INTERGOVERNMENTAL GROUP OF TWENTY FOUR

G-24

Tax treaties of G-24 Countries:
Analysis Using a New Dataset

G-24 Working Paper

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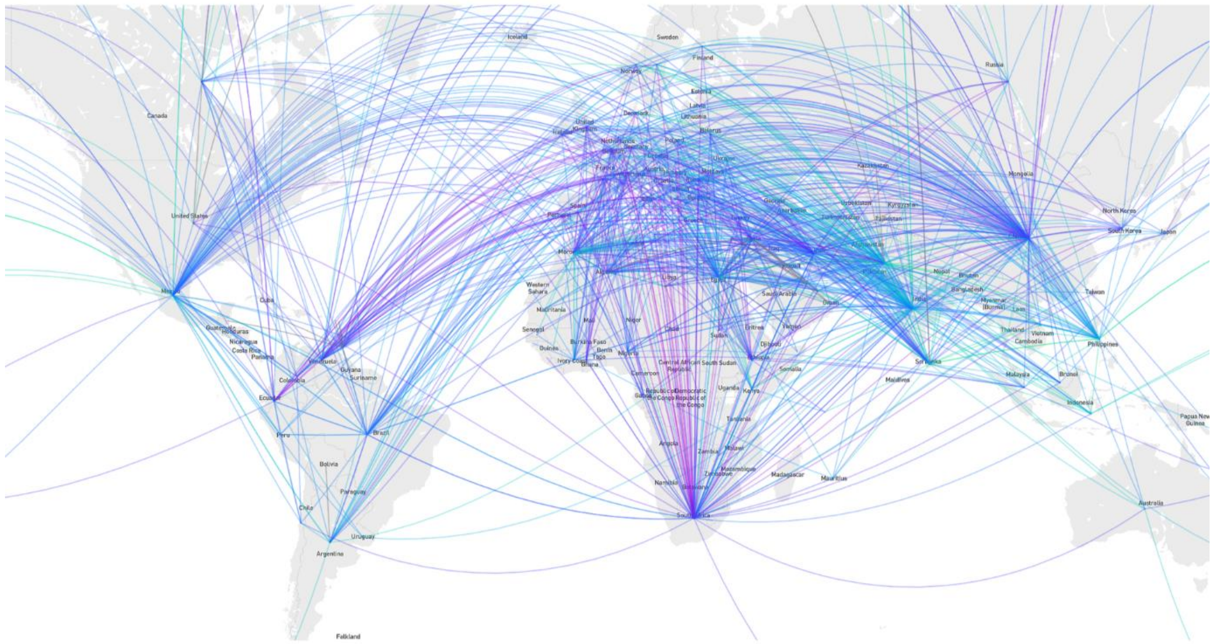

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Abstract

Between them, the G-24 countries have over 800 bilateral tax treaties in force. Each treaty limits states' ability to tax income earned within their borders by investors and service providers from the treaty partner. As well as constraining states' 'taxing rights', they are also vulnerable to abuse through 'treaty shopping'. A new dataset of developing countries' tax treaties, developed with support from the G-24, allows for comparisons of the content of these treaties, between countries and over time. Across many policy areas - including the taxation of services, indirect transfers of assets, and protection from abuse – newer and recently renegotiated treaties contain more provisions that are beneficial to capital and service-importing countries. The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) offers improvements in some areas, especially protection from abuse. Yet, many older and weaker treaties remain in force and will not be satisfactorily strengthened through the MLI. Within the G-24 there is wide variation among treaties with the same partners, suggesting the possibility for South-South cooperation to strengthen renegotiation strategies.

Acronyms

ATAF	African Tax Administration Forum
BEPS	Base Erosion and Profit Shifting
CGT	Capital Gains Tax
G-24	Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development
IBFD	International Bureau of Fiscal Documentation
ICTD	International Centre for Tax and Development
IMF	International Monetary Fund
LOB	Limitation of Benefits
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (“The Multilateral Instrument”)
MNE	Multinational Enterprise
OECD	Organisation for Economic Cooperation and Development
PE	Permanent Establishment
PPT	Principal Purpose Test
UN	United Nations
WHT	Withholding Tax

1 Introduction

Between them, the G-24 countries have over 800 bilateral tax treaties in force. Each treaty limits the states' ability to tax income earned within their borders by investors and service providers from the treaty partner, often referred to as states' 'taxing rights'. They affect the taxation of most cross-border activity, an estimated 80 percent of all foreign direct investment (FDI). As its only major source of 'hard' international law, tax treaties are also the bedrock of the international regime for multinational corporate taxation. The G-24 has stated that developing countries need "rules that are globally fair and avert harmful tax practices and competition,"[1] and in this regard the reform of tax treaties has the potential to play a major role. For example, they have the potential to impede, or to facilitate, the taxation of indirect transfers of assets and to tax extractive industries effectively (United Nations, 2017; The Platform for Collaboration on Tax, 2020). This is why a growing number of countries are renegotiating or terminating treaties, as well as reviewing their treaty networks, and international organisations are stepping up the support they offer with negotiations (see, notably, The Platform for Collaboration on Tax, 2021).

Tax treaties determine the balance of 'taxing rights' between exporters ("residence countries") and importers ("source countries") of investment and services. This balance has been described by a Ghanaian negotiator as "very crucial" and "not in [the] interest of developing countries."[2] The African Tax Administration Forum argues that, "Africa is still beset by serious issues such as . . . tax treaties with no appropriate tax allocation rights between source and residence taxation and thus susceptible to abuse (ATAF, 2019, p. 15)." Academic literature frequently questions the fairness and value for money of the limitations they impose on source taxing rights (Pistone, 2010; Brooks and Krever, 2015; Paolini *et al.*, 2016; Eyitayo-Oyesode, 2020; Leduc and Michielse, 2021). In many cases, however, curbs on source taxing rights accrue to multinational investors, rather than residence country governments, and indeed, investment promotion is often the main justification for tax treaties (Zolt, 2018).

In terms of harmful tax practices, the abuse of tax treaties is a major problem that causes significant revenue loss for developing countries (Beer and Loeprick, 2021). The IMF (2014, p. 24) cautions that developing countries "would be well- advised to sign treaties only with considerable caution." Treaty shopping occurs when firms reduce their tax liabilities in the countries in which they operate, by structuring their activities through intermediate jurisdictions such as the Netherlands, Singapore, and Mauritius that have wide treaty networks. Investors can choose a structure that minimises the taxes paid by their affiliate or branch in the host country on its profits, as well as on dividends, interest, royalties, and service fees that it pays out, and potentially on capital gains realised if it is sold. There is strong evidence that investments tend to be structured into countries through their most advantageous treaties with conduit countries (Weyzig, 2013; Balabushko *et al.*, 2017; Petkova, Stasio and Zagler, 2019). Domestic investors can also use shell companies in a conduit

[1] https://www.G-24.org/wp-content/uploads/2019/10/G-24-Communique-Final-Annual-Meetings-2019.pdf

[2] https://www.G-24.org/wp-content/uploads/2017/04/3.-Ghana-Mobilizing-Domestic-Resources-for-Development-International-cooperation.pdf

jurisdiction to take advantage of a tax treaty intended for overseas investors, so called "round tripping." A treaty is thus high risk to a country if it is with a major source of direct investment or, potentially even more so, if it is with a conduit jurisdiction. Those risks depend on the content of the treaty: how much it restricts source taxing rights, and the protections it contains against treaty shopping. Within the G-24, for example, India, South Africa, and Kenya have renegotiated their treaties with Mauritius to strengthen them against abuse, the last of these following a high court challenge from civil society organisations (Ogembo, 2019)

This paper presents the first detailed and comprehensive analysis of the content of G-24 countries' tax treaties. A dataset compiled with G-24 support includes 1,820 G-24 bilateral treaties, amendments, and bilateral linkages through multilateral treaties, of which the text of 1,732 could be obtained and coded. Building on prior work published by ActionAid and ICTD (Hearson, 2016), the new dataset captures 28 clauses, most of them reflecting the balance between source and residence taxation, across almost every tax treaty signed by developing economies. For the first time, this allows broad comparisons and analyses between countries and over time. It offers the potential for new research into the impact of specific treaty provisions beyond dividend and interest withholding taxes. The dataset is accompanied by an online tool, available at treaties.tax, which acts as an accessible entry point to understand treaties in comparative context.

