

The 100th Anniversary of International Institutions and International Taxation

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The year 2020 got off to an encouraging start. On 29-30 January 2020 ... the 137 countries and jurisdictions of the G20/OECD Inclusive Framework on BEPS reaffirmed their commitment to reach a consensus-based solution and endorsed the 'Outline of the Architecture of a Unified Approach on Pillar One.' (OECD, *OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (Riyadh, Saudi Arabia)* (OECD Publishing, Feb. 2020), available at <http://www.oecd.org/ctp/oecd-secretary-general-tax-report-g20-finance-ministers-riyadh-saudi-arabia-february-2020.pdf> (accessed 11 June 2020).)

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The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) was established in 2016 to ensure that interested countries and jurisdictions could be involved in the development of standards on BEPS related issues. The Inclusive Framework is the latest international collaboration formed to address international tax issues, the origins of which can be traced back a century. Today, the involvement of international institutions such as the OECD, International Monetary Fund, World Bank, and the United Nations in matters of international taxation is accepted as standard practice. But would this be the case if not for the events of a hundred years ago?

To varying degrees, every European country suffered economically following the Great War. Some of the 'bel-ligerent' countries of Europe (Belgium, Bulgaria, France, Germany, Great Britain, Greece, Italy and Portugal) were faced with crippling external debt – valued at approximately 155 billion dollars in 1920 as compared to 17 billion dollars in 1913.¹ This debt was the result of an increase in national expenditure of between 500 and 1,500% due to the Great War and was estimated to represent between 20% and 40% of the national income of those countries. In all cases, new taxes, particularly direct taxes, were introduced to increase government revenue but for all except Great Britain, there was still a significant shortfall between total income and expenditure. A further problem for the economic outlook of all of these countries, again with the exception of Great Britain,

was the significant depreciation in the value of their currencies. The financial difficulties were not limited to those countries directly involved in the Great War and neutral countries such as Denmark, the Netherlands, Luxembourg, Norway, Spain, Sweden and Switzerland were also significantly affected. While there was some increase in expenditure directly in consequence of the war, a further increase in government expenditure was the result of the provision of significant subsidies to the general population to meet rising prices. Again, the increase in expenditure was met with an increase in taxes but the increased revenue was insufficient and many of these countries also faced large deficits. Outside of Europe, a number of countries, most notably the United States, significantly improved their financial position as a result of the Great War by exporting their goods to European countries and not only paying down their external debt but making large loans to their former creditors. However, as with the neutral European countries, these countries also faced rising prices and were dependent on the restoration of the purchasing power of their European customers for their financial wellbeing. Finally, developing countries, which required significant capital inflows to aid in their development, were hampered by the global shortage of capital. In a world facing rising inflation, depreciating currencies, national budgetary deficits, lack of capital and new economic barriers to international trade, the League of Nations, at its second

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¹ League of Nations, International Financial Conference, *Proceedings of the Conference: Volume 1* 4–6 (1920).

meeting on 11 February 1920 in London, called for an international financial conference.²

The League of Nations was officially established on 10 January 1920 following the ratifications of the Treaty of Versailles. There were forty-two founding members,³ and only three countries eligible for membership at the time – Costa Rica, Honduras, and the United States – did not take up their membership. The League had a budget of USD 600,000 for its first three months of operation and approximately USD 2.5 million for its first fiscal year, to be contributed by member countries.⁴ The League was made up of three main bodies – the Assembly, the Council, and the Permanent Secretariat. The Assembly comprised representatives of all member countries who agreed to meet once a year unless an extraordinary meeting was called. At the time of establishment, the Council was made up of four permanent members (France, Britain, Italy, and Japan) and four non-permanent members elected by the Assembly. The Secretariat was essentially an international civil service headed by the Secretary-General. The members of the Secretariat worked to meet the League's purposes and were not representatives of their countries. In its first six months, the Council met monthly and among the matters dealt with by the Council during that time were the establishment of the Saar Basin Frontier Commission, establishment of the rules of procedure of the Council, establishment of the Permanent Court of International Justice, establishment of the International Health Office, undertaking of measures to prevent typhus in Poland, discussion of the protection of minorities in various countries, approved plans for the accession of new members and new treaties, constituted a Permanent Armaments Commission, appointed an International Statistics Commission, received various reports on the freedom of communication and transit, the repatriation of ex-enemy prisoners, considered requests for League intervention against Russian Soviet aggression and of course, summoned an international financial conference.⁵ The establishment of the League has been described as a significant turning point in the evolution of the world toward international organization.⁶ It has certainly proved to have had a pivotal impact on the

development of international taxation through international institutions.

