# The Platform for Collaboration on Tax

## Toolkit on Tax Treaty Negotiations

**International Monetary Fund (IMF)**
**Organisation for Economic Co-operation and Development (OECD)**
**United Nations (UN)**
**World Bank Group (WBG)**

This document has been prepared in the framework of the Platform for Collaboration on Tax (PCT) under the responsibility of the Secretariats and Staff of the four organizations. The work of the PCT Secretariat is generously supported by the Governments of Japan, Luxembourg, the Netherlands, Norway, Switzerland, and the United Kingdom. This draft should not be regarded as the officially endorsed views of those organizations, their member countries or the donors of the PCT Secretariat.

## Contents

# Introduction

### Context and purpose of the Toolkit

This document introduces the Toolkit on Tax Treaty Negotiation (the "Toolkit"), which has been prepared in the framework of the Platform for Collaboration on Tax (the "PCT") by the IMF, the OECD, the UN and the WBG (the "PCT Partners").

The Toolkit represents a joint effort to provide capacity-building support to developing countries on tax treaty negotiation, building on previous contributions and reducing duplication and inconsistencies.

The updated version of the UN Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (the "UN Manual") is an excellent resource, and the Toolkit builds on it by providing tax officials who have little or no experience in tax treaty negotiation with the tools they need to implement some of the guidance in the UN Manual. It does so by building on Section II of the UN Manual, which sets out how to conduct a tax treaty negotiation in all its phases (preparation, conduct and follow-up), complementing it with a set of tools and resources.

The nature of the Toolkit is that it can be regularly updated with new tools, centralized and accessible, and be improved following feedback from users and experienced negotiators. Having a web-based product is the ideal way to do this.

Some of the tools and resources are already publicly available; however, they might be dispersed or difficult to find. The Toolkit will therefore help to promote and spread the use of those resources. In other cases, the proposed tools still need to be collected or developed with contributions and suggestions from experienced negotiators.

For instance, one of the tools proposed in this document is a shared calendar of training events on tax treaties. Having a centralized and accessible source of information about the courses, workshops and seminars on tax treaties organized by the PCT Partners would not only be useful for tax officials but would also contribute to achieving some of the expected outputs in the area of capacity development issues. Among other collective actions, the 2016 "Concept Note" (which describes the purpose and functions of the PCT) foresees: "(…) ensuring synergies and an effective division of labor among the major providers based on transparent information about who is doing what (…)".[1]

Following the structure of Section II of the UN Manual, the Toolkit contains extracts from the main ideas and guidance from the Manual, followed by links or references to additional information and related websites, templates, examples, audiovisual contents, checklists and other useful information and resources to implement the guidance in the UN Manual.

Many countries are currently reviewing their existing treaty network and treaty policy in light of a better understanding of revenue losses associated with treaty abuse, the recommendations resulting from the BEPS project, including the minimum standard to combat treaty shopping, and the most recent updates of the OECD Model Tax Convention on Income and on Capital ("OECD Model") and of the UN Model Double Taxation Convention between Developed and Developing Countries ("UN Model"). This toolkit should help new treaty teams or team members to swiftly initiate that work.

[1] http://documents.worldbank.org/curated/en/801891468196141038/pdf/104902-SECOND-REVISION-concept-note-platform-for-collaboration-on-tax.pdf.

This Toolkit does not establish any international policy standard. Rather, it is intended to provide capacity-building support to developing countries on tax treaty negotiation. Importantly, the supporting materials provided in this Toolkit are being cited for the general purpose of providing this capacity-building support to developing countries and are not being formally endorsed by the PCT, the four partner organizations, their respective managements, or the organizations' member countries, unless specifically indicated otherwise within the materials themselves.

## Pictograms

: The boxes with this pictogram provide context and essential explanations.

: The boxes with this pictogram contain guidance or recommendations

: The boxes with this pictogram contain references to additional information, related websites, templates, examples and other useful tools and resources.

# Toolkit on treaty policy, domestic model and treaty negotiations

## + A. Why negotiate tax treaties?

### + A.1. Purposes of tax treaties

Typically, tax treaties are negotiated with the objectives of encouraging cross-border trade, investment and the transfer of skills and technology and to enhance tax co-operation between countries in order to counteract international tax avoidance and evasion. Treaties are intended to contribute to the achievement of these objectives by: preventing double taxation; providing predictability and stability in the tax treatment of cross-border transactions; prohibiting tax discrimination; standardising key terms and procedures; providing mechanisms for sharing information with full confidentiality protections; and providing mechanisms for both preventing and resolving disputes.

A country may also negotiate a tax treaty to pursue political or diplomatic objectives: as an expression of willingness to conform with international tax standards or as a sign of close political and/or economic relationship between the parties. A country may also be asked to enter into a tax treaty for other non-tax reasons, such as a condition for obtaining economic assistance.

It is important, however, not to lose sight of the fact that tax treaties are essentially tax instruments. Any "non-tax" reasons for entering into a tax treaty must therefore be evaluated critically, as these non-tax reasons can result in pressure to enter into negotiations when there are no compelling tax policy reasons for doing so. Some of the objectives described above (such as increased administrative cooperation in order to counteract international tax avoidance and evasion) may be achieved without entering into a comprehensive tax treaty, e.g. through alternative international agreements or domestic measures (see subsection A.3). Countries will want to consider such alternatives before agreeing to negotiate a tax treaty and in considering whether existing treaties continue to serve their intended objectives.

Countries entering into tax treaty negotiations need a good understanding of the ways in which treaties operate, the potential benefits and costs arising from treaties (see subsection A.2), and whether there are alternative ways to achieve the same policy objectives (see subsection A.3).

A country's decision to negotiate a tax treaty should be based on an analysis of the relevant economic factors, a review of the tax regimes of both countries (with the primary objective of identifying risks of double taxation and non-taxation) and an analysis of the tax treaty model of the other country (if available) or the "opening" text in a negotiation (see subsection C.5) and of its recent tax treaties in order to identify the main elements of its tax treaty policy.

Further, a country's decision to negotiate a tax treaty should also be guided by an assessment of its available resources, including in terms of the availability and skills of current tax officials. Availability should be measured as the opportunity cost of using these resources to undertake other endeavours. Assessing current skills and knowledge is also vital as it would not be prudent to engage in treaty negotiations without the necessary technical expertise. Engagement of external experts without conflicts of interest should be considered where a country has low capacity and/or experience in tax treaty negotiation.

*Actual risks of double taxation*: A question that should always be considered before agreeing to enter into tax treaty negotiations with a country is whether there is a material risk of double taxation with that country, which is unlikely where a country levies little or no income tax. Countries should also consider whether there are elements of the other country's tax system that could increase the risk of non-taxation, such as tax advantages that are ring-fenced from the domestic economy. Investments are often structured via investment hubs that tend to have low tax rates. Revenue losses from treaties with these low tax hubs can be substantial due to "treaty shopping" with foreign investors routing investments through a conduit entity in the hub, or domestic investors "round-tripping" their investments via the hub. These strategies are the reason for the recent addition of strong anti-treaty shopping rules in both the OECD and UN Models to prevent the granting of treaty benefits in inappropriate situations.

