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United Nations Convention on Double Taxation: New version in tune with digitalization

For a fairer global Tax system

¹ [Sadowsky, Marilyne, L'histoire du droit fiscal international \(16 mars 2021\). OUP Handbook of International Tax Law \(F. Haase, G. Kofler eds., Oxford University Press 2021 à paraître\)](#)

² [Bilan des incitations aux investissements en Tunisie | Observatoire Tunisien de l'Economie \(economie-tunisie.org\)](#)

³ [Les 13 leaks politiques et financiers des 40 dernières années | Les Echos Start](#)

With the increased digitalization of the global economy, attempts to adapt international taxation to these changes are increasing. The United Nations (UN) proposal on the taxation of automated digital services has emerged as an alternative to the OECD's Inclusive Framework and its Global Tax Agreement¹. Although the latter initiative², pushed by high-income countries, has seen 14 jurisdictions join until November 2021³, including several developing countries, they perceive the UN as a more democratic and inclusive space, where they got a say. They also feel that the UN model tax treaty is more favorable to them.

Like the OECD, the UN recognized early on the major changes in the global economy and adapted its work on tax treaties to the challenges posed by digitalization.

The 2021 version of the UN Model for Double Taxation Treaties is part of this updating process. This latest version is a continuity of the work that has been going on for decades, as Michael Lennart, head of the International Tax Cooperation Section in the UN Office of Economic and Social Affairs, reminds.

«The work of the UN Committee on Fiscal Affairs has quite a long history that really began in the League of Nations, then the work was transferred to the predecessor body of the OECD,» said UN official at the official launch of the 2021 version on 26 April 2022.

Michael Lennard then referred to the creation, in 1968, of an ad hoc group of experts specifically dedicated to tax treaties for developing countries. The prerogatives of this committee were then modified to give a broader input beyond the simple tax treaty.

The tax expert continues to draw up his chronology by recalling that in 2005, the group of ad hoc experts of the UN was upgraded to a committee composed of experts nominated by countries and then selected by the Secretary General. «It is a body of 25 members and individuals acting in their personal capacity as tax experts to strengthen international tax cooperation,» he explained.

For him, therefore, adapting a convention that is intrinsically favorable to the interests of developing countries is relevant and should lead to the adhesion of these countries.

Several officials of tax administrations in these countries agree. This is the case of Kapembwa Numuyemba Sakombe, an expert in the Zambian tax administration. The negotiator believes that the UN model is favorable to Zambia, which signed 14 of its 22 tax treaties before or just after the country's independence in 1964, «at a time when the colonizing forces did not even consider Zambia as a country in its own right.

But what is the content of these changes in the most recent version of the UN Model Tax Convention?

⁴ [A propos de l'OCDE - OCDE \(oecd.org\)](https://www.oecd.org/)

In particular, there is **Article 12 B**⁴ that the Tax Committee added in April 2021 to tax «automated digital services» through bilaterally negotiated tax treaties. This new article provides a starting point for home and source countries to negotiate taxes on automated digital services, while allowing the latter to establish a withholding tax at an agreed rate on the services in question.

Article 12 B thus consolidates **Article 12 A**, which was added in 2017 for the purpose of allowing countries to impose a withholding tax on fee payments for technical services made to non-residents. The 2017 version of the UN Model defines such fees as «any payment for any service of a managerial, technical or advisory nature.»

The work of the UN Committee on Fiscal Affairs on the model of the tax convention, and its effort to adapt it to the imperatives of better mobilization of domestic sources in developing countries, led the G77, the group representing the countries of the South at the UN, to request that this committee of experts on tax matters be transformed into an intergovernmental body that would manage the affairs of international taxation under UN auspices.

In the coming months, the international tax arena is likely to see competition between the OECD/G77 group, which will have to promote and improve their initiative, and those groups that are more supportive of UN efforts to align the global economy with the challenges and opportunities of digitalization.