The discussions of the International Financial Conference were governed by the Council resolution passed in February 1920 which stipulated that:

The League of Nations shall convene an International Conference with a view to studying the financial crisis and looking for the means of remedying and of mitigating the dangerous consequences arising from it.⁷

The Conference was not limited to League members and eighty-six delegates from thirty-nine countries attended the Conference.⁸ The delegates attended in their capacity as financial and economic experts and not as representatives of their governments. The delegates were tasked with finding solutions to the abovementioned problems and tackled the matter by dividing their work into four parts and establishing a separate commission for each. The four commissions were asked to study and make recommendations in respect of public finance, currency and exchange, international trade and commerce, and international action with special reference to credits. So how did international taxation end up on the agenda? Interestingly, taxation did not arise from the discussions of the Commission on Public Finance. Rather, it was the Commission on International Credits which proposed the following resolution:

[T]he Conference believes that the activities of the League might usefully be directed towards promoting certain reforms and collecting the relevant information required to facilitate credit operations. In this connection the Conference considers it well to draw attention to the advantages of making progress under each of the following heads ... an international understanding which, while ensuring the due payment by everyone of his full share of taxation, would avoid the imposition of double taxation which is at present an obstacle to the placing of investments abroad.⁹

The resolution was unanimously adopted by the Conference and thus, international taxation became an

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² *Record of Political Events: League of Nations*, 35(3) Pol. Sci. Q. 12 (1920).

³ Argentina, Belgium, Bolivia, Brazil, the British Empire (with separate memberships for Australia, Canada, India, New Zealand, South Africa, and the United Kingdom), Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, El Salvador, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Liberia, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Poland, Portugal, Romania, Siam (later Thailand), Spain, Sweden, Switzerland, Uruguay, Venezuela, and the Kingdom of Serbs, Croats and Slovenes (later Yugoslavia).

⁴ *Record of Political Events: League of Nations*, *supra* n. 2.

⁵ *Ibid.*, at 12–13.

⁶ C. Howard-Ellis, *The Origin, Structure and Working of the League of Nations* 67 (Houghton Mifflin Company 1928).

⁷ *League of Nations*, *supra* n. 1, at 3.

⁸ The thirty-nine countries represented were Argentina, Armenia, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, China, Czecho-Slovakia, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, India, Italy, Japan, Latvia, Lithuania, Luxemburg, the Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Romania, Serb-Croat-Slovene State, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America, and Uruguay.

⁹ *League of Nations*, *supra* n. 1, at 26.

issue to be addressed at an international institutional level. Although tackling international double taxation was identified as one of the necessary measures to address the international financial crisis so early on, it would take several years for real progress to be made. Initially, there was some scepticism as to whether international double taxation was in fact an obstacle to international investment and the incongruity of possibly asking countries to reduce or forgo taxation in a time of high revenue need. Not to mention the other pressing economic and financial matters to be addressed by the League, such as the reconstruction of Austria. As such, international double taxation was not high on the League's agenda, but it did remain on the agenda.

The International Financial Conference also recommended that the League establish a committee to progress the recommendations from the conference and the Provisional Economic and Financial Committee was created by the League Council in October 1920.¹⁰ In the first meeting of the Provisional Committee, the issue of double taxation was allocated to the Financial Section.¹¹ The members of the Financial Committee were nominated by their governments but acted in their personal capacity and not as representatives of their governments.¹² The Financial Committee members had diverse backgrounds and included bankers and public officials. The primary work of the Financial Committee related to the financial reconstruction of individual countries. The Financial Committee's initial discussions regarding double taxation were hampered by the tensions mentioned above.¹³ The Chairman of the Committee, Sir Henry Strakosch of South Africa,¹⁴ did not think that it was an appropriate time to be asking governments to take action to address double taxation given that they were particularly interested in increasing government revenue. The British representative, Sir Basil Blackett,¹⁵ was of a similar mind and thought it impossible to alter existing systems given governments' need for revenue. However, the Italian representative, Dr Giannini, and the Dutch representative, Mr Ter Meulen,¹⁶

considered international double taxation to be of the utmost importance and a problem which could be usefully studied by the League. Following more discussions and compromises, the Financial Committee eventually adopted the following resolution in September 1921, almost a year after the matter of international double taxation was raised at the International Financial Conference and referred to the Financial Committee¹⁷:

Representations have been made to the Financial Committee that there are grave objections, not only on grounds of equity, but also on economic grounds, to existing systems of taxation, in so far as they compel citizens and corporations of one country to pay taxes in more than one country in respect of the same taxable subjects.

