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Researching International Tax Law

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I. INTRODUCTION

International Tax Law largely consists of bilateral tax treaties and model tax conventions that guide the process and format of such treaties. While tax treaties can cover a variety of issues, most focus on the avoidance of double taxation and tax evasion. Double taxation occurs when a citizen of a foreign nation has to pay taxes to both the home country and current foreign place of residence. This can cause obvious problems with respect to commerce and tourism, as the expense could discourage foreign investment for both nations. Countering tax evasion focuses on offshore tax schemes, such as U.S. citizens hiding assets offshore to avoid paying taxes at a higher rate or paying them altogether. The United States has also experienced difficulties in the past with expatriates who would take their assets, move offshore to a country with less stringent income tax laws, and renounce their citizenship. Tax treaties will often provide rules for cooperation between nations with respect to exchanging information about individuals who attempt to evade taxes, and guidelines for preventing tax evasion.

II. SOURCES OF INTERNATIONAL LAW

A. Vienna Convention on the Law of Treaties

- Governs the standards for all treaties, including tax treaties
- United States is not a party, but views several of the provisions as customary law
- Looks to the ordinary meaning of the terms of the treaty considering the treaty's context, object, and purpose
- Assumes good faith of both contracting nations
- Subsequent agreements and actions of both parties must be considered
- Supplementary materials can provide meaning to ambiguous terms
- In treaties where there are two or more languages, each language is equally binding
- Sources:
 - *United Nation Nations Treaty Series*. 1155 U.N.T.S. 331, T.S. No. 58 (1980), 8 I.L.M. 679 (1969). (entered into force on January 27, 1980).
 - Linderfalk, Ulf. *On the Interpretation of Treaties: The Modern International Law As Expressed in the 1969 Vienna Convention on the Law of Treaties*. Law and Philosophy Library, v. 83. Dordrecht, The Netherlands: Springer, 2007.

B. Model Tax Conventions

- **Starting point for negotiating tax treaties**
- **Issues addressed by Model Conventions**
 - Avoiding double taxation
 - Cooperation between nations in dealing with tax fraud
 - Individuals or entities covered under the tax treaties
 - Lowering withholding rates on investment income
 - Location (situs) of real property
 - Exchange of information between nations
- **Types of Model Conventions**
 - Organization of Economic Cooperation and Development (OECD)
(<http://www.oecd.org/dataoecd/14/32/41147804.pdf>)
 - Published in 1963 and revised various times (most recently 2008)
 - Majority of tax treaties are based on this model
 - Contains commentaries explaining the text of the articles
 - Includes observations and reservations by member countries
 - Contains anti-discrimination rules against foreign taxpayers
 - Followed mainly by economically developed nations (mostly European)
 - The United States is a party to this convention, but follows its own model for tax treaties
 - Generally provides nation of residence with sole jurisdiction to tax
 - United States Model
(<http://www.ustreas.gov/press/releases/reports/hp16801.pdf>)
 - Originally published in 1981, but revised in 1996 and 2006
 - The United States uses this model as a basis for negotiating all treaties
 - Designed to make sure that tax treaties fall in line with U.S. laws
 - Similar to the OECD model with a few exceptions
 - Provides the nation where the taxpayer resides with sole tax jurisdiction
 - Anti-discrimination rules are less stringent than with OECD
 - Includes much of the OECD commentaries
 - United Nations Model
(<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan002084.pdf>)
 - Compiled by an U.N. ad hoc committee in 1980 and revised in 2001
 - Designed to focus on economically disadvantaged nations and handle issues that pertain to them
 - Includes standards for negotiations for tax treaties between developed nations and developing nations
 - United Nations members are not obligated to follow this treaty

- **Sources**

Most of the tax databases will provide access to the current model conventions. However, there are a variety of print sources available for those researching the Vienna Convention on Laws and Treaties as well as the OECD and US Model Tax Conventions. The United Nations Model Tax Treaty is available through the United Nations Treaty Series database at <http://treaties.un.org>.

