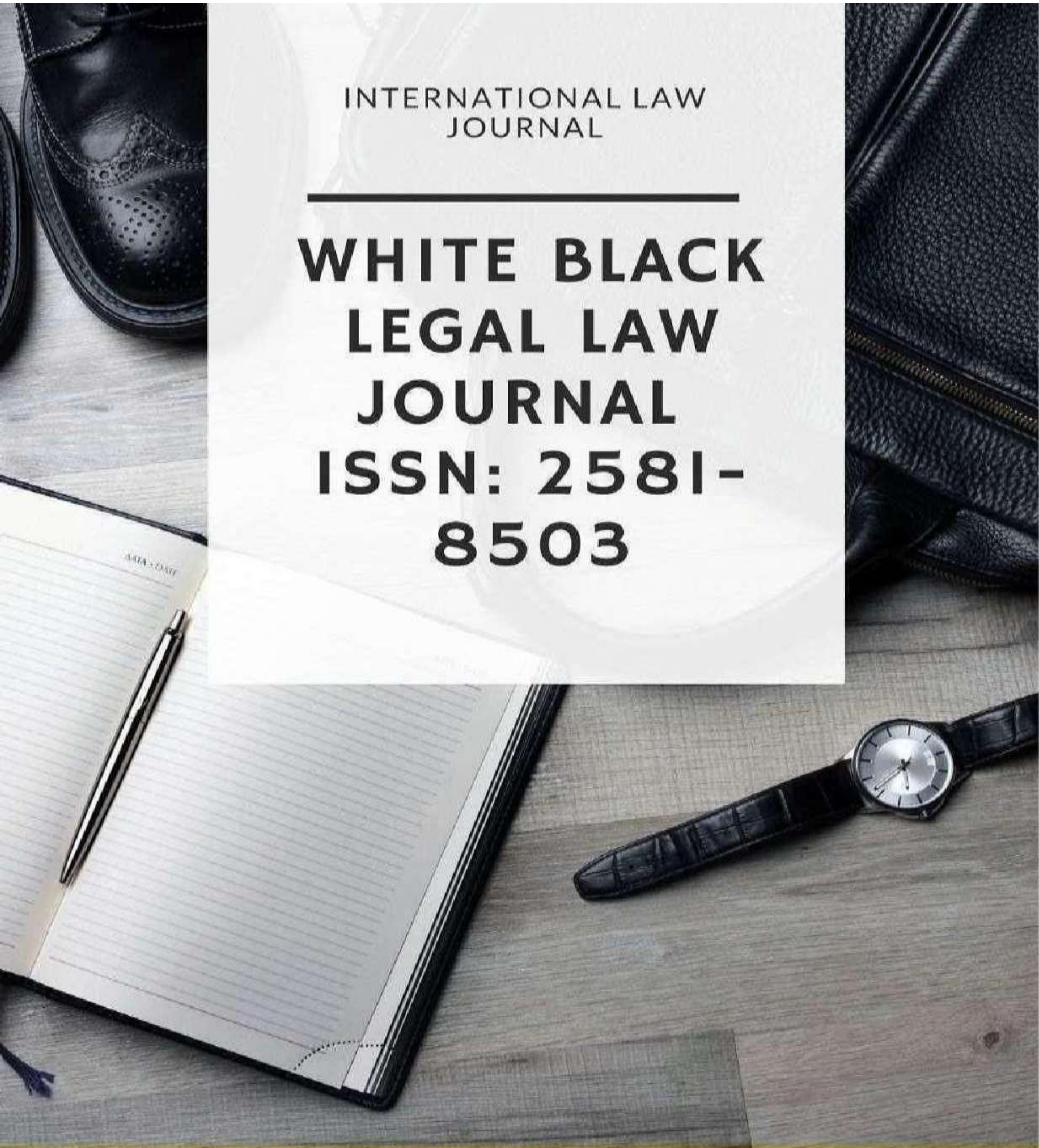

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With this thought, we hereby present to you

