

Business & Careers

No single model for treaties in international trade



Vern Krishna
Tax Views

Since each country has its own tax system, which may conflict with other systems, we need a mechanism to ameliorate the frictions that can arise from their interaction—typically, in the form of double taxation. To be sure, all sophisticated tax systems provide credits in their domestic tax regimes for tax paid by residents to a foreign country. If, for example, a Canadian earns dividend income in the United States, he or she will pay tax on the income in the U.S. and in Canada, and receive a foreign tax credit against Canadian tax payable. However, the foreign

tax credit is usually limited to a maximum of the domestic tax rate. Hence, it is possible for some tax slippage or double taxation of the same income.

Canada has a small network of tax treaties with developed and developing countries that assist in alleviating double taxation. More recently, these treaties and their cousins (tax information exchange agreements) are also concerned with tax avoidance and evasion. There is no single model for all of our tax treaties. Countries negotiate with each other based upon their economic development and capital flows, with three major model treaties used to provide some consistency of international rules and interpretation: (1) OECD treaty; (2) UN model convention; and (3) U.S. model treaty.

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country earn from sources within the other country. Eliminating double taxation promotes closer economic co-operation between treaty countries and reduces barriers to trade caused by overlapping taxing jurisdictions. The models achieve this by providing that the country of residence will eliminate double taxation of income by allowing a foreign tax credit for foreign income or by exempting the income from tax.

Additionally, the models provide that the source country will reduce the scope of its jurisdiction to tax income at source by reducing its withholding tax on income that a non-resident earns in the country.

The second purpose is to reduce tax avoidance and evasion in international trade and commerce.

Developed countries use a model developed by the Organization for Economic Cooperation and Development (OECD) in

negotiating with each other.

The UN model, which developing countries use in negotiating treaties with developed countries, serves an additional purpose. In addition to eliminating double taxation and reducing inappropriate tax avoidance and evasion, it promotes politically acceptable investment in developing countries. As a UN commentary from a 1998 report states:

“The desirability of promoting greater inflows of foreign investment to developing countries on conditions which are politically acceptable as well as economically and socially beneficial has been frequently affirmed in resolutions of the General Assembly and the Economic and Social Council of the United Nations and the United Nations Conference on Trade and Development.

Broadly speaking, the general objectives of bilateral tax conven-

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Business & Careers

Going small and lean with your firm

ALLAN OZIEL

In the current economic climate, clients continue to seek high quality and specialized legal work, but many of them cannot afford the rates of big downtown law firms. In the past, clients on limited budgets found a lawyer through their personal network or by looking in the phonebook. The practices of many "phonebook lawyers" tended to be general, though, rather than specialized—they simply could not afford to turn down general work in order to specialize, the high costs of office space, computer servers and private telephone networks eating away at their profit margins.

Nowadays, with advances in technology and outsourcing options, today's lawyers have a wide variety of tools and options available to keep costs down, increase margins and, in turn, allow for specialized legal work at affordable prices.

Virtual office space

While face-to-face interaction can never be fully replaced, clients and their lawyers are becoming increasingly comfortable conducting business online. The availability of technologies such as cloud computing, telephone and web conferences, electronic signatures and virtual deal rooms have decreased the reliance on a physical and permanent office space. As a result, some sole practitioners and small firms have taken to working primarily from a home office, renting

office space or boardrooms on an as-needed basis.

Virtual office providers permit businesses to enter into a monthly membership that provides the business with services that may include:

- A prestigious business address;
- A listing in the building lobby directory;
- A receptionist to answer calls and greet guests;
- Incoming mail, delivery and fax service;
- Use of meeting rooms and facilities; and
- Support services on an as-needed basis.

Cloud computing

Working from home or a virtual office would not be as practical if you could not access your document server in both locations, or had to schlep physical files back and forth. To avoid this, consider utilizing a cloud server and implementing a "paperless office" (or at least an office with less paper).

Using a secure cloud server can dramatically decrease startup IT costs for a small law firm. Electronic documents can be stored on the cloud server and accessed securely from virtually any computer, in any location. Physical documents can also be scanned and saved as a PDF to the cloud server. A high-speed scanner with a duplex automatic document feeder is recommended for firms that try and go paperless.

Implementing a decent docu-

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Allan Oziel
Oziel Law

ment management system that integrates with the cloud server can ensure that your matters and documents are named, tagged and organized correctly, and that all documents can be located. Utilizing these tools will dramatically decrease a lawyer's reliance on the physical file or need to be "in the office." In addition, some litigators may choose to pair eDiscovery software with their document management system to streamline the process.

Practice management

There are several cloud-based practice management and accounting software options that are available for a monthly fee as "software as a service" (SaaS). While the total cost of a SaaS subscription can be higher than a desktop license over

time, these cloud options provide high-powered and regularly updated software, while reducing the initial startup burden. Unlike some of their desktop counterparts, SaaS practice management and accounting options may contain the following features:

- Accessible through any browser connected to the Internet (including a tablet or smartphone);
- Shared contact, calendar, task and tickler functions mirror desktop entries to your smartphone; and
- Ability to docket on your tablet or smartphone.

