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International and Foreign Tax Research

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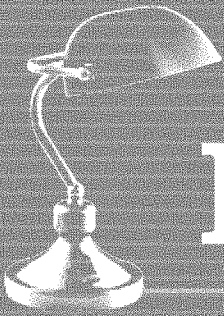


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Law Library Lights

International and Foreign Tax Research

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Tax research often strikes fear in the heart of lawyer and librarian alike, and foreign and international tax research, doubly-so. Fortunately, the resources available for tax research are top-notch, which should enable your research to proceed painlessly.

This article will look at resources and tools for finding model and in-force bilateral tax treaties; foreign tax law in both English and vernacular; and newsletters for keeping abreast of current issues in international and foreign tax law.

Introduction

The main concerns in international tax law that treaties attempt to address are the avoidance of double taxation and tax evasion. Double taxation is when a citizen of one country (such as of the United States) works in a foreign country and has to pay taxes to both her home country and current foreign country of residence. Countering tax evasion focuses on offshore tax shelters, citizens (or resident corporations) who hide assets offshore, and information exchange. Over the last few years, the United States has been renegotiating its bilateral tax agreements to implement FATCA, the Foreign Accounts Tax Compliance Act (P.L. 111-147 (Mar. 18, 2010)).

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Some terms and issues frequently seen currently in foreign and international tax planning are

1. **FACTA**, the Foreign Accounts Tax Compliance Act, a recent United States law that requires foreign banks to disclose their accounts held by American citizens;
2. **BEPS**, or Base Erosion and Profit Shifting, which is the concern that international corporations are minimizing (or eliminating entirely) their income taxes through foreign tax planning and restructuring through low-tax countries and tax havens;
3. **Inversions**, which is when a United States corporation restructures into a foreign corporation and expatriates;
4. **A Dutch-Irish Sandwich**, a cross-border tax planning structure taking advantage of various incentives and tax rates in Ireland and the Netherlands; and
5. **Worldwide Versus Territorial Tax Systems**, which is the debate over whether American citizens and corporations should pay income taxes based on citizenship (i.e., an American corporation pays income tax for all its income no matter in which country it is earned) or territory and residence (i.e., an American corporation only pays income tax on income earned inside the United States).

Bilateral Tax Treaties

The main form of international treaty concerning tax law is the bilateral treaty between two countries.

Model Bilateral Tax Treaties

Bilateral tax treaties (or “conventions”) generally use one of three models as a starting point in negotiations:

- ▶ **The OECD Model**
- ▶ **The United States Model**
- ▶ **The United Nations Model**

The OECD (Organization for Economic Cooperation and Development) Model Convention with Respect to Taxes on Income and Capital was revised in 2014.¹ The majority of bilateral tax treaties between economically-developed nations use the OECD Model as a starting point. Although the United States is a party to this convention, the United States utilizes its own model for tax treaties.

The United States Model² was revised in 1996 and 2006. A copy of the model and a technical explanation is available from the IRS’s website. The US Model is similar to the OECD model, with a few exceptions to better conform to American tax law.

The United Nations Model Double Taxation Convention between Developed and Developing Countries (<http://www.un.org/en/development/>

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[desa/publications/double-taxation-convention.html](#)) last updated 2011, focuses on the unique issues facing developing countries. (Previous versions were drafted in 1980 and 2001).

Bilateral Tax Treaties In Which The United States Is A Party

Bilateral tax treaties in which the United States is a party are available in numerous official and unofficial resources.

Free/Official Resources

Tax treaties are announced and printed in the *Internal Revenue Bulletin* and reprinted in the *Cumulative Bulletin*. The text of most tax treaties in force is available on the IRS's website.³ The treaties available from the IRS include the text of the treaty, any additional protocols (i.e., amendments to the treaty), and a technical explanation of the treaty written by the Treasury Department.

The Treasury Department's website⁴ has the texts of recently-signed United States income tax treaties, protocols, and tax information exchange agreements (TIEAs) and the accompanying Treasury Department tax treaty technical explanations as they become publicly available. These treaty and TIEA documents are posted on Treasury's site upon signature and prior to ratification and entry into force.

Information on the Senate confirmation of tax treaties is available from the Library of Congress on [thomas.loc.gov](#).⁵ The information available on Thomas includes dates of Senate committee hearings and votes.

The Joint Committee on Taxation's technical explanations are available directly from their website.⁶

Subscription/Unofficial Resources

Both major commercial tax reporting services have United States bilateral tax treaty coverage. United States bilateral tax treaties are available in the CCH Tax Treaties looseleaf service *U.S. Tax Treaties Reporter*, which is available in print or electronically on CCH IntelliConnect. Similarly, these treaties are reprinted in RIA's Federal Tax Coordinator and electronically on RIA Checkpoint.

