TAX POLICY: A REVIEW OF PAKISTAN'S TAX TREATIES AND RECOMMENDATIONS FOR ACTIONS

By

Jawad Shabir

PIDE2020FMSMS05

Supervisor

Dr. Nadeem Ahmad Khan

Co-Supervisor
Dr. Mahmood Khalid

MS Management Sciences
PIDE School of Social Sciences
Pakistan Institute of Development Economics, Islamabad
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Pakistan Institute of Development Economics, Islamabad

PIDE School of Social Sciences

CERTIFICATE

This is to certify that this thesis entitled: **"Tax Policy: A Review of Pakistan's Tax Treaties and Recommendations for Actions."** submitted by Jawad Shabir is accepted in its present form by the PIDE School of Social Sciences, Pakistan Institute of Development Economics (PIDE), Islamabad as satisfying the requirements for partial fulfillment of the degree in Master of Science in Management Sciences.

Supervisor: Dr. Nadeem Ahmed Khan Signature:

Co-Supervisor: Dr. Mahmood Khalid Signature:

External Examiner: Dr. Faiz Ur Rehman Signature:

Head,
PIDE School of Social Sciences: Dr. Hafsa Hina Signature:

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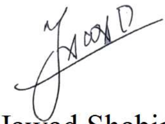

Jawad Shabir

Dedication

I would like to dedicate this thesis to my family, colleagues and teachers who have been a great help during the last two years. Their cooperation is the only reason that I have been able to complete this thesis.

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I would like to acknowledge the support of my teachers specially Dr. Nadeem Ahmed Khan who provided me the opportunity and guidance to choose the research topic of my interest. His guidance and the space provided by him is the only reason that I have been able to apply my mind independently on this project.

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ABSTRACT

Double Tax Treaties have been widely used to reduce double taxation for more than 60 years. The International Tax Environment is evolving continuously and these changing circumstances require that countries review and update their tax treaties constantly to protect their taxing rights. This study reviewed Pakistan's tax treaties with its major FDI Partners and found that the country needs to work rigorously to update its existing tax treaties to prevent loss of tax revenue through treaty abuse. Pakistan has been unable to update its tax treaties in some cases such as the Pakistan-US Tax treaty and there is a dire need to prepare a roadmap to evaluate and then re-negotiate tax treaties which cause tax loss to Pakistan. Drafting a model tax treaty for Pakistan and mechanisms for parliamentary supervision and incorporating the input from business sector is also the need of the hour.

Keywords: FDI, ICTD, OECD MTC vs UN MTC, Model Tax Treaty, Other Clauses Index, Source Index PE Index, Pakistan – USA DTT, Pakistan UAE DTT, Review of existing DTTs, Renegotiating Tax Treaties, Treaty Explorer Dataset, UN Index, WHT Index,

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LIST OF ABBREVIATIONS

BEPS	Base Erosion and Profit Shifting
CbC MCAA	Multilateral Competent Authority Agreement for Exchange of Country-by-Country Reports
CFA	Committee on Fiscal Affairs
CMATM	Convention on Mutual Administrative Assistance in Tax Matters
CMM	Carr, Markusen, Maskus (CMM) Model
DTT	Double Taxation Treaty
FBR	Federal Board of Revenue
FDI	Foreign Direct Investment
FOA	Force of Attraction
HMRC	Her Majesty's Revenue and Customs
ICTD	International Center for Tax Development
MCAA	Multilateral Competent Authority Agreement on Exchange of Financial Accounts Information
MLI	Multilateral Instrument
MNC	Multinational Corporation
MNE	Multinational Enterprise
MTC	Model Tax Convention
OECD	Organization for Economic Co-operation and Development
OEEC	Organization for European Economic Co-operation
PE	Permanent Establishment
SBP	State Bank of Pakistan
SOP	Standard Operating Procedure
UAE	United Arab Emirates

UK	United Kingdom
UN	United Nations
USA	United States of America
USD	US Dollar
WHT	Withholding Tax

CHAPTER 1

INTRODUCTION - TAX POLICY: A REVIEW OF PAKISTAN's TAX TREATIES

1.1 Background and context

Pakistan loses a total of USD 758 Million every year in terms of tax due to global tax abuse as per the information available with (Taxjustice, 2022):[1]

Figure 1 – Revenue lost by Pakistan through Global Tax Abuse

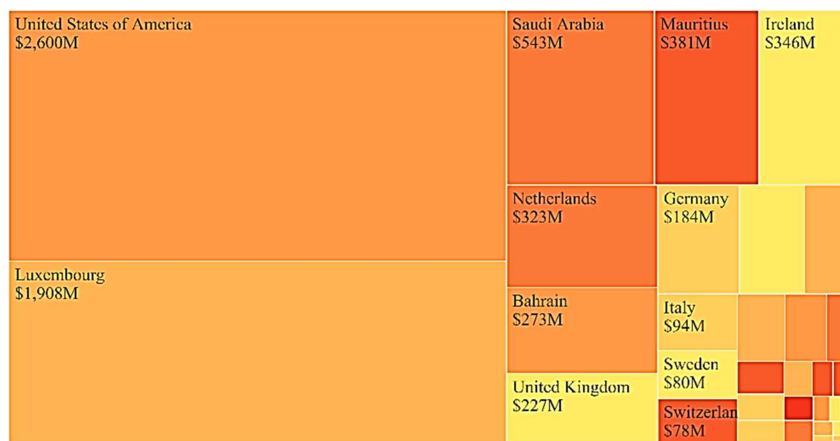
Source: https://taxjustice.net/country-profiles/pakistan/

[1] (an organization involved in research on tax practices around the globe):

Much of this global tax abuse is carried out through the use of tax agreements entered into with different tax jurisdictions wherein Multinational corporations use conduit entities established in jurisdictions having favorable tax treaties with Pakistan.

Also, there is a need to look at the trade and investment flows and determine whether our tax treaties are aligned with our financial realities or not. e.g., three of top ten contributors in terms of yearly inward investment in Pakistan are Netherlands (Tax treaty signed in 1982), Mauritius (Tax treaty signed in 1994) and Cayman Islands (No tax treaty). As per (Taxjustice, 2022), USD 1.9 billion was routed through Luxembourg into Pakistan in 2018 in terms of portfolio investment but we do not have a tax treaty with Luxembourg in place.

Figure 2 – Major Portfolio Investors in Pakistan (2018)



Source: https://iff.taxjustice.net/#/profile/PAK

Another interesting fact is that we do not have a bilateral tax treaty with any of the South American/ Central American country in place, our tax treaty penetration in Africa is minimal and yet we never hear from our policy makers about how to deal with this situation.

There is a need to study the main causes of tax revenue being lost through treaty abuse and to identify what is Pakistan doing wrong while negotiating its tax treaties which is resulting in loss of tax revenue through treaty abuse. Tax treaties are a great instrument of providing tax clarity to incoming investors but these treaties are also used by such

investors to avoid taxes by engaging in tax structuring schemes which may not be illegal but would definitely be unethical in some cases. This thesis is focused on a study of Pakistan's tax treaties with its top ten FDI partners and provides a framework which can be used as a point of reference to evaluate all the active tax treaties.

1.2 History and importance of tax treaties

International juridical double taxation is broadly defined as subjecting the same income earned by a person in a period to similar taxes in two or more states thus resulting in subjecting the same income to double taxation and resulting in a higher tax burden for the said person. It has long been accepted that such that such double taxation is detrimental to the free flow of capital, services, goods and technologies and it is necessary to find ways to remove such obstacles in order to facilitate the businesses.

In addition to bringing tax clarity for individuals/ businesses involved in cross-border transactions there was also a need for tax authorities devise information sharing mechanisms and cooperate in collecting taxes to avoid tax evasion.

These goals are achieved through bilateral or multilateral tax treaties wherein different jurisdictions enter into these treaties to define the taxation rights held by each jurisdiction with respect to different classes of income in addition to defining arbitration mechanisms in cases of dispute and ways to cooperate with each other through information sharing and tax collection mechanisms.

1.2.1 History of tax treaties

International Tax Treaty Regime as we have it today began with the twentieth century when the Finance Committee of the League of Nations was assigned to carry out a study on the impact of International Double Taxation in 1921.

The Finance Committee's work resulted in the drafting of the first model bilateral convention in 1928. The 1928 bilateral convention was subsequently revisited and as a result the model tax conventions of Mexico (1943) and London (1946) were drafted. These model tax conventions were used by various countries as a yardstick to negotiate tax treaties with other countries.

The Organization for European Economic Co-operation (OEEC subsequently OECD) first took policy step towards elimination of double taxation through double tax treaties when the Council of OEEC adopted the first recommendation in 1955. By that time 70 double tax treaties among different OEEC members were already in place. This was also a time when the world was recovering from the aftermath of the World War II and the international trade was flourishing in a world rebuilding itself.

Although draft model tax conventions (MTC's) from 1946 were already in place, there was a lot of inconsistency on several key issues, i.e., the 1946 convention did not include provisions on how to determine the residence of the taxpayer how to eliminate double taxation. To address these issues, OECD's Fiscal Committee sat down and introduced the first MTC in 1963. Since then, the OECD has carried out various revisions to the OECD MTC which will be briefly discussed in following paragraphs.

One problem with the OECD is that it is a group of developed countries so any policy document set up by OECD reflects the sentiments of developed countries (Economic and Social Council (ECOSOC) of the United Nations, 1967). There was a need to draft a MTC which also caters for the developing countries point of view. To tackle this need, the United Nations (UN) Secretary General set up an Ad hoc group of experts who came up with the UN MTC in 1980. Prior to the 1980 MTC, the Ad hoc group had also shared a manual on tax treaty negotiation between the developed and developing countries. The introduction of the UN MTC meant that now we had two guiding models which a country could use as points of reference while negotiating tax treaties.

The salient features of the OECD and UN MTC and how those have evolved over the years are discussed below:

1.2.1.1 OECD Model Tax Convention (MTC)

The Fiscal Committee (named Committee on Fiscal Affairs in 1971) of OECD started its work in 1956 and presented many reports which culminated in the issuance of the 1963 Draft Double Tax Convention on Income and Capital. This resolution was adopted by the OECD council which recommended the OECD member countries to use the MTC as a reference when negotiating tax treaties between themselves and with other non-member countries. There was a realization in the Fiscal Committee that this MTC would need to be revised once tax treaties are negotiated as new ways of carrying international transactions will be introduced and countries will gain experience of the tax treaty negotiation/ implementation process.