- See paragraphs 55 - 62 of the UN Manual
- See paragraphs 15.1 – 15.6 of the Introduction to the OECD Model: "Tax policy considerations that are relevant to the decision of whether to enter into a tax treaty or amend an existing treaty"
- See paragraph 17.4 of the Introduction to the UN Model, on tax policy considerations to enter into a tax treaty
- Access the shared calendar for workshops, courses and seminars on tax treaties organized by the PCT Partners
- A pilot tax treaty database was launched in February 2016 by ICTD and covers around 2400 treaties that low- and lower-middle income countries signed since 1970
- Find more information about BEPS Action 5 peer review and monitoring on harmful tax practices
- Find more information about BEPS Action 6 on prevention of tax treaty abuse
- Find more information about preventing the improper use of tax treaties in the Commentary on article 1 & the Commentary on article 29 of the OECD Model
- For recent analytical work investigating the costs and benefits of concluding tax treaties with investment hubs, see Beer and Loeprick (2021)
- Find the Knowledge Sharing Platform for Tax Administrations

## + A.2. Consideration of potential costs and benefits

A tax treaty is usually structured so as to include (a) general provisions and definitions, (b) substantive provisions on taxation (distributive rules) and elimination of double taxation, and (c) provisions on non-discrimination and international cooperation and assistance. The distributive rules will in most cases reduce the amount of tax that a source country can charge non-residents based on its domestic law (ignoring any behavioural changes effected by the treaty). On the other hand, the ability to receive information and receive assistance in tax collection from a treaty partner is likely to result in better compliance, and hence higher tax receipts.

Administrative measures are essential for a country to fulfil its international obligations deriving from a tax treaty. Generally, a treaty has to be implemented through domestic tax law and most treaty rules will be applied through the usual administrative processes required to assess and enforce income taxes (e.g. self-assessment, assessment, withholding, tax examination and administrative and judicial dispute resolution). However, the application of tax treaties may require the performance of additional administrative functions, for example in the application of reductions or refunds of withholding taxes, the resolution of treaty-related disputes through the mutual agreement procedure, the exchange of tax information and the assistance in the recovery of taxes. These on-going administrative measures and the resources that they require are in addition to the resources required for the negotiation and updating of a country's tax treaties.

It is important to consider the potential costs and benefits before deciding to embark on tax treaty negotiations and in assessing whether existing treaties remain appropriate. In particular, countries would benefit from identifying existing treaties that cause substantial revenue losses and produce little increase in direct inward investment – and considering their renegotiation, or seeking to have their application modified through the MLI[2], or their termination, as appropriate – rather than entering into new tax treaties.[3]

While the determination of a treaty's cost-benefit trade-off for a country is not straightforward, a range of options exist to try to measure some of these costs and benefits. Treaties are frequently used as a tool to attract investment into developing economies (Zolt 2018, see toolbox)[4]. Challenges to measuring treaty effects may thus be similar to analysing other types of tax expenditures and could be informed by approaches summarized in the 2015 PCT toolkit "Tools for the assessment of tax incentives" (see toolbox). For income flows (dividends, interest and royalties), the theoretical impact on tax revenues can be captured by comparing treaty withholding tax rates with the domestic rate (see in the toolbox for instance, McGauran (2013), Balabushko et al. (2017), Janský and Šedivý (2018), and useful data sources on cross-border flows). This analysis has value even without taking into account the response of taxpayers to higher withholding tax rates.[5] For other aspects of treaty costs, including indirect costs of base erosion and profit shifting linked to treaties, taxpayer information can be analysed (Balabushko et al. 2017) and often administrative experience can at a minimum provide anecdotal evidence of aggressive tax planning strategies (and associated costs) that take advantage of specific treaties, although such an analysis would not necessarily take account of the effect of new treaty rules designed to address treaty abuse.

The following are some of the most important issues that should feed into an analysis before deciding to negotiate a tax treaty or in assessing whether existing treaties remain appropriate. As will be seen, many of these issues may, depending on the circumstances, be seen as either a benefit or a cost (or both):

*Impact on foreign direct investment:* The evidence on whether tax treaties increase foreign direct investment is mixed[6] – however, an incremental benefit only arises if it leads to positive spillovers for local residents (e.g. increased employment and income that would not have occurred otherwise).

[2] Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI may allow governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into bilateral tax treaties worldwide thereby reducing opportunities for tax avoidance by multinational enterprises. While the MLI may allow governments to more easily modify their existing treaties to counter treaty abuse, the range of potential modifications are limited in scope and do not cover key matters that might otherwise be discussed in a comprehensive renegotiation such as maximum withholding tax rates, other core aspects of the PE definition, and provisions covering technical service fees (see also subsection B.1).

[3] Examples of countries that have renegotiated or cancelled tax treaties include Argentina in 2012, Rwanda in 2013, Mongolia in 2013, India in 2016, Nigeria in 1989 and Senegal in 2019.

[4] Where the residence State does not tax income on which the source State has reduced its taxation as a result of a tax treaty, tax revenue is not shifted between the source State and the residence State but between the source State and the taxpayer, resulting in economic effects much like a tax incentive. However, where treaty provisions have the effect of eliminating double taxation, they act to remove a tax obstacle to cross-border trade and investment and, unlike a domestic tax incentive, remove rather than create economic distortions.

[5] The distributive rules are typically reciprocal (i.e. the same maximum withholding tax rates apply to each treaty partner). However, non-reciprocal provisions that are more favourable to a developing country have been concluded with developed countries—given the usual asymmetric cross-border income flows between them— in few occasions in the past (which would limit the cost of the tax treaty that would otherwise arise for the developing country). Examples of tax treaties with non-reciprocal distributive rules with respect to maximum withholding tax rates in favour of developing countries include: (i) the 1982 Cameroon-Canada tax treaty, where Canada's maximum withholding tax rate for dividends, interest, and royalties is 15 percent, whereas Cameroon's is 20 percent; (ii) the 1992 Canada-Zimbabwe tax treaty with respect to dividend withholding tax on non-substantial shareholdings (15 percent for Canada; 20 percent for Zimbabwe); and (iii) the 1999 Algeria-France tax treaty with respect to interest withholding tax (10 percent France; 12 percent Algeria).

[6] For a summary of the empirical discussion see, for instance Zolt (2018) reference in the toolbox. Difficulties in isolating treaty effects and the subordinated role of taxation in investor decision-making likely explain inconclusive empirical findings.

