Transfer Pricing and Tax Havens: Mending the LDC Revenue Net

Charles E. McLure, Jr.[*]

1. Introduction

Transfer pricing and tax havens, individually and in combination, adversely affect the ability of many countries to raise tax revenues. The problem is especially severe in less developed countries (LDCs) and in countries in transition from socialism (CITs), which I will generally lump together and designate as LDCTs.[1] This paper describes some of the revenue implications of transfer pricing and tax havens and examines, somewhat speculatively, the possibility of mending the tears in the revenue nets of LDCTs.[2]

[*] Hoover Institution, Stanford University

[1] Kudrle and Eden (2003, p. 50) opine, "... the tax evasion damage to poor countries is almost certainly greater than to richer states."

[2] The title refers only to LDCs because making it more accurate would make it long and ungainly. Where meaning is clear from context, the term "transfer pricing" is sometimes used as a shorthand for "manipulation of transfer prices." Of course, transfer prices for transactions between related parties are essential, whether they are manipulated or not.

Revenue losses result primarily from avoidance of corporate income taxes and evasion of individual income taxes. LDCTs are more limited than developing countries in what they can do to mend their revenue nets, *inter alia* because of the complexity of the problem and the lack of administrative resources. They may thus be reliant on developed countries to assist them, either because they choose to do so or as the result of measures they take to protect their own tax bases.[3] The paper examines whether the recent OECD initiative to combat harmful tax competition may indirectly benefit LDCTs.

The next section provides a bare-bones description of the international tax "system." The section that follows it discuss the revenue implications of tax havens and transfer pricing. Sections IV and V, respectively, examine two ways to prevent abuse, monitoring transfer pricing and enforcing anti-deferral legislation. Section VI examines the OECD initiatives on harmful tax competition and related matters. Section VII concludes.

The paper deals primarily with the use of transfer pricing and tax havens by multinational businesses to defer, avoid, or (depending on whether one views manipulation of transfer prices as involving avoidance or evasion) evade taxes levied by the country of residence. Thus it pays relatively little attention to the use of tax havens by wealthy individuals to evade taxes in their countries of residence. Nor does it consider preferential tax treatment for selected non-financial sectors, perhaps limited to foreign investors, in order to attract real (non-financial) activities. Such countries are not ordinarily called tax havens,[4] and these policies are best covered by a paper on tax incentives.[5] Finally, it does not consider headquarters havens, except in passing, in the brief discussion of corporate inversions.

---

[3]Kudrle and Eden (2003, p. 66) note, "By any relative measure, most low-income countries are hurt more by capital flight and untaxed foreign earnings than are OECD states. Moreover, there is nothing they can effectively do individually or as a group to stanch the outflow. Because most of the capital flow from poorer countries is invested in OECD states, the rich hold the key to taxation reform."

[4]Avi-Yonah (2000) calls such countries production havens. Countries that levy generally applicable income taxes at low rates are usually not classified as tax havens. Kudrle and Eden (2003, p. 40) make the useful distinction between activities that take place in a tax haven, activities that are assigned to a haven, and the use of havens to mask reality. They distinguish further (p. 41) between production havens, headquarters havens, sham havens, and secrecy havens. This paper is concerned primarily with the use of havens to shift income and, to a lesser extent, with the use of secrecy to mask reality for wealthy investors.

[5]See, however, the papers in Shah (1995), Holland and Vann (1998), McLure (1999), and Easson (2001a, b) and references provided therein.

It will be useful to consider three broad classes of countries: tax havens, developed countries, and (non-haven) LDCTs,.[6] For some purposes it will be useful to distinguish between the least developed LDCs and more advanced LDCTs. Since the paper is most concerned with the fiscal plight of LDCTs, it considers the situation of developed countries primarily as models for what LDCTs might do and to understand the possibility that assistance for LDCTs will be forthcoming, perhaps as a collateral benefit of policies developed countries adopt for their own reasons.

It may be useful to indicate some of the other topics the paper does not cover. First, it does not discuss whether or not having a corporate income tax is a good idea for a small open economy. Similarly, it does not discuss the related question of whether or not it is a good idea for an individual country to levy such a tax at a rate above zero on income foreigners earn in the country. Second, it does not discuss whether taxation should be designed to further capital export neutrality or capital import neutrality.[7] Thus, it does not enter into the current US debate over whether or not to either end deferral or move to a more territorial system. Third, it does not consider whether or how the basic rules that govern taxation of international flows of income, contained in model treaties (for example, the definition of a permanent establishment), should be changed to accommodate the development of electronic-commerce (e-commerce), which accentuates problems of transfer pricing.[8] Fourth, it does not consider whether formula

---

[6]These categories, though useful, are not necessarily exclusive. For example, Switzerland and the United States, both developed countries, act as tax havens for passive investments. For an indictment of the United States as a tax haven under the criteria of the OECD report on harmful tax competition (OECD, 1998), see Langer (2000).

[7]See, however, Graetz (2001) and references provided there. If all countries levied only source-based taxes, all income earned in a given jurisdiction would be subject to the same tax regime, and capital import neutrality would prevail. By comparison, if all levied only residence-based taxes (or if those that levied residence-based taxes granted credits for all foreign income taxes) and there were no deferral, all income earned by those residing in a given jurisdiction would be subject to the same tax regime, and capital export neutrality would prevail. Because of deferral and limitations on the foreign tax credit, complete capital export neutrality is not achieved, even for residents of countries that tax worldwide income.

[8]Electronic commerce complicates application of the international system in two ways. First, it brings into question many of the basic concepts underlying that system, including the determination of corporate residence, distinctions between types of income (e.g., income from sale of a product, income from provision of a service, and royalties), the nature of a permanent establishment, the source of business income, and the application of transfer pricing guidelines. Many of these developments appear to have negative implications for LDCTs. As important as these are, they are not discussed her. See, however, IFA (2000a) and McLure (2003b) and references given there.Second, e-commerce aggravates the problems of transfer pricing and tax havens described below. There are – and increasingly will be – more transactions between related entities, many of them in intangibles for which there are no comparable uncontrolled

apportionment should replace separate accounting and the arm's length standard as a way to solve the problems identified here related to corporate use of tax havens and transfer prices. (On this, see McLure, 2002, and literature cited there.) Fifth, the tax implications of derivatives and other modern financial instruments are not considered, despite their role in greatly complicating efforts to deal with tax havens and other abuses. Finally, it does not consider whether a World Tax Organization, which has been proposed, *inter alia*, by Tanzi (1999) and the Zedillo Commission (UN, 2001), is needed to address the problems described here.

2. The International Tax "System"

In principle, all income that crosses international borders could be taxed by the country where it originates (the source country) or by the country of residence of the recipients of the income (also sometimes called the home country).[9] If both countries were to tax such income, double taxation would occur. Both domestic laws and bilateral tax treaties, especially among developed countries, contain provisions intended to prevent this, and treaties also provide for exchange of information between the tax administrators of source and residence countries. Most treaties between developed countries, as well as some between developed countries and LDCTs, are based on the OECD Model Treaty. Treaties between LDCs are more likely to follow the UN Model Treaty, which is generally more favorable to source countries.

Under these treaties income is taxed differently, depending on how it is characterized. Source countries ordinarily tax net business income (that is, income net of deductions for expenses of earning the income), but only if it is earned by a "permanent establishment" (PE) in the country. By comparison, source countries tax interest, dividends, and royalties, if at all, on a gross basis (that is, with no deductions for expenses of earning the income), commonly via withholding taxes. These taxes are generally reduced, sometimes to zero, under treaties. It may thus be necessary for source

---

transactions. Financial transactions and communications – the very lifeblood of tax havens – will be easier and faster. Residence for tax purpose will be more footloose and more difficult to determine. It will thus be easier to locate it in tax havens. Some real activities will also be easier to locate in tax havens.

[9] Arnold (1986) provides an excellent description of this system. For a description of the economic incentives created by the US version of the international system, including some anti-abuse rules, see Scholes *et al*. (2002).

countries to determine a) whether income is business income or some other kind of income, b) whether or not business income is earned by a PE, c) the geographic source of the income, and d) the amount of income that is taxable. It is also necessary for countries taxing worldwide income to determine the geographic source and amount of income, in order to calculate the limits on foreign tax credits mentioned below.

Residence countries generally either exempt foreign-source income or tax it as part of the taxpayer's worldwide income and allow credits for tax paid to source countries, up to the amount of domestic tax on the income.[10] Countries such as France that tax business income on the basis of source may, none-the-less tax passive income of their residents. Subject to limitations to be described in Section IV below, residence countries respect the legal identity of separate corporations; this implies that residence country tax on foreign-source income earned by foreign subsidiaries (but not by foreign branches) is "deferred" until it is repatriated.

In what follows we examine how transfer pricing and tax havens produce tears in this system and whether and how the tears can be mended.. Wealthy individuals in both LDCTs and developed countries employ tax havens to evade taxes on passive investments. By comparison, the tears in the corporate revenue net that LDCTs and developed countries experience are not the same. In the former case, the primary risk is to source-based taxation, that is, taxation of corporate income having its source within the country. By comparison, developed countries are also likely be concerned about residence-based taxation of corporate income. An important focus of the paper is to discern whether actions taken be developed countries to protect their tax bases can also, if indirectly, help protect those of developed countries.