The OECD Committee on Fiscal Affairs (CFA) continued its work on revising the MTC in light of new economic and tax developments and in 1977 came up with a revised MTC with updated commentary. The international tax has been a constantly changing domain and we have been seeing new ways to avoid/ evade tax in an ever changing economic and business environment. Due to this reason, in 1991 The OECD CFA adopted an ambulatory approach to interpret the MTC which meant that the MTC should be read and interpreted in light of most recent OECD updates and commentaries instead of waiting for a complete revision of the entire OECD MTC and related commentary.

The OECD MTC has a very deep influence on how the tax treaties are negotiated around the world and even countries who are not OECD members rely heavily on the guidance contained in the OECD MTC. Due to this important factor, OECD realized the importance of the opinion of the non-member countries and the 1997 version of the OECD MTC included the position of non-member countries on the document. Since the adoption of ambulatory interpretation in 1992, the OECD MTC has been updated a

total of ten times with the most recent update incorporating the OEC Base Erosion and Profit Shifting (BEPS) project recommendations.

The 2017 version of the OECD MTC consists of 32 Articles divided into seven chapters as follows:

- *Chapter I – Scope of the convention, explaining the persons and taxes covered by the MTC;*
- *Chapter II – Definitions, containing definitions of the provisions included in the MTC with separate articles defining the meaning of a Resident person and Permanent establishment (PE) under the MTC;*
- *Chapter III – Taxation of Income, containing articles allocating the taxing rights between the source and resident state for different classes of income including Business income, Income from International Shipping and air transport, Dividend/ Royalty/ Interest/ Capital Gains Income, Employment/ Entertainers and sportspersons income etc.*
- *Chapter IV – Taxation of Capital, dealing with allocation of taxing rights between source and residence-states for capital;*
- *Chapter V – Methods of elimination of double taxation, providing the methods of eliminating double taxation through either the exemption method or the credit methods;*
- *Chapter VI – Special Provisions, containing articles on non-discrimination, exchange of information, mutual agreement procedure, assistance of collection in taxes, Limitation of benefits and the territory covered under the MTC;*
- *Chapter VII – Final Provisions, containing information on when the article will come into force and when it will be terminated.*

1.2.1.2 UN Model Tax Convention (MTC)

OECD member countries are mostly high-income countries and are mostly capital exporting nations so the provisions of the OECD MTC mostly favor the residence-state

instead of the source-state. Most of the OECD countries are net capital exporters with investments in developing countries so any provision which takes the right of taxation from the source-state and transfers it to the residence-state is in the benefit of OECD countries. This was a major concern for developing countries who believed that they should have their own version of MTC which ensures that their income rights are protected which led to the development of the UN MTC. The first UN MTC was introduced in 1980 which was subsequently revised in 2001 and then 2011 to cater for the changes such as increased trade, financial services etc. in the global economy. Subsequently the UN MTC was revised to cater for the BEPS project and a revised MTC was issued in 2017.

As discussed previously, the OECD MTC is more inclined to give the taxing rights to the residence-state whereas the UN MTC caters for the taxing rights of developing nations and aims to find a balance between the taxing rights of the source and residence-state. The developing countries face a dilemma since if they tax the foreign investors too high then such investors will run away and invest in other competitive locations which allow reduced taxation and if such countries tax too low then they risk losing tax revenue.

The UN MTC is not materially different from the OECD MTC but when allocating taxing rights, it tends to allocate the taxing right to developing countries (typically source-state) rather than the developed countries (typically residence-state). Also, the UN MTC does not include the article on territorial extension which is included in the OECD MTC.

1.2.1.3 OECD MTC versus UN MTC

A brief comparison of the OECD MTC versus the UN MTC is provided in the following table (see table 1). To make the comparison as brief as possible the table only focuses on obvious differences that explain the source versus residence concept which is the focus of this document in previous paragraphs:

Table 1 – OECD MTC versus the UN MTC

Article	(Organisation for Economic Co-operation and Development, 2017)	(United Nations, 2017)
Article 5 (Permanent Establishment)	Threshold for establishment of construction PE is six (6) months	Threshold for establishment of construction PE is twelve (12) months
	Non-existence of non-resident service PE	Service PE exists if services provided for more than 183 days in any 12 months period
	Any establishment storing, displaying, delivering goods on behalf of a non-resident does not create a PE	Any establishment delivering goods on behalf of a non-resident may create a PE
	An agent who does not conclude contract on principal's behalf but maintains stock from which he delivers goods does not create a PE	An agent who does not conclude contract on principal's behalf but maintains stock from which he delivers goods may create a PE
Article 7 (Business Profits)	No Force of Attraction Rule	Limited Force of Attraction Rule exists
Article 8 (International Shipping and Air Transport)	Residence-state has the right to tax	In addition to the OECD rule, an alternative to allow residence-state taxation where there is more than casual
Article 10 (Dividends)	OECD specifies minimum WHT Rates	UN leaves the WHT rate decision on negotiations

Article	(Organisation for Economic Co-operation and Development, 2017)	(United Nations, 2017)
Article 11 (Interest)	OECD specifies minimum WHT Rates	UN leaves the WHT rate decision on negotiations
Article 12 (Royalty)	Residence country taxation right	Source country also given the right to tax with a cap on the WHT rate depending upon negotiations
Article 12A (Fees for technical services)	Does not exist in the OECD MTC	Exists in UM MTC and provides a minimum WHT Rate which should be agreed between the two treaty partners
Article 13 (Capital Gains)	No provision in the OECD MTC on allowing source country taxation linked with minimum shareholding threshold	Provision for source country taxation for disposal of shares or comparable holding conditional upon a minimum shareholding threshold agreed between treaty partners

Source: Extracted from OECD MTC 2017 and UN MTC 2017

When evaluating any tax treaty between a developing and developed country, it is important to understand that if the negotiated clauses of the above-mentioned articles are based on the OECD MTC then the benefit goes to the developed country whereas if the same clauses are based on the UN MTC then we can generally argue that the developing country has been successful in getting a better deal for itself.

1.3 Tax Treaties in Pakistan

Pakistan signed its first bilateral tax treaty in 1957 with the United State of America which interestingly is still in force today without any amendments. Whereas the US

treaty being the first one makes sense because of the close nature of Pakistan's ties with US in 1950s it is strange that Pakistan signed its first tax treaty with the United Kingdom in 1960. This anomaly can be explained by the fact that the OECD only came up with its MTC in 1963 which might have influenced the UK's tax treaty policy whereas the US has always been more of a pioneer in its own way since it uses its own Tax Convention (different from the OECD and UN MTCs) and has its own way of doing things. A total of 129 tax treaties/ amendments to protocols/ amendments due to the Multilateral Instrument (MLI) have been signed by Pakistan since its inception and a there is a total of 66 unique countries with which Pakistan has signed tax treaties.

A pictorial description of the 66 different countries as per the (International Centre for Tax and Development, 2021) with which Pakistan has signed tax treaties is shown in the below picture:

Figure 3 – Graphical Depiction of Pakistan's Major Tax Treaties

Source: https://www.treaties.tax/en/

A table showing the decade-wise progress of Pakistan in terms of signing tax treaties is provided below:

Table 2 – Tax Treaties signed by Pakistan through the decades

Decade	Original treaties signed	Amendment in treaties through protocol	Amendment in treaties through the MLI
1950s	4	1	0
1960s	3	2	0
1970s	8	1	0
1980s	15	0	0
1990s	20	0	0
2000s	19	3	0
2010s	7	6	40
Total	**76**	**13**	**40**

Source: https://www.treaties.tax/en/

The inflated number of forty due to the MLI is because of a global initiative by the OECD where the global community entered into an understanding as part of the BEPS project to introduce a multilateral instrument (MLI) which would be signed by different countries to update their (selected) tax treaties to update certain clauses which are a major source of tax avoidance across the globe.

Other than the 66 Full Scope Bilateral Tax Treaties dealing with the taxes on income and capital, Pakistan has also signed the following:

i). Limited scope tax treaties dealing with airlines and shipping income with four countries;

ii). Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention);

iii). Multilateral Competent Authority Agreement on Exchange of Financial Accounts Information (MCAA);

iv). Multilateral Competent Authority Agreement for Exchange of Country-by-Country Reports (CbC MCAA);

v). Multilateral Convention to implement Tax Treaty related measures to prevent Base Erosion and Profit Shifting; and

vi). SAARC (Limited Multilateral Agreement).

The focus of this study will be on full scope bilateral tax treaties.

1.4 Tax Treaty Negotiation Process in Pakistan

As per the Part I of the Fourth Schedule of the Constitution of Pakistan, i.e., the Federal Legislative List, the clause 3 provides that the external affairs including the implementation of treaties and governments with the foreign governments is a Federal Subject. Clause 32 of the same schedule provides that the power to legislate on the international conventions, agreements and arbitration also rests with the Federation.

This means that the need to enter into/ negotiation/ implementation of bilateral or multilateral tax treaties will rest with the Federation of Pakistan. Now, the Constitution of Pakistan gives a broad power to the Federation but there is no specific law dealing with how that power will be exercised in the Federation. The Parliament has not approved or implemented any specific law that provides guidance on how the governments will implement this power.

Traditionally, this power is being used by different federal governments where they decide to negotiate, sign and implement tax treaties with different countries through cabinet approvals. Although several parliamentarians in past have tried to introduce private bills to introduce parliamentary oversight over the tax treaty negotiation process but until now no such law has been approved in the Parliament.

There is very little information available on this subject on public domain but normally the Federal Governments in Pakistan rely on Federal Board of Revenue (FBR) to identify countries with whom Pakistan needs to sign treaties or re-negotiate the existing treaties. After the FBR's assessment the cabinet approves the negotiation process. The available information does not provide any information on how FBR drafts the tax

treaty but the next step in this process is the exchange of model drafts with the foreign tax authority. Also, although no information on whether FBR conducts economic-political analysis of the impact of tax treaty or whether any input is sought from the business community in Pakistan or foreign missions in the treaty country but a review of the press release issued by FBR (Federal Board of Revenue, n.d.) on Pakistan – Venezuela tax treaty negotiation process indicates that some account of bilateral trade is taken while entering the tax treaty process. Also, the same press release indicates that the Federal Cabinet approved the process to initiate tax treaty negotiation in 2008 and FBR conducted a meeting with the Venezuelan Ambassador in 2011 to initiate tax treaty negotiation, no tax treaty has been concluded as of today. We also have to take into account that Venezuela has been going through political turmoil for last five six years but prior to that Venezuela was somewhat stable politically and is the country with the largest proven oil reserves in the world (Statista.com, n.d.).

