Vilnius University, Faculty of Law

Department of Private Law

2nd Study Year, International and European Law

Master's Thesis

International Double Taxation Agreements

Tarptautinės dvigubo apmokestinimo išvengimo sutartys

Supervisor: Gruodis Povilas, Assist. Prof. Dr.

Vilnius

2026

ABSTRACT

The study is a critical analysis of the international system of double taxation agreement (DTA) - its legal framework, historical basis, the mechanics of its operation and the structural limitations of the system - in the context of a rapidly globalising and digitalising world economy. The bilateral tax treaties system, consisting of over three thousand separate bilateral treaties between more than one hundred and eighty different jurisdictions, was developed in the course of the twentieth century in order to cope with the simultaneous and overlapping nature of claims to taxing rights by sovereign states over the same taxpayer, the same income, and the same time. This is a fact, an economically damaging, and resolvable, problem, known as juridical double taxation. The bilateral treaty system that evolved under the League of Nations followed by the OECD has been very successful in helping to reduce this kind of double taxation in cross-border transactions between the treaty partners.

The bilateral structure, however, is structurally inappropriate to the economic environment in which it now has to work. The study shows that the system is not capable of sufficiently responding to three deep-seated modern issues. To begin with, the emergence of the digital economy has rendered the physical-presence nexus rule on which the entire system of treaties to allocate source-state taxing rights is based is functionally obsolete to the most commercially significant business models of the present era. Second, the bilateral architecture and its formal criteria of legal residence has offered structural conditions to systematic treaty abuse through treaty shopping, base erosion and profit shifting (BEPS), and artificial avoidance of the status of permanent establishment. Third, the framework has brought about highly inequitable distributional implications on the developing countries which has been attracted into the relationship of the treaties which have a systematic erodement of the source-state taxing rights in exchange of investment benefits which are not reliably confirmed by empirical evidence.

The study appraises the OECD/G20 Base Erosion and Profit Shifting project and its Multilateral Convention, and the Two-Pillar Solution, and concludes that despite the genuine contributions made by these initiatives to anti-abuse standards and minimum tax rules, they are nonetheless primarily addressing symptoms, rather than the underlying causes. The study concludes that meaningful and lasting reform requires a paradigm shift:

between bilateral and inclusive multilateral governance, between formal-presence and substance-based nexus rules, between optional and mandatory and binding dispute resolution and towards a reconceptualization of taxing rights that reflects the point of value-creation in a digital, globalised economy. It is, the research argues, a framework convention on international tax cooperation under the auspices of the United Nations - a framework that provides all states, including developing and least-developed countries, with a real and structurally equal voice in the formulation of the rules that will govern the international tax system to which they are subject.

SANTRAUKA

Šis tyrimas yra kritinė tarptautinės dvigubo apmokestinimo išvengimo susitarimų (DAS) sistemos analizė – jos teisinis pagrindas, istorinis pagrindas, veikimo mechanizmas ir struktūriniai sistemos apribojimai – sparčiai globalėjančios ir skaitmenėjančios pasaulio ekonomikos kontekste. Dvišalių mokesčių sutarčių sistema, kurią sudaro daugiau nei trys tūkstančiai atskirų dvišalių sutarčių tarp daugiau nei šimto aštuoniasdešimties skirtingų jurisdikcijų, buvo sukurta XX amžiuje, siekiant susidoroti su suverenių valstybių vienalaikiais ir persidengiančiais apmokestinimo teisių reikalavimais dėl to paties mokesčių mokėtojo, tų pačių pajamų ir tuo pačiu metu. Tai faktas, ekonomiškai žalinga ir išsprendžiama problema, vadinama teisiniu dvigubu apmokestinimu. Dvišalių sutarčių sistema, kuri išsivystė Tautų Sąjungos, o vėliau ir EBPO, valdymo laikotarpiu, labai sėkmingai padėjo sumažinti tokio pobūdžio dvigubą apmokestinimą tarpvalstybiniuose sandoriuose tarp sutarties partnerių.

Tačiau dvišalė struktūra yra struktūriškai netinkama ekonominei aplinkai, kurioje ji dabar turi veikti. Tyrimas rodo, kad sistema nėra pajėgi tinkamai reaguoti į tris giliai įsišaknijusias šiuolaikines problemas. Pirmiausia, skaitmeninės ekonomikos atsiradimas lėmė, kad fizinio buvimo ryšio taisyklė, kuria grindžiama visa sutarčių sistema, skirta paskirstyti šaltinio ir valstybės apmokestinimo teises, yra funkcionaliai pasenusi svarbiausiems dabartinės eros verslo modeliams. Antra, dvišalė architektūra ir jos oficialūs teisėtos rezidavimo kriterijai sudarė struktūrines sąlygas sistemingam piktnaudžiavimui sutartimis per sutarčių paieškų, bazės erozijos ir pelno perkėlimo (BEPS) bei dirbtinio nuolatinės buveinės statuso vengimo procesą. Trečia, ši sistema sukėlė labai nelygų paskirstymo poveikį besivystančioms šalims, kurios buvo įtrauktos į sutarčių santykius, sistemingai mažinančias šaltinio ir valstybės apmokestinimo teises mainais į investicinę naudą, kurios patikimai nepatvirtina empiriniai įrodymai.

Tyrime vertinamas EBPO/G20 bazės erozijos ir pelno perkėlimo projektas ir jo daugiašalė konvencija bei dviejų ramsčių sprendimas ir daroma išvada, kad nepaisant realaus šių iniciatyvų indėlio į kovos su piktnaudžiavimu standartus ir minimalias mokesčių taisykles, jos vis dėlto pirmiausia sprendžia simptomus, o ne pagrindines priežastis. Tyrime daroma išvada, kad prasminga ir ilgalaikė reforma reikalauja paradigmos pokyčio: nuo dvišalio ir įtraukaus daugiašalio valdymo, nuo formalaus dalyvavimo ir turiniu pagrįstų sąsajų taisyklių, nuo pasirenkamo ir privalomo bei įpareigojančio ginčų sprendimo ir link apmokestinimo teisių permąstymo, kuris atspindėtų vertės kūrimo esmę skaitmeninėje, globalizuotoje ekonomikoje. Tyrime teigiama, kad tai yra Jungtinių Tautų globojama tarptautinio mokesčių bendradarbiavimo pagrindų konvencija – sistema, suteikianti visoms valstybėms, įskaitant besivystančias ir mažiausiai išsivysčiusias šalis, realų ir struktūriškai lygiateisį balsą formuojant taisykles, kurios reglamentuos tarptautinę mokesčių sistemą, kuriai jos yra taikomos.

Keywords: Bilateral Tax Treaty, Double Taxation, Residence-Source Conflict, Permanent Establishment, Treaty Shopping, Base Erosion and Profit Shifting, OECD Model Tax Convention, Developing Countries, Digital Economy, Two-Pillar Solution, Multilateral Tax Governance, Fiscal Sovereignty.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

BEPS: Base Erosion and Profit Shifting

DTA: Double Taxation Agreement

FDI: Foreign Direct Investment

IMF: International Monetary Fund

LOB: Limitation on Benefits

MAP: Mutual Agreement Procedure

MLI: Multilateral Instrument (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS)

MNE: Multinational Enterprise

OECD: Organisation for Economic Co-operation and Development

PE: Permanent Establishment

PPT: Principal Purpose Test

UN: United Nations

UNCTAD: United Nations Conference on Trade and Development

VCLT: Vienna Convention on the Law of Treaties

INTRODUCTION

The cross-border taxation of international income finds itself at the nexus of fiscal sovereignty, public international law and international economic integration. Over a hundred years of bilateral treaties of double taxation have been the main tool by which states have sought to coordinate their competing fiscal claims, prevent the economic inefficiency and injustice of double taxation, and provide a stable and predictable legal framework to coordinate cross-border investment and trade.

The institutional origins of the bilateral treaty system lie in the work of the League of Nations in the 1920s, when the basic categories and principles of the modern system - the distinction between source and residence as the two competing bases of tax jurisdiction, the concept of permanent establishment as the gateway to taxation of business profits by source states, and the method of credit and exemption as the leading mechanism of eliminating the occurrence of a second taxation - were first formulated in a multilateral context. These categories and principles were subsequently codified in the OECD Model Tax Convention on Income and on Capital, the most influential single instrument in the history of international tax law, which has served as the template for the overwhelming majority of the more than three thousand bilateral treaties in the global treaty network. They were supplemented, from the perspective of capital-importing developing countries, by the United Nations Model Double Taxation Convention, which sought to redress the distributional imbalance in favour of source states that the OECD Model's residence-centred architecture had entrenched.

The framework has achieved important objectives. It has significantly reduced the incidence of juridical double taxation on cross-border income flows between treaty partners. It has established a common language and a set of shared concepts for the resolution of tax disputes between states. It has created a network of bilateral information exchange arrangements that provided the foundation on which the post-2008 global push for tax transparency has been built.

But the framework is in structural crisis. The problems are three in number, each rooted in structural features of the bilateral treaty system, and each representing a fundamental mismatch between the assumptions on which the system was built and the economic realities it must now regulate.

The first is the problem of the digital economy The bilateral treaty system was established with the understanding that economically relevant business activity demands a large physical presence in the state where the business activity occurs. The notion of permanent establishment incorporates this assumption as the initial point of entry to source-state jurisdiction. The physical-presence gateway is just not relevant to the major digital economy enterprises, the business model of which is already based on the provision of cross-border without physical infrastructure services, on the capture and monetisation of user data, and on the exploitation of network effects. A digital enterprise can earn billions of dollars of revenue on users in a market condition and have no taxable presence in the market condition under the traditional bilateral treaty provisions. The outcome is a systemic dislocation between the location of value creation and the location of taxes on profits.

The second issue is the issue of abuse of treaties. The network of bilateral treaties has created the possibility of systematic tax avoidance in the form of treaty shopping the process by which taxpayers channel their income through conduit entities formally resident in states with favourable treaties, and accessing treaty benefits to which they are not economically entitled. The network has also been able to offer the structural framework of the base erosion and profit shifting - the concerted arrangement of tax planning arrangements through which multinational enterprises reap the benefits of the differences in the national tax regimes. Neither treaty shopping nor BEPS are fringe benefits: the latter is a predictable and systematic consequence of the structural features of the bilateral treaty system.

The third one is the issue of equity towards developing countries. The network of bilateral treaties was constructed by and on behalf of the advanced industrial economies that dominated the international community in the early twentieth century. Third world countries have entered into treaty relations that bind the third world country source-state taxation rights in exchange of the third world country promised investment relations whose realisation is empirically questionable. What has been produced is a retrogressive distributional pattern that is characterized by states with the least form of economic payoff giving up the largest share of their fiscal sovereignty in exchange of the least demonstrable economic payoff.

Research Aim and Purpose

This research aims to present a rigorous, critical and comprehensive analysis of the international double taxation agreement framework - its origins, legal structure, key mechanisms, interpretational rules, structural inadequacies and reform prospects in order to determine whether the framework as currently constituted is fit to the purpose of the modern global economy and, in that case, what fundamental reforms are necessary and feasible to make it so.

The second contribution relates the structural analysis of the framework with its particular implications to developing countries in a more empirically-based literature than merely theoretical. The evidence regarding the FDI impact of OECD-model bilateral treaties is marshaled to confront the economic rationale presented to governments of developing countries to accept terms of bilateral treaties that negatively impact their financial interests. The empirical basis of a legal and policy argument that the distributional results of the bilateral treaty system are not only unfair in principle, but also harmful in practice, is provided by the evidence on the revenue implications of treaty concessions.

The third contribution is a step forward and defence of the hypothesis that the bilateral coordination of the international tax order itself, must be the object of fundamental reform - that it is not to reform the existing bilateral framework but to replace it with an institutional architecture that reflects the economic realities of the present day, the fiscal interests of all the participating states, and the need of inclusive and democratically legitimate governance of the international tax order. It is an argument that engages with the new literature on multilateral tax governance, and situates the UN initiative of the framework convention within the wider structural analysis of the shortcomings of the bilateral treaty system.

Research Objectives

This research has four general objectives. The first is to consider the legal origins and operational design of the DTA framework - to determine the historical conditions under which the framework was produced, institutional interests that informed the operational design, and the extent to which the resulting architecture is fit to handle the economic environment of the present day.

The second is to examine the effect of the framework in accomplishing its stated goals, that is, to assess whether the bilateral treaty system facilitates the avoidance of double taxation, cross-border investment, and distributes the fiscal benefits and costs of economic integration fairly in a manner that is consistent with the developmental needs of all participating states.

The third is to determine the adequacy of the reform efforts of the international community, as of such and such, to assess the BEPS project, the Multilateral Convention and the Two-Pillar Solution on their technical merits and on their ability to address the root structural failures of the bilateral system and not merely to mitigate some of their worst effects.

The fourth is to contribute to the discussion on the reconceptualisation of multilateral tax governance - to develop the argument that the bilateral coordination of the international tax order, as currently practised, must itself be the subject of fundamental reform, and to identify the institutional and substantive features of a more adequate international tax governance framework.

These goals are achieved by having five substantive research chapters that discuss: the conceptual and historical origins of the bilateral DTA paradigm; its core legal provisions and rules governing their interpretation and application; the structural failures of the paradigm as a mechanism of abuse; the distributional effect on developing countries and the challenges they face in enforcing treaty rights; and the prospects of reform within and outside the bilateral framework.

