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Karen B. Brown *Editor*

Taxation and Development - A Comparative Study

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Taxation and Development - A Comparative Study

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Preface

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Washington, DC, USA — Karen B. Brown

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Introduction

Increasingly, the impact of individual state actors on the quality of life on the more than seven billion people on planet earth, even those separated by thousands of miles, is of note. This was one of the lessons and causes of the environmental colloquium, the UN Climate Change Summit, held in Paris, France, in November and December 2015. The work of the conference, as that of previous world convocations, concluded that the environmental policies of one country affected all. In particular, the policies instituted by the leaders of the more industrialized, higher-income nations in their quest to produce and prosper helped to create the environmental degradation plaguing everyone, particularly nations which are geographically and economically vulnerable. The accords finally reached acknowledged that agreement to climate control concessions by developing countries placed them in a position not to benefit from the kind of economic expansion they could enjoy from production unrestrained by environmental concerns. Moreover, the accords further acknowledged that, under such circumstances, these nations could not be expected to shoulder the expense of the required technological innovations to achieve climate goals while maintaining the ability to compete effectively in the global marketplace, without financial and other kinds of assistance from richer nations.

A similar interconnection is found in the international tax policies of the more highly developed nations. This has led groups like the Organisation for Economic Cooperation and Development (OECD) among others, to call for increased cooperation among nations to combat the type of tax arbitrage (or manipulation of the differences in countries' laws to gain tax advantages) that results in a world where each sovereign establishes its tax regime independently of the concerns of others. This resulted in the issuance of the 1998 OECD reports on Harmful Tax Competition and Tax Sparing, establishment of the OECD Global Tax Forum on Transparency and Exchange of Information on Tax Matters and promulgation of the final Base Erosion and Profit Shifting (BEPS) report by the OECD in October 2015. The goal of this work has been to move nations to voluntarily agree to conform their tax regimes to certain "internationally accepted" standards and principles. Yet, unlike those setting climate control policies, the tax policymakers have not given sufficient thought to the ways in which the tax systems and regime choices established by the

more highly developed, higher-income nations affect more vulnerable nations. Developed nations have condemned many of the tax regimes developing nations have put in place in order to attract investment and revenue to fuel development without acknowledging that many of these strategies have been dictated as a response to the tax strategies of multinational enterprises incentivized by developed -world regimes. Without input from developing nations, the tax reform strategies of higher-income countries will operate primarily to protect the latter countries' own tax bases and will fail to appropriately consider the obstacles faced by resource-limited nations as they struggle to meet international standards they had little opportunity to shape.[1]

This is the phenomenon that caused the International Academy of Comparative Law (IACL) to convene tax scholars from around the world to consider these issues at the 19th World Congress held in Vienna, Austria, in July 2014. This meeting resulted in submission of 19 national reports that consider the international tax regimes of the covered countries and their impact on developing country regimes. The Appendix at the end of Chapter 1, Taxation and Development – Overview, which serves as the General Report for this topic for the 19th Congress, lists the reporters and their affiliations. Each of these national reports, preceded by a synopsis, appears in the following chapters. You will note that every one of these reports is thought-provoking, thorough and insightful. Can tax incentives be an appropriate policy tool in the international marketplace?[2] What is harmful tax competition? How do the tax regimes of higher-income nations affect the ability of developing countries to collect essential fiscal resources? What are the essential non-tax supports for investment? While the reports do not definitively answer all of these questions, they deal with the complexity of the issues and report no easy solutions to the problems confronting countries as they individually and collectively work to determine the appropriate parameters for shaping future international tax policy.

[1] See, e.g. Organisation for Cooperation and Development, Part 1 of a Report to G20 Development Working Group on the Impact of BEPS in Low Income Countries 34 (July 2014) ("[W]e encourage international and regional organisations and all stakeholders to take further steps to ensure that developing countries' voices are taken into account in the international efforts to counter BEPS and strengthen domestic resource mobilisation") and Part 2 of a Report to G20 Development Working Group on the Impact of BEPS in Low Income Countries (13 August 2014).

