

Editors' Preface

This volume in the “Series on International Tax Law” includes the Master’s theses of the full-time students attending the 2017-18 class of the postgraduate LL.M. programme in International Tax Law at WU (Vienna University of Economics and Business). The general topic this year was Arbitration in Tax Treaty Law. The last decades have seen an unprecedented integration of national economies, the emergence of new global players and the growth of global corporations. At the same time, tax competition has intensified, with countries using their tax systems to attract increasingly mobile economic activities. Moreover, multinational enterprises have increasingly made use of the arbitrage opportunities offered by differences in domestic tax laws and the treaty networks of different states. These factors have caused an exponential increase in the number of cross-border tax disputes, as well as the amounts at stake. OECD and EU statistics on tax disputes show that tax administrations are having difficulty coping with this increase, which is an unsatisfactory solution for taxpayers and governments alike.

This is due to the framework governing the resolution of international tax disputes, which is based on the mutual agreement procedure (MAP) and has some deficiencies as regards certainty, transparency and efficiency, among other areas. One way to ensure more principled and timely outcomes and to manage the tsunami of disputes would be international tax arbitration, which was recently put forward by the EU, the OECD, the UN and the United States, yet is absent from most income tax treaties (tax treaties). In this respect, international tax law lags behind other areas of law such as investment law, trade law and commercial law, which not only make broad use of arbitration to resolve disputes, but have also developed centralized institutions to manage the procedural aspects of arbitration. While the new approaches being put forward would go some way towards aligning dispute resolution procedures in the tax area with best practices in these areas, there is still significant room for improvement.

Moreover, international tax arbitration gives rise to many controversies, especially among developing countries, which is why many countries have decided to forego it and search instead for other means of dispute resolution, such as non-binding mechanisms. Thus, the international community is at a crucial stage in the debate on how to resolve cross-border disputes. As the international debate is currently focused on whether multinational enterprises pay their fair share of tax, and governments are intent on closing tax law loopholes and securing revenue,

there is a risk that not enough attention is being paid to the importance of resolving cross-border disputes and thus increasing international tax certainty – which is essential in achieving a sustainable growth path. As we move through the transitional period of implementation of the measures developed by the OECD to counter base erosion and profit shifting (BEPS) – which could take a decade or more – the potential for cross-border tax disputes will increase and therefore there will be more pressure on existing dispute resolution mechanisms, especially the MAP.

Against this background, a comprehensive analysis of the issues related to Arbitration in Tax Treaty Law proves to be of utmost importance. The book aims to develop academic insights, provide practical guidance and enable an in-depth analysis of specific aspects of the general topic, as well as to generate new approaches to tax dispute resolution through high-quality, cutting-edge research that addresses the conceptual and practical concerns expressed with respect to arbitration.

First, the reader is provided with a background on tax treaty arbitration, its development and its advantages compared to the MAP, as well as an introduction to arbitration in other areas of international law and the best practices developed in that context. In a second step, the current international framework for tax treaty arbitration, as well as the recent proposals made by the OECD, the UN, the EU and the United States are analysed in detail. Different types of arbitration are compared and contrasted, and the practical impact of these proposals is assessed. In a third step, several country-specific case studies are presented which provide the reader with a broad sample of different practical approaches to the implementation of arbitration. After this general theoretical and practical overview, the most significant concerns and unresolved issues with respect to arbitration are addressed. Finally, the book looks towards the future of dispute resolution in the international tax area and considers several possible developments. In total, the students were assigned to 31 concrete topics which allowed them to thoroughly analyse the respective issues at stake and address the key areas of interest from various perspectives.

Without a doubt, these topics required the students to confront an impressive challenge. Some students had to deal with problems that have not yet been extensively discussed in academia, and thus they had to be creative by corroborating their conclusions with existing academic literature and their experience. Others were faced with the challenge of analysing issues that have already been extensively discussed and providing their own insights on these topics. All of them have impressively managed this challenging task, and it was our pleasure to provide these talented students with critical support in their research endeavours. At the end of this process, we would like to thank all of the students for their commitment and congratulate them on the successful completion of their studies.

In addition, we would like to express our sincere gratitude to the Linde Publishing House for the opportunity to publish this volume. Having Linde as a partner provides the professional cooperation needed to make a project such as this a success. Sincere thanks are also given to Ms Jenny Hill and Ms Constance McCarthy, who contributed to the completion of this book by revising the Master's theses from a linguistic perspective.

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Alicja Majdanska
Laura Turcan