- Baker, Philip. *Double Taxation Conventions: a Manual on the OECD Model Tax Convention on Income and on Capital*. London: Sweet & Maxwell, 2001-.
- *Federal Tax Coordinator (FTC)*, Volume 20A. U.S. Model Income Tax Treaty, 2006.
- *Federal Tax Coordinator (FTC)*, Volume 20A. OECD Model Tax Convention, 2005.
- OECD Committee on Fiscal Affairs. *Model Tax Convention on Income and on Capital*. Paris: Organisation for Economic Co-operation and Development, 2000-.
- Organisation for Economic Co-operation & Development Committee on Fiscal Affairs. *OECD Model Tax Convention on Income and on Capital: Condensed Version: and Key Features of Tax Systems & Treaties of OECD Member Countries*. Edited by Tiago Cassiano Neves. Amsterdam: International Bureau of Fiscal Documentation; Paris: Organisation for Economic Co-operation and Development, 2007
- Tittle, Martin B & Avi-Yonah, Reuven S. *The Integrated 2006 United States Model Income Tax Treaty*. Lake Mary, FL: Vandeplas Publishers, 2008.
- Ward, David A. *The Interpretation of Income Tax Treaties with Particular Reference to the Commentaries on the OECD Model*. Kingston, ON: International Fiscal Association (Canadian Branch); Amsterdam: International Bureau of Fiscal Documentation, 2005.

C. Tax Treaties

- **Most authoritative of all sources of international tax law**
- **Usually Bilateral**
 - There are a few multilateral tax treaties, but almost all tax treaties are bilateral
- **Purpose**
 - Prevent Tax Fraud
 - Moving assets offshore to avoid paying taxes
 - Expatriation to jurisdictions with more favorable tax laws

- Avoid Double Taxation
 - Both nations have a mutual interest in encouraging foreign investment and tourism
 - Double taxation could stifle tourism and commerce for both nations
 - Prevented either through a foreign tax credit or foreign tax exemption
- **Authority**
 - Automatic - Terms of the treaty are immediately incorporated into the nation's domestic laws (sometimes only requiring ratification by a legislative body). In the United States, a treaty that is ratified by the Senate becomes the "Supreme Law of the Land".
 - Non-automatic - The provisions from the treaty must be passed through legislative measures in order to be incorporated into a nation's domestic laws. This is the case with Canada.
 - Domestic tax laws may be preferred - Sometimes there is a discrepancy between the terms of the tax treaty and a signing nation's domestic laws.
- **Locating Tax Treaties**
 - United States Tax Treaties
 - Commercial Services
 - *Federal Tax Coordinator*, Volumes 20-20A. New York: Research Institute of America (RIA), 1977-.
 - Rhoades and Langer. *U.S. International Taxation and Tax Treaties*. New York: Matthew Bender, 1996-.
 - *Tax Treaties: Full Texts of U.S. Treaties with Foreign Countries Covering Income and Estate Taxes*. New York: Commerce Clearing House (CCH), 1965-.
 - Official Sources
 - *Cumulative Bulletin*. Washington, DC: Internal Revenue Service.
 - *Internal Revenue Bulletin*. Washington, DC: Internal Revenue Service.
 - *Treaties and Other International Acts Series (TIAS)*. Washington, DC: U.S. Government Printing Office, 1946-. Available on the HeinOnline database at <http://heinonline.org/>.
 - *United States Treaties and other International Agreements*. Washington, DC: U.S. Government Printing Office, 1950-. Available on the HeinOnline database at <http://heinonline.org/>.

- *U.S. Congressional Set: Senate Executive Documents/Senate Treaty Documents.* Washington, DC: U.S. Government Printing Office, 1979-.

Treaty Guides and Indexes

Most of the sources below are available through the HeinOnline database by subscription at <http://heinonline.org/>.

- *A Guide to U.S. Treaties in Force.* Buffalo, NY: W.S. Hein Co., 1982-.
 - *Guide to the United States Treaties in Force. Current Treaty Action Supplement.* Buffalo, NY: W.S. Hein Co., 1994-.
 - Kavass, Igor. *United States Treaty Index: 1776-1990 Consolidation.* Buffalo, NY: W.S. Hein Co., 1991-.
 - Kavass, Igor I. & Sprudz, Adolf. *Current Treaty Index.* Buffalo, NY: W.S. Hein Co., 1982-1999.
 - *Treaties in Force; a List of Treaties and Other International Agreements of the United States.* Washington, DC: Government Printing Office, 1950-.
- Treaties where the United States is not a party
 - Diamond, W.H. & Diamond, D.B. *International Tax Treaties of all Nations.* Dobbs Ferry, NY: Oceana Publications, 1975-; Series B, 1977-1997.
 - *United Nations Treaty Series (U.N.T.S.).* New York: United Nations, 1947-.
 - *Worldwide Tax Treaty Index.* Arlington, VA: Tax Analysts, 1993-.