3. Tears in the System

Tax havens and transfer pricing create tears in the revenue system. To simplify exposition, we initially discuss the use of tax havens simply to defer, avoid, and evade taxes, while ignoring manipulation of transfer prices. We then consider the effects of

[10]Most countries define residence in terms of the place of effective management. By comparison, the United States uses only the place of incorporation. This distinction is generally ignored here. See, however, the brief reference to corporate inversions in Section IV.B.

manipulating transfer prices, in the absence of tax havens. Finally, we consider the realistic case in which tax havens and manipulation of transfer prices occur together. We abstract initially from the effects of legislation and administrative techniques intended to prevent tax minimization associated with transfer pricing and tax havens, which are discussed in the next section.

A. Deferral, Tax Avoidance, and Evasion in "Simple" Tax Haven Cases

Tax havens may arise for several reasons that do not involve manipulation of transfer prices. These generally, but not always, involve wealthy individuals or corporate parents that are residents of a country that taxes worldwide income (at a rate that exceeds that in the source country), rather than exempting foreign-source income. It is worthwhile to describe two cases that will help understand the purpose of anti-deferral legislation.

1. Passive investment

First, a corporation may use a tax haven subsidiary (or a trust) to make passive investments, thereby postponing home-country tax that the parent would owe if it received the income currently. In the absence of anti-abuse legislation, income from investments made in the residence country of the parent might be channeled to the tax haven, thereby allowing the parent to achieve deferral of tax on domestic-source income.[11] It may also be possible to convert ordinary income from passive investments into capital gains by selling shares in the tax haven subsidiary, rather than receiving dividends from it, thereby realizing the benefits of reduced tax rates.

Wealthy individuals may also engage in this type of tax haven activity, but they are more likely never to pay tax, thus evading it, rather than merely deferring it. The success of tax evasion in this case depends on confidentiality provided by the tax haven, in particular on the absence of exchange of information between the tax haven and the residence country. See Vann (1998, pp. 759-761). In part because of the success of the anti-abuse legislation considered below, this evasion is probably more important than

[11]The income may be subject to withholding tax, but this is may be lower than the corporate income tax that would be due if the parent reported the income currently, especially if the tax haven has a tax treaty with the residence country.

corporate use of tax havens to achieve deferral and has been characterized as "the weakest point in the entire world fiscal system." (See Kudrle and Eden, 2003, p. 53.)

2. Active investment

Corporate tax haven activity is, of course, not limited to passive investments; controlled foreign corporations (CFCs) can also be used to defer residence-country taxation of business income. Blessing (2000, p. 18:2) describes the following "paradigm for structuring operations with respect to a traditional manufacturing-distributing enterprise" to achieve "the objective of unbundling functions and placing them in jurisdictions that are compatible with tax reductions":

- First, a CFC ("Principal), resident in a low-tax jurisdiction owns relevant intangibles; is the hub that arranges the manufacturing, distribution, and other functions; owns the goods; and derives residual profits.
- An affiliated or unaffiliated toll manufacturer ... or contract manufacturer manufactures the goods on behalf of the CFC for a modest fee.[12]
- An affiliated commissionaire (a sale agent that acts in its own name for a modest commission) or a stripped buy-sell distributor (a distributor that acquires ownership and resells the goods, incurring relatively little risk, for a modest profit) sells the goods in a the local market.
- One or more affiliated service entities might perform procurement, invoicing shipping, and other back-office functions for Principal for a modest fee.[13]

In these scenarios (and others), unbundling functions and interposing the tax haven between them is advantageous, even if income is not shifted between countries, because repatriation and current taxation by the country of residence is deferred.[14] These

[12]In either case the manufacturer acts in an agency capacity. In the first case it does not take title to the materials or goods; in the second case it does take title.
[13]Rosenbloom (2000, p. 35.6) notes, "Tax havens ... raise problems without regard to arbitrage, even if transfer prices in the United States and the other country are identical." For further elementary descriptions of the mechanics of tax havens, see Arnold (1986) and (2001).
[14]There may be other reasons to establish such a corporate structure (or not to do so).

tax haven activities would not be attractive if foreign-source income were taxed currently, without deferral.

B. Income Shifting in "Simple" Transfer Pricing Cases

When affiliated parts of a multinational enterprise (MNE) engage in transactions with each other, it is necessary to specify "transfer prices" to be used to value the transactions. There is often an incentive to choose transfer prices that shift income from high-tax to low-tax jurisdictions.[15] This implies that low-tax source countries are less likely than high-tax countries to experience transfer pricing problems. This implies, in turn, that one of the best ways for LDCTs to minimize the need to monitor transfer prices is to impose low tax rates. This defense is not adequate, however, once a tax haven is interposed, as in the next part of this section. Thin capitalization and similar rules may be useful in combating abuse in such cases; see Section III.D.

It is instructive to construct a simple example to illustrate the benefits of manipulating transfer prices. Suppose that a parent corporation resident in nation R develops technology that it licenses to a production subsidiary in nation P, which in turn markets its product through a sister subsidiary in nation M. Suppose further that R has the highest tax rate of the three countries and M has the lowest. Suppose alternatively that nation R exempts foreign-source income or taxes worldwide income and allows credits for foreign taxes, but repatriation can be postponed. There is an incentive to manipulate transfer prices to shift income from both the parent and the marketing subsidiary to the production subsidiary, and thus from countries R and M to country P, where it will be subject to the lowest tax rate.

The facts assumed in constructing this example are deliberately simple; it involves only transfer prices for technology and a finished product. In fact, the world is much more complex, and it is also necessary to establish transfer prices for a wide range

[15]This is most obvious in the case of MNEs resident in countries that exempt foreign-source income. The situation of MNEs resident in countries that tax worldwide income is more complicated, depending on whether residence-country taxation can be deferred, rules for averaging foreign income and tax credits, and the availability of excess (or deficits of) foreign tax credits. Slemrod (1995) provides a masterful description of the conditions under which it is advantageous to shift income. For present purposes it is assumed that income shifting is beneficial.

of other transactions, among them intermediate products, other intangible assets and products, financial products, services, and technical assistance.

C. Combining Tax Havens and Transfer Pricing

A key feature of the "simple" transfer pricing scenario considered above is that the benefits of manipulating transfer prices for a MNE whose parent is resident in a country that taxes worldwide income depend on differences in tax rates in source and residence countries. Once transfer pricing and tax havens are combined, the benefits of manipulating transfer prices increase dramatically and depend differences in tax rates in the source and residence countries and in the tax haven, assumed for simplicity to be zero, rather than on differences in tax rates in source and residence countries.

To see the difference in these two situations we modify the previous example so that a holding company resident in a tax haven acquires the patent to the technology from its parent and owns not only the production and manufacturing subsidiaries, but also a tax-haven subsidiary that buys from the production subsidiary and sells to the marketing subsidiary.[16] In the absence of anti-abuse legislation, there is an incentive to use transfer pricing to attribute as much income as possible to the holding company, where it will be subject to little or no taxation as long as it is not repatriated. (If the marketing subsidiary is located in the country of residence of the parent, transfer pricing can be used to shift income to the tax haven and thereby avoid current R-country taxation.) This incentive exists, even if all three (non-haven) tax rates are the same. And, because the incentives depend on the level of the three rates, rather than their differences, the stakes in transfer pricing are substantially greater than in ether of the "simple" cases described earlier, and a low-tax strategy may not suffice to protect the tax base of a source country.

[16] The true fabric of tax "avoision" that can be woven from the interplay of transfer pricing and tax havens is, of course, far more complex than this simple example suggests. For further descriptions of the mechanics of tax havens, see Gordon (1981), Doggart (1985), Arnold (1986), and OECD (1987). The

4. Mending the Tears: Transfer Pricing

All countries with inward or outward foreign investment – which is just about all countries – face the need to monitor transfer prices. It will be convenient to begin by ignoring the existence of tax havens and examine solutions to "simple" problems of transfer pricing.

A. Transfer Pricing Guidelines

Most developed countries specify rules to be used in establishing and monitoring transfer prices. In general, the objective is to approximate prices that would be charged in arm's length transactions with an unrelated party (e.g., an unrelated buyer, seller, borrower, or lender).

Traditional methods. The United States, which has the most elaborate rules, initially specified three rules: comparable uncontrolled price (CUP), cost plus a margin, and resale price minus a margin. The OECD's *Transfer Pricing Guidelines* (1995), which greatly influence international practice, envisages use of similar "traditional" rules when possible.

*Transactional net margin method*s. Since it may sometimes be difficult to implement any of the traditional rules, especially when intangible assets are involved, the United States has added two non-traditional methods. Similarly, the OECD *Transfer Pricing Guidelines* now include two additional methods, but their use is discouraged.[17]

Profit-split method. Under one of these, the profit split method, profits (either total or residual) are divided among members of the controlled group. Under the OECD approach the way total profits are split depends on functions performed and risks assumed. The US allows the comparable profit split method to be used only when data on profitability of similar activities of uncontrolled taxpayers are available. Yet

---

ability to employ tax havens to reduce taxes is, of course, affected by the anti-abuse legislation considered in the next section.

[17]O'Connor (1997) describes the application of both traditional and non-traditional methods. See Lin (2003, pp. 109-116 and chapters 4-9) for both a summary description of the methods and detailed descriptions of transfer pricing practices in 6 countries (Canada, the United States, Japan, China, Hong Kong, and Singapore). The OECD *Guidelines* explicitly rejects what it calls global formulary apportionment of the type used by the US states and the Canadian provinces to apportion the income of corporations operating in multiple jurisdictions.

Rosenbloom (2000, p. 35.9, n. 10) indicates that "CPM is probably the most common approach used today in applying the arm's length method in the United States."