[2] Resolution Adopted by the General Assembly on 27 July 2015, 69/313. Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) ¶ 27.

Part I
General Report

Chapter 1
Taxation and Development: Overview

Karen B. Brown

Abstract In an effort to promote internationally accepted standards that embody principles underlying their own systems, developed countries have, in some respects, ignored the spill-over effect of their tax regimes on the viability of strategies of countries in the developing world to attract much needed investment. A reconsideration of the principles underlying the decisions made by higher-income countries concerning the proper allocation of taxing jurisdiction over income arising from global operations of multinationals could and should result in a re-examination of the ways in which countries, particularly developing ones, are able to build economies. This chapter provides an overview of contributions that consider whether 19 different countries use their tax laws to attract foreign investment or to encourage investment in developing countries.

Introduction

In general, economists, academics, and other policy analysts maintain that the tax laws of a given economy should not distort the business decisions of its constituents. This is taken to mean that tax laws should be neutral, providing an offset against the income tax base for expenses of producing income, but not allowing for special incentives designed to encourage or discourage specified taxpayer behavior. At the domestic level, examples of special tax breaks include accelerated depreciation allowances for investments in production assets, tax rate preferences for specified types of income, and accelerated recovery of research and development costs. At the international taxation level, neutrality implies a tax regime that would not favor or

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IV.E, La fiscalité et le développement. General Report for the International Academy for Comparative Law 19th Congress held in Vienna, Austria in 2014. While most of the national reports detail the rules governing taxation of individuals as well as corporations, this General Report refers only to income taxation of corporations and certain other business entities.

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disfavor investment abroad if there are economically sound reasons (apart from income tax consequences) for doing so. This type of neutrality has been embodied in the principle of capital export neutrality, dictating that a country tax the worldwide income of its residents, but provide a mechanism (usually a foreign tax credit) to relieve the double taxation that may ensue. Although the majority of countries purport to ground their respective tax systems upon the worldwide taxation principle, a number have adopted a variant on capital export neutrality, such as capital import neutrality, in which a country opts not to tax income which its residents derive abroad. An example of this approach is the territorial system of taxation. Such a system allows a country's residents to compete abroad with residents of other countries. The justification for promoting what is known as "tax competition" is that it provides the resident the opportunity to translate the lower rate of taxation operative abroad into lower overall production costs, which would allow it to sell the goods at competitive prices worldwide. Because certain types of tax competition have become widely viewed as harmful to worldwide productivity, they have fallen into disfavor, particularly after the Organisation for Economic Cooperation and Development's (OECD's) 1998 Report on Harmful Tax Competition and, more recently, its October, 2015 Final Report on Base Erosion Profit Shifting (BEPS).

Despite the ostensible hegemony of the neutrality principle, countries have opted both at the domestic and international levels, to provide tax incentives. This departure derives from a practical reality – national leaders find it legitimate to use their respective tax laws to achieve results far beyond that of providing a sufficient infrastructure and social network to support the citizenry. Many of these incentives, such as lowered income tax rates for certain types of production or industries and rapid methods of cost recovery, are designed to encourage production within the country's borders, while others are designed to support (or have the effect of supporting) production activity outside of the country's borders through application of participation exemptions and other means of taxing profits derived abroad more favorably. One of the motives for providing preferential treatment for foreign income can be seen as a competitive move to be the country of choice of multinational enterprises with the hope of attracting business activity and investment.