There is a need to study the treaty negotiation process and determine how the involvement of the business/ industry community and parliamentary oversight will lead to better tax treaties. OECD and the UN have introduced their manuals on tax treaty negotiation process and some of the key steps in the OECD tax treaty negotiation process include the following:

- B.1. Designing a tax treaty policy framework;
- B.2. Designing a country's tax treaty model;
- C.4. Consulting business, stakeholders and relevant ministries and agencies

The above steps have been chosen from a list of procedures on the basis that these steps put the information in public domain and bring clarity on the treaty negotiation process used by different countries. This study will provide a brief overview of how these steps are catered for in a select group of countries and how Pakistan can improve its policy making practices in this particular area.

1.5 Statement of Problem

Tax treaties are a component of any country's tax policy and these are used as tools for promoting foreign direct investment in any country. Technology and e-commerce have led to huge disruptions in how finance flows between different jurisdictions and this has also led to obsolescence of tax treaties wherein the treaties signed thirty to forty years ago are no longer able to serve their intended purpose of protecting tax jurisdiction/ promoting investments.

Due to the loss of tax revenue through treaty abuse and the monumental change brought on due to the introduction of information technology there is a need to perform an objective review of Pakistan's tax treaties. Also, there is a need for evaluating the treaty negotiation management process and identifying whether the relevant domestic stakeholders are being taken onboard during the treaty negotiation process or not.

1.6 Objective of the Study

The purpose of this study is to:

a) Providing an example of how ICTD's Tax Treaty Explorer Dataset tool can be used to evaluate any particular tax treaty and performing a qualitative review of a sample of Pakistan's existing treaties and comment on the need to revise existing agreements;

b) Commenting the tax treaty negotiation/ signing process and how different stakeholders' perspective could be integrated into the tax treaty negotiation process and how the treaty negotiation process could be made more transparent and democratic; and

e) Coming up with suggestions to improve the legal and management framework around identifying treaty opportunities, entering into treaty negotiations and signing process.

1.7 Structure of Thesis

This thesis is a qualitative study and will focus on the technical aspects of selected tax treaties. The study will comment on how Pakistan has performed in terms of negotiation of tax treaties with its major foreign investors. In addition, the study will also touch the legislative processes around the tax treaty negotiation process and compare Pakistan's performance with select countries around the globe. The thesis is structured to begin with an Introduction in Chapter 1 which will be followed by a Literature Review in Chapter 2 wherein the thesis will look into the available literature on the economic benefit of the tax treaties, how developing countries have performed in negotiating tax treaties, why there is a need to re-negotiate the tax treaties by developing countries. In Chapter 3, the thesis will briefly describe the methodology being used in the thesis and the sources for the data used in the research. Also, the methodology chapter will define the different variables which are being used to evaluate the tax treaties signed by Pakistan with its treaty partners and how those variables are linked with the aims of the thesis. Chapter 4 is the crux of this thesis which contains the objective review of the top 11 FDI countries tax treaties, comparison of Pakistan's score on the different MTC clauses indices with selective countries, tax treaties negotiation process in Pakistan and its comparison with other countries whereas the Chapter 5 will include a conclusion of the research as well as the recommendations for actions.

CHAPTER 2

LITERATURE REVIEW

Although tax treaties bring clarity for tax payers and foreign investors it is also important to study whether signing a tax treaty is linked with an increase in bringing foreign investment or not. Signing a tax treaty does not automatically guarantee that investment will also begin to flow between the signing countries because the flow of investment is dependent on other economic factors as well. The quantum of foreign direct investment is not the only thing that we should be concerned about since the technology, knowledge and skills transfer between developed and developing countries is another factor that is important in today's knowledge-based world. In addition to considering the impact of tax treaties on the foreign investment, there is a need to study how other developing countries have negotiated their tax treaties and what does the literature says on this subject. Since the subject of this thesis deals with using different indices to review the different treaties signed by Pakistan, there is a need to study literature on the development of those indices and provide a background on the link of those indices with the OECD and UN MTC's. Lastly, the literature review will look into the theory available on negotiating and concluding tax treaties.

2.1 Link of double tax treaties with foreign direct investment

It is very important to establish the link of tax treaties with the foreign direct investment and determine whether the existence of tax treaties leads to an increase in foreign direct investment or not.

A study of OECD countries for the years 1982 through 1992 was conducted by (Blonigen & Davies, 2002) using the Carr, Markusen, Maskus (CMM) Model to study the impact of tax treaties on the foreign direct investments. Their analysis showed that the impact of treaties on the FDI in OECD countries was negative and contrary to the common belief the existence of tax treaties does not lead to increase in FDI. The authors argued that existence of a tax treaty may close tax planning strategies like transfer

pricing planning or treaty shopping which in a way might lead to decreased FDI activity.

The effect of DTTs on bilateral stock of FDI was studied by (Egger, Larch, Pfaffermayr, & Winner, 2006) – their study was based on the assumption that two countries will only be willing to implement a tax treaty if they are both set to gain in welfare from such implementation. The study used a general equilibrium model of trade's link with multinational firms to determine the impact on both outward FDI and welfare. The study found that DTTs are independent and are not linked with FDI. The authors used OECD bilateral outward FDI for the years from 1985-2001 and found that such treaties have a negative link with outward FDI.

The impact of tax treaties on FDI in Sub-Saharan Africa was reviewed by (Christians, 2006) and the study concluded that due to increasing tax competition across the globe and the resulting variance between developed and developing nations DTTs no longer provide a significant benefit for US investors investing in the Sub-Sahara Africa. The author took the case study of Ghana and after evaluating different factors impacting the FDI flow reached the conclusion that tax treaty in isolation is not an effective way to promote FDI. The developing countries should look at the broader perspective and find other ways to cooperate with entities in the developed countries to attract FDI.

The link between the tax treaties and foreign direct investment by United States of America in developing countries was studied by (Neumayer, 2007). Their research found that the existence of a DTT meant higher FDI activity in the investee country. The countries with higher populations, high resources and DTT with USA had higher investments and the DTT effect was measured up to 34%. Based on the research the author concluded that countries having a DTT with USA attract higher investments from US investors. The authors then adjusted for the quality of host country governance to study the link between DTT's and US FDI in such country, however, they did not find any link between the two.

(Louie & Rousslang, 2008) used the corruption and political stability indices to determine the impact of poor governance on the rates of return required by US investors investing abroad. Their research found that a stable governance score was linked to lower rates of return required by investors whereas higher corruption led to higher required rates of return. After concluding on the link between the governance and required rates of return, the authors evaluated the impact of double tax treaties and foreign indirect investment and found no appreciable impact of the DTTs on the required rates of return.

(Barthel, Busse, & Neumayer, 2010) argued the fact that the effectiveness of Double Tax Treaties (DTTs) to induce FDI is still a debatable subject. The authors used the UNCTAD FDI stock data for 30 FDI source countries and 105 FDI host countries from the years 1978 to 2004. Their research demonstrated that DTTs are positively correlated to the FDI in host countries.

(Hearson, Tax treaties in sub-Saharan Africa: a critical review, 2015) reviewed the tax treaty framework in the Sub-Saharan countries with a special focus on Uganda and Zambia. The author performed a detailed review of the sample countries Tax Treaties and identified treaty clauses in different DTT's which might be a source of losing tax revenue for these countries. The author suggested that developing countries and particularly those in the Sub-Saharan Africa need to reevaluate the tax treaties negotiated by these countries during the last 60 years and align themselves with the international tax developments in recent years. Such countries need to come up with their own model tax treaties based on the traditional models but also catering for the economic interests of the developing countries.

Some researchers like (Hong, 2018) compared the impact of routing FDI in source countries directly in comparison to routing the same FDI through a tax minimization route. For comparison purposes the author constructed a tax rate matrix to study the impact on 70 countries and reached the conclusion that presence of a tax minimization route through intermediate countries leads to 2.14 times greater investment in

comparison to investing directly in a country. The author recommends that negotiating the treaty directly rather than bringing in investments through an intermediate country may encourage direct FDI and also discourage treaty shopping practices.

Another study was done (Zolt, 2018), where the researcher studied the importance of tax treaties in the developing countries and put forward the point that DTT's should not only be seen as sources of dividing tax revenues between a developed and developing countries and in fact other economic consequences should also be considered. The author argued the point that the tax revenue received by the tax authority of a developed state is too immaterial for that tax authority due to tax concessions offered by the residence-state to make its Multinational Enterprises (MNEs) more competitive in the international market. Also, the author pointed out that there is a great deal of variety among the developing states and these states offer different tax systems, MNE presence, quality of resources, business opportunities, bargaining strengths and any economic analysis studying the broad relationship between economic development and DTTs will not give a true picture. For example India's economic development and its link with the DTT cannot be compared with let's say Afghanistan although both are developing countries.

(Petkova, Stasio, & Zagler, 2020) investigated the impact of DTTs on FDI after considering the fact that DTTs shouldn't be considered as only bilateral treaties but rather as a network where the impact of treaty shopping on the DTTs should also be considered. After adjusting for the different investment routes, i.e. the treaty shopping available the cheapest route to channel investment was determined and then the impact of this on FDI was studied. The study found out that DTTs which reduce the tax rates in comparison to the existing tax treaty network will lead to an 18% increase in the FDI.

Based on the above literature review, we can conclude that there is no conclusive evidence to prove that DTTs may lead to an increase in FDI but there is no conclusive evidence which proves that DTTs may lead to a decrease in FDI. In fact, treaty

jurisdictions that facilitate or provide the foreign investors with lower tax rates may lead to foreign investors preferring such foreign jurisdiction. Also, there is a need for developing countries to objectively evaluate their existing tax treaties and re-align those treaties with the changing international tax environment. There is a need to determine tax treaties and treaty clauses that may result in a loss of tax revenue and then renegotiate such tax treaties with treaty partners.

2.2 Tax Treaty Policy

We have already discussed the two prevalent models of MTC's being used by the countries around the world and their importance. The key differences between the two models are discussed in Table 1.1 of this thesis. As discussed in previous chapter, the OECD MTC is made more from a developed country perspective where the MTC tries to take the taxing jurisdiction to the residence-state whereas the UN MTC is made from a developing country perspective where the taxing rights are given to the source-state, i.e. the state where the activity resulting in income is being carried out.