CROSS BORDER TAXATION: THE CONFLICT IN HOST STATE AND HOME STATE LAWS

AUTHORED BY - ESHITA TALWAR & PROF(DR.) SHEFALI RAIZADA

ABSTRACT

Cross-border taxation presents complex legal challenges arising from conflicts between the tax laws of host states where investments occur and the home states of the investors. This paper examines key issues in reconciling host and home state tax regimes for cross-border investments. It begins by explaining the legal nature and purposes of bilateral tax treaties, which are designed to mitigate double taxation and facilitate cross-border economic activity. The paper reviews the United Nations and OECD Model Tax Conventions that provide model frameworks for such treaties. It analyses the interplay between tax treaties and domestic tax laws, highlighting areas of conflict and different approaches used by countries. The interpretation of tax treaties under international law principles and domestic laws is also discussed. The paper further explores objectives of tax coordination beyond double taxation relief, such as combating tax evasion/avoidance and promoting fair taxation. It identifies major sources of host-home state tax disputes, including tax incentives, stabilization clauses, and policies that impact arbitration awards to investors. Strategies are proposed for effective disputeprevention and resolution mechanisms, including strengthening tax administration capabilities, improving transparency, engaging stakeholders, and conducting regular policy impactassessments. The paper emphasizes the need for enhanced international cooperation, clearer treaty provisions, and principled interpretation methods to create a stable and predictable environment for cross-border investment flows.

INTRODUCTION

An integral part of many nations' international tax regulations is tax treaties. There are an increasing number of bilateral income tax treaties, with over 3,000 now in existence. The Model Convention on the Avoidance of Double Taxation in International Trade between Developed and Developing Nations is the basis of the great majority of these accords[1] and the "Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital (OECD Model)." [2]

LEGAL NATURE AND EFFECT OF TAX TREATIES

Sovereign states enter into treaties when they reach an agreement. The following is stated in Article 2 of the universally applicable Vienna Convention on the Law of Treaties:[3]

Tax treaties, often termed either "agreements" or "conventions," serve as binding commitments between sovereign states, framed through legal documents and governed by international law. Despite the interchangeable use of these terms, their relevance is considered minimal as per Article 2 of the Vienna Convention.

Such treaties typically operate on a bilateral basis, endowing privileges and assigning duties exclusively to the signatory states without extending these directly to individual taxpayers. However, the primary aim of these treaties is to benefit taxpayers of the participating countries, effectiveness of which hinges on the respective national laws of the states involved. In certain jurisdictions, tax treaties are self-executing; this implies that upon ratification, the treaty automatically confers rights to the citizens of the states party to the treaty. Conversely, other jurisdictions necessitate further domestic legislative actions to translate treaty provisions into local benefits for their citizens.

Article 26 of the Vienna Convention mandates that tax treaties must be executed with integrity and good faith. Non-compliance with treaty obligations can result in a loss of trust and reluctance among nations to engage in further tax treaty negotiations. While most tax treatiesare bilateral, there exists a handful of multilateral agreements, such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The practicality of broader

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[1] "United Nations, Department of Economic and Social Affairs, United Nations Model Double Taxation Convention between Developed and Developing Countries" (New York: United Nations, 2011).

[2] "Organisation for Economic Co-operation and Development, Model Tax Convention on Income and Capital" (Paris: OECD, 2014).

[3] "Convention on the Law of Treaties, Vienna," (23 May 1969).

multilateral treaties remains a topic of discussion, particularly under the auspices of the OECD's Base Erosion and Profit Shifting (BEPS) initiative.

Reciprocity stands as a cornerstone in the structure of tax treaties, although interpretations of its application continue to be a subject of debate. Typically, these treaties contain reciprocal clauses—such as those setting caps on withholding tax rates for dividends in Article 10—that are designed to be mutually beneficial. This reciprocity is upheld even in cases where dividend flows predominantly originate from firms in developing nations to investors in more developed economies.

THE PROCESS OF NEGOTIATING TAX TREATIES

The initiation of a tax treaty typically begins through preliminary exchanges between the respective governments concerned. A critical factor influencing a government's decision to enter into treaty negotiations is the volume of commercial and investment interactions existing between the potential partner countries. Upon agreeing to commence discussions, the countries involved generally exchange their respective model treaties, or their latest tax treaties if model versions are not available. Negotiations are customarily conducted over two sessions, hosted alternately by each nation.[4]

In the initial negotiation phase, parties agree upon a base document, usually a model treaty of one of the countries, which will guide the discussions. This is followed by presentations detailing each country's tax laws, allowing negotiations to advance systematically, tackling each provision one at a time. Portions of the text that remain unresolved are bracketed for later discussion. Once agreement on the treaty's text is reached, it is prepared for signature by an authorized official, such as an ambassador.

Post-signature, the treaty must undergo each nation's ratification process. The treaty is considered finalized once ratification instruments are exchanged between the countries. The treaty then enters into force as specified under its terms, generally in line with Article 29 (Entry into Force) of the UNMC.[5]

After ratification, a tax treaty can be amended via a mutual agreement between the signatory states, typically through a Protocol which itself is a form of treaty and thus also requires ratification. Domestic tax laws continuously evolve and are interpreted to suit new circumstances, and tax treaties are no exception. Ideally, any deficiencies in a treaty should be

[4] Daurer, Veronika. "Tax treaties and developing countries." *Intertax* 42, no. 11 (2014).