Methodology

The study uses four unique methodological strategies, which are suitable in various aspects of the study. The doctrinal method is the predominant method of legal analysis: it is applied to the study of the OECD and UN Model Tax Conventions and their Commentaries, the international law of treaties as codified in the Vienna Convention on the Law of Treaties, and the case law of domestic courts in major common law jurisdictions the United Kingdom, Canada, Australia, the United States, and India that have made the greatest substantive contribution to the development of judicial doctrine on the application of treaties on double taxation. The doctrinal analysis seeks to determine not only what the law says but what the law means, how the law is applied in practice, and where the application of the law yields results that are not consistent with the declared aims of the treaty system.

There are many levels of application of the comparative method. It compares the normative and structural differences between the OECD Model Tax Convention and the UN Model Tax Convention - two frameworks which share a common architectural heritage but diverge widely in the distributional allocation of taxing rights, reflecting the different fiscal interests of their principal constituencies. It uses the developed and developing countries experience of the treaty system, to compare their outcomes and experiences of the treaty system to the actual experience in the economy. It further contrasts the merits of the competing anti-abuse provisions, the principal purpose test and the limitation on benefits clause, as a tool to prevent treaty shopping.

The critical review of the empirical literature on the effects of treaties on double taxation on foreign direct investment, on the revenue implications of the concessions on developing countries in treaties on double taxation and on the effectiveness of the BEPS project and the Two-Pillar Solution in addressing structural deficiencies is the application of the analytical method. The mobilisation of the empirical evidence is used as a source of evidence to carry out a legal and policy analysis - to evaluate the extent to which the legal and institutional design of the bilateral treaty system produces results that are consistent with its stated objectives. The historical approach follows the history of the institutional and intellectual history of the treaty system between the report of the Economists of the League of Nations of 1923 and the present Two-Pillar Solution.

Originality and Contribution

This research makes three principal contributions to the existing literature on international tax law. The first contribution is analytical: the research treats the structural deficiencies of the bilateral treaty system not as a collection of distinct and independent technical problems but as manifestations of a single underlying structural failure rooted in the foundational design of the system. The physical-presence PE concept, the formal-residence allocation of treaty benefits, the residence-state bias of the OECD Model's distributional rules, the inadequacy of the MAP for developing countries — these are not separate problems requiring separate solutions but expressions of a common structural logic that allocates taxing rights by reference to formal legal categories and physical-world criteria increasingly disconnected from the economic realities of global digital business.

The second contribution relates the structural analysis of the framework with its particular implications to developing countries in a more empirically-based literature than merely theoretical. The evidence regarding the FDI impact of OECD-model bilateral treaties is marshaled to confront the economic rationale presented to governments of developing countries to accept terms of bilateral treaties that negatively impact their financial interests. The empirical basis of a legal and policy argument that the distributional results of the bilateral treaty system are not only unfair in principle, but also harmful in practice, is provided by the evidence on the revenue implications of treaty concessions.

The third contribution is a step forward and defence of the hypothesis that the bilateral coordination of the international tax order itself, must be the object of fundamental reform - that it is not to reform the existing bilateral framework but to replace it with an institutional architecture that reflects the economic realities of the present day, the fiscal interests of all the participating states, and the need of inclusive and democratically legitimate governance of the international tax order. It is an argument that engages with the new literature on multilateral tax governance, and situates the UN initiative of the framework convention within the wider structural analysis of the shortcomings of the bilateral treaty system.

Limitations

The present work has its working within a number of significant constraints that need to be taken into consideration in the very beginning. The international system of double taxation is too elaborate to be comprehensively surveyed in any one research project, too extensive as it is to be fully surveyed in a single research project. The analysis is therefore based on the overall structural characteristics of the bilateral treaty framework and case studies of the countries, rather than making an attempt to make a comparative evaluation of the treaty network as a whole.

Time constraints would be a second limitation, especially as regards to the current processes of reform. By the time of writing, the negotiations over the Multilateral Convention to implement Pillar One are still ongoing since the failure of the June 2024 deadline, and the decision of the United States to withdraw out of the global tax deal in January 2025 has caused deep uncertainty over the future of both Pillar One and the global tax reform agenda as a whole. United Nations negotiations on a framework convention on international tax cooperation continue and the institutional form of any resultant agreement is open to debate. These reform initiatives are analyzed, and the analysis will show the state of knowledge when the analysis was conducted.

The research is also limited to a substantive scope: it deals with income tax treaties, but does not extend to include income tax treaties, value added tax regimes, or the overall terrain of international investment treaties. The analysis of FDI effects draws on the existing empirical literature not the independent empirical research; the empirical evidence is the source of argument to be used in the legal and policy analysis and not the subject of independent empirical study.

Structure of the Thesis

The thesis is divided into four substantive research chapters, with this Introduction following and a Conclusions section following that. In Chapter 1, the conceptual and legal basis of a problem of double taxation and of the bilateral treaty framework is laid down. It looks at the nature and types of both juridical and economic double taxation, the consequences of unrelieved double taxation, the historical development of the bilateral system of treaties to relieve double taxation since the League of Nations, and the legal nature and characteristics of DTAs as instruments of the public international law. Chapter 2 discusses the primary operational clauses of DTAs, regulations that regulate their interpretation and application. It deals with the extent and scope of DTAs, the concept of permanent establishment and its restrictions, assignment of taxing rights, the principles of treaty interpretation under the Vienna Convention. Chapter 3 looks at the structural inadequacies of the bilateral paradigm as a transfer mechanism of the abuse and evasion of source-state taxing rights. It explores the treaty shopping, the distinction between tax avoidance and tax evasion, the erosion of bases and profit shifting, the issue of the digital economy, and the responses of the BEPS project to anti-abuse. Chapter 4 analyses the distributional effect on the developing countries, comparing the treaty experiences of the developed and developing states, empirical evidence on the investment and revenue implications of DTAs, assessment of the challenges encountered in implementation and assessment of the prospects of reform within and outside of the bilateral framework. The

Conclusions are the summary of the results which are sensibly evaluated in the context of the fundamental restructuring of the bilateral treaty system and needs.

The numbers indicate the magnitude of the issue. The bilateral tax treaty network of more than three thousand instruments between over one hundred and eighty jurisdictions, creates a web of overlapping and even conflicting legal obligations, which no single government, and neither any single taxpayer, can navigate comprehensively. Each treaty is a negotiated bilateral concession - a complex of mutual concessions on the rates of withholding tax, on the definition of permanent establishment, on the sharing of taxation rights over specific categories of income - the cumulative effect of which on the international tax system as a whole is never systematically evaluated and is never in general understanding among the governments which negotiated the individual treaties. The outcome is a system that has grown organically, motivated by the bilateral interests of the states that negotiate individual treaties and driven by the institutional inertia of a model convention architecture which has remained substantially unchanged in its constitutive characteristics over a period of almost a hundred years. The case of a fundamental re-evaluation of this architecture has never been more favourable, and the institutional moment of such re-evaluation - with the negotiations of the framework convention of the UN underway and the OECD process of reform facing the visible blindness of what bilateral coordination can accomplish - has never been more propitious.

CHAPTER 1: FOUNDATIONS AND LEGAL ARCHITECTURE OF DOUBLE TAXATION AGREEMENTS

1.1 The Concept and Types of Double Taxation

One of the structurally persistent and economically important issues of international fiscal law is international double taxation. In its most narrow legal definition, which is adopted by the OECD in the Introduction to its Model Tax Convention, international double taxation is tax that is imposed by two or more independent tax jurisdictions on the same taxpayer in respect of the same subject matter over the same taxable period. This definition reflects the main legal factors: a single instance of income-generating activity that gives rise to concomitant, independent, and fully enforceable claim to tax in two or more separate jurisdictions, each with its own sovereign power to tax in a manner that is internally legal and externally competitive with the parallel claim to the same in the other. This definition, though legally accurate, is not a reflection of the realities of the phenomenon. There is no single form of taxation: the interaction of national tax systems, which are designed independently, without systematic coordination, reflecting different - sometimes fundamentally incompatible - understandings of what the proper basis is of asserting tax jurisdiction over income generated in or connected with the territory of a state or the person of its inhabitants. The historical evolution of the systems of national income taxation resulted in, by the early twentieth century, two broad categories of tax jurisdiction: source-based taxation, under which a state asserts the right to tax the worldwide income of persons resident within its territory regardless of the residence of the taxpayer; and residence-based taxation, under which a state asserts the right to tax worldwide income of persons resident within its borders regardless of the residence of the taxpayer.In closed, self-sufficient national economies, these two principles are broadly compatible. In a world of open economies and international investment, the two principles generate overlapping and conflicting claims that neither state is under any obligation to resolve unilaterally in the other's favour.

Juridical double taxation is a term that is used to refer to a situation whereby the same taxpayer is taxed by two or more states in respect of the same income or capital during the same taxable year. It is a phenomenon, where the legal identity of the taxpayer turns on: the same legal person, whether an individual, a corporation, or otherwise, is subject to similar taxation in two or more jurisdictions at the same time, each with its own rules and rates. The paradigmatic case is simple: a corporation established and operated out of one state receives its income out of sources located in another state. The residence state in which the corporation is established, claiming to tax the worldwide income of its residents, levies its corporate income tax on all the income of the corporation. The source state, which claims its right to tax the income generated on its territory, levies its own tax on the same income. The dual taxation which is imposed on the corporation is not due to non-compliance or avoidance but the lawful and independent functioning of two national tax systems with no established principle of priority between them.

Economic double taxation, by contrast, is whereby the same amount of income or other economic value is taxed by two or more states in the hands of two or more different taxpayers. The most commonly spoken of one is the taxation of corporate income at the corporate level when after-tax profits are paid out as dividends. The legal persons are different, but the value of taxation is identical, and cumulative burden can greatly exceed that which would be the result of a single domestic transaction. The OECD Model Tax Convention places its major emphasis on the juridical double taxation; the UN Model has the same priority but has a different distributional approach, giving more weight to the taxing rights of source. economies reflecting the specific interests and development needs of capital-importing states.[1]

The analytical importance of the distinction between these two types extends beyond definitional precision. Juridical double taxation is, in principle, amenable to legal solutions through agreed rules for the allocation of taxing rights. Economic double taxation is a more fundamental consequence of the decision to impose distinct taxes on the same economic value at successive levels of a corporate group and can only be addressed through more radical measures — such as integration of corporate and personal income taxes or exemption of inter-corporate dividends — that go well beyond standard bilateral treaty negotiation.

The current economic context with the global economy denotes the range of economic actors impacted by the issue of double taxation in the contemporary global economy. At the individual level, a professional consultant resident in one of the contracting states who provides services to a client in another contracting state is at risk of not paying tax on the

[1]Michael Lang, Introduction to the Law of Double Taxation Conventions (3rd edn, IBFD, Amsterdam, 2021); OECD, Model Tax Convention on Income and on Capital (Full Version, OECD Publishing, Paris, 2017), Introduction, para 1.

fees paid by the client in another contracting state as a part of the overall worldwide taxable earnings of the consultant. Without a bilateral treaty provision giving exclusive or priority taxing powers to one of the two states, the actual tax burden on the consultant could be significantly greater than the burden that would be the result of similar services rendered entirely within either state. This is an economically important, yet legally uncomplicated, problem that is being multiplied by the millions of cross-border transactions each year.
The issue at the corporate level is both increased in scale and complexity. This can create an overlapping web of fiscal claim, which, in the absence of systematic treaty relief would render international investment economically unsustainable on a scale. It was in order to avert precisely such an outcome that the treaty system was established, and it is to its success in doing so that it has had a real success in the narrower context of bilateral relationships between states, and in which economic interests are broadly shared. The question is whether this has been done to a sufficient extent bearing in mind the radical changes in terms of the structure of global economy which have taken place since the underlying framework was developed.

1.2 Consequences and the Rationale for Treaty Relief

The argument in favour of international treaty relief against the imposition of the same tax having been paid once is based on two foundations, one distinct and the other complementary. The first one is economic efficiency: the concept of double taxation generates an incorrect competition between the domestic and cross-border investment. When an investor incurs a higher aggregate tax burden on foreign income than on comparable domestic income - not due to any difference in the risk or productivity but simply because of an overlapping jurisdiction between the source state and the residence state - the investor will face an economically irrational disincentive to make cross-border investments. This efficiency argument, which was the main argument in the original case made by the League of Nations regarding the bilateral treaty relief, has been a standard feature of the economic justification of the treaty system.

The second foundation is equity and proportionality. Double taxation imposes a tax burden on the cross-border taxpayer that does not reflect any incremental ability to pay compared to a purely domestic taxpayer. The additional burden arises from the jurisdictional accident that income has a connection to more than one state. This is widely regarded as inequitable — a form of fiscal discrimination against cross-border economic activity that the bilateral treaty system is designed to eliminate.

These are the effects of unremedied double taxation which are experienced at the entire range of the economic activity between countries. At the individual level, a professional consultant resident of one contracting state rendering services to a client in another faces withholding tax on the fees paid by the client in the source-state combined with full taxation in the residence state on the same income as part of their worldwide taxable income. Without relief under the treaty, the burden of effective taxation can easily be much greater than the burden of corresponding services furnished wholly within either of the two states. On at least one side of the corporate line, a multinational enterprise with operating subsidiaries in more than one jurisdiction - generating profits subject to tax in the host states, potentially subject to withholding taxes on dividends repatriated, and potentially subject to further taxation in the host states - will face an overlapping web of fiscal claims that, without systematic treaty relief, would make international investment economically unviable at scale.

