INVITATION

GTTC Universities Project VII: Scope and Framework

We herewith invite you to participate in the Seventh edition of the GTTC University Project, which forms part of the Global Tax Treaty Commentaries (GTTC) published by IBFD.

In 2014 IBFD launched the GTTC, the first digital global commentary of its kind to assist in the analysis of Tax Treaties. This publication provides a high-level analysis of each article of the OECD Model and the UN Model. The collection also contains chapters on meta-topics on important general issues such as tax treaty interpretation and tax avoidance. All chapters provide a comprehensive overview, written by distinguished global authors. The chapters draw on actual global treaty practice highlighting the many variations from the model provisions and its practical application. As a result, GTTC represents a truly collective view from world-class academics and tax professionals on the subject.

GTTC has as its primary aim to be the authoritative source for analysis and commentary on tax treaty practices across the globe. In this regard, one of the main goals of the GTTC is the introduction of information about the treaty policy of states and its impact on the actual negotiation of tax treaties.

The goal of the GTTC University Project is to involve University teams in empirical research concerning international tax treaties. The reports submitted will be given to the authors of the relevant GTTC chapters, enabling them to enrich their chapters with the findings in the reports.

For this purpose, the IBFD invites university professors/teachers and students to express their interest in participating in this project. Some universities have already participated in the previous editions of the GTTC Universities Project, which focused on tax treaty case law, tax treaty policy and tax treaty deviations, and the impacts of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "MLI") on the treaty domestic policy of jurisdictions and tax treaty policy of/with developing countries.

Formal details

i. IBFD invites all interested universities to express their interest on this project. Insofar as possible, it is recommended that participating universities include this project as a special research project within the framework of a course on international tax law or similar. Each team should consist of 3 to 4 students, under the coordination of a university professor/teacher specialized in tax law.

ii. IBFD will provide free access to the GTTC online publication as well as to the Tax treaty database for all competing teams during the time of the project. Such access may be restricted at the sole discretion of IBFD. Access will be provided to the team participants, the supervising professor(s) and teaching staff involved in the project.

iii. Each team should draft a report according to the guidelines set out below. The evaluation criteria for the reports are:

a) Information: Does the research probe all possible sources? Does it analyze the value of those sources and/or explain why only limited sources were used? Is the information presented relevant? (30%)

b) Analysis: Does the report present a convincing analysis of the information found? Does the analysis add depth to the information presented, for example by relating the information presented to the country's economic position, charting the development of the country's treaty policy over time and/or relating the provisions found to the characteristics of the treaty partners? (40%)

c) Presentation: Is the report well structured and clearly written? Is the information presented in a way that supports the analysis, for example in charts that highlight or illustrate the points made in the analysis (rather than simply listing treaty provisions)? (30%)

v. The IBFD jury will select the four most outstanding reports and the IBFD will notify the jury's decision to the participants by 20 April 2023. The four teams that submitted the selected reports will be invited to make an oral presentation of their findings to the jury, at the IBFD headquarters in Amsterdam, on 1 June 2023. The jury will select one winning team on the basis of the following criteria:

a) Clarity: Do the presentations give a clear explanation of how the research and analysis was carried out? Do the presentations follow a clear structure? (25%)

b) Selection of content: Do the presentations give a good sense of the overall results of the research, the analysis made and the conclusions drawn? Do they provide illuminative examples or highlights? (50%)

c) Speaking skills: Are the speakers able to make their points clearly and in the limited time available? Are they pleasant to listen to and able to keep the attention of the audience? (25%)

Each of the four selected teams will receive:

- A grant of 2500 Euros to cover (part of) the accommodation and travel expenses of each of the four shortlisted teams.

- A certificate for each member of the shortlisted teams.

• The Universities of the four shortlisted teams will receive an offer for a 50% reduced fee for subscription to GTTC online publication for a period of one year following the period of free access for the - term of this project.