[5] Foster, David S. "The Importance of Tax Treaties." *Hastings Int'l & Comp. L. Rev.* 5 (1981): 565.

corrected through mutual agreement and subsequent amendment of the treaty. However, this amendment process is often lengthy and complex, much like the initial treaty negotiation. It is common for the renegotiation of one part of a treaty to open up other parts to scrutiny and potential renegotiation. Additionally, tax treaties can be adaptively interpreted through processes such as the “Mutual Agreement Procedure” (MAP), which allows competent authorities from the contracting states to resolve issues related to the treaty’s interpretation and application. This provides a mechanism for adjustments without formal amendments.

THE UNITED NATIONS AND OECD MODEL TAX CONVENTIONS

The landscape of international taxation has been significantly shaped by two major model tax conventions: the OECD Model Convention and the UNMC. Additionally, many countries develop their own confidential tax treaties that serve as templates during negotiations withother states. Notably, the United Nations Model heavily draws upon the principles established by the OECD Model Convention.

The genesis of these model tax treaties can be traced back to diplomatic accords from the 18th century, initially designed to protect diplomats from discriminatory taxation when stationed abroad. With the advent of substantive income tax systems in the early 20th century, the scope of these treaties expanded to incorporate tax matters. Following World War I, the League of Nations took the initiative to formulate standard tax agreements, covering both income and capital taxes, with pivotal models emerging in 1943 and 1946. Despite some resistance, the task of refining these model treaties was later undertaken by the OECD and subsequently by the United Nations.[6]

Currently, the OECD, comprising 34 member countries predominantly from the industrialized world, first released its Model Convention in a preliminary edition in 1963. Subsequent revisions in 1977 and 1992 introduced a flexible loose-leaf format to facilitate ongoing updates.The most recent of these updates was in 2014. The OECD’s “Committee on Fiscal Affairs” (CFA), which includes senior tax officials from its member states, oversees this Model Convention. The Committee operates through various working groups organized under the “Centre for Tax Policy and Administration, which maintains a permanent secretariat. Particularly, Working Party No. 1 on Tax Conventions and Related Questions is charged with

[6] Mogaka, Joshua. "Domestic Policies on Negotiating Tax Treaties." (2022).

the stewardship of the Model Convention," ensuring it addresses evolving international tax issues.[7]

The OECD Model Convention, detailed in a comprehensive Commentary that examines each article individually, is instrumental in guiding the interpretation and application of tax treaties globally, including those involving non-member states. In 1997, recognizing the need for more inclusive global input, the OECD broadened the Commentary revision process to include several non-member countries such as Argentina, India, Brazil, Russia, China, and South Africa.

The Convention generally favors capital-exporting countries by often requiring the country of income origin to lessen or waive its tax claims on certain income types earned by residents ofa treaty partner. This framework is most effective when there is a balanced flow of trade and investment between the treaty nations, and the resident country imposes taxes on income exempted by the source country. However, this model tends to disadvantage net capital- importing countries.

To address this imbalance, developing countries initiated the development of an alternative model treaty that better aligns with their economic needs. This move was catalyzed in 1968 when the "United Nations Economic and Social Council" (ECOSOC) established the "United Nations Ad Hoc Group of Experts on Tax Treaties" between Developed and Developing Countries under its "resolution 1273 (XLIII)." The group's mandate was to create a more equitable treaty framework that effectively caters to the unique challenges faced by developing countries in international tax treaty negotiations.[8]

The assembly of specialists convened to devise a guide for formulating bilateral tax agreements between advanced and emerging nations. This effort culminated in the release of the 1980 UN Model Tax Convention, designed to facilitate tax negotiations between developed and developing countries.[9]

The Model Convention underwent revisions first in 2001 and subsequently in 2011. Additionally, in 2004, "the original Group of Experts was reconstituted as the Committee of Experts on International Cooperation in Tax Matters." [10] The Committee on Taxation and Development maintains Commentaries on the UNMC and publishes tax guides for developing

[7] Chisik, Richard, and Ronald B. Davies. "Asymmetric FDI and tax-treaty bargaining: theory andevidence." *Journal of Public Economics* 88, no. 6 (2004): 1119-1148.

[8] "Economic and Social Council resolution 1273 (XLIII)" of 4 August 1967.

[9] "United Nations Model Taxation Convention between Developed and Developing Countries" (New York: 1980).