*Loss of tax revenues*: The restrictions that a tax treaty imposes on source taxation (e.g. of passive income, business profits and capital gains) may result in a direct loss when compared with the revenues that would be collected under domestic tax law in the absence of a tax treaty. Behavioural effects of a tax treaty also need to be considered. These include a potential increase of foreign investment by preventing double taxation, prohibiting tax discrimination and increasing tax certainty; and a reduction of tax evasion resulting from treaty provisions allowing the exchange of tax information and possibly the assistance in the recovery of taxes. At the same time, restrictions on source taxation can exacerbate tax avoidance. This is because changes in withholding tax rates, for instance, can affect the costs of shifting income abroad through debt financing or royalty payments, both being important elements of global profit shifting dynamics. However, some forms of source taxation are difficult to administer and are often borne by the resident payer of the income rather than by its foreign recipient.

*Difficult to modify, replace or terminate:* Many countries also find it difficult to terminate a tax treaty even though termination, unlike a modification or replacement, may be done unilaterally. On the one hand, this can restrict the effect of future domestic tax changes that a country may want to adopt. On the other hand, a stable treaty network provides more certainty to foreign investors (including protection against some forms of discriminatory taxation).

*Integration with a country's domestic international tax policy:* Where a country has a stable domestic tax regime, it is more likely to have an integrated and coherent treaty policy framework and a defensible model tax treaty, which is a prerequisite for negotiating more robust and consistent tax treaties. It follows that the prospect of significant changes to a country's domestic tax regime could suggest that a country should not negotiate tax treaties until those changes are complete given the heightened risks.

*Administrative capacity to negotiate and administer tax treaties:* A country should not agree to negotiate tax treaties until it has the necessary technical expertise, having first researched the terms upon which a potential treaty partner has negotiated tax treaties with other countries. Countries should also consider whether they have the capacity to administer tax treaties before agreeing to negotiate them. The proper negotiation and practical application of tax treaties may require substantial resources from a tax administration. That said, treaties' provisions on dispute resolution, exchange of information and assistance in collection enhance tax administrations' ability to apply their countries' laws to cross-border transactions.

*Prevention and resolution of treaty disputes*: Tax treaties foster communication and cooperation between tax authorities and provide a framework for preventing and solving disputes related to tax treaties through the mutual agreement procedure (MAP), which mitigates the risk of double taxation. Most tax treaties contain MAP provisions that are crucial for these purposes and for the proper application and interpretation of tax treaties, notably to ensure that taxpayers entitled to the benefits of the treaty are not subject to taxation by either or both of the Contracting States that is not in accordance with the terms of the treaty. Ensuring that this mechanism is available, that MAP cases are resolved within a reasonable timeframe and that the agreed solutions are implemented quickly may, however, be challenging for developing countries that require more capacity building and increased resources to properly apply the MAP.

- See paragraphs 55 - 62 of the UN Manual
- See paragraphs 15.1 – 15.6 of the Introduction to the OECD Model: "Tax policy considerations that are relevant to the decision of whether to enter into a tax treaty or amend an existing treaty"
- Access the shared calendar for workshops, courses and seminars on tax treaties organized by the PCT Partners
- Find more information about the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)

- Find more information about Action 14 (Making Disputes Resolution Mechanisms More Effective and its peer review process
- Find some studies and papers on these matters:
    - Zolt (2018)
    - PCT Toolkit "Tools for the assessment of tax incentives"
    - McGauran (2013)
    - Balabushko et al. (2017)
    - Janský and Šedivý  (2018)
- Find some data sources with respect to Foreign Direct Investment (FDI) on stocks and flows:
    - Coordinated Direct Investment Survey (IMF)
    - Investment Statistics and Trends (UN)

## + A.3. Consideration of whether there are alternative ways to achieve the same policy objectives

In some cases, alternative instruments may be used instead of a tax treaty. For instance, where a main reason for wanting to conclude a tax treaty is to obtain administrative assistance from another country, such as the benefit of exchange of information or assistance in collection of taxes provisions, an alternative approach would be to use a tax information exchange agreement (TIEA) or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("MAAC"). This approach, however, requires that the other country signs and ratifies the MAAC (unless it has already done so) or be willing to conclude a TIEA rather than a tax treaty. It should also be noted that TIEAs may not allow for assistance in the collection of taxes and that many countries have reserved the right not to have the assistance in collection provisions of the MAAC apply to them. Also, neither TIEAs nor the MAAC allow tax administrations to consult each other to address cases of double taxation that are typically addressed through the mutual agreement procedure of tax treaties.  Other international agreements on mutual administrative assistance in tax matters can also be found in regional contexts (see toolbox).

If one of the reasons for negotiating tax treaties is to address specific tax issues, for example, with regard to shipping or airline enterprises, a more targeted approach would be to include the required tax provisions in an air transport or shipping agreement, as has been done by many countries. Such agreements, however, generally do not deal with the treatment of employees or employers' withholding obligations.

Relieving many forms of double taxation may also be done without tax treaties. Most countries provide some level of relief from double taxation unilaterally. Many cases of residence-source juridical double taxation can therefore be eliminated through domestic provisions (ordinarily in the form of either the exemption or a credit method) which operate without the need for tax treaties. However, these domestic provisions do not cover all cases of double taxation.  For instance, where an individual or company is a resident of two countries under their domestic laws, double taxation cannot be eliminated without some agreement between those countries. Also, the source rules of countries often differ, which means that a country's domestic rules for relieving residence-source double taxation will not apply where the other country takes the view, contrary to the first country, that an item of income has its source on its territory. More importantly, the domestic law of many countries does not allow for unilateral relief of cases of economic double taxation arising from a transfer pricing adjustment made in another country: even where domestic law allows such unilateral relief, it cannot require countries to consult in order to solve disagreements in such cases, which is what the mutual agreement procedure of most tax treaties requires.

If a country's ultimate objective for entering into tax treaties is to attract foreign direct investment, one could also argue that an alternative to treaties could be to adopt unilateral measures in domestic tax laws governing taxation and investment (e.g. investment/cost-based incentives[7]; not harmful preferential tax regimes). On the one hand, measures in domestic law can be better tailored and targeted to a country's specific circumstances, thereby reducing redundancy and crowding out effects; also, these measures can be designed to be more transparent and easier to monitor, with an increasing number of countries regularly publishing tax expenditures and subject to peer reviews. On the other hand, such domestic tax incentives create economic distortions and risk promoting a "race to the bottom". In addition, many developing countries have been adversely affected by the adoption of ineffective and inefficient tax incentives (2015 PCT toolkit), as well as the inclusion of special tax regimes in concession agreements, in particular where the tax provisions of such agreements have stability clauses or have been made subject to binding investor-state dispute resolution mechanisms. Finally, as explained in subsection A.2, relying on unilateral measures in domestic tax laws may provide less tax certainty to foreign investors than a stable treaty network.