Format and style of the working paper:

• *Text*: To be presented in a Word document in font Times New Roman (TNR) 11 pt; double spacing; left aligned. Document title: To be presented in TNR 11 pt, centred, bold and in CAPS.

• *Sections*: Sections within the chapter should be numbered consecutively using Arabic numerals, starting with the chapter number. Limit headings to three levels, keep titles concise and number consistently throughout the Working Paper. The numbers and section titles and sub-section titles are to be in TNR 11 pt and bold.

• *Length*: maximum 40 pages.

Deadline: 26 March 2023.

Structure and Content of the Working Papers

Introduction

The aim of the reports written for this competition is to analyze your country's tax treaty policy in respect of the subject matter set out below. In other words, from the materials available (which are discussed in more detail below), you are expected to carry out some "reverse engineering" in order to ascertain your country's treaty policy and to put that treaty policy in its economic and political context. Some states make their treaty policy publicly known, for example by publishing their own model; in this case you should ascertain the extent to which that policy is implemented in concluded treaties and assess the relative importance to your country of the different elements of the stated policy.

A country's tax treaty policy does not exist in a vacuum; it is determined by a multitude of factors, such as the country's domestic tax law, its state of development, its economic position in the world and its trading partners. The analysis that we are seeking in this competition therefore not only reports on the content of concluded treaties and the country's (stated) aims in this respect, but also puts them into context by relating that information to the factors that shape the country's treaty policy. It will not always be possible to relate specific provisions to the policy factors that you have identified for your country, as tax treaties are (usually) bilateral instruments, which include provisions requested by both contracting states. These "other country" provisions, however, may give you valuable information about the relative importance of your own country's aims and the areas in which it is willing to make concessions.

Sources

In writing the report, you should consider at least the following materials:

– concluded treaties, including any that are not yet in force. Also read any protocols, exchanges of letters and/or memoranda of understanding. Be careful with older treaties, as they may not follow the structure of the Models, so you might have to read the whole treaty carefully in order to make sure that you have picked up all the provisions relevant to the topic of your report;

- changes that have been made to treaties by protocol and the complete replacement of treaties. These changes might be particularly useful to highlight whether/how the policy of your country has changed over time;
- any explanatory documents issued in connection with concluded treaties (primarily those published by your country, but if you are able to find and read them, explanatory documents issued by treaty partners might also be useful, particularly in order to understand the background of "deviating" provisions);
- if your country has signed the MLI, the choices it has made in respect of any provisions relevant to your report;
- any statements made by your country about its treaty policy, including a possible national model, and any statements about adherence to the OECD or UN Model and their Commentaries. Such statements may also be made in guidance given to the tax authority, which is publicly available in some countries;
- reservations, observations or non-Member State positions registered in respect of the OECD Model and Commentary;
- other policy documents issued by your country explaining the policy background of the treaty provisions under consideration and/or the policy background of domestic law that relates to those treaty provisions;
- case law in your country that has influenced treaty policy. For example, case law might have determined an interpretation of a treaty term in a way not anticipated by the tax administration and that, in turn, might have influenced the provisions of new treaties.

If your country has an extremely large network of treaties, you may wish to make a selection of treaties for detailed analysis. In this case, please focus the selection on treaties that deviate from the OECD or UN Model (depending on any stated or perceived preference of your country) and report that the treaties not in the selection (generally) follow the Model. Consider whether you can group the selected treaties according to the nature of the deviations for the purposes of your discussion, as the deviating treaty provisions of one country commonly result from a specific policy of that country.

