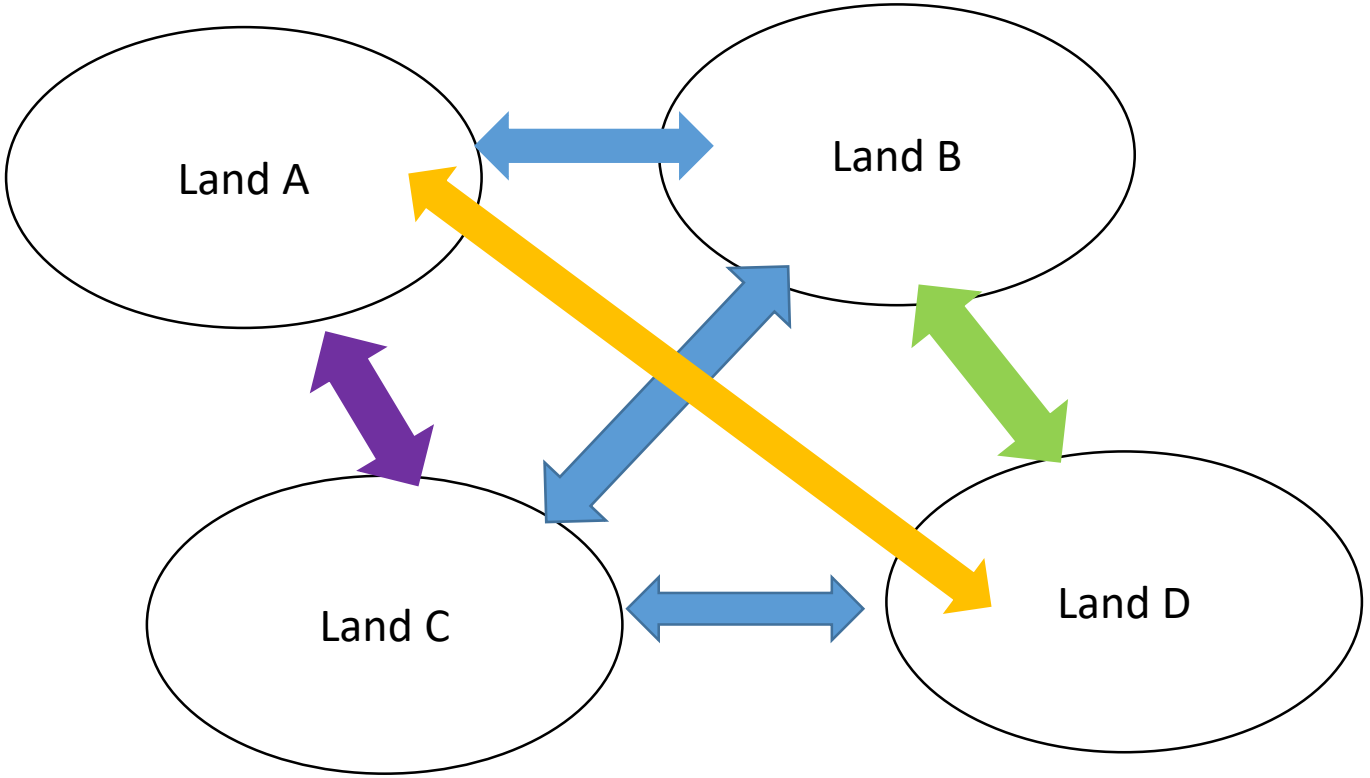
vereniging voor
Belastingwetenschap

HET MLI

MR. DR. DIRK BROEKHUIJSEN

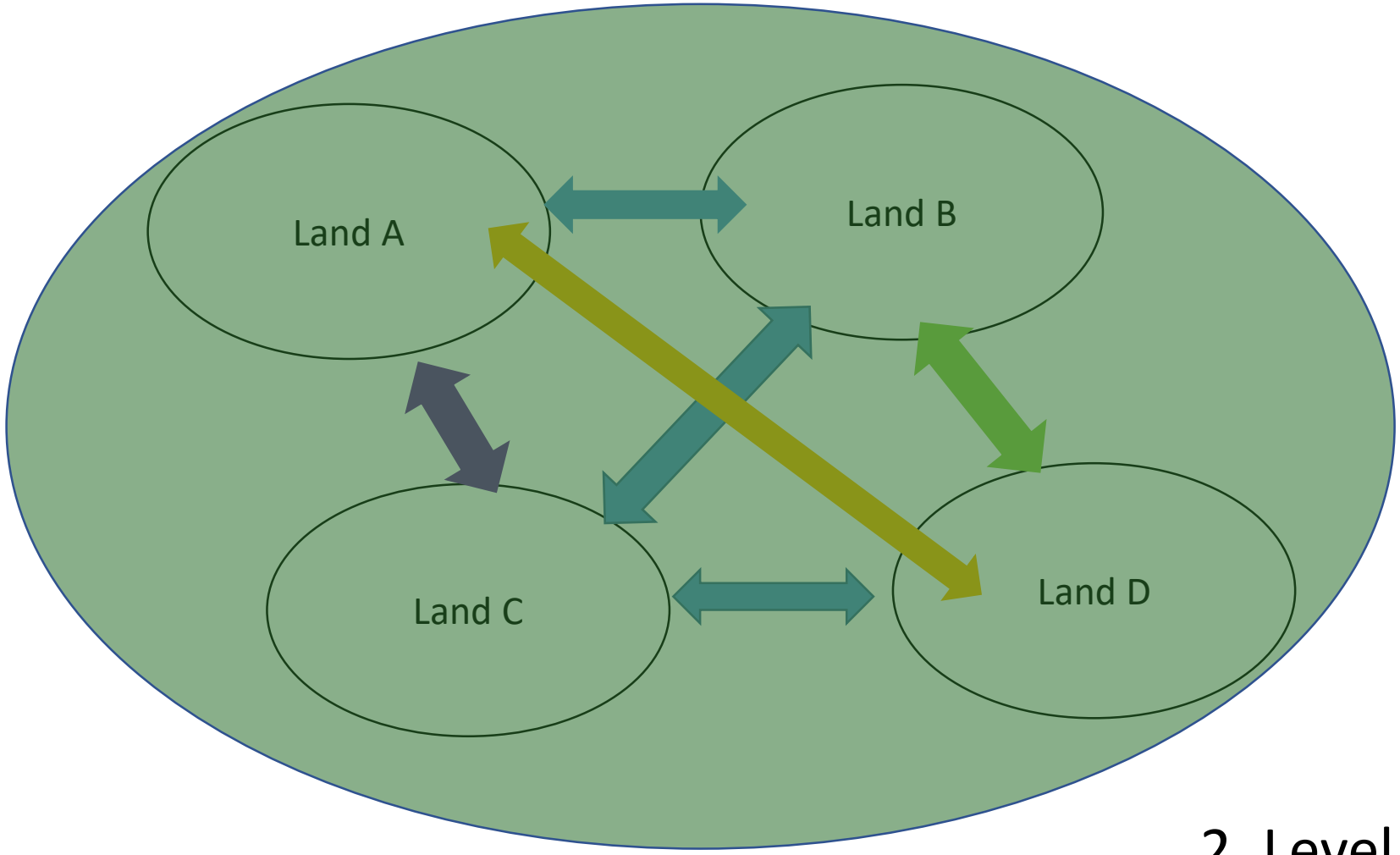


OESO
Modelverdrag
1963

OECD
Modelverdrag
1977

OECD
Modelverdrag
2003

