

**Dispute Resolution under Tax Treaties**  
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**Sample from Introduction**

The academic literature in the past few years has only begun to connect international trade, investment and tax law policies, and, to the best of my knowledge, except for one, no scholar to date has yet attempted to perform a comprehensive analysis of this relationship and the effect it might have on the preferred method for resolving international tax disputes. In fact, Professor Robert Green of Cornell Law School, who is the only scholar who did conduct such an analysis, concluded that the DSU system used by the WTO for resolving international trade disputes is not the preferred method for resolving international income tax disputes.

Notwithstanding the above, tax treaties are unique in a way that makes the comparison with trade treaties rather constrained. Unlike trade agreements, tax treaties are designed to have direct effect under domestic laws; thus, even in dualistic legal systems, taxpayers are able to enforce treaty obligations through the use of domestic courts. Taxpayers are therefore afforded much more protection under tax treaties than under most other international treaties, and the need for a binding international procedure is weaker.

However, the use of domestic courts is far from sufficient. With more than 4,000 different decisions by domestic courts on the interpretation and application of tax treaties, there is a great need to coordinate such efforts. The system today does not provide tax administrators, treaty drafters, and taxpayer with the necessary guidance required to reduce uncertainty and prevent further disputes. Domestic courts are also understandably not trusted by foreign taxpayers requiring the diplomatic protection of their government to secure the fair application of treaty obligations.

Unlike previous studies in this field, this study suggests that various mechanisms for the resolution of international tax disputes should be used rather than one mechanism only. This study recommends that transfer pricing disputes as well as other fact-intensive specialty cases would be better addressed by international arbitration. On the other hand, non-allocation disputes should be resolved through the use of an international tax tribunal (ITT) providing *non-binding* opinions to domestic courts and consisting of tax judges from the countries involved. This study further suggests that these two institutions, arbitration and the ITT, should be conducted under the auspice of a new global tax organization (GTO). An organizational chart of the proposed procedures is provided on page

One of my main conclusions is the need for an institutional reform in the composition of the competent authority institution. In the past 15 years more than 50 treaties have adopted arbitration provisions as a supplement to the MAP, but as of today only one case was referred to such arbitration. Unlike previous

studies on arbitration which suggest that the problem might be found in the procedure itself as well as with taxpayer ignorance, this study suggests that the main problem lies elsewhere. More specifically, this study suggests that the problem with arbitration today is that it is administered by the fiscal authorities of the countries involved, and is tainted by an inherent partiality of interests, conflict of interests, and unaligned interest.

As to the suggested design, unlike Green, I argue that a compulsory and binding dispute settlement procedure conducted by an international institution and based on income tax treaties would be of great importance to international income tax disputes. However, given the direct effect of tax treaties under domestic laws and government sovereignty concerns, this study suggests that the use of an international advisory tribunal providing transparent non-binding opinions to domestic courts would be better able to accomplish the objectives of tax treaties under the current political climate than the WTO/DSU procedure. International relations institutional theory predicts that such a mechanism will reap most of the benefits that a true international court may provide while at the same time allow governments the flexibility they need to administer their own tax policies.

As of today, there has been little comparative analysis among the various alternatives available for resolving international tax disputes. Most scholars and practitioners have simply suggested the use of arbitration, taking the merits of arbitration as a given. My analysis conducts such an analysis based on international tax law policies, as well as on neoliberal institutionalists' international relations theories, domestic political science, and additional thoughts from the field of alternative methods of dispute settlement. Based on these disciplines, I suggest a new set of dispute settlement procedures for resolving international tax disputes, to be agreed upon in a multilateral treaty. This procedure would include a combination of negotiation, arbitration, and adjudication mechanisms applied by a new international institution.

The study itself is structured as follows: In Chapter One I explore the main conclusions and recommendations of past studies and present my three basic sets of research questions: First, based on the available empirical evidence, is there a real need for reform? This question is especially important given the debate between tax administrations and taxpayers on this issue. Second, if there is such a need, why has the development of the dispute resolution procedures stagnated over the past century, and even more interesting, why has there been almost no use of the reformed procedures which have already been adopted in tax treaties? My third and last research question deals with the design of the procedure itself. It is here that I ask whether the design of the current MAP is capable of accomplishing the objectives of tax treaties with specific emphasis on the objectives of the dispute resolution procedure. I then turn to arbitration and ask similar questions. Concluding this analysis, I ask whether a different dispute resolution process would be better able to accomplish such objectives.

Chapter Two tries to address the first question with an analysis of the meager empirical evidence made available over time by the tax administrations of the United States, Canada, the European Community, Japan, and various other countries. In Chapter Three I deal with the second set of questions and try to explain the empirical evidence through the use of institutional analysis. In this chapter I explore the possible partiality of interests, conflict of interest, and unaligned interests inherent in the current construction of the Competent Authority. I then analyze which of these concerns should be taken into consideration from a policy perspective and suggest ways in which such concerns could be addressed by governments while noting the possible political powers at play.

The rest of the study is devoted to answering the third set of questions. In Chapter Four I shortly explain the theories of institutionalist international relations scholars. These theories will be used when conducting my analysis and substantiating my arguments in the rest of this study. Building on my conclusions in the previous four chapters, in Chapter Five I identify the main objectives of the dispute resolution process under income tax treaties and conduct a comprehensive analysis of the current system used to resolve disputes. Chapter Six is then devoted to exploring international arbitration, which is the most popular reform proposal today among practitioners. In this chapter I show how arbitration is not a completely satisfactory solution to the problems governments and taxpayers are faced with today. In Chapter Seven I build the framework for my design proposals, and present my main conclusions and recommendations. I then also conduct a thorough analysis of my suggestions using similar benchmarks to those used in the preceding chapters.

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