Article

The OECD Dispute Resolution System in Tax Controversies

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Abstract: The article analyses the latest international tax law developments in dispute resolution settlement protocols and the need for effective multilateral solutions to prevent international double taxation. While several treaties currently minimise the risks of international double taxation, more must be achieved to provide judicial remedies in cases where two states want to tax the same income simultaneously. The OECD has developed a dispute resolution system based on arbitration clauses to be introduced in conventions signed by the state and a brand-new MLI (multilateral instrument) that should be applicable on a broader scale. These remedies have proven unsatisfactory as the taxpayer is not entitled to play any role in these (arbitration) procedures and cannot stand personally in front of any panel. The authors argue that such a scenario is inconsistent with the rule of law and the due process clauses and should be amended. Creating a supranational court with the entitlement to adjudicate the power to tax would be the optimal solution, but this would collide with the position of several states and their distrust of the international judiciary in tax matters.

Keywords: double taxation; arbitration; mutual agreement procedure; OECD; tax treaty; good faith; transfer pricing; taxpayers' rights; international tax law; BEPS

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1. International Tax Law: A System without Jurisdiction

International academics, scholars, and practitioners have long debated the existence of a global tax system, intended as a set of rules and principles commonly accepted by the states of the international community or by most of them (Avi-Yonah 2007). Should these principles exist, they would form a part of international public law as ordinarily understood in the literature (Brownlie 1990).

Although the debate on the matter is still ongoing, there is another issue on which, to the contrary, unanimous consensus exists. An international court with the power to decide on tax cases does not exist and, more to the point, will not ever exist in the future. This is because states are more than reluctant to surrender their sovereignty to a judicial body with the power to allocate the taxing power to one of them to the detriment of another (van der Bruggen 2001). Well-known historical reasons favour this conclusion for good and evil, among which are the jealousy of the states in their prerogatives and the incompatibility of the classic notion of sovereignty with a supra-national judicial body (Draghi 2019; Hinsley 1986; Krasner 2007).

The International Court of Justice, whose jurisdiction must be accepted by the state to be considered binding, has never ruled on relevant tax cases. However, some past decisions have significantly shaped the current international tax law (Qureshi 1987). On the contrary, other courts are provided with such power, yet they operate on a regional basis only. This could be the case of the Court of Justice of the European Union, whose decision-making process has been shaping the law in the old continent for decades (a list of the most relevant cases in the field of direct taxation can be found on page 32 in Lang et al. 2020) and possibly of the European Court on Human Rights (Greggi 2007). In the latter case, although the primary goal of the jurisdiction is not related (or pertinent) to taxation, an ever-increasing

number of cases with a remarkable relevance for taxation have been decided recently (Baker 2015).

Eventually, the international courts with jurisdiction over different areas of the law could be considered, as they might also extend their intervention in taxation. This is the case with the World Trade Organization dispute resolution mechanism (Cameron and Gray 2001). Its role is to settle controversies and interpretive discrepancies that might emerge from implementing the WTO principles in the national jurisdictions (Bello 1996). Although the WTO does not embrace all the states of the international community and, in this respect, it could be considered perhaps a (macro-)regional entity, nonetheless, the number of participants, their extension, and their political and economic influence would make the WTO a global player (Palmeter and Mavroidis 1998).

In the past, the WTO Panel played an essential role in deciding tax issues (Bentley 2000) as they were related to the core of the Treaty that it was supposed to preserve and the principles enshrined in it. Amongst them are free commerce, fair competition, and the prohibition of distortive national intervention in the economy to the detriment of market values (Herdin-Winter and Hofbauer 2006). The literature has already recorded the essential decisions in this respect and assessed their impact on the decision-making processes of the states involved and the European Union, which is a party to the WTO agreement (McDaniel 2004; Micheau 2007). The Foreign Sales Corporations (38 ILM 173 (2000), decided on 8 October 1999) is an example of the point.

The Panel's decisions are formed according to the WTO agreement, which is focused on something other than a jurisdictional nature, as this is usually intended, given the general theory of the law and the process. First, they are served by a body not defined as a court, tribunal, or equivalent by the law regulating the WTO (it could be considered a quasi-judicial body). Secondly, this body is incorporated to solve a specific controversy: It is constituted upon demand and with individuals of the highest skill in the law and personal integrity in the world yet vetted by the parties involved. Their task ends with a decision on the specific controversy. This adjudication power is limited to the litigation as it emerges: it is an *ad hoc* body.

These aspects collide with a jurisdictional subject's nature and features as generally intended by the law. To be served, justice needs a body with specific prerogatives: independence, stability, and subjection to the law only, among other things. These features (and others) are addressed with major or minor importance (or with different priorities) depending on the regional acceptance of the rule of law (Bingham 2011). Yet, irrespective of any local influence, a shared understanding of jurisdiction exists (Ford 1999; Michaels 2005; Ryngaert 2015).

Jurisdiction (*ius dicere*: literally, "to tell what the law is") is embedded with the rule of law in a way that the first does not exist if the second does not thrive (Bingham 2011, p. 90). The power to rule the law demands guarantees in the traditional separation of powers, one of the pillars on which modern states are built, not only in Europe or America. Such prerogatives include special protection from the decisions of the government and the possibility for the justices to decide irrespective of the will of the latter.

The rule of law is indeed one of the most sophisticated aspects of modern legal systems (Corstens and Mills 2017). It is commonly referred to as a distinctive feature of the common law system because, in continental Europe, it is loosely translated as *Stato di diritto* or *Rechtstaat* (in Italian or German, respectively, for example), thus referring to a concept, the state, that is missing from the English definition (quite surprisingly, it is closer to the French translation, *primauté du droit*, that is, the primacy of the law) (Frändberg 2014). This is coherent with the civil law tradition of the European countries, where the law is still today (in most circumstances) the law of the state as passed by the national parliaments: this is not the case in the United Kingdom (to mention one of the common law countries) where the law stems both from the Parliament and the courts (Merryman and Pérez-Perdomo 2007).

On the continent, on the contrary, Montesquieu's theory on the separation of powers is strictly enforced (Baron de Montesquieu 2005, in particular at page 187 of the edition

cited[1]). Such a scenario also has implications for tax law, where the taxes to be paid are decided by the parliament, and the courts have no other power but to apply the law of the former body.