D. Customary Law

- **The Common Law of International Law**
 - Two parts:
 - State Practice - look at consistent acts of nations regarding tax matters
 - Nations commit certain acts because of a feeling of obligation
 - Not as authoritative as treaties
 - Treaties can provide evidence of customary law

- **Sources**

- Gaebler, Ralph & Smolka-Day, Maria, eds. *Sources of State Practice in International Law*. Ardsley, NY: Transnational Publishers, 2002-.
- Nash, Marian Lloyd, ed. *Cumulative Digest of United State Practice in International Law*. Washington, DC: U.S. State Department, 1993-1995 (covering 1981-1988).
- *Digest of United States Practice in International Law*. Washington, DC: U.S. State Department, 1973-1980.
- *Digest of United States Practice in International Law*. Washington, DC: International Law Institute, 2001 (covering 1989-current). The materials from 1989-1999 are incomplete and are currently in the process of being published. The U.S. State Department currently provides access to these materials from 2001 at <http://www.state.gov/s/l/c8183.htm>

E. General Principles of Law

- **Principles Embedded in the Laws of Nations**

- Principles that are generally applicable to all nations
- Fills in the gaps with respect to matters that have not been adequately addressed by treaties or customary laws
- Case Law
 - International Tribunals
 - Domestic courts dealing with international issues
- Writings from Scholars

- **Sources**

- Brownlie, Ian. *Principles of Public International Law*, 6th ed. Oxford: Oxford University Press, 2003.
- Cheng, Bin. *General Principles of Law, as applied by International Courts and Tribunals*. London: Stevens, 1953. Reprinted, Cambridge; New York: Cambridge University Press, 2006.
- International Court of Justice web site (www.icj-cij.org)
- International Law in Domestic Courts (<http://ildc.oxfordlawreports.com>)
- WorldLII International Courts and Tribunals (<http://www.worldlii.org/int/cases/>)

III. SECONDARY SOURCES

A. Practice Guides

- Isenbergh, Joseph. *International Taxation: U.S. Taxation of Foreign Persons and Foreign Income*, 3d ed. 3 vols. Greenvale, NY: Panel Publications, 2002-.
- *Tax Treaties: Full Texts of U.S. Treaties with Foreign Countries Covering Income and Estate Taxes*. New York: Commerce Clearing House, 1965-.

B. Treatises

- Amatucci, Andrea, ed. *International Tax Law*. Frederick, MD: Kluwer Law International, distributed in North America by Aspen Publishers, 2006.
- Bittker, Boris & Lokken, Lawrence. *Fundamentals of International Taxation: U.S. Taxation of Foreign Income and Foreign Taxpayers*. Boston: Warren, Gorham & Lamont, 2008.
- Doernberg, Richard L. *International Taxation in a Nutshell*. St. Paul: Thomson West, 2009.
- Holmes, Kevin. *International Tax Policy and Double Tax Treaties: an Introduction to Principles and Application*. Amsterdam: IBFD, 2007.
- Isenbergh, Joseph. *International Taxation*, 2d ed. New York: Foundation Press, 2005.
- Rohatgi, Roy. *Basic International Taxation*, 2d ed. 2 vols. Richmond, United Kingdom: Richmond Law & Tax Ltd., 2005.
- Russo, Raffeale, ed. *Fundamentals of International Tax Planning*. Amsterdam: IBFD, 2007.

C. Tax Management Portfolios Bureau of National Affairs (1971-present)

BNA publishes *Tax Management Portfolios*, which are a collection of mini-treatises that cover a variety of tax topics. Each portfolio provides an overview of the law including the code, regulations, cases, rulings, and administrative decisions handed down by the IRS. Written by experts in the field, these portfolios also contain analysis and sample forms. There are a variety of portfolios on foreign income that cover the following subtopics:

- Taxation of U.S. Persons' Foreign Income
- Taxation of Foreign Persons' U.S. Income
- Provisions Applicable to U.S. and Foreign Persons
- Transfer Pricing

- Business Operations Abroad (Countries)

The portfolios for business operations abroad include information on tax treaties.

D. Journals/Periodicals

International tax articles can be searched by using the LegalTrac Database (<http://www.gale.cengage.com/>) which requires a subscription and provides coverage from 1980 until present. There are also a number of print indexes including *Index to Legal Periodicals* and *Index to Foreign Legal Periodicals* available at most public and academic law libraries.