The tax treaty signed between any two countries is a result of lengthy negotiations and both countries try to protect their interests while negotiating the tax treaties. Pakistan is an active member of UN's Committee of experts on International Cooperation in Tax Matters and routinely provides its input on different UN platforms on tax matters but does not have a publicly stated policy on how it negotiates its tax matters. A review of the existing tax treaties indicates that Pakistan relies on the UN MTC model while negotiating tax treaties with other countries. Pakistan is a developing country where the active discourse is always on how to attract FDI to promote economic growth and reduce the current account balance which is always negative. While both the OECD and the UN MTCs promote the concepts of Capital Import Neutrality and Capital Export Neutrality, Pakistan's sole economic focus has always been on how to get more FDI inflows and how to curb the foreign currency outflows. The case to have a publicly stated policy of a base tax treaty model and a treaty negotiation process which involves the input of business community and democratic institutions seems lost in the current

scenario where all the focus is on to attract as much foreign investment as possible no matter what the cost. But such a policy is necessary in order to provide a guiding light in future treaty negotiations. Some of the key steps in the OECD tax treaty negotiation Guideline include the following processes:

B.1. Designing a tax treaty policy framework;
B.2. Designing a country's tax treaty model;
C.4. Consulting business, stakeholders and relevant ministries and agencies

Pakistan does not have a publicly available tax treaty policy framework or a standard tax treaty model. Also, there is no instance of any public communication from the Federal Board of Revenue (FBR) wherein FBR sought the opinion of business and other stakeholders on any DTT which is under negotiation with the FBR. There is a need to study and evaluate FBR's internal Standard Operating Procedures (SOPs) with respect to the treaty negotiation process and how such SOPs compare with the guidance contained in the OECD and UN treaty negotiation kits. There is also a need to evaluate whether the existing SOPs are covering the different risk areas or not and what changes need to be made to the existing SOPs. For the purposes of our research we will only point out what are the broad principles which need to be looked into while negotiating the tax treaties whereas a broad review of existing SOPs will be carried out in some future study. There is very less literature available on the Treaty Negotiation Policy of specific countries. (Mutava, 2019) reviewed the tax treaties practices and policies framework in seven African countries and found out that only three countries, i.e. (Ghana, Mauritius and South Africa) have an official tax treaty policy framework guiding their treaty negotiation process. South Africa does not have a specific model which it uses as a base when negotiating tax treaties and they shift their base from the OECD model to the UN Model depending on whether the other party is from Africa or some other developed model. Mauritius's tax policy has been to promote itself as an investment or treaty hub so its treaty negotiation process is not so much focused on protecting its tax base but more on how to negotiate tax rates which make it more

attractive as an investment hub to invest in other countries. There is a lot that needs to be done and studied for tax policy purposes in Pakistan's context.

2.3 How to evaluate tax treaties?

A tax treaty is a legal agreement between two countries which allocates taxing rights between two countries and is subject to interpretation under the Vienna Convention on the Law of Treaties (1969). It is very difficult to interpret a tax treaty on quantitative terms since not much data would be available to perform any critical review of a tax treaty. Also, much of tax treaty review is about analyzing the different options that were available and were not adopted for which no data would be available or if available would require a lot of adjustments to be made. Such adjustments would basically make any such quantitative analysis meaningless or let's say disconnected with the actual facts.

The only option we have available with us is to determine whether the country that we are evaluating under our review exercise is a capital importing country under the DTT or a capital exporting country. Now, for some cases it would be difficult to determine whether a country is a capital importing country or a capital exporting country but for our analysis we are analyzing Pakistan's relationship with countries having FDI in Pakistan and it becomes very simple since for all these countries Pakistan is a capital importing country. Also, the narrative about capital export is totally irrelevant for Pakistan at the moment since Pakistan's economic narrative gives almost negligible importance to capital export goals.

Not much literature is available on how to evaluate a tax treaty from a particular jurisdiction's point of view. There have been very few research papers on this topic and much of the recent efforts in this research area are focused on collating a database of DTTs throughout the world and defining parameters to evaluate the tax treaties based on those parameters.

(Eyitayo-Oyesode, 2020) reviewed how source-based taxing rights are allocated in the UN MTC versus the OECD MTC in the articles 7 – 13 of both models. The author concluded that the allocation of taxing rights under these articles is imbalanced and in the favor of residence nations. The author also argued that although the UN Model is somewhat better for source nations, it still only offers a slight improvement and both the UN and the OECD MTCs are vastly in favor of the Residence countries.

(Utama, 2021) did an analysis of Indonesia's tax treaties and identified that Indonesia does not have a pro-forma tax treaty which it uses as its base of negotiation with other countries. While evaluating the tax treaties the author analyzed how successful Indonesia has been in maintaining taxation rights on business profits, retaining taxing jurisdiction on shipping and air transport taxation and right to impose withholding tax rights on interest, dividend and royalty income.

(Hearson, Carreras, & Custers, Using New Data to Support Tax Treaty Negotiation, 2021) developed a new dataset under which different indices were developed to reexamine existing tax policy. These indices could then be used to identify areas requiring improvement in the existing areas. The authors used the new dataset to review an existing study which found a positive relationship between tax treaty and FDI and found that the positive relationship arose because of the withholding tax provisions and the impact of other provisions in the tax treaty were negligible.

Based on the above literature we can conclude that to evaluate a tax treaty we need to review the taxing rights allocation between the two treaty countries, this would include a review of the following among others:

- Allocation of source taxing rights;
- Withholding tax rates in articles 10-12 of the DTTs;
- Qualifying thresholds in articles 10-11 of the DTTs;
- Permanent establishment (PE) definition, length of qualification period, Service PE, construction PE threshold, force of attraction clause; and

- Arbitration and information sharing clauses.

2.4 Research Gap

A review of the literature indicates that as far as Pakistan is concerned there has been no research on the objective evaluation of Pakistan's tax treaties. We do not have any existing framework which we can refer to on this subject. Only available relevant examples we have come from outside Pakistan such as (Hearson, Carreras, & Custers, Using New Data to Support Tax Treaty Negotiation, 2021) who developed a methodology to evaluate the tax treaties.

This thesis will fill this research gap and will provide a framework to any researcher interested in performing a comprehensive review of the tax treaties and also to the FBR who can use the research/ dataset to define their roadmap on the tax treaty front.

CHAPTER 3

METHODOLOGY

3.1 Research Strategy:

The research is focused on a technical evaluation of the DTTs signed by Pakistan and involves a desk review of the subject DTTs. The research will involve the use of ICTD's tax treaty database to evaluate Pakistan's Tax Treaty Performance. The clauses of any tax treaty are very subjective and require a careful evaluation of different clauses of the tax treaty to determine the bargaining settlement reached by the treaty countries.

ICTD's tax treaty database has identified certain key clauses such as sourcing rights, permanent establishment definition, withholding tax rates, other provisions and key UN Model Tax Convention (MTC) Clauses. (International Centre for Tax and Development, 2021) defines the individual indices is as under:

Index of source taxing rights: Incorporates all fields in the dataset that relate to the balance of taxing rights and gives a high-level overview of the treaty. By referring to the clauses in Table 1, if a tax treaty is in favor of the capital exporting country then this index's score will tend towards zero whereas if the source nation has greater taxing right then the score will move towards one;

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. There are different clauses such as the Service PE clause/ Construction PE duration clause/ Service PE duration clause etc. (refer Table 1 – OECD MTC versus the UN MTC for the detailed discussion) and these clauses either favor the source-state or the residence-state. This index is developed by reviewing these different clauses and then an average is assigned as a score.

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, and 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 (Force of Attraction Rules which benefit the source state), 8 (Taxing Rights over Shipping Companies), 13 (Capital Gains over land rich companies), 16 (Taxation of top level managerial officials), and 21 (Source taxation of other income) of the models. Each of these clauses in the double tax agreements is reviewed in detail and a score is allotted on the basis of whether it's benefitting the source-state or the residence state after which a combined index score is developed;

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.

A summary of the different clauses in the UN MTC and how those clauses impact the individual indices in the ICTD's Tax Treaty Database is provided in the table below:

Table 3 - UN MTC Clauses and link with Individual components of the indices

UN Article Reference	Description	Source Index	PE Index	WHT Index	Other Clauses Index	UN Index
UN model article 5(3)(a) length	Construction PE duration in months					
UN model article 5(3)(a) supervisory activities	Supervisory activities ancillary to construction					

UN Article Reference	Description	Source Index	PE Index	WHT Index	Other Clauses Index	UN Index
UN model article 5(3)(b) included	Service PE inclusion					
UN model article 5(3)(b) length	Service PE duration					
UN model article 5(4)(a)	Delivery facilities exclusion from PE					
UN model article 5(4)(b)	Delivery stock exclusion from PE					
UN model article 5(5)(b)	Agent maintaining stock PE					
UN model article 5(6)	Insurance broker PE					
UN model article 5(7)	Dependent agent PE					
UN model article 7(1)(b&c)	Limited force of attraction					
UN model article 7(3)	No deduction for payments to head office					
UN model article 8(2)	Taxing right over shipping income					
UN model article 10(2)(a) FDI dividends	Qualifying [FDI] WHT on dividend %					
UN model article 10(2)(a) threshold	Threshold shareholding to qualify for lower WHT rate in %					
UN model article 10(2)(b) portfolio dividends	WHT rate: other [portfolio] WHT on dividend in %					
UN model article 11(2) interest	WHT rate: WHT on interest in %					
UN model article 12(2) royalties	WHT rate: WHT on royalties in %					
UN model article 12(3) television	Royalty definition: films or tapes used for radio or television broadcasting					

UN Article Reference	Description	Source Index	PE Index	WHT Index	Other Clauses Index	UN Index
UN model article 12(3) equipment	Royalty definition: industrial, commercial or scientific equipment					
Services WHT included	Management or technical fees included					
Services WHT rate	WHT rate: management or technical fees rate					
UN model article 13(4)	Source capital gains on 'Land rich' company					
UN model article 13(5)	Source capital gains on shares other than those covered by 13					
UN model article 16(2)	Source taxation of earnings by top-level managerial officials					
UN model article 18(2)	Shared taxation of pensions					
UN model article 18(2/3)	Source taxation of social security pensions					
UN model article 21(3)	Source taxation of other income					
UN model article 27	Assistance in tax collection					

Each individual treaty was specifically reviewed with a special focus on these clauses. To create the indices, each treaty was assigned a specific score of "0" or "1" where "1" represents greater taxing right over inward investment.

This thesis reviews the particular index scores for Pakistan's Tax Treaties with top ten FDI partner countries and aims at commenting on how Pakistan's treaties are structured and how has Pakistan scored with respect to these particular tax treaties.

Once the treaty indices are considered, then the relevant articles of each treaty impacting the treaty are reviewed in detail to determine the cause of high or low index score. Detailed comments on each of the sample treaty are covered and recommendations are included on how Pakistan could improve its treaty negotiation performance and what a particular treaty lacks.

3.2. Research Design:

The research aims at reviewing the different indices and comment on the scores from a qualitative perspective as to how Pakistan has performed in terms of treaty negotiation with its major FDI Partners. Since most of these are investing in Pakistan and are developed countries so they have a bargaining advantage over Pakistan.

3.3. Data collection:

For the analysis purpose, I will rely on the data from the International Center for Tax Development (ICTD) Tax Treaty Explorer Dataset as a base. Further to that, the research will also focus on direct review of the different tax treaties.

