

Brian J. Arnold
Hugh J. Ault

<http://www.un.org/esa/ffd/>

UN Handbook: Protecting the Tax Base of Developing Countries

- supplement/complement to OECD BEPS project
- focus on OECD BEPS issues of primary interest to developing countries
- also includes other issues that are not part of BEPS project but important for developing countries:
 - income from services
 - capital gains
 - tax incentives
- doesn't deal with transfer pricing aspects

UN Handbook: Protecting the Tax Base of Developing Countries

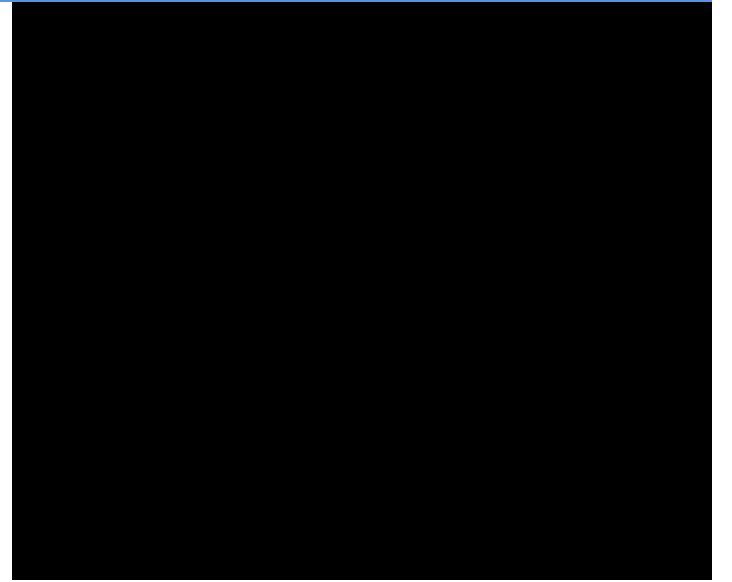
- draft papers discussed at workshop in June 2014 in New York and in September 2014 in Paris with experts and tax officials from developing countries
- papers revised in light of workshops
- UN Handbook published and presented at Financing for Development Conference in Addis Ababa in July 2015

Topics Covered

- Introduction and Overview: Hugh Ault and Brian Arnold
- Services: Brian Arnold
- Capital Gains: Wei Cui
- Interest: Peter Barnes
- Hybrids: Peter Harris
- Treaty Abuse: Graeme Cooper
- PE Issues: Adolfo Martin Jimenez
- Digital Economy: Jinyan Li
- Tax Incentives: Eric Zolt
- Transparency and Disclosure: Diane Ring

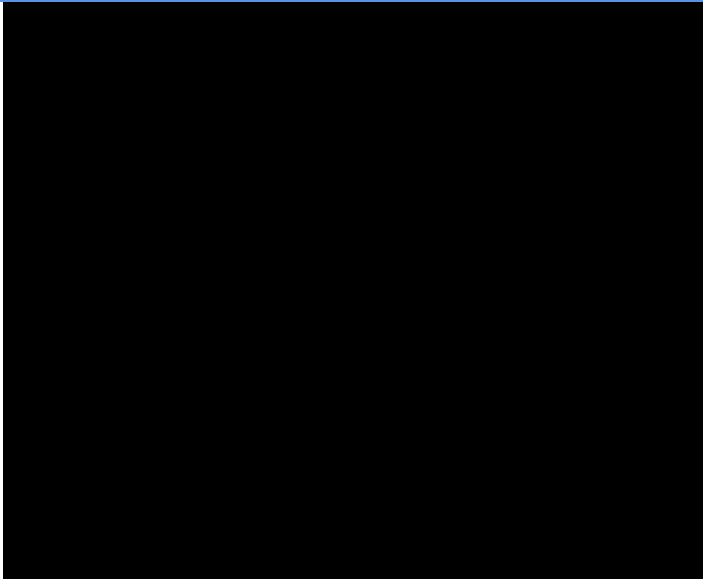
GENERAL POINTS

- Issues considered exclusively from perspective of base erosion
- base erosion issues result from
 - 1) lack of coherence in international tax rules
 - 2) disconnect between economic activities and taxing rights
- dealing with base erosion requires improved transparency, disclosure and information sharing
- no recommendations – identification of the risks of base erosion and possible responses



Concerns of Developing Countries

- primarily concerned with reductions in source country taxation
- corporate tax revenue accounts for larger portion of total revenue for developing countries
- capacity development and administrative resources are serious challenges for developing countries in dealing with base erosion

