UNITED
NATIONS

ST

Secretariat

Dist.
LIMITED

ST/SG/AC.8/1997/L.8
19 August 1997

ORIGINAL: ENGLISH

AD HOC GROUP OF EXPERTS ON INTERNATIONAL
COOPERATION IN TAX MATTERS
Eighth meeting
Geneva, 15-19 December 1997

Review of tax treaties between developing countries: a comparison with the United Nations Model Double Taxation Convention Between Developed and Developing Countries*

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97-22278 (E) 240997

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INTRODUCTION

1. The present paper provides a comparison of the "associated enterprises" or transfer pricing articles of a sample of 46 bilateral and two multilateral income tax treaties between developing countries.[1] This represents approximately 25 per cent of the treaties between developing countries in force as of December 1996. The comparison examines the correlation between the terms of the associated enterprise articles (the articles) in the sample treaties and the articles in the United Nations Model Double Taxation Convention Between Developed and Developing Countries.[2] The purpose is to assess the extent to which the articles of the sample treaties are at variance with the articles of the Model Convention; look for the presence of any patterns or trends where variances are observed; propose certain relationships between the treaty parties that may explain any trends or patterns observed; and discuss possible implications of such variances. The work initiated in the present paper will be extended to test the strength of those relationships between contracting States and any correlation between them and treaty variation.

2. Section I contains an analysis of the Model Convention "associated enterprises" provisions, as included in the May 1995 draft version of the Model Convention that was prepared for the June 1995 meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters. That document contains the articles as they appear in the Model Convention, as well as proposed changes. In this case, the proposed changes include additional provisions for the "associated enterprise" articles. Section I also contains a summary of the results of the comparison, identifying, in general terms, the distinguishing characteristics of observed variations from the articles of the Model Convention and any trends or patterns in the variations. To enhance the analysis and offer a cross-sectional perspective, the comparison looks separately at 18 bilateral treaties in which the one contracting State is held constant and the treaty partners represent a cross-section of developed and developing countries. For the purposes of structural validity, the two constant treaty partners represent both developed (France) and developing (Argentina) countries. The sample of French and Argentine treaties were drawn from the 1996 tax treaty file of the International Bureau of Fiscal Documentation (IBFD). Where appropriate, the Argentine treaties are included in the developing country sample.

3. Section II presents the treaty-by-treaty comparison, and identifies the specific variations from Model Convention provisions for each comparison. This analysis shows which countries are the contracting States to each treaty and how each of the treaties compare with the Model Convention provisions, and summarizes the variations observed, taking special note of those that occur with sufficient frequency to indicate possible patterns or systematic behaviour. Section III discusses a set of possible relationships between contracting States that may offer some explanation for the presence of the observed variations, and suggests how this could impact the treaty process.

4. Section IV discusses the implications of the results, possibilities for future inquiry and the localized conclusions that can be drawn from the observations made.

I. SUMMARY OF RESULTS

5. As of 6 December 1996, there were approximately 214 income tax treaties in force between developing countries, as listed in the IBFD tax treaty file on the Lexis/Nexis databases. A sample of 52 treaties was selected, generally at random. The final sample of 46 was obtained after the elimination of duplications in multilateral treaties. The only criteria imposed on the selection process was that it cover the major economic and geographic areas of the global business community, and that it provide for some observations to reflect treaties between developing countries both within and across those geographic and economic areas. The 18 treaties that include Argentina or France as a constant contracting State were selected from the same IBFD file. There was no distinguishing feature that dictated the selection of the two anchoring countries or the specific treaties other than to make sure that one of the anchoring countries was a developed country and the other was a developing country.

6. The "associated enterprise" articles of the sample treaties were compared against the provisions, both existing and proposed, of the United Nations Model Double Taxation Convention Between Developed and Developing Countries, as presented to the Ad Hoc Group of Experts on International Cooperation In Tax Matters at its meeting of 5-7 June 1995 in New York (see ST/SG/AC.8/1995/WP.9).

7. The analysis of those provisions is presented in table 1. The provisions present in the Model Convention, article 9 (1) (a) and 9 (1) (b), describe related enterprises in terms of common control, management, or capital investment either between two entities or through a third party. The operative language of article 9 (1) provides that where the allocation of profits between related enterprises located in different contracting States is distorted as the result of the related party status of the enterprises, the contracting State to which the related enterprise therein has under-reported profits may impose an adjustment on that enterprise to accrue the amount under-reported.