Courts under the rule of law (*Rechtstaat*) are independent. To be authentic, such autonomy demands that they be autonomous in their activity, not dependent on the government's decision to change them and be stable for their duration (Wang 2014). Special courts and, on purpose, tribunals hardly comply with the idea of actual independence from the other two powers (legislative and executive).

The stability of the jurisdictional bodies is a distinctive feature compared to the various arbitration panels, bodies, and committees that have increased in the current historical period in international law and international tax law. The former are there to last, while the others are dismissed once the case is decided. The more sensitive the government is to the decision to be made by quasi-judiciary bodies in the case (taxation, in this specific scenario), the more reluctant they are to grant jurisdictional prerogatives to arbitration panels.

The findings that we reached in the analysis of the WTO arbitration system (Davey 2009) could also be extended to similar local (or regional) treaties aimed at boosting cross-border partnerships or promoting foreign investments in the respective countries. The EU followed the same pattern as Directive 2017/1852 (see paragraph eight below).

Tax disputes that might emerge in this case are usually excluded from the jurisdictions of these bodies, and when justice is served, this occurs in the form of arbitration or via an equivalent body (Dourado and Pistone 2014; Kollmann et al. 2015).

Therefore, the conclusion is that international jurisdiction is impossible to conceive in the current historical moment, and any solution aimed at addressing possible controversies that might arise from the application of international tax treaties has to be found consistently with second-best scenarios, following the solutions adopted so far in other areas of the law or by relying on national judicial bodies.

2. The Possible Remedies to International Tax Controversies

Ever since the inception of a World Tax Order in the League of Nations (League of Nations 1946), controversies between states have been considered, together with the necessity of adopting ways and means to address them adequately (Carroll 1939; Coates 1924; Jogarajan 2018). This has been evident from the preliminary works and academic writings on the field, as states were encouraged to pursue a collaborative approach to decision-making processes and conflict mitigations, including mutual agreement procedures and instruments based on consensus.

When the OECD took over the effort of the League of Nations (Avery Jones 2006; Jogarajan 2020), right after the Second World War, ever-increasing attention was dedicated to procedural aspects of the law, adjudication processes, and problem-solving methodology. The OECD Model Convention and the Commentary have been adapted to provide more references to best practices regarding the controversies between states, tax administrations, and possibly taxpayers (Avery Jones 1980). Most of these remedies include the possibility to initiate collaboration protocols between states or, in the best situations (that is, where reciprocal trust between the countries of the case was high due to the historical situation), arbitration bodies (Schelpe 1995).

In all these circumstances and in accordance with the public international law principles, states, not taxpayers, were considered parties to the litigation.

The OECD discarded no option in this respect, as all the possible instruments to solve controversies were considered and proposed, consistently with the second-best approach suggested above. These included unilateral measures, bilateral consensus-based agreements, and arbitration panels with or without the power to adjudicate which state may eventually tax. All the possible instruments conceived were coherent with the fundamental

[1] The author also observes that: "*It is the masterpiece of legislation to know where to properly place the judiciary power. But it could not be in worse hands than in those of the person to whom the executive power had already been committed*".

principles of international public law. Amongst these, the most relevant is that only states (and not individuals) are parties to a possible controversy.

States and not individuals are members of the international community (Lauterpacht 2011). This is true in almost all the fields of law, and taxation is no exception to this, with the only exclusion of the Human Rights doctrine (Donnelly 2013). Taxation, part of a *domain reservée* of the state's prerogative, exacerbates the necessity to have only countries, not taxpayers, in the decision hall to find a possible solution to tax treaty application. Therefore, it makes perfect sense to have state signatories of the agreement as parties to the possible procedure and in a position to negotiate a solution to the controversy.

In international public law, states act as proxies for the individuals involved, preserving their sovereign interests.

This is what is referred to as diplomatic protection, in the sense that a state acts in the international arena in the interest of one of its citizens since individuals are not considered to be members of the global community (only states are) (Amerasinghe 2008; Geck 1987). The diplomatic protection of the state, however, is only partial as the country operates in the interest of the individual. Still, it must consider other factors that might nudge the states to appease their counterparts or find a diplomatic solution that is only partially consistent with the law. For instance, a state might legitimately give up the protection of an individual if other (more important) interests come into play. In this scenario, politics and law are intertwined in an almost inextricable conclusion, and the decision-making processes by arbitration bodies might resent this situation.

The first conclusion that we can reach up to this point is that in settling disputes in front of bodies, panels, or just in the framework of mutual agreement protocols, taxpayers' intrinsic rights as recognised by the home jurisdiction are not protected as such, but only insofar they are coherent with the agenda of the state of the case (Calderón Carrero and Quintas Seara 2014; Czakert 2015; Runge 2002). This legal background, built as it is on intertwined interests and rights, makes the situation much more complicated as the dispute resolution mechanisms applicable to taxation are set to operate in a scenario where several positions must be considered simultaneously, and only a few of them could be (possibly) convergent.

In international tax controversies, the most frequent scenario is triangular: two states (source and residence) are involved, and a person (legal or natural) is exposed to double taxation. This occurs because the relevant tax treaty provisions applicable to the case could lead to divergent results in the two jurisdictions.

This could be the case of two countries (states A and B) which simultaneously consider an individual resident in their territory and tax him accordingly. It could also be the case, very frequently in practice, of asymmetric evaluation of the arm's length price of goods sold under Article 9 of the OECD Model Convention rule and the transfer pricing regulations as they are applicable (Schön 2013). Eventually, double taxation might also arise from a conflict qualification that could not be solved by the other instruments made available (Lang 2009). The three parties are not necessarily in two different positions, as the home state of the taxpayer exposed to double taxation has to consider several factors, and such a consideration might fall under the discretionary power of the state (Bingham 2011) (more to the point, of the tax administration of the state) and hence outside the rule of law as correctly said (as the latter meets a limit when political discretion comes into play, thus preventing a judicial review of the decisions taken (Eleftheriadis 2010: according to this author, the (rule of) law and sovereignty are mutually excluding concepts; Goldsworthy 1999).

The home state might consider the position of the domestic taxpayer as deserving protection and, therefore, initiate the procedures applicable under the Treaty to the case (on which infra) or believe other prevailing interests might not make this decision the best in the country's interests.

