

The London School of Economics and Political Science

Bargaining away the tax base:
The North-South politics of tax treaty diffusion

Martin Hearson

A thesis submitted to the Department of International Relations of the
London School of Economics and Political Science for the degree of
Doctor of Philosophy, London, August 2016

Declaration

I certify that the thesis I have presented for examination for the PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

The copyright of this thesis rests with the author. Quotation from it is permitted, provided that full acknowledgement is made. This thesis may not be reproduced without my prior written consent. I warrant that this authorisation does not, to the best of my belief, infringe the rights of any third party.

I declare that my thesis consists of 92 508 words.

Abstract

Developing countries have signed over a thousand tax treaties, at a cost of millions of pounds a year, based on a myth. The predominant legal rationale for so-called ‘double taxation’ treaties is outdated, while the evidence that they attract investment into developing countries is inconclusive. Although the financial gains from tax treaties are split between the treasuries of capital exporting countries and their multinational companies, most of the costs are incurred by the fiscs of capital importing countries. Rational actor models alone cannot explain the diffusion of tax treaties to the global South.

The missing piece of the picture is ideas. As developing countries have formed their identities as fiscal states, a century-old narrative describing the deleterious effects of double taxation resulting from international fiscal anarchy has shaped different actors’ preferences. From the perspective of those focused on investment promotion, tax treaties are part of what a state does when it wants to compete for investment, regardless of the evidence about their actual effects. Meanwhile, officials developing the tax system have looked to the OECD as the source of sophisticated technical knowledge, and learned to regard tax treaties as the way to ensure ‘acceptable standards’ for taxing multinational companies.

This thesis uses interviews with treaty negotiators, observations of international meetings, and archival research, including case studies from the UK, Zambia, Vietnam and Cambodia selected through a mixed methods strategy. It identifies three diffusion mechanisms: competition by developed countries for outward investment opportunities, ‘boundedly rational’ competition by developing countries for inward investment, and efforts by tax specialists to disseminate fiscal standards. It also highlights two scope conditions. First, competition for inward investment can be blocked if political actors are concerned about raising corporate tax revenue. Second, where the preferences of specialists and non-specialists in a country do not align, control over veto points is a prerequisite to diffusion.

Acknowledgements

This project really began while I worked at ActionAid, and has continued as a collaboration with its various offices and partners around the world. Over the past four years I have been especially grateful for the ideas and contacts of: Nadia Harrison and Lovisa Moller in London; Anders Larsen, Nelly Busingye and Jalia Kangave in Kampala; Kryticous Patrick Nshindano and Pamela Chisanga in Lusaka; Savior Mwambwa and all at Tax Justice Network Africa in Nairobi; Nora Honkaniemi in both Nairobi and Hanoi. The others within civil society who helped to shape my thinking are too numerous to mention, aside of course from the founders of Tax Justice Network, especially John Christensen, without whom few of us would ever have thought to look into the obscure world of international taxation.

I have enjoyed many rich and challenging discussions with members of the international tax community, as well as plundering their contact books. In particular, thanks go to Michael Lennard of the UN tax committee secretariat, Lee Corrick and Diego Gonzalez-Bendixsen at the OECD, Roberto Schatan at the IMF, Heather Self, Michael Durst, Jeremy Cape, David Spencer, as well as my friends in the tax Twittersphere.

My supervisor Jeff Chwieroth's comments shaped and focused the project throughout, making it immeasurably better. I am also grateful (in hindsight!) for critical feedback early on from LSE's Leonardo Baccini and Steve Woolcock, and later from James Morrison. A special thanks is due to a number of academics who have reached out to me with useful comments but also comradeship in the lonely world of the tax IPE scholar, notably Len Seabrooke, Duncan Wigan, André Broome, Lauge Poulsen, Jason Sharman, Ronen Palan and Lucy Barnes on the international relations side, and Alison Christians, Eduardo Baistrocchi, Hugh Ault, Judith Freedman and the International Centre for Tax and Development team on the tax side. The companionship of fellow PhD students was of course invaluable, including: at LSE Joanne Yao, Lukas Linsi, Marian Feist, Andrew Delatolla, Daniel Schade and Heidi Wang-Kaeding; further afield Todd Tucker, May Hen, Daisy Ogembo and Deeksha Sharma.

My wife, Rachel, has helped me keep this work in perspective. She put up with all the traveling without much complaint, but then she didn't have to wait for a telegram to find out when I would be home.

I acknowledge ESRC funding, without which I couldn't have undertaken this project. The ESRC is state-funded, and so, ultimately, it was tax that paid for my PhD.

Contents

Abstract.....	3
Acknowledgements.....	4
List of tables.....	6
List of figures.....	7
Acronyms.....	8
Preface.....	9
1 Introduction.....	11
2 International fiscal relations.....	22
3 The tax treaties conundrum.....	56
4 Turning the tables: competition for inward and outward investment.....	78
5 Expert authority in the diffusion of tax treaties.....	104
6 Case selection and methodology.....	136
7 The United Kingdom.....	150
8 Zambia.....	179
9 Vietnam and Cambodia.....	197
10 Conclusion.....	217
Annex 1: list of interviews.....	227
Annex 2: Descriptive statistics for quantitative analysis.....	230
Bibliography.....	231

List of tables

Table 1.1: Outline of the mechanisms, conditions and cases.....	19
Table 3.1: Selected provisions of tax treaties and their effects.....	63
Table 4.1: Breakdown of interviews.....	80
Table 4.2: Examples of spatial lag variables in a diffusion study.....	83
Table 4.3: Quotes from developing country negotiators.....	92
Table 4.4: Quotes from developed country negotiators.....	99
Table 5.1: Overlap in membership between UN and OECD tax committees.....	128
Table 6.1: Original and re-estimated coefficients for the Cox proportional hazard model..	142
Table 6.2: Model fit for case study countries.....	147
Table 6.3: Summary of case studies.....	148
Table 7.1: UK negotiations with developing countries during 1970-1979.....	154
Table 7.2: Predicted survival for within-UK case comparison.....	164
Table 8.1: Phases of treaty negotiation in Zambia.....	180
Table 8.2: Zambian negotiations during 1970-1979.....	181
Table 8.3: Foreign investors in Zambia's state-owned enterprises, 1974.....	182
Table 9.1: Phases of treaty negotiation in Vietnam and Cambodia, 2003-2012.....	198
Table 9.2: Inward FDI flows per capita (current US\$).....	199
Table 9.3: Timing of some key milestones in economic integration.....	199
Table 9.4: Treaty-making activity.....	200
Table 9.5: Tax treaties signed by ASEAN member states.....	211
Table 9.6: Selected tax statistics from Vietnam and Cambodia.....	213

List of figures

Figure 3.1: Cumulative total tax treaties signed by developing countries	57
Figure 3.2: Cumulative total tax treaties signed by developing countries in sub-Saharan Africa and South-East Asia.....	58
Figure 3.3: Number of developing countries with at least one tax treaty	58
Figure 3.4: Countries with five or more treaties with sub-Saharan African countries.....	59
Figure 5.1: Policy space and capacity building curves, generic	118
Figure 5.2: Policy space and capacity building curves, this case study	118
Figure 6.1: Case selection under different strategies	139
Figure 6.2: Selecting country cases.....	143
Figure 6.3: Case study selection using aggregate values per country, 1970-79.....	146
Figure 6.4: Case study selection using aggregate values per country, 2003-12.....	146
Figure 7.1: Histogram showing length of time between first contact and signature.....	153
Figure 8.1: Negotiated content of tax treaties signed by sub-Saharan countries, 1970-1985	189
Figure 9.1: Vietnam's tax treaties scored against its declared position in reservations to the OECD model treaty.....	203

Acronyms

ASEAN	Association of South East Asian Nations
BEPS	Base Erosion and Profit Shifting
BIT	Bilateral Investment Treaty
BTT	Bilateral Tax Treaty (“tax treaty”)
CBI	Confederation of British Industry
CFA	Committee on Fiscal Affairs
CFP	Center for Freedom and Prosperity
COMESA	Common Market of Eastern and Southern Africa
CPP	Cambodian People’s Party
CTPA	Centre for Tax Policy and Administration
DTA	Double Taxation Agreement (“tax treaty”)
DTI	Department for Trade and Industry
DTT	Double Taxation Treaty (“tax treaty”)
EAC	East African Community
ECOSOC	Economic and Social Council (of the UN)
EEC	European Economic Community
FCO	Foreign and Commonwealth Office
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GDT	General Department of Taxation
IBFD	International Bureau of Fiscal Documentation
ICC	International Chambers of Commerce
IMF	International Monetary Fund
IPE	International Political Economy
MFA	Ministry of Foreign Affairs
MMD	Movement for Multiparty Democracy
NGO	Non-Governmental Organisation
ODA	Overseas Development Assistance
OECD	Organisation for Economic Co-operation and Development
OFC	Offshore financial centre
PE	Permanent Establishment
RTZ	Rio Tinto Zinc
SADC	Southern African Development Community
TIEA	Tax Information Exchange Agreement
TJN	Tax Justice Network
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNICE	Union des Industries de la Communauté Européenne
VAT	Value Added Tax
VBF	Vietnam Business Forum
WTO	World Trade Organisation
ZRA	Zambia Revenue Authority

Preface

In January 1972, a British tax treaty negotiator in Nairobi sent a telegram to his superiors at Somerset House, the headquarters of the Board of Inland Revenue across the road from the London School of Economics. “Talks with Kenya have broken down over treatment of management fees and royalties,” he wrote. “The Keanyans [sic] have pressed me to obtain confirmation from the Board that the UK cannot agree to a 20% withholding tax.”¹ Kenya wanted to replace a tax treaty with the UK that it inherited at independence with a new one that would give it the right to tax gross fees paid by Kenyan companies to British managers and consultants at a rate of up to 20 percent. The UK had never agreed to this before, taking the view that such payments should be taxable only in the UK. Kenya eventually terminated the colonial agreement in an impressive act of brinksmanship, and the UK relented on its point of principle. In subsequent talks at Somerset House, Kenyan and British officials initialled a treaty permitting Kenya to tax management and consultancy fees paid to the UK, but only at rates up to 12.5 percent.² This is the lowest cap in any Kenyan treaty currently in force.

The notes of the UK-Kenya negotiations indicate that tax avoidance by unscrupulous British multinational companies was the developing country’s concern about this clause. Pressed for an example, Kenyan negotiators explained that a British firm had posted handwritten letters back to the UK, where they were typed up and posted back to Nairobi, with the extortionate fee charged for this secretarial service shifting profits from Kenya to the UK before the former could tax them.³ The British were sceptical, and in a tense exchange during the Nairobi talks, a Kenyan negotiator asserted that “the UK wanted to make UK management cheaper in the Kenyan market than Swedish management.”⁴ Sweden, along with Norway and Denmark, had already agreed to the 20 percent rate, which meant that Nordic firms would have needed to charge 20 percent more than their British counterparts for the same post-tax return, had the UK got the zero rate that it sought.

It seems unlikely that either side would have been thinking of a British PhD student, forty years in the future, arranging a contract using email, Whatsapp and Skype. Yet in 2013, across the road from the building where the treaty was initialled, it saved me (and cost the Kenyan treasury) several hundred pounds. A Kenyan organisation, Tax Justice Network-Africa (TJN-A), had agreed to pay some of the costs of the fieldwork for this thesis, through

¹ Telegram from D Hopkins, Inland Revenue, 27 January 1972. File ref IR 40/17623

² United Kingdom-Kenya double taxation agreement, 1973

³ Minutes of UK-Kenya tax treaty negotiation meeting, London, 9-11 November 1971. File ref IR 40/17623

⁴ Minutes of UK-Kenya tax treaty negotiation meeting, Nairobi, 25-29 January 1972. File ref IR 40/17623

a consultancy fee. TJN-A's standard contract stated that it was legally obliged to deduct a 20 percent withholding tax from my fee, but in my case the rate was reduced to 12.5 percent, on the basis of the 1973 agreement.

The final sentence of the January 1972 telegram illustrates how times have changed between the negotiation of the treaty and its impact on my own tax liability. "I would be grateful if you could get a message to my wife that I will probably not be home until Wednesday," wrote the British negotiator, giving a home telephone number.⁵ In contrast, thanks to the excellent mobile internet coverage across east Africa today, my wife had no such uncertainty to endure when I conducted fieldwork.

While Kenyan negotiators in 1973 obtained a good result in comparison to other countries negotiating with the UK, the treaty still has significant costs, which can only be reduced through a new intergovernmental negotiation or by abrogating the treaty altogether. By 2013, British multinationals had over £2 billion invested in Kenya, remitting £150 million to the UK in dividends and fees, on which the treaty caps tax rates at either 12.5 or 15 percent.⁶ In any event, it is unlikely that a renegotiation would improve Kenya's lot, as most of its recent negotiations, while resembling its past treaties in form and content, prevent it from taxing consultancy fee payments at all.

Just as neither TJN-A nor I considered the tax treaty until after we had decided to work together, evidence suggests that tax treaties may only rarely influence multinational companies' investment decisions, and so developing countries have little to show for these revenue sacrifices. As a result, some have recently started to reconsider individual tax treaties or even their whole networks, and organisations as diverse as African civil society groups and the IMF have adopted an increasingly critical stance. In 2012, Mongolia, Argentina and Rwanda between them repudiated a total of eight tax treaties, apparently due to fears that they were open to abuse or overly generous.⁷

The rate at which developing countries are signing new tax treaties, however, shows no sign of declining. This thesis is an attempt to understand the inconsistency between 50 years of negotiations that have resulted in over a thousand tax treaties signed by developing countries, and the evidence that these treaties cost developing countries more than they gain.

⁵ Telegram from D Hopkins, Inland Revenue, 27 January 1972. File ref IR 40/17623

⁶ Irungu, "UK Firms Ship out Sh20bn in Dividends and Fees from Kenya"; Kenya High Commission, "Kenya - United Kingdom Relations."

⁷ Godfrey, "Argentina Cancels Double Tax Pact With Spain"; Ernst & Young, "Draft Law to Cancel Mongolia's Double Tax Treaties"; Ernst & Young, "Argentina Unilaterally Terminates Tax Treaty with Switzerland."

1 Introduction

A treaty means giving some rights to others. Why would you do that to someone who is coming to invest?

- Tanzanian tax treaty negotiator¹

Developing countries do not get a fair share of the global multinational corporate income tax base. Long the contention of critical legal scholars, this view is now increasingly shared by vocal political actors.² Yet the key mechanism depriving developing countries of a larger share of tax revenues is something they have signed up to – and continue to do – entirely voluntarily: a network of bilateral treaties, and the international norms that those treaties encode into hard law. According to Tsilly Dagan, the main effect of these tax treaties is “regressive redistribution – to the benefit of the developed countries at the expense of the developing ones.”³ Kim Brooks and Richard Krever agree that “the success of the high-income states in negotiating ever more treaties has come at the expense of the tax revenue bases of low-income countries.”⁴ If this is the case, why are most of the 3000 tax treaties in existence signed by developing countries?

The conventional answer to this question rests on a fiscal anarchy *problematique*. States are defined in part by their claim to fiscal sovereignty, a monopoly over the right to raise tax within their borders. Because economic factors can cross those borders, however, states’ attempts to exercise their fiscal sovereignty in conditions of anarchy may be self-defeating. Without cooperation, overlapping claims to tax the same income will create onerous double taxation that deters trade and investment. Worse still, taxpayers may respond to a high tax burden in one country by moving to another, or by placing their wealth in another jurisdiction, beyond the reach of their home state’s administrative capacity. Fiscal states’ relationships with each other and with their corporate taxpayers have developed within the constraints of this socially constructed notion of international anarchy.

The modern corporate income tax, introduced among ‘developed’ countries in the early 20th century, had always to be designed bearing in mind the effects of its interaction with other states’ tax systems, and so states worked simultaneously through the League of Nations to

¹ Interview 20

² Irish, “International Double Taxation Agreements and Income Taxation At Source:”; Dagan, “The Tax Treaties Myth”; Thuronyi, “Tax Treaties and Developing Countries”; ActionAid, *Mistreated: The Tax Treaties That Are Depriving the World’s Poorest Countries of Vital Revenue*.

³ Dagan, “The Tax Treaties Myth,” 941.

⁴ Brooks and Krever, “The Troubling Role of Tax Treaties,” 160.

construct a set of international norms that brought order to this emerging anarchy.⁵ As globalisation has intensified these conflicts, developed countries, acting primarily through the OECD, have elaborated an increasingly detailed global tax regime. Their tax systems have converged on a common approach to international tax formulated over decades of experimentation and negotiation, which combines multilateral ‘soft law’ in the form of a set of core principles and thousands of pages of detailed technical standards with the hard law of bilateral treaties.⁶ Nonetheless, disagreements among states over international corporate taxation have recently been elevated to the highest levels of international politics through the G-20.⁷

For developing countries, coming much later into the international tax regime and with much less mature tax systems, the traffic has been one-way. Whole chapters of tax codes have been developed on the basis of OECD tax concepts and standards, some of which they have adopted wholesale.⁸ Their very identities as fiscal states – from the purpose and definition of corporate tax, to the fiscal state’s responsibilities towards its taxpayers – have not formed in isolation, but as participants in this regime. The double taxation problem, which expresses one of the negative consequences of international fiscal anarchy, is pervasive in the design of their laws governing international tax.

At the heart of this process are thousands of bilateral tax treaties, every one of them derived from a model formulated and promoted by the OECD. This multilateral foundation of the tax treaty regime, as well as the bilateral treaties built on those foundations, has distributional consequences. By design, tax treaties between developed and developing countries constrain the latter’s ability to raise tax revenue from foreign investors.⁹ Put simply, developing countries have given up large chunks of their tax base by signing these treaties, with few certain gains to show as a result: their incorporation into the international tax regime is more akin to a process of dependency than of modernisation.¹⁰

⁵ Graetz and O’Hear, “The ‘Original Intent’ of U.S. International Taxation”; Picciotto, *International Business Taxation: A Study in the Internationalization of Business Regulation*.

⁶ Avi-Yonah, *International Tax as International Law*.

⁷ Houlder, “Special Tax Rules for Internet Companies ‘not Viable’”; Dyer, “China Greets G20 Results with Caution.”

⁸ Stewart, “Global Trajectories of Tax Reform: The Discourse of Tax Reform in Developing and Transition Countries”; Christians, “Global Trends and Constraints on Tax Policy in the Least Developed Countries”; Genschel and Seelkopf, “Did They Learn to Tax? Taxation Trends Outside the OECD,” 2016.

⁹ In this thesis, the distinction between ‘developed’ and ‘developing’ countries is treated as interchangeable with that between ‘capital-exporting’ and ‘capital-importing’ countries, and the ‘home’ and ‘host’ country of a multinational company. In reality, this equivalence is increasingly breaking down, in particular as middle-income countries act simultaneously as capital importers and capital exporters. For my purposes, the categorisation is a relative one referring to a country’s position in the individual dyadic relationship, rather than its relationship to all countries. The case studies, in particular, focus on a developed country in negotiations where its role is that of a capital exporter, and developing countries that are overwhelmingly capital importers.

¹⁰ Brooks and Krever, “The Troubling Role of Tax Treaties”; Thuronyi, “Tax Treaties and Developing Countries.”

1.1 The role of ideas

Existing literature that tries to explain the development of the tax treaty regime, and in particular the diffusion of tax treaties to developing countries, takes a rationalist approach. The double taxation problem is treated as fact, as is states' pre-existing, first order preference for resolving it while – as a second-order preference – maximising their share of the tax base.¹¹ Negotiations can then be modelled using game theory, as a 'battle of the sexes' through which states reach a coordinated solution.¹² Some studies modify this by taking into account competition between capital importing states, which may alter their preferences, creating a more intense preference for resolving double taxation despite the loss of the tax base that this entails.¹³

As constructivist international relations scholarship reminds us, however, international anarchy is a socially constructed concept,¹⁴ and rationalist assumptions about state preferences in international tax are indeed difficult to sustain. Tsilly Dagan turns the model of tax treaty negotiations as a 'battle of the sexes' on its head, demonstrating that, absent an agreement, capital exporting states will always have an incentive to move unilaterally to resolve double taxation, bearing all the costs of doing so themselves.¹⁵ True to Dagan's prediction, developed countries' tax systems already resolve most instances of double taxation faced by their outward investors. Unsurprisingly, therefore, there is little evidence to support the contention that developing countries gain inward investment as a result of signing tax treaties.¹⁶ The voluminous critical legal literature that is sceptical of tax treaties from a developing country perspective is less vocal about why, given the certain costs and uncertain benefits, they should have proceeded to sign tax treaties.¹⁷ Those authors that do venture suggestions point to the role of ideas: Dagan suggested that the 'myth' of the double taxation problem concealed "much more cynical goals, particularly redistributing tax revenues from the poorer to the richer signatory countries"; Charles Irish, writing as early as

¹¹ Rixen and Schwarz, "Bargaining over the Avoidance of Double Taxation: Evidence from German Tax Treaties"; Radaelli, "Game Theory and Institutional Entrepreneurship: Transfer Pricing and the Search for Coordination International Tax Policy"; Becker and Fuest, "The Nexus of Corporate Income Taxation and Multinational Activity"; Chisik and Davies, "Asymmetric FDI and Tax-Treaty Bargaining: Theory and Evidence."

¹² Rixen, *The Political Economy of International Tax Governance*.

¹³ Baistrocchi, "The Use and Interpretation of Tax Treaties in the Emerging World: Theory and Implications"; Barthel and Neumayer, "Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties"; Rixen, *The Political Economy of International Tax Governance*.

¹⁴ Wendt, *Social Theory of International Politics*.

¹⁵ Dagan, "The Tax Treaties Myth."

¹⁶ See, for example, Sauviant and Sachs, *The Effect of Treaties on Foreign Direct Investment*. More recent examples include Davies, Norbäck, and Tekin-Koru, "The Effect of Tax Treaties on Multinational Firms: New Evidence from Microdata"; Blonigen, Oldenski, and Sly, "The Differential Effects of Bilateral Tax Treaties."

¹⁷ For example, Brooks and Krever, "The Troubling Role of Tax Treaties"; Christians, "Tax Treaties for Investment and Aid to Sub-Saharan Africa: A Case Study"; Dagan, "The Tax Treaties Myth"; Irish, "International Double Taxation Agreements and Income Taxation At Source:"

1974, bemoaned developing countries' "unawareness of the adverse nature of double taxation agreements" and "unquestioned acceptance of the status quo."¹⁸

Elsewhere in the political economy literature on international tax, the causal role and constitutive nature of ideas is widely accepted. Jason Sharman, in seeking to explain why large developed countries should have been unable to curb the harmful tax practices of small island states, concludes that the OECD lost, "a rhetorical conflict, that is, one centred on the public use of language to achieve political ends," despite its overwhelming dominance of material capabilities.¹⁹ For Ronen Palan, tax havens' use of the 'commercialisation of state sovereignty' to undermine other states' tax systems has been insulated from the ability that developed countries undoubtedly possess to legislate it away, because it is a by-product of a principled idea, the Westphalian concept of sovereignty.²⁰ Leonard Seabrooke and Duncan Wigan portray the standard-setting process for financial reporting related to corporate taxation as a conflict between groups of professionals that was resolved through their claims to technical and moral authority.²¹

Two empirical aspects of international tax make it essential that the role of ideas is considered when policy processes are analysed, whether they relate to tax avoidance and evasion, as these constructivist accounts do, or to bargaining over double taxation, which has until now been addressed in political science solely by scholars working in a rationalist tradition. First, as chapter 2 of this thesis will discuss, tax is intimately connected to state-citizen relations and hence to ideologies, so that state preferences cannot be derived simply from an aggregate assessment of the welfare losses and gains of different options. Second, as chapters 4 and 5 argue, international tax is characterised by technical complexity, meaning that many participants in policy debates must necessarily act without a comprehensive understanding of the available information, and that actors with authoritative command of technical knowledge have considerable power to shape others' preferences.

The aim of thesis is therefore to extend the study of the role of ideas in international tax relations to the double taxation problem. Its starting point is that the 'tax treaties myth' is socially constructed, bound up in the idea of international fiscal anarchy. Detailed country case studies and interviews with treaty negotiators will show how this and other socially constructed ideas are transmitted through international mechanisms of diffusion. Those ideas support an agenda in the interests of developed countries, although not, in general, one of

¹⁸ Dagan, "The Tax Treaties Myth," 939; Irish, "International Double Taxation Agreements and Income Taxation At Source:," 300–301.

¹⁹ Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*, 75.

²⁰ Palan, "Tax Havens and the Commercialization of State Sovereignty," 172.

²¹ Seabrooke and Wigan, "Powering Ideas through Expertise: Professionals in Global Tax Battles."

‘regressive redistribution’ of tax revenue as posited by Dagan. Instead, since the benefits accrue primarily to multinational firms resident in developed countries, the narrative of this thesis is more consistent with a business power perspective.²²

1.2 Policy diffusion

The main theoretical goal of this thesis is to develop and refine literature on the diffusion of economic policies, and in particular intergovernmental agreements between developed and developing countries.²³ Policy diffusion, defined as when “the policy choices of one country are shaped by the choices of others,”²⁴ refers to the underlying mechanism driving an observed convergence in policy.²⁵ While the policy diffusion literature has largely used quantitative methodologies to identify broad cross-country mechanisms driving diffusion at global level, far less is understood about the national and regional scope conditions that may enhance or undermine their effectiveness, especially in the case of developing countries.²⁶ According to Fabrizio Gilardi, “[t]he nature of diffusion processes cannot be elucidated satisfactorily unless broad patterns can be supported by detailed information on the underlying dynamics.”²⁷ Similarly, the literature on epistemic communities is able to identify the characteristics of international expert networks who cause convergence around a policy in multiple countries, but much weaker when it comes to demonstrating how and in what circumstances these experts create changes in specific countries’ policies.²⁸

The departure point for this thesis is the literature on bilateral investment treaties (BITs), which has recently taken a turn towards explaining diffusion to developing countries through ‘bounded rationality’, the notion that policymakers do not give equal weight to all the available information, but instead rely on cognitive shortcuts when evaluating it.²⁹ BITs, it is argued, were perceived by developing countries as cost-free, which they were, until years

²² Fuchs, *Business Power in Global Governance*.

²³ Poulsen, “Bounded Rationality and the Diffusion of Modern Investment Treaties”; Elkins, Guzman, and Simmons, “Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000”; Jandhyala, Henisz, and Mansfield, “Three Waves of BITs: The Global Diffusion of Foreign Investment Policy”; Barthel and Neumayer, “Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties.”

²⁴ Dobbin, Simmons, and Garrett, “The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?,” 450.

²⁵ Gilardi, “Transnational Diffusion: Norms, Ideas, and Policies.”

²⁶ Marsh and Sharman, “Policy Diffusion and Policy Transfer”; Meseguer and Gilardi, “What Is New in the Study of Policy Diffusion?”; Solingen, “Of Dominoes and Firewalls: The Domestic, Regional, and Global Politics of International Diffusion.”

²⁷ Gilardi, “Transnational Diffusion: Norms, Ideas, and Policies,” 471.

²⁸ Haas, “Introduction: Epistemic Communities and International Policy Coordination”; Davis Cross, “Rethinking Epistemic Communities Twenty Years Later”; Antoniadis, “Epistemic Communities, Epistemes and the Construction of (World) Politics.”

²⁹ Kahneman and Tversky, “Prospect Theory: An Analysis of Decision under Risk”; Weyland, *Bounded Rationality and Policy Diffusion: Social Sector Reform in Latin America*; Poulsen, “Bounded Rationality and the Diffusion of Modern Investment Treaties.”

later investors began to use their dispute settlement clauses.³⁰ Tax treaties are a more difficult case to explain using ‘bounded rationality’, because their costs to signatory governments are immediate, predictable, and significant. Despite this difference, the evidence in this thesis supports the contention that policymakers in developing countries with limited understanding of the likely costs and benefits of tax treaties pushed forward with negotiation, based on the idea that treaties would attract investment. They did this without evaluating all the available information equally and sometimes against the advice of specialists who were more familiar with the likely impacts. Not only did this result in tax treaties signed in instances where any impact on investment was uncertain, but it also resulted in greater concessions than would have been necessary to secure an agreement with negotiating partners. A negative scope condition for this mechanism concerns the attention paid by policymakers to information about the fiscal costs of tax treaties. I argue that such costs are more salient to actors when there is concern about a country’s low tax effort, or when corporate taxation is politically controversial.

The thesis identifies a second mechanism that is largely missing from the diffusion literature. Capital exporting countries stood to gain from tax treaties, not usually through increased revenue, as discussed in the critical tax literature,³¹ but by giving their multinational investors a competitive edge in signatory countries. There is substantial evidence that lobbying by multinational companies guides capital exporting countries’ negotiating priorities, and that tax treaties form a part of these countries’ outward investment-promoting strategies. In general, such lobbying has followed the decision to invest in a country, rather than preceded it, so there is little support for the suggestion that tax treaties positively influence investors’ decisions. For this mechanism to work, of course, developing countries must be willing to sign, and so it is likely that the first two mechanisms work hand-in-hand to drive diffusion.

A third and final mechanism identified in this thesis is the agency of an epistemic community of tax technocrats based in national civil services, the private sector, academia and international organisations. Members of this community can be shown to hold a specific set of ideas about tax treaties that are different to those of non-specialists. They regard treaties as means of disseminating international tax norms and standards that members of their community have developed within the OECD’s technical bodies, and which they consider preferable to tax rules developed through national processes involving political

³⁰ Poulsen and Aisbett, “When the Claim Hits: Bilateral Investment Treaties and Bounded Rational Learning”; Jandhyala, Henisz, and Mansfield, “Three Waves of BITs: The Global Diffusion of Foreign Investment Policy.”

³¹ Dagan, “The Tax Treaties Myth”; Irish, “International Double Taxation Agreements and Income Taxation At Source:”

actors. This community claims an authoritative position in the formulation of tax policy on the basis of multiple professional competencies, and the mastery of a complex and precise technical language.³²

The thesis does not claim to show evidence of a socialisation mechanism through which developing countries' officials may have internalised these ideas, since it is difficult to demonstrate that an individual's underlying beliefs have changed.³³ It does show, however, that civil servants who have learnt specialist technical knowledge about tax treaties also hold ideas prevalent in the international tax community. These ideas can create differing preferences from other actors at national level who do not have the same specialist training. The technical learning can produce two outcomes. In one scenario, as they understand the technical detail of tax treaties better, officials become increasingly aware of their costs, and of the limited evidence that they will attract inward investment. In another, as they learn how the international tax community conceptualises tax treaties, they regard tax treaties' true function as lying outside any immediate investment-promoting effects, and their preferences for treaty partners and treaty content shift. The nature and extent of officials' learning is thus a variable that can cause them to support or oppose particular treaties.

The effectiveness of the dissemination of technical standards as a diffusion mechanism depends, however, on a second scope condition, which is the power that specialists and non-specialists have at veto points in the treaty making process. This power may result from formal bureaucratic and political responsibilities, but technical specialists may also hold a *de facto* veto created by the complex technical content and obscure terminology associated with tax treaties, which forces non-specialist actors to defer to them.³⁴

1.3 Methodology and case selection

The thesis is structured along the inductive-deductive process I used for my research. In the theory-generating stage, interviews were conducted with 47 stakeholders in tax treaty negotiations, most of them tax treaty negotiators. Several meetings of the international tax community – at the United Nations and OECD – were also observed. This anecdotal evidence is presented in the first half of this thesis as proof-of-concept, demonstrating the existence, but not the relative importance, of the diffusion mechanisms identified above.

³² Picciotto, "Indeterminacy, Complexity, Technocracy and the Reform of International Corporate Taxation"; Snape, "Tax Law : Complexity , Politics and Policymaking."

³³ Zürn and Checkel, "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State"; Johnston, "Conclusions and Extensions: Toward Mid-Range Theorizing and Beyond Europe."

³⁴ Tsebelis, *Veto Players: How Political Institutions Work*.

The theory testing phase uses the mixed methods approach of ‘nested analysis’, whereby case studies for detailed examination are selected on the basis of the predictions of a quantitative model.³⁵ In a nested analysis, cases that conform to the model’s statistical predictions are selected to test the underlying causal hypothesis, while cases with large residual variation are selected to develop new hypotheses that improve explanatory power. In this case, an existing diffusion study that is interpreted as showing support for tax treaty diffusion through rational competition by developing countries for inward investment is used as the starting point.³⁶ Cases are selected as follows (Table 1.1):

- The UK in the 1970s is first selected for its good fit with the quantitative model. This case study tests between two causal hypotheses that explain the results: was competition driven by developing countries seeking inward investment, or developed countries seeking outward investment opportunities? The case study is developed using fine-grained archival records showing the process of individual negotiations, and a broader view of London-based policymaking.
- Moderate outliers in the quantitative results are used for developing country cases: Zambia in both the 1970s and 2003-12, and Vietnam and Cambodia from 2003-12 (hereafter ‘the 2000s’). Vietnam and 1970s Zambia are positive outliers, with more treaty signatures than predicted, and are used to identify alternative diffusion mechanisms. Cambodia and 2000s Zambia are negative outliers, with fewer treaty signatures than predicted, and are used to identify scope conditions that act as ‘firewalls’ to diffusion.³⁷ The more recent years are studied using interview-based fieldwork conducted in 2014 and 2015, comprising a further 28 interviews on top of those used for theory generation.

Within-case comparison is the most effective way of holding control variables constant, and so the cases have been selected to enable this wherever possible.³⁸ Individual UK negotiations can be compared with each other thanks to the granularity of the data. For Zambia, the two different time periods can be compared with each other. For Vietnam and Cambodia, similar attitudes to other aspects of international economic cooperation establish the validity of the case comparison.

³⁵ Lieberman, “Nested Analysis as a Mixed-Method Strategy for Comparative Research.”

³⁶ Barthel and Neumayer, “Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties.”

³⁷ Solingen, “Of Dominoes and Firewalls: The Domestic, Regional, and Global Politics of International Diffusion.”

³⁸ Gerring, “What Is a Case Study and What Is It Good For?”

Table 1.1: Outline of the mechanisms, conditions and cases

Diffusion mechanism	Scope condition		Main case	Case chapter
1. Competition for outward investment			UK 1970s	7
2. Competition for inward investment	Fiscal costs not salient	Present	Zambia 1970s	8
		Absent	Cambodia 2000s	9
3. Dissemination of standards	Specialist control of veto points	Present	Vietnam 2000s	9
		Absent	Zambia 2000s	8

Source: Author's own

1.4 Outline

Chapters 2 to 5 outline a theory of tax treaty diffusion, based on secondary literature and the interview and observation data mentioned above. Chapter 2 sets the stage by describing the origins of the fiscal anarchy *problematique* in the notion of fiscal sovereignty, a long-recognised but underemphasised characteristic of the nation state. It highlights three dimensions of the idea of international fiscal anarchy, and the main ways in which this idea has conditioned interactions between states: tax competition for mobile factors of production, conflicting claims to tax cross-border economic activity, and the challenge of enforcing tax laws in a world of mobile capital. This chapter emphasises that fiscal states' tax systems, and their identities and interests as taxing entities, have not developed in isolation, but have been constructed intersubjectively on the basis of this notion of fiscal anarchy. It also argues that measures to resolve each one of these three difficulties are naturally influenced by state-state interactions in the other two areas, and by non-state actors.

Chapter 3 elaborates the core puzzle of the thesis, the diffusion of tax treaties to developing countries. A widespread discourse around tax treaties in the developing country context emphasises that it is essential to resolve the double taxation problem through tax treaties, otherwise foreign investors will be deterred by conflicting claims to tax cross-border investment. Yet the home countries of these investors have generally taken unilateral steps to prevent their outward investors facing double taxation, which fundamentally undermines this case. Furthermore, the economic evidence to date suggests a very mixed case for the effect of tax treaties on investment into developing countries. Finally, when signing tax treaties, developing countries have generally given away more of the tax base than would have been necessary in order to reach agreement.

Chapters 4 and 5 then present the theoretical and empirical basis for the diffusion mechanisms and scope conditions proposed in this thesis. Chapter 4 discusses the notion of bounded rationality in policy diffusion. While it has largely been applied to learning by developing countries, it is applied here to competition. Interview and documentary evidence in this chapter show that decisions by developing countries to open tax treaty negotiations have at times been motivated by competition for inward investment, but that this is often hard to explain based on a model of purely rational legal and economic analysis of their likely impact. The chapter then ‘turns the tables’, demonstrating a strong evidence base that it is often *developed* countries that seek tax treaties with developing countries, in order to enhance the competitive position of their own multinationals.

While chapter 4 focuses on mechanisms acting on policymakers who are not familiar with the detail of tax treaties, in chapter 5 the emphasis is on the epistemic community of international tax professionals who are at the heart of the international tax regime and of bilateral tax treaty negotiations. Through interviews and participant observation at international meetings, it demonstrates that community members share a set of ideas about tax treaties that differ from those held by non-specialist actors. They favour tax treaties not because of any immediate impact on investment flows, but because they disseminate a set of standards that embody an acceptable and responsible way to tax multinational companies. The chapter argues that community influence can happen through ‘teaching’ civil servants and through the influential position acquired by community members through their mastery of complex, interdisciplinary technical knowledge.

Part two of the thesis then tests for the influence of these mechanisms using a mixed methods approach to case selection, which is set out in chapter 6. Four countries are discussed, beginning in chapter 7 with the UK during the 1970s. It signed a large number of treaties in instances where it was a capital exporter, which were generally well-predicted by a quantitative model of competition. More usually interpreted as showing competition among capital importing countries, the evidence in this chapter supports a reinterpretation in terms of competition among capital exporters.

Zambia is the focus of chapter 8. It had a much greater propensity to conclude tax treaties during the 1970s than predicted by the quantitative model, negotiating comparatively unfavourable agreements that undermined its other policy goals. Archival and interview evidence suggest that this resulted from the pursuit of inward investment by civil servants and political appointees with little capacity to understand the nature of what they were signing up to. In contrast, by the 2000s Zambia had a lower-than-expected propensity to sign treaties. While at this point it had developed a tax specialist bureaucracy who understood in

detail the impact of tax treaties and sought to make them consistent with international standards, these officials were blocked by veto players in the treaty making process who were concerned about the fiscal costs of tax treaties.

Finally, chapter 9 compares Vietnam, which signed many more treaties during the 2000s than predicted on the basis of competitive pressure, and Cambodia, which signed none at all. A key difference between the two countries was the importance of corporate tax revenue for future government income. In Vietnam, revenue from the very large state-owned enterprise sector dwarfed tax receipts, meaning that the tax costs of treaties were not considered until businesses began to challenge the tax administration's implementation of its treaties. The investment promotion drive of the 1990s gave way at the turn of the century to the priorities of a specialist bureaucracy keen to ensure that even the smallest investor was covered by a tax treaty, but unwilling to apply the treaties in ways that would be most beneficial to investors. In contrast, in Cambodia, a comparatively low level of tax revenue as a share of GDP and an absence of state-owned enterprises meant that the potential costs of concluding treaties deterred the country from signing them, despite significant pressure from other countries.

Chapter 10 then offers some conclusions from this evidence. As well as examining the implications for literature on tax, diffusion and epistemic communities, it reflects on the lessons the governments of developing countries and other stakeholders might draw as tax treaties come increasingly under scrutiny.

2 International fiscal relations

International tax policy, like any aspect of tax policy, lies close to the beating heart of national sovereignty.

- David Rosenbloom, former United States treaty negotiator¹

With a few notable exceptions, taxation has rarely been treated in its own right as an empirical subject of international relations, or of the subfield of international political economy.² Yet ‘fiscal sociologists’, among them Joseph Schumpeter and Charles Tilly, have recognised for a century that tax is an important part of any country’s political and social characteristics, and hence that it has the power to help explain the development of those characteristics.³ Tax is an enabling condition for the modern state to exist, not merely to fund it, but also to cement its relationship with its citizens. Furthermore, the power to tax, and the exercise of that power, are defining characteristics of the modern state. A group of ‘new fiscal sociologists’ posit “a new theory of taxation as a social contract that multiplies a society’s infrastructural power.”⁴

If taxation is so fundamental to understanding the state, it follows that it is also fundamental to understanding the relations between states. We need look no further than one of the foundational texts of realist international relations, Thomas Hobbes’ *Leviathan*, which ascribes to the sovereign:

the Right of making Warre, and Peace with other Nations, and Common-wealths; that is to say, of Judging when it is for the publique good, and how great forces are to be assembled, armed, and payd for that end; and *to levy mony upon the Subjects*, to defray the expenses thereof.⁵

The state must be able to tax if it is to perform its main function, safeguarding the security of its citizens. It is no coincidence that the introduction of the corporate income tax, the main subject of this thesis, is intimately linked with war in many countries.⁶

¹ Rosenbloom, “Where’s the Pony? Reflections on the Making of International Tax Policy,” 491.

² The exceptions include Palan, *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*; Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*; Eccleston, *The Dynamics of Global Economic Governance: The OECD, the Financial Crisis and the Politics of International Tax Cooperation*; Rixen, *The Political Economy of International Tax Governance*; Dietsch and Rixen, *Global Tax Governance: What Is Wrong with It and How to Fix It*.

³ Schumpeter, “The Crisis of the Tax State”; Tilly, *Coercion, Capital, and European States, A.D. 990-1990*.

⁴ Martin, Mehrotra, and Prasad, “The Thunder of History: The Origins and Development of the New Fiscal Sociology,” 14.

⁵ Hobbes, *Leviathan*, 134. Emphasis added.

⁶ Seligman, *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad*.

Beyond financing, tax is also about sovereignty. The lines of the anarchy *problematique* are often drawn from Max Weber's definition of the state as the authority claiming "the monopoly of the legitimate use of physical force within a given territory."⁷ But the state also claims a monopoly on taxation. As Douglass North suggests, the state may be better defined as, "an organization with a comparative advantage in violence, extending over a geographic area whose boundaries are determined by its power to tax constituents."⁸ The struggle to retain and even define this 'fiscal sovereignty' in a world of mobile and transnational taxpayers is what motivates this thesis.

This chapter aims to take a broad view that sketches out the empirical area of international tax relations. The next two sections build up a picture of the subject matter of such a study, beginning by tracing the national origins of fiscal sovereignty, and a corresponding international fiscal anarchy *problematique*. Three dimensions of international fiscal anarchy are highlighted: tax competition between states to attract investment, conflicting claims to the right to tax the multinational tax base, and commercialisation of sovereignty by tax havens, which prevents other states from enforcing their tax laws. The chapter then introduces three types of non-state actor into the analysis: multinational companies, international institutions, and civil society. Finally, the North-South relations of international taxation are briefly discussed.

2.1 The sociology of fiscal sovereignty

The term 'fiscal sociology' originates with Rudolf Goldscheid, who asserted that "the origin of the state lies in association for the purposes of defence and to meet common fiscal needs."⁹ The first manifesto on the subject is his contemporary Joseph Schumpeter's *Crisis of the Tax State*. According to Schumpeter, "the fiscal history of a people is above all an essential part of its general history." Taxation is not only a useful lens through which to view political and social events, but also plays a causal role in those events.¹⁰ While Schumpeter and Goldscheid may have been the first to explicitly emphasise the fiscal part of their story, others before them had recognised the importance of taxation for any understanding of the state. According to Edmund Burke, writing about post-revolutionary France, "[t]he revenue of the state is the state. In effect all depends upon it, whether for support or for reformation."¹¹

⁷ Weber, "The Profession and Vocation of Politics," 310–311.

⁸ North, *Structure and Change in Economic History*, 21.

⁹ Goldscheid, "A Sociological Approach to Problems of Public Finance," 202.

¹⁰ Schumpeter, "The Crisis of the Tax State," 100.

¹¹ Burke, *Reflections on the French Revolution*, 105.

Schumpeter's argument ran as follows. As warfare between princedoms led more and more European princes to face financial difficulties in the 14th and 15th centuries, they turned to the estates they governed to finance the war effort, and in doing so a public financial realm came into being, separate from the prince's private finances: the 'tax state'. Writing at the end of the first world war, Schumpeter traced the development of the Austrian tax state, but argued that it faced a crisis, burdened by war debts and reaching the limit of its taxing capacity as it struggled to repay them.¹² Others, writing subsequently, have characterised the tax state's evolution into the 'fiscal state', which is distinguished by its ability to borrow sustainably on the strength of its reliable revenue stream, and hence its greater financial capacity to react to wars and other emergencies.¹³

The 'militarist' fiscal sociology account is found across many descriptions of state development. In Norbert Elias' history of state formation, the modern state is characterised by two mutually reinforcing monopolies: military force coerces the payment of taxation, which in turn funds military force.¹⁴ Charles Tilly expanded on Elias' ideas in his famous account of how 'war made the state':

Where did the money [for warfare] come from? In the short run, typically from loans by capitalists and levies on local populations unlucky enough to have troops in their vicinity. In the long run, from one form of taxation or another.¹⁵

Income tax, the focus of this thesis, was introduced in the UK in 1799 to fund the war with Napoleonic France, and continued to be tied explicitly to war efforts right through to the First World War.¹⁶ In the United States, too, federal income tax was first levied by Congress in 1861 to fund its efforts in the civil war.¹⁷ Wars also played a role in the income tax's introduction into France and Austria.¹⁸

The next stage of the account runs as follows. Extending the revenue base to more powerful, wealthy citizens who may up to that point have been insulated from the burden of coercive taxation created two imperatives: the establishment of administrative institutions to collect and manage the revenue separately from the prince's private household, and the formation of a social contract with these new taxpayers.¹⁹ To collect taxes from these groups, the ruler relied on their consent, a shift characterised by Mick Moore as being from 'coercive' to

¹² Schumpeter, "The Crisis of the Tax State," 116.

¹³ Moore, "Between Coercion and Contract: Competing Narratives on Taxation and Governance."

¹⁴ Elias, *The Civilizing Process*.

¹⁵ Tilly, *Coercion, Capital, and European States, A.D.990-1990*, 85.

¹⁶ HMRC, "Taxation: A Brief History"; Seligman, *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad*.

¹⁷ Library of Congress, "History of the US Income Tax"; Seligman, *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad*.

¹⁸ Seligman, *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad*.

¹⁹ Bräutigam, "Introduction: Taxation and State-Building in Developing Countries."

‘contractual’ taxation.²⁰ In 16th century Austria, for example, Schumpeter describes how the estates’ contributions to the defence of the princedoms came with an expectation of some capacity to influence both the distribution of the tax liability and the use to which the tax revenue was put.²¹ Evidence shows that a higher tax burden on an elite leads to policies that favour it, and a higher tax burden in general leads to a more democratic or liberal polity: “in the long run, democratisation only occurs when rulers come to rely on citizen compliance for their means of rule,” according to Tilly.²²

The militarist account is only one lens through which to view the development of the fiscal state. Others have situated it within the deterministic sweep of economic and social modernisation, the path dependent emphasis of institutionalist theory, or have emphasised the role of elite and, later, popular consent.²³ The ‘new fiscal sociologists’ argue that “taxation is central not only to the state’s capacity in war, but in fact to all social life.”²⁴ The point to emphasise here is that, because taxation is integral to the development of state-citizen relations, the fiscal component of sovereignty is an essential part of any story of the development of international relations, especially one that recognises that both “war made the state, and the state made war.”²⁵ The state needs tax revenue to safeguard the security of its citizens, but the act of taxation is also part of the social construction of what the state is, of its sovereignty within a given area. The next section further considers the implications of this perspective.

2.2 Describing the fiscal anarchy *problematique*

As the previous section outlined, the fiscal motor of the modern state’s development can be characterised through two interrelated dynamics: the relationship between the state’s objectives and its financial capability, and the construction of a state-citizen social contract founded on the state’s sovereign right to levy tax. For both reasons, states effectively levy tax according to their *raison d’etat*, which, in a global economy creates a kind of fiscal anarchy *problematique*. Peggy Musgrave, author of several works in the tax literature interrogating this question:

²⁰ Moore, “Between Coercion and Contract: Competing Narratives on Taxation and Governance”; Levi, *Of Rule and Revenue*.

²¹ Schumpeter, “The Crisis of the Tax State.”

²² Tilly, “Extraction and Democracy,” 174.

²³ Martin, Mehrotra, and Prasad, “The Thunder of History: The Origins and Development of the New Fiscal Sociology”; Bräutigam, “Introduction: Taxation and State-Building in Developing Countries”; Kaldor, “Will Underdeveloped Countries Learn to Tax?”

²⁴ Martin, Mehrotra, and Prasad, “The Thunder of History: The Origins and Development of the New Fiscal Sociology,” 14.

²⁵ Tilly, *The Formation of National States in Western Europe*, 42.

it is likely that in the absence of cooperative agreements...countries will exercise their entitlements in a way to serve their national interests and that these interests may conflict with each other and with standards of inter-nation equity and allocative efficiency.²⁶

Musgrave forms part of a long tradition of advocates for a formal international tax authority, whose proposals have failed to gain traction because of the strength of feeling about fiscal sovereignty.²⁷ Yet there is a substantial amount of cooperation between states, justified on the grounds of the fiscal anarchy *problematique*. This section considers three aspects: inter-state competition for mobile factors of production, inter-state conflict over the tax base of transnational taxpayers, and the international constraints on tax administration in the light of the commercialisation of sovereignty by tax havens. In each case, states have chosen to establish some degree of cooperation in response to the negative impacts of the 'state of nature' on their ability to exercise their own fiscal sovereignty.

One way to construct the role of taxation in international relations would be to begin at the national level, examining the domestic pressures that, combined with the intimate role of tax in state-citizen relations, create states' interests in international tax relations. But this thesis takes a structural perspective, recognising that national preferences develop within an international system.²⁸ Indeed, if economic factors can cross borders, it is hard to think of fiscal sovereignty as absolute.²⁹ As Alison Christians writes,

[I]f tax sovereignty means anything, perhaps it is the idea that governments have a non-exclusive right to decide through political means whether and how to tax whatever activity occurs within their territories and whomever can be considered to be their "people," and that they recognize a reciprocal right in all other states.³⁰

When developing their own international tax systems (that is, their domestic law as it pertains to multinational taxpayers) in the interwar years, states were already constrained by the way in which their laws might interact with those of other countries, and this was one of the main motivating factors behind their first steps at international tax cooperation.³¹

Western states made explicit efforts to copy each other's laws, while many developing countries emerged from colonialism with a facsimile of the coloniser's tax system.³²

²⁶ Musgrave, "Sovereignty, Entitlement, and Cooperation in International Taxation," 1348.

²⁷ Tanzi, "Globalization, Technological Developments, and the Work of Fiscal Termites"; Rixen, "Tax Competition and Inequality: The Case for Global Tax Governance"; Dietsch, *Catching Capital: The Ethics of Tax Competition*; Musgrave, "Sovereignty, Entitlement, and Cooperation in International Taxation"; Thuronyi, "International Tax Cooperation and a Multilateral Treaty."

²⁸ Waltz, *Theory of International Politics*.

²⁹ Kaufman, "Fairness and the Taxation of International Income."

³⁰ Christians, *Sovereignty, Taxation, and Social Contract*, 12.

³¹ Graetz and O'Hear, "The 'Original Intent' of U.S. International Taxation."

³² Keen, "Taxation and Development - Again"; Seligman, *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad*; Brautigam, "Building Leviathan: Revenue, State Capacity and Governance."

The international environment in which states' tax systems have formed cannot be reduced to a purely legal and economic one, because it is also composed of ideas. Indeed, these ideas incorporate beliefs about the legal and economic constraints of anarchy, formed intersubjectively in an international environment, which in turn construct state interests.³³

The notion that ideas about the economic world are a part of the causal story of international economic relations has become a central tenet of international political economy scholarship, where constructivist accounts include work on how changing ideas about monetary policy, capital account liberalisation, the 'race to the bottom' between states, and indeed international cooperation in the fight against tax havens, have led to changes in policy that cannot be explained by material factors alone.³⁴ This chapter will largely consider such matters from the perspective of the state as a unitary actor, while chapters 4 and 5 will return to the question of individual actors' ideas and preferences.

2.2.1 Tax competition between states

Governments need revenue. On average, OECD member states collect taxes amounting to 34 percent of gross domestic product, while in developing countries the equivalent figure is half that amount, reflecting a lower level of taxable capacity within their economies, and the availability of 'rent' income from natural resource extraction and overseas aid; on the other hand, what tax they do raise tends to come disproportionately from multinational investors.³⁵ But governments have other priorities that may conflict with the taxing imperative. This may include making side payments in the form of tax reductions to constituencies on whose support they depend: there is evidence of an association between corporate political contributions and tax reductions.³⁶ Some governments may also be ideologically committed to a smaller state.³⁷

One of the most important concerns that may conflict with the imperative to tax is the desire to stimulate investment and growth in the national economy. Tax need not necessarily have a negative effect on either, but governments must take into account the behavioural effects

³³ Finnemore and Sikkink, "International Norm Dynamics and Political Change"; Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics." For a critique of Wendt's 'idealism', see Palan, "A World of Their Making: An Evaluation of the Constructivist Critique in International Relations."

³⁴ For example, Abdelal, *Capital Rules: The Construction of Global Finance*; Best, "Hollowing out Keynesian Norms How the Search for a Technical Fix Undermined the Bretton Woods Regime"; Chwieroth, *Capital Ideas: The IMF and the Rise of Financial Liberalization*; McNamara, *The Currency of Ideas: Monetary Politics in the European Union*; Mosley, "Globalisation and the State: Still Room to Move?"; Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*.

³⁵ Prichard, Cobham, and Goodall, *The ICTD Government Revenue Dataset*; Fenochietto and Pessino, *Understanding Countries' Tax Effort*; Moore, "Between Coercion and Contract: Competing Narratives on Taxation and Governance"; OECD, *Revenue Statistics 2015*.

³⁶ Richter, Samphantharak, and Timmons, "Lobbying and Taxes."

³⁷ Jensen and Lindstadt, "Leaning Right and Learning From the Left: Diffusion of Corporate Tax Policy Across Borders."

resulting from the impact of taxation on taxpayers' economic incentives. They may reduce the incentive to work and invest, increase the incentive to avoid or evade taxes altogether, or encourage mobile economic actors to seek out less onerous tax regimes. These effects are captured in what is widely known as the 'Laffer curve', the idea that above a certain level, raising the tax rate further can actually reduce the total revenue raised, because these behavioural effects reduce the level of economic activity to be taxed.³⁸

While some of these incentive effects occur within each state regardless of the conditions outside, the effect of taxation on mobile taxpayers is to create strategic interactions between states, known as 'tax competition'. A large number of studies have attempted to model how corporate income taxation in the host state affects inflows of foreign direct investment (FDI). Meta-analyses of these studies find that a one-point increase in the corporate tax rate reduces FDI inflows by either three percent or 1.7 percent.³⁹ For developing countries, however, there is some econometric evidence that long-term investment may not be responsive to taxation, and especially to tax incentives.⁴⁰ In surveys, too, international investors in developing countries tend to cite other, more fundamental factors such as infrastructure and education above taxation.⁴¹ Where investment into developing countries is sensitive to tax competition, it may crowd out domestic investment, and may be of a 'transitory', footloose kind that does not bring with it long term benefits such as skills and technology transfer, or forward and backward linkages.⁴²

Despite these limitations, tax competition is not merely a descriptive theory: it is a powerful idea that influences policy. There is an influential view in public choice economics, originating with Charles Tiebout, that competition between states for mobile factors of production is desirable because it will lead to the optimal balance between the provision of public services benefiting those factors of production, and levels of taxation levied on them.⁴³ Conversely, others argue that states should cooperate to limit tax competition, which if unmitigated leads to inefficient outcomes.⁴⁴

³⁸ Wanniski, "Taxes, Revenues, and the 'Laffer Curve.'"

³⁹ Mooij and Ederveen, "Corporate Tax Elasticities: A Reader's Guide to Empirical Findings"; Feld and Heckemeyer, "FDI and Taxation: A Meta-Study."

⁴⁰ Kinda, *The Quest for Non-Resource-Based FDI: Do Taxes Matter?*; Oman, *Policy Competition for Foreign Direct Investment: A Study of Competition among Governments to Attract FDI*.

⁴¹ Kinuthia, "Determinants of Foreign Direct Investment in Kenya: New Evidence"; Mwachinga, "Results of Investor Motivation Survey Conducted in the EAC."

⁴² IMF et al., *Supporting the Development of More Effective Tax Systems: A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank*, 20.

⁴³ Tiebout, "A Pure Theory of Local Expenditures."

⁴⁴ Rixen, "Tax Competition and Inequality: The Case for Global Tax Governance"; Dietsch, *Catching Capital: The Ethics of Tax Competition*.

There is, consequently, a broad consensus in the literature confirming strategic tax competition between governments.⁴⁵ Corporation tax rates, for example, have fallen consistently since the 1960s, while burgeoning tax incentive regimes can be seen both in developing and developed countries, in spite of consistent advice from international organisations that such competition is unlikely to bring investment gains.⁴⁶ Chapter 4 will consider in more detail the nature of this strategic interaction, and the determinants of countries' responses to each other's decision to reduce corporation tax.

In sum, states can choose to exercise their sovereign right to tax as much as they like in principle, but in practice the logic of tax competition suggests that they must engage in a strategic interaction, enforced by mobile corporate capital and high-income labour.⁴⁷ As capital has become more mobile over time, states have come to take this much more into account, engaging in what some have described as a 'race to the bottom'.⁴⁸ The *idea* of tax competition, potent in political debates as well as economic decision-making, is sustained regardless of the shaky evidence that it brings welfare gains, especially to developing countries.

2.2.2 Conflicting claims to the tax base

When a taxpayer has a potential tax liability in more than one state, what happens if they all claim the right to tax it? This is not an abstract proposition, but one that supports the livelihoods of thousands of tax professionals in governments and the private sector. Later in this thesis I discuss the autonomous logic of this problem; here I describe it. States have several options to mitigate the 'double taxation' problem, the first of which is to leave the conflict unresolved. 'Juridical' double taxation occurs when the same taxpayer is taxed twice on the same income by different states, while 'economic' double taxation means that the same income is taxed twice in the hands of different taxpayers.

Because they incur all the costs when they act unilaterally to relieve double taxation, capital exporting states have naturally preferred a more coordinated approach, based on bilateral treaties and multilateral guidelines and norms.⁴⁹ From their perspective, this achieves a

⁴⁵ Genschel and Schwarz, "Tax Competition: A Literature Review."

⁴⁶ Keen and Mansour, *Revenue Mobilization in Sub-Saharan Africa: Challenges from Globalization*; Auerbach, *Why Have Corporate Tax Revenues Declined? Another Look*; Klemm and Abass, *A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies*.

⁴⁷ Mosley, "Room to Move: International Financial Markets and National Welfare States."

⁴⁸ Klemm and Abass, *A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies*; Plümpert, Troeger, and Winner, "Why Is There No Race to the Bottom in Capital Taxation?"; Basinger and Hallerberg, "Remodeling the Competition for Capital: How Domestic Politics Erases the Race to the Bottom"; Mosley, "Globalisation and the State: Still Room to Move?"

⁴⁹ Graetz and O'Hear, "The 'Original Intent' of U.S. International Taxation," 1025.

number of benefits over the unilateral methods. It more comprehensively eliminates double taxation, because states can negotiate consistent rules and definitions, and put in place dispute settlement procedures where there are outstanding differences of interpretation. More importantly, it shares the cost of double taxation relief between states as a result of a negotiated outcome: if one country (most likely the net capital exporter) considers the revenue it has sacrificed through unilateral relief to be too great, it can negotiate with other countries to have them take on some of these costs, by accepting curbs on the extent to which they can tax investors from the first country. This may be the real function of international double taxation negotiations.⁵⁰

If states have a prior preference for relieving double taxation in a coordinated way, the result would be a distributional conflict, of the type referred to by game theorists as ‘battle of the sexes’. In this game, multiple stable equilibria exist, with different distributional outcomes, because participants prefer to reach a cooperative outcome even if it is not the agreement from which they would benefit the most.⁵¹ According to this analysis, states will accept a given settlement if the anticipated absolute welfare gains from increased investment and trade exceed the fiscal cost.⁵² This presumes that states have a prior preference for relieving double taxation through a treaty, an assumption that should logically break down in the case of a country that is overwhelmingly a capital importer, negotiating with a capital exporter that relieves double taxation unilaterally.

Two conceptual dichotomies are commonly invoked when analysing this situation. The first is what tax professionals call ‘source’ and ‘residence’ taxation. States may claim the right to tax income earned by foreign-resident taxpayers if its source is within their borders, and conversely they may claim the right to tax the foreign-source income earned by their own residents. When exporting capital, countries gain revenue from taxing their outward investors on a residence basis, while capital importing countries gain revenue from taxing inward investors on a source basis. In the absence of international agreement, the ‘residence’ state bears the cost of relieving double taxation, and international double tax negotiations shift revenue from ‘source’ to ‘residence’ countries.

The second dichotomy is between two conflicting economic principles. ‘Capital export neutrality’ means that an international investor’s return on a given investment will be taxed

⁵⁰ Dagan, “The Tax Treaties Myth.”

⁵¹ Rixen, *The Political Economy of International Tax Governance*; Radaelli, “Game Theory and Institutional Entrepreneurship: Transfer Pricing and the Search for Coordination International Tax Policy.”

⁵² Rixen and Schwarz, “Bargaining over the Avoidance of Double Taxation: Evidence from German Tax Treaties”; Becker and Fuest, “The Nexus of Corporate Income Taxation and Multinational Activity”; Easson, “Do We Still Need Tax Treaties?”

the same whether it is made in the domestic market or any given overseas market.⁵³ To achieve this form of neutrality, the country of residence must levy a worldwide tax on all a multinational company's (or an individual's) income, while source countries must keep the effective tax rate they levy below that of the residence country. The latter then grants outward investors a deduction from their tax liability, or a credit against it, for the taxes paid abroad, so that in effect they pay the same amount as if they had earned their income at home. In contrast, under 'capital import neutrality', returns on all investments in the host market are taxed equally regardless of their origin. This requires taxation by the country of source, and a corresponding exemption by the country of residence of investors' foreign-source income (a 'territorial' tax system). The residence country must tax only the income generated within its own territory. Economists have generally arrived at the view that capital *export* neutrality produces the greatest total net welfare gains, while worldwide taxation also creates a more equitable outcome for taxpayers.⁵⁴ As we will see when we turn to developing countries, it does not perform so well in terms of 'inter-nation equity'.

In the prevailing analysis of international cooperation to resolve the double taxation problem, the distributional politics of international tax rules are too complex to resolve at multilateral level. The system allows states to resolve the conflict between capital importers and exporters at bilateral level, with agreement reached more easily at multilateral level on other aspects that are not characterised by such a strong distributional conflict.⁵⁵ As Nancy Kaufman argues:

What is it that has kept us from achieving greater international cooperation in substantive tax matters? A good bet is that the stumbling blocks have somewhat less to do with economic analysis and more to do with various sovereign actors' perceptions of the fairness of the distribution of the tax base internationally.⁵⁶

The intensity of the conflict between states is reflected in the growing number of disputes that take place within the framework of bilateral tax treaties' mutual agreement procedures, through which states negotiate on issues not clarified when the treaty itself was negotiated.⁵⁷ There were over 2,500 open disputes between states at the end of 2014.⁵⁸

The nature of distributional conflicts in international tax is also evolving, a product of shifting economic power and of changes in the nature of the global economy. The agreements at multilateral level do also have distributional implications (a point I will revisit

⁵³ Musgrave, "Criteria for Foreign Tax Credit."

⁵⁴ Grubert and Mutti, "Taxing Multinationals in a World with Portfolio Flows and R&D: Is Capital Export Neutrality Obsolete?"; Musgrave, *Taxation of Foreign Investment Income; an Economic Analysis*.

⁵⁵ Rixen, *The Political Economy of International Tax Governance*.

⁵⁶ Kaufman, "Equity Considerations in International Taxation," 1480.

⁵⁷ Christians, "How Nations Share."

⁵⁸ OECD, "Mutual Agreement Procedure Statistics for 2014."

when I consider the North-South politics of international tax institutions below) and have been reached largely among OECD member states. While some OECD states are predominantly capital exporters within the OECD, and others predominantly capital importers, all are capital exporters with respect to the rest of the world. Some emerging economies have begun to argue that their large, dynamic and relatively untapped markets place them in a distributional conflict with countries that export products and services to those markets.⁵⁹ They consider that current multilateral rules undervalue the contribution of their markets to value creation, and hence deprive them of tax revenue. Furthermore, international tax rules that originated in the 1920s do not deal well with economic activity that is based on trade in services and intangible goods, and countries with service-based economies have different interests to those that are commodity-based. The current rules' emphasis on physical presence as the yardstick of taxing rights tends to disadvantage service importers, who have begun to agitate for a change in multilateral rules.⁶⁰ Neither of these distinctions is identical to the traditional capital importer/exporter axis that is the theoretical and practical foundation of international tax rules.

States are therefore in conflict with each other over the multinational tax base. If each state, acting in isolation, were to tax cross-border economic activity at its preferred rate, multiple taxes imposed by multiple states on the same income might become too onerous, stifling trade and investment. If states act in isolation to alleviate it, the burden falls on net capital exporting countries. It is more difficult to see the incentive for net capital importing countries to agree to take on some of the burden. Yet their tax systems, and their identities as tax states, have developed in an international system where cooperation over double taxation is a normative imperative. Cooperating to alleviate double taxation is what a modern fiscal state does.

2.2.3 The interaction between tax competition and distributional conflict

Models of bargaining between capital exporting and importing countries tend to assume that each state's aim is to maximise its share of the tax base of cross-border investors so as to raise more tax revenue while preventing double taxation.⁶¹ Literature on tax competition focuses on strategic interaction between countries in capital *importing* mode.⁶² There is little

⁵⁹ see, for example, United Nations, "Country Practices"; Mishra, *Letter to Alexander Trepelkov*; Eccleston and Smith, "The G20, BEPS and the Future of International Tax Governance."

⁶⁰ Liao, *Taxation of Cross-Border Trade in Services: A Review of the Current International Tax Landscape and the Possible Future Policy Options*.

⁶¹ Rixen and Schwarz, "Bargaining over the Avoidance of Double Taxation: Evidence from German Tax Treaties"; Becker and Fuest, "The Nexus of Corporate Income Taxation and Multinational Activity"; Dagan, "The Tax Treaties Myth"; Musgrave, "Sovereignty, Entitlement, and Cooperation in International Taxation."

⁶² Genschel and Schwarz, "Tax Competition: A Literature Review"; Barthel and Neumayer, "Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties."

consideration of how bargaining and competition interact. In particular, because there is also strong pressure for competition among capital exporting countries, their motivation for engaging in tax bargaining may not primarily be to maximise their own tax revenue, but rather to minimise the taxes that can be levied on their multinational investors abroad. This reduces those firms' global effective tax rate beyond just the taxes that they themselves levy.

Because the tax costs for investors in a worldwide tax system are determined by the home state, such systems create tax competition between home states: when a country's investors are competing in foreign markets with firms from other countries, they will be at a disadvantage if those competitor firms have lower overall effective tax rates. This competition between home states has further intensified as capital becomes more mobile, and entire multinational companies can now move between headquarters countries, seeking out more favourable tax treatment of their worldwide income.⁶³ The result has been to place capital exporting countries in competition on the basis of the worldwide effective tax rate that their resident firms incur, which is a function of three things: first, their corporate tax rate; second, the tax base on which that rate is applied, which most countries have reduced by replacing their worldwide tax systems with territorial ones in which foreign-source income is not taxed at all;⁶⁴ third, their bilateral tax treaty networks, which reduce the effective tax rate on multinationals' foreign operations.

The UK, for example, has fundamentally restructured its approach to taxing UK-headquartered companies' overseas profits over the past decade, not only by reducing its corporate tax rate, but by shrinking the tax base, by largely exempting foreign-source profits from tax in the UK.⁶⁵ This policy was explicitly justified by the government as a move to attract and retain headquarters, with firms such as WPP relocating on paper to Ireland, and a number of US firms relocating their registered headquarters to the UK.⁶⁶ The US international tax system is one of the few that still taxes firms on a worldwide basis, but it allows firms to stockpile profits offshore, rather than repatriating them to the US, where they will be taxed. The US has struggled to prevent its own firms from performing corporate inversions, which are tax-motivated mergers with foreign firms in order to claim residency in another country, so that those stockpiled profits can be returned to shareholders without

⁶³ Voget, "Relocation of Headquarters and International Taxation."

⁶⁴ PWC, *Evolution of Territorial Tax Systems in the OECD*.

⁶⁵ Matheson, Perry, and Veung, *Territorial vs. Worldwide Corporate Taxation: Implications for Developing Countries*.

⁶⁶ Markle and Shackelford, "Cross-Country Comparisons of Corporate Income Taxes."

paying the 35 percent US tax rate on them.⁶⁷ There has, for some time, been a debate over whether the US should move to a territorial tax system to resolve this impasse.⁶⁸

Because of this interaction, neither the ‘battle of the sexes’ model of tax bargaining, nor the ‘prisoner’s dilemma’ of tax competition, are adequate. When both the capital importing and capital exporting states in a tax negotiation are also in strategic interaction with other states, the aim of alleviating double taxation blurs into the aim of reducing single taxation altogether. This is particularly the case when the capital exporting state has a territorial tax system that exempts overseas profits from further taxation, because in that situation, any gains from a lower effective tax rate in the host country accrue directly to multinational investors. Firms that are not taxed by their home state on their worldwide income are demonstrably more responsive to tax changes in host states than those under worldwide taxation.⁶⁹ In that situation, for the capital exporter the tax treaty becomes a means of reducing the worldwide effective tax rate of their resident multinationals, while for the capital importer it becomes a geographically-specific tax incentive for inward investors from the treaty partner. The ‘tax treaties myth’ already obscured the impact of tax treaties on the distribution of the revenue base between source and revenue countries. That debate may turn out to be a further distraction from yet another role of tax treaties, which is as tools of tax competition, the benefits of which accrue to multinational investors who largely did not face double taxation in the first place.

2.2.4 The limits of administrative power

A state may claim the right to tax a person in principle, either because they are one of its residents, or because they earn income within its borders. But there are practical constraints that may prevent it from exercising that right, and these constraints have shaped the development of international tax norms to date.⁷⁰ The two biggest are these: first, how can a state tax an entity with sources of income in multiple countries, if it cannot know whether or not the entity has given an honest account of its global financial position? Second, how can a

⁶⁷ Kun, “Corporate Inversions: The Interplay of Tax, Corporate, and Economic Implications.”

⁶⁸ Mullins, *Moving to Territoriality? Implications for the United States and the Rest of the World*.

⁶⁹ Slemrod, “Tax Effects on Foreign Direct Investment in the United States - Evidence from a Cross-Country Comparison”; Scholes and Wolfson, “The Effects of Changes in Tax Laws on Corporate Reorganization Activity”; Hines, “Lessons from Behavioral Responses to International Taxation”; Matheson, Perry, and Veung, *Territorial vs. Worldwide Corporate Taxation: Implications for Developing Countries*. Scholes and Wolfson go as far as to hypothesise that an increase in taxes in the host country would actually increase inward FDI from businesses taxed on a worldwide basis, since the increase would have no impact on these businesses, while domestic investors and those from territorial tax countries would experience an increase in tax costs. Subsequent empirical studies have not confirmed this, however. See Swenson, “The Impact of U.S. Tax Reform on Foreign Direct Investment in the United States”; Auerbach and Hassett, *Taxation and Foreign Direct Investment in the United States: A Reconsideration of the Evidence*.

⁷⁰ Avi-Yonah, *International Tax as International Law*.

state force a foreign resident to pay tax on income it has earned within the state's borders, if the foreign resident no longer has any income or assets in that state? In a condition of pure anarchy, states would be powerless to surmount these difficulties.

The solution has been to develop a set of international instruments through which states share information with each other and cooperate to collect revenue from cross-border taxpayers.⁷¹ Based on these standards, states now share bulk data on each other's taxpayers' affairs, make requests from each other for more detailed information as part of tax investigations, and even collect tax revenue on each other's behalf. This system demonstrates that states need to cooperate with each other in order to tax according to their sovereign rights.

Such cooperation naturally creates an incentive to defect, since in refusing to cooperate, jurisdictions can attract business from citizens who stand to lose from such cooperation. Ronen Palan describes such actions as the 'commercialisation of state sovereignty', by which a jurisdiction offers residents of other countries the opportunity to adopt its nationality, attracting them with the benefits of an attractive tax regime, without actually moving physically to that state.⁷² By becoming, on paper, a resident of this new jurisdiction, companies and wealthy individuals can exploit the international tax rules put in place by the states in which they operate, by which their taxing rights are curbed. In other instances, companies and individuals use the commercialised sovereignty of tax havens to conceal their wealth behind a veil of secrecy that cannot be penetrated by the tax authorities of the countries where they are really present.

When powerful states choose to challenge such behaviour, they use the rhetorical threat of brute force to pressure jurisdictions to change their tax rules against their will, focused on reputational damage as well as the threat of retaliation.⁷³ For example, in 2009, G-20 members threatened countermeasures against states that did not comply with certain tax standards.⁷⁴ A number of individual states, including France and Brazil, maintain blacklists of tax havens, users of which are penalised.⁷⁵ In 2012, the United States went one step further, unilaterally forcing foreign banks to disclose information on any US citizens among their clients, again with the threat of sanctions against those banks.⁷⁶ All of these measures require some transgression of fiscal sovereignty, by interfering in the sovereign right of

⁷¹ For example, the Convention on Mutual Administrative Assistance in Tax Matters, formerly an OECD/Council of Europe instrument but now open to all interested jurisdictions.

⁷² Palan, *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*.

⁷³ Sharman, "The Bark Is the Bite: International Organizations and Blacklisting."

⁷⁴ Dyer, "China Greets G20 Results with Caution."

⁷⁵ Sharman, "Dysfunctional Policy Transfer in National Tax Blacklists."