8. The language of article 9 (2) provides the protection against double taxation. It states that in the event one contracting State to the treaty has imposed an adjustment under 9 (1), the other contracting State shall make an appropriate adjustment accordingly. This adjustment would be expected to be compensatory and to restore the aggregate profits of the enterprise group to its original level.

9. The above-mentioned document offers two provisions, in draft form, for consideration as additions to the existing article 9 model. Those two are proposed as draft articles 9 (3) and 9 (4).

10. Draft article 9 (3) provides that article 9 (1) shall not preclude a contracting State from making an adjustment to accrue profits to secure the clear reflection of income or to preclude tax evasion. The essence of the provision can be interpreted to give the contracting State the opportunity to impose an adjustment where the treaty, for whatever reason, produces an anomalous result or has not effectively precluded tax evasion.

Table 1. Analysis of "associated enterprises" provisions of the United Nations Model Double Taxation Convention Between Developed and Developing Countries

Article	Provision	Explanation
9 (1) (a)	Where an enterprise of a contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other contracting State, or	Describes related enterprises in terms of common control, management or capital investment between entities
9 (1) (b)	Where the same persons participate directly or indirectly in the management, control or capital of an enterprise of a contracting State and an enterprise of the other contracting State	Describes related enterprises in terms of common control, management or capital investment through a third party
9 (1)	And in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly	Provides that where the allocation of profits is distorted as a result of the related party status of the enterprises, the contracting State to which a related enterprise has under-reported profits may impose an adjustment on the enterprise in that contracting State to accrue the profits deemed under-reported as a result of the related status
9 (2)	Where a contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Convention and the competent authorities of the contracting States shall, if necessary, consult each other	This provision is the double taxation protection. In the event that one contracting State to the treaty has imposed an adjustment under 9 (1) (a), the other contracting State shall make an appropriate adjustment
9 (3)[a]	The provisions of paragraph 1 shall not limit any provisions of the law of either contracting State which permit the distribution, apportionment, or allocation of income, deductions, credits or allowances between persons, whether or not residents of a contracting State, owned or controlled directly or indirectly by the same interests, when necessary in order to prevent evasion of taxes or clearly to reflect the income of any such persons	The language of this draft provision provides that article 9 (1) shall not preclude a contracting State from making an adjustment to accrue profits where either the treaty produces an anomalous result, or despite the treaty there is the very real possibility that the enterprise is evading taxes
9 (4)[a]	Insofar as it has been customary in a contracting State to determine the profits to be attributed to an enterprise of that State on the basis of an apportionment of the total profits of the enterprise and any associated enterprises among them, nothing in paragraph 1 shall preclude that contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted however, shall be such that the result shall be in accordance with the principles contained in this article	Provides that in making a 9 (1) (a) adjustment, the contracting State may use its customary or conventional method to determine the magnitude of the adjustment

[a] Draft article; not yet a part of the Model Convention.

11. Draft article 9 (4) provides that in making the adjustment for the attribution of misreported profits, the contracting State may use its customary allocation or apportionment method. It makes no specific reference to the article 9 (1) adjustment, but that should be specified. The provision, as it now reads, seems to allow for the possibility that article 9 (1) and 9 (2) adjustments could each be made under different methods, thereby providing the opportunity for double taxation.

12. A substantial number of departures from the Model Convention were observed in the comparison of the developing country treaties reviewed. Only about 32 per cent of the treaties reviewed in the sample include all of the Model Convention provisions. Most of that 32 per cent use the same literal language as the model articles, but a few provide their own wording. It is not possible to determine whether these variations are significant without looking at underlying economic and trade, cultural and historical relationships between the contracting States (see section III below).

13. In contrast, 54 per cent of the treaties reviewed (26 out of 48) include only the provisions of article 9 (1) of the Model Convention, with one of the 26 treaties including only the provisions of article 9 (1) (a) in its definition of related enterprises. In so doing, although those treaties provide for adjustment in the contracting State to which profits are under-reported, they do not provide for protection against double taxation. Given the frequency of the occurrence of double taxation, it must be asked why such a basic protection - one of the two key focuses of the Model Convention - should be excluded. Section II below will discuss possible explanations for this and other observed variant behaviour.

14. Two other variations were observed that are worthy of note. First, four of the treaties reviewed were observed to have no "associated enterprise" articles. It is difficult to imagine what factors could be so extreme as to precipitate the complete absence of such articles. Second, several treaties include statute of limitation provisions in the articles; this is mainly the case for developed country treaties, but does occur in one of the developing country treaties.