Eventually, even if the first option is chosen, the strategy pursued by the states, the discussion with the counterpart, and the alternative offered might not mirror the taxpayer's

requests. Should a deal be found with reciprocal concessions between the two states, the taxpayer could not have his position formally considered.

Therefore, the conclusion is that taxpayers' rights are downgraded in international tax law to legitimate expectations when dispute settlement procedures are considered (Henckels 2020). No rule of law principle is directly applicable in this respect (unless otherwise specified by the national jurisdiction of the case) as the negotiating tax administration on behalf of the government falls outside such a check in this scenario.

Most certainly, this is not a lack of protection in the formal sense of the word, as, assuming that both states are built on the rule of law principle, the taxpayer might try to find a remedy in the respective tax jurisdictions.

Two arguments collide with this formalistic observation.

The first is that once such an agreement is reached (before the court of the case decides the case), it influences the decision-making process of the tribunal, and the justices have to consider it as part of the law to be used to settle the case (according to Article 25, § 2 OECD Model Convention, states are committed to implementing the agreement reached by the two states).

Secondly, it is essential to remember that the agreement procedure is mentioned in the text of the Treaty as a possible source of the law to settle litigation and, more than that, to fill the possible loopholes (interpretive or not) of the text of the Treaty as the OECD Model inspires it. The point is that if such an agreement should be reached without the (implicit or explicit) consensus of the taxpayer, then the individual rights of the latter would be compressed, and the domestic judiciary in the possible sentencing of the case would be forced to consider the content of such an agreement in the decision-making process.

The OECD Model provides several procedures, commonly called "Dispute settlement," depending on the scenario. Some are ex post (the most frequent), while others are ex ante.

In this second situation, nothing would prevent a tax administration from addressing with the Treaty counterpart possible issues as they might potentially emerge in the future, and with no necessity for such a protocol to be initiated by a specific request of a taxpayer (as under Article 25 of the OECD Model Convention). This would make perfect sense because the intervention of the tax administration is supposed to preserve a national (public) interest, not only the taxpayer's interest. If this is the scenario, then it could be possible for the two tax administrations of the respective countries to shape the content of the Treaty in the way they find more pertinent to the specific interest without the necessity of an actual dispute to be pending and with a limited control (of either nature) of the exercise of discretionary power in this interpretive phase.

The recent changes to Article 4, § 3 of the OECD Model Convention exemplify this approach.

The OECD insisted on granting a more significant leeway to the states' tax administrations in deciding where a legal person's residence is (Gerlach and Niemeyer 2018). In making this decision (arguably during a negotiation), tax administrations could operate without a pending case and introduce clarifications and further details without checking their positions or strategy. Eventually, ex post, a taxpayer might find himself bound to these conclusions and, most importantly, the national judiciary, too, as such agreements are indirect sources of law in the framework of the Treaty for such cases.

The agreement procedure qualifies for a complex and multi-faceted nature: sometimes it operates ex post and settles a specific controversy, and others are to fill in possible loopholes of the tax treaties in particular provisions. Taxpayers play a limited role in all of them, remaining in the shadow of the state's tax administration. In most of them, the judiciary is set aside, too, as in applying the tax treaty, and more than that, in determining its content daily, state authority and political power play a central role (Avery Jones 1980).

3. The OECD and the Mutual Agreement Provisions

Disputations arising from applying tax treaties are resolved by different means and at various times as they emerge. They range from mutual agreement (thus consensus-

based) to others resembling a quasi-judiciary scenario, with an impartial body requesting adjudication or adjudicating the controversy.

Article 25, OECD Model Convention, addresses the first kind of remedies: It has been changed to reflect the findings reached in the framework of the BEPS project in 2017. Before that, modifications were also added in the 2014 version of the Model, and the UN has an applicable measure like the one suggested by the OECD (Lang et al. 2015).

The OECD Model introduces the mutual agreement procedure, which is mirrored in most of the treaties currently in force. However, only a few comply with the latest version, ratione temporis, as its introduction in the Model Convention has no retroactive effect on the existing treaties. Essentially, the provision rules that if a person (legal or natural) allegedly suffers from international double taxation (in the source state and the residence one), he can report the situation to the competent authorities of the state which he is resident in (or a national of, should a breach of the principles in Article 24, § 1 OECD Model comes into play) or of the other state, and ask for the situation to be sorted out. It is essential to observe that such a request might be raised in relation to both states engaged in the possible controversy.

According to the law (Article 24), this possibility is granted irrespective of the national jurisdictional remedies, which are, in any case, made available to the taxpayer. In many respects, the article of the case seems to operate in a parallel way, granting an additional instrument to the person allegedly suffering from double taxation, which might play a role where the decision of the judiciary is not enough, where it was unsatisfactory or where the Treaty itself necessitates the intervention of such a joint initiative (this would be the case of the new version of Article 4, where the residence of a company is decided via an agreement procedure by the different tax administrations). The only limitation due to the time limits set by the OECD is the three-year deadline from when "*the action resulting in taxation*" has been notified to the taxpayer.

Irrespective of such a nature, the possibility for a tax administration to intervene and negotiate with the counterpart in the controversy might meet practical limits due to the judiciary's previous decision. In some states, for instance, the res judicata in a specific controversy would prevent the tax administration from renegotiating it, possibly changing the outcome. Still, some limitations might be found in EU law (van Dam and van Eijsden 2010). Should the audit determining double taxation in a potential breach of the Treaty be confirmed by a judge with a sentence, and if this decision would become res judicata, it would be impossible for the tax administration to override such a decision of the court and renegotiate the outcome of the controversy, even if such a change would be made possible via negotiation with the counterpart (consistently with Article 25 of the OECD Model Convention). Essentially, several legal systems (most of the continental ones) suffer from this constraint, as the administration would only be allowed to respect a specific decision of the court.

A preemption mechanism could come into play, frustrating any possibility of reaching a consensual agreement in the framework of the OECD-inspired measure.

Should the tax administration of the source state (or the residence, or both) be unable to solve the problem unilaterally, then they might initiate a bilateral contact to address the situation together and consistently with the overarching principles of fairness and good faith (Article 25, § 2 of the 2014 version of the Model Convention).

4. The OECD Procedure and Its Duration

Article 25 of the OECD Model Convention does not provide a specific framework or method for such a collaboration. The model stresses only a few points: the principle inspiring the action of the parties involved, the time limits for such an action, and the means to be used (together with the scope of the contract).