⁷⁶ Grinberg, *Beyond FATCA: An Evolutionary Moment for the International Tax System*.

other states to determine how people within their borders are taxed. They interfere directly in the fiscal contract between state and citizen. For this reason, they are hard to maintain without the cover of a normative authority such as the ‘apolitical’ OECD, and past efforts have often failed because they lacked this perceived legitimacy.⁷⁷

2.2.5 The interaction between administrative and other challenges to sovereignty

On the face of it, these challenges to tax *administration* are qualitatively different to the *policy* challenges of double taxation and tax competition. In practice, however, this distinction is far from clear cut. Writers on tax and development are fond of the quoting the assertion from an old World Bank book that, “in developing countries, tax administration *is* tax policy.”⁷⁸ Administrative decisions, such as to focus resources on increasing tax compliance by a particular group of taxpayers, will have distributional consequences; policy decisions must take into account the realities of administrative capacity. These constraints apply internationally as much as they do at national level.⁷⁹

Let us begin with the relationship between tax competition and tax administration. While, for a large economy, the costs of tax competition may be finely balanced with the investment gains, for small open economies the benefits from the potential increase in inward investment through tax competition far exceed the costs.⁸⁰ This leads to a form of mercantilism, in which a small state seeks to boost its own balance of trade at the expense of others’, by lowering the tax rate on foreign capital. ‘Commercialised sovereignty’ is an extreme form of tax competition, in which mobile taxpayers are not just offered a low or zero rate on their income earned inside a jurisdiction, but also the chance to lower their effective tax rate on income earned *outside* it, essentially by establishing a fictitious tax residency.⁸¹

For many tax havens, the provision of secrecy, by deliberately withholding information from the tax authorities of other jurisdictions, is part and parcel of their competitive strategy.⁸² In recognition of this, the OECD originally used the term ‘harmful tax competition’ as an umbrella term for its work challenging tax havens.⁸³ This proved to be a linguistic own-goal, since tax competition itself is widely endorsed by OECD members, and because it is not

⁷⁷ Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*, 58–64.

⁷⁸ Casanegra De Jantscher, “Administering the VAT,” 179. Emphasis in original.

⁷⁹ Ring, “International Tax Relations: Theory and Implications,” 87.

⁸⁰ Musgrave, *Taxation of Foreign Investment Income; an Economic Analysis.*; Wilson, “Theories of Tax Competition.”

⁸¹ Palan, *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires.*

⁸² Palan, Murphy, and Chavagneux, *Tax Havens: How Globalization Really Works.*

⁸³ OECD, *Harmful Tax Competition: An Emerging Global Issue.*

easy to define a boundary between harmful and legitimate tax competition without placing some OECD members themselves on the ‘harmful’ side.⁸⁴ Tax havens deployed the concept of fiscal sovereignty to fend off the OECD attack, an effective weapon because, as Palan argues, the offshore industry is bound up in the Westphalian notion of sovereignty.⁸⁵

International administrative challenges, tax competition and conflict over the tax base all converge in one particular area: international tax avoidance. Here multinational taxpayers circumvent the intention of one country’s tax laws by exploiting the differences between countries’ tax systems, some of which may exist deliberately as a result of aggressive tax competition by other states, or loopholes in international tax rules.⁸⁶ Tax treaty shopping, for example, uses the terms of tax treaties that divide up the tax base, combined with the advantageous laws of low-tax conduit jurisdictions such as the Netherlands and Mauritius, to obtain advantages not intended by (at least one of) the treaty signatories.⁸⁷ Eduardo Baistrocchi has suggested that developing countries may deliberately avoid enforcing international tax rules as a form of tax competition.⁸⁸ Recent controversies in the European Union surround the combination of aggressively competitive tax laws with preferential administrative rulings.⁸⁹

2.2.6 Conclusion

As this section has illustrated, fiscal sovereignty may be a defining characteristic of the state, but to exercise it, the corresponding doctrine of fiscal anarchy requires that states cooperate. They would be unable to tax mobile factors of production because of a race to the bottom driven by intense tax competition; cross-border trade and investment would be deterred by multiple claims to tax the same income (although, as noted, capital exporting states tend to act unilaterally to prevent this); states would be unable to enforce their own tax laws because tax evaders could spirit their income offshore without any way for the tax authority to detect it. But analysis of any one of these three problems must consider the interactions between them, otherwise the problem structure may be mis-specified. In particular, the case for cooperation to relieve double taxation, already flawed on its own terms, may obscure tax competition between states.

⁸⁴ Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*, 89.

⁸⁵ Palan, “Tax Havens and the Commercialization of State Sovereignty,” 172.

⁸⁶ OECD, *Addressing Base Erosion and Profit Shifting*; Weyzig, *Evaluation Issues in Financing for Development. Analysing Effects of Dutch Corporate Tax Policy on Developing Countries*; IMF, *Spillovers in International Corporate Taxation*.

⁸⁷ Weyzig, “Tax Treaty Shopping: Structural Determinants of Foreign Direct Investment Routed through the Netherlands.”

⁸⁸ Baistrocchi, “The Use and Interpretation of Tax Treaties in the Emerging World: Theory and Implications.”

⁸⁹ For example, European Commission, “Alleged Aid to Amazon by Way of a Tax Ruling.”

2.3 Beyond the state

As the previous section explained, international tax relations need to be understood as a web of strategic interactions between states of different types whose actions may place *de facto* constraints on each other's fiscal sovereignty. In addition, non-state actors shape international tax relations in important ways. This section outlines the role of three: multinational companies, international organisations, and civil society.

2.3.1 Multinational companies and corporate income tax

Incorporation confers a legal personhood on companies. It does not confer citizenship, however. So the fiscal contract between the state and the company is somewhat different to that between the state and natural people. Put simply, firms are subject to taxation without representation – although of course they have considerable power within the political process.⁹⁰ Nonetheless, there is a clear public and political expectation that companies have a moral responsibility, as corporate citizens, to pay taxes.⁹¹

In most countries, businesses pay a large number of different taxes, including for example income tax on their profits, local-imposed business rates, employer's national insurance contributions, customs duties, and capital gains tax. They also collect other taxes on behalf of government, the two main instances of this being the employees' income tax that they withhold from wages (pay-as-you-earn) and sales taxes added to the price paid by consumers (VAT and excise duties). The distinction between taxes borne and collected by companies is conceptually important, but in economic terms it is not clear, since the incidence of all taxes paid by businesses will ultimately fall on natural people, through lower dividends, lower wages, or higher prices. Although a lot of energy has been expended on assessing where the ultimate incidence of corporate tax falls in an open economy, whether on labour or capital, the results are inconclusive, beyond a general view that it falls to some extent on both.⁹²

Corporate income tax is probably the most contentious tax on companies, seen by the public as the yardstick of corporate tax contributions, and by governments as the most important item in the tax competition toolbox. It is also the main tax regulated by bilateral tax treaties,

⁹⁰ Richter, Samphantharak, and Timmons, "Lobbying and Taxes"; Fairfield, *Private Wealth and Public Revenue in Latin America: Business Power and Tax Politics*; Fuchs and Lederer, "The Power of Business"; Quinn and Shapiro, "Business Political Power: The Case of Taxation."

⁹¹ Numerous opinion polls support this view, see for example Groom, "Tax Avoidance Replaces Bosses' Pay at Top of Concerns over Ethics."

⁹² Harberger, "The Incidence of the Corporation Income Tax"; Clausing, "In Search of Corporate Tax Incidence"; Auerbach, "Who Bears the Corporate Tax? A Review of What We Know"; Arulampalam, Devereux, and Maffini, "The Direct Incidence of Corporate Income Tax on Wages"; Liu and Altshuler, "Measuring the Burden of the Corporate Income Tax under Imperfect Competition."

hence our interest here. Corporation tax is regarded by many economists as an inefficient tax, in comparison to taxes levied directly on the natural people who will ultimately bear its incidence.⁹³ The difficulties of framing a corporate income tax code that minimises distortions and opportunities for avoidance are equally highlighted by tax lawyers.⁹⁴ Much of this difficulty originates from the fact that corporate income tax is levied on an accounting concept, profit, which has no corresponding tangible basis. The profit figure can be manipulated with little real world impact. This matter becomes all the more confusing in a world of multinational companies, which add an additional geographic dimension to the accounting concept of profit. In theory, a multinational company is a collection of entities under common ownership, which trade with each other and achieve synergies because they operate in a coordinated manner. In practice, evaluating the contribution of each entity to generating the group's collective income requires an abstraction of one kind or another.⁹⁵

The decision taken by states in the 1920s, and still applied today, is to allocate taxable profits across countries by treating each entity in the multinational group as an independent company, investing and trading with other group companies as if in a free market.⁹⁶ This requires disregarding the synergies within the group that might, for example, mean that a product can be supplied for a lower price by a wholly-owned manufacturer than by an independent one. It leads to a situation in which a large proportion of cross-border dividend, interest, royalty and fee payments take place between companies under common control, and means that a group can have multiple operations in a single country that are treated separately for tax purposes. Estimates of the share of international trade that takes place between companies under common control vary from 40 to 60 percent.⁹⁷ The alternative approach, evaluated by the League of Nations in the 1920s and still advocated by many tax law commentators, is to abandon the separate entity principle altogether.⁹⁸ Companies would be taxed on their global income, which would be allocated between countries using a formula that would typically take into account the distribution of a firm's workforce, physical assets and sales.

⁹³ Sørensen, "Changing Views of the Corporate Income Tax"; Goolsbee, "Taxes, Organizational Form, and the Deadweight Loss of the Corporate Income Tax"; Gordon, "Taxation of Corporate Capital Income: Tax Revenues versus Tax Distortions."

⁹⁴ Devereux, Griffith, and Klemm, "Corporate Income Tax Reforms and International Tax Competition."

⁹⁵ Rixen, "Tax Competition and Inequality: The Case for Global Tax Governance"; Picciotto, *Towards Unitary Taxation of Transnational Corporations*.

⁹⁶ Picciotto, *International Business Taxation: A Study in the Internationalization of Business Regulation*.

⁹⁷ Devereux and et al, *Transparency in Reporting Financial Data by Multinational Corporations: Report of a Group Chaired by Michael Devereux*.

⁹⁸ League of Nations, *Report of the Committee of Technical Experts on Double Taxation and Tax Evasion*; Avi-Yonah, "Double Tax Treaties: An Introduction"; Picciotto, *International Business Taxation: A Study in the Internationalization of Business Regulation*.

The first consequence of the ‘absurd’ decision to use the separate entity approach is that it specifies the form of conflict and cooperation between countries.⁹⁹ Common agreement on *how* multinational firms’ profits are to be attributed between entities focuses competition on the *rate* at which they are taxed, since companies cannot compete over the method.¹⁰⁰ The primary distributional conflict under a separate entity approach becomes that between home and host states, rather than between host states. We can consider the counterfactual scenario in which firms were taxed on their global profits, because this system is applied in a number of federal countries, most importantly the United States. In the US, the complex distributional impact of the formula for allocating profits means that there is no multilateral agreement on the content of the formula. Instead, each state adopts its own formula, and tax competition has been most manifested through the choice of factors in the formula: many states have moved towards a formula that uses sales only, to incentivise firms to locate physical assets and jobs within their territory.¹⁰¹ With legal structures and cross-border payments disregarded from tax assessments, distributional conflict follows the lines of how rich a state is in the three components of the formula: there is no distinction between capital exporter and importer in this world.

In addition to specifying the form of conflict between states, the separate entity principle also specifies the role of multinational firms. By concentrating rule-making processes about the attribution of taxable profits, supposedly the neutral part of the process, within international organisations, multinational firms can concentrate their influence here. They may be more able to exercise instrumental power because of their international form, which brings greater knowledge and more coherent positions than individual states, and because international organisations are less open to domestic democratic scrutiny and more vulnerable to business influence through ‘quiet politics’.¹⁰²

In effect, multinationals also have some power to determine where they pay their taxes. The rules in place confer a degree of room to manoeuvre on multinational taxpayers, which is the reason they are able to work within the law to minimise their tax payments by shifting profits.¹⁰³ This has two significant implications for international tax relations, on the distributional conflict and on sovereignty. First, multinational firms, as well as governments,

⁹⁹ Palan, “Tax Havens and the Commercialization of State Sovereignty,” 172.

¹⁰⁰ Baistrocchi, “The Use and Interpretation of Tax Treaties in the Emerging World: Theory and Implications.” Suggests that developing countries may compete over the application of transfer pricing rules in practice.

¹⁰¹ Altshuler and Grubert, “Formula Apportionment: Is It Better than the Current System and Are There Better Alternatives?”

¹⁰² Strange, *The Retreat of the State*; Fuchs, *Business Power in Global Governance*; Culpepper, *Quiet Politics and Business Power: Corporate Control in Europe and Japan*.

¹⁰³ Fuest, Hebous, and Riedel, “International Debt Shifting and Multinational Firms in Developing Economies”; Crivelli, De Mooij, and Keen, *Base Erosion, Profit Shifting and Developing Countries*; OECD, *Addressing Base Erosion and Profit Shifting*.

determine the outcome of the distributional conflict between states. They respond to flexibilities in the rules by deciding where they would prefer to be liable for tax, largely based on their effective tax rate in each jurisdiction. For example, Google prefers its sales activities in the UK to be taxable in Ireland, which has a lower corporate tax rate, and is able to structure its operations to achieve this result, thus determining which of these two countries is entitled to tax these profits.¹⁰⁴ Second, because multinational firms have some choice over whether and how much they are taxed by particular states, those states' ability to enforce their tax policy preferences legally is curtailed. This is an erosion of *de jure* sovereignty, to the extent that multinational companies can use legal and quasi-legal processes to enforce their own interpretations of international tax rules.¹⁰⁵ It also restricts *de facto* sovereignty insofar as states' administrative capacity may be inadequate completely to enforce their policy preferences as expressed through tax laws.

Multinational companies are thus important actors in their own rights in the international relations of taxation. Corporation tax is the single biggest area of international tax cooperation and conflict, the lines of which run not only among states, but also between states and corporations. At times, it is multinational firms who determine the outcome of state-state strategic interactions, either through their structural power that constrains states' autonomy to act, or through their ability to structure operations in a way that determines where their tax liability is incurred.

2.3.2 International institutions

Institutions “involve persistent and connected sets of rules (formal and informal) that prescribe behavioural roles, constrain activity, and shape expectations.”¹⁰⁶ There are international tax institutions that tackle all three of the problems described earlier: tax competition, distributional conflict, and administrative cooperation. Each is designed with sensitivity around national sovereignty in mind. Because fiscal sovereignty is of such fundamental importance to states, international tax institutions are often described as ‘sovereignty-preserving’.¹⁰⁷

Tax competition is perhaps the most challenging of the three dimensions of international tax relations to address through institutions. The game being played here is a prisoner's dilemma, which means it needs enforcement; because such enforcement comes into direct

¹⁰⁴ Drucker, “‘Dutch Sandwich’ Saves Google Billions in Taxes.”

¹⁰⁵ Christians, “How Nations Share”; Baistrocchi, “Tax Disputes under Institutional Instability: Theory and Implications.”

¹⁰⁶ Keohane, “International Institutions: Two Approaches,” 383.

¹⁰⁷ Dietsch, *Catching Capital: The Ethics of Tax Competition*, 171; Cameron, “Turning Point? The Volatile Geographies of Taxation,” 243.

conflict with most states' claims to fiscal sovereignty, these initiatives have never been very successful. Both the OECD and the European Union have attempted to stymie tax competition among their members through the formulation of a code of conduct that focuses on harmful tax competition, but in both cases these initiatives have been products of a particular era and have not led to durable institutions that prevent defection. The OECD formally endorses tax competition, such as over rates, as a positive thing, focusing only on 'harmful' tax competition, which deals with practices of its members states that are more consistent with the category of commercialised sovereignty.¹⁰⁸ The EU's own code of conduct on harmful tax competition has similar limitations, hampered by its members' insistence on maintaining vetoes on tax rules.¹⁰⁹

The central institution of the international tax regime is the OECD Model Tax Convention on Income and Capital.¹¹⁰ Most importantly, the OECD model treaty is the basis of over 3000 bilateral tax treaties negotiated between states. It sets out the areas in which states will negotiate, and articulates an ideal type negotiated outcome, although in areas such as the particular maximum tax rates specified, bilateral negotiations may vary from this outcome. The OECD model also incorporates various explicit and implicit principles of the international tax regime. Two sets of standards are incorporated into the model treaty but also have a life outside it: these are the OECD's Transfer Pricing Guidelines, and its information exchange standard. It is through the constant updating of the model and its associated guidance that the foundations of the international tax system evolve.

Some states use alternative model treaties as their negotiating position or as a reference point in negotiations. In particular, a United Nations committee of experts, reporting to ECOSOC, maintains the United Nations Model Double Taxation Treaty between Developed and Developing Countries.¹¹¹ Regional groupings such as the Common Market of Eastern and Southern Africa (COMESA) and Association of South-East Asian Nations (ASEAN) have formulated their own models. Many countries have their own national models, only one of which – for the United States – is published. Each of these model conventions takes the OECD model as its starting point, and follows it closely in form and content, down to the numbering of articles and the majority of wording; they are usually reviewed in the light of updates to the OECD model.

The OECD model and its associated standards do not have a 'hard law' status unless states commit to be bound by them through an actual treaty based on the OECD model. The

¹⁰⁸ Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*.

¹⁰⁹ Radaelli, "Harmful Tax Competition in the EU: Policy Narratives and Advocacy Coalitions."

¹¹⁰ OECD, *Model Tax Convention on Income and on Capital*.

¹¹¹ United Nations, *Model Double Taxation Convention between Developed and Developing Countries*.

number of such commitments is growing, but even beyond that, the reach of OECD soft law is becoming broader and deeper over time.¹¹² Many countries, not only OECD members, use OECD model treaty provisions and transfer pricing standards as the basis of their domestic law. Texts such as the commentary to the OECD model treaty and the Transfer Pricing Guidelines have been referred to by courts as a source of authority even where they do not form part of the law. The application of the OECD's peer review mechanism to taxation has also gradually expanded over the past ten years, to cover compliance with information exchange standards and new rules on corporate taxation.¹¹³ Each of these trends has increased the constraints on the fiscal sovereignty of countries inside and outside the OECD. Or, as Allison Christians argues, it “appears to shift the focus on tax sovereignty toward identifying affirmative duty in tax system design as a necessary element of respect for sovereignty itself.”¹¹⁴

A conventional narrative suggests that, because states cannot reach agreements on distributional questions in a multilateral setting, they use the multilateral setting to develop tools that will act as focal points for bilateral negotiations on distributional questions.¹¹⁵ Such a view implies that these multilateral tools, such as the OECD model and transfer pricing guidelines, are neutral with respect to distributional questions, but a brief review of the history of international tax institutions reflects that this has never been the case. In the 1920s, when the first model treaties were developed, business organisations and governments struggled to reach agreement as to whether the host country of a multinational company should have any right to tax at all, eventually reaching a compromise that introduced qualitative concepts that sharply curbed the host country's taxing rights, concepts that now underpin the OECD and UN model treaties.¹¹⁶

By the 1940s, a difference of opinion had opened up between the Latin American countries and the Europeans, with the former preferring a model with very few limits on the host country's capacity to tax.¹¹⁷ The result was two model treaties, the Mexico Draft and the London Draft, which differed primarily in the balance of taxing rights that they allocated, with the former more advantageous to net capital importing countries. With the founding of the United Nations, there was an attempt to unite the drafts, but agreement could not be reached between developed and developing countries. Instead, the Organisation for

¹¹² Avi-Yonah, *International Tax as International Law*.

¹¹³ Woodward, *The Organisation for Economic Cooperation and Development*.

¹¹⁴ Christians, *Sovereignty, Taxation, and Social Contract*, 13.

¹¹⁵ Rixen, *The Political Economy of International Tax Governance*.

¹¹⁶ Graetz and O'Hear, “The ‘Original Intent’ of U.S. International Taxation.”

¹¹⁷ Picciotto, *International Business Taxation: A Study in the Internationalization of Business Regulation*; McIntyre, Bird, and Fox, “Developing Countries and International Cooperation on Income Tax Matters: An Historical Review.”

European Economic Cooperation, which subsequently became the OECD, took forward work to develop a model treaty for use by its members, based solely on the London Draft, based on more capital exporter-friendly concepts.¹¹⁸ Meanwhile, some Latin American countries formulated the Andean Model treaty, which allocated all taxing rights to the capital importing country, but which was never used outside of treaties signed among the Andean community, because OECD members refused to use it as a starting point for negotiations¹¹⁹

In the 1970s, the United Nations took up the tax treaty work again, with the creation of an expert committee with members from developed and developing countries, to review the issue of tax treaties and developing countries. This committee formulated its own model, but this was now closely based on the OECD model, accepting the core concepts on which it was based. By 2013, a third iteration of the UN model had been published, with a growing number of divergences from the OECD model.¹²⁰ Some of these amendments explicitly reflect the committee's opinion regarding the appropriate balance between source and residence taxation.¹²¹ In 2012, the UN committee also published a document in which large developing countries set out their view on a 'fair' distribution of the corporate tax base through transfer pricing.¹²²

To further underline that the development of multilateral institutions also reflects a distributional negotiation, developing and developed countries have disagreed over the status of the UN committee and its model treaties, with developing countries seeking to upgrade it to an intergovernmental body and agreement, and OECD members consistently opposing this.¹²³ We can see, therefore, that states themselves believe the model treaties to be more than neutral points of departure for bilateral negotiations over the distribution of taxing rights: the content of multilateral tax institutions influences the distribution of the multinational tax base.

¹¹⁸ Avery Jones, "Understanding the OECD Model Tax Convention: The Lesson of History"; Picciotto, *International Business Taxation: A Study in the Internationalization of Business Regulation*.

¹¹⁹ Quinones Cruz, "Colombia"; Goldberg, "Conventions for the Elimination of International Double Taxation: Toward a Developing Country Model."

¹²⁰ Lennard, "The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments."

¹²¹ See for example the UN model commentary's discussion of changes to Article 7 of the OECD model. United Nations, *Model Double Taxation Convention between Developed and Developing Countries*, 139–140.

¹²² United Nations, "Country Practices."

¹²³ Lesage, Mcnair, and Vermeiren, "From Monterrey to Doha: Taxation and Financing for Development."

2.3.3 Civil society organisations

Civil society participation has come rather late to international tax politics, which until the last decade have interested only businesses and governments. In his account of the OECD's 1998-2003 Harmful Tax Practices initiative, Jason Sharman describes how one civil society organisation, the Washington DC-based Center for Freedom and Prosperity (CFP), was able to shape the position of an incoming US government administration. The CFP, importantly, was not a business lobby organisation, but rather one motivated by libertarian ideology.¹²⁴

During the 2000s, civil society organisations engaged increasingly with international tax debates, with the Tax Justice Network (TJN), founded in 2003, initially leading such efforts. Founded by former tax professionals with decades' combined experience in law, economics and accounting, TJN was able to overcome the expertise gap that had acted as a barrier to civil society engagement, using the epistemic community's technical language to enter the space previously dominated by tax professionals in businesses and government.¹²⁵ TJN was a membership organisation, and over the subsequent years it catalysed participation in international tax debates by a growing number of civil society organisations that were not themselves tax specialists, in particular development NGOs.¹²⁶

Increasingly, civil society organisations participate directly in international tax political processes. The expanded role of the UN tax committee after 2002 created opportunities for civil society organisations to participate as observers in what were, effectively, international tax negotiations; the committee's status was reviewed during United Nations Financing for Development negotiations in 2008 and 2015, processes in which civil society organisations were already heavily engaged, and at which the politics between developed and developing countries were thrown into sharp relief.¹²⁷ Meanwhile, civil society organisations have an institutionalised role in the OECD's outreach work with developing countries, and participate in its mainstream work, often engaging in matters of deep technical detail, and directly shaping outcomes in certain areas.¹²⁸

It is in the area of agenda-setting that civil society interest in international tax has had the most visible impact. In developed countries, civil society organisations ranging from the radical 'Uncut' and 'Occupy' movements to the more established development agencies and

¹²⁴ Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*, 64–68.

¹²⁵ Rixen, *Politicization and Institutional (Non-) Change in International Taxation*; Seabrooke and Wigan, *Emergent Entrepreneurs in Transnational Advocacy Networks: Professional Mobilization in the Fight for Global Tax Justice*; Seabrooke and Wigan, "Powering Ideas through Expertise: Professionals in Global Tax Battles."

¹²⁶ Lesage, McNair, and Vermeiren, "From Monterrey to Doha: Taxation and Financing for Development"; Eden and Smith, "The Ethics of Transfer Pricing," 3–4.

¹²⁷ Lesage, McNair, and Vermeiren, "From Monterrey to Doha: Taxation and Financing for Development."

¹²⁸ Seabrooke and Wigan, "Powering Ideas through Expertise: Professionals in Global Tax Battles."

trade unions have seized on the issue of corporate tax avoidance in an era of fiscal austerity, putting pressure on governments to be seen to act.¹²⁹ In developing countries, the focus has been on taxation of multinational investors, especially mining companies, in a context of declining aid flows, increasing capacity building efforts, and increases in ‘regressive’ taxes such as VAT.¹³⁰ There can be no doubt that such efforts have brought previously obscure tax policymaking into the public domain, but the barrier to participation created by technical knowledge inhibits the effective scrutiny of governments’ actions, and the somewhat begrudging response of tax professionals, governments and international organisations often highlights a perceived lack of understanding on the part of civil society.¹³¹

2.4 Developing countries

The North-South contours of international tax relations have been thrown into much sharper relief during the last few years, both as a product of increasing tensions between emerging powers and the OECD states, and as aid donors and non-governmental organisations have begun to focus on ‘domestic resource mobilisation’ as a part of the international development agenda. The development of the tax state in post-independence developing countries is somewhat different to the Eurocentric model elaborated by Schumpeter and his colleagues. On one hand, the financing of a war effort against an external aggressor is not generally available as a pretext for asking citizens to make a greater tax contribution.¹³² On the other hand, most developing states’ fiscal situations are heavily influenced by external actors: tax systems are inherited from colonial governments, and further influenced by donors, lenders and technical assistance providers; overseas aid provides an additional source of revenue that changes leaders’ incentives to raise and spend revenue in particular ways; tax levied on (and collected by) multinational investors, especially in those countries with extractive industries, makes up a much larger share of tax revenue than in developed countries.¹³³ For these reasons, it makes sense to consider international tax relations from this different point of view.

Consider tax competition between states. Capital-poor developing countries rely much more on foreign investment to enable them to exploit their abundant labour and land, which one

¹²⁹ See, for example, Houlder, “Tax: Trouble to Avoid”; “Global Tax 50: The Leaders Making an Impact around the World.”

¹³⁰ For a good summary, see High-Level Panel on Illicit Financial Flows from Africa, “Illicit Financial Flows.”

¹³¹ Devereux, Freedman, and Vella, *Tax Avoidance*; Reuter, *Draining Development?: Controlling Flows of Illicit Funds from Developing Countries*; OECD, *Addressing Base Erosion and Profit Shifting*.

¹³² Moore, “Between Coercion and Contract: Competing Narratives on Taxation and Governance.”

¹³³ Christians, “Global Trends and Constraints on Tax Policy in the Least Developed Countries”; Stewart, “Global Trajectories of Tax Reform: The Discourse of Tax Reform in Developing and Transition Countries”; Fjeldstad and Moore, “Tax Reform and State-Building in a Globalised World”; Genschel and Seelkopf, “Did They Learn to Tax? Taxation Trends Outside the OECD,” 2016.

would expect would lead to much more intense tax competition among them. Indeed, the proliferation of tax incentives and the drop in tax rates over time illustrates that developing countries have been engaged in a race to the bottom since soon after independence, encouraged by technical advisers.¹³⁴ As discussed earlier, competition among developing countries is also a function of competition among *developed* countries, because characteristics of capital exporters' tax systems influence the form of strategic interaction between capital importers.¹³⁵

Turning to distributional conflict, the North-South axis throws this aspect of international tax relations into sharpest relief. To the extent that the division of tax revenue between states is considered through a normative lens within this economic debate, this is through the concept of inter-nation equity, a term championed by Peggy Musgrave.¹³⁶ The essence of Musgrave's conceptualisation of inter-nation equity is the gains and losses in welfare in the home ('residence') and host ('source') countries of a multinational economic actor, incorporating both the tax effects and the welfare effects in the economy at large.

Within the OECD, there are different preferences about the balance of taxing rights, which emerge principally from the pattern of trade and investment flows between member states. But all OECD member states are net capital and service exporters relative to the rest of the world, and so their interests are relatively homogenous in comparison to those of developing countries, which are net capital and service importers relative to the OECD. In the terminology used by the international tax community, developing countries are source countries, and OECD members are residence countries.

Given this global asymmetry between North and South, the dominant role played by the OECD in the design of international tax institutions is something of a puzzle. It is evidently the case that the design of its institutions reflects the 'predilection for residence taxation' of OECD member states,¹³⁷ and yet those institutions appear to have hegemonic status.¹³⁸ One possible explanation for the OECD's position is path dependence, since in the post-war era it

¹³⁴ Klemm and Abass, *A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies*; Keen and Mansour, *Revenue Mobilization in Sub-Saharan Africa: Challenges from Globalization*; Stewart, "Global Trajectories of Tax Reform: The Discourse of Tax Reform in Developing and Transition Countries"; Fjeldstad and Moore, "Tax Reform and State-Building in a Globalised World."

¹³⁵ IMF, *Spillovers in International Corporate Taxation*; Mullins, *Moving to Territoriality? Implications for the United States and the Rest of the World*.

¹³⁶ Musgrave and Musgrave, "Inter-Nation Equity"; Musgrave, "Sovereignty, Entitlement, and Cooperation in International Taxation"; Brooks, "Inter-Nation Equity: The Development of an Important but Underappreciated International Tax Value."

¹³⁷ Irish, "International Double Taxation Agreements and Income Taxation At Source:"

¹³⁸ Christians, "Global Trends and Constraints on Tax Policy in the Least Developed Countries"; Latulippe, "The Expansion of the Bilateral Tax Treaty Network in the 1990s: The OECD's Role in International Tax Coordination"; Ring, *Who Is Making International Tax Policy? International Organizations as Power Players in a High Stakes World*.

was members of what became the OECD that invested first in developing international tax institutions, which became a focal point for subsequent negotiations.¹³⁹ A variation on this explanation is that the policy leadership of the OECD countries has shaped incentives for non-members, forcing them to comply with OECD standards if they want to access any benefits derived from the international tax regime.

It is notable that proposals for a more ‘ethical’ international tax system generally place the issue of source and residence tax balance to one side. Peter Diestch’s design for a more philosophically sound international tax institution, for example, leaves out the question on the grounds that it would make it too hard to reach consensus among states.¹⁴⁰ The popular proposal among critics to replace the existing system of transfer pricing with ‘unitary taxation’, where a globally agreed formula would allocate the tax base between states, leaves unanswered the distributional implications of such an agreed formula.¹⁴¹

Finally, administrative cooperation between states is largely an area in which developed and developing countries’ interests are aligned, since the winners from improved administrative cooperation are states in which real economic activity takes place, while the ‘losers’ from cooperation are tax havens and their users. Nonetheless, there are two differences. First, the asymmetrical nature of economic flows and enforcement capacities means that developing countries need a different form of cooperation to developed countries. For example, complex corporate tax structuring is a problem for developed countries, while developing countries suffer from ‘plain vanilla’ structures that developed countries can often prevent quite easily.¹⁴² In contrast, as capital importers, developing countries need access to information on multinational investors that may be more readily available to the developed countries in which they are headquartered.¹⁴³ The international tools of administrative cooperation formulated by developed countries may therefore not always meet the needs of developing countries. A second difference is that, while developed countries have the economic power to coerce tax havens into cooperating, developing countries who lack this coercive power must piggy-back on initiatives designed by others. To obtain information from less-cooperative tax havens, for example, they may need to participate in OECD exchange of information initiatives that are backed by the threat of G-20 countermeasures.

¹³⁹ Rixen, *The Political Economy of International Tax Governance*.

¹⁴⁰ Diestch, *Catching Capital: The Ethics of Tax Competition*.

¹⁴¹ Picciotto, *Towards Unitary Taxation of Transnational Corporations*.

¹⁴² OECD, *Report to G20 Development Working Group on the Impact of BEPS in Low Income Countries (Parts 1 and 2)*.

¹⁴³ High-Level Panel on Illicit Financial Flows from Africa, “Illicit Financial Flows.”

2.5 Alternative theories of policy formation in developing countries

This section considers how theories focused on domestic interests and institutions may apply in the area of tax treaties. Three possibilities are considered: democratic politics, special interest group preferences, and bureaucratic capacity. To begin with, much work on the political economy of governments' participation in international agreements, particularly preferential trade agreements (PTAs), has incorporated interests and institutions through the lens of 'Open Economy Politics' (OEP).¹⁴⁴ If governments' interest in bilateral tax treaties relates primarily to trade and investment promotion, then the same theoretical framework may be useful in analysing the politics of tax treaties. OEP begins from the preferences of different interest groups, derived using rational economic models. It then considers how national political institutions aggregate these interests, taking into account the influence they give to particular groups and the way they shape incentives for political actors.

A basic building block of work that uses the OEP approach is a model in which democratic political leaders' economic policy preferences are shaped by the aggregation of two constituencies' preferences: voters, who are affected through general welfare effects and want the provision of public goods, and interest groups such as businesses and trade unions, who seek private benefits for their members and can influence policy through campaign contributions.¹⁴⁵ Edward Mansfield and Helen Milner supplement this by suggesting that an international economic agreement may serve as a tool to reassure the former group in a general sense that the government has not given in to the protectionist interests of the latter, given that they may not know about or notice directly the effects of individual trade policy decisions.¹⁴⁶ It may also serve as a 'credible commitment' to investors about current and future governments' adherence to specific liberal economic policies, or to a liberal programme more generally.¹⁴⁷

The way in which political institutions grant influence to interest groups and voters is also clearly pertinent, since "the state is not an actor but a representative institution constantly subject to capture and recapture, construction and reconstruction by coalitions of social

¹⁴⁴ Lake, "Open Economy Politics: A Critical Review."

¹⁴⁵ Grossman and Helpman, "Protection for Sale."

¹⁴⁶ Mansfield and Milner, *Votes, Vetoes, and the Political Economy of International Trade Agreements*.

¹⁴⁷ Gray, *The Company States Keep: International Economic Organizations and Investor Perceptions*; Baccini and Urpelainen, "International Institutions and Domestic Politics: Can Preferential Trading Agreements Help Leaders Promote Economic Reform?"; Buthe and Milner, "The Politics of Foreign Direct Investment into Developing Countries: Increasing FDI through International Trade Agreements?"; Yackee, "Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law: Do BITs Promote Foreign Direct Investment?"; Simmons, "Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment."

actors.”¹⁴⁸ In the model formulated by Bruce Bueno de Mesquita and colleagues, political leaders’ incentives, including in the area of tax policy, are shaped by the need to maintain support from a winning coalition among the ‘selectorate’, the group of people who control access to power.¹⁴⁹ They argue that governments in democracies, who need a large winning coalition from among the electorate rather than among politically influential groups, will favour a lower tax rate that allows citizens to retain more of their earnings, encouraging them to work harder and stimulating growth, while maintaining enough revenue to provide the public goods that they expect. In contrast, leaders in less democratic countries, who rely on a small winning coalition drawn from the elite, prefer to levy higher taxes in order to use the revenue to provide private goods, which also compensate coalition members for the taxes they have paid.

This logic does not work for international tax. Here, the government of a capital-importing country is taxing foreign companies who are not a part of the ‘selectorate’, and so it can tax them without imposing costs on actors it needs in its winning coalition. Indeed, there is little evidence from the interviews and archival research in this thesis that multinationals lobby host country governments directly for tax treaties, even though they may gain tax savings if a treaty is concluded. Their normal route of influence appears to be via their embassy and thus their home government, captured in Chapter 4 of this thesis. In contrast, the government might have concerns about domestic constituencies: voters and organised interest groups.

2.5.1 Democratic politics

Median voter effects may operate in two directions. In general, we expect that the median voter’s preference is for more inward investment, since this creates employment, both directly and through forward and backward linkages in the economy. Job creation is likely to be a greater priority for left governments.¹⁵⁰ As chapter 3 will discuss, it is questionable whether the information available to policymakers in developing countries would lead them to conclude rationally that tax treaties are an effective way to achieve this; nonetheless, a solid evidence base is not a prerequisite for political debate about tax policy and investment. In Australia, for example, mining companies used their influence over public opinion to force politicians to reverse a decision by the incumbent Labour government to raise taxes on them, after the government indicated that it did not take threats of closures and

¹⁴⁸ Moravcsik, “Taking Preferences Seriously: A Liberal Theory of International Politics,” 518. Ways in which ‘veto points’ in the treaty-making process may give particular influence to certain groups are considered in Chapter 5. See Mansfield and Milner, *Votes, Vetoes, and the Political Economy of International Trade Agreements*; Tsebelis, *Veto Players: How Political Institutions Work*.

¹⁴⁹ Bueno de Mesquita et al., *The Logic of Political Survival*, 141, 154.

¹⁵⁰ Pinto and Pinto, “The Politics of Investment Partisanship: And the Sectoral Allocation of Foreign Direct Investment.”

disinvestment seriously.¹⁵¹ Conversely, Nathan Jensen argues that at the US state level, tax incentives are used by governments, even when their effectiveness is questionable, as a device for claiming credit for inward investment.¹⁵²

If there is a prevailing public belief that tax treaties will attract inward investment, the median voter effect could create an incentive for governments, and especially those of the left, to seek to conclude them. There is little evidence, however, for such political debate in capital importing countries, and little if any public awareness of their existence.

Furthermore, it is notable that, in the case studies discussed later in this thesis, it was in non-democracies (1970s Zambia and 2000s Vietnam) that governments pursued tax treaties most enthusiastically.

Indeed, it is hard to predict which way a median voter effect might push a government. Because they reduce the tax liabilities of foreign multinationals, tax treaties may compromise the government's ability to redistribute wealth and provide public services that will increase the welfare of the voting public. This revenue effect may run counter to the prevailing political discourse of domestic resource mobilisation in many developing countries, and so the median voter and parties of the left may be more concerned that the government taxes foreign multinationals 'fairly'. When the negotiators interviewed for this research commented on their country's politicians, it was predominantly along the lines that they had slowed the ratification process. The argument developed in Chapter 5 thus includes the possibility that political actors may block tax treaties if they are concerned about their impact on revenue mobilisation.

2.5.2 Special interest groups

Two sets of actors that may be members of the 'selectorate', or otherwise able to exert influence beyond the democratic process, may have an interest in tax treaty conclusion. Domestic capitalists and other wealthy individuals may benefit from the tax avoidance opportunities created by some treaties. A tax treaty may effectively be a side-payment to wealthy individuals able to use it to avoid tax by 'round tripping', where they route investments in the domestic market via a tax haven in order to benefit from treaty advantages supposedly intended for foreign investors.¹⁵³ A good example of this is India's treaty with Mauritius, which has been abused by Indian nationals seeking to avoid Indian

¹⁵¹ Bell and Hindmoor, "The Structural Power of Business and the Power of Ideas: The Strange Case of the Australian Mining Tax"; see also Fairfield, *Private Wealth and Public Revenue in Latin America: Business Power and Tax Politics*.

¹⁵² Jensen, "Domestic Institutions and the Taxing of Multinational Corporations."

¹⁵³ Sharman, "Offshore and the New International Political Economy," 8–9.

capital gains tax.¹⁵⁴ There is some suggestion that the Indian parliament may have been slow to introduce an anti-abuse clause because members were among those practicing ‘round tripping’.¹⁵⁵ A tax treaty between Kenya and Mauritius, which contained no protection against round tripping to avoid Kenya’s newly introduced capital gains tax, was concluded despite opposition from the Kenyan Revenue Authority, possibly because of influence from wealthy Kenyans who would have been liable for the new tax.¹⁵⁶ These examples are exceptions, however, and the bulk of discussion about tax treaties in developing countries is focused on the benefits they may provide to foreign multinational companies, rather than any selective benefits they may offer elites. It is also hard to see such advantages in the majority of tax treaties, which are with higher-tax countries rather than tax havens.

Domestic capitalists and wealthy individuals may also have reasons to oppose the conclusion of tax treaties. For businesses, the tax treaty is in effect a reduction in the tax burden facing their foreign-owned competitors, which may give those competitors an advantage over domestically owned businesses. Again, however, there is little evidence for such organised interest group pressure *against* the conclusion of tax treaties. Law, accountancy and tax advisory firms are governments’ main interlocutors on tax treaty matters. Lobbying, where it occurs, is therefore primarily an interaction between government and private sector officials who are members of the international tax community, many of whom have previously worked together in government. This is the type of mechanism considered in Chapter 5, and it tends to push governments in the direction of entering into more tax treaties, and adopting more OECD-type tax systems, not less.

A more compelling motivation to oppose a tax treaty pertains to the administrative cooperation obligations it includes, which help the revenue authority to investigate the offshore tax affairs of businesses and individuals. Those evading tax may be concerned by the revenue authority gaining information on any wealth they have deposited in the treaty partner. It is thought that the revenue authorities of developing countries may demur from using the information exchange provisions within tax treaties precisely because of the political influence of individuals who they would be investigating, in which case the same reticence might be expected at the policy level.¹⁵⁷ Some studies have even found a negative impact of tax treaties on investment flows, which they attribute to this dynamic.¹⁵⁸

¹⁵⁴ Norwegian Government Commission on Capital Flight from Poor Countries, *Tax Havens and Development: Status, Analyses and Measures*.

¹⁵⁵ Conversations with Indian participants at an international meeting

¹⁵⁶ Interviews. anonymised

¹⁵⁷ Independent Commission on Aid Impact, “UK Aid’s Contribution to Tackling Tax Avoidance and Evasion.”

¹⁵⁸ Blonigen and Davies, “The Effects of Bilateral Tax Treaties on U.S. FDI Activity”; Millimet and Kumas, “It’s All in the Timing: Assessing the Impact of Bilateral Tax Treaties on U.S. FDI Activity.”

None of the interview or documentary evidence gathered for this thesis supports the idea that such a mechanism influences tax treaty *formation*. With a few exceptions, jurisdictions that act as tax-friendly investment conduits for multinational firms are not generally the same as those that act as boltholes for illicit wealth, so any conflict between direct investment promotion and offshore evasion may again be limited to a small number of treaties. Just as the round tripping effect rests on the inclusion and exclusion of a particular combination of clauses, a negative effect from administrative cooperation also relates more to the specific clauses included than to the existence of a treaty *per se*.

In sum, there are certainly reasons why foreign multinationals, domestic businesses, wealthy elites and voters might all have a stake in developing country governments' tax treaty policies. There is little evidence, however, that these groups do have preferences strong enough to shape the incentives facing political actors. In part this may be because tax treaties have uncertain and contradictory effects that it may be hard for any interest group to compare: for example, creating possibilities for tax avoidance while acting against tax evasion; potentially attracting foreign investment while reducing government revenues. For sure, different interest groups may have less or more inclination for policies aimed at attracting inward investment, but tax treaties themselves are generally too obscure to attract much direct lobbying or political debate from these constituencies. It is only within the tax community that such influence plays any role.

2.5.3 Bureaucratic capacity

A wide literature on domestic resource mobilisation in developing countries considers the requirement for an extensive bureaucratic infrastructure in order to collect taxes.¹⁵⁹ The state's pursuit of its objectives may be limited more broadly by its bureaucratic capacity, for example its ability to gather and evaluate evidence, draft laws, and negotiate treaties. 'State-centred' explanations relevant to tax policy also suggest that a state's ability to pursue its revenue mobilisation goals, in spite of downward pressure from domestic interest groups and under globalisation, may be a function of the strength of its political and bureaucratic institutions.¹⁶⁰ The development of a state bureaucracy capable of administering and enforcing tax laws must thus run in parallel with the political development of consent for its tax system, fostering a culture of compliance among taxpayers.¹⁶¹ Once created, state institutions, not least those for taxation, may also take on an autonomous logic of their own,

¹⁵⁹ Bräutigam, "Introduction: Taxation and State-Building in Developing Countries"; Kaldor, "Will Underdeveloped Countries Learn to Tax?"

¹⁶⁰ Weiss, "Bringing Domestic Institutions Back in"; Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research."

¹⁶¹ Levi, *Of Rule and Revenue*; Di John, *The Political Economy of Taxation and Tax Reform in Developing Countries*; Moore, "Between Coercion and Contract: Competing Narratives on Taxation and Governance."

outlasting the configuration of social forces that led to their creation, or indeed shaping the construction of identities and interests among actors.¹⁶²

As the case studies in this thesis illustrate, it is certainly the case that a weaker, less specialised tax bureaucracy is less able to provide evidence-based advice to its political leaders, leaving them more exposed to the influence of ideas, interest groups and foreign governments. The creation of a stronger, specialist international tax unit within the bureaucracy can lead to a more focused, critical approach to the exogenous pressures to make tax treaties. As chapter 5 argues, it may also endogenise those pressures, creating an institutional logic of tax treaty-making, not least through a group of civil servants with a vested interest in maintaining an active tax treaty negotiation programme.

This is not, however, a product of bureaucratic capacity *per se*, but something more idiosyncratic. Tax treaty policy tends to be a small, specialist function within most governments, a niche within the niche of international tax policy. Negotiations are frequently led by just one individual, or by at most a handful of staff, operating in obscurity with little scrutiny. Much therefore depends on the knowledge and experience of this person or people, as well as quite specific resourcing decisions concerning the number of people in such a team. Comparing the UK and US, for example, or Cambodia with Vietnam, illustrates that the size and competence of the tax treaty negotiating team does not necessarily correlate with the size of the state apparatus, even that pertaining to taxation. For this reason, the focus of this thesis, as outlined in Chapter 5, is precisely on the knowledge and experience of the officials themselves, as well as on how they are constrained within a system of checks and balances, rather than on a broader notion of bureaucratic capacity. While quantitative measures such as a government's bureaucratic capacity and the 'tax effort' of its tax policy and administration apparatus may be proxies for the size and effectiveness of a country's tax bureaucracy,¹⁶³ neither is a reliable indicator of the bureaucratic capacity devoted specifically to tax treaties.

2.6 Conclusion

Tax is an existential matter for the state: without it, a government will have no resources with which to guarantee its citizens' security and its rulers' survival, but nor will it develop the fiscal contract with its citizens that underpins the 'modern' democratic state. This creates a strong sense of the state's fiscal sovereignty. But taxation is globalised: since states first

¹⁶² March and Olsen, *Rediscovering Institutions: The Organizational Basis of Politics*.

¹⁶³ On tax effort, see Le, Moreno-Dodson, and Bayraktar, *Tax Capacity and Tax Effort: Extended Cross-Country Analysis from 1994 to 2009*; a widely used index of bureaucratic capacity is included in The PRS Group, "International Country Risk Guide."

began to design modern corporate taxes in the early 20th century, they taxed foreign-owned companies, and domestic taxpayers' foreign earnings, bringing them into conflict and forcing them to cooperate in order to maintain their *de facto* sovereignty. The doctrine of fiscal anarchy that underpinned this cooperation was formed intersubjectively at the same time, shaping the identities and preferences of each 'fiscal state', especially of developing countries whose tax systems developed once international institutions had consolidated. The case for tax treaties, in particular, is premised on what Tsilly Dagan calls 'the tax treaties myth', the idea that states should cooperate to alleviate double taxation, which will otherwise impede international trade and investment.¹⁶⁴ The next chapter examines the proliferation of tax treaties, and questions the evidence that they have a positive impact on trade and investment.

¹⁶⁴ Dagan, "The Tax Treaties Myth."

3 The tax treaties conundrum

If we are not careful in the negotiation of DTAs, we will become net exporters of revenue.

- Allen Kagina, former commissioner, Uganda Revenue Authority¹

A tax treaty is a device through which states voluntarily accept constraints on their *de jure* fiscal sovereignty. International tax practitioners frame this process in terms of the allocation of ‘taxing rights’ between the host and home country for a particular piece of income or capital.² The notion that states can only tax where they have been given the ‘right’ to do so immediately indicates the sacrifice of sovereignty entailed by the treaty. Where no treaty exists, a country is free to tax any activity that it wishes, subject to the constraints set out in chapter 2. So-called ‘double taxation treaties’ are understood as a tool to resolve competing claims to tax the same income, which would otherwise create double taxation, as well as instruments creating a legal framework for administrative cooperation to tackle tax evasion. But they are also heavily influenced by tax competition.

Of the 3000 tax treaties in existence today, more than half have at least one developing country as a signatory. Yet why developing countries should have embraced tax treaties is a puzzle. On one hand, the legal rationale is disputed, and a policymaker seeking empirical evidence that tax treaties attract investment into developing countries would have drawn a blank during much of the period during which the tax treaty network was expanding. In recent years an evidence base has begun to emerge, but the picture it paints is far from conclusive. On the other, developing countries give up a disproportionate amount when they sign a tax treaty, partly because all tax treaties are based on concepts formulated among OECD countries in their own interests, and partly because most treaties that are negotiated still do not incorporate the amendments that have been proposed through model treaties designed to redress this balance. This chapter sets out this puzzle in detail, explaining what tax treaties are, how they have spread, and what is known about how they come about.

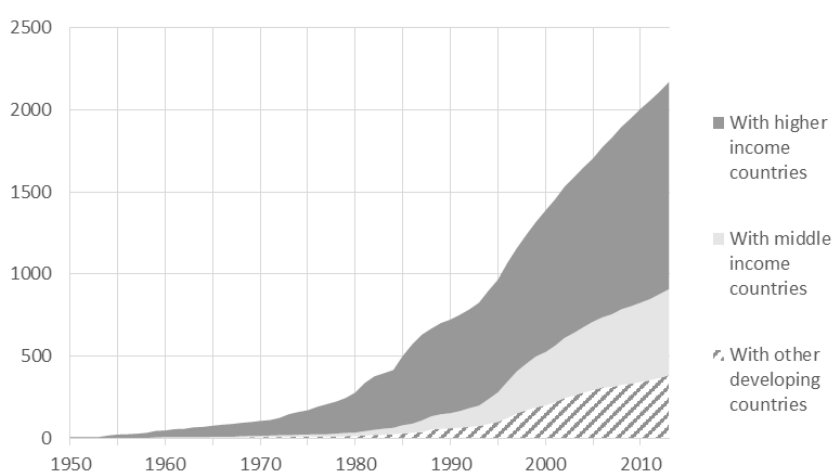
¹ Comments at the African Tax Research Network inaugural conference, Cape Town, September 2015

² For example, the term appears 11 times in a special issue of the *Bulletin for International Taxation*, the house journal of tax treaty specialists, introducing the 2011 update to the United Nations model treaty. (UN Model 2011 Special Issue 2012).

3.1 The diffusion of tax treaties to developing countries

By 2013, over 2000 tax treaties had been signed by developing countries, more than half with upper income countries (Figure 3.1).³ The pattern of diffusion may not be consistent with the S-shaped explosion commonly associated with policy diffusion: rather, it seems that the growth has been linear since the 1980s. Broadly speaking, there has been a growth in treaties with all three income groups shown in Figure 3.1, but treaties with developing and middle-income countries represent an increasing share of the total.

Figure 3.1: Cumulative total tax treaties signed by developing countries



Source: IBFD.⁴ “Developing countries” includes all countries classified by the World Bank as low or lower-middle income.⁵

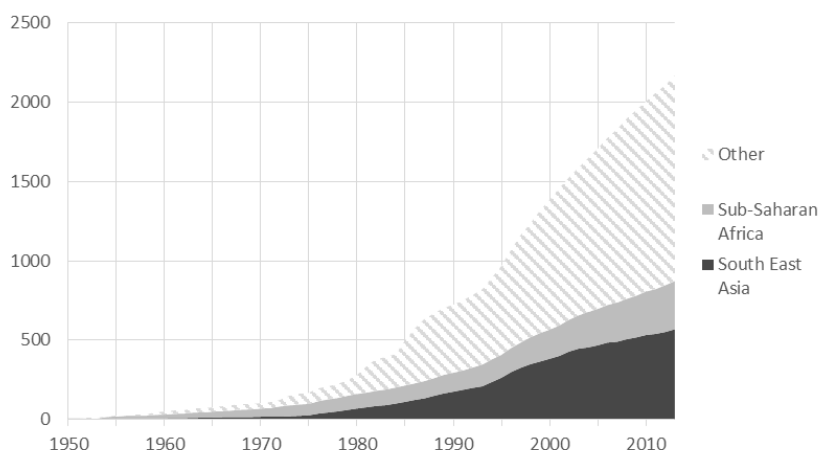
Sub-Saharan Africa and South East Asia, the two regions from which case studies in this thesis are drawn, have between them concluded just under 1000 tax treaties (Figure 3.2). While South East Asian countries have more treaties in total, Sub-Saharan Africa displays a much more consistent growth in the number of agreements since independence (treaties concluded during the colonial era are excluded from these figures). Indeed, most Sub-Saharan African countries began to sign tax treaties during the 1960s, soon after independence (Figure 3.3).

³ The term “developing country” in this thesis refers to low and lower-middle income countries as classified by the World Bank World Bank, “World Development Indicators.”

⁴ IBFD, “IBFD Tax Research Platform.”

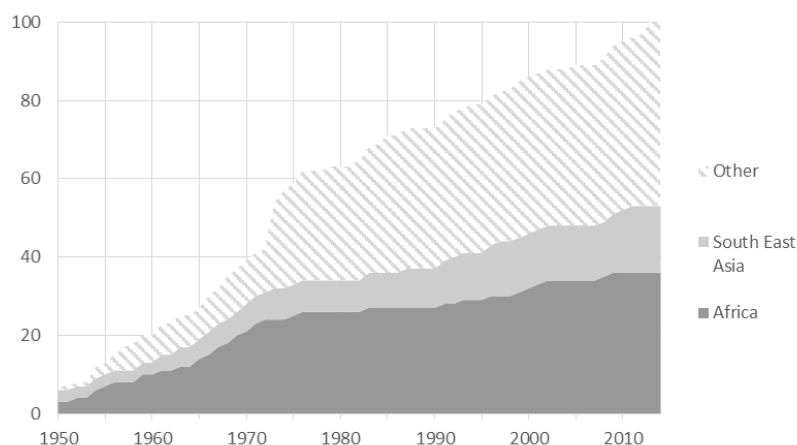
⁵ World Bank, “World Development Indicators.”

Figure 3.2: Cumulative total tax treaties signed by developing countries in sub-Saharan Africa and South-East Asia



Source: IBFD⁶

Figure 3.3: Number of developing countries with at least one tax treaty



Source: IBFD⁷

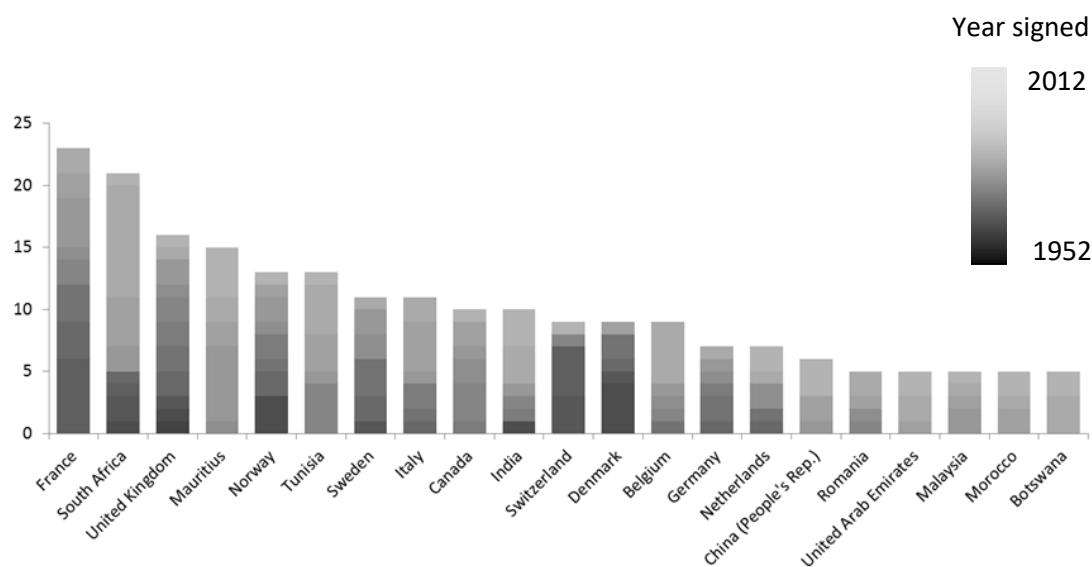
Figure 3.4, which shows the treaty partners of sub-Saharan countries, sheds some light on this trend. Originally, sub-Saharan countries had mostly signed treaties with former colonial parents and Nordic countries. While the former are consistent with an investment promotion rationale, given the extensive economic ties that remained after independence, the latter is a more intriguing, since the Nordic countries are by no means the most significant investors into the sub-Saharan continent. In contrast, more recent sub-Saharan treaty-making activity has been with countries on the continent (South Africa, Mauritius, Tunisia), emerging economies (India, China) and with a different set of developed countries (Canada, Italy, Belgium, Netherlands). Emerging sources of FDI, such as China and India, and regional

⁶ IBFD, "IBFD Tax Research Platform."

⁷ Ibid.

ones such as South Africa, Morocco and Tunisia in the case of Africa, are consistent with a simple investment promotion rationale, and it has been observed that countries such as China and Turkey adopt a similar stance to OECD members when negotiating with less developed countries.⁸

Figure 3.4: Countries with five or more treaties with sub-Saharan African countries



Source: IBFD⁹

Mauritius, Switzerland and the Netherlands, in contrast, are generally not the originators of large amounts of investment themselves, but intermediate hubs through which large volumes of trade and investment pass.¹⁰ In general, they have generous tax regimes to start with, which means that the likelihood of double taxation is limited and a treaty is probably unnecessary to relieve it. Their attractiveness to investors, however, is premised not simply on facilitating investments without double taxation, but on the advantageous terms of their tax treaties that enable investors to avoid taxation at all. These treaties may leave developing countries particularly open to tax losses. There are also some treaties with countries which whom there does not seem to be a significant amount of investment. These treaties are likely to be motivated not by their specific terms and conditions, but by the political signal that

⁸ Li, “The Great Fiscal Wall of China: Tax Treaties and Their Role in Defining and Defending China’s Tax Base”; Hearson, *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset*.

⁹ IBFD, “IBFD Tax Research Platform.”

¹⁰ Weyzig, “Tax Treaty Shopping: Structural Determinants of Foreign Direct Investment Routed through the Netherlands”; McGauran, *Should the Netherlands Sign Tax Treaties with Developing Countries?*; OECD, *Addressing Base Erosion and Profit Shifting*; Lewis, *Sweet Nothings: The Human Cost of a British Sugar Giant Avoiding Taxes in Southern Africa*.

they send, and since their costs (as well as any benefits) are small, they will not be the focus of this thesis.¹¹

In sum, developing countries have been concluding tax treaties since independence, most commonly with their former colonial parents and other OECD countries. From the 1990s, developing countries continued to conclude treaties with traditional sources of investment, but they also began signing treaties with emerging economies, as well as to some extent among themselves. A particularly intriguing question is why they have signed so many treaties with conduit countries, when these countries are not sources of investment in their own right, may not lack the power to coerce developing countries, and these treaties are likely to be abused through treaty shopping.

3.2 Tax treaties as distributional settlements between countries

The formal function of tax treaties, reflected in the more commonly used term ‘double taxation treaties’, and in the words on the title page of most treaties (‘agreement for the relief of double taxation and [in more recent treaties] the prevention of fiscal evasion’) is to promote trade and investment, by reducing the potential that companies operating in the two countries will be taxed twice on the same income. For example, the introduction to the model tax treaty developed by the United Nations tax cooperation committee (“the UN model”), which is intended as a template for developing countries to use in negotiations, states:

Broadly, the general objectives of bilateral tax treaties therefore include the protection of taxpayers against double taxation with a view to improving the flow of international trade and investment and the transfer of technology.¹²

Similarly, the introduction to the OECD Model Tax Convention on Income and Capital (“the OECD model”) describes its main purpose as:

to clarify, standardise, and confirm the fiscal situation of taxpayers who are engaged in commercial, industrial, financial, or any other activities in other countries through the application by all countries of common solutions to identical cases of double taxation.¹³

Investment promotion is certainly a powerful narrative in developing countries, and among some organisations providing technical support on investment policy, supporting the idea

¹¹ Pickering, *Why Negotiate Tax Treaties?*

¹² It also makes reference to the aims to “prevent certain types of discrimination as between foreign investors and local taxpayers, and to provide a reasonable element of legal and fiscal certainty.” United Nations, *Model Double Taxation Convention between Developed and Developing Countries*, vii.

¹³ OECD, *Model Tax Convention on Income and on Capital*, 7.

that tax treaties will attract inward investment. For example, investment promotion literature from countries including Kenya and Zimbabwe highlights tax treaties as important factors that should attract investors.¹⁴ In budget speeches introducing tax treaties to Uganda's parliament, successive finance ministers have explained that their purpose was, "to protect taxpayers against double taxation, and to ensure that the tax system does not discourage direct foreign investment" and "to reduce tax impediments to cross border trade and investment."¹⁵ A study conducted by the Ministry of Finance of Peru states that, "these conventions create a favourable environment for investment. In signing a double taxation convention, a country is sending a positive signal to foreign investment and offering investors security with respect to the elements negotiated."¹⁶

Treaties set boundaries on when and how each country is entitled to tax income earned by residents of the treaty partner (especially multinational companies) within its borders. Table 3.1 summarises some of these restrictions. As can be seen, a large proportion of the treaty is designed to restrict the host country's taxing rights over foreign investors. Broadly speaking, it does this in three ways. First, it sets activity thresholds for a foreign company's activity in the host country, based on the length of time, extent of presence, and type of activity. Below these thresholds the host country cannot tax a foreign investor, and the treaty therefore shifts the balance of taxing rights away from the host country, by an amount that depends on the specific threshold. For example, Uganda's tax treaty with China, signed but not ratified at the time of writing, would prevent the country from taxing Chinese companies' construction sites in the country (of which there are many) unless they are present for six months. This may be a significant curb when, as a finance ministry official stated in an interview for this thesis, "the Chinese can do things in three months."¹⁷ China's tax treaty with Mongolia, signed in 1991, imposes a much higher threshold of 18 months, which in practice would exempt many Chinese construction projects from Mongolian tax.

Second, in some instances tax treaties allocate the right to tax in a binary way. Income such as royalties, pensions, and many types of capital gains may only be taxable by the home country once the treaty comes into force, again shifting the balance of taxing rights in its favour. For example, where a company in the host country pays out pensions to its former employees who now reside in the treaty partner (typically former expatriate employees of a multinational firm who have worked a subsidiary in the host country) many treaties prohibit

¹⁴ Typical examples can be found in Embassy of the Republic of Kenya, "Trade and Investment"; Zimbabwe Investment Authority, "Exploring Investments in Zimbabwe."

¹⁵ Hearson and Kangave, *A Review of Uganda's Tax Treaties and Recommendations for Action*, 11.

¹⁶ Ministerio de Economía y Finanzas de Peru, "Sobre Los Convenios Para Evitar La Doble Tributación Para Promover La Inversión Y Evitar La Evasión Fiscal Internacional."

¹⁷ Interview 25

the host country from taxing those payments.¹⁸ Another longstanding concern about India's tax treaty with Mauritius has been that it prevented India from taxing capital gains made by Mauritian residents in India, and was a vehicle for tax avoidance as a result.¹⁹ In Uganda, an ongoing dispute between the tax authority and telecommunications multinational Zain relates to the Uganda-Netherlands tax treaty, which prevents Uganda from levying capital gains tax on certain types of gains made by Dutch residents, including holding companies, in Uganda.²⁰

Third, in some instances tax treaties set a maximum tax rate on cross-border transactions that the host state must not exceed. Developing countries commonly levy such 'withholding taxes' on dividends, interest payments, royalties and service fees. According to estimates by the development NGO ActionAid, tax treaties signed by Bangladesh deprive it of US\$85 million in dividend and interest withholding tax revenue per year.²¹ An IMF report estimated the equivalent cost to non-OECD states from their tax treaties with the US of the order of US\$1.6 billion in 2010.²² The maximum withholding tax rates imposed by tax treaties are probably their most visible and high profile aspects in developing countries, where withholding tax rates tend to be higher than those in developed countries.

In return for these restrictions in the home country, the signatories also agree to bear the cost of eliminating any remaining double taxation incurred by their residents by making allowances for taxes paid in the treaty partner when calculating their tax liability. This is usually done through a combination of credits for tax paid abroad and exempting income earned in the treaty partner altogether. From the 1970s to 1990s, it was common to include a 'tax sparing' clause in which the home country agreed to honour any tax incentives its firms were granted by the treaty partner, by giving them credits as if they had paid taxes in full. This practice, which did create costs for capital exporting countries, fell out of fashion with the publication of an OECD report, 'Tax Sparing: a reconsideration', which argued that these provisions were vulnerable to tax avoidance, and encouraged investors to repatriate profits, rather than investing them in the developing country.²³

¹⁸ Hearson, *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset*.

¹⁹ Kumar and Natarajan, "Indo-Mauritius DTAA: The Way Forward"; Norwegian Government Commission on Capital Flight from Poor Countries, *Tax Havens and Development: Status, Analyses and Measures*.

²⁰ Hearson and Kangave, *A Review of Uganda's Tax Treaties and Recommendations for Action*.

²¹ ActionAid, *Mistreated: The Tax Treaties That Are Depriving the World's Poorest Countries of Vital Revenue*.

²² IMF, *Spillovers in International Corporate Taxation*.

²³ OECD, *Tax Sparing: A Reconsideration*.

Table 3.1: Selected provisions of tax treaties and their effects

Article	Tax(es) concerned	Effect
5	Corporate income tax	Permanent establishment. Prescribes that states can only tax a foreign company if its activity within their borders meets the thresholds set out under the treaty definition of ‘permanent establishment’ (PE). Typically these thresholds include a minimum amount of physical presence over a minimum length of time, and a list of business activities that do or do not count as a PE.
7	Corporate income tax	Business profits. Sets out how the profits made by a foreign business should be calculated for the purpose of taxation by the state in which it is operating. The state can only take into account profits that it is permitted to by this article, and it must allow the taxable profits to be reduced by any expenses specified in this article.
10-12	Withholding taxes	Withholding tax limits. In addition to profit taxes, states often levy taxes on overseas payments made by companies, such as interest payments, royalties and dividends. These clauses specify the types of payments on which a country can levy withholding taxes, and the maximum rates at which they can levied. The maximum rates are usually set lower than the statutory rates in the capital importing country, as a key concession making the treaty advantageous to the capital exporting country.
13	Capital gains tax	Capital gains tax. The country in which a foreign investor realises a capital gain can only tax it in the circumstances set out in his clause. This may include that a shareholding being sold must constitute a minimum threshold (so that the host country can only tax gains on direct, not portfolio investment).
21	Others	Other forms of taxation. Generally this states that any only the home country has the right to levy taxes that are not explicitly mentioned in the treaty.
23	All	Relief of double taxation. All previous articles limit the capital importer’s taxing rights. This article is the <i>quid pro quo</i> , under which the capital exporter agrees that its resident taxpayers will either receive credits against their tax bills for equivalent taxes paid in the treaty partner, or that it will exempt income and capital in the treaty partner from taxation altogether.
25	All	Mutual agreement procedure. Where the provisions of the treaty are interpreted differently such that a taxpayer still incurs double taxation, this provides for a mechanism through which the countries can try to resolve the dispute. More recent treaties have begun to include taxpayer-initiated binding arbitration within this clause.
26	All	Exchange of information. Obliges and provides a legal authority for states to cooperate with each other when investigating taxpayers with affair in both countries.

Source: Author’s own

If the flows of investment and people between the two treaty partners are broadly equal, changes to the balance of taxing rights resulting from the treaty may affect the incentives for particular taxpayers to move or invest between the signatories, but will not have a significant impact on the overall distribution of taxing rights between the two countries. This is because each country is simultaneously a home and host country with respect to different investors, and so will gain and lose in roughly equal proportion from the restrictions on host or home country taxing rights. But when a treaty is concluded between two countries between which capital flows are not equal, as between a developing country and a developed country, the settlement will have major distributional consequences.

The negotiated content of the treaty may be more or less advantageous to the capital exporting country depending on the level of the permanent establishment threshold, the allocation of the binary provisions, and the maximum withholding tax rates set. But it is normally the case that even treaties that are comparatively favourable to the capital importing country still place significant restrictions on their taxing rights relative to domestic legislation. For example, accepting the concept of permanent establishment, regardless of how broadly it is defined, is a restriction relative to a domestic tax framework that does not include the concept. This illustrates the power of the model treaties, which are predicated on these concepts. It also illustrates that the real impact of tax treaties is often not to alleviate double taxation, but to transfer some of the cost of doing so from the capital exporting country to the capital importer, and to reduce the overall effective tax rate of investors operating across the two countries.

3.3 Weighing up the costs and benefits

We have established that a bilateral tax treaty between a capital-importing developing country and a capital exporter is an explicit political agreement in which each country agrees to surrender some of its fiscal sovereignty, giving up some of its so-called taxing rights. Where the treaty partner has already unilaterally committed to double tax relief through credits or exemptions, as most of the traditional FDI exporting countries have done, a tax treaty is more akin to a transfer of taxing rights to it from the developing country. The question for a developing country policymaker considering entering into negotiations is therefore what their country might expect to gain from signing a tax treaty, to offset these losses. This section considers the evidence available in both the legal and economic literature.

3.3.1 Legal scholars debate whether tax treaties are necessary to relieve double taxation

A hypothetical rational policymaker would have little trouble finding work by lawyers in the policy and academic literature that might give them pause for thought. For forty years, legal scholarship has debated the extent to which the sacrifice of taxing rights by a developing country in signing a tax treaty is justified by its impact on the tax treatment of inward investment.²⁴ Critical legal scholars have argued that tax treaties place too much of the burden of relieving double taxation on developing countries, or that the entire rationale is as ‘a myth’ or “aid in reverse— from poor to rich countries,” because, rather than relieving double taxation, tax treaties between developed and developing countries merely shift the burden of doing so from the former to the latter.²⁵

This is because the credit or exemption provisions that limit the home country’s right to tax its own residents – the quid pro quo for the restrictions in the host country – are rendered less significant by the fact that a majority of major capital exporting countries have incorporated credits or – increasingly – exemptions for foreign-taxed profits into their tax systems unilaterally.²⁶ The treaty may even increase tax revenue in the home country if it operates a credit system and its outward investors’ tax liability in the treaty partner falls as a result of the treaty. (If it operates an exemption system, the benefit of the restrictions in the host country accrues entirely to the multinational investor).

It does appear to be the case that many tax treaties concluded by developing countries have been with countries that already relieve tax unilaterally. Authors who believe that tax treaties can nonetheless attract investment into developing countries make the following points.²⁷ First, not all capital exporting countries relieve double taxation unilaterally in all circumstances, in which case there may be a strong argument for a tax treaty in these cases. Second, although in other instances there may not be what Dagan refers to as “heroic” double taxation, there would still remain instances in which companies are caught out, for example because each country’s tax code defines a particular transaction differently. Treaties help to resolve this both by standardising many definitions and also by providing taxpayers with an avenue to initiate dispute settlement between the treaty partners. Third, an important

²⁴ Irish, “International Double Taxation Agreements and Income Taxation At Source:”; Avi-Yonah, “Double Tax Treaties: An Introduction”; Thuronyi, “Tax Treaties and Developing Countries”; Pistone, “Tax Treaties with Developing Countries: A Plea for New Allocation Rules and a Combined Legal and Economic Approach”; Christians, “Tax Treaties for Investment and Aid to Sub-Saharan Africa: A Case Study.”

²⁵ Dagan, “The Tax Treaties Myth”; Irish, “International Double Taxation Agreements and Income Taxation At Source;” 316.

²⁶ PWC, *Evolution of Territorial Tax Systems in the OECD*.

²⁷ Avery Jones, “Are Tax Treaties Necessary?”; Self, “Some Treaty Issues for Developing Countries”; Pickering, *Why Negotiate Tax Treaties?*

benefit to businesses from tax treaties is that they create stability. A tax treaty is effectively a tool to deliver a credible commitment that many aspects of the tax treatment of an investment will not change in a way that is dramatically worse for the investor, for example a large hike in withholding taxes.

Finally, it is also argued that tax treaties create a more favourable treatment for investors because they reduce taxes that are a direct cost to businesses. This occurs if income is not taxed in the home country, as opposed to being taxed with a credit for taxes paid overseas, or if the home tax rate is lower than the host tax rate on the income concerned. For example, if both countries tax capital gains at the same rate, a business will be indifferent to which country is accorded the taxing rights in the tax treaty, since it will pay the same overall. On the other hand, if the home country doesn't tax capital gains, then a treaty according this taxing right to the home country will entirely eliminate the potential for capital gains tax for investors, which may make the host country a more attractive destination for them.

Tsilly Dagan's paper, which has been the most influential critical analysis, uses game theory to demonstrate that, absent a treaty, the Pareto optimal outcome for a home country will always be to take unilateral steps to relieve double taxation incurred by its multinationals that invest abroad.²⁸ For capital importing developing countries, then, the best strategy should be to sit tight. In Eduardo Baistrocchi's analysis, Dagan's result does not hold when multiple developing countries are competing for inward investment – in this situation they are in a prisoner's dilemma, and once one host country has signed a tax treaty with the capital exporter, the optimal solution for the others is to follow suit.²⁹ This competition model also applies if tax treaties are reducing direct costs to investors, as opposed to eliminating double taxation – here tax treaties may be tools of tax competition in the same manner as statutory tax rates, in which case developing countries face a collective action problem.

What would a policymaker in a developing country, seeking rationally to analyse all the evidence available to them, conclude on the basis of a tax law analysis? Tax treaties may hold some attraction to investors, but this depends very much on the characteristics of the two signatories' tax systems. Certainly, the sweeping statements about the benefits of tax treaties to developing countries often seen in policy literature seem hard to sustain. Perhaps more pertinent is the empirical question, "do tax treaties increase investment into developing countries?" to which we now turn.

²⁸ Dagan, "The Tax Treaties Myth."

²⁹ Baistrocchi, "The Use and Interpretation of Tax Treaties in the Emerging World: Theory and Implications."

3.3.2 Economics scholars debate the empirical record of tax treaties in facilitating investment

The econometric evidence is, unfortunately for our hypothetical policymaker, not much more clear cut.³⁰ Any survey of the academic literature, certainly one conducted before the last few years, would have cast further doubt on the benefits a developing country could expect from concluding a tax treaty. Only a literature review conducted with access to the most recent journal articles might offer grounds for optimism, and even here a close and critical reading calls into question the likely gains for developing countries.