Consideration should also be given to whether a country's objective can be achieved through alternative instruments, taking into account their scope and limitations.

- Find more information about BEPS Action 5 peer review and monitoring
- Find the Model TIEA and related protocol together with a number of countries' agreements on exchange of information for tax purposes
- For recent analytical work investigating the impact of exchange of information in tax matters in reducing international tax evasion, see Beer, Coehlo and Leduc (2019)
- Find information about the Convention on Mutual Administrative Assistance in Tax Matters
- Find information about the African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters.
- Find information about tax cooperation in the context of the Southern African Development Community

## B. Tax treaty policy framework and country's model tax treaty

### B.1. Designing a tax treaty policy framework

The tax treaty policy framework should establish and explain the main policy outcomes that a country wishes to achieve when negotiating tax treaties ("to know what it wants"), including the identification of priority countries, the degree of flexibility that the negotiators may have and a minimum acceptable outcome in order to reach agreement.

The UN and the OECD Models are helpful since it is harder to negotiate provisions that are not based on one of those Models.

Some factors that should be taken into account include:

- international treaty norms reflected in the UN Model and the OECD Model;

[7] Investment/cost-based incentives involve specific allowances linked to investment expenses, such as accelerated depreciation schemes and special tax deductions and credits. They are targeted at lowering the cost of capital and so make a greater number of investment projects more profitable at the margin -that is, they may generate investments that would not otherwise have been made (2015 PCT toolkit).

- commitments related to, or impacting, tax treaty provisions made as participants in regional groupings and international organizations;
- key aspects of the country's economy, including its main sources of revenue and areas of current or potential foreign investment;
- the domestic tax law and policy of the country and the way tax treaties will interact with that domestic tax law and policy; and
- the ability of the country's tax administration to implement its treaty obligations.

Therefore, the tax treaty policy framework should be agreed on a whole-of-government basis and decisions to depart from specific policy choices endorsed in the UN or the OECD Models should be, if possible, limited and always carefully reasoned. Some regional organisations may also be helpful resources to obtain advice when designing a tax treaty policy framework and model.

In light of the above factors, a sensible starting position for the development of the tax treaty policy framework would be for a country to carefully consider the provisions of the UN Model and the OECD Model (including the alternative provisions contained in its Commentary) and the interaction of those provisions with their own domestic and international tax policy, with a particular focus on defining a policy position on each of the following (with an inclination to protect source country taxing rights):

- Withholding tax rates for dividends, interest, royalties, technical service fees, and capital gains;
- A MAP-based tiebreaker for dual resident entities;
- A definition of permanent establishment ("PE"), which may include a services PE;
- A technical services fee article following Article 12A of the UN Model;
- A definition of royalties including payments for the use of industrial, commercial or scientific equipment;
- The right to comprehensively tax indirect transfers of immovable property;
- Assistance in the collection of taxes;
- A principal purpose test ("PPT"), with the consideration of the use of a limitation-on-benefits ("LOB") provision; and
- Other BEPS tax treaty-related measures, in particular those to protect tax treaties from inappropriate use (including treaty shopping) and to enhance dispute prevention and resolution.

In applying the tax treaty policy framework when designing a country's model or preparing for a particular negotiation, countries should ensure that they analyze at least the following points and adapt as appropriate (see also subsection C.5.):

- The objectives of entering into the tax treaty, with confirmation that alternative instruments have been considered;
- The reasons for entering into a tax treaty with the specific treaty partner,
- The current volume of cross-border trade and investment with the treaty partner;
- How the tax treaty is expected to increase the level of cross-border trade and investment with the treaty partner;
- An estimation of the potential revenue effect of the treaty for the country;
- Whether there are policies and existing tax legislation in the country, that may be in conflict with a treaty; and
- Any other benefits or costs to the country that may result from the tax treaty.

- See paragraphs 63 - 76 of the UN Manual
- Find the 2017 OECD Model (PDF)
- Find the 2017 UN Model (PDF)
- For an example of a regional treaty model, find the ATAF Model
- Find information about commitments in the context of the Inclusive Framework on BEPS
- Find information about commitments in the context of the Global Forum on Transparency and Exchange of Information
- Find the 2020 PCT Toolkit on "Taxation of Offshore Indirect Transfers"

### B.2. Designing a country's tax treaty model

The model treaty should reflect the choices made when developing the country's tax treaty policy framework and should take the form of a draft treaty showing the different provisions that the country would ideally want to include in its tax treaties.

Countries should, as far as possible and to the extent that this is consistent with their policy objectives, adopt the structure of the UN Model and the OECD Model and use the wording of the provisions found in these models and their commentaries. Countries should also be mindful of the benefits of a consistent approach (see subsection C.7).

- See paragraphs 63 – 68 and 77- 79 of the UN Manual
- See Section III of the UN Manual that provides a summary of the various provisions of the UN and OECD Models and discusses possible alternatives
- For an example of a regional treaty model, find the ATAF model

## C. Preparing for tax treaty negotiation

### C.1. Obtaining authority to negotiate

In most countries, treaty negotiators require authorization from appropriate authorities to negotiate with another country. Sometimes a new authorization is required for each round of negotiations. Practice, however, varies among countries.

Regardless of the process for authorization, the ministry in charge of foreign affairs should be consulted before any decision is made to undertake negotiations with another country. However, the final decision whether to engage in treaty negotiations should rest with the ministry in charge of finance (or otherwise have its support if the making of that decision has been given to the tax administration), which has primary responsibility for fiscal policy matters, including tax policy.

- See paragraphs 80 – 84 of the UN Manual
- Find a checklist for pre-negotiation phase (PDF)

### C.2. Contact and logistics

Efficient communications and a careful organization of a negotiation meeting is essential for the effectiveness of the event. It is important that the organizer ensures the access to a suitable venue, necessary equipment and materials, and ensures efficient time management.

In the past, the normal rhythm of tax treaty negotiations was to travel and meet in-person for a week at one country's capital, followed by another week at the other country's capital some months later, and so on until negotiations were completed. Occasionally, meetings, either of the entire team or just the principals, would take place on the side-lines of other international meetings attended by team members. With the important changes in working methods resulting from advances in communications technologies and various restrictions on travels, assumptions about the best way to proceed should be re-examined.

Countries have found that it is possible to make substantial progress through videoconferencing. Even when meetings in-person are possible, videoconferencing may be preferred because of the substantial savings in travel time and costs that it allows. Such an approach may be helpful, for example, to make progress on specific issues between in-person meetings. Videoconferencing may also be helpful in connection with the discussion of specialized issues, such as the treatment of pensions or financial products, where it would not be cost-effective to bring a subject-matter expert to an in-person meeting. It could also be used for exploratory discussions aimed at determining whether it is likely that the parties could agree on the terms of a treaty, in order to avoid spending scarce resources on a treaty that is unlikely to materialize.