The OECD Model observes that a specific taxpayer request does not necessarily initiate the mutual agreement procedure (see § 14 of the Commentary on page 434). Although this is the most likely scenario, any tax administration (or the body appointed for this purpose)

would be in the position to initiate a MAP (mutual agreement procedure) to anticipate a possible reason for conflict or to clarify ex ante and not during litigation, the potential meaning of words used in the Treaty, whose understanding has been changed in time or is not as straightforward as the parties thought it to be when the text was drafted. A preemptive, non-necessarily conflictual, mutual agreement procedure is made possible according to Article 25, or at least it is not incompatible with it. Should a mutual consensus be reached in the framework of this procedure, the final joint decision would become a guideline for interpreting the Treaty, possibly completing it where such a possibility is granted to the parties.

As to the time limits, the Model allows no constraints in this respect; thus, a MAP (mutual agreement procedure) would possibly be open for a considerable amount of time, virtually forever, if such a scenario would not be against the bona fides principle (Kolb 2017, in particular at page 195). Such a decision is consistent with the policy aimed at pursuing an agreement wherever and whenever possible in the interest of the tax administration involved in the case. Timeframes can play an adverse role in the decision-making processes and might be influenced negatively by the national legislation as they are applicable. Providing no limits allows the tax office to set its agenda most conveniently.

Such a policy, however, is to the detriment of the expectations of the taxpayer who brought the situation to the attention of the tax administration. Principles of the due procedure of law, as they are typically understood and enforced in most jurisdictions and in Europe (Greggi 2009; Voje 2020), demand a timely decision to be delivered by the administration of the case, including the tax administration. In recent times, various courts in the world have upheld the principle of the reasonable duration of a procedure (it has been extended to the investigative phase before the trial by the European Court on Human Rights in *Petrella* (24340/07) decided on 18 March 2021), and of a good tax administration (Bousta 2013). This entails several consequences: among other things, the necessity of the (tax) administration to operate within a specific time frame limit, as otherwise, any outcome of the procedure would be of no use to the individual. This approach would confirm the reasonable duration of the process, a common acquis of several states and part of the rule of law principle (Wolf 2003).

The decision by the OECD to set no specific time limits to the MAP was made under the text of Article 25. Such a lack of time limitation differs from the taxpayer's interests, who, on the contrary, needs a fast and reliable decision. On the contrary, if we take a different position, this decision to set no time limits is perfectly consistent: this would be the case where Article 25 is intended to protect the interest of the state (as the priority) and only after this goal has been achieved, the interest of the taxpayer.

5. The *Good Faith* Principle and Its Application in the Mutual Agreement Procedure

In the previous paragraphs, it was noted that divergent interests lie behind a MAP. Such interests cannot be easily grouped into two opposing sides, and the position of a state does not necessarily coincide with the interest of the (residing) taxpayer who raised the case. The duration of the procedure is other evidence of such a scenario, confirming the idea that MAPs are effective. Still, their primary goal is to aid the states rather than (directly) the individuals, and these latter are safeguarded only insofar as this outcome is aligned with the agenda of the pertinent state.

These preliminary findings should lead to a balanced understanding of the provisions. Regardless, all the parties involved in the possible controversy should operate consistently with the bona fides (good faith) approach.

Making sense of the bona fides principle and providing a basic understanding of the concept would be a task going far beyond the constraints of this study, as it would entail the necessity to investigate how the idea was introduced in national systems from Roman law (at least, in the West) and how it changed in the several disciplines that the law is divided into (Avi-Yonah 2004; Meyer 1994; Mousourakis 2015; Schermaier and Dedek 2012).

For this analysis, it is essential to remember that the bona fides concept is generally understood from a subjective or objective perspective. According to the first one, an individual is in good faith when he is convinced that his behaviour is not hurting anybody else in violation of the law (naeminem ledere); in the second case, good faith is deemed to exist when the behaviour of an individual is consistent with the state-of-the-art protocol or standard rules of conduct that must be kept in specific circumstances. In international taxation, good faith refers to standard behaviours and, thus, is usually intended in the word's objective meaning.

6. The Arbitration Clause and BEPS Action 14

Since its 2008 release, the OECD Model has provided for an arbitration clause in Article 25, § 5. It has been introduced to cut the Gordian knot that sometimes emerges as the different tax administrations struggle to find a solution to controversies where visions, perspectives, and interests are too divergent (Falcão 2017; Majdańska and Turcan 2018; Pit 2014).

In such cases, the taxpayer can upgrade the pending MAP to arbitration, thus stressing the conflictual aspects of the interaction between the two tax administrations. The Treaty considers this option an individual right that may be exercised consistently with specific formal conditions (the request must be written) and in a precise timeframe (two years since the MAP has been initiated). Eventually, an external condition must also be met: no jurisdictional authority of either state has already ruled on the specific matter.

The Model Convention does not provide for specific conditions to be met or for the arbitration body to operate. These are left to the states to decide in the Treaty when negotiated or in subsequent decisions according to the MAP set in paragraphs 2–4 of Article 25, OECD Model Convention.

The provisions, introduced in 2008, open the floor to further considerations as to the legal position of the taxpayer in the arbitration, according to the OECD perspective, and to the principles of international public law that seem to inspire the legislative decision taken by the organisation of Paris. The OECD has agreed with the common understanding of international law concerning the adjudicatory jurisdiction and the parties that can stand in front of such a panel.

First, although the arbitration needs a formal request by the individual to begin (Article 25, §5 OECD Model Convention), it is operated by the states as these latter only are part of it. The two countries might stand in front of a panel (or the body requested to decide on the case) via their tax administrations or a branch of these. The taxpayer exposed to double taxation has no vested interest in this respect, nor can he file an appeal with the case body.

Although this approach is in line with a long-standing tradition, it is left to the interpreter to decide whether it is still consistent with the rule of law and due process of law clauses as they are typically understood these days, at least in Europe (EU Commission Communication COM (2020) 580 *Final*, issued on 30 September 2020 on the rule of law situation in Europe). A more modern understanding of the taxpayers' rights and the importance of his position would have suggested a more proactive role of the latter in front of the panel, mirroring in the arbitration the triangular situation discussed in the paragraphs above (at § 3).