The Bloomberg BNA Tax Management Portfolios also have treaty coverage in their "Business Operations in [country name]" volumes. Generally, the bilateral tax treaty materials are contained within the Working Papers appendix in the relevant portfolio. Tax Management Portfolios are available in print and electronically in both the Bloomberg BNA Library and Bloomberg Law.

Bilateral Tax Treaties Between Two Foreign Countries

Free Resources

United Nations Treaty Collection (online at <https://treaties.un.org/>). Use the awkward, but necessary, advanced search. Generally, the UNTC is a few years behind, so relying on this collection as a final research destination is not recommended.

The European Union Taxation and Customs Union maintains a website pointing to the bilateral tax treaties of its member countries.⁷ The EU's website links directly to each country's tax authority's website, so the majority of the links are not in English.

For English-speaking countries with centralized government websites containing their primary legal materials, such as Canada⁸ or the United Kingdom,⁹ their governmental websites generally have a collection of their bilateral tax treaties.



Treaties may be available on other countries' governmental websites as well, but will likely require navigation in foreign languages. Google Translate can assist with browsing foreign-language websites, particularly for Google Chrome browser users.

Commercial Resources

Because of the difficulty of finding current information on foreign bilateral tax treaties using free resources, commercial resources will probably be the best choice for this type of research question.

Worldwide Tax Treaties is a collection available on Tax Analysts' web services subscription database.¹⁰ Worldwide Tax Treaties includes in-force, pending, and terminated treaties. Model tax conventions are also available. Worldwide Tax Treaties also includes a tool to compare the articles of two different bilateral tax treaties, or a treaty to a model convention.

The International Bureau of Fiscal Documentation¹¹ produces both a set of print resources and a subscription database. The International Bureau of Fiscal Documentation (IBFD) is a Netherlands-based non-profit that collects material, writes research articles and analyses, and offers education and training on international and cross-border tax law. IBFD's print publication of foreign bilateral tax treaties is via a series of regional books with a somewhat confusing and inconsistent set of varying titles:

- ▶ *Supplementary Service to European Taxation: Information on European Taxes and Tax Treaties*
- ▶ *Taxes & Investment in Asia and the Pacific*
- ▶ *Taxes and Investment in the Middle East*
- ▶ *African Tax Systems*

- ▶ *Taxation and Investment in the Caribbean*
- ▶ *Corporate Taxation in Latin America*

IBFD also publishes a few country-specific books, including *Taxation and Investment in Canada*, *Taxation and Investment in Mexico*, and *The Foreign-Related Tax Laws and Regulations of the People's Republic of China*.

IBFD's subscription database (IBFD'S "Tax Research Platform") is an excellent tool for treaty research. Their database includes non-US bilateral tax treaties in English and in the vernacular of the two signatories. Much like Worldwide Tax Treaties, IBFD's database makes it easy to compare two treaties (or a treaty and a model convention) side-by-side.

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IBFD also includes national and international (European Court of Justice) case law interpreting tax treaties, although for many civil law countries only a summary of the court's holding is available. A unique advanced search function in IBFD's case searching permits searching by OECD article. Inasmuch as most non-US bilateral tax treaties follow the organization of the OECD model, this makes searching for cases interpreting a particular issue, which is generally addressed in the same section in every treaty, easy.



Foreign Tax Law

In English

The first step for finding the tax law for a particular country in English is to ascertain whether there is a translation of that country's tax code or a useful treatise on that country's tax system. These are available for most large economies, especially concerning members of the G-20, European Union, or OECD. It is strongly recommended to consult a country-specific research guide, such as those produced by the Law Library of Congress,¹² to identify translations and how often they are updated.

If a copy of a particular country's tax code is not available in an English translation, there are a few other sources to find foreign tax law in translation. RIA publishes *Worldwide Tax and Commercial Law*, which is a collection of both tax statutes and other commercial codes (generally banking and corporate law). It is comprehensive (around 150 countries) and organized by region. *Worldwide Tax* is available online on both RIA Checkpoint and on IBFD's subscription database.

For summaries of foreign tax laws, IBFD publishes a set of Global Tax Series, available in print and via their subscription database. The set includes two different summary types: Surveys and Analyses. The Surveys cover over two hundred jurisdictions and provide a brief overview of each country's system and tax rates. The Analyses are more in-depth, but are only for about sixty countries. Both the Surveys and the Analyses are organized the same way for each country, making it easy to compare tax laws across jurisdictions. Indeed, the IBFD subscription database provides a side-by-side comparison tool.