The paper proceeds as follows. Section 2 introduces the new Tax Treaties Explorer Dataset, giving summary data on the treaties and amending instruments concluded by G-24 countries. These data are analysed at an aggregate level using indices in section 3. Sections 4 to 6 cover treaty provisions related to cross-border provision of services, indirect transfers of assets, and protection against abuse, respectively. These are the clauses that have animated international debates in recent years, and they are also among the clauses most pertinent to the extractive industries, a key concern for many developing countries. These sections paint an optimistic picture about the diffusion of treaty provisions that strengthen source taxing rights and prevent treaty abuse. Yet, there remains a large proportion of treaties that is of some concern. Section 7 briefly examines some impacts on G-24 treaties of the G20/OECD Multilateral Convention to Implement Treaty-Related Aspects of BEPS ("MLI"), to which 13 G-24 members are signatories. It demonstrates that the main gains are to be found in the area of protection from abuse. Section 8 concludes. While G-24 action at multilateral level has rightly focused on global negotiations and changes to the model conventions, there is much countries can do within the framework provided by the existing models to rectify problems in their treaty networks, but South-South collaboration will be essential.

2 The Tax Treaties Explorer Dataset

The new dataset, compiled during 2019 and 2020, comprises 2533 bilateral tax treaties, 231 bilateral linkages created by 8 multilateral tax treaties, 272 bilateral amending instruments, and 687 modifications through the G20/OECD Multilateral Instrument (MLI).[3] As far as possible, this includes all treaties signed by 118 countries: those that are or were until recently low and lower-middle income countries, all countries in Africa, and all members of the G-24 plus China. Lists of treaties were compiled from the International Bureau of Fiscal Documentation (IBFD), supplemented with governments' own lists published online and the OECD's MLI matching database. Of 3723 total entries, 1623 involve at least one G-24 country. Table 1 gives a breakdown of the nature and status of the G-24 entries.

Table 1 G-24 countries' tax treaties in the dataset

	Currently in Force	Not Yet In Force	Superseded text prior to amendments	Terminated	Total
Original	633	138	187	102	1060
Amendments by protocol	74	17	37	15	143
Amendments by MLI	98	243			341
Multilateral[4]	43	6		30	79
Total	848	404	224	147	1623

Most tax treaty negotiations use as their starting point the OECD and United Nations model tax conventions, and almost all treaties follow a structure based on these models. Treaties based on the OECD model generally impose greater restrictions on a country's ability to tax inward investment; the UN model makes amendments to the OECD model that leave more of these rights intact. Each of the fields in this dataset, listed in Annex 1, is based on a provision of the model treaties: a difference between the UN and OECD models, a clause that is in both models but does not always appear in negotiated treaties, or a value that the models leave open to bilateral negotiations. The dataset uses a purposive interpretation, which means that we have tried to take account of the intention of non-standard wording, rather than simply checking for the presence of a specific phrase. Each treaty was coded twice, independently, by two different members of the project team, to reduce the error rate as far as possible. A full discussion of the dataset methodology is available in a forthcoming ICTD/World Bank working paper that will be available on the treaties.tax site.

[3] Data in this working paper apply to version 2.0.4, check https://treaties.tax/data for subsequent updates.

[4] Multilateral agreements in force in G-24 countries are those of the Arab Economic Union Council (Egypt and Syria), Arab Maghreb Union (Algeria, Morocco), and West African Economic and Monetary Union (Cote d'Ivoire). In the dataset, multilateral treaties are recorded as networks of bilateral relationships: these three agreements apply to 43 pairs of countries of which one is a G-24 member.

As well as looking across the detail of negotiated tax treaties, the dataset can also be used to amalgamate the content of a treaty into an expression of the overall bargaining settlement it contains. Annex I also gives a list of the clauses included in each index. These indices are useful starting points for comparing treaties, but they are only a rough approximation and cannot replace a detailed examination of the text in the light of the contracting states' tax systems and policy preferences. To create the indices, each clause in the treaty was assigned a value between 0 and 1, where 1 represents a greater taxing right over inward investment. Indices are averages of these values over a particular group of clauses, as follows.

- Index of source taxing rights: Incorporates all fields in the dataset that relate to the balance of taxing rights. It is calculated as the average of the IBFD and other provision indices. It gives a high-level overview of the treaty.
- Index of permanent establishment definition: Includes fields related to Permanent Establishment (PE), which refers to the threshold above which a foreign company's presence in a country becomes taxable. It is drawn from article 5 of the model treaties.
- Index of withholding tax rates: An average of the withholding tax (WHT) rates in each treaty. These are taxes imposed on cross-border investment, which treaties either prevent or limit to a maximum rate. These are articles 10 to 12A of the model treaties. Each of the four types of payment (dividends, interest, royalties, technical service fees) is given equal weighting, but within each type, the values in the dataset are averaged.
- Index of other provisions: This includes the remaining fields, drawn from articles 7, 8, 13, 16, and 21 of the models.
- UN index: This employs a strict analysis of only the provisions that vary between the UN and OECD models, as they stood in 2017. It excludes, for example, WHT rates, since these are not specified in the UN model, but it does include the presence of article 12A or an equivalent taxing right. Shipping, where the UN model gives two options, is given half weighting.

Beyond the calculations described above, the indices based on the dataset do not employ any weighting strategy. It is impossible to take into account how important each particular clause is to different countries, although inevitably defending the right to impose certain taxes will be much more important to some countries than others. As a consequence, indices provide high level comparisons that point to trends meriting further investigation.

3 Trends in G-24 countries' tax treaties

The dataset includes 805 bilateral treaties that were signed by G-24 countries before January 1, 2020 and in force as of March 1, 2021. Of these, 633 were in force unamended, 74 had been amended through bilateral protocols, and 98 by the MLI. In common with developing countries more generally, the number of treaties signed by G-24 countries increased exponentially until the turn of the century, when activity began to turn to renegotiations, although more than 20 new treaties per year were signed by the group during the 2010s.

As Table 2 shows, most of the older treaties are no longer in force or have been amended. Nonetheless, a significant minority of G-24 treaties is several decades old. Sixty percent of G-24 treaties in force have been signed or updated in the past 20 years, which leaves 40 percent (345) dating from the 20th century. The G-24 treaty network is therefore slightly more up to date than the whole dataset, for which the figure is 50 percent. Almost ten percent (76) are still intact from prior to 1980, the year in which the UN model tax convention was first published. In this time, negotiation practice and norms set out in the model conventions have changed significantly, in ways that strengthen treaties against abuse and, in many instances, expand source taxation rights. This includes provisions related to source taxation of services, indirect transfers of assets, and anti-abuse clauses.

