

*Edited by N. Slanevskaya*

*Глобальное сообщество:  
пространство для сотрудничества  
или новое поле для конфликтов?*

*La société mondialisée:  
espace de coopération ou de conflit?*

**Global Society:  
Conflict or Cooperation?  
Discussion**

Edited by N. SLANEVSKAYA

GLOBAL SOCIETY:  
CONFLICT OR COOPERATION?

Discussion

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## GLOBAL SOCIETY:

### CONFLICT OR COOPERATION?

#### Discussion

Edited by Nina SLANEVSKAYA

Includes bibliographical references, a list of abbreviations, index,  
notes on contributors made by Nina Slanevskaya,  
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### Alexander POGORLETSKA

One of the consequences of the globalisation of the modern world economy is the growth of fiscal conflicts between different countries. The point is that globalisation initiates the process of international tax competition, which exists in two main forms:

- 1) tax competition for the right to impose taxes on the incomes of the subjects of international business;
- 2) tax competition for the right to attract capital and incomes (investments) within the limits of the given fiscal jurisdictions.

Each country under conditions of international tax competition is guided by its own interests and operates in most cases in prejudice to other countries. It is possible to receive benefits from international tax competition only at the loss of other participants of the process. Such circumstances give birth to fiscal conflicts. The international double taxation when two different tax jurisdictions realizing their "rights to impose taxes" impose their taxes on the same source of income of the same subject of international business operations is the direct result of the international tax competition. The international double taxation initiates fiscal conflicts between national tax administrations which compete for the right to impose taxes on the incomes of *les personnes physiques et morales* engaged in international transactions.

Moreover there are two more classified forms of the international tax competition "for the right to attract capital and incomes": (1) fair tax competition, and (2) harmful tax competition. The consequences of the harmful tax competition (that is the extremely liberal tax climate of some countries which provides protection of international tax evasion) have the most negative character in the modern world economy because that sort of tax competition provokes criminal activity of international economic agents and clashes between the interests of fiscal jurisdictions with high level of taxes and strict tax control and the interests of typical tax havens with low level of taxation and absence of tax control.

Of course, the countries try to solve the problem of fiscal conflicts in a unilateral order introducing appropriate regulations in national tax legislations including methods for the elimination of international double taxation of their residents, anti-offshore measures and discrimination of national economic agents operating with tax havens as well as residents of offshore jurisdictions. Nevertheless the results of such one-way measures are not good because the international tax competition stimulates international tax planning and international tax arbitrage leading to the flight of capitals and incomes from the jurisdictions with high level of tax burden and strong tax regulations to the tax havens with liberal fiscal regimes. That is why

The forms of international cooperation in the fiscal sphere to prevent which are caused by tax competition for the right to impose taxes: bilateral cooperation (cooperation between two concrete countries); multilateral cooperation (cooperation in the frames of international conventions which is also a legal basis for bilateral cooperation).

Cooperation in the tax matters dates back to the middle of the 19th century when the first bilateral tax treaty (between Belgium and France) was signed. That sort of inter-country cooperation in fiscal matters is based on the double tax conventions to avoid the international double taxation of incomes and appropriate tax administrations eliminate conflicts between two countries in the sphere of international double taxation by using regulations and rules of the convention as well as articles preventing tax evasion and tax discrimination of resident and foreign residents. Exchange of fiscal information between national administrations and mutual agreement procedure are important aspects of international cooperation based on tax conventions. Such a kind of cooperation plays a more and more an important role in the globalizing system of international relations. A constant growth of tax conventions in the world (more than 1000 at the beginning of the 21st century in comparison with only 24 tax treaties in 1923) proves it.

International cooperation in the fiscal area began just after the foundation of the first international organisation – the League of Nations (the headquarters of the League was created in 1919 in Geneva). The Fiscal Committee of the League of Nations took in its hands the coordinating functions on preparing model tax conventions to prevent international double taxation. In 1923 the first four model tax conventions recommended by the Fiscal Committee, were ready.

The process of multilateral cooperation in fiscal affairs accelerated after World War II. In the frames of the Committee for Fiscal Affairs of the Organisation for Economic Cooperation and Development (OECD). In 1963 the CFA issued the first draft of the OECD Model Tax Convention with respect to taxes on income and on capital recommended to sign between developed countries. The OECD Model Tax Convention helps to eliminate different fiscal conflicts between national jurisdictions of developed countries in their competition to impose taxes on the subjects of international business. It is the initial framework for the international tax treaty conclusion between two negotiating countries. The OECD Model Convention helps to exclude the international double taxation of incomes and capital, and to prevent tax evasion and tax discrimination. The OECD Model Tax Convention was completely revised in 1977. The current edition of the OECD Model Tax Convention was adopted in 2005.