The implications of unrelieved double taxation, and of networks of treaties that grant ineffective relief has been widely documented, particularly in the case of developing countries. Effective rates on passive flows of income that significantly decrease the after-tax earnings of foreign investment may be imposed by source-state withholding taxes on dividends, interest and royalty payments. The aim of the treaty framework is thus to offer a systematic and legally sure mechanism of the elimination or reduction of the double taxation on cross-border income flows - through the agreed allocation of taxing rights, through exemption or credit mechanisms, and through dispute resolution procedures in case of the application of the treaty.

1.3 Historical Evolution of the Bilateral Treaty Framework

History of the bilateral double taxation treaty as an instrument of international law can never be separated by history of the international economic order in the twentieth century. The form of treaty did not simply emerge: it was the result of a long and contentious international institutional process in which the competing fiscal interests of the capital-exporting and the capital-importing states were bargained out through a series of model conventions and commentary documents the authority of which does not lie in their formal legal binding but in their institutional influence.

The intellectual foundations of the bilateral tax treaty system are found in the fact that the major industrial economies of the first half of the twentieth century recognized that the development of the international trade and investment were being hampered by the lack of coordination in the national taxing rights over cross-border income flows. In 1923, a report commissioned by the League of Nations and prepared by four distinguished economists, Bruins, Einaudi, Seligman, and Stamp, had the effect of producing the first systematic multilateral analysis of the problem of double taxation and the creation of the basic conceptual framework on which all future work has since been based. Two of the long-term contributions of the 1923 Report were as follows. First, it expressed the difference between the source and residence principles of the tax jurisdiction and made clear the conflict between the two as the structural source of international double taxation. Second, and more controversially, it advised that the principle of source should be accorded priority in the distribution of taxing rights, based on the fact that the income is the result of active economic activity, and is not the passive fact of the residence of the taxpayer.

The model conventions that followed, the 1928 Model Bilateral Conventions, which were negotiated under the Committee of Technical Experts on Double Taxation, of the League, represented a compromise, with much greater weight given to residence-state taxation than the Economists had proposed. The institutional explanation for this outcome that the major capital-exporting states of the interwar period had disproportionate influence over the institutional process has been documented by subsequent scholarship and is directly relevant to the assessment of the current treaty system's distributional implications.[2]

The post-war institutional history of international tax treaty development is dominated by the OECD, which assumed the standard-setting role previously exercised by the League of Nations and produced the Draft Double Taxation Convention on Income and Capital in 1963,14 revised to the Model Tax Convention on Income and on Capital. The OECD Model Tax Convention has been the template for the overwhelming majority of bilateral treaties in the global network. Its Commentaries have shaped the application of treaty provisions in domestic courts across the world. The OECD's institutional position as the de facto standard-setter for international tax law has been reinforced by its management of the BEPS project and the Inclusive Framework, which has expanded institutional

[2] Sunita Jogarajan, 'Stamp, Seligman and the Drafting of the 1923 Experts' Report on Double Taxation' (2013) 5 World Tax Journal 368.

participation beyond the original OECD membership, though critics have questioned the genuineness of this expansion given the continuing dominance of OECD-developed templates.

The United Nations Model Double Taxation Convention was first developed in 1980, under UN Department of Economic and Social Affairs auspices, and has been updated periodically, with its most recent revision in 2021. The UN Model was developed in explicit response to the recognition that the OECD Model's residence-state bias was systematically disadvantageous to capital-importing developing countries.[3] It incorporates greater source-state taxing rights particularly on royalties, technical service fees, and capital gains that reflect the fiscal interests of states that are net recipients of foreign direct investment. The practical impact of the UN Model on actual treaty practice has, however, been limited by the asymmetry of negotiating power: many developing countries find that their treaty partners among the major capital-exporting states insist on OECD-model terms as a precondition of treaty negotiations.

1.4 Nature, Characteristics, and Models of DTAs

A double taxation agreement, in its legal nature, is a bilateral treaty under public international law a binding agreement between two sovereign states, governed by the general law of treaties as codified in the Vienna Convention on the Law of Treaties (VCLT) of 1969.[4] It is created through the formal processes of treaty-making negotiation, signature, ratification, and entry into force prescribed by the constitutional and legal arrangements of each contracting state, and is binding on each under the principle of pacta sunt servanda as a matter of both treaty obligation and customary international law. In most jurisdictions, a ratified bilateral tax treaty has the status of national law either through monist constitutional arrangements that treat international law as automatically part of domestic law, or through dualist arrangements requiring domestic implementation legislation.

A standard DTA will define the classes of persons to whom the treaty applies and the taxes covered typically the national income and capital taxes of the contracting states. It will establish rules for resolving conflicts of residence through the treaty tie-breaker

[3]Michael Lennard, 'The UN Model Tax Convention as Compared with the OECD Model Tax Convention' (2009) 15 Asia-Pacific Tax Bulletin 4.
[4]Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 2(1)(a).

provisions. It will establish the concept of permanent establishment as the gateway to source-state taxation of business profits, and define when a non-resident enterprise's activities create a taxable PE. It will allocate taxing rights between the contracting states for each category of income business profits, dividends, interest, royalties, capital gains, employment income either reserving exclusive taxing rights to one state or establishing a shared taxing-rights structure. It will specify the method exemption or credit by which the residence state provides relief for source-state tax. And it will include provisions for the non-discriminatory treatment of nationals and for the resolution of disputes through the mutual agreement procedure.

The two principal model conventions the OECD Model Tax Convention on Income and on Capital (2017) and the United Nations Model Double Taxation Convention between Developed and Developing Countries (2021) share this common structural architecture but differ significantly in their distributional choices. The OECD Model reflects the fiscal interests of capital-exporting states: its general rule allocates taxing rights to the residence state, with source-state rights as carefully defined exceptions; its PE definition adopts a high threshold for taxable business presence; its withholding tax rates on dividends, interest, and royalties are relatively low; and its denial of source-state withholding on royalties in contrast to the UN Model's retention of such a right is a major source of contention in treaty relationships between developed and developing countries.[5] The practical dominance of the OECD Model in the global treaty network means that the distributional consequences of the OECD Model's residence-state bias are systematically reproduced across the network as a whole.[6]

The role of international organisations in shaping treaty practice extends beyond the formal status of the model conventions. The OECD's Commentaries, while not legally binding, have achieved a quasi-authoritative status in the interpretation of bilateral treaties based on the OECD template a status deriving from the institutional authority of the OECD and the interpretive consensus that its expert committees have built over decades of commentary revision. The OECD's management of the BEPS project and the Inclusive Framework with its 140-plus member jurisdictions has further extended its institutional reach, incorporating non-OECD member jurisdictions into a governance structure that,

[5] United Nations Department of Economic and Social Affairs, United Nations Model Double Taxation Convention between Developed and Developing Countries (United Nations, New York, 2021), arts 10-12.
[6] OECD, Model Tax Convention on Income and on Capital (Full Version, OECD Publishing, Paris, 2017), art 1.

while formally more inclusive, continues to be substantially shaped by OECD-developed standards and institutional perspectives.

The tension between the source and residence principles has never been satisfactorily resolved at the international level, and this unresolved tension is the deepest structural source of the bilateral treaty system's contemporary difficulties. The OECD Model Tax Convention resolved this tension, in effect, by privileging the residence principle: the general rule under the OECD Model is that income is taxable only in the residence state, with source-state rights as carefully defined and limited exceptions. This resolution reflected the fiscal interests of the capital-exporting states that dominated the OECD's membership and that had the greatest interest in ensuring that the income of their multinationals investing abroad was not heavily taxed in the countries where it was earned. The developing countries that have subsequently joined the international economy as capital-importing states with a fiscal interest in source-state taxation inherited a treaty system whose foundational distributional choice had already been made, and have found it extraordinarily difficult to change that choice through individual bilateral negotiations in the face of the structural power asymmetries that characterise those negotiations.

CHAPTER 2: CORE PROVISIONS, INTERPRETATION, AND APPLICATION OF DTAs

2.1 Scope, Coverage, and Taxing Rights Assignment

The operative scope of a double taxation agreement the range of persons, taxes, and territorial circumstances to which its provisions apply is defined at the outset of the treaty text and establishes the legal domain within which all subsequent provisions operate. The personal scope of a DTA is typically defined by reference to the concept of residence in the contracting states: the treaty applies to persons who are residents of one or both contracting states, as determined by the domestic law of each state subject to a tie-breaker hierarchy in cases of dual residence. The material scope encompasses the national income and capital taxes of the contracting states, defined by enumeration and by a general description of the type of taxes to which the treaty applies.[7]

The allocation of taxing rights the distribution of the right to tax specific categories of income between the source state and the residence state is the substantive heart of the bilateral treaty system. The OECD Model allocates taxing rights for each category of income through a system of operative articles, each establishing either an exclusive allocation to one state or a shared allocation under which the source state's right to tax is capped at an agreed withholding rate. The general principle residence-state primacy with source-state exceptions is expressed most clearly in Article 7, which provides that the business profits of an enterprise of one contracting state are taxable only in that state unless the enterprise carries on business in the other state through a permanent establishment.[8] Source-state taxing rights on business profits are thus conditional on the existence of a PE in the source state.

For passive income categories, the OECD Model establishes a shared taxing rights structure. The source state may tax dividends paid by a resident company to a shareholder resident in the other state at rates specified in Article 10: typically, five per cent on dividends paid to a corporate shareholder holding at least twenty-five per cent of the capital,

[7]OECD, Model Tax Convention on Income and on Capital (Full Version, OECD Publishing, Paris, 2017), art 2 and Commentary.
[8]OECD, Model Tax Convention on Income and on Capital (Full Version, OECD Publishing, Paris, 2017), art 7(1).

and fifteen per cent on other dividends. For interest and royalties, the OECD Model provides for even more limited source-state taxing rights: Article 11 caps the source-state withholding rate on interest at ten per cent, and Article 12 in a particularly significant manifestation of the OECD Model's residence-state bias provides for exclusive residence-state taxation of royalties, denying the source state any withholding right on royalty payments. This exclusion of source-state royalty withholding reflects the fiscal interests of capital-exporting states whose multinationals are the principal recipients of royalty income in cross-border licensing arrangements and is systematically disadvantageous to source states typically developing countries whose revenue base is disproportionately dependent on source-state taxation of passive income flows.

The UN Model departs from the OECD Model in important respects, particularly on the allocation of source-state taxing rights. On royalties, the UN Model retains a source-state withholding right, rejecting the OECD Model's exclusive residence-state allocation. On technical service fees a category not separately addressed in the OECD Model the UN Model includes an optional article that allows the source state to impose withholding tax on fees paid for technical, management, or consultancy services rendered in the source state. The capital gains treatment in the UN Model is also more favourable to source states, preserving source-state taxing rights on gains from the alienation of shares in companies that derive their value principally from immoveable property situated in the source state.[9] These distributional differences between the OECD and UN models reflect fundamentally different assessments of the appropriate balance of fiscal interests between capital-exporting and capital-importing states, and they have significant revenue implications for the developing country governments that negotiate the bulk of their treaties on OECD-model terms.

2.2 The Concept of Permanent Establishment

The permanent establishment concept is the most important and most contested concept in the operational law of double taxation agreements. It serves as the jurisdictional gateway through which a source state gains the right to tax the business profits of a non-resident enterprise: without a permanent establishment in the source state, a non-resident enterprise's business profits are, under the standard treaty allocation, taxable only in the residence state, regardless of how economically significant the enterprise's activities in the source state may be. The PE concept thus determines the fundamental distributional question of whether source states can tax the profits of non-resident enterprises that operate within their territory.

The OECD Model Tax Convention defines a permanent establishment, in Article 5, as a fixed place of business through which the business of an enterprise is wholly or partly carried on.[10] The definition is elaborated through a positive list of qualifying fixed places of business a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well and through a series of exclusions that preserve the source state's right to tax where certain activities constitute a sufficiently substantial business presence. The concept of a dependent agent PE an agent who habitually exercises in the source state an authority to conclude contracts on behalf of the enterprise provides an alternative gateway to source-state PE taxation where the enterprise's business is conducted through personnel rather than through a fixed place of business.[11]

The PE concept was designed for the industrial economy of the mid-twentieth century, in which the presence of a non-resident enterprise in a market state typically implied the maintenance of physical infrastructure of the kind that creates a genuine and identifiable economic connection between the enterprise and the source state sufficient to justify source-state taxation.[12] For the steel mill, the automobile factory, the retail chain, the insurance company with local agents the forms of business that the treaty architects had in mind this assumption is well-founded. For the streaming service, the search engine, the e-commerce platform, the cloud computing provider, the social media network businesses whose defining characteristic is the delivery of services through digital infrastructure with no necessary physical presence in the market state the assumption is simply inapplicable.[13]

These businesses can and do generate billions of dollars of revenue from market-state customers while maintaining no physical presence that approaches the PE threshold. Under the conventional PE definition, there is no permanent establishment, no source-state

[10]OECD, Model Tax Convention on Income and on Capital (Full Version, OECD Publishing, Paris, 2017), art 5(1).
[11]United Nations, Commentary on Article 5 of the United Nations Model Double Taxation Convention (United Nations, New York, 2019) para 2.
[12]OECD, Model Tax Convention on Income and on Capital (Full Version, OECD Publishing, Paris, 2017), arts 5(2) and 5(4) and Commentary.
[13]Roberts and Holland LLP, 'When Does E-Commerce Result in a Permanent Establishment?' (online, 2024).

business profits tax, and the entire economic value generated by the enterprise's activities in the market state escapes source-state taxation. This outcome is not a consequence of aggressive tax planning or treaty abuse in the conventional sense: it is the logical application of the conventional PE rules to a form of economic activity for which those rules were not designed. The digital economy challenge to the PE concept is therefore not primarily a problem of enforcement but a problem of design: the rules themselves are inadequate to generate source-state taxing rights for the most commercially significant forms of contemporary economic activity.