1. AANPASSEN VERDRAGEN

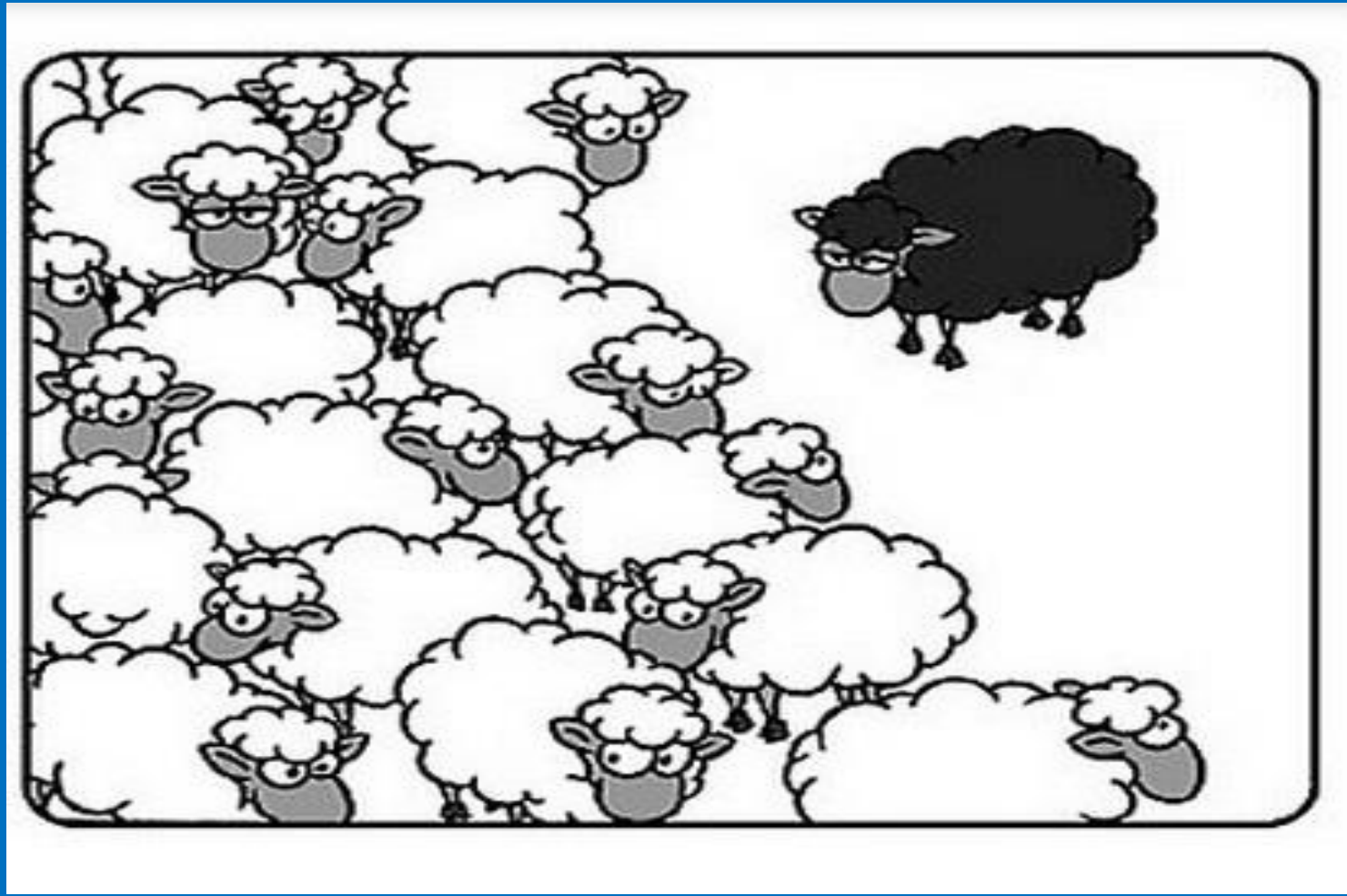


2. Level playing field

AGENDA

1. VERPLICHTINGEN

1. OPT OUTS/RESERVATIONS



RESERVATIONS (“OPT-OUT”)

Art. 4 – Dual resident entities

3. A Party may reserve the right:

   a) for the entirety of this Article not to apply to its Covered Tax Agreements;

   b) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction by requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence;