In 1980 the United Nations (UN) issued its own model tax convention (the UN Model Tax Convention) recommended to sign between developed and developing

countries. Both the model tax conventions (the OECD's and the UN's) contain general definitions harmonizing national tax legislations, unified rules of income and capital distribution between negotiating countries with the following taxation either in the country of the residence of a taxpayer or in the country which is the source of incomes or the place of location of immovable property and contain methods for elimination of double taxations as well as provisions on exchange of information and on prevention of tax discrimination.

The international tax competition for the right to attract capital and incomes (investments) under the conditions of globalisation at the turn of 20-21th centuries causes new problems: the growing activity of tax havens (used by subjects of international tax planning as jurisdictions for offshore operations) as well as the e-commerce development. The serious stimulus for existing harmful tax competitions of such kind is the result of protection of governments of some countries from tax crimes (including tax evasion). That fact gives birth to fiscal conflicts between the countries following the fair rules of tax competition and the countries, which use harmful instruments of the competition ignoring the principles of tax morale existing in the developed world. The point is that while the developed countries of the world are fighting against harmful tax regimes some tax havens are expanding their "harmful activity" by the active advertising of themselves as offshore jurisdictions where residents of the high tax level countries could hide their capitals and incomes from the national tax administrations. Moreover some tax havens (like Nauru, Vanuatu or even Switzerland) have become real tax shelters for international criminal communities and terrorist organisations. It is evident that at the beginning of the 21st century such harmful tax policy of tax havens must not be left without attention. That is why there is quite hard pressure on the positions of tax havens from all the international community.

To solve the problem of harmful tax competition national tax administrations cooperate in the frames of international organisations. The leading role in such cooperation belongs to the CFA of OECD. In 1998 the CFA prepared special report on harmful tax competition ("Harmful tax competition – an emerging global issue") with qualifying characteristics of tax haven jurisdictions and proposed measures against harmful tax regimes. Based on the CFA activity the OECD made the monitoring of tax havens and required from these jurisdictions to modify their tax systems to appropriate criterions of taxation existing in the developed countries of the world. In absence of the reaction from these tax havens the OECD threatened to break all economic relations between developed countries and tax shelters encouraging tax evasions. Such pressure on tax havens from the OECD was effective: if in 2000 the monitoring made by the OECD discovered 35 countries classified as tax havens, in 2002 there were only 7 tax havens which continued to ignore the OECD claims.

Tax consequences of the e-commerce development also are dealt successfully by the OECD. A Special Technical Advisory Group (TAG) of the OECD made detailed classification of e-commerce incomes to interpret existing bilateral tax

conventions (Articles 7 and 12 of OECD Model Tax Convention) taking into account the modern e-commerce development. The prevention of excessive tax haven activity in the sphere of e-commerce (in particular, harmful tax competition in the virtual sub-system of the modern world economy) has another important coordination of efforts for the OECD member-countries.

Moreover, developed countries of the world expand their cooperation and intention to prevent fiscal conflicts in the frames of regional integration communities such as the European Union (EU). There is a special programme of coordination within the EU, which supposes modification of national tax provisions of the EU member-countries, preventing the harmful tax competition of the EU as well as assuming the unified approach of the EU to the indirect taxation of e-commerce transactions. Such a regional tax coordination helps to prevent the causes of tax conflicts within this integration community.

Organizing the participation of the Russian Federation in the cooperation with national tax administrations we can note that Russia is quite an active participant of the process. More than sixty tax conventions of the Russian Federation signed under the OECD Model Tax Convention and the UN's one) is the legal basis for the bilateral relations between the Russian tax administration and tax administrations of the partner-countries. In addition, Russia is an associated member of the CFA of OECD that means it takes part in the activity of the OECD and that preventing tax conflicts on the multilateral basis.

## QUESTIONS FOR DISCUSSION

### PROBLEM:

*As you know, the OECD's main interest about tax competition is the "shift of the tax burden". If we accept that "shift", then automatically we also accept that the interests of governments from corporate profit implies a zero-sum game and logically follows that stem from this type of game should be solved by all actors continuously. In our case, a cooperation on tax issues necessitates inclusion of all countries into the decision making process. However this is not an easy situation. How can we convince a state (that benefits from tax competition) to give up these*

*either hand there may be such states that need less tax revenue because they have small expenditure levels. In those cases how can we expect these states to have more revenue than they need? Another point on the issue is who should decide how to label some kinds of competitions and call them either "fair" or "unfair"? What are the criteria that will be used for such a differentiation? Is it "fairness" of some developed states that are using higher tax rates? If it is so, this means that what determines the content of "criminality" is the interest of developed countries. Will such a situation be for the benefits of all states including underdeveloped and developing ones)?*