Can technology help deal with the complex issue of double tax treaty application?

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Taxation must keep up with economic developments, including states' tax laws and tax treaties (hereafter "Tax Treaties" or "Tax Treaty"), which are subject to regular adjustments.

When updating these Tax Treaties, the Organisation for Economic Co-operation and Development (OECD), the United Nations (UN) and states strive to respond to new international tax issues resulting from international economic, financial, technological and trade developments. While a lot of documentation on Tax Treaties' provisions has been developed over the years, including Tax Treaties' relationships with other treaties and states' domestic laws, there is little assistance available regarding Tax Treaties' practical implementation, which is generally left to the states' domestic laws[1].

While the digital transformation of economies and the acceleration of dematerialized exchanges exacerbate certain difficulties in applying Tax Treaties, it could also create tools that facilitate exchanges between a Tax Treaty's parties and administrations.

But how can technology simplify the complex issue of double tax treaty application? Which procedural obstacles exist and how can technology overcome them?

Tax Treaties based on the OECD Model Convention include mutual agreement procedures between states to overcome procedural obstacles, including information exchange and recovery assistance. However, these provisions hold each state's competent authority responsible, by mutual agreement, for resolving Tax Treaty interpretation or application problems[2]. Even if certain articles of a Tax Treaty limit the state's right to tax income arising in its territory, «…the convention does not resolve procedural issues and each State is free to use the procedure provided in its domestic law to apply the limitations provided for in the convention» [3].

In this respect, «…competent authorities may communicate directly with each other,» and exchange information without using diplomatic channels[4]. However, this creates administrative burdens[5] and the mutual agreement procedure can take up to three years, a period that no longer corresponds to certain economic models or activity sectors.

Similarly, each state's taxation method affects the Tax Treaty's application[6]. For example, some states using a withholding tax system will directly limit the Tax Treaty's amount of taxation if the other states can levy taxation under their do-

mestic legislation and, subsequently, refund the part withheld.

In this context, a digital platform with secure access, with one part reserved for correspondence between competent authorities and another between the state and taxpayers, would speed up communication and document sharing. And, digitalizing and automating certain processes (via «block-chain» type models) could also simplify and secure Tax Treaty implementations.

Can some fundamental problems of implementing Tax Treaties be solved digitally?

There are several fundamental problems that complicate a Tax Treaty's implementation. For example, each states' determination of who is eligible[7] and the person's tax residence and/or tax liability can differ. Likewise, the problem of income qualification, and how this income is linked to people wanting to take advantage of a Tax Treaty, may raise problems with its application[8]. In addition, it is not uncommon for the conventional definitions of the various types of income to refer to the domestic tax law of the state that is a party to the tax convention in question[9].

While the digital revolution would not completely solve these fundamental problems, its technological tools will facilitate exchanges between states' competent authorities and improve Tax Treaty implementation. For example, competent authorities could share a database platform that centralizes the information and definitions specific to each state, helping the classification of persons and income.

How will this digitalization impact competent authorities' organizational structures?

The administrative organization of each state's competent authority can also slow Tax Treaty implementation. For example, there may be delays in their digitalization, or budgetary restrictions that affect the necessary human resources available (e.g., for information searches, investigations and exchanges between competent authorities, or tax collection). Moreover, assistance between states can be costly, and «…the usual practice, ordinary expenses incurred by a State in providing assistance to the other State will not be reimbursed by the other State».[10] This is also true for taxpayers. However, the use and evolution of technological tools regarding Tax Treaties should partially resolve states' and taxpayers' organizational problems[11]. Using secure databases and digital platforms could reduce their financial impact by reducing the need for specialized human resources.

How willing are states to implement proper digitalization?

Due to international investment development, the complexity of international investment structures, and the difficulties of applying Tax Treaties to this sector, the OECD drafted the Treaty Relief and Compliance Enhancement (TRACE) initiative in 2013. It was based on the January 2009 report of the informal consultative group, which dealt with the application of treaty benefits on dividends and interest on securities held by financial intermediaries.

Through TRACE, authorized intermediaries could apply for exemptions or reduced rates of withholding tax on a common annual basis on behalf of their portfolio investors. These requests would be supported by investors' standardized self-declarations with information such as name, address, the beneficial owners' tax identification number, and a description of the income types[12]. Then, the source country would automatically exchange this information with the investors' country of residence. To support the TRACE initiative, on 25 February 2020, the OECD published the TRACE XML Schema User Guide, providing guidance on the standardized electronic format for reporting TRACE-related information by financial institutions to tax administrations, and for information exchanged between tax administrations. This guide specifies the respective obligations of financial intermediaries and investors, determines the different participants (authorized intermediaries, contractual intermediaries, excluded intermediaries, beneficial owners or equivalent), and the specific information to be exchanged.