[10] "Economic and Social Council resolution 2004/69" of 11 November 2004.

nations. The Committee comprises tax officials appointed by the Secretary-General of the United Nations and members from developing nations and countries in transition. The UNMC offers broader taxing rights to source countries, allowing for more extensive taxation on incomesources like royalties and business earnings. It does not impose limitations on royalties paid to residents of another country, highlighting the UN model's inclination towards empowering source states with greater taxing capabilities. The threshold for establishing a permanent establishment differs between the two models. Both the UN and OECD Model Conventions have significantly influenced global tax norms and reduced instances of double taxation internationally. However, amending these Model Conventions remains a complex process dueto the need for extensive renegotiations of existing bilateral treaties. Modifications to the Commentaries of these conventions are more straightforward and do not require such renegotiations.[11]

The OECD Model Convention, distinguishing itself from the UNMC, encapsulates the consensus of its OECD member states. However, member states retain the right to express dissent on specific provisions through the mechanism of reservations, as recorded in the accompanying Commentaries of the Model Convention. A reservation signifies a member country's intent not to incorporate a particular provision into its bilateral tax treaties. A commonsubject of such reservations is Article 12 concerning royalties, where numerous countries have opted to maintain their right to impose withholding taxes.

Additionally, the Commentaries on the OECD Model Convention serve as a repository for observations by member countries. These observations reflect disagreements with the interpretative guidance provided in the Commentary but do not equate to a rejection of the underlying treaty provision. Thus, while a country may adopt a provision within its tax treaties, it reserves the right to interpret and apply the provision in a manner that diverges from the Commentary’s guidance. Observations serve to clarify a country's stance on the interpretation and application of treaty provisions, ensuring alignment with national tax policy objectives.

RELATIONSHIP BETWEEN TAX TREATIES AND DOMESTIC LAW

For a number of countries, the relationship between international tax treaties and national tax policies is complex. The main point is that if there is a conflict between the needs of domestic law and the treaty, the treaty will be applied first. Several countries, including France, have

[11] “The country’s courts may take a different position and refuse to interpret the treaty in accordance with the revised Commentary.”

given this concept constitutional legitimacy. The provisions of a tax treaty may be superseded by the government in many other countries due to local law. For instance, in a number of parliamentary democracies, the supremacy of the legislature is a fundamental legal norm. Therefore, it is clear that these countries' own tax rules may take precedence over their tax treaties. However, in order for these countries' courts to enforce domestic laws that clash with treaties, the legislature must make its intention to supplant the treaty plain. When a conflict arises between domestic law and a treaty, the courts may try to find a way to reconcile the two.

State, provincial, and local taxes, as well as any other kind of income or capital tax imposed bya state that is a party to a tax treaty, are usually all included. Nevertheless, for a number of federal states, either the constitution or long-standing policy prohibit the federal government from engaging in tax treaties that limit the taxing power of its state or local governments. Therefore, these federal states' tax treaties just cover domestic taxes. Here we are at the present moment in American and Canadian history. As a result, a regional administration may implement tax policies that the federal government would find unacceptable.

It is not common for tax treaties to impose taxes. Consequently, tax treaties limit the taxes thata state may impose since domestic law is responsible for enforcing taxes. The main purpose of tax treaties is to alleviate financial hardship. Similarly, contrary to popular belief, tax treatiesdo not provide any particular tax rights. Keeping this fundamental idea in mind, before applying the terms of a tax treaty, it is often wise to determine whether the sum at question is subject to domestic taxes. We won't bother with the treaty if the amount is already tax-free under domestic law. As an example, suppose a treaty between two countries stipulates that a maximum withholding tax rate of fifteen percent applies to interest payments made by citizens of one state to citizens of the other. The treaty does not give country A the power to impose a 15% withholding tax on interest if, according to that country's laws, a domestic company is not obligated to pay taxes on interest paid to a lender in country B at a reasonable market rate.[12]

The question of whether tax treaties provide the power to levy taxes apart from domestic legislation hinges on prevailing domestic law. In the absence of a specific treaty exemption, several countries' internal laws permit the imposition of taxes on any amount, as is the case in France.

[12] Arnold, Brian. "An introduction to tax treaties." URL: http://www.un. org/esa/ffd/wpcontent/uploads/2015/10/TT_Introduction_Eng. pdf (2013).

