

International tax dispute settlement

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FACTI ISSUES NOTE

The FACTI Panel published its [interim report](#) on 24 September 2020.

The FACTI Panel will hold a series of high-level virtual regional consultations with global stakeholders from 9 to 23 November 2020. The consultations aim to discuss possible means to address the shortcomings identified in the interim report. To orient the consultations a series of short issues papers are being presented along with guiding questions for the consultations.

INTRODUCTION

The international tax framework is based on cooperation and the goodwill of countries to comply with their tax treaties and the recommendations made by the OECD or the UN Tax Committee. Disputes may arise from a failure to prevent double taxation, or inconsistency in interpretation and application of treaty provisions. Disputes are expected to increase because of the increased complexity in tax norms, the need for subjective judgement to implement new tax rules, and the likelihood that countries selectively enforce the rules which they consider favourable to them.

Alongside access to domestic courts, dispute resolution mechanisms commonly available in bilateral tax treaties include mutual agreement procedures (MAPs) and, less commonly, mandatory binding arbitration.

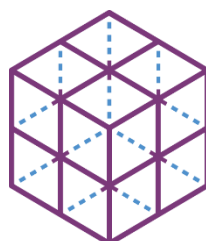
Given the sovereign nature of tax, countries generally resolve tax disputes with taxpayers domestically. However, as the adjustments made by a tax authority in one country may lead to double taxation of an multinational company, many countries agree, through their tax treaties, to MAP through which the tax authorities of the countries involved seek to resolve the double taxation. These procedures are not

mandatory, and country authorities generally retain sovereignty to determine what is the appropriate amount of tax due in their jurisdiction. Most MAP provisions in bilateral tax treaties do not compel competent authorities to reach an agreement.

There are proposals to move international tax disputes from being handled bilaterally through MAP to being handled by international arbitration. Such instruments require countries to cede sovereignty and have been controversial in the trade and investment field where disputes are settled by international arbitration or, until recently, by the WTO Dispute Settlement Mechanism.

Mandatory binding arbitration on tax disputes is opposed by many developing countries, not least because many countries have negative perceptions of binding arbitration brought under investor-state dispute settlement clauses that are part of many international trade and investment agreements.

At the UN Tax Committee, the Subcommittee on Dispute Avoidance and Resolution has developed additional guidance that includes:



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steps to prevent disputes in the first place; arbitration requested by the tax authority rather than the taxpayer; representative panels of arbitrators supported by the UN Tax Committee, and the use of mediation.

LOOKING FORWARD

There are tensions between sovereignty and taxpayers' desire for certainty, with implications for revenue raised. The Panel will examine proposals for creating instruments or institutions for more quickly resolving tax disputes, considering lessons

learned from experience with international arbitration, and fundamental values such as representation, neutrality, fairness and certainty.

Guiding question for the consultations:

- **What are your views on ways to improve international tax dispute settlement?**
- **What is your assessment of arbitration in tax dispute settlement and how it could be applied?**

Further details on the high-level regional consultations can be found on the FACTI Panel website: <http://www.factipanel.org/events>.