When a comprehensive collection of studies constituting the state of the art was published in 2009, it gave mixed evidence for the effect of tax treaties on investment.³¹ Bruce Blonigen and Ronald Davies found no significant association between FDI activity and the negotiation of tax treaties with the US, and a negative association when examining treaties negotiated between OECD states.³² These findings were corroborated by Peter Egger and colleagues, and by Henri Louie & Donald Rousslang, the latter finding no change in the rate of return expected by US corporations investing in countries where a tax treaty had been negotiated.³³

Daniel Millimet and Abdullah Kumas used a different methodology that allowed for a lag of several years between the negotiation of a treaty and any effect on investment levels.³⁴ They found a significant positive association between the presence of a tax treaty and inbound FDI activity into the US; for outbound investment, they found a less significant association, which was positive for FDI stocks, but negative for flows. Finally, Eric Neumayer found a significant and positive relationship between the negotiation of tax treaties with OECD countries and inbound FDI for middle-income countries, but not for low-income countries, in whom we are more interested here.³⁵

More recent studies have begun to find a more consistent positive effect, although conceptual issues with the study designs remain. One set of studies has used foreign affiliate microdata from Sweden, Germany, the US and Austria, finding positive effects in certain circumstances.³⁶ These studies also provide interesting nuance. In particular, any positive

³⁰ This section expands on some comments previously published online. See Hearson, “Do Tax Treaties Affect Foreign Investment? The Plot Thickens.”

³¹ Sauvart and Sachs, *The Effect of Treaties on Foreign Direct Investment*.

³² Blonigen and Davies, “The Effects of Bilateral Tax Treaties on U.S. FDI Activity.”

³³ Egger et al., “The Impact of Endogenous Tax Treaties on Foreign Direct Investment: Theory and Evidence”; Louie and Rousslang, “Host-Country Governance, Tax Treaties and US Direct Investment Abroad.” Louie & Rosslang also note that the omission of a governance variable in investee countries can lead to the appearance of a spurious association between FDI and US tax treaty negotiation.

³⁴ Millimet and Kumas, “It’s All in the Timing: Assessing the Impact of Bilateral Tax Treaties on U.S. FDI Activity.”

³⁵ Neumayer, “Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?”

³⁶ Davies, Norbäck, and Tekin-Koru, “The Effect of Tax Treaties on Multinational Firms: New Evidence from Microdata”; Egger and Merlo, “Statutory Corporate Tax Rates and Double-Taxation Treaties as Determinants of

effect seems to be limited to the extensive margin, in other words to the initial decision to enter a country, but not subsequent increases in the size of the investment (the intensive margin). This may be because tax treaties reduce the tax paid on cross-border payments, creating an incentive to remit profits elsewhere in the multinational group, rather than to reinvest them in the host country.³⁷ The study of Swedish firms found that a tax treaty increased the likelihood of establishing an affiliate in a country by a small but statistically significant amount – from 0.6% to 0.7%.³⁸ The German study offered a range of figures depending on the variables used, but found that the corporation tax rate had a much larger effect.³⁹ Only the Austrian study, based on less granular data, found an effect at the intensive margin.⁴⁰

Bruce Blonigen and colleagues, using US data, demonstrate that tax treaties affect different sectors differently.⁴¹ They find that a tax treaty increases both the number of new entrants into a market (the extensive margin) and the volume of sales by a given affiliate (the intensive margin), but only for some firms. The explanation focuses on tax treaties' Mutual Agreement Procedure (MAP), through which countries can settle disputes about who gets to tax them in certain circumstances. Without a treaty, a company will most likely be taxed by both countries if they disagree. This problem is unlikely to affect firms whose internal trade is dominated by 'homogenous' goods for which a price can easily be found, but firms trading in 'differentiated' products, whose values are more likely to be disputed between countries, are sensitive to the presence of a tax treaty.

The conclusions we can draw about developing countries from these studies are limited, however. There is a major lack data on developing countries in the foreign affiliate microdata samples: the US only has one treaty with sub-Saharan Africa, Austria has few treaties with lower income countries, and German data only covers 51 host countries, with a bias towards larger economies and not a single African country. Given that pre-2009 studies found a difference between the effect of treaties in countries at different levels of development, this significantly limits the conclusions we can draw. Blonigen and colleagues' hypothesised mechanism focusing on the MAP is unlikely to make much difference for investment in developing countries, most of which have never entered into a

Multinational Firm Activity"; Blonigen, Oldenski, and Sly, "The Differential Effects of Bilateral Tax Treaties"; Braun and Fuentes, *A Legal and Economic Analysis of Double Taxation Treaties between Austria and Developing Countries*.

³⁷ Hartman, "Tax Policy and Foreign Direct Investment"; Sinn, *Taxation and the Birth of Foreign Subsidiaries*.

³⁸ Davies, Norbäck, and Tekin-Koru, "The Effect of Tax Treaties on Multinational Firms: New Evidence from Microdata."

³⁹ Egger and Merlo, "Statutory Corporate Tax Rates and Double-Taxation Treaties as Determinants of Multinational Firm Activity."

⁴⁰ Braun and Fuentes, *A Legal and Economic Analysis of Double Taxation Treaties between Austria and Developing Countries*.

⁴¹ Blonigen, Oldenski, and Sly, "The Differential Effects of Bilateral Tax Treaties."

tax treaty MAP.⁴² Only Ronald Davies and colleagues' study using Swedish microdata has sufficient coverage of sub-Saharan countries to be able to apply its results to that region, and the effect it found was small.⁴³

Aggregate investment data offer better data coverage. Two studies using more comprehensive bilateral investment data have found significant positive effects of tax treaties on FDI stocks in developing countries: one focused on developing countries and found the effect to be in the region of 30 percent, while another not limited to developing countries suggested it was 21 percent.⁴⁴ There are, however, problems with the dyadic approach used, by which the studies assess the extent to which a treaty between capital exporter E and capital importer I corresponds to higher investment from E into I. None controls fully for treaty shopping, in which investors from E into I use an intermediate vehicle in conduit jurisdiction C to take advantage of the treaty between C and I, a phenomenon for which Arjan Lejour tests and finds support, and which Francis Weyzig documents using Dutch microdata.⁴⁵

Both the aggregate FDI and microdata approaches are susceptible to a number of further problems. First, endogeneity, since qualitative research presented below suggests that treaties are often negotiated at the same time as or in response to investment decisions, rather than before them. A lag of one year is not sufficient to address this difficulty, since treaty negotiations and new investments may both take several years from the initial decision to an observable event.⁴⁶

Second, neither the dyadic FDI nor firm-level studies allow us to draw conclusions about the effect of a treaty on absolute levels of investment. A tax treaty is a unique form of tax incentive that only applies to firms from the treaty partner. If a treaty between capital exporter E and capital importer I lowers the tax cost for investors resident in E and operating in I, this may come at the cost of less investment into I from another capital exporter F, whose firms are no longer as competitive (this is indeed the fear expressed by British businesses and civil servants quoted in chapter 7). Country I may benefit from this competition, but by less than the total amount of any new investment recorded from E into I, because of the displacement effect. Alternatively, the treaty between E and I may divert investment from E that would previously have gone to capital importer J, but can now obtain

⁴² OECD, "Mutual Agreement Procedure Statistics for 2014."

⁴³ Davies, Norbäck, and Tekin-Koru, "The Effect of Tax Treaties on Multinational Firms: New Evidence from Microdata."

⁴⁴ Barthel, Busse, and Neumayer, "The Impact of Double Taxation Treaties on Foreign Direct Investment: Evidence From Large Dyadic Panel Data"; Lejour, *The Foreign Investment Effects of Tax Treaties*.

⁴⁵ Ibid.; Weyzig, "Tax Treaty Shopping: Structural Determinants of Foreign Direct Investment Routed through the Netherlands."

⁴⁶ Table 7.1 on page 145, and Table 8.2 on page 170, give an idea of typical negotiation timespans

a better post-tax return in capital importer I. This diversion effect is a clear ‘prisoner’s dilemma’ situation.

Third, on the other side of the coin, certain tax treaties provide benefits to investors that are not resident in the treaty partner country. This is because a multinational from country M, which has no treaty with I, may have another subsidiary in country E, and may make payments between its subsidiaries in E and I such that it benefits from the treaty between E and I, even though these payments are not reflected in the flows of FDI from E into I.

A final note about the evidence base concerns ‘tax sparing’ clauses, which are added into some tax treaties signed by developing countries to give a stronger effect to tax incentives granted by the developing country to multinationals from the home country. The OECD asserts that, “[i]nvestment decisions taken by international investors resident in credit countries are rarely dependent on or even influenced by the existence or absence of tax sparing provisions in treaties.”⁴⁷ In spite of this, several studies have found positive and significant effects of tax sparing provisions on investment into developing countries, independent of the presence of a tax treaty *per se*.⁴⁸

In sum, a rational policymaker evaluating all the available econometric evidence would be unlikely to conclude that this literature allows for any generalised conclusions about whether or not a given tax treaty will bring inward investment. Most studies that have looked specifically at developing countries have found little support, and there are strong reasons to question the validity of claims made by those that do appear to find an effect. In particular, it is difficult to distinguish between new investment resulting from a treaty, and investment diverted or routed from elsewhere to take advantage of its terms. In all probability, any effect of a tax treaty on investment depends on the interaction of the tax system of the host and home country to begin with, whether the treaty contains effective protection against treaty shopping, whether a country’s competitors have already concluded tax treaties, and the particular provisions agreed. Yet such qualifications are absent from policy discourse and, as the evidence in this thesis will show, from policymakers’ descriptions of their own considerations. It thus seems unlikely that the prevalent view, that tax treaties have a blanket investment-promoting effect, is based on a rational assessment of the strength of economic or legal evidence.

⁴⁷ OECD, *Tax Sparing: A Reconsideration*, 5.

⁴⁸ Azémar, Desbordes, and Mucchielli, “Do Tax Sparing Agreements Contribute to the Attraction of FDI in Developing Countries?”; Azémar and Delios, “Tax Competition and FDI: The Special Case of Developing Countries”; Hines Jr, “‘Tax Sparing’ and Direct Investment in Developing Countries.”

3.4 Getting a good deal

The evidence for a generalised effect of tax treaties on investment is largely based on a binary explanatory variable, measuring the presence or absence of a tax treaty. Yet, while all tax treaties conform to the parameters set by the model treaties, there is still considerable variation in their content, which may affect a treaty's impact on investment flows, and on tax revenues. Because tax treaties follow a standardised form, and tend to vary in a number of precise, standardised ways, patterns of negotiated outcomes should also reveal something about the preferences of the countries driving their negotiation.

The fiscal costs to developing countries of tax treaties have never been the subject of an empirical academic study, but non-governmental organisations have attempted to draw attention to what they regard as a negative impact of the reduced withholding tax rates through both case studies and quantitative analysis.⁴⁹ In 2012, Mongolia, Argentina and Rwanda between them repudiated a total of eight tax treaties, apparently due to fears that they were open to abuse or overly generous.⁵⁰ Meanwhile the Dutch and Irish governments have recently conducted reviews of their tax treaties with developing countries.⁵¹ The IMF now advises developing countries that they “would be well-advised to sign treaties only with considerable caution.”⁵²

The UN model treaty is generally regarded as a better compromise between the costs and benefits for developing countries than the OECD model treaty.⁵³ Where the two models vary, it is almost always because the UN model allocates greater taxing rights to the capital importing country. But some recent research has demonstrated that the outcome of tax treaty negotiations between developed and developing countries is generally closer to the OECD model than that of the UN: most of the clauses of the UN model that differ significantly from the OECD model, in areas such as the permanent establishment definition and capital gains tax, appear in only a minority of treaties signed by developing countries.⁵⁴ Because the

⁴⁹ Lewis, *Sweet Nothings: The Human Cost of a British Sugar Giant Avoiding Taxes in Southern Africa*; Hearson and Brooks, *Calling Time: Why SABMiller Should Stop Dodging Taxes in Africa*; ActionAid, *Mistreated: The Tax Treaties That Are Depriving the World's Poorest Countries of Vital Revenue*; Weyzig, *Evaluation Issues in Financing for Development. Analysing Effects of Dutch Corporate Tax Policy on Developing Countries*.

⁵⁰ Ernst & Young, “Draft Law to Cancel Mongolia's Double Tax Treaties”; Godfrey, “Argentina Cancels Double Tax Pact With Spain.”

⁵¹ Netherlands Ministry of Finance, *Government's Response to the Report from SEO Economics Amsterdam on Other Financial Institutions and the IBFD Report on Developing Countries*; IBFD, *Possible Effects of the Irish Tax System on Developing Economies*.

⁵² IMF, *Spillovers in International Corporate Taxation*, 24.

⁵³ Lennard, “The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments.”

⁵⁴ Wijnen and de Goede, *The UN Model in Practice 1997-2013*; Wijnen, de Goede, and Alessi, “The Treatment of Services in Tax Treaties”; Hearson, *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset*.

UN model clauses are generally more common in treaties between two non-OECD countries than in treaties signed by one OECD and one non-OECD country, it appears that developing countries may seek, but fail to secure, more expansive taxing rights in negotiations with OECD countries, where the division of taxing rights really matters.

A few papers have looked for patterns within the negotiated content of tax treaties. Kim Brooks observes that Australia has tended to be more generous in the terms of its tax treaties with developing countries than Canada, and that the latter has become less generous as time has progressed.⁵⁵ Charles Irish suggests that the prevalence of African tax treaties with Nordic countries and West Germany in the 1970s was a result of these countries' openness to negotiate and to conclude treaties on preferential terms. These countries "do recognise the necessity of greater taxation at source and are willing to enter into tax agreements favourable to developing countries."⁵⁶

Veronica Dauer and Richard Krever survey tax treaties in 11 African countries, comparing the negotiated outcome of several clauses across treaties concluded by these African countries, as well as those concluded by six Asian countries. Their survey finds marked differences between some countries, and notes that "as a group, these African countries appear not to have been as successful as Asian countries in retaining taxing rights."⁵⁷ They advance, but do not test, three explanations for this: countries' negotiating strength, national policy preferences, and emulation of regional partners.

In a study of 500 treaties signed by developing countries, I found that Asian countries have generally been more successful at obtaining UN treaty provisions that safeguard their taxing rights than African countries.⁵⁸ Since 1970, a trend towards lower withholding taxes in developing country tax treaties has been counterbalanced by more expansive taxing rights in permanent establishment provisions, while the picture with respect to capital gains is mixed. As a group, OECD countries are becoming more restrictive in their negotiating positions towards developing countries, and non-OECD countries more expansive.

Jinyan Li analyses the historical development of China's treaty network using a detailed typology.⁵⁹ Broadly, she finds that China has changed its preference in negotiations, from preferring clauses that expanded its taxing rights as a capital importer, towards more

⁵⁵ Brooks, "Canada's Evolving Tax Treaty Policy toward Low-Income Countries"; Brooks, "Tax Treaty Treatment of Royalty Payments from Low-Income Countries: A Comparison of Canada and Australia's Policies."

⁵⁶ Irish, "International Double Taxation Agreements and Income Taxation At Source," 301.

⁵⁷ Dauer and Krever, *Choosing between the UN and OECD Tax Policy Models: An African Case Study*, 17.

⁵⁸ Hearson, *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset*.

⁵⁹ Li, "The Great Fiscal Wall of China: Tax Treaties and Their Role in Defining and Defending China's Tax Base."

recently preferring clauses that expand its taxing rights as a capital exporter. Eduardo Baistrocchi's describes an initial stage of Chinese treaty policy during which it was willing to accept treaties on OECD members' terms, despite the costs it incurred as a capital importing country, in order to send the signal that it was open to investment.⁶⁰

Two studies consider the relationship between FDI asymmetries between the two negotiating countries and the withholding rates in those treaties. One looks at this for US treaties and for treaties between OECD members, while the other uses data from German treaties.⁶¹ Both studies find that withholding tax rates are higher where the asymmetry in the FDI relationship between treaty partners is higher. A much earlier, qualitative study observed that "treaty partners having unequal income flows will allocate jurisdiction to tax so as to achieve a more even balance between the two extremes."⁶²

The findings of these three studies imply that countries in a more capital importing position, where the balance of taxing rights in the treaty is most important, are more likely to obtain a better outcome. But it is worth noting that the treaties studied in these papers are predominantly among more developed countries. The descriptive studies that used a sample of lower-income developing countries have tended to find that these countries are quite unsuccessful at obtaining the versions of clauses that they seem to prefer when negotiating treaties with developed countries, as opposed to with each other.⁶³ This is consistent with the view that a tax treaty between a developed and a developing country tends to act primarily to constrain the latter's ability to tax investors from the former.

3.5 Determinants of tax treaty formation

So far we have seen that the existing literature on tax treaties creates something of a puzzle for why developing countries might sign them. The legal rationale is hard to generalise, but the most common 'heroic' explanation in terms of double taxation does not stand up in many instances. In any event, regardless of the legal position, policymakers have not generally had a robust econometric evidence base to support the idea that treaties achieve increases in investment. And yet developing countries are signing tax treaties that, in many cases, significantly curtail their taxing rights.

⁶⁰ Baistrocchi, "The International Tax Regime and the BRIC World: Elements for a Theory."

⁶¹ Rixen and Schwarz, "Bargaining over the Avoidance of Double Taxation: Evidence from German Tax Treaties"; Chisik and Davies, "Asymmetric FDI and Tax-Treaty Bargaining: Theory and Evidence."

⁶² Goldberg, "Conventions for the Elimination of International Double Taxation: Toward a Developing Country Model."

⁶³ Wijnen and de Goede, *The UN Model in Practice 1997-2013*; Dauer and Krever, *Choosing between the UN and OECD Tax Policy Models: An African Case Study*.

The only study to date to test a ‘diffusion’ explanation for the spread of tax treaties suggests that competition for inward investment is an important driver. Fabien Barthel and Eric Neumayer conclude that developing countries are more likely to conclude a tax treaty with a particular country when their likely competitors for inward investment have signed a treaty with that country.⁶⁴ Policymakers, it seems, are convinced enough of the benefits of tax treaties to engage in a competitive strategic interaction.

A paper written for the UN tax committee by former Australian tax treaty negotiator Arianne Pickering, while devoting most of its attention to the investment-promoting rationale for tax treaties, also notes two further reasons why developing countries might sign tax treaties: the prevention of fiscal evasion through the tax information exchange and cooperation provisions of tax treaties, and “political reasons.”⁶⁵ There is certainly evidence that tax officials from some developing countries, among them Zambia and Kenya, currently regard the information exchange provisions of tax treaties as important benefits to be weighed up as part of any assessment of the gains and losses from treaty negotiations and renegotiations.⁶⁶ This was not, however, a common motivation identified in the research for this thesis, not least because such provisions can be obtained without the need to sacrifice taxing rights, through a standalone Tax Information Exchange Agreement (TIEA). It is also the case that, historically, developing countries have not made much use of the information exchange provisions within their tax treaties.⁶⁷ In Uganda, for example, although finance ministers have paid lip service to these benefits in the treaty ratification process, the country has made very few information requests.⁶⁸

Pickering breaks down “political reasons” into several elements: the signalling effect towards businesses that a country is “a responsible member of the international tax community,” international obligations (OECD and EU members, for example, are obliged to conclude tax treaties among themselves), diplomatic reasons unconnected with taxation, and the possibility of coercion:

Frequently, developing countries commence negotiations for a tax treaty primarily because they feel pressured to do so by another country. The pressure may come in the form of diplomatic or political representations, or from the tax administration or revenue officials from the other country or directly from taxpayers resident in the other country.⁶⁹

⁶⁴ Barthel and Neumayer, “Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties.”

⁶⁵ Pickering, *Why Negotiate Tax Treaties?*, 17–18.

⁶⁶ Interviews, anonymised.

⁶⁷ Independent Commission on Aid Impact, “UK Aid’s Contribution to Tackling Tax Avoidance and Evasion”; Grinberg, “Building Institutions for a Globalized World.”

⁶⁸ Hearson and Kangave, *A Review of Uganda’s Tax Treaties and Recommendations for Action*.

⁶⁹ Pickering, *Why Negotiate Tax Treaties?*, 18.

Charles Irish, writing in 1974 based on his experience as an adviser to the Zambian government, noted that Zambia had signed a number of unfavourable treaties, and suggested that this resulted from a number of factors combining to create a coercive mechanism. Developing countries were “unaware” of the disadvantages of tax treaties as proposed by developed countries, and of the possibility that they might challenge the allocation of taxing rights; developing countries “have or believe they have a relatively weak bargaining position”; developed countries “have a propensity to take advantage” of these two deficits.⁷⁰

One collection of studies is consistent with the idea that developing countries’ policymaking is not well developed in international tax. It describes the attitude to tax negotiation in several developing countries. The author of the book’s Ugandan chapter, for example, argues that,

tax administration and tax policy officials in Uganda are not sufficiently trained in the area of tax treaties and international taxation. As a result, Uganda has a weak tax treaty negotiation team that concludes treaties more intensively reflecting the position of the other contracting state.⁷¹

Similarly, the chapter on Colombia describes how a decision by the Uribe government in 2004 to adopt a policy of “attracting investment at any price” led to poorly-prepared negotiations that resulted in an outcome that was less favourable to Colombia than might otherwise have resulted:

In 2005 the Ministry of Trade thus issued a priority list of major trading partners for parallel negotiations of bilateral investment treaties (BITs) and [tax] treaties...Due to the urgency of negotiations, Colombian officials decided to implement the [OECD Model, rather than the Andean or United Nations models] as the only available tool for negotiating with OECD Member countries.⁷²

These examples are consistent with my own experience prior to embarking on the research for this thesis: a tax policy official in Ghana told me that his country had lost out in negotiations through poor preparation, and had not fully taken into account the way tax treaties could allow certain jurisdictions to act as conduits for tax avoidance.⁷³

A different perspective is provided by Alison Christians in her account of field research in Ghana.⁷⁴ Christians observed that most stakeholders in that country didn’t consider a tax treaty with the United States to be necessary in terms of its specific impact on the tax treatment of US investments into Ghana. The case study also casts doubt on the value of any

⁷⁰ Irish, “International Double Taxation Agreements and Income Taxation At Source;,” 309.

⁷¹ Aukonobera, “Uganda,” 1084.

⁷² Quinones Cruz, “Colombia,” 204–5.

⁷³ Hearson and Brooks, *Calling Time: Why SABMiller Should Stop Dodging Taxes in Africa*, 24.

⁷⁴ Christians, “Tax Treaties for Investment and Aid to Sub-Saharan Africa: A Case Study.”

signalling effect from a tax treaty, in comparison to other potential drivers of inward investment such as BITs.

In sum, the small literature examining developing countries' reasons for signing tax treaties suggests a familiar set of issues for international political economy scholars: policymakers acting on imperfect information, power imbalances between countries, and the pursuit of economic objectives beyond the technical purpose of the treaty. These explanations certainly add nuance to the prevailing view that tax treaty diffusion to developing countries can be explained through the rational pursuit of inward investment.

3.6 Conclusion

The tax treaties myth entails two logical steps: first, that states' competing claims to tax cross-border investment create the problem of double taxation, which is unresolved without cooperation between states; second, that by putting in place a tax treaty to resolve this problem, an actual barrier preventing investment flows will be lifted. As this chapter has shown, it is unlikely that policymakers have sufficient evidence to support such generalised claims, and some evidence that contradicts each..

In fact, we understand very little about why developing countries sign tax treaties, and hence we have no yardstick against which to judge whether they have been successful. What we do know is that developing countries have signed, and continue to sign, a great many tax treaties, many of which have been negotiated on terms that seem to have entailed a greater sacrifice of fiscal sovereignty than was necessary to reach agreement. The core question posed by the empirical literature is therefore why developing countries have concluded so many tax treaties, and on such disadvantageous terms.

To answer this questions convincingly, it will be necessary to work across two disciplinary boundaries. First, to combine the detailed analysis of legal scholarship with the political scientist's emphasis on causal hypotheses; second, to adopt a mixed methods approach that leverages the inferential power of large-N analysis with the specificity of qualitative case studies. In each case, it is important to combine the analyses systematically: to formulate hypotheses not just about the origins of tax treaties in general, but about specific clauses given their interaction with the domestic tax system; to embed case studies in a rigorous mixed methods approach that tests and clarifies the findings of quantitative work. By integrating these different approaches, the aim is to formulate a new understanding of tax treaty formation that questions the assumptions underlying existing analyses

The next two chapters begin that process by setting out a theory of tax treaty diffusion to developing countries, based on qualitative evidence gathered through interviews and observations. Chapter 4 focuses on non-specialists within a country's policymaking process, who have little knowledge of the detailed content of tax treaties, nor of their interactions with domestic tax systems. For these individuals, it is the idea that countries wanting to attract investment should sign tax treaties that has driven tax treaty diffusion. Chapter 5 then turns attention to those within the bureaucracy who do have specialist knowledge, in particular the treaty negotiators themselves. These individuals' technical knowledge is detailed, and packaged within a set of ideas about acceptable tax standards, which are embodied by the OECD model tax treaty.

4 Turning the tables: competition for inward and outward investment

Nobody comes to invest because you have a tax treaty. When you see the rationale to attract investment, it sounds laudable. But when you look at the evidence, it's not the case.

- Ugandan treaty negotiator¹

This chapter and the one that follows build on the theoretical and empirical foundations of the previous chapters to develop a theory of tax treaty diffusion in which ideas play a causal role. The propositions here are supported by anecdotal evidence drawn from interviews with tax treaty negotiators and participant observation at their international meetings, as well as from some documentary evidence. The present chapter focuses on the idea that tax treaties increase investment flows, and hence can be used to compete for investment. This idea departs from the double taxation problem discussed in chapter 2, whereby international investment is deterred by the multiple claims to tax it by different countries.

Competition is one of four classic categories of policy diffusion mechanism, the others being learning, emulation and coercion.² This chapter begins with a critical review of policy diffusion literature. It then builds a theory of 'boundedly rational competition', combining the insights from recent work on boundedly rational learning – especially on BITs – with the classic conception of policy diffusion through competition, or 'race to the bottom'. As the evidence presented in this chapter shows, tax treaties have indeed diffused in some cases as a result of competition by developing countries for inward investment. The lack of a solid evidence base to justify this competition, and the views of treaty negotiators who are often sceptical that tax treaties will attract investment, suggest that non-specialist actors in developing countries who subscribe to the competition approach may be relying on ideas as well as, or instead of, purely rational analysis of the costs and benefits. Tax treaties are, however a harder case than BITs for theories of bounded rationality, because the costs are more immediate and certain than any potential benefits, and hence information on the costs might expected to be more 'available' to policymakers. With this in mind, it is proposed that the salience of fiscal costs to those actors is a scope condition for this diffusion mechanism.

The chapter then turns the logic of competition on its head, demonstrating that tax treaties have also diffused through competition by outward-investing developed countries for

¹ Interview 25

² Dobbin, Simmons, and Garrett, "The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?"

investment opportunities. Since tax treaties confer benefits in the developing country on only those multinationals based in the signatory country, investors from signatory countries gain an advantage over their competitors, who in turn ask their home governments to conclude tax treaties. Anecdotal evidence confirms that this mechanism has played an important role in the initiation of tax treaty negotiations between developed and developing countries, and hence in the observed pattern of tax treaty diffusion. This apparently simple observation is largely absent from any discussion of BIT and BTT diffusion in the literature.

Competition for outward investment cannot explain why developing countries, which incur most of the costs of tax treaties, would acquiesce to requests from developing countries. The final task of this chapter is therefore to consider the means through which developed countries have influenced developing countries' willingness to reciprocate, a process of 'coercion'.

4.1 Evidence base

To build the argument in this chapter and the one that follows, I use evidence from interviews, participant observation in international meetings, and official documentation. In total, the thesis draws on 68 interviews with 84 stakeholders in the tax treaty-making process. Of these stakeholders, 56 were or had been national civil servants involved in setting tax treaty policy, negotiating tax treaties - many were their country's lead negotiator - or administering tax treaties (the umbrella term "tax treaty officials" will be used for all three types of civil servant). The sample also included 27 individuals currently working in the private sector, primarily for business lobby groups and tax advisory firms, and eight international organisation staff.³ These individuals came from 27 different countries, including the three case study countries; 50 interviewees were not from or working in case study countries.

The sampling was a combination of convenience and purposive. Most of the interviews were conducted at meetings convened by the United Nations Committee of Experts on International Cooperation in Tax Matters ("UN Committee"), but these were supplemented with some in-country interviews during incidental travel. In addition to the three contemporary case studies – Cambodia, Vietnam and Zambia – in-country interviews were conducted in Uganda, Kenya, Denmark, South Africa and the US. A multi-stakeholder focus group was also conducted at a tax conference in Nairobi in 2013, involving local businesses, tax advisors, revenue authority officials and academics. The sampling strategy was designed

³ The numbers do not add up to 84 because several interviewees had worked in some combination of the public sector, private sector, and international organisations.

to obtain a cross-section of countries by income group and region, as shown in Table 4.1, which gives a breakdown of the countries covered by the interviews by income group. A detailed list of interviews is given in annex, although countries and names are kept confidential at the request of numerous interviewees.

Table 4.1: Breakdown of interviews

Country income group	Negotiators	Other government	Private sector	Total
High	13	5	4	22
Upper-middle	7	1		8
Lower-middle	12	5	1	18
Low	4	7	17	28
Int'l organisation	8	1	5	14
Total	44	19	27	

Source: Author's own

Where possible, interviews were undertaken on a semi-structured basis, with a series of general questions about the interviewee's experience of negotiations, and how tax treaty decisions were made in their country. In addition, some specific questions were asked about recent developments in each country, such as recent treaty signatures, using lists obtained from the International Bureau of Fiscal Documentation in advance.⁴ Some conversations were necessarily more informal than this, given that participants were interviewed in the margins of conferences. Interviews were not recorded, as requests to record early interviews had a significant chilling effect on the conversation.

International meetings also provided the opportunity for participant observation. Meetings of the United Nations Tax Committee are gatherings of dozens of tax treaty officials that last over several days. During formal proceedings, the 25 committee members speak in a personal capacity, while country observers speak on behalf of their country, and a small number of representatives from NGOs, the private sector and NGOs also participate as observers.⁵ The meetings were an opportunity to observe both the formal statements made by participants during the committee's deliberations, and the informal discussions during breaks and social functions. Comments made by committee members cannot, however, be attributed.

There are several sources of bias in the use of such interview and observation data. First, not all countries attend United Nations events, and so the sample may over-represent countries –

⁴ IBFD, "IBFD Tax Research Platform."

⁵ In practice, most countries send a single delegate, although a few countries had both a committee member and an official observer.

or individuals – with a certain perspective on the matters under discussion (for example, those more instinctively amenable to international cooperation, and more particularly to the UN). Second, I am known by some participants for my past advocacy work, including a widely-distributed report that was somewhat sceptical of tax treaties.⁶ It is possible that participants may have adjusted their replies to take account of this background. Third, as the thesis discusses, the power balance between different groups of officials within the national bureaucracy influences a country's approach to tax treaty negotiations. In many developing countries, the decision about whether or not to negotiate a tax treaty is made by the ministry of finance, while the tax treaty specialists – those who attend international meetings – reside in the revenue authority. For this reason, not all the tax treaty officials interviewed, despite being implementers, were privy to the decision-making process that produced their negotiating mandate. Fourth, developing country tax authorities experience a high turnover of staff, and as a consequence, a significant number of negotiators interviewed had not been involved in even relatively recent negotiations.

Despite these limitations, the practical opportunity of an opportunity to speak with a large number of officials involved in the treaty-making process at international meetings was unique, and a number of mitigating factors help to address this potential bias. First, and most importantly, the task in this section of the thesis is merely proof of concept: my aim here is to demonstrate that the proposed mechanisms play a non-trivial role in tax treaty diffusion, not to draw any conclusions about their relative importance beyond this. This “how much” question is better addressed through the inclusion of a quantitative methodology within the formal testing approach outlined in chapter 6.⁷ Second, a degree of triangulation was possible within the interview methodology. Triangulation techniques included speaking independently with negotiators who had experience across the table from each other, speaking with more than one official from the same country, and using field visits to focus on interviews with stakeholders who did not participate in international tax meetings, in particular in finance ministries and the private sector. Third, it was also possible to triangulate between interview and observation data and other sources of information on the negotiating experience or practices of countries. Information was drawn from countries' official statements about policy towards tax treaties, both in written form and from parliamentary transcripts, and from a number of unofficial accounts of the negotiating process. In addition, one source of material that provided useful data, some of which were also used as a basis for discussion in interviews, is the Public Library of US Diplomacy

⁶ Hearson and Brooks, *Calling Time: Why SABMiller Should Stop Dodging Taxes in Africa*.

⁷ Chwieroth, “Testing and Measuring the Role of Ideas: The Case of Neoliberalism in the International Monetary Fund.”

which maintains a database of US diplomatic cables, including both a historical archive from the 1970s, and the more recent cables leaked to Wikileaks.⁸ Searches of the more recent cables for “tax treaty” and “double taxation” yielded 232 results, mostly cables recording discussions between finance ministers or officials and US diplomats.

4.2 Diffusion theory: an overview

At its most broad and simple, policy diffusion means that “the policy choices of one country are shaped by the choices of others.”⁹ Viewed more mechanistically, the term can refer to “the process by which institutions, practices, behaviors, or norms are transmitted between individuals and/or between social systems.”¹⁰ Its roots can be traced back as far back as 1889, to remarks made by Sir Francis Galton at the Royal Anthropological Institute concerning the difficulty of distinguishing between cross-cultural similarities that emerged independently, and those that emerged because they had been transmitted in some way from one cultural unit to another.¹¹ Before reaching international relations literature, the phenomenon of ‘policy transfer’ was understood within comparative politics as when “knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in development of policies, administrative arrangements, institutions and ideas in another political setting.”¹²

Policy diffusion is defined here as the underlying mechanism(s) driving an observed convergence in policies, not the convergence itself.¹³ The literature gives a menu of possible mechanisms, certain scope conditions for their effectiveness, and some methodological techniques associated with measuring and testing each. Mechanisms of policy diffusion are usually divided into four categories: emulation, learning, competition and coercion.¹⁴ The key objective of most contributions in the literature has been to identify which of these mechanisms have resulted in particular instances of policy diffusion. Diffusion studies commonly use cross-country event history models, in which the unit of analysis is the country-year or, in the case of bilateral treaties, the dyad-year.¹⁵ The particular innovation of

⁸ Wikileaks, “Public Library of US Diplomacy.”

⁹ Dobbin, Simmons, and Garrett, “The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?,” 450.

¹⁰ Welsh, “Inter-Nation Interaction and Political Diffusion: Notes toward a Conceptual Framework,” 3. Cited in Starr, “Democratic Dominoes: Diffusion Approaches to the Spread of Democracy in the International System,” 359.

¹¹ Naroll, “Two Solutions to Galton’s Problem”; Ross and Homer, “Galton’s Problem in Cross-National Research.”

¹² Dolowitz and Marsh, “Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making.”

¹³ Gilardi, “Transnational Diffusion: Norms, Ideas, and Policies.”

¹⁴ Dobbin, Simmons, and Garrett, “The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?”

¹⁵ For example, Simmons and Elkins, “The Globalization of Liberalization: Policy Diffusion in the International Political Economy”; Elkins, Guzman, and Simmons, “Competing for Capital: The Diffusion of Bilateral

these studies is the introduction of spatial lags: the occurrence of the same event in other countries is used as an independent variable, but is weighted according to “distance” measures that model the different diffusion effects. An early example that serves as a template for many subsequent diffusion studies examines competing explanations for the diffusion of economic liberalisation policies. The spatial lags used in that study are shown in Table 4.2.

Table 4.2: Examples of spatial lag variables in a diffusion study

Diffusion mechanism		Spatial lag
Competition	For export markets	Similarity of trade relationships
		Similarity of basket of products exported
	For capital	Similarity of bond ratings
		Similarity of ‘education and infrastructure variables’
Learning	From high performers	Adoption by countries in top growth decile
	From countries with which information is more likely to be shared	Shared membership of trade agreements and bilateral investment treaties
		Cross-border business contacts
		Cross-border telephone traffic
Emulation	Of countries with ‘perceived similarity of values and shared ideas’	Common language
		Common religion
		Common colonial heritage
	Of global norms	Mean global adoption

Source: Based on Simmons & Elkins¹⁶

Zachary Elkins and colleagues modify this method to examine the diffusion of bilateral investment treaties (BITs).¹⁷ They find a significant effect from the variables that attempt to measure diffusion effects through competition and coercion when measured through recourse to IMF loans. Emulation effects, measured through various common cultural characteristics, are only significant in the case of religion. There is no evidence for learning, measured through variables that capture the effect of the available evidence of BITs on FDI.

4.2.1 Critical reflections in the diffusion literature

Since this early work, the policy diffusion literature has been characterised by increasingly sophisticated quantitative models that seek to identify and differentiate diffusion mechanisms.¹⁸ Yet, there is a growing recognition that more fine-grained analysis of the

Investment Treaties, 1960-2000”; Neumayer and Plümper, “Spatial Effects in Dyadic Data”; Lee and Strang, “The International Diffusion of Public-Sector Downsizing: Network Emulation and Theory-Driven Learning.”

¹⁶ Simmons and Elkins, “The Globalization of Liberalization: Policy Diffusion in the International Political Economy.”

¹⁷ Elkins, Guzman, and Simmons, “Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000.”

¹⁸ For example: Greenhill, Mosley, and Prakash, “Trade-Based Diffusion of Labor Rights: A Panel Study, 1986–2002”; Barthel and Neumayer, “Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of

national-level dynamics through which diffusion occurs is needed to triangulate these large-N results. As Fabrizio Gilardi states, “[t]he nature of diffusion processes cannot be elucidated satisfactorily unless broad patterns can be supported by detailed information on the underlying dynamics.”¹⁹ Etel Solingen, in her essay on ‘dominoes’ and ‘firewalls’, observes that “similar mechanisms may yield different outcomes under different domestic, regional, and global conditions. And different mechanisms may yield similar outcomes under comparable circumstances.”²⁰

Covadonga Meseguer and Gilardi argue that the approaches followed in diffusion research thus far have tended to ‘homegenise’, looking for universal explanations for global convergence. They suggest that diffusion mechanisms are rarely sufficient conditions for policy change in a given country, which limits the predictive power of diffusion theories. This leads them to sketch out a research agenda which includes:

- (1) why some policies diffuse faster than others; (2) why regional patterns of policy diffusion vary so much; (3) why partisan politics retains predictive power to explain some policy adoptions but not others; (4) what mechanisms of diffusion are likely to be influential in early as opposed to late phases of policy diffusion; and (5) how patterns of policy diffusion are affected by political variables.²¹

The importance of regional-level dynamics is highlighted by Jason Beckfield’s study of the growing regionalisation of the world polity.²² David Marsh & Jason Sharman also identify a need for more studies at the regional level, noting that, “[t]he states of Africa, the Middle East and most of Asia are either considered only in so far as they are present in global data sets, or ignored altogether.”²³ They suggest that one might expect stronger coercion, competition and emulation effects in developing countries, due to their greater need for outside support, inward investment and state legitimacy. Marsh & Sharman challenge the reduction of policy diffusion down to a dichotomous dependent variable, suggesting that frequently policies are adopted as “hybridized combinations of outside and local knowledge,” a view supported by Amitav Acharya, who argues that international norms are ‘localised’ as part of the diffusion process.²⁴

The assumption of a constant pattern of diffusion over time, which is implied by the methodology used in many of these studies, also merits some scrutiny. For example, Martha

Double Taxation Treaties”; Zhukov and Stewart, “Choosing Your Neighbors: Networks of Diffusion in International Relations I”; Quiliconi, “Competitive Diffusion of Trade Agreements in Latin America.”

¹⁹ Gilardi, “Transnational Diffusion: Norms, Ideas, and Policies,” 471.

²⁰ Solingen, “Of Dominoes and Firewalls: The Domestic, Regional, and Global Politics of International Diffusion,” 640.

²¹ Meseguer and Gilardi, “What Is New in the Study of Policy Diffusion?,” 538.

²² Beckfield, “The Social Structure of the World Polity.”

²³ Marsh and Sharman, “Policy Diffusion and Policy Transfer,” 280.

²⁴ Acharya, “How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism”; Marsh and Sharman, “Policy Diffusion and Policy Transfer,” 279.

Finnemore and Kathryn Sikkink suggest that the diffusion of particular norms reaches a tipping point, after which a ‘cascade’ or ‘herding’ effect may occur.²⁵ The story of BIT diffusion, for example, is divided into three phases: an initial phase in which treaties with countries that were key sources of investment were concluded to reassure investors, followed by a second cascade phase characterised by the conclusion of treaties between pairs of countries without significant FDI flows (the Attorney General of Pakistan suggesting that treaties were signed “because it was fashionable to do so”) and finally a third phase in which treaties were concluded in more limited circumstances once their negative consequences began to be observed.²⁶ The aim here, as with studies of BIT conclusions, is thus to explain the variations over time and across countries in the pattern of tax treaty diffusion.

4.3 From bounded learning to bounded competition

4.3.1 Emulation and bounded learning

Emulation, originally referred to by Frank Dobbin and colleagues as ‘constructivism’, is the spread of a policy through its social acceptance as a policymaking norm.²⁷ These authors identify three ways in which this might occur: its adoption by countries which are seen as exemplars by others, its promulgation as a policy norm by expert groups even in the absence of an exemplar, and the adoption of a policy by countries sharing economic, social, political or cultural similarities. Much attention in the literature is focused on how norms reach a ‘tipping point’ beyond which they become ‘standards of appropriate behaviour’, effectively the default behaviour for states.²⁸

Policy learning is distinguished from emulation in that it requires a change in policymakers’ beliefs about cause and effect, rather than their adoption of a norm because it is seen as appropriate behaviour. This distinction from emulation is clear if learning is rational, based on Bayesian updating, in which decision-making is a function of all the information available to decision-makers. In contrast, learning may also be modelled as ‘bounded’, in which case information is processed through a cognitive-psychological framework, employing cognitive shortcuts and heuristics that privilege certain pieces of information and downplay others.²⁹

²⁵ Finnemore and Sikkink, “International Norm Dynamics and Political Change.”

²⁶ Jandhyala, Henisz, and Mansfield, “Three Waves of BITs: The Global Diffusion of Foreign Investment Policy.”

²⁷ Dobbin, Simmons, and Garrett, “The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?”

²⁸ Finnemore and Sikkink, “International Norm Dynamics and Political Change.”

²⁹ Weyland, “Theories of Policy Diffusion - Lessons from Latin American Pension Reform”; Poulsen, “Bounded Rationality and the Diffusion of Modern Investment Treaties.”

Such a bounded rationality framework builds on several of the classic diffusion and socialisation mechanisms, adding insights from behavioural economics, in particular ‘prospect theory’, which argues that people making decisions under uncertainty employ ‘heuristics’ as shortcuts to evaluate information.³⁰ Kurt Weyland suggests that the typical characteristics of policy diffusion, as typified by Latin American pension reforms, cannot be explained by a fully rational learning approach, and require the insights of cognitive heuristics. First, the adoption of near-identical policies by countries with diverse needs and contexts implies that policymakers have not studied their own problems and all potential solutions in detail. Second, the geographic clustering seen in diffusion demonstrates that policymakers pay more attention to reforms adopted by countries close to home, rather than evaluating the full range of alternatives from around the globe. Finally, the typical S-shaped diffusion pattern seems inconsistent with a rational approach: the rapid upsurge in the middle of the pattern “deviates from rational learning, which requires a careful cost-benefit analysis that considers a longer track record,” while the eventual levelling out is also hard to explain because “the more countries adopt a promising innovation, the greater the competitive pressure on laggards to follow suit. Accordingly, diffusion should follow an exponential curve.”³¹

Prospect theory introduces three heuristics used by people as shortcuts when evaluating information. First, the availability heuristic causes people to overvalue information that is more striking, for example because it is simpler to understand, or more dramatic. Weyland suggests that this explains the undue weight given to examples that are geographically proximate. Alternatively, policymakers might look more favourably on the evidence about a policy that conforms to their ideological preferences, in comparison to a policy that contradicts them.³² Second, through the representativeness heuristic, people tend to overestimate how generalisable the information gleaned from a small number of observations is. This would explain the explosive nature of the early stages of diffusion: after a certain point, the ‘informational cascade’ reaches a tipping point at which point countries stop accumulating new information, and decide to adopt the policy.³³ Finally, the anchoring heuristic is the mechanism by which the stickiness of an initial piece of information biases further analyses, which would be the reason for isomorphism in policy diffusion.

³⁰ Kahneman and Tversky, “Prospect Theory: An Analysis of Decision under Risk.”

³¹ Weyland, “Theories of Policy Diffusion - Lessons from Latin American Pension Reform,” 280–1.

³² Volden, Ting, and Carpenter, “A Formal Model of Learning and Policy Diffusion.”

³³ Bikhchandani, Hirshleifer, and Welch, “Learning from the Behavior of Others: Conformity, Fads, and Informational Cascades”; Bikhchandani, Hirshleifer, and Welch, “A Theory of Fads, Fashion, Custom, and Cultural Change as Informational Cascades.”

Clearly, the boundary between emulation and bounded learning is blurred: in effect, the availability and representativeness heuristics result in a mechanism whereby countries ‘learn’ by observing the actions of other countries that they are predisposed to emulate, rather than the results of those actions. Chang Lee and David Strang demonstrate a combination of emulation and learning in the example of changes in the size of the public sector in OECD countries.³⁴ The emulation effect is based on the strength of trading relationship between countries, as well as a specific ‘follow the leader’ emulation of policy shifts by the US. That the adoption of a policy by ‘great powers’ is more likely to lead to diffusion than its adoption by other countries is a long-held suggestion in diffusion literature, often traced from the game theory model of ‘Stackelberg leadership’, in which a leader firm moves first, and is followed by other market participants.³⁵ As Harvey Starr writes, “[t]he key issue in the study of diffusion is where the stimulus for emulation comes from.”³⁶

The emulation effect found by Lee and Strang is not dependent on what impact the adoption of reforms had in other countries, merely on the fact of them having been adopted; but they also observe a learning effect, which is dependent on the outcomes. Learning, the authors argue, is mediated by an ‘interpretive frame’, or belief that downsizing will encourage economic growth.³⁷ Information that is consistent with this frame appears more ‘available’ than information that is not: changes to public sector size that are followed by changes in economic performance in the direction supported by the theory lead to public sector downsizing in other countries; changes that have a null or an opposite effect to that anticipated do not lead to increases in the size of the public sector.

Nathan Jensen and René Lindstadt also demonstrate the cognitive mediation of a learning effect within OECD countries, in the case of corporate tax policy. They show that corporation tax cuts by right-leaning governments are not associated with diffusion effects to other countries, but that cuts by left-leaning governments trigger similar measures in other countries. This supports the argument that a policy decision taken against a government’s expected preference “communicates important information about the viability” of that policy.³⁸ On the other hand, political leaders may have more or less motivation to learn from

³⁴ Lee and Strang, “The International Diffusion of Public-Sector Downsizing: Network Emulation and Theory-Driven Learning.”

³⁵ Von Stackelberg, *Market Structure and Equilibrium [Marktform Und Gleichgewicht]*; Fordham and Asal, “Billiard Balls or Snowflakes? Major Power Prestige and the International Diffusion of Institutions and Practices.”

³⁶ Starr, “Democratic Dominoes: Diffusion Approaches to the Spread of Democracy in the International System,” 359.

³⁷ Lee and Strang, “The International Diffusion of Public-Sector Downsizing: Network Emulation and Theory-Driven Learning,” 887–889.

³⁸ Jensen and Lindstadt, “Leaning Right and Learning From the Left: Diffusion of Corporate Tax Policy Across Borders,” 285.

others, depending on their natural disposition to implement a policy, in which case the level of accountability within the political system may mediate any learning effect.³⁹

The S-shaped curve discussed by Weyland is very visible for bilateral investment treaty diffusion, and the particulars of the BIT story seem to fit his hypothesis: at first, countries were quick to copy each other without a detailed consideration of the costs and benefits of signing BITs, then stopped once policymakers realised the costs could be significant.⁴⁰

Lauge Poulsen uses the availability heuristic to explain this pattern: developing countries entered into treaties without fully anticipating their consequences, because these consequences were remote and had lower salience, in comparison to the signal sent by their neighbours forging ahead with BIT signatures; they were slow to realise the implications for themselves when other countries experienced investor-state claims, especially when these claims were outside their own region, because the examples were, again, less salient.⁴¹

Diffusion through bounded learning may include social knowledge, premised on the development of a policy consensus among elites, such as the theory of downsizing in Lee and Strang's example, or of pension reform in Weyland's. Learning may also be channelled through organisations and networks, for example mutual membership of international organisations.⁴² In several studies of different economic policy diffusion, Xun Cao finds that shared participation in intergovernmental organisations leads to diffusion through the "natural affinity" between members of the same intergovernmental organisation, as well as through policy learning.⁴³ Brian Greenhill shows a similar effect for human rights norms, whereby a state's compliance is associated with that of its fellow intergovernmental organisation members.⁴⁴ As the network of intergovernmental organisations becomes more fragmented, regionalised, and increasingly divided on core/periphery lines, patterns of diffusion through emulation and learning may be expected to become more heterogeneous.⁴⁵

³⁹ Meseguer and Escriba-Folch, "Learning, Political Regimes and the Liberalisation of Trade."

⁴⁰ Jandhyala, Henisz, and Mansfield, "Three Waves of BITs: The Global Diffusion of Foreign Investment Policy."

⁴¹ Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries*.

⁴² Here we are concerned with the social interactions within organisations as channels for information, rather than the role of experts within the organisation's secretariat as 'teachers' Finnemore, *National Interests in International Society*; Gheciu, "Security Institutions as Agents of Socialization? NATO and the 'New Europe.'" which is considered in chapter 5.

⁴³ Cao, "Networks of Intergovernmental Organizations and Convergence in Domestic Economic Policies"; Cao, "Global Networks and Domestic Policy Convergence: A Network Explanation of Policy Changes"; Cao, "Networks as Channels of Policy Diffusion: Explaining Worldwide Changes in Capital Taxation, 1998-2006."

⁴⁴ Greenhill, "The Company You Keep: International Socialization and the Diffusion of Human Rights Norms."

⁴⁵ Beckfield, "The Social Structure of the World Polity."

4.3.2 Emulation and bounded competition

Under economic competition, strategic interaction between countries causes them to adopt policies in order to make them relatively more attractive to foreign investment, or to gain relatively more favourable access to export markets. This may lead to the diffusion of particular policies among countries competing with each other, or to the adoption of different policies in order to compete. Although Weyland and Poulsen situate their discussions of bounded rationality within the learning category of diffusion mechanisms, competition in diffusion need not presume perfectly rational behaviour. This may be so in at least three ways. First, in the choice of policy: the government of one country may respond to the adoption of a particular investment-promotion policy in a competitor country by adopting it, perhaps ignoring doubts about its efficacy because of a fear of losing investment. This may be a rational choice to take a risk-averse approach in the absence of evidence, a mechanism that has been described as ‘rational emulation’.⁴⁶ Jensen argues that at the US state level, tax incentives are used by governments, even when their effectiveness is questionable, as a credit-claiming device.⁴⁷

It may also, in the language of prospect theory, be based on cognitive heuristics. States compete with each other over corporation tax, but there is evidence to suggest that such competition is far from purely rational. The literature on business power describes competition to attract or retain inward investment as a manifestation of businesses’ ‘structural power’.⁴⁸ Recent attempts to study structural power in practice have found that what matters is the *perception* of business power, more than the reality; indeed, different perceptions of the disinvestment threat among different actors in a country can lead to different preferences.⁴⁹

Second, the choice of competitor country may be imperfectly rational. Quantitative models define competitor countries objectively, based on economic statistics (similarity in trade patterns, bond ratings, and infrastructure characteristics in Table 4.2, for example) and hence implicitly assume that policymakers apply a similarly evidence-based approach to determining the countries with which they compete. Any strategic interaction with countries outside this pool would thus be categorised as emulation (by definition non-rational) or learning. Yet, just as with learning, the *logic* of competition may also apply in a boundedly

⁴⁶ Baturó and Gray, “Flatliners: Ideology and Rational Learning in the Adoption of the Flat Tax.”

⁴⁷ Jensen, “Domestic Institutions and the Taxing of Multinational Corporations.”

⁴⁸ Fuchs and Lederer, “The Power of Business”; Lukes, *Power: A Radical View*; Fairfield, *Private Wealth and Public Revenue in Latin America: Business Power and Tax Politics*.

⁴⁹ Bell and Hindmoor, “The Structural Power of Business and the Power of Ideas: The Strange Case of the Australian Mining Tax”; Fairfield, *Private Wealth and Public Revenue in Latin America: Business Power and Tax Politics*.

rational way, in which information about the actions of certain countries is more ‘available’ than others, regardless of the extent to which they are actually in competition with each other.

Finally, policymakers in a state may have an imperfect understanding of the relationship between a particular reform and flows of trade and investment. As the example of anti-money laundering rules shows, countries may adopt reforms on paper in order to send a signal to other countries and to investors, without real commitment to enforcing them.⁵⁰ In corporation tax, policymakers’ focus on the headline rate of tax may differ from businesses’ interest in the effective rate, which is determined by more obscure factors such as capital allowances.⁵¹

The possibility of bounded rationality in the operation of competition mechanisms is specifically excluded by many quantitative methodological designs, which identify competitive pressure by analysing objective economic variables, assuming that policymakers with a competitive mentality have done the same. For example, Simmons and Elkins examine the determinants of capital account, current account and exchange rate liberalisation, finding that economic competition drives the diffusion of such policies.⁵² Elkins and colleagues find that potential host governments seem more motivated to sign BITs when countries whose exports compete in similar third markets, and countries whose economic fundamentals make them comparably “attractive” to investors have done so.⁵³ It is possible that what is captured by emulation variables such as linguistic similarity and geographic proximity is not pure emulation, but rather competition employing cognitive heuristics to identify competitors. Thus, the conceptual boundaries popularly used in the policy diffusion literature may obscure more complex mechanisms, which can be more readily uncovered using qualitative research.

⁵⁰ Sharman, “Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States”; Heilmann et al., “The Limits of Policy Diffusion: Introducing International Norms of Anti-Money Laundering into China’s Legal System.”

⁵¹ Maffini, *Business Taxation under the Coalition Government*.

⁵² Simmons and Elkins, “The Globalization of Liberalization: Policy Diffusion in the International Political Economy.”

⁵³ Elkins, Guzman, and Simmons, “Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000.”

4.4 Competition and bounded rationality in the diffusion of tax treaties

There is a widespread assumption that tax treaty diffusion is due to competition between developing countries for inward investment.⁵⁴ As discussed in chapter 3, there are a number of reasons why policymakers in developing countries might expect a tax treaty to attract inward investment (double tax relief, tax sparing clauses, lower effective tax rates, signalling effects and credible commitments) but there are also strong reasons to question any anticipated benefits. In contrast, the tax costs are certain and significant. This opens up the possibility that any such competition may be underpinned by ‘bounded’ rationality.

The technically complex, obscure and low-salience nature of tax treaties makes them an ideal candidate for bounded rationality: the simplicity of the idea that tax treaties will attract investment by eliminating double taxation contrasts with their complex nature and uncertain effects. Non-specialists cannot themselves assess the likely effects of tax treaties, and would need to rely on specialist officials, yet evidence suggests that they do not seek out the information that these officials could provide, or that these officials lack sufficient specialist knowledge to advise. According to a former technical adviser to Rwanda, which has renegotiated its treaty with Mauritius, the original agreement was "a classic case of somebody negotiating something they don't understand."⁵⁵ A technical adviser at an international organisation observed that developing countries often have contradictory policies within their tax code, some of which are designed to maximise revenue, and others to give it away with the idea of attracting investment. "It's at that political, strategic level that more could be done" to improve such coherence.⁵⁶

Although in one case a negotiator described having been asked by her finance ministry for an impact assessment, in many cases there is no detailed consideration of the costs and benefits by the developing country concerned, and no policy on which to base decisions.⁵⁷ One negotiator told me that "we are thinking that we should have a policy."⁵⁸ Another said that her country had sought advice from international organisations on conducting impact assessments, and been told it was impossible.⁵⁹ Furthermore, a high turnover of staff means

⁵⁴ Baistrocchi, "The Use and Interpretation of Tax Treaties in the Emerging World: Theory and Implications"; Barthel and Neumayer, "Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties."

⁵⁵ Interview 22

⁵⁶ Interview 33

⁵⁷ Interview 11

⁵⁸ Interview 6

⁵⁹ Interview 5

a lack of institutional memory, illustrated by the fact that negotiators were rarely aware of the considerations around treaties that they themselves had not worked on.⁶⁰

Most of the negotiators from developing countries interviewed, who would be most likely to understand the situations in which investors would benefit from treaties, did not share the view they would attract investment, even when they did recognise that foreign investors into their country faced some double taxation. Eleven negotiators from developing countries expressed a clear opinion about the impact of treaties on investment when asked directly. Of these, four said treaties were not pursued in order to attract investment, four said that they were, and three emphasised the risk of saying no to a treaty, regardless of the evidence base. The sceptical views are illustrated by the quotes reproduced in Table 4.3.

Table 4.3: Quotes from developing country negotiators

A treaty is not a central factor to promote investment, it's more to eliminate double taxation.⁶¹

I would agree that a DTA is not a major factor driving investment.⁶²

I know that there's a position that these treaties affect FDI, but I think it's not right.⁶³

Most of the time developing countries are disadvantaged by treaties. Treaties do not attract investment. It is other factors.⁶⁴

Source: Author's own

Other negotiators saw the matter differently, but their views were expressed more emotionally than factually. "We do have the idea that it will attract investment," said one.⁶⁵ The other, from a much less developed country, said, "you must understand that we are afraid of losing investment. We are a poor country and we're at the bottom of the pile."⁶⁶

⁶⁰ When I related this to negotiators from developed countries, many rejected the idea that they had initiated all, or even most, of their treaties with developing countries. This disparity may be explained by countries making reciprocal requests as investment flows between them grow, perhaps with the different timing allowing each side to feel that the other has initiated negotiations. There may also be an historical variation whereby developing countries had pursued some treaties with European countries in the past, before the negotiators with whom I spoke were in post. Finally, it may also be the case that treaty negotiators based in the revenue authority are not always privy to the initial contacts made by foreign affairs or finance ministries, especially if their country does not have a treaty policymaking process.

⁶¹ Interview 37

⁶² Interview 23

⁶³ Interview 4

⁶⁴ Interview 20

⁶⁵ Interview 5

⁶⁶ Interview 7

A private sector interviewee explained that a request to a company's home country government for a tax treaty with a country in which it was considering an investment would rarely be the deciding factor in an investment decision, but that it would come into play when evaluating the potential return on an investment, as a potential upside risk.⁶⁷ While a few interviewees pointed to real examples of double taxation in developing countries in the absence of tax treaties,⁶⁸ the consensus appeared to be that these examples were unlikely to be material to foreign direct investment decisions, or limited to a small subset of investors.

One way to verify whether the active pursuit of tax treaties by developing countries has been underpinned by an understanding of their actual tax effects is to look for evidence that requests received by developed countries from developing countries coincided with interest from investors. If they did not, this would indicate that the absence of a treaty was unlikely to have been an impediment to investment flows. Because developed countries' tax treaty policymaking is quite sensitive to multinational companies' needs, and since the sacrifice of taxing rights entailed by a treaty is largely by the developing country, a developed country's response to a request for a tax treaty is generally quite indicative of whether or not a treaty will really resolve problems that are preventing investment.

According to one former treaty negotiator in a developed country, "requests come from developing countries and may wait for years before there's a response."⁶⁹ Another told me that this experience "is true to some extent, but our in-tray is not large."⁷⁰ As Allison Christians observes, when examining the legal consequences of the absence of a tax treaty between Ghana and the United States:

in today's global tax climate, a typical tax treaty would not provide significant tax benefits to current or potential investors. Consequently, there is little incentive for these investors to pressure the U.S. government to conclude tax treaties with many LDCs... even if concluded, these treaties would not have a significant impact on cross-border investment and trade.⁷¹

US diplomatic cables dated between 2004 and 2010 give a number of examples of developing countries seeking treaties with the US. These include Vietnam, Hungary, Brunei, Croatia, Azerbaijan, Jordan, Malaysia, Libya, Honduras and Turkmenistan.⁷² In most of these cases, no treaty has since been signed with the US, and correspondence in the cables suggests that US reluctance was because US multinationals did not consider these treaties necessary. For example, a 'scen setter' for an Assistant Secretary of State ahead of a March

⁶⁷ Interview 9

⁶⁸ Interviews 50, 68

⁶⁹ Interview 1

⁷⁰ Interview 21

⁷¹ Christians, "Tax Treaties for Investment and Aid to Sub-Saharan Africa: A Case Study," 643.

⁷² Wikileaks, "Public Library of US Diplomacy."

2007 visit to Macedonia noted that while that government wanted to sign a tax treaty with the US during official visits later in the year, US businesses did not see any need for it:

Regarding the double taxation issue, we are studying the Macedonian draft proposal and have advised the MFA that action on such agreements would require strong lobbying from US companies doing business in Macedonia, which has not yet been the case.⁷³

In December 2006, the US Ambassador met with the Croatian Foreign Minister, noting “that the Barr Labs \$2.5 billion takeover of Pliva Pharmaceuticals may spur interest in concluding a double taxation treaty between the US and Croatia, and said he would be urging Washington to take a fresh look.”⁷⁴ Records of meetings with senior US Treasury officials illustrate this line consistently. In 2007, Croatia’s finance minister was told that “investments, such as Barr, will help make Croatia a higher priority” for a tax treaty.⁷⁵ The following year, Qatar’s Finance and Economy Minister was informed that,

the [US Government] has limited resources to negotiate treaties and therefore has certain core requirements that would need to be addressed following consultation with U.S. companies to ensure that the proposed treaty would, in fact, address specific problems.⁷⁶

In some instances, then, the governments of developing countries have sought tax treaties despite (or in the absence of) analysis of their own expert officials about the likely impact of the treaty, or against these officials’ views about an appropriate negotiating position. The response from developed countries, where tax treaty policy may be supported by a greater awareness of the likely impacts, has sometimes been to delay or decline such requests.

4.5 Scope condition: fiscal cost salience

The story of tax treaty diffusion is at first sight a harder case to explain through bounded rationality than BITs, the costs of which are only incurred if an investor makes a claim against the state at some point in the future.⁷⁷ Many of the costs of tax treaties are immediate and significant: withholding tax revenue is reduced from the moment the tax treaty comes into force, and can be estimated in advance (although in interviews it became apparent that such forecasts are rarely made). Some other, larger, costs do emerge later and may be unanticipated, in particular capital gains charges, which have been the subject of legal disputes in countries such as Uganda years after a treaty was signed. The costs of tax treaty

⁷³ US Embassy Cable 07SKOPJE190, Mon, 5 Mar 2007

⁷⁴ US Embassy Cable 06ZAGREB1490, Fri, 15 Dec 2006

⁷⁵ US Embassy Cable 07ZAGREB285, Mon, 26 Mar 2007

⁷⁶ US Embassy Cable 08DOHA781, Wed, 5 Nov 2008

⁷⁷ Poulsen and Aisbett, “When the Claim Hits: Bilateral Investment Treaties and Bounded Rational Learning”; Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries*.

shopping, too, follow later, as investors construct tax planning structures using the new treaty.⁷⁸ Furthermore, the growth in tax treaty diffusion has yet to level off. Even countries for which significant negative consequences of treaty conclusion have clearly become apparent have not generally stopped signing tax treaties, choosing instead to cancel or renegotiate some problematic treaties and carry on negotiating new ones.⁷⁹ In addition to this, there is substantial variation between the number of tax treaties signed by countries under similar competitive pressure.⁸⁰

This poses the question: what scope conditions determine the effectiveness of the diffusion mechanisms discussed above? Why have some governments acted in spite of information about the fiscal costs, while others have not? A scope condition may be positive, increasing the intensity of competition, or negative, acting as a ‘firewall’. In the tax competition literature, the focus has been on the ideological and institutional constraints on governments.⁸¹ Scott Basinger and Mark Hallerberg find that political costs faced by a government in the form of veto players and ideological opposition reduce the likelihood that it will cut corporate taxes in response to competitive pressure: the governments of competitor countries take into account these political costs of their competitors in setting their own corporate tax rates.⁸² Duane Swank shows that the ‘neoliberal’ tax policies diffuse from the US to other countries through a process of competition for mobile capital, which is conditioned by national institutions: coordinated market institutions impede diffusion, and liberal market institutions assist it.⁸³ Thomas Plümper and colleagues consider how domestic constraints affect the balance between capital and labour taxes, demonstrating that fiscal constraints on a government as well as prevailing norms among voters constrain capital tax reductions.⁸⁴ The latter paper also demonstrates that competition over corporate tax rates is more intense between adjacent countries. Domestic stakeholders beyond the policy elite may

⁷⁸ Hearson and Kangave, *A Review of Uganda’s Tax Treaties and Recommendations for Action*.

⁷⁹ This illustrates an important difference between tax treaties and BITs: the main function of a BIT lies in the creation of a ‘credible commitment’ by raising the cost of expropriation for the government, and if a government comes to regret this concession it can only escape it by terminating the treaty; in contrast, if a government becomes concerned by certain costs of a tax treaty, it can (in principle, at least) alter its negotiating stance to retain more taxing rights without negating the entire case for the treaty.

⁸⁰ Discussed in chapter 6.

⁸¹ One common conclusion is that smaller countries are more likely to compete over corporate tax rates (though not labour or consumption tax rates) than larger countries. More generally, larger economies have higher corporate tax rates than smaller ones. This conclusion is predicted by economic theories which note that smaller economies are more likely to benefit from attracting more foreign investment at a lower tax rate than larger economies.

⁸² Basinger and Hallerberg, “Remodeling the Competition for Capital: How Domestic Politics Erases the Race to the Bottom.”

⁸³ Swank, “Tax Policy in an Era of Internationalization: Explaining the Spread of Neoliberalism.” See also Soskice and Hall, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*.

⁸⁴ Plümper, Troeger, and Winner, “Why Is There No Race to the Bottom in Capital Taxation?”

also act as agents of diffusion, rather than ‘firewalls’, if international norms diffuse to the domestic constituencies who shape politicians’ incentives.⁸⁵

Tax treaties, however, differ from corporate tax rates in that, while their costs are just as real, their visibility is lower, and the number of *de facto* veto points they must pass through is also fewer.⁸⁶ In the UK parliament, tax treaties are ratified as statutory instruments through a delegated legislation committee, which rarely discusses them in any detail and has never declined to ratify a treaty.⁸⁷ In Canada, legislative scrutiny is similarly cursory.⁸⁸ In Uganda, tax treaties are laid before parliament, but only for information purposes, and in Denmark, parliamentary approval was only introduced in the last few years.⁸⁹ This lack of engagement by political actors illustrates that tax treaties are not clearly identified with any ideological positioning, most likely because they are regarded as serving a primarily administrative function. Furthermore, they reduce taxes on capital, which is generally considered a preference of the right, but they are also regarded as tools for investment promotion, which is a preference of the left in developing countries. There is no identifiable political constituency likely to oppose tax treaties, which may explain why they are rarely controversial.⁹⁰ A government’s preference for concluding tax treaties is therefore unlikely in most cases to be impeded by vetoes imposed by its domestic constituencies or within the political system (chapter 5 will discuss how conflict between political and bureaucratic actors may occur at veto points).

A more pertinent scope condition for tax treaties in developing countries is the importance of their fiscal costs to political actors. The ‘availability’ of this information may vary. While governments do not routinely collect information on the taxes foregone through their treaties, such information becomes apparent when NGOs or the media highlight tax avoidance structures that exploit tax treaties, or when a court case over eligibility to treaty benefits thrusts particular elements of a treaty into the limelight.⁹¹ Fiscal cost information may also become more ‘available’ if the underlying constraints on policy change. For example, political conditions may create incentives for a government to re-examine the tax

⁸⁵ Linos, “Diffusion through Democracy.”

⁸⁶ Tsebelis, *Veto Players: How Political Institutions Work*.

⁸⁷ Interview

⁸⁸ Christians, “While Parliament Sleeps: Tax Treaty Practice in Canada.”

⁸⁹ Interview, anonymised; Hearson and Kangave, *A Review of Uganda’s Tax Treaties and Recommendations for Action*.

⁹⁰ On partisanship, FDI and tax policy, see Pinto, *Partisan Investment in the Global Economy: Why the Left Loves Foreign Direct Investment and FDI Loves the Left*; Pinto and Pinto, “The Politics of Investment Partisanship: And the Sectoral Allocation of Foreign Direct Investment”; Jensen and Lindstadt, “Leaning Right and Learning From the Left: Diffusion of Corporate Tax Policy Across Borders.”

⁹¹ For example: McGauran, *Should the Netherlands Sign Tax Treaties with Developing Countries?*; Lewis, *Sweet Nothings: The Human Cost of a British Sugar Giant Avoiding Taxes in Southern Africa*; Business Daily, “Africa’s Tax Officials Watch Uganda Case Keenly.”

revenue it raises from foreign investors, either because this is a vote-winning policy, or because a government wants more tax revenue across-the-board to obtain autonomy from donors. Fiscal conditions may also influence how ‘available’ the information about fiscal costs is: where tax revenue is scarce, or corporate tax makes up a larger share of total revenue, the revenue foregone through a treaty is likely to be a bigger concern. Finally, there is some evidence that individual policymakers differ in their predisposition to be concerned about fiscal costs. In one developing country, a finance ministry official who led treaty negotiations explained that:

Before we came, the leadership in treasury felt that we were going to lose a lot of tax revenue. The perception then was that if we enter into these treaties we are going to lose tax.⁹²

The salience of the revenue sacrifice resulting from a tax treaty in the eyes of policymakers who are weighing up the perceived investment/revenue trade-off is therefore an important scope condition for the effectiveness of diffusion through boundedly rational competition for inward investment. The case studies later in this thesis will illustrate that, where ministers and officials are very conscious of the fiscal costs, they are more likely to resist pressure to sign treaties, whereas, if raising tax revenue is less of a priority, they are more likely to acquiesce.

4.6 Turning the tables: tax treaties as outward investment promotion tools

So far, consistent with the existing literature on tax treaties and also BIT diffusion, I have focused entirely on competition among capital importing countries. I now turn to another possibility, that competitive pressure might act on capital exporting countries, driving them to seek tax treaties with developing countries. Mark Manger has argued with respect to preferential trade agreements that,

concentrated interests in FDI-exporting countries have a strong incentive to lobby for preferential agreements because they confer specific advantages over competitors. To be politically attractive, these agreements must have a discriminatory effect on trade and investment with non-members.⁹³

Such a position is certainly logical for tax treaties, which provide a tax advantage to firms investing outward into the treaty partner over their competitors from countries where such a treaty does not exist. Indeed, there is ample evidence that business lobbying, exercised in the home country rather than the host, has been at the origin of many tax treaties between

⁹² Interview 23

⁹³ Manger, *Investing in Protection: The Politics of Preferential Trade Agreements between North and South*, 19.

developed and developing countries. At a discussion in the Danish parliament in June 2015, for example, business pressure on the Danish government was very evident. A private sector participant stated that “Danish industry sees DTTs as an important competition parameter,” while Denmark’s tax minister stated that “we have several times heard expressions of interest regarding Nigeria, but we have been unable to get them to sign.”⁹⁴

In support of this proposition, a majority of negotiators interviewed from developing countries stated that their country’s pattern of treaty signatures was mainly the result of requests from other countries. “We’re more or less on the waiting position...they come to us,” one stated.⁹⁵ According to another, “normally we negotiate when we receive requests, and have always responded positively. It’s always a request from the other party.”⁹⁶ In this country’s case, the treaty would only be signed and ratified once the treaty partner had pushed again, usually following further requests from the investor. Negotiators from two developing countries that had recently signed their first tax treaties indicated that, once it became known that they were open to concluding agreements, they had been inundated with requests from capital exporting countries.⁹⁷

Developed countries formulate their negotiating priorities through consultation with their multinational businesses. Many have an established procedure to solicit private sector input into their future plans for treaty-making. European treaty negotiators interviewed were all happy to say that their country actively solicits business input into their annual treaty priorities, and that this was the main factor determining those priorities, alongside other diplomatic and economic matters. Some typical quotes from these interviews are given in Table 4.4. The same applied to middle-income countries whose negotiators were interviewed, in respect of their treaties with lower-income countries.

Indeed, many individual treaties are the result of lobbying by a single multinational around a particular investment in a developing country. Talking about a particular treaty that had been concluded on his company’s behalf, a business interviewee in a developed country said, “we were the first [to invest in that country] but they knew there would be others...If you went through any developing country and looked at big investments, you’d see a treaty just before or afterwards.”⁹⁸ In Nairobi, Kenya’s 2007 tax treaty with France is widely understood among tax professionals from the public and private sectors to have been specifically linked to France Telecom’s investment in the country, although this was denied by a Treasury

⁹⁴ Remarks at a hearing of the committee on fiscal affairs, June 2015.

⁹⁵ Interview 4

⁹⁶ Interview 6

⁹⁷ Interviews 5 and 64

⁹⁸ Interview 9

official. “The entry of France Telecom into Telkom Kenya has yielded a tax benefit across all sectors with the signing of a double taxation treaty between Kenya and France,” a local newspaper report noted at the time.⁹⁹ As another example, several interviewees from government and the private sector in different African and Asian countries hinted that certain tax treaties had been concluded in response to pressure from regional airlines.

Table 4.4: Quotes from developed country negotiators

When we agree our treaty negotiation programme the main concern is how it is going to benefit [our] companies.¹⁰⁰

It’s a matter of competition: we’re a small country.¹⁰¹

We do have a treaty with [an African country] because at that time we had a construction company [investing there].¹⁰²

[If a competitor is from a treaty country] this will make it impossible for [our company] to compete.¹⁰³

Source: Author’s own

Of the negotiators from developing countries who gave a direct answer to the question, nine claimed to have a predominantly passive role in the initiation of negotiations, while only one said that they usually requested negotiations with capital exporting countries. Outside of Latin America, all the negotiators that I spoke with indicated that they never decline requests for tax treaties from developed countries, except from tax havens. “We never reject a request for negotiation. This has something to do with diplomacy and international relations,” said one African negotiator.¹⁰⁴ Several did indicate that responses to some requests might be deliberately stalled – for example if it was politically necessary to conclude treaties in a certain order.¹⁰⁵

Tax treaties are, therefore, frequently initiated at the behest of outward investors, via their home states, rather than by host country governments seeking to attract inward investment. Developing countries usually accept these requests to negotiate for a variety of reasons: a positive but passive attitude to tax treaties, diplomatic necessity, lack of capacity to analyse the costs and benefits, or simply because they are following the path of least resistance.

⁹⁹ Were, “Kenya: France Telecom Entry Eases Tax Burden.”