Some countries that have used videoconferencing effectively note that it is good practice for the members of the negotiating team to be in the same room if possible. This facilitates communications within the team during the negotiations. If it is not possible, then the team should consider other ways to facilitate such internal communication.

If the negotiation teams do not fluently speak a common language, consideration should be given to having the assistance of interpreters versed with the technical vocabulary.

Where two countries have agreed to undertake tax treaty negotiations, they need to agree on the dates, the place and the language in which the negotiations will be carried out.

Each country will need to decide the number of members and the persons to be included as members of its negotiating team and, as a matter of courtesy, provide the other country with the names, title and contact details of each member of its team.

The host team should provide the other team with an invitation letter (for visa or other purposes), draft agenda, venue for negotiations, directions and relevant information to access the venue.

The visiting negotiators will need to arrange for travel authorizations (visas if necessary), travel and accommodation arrangements and notification to the local embassy if appropriate.

Consider whether videoconferencing would be an effective means of advancing negotiations between, or instead of, in-person negotiations.

- See paragraphs 85 – 92 of the UN Manual
- Find the OECD Tax Treaty Website for Tax Officials which contains useful information on tax treaties and countries' competent authorities (previous registration required)
- Find an example of an agenda and list of participants for a tax treaty negotiation (PDF)
- Find a checklist of logistics aspects (PDF)

## + C.3. Defining the roles of each member of the team

A typical structure of a negotiating team includes a team leader (head of delegation) with authority to make important decisions, a technical adviser specialized in tax treaties and/or domestic tax legislation; and a note taker (for internal purposes) with enough experience to understand, select and summarize complex arguments or proposals. Most teams also have at least one person from the competent authority or who is otherwise involved in implementing treaties.

In the preparations for the negotiations, as well as during them, it is important that all members of the negotiating team know which duties have been allocated to them, and what their roles will be.

- See paragraph 93 of the UN Manual

## C.4. Consulting business, stakeholders and relevant ministries and agencies

Consultations with business could be useful to identify potential new treaty partners and to address problems businesses have encountered, or are anticipating, when engaging in cross-border activities (e.g. industry groups representing the primary economic activities within the country). Consultations with business, civil society, academia, relevant ministries and agencies could be useful to provide the team with important information on economic sectors or issues (including non-economic) that should be taken into account during the negotiations. The involvement of the tax administration or revenue authority in tax treaty negotiation at every stage is very important, as they usually have direct experience and knowledge of the application of tax treaty provisions and of the potential difficulties that they involve.

When preparing for negotiations with another country it is prudent to consult with business and relevant ministries and agencies – including the tax administration or revenue authority – and the embassy in the other country. A country negotiating a treaty needs to be aware of the diplomatic relations between the country they are negotiating with and other treaty partners. Signing a treaty could have unintended political and diplomatic implications outside of the tax arena.

- See paragraph 94 of the UN Manual

## C.5. Preparing the draft model used for a particular negotiation ("opening" text)

This could be the country's standard model treaty or an adapted version that takes into account particular inputs such as previous negotiations or business and industry groups' submissions.

The team must prepare a draft text which they will use as the basis for the particular negotiation.

Before negotiations begin, and as early as possible, the two sides should exchange draft opening texts. This may also be an opportunity for a country to point out and explain any unusual features of its draft text if they might be complex to present (e.g. any divergences from the provisions of the UN and OECD Models), or difficult for the other side to understand for the first time in face to face talks. If applicable, it is advisable to be aware of each country's reservations and observations or positions on the OECD Model.

Preparing a list of questions or issues that could be raised by the other side is a useful practice.

Preparation should include a thorough review of the other country's treaties (particularly its recent ones and those with comparable countries).

- See paragraph 95 of the UN Manual
- See OECD Members' reservations and non-Members' positions in the 2017 OECD Model

## C.6. Preparing alternative provisions

Alternative provisions may be found in the commentaries of the UN and OECD Models, in a country's own treaty network, in the treaties of the other country with third parties or may be unique provisions intended to specifically address concerns expressed by the other country.

Where the draft text includes provisions that are likely to be controversial, it is advisable to prepare alternative provisions that may be acceptable to both countries.

Knowing which BEPS provisions a country has adopted in its MLI positions may assist in determining which measures that country could accept, or might resist, during the negotiation.

If the alternative provision is not derived from the OECD or UN Model, the party proposing it should explain their reasons (see subsection B.1 above) and special attention should be paid to the drafting, and its potential effects should be carefully tested against a range of fact patterns and possible future developments to ensure that it does only what it is meant to do.

- See paragraph 96 of the UN Manual
- Find the 2017 OECD Model (PDF)
- Find the 2017 UN Model (PDF)
- Find publicly available information on countries' treaty networks in the MAP profiles of the OECD/G20 Inclusive Framework on BEPS
- Find a list of signatories and parties, including jurisdictions' positions on the MLI
- Find the CIAT tax treaty database

## C.7. Non-negotiable provisions

These are provisions that reflect strongly held policy or technical positions that must be included in any treaty concluded by the country (see subsection B.1 above). A distinction should be made between provisions that are genuinely non-negotiable and provisions, which merely reflect a strong preference but which, under certain circumstances, can be accepted.

In the preparation of the negotiations, it is also important to clarify internally which provisions are non-negotiable in accordance with the country's tax treaty policy framework. It would be advisable to communicate such provisions to the other negotiating team in advance of the negotiations so as to avoid spending time on negotiations that cannot reach a conclusion because of irreconcilable differences of views concerning such provisions.

If applicable, it is advisable to be aware of each country's reservations and observations or positions on the OECD Model (or a regional model, such as the ATAF Model) and to be aware of same or similar provisions that might have been included in each country's treaty network in the past.

Where a country is considering changing its model, or departing from its opening text in a negotiation, it should be mindful of the benefits of a consistent approach. Its treaty policy will of course evolve in response to changing circumstances and preferences. But where, for example, a country is considering conceding certain source state taxing rights in a negotiation, it should remember that doing so could set a precedent that might be hard to resist in future negotiations. It could, depending on the provision in question, also create an incentive for taxpayers to undertake treaty shopping transactions – though that will be mitigated by the operation of the PPT or other protections against treaty shopping.

- See paragraph 97 of the UN Manual
- Find information on OECD Members' reservations and non-Members' positions in the 2017 OECD Model
- Find information about commitments in the context of the Inclusive Framework on BEPS
- Find information about the ATAF Model
- Find information about commitments to the international standard on the exchange of tax information in the context of the Global Forum on Transparency and Exchange of Information

## + C.8. Understanding the interaction between domestic legislation and treaty provisions

During the negotiations, a team will often be asked to explain features of its domestic tax legislation and how proposed provisions of the draft treaty would interact with that legislation.