Secondly, although this phase should be inspired by the bona fides approach (intended to cover both the relation between states and between them and the taxpayer of the case), nothing would prevent the parties from reaching an agreement or keeping a procedural position that would not be entirely consistent with the taxpayer's necessity, possibly violating his rights while pursuing a more comprehensive settlement between the two states.

An example might help the reader understand the cases in which a misalignment between the right of the (individual) taxpayer and the state's interest may diverge.

If we assume, for instance, that two countries have several litigations pending before them to be solved via a mutual agreement procedure to reach a satisfactory political result,

the states might try to achieve a solution where one of them surrenders this power to tax on half of the cases. The other does the same in regard to the other part (assuming that all the tax cases are equal in value).

In such a situation, which is satisfactory for the interest of the states as all the pending situations would be settled, a taxpayer of one state that has been traded to another country might lament a violation of his rights where such a surrender of his position by the home country derives, far from the application of the law, from a political evaluation of the overall scenario. In conclusion, at least regarding the developments in 2008, in the arbitration procedure, as set by the Treaty, individual rights are downgraded to legitimate expectations of the taxpayer, which finds forms of protection in the treaties and subsequent decisions only insofar (as long as) they are coincident with the position and the financial interests of one of the two states.

Even with this scenario, arbitration clauses, as inserted in Article 25 of the Treaty, have yet to succeed globally. Double taxation conventions still need to incorporate them, and fewer are the cases where the arbitration under this provision took place.

Due to the failure of the arbitration model proposed in 2008 (in terms of actual implementation) and its intrinsic constraints (as inserted in bilateral treaties, the possible application of the clauses was limited to the relations between the two states of the case) the OECD insisted on a renovation of the dispute settlement procedures in the framework of the BEPS project, under Action 14 (OECD, Report on Action 14: Making Dispute Resolution Mechanisms More Effective, 2016).

Ambitious as it was at the very beginning, the goal of the action would have been to inaugurate an era in which tax arbitration would have been made available to all the states joining the initiative. Were this masterplan enacted, the current scenario would witness an arbitration body working in a way not dissimilar to a court, as observed in paragraph I above.

Alas, only a limited number of states have committed themselves to this result. Thus, the core of the action was rolled back to the MAP solution, although enhanced and (hopefully) strengthened via a peer review process aimed at identifying the reasons for possible failure and implementing best practice mechanisms in the long run.

The 2015 Final Report on Action 14 also suggests further recommendations to stimulate spontaneous collaboration between tax administrations consistent with the bona fides principle.

7. The Relevance of the Multilateral Instrument (MLI)

The OECD probably argued that where the development of Action 14 failed (or, at least, did not meet the expected results), the MLI would score success, as the arbitration-based way to address international tax controversies has been proposed again in the framework of the innovative multilateral instrument as a part of another Action of the BEPS Project (Action 15).

The optimism was based on the consideration that the failure of the arbitration convention was due to its overall application to the states joining the project with little or no possibility of opting out. The MLI, on the contrary, is characterised by a more sophisticated mechanism of implementation, allowing states to adjust its application (in time and space), striking a balance between sovereign prerogatives in the field of taxation, and the necessity to grant taxpayers more efficient means to tackle international double taxation (Avery Jones 2019; Dourado 2019; Nias 2017).

The MLI provides two different kinds of arbitration procedures (Article 19). One is based on a ruling given by a panel of independent experts with higher integrity, which is the traditional way of dealing with arbitration: such a solution is always available at any stage of the litigation. The other is a (quite innovative) procedure according to which the two litigating parties are supposed to deliver their opinion, and the panel must choose between the two, with no possibility of providing a different judgment (Article 23, § 1, (a)). This second binary option would be introduced to soften the position of the

parties, bringing them to fair conclusions (no state would insist on an extreme position—for ideological grounds or as a matter of principle—as the panel would almost certainly choose the counterpart's—more reasonable—solution).

The arbitration procedure introduced by Part VI of the MLI is not immune to flaws. To reach a broader consensus amongst the countries engaged in the project, the OECD has made the MLI's application flexible and subject to many conditionalities that would make it hard to apply and harder to determine a positive effect. Veto powers have been maintained by the parties (the states) as to what concerns the procedure: both ex ante and ex post (in this latter situation, *it* is always possible for the parties involved to derogate to the conclusion of the panel if mutual consensus is reached on a different ground).

The taxpayers have veto power, too, should the final condition not address their necessities: this is quite a surprising possibility, as taxpayers have not been part of the litigation.

In conclusion, the MLI is, at best, an occasion lost to provide taxpayers of the different states with a more robust and efficient dispute resolution mechanism, capable of protecting their rights while ensuring obligations (that is, to pay taxes in the source state or the residence one). Denying any proactive role to the taxpayer (but the one to initiate the procedure and accept the outcome) makes the arbitration protocol unfit for the due process clause and unsatisfactory as to the necessity to address the needs of the taxpayer both under substantive and formal standpoints.

The substantive flaws derive from the fact that the taxpayer cannot be heard, deliver an opinion, or have the counsellor participate in the sessions where the panel debates the controversy (Voje 2020).

The procedural flaws are because the innovative way to address the litigation (the digital approach mentioned above, according to which the panel would be obliged to opt between one of the two solutions suggested) would result in trial strategies finalised to mitigate the state's request while infringing the taxpayer's aspirations.

In this scenario, the state would cease to act as a proxy of the taxpayer to support a different conclusion of the controversy that is more interesting for it rather than for the person involved.

8. Local Remedies: The Interplay between the OECD and the EU

Where the OECD has failed, that is, in granting an efficient and robust dispute resolution mechanism, other regional solutions, limited in their application, have proven more effective. This is the case of the European Union and its long-standing experience in dispute-settling mechanisms (Moramarco and Orlandoni 2020; Perrou 2019; Voje 2018).

The EU has no specific jurisdiction on direct taxation, as the Treaty on the Functioning of the European Union grants the possibility to intervene extensively only on Customs (The Council shall fix Article 31 "Common Customs Tariff duties on a proposal from the Commission"), VAT, and qualified Excises (Article 113 "*The Council shall, acting unanimously by a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition*"). Yet the proper, non-distortive application of taxes in several European countries is essential for the common market to operate and for the European project to proceed via an ever-increasing approximation of the different jurisdictions. This has made it possible in the past for the Union to intervene, although in limited, selective areas, in direct taxation too (Lang et al. 2020).