The provisions of domestic law must still be considered alongside tax treaties. Consider the following hypothetical situation: a person is considered a resident of both country A and country B based on their respective domestic laws. According to the tie-breaker rule outlinedin the treaty between country A and country B, an individual is considered a resident of countryA for the purposes of the treaty if, after applying the criteria outlined in "Article 4 (2) (Resident)of both the United Nations and the OECD Model Conventions," an individual is determined to be a resident of country A even though they are considered a resident of both countries. For any other reason unrelated to the treaty, however, they will continue to be considered residents of nation B. Hence, for as long as the individual is a resident of country B, they are bound to comply with any withholding obligations imposed by country B on dividends, interest, or royalties paid to non-residents of country B.[13]

A municipal court's interpretation of a tax agreement may be changed or overturned by certain national regulations. Even well-meaning laws cannot violate a country's obligations under itstax treaties. When a nation chooses to ignore its tax treaties, it often talks to its treaty partners about it to be honest and prevent misunderstandings.

Some countries' tax treaty provisions may conflict with new domestic legislation, thus these countries may try to prevent judicial challenges to such laws by stating that the new legislation is more important. Although other countries have sometimes adopted the most infamous and controversial treaty overrides, the United States has the reputation for doing so. Unless there are extraordinary circumstances, treaties should not be disregarded since they are legally enforceable obligations. In the same breath, countries need the ability to revise their internal tax rules to clarify any confusion and make sure they remain relevant.

Due to their direct relevance to the meaning of terms under local law, several provisions of tax treaties do not stand alone. The income from immovable property may be taxed by the country where the property is located, according to Article 6, which deals explicitly with this matter.The term "immovable property" has its meaning in this case derived from the laws of the country in which the property is located. Additionally, as will be discussed in more detail below,Article 3 (2) (General definitions) states that the treaty's undefined terms must be interpreted according to their legal meaning in the country that is putting the treaty into effect. However,in countries where the treaty and local law both use the same wording, the domestic law meaning of those phrases may match up with the treaty interpretation in such countries.

[13] Mattsson, Nils. "Multilateral Tax Treaties–A Model for the Future?." *Intertax* 28, no. 8/9 (2000).

NAVIGATING THE COMPLEX TERRAIN OF CROSS-BORDER TAXATION: A RECONCILIATION OF HOST AND HOME STATE TAX REGIMES

Cross-border investments are pivotal in fueling global economic growth by enabling the flowof capital across borders. Despite their economic significance, these investments often face challenges stemming from the complexities of overlapping international tax regimes and the legal intricacies of reconciling host and home state laws. Such conflicts not only create a climate of uncertainty for investors but also impact the fiscal revenues of involved states and pose challenges to the legal frameworks under international investment agreements.

A prominent issue in the realm of cross-border taxation is the conflict between the tax laws of the host state and the home state of the investor. This often comes to the fore when investors receive financial redress from international arbitral awards, which may then be taxed by the investor's home state. Concurrently, the host state may levy additional taxes or impose different tax rules, potentially leading to double taxation or disputes over the determination of tax liabilities. This discord underscores the urgent need for enhanced clarity and improved bilateral coordination between jurisdictions to mitigate adverse outcomes for both investors and states.[14]

Further complicating the landscape are issues arising from tax incentives and stabilization clauses incorporated within investor-state contracts. These clauses are designed to safeguard investors against shifts in the tax policy of the host state that could affect the initial incentives offered during investment negotiations. Such protective measures can precipitate claims of unfair treatment if the host state modifies its fiscal policy, thereby potentially infringing thefair and equitable treatment standards set by international investment agreements. The presence of these clauses highlights the delicate balance that must be maintained between ensuring regulatory stability for investors and preserving the legislative autonomy of host states.[15]

Addressing the multifaceted challenges of cross-border taxation requires a robust policy framework that emphasizes coordination and open dialogue between the tax authorities of the host and home states. Implementing joint assessment mechanisms and creating exceptions within international investment agreements could provide structured methods to evaluate whether tax measures align with established investment norms.

[14] Huizinga, Harry, Johannes Voget, and Wolf Wagner. "International taxation and cross-border banking." *American Economic Journal: Economic Policy* 6, no. 2 (2014): 94-125.

[15] Huizinga, Harry P., and Johannes Voget. "International taxation and the direction and volume of cross-border M&As." *The Journal of Finance* 64, no. 3 (2009): 1217-1249.

Additionally, fostering ongoing dialogue and conducting comprehensive research on the convergence of tax and investment policies at the international level is crucial. This approach will aid in identifying and establishing best practices and shared standards that minimize tax-related conflicts. By encouraging cooperative engagement and involving stakeholders from both governmental and private sectors, states can more effectively manage the complexities associated with cross-border taxation, thereby enhancing the stability and predictability of the investment climate.