It is strongly advisable for each team to research and understand the key features of the domestic tax legislation of the other country e.g. preferential regimes, residency and source definitions, type of entities and their tax treatment, domestic anti-abuse provisions that may affect or interact with treaty provisions, etc. For example, it is important to analyse the country's stance on entities that are considered "comprehensively liable to tax" by a potential treaty partner even if the tax is not actually imposed; and the opacity or transparency of partnerships and similar entities under the domestic law of the potential treaty partner.

Understanding how treaty provisions interact with a country's tax legislation will also be necessary. Although tax treaties generally operate to relieve tax otherwise payable under domestic law, there are many aspects of that interaction that need to be considered.

The team should be aware of its own country's jurisprudence on tax treaties.

- See paragraph 98 of the UN Manual
- See Section III of the UN Manual for an introduction to different treaty provisions and their interaction with domestic law
- See some information on preferential regimes and BEPS Action 5
- Find the Vienna Convention on the Law of Treaties
- Access the shared calendar for workshops, courses and seminars on tax treaties organized by the PCT Partners
- See more information about an alternative provision dealing with "Special Tax Regimes" in paragraph 85-100 of the OECD Commentary of Article 1
- Find a "Checklist of information on a country's tax system that should be provided to the other country in advance of, or during, a tax treaty negotiation"
- Find more information about an alternative provision to deal with "subsequent changes to domestic law" in paragraphs 101-105 of the OECD Commentary on article 1.

## + C.9. Transmitting a short written explanation of the domestic tax system and the model to the treaty partner

Many countries prepare a short written explanation of their domestic tax system, especially if there is something in the legislation that is likely to require clarification during the negotiations.

Brief explanations of the domestic tax legislation, legal entities and other relevant domestic law aspects, should be sent to the treaty partner well in advance of the meeting. Illustrations and examples could facilitate the understanding of domestic systems.

- See paragraph 99 of the UN Manual
- Find some short explanations of the domestic legal and tax systems of members of the Global Forum on Transparency and Exchange of Information in their peer review reports
- Find a "Checklist of information on a country's tax system that should be provided to the other country in advance of, or during, a tax treaty negotiation"

- Find examples of brief explanations of countries' pension systems in the report "Financial incentives for funded private pension plans: OECD country profiles June 2019"

## + C.10. Preparing a comparison of the respective models

Many experienced negotiators find it helpful to compare the two models in a side-by-side document, with a column for comments.

Using different colors or texts in brackets simplifies the identification of the differences between the models. Where there is a divergence in the texts, it can be useful to note in the comment column whether one of the texts follows a model provision and whether there are precedents in other treaties.

Another part of the comparison between the two countries' draft texts involves the identification of provisions proposed by a country that deviate from provisions agreed to by that country in treaties with third countries, with a particular focus on more current treaties concluded with comparable third countries. For these purposes, a thorough review of the recent tax treaties concluded by the other country should already have been undertaken, with particular attention paid to identifying provisions that have been previously accepted with comparable third countries with a similar profile. For instance, countries that are in the same region; with similar tax systems; and/or at similar stages of development. The negotiating team should be aware of and ready to explain provisions that its country has accepted in negotiations with third parties.

- See paragraphs 100 and 101 of the UN Manual
- Find publicly available information on countries' treaty networks in the MAP profiles of the OECD/G20 Inclusive Framework on BEPS
- Find an example of a side-by-side document using the 2017 versions of the UN Model and the OECD Model (coming soon)
- Find an example of how a comparison of two imaginary proposed provision might be laid out using side-by-side texts (PDF)
- Find an example of how a comparison of two imaginary proposed provisions might be laid out using colours (PDF)
- Find an example of how a comparison of two imaginary proposed provisions might be laid out using square brackets and colors (PDF)
- Find the CIAT tax treaty database
- Find some commercial tax treaty databases:
    - IBFD's Tax Treaties Database
    - Tax Analysts' Tax Treaties Research Tool

## + C.11. Studying the economy, culture and customs of the other country

Having some general information about the other country with which a tax treaty will be negotiated may be useful to understand its positions and also to avoid misunderstandings and embarrassing situations.

For instance, a negotiating team should have a general idea of that other country's economic situation, e.g. its population, gross national product (GNP), important industries and its relations with other countries. The team should also be aware of the current trend of trade relations (exports and imports) with the other country, of applicable Free Trade Agreements or Bilateral Investment Treaties, and current capital inflow in the form of Foreign Direct Investment (FDI), Foreign Portfolio Investment (FPI) and External Commercial Borrowing (ECB). It should also be aware of local customs and sensitive issues, for example, regarding food, alcohol, religious beliefs and behaviors that may be considered offensive. Consultation with its embassy in the other country may be helpful.

It would be useful to be aware of how stable the other country's tax laws are, as well as its experience in successfully concluding – and bringing into force – tax treaties with other countries. This might indicate the likelihood and timing of reaching an agreement with that country, as well as the time that may be required for its effective implementation.

- See paragraph 102 of the UN Manual
- Find some short explanations of the domestic legal and tax systems of members of the Global Forum on Transparency and Exchange of Information in their peer review reports
- Find some general information about some countries' economies

## D. Conduct of negotiations

### D.1. Opening of the meeting and working draft

At the beginning of the negotiation meeting, both leaders should introduce themselves and their team so that both delegations know who is present and the role of each team member. The leader from the host country will usually open discussions and there should be agreement on the agenda for the meeting.

The two teams will need to decide the practical issue of how to discuss and amend the two draft texts in order to produce the working document that will constitute the draft treaty.

Ideally, a common working draft in which all the differences between the two models would appear in square brackets and/or in different colors for the text proposed by each country, would be prepared in advance of the negotiation meeting and would be displayed and amended in real time during that meeting. If that cannot be done, one approach would be for the two teams to decide to use one of the two draft texts as the working draft. Existing software may provide additional tools to easily manage track changes in documents during the negotiation (these tools may be even more useful during virtual meetings).

- See paragraphs 103 - 105 of the UN Manual
- Find an example of how a comparison of two imaginary proposed provisions might be laid out using colours (PDF)
- Find an example of how a comparison of two imaginary proposed provisions might be laid out using square brackets and colors (PDF)

### D.2. Negotiation style

The negotiation style adopted by each team can play a significant role in the way the negotiation meeting proceeds. Negotiating styles can vary from what could be called "soft" to "aggressive":

– A "soft" negotiator seeks to reach agreement on all articles as soon as possible. This may lead to the negotiator making unnecessary concessions.

– An "aggressive" negotiator insists on his/her proposals and demands concessions. This style may result in the other side pushing back or even refusing to continue the negotiations.

– A negotiation style somewhere between these two extremes is obviously desirable.