The adequacy of the PE concept as a source-state nexus rule is further undermined by the strategic behaviour of multinational enterprises in structuring their global operations to minimise PE exposure in high-tax jurisdictions. Commission structures, warehouse PE avoidance through the use of purchasing and logistics arrangements falling within the preparatory-and-auxiliary exclusion, and the fragmentation of integrated business activities across multiple related entities have been documented extensively in the BEPS project literature. The BEPS Action 7 modifications to the PE definition tightened the anti-fragmentation rules and the dependent agent PE provisions to prevent some of the most egregious PE avoidance strategies. But these modifications have not changed the fundamental nexus rule: physical presence in the source state, in a form that crosses the PE threshold, remains the necessary condition for source-state business profits taxation under the standard bilateral treaty architecture.

The BEPS Action 7 modifications to the PE definition, incorporated into the 2017 OECD Model and implemented through the Multilateral Convention, addressed some of the most egregious PE avoidance strategies: the anti-fragmentation rules were tightened to prevent the artificial splitting of integrated business activities across multiple related entities to keep each below the PE threshold, and the dependent agent PE provisions were broadened to capture arrangements where agents habitually conclude contracts substantially identical to those specifically entered into in the name of the enterprise, even where those contracts are formally concluded elsewhere. These modifications represent genuine improvements in the PE framework's ability to resist avoidance. But they have not changed the fundamental nexus rule: physical presence in the source state, in a form that crosses the PE threshold, remains the necessary condition for source-state business profits taxation under the standard bilateral treaty architecture.

The gap between the PE concept and the realities of digital economy business activity has prompted various jurisdictions to develop unilateral responses. France, the

United Kingdom, Italy, Spain, and several other European countries have introduced digital services taxes levies on revenues derived from specified digital services provided to users located in the jurisdiction, irrespective of the service provider's PE status. India has introduced an equalisation levy with a similar structure. These unilateral measures reflect the practical impossibility, under the existing bilateral treaty framework, of taxing the enormous value generated by major digital economy enterprises in market states through conventional PE-based rules. But they also create new problems: potential conflicts with bilateral treaty obligations, risks of double taxation on the same revenues taxed under both the digital services tax and conventional corporate income tax rules, and the trade-compliance concerns that have made digital services taxes a major source of geopolitical tension between the United States and the European Union. The unilateral path is not a sustainable solution to the digital economy tax challenge: it is, at best, an interim measure pending the development of a multilateral framework adequate to the task.

2.3 Methods for Elimination of Double Taxation and Non-Discrimination

The elimination of double taxation the practical relief of the competing tax claims that bilateral treaty provisions have allocated between the source and residence states is accomplished through two principal methods: the exemption method and the credit method. Each has distinct legal mechanics, distributional implications, and practical consequences for the taxpayer and for the fiscal revenues of the contracting states.

The exemption method, provided for in Article 23A of the OECD Model, relieves the residence state of the obligation to tax income that the treaty assigns to the source state. Under the full exemption variant, the residence state simply excludes the source-state income from the taxable base. Under the exemption-with-progression variant, the residence state does not tax the income but takes it into account in determining the rate of tax applicable to the taxpayer's other income preserving the progressivity of the tax system without imposing a double tax.[14] The exemption method reflects a principle of capital import neutrality: by exempting foreign-source income from residence-state tax, it places

[14]Georg Kofler and others (eds), Exemption Method and Credit Method: The Application of Article 23 of the OECD Model (IBFD, Amsterdam, 2023).

income from foreign investment on an equal footing with income derived by locally resident investors in the same source state.[15]

The credit method, provided for in Article 23B of the OECD Model, takes a different approach. Under the credit method, the residence state taxes the worldwide income of its residents but allows a credit a direct reduction in the tax payable for the tax paid in the source state, limited to the amount of residence-state tax attributable to the source-state income. The credit method reflects a principle of capital export neutrality: by taxing foreign-source income at the same effective rate as domestic income, it seeks to ensure that investment decisions are not distorted by tax considerations favouring domestic over foreign investment.

The non-discrimination provision of bilateral tax treaties Article 24 of the OECD Model operates alongside and independently of the exemption and credit methods as a fundamental design principle of equitable taxation. Its objective is not to eliminate double taxation but to prevent discriminatory taxation: the imposition of a more burdensome tax treatment on nationals or enterprises of the other contracting state than on domestic nationals or enterprises in comparable circumstances. The non-discrimination provision operates at several levels: it prohibits nationality-based taxation discrimination, requires equivalent treatment for permanent establishments of foreign enterprises, and protects the deductibility of cross-border payments.[16]

In practice, the application of non-discrimination raises complex issues at its interface with domestic anti-avoidance rules. The OECD Commentary argues that anti-avoidance measures do not generally breach non-discrimination rules where they apply on equivalent terms to domestic and cross-border transactions.[17] But identifying equivalent circumstances in cross-border tax avoidance fact patterns is often contentious, and the post-BEPS proliferation of domestic anti-avoidance rules has substantially complicated the analysis, creating significant uncertainty about the interaction between treaty non-discrimination obligations and domestic anti-avoidance legislation.

[15] T Dickescheid, 'Exemption vs Credit Method in International Double Taxation Treaties' (2004) 11 International Tax and Public Finance 721.
[16] OECD, Model Tax Convention on Income and on Capital (Full Version, OECD Publishing, Paris, 2017), art 24(3).
[17] OECD, Discussion Draft on the Application and Interpretation of Article 24 (Non-Discrimination) (OECD, Paris, 2007).

2.4 The Mutual Agreement Procedure

The mutual agreement procedure (MAP), codified in Article 25 of the OECD Model Tax Convention, is the primary institutional mechanism through which disputes arising from the application or interpretation of double taxation agreements are to be resolved. Without an effective dispute resolution mechanism, the substantive provisions of the treaty however well-crafted in their allocation of taxing rights would be subject to divergent interpretations by the contracting states and their courts, and the taxpayer who experiences double taxation despite the existence of a treaty would have no reliable means of obtaining relief.

The mutual agreement procedure operates through the competent authorities of the contracting states the tax administration bodies designated in the treaty as responsible for treaty administration. A taxpayer who considers that the actions of one or both contracting states have resulted in taxation not in accordance with the treaty may present the case to the competent authority of their state of residence. The taxpayer's submission initiates a process in which the competent authority considers the matter and, if it considers the objection justified and unable to resolve it unilaterally, endeavours to resolve it by mutual agreement with the competent authority of the other contracting state.[18]

The MAP operates in three modes. The first most frequently used is the taxpayer-initiated mode, through which a resident taxpayer seeks relief from double taxation that has occurred or is threatened. The second is the treaty-interpretation mode, through which competent authorities resolve, by mutual agreement, any difficulties arising in the interpretation or application of the treaty allowing the contracting states to develop agreed positions on interpretive questions without requiring formal treaty amendment. The third is the mutual agreement arbitration mode, where the treaty includes an arbitration clause: cases that competent authorities have been unable to resolve within a specified period are submitted to a binding arbitral determination. The inclusion of mandatory binding arbitration provisions modelled on Article 25(5) of the OECD Model and implemented through the Multilateral Convention is the most significant recent development in MAP practice, though adoption has been uneven and many bilateral reservations remain.[19]

---

[18] University of Melbourne Policy Brief No 11, 'Dispute Resolution: Mutual Agreement Procedure' (University of Melbourne, 2021).

[19] OECD, Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (OECD Publishing, Paris, 2016), art 19.

The MAP has significant structural weaknesses that have been extensively criticised. The most fundamental is that the competent authorities' obligation is to endeavour to resolve the case not to guarantee resolution. If competent authorities disagree on the correct interpretation, the MAP provides no mechanism for compelling a resolution, and the taxpayer may be left with a case that is meritorious but remains unresolved indefinitely. The OECD reported that by the onset of the BEPS process in 2013, the global inventory of open MAP cases had increased by over ninety-four per cent since 2006 a systemic backlog reflecting both the increasing complexity of international business transactions and the inadequacy of the MAP's institutional design.[20] The BEPS Action 14 minimum standard sought to address these failings by requiring Inclusive Framework members to commit to specific standards for the timely and effective resolution of MAP cases, including a twenty-four-month target resolution time and annual reporting of MAP inventories.[21] Improvement has been documented through the peer review process, but the MAP remains fundamentally inadequate as a dispute resolution mechanism, particularly for developing countries whose competent authorities lack the experienced staff, financial resources, and institutional capacity to engage in sustained bilateral negotiations with the much larger tax administrations of major capital-exporting states on equitable terms.

2.5 Principles of Treaty Interpretation

The interpretation of double taxation agreements the determination of the meaning and scope of treaty provisions in their application to specific factual circumstances is governed by a combination of general international treaty law, specific interpretive provisions in the treaties themselves, and the guidance provided by the Commentaries to the model conventions on which the treaties are based. It is an area of substantial practical importance and considerable doctrinal complexity, reflecting the inherent tension between general principles of international treaty interpretation and the sui generis character of double taxation agreements as instruments that operate simultaneously in international law and in the domestic legal orders of the contracting states.

[20]OECD, BEPS Action 14 on More Effective Dispute Resolution Mechanisms — Peer Review Documents (OECD Publishing, Paris, 2023).
[21]OECD, Making Dispute Resolution Mechanisms More Effective: Final Report, BEPS Action 14 (OECD Publishing, Paris, 2015).

The Vienna Convention on the Law of Treaties provides, in Articles 31-33, the general rules of interpretation applicable to international treaties.[22] Article 31 establishes the general rule: a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The context includes the text of the treaty, including its preamble and annexes, any agreement or instrument made in connection with the conclusion of the treaty, and subsequent agreements and practice of the parties. Article 32 permits resort to supplementary means of interpretation including preparatory work and the circumstances of the treaty's conclusion where the general rule leaves the meaning ambiguous or obscure, or leads to a result that is manifestly absurd or unreasonable.[23]

The application of the VCLT rules to bilateral tax treaties raises specific questions that have generated substantial divergence in the interpretive practice of different national courts. The most important concerns the status of the OECD Commentary on the Model Tax Convention as an interpretive guide. The Commentary is not a treaty, not a rule of international law, and not an agreement between the contracting states: it is an explanatory document produced by the OECD's Committee on Fiscal Affairs that reflects the interpretive positions of OECD member states at the time of its preparation. It is periodically revised and updated, sometimes in ways that change the recommended interpretation of provisions that have not themselves changed. The question of whether a domestic court should apply the contemporaneous version of the Commentary the version current when the treaty was concluded or the most recent version is contested between the static and ambulatory approaches to Commentary interpretation.[24] The practical implications are significant: if the ambulatory approach is followed, OECD member states can effectively modify the interpretation of existing treaties by revising the Commentary without the consent of non-OECD treaty partners, raising fundamental questions about the legitimacy and equality of the treaty relationship.

The role of domestic law in treaty interpretation is addressed in Article 3(2) of the OECD Model Tax Convention, which provides that terms not defined in the treaty have the meaning they have under the domestic law of the state applying the treaty, unless the

[22]Vienna Convention on the Law of Treaties (n 21) arts 31-33.
[23]VCLT (n 21) art 32.
[24]Ulf Linderfalk and Maria Hilling, 'The Use of OECD Commentaries as Interpretative Aids' (2015) Nordic Tax Journal 1.

context otherwise requires.[25] This provision is a source of frequent interpretive divergence: the same treaty term may have different meanings in the domestic law of the two contracting states, producing different interpretations and potentially different treaty outcomes depending on which state is applying the treaty. The case law of domestic courts in major treaty-applying jurisdictions the United Kingdom, Canada, Australia, the United States, and India has developed a rich and sometimes divergent body of doctrine on the interpretation of specific treaty provisions.[26] The absence of any international judicial authority with jurisdiction to ensure consistent interpretation of the global treaty network means that this divergence is irresolvable except through the slow and partial mechanism of MAPs and the informal influence of the OECD Commentary on domestic judicial practice.[27]

The interaction between the treaty system and domestic anti-avoidance rules has become one of the most contested areas of international tax law in the post-BEPS era. The proliferation of controlled foreign company (CFC) rules, thin capitalisation restrictions, hybrid mismatch rules, and general anti-avoidance provisions in the domestic law of OECD member states and increasingly in the domestic law of developing countries has created a complex matrix of interactions between treaty obligations and domestic anti-avoidance legislation. The question of whether a domestic anti-avoidance rule that disregards an artificial transaction or that attributes income to a resident taxpayer on the basis of its economic connection rather than its formal legal form conflicts with a bilateral treaty provision that allocates taxing rights on the basis of formal legal categories is a question that different courts in different jurisdictions have resolved differently, producing a landscape of interpretive divergence that creates significant uncertainty for taxpayers and for the tax authorities that must apply these rules in practice. The BEPS project sought to address some of the most acute conflict points particularly through the hybrid mismatch rules of Action 2 and the changes to domestic law that Actions 3 through 5 recommended but the interaction between treaty obligations and domestic anti-avoidance rules remains an area of substantial doctrinal uncertainty and ongoing litigation.