Another useful resource for getting the summary of a particular country's tax law is the Bloomberg

BNA Tax Management Portfolio for that particular country ("Business Operations in ..."). Not only is there a detailed summary of that country's tax law and its forms of business entities, but the Working Papers appendix will generally include frequently-used tax forms and incorporation workpapers.

In Vernacular

For finding primary sources of tax law in the vernacular of the foreign country, there are several resources that can list what resources are available for that country and where to find them. The Law Library of Congress endeavors to comprehensively collect the primary law of as many nations as possible. Accordingly, the Law Library of Congress is an invaluable resource—and conveniently located in town! As noted above (in note 12) the Law Library of Congress has two sets of research guides available: a number of detailed guides for a set of selected countries and a less-detailed set listing resources available for many countries.

The World Legal Information Institute¹³ is a free resource listing online sources for a large number of countries' laws, courts, and legislatures. Most of the listed sites contain primary legal sources, and for some countries, English translations are also available.

The Foreign Law Guide¹⁵ is a subscription database that provides information on sources of foreign law, including complete bibliographic citations to legislation, the existence of English translations and selected references to secondary sources. It covers approximately 190 jurisdictions.

Keeping Current

There are several practitioner-focused newsletters on foreign and international tax issues. Tax Analysts publishes two highly-respected and widely-read newsletters: *Tax Notes International*, and *World Tax Daily*. Tax



Notes International is a weekly publication and contains news and substantive articles written by both practitioners and academics. World Tax Daily is a daily newsletter (also available as an email blast) focusing on news. Both newsletters are available electronically through Tax Analysts'

"For finding primary sources of tax law in the vernacular of the foreign country, there are several resources that can list what resources are available for that country and where to find them. The Law Library of Congress endeavors to comprehensively collect the primary law of as many nations as possible. Accordingly, the Law Library of Congress is an invaluable resource — and conveniently located in town!"

webservices database. When using this database it is highly recommended to always use the advanced search, as the advanced search provides for country-specific searching as well as searching Tax Analysts' archive.

Bloomberg BNA publishes several newsletters as well: *International Tax Journal*, *International Tax Monitor*, *Tax Planning International*, and *Transfer Pricing International Journal*. These are available in a print subscription or digitally in both the Bloomberg BNA Library and Bloomberg Law.

CCH IntelliConnect and RIA Checkpoint also have newsletters available. CCH IntelliConnect publishes *Global Daily Tax News*, *International Tax Journal*, and *CCH Global Tax Briefing*. RIA Checkpoint has the RIA-published *International Taxes Weekly* and

several WG&L publications, including the *Journal of International Taxation* and *International Tax Alert*.

Additional Resources

Some useful research guides on foreign and international tax law are the Law Library of Congress guides (see note 12); Georgetown Law Library's research guides on treaties,¹⁵ foreign and comparative Law,¹⁶ and international and foreign tax law;¹⁷ and Columbia Law Library's guide to treaty research.¹⁸ ■

Notes

¹ Available at <http://www.oecd.org/tax/treaties/oecd-model-tax-convention-available-products.htm>

² Available at <http://www.irs.gov/Businesses/International-Businesses/United-States-Model---Tax-Treaty-Documents>

³ <http://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z>

⁴ <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/treaties.aspx>

⁵ Although congress.gov has largely supplanted Thomas, treaties have not yet migrated to the new platform.

⁶ <http://jct.gov>

⁷ http://ec.europa.eu/taxation_customs/taxation/individuals/treaties_en.htm

⁸ http://www.fn.gc.ca/treaties-conventions/in_force-eng.asp

⁹ <http://www.hmrc.gov.uk/taxtreaties/>

¹⁰ <http://www.taxanalysts.com/>

¹¹ <http://www.ibfd.org/>

¹² The Law Library of Congress has two sets of country-specific research guides. Detailed guides for a few selected countries are available at <http://www.loc.gov/law/help/foreign.php> and all-nation online resources are at <http://www.loc.gov/law/help/guide/nations.php>

¹³ <http://www.worldlii.org/>

¹⁴ <http://referenceworks.brillonline.com/browse/foreign-law-guide>

¹⁵ <http://www.law.georgetown.edu/library/research/guides/TreatyResearch.cfm>

¹⁶ <http://www.law.georgetown.edu/library/research/guides/ForeignandComparativeLaw.cfm>

¹⁷ <http://www.law.georgetown.edu/library/research/guides/internationaltaxlawresearch.cfm>

¹⁸ http://library.law.columbia.edu/guides/Guide_to_Treaty_Research#Tax_Treaties