¹⁰⁰ Interview 21

¹⁰¹ Interview 14

¹⁰² Interview 19

¹⁰³ Interview 13

¹⁰⁴ Interview 20

¹⁰⁵ Interviews 5,6,65

4.7 Coercion

If the advantages of tax treaties accrue predominantly to the developed country signatory, and in many instances it is the actions of that developed country that lead to the initiation of negotiations, this sheds a different light on why developing countries may have been willing – and even enthusiastic – to sign tax treaties. The organising concept in this case is ‘coercion’, defined broadly in diffusion studies and sometimes excluded on the grounds that it is a hierarchical process through which a third party changes states’ incentives, rather than their preferences.¹⁰⁶ In Dobbin and colleagues’ framework, however, three coercive mechanisms exist: changing material incentives through either conditionality or the formation of a policy consensus around a policy leader, and the influence of ‘hegemonic ideas’. “What unites these studies,” they say, “is their focus on the influence of an external source of pressure or ideas.”¹⁰⁷

There is only very limited evidence of explicit conditionality associated with tax treaties. For example, several negotiators indicated, always about other countries rather than themselves, that Spain had threatened to withdraw tax-related technical assistance, and even aid funds, as part of treaty negotiations.¹⁰⁸ British civil servants discussed using aid as leverage to obtain tax treaties in principle, but there is no evidence that they did so in practice.¹⁰⁹

There are more examples of developed countries insisting on a tax treaty as a *quid pro quo* for some other form of agreement. A US embassy cable from 2009 outlines Colombia’s pursuit of free trade agreements (FTAs):

According to the [Government of Colombia], Japan has insisted on negotiating a BIT [bilateral investment treaty] (fourth negotiation round is in late November), followed by a DTT [double taxation treaty], before it will begin FTA [free trade agreement] negotiations with Colombia.¹¹⁰

In 2007, Argentina requested a Tax Information Exchange Agreement (TIEA) with the US. This is a kind of abridged tax treaty that would allow Argentina to obtain information about its citizens’ US tax affairs, to help in investigations of potential tax evasion. The US responded by stating that it was only willing to discuss a full tax treaty, which would give Argentina the same information, but would also require Argentina to surrender some of its

¹⁰⁶ Gilardi, “Transnational Diffusion: Norms, Ideas, and Policies.”

¹⁰⁷ Dobbin, Simmons, and Garrett, “The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?,” 357.

¹⁰⁸ Interviews, anonymised

¹⁰⁹ For examples, there is some correspondence related to the UK’s desire to open negotiations with India and Latin American countries. A letter from DL Pearson in the Ministry of Overseas Development to FB Harrison at the Inland Revenue, dated 16 May 1966, states: “we think it would be both impracticable as well as damaging to aid policy to establish and overtly emphasise any direct link between the amount of aid we provide and the forthcomingness of the recipient Government in fiscal (or indeed other) matters.” File ref IR40/16325.

¹¹⁰ US Embassy Cable 09BOGOTA3359, Thu, 12 Nov 2009

tax base to the US.¹¹¹ This led to a stalemate, which has yet to be resolved. According to the Commissioner General of the Kenya Revenue Authority, Kenya received a similar response when it requested a TIEA with Singapore.¹¹²

The second form of coercion, policy leadership, occurs when a country or bloc with market power takes an action that changes incentives for other market actors – whether deliberately or not. Thus, since OECD countries have all adopted a common approach to international taxation based on bilateral tax treaties, developing countries have an incentive to do the same. Eduardo Baistrocchi frames these advantages using the concept of a network market, which creates three types of network effects that incentivise adoption of a particular policy instrument: positive externalities, whereby the detailed elaboration of model tax treaties and case law on their implementation reduces the transaction costs for other countries choosing to adopt them, and for taxpayers operating in those countries; an expectation among market actors that countries will follow the lead of the OECD countries; and ‘lock-in’ effects, a similar concept to path dependency in which the existing regime has significant sunk costs that make it difficult for new, incompatible entrants to the market to gain ground, even if they have advantages over the existing technology.¹¹³ In practical terms, this explains why developing countries might face a binary choice – sign OECD-type tax treaties or not at all – rather than develop an alternative approach. Such an alternative was formulated by the community of Andean nations and signed in 1971, but failed to gain a foothold because OECD member states refused to use it as the basis of negotiation.¹¹⁴

Finally, coercion through hegemonic ideas refers to how “dominant ideas become rationalized, often with elegant theoretical justifications, and influence how policy makers conceptualize their problems and order potential solutions.”¹¹⁵ Norms emerge within a social hierarchy of states, and their association with this hierarchy is important: a norm may be more likely to spread in a universal way if it is associated with the behaviour of an ‘advanced’ state.¹¹⁶ David Rosenbloom, a former US tax treaty negotiator, famously stated that many developing countries regarded tax treaties as a “badge of international economic respectability.”¹¹⁷ Arianne Pickering, a former Australian treaty negotiator, concurs that,

¹¹¹ US Embassy cables 07BUENOSAIRES1795, Mon, 10 Sep 2007, and 07BUENOSAIRES2241, Tue, 20 Nov 2007

¹¹² Commissioner General John Njiraini, speech at Strathmore University, Nairobi, 12 September 2013.

¹¹³ Baistrocchi, “The Use and Interpretation of Tax Treaties in the Emerging World: Theory and Implications.”

¹¹⁴ *Ibid.*; Goldberg, “Conventions for the Elimination of International Double Taxation: Toward a Developing Country Model.”

¹¹⁵ Dobbin, Simmons, and Garrett, “The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?,” 456.

¹¹⁶ Towns, “Norms and Social Hierarchies: Understanding International Policy Diffusion ‘From Below.’”

¹¹⁷ Annual institute on federal taxation.

a country may want to signal to the global economy and potential investors that it is a responsible member of the international tax community that is willing and able to conform with widely-accepted tax rules and norms.¹¹⁸

By concluding a tax treaty for broader reputational reasons, policymakers may therefore be acting in a purely rational incentive-driven way, making a conscious instrumental calculation based on a logic of consequences. Alternatively, they may be following a logic of appropriateness, taking for granted a norm that associates tax treaties with the way ‘advanced’ countries behave.¹¹⁹

Dobbin and colleagues emphasize that some combination of international organisations, epistemic communities and policy entrepreneurs is usually required to construct the conceptual framework supporting an idea, even if it subsequently gains hegemonic status because of its endorsement by powerful actors.¹²⁰ The chapter that follows this one considers how such processes have created diffusion by shaping the ideas of tax specialists; here we are interested in how policymakers who rely on heuristics in place of specialist knowledge might be ‘coerced’ by a hegemonic idea, that a tax treaty will attract investment, with origins elsewhere.

While conditionality and policy leadership were mechanisms premised on shifts in incentives that would alter how a fully rational decision maker acted, such a mechanism of ideational hegemony is fully consistent with a bounded learning, bounded competition, or emulation account. Indeed, Jason Sharman suggests that the nexus between coercion and other diffusion processes is under-studied:

By understating the power-based character of mimicry, scholars have also understated to a significant degree the proposition that, at least for the developing world, policy diffusion by mimicry is often a coercive process.¹²¹

He suggests that governments in developing countries may emulate others in adopting reforms associated with being ‘developed’, regardless of the content of those reforms, “to show peers and reassure policy-makers themselves that they are in line with shared values.”¹²² To quote Kurt Weyland, writing within the bounded learning framework, “governments dread the stigma of backwardness and therefore eagerly adopt policy innovations, regardless of functional needs.”¹²³

¹¹⁸ Pickering, *Why Negotiate Tax Treaties?*, 17.

¹¹⁹ March and Olsen, *Rediscovering Institutions: The Organizational Basis of Politics*.

¹²⁰ Dobbin, Simmons, and Garrett, “The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?”

¹²¹ Sharman, “Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States,” 647.

¹²² *Ibid.*, 646.

¹²³ Weyland, “Theories of Policy Diffusion - Lessons from Latin American Pension Reform,” 270.

4.8 Conclusion

This chapter illustrated one manner in which the tax treaties myth has contributed to diffusion to developing countries, by shaping the preferences of non-specialist actors. The idea that, by eliminating double taxation, tax treaties will attract investment acted as a ‘cognitive shortcut’ in a boundedly-rational decision making process. Tax treaties are a harder case to explain through bounded rationality than bilateral investment treaties, because their costs are immediate and foreseeable. Thus, the ‘availability’ of information about these costs is critical to the bounded rationality framework. When governments are less dependent on corporate tax revenue as part of their income, concerns about fiscal costs may be less salient, which means that such information may be less cognitively ‘available’ than it is for countries where raising more tax revenue is a major concern.

For a tax treaty to be concluded, two countries must agree, yet the diffusion literature on bilateral treaties focuses overwhelmingly on the capital importers. As a tool for attracting inward investment, a tax treaty is an odd choice, because it has the distorting effect of lowering tax costs for foreign investors from one country in comparison to those from other countries in the host country market. In contrast, for capital exporting countries, the effect of that distortion is to give their outward investors a competitive advantage in the developing country over investors from other countries. For this reason, and as the evidence provided showed, it is commonly capital exporters who initiate tax treaty negotiations, not capital importing developing countries.

Two of the mechanisms of ‘coercion’ in the diffusion literature offer explanations for why a developing country would respond positively to a request from a developed country. First, policy leadership among OECD states creates incentives for other countries to sign treaties that are compatible with their approach to international tax. Second, the ‘hegemonic idea’ of the tax treaties myth, or even that signing tax treaties is what advanced countries do, permeate analysis of tax treaties in developing countries. Having focused on ideas about tax treaties among policymakers who do not have a deep specialism in the subject, the next chapter shifts focus to international tax specialists, for whom tax treaties serve an altogether different purpose.

5 Expert authority in the diffusion of tax treaties

Rob Marris: I congratulate the Minister on the width of his expertise on taxation in Senegal on cinematographic matters. It is most impressive.

Mr Gauke: I am grateful. It is recently acquired expertise—[Laughter].

- ‘Debate’ on ratification of the UK-Senegal tax treaty in the UK parliament, 2015¹

Since the origins of the international model treaties with the League of Nations, and the negotiation of some of the earliest bilateral agreements, tax treaties have primarily been the project of a community of international tax practitioners, who share common educational and professional backgrounds, meet each other regularly, share in the performance of negotiations among states or between states and businesses, and have a vested interest in protecting the internal coherence of what they see as a technical project against political interference.² This chapter turns the attention from mechanisms that act on policy makers with little familiarity with tax treaties, and on to this community of international tax specialists.

Whereas the tax treaties myth leads non-specialists to seek treaties as a way of stimulating investment by lowering investors’ tax costs, those with detailed technical knowledge take a different view. For them, tax treaties transmit a series of procedural and content rules concerning the taxation of investors, from the authors of model treaties – a community of specialists revolving around the OECD – to the signatory countries. They regard the creation of a consistent global approach to taxation modelled on OECD standards as a long-term project to enhance trade and investment flows, a public good to be diffused as widely as possible, reducing the negative effects of international fiscal anarchy.³

To the extent that these rules lower the risk-adjusted tax cost to investors, this could be conceptualised as a more nuanced version of the tax competition mechanisms discussed in the previous chapter: firms protected by tax treaties’ reference to international standards incur an advantage over others who are not. However, competition premised on the diffusion

¹ Fourth Delegated Legislation Committee, Wednesday 21 October 2015

² Ring, *Who Is Making International Tax Policy? International Organizations as Power Players in a High Stakes World*; Christians, “While Parliament Sleeps: Tax Treaty Practice in Canada”; Picciotto, *International Business Taxation: A Study in the Internationalization of Business Regulation*; Evers, “Tracing the Origins of the Netherlands’ Tax Treaty”; Picciotto, “Indeterminacy, Complexity, Technocracy and the Reform of International Corporate Taxation.”

³ See, for example, the introductions to the model treaties: United Nations, *Model Double Taxation Convention between Developed and Developing Countries*; OECD, *Model Tax Convention on Income and on Capital*.

of international standards and competition premised on lower short-run tax rates do not always produce the same preferences, either in terms of treaty partners or the content of tax treaties. Furthermore, members of the international tax community do not necessarily support a form of competition that applies its standards as a private good, to benefit only investors between treaty signatory countries. They take a more sceptical view about the likely impact of any one tax treaty on investment flows.

This chapter argues that the development of different levels of technical knowledge within a country can create a negative interaction. Conflict between the preferences of two groups within a country – specialists and non-specialists – can block diffusion driven by one or the other group. Specialists may seek to block the negotiation of tax treaties motivated by short term investment gains, and they may seek to negotiate treaties in which non-specialists have little interest. There is evidence that, as dedicated international tax officials build their technical knowledge about tax treaties, they can become more sceptical about the benefits, and more aware of the costs, of tax treaties to their countries. The control that specialists and non-specialists have over veto points in the treaty making process becomes an important scope condition for tax treaty diffusion.

The chapter begins by describing the roles of different groups of stakeholders in the process of tax treaty formation, including the international processes through which model treaties are formulated. It then describes the international tax epistemic community responsible for both the model treaties and bilateral negotiations. The chapter then includes some specific discussion of the OECD and United Nations, two international forums in which the processes of intersubjective knowledge generation take place.

5.1 The international tax epistemic community

An epistemic community is “a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue.”⁴ Despite the general failure of the concept of epistemic communities to inform significant analytical advances in international relations,⁵ it seems inescapable here, and has been evoked by numerous writers discussing the making of international tax standards.⁶ The international tax community is characterised by a core

⁴ Haas, “Introduction: Epistemic Communities and International Policy Coordination,” 3.

⁵ Davis Cross, “Rethinking Epistemic Communities Twenty Years Later.”

⁶ Ring, *Who Is Making International Tax Policy? International Organizations as Power Players in a High Stakes World*, 681; Ring, “International Tax Relations: Theory and Implications,” 144–6; Christians, “Networks, Norms and National Tax Policy,” 22; Sharman, “Dysfunctional Policy Transfer in National Tax Blacklists,” 627; Rixen, *Politicization and Institutional (Non-) Change in International Taxation*, 13; Strange, *The Retreat of the State*, 62; Webb, “Tax Administrators Are Enmeshed in a Trans- National Epistemic communityTax Administrators

group of senior tax professionals based in tax authorities, finance ministries, multinational businesses, business services firms, academia and international organisations. These professionals interact regularly at numerous international meetings and conferences, and within international organisations.⁷

Epistemic communities, in Peter Haas' classic formulation, share four interconnected sets of ideas: normative beliefs, causal beliefs, ideas about how to evaluate knowledge claims, and a collective policy project.⁸ While the individuals within the international tax community are positioned on different sides of various axes of distributional conflict and several possible professional trainings, their frequent interactions and longstanding relationships, embedded within an international community that is close to 100 years old, have created just such a shared set of ideas.

The process of intersubjective idea formation began in the 1920s. Both the German and Dutch negotiators of the controversial early 1900s tax treaty between these two countries were invited to join the "Committee of Technical Experts on Double Taxation and Tax Evasion" whose work from 1925 to 1930 led to the formulation of the first model treaty for the League of Nations.⁹ While the final report, drafted by 14 'experts' from League member states, set the basic parameters of the OECD model treaty that became the basis of thousands of intergovernmental agreements,¹⁰ its preface stresses that, "although the members of the Committee are nominated by their respective Governments, they only speak in their capacity as experts, i.e., in their own name."¹¹ One of the participants in the early League of Nations work, Edwin Seligman, observed that, while at first, the technical experts' "concern was

Are Enmeshed in a Trans-National Epistemic Community." A distinct conceptualisation of the socialising community is 'communities of practice', which one of its main exponents in international relations, Emmanuel Adler, claims to be a broader category of which epistemic communities are just one example. Practices are "knowledge-constituted, meaningful patterns of socially recognized activity embedded in communities, routines and organizations that structure experience." See Adler, "The Spread of Security Communities: Communities of Practice, Self-Restraint, and NATO's Post-Cold War Transformation."

⁷ Durst, "The Two Worlds of Transfer Pricing Policymaking"; Christians, "Networks, Norms and National Tax Policy."

⁸ Haas, "Introduction: Epistemic Communities and International Policy Coordination," 3. The contours of one particular community, described in Drake and Nicolaidis's contribution to the epistemic communities themed issue of *International Organisation*, seem very similar to that of the international tax community: "The community's membership has two tiers. The first includes personnel from governments, international agencies, and private firms—individuals who work for organizations with direct interests in alternative policy solutions. In contrast, the second tier includes academics, lawyers, industry specialists, and journalists—individuals whose stakes, if any, are more purely intellectual or a matter of professional entrepreneurship. But the members of the first and second tiers share a conceptual framework and agenda, and this, coupled with the latter's organizational independence, helps legitimate the former's views in the eyes of cautious policymakers." See Drake and Nicolaidis, "Ideas, Interests and Institutionalization: 'trade in Services' and the Uruguay Round."

⁹ League of Nations, *Report of the Committee of Technical Experts on Double Taxation and Tax Evasion*.

¹⁰ McIntyre, Bird, and Fox, "Developing Countries and International Cooperation on Income Tax Matters: An Historical Review"; Vogel, "Double Tax Treaties and Their Interpretation"; Rixen, *Politicization and Institutional (Non-) Change in International Taxation*.

¹¹ League of Nations, *Report of the Committee of Technical Experts on Double Taxation and Tax Evasion*, 6.

primarily to enter into some arrangement which would be politically agreeable to their respective countries”:

when they learned to know each other more intimately; and especially in proportion as they were subjected to the indefinable but friendly atmosphere of the League of Nations, their whole attitude changed. Suspicion was converted into confidence; doubt was resolved by the feeling of certainty of accomplishment; and aloofness gave way to warm personal friendship which contributed materially to smoothing out the difficulties.¹²

According to Sol Picciotto, the international community created by this process of deliberation has played a longstanding role in international tax policy formation:

[P]erhaps the most important outcome of the inter-war years was to begin to create a community of international tax specialists...a community within which ideas and perspectives as well as economic advantage could be traded. It was these direct contacts between specialists which filled the gap created by the difficulties of resolving by any general principles the issues of international allocation of the tax base of international business.¹³

Today, the burden of participating in a large volume of international meetings, often in different capacities as members of numerous committees, is a common complaint overheard among these people during coffee breaks, but it is clear that close social relationships develop as a result. One staff member of an organisation that frequently hosts international tax meetings observed, “these people are friends, they stay at each other’s houses.”¹⁴ According to a former treaty negotiator from an OECD country, participation in OECD meetings “was very much a club, people didn’t want to lose that gig, a really clubby arrangement.”¹⁵ Elements of this ‘clubbiness’ observed at international meetings include delegates’ habitual reference to each other in formal discussions by first name, and the clearly warm nature of informal discussions during breaks and over dinner. It is also clear that such comradeship exists principally between longstanding members of the group from OECD countries, the private sector and international organisations; developing country delegates, who are newer, attend fewer meetings per year, and generally change over positions more quickly, appeared at the meetings observed to interact primarily among themselves, and with less familiarity. In this sense, the community can be thought of as having a core-periphery structure, with longstanding members from OECD countries forming a close social group, while developing country participants occupy a satellite role. It is a common observation that discussions at the UN committee of experts are dominated by

¹² Seligman, *Double Taxation and International Fiscal Cooperation : Being a Series of Lectures Delivered at the Académie de Droit International de La Haye.*, 143–144.

¹³ Picciotto, *International Business Taxation : A Study in the Internationalization of Business Regulation*, 37.

¹⁴ Interview 40

¹⁵ Interview 1

OECD members who have coordinated their positions in advance, unlike developing country members who act in isolation.¹⁶

5.1.1 Characterising the community's ideational underpinnings

Any characterisation of the shared ideas developed among this community must begin with common normative belief in the aim of eliminating double taxation.¹⁷ Although this originates with a causal belief – that eliminating double taxation will enhance cross-border trade and investment – the abhorrence of double taxation has become a principled belief with its own normative weight, rather than merely a means to achieve an end. The strength of language used in one of the original League of Nations reports illustrates this:

Double taxation...imposes on such taxpayers burdens which, in many cases, seem truly excessive, if not intolerable. It tends to paralyse their activity and to discourage initiative, and thus constitutes a serious obstacle to the development of international relations and world production.¹⁸

The modern day successor to that report, the OECD model tax treaty, adds that: “It is scarcely necessary to stress the importance of removing the obstacles that double taxation presents to the development of economic relations between countries.”¹⁹ A report from consultancy firm PWC on international taxation in developing countries states, with no support, that, “[o]verall, double taxation is detrimental to economic development.”²⁰

From the departure point of avoiding double taxation, the international tax community has elaborated a series of further concepts, embodied in the model tax treaties and their associated guidance, with a status bordering on customary international law.²¹ Two important concepts are the ‘arm’s length principle’ for allocating the multinational tax base through transfer pricing, and ‘permanent establishment’ for determining the threshold of activity at which a business becomes liable to pay tax in a country. Policies are evaluated against compliance with these criteria above all else, while criteria on which community members may differ, such as particular tax rates, or the distribution of taxing rights between different countries, are subjugated below it. This makes the concepts powerful social conditioning tools within the community, underpinning instances that socialisation scholars

¹⁶ Informal conversations with observers at UN tax committee meetings

¹⁷ And, to a lesser extent, double non-taxation, but this is a more recent development. See Rixen, *The Political Economy of International Tax Governance*.

¹⁸ League of Nations, *Report of the Committee of Technical Experts on Double Taxation and Tax Evasion*, 8.

¹⁹ OECD, *Model Tax Convention on Income and on Capital*, 7.

²⁰ PWC, *Transfer Pricing and Developing Countries: Final Report*, 11.

²¹ Avi-Yonah, *International Tax as International Law*.

would recognise as ‘normative suasion’, wherein actors are persuaded to change their opinions through recourse to shared values.²²

They are regularly invoked in debates at international organisations, such as the meetings of the United Nations tax committee observed by the author. In one typical instance, delegates from the US government and the accountancy firm PWC engaged in a lively debate with a speaker from Brazil over whether unconventional aspects of the latter’s tax law were consistent with the arm’s length principle.²³ In a fraught debate between members of the UN tax committee over a proposed new article to the UN model treaty conferring greater rights to tax on developing countries, opponents claimed that the new article would create double taxation, instantly shifting the burden of proof onto proponents.²⁴

When in 1986 the United States adopted transfer pricing laws that deviated from OECD guidance, its tax policy was roundly criticised by businesses and tax officials other countries, provoking a decade-long international debate. A short statement by UNICE, which represents European businesses, made reference to the arm’s length principle in nearly every paragraph: various different parts of the US regulation were “a dangerous departure from the arm’s length principle,” “a threat to the arm’s length principle,” “at odds with the arm’s length principle” and “alien to the concept of arm’s length.”²⁵ The OECD formed a task force to review the US proposals, and effectively negotiate with the US. It concluded that the US rules,

could risk undermining the consensus that has been built up over a number of years on the application of the arm’s length principle and thereby increase the risk of economic double taxation.²⁶

Arguing by reference to these norms, which are framed in technical language, instantly delineates between community members and others. While they may be on different sides of particular debates, community members share a notion of the validity of different contributions – the third part of Hass’ characterisation of an epistemic community – that rests on the qualifications of those making authoritative claims: an education in taxation, experience of its practice, and familiarity with a bewildering array of technicalities. In informal conversations at international meetings, it is clear that popular criticism of the system, as has occurred recently, has united the community’s different factions in opposition to the “misunderstandings” propounded by parliamentarians, NGOs and journalists. After

²² Checkel, “International Institutions and Socialization in Europe: Introduction and Framework”; Johnston, *Social States: China in International Institutions, 1980-2000*.

²³ Observation, March 2012

²⁴ Observation, October 2015

²⁵ UNICE, “UNICE Comments on US Transfer Pricing Regulations.”

²⁶ OECD, *Tax Aspects of Transfer Pricing within Multinational Enterprises: The United States Proposed Regulations: A Report*.

the UK's Public Accounts Committee criticised multinational firms and the UK's tax authority, one industry publication referred to its Chair as 'Tax Prat of the Year'.²⁷ The OECD's landmark publication launching its international tax reform programme observes that, "[c]ivil society and non-governmental organisations (NGOs) have also been vocal in this respect, sometimes addressing very complex tax issues in a simplistic manner."²⁸

"The influence of epistemic communities persists mainly through the institutions that they help create and inform with their preferred world vision," wrote Haas and Emmanuel Adler.²⁹ For the international tax community, the policy project that is the fourth uniting characteristic in Haas' definition is the promulgation of such an institution, a set of common international standards, so that countries are not encouraged to deviate from international tax norms, and thus double taxation is avoided. "Treaties are the means whereby sovereign states endeavour, usually on a bilateral basis, to harmonize the rules of their national laws," according to a former US negotiator.³⁰ In particular, these standards incorporate the OECD model treaty, which underpins the growing network of some 3000 bilateral tax treaties, and the accompanying guidelines that stipulate how a multinational company's tax base should be divided across the countries in which it operates (the transfer pricing guidelines).

Because international tax specialists see the alleviation of double taxation as an end in itself, rather than merely a means to facilitate trade and investment, they weigh the costs and benefits of tax treaties differently to others. In this view, tax treaties are needed *because* there is investment, not in order to attract it. "Treaties come later, after the company has invested," explained one negotiator from a developing country.³¹ Another from a resource-rich country explained that companies would invest regardless, "but a bit later you cannot avoid it, you must have a treaty" to resolve the tax issues faced by businesses as they expand.³² Of course, tax specialist officials from a given country may see a network of tax treaties as part of creating a healthy investment environment with long-term benefits, and those in capital exporting countries may recognise the value for their outward investors of being taxed according to international standards. This is not, however, the same as believing in a cause-and-effect relationship between individual tax treaties and investment flows into developing countries.

²⁷ Truman, "Tax Prat of the Year."

²⁸ OECD, *Addressing Base Erosion and Profit Shifting*.

²⁹ Adler and Haas, "Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program."

³⁰ Rosenbloom, "Cross-Border Arbitrage: The Good, the Bad and the Ugly," 491.

³¹ Interview 20

³² Interview 4

5.1.2 Blurred boundaries and competition for authority

Not all of the international tax community's participants have equal authority. Some country delegates, as well as some external commentators such as prominent lawyers and academics, are particularly influential.³³ Competition for authority within a community is a key theme of the 'linked ecologies' approach, which defines the unit of study in terms of relationships and interactions, rather than professions and institutional affiliations.³⁴ As Sending & Neumann argue, there is no reason researchers should *a priori* assume and reproduce the traditionally understood boundaries between realms, such as institutional affiliation or professional qualification; rather, communities should be identified empirically.³⁵ Individuals with diverse backgrounds and patterns of interaction in multiple ecologies employ 'epistemic arbitrage', gaining a more authoritative position through their familiarity with (and in) multiple different ecologies.³⁶ This is an especially appropriate concept for international taxation, a field that combines law, accounting and – to a lesser extent – economics, as well as spanning public and private boundaries, and organising at a national and supranational level. The international tax community's most authoritative participants are able to leverage knowledge from these multiple ecologies, as well as to 'be heard' in multiple professional spaces.³⁷

Consider first the links between different professional ecologies at national level. "The concept of a single 'tax profession' or tax practitioner is difficult to comprehend," write Rex Marshall and colleagues, continuing: "In practice, the term 'tax practitioner' covers a diverse group of individuals, business structures and professional groups."³⁸ Yet these people with different professional trainings, representing organisations on different sides of various distributional conflicts, do identify as part of a common 'tax profession'. For example, the Chartered Institute of Taxation in the UK was founded in 1930 by a mixed group of accountants and lawyers drawn from private practice and the Inland Revenue, to "promote the study of taxation, hold examinations, facilitate the exchange of information, make representations and establish and maintain a high standard of conduct."³⁹

³³ As illustrated by the annual 'Global tax 50' list published by *International Tax Review*

³⁴ Abbott, "Linked Ecologies: States and Universities as Environments for Professions"; Seabrooke and Tsingou, *Revolving Doors and Linked Ecologies in the World Economy: Policy Locations and the Practice of International Financial Reform*.

³⁵ Sending and Neumann, "Banking on Power: How Some Practices in an International Organization Anchor Others."

³⁶ Seabrooke, "Epistemic Arbitrage: Transnational Professional Knowledge in Action."

³⁷ Christensen, "Professional Competition in Global Tax Reform."

³⁸ Marshall, Smith, and Armstrong, "The Impact of Audit Risk, Materiality and Severity on Ethical Decision Making."

³⁹ Frecknall-Hughes and McKerchar, "Historical Perspectives on the Emergence of the Tax Profession: Australia and the UK."

Tax is a hybrid discipline combining law and accountancy, requiring familiarity with both, and individuals with more diverse careers are more often found in positions of authority within formal institutions.⁴⁰ Inside law and accountancy firms, businesses and revenue authorities, international tax is a niche field within the already specialist field of tax, and those who practice it are small in number, often building closer professional links with fellow specialists outside their own institution.⁴¹

Next, consider the public and private sectoral ecologies. While one might naturally assume that governments and taxpayers are in conflict over whether a firm's profits are paid as tax or retained by the company, in practice international tax policymaking has always been a collective endeavour between the two groups. In their history of the League of Nations years, Graetz and O'Hear describe how the International Chamber of Commerce "exercised primary leadership in the movement against international double taxation," developing terminology and concepts that were adopted as the basis of the League technical experts' subsequent work.⁴² In many respects, it was negotiations between the ICC's national chapters that established the contours of an international agreement, ahead of discussions among the League's committee. Resolutions passed by the ICC, according to an observer quoted by Graetz and O'Hear, were "used as the firm basis on which draft conventions have been built or actual treaties adopted."⁴³ Furthermore, the ICC's Double Taxation Committee (representing businesses), and the League's Technical Expert committee (representing governments) actually had overlapping memberships, a textbook example of 'epistemic arbitrage'. Thomas Adams, the US-appointed member of the League committee, chaired a committee for the US Chambers of Commerce as well as participating in the ICC's work; his successor, Mitchell Carroll, was a lawyer advising multinational firms on their tax affairs, as well as working on behalf of the US at the League.⁴⁴

Today, as noted above, representatives of multinational companies and tax advisers regularly mix at international tax meetings. In addition to private sector representatives' attendance at meetings of the OECD and United Nations, governmental and international organisation representatives are commonly in attendance at meetings organised by tax professionals, such as an annual conference organised jointly by the US Council for International Business and the OECD.⁴⁵ At national level, in the UK for example, interactions between governments and private sector lobbyists are frequent, and "the corporate tax reform policy community

⁴⁰ Christensen, "Professional Competition in Global Tax Reform."

⁴¹ Plesner Rossing, "Tax Strategy Control: The Case of Transfer Pricing Tax Risk Management."

⁴² Graetz and O'Hear, "The 'Original Intent' of U.S. International Taxation," 1073.

⁴³ *Ibid.*, 1070.

⁴⁴ Carroll, *Global Perspectives of an International Tax Lawyer*.

⁴⁵ Durst, "The Two Worlds of Transfer Pricing Policymaking."

has a tightly integrated and fairly constant membership” leading to “an almost astonishing assimilation of professional expertise to the legislative function, born no doubt of many a congenial meeting over coffee and biscuits in Whitehall.”⁴⁶ The UK government used secondees from Deloitte to help develop reforms to its laws surrounding taxation of multinational companies, who subsequently returned to the firm to advise private clients.⁴⁷ The same is certainly true in developing countries: Thailand, for example, formed an advisory committee with representation from all the ‘big four’ accounting firms to develop more competitive international tax laws;⁴⁸ in Zambia, the Revenue Authority contracted tax advisers Grant Thornton to perform some of its tax assessments.⁴⁹ Advice to the European Commission on international tax law and administrative reforms in developing countries was contracted out to accountancy firm PWC.⁵⁰

Added to this is the ‘revolving door’ phenomenon, as individuals move between tax roles in government, the private sector, and international organisations.⁵¹ A majority of the tax advisors interviewed for this research had worked in the past for governments or tax authorities. The creation of semi-autonomous revenue authorities at arm’s length from the civil service has led to the appointment of tax commissioners and others in senior roles from the private sector, in countries as far apart as Uganda and Colombia, while the UK’s HMRC has a governing board drawn primarily from the private sector.⁵² The community within which international tax norms are formed and propagated thus permeates the public/private border, and furthermore, those whose authority is recognised within both ecologies have greater influence as a result.

Finally, consider the national and international ecologies. As well as interaction between these different groups at national level, many of the most influential within these national linked ecologies also operate at the international level, which forms itself an ecology distinct from each of the national ecologies from which its members also hail, but now, as Leonard Seabrooke and Eleni Tsingou suggest, “in a different social space and reconfiguring how they work rather than replicating their national institutions or changing their own to reflect other national institutions.”⁵³ Seabrooke argues elsewhere that international professional networks, “provide a common language to those generating economic policy knowledge and

⁴⁶ Snape, *The Political Economy of Corporation Tax: Theory, Values and Law Reform*, 89.

⁴⁷ Truman, “Tax Prat of the Year.”

⁴⁸ Interview 37

⁴⁹ Association SHERPA et al., *Specific Instance Regarding Glencore International AG and First Quantum Minerals Ltd and Their Alleged Violations of the OECD Guidelines for Multinational Enterprises via the Activities of Mopani Copper Mines Plc in Zambia*.

⁵⁰ PWC, *Transfer Pricing and Developing Countries: Final Report*.

⁵¹ Seabrooke and Tsingou, *Revolving Doors and Linked Ecologies in the World Economy: Policy Locations and the Practice of International Financial Reform*.

⁵² Fjeldstad and Moore, “Revenue Authorities and Public Authority in Sub-Saharan Africa.”

⁵³ Seabrooke, “Epistemic Arbitrage: Transnational Professional Knowledge in Action,” 55.

they also stretch and test allegiances to national interests when these conflict with the professions' ideologies and beliefs."⁵⁴

The epistemic community of international tax professionals is thus heterogeneous, with a ragged boundary, incorporating people from different countries, professions and sectors. These individuals are united by a common set of ideas that depart from a belief in the abhorrence of double taxation. To participate, one must be fluent with the ideas and language of the community, which is complex and technical. Authority within the community is a function of the ability to deploy this language and to leverage experience from within different professional ecologies.

5.2 Internal influence: socialisation and learning

Broadly speaking, an epistemic community has two routes through which to influence national policy: the possibility for its members to 'infiltrate' the policymaking apparatus directly, and its ability to influence the knowledge and hence preferences of policymakers.⁵⁵ The former, considered in this section, entails the 'socialisation' of bureaucrats, "a process of inducting actors into the norms and rules of a given community."⁵⁶ This entails moving from a 'logic of consequences', based on material incentives and outcomes, to one of 'appropriateness', in which actors make decisions based on what is the appropriate thing to do in an international context.⁵⁷

Mechanisms of socialisation have been divided into three categories: those based on instrumental calculations in response to social incentives; role playing, in which actors emulate those around them in order to fit in; normative suasion, in which actors are persuaded to change their opinions by others through recourse to intersubjectively-derived shared values.⁵⁸ Alastair Iain Johnston distinguishes between a first stage of socialisation in which an actor makes a 'conscious instrumental calculation' to follow the logic of appropriateness (changed constraints), and a second stage that leads to the 'taken for grantedness' of institutional norms (changed preferences).⁵⁹ Michael Zurn & Jeffrey Checkel

⁵⁴ Seabrooke, "Economists and Diplomacy: Professions and the Practice of Economic Policy," 629.

⁵⁵ Haas, "Introduction: Epistemic Communities and International Policy Coordination."

⁵⁶ Checkel, "International Institutions and Socialization in Europe: Introduction and Framework."

⁵⁷ March and Olsen, "The Logic of Appropriateness."

⁵⁸ Checkel, "International Institutions and Socialization in Europe: Introduction and Framework"; Johnston, *Social States: China in International Institutions, 1980-2000*.

⁵⁹ *Ibid.*

suggest that compliance with norms based on a purely instrumental motivation may lead to the internalisation of norms over time, as a result of the cognitive dissonance created.⁶⁰

Kerrie Sadiq describes Australia's integration into the international tax 'regime' as a four stage process, the first of which, she argues, required a conscious decision to recognise the concept of an externally-derived, pre-existing legal regime. She maintains that Australian policymakers' actions were based on instrumental calculations about the constraints created by this regime, rather than any change in preferences:

assessing the gains in tax revenue as well as other economic benefits from attracting capital imports as well as international perception against the forfeiture of a certain amount of autonomy and sovereignty.⁶¹

Identifying whether or not preferences and identities have truly changed over time – whether norms have really been internalised – is empirically very challenging, and this is not the aim of this thesis.⁶² It will be enough to treat statements made by actors in anonymised interviews as an accurate reflection of the ideas they hold now.

We can consider two ideal type mechanisms through which socialised individuals infiltrate a bureaucracy, which differ in terms of sequencing. In the first type, infiltration occurs because individuals who have been socialised into the community through professional training or a scientific career move into policy jobs. For example, Jeffrey Chwieroth finds that countries that appoint to senior posts economists who have trained in an academic environment likely to have socialised them into neoliberal orthodoxy are more likely to adopt neoliberal economic policies.⁶³ The relevant senior appointments for tax treaties would be senior roles in international tax policy within the finance ministry, and tax commissioners, who tend to be career civil servants and may not have a tax background at all. Even civil servants who do work on tax treaties do not have prior specialist training beyond general tax law or accountancy background. Since tax treaties do not form a part of the standard neoliberal consensus, or indeed any typical professional training leading to these roles, such individuals are unlikely to have been fully socialised into any kind of views about tax treaties, and are more susceptible as non-specialists to the kind of ideas about investment promotion discussed in the previous chapter.

⁶⁰ Zürn and Checkel, "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State."

⁶¹ Sadiq, "The Inherent International Tax Regime and Its Constraints on Australia's Sovereignty," 141.

⁶² Johnston, "Conclusions and Extensions: Toward Mid-Range Theorizing and Beyond Europe"; Beyers, "Conceptual and Methodological Challenges in the Study of European Socialization"; Chwieroth, "Testing and Measuring the Role of Ideas: The Case of Neoliberalism in the International Monetary Fund."

⁶³ Chwieroth, "Neoliberal Economists and Capital Account Liberalization in Emerging Markets."

A second type of infiltration that is more likely to be relevant to international tax occurs when individuals, in the course of doing their job, interact with a community and become socialised. If international socialisation causes actors to adopt different preferences to those of their colleagues at home, they may have to play a ‘two level game’, negotiating internationally and within their national bureaucracy.⁶⁴ Ideas within the international tax community are formed intersubjectively, through the interactions between members, but membership of the community is dynamic, with individuals moving in and out of its porous boundaries. The majority of tax treaty negotiators are career civil servants, in many instances long-term tax or finance ministry officials, and international tax is a niche field that generally develops as a specialism once people are employed within relevant roles in industry or the public sector, not as a major part of their training. If civil servants from developing countries take academic training in international tax, they generally do so after they have been appointed, not before.⁶⁵

Tax treaty officials from developing countries are most likely to be socialised through hierarchical processes, in which existing community members ‘teach’ newer members about expected behaviour within the community.⁶⁶ Teaching and learning may occur through the numerous tax treaty negotiation trainings that are organised for developing countries, usually delivered by the OECD and United Nations tax committee, but sometimes under the auspices of developing country organisations such as the African Tax Administration Forum. A United Nations treaty negotiation manual for use at such trainings, for example, contains only a very brief section on the arguments against signing treaties, focusing almost entirely on the arguments in favour.⁶⁷ The international meetings of the epistemic community, at which developing countries are increasingly represented, include the OECD’s annual Tax Treaties forum, and the annual sessions of the United Nations tax committee. Treaty negotiation rounds themselves, which can take one or two weeks, are often described by their participants as teaching and learning environments too. Several interviewees indicated that they had used negotiations with developing countries to teach them about the technical detail of tax treaties.⁶⁸ As the tax manager of Maersk, the Danish multinational shipping company, put it:

⁶⁴ Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games.”

⁶⁵ For example, interviews 8, 45

⁶⁶ Finnemore, *National Interests in International Society*; Gheciu, “Security Institutions as Agents of Socialization? NATO and the ‘New Europe’”; Kratochwil and Ruggie, “International Organization: A State of the Art on an Art of the State”; Broome and Seabrooke, “Shaping Policy Curves: Cognitive Authority in Transnational Capacity Building.”

⁶⁷ United Nations, *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*.

⁶⁸ Interviews 2,16,35

By negotiating these agreements, they are led into a train of thought about how various forms of tax are administered.⁶⁹

As André Broome and Leonard Seabrooke argue, learning within a socialising, specialist context means that “policy space is reduced as actors converge on a shared policy language and learn to solve problems through common diagnostic practices embedded within ‘best practice’ policy norms.”⁷⁰ Thus, the ‘learning curve’ leads to an equal and opposite ‘policy curve’, as the logic of appropriateness circumscribes possible policy responses (Figure 5.1).

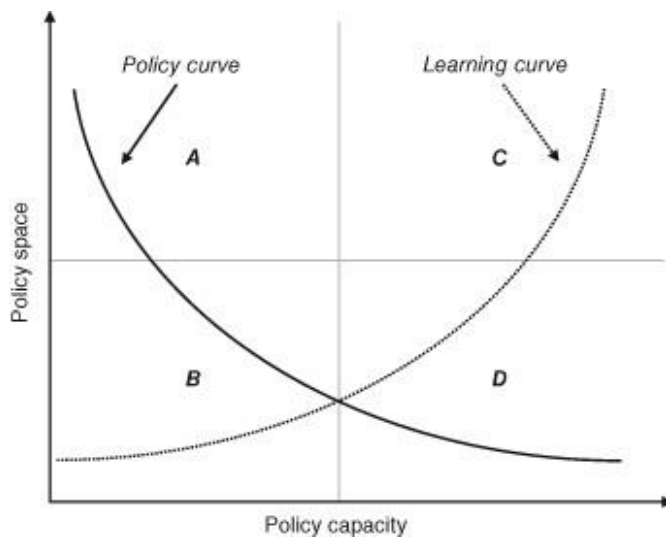
In the case of tax treaties, however, policy autonomy requires a degree of technical knowledge, without which policymakers will either be unable to analyse policies correctly, or reliant on external sources of expertise. The case studies later in this thesis illustrate how developing countries often began treaty negotiations without the knowledge to understand the circumstances in which tax treaties were and were not likely to benefit them, nor when or how to counter the negotiating preferences of developed countries. Former treaty negotiators, tax lawyers and international organisation staff, all members of the epistemic community, played an influential role in shaping the approach to tax treaty negotiation in late Cambodia and Zambia.

From this starting point, learning can still lead to socialisation, but the negative effect of socialisation on policy space is in competition with the increase in policy space created by the acquisition of basic technical knowledge. Renegotiations to fix past mistakes by Vietnam and Zambia discussed later in this thesis illustrate precisely this process. I suggest that this produces a ‘policy curve’ shaped more like a normal distribution (Figure 5.2): with a small amount of capacity, officials resort to norms, which close down policy space. A large amount of capacity building leads to socialisation, which restricts policy space in a different way. It is with an intermediate amount of capacity building – sufficient to question the non-specialist norms, but not enough to have internalised the specialist norms – that policy space is maximised. Learning by tax specialist bureaucrats is therefore simultaneously a diffusion mechanism and a scope condition, since an intermediate level of learning may create a block to other mechanisms of tax treaty diffusion.

⁶⁹ Clive Baxter, speaking at a hearing of the fiscal affairs committee of the Danish parliament, June 2015

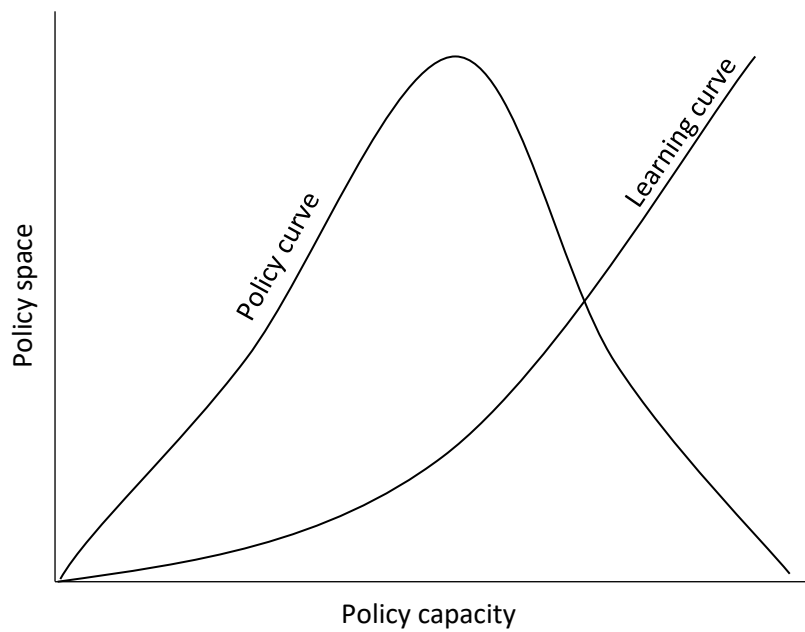
⁷⁰ Broome and Seabrooke, “Shaping Policy Curves: Cognitive Authority in Transnational Capacity Building,” 960.

Figure 5.1: Policy space and capacity building curves, generic



Source: Broome & Seabrooke⁷¹

Figure 5.2: Policy space and capacity building curves, this case study



Source: author's own

⁷¹ Ibid., 961.

5.3 External influence

The previous section considered how an epistemic community may influence policy by infiltration, leading to the formation of a cohort of specialist bureaucrats that hold pro-treaty norms occupying positions within the bureaucracy. But such mechanisms can only influence bureaucrats at a junior level such that their remit is specialised. For non-specialists, including those in more senior bureaucratic and political roles, we need to consider how an epistemic community influences people outside its own boundaries. Such influence is widely expected to be greatest under conditions in which policymakers experience significant technical uncertainty, but the means through which they exert influence is not well understood.⁷² Although Peter Haas originally suggested that epistemic communities' influence is greatest in a crisis, when uncertainty is also greatest, many studies using the framework have focused on longer-term influence.⁷³ For example, both Clare Dunlop and Andreas Antoniadis distinguish between an epistemic community's 'cognitive' ability to shape foundational knowledge and hence policy goals, and its more practical ability to influence policy processes in situations when policymakers have already identified their interests and policy goals, but are uncertain about the means to achieve them.⁷⁴

Taxation is unusual in that it is entirely a legal construct, which carries with it a certain inevitable deference to tax professionals who are seen to monopolise expert knowledge not just on its interpretation, but on its very nature.⁷⁵ So it is not surprising that concerns about the domination of international tax policy by a technical community are also highlighted by critical legal scholars writing in the Bourdiesian tradition. The starting point for this is Pierre Bourdieu's article describing a juridical social field as "the site of a competition for monopoly of the right to determine the law." As he argues:

It divides those qualified to participate in the game and those who, though they may find themselves in the middle of it, are in fact excluded by their inability to accomplish the conversion of mental space – and particularly of linguistic stance – which is presumed by entry into this social space. The establishment of properly professional competence, the technical mastery of a sophisticated body of knowledge that often runs contrary to the simple counsels of common sense, entails the disqualification of the non-specialists' sense of fairness, and the revocation of their naïve understanding of the facts, of their 'view of the case'.⁷⁶

⁷² Dunlop, "Policy Transfer as Learning: Capturing Variation in What Decision-Makers Learn from Epistemic Communities"; Haas, "Introduction: Epistemic Communities and International Policy Coordination"; Davis Cross, "Rethinking Epistemic Communities Twenty Years Later"; Antoniadis, "Epistemic Communities, Epistemes and the Construction of (World) Politics"; Zito, "Epistemic Communities, Collective Entrepreneurship and European Integration."

⁷³ Davis Cross, "Rethinking Epistemic Communities Twenty Years Later."

⁷⁴ Antoniadis, "Epistemic Communities, Epistemes and the Construction of (World) Politics"; Dunlop, "Policy Transfer as Learning: Capturing Variation in What Decision-Makers Learn from Epistemic Communities."

⁷⁵ Snape, "Tax Law : Complexity , Politics and Policymaking."

⁷⁶ Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," 817,828.

This view describes with prescient accuracy the tax community's interactions with the broader political and public space. John Snape regards international corporate taxation as an example of how "private regulation is transformed into public law with the complex reasonings of specialized professional disciplines as its chief characteristic."⁷⁷ Sol Picciotto sees a resonance for international tax in the way that "law operates to defuse social conflicts and depoliticize them, shifting political and economic conflicts on to the terrain of debates over the symbolic power of texts."⁷⁸ He argues that the cohesiveness of the international tax 'interpretive community' of stakeholders from organisations with apparently conflicting interests is maintained by elaborating new rules that maintain a broad ongoing consensus, and by "limiting the membership of the interpretative community and trying to ensure that they are like-minded."⁷⁹ Secretive meetings at the OECD in the 1960s and 1970s have given way to public discussions to which access is restricted by the technical complexity of legal rules and the language used to debate them. This leads to a self-reinforcing in-group of people "able to invest in learning the arcane terminology and linguistic techniques familiar to that group."⁸⁰ This linguistic gatekeeping, he argues, is bolstered by a social and financial pressure not to question the community's foundational principles.

Certainly, where there is political involvement in the specifics of multinational corporate taxation, this is an exception, rather than a rule.⁸¹ As Pepper Culpepper emphasises, civil servants and business representatives may exercise a *de facto* veto over political actors because of the disparity in knowledge. Business power in 'quiet politics', he argues,

is not primarily because of the structural power to disinvest, which Lindblom emphasized. It is instead because they [businesses] know the facts on the ground, and that expertise is extremely valuable in negotiating with other members of the policy subsystem. On the rare occasions when politicians turn their attention to typically low salience areas, they enter with an asymmetry of expertise vis-a-vis the representatives of business.⁸²

In fact, Charles Lindblom referred to the complicity between civil servants and their private sector interlocutors in his classic analysis of business power, in which he argued that one strategy employed by businesses is to attempt to keep policy issues below the political radar. He suggests that civil servants will often support such efforts because "they are caught in a potential crossfire between privileged controls and polyarchal controls."⁸³ Ash Amin and

⁷⁷ Snape, "Tax Law : Complexity , Politics and Policymaking," 157.

⁷⁸ Picciotto, "Indeterminacy, Complexity, Technocracy and the Reform of International Corporate Taxation," 179.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Bell and Hindmoor, "The Structural Power of Business and the Power of Ideas: The Strange Case of the Australian Mining Tax"; Fairfield, *Private Wealth and Public Revenue in Latin America : Business Power and Tax Politics*.

⁸² Culpepper, *Quiet Politics and Business Power: Corporate Control in Europe and Japan*, 159.

⁸³ Lindblom, *Politics and Markets : The World's Political and Economic Systems*, 205.

Ronen Palan also emphasise that there is no reason to assume *a priori* that actors within government bureaucracies and multinational firms are in an antagonistic relationship.⁸⁴

Tax policy in developing countries has historically been shaped by an outside professional community. There is a critical strand of literature on tax reform that describes how a ‘tax consensus’ developed among development policy advisers in the 1980s and was transmitted to developing countries through conditionality and technical assistance. According to Odd-Helge Fjeldstad and Mick Moore, this consensus focused on the elimination of trade taxes and their replacement with the value added tax, as well as a bureaucratic reform: the creation semi-autonomous revenue authorities that were not under the direct control of finance ministries.⁸⁵ This view, they argue, formed among “an epistemic community of taxation professionals, employed in national tax administrations, in consultancy companies and in international financial institutions, and organised in regional and global professional associations” during “a period of unusually radical tax reform in the developing world since the 1980s.”⁸⁶ “The key factor,” writes Miranda Stewart, “is the development of an international consensus, or ‘norm’, of tax reform and policy driven largely by the international institutions, and propounded by non-government tax experts.”⁸⁷

Three main concerns are highlighted by authors discussing this tax consensus: its close association with the neoliberal Washington consensus, its ‘one size fits all’ approach, and, crucially, the depoliticisation of decisions with important distributional impacts, which critics argue should fundamentally be part of the democratic process.⁸⁸ Lisa Philipps describes how “tax and budgetary issues are frequently constructed as technical matters that can be resolved rationally according to economic, mathematical or other ostensibly neutral principle,” with policymaking processes dominated by technical experts despite the political nature of outcomes.⁸⁹ Stewart concurs:

tax reform projects have been mass-produced and have spread rapidly across the globe through broad, superficial, and generalized tax policy recommendations grounded in the consensus...The contemporary mass production of tax reform militates against any real domestic political participation in the determination of tax policies and laws in the countries undergoing reform.⁹⁰

⁸⁴ Amin and Palan, “Towards a Non-Rationalist International Political Economy,” 572–3.

⁸⁵ Fjeldstad and Moore, “Tax Reform and State-Building in a Globalised World,” 258.

⁸⁶ *Ibid.*

⁸⁷ Stewart, “Global Trajectories of Tax Reform: The Discourse of Tax Reform in Developing and Transition Countries,” 170.

⁸⁸ For example, Di John, *The Political Economy of Taxation and Tax Reform in Developing Countries*.

⁸⁹ Philipps, “Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy.”

⁹⁰ Stewart, “Global Trajectories of Tax Reform: The Discourse of Tax Reform in Developing and Transition Countries,” 173.

This literature has focused on domestic tax reforms, in particular the elimination of trade tariffs and the introduction of value added tax, during the past three decades. Yet international institutions and experts play a similar driving role in the international tax reforms adopted by developing countries, in particular with respect to transfer pricing and tax treaties.⁹¹ A review of developing country tax systems commissioned by the European Commission from PWC, for example, urges that “donor support initiatives should eventually aim at lifting the TP [transfer pricing] legislation and its application in developing countries to a common international standard. In our opinion, this is vital to reduce economic uncertainty and foster investment and growth.”⁹² In Vietnam, business lobby group the Vietnam Business Forum regularly urges the government to “align...Vietnam tax policy with international practice,” calling in 2014 for it to “study and provide guidance base on the description and regulation about permanent establishment under international practice and standard as the UN and the OECD [sic].”⁹³

The international tax community can thus be characterised as an epistemic community whose ideas are formed intersubjectively in the social context it creates. Through formal professional competence, high technical and linguistic barriers to participation, and its own pivotal role in standard-setting, the community claims a monopoly on the ‘correct’ interpretation of the principles of international tax law. Because tax is a legal construct, this claim extends to defining its every aspect. The community itself is dynamic and fluid, the nexus of several overlapping ecologies: accountancy and law, private and public, national and international. Many of the leading roles in international tax are played by individuals who have authoritative positions within these multiple ecologies. The community influences policy in part by socialising bureaucrats who occupy relevant specialist positions into its norms, and in part through non-specialist policymakers’ deference to its expertise. Policymakers’ technical uncertainty, the emphasis in the epistemic communities literature, certainly leads them to defer to the community, yet the community itself actively creates such uncertainty, through the proliferation of ever-greater complexity.

5.4 The OECD as a site of authority

It is impossible to discuss international tax without discussing the OECD. Its hegemonic status is widely recognised by tax law scholars, and so a theoretical understanding of the

⁹¹ Ring, *Who Is Making International Tax Policy? International Organizations as Power Players in a High Stakes World*; Christians, “Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20”; Eden, Dacin, and Wan, “Standards across Borders: Crossborder Diffusion of the Arm’s Length Standard in North America.”

⁹² PWC, *Transfer Pricing and Developing Countries: Final Report*, 4.

⁹³ Vu, *Several Tax Issues*.

organisation is essential for this thesis.⁹⁴ Yet in comparison to other international organisations, international relations scholarship on the OECD is relatively limited.⁹⁵ Work on the OECD's role in international tax relations has generally been focused on its initiatives to target harmful tax practices and 'tax havens', which are largely distinct from its work on tax treaties.⁹⁶

International organisations are of particular importance in the field of socialisation, both as providers of advice and, along with their associated communities, as settings for socialisation.⁹⁷ According to Martha Finnemore, international organisations should be considered as autonomous actors, "shapers of actors or interests," above and beyond the sum total of their member states.⁹⁸ She points to the 'teacher' role fulfilled by international organisations, "according them more autonomous and causal status, particularly as shapers of actors and interests."⁹⁹ Friedrich Kratochwil and John Ruggie argue that:

In the international arena, neither the processes whereby knowledge becomes more extensive nor the means whereby reflection on knowledge deepens are passive or automatic. They are intensely political. And for better or for worse, international organizations have manoeuvred themselves into the position of being the vehicle through which both types of knowledge enter onto the international agenda.¹⁰⁰

The OECD's model tax treaty and associated guidance have a hegemonic status, forming the basis of all bilateral tax treaties. Variations, such as the UN model tax treaty, still take the OECD model as their point of departure. Yet the OECD has achieved this outcome not as a purveyor of hard law, but rather as a site in which soft law instruments are created and promulgated. For this reason, much OECD scholarship focuses on its ideational leadership. As Charles Nelson wrote as early as 1970:

The OECD is important not for the decisions it makes but for the decisions it prepares...there are very few important international economic problems which the OECD can legitimately resolve ... This is the most important single characteristic of the OECD. The major decisions prepared within it are inevitably formalized and

⁹⁴ Christians, "Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20"; Christians, "Networks, Norms and National Tax Policy"; Ring, *Who Is Making International Tax Policy? International Organizations as Power Players in a High Stakes World*; Ault, "Reflections on the Role of the OECD in Developing International Tax Norms"; Cockfield, "The Rise of the OECD as Informal World Tax Organization through National Responses to E-Commerce Tax Challenges."

⁹⁵ Eccleston, "The OECD and Global Economic Governance," 243.

⁹⁶ Eccleston, *The Dynamics of Global Economic Governance: The OECD, the Financial Crisis and the Politics of International Tax Cooperation*; Eccleston and Woodward, "Pathologies in International Policy Transfer: The Case of the OECD Tax Transparency Initiative"; Sharman, "Seeing Like the OECD on Tax"; Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*; Eden and Kudrle, "Tax Havens: Renegade States in the International Tax Regime?"

⁹⁷ Finnemore, *National Interests in International Society*; Gheciu, "Security Institutions as Agents of Socialization? NATO and the 'New Europe.'"

⁹⁸ Finnemore, *National Interests in International Society*, 13.

⁹⁹ *Ibid.*

¹⁰⁰ Kratochwil and Ruggie, "International Organization: A State of the Art on an Art of the State."

carried out elsewhere: in the IMF, in GATT, in the UNCTAF [sic], in the World Bank, or through traditional diplomatic channels.¹⁰¹

Bengt Jacobsson suggests that the OECD has two main functions: a meditative function, through which standards are developed, and an inquisitive one, its distinctive peer review process through which states' compliance with those standards is assessed.¹⁰² While the peer review process is a part of the OECD's taxation work, this is in areas other than tax treaties, and so it is on the 'meditative' role that this discussion will dwell. It is worth noting, however, that the OECD's authoritative position as the grouping of the world's most 'advanced' democracies occupies a mutually reinforcing role with respect to its peer review process, which simultaneously relies on, and bolsters its position as a source of authoritative knowledge about how an 'advanced' economy should behave, because it can "modify the reference groups of national bureaucrats, their aspirations, and their behaviour."¹⁰³

An influential paper by Martin Marcussen segments the OECD's ideational role into five categories: an artist, which formulates, tests and diffuses policies; an agent, which transfers ideas from more prosperous to less prosperous states; an agency, which takes emerging ideas from states, develops them, and then sells them back in a more refined form; an arbitrator, through which civil servants are socialised; finally, an authority, used by states to back up their positions.¹⁰⁴ Each of these roles helps to explain the OECD's central role in the world of tax treaties.

Consider first the 'artist' role. The OECD is the place in which international tax standards are formulated and reformulated, since it inherited the responsibility for the model tax treaty from its predecessor the OEEC. Whenever tax specialists within its member states identify a need for new or changed standards, it is to the OECD that they turn. This was the case in the late 1990s, when states began to be concerned about 'tax havens', and it applied again in 2012, when corporate tax avoidance rose up the political agenda.¹⁰⁵ Arthur Cockfield suggests that this is part of a trend towards doing the technical work on new standards at the OECD first, rather than first developing standards at national level and then using the OECD as a forum to reconcile different approaches:

Because of the history of cooperation along with more recent efforts, it may be the case that the OECD member states have learned to trust the OECD process to the point where they are increasingly prepared to accept the OECD's leadership in resolving

¹⁰¹ Nelson, "The Role of the OECD in International Economic Negotiations," 159–60. Quoted in Marcussen, "The OECD in Search of a Role: Playing the Ideas Game," 3.

¹⁰² Jacobsson, "Regulated Regulators: Global Trends of States Transformation."

¹⁰³ March and Olsen, "The Institutional Dynamics of International Political Orders," 961.

¹⁰⁴ Marcussen, "The OECD in Search of a Role: Playing the Ideas Game."

¹⁰⁵ Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*.

other areas of international tax policy concern, including binding multilateral mechanisms in limited areas such as transfer pricing arbitration.¹⁰⁶

Studies of the OECD have emphasised the informal interaction between specialist bureaucrats as a forum for socialisation since its early days as an organisation. Henry Aubrey emphasised that the formal part of meetings and the ‘informal contacts in the corridors and over meals’ led to ‘mutual appreciation and trust’ between civil servants.¹⁰⁷ Marcussen, citing Gunnar Sjöstedt, describes how officials in OECD deliberations “develop a common language,” “start using the same kind of causal reasoning” and further:

develop a common selective perception of the world and they start to employ a common frame of reference and a common worldview. The latter helps them to define what can be considered as a relevant problem in the first place and which instruments can legitimately be employed to solve this problem.¹⁰⁸

A little more recently, Scott Sullivan, in an authorised account that presumably reflects the OECD’s self-perception, describes how OECD committees, “serve as a crucible for its members’ future actions...In the corridors and coffee bars between sessions, officials with similar interests but very different backgrounds meet, argue, forge friendships.”¹⁰⁹

A focus on the OECD’s members and their interactions through the OECD, however, risks underspecifying the entrepreneurial role of the OECD secretariat. For Rianne Mahon and Stephen McBride, the organisational culture within the OECD is an important contributor to its meditative function:

OECD staff conducts research and produces a range of background studies and reports. In this, they draw on their disciplinary knowledge, supplemented by what Dostal refers to as an ‘organizational discourse’ – ‘claims encapsulating long-term political projects as defined by the organization in question’. The latter reflects the effects of organizational learning.¹¹⁰

A survey of career histories of staff from the OECD’s Centre for Tax Policy and Administration, 45 of whom have a profile on LinkedIn, illustrates that the OECD tax bureaucracy reflects the public-private epistemic community. Some 42 percent of its staff came to the OECD from multinational businesses, accountancy firms and law practice, while 58 percent worked in finance ministries and revenue authorities; when full career histories were taken into account, 75 percent of CTPA staff had worked in tax specialist roles in both

¹⁰⁶ Cockfield, “The Rise of the OECD as Informal World Tax Organization through National Responses to E-Commerce Tax Challenges,” 171.

¹⁰⁷ Aubrey, *Atlantic Economic Cooperation*.

¹⁰⁸ Marcussen, “The OECD in Search of a Role: Playing the Ideas Game,” 21. Citing Sjöstedt, *OECD-Samarbetet: Funktioner Och Effekter*, 322–323.

¹⁰⁹ Sullivan, *From War to Wealth: Fifty Years of Innovation*, 98.

¹¹⁰ Mahon and McBride, “Standardizing and Disseminating Knowledge: The Role of the OECD in Global Governance.”

the public and private sector at some point.¹¹¹ The OECD secretariat is therefore the embodiment of an expert community whose reach transcends the public and private boundaries. As Jason Sharman argues, the normative weight of the OECD's output rests on its "technocratic identity...as an international organisation composed of 'apolitical' experts."¹¹²

Secretariat staff and civil servants interact frequently through the OECD's various tax committees, working parties and forums. For Allison Christians, it is this tripartite interaction between national government representatives, 'experts' from academia and business, and secretariat staff (largely drawn from the first two groups) that defines the OECD's way of working:

These tax policy groups form an intertwined epistemic community that holds an important and influential position in the law-making order. Together, the CTPA (OECD employees) and the CFA (public servants or national representatives) diagnose and prescribe tax policy reforms that are informed by, and that play out within, national legal regimes.¹¹³

If the internal milieu of the OECD is a potential socialising context for the tax profession, the external-facing aspects of Marcussen's typology also seem highly apposite. He describes the OECD's 'agent' role as the manner in which it transfers policy from more prosperous to less prosperous nations.¹¹⁴ As a socialising forum and a promulgator of standards, it is not just that the OECD is a focal point for other states, as Thomas Rixen argues, but also that its standards are associated with the 'advanced' reputation of its member states.¹¹⁵ As Tony Porter and Michael Webb write, the OECD's technical work "is reinforced by the diffuse sense that the OECD's knowledge is an expression of the best states' best practices."¹¹⁶

This authoritative role towards non-members is not merely established passively by the OECD, but also through active outreach. This takes two forms: civil servants from developing countries are invited to participate in various forums in Paris, and the OECD also engages in sensitisation and capacity building work. Since the mid-1990s, the OECD's Centre for Tax Policy and Administration has maintained an active programme of outreach to developing countries, based on training workshops and seminars with civil servants many

¹¹¹ In October 2015, an exhaustive list of 59 CTPA staff was compiled through LinkedIn. The list was compiled from a search for the keywords 'OECD' and 'tax'. The professional contacts of the individuals whose profiles were returned from this result were also checked to obtain the names of any colleagues who had not been returned by the keyword search.

¹¹² Sharman, *Havens in a Storm: The Global Struggle for Tax Regulation*, 50.

¹¹³ Christians, "Networks, Norms and National Tax Policy," 22.

¹¹⁴ Marcussen, "The OECD in Search of a Role: Playing the Ideas Game."

¹¹⁵ Rixen, *The Political Economy of International Tax Governance*.

¹¹⁶ Porter and Webb, "The Role of the OECD in the Orchestration of Global Knowledge Networks," 6.

of whom went on to lead their country's tax treaty negotiations.¹¹⁷ Such outreach is premised on the technical superiority of the OECD's international tax instruments, as demonstrated by their adoption across its members and more widely. A prominent policy paper from the OECD states:

There is already a significant amount of work being done by the OECD and other international organisations to support developing countries to address these [international tax] challenges. This work aims at disseminating effective international standards, improving access to data and information, building capacity and assisting in tax audits¹¹⁸

Another part of the OECD's meditative function, as described by Marcussen, is the manner in which it is cited as an authority by its members (and, we might say, by other actors in the international tax milieu). For example, a consultancy report on transfer pricing written for the European Commission by PWC states:

The OECD Guidelines could serve as common global standards for TP and we would advocate that developing countries orient themselves to these standards when adopting and implementing TP legislation [...] the selected countries should particularly draw attention to the development of a network of DTAs. This can foster the local investment climate by providing a legal mechanism to address potential cases of double taxation.¹¹⁹

The OECD is *the* guardian of concepts that, as outlined earlier, are foundational to the international tax community.

It is worth noting that the OECD, while exercising a dominant position, is not the only organisation in which the tax expert community operates. Some regional organisations of developing countries have developed their own model treaties, but in every case these organisations use the OECD's model treaty as their jumping-off point.¹²⁰ More important is the United Nations tax committee, a grouping of 25 tax treaty negotiators (acting, like the League of Nations group, in their personal capacity) which produces its own model treaty that is supposed to be explicitly designed to take into account the special needs of developing countries. The UN model treaty differs from the OECD model in the wording of a number of clauses, some of which can be found in a majority of tax treaties signed by developing countries.¹²¹ In practice, however, the committee's debates exist within a framework of legitimate dissent, whereby differences in interests between developed and developing countries are tightly contained within the overall framework of the standards

¹¹⁷ Latulippe, "The Expansion of the Bilateral Tax Treaty Network in the 1990s: The OECD's Role in International Tax Coordination." An example is interview 45.

¹¹⁸ OECD, *Action Plan on Base Erosion and Profit Shifting*, 87.

¹¹⁹ PWC, *Transfer Pricing and Developing Countries: Final Report*, 41.

¹²⁰ Hearson, *Tax Treaties in Sub-Saharan Africa: A Critical Review*.

¹²¹ Lennard, "The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments"; Wijnen and de Goede, *The UN Model in Practice 1997-2013*; Hearson, *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset*.

formulated by the OECD, which are not questioned. Many of the senior roles within the UN committee are occupied by individuals who also play leading roles within the various OECD working parties (Table 5.1).¹²²

Table 5.1: Overlap in membership between UN and OECD tax committees

Name and country	UN role(s)	OECD role(s)
Andrew Dawson (UK)	Committee member	Chair of Working Party 1 on Tax Conventions and Related Questions
Carmel Peters (New Zealand)	Chair of Base Erosion and Profit-Shifting subcommittee	Vice Chair of Working Party 1 on Tax Conventions and Related Questions, Chair of BEPS Action 6 Focus Group
Armando Lara Yaffar (Mexico)	Chair	Chair of Working Party No. 10 on Exchange of Information and Tax Compliance
Liselott Kana (Chile)	Vice Chair, Chair of Subcommittee on Tax Treatment of Services	Chair of BEPS Action 7 Focus Group
Xiaoyue Wang (China)	Committee member	Bureau Member, Working Party No. 6 on the Taxation of Multinational Enterprises
Ingela Wilfors (Sweden)	Committee member	Bureau Member, Working Party No. 6 on the Taxation of Multinational Enterprises
Stig Sollund (Norway)	Chair of Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing	Bureau Member, Working Party No. 6 on the Taxation of Multinational Enterprises; Bureau Member, Committee on Fiscal Affairs
Christoph Schelling (Switzerland)	Committee member	Bureau Member, Committee on Fiscal Affairs

Source: United Nations and OECD¹²³

More importantly, the UN committee serves as a forum for socialisation of developing country officials. This objective is set out clearly in an internal UK civil service document from the 1970s:

Our view, which is shared by the Americans and the Dutch, has been that it is of little use to try to “educate” developing countries – at the United Nations Expert Group on tax treaties and elsewhere – about acceptable international fiscal standards if, when it comes to the crunch, we are prepared to sacrifice principle in order to secure an agreement.¹²⁴

¹²² At the UN, committee members act in a personal capacity, while at the OECD they represent their governments

¹²³ United Nations, “Committee of Experts on International Cooperation in Tax Matters: Current Subcommittees”; OECD, “On-Line Guide to OECD Intergovernmental Activity.”

¹²⁴ 5 May 1976. Note to Minister of State (Fin Sec) from Wilkinson (Private Secretary) ahead of negotiations. File ref IR 40/19025

We can see, therefore, that the OECD is at the heart of a tax ecosystem that incorporates other international organisations, business groups and countries, held together by the glue of an epistemic community of tax professionals who are simultaneously participants in these different organisations' work. The OECD's central position is a function of two mutually-reinforcing perceptions: the technical superiority of its standards, and their endorsement by the world's most advanced economies, the members of the OECD. The international tax community's emphasis on tax treaties as the correct way of establishing the tax treatment of multinational companies gains authority from the organisation's wider economic policy authority.

5.5 Scope condition: control over veto points

Just as diffusion research has taken a turn towards unpacking the heterogeneity in diffusion processes, 'bringing the national back in' is a common refrain in discussions of the state of socialisation research.¹²⁵ Interest in socialisation has focused on the 'scope conditions' that make mechanisms more or less effective. These tend to be characteristics of international institutions, the agents who participate in them, and the national context from which those agents originate.¹²⁶ Here we focus on the national level.

For example, in his work on socialisation of economic policymakers, Jeffrey Chwieroth demonstrates that IMF-led teaching of neoliberal economic ideas to developing countries in the 1980s and 1990s was much more likely to lead to capital account liberalisation in the presence of an IMF technical assistance programme, this organisational channel acting as "a critical conduit through which the [IMF] staff can disseminate their ideas."¹²⁷ In contrast, where socialisation into the neoliberal policy programme had already occurred through professional training of economic professionals, "the formation of a coherent policymaking team, characterized by a preponderance of like-minded experts in key bureaucratic positions" in a country was an important scope condition for the adoption of capital account liberalisation.¹²⁸

The process of tax treaty negotiation, from the initial policy considerations through to ratification, is indeed guided in almost every country by a small team of technical professionals. The formation of a strong specialist international tax unit within a finance

¹²⁵ Johnston, *Social States: China in International Institutions, 1980-2000*; Zürn and Checkel, "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State."

¹²⁶ Johnston, "Conclusions and Extensions: Toward Mid-Range Theorizing and Beyond Europe"; Zürn and Checkel, "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State."

¹²⁷ Chwieroth, "Testing and Measuring the Role of Ideas: The Case of Neoliberalism in the International Monetary Fund," 23.

¹²⁸ Chwieroth, "Neoliberal Economists and Capital Account Liberalization in Emerging Markets," 445.

ministry or revenue authority, with institutionalised links to the OECD, UN tax committee, or other socialising environment, is likely to determine the extent to which officials learn. But these professionals' autonomy is circumscribed by a number of veto points, at which political or other bureaucratic actors may have some formal or informal influence. While the process varies across countries, these veto points are generally: *ex ante* negotiating authority; opening negotiations; agreement at official level ('initialling the draft'); signature; ratification. Given that the preferences of specialists and non-specialists may not align, it may be an obstacle to treaty diffusion via experts if there are veto players whose preferences for tax treaty negotiation differ.¹²⁹ Conversely, if experts hold a veto at the point of opening negotiations, they may block diffusion through competition, which acts on non-specialist actors.

Such tensions have been inherent since the very first tax treaty to be negotiated between two countries – Prussia and the Netherlands in the 1910s. First, the treaty was not ratified by the Dutch side because of objections from the business community to its information-sharing clauses, which only emerged at the last minute when the outcome of negotiations was made public.¹³⁰ The treaty was described as a “personal project” of lead negotiator Jan Sinninghe Damsté. An attempt at renegotiation stumbled because, according to a communication from the Dutch ambassador to Germany, “this matter was previously dealt with by the Minister of Finance, and...the current official did not understand these matters”¹³¹

Few countries have an explicit policy regarding who they will negotiate with. As a result, decisions about whom to negotiate with are made informally by civil servants, often without ministerial oversight. In one country, a treaty had been negotiated by a previous tax commissioner, understood by current officials as a “personal project” based on his personal connections to the treaty partner, and quietly shelved when the commissioner was replaced. Seven years later, when its existence was uncovered by a senator, it was ratified, to the consternation of the revenue authority.¹³² In another, ministerial approval to open negotiations was fully understood to be a box-ticking exercise, and had never been declined.¹³³ Uganda has even initiated a review of its treaty network with the aim of soliciting some political guidance where previously decisions have been taken entirely by tax officials.¹³⁴

¹²⁹ Tsebelis, *Veto Players: How Political Institutions Work*.

