



Subject-To-Tax-Rule in the UN Model Tax Convention

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Introduction

- The Subject to Tax Rule (STTR) is a treaty-based rule that allows source jurisdictions to impose limited source taxation on specified related party payments subject to tax below a minimum rate.
- IF developing countries allowed to request IF developed country members to implement the STTR into their bilateral treaties upon request where they (developed countries) apply nominal corporate income tax rates below the STTR minimum rate to interest, royalties and a defined set of other payments.
- The taxing right for developing countries will be limited to the difference between the minimum rate and the tax rate on the payment.
- The minimum rate for the STTR will be 9%.
- A model treaty provision to give effect to the STTR will be developed alongside commentary. This was initially expected in March 2022.
- A Multilateral Instrument (MLI) will be developed by the IF by mid-2022 to facilitate the swift and consistent implementation of the STTR in relevant bilateral treaties. This would act in a similar manner to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.



Scope

- The scope of the STTR remains under negotiation and at present only interest and royalties have been included.
- Unlike the GloBe rules, there is no threshold however developing countries are defined as those with a GNI per capita, calculated using the World Bank Atlas method, of USD 12,535 or less in 2019 to be regularly updated.
- A UN model treaty convention principle could include service fees, capital gains, dividends and technical fees.
- Given that the GloBe rules cover all income the STTR should not have a limited scope.

Charging provisions

Options are:

To amend article Article 10 dividends, 11 interest,
12 royalties, 12A fees for technical services and 13
Capital gains

Create a new article to cover the STTR.



Whatever option is chosen it will be important to specify that the new provisions apply notwithstanding the provisions in Articles 23A and 23B.

Administration and Operationalization

To administer the provisions, information on the countries that the MNEs are from will be needed as well as the taxes they've paid (or not paid) in their home countries.

There will also need to be a clear provision on who the obligation to disclose this information falls on? Is it the MNE, tax authorities from developed countries etc.

Country-by-country reporting will also assist with determining the tax paid. This this will however only cover companies with annual consolidated group revenue of more than EUR 750 million.

Information on beneficial ownership important as it will give information on company structure.

Automatic access of to information will assist with the remainder.

Multilateral Instrument?

Although the Multilateral Instrument (MLI) aims to facilitate swift and consistent implementation of the STTR in relevant bilateral treaties, this would act in a similar manner to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

There are questions surrounding the effectiveness of multilateral instruments apply especially as regards the issue of reciprocity.



Legitimacy issues

- The UN Model Convention is not hard law;
- MLI needs to be ratified by each jurisdiction;
- Domestic law provisions may need to be passed;
- What happens when there is no DTA?

Thank You!