Issues to consider

When writing your report, pay attention to the following issues:

- think about the features of your country's domestic tax law that have a bearing on its treaty policy and whether/how those features are reflected in treaties. For example, you might need to explain certain regimes in your country's domestic law as part of the background, or features that do not conform to international norms, such as a territorial system of taxation;
- state whether or not your country is an OECD member;
- analyze the extent to which your country adheres to the OECD or the UN Model (or a regional model) and policies that do not conform to either Model. If the treaties conform to the OECD and/or UN Model, it is sufficient to state that without further explanation. If the treaties have different wording but achieve the same result as one of the Models, this should be noted. A different interpretation of the same wording needs more attention, for example if your country's case law has given a specific interpretation of a certain common treaty provision;

- pay particular attention to deviations from the OECD and UN Models, particularly if this is a consistent pattern. In comparing your country's treaties with the Models, pay attention to the time at which the treaties were signed and the text of the Models that were current at that time. Does your country, for example, consistently follow the most recent version, or does it prefer an older version of a specific provision, such as Art. 7 in the OECD Model?;
- note that both Commentaries make many suggestions for alternative versions of the provisions in the Models. If your country adopts any of these suggestions, it is sufficient to point to the paragraph of the Commentary where this text is set out;
- think about how any trends discovered (in particular in respect of consistent deviations from the OECD and/or UN Models) relate to the economic position of your country. One of the most important factors is the pattern of cross-border trade and whether your country is primarily an importer or exporter of capital and investment. Other factors might be, for example, your country's reliance on a particular industry, or having a well-educated workforce that is frequently employed abroad. The policy is also likely to be shaped by whether or not your country has a dominant position in the international or regional economy;
- analyze your findings to determine whether there are discernible differences in the treaties concluded with specific groups of countries (such as developing countries, or countries in specific regions);
- if possible, distinguish between treaty provisions that form an active part of your country's policy and provisions that are included at the request of the other party.

Any tables or charts you produce should support your report by picking out the information needed to substantiate its conclusions. For example, you might want to produce charts highlighting how the trends you have discovered relate to treaty partners grouped by region and/or stage of economic development, and charts highlighting how the provisions in concluded treaties have changed over time. Tables and charts that have a clear "message" are much more informative than long lists of treaty provisions.

Outline

Scope and framework

The selected provisions are:

- expressions of the overall purpose of the treaty (title, preamble, Art. 6 MLI);
- the personal scope of the treaty (Arts. 1(1), 3(1)(a) 4 and 29 of the 2017 OECD and UN Models);
- the material scope of the treaty (Art. 2 of the 2017 OECD and UN Models);
- the geographical scope of the treaty (Arts. 3 and 30 of the 2017 OECD and UN Models, protocols);
- the temporal scope of the treaty (Arts. 31 and 32 of the 2017 OECD and UN Models);
- the allocation framework of the treaty (Arts. 1(2), 1(3), 23 and 24 of the 2017 OECD and UN Models);
- the interpretation framework of the treaty (Art. 3 of the 2017 OECD and UN Models, terminal clause)
- anti-abuse provisions (Art. 29(9) of the 2017 OECD and UN Models, Art. 7 of the MLI).

1. General overview of domestic policy and history

This section provides a general introduction to domestic policy in respect of the tax treaty topics to be addressed in this report noting, if possible, how this policy has developed over time. Some of the notes below (for example, in connection with Art. 4) point out some domestic regimes that may require a description in the context of the relevant section. In this section, you should provide some high-level background information about your country's tax system, such as the range of taxes imposed, whether the system is highly complex or more basic and whether there is a long experience with cross-border issues. This section should also provide relevant background information about your country's economy, such as the size and composition of the economy, whether your country has a dominant position regionally or internationally, etc.

2. Personal scope of the treaty

2.1. Main entitlement rule

2.1.1. Basic rule – Art. 1(1)

2.1.2. Definition of "person" - Arts. 3(1)(a) and (b)

Concluded treaties may have an extra definition in Art. 3(1)(a) in connection with partnerships, but please report these in Section 2.2. and not in this section.

2.2. Transparent entities - Art. 1(2) and Art. 3 MLI

Concluded treaties, especially those dating from before the 2017 Models, include a variety of provisions dealing with the application of the treaty to partnerships, in particular, but sometimes also to other types of transparent entity. Please report on all such provisions here,

even if they do not follow the wording of Art. 1(2), if they differ from the principle of Art. 1(2) or if they are found in other parts of the treaty.