Tax dispute resolution has been one of these areas, as improper, asymmetric management of such a situation would jeopardise the common market and make cross-border (but intra-EU) investments more uncertain and expensive for a business embarking on such an enterprise. The European Commission successfully intervened in the nineties, promoting a multilateral convention to introduce an arbitration procedure in the transfer pricing adjustment between states (Hinnekens 2010). The form of a treaty (rather than a

directive) was chosen to be more compliant with the limits set above for the intervention of the Commission.

The Brussels Convention 1990/436/EC was the first comprehensive legal instrument in which an arbitration protocol was introduced (besides the more traditional mutual agreement procedure) to fix one of the most severe consequences that transfer pricing had: the intrinsic asymmetry in price determination. The typical scenario experienced during a transfer pricing audit is often quadrangular, involving at least two jurisdictions and two taxpayers. These include the two companies involved in the transaction (to whom the arm's length rule is applied) and the states that they reside in (Luckhaupt et al. 2012). Alas, the Convention entered into force years after (in 1995) and was applied in a minimal number of situations.

The failure to grant an efficient legal instrument, together with the understanding that dispute settlement was becoming a key area in protecting an efficient common market, brought the European Commission, years later, to take once more the initiative in the matter. Such a revamp of interest was also made possible because of the ongoing policy activity by the OECD and the success of the BEPS project in terms of awareness of the situation and the need for new means to address tax disputes in an international scenario.

The 2017/1852 Arbitration directive was eventually adopted in 2017; it is now binding on the 27 member states. This measure is different (as compared with the previous 1990 convention) in form and substance. However, it mirrors the principles and values that the OECD insisted on in the latest policy recommendations and reports, as well as in the framework of the BEPS initiative and its aftermath (Kokott 2020).

The 2017 innovation was introduced via a directive, a legal instrument binding on the member states of the European Union, which are supposed to act consistently with it and enact domestic legislation mirroring the principles enshrined in such provision. More than that, any possible misalignments with domestic law or interpretation may be judged by the Court of Justice of the European Union, which would also be called to apply the law of the Treaty and the common constitutional principles of the European states (including arguably the due process clause; see § 5).

As to the substance, the scope of the directive has been dramatically extended compared to the 1990 international agreement (intended to be applied to transfer pricing issues only). Now, it covers all the possible situations arising from the application of double taxation conventions and on the taxation of capital, virtually leaving no area unprotected in this respect (with the only significant exclusion of international inheritance taxation, on which no outstanding achievements have been scored so far in terms of harmonisation or tax policy regulation).

Eventually, the possibility of conceiving an alternative dispute resolution mechanism (ADR) in such a field is another significant innovation that the EU introduced, making the most of the more limited territorial scope that it is working on. In this case, the taxpayer's role is not at the procedure's core as it would be; thus, in many ways, such a directive is only partially consistent with the due process clause, just like the OECD-inspired procedure.

The Arbitration directive is one of the most remarkable achievements that the EU has made recently regarding dispute resolution protocols within the old continent. Suppose that it must be evaluated from an OECD standpoint. In that case, the result is remarkable as it grants the highest (indirect) level of protection to taxpayers conceived in multi-national scenarios worldwide. No other area of the globe has an equivalent instrument made available with a comparable binding force to reach this result. The OECD and its priorities have profoundly influenced the EU.

Yet, if we are to judge this outcome from the point of view of the European stakeholders, we would argue that an intervention aimed at extending the application of a national court decision to other states would have been more consistent and coherent with the making of the European Union. This strategy would have been more in line with the understanding of the judiciary as a European body, too, as national judges are already requested to decide

on cases considering the European law (and in doing so, they become, in many respects, European judges).

Compulsory arbitration and ADR are outstanding achievements for the OECD and the international community, but the EU would demand more incisive instruments, such as a joint judiciary or—at least—a system of mutual recognition of sentences in the field of tax law, as is already in force in many other areas of the law (Bantekas 2007; Janssens 2013; Klimek 2017) and, more recently in criminal prosecution (Peers 2013).

9. Concluding Remarks

Just like the ancient Roman god, Janus, the OECD dispute resolution mechanism has two faces or, at least, can be judged from two separate perspectives: the State's and the taxpayers'.

According to the first one, the relentless activity of the OECD has led to unprecedented results in terms of policy goals and awareness of the problem. Although states confirm their jealousy concerning the adjudication powers and the willingness to surrender their sovereignty to supranational panels, bodies, or whatever only in qualified circumstances, it is evident that the necessity to prevent double taxation or the asymmetric interpretation of concepts in applying tax treaties is receiving traction.

Mutual agreement, a non-necessarily conflictual approach, prevails as to the method (Gröper 2020). This conclusion is coherent with the holistic and inclusive approach that the OECD has systematically pursued during and after the BEPS project. The willingness to engage the most significant number of countries has inevitably diluted the most important (but divisive) positions (such as the compulsory nature of the arbitration).

Yet, from the taxpayers' perspective, the achievements regarding the method pursued and the lack of consideration for their role in the procedure are far from acceptable.

In this respect, the international community needs a Copernican revolution: a paradigm change is required. The taxpayer, his rights (and his obligations) are to be the system's centre, around which all the other players (including states) are supposed to rotate, just like in Copernicus' vision. This would include the possibility for the taxpayer to be heard, to litigate, to deliver opinions, and to discuss the case in front of the panel or the body appointed for the decision. In this respect, a natural court rather than an *ad hoc* body or panel would ensure higher protection and impartiality. More than that, it would be consistent with the due process clause (art. 6 ECHR), a human right.

Therefore, the agenda for the years ahead is to make the rule of law work in dispute settlement as it has never been before, bearing in mind that the "Rule of Law" is a principle that tolerates no derogation: states and the OECD should not aim for anything less (Shetreet 2015).

To achieve this goal, states should reconsider the role of the United Nations in international tax policymaking. Very recently, the UN Assembly has advocated a more critical role in the decision to be taken on double taxation treaties and the struggle against international tax avoidance (A/C.2/78/L.18/Rev.1. The proposal was approved on 22 November 2023 by the General Assembly, 25th Meeting).

Coherently, the UN should advocate a more critical role by the ICJ, whose standard of impartiality and commitment to the rule of law is beyond any doubt, particularly in an area of tax law, which would be far less sensitive than others from a political point of view (Kolb 2014).