The Financial Committee are of opinion that it is desirable that this question should be studied from the widest possible standpoint, and that expressions of opinion upon it should be obtained from recognized experts on taxation together with concrete recommendations, if experts think fit, for eliminating any drawbacks attaching to double taxation. The possibility of an international convention regulating the matter should be considered.¹⁸

At this time, the Committee also agreed that the question of international double taxation would be submitted to four economic experts for assistance: Professor Bruins of Commercial University Rotterdam, Professor Senator Einaudi of Turin University, Professor Seligman of Columbia University, and Sir Josiah Stamp of London University ('the Four Economists'). The report by the Four Economists on double taxation was eventually published in 1923.¹⁹ The report was unclear in its conclusions as to the extent of the problem of international double taxation and its proposals as to the methods of addressing it, reflecting the conflict between its two primary authors, Stamp and Seligman.²⁰ The Economists' Report was a theoretical study of the matter and given its mixed

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¹⁰ Y. Decorzant, *Internationalism in the Economic and Financial Organisation of the League of Nations*, in *Internationalism Reconfigured: Transnational Ideas and Movements Between the World Wars* 115–129 (D. Laqua ed., I. B. Tauris 2011).

¹¹ League of Nations, *Proceedings of the First Session of the Provisional Economic and Financial Committee* 3 (1920).

¹² M. Hill, *The Economic and Financial Organization of the League of Nations: A Survey of Twenty-Five Years' Experience* 21–22 (Carnegie Endowment for International Peace 1946).

¹³ *Minutes of the Seventh Meeting of the Fourth Session of the Financial Committee of the Provisional Economic and Financial Committee Held on 30 May 1921 in London*, League of Nations Archives, Box R 333, Document No. 13130.

¹⁴ Managing Director of the Union Corporation.

¹⁵ Controller of Finance, H. M. Treasury, London.

¹⁶ Hope & Co. Bankers, Amsterdam.

¹⁷ For the detail of the Financial Committee's discussions leading up to the resolution, see S. Jogarajan, Stamp, Seligman and the Drafting of the 1923 Experts' Report on Double Taxation, 5(3) *World Tax J.* 368, 370–372 (2013).

¹⁸ Provisional Economic and Financial Committee, *Report to the Council Upon the Session Held at Geneva, August–September 1921 Communicated to the Assembly in Accordance with the Council's Resolution of September 19th 1921 (A. 95. 1921. II)* 6 (1921).

¹⁹ G. W. J. Bruins et al., *Report on Double Taxation: Submitted to the Financial Committee* (1923).

²⁰ For the detail of the drafting of the Economists' Report, see S. Jogarajan, Stamp, Seligman and the Drafting of the 1923 Experts' Report on Double Taxation, 5(3) *World Tax J.* 368 (2013).

recommendations, it is possible that the League's work on double taxation may have ended there but for concurrent events elsewhere.

In 1921, Austria, Hungary, Italy, Poland, Romania, and the Kingdom of the Serbs, Croats and Slovenes reached an agreement to conclude the first multilateral treaty on double taxation.²¹ Citing this example, the Italian representative to the League's Provisional Economic and Financial Committee, Commendatore Bianchini, agitated for the League to commission a conference of government officials to reach an agreement on some of the more pressing difficulties of double taxation.²² However, the Committee preferred to wait until they received the Economists' Report as they did not think that they were sufficiently knowledgeable on the issue of international double taxation to usefully convene an international conference.

Meanwhile, despite the recommendations of the International Financial Conference in 1920, economic and financial conditions in Europe had not improved and a second international economic and financial conference was convened in Genoa in 1922. The Genoa Conference was attended by representatives from thirty-four countries and was intended to settle the economic and political issues in Europe. However, two key actors, Russia and Germany, separately signed a treaty of recognition and friendship at Rapallo, thwarting the goals of the Genoa Conference. The key achievement of the Genoa Conference was the agreement by countries to resume the gold standard, but it is otherwise considered a limited success.²³ However, it was certainly a critical event in the history of international taxation and international institutions. The work of the Genoa Conference was divided into three commissions – the Financial Commission, Economic Commission, and Transport Commission. The issue of double taxation was discussed by the Financial Commission and placed back on the League's agenda. Specifically, the League was asked to expedite its enquiries into double taxation.²⁴ The issue of tax evasion or 'capital flight' was also discussed by the Financial Commission and referred to the League, but not without some controversy.