[25]SSRN, 'Unless the Vienna Convention Otherwise Requires' (2024).
[26]Prevost Car Inc v The Queen [2009] FCA 57; United States v Stuart, 489 US 353 (1989); JN Gladden Estate v The Queen (1985).
[27]Brian J Arnold, 'The Interpretation of Tax Treaties: Looking to the Future' (2022) International Bureau of Fiscal Documentation.

CHAPTER 3: STRUCTURAL DEFICIENCIES AND EXPLOITATION OF THE DTA FRAMEWORK

3.1 Treaty Shopping

Treaty shopping is among the most well-documented and economically significant forms of international tax avoidance, and it is of particular analytical importance for this research because it is not merely facilitated by the bilateral treaty system it is a logical consequence of the bilateral treaty system's structural design. The bilateral treaty network allocates treaty benefits reduced withholding tax rates, PE exemptions, access to the MAP by reference to the formal legal criterion of residence in a contracting state. Residence is the gateway to treaty benefits: only persons who are residents of one or both contracting states, as defined by domestic law subject to the treaty's tie-breaker provisions, are entitled to claim the treaty's benefits. The structural vulnerability that makes treaty shopping possible is the fundamental weakness of formal legal residence as a criterion for genuine connection between a taxpayer and a treaty state: corporate residence is typically easy and inexpensive to establish through incorporation, even in the absence of any genuine economic activity or substance in that jurisdiction.[28]

The mechanics of a standard treaty shopping arrangement illustrate the structural nature of the problem. A beneficial owner of income say, a corporate group headquartered in a state that has no bilateral tax treaty with the source state, or has a treaty with significantly higher withholding tax rates than a third state's treaty with the source state establishes a holding or conduit entity in the favourable treaty state. The conduit entity is incorporated in and, by virtue of that incorporation, resident in the favourable treaty state. The income flows to the conduit entity, which claims the reduced withholding rates or other treaty benefits. The conduit entity then passes the income, net of local tax and residual source-state tax, to the ultimate beneficial owner in the non-treaty state. The legal form is impeccable at every stage: the conduit is legally resident in the treaty state; the treaty grants benefits to residents of that state. The economic reality is that the beneficiaries of treaty

[28]OECD, 'New Results on the Prevention of Tax Treaty Shopping' (OECD, Paris, 22 March 2022).

benefits are residents of a third state that has traded none of those benefits away in exchange.[29]

Specific examples of treaty shopping structures have been widely documented. Mauritius, the Netherlands, Luxembourg, and Ireland have historically been prominent conduit jurisdictions, exploiting combinations of extensive treaty networks, low effective rates of taxation on passive income, and favourable domestic rules on dividend and royalty flows.[30] The Netherlands-resident holding company structure for routing dividend flows between non-Netherlands corporate groups and source-state subsidiaries has been a prominent feature of international tax planning, exploiting the wide withholding-tax exemptions available under the Dutch treaty network. The India-Mauritius treaty, which provided for source-state exemption of capital gains, attracted sustained attention from the Indian revenue authorities ultimately leading to a renegotiation of the treaty terms.[31] The fundamental transparency flaw enabling all of these arrangements is consistent: the bilateral treaty network allocates benefits by reference to formal residence, and corporate residence is readily established making the gatekeeping function of the residence test weak and easily circumvented in tax planning.

3.2 Tax Avoidance, Tax Evasion, and the Limits of the Distinction

A clear conceptual distinction between tax avoidance and tax evasion is essential for understanding the nature of the exploitation problems facing the bilateral treaty system and the strategies appropriate to address them. Tax evasion is the wilful, illegal act of falsely recording or concealing financial dealings to reduce or eliminate a tax liability understatement of income, misstatement of reports, concealment of offshore accounts.[32] Tax evasion is criminal in virtually all jurisdictions: it constitutes fraud on the public revenue and is subject to criminal prosecution, financial penalties, and imprisonment. The international community's response to tax evasion through automatic exchange of financial

[29]OECD, 'Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 — 2015 Final Report', OECD/G20 BEPS Project (OECD Publishing, Paris, 2015).

[30]Jones Day, 'Treaty Abuse: BEPS Action 6, Global Tax Update' (Jones Day, September 2015).

[31]India-Mauritius Double Taxation Avoidance Agreement (1983), as amended by Protocol (2016); Parthasarathi Shome, 'The International Tax Architecture at a Crossroads' in Michael Lang and others (eds), The Impact of the OECD and UN Model Conventions on Bilateral Tax Treaties (Cambridge University Press, Cambridge, 2012) 21.

[32]Tax Foundation, 'International Tax Avoidance vs Tax Evasion' (Tax Foundation, July 2024).

account information, country-by-country reporting, the Common Reporting Standard, and enhanced administrative cooperation has been substantial and genuinely transformative.

Tax avoidance, by contrast, is the reduction of tax obligations through the legal arrangement of affairs the use of legitimate legal structures and contractual arrangements in a manner that minimises tax liability through exploitation of statutory provisions rather than deception about facts.[33] When a multinational establishes an intellectual property holding company in a low-tax jurisdiction and licenses its IP to group companies in high-tax jurisdictions, the arrangement is compliant with the written terms of both domestic and international tax law. When a corporation issues hybrid debt instruments exploiting a mismatch between two legal systems' characterisation of the same financial instrument, it is engaging in an arrangement that is lawful in both jurisdictions. The problem is not deception or misrepresentation: it is the exploitation of the structure of the legal system gaps, mismatches, and inconsistencies between national tax systems and bilateral treaty provisions in ways not intended by legislators and treaty negotiators, and that produce revenue losses that neither the source state nor the residence state would regard as an acceptable outcome if fully understood.

Treaty shopping, aggressive transfer pricing, hybrid mismatch arrangements, and the artificial avoidance of permanent establishment status are principally forms of avoidance rather than evasion: they are compliant with the written terms of both domestic and treaty law, and exploit its structure rather than its facts. It is this insight that informs the design of the OECD/G20 Base Erosion and Profit Shifting project as a project of legal restructuring rather than enforcement a recognition that it is not just non-compliance with the law that must be tackled but also the laws themselves, which have been systematically exploited by the avoidance structures they were intended to regulate. The result is a systemic inequity: multinational enterprises with resources to implement complex cross-border structures achieve effective tax rates unavailable to their purely domestic counterparts or to individual taxpayers unable to route income through offshore arrangements.

[33]OECD, International Tax Avoidance and Evasion (OECD Publishing, Paris, 1987).

3.3 Base Erosion and Profit Shifting (BEPS)

Base erosion and profit shifting represents the aggregate and systemic dimension of international corporate tax avoidance: the cumulative effect of individual profit-shifting arrangements through which multinational enterprises exploit structural features of the international tax system to locate taxable profits in low-tax jurisdictions while the economic activities that generate those profits take place in higher-tax jurisdictions. The OECD's 2013 diagnosis of the BEPS problem and its quantitative estimates of the annual revenue cost between USD 100 billion and USD 240 billion in corporate income tax revenue loss, between four and ten per cent of global corporate income tax revenue established BEPS as a policy priority of the first order.[34]

The mechanics of BEPS are varied in technical implementation but unified in economic logic. Transfer pricing manipulation is the most significant and most widely documented BEPS mechanism: the practice of setting the prices charged in transactions between related enterprises for goods, services, financial instruments, and intellectual property in a manner that departs from arm's length prices in order to shift profits from high-tax to low-tax members of the multinational group.[35] The arm's length principle the international standard for transfer pricing, codified in Article 9 of both the OECD and UN Model Tax Conventions requires that related party transactions be priced as if concluded between independent parties. In practice, the valuation of unique assets particularly intellectual property, whose value is notoriously difficult to determine by reference to comparable third-party transactions provides substantial opportunity for the use of prices that are formally compliant with the arm's length standard but are in substance designed to allocate maximum profit to the lowest-tax member of the group.[36]

The bilateral treaty network is not merely a passive backdrop to BEPS: it is an active facilitator. Treaty benefits lower withholding tax effective rates, non-inclusion of permanent establishment tax liabilities, non-inclusion of capital gains income are the instruments through which BEPS strategies operate. A multinational that successfully establishes a conduit in a treaty jurisdiction with low effective tax rates, avoids PE liability in the source jurisdiction, and pays royalties to an IP holding company in another treaty jurisdiction imposing low tax rates benefits not only from domestic tax law gaps but from

[34] OECD, Action Plan on Base Erosion and Profit Shifting (OECD Publishing, Paris, 2013). BEPS practices cost countries USD 100-240 billion annually, equivalent to 4-10% of global corporate income tax revenue.
[35] IBFD, 'Base Erosion and Profit Shifting (BEPS)' (IBFD, Amsterdam, 2025).
[36] Tax Justice Network, 'The Scale of Base Erosion and Profit Shifting' (2015) Policy Brief.

the distributive rules of treaties that are supposed to avoid double taxation but which in practice allow double non-taxation of entities and structures that lack economic substance in the jurisdiction of their formal residence. The BEPS project's anti-abuse rules the principal purpose test, limitation on benefits, transfer pricing documentation, and country-by-country reporting represent genuine improvements, but they operate within the same bilateral framework that generates the structural conditions for BEPS and cannot eliminate the incentives and opportunities the framework creates.

Intellectual property structures are among the most economically significant BEPS mechanisms. The mobility of intellectual property the ease with which the legal ownership of a patent, trademark, or software can be transferred to an entity in a low-tax jurisdiction combined with the difficulty of valuing IP at the time of transfer and the high profitability of IP-intensive businesses, creates conditions in which IP holding structures can achieve dramatic reductions in global effective tax rates. Major technology companies, pharmaceutical enterprises, and branded goods companies have all exploited IP structures to concentrate economic value in low-tax jurisdictions while maintaining the commercial and operational activities that generate that value in higher-tax market jurisdictions.

Debt-based BEPS mechanisms exploit the asymmetric tax treatment of debt and equity: interest payments are typically deductible from taxable income in the payer's jurisdiction, reducing the tax base in the high-tax jurisdiction, while the corresponding interest receipts are taxable in the recipient's jurisdiction ideally a low-tax or no-tax jurisdiction. By artificially loading high-tax group members with intra-group debt, multinational enterprises can shift taxable income from high-tax to low-tax jurisdictions through interest deductions. Hybrid mismatch arrangements exploit the divergence between different jurisdictions' legal characterisation of the same financial instrument: an instrument treated as debt in one jurisdiction generating interest deductions may be treated as equity in another generating exempt dividends allowing the group to achieve a double deduction or a deduction with no corresponding income inclusion anywhere in the group. The BEPS project addressed these mechanisms through Actions 2 through 5, introducing requirements for neutralising hybrid mismatches, addressing harmful tax practices, and combating treaty abuse. These measures have reduced the most egregious examples of these arrangements. But the structural incentives for profit-shifting the continuing existence of jurisdictions with low or zero effective corporate tax rates, the continuing reliance of the international tax system on formal legal categories that can be manipulated by legal structuring have not been eliminated by the BEPS reforms.

3.4 The Digital Economy Challenge

The challenge of taxing the digital economy is the most structurally profound problem facing the bilateral treaty regime and the least capable of resolution through ad hoc reform within the existing bilateral framework. The conventional treaty system rests on assumptions that business activity requires physical presence in the market state, that value can be attributed to tangible transactions, that the PE concept effectively generates source-state taxing rights which are comprehensively falsified by the operational characteristics of major digital economy participants.[37]

A multinational technology company can generate hundreds of millions of dollars of value from users in a market state, enter into close and commercially significant relationships with those users, capture and monetise data relating to those users, and because of the intangible, cross-border nature of its business model have no physical presence in the market state generating PE liability. Under traditional bilateral treaty rules, there is no PE, no source-state taxing right, and all tax value attributable to the company's activities in the market state accrues to the low-tax jurisdiction of its intellectual property holding company. This result is not a misinterpretation of treaty rules: it is their logical application to economic activity purposefully designed to generate value without physical presence. The underlying mismatch between the physical-presence nexus and digital business models is a structural feature of the bilateral treaty regime, not an edge case.[38]

The BEPS project recognised this early Action 1 was the first and most politically contested action but ultimately deferred a definitive solution, reflecting the geopolitical reality that the most commercially significant digital enterprises were incorporated in the United States, whose government was likely to oppose rule changes that would shift taxing rights over their profits to other states.[39] The OECD's Two-Pillar Solution, agreed in principle by 135 jurisdictions in October 2021, represents the most ambitious attempt to date to resolve the problem. Pillar One proposes to allocate a share of the residual profits of the largest MNEs (global revenues exceeding EUR 20 billion and profit margins

[37] Bloomberg Tax, 'OECD Inclusive Framework: BEPS and the Taxation of the Digital Economy' (Bloomberg Tax, updated 2024).

[38] 'New Rationales for Taxing the Digital Economy: Lessons from the OECD Pillar One Consultations' (2025) Frontiers in Political Science.