As competition among the more developed, higher income countries persists, little attention is paid to the impact of these international tax regimes on the fiscal strategies of the developing world. Intergovernmental organizations, like the OECD, have worked to promote internationally accepted standards relating to tax administration, such as information exchange, transparency, and enforcement, and anti-base erosion techniques, but these have tended to place an imprimatur on the tax competitive features of some regimes and condemned features of others traditionally designed to provide an incentive for investment in developing countries. And while some disfavored incentives may have resulted in no real benefit to poorer countries without proper safeguards, there has been no move to encourage safeguards or even to promote resort to other incentives that might hold promise to support developing world initiatives. Increasing income inequality in developing countries, has frequently led to political instability, threats to safety, and eventually exodus to more stable locales, with little prospect of increased aid in the form of overseas develop-

ment assistance through important international organizations like the United Nations. Whether or not the developed world feels called to affirmatively use tax law to spark investment it is clear that a strategy is needed to disrupt the current disincentive for investment in the developing world provided by the tax regimes of higher income countries. In the absence of support for tax incentives, a more effective project would seek to dismantle the current hodgepodge of country approaches and to advocate a common tax base for all nations that would allow developing countries a reasonable share of tax revenue.

This chapter examines on a comparative basis whether, and the extent to which, countries support the use of tax laws to encourage economic activity within their own borders as well as in developing countries, emerging or low-income nations. To varying degrees most of the countries covered in this volume use their tax laws to provide a stimulus for investment within their borders. While most of them do not provide tax benefits designed to encourage investment in developing or poorer countries, the competitive features of some tax regimes actually remove any incentive to invest in these countries. A comparative approach invites a look at the ways in which higher-income countries could offset the harmful spill-over effect of their regimes on the developing world.

National Reports

In preparation for the 19th Congress of the International Academy of Comparative Law held in Vienna, Austria in 2014, national Reports were submitted for 19 countries: Australia, Belgium, Brazil, Croatia, Czech Republic, France, Hong Kong, Israel, Italy, Japan, Maldives, Netherlands, Poland, Portugal, South Africa, Uganda, United Kingdom, United States, and Venezuela.[1] These Reports are contained in the chapters that follow and are discussed below.

International Tax Norms

Sovereign nations are free to enact tax laws designed to meet duly constituted tax policy goals without restriction by the laws or policies of other nations. Although each nation has the power to fashion a tax regime free from interference by the laws of others, international cooperation among jurisdictions has evolved and internationally accepted standards have taken hold. Such group action is essential in a global marketplace in which multinationals unrestricted could exploit incompatible tax laws of separate nations in order to gain an unintended tax advantage. This phenomenon, sometimes known as “tax arbitrage,” cannot be prevented without joint action by affected countries.

[1] A list of the National Reporters is appended to this General Report.

In addition to collective action through international organizations, such as the United Nations, tax authorities have also resorted to cooperation through inter-governmental organizations, such as the OECD, in order to develop strategies for addressing international tax avoidance, among other matters. The first of the OECD reports relating to strategies to prevent unfair tax competition, the Harmful Tax Competition Report, was published in 1998.[2] This Report condemned certain competitive strategies employed by some nations to attract investment. The most egregious of these was the establishment of preferential regimes that reduced or eliminated tax on specified types of income. However, the competitive practice of overall rate reduction to attract investment, such as Ireland's decision at the time of the Report's publication to reduce its overall tax rate to a level well below that of its peers, was not (for reasons not disclosed) labeled anti-competitive.

After publication of the Harmful Tax Competition report, and partly in response to complaints that the high-income members were imposing their views of appropriate tax policy on non-member countries, in particular, developing nations, the OECD constituted the Global Forum on Transparency and Exchange of Information in Tax Matters (Global Forum). The Global Forum has conducted systematic review of the tax systems of the 130 members to determine compliance with an internationally accepted standard.

