



Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

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Bilateral Tax Treaties between Developed and Developing Countries***

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Mandate of the UN Tax Committee

ECOSOC Resolution 2004/69

The Committee shall:

- (i) Keep under review and update as necessary the United Nations Model Double Taxation Convention between Developed and Developing Countries and the **Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries**

Role of Double Tax Treaties

*The growth of investment flows between countries depends to a large extent on the prevailing investment climate. **The prevention or elimination of international double taxation** in respect of the same income—the effects of which are harmful to the exchange of goods and services and to the movement of capital and persons, **constitutes a significant component of such a climate.***

— United Nations Model Double Taxation Convention between Developed and Developing Countries, Introduction

Role of Double Tax Treaties

Double Tax Treaties have a key role in international cooperation on tax matters:

- Encourage investment by reducing tax barriers, including double taxation
- Encourage the transfer of skills and technology
- Reduce cross-border tax avoidance and evasion, including through:
 - Exchange of tax information
 - Mutual assistance in the collection of taxes

Addis Ababa Action Agenda

Member States pledge that they will

“[...] reduce opportunities for tax avoidance, and consider inserting anti-abuse clauses in all tax treaties [...], enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities [...], make sure that all companies, including multinationals, pay taxes to the Governments of countries where economic activity occurs and value is created, in accordance with national and international laws and policies”.

Subcommittee on Negotiation of Tax Treaties – Practical Manual

- Established at the ninth session of the Committee (Geneva, 21-25 October 2013)
- Mandated to develop a practical manual on the negotiation of bilateral tax treaties along the following principles:
 - That it be a **compact practical training tool for beginners** or tax officials with limited experience and reflect the realities for developing countries at their relevant stages of capacity development
 - That it reflect the **current version of the United Nations Model Convention** and the relevant Commentaries thereon, as well as ongoing decisions of the Committee leading to changes therein, and
 - That it draw upon the previous work done by the Committee and any other relevant inputs, as well as work being done in other fora

Aim of the Manual

The Manual supports treaty negotiators in developing countries, especially those with limited experience, by providing:

- **Practical guidance** on all aspects of tax treaty negotiation, including on how to prepare for and conduct negotiations
- Tools to identify their country's **policy framework** and the intended outcomes they wish to achieve
- A discussion of the Articles of the United Nations Model Convention

Structure of the Manual

The Manual is structured into four Sections:

- Section I – **General introduction**
- Section II – **Treaty policy, domestic model, negotiations**
- Section III – **Treaty provisions**
 - Chapter I – Scope of the Convention
 - Chapter II – Definitions
 - Chapter III – Taxation of Income
 - Chapter IV – Taxation of Capital
 - Chapter V – Methods for the elimination of double taxation
 - Chapter VI – Special provisions
 - Chapter VII – Final provisions
- Section IV – **Improper use of treaties**

Practical Nature of the Manual

The Manual raises the fundamental question:

Why negotiate tax treaties?

It then discusses some common reasons for entering into tax treaties, and the costs and benefits to developing countries.

The practical guidelines contained in the Manual aim to support negotiators with:

- Preparing for tax treaty negotiation
- Conduct of negotiations
- Post-negotiation activities

Policy Framework

“All countries would find it beneficial to develop a tax treaty policy framework and a model treaty before entering into negotiations. A country has to “know what it wants.”

The policy framework should set out the **main policy outcomes** that a country wishes to achieve under its tax treaties.

It is important for developing countries to strike the right balance between:

- **protecting revenue** (by maintaining source taxing rights) and
- **encouraging inbound investment** (by reducing tax barriers).

To achieve this, tax treaties of most developing countries generally follow the UN Model Convention.

In treaties between developed and developing countries, **reaching a fair balance between source and residence taxation is usually one of the most controversial aspects of negotiation.**

Residence vs. Source Taxation

“With respect to each category of income, developing countries may find it helpful to analyze the distributive rules of the UN Model Convention — and the OECD Model Convention — in the context of their own circumstances.”

In particular, the Manual illustrates different approaches to taxation of cross-border transactions, having regard to the

- **Source country** (where the income is generated) **or**
- **Residence country** (where the recipient of the income is based)

In many cross border transactions, developing countries are the source of income, while developed countries are often the residence country of recipient of the income.

For this reason, the UN Model places greater emphasis on source country taxation, as opposed to the OECD Model.

Improper Use of Double Tax Treaties

“One of the main reasons that a country may wish to enter into a tax treaty with another country is to improve coordination and cooperation between tax administrations in order to address tax avoidance or evasion.”

The last Section of the Manual covers the **improper use of treaties**, including both specific and general anti-abuse rules, their interpretation, as well as common provisions found in domestic law.

In deciding which anti-abuse rules should be included in tax treaties, negotiators may take into account:

- The risk of abuse in the **context of their economy and tax systems**, and in their **interaction** with the tax system of the other country
- The ability of the **tax administration** of their country to effectively administer the provisions
- The **effectiveness** of the proposed provision in dealing with a broad range of cases

Final Remarks

The UN Model Convention and the UN Manual for the Negotiation of Tax Treaties complement each other.

While the UN Model Convention proposes the legal framework of Tax Treaties, the Manual for the Negotiation of Tax Treaties aims at helping treaty negotiators in realizing Tax Treaties.