[39] Groupe d'etudes geopolitiques, 'Taxation of the Digital Economy: Global Challenge, Local Responses?' (2021).

exceeding ten per cent) to market jurisdictions on a basis not dependent on physical presence.[40] Pillar Two proposes a global minimum effective tax rate of fifteen per cent for large MNEs, implemented through the income inclusion rule and undertaxed profits rule.[41]

But both pillars face severe implementation constraints. Pillar One negotiations produced no agreement by June 2024, and US withdrawal from the multilateral framework in January 2025 has thrown the entire architecture into uncertainty.[42] Pillar Two, while being implemented domestically by many states, has a fifteen per cent minimum rate widely regarded as insufficient to suppress tax competition effectively, and its significant-activity carve-outs limit its application in capital-intensive industries.[43] The underlying diagnosis of the shortcoming the failure to bring the digital economy under the ambit of the treaties is not merely technical. The bilateral global framework of double taxation treaties is based on the allocation of taxing rights by reference to a physical location of economic activity and a residence of the taxpayer premises that were well-founded for the industrial economy but have been simultaneously broken by the digital economy. The tax reform projects of the last decade have tried to reduce the effects of this fundamental mismatch by means of anti-abuse rules, minimum standards, and redistributive rules for the allocation of profits. They have not accomplished and the multilateral process as currently constituted may preclude them from accomplishing the reconceptualisation of the nexus rules that is the only adequate response to the structural challenge the digital economy presents.

3.5 Anti-Abuse Measures and Their Limits

The international response to treaty abuse has centred on the OECD/G20 BEPS Action Plan, finalised in October 2015. BEPS Action 6, addressing treaty abuse, is one of the four BEPS minimum standards that all Inclusive Framework members have committed to implement.[44] It requires contracting states to include in their treaties a preamble statement of common intention not to permit double non-taxation through treaty abuse, and

---

[40]OECD/G20, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (OECD, Paris, October 2021).
[41]OECD, 'Tax Challenges Arising from the Digitalisation of the Economy — Subject to Tax Rule (Pillar Two): Inclusive Framework on BEPS' (OECD Publishing, Paris, 2023).
[42]Baker McKenzie, 'Navigating the Digital Tax Landscape' (Baker McKenzie, March 2025).
[43]'A New Framework for Digital Taxation' (2022) 63(2) Harvard International Law Journal.

to adopt substantive anti-abuse rules primarily the Principal Purpose Test (PPT) and the Limitation on Benefits (LOB) clause.

The PPT, incorporated as Article 29(9) of the 2017 OECD Model Tax Convention and widely adopted through the Multilateral Convention, denies a treaty benefit if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining the benefit was one of the principal purposes of any arrangement or transaction that directly or indirectly resulted in the benefit unless it is established that granting the benefit in those circumstances would be in accordance with the object and purpose of the relevant treaty provisions. This is both the test's strength and its weakness: it provides a broadly applicable anti-abuse doctrine without the need to pre-define abusive arrangements, but creates uncertainty for taxpayers and revenue authorities as to whether particular arrangements are caught.

The LOB clause is a structurally different instrument: an objective, mechanical test asking whether the entity claiming the treaty benefit satisfies objective criteria being a publicly traded company, being owned to a specified degree by residents of the treaty state, being an active business entity with a sufficient nexus between its activities and the income for which benefits are claimed. The LOB clause provides greater certainty but is less flexible and produces more anomalous results: it may deny treaty benefits to entities with genuine economic substance that nevertheless fail to satisfy the formal criteria, while potentially granting benefits to entities that satisfy the formal criteria but whose treaty benefit claims are economically unjustified.

The coexistence in the BEPS framework of two fundamentally incompatible anti-abuse approaches the PPT based on purpose and the LOB based on objective criteria reflects the political dynamics of the BEPS negotiation rather than coherent policy design. The United States insisted on the preservation of the LOB as an alternative to the PPT. Other OECD members preferred the flexibility of the PPT. The compromise gives individual states flexibility to choose their preferred approach but produces a treaty network in which different bilateral relationships operate under different anti-abuse standards, creating opportunities for regulatory arbitrage and reducing the predictability and coherence of the anti-abuse framework as a whole. The Multilateral Convention facilitates implementation of these measures across bilateral treaty networks without full renegotiation, but its effectiveness depends on the administrative capacity of tax authorities to identify and prosecute treaty abuse cases a capacity many developing countries lack.

CHAPTER 4: DEVELOPING COUNTRIES, DISTRIBUTIONAL IMPACT, AND REFORM PROSPECTS

4.1 The Structural Disadvantage of Developing Countries in the Treaty Network

The distributional impact of the bilateral double taxation treaty framework on developing countries is among the most important and most contested questions in contemporary international tax policy. It is important because the revenue implications of treaty concessions the reduced withholding rates, the restricted PE thresholds, the limited source-state taxing rights that developing countries accept in exchange for treaty relationships with capital-exporting states may determine the availability of public resources for investment in health, education, and infrastructure in economies where public revenue is already constrained by limited administrative capacity and a narrow tax base. It is contested because the standard justification offered to developing countries for accepting treaty terms that disadvantage their fiscal interests that the investment-promotion benefits of a treaty relationship more than compensate for the fiscal cost is a factual claim that must be assessed against the empirical evidence, and the evidence is substantially less supportive than the standard justification suggests.

The structural explanation for the bilateral treaty system's distributional disadvantage for developing countries lies in its institutional origins. The model conventions that have shaped the global treaty network were designed by and for the industrialised economies of Western Europe and North America that dominated the international community in the early twentieth century. The OECD Model's preference for residence-based taxation systematically advantages capital-exporting states over capital-importing states, which are more dependent on source-state taxation of income generated within their territory.[45] An OECD-model treaty therefore locks down withholding rates and PE thresholds that are critical to the revenue base of developing country treasuries it often leads to a revenue loss without a corresponding revenue gain.[46]

[45] Harvard International Law Journal, 'A New Framework for Digital Taxation' (2022) 63(2) Harvard International Law Journal.

[46] OECD, Model Tax Convention on Income and on Capital (OECD Publishing, Paris, 2017), arts 10-12; Kimberly Clausing, 'The Effect of Profit Shifting on the Corporate Tax Base' (2016) 69 National Tax Journal 905.

The practical consequences of this structural disadvantage are compounded by asymmetries of negotiating power in bilateral treaty negotiations. Developing countries that seek treaty relationships with major capital-exporting states the United States, the United Kingdom, Germany, France, Japan typically do so from a position of structural weakness: they are the demandeur, seeking the investment credibility a treaty relationship is thought to confer. Major OECD member states typically insist on OECD-model terms as a precondition for treaty negotiations, denying developing country partners the negotiating space to introduce UN-model provisions on royalty withholding, technical service fees, or PE thresholds.[47] In practice, the developing country's ability to negotiate treaty terms that reflect its fiscal interests is further constrained by the limited negotiating expertise of its treaty negotiators and by the lack of detailed treaty impact assessments that would allow the government to evaluate the fiscal cost of specific concessions before they are made.

The recent scholarship on the revenue implications of developing country treaty networks has documented the magnitude of the fiscal costs. Studies of the treaty networks of African countries have consistently found that treaty commitments to OECD-model withholding rates have resulted in revenue losses that exceed the investment inflows attributable to the treaties. The International Monetary Fund has estimated that the treaty-induced reduction in withholding rates costs low-income countries significant portions of GDP per year a loss that, in economies where total government revenue as a percentage of GDP is already low, represents a material constraint on fiscal capacity. These findings make a critical analysis of the treaty network's distributional implications not merely an academic exercise but a matter of practical urgency for the fiscal sustainability of developing country governments.

4.2 Comparative Analysis: Developed and Developing Country Treaty Practice

A systematic comparative analysis of the treaty practices of developed and developing countries reveals substantial differences across several dimensions withholding rates, anti-abuse provisions, information exchange arrangements, PE thresholds, and the treatment of technical service fees that cumulatively demonstrate the extent to which the

[47] Martin Hearson, Imposing Standards: The North-South Dimension to Global Tax Politics (Cornell University Press, Ithaca, 2021) ch 3; Petr Jansky and Miroslav Palansky, 'Estimating the Scale of Profit Shifting and Tax Revenue Losses' (2019) 25 International Tax and Public Finance 1048.

global treaty network embodies distributional preferences systematically unfavourable to developing country source states.

On withholding rates, the contrast between the treaty practice of OECD member states inter se and the treaty relationships between OECD members and developing countries is stark. In bilateral treaties between OECD member states, withholding rates on dividends paid to substantial corporate shareholders are typically zero or five per cent. For interest and royalties, the standard OECD model provision allows for zero or low withholding by source states, with the full burden of taxation shifted to the residence state. Developing countries, by contrast, often have significantly higher statutory withholding rates in their domestic law reflecting a fiscal preference for taxing at source the passive income outflows that represent the financial cost of foreign capital but are frequently pressured in treaty negotiations to reduce these rates to OECD-model levels in order to be seen as investor-friendly.[48]

The comparative analysis of anti-abuse provisions in treaties involving developing countries reveals a troubling temporal pattern. Treaties signed by African developing countries with European states during the 1990s and early 2000s the period before the BEPS project transformed the international anti-abuse standard typically lack any effective treaty anti-shopping provisions: no PPT clause, no LOB provision, no beneficial ownership requirement of substance.[49] These treaties, which may remain in force for decades, continue to provide conditions for systematic treaty shopping even as the post-BEPS standard has improved in more recently negotiated agreements. The practical consequence is that the treaty relationships in which the weakest anti-abuse protections appear are precisely those between developing country source states and major capital-exporting states in which the incentives for treaty shopping are strongest and the fiscal consequences of revenue loss are most severe.

The information exchange provisions of bilateral treaties involving developing countries also reveal significant disparities. The shift from exchange-of-information-on-request to automatic exchange of financial account information requires tax administrations to have in place the data management infrastructure, trained staff, secure communication systems, and legal and regulatory framework to generate, process, and use the information

[48] IMF, Spillovers in International Corporate Taxation, IMF Policy Paper (Washington DC, IMF, 2014).
[49] Leonce Ndikumana and James Boyce, Africa's Odious Debts (Zed Books, London, 2011); Attiya Waris, Tax and Development (Eleven International Publishing, The Hague, 2013) ch 6.

received.[50] Many developing country tax administrations lack one or more of these prerequisites. The result is that automatic exchange is a theoretically universal standard that is practically asymmetric in its implementation, with the benefits of information access flowing disproportionately to the tax administrations that have the administrative capacity to exploit the information received. For many developing countries, automatic exchange has created additional compliance obligations without a commensurate benefit in the form of improved access to information about their own residents' offshore financial activity.

4.3 The Effectiveness of DTAs in Facilitating Investment

The empirical assessment of the investment-promotion effects of double taxation treaties is central to the policy debate about the fiscal costs that developing countries have accepted in treaty negotiations. If bilateral tax treaties reliably produce substantial and identifiable increases in inward foreign direct investment increases that exceed the fiscal costs of the treaty concessions in terms of reduced withholding tax revenue then the developing country government's decision to negotiate treaty concessions is economically rational. If, on the other hand, the investment-promotion effects are uncertain, variable, and often insufficient to compensate for the fiscal costs, then the economic rationale for developing countries accepting OECD-model treaty terms is substantially weaker than claimed.

The empirical literature on the FDI effects of bilateral tax treaties is extensive, technically sophisticated, and substantially ambiguous in its conclusions. Early econometric studies particularly those produced in the 1990s and early 2000s tended to find positive and statistically significant associations between bilateral treaty relationships and FDI flows, supporting the conventional wisdom that treaties promote investment by reducing tax friction and enhancing investment security.[51] These findings were widely cited in support of treaty-signing by developing country governments, often in the absence of country-specific analysis of the costs and benefits of specific treaty arrangements.

[50] Global Forum on Transparency and Exchange of Information for Tax Purposes, Automatic Exchange of Information: A Roadmap for Developing Country Participation (OECD, Paris, 2014).

[51] Peter Egger and Valeria Merlo, 'The Impact of Bilateral Investment Treaties on FDI Dynamics' (2007) 30 World Economy 1536; Ronald Davies, 'Hunting High and Low for Vertical FDI' (2008) 57 Review of International Economics 367.

More recent and methodologically sophisticated studies have significantly qualified these conclusions. Neumayer's panel data analysis of the impact of OECD-model treaties on FDI inflows to developing countries found no clear evidence that OECD-model bilateral tax treaties produce increases in inward FDI to developing countries that would not have occurred in the absence of the treaty, while the fiscal costs of reduced withholding rates were demonstrably present in the revenue data.[52] Subsequent work has refined this finding: some studies find positive FDI effects for certain types of investment, particularly FDI between countries with significant tax rate differences, but the general conclusion that the investment-promotion effects of treaties are variable, context-dependent, and often insufficient to compensate for the revenue costs is supported by the balance of the literature.

The mechanism through which treaties are supposed to promote investment works more or less effectively depending on the characteristics of the host country. For countries that already provide strong institutions, contract enforcement, property rights protection, and macroeconomic stability, a bilateral tax treaty may provide an additional but marginal reassurance to potential investors.[53] For countries where institutional quality is weak, infrastructure is inadequate, or political risk is high, the existence of a bilateral tax treaty is unlikely to be a determining factor in investment location decisions: the fundamental business case for investment will be assessed primarily on market access, production costs, resource availability, and political risk, with the tax treaty as a second-order consideration.[54] A different question is whether treaties are good instruments for tax administration information exchange provisions can, if properly implemented and backed by adequate administrative capacity, result in improvements in anti-avoidance enforcement.[55] But the fundamental question of whether the terms on which treaty infrastructure is established are proportionate and equitable for developing countries remains largely unanswered by the existing empirical literature.

The question of whether bilateral tax treaties promote foreign direct investment is not merely academic: it has concrete implications for the billions of dollars of revenue that

[52] Arjan Lejour, 'The Foreign Investment Effects of Tax Treaties' (2014) 6 World Tax Journal 124; Eric Neumayer, 'Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?' (2007) 43 Journal of Development Studies 1501.