15. Of the nine French treaties reviewed in table 3, six are with developing countries and three are with developed countries. The six treaties with developed countries are uniformly consistent in that they include article 9 (1) (a) and (b), precisely as contained in the Model Convention. However, none of them incorporate the double taxation protection of article 9 (2).

16. Of the three French treaties with developed countries, all are consistent with the content and language of the Model Convention articles 9 (1) and 9 (2). Some include variations of the proposed provisions as well, and one includes a statute of limitations provision.

17. Of the nine Argentine treaties reviewed in table 4, seven are with developed countries and two with developing countries. Of the seven treaties with developed countries, five contain all the articles of the Model Convention and the tax evasion provisions of its proposed article 9 (3); of those five, three include statute of limitation provisions. The apparent anomaly is the

treaty with France (not considered in the review under table 3). Only article 9 (1) (a) is included in this treaty: the third party definition of related enterprises, the double tax protection of article 9 (2) and the tax evasion provisions are omitted.

18. Of the two Argentine treaties with developing countries, at least one includes all the provisions of article 9 (1) but omits article 9 (2). The treaty with Bolivia contains no specific "associated enterprise" article.

19. Thus, variation between Model Convention articles and sample articles does occur, but the final assessment of the significance of that variation for the treaty process and the contracting States using the Model Convention will depend on the next phase of the present inquiry, i.e., the consideration of factors that contribute to the explanation of that variation.

II. SAMPLE ANALYSIS

20. In tables 2, 3 and 4, the results of the review of the individual treaties are presented. Table 2 compares "associated enterprises" Model Convention provisions with those of 46 tax treaties between developing countries.

21. Tables 3 and 4 compare "associated enterprises" Model Convention provisions with those of tax treaties between France and other countries and Argentina and other countries, respectively.

22. A summary discussion of the results of the comparison was presented in Section I above. The following section discusses the specific details of the analysis.

Table 2. Comparison between "associated enterprises" provisions of the Model Convention and developing country tax treaties

				Treaty articles				
IBFD	Order	Treaty parties		9(1)(a)	9(1)(b)	9(2)	Other	Comments
1996	1	Thailand	Viet Nam	Y	Y	N	N	
1996	2	Sri Lanka	Yugoslavia	Y	Y	N	N	
1996	3	Thailand	Philippines	Y	Y	Y	Y	§1: adjustment subject to statute of limitations: ≤5 years after year of accrual, for CS.
1996	4	Singapore	Philippines	Y	Y	N	N	
1996	5	Morocco	Tunisia	Y	Y	N	N	
1996	6	Morocco	Romania	Y	Y	N	N	
1996	7	South Africa	Israel	Y	Y	N	N	
1996	8	Singapore	Israel	Y	Y	N	N	

IBFD	Order	Treaty parties		Treaty articles 9(1)(a)	9(1)(b)	9(2)	Other	Comments
1996	9	Estonia	Lithuania	Y	Y	Y	N	
1996	10	United Arab Republic	Iraq	Y	Y	Y	N	
1996	11	Romania	Ecuador	Y	Y	M	N	§2: where profits of DE taxed by FCS includes profits which would accrue to a DCS but for an RP status between DE and FE, FCS shall make an appropriate adjustment
1996	12	Cyprus	Syrian Arab Republic	Y	Y	Y	N	
1996	13	Cyprus	Czechoslovakia	Y	Y	N	N	
1996	14	The former Yugoslav Republic of Macedonia	Croatia	Y	Y	Y	N	
1996	15	United Arab Emirates	China	Y	Y	Y	N	
1996	16	Thailand	China	Y	N	N	N	
1996	17	Singapore	China	Y	Y	N	N	
1996	18	Romania	China	Y	Y	N	Y	
1996	19	Poland	China	Y	Y	N	N	
1996	20	Papua New Guinea	China	Y	Y	Y	N	§3: approximates the language of the suggested §3, which says that nothing in §§1 or 2 precludes DCS law from dictating determination of profits attributable to DE
1996	21	Kuwait	China	Y	Y	Y	N	
1996	22	Cyprus	China	Y	Y	Y	N	
1996	23	Republic of Korea	Bulgaria	Y	Y	N	N	
1996	24	Indonesia	Bulgaria	Y	Y	N	N	
1996	25	Hungary	Bulgaria	Y	Y	Y	N	
1996	26	China	Bulgaria	N	N	N	N	Treaty has no "associated enterprise" article, nor does treaty mention transfer pricing as such
1996	27	Republic of Korea	Brazil	Y	Y	N	N	

