

B. HISTORICAL SETTING OF THE UNITED NATIONS MODEL CONVENTION

The United Nations Model Double Taxation Convention between Developed and Developing Countries forms part of the continuing international efforts aimed at eliminating double taxation. These efforts begun by the League of Nations and pursued in the Organisation for European Economic Cooperation (now known as the Organisation for Economic Cooperation and Development (OECD)) and in regional forums, as well as in the United Nations, have in general found concrete expression in a series of model or draft model bilateral tax conventions.

In 1921, the League of Nations, acting through its Financial Committee in response to an appeal by the 1920 Brussels International Financial Conference for action aimed at eliminating double taxation, entrusted a team of four economists (from Italy, the Netherlands, the United Kingdom and the United States of America) with the task of preparing a study on the economic aspects of international double taxation.

In 1922, the Financial Committee of the League invited a group of seven high-level tax officials (from Belgium, Czechoslovakia, France, Italy, the Netherlands, Switzerland and the United Kingdom) to study the administrative and practical aspects of international double taxation and international tax evasion. In 1925, the group was enlarged to include officials from Argentina, Germany, Japan, Poland and Venezuela. In 1927, an official from the United States of America joined the group. In the course of sessions held from 1923 to 1927, the group drafted Bilateral Conventions for the Prevention of Double Taxation in the Special Matter of Direct Taxes dealing with income and property taxes, a Bilateral Convention for the Prevention of Double Taxation in the Special Matter of Succession Duties, a Bilateral Convention on Administrative Assistance in Matters of Taxation and a Bilateral Convention on [Judicial] Assistance in the Collection of Taxes. The conventions, with their commentaries, were sent to the various Governments, Members and non-members of the League, which were invited to send representatives to discuss them at a General Meeting of Government Experts. The latter meeting, held at Geneva in October 1928, included representatives of 27 countries.

In 1929, pursuant to a recommendation of the General Meeting of Government Experts, the Council of the League of Nations appointed a permanent Fiscal Committee. The latter devoted considerable attention to the question of formulating, for tax purposes, rules for allocation of the business income of undertakings operating in several countries. Within the framework of those activities, a Draft Convention for the Allocation of Business Income between States for the Purposes of Taxation was formulated, first at meetings of a subcommittee held in New York and Washington under the auspices of the American Section of the International Chamber of Commerce, and then at the full meeting of the Fiscal Committee in June 1933. The Draft Convention was revised by the Fiscal Committee in June 1935.¹

¹ For further details, see Mitchell B. Carroll, *Global Perspectives of an International Tax Lawyer* (Hicksville, New York, Exposition Press, 1978). Mr. Carroll

In 1940, the Fiscal Committee held a subcommittee meeting in the Netherlands to review the progress made with regard to tax treaties since the 1928 General Meeting of Government Experts. Soon afterwards, it began consolidating the 1928 Model Conventions and the 1935 Draft Convention. The results of its work were reviewed at a Regional Tax Conference convened in June 1940 at Mexico City, reconvened in July 1943, likewise at Mexico City, and attended by representatives from Argentina, Bolivia, Canada, Chile, Colombia, Ecuador, Mexico, Peru, the United States of America, Uruguay and Venezuela. The Second Regional Conference adopted a Model Bilateral Convention for the Prevention of the Double Taxation of Income and a Protocol thereto, and a Model Bilateral Convention for the Establishment of Reciprocal Administrative Assistance for the Assessment and Collection of Direct Taxes and a Protocol thereto.

In March 1946, the Fiscal Committee of the League of Nations convened in London for its tenth session, at which it reviewed and redrafted the Mexico model bilateral tax conventions. The Committee stated that the general structure of the model conventions drafted at the tenth session was similar to that of the Mexico models; a number of changes had been made in the wording, and some articles had been suppressed because they contained provisions already in other clauses. The Committee observed that virtually the only clauses where there was an effective divergence between the views of the 1943 Mexico meeting and those of the London meeting were those “relating to the taxation of interest, dividends, royalties, annuities and pensions.” The Committee added that it was aware of the fact that the provisions contained in the 1943 model conventions might appear more attractive to some States — in Latin America for instance — than those which it had agreed during its current sessions and that it thought “that the work done both in Mexico and in London could be usefully reviewed and developed by a balanced group of tax administrators and experts from both capital-importing and capital-exporting countries and from economically-advanced and less-advanced countries, when the League work on international problems is taken over by the United Nations.”²

It was against that background that the Economic and Social Council of the United Nations, in its resolution 2 (III) of 1 October 1946, set up a Fiscal Commission which was requested to “Study and advise the Council in the field of public finance, particularly in its legal, administrative and technical aspects.” After the Fiscal Commission and its Committee on International Tax Relations stopped functioning in 1954 the focus of action in the field of international taxation shifted to OEEC.