The residual profit method is used when there are profits that cannot be explained by traditional methods, because of factors such as economies of scale or the existence of unique assets. Lin (2003, p. 111) has noted that the US practice of attributing residual profits to the place where intangible assets have been developed is favorable to the United States.[18] Fox and McIntyre (2003) note, by comparison, that "... the cost-plus method and the resale price method allowed them [MNEs] to shift all of their profits, aside from some modest amount, to tax havens" because they "allow the residual profits that a MNE derives from the exploitation of intangible property to be shifted to the country where the owner of the intangible property is resident. By design the place of residency is often a tax haven. In the bulk of cases, the bulk of the profits derived by MNEs come from the exploitation of intangible property."

Transactional net margin method. The other non-traditional method, the transactional net margin method, examines profit margins, relative to a base such as costs, sales, or assets and thus operates in a manner similar to the cost plus and resale price methods.

Advance Pricing Agreements. Some developed countries have developed procedures whereby taxpayers and the tax administration will agree in advance on the methodology to be used to establish transfer prices. In some cases the tax administration of foreign countries may be party to the agreement; generally this is true only if a tax treaty exists between the two countries.[19]

B. Transfer Pricing in LDCTs: Problems

LDCTs face several layers of overwhelming problems in the area of transfer pricing. First, their legal framework (laws and regulations) may not deal adequately with the issue. A publication that purports "to present all information available on transfer pricing into a single comprehensive reference work" and to be "the single most

[18]Moreover, under the "super-royalty" provisions of the 1986 Tax Reform Act, taxpayers can be required to adjust the transfer prices used to value transfers of technology to reflect the actual income an intangible generates.

[19]Ring (2000) describes the history and practice of APAs.

authoritative source of information on the subject," provides information on only 33 countries, of which only 10 are not members of the OECD.[20] Moreover, the UN reports that existing transfer pricing regulations, guidelines, and/or administrative requirements of 41 percent of developing countries surveyed did not address services and that regulations of two-thirds did not address technology transfers. (UN, 1999, p. 29) This neglect may reflect the neglect tax advisers have given to this problem until recently. The Appendix surveys what selected tax reform missions have had to say about transfer pricing.

Second, even where a legal framework for monitoring transfer pricing exists, an LDC may lack the administrative capacity, including specially trained economists, to deal with the problem, which is one of the most complex in the entire area of tax administration and compliance;[21] by comparison, MNEs have teams of experts who are occupied with nothing else and may hire away skilled tax administrators.

Third, comparable uncontrolled transactions and relevant evidence on profitability are even less likely to exist and be accessible to tax administrators in LDCTs than in developed countries.

---

[20]See IBFD (looseleaf). The 33 countries covered are Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Denmark, Finland, France, Germany, India, Ireland, Italy, Japan, Korea (Rep.), Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Portugal, Romania, Singapore, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States, and Uruguay. Global surveys of transfer pricing practices conducted by Ernst & Young over the past 5 years have covered from 12 to 22 of these countries; see Ernst & Young (1999), Ackerman and Hobster (2001), and Ackerman *et al*., (2002a), (2002b), and (2003). The papers by Ackerman *et al*., discuss transfer pricing in Greece, Hungary, Malaysia, Taiwan, Thailand, Turkey, and Venezuela. The 40 countries listed here may not be the only ones that have transfer pricing guidelines. The Tax Policy Staff of the Fiscal Affairs Department of the IMF, writing in 1990, reported, regarding practices in 21 LDCs, including 11 not listed above, that "the general indication is that countries attribute incomes and expenditures at 'arm's length." Cursory examination of the entries in the column for "attribution rule" in Table 4 (where "arm's length" appears for some countries) suggests, however, that this may have been an unrealistic assessment. Several CITs have issued guidelines, but are not included in these compilations.

[21]Even before the United States added non-traditional methods of transfer pricing to Section 482, Schindler and Henderson (1985, p. 1171) noted, "Intercorporate transfer pricing under the scope of Code section 482 is one of the most complex areas of international taxation." Addition of these methods further increases complexity. Ikeda (1992) opined at the time the new guidelines were being considered, "At this stage, there is much uncertainty about the impact that the recent discussions on transfer pricing issues will have on developing countries. Perhaps, as more sophisticated international tax principles are constructed for international income allocation, the problem of insufficient resources in developing countries, will become more serious." Fox and McIntyre (2003) conclude, "The experience in the developing countries since 1995 with the new pricing methods has not been very encouraging."

Fourth, the typically long period that elapses before transfer pricing cases are settled, as well as the uncertainty of favorable outcomes, may make cash-strapped LDCTs relatively uninterested in pursuing them.

All these problems are likely to be more serious in low-income LDCs than in those with higher incomes. CITs, having recently benefitted from foreign technical assistance, may have more satisfactory legal structures, but lack administrative capacity.

It might also be noted that imposition of severe penalties for transfer pricing violations may have unintended and undesirable consequences, because of the uncertainty inherent in setting transfer prices. Tax administrators are likely to treat over- and understatement of income differently, adjusting income upward, and perhaps imposing penalties, where it seems appropriate to do so, but not reducing income, where appropriate – and there is not counterpart to the penalty for understating income. Because of this asymmetry, the risk of heavy penalties may discourage investment.[22]

Ikeda (1992), at the end of a survey that focuses on experience in six developed countries, concludes:

> A transfer pricing policy is an important issue for developing as well as developed countries. Since taxation of foreign-related businesses often represents a substantial part of total tax revenue in developing countries, it is not just a matter of tax equity but also one of economic necessity to be able to tap the tax potential of multinational, enterprises. On the other hand, these countries are seriously beset by practical difficulties in applying transfer pricing rules, because their administrations in most cases have only limited resources to cope with complicated international tax issues.

A UN survey reveals that, of developing countries with enough evidence to make a judgement, 61 percent estimated that domestic multinational enterprises were engaged

---

[22]See Newlon (2000, pp. 230-31. Newlon notes that there may be an incentive to over-report income in jurisdictions that impose heavy penalties; of course, this potential revenue enhancing effect may be more than offset by the tendency of heavy penalties to deter investment.

in income shifting and 84 percent believed that foreign enterprises were doing so; 70 percent and 87 percent, respectively, of these countries thought the problem to be significant.[23]

Because of differences in laws, regulations, and their interpretation, as well as because of weaknesses in tax administration, corporations may not report the same transfer prices for a given transaction in all countries. (IFA, 2001a, reports differences in transfer pricing policies applied to electronic commerce.) Thus income flowing across international borders may be undertaxed. Adoption of international standards for transfer pricing, such as those in the OECD Model Treaty and *Transfer Pricing Guidelines*, would help alleviate problems caused by diverse legal frameworks, but not those caused by inadequate administration.

If all countries used the same transfer pricing rules, interpreted them in the same way, and were effective in doing so, undertaxation could not occur. But uniform application of transfer pricing rules would require international cooperation in administration of transfer pricing. Such cooperation could take several forms. At the very least there would be exchange of information on transfer pricing, to assure that the same transfer pricing were being reported to both source and residence countries. Since exchange of information ordinarily occurs only in the context of a tax treaty, and there are relatively few treaties between developed countries and LDCs, there is little such cooperation. This problem is aggravated by the interposition of tax havens between source and residence countries, since tax havens enter into few tax treaties.

Even if a multinational corporation does report on a uniform basis everywhere, a transfer pricing adjustment by one country will not necessarily result in an offsetting adjustment elsewhere. In theory mutual adjustment procedures (MAPs), arbitration, and multilateral advance pricing agreements could be used to prevent this. But, again, lack of treaties, as well as the fact that MAPs take a long time and generally are not binding on competent authorities, stands in the way. Moreover, domestic laws of developed countries or the OECD model treaty and transfer pricing guidelines may attribute to LDCTS less income than some believe is appropriate. As noted above, US interpretation

[23]UN (1999, p. 31). The latter figures are presumably percentages of the countries thought to have a problem. This source does not, unfortunately, indicate which countries – or even how many – responded to

of the residual profit split method would attribute the lion's share of income from intangibles to the United States, leaving little to market jurisdictions. Also, the OECD as concluded that application of the standard transfer pricing methodology would attribute little e-commerce income to market states.[24]

C. Combining Transfer Pricing and Tax Havens

Combating the type of transfer pricing problems created by the combination of transfer pricing and tax havens, described in the last part of the previous section, poses even greater problems. Cooperation between source and residence countries (or between source countries) to prevent inconsistent reporting of transfer prices on the same transaction would be ineffective in preventing revenue cracks, since, from a legal point of view, the tax haven is interposed between the interested countries and it would not be a party to such cooperation. Stanley Surrey, writing in 1978, described the problem as follows:

> [T]he United States considered that its parent companies were not charging interest, not being paid for services, not requiring royalties, and not charging proper prices for good sold. Yet it is the developing countries who are most vocal in asserting that they are being imposed on by parent companies of international enterprises. Thus it is asserted that the subsidiary companies in the developing countries are being charged excessive interest rates, being overcharged excessive interest rates, being overcharged for unneeded services, being charged excessive royalties, and being overcharged for goods purchased. (Surrey, 1978, p. 431)

---

the survey or thought they had enough evidence to make a judgement.

[24]These issues go beyond transfer pricing. Under international conventions a source country can tax business profits only if earned by a permanent establishment (PE) in the country, where such profits are measured by the application of arm's length pricing. E-commerce creates the ability to exploit a market without resort to a PE, and even if a PE exists in the market country, standard transfer-pricing methodologies would not attribute much income to it. For further discussion, see McLure (2003, pp. 303, 305-6) and references cited there. Solutions that are conceptually possible, if politically unlikely or technically difficult, might include relaxing or redefining the PE test, so that a significant economic presence implied jurisdiction to tax; including a restricted force of attraction rule in tax treaties; allowing withholding taxes on sales of digital content; and altering the methodology of transfer pricing, perhaps even replacing it with formulary apportionment. See McLure (2003, pp. 306-309) and references cited there.