Table 2 Dates in which G-24 tax treaties were signed or most recently modified

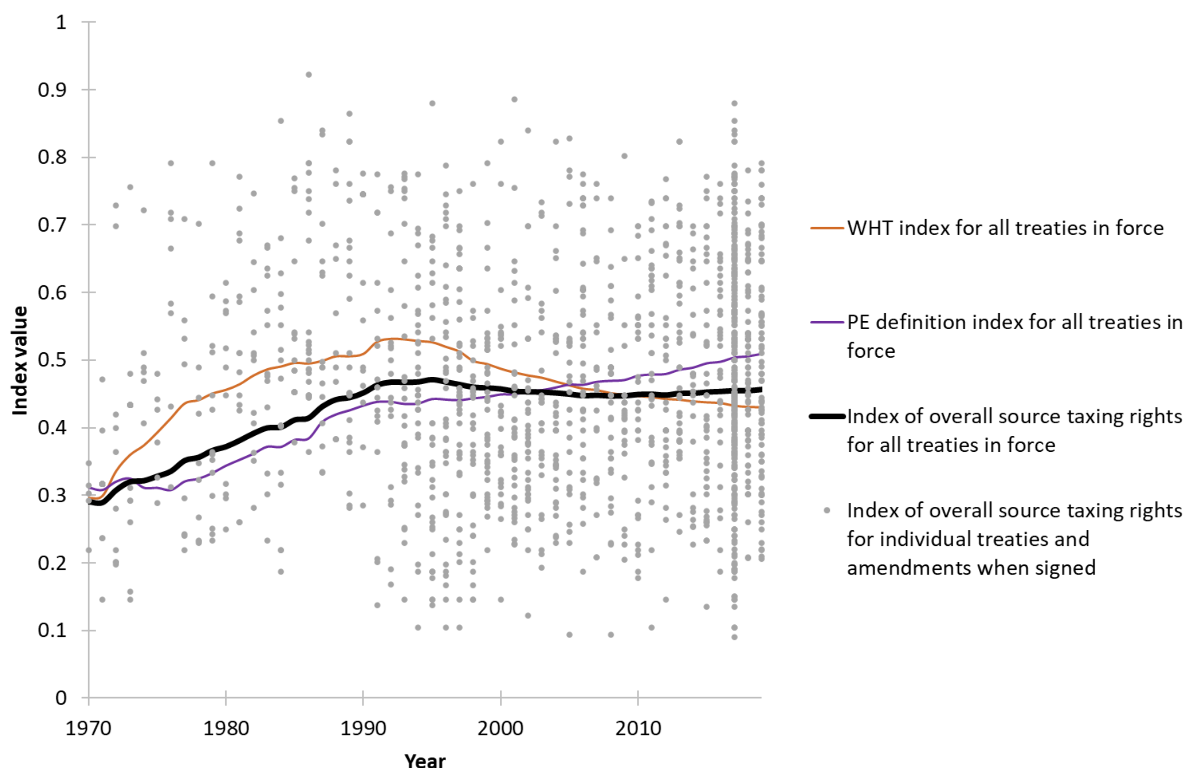
Decade	New bilateral treaties: date of original signature	Bilateral treaties in force: date of most recent amendment
1940s	1	0
1950s	22	2
1960s	39	12
1970s	78	62
1980s	134	72
1990s	271	197
2000s	291	242
2010s	224	261
Total	1060	848

What do G-24 treaties look like overall, and how are they changing? Figure 1 shows the overall picture using the dataset indices. Each dot in the chart shows a new treaty or amending instrument, with its protection for source taxing rights measured using the index of overall source taxing rights. A treaty with a value close to one closely resembles the UN model and has higher withholding tax rates; one close to zero more closely resembles the OECD model and has lower withholding tax rates. These dots illustrate how much variation there is in treaties signed by G-24 countries, from 0.1 on the index through to 0.9. To give an indication of what this reflects, the lowest scoring treaty has a PE definition that is identical to the OECD model in every way measured in the dataset except for including taxing rights over supervisory activities associated with a construction site, and mostly zero withholding tax

rates. The highest scoring treaty has a PE definition that entirely follows the UN model, and withholding tax rates of 10 to 15 percent.

Turning to the overall trends, the average G-24 treaty in force was becoming on aggregate more source based until around 1990, and then stabilised around a source index value of approximately 0.45. Underneath this apparent stability is a picture of diversity: there is a wide variation in the values for individual treaties throughout. Furthermore, there has been a rebalancing of source taxing rights in different areas, which is reflected in the orange and purple lines that show the index values for PE definition and WHT rates. Withholding tax rates in new tax treaties have been "trending down" since the 1990s, alongside withholding tax and corporate income tax rates in domestic law (IMF, 2014, p. 26). In contrast, the average permanent establishment definition has become broader, a consistent trend that can be observed across every decade. While these data cover only G-24 treaties, the pattern is the same for all developing countries.

Figure 1 Overall trends in G-24 treaties



How is the situation when we compare across countries? The charts on the next page demonstrate that there is wide variation, but also some consistency. Pakistan and India have, on average, the most source-based treaties in the G-24, while Lebanon has the least source-based, followed by four African countries. While small differences in index values are sensitive to artefacts in the methodology discussed earlier (for example, Ghana appears low partly because it has low domestic WHT rates and therefore has not pursued higher rates in its recent treaties) larger differences allow us to make more confident observations. This can be seen when, as in Figure 3, we compare G-24 members' treaties with the same negotiating partner. This way of analysing the treaties controls for the negotiating

practice of the treaty partner. Figure 3 shows that India, Pakistan, the Philippines, and other countries at the bottom of Figure 2 consistently have treaties that are much more source based than the G-24 average with the same country, and overwhelmingly more so than the most residence-based treaty that a G-24 member has with that country. This indicates that South-South sharing of practice among G-24 members could enable countries that want more source-based treaties to identify opportunities to renegotiate. It should be noted that not all countries have lower values for the index of overall source taxing rights *despite* a preference for more source-based treaties: those that are capital exporters to some treaty partners, or that seek to act as locations for MNEs' regional headquarters, may have preferred more residence-based treaties.

Figure 2 Index of overall source taxing rights: G-24 country averages

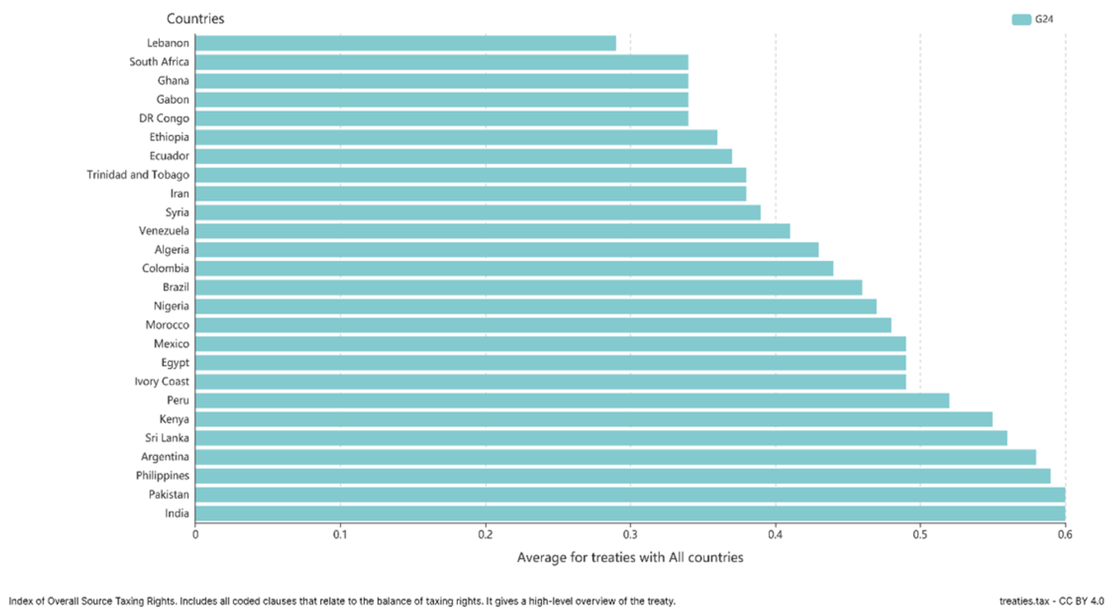
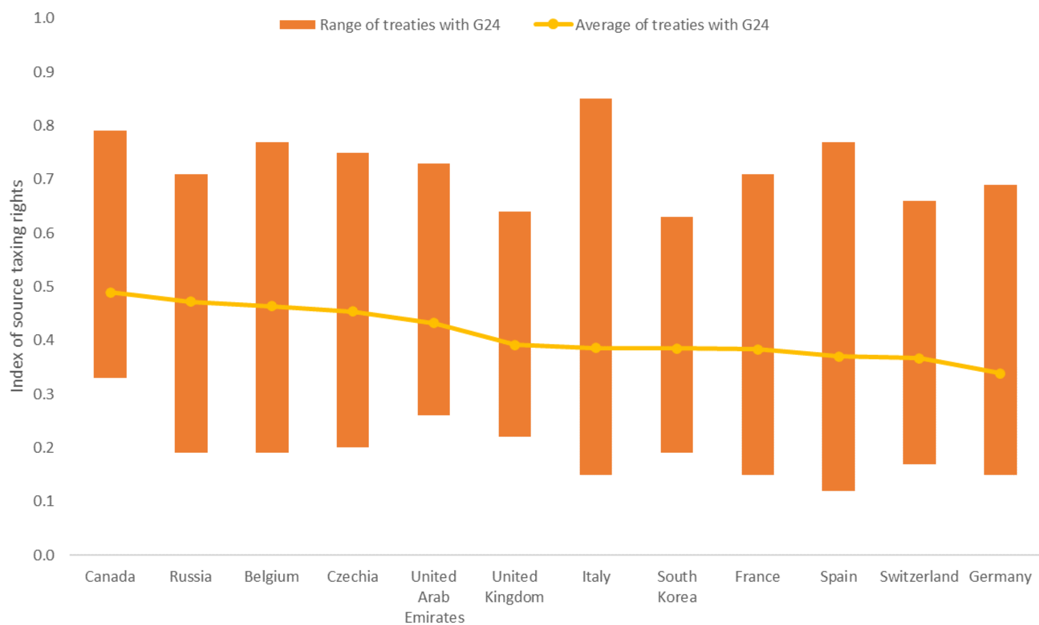