¹³⁰ Evers, “Tracing the Origins of the Netherlands' Tax Treaty.”

¹³¹ cited in *ibid.*, 385.

¹³² Interview 5

¹³³ Interview 35

¹³⁴ Interview 25

As discussed in the previous chapter, tax treaty negotiators from most capital exporting countries consult at the prioritisation stage, with businesses and with other government departments. In some countries, the decision to enter into negotiations requires direct ministerial approval, while in others that comes later, once the text is ready for signature, or even further down the line. The UK case study in this thesis records how the minister responsible sought to have approval of treaty texts before signature, rather than simply being shown them before he proposed their ratification to parliament.

Negotiators' autonomy is in part circumscribed by the law that gives them force. For example, in the UK, the Taxation (International and Other Provisions) Act 2010 defines the 'double taxation' that is to be relieved by tax treaties, and specifies the taxes to which the mechanism can apply. To give effect to an agreement that exceeds this mandate, the law would have to be changed, as it was in the case of the UK-Brazil negotiations (discussed in section 7.4.2). Within the legal parameters, only new precedent generally requires ministerial approval.¹³⁵ In contrast, section 88 of Uganda's income tax act merely states that an international tax agreement "shall have effect as if the agreement was contained in this Act." Uganda's chief negotiator indicated that the country's current review of its tax treaties was in part designed to give a political steer where previously negotiators had only their own opinion to guide them in negotiations.¹³⁶

An important addition to this discussion is the role played by model treaties in setting the parameters of negotiations. OECD member states have their own national model treaties, which are largely used in private to set out their opening negotiating position,¹³⁷ and which are published by a small number of countries.¹³⁸ They also adhere to the articles of the OECD model convention, which they have negotiated among themselves in advance, except where they have specified reservations to its text.¹³⁹ Other countries may also refer to regional models, such as the COMESA, SADC and EAC models in Africa, or the ASEAN model in South East Asia. These models are generally formulated by the treaty negotiators themselves, in particular at the OECD, where a dedicated working party of civil servants updates the model convention, which is then approved by the Committee on Fiscal Affairs, made up of "high-level officials in national treasuries and tax administrations."¹⁴⁰ In recent years, the process of modifying the OECD model has become more consultative, with business groups submitting comments on published drafts or participating in working

¹³⁵ Interview 22

¹³⁶ Interview 27

¹³⁷ Interview 22

¹³⁸ Latham & Watkins LLP, "Federal Ministry of Finance Publishes Model for Future Double Tax Treaties."

¹³⁹ OECD, *Model Tax Convention on Income and on Capital*, 449–490.

¹⁴⁰ Ault, "Reflections on the Role of the OECD in Developing International Tax Norms," 760.

groups.¹⁴¹ Political oversight, however, remains minimal.¹⁴² A United Nations model adapts the OECD model for treaties between developed and developing countries, but the committee producing it is made up (largely) of treaty negotiators formally acting in a personal capacity, rather than on behalf of their country. Notably, the COMESA model treaty was drafted by European private sector consultants, while the accountancy firm KPMG drafted an ASEAN position on tax treaties.¹⁴³

Tax treaty negotiations are generally led by a country's finance ministry or its tax authority, with the exact division of labour depending on the institutional structure. In countries such as the UK and Cambodia, it is the tax authority that leads, while in others such as Zambia and the US, responsibility lies with the finance ministry, although the revenue authority may also participate in negotiations.¹⁴⁴ Foreign affairs and investment promotion ministries often also participate, but make little if any contribution. In the UK, for example, the Foreign and Commonwealth Office approves treaty texts before they are signed, but in general its only input is on the definition of the contracting states.¹⁴⁵ In all the case studies in this thesis, negotiations were led by officials from finance ministries or revenue authorities, with varying degrees of specialism in international tax; in wider interviews, a handful of examples were given of negotiations led by other government ministries, such as in one case an investment promotion authority.¹⁴⁶

Tax treaties are intergovernmental agreements which, once signed, become a part of their signatories' tax law. Ratification follows different procedures in different countries. Typically, in developing countries, tax treaties are ratified by the cabinet, with no parliamentary approval. This is the case, for example, in Uganda, where treaties are merely laid before parliament, and Zambia, where they never pass through parliament.¹⁴⁷ An ongoing legal dispute in Kenya concerns the lack of parliamentary ratification of a treaty with Mauritius: Kenya's new constitution requires parliamentary ratification of treaties, but the government argues that the tax treaty is merely an administrative agreement.¹⁴⁸

¹⁴¹ Cockfield, "The Rise of the OECD as Informal World Tax Organization through National Responses to E-Commerce Tax Challenges"; Ault, "Reflections on the Role of the OECD in Developing International Tax Norms."

¹⁴² Christians, "Networks, Norms and National Tax Policy"; Ring, *Who Is Making International Tax Policy? International Organizations as Power Players in a High Stakes World*.

¹⁴³ Bunting, Fawcett, and Makasa, *Working Document COMESA Model Double Taxation Agreement and Commentary*; Farrow and Jogarajan, *ASEAN Tax Regimes and the Integration of the Priority Sectors: Issues and Options*; Farrow and Jogarajan, "ASEAN Tax Regimes: Impediment or Pathway to Greater Integration."

¹⁴⁴ Interviews, anonymised

¹⁴⁵ Correspondence reviewed in chapter 7

¹⁴⁶ Interview 10

¹⁴⁷ Hearson, *Tax Treaties in Sub-Saharan Africa: A Critical Review*.

¹⁴⁸ Kenyan High Court, petition number 494 of 2014, documents on file

In developed countries, it is more common – but not universal – for parliaments to approve new tax treaties. A survey of the parliamentary ratification of Canada’s last 33 treaties revealed “expeditious implementation through Parliament with little or no scrutiny,” with deliberations not coming to a single vote in one of the two chambers.¹⁴⁹ In the UK, tax treaties are made law as statutory instruments, a mechanism that is designed for non-controversial laws that are passed through a delegated legislation committee. Ratification rarely entails more than a token debate in this committee, and no treaty has ever been rejected or sent back for renegotiation.¹⁵⁰ In Denmark, parliamentary ratification was introduced during the 1990s, but is equally uncontroversial.¹⁵¹ In contrast, the US senate is famously thorough in its scrutiny of tax treaties. It forced a change to the US-UK treaty before ratification in the 1990s, and in recent years has held up ratification altogether.¹⁵²

There is certainly considerable heterogeneity across countries in the number of veto points and players. At one end of the spectrum, a combination of formal rules and their authoritative position would give a coherent team of tax treaty experts near total control over the process of treaty-making. Some treaty negotiators interviewed did indeed claim that ministerial and parliamentary scrutiny, where it existed, was largely a rubber-stamping exercise.¹⁵³ At the other end, negotiators are unable to realise their preferences because other stakeholders, who do not share their ideas about tax treaties, exercise a veto at various stages of the process. Even where there was no parliamentary ratification, some negotiators explained that the approval process could get held up because finance ministers did not approve signature.¹⁵⁴

Finally, there is specific evidence that tax treaties are sometimes pushed through by non-specialists in spite of the reticence of tax treaty specialists themselves. A study of tax treaty negotiations in Colombia, for example, suggests that tax officials received a political instruction to negotiate treaties swiftly in pursuit of “investment at any price.”¹⁵⁵ One negotiator from a developing country interviewed for this thesis explained that his country had signed a treaty with Mauritius, a tax haven, on very disadvantageous terms, because the negotiation had been initiated by the country’s newly-created investment promotion authority, and conducted without any revenue authority involvement. The tax implications

¹⁴⁹ Christians, “While Parliament Sleeps: Tax Treaty Practice in Canada,” 27.

¹⁵⁰ Interview, anonymised

¹⁵¹ Interview, anonymised

¹⁵² Interview, anonymised; Connery, Lainoff, and Cope, “Current Status of U.S. Tax Treaties and International Tax Agreements.”

¹⁵³ Interviews 25, 34, 35

¹⁵⁴ Interviews 10, 23

¹⁵⁵ Quinones Cruz, “Colombia,” 204.

were not considered, and the country didn't even formulate an opening position before beginning negotiations.¹⁵⁶

5.6 Conclusion

This chapter has focused on tax treaty specialists: those who formulate international models and national policies, and negotiate treaties themselves, as well as the other actors within their community, such as from businesses and academia. The doctrine of international fiscal anarchy forms the *raison d'être* for this epistemic community, leading to a distinct conceptualisation of the role of tax treaties grounded in a set of norms concerning the appropriate way to tax multinational firms. The community wields the double taxation problem as a tool through which to strengthen its influence over national tax policymaking over time, in effect wresting sovereignty away from political actors, whose actions will naturally tend to create 'double taxation'. Much of this is achieved by the use of increasingly obscure language and elaboration of every more detailed terms, as well as by the community's claim to authority derived from professional expertise.

To understand the boundaries of and contestation within the international tax community, the chapter also brought in the linked ecologies perspective, which recognises that each individual's identity and their perceived authority within and outside of their community stems from their role within multiple overlapping relational contexts, such as their profession, organisational affiliation and the country in which they operate primarily. 'Revolving doors' between the public and private sector, and between national and international organisations, are particularly important to the understanding of the international tax community because this diverse experience gives individuals greater epistemic authority. These patterns may also help to explain why developing country officials, despite being in the majority, are predominantly 'norm takers'.

The ability of the international tax community to exercise power within national bureaucracies varies over time and between countries. In developing countries, the number and experience of international tax bureaucrats varies, which is one reason for the variation in approaches to international tax: as individuals become socialised into the international tax community, their attitude to tax treaties changes, as they first learn about their costs and benefits framed in terms of their pre-existing ideas (often creating a sceptical outlook), and then come to internalise the community's ideas about the function of tax treaties (often creating an enthusiastic outlook).

¹⁵⁶ Interview 10

The influence of specialist tax bureaucrats over treaty-making in a country depends further on their autonomy within the government structure. The number and nature of veto players varies between countries, and where they exist they may cause treaties to fail because of differing preferences over treaty partners, treaty content, or the whole project of tax treaties itself. These differences do not necessarily emerge because different actors have different material incentives, but because they hold different ideas about what tax treaties are for, and indeed about the function of international tax rules.

6 Case selection and methodology

The previous chapters sketched out an argument explaining the mechanism through which tax treaties have diffused, using a range of documentary sources and interviews with negotiators. The anecdotal nature of that evidence means that, while it can be used to establish the existence of certain mechanisms, I cannot infer from it any wider conclusions about the role played by those mechanisms in comparison to others. The remainder of the thesis offers a more formal test, using individual cases that are selected with the aim of being able to draw such wider conclusions

This short chapter describes the case selection methodology. Each of four country cases is ‘nested’ within a quantitative analysis derived from a time-series model founded on the hypothesis that tax treaty diffusion is the result of rational competition for inward investment. The UK is ‘on the line’: it signed tax treaties at a (high) rate predicted by the quantitative model. If the quantitative results are in part the product of competition by developing countries for inward investment – in this case British investment – the case study should confirm this. If the data capture competition for outward investment, I should find evidence of this mechanism as well (or instead). The three developing countries – Zambia, Vietnam and Cambodia – are all ‘off the line’, having signed significantly more or fewer treaties than predicted by the model. These cases should reveal the additional diffusion mechanisms and scope conditions that are responsible for this unexplained variation.

For added explanatory power, the cases have been selected to permit within-case comparisons where possible, and between-case comparisons where not. Because the quantitative analysis underlying case selection is based on dyads of countries, the very granular archival evidence used for the UK case allows for a statistically-driven comparison between individual negotiations. Interview evidence was less granular, with interviewees often reluctant or unable to speak in detail about particular negotiations. For this reason, within-case comparison for Zambia is based on two different historical periods of times, rather than individual treaties. when national-level variables changed. For Vietnam and Cambodia, which began to consider signing tax treaties only relatively recently, the comparison is between neighbouring countries over the same time period.

6.1 Mixed methods and the nested analysis approach

The aim of the mixed methods research design in this thesis is to use quantitative and qualitative methods synergistically, leveraging both the detailed causal claims made through qualitative case studies and the generalisability of conclusions drawn from large-N

quantitative work. The thesis uses a nested analysis approach, in which country case studies are selected based on the results of an initial regression replicated from a previously published study.¹ Before elaborating this methodology, the development of mixed methods as a category of research design is briefly discussed.

The idea of combining different methods is often credited to a 1959 article that coined the term “multiple operationalism” to refer to the use of multiple methodological techniques to triangulate research results.² By the 2000s, mixed methods was a popular enough technique to have acquired its own methodology journal, the *Journal of Mixed Methods Research*, published by Sage. The growing popularity of mixed methods research within the social sciences is attributed by some of its proponents to a reaction against the perceived conflict between qualitative and quantitative research paradigms during the 1980s and 1990s, and in particular *Designing Social Inquiry*, which argued for an approach to qualitative research that built on the positivist epistemology of quantitative methodologies.³ A fundamental point for these mixed methods scholars is that the positivist-orientated quantitative paradigm is epistemologically incompatible with an interpretivist qualitative paradigm; what is required, therefore, is a ‘pragmatic’ approach to epistemology.⁴

In keeping with the pragmatic approach to mixed method research, this project treats economic constructivism as “a conceptual toolbox rather than a theoretical paradigm.”⁵ As Martha Finnemore and Kathryn Sikkink argue: “Constructivism opens up a set of issues, and scholars choose the research tools and methods best suited to their particular question.”⁶ A reflexive epistemology is inevitably a part of my approach to research, however, since academic and quasi-academic work contributes to the pool of ideas that influences policies towards tax treaties. This is especially the case in the area of tax law, where the boundary between practitioner, advisor and scholar is porous.

There are, naturally, myriad definitions of mixed methods research. In general, mixed methods research designs are distinguished from ‘multi-methods’ research, in that the latter combine different methods to answer different questions within an overall research design, while the distinctive quality of mixed methods approaches is the use of one methodological

¹ Lieberman, “Nested Analysis as a Mixed-Method Strategy for Comparative Research.”

² Campbell and Fiske, “Convergent and Discriminant Validation by the Multitrait-Multimethod Matrix.”

³ King, Keohane, and Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research*.

⁴ Morgan, “Paradigms Lost and Pragmatism Regained: Methodological Implications of Combining Qualitative and Quantitative Methods”; Bergman, “The Straw Men of the Qualitative-Quantitative Divide and Their Influence on Mixed Methods Research.”

⁵ Broome, “Constructivism in International Political Economy,” 199.

⁶ Finnemore and Sikkink, “Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics.”

technique to frame the whole project, with other, subsidiary techniques situated within it.⁷

This rigid distinction is not universal, however. One group of researchers surveyed practitioners of mixed methods and formulated the following broad synthesis definition:

Mixed methods research is the type of research in which a researcher or team of researchers combines elements of qualitative and quantitative research approaches (e.g., use of qualitative and quantitative viewpoints, data collection, analysis, inference techniques) for the broad purposes of breadth and depth of understanding and corroboration.⁸

John Creswell and colleagues provide a helpful typology of mixed methods research designs.⁹ Excluding experimental designs, they present three types. In a ‘triangulation’ design, qualitative and quantitative analyses are conducted in parallel and then merged in order to combine or compare results. An ‘explanatory’ design begins with quantitative analysis, the results of which are followed up using qualitative methods to explain the observed pattern. Conversely, an ‘exploratory’ design begins from qualitative analysis, using it as the basis of a quantitative design that allows for the generalisation of the initial qualitative findings.

Evan Lieberman’s ‘nested analysis’, the method used here, follows the same logic as ‘explanatory’ and ‘exploratory’ designs.¹⁰ It begins with an initial regression, which tests for a significant relationship between the explanatory and independent variables. If such a relationship is found, then the qualitative phase serves as a ‘model-testing’ or explanatory stage in which case studies serve to confirm whether or not the observed quantitative relationship is created by the hypothesised causal mechanism. If no significant relationship is found, qualitative case studies serve a ‘model building’ or exploratory role, on the basis of which the quantitative model can be redesigned.

The case selection rationale differs depending on whether a model-testing or model-building strategy is being followed. For the former, selection should proceed on the basis of cases that are ‘on the line’ (that is, well-predicted by the model) and that have different values of the dependent variable. For theory-building strategies, the model can be best improved by selecting at least one outlier, as this is where causal processes that are not specified within the model are most likely to be present. Outliers should not be extreme, since these are likely to be driven by more unusual causal processes, but should rather be from the more poorly fitted end of the general population of cases.

⁷ Berg-Schlosser, *Mixed Methods in Comparative Politics Principles and Applications*; Morse and Niehaus, *Mixed Method Design : Principles and Procedures*.

⁸ Johnson, Onwuegbuzie, and Turner, “Toward a Definition of Mixed Methods Research,” 123.

⁹ Creswell, Plano Clark, and Garrett, “Methodological Issues in Conducting Mixed Methods Research Designs.”

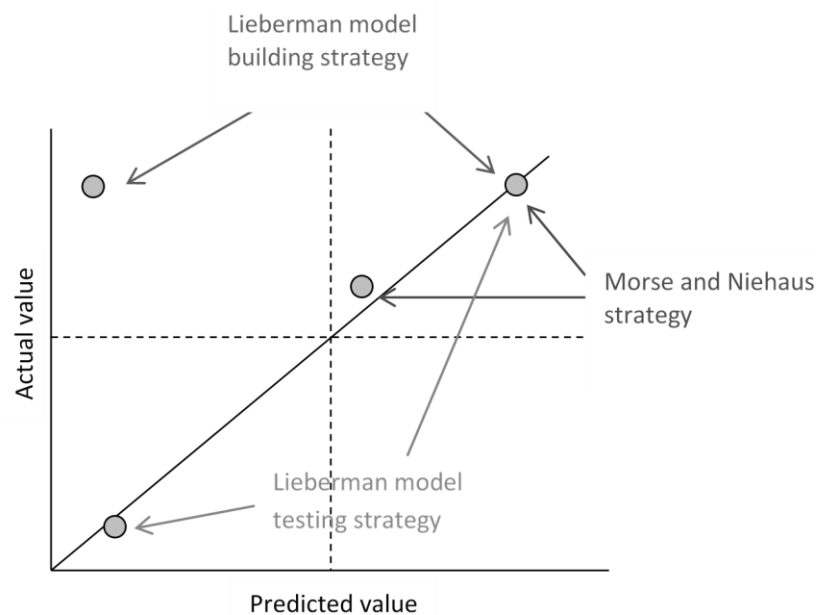
¹⁰ Lieberman, “Nested Analysis as a Mixed-Method Strategy for Comparative Research.”

This approach differs from that propounded by Gary King and colleagues, who argue against selecting cases for variation in the dependent variable, to avoid selection bias.¹¹ It also differs from that proposed by Janice Morse and Linda Niehaus, who argue that:

Traction in building and testing theories can be gained only by comparing mechanisms that contribute to creating the same outcome.¹²

On this basis, only cases in which the explanatory variable, dependent variable and any scope conditions are all present should be used. Comparisons should then be drawn between most and least likely cases within this subset, which means cases in which an explanatory variable is more or less present, but the outcome still occurs. For continuous variables, it is possible to reconcile this approach with that advocated by Lieberman for model-testing, since the difference is only one of degree, but for binary variables the two approaches are polar opposites.

Figure 6.1: Case selection under different strategies



Source: Author's own, based on Lieberman and Morse & Niehaus¹³

The aim of this thesis is both model-testing and model-building. First, the hypothesis of competition for inward investment underlying a quantitative model, originally developed by Fabien Barthel and Eric Neumayer, is to be tested against an alternative explanation, compatible with the same quantitative results, in which competition for outward investment

¹¹ King, Keohane, and Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research*.

¹² Morse and Niehaus, *Mixed Method Design: Principles and Procedures*, 146.

¹³ Lieberman, "Nested Analysis as a Mixed-Method Strategy for Comparative Research"; Morse and Niehaus, *Mixed Method Design: Principles and Procedures*.

by the capital exporting country in each pair of countries explains some or all of the results.¹⁴ Second, a model for the unexplained variation is to be built, based on the boundedly-rational nature of competition among developing countries, and learning by tax specialists. For this reason, both cases that are ‘on the line’ and ‘off the line’ need to be selected.

One of the motivations of Lieberman’s approach is to move away from the idea of trying to find cases that hold conditions constant when choosing different countries, since shortcuts such as choosing cases from similar regions rarely succeed in this aim. A similar view is taken by John Gerring, who argues that within-case comparison is a much better vehicle for the method of difference than between-case comparison.¹⁵ The approach taken here is wherever possible to identify within-case comparisons. This is made possible by the use of country case studies selected from a dyadic dataset: the dyad A-B can be compared with the dyad A-C as a within-case comparison with respect to country A. Within-case comparisons can also be made across time, and there are clear variations over time in countries’ approaches to tax treaty negotiations.

6.2 Model re-estimation

In the quantitative model, tax treaty formation in a given dyad is associated with the number of treaties signed by countries with which members of the dyad would be expected to compete for investment.¹⁶ Barthel and Neumayer’s estimated Cox model is specified as follows:

$$h(t|X_{ijt}Y_{ijt}) = h_0(t)\exp(\beta X_{ijt} + \gamma Y_{ijt})$$

where $h_0(t)$ is the baseline hazard function, X_{ijt} represents the control variables, and Y_{ijt} represents ‘spatial lag’ variables capturing the competition effects (‘competitive pressure’); i and j are the two dyad members, and t is the year.

The original paper specifies competition using three different ‘spatial lags’, each of which weights the conclusion of a tax treaties by other countries with a measure of the degree to which those countries are in competition with the dyad in question. The first spatial lag, common region, applies a weighting of 1 to treaties signed between countries in the same regions as the two dyad members, and 0 in other cases. For example, competitive pressure

¹⁴ Barthel and Neumayer, “Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties.”

¹⁵ Gerring, “What Is a Case Study and What Is It Good For?”

¹⁶ Barthel and Neumayer, “Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties.” See also Neumayer and Plümper, “Spatial Effects in Dyadic Data.”

on the Germany-Ghana dyad increases when treaties are concluded between other European and sub-Saharan countries. The second spatial lag, export product similarity, applies a weighting based on the basket of goods and services exported by each country. For example, competitive pressure on a dyad in which one country's exports are dominated by agricultural products is increased each time another agricultural exporter signs a tax treaty. A third spatial lag, based on export market similarity, did not significantly affect the probability of tax treaty conclusion, and so has been excluded from this analysis. The spatial lags are also lagged by one year, to reduce concerns about endogeneity.

As can be seen from this description, this specification of competition is symmetrical except that it includes a focus on exports, and not imports. Export product similarity reflects the structure of a country's production for international markets, but this could measure a country's outward investment interests, as well as the types of inward investment it seeks to attract. Thus, the spatial lags could capture competition for outward investment, as described in chapter 4, as well as competition for inward investment. In the Ghana-Germany dyad, for example, it could be that Ghana is reacting to its neighbours' signature of tax treaties with European countries, or the conclusion of tax treaties with Germany by other countries that also export cocoa, gold and oil; it could also be that Germany is reacting to its competitors' signatures of tax treaties with Ghana or with other sub-Saharan countries.¹⁷

In addition to the spatial lags, a range of control variables are included in the model. They are discussed in detail, with sources, in the original paper.¹⁸ The size and wealth of the two economies are captured using the product of their population sizes and GDP per capita. Policy variables included are the openness to trade and the extent of political constraints, both also measured as the produce of these values for both countries. Several variables specific to international tax policy are also incorporated: a dummy variable indicating whether one country is an offshore financial centre (OFC), dummies for dyads made up of one or two OECD members, the number of years since both dyad members were independent, and the number of tax treaties signed by each dyad member, as well as the maximum of those two values. Several controls for economic and political relations within the dyad are also included: bilateral trade, presence of a BIT between the two countries, joint

¹⁷ Barthel and Neumayer include a robustness test that incorporates a 'directed' version of the model, based on a situation where OECD members coerce non-OECD members into concluding treaties with them. This specification, "in which the propensity of a non-OECD member to sign a DTT with a given specific OECD member depends on the weighted sum of DTTs signed by other non-OECD members with the very same OECD member" produces a result in line with the main, 'undirected' specification. As the description indicates, however, this is not a specification that focuses on competition among OECD members. See Barthel and Neumayer, "Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties," 657.

¹⁸ *Ibid.*, 649–650.

membership of a regional trade agreement (RTA), diplomatic representation in each other's capitals, and distance between capitals.

I have extended Barthel and Neumayer's dataset, which ended in 2005, to 2012. This brings the predictions of the quantitative data closer to the time of fieldwork, which was conducted during 2014-15. New data for 2006-12 were appended to the existing data from 1969-2005, increasing the number of years covered from 37 to 44, but swelling the number of observations by one third as a result of better data coverage for recent years. Descriptive statistics for the old and new datasets are provided in Annex 2. To check consistency, data for 2004 and 2005 were reconstructed: new and existing values of the export product similarity spatial lag were 88% correlated, and the predicted survivals generated by the two models for 2004 were 93% correlated. In the re-estimated model (Table 6.1), the coefficient of the main variable capturing competition, export product similarity, is nonetheless smaller, although its sign does not change. This may be because, in the dataset as a whole, dyads with the largest competitive pressure had largely conclude a treaty by 2005, reducing (but by no means eliminating) the explanatory role of this variable for later years.

Table 6.1: Original and re-estimated coefficients for the Cox proportional hazard model

Variable	Correlation coefficients	
	Original dataset, 1969-2005	Extended dataset, 1969-2012
Spatial lags:		
Common region (product) (t-1)	1.229***	1.287***
Export product similarity (sum) (t-1)	11.38***	6.018**
Product of populations (ln)	0.0855***	0.0994***
Product of GDPs per capita (ln)	0.0234	0.1500***
Bilateral trade (ln, t-1)	0.137***	0.0813***
Product of openness to trade	6.92e-05***	4.34e-05***
BIT	1.310***	1.365***
RTA	-0.174	-0.134
OFC	-0.463***	-0.346***
Diplomatic representation	1.201***	0.8945***
Distance (ln)	-0.255***	-0.302***
Product of Political Constraints	0.640***	0.313**
OECD-OECD dyad	-0.143	-0.244
OECD-nonOECD dyad	-0.504***	-0.628***
Min. years of independence	-0.00605***	-0.00469***
Max. number of DTT (t)	-0.0356***	-0.0349***
Cumulative number of DTTs, country i (t-1)	0.0430***	0.0400***
Cumulative number of DTTs, country j (t-1)	0.0417***	0.0394***
Observations	198,820	289,226

*p<0.1 **p<0.05 ***p<0.01

Source: Barthel & Neumayer; Author's own¹⁹

¹⁹ Barthel and Neumayer, "Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties."

6.3 Case selection

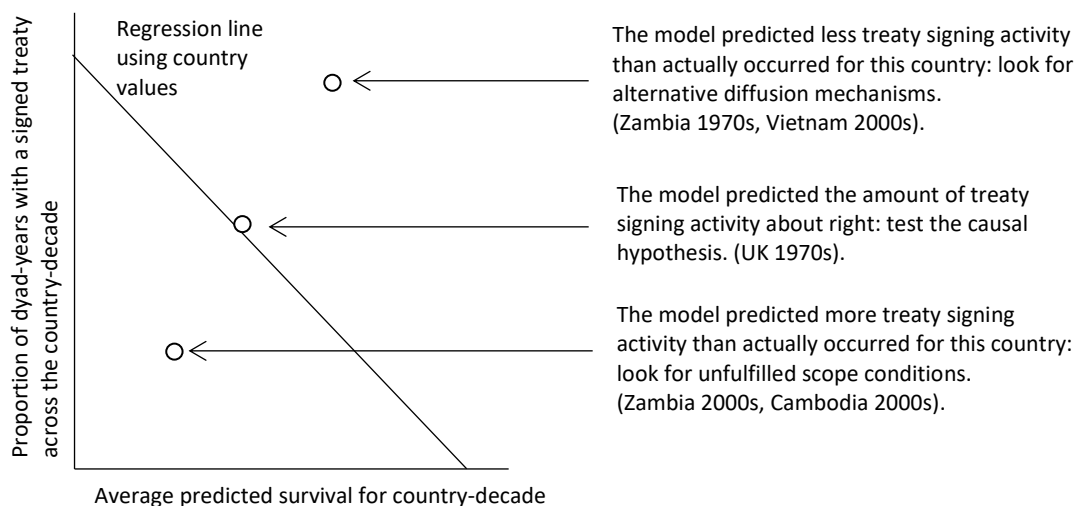
To select cases following the nested analysis strategy, I need to compare predicted with actual values. To generate predicted values from a Cox proportional hazard model, the ‘predicted survival’ is used. This is the probability that a failure event (signing a treaty, in this case) does *not* occur in a given dyad-year. It is estimated as:

$$\hat{S}_i(t) = [\hat{S}_0(t)]^{\exp(\hat{\beta}X_{ijt} + \hat{\gamma}Y_{ijt})}$$

where $\hat{S}_0(t)$ is the Breslow baseline hazard estimator.²⁰

While the predicted survival is a continuous variable, the actual values of the dependent variable are binary: signing a treaty or not. Case selection in nested analysis requires plotting actual values against the model’s predicted values (Figure 6.2). I therefore convert the binary dependent variable to a continuous variable by using aggregate figures at the country-decade level. Specifically, the dependent variable becomes the proportion of dyad-years within the country-decade for which a treaty was signed. This is plotted against the average predicted survival across the country-decade. Since there is not a simple one-to-one equivalence between these predicted and actual values, an ordinary least squares regression line using the country-decade values provides an indicator of how consistent each country’s actual values are with the model’s predictions.

Figure 6.2: Selecting country cases



Source: Author’s own

²⁰ Breslow, “Covariance Analysis of Censored Survival Data.”

While each dyad of countries at a given time could be considered a case based on the dyadic model, aggregating results at the country-decade level has several advantages beyond the ability to apply Lieberman's methodology:²¹

- Selecting in this way allows me to compare individual dyads as a within-case comparison, which is a much stronger way of holding other variables constant to use the method of difference.
- The explanatory variables and scope conditions in which I am interested are all at the national level (even the diffusion effect, although dyadic, is either the sum of the pressures on the two dyad members or an interaction between the competitive pressures on each). The negotiating officials and politicians, in particular, are the same for the same country across different treaties.
- Researching several treaties within a country case is more practical for fieldwork.

Two different decades are used, tailored to different data sources. For archival documentation, the earliest possible time period, 1970-79, is used. This maximises the number of government documents available for scrutiny, given that the statutory delay in releasing documents in the UK, for example, is 30 years. Conversely, developing countries do not tend to keep and disclose such records. For interview-based fieldwork, the most recent time period, 2003-12, is used, since it is easier to trace interview subjects with knowledge of more recent years, and interview data may become less reliable over time.

Although many of the variables affecting tax treaty formation vary across time and between countries, the nature of tax treaties has barely altered since the formulation of the first OECD model tax convention in 1963, and most treaties negotiated in the 1970s are still in force un-amended; consequently, while each case study needs to be situated in historical context, it is reasonable to compare between case studies from these different time periods. To confirm this, one case study (Zambia) is examined across both the early and late time

²¹ An alternative approach might be to aggregate at the county-year level, rather than country-decade, plotting values for all country-years together. Aggregating at this level is problematic, however, because the dependent variable is highly sensitive to the timing of treaty signature, which can vary by a year or more after agreement on the treaty content has been reached (Table 7.1), variation which may be for purely administrative reasons. Because most countries sign only one or two new treaties in a given year, the dependent variable displays wide variation across consecutive years, and it is necessary to aggregate over a longer time period to smooth this out. At the other extreme, the results for each country could be aggregated across the whole 44-year time period at once. This has the disadvantage that variation over time within a country is lost. For example, during the 44 years covered by the dataset, both Vietnam and Zambia, case studies for this thesis, have periods of intense negotiation and other, lengthy periods during which no treaties at all were concluded, reflecting major economic and political changes. Averaged over the full period, Zambia appears significantly 'above the line', reflecting its early start at treaty negotiations, while Vietnam appears 'below the line', because it didn't start signing treaties until halfway through the observation period. Yet during the 1970s and 2000s respectively, Zambia and Vietnam were intensive negotiators of tax treaties, far exceeding the model's predictions. Aggregating across all 44 years is therefore not the best approach, as it reduces the sensitivity of the case selection. The selection of decades is a compromise between these two extremes, which smooths out the year-to-year variations in signature dates, but also allows for variation over time.

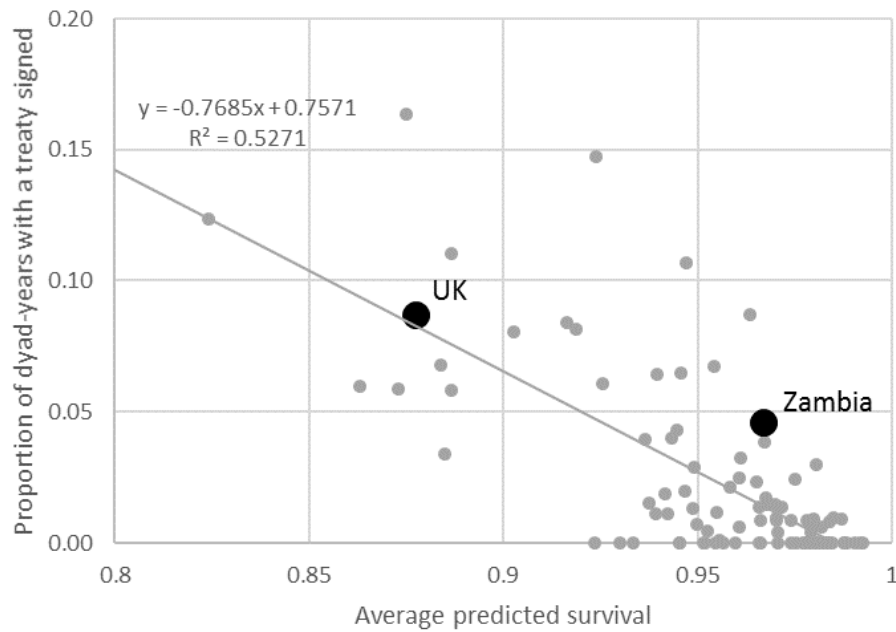
periods. The different time periods and methodologies also suit the availability of information in different countries. While it is possible to have fairly frank conversations with officials in developing countries, developed country officials are generally more concerned about retaining the confidentiality of their negotiating positions.

Figure 6.3 and Figure 6.4 show how the country case studies are selected using this adapted version of Lieberman's nested analysis case selection technique. To test the hypothesis that Barthel and Neumayer's results reflect rational competition for *outward* investment, against the conventional view that these results reflect competition for *inward* investment, a developed country is selected whose treaty-signing activity is well-predicted by the model ('on the line'). This is the UK 1970-9. The UK also offers the advantage that its average predicted survival is low, and it signed a comparatively large number of treaties, meaning that variables driving diffusion are strongly present. Because the documentary sources provide highly detailed information on each individual negotiation, within-country comparisons are possible here between individual dyads involving the UK.

Two pairs of developing country case studies will also be used. First, Zambia 1970-9 will be compared with Zambia 2003-12. In the first case, Zambia is above the line, meaning that it signed a larger number of treaties than predicted by a rational competition model; in the second, it is below the line, meaning that it signed fewer than predicted. A comparison of these two time periods should reveal variables not captured by the model that differ across the two time periods. The second pair of countries is Vietnam and Cambodia 2003-12. These countries were predicted to sign a similar number of treaties, but in practice Vietnam signed a larger number more than expected, and Cambodia none at all. A comparison of the two should again reveal variables not captured by the model that explain signature and non-signature.

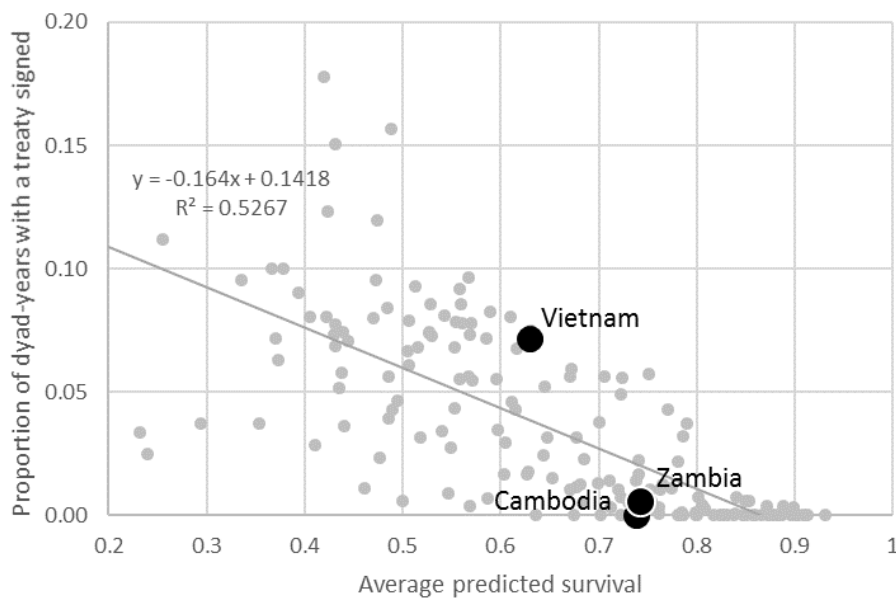
Table 6.2 presents the data for case selection in a different format, with the addition of competitive pressure, the explanatory variable. During the 1970s, the UK had a lower than average predicted survival, and, consistent with the model, a larger proportion of dyad-years with a treaty signature. Competitive pressure on dyads involving the UK was also greater than average, illustrating that both the explanatory and dependent variables were strongly present in this case, making it an ideal test for the causal hypothesis underpinning the quantitative model.

Figure 6.3: Case study selection using aggregate values per country, 1970-79



Source: Author's own, based on Barthel & Neumayer and supplementary data²²

Figure 6.4: Case study selection using aggregate values per country, 2003-12



Source: Author's own, based on Barthel & Neumayer and supplementary data²³

²² Barthel and Neumayer, "Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties."

²³ Ibid.

Dyads involving Zambia 1970-9, in contrast, have a predicted survival slightly above average, with competitive pressure below average. This suggests that Zambia should have signed fewer treaties than the average, because of a lack of competitive pressure. Instead, it has an above-average share of dyad-years with signature. By 2003-12, Zambia's predicted survival and competitive pressure are relatively close to the average, and yet the proportion of dyad-years with signature is low. These Zambian cases do not vary more than one standard deviation from the mean values, meaning that Zambia is a moderate outlier.

Cambodia and Vietnam show predicted survivals and competitive pressure close to the mean, and yet both their proportions of dyad years with signature are around a standard deviation from the mean, in opposite directions. There appears to be a major unexplained variation between these two countries, which the comparative analysis may help to explain.

Table 6.2: Model fit for case study countries

		Predicted survival	% dyad-years with signature	Competitive pressure
1970-9	Mean	0.956	2.22%	0.276
	<i>(Standard deviation)</i>	<i>(0.032)</i>	<i>(3.42%)</i>	<i>(0.054)</i>
	UK	0.878	8.70%	0.351
	Zambia	0.967	4.57%	0.235
2003-12	Mean	0.650	3.52%	1.212
	<i>(Standard deviation)</i>	<i>(0.165)</i>	<i>(3.74%)</i>	<i>(0.123)</i>
	Cambodia	0.730	0.00%	1.372
	Vietnam	0.630	7.12%	1.239
	Zambia	0.743	0.53%	1.097

Source: Author's own

6.4 Introducing the cases

Table 6.3 summarises the case studies discussed in the remainder of the thesis. The UK in the 1970s, discussed in chapter 7, is an example of a country whose dyads are a good fit with the model. While there is some evidence of competition by developing countries driving some treaty signatures, in many other cases it was the UK that drove treaty signature, with two different mechanisms at work: competition for outward investment based on lowering tax costs is the main mechanism acting on non-specialists, and dissemination of international tax standards (partly a competition rationale) acting on specialists. Comparing well-predicted and poorly-predicted dyads within the country case, I find that the view of

specialists is the determining factor in treaty signatures, because non-specialists had little influence over treaty negotiations.

Table 6.3: Summary of case studies

Chapter number	Case study	Model fit	Main diffusion mechanism	Scope condition present?
7	UK (1970s)	Good	1 Competition for outward investment	
8	Zambia (1970s)	More treaties than predicted	2. Competition for inward investment	Yes. Fiscal costs not salient
9	Cambodia (2000s)	Fewer treaties than predicted		No. Fiscal costs salient
9	Vietnam (2000s)	More treaties than predicted	3. Dissemination of standards	Yes. Specialists control veto points
8	Zambia (2000s)	Fewer treaties than predicted		No. Specialists do not control veto points

Source: Author's own

Two contrasting eras in Zambian treaty negotiations are discussed in chapter 8. During the 1970s, it signed more treaties than expected, while during the 2000s, it signed fewer. The 1970s was a point where Zambia did not appear to have any dedicated tax specialists, and treaty negotiations were led by a changing roster of political appointees, based on a competition rationale. A lack of analysis of even the simplest tax impacts led to an inconsistency between the policy of seeking treaties and that of imposing withholding taxes on foreign investors, and some extraordinarily one-sided treaties. From 2003-2012, Zambia had a cohort of tax specialists who espoused the project of double tax relief, but they had little control over veto points in the treaty making process; the politicians who did were much more concerned about the tax costs of treaties in an era of politicised corporate taxation.

Chapter 9 compares Vietnam, which signed many more treaties than predicted from 2003-2012, with Cambodia, which signed none at all. Both countries signed other forms of economic cooperation agreements within a few years of each other; both were subject to competitive pressure among ASEAN countries, as well as to requests from capital exporters to open negotiations. While competition appears to have been a driving force during the 1990s in Vietnam, from 2000 onward negotiations were driven by a specialist team who believed that every investor, no matter how small, should be covered by a tax treaty. The different attitude between the two countries appears to be attributable to the salience of corporate tax losses, which was low in Vietnam, and high in Cambodia.

6.5 Conclusion

Mixed methods research designs provide a powerful way to make generalised claims about causal processes. In this chapter an adapted version of Evan Lieberman's 'nested analysis' approach was used to select case studies to be investigated in the second part of this thesis, taking an existing quantitative study of tax treaty diffusion as the starting point. Lieberman's approach provides for both explanatory or 'model testing' case studies, and exploratory or 'model building' case studies. The three case study chapters that follow include examples of each. The UK in the 1970s, a good fit with the existing quantitative model, has been selected as a model-testing case study to examine the causal process underlying the observed pattern of diffusion. The remaining case studies are moderate outliers, selected for model-building. Vietnam in the 2000s and Zambia in the 1970s signed more treaties than predicted, and so it is likely that explanatory variables not captured in the model were present in these cases. Cambodia and Zambia in the 2000s signed fewer treaties than predicted, and so they provide opportunities to look for scope conditions that prevent the action of the diffusion mechanisms captured here.

7 The United Kingdom

Above all, [tax treaties] impose acceptable standards
... where such standards would otherwise be absent.

- Deputy Chairman of the Board of Inland Revenue¹

The United Kingdom has the widest tax treaty network of any country in the world. Since the international tax regime's founding in the 1920s, it has played a leading role in the formulation of model treaties, and it is still at the heart of the OECD's tax work. This chapter focuses on the 1970s, a period when the tax treaty network expanded rapidly into recently independent developing countries that were certainly keen to attract inward investment. Britain entered into negotiations with about 40 developing countries during the period 1970-1979, successfully concluding agreements with just over half. Most of these agreements are still in force today.

The UK in the 1970s is an excellent case study with which to test the nature of tax treaty diffusion through competition. This is because, on average, dyads involving the UK during the 1970s are a very good fit with the quantitative model elaborated in the previous chapter, with the proportion of dyad-years covered by a treaty strongly consistent with the model's predictions. Furthermore, the dependent variable is strongly present (a relatively large number of dyads including the UK signed treaties), as is the independent variable (competitive pressure on the dyad members). Thus, by examining dyads involving the UK during the 1970s, we would expect to see the competition mechanism underlying the quantitative model at work.

This chapter will test the conventional competition hypothesis, in which the observed pattern of diffusion is the product of competition by developing countries seeking inward investment from the UK, against my alternative hypothesis, in which it results from competition between the UK and other home countries of multinational investors for outward investment opportunities. Having established that competition for outward investment explains many of the UK's treaty negotiations, it then examines the drivers of competition in more detail. This demonstrates that the dominant logic of tax competition in the UK was one compatible with the specialist viewpoint of tax treaty negotiators in the Board of Inland Revenue, for whom the goal of tax treaties was to export 'acceptable' OECD tax standards wherever they operated. Non-specialist stakeholders in the treaty-

¹ Memo from Alan J Lord, Inland Revenue, 1 March 1976. File ref FCO 59/1459.

making process analysed competition through a different, ‘boundedly rational’ focus on double taxation, and on the perceived effects of tax treaties on the short-term effective tax rate of UK multinationals. This led to clashes of preferences, which the Inland Revenue generally put down to misunderstandings or parochialism. The role played by expert technical knowledge in shaping the preferences of tax specialists is illustrated by the private sector actors, who did not align with each other, but with the two civil service camps, based on their level of expertise.

Evidence presented in this chapter is drawn from civil service documentation released under the United Kingdom’s 30-year rule. It covers the decade from 1970, the beginning of the quantitative model’s predictions. The documents reviewed include internal civil service correspondence, minutes of negotiation meetings, and correspondence between the UK and other countries’ negotiating teams. The focus is therefore on the variables driving the UK’s actions, rather than those internal to the developing country. We cannot tell conclusively from this evidence what motivated the developing country, but by mapping the process of each negotiation, it is possible to determine the extent to which the developing country was driving forward negotiations, or acquiescing to the UK’s enthusiasm, a crucial test of whether competition in the developed or developing country was responsible for the treaty’s conclusion.

The rest of the chapter proceeds as follows. The next section briefly discusses the archival documents used. Sections 7.2 and 7.3 establish some general findings about roles and attitudes of different stakeholder groups in the treaty-making process, drawing from some specific examples as well as overriding policy considerations. In section 7.4, I conduct a more formal hypothesis test by comparing three pairs of negotiations between the UK and developing countries. Two predicted signatures are compared with two unpredicted signatures, to examine what explanatory variables might have resulted in this otherwise unexplained variation in the dependent variable. The predicted signatures are also compared with two unexplained non-signatures, cases where the model predicted a signature. This is to establish what scope conditions should be included in the model to explain this otherwise unexpected positive value of the dependent variable.

7.1 Context

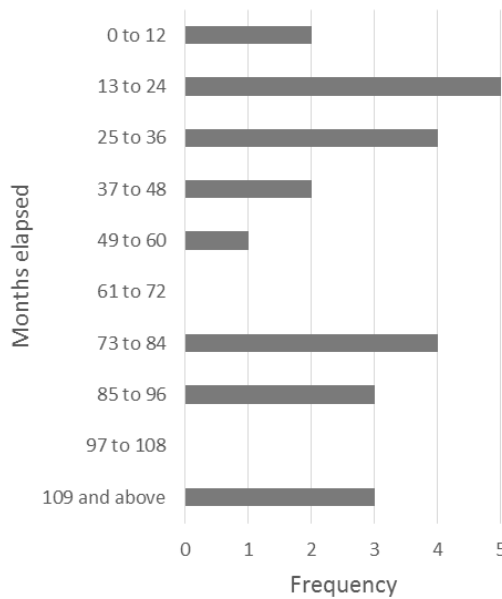
The evidence used in this chapter is drawn from the UK National Archives, which release civil service files 30 years after they have been closed (70 years for files that include information on identified people’s tax affairs). Each file is recorded in an online database that includes its name and a short description. To find the relevant files, this database was

searched for the terms ‘double tax’, “double taxation” and ‘tax treaty’, yielding 2301 results. The majority of these were country-specific files originated from the Inland Revenue or the Foreign and Commonwealth Office and its predecessors. They include internal civil service correspondence, correspondence between countries, and minutes of negotiation meetings. This means that they include both the internal thinking of the UK and the positioning of the negotiating partner, supplemented on occasions by intelligence about its motivations from other British sources.

Most of the country files indicate that sporadic contact between the two sides was the norm before any serious negotiations were initiated. The UK might have made tentative enquiries, as in the case of Latin American countries, or an ambassador from a developing country might have expressed an interest that the UK judged not to reflect a serious intent on behalf of that country’s tax treaty decision-makers. The UK entered into serious discussions with around 40 developing countries during the period under study, shown in Table 7.1. The median length of time from the UK’s first successful contact with a country with a view to negotiating a tax treaty to signature was 38 months, but a significant number of negotiations took over 72 months (Figure 7.1). The median time from first contact to ratification by both parties was 60 months. That the average period of time between the decision to open negotiations and the observable event of signing a treaty is over three years, and this gap was often as long as six years, calls into question the typical one-year lag used in quantitative studies of policy diffusion.

Negotiations were undertaken by a small team of officials within the Board of Inland Revenue. Most of the information used in this chapter is drawn from that team’s files, although most treaties also have a corresponding Foreign Office file, which may include communication between the embassy and the desk officer in London, but is often purely procedural. In general, for each treaty the file begins with the report of a conversation with a developing country, or correspondence between either the Inland Revenue and its counterpart, or the Inland Revenue and the British embassy. Preliminary discussions then give way to a formal request to start negotiations, and the Inland Revenue circulates a written request for comment to the Treasury, Foreign and Commonwealth Office and the Department (or Departments, depending on the date) of Trade and Industry.

Figure 7.1: Histogram showing length of time between first contact and signature



Source: Author's own (see Table 7.1)

A typical negotiation consisted of an exchange of drafts (or simply the UK sending its draft, and the developing country responding with comments) then a first round of negotiations in person. Finding a mutually convenient time to meet was a lengthy process when correspondence was principally by air mail, and a year's delay at this point for purely practical reasons was not atypical. After the first round of negotiations, the file usually includes formal minutes and a more informal memo circulated to accompany them, giving the negotiators' impressions of their opposite numbers. Further correspondence on outstanding issues usually led to a second round of negotiations, at which the agreement was initialled, signalling agreement at official level. The treaty was then subject to final checks, including translation and finalising the definition of countries with the Foreign and Commonwealth Office (FCO), before it was signed. Sometimes errors, legislative changes or a change of heart by one side could lead to amendments being made at this stage, either to the text itself or via a protocol, signed at the same time. Ratification followed, which in the UK involved the Minister of State presenting the agreement to a parliamentary committee: the file usually includes a copy of the briefing given to the minister, explaining any salient or unusual features of the treaty, and giving suggested answers to anticipated questions; while these briefings are usually formulaic, they sometimes include information explaining the UK's reasoning. It was not unusual for signature or ratification to be delayed in the developing country, and the files sometimes show the UK negotiators seeking to rally the developing country.

Table 7.1: UK negotiations with developing countries during 1970-1979

	Negotiations initiated by	Discussions opened	First round of negotiations	Treaty signed	Treaty in force
Argentina	UK	1979	1980		
Bangladesh	UK	1976	1977	1979	1980
Botswana	[Counterpart]	1974	1974	1977	1978
Brazil	UK	1972	1973		
Colombia	UK		Informal discussions only		
Czechoslovakia	UK	1975	1977	1990	1991
Egypt	UK	1976	1976	1977	1980
Fiji	-	1973	1974	1975	1976
Gambia	-	1974	1974	1980	1982
Ghana	[Counterpart]	1974	1974	1977	1978
Greece	UK		Informal discussions only		
Hungary	UK	1976	1977	1977	1978
India	UK	1976	1976	1981	1981
Indonesia	-			1974	1976
Iran	UK	1973	1975		
Ivory Coast	-	1978	1979	1985	1987
Jamaica	[Counterpart]	1969	1969	1973	1973
Kenya*	[Counterpart]	1971	1971	1973	1977
Korea	-	1974	1975	1977	1978
Lesotho	-		Informal discussions only		
Malaysia	[Counterpart]	1971	1975		
Mauritius	-	1974	1975	1981	1981
Mexico	UK	1978			
Morocco	Counterpart	1970	1976	1981	1990
Nigeria	UK	1978	1979	1976	1978
Philippines	Counterpart	1974	1975	1976	1978
Poland	UK	1975	1975	1975	1978
Romania	Counterpart	1975	1975	1975	1977
Saudi Arabia	UK	1977			
Spain	UK	1973	1975	1975	1976
Sri Lanka	Counterpart	1972	1974	1979	1980
Sudan	[Counterpart]	1973	1974	1975	1977
Swaziland	-		Informal discussions only		
Tanzania*	Counterpart	1976	1977		
Thailand	UK	1974	1976	1981	1981
Tunisia	Counterpart	1975	1976	1982	1984
Turkey	UK	1978			
Uganda*	-	1971			
Yugoslavia	-	1975	1976	1981	1982

Source: National Archives, various files. Where no information was available in the archives this is indicated by a dash. Blank spaces indicate that this stage of negotiation did not take place. Use of square brackets in the second column indicates a renegotiation initiated while a current treaty was already in force. *Kenya, Tanzania and Uganda's negotiations with the UK began as part of a joint negotiation on behalf of the East African community.

There are also some files relating to the UK's general negotiating position, such as correspondence within and between departments relating to a cross-departmental review of double taxation treaties. Another set of files records meetings and correspondence with business organisations, including quarterly "state of play" reports on all the UK's negotiations which were compiled as briefing documents for civil servants attending these meetings. These are discussed in more detail in the sections that follow.

7.2 The UK's active pursuit of tax treaties

Since the earliest files discussing potential treaties, correspondence inside the UK civil service indicates that the UK was not merely a passive respondent to requests from developing countries, "stand[ing] ready with model treaties in hand," but rather it was actively shaping its own treaty network.² Already in 1957, discussion of a potential agreement with Colombia states:

for years we have been unsuccessfully trying to conclude an agreement with a South American country without any success... This is, therefore, the only area of the world, apart from the countries behind the Iron Curtain in which we have made no progress.³

With Turkey, the UK proposed talks in 1978 and again in 1979, but a note in 1981 indicates that the Turks "have expressed no enthusiasm" for a treaty.⁴ Similarly, the UK sent a draft treaty to Czechoslovakia in 1975, but in 1976 a civil servant wrote that "despite reminders, the Czechs have not responded."⁵ In the latter case, negotiations did take place in 1977 and 1978, but a stalemate was reached because "the Czechs [were] refusing to reduce their tax on royalties."⁶ Iran's previous "apparent lack of response" to the UK gave way to a "willing[ness] to have talks" in 1974, but later the same year the civil service files record that "[o]ur embassy is pressing the Iranians as much as we can."⁷ A final example is Mexico, with which the UK requested negotiations in 1978 following an approach to the Inland Revenue from business groups.⁸ The next mention in the "state of play" reports is in 1981, which record that the UK had been "told they are not yet ready."⁹

Of course, if the UK was keen to sign treaties with all developing countries, but many of them rejected its overtures, this would be consistent with the view that it is policy in the

² Elkins, Guzman, and Simmons, "Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000," 822.

³ Letter from DG Daymond, Inland Revenue, 21 January 1957. File ref FCO 371/126504.

⁴ "State of play on countries - January 1981" File ref IR 40/18110

⁵ "State of play on countries - January 1976" File ref IR 40/18110

⁶ "State of play on countries - January 1981" File ref IR 40/18110

⁷ "State of play on countries - October 1974" File ref IR 40/18110

⁸ Letter from JH Clement, Department of Trade, 13 November 1978. File ref IR 40/18110

⁹ "State of play on countries - January 1981" File ref IR 40/18110

developing country that is the primary determinant of the timing of treaty negotiations. The picture painted by the files, however, is clearly one in which the UK actively reached out to certain developing countries to urge them to open negotiations, exerting diplomatic pressure where necessary. Excluding renegotiations, three quarters of the negotiations listed in Table 7.1 (17 of 23) for which information is available were initiated by the UK. Where developing countries did make the first move, this was often because they wanted to renegotiate the terms of an existing agreement put in place when that country was a British colony.

7.3 Actors and actions in UK treaty-making

In this section, I outline the roles of different groups of stakeholders in the decision-making processes surrounding the UK's tax treaties. Specifically, I examine the preferences of tax treaty specialists in the Inland Revenue, who led negotiations, and those of non-specialists, in particular those in the rest of government. I also consider what happened when these different preferences created conflict between the two groups.

7.3.1 Diffusion driven by dissemination of technical standards

For specialists inside the Inland Revenue, the major causal effect of tax treaties was not, despite their formal title of “for the avoidance of double taxation and the prevention of fiscal evasion,” the elimination of double taxation (fiscal evasion rarely seems to get a mention, either). The reason for this was that the UK, in common with many other countries, had taken unilateral steps to prevent double taxation of its firms operating overseas, by giving them a credit against their UK tax bill for any taxes paid overseas.

Recognition of this dates back at least to 1957, when an Inland Revenue civil servant wrote that with regard to one treaty, “the United Kingdom taxpayer gets very little benefit out of it: he will get credit for the tax paid in Colombia against the tax due on the same income in this country whether we have an agreement or not.”¹⁰ Two decades later, in 1976, a cross-department review of the UK's approach to international double taxation, led by the Inland Revenue, made the case even more boldly: “in the absence of an agreement there is no question of United Kingdom investors being doubly taxed.”¹¹

¹⁰ Letter from DG Daymond, Inland Revenue, 21 January 1957. File ref FCO 371/126504.

¹¹ “Double taxation relief.” Report to the Paymaster General, 25 February 1976. File ref FCO 59/1459.

What then was the purpose of a tax treaty for the Inland Revenue? That same note from 1957 records that, for a board of Directors in the UK, “the advantages of a double taxation [agreement] need no stressing.”¹² It goes on to argue that a tax treaty

at once assures the directors that they will be taxed according to internationally accepted rules and they will not be subject to discrimination. From the contacts we have with businessmen we believe that these considerations do, in fact, weigh heavily with them in deciding whether to invest or not, and the conclusion of a double taxation agreement goes a long way towards establishing a suitable climate for foreign investment.¹³

These are often referred to as ‘intangible benefits’, and they are mentioned by government officials throughout the period under consideration. According to the 1976 review, “these include protection against fiscal discrimination, the establishment of a framework within which the two tax administrations can operate, and the expectation that an overseas authority which has negotiated a treaty will at least try to apply it reasonably.”

“Above all,” wrote the Deputy Chairman of the Board of Inland Revenue in 1976, treaties “impose acceptable standards for allocating profits to branches and subsidiaries and for dealing with transfer pricing in countries (some of them within the EEC) where such standards would otherwise be absent.”¹⁴

For the specialists, tax treaties were tools through which the UK, which had always taken a prominent role in the development of the international tax system, ensured the participation of other countries in it. This would be especially beneficial for British businesses in the case of developing countries, including those newly independent, where, as one official wrote, “protection against fiscal discrimination is generally worth more...because they are more likely to include deliberately discriminatory fiscal practices in their general law than are developed countries.”¹⁵

But that 1957 view that a treaty would influence a firm’s decision “whether to invest or not” is an anomalous one in the files. Much more commonly, treaties were understood as means to ensure that British firms could be competitive *when they decided to invest*, rather than to make investment in the treaty partner more attractive in the first place. This would mean that

¹² Letter from DG Daymond, Inland Revenue, 21 January 1957. File ref FCO 371/126504.

¹³ There are, of course, exceptions. Businesses that incurred taxes on gross fees, for example withholding taxes on management fees paid out from clients in developing countries would find that, absent a treaty, these tax payments would not qualify for a credit against UK tax, because the UK considered them to be levied on gross income, not profit. In the opposite direction, staff of foreign airlines working in the UK in some instances found themselves taxed by the UK and by their home country.

¹⁴ Memo from Alan J Lord, Inland Revenue, 1 March 1967. File ref FCO 59/1459.

¹⁵ Memo from A Wilkinson, Inland Revenue, 8 April 1976. File ref IR 40/18941.

treaties increased investment from the UK to the treaty partner, but not by influencing business decisions; rather, they gave British investors a helping hand.

The effect of treaties on outward investment from the UK was not a trivial matter during the 1970s, but an important policy question. Treasury policy was to limit the impact of outward FDI on the balance of payments by encouraging it to be done out of retained earnings, investment currency or foreign currency borrowing. In 1973, at a meeting of the cross-Whitehall Tax Reform Committee handling changes to corporation tax, a Treasury official argued against measures that would prioritise overseas investment, because of the effect on the balance of payments. The concern was both about foreign exchange reserves, which could be protected more through income from exports than from direct investment; furthermore, the likely shift in manufacturing abroad as a result of overseas investment would increase imports.¹⁶

Discussing this point, the 1976 review concluded that the treaty network at that point “neither encourages nor discourages overseas investment in fiscal terms compared with domestic investment, except where matching credit is provided.”¹⁷ At around this time the Inland Revenue was arguing against conceding Brazil’s demands for more comprehensive concessions in a tax treaty on the grounds that the concessions, “would mean that we were according outward investment a higher priority than hitherto with all that that implied for the balance of payments and the domestic economy.”¹⁸

The epistemic community of tax specialists who shared this analysis and these objectives was not limited to the Revenue itself, in at least one respect: it extended into the private sector. In December 1971, Alan Davies of Rio Tinto Zinc (RTZ), chair of the CBI’s tax committee, wrote to Alan Lord, Deputy Chairman of the Board of the Inland Revenue. The letter outlined the limitations of the Revenue’s current approach to consultation, which was to solicit comments from industry by letter once negotiations were initiated. Davies cited “a peeved feeling on our side that some more confidence would be justified,” and argued for more informal discussion about the progress of negotiations.¹⁹

The result was a system of regular quarterly meetings between tax specialists from industry groups (the CBI, British Insurance Association and Chamber of British Shipping) at which detailed information on the “state of play” in negotiations was divulged, and comments

¹⁶ Memo from D Hopkins, Inland Revenue, 9 November 1973, referring to remarks by “Mr Wass representing the Treasury” at a meeting of 23 July 1973. File ref IR 40/17190.

¹⁷ “Double taxation relief.” Report to the Paymaster General, 25 February 1976. File ref FCO 59/1459.

¹⁸ Memo from C Hubbard, Inland Revenue, 22 December 1974. File ref IR 40/19025.

¹⁹ Letter from AC Davies, Rio Tinto Zinc, 15 December 1971. File ref IR 40/18109.

sought on specific topics.²⁰ The first such meeting took place in March 1972, and they continued for at least the next decade. At each meeting, the Inland Revenue participants were supplied with a status report on current and planned negotiations, which they shared verbally with the business representatives on condition that the information was not shared outside of the small, expert group. When negotiations reached a difficult point, illustrated in Section 7.4.2, the matters of contention would often be discussed in this forum.

7.3.2 Diffusion driven by competition for outward investment opportunities

Here I consider the preferences of non-specialists, for whom tax treaties were also tools to increase the competitiveness of British firms abroad. A lack of detailed taxation knowledge, frequently lamented both by them and by the specialists, left them to rely on their own ideas, which were not necessarily grounded in facts. This would lead to conflicts, during which the Revenue would sometimes try to persuade them that their faith in the effect of tax treaties was misplaced. “There can be little doubt that tax treaties are a means of stimulating trade and investment between the treaty partner countries,” wrote the private secretary to the Treasury minister responsible for tax policy in 1976. “On the other hand their importance is sometimes exaggerated.”²¹ The UK’s lead negotiator noted in 1974, referring to Brazil, that,

we should not over emphasise the importance of a DTA. It generally only affects income flowing from one country to another whereas in the short term a company will not remit much in the way of profits and will not be too bothered in the absence of an agreement.²²

Most civil service non-specialists who engaged with tax treaty matters during the 1970s wanted British firms that were eligible for investment-promoting tax relief in developing countries to receive a corresponding credit (often referred to as ‘tax sparing’ credit) against UK tax, to ensure that they could retain the benefit of the tax relief when they repatriated their profits. As the 1976 review notes, in outlining the priorities of different departments, “the main cash benefit for the investor [from a tax treaty] is matching credit for pioneer reliefs.”²³ The difficulty was that this was not the Inland Revenue’s priority from tax treaties, and at times (as in the case of Brazil, below) the two priorities even came into conflict.

The Inland Revenue sought to keep input from other departments limited and compartmentalised, and did not welcome their attempts to influence its priorities. The Treasury, Departments of Trade and Industry, and Foreign Office would each be consulted

²⁰ File refs IR 40/18109-18111.

²¹ Memo from A. Wilkinson, Inland Revenue, 5 May 1976. File ref IR 40/19025.

²² Remarks by A Hopkins recorded in note of a meeting on 7 June 1974. File ref IR 40/18969. Emphasis in original.

²³ “Double taxation relief.” Report to the Paymaster General, 25 February 1976. File ref FCO 59/1459.

on treaties once negotiations were opened, and on specific questions concerning their content, but the Revenue would often rebuff their requests to be able to influence its priorities.

During late 1972 and 1973, an extraordinary correspondence opened up between the FCO and the Board of Trade on one hand, and the Inland Revenue on the other. The former were frustrated by their inability to influence the latter's negotiating priorities. At a cross-Whitehall meeting in April 1972, the Revenue had merely invited them to submit 'shopping lists' for treaties they would like it to negotiate.²⁴ "We have already forfeited opportunities for investment in Brazil, notably to the Germans and Japan and, as a matter of commercial policy, it is important that we should not place our traders at a disadvantage when seeking out investment opportunities in the future," argued one official from the Board of Trade in February 1973.²⁵ He continued that:

As you know, we have been concerned that the corporation tax system should not so limit the scope for tax sparing as to damage the UK's ability to export to and invest in developing (and highly competitive) overseas markets. For this reason, we place great importance on the conclusion, as quickly as possible, of double tax agreements with our developing trading partners which allow for tax sparing.

The Revenue rebuffed this pressure, refusing even to share a list of current negotiating priorities or negotiations that were underway, because "a high degree of confidentiality attaches to our negotiations with particular countries."²⁶ The reference to confidentiality is revealing, because this correspondence took place at the same time as the Revenue had begun quarterly meetings with tax specialists from businesses, at which exactly this information was disclosed.

"I find the Inland Revenue's attitude and behaviour quite extraordinary," wrote an official in the FCO's financial relations department, as part of correspondence that passed between these other departments. "I cannot imagine that any other department in Whitehall would behave in this way. Nor would we have allowed any other Department to get away with behaviour like this for quite so long. I am quite clear we must call a halt now."²⁷ Another lamented "a dispiriting and unfruitful confrontation with the Inland Revenue."²⁸ The problem for the FCO, in particular, was that it lacked a coherent position within itself, and the technical expertise to develop one. "The subject is difficult and mastering it is undoubtedly time-consuming" mused one FCO official.²⁹

²⁴ Note of meeting on 20 February 1972. File ref IR 40/17190.

²⁵ Letter from J Gill, Board of Trade, 15 February 1973. File ref FCO 63/1126.

²⁶ Letter from A Smallwood, Inland Revenue, 15 March 1973. File ref FCO 59/973.

²⁷ Memo from D Kerr, FCO, 27 March 1973. File ref FCO 59/973.

²⁸ Memos from AT Baillie, FCO, 1 November 1972 and 4 April 1973. File ref FCO 59/973.

²⁹ Memo from D Kerr, FCO, 25 April 1973. File ref FCO 59/973.

It was not only officials from other departments who had trouble influencing Inland Revenue officials: their own ministers faced the same problem. In general, politicians had little involvement in tax treaties at all. At the start of the 1970s, negotiators worked within enabling powers set by parliament, and would only seek ministerial guidance when making a concession that had not previously been given in negotiations. There seems to have been no political involvement in the decision with whom to negotiate, and the minister in charge, the Financial Secretary to the Treasury, did not usually have sight of a treaty until bringing it before parliament for ratification.

The technical complexity of tax treaties was inevitably a barrier to effective political scrutiny, but this must surely have been combined with the short tenure of Financial Secretaries: eleven different people occupied the position during the 1960s and 1970s, with an average tenure of two years.³⁰ As a civil service memo from 1975 notes:

It is however a long time since the agreements took their present form and the Treasury Ministers of today have had no experience in this field outside government.³¹

The longest serving Financial Secretary, Robert Sheldon, in post from February 1975 to April 1979, was also the only one for whom the Treasury archives record any attempt to scrutinise the activities of his civil servants on their treaty making activities. In December 1975, Sheldon was being briefed ahead of a parliamentary debate at which he was to propose the ratification of several tax treaties. He expressed concern that he was expected to propose an agreement in parliament that he had not seen beforehand. He suggested that parliamentary approval be dropped, and replaced with greater ministerial oversight.³² At a subsequent meeting in May 1976, Sheldon wanted “to reassure himself in the absence of quantifiable data that when he is asked to recommend a double taxation agreement to the House as a reasonably balanced deal he can happily do this.”³³

During the December 1975 debate, Sheldon undertook to look into the costs and benefits of tax treaties. This commitment provoked lengthy exchanges within the civil service, both to examine costing methodologies and to explain what officials saw as the problem with this approach. “What might be a reasonably balanced agreement as a whole,” Sheldon’s private secretary wrote to him, “might appear otherwise if the disadvantages were more easily quantifiable than the advantages.” Furthermore, such costing information might undermine

³⁰ According to biographies on the UK parliament website, tenure during the period covered by this chapter was as follows: Dick Taverne, 1968-1970; Bernard Jenkin, 1970-1972; Terence Higgins, 1972-1973; John Gilbert, 1974-1975; Robert Sheldon, 1975-1979; Nigel Lawson, 1979-1981.

³¹ Memo from A Smallwood, Inland Revenue, 5 December 1975. File ref IR 40/18941.

³² Memo from unnamed author, c. 3 December 1975. File ref IR 40/18941.

³³ Note of meeting on 3 May 1976. File ref IR 40/18941.

negotiations. Demonstrating that the UK had obtained a good deal might provoke the other country to seek to change it, while a bad deal would set a precedent.³⁴

These notes indicate the difficulty faced by a minister trying to exert some influence over a policy area with which he was unfamiliar. During the mid-1970s, the UK had been seeking to amend its treaties to reflect changes to its corporation tax system. The civil servant who first briefed Sheldon commented that:

I got the impression that he does not realise – or did not until I pointed it out to him – that double taxation agreements also deal with other matters than dividends.... he seemed surprised when I told him we had sixty plus agreements in operation.³⁵

This lack of understanding is also apparent in the minute of the May 1976 meeting. Sheldon questioned “what the OECD Model was and what we would do if it turned out not to provide an advantageous pattern for the UK.”³⁶ This question illustrates a lack of basic familiarity with the area, and is all the more surprising because Sheldon’s brief would also have included ministerial responsibility for the UK’s input into the OECD model tax treaty. To make matters worse, Sheldon cut the meeting short before officials could give a full explanation.

A third category of non-specialist stakeholder was those within business, who were evidently very keen to influence UK policy. At the non-specialist level, businesses were able to influence the positions of other parts of government including the FCO and DTI, but this rarely translated into treaties. Geographic departments in the FCO, in particular, were often persuaded by businesses, which lobbied British embassies, to advocate new British tax treaties. For example, “UK finance houses and business interests are adamant that we are losing a significant amount of business in Spain because there is no double taxation agreement,” wrote an official in the FCO’s Southern Europe department.³⁷ These positions fed into the central FCO departments, in particular the economists’ department and financial relations department, which as we have seen were furious that the Inland Revenue would not heed their concerns about the competitiveness of British businesses. Meanwhile, the Inland Revenue seemed content to divide and rule the geographical departments.

Business lobbying via these departments met with limited success, partly because those other parts of government had limited influence on the Revenue, but also because one part of the private sector undermined the other, a fault line that sometimes ran within, rather than between, businesses. As the Brazil case study, below, will illustrate, private sector tax

³⁴ Memo from Private Secretary to Financial Secretary, c. October 1974. File ref IR 40/18941.

³⁵ Memo from unnamed author, c. 3 December 1975. File ref IR 40/18941.

³⁶ Note of meeting on 3 May 1976. File ref IR 40/18941.

³⁷ Memo from AT Baillie, FCO, 4 April 1973. File ref FCO 59/973.

specialists sometimes directly contradicted their non-specialist colleagues when in discussion with the Inland Revenue. While some of these specialists evidently felt it necessary to sacrifice the intellectual purity and consensus of the epistemic project for the sectional interests of their own firm, in many cases the business-Revenue consultations were more a strategic discussion of how to manage their respective non-specialist constituencies.³⁸

A memo from the CBI to the Department of Trade and Industry, covering a wide range of policy and not written by tax specialists, states that tax treaty “negotiations should not be left exclusively to the Inland Revenue (whose main concern is naturally the minimisation of losses to the Exchequer).”³⁹ But a covering note from the chair of the CBI’s tax committee to the Inland Revenue accompanying a copy of the CBI’s submission to the UK-Egypt joint economic commission in 1975 argued the opposite. “We were intending to discuss this question with you before we let the Department of Trade have any comments,” it said, but short notice had prevented it.⁴⁰ The letter continued:

Our overseas Department receives such requests from the Department of Trade from time to time and we are now trying to ensure that any answer is given by the tax experts who attend the join CBI/ICC Working Group meetings at Somerset House [the Inland Revenue office] rather than by those who are not too familiar with the technical implications. This should avoid any future complications over such representations.

For businesses, as for the civil service, it appears that technical knowledge was the main dividing line between actors with different ideas about the role of tax treaties.

7.4 Case studies

The previous section demonstrated two different motivations among different stakeholders for the UK pursuit of tax treaties. It also illustrated that a tax competition mechanism driven by non-specialists faced a potential ‘firewall’ if it met opposition from specialists.⁴¹ In this section I outline three sets of two case studies, selected using the same quantitative methodology outlined in section 2, to test when and how these different variables were at work in shaping the observed outcome of treaty signature.

I identify three kinds of case studies (Table 7.2). Predicted signatures, in which high a low predicted survival is combined with an actual treaty signature, allow me to study the

³⁸ For example, As the UK and Brazil reopened negotiations in the early 1970s, a tax manager of Rio Tinto Zinc, who were preparing major investments in the country, lobbied officials at the Inland Revenue in London and at the British Embassy in Brazil. Letter from DP Harlow, 13 October 1971 and note of meeting on 7 February 1972. File ref IR 40/17189.

³⁹ CBI memo, 16 September 1974. File ref OD 42/104

⁴⁰ Letter from PE Moran, 24 November 1975. File ref IR 40/19097.

⁴¹ The term “firewall” is introduced in Solingen, “Of Dominoes and Firewalls: The Domestic, Regional, and Global Politics of International Diffusion.”

causative mechanism underlying the apparent diffusion of tax treaties through competition.⁴² Comparing these with unexplained non-signatures, where the explanatory variables appear to be the same, but the value of the dependent variable differs, allows me to look for ‘firewalls’ that might have blocked the causal mechanism.⁴³ Finally, comparing predicted and unpredicted signatures, which have different values of the explanatory variable but the same values of the dependent variable, should allow me to supplement the model of treaty diffusion with additional explanatory variables.