After writing, "Clearly the two images cannot be describing the same transactions," Surrey adds the following in a footnote:

> The two images cannot be describing the same *direct* transaction. But such differing images can coexist as to *indirect* transactions, involving a tax haven. The parent company could *undercharge* on the transaction between it and the tax haven subsidiary and the subsidiary could *overcharge* on the related transaction between it and the subsidiary in the developing country, so that a larger profit will reside in the tax haven. Hence, one tax administrator could see an undercharge and the other an overcharge as respects the basic transaction. (Surrey, 1978, p. 431, n. 52; emphasis in original)

Vann (1998, p. 797) summarizes the situation as follows: "Because of the sophistication of international tax planning and its frequent combination of domestic law, tax havens, and tax treaties, the taxation of nonresident direct investors by developing and transition countries is not an easy task."

D. Thin Capitalization and Similar Rules

Many LDCs, when faced with the specter of undercapitalization (and thus excessive use of debt) and payment of excessive interest rates and fees for technical services by local subsidiaries, have resorted to thin capitalization rules, disallowance of full deduction for certain categories of expenses, and withholding taxes on certain payments. Such "meat ax" rules avoid the difficulty of monitoring transfer prices to limit abuse, but may encounter objections from treaty partners unless carefully structured. (See Oldman, Rosenbloom, and Youngman (1991, p. 393-94.)

5. Mending the Tears: Anti-deferral Rules

Some would not consider the deferral involved in "simple" tax haven cases described in section III to involve abuse; in that view tax havens simply facilitate the realization of the paradigm described in the section on the international tax system: residence-country taxation of repatriated income and deferral of residence-country tax on income that is not repatriated (with source country taxation in the meantime). Others do not like the results described, perhaps because they advocate capital export neutrality, which requires current home-country taxation of worldwide income, with credits for foreign taxes.[25] By comparison, most would probably consider using tax havens to evade residence-country taxes and combining the use of tax havens and manipulation of transfer pricing to involve abuse, especially when the latter involves domestic funds making a round-trip for investment in the home market disguised as foreign investment. For whatever reason, some countries that impose residence-based taxes – and, indeed, some that do not[26] – have enacted controlled foreign corporation (CFC) legislation to limit the ability of MNEs to defer income attributed to tax haven subsidiaries.[27] Efforts one country makes to prevent abuse may have repercussions on others.

---

[25]Thus Arnold and Dibout (2001, pp. 38-39) write:
The unlimited deferral of residence country tax on the income of foreign corporations owned by residents is difficult to justify. Deferral encourages residents to divert income, especially passive income, to CFCs in low-tax countries and to accumulate such income in those CFCs rather than repatriate the funds to the parent corporation. It violates the fundamental principles of equity and capital export neutrality on which worldwide taxation are based. Proponents of deferral, however, argue for the preservation of deferral, especially for business income, on grounds of international competitiveness or capital import neutrality. Under this view of neutrality, a multinational enterprise doing business in a country through a subsidiary there should be subject to tax only at the rate applicable in that country so that it can compete equally with other corporations doing business in that country.
For a critical view of capital export neutrality, see Graetz (2001).

[26]France employs CFC legislation because it taxes only business income on a territorial basis; it taxes investment income on a worldwide basis. Its CFC legislation is intended to prevent diverting passive income to a tax haven subsidiary and accumulating investment income is such a corporation. Also, in the absence of legislation, passive income received by the tax-haven could be distributed to the parent as a tax-free dividend. See Arnold (1986, pp. 134, 201-4.)

[27]For a brief description the rationale and functioning of CFC legislation, see Arnold (1986) and (2000), OECD (1996), and Arnold and Dibout (2001). The national reports in IFA (2001b) summarizes practice in 30 countries. Much of the following description is based on Arnold and Dibout (2001, especially pp. 30-57.) Taylor and Richman (1965, p. 81) describe a pre-1960 scheme used by Colombians to evade tax: forming foreign companies in Panama or Venezuela to do business in Colombia. In theory, CFC legislation would have prevented this ploy; in fact, it is almost certain that it would not have, for administrative reasons. Colombia relied instead on increased withholding taxes on branch profits and dividends. Of course, neither of these would have prevented manipulation of transfer prices to shift income out of the country.

A. Basic Features of CFC rules

Under CFC legislation, certain income of foreign subsidiaries located in low-tax jurisdictions and controlled by domestic parents is treated as if it were distributed currently, and is thus subject to current taxation by the parent's country of residence, rather than being taxed only when repatriated.[28] Arnold and Dibout (2001, p. 40) note:

> The basic function of the CFC rules of every country is to distinguish between acceptable (or good) and unacceptable (or bad) deferral. ... For most countries with CFC rules, the distinction between good and bad deferral is usually drawn on the basis of three factors. In general, deferral is considered to be unacceptable and is eliminated under CFC rules if:
> (a) residents control or have a substantial interest in the foreign corporation;
> (b) the income derived by the CFC is passive investment income or base company income and not genuine business income; and
> (c) the income derived by the CFC is subject to a low rate of foreign tax.

Definitions of control, what constitutes a low-tax regimes, and the type of income that is considered "tainted" vary from country-to-country and cannot be described in detail here. (See, however, IFA, 2001b.) All countries that have CFC legislation disallow deferral of tax on income from passive investments (which generally includes interest, dividends, rents, royalties, and capital gains), some extend the definition of "tainted" income to "base company income" (a concept to be described below), and some tax virtually all income earned by subsidiaries located in certain countries. Most countries use "black lists" of tax haven countries, some use white lists, and some use gray lists. Whether a country is on a black list may depend simply on the tax rates in the country in question, but that determination is generally more nuanced.

[28]For example, under US law a CFC is a foreign corporation in which more than 50 percent of the voting power or market value of the corporation is owned by US persons each of whom owns at least 10 percent of voting stock. Income of a passive foreign investment company (PFIC) may also be subject to current taxation. A corporation may be classified as a PFIC in any year in which at least 75 percent of its gross income is passive or at least 50 percent of its assets produce passive income.

"Base company income" is the term commonly used to describe tainted income other than passive income. The most important kind of base company income is income a CFC derives from selling property or rendering services outside the jurisdiction where the CFC is incorporated or to related parties.

CFC legislation generally is not intended merely to prevent deferral. It represents an attempt to prevent the loss of tax revenue created by combining transfer pricing manipulation with tax havens. Thus Arnold and Dibout (2001, p. 54) state:

> The inclusion of income from related-party transactions in tainted income is usually intended to bolster a country's transfer pricing rules. Transfer pricing rules are intended to prevent the diversion of income to related foreign corporations through the non-arm's length pricing of sales, service, and other transactions. These rules are notoriously difficult to enforce. By treating such income as tainted income for the purposes of CFC rules, countries can avoid the necessity of applying their transfer pricing rules.

Similarly, the OECD (1996, p. 10) states:

> Without CFC legislation, it would be easy for a resident taxpayer in the AL/SA [arm's length/separate accounting] system to avoid domestic taxation on its foreign income (and, indeed, to some extent, even on its domestic income) simply by interposing a foreign corporation in a territory with a lower level of taxation to receive such income instead of remitting ir to the home country (or equivalently, to charge deductible arm's length fees to domestic taxpayers in respect to certain services rendered.

It thus describes CFC legislation as "back stop" against the difficulty of administering transfer pricing rules. It goes on to note that, "... unless the legislation applies to *all* types

of income, active, as well as passive, it will be of limited use in this respect." (OECD, 1996, p. 11)

The United States enacted the world's first CFC legislation in 1962 and by 1986 only five other countries (Canada, Germany, Japan, France, and the United Kingdom) had done so. Since then the practice has grown rapidly, and Arnold and Dibout (2001) report that 23 countries had adopted CFC legislation or were in the process of doing so by the end of 2000.[29] Not surprisingly, it is primarily the major capital-exporting countries and other members of the OECD that have taken this step. But it seems likely that the list of countries with CFC legislation will grow, perhaps rapidly, in part because of the recent OECD recommendations, to be considered below.[30]

B. Effectiveness of CFC Rules

Arnold (2000, p. 17:14) suggests that "CFC rules are reasonably successful in preventing the worst cases of tax haven abuse," situations involving diversion or accumulation of passive income to/in tax havens. He believes, however, that CFC rules are less effective in dealing with foreign base company income. He cites opposition to CFC rules by multinational enterprises as evidence of the "core effectiveness" of the rules.

---

[29]Arnold and Dibout (2001) list the following countries with CFC rules in chronological order based on the year in which the rules were adopted: United States, 1962; Canada, 1972; Germany, 1972; Japan, 1978; France, 1980; United Kingdom, 1984; New Zealand, 1988; Australia, 1990; Sweden, 1990; Norway, 1992; Denmark, 1995; Finland, 1995; Indonesia, 1995; Portugal, 1995; Spain, 1995; Hungary, 1997; Mexico, 1997; South Africa, 1997; South Korea, 1997; Argentina, 1999; Israel (proposed), 2000; Italy, 2000; Estonia, 2000. They note that the Hungarian CFC rules were so significantly diluted effective 1 January 2001 that it may no longer be appropriate to categorize them as CFC rules.