Also on 25 February 2020, the OECD published an XML Scheme and User Guide for tax authorities to provide structured feedback to senders on errors regarding tax information exchanged through the Common Transmission System (CTS). The CTS, which is the OECD's secure and encrypted vehicle enabling the bilateral exchange of tax information, is already in use in over 100 countries for the automatic exchange of information regarding the Common Reporting Standards, country-by-country reporting, and exchange of advance tax agreements.

The CTS reflects the willingness of various tax administrations to comply with the economy's digitalization and the acceleration of international financial transactions to support cross-border investment. However, since its launch, the TRACE initiative has not met with the support expected from governments. While states have implemented other projects relating to the automatic exchange of information, such as the Common Reporting Standard or FATCA, they are showing protectionism regarding their tax procedures. In addition, states may misunderstand the benefits of TRACE, thinking it only useful to large financial institutions, which reduces their motivation to rapidly implement the initiative.

The age of digitization of tax matters and, more specifically, international taxation is only in its infancy. Its rapid development should enable taxpayers to benefit from the advantages of Tax Treaties in a more efficient and less costly way, while preserving and increasing tax authorities' control of an increasing number of international transactions, as well as the appetite of new generations of economic and financial operators.

1) See, for example, article 25 of the OECD 2018 Model Convention and related comments, in particular paragraph 3.
2) See article 25 paragraph 3 of the OECD Model Convention 2018.
3) See paragraph 109 commentary to article 1 of the OECD Model Convention 2018.
4) See paragraph 4 article 25 of the OECD Model Convention 2018 and comments thereon.
5) See commentary on article 26 of the OECD Model Convention 2018 and in particular paragraph 12.3 specifying that the competent authority of the state providing the information must authorize its use.
6) For a detailed explanation see section 4.4 of chapter 1 of the UN Manual on Certain Aspects of the Administration of Double Taxation Treaties for Developing Countries of 2015.
7) See Article 1 OECD Model Convention 2018 and comments thereon, in particular paragraph 22 et seq. for an example of access to treaties for undertakings for collective investment (UCIs), the report of the OECD's Informal Consultative Group on Taxation of UCIs and Tax Relief Procedures for International Investors of 12 January 2009.
8) See, for example, article 10 of the OECD Model Convention 2018 and related comments, in particular paragraph 12 et seq. and article 11 and related comments, in particular paragraph 9 et seq.
9) See article 3 paragraph 2 of the OECD Model Convention 2018 and commentary thereon, in particular paragraph 13.2. and e.g., article 10 of the OECD Model Convention 2018 and commentary thereon, in particular paragraph 23.
10) See commentary on article 27 OECD Model Convention 2018 and in particular paragraph 8.
11) For a detailed example of a successful digitization of the organization of a state, see the article by the same author entitled "How are tax administrations and tax specialists going digital?".
12) For an example of a form for an individual, see appendix 1 page 43 of the TRACE or page 46 for an entity.

Origin closes $7million Series A with Clearstream and LuxSE

Origin, the London-based fintech company that has pioneered the digitalisation of bond issuance, has successfully closed its $7million Series A funding round led by Clearstream and the Luxembourg Stock Exchange (LuxSE) following regulatory approval. This brings the company's total funding to date to $10million.

As a pioneer of digital debt capital markets, Origin offers 3 products that work together to automate debt issuance: their Marketplace, Documentation and Post-Trade modules. The company now counts over 90 issuers and 20 dealers as clients, including some of the largest participants in the international capital markets. The partners' ambition is to further develop Origin's existing platform to establish a digital, end-to-end, straight-through-processing issuance platform for international fixed-income capital markets, enabling instant, T+0 issuance, listing and settlement.

This will be achieved in a phased approach over the coming years in cooperation with major market participants, including Origin's existing dealer and issuer client base, as well as Clearstream's and LuxSE's partners in the agency, post-trade and infrastructure space.

The platform already provides an integrated digital listing service, enabling issuers and their agents to achieve listing at LuxSE with a single click. It will in addition start offering instant ISIN generation for transactions crystallised on Origin Documentation by utilising ISINs allocated by Clearstream. The parties aim to go live with this feature by mid-2021. This will be followed by integrating standardised and automated ICSD admission checks into the platform, leading to the automation of the origination to settlement and payment processes.

Importantly, the platform is being developed in an open-access and open-architecture manner, allowing participation from market participants across the various layers of the international fixed income ecosystem.

While the initial focus will be in the Eurobond market covered by the ICSDs, the parties aim to expand the offering to also cover other asset classes and market segments in the future.