Effectively resolving the intricacies of cross-border taxation between host and home states demands a holistic approach that carefully balances the interests of both investors and sovereign states. Enhanced cooperation, greater transparency, and sustained dialogue are fundamental to improving the clarity and reliability of international tax regimes. By addressing these challenges, policymakers will not only foster an environment conducive to investment but also uphold the principles of equity and justice in global economic interactions.

OBJECTIVES OF TAX TREATIES

Tax treaties remove fiscal obstacles like double taxation, a major obstacle to international trade and investment. These bilateral agreements have generally concentrated on this feature to stimulate global economic activity by preventing numerous governments from taxing revenue. Article 4(2) (Resident) of the UNMC specifies conditions for dual residence and designates a single nation for tax purposes. In addition, such treaties frequently limit the source nation's taxing rights on specific income kinds and require the residence country to balance them with foreign tax credits or exemptions.

Modern tax treaties aim to combat tax evasion and avoidance as well as double taxation, which was especially difficult for multinational firms in the absence of large treaty networks and unilateral relief procedures. This goal reduces double taxation and double non-taxation, which might encourage fiscal evasion, by taxing income fairly and squarely once.

Outside these main purposes, tax treaties serve various other reasons. They strive to eradicate foreign national and non-resident tax discrimination in treaty states to ensure fair corporate treatment. Such treaties also improve administrative cooperation among signatory states by exchanging tax information, helping collect taxes, and resolving disputes through procedures like the mutual agreement procedure, used in transfer pricing disputes. One of the main advantages of tax treaties is clarity about cross-border investment taxes. Around 15 years ago, these treaties protected investors against local tax law changes in their operating nations. If a corporation from country A licences technology to companies in country B, it may use the treaty's set royalties withholding tax rate even if nation B raises its local rates.[16]

Tax treaties allocate cross-border tax money, which is not their main goal. Treaty negotiators must be conscious of how the treaty's provisions may affect each country's tax income, particularly when imposing fixed tax rates on revenues like interest payments, as in Article 11 (Interest) of numerous tax conventions. Tax treaties balance worldwide corporate growth with fair tax treatment and compliance across countries.

INTERPRETATION OF TAX TREATIES

Taxpayers, tax authorities, and domestic courts are responsible for the interpretation of tax treaties. From a basic viewpoint, tax treaties may be construed in a wide manner to achieve their intended aims or in a restricted manner to rigorously follow their exact meaning.

The analysis of tax treaties has significant resemblances with those of domestic tax laws. For instance, the interpretation of both treaties and domestic tax law is often influenced by factors such as the definition of the terms, the specific context in which they are used, and the intended objective of the provision. Tax officials and courts may have a proclivity to interpret tax treatiesin a manner consistent with domestic tax law. Nevertheless, tax treaties and domestic tax policyexhibit some significant distinctions:

- Given that every treaty involves two contracting states, any problems with interpretation should be handled by considering the shared objectives and expectations of both parties concerned.
- Tax treaties have a wider scope compared to domestic law since they are intended for both the governments and taxpayers of each nation.
- Tax treaties may use different terminology than domestic law. As an example, the UNMC use the word "enterprise," which is absent in the domestic laws of several nations.
- Tax treaties are generally designed to provide relief and do not impose taxes, as previously said.
- Domestic tax law does not have equivalents to the United Nations and OECD Model

Conventions and Commentaries.

[16] Eberhartinger, Eva, and Martin Six. "Taxation of cross-border hybrid finance: a legal analysis." *Intertax* 37(2009): 4.

- Considering these disparities, the issue at hand is whether an alternative method of interpretation is suitable for tax treaties.
- As tax treaties are treaties, their interpretation is governed by the "Vienna Convention on the Law of Treaties[17] (Vienna Convention)," which applies to all treaties, not just tax treaties. Numerous nations have ratified the agreement and are obligated to adhere to its provisions. Nevertheless, countries that have not ratified the rules may be obligatedto follow them due to their representation of customary international law, which is universally binding.

