### Allocation of taxing rights between countries and Inter-Nation Equity (INE)

**An analysis from the perspective of the BRIC countries**

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**Existing framework for allocation of taxing rights between countries**

- OECD Model Tax Convention (OECD Model) – Allocates greater taxing rights to home countries.
- UN Model Tax Convention (UN Model) – Seeks to achieve compromise between host and home country taxing rights by allocating comparatively greater taxing rights to the host countries.
- Network of more than 3000 bilateral tax treaties based on these Models.

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**The question** - Does this framework represent a ‘fair’ allocation of taxing rights between countries?

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**Existing Understanding in International Taxation Law Literature**

- Concept of fairness in allocation of taxing rights - ‘Inter-Nation Equity’ – International taxation law literature relates INE to scope of host State’s right to tax.
- Discusses only an outcome. No mention of fairness in process of formulation and development of rules for allocation of taxing rights and how that may influence these rules.

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**Understanding of fairness outside International Taxation Law Literature**

<table>
<thead>
<tr>
<th>Fairness</th>
<th>Fairness in process</th>
<th>Participation in decision making</th>
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</thead>
<tbody>
<tr>
<td>Effectiveness of participation</td>
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**Formulation of rules**

<table>
<thead>
<tr>
<th>Fiscal Committee of the League of Nations</th>
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<tbody>
<tr>
<td>Drafting of the OECD Model</td>
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<tr>
<td>Drafting of the UN Model</td>
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**Participation of the BRIC countries**

- No involvement in drafting of the Model Conventions. Limited presence at different times in the process of approving them.
- No participation when the Model was drafted. In 1997 positions of non-members were added. Now China and India regular Observers on Committee on Fiscal Affairs. Full participation under discussion.
- Representatives from India and Brazil involved in drafting of the UN Model. China and Russia involved since 1980.

**Effectiveness of participation**

- Mexico Model? – Key differences between the Mexico Model and the League’s final London Model.
- Change from position favouring home countries? – Limited evidence?
- Recent developments at OECD level and prospects for future?
- Recent developments in the UN Tax Committee – Indications of strong influence of the BRIC countries?

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**Case study**

<table>
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<tr>
<th>Active income</th>
<th>Taxation of income from services generally</th>
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<tr>
<td>Passive income</td>
<td>Taxation of capital gains</td>
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**Findings**

- BRIC countries’ changing notion of host state’s taxing right – host state’s taxing right not only by virtue of being place of activity but also if that state is the place of demand or consumption.
- BRIC countries’ changing notion of host state’s taxing right in case of alienation of asset if the underlying value of the asset so alienated is derived from that state irrespective of where the asset is located.

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**Problems with the existing approach to INE**

It relates INE to right of the host country to tax income having ‘source’ within that country’s borders. However, the findings of this thesis reveal that the very problem from the perspective of the BRIC countries are the existing source rules.

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**Working towards the solution** – ‘Parameter based’ approach to INE?

- Analysing alternatives to existing framework for allocation of taxing rights on basis of the such an approach?
- Analysing BRIC countries’ ability to influence the process of future development of the rules for allocation of taxing rights so as to be able to push for an alternative based on such an approach to INE at international level.
- Larger question – What does this mean for the other developing countries? – Could an alternative assessed on such an approach to INE lead to a fairer allocation of taxing rights from their perspective as well.