3.4. Sampling:

All active DTTs with the top ten major FDI Partners will be covered under the study.

3.5. Analysis:

We will review the index scores to determine if Pakistan has been successful or not in this respect, there is no particular model to review such index scores but we will use different techniques, i.e., average scores over different time periods, average scores for countries from different income groups etc. to analyze the research problem in detail.

We will review the tax treaty negotiation process in a select group of countries by reviewing the process through which the treaties are approved in these countries by referring to the public information available on such process at different platforms and by comparing these processes with the processes in place in Pakistan.

CHAPTER 4

PAKISTAN'S DTTs WITH ITs MAJOR FDI PARTNERS AND THE TREATY NEGOTIATION PROCESS IN PAKISTAN

4.1. Pakistan's FDI Partners

Pakistan is a capital importing country and is always striving to bring more investment in the country to tackle its balance of payments and productivity problems. Traditionally, the foreign direct investment (FDI) in Pakistan has come from the developed countries in the Europe/ USA/ Middle East with some investment coming from China in recent years. As at 31 December 2020, Pakistan had a total of USD 32,100 Million of Foreign Direct Investment from different country groups as follows (State Bank of Pakistan, 2020):

Table 4 – FDI in Pakistan as at 31 December 2020

Countries	Investment (In Million US$)
Developed countries from European Union	12,209.9
Other developed countries	7,220.7
Developing economies from the Middle East	4,013.3
Other Developing economies (including China)	8,174.3
Unspecified (includes IFIs and countries not included anywhere else)	481.9
Total	**32,100.1**

If we look at the sectors bringing in investment, we observe that following are the major contributors (State Bank of Pakistan, 2020):

Table 5 – Major sectors involving FDI in Pakistan

Industry	Investment in USD
Financial Business	6.305 Billion
Power	5.513 Billion
Tobacco & Cigarettes	3.126 Billion
Food	2.683 Billion

Oil & Gas Explorations	2.665 Billion
Communications	2.325 Billion

It is common knowledge that the foreign players have significant investments in Pakistan's Power, Oil & Gas and Communication Sector. Also, the presence of tobacco companies is well known but the presence of Financial Business is a surprise here. A deep dive into the data indicates that the FDI relating to financial businesses either relates to established banks (Like Bank Al-Habib or Habib Bank Limited etc.) with Pakistani roots having head offices abroad or finance companies opened in cooperation with the Middle East Countries. The presence of food sector is an interesting fact which requires exploration although the presence of companies like Unilever might help explain these numbers.

For the purposes of our analysis, we would rely on analyzing the tax treaty of the top ten countries that hold investment in Pakistan to maintain the objectivity of this research. We will set the closing FDI position as at 31 December 2020 as the cut-off point to determine the list of countries on which we will focus. Also, since one of the country, i.e. Cayman Islands from the top ten list does not have a tax treaty with Pakistan so we will consider the next country on the list, i.e. Kuwait. Also, for our analysis we are including the information about whether the country in the top ten list is a tax haven or not. An OECD report (Organisation for Economic Co-operation and Development, 1998) defined a tax haven as a jurisdiction which has i) no or nominal tax on the relevant income; or ii) lack of effective exchange of information; or iii) lack of transparency; or iv) No substantial activities but income is recorded in the jurisdiction. For our analysis purposes we are relying on OXFAM's policy paper (Berkhout, Tax Battles: The dangerous global race to the bottom on corporate tax, 2016) on dangerous race to the bottom of corporate tax rates published in 2016.

The list of Pakistan's top eleven FDI holders is as follows (State Bank of Pakistan, 2020):

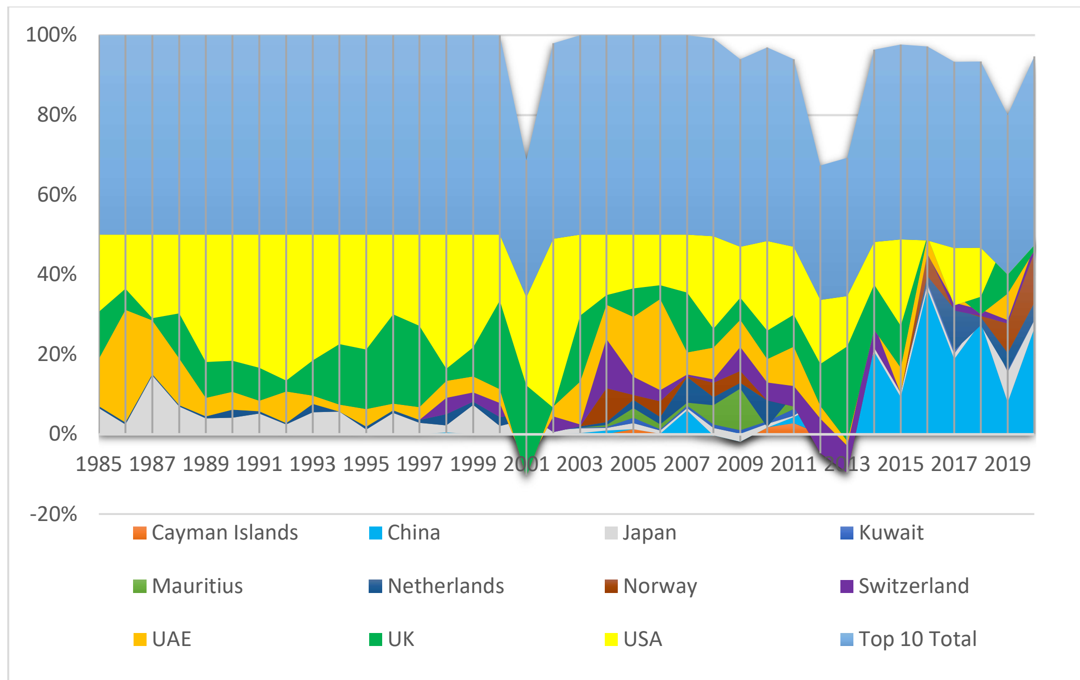
Table 6– Top eleven countries with FDI in Pakistan and DTT status

Field Characteristic	Investment in USD Millions	OECD Member	Tax Haven Status	Date of signature of Tax Treaty	Effective year of Tax Treaty	Status of Tax Treaty
United Kingdom	7,535.8	Yes	No	2017	2021	In Force
Switzerland	3,394.2	Yes	Yes	2017	2018	In Force
China	3,100.4	No	No	2016	2017	In Force
Netherlands	2,715.7	Yes	Yes	2017	2021	In Force
United Arab Emirates	2,383.5	No	No	2018	2021	In Force
United States of America	1,882.4	Yes	No	1957	1959	In Force
Cayman Islands	1,312.4	No	Yes	N/A	N/A	N/A
Mauritius	1,183.1	No	Yes	2017	2021	In Force
Japan	1,135.5	Yes	No	2017	2021	In Force
Norway	717.7	Yes	No	1986	1988	In Force
Kuwait	685.6	No	No	1998	1999	In Force

4.2. Do DTA's result in increase in investment and trade of services?

A quick look at the investment inflows during the years 1985 – 2020 (State Bank of Pakistan, 2020) shows that the top 11 Investment Partners are the major drivers of FDI in Pakistan. The top three, i.e., USA, UK and the UAE have been the traditional big players in terms of FDI in Pakistan with China coming into play in recent years.

Figure 4 - FDI Inflows into Pakistan from 1985-2020



Source: *https://www.sbp.org.pk/ecodata/nifp_arch/index.asp*

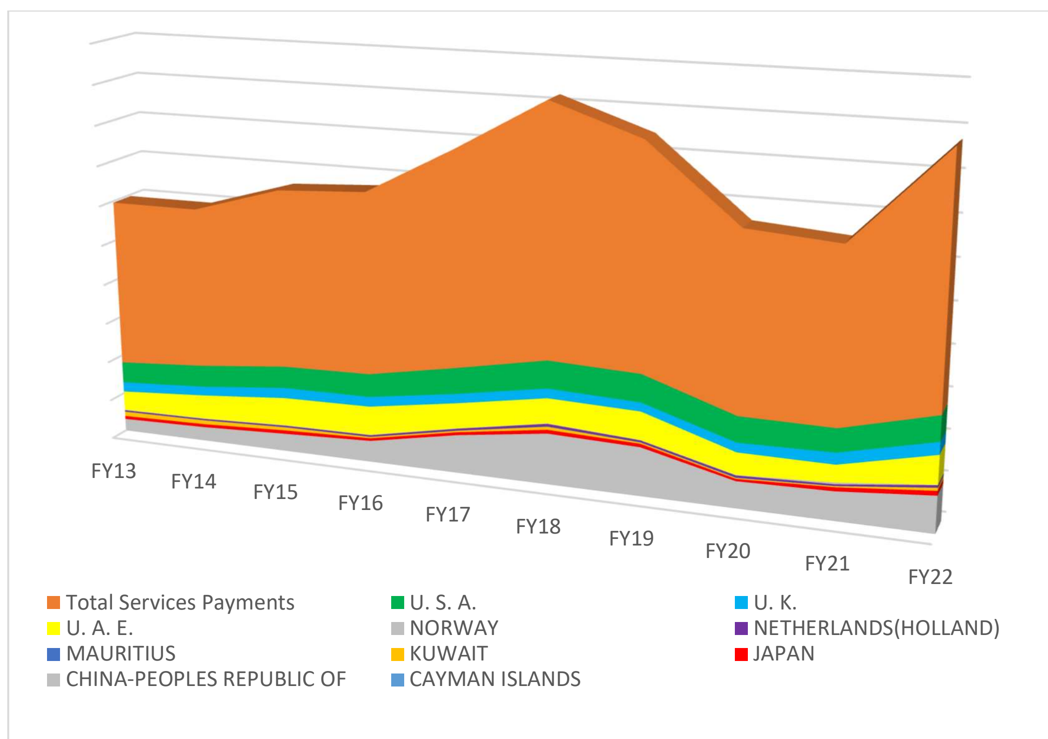
The above figure clearly shows that during the period under review the FDI flow into Pakistan was being driven by the Top Three major partners of Pakistan. Pakistan had already had treaties in place with the US and UK since the 1960s whereas the DTT with the UAE was only signed into in 1995, however, it appears that the FDI flow is not impacted by the existence of the Tax Treaties since UAE was investing in Pakistan even before signing the DTT. The above diagram also shows that the FDI flow is related more to the investment climate since the liberalization of economy in early 2000's attracted more investment whereas during the economic downturns we see a decline in FDI into Pakistan as well. This is also in congruence with the literature which is inconclusive about the impact of DTTs on FDI within a country, however, such DTTs do provide clarity on tax environment.