Figure 3 Source taxing rights in G-24 treaties with the most common treaty partners



4 Taxation of services

Although the interests of developing countries, in respect of tax treaties, are frequently framed in terms of the taxation of inbound foreign direct investment, it is increasingly the taxation of inbound service provision that animates policy debates (Leduc and Michielse, 2021). As services become a larger part of global economic transactions, and more of them are provided virtually, protecting source taxing rights in this area has become a policy priority. This can be seen at the UN tax committee, where the taxation of software royalties, fees for technical services and automated digital services are all the subject of recent or ongoing debate between committee members from developed and developing countries. At the OECD's Inclusive Framework, it is the emergence of digital service taxes that has sparked the ongoing 'Pillar One' negotiations on the tax challenges of the digitalisation of the economy. In bilateral tax treaty negotiations, taxing rights over fees for technical services have proved to be an intractable barrier to the successful conclusion of several current negotiations (Hearson, 2021).

Probably the two most notable treaty articles in respect of this topic are the service permanent establishment, article 5(3)(b), and withholding taxes on technical service fees, article 12A. The former is a longstanding element of the UN model that differentiates it from the OECD model. It allows for taxation of a service provider's net profits if they are physically present in a country for more than a certain length of time stipulated in the treaty, in circumstances where they would not otherwise meet the PE test. The service WHT, in contrast, was adopted as article 12A in the UN model as recently as 2017. It permits taxation of management, consultancy and technical service fee payments on a gross basis, as is commonly found in developing countries' domestic tax law. 12A-type articles were becoming increasingly popular before this point, both in bilateral treaties and in regional instruments, for example the CARICOM multilateral treaty of 1994, the Southern African Development Community model treaty of 2011, and the ATAF model of 2016.

The charts on the following page use the dataset to analyse G-24 countries' treaties in force in respect of these two provisions. Figure 4 shows that the service PE has become progressively more common and is now found in half of all G-24 treaties. The services WHT shows a different trend, having become more common during the 1970s and 1980s, plateaued after 1990, and increased in frequency again since the mid-2000s. Figure 5 shows that, while most G-24 treaties include one or other of these two provisions, there are marked differences between countries. For a few, especially Argentina, Brazil, Ghana, India, and Trinidad and Tobago, the service WHT is evidently a priority in negotiations and appears in almost all their treaties. Many others have settled for service PE provisions or have treaties in force including neither. For countries with limited administrative capacity, the inclusion of a service PE provision brings with it associated challenges of income allocation through transfer pricing, and there is an argument that a withholding tax, while a blunt instrument, offers stronger protection against profit-shifting (Leduc and Michielse, 2021).

Figure 4 Services taxation G-24 treaties in force, over time

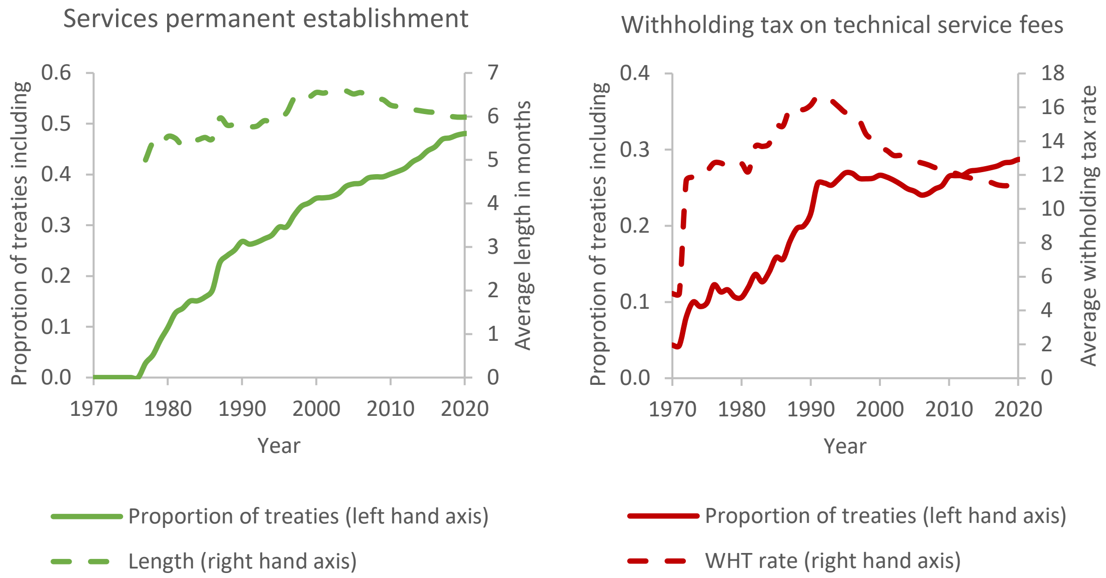
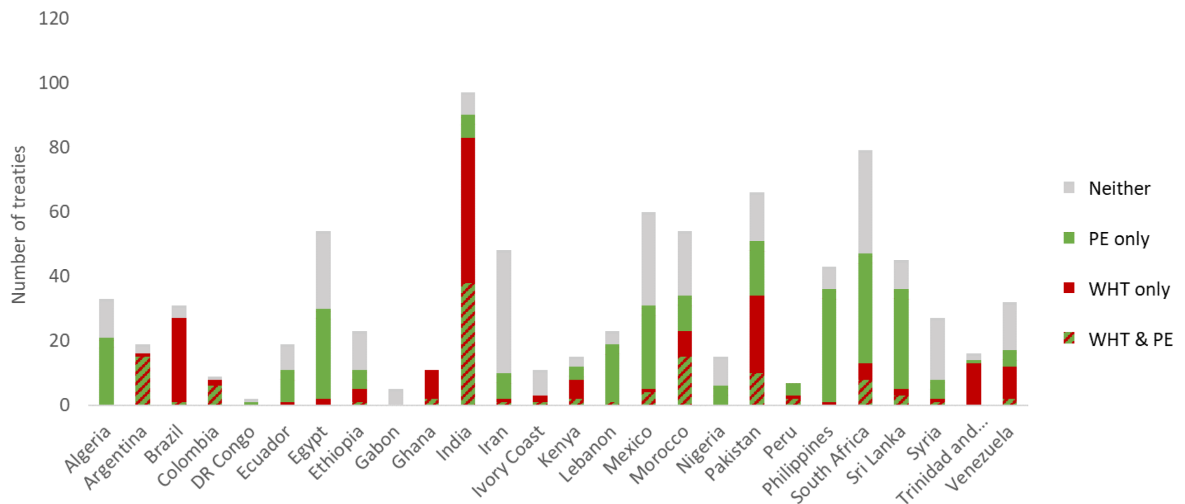