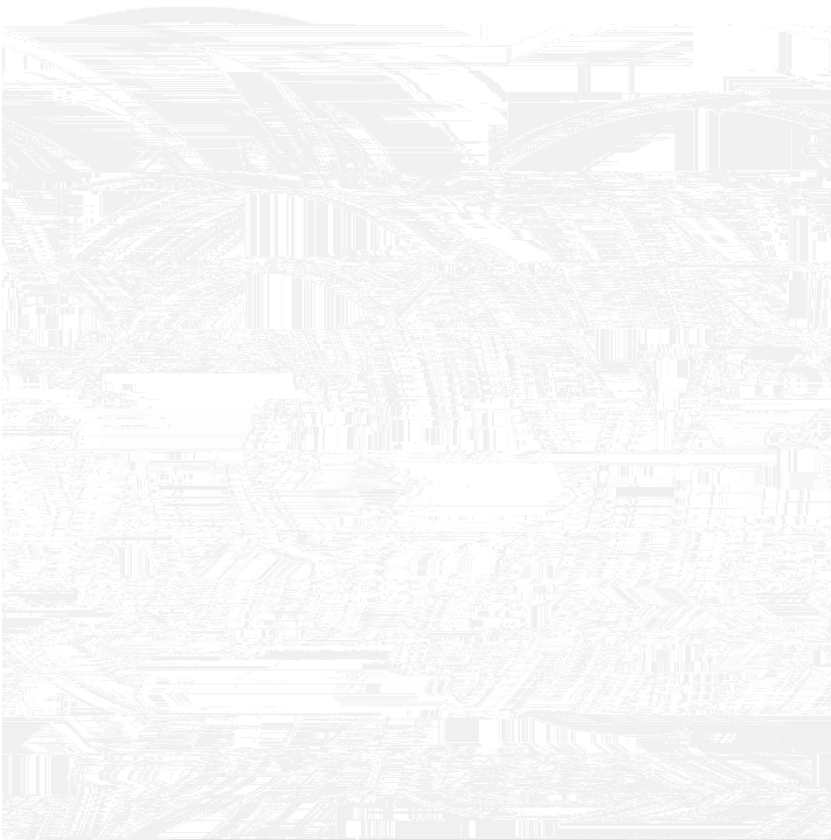


Income from Services

- relatively easy for MNEs to erode tax base of developing countries through payments for services
- payments are deductible against source country tax base
- payments may not be subject to source country tax
- payments may be subject to no or low tax by country of residence of service provider

Income from Services

- Chapter provides an overview of the taxation of nonresidents on income from services under domes-.006@from valr



Hybrid Mismatch Arrangements

- chapter provides useful insights into the problem of hybrids
- puts BEPS Action 2 into a broader context
 - identifies meaning of hybrid mismatch arrangements by reference to fundamental concepts of income tax
 - hybrid arrangements are similar to use of tax havens
- detailed analysis of the examples in Action 2

Hybrid Mismatch Arrangements

- notes problems with OECD recommendations for developing countries
 - especially need to consider treatment of arrangements under foreign law
- identifies alternative ways for developing countries to deal with hybrids
 - for example, encourage nonresidents to create a PE, focus on source of revenue and expenses, greater use of withholding taxes on base-eroding payments, application of earnings-stripping rules to all base-eroding payments

Interest Deductions

- chapter provides a valuable introduction to both the tax and non-tax issues involved in financing with debt and equity
- chapter considers interest deductions by subsidiaries and branches of foreign enterprises
- chapter emphasizes the multifaceted nature of the problem and the need for developing countries to adopt solutions that can be administered effectively

Interest Deductions

- 5 main issues related to “excessive” interest deductions:

- 1) how to determine whether amount of debt and interest is excessive?

