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**THE INTERGOVERNMENTAL  
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OF THE SOUTH**



## Analysis of Imbalanced Tax Treaties of Developing Countries

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## Key take-aways

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1. More and more evidence show that developing countries lose significant amount of revenues through tax treaties.
2. Given the rise in the use of intangibles for instance, no country should accept the OECD version of Article 12 which provides for exclusive residence state taxation of royalties and narrow scope definition of royalties
3. Enhance treaty provisions by broadening PE definition to cover modern business models and include new Article XX for Services and Article 12B for Automated Digital Services.
4. Developing countries should have a treaty policy adopting the provisions of Article 13 of UN MTC which includes Offshore Indirect Transfers, except 13(8) which allocates residual rights to the country of residence.
5. Many other new provisions of the UN Model Tax Convention should be studied: Article XX, 12C, 5A, etc.

## Key take-aways

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### 1. Tax treaty re-negotiation using Fast Track Instrument (FTI)

- ❖ UN FTI developed by the UN Tax Committee a game-changer: can enable multiple treaties to be negotiated simultaneously by incorporating Articles of UN MTC like STTR, Offshore Indirect Transfer (OIT), Article 12(3), 12A, 12B, et cetera
- ❖ Eg – Ghana, Algeria and Bolivia can renegotiate treaty with UK *together*
- ❖ Or – Ecuador can update treaties with Italy and Spain *at the same time*
- ❖ **For the first time in history, developing countries will be able to negotiate or renegotiate tax treaties in blocs**
- ❖ However, FTI needs to be converted into a treaty that can be signed and ratified
- ❖ Developing countries support required: either as stand-alone treaty or as protocol to UN Framework Convention on International Tax Cooperation

## Key take-aways

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### 1. Termination

- ❖ Imbalanced tax treaty could be terminated if a treaty partner refuses to renegotiate the treaty.
- ❖ For example, Mali, Burkina Faso and Niger recently terminated treaty with France.
- ❖ If a tax treaty is terminated, appropriate guidance should be issued to guide taxpayers on tax treatment of relevant items of income to maintain tax certainty.

## Conclusion

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- 1. Developing countries urged to review their tax treaty policy, study latest updates to UN Model Tax Convention and update national Model Tax Treaty at the earliest.**
- 2. The South Centre remains available to provide its Member States with support in:**
  - 1. Capacity building in tax treaty negotiation**
  - 2. Access to tax treaty databases for information on any tax treaty, withholding rates, etc.**
3. South Centre Tax Focal Points can contact [Taxcooperation@southcentre.int](mailto:Taxcooperation@southcentre.int)

## THE SOUTH CENTRE

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