Figure 5 Services taxation in G-24 treaties in force, by country



5 Taxation of indirect transfers of assets

'Indirect transfers' allow investors to avoid capital gains tax (CGT) when selling an asset or an affiliate company via the sale of a holding company based in an intermediate jurisdiction. CGT disputes can run into hundreds of millions of dollars (The Platform for Collaboration on Tax, 2020). Indirect transfers are frequently, although not exclusively, a tax treaty issue. Tax treaties impose restrictions on the host country's ability to levy capital gains tax in a number of circumstances, but two in particular are relevant here. The OECD and UN model conventions now include paragraph 13(4), which allows for source taxation of gains from the alienation of shares in companies whose value derives predominantly from immovable assets – a protection against tax avoidance through offshore indirect transfers of assets. In the absence of this paragraph, source countries usually do not have a taxing right over the gains realised by foreign residents when they sell shares in companies whose value derives principally from 'immovable property', such as real estate, including for example a mine or a telecommunication infrastructure. The paragraph means that a developing country has the right to tax not only gains made on the direct sale of an immovable asset, but also those made through an indirect transfer of the asset.[5]

The new dataset codes for paragraph 13(4) and allows us to observe how it has become more common over time. It was present in the first UN model published in 1980 but was only introduced into the OECD model in 2003. There are some differences between UN and OECD versions, in as well as in different editions of these models, which are disregarded in the dataset. We code simply for the presence or absence of the paragraph.[6] As can be seen in Figure 6, it has become steadily more common in new treaties signed by G-24 countries, in three quarters or more treaties signed each year since 2006. By 2019, it could be found in 62% of G-24 treaties in force.[7] As shown in Figure 7, the proportion of each country's treaties that include it varies considerably. Two G-24 members, Morocco and South Africa, have a reservation against its inclusion via the MLI. This suggests that they do not wish to see it included as standard in all their treaties, although it still appears in a substantial proportion of their treaties in force.

[5] The dataset also codes for the inclusion of paragraph 13(5), which allows for the taxation of gains from the sale of shares in companies that are resident in a country. This may capture domestic indirect transfers, but not those that take place offshore.

[6] Unlike the PCT toolkit on indirect transfers of assets, the dataset does not require that the paragraph include the word "indirectly", which would specify explicitly that both direct and indirect ownership structures are covered; that is, that the source taxing right cannot be frustrated by interposing a second layer of ownership. While the use of the word 'indirectly' clarifies the taxing right over indirect transfers, its absence does not mean that such a taxing right does not exist and would depend on a court's interpretation of the treaty.

[7] Excludes treaties that omit a capital gains article altogether

Figure 6 Evolution of paragraph 13(4) of the UN model in G-24 treaties

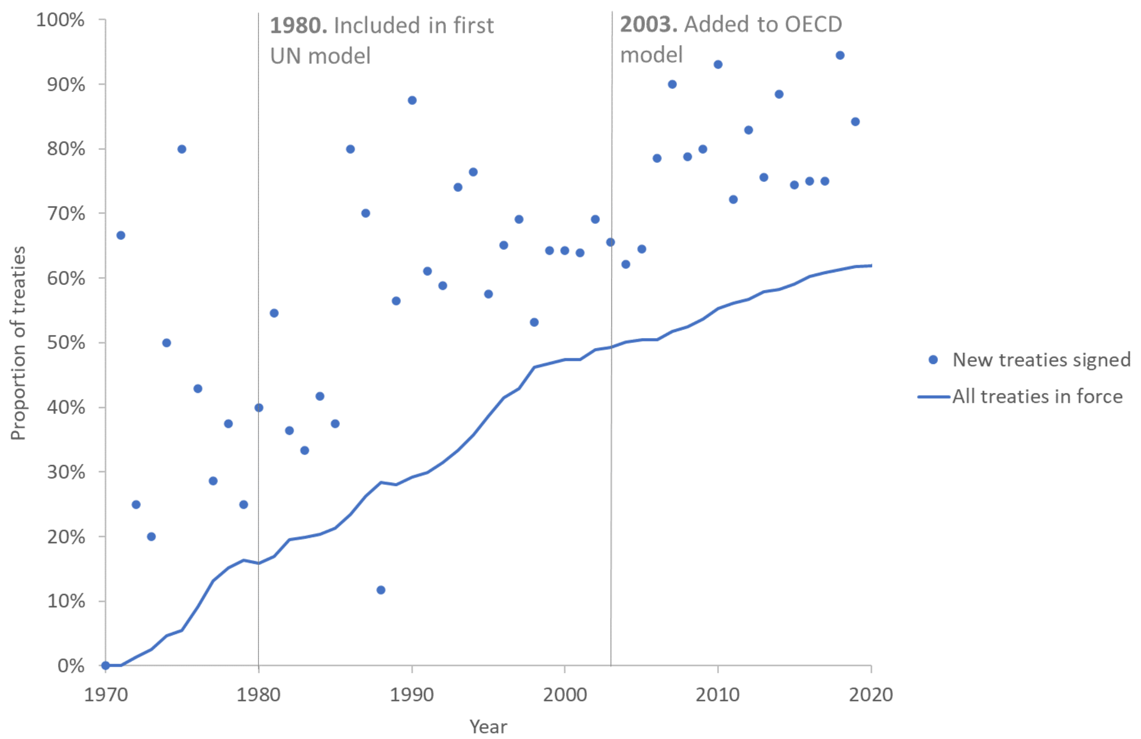
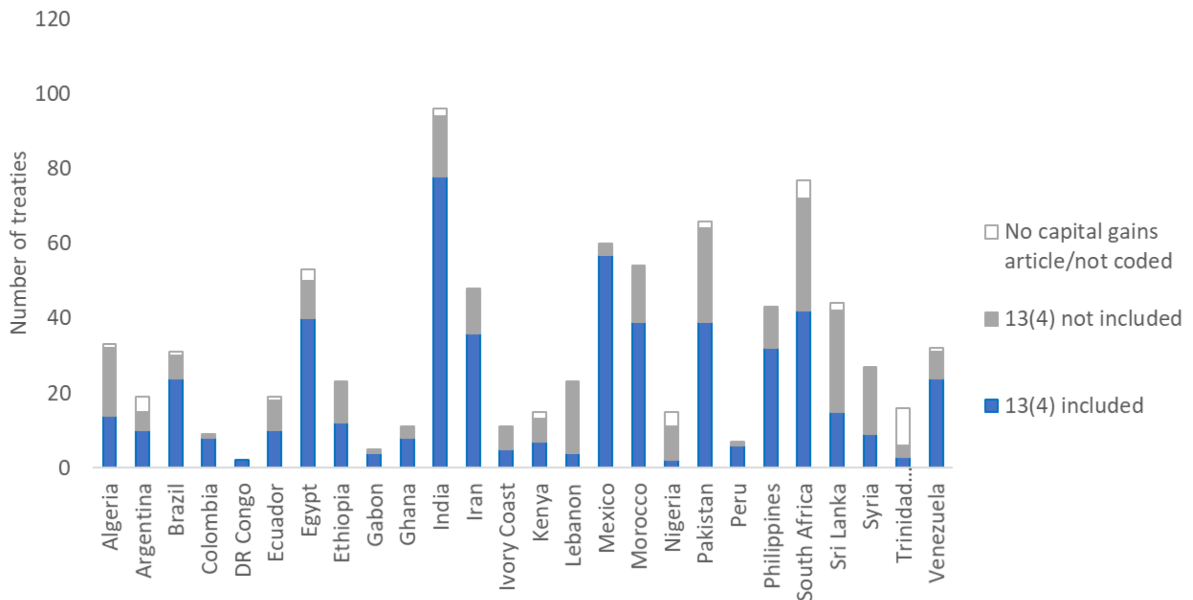


Figure 7 Article 13(4) in G-24 countries' treaties in force



6 Entitlement to benefits clauses

Tax treaty abuse through "treaty shopping" occurs where investors create transactions or structures through a conduit jurisdiction, without corresponding economic substance, to gain the advantages conferred by the conduit's treaty network. Because investors are able to do this, "tax treaties are like a bathtub; a single leaky one is a drain on a country's revenues" (Brumby and Keen, 2016). Preventing tax treaty abuse requires a combination of protections in domestic law, specific treaty anti-avoidance rules, and general anti-abuse rules especially in the most 'leaky' treaties. Since 2017, both the OECD and UN model conventions have included an article on entitlement to benefits, which denies the preferential treaty provisions in some circumstances. International norms have settled on two types of entitlement to benefits clause, which may be combined or used individually. A 'Limitation on Benefits' (LOB) clause defines objective criteria that an investor must meet in order to qualify for the treaty protections. A 'Principal Purpose Test' (PPT) states that the treaty benefits can be denied if it is reasonable to conclude that one of the main reasons for a structure or transaction was to take advantage of the treaty.