Negotiators should never allow themselves to agree to something because they are intimidated by someone with more experience. If they are not comfortable with a proposal, they can simply say that they are not comfortable enough (or authorized) to agree at the moment and will discuss it in a future negotiation session.

Whatever approach is adopted, a negotiator must remember that his/her style should be adapted to the goal of the negotiations, which is to achieve a mutually beneficial treaty.

Negotiators may also need to adapt to situations where reaching agreement on a tax treaty is more important to one party than the other, or when one side has more capacity or influence over the other, with a view to reach a balanced and fair result. Applying the principles of fairness and equity will no doubt result in development of more stable and sustainable taxation systems.

- See paragraphs 106 - 107 of the UN Manual
- Find examples of negotiation strategies (YouTube Video)
- Access the shared calendar for workshops, courses and seminars on tax treaties organized by the PCT Partners

## D.3. Trust

To achieve a productive atmosphere during the negotiation process, it is necessary to gain the trust of the other team. It is easier to lose than to gain credibility.

The explanations given by a team must be truthful, complete and correct.

If the teams are using a common working draft, any amendment to it should be tracked, consulted and/or communicated in a transparent way to the other team (e.g. the removal of square brackets). If it is not possible to use a common working draft, the text of each article should be read when the discussion of that article has been completed in order to ensure that both teams agree on what has been agreed and what remains to be discussed.

Unless the two teams agree to make the contents of the treaty public before its signature, the draft treaty should be treated as confidential until it is signed (see subsection E.1 below).

- See paragraph 108 of the UN Manual
- Find an example of how a comparison of two imaginary proposed provisions might be laid out using colours (PDF)
- Find an example of how a comparison of two imaginary proposed provisions might be laid out using square brackets and colors (PDF)

## D.4. Building a relationship

Some degree of formality is appropriate during a negotiation meeting even if the members of the two teams are known to each other. All interactions, however, play a part in the negotiations: informal discussions or contacts taking place during a break, or at lunches or dinners, may contribute to building a good relationship.

Be punctual, listen with respect (avoid interrupting or negative body language) and politely explain different opinions of preferred solutions.

- See paragraphs 109 - 112 of the UN Manual

## D.5. Discussions

A tax treaty negotiation will normally require more than one round of meetings. For the first round of negotiations, it is usually desirable to work quickly through all articles one by one without lengthy discussions of difficult issues in order to resolve minor issues and identify difficult or important ones for further discussion. When all the articles have been worked through, it is time to concentrate on solving the remaining difficult issues. A team should be prepared to clearly lay out arguments in favor of its proposed approach, and be ready to respond to counter-arguments. A team should also stand ready to make counter-proposals instead of adamantly sticking to its original position. It may sometimes be found that the other team's own proposal or counter-proposal is more advantageous for the first team than the provision initially proposed.

When conflict becomes apparent or the negotiation process moves towards a dead end, the leaders can agree to suspend the meeting for a brief period or indefinitely. This will help to gather more information, provide time for consultation with the right people and adoption of better strategies to deal with the situation and suggest a future course of action.

Sometimes at the end of negotiations, a few technical issues remain outstanding. The current practice is to try to resolve these issues via conference calls or email. It is desirable to do this as soon as possible after negotiations have finished while the issues are still fresh in everyone's minds. If the ramifications of a particular clause aimed at specific types of businesses are unclear, it may be useful to consult with relevant business/industry groups if and when feasible to do so.

If a provision relates specifically to one of the countries, or is merely a clarification of the meaning of a provision, it is sometimes better to include that provision in a protocol rather than trying to include it in the treaty itself. [8]

Negotiators should remember that domestic laws might change. So if an unusual domestic provision has influenced the form of a treaty provision (or a protocol provision), it may be advisable to anticipate the consequence of a subsequent change in that domestic provision.
Some treaty provisions that have been used—although countries may have different views on their advantages, disadvantages and risks—are the following:

- a "tax sparing" clause;
- a "most favored nation" (MFN) clause;
- a "sunset" clause;
- a "preservation of benefits" clause that keeps certain benefits for certain persons under a superseded or abolished provision for a limited period (sometimes referred to as "grandfathering provision"); and
- a deferred-effect clause.

As for any provision that is not derived from the OECD or UN Model (see also subsection C.6), special attention should be paid to the drafting of these measures and their potential risks and effects in different scenarios and timeframes. This is particularly relevant with regard to MFN clauses as they can have disruptive effects on a developing country's treaty policy long after a treaty negotiation is concluded (see some examples in the material referred in the toolbox).

The resulting draft treaty should be added to the agreed minutes after every round of negotiations and provided to both teams in paper and electronic form.

- ► See some additional information on some of the provisions mentioned above in paragraphs 113 - 130 of the UN Manual
- ► Find some additional information on tax sparing provisions, their effects and risks:
  - ► in paragraphs 610 – 617 of the UN Manual and;

[8] A number of bilateral treaties have a "protocol" that was negotiated at the same time as the treaty (as opposed to a subsequent protocol, which constitutes another instrument amending the initial one). A treaty is an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (e.g. treaty, protocol, agreement or convention). The legal effect of a protocol, and when it may be appropriate to use one, needs to be carefully understood.

- in the report: "OECD (1998), Tax Sparing: A Reconsideration, OECD Publishing, Paris", which shows the risks of tax avoidance related to tax-sparing provisions -both in the country of the investor and in the country of the investment- and recommends a set of "best practices" to reduce the potential for abuse;

- Find a brief description and some examples of MFN clauses, including different effects and risks (PDF)
- Find an example of a sunset clause (PDF)
- Find a brief description and example of a preservation of benefits clause (PDF)
- Find examples of a deferred-effect provision (PDF)
- Find an example of a fictional Agreed Minutes (PDF)

## + D.6. Arguments

Arguments should be based on logic and sound tax policy, underpinned by precedents and supported by examples and explanations that address the substance and effect of the relevant provision.

Teams should be prepared to present relevant arguments to explain the provisions that they propose in the different articles of the working draft. This is true of all provisions, but is essential where the wording of a provision deviates from what is found in the UN and OECD Models.

- See paragraphs 131 - 132 of the UN Manual
- Find publicly available information on countries' treaty network
- Find information on OECD Members' reservations and non-Members' positions in the 2017 OECD Model.

## + D.7. Keeping an accurate record of what has been agreed to

It is important to keep a full and accurate record of what has been agreed to and of the provisions that remain to be discussed (see subsection D.3 above).

The working draft should ideally be amended to reflect the discussions and projected on a screen during the negotiation meeting. If it is not possible to do so, the text of each article should be read when the discussion of that article has been completed in order to ensure that both teams agree on what has been agreed to and what remains to be discussed.

When going through the working draft article by article, all wording that is not agreed upon should be put in square brackets. Both teams should have a printed version of the working draft as it stands at the end of each round of negotiation.