While the Global Forum dealt with best practices in the area of tax administration and treaty practices, the OECD began work in 2013 on a project that became known as the BEPS project. In 2014 a G-20 Development Working Group issued its report on the impact of BEPS in low-income countries. In addition to detailing the obstacles to implementation of BEPS by developing countries, the G-20 report noted that "[t]ax incentives…are still a top priority concern for developing countries"[3] and that "risk to their tax base [occasioned by implementation of some of the BEPS proposals] will need to be addressed."[4] The final BEPS report issued in October, 2015 offered recommended action items in 15 areas, including harmful tax competition. The decision not to recommend replacement of the current system with a wholesale revision like worldwide formulary apportionment, in which worldwide income is allocated to jurisdictions in a manner not susceptible to manipulation by sophisticated multinationals, has been critiqued.[5] A radical revision of the prototype for the modern international tax regime would have required developed nations to relinquish competitive features of their systems and provide an opening for developing countries to implement strategies to attract investment.

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[2] Organisation for Economic Cooperation and Development (OECD), Harmful Tax Competition (1998).

[3] OECD, Part 2 of a Report to G20 Development Working Group on the Impact of BEPS in Low Income Countries 4 (Aug 13 2014) (BEPS DWG Pt 2).

[4] OECD, Part 1 of a Report to G20 Development Working Group on the Impact of BEPS in Low Income Countries 25 (July 2014).

[5] Lee A. Sheppard, BEPS Action 2: The Hybrid Hydra, 149 Tax Notes 183 (Oct 12 2015).

Competitive Features of International Tax Regimes: Tax Base

The majority of reported countries, in keeping with the international trend, feature a worldwide tax regime, subjecting all income of their residents from domestic and foreign sources to taxation and providing a foreign tax credit of varying types to avoid double taxation. The minority report territorial regimes in which only the income of its residents from domestic sources is taxed. A territorial system is generally viewed as one that fosters competition, allowing resident multinationals to go offshore to enjoy the benefits offered by lower-tax jurisdictions. Closer scrutiny, however, reveals that jurisdictions purporting to have a worldwide system nonetheless have competitive features.

Sixteen of 19 reported countries purport to found their tax regimes on the worldwide taxation principle.[6] Of these, however, all but three (Brazil, Uganda, and United States) have some form of participation exemption, or other tax-exemption for dividends (and sometimes other income) paid by foreign subsidiaries of resident corporations.[7] This exemption converts a worldwide regime into a territorial one by exempting from tax (or greatly reducing the tax rate on) income derived offshore through foreign operations. Thus, although the governing international tax principle appears to be that of capital export neutrality – asserting the sovereign's right to tax income from all sources – capital import neutrality, a principle acknowledging the need of resident multinationals to compete in foreign jurisdictions under the prevailing advantageous terms, also guides tax policy.[8]

Two countries, Israel and Venezuela, moved from a territorial to a worldwide system of taxation.[9] The reporters for Israel indicated that this shift represented a decision by Israel to accommodate the realities of "economic globalization" and to conform to commonly accepted tax policy principles. This suggests that the trend among countries is to accommodate certain internationally recognized standards,

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[6] These are Australia, Belgium, Brazil, Croatia, Czech Republic, Israel, Italy, Japan, Netherlands, Poland, Portugal, South Africa, Uganda, United Kingdom, United States, and Venezuela.

[7] The U.S. regime briefly featured a participation exemption-type regime when a special provision enacted in 2004 provided an 85 % deduction for certain dividends received from controlled corporations. Although Uganda has a worldwide tax regime, the government does grant tax holidays on an ad hoc basis. Although the governing principles under Brazilian law continue to be re-evaluated by the courts, it appears that Brazil provides no exemption for earnings of controlled foreign corporations, but may provide one for non-controlled foreign affiliates in certain cases. Poland and Portugal provide a participation exemption for corporations organized in EU or EEA member states or Switzerland.

[8] This may also suggest that "capital ownership neutrality," a principle that evolved from the work of two economists, Mihir Desai and James Hines, who argued that evaluations by multinationals of the appropriate location for investment should not be impeded by countries' tax laws, has gained acceptance. Some argue that this principle is served only if there is uniformity in the international tax regimes of all countries. See, e.g., C. Gustafson, R. Peroni & R. Pugh, TAXATION OF INTERNATIONAL TRANSACTIONS 22 (2011).