As Figure 8 shows, the growing adoption of entitlement to benefits clauses is remarkable. Even prior to its introduction into the model conventions and to the conclusion of the G20/OECD work on Base Erosion and Profit Shifting, it was being added into over a quarter of G-24 treaties, compared close to zero before 2000. Since 2017, it is now found in the vast majority of new treaties. Nonetheless, prior to the MLI (which is not shown in Figure 8) only 10 percent of treaties in force had an entitlement to benefits clause. Figure 9 shows the proportion of each G-24 member's treaties in force that includes it. Here the impact of MLI modifications is included, and the difference between Egypt, India, and Pakistan (where the MLI is in force) and others is stark.

As Leduc and Michielse (2021, p. 168) argue, "In developing countries with less r no experience in applying general anti-abuse concepts, a principal purposes test would most likely not be very helpful to combat treaty shopping." Unsurprisingly, then, G-24 members appear to have a stronger preference for the LOB than is found among their developed country treaty partners. Many have expressed a preference for a simplified LOB alongside the PPT through their MLI positions (Table 3, below). Unless their treaty partners do the same, however, the default PPT applies. As a result, where the MLI is not in force, LOB clauses are as prevalent as PPT clauses; where the MLI is in force, however, the PPT dominates. Figure 9 shows how India and Pakistan's MLI-amended treaties overwhelmingly include just the PPT in spite of their preference for the simplified LOB.

Figure 8 Evolution of entitlement to benefits clauses in G-24 treaties

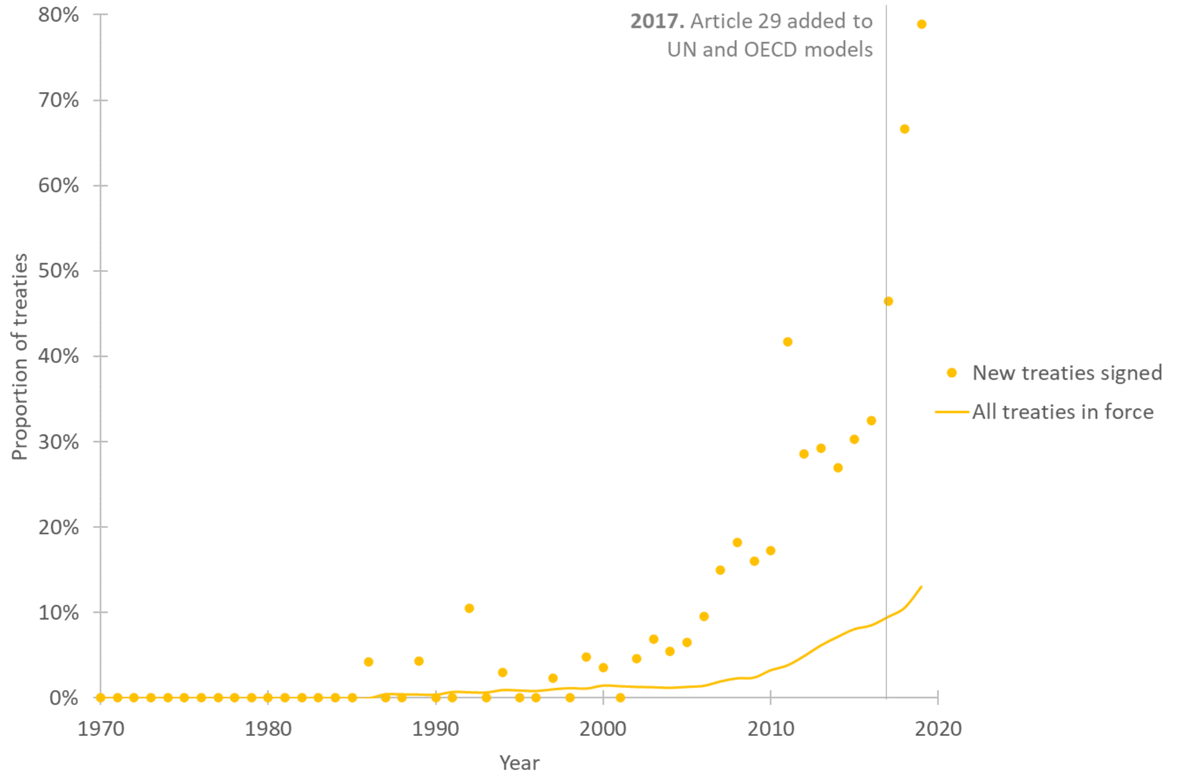
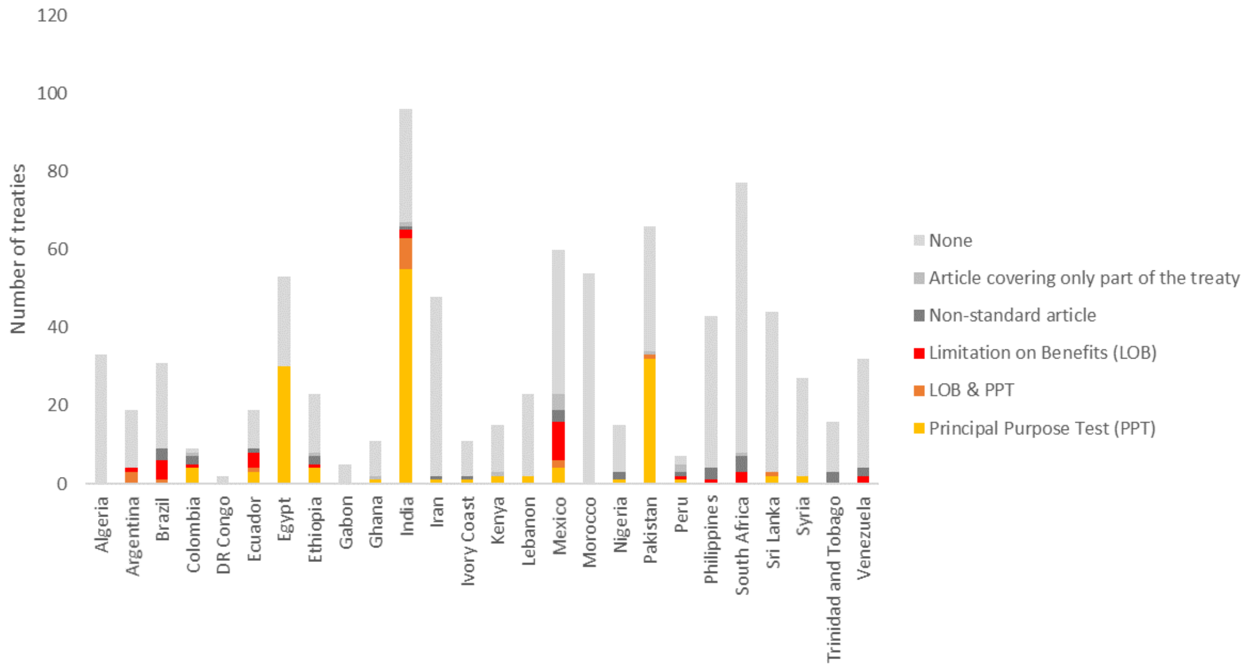