2.3. Residence

2.3.1. Main rule – Art. 4(1)

If your country has a territorial system of taxation, please report this here and state whether there have been any pronouncements from the government in respect of the application of treaties or any case law on this point.

A number of countries have regimes for wealthy individuals that impose a forfaitary tax instead of a regular income tax on foreign-source income. If your country has such a regime, please describe it briefly and state whether your country's treaties include special provisions in this respect and whether there have been any pronouncements from the government in respect of the application of treaties or any case law on this point. The US Model treaty of 2016 excludes any person subject to such a regime from the benefit of the treaty; maybe other countries regularly include similar provisions in their treaties.

2.3.2. Individual dual residence – Art. 4(2)

2.3.3. Entity dual residence – Art. 4(3), Art. 4 MLI

2.4. Limitation on benefits – Art. 29(1)-(7)

Do not deal in detail with all the separate paragraphs of LOB provisions; it is sufficient to report: whether your country (routinely) includes an LOB article in its treaties; whether any LOB articles most resemble the detailed or the simplified version; and whether there are any specific features (inclusions or exclusions) that are noteworthy. Note that the PPT, in Art. 29(9), should be covered in Section 4(2) below. Art. 29(8), on income attributable to third-state PEs, should not be discussed here as it is covered by the reports on passive income that will be written in a different year of the compeition.

2.5. Specific entities

Please report here on provisions included your country's treaties that deal with the general treaty entitlement of CIVs, REITs, pension funds, governments and government entities, or other specific types of entity. If definitions of the types of entity concerned are included in Art. 3(1)(a) they should also be reported here.

Provisions dealing with the application of specific treaty articles to these entities, such as provisions on the application of Art. 10 to REITS or exemptions for certain entities for source-state withholding tax on interest, are covered in the reports that will be written in a different year of the competition. You may need, however, to mention such provisions briefly here in order to complete the overall picture (for example by reporting that, as REITs are not generally entitled to treaty benefits, special provision is made for them in Art. 10).

3. Other scope provisions

3.1. Material scope - Art. 2

3.1.1. Main rule – Arts. 2(1), (2) and (4) first sentence

Do not deal with the second sentence of Art. 2(4), as this provision is included in the separate reports on procedural rules that will be written in a different year of the competition.

3.1.2. Listed taxes – Art. 2(3)

Please state whether Art. 2(3) in your country's treaties generally include all the taxes imposed by your country that could be regarded as a tax on income or capital. Please give a brief description (particularly of the tax base) of each tax that raises issues in this respect, stating whether or not it is generally covered by treaties. If your country has a digital services tax, or is contemplating introducing one, please pay attention to this.

A small number of income tax treaties also apply to other taxes, such as gift/inheritance taxes; please report this if it applies to your county.

3.2. Geographical scope – Arts. 3 and 30 and protocols

Although the OECD Model does not do so, many concluded treaties include a geographical definition of the two contracting states in Art. 3. On the other hand, many concluded treaties do not include any equivalent of Art. 30 OECD. Please report here any provisions found in your country's treaties that define the territory to which the treaty applies, including those in protocols.

Note that protocols, in particular, sometimes extend the scope of a treaty to former dependent territories. Occasionally, the extension of an old treaty to a former dependent territory may remain in force even though the treaty itself has been replaced in the relationship between the countries named as contracting states.

3.3. Temporal scope (Arts. 31, 32)

Concluded treaties often distinguish among the treaty articles when specifying the date that they take effect or lose effect, the passive income articles taking effect on or soon after the date that the treaty enters into force and the remaining articles taking effect at the beginning of a tax year. If the contracting states have different tax years, that difference is usually reflected in these provisions. Please state your country's tax year when reporting on these articles. Note that some treaties have a provision, usually in a protocol, providing that the treaty ceases to have effect after a certain period unless the contracting states specifically agree to renew it.