[30]The national report for several countries in IFA (2001b) mention the influence of the OECD project on harmful tax competition. Thus: "In a general sense, the OECD issues on harmful tax competition were, among others, an important element to be taken into account in introducing legal reforms to the Income Tax Law at the end of 1999." (Argentina, p. 335) Similarly, "[F]ollowing international trends, although it is not a member of the OECD or of the EU, Brazil will closely follow the guidelines established by the OECD as regards controlling operations performed with beneficiaries located in countries with favorable tax treatment." (Brazil, p. 430) Finally, "The Ministry of Finance understands and supports the OECD and EU initiatives against harmful tax competition. Additionally, it should be emphasised that such initiatives indirectly gave the ground and justified the introduction from 2001 of the provisions which require reporting of transactions with entities in low-tax jurisdictions." (Poland (766). By comparison, the national report for Peru (p. 758) says, "The projects of the OECD and EU against harmful tax competition have not necessarily influenced the proposed internal tax norms, which, if approved by Congress, would go into effect starting in 2001."

Unilateral anti-abuse measures are not a panacea, for either developed countries or LDCTs. First, without access to information on tax haven activities of their residents, it will be difficult to enforce CFC and similar anti-deferral legislation. For developed countries with close supervision of corporations, gaining information on CFCs owned by domestic parents, especially those that are publicly traded, should be relatively easy. But for individuals in both developed countries and LDCTs and for corporations resident in LDCTs, the problem is likely to be more daunting. The requisite information is not likely to be forthcoming, unless it is provided by the tax haven – up to now a forlorn hope. This points up the importance of the OECD project discussed below. Even if tax havens were willing to provide information, many LDCTs probably lack the administrative capacity to implement CFC legislation.

Second, some American multinationals have engaged in "inversion" transactions, in which the parent becomes a foreign corporation and its domestic activities those of a subsidiary.[31] (The ability to do this is predicated on the unusual test the United States employs to determine residence. Switching to the more common test based on "place of effective management and control" would make this ploy much more costly, as it would require moving management and control to a tax haven.) The result is that CFC legislation becomes irrelevant and income can be accumulated in the tax haven subsidiary. This could have negative effects on the fiscal situation of LDCTs, by putting income shifted to tax havens beyond the reach of the US government. Moreover, it seems likely that domestic companies operating in LDCTs could also engage in inversion transactions, if the CFC legislation of those countries started to bite.

Third, CFC legislation generally does not apply when real activity is being conducted in the low-tax jurisdiction. This could be crucially important, since many e-commerce activities could be lodged in PEs located in low-tax jurisdictions. This topic, which is greatest relevance for developed countries, is beyond the scope of this paper.

[31] See US Department of the Treasury (2002), Dimon (2002), Avi-Yonah (2002), and Desai and Hines (2002).

C. CFC Rules and LDCTs

Whether CFC rules should apply when it is only foreign taxes that are being avoided (that is, when the taxes of the residence country of the parent are not being avoided) is a controversial issue.[32] Arnold (1986, p. 466) gives the example of a French or US-controlled manufacturing company established in a high-tax foreign country that uses a tax haven subsidiary to sell its products, the policy question being whether French or US anti-tax haven rules should apply to the income of the tax haven subsidiary, even if the only tax being avoided is that of the country where the manufacturing company is established. The French or US rules may apply in this situation. (The rules of New Zealand and Sweden apply to all income of CFCs, and thus to the income in question.) By comparison, most countries apply their CFC rules only if their own taxes are being avoided.

We have seen above, many LDCTs lack the ability to enforce transfer pricing and other anti-abuse rules. It appears that if more developed countries were to adopt the more inclusive approach it could have beneficial effects on LDCTS, by making it less advantageous to attribute to tax havens income that is properly attributable to LDCTs.[33] The more restricted view appears to leave substantial latitude and incentive to shift income from LDCTs to tax havens. It can be argued, of course, that no country has any responsibility "... to act as a fiscal policemen to enforce another country's tax system." (Arnold, p. 466) Moreover, as Kudrle and Eden argue (2003, p. 61) there are "prisoner's dilemma elements" to the decision to enforce tough anti-abuse rules. "[W[hile all states would benefit from increased vigilance of other home countries in making certain that their subsidiaries do not use havens to avoid paying full taxes due, both special interest politics and perhaps national economic interest suggest that there is less incentive to assiduously police their own firms."

For a variety of reasons, many LDCTs have not focused on anti-deferral rules. First, where exchange controls exist and are implemented effectively, it is unlikely that the foreign investment required to capitalize a CFC would be allowed. If exchange

[32]See Arnold (1986, pp. 134, 466) for further discussion.

[33]Arnold (1986, pp. 466, 505-6) notes, however, that if both France or the US and the other high-tax country were apply anti-abuse rules, double taxation might result.

controls are not effective, it is unlikely that CFC rules would be. The increased liberalization of capital markets can be expected to lead to the elimination of exchange controls and suggest the need for CFC legislation.

Second, some countries export so little capital whatever limited administrative resources they have available to deal with international issues should probably be concentrated on administering transfer prices and undercapitalization, rather than CFC legislation.[34] Writing of the effectiveness of extant CFC rules, Arnold (2000, p. 17:14) writes, "[T[he effectiveness of the rules is questionable because of inadequate or non-existent enforcement by tax authorities. Any tax rules that require the computation and verification of the income of foreign entities cause significant enforcement problems fo the residence country. Few countries have the tax administration resources to enforce CFC rules effectively at the margin." The scarcity of administrative resources is, of course, vastly worse in most LDCTs than in developed countries.

Finally, without the cooperation of tax havens, it is unlikely that LDCTS would have the information needed to enforce CFC rules.

6. The OECD Initiative on Harmful Tax Competition

In 1996 the OECD undertook to "develop measures to counter the distorting effects of harmful tax competition on investment and financing decisions and the consequences for national tax bases."[35] It noted in 1998: "Tax havens serve three main purposes: they provide a location for holding passive investments ('money boxes'); they provide a location where 'paper' profits can be booked; and they enable the affairs of taxpayers, particularly their bank accounts, to be effectively shielded from scrutiny by tax authorities of other countries."[36] Its first target has thus been tax regimes intended to attract geographically mobile activities, such as financial and other service activities,

[34]Thus Arnold and Dibout (2001, p. 28) note, "Other countries, such as Poland, which were subject just a few years ago to a planned economy and which are opening up to the multinationals' activities, are discovering at the same time the complexity of the fiscal questions connected with internationalization of trade and the need for developing appropriate taxation legislation. ... Such countries' concern with protecting their tax base against international avoidance is expressed more, in the current state of development of their adaptation process, in rules relating to checking transfer prices and undercapitalization than in provisions that are specifically aimed at low-taxation regimes abroad."
[35]Ministerial Communique of May 1996, quoted in OECD (1998, Foreward).

including the provision of intangibles, whether located in tax havens or OECD members. Although the project explicitly did not target not savings instruments such as bank deposits, its greatest immediate effect may lie in that area.

A. Tax Havens and Preferential Regimes

The OECD used four key factors to identify tax havens and preferential tax regimes found in member nations:

– little or no tax on the income in question;

– no effective exchange of information;

– lack of transparency; and

– no need for local substantive presence or prohibition of local commercial impact in the case of tax havens; "ring-fencing" in the case of preferential regimes.[37]

Based on these criteria, the OECD tentatively identified 47 preferential tax regimes found in member states and compiled a list of tax havens.

In the 2004 Progress Report on its Project on Harmful Tax Competition the OECD indicated that, of the 47 potentially harmful regimes found in OECD members, 18 have been (or are being) abolished, 14 have been amended to eliminate potentially harmful features, and 13 were found upon further examination not to be harmful. Only two regimes (Switzerland's "50/50 Practice" and Luxembourg's 1929 Holding Company regime) remain, and they are being modified.[38]

Progress on elimination of tax haven regimes is no less impressive, with 33 countries and jurisdictions that might otherwise have been characterized as "uncooperative tax havens" having committed to principles of effective exchange of information and transparency. Only 5 jurisdictions (Andorra, Liberia, Liechtenstein, the Marshall Islands, and Monaco) remain on the list of uncooperative tax havens.[39]

---

[36]OECD (1998, ¶ 49).

[37]OECD (1998, ¶s 52, 59).

[38]OECD (2004, ¶s 12, 15). Switzerland has agreed to effective exchange of information with respect to holding companies in the context of bilateral treaties. Luxembourg has submitted legislation to its Parliament to make its 1929 Holding Company regime consistent with the EU Code of Conduct, but has not addresses effective exchange of information. (¶ 15)

B. The Model Agreement on Exchange of Information

As the previous discussion of tax havens makes clear, secrecy and lack of access to information are key to the success of some tax haven operations. Substantial progress has been achieved on this score. Anonymous bank accounts can no longer be opened in any OECD country and the "vast majority" of the non-OECD jurisdictions that have agreed to transparency and exchange of information have immobilized or eliminated bearer shares.[40] A particularly positive development has been the drafting of a Model Agreement on Exchange of Information on Tax Matters (OECD, 2002) by a working group consisting of both OECD members and erstwhile tax havens.[41] Article 5 of this model provides a) that (subject to safeguards, e.g., for relevance, non-disclosure of trade or business secrets, and confidentiality) the country receiving a request for information must provide the information if it is necessary for enforcement of the treaty partner's taxes, even if the requested country does not need the information for its own tax purposes, and b) that its competent authority must have the authority to obtain and provide information held, *inter alia*, by banks, other financial institutions, and persons acting in an agency or fiduciary capacity and information on ownership of companies trusts, etc. These provisions are important because they explicitly modify the existing terms of Article 26 of the OECD Model Treaty, which allows a country to refuse a request for exchange of information that would not be obtainable in the normal course of administration or that would be "contrary to public policy."[42] In particular, the Model

---

[39]OECD (2004, ¶s 19, 27).