Figure 9 Entitlement to benefits clauses in G-24 treaties in force



7 How is the Multilateral Instrument affecting G-24 treaties?

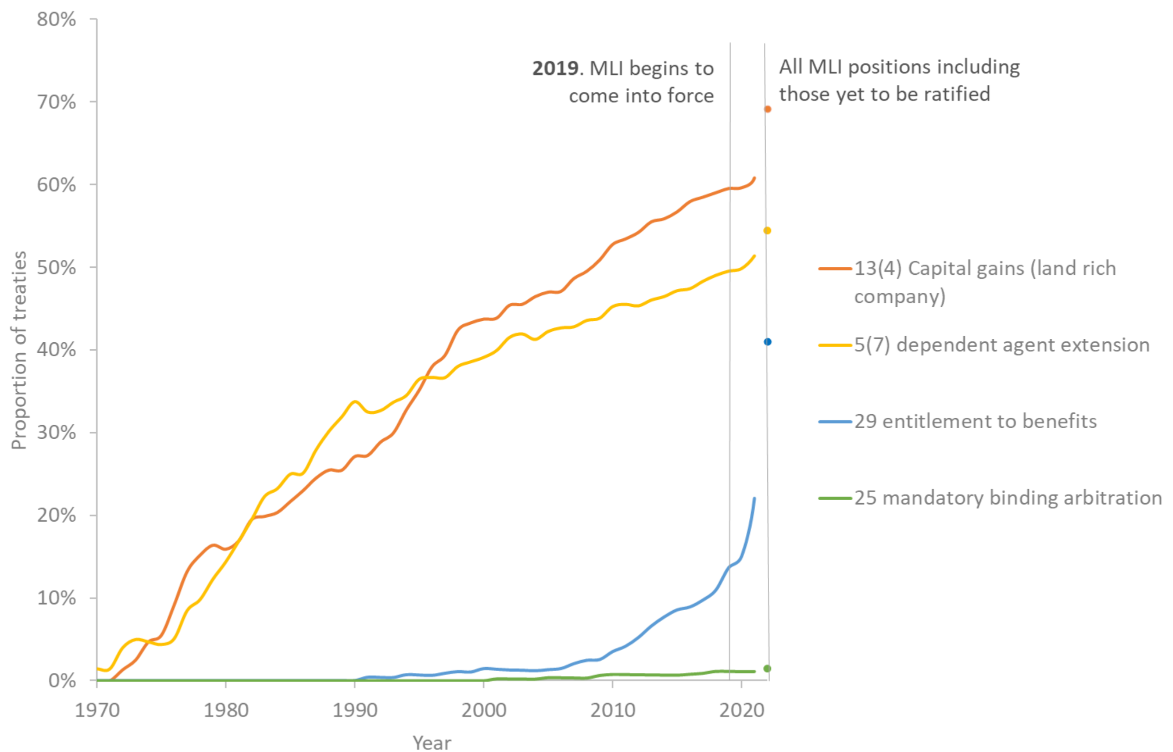
In 2017, members of the G20/OECD Inclusive Framework on BEPS tried a new approach to make treaty norms filter through more quickly into treaties already in force. The MLI offers the potential to make wide-ranging changes to tax treaties. Fourteen G-24 countries are signatories to the MLI, of which only three – Egypt, India, and Pakistan – had ratified it at the time of writing. Around two-thirds of their total treaties stand to be modified by the MLI. Four provisions coded by the dataset are affected: article 5(7) in the permanent establishment definition, article 13(4) discussed earlier in section 5, article 25(5) which adds arbitration into the mutual agreement procedure, and article 29, discussed above in section 6. As Table 3 shows, only a few countries have taken out reservations against 5(7) and 13(4), indicating that most prefer to see them added to their treaties. None have opted into mandatory binding arbitration, so that provision will not change their treaties at all. Around half prefer a hybrid entitlement to benefits article rather than a PPT alone.

Table 3 G-24 members' positions on the MLI

	Treaties in force	Covered by MLI	5(7) Reservation	13(4) Reservation	25(5) Opt-in	29 Prefer PPT+SLOB
Argentina	20	18				x
Colombia	9	11				x
Ivory Coast	11	7				
Egypt	59	43				
Gabon	5	5				
India	97	66				x
Kenya	15	14				x
Mexico	60	60				x
Morocco	54	49	x	x		
Nigeria	15	19				
Pakistan	66	45				x
Peru	7	6				
South Africa	79	60	x	x		

Figure 10 shows the impact of the MLI on all G-24 treaties in respect of these four provisions. For the first three, the MLI largely consolidates changes in the treaty network that have been underway for decades. This is especially the case because countries choose which of their treaties are to be covered by the MLI, as well as being able to opt out of many of its provisions. Unless countries' MLI reservations reflect changes to their treaty policy, its effects are limited. For articles 13(4) and 5(7), the MLI reflects a longstanding preference on the part of lower-income countries that is already found in most of their treaties. Conversely, few developing countries have opted into mandatory binding arbitration, meaning that the MLI has no impact on G-24 treaties in this respect. The standout difference is the entitlement to benefits article, which treaties amended by the MLI must include in some form. Here, the MLI means that more than 40% of G-24 treaties stand to be amended to include an entitlement to benefits article.

Figure 10 G-24 treaties in force: impact of the MLI



8 Conclusion: South-South collaboration to strengthen source taxing rights

The main message from this paper is a positive picture of the direction of travel in tax treaty negotiations. It is becoming more common for treaties to include each of the provisions discussed here, making it easier for countries to tax service providers and indirect transfers, and protecting them from treaty shopping. The MLI will consolidate some of these developments, and it will have a potentially transformative impact in respect of treaty shopping, though it will not fulfil some countries' preference for an LOB as well as a PPT - arguably more appropriate for countries with little experience combating treaty abuse.

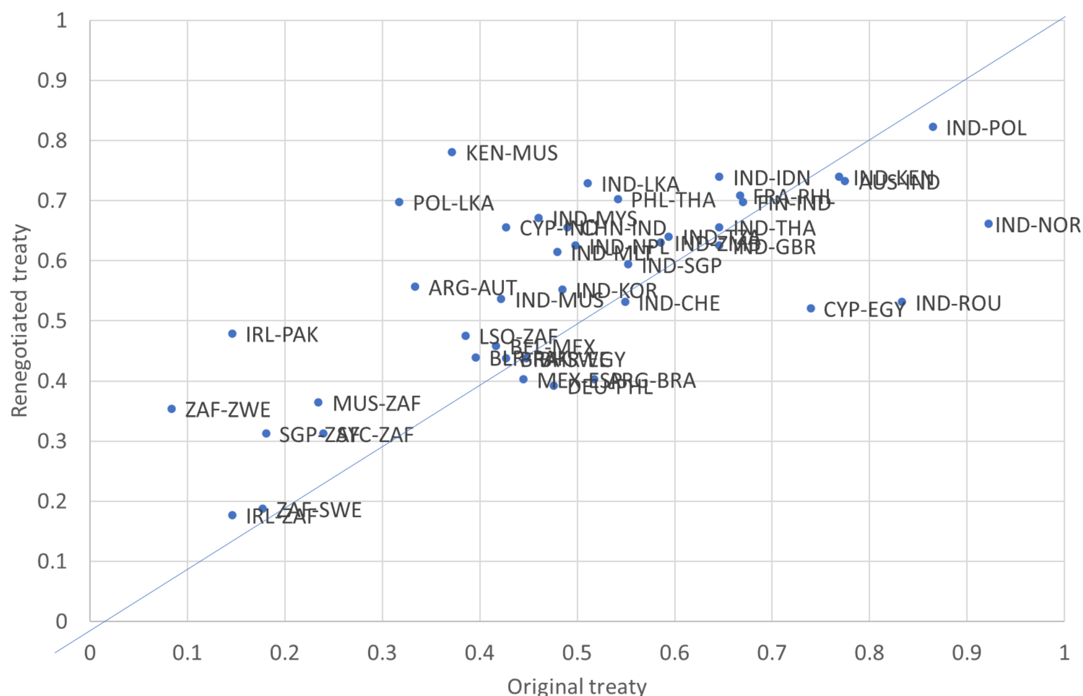
Nonetheless, even with these positive developments, many provisions that constrain source taxing rights will remain unless countries take a systematic approach to reviewing and amending their treaty networks. Much international attention is focused on strengthening capacity to negotiate new treaties but developing countries would do well to fix problems in their existing networks first. Stronger data-driven analysis such as that presented in this paper can help countries to develop tax treaty negotiation policies that stipulate who they will negotiate with and on what terms, to prepare for negotiations by analysing precedent, and to identify the highest risk treaties in comparative context. There is ample evidence that negotiations by developing countries to date have suffered from capacity deficits, lack of preparation and pressure from political actors who did not take into account the full impact of treaties on future revenues (Irish, 1974; Mutava, 2019; Hearson, 2021). Renegotiations can improve things, but only if they are better prepared.

