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Tax Treaty Arbitration

15

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Tax Treaty Arbitration

Why this book?

Tax treaty arbitration is a topic that has become more important than ever before. In a post-BEPS world, where tax treaty disputes are expected to increase significantly as a result of the different measures taken to address treaty abuse, a well-functioning dispute resolution mechanism is key to solving tax treaty disputes. Both the OECD and the European Union took initiatives to improve the mechanisms for dispute resolution in tax matters. The OECD amended article 25 of the OECD Model on the mutual agreement procedure and the European Union adopted Council Directive 2017/1852 on tax dispute resolution mechanisms in the European Union. The aim of this book is to provide tax authorities, policymakers, courts and practitioners an overview of the effectiveness of tax treaty arbitration and the approach towards the recent changes in 36 countries.

This book comprises 36 national reports from countries across the globe and is the outcome of a conference on tax treaty arbitration that took place from 5 to 7 July 2018 in Rust (Austria). More than 100 experts, including the authors of the national reports, were brought together to discuss recent developments in the field of tax treaty arbitration. A general report highlights the most important findings of the conference.

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Preface

In recent years, several important developments have taken place with respect to the instruments available under international and European tax law to resolve cross-border tax disputes. Both the OECD and the European Union took initiatives to improve the mechanisms for dispute resolution in tax matters. The work of the OECD on BEPS Action 14 resulted in the inclusion of provisions improving dispute resolution – in particular, with respect to the mutual agreement procedure and arbitration – both in the Multilateral Instrument and in the 2017 OECD Model Convention and Commentary thereon. In October 2017, the European Union adopted Council Directive 2017/1852 on tax dispute resolution mechanisms in the European Union, aiming to ensure the effective resolution of cross-border tax disputes within the European Union.

From 5 to 7 July 2018, the WU Vienna University of Economics and Business, Institute for Austrian and International Tax Law hosted its annual Rust Conference. Participants from more than 40 countries representing all continents were brought together to discuss recent developments in the field of tax treaty arbitration, which was the topic of the conference. The main focuses of the conference were whether arbitration is an answer for solving tax treaty disputes, the effectiveness of mutual agreement procedures and other alternative dispute resolution mechanisms in general. The conference participants presented their country’s perspective on different procedural aspects of arbitration.

We are very grateful to all National Reporters and authors. They displayed enormous discipline in completing their National Reports, taking into account the guidelines provided. They participated in the discussions at the conference with great enthusiasm. After presenting the results at the conference, they immediately completed their National Reports. The editors believe that the reports presented in this book are of high value and, therefore, will be of particular interest for academics, tax consultants, public officers and all those interested in international tax law.

This project has been conducted with the kind support of the FWF (Austrian Science Fund). We are grateful to the FWF for their funding of the Doctoral Programme on International Business Taxation (DIBT) and to the OeNB for the funding received under the project entitled “Arbitration Clauses in Double Tax Treaties of CEE-States”. We would like to express our sincere thanks to IBFD for its cooperation and the swift realization of this publication project. Ms Constance M. McCarthy contributed greatly to the

completion of this book by editing and polishing the texts for the authors, for whom English is – to a great extent – a foreign language. Above all, we would like to thank the members of the secretariat and the research assistants of the Institute for Austrian and International Tax, especially Ms Renée Pestuka, Ms Svitlana Buriak, Ms Shimeng Lan, Ms Alexandra Miladinovic and Dr Jean-Philippe Van West, who were responsible for the organization and preparation of the conference in Rust as well as publication of this book. Without their dedication and talent for organization, the success of the conference and the completion of this book would not have been possible.

The chapters contained in this book are based on the reports presented, and subsequent feedback received, during the aforesaid 2018 Rust conference. The information was accurate as of the date of writing but may since have changed given subsequent developments.

Vienna, March 2020.

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