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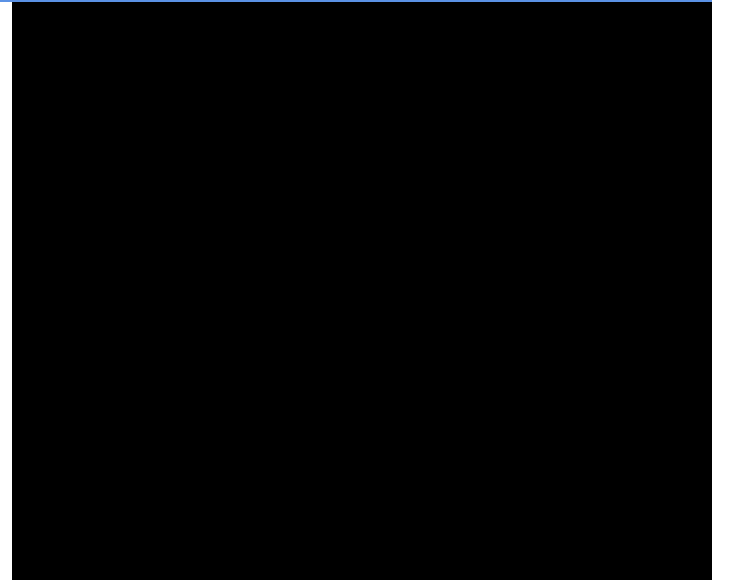
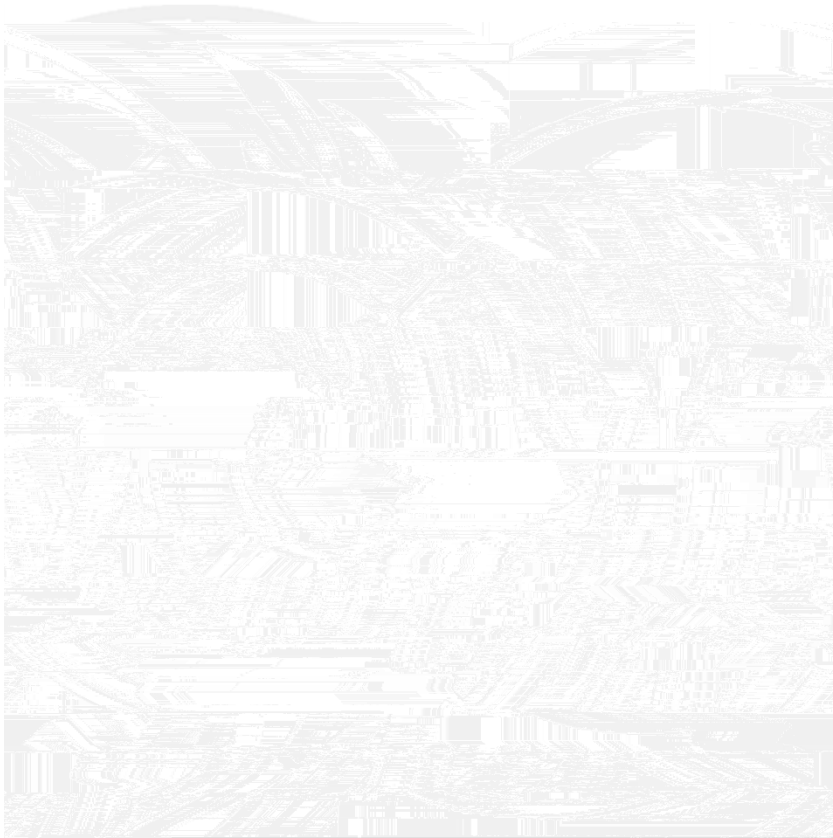
Treaty Abuse

- developing countries with tax treaties consider the misuse or abuse of those treaties to be a high-priority item
 - chapter notes that OECD Action 6 may be useful for developing countries because its focus is on preventing the reduction of source taxation
 - Action 6 will lead to changes in the OECD Model
 - may result in parallel changes to the UN Model
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Treaty Abuse

- chapter considers extent to which OECD recommendations for a minimum standard are





Capital Gains

- not dealt with in OECD BEPS project
- chapter explains the basic relationship between source country taxation of income and capital gains
- tax treaties allow source country to tax income from various sources but capital gains on underlying assets only for immovable property and assets of a PE
- important for developing countries to carefully consider these inconsistencies

Capital Gains

- chapter argues that taxing nonresidents on capital gains is justified in principle despite the lack of an international norm
 - however, source countries face problems in enforcing tax on capital gains and in preventing avoidance
 - Special issues in taxing gains on indirect interests
 - Adjustments to cost basis and multiple taxation
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Capital Gains

- capital gains don't fit easily into the active-passive income distinction
- should capital gains be taxed on net or gross basis?
 - any relief for losses?
- chapter examines special problems such as taxing capital gains on shares in listed entities and enforcing taxes, especially for transactions between nonresidents
- chapter includes a detailed analysis of Article 13 of the UN Model, including residual power to tax capital gains and indirect transfers

Thank you

TaxffdCapDev@un.org

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