The Council of OEEC adopted its first recommendation concerning double taxation on 25 February 1955; that recommendation subsequently resulted in the establishment of the

was a former President of the Fiscal Committee of the League of Nations and the International Fiscal Association.

² League of Nations, *Fiscal Committee: Report on the Work of the Tenth Session of the Committee, held in London from March 20th to 26th, 1946* (C.37.M37.1946.II.A), page 8.

OEEC Fiscal Committee in March 1956. In July 1958, the Fiscal Committee was instructed to prepare a draft convention for the avoidance of double taxation with respect to taxes on income and capital as well as concrete proposals for the implementation of such a convention. In the words of the Fiscal Committee: “Since the work of the League of Nations, the value of a Model Convention has been universally recognized not only by the national authorities but also by the taxpayers themselves.”³

From 1958 to 1961, the Fiscal Committee prepared four reports, published under the title “The elimination of double taxation,” in which the Committee proposed a total of 25 articles. After OEEC became the Organisation for Economic Cooperation and Development (OECD) in September 1961, the mandate of the Fiscal Committee was confirmed; the Committee subsequently agreed on a number of new articles and all the articles were embodied in a report entitled “Draft Double Taxation Convention on Income and on Capital,” published in 1963.

In July 1963, OECD, recognizing that the effort to eliminate double taxation between member countries needed to go beyond the field of periodic taxes on income and capital, instructed the Fiscal Committee to work out a draft convention which would provide a means of settling on a uniform basis the most common problems of double taxation of estates and inheritances. The “Draft Convention for the Avoidance of Double Taxation with Respect to Taxes on Estates and Inheritances” was published in 1966.

In 1967 the Fiscal Committee — renamed in 1971 “Committee on Fiscal Affairs” — began revising the 1963 “Draft Double Taxation Convention.” That revision was considered necessary in order to take account of “experience gained by Member countries in negotiating new conventions or in their practical working” and also of “the changes in systems of taxation and the increase in international fiscal relations on the one hand and, on the other, the development of new sectors of business activity and the increasingly complex forms of organization adopted by enterprises for their international activities.” The revision of the 1963 “Draft Convention” ultimately led to the publication of the 1977 “Model Double Taxation Convention on Income and on Capital.” It has recently undergone revisions in 1992, 1994, 1995 and 1997.

As it had done for the 1963 “Draft Convention,” the Council of OECD, in a recommendation based on a suggestion by the Committee on Fiscal Affairs and adopted on 23 October 1997, recommended to the Governments of member countries “... to pursue their efforts to conclude bilateral tax conventions on income and on capital with those Member countries, and where appropriate with non-member countries, with which they have not yet entered into such conventions, and to revise those of the existing conventions that may no longer reflect present-day needs, and when concluding new bilateral conventions or revising existing bilateral conventions to conform to the Model

³ Organization for Economic Cooperation and Development: *Draft Double Taxation Convention on Income and Capital: Report of the OECD Fiscal Committee* (Paris, 1963), page 25, para. 49.

the Committee on Fiscal Affairs “to proceed to periodic reviews of situations where double taxation may occur, in the light of experience gained by member countries and to make appropriate proposals for its removal.”

In the mid 1960s, the United Nations began to take a renewed interest in the problem of double taxation, as a result of the continued increase in the number of developing Member States and as part of its action aimed at promoting the flow of foreign investment to developing countries. That renewed interest led to the activities described in section 1 above, which have culminated in the preparation of the United Nations Model Convention.

Action relating to double taxation has also been taken at the regional and subregional levels. At the regional level, a Group of Experts of the Latin American Free Trade Association (LAFTA) adopted in 1976 criteria for the avoidance of double taxation between LAFTA and member countries and countries outside the region. At the subregional level, the Commission of the Cartagena Agreement adopted in November 1971 the “Model Convention for the Avoidance of Double Taxation between Member Countries and Other Countries outside the Andean Subregion” and also the “Convention for the Avoidance of Double Taxation within the Andean Group.” Furthermore, in November 1972, a Convention on Administrative Assistance in Tax Matters was concluded by Denmark, Finland, Iceland, Norway, and Sweden; the Convention was amended in 1973 and again in 1976. The Nordic Convention on Income and Capital entered into by Denmark, Finland, Iceland, Norway and Sweden, which was concluded in 1983, was replaced in 1987, 1989 and 1996. The Convention on Mutual Administrative Assistance in Tax Matters was drawn up within the Council of Europe on the basis of a first draft prepared by the Committee on Fiscal Affairs. This Convention entered into force on 1 April 1995.