- *International Tax Journal*. Greenvale, NY: Panel Publishers, 1974-.
- *Berkeley Journal of International Law*. Berkeley: University of California Press, 1966- (previously *International Tax and Business Lawyer*, 1983-1996).
- *Journal of Taxation of Global Transactions*. Chicago: Commerce Clearing House (CCH), 2001-.
- *Tax Management International Journal*. Washington, DC: Bureau of National Affairs. Tax Management Inc., 2001-.

E. Legislative History

Most tax databases offers access to the Senate treaty documents for United States Tax Treaties. Practice Guides such as CCH Tax Reporter will also have current information on legislative history documents.

- Robert, Sidney, ed. *Legislative History of United States Tax Conventions: Roberts and Holland Collection*. Buffalo, NY: W.S. Hein, 1986-.

F. Legal Research Guides

- Foreign and International Tax Law Resources. Lillian Goldman Law Library, Yale Law School. Available at <http://www.law.yale.edu/library/foreign-international-tax-law-resources.asp>.
- International and Foreign Tax Law Research Guide. Georgetown Law Library, Georgetown University Law Center. Available at <http://www.ll.georgetown.edu/guides/internationaltaxlawresearch.cfm>.
- Researching International Tax. University of Minnesota Law School. Available at <http://local.law.umn.edu/library/pathfinders/IntTax.html>.

IV. ONLINE DATABASES

A. Free Internet

- **Internal Revenue Service** (<http://www.irs.gov/businesses/international/>)

The IRS provides the full text in PDF for treaties between the United States and other nations.

- **United States State Department** (<http://www.state.gov/s/l/treaty/index.htm>)

The U.S. State Department provides a listing of Treaties in Force between the U.S. and other nations on a variety of topics, including tax.

- **United States Department of Treasury** (<http://www.treas.gov/offices/tax-policy/treaties.shtml>)

The U.S. Treasury Department Tax Documents web site includes the full text of tax treaty documents, including congressional testimony as well as treaties between the United States and other nations.

- **United Nations Treaty Series** (<http://treaties.un.org>)

The United Nations Treaty Series makes it possible to locate bilateral treaties, including those where the United States is not a party, assuming that the treaty was deposited with the United Nations.

B. Subscription Databases

- **Westlaw**

Westlaw contains many of the sources from RIA and BNA depending on subscription. Clicking “add a tab” at the top right of the screen will allow the user to add the tax tab. There is an international section on the front page that includes access to all Westlaw, BNA, WG&L, and RIA materials on foreign and international tax. The following is a list of major sources useful for international tax research:

- Anderson: Analysis of United States Income Tax Treaties (WGL-TREATIES)
- Federal Taxation-U.S. Treaties and Conventions (FTX-TREATIES)
- U.S. Treaties and Other International Agreements (USTREATIES)
- RIA-International Tax Treaties (RIA-TAXT)
- RIA-International Tax Treaties and Explanations (RIA-TREATIES)
- RIA-International Tax Treaty Editorial Explanations (RIA-TAXTEX)
- WGL Combined International Tax Treatises (WGL-TAXTINTL)
- Journal of International Taxation (WGL-JITAX)
- International Legal Materials (ILM)
- International Legal Materials Cumulative Index (ILM-INDX)
- Streng: U.S. International Estate Planning (WGL-INTLEP)
- Tilton: U.S. International Tax Forms Manual: Compliance and Reporting (WGL-INTFORMS)

- **LexisNexis**

LexisNexis contains a tax section that compiles all tax sources available on LexisNexis in one place through the Tax Center. The Tax Center can be utilized by clicking the “Research Tasks” tab at the top of the page and then selecting the “international” tab. This tool will allow the user to search through multiple sources simultaneously, including primary law by country or regions, international tax planning, tax treaties and analysis, news, and expert commentaries. The following is a list of the major sources of international tax law available depending on subscription:

- Double Taxation Relief
- Foreign Tax and Trade Briefs
- Foreign Tax and Trade Briefs-International Withholding Tax Treaty Guide
- International Tax and Estate Planning
- Rhoades & Langer U.S. International Taxation & Tax Treaties
- Tax Analysts Worldwide Tax Treaties Model Convention Documents
- Tax Analysts Worldwide Tax Treaties
- Tax Analysts Worldwide Tax Treaties Case Law
- Tax Analysts Worldwide Tax Treaties Combined Files
- Tax Analysts Worldwide Tax Treaties Estate & Gift Tax Treaties
- Tax Analysts Worldwide Tax Treaties in Force
- Tax Havens of the World

- **Oceana Treaties and International Agreements Online**

Oceana is particularly useful for locating treaties where the United States is not a party. This database boasts access to over 17,000 treaties and international agreements, and includes an advanced search feature that allows the user to search treaties through a variety of fields. A quick treaty locator provides easy access to virtually every treaty available.