4. Allocation and interpretation framework

4.1. Saving clause - Art. 1(3) and Arts. 3(3) and 11 MLI

The saving clause was not added to the Models until 2017 and is therefore not included in many older treaties, the main exception being treaties concluded by the US, which has had this provision in its own model for much longer. The MLI has two routes by which this provision is potentially added to covered treaties. Please indicate which choices your country has made in respect of the MLI provision and whether your country follows the new Models in newly concluded treaties.

4.2. Interpretation framework

4.2.1. Definitions – Art. 3(1)

It is not necessary to report individually on all the definitions included in this paragraph; the most important issue to report here is whether the treaties concluded by your country define terms that are not specifically defined in the OECD Model and/or whether they consistently omit definitions that are included in the OECD Model.

Do not report here on the following provisions, which should all be reported in another section:

- Variations in respect of paras. (a) and (b) (Section 1.2.);
- Geographical definitions of the contracting states (Section 3.2.);

- Definitions in connection with the application of the treaty to specific entities (Section 2.5.).

4.2.2. Undefined terms – Art. 3(2)

Note here, in particular, whether your country's treaties adopt a static or ambulatory approach in this provision.

4.2.3. Languages – terminal clause

The terminal clause usually names any different language versions of the treaty and often states which is to be regarded as authoritative if there is a discrepancy in meaning among the different languages. Please report here the official language(s) of your country's tax legislation, the extent to which the language used in tax treaties reflects the language(s) of domestic law, the extent to which a single authoritative language is chosen and the extent to which such a single authoritative language is a "third" language that is not an official language in either state.

4.2.4. Other interpretation documents

Please report here the extent to which your country makes use of protocols, memoranda of understanding and/or exchanges of letters to deal with issues of interpretation and any general trends in the interpretation issues addressed in these documents.

4.3. Double tax relief

4.3.1. Basic DTR obligation - Art. 23A/B and Art. 5 MLI

It is extremely rare for the DTR article of a concluded treaty to follow the OECD Model, as most states wish to use wording in this provision that matches the wording of their domestic law. As a result, very many treaties include separate paragraphs in this article to cater for the two contracting states. These provisions may borrow the wording of domestic law or state explicitly that relief is to be given according to domestic law. Often, but not always, they also state that the granting of double tax relief is subject to the general principle of the treaty provision, which may raise an issue if the method of relief differs between the two or if there are changes to the domestic law.

It is not necessary to report in detail on the specific wording used by your country in its treaties, but please report the following:

- whether, and if so how, the relationship between the treaty and domestic law is defined in the DTR articles;
- whether the DTR method provided in treaties differs from the method used in domestic law and, if so, whether there is any case law or administrative pronouncement about the impact of this difference on taxpayers (for example, whether taxpayers may choose which method to use).

4.3.2. Double residence taxation – Art. 3(2) MLI

The 2017 version of both Models added wording to Art. 23 to clarify that countries are not required to grant double tax relief in respect of tax levied by the other contracting state on a residence basis. Art. 3(2) MLI is a separate provision to this effect; this provision is worded in general terms, although it is part of the article headed "transparent entities". Please indicate which choices your country has made in respect of the MLI provision and whether your country follows the new Models in newly concluded treaties.

4.3.3. Conflicts of qualification – Art. 23A(4)

Art. 23A(4) was added to the OECD Model in 2000, and to the UN Model in 2017, to deal with the phenomenon generally described as "conflicts of qualification" and to prevent non- or under-taxation in these cases. Art. 5 MLI offers three options for achieving the same result.

If your country adopts the exemption system in its treaties, please report on whether 23A(4) is generally included in its treaties and which option, if any, has been chosen under the MLI.

This issue arises only in connection with treaties that use the exemption method of double tax relief; if the treaties concluded by your country always employ the credit method only, please state so briefly.