[40]OECD (2003b), (2004, ¶ 26).

[41]The non-OECD members of this working group are Aruba, Bermuda, Bahrain, Cayman Islands, Cyprus, the Isle of Man, Malta, Mauritius, the Netherlands Antilles, the Seychelles and San Marino. The word "erstwhile" modifying "tax havens" should perhaps appears in quotations marks, because, as explained below, it appears that for many purposes, these tax havens will not cease to be tax havens. Another working group is charged with developing accounting standards to be used for the maintenance and exchange of information. OECD (2003b), (2004, ¶s 22-27).

[42]Paragraph 2 of Article 26 of the Model Treaty, which is explained further in the Commentary thereto (OECD, 2003) states:
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

Agreement explicitly clarifies that exchange of information cannot be refused on grounds that it would be "contrary to public policy," as represented by laws guaranteeing bank secrecy, as happens today.

The Model Agreement has already formed the basis for several recently signed exchange of information agreements.[43] Such agreements are potentially extremely useful in combating the use of tax havens by individuals to evade taxes. It is crucial, however, that all financial centers must follow the standards set forth in the Model Agreement, if those that do so are not to be placed at a competitive disadvantage relative to those that do not and to avoid "the migration of business" to centers that do no cooperate. (See OECD, 2002, ¶4) The "defensive measures" discussed below should help to achieve this result. More important for present purposes, as explained below, there would seem to be little likelihood that the erstwhile tax havens will exchange information with LDCTs.

C. Defensive Measures

Tax havens are not responding only to moral suasion. The OECD has urged its members to undertake "coordinated defensive measures" to combat tax haven activities. Among the defensive measures that it suggests might be used are these:

- Disallowance of deductions, exemptions, credits, and other allowances for payments made to persons located in jurisdictions engaged in harmful tax practices, except where the taxpayer can establish that the payments are made at arm's length;
- Thin capitalization rules restricting deductions for interest payments made to persons located in jurisdictions engaged in harmful tax practices;

---

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).
OECD (2004, ¶ 24) notes that this Model Agreement is being used as the basis for revising Article 26.

[43]OECD (2004, ¶ 24). The OECD reports that since 2000, the United States has signed agreements with Antigua and Barbuda, the Bahamas, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey and the Netherlands Antilles and that other OECD members such as Germany, Ireland, the Netherlands and Spain are in the process of negotiating similar agreements. See OECD (2003b, p. 19)

- Requiring that taxpayers report payments, transactions, and ownership involving persons located in jurisdictions engaged in harmful tax practices;
- Taxation of residents on income that benefits from harmful tax practices;
- Denial of exemptions and modification of foreign tax credits for income that is subject to little or no taxation because it arises in a jurisdictions engaged in harmful tax practices;
- Withholding taxes on dividends, interest, and royalties made to beneficial owners benefitting from harmful tax practices;
- Coordination of enforcement activities involving entities and transactions related to jurisdictions engaged in harmful tax practices;
- Terminating, avoiding, and limiting treaties with jurisdictions engaged in harmful tax practices.[44]

D. Implications

The OECD Project on harmful tax competition appears to have been quite successful, but only within a fairly narrow range. It might also appear at first glance that success in the OECD efforts to combat harmful tax competition could have substantial benefits for LDCTS since, as the OECD noted in its initial report on harmful tax competition (1998, ¶88), "Residence countries can partly negate the effects of harmful preferential tax regimes in source countries..." Closer examination reveals, however, that, as usual, LDCTs are likely to get only "crumbs from the table," if that.

As intended, the primary effect of the project will be to reduce the possibility that individuals resident in developed countries can evade tax by making portfolio investments in or through tax havens. Prospects do not, however, seem nearly as bright for LDCTs. Erstwhile tax havens may feel compelled to conclude agreements to exchange information with economically and politically powerful developing countries, and perhaps even with some LDCTs, but it is hard to see why they would also feel similar pressure to conclude such agreements with most LDCTs, unless pressured to do so by

[44]OECD (2004, ¶ 30). This list represents a refinement of the similar list appearing in (OECD (2000, ¶s 32-38). See OECD (1998), ¶s 97-169) for further elaboration of some of these items.

OECD members, something that does not seem to be contemplated.[45] In the absence of such agreements, nothing will have changed, as far as the majority of LDCTs is concerned. Indeed, to the extent that tax havens are no longer able to appeal effectively to residents of developed countries, they may redouble efforts to appeal to residents of LDCTs.[46] Even with such an agreement in place, tax administration is not self-enforcing; tax administrations must actually request and utilize the available information – a tall order for LDCTs. Of course, the risk that they might request and use information might deter some tax evasion.

Similarly, to combat the use of tax havens to defer domestic corporate taxes, LDCTs will need to rely on CFC legislation. But they are unlikely to be able to enforce CFC legislation without information on tax haven corporations owned by their residents, even if they were to enact such legislation. As noted, they are unlikely to be able to conclude treaties that would provide access to such information.

There now exists an almost universally accepted "black list" of "un-cooperative tax haven jurisdictions" that is already extremely short and is likely to grow shorter, because of the threat that defensive measures will be applied multilaterally against jurisdictions remaining on the list. If the noose is tight enough, harmful tax competition, as defined by the OECD, may follow preferential regimes in OECD members into extinction. This does not mean, however, that corporate tax havens will cease to exist. It appears that commitment to effective exchange of information and transparency is enough to get a jurisdiction removed from the list of uncooperative tax havens; it seems almost certain that a jurisdiction could retain a key feature of corporate tax havens – little or no tax on the income in question -- without being put on the list of uncooperative tax

[45]Bentley (2003) writes, "A country that did not face extreme political or economic reprisals would not otherwise consider signing an agreement based on that model." Kudrle and Eden (2003, p. 66) describe some of the pressures that could be brought to bear on tax havens: "The secrecy havens have little option but maximum cooperation because of their vulnerability to action by the OECD. One obvious response to non-cooperation would see the high income countries disallow the cost of debt financing from non-cooperating jurisdictions as a business expense for tax purposes. ... Even more drastic measures are clearly available including the denial of access to the banking systems of the G-7 countries and the severing of transportation links." It does not seem that similar threats by LDCTs would have much effect. See Langer (2002) for a scathing critique of OECD policy that gives erstwhile tax havens nothing in return for signing exchange of information agreements, as well as an historical explanation of the development of tax havens.

[46]I am grateful to Lee Burns for this point.

havens.[47] As noted earlier, lack of exchange of information and transparency are presumably substantially less important than low tax rates for corporate tax havens, except in LDCTs. This implies that, despite the apparent success of the OECD project, enactment and effective enforcement of CFC legislation will be required to prevent the use of tax havens to defer home-country corporate tax. As noted earlier, the CFC legislation of most nations only applies to the extent that the income of the country of residence of the parent is being deferred; it would not prevent avoidance of source-country tax in LDCTs.

Despite this generally gloomy picture, there may be a bit of light. The OECD has given quasi-official multilateral approval of enactment of a specific list of defensive measures, by both source and residence countries, that limit the capacity to use tax havens and preferential regimes to avoid taxes. Without such multilateral approval some of these measures might be condemned as draconian and out of step with best international practice. LDCTs could invoke these defensive measures (e.g., disallowance of deductions for payments, thin capitalization rules restricting deductions for interest payments, and withholding taxes on dividends, interest, and royalties) against any jurisdiction that imposes "little or no tax on the income in question," even if the jurisdiction is not engaging in "harmful tax competition," as defined by the OECD. Such measures may be more effective – and they certainly require fewer administrative resources – than attempting to monitor transfer prices or enforce CFC rules.

7. Concluding Remarks: Can Tax Reform Mend the Tears?

The following excerpt from Jim Alm, Jorge Martinez, and Mark Rider's description of the purpose of this conference seems a fitting place to conclude this exercise:

> [T[he last several decades have seen a dizzying array of different tax reforms around the world. ... However, despite the enormous amounts of time and resources invested in these reform efforts, the lessons from all of

[47]The OECD reiterated in the introduction to its 2004 report on the project on harmful tax competition, "The OECD does not seek to dictate to any country what its tax rate should be."

> this work have been very unevenly disseminated, and there are clearly many unresolved issues. It seems unlikely that these issues are going to go away. With the steady advance of such things as globalization, regional integration, and technology, it seems more likely that, if anything, the issues of adapting tax systems to new economic environments and reforming specific taxes will become even more pressing.

To the extent that tax reform is a unilateral affair, the above discussion indicates clearly that the tax reforms of the last several decades could not have been expected to deal adequately with the revenue cracks created by tax havens and transfer pricing. At best, source countries could have addressed the administration of transfer pricing and implemented thin capitalization and other anti-abuse rules, and residence countries could have enacted CFC rules. All other progress would have required bilateral cooperation or multilateral action, neither of which can be imposed unilaterally. What bilateral and multilateral action has occurred to date seems more likely to benefit developed countries than to help LDCTs mend the tears in their revenue nets.

APPENDIX

Selected Tax Reform Missions and Transfer Pricing

Since transfer pricing seems to be a potentially important source of revenue cracks in LDCTS, it is instructive – or at least interesting – to look back to see what some of the major reports and surveys on tax reform in LDCs have had to say about transfer pricing.