[53] UNCTAD, World Investment Report 2015: Reforming International Investment Governance (Geneva, UNCTAD, 2015) ch IV.

[54] OECD, Fighting Tax Crime — The Ten Global Principles (2nd edn, OECD Publishing, Paris, 2021).

[55] Richard Vann, 'Reflections on Business Profits and the Arm's Length Principle' in Brian Arnold and others (eds), The Taxation of Business Profits under Tax Treaties (Canadian Tax Foundation, Toronto, 2003) 133.

developing countries forgo annually through the withholding rate concessions embedded in their treaty networks. If the investment-promotion hypothesis were robustly supported if the evidence showed that OECD-model treaties reliably produced investment increases that substantially exceeded the revenue costs of the treaty concessions then the developing country government's decision to accept OECD-model terms would be economically rational, even if sub-optimal from a purely fiscal perspective. If the hypothesis is not supported if the evidence shows that the investment benefits are uncertain, variable, and often insufficient to compensate for the revenue costs then the intellectual and policy case for developing countries accepting treaty terms that disadvantage their fiscal interests is substantially weaker.

The weight of the evidence now available supports the latter conclusion. The most rigorous recent studies, using panel data for large sets of developing countries and employing econometric methods designed to control for the endogeneity of treaty formation the fact that treaties are more likely to be formed between countries that already have significant investment relationships have consistently failed to find robust evidence that OECD-model treaties produce investment increases that would not have occurred in the absence of the treaty. At the same time, the fiscal costs of treaty concessions through reduced withholding rates on dividends, interest, and royalties are demonstrably present in developing country revenue data and can be quantified with reasonable precision. The result is an asymmetry: the costs of treaty concessions are measurable and present; the benefits are uncertain and contested. This asymmetry does not prove that bilateral treaties are never beneficial for developing countries, or that treaty-signing is always against their interests. What it does demonstrate is that the standard policy advice offered to developing countries that bilateral tax treaties are reliably beneficial because they promote investment is not well-supported by the balance of the empirical evidence, and that developing country governments need much more careful country-specific analysis of the costs and benefits of specific treaty arrangements before entering into treaty commitments.

4.4 Implementation Challenges in Developing Countries

The challenges developing countries face in implementing DTAs are legal, institutional, and practical and these things are not wholly distinct. Legal issues reflect the nexus between treaty obligations and domestic law; institutional issues reflect the shortcomings of tax administration systems often designed for simpler domestic tax regimes; and practical issues reflect the resource and information deficiencies that infuse lower-income revenue administrations with uncertainty and doubt.

At the legal level, a common challenge is the domestic effect of treaty provisions. In common law systems, treaties generally require domestic enabling legislation to be incorporated by courts and tax authorities. This creates a lag between treaty signature, ratification, and domestic implementation, with a period of legal uncertainty in which investors and tax authorities may have different views of treaty provisions. Another issue is the interaction of treaty rules with subsequent domestic laws: if a parliament legislates a tax policy inconsistent with a treaty obligation, priority between the instruments is determined by constitutional arrangements that differ between countries and may not produce a clear answer.

Transfer pricing is perhaps the most technically demanding implementation challenge. The arm's length principle requires access to comparable-transactions data, specialist knowledge of financial and economic analysis methodologies, and powers of enforced disclosure. The OECD Transfer Pricing Guidelines presuppose a level of analytical capacity that exceeds what most developing country tax administrations currently possess.[56] The result is that transfer pricing the most significant mechanism through which multinational enterprises shift profits out of developing country source states is also the area in which developing countries are least able to identify, assess, and successfully challenge abusive arrangements.

Digital services taxation adds further complexity. Developing countries that have introduced unilateral digital services taxes face the risk that these taxes are incompatible with their bilateral treaty obligations.[57] Under the standard bilateral treaty, income attributable to digital services may be characterised as royalties or business profits and subject to treaty provisions limiting source-state taxation. A unilateral digital services tax that imposes a levy on revenues from market-state users may conflict with these provisions either by being treated as a covered tax that gives rise to treaty obligations, or by being subject to non-discrimination challenges. The result is that developing countries wishing to tax the digital economy may face not only the technical challenge of designing an effective

---

[56] OECD, Tax Challenges Arising from Digitalisation — Report on Pillar One Blueprint (OECD Publishing, Paris, 2020).

[57] Victoria Perry, 'How the IMF Engages on International Tax Issues' (2019) IMF Working Paper WP/19/192; ATAF, ATAF Suggested Approaches to Drafting Provisions for the Taxation of the Digitalised Economy (ATAF, Pretoria, 2021).

tax but the legal challenge of doing so compatibly with treaty obligations a challenge for which the bilateral treaty system, designed in a pre-digital era, provides no adequate guidance.

Institutional fragmentation adds to these challenges. In many developing countries, the finance ministry unit that negotiates treaties is operationally separate from the semi-autonomous revenue authority that administers them. They may not consult with each other. Treaties may be negotiated with inadequate consultation with the operational tax administration as to the practical implementability of treaty terms.[58] Particular attention should be paid to the resolution of tax treaty disputes. The mutual agreement procedure is dependent on initiative from the taxpayer subject to alleged double taxation, as well as the decision of competent authorities to negotiate the case. In practice, MAP disputes involving developing countries are more likely to arise from challenges by multinationals to source-state tax assessments than from developing country initiatives to resolve double taxation faced by their own residents resulting in a dispute procedure skewed against developing countries' fiscal interests.[59]

4.5 Reform Recommendations

Addressing the problems identified above requires reform on a number of fronts: international standard-setting reform, bilateral treaty reform, and domestic institutional capacity reform. There is no single measure that can address all the problems identified: the issues are too many and in too many different settings for any one change to provide a systemic solution.[60]

At the international level, the most important change is meaningful inclusion of developing-country interests in the model conventions domestically applied in the treaty drafting process. The OECD's Inclusive Framework on BEPS has gone some way to increasing representation beyond the regular OECD parties, but to be effective, developing-country representatives require technical and preparatory support, and resources for negotiations, to engage meaningfully rather than merely to rebut proposals made by larger

---

[59] Yariv Brauner, 'MAP: From Ideal to Reality' in Ekkehart Reimer and Alexander Rust (eds), Klaus Vogel on Double Taxation Conventions (4th edn, Kluwer Law International, Alphen aan den Rijn, 2015) art 25.
[60] Sol Picciotto, International Business Taxation (Weidenfeld and Nicolson, London, 1992); Reuven Avi-Yonah, 'International Tax as International Law' (2004) 57 Tax Law Review 483.

parties. The UN Committee of Experts on International Cooperation in Tax Matters has a role in standard-setting that should not be based solely on its voluntary coordination with the OECD.

On withholding rates, there is little empirical support for lowering rates across the board for developing-country treaties. An initiative to allow developing countries to maintain higher withholding rates on royalties and technical services the types of income most likely subject to profit-shifting without threat of coercion to adopt lower OECD rates would better reflect the nature of income flows in these relationships.[61] The permanent establishment threshold needs to be reformed in all treaty situations, but especially in developing countries principally acting as market jurisdictions for digital services. A possible reform is to include a significant economic presence concept in model treaty provisions a concept considered under the OECD's Inclusive Framework and which a number of African tax administrations have incorporated into domestic law.

Simplified transfer pricing methods safe harbours, fixed margins for low-value transactions, presumptive pricing for industry sectors with homogeneous goods and services can reduce the cost of the arm's length norm while retaining it.[62] The OECD has formally acknowledged the usefulness of simplified methods in developing countries but has so far produced limited guidance. Multilateral and bilateral treaty negotiation should become an inter-departmental process involving revenue administrators, treaty drafters, and economists at the negotiation table. Treaty impact notes, similar to legislative impact notes for legislative purposes, should be an integral part of the treaty process prior to ratification.[63] Technical assistance provided by the IMF, World Bank, and OECD Global Relations Programme should be on a capacity-building basis rather than being an opportunity for standard setters to push their preferred approaches forward.[64]

The next step for developing countries' DTA policy might be some degree of movement toward multilateralism. The Multilateral Convention to Implement Tax Treaty

[61] Allison Christians, 'Sovereignty, Taxation, and Social Contract' (2009) 18 Minnesota Journal of International Law 99; Luis Eduardo Schoueri, 'Arm's Length: Beyond the Guidelines of the OECD' (2015) 69 Bulletin for International Taxation 690.

[62] IMF, Revenue Administration: A Toolkit for Implementing a Revenue Authority (IMF, Washington DC, 2010); OECD, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, BEPS Action 13 Final Report (OECD, Paris, 2015).

[63] Martin Hearson, 'When Do Developing Countries Negotiate Away Their Corporate Tax Base?' (2016) 43 Journal of International Development 1008; Judith Freedman, Geoffrey Loomer and John Vella, 'Corporate Tax Risk and Tax Avoidance' (2009) 29 British Tax Review 74.

[64] World Bank Group, Supporting Countries in Tax Matters: Building Capacity for Domestic Resource Mobilisation (World Bank, Washington DC, 2019).

Related Measures to Prevent BEPS has demonstrated that it is possible to amend a significant block of bilateral treaties through a multilateral instrument. A more holistic approach that takes into account all aspects of the allocation of taxing rights not just anti-avoidance provisions might lead to a much greater shift in the distribution of benefits. The recent opening of the UN General Assembly to the governance of the international tax system, which has resulted in negotiations of a framework convention on international tax cooperation, represents a larger institutional transformation that could change the norms embedded in the bilateral treaties and give all states particularly developing and least-developed countries a genuine and equal voice in the governance of the system to which they are subject.[65]

[65] United Nations General Assembly, Resolution 78/230, 'Promotion of Inclusive and Effective International Tax Cooperation at the United Nations' (2023); Diane Ring, 'Who Is Making International Tax Policy?' (2010) 32 Fordham International Law Journal 649.

CONCLUSIONS

These are the conclusions that are to be provided in direct response to the four research objectives that were established at the beginning of the Introduction. In each of the conclusions, the key answer obtained in the course of the preceding analysis is summed up.

1. The legal foundations and operational framework of the bilateral DTA framework is structurally unsustainable to the contemporary global economy. The framework is based on two underlying assumptions that have gradually been demonstrated false: that economic activity of economic significance must have a physical presence in the source state, and that formal legal residence is a sound proxy of true economic relationship. Neither of the assumptions can withstand the digital economy and the global mobility of capital and intangible resources.

2. Bilateral DTA framework fails in delivering its proclaimed aims. Although it has managed to eliminate juridical double taxation in traditional cross-border trade between treaty partners, it has also facilitated systematic double non-taxation by using treaty shopping and base erosion and profit shifting. The source-residence dichotomy of the OECD Model allocation of taxing rights systematically favors residence states, typically developed economies over source states, and the empirical data does not support the argument that OECD-model treaties systematically favor residence states, typically developed economies over source states.

3. As the conceptual entry point to source-state taxation of business profits, the concept of permanent establishment is structurally unable to accommodate the taxable presence of digital economy enterprises. The value of market-state users to a multinational technology company can be generated in billions of dollars without the physical presence of the user across the PE threshold. It is a failure of the underlying rule of nexus itself, and not of the interpretation or application of the rule. The BEPS Action 7 changes refined the anti-avoidance perimeter of the existing rule, but it did not reconceptualise the existing rule.

4. The aberrations of the intended functioning of the bilateral treaty system include but are not limited to: treaty shopping and base erosion and profit shifting. The system allocates treaty benefits by reference to formal legal residence a criterion easily met by incorporating in a favourable jurisdiction without economic substance and assigns taxing

rights according to formal income characterisations which can be altered by legal structuring. These underlying design decisions have predictable consequences in terms of opportunities to abuse.

5. The reform efforts of the international community reforms of the bilateral system BEPS project Multilateral Convention Two-pillar solution are inadequate responses to structural weaknesses of the bilateral system. They have yielded actual changes in anti-abuse regulations, transfer pricing procedures, dispute settlement criteria, and minimum tax requirements. Nevertheless, they introduce changes to the mechanics of the system, but do not give a second thought to the underlying premises of the system. The fact that Pillar One did not reach the treaty form following the failure of the June 2024 deadline and withdrawal of the United States as a member of a multilateral framework that Pillar Two is supposed to have been actively discouraged by many experts as an ineffective measure to deter tax competition.

6. The bilateral DTA system systematically subjects developing nations to distributional disadvantages. The combination of the structural bias of the OECD Model towards residence-state taxation, and the negotiation of asymmetries in bilateral treaty negotiations and the limited administrative capacity of the tax administration of developing countries has produced a regressive pattern in which the states with the greatest needs of development are the ones to cede the most of their fiscal sovereignty in exchange of investment benefits the materialisation of which is empirically uncertain. The structural gap between the formal entitlement to treaties of developing countries and their actual ability to enforce them is created by implementation issues in the transfer pricing, determination of permanent establishments, and participation in mutual agreement procedures.

7. The international tax system cannot be effectively reformed by making further technical modifications to structurally identical bilateral treaties. The bilateral form of treaty is by its very nature incapable of addressing the multilateral coordination issues presented by the digital economy, the global mobility of multinational enterprise structures, and the distributional inequities that the system has brought about. Reform needs a re-conceptualisation of the governance structure of international taxation as opposed to the further accretion of bilateral amendments.