[9] One important country not covered in this volume, China, recently moved from a territorial to a worldwide system of taxation. This move was designed to crack down on certain tax avoidance schemes using special purpose vehicles owned by foreign residents.

which appears to derive force from the collective judgment of inter-governmental organizations. Decisions of these bodies concerning the direction of international tax policy has considerable influence whether or not a country is an official member of participant.

Three countries, France, Hong Kong, and Maldives, have resisted the international trend and continue to embrace a territorial tax regime. France taxes its resident corporations on income derived from operating in France. Only active income derived abroad (that is, not passive income like interest, dividends, royalties, and similar income) is excluded from French taxation. France also has a participation exemption for foreign source dividends received by a qualified French parent. This exemption only exists if the subsidiary is subject to a tax at the French rates or the prevailing rate in the country of organization. Thus, although the rate of tax imposed on an Irish subsidiary (12.5 %) is lower that the French rate of (33.33 %), dividends from an Irish subsidiary would nonetheless be eligible for the participation exemption because the subsidiary is taxed at the prevailing rate of its country of residence. The French participation exemption also extends to gain on the sale of the subsidiary's stock when eligibility requirements are met.[10]

Hong Kong has a territorial regime under which only business profits derived from Hong Kong sources are subject to tax. A dividend paid to a Hong Kong company by an offshore company is deemed to derive from foreign sources and is not subject to Hong Kong tax. According to the reporter, the Hong Kong regime is not intended to encourage investment abroad, but it may be viewed by taxpayers as incentivizing foreign investment. Although it has a territorial system, Hong Kong maintains conformity to mainstream OECD policy by maintaining a large network of comprehensive tax treaties.

The Maldives taxes its resident individuals on a territorial basis. Although corporations are taxed on a worldwide basis, they may enter into an agreement under the Law of Foreign Investments that confers an exemption from the business profits tax. The Maldives is considered a former "tax haven," but it has been building its regime into one that conforms to internationally accepted standards of taxation. This is demonstrated by its intention to increase its entry into Tax Information Exchange Agreements (TIEAs).

Although the Netherlands nominally has a worldwide system of taxation, since 2012, foreign profits and losses are excluded from the tax base either by treaty or under internal law. This exemption extends to foreign passive income derived by a foreign company if the income is subject to a tax of at least 10 % (thus exempting passive income derived through an Irish company because the Irish tax rate is 12.5 %). In addition, the participation exemption is available for dividends received from a 5 %-owned foreign corporation and from gains on the sale of the stock. This exemption applies to a subsidiary with passive income as long as the subsidiary is subject to an effective rate of tax of at least 10 %.

[10] Ninety-five percent of the dividend is excluded under the participation exemption, while eighty-eight percent of capital gain is excluded from tax.

As the reporter for the Netherlands indicates, the Dutch tax system would not prevent developing countries from "creating an attractive tax regime aimed at substantial foreign direct investment by or via Dutch companies." It is fair to note, however, that Dutch system is open to all competitors. It is not certain whether a developing country would have an advantage over a developed country, such as Ireland or other low-tax, high income countries, that offers the kind of industrial infrastructure, labor force, and other amenities unavailable in a low-tax developing country.

Other Modes of Competition: Tax Rates

A notable development in international taxation is the race among higher-income countries to compete for investment by lowering tax rates. The reports indicated that there has been some rate competition. The top statutory corporate tax rate for the reported countries is as follows:

United States:	35 %
Brazil:	34 %
Venezuela:	34 % [50 % for some industries]
Belgium:	33 % [plus a 3.3 % emergency contribution]
France:	33 % [plus a 3.3 % social contribution]
Australia:	30 %
Uganda:	30 %
South Africa:	28 %
Italy:	27.5 %
Israel:	26.5 %
Netherlands:	25 %
Portugal:	25 %
Japan:	23.9 %
Croatia:	20 %
United Kingdom:	20 %
Czech Republic:	19 %
Poland:	19 %
Hong Kong:	15 %
Maldives:	15 %