Venezuela: Shoup report. The Shoup mission to Venezuela, in 1958-59, noting that "only those costs or expenditures incurred within the country are deductible," suggested. "In principle, deduction should be allowed for any expense ... which is connected with and properly allocable to income taxable in Venezuela." The report's response to "the administrative problem that is posed by expenses incurred abroad by a business with branches or activities in both Venezuela and other countries," was to propose "the taxpayer's proving both the expense and its allocation in accordance with rules established by the Tax Administration." It continued, in a sentence that seems hopelessly naive by today's standards, "One requirement might appropriately be that the claim for deduction be accompanied by the statement of a certified public accounting firm that the expense ... is connected with and properly allocable to Venezuelan activity under standard ac counting principles, together with an explanation of the method of allocation followed." (Shoup, *et al*., 1959, pp. 155-156) The report subsequently (p. 173) discussed the need for the tax administration to scrutinize transactions between taxpayers controlled by the same interests to prevent misallocation of income between them and, if necessary, compute the income of each to on the basis of a "fair price." It is not clear whether this discussion is intended to pertain to international transactions, or only domestic ones.

Colombia: Taylor and Musgrave reports. The Taylor mission to Venezuela in the early 1960s expressed the same concern that the expense of services rendered abroad were not deductible and reached similar policy conclusions, including reliance on "customary accounting principles" and detailed proof that the claimed deductions are allocable to Colombian income. (Taylor and Richman, 1965, p. 82) A few years later the Musgrave mission reached roughly the same conclusions. (Musgrave, 1971, p. 87; Slitor, 1971, p. 508)

Jamaica, Bahl report. One of the staff papers prepared for the Bahl mission to Jamaica identifies the transfer pricing problem: "An effective review of returns filed by members of an affiliated group requires auditors to verify that prices, compensation, and other aspects of intercorporate transfers are computed on an arm's length basis .... [U]nless transfer prices come under careful administrative scrutiny, their manipulation permits the shift of income to group members taxed at the lowest rates."[48] Although there are no detailed suggestions for the standard to be used in appraising transfer prices, the reference to the provisions of the U.S.-Jamaica tax treaty dealing with associated enterprises and mutual adjustment procedures is instructive.

Comparison. The difference in concerns expressed in the Shoup, Taylor, and Musgrave reports and those expressed in the Bahl report is remarkable. Whereas the first three reports rightly worried that deductions were not being allowed for expenses incurred abroad and expressed faith in outside auditors to certify the appropriateness of transfer prices, the Bahl report, written several decades later, identified clearly the need for "careful administrative scrutiny"of transfer prices.

Comment. It appears that most tax reform studies have had relatively little to say about transfer pricing.[49] It is easy to see why this would be true. First, at the time the studies were done, direct foreign investment and intracorporate trade, especially in intangibles, were nowhere near as important as now. Second, transfer pricing may have been a distinctly second (or third) order problem, because there were "other fish to fry," namely undesirable structural elements in need of fundamental reform. This would certainly seem to be the case in Venezuela more than 40 years ago and in Colombia 35 to 40 years ago, where the issues did receive attention. Third, techniques of tax avoidance

---

[48] Oldman, Rosenbloom, and Youngman (1991, p. 393). The omitted words are:
Otherwise, corporations could report, or "characterize," intragroup transactions in whatever manner provided the maximum tax benefit. Payments could be arbitrarily characterized as dividends, interest, royalties, or compensation, depending upon which was subject to the most beneficial sour e rules, avoided withholding taxes, or permitted a deduction for the payor."
Unlike the other three reports reviewed here, the Bahl Report also considered the need for thin cap rules, see Oldman, Rosenbloom, and Youngman (1991, pp. 393-4).

[49] This comment seems also to apply to the papers in Gillis (1989), Boskin and McLure (1990), Eden (1991), Thirsk (1997), Martinez-Vazquez and Alm (2003), although Whalley (1990) does mention that one impetus for corporate rate reduction in Canada was the fear that debt financing, and thus interest deductions, would shift from the US to Canada due to the rate reductions in the US resulting from the 1986 tax reform act. Of course, this does not imply manipulation of transfer prices.

and evasion were not as well developed or as fully exploited as now.[50] Fourth, it is likely that some of those who undertook tax reform missions, often economists trained in a closed-economy tradition, simply failed to realize the potential importance of transfer pricing.[51].

[50]There is another reason for the failure to consider transfer pricing in McLure et al. (1990). The explicit assignment was relatively narrow: to consider the need for inflation adjustment in the measurement of income.

[51]Thus, in McLure (1991, p. 73), I observed, "[T]he Shoup mission generally appears to have taken the tax system at face value, without stressing that 'things ain't what they seem' once the lawyers and accountants finish their work. Though the Shoup mission mentioned the difficulties of transfer prices, it did not stress this problem...."

References

Ackerman, Bob, and John Hobster. (2001). "Transfer Pricing Practices, Perspectives, and Trends in 22 Countries," *Tax Notes International*, Vol. 24 (December 17), pp. 1151-58.

Ackerman, Bob, *et al*. (2002a). "Global Transfer Pricing Update – July 2002," *Tax Notes International*, Vol. 27 (July 29), pp. 553- 69.

Ackerman, Bob, *et al*. (2002b). "Global Transfer Pricing Update," *Tax Notes International*, Vol. 28 (Oct. 28), pp. 357-84.

Ackerman, Bob, *et al*. (2003). "Global Transfer Pricing Update," *Tax Notes International*, Vol. 32 (Nov. 3) pp. 445-68.

Ackerman, Bob, *et al*. (2004). "Global Transfer Pricing Update," *Tax Notes International*, Vol. 33 (January 19), pp. 259-65.

Arnold, Brian J. (1986). *The Taxation of Controlled Foreign Corporations: An International Comparison,* Toronto, Canadian Tax Foundation, 1986.

Arnold, Brian J. (2000). "Controlled Foreign Corporation Rules, Harmful Tax Competition, and International Taxation," in *Report of Proceedings of the First World Tax Conference: Taxes without Borders,* 2000 World Tax Conference Report, Toronto, Canadian Tax Foundation.

Arnold, Brian J., and Patrick Dibout. (2001). "Limits on the Use of Low-tax Regimes by Multinational Businesses: Current Measures and Emerging Trends: General Report." *Cahiers de Droit Fiscal International*, International Fiscal Association, chapter 17.

Avi-Yonah, Reuven S. (2000). "Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State," *Harvard Law Review* Vol. 113, No. 7 (May), pp. 1675-1676.

Avi-Yonah, Reuven S. (2002). "For Haven's Sake: Reflections on Inversion Transactions," *Tax Notes International*, Vol 27 (July 8), pp. 225-231.

Bentley, Duncan. (2003). "International Constraints on National Tax Policy," *Tax Notes International*, Vol. 30 (June 16), pp. 1127-1144.

Blessing, Peter H. (2000). "Revisiting the Deferral of Foreign Business Income," in *Report of Proceedings of the First World Tax Conference: Taxes without Borders,* 2000 World Tax Conference Report, Toronto, Canadian Tax Foundation, chapter 18.

Bodner, Paul M., "International Taxation," in Frederick D. S Choi, editor, *International Accounting and Finance Handbook*, 2nd edition (New York: John Wiley and Sons), chapter 39.

Boskin, Michael J., and Charles E. McLure, Jr., editors. (1990). *World Tax Reform: Case Studies of Developed and Developing Countries* (San Francisco: International Center for Economic Growth)

Desai, Mihir A. and James R. Hines, Jr., "Expectations and Expatriations: Tracing the Causes and Consequences of Corporate Inversions", Working Paper No. 9057, National Bureau of Economic Research, July 2002.

Dimon, Samuel J. (2002). "Outbound Inversion Transactions," *Tax Notes*, Vol. 96 (July 1), pp. 127- 49.

Doggart, Caroline. (1985) *Tax Havens and Their Uses. Economist Intelligence Unit.*

Easson, Alex. (2001a). "Tax Incentives for Foreign Direct Investment, Part I: Recent Trends and Countertrends," *Bulletin for International Fiscal Documentation*, Vol. 55, No. 7 (July), pp. 266-74.

Easson, Alex. (2001b). "Tax Incentives for Foreign Direct Investment, Part II: Design Considerations," *Bulletin for International Fiscal Documentation*, Vol. 55, No. 8 (August), pp. 365-75.

Easson, Alex. (1999). "The Tax Competition Controversy, *Tax Notes International* Vol. 18 (January 25), pp. 371-

Eden, Lorraine, editor. (1991). *Retrospectives on Public Finance* (Durham, NC: Duke University Press)

Fox, William F., and Michael J. McIntyre. (2003). "Globalization and Tax Design in Developing Countries," available at http://www1.worldbank.org/publicsector/tax/AprilMay2003Seminar/FoxMcIntyrePaper.pdf

Gillis, Malcolm. (1989). *Tax Reform in Developing Countries* (Durham, NC: Duke University Press).

Gordon, Richard A. (1981). *Tax Havens and Their Use by United States Taxpayers – and Overview* U.S Internal Revenue Service, U.S. Department of the Treasury.

Graetz, Michael J., (2001). "Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies," *Tax Law Review*, Vol. 54, pp. 261- 336; also in *Brooklyn Journal of International Law*, Vol. 26, No. 4, 1357-1448.

Hines, James R., Jr., and Eric M. Rice (1994), "Fiscal Paradise: Foreign Tax Havens and American Business," 109 *Quarterly Journal of Economics*, pp. 149-82.

Holland, David, and Richard J. Vann. (1998). "Income Tax Incentives for Investment," in Victor Thuronyi, editor, *Tax Law and Drafting*, Vol. 2 (Washington: IMF), pp. 986-1020.