Empowering the ICJ to decide on international tax matters would not grant rebus sic stantibus, a more proactive role by the (individual) taxpayer in the process. Still, it would nonetheless grant a more effective protection of individual rights. The taxpayer's hearing might also be introduced to protect individual rights in the long run. This thesis has already been tabled by prominent academics (Couvreur 2016).

In the last century, international taxation was conceived as a discipline to regulate the relations between the states in attributing their power to tax. In this century, academics

and stakeholders should make taxation taxpayer-oriented by putting the individual and his rights under the spotlight.

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References

Amerasinghe, Chittharanjan F. 2008. *Diplomatic Protection*. Oxford: Oxford University Press.
Avery Jones, John F. 1980. The Legal Nature of the Mutual Agreement Procedure under the OECD Model Convention. *British Tax Review* 25: 13.
Avery Jones, John F. 2006. The Origins of Concepts and Expressions Used in the OECD Model and their Adoption by States. *Bulletin for International Taxation* 60: 220.
Avery Jones, John F. 2019. Types of Arbitration Procedure. *Intertax* 47: 674.
Avi-Yonah, Reuven S. 2004. *International Tax as International Law*. Ann Arbor: University of Michigan.
Avi-Yonah, Reuven S. 2007. *International Tax as International Law: An Analysis of the International Tax Regime*. Cambridge: Cambridge University Press.
Baker, Philip. 2015. Some Recent Decisions of the European Court of Human Rights on Tax Matters. *European Taxation* 55: 107–10.
Bantekas, Ilias. 2007. The Principle of Mutual Recognition in EU Criminal Law. *European Law Review* 32: 365.
Baron de Montesquieu, Charles de Secondat. 2005. *The Spirit of Laws*. Clark: Lawbook Exchange.
Bello, Judith H. 1996. The WTO Dispute Settlement Understanding: Less is More. *The American Journal of International Law* 90: 416.
Bentley, Philip. 2000. Challenging Fiscal Subsidies under WTO Law: The Example of the US Foreign Sales Corporation. *EC Tax Journal* 4: 81.
Bingham, Tom. 2011. *The Rule of Law*. London: Penguin Books Limited.
Bousta, Rhita. 2013. Who Said There is a 'Right to Good Administration'? A Critical Analysis of Article 41 of the Charter of Fundamental Rights of the European Union. *European Public Law* 19: 481.
Brownlie, Ian. 1990. *Principles of Public International Law*, 4th ed. New York: Oxford University Press, p. 748.
Calderón Carrero, José M., and Alberto Quintas Seara. 2014. The taxpayer's Right of Defence in Cross-border Exchange of Information Procedures. *Bulletin for International Taxation* 68: 498.
Cameron, James, and Kevin R. Gray. 2001. Principles of International Law in the WTO Dispute Settlement Body. *The International and Comparative Law Quarterly* 50: 248. [CrossRef]
Carroll, Mitchell B. 1939. *Prevention of International Double Taxation and Fiscal Evasion: Two Decades of Progress Under the League of Nations*. Geneva: League of Nations.
Coates, William H. 1924. League of Nations Report on Double Taxation Submitted to the Financial Committee by Professors Bruins, Einaudi, Seligman, and Sir Josiah Stamp. *Journal of the Royal Statistical Society* 87: 99–102. [CrossRef]
Corstens, Geert, and Annette Mills. 2017. *Understanding the Rule of Law*. London: Bloomsbury Publishing.
Couvreur, Philippe. 2016. *The International Court of Justice and the Effectiveness of International Law*. Leiden: Brill.
Czakert, Ernst. 2015. Practical Protection of Taxpayers in the Exchange of Information Process. *Internationales Steuerrecht* 24: 590.
Davey, William J. 2009. Compliance problems in WTO dispute settlement. *Cornell International Law Journal* 42: 119.
Donnelly, Jack. 2013. *Universal Human Rights in Theory and Practice*. Ithaca: Cornell University Press.
Dourado, Ana P. 2019. Post-BEPS International Tax Arbitration. *Intertax* 47: 671. [CrossRef]
Dourado, Ana P., and Pasquale Pistone. 2014. Some Critical Thoughts on the Introduction of Arbitration in Tax Treaties. *Intertax* 42: 158. [CrossRef]
Draghi, Mario. 2019. *Sovereignty in a Globalised World. Presented at the Honoris Causa Graduation Ceremony*. Bologna: European Central Bank. Available online: https://www.ecb.europa.eu/press/key/date/2019/html/ecb.sp190222~fc5501c1b1.en.html (accessed on 1 March 2024).
Eleftheriadis, Pavlos. 2010. Law And Sovereignty. *Law and Philosophy* 29: 535. [CrossRef]
Falcão, Tatiana. 2017. Granting Juridical Autonomy to Article 25(5) of the Tax Treaty Model. *British Tax Review* 62: 453.
Ford, Richard T. 1999. Law's Territory (A History of Jurisdiction). *Michigan Law Review* 97: 843. [CrossRef]
Frändberg, Åke. 2014. *From Rechtsstaat to Universal Law-State: An Essay in Philosophical Jurisprudence*. Berlin and Heidelberg: Springer International Publishing.

