



INVITATION

GTTC Universities Project VIII: Passive income

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

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

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

The goal of the GTTC University Project is to involve university teams in empirical research concerning international tax treaties. The reports submitted will be given to the authors of the relevant GTTC chapters, enabling them to enrich their chapters with the findings in the reports. For this purpose, the IBFD invites university professors/teachers and students to express their interest in participating in this project.

Formal details

- i. IBFD invites all interested universities to express their interest on this project. Insofar as possible, it is recommended that participating universities include this project as a special research project within the framework of a course on international tax law or similar. Each team should consist of 3 to 4 students, under the coordination of a university professor/teacher specialized in tax law.
- ii. IBFD will provide free access to the GTTC online publication as well as to the IBFD tax treaty database for all competing teams during the time of the project. Such access may be restricted at the sole discretion of IBFD. Access will be provided to the team participants, the supervising professor(s) and teaching staff involved in the project¹.
- iii. Each team should draft a report according to the guidelines set out below. The evaluation criteria for the reports are:
 - a) Information: Does the research probe all possible sources? Does it analyze the value of those sources and/or explain why only limited sources were used? Is the information presented relevant? (30%)
 - b) Analysis: Does the report present a convincing analysis of the information found? Does the analysis add depth to the information presented, for example by relating the information presented to the country's economic position, charting the development of the country's treaty policy over time and/or relating the provisions found to the characteristics of the treaty partners? (40%)
 - c) Presentation: Is the report well structured and clearly written? Is the information presented in a way that supports the analysis, for example in charts that highlight or illustrate the points made in the analysis (rather than simply listing treaty provisions)? (30%)
- iv. The IBFD jury will select the three most outstanding reports and the IBFD will notify the jury's decision to the participants by the 15th of April 2024. The three teams that submitted the selected reports will be invited to make an oral presentation of their findings to the jury, at the IBFD headquarters in Amsterdam, on the 4th of June 2024. The jury will select one winning team on the basis of the following criteria:
 - a) Clarity: Do the presentations give a clear explanation of how the research and analysis was carried out? Do the presentations follow a clear structure? (25%)
 - b) Selection of content: Do the presentations give a good sense of the overall results of the research, the analysis made and the conclusions drawn? Do they provide illuminative examples or highlights? (50%)
 - c) Speaking skills: Are the speakers able to make their points clearly and in the limited time available? Are they pleasant to listen to and able to keep the attention of the audience? (25%)

¹ Access to be set at the sole discretion of the IBFD.

Each of the three selected teams will receive:

- A grant of funds to cover (part of) the accommodation and travel expenses of each of the shortlisted teams:
 - EU teams within 500 KM from Amsterdam: €500
 - Other EU teams: €2.000
 - Non-EU teams: €4.000
- A certificate for each member of the shortlisted teams.
- The universities of the shortlisted teams will receive an offer for a 50% reduced fee for subscription to GTTC online publication for a period of one year following the period of free access for the term of this project.

Format and style of the working paper:

- *Text:* To be presented in a Word document in font Times New Roman (TNR) 11 pt; double spacing; left aligned. Document title: To be presented in TNR 11 pt, centred, bold and in CAPS.
- *Sections:* Sections within the chapter should be numbered consecutively using Arabic numerals, starting with the chapter number. Limit headings to three levels, keep titles concise and number consistently throughout the working paper. The numbers and section titles and sub-section titles are to be in TNR 11 pt and bold.
- *Length:* maximum 40 pages.

Deadline: 15 March 2024.

Structure and Content of the Working Papers

Introduction

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

A country's tax treaty policy does not exist in a vacuum; it is determined by a multitude of factors, such as the country's domestic tax law, its state of development, its economic position in the world and its trading partners. The analysis that we are seeking in this competition

therefore not only reports on the content of concluded treaties and the country's (stated) aims in this respect, but also puts them into context by relating that information to the factors that shape the country's treaty policy. It will not always be possible to relate specific provisions to the policy factors that you have identified for your country, as tax treaties are (usually) bilateral instruments, which include provisions requested by both contracting states. These "other country" provisions, however, may give you valuable information about the relative importance of your own country's aims and the areas in which it is willing to make concessions.

Sources

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

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

If your country has an extremely large network of treaties, you may wish to make a selection of treaties for detailed analysis. In this case, consider how best to make the selection representative of your country's policy and whether specific treaties can be regarded as representative of a larger group, such as treaties concluded during a certain period or with a certain group of treaty partners.