Table 7.2 shows the predicted survival values for each dyad during the decade, comparing them with the average for the whole of the UK. During the decade the predicted survival fell below the UK average for Thailand and Egypt, the two predicted signatures, and for Brazil and Nigeria, the two unexplained non-signatures. As the appearance of all these countries in Table 7.1 indicates, the UK opened negotiations with all of them, but it didn’t conclude an agreement with Brazil or Nigeria. In contrast, for the two unpredicted signatures, Zambia and Bangladesh, the predicted survival never strayed much below average, which means that the model did not predict that these countries would sign an agreement with the UK.

Table 7.2: Predicted survival for within-UK case comparison

Dyad		Predicted survival
Average for all UK dyads		0.878
Predicted signatures (minimum)	Thailand	0.407
	Egypt	0.369
Unexplained non-signatures (minimum)	Brazil	0.724
	Nigeria	0.785
Unpredicted signatures (minimum)	Zambia	0.911
	Bangladesh	0.862

Source: author’s own, based on Barthel and Neumayer and supplemental data⁴⁴

7.4.1 Predicted signatures: Thailand and Egypt

These are cases in which the presence of explanatory variables (including competitive pressure) leads to a prediction of signature, and the dependent variable (treaty formation) is

⁴² Dyads have been categorised as ‘signatures’ if an agreement was signed by 1981, two years after the end of the sample period, if agreement was reached in principle by 1979. This is to take into account time for the logistics of signature to be arranged.

⁴³ Choosing case studies is potentially biased because for practical purposes I can only use countries with which some communication with the UK took place, in order to for a file to exist. This means that I cannot consider treaties where there is no record of any interest from either side, such as Paraguay, Trinidad and Algeria.

⁴⁴ Barthel and Neumayer, “Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties.”

indeed present. Studying these cases qualitatively allows me to find the causal mechanism underpinning the quantitative result. The conventional causal hypothesis is that the diffusion of tax treaties is driven by competition between developing countries for inward investment, while my alternative interpretation is that it is driven by competition among developed countries (that is, between the UK and its competitors) for *outward* investment opportunities.

Thailand

The 1930s to the 1960s saw a series of false starts to negotiations between the UK and Thailand. The British Inland Revenue came under pressure from shipping firms, who faced double taxation because of the form of Thailand's tax on foreign shipping firms.⁴⁵ It resisted this pressure, because it knew that the only terms on which an agreement could be reached would be to permit Thailand some taxing rights over British shipping firms, which contravened longstanding UK policy.⁴⁶ By 1961, Thailand had begun to negotiate tax treaties with other countries, but there was no interest from British businesses (including shipping, whose concerns had been resolved) in a treaty. Speculatively, the UK sent a draft treaty, but there was no response, and no follow-up from the UK side.⁴⁷

In the early 1970s, the UK government had started to receive a handful of requests from companies, mainly on the grounds that Thailand had by that point concluded tax treaties with many competitor countries. After a meeting in 1972 with "the only one who is able to talk about Double Taxation Agreements" in Thailand's revenue department, a British Foreign Office official concluded that, "in principle they would be interested but it was not likely that Thailand would take the initiative."⁴⁸ But he added, "there does not seem to be any particular desire on the part of anyone here [among British businesses] to take the initiative in asking me to suggest that the UK should have a Double Taxation Agreement with Thailand." A memo from October 1973 notes that "Thailand does not seem to be very interested in a DTA with the United Kingdom."⁴⁹

Later that year, negotiations finally kicked off, following a request from the Thai government which was based on a desire for a tax treaty with Hong Kong, a British dependency.⁵⁰ Thai officials quickly lost interest on hearing that this was not something the UK could negotiate, and the British Foreign office asked the Inland Revenue not to pursue

⁴⁵ Thailand taxed them on a gross basis, for which they were not eligible for credit in the UK. File ref IR 40/17358.

⁴⁶ Handwritten note, "Relations with Thailand". File ref FCO 15/972.

⁴⁷ Handwritten note, "Relations with Thailand". File ref FCO 15/972.

⁴⁸ Letter from D Montgomery, British Embassy, Bangkok, 5 June 1972. File ref FCO 15/1645.

⁴⁹ Untitled note addressed to a Mr Stewart. File ref IR 40/18109

⁵⁰ Letter from PR Spendlove. FCO, 12 November 1973. File ref IR 40/18456

the matter, as it feared negotiations might interfere with parallel discussions on an investment promotion agreement.⁵¹ But by this point, having consulted with its contacts in industry, the Inland Revenue had become convinced that there was pressure from businesses. The Chamber of British Mines attached “special importance” to an agreement with Thailand, while the CBI and British Insurance Association had expressed a “strong interest.”⁵² In 1976, following repeated requests by the British, negotiations finally opened and an agreement was reached fairly easily after two rounds.

Notably, the longstanding difference of opinion over shipping proved easy to resolve once the UK was set on a treaty. Before finalising the treaty, the Inland Revenue consulted with its tax contacts in the shipping industry, who were concerned about the precedent the agreement would set. A briefing note for the second round of negotiations stated that:

The question is one of principle, and as the amount of money involved is small, we have decided, after consultation with the General Council of British Shipping, to have no Shipping Article in the Convention to avoid providing a precedent with other, and more important, countries.⁵³

With an agreement to differ on shipping, the treaty was agreed in 1977, although not signed until 1981 owing to the need to take into account changes to the Thai tax system.

Egypt

As with Thailand, Egypt and the UK exchanged correspondence about tax treaties sporadically during the 1950s and 1960s, without ever concluding an agreement. The initiative seems to have come from different sides at different times, broken off due to changes in civil service staff or government, reforms to tax policy, or at one point the Suez crisis.⁵⁴ By the late 1960s a strong preference emerged from the two national airlines, both of which were state-owned, for a treaty.⁵⁵ In March 1969, the Egyptian embassy in London formally requested a limited double taxation agreement, which would exempt each country’s national airlines from taxation in the other.⁵⁶ But later that year, when an embassy official spoke with Egyptian tax authority officials, they denied all knowledge or interest in this proposal, and talks never went ahead.⁵⁷ The only party to seem aggrieved by this was the British Overseas Airways Company (BOAC), which declared itself “bitterly disappointed”

⁵¹ Letter from PB Cormack, British Embassy, Bangkok, 4 August 1975. File ref IR 40/18456

⁵² Letter from IP Gunn, Inland Revenue, 25 September 1974. File ref IR 40/18456.

⁵³ “Double taxation convention talks with Thailand.” c. October 1976. File ref IR 40/18456.

⁵⁴ “History of Double Taxation Negotiations with Egypt/UAR” in a memo by MJ Powell, Inland Revenue, 1 November 1968. File ref IR 40/17378. See also correspondence in file ref FO 371/80437.

⁵⁵ Correspondence in file IR 40/17378

⁵⁶ Letter from the Egyptian ambassador dated 18 March 1969. File ref IR 40/17378

⁵⁷ Letters from AJCE Baillie, British Embassy, Cairo, 25 November and 1 December 1969. File ref IR 40/17378

that talks had failed, because Egyptian demands for taxation on it were “unreasonable” and “impossible.”⁵⁸

The following year, a letter from the British embassy stated that, “I have twice heard suggestions that a general double taxation agreement would be both welcome and useful” because some UK firms had faced “harsh tax assessments.”⁵⁹ In February 1971, the UK formally requested negotiations on a comprehensive tax treaty, noting that “interest has been expressed by a number of British companies.”⁶⁰

However, the request does not seem to have had the support of the Inland Revenue, whose officials observed in an internal memo:

The importance of a comprehensive agreement with Egypt is not clear. We have not called for representations [from industry] as such and neither have any requests been made to us from outside concerns apart from BOAC to take the initiative.⁶¹

The request appears to have met with a similar fate in Egypt. According to a report from the embassy:

a tax official, on discovering that such an agreement would benefit Britain rather than Egypt because EgyptAir succeeds in never declaring a profit in London for tax purposes, whereas BOAC usually faces a stiff tax bill in Cairo, had decided to sit on the notes and do nothing.⁶²

The logjam was finally broken four years later, when a joint UK-Egypt economic commission was underway, managed by the Department of Trade, covering a variety of areas of economic cooperation. The CBI’s position document on the economic commission recorded “a wide expression of interest in a double taxation treaty with Egypt and there would seem to be little doubt that if a satisfactory agreement can be reached there would be substantial interest among those members we have consulted, in investment in Egypt.”⁶³ The tax treaty was negotiated in one two-week meeting in May 1976. An Inland Revenue note indicates that the Egyptians “were willing to be led by us most of the time in the drafting” and “for the most part the Egyptians were content” with the British positions.⁶⁴

Egypt’s interest in the treaty, however, appears to have been quite weak. The ratification process in Egypt dragged on for years after 1976, during which time it became apparent that the treaty’s real immediate impact was in increasing British firms’ competitive position. A

⁵⁸ Letter from JL Sayer, BOAC, 2 December 1969. File ref IR 40/17378.

⁵⁹ Letter from MJ Wilmshurst, British Embassy, Cairo, 16 October 1970. File ref IR 40/17378

⁶⁰ Letter from British Embassy, 12 February 1971. File ref IR 40/17378.

⁶¹ Memo from J Johnson, Inland Revenue, 9 March 1972. File ref IR 40/17378.

⁶² Letter from MJ Wilmshurst, British Embassy, Cairo, 2 November 1972. File ref FCO 39/1280.

⁶³ CBI Representations on an Egyptian Double Taxation Agreement. Attached to letter from Paul Moran, CBI, 19 January 1976. File ref IR 40/19097.

⁶⁴ Note on UK/Egypt Double taxation talks, May 1976. File ref IR 40/19097.

meeting with a construction firm in 1976 records their frustration that competitor firms from treaty countries benefited from ‘tax sparing’ provisions. “They were worried that the absence of a treaty would mean them losing an order and not getting a foothold in Egypt.”⁶⁵ A letter from BOAC, now British Airways (BA), in 1978 complains that “BA are now the only major airline in Cairo not exempted from Egyptian tax.”⁶⁶ By early 1979, an Inland Revenue document notes that, in the light of delays at the Egyptian end:

We are under some pressure from United Kingdom companies with interests in Egypt to push the convention through Parliament and into force as quickly as possible.⁶⁷

The agreement was ratified by Egypt the same year, and by the UK in early 1980.

Observations

In both these cases, discussions that had continued sporadically for some time only became earnest negotiations once the Inland Revenue in the UK was convinced that British businesses, and specifically its fellow tax experts in the private sector, were interested. This interest seems to have been based more on the competitiveness of British firms than on stimulating new investment plans, although some opinion on the latter lines was expressed. In both cases, the Inland Revenue position was at times out of step with that of the FCO: in the Thai case, the FCO was against negotiations, but the Inland Revenue proceeded nonetheless; in the Egyptian case, negotiations did not get off the ground at first because the Inland Revenue and its Egyptian counterparts did not share their foreign ministries’ enthusiasm.

In any event, while each side expressed interest at different times, the successful negotiations were not initiated or driven in either case by Thailand or Egypt, but by the UK. This seems to support the view that competitive diffusion of tax treaties is driven by competition between developed countries. We cannot see from this evidence what motivated the developing countries’ acceptance of British overtures, but we can observe that the negotiations came about, and continued to fruition, because of efforts made on the British side.

In the Thai case, Inland Revenue policy on shipping taxation was at first the obstacle preventing the Inland Revenue from acquiescing to pressure from British firms. By the 1970s, tax experts within the shipping firms were allied with the Revenue in seeking to uphold this policy, which was why the Revenue sought their opinion before agreeing to a

⁶⁵ Meeting between Inland Revenue and Construction Design Services, 7 September 1976

⁶⁶ Letter from FW Batstone, Manager Egypt, Sudan & Libya, British Airways, 4th January 1978. File ref FCO 93/1565

⁶⁷ Letter from JO Edwardes, Inland Revenue, 27 April 1979. File ref IR 40/19097

compromise with Thailand. Would tax experts in the Revenue and shipping industry have blocked the signature if Thailand hadn't agreed to the compromise? The answer can be seen in a parallel negotiation with Tanzania, which broke down over the shipping question after discussions among the same group of experts.⁶⁸ The context to this firm line with Thailand and Tanzania is the creation of a precedent ahead of anticipated negotiations with India, where the sums at stake were much larger.

7.4.2 Unexplained non-signatures: Brazil and Nigeria

These are cases in which the competitive pressure model predicts the conclusion of a treaty, but no treaty was signed. These examples, in comparison with the predicted signatures discussed above, illustrate that opposition from the tax specialist community can act as a 'firewall', blocking diffusion through competition.⁶⁹

Brazil

The UK devoted far more time and effort to negotiations with Brazil during the 70s than almost any other developing country. Talks in 1967 had failed, but they were taken up again from 1972, now in the context of Brazil's 'economic miracle', which British businesses wanted to be a part of.⁷⁰ Brazil adopted a 'take it or leave it' approach to certain unconventional demands. A particularly difficult issue for the UK was Brazil's insistence that the UK grant extensive tax sparing concessions. In common with many UK treaties, this would mean crediting the value of a Brazilian tax exemption against the UK company's tax bill as if it had paid full Brazilian tax, but unusually it would also mean doing the same for the reductions in withholding taxes on cross-border payments that Brazil would be able to levy on British investors as a consequence of a treaty. In the words of a Brazilian negotiator, "whilst Brazil does not want the United Kingdom to lose tax, she cannot allow the United Kingdom to collect more tax as a result of the convention."⁷¹ Such a concession required an

⁶⁸ File ref IR 40/17624

⁶⁹ Aside from these examples, there is one other developing country where the data suggest a high competitive pressure and the model predicts a low likelihood of survival, but no treaty was signed, and for which a negotiation file exists. This is Tunisia, which cannot be used as a full case study because the file stops midway through the negotiations, without any explanation for why the countries did not progress to signature until 1982. The Tunisia files do, however, give some indication as to why the discussions took so long. They began in 1974 with a remark by the Tunisian Minister of National Economy that the absence of a treaty "had an inhibiting effect on trade between our two countries." Tunisia's motivation appears to have been tax sparing credits, but an Inland Revenue memo mid-negotiations in 1977, states that, "we doubt whether, in fact, the agreement will be of substantial benefit to either side... Tunisia is a small country with no great resources or potential to attract United Kingdom investment and it is unlikely that a double taxation agreement will basically alter this." A letter from the CBI concurs that "there is very little interest from our members." While there may have been competitive pressure in Tunisia that is reflected in the data, there evidently was not in the UK. File ref IR 40/19055

⁷⁰ Negotiating history summarised in "Brazil Brief 16: Double Taxation Relief Agreement", 25 August 1974. File ref IR 40/19025. The recommencement of negotiations is recorded in file ref IR 40/17189. The civil service files include a clipping from the Financial Times discussing Brazil's "economic miracle".

⁷¹ F Dornelles, recorded in a note of talks in Brazilia, October 1974. File ref IR 40/19025

amendment to section 497(3) of the Income and Corporate Taxes Act 1970 in the UK, the provision that gave effect to tax treaties, and this was passed in 1976. There was also concern, however, at Brazil's proposed treatment of royalty payments to the UK, which would have seen them taxed as foreign payments, but without (as was normal) allowing companies to deduct the value of the royalty payments from the profits against which they paid tax.⁷²

Several European countries, including France and Germany, had reached agreement with Brazil, which both increased the pressure on the Inland Revenue and reduced their leverage in negotiations. British companies "are undoubtedly at a competitive disadvantage as compared with companies from other countries," noted a background brief in August 1974.⁷³ "Pressure for an agreement with Brazil comes from the DTI, ODA, our Embassy in Brazil and, although perhaps to a lesser extent, from the CBI, in particular RTZ," wrote an Inland Revenue official in November 1973.⁷⁴ In October 1974, a memo from the Department of Industry to the Inland Revenue pressed the case for a treaty, citing "specific evidence of orders being lost by British companies apparently because of their relatively lower post-tax returns forcing them to quote higher prices in compensation."⁷⁵ With no movement by December, the Department of Trade weighed in, beginning a correspondence between its Secretary of State, Peter Shore, and Chancellor of the Exchequer Denis Healey.⁷⁶

The pressure from businesses, then, did not come directly on the Inland Revenue, but via other ministries. In fact, tax specialists within British businesses reassured the Revenue that they were broadly in agreement with its view that the Brazilian terms were unacceptable.⁷⁷ At one point, an internal Inland Revenue note contrasted the position of "the non-fiscal voices" within the CBI with that of "the CBI's Tax Committee, as a Committee of tax experts."⁷⁸

As the pressure ratcheted up, the Inland Revenue called a special meeting with its regular interlocutors, tax specialists within British multinationals. The latter group agreed with the Revenue that Brazil's terms on royalties would be detrimental in the long term, in view of the precedent that would be set:

⁷² Minutes of meeting between Inland Revenue and CBI double taxation group, 6 August 1975. File ref IR 40/19025.

⁷³ "Brazil Brief 16: Double Taxation Relief Agreement", 25 August 1974. File ref IR 40/19025.

⁷⁴ Memo from D Hopkins, Inland Revenue, 9 November 1973. File ref IR 40/19025.

⁷⁵ "Brazil Brief 16: Double Taxation Relief Agreement", 25 August 1974. File ref IR 40/19025.

⁷⁶ Letter from P Shore, 12 December 1974. File ref IR 40/19025. (In 1974 the Department of Trade and Industry was split into two separate departments)

⁷⁷ See for example letter from FN Harvey, CBI, 12 January 1976. File ref IR 40/19025.

⁷⁸ Memo from Private Secretary to the Minister of State, 5 May 1976. File ref IR 40/19025.

the CBI Secretariat (but not the Overseas Tax Panel) are well aware of the powerful trade and political pressures in favour of having an agreement (apparently any agreement) with Brazil which he [Mr Morant of the CBI] thought could lead to an explosion in the autumn. His personal view was that the Revenue and Treasury Ministers could be under pressures from other Ministers which might lead to an agreement, in spite of the unsatisfactory features that had been discussed. Much of the pressure is based on ignorance of the effects of unilateral relief and of the likely terms of a treaty, and it appears that much of it is generated in Brazil and by companies whose only overseas operations are, or are likely to be, in Brazil and which operate on the basis of official handouts.⁷⁹

Minutes of the meeting and a follow-up letter from the CBI record the industry tax experts' frustration at being unable to correct their colleagues' "ignorance" because of the confidential nature of their meetings with the Inland Revenue.⁸⁰

In 1976, British negotiators were able to travel to Brasilia with their new legislative mandate on tax sparing, but with instructions "to refrain from agreeing to the unacceptable features of Brazilian law which they wish to enshrine in the treaty, but to avoid a breakdown in the talks."⁸¹ While the negotiations didn't create any further progress, the visit was illuminating for revenue officials. In negotiations, the head Brazilian negotiator (as reported by British negotiators) "frankly admitted that the treatment of royalties was unsound tax practice but made it clear his hands were tied," because of what the minutes describe as "a political decision."⁸²

The Brazilian officials' frustration at political constraints preventing an agreement is revealed more sharply still by a note of comments made by another negotiator over dinner:

Dornelles' No2 (Noqueira) at a dinner given for us last night by the Ministry of Finance told me that they are extremely anxious to get a treaty with the U.K. because their chances of getting one with the U.S.A, Switzerland or the Netherlands are ranked as nil. Switzerland is now second largest investor and will not even discuss a treaty on 'German package' lines. The U.S.A. have an annual meeting with the Brazilians for window dressing purposes only. The Netherlands merely write once a year to enquire whether there has been any change in Brazil's policy.⁸³

After the negotiations, British officials held several meetings with business representatives in Rio de Janeiro. Following this meeting, they reached the conclusion that, with one small exception that could probably be resolved unilaterally, there was no genuine problem with double taxation for most firms, despite the idiosyncrasies of the Brazilian tax system. "The impression all three of us got," wrote the chief negotiator, "was that the business community in Brazil were doing very well indeed and that a tax treaty would be a bonus rather than a matter of life or death to them... They would not be at all impressed with [a treaty] which

⁷⁹ Memo from AH Smallwood, Inland Revenue, 7 August 1974.

⁸⁰ Letter from Paul Moran, CBI, 26 September 1975. File ref IR 40/19025.

⁸¹ Telegram, 24 May 1976. File ref IR 40/19025.

⁸² Reported in telegram from B Pollard, 26 May 1976. File ref IR 40/19025.

⁸³ Reported in telegram from B Pollard, 26 May 1976. File ref IR 40/19025.

served only to confirm the undesirable features of Brazilian law.”⁸⁴ He concluded that the FCO’s picture of British businesses’ views may have been distorted by the Consul General in Rio de Janeiro, who had become “positively paranoid about the whole question of a tax treaty with Brazil and has got past the stage, if he was ever there, of being able to consider objectively the arguments against accepting the Brazilians’ terms.”⁸⁵

The Brazil files stop at the turn of the 1980s, but the same debate continues. In 1992, in a separate file, an Inland Revenue official wrote that “Brazil continues to be the big prize: but it is not ripe for an immediate approach and what indications there are suggest that it will be a difficult nut to crack.”⁸⁶ The absence of a treaty with Brazil is still raised by British business lobby groups today, and was mentioned in parliament in 2014, when the UK-Zambia treaty was ratified: according to the Minister responsible, the UK and Brazil still cannot agree on terms.⁸⁷

Nigeria

The story of the UK-Nigeria tax treaty runs for 25 years, from Nigeria’s original request to renegotiate a colonial-era agreement in 1963, through to the final signature of a treaty in 1987. The original request related to Nigeria’s desire that inward investors from the UK be eligible for tax sparing credits in the UK.⁸⁸ The UK proposed a draft agreement, and comments were exchanged during the early 1960s. In 1969, the Inland Revenue decided not to press for renegotiation “since the UK would only stand to lose by a new agreement which was bound to be less favourable than the old.”⁸⁹ This came against opposition from the High Commission and Foreign Office, which favoured renegotiation to include tax sparing credits.⁹⁰ Negotiations only began in earnest when Nigeria announced the abrogation of all its colonial era tax treaties in 1978, and the concurrent imposition of new taxes on air and shipping companies.⁹¹

A telegram from the Inland Revenue to the British embassy in Lagos noted that the government “is very concerned at serious implications of termination of Double Taxation Agreement for British airline and shipping companies,” and asked the embassy to request immediate renegotiations “in view of the strength of representation already being made here

⁸⁴ Memo from B Pollard, Inland Revenue, 4 June 1976. File ref IR 40/19025.

⁸⁵ Memo from B Pollard, Inland Revenue, 4 June 1976. File ref IR 40/19025.

⁸⁶ Memo from JB Shepherd, Inland Revenue, 14 July 1992. File ref IR 40/17808.

⁸⁷ Delegated Legislation Committee, 30 June 2014

⁸⁸ Note addressed to the British High Commission, 21 January 1963. File ref IR 40/14909.

⁸⁹ “Historical background to talks”, 13 September 1978. File ref IR 40/17629.

⁹⁰ Correspondence in file ref FCO 65/1231

⁹¹ The note terminating the Nigeria-UK treaty is dated 29 June 1978. File ref IR 40/17629.

at senior official level and the probability of escalation to Ministerial level in the near future.”⁹²

The Nigerian government was willing to sign a new treaty, but according to an Inland Revenue official, its proposed draft “would require us to make concessions which are far in advance of the terms which other developing countries have accepted in treaties with us.”⁹³ Progress was made in the first round of talks, including an agreement limited to air and shipping that relieved some of the immediate pressure on negotiators, but at the second round soon after February 1979 it became apparent to British negotiators that “an agreement on the terms offered would have been unattractive in itself and would have served as an unfortunate precedent for future agreements.”⁹⁴

The main concern was the rate of tax that could be imposed on fees for technical consultancy and management services, on which Nigeria had declared what one negotiator explained was a “total war.”⁹⁵ The British economic arguments against taxation of these management fees carried little weight because Nigeria’s position was to use tax to discourage their payment at all. The Revenue discussed the situation in confidence with tax experts within the CBI, who “share our reluctance to reach an agreement until the Nigerians make concessions.”⁹⁶

The UK position did not change after 1980, but Nigeria did moderate its position, and a new treaty was initialled in 1982. However, the treaty was not actually signed – the variable used in the data – until 1987. The problem seems to have been with the Nigerian treaty approval process, which, unusually, required parliamentary ratification before signature. Although the negotiators on both sides were happy with the treaty, Nigerian officials in other ministries did not take any action to progress the treaty, according to correspondence in the files.⁹⁷

Observations

The starting point for both Nigeria and Brazil, as with the previous two cases, is competitive pressure felt by the UK to sign a treaty with the partner country, because of the need for tax sparing credits. In each case, British businesses were pushing for a treaty. The cases indicate

⁹² Draft telegram, Inland Revenue, 27 July 1978. File ref IR 40/17629.

⁹³ “Taxation brief for Mr Barratt’s visit to Nigeria and meeting with the Director of Inland Revenue: December 1978.” File ref IR 40/17629.

⁹⁴ Letter from AP Beauchamp, Inland Revenue, 18 May 1979. File ref IR 40/17630.

⁹⁵ Letter from DO Olorunlake, Nigerian Federal Inland Revenue Services Department, 17 April 1979. File ref IR 40/17630.

⁹⁶ “Extract from briefing for Chancellor re meeting with Sir David Steel on Tuesday 10/7/79.” File ref IR 40/17630.

⁹⁷ File ref IR 40/17631

that, on the UK side at least, this diffusion was driven by non-specialists, and blocked because specialists had a veto over treaty negotiations.

The difference between these non-signatures and the previous two predicted signatures is whether or not the Inland Revenue was willing to agree to the compromise available. In both unexplained non-signatures, as it had when reaching an accommodation with Thailand, the Revenue consulted with fellow specialists in businesses before deciding to reject the other side's demands. The views of non-specialists who wanted the UK to accept Brazil's terms were dismissed as 'ignorant' by specialists in the civil service and the private sector, who worked together to counter the pressure on the Revenue, because this particular treaty would undermine their collective policy enterprise of the dissemination of 'acceptable' fiscal policy.

The difference between these two non-signatures is that Nigeria eventually responded to the UK digging in its heels by capitulating, while Brazil continued to resist. Why? Drawing conclusions from the UK files is difficult, but we can at least speculate. The Brazilian officials claimed they wanted to accept the UK's terms, and that they accepted the rationale behind the British position, but that they were constrained by political factors preventing them from accommodating the UK. There were 'firewalls' on both sides: the British specialists and the Brazilian non-specialists.

Nigeria's cancellation of a treaty and five-year delay between initialling and signature indicates that it too was more concerned with maximising tax revenues than with any urgent need to sign a tax treaty. So why did it make the concessions? The files don't contain an answer, other than that the climb-down came after Nigeria had negotiated with a clutch of OECD countries, opening up the possibility that its negotiators had learned what developed countries considered 'acceptable' tax practices during earlier negotiations. An internal British note describes the original draft proposed by Nigeria as "an opening bid from a country which has had little recent experience in negotiating double tax conventions."⁹⁸

7.4.3 Unpredicted signatures: Zambia and Bangladesh

These are examples of treaties signed despite an absence of competitive pressure. By contrasting them with cases where the competitive pressure did produce a treaty, I can look for alternative explanatory variables not captured by the model.

⁹⁸ "Taxation brief for Mr Barratt's visit to Nigeria and meeting with the Director of Inland Revenue: December 1978." File ref IR 40/17629.

Zambia

Negotiations with Zambia moved much more quickly than any of those discussed above. An approach by Zambia in 1969 was followed by a single round of negotiations in 1971, at which the treaty was initialled, and signature a year later. Zambia's letter requesting a renegotiation placed an emphasis on the inclusion of tax sparing credits, which is likely to have been the motivation for the renegotiation, since a treaty already existed.⁹⁹ In negotiations, however, Zambia gave up the tax sparing credits offered by the UK when it was told it must choose between this and a withholding tax on royalty payments of 10 percent.¹⁰⁰ Zambian officials made clear that the royalty rate was of crucial importance, despite the fact that royalty flows were according to British data, 'negligible'.¹⁰¹ That Zambia caved in when faced with this ultimatum, rather than holding on for British concessions in a second round of talks, might be indicative of pressure on negotiators, but it is inconsistent with the original request for negotiations. It seems that on Zambia's side the negotiations were not characterised by a clear government policy based on a rational expectation that certain features of a tax treaty would attract investment (see chapter 8).

As the Brazil case study illustrated, however, tax sparing credits were often a priority for British businesses, as well as for developing countries. Indeed, such a request had been made for the treaty with Zambia during the Inland Revenue's pre-negotiation consultations with industry.¹⁰² The British negotiators wrote to their Zambian counterparts soon after the conclusion of negotiations to offer the tax sparing credit that they had previously withheld, claiming that they had subsequently been pushed by another country to offer similar terms.¹⁰³ Another explanation would be that the UK had been using Zambia's desire for tax sparing credits to try to obtain a lower royalty tax rate, only to have its bluff called.

Bangladesh

The UK approached Bangladesh about a treaty in 1976. A background note in the file states that "there is not much pressure in the United Kingdom for a treaty with Bangladesh,"¹⁰⁴ and yet not only were the negotiations initiated by the UK, but pressure for talks was exerted at head of state level ("we had earlier made the running and it had required intervention with General Zia personally to get things moving," according to a memo).¹⁰⁵ According to the background note, the UK's initiation of the treaty was "partly because other countries had

⁹⁹ Communication from the Zambian Ministry of Foreign Affairs, 12 September 1969. File ref IR 40/16974

¹⁰⁰ Minutes of negotiation between UK and Zambia, London, 24-27 May 1971. File ref IR 40/16974

¹⁰¹ Pro forma sheet dated 5 May 1971. File ref IR 40/16974

¹⁰² Letter from EL Gomeche, CBI, 26 June 1970. File ref IR 40/16974

¹⁰³ Letter from JA Johnstone, Inland Revenue, 2 July 1971. File ref IR 40/16974

¹⁰⁴ Memo from A Wilkinson, Inland Revenue, 9 September 1977. File ref IR 40/18445

¹⁰⁵ Telegram from O'Neill, FCO, 5 November 1976. File ref IR 40/18445

opened negotiations with Bangladesh.”¹⁰⁶ Bangladeshi negotiators subsequently indicated that they were very keen to initial a treaty with the UK, and to do so before they reached agreement with other countries with which they were negotiating.¹⁰⁷ During the second round of negotiations in Dhaka, the head of state General Zia was given daily updates on progress.¹⁰⁸

The main points of contention were shipping, where different positions were resolved by leaving this out of the treaty, as had been done with Thailand, and withholding tax rates.¹⁰⁹ On the latter, the discussion was quite difficult, with a Bangladeshi negotiator arguing that the UK should break precedent because it was “practically the poorest of the world’s underdeveloped countries,” to which his UK counterpart responded that “the United Kingdom did not regard a double taxation convention as a vehicle for giving financial aid, no matter how deserving the partner country.”¹¹⁰ Despite this, agreement was eventually reached, and the treaty was signed in 1979.

Observations

As anticipated in the data, neither negotiation resulted from serious competition for inward or outward investment, in the sense that there was no anticipation that British firms were in need of either treaty to maintain their competitive position, nor that they would commit more investment to the developing countries as a result of the treaty. The qualitative evidence thus supports the quantitative. This finding is supported by a comparison with the predicted signatures, and indeed the unexplained non-signatures, where the quantitative and qualitative data indicate much stronger competitive pressure.

Nonetheless, a competition mentality does seem to have played a part in the initiation of negotiations between the UK and Zambia and Bangladesh, suggesting that these countries’ approach to identifying treaty partners was not consistent with the rational model of competition on which case selection is based. This was a boundedly rational approach by which the UK, Zambia and Bangladesh all seemed to develop a preference for signing a treaty even though one was unlikely to have a significant positive effect, but would have a cost for the developing country (and indeed for the UK if it agreed to a ‘tax sparing’ clause).

In the Bangladesh case, this applied on both sides, with the UK seeking to open negotiations because competitor countries had signed treaties, even though there was no expectation of an

¹⁰⁶ The other main reason was requests from businesses who were having trouble remitting income from Bangladesh that had been generated before independence, rather than for tax reasons.

¹⁰⁷ Briefing note for “Double Taxation Talks with Bangladesh”, 27-29 July 1977. File ref IR 40/18445

¹⁰⁸ Briefing note for “Double Taxation Talks with Bangladesh”, 27-29 July 1977. File ref IR 40/18445

¹⁰⁹ Minutes of negotiation between Bangladesh and UK, 27-29 July 1977. File ref IR 40/18445

¹¹⁰ Minutes of negotiation between Bangladesh and UK, 27-29 July 1977. File ref IR 40/18445

increase in investment. Zambia's request for renegotiations with the UK came at the same time as it negotiated with several others, seemingly with the aim of securing tax sparing credits: from 1970 to 1984, Zambia concluded 12 treaties, all of which provided for tax sparing credits.¹¹¹ As chapter 8 will illustrate, this negotiating frenzy did not depart from a rational or comprehensive assessment of costs and benefits.

It is interesting that in both these cases, where competitive pressure seems to have been relatively weak, agreement was reached more quickly and easily than in the cases described earlier, where pressure was stronger. Although in both cases the sides differed on matters of principle, they were quickly willing to make concessions. This is counterintuitive, since the absence of competitive pressure to reach agreement would be more likely to encourage negotiators to stick to positions that maximised tax revenue. One possibility is that the small amount of competitive pressure in these cases corresponded to small amounts of investment, which meant that the stakes for both sides from making concessions were lower. Another is that the developing country's interest in negotiations in spite of the lack of competitive pressure is indicative of poor policymaking capability, which translated into a weaker negotiating stance.

7.5 Conclusion

The UK in the 1970s is a quintessential example of a country whose tax treaty network appears from the quantitative data to have been driven by tax competition. This is usually assumed in policy discourse and in the academic literature to have been competition among developing countries to attract British investment. By examining civil service documents I have demonstrated that this interpretation is incomplete. In the predicted signatures as well as the unexplained non-signatures, the data actually seem to have captured competition by the UK for outward investment opportunities. The case in which successful negotiations followed a request from the developing country (Zambia) was actually an outlier not predicted by the model.

A further disaggregation into different stakeholders allows us to see the scope conditions under which this competition effect worked. The difference between the signatures and non-signatures was whether or not the terms on which agreement could be reached constituted 'acceptable fiscal standards', the export of which was the policy project pursued by tax specialists in the UK (and, the files suggest, their colleagues in other OECD countries). For these specialists, the aim was to bring order to international fiscal anarchy by ensuring that

¹¹¹ Two exempted dividends paid to direct investors from tax in the home country entirely, which had the same effect.

multinational firms were taxed according to rules that they had formulated through the OECD. Competition and business pressure were only effective in so far as the specialists could be persuaded that the terms of an agreement were consistent with this aim, because the UK treaty-making apparatus gave them a veto, and they were further insulated by the technical obscurity of tax treaties that prevented other stakeholders from influencing their activities.

Importantly, the ‘in group’ for decision making within the UK was not defined by occupation, but by specialism. Private sector officials who had a tax specialism were brought inside the tent, and their views were influential in decisions made by the Inland Revenue in the Brazil, Nigeria and Thailand cases. Information readily supplied to the business tax experts was at the same time withheld from government officials from other departments on the grounds of confidentiality, and their views dismissed as ‘ignorant’. Even the government ministers supervising tax officials were unable to exert influence because they lacked the technical understanding.

The difference between the correct and incorrect predictions of signature, as expected, was whether or not there was substantial pressure from British businesses to sign a treaty, as anticipated by the data. In each case, the developing country seems to have been interested in concluding an agreement, but less clear about how it would attract investment, and yet more willing to make concessions. This illustrates that few developing countries at this point in time had clearly defined negotiating positions or analyses of the likely impact of tax treaties. Instead, boundedly rational competition for inward investment appears to have driven their negotiating stances, a suggestion that the next two chapters will explore more fully.

8 Zambia

They ask for an arm and a leg and you give them both legs.

- Zambian government official¹

This chapter complements the previous one by considering the other end of negotiations, in a developing country.² One of the few negotiations between the UK and a developing country during the 1970s that was initiated by the developing country itself was the 1972 treaty with Zambia. In comparison with other agreements signed by the UK at the time, this was an easy negotiation for the UK, in which Zambia did not gain an outcome that protected many of its source taxing rights. The surprising thing about Zambia's actions towards the UK, which were typical of its broader approach to tax treaties, is that the competitive pressure on the Zambia-UK dyad, and on Zambia in general, was small, compared to other dyads where treaties were signed during this period.

Zambia is a moderate outlier, which had a higher than expected propensity to sign tax treaties during 1970-9, and a lower than expected propensity during 2003-12. During the 1970s, it signed ten tax treaties, with countries of Western Europe and Japan. No other sub-Saharan country signed so many: Kenya and Tanzania, the next closest by number of signatures, signed six each.³ In contrast, from 2003-12, a period when sub-Saharan countries signed 72 treaties between them, Zambia signed just three, with China, Mauritius and the Seychelles. All of them were signed late in the decade, despite evidence that negotiations began much earlier.

The selection of a positive outlier is consistent with my model building strategy, whereby I identify cases that seem to be explained by something other than rational competition for investment. In Zambia in the 1970s, a context where nobody in the bureaucracy had a detailed knowledge of international tax, the idea that treaties would attract investment took hold, but the sacrifice of taxing rights made by Zambian negotiators was much greater than was necessary to secure treaties. The large tax revenue from Zambia's mining industry during the early 1970s made information about the costs of the treaties Zambia was negotiating less important to those driving the negotiations.

¹ Interview 44

² Some of the evidence and analysis in this chapter has been published in another form. See Hearson, *Tax Treaties in Sub-Saharan Africa: A Critical Review*.

³ IBFD, "IBFD Tax Research Platform."

Zambia was also an outlier during the 2000s, but this time in the other direction, signing a much smaller number of treaties than predicted. Examining this period enables me to identify scope conditions for diffusion that were not fulfilled. I conclude that ministers and senior officials, who were veto players in the ratification process, were concerned about the fiscal costs of tax treaties, since Zambia's tax/GDP ratio had declined since the 1970s, and multinational corporate tax was becoming increasingly politicised. Tax treaty officials, exposed to external advice and socialising environments, came to adopt the ideas about tax treaties that had disseminated through the international expert community. This led to support for the policy project of a network of tax treaties promulgating standards formulated by that community, regardless of any effect on investment. But this mechanism was blocked by the non-specialists, whose main concern was protecting tax revenues.

Table 8.1: Phases of treaty negotiation in Zambia

Dates	Main mechanism	Scope condition		Outcome
1970-79	2. Competition for inward investment	Fiscal costs not salient	Present	Rush to negotiation
2003-12	3. Dissemination of standards	Specialist control of veto points	Absent	Negotiations blocked

Source: Author's own

8.1 1970-9

This first time period was studied primarily using historical documentary sources. These include negotiation correspondence and meeting minutes from Zambia's negotiation with the UK, obtained from the British national archives, and informal intelligence on Zambia's broader treaty negotiation programme, from the same files and from US diplomatic cables.⁴ I also use written accounts from individuals involved in economic policymaking in Zambia at the time, and official documents published by the Zambian government, in particular the annual reports of its Commissioner of Taxes, which include sections on tax treaty negotiations. Telephone and email interviews were also conducted with two former advisers to the Zambian government during the 1970s who have published work about their experiences, Charles Irish and Andrew Sardanis.⁵

While the first tax agreement signed by Zambia after independence was with regional neighbours in the East African Community, in 1968, Zambia soon sought to obtain new

⁴ Wikileaks, "Public Library of US Diplomacy."

⁵ Irish, "International Double Taxation Agreements and Income Taxation At Source"; Irish, "Transfer Pricing Abuses and Less Developed Countries"; Sardanis, *Zambia: The First Fifty Years*.

agreements with developed countries, focusing first on countries with which it had not inherited an agreement from colonial times. This first wave of negotiations included Japan, Ireland, Italy, Germany, Denmark and (unsuccessfully) India and Pakistan (Table 8.2). These negotiating priorities follow quite closely the pattern of Zambia's main sources of foreign investment at the time (Table 8.3). While the signatures came in the early 1970s, many of the negotiations appear, technically, to have taken place before this date, as the detailed timeline of treaty negotiations in Table 8.2 shows.

Table 8.2: Zambian negotiations during 1970-1979

Partner	Colonial agreement inherited?	Negotiations opened	Agreement reached	Signed	In force
Japan	No	1967	1968	1970	1971
Ireland	No	1967	1968	1971	1972
Italy	No	1968	1971	1973	*
Germany	No	1968	1971	1974	1976
Denmark	No	1971	1972	1974	1975
Norway	Yes	1971	1971	1971	1973
United Kingdom	Yes	1971	1972	1972	1973
France	Yes	1971	*	*	*
Sweden	Yes	1971	1971	1974	1976
United States	Yes	1972	*	*	*
Netherlands	Yes	1978	1978	1978	1982
Switzerland	Yes	*	*	*	*
Finland	No	1979	1979	1979	1986
India	No	1968	*	*	*

Source: Reports of Zambia Commissioner of Taxes, 1967-1974; IBFD⁶

In his 1968 report, the Commissioner of Taxes also announced a plan to review and renegotiate the country's colonial-era agreements.⁷ At independence in 1964, Zambia had, like other former British colonies, inherited a set of tax treaties signed on its behalf by Britain. There were six treaties with European countries, one with the United States, and a collective one with Kenya, Tanzania and Uganda - the East African Community countries. Colonial era agreements between developed and developing countries tended to restrict the latter's right to tax quite considerably, in a manner that was inconsistent with the newly founded states' need to finance themselves, a state of affairs that provoked many developing countries to cancel or renegotiate these treaties.⁸

⁶ IBFD, "IBFD Tax Research Platform."

⁷ Knoetze, *Report of the Commissioner of Taxes, 1966/7*.

⁸ Irish, "International Double Taxation Agreements and Income Taxation At Source:"

Table 8.3: Foreign investors in Zambia's state-owned enterprises, 1974

Country	Colonial agreement inherited?	Industry
Canada	No	Mining, brewing
Germany	No	Chemicals
Italy	No	Road transport, Oil & gas, Manufacturing, Engineering
Japan	No	Chemicals
Liechtenstein	No	Manufacturing
Romania	No	Mining
South Africa	Yes	Mining
Sweden	Yes	Manufacturing
Tanzania (government)	Yes	Road transport, Oil & gas
UK	Yes	Mining, Import/export houses, Oil & gas, Brewing, Sugar, Chemicals, Manufacturing, Building supplies, Milling
US	Yes	Mining, Manufacturing

Source: Shaw⁹

The Zambian review seems to have taken several years to get off the ground, and most of the renegotiations took place in around 1971-2.¹⁰ Not every one of Zambia's treaty partners agreed to reopen its existing treaty with Zambia: it did try with France, in particular, but unsuccessfully. Some recently independent countries, such as Kenya, Uganda, and later Nigeria, chose to abrogate their treaties in such circumstances, to force countries to the table and secure a better deal; others, such as Malawi, concluded that renegotiation was not a priority at all.¹¹ Zambia, on the other hand, opted for a piecemeal approach, renegotiating individual treaties to replace old agreements where it could. As a result, its colonial era agreements with France and Switzerland remain in force to this day.

8.1.1 Diffusion driven by competition for inward investment

What were Zambian negotiators trying to achieve? It is clear that investment promotion was a priority. One of the first Acts passed by the new Government of Zambia was the 1965 Pioneer Industries (Relief from Income Tax) Act, which granted tax incentives to encourage investment in sectors outside of the dominant mining sector, and in the non-mining areas of the country.¹² Many foreign investors were unable to secure the full benefits of these tax incentives, however, because their lower tax bill in Zambia simply led to a higher tax bill in their home country.

⁹ Shaw, "The Foreign Policy System of Zambia," 44-46.

¹⁰ Luhanga, *Report of the Commissioner of Taxes, 1970/1*; Chiwenda, *Report of the Commissioner of Taxes, 1971/2*.

¹¹ Irish, "International Double Taxation Agreements and Income Taxation At Source:" contrasts Kenya and Malawi, while Nigeria is discussed in Chapter 7 of this thesis

¹² Saasa, "Zambia's Policies towards Foreign Investment: The Case of the Mining and Non-Mining Sectors," 30.

Zambia thought that the inclusion of a ‘tax sparing’ provision in a tax treaty would resolve this issue, giving full effect to the incentives outlined in the 1965 Pioneer Industries Act. All of the 11 treaties concluded between Zambia and OECD member countries during the 1970s and 1980s provided explicitly for tax sparing credits, or else contained provisions that had the same effect.¹³ The priority accorded to the tax sparing clause is illustrated in the formal letter from Zambia to the UK, requesting that negotiations be opened:

In recently negotiated Agreements, Zambia has followed substantially the O.E.C.D. Draft Convention and it is suggested that any new Agreement should substantially follow this Draft Convention. Zambia would, in particular, wish to discuss matters arising from the operation of the *Zambian Pioneer Industries (Relief from Income Tax) Act*.¹⁴

While the treaties may have improved the effectiveness of Zambia’s investment promotion measures, by the time that they were concluded they also undermined some of its newer policies towards foreign investors. From 1968 onwards, Zambia attempted to balance investment promotion with other concerns: preventing the repatriation of capital by investors, increasing the participation of Zambian entrepreneurs in the country’s economic development, and a rebalancing of the government’s tax base away from large but volatile mining revenues. The reform agenda began with President Kaunda’s 1968 ‘Mulungushi’ and ‘Matero’ declarations, which announced the partial nationalisation of the non-mining and mining industry respectively.¹⁵

According to Andrew Sardanis, an expatriate civil servant who helped design them, the Mulungushi reforms were designed “to give space to African businessmen to develop away from competition from better financed and more experienced foreign-owned enterprises.”¹⁶ Financial Times journalist Antony Martin argues that the reforms were inspired in part by “a growing awareness that it would be futile for Zambia to rely primarily on foreign investment for its development.”¹⁷

As the copper price began to fall in 1971-2, the government tightened exchange controls and imposed import licensing restrictions to tackle its declining balance-of-payments deficit.¹⁸

There was growing concern that, as Ann Seidman explains:

an increasing portion of the after-tax surpluses in the private sector was removed from the country - even after the economic reforms of 1968 and 1969 -largely in the way of profits, interest, dividends, compensation for government acquisition of shares in

¹³ Two exempted dividends paid to direct investors from tax in the home country entirely.

¹⁴ Communication from the Zambian Ministry of Foreign Affairs, 12 September 1969. File ref IR 40/16974

¹⁵ Kaunda, *Zambia’s Economic Revolution : Address at Mulungushi, 19th April, 1968*.

¹⁶ Sardanis, *Zambia: The First Fifty Years*, 67.

¹⁷ Martin, *Minding Their Own Business : Zambia*.

¹⁸ Seidman, “The Distorted Growth of Import-Substitution Industry: The Zambian Case,” 620.

industries, and salaries for expatriates. Together these totalled almost K200 million in 1971...about a third of Zambia's investible surpluses¹⁹

Kaunda delivered a speech in 1973 criticising the mining companies, complaining among other things that, "in the last three and a half years...they have taken out of Zambia every ngwee [penny] that was due to them."²⁰ As well as dividend repatriation, Kaunda complained that agreements with the mining companies permitted them to "provide sales and marketing services for a large fee. Although most of this work is performed in Zambia the minority shareholders have entered into separate arrangements with non-resident companies for reasons best known to themselves."²¹

8.1.2 Positive scope condition: low salience of the tax/GDP ratio

At the turn of the 1970s, Zambia's tax-to-GDP ratio was a phenomenal 34 percent.²² This is comparable with the rate in OECD countries today, and more than double the average for sub-Saharan countries.²³ It is no surprise, therefore, that Zambia's treaty negotiations at the turn of the 1970s were not driven by a technical analysis of the actual effects of these treaties' negotiated content, and that negotiators had made no attempt to cost them. The report of Zambia's Inspector of Taxes in 1972/3 quotes the cost of the reduced withholding tax rates in treaties in force at that time, expressed as refunds to taxpayers from the domestic law rate. "An increase in claims for refunds is expected," it notes, "but no estimate of the total refunds can be made."²⁴

The withholding taxes on interest, royalty, technical fee and dividend payments made to overseas recipients had been introduced in 1971 and 1972, after agreement was reached on the new tax treaties, but before they were signed. They were primarily concluded as part of efforts to limit the repatriation of capital and support diversification of the economy in the context of falling copper prices, but the government also recognised that:

Only with a significant increase of the fiscal revenues from sources outside the mining sector will it be possible to maintain the share of fiscal revenue in the GDP at a level of about 34 percent.²⁵

Despite difficulties in administrating them effectively, the new withholding taxes were also significant in revenue terms. By 1974, they were already raising 17 million kwacha, out of

¹⁹ Ibid., 611.

²⁰ Quoted in Sardanis, *Zambia: The First Fifty Years*, 97.

²¹ Quoted in *ibid.*

²² Zambia Ministry of Development Planning and National Guidance, *Second National Development Plan, January, 1972-December, 1976*.

²³ Prichard, Cobham, and Goodall, *The ICTD Government Revenue Dataset*.

²⁴ Chiwenda, *Report of the Commissioner of Taxes, 1972/3*, 6.

²⁵ Zambia Ministry of Development Planning and National Guidance, *Second National Development Plan, January, 1972-December, 1976*.

total government revenue of 628 million.²⁶ They could have raised more, but the newly implemented agreements with Ireland, Japan, Norway and the UK were already costing Zambia ten percent of its potential revenue from the dividend withholding tax.²⁷ All the treaties prevented Zambia from imposing withholding taxes on technical and management fees, and capped the taxes it could levy on the other types of payment. But the first two agreements to be reached, with Japan and Ireland, also ruled out any withholding taxes on dividends and (in the Irish case) interest and royalties altogether. Because most of Zambia's foreign investment came from treaty partner countries, these agreements significantly blunted the effectiveness of withholding taxes, as both revenue-raising and exchange control policies. It appears that, with such a high tax-to-GDP ratio, nobody was looking closely at the impact of tax treaties, especially in the earliest negotiations.

8.1.3 Low technical knowledge enabled diffusion

In late 1972, Charles Irish, a three years-qualified American lawyer, arrived as a lecturer at Zambia University and an adviser to Zambia's finance ministry. Irish was aghast at what he regarded as the unfair nature of the tax agreements signed by Zambia with developed countries (he referred to it as a 'bias for residence' taxation). He described the agreement with Germany as 'horribly inequitable', while negotiators from the United States, "were putting forward a treaty that was so one-sided it should have made them blush."²⁸

In 1974, Irish published a paper castigating the system, singling out the withholding tax revenue lost by Zambia through its treaties with the UK, US, Germany and Japan. He wrote:

The practical effect of the present network of double taxation agreements between developed and developing countries is to shift substantial amounts of income tax revenues to which developing countries have a strong legitimate and equitable claim from their treasuries to those of developed countries. Concomitantly, these double taxation agreements result in a very considerable and unnecessary loss of badly needed foreign exchange reserves for developing countries. In other words, the present system of tax agreements creates the anomaly of aid in reverse - from poor to rich countries.²⁹

According to Irish, negotiations at this time were pushed by a finance minister and his permanent secretary seeking to send a signal to investors, with little regard to the content. Interviewed in 2014, Irish stated that Zambia's negotiating strategy was not based on an analysis of the technical detail of treaties:

My impression of that time was that the revenue concerns were of less importance than the prestige concerns, and if you were able to conclude a tax treaty with the UK or the US then that was seen at the time in the minds of policymakers as opening the

²⁶ Bwalya, *Report of the Commissioner of Taxes, 1973/4*.

²⁷ *Ibid.*, 21–22.

²⁸ Interview 42

²⁹ Irish, "International Double Taxation Agreements and Income Taxation At Source:"

door to the possibility of foreign investment from those countries. There wasn't a very good awareness of the revenue consequences of the treaties, not very much at all.³⁰

In his paper, he concluded that developing countries “feel compelled to accept any double taxation agreement in order to remove impediments to foreign investment contained in the internal tax systems of developed countries and to provide assurances of stability to foreign investors” and were “unaware of the adverse nature of tax agreements with a bias for residence.”³¹

Andrew Sardanis, an expatriate who was permanent secretary to the finance ministry in 1970-1, concurs. Zambia's treaty with Ireland remains a stand-out example of a one-sided treaty, leaving Zambia with very few taxing rights at all. According to Sardanis:

The fact is that most of the times, we let the other side write the agreements... We were all very raw in those days and we also had our likes and dislikes. We liked Ireland because of its history of conflict with the UK and because many Irish in Northern Rhodesia were sympathetic to us during the period of apartheid.³²

Three organisational factors are likely to have exacerbated the failure to fully appreciate the consequences of treaty negotiations. First, there was the ongoing problem of, in Irish's words, a civil service “dominated by people who didn't have very much formal education” lacked technically adept bureaucrats who might have scrutinised the content of treaties.³³ This difficulty is corroborated by annual tax commissioners' reports, which outline the department's ongoing struggle to recruit, train and maintain skilled staff. Successive commissioners complained of poor facilities, lack of sufficient budget, and failure to fill more senior posts with competent staff.³⁴ Little wonder then that, in Charles Irish's words based on his experience in Zambia, “the income tax departments of developing countries are woefully undertrained and understaffed and are barely able to cope with the administration of domestic tax laws, much less give serious consideration to complex international tax matters.”³⁵ For the Ministry of Finance it was the same, according to a study of mineral taxation reforms, which notes that “Zambia did not have the needed cadre of technically-trained public officials and professional economists to contest the companies' claims.”³⁶

This was compounded by a second factor, President Kaunda's predilection for moving ministers and senior officials between posts on an almost annual basis. Dennis Dresang and

³⁰ Interview 42

³¹ Irish, “International Double Taxation Agreements and Income Taxation At Source:”

³² Interview 53

³³ Interview 42

³⁴ Bwalya, *Report of the Commissioner of Taxes, 1973/4*, 12; Chiwenda, *Report of the Commissioner of Taxes, 1971/2*.

³⁵ Irish, “International Double Taxation Agreements and Income Taxation At Source:”

³⁶ Curry, “Problems in Acquiring Mineral Revenues for Financing Economic Development: A Case Study of Zambia during 1970-78,” 42.

Ralph Young describe a “merry-go-round” in ministerial posts, the product of political and later economic instability within the government.³⁷ From 1965 to 1975, ministerial reshuffles or organisational changes that shifted ministerial responsibilities took place every ten months,³⁸ while the average period of a permanent secretary in post was 18-24 months.³⁹ The post of tax commissioner, with responsibility for tax treaty negotiation, was occupied by a different person each year from 1970 to 1974. The Ministry of Finance changed Permanent Secretaries at least four times in six years between 1967 and 1974.⁴⁰

The negotiation minutes and correspondence from Zambia’s negotiations with the UK bear out Irish’s assertion that this state of affairs led to tax treaties “too often the product of unquestioned acceptance of the developed country’s position after little or no substantive negotiation.”⁴¹ Zambia’s negotiations with the UK in 1971 were carried out personally by the newly-appointed EC Chibwe, on a whistlestop tour of European capitals, flanked by two officials from other departments who did not appear to speak in the negotiations.⁴² The Zambia-UK treaty was initialled in less than four days, an unusually easy negotiation. Notably, having emphasised the tax sparing clause in its letter requesting an agreement (written under a previous tax commissioner), Zambia’s negotiators dropped this demand – apparently the main original motivating factor for the treaty – when forced to choose between it and a retaining the right to levy a higher withholding tax on royalty fees.⁴³ Furthermore, the competitive pressure model does not predict a treaty with the UK at all, and UK investors did not consider it to be valuable. It seems hard to sustain the view that Zambian negotiators had a clear idea of why they wanted a treaty with the UK, what they needed to concede to get one, nor that they understood the aspects of the treaty most likely to bring the most costs or benefits.

A third factor was the role that appointments to senior positions played in political patronage, especially during the period when treaty negotiations were underway. Until the institution of the one-party state in 1972, senior posts in the Zambian government were used to balance the representation of different factions in the ruling coalition.⁴⁴ The finance brief came with substantial prestige and was allocated accordingly: it changed hands in 1967 as part of the balancing act, then twice in 1969, when it was first added to the portfolio of Vice

³⁷ Dresang and Young, “The Public Service,” 86.

³⁸ Dresang, *The Zambia Civil Service : Entrepreneurialism and Development Administration.*, 117.

³⁹ Dresang and Young, “The Public Service,” 86.

⁴⁰ Andrew Sardanis mentions three different Permanent Secretaries during this era (Sardanis, *Zambia: The First Fifty Years.*) The third of these, EC Chibwe, Permanent Secretary from 1971, had become Ambassador to West Germany by 1974 (Shaw, “The Foreign Policy System of Zambia,” 55.)

⁴¹ Irish, “International Double Taxation Agreements and Income Taxation At Source;,” 300.

⁴² File ref IR 40/16974

⁴³ See chapter 7.4.3

⁴⁴ Sardanis, *Zambia: The First Fifty Years*, 59; Dresang, *The Zambia Civil Service : Entrepreneurialism and Development Administration.*, 139–142.

President Emmanuel Kapepwe, and then moved to a new post of Minister of Development and Finance.⁴⁵ Zambia's lead tax treaty negotiators, its tax commissioners, were thus operating without any specialist technical support below them, and without any focused scrutiny above them.

Figure 8.1, below, illustrates that the settlements obtained by Zambia in its initial spate of tax treaty negotiations were at the lower bound of the outcomes obtained by other sub-Saharan countries.⁴⁶ It is based on an index of tax treaty content that codes provisions in the treaty based on whether they give taxing rights to the host or home country of an investor. A higher number means the treaty better protects the taxing rights of the host country (i.e., the developing country).

During the late 1970s and 1980s, Zambia's position towards inward investors became, if anything, more favourable, with a relaxation of exchange controls in 1976 and a new package of tax incentives in 1977.⁴⁷ Yet Zambia became a more cautious, better tax treaty negotiator. The agreements signed between 1978 and 1985, with Finland, India and Canada, still follow the pattern of countries with some investment in Zambia (Table 8.3), but these agreements were reached at a much slower pace, and Figure 8.1 shows much improved negotiating outcomes.

By his own account, the presence of an expatriate international tax specialist – Charles Irish – had made a difference.⁴⁸ This is corroborated in US diplomatic cables that record Zambia's negotiations with the US. In October 1973, the US embassy in Lusaka informed the US Treasury that Zambia's ministry of finance “had decided [to] seek [an] agreement more favorable to GRZ [Government of Zambia] in revenue terms than past agreements.”⁴⁹ Instead of just one round of negotiations, the cables indicate that at least three took place.

⁴⁵ Sardanis, *Zambia: The First Fifty Years*, 59; Dresang, *The Zambia Civil Service: Entrepreneurialism and Development Administration*, 139–142.

⁴⁶ For example, Zambia's treaty with the UK, signed in 1972, was much less favourable to Zambia than Kenya's which was signed in 1973. British negotiating records make clear that Kenya was much more focused on renegotiating an agreement with a wider scope for it to impose withholding taxes than the colonial agreement it inherited. Negotiations broke down over this point, until Kenya cancelled the colonial era agreement, and even once the two sides had reached an agreement, Kenya sought and obtained further concessions from the UK before ratifying. Tellingly, Kenya's negotiating team included an expatriate civil servant from the UK as well as the Kenyan lead negotiator; Kenya also attended meetings of the United Nations ad hoc committee on tax treaties, and negotiators frequently bolstered their positions with reference to what they had learnt in discussions there.

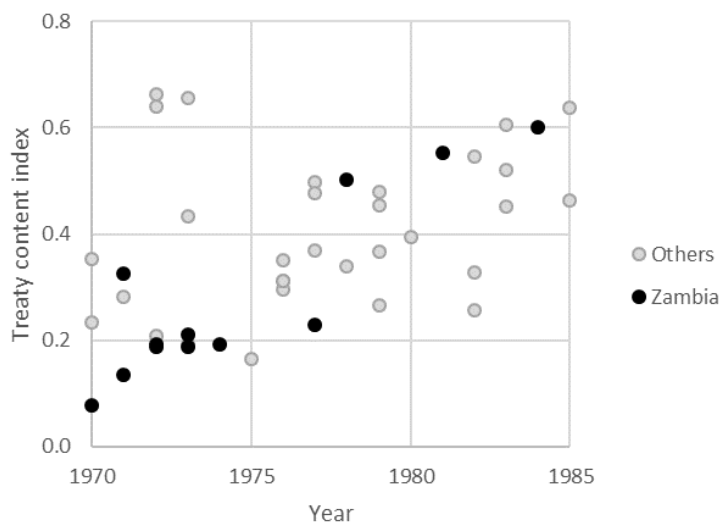
⁴⁷ Curry, “Problems in Acquiring Mineral Revenues for Financing Economic Development: A Case Study of Zambia during 1970-78,” 46.

⁴⁸ Interview 43

⁴⁹ “Income Tax Treaty Negotiations”, 11 October 1973, US diplomatic cable ref 1973LUSAKA01854_b. Source: Wikileaks, “Public Library of US Diplomacy.”

Zambia's delegation was led by a less senior official, its Deputy Commissioner of Tax, and also included Irish.⁵⁰ The agreement was never signed.

Figure 8.1: Negotiated content of tax treaties signed by sub-Saharan countries, 1970-1985



Source: The ActionAid Tax Treaties Dataset⁵¹

8.1.4 1970-1979: conclusion

In summary, the late 1960s and early 1970s saw Zambia rush into negotiating a number of tax treaties with the aim of attracting inward investment through ‘prestige’ and tax sparing clauses, producing nine treaty signatures during the time period under consideration. The decision to negotiate, with whom and on what basis, was made in the first half of the 1970s without any detailed knowledge of the specifics of tax treaties. As a result, Zambia displayed an almost reckless disregard for the treaties’ implications, making concessions that undermined policies it was simultaneously trying to implement to raise more revenue and keep capital in the country. Zambia also lacked a clear sense of the concessions that it might have been able to extract from treaty partners, as illustrated by the better results obtained by other African countries in negotiations with the same countries, and the better results Zambia itself obtained once it had the support of an external specialist adviser.

In the absence of their own specialist knowledge or that of any specialists within their bureaucracy, Zambia’s inexperienced negotiators relied on cognitive shortcuts that derived from ideas about the likely impact of tax treaties, and ignored the detail. The country’s high

⁵⁰ The Zambian negotiation team for the first two rounds is indicated in “Income Tax Treaty Negotiations”, 5 July 1974. US cable ref 1974LUSAKA01386_b. Reference to a third round of negotiations is made in “Status of U.S.-Zambia Double Taxation Agreement” 21 January 1975. US Cable ref 1975STATE013771_b. Source: Ibid.

⁵¹ Hearson, “The ActionAid Tax Treaties Dataset.”

tax-to-GDP ratio at this time reduced the attention paid by ministers and finance ministry officials to the revenue losses they were incurring, even though they were far from immaterial to the country's overall tax position.

8.2 2003-12

From 1997 onwards, Zambian bureaucrats had been participating extensively in international training and conferences on tax treaties. In the early 2000s, Zambia was even among 25 countries represented on the UN Committee of Experts dealing with tax treaties. Interview evidence indicates that a number of negotiations and renegotiations took place during this time, but no treaties came to signature until 2010, when agreements with China, Mauritius and the Seychelles were signed, followed by Botswana in 2013. Mauritius and the Seychelles, of course, are tax havens, and these treaties open Zambia up to the risk of tax avoidance structures.

The data for this second time period are drawn from 15 semi-structured interviews. Fieldwork conducted in Lusaka in September 2014 followed a snowball sampling approach, beginning from contacts made through NGOs and at international meetings. Interviews were conducted with a total of three current and two former officials drawn from the finance ministry and tax authority, including those with responsibility for treaty negotiations in these two institutions during the most recent waves of negotiations. These were triangulated through interviews with three tax advisers in the private sector, two British officials familiar with the recent Zambia-UK renegotiation, two expatriate technical assistance providers, and several other stakeholders from NGOs and academia in Zambia. These interviews have all been anonymised, at the request of some government interviewees.

8.2.1 Diffusion driven by dissemination of technical standards

The reintroduction of multiparty democracy in 1991 saw the election of only Zambia's second government since independence. As part of a classic structural adjustment programme, the new Movement for Multiparty Democracy (MMD) government immediately began to implement an aggressive suite of Washington Consensus policies, eliminating tariffs and exchange rate controls, privatising much of the state-owned industry, and introducing a VAT.⁵² Within two years, it had passed an act creating a new semi-autonomous Zambia Revenue Authority (ZRA), a reform that swept through Anglophone Africa during the 1990s as a means of increasing the efficacy of revenue collection.⁵³ Semi-

⁵² Rakner, *Political and Economic Liberalisation in Zambia 1991 – 2001*, 14.

⁵³ Fjeldstad and Moore, "Revenue Authorities and Public Authority in Sub-Saharan Africa."

autonomous revenue authorities are governed at arm's length from the government, free to set their own employment practices to reduce the extent of patronage in their staffing, and to improve staff retention.⁵⁴

The creation of a specialist organisation dealing with tax administration, combined with an influx of technical assistance on tax issues from donors such as the UK, Germany and Japan, quickly brought senior Zambian officials into contact with an international network of tax treaty negotiators. A review document prepared by the OECD secretariat and the government of Zambia in 2011 describes the extent of this interaction:

Officials from the Ministry of Finance and National Planning together with the ZRA are working closely with their counterparts in other jurisdictions through double taxation agreements and organisations such as: the African Union; OECD; African Tax Forum; World Customs Organisation; SADC; COMESA Technical Committees on Customs; etc. Zambian Officials are often invited to attend discussions on issues pertaining to tax administration and customs border control organised by international organisations. An example of the outcomes of networking on tax treaties are the double taxation agreements that Zambia has signed with a number of countries.⁵⁵

As one negotiator, who was senior within the ZRA at this time, explained, “from about 1997, the ZRA having been formed in 1994, there was a lot of interest from the OECD to get non-OECD countries to appreciate the issue of [tax treaties].”⁵⁶ Zambia went ‘religiously’ to OECD tax treaties meetings in Paris, and participated in numerous OECD trainings.⁵⁷ Throughout the 2000s, it was represented almost every year at either the OECD’s Global Forum on Tax Treaties in Paris, or the annual session of the United Nations Committee of Experts on International Cooperation in Tax Matters in Geneva. Its representatives were generally top-ranking officials from within the revenue authority.⁵⁸ At these meetings, according to an analysis of OECD documents by Lynne Latulippe:

The OECD's activities created and maintained non-members' perception that tax treaties were necessary to attract FDI, although it did not produce any direct evidence of the consequences or the influence of tax treaties.⁵⁹

Several examples illustrate the prevailing direction of discussions in these forums. In 2002, members of the Southern African Development Community (SADC) signed a memorandum on tax cooperation, which committed them to “strive to ensure the speedy negotiation, conclusion, ratification and effective implementation of tax treaties” and “establish amongst

⁵⁴ According to Mwenda (Mwenda, “Efficacy of the Institutional and Regulatory Framework for the Administration of Tax Law in Zambia.”) the ZRA is not as autonomous in practice as the ideal type might suggest, since the Chair of its governing board and its Commissioner General are appointed by the President.

⁵⁵ OECD, *Investment Policy Review of Zambia (2011 Preliminary Draft)*, 66.

⁵⁶ Interview 45

⁵⁷ Interview 45

⁵⁸ Attendance records on file with the author

⁵⁹ Latulippe, “The Expansion of the Bilateral Tax Treaty Network in the 1990s: The OECD’s Role in International Tax Coordination,” 872.

themselves a comprehensive treaty network.”⁶⁰ COMESA entered into a similar project in 2009.⁶¹ Zambia’s decision to accede to requests from Mauritius and the Seychelles for tax treaties, despite the risks originating from their position as tax havens, was linked by many interviewees to the SADC protocol. As one government interviewee explained:

First of all there’s the issue of expanding the network. Being part of SADC, SADC protocol says you’re going to have treaties with each other. There’s this thing that says you’re in this together. If you just look at tax on its own you’re never going to sign any treaties.⁶²

In 2006, UNCTAD, in a project funded by the Japan Bank of International Cooperation, produced the “Blue Book” for Zambia, which included the following among its ten recommendations for capacity building assistance:

Carry out a [tax treaty] negotiation round with China, the Republic of Korea and three other South-East Asian countries with strong investment interests in Zambia. This can be facilitated by UNCTAD. The participants will consist of teams of DTT negotiators mandated by their country to negotiate and conclude such agreements. The round will last five days. UNCTAD's secretariat will provide assistance for the facilitation and the organization of the round (preparatory work, invitations, exchange of drafts and comments, preparation of the negotiating matrix, secretarial backstopping during the round).⁶³

Zambia’s specialist international tax officials at the time saw tax treaties as intimately linked with investment, but not as drivers of new inward investment. As they saw it, investors from countries without tax treaties might face double taxation, and this was a problem that should be resolved. According to a senior Zambia Revenue Authority official at the time:

We wanted to expand the network. It was about the time we had opened up, and there was a lot of interest in terms of FDI coming into the country. It was about the time investors were coming in, and we wanted to have treaties there to avoid double taxation.⁶⁴

His counterpart from the Ministry of Finance also explained that treaties “come from the investors’ influence. It’s when they need to repatriate income.”⁶⁵ One of the former negotiators even expressed quite a cynical view about the political reality of his position:

I know there’s empirical evidence that it has no effect on investment, but the reality country-to-country is that there’s a bluff goes on, and countries don’t want to take the risk of losing big investments... China you know is a powerhouse. They come and say, ‘for us to further this investment, we need a treaty.’ That’s what it’s about: bluffing.⁶⁶

⁶⁰ SADC, *Memorandum of Understanding on Co-Operation in Taxation and Related Matters*.

⁶¹ Bunting, Fawcett, and Makasa, *A Roadmap for Further Negotiations by COMESA Countries*.

⁶² Interview 45

⁶³ UNCTAD and Japan Bank for International Cooperation, “Blue Book on Best Practice in Investment Promotion and Facilitation.”

⁶⁴ Interview 45

⁶⁵ Interview 49

⁶⁶ Interview 45

8.2.2 Negative scope conditions: political veto players and high fiscal cost salience

Despite devoting so much energy to tax treaty negotiations throughout the 1990s and 2000s, Zambia had only actually concluded four tax treaties by 2014, with China (as recommended in the ‘Blue Book’) and the Seychelles, Mauritius and Botswana (all SADC members). Negotiators at the time indicated that many renegotiations, including with South Africa, Tanzania and the UK, were stalled once officials had reached agreement, while others failed to get off the ground due to slow ministerial approval.⁶⁷ No treaties were actually signed until 2010, and it is common knowledge among negotiators and advisers in the private sector that these – as well as several that have not been signed – had been negotiated some years before.⁶⁸

Treaty negotiators and private sector tax advisers all explained in interviews how officials were unable to secure ministerial approval for signature and ratification. “Government was not sure what were the benefits,” said one former negotiator. “Some people had read that DTAs give away revenue. Somehow it never got past cabinet. The revenue authority was finding it a bit frustrating.”⁶⁹ Another concurred: “you send it to the minister for permission, and it just sits there.”⁷⁰ One factor appears to have been changes in government, with presidential elections taking place in 2002, 2008, 2011 and 2012. “When you have a change in government, you have to go back to the drawing board,” explained a negotiator.⁷¹

Zambia’s tax performance, which had declined by more than half since the early 1970s, stood at just 16 percent of GDP in 2003.⁷² As copper prices rose, the lack of tax revenue from foreign investors became a politicised topic. In early 2008, the government attempted (ultimately unsuccessfully) to introduce a windfall tax of up to 75 percent on mining companies, which required cancelling agreements reached with mining companies at privatisation.⁷³ Corporate taxation, particularly of the mines, became controversial during a presidential election later that year won by former Vice President Rupiah Banda following the death of incumbent Levy Mwanawasa.⁷⁴ In 2011, Banda lost to opposition leader Michael Sata, whose party had stood on an explicit platform of tackling tax avoidance by multinational mining firms.⁷⁵ According to one official, “the whole tax regime had an

⁶⁷ Interviews 45,49

⁶⁸ For example, interviews 41,47

⁶⁹ Interview 45

⁷⁰ Interview 49

⁷¹ Interview 49

⁷² Prichard, Cobham, and Goodall, *The ICTD Government Revenue Dataset*.

⁷³ Manley, *A Guide to Mining Taxation in Zambia*, 32.

⁷⁴ Larmer, *Rethinking African Politics : A History of Opposition in Zambia*, 262.

⁷⁵ Chanda, “Should Zambia Impose Windfall Taxes on Mining Companies?”

injection in 2010, because we were trying to get rid of [tax] incentives, and we started to [re]negotiate.”⁷⁶ Another seemed to agree. “There was no specific policy change, it was simply that the minister and cabinet decided to handle this issue. Okay, I suppose you can call that a change in policy.”⁷⁷

The specialists’ efforts to negotiate and renegotiate tax treaties were obstructed in this context because political decision-makers, who were concerned to be seen to increase tax revenues, did not support the tax treaty project. While a political impetus to conclude new treaties with China and SADC neighbours meant that the negotiators were eventually able to secure signature and ratification of these agreements, longstanding ambitions for new and renegotiated older treaties never saw the light of day, even when negotiations had been completed. Even the official version of the 2002 SADC protocol does not have a Zambian ministerial signature.⁷⁸ As one official lamented, “if it is new and they are saying ‘go for it’ it is ratified. If it is old, nobody is interested.”⁷⁹ According to a prominent tax adviser in a professional services firm, “the treaty with South Africa is very old, it can’t be implemented in places. It’s 15 years since they renegotiated that treaty...we think cabinet has been lazy, they have not given it a lot of thought.”⁸⁰ An expatriate technical adviser to the Ministry of Finance stated that “Ministers of Finance have been reasonably competent, but somewhere in the political system it all disappears.”⁸¹

8.2.3 2011 onwards: a new attitude to international tax?

After the 2011 election, a new cohort of senior civil servants came into post at the Treasury, and those who took over the remit for tax treaties did not have the same history of participation in international tax organisations. According to these officials themselves, this fresh perspective and new political impetus, combined with civil society campaigns that drew specific attention to tax treaties, has led to a new approach. Renegotiations have been undertaken with the UK, India, South Africa, Ireland, and the Netherlands (the latter three treaties regarded as substantially problematic), and an out-of-date treaty with Switzerland is slated for termination since a renegotiation request was rejected.⁸²

“In 2012, with the change of government, this government came in with a different view, they were ready to terminate treaties,” said a junior official with experience in both

⁷⁶ Interview 44

⁷⁷ Interview 45

⁷⁸ SADC, *Memorandum of Understanding on Co-Operation in Taxation and Related Matters*.