In addition to a competitive rate structure, some countries have adopted special low-tax regimes for prescribed income which is designed to attract business activity to the jurisdiction. The United Kingdom has adopted a competitive Patent Box regime in which profits from the development and exploitation of patents and their equivalents are taxed at a 10 % rate. The Netherlands has implemented an "innovation box" regime in which specified income from patents and other research and development is taxed at a 5 % rate. France applies a special reduced tax rate of 15 %

to income derived from exploitation of intellectual property (IP), including royalties and capital gain resulting from IP transfer. These preferential regimes may be under review by the European Union because they are believed to violate anti-state aid restrictions and code of conduct requirements under EU directives.

Other countries have adopted a special regime to provide advantageous treatment (in the form of lower tax rates) for income from targeted business activities. The United States provides a lower corporate tax rate for specified domestic production activities. Emerging nations, like Croatia, Czech Republic, and Poland offer tax advantages to foreign investors in certain industries or under-developed economic areas. France has offered a special tax regime to encourage companies to establish headquarters or logistics centers in France. These devices to attract investment are typical of countries transitioning from developing to developed country status. It is not certain whether these incentives will violate EU restrictions on state aid.

Israel has offered investment incentives, including a reduced tax rate for income from activities having a demonstrable impact on imports, but these have been viewed as either unfairly competitive by the OECD or in violation of pertinent trade agreements.

Finally, several reports have noted that the existence of approachable tax officials and the ability to obtain reliable guidance in advance of entering into transactions causes many higher income countries to be considered attractive investment destinations. This was noted in particular in the reports on Hong Kong, Maldives, and the Netherlands. When multinationals employ tax-minimizing strategies, predictability of results gains the confidence of investors. To the extent the approachability of tax officials translates into a vehicle to obtain special tax advantages, however, at least for EU member states, the arrangement may be challenged by EU officials as prohibited state aid.[11]

Incentives for Investment in Developing Countries

In the past, a practice of some high-income countries was to grant tax sparing credits to developing, emerging, or lower-income nations. Tax sparing occurs when a multinational's home country allows an offset against the home country tax otherwise due for fictional income taxes deemed paid (but not actually paid) to the lower-income nation. This tax sparing credit allows the capital-seeking nation to offer the multinational enterprise a lower-than-home country tax rate in order to attract foreign investment. In this fashion the higher income nation provided an incentive for investment in the lower-income nation. While the Harmful Tax Competition Report did not expressly address tax sparing, a separate report issued in the same year,

[11] See, e.g., Apple May Owe $8 Billion in European Taxes from Use of Irish Subsidiaries to Shelter Profits, Bloomberg News, Jan 15, 2016 (referring to certain favorable transfer pricing methodologies allowed by Ireland).

recommended an end to the practice.[12] The primary objections were that it was harmful to competition and it created a "race to the bottom" in which the lower-income nation faced pressure to reduce tax rates below a level that would sustain its revenue needs.

After issuance of the Tax Sparing Report, many countries abandoned tax sparing provisions in treaties with developing countries in order to align themselves with acceptable practices. Several of the reported countries have abandoned tax sparing, having terminated these agreements or phased them out. These include Australia, Belgium, Italy, and Japan. The United States has never entered into tax sparing arrangements.[13]

France has continued to use double taxation agreements to provide a tax sparing credit to certain developing countries, including French-speaking Africa, but because the credit provided no incentive for French companies to re-invest their tax savings into the local economy, these agreements are in decline. Japan has also continued to conclude tax sparing agreements with developing countries, like China, Brazil, Thailand, Zambia, and Bangladesh. Agreements with other countries are set to expire or have been negotiated for a limited time period. The reporter for Japan noted that, in lieu of tax sparing, Japan's participation exemption may provide a vehicle for investment in developing countries.