The impact of DTTs can also be seen by studying how signing a treaty leads to increase in flow of services between two countries. Since we have already selected the countries with top highest FDI in Pakistan so it is a given that the trade of services with these

countries will be on a higher end, however, if we compare the services from top ten countries with the total services we see some interesting trends.

When we study the total volume of services and compare it with the services from Top 10 FDI Partners (State Bank of Pakistan, 2022), we observe that the services from the partners although on a high level are not inflated:

Figure 5 - Service Imports by Pakistan from Top 10 FDI Partners during FY 2013 – 2020

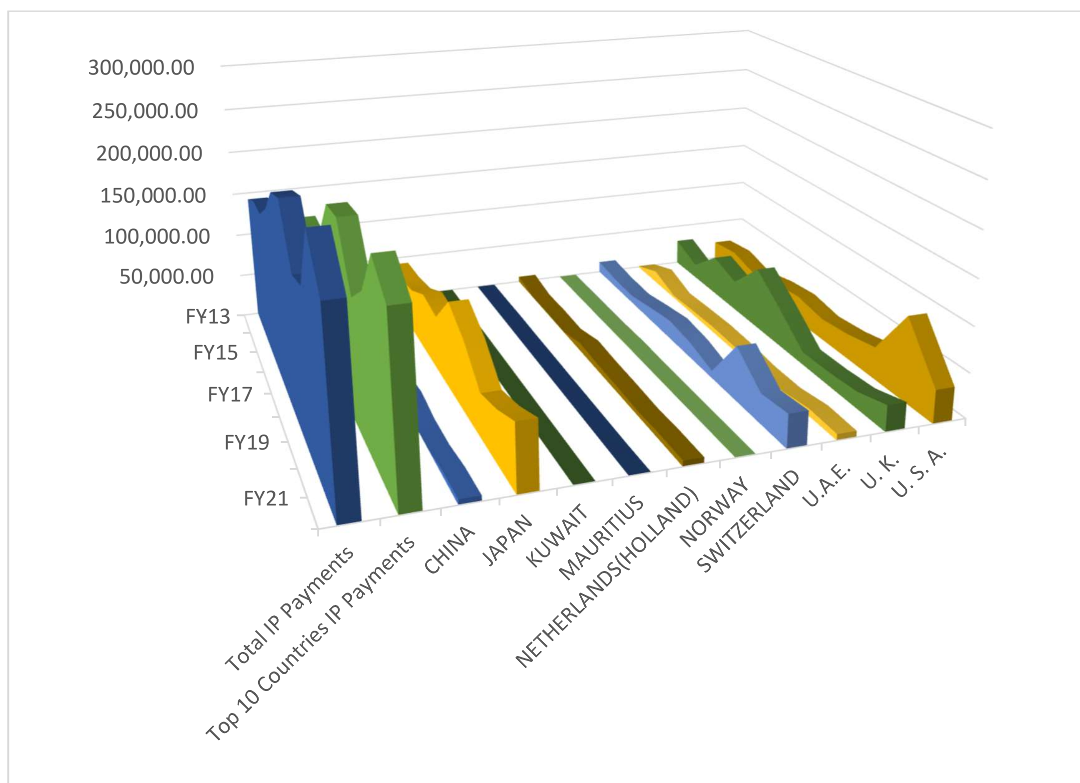


Source: https://www.sbp.org.pk/publications/import/index-import.htm

The Top Three FDI Partners are leading in terms of service payments being made to them by Pakistan with China coming to the front in recent years, however, the total payments made to the Top Ten Partners are not more than 50% of the total service import payments made by Pakistan.

This completely changes when we review the service payments being made in respect of royalty, i.e. payments for the use of intellectual property (IP) (State Bank of Pakistan, 2022). Usually, we should expect that the royalty payments should also correspond to the same pattern as we saw in services import but the data indicates otherwise as shown in the below:

Figure 6 - IP Payments made from Pakistan (2013-2021)



Source: *https://www.sbp.org.pk/publications/import/index-import.htm*

The Top Ten countries comprise a very high proportion of the total payments made from Pakistan which can be explained to a certain extent by the argument that IP Payments relate to technology transfer/ franchise agreements/ software usages but the technological boom in the recent years dictates that the payments for such usages should be directed towards the traditional technology strong-houses, i.e. the US but we are seeing that the major IP related payments are being directed to Japan.

Also, Switzerland has come into play in recent years where the use for IP payments being made to Switzerland are competing with the UK and the US which is a very interesting point. Pakistan and Switzerland signed a DTT in 2017 which provides a reduced withholding tax rate of 10% on royalty payments against the domestic rate of 15% in Pakistan. There is a need to look closely into the IP payments being made from Pakistan to Switzerland and Japan. There is no publicly available data, however, the IP payments to Japan could relate to auto companies operating in Pakistan. We believe that there is a need to look into these payments in detail and also to subject such IP payments to transfer pricing audits to ensure that these are being carried out at fair value and not resulting in tax revenue loss for Pakistan.

On a whole, we can conclude that the data is inconclusive on the role of DTTs leading to an increase in investment and there is a need to take a deep look into the fair value of the IP payments being made from Pakistan to its major FDI partners (particularly to Japan and Switzerland) where the reduced WHT rates might have been used for tax avoidance.

4.3. Review of Pakistan's DTTs with its Top Ten FDI Partners

As discussed in previous chapters the research involves a critical review of Pakistan's DTTs with its top ten treaty partners. A critical review of the DTTs with the top 10 FDI Partner countries is included in following paragraphs:

a. The United Kingdom (UK)

Pakistan signed its first DTT with the United Kingdom in 1961 which was superseded by a DTT signed in 1986. Subsequently, as part of the BEPS MLI initiative the current DTT was put in place. The individual indices score for the UK DTT against the average for all active DTTs is shown in below table:

Table 7 - United Kingdom DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
UK DTT Score	0.520	0.690	0.590	0.290	0.500
Average DTT Score	0.595	0.533	0.644	0.608	0.631

The above indices comparison for the UK DTT with the Average DTT score for all DTTs in force for Pakistan show that the UK DTT scores higher on the WHT Rate Index (i.e. is in the balance of source country – Pakistan) but for all the other indices the UK DTT on average is in the favor of the residence country – the UK.

UK is an OECD member and has a bargaining advantage over Pakistan due to the pre-independence power structure and also because it is the biggest FDI partner of Pakistan. In fact, the second biggest FDI partner is almost half the size of the UK. A detailed look at the DTT shows that the UK DTT does not contain the "Limited force of Attraction" rule which is one of the key feature of the UN MTC. The limited force of attraction (FOA) rule allows a source country to subject all the income of a non-resident to tax if it is established that the non-resident has a Permanent Establishment (PE) in the source country. Multinational Corporations go to great lengths to ensure that they do not create a PE in any source country and even if it is determined that they have a PE in any country they prefer to route investments in other countries through treaty partners that do not contain FOA provisions. The presence of an FOA means that the tax authority in the source country will not only subject activity under the PE to tax in the source country but in fact will try to subject all the income generated by the non-resident under its tax ambit. The absence of a FOA rule is in the favor of the residence country and means that the Capital Exporting Country has gained an advantage over the Capital Importing Country in treaty negotiations.

Also, the UK treaty does not include the provisions under which the supervisory activities connected with a construction or assembly project lead to the existence of a PE in Pakistan. The UN MTC does contain this provision whereas the OECD MTC does not contain this provision.

The services PE provision which under the UN MTC lead to the PE determination if the services are provided for a period of six months within a tax period is not present in UK DTT. This is a very important provision since due to technological progress most of economic activity in any economy is in the services sector but Pakistan has been unable to negotiate this provision in its tax treaty with the UK. In addition, the UK DTT provides a WHT rate of 12.5% on technical services provided by a UK resident in Pakistan against the standard rate of 15% under the Income Tax Ordinance, 2001.

As discussed earlier, the WHT rates under the UK DTT are in line with the average and the qualifying thresholds for granting treaty benefits to beneficial owners are on the higher side.

One thing that the UK DTT is missing is the right to tax the capital gains that a UK Resident might derive from disposal of shares in land rich companies or companies deriving a major portion of their value from immovable property. The inclusion of this article should be considered a priority with the UK in any future negotiations.

The most important absence in the UK DTT is the absence of the "Mandatory Binding Arbitration" under Article 25 and "Assistance in Collection of Taxes" under Article 27 of the MTC. Considering the importance of the UK – Pakistan relationship the presence of mandatory binding arbitration clauses will ensure clarity for investors investing in Pakistan and will make the non-resident taxpayer more confident about investing in Pakistan since such clauses grant the non-resident a right to challenge the unilateral rejection of treaty benefits by FBR. An interesting thing to note is that out of Pakistan's 66 DTTs only 2 contain the "Mandatory Binding Arbitration" provision which merits an investigation into why Pakistan is against the policy of including this clause in its

tax treaties. Such clauses are a great benefit to any non-resident since these provisions give the tax payer a right to challenge the abuse of power of tax authorities when tax authorities refuse to grant treaty benefits.

The absence of "Assistance in collection of taxes" under the DTT is compensated by the presence of "Convention on Mutual Administrative Assistance in Tax Matters (CMATM)" which is signed by both Pakistan and UK but how much is this convention effective in recovery of tax is a matter which requires to be explored further.

b. Switzerland

Pakistan signed its first DTT with Switzerland in 1959 which was amended through protocol in 1961 and then superseded by a DTT signed in 2015. Subsequently, as part of the BEPS MLI initiative the current DTT was put in place. (Berkhout, 2016) includes Switzerland as one of the Tax Havens in the book published by Oxfam UK (titled Tax Battles: The Dangerous Global Race to the Bottom on Corporate Tax) which further makes it important to study the Switzerland DTT. The rhetoric of Swiss bank accounts in the Pakistani political narrative adds to the importance of reviewing the Switzerland DTT.

The individual indices score for the Switzerland DTT against the average for all active DTTs is shown in below table:

Table 8 – Switzerland DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
Switzerland DTT Score	0.650	0.560	0.950	0.430	0.720
Average DTT Score	0.595	0.533	0.644	0.608	0.631

On an average, the Switzerland DTT is one of the better negotiated DTTs which is also visible from the above indices where the Switzerland DTT performs better than the average DTT Index score for all indices except the "Other Clauses Index".

Although the Switzerland DTT does not contain the FOA rule but it does include a Service PE provision and also includes supervisory activities in relation to a construction/ assembly project within the definition of the PE. Most developed countries that are part of OECD do not feel comfortable with the Services PE provision which is the reason that out of Pakistan's top 10 FDI partners only three have allowed this provision to be included in their DTT (the other two countries being the Netherlands and Kuwait). Also, Pakistan has been able to negotiate a shared taxing right over the shipping profits derived by the Swiss enterprises in Pakistan which is a positive thing.