⁷⁹ Interview 45

⁸⁰ Interview 41

⁸¹ Interview 51

⁸² Status of Zambian tax treaties, 2014, Finance Ministry document on file with the author

administrations. “We are close to happy [with the renegotiations]. The first thing we did was to repair the damage.”⁸³ The finance ministry official now responsible for tax treaties appears sceptical, stating that, “there is currently no evidence to show that tax treaties have helped to attract investment into Zambia...So the important advice to third world countries like Zambia will be to demonstrate really how double taxation avoidance can be achieved without signing tax treaties.”⁸⁴

The process of renegotiation undertaken by Zambia is intended to stem some of the losses due to abuse of existing tax treaties, and to maximise the administrative benefits that Zambia can obtain from the information exchange and mutual assistance provisions of tax treaties.⁸⁵ But there is evidence here of a degree of path dependency. Despite the clearly sceptical attitude from inside the finance ministry, it is much harder for Zambia to renegotiate or cancel an existing agreement than it would have been to agree to it in the first place. For example, a tentative attempt by the ZRA to disregard the colonial-era agreement with France failed after the threat of a legal challenge from French businesses in Zambia and from the French government.⁸⁶ The newly renegotiated treaty with the UK is a more useful tool for the ZRA’s enforcement work, and it includes a broader definition of permanent establishment, but in return Zambia was forced to accept a substantially reduced maximum withholding tax rate on British firms, to bring the treaty into line with the concessions it had offered to China in the 2010 agreement. “It’s hard enough competing with Chinese businesses in Africa as it is,” a British diplomat explained.⁸⁷

There is a sense from government officials that if the present administration in Zambia were building its treaty network from scratch, it would not conclude many treaties at all. The recent agreements with the Seychelles and Mauritius, which had been negotiated and signed under the previous government, are not seen as good deals for Zambia. “The process of approval took too long such that by the time [these] agreements were signed, the agreements were 'out of tune' and therefore lacked the standards we now insist upon,” said a senior finance ministry official. He continued:

I am not sure if Zambia would remain in good standing with the international community if it decided to annul the treaties (unilaterally or not) with either the UK, Germany, Japan or Canada, for instance. Perhaps we have sold our soul for [having] been aid recipients from countries such as the ones stated above.⁸⁸

⁸³ Interview 44

⁸⁴ Interview 41

⁸⁵ Interviews 40,41

⁸⁶ Interviews 41,44,48

⁸⁷ Interview 46

⁸⁸ Interview 41

8.2.4 2003-12: Conclusion

Zambia did not sign many treaties during this later period, and those it did sign came late. But this was not because of an absence of enthusiasm or negotiating activity on the part of its international tax specialists. Rather, it was a consequence of opposition to the tax treaty project from political actors, who were concerned to be seen to increase the amount of tax revenue raised from businesses, in a country where the tax-to-GDP ratio was almost half what it had been during the 1970s.

8.3 Conclusion

This chapter looked at a developing country that is an outlier, because its decisions to negotiate tax treaties do not fit the predictions of the quantitative, rational competition model. Zambia has gone through two eras of negotiation: in the 1970s it was a positive outlier, signing many more treaties than predicted, while in the 2000s it was a negative outlier, not signing as many as predicted.

In the 1970s, Zambia did not have specialist bureaucrats to drive the process, and so the decision to negotiate was based on the idea that treaties would attract investment, without any clear analysis of the costs and benefits. The process was led by politically-appointed non-specialists, with little technical support and little experience themselves, in a context of high tax/GDP ratio that reduced the salience of the treaty's costs. This meant that negotiation, signature and ratification were quick, but the quality of negotiation was poor, until an expatriate specialist arrived and caused Zambia to question its approach.

In the 2000s, Zambia did have a specialist bureaucracy, which engaged frequently with the international tax community. These officials saw treaties as an important part of the enabling framework for inward investment - not as instruments that would directly attract investment, but as tools to eliminate double taxation as an end in itself, and also to increase Zambia's capacity to enforce its tax laws. It was important that older treaties be brought into line with modern standards in order to achieve this. But these objectives were not shared by cabinet ministers, and as a consequence they were not signed or ratified, with the exception of treaties with SADC countries and with China, where specific political pressures existed.

9 Vietnam and Cambodia

We didn't even know who the Seychelles were.
I had to Google it.

- Cambodian treaty negotiators¹

This chapter considers two South-East Asian countries, Vietnam and Cambodia. In comparison to Zambia, both were late adopters of tax treaties: neither had a single bilateral tax treaty when they began to open up to foreign direct investment in the early 1990s. From that time, their attitudes to investment promotion were not radically different, as illustrated by the tax incentives offered to foreign investors and their active BIT negotiation programmes. Yet, while Vietnam has signed more tax treaties than almost any other developing country, Cambodia has not signed any to date. In contrast to conventional explanations of the origins of tax treaties, which view the capital importer as the active pursuer of tax treaties, Cambodia has been declining requests for tax treaty negotiations from capital exporting countries and tax havens for many years.

These two countries illustrate the presence of the diffusion mechanisms proposed in this thesis, during the period 2003-2012, but with different levels of effectiveness. First, both countries were approached by numerous capital exporting countries seeking to enhance opportunities for their multinational investors: Vietnam generally accepted these requests, while Cambodia declined them. Second, policymakers in both Vietnam and Cambodia felt competitive pressure to sign tax treaties in order to attract inward investment. The Cambodian state desperately needed more tax revenue, which created a strong resistance to this pressure. In contrast, Vietnam had a large reservoir of state income from state-owned enterprises, which reduced the salience of tax treaties' fiscal costs. In the 1990s, this resulted in the rapid conclusion of dozens of tax treaties containing provisions whose consequences Vietnamese negotiators did not appreciate, and which their successors now regret.

Third, a new cohort of Vietnamese officials took over in the 2000s, who engaged out of preference with the OECD, rather than the UN. While they were more strategic in their negotiating stance, they were motivated by the idea that all investment, no matter how small, and regardless of the costs or the level of competitive pressure, should be covered by a tax treaty. Vietnam also took unilateral steps using its domestic tax system that negated the main supposed investment-promoting benefits of tax treaties. More recently, as Cambodia has

¹ Interview 64, 65

finally begun to negotiate, the technical knowledge imported from abroad has changed negotiators' ideas, causing them to drop negotiating positions that were incompatible with 'international standards'.

This chapter begins with a comparison of Vietnam and Cambodia's approaches to international economic cooperation, including tax treaties. It then briefly demonstrates that both countries came under pressure from capital exporters to sign tax treaties, the first diffusion mechanism. After this, the mechanisms within Vietnam and Cambodia are considered separately.

Table 9.1: Phases of treaty negotiation in Vietnam and Cambodia, 2003-2012

Country	Main mechanism	Scope condition		Outcome
Cambodia	2. Competition for inward investment	Fiscal costs not salient	Absent	Negotiations blocked
Vietnam	3. Dissemination of standards	Specialist control of veto points	Present	Rush to negotiation

Source: Author's own

9.1 Comparative context

Vietnam and Cambodia are neighbouring countries in south-east Asia, both of which had somewhat closed economies until the turn of the 1990s. They began to open up to foreign direct investment at around this point, and, as Table 9.2 shows, FDI flows on a per capita basis have only been slightly greater in Vietnam than in Cambodia since the mid-1990s. One major difference between the two is the large role of state-owned enterprises and state investment in Vietnam's economy, in comparison to Cambodia, which has a much smaller state sector and relies much more on foreign enterprises for its economic growth. As a result, gross fixed capital formation from 1995 to 2014 was 2.5 times greater on a per capita basis in Vietnam than in Cambodia.²

In terms of economic cooperation with other countries, by most measures Cambodia lags behind Vietnam, but the difference is only one of degree. For example, Cambodia joined ASEAN after Vietnam, but the WTO before it. Its first investment law and BIT were a few years later than those of Vietnam (Table 9.3).

² World Bank, "World Development Indicators."

Table 9.2: Inward FDI flows per capita (current US\$)

Year	Cambodia	Vietnam
1995-1999	19.9	25.5
2000-2004	10.4	17.8
2005-2009	44.5	67.1
2010-2014	81.5	94.4
Total	156.3	204.8

Source: World Bank³

Table 9.3: Timing of some key milestones in economic integration

Event	Vietnam	Cambodia
First investment law	1987	1994
First BIT	1990	1994
First DTT	1992	-
Joins ASEAN	1995	2000
Joins WTO	2007	2004

Source: IBFD, Slocomb, Sodhy, UNCTAD⁴

While it is true that Cambodia has concluded fewer BITs than Vietnam, it has nonetheless signed 23, indicating that at least some of the mechanisms driving diffusion of BITs to Vietnam were also effective in influencing Cambodia.⁵ Yet Vietnam and Cambodia are polar opposites when it comes to their attitude to tax treaties. From 2003-12, Vietnam signed 28 tax treaties, while Cambodia signed none at all, continuing a trend that had begun in the 1990s. Table 9.4 compares the cumulative number of tax treaties that both countries have signed since 1990 with the number of BITs. The data examined in chapter 6 show that, while Vietnam was predicted by the quantitative model to sign more tax treaties than Cambodia, the prediction is not of such a stark difference as this.

To explain why the number of tax treaties signed by these two countries varied from the quantitative model's predictions, this chapter uses secondary literature and field visits to Vietnam and Cambodia undertaken during August and September 2015. Eleven semi-structured interviews were conducted in Vietnam (in total four government officials, nine private sector stakeholders, and two others took part in interviews), and five in Cambodia (with two government officials and three private sector stakeholders). In both countries, the government officials responsible for tax treaty policy and negotiations were included in the

³ Ibid.

⁴ IBFD, "IBFD Tax Research Platform"; Slocomb, *An Economic History of Cambodia in the Twentieth Century*, 273-5; Sodhy, "Modernization and Cambodia," 153; UNCTAD, "International Investment Agreements Navigator."

⁵ According to Lauge Poulsen, who interviewed a Cambodian BIT negotiator, these treaties were seen "as strategic instruments to comfort investors in post-war environments." See Poulsen, "Sacrificing Sovereignty by Chance: Investment Treaties, Developing Countries, and Bounded Rationality," 145-6.

sample. Sampling was largely purposive, with interviews arranged in advance through email. Government contacts were obtained through an OECD technical adviser who had been active in both countries, private sector contacts through the websites of private sector advisory firms, and other contacts through local NGOs. A small number of additional snowball-sampled interviews were arranged during field visits. In Vietnam, a government-industry consultation meeting on tax treaty interpretation was also observed. In Cambodia, the lack of any tax treaties and the embryonic state of the country's tax advisory sector reduced the number of potential interviewees available.

Table 9.4: *Treatymaking activity*

Year	BITs signed		DTTs signed	
	Cambodia	Vietnam	Cambodia	Vietnam
1990-1994	1	25	0	11
1995-1999	7	14	0	23
2000-2004	8	9	0	8
2005-2009	5	12	0	16
2010-2014	2	3	0	12
Total	23	63	0	70

Source: UNCTAD & IBFD⁶

9.2 Competition for outward investment opportunities in Cambodia and Vietnam

The competitive pressure on Vietnam and Cambodia is reflected in the growing number of treaties signed by countries within the ASEAN region, with whom Cambodia and Vietnam compete for foreign investment and trade. Vietnam and the Philippines have used tax incentives to compete for high tech manufacturers, for example, while Cambodia, Laos and Myanmar compete in lower technology sectors.⁷ In both these case study countries, there was evidence of what appears to be a strategic interaction between developing countries, whereby one ASEAN country's signature of tax treaties creates pressure on another.

This is not, however, the only form of strategic interaction driving treaty diffusion. Since opening up, Cambodia has received multiple requests for tax treaties both from Asian and European countries; about ten, according to one government source. Among the countries that, as one official said, "have been writing many times in the past" are Malaysia, Thailand, Korea, China and Japan.⁸ At least two of these countries have made formal requests in

⁶ UNCTAD, "International Investment Agreements Navigator"; IBFD, "IBFD Tax Research Platform."

⁷ Charlton, *Incentive Bidding for Mobile Investment: Economic Consequences and Potential Responses*, 17.

⁸ Interview 65

person via their ambassadors.⁹ Requests have also been received from European countries and more than once from the Seychelles. “We don’t even know who they are,” said one official, referring to the latter. “I had to Google it,” said another.¹⁰

Vietnam has already signed a treaty with the Seychelles, despite no investment flowing between the two. Its large network of treaties signals to other countries that they will receive a positive response if they request negotiations, and many treaties in recent years have been initiated from the other country. “Normally when we negotiate with other countries, they decide when we negotiate,” confirmed the country’s current chief treaty negotiator, Nguyen Duc Thinh, the head of the International Taxation Department of the General Department of Taxation (GDT).¹¹ While this confirms that the phenomenon described in chapter 7 is still relevant to the present day, the rest of this chapter focuses on the variables shaping preferences in the developing countries, since it is in those countries that fieldwork took place.

9.3 Vietnam

Following the *doi moi* reforms of 1986, Vietnam’s government began to open the country to FDI, passing a liberal investment law that was unusual in that it protected investors from subsequent changes in laws, as well as from expropriation.¹² Furthermore, the new investment regime offered inward investors a tax holiday of up to eight years and a reduced tax rate thereafter.¹³ Progress in expanding political and economic relations with the rest of the world was initially slow after 1987, but came to be felt more urgently within the Vietnamese communist party when the fall of the Soviet Union left it marginalised.¹⁴ This is thought to have been one of the drivers of Vietnam’s willingness to relinquish its military involvement in Cambodia through the Paris peace accords signed in 1991, which in turn led to some thawing of relations with members of the Association of South East Asian Nations (ASEAN), although it would take some time to establish trust.¹⁵

Vietnam had been signing BITs from 1990 onwards at a ferocious pace of around six per year, with European and south-east Asian countries as partners in roughly equal numbers. It signed its first tax treaty in 1992, picking up the same faster pace as for BITs from 1994

⁹ Interview 65

¹⁰ Interviews 64 & 65

¹¹ Interview 55

¹² Tran-Nam, “Economic Liberalization and Vietnam’s Long-term Growth Prospects,” 248.

¹³ Harvard Law Review, “Protection of Foreign Direct Investment in a New World Order: Vietnam. A Case Study,” 2004.

¹⁴ Gainsborough, “Vietnam and ASEAN: The Road to Membership?”

¹⁵ Ibid.

onwards (Table 9.4, above). A surge in FDI into Vietnam in 1996 can be attributed to the lifting of the United States trade embargo in 1994, which paved the way for Vietnam to finally join the ASEAN community in 1995, and eventually the WTO in 2007.¹⁶ The ASEAN and WTO logos still light up the main road from Hanoi's Nội Bài International Airport to the city centre today.

The 19 tax treaties signed by Vietnam between 1992 and 1995 already covered half of its inward investment, and by 1998 it had concluded a total of 34 treaties, now covering two-thirds of all its inward investment.¹⁷ From 2000 to 2014, it signed the same number again, 19 of which were during the sample period, 2003 to 2012.

In 1997, Vietnam formally expressed positions on the provisions of the OECD model tax treaty for the first time, 'reserving the right' to include numerous beneficial clauses in its own treaties that are excluded from the OECD model.¹⁸ Figure 9.1 shows how the content of Vietnam's tax treaties changed over time, by comparing them to this declared negotiating position. There appear to be two distinct periods of negotiation: treaties signed between 1992 and 1998 were much more heterogeneous in their content, and generally less reflective of Vietnam's own preferences. From 2000 onwards, most treaties included 70 to 80 percent of the clauses that Vietnam had indicated in its negotiating position. While treaties with OECD member countries since 2000 have tended to be less reflective of Vietnam's negotiating position, the same structural break can be seen from 2000 onwards, suggesting stronger negotiating by Vietnam. Two specific examples of this structural break are as follows.

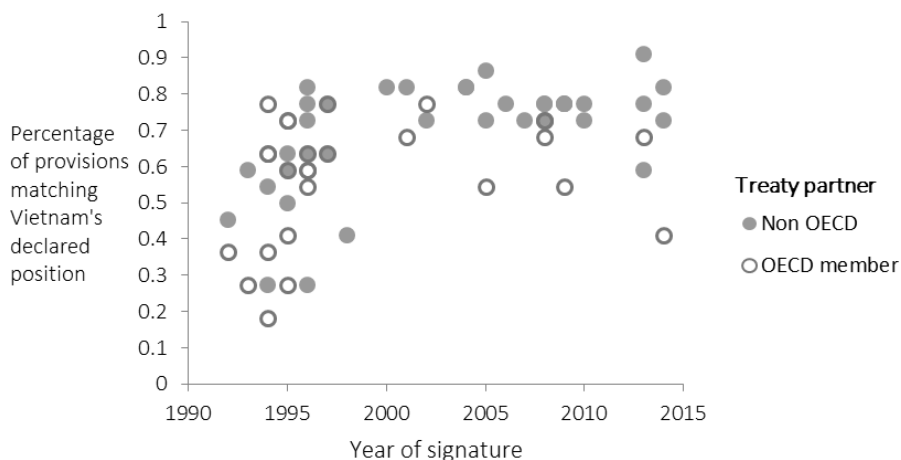
- Vietnam's position includes an additional paragraph 7 in article 5 of its tax treaties, giving it the right to tax companies that are 'dependent agents' of foreign multinationals. This provision had only appeared in half of Vietnam's 1990s treaties, but it was included in all of those signed since 2000.
- It also set out a position in favour of the right to levy a withholding tax on technical service fee payments to foreign contractors, which the model treaties do not permit. It was only included in one quarter of Vietnam's 1990s treaties, but is in more than half those signed from 2000 onwards.

¹⁶ Pham, "FDI and Development in Vietnam : Policy Implications," 24.

¹⁷ These percentages are accurate whether using data on FDI stocks in 1998 or 2011. See Pham, "FDI and Development in Vietnam : Policy Implications"; General Statistic Office of Vietnam, "Foreign Direct Investment Projects Licensed by Main Counterparts (Accumulation of Projects Having Effect as of 31/12/2012)." From 1988 to 1998, over half of the FDI into Vietnam had come from five nearby countries: Singapore, Taiwan, Japan, Hong Kong and Korea, and these five countries still constituted 53 percent of investment stock in Vietnam in 2011.

¹⁸ OECD, *Model Tax Convention on Income and on Capital*.

Figure 9.1: Vietnam's tax treaties scored against its declared position in reservations to the OECD model treaty



Source: The ActionAid Tax Treaties Dataset¹⁹

9.3.1 Context in 2003: a treaty network driven by competition for inward investment

This case study focuses on the period from 2003-12, and in any event it was not possible during the field visit to obtain access to people who had been directly involved in the 1990s negotiations. Yet it is quite clear from the GDT's current actions that Vietnam's decision to give away large amounts of its tax base at this time was not based on an assessment of the costs and benefits. Indeed, Vietnam was not aware of the content of some of the clauses it accepted in that early period. It signed many more treaties than is predicted by the model, and their content, especially in earlier years, more intensively reflected the interests of large capital exporters to Vietnam, leading to greater fiscal costs than necessary.

Interviews with current and former Vietnamese officials indicate that an intense desire to attract inward investment explains many of these early decisions. According to Mr Think, three factors drove Vietnam's prolific negotiation of tax treaties and its willingness to make big concessions in the 1990s.²⁰ First, tax treaties and other economic agreements were ways of establishing political and economic relationships with other countries at a time when an economic embargo on Vietnam was still in place in the United States. This weakened Vietnam's negotiating strength. Second, by ensuring that all foreign investment was covered by tax treaties, Vietnam aimed to shortcut the development of domestic corporate tax laws, which would take considerable time at a point when there was a pressing need for inward

¹⁹ Hearson, "The ActionAid Tax Treaties Dataset."

²⁰ Interview 55

investment. A third factor driving Vietnam's enthusiasm for tax treaties was a desire to have 'tax sparing' agreements with capital exporting countries. Like Zambia in the 1970s, Vietnam in the 1990s was using generous tax incentives to try to attract inward investment; 'tax sparing' provisions in tax treaties ensured that foreign investors could benefit from the incentives in full. "This was our most vital condition for negotiating a DTA at this time...we had to step back [from other negotiating preferences] a lot because the tax sparing was so vital," said Mr Think.

Vietnam's weak position, combined with its lack of experience negotiating, meant that it made concessions that it would not now make:

During that time our negotiating partners were from the OECD and it was urgent to open our door and so we had to accept [OECD model treaty provisions]...When we were beginning to negotiate DTAs, we didn't have so much experience. When the countries came to negotiate with us they forced us to use the OECD model.

As Figure 9.1 indicates, however, it was not only with OECD members that Vietnam gave away large amounts of taxing rights. Among the pre-2000 treaties, aside from those with OECD countries, two are considerably less good deals than average for Vietnam. These are with Taiwan and Singapore, by far its two biggest sources of investment outside the OECD.

9.3.2 Context in 2003: low fiscal cost salience

Vietnamese officials paid little attention to the costs of treaties they negotiated at this time because raising corporate tax from foreign investors was not a priority. "In Vietnam they don't care much about corporate income tax, it's VAT," one former civil servant explained to me.²¹ The country's tax system in the early years of its economic liberalisation was complicated and discriminatory, incorporating taxes on turnover, profits and profit disbursements. It was also administered inefficiently and somewhat arbitrarily by inexperienced and corrupt tax administrators.²² While this frustrated foreign-owned companies, they benefited greatly because they were exempted from turnover tax, and taxed on their profits at a lower headline rate than domestic firms (25 percent compared to a maximum of 45 percent for domestic firms); furthermore, generous tax incentives in the Investment Law meant that most would not become liable for even this tax for some time, if at all.²³

²¹ Interview 59

²² Tran-Nam, "Economic Liberalization and Vietnam's Long-term Growth Prospects."

²³ Ibid.

As a result of this tax system, revenue from FDI-related investments was relatively small, as low as 0.02 percent of GDP in 1991, rising with the stock of FDI to 1.2 percent in 1997.²⁴ But while tax revenue from foreign companies may have been low, Vietnam raised considerable revenue elsewhere.²⁵ A paper co-authored by the Head of Tax Policy in the Ministry of Finance notes that, despite difficulties in the administration of the tax system, Vietnam's tax-to-GDP ratio in the 1990s was much higher than other ASEAN countries that would have been expected to have greater 'taxability' because of higher per-capita income and a greater industrial share in the economy.²⁶

In part, this was because effective tax rates on domestic firms in Vietnam were much higher than these other countries, exceeding 60 percent once turnover and profit taxes were taken into account.²⁷ In addition, structural economic differences provided more tax revenue, in particular the large share of state-owned enterprises in the economy, and the presence of the high-tax oil and gas sector (although revenue from the latter amounted to only around two to three percent of GDP).²⁸ In 2000, tax revenue from foreign-owned firms still made up only five percent of total corporate income tax revenue, less than four times that from state-owned enterprises.²⁹ A new tax system promulgated in 1999 made the country's tax structure simpler and less discriminatory. Foreign-owned firms now paid 33 percent tax on their profits, the same as domestic firms, but they also still benefited from generous reductions lasting as long as ten years.³⁰

9.3.3 Diffusion driven by dissemination of technical standards

The apparent structural break in Vietnam's pattern of negotiation around the year 2000 coincides with the appointment of Mr Think as Vietnam's current treaty negotiator. In an interview, he specifically stated that there had not been a change in the policy or the quality of negotiation as a result of his appointment, attributing it instead to "changed economic, political and social conditions."³¹ What is certain is that he and his colleagues came into close contact with the OECD. In the late 1990s, "some OECD experts came to Vietnam to talk about the DTAs," he said.³² Vietnamese officials were a regular fixture at the OECD's annual Global Forum on Tax Treaties and Transfer Pricing during the 2000s, sending a two

²⁴ Pham, "FDI and Development in Vietnam: Policy Implications," 59.

²⁵ Tran-Nam, "Taxation and Economic Development in Vietnam."

²⁶ Quang and Dung, "Tax Reform in Vietnam," 7.

²⁷ Figures cited in *ibid.*, 9.

²⁸ *Ibid.*, 4.

²⁹ Government figures cited in Rama, Mishra, and Pham, "Overview of the Tax System in Vietnam," 19.

³⁰ Quang and Dung, "Tax Reform in Vietnam," 11.

³¹ Interview 55

³² Interview 55

to four person-strong delegation usually consisting of Mr Think and his deputies.³³ In contrast, Vietnam does not attend annual meetings of the United Nations tax committee.³⁴

While government officials outside the GDT still reproduce the view that tax treaties attract investment by alleviating double taxation,³⁵ this is not the only logic at work within the GDT itself. Rather, Vietnam has adopted the policy that all investors, no matter how small, should be covered by a tax treaty. “Even if it is a small amount of investment it is still worth it,” according to Mr Think. This contributes to the view of a business representative that “Vietnam’s negotiations have been on a 20-year roll.”³⁶ But while Mr Think and his colleagues want all investors to be covered by a treaty, it is very clear, from interviews and from their approach to applying tax treaties, that this is because they want to apply an international standard to all existing inward investors, not merely to encourage new inward investment.

A key reason for this is the decision in 2005 to abolish withholding tax on profits remitted by foreign investors as dividends, and reduce withholding taxes on interest, royalties and service fees to very low rates.³⁷ This dramatic move made Vietnam’s tax system much more attractive than its neighbours, but also undercut the main supposed investment-promotion tool of its tax treaties. As Vietnam also no longer prioritises tax sparing clauses within its treaties,³⁸ the tax treaty provisions that might be expected to have the biggest investment-promoting effect are of no longer of relevance to investors in Vietnam.

Furthermore, Vietnam’s application of its tax treaties directly undermines the benefits that investors might hope to gain. We can see this by looking at the example of Vietnam’s approach to permanent establishment (PE). This is a threshold test that establishes when a foreign company operating in Vietnam becomes liable to pay income tax on its profits. In almost all tax treaties, a company must have a physical presence in a country for a certain period of time to meet this test, subject to some exceptions. In contrast, the criteria in Vietnamese law are much more broad, simply that most companies “who do business in Vietnam or earn income in Vietnam” are liable to income tax.³⁹ In theory, therefore, any investors who are sensitive to their tax liability should regard a tax treaty with Vietnam as an important curb on what many regard as its aggressive approach to taxation. But Vietnam has chosen to interpret the PE provisions of its treaties in unconventional ways that, according to

³³ Attendance lists on file with the author

³⁴ Attendance lists on file with the author

³⁵ Interview 57

³⁶ Interview 62

³⁷ Tran-Nam, “Taxation and Economic Development in Vietnam,” 132.

³⁸ Interview 55

³⁹ Ministry of Finance, *Guidelines for Fulfilment of Tax Liability of Foreign Entities Doing Business in Vietnam or Earning Income in Vietnam*.

a typical statement from the Vietnam Business Forum, which represents overseas investors, have “made the application of DTA[s] of foreign enterprises impossible, effectively it obliterate[s] the legitimate benefit of enterprises.”⁴⁰ Vietnamese negotiators want to eat their cake and have it, simultaneously demonstrating their support for the policy project of disseminating OECD standards through tax treaties, and ignoring those standards where they prevent Vietnam from taxing as it would like.

For example, a common difference between the two main models on which tax treaties are based is the provision for a ‘services PE’. Under the OECD model, which favours capital exporters more, a foreign company providing services in Vietnam must have a fixed place of business in the country, such as a registered office, to be taxable. Vietnam has expressed a position on the OECD model stating that in its treaties it will seek a provision from the UN model that lowers this threshold by permitting it to tax such a company simply if its employees are physically present for a certain period, even without a ‘fixed place of business’. Although more than two-thirds of Vietnam’s treaties in force include this service PE provision, it is omitted from many of its older treaties, and from treaties covering almost two-thirds of its inward FDI. Vietnam’s response to this unsatisfactory situation has been to take the position that, absent a service PE provision in a treaty, it is at liberty to tax service providers without any minimum threshold, the exact opposite of how tax treaties are usually interpreted.⁴¹

The inconsistency between negotiation and administration priorities is not a result of inconsistency between parts of the bureaucracy, because decisions on both are made by the same person. Vietnam’s tax administration is decentralised, and according to tax advisers, its local offices do not have the knowledge to apply tax treaty provisions effectively.⁴² They rely on circulars issued by the Mr Think’s team at the GDT in Hanoi. Senior officials at a consultation meeting between VBF members and the Ministry of Finance in August repeated the line in these circulars.⁴³ Investors’ lack of confidence in the independence of the courts means that no tax treaty case has ever been tried in a court, despite the clear frustration from many investors and their advisers.⁴⁴ Administrative appeals, according to tax advisers, are always settled by the International Tax department, which drafts the circulars against which the appeals are directed. “The Deputy Director of the DGT signs off rulings,” said a tax adviser. “If there’s a dispute you can escalate it to the deputy Minister of Finance, but

⁴⁰ Vu, *Several Tax Issues*.

⁴¹ Public discussion between government officials and industry, Hanoi, August 2015

⁴² Interviews 54,60,61

⁴³ The author attended as an observer

⁴⁴ Interview 62

ultimately it will just go back to Mr Think.”⁴⁵ The result of this system is that companies do not avail themselves of benefits to which they are entitled according to the treaty. “A lot of companies could claim [reduced taxation] under treaties, but they don’t. It’s too much hassle,” stated one interviewee, while another went as far as to state that, “I am not aware of foreign investors obtaining treaty benefits.”⁴⁶

The consequence of Vietnam’s position is that investors paradoxically have *less* certainty under treaties than without them, and, worse, that Vietnam’s treaties actually *create* double taxation, rather than eliminating it. This latter effect comes about because treaty partners generally refuse to give their outward investors a credit against tax paid in Vietnam if, in their view, Vietnam should not have the right to levy tax under the treaty (in the absence of a treaty they would be likely to give a credit in the circumstances described here). Following the US\$1 billion investment by Samsung in the country, businesses from Korea, covered by one of Vietnam’s earliest and most regretted (by the GDT) treaties, have now invoked a dispute settlement procedure in the treaty to try to challenge some of these interpretation issues, because they do not expect domestic remedies to make a difference.⁴⁷

9.3.4 Positive scope condition: specialist control of veto points

Among private sector tax practitioners with experience dealing with the GDT, Mr Think is widely understood to be personally the driving force behind all decisions related to tax treaties.⁴⁸ He also suffers from a lack of experienced support: according to a former employee within the International Tax Department, Think is the only member who has been in post for more than five years, out of a staff of twelve.⁴⁹ According to one European tax lawyer who has worked in the region for over a decade, “it’s all about people. If Vietnam didn’t have Mr Think they wouldn’t have any tax treaties.”⁵⁰ A former official from the Department of Trade stated, “The legacy of signing agreements all the time is set in momentum, and it keeps on going... Sometimes it just happens because someone gets in the routine.”⁵¹

It is notable, however, that Think’s authority does not extend to being able to implement his desire to renegotiate treaties. The country has recently accepted an offer from the Netherlands to renegotiate in order to add an anti-abuse clause into that treaty, but while

⁴⁵ Interview 54

⁴⁶ Interviews 60,54

⁴⁷ Interviews 55, 62; VBF-MOF consultation

⁴⁸ Interviews 54, 56, 61, 66

⁴⁹ Interview 54

⁵⁰ Interview 66

⁵¹ Interview 59

some developing countries have faced difficulties persuading developed countries to renegotiate treaties that are a good deal for the latter (see chapter 8), Vietnam does not appear to have tried. According to Mr Thinh, the main reason relates to internal bureaucratic politics:

Nowadays...we would like to renegotiate. From our side, it's not easy because there would be questions from the other ministries and agencies, they would ask why we should want to. For example, we really want to renegotiate with France, because we don't have an interest article, but the other ministries would say 'everything is fine, why do you want to do this?'

9.3.5 Vietnam: conclusion

During the 1990s, Vietnam had sought tax treaties to bring in inward investment, establishing political and economic relations with countries following economic liberalisation and the fall of the Soviet Union, and making up for its lack of a domestic tax code. The tax costs they created were not anticipated by officials in this early period, creating problems later when companies expected to benefit from these treaty provisions. A main priority in this early period was 'tax sparing' clauses, but in other areas Vietnam was negotiating without a clear sense of the specific provisions that were important to retain its tax base, because raising tax revenue was not a priority.

Since 2000, greater technical knowledge within the GDT means that Vietnam has negotiated on a much more consistent, assured basis, with a wide range of countries including many where there is neither competitive pressure nor a prospect of inward investment. With this technical knowledge has come the idea that all investment should be covered by a tax treaty, no matter how small. The office within the GDT that negotiates and applies tax treaties appears unwilling to reconcile this belief with the revenue costs that it entails, interpreting tax treaties in ways that render them largely ineffective. As one tax lawyer put it, "they should be looking into the OECD interpretations if they're serious. As it is, it's [tax treaties] just window dressing."⁵²

9.4 Cambodia

Cambodia also underwent momentous change towards the turn of the 1990s, beginning with the end of the Khmer Rouge regime in 1985. Before this, private enterprises were not recognised by the Cambodian state, and private property rights were not restored until

⁵² Interview 62

1989.⁵³ But Cambodia's current political era begins with the Paris peace accord in 1991 that formally ended conflict between its warring factions, and the involvement of 18 other countries in its domestic affairs.⁵⁴ On 21 September 1993, Cambodia's new constitution was adopted by its newly elected Constituent Assembly, and an elected government took office. Policymaking in this era was predominantly dictated by outside experts, especially when Cambodia agreed to a Structural Adjustment package in 1994.⁵⁵

The new government in 1994 established for the first time a formal tax system based on self-assessment, replacing what had previously been an 'estimated' regime in which tax officials calculated a firm's estimated profit and then 'negotiated' with the taxpayer.⁵⁶ But it was not until 1997 that a Western-style tax system was introduced, with taxes on profits and withholding taxes on certain types of payments. Before this, tax treaties may have made little difference.

In August 1994, Cambodia signed its first Bilateral Investment Treaty (BIT), with Malaysia, and passed the Cambodian Investment Law, which offered investors in certain sectors generous incentives including an eight-year corporate income tax holiday (the same as Vietnam) and an exemption from tax on dividend payments.⁵⁷ There was a setback in investment promotion in July 1997, when the Cambodian People's Party (CPP) instigated a coup. Combined with the Asian financial crisis, this temporarily slowed inward investment into Cambodia, but with successful elections in 1998 placing the CPP in power on a more legitimate basis, Cambodia's integration into the global political economy continued.⁵⁸

In 2004, Cambodia began to seriously consider the idea of signing tax treaties, beginning work to develop a negotiating model.⁵⁹ In 2008, an international tax bureau, tasked with treaty negotiations, was formed within the newly created General Department of Taxation (GDT). But it was not until 2014, after the end of the sample period, that Cambodia opened talks. At the time that fieldwork was conducted, it had completed the first round of negotiations with Vietnam and Thailand, and was in correspondence with Brunei, Laos and Singapore.⁶⁰

⁵³ Sok, "Role of Law and Legal Institutions in Cambodia Economic Development: Opportunities to Skip the Learning Curve," 52.

⁵⁴ Slocomb, *An Economic History of Cambodia in the Twentieth Century*, 231.

⁵⁵ *Ibid.*, 236; Ayres, *Anatomy of a Crisis: Education, Development, and the State in Cambodia, 1953-1998*.

⁵⁶ Seiha, "Cambodia: Tax Revenue Reform Issues, Further Reforms," 6.

⁵⁷ Slocomb, *An Economic History of Cambodia in the Twentieth Century*, 279–280.

⁵⁸ *Ibid.*

⁵⁹ Interviews 64, 66

⁶⁰ Interviews 64, 65

9.4.1 Diffusion driven by competition for inward investment

All the interviewees situated a recent shift by Cambodia into negotiating gear in the context of its historic reluctance to sign tax treaties. It is clear that Cambodia has felt under pressure to sign tax treaties for some time, not because investors face great obstacles created by double taxation, but because it has become increasingly isolated within the region as the only country without a double taxation treaty (Table 9.5).

Table 9.5: Tax treaties signed by ASEAN member states

Country	Tax treaties signed		
	1993	2003	2013
Brunei	0	1	15
Cambodia	0	0	0
Indonesia	30	63	71
Laos	0	4	10
Malaysia	34	57	70
Myanmar	1	7	9
Philippines	27	40	43
Singapore	30	51	78
Thailand	26	53	63
Vietnam	4	40	67

Source: IBFD⁶¹

In 2008, ASEAN members signed the ASEAN Economic Community blueprint, which states that members will “work towards establishing an effective network of bilateral agreements on avoidance of double taxation among ASEAN countries.”⁶² Though Cambodia is still reluctant, the momentum this has created among its neighbours – and direct competitors for investment – such as Laos and Myanmar, has been the final straw. “It’s an international tax trend, our neighbours are signing them,” said a government official.⁶³ Tax advisers in the private sector concur. “The government had no intention of signing tax treaties. But now that Myanmar is open, they are considering if we have got behind,” said one.⁶⁴ Another agreed:

They’re under a lot of pressure from everywhere because they hesitated for a very long time. They have considered a lot and they don’t want to do it, but because of the pressure from the private sector and government - even Myanmar is doing it now - Cambodia is the only one left.⁶⁵

Cambodian officials emphasise that their own capacity development has been slow, and seem to believe that Laos and Myanmar have made a mistake by negotiating treaties at a

⁶¹ IBFD, “IBFD Tax Research Platform.”

⁶² ASEAN, *ASEAN Economic Community Blueprint*, 14.

⁶³ Interview 64

⁶⁴ Interview 67

⁶⁵ Interview 68

similar stage of capacity development, rather than forming a firm position based on more detailed technical knowledge first.⁶⁶

9.4.2 Negative scope condition: high fiscal cost salience

A comparison of tax performance in Cambodia and Vietnam illustrates why Cambodian officials were so reluctant to make the revenue sacrifice entailed by tax treaties (Table 9.6). In 1995, the first year for which data are available, Cambodia raised tax revenue amounting to as little as 5.3 percent of its gross domestic product (GDP), and was highly aid-dependent, receiving twice as much government revenue through aid than through taxation.⁶⁷ In contrast, Vietnam's tax-to-GDP ratio was 18.5 percent.⁶⁸ The situation with respect to taxes on businesses was much starker: while Vietnam raised 3.2 percent of GDP, and 20 percent of its total taxes, from businesses, Cambodia only raised 0.2 percent of GDP, and four percent of its total taxes, from this source.⁶⁹ More than half of Cambodia's government tax revenue came from trade taxes, a disproportionately high amount compared to other developing countries.⁷⁰

Cambodia's corporate income tax rate at this time was 20 percent, low in comparison to other countries in the region, and in practice foreign investors could pay much less, as a result of eight-year tax holidays that were followed by a permanent nine percent preferential tax rate. They were also exempt from withholding taxes on certain dividend, interest and royalty payments. A World Bank report from 1998 notes that:

Cambodia's current revenue-to-GDP ratio is very low by international standards... The Law on Investment is one of the most critical impediments to improved revenue mobilization... The combination of the Law and the [implementing] Regulations has eliminated any room for the business income tax to be a policy instrument in the revenue mobilization effort.⁷¹

By 2003, the first year of the sample period, Cambodia had successfully targeted reforms to its business tax law and administration, increase its tax revenue from businesses much more than other taxes, to 0.6 percent of GDP, now 10 percent of the total. Any measures that reduced its tax take from businesses would significantly weaken government resources. By 2012, taxes from businesses climbed further, to 15 percent of the total tax take, which had itself doubled compared to 2003.

⁶⁶ Interviews 64, 65

⁶⁷ Godfrey et al., "Technical Assistance and Capacity Development in an Aid-Dependent Economy: The Experience of Cambodia," 359.

⁶⁸ Prichard, Cobham, and Goodall, *The ICTD Government Revenue Dataset*.

⁶⁹ Ibid.

⁷⁰ St. John, "The Political Economy of the Royal Government of Cambodia."

⁷¹ World Bank, *Cambodia Country Economic Memorandum*, 9.

Table 9.6: Selected tax statistics from Vietnam and Cambodia

% of GDP	1995		2003		2012	
	Cambodia	Vietnam	Cambodia	Vietnam	Cambodia	Vietnam
Total government revenue excluding grants	7.6	22.6	9.1	24.5	13.1	22.3
Total tax revenue	5.3	18.5	6.4	19.3	11.6	19.0
Corporations and other enterprises	0.2	3.2	0.6	7.7	1.7	No data

Source: Prichard, Cobham, and Goodall⁷²

These figures explain why the revenue sacrifice from tax treaties has seemed much more significant to Cambodian policymakers than to their Vietnamese counterparts. Cambodia has proceeded to develop a treaty policy cautiously over a period of ten years before entering into negotiations, and has put in place plans to monitor the impact on revenue of its first few treaties. According to one interviewee, a GDT study estimated the impact of reduced withholding tax rates, were Cambodia to sign a treaty with Vietnam, at between US\$ 5 million and US\$ 6 million.⁷³ If correct, this would be around two percent of Cambodia's tax revenue from businesses from one part of a single treaty. Edwin Vanderbruggen, a Dutch tax lawyer practicing across South East Asia who advised the GDT, also felt that concern about lost revenue was uppermost in the Cambodian officials' minds. In contrast to BITs, he said, tax treaties have an immediate upfront cost:

They had no understanding of how tax treaties worked, but they did understand that you can't sign tax treaties and not lose anything. They had a very small tax base to begin with.⁷⁴

Tax advisers in the private sector also attribute the continued reticence, including the lack of allocation of human resources to tax treaties until recently, to an institutional preoccupation with their fiscal costs. "The GDT is the tax policymaker, execution and judge. When the government set their own revenue KPIs they don't look into the long term, that's why they don't sign," stated one.⁷⁵ "They don't want to move quick and incur a lot of loopholes," said another.⁷⁶

9.4.3 Low technical knowledge enabled diffusion

The final push leading to the negotiations being opened was created by the recent appointment of a new Director General (DG) at the GDT. "When the former DG Sin Yay

⁷² Prichard, Cobham, and Goodall, *The ICTD Government Revenue Dataset*.

⁷³ Interview 67

⁷⁴ Interview 66

⁷⁵ Interview 68

⁷⁶ Interview 67

was replaced by Kong Vibol, this gave it a new impetus, he's much more international," said one.⁷⁷ Another agreed, that "the previous DG was quite narrow-minded. After the change of DG they started looking into a lot of issues. They started quickly on DTAs but it took a lot of time for them to understand. I thought it was just a matter of time."⁷⁸

But Cambodia's international tax bureau still had only four people in 2011, one of whom was studying abroad, and one of whom was actually dedicated to other work. "We had very few human resources, and those human resources were not fit for the job," said one of the civil servants interviewed, who is in a management position within the international tax bureau. He added that, "the very day I started, I didn't know what a DTA was."⁷⁹

In this context, external advisers had considerable influence. From the beginning, Cambodia has relied on outside experts with greater expertise than its own staff. Vanderbruggen was hired as a full time adviser in 2006, to develop a model treaty for use in negotiations.⁸⁰ Cambodia also received technical assistance from Australian and Japanese experts – the first a former treaty negotiator - as well as the OECD, Asian Development Bank and World Bank, and its officials have attended numerous external training courses.⁸¹

Cambodian officials have identified several areas where treaties that use the conventional rules of international taxation were likely to have a significant impact on the country's revenues, and where they wanted to pursue an unconventional approach. These include the taxation of foreign airlines and insurance companies.⁸² Cambodia currently levies a tax on half the gross value of tickets sold for flights to and from the country, and on the gross value of insurance premiums paid by Vietnamese residents, and officials wanted its treaties to permit this to continue. International treaty norms, however, state that businesses should only be taxed on their net profits, not gross income, in these circumstances. As a government official wryly observed, state subsidies mean that most airlines flying to Cambodia make a loss, and so there is no net profit for Cambodia to tax.⁸³

Cambodian officials, conscious of their limited technical knowledge, have been persuaded by their technical advisers that these unconventional positions cannot be included within their tax treaties. According to Vanderbruggen, who drafted Cambodia's model tax treaty, "I said, 'you cannot be the only country in the world that goes against the OECD, UN and

⁷⁷ Interview 66

⁷⁸ Interview 68

⁷⁹ Interview 65

⁸⁰ Interviews 64, 66

⁸¹ Interviews 64, 65

⁸² Interviews 65, 66

⁸³ Interview 65

ASEAN model [treaties]’.”⁸⁴ As for insurance, Vietnam has drafted alternative wording in its model treaty, but finds it hard to maintain in negotiations, because, said a negotiator, “your counterpart just tells you that this is not the international standard.”⁸⁵ Thus, Cambodian negotiators have come to accept international standards out of deference to more experienced members of the community of negotiators and tax professionals, rather than because it is in Cambodia’s interests to do so. While still concerned about the fiscal costs, their views about acceptable approaches to international taxation have been circumscribed by those of members of the epistemic community, including their own advisers and more experienced negotiators from other countries.

9.4.4 Conclusion: Cambodia

Cambodia has not failed to sign tax treaties because of a lack of competitive pressure. Rather, it has actively resisted this pressure both in terms of comparing itself with competitor countries, and accepting requests from potential treaty partners to open negotiations. The lack of treaties is also not a result of a reticence to conclude economic agreements with other countries, as its 23 BITs to date indicate, or of an unwillingness to use its tax system to attract investment, something that international organisations suggested it did too much of. The reluctance to negotiate seems instead to have resulted from an acute awareness of the fiscal costs of tax treaties, at a time when government revenues from all types of tax were low. It is only now that all Cambodia’s direct competitors have concluded some tax treaties, and the country’s tax performance has improved, that government officials have reached the conclusion that the costs of not signing treaties exceed those of doing so. The basis on which this decision was made comes not from evidence, such as seeing a positive effect on investment among their competitors (who in fact the Cambodian negotiators believe have moved too quickly), but from a feeling that Cambodia cannot continue to be an outlier. Furthermore, Cambodia’s negotiating position contravenes officials’ original view of what constitutes a fair balance of taxing rights. Instead, it is based on advice from technical experts who are part of an epistemic community which promotes tax treaties regardless of their costs and benefits for developing countries.

9.5 Case comparison

This chapter compared a positive and negative outlier to look for the reasons why one signed more tax treaties than predicted, giving away more taxing rights than necessary, while

⁸⁴ Interview 66

⁸⁵ Interview 65

another signed none at all, despite the presence of competitive pressure. Other economic competition variables were held largely constant between the cases, as illustrated by both countries' signatures of BITs and preferential trade agreements. Ideas certainly played a role in diffusion in both countries, and it was the difference in tax effort in the two countries that caused those ideas to have a different level of effectiveness.

Vietnam had moved quickly to sign tax treaties in the 1990s, making revenue sacrifices that it did not anticipate and would subsequently regret. Government officials were prioritising the use of tax treaties to overcome other deficiencies that might discourage inward investment, without first forming a complete understanding of the implications of the agreements they were signing. By 2003, the start of the sample period, a new team of negotiators had taken over, with a greater level of technical knowledge gained from international interactions, and they sought both to use their power over the administration of tax treaties to undo the decisions of their predecessors. But with their knowledge had come the idea that they should sign tax treaties with all investing countries, irrespective of the amount of investment or the effects of those treaties.

In contrast, Cambodian officials, with a smaller government revenue base and less international training, were much more concerned about the fiscal costs of tax treaties. As a result, they refused to conclude any tax treaties, despite receiving requests from treaty partners and despite watching their competitors sign more treaties. The decision to begin work on negotiations in 2004 was a result of peer pressure: Cambodia could not be the only country in the region without any tax treaties, even if the costs of those treaties outweighed the benefits. Nonetheless, Cambodia moved slowly, in part because of a desire to build knowledge and competence first, to minimise the costs of signing the treaty. But the knowledge that officials gained, primarily through bringing in outside expertise, constrained their choices by pushing them into compliance with international standards in spite of their own concerns that these standards would have very specific negative impacts on their revenue base. Exactly how effectively Cambodia safeguards itself against these impacts during its negotiations will only be seen when its first treaties are concluded.

10 Conclusion

In my experience with legislative bodies I have found that you can accomplish more for equity and justice in taxation in the name of eliminating or preventing double taxation, than with any other slogan or appeal.

- Thomas Adams, architect of the US international tax system¹

To explain the diffusion of tax treaties, we need to understand the different ideas held by relevant actors within a polity about what they are for. The term ‘Double Taxation Agreement’ conveys an idea which is powerful, but misleading: that tax treaties’ main purpose is to resolve a problem created by competing claims to tax inward cross-border investment, which will deter that investment. Tsilly Dagan argued that this logic was a myth, and many actors in the process, including negotiators themselves, agree with her. Most notably, the United Kingdom’s international tax officials in the 1970s, responsible for a huge programme of negotiations, shared this view. Members of the international tax community abhor double taxation, but recognise that even in the absence of a treaty it is unlikely to exist to a degree that will deter investment. Nonetheless, it is axiomatic to them that double taxation must be eliminated in all its forms, and that the conclusion of tax treaties is the appropriate way for a modern fiscal state to behave.

As actors in developing countries – nascent fiscal states – have gained technical knowledge, they have taken this vision to heart. Vietnam, an unusually prolific negotiator, ensured that all its investors were covered by a tax treaty, even where there was little competitive pressure on it to do so. The way in which it applied those treaties, however, undermined any benefits that investors might have expected to gain from them. Zambia’s international tax specialists negotiated and renegotiated agreements, but struggled to convince political veto players to sign and ratify them. As Cambodia succumbed to the inevitable logic of competition through tax treaties, its officials allowed external technical advisers to teach them which treaty provisions were acceptable, and which were not.

Meanwhile, the tax treaties myth prevails among actors who do not have this same technical knowledge. To them, signing tax treaties is one of the things that a country wishing to compete for investment does, even though there is not a solid evidence base to support this view. The choice of treaty partners illustrates this point: positive outliers such as Zambia and Vietnam, in negotiations during the 1970s and 1990s respectively, signed treaties with countries where there was low competitive pressure based on the idea that they would attract

¹ Quoted in Graetz and O’Hear, “The ‘Original Intent’ of U.S. International Taxation,” 1047.

investment. These countries' high tax-to-GDP ratios insulated negotiators from more intense scrutiny of their choices, whereas Cambodia has been reluctant to enter negotiations because of its low tax-to-GDP ratio.

Negotiations by countries with limited technical expertise and a competition-driven mentality also produced results in terms of the content of their agreements that illustrated the bounded rationality of their negotiating stance. When Zambia and Vietnam's negotiations were motivated by competition, they also signed away taxing rights that their present negotiators regret, and that past negotiators could have known they should not give away, had they fully understood the agreements they were signing.

The core argument of this thesis is that the mutually supporting ideas of fiscal anarchy and the tax treaties myth have played a causal role in the diffusion of tax treaties. This is not to say, however, that material factors did not also play a role, and clearly they did. Ideas constructed preferences that sometimes had their origins in material interests. In particular, the UK case and other anecdotal evidence supports the idea that developed countries actively pursue tax treaties with developing countries, because this improves the competitive position of their own multinationals. Yet, in the UK, two competing ideas about how treaties would achieve this shaped the country's negotiating priorities. In some instances, the UK turned down an agreement in the face of strong competitive pressure, because tax specialists did not consider that it was consistent with their idea of acceptable fiscal standards, and believed those creating the pressure were 'ignorant'. Furthermore, even if rational interests did explain the actions of capital exporters, we need also to explain the willingness of capital importers to negotiate. This brings us back to the ideational mechanisms discussed above.

Another rationalist explanation might focus on the 'intangible' benefits of tax treaties to developing countries other than the relief of double taxation, such as the broader signals they convey to investors about investment climate and conformity to international norms. It would not be irrational to believe that these benefits might stimulate investment. But countries rarely adopted this view without reference to the double taxation problem, and the absence of a cost-benefit analysis based on the actual features of a country's tax system, unfortunately the norm, indicates 'bounded' rationality.

Finally, an exception to the tax treaty myth may be the 'tax sparing' clauses that were popular in tax treaties from the 1970s to the 1990s, which provided benefits directly to companies, rather than eliminating double taxation. There is some positive evidence to

suggest that they do stimulate investment into developing countries.² But they are not part of the modern tax standards package, and tax specialists have an ambivalent relationship with them. The OECD, guardian of international tax standards, suggested in 1998 that there was “an emerging consensus on the need for a re-evaluation”, claiming that “the basic assumption underlying tax sparing is invalid.”³ Furthermore, while tax sparing clauses clearly motivated some of the particular negotiations considered in the case studies, they by no means explain all. Indeed, UK negotiators regarded tax sparing clauses as an adjunct to the main function of tax treaties, and fought off pressure to sign with Brazil that was largely motivated by the desire for tax sparing. Zambia, negotiating with the UK, and Vietnam, negotiating with the US, both dropped their demands for tax sparing in order to secure an agreement.

These findings have implications in four areas. First, they help chart a path towards a more comprehensive international political economy of tax, that incorporates both the rationalist work on tax treaties and the constructivist work on offshore. Second, they suggest some ways in which diffusion studies can be strengthened and challenge certain assumptions in the design and interpretation of quantitative models. Third, they offer some specific evidence with which to calibrate the core methodologies used in diffusion studies. Finally, and perhaps most importantly, they provide evidence for policymakers in developing countries to help inform their responses to the current groundswell of concern about the impact of tax treaties.

10.1 Implications for IPE literature on tax

It is not just policymakers who have been influenced by the seductive logic behind ‘Double Taxation Agreements’. The assumption in previous studies addressing this question, that tax treaties are primarily the product of states’ desire to eliminate double taxation in order to stimulate investment, demonstrably does not hold. Critical accounts in the legal literature that have dismantled the tax treaties myth on technical grounds have demonstrated this, but are unable to explain why developing countries agreed to sign them.⁴ It is by focusing on the causal role of the socially constructed problem itself that this gap can be filled.

An account that instead recognises the role of ideas in shaping the preferences of developing fiscal states, and of the individuals behind their tax policy, begins by problematising the

² Azémar, Desbordes, and Mucchielli, “Do Tax Sparing Agreements Contribute to the Attraction of FDI in Developing Countries?”; Azémar and Dharmapala, *Tax Sparing Agreements, Territorial Tax Reforms, and Foreign Direct Investment*; Hines Jr, “‘Tax Sparing’ and Direct Investment in Developing Countries.”

³ OECD, *Tax Sparing : A Reconsideration.*, 21–23.

⁴ Dagan, “The Tax Treaties Myth”; Brooks and Krever, “The Troubling Role of Tax Treaties.”

double taxation problem itself. OECD states' identities and preferences about corporate taxation were constructed intersubjectively in an international environment whose formative era was almost a hundred years ago, when their modern tax systems were themselves under construction. For developing countries, in contrast, their tax systems and bureaucratic capacities have developed within this system, which in many cases predated their existence as states. For a country starting to design an international tax system, the OECD offers a rationale, a template and a set of off-the-shelf tools, which it actively promotes to developing countries. The diffusion of tax treaties, based on an OECD model, is therefore underpinned by ideas about the treaties' role that were also constructed by actors in OECD states.

Constructivist accounts also dismantle the model of the state as a unitary actor, pointing to the role of tax expertise in the domestic and international policymaking environments. A defining feature of debates on tax policy, both within the specialist community and outside it, is a recognition of its complexity and obscurity: tax is *boring*. Yet this perception stands in sharp contrast to taxation's existential role with respect to the state: it enables the state to do what it does, but it is also a part of the state's socially constructed relationship with its citizens. In developing countries, which rely heavily on taxation from multinational companies, the revenue sacrifice from tax treaties does not only undermine the state's ability to provide the public services expected by its citizens, it also threatens to undermine tax morale, and with it the nascent fiscal contract between citizens and the state. The current wave of publicisation and politicisation of corporate taxation, and – in some countries – of tax treaties themselves,⁵ is the result of decades of incremental decisions by individual actors within developing countries to hollow out the tax base, rather than taking a strategic decision in full view of stakeholders in the fiscal state.

The other major contribution of the thesis to the study of international tax relations was to provide an innovative account of tax competition. Economics and international political economy have long focused on the 'race to the bottom' thought to result from competition between states for inward investment. The role of competition between capital exporting states, which seek to increase opportunities for their outward investors, has rarely been considered as a diffusion mechanism, although its effects on corporate behaviour have been studied by economists. As the headquarters of multinational companies have become more mobile, pitting capital exporting states in competition with each other to attract multinationals' headquarters, such competition for outward investment has intensified, and

⁵ Seabrooke and Wigan, "Powering Ideas through Expertise: Professionals in Global Tax Battles"; Rixen, *Politicization and Institutional (Non-) Change in International Taxation*.

international organisations have raised concerns about the ‘spillover’ effects on developing countries.⁶ Tax treaties are just one example of an increasingly complex story of tax competition among capital exporters. To understand what capital exporters want when they negotiate a tax treaty, we need a more sophisticated model of their preferences that takes into account the use of international tax rules to provide financial advantages to mobile capital, rather than simply to maximise revenue.

10.2 Implications for diffusion and socialisation literatures

While the IR literature on BITs is more voluminous than that on tax treaties, they share a common problem structure: the conclusion of thousands of bilateral agreements by developing countries despite significant costs and a lack of evidence of corresponding benefits. I noted at the start that the diffusion of tax treaties is harder to explain through the ‘bounded rationality’ framework popularised by Lauge Poulsen in the study of BITs, because that story rests on the initial invisibility of the treaties’ costs.⁷ One contribution of this thesis is to demonstrate that the bounded rationality argument still holds in this more difficult case, where the costs were much more immediate.

The BIT and tax treaty literatures also share a common focus on the preferences of developing (capital importing) countries, while those of developed (capital exporting) countries are held to be constant across time and between countries. Elkins and colleagues, for example, in their classic study of BIT diffusion, note that diffusion is characterised by a clustering of signatures by a particular developing country in a short space of time. They deduce from this that, “while the major capital exporters stand ready with model treaties in hand, the decision whether and when to sign is left to the host,” a view that Poulsen concludes “appears to be correct.”⁸ Barthel and Neumayer test for the idea that tax treaties are ‘directed’ from OECD states outwards, but they model this by presuming that the timing of signature depends on the capital importing country.⁹

The findings of this thesis suggest another possible explanation: the observed clustering reflects a host country-specific strategic interaction between capital *exporters*. While developing countries’ preferences certainly influence the timing of their tax treaty

⁶ IMF, *Spillovers in International Corporate Taxation*.

⁷ Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries*.

⁸ Elkins, Guzman, and Simmons, “Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000,” 822; Poulsen, “Sacrificing Sovereignty by Chance: Investment Treaties, Developing Countries, and Bounded Rationality,” 108.

⁹ Barthel and Neumayer, “Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties.”

negotiations, it is also clearly the case that, once a country crosses the Rubicon, capital exporting countries – and low-tax conduit countries – move quickly to request their own negotiations with it. This strategic interaction may be driven by two dynamics. First, a BIT or a tax treaty with a given host country confers a competitive advantage for firms from the capital exporting signatory: it raises their risk-adjusted rate of return, allowing them to undercut their competitors. Those competitors' governments may respond by seeking a treaty with the same host country, as the UK did with Egypt and tried to do with Brazil. Second, the signature of a BIT or tax treaty between a developed and a developing country signals that the latter is now willing to sign such treaties, which may cause other developed countries to react by requesting negotiations themselves, as Cambodia and Vietnam both experienced, and the UK did in the case of Bangladesh. In many of the cases discussed here, the observed pattern of convergence in developing countries is certainly at least partly attributable to this diffusion mechanism acting on developed countries.

There are good reasons for focusing on the preferences of the developed country signatory as well as those of its developing country partner. First, a capital exporter seeking to increase outward investment and enhance the competitive position of its multinational companies has a clear incentive to pursue tax treaties and BITs with countries that are important markets for outward investment, since treaties provide an advantage to multinationals without imposing many costs on the capital exporter.¹⁰ Second, if developing countries' preferences are characterised by 'bounded' rationality, it seems logical that developed countries might critically examine the pattern of requests from developing countries, according a higher priority to some than others; developed countries might actively reach out to desirable potential partners from whom they have not received a request. Third, there is an observable variation between capital exporters in the number, distribution and content of bilateral treaties they have concluded, implying that their own preferences may also shape the pattern of diffusion.¹¹

If the findings in this thesis also apply to other forms of international agreement, the research agenda needs to shift focus towards explanations that better incorporate developed countries' preferences as well as those of developing countries, perhaps modelled as an interaction between the two. The conclusion of a tax treaty or a BIT requires willingness on the part of two signatories, and it is no surprise that these preferences do not always align. A challenge for quantitative studies is to delineate mechanisms acting on capital exporters

¹⁰ Mark Manger makes the case for this with respect to preferential trade agreements. See Manger, *Investing in Protection: The Politics of Preferential Trade Agreements between North and South*.

¹¹ Allee and Peinhardt, "Evaluating Three Explanations for the Design of Bilateral Investment Treaties"; Wei, "Bilateral Investment Treaties: An Empirical Analysis of the Practices of Brazil and China."

from those acting on capital importers, and indeed those mechanisms that fall within the concept of ‘coercion’, which operate from the former to the latter. Existing proxies for coercion, such as overseas aid or IMF disbursements, would not suffice for the explanation developed here.

10.3 Methodological implications

Authors writing in the policy diffusion and socialisation literature have highlighted that the methodological ‘state of the art’ is strong at identifying broad cross-national patterns, but weak at understanding regional and national variables that interact with these international mechanisms to produce concrete policy change, as well as weak in its coverage of developing countries in general.¹² Commentators on diffusion have highlighted the need to supplement the quantitative evidence base with more qualitative studies, especially in developing countries.¹³

The mixed methods approach used here identified unexplained variation in quantitative studies, but it also tested the external validity of studies that apply established causal mechanisms to developing countries without testing this qualitatively. In doing so, it went some way towards identifying national-level scope conditions that vary across developing countries but that may not do so across developed countries. First, policymaking capacity can vary from a situation in which there are no civil servants with the capacity to build up technical expertise at all, through to the existence of a small, focused and knowledgeable team. In contrast, the variation within OECD countries is much narrower. Second, there is a big difference between the level of political engagement with corporate taxation across all countries, with some bureaucrats operating entirely under-the-radar, while others face intense scrutiny from political actors. One determinant of this in developing countries is the state’s need for corporate tax revenue, which is much more heterogeneous than in developed countries, which have universally higher tax/GDP ratios, bolstered by large personal income tax and VAT bases. Finally, developing countries are characterised by less complex and more variable polities, which create wide variations across time and between countries in the veto power of different players with an interest in corporate taxation.

The mixed methods test gives cause to question the interpretation of an existing quantitative study, clearly identifying a need to reinterpret the strong, significant competition effect that

¹² Solingen, “Of Dominoes and Firewalls: The Domestic, Regional, and Global Politics of International Diffusion”; Meseguer and Gilardi, “What Is New in the Study of Policy Diffusion?”; Gilardi, “Transnational Diffusion: Norms, Ideas, and Policies.”

¹³ Marsh and Sharman, “Policy Diffusion and Policy Transfer.”

it found. Specifically, the evidence suggests that competition at the capital exporting end of a dyad is an important driver of the pattern of treaty diffusion, questioning a causal hypothesis that focused solely on competition at the inward-investing end. Mixed methods is still relatively unusual in international relations research, but, especially where the focus is on the role of ideas in driving diffusion, it is essential to test the causal story underlying quantitative results.

Finally, the focus on individual clauses and the use of an index of tax treaty content demonstrated that the use of a simple binary variable in studies of the causes and effects of tax treaties is inadequate. For this study, knowing the *quality* of negotiation helps to build the causal story behind the *quantity* of negotiations as well. Large-N studies that break down the content of treaties are time-consuming and innovative, but generally produce new and interesting findings about the power dynamics of negotiation.¹⁴

10.4 Policy implications

Ideas play a causal role in the diffusion of tax treaties. For specialist bureaucrats, steeped in the technical detail of tax treaties, the foundation of that discourse is the double taxation problem, a socially constructed fact. For politicians and civil servants for whom tax treaties are merely an obscure tool in the economic toolbox, it is the sense of an authoritative policy consensus around the investment-promoting effects of tax treaties that too often goes unquestioned. Yet the survey of the literature in this thesis illustrates that sufficient critical scholarship exists to call these ‘facts’ into question. The empirical evidence suggests that negotiators from developing countries sometimes do this, but sporadically, and often with some concern about the risks associated with challenging a prevailing consensus.

Even if the double taxation problem itself is taken as read, it does not necessarily follow that the consensus across the OECD-derived model tax treaties, which systematically shift the burden of double tax relief onto developing countries, is the inevitable solution. Again, some tax officials, on gaining sufficient understanding of tax treaties to realise this, question the standard treaty articles. But there has not been a concerted push to challenge the hegemonic status of the *de facto* settlement between developed and developing countries that is embodied by the OECD model.

¹⁴ Allee and Peinhardt, “Evaluating Three Explanations for the Design of Bilateral Investment Treaties”; Simmons, “Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment”; Büthe and Milner, “Foreign Direct Investment and Institutional Diversity in Trade Agreements: Credibility, Commitment, and Economic Flows in the Developing World, 1971–2007.”

The recent politicisation of international tax and – increasingly – tax treaties themselves has begun to create more interest in such anti-establishment questions. During the time that this thesis was researched, development NGO ActionAid published reports that contributed to Zambia’s decision to seek renegotiations of some of its most questionable tax treaties, and provoked debate in the Danish and British parliaments about the coherence of tax treaty negotiations with development policy.¹⁵ The IMF issued its own cautious statement questioning the wisdom of tax treaties for developing countries.¹⁶ At the UN tax committee, developing countries secured a new model treaty clause allowing them to tax gross service fee payments made to residents of the treaty partner.¹⁷

This research will, hopefully, contribute to the battle of ideas over tax treaties, because historical perspectives on the origins of developing countries’ tax treaty networks are sorely lacking. During fieldwork in Uganda, civil servants were surprised that I knew much more about their country’s past negotiations with the UK than they did. After I presented chapter 7 of this thesis to a group of African revenue officials, a revenue authority commissioner approached me afterwards to say how surprised he was to learn of the UK government’s own motivations for concluding tax treaties with developing countries. Stories of developing countries unable even to find the text of their older tax treaties circulate among NGOs.

This lack of historical perspective needs to be addressed for a number of reasons. Firstly, many developing countries, including Zambia and Vietnam, signed treaties with their biggest sources of investment soon after independence or opening up. The result is that the taxation of much of their foreign investment is governed by agreements on terms reached by negotiators who may have had much less knowledge and experience than their current successors, reaching trade-offs that were specific to the economic and political climate of the day. Second, a negotiated tax treaty is sticky: the consequences for a country’s reputation of terminating a treaty may be more significant than not negotiating it in the first place, as a Zambian negotiator lamented.¹⁸ Developing countries are subject to ‘policy drift’, whereby domestic and international politics make it tough to alter their historically negotiated treaties, even as the economic context changes around them, potentially making them costly in ways that could not have been anticipated.¹⁹ Third, negotiating positions are determined by

¹⁵ Interview, anonymised; UK Parliament Fourth Delegated Legislation Committee, 21 October 2015; Fiscal Affairs committee of the Danish parliament, 29 April 2015.

¹⁶ IMF, *Spillovers in International Corporate Taxation*.

¹⁷ Observation, October 2015

¹⁸ Interview 41

¹⁹ Hacker, “Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States.”

precedent, with subsequent negotiations starting from the terms that a country has offered in the past.

Consider the 1973 UK-Kenya tax treaty, with which this thesis began. It was a Kenyan priority, as in many of the case studies in this thesis, to secure a 'tax sparing' clause so that British firms could benefit fully from Kenyan tax incentives. Such a clause is no longer necessary, as the UK has ceased taxing the foreign-source profits of British multinationals. The tough negotiation over the taxation of management and consultancy fees occurred before the internet age had revolutionised the tax planning possible using such fees. On this basis, it might be a sensible strategy for Kenya to go back to the drawing board on this treaty, as it had originally done in the 1970s. The treaties it tore up then were biased against it because they had been imposed on it under colonial rule. Today it is a hegemony of ideas, serving the interests of OECD member states and multinational firms, that is at the roots of an unfair tax treaty system.

Annex 1: list of interviews

Interview number	Year	Setting	Number of interviewees	Country income group	Type of interviewee
1	2013	Telephone^	1	High	International organisation/former civil servant
2	2013	Field visit	1	Upper-middle	Civil servant
3	2013	Field visit	1	Upper-middle	Civil servant
4	2013	Int'l meeting	1	Upper-middle	Civil servant
5	2013	Int'l meeting	1	Upper-middle	Civil servant
6	2013	Int'l meeting^	2	Lower-middle	Civil servant
7	2013	Int'l meeting*	1	Low	Civil servant
8	2013	Field visit	1	Lower-middle	Civil servant
9	2013	Field visit	1	High	Private sector
10	2013	Int'l meeting	1	Low	Civil servant
11	2013	Int'l meeting*	1	Low	Civil servant
12	2013	Int'l meeting*	1	High	Private sector
13	2013	Int'l meeting	1	High	Civil servant
14	2013	Int'l meeting	1	High	Civil servant
15	2013	Int'l meeting	1	Upper-middle	Civil servant
16	2013	Int'l meeting	1	Upper-middle	Civil servant
17	2013	Int'l meeting	1	Upper-middle	Civil servant
18	2013	Int'l meeting	1	High	Civil servant
19	2013	Int'l meeting*	1	High	Civil servant
20	2013	Int'l meeting	3	Low	Civil servant
21	2014	Field visit	1	High	Civil servant
22	2014	Int'l meeting	1	Low	Technical adviser/former civil servant
23	2014	Field visit	1	Lower-middle	Civil servant
24	2014	Field visit	1	Lower-middle	Civil servant
25	2014	Field visit	1	Low	Civil servant
26	2014	Field visit	1	Low	Private sector
27	2014	Field visit	2	Low	Private sector
28	2014	Field visit	3	Low	Civil servant
29	2014	Field visit	1	Low	Academic/private sector

Interview number	Year	Setting	Number of interviewees	Country income group	Type of interviewee
30	2014	Field visit	1	Low	Private sector
31	2014	Field visit	1	Low	Civil servant
32	2015	Field visit	2	International organisation	International organisation/former civil servant
33	2015	Field visit	1	International organisation	International organisation/former civil servant
34	2015	Field visit	2	High	Civil servant
35	2015	Field visit	2	High	Civil servant
36	2015	Int'l meeting	1	Upper-middle	Civil servant
37	2015	Field visit	1	Upper-middle	Private sector
38	2015	Field visit	2	High	Private sector
39	2015	Field visit	1	High	Civil servant
40	2015	Int'l meeting*	1	International organisation	Academic/international organisation
Zambia					
41	2014	Email	1	Lower-middle	Civil servant
42	2014	Telephone	1	Lower-middle	Technical adviser/private sector
43	2014	Field visit^	1	Lower-middle	Civil servant
44	2014	Field visit	1	Lower-middle	Civil servant
45	2014	Field visit	1	Lower-middle	Civil servant
46	2014	Field visit	2	High	Civil servant
47	2014	Field visit	1	International organisation	International organisation
48	2014	Field visit	1	Lower-middle	Private sector
49	2014	Field visit	1	Lower-middle	Civil servant
50	2014	Field visit	2	Lower-middle	Private sector
51	2014	Field visit	1	Lower-middle	Technical adviser
52	2014	Email	1	Lower-middle	Technical adviser/private sector
Vietnam					
53	2014	Field visit	1	International organisation	International organisation
54	2015	Field visit	3	Lower-middle	Private sector
55	2015	Field visit	2	Lower-middle	Civil servant
56	2015	Field visit	1	Lower-middle	Private sector
57	2015	Field visit	1	Lower-middle	Civil servant
58	2015	Telephone	1	Lower-middle	Private sector

Interview number	Year	Setting	Number of interviewees	Country income group	Type of interviewee
59	2015	Field visit	1	Lower-middle	Civil servant
60	2015	Field visit	1	Lower-middle	Private sector
61	2015	Field visit	1	Lower-middle	Private sector
62	2015	Field visit	2	Lower-middle	Private sector
63	2015	Telephone	1	High	Civil servant
Cambodia					
64	2015	Field visit	1	Lower-middle	Civil servant
65	2015	Field visit	1	Lower-middle	Civil servant
66	2015	Telephone	1	Lower-middle	Technical adviser/private sector
67	2015	Field visit	1	Lower-middle	Private sector
68	2015	Field visit	1	Lower-middle	Private sector

*Informal conversation ^Subject interviewed more than once, but recorded here as one interview

Annex 2: Descriptive statistics for quantitative analysis

This table gives the results for both the original Barthel & Neumayer (B&N), and the extended dataset used in this thesis (H).

	Observations		Mean		Std. Dev		Min		Max	
	B&N	H	B&N	H	B&N	H	B&N	H	B&N	H
DTT	212,244	289,226	0.007	0.006	0.081	0.080	0	0	1	1
Product of populations (ln)	212,244	289,226	31.592	31.523	2.363	2.421	22.276	21.898	41.534	41.534
Product of GDPs per capita (ln)	212,244	289,226	14.765	15.126	2.079	2.155	9.374	9.374	21.072	22.342
Bilateral trade (ln, t-1)	212,244	289,226	9.986	10.294	7.765	7.476	0.000	0.000	25.237	25.237
Product of openness to trade*	212,244	289,226	5,296.2	6,244.9	4,604	5,457	65.342	65.342	94,121.9	108,337.6
BIT	212,244	289,226	0.046	0.056	0.209	0.231	0	0	1	1
RTA	212,244	289,226	0.079	0.093	0.269	0.291	0	0	1	1
OFC[^]	212,244	289,226	0.209	0.228	0.407	0.419	0	0	1	1
Diplomatic representation~	212,244	289,226	0.307	0.274	0.461	0.446	0	0	1	1
Distance (ln)[^]	212,244	289,226	8.782	8.792	0.705	0.696	4.535	4.535	9.896	9.896
Product of Political Constraints	212,244	289,226	0.125	0.125	0.191	0.186	0	0	0.786	0.786
OECD-OECD dyad[^]	212,244	289,226	0.009	0.007	0.092	0.081	0	0	1	1
OECD-nonOECD dyad[^]	212,244	289,226	0.262	0.248	0.440	0.432	0	0	1	1
Min. years of independence[^]	212,244	289,226	36.718	39.709	17.10	17.59	2	2	81	87
Max. number of DTT (t)	212,244	289,226	24.428	29.905	23.98	27.14	0	0	118	126
Cumulative number of DTTs, country i (t-1)	212,244	289,226	12.993	17.620	19.52	24.04	0	0	120	126
Cumulative number of DTTs, country j (t-1)	212,244	289,226	15.987	17.795	21.73	23.58	0	0	120	126
Spatial lags										
W: Common region (product) (t-1)	212,244	289,226	0.049	0.064	0.093	0.108	0	0	1	1
W: Export product similarity (sum) (t-1)	212,244	289,226	0.100	0.120	0.050	0.055	0.012	0.012	0.279	0.253

* Unable to reproduce figures, so the most recent value in the B&N dataset has been extrapolated forward in the H dataset.