IBFD	Order	Treaty parties		Treaty articles 9(1)(a)	9(1)(b)	9(2)	Other	Comments
1996	28	India	Brazil	Y	Y	N	N	
1996	29	Czech Republic	Brazil	Y	Y	N	N	
1996	30	China	Brazil	Y	Y	N	N	
1996	31	Botswana	Mauritius	Y	Y	Y	N	
1996	32	Latvia	Belarus	Y	Y	Y	N	
1996	33	Pakistan	Bangladesh	Y	Y	N	N	
1996	34	Republic of Korea	Bangladesh	Y	Y	N	N	
1996	35	India	Bangladesh	Y	Y	N	N	
1996	36	Albania	Hungary	Y	Y	Y	N	
1996	37	Albania	Malaysia	Y	Y	N	N	
1996	38	Albania	Poland	Y	Y	Y	N	
1996	39	Albania	Romania	Y	Y	Y	N	
1996	40	Algeria	Tunisia	Y	Y	Y	N	
1996	41	Andean Group	Bolivia	N	N	N	N	No "associated enterprise" or transfer pricing provisions
1996	42	Andean Group	Colombia	N	N	N	N	No "associated enterprise" or transfer pricing provisions
1996	43	Andean Group	Ecuador-Peru	N	N	N	N	No "associated enterprise" or transfer pricing provisions
1996	44	Andean Group	Venezuela	N	N	N	N	No "associated enterprise" or transfer pricing provisions
1996	45	Arab Economic Union Council	Egypt, Iraq, Jordan, Kuwait, Sudan, Syrian Arab Republic, Yemen	M	M	N	N	Art. 8: CS may disregard commercial and financial relations between enterprises if such conditions would decrease profits in that State; art. 8(a) and (b): parent subsidiary/affiliate and brother/sister provisions
1996	46	Argentina	Bolivia	N	N	N	N	No "associated enterprise" or transfer pricing provisions

Key: Y = yes
N = no
M = different wording but consistent with Model Convention

Table 3. Comparison between "associated enterprises" provisions of the Model Convention and tax treaties between France[a] and other countries

IBFD	Order	Treaty parties		Treaty articles				Comments
				9(1)(a)	9(1)(b)	9(2)	Other	
1996	1	France	Algeria	Y	Y	N	N	
1996	2	France	Bangladesh	Y	Y	N	N	
1996	3	France	Benin	Y	Y	N	N	
1996	4	France	Brazil	Y	Y	N	N	
1996	5	France	Central African Republic	Y	Y	N	N	
1996	6	France	Cyprus	Y	Y	Y	Y	
1996	7	France	Australia	Y	Y	N	N	Some modification of language, but essence consistent with Model articles
1996	8	France	Austria	Y	Y	Y	Y	
1996	9	France	Canada	Y	Y	Y	Y	Statute of limitations provision included

Key: Y = yes
N = no

[a] For treaty with Argentina, see table 4 below.

Table 4. Comparison between "associated enterprises" provisions of the Model Convention and tax treaties between Argentina and other countries

IBFD	Order	Treaty parties		Treaty articles				Comments
				9(1)(a)	9(1)(b)	9(2)	Other	
1996	1	Argentina	Austria	Y	Y	N	N	
1996	2	Argentina	Canada	Y	Y	Y	Y	Statute of limitations and fraud provisions
1996	3	Argentina	Denmark	Y	Y	Y	Y	Statute of limitations and fraud provisions
1996	4	Argentina	Finland	Y	Y	Y	Y	Statute of limitations and fraud provisions
1996	5	Argentina	France	Y	Y	N	N	
1996	6	Argentina	United States	Y	Y	Y	Y	
1996	7	Argentina	Netherlands	Y	Y	N	N	Statute of limitations and fraud provisions
1996	8	Argentina	Bolivia	N	N	N	N	
1996	9	Argentina	Brazil	Y	Y	N	N	

Key: Y = yes
N = no

III. DISCUSSION OF RESULTS

23. The results of the review of the 46 developing country income tax treaties reveal substantial variation from the articles of the Model Convention. However, it is not clear what impact that variation may have on the treaty process. Two constraints operate here to limit the conclusions or inferences that can be drawn. First, the present study has been limited to the "associated enterprise" articles of the treaties. It is at best unclear whether similar levels of variation will appear, under similar conditions, in the articles of the treaties that were not reviewed; that question can only be answered with a comprehensive review of the sample treaties. Second, a review of the treaties does not by itself reveal the factors that were considered by the contracting States during the negotiations when the treaty was developed. The present inquiry is currently being expanded to look at those considerations, on the hypothesis that such relationships between the contracting States can be identified and specified. It is not likely that a prediction model of any great degree of accuracy could be constructed, but such analysis would be of substantial value for the study of tax policy, economics and multinational business.

