

Papers on Selected Topics in Protecting the Tax Base of Developing Countries

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Preventing Tax Treaty Abuse

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Draft papers and outlines on selected topics in protecting tax base of developing countries are preliminary documents for circulation at the workshop on "Tax base protection for developing countries" (New York, 4 June 2014) to stimulate discussion and critical comments. The views and opinions expressed herein are those of the authors and do not necessarily reflect those of the United Nations Secretariat. The designations and terminology employed may not conform to United Nations practice and do not imply the expression of any opinion whatsoever on the part of the Organization

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Preventing Tax Treaty Abuse

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Many developing countries have already ~~negotiated~~ a number of tax treaties with their

intention that is the result of deliberate planning and conscious decision making, rather than a more objective set of facts and circumstances.

be taxing will instead be taxed in the residence country. If income is not taxed in the residence country, this may be significant to the source country.

2 Examples of structures and instruments th

ex post confirmation and verification
using exchange of information to verify / detect

Domestic tax base anti-avoidance rules

thin capitalization rules
CFC and PFIC rules
offshore asset transfer rules
transfer pricing rules
SAARs
GAARs

Existing judicial doctrines may also play a role in preventing tax treaty abuse.

4 Implicit protections underlying the interpretation and operation of tax treaties

The UN and the OECD Models have very detailed Commentary on the operation of various provisions in their Model Treaties. This Commentary also outlines doctrines and ideas which already underlie the operation and interpretation of tax treaties as international instruments.

The Commentary to Article 1 of the UN Model examines the notion of the abuse of a treaty as a doctrine of international law which might allow the benefits of a treaty to be denied.

The Commentary on individual articles in each Model also contains many passages which draw attention to possible interpretations of the text which rebut the arguments of tax officials seeking to deny treaty benefits.

The chapter will also discuss adjusting the preamble to future treaties as a means of clarifying the scope and application of the treaty.

5 Existing provisions in treaties to prevent treaty abuse

This part of the chapter examines the operation of some common provisions in the text of the UN and OECD Models that already give a measure of protection against tax treaty abuse

- treaty definition of 'resident' – and how to handle transparent entities
- handling PEs properly
- beneficial ownership requirements

The chapter will include references to sources (available free on the Internet) discussing the