8. The institutional vehicle of this reconceptualization is the framework convention on international tax cooperation that is currently being negotiated under the auspices of the United Nations, pursuant to the General Assembly Resolution 78/230 of 2023. To correct

the structural inadequacies found, the framework convention should establish: a substance-based nexus rule to tax the digital economy; a binding and mandatory dispute resolution mechanism; an inclusive multilateral process of standard setting that provides the genuine equality of voice with the developing countries; and a distributional framework to allocate taxing rights that reflects the economic interests of all participating states. More than a century, the bilateral treaty system has been brewing. It has reached its institutional moment when it has to be replaced.

SUMMARY

This thesis critically examines the international double taxation agreement (DTA) regime its historical foundations, legal architecture, operational mechanisms, structural deficiencies, and reform prospects in order to determine whether the bilateral treaty framework is fit for the purposes of the modern global economy. The research employs doctrinal, comparative, and analytical methods, drawing primarily on the OECD Model Tax Convention (2017), the United Nations Model Double Taxation Convention (2021), the Vienna Convention on the Law of Treaties (1969), the OECD/G20 BEPS project documentation, and a wide range of academic scholarship and institutional publications in international tax law and international political economy.

The research demonstrates that the bilateral double taxation treaty system, while achieving genuine success in eliminating juridical double taxation in the industrial era, is structurally inadequate to address the three defining challenges of international taxation in the digital era: the digital economy's dissolution of the physical-presence nexus on which the treaty system's jurisdictional categories depend; the systematic exploitation of the treaty network through treaty shopping and BEPS by multinational enterprises; and the inequitable distributional outcomes the system produces for developing countries.

The BEPS project and the Two-Pillar Solution are assessed as representing the most ambitious reform efforts in the history of international tax treaty-making but as fundamentally insufficient responses to the structural crisis of the bilateral system, because they seek to modify the mechanics of the system without reconceptualising the foundational premises from which the system's structural deficiencies derive. Pillar One has not achieved treaty form; Pillar Two's minimum rate is insufficient to suppress tax competition effectively; and the US withdrawal from the global tax deal in January 2025 has created profound uncertainty about the future of both pillars.

The research concludes that meaningful and durable reform of the international tax system requires a reconceptualization of the governance architecture of international taxation rather than the continued accumulation of technical modifications to the bilateral treaty framework. The institutional vehicle for this reconceptualization is the framework convention on international tax cooperation being developed under United Nations auspices a framework that, if designed with genuine inclusivity and substantive ambition,

could provide the legal foundation for the transformation of international tax governance: towards substance-based nexus rules, inclusive multilateral standard-setting, mandatory binding dispute resolution, and an equitable distribution of taxing rights that reflects the economic interests of all states, including the developing and least-developed countries whose fiscal sovereignty has been most compromised by the bilateral treaty system as currently constituted.

SANTRAUKA

Šiame darbe kritiškai nagrinėjamas tarptautinis dvigubo apmokestinimo išvengimo susitarimų (DAS) režimas – jo istoriniai pagrindai, teisinė architektūra, veikimo mechanizmai, struktūriniai trūkumai ir reformų perspektyvos, siekiant nustatyti, ar dvišalė sutarčių sistema atitinka šiuolaikinės pasaulio ekonomikos poreikius. Tyrime taikomi doktrininiai, lyginamieji ir analitiniai metodai, daugiausia remiantis EBPO pavyzdine mokesčių konvencija (2017 m.), Jungtinių Tautų pavyzdine dvigubo apmokestinimo išvengimo konvencija (2021 m.), Vienos konvencija dėl sutarčių teisės (1969 m.), EBPO/G20 BEPS projekto dokumentacija ir įvairiais akademiniais tyrimais bei instituciniais leidiniais tarptautinės mokesčių teisės ir tarptautinės politinės ekonomikos srityse.

Tyrimas rodo, kad dvišalė dvigubo apmokestinimo išvengimo sutarčių sistema, nors ir sėkmingai panaikino teisinį dvigubą apmokestinimą pramonės eroje, yra struktūriškai nepakankama spręsti tris pagrindinius tarptautinio apmokestinimo iššūkius skaitmeniniame amžiuje: skaitmeninės ekonomikos fizinio buvimo ryšio, nuo kurio priklauso sutarčių sistemos jurisdikcijos kategorijos, išnykimą; sistemingą sutarčių tinklo išnaudojimą tarptautinių įmonių ieškant palankiausių sutarčių ir taikant BEPS; ir nelygius paskirstymo rezultatus, kuriuos sistema sukuria besivystančioms šalims.

BEPS projektas ir dviejų ramsčių sprendimas vertinami kaip ambicingiausios reformos pastangos tarptautinių mokesčių sutarčių sudarymo istorijoje, tačiau iš esmės nepakankami atsakai į dvišalės sistemos struktūrinę krizę, nes jais siekiama pakeisti sistemos mechaniką nepermąstant pagrindinių prielaidų, iš kurių kyla sistemos struktūriniai trūkumai. Pirmasis ramstis neįgavo sutarties formos; antrojo ramsčio minimalus tarifas yra nepakankamas, kad būtų veiksmingai slopinama mokesčių konkurencija; o JAV

pasitraukimas iš pasaulinio mokesčių susitarimo 2025 m. sausio mėn. sukėlė didelį netikrumą dėl abiejų ramsčių ateities.

Tyrimo išvadose teigiama, kad prasminga ir ilgalaikė tarptautinės mokesčių sistemos reforma reikalauja permąstyti tarptautinio apmokestinimo valdymo architektūrą, o ne nuolat kaupti techninius dvišalės sutarties sistemos pakeitimus. Institucinė šio permąstymo priemonė yra Jungtinių Tautų globojama Tarptautinio mokesčių bendradarbiavimo pagrindų konvencija. Jei ši sistema būtų sukurta išties įtraukiai ir turint esminių ambicijų, ji galėtų tapti teisiniu pagrindu tarptautinio mokesčių valdymo transformacijai: siekiant turinio pagrindu veikiančių susietumo taisyklių, įtraukaus daugiašalio standartų nustatymo, privalomo teisinio ginčų sprendimo ir teisingo apmokestinimo teisių paskirstymo, kuris atspindėtų visų valstybių, įskaitant besivystančias ir mažiausiai išsivysčiusias šalis, kurių fiskalinį suverenitetą labiausiai pažeidė dabartinė dvišalių sutarčių sistema, ekonominius interesus.

LIST OF REFERENCES

I. Primary Sources

OECD, Model Tax Convention on Income and on Capital (Full Version, OECD Publishing, Paris, 2017).

United Nations, Model Double Taxation Convention between Developed and Developing Countries (UN, New York, 2021).

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

OECD/G20, Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Paris, 2016).

OECD/G20, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Paris, October 2021).

League of Nations, Report on Double Taxation submitted to the Financial Committee (Geneva, 1923) (Bruins, Einaudi, Seligman and Stamp).

United Nations General Assembly, Resolution 78/230, 'Promotion of Inclusive and Effective International Tax Cooperation at the United Nations' (2023).

II. Books and Monographs

Avi-Yonah RS, International Tax as International Law: An Analysis of the International Tax Regime (Cambridge University Press, Cambridge, 2006).

Dagan T, International Tax Policy: Between Competition and Cooperation (Cambridge University Press, Cambridge, 2018).

Hearson M, Imposing Standards: The North-South Dimension to Global Tax Politics (Cornell University Press, Ithaca, 2021).

Kofler G and others (eds), Exemption Method and Credit Method: The Application of Article 23 of the OECD Model (IBFD, Amsterdam, 2023).

Lang M, Introduction to the Law of Double Taxation Conventions (3rd edn, IBFD, Amsterdam, 2021).

Ndikumana L and Boyce J, Africa's Odious Debts (Zed Books, London, 2011).

Picciotto S, International Business Taxation: A Study in the Internationalisation of Business Regulation (Weidenfeld and Nicolson, London, 1992).

Vogel K (ed), Klaus Vogel on Double Taxation Conventions (4th edn, Kluwer Law International, Alphen aan den Rijn, 2015).

Waris A, Tax and Development (Eleven International Publishing, The Hague, 2013).

III. Journal Articles and Book Chapters

Arnold BJ, 'The Interpretation of Tax Treaties: Looking to the Future' (2022) International Bureau of Fiscal Documentation.

Avi-Yonah RS, 'International Tax as International Law' (2004) 57 Tax Law Review 483.

Barthel F, Busse M and Neumayer E, 'The Impact of Double Taxation Treaties on Foreign Direct Investment: Evidence from Large Dyadic Panel Data' (2010) 28(3) Contemporary Economic Policy 366.

Brauner Y, 'MAP: From Ideal to Reality' in Reimer E and Rust A (eds), Klaus Vogel on Double Taxation Conventions (4th edn, Kluwer Law International, Alphen aan den Rijn, 2015) art 25.

Christians A, 'Sovereignty, Taxation, and Social Contract' (2009) 18 Minnesota Journal of International Law 99.

Clausing K, 'The Effect of Profit Shifting on the Corporate Tax Base in the United States and Beyond' (2016) 69 National Tax Journal 905.

Dickescheid T, 'Exemption vs Credit Method in International Double Taxation Treaties' (2004) 11 International Tax and Public Finance 721.

Freedman J, Loomer G and Vella J, 'Corporate Tax Risk and Tax Avoidance' (2009) 29 British Tax Review 74.

Hearson M, 'When Do Developing Countries Negotiate Away Their Corporate Tax Base?' (2016) 43 Journal of International Development 1008.

Jansky P and Palansky M, 'Estimating the Scale of Profit Shifting and Tax Revenue Losses Related to Foreign Direct Investment' (2019) 25 International Tax and Public Finance 1048.

Jogarajan S, 'Stamp, Seligman and the Drafting of the 1923 Experts' Report on Double Taxation' (2013) 5 World Tax Journal 368.

Kysar RM, 'Interpreting Tax Treaties' (2016) 101(4) Iowa Law Review 1387.

Lejour A, 'The Foreign Investment Effects of Tax Treaties' (2014) 6 World Tax Journal 124.

Lennard M, 'The UN Model Tax Convention as Compared with the OECD Model Tax Convention — Current Points of Difference and Recent Developments' (2009) 15 Asia-Pacific Tax Bulletin 4.

Linderfalk U and Hilling M, 'The Use of OECD Commentaries as Interpretative Aids: The Static/Ambulatory Approaches Debate Considered from the Perspective of International Law' (2015) Nordic Tax Journal 1.

Neumayer E, 'Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?' (2007) 43(8) Journal of Development Studies 1501.

Ring D, 'Who Is Making International Tax Policy?' (2010) 32 Fordham International Law Journal 649.

Schoueri LE, 'Arm's Length: Beyond the Guidelines of the OECD' (2015) 69 Bulletin for International Taxation 690.

Vann R, 'Reflections on Business Profits and the Arm's Length Principle' in Arnold B and others (eds), The Taxation of Business Profits under Tax Treaties (Canadian Tax Foundation, Toronto, 2003) 133.

Whittaker DR, 'An Examination of the OECD and UN Model Tax Treaties: Application to US Foreign Policy' (1982) 10 North Carolina Journal of International Law and Commercial Regulation 45.

IV. Official and Institutional Sources

ATAF, ATAF Suggested Approaches to Drafting Provisions for the Taxation of the Digitalised Economy (ATAF, Pretoria, 2021).

Global Forum on Transparency and Exchange of Information for Tax Purposes, Automatic Exchange of Information: A Roadmap for Developing Country Participation (OECD, Paris, 2014).

IMF, Spillovers in International Corporate Taxation, IMF Policy Paper (Washington DC, 2014).

IMF, 'Are Tax Treaties Worth It for Developing Economies?' in Perry V and others (eds), Corporate Income Taxes under Pressure (IMF, Washington DC, 2021) ch 8.

OECD, Action Plan on Base Erosion and Profit Shifting (OECD Publishing, Paris, 2013).

OECD, BEPS Action 14 on More Effective Dispute Resolution Mechanisms — Peer Review Documents (OECD Publishing, Paris, 2023).

OECD, Making Dispute Resolution Mechanisms More Effective: Final Report, BEPS Action 14 (OECD Publishing, Paris, 2015).

OECD, 2024 Mutual Agreement Procedure Statistics (OECD, Paris, 2024).

OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Publishing, Paris, 2022).

OECD, Tax Challenges Arising from Digitalisation — Report on Pillar One Blueprint, Inclusive Framework on BEPS (OECD Publishing, Paris, 2020).

OECD/G20, Base Erosion and Profit Shifting Project — Final Reports (15 Actions) (OECD Publishing, Paris, 2015).

UNCTAD, World Investment Report 2015: Reforming International Investment Governance (Geneva, 2015).

United Nations Department of Economic and Social Affairs, Manual for the Negotiation of Bilateral Tax Treaties Between Developed and Developing Countries (UN, New York, 2019).

World Bank Group, Supporting Countries in Tax Matters: Building Capacity for Domestic Resource Mobilisation (Washington DC, 2019).

V. Case Law

Prevost Car Inc v The Queen [2009] FCA 57 (Federal Court of Appeal of Canada).

Royal Bank of Canada v HMRC [2023] EWCA Civ 695 (England and Wales Court of Appeal).

HMRC v Anson [2015] UKSC 44 (United Kingdom Supreme Court).

IRC v Commerzbank AG [1990] STC 285 (England and Wales High Court).

United States v Stuart, 489 US 353 (1989) (United States Supreme Court).

JN Gladden Estate v The Queen (1985) (Federal Court Trial Division of Canada).