24. Rather, what is presented below are two items for the consideration of the meeting. First, a number of relationships between contracting States are proposed in connection with the above-mentioned hypothesis. Second, section IV considers, to the extent that evidence permits, the implications that the variations observed in the sample treaties reviewed may have for the treaty process and the "associated enterprises" provisions of the Model Convention.

25. There are several factors that could influence the treaty development process. Some help to explain the developed countries' tendency towards a well defined set of rules that reduce ambiguity but also flexibility. Others help to explain the developing countries' tendency towards flexibility and a set of general rules that may, in the process, allow individuality and customization of business arrangements but also tend to obfuscate clarity. Most of the examples below have been derived from anecdotal evidence, from sources with varying degrees of experience in treaty development and negotiations.

26. Developed countries generally represent complex and sophisticated societies and commercial environments, with equally complex and sophisticated regulatory systems. They are "rules-oriented" countries. This is a natural consequence of the evolution of society and commerce, and of all the complexities that integrating a myriad of independent parts into a working unit generally brings with it. In these rules-oriented environments, the emphasis is placed on a well defined set of rules to provide for governance and direction. By definition, there is less room for spontaneous flexibility: any flexibility in the system must be designed into the rules. One would expect to find developed countries devoting substantial resources to drafting their rules and then to monitoring compliance. This is what we see when we look at the resources that developed countries or countries with complex commercial dealings, as well as agencies that monitor compliance, expend on writing and enforcing those rules, such as taxation laws and regulations.

27. Another factor affecting developed countries' treaty considerations is the growing competition for tax dollars in the global business market. Among the developed countries, there is a pattern of movement towards tax conformity.[3] Conformity brings with it, among other things, a parity in tax rates.[4] That parity has the effect of placing a soft upper bound on the tax burden of a multinational enterprise. There are global conditions that bring this about. Developed countries are in competition for trade markets and capital. Although they want to protect against depleting their treasuries, they do not want tax costs to create a comparative disadvantage for business in their jurisdiction. As a result of such pressures, the business tax rate becomes, in the economically competitive sense, inflexible. Since countries cannot protect their treasuries by simply raising tax rates, the tax issue that they are very much concerned about is the allocation of those limited international tax dollars.[5] As the allocation issue develops, each country responds with more sophisticated rules and regulations, and intensified efforts in the area of enforcement.

28. The character of the product also impacts treaty and trade considerations. Those countries that trade in manufactured and technology-based products or intellectual properties tend to adhere more closely to the Model Convention articles and incorporate the proposed additions. These are sophisticated products and the trade arrangements are complex. This complexity, as well as the number of permutations possible in the population of multinational commercial arrangements, make it more difficult and more costly to apply an "arm's length" or "independent" pricing standard since that requires that each transaction be considered individually. In the interest of clarity, consistency and compliance, these countries prefer a well defined environment. This preference is also consistent with the rules-oriented nature of the country or business. Although the developed countries tend to fall into that category, it is a product-based factor and can play a role in the treaty process for developing countries as well.

29. Such factors are equally important to the treaty considerations of developing countries, but their concerns are the antithesis of those discussed above. In contrast, the developing countries tend to emphasize flexibility in their regulations[6] and in their treaty considerations. Their incentive structure is different. They are expanding into new markets, importing capital investment, and building their product and technology base. Whereas rules and structure are consistent for a developed economy, those same elements constrain the capabilities of the developing economy to tailor commercial arrangements to meet specialized business needs as a means of optimizing their development and growth goals. That is the objective of tax holidays or tax havens: they emphasize capital formation and business growth over tax revenues in an effort to encourage trade, either in a general area or in specific products or technologies.

30. Regulation of transfer pricing can also reflect a country's economic incentives in the same ways as tax holidays do. The developing countries tend to employ a general "arm's length" profits test and deal with cases on an individual basis, rather than design specific but sometimes puzzling definitions of acceptable transfer pricing[7] methods and strictly administering their enforcement procedures. Except for the egregious case, during the time

developing countries are building their technologies, product bases and markets, they are more interested in business and capital growth than in the flight of tax dollars. The purpose of the general standard is to permit the country to deal with such problems as fraud but allow them the flexibility to accommodate a wide range of customized arrangements. This leaves the flexibility in the hands of the individual country that needs it.