- **BNA Tax and Accounting Center and BNA International**

The BNA Tax and Accounting Center is a comprehensive database that includes portfolios for federal income, state, and international tax, as well as portfolios for accounting topics. The Foreign and International tax portfolios are very useful in researching international tax law, especially from the U.S. perspective. Depending on subscription, BNA makes tax treaties available on this database.

The BNA International database was designed to provide international news and information for international tax research, including tax treaties and foreign tax laws. The BNA databases have advanced and basic search features that allow for sophisticated searching, although the user may prefer to browse the table of contents, especially for locating treaties.

- **CCH Tax Research Network**

Commerce Clearing House (CCH) Tax Research Network database includes a wide range of materials for international tax research, including internet tax planning, international tax treaties and analysis, model conventions, and the tax treaty withholding rate decision tool.

The following international tax sources are available:

- *Klaus Vogel on Double Taxation Conventions*
- *The Impact of Community Law on Tax Treaties-Issues and Solutions*, by Pasquale Pistone
- *The Compatibility of Anti-Abuse Provisions in Tax Treaties with EC Law* edited by P.H. Essers, G.J. de Bont and E.C. Kemmeren
- *International Taxation, U.S. Taxation of Foreign Persons & Foreign Income*, by Joseph Isenberg
- OECD Model Treaties and Commentaries
- U.S. Model Treaties and Technical Explanations
- World Tax Treaties including income tax treaties

- **RIA Checkpoint**

This database provides a significant international tax library in addition to the Internal Revenue Code, regulations, tax cases, rulings, and other administrative decisions. There are two ways to use RIA Checkpoint. First, the search feature allows the user to select the sources and enter terms in the search box. Second, a table of contents feature makes it possible to browse the sources including U.S. Tax Treaties. Click the “Table of Contents” at the top right of the page, and then select “International Tax Library”.

The following international tax sources are available:

- *International Taxes Weekly Newsletter*
- *International Tax Alert*
- *Anderson: Analysis of United States Income Tax Treaties*
- *Anderson: Foreign Tax Credits*
- *Dolan, Jackman, Dabrowski & Tretiak: U.S. Taxation of International Mergers, Acquisitions and Joint Ventures*
- *Hammer, Lowell, & Levey: International Transfer Pricing: OECD Guidelines*
- *Kuntz & Peroni: U.S. International Taxation*
- *Levey: U.S. Taxation of Foreign-Controlled Businesses*
- *Lowell, Donohue, Martin & Wells: U.S. International Taxation: Agreements, Checklists & Commentary*
- *Lowell, Briger & Martin: U.S. International Transfer Pricing*
- *Michaels: International Taxation: Withholding*
- *Tilton: U.S. International Tax Forms Manual: Compliance and Reporting*
- U.S. Tax Treaties and Explanations
- OECD Guidelines

- **Tax Analysts Web Services**

Tax Analysts is widely known in the tax profession for its *Tax Notes Weekly* (print) and *Tax Notes Daily* (online) publications that announce the latest tax coverage, including changes to the statutes, regulations, rulings, etc. as well as news articles and analysis.

World Tax Daily includes updates on tax law and tax news from every nation in the world and can be searched by date, jurisdiction, and subject. The Tax Analysts Tax Treaty database allows for the user to

search for treaties in force, unperfected treaties, pending treaties, and terminated treaties and includes a quick tax treaty locator which allows the user to search for treaties between nations. The database includes access to the OECD, U.S., and U.N. model conventions and tax treaty related news from around the globe.

V. REFERENCES

Andrea Amatucci, ed. *International Tax Law*. Frederick, MD: Kluwer Law International, distributed in North America by Aspen Publishers, 2006.

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Raabe, William A., Whittenburg, Gerald E. & Sanders, Debra L. *Federal Tax Research*, 8th ed. Mason, OH: Thomson/South-Western, 2009.

Rohatgi, Roy. *Basic International Taxation*, 2d ed. 2 vols. Richmond, UK: Richmond Law & Tax Ltd., 2005.

Russo, Raffeale, ed. *Fundamentals of International Tax Planning*. Amsterdam: IBFD, 2007.