The Director of the German Central Bank ('Reichsbank'), Havenstein, first raised the possibility of investigations into capital flight at a plenary meeting of the Financial Commission but was immediately opposed by the Swiss representative, Dubois, and the matter was not discussed further at the plenary meeting.²⁵ However, the Financial Commission was divided into three sub-commissions – on currency, exchanges, and credits – and the German representative on the currency sub-commission again raised the issue of capital flight and asked that measures be taken to prevent the flight of capital so as to ensure that taxes could be fully collected. The request was again denied, this time on the basis that the issue did not fall within the purview of the currency sub-commission. After intervention by the Committee of Experts to confirm that the issue did fall within the sub-commission's mandate,²⁶ and further lobbying by the German and Italian representatives for the matter to be addressed by the currency sub-commission, the following resolution was drafted by the currency sub-commission and adopted by the Financial Commission:

We have considered what action, if any, could be taken to prevent the flight of capital in order to avoid taxation, and we are of the opinion that any proposals to interfere with the freedom of the market for exchange, or to violate the secrecy of bankers' relations with their customers are to be condemned. Subject to this proviso, we are of the opinion that the question of measures for international cooperation to prevent tax evasion might be usefully studied in connection with the problem of double taxation which is now being studied by a Committee of Experts on behalf of the League of Nations. We therefore suggest that the League should be invited to consider it.²⁷

And so, two years after the first international financial conference, the questions of international double taxation and tax evasion were placed firmly back on the League's agenda. The League convened several conferences of government officials, in 1925, 1927 and 1928, which resulted

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²¹ *Convention for the Purpose of Avoiding Double Taxation between Austria, Hungary, Italy, Poland, Roumania and the Kingdom of the Serbs, Croats and Slovenes*, concluded 6 Apr. 1922 (reproduced in League of Nations, *Double Taxation and Fiscal Evasion: Collection of International Agreements and International Legal Provisions for the Prevention of Double Taxation and Fiscal Evasion* 73–75 (1928)). The treaty was only ever in force between Austria and Italy.

²² *Minutes of the First Meeting of the Sixth Session of the Financial Committee of the Provisional Economic and Financial Committee held at 11am on 23 February 1922 in Geneva*, League of Nations Archives, Box R 333, E.F./Finance VI/P.V.I.

²³ W. Harris, *The Genoa Conference* 1(5) J. Brit. Inst. Int'l Aff. 150–158 (1922); A. Dennis, *The Genoa Conference*, 215(796) N. Am. Rev. 289–299 (1922); C. Fink, *The Genoa Conference* 303–307 (University of North Carolina Press 1984).

²⁴ *Memorandum by the Secretariat of the Financial Committee of the Provisional Economic and Financial Committee on 'The Work of the League in Financial Matters'* (May 1922), League of Nations Archives, Box R360, E.F.S. 287 A 370.

²⁵ *Note by the Secretariat with Regard to Resolution 13 of the Genoa Financial Commission, relating to tax evasion or the flight of capital*, (30 May 1922), League of Nations Archives, Box R360, E.F.S. 282 A 165.

²⁶ The Committee of Experts comprised all assembled government officials and financial authorities, primarily from Western European countries and veterans of various post-war international gatherings: C. Fink, *The Genoa Conference* 233 (University of North Carolina Press 1984).

²⁷ *Note by the Secretariat with Regard to Resolution 13 of the Genoa Financial Commission, relating to tax evasion or the flight of capital* (30 May 1922), League of Nations Archives, Box R360, E.F.S. 282 A 165.

in the publication of the first model treaties on double taxation and tax evasion.²⁸ Contemporary tax treaties have their foundations in the League's 1928 model treaties and

the events of a hundred years ago set in train the practice of resolving international taxation issues at international institutions, a practice which continues to today.

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²⁸ League of Nations, *Double Taxation and Tax Evasion: Report Presented by the General Meeting of Government Experts on Double Taxation and Tax Evasion* (1928). For the detail of the drafting of the 1928 model treaties, see S. Jogarajan, *Double Taxation and the League of Nations* (2018) and S. Jogarajan, *The Drafting of the First Model Treaties on Tax Evasion*, in *Studies in the History of Tax Law Vol.9*, Studies in the History of Tax Law 445 (P. Harris & D. de Cogan eds, Hart Publishing 2019).