31. There are transaction cost considerations associated with the various treaty strategies. Many developing countries look to developed countries for education and training in specialized areas. The developing country can support a visiting scholar, or send its own nationals to a foreign country. Many developing countries express their preference to send their individuals to the developed country rather than encourage visiting scholars, because this allows their students to have access to more facilities and to develop the country's resident knowledge base rather than subsidize exposure to a single source for a limited time. Such a strategy provides a much more attractive cost-benefit picture for the developing country. In such cases, the treaty provisions of the developing country would be expected to emphasize those articles that focus on the tax treatment of their teachers and students in foreign countries.

32. Historical trade and cultural factors may also impact treaty considerations of contracting States. For example, colonial or cultural ties may precipitate special investment arrangements between States, or may result in more liberal economic subsidies on non-income tax levels. The inducements between these countries in structuring income tax treaties are significantly different than those where the relationships have been built on a primarily commercial basis. For example, concerns about tax revenue flight or tax allocation are substantially mitigated by these overriding considerations; under those conditions, one would expect that treaty provisions would reflect less rigour in construction and would have a less constraining character.

IV. IMPLICATIONS

33. In conclusion, the results of the comparison indicate that treaties between developing countries - and in some cases between developing and developed countries - do exhibit a departure from the standard provisions of the Model Convention. But how is that departure to be interpreted?

34. The discussion in section III above shows that there are many factors that, ex ante, could logically be expected to affect treaty considerations. Section III does not contain an all-inclusive list, but much of what is posited in that discussion is consistent with what we see, for example, in treaty terms and the regulatory schemes of developed and developing countries with regard to transfer pricing.

35. The results must be viewed in the context of the issue that has been addressed, i.e., a review of treaty articles concerning "associated enterprises" or transfer pricing. It is not clear that the results of the present review can help to predict what could be expected of a more comprehensive review - such as that undertaken by Lawrence Lokken in 1995 (see ST/SG/AC.8/1995/L.9) - dealing solely with developing countries.

36. The results do show the presence of variation from the Model Convention articles in the reviewed treaties between developing countries. It is reasonable to posit that such variation is not by accident, that such variations have a purpose; in any case, whether intentional or not, the effect of such variation is that the contracting States have placed themselves in a position that seems to allow more flexibility in dealing with individual business transactions.

37. Although demonstrating that such variation exists is of some information value, the next step is to try to explain what factors were at work during the construction of the articles. Section III above proposed several possible considerations, but no single factor will explain all the individual departures in each case. Accordingly, there is a need to test whether any of the hypothesized factors do actually affect the treaty process.

38. The value of such information lies in its ability to assist contracting States in dealing with the process. It is important to try and determine what is included - i.e., why certain departures are incorporated - before any contracting State can determine what should be included.

39. In short, the results can be said to demonstrate that the "associated enterprises" provisions of tax treaties between developing countries do vary from the standard Model Convention articles. Although that variation may exhibit trends, it is not clear what the implication of those trends or patterns are because it is not clear that there is any distinct pattern of factors causing the variation. It would be detrimental to eliminate such variation until its causes are known and can be specifically addressed in treaty provisions.

40. The results also provide material that would support the efficacy of information and education programmes on double taxation treaties, the treaty process and treaty negotiations. As understanding grows of the instances of variation, the amount of information available for such programme services will grow as well.

Notes

[1] Developing countries are defined, for the purposes of the present paper, as any country that is not a member of the Organisation for Economic Cooperation and Development. This appears to be consistent with earlier papers in this area.

[2] United Nations publication, Sales No. E.80.XVI.3.

[3] See Wunder, H. F., and S. R. Crow, "International tax reform since 1986: an update," Tax Notes International, 7 April 1997.

[4] See ibid., footnote 3.

[5] See Crow, S. R., and E. H. Sauls, "Tax and management implications for transfer pricing for international business," in Proceedings: Academy of International Business, West and Southeast Asia Regional Conference (Hong Kong, June 1993).

[6] See Crow, Stephen R., "The new mandate for international transfer pricing: a new paradigm for multinationals," in Proceedings: 1996 Western Decision Sciences Institute Conference, April 1996.

[7] See ibid., footnote 6.