The United Kingdom has promoted investment in emerging economies by concluding tax sparing agreements in 37 treaties. While most of the agreements terminate after 10 years, such agreements in treaties with Belize, Israel, Cyprus, and Sudan do not expire.

It is apparent that the abuse of a tax sparing treaty provision offers the possibility of no real investment in the developing country and this explains, in part, the reason these arrangements are in decline. A well-crafted arrangement that safeguarded returns to the low-income treaty partner and offered other anti-abuse protections could hold promise to circumvent potential problems. It appears that no reported country abandoning tax sparing sought ways to prevent abuse.

As noted by the reporter for the Netherlands, the extensive Dutch treaty network may provide opportunities to attract investment. Special purpose entities (SPEs) may be organized under Dutch law for investment in developing countries. These are appealing because SPEs can pass on dividends and interest at favorable rates to corporate parents in third countries lacking advantageous treaties. The reporter believes that the substantially larger inflow of investment to developing countries through Dutch SPEs may outweigh the revenue loss from routing income out of the developing country to the parents. In addition the unilateral credit provided by Dutch law, for dividends distributed by and interest and royalties received from entities in developing countries provides an incentive for investment in low-income countries.

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[12] OECD, Tax Sparing (1998).

[13] The U.S. national report indicates that the U.S. has provided relief similar to tax sparing in its internal law. Relief for certain investments in Puerto Rico, a U.S. possession was provided in§ 936 of the Internal Revenue Code until its phase-out for years after 2006.

Italy has founded its international tax system upon the capital export neutrality principle. This means that it has opted not to provide tax incentives for investment in developing countries. Instead, it has employed non-tax strategies to assist these nations. In particular, it has taken initiatives in the area of customs duties through the "Cotonou Agreement" with African, Caribbean, and Pacific states. These actions have led to maritime accords, structural accords, and free trade zones. It has aligned itself with the OECD and other strategists that believe that developing nations are more appropriately helped by measures enabling them to create a stable market economy rather than by unilateral investments, aid, or tax benefits.

Tax Treaties with Developing Countries

A robust treaty network can provide considerable support for investment in developing countries. Double taxation agreements have been concluded with developing countries by Australia, Belgium, Brazil, Croatia, France, Hong Kong, Israel, Italy, Japan, the Netherlands, Poland, South Africa, Uganda, United Kingdom, and Venezuela. Some of these countries, like the Netherlands, have an extensive treaty network with developing countries, while others, like Belgium and Croatia, have very few.[14] Others, such as the Czech Republic and the United States, have negotiated Tax Information Exchange Agreements (TIEAs), but not full treaties.

Developing Country Efforts to Attract Investment

Among the reported countries that fall into the category of developing, emerging, or low-income, all employed some type of tax exemption or rate reduction for designated activities.[15] Most of the rate reductions were for activities deemed to bring development, such as building of infrastructure through construction, tourism, research and development, increasing export of goods, foreign film production, and manufacturing, of importance to the country's economy.

A low-tax strategy will be effective to attract investment only from companies resident in countries like France, Hong Kong, the Maldives, the Netherlands, and the United Kingdom which have regimes with territorial features. These tax systems would exempt resident multinationals from home country tax and not interfere with

[14] Belgium's only full double taxation treaty (not limited to information exchange like a TIEA) with a developing country is with Burundi, a former colony.

[15] Croatia, Czech Republic, Poland, South Africa, and Uganda, ranging along the spectrum from developed to developing country, all offered some type of rate reduction for specified activities. Uganda offers tax holidays on an ad hoc basis depending upon the merits of a particular project. Israel, while not a developing country, is a small country with special reasons for encouraging investment within its own borders.

a developing country's low-tax incentive. Of these countries, those entering into treaty tax sparing agreements also support the ability to attract investment by offsetting the home country tax liability by a fictional credit that cedes taxing jurisdiction to the developing country.