Telephone systems

In the past, law firms needed to purchase and house expensive and bulky private branch exchange (PBX) hardware in order to have multiple phone lines, extensions and other telephonic features. However, with improvements to Internet speed and advances in voice over IP telephones, law firms can now pay low monthly fees to access hosted or virtual PBX servers that are located off site. These affordable solutions permit even the smallest law firm to have the appearance of an established organization. Available features include automatic attendants, multiple extensions, fax to e-mail, voicemail to e-mail, and multi-party conference bridges.

Marketing on the Internet

To complement traditional meth-

ods of marketing, sole practitioners and small law firms are now beginning to embrace the marketing potential of the Internet. Social media tools, such as LinkedIn, Facebook and Twitter are great ways to expand your personal network and share content. Many lawyers have taken to blogging and tweeting to display their legal expertise. Of course, when doing so, appropriate disclaimers should be visible to ensure that the often informal blogging and tweeting is not taken as legal advice and does not initiate an engagement with the lawyer.

Law firms are also utilizing search engine optimization (SEO) and pay-per-click ad campaigns to target potential clients who are searching for specific legal work. While the creation and organization of both an "organic" and pay-per-click SEO campaign can be costly, high ranking results and advertisements can significantly increase potential leads if done correctly. As a result, many sole practitioners and small law firms can access sophisticated clients who know what they are looking for, and who may not have been able to find them without the Internet.

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Tax: Tension over agreements in some countries

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tions may today be seen to include the full protection of taxpayers against double taxation (whether direct or indirect) and the prevention of discouragement that taxation may provide for the free flow of international trade and investment and the transfer of technology. They also aim to prevent discrimination between taxpayers in the international field, and to provide a reasonable element of legal and fiscal certainty as a framework within which international operations can be carried on.

With this background, tax treaties should contribute to the furtherance of the development aims of the developing countries. In addition, the treaties have as an objective the improvement of co-operation between taxing authorities in carrying out their duties."

Thus, the UN model is more than a simple tax instrument. It serves as a vehicle for subsidies and foreign aid under the guise of

fiscal legislation.

There is some tension in treaties between developed and developing countries. Developed countries adopt the OECD approach — tax credits, exemptions and reduction in withholding taxes — as appropriate in the negotiation of bilateral tax treaties; developing countries do not.

Developing countries accept the first principle — reduction of taxes by the country of residence through a tax credit or exemption for foreign income. This approach causes the residence country to yield its jurisdiction to tax foreign source income. However, developing countries, such as India, are reluctant to reduce their yield on source taxation. Indeed, some developing countries go so far as to say that the source country should have the exclusive jurisdiction to tax income arising in the country. The UN model does not go that far.

The U.S. model (developed by the U.S. Treasury) is similar to the OECD model in most respects, but has some unique features that are of particular concern to the United States, particularly in connection with tax havens, treaty shopping and tax sparing. As a capital and intellectual property exporting country, the United States adopts the position in all its treaty negotiations that the country of source of income should defer to the country of residence in taxing royalties and rentals from intellectual property. Hence, there is some tension between developing countries and the U.S. in treaty negotiations.

Regardless of the tensions and friction between countries in negotiating treaties to serve different economic interests and political philosophies, the treaties do ameliorate double taxation and, in some cases, provide indirect tax subsidies to developing countries. Thus, treaties promote international trade in the global economy.

Share: Cost is just one benefit

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may find a ready-made solution in the wide array of shared office space available for lease in buildings across the country. From fully furnished "executive" offices with windows, through to single-day boardroom rentals, most major cities offer a wide range of options for renting space in shared facilities.

Like Segal, most professionals are drawn to the hassle-free and flexible attributes of shared space arrangements, says Grant Greenberg, public relations and communications manager for Regus, a company that offers rental space in 54 locations across Canada.

"People are typically attracted by the fact that they aren't tied into a long-term lease or a predetermined amount of space," he says. "And really all you need to bring in is your computer. It's pretty turn-key."

Greenberg says his company

has seen demand grow by 30 percent per year in recent years, as an uncertain economy has led professionals to favour more immediate solutions over long-term contracts. "People are learning to just get the amount of space they need."

Enthusiasm for shared space and flexible working arrangements will likely continue to grow as technology makes people more mobile and less dependent on fixed offices, says Dormer. "There's a lot more remote work being done by lawyers, so it's a lot less about where you are."

That's a message that Segal hopes is heard by young lawyers who are just starting to build their practices and feel pressured to bankroll expensive offices. "One should be cautious of spending too much money on the bells and whistles just to impress clients," she warns. "You're better off impressing them with your skills and expertise."