Countries are encouraged to follow the practice of producing "Agreed Minutes" to acknowledge that the meeting took place and to record the main outcomes, outstanding issues, agreed interpretations, next steps, etc.

Furthermore, if countries so wish, there could be an explicit mention in the treaty (or the protocol) as to whether the commentaries of any model used in the negotiations (whether the OECD or UN Models) shall be considered in the case of disagreement on the interpretation of a provision.

Interpretations of particular provisions can also be included in a memorandum of understanding or exchange of notes or technical explanations agreed by the treaty negotiators or the competent authorities. The Contracting States might consider agreeing, and possibly publishing, contemporaneous notes and comments. After agreement has been reached on all the provisions of the working draft, which may happen at the end of the first or a subsequent round of negotiation, it is usual for the head of each delegation to initial each page the draft treaty. This simply means that the draft reflects the results of the negotiations.

- See paragraphs 133 - 135 of the UN Manual
- An example of an agreed understanding is the technical explanation of the US-Canada Protocol.
- Find an example of a fictional Agreed Minutes (PDF)
- Find an example of how a comparison of two imaginary proposed provisions might be laid out using colours (PDF)
- Find an example of how a comparison of two imaginary proposed provisions might be laid out using square brackets and colors (PDF)

## + E. Post-negotiation activities

### + E.1. Preparing for signature

After the two heads of delegation have initialed the final draft treaty, the next step is to prepare it for signature.

Each country should know in advance which ministry will be responsible for the signing procedure. It is recommended that each country's procedures and estimated timeline for the approval of the signature be discussed during the negotiation of the treaty.

Preparing the proposed treaty text for signature includes conducting thorough proofreading of the text (and of the translations if appropriate). Editorial or substantive mistakes are often found at that stage or in the translation process.

In the two official versions of the treaty that will be signed (or more than two if the treaty is signed in more than one official language), each country should be mentioned first in the Title, Preamble and signature block of its own copy (or copies, if in more than one language). The other country should be mentioned first in its own copy (or copies). There should be no alternation in the rest of the text.

Unless the two teams agree to make the contents of the treaty public before its signature, the draft treaty should be treated as confidential until it is signed. In some countries, the draft text is discussed with relevant Parliamentary committees prior to signature to avoid later problems at or after signature.

- See paragraphs 135 - 141 of the UN Manual
- Find a checklist for preparing for signature (PDF)

### + E.2. Translation and official texts

The terminal clause of the proposed treaty will indicate the languages in which the treaty will be signed and will normally indicate that each version is equally authentic or authoritative.

A treaty will often be negotiated in a foreign language, for example English, even if that language is not an official language of either country. In such cases, the countries will generally agree to sign the treaty in as many official languages as there are as well as in the language in which it was negotiated. These countries may then also agree to provide that the language in which the treaty was negotiated will prevail in case of divergences between the other versions, which will be relevant when considering such divergences in the context of litigation or MAP cases related to the treaty.

A thorough proofreading of the texts by both countries should be done both before and after translation. Editorial or substantive mistakes are often found at that stage or in the translation process.

In particular, the translation should be checked to ensure that, as far as possible, it uses the same terminology as the official versions of the UN and OECD Models and of previously concluded treaties that have used similar wording.

- See paragraphs 142 - 148 of the UN Manual
- See some examples of terminal clause on languages (PDF)
- Find some official and non-official versions of the UN and the OECD Models in different languages:
  - OECD Model in French
  - OECD Model in Spanish

## E.3. Signing of the treaty

The next step is to seek the approval of each government for the signature of the treaty. The procedure for obtaining that approval varies from country to country. Tax treaties are typically signed by ministers of finance, ministers of foreign affairs or ambassadors.

Where the treaty is to be signed by the minister of finance, another minister, an ambassador or any other person, that person will generally be required to produce a written confirmation (usually from the minister of foreign affairs) that they have been given authority to sign (referred to in the Vienna Convention on the Law of Treaties as “full powers”).

At least two original versions of the treaty will be signed, one for each state. Where the treaty is signed in more than one language, two versions of the treaty will be signed in each official language. Each country will receive a signed version of the treaty in each official language.

There are no set rules about where and when the signing ceremony should take place. It should be signed where and when it is most convenient for the two countries.

It is a good practice to publish the text of a treaty as soon as it has been signed and to post it on the website of the tax administration or of the ministry in charge of finance so that all interested parties are aware of its contents.

- See paragraphs 149 - 154 of the UN Manual
- Find the Vienna Convention on the Law of Treaties
- Find a Template Full Powers document (PDF)
- Find some examples/options for signing ceremonies or procedures (PDF)

## E.4. From signature to entry into force

In almost all countries, the signed treaty has to be approved by the parliament or legislative assembly before it can be considered that the state has given its consent to be bound by the treaty.

In many countries, treaties are presented to parliament together with a full explanation of their provisions, and the reasoning behind them, as well as an estimate of their potential impact.

In many countries, the ministry in charge of finance or the tax administration needs to prepare a technical explanation of the treaty for purposes of its parliamentary or legislative approval.

A good practice is that the leaders of negotiation teams inform each other about their internal constitutional and legislative procedures for approval of the treaty before ratification, and to update each other from time to time on the status of such procedures and estimated timelines for ratification.

The entry-into-force article of the treaty will govern how and when the treaty will enter-into-force. Countries that require a formal exchange of instruments of ratification will ensure that the entry-into-force article refers to such an exchange. Many treaties simply provide that each country will notify the other, through diplomatic channels, when its internal requirements or procedures for the entry into force of the treaty have been satisfied and that the treaty will enter into force when the last such notification has been provided.

- See paragraphs 155 - 162 of the UN Manual
- Find a check list for ratification process (PDF)
- Find a Template Technical Explanation of a treaty for parliamentary or legislative approval (PDF)

## + E.5. After the entry into force

The date on which the provisions of a tax treaty start to have effect for the taxpayers and the tax administration of each country, which is the most important date as regards the practical application of the treaty, should not be confused with the date of signature or the date of entry into force of a tax treaty.

Following the entry into effect of its provisions, the treaty should become part of a regular exercise to track its effects in terms of investment and income flows. The process should allow for a regular assessment of whether the expected benefits were achieved, the costs associated with its adoption, and to help refine and inform the economic analysis of decisions to negotiate/renegotiate treaties.

It is a good practice to inform all interested parties when a new treaty enters into force and when its provisions will have effect. This may be done through a press release, notice in the official gazette or journal or on the website of the tax administration or of the ministry in charge of finance.

A country should be prepared to establish a methodology for continual communication, consultation and cooperation with treaty partners, which is critical to the effectiveness of the treaty as a policy tool for economic development.

- See paragraphs 163 - 165 of the UN Manual
- Find some examples to illustrate differences between date of signature, date of entry into force and date of entry into effect (PDF)