

THE RESOLUTION OF TAX DISPUTES AND INTERNATIONAL TAX ARBITRATION

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ABSTRACT

Amongst the different aspects requiring regulation is the field of taxation, not only due to its repercussion and complexity, but also because of the unwanted consequences of applying the tax regulations of different legal systems to the same taxable events or activities. These undesirable consequences may arise for both taxpayers, who might be forced to pay tax twice on the same earnings, and for States, which may see their tax collection expectations negatively affected.

Following a number of attempts by different international bodies to resolve the issue, the Organization for Economic Co-operation and Development (OECD) unveiled an Action Plan in 2013 to tackle the problems associated with tax base erosion and profit shifting (BEPS). This was carried out in the main by multinational companies, which were taking advantage of these very shortcomings in bilateral treaties and of the differences between national tax systems to avoid or reduce paying their taxes. Implementing one of the actions contemplated in said plan, 2016 saw the creation of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

One of the mechanisms contemplated in the MLI is the implementation of international arbitration in cases in which mutual agreement procedures do not come to successful fruition. For it to be able to effectively accomplish its purpose, this arbitration must be mandatory and binding, and initiated at the request of the taxpayer. Despite certain States' reticence to give up some of their sovereignty and be bound by the resolutions of bodies outside of their jurisdictions, the losses they are suffering in their tax income are forcing them to adopt new measures at an international level, as global problems can only be resolved effectively with multilateral solutions. The European Union (EU) approved in 2017 a Directive obliging Member States to introduce systems that must include binding arbitration in their legislation systems for resolving tax disputes and providing effective solutions outside of the national courts.

Keywords: Tax, Taxpayer, Arbitration, Proceeding, Resolution, International, EU.

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