In addition, the participation exemption regimes of many of the reported countries, described in the section above entitled "Competitive features of international Tax Regimes: Tax Base", also support these low-tax strategies by exempting offshore profits of subsidiaries organized in developing countries and dividends distributed. In view of the rate competition by developed countries, however, these countries may need to reduce rates to a level that will not sustain the needs of the population.

Yet even those regimes that support tax-rate incentives of developing country provide limited effect because these countries are nonetheless competing in a set of market conditions that continue to favor the developed world. Providing a set of factors effective in attracting foreign investment is no easy task. Academics have noted that the most important components of success in attracting foreign investment are: economic determinants (quality of a country's infrastructure, growth of the market, availability of skills, and technological capacity), regulatory framework (whether the legal framework is transparent, stable, and reliable), and investment promotion (capacity to target foreign investors and to provide ongoing follow-up services post-investment).[16] Tax incentives alone are not sufficient because these elements of success cannot exist without the willingness of the developed world to dedicate development assistance in the form of monetary aid and technical expertise and guidance that can help the poorer nation to solidify its economic foundation.[17]

A real contribution to the economic viability and investment-attracting ability of developing countries would be a coordinated overhaul of the current system of separate country tax regimes. This system operates to the detriment of developing countries that are relegated to looking for ways in which to compensate for the spill-over effects of the regimes of the developed world. Yet these are marginal strategies which may not sustain their economies in the global marketplace. A worldwide system of coordinated taxation, such as that described in proposals for formulary apportionment,[18] devised with full input from developing nations, is one example of the type of innovative plan that might provide an effective tool. With this type of regime in place, innovation in the global allocation of corporate income may hold promise to support developing country strategies for economic viability. One example of the type of forward thinking called for is a recent project headed by Professor Reuven Avi-Yonah proposing to further a regulatory goal of the corporate income tax by connecting the overall effective corporate tax rate to corporate performance

[16] Karl P. Sauvant, Attracting Foreign Direct Investment and Benefiting from it: Challenges for the Least Developed Countries, 7 Transn'l Corporations Rev. 125–126 (June 2015) (available on line at www.tnc-online.net).

[17] Id. at 125.

[18] Reuven Avi-Yonah, Kimberly Clausing, and Michael C. Durst, Allocating Business Profits for Tax Purposes: A Proposal to Adopt a Formulary Profit Split, 9 Fla. Tax Rev. 497 (2009).

(using factors such as profitability, employment, social and environmental sustainability, and 'wealth redistribution' within a locality).[19] Implementation of this proposal would allow a developing country to structure its tax regime in a way that would further development goals (job training, environmental sustainability, job creation), attract investment, and begin to build the type of social and technological infrastructure that would strengthen and build its economy.

Appendix

National Reporters

AUSTRALIA – Miranda Stewart
BELGIUM – Edoardo Traversa, Gaëtan Zeyen
BRAZIL – André Mendes Moreira, Misabel Abreu Machado Derzi, Fernando Daniel de Moura Fonseca
CROATIA – Nataša Žunić Kovačević
CZECH REPUBLIC – Michal Radvan, Dana Šramková
FRANCE – Thomas Dubut
HONG KONG – Andrew Halkyard
ISRAEL – Tamir Shanan, Sagit Leviner, Moran Harari
ITALY – Claudio Sacchetto
JAPAN – Yoshihiro Masui
MALDIVES – Kevin Holmes
NETHERLANDS – Raymond H.C. Luja
POLAND – Wlodzimierz Nykiel, Michal Wilk
PORTUGAL – Fernando Rocha Andrade
SOUTH AFRICA – Craig West, Jennifer Roeleveld
UGANDA – Jalia Kangave
UNITED KINGDOM – Rita Cunha
UNITED STATES – Tracy Kaye
VENEZUELA – Serviliano Abache Carvajal

[19] A corporation successful according to these measures would be awarded a low tax rate.

Part II
National Reports