[^] Time invariant or generated from time-invariant data, so data taken directly from the B&N dataset.

~ No data for more recent years are available, so the most recent value in the B&N dataset has been extrapolated forward in the H dataset.

Bibliography

- Abbott, Andrew. "Linked Ecologies: States and Universities as Environments for Professions." *Sociological Theory* 23, no. 3 (2005): 245–274.
- Abdelal, Rawi. *Capital Rules : The Construction of Global Finance*. Cambridge, MA: Harvard University Press, 2007.
- Acharya, Amitav. "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism." *International Organization* 58, no. 2 (2004): 239–275.
- ActionAid. *Mistreated: The Tax Treaties That Are Depriving the World's Poorest Countries of Vital Revenue*. London: ActionAid UK, 2016.
- Adler, Emanuel. "The Spread of Security Communities: Communities of Practice, Self-Restraint, and NATO's Post--Cold War Transformation." *European Journal of International Relations* 14, no. 2 (2008): 195–230.
- Adler, Emanuel, and Peter M Haas. "Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program." *International Organization* 46, no. 1 (1992): 367–390.
- Allee, Todd, and Clint Peinhardt. "Evaluating Three Explanations for the Design of Bilateral Investment Treaties." *World Politics* 66, no. 1 (2014): 47–87.
- Altshuler, Rosanne, and Harry Grubert. "Formula Apportionment: Is It Better than the Current System and Are There Better Alternatives?" *National Tax Journal* 63, no. 4 (2010): 1145–1184.
- Amin, Ash, and Ronen Palan. "Towards a Non-Rationalist International Political Economy." *Review of International Political Economy* 8, no. 4 (2001): 559–577.
- Antoniades, Andreas. "Epistemic Communities, Epistemes and the Construction of (World) Politics." *Global Society* 17, no. 1 (2003): 21–38.
- Arulampalam, Wiji, Michael P Devereux, and Giorgia Maffini. "The Direct Incidence of Corporate Income Tax on Wages." *European Economic Review* 56, no. 6 (2012): 1038–1054.
- ASEAN. *ASEAN Economic Community Blueprint*. Jakarta: Association of South East Asian Nations, 2008.

- Association SHERPA, Berne Declaration, Centre for Trade Policy and Development, L'Entraide missionnaire, and Mining Alert. *Specific Instance Regarding Glencore International AG and First Quantum Minerals Ltd and Their Alleged Violations of the OECD Guidelines for Multinational Enterprises via the Activities of Mopani Copper Mines Plc in Zambia*. Submission to OECD national contact points in Switzerland and Canada, 2011.
- Aubrey, Henry G. *Atlantic Economic Cooperation*. New York: Published for the Council on Foreign Relations by Praeger, 1967.
- Auerbach, Alan. *Why Have Corporate Tax Revenues Declined? Another Look*. Cambridge, MA, August 2006.
- Auerbach, Alan J. "Who Bears the Corporate Tax? A Review of What We Know." *Tax Policy and the Economy* 20 (2006): 1–40.
- Auerbach, Alan J, and Kevin Hassett. *Taxation and Foreign Direct Investment in the United States: A Reconsideration of the Evidence*. NBER Working Paper No. 3895, Cambridge, MA: National Bureau of Economic Research, 1991.
- Aukonobera, Festus. "Uganda." In *The Impact of the OECD and UN Model Conventions on Bilateral Tax Treaties*, edited by Michael Lang, Pasquale Pistone, and Josef Schuch, 1083–1100. Cambridge University Press, 2012.
- Ault, Hugh J. "Reflections on the Role of the OECD in Developing International Tax Norms." *Brooklyn Journal of International Law* 34, no. 3 (2009): 756–781.
- Avery Jones, John F. "Are Tax Treaties Necessary?" *Tax Law Review* 53, no. 1 (1999): 1–38.
- . "Understanding the OECD Model Tax Convention: The Lesson of History." *Florida Tax Review* 10, no. 1 (2009): 1.
- Avi-Yonah, Reuven S. "Double Tax Treaties: An Introduction." In *The Effect of Treaties on Foreign Direct Investment*, edited by Karl P Sauvant and Lisa E Sachs, 99–106. New York: Oxford University Press, 2009.
- . *International Tax as International Law*. New York: Cambridge University Press, 2007.
- Ayres, David M. *Anatomy of a Crisis: Education, Development, and the State in Cambodia, 1953-1998*. University of Hawaii Press, 2000.

- Azémar, Céline, and Andrew Delios. "Tax Competition and FDI: The Special Case of Developing Countries." *Journal of the Japanese and International Economies* 22, no. 1 (2008): 85–108.
- Azémar, Céline, Rodolphe Desbordes, and Jean-Louis L Mucchielli. "Do Tax Sparing Agreements Contribute to the Attraction of FDI in Developing Countries?" *International Tax and Public Finance* 14, no. 5 (2007): 543–562.
- Azémar, Céline, and Dhammika Dharmapala. *Tax Sparing Agreements, Territorial Tax Reforms, and Foreign Direct Investment*. Unpublished Working Paper, 2015.
- Baccini, Leonardo, and Johannes Urpelainen. "International Institutions and Domestic Politics: Can Preferential Trading Agreements Help Leaders Promote Economic Reform?" *The Journal of Politics* 76, no. 1 (2014): 195–214.
- Baistrocchi, Eduardo. "Tax Disputes under Institutional Instability: Theory and Implications." *The Modern Law Review* 75, no. 4 (2012): 547–577.
- . "The International Tax Regime and the BRIC World: Elements for a Theory." *Oxford Journal of Legal Studies* 33, no. 4 (2013): 733–766.
- . "The Use and Interpretation of Tax Treaties in the Emerging World: Theory and Implications." *British Tax Review* 28, no. 4 (2008): 352.
- Barthel, Fabian, Matthias Busse, and Eric Neumayer. "The Impact of Double Taxation Treaties on Foreign Direct Investment: Evidence From Large Dyadic Panel Data." *Contemporary Economic Policy* 28, no. 3 (2009): 366–377.
- Barthel, Fabian, and Eric Neumayer. "Competing for Scarce Foreign Capital: Spatial Dependence in the Diffusion of Double Taxation Treaties." *International Studies Quarterly* 56, no. 4 (2012): 645–660.
- Basinger, Scott J., and Mark Hallerberg. "Remodeling the Competition for Capital: How Domestic Politics Erases the Race to the Bottom." *American Political Science Review* 98, no. 2 (2004): 261–276.
- Baturo, Alexander, and Julia Gray. "Flatliners: Ideology and Rational Learning in the Adoption of the Flat Tax." *European Journal of Political Research* 48, no. 1 (2009): 130–159.
- Becker, Johannes, and Clemens Fuest. "The Nexus of Corporate Income Taxation and Multinational Activity." *FinanzArchiv: Public Finance Analysis* 68, no. 3 (2012): 231–

- Beckfield, Jason. "The Social Structure of the World Polity." *American Journal of Sociology* 115, no. 4 (2010): 1018–1068.
- Bell, Stephen, and Andrew Hindmoor. "The Structural Power of Business and the Power of Ideas: The Strange Case of the Australian Mining Tax." *New Political Economy* 19, no. 3 (2013): 470–486.
- Berg-Schlosser, Dirk. *Mixed Methods in Comparative Politics Principles and Applications*. Basingstoke: Palgrave Macmillan, 2012.
- Bergman, Manfred Max. "The Straw Men of the Qualitative-Quantitative Divide and Their Influence on Mixed Methods Research." In *Advances in Mixed Methods Research*, edited by Manfred Max Bergman, 10–21. London: SAGE Publications Ltd, 2008.
- Best, Jacqueline. "Hollowing out Keynesian Norms How the Search for a Technical Fix Undermined the Bretton Woods Regime." *Review of International Studies* 30, no. 3 (2004): 383–404.
- Beyers, Jan. "Conceptual and Methodological Challenges in the Study of European Socialization." *Journal of European Public Policy* 17, no. 6 (2010): 909–920.
- Bikhchandani, Sushil, David Hirshleifer, and Ivo Welch. "A Theory of Fads, Fashion, Custom, and Cultural Change as Informational Cascades." *Journal of Political Economy* 100, no. 5 (1992): 992–1026.
- . "Learning from the Behavior of Others: Conformity, Fads, and Informational Cascades." *The Journal of Economic Perspectives* 12, no. 3 (1998): 151–170.
- Blonigen, Bruce A, Lindsay Oldenski, and Nicholas Sly. "The Differential Effects of Bilateral Tax Treaties." *American Economic Journal: Economic Policy* 6 (2014): 1–18.
- Blonigen, Bruce A, and Ronald B Davies. "The Effects of Bilateral Tax Treaties on U.S. FDI Activity." *International Tax and Public Finance* 11, no. 5 (2004): 601–622.
- Bourdieu, Pierre. "The Force of Law: Toward a Sociology of the Juridical Field." *The Hastings Law Journal* 38, no. 1971 (1987): 805–853.
- Braun, Julia, and Daniel Fuentes. *A Legal and Economic Analysis of Double Taxation Treaties between Austria and Developing Countries*. Vienna: Vienna Institute for International Dialogue and Cooperation, 2014.

- Brautigam, Deborah. "Building Leviathan: Revenue, State Capacity and Governance." Edited by Deborah Brautigam. *IDS Bulletin* 33, no. 3 (2002): 10–20.
- Bräutigam, Deborah A. "Introduction: Taxation and State-Building in Developing Countries." In *Taxation and State-Building in Developing Countries*, edited by Deborah Brautigam, Odd-Helge Fjeldstad, and Mick Moore, 1–33. Cambridge: Cambridge University Press, 2008.
- Breslow, Norman. "Covariance Analysis of Censored Survival Data." *Biometrics* 30, no. 1 (1974): 89–99.
- Brooks, Kim. "Canada's Evolving Tax Treaty Policy toward Low-Income Countries." In *Globalization and Its Tax Discontents: Tax Policy and International Investments*, edited by Richard Krever, 187–211. Toronto: University of Toronto Press, 2010.
- . "Inter-Nation Equity: The Development of an Important but Underappreciated International Tax Value." In *Tax Reform in the 21st Century*, edited by Richard Krever and John G. Head. Kluwer Law International, 2008.
- . "Tax Treaty Treatment of Royalty Payments from Low-Income Countries: A Comparison of Canada and Australia's Policies." *eJournal of Tax Research* 5, no. 2 (2007).
- Brooks, Kim, and Richard Krever. "The Troubling Role of Tax Treaties." In *Tax Design Issues Worldwide*, edited by Geerten M. M. Michielse and Victor Thuronyi, 159–178. Kluwer Law International, 2015.
- Broome, André. "Constructivism in International Political Economy." In *Global Political Economy: Contemporary Theories*, edited by Ronen Palan, 193–204. 2nd ed. New York: Routledge Ltd, 2013.
- Broome, André, and Leonard Seabrooke. "Shaping Policy Curves: Cognitive Authority in Transnational Capacity Building." *Public Administration* 93, no. 4 (2015): 956–972.
- Bueno de Mesquita, Bruce, Alastair Smith, Randolph M. Siverson, and James D. Morrow. *The Logic of Political Survival*. Cambridge, Mass: MIT Press, 2003.
- Bunting, Roger, Peter Fawcett, and Caroline Makasa. *A Roadmap for Further Negotiations by COMESA Countries*. Brussels: ACE International Consultants, 2012.
- . *Working Document COMESA Model Double Taxation Agreement and Commentary*. Brussels: ACE International Consultants, 2011.

- Burke, Edmund. *Reflections on the French Revolution*. London: Dent, 1955.
- Business Daily. "Africa's Tax Officials Watch Uganda Case Keenly." *Business Daily*, February 23, 2014.
- Buthe, T, and Helen V Milner. "The Politics of Foreign Direct Investment into Developing Countries: Increasing FDI through International Trade Agreements?" *American Journal of Political Science* 52, no. 4 (2008): 741–762.
- Büthe, Tim, and Helen V Milner. "Foreign Direct Investment and Institutional Diversity in Trade Agreements: Credibility, Commitment, and Economic Flows in the Developing World, 1971–2007." *World Politics* 66, no. 1 (2014): 88–122.
- Bwalya, LW. *Report of the Commissioner of Taxes, 1973/4*. Edited by Zambia Department of Taxes. Lusaka: Lusaka., 1975.
- Cameron, Angus. "Turning Point? The Volatile Geographies of Taxation." *Antipode* 38, no. 2 (2006): 236–258.
- Campbell, D T, and D W Fiske. "Convergent and Discriminant Validation by the Multitrait-Multimethod Matrix." *Psychological Bulletin* 56, no. 2 (1959): 81.
- Cao, Xun. "Global Networks and Domestic Policy Convergence: A Network Explanation of Policy Changes." *World Politics* 64, no. 3 (2012): 375–425.
- . "Networks as Channels of Policy Diffusion: Explaining Worldwide Changes in Capital Taxation, 1998-2006." *International Studies Quarterly* 54, no. 3 (2010): 823–854.
- . "Networks of Intergovernmental Organizations and Convergence in Domestic Economic Policies." *International Studies Quarterly* 53, no. 4 (2009): 1095–1130.
- Carroll, Mitchell Benedict. *Global Perspectives of an International Tax Lawyer*. Hicksville: Exposition Press, 1978.
- Casanegra De Jantscher, Milka. "Administering the VAT." In *Value Added Taxation in Developing Countries*, edited by Carl S Shoup, Malcolm Gillis, and Gerardo P Sicat. Washington, DC: World Bank, 1990.
- Chanda, Mutuna. "Should Zambia Impose Windfall Taxes on Mining Companies?" *BBC News Online*, September 13, 2011.
- Charlton, Andrew. *Incentive Bidding for Mobile Investment: Economic Consequences and*

Potential Responses. Paris: OECD Publishing, 2003.

Checkel, Jeffrey T. “International Institutions and Socialization in Europe: Introduction and Framework.” *International Organization* 59, no. 4 (2005): 801–826.

Chisik, Richard, and Ronald B Davies. “Asymmetric FDI and Tax-Treaty Bargaining: Theory and Evidence.” *Journal of Public Economics* 88, no. 6 (2004): 1119–1148.

Chiwenda, D. *Report of the Commissioner of Taxes, 1971/2*. Lusaka: Zambia Department of Taxes, 1973.

———. *Report of the Commissioner of Taxes, 1972/3*. Lusaka: Zambia Department of Taxes, 1974.

Christensen, Rasmus Corlin. “Professional Competition in Global Tax Reform.” Unpublished Masters thesis, Copenhagen Business School, 2015.

Christians, Allison. “Global Trends and Constraints on Tax Policy in the Least Developed Countries.” *University of British Columbia Law Review* 42, no. 2 (2010): 239.

———. “How Nations Share.” *Indiana Law Journal* 1 (2011): 1407–1453.

———. “Networks, Norms and National Tax Policy.” *Washington University Global Studies Law Review* 1 (2010): 0–38.

———. *Sovereignty, Taxation, and Social Contract*. University of Wisconsin Legal Studies Research Paper, 2008.

———. “Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20.” *Northwestern Journal of Law and Social Policy* 5, no. Spring (2010).

———. “Tax Treaties for Investment and Aid to Sub-Saharan Africa: A Case Study.” *Brooklyn Law Review* 15, no. 1999 (2005): 639–700.

———. “While Parliament Sleeps: Tax Treaty Practice in Canada.” *Journal of Parliamentary and Political Law* 10, no. 15 (2016).

Chwieroth, Jeffrey M. *Capital Ideas : The IMF and the Rise of Financial Liberalization*. Princeton: Princeton University Press, 2010.

———. “Neoliberal Economists and Capital Account Liberalization in Emerging Markets.” *International Organization* 61, no. 2 (2007): 443–463.

———. “Testing and Measuring the Role of Ideas: The Case of Neoliberalism in the

- International Monetary Fund." *International Studies Quarterly* 51, no. 1 (2007): 5–30.
- Clausing, Kimberly. "In Search of Corporate Tax Incidence." *Tax Law Review* 65, no. 3 (2012): 433–472.
- Cockfield, Arthur J. "The Rise of the OECD as Informal World Tax Organization through National Responses to E-Commerce Tax Challenges." *Yale Journal of Law and Technology* 8 (2005): 136–187.
- Connery, Jason R, Steven R Lainoff, and Charles W Cope. "Current Status of U.S. Tax Treaties and International Tax Agreements." *Tax Management International Journal* 42, no. 106 (2013): 1–10.
- Creswell, John W, Vicki L Plano Clark, and Amanda L Garrett. "Methodological Issues in Conducting Mixed Methods Research Designs." In *Advances in Mixed Methods Research*, edited by Manfred Max Bergman, 66–83. London: SAGE Publications Ltd, 2008.
- Crivelli, Ernesto, Ruud A De Mooij, and Michael Keen. *Base Erosion, Profit Shifting and Developing Countries*. IMF Working Paper 15-118. Washington, DC: International Monetary Fund, 2015.
- Culpepper, Pepper D. *Quiet Politics and Business Power: Corporate Control in Europe and Japan*. Cambridge: Cambridge University Press, 2010.
- Curry, Robert L. Jr. "Problems in Acquiring Mineral Revenues for Financing Economic Development: A Case Study of Zambia during 1970-78." *American Journal of Economics and Sociology* 43, no. 1 (1984): 37–52.
- Dagan, Tsilly. "The Tax Treaties Myth." *New York University Journal of International Law and Politics* 32 (2000): 939-996.
- Dauer, Veronika, and Richard Krever. *Choosing between the UN and OECD Tax Policy Models: An African Case Study*. EUI Working Paper RSCAS 2012/60, Robert Schuman Centre for Advanced Studies Global Governance Programme. San Domenico di Fiesole: European University Institute, 2012.
- Davies, Ronald B, Pehr-Johan Norbäck, and Ayça Tekin-Koru. "The Effect of Tax Treaties on Multinational Firms: New Evidence from Microdata." *World Economy* 32, no. 1 (2009): 77–110.
- Davis Cross, Mai'a K. "Rethinking Epistemic Communities Twenty Years Later." *Review of*

International Studies 39, no. 1 (2012): 1–24.

Devereux, Michael, and et al. *Transparency in Reporting Financial Data by Multinational Corporations: Report of a Group Chaired by Michael Devereux*. Oxford: Oxford University Centre for Business Taxation, 2011.

Devereux, Michael P., Judith Freedman, and John Vella. *Tax Avoidance*. Oxford: Oxford University Centre for Business Taxation, 2012.

Devereux, Michael P, Rachel Griffith, and Alexander Klemm. “Corporate Income Tax Reforms and International Tax Competition.” *Economic Policy* 17, no. 35 (2002): 449–495.

Di John, Jonathan. *The Political Economy of Taxation and Tax Reform in Developing Countries*. UNU World Institute for Development Economics Research Research Paper 74, 2006.

Dietsch, Peter. *Catching Capital : The Ethics of Tax Competition*. New York : Oxford University Press, 2015.

Dietsch, Peter, and Thomas Rixen, eds. *Global Tax Governance : What Is Wrong with It and How to Fix It*. Colchester: ECPR Press, 2016.

Dobbin, Frank, Beth A Simmons, and Geoffrey Garrett. “The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?” *Annual Review of Sociology* 33, no. 1 (2007): 449–472.

Dolowitz, David P, and David Marsh. “Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making.” *Governance* 13, no. 1 (2000): 5-23.

Drake, William J, and Kalypso Nicolaidis. “Ideas, Interests and Institutionalization : ‘trade in Services’ and the Uruguay Round.” *International Organization* 46, no. 1 (1992): 37–100.

Dresang, Dennis L. *The Zambia Civil Service : Entrepreneurialism and Development Administration*. Nairobi: East African Publishing House, 1975.

Dresang, Dennis L, and Ralph A Young. “The Public Service.” In *Administration in Zambia*, edited by William Tordoff, 68–103. Manchester: Manchester University Press, 1980.

Drucker, Jesse. “‘Dutch Sandwich’ Saves Google Billions in Taxes.” *Bloomberg Businessweek*, October 21, 2010.

- Dunlop, Claire A. "Policy Transfer as Learning: Capturing Variation in What Decision-Makers Learn from Epistemic Communities." *Policy Studies* 30, no. 3 (2009): 289–311.
- Durst, Michael C. "The Two Worlds of Transfer Pricing Policymaking." *Tax Notes*, January 24, 2011.
- Dyer, Geoff. "China Greeted G20 Results with Caution." *Financial Times*. April 4, 2009.
- Easson, Alex. "Do We Still Need Tax Treaties?" *Bulletin for International Fiscal Documentation* 54, no. 12 (2000): 619–625.
- Eccleston, Richard. *The Dynamics of Global Economic Governance: The OECD, the Financial Crisis and the Politics of International Tax Cooperation*. Cheltenham: Edward Elgar, 2012.
- . "The OECD and Global Economic Governance." *Australian Journal of International Affairs* 65, no. 2 (2011): 243–255.
- Eccleston, Richard, and Helen Smith. "The G20, BEPS and the Future of International Tax Governance." In *Global Tax Governance: What Is Wrong with It and How to Fix It*, edited by Peter Dietsch and Thomas Rixen, 175–198. Colchester: ECPR Press, 2016.
- Eccleston, Richard, and Richard Woodward. "Pathologies in International Policy Transfer: The Case of the OECD Tax Transparency Initiative." *Journal of Comparative Policy Analysis: Research and Practice* 16, no. 3 (2013): 216–229.
- Eden, Lorraine, M Tina Dacin, and William P Wan. "Standards across Borders: Crossborder Diffusion of the Arm's Length Standard in North America." *Accounting, Organizations and Society* 26 (2001): 1–23.
- Eden, Lorraine, and Robert T Kudrle. "Tax Havens: Renegade States in the International Tax Regime?" *Law & Policy* 27, no. 1 (2005): 100–127.
- Eden, Lorraine, and L Murphy Smith. "The Ethics of Transfer Pricing." In *Fraud in Accounting, Organizations and Society*, Imperial College, London, April 2011.
- Egger, Peter, Mario Larch, Michael Pfaffermayr, and Hannes Winner. "The Impact of Endogenous Tax Treaties on Foreign Direct Investment: Theory and Evidence." *Canadian Journal of Economics* 39, no. 3 (2006): 901–931.
- Egger, Peter, and Valeria Merlo. "Statutory Corporate Tax Rates and Double-Taxation

Treaties as Determinants of Multinational Firm Activity.” *FinanzArchiv: Public Finance Analysis* 67, no. 2 (2011): 145–170.

Elias, Norbert. *The Civilizing Process*. Oxford: Blackwell, 1994.

Elkins, Zachary, Andrew T Guzman, and Beth A Simmons. “Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000.” *International Organization* 60, no. 4 (2006): 811–846.

Embassy of the Republic of Kenya. “Trade and Investment.” Accessed November 19, 2012. <http://www.kenyaembassy.com/economycommerce.html>.

Ernst & Young. “Argentina Unilaterally Terminates Tax Treaty with Switzerland.” *International Tax Alert*, February 14, 2012.

———. “Draft Law to Cancel Mongolia’s Double Tax Treaties.” *Mongolian Tax Alert*, August 2012.

European Commission. “Alleged Aid to Amazon by Way of a Tax Ruling.” Brussels: European Commission Decision C(2014) 7156, 2014.

Evers, Maikel. “Tracing the Origins of the Netherlands’ Tax Treaty.” *Intertax* 41, no. 6 (2013): 375–386.

Fairfield, Tasha. *Private Wealth and Public Revenue in Latin America : Business Power and Tax Politics*. New York: Cambridge University Press, 2015.

Farrow, Ian, and Sunita Jogarajan. “ASEAN Tax Regimes: Impediment or Pathway to Greater Integration.” In *Brick by Brick: The Building of an ASEAN Economic Community*, edited by Denis Hew, 132–143. Singapore: Institute of Southeast Asian Studies/ASEAN-Australia Development Cooperation Programme, 2008.

———. *ASEAN Tax Regimes and the Integration of the Priority Sectors: Issues and Options*. KPMG Australia, 2006.

Feld, Lars P, and Jost H Heckemeyer. “FDI and Taxation: A Meta-Study.” *Journal of Economic Surveys* 25, no. 2 (2011): 233–272.

Fenochietto, Ricardo, and Carola Pessino. *Understanding Countries’ Tax Effort*. Washington, DC: International Monetary Fund, 2013.

Finnemore, Martha. *National Interests in International Society*. Ithaca: Cornell University Press, 1996.

- Finnemore, Martha, and Kathryn Sikkink. "International Norm Dynamics and Political Change." *International Organization* 52, no. 4 (1998): 887–917.
- . "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics." *Annual Review of Political Science* 4, no. 1 (2001): 391–416.
- Fjeldstad, Odd-Helge, and Mick Moore. "Revenue Authorities and Public Authority in Sub-Saharan Africa." *The Journal of Modern African Studies* 47, no. 1 (2009): 1–18.
- . "Tax Reform and State-Building in a Globalised World." In *Taxation and State-Building in Developing Countries*, edited by Deborah Brautigam, Odd-Helge Fjeldstad, and Mick Moore, 235–260. Cambridge: Cambridge University Press, 2008.
- Fordham, Benjamin O, and Victor Asal. "Billiard Balls or Snowflakes? Major Power Prestige and the International Diffusion of Institutions and Practices." *International Studies Quarterly* 51, no. 1 (2007): 31–52.
- Frecknall-Hughes, Jane, and Margaret McKerchar. "Historical Perspectives on the Emergence of the Tax Profession: Australia and the UK." *Australian Tax Forum* 28, no. 2 (2013): 276–288.
- Fuchs, Doris A. *Business Power in Global Governance*. Boulder: Lynne Rienner Publishers, Inc., 2007.
- Fuchs, Doris, and Markus ML Lederer. "The Power of Business." *Business and Politics* 9, no. 3 (2008): 1–17.
- Fuest, Clemens, Shafik Hebous, and Nadine Riedel. "International Debt Shifting and Multinational Firms in Developing Economies." *Economics Letters* 113, no. 2 (2011): 135–138.
- Gainsborough, Martin. "Vietnam and ASEAN: The Road to Membership?" *The Pacific Review* 6, no. 4 (1993): 381–387.
- General Statistic Office of Vietnam. "Foreign Direct Investment Projects Licensed by Main Counterparts (Accumulation of Projects Having Effect as of 31/12/2012)," 2014. http://www.gso.gov.vn/default_en.aspx?tabid=471&idmid=3&ItemID=14366.
- Genschel, Philipp, and Peter Schwarz. "Tax Competition: A Literature Review." *Socio-Economic Review* 9, no. 2 (2011): 339–370.
- Genschel, Philipp, and Laura Seelkopf. "Did They Learn to Tax? Taxation Trends Outside

- the OECD.” *Review of International Political Economy* 23, no. 2 (2016): 316–344.
- . “Did They Learn to Tax? Taxation Trends Outside the OECD.” *Review of International Political Economy* 23, no. 2 (2016): 316–344.
- Gerring, John. “What Is a Case Study and What Is It Good For?” *American Political Science Review* 98, no. 2 (2004): 341–354.
- Gheciu, Alexandra. “Security Institutions as Agents of Socialization? NATO and the ‘New Europe.’” *International Organization* 59, no. 4 (2005): 973–1012.
- Gilardi, Fabrizio. “Transnational Diffusion: Norms, Ideas, and Policies.” In *Handbook of International Relations*, 453–477. London: Sage Publications Ltd, 2012.
- “Global Tax 50: The Leaders Making an Impact around the World.” *International Tax Review*, November 2012.
- Godfrey, Martin, Chan Sophal, Toshiyasu Kato, and Long Vou. “Technical Assistance and Capacity Development in an Aid-Dependent Economy : The Experience of Cambodia.” *World Development* 30, no. 3 (2002): 355–373.
- Godfrey, Mike. “Argentina Cancels Double Tax Pact With Spain.” *Tax News*. July 18, 2012.
- Goldberg, Honey Lynn. “Conventions for the Elimination of International Double Taxation: Toward a Developing Country Model.” *Law & Policy in International Business* 15 (1983): 833–909.
- Goldscheid, Rudolf. “A Sociological Approach to Problems of Public Finance.” In *Classics in the Theory of Public Finance*, edited by Richard A Musgrave and Alan T Peacock, 202–213. London: Palgrave Macmillan UK, 1958.
- Goolsbee, Austan. “Taxes, Organizational Form, and the Deadweight Loss of the Corporate Income Tax.” *Journal of Public Economics* 69, no. 1 (1998): 143–152.
- Gordon, Roger H. “Taxation of Corporate Capital Income: Tax Revenues versus Tax Distortions.” *The Quarterly Journal of Economics* 100, no. 1 (1985): 1–27.
- Graetz, Michael J, and Michael M O’Hear. “The ‘Original Intent’ of U.S. International Taxation.” *Duke Law Journal* 46, no. 5 (1997): 1020–1109.
- Gray, Julia. *The Company States Keep : International Economic Organizations and Investor Perceptions*. Cambridge : Cambridge University Press, 2013.

- Greenhill, Brian. "The Company You Keep: International Socialization and the Diffusion of Human Rights Norms." *International Studies Quarterly* 54, no. 1 (2010): 127–145.
- Greenhill, Brian, Layna Mosley, and Aseem Prakash. "Trade-Based Diffusion of Labor Rights: A Panel Study, 1986–2002." *American Political Science Review* 103, no. 4 (2009): 669–690.
- Grinberg, Itai. *Beyond FATCA: An Evolutionary Moment for the International Tax System*. Georgetown University Working Paper, 2012.
- . "Building Institutions for a Globalized World." In *Global Tax Fairness*, edited by Thomas Pogge and Krishen Pehta, 14–30. Oxford: Oxford University Press, 2016.
- Groom, Brian. "Tax Avoidance Replaces Bosses' Pay at Top of Concerns over Ethics." *Financial Times*. November 28, 2013.
- Grossman, Gene M, and Elhanan Helpman. "Protection for Sale." *The American Economic Review* 84, no. 4 (1994): 833–850.
- Grubert, Harry, and John Mutti. "Taxing Multinationals in a World with Portfolio Flows and R&D: Is Capital Export Neutrality Obsolete?" *International Tax and Public Finance* 2, no. 3 (1995): 439–457.
- Haas, Peter M. "Introduction: Epistemic Communities and International Policy Coordination." *International Organization* 46, no. 1 (1992): 1–35.
- Hacker, Jacob S. "Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States." *American Political Science Review* 98, no. 2 (2004): 243–260.
- Harberger, Arnold C. "The Incidence of the Corporation Income Tax." *The Journal of Political Economy* 70, no. 3 (1962): 215–240.
- Hartman, David G. "Tax Policy and Foreign Direct Investment." *Journal of Public Economics* 26, no. 1 (1985): 107–121.
- Harvard Law Review. "Protection of Foreign Direct Investment in a New World Order: Vietnam. A Case Study." *Harvard Law Review* 107, no. 8 (1994): 1995–2012.
- Hearson, Martin. "Do Tax Treaties Affect Foreign Investment? The Plot Thickens." *Tax, Development and International Relations*. Accessed October 20, 2014.
<http://martinhearsen.wordpress.com/2014/06/19/do-tax-treaties-affect-foreign->

investment-the-plot-thickens/.

———. *Measuring Tax Treaty Negotiation Outcomes : The ActionAid Tax Treaties Dataset*. ICTD Working Paper 47. Brighton: Institute of Development Studies, 2016.

———. *Tax Treaties in Sub-Saharan Africa: A Critical Review*. Nairobi: Tax Justice Network Africa, 2015.

———. “The ActionAid Tax Treaties Dataset.” Brighton: Institute of Development Studies, 2016.

Hearson, Martin, and Richard Brooks. *Calling Time: Why SABMiller Should Stop Dodging Taxes in Africa*. London: ActionAid UK, 2010.

Hearson, Martin, and Jalia Kangave. *A Review of Uganda’s Tax Treaties and Recommendations for Action*. International Centre for Tax and Development Working Paper 50. Brighton: Institute of Development Studies, 2016.

Heilmann, S, Nicole Schulte-Kulkmann, Sebastian Hielmann, and Nicole Schulte-Kulkmann. “The Limits of Policy Diffusion: Introducing International Norms of Anti-Money Laundering into China’s Legal System.” *Governance* 24, no. 4 (2011): 639–664.

High-Level Panel on Illicit Financial Flows from Africa. “Illicit Financial Flows.” Addis Ababa: United Nations Economic Commission for Africa, 2015.

Hines, James R. “Lessons from Behavioral Responses to International Taxation.” *National Tax Journal* 52, no. 2 (1999): 305–322.

Hines Jr, James R. “‘Tax Sparing’ and Direct Investment in Developing Countries.” In *International Taxation and Multinational Activity*, 39–72. Chicago: University of Chicago Press, 2000.

HMRC. “Taxation: A Brief History.” *Bicentenary of Income Tax*. HMRC website. Accessed April 7, 2014.

<http://webarchive.nationalarchives.gov.uk/+http://www.hmrc.gov.uk/history/index.htm>.

Hobbes, Thomas. *Leviathan*. Library of Essential Reading. New York: Barnes & Noble Publishing, 2004.

Houlder, Vanessa. “Special Tax Rules for Internet Companies ‘not Viable.’” *Financial*

Times, January 20, 2014.

———. “Tax: Trouble to Avoid.” *Financial Times*. February 6, 2011.

IBFD. “IBFD Tax Research Platform.” Accessed June 20, 2016. <http://online.ibfd.org/>.

———. *Possible Effects of the Irish Tax System on Developing Economies*. Dublin: Irish Ministry of Finance, 2015.

IMF. *Spillovers in International Corporate Taxation*. Washington, DC, 2014.

IMF, OECD, UN, and World Bank. *Supporting the Development of More Effective Tax Systems: A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank*. Paris: OECD Publishing, 2011.

Independent Commission on Aid Impact. “UK Aid’s Contribution to Tackling Tax Avoidance and Evasion.” London: Independent Commission on Aid Impact, 2016.

Irish, Charles R. “International Double Taxation Agreements and Income Taxation At Source.” *International and Comparative Law Quarterly* 23, no. 2 (1974): 292–316.

———. “Transfer Pricing Abuses and Less Developed Countries.” *The University of Miami Inter-American Law Review* 18, no. 1 (1986): 83–136.

Irungu, Geoffrey. “UK Firms Ship out Sh20bn in Dividends and Fees from Kenya.” *Business Daily*. May 15, 2013.

Jacobsson, Bengt. “Regulated Regulators: Global Trends of States Transformation.” In *Transnational Governance: Institutional Dynamics of Regulation*, edited by Marie-Laure Djelic and Kerstin Sahlin-Andersson, 205–224. Cambridge: Cambridge University Press, 2006.

Jandhyala, Srividya, Witold J Henisz, and Edward D Mansfield. “Three Waves of BITs: The Global Diffusion of Foreign Investment Policy.” *Journal of Conflict Resolution* 55, no. 6 (2011): 1047–1073.

Jensen, Nathan M. “Domestic Institutions and the Taxing of Multinational Corporations.” *International Studies Quarterly* 57, no. 3 (2013): 440–448.

Jensen, Nathan M, and René Lindstadt. “Leaning Right and Learning From the Left: Diffusion of Corporate Tax Policy Across Borders.” *Comparative Political Studies* 45, no. 3 (2012): 283–311.

- Johnson, R. B., A. J. Onwuegbuzie, and L. A. Turner. "Toward a Definition of Mixed Methods Research." *Journal of Mixed Methods Research* 1, no. 2 (2007): 112–133.
- Johnston, Alastair Iain. "Conclusions and Extensions: Toward Mid-Range Theorizing and Beyond Europe." *International Organization* 59, no. 4 (2005): 1013–1044.
- . *Social States: China in International Institutions, 1980-2000*. Princeton, N.J: Princeton University Press, 2008.
- Kahneman, Daniel, and Amos Tversky. "Prospect Theory: An Analysis of Decision under Risk." *Econometrica* 47, no. 2 (1979): 263–291.
- Kaldor, Nicholas. "Will Underdeveloped Countries Learn to Tax?" *Foreign Affairs* 41, no. 2 (1963): 410–419.
- Kaufman, Nancy H. "Equity Considerations in International Taxation." *Brooklyn Journal of International Law* 26, no. 4 (2000): 1465–1470.
- . "Fairness and the Taxation of International Income." *Law & Policy in International Business* 29, no. 2 (1998): 145–203.
- Kaunda, Kenneth David. *Zambia's Economic Revolution : Address at Mulungushi, 19th April, 1968*. Lusaka: Zambia Information Services, 1968.
- Keen, Michael. "Taxation and Development - Again." In *Critical Issues in Taxation and Development*, edited by Clemens Fuest and George R. Zodrow, 13–44. Working Paper. Washington, DC, 2013.
- Keen, Michael, and Mario Mansour. *Revenue Mobilization in Sub-Saharan Africa: Challenges from Globalization*. Working Paper 9/157. Washington, DC: International Monetary Fund, 2009.
- Kenya High Commission. "Kenya - United Kingdom Relations." Accessed August 25, 2014. <http://kenyahighcom.org.uk/kenya-united-kingdom-relations-2/>.
- Keohane, Robert O. "International Institutions: Two Approaches." *International Studies Quarterly* 32, no. 4 (1988): 379–396.
- Kinda, Tidiane. *The Quest for Non-Resource-Based FDI : Do Taxes Matter ?* Working Paper 14/15. Washington, DC: International Monetary Fund, 2014.
- King, Gary, Robert O Keohane, and Sidney Verba. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton: Princeton University Press, 1994.

- Kinuthia, Bethuel Kenyanjui. "Determinants of Foreign Direct Investment in Kenya: New Evidence." In *African International Business and Management Conference*. Nairobi, 2010.
- Klemm, Alexander, and S.M. Ali Abass. *A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies*. Working Paper 12/28. Washington, DC, 2012.
- Knoetze, M. *Report of the Commissioner of Taxes, 1966/7*. Lusaka, 1968.
- Kratochwil, Friedrich, and John Gerard Ruggie. "International Organization: A State of the Art on an Art of the State." *International Organization* 40, no. 4 (1986): 753.
- Kumar, Aayush, and Varun Natarajan. "Indo-Mauritius DTAA : The Way Forward." *Intertax* 41, no. 12 (2013): 693–700.
- Kun, Orsolya. "Corporate Inversions: The Interplay of Tax, Corporate, and Economic Implications." *Delaware Journal of Corporate Law* 29, no. 2 (2004): 313–375.
- Lake, David A. "Open Economy Politics: A Critical Review." *The Review of International Organizations* 4, no. 3 (2009): 219–244.
- Larmer, Miles. *Rethinking African Politics : A History of Opposition in Zambia*. Farnham: Ashgate, 2011.
- Latham & Watkins LLP. "Federal Ministry of Finance Publishes Model for Future Double Tax Treaties." *Tax Info*, January 8, 2014.
- Latulippe, Lynne. "The Expansion of the Bilateral Tax Treaty Network in the 1990s: The OECD's Role in International Tax Coordination." *Australian Tax Forum* 27, no. 4 (2012): 851–884.
- Le, Tuan Minh, Blanca Moreno-Dodson, and Nihal Bayraktar. *Tax Capacity and Tax Effort: Extended Cross-Country Analysis from 1994 to 2009*. Policy Research Working Papers. Washington, DC: World Bank, 2012.
- League of Nations. *Report of the Committee of Technical Experts on Double Taxation and Tax Evasion*. Geneva: League of Nations, 1927.
- Lee, Chang Kil, and David Strang. "The International Diffusion of Public-Sector Downsizing: Network Emulation and Theory-Driven Learning." *International Organization* 60, no. 4 (2006): 883–909.

- Lejour, Arjan. *The Foreign Investment Effects of Tax Treaties*. CPB Netherlands Bureau for Economic Analysis Discussion Paper 265, 2014.
- Lennard, Michael. “The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments.” *Asia-Pacific Tax Bulletin* no. 1 (2009): 4–11.
- Lesage, Dries, David McNair, and Mattias Vermeiren. “From Monterrey to Doha: Taxation and Financing for Development.” *Development Policy Review* 28, no. 2 (2010): 155–172.
- Levi, Margaret. *Of Rule and Revenue*. Berkeley: University of California Press, 1988.
- Lewis, Mike. *Sweet Nothings: The Human Cost of a British Sugar Giant Avoiding Taxes in Southern Africa*. London: ActionAid UK, 2013.
- Li, Jinyan. “The Great Fiscal Wall of China: Tax Treaties and Their Role in Defining and Defending China’s Tax Base.” *Bulletin for International Taxation* 66, no. 9 (2012): 452–479.
- Liao, Tizhong. *Taxation of Cross-Border Trade in Services: A Review of the Current International Tax Landscape and the Possible Future Policy Options*. Geneva: United Nations, 2013.
- Library of Congress. “History of the US Income Tax.” *Business Reference Services*. Accessed April 7, 2014. http://www.loc.gov/rr/business/hottopic/irs_history.html.
- Lieberman, Evan S. “Nested Analysis as a Mixed-Method Strategy for Comparative Research.” *American Political Science Review* 99, no. 3 (2005): 435–452.
- Lindblom, Charles Edward. *Politics and Markets : The World’s Political and Economic Systems*. New York: Basic Books, 1977.
- Linos, Katerina. “Diffusion through Democracy.” *American Journal of Political Science* 55, no. 3 (2011): 678–695.
- Liu, Li, and Rosanne Altshuler. “Measuring the Burden of the Corporate Income Tax under Imperfect Competition.” *National Tax Journal* 66, no. 1 (2013): 215–237.
- Louie, Henry J, and Donald J Rouslang. “Host-Country Governance, Tax Treaties and US Direct Investment Abroad.” *International Tax and Public Finance* 15, no. 3 (2008): 256–273.

- Luhanga, PC. *Report of the Commissioner of Taxes, 1970/1*. Lusaka: Zambia Department of Taxes, n.d.
- Lukes, Steven. *Power : A Radical View*. London: Macmillan, 1974.
- Maffini, Giorgia, ed. *Business Taxation under the Coalition Government*. Oxford: Oxford University Centre for Business Taxation, 2015.
- Mahon, Rianne, and Stephen McBride. "Standardizing and Disseminating Knowledge: The Role of the OECD in Global Governance." *European Political Science Review* 1, no. 1 (2009): 83–101.
- Manger, Mark S. *Investing in Protection: The Politics of Preferential Trade Agreements between North and South*. Cambridge: Cambridge University Press, 2009.
- Manley, David. *A Guide to Mining Taxation in Zambia*. Lusaka: Zambia Institute for Policy Analysis & Research, 2013.
- Mansfield, Edward D, and Helen V Milner. *Votes, Vetoes, and the Political Economy of International Trade Agreements*. Oxford: Princeton University Press, 2012.
- March, James G, and Johan P Olsen. *Rediscovering Institutions: The Organizational Basis of Politics*. New York: Free Press, 1989.
- . "The Institutional Dynamics of International Political Orders." *International Organization* 52, no. 4 (1998): 943–969.
- . "The Logic of Appropriateness." In *The Oxford Handbook of Public Policy*, 689–708. Oxford: Oxford University Press, 2008.
- Marcussen, Martin. "The OECD in Search of a Role : Playing the Ideas Game." In *ECPR Joint Session of Workshops*, Grenoble, 2001.
- Markle, Kevin S, and Douglas A Shackelford. *Cross-Country Comparisons of Corporate Income Taxes*. NBER Working Paper No. 16839, Cambridge, MA: National Bureau of Economic Research, 2011.
- Marsh, David, and Jason C Sharman. "Policy Diffusion and Policy Transfer." *Policy Studies* 30, no. 3 (2009): 269–288.
- Marshall, Rex, Malcolm Smith, and Robert Armstrong. "The Impact of Audit Risk, Materiality and Severity on Ethical Decision Making." *Managerial Auditing Journal* 21, no. 5 (2006): 497–519.

- Martin, Antony. *Minding Their Own Business : Zambia*. Harmondsworth: Penguin, 1975.
- Martin, Isaac William, Ajay K Mehrotra, and Monica Prasad. "The Thunder of History: The Origins and Development of the New Fiscal Sociology." In *The New Fiscal Sociology*, edited by Isaac William Martin, Ajay K Mehrotra, and Monica Prasad, 1–28. Cambridge: Cambridge University Press, 2009.
- Matheson, Hornton, Victoria J Perry, and Chandara Veung. *Territorial vs. Worldwide Corporate Taxation: Implications for Developing Countries*. IMF Working Paper 13-205. Washington, DC: International Monetary Fund, 2013.
- McGauran, Katrin. *Should the Netherlands Sign Tax Treaties with Developing Countries?* Amsterdam: SOMO, 2013.
- Mcintyre, Michael J, Richard M Bird, and William F Fox. "Developing Countries and International Cooperation on Income Tax Matters : An Historical Review." Unpublished manuscript, 2005.
- McNamara, Kathleen R. *The Currency of Ideas : Monetary Politics in the European Union*. Ithaca: Cornell University Press, 1998.
- Meseguer, Covadonga, and Abel Escriba-Folch. "Learning, Political Regimes and the Liberalisation of Trade." *European Journal of Political Research* 50, no. 6 (2011): 775–810.
- Meseguer, Covadonga, and Fabrizio Gilardi. "What Is New in the Study of Policy Diffusion?" *Review of International Political Economy* 16, no. 3 (2009): 527–543.
- Millimet, Daniel L., and Abdullah Kumas. "It's All in the Timing: Assessing the Impact of Bilateral Tax Treaties on U.S. FDI Activity." In *The Effect of Treaties on Foreign Direct Investment*, edited by Karl P Sauvart and Lisa E Sachs. New York: Oxford University Press, 2009.
- Ministerio de Economía y Finanzas de Peru. "Sobre Los Convenios Para Evitar La Doble Tributación Para Promover La Inversión Y Evitar La Evasión Fiscal Internacional." Accessed February 12, 2015.
http://www.mef.gob.pe/index.php?option=com_content&view=article&id=2199%3Asobre-los-convenios-para-evitar-la-doble-tributacion-para-promover-la-inversion-y-evitar-la-evasion-fiscal-internacional&catid=297%3Apreguntas-frecuentes&Itemid=100143&lang=es.

- Ministry of Finance. *Guidelines for Fulfilment of Tax Liability of Foreign Entities Doing Business in Vietnam or Earning Income in Vietnam*. Vietnam, 2014.
- Mishra, Sanjay Kumar. *Letter to Alexander Trepelkov*. Ministry of Finance, Government of India, 2012.
- Mooij, Ruud A de, and Sjef Ederveen. "Corporate Tax Elasticities: A Reader's Guide to Empirical Findings." *Oxford Review of Economic Policy* 24, no. 4 (2008): 680–697.
- Moore, Mick. "Between Coercion and Contract: Competing Narratives on Taxation and Governance." In *Taxation and State-Building in Developing Countries*, edited by Deborah Brautigam, Odd-Helge Fjeldstad, and Mick Moore, 34–63. Cambridge: Cambridge University Press, 2008.
- Moravcsik, Andrew. "Taking Preferences Seriously: A Liberal Theory of International Politics." *International Organization* 51, no. 4 (1997): 513–553.
- Morgan, David L. "Paradigms Lost and Pragmatism Regained: Methodological Implications of Combining Qualitative and Quantitative Methods." *Journal of Mixed Methods Research* 1, no. 1 (2007): 48–76.
- Morse, Janice M, and Linda Niehaus. *Mixed Method Design : Principles and Procedures*. Walnut Creek: Left Coast Press, 1994.
- Mosley, Layna. "Globalisation and the State: Still Room to Move?" *New Political Economy* 10, no. 3 (2005): 355–362.
- . "Room to Move: International Financial Markets and National Welfare States." *International Organization* 54, no. 4 (2000): 737–773.
- Mullins, Peter J. *Moving to Territoriality? Implications for the United States and the Rest of the World*. IMF Working Paper 06/161. Washington, DC: International Monetary Fund, 2006.
- Musgrave, Peggy B. "Sovereignty, Entitlement, and Cooperation in International Taxation." *Brooklyn Journal of International Law* 26, no. 4 (2000): 1335–1356.
- . *Taxation of Foreign Investment Income; an Economic Analysis*. Baltimore: Johns Hopkins Press, 1963.
- Musgrave, Peggy B, and Richard A Musgrave. "Inter-Nation Equity." In *Modern Fiscal Issues: Essays in Honor of Carl S. Shoup.*, edited by Richard M Bird and John G Head,

- 63–85. Toronto: University of Toronto Press, 1972.
- Musgrave, Richard A. “Criteria for Foreign Tax Credit.” In *Taxation and Operations Abroad*, 83–93. Princeton: The Tax Institute, 1960.
- Mwachinga, Edward. “Results of Investor Motivation Survey Conducted in the EAC.” In *International Tax Compact Seminar*. Lusaka, 2012.
- Mwenda, Kenneth Kaoma. “Efficacy of the Institutional and Regulatory Framework for the Administration of Tax Law in Zambia.” *Richmond Journal of Global Law and Business* 5, no. 1 (2005): 37–67.
- Naroll, Raoul. “Two Solutions to Galton’s Problem.” *Philosophy of Science* 28, no. 1 (1961): 15–39.
- Nelson, Charles G. “The Role of the OECD in International Economic Negotiations.” Unpublished PhD thesis, Indiana University, 1970.
- Netherlands Ministry of Finance. *Government’s Response to the Report from SEO Economics Amsterdam on Other Financial Institutions and the IBFD Report on Developing Countries*. Amsterdam: Netherlands Ministry of Finance, 2013.
- Neumayer, Eric. “Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?” *Journal of Development Studies* 43, no. 8 (2007): 1501–1519.
- Neumayer, Eric, and Thomas Plümper. “Spatial Effects in Dyadic Data.” *International Organization* 64, no. 1 (2010): 145–166.
- North, Douglass C. *Structure and Change in Economic History*. New York: W. W. Norton, 1981.
- Norwegian Government Commission on Capital Flight from Poor Countries. *Tax Havens and Development: Status, Analyses and Measures*. Oslo, 2009.
- OECD. *Action Plan on Base Erosion and Profit Shifting*. Paris: OECD Publishing, 2013.
- . *Addressing Base Erosion and Profit Shifting*. Paris: OECD Publishing, 2013.
- . *Harmful Tax Competition: An Emerging Global Issue*. Paris: OECD Publishing, 1998.
- . *Investment Policy Review of Zambia (2011 Preliminary Draft)*. Paris: OECD Publishing, 2011.

- . *Model Tax Convention on Income and on Capital*. Paris: OECD Publishing, 2014.
- . “Mutual Agreement Procedure Statistics for 2014.” Paris: OECD Publishing. Accessed November 24, 2015. <http://www.oecd.org/ctp/dispute/map-statistics-2014.htm>.
- . “On-Line Guide to OECD Intergovernmental Activity.” Accessed June 20, 2016. <http://webnet.oecd.org/OECDGROUPS/Bodies/ListByRoleView.aspx>.
- . *Report to G20 Development Working Group on the Impact of BEPS in Low Income Countries (Parts 1 and 2)*. Paris: OECD Publishing, 2014.
- . *Revenue Statistics 2015*. Revenue Statistics. Paris: OECD Publishing, 2015.
- . *Tax Aspects of Transfer Pricing within Multinational Enterprises : The United States Proposed Regulations : A Report*. Paris: OECD Publishing, 1993.
- . *Tax Sparing : A Reconsideration*. Paris: OECD Publishing, 1998.
- Oman, Charles. *Policy Competition for Foreign Direct Investment: A Study of Competition among Governments to Attract FDI*. Paris: OECD Publishing, 2000.
- Palan, Ronen. “A World of Their Making: An Evaluation of the Constructivist Critique in International Relations.” *Review of International Studies* 26, no. 4 (2000): 575–598.
- . “Tax Havens and the Commercialization of State Sovereignty.” *International Organization* 56, no. 1 (2002): 151–176.
- . *The Offshore World : Sovereign Markets, Virtual Places, and Nomad Millionaires*. Ithaca: Cornell University Press, 2003.
- Palan, Ronen, Richard Murphy, and Christian Chavagneux. *Tax Havens: How Globalization Really Works*. Ithaca: Cornell University Press, 2010.
- Pham, Hoang Mai. “FDI and Development in Vietnam : Policy Implications.” In *Foreign Direct Investment and Development in Vietnam*. Singapore: Institute of Southeast Asian Studies, 2004.
- Philipps, Lisa. “Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy.” *Canadian Journal of Law and Society* 11 (1996): 141.
- Picciotto, Sol. “Indeterminacy, Complexity, Technocracy and the Reform of International

- Corporate Taxation.” *Social & Legal Studies* 24, no. 2 (2015): 165–184.
- . *International Business Taxation : A Study in the Internationalization of Business Regulation*. London: Weidenfeld & Nicolson, 1992.
- . *Towards Unitary Taxation of Transnational Corporations*. London: Tax Justice Network, 2012.
- Pickering, Ariane. *Why Negotiate Tax Treaties?* New York: United Nations, 2013.
- Pinto, Pablo M. *Partisan Investment in the Global Economy: Why the Left Loves Foreign Direct Investment and FDI Loves the Left*. Cambridge: Cambridge University Press, 2013.
- Pinto, Pablo M., and Santiago M. Pinto. “The Politics of Investment Partisanship: And the Sectoral Allocation of Foreign Direct Investment.” *Economics & Politics* 20, no. 2 (2008): 216–254.
- Pistone, Pasquale. “Tax Treaties with Developing Countries: A Plea for New Allocation Rules and a Combined Legal and Economic Approach.” In *Tax Treaties: Building Bridges between Law and Economics*, edited by Michael Lang, Pasquale Pistone, Josef Schuch, Claus Staringer, Alfred Storck, and Martin Zagler, 413–440. Amsterdam: IBFD, 2010.
- Plesner Rossing, Christian. “Tax Strategy Control: The Case of Transfer Pricing Tax Risk Management.” *Management Accounting Research* 24, no. 2 (2013): 175–194.
- Plümper, Thomas, Vera E. Troeger, and Hannes Winner. “Why Is There No Race to the Bottom in Capital Taxation?” *International Studies Quarterly* 53, no. 3 (2009): 761–786.
- Porter, Tony, and Michael Webb. “The Role of the OECD in the Orchestration of Global Knowledge Networks.” *Canadian Political Science Association Annual Meetings* no. 1 (2007): 1–16.
- Poulsen, Lauge N Skovgaard. *Bounded Rationality and Economic Diplomacy : The Politics of Investment Treaties in Developing Countries*. Cambridge: Cambridge University Press, 2015.
- . “Bounded Rationality and the Diffusion of Modern Investment Treaties.” *International Studies Quarterly* 58, no. 1 (2014): 1–14.

- . “Sacrificing Sovereignty by Chance: Investment Treaties, Developing Countries, and Bounded Rationality.” PhD thesis, London School of Economics, 2011.
- Poulsen, Lauge N Skovgaard, and Emma Aisbett. “When the Claim Hits: Bilateral Investment Treaties and Bounded Rational Learning” 65, no. 2 (2014): 273–313.
- Prichard, Wilson, Alex Cobham, and Andrew Goodall. *The ICTD Government Revenue Dataset*. ICTD Working Paper 19. Brighton: Institute of Development Studies, 2014.
- Putnam, Robert D. “Diplomacy and Domestic Politics: The Logic of Two-Level Games.” *International Organization* 42, no. 3 (1988): 427–460.
- PWC. *Evolution of Territorial Tax Systems in the OECD*. Washington, DC: Prepared for The Technology CEO Council, 2013.
- . *Transfer Pricing and Developing Countries: Final Report*. Brussels: European Commission, 2011.
- Quang, Ngo Dinh, and Nguyen Tien Dung. “Tax Reform in Vietnam.” *Vietnam’s Socio-Economic Development: A Social Science Review* no. 10 (1997): 3–16.
- Quiliconi, Cintia. “Competitive Diffusion of Trade Agreements in Latin America.” *International Studies Review* 16, no. 2 (2014): 240–251.
- Quinn, Dennis P, and Robert Y Shapiro. “Business Political Power: The Case of Taxation.” *The American Political Science Review*, 85, no. 3 (1991): 851–874.
- Quinones Cruz, Natalia. “Colombia.” In *The Impact of the OECD and UN Model Conventions on Bilateral Tax Treaties*, edited by Michael Lang, Pasquale Pistone, and Josef Schuch, 294–307. Cambridge: Cambridge University Press, 2012.
- Radaelli, Claudio M. “Harmful Tax Competition in the EU: Policy Narratives and Advocacy Coalitions.” *Journal of Common Market Studies* 37, no. 4 (1999): 661–682.
- Radaelli, Claudio M. “Game Theory and Institutional Entrepreneurship: Transfer Pricing and the Search for Coordination International Tax Policy.” *Policy Studies Journal* 26, no. 4 (1998): 603–619.
- Rakner, Lise. *Political and Economic Liberalisation in Zambia 1991 – 2001*. Stockholm: Nordic Africa Institute, 2003.
- Rama, Martin, Deepak Mishra, and Duc Minh Pham. “Overview of the Tax System in Vietnam.” In *Tax Reform in Vietnam: Towards a More Efficient and Equitable System*,

edited by Gangadha Prasad Shukla, Duc Minh Pham, Michael Engelschalk, and Tuan Minh Le, 17–32. Washington, DC: World Bank, 2011.

Reuter, Peter, ed. *Draining Development?: Controlling Flows of Illicit Funds from Developing Countries*. Washington, DC: World Bank, 2012.

Richter, Brian K, Krislert Samphantharak, and Jeffrey F Timmons. “Lobbying and Taxes.” *American Journal of Political Science* 53, no. 4 (2009): 893–909.

Ring, Diane M. “International Tax Relations: Theory and Implications.” *New York University Tax Law Review* 60 (2006): 83–154.

———. *Who Is Making International Tax Policy? International Organizations as Power Players in a High Stakes World*. Boston College Law School Faculty Papers 264, 2010.

Rixen, Thomas. *Politicization and Institutional (Non-) Change in International Taxation*. WZB Discussion Paper, SP IV 2008-306, 2008.

———. “Tax Competition and Inequality: The Case for Global Tax Governance.” *Global Governance* 17 (2011): 447–467.

———. *The Political Economy of International Tax Governance*. New York: Palgrave Macmillan, 2008.

Rixen, Thomas, and Peter Schwarz. “Bargaining over the Avoidance of Double Taxation: Evidence from German Tax Treaties.” *FinanzArchiv: Public Finance Analysis* 65, no. 4 (2009): 442–471.

Rosenbloom, H David. “Cross-Border Arbitrage: The Good, the Bad and the Ugly.” *Taxes* 85, no. 3 (2007): 115–117.

———. “Where’s the Pony? Reflections on the Making of International Tax Policy.” *Canadian Tax Journal* 57, no. 3 (2009): 489–503.

Ross, Marc H, and Elizabeth Homer. “Galton’s Problem in Cross-National Research.” *World Politics* 29, no. 1 (1976): 1–28.

Saasa, Oliver S. “Zambia’s Policies towards Foreign Investment: The Case of the Mining and Non-Mining Sectors.” Uppsala: The Scandinavian Institute of African Studies, 1987.

SADC. *Memorandum of Understanding on Co-Operation in Taxation and Related Matters*. Pretoria: Southern African Development Community, 2002.

- Sadiq, Kerrie. "The Inherent International Tax Regime and Its Constraints on Australia's Sovereignty." *University of Queensland Law Journal*, The 31, no. 1 (2012): 131–146.
- Sardanis, Andrew. *Zambia: The First Fifty Years*. London: IB Tauris, 2014.
- Sauvant, Karl P, and Lisa E Sachs, eds. *The Effect of Treaties on Foreign Direct Investment*. Oxford: Oxford University Press, 2009.
- Scholes, Myron S, and Mark A Wolfson. "The Effects of Changes in Tax Laws on Corporate Reorganization Activity." *The Journal of Business* 63, no. 1 (1990): S141–S164.
- Schumpeter, Joseph. "The Crisis of the Tax State." In *Joseph A. Schumpeter: The Economics and Sociology of Capitalism*, edited by Richard A. Swedberg, 99–140. Princeton: Princeton University Press, 1991.
- Seabrooke, Leonard. "Economists and Diplomacy: Professions and the Practice of Economic Policy." *International Journal* no. Summer (2011): 629–642.
- . "Epistemic Arbitrage: Transnational Professional Knowledge in Action." *Journal of Professions and Organization* 1, no. 1 (2014): 49–64.
- Seabrooke, Leonard, and Eleni Tsingou. *Revolving Doors and Linked Ecologies in the World Economy: Policy Locations and the Practice of International Financial Reform*. Centre for the Study of Globalisation and Regionalisation. Working Paper 260. University of Warwick, 2009.
- Seabrooke, Leonard, and Duncan Wigan. *Emergent Entrepreneurs in Transnational Advocacy Networks: Professional Mobilization in the Fight for Global Tax Justice*. GR:EEN Working Paper Series. Centre for the Study of Globalisation and Regionalisation. University of Warwick, 2013.
- . "Powering Ideas through Expertise: Professionals in Global Tax Battles." *Journal of European Public Policy* 23, no. 3 (2016): 357–374.
- Seidman, Ann. "The Distorted Growth of Import-Substitution Industry: The Zambian Case." *The Journal of Modern African Studies* 12, no. 4 (1974): 601–631.
- Seiha, Um. "Cambodia: Tax Revenue Reform Issues, Further Reforms." In *IMF High Level Tax Conference for Asian and Pacific Countries*. Tokyo, 2012.
- Self, Heather. "Some Treaty Issues for Developing Countries." London: Queen Mary

University guest lecture, 30 January, 2014.

Seligman, Edwin RA. *Double Taxation and International Fiscal Cooperation : Being a Series of Lectures Delivered at the Académie de Droit International de La Haye*. New York: Macmillan, 1928.

———. *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad*. New York: Macmillan, 1914.

Sending, Ole Jacob, and Iver B. Neumann. “Banking on Power: How Some Practices in an International Organization Anchor Others.” In *International Practices*, edited by Emanuel Adler and Vincent Pouliot, 231–254. Cambridge: Cambridge University Press, 2011.

Sharman, Jason. “Offshore and the New International Political Economy.” *Review of International Political Economy* 17, no. 1 (2010): 1–19.

Sharman, Jason C. “Dysfunctional Policy Transfer in National Tax Blacklists.” *Governance* 23, no. 4 (2010): 623.

———. *Havens in a Storm: The Global Struggle for Tax Regulation*. Ithaca: Cornell University Press, 2006.

———. “Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States.” *International Studies Quarterly* 52, no. 3 (2008): 635–656.

———. “Seeing Like the OECD on Tax.” *New Political Economy* 17, no. 1 (2012): 37–41.

———. “The Bark Is the Bite: International Organizations and Blacklisting.” *Review of International Political Economy* 16, no. 4 (2009): 573.

Shaw, Timothy M. “The Foreign Policy System of Zambia.” *African Studies Review* 19, no. 1 (1976): 31–66.

Simmons, Beth A. “Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment.” *World Politics* 66, no. 1 (2014): 12–46.

Simmons, Beth A, and Zachary Elkins. “The Globalization of Liberalization: Policy Diffusion in the International Political Economy.” *The American Political Science Review* 98, no. 1 (2004): 171–189.

Sinn, Hans-Werner. *Taxation and the Birth of Foreign Subsidiaries*. NBER Working Paper No. 3519. Cambridge, MA: National Bureau of Economic Research, 1990.

- Sjöstedt, Gunnar. *OECD-Samarbetet: Funktioner Och Effekter*. Stockholm Political Studies. Stockholm: Statsvetenskapliga institutionen, 1973.
- Skocpol, Theda. "Bringing the State Back In: Strategies of Analysis in Current Research." In *Bringing the State Back In*, edited by Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, 3–38. Cambridge: Cambridge University Press, 1985.
- Slemrod, Joel. "Tax Effects on Foreign Direct Investment in the United States - Evidence from a Cross-Country Comparison." In *Taxation in the Global Economy*, edited by Assaf Razin and Joel Slemrod, 79–122. Chicago: Chicago University Press, 1990.
- Slocomb, Margaret. *An Economic History of Cambodia in the Twentieth Century*. Singapore: NUS Press, 2010.
- Snape, John. "Tax Law : Complexity , Politics and Policymaking." *Social & Legal Studies* 24, no. 2 (2015): 155–163.
- . *The Political Economy of Corporation Tax : Theory, Values and Law Reform*. Oxford: Hart, 2011.
- Sodhy, Pamela. "Modernization and Cambodia." *Journal of Third World Studies* XXI, no. 1 (2004): 153–175.
- Sok, Siphana. "Role of Law and Legal Institutions in Cambodia Economic Development: Opportunities to Skip the Learning Curve." Bond University, 2008.
- Solingen, Etel. "Of Dominoes and Firewalls: The Domestic, Regional, and Global Politics of International Diffusion." *International Studies Quarterly* 56, no. 4 (2012): 631–644.
- Sørensen, Peter Birch. "Changing Views of the Corporate Income Tax." *National Tax Journal* 48, no. 2 (1995): 279–294.
- Soskice, David W, and Peter A Hall, eds. *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press, 2001.
- St. John, Ronald B. "The Political Economy of the Royal Government of Cambodia." *Contemporary Southeast Asia* 17, no. 3 (1995): 265–281.
- Starr, Harvey. "Democratic Dominoes: Diffusion Approaches to the Spread of Democracy in the International System." *The Journal of Conflict Resolution* 35, no. 2 (1991): 356–381.
- Stewart, Miranda. "Global Trajectories of Tax Reform: The Discourse of Tax Reform in

- Developing and Transition Countries.” *Harvard International Law Journal* 44, no. 1 (2003): 139–190.
- Strange, Susan. *The Retreat of the State*. Cambridge: Cambridge University Press, 1996.
- Sullivan, Scott. *From War to Wealth: Fifty Years of Innovation*. Paris: OECD Publishing, 1997.
- Swank, Duane. “Tax Policy in an Era of Internationalization: Explaining the Spread of Neoliberalism.” *International Organization* 60, no. 4 (2006): 847–882.
- Swenson, Deborah L. “The Impact of U.S. Tax Reform on Foreign Direct Investment in the United States.” *Journal of Public Economics* 54, no. 2 (1994): 243–266.
- Tanzi, Vito. “Globalization, Technological Developments, and the Work of Fiscal Termites.” *Brooklyn Journal of International Law* 26 (2000): 1261–1285.
- The PRS Group. “International Country Risk Guide,” 2017.
- Thuronyi, Victor. “International Tax Cooperation and a Multilateral Treaty.” *Brooklyn Journal of International Law* 26 (2000): 1641–1681.
- . “Tax Treaties and Developing Countries.” In *Tax Treaties: Building Bridges between Law and Economics*, edited by Michael Lang, Pasquale Pistone, Josef Schuch, Claus Staringer, Alfred Storck, and Martin Zagler, 441–458. Amsterdam: IBFD, 2010.
- Tiebout, Charles M. “A Pure Theory of Local Expenditures.” *The Journal of Political Economy* 64, no. 5 (1956): 416–424.
- Tilly, Charles. *Coercion, Capital, and European States, A.D.990-1990*. Cambridge, MA: Basil Blackwell, 1992.
- . “Extraction and Democracy.” In *The New Fiscal Sociology*, edited by Isaac William Martin, Ajay K Mehrotra, and Monica Prasad, 173–182. Cambridge: Cambridge University Press, 2009.
- . , ed. *The Formation of National States in Western Europe*. Princeton: Princeton University Press, 1975.
- Towns, Ann E. “Norms and Social Hierarchies: Understanding International Policy Diffusion ‘From Below.’” *International Organization* 66, no. 2 (2012): 179–209.
- Tran-Nam, Binh. “Economic Liberalization and Vietnam’s Long-term Growth Prospects.”

- Journal of the Asia Pacific Economy* 4, no. 2 (1999): 233–257.
- . “Taxation and Economic Development in Vietnam.” In *Taxation in ASEAN and China: Local Institutions, Regionalism, Global Systems and Economic Development*. Abingdon: Routledge, 2012.
- Truman, Mike. “Tax Prat of the Year.” *Taxation*, February 6, 2013.
- Tsebelis, George. *Veto Players: How Political Institutions Work*. New York: Russell Sage Foundation, 2002.
- UNCTAD. “International Investment Agreements Navigator.” Accessed August 10, 2015. <http://investmentpolicyhub.unctad.org/IIA>.
- UNCTAD, and Japan Bank for International Cooperation. “Blue Book on Best Practice in Investment Promotion and Facilitation.” Geneva: United Nations, 2006.
- UNICE. “UNICE Comments on US Transfer Pricing Regulations.” *Intertax* 21, no. 8 (1993): 380–381.
- United Nations. “Committee of Experts on International Cooperation in Tax Matters: Current Subcommittees.” *Financing for Development Website*. Accessed June 20, 2016. <http://www.un.org/esa/ffd/tax-committee/tc-current-subcommittees.html>.
- . “Country Practices.” In *Practical Manual on Transfer Pricing in Developing Countries*. New York: United Nations, 2012.
- . *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*. New York: United Nations, 2003.
- . *Model Double Taxation Convention between Developed and Developing Countries*. 2011th ed. New York: United Nations, 2011.
- Vogel, Klaus. “Double Tax Treaties and Their Interpretation.” *Berkeley Journal of International Law* 4, no. 1 (1986): 4–85.
- Voget, Johannes. “Relocation of Headquarters and International Taxation.” *Journal of Public Economics* 95, no. 9 (2011): 1067–1081.
- Volden, Craig, Michael M Ting, and Daniel P Carpenter. “A Formal Model of Learning and Policy Diffusion.” *American Political Science Review* 102, no. 3 (2008): 319–332.
- Von Stackelberg, Heinrich. *Market Structure and Equilibrium [Marktform Und*

- Gleichgewicht*]. Heidelberg: J. Springer, 1934.
- Vu, Huong. *Several Tax Issues*. Hanoi: Vietnam Business Forum, 2014.
- Waltz, Kenneth Neal. *Theory of International Politics*. Boston: McGraw-Hill, 1979.
- Wanniski, Jude. "Taxes, Revenues, and the 'Laffer Curve.'" *Public Interest* 3–15, no. 50 (1978): 3.
- Webb, Michael C. "Tax Administrators Are Enmeshed in a Trans- National Epistemic communityTax Administrators Are Enmeshed in a Trans- National Epistemic Community." In *Global Corporate Power*, edited by Christopher May, 105–126. Boulder: Lynne Reinner, 2006.
- Weber, Max. "The Profession and Vocation of Politics." In *Weber: Political Writings*. Cambridge: Cambridge University Press, 1994.
- Wei, Dan. "Bilateral Investment Treaties: An Empirical Analysis of the Practices of Brazil and China." *European Journal of Law and Economics* 33, no. 3 (2010): 663–690.
- Weiss, Linda. "Bringing Domestic Institutions Back in." In *States in the Global Economy: Bringing Domestic Institutions Back in*. Cambridge: Cambridge University Press, 2007.
- Welsh, W.A. "Inter-Nation Interaction and Political Diffusion: Notes toward a Conceptual Framework." In *Paper Presented at the Annual Meeting of the International Studies Association, Atlanta, March*, 1984.
- Wendt, Alexander. "Anarchy Is What States Make of It: The Social Construction of Power Politics." *International Organization* 46, no. 2 (1992): 391–425.
- . *Social Theory of International Politics*. Cambridge: Cambridge University Press, 1999.
- Were, Emmanuel. "Kenya: France Telecom Entry Eases Tax Burden." *Business Daily*. December 16, 2007.
- Weyland, Kurt. *Bounded Rationality and Policy Diffusion: Social Sector Reform in Latin America*. Princeton: Princeton University Press, 2007.
- . "Theories of Policy Diffusion - Lessons from Latin American Pension Reform." *World Politics* 57, no. 2 (2005): 262–295.

- Weyzig, Francis. *Evaluation Issues in Financing for Development. Analysing Effects of Dutch Corporate Tax Policy on Developing Countries*. Amsterdam: Dutch Ministry of Foreign Affairs, 2013.
- . “Tax Treaty Shopping: Structural Determinants of Foreign Direct Investment Routed through the Netherlands.” *International Tax and Public Finance* 20, no. 6 (2013): 910–937.
- Wijnen, Wim, and Jan de Goede. *The UN Model in Practice 1997-2013*. Amsterdam: International Bureau of Fiscal Documentation, 2013.
- Wijnen, Wim, Jan de Goede, and Andrea Alessi. “The Treatment of Services in Tax Treaties.” *Bulletin for International Taxation* (2012): 27–38.
- Wikileaks. “Public Library of US Diplomacy.” Accessed June 22, 2015.
<https://search.wikileaks.org/plusd>.
- Wilson, Jeffrey D. “Theories of Tax Competition.” *National Tax Journal* 52, no. 2 (1999): 269.
- Woodward, R. *The Organisation for Economic Cooperation and Development*. Null. London: Routledge, 2009.
- World Bank. *Cambodia Country Economic Memorandum*. Washington, DC: World Bank, 1998.
- . “World Development Indicators.” *World Bank Open Data*. Accessed June 20, 2016.
data.worldbank.org.
- Yackee, Jason Webb. “Bilateral Investment Treaties, Credible Commitment, and the Rule of (International) Law: Do BITs Promote Foreign Direct Investment?” *Law & Society Review* 42, no. 4 (2008): 805–832.
- Zambia Ministry of Development Planning and National Guidance. *Second National Development Plan, January, 1972-December, 1976*. Lusaka, 1972.
- Zhukov, Yuri M., and Brandon M. Stewart. “Choosing Your Neighbors: Networks of Diffusion in International Relations 1.” *International Studies Quarterly* 57, no. 2 (2013): 271–287.
- Zimbabwe Investment Authority. “Exploring Investments in Zimbabwe.” Accessed November 19, 2012. http://www.zimottawa.com/files/investing_in_zimbabwe.pdf.

Zito, Anthony R. "Epistemic Communities, Collective Entrepreneurship and European Integration." *Journal of European Public Policy* 8, no. 4 (2001): 585–603.

Zürn, Michael, and Jeffrey T Checkel. "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State." *International Organization* 59, no. 4 (2005): 1045–1079.