South-South cooperation can help once a country has identified the weak spots in its treaty network and the opportunities for improvement. The analysis in this paper shows that, for each of the provisions examined, there is a significant body of precedent on which a country can draw in making

the case to its negotiating partner. Treaty norms are also changing: each provision discussed in this paper is found in a far higher proportion of treaties signed in recent years than in the body of all treaties in force. This should embolden countries to push for these articles to be included, bringing the treaty in line with current negotiating practice. Where a whole treaty is unbalanced, there is usually another G-24 member whose treaty with the same treaty partner is much stronger. Developed countries have long compared notes on their experiences negotiating with third countries and developing countries may benefit from doing the same.

What can developing countries learn from each other about renegotiation? Figure 11 plots every renegotiation by a G-24 country using the index of overall source taxing rights: the value for the treaty prior to renegotiation is on the x-axis, and for the renegotiation on the y-axis. The solid line is at 45 degrees, which would indicate a renegotiation that did not change the balance of taxing rights. Treaties above (below) the line have a higher (lower) index value following the renegotiation, indicating that the renegotiation strengthened (weakened) source taxing rights. For a treaty close to the line, it is hard to make an assessment of gains and losses from the renegotiation, as the change in index value may reflect artefacts of index construction. Those further above from the line can more confidently be considered as improvements and may serve as models for others to follow. Kenya-Mauritius, for example, reversed the terms of a very residence-based treaty following the Kenyan High Court's decision to strike down the previous treaty's ratification. South Africa and India have also renegotiated their treaties with Mauritius to strengthen them against abuse. As a group of developing countries with a very diverse network of treaties, the G-24 is ideally placed as a forum for collaboration to work through the bilateral system to collectively strengthen its members' tax treaties and protect them from abuse.

Figure 11 Renegotiations by G-24 countries since 2010, impact on the overall balance of source taxing rights



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Annex 1 Tax treaties explorer dataset fields and index composition

Article	Field	Index	Overall index
5(3)(a)	**PE definition: construction PE length in months**	Permanent establishment definition	Overall source taxing rights
5(3)(a)	PE definition: supervisory activities associated with construction	Permanent establishment definition	Overall source taxing rights
5(3)(b)	PE definition: service PE length in months	Permanent establishment definition	Overall source taxing rights
5(4)(a)	PE definition: delivery exception to PE	Permanent establishment definition	Overall source taxing rights
5(4)(b)	PE definition: delivery exception to PE	Permanent establishment definition	Overall source taxing rights
5(5)(b)	PE definition: stock agent PE	Permanent establishment definition	Overall source taxing rights
5(6)	PE definition: insurance PE	Permanent establishment definition	Overall source taxing rights
5(7)	PE definition: dependent agent extension	Permanent establishment definition	Overall source taxing rights
10(2)(a)	WHT rate: qualifying [FDI] dividend WHT in %	Withholding tax rates	Overall source taxing rights
10(2)(b)	WHT rate: other [portfolio] dividend WHT in %	Withholding tax rates	Overall source taxing rights
11(2)	WHT rate: general interest WHT in %	Withholding tax rates	Overall source taxing rights
11(2)	WHT rate: interest rate WHT applying to loans from banks and financial institutions in %	Withholding tax rates	Overall source taxing rights
12(2)	WHT rate: general royalties WHT in %	Withholding tax rates	Overall source taxing rights
12A	Management or technical service fees in %	Withholding tax rates	Overall source taxing rights
12(2)	WHT rate: royalties WHT applying to payments for copyright in %	Withholding tax rates	Overall source taxing rights
12(2)	WHT rate: royalties WHT applying to payments for the use of equipment in %	Withholding tax rates	Overall source taxing rights
7(1)(b&c)	Limited force of attraction	Other provisions	Overall source taxing rights
7(3)	No deduction for payments to head office	Other provisions	Overall source taxing rights
8(2)	Source shipping right as a %	Other provisions	Overall source taxing rights
13(4)	Source capital gains on 'Land rich' company	Other provisions	Overall source taxing rights
13(5)	Source capital gains on shares other than those covered by 13(4)	Other provisions	Overall source taxing rights
14	Independent personal services included	Other provisions	Overall source taxing rights
16(2)	Source taxation of earnings by top-level managerial officials	Other provisions	Overall source taxing rights
21(3)	Source taxation of other income	Other provisions	Overall source taxing rights
10(2)(a)	Threshold for qualified dividends	[Excluded from indices]	
25B(5)	Mandatory binding arbitration	[Excluded from indices]	
27	Assistance in tax collection	[Excluded from indices]	
29	General anti-abuse rule	[Excluded from indices]	

Annex 2: Index of overall source taxing rights for treaties with the most common G-24 treaty partners

	Canada	Russia	Belgium	Czechia	UAE	UK	Italy	Korea	France	Spain	Switzerland	Germany	Av.
Algeria	0.52	0.45	0.46		0.28	0.27	0.46	0.23	0.27	0.12	0.30	0.32	0.33
Argentina	0.54	0.65	0.61		0.72	0.64	0.36		0.35	0.72	0.66	0.35	0.56
Brazil	0.50	0.43	0.25	0.45			0.49	0.45	0.40	0.48			0.43
China	0.54	0.23	0.41	0.25	0.32	0.38	0.44	0.35	0.38	0.48	0.38	0.38	0.38
Colombia	0.45			0.55		0.28		0.40		0.23			0.38
DR Congo			0.27										0.27
Ecuador	0.40	0.55	0.19				0.19	0.31	0.28	0.20	0.20	0.28	0.29
Egypt	0.47	0.70	0.76	0.61	0.42	0.24	0.43	0.29	0.32	0.45	0.33	0.44	0.45
Ethiopia				0.49		0.38	0.41	0.27	0.33				0.38
Gabon	0.39		0.38					0.27	0.27				0.33
Ghana			0.31			0.37	0.32		0.37		0.23	0.27	0.31
India	0.79	0.56	0.77	0.57	0.31	0.63	0.75	0.55	0.69	0.77	0.53	0.41	0.61
Iran		0.19		0.34				0.40	0.29	0.21	0.27	0.25	0.28
Ivory Coast	0.57		0.49			0.53	0.41		0.46		0.41	0.45	0.47
Kenya	0.67				0.51	0.48		0.28	0.46			0.53	0.49
Lebanon		0.23		0.20	0.26		0.15		0.36				0.24
Mexico	0.48	0.53	0.46	0.53	0.44	0.45	0.44	0.44	0.41	0.40	0.36	0.35	0.44
Morocco	0.33	0.43	0.61	0.45	0.35	0.26	0.20	0.30	0.30	0.23	0.33	0.20	0.33
Nigeria	0.52		0.49	0.45		0.37			0.56	0.38			0.46
Pakistan	0.66		0.63	0.70	0.48	0.52	0.85	0.63	0.63	0.29	0.65	0.69	0.61
Peru	0.46							0.53			0.51		0.50
Philippines	0.58	0.68	0.73	0.42	0.54	0.57	0.49	0.55	0.71	0.67	0.48	0.39	0.57
South Africa	0.35	0.25	0.19	0.27	0.26	0.22	0.21	0.19	0.15	0.19	0.21	0.16	0.22
Sri Lanka	0.35	0.67	0.55	0.27	0.73	0.23	0.32	0.33	0.48		0.30	0.30	0.41
Syria		0.29		0.41	0.43		0.28		0.23			0.21	0.31
Trinidad and Tobago	0.38					0.36	0.24		0.33	0.21	0.29	0.31	0.30
Venezuela	0.33	0.71	0.25	0.75	0.44	0.27	0.28	0.54	0.17	0.27	0.17	0.15	0.36
Av.	**0.49**	**0.47**	**0.46**	**0.45**	**0.43**	**0.39**	**0.39**	**0.38**	**0.38**	**0.37**	**0.37**	**0.34**	**0.41**