Issues to consider

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

- think about the features of your country’s domestic tax law that have a bearing on its treaty policy and whether/how those features are reflected in treaties. For example, you might need to explain certain regimes in your country’s domestic law as part of the background, or features that do not conform to international norms, such as a territorial system of taxation;
- state whether or not your country is an OECD member and whether it has joined the MLI;
- analyze the extent to which your country adheres to the OECD or the UN Model (or a regional model) and policies that do not conform to either Model. If the treaties conform to the OECD and/or UN Model, it is sufficient to state that without further explanation. If the treaties have different wording but achieve the same result as one of the Models, this should be noted. A different interpretation of the same wording needs more attention, for example if your country’s case law has given a specific interpretation of a certain common treaty provision;
- pay particular attention to deviations from the OECD and UN Models, particularly if this is a consistent pattern. In comparing your country’s treaties with the Models, pay attention to the time at which the treaties were signed and the text of the Models that were current at that time. Does your country, for example, consistently follow the most recent version, or does it prefer an older version of a specific provision, such as Art. 7 in the OECD Model?;
- note that both Commentaries make many suggestions for alternative versions of the provisions in the Models. If your country adopts any of these suggestions, it is sufficient to point to the paragraph of the Commentary where this text is set out;
- think about how any trends discovered (in particular in respect of consistent deviations from the OECD and/or UN Models) relate to the economic position of your country. One of the most important factors is the pattern of cross-border trade and whether your country is primarily an importer or exporter of capital and investment. Other factors might be, for example, your country’s reliance on a particular industry, or having a well-educated workforce that is frequently employed abroad. The policy is also likely to be shaped by whether or not your country has a dominant position in the international or regional economy;
- analyze your findings to determine whether there are discernible differences in the treaties concluded with specific groups of countries (such as developing countries, or countries in specific regions);
- if possible, distinguish between treaty provisions that form an active part of your country’s policy and provisions that are accepted if requested by the other party.

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

Outline

Passive income

The selected provisions are:

- the allocation of taxing rights over income from immovable property (Art. 6 of the 2017 OECD Model and 2021 UN Model);
- the allocation of taxing rights over dividends (Art. 10 of the 2017 OECD Model and 2021 UN Model);
- the allocation of taxing rights over interest (Art. 11 of the 2017 OECD Model and 2021 UN Model);
- the allocation of taxing rights over royalties (Art. 12 of the 2017 OECD Model and 2021 UN Model);
- the allocation of taxing rights over capital gains realized on investment assets (Art. 13 of the 2017 OECD Model and 2021 UN Model and Art. 9 of the MLI);
- the allocation of taxing rights over other categories of passive income (Art. 21 of the 2017 OECD Model and 2021 UN Model);
- the allocation of taxing rights over capital held as an investment (Art. 22 of the 2017 OECD Model and 2021 UN Model
- Art. 29(8) of the 2017 OECD Model and 2021 UN Model and Art. 10 of the MLI;
- provisions granting MFN treatment in respect of passive income (often found in protocols).

1. General overview of domestic policy and history

This section should provide a general introduction to domestic policy in respect of the tax treaty topics to be addressed in this report noting, if possible, how this policy has developed over time. Some of the notes below point out some common regimes that need a brief description in the relevant section, but your country may also have features of general application in its law that require explanation here, such as a dual taxation system for individuals that imposes different rates on earned and investment income. This section should also provide general background information about the aspects of your country's economy that are relevant to the report, such as whether there is a high proportion of individual saving and investment, whether there is a large amount of wealth invested in the country from outside its borders, etc.

2. Income from immovable property - Art. 6

This section may need to be split into sub-sections, depending on what has to be reported for your country.

3. Dividends - Art. 10

3.1. Main allocation rules – Arts. 10(1) and 10(2)

Please indicate, in particular, the range of limits on source-state taxation in your country's treaties, how often a distinction is made in this respect between participation and portfolio dividends, and the (range of) shareholding thresholds to define participation dividends.

Concluded treaties may include provisions dealing with collective investment vehicles (CIVs) and real estate investment trusts (REITs). Provisions that deal specifically with the application of Art. 10 to these entities should be reported here. Provisions that are repeated in Arts. 10, 11 and 12 should be reported in Section 6 below. Provisions dealing with the application of treaties to these entities generally (such as provisions on their status as a "person" for treaty purposes) should not be discussed in detail in this report, as they are covered in a separate report on the framework of treaties; it may be necessary, however, to mention them briefly here.

This section may be further divided into sub-sections if it would be otherwise become too long.

3.2. Definition – Art. 10(3)

3.3. Other provisions - Arts. 10(4) and 10(5)

Provisions on branch profits taxes may be found in Art. 10 or in Art. 24. If your country's treaties include these provisions in either article, please report them here.

Most-favoured-nation (MFN) clauses specifically in respect of dividends should be covered here. MFN clauses in respect of a wider category of income (such as all passive income) should be reported in Section 6.

Note: do not deal with tax sparing credits here, even if they are granted only in respect of passive income or specifically in respect of dividends, as all matters relating to double tax relief are covered in a separate report.

4. Interest - Art. 11

4.1. Main allocation rules – Arts. 11(1) and 11(2)

Please indicate, in particular, the range of limits on source-state taxation in your country's treaties, whether this article distinguishes among different categories of interest and, if so, which categories are commonly used and the range of limits agreed for those categories.