Ikeda, Yuichi " (1992). "Treatment of Intercompany Transfer Pricing for Tax Purposes – A Survey of Legislative and Administrative Issues," International Monetary Fund, Working Paper No. 92/77.

International Bureau for Fiscal Documentation. (looseleaf). *The Tax Treatment of Transfer Pricing* (The Hague: IBFD).

International Fiscal Association. (2001a). *Taxation of Income Derived from Electronic Commerce; Cahiers de Droit Fiscal International*.

International Fiscal Association. (2001b). *Limits on the Use of Low-tax Regimes by Multinational Businesses: Current Measures and Emerging Trends; Cahiers de Droit Fiscal International*.

International Monetary Fund, Tax Policy Division. (1990). "Tax Policy and Reform for Foreign Direct Investment in Developing Countries," Working Paper No. WP/90/70.

Kudrle, Robert T., and Lorraine Eden. (2003). "The Campaign Against Tax Havens: Will It Last? Will It Work?" *Stanford Journal of Law, Business & Finance*, Vol 9, pp. 37-67.

Langer, Marshall J., (2000). "Harmful tax Competition: Who are the Real Tax Havens?" *Tax Notes International* Vol. 21 (Dec. 18), pp. 2831-39.

Langer, Marshall J., (2002). "The Outrageous History of Caribbean Tax Treaties with OECD Member States," *Tax Notes International*, Vol. 26 (June 10), pp. 1167-1217.

Lin, Jinyan. (2003). *International Taxation in the Age of Electronic Commerce: A Comparative Study* (Toronto: Canadian tax Foundation)

Martinez-Vazquez, Jorge, and James Alm. (2003). *Public Finance in Developing and Transitional Countries* (Cheltenham, UK: Edward Elgar).

McLure, Charles E., Jr. (1991). "Income Tax Reform in Venezuela: Thirty Years after the Shoup Mission." in Lorraine Eden, editor, *Retrospectives on Public Finance* (Durham, NC: Duke University Press), pp. 67-85.

McLure, Charles E., Jr. (1999). "Tax Holidays and Investment Incentives: A Comparative Analysis," *Bulletin for International Fiscal Documentation*, Vol. 53, No. 8-9 (August-(September), pp. 326-39.

McLure, Charles E., Jr. (2001). "Globalization, Tax Rules and National Sovereignty," *Bulletin for International Fiscal Documentation*, Vol. 55, No. 8 (August), pp. 328-41.

McLure, Charles E., Jr. (2002). "Replacing Separate Entity Accounting and the Arm's Length Standard with Formulary Apportionment,"*Bulletin for International Fiscal Documentation*, Vol. 56, No. 12 (December), pp. 586-99.

McLure, Charles E., Jr. (2003). "Taxation of Electronic Commerce in Developing Countries,"in James Robert Alm and Jorge Martinez, editors, *Public Finance in Developing and Transition Countries*: *Essays in Honor of Richard Bird* (Edward Elgar), pp. 283-323.

McLure, Charles E., Jr., Jack Mutti, Victor Thuronyi, and George R. Zodrow. (1990). *The Taxation of Income from Business and Capital in Colombia* (Durham, NC: Duke University Press).

Musgrave, Richard A., and Malcolm Gillis. (1971). *Fiscal Reform for Colombia: the Final Report and Staff Papers of the Colombian Commission on Tax Reform* (Cambridge, MA: Harvard University International Tax Program).

Newlon, T. Scott. (2000). "Transfer Pricing and Income Shifting in Integrating Economies," in Sijbren Cnossen, editor, *Taxing Capital Income in the European Union: Issues and Options for Reform* (Oxford: Oxford University Press), pp. 214-42.

O'Connor, Walter. (1997) "International Transfer Pricing," in Frederick D. S Choi, editor, *International Accounting and Finance Handbook*, 2nd edition (New York: John Wiley and Sons), chapter 38.

OECD (1987). *International Tax Avoidance and Evasion: Four Studies* (Paris: OECD).

OECD (1996). *Controlled Foreign Company Legislation* (Paris: OECD).

OECD, Committee on Fiscal Affairs (1998). *Harmful Tax Competition: An Emerging Global Issue* (Paris: OECD).

OECD, Committee on Fiscal Affairs. (2000). "Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practices," available at http://www.oecd.org/dataoecd/9/61/2090192.pdf?channelId=33745&homeChannelId=34897&fileTitle=2000+Report%3A+Towards+Global+Tax+Co-operation%3A+Progress+in+Identifying+and+Eliminating+Harmful+Tax+P+...

OECD (2002). *Agreement on Exchange of Information on Tax Matters*, available at: http://WWW.OECD.ORG/dataoecd/15/43/2082215.pdf?channelId=33767&homeChannelId=34897&fileTitle=Agreement+on+Exchange+of+Information+on+Tax+Matters.

OECD. (2003a). *Model Tax Convention on Income and on Capital*: Condensed version – - January 2003 (Paris: OECD)

OECD (2003b). *Improving Access to Bank Information for Tax Purposes: The 2003 Progress Report*, available at: http://WWW.OECD.ORG/dataoecd/5/0/14943184.pdf?channelId=33767&homeChannelId=34897&fileTitle=Improving+Access+to+Bank+Information+for+Tax+Purposes+-+The+2003+Progress+Report.

OECD (2004). *The OECD's Project on Harmful Tax Practices: the 2004 Progress Report*, available at:: http://WWW.OECD.ORG/dataoecd/60/33/30901115.pdf?channelId=33745&homeChannelId=34897&fileTitle=The+2004+Progress+Report%3A+The+OECD%27s+Project+on+Harmful+Tax+Practices.

Oldman, Oliver, H. David Rosenbloom, and Joan Youngman. (1991). "International Aspects of Revisions to the Jamaican Company Tax," in *The Jamaican Tax Reform* (Cambridge, Mass.: Lincoln Institute of Land Policy), pp. 385-413.

Ring, Diane M. (2000). "On the Frontier of Procedural Innovation: Advance Pricing Agreements and the Struggle to Allocate Income for Cross Border Taxation," *Michigan Journal of International Law*, Vol. 21 (winter), pp. 143-234.

Rosenbloom, H. David. (2000). "Arbitrage and Transfer Pricing," in *Report of Proceedings of the First World Tax Conference: Taxes without Borders,* 2000 World Tax Conference Report, Toronto, Canadian Tax Foundation, chapter 35.

Schindler, Geunter, and David Henderson. (1985). " Intercorporate Transfer Pricing: 1985 Survey of Section 482 Audits," *Tax Notes,* Vol. 29 (December 16), pp. 1171-77.

Scholes, Myron S. Mark A. Wolfson, Merle M. Erickson, Edward L. Maydew, and Terry J. Shevlin, (2002) *Taxes and Business Strategy: a Planning Approach*, 2nd edition (Prentice Hall).

Shah, Anwar, editor. (1995). *Fiscal Incentives for Investment and Innovation* (New York: Oxford University Press for the World Bank).

Shoup, Carl S., John F. Die, Lyle C. Fitch, Donald MacDougall, Oliver S. Oldman, and Stanley S. Surrey. (1959). *The Fiscal System of Venezuela* (Baltimore: Johns Hopkins Press).

Slemrod, Joel. (1995). "Tax Policy toward Foreign Direct Investment in Developing Countries in Light of Recent International Tax Changes," in Anwar Shah, editor, *Fiscal Incentives for Investment and Innovation* (New York: Oxford University Press for the World Bank), pp. 289-307.

Slitor, Richard.. (1971). "Reform of the Business Tax Structure: Analysis of Problems and Alternative Remedial Proposals," in Richard A. Musgrave and Malcolm Gillis, *Fiscal Reform for Colombia: the Final Report and Staff Papers of the Colombian*

Commission on Tax Reform (Cambridge, MA: Harvard University International Tax Program), pp. 463-529.

Surrey, Stanley S., "Reflections on the Allocation of Income and Expenses among National Tax Jurisdictions." (1978) 10 *Law and Policy in International Business*, pp. 409-60.

Tanzi, Vito. (1995). *Taxation in an Integrating World* (Washington: Brookings Institution).

Tanzi, Vito. (1999). "Is There aa Need for a World Tax Organization?" in Assaf Razin and Efraim Sadka, editors. *The Economics of Globalization : Policy Perspectives from Public Economics* (Cambridge: Cambridge University Press), pp. 173-186.

Taylor, Milton C., and Raymond L. Richman. (1965). *Fiscal Survey of Colombia* (Baltimore: Johns Hopkins Press).

Thirsk, Wayne (editor). (1997). *Tax Reform in Developing Countries* (Washington: World Bank).

Vann, Richard J. (1998). "International Aspects of Income Tax," in Victor Thuronyi, editor, *Tax Law and Drafting*, Vol. 2 (Washington: IMF), pp. 718-810.

United Nations Conference on Trade and Development. (1999). *Transfer Pricing*. (New York)

United Nations. (2001). *Report of the High-level Panel on Financing for Development* (New York: UN), available at http://www.un.org/reports/financing/.

US Department of the Treasury. (2002). "Corporate Inversion Transactions: Tax Policy Implications," available at www.treas.gov/press/releases/docs/inversion.pdf.

Whalley, John. (1990). "Recent Tax Changes in Canada: Policy Responses to Global and Domestic Pressures," in Michael J. Boskin, and Charles E. McLure, Jr., editors, *World Tax Reform: Case Studies of Developed and Developing Countries* (San Francisco: International Center for Economic Growth), pp. 73-91.