4.3.4. Special DTR provisions

Please report here any specific provisions in respect of double tax relief that are included in the treaties concluded by your country, such as tax sparing credits (even if they are granted only in respect of specific types of income). Note that tax sparing provisions are often found in protocols and are sometimes drafted with deliberately obscure wording.

4.4. Non-discrimination – Art. 24

Please report here, in particular:

- Treaties that do not extend the scope of Art. 24(1) to all persons, whether or not resident in one of the contracting states;
- Treaties that do not include para. (6) or that do not otherwise extend the scope of this article to all taxes, whether or not covered by Art. 2;
- Treaties that do not extend the scope of paras. (1), (2) and (5) to "connected requirements".

Countries that have a branch profits tax sometimes include a provision in Art. 24 to protect it. Paras. 24 of the UN Commentary on Art. 10 include an example of such a provision. If this is the case for your country, please report this very briefly here, as a full report is requested in the separate reports on passive income that will be written in a different year of the competition.

5. General anti-abuse and "purpose" provisions

5.1. Purpose of the treaty – Title, preamble, Art. 6 MLI

Please report here on the purposes of a tax treaty expressed in the title and/or preamble of treaties concluded by your country, in particular the extent to which the prevention of tax avoidance, tax evasion or treaty shopping is named explicitly. Please report also on the choices made under Art. 6 MLI in this respect.

5.2. PPT – Art. 29(9) 2017 OECD and UN Models, Art. 7 MLI

Please report here on general anti-avoidance provisions in the treaties concluded by your country, even if they are not worded the same way as the PPT in Art. 29(9). Do not discuss anti-abuse provisions that apply only to specific allocation articles, such as the wording in the passive income articles of many UK treaties that prevents the application of these articles to structures designed to take advantage of that article (these provisions are covered in the separate reports on the treaty article concerned that will be written in a different year of the competition).

5.3. Other provisions relating to purpose

This section should report on any other provisions of general scope relating to the purpose of tax treaties. The subsections below all relate to the general conditions under which treaty benefits are granted and reflect the aim of tax treaties to prevent double taxation without providing opportunities for less-than-single taxation. Concluded treaties may include other provisions of general scope that reflect this same aim, or provisions that reflect other aims of the treaty such as enhancing administrative cooperation between the contracting states.

If necessary, you may change the subsections in this section in order to reflect your country's treaty policy, but if you use the headings below please follow the order in which they are given. If the treaties concluded by your country have no provisions of this kind, please indicate that briefly, without using any sub-sections.

Do not discuss the following:

- The beneficial ownership requirement (this is covered by the seperate reports on passive income that will be written in a different year of the competition);
- Provisions limiting treaty benefits for passive income that is attributable to a third-state PE (this is also covered by the separate reports on passive income);
- Other provisions relating only to specific treaty articles, such as the provision suggested in para. 107 of the OECD Commentary on Art. 1, as this provision limits the application of only one treaty article (Art. 11).

5.3.1. Subsequent changes to domestic law

The OECD Commentary on Art. 1, in para. 101, suggests the text of a provision that requires the contracting states to consult with each other if certain features of the tax system of the contracting states change so fundamentally as to upset the main purpose of the treaty. This provision is also cited in para. 144 of the UN Commentary on Art. 1. A similar provision is included in the 2016 US Model Convention.

5.3.2. Remittance basis

The OECD Commentary on Art. 1, in para. 108, suggests the text of a provision to prevent the granting of treaty benefits for income that is not at risk of double taxation due to the use of the remittance basis in one of the contracting states. This provision is also cited in para. 144 of the UN Commentary on Art. 1.

5.3.3. Subject-to-tax clauses

Subject-to-tax clauses appear in concluded treaties in many different forms and in many different treaty articles. Please report here only the use of subject-to-tax clauses as a general policy in respect of a broad range of allocation articles. Subject-to-tax clauses that relate only to the passive income articles should not be reported here, as they are covered in the separate report on passive income.