4.2. Definition – Art. 11(3)

4.3. Other provisions – Arts. 11(4), 11(5) and 11(6)

Most-favoured-nation (MFN) clauses specifically in respect of interest should be covered here. MFN clauses in respect of a wider category of income (such as all passive income) should be reported in Section 6.

Note: do not deal with tax sparing credits, even if they are granted only in respect of passive income or specifically in respect of interest, as all matters relating to double tax relief are covered in a separate report.

5. Royalties - Art. 12

5.1. Main allocation rules – Art. 12(1) OECD Model, Arts. 12(1) and 12(2) UN Model

Please indicate, in particular, the range of limits on source-state taxation in your country's treaties, whether this article distinguishes among different categories of royalty and, if so, which categories are commonly used and the range of limits agreed for those categories.

5.2. Definition – Art. 12(2) OECD Model, Art. 12(3) UN Model

If your country's treaties extend the scope of this provision to technical service fees or to "included services", please state so briefly but do not deal at length with service fees.

5.3. Other provisions Arts. 12(3) and 12(4) OECD Model and Arts. 12(4) and 12(5) UN Model

Most-favoured-nation (MFN) clauses specifically in respect of royalties should be covered here. MFN clauses in respect of a wider category of income (such as all passive income) should be reported in Section 6.

Note: do not deal with tax sparing credits, even if they are granted only in respect of passive income or specifically in respect of royalties, as all matters relating to double tax relief are covered in a separate report.

6. Arts. 10, 11 and 12 – common issues

This section should report on issues that arise throughout Arts. 10, 11 and 12, whether the issue arises from a separate provision or from wording that appears in all three articles. The following subsections may be adapted and/or expanded to suit the needs of your report, but if you do use the headings below (or similar headings) please place them in the order given here.

6.1. Beneficial ownership

Please report on any of the following that are relevant to your country:

- Provisions in treaties, protocols, memoranda of understanding and exchanges of letters (bilateral treaty-related documents) that shed light on the beneficial ownership concept;
- Unilateral declarations or explanations of your country on the beneficial ownership concept, such as explanatory memoranda accompanying treaties and guidance from the tax authority;
- Case law in your country on the beneficial ownership concept.

In all cases, please report only information that assists specifically in understanding how beneficial ownership is understood in your country in respect of tax treaties. Do not engage in a general discussion of the treaty beneficial ownership concept or deal with the use of the "beneficial ownership" terminology in other contexts.

6.2. Anti-avoidance rules

Many treaties include anti-avoidance rules in the passive income articles, which reflect the wording of the principle purpose test (PPT). Alternatively, treaties may include a subject-to-tax rule that restricts the application of the limits on source-state taxation of passive income. These, and comparable provisions, should be reported here.

6.3. Third-state PEs

Art. 29(8) of the Models and Art. 10 of the MLI are an anti-abuse rule for dividends, interest and royalties paid from a source in one contracting state to a third-state PE of a resident of the other contracting state. Please report whether this article of the MLI modifies the treaties concluded by your country and/or whether your country has otherwise included this or a similar provision in its treaties.

6.4. Special tax regimes

Both Commentaries on Art. 1 include a discussion on a provision to prevent the reduction of source-state taxation on interest and royalties that are subject to a special tax regime in the hands of the recipient. The suggested text includes a long definition of “special tax regime” to be included in Art. 3. If your country includes this or a comparable provision in its treaties, please also report here on any definition of a special tax regime, whether the definition is placed in Art. 3 or in Arts. 11 and 12. It is, however, not necessary to deal with the definition at length.

6.5. MFN provisions

If your country includes most-favoured-nation (MFN) clauses in its treaties in respect of passive income as a whole category, please report that here. MFN clauses in respect of a specific type of passive income should be reported in the relevant section above. Note that MFN clauses are commonly placed in protocols.

7. Capital gains - Art. 13, Art. 9 MLI

7.1. Gains from immovable property – Art. 13(1)

7.2. Indirect alienations of immovable property - Art. 13(4), Art. 9 MLI

7.3. Gains from shares – Art. 13(5) UN

If your country has concluded any treaties including Art. 13(7) of the UN Model, please report that here.

7.4. Gains from other investment assets – Art. 13(5) OECD and Art. 13(8) UN

7.5. Exit / trailing taxes

This sub-section may be used if it is appropriate for your country.

8. Other income - Art. 21

8.1. Main rule – Art. 21(1)

8.2. Allocation of taxing right to source state – Art. 21(3) UN

9. Capital – Art. 22

If your country does not have any tax on capital and does not include this article in its treaties, it is sufficient simply to state that, without using the subsections below. If your country does have a tax on capital, please state briefly here the scope of this tax – whether it applies to all

assets or only to certain types of asset. If your country includes Art. 22 in its treaties, please follow the subsections below.

9.1. Immovable property – Art. 22(1)

9.2. Other assets held as an investment – Art. 22(4)