"Article 31(1) of the Vienna Convention" states the fundamental principle of interpretation as follows:

Interpreting a treaty requires a sincere and honest approach, guided by the typical meanings of its terms within the framework of the treaty's entirety, as well as its objectives and purposes. "Article 31(2) of the Vienna Convention" outlines that the context of a treaty includes its text, any related agreements made by the parties, and documents prepared by one party that have been accepted by the other. For instance, when the United States elaborates on its tax treaties, Canada's acknowledgment of these explanations regarding the US-Canada treaty illustratesthis principle. Moreover, Article 31(3) expands on this by incorporating subsequent agreements between parties and subsequent practices concerning the treaty, as well as relevant rules of international law, into the interpretive process. Thus, any interpretative consensus reached by the authoritative entities of the contracting states must be regarded as integral to the treaty.[18]

The interpretative methodology established in "Article 31(1) of the Vienna Convention" is both logical and straightforward. Initially, the analysis focuses on the ordinary meaning of the treaty's language, which must be considered in light of the entire treaty. This initial phase is critical because the interpretation of any term is inherently influenced by the context in whichit appears. Furthermore, aligning the interpretation with the treaty's aims reflects the deliberate intentions of the states when they crafted and consented to the treaty's provisions.[19]

While Article 31(1) facilitates a rational approach, its broad phrasing lacks specificity, offering no detailed guidance for weighing the common meanings of terms, the textual context, and the intentions underlying the treaty provisions in particular situations. This can be problematic

[17] Convention on the Law of Treaties, Vienna, 23 May 1969.

[18] Englisch, Joachim. "Taxation of cross-border dividends and EC fundamental freedoms." *Intertax* 38, no. 4(2010).

[19] Becker, Johannes, and Nadine Riedel. "Cross-border tax effects on affiliate investment—evidence from European multinationals." *European Economic Review* 56, no. 3 (2012): 436-450.

when there is a conflict between the plain meaning of the language and the purpose of the relevant rule, as Article 31(1) provides no explicit resolution mechanism.

Article 32 of the Vienna Convention introduces supplementary means of interpretation, suchas the preparatory work of the treaty and the circumstances surrounding its conclusion. These elements serve either to corroborate the meaning ascertained under Article 31 or to help resolveambiguities or illogical conclusions derived from it.

Although the United Nations and OECD Model Conventions and Commentaries play a significant role in the interpretation of tax treaties, their legal status remains uncertain under the terms of the Vienna Convention. Initially, they appear to function as supplementary interpretative tools as defined in Article 32. Their relevance, therefore, might be seen as secondary, only reinforcing or clarifying meanings where Article 31's interpretation is inadequate or yields unreasonable results. It is not intended by the United Nations Committeeof Experts or the OECD for these models and commentaries to serve a limited role.

The introduction to the UNMC states that, *"while its provisions and the Commentaries thereto are not enforceable and should not be considered as formal recommendations, they are intended to facilitate the negotiation, interpretation and practical application of bilateral tax treaties based upon its provisions."* [20] Similarly, the introduction to the OECD Model Convention indicates that the Commentaries *"can ... be of great assistance in the application and interpretation of the conventions and, in particular, in the settlement of any disputes".*[21] Multiple countries' complicated and contradictory laws complicate cross-border taxes. Interpreting tax treaties under Article 31 of the Vienna Convention is notably complicated bythe UN and OECD Model Conventions and their Commentaries. The inclusion of these Commentaries in treaty interpretation is contentious, especially when a treaty predates Commentary modifications, although it has little practical consequence. In treaty conflicts, several nations' courts defer to the Model Conventions and Commentaries.

Uniform interpretation is essential in international tax law to prevent double taxation or tax evasion. A person from country A offers services in country B and is reimbursed in a way that country B calls service fees and country A calls royalties. A misinterpretation of tax treaty terms

[20] United Nations, Department of Economic and Social Affairs, United Nations Model Double Taxation Convention between Developed and Developing Countries, Introduction, para. 12 (New York: United Nations, 2011).

[21] Organisation for Economic Co-operation and Development, Model Tax Convention on Income and Capital, Introduction, para. 29 (Paris: OECD, 2014).

that tax service fees in the source country and royalties in the resident nation might lead to double taxation if not rectified by appropriate authorities.

Multilingual tax treaties complicate matters. According to Article 33 of the Vienna Convention,all language versions are equally authoritative unless a governing language is specified in case of divergence. In treaty language conflicts, China prefers English.

Article 3(2) of the UN and OECD Model Conventions provides an essential rule of interpretation for undefined terminology. This rule requires three steps: first, determine whether the treaty defines the word; second, identify the domestic interpretation; and third, determine if the treaty context requires a divergence from the domestic interpretation. The definition may be broad, implying an average meaning with particular inclusions, or exclusive, defining it precisely.

Undefined terms in the treaty are construed using domestic legislation, which may be broad or tax-specific. Given the treaty's circumstances, use the most appropriate domestic law interpretation. This entails comparing common and legal tax definitions, other treaty nation interpretations, treaty clause purposes, and Model Conventions Commentaries.