An anomaly in the Swiss DTA is the duration of continuance of construction activity that may give rise to a PE being 9 months. The OECD MTC specifies 12 months as the duration for such activities leading to a PE whereas the UN MTC specifies period of 6 months. This duration of 9 months shows a compromise between the two treaty partners wherein both reached a compromise from their base positions. Similar provision of 9 months is also seen in the Romania and Serbia DTTs.

The Switzerland DTT is one of the only two Pakistan DTTs which has a mandatory arbitration clause which is positive thing and makes it further important to study as to why Pakistan has agreed to mandatory arbitration clause in the Swiss treaty whereas it has refrained from doing so in other DTTs.

The assistance in collecting tax article is not present in the DTT however that is covered through CMATM. On a whole, we can conclude that the Swiss DTT is one of the better negotiated DTTs in which all matters are covered and we see a balance wherein both sides have reached a better bargain.

c. China

Pakistan signed its first DTT with China in 1989 which was amended through protocol in the years 2000, 2007 and 2016. Subsequently, as part of the BEPS MLI initiative the current DTT was put in place. The individual indices score for the China DTT against the average for all active DTTs is shown in below table:

Table 9 – China DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
China DTT Score	0.760	0.560	0.840	0.880	0.880
Average DTT Score	0.595	0.533	0.644	0.608	0.631

On a superficial reading of things the Pakistan – China DTT seems to have very high source score and gives an impression that Pakistan negotiated this treaty very well. The China DTT has a FOA rule but an important absence is the presence of Services PE provision. The Services PE provision is very important in the context of China Pakistan Economic Corridor (CPEC) project since many Chinese companies operating in Pakistan source services from China and there is a very high chance that some of the contractors operating in Pakistan for the CPEC projects might be providing services in Pakistan for an extended period of time. The absence of a Service PE clause in the China DTT will enable these service providers to claim that their presence in Pakistan does not constitute a PE in Pakistan and hence such income should not be taxed in Pakistan. Although FBR may try to subject such persons to tax in Pakistan by claiming that their stay in Pakistan makes them a resident but such claims can be managed by the Chinese companies by routinely rotating the service delivery personnel and other tax planning strategies. We believe that the presence of a Services PE clause in the

China DTT is absolutely necessary and should be considered by FBR in any future negotiations.

Another notable absence is the “Shared taxing rights on income from shipping business” which is important for the China DTT since Pakistan and China are cooperating on the Gwadar Deep Sea Port and there are plans to use the Gwadar port for shipments to/ from China. If the Gwadar port is going to be used by the Chinese shipping companies and shipments by such companies may constitute a major portion of the volume being handled by Gwadar port then it makes sense that Pakistan should demand a joint taxing right from China in taxing such shipping companies. Although there are provisions in domestic tax law that deal with such businesses but incorporation of these in the DTT will bring further clarity for tax payers and improve cooperation among the two countries.

Another notable absence in the China DTT and other signed in the 1980s/ 1990s is the absence of the definition of term “Beneficial Owner”. The UK and Swiss DTTs specify a minimum percentage of shareholding which should be met in order to grant the treaty benefits under Article 10 but such term is absent in the China and many other DTTs negotiated in 1980s/ 1990s. In the absence of quantified thresholds, the matters are decided by reference to the domestic law or case law and result in unnecessary litigation which is costly and time-consuming. We believe that FBR should review all the treaties where no threshold is specified for beneficial owner definition and renegotiate such treaties with treaty partners.

The China DTT also lacks the presence of a Principal Purpose Test (PPT) or a Limitation on Benefits (LOB) clause. While ratifying the MLI Pakistan chose the Simplified LOB under the paragraph 6 of Article 7 of the MLI whereas China adopted the PPT so at a minimum the PPT will apply. It remains to be seen how these provisions will practically play out in coming future for tax payers and how FBR intends will use these clauses for tax payers claiming the treaty benefit.

d. The Netherlands

Pakistan signed its first DTT with the Netherlands in 1982 which was amended due to the adoption of BEPS MLI initiative in 2017. The individual indices score for the Netherlands DTT against the average for all active DTTs is shown in below table:

Table 10 – Netherlands DTT Score

Description	**Source Index**	**WHT Rate Index**	**PE Index**	**Other Clauses Index**	**UN Clauses Index**
Netherlands DTT Score	0.650	0.520	0.840	0.570	0.690
Average DTT Score	0.595	0.533	0.644	0.608	0.631

(Berkhout, 2016) in its book on tax havens classifies the Netherlands as a tax haven due to laws enabling corporate tax payers to implement tax planning schemes such as the Double Irish Dutch Sandwich. Such schemes have been used by companies such as Google to shift their profits to low or no tax jurisdictions in the past.

The Netherlands DTT is also one of the better negotiated treaties, the source/ PE/ UN clauses index scores are higher than average which indicate that Pakistan has protected its taxing rights in negotiating these tax treaties. The presence of the FOA and Service PE clauses the strength to bring non-residents into the tax net whereas the withholding tax rates (WHT) on dividends/ interest/ royalty are also closer to the average scores. The qualifying threshold for dividend WHT benefit is also specified clearly. The Netherlands and Pakistan have both ratified the MLI which contains the provision for not allowing tax benefit to persons where the sole benefit of entering the tax treaty is to claim treaty benefit. Also, both the countries have ratified CMATM which promotes assistance in collecting taxes. On a whole we could conclude that the Netherlands DTT is a better negotiated treaty but there is a need to see the actual needs of the business

community and determine areas which might require improvement (i.e. reducing WHT rates on dividends for investors).

e. United Arab Emirates (UAE)

Pakistan signed its first DTT with the UAE in 1995 which was amended due to the adoption of BEPS MLI initiative in 2017. The individual indices score for the UAE DTT against the average for all active DTTs is shown in below table:

Table 11 – UAE DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
UAE DTT Score	0.480	0.580	0.470	0.380	0.470
Average DTT Score	0.595	0.533	0.644	0.608	0.631

The UAE DTT is one of the lowest scoring DTT on the ICTD indices and second only to the Kuwait DTT. One major reason for this could be the fact that this treaty was negotiated in the Mid-90s when UAE was not the economic force it is now. The UAE has only recently proposed introduction of corporate tax and did not have any corporate tax (except on foreign petroleum exploration companies and branches of foreign banks) in past. UAE's proximity to the Pakistan (both geographically and culturally) combined with its close relationship makes it an attractive investment hub to make investments in Pakistan.

The UAE DTT does not have the FOA clause, the Service PE clause and the supervisory activities leading to PE clause which is the main reason for the low PE and Source indices score being this low. In addition, the UAE DTT is only one of the two

DTTs (the other being the Swiss DTA) with major FDI partners which allows deduction of payments to head office.

The WHT rates are in line with the average rates whereas the "Assistance in collection of tax" and "Limitation of Benefits" clauses are covered through MCATM and MLI. The absence of the FOA, Service PE and Supervisory activity leading to PE Clauses means that a lot of income from UAE based non-residents performing activities would escape taxation in Pakistan. There is a need to do a quantitative evaluation of how much tax revenue could be lost due to absence of these clauses and re-negotiate the UAE tax treaty for a better tax bargain.

f. United States of America (USA)

Pakistan signed its DTT with the USA in 1957 which has not been amended since then. The USA has not yet ratified either the MLI or the amended protocol to the MCATM which means that the USA has still only ratified the 1988 version of the MCATM which is quite outdated.

The USA is a very unique country since it has its own version of DTT and uses that as a base model when negotiating tax treaties with other countries. Also, USA's unique position as a global power allows it to shape the international tax narrative since any major policy introduced by the OECD/ UN cannot be effectively implemented without input from the US.

The ICTD indices do not provide any information on the USA DTT primarily due to the fact that this treaty is so old that comparing it with the OECD/ UN/ Current US MTC would not add to any research:

Table 12 – USA DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
USA DTT Score	N/A				
Average DTT Score	0.595	0.533	0.644	0.608	0.631

For our research purposes, we would like to mention following shortcomings in the US DTT:

- An outdated definition of Permanent Establishment which does not include any of the now standard clauses on Construction PE, Supervisory Activities, Dependent Agent, Service PE clauses etc.;
- No consideration of portfolio investors receiving dividend from either of the treaty partners;
- No Articles in the treaty on associated persons, Income from Immovable Property or Capital Gains;
- Royalty being taxed totally in the residence jurisdiction with no right to withholding tax for the source jurisdiction;
- No assistance in tax collection, limitation of benefits or arbitration clauses,

In short, we can say that the USA DTT is not updated for any of the International Tax Developments in the last sixty years and required major renegotiation. One benefit of existing DTT is that it exempts the State Bank of Pakistan's (SBP) income from sources in the USA which is important considering the USA's importance in the global financial market and the maintenance of SBP deposits in the US.

There is a need to re-negotiate the USA DTT to bring it at par with the modern practices. Renegotiating a tax treaty will bring clarity for tax payers as the DTT in current form is irrelevant for investors looking to invest in Pakistan.

g. Mauritius

Pakistan signed its first DTT with Mauritius in 1994 which was amended due to the adoption of BEPS MLI initiative in 2017. The individual indices score for the Mauritius DTT against the average for all active DTTs is shown in below table:

Table 13 – Mauritius DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
Mauritius DTT Score	0.540	0.410	0.720	0.500	0.590
Average DTT Score	0.595	0.533	0.644	0.608	0.631

Mauritius is used as an intermediary location by many Multinational Corporations (MNCs) for investment around the globe due to it being a treaty hub. Mauritius in itself is not a capital export country so its presence in the top ten FDI partners hints being used as an intermediary to seek treaty benefits.

With the introduction of the MLI and the option to deny treaty benefits where there is a treaty abuse FBR should look into the investments routed through Mauritius and if evidence is found that the sole purpose of routing these investments through Mauritius is to seek treaty benefit then FBR should look into denying such treaty benefits.

The Mauritius treaty is not very far from the average DTT scores on the ICTD indices. The WHT index is one index where we see significant low score which might be because of lower WHT rates on dividends. Also, like the other treaties negotiated in 1980s/ 1990s the Mauritius DTT does not contain the definition of "beneficial owner" which should be updated in any new DTT agreed with Mauritius.