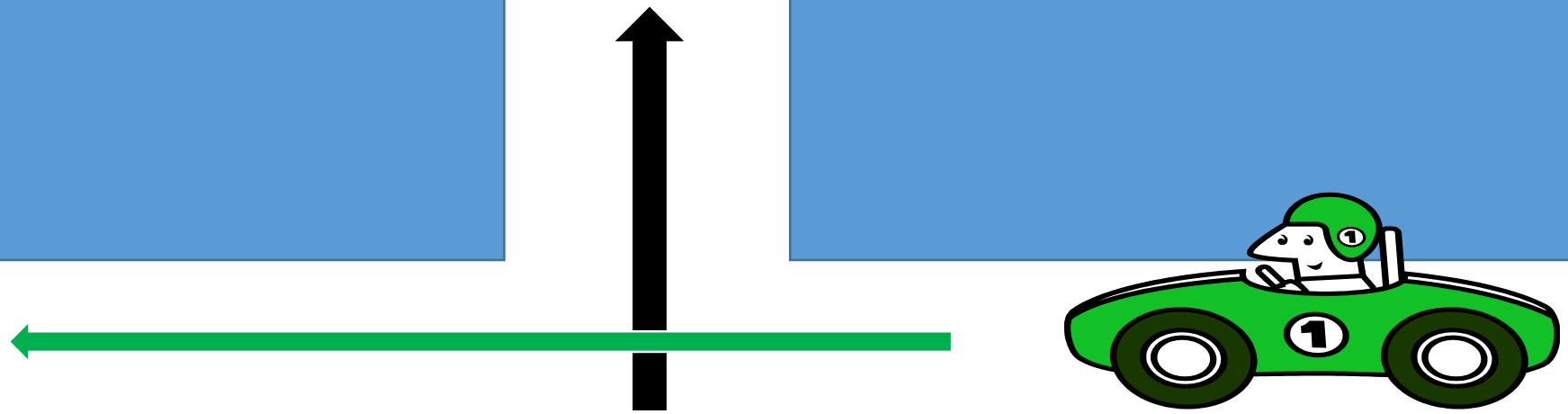
   c) for the entirety of this Article not to apply to its Covered Tax Agreements that already address cases where a person other than an individual is a resident of more than one Contracting Jurisdiction by denying treaty benefits without requiring the competent authorities of the Contracting Jurisdictions to endeavour to reach mutual agreement on a single Contracting Jurisdiction of residence;

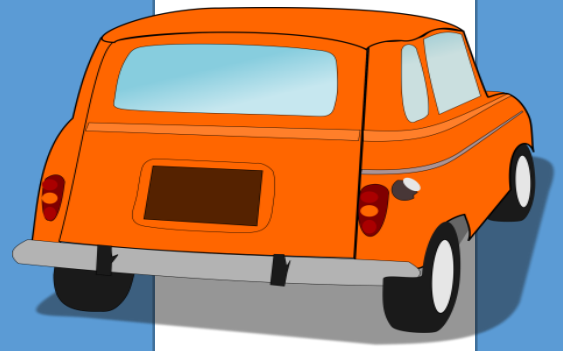
Etc.

1. Reservation moet expliciet zijn toegestaan door MLI (art. 28 MLI)

2. Geldt voor alle belastingverdragen van een land (behoudens uitzonderingen).

2. ‘RULES OF THE ROAD’





