

# MAKING TAX DISPUTE RESOLUTION MECHANISMS MORE EFFECTIVE— THE BASE EROSION AND PROFIT SHIFTING PROJECT AND BEYOND

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## ABSTRACT

*The OECD's goal in Action 14 of the BEPS Action Plan—of making dispute resolution mechanisms more effective—is a major aspect of the evolving transnational regime for tax. One of the most central questions is whether mandatory arbitration will be established. As international taxation is entering a new era, it is important to consider the possible models and practices that could be used to develop a robust arbitration mechanism to address tax disputes. This Article focuses on the key aspects (both procedural and substantive) of international investment arbitration and places them in the context of the current debate on international tax disputes. The aim is to review the core aspects of investment arbitration to see which (and to what extent) procedures may fit the global tax policy aspirations. Overall, when we compare tax treaty arbitration to arbitration of investment disputes, what are the advantages and disadvantages for governments and taxpayers/foreign investors of these systems (e.g., transparency, appointment of arbitrators, excess of authority, third party funding, treaty shopping, publication of awards, independence of arbitrators, etc.)? In order*

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*to reach a sustainable mechanism which could find support from both sides, which lessons can be learned from arbitration of investment disputes? In other words, which specific practices in the arbitration of investment disputes should and should not be adopted in tax treaty arbitration? To answer these questions, this Article reviews the restrictions in the scope of arbitrable issues under both tax and investment treaties. It also looks at the enforcement of international awards. The Article also explores the role of national courts and considers the initiation of international disputes and the role of States. The analysis is then further expanded to discuss the recurring issue of the costs of arbitration. Finally, the conclusion summarizes the advantages and disadvantages of international arbitration to address transnational tax issues.*

**KEYWORDS:** *tax arbitration, BEPS, OECD, investor-state arbitration*