The Source Score is also comparatively lower than the average score which is because of the fact that the clause on source-state's taxing right over disposal of shares in Land/ Real State rich companies is not included in the Mauritius DTT. The FOA clause is also missing in the Mauritius DTT which might have added to taxing rights but its absence is not material.

h. Japan

Pakistan signed its first DTT with Japan in 1959 which was renegotiated and then a new treaty was signed in 2008. The 2008 treaty was further amended due to the adoption of BEPS MLI initiative in 2017. The individual indices score for the Japan DTT against the average for all active DTTs is shown in below table:

Table 14 – Japan DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
Japan DTT Score	0.600	0.470	0.720	0.630	0.710
Average DTT Score	0.595	0.533	0.644	0.608	0.631

Japan DTT has one of the lowest score on the WHT Index which is because of the fact the WHT rate on dividends is a mere 5% with the beneficial owner shareholding threshold set at 50%.

The Service PE and FOA clauses are absent in the Japan DTT which might be a source of tax revenue loss for Pakistan since Japanese engineering service providers in Pakistan might use the absence of these clauses as a way to gain tax benefit. Japan has

signed both MCATM and MLI so assistance in collection of taxes and treaty abuse clauses are covered through these agreements.

On the whole, the Japanese treaty is a comprehensive treaty however the addition of FOA and Service PE clauses would have certainly added to Pakistan's position.

i. Norway

Pakistan signed its first DTT with Norway in 1988 which was updated due to the adoption of BEPS MLI initiative in 2017. The individual indices score for the Norway DTT against the average for all active DTTs is shown in below table:

Table 15 – Norway DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
Norway DTT Score	0.780	0.610	0.840	0.880	0.880
Average DTT Score	0.595	0.533	0.644	0.608	0.631

The Norway DTT scored exceptionally high on all indices which is due to the fact that almost all the provisions under the UN MTC are included in the DTA except the Service PE concept. The Norway DTT includes a joint taxing right over profits from shipping activities which makes it only the second country among the top ten FDI partners to contain this provision. On a whole, it is the best treaty among the top ten FDI partners when evaluated on the basis of ICTD indices.

j. Kuwait

Pakistan signed its first DTT with Kuwait in 1999 which was updated due to the adoption of BEPS MLI initiative in 2017. The individual indices score for the Kuwait DTT against the average for all active DTTs is shown in below table:

Table 16 – Kuwait DTT Score

Description	Source Index	WHT Rate Index	PE Index	Other Clauses Index	UN Clauses Index
Kuwait DTT Score	0.410	0.380	0.590	0.250	0.410
Average DTT Score	0.595	0.533	0.644	0.608	0.631

Whereas the Norway DTT was the best ranking DTT among the top ten FDI partners, the Kuwait DTT is the worst among the FDI partners. It is the only treaty in our analysis under which the delivery facilities and delivery stock maintenance do not result into a PE of the non-resident. The treaty does not have a FOA clause and all the WHT rates specified in the DTT are on the lower end of the spectrum. Also, the provision for capital gains on entities deriving their value from real estate is not included in the tax treaty.

Kuwait has not yet ratified the MLI so the treaty abuse and other clauses will not be applicable to the Kuwait DTT. There is a need to re-evaluate the Kuwait DTT depending on the volume of financial flows from Kuwait.

4.2. Treaty negotiation process in Pakistan:

As mentioned in the Introduction Chapter the power to negotiate tax treaties in Pakistan is held by the Federal Government, the Federal Government uses FBR to exercise the

treaty negotiation and technical preparation process. As highlighted earlier, Pakistan does not have a publicly available document where Pakistan states its model tax treaty although after our initial contact with FBR, the Bureau has included the development of a Model Tax Treaty as one of its goals for IRS Strategic Plan (ProPakistani, 2022).

Also, there is no practice to seek public opinion on the tax treaties under the negotiation process, the UN and OECD tax treaty negotiation toolkits specify the following to be considered in tax treaty negotiations:

C.4. Consulting business, stakeholders and relevant ministries and agencies

We do not see any public input being sought by the Federal Government while negotiating tax treaties. Also, the Federal Government negotiated the tax treaties on its own without any input from the Parliament. Such disregard of the Parliamentary approval is quite common in Pakistan where successive Federal Governments use their powers without any consultation from the Parliament and public at large.

A brief overview of the Tax Treaty Negotiation Process in different countries is provided below:

The United States of America (US)

In the US, the tax treaty negotiation process is controlled by the International Tax Counsel office in the Treasury Department which in turn is controlled by the President's office through the Secretary of Treasury. The Treasury Department works in close contact with the Senate's Committee on Foreign Relations which provides its comments on the provisions of the tax treaty and seeks comments from the general public. (Dentons, 2020). The legislative process in the US requires the approval of two-thirds of the Senate for any tax treaty to be enacted. Further guidance on any tax treaty entered into by the US is included in the technical explanation document which is prepared by the treasury department and submitted to the Senate Committee on the

Foreign Relations. Such technical explanations come in very handy for tax payers and are a tool to reduce ambiguity in the interpretation of the tax treaties.

The United Kingdom (UK)

In the UK, the legislative process requires that tax treaties be approved by the Parliament since they affect revenue. The His Majesty's Revenue and Customs (HMRC) shares its tax treaty preferences through public announcements. HMRC's Tax Treaty Team is responsible for seeking public opinion through consultations with important stakeholders on important tax treaty matters which ensures that the input of important stakeholders is considered before making any major changes to the tax treaty negotiation process. Such consultations may be open-ended or specifically addressing HMRC's priority areas. Virtual meeting may also be arranged with different stakeholders to seek their opinion on the specific tax issues (Chartered Institute of Taxation, 2022).

Australia

In Australia, before negotiating any tax treaty it is necessary to seek the approval of the Ministry of Foreign Affairs and inform the Prime Minister and other ministries affected by the proposed negotiation. The Australian Tax Office (ATO) is responsible for seeking the input from different stakeholders, i.e., the government, state governments and other stakeholders throughout the negotiation process. Once a final draft is ready approval of the Federal Executive Council (ExCO) is sought after which signature on the treaty are arranged in consultation with the Ministry of Foreign Affairs. Approval of both the houses of the Parliament is sought through the Joint Standing Committee on Treaties (JSCOT). Following JSCOT's report the treaty will be approved by both the houses of the parliament after which the treaty will be put in force (Department for Foreign Affairs and Trade, n.d.).

In 2021, (Australian Taxation Office, 2021) sought public consultation wherein it explained that it is seeking to expand Australia's tax treaty network for a list of countries and requested public at large to provide input on what should Australia seek to achieve in the proposed tax treaties. Such public consultations ensure that the input from all stakeholders is incorporated.

Treaty negotiation process in Pakistan

In Pakistan, there is a lack of transparency in the tax treaty negotiation process. FBR does not seek the opinion of stakeholders on the tax treaties being negotiated by it and does not have any process in place to ensure that the input of business community is included in such tax treaties. Also, the input from parliament is not sought in the treaty approval process and we do not see effective parliamentary oversight in this process. There is a need for the Federal Government to incorporate the following in its treaty negotiation process:

1. Seek parliamentary approval of the DTTs and ensure that the comments from public are considered while entering into tax treaties;
2. FBR should periodic plans under which it should share its proposed treaty negotiation partners and seek public opinion on such treaties;
3. FBR should ensure that the opinion from tax professionals is considered while negotiating tax treaties.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS FOR ACTIONS

The study has shown that although Pakistan has signed tax treaties with many countries but the tax treaty negotiation process is not streamlined. Pakistan has tax treaties with nine of its ten major FDI partners but some of these treaties are not updated or are lacking as in they fail to protect Pakistan's right to tax.

In its current form the tax treaties are under Federal Government's domain with no input from either the Parliament or public/ business groups at large. FBR, i.e., the Federal Government's implementing arm when it comes to tax treaties has no public policy under which it shares its treaty negotiation roadmap. In fact, when we consider the accountability aspect of tax treaties, FBR and the Federal Government are still living in the 19th Century. In Particular, our study found the following:

- IP payments made from Pakistan to its top ten FDI partners comprise a very significant percentage of the total IP payments made by Pakistan. In particular, the IP payments to Japan and Switzerland are significantly in excess of their relative FDI in Pakistan;
- There is currently no framework to identify the countries with which there is a need to enter into a double tax treaty. Pakistan does not have a tax treaty with Cayman Islands, one of the top ten country through which investment was made into Pakistan;
- Pakistan has not reviewed its existing DTTs with major FDI partners in particular US. There is no framework or policy in place to ensure that the DTTs are reviewed on a periodic basis;
- Pakistan does not have a model tax treaty or any other policy document highlighting Pakistan's treaty policy preferences;

- There is no legal or administrative process in place in Pakistan to ensure that the input of legislators and business community is sought while negotiating a tax treaty;

The advent of technology and new data publicly available means that FBR now has a chance to reevaluate the existing treaties and use the current international tax environment to re-negotiate tax treaties where possible. Also, the International Tax has advanced leaps and bounds in the last decade which has created an enabling environment for countries wishing to protect their tax base. In particular, we recommend that the following recommendations be considered by tax policymakers in Pakistan:

1. ***Parliamentary oversight of tax treaties:*** *It is recommended that the Federal Government should introduce rules to ensure parliamentary oversight of tax treaties. Even if the federal government believes that approval by parliament should not be necessary steps should be taken to ensure that review from parliamentary committees should be incorporated in the tax treaty approval process;*
2. ***Establish a model tax treaty:*** *It is recommended that the FBR should develop a model tax treaty in line with the best practices after input from the tax practitioners and use it as a base for negotiating tax treaties. In particular, the model tax treaty should set out Pakistan's policy approach towards different clauses of the model tax treaty;*
3. ***Stakeholders' involvement:*** *It is recommended that the FBR should introduce steps to ensure that comments from different stakeholders (i.e. business community, tax practitioners, overseas Pakistanis etc.) are sought before finalizing any tax treaty;*
4. ***Reevaluation of existing tax treaties:*** *It is recommended that the FBR should perform a thorough review of its existing tax treaties by first using the ICTD's tax treaty database to identify treaties where Pakistan negotiated away it's taxing rights and then focusing on areas requiring improvement;*

5. ***Re-negotiation of tax treaties:*** *It is recommended that FBR should suggest a strategy to the Federal Government under which the existing treaties which no longer serve their intended purpose are re-negotiated. There is a need to perform quantitative analysis of existing treaties as well as their comparison with the most recent versions of the MTC. It is recommended that FBR should come up with a roadmap on which treaties need re-negotiation within next five to ten years;*
6. ***Re-negotiation of Kuwait, USA and UAE Treaty:*** *It is recommended that the FBR should perform a quantitative review of the benefits claimed under the Kuwait, USA and UAE DTTs and determine if these are causing any tax loss to Pakistan. On the basis of the quantitative review such treaties should be re-negotiated. In particular the US treaty is now more than sixty years old and requires a thorough review and re-negotiation.*

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