RULE OF THE ROAD

Article 7 – Prevention of Treaty Abuse

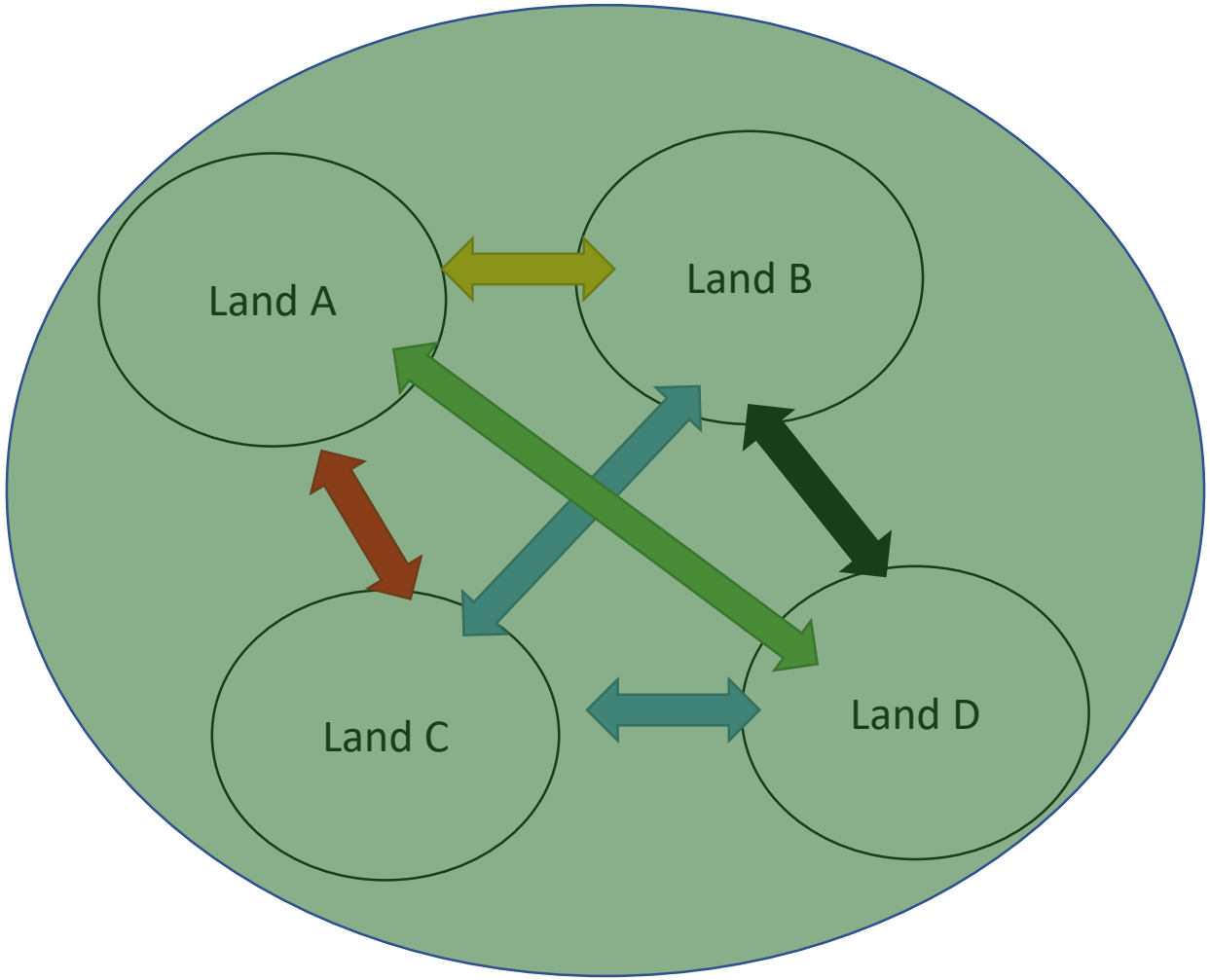
1. Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.

2. VERHOUDING MET BILATERALE VERDRAGEN

MLI en bilaterale verdragen zijn “gelijk”

Voorrang van MLI?

Rechtszekerheid: “compatibility clauses”



COMPATIBILITY CLAUSES

Effect afhankelijk van:

(1) singaalwoorden

(2) matching “notifications”

Vier typen:

1. “In place of”
2. “applies to” of “modifies”
3. “in the absence of”

Geen match: bepaling niet in CTA

Wel match: CTA-bepaling wordt gewijzigd, geheel vervangen of bepaling geheel aan CTA toegevoegd

4. “in the place or in the absence of”

Geen match: MLI bestaat ‘naast’ CTA

Wel match: Bepaling in CTA wordt geheel vervangen

COMPATIBILITY CLAUSE

Art. 4 – Dual resident entities

Signaalwoord

2. Paragraph 1 shall apply in place of or in the absence of provisions of a Covered Tax Agreement that provide rules for determining whether a person other than an individual shall be treated as a resident of one of the Contracting Jurisdictions in cases in which that person would otherwise be treated as a resident of more than one Contracting Jurisdiction. Paragraph 1 shall not apply, however, to provisions of a Covered Tax Agreement specifically addressing the residence of companies participating in dual-listed company arrangements.

Te identificeren bepaling in CTA

Notificatie

4. Each Party that has not made a reservation described in subparagraph a) of paragraph 3 shall notify the Depositary of whether each of its Covered Tax Agreements contains a provision described in paragraph 2 that is not subject to a reservation under subparagraphs b) through d) of paragraph 3, and if so, the article and paragraph number of each such provision. Where all Contracting Jurisdictions have made such a notification with respect to a provision of a Covered Tax Agreement, that provision shall be replaced by the provisions of paragraph 1. In other cases, paragraph 1 shall supersede the provisions of the Covered Tax Agreement only to the extent that those provisions are incompatible with paragraph 1.

Consequenties van notificatie-match

3. TOEKOMST?

3. TOEKOMST?

MLI 2.0?

Uitbreidingen aan MLI?

Ad-hoc of coherent?

vereniging voor
Belastingwetenschap

DANK!