Scholars discuss whether undefined phrases should have domestic or treaty-specific interpretations. Article 3(2) does not prioritise domestic law implications, therefore interpretation should include all relevant background.

Article 3(2)'s last consideration is whether the term's meaning should follow the domestic legislation as it existed when the treaty was signed (static approach) or as it changes. Since the 1995 OECD Model Convention modification and the 2001 UNMC amendment, the ambulatory method has been preferred to react to domestic law changes. However, major changes to domestic legislation that disrupt the treaty's balance may violate Article 26 of the Vienna Convention (pacta sunt servanda), which protects agreements.

STRATEGIES FOR EFFECTIVE DISPUTE RESOLUTION AND PREVENTIVE MEASURES

An essential component of managing cross-border tax conflicts is the establishment of effective dispute-resolution mechanisms. These should be specifically tailored to address and resolve tax-related disputes in a timely and fair manner. Arbitration panels, for instance, could be equipped with experts in both tax law and international investment law to provide balanced resolutions. Additionally, the creation of bilateral or multilateral tax committees could facilitate

ongoing discussions and swift resolution of disputes, preventing escalation and fostering mutual understanding.

The design and negotiation of tax treaties represent a preventive approach to mitigating potential conflicts. Treaties should be drafted with clear definitions and provisions that anticipate common areas of dispute and provide explicit guidelines for their resolution. Emphasizing the principle of mutual agreement in treaties can empower involved states to negotiate solutions before conflicts reach a critical point. Moreover, incorporating dynamic clauses that adapt to changes in domestic tax laws can help maintain the relevance and effectiveness of treaties over time.

Strengthening the capabilities of tax administrations in both host and home states through training programs and shared knowledge resources is fundamental. Enhanced understandingof the complexities of cross-border tax rules among tax officials will lead to more informed and effective administration of these laws. Sharing best practices and experiences through international tax forums and workshops can also lead to improvements in policy-making and treaty negotiations, reducing the likelihood of disputes.

Transparency in tax matters, coupled with active engagement of all stakeholders, is vital for preventing disputes and building trust. Public disclosure of tax rules, treaties, and related legislative changes should be standard practice. Moreover, engaging multinational corporations and investors in the consultation phases of tax policy-making can help identify potential areas of conflict early and allow for adjustments before policies are finalized.

Regular monitoring and evaluation of the impact of tax policies on international investments are crucial. This process should involve an analysis of the economic effects of tax laws and their alignment with international agreements. Such evaluations can lead to timely adjustments and reforms, minimizing negative repercussions and ensuring that tax policies continue to facilitate rather than inhibit cross-border investment.

CONCLUSION

Effectively managing the complexities of cross-border taxation and reconciling the tax regimes of host and home states is essential for promoting a stable and conducive environment for international investment flows. This paper has highlighted the multifaceted challenges posed by overlapping and conflicting tax laws, policies, treaties, and dispute resolution mechanisms.

A key priority is enhancing cooperation and coordination between tax authorities across borders. Bilateral and multilateral platforms must be strengthened to facilitate open dialogue, information sharing, and collaborative policymaking. Joint assessment committees could help evaluate cross-border tax measures against established investment norms and principles.

Clarity and precision in the formulation of tax treaties is paramount. Ambiguities and gaps in treaty provisions spur disputes and provide openings for unilateral overrides by states. Incorporating clearly defined stabilization clauses, exceptions, and interpretive guidelines can minimize conflicts over evolving domestic policies. Wider adoption of the ambulatory approach to treaty interpretation can ensure treaties remain aligned with legislative updates over time.

Uniform and principled methods of treaty interpretation also require attention. While the Vienna Convention offers a framework, more specific guidance is needed on aspects like prioritizing ordinary meaning versus purpose and reconciling domestic law conflicts. The legal standing of interpretive aids like the OECD and UN Model Commentaries should be clarifiedto enhance their judicious application by tax authorities and courts across countries.

Strengthening institutional capabilities within states is equally vital. Comprehensive training equipping tax officials with specialized knowledge of cross-border rules is essential for effective administration and compliance. Knowledge-sharing of best practices through international tax forums can further build capacity.

Fundamentally, an ethos of transparency, inclusivity, and mutual respect for domestic policy autonomy and investor interests must be cultivated. Consulting all stakeholders during tax policy formulation allows identifying friction points early. Robust monitoring of impacts can trigger timely reforms aligned with international investment principles.

Undoubtedly, the task of harmonizing cross-border tax regimes is an enormous challenge requiring sustained, collaborative efforts by state and non-state actors. However, progress on this front is pivotal to unlocking the full potential of international investments as an engine of global economic development and cooperation among nations.