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Digitalization of International Tax Dispute Resolution: Reflection in Light of the Covid-19 Pandemic

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Like it or not, the Covid-19 pandemic has been changing our way of life. Among others, large-scale lockdowns drive us to work from home and to rely heavily on videoconferencing and online-shopping. Thus, the arguably already digitalized life has been further digitalized!

In the fiscal circle, the tax challenges of the digitalization of the economy had already occupied the top agenda of the BEPS Project even before the beginning of the pandemic. As keen researchers of international tax dispute resolution (ITDR), however, we both thought of the digitalization of the ITDR. ‘This time they would have no other choice but to move their cases online’, we joked. But very soon, we realized that things might not be so quick and easy, particularly when we both thought of the tortuous evolution of tax arbitration. That was when we began to seriously consider the topic of digital ITDR.

It is worth noting that in a 2018 article published in Intertax (in two parts), Dimitropoulou et al. already envisioned the use of modern, disruptive technologies to improve the ITDR process.[1] Seminal and thought-provoking as it may be, the article is largely normative, addressing the question of ‘how’. By contrast, our focus lies on the positive aspect, exploring the questions of ‘what’ and ‘why’. In particular, we are interested in the political momentums and obstacles of this digital transformation.

We once wrote, individually, about the comparison between the ITDR and trade/investment dispute resolution.[2] One fact quickly drew our attention: the cases of international tax disputes far outnumber those of trade/investment disputes. For illustration, since 1995, approximately 600 disputes have been brought before the WTO.[3] From 1972 to June 2020, 768 cases were registered under the ICSID.[4] By contrast, in a single year of 2019, the OECD members reported 2,690 new MAP cases.[5] Note that the WTO consists of 164 members[6] and the ICSID of 163 members,[7] whereas the OECD MAP statistics encompass around 100 jurisdictions.[8]

No wonder the MAP has long been criticized for its protraction! We both thought of domestic judicial systems in which alternative dispute resolution (ADR) and digital justice were first developed exactly due to the pressure of high caseloads. There are other factors that present strong cases for the digitalization of the ITDR process. For instance, competent authorities from

numerous countries reported that administrative costs such as travel expenses constitute a major handicap for efficient settlement of tax disputes.

Notwithstanding these cases for the promotion of the digital ITDR, the peer review reports in respect of BEPS Action 14 reveals that the digital ITDR is, at most, underdeveloped. The use of information and communication technologies (ICTs) is rudimentary and largely limited to the basic tools such as email and videoconferencing. Very few countries have implemented case management systems that are ICT-based. Definitely no common digital ITDR platform is available for countries. [9]

Is it because of the low digital capacity on the part of competent authorities? We do not think this is the main issue. Today tax administrations across the world have generally become digitalized – they must if they hope to collect revenue since businesses also have gone digital. Is it because of countries’ sovereignty concern? Probably. Though digital across the world, countries may still vary in their digital capacity.

Again, we detected some other clues in the peer review reports. In one report, several peer competent authorities reported that their communication with the US counterparty may be slowed due to the US requirement that taxpayer identification data could only be exchanged by mail or fax.[10]

To reap the benefits of the digital ITDR while overcoming the above obstacles, we propose a multilateral approach under which the UN or the OECD (a preferable forum for its flexibility) can exhibit greater leadership. As to the specific roadmaps, readers can refer to the research by Dimitropoulou et al. or make their own contribution. This is an area full of adventure and excitement.

The full version of this article can be read in Intertax, vol. 49, 2021, issue 8/9.

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[1] Christina Dimitropoulou, Sriram Govind & Laura Turcan, *Applying Modern, Disruptive Technologies to Improve the Effectiveness of Tax Treaty Dispute Resolution: Part 1*, 46 Intertax 856 (2018).

[2] Spyridon E. Malamis, *The Future of OECD Tax Arbitration: The Relevance of Investment Treaty and WTO Dispute Settlement Practice in Promoting a Gradual Evolution of the International Tax Dispute Resolution System*, 48 Intertax (2020); Qiang Cai, *Behind Sovereignty: Concerns About International Tax Arbitration and How They May Be Addressed*, British Tax Review 441 (2018).

- [3] *WTO / Dispute Settlement – Dispute Settlement Activity – Some Figures*, , https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm (accessed 3 Oct. 2019).
- [4] ICSID, *The ICSID Caseload Statistics (Issue 2019-1) 7*, <https://icsid.worldbank.org/en/Pages/resources/ICSID-Caseload-Statistics.aspx>.
- [5] OECD, *Mutual Agreement Procedure Statistics for 2019 (OECD)* < <https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm> > (accessed 20 January 2021).
- [6] *WTO / About the Organization*, https://www.wto.org/english/thewto_e/thewto_e.htm (accessed 13 Apr. 2019).
- [7] ICSID, *Database of ICSID Member States*, <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx> (accessed 20 Jan. 2021).
- [8] OECD, *2019 MAP Statistics per jurisdiction (OECD)* <https://www1.compareyourcountry.org/map-statistics/en/0/2288+2289+2290+2291+2292+2293+2294/default> (accessed 20 January 2021).
- [9] OECD: *Action 14 – OECD BEPS*, <https://www.oecd.org/tax/beps/beps-actions/action14/> (accessed 5 May 2021).
- [10] Report on the US (para.123), OECD: *Action 14 – OECD BEPS*, <https://www.oecd.org/tax/beps/beps-actions/action14/> (accessed 5 May 2021).

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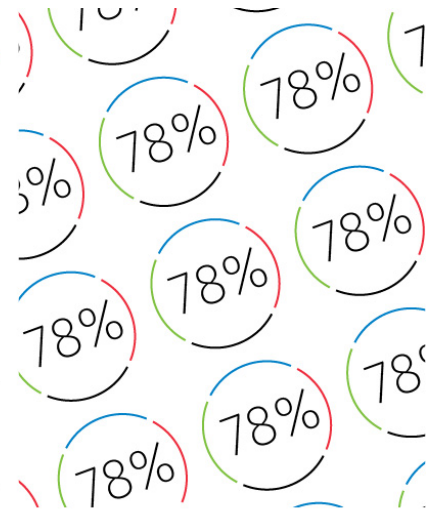
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