Geck, Wilhem K. 1987. Diplomatic protection. In *Encyclopedia of Disputes Installment 10*. Amsterdam: Elsevier, pp. 99–121.
Gerlach, Cosima, and Nicola Niemeyer. 2018. The New Tie-breaker-rule for Companies according to BEPS Action Point 6: A (too) Radical Change? *Intertax* 46: 753.
Goldsworthy, Jeffrey. 1999. *The Sovereignty of Parliament: History and Philosophy*. Oxford: Oxford University Press UK.
Greggi, Marco. 2007. The Protection of Human Rights and the Right to a Fair Tax Trial in the Light of the Jussila Case. *Intertax* 35: 610–15. [CrossRef]
Greggi, Marco. 2009. *Il Giusto Procedimento nel Diritto Tributario Europeo*. Roma: Aracne.
Gröper, Juliane. 2020. *The Mutual Agreement Procedure in International Taxation: The Need for Procedural and Administrative Rules*. München: Utzverlag.
Henckels, Caroline. 2020. Legitimate expectations and the rule of law in international investment law. In *Investment Protection Standards and the Rule of Law*. Monash University Faculty of Law Legal Studies Research Paper, 3409086. Oxford: Oxford University Press, forthcoming.
Herdin-Winter, Judith, and Ines Hofbauer, eds. 2006. *The Relevance of WTO Law for Tax Matters*. Wien: Linde.
Hinnekens, Luc. 2010. European Arbitration Convention: Thoughts on its Principles, Procedures and First Experience. *EC Tax Review* 19: 109. [CrossRef]
Hinsley, Francis H. 1986. *Sovereignty*. Cambridge: Cambridge University Press.
Janssens, Christine. 2013. *The Principle of Mutual Recognition in EU Law*. Oxford: Oxford University Press.
Jogarajan, Sunita. 2018. *Double Taxation and the League of Nations*. Cambridge: Cambridge University Press.
Jogarajan, Sunita. 2020. The 100th Anniversary of International Institutions and International Taxation. *Intertax* 48: 929. [CrossRef]
Klimek, Libor. 2017. *Mutual Recognition of Judicial Decisions in European Criminal Law*. Cham: Springer.
Kokott, Juliane. 2020. Taxpayers' Rights. *European Taxation* 60: 3. [CrossRef]
Kolb, Robert. 2014. *The International Court of Justice*. London: Bloomsbury Publishing.
Kolb, Robert. 2017. *Good Faith in International Law*. London: Bloomsbury Publishing.
Kollmann, Jqsmin, Petra Koch, Alicja Majdanska, and Laura Turcan. 2015. Arbitration in International Tax Matters. *Tax Notes International* 77: 1189.
Krasner, Stephen D. 2007. Sovereignty. In *The Blackwell Encyclopedia of Sociology*. Edited by G. Ritzer. Oxford: John Wiley & Sons, Ltd., vol. 41, p. 20.
Lang, Michael. 2009. Conflicts of qualification and double non-taxation. *Bulletin for International Taxation* 63: 204–7. [CrossRef]
Lang, Michael, Pasquale Pistone, Alexander Rust, Josef Schuch, Claus Staringer, and Alfred Storck, eds. 2015. *The OECD-Model-Convention and Its Update 2014*. Wien: Linde.
Lang, Michael, Pasquale Pistone, Josef Schuch, Claus Staringer, Alexander Rust, Georg Kofler, and Karoline Spies, eds. 2020. *Introduction to European Tax Law on Direct Taxation*. London: Linde.
Lauterpacht, Hersch. 2011. *The Function of Law in the International Community*. Oxford: Oxford University Press.
League of Nations. 1946. *Report on the Work of the Tenth Session of the Fiscal Committee*. London: League of Nations Fiscal Committee, p. 15.
Luckhaupt, Hagen, Michael Overesch, and Ulirch Schreiber. 2012. The OECD Approach to Transfer Pricing: A Critical Assessment and Proposal. In *Fundamentals of International Transfer Pricing in Law and Economics*. Edited by Wolfgang Schön and Kai A. Konrad. MPI Studies in Tax Law and Public Finance. Berlin and Heidelberg: Springer, vol. 1. [CrossRef]
Majdańska, Alicja, and Laura Turcan, eds. 2018. *OECD Arbitration in Tax Treaty Law*. Wien: Linde.
McDaniel, Paul R. 2004. Trade agreements and income taxation: Interactions, conflicts, and resolutions. *Tax Law Review* 57: 275.
Merryman, John H., and Rogerio Pérez-Perdomo. 2007. *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. London: Stanford University Press.
Meyer, Rudolf. 1994. *Bona Fides und Lex Mercatoria in der Europäischen Rechtstradition*. Göttingen: Wallstein Verlag.
Michaels, Ralf. 2005. Two Paradigms of Jurisdiction. *Michigan Journal of International Law* 27: 1003.
Micheau, Claire. 2007. WTO law and tax subsidies: Towards establishing jurisprudential standards. *Bulletin for International Taxation* 61: 550.
Moramarco, Giuseppe, and Ottavia Orlandoni. 2020. Law implementing the EU Tax Dispute Resolution Directive (2017/1852). *European Taxation* 60: 499.
Mousourakis, George. 2015. *Roman Law and the Origins of the Civil Law Tradition*. Cham: Springer.
Nias, Peter M. W. 2017. International Tax Dispute Resolution—The MLI Conundrum. *International Tax Review* 28: 62.
Palmeter, David, and Petros C. Mavroidis. 1998. The WTO Legal System: Sources of Law. *The American Journal of International Law* 92: 398. [CrossRef]
Peers, Steve. 2013. The European Arrest Warrant: The Dilemmas of Mutual Recognition, Human Rights and EU Citizenship. In *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-Law—La Cour de Justice et la Construction de l'Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence*. The Hague: Springer, p. 523.
Perrou, Katerina. 2019. Taxpayer Rights and Taxpayer Participation in Procedures under the Dispute Resolution Directive. *Intertax* 47: 715. [CrossRef]
Pit, Martin H. 2014. Arbitration under the OECD Model Convention: Follow-up under Double Tax Conventions: An Evaluation. *Intertax* 42: 445. [CrossRef]

Qureshi, Asif H. 1987. The Freedom of a State to Legislate in Fiscal Matters under General International Law. *Bulletin for International Fiscal Documentation* 41: 16.

Runge, Berndt R. 2002. Mutual agreement procedures and the role of the taxpayer. *International Transfer Pricing Journal* 9: 16.

Ryngaert, Cedric. 2015. *Jurisdiction in International Law*. Oxford: Oxford University Press.

Schelpe, Dirk. 1995. The Arbitration Convention: Its Origin, its Opportunities and its Weaknesses. *EC Tax Review* 4: 68. [CrossRef]

Schermaier, Martin J., and Helge Dedek. 2012. Bona fides. In *The Encyclopedia of Ancient History*. Hoboken: John Wiley & Sons, Inc.

Schön, Wolfgang. 2013. Transfer pricing, the arm's length standard and European Union law. In *Allocating taxing powers within the European Union*. Berlin and Heidelberg: Springer, pp. 73–99.

Shetreet, Shimon, ed. 2015. *The Culture of Judicial Independence: Rule of Law and World Peace*. Leiden: Brill.

van Dam, Janco J., and Arjo J. R. van Eijsden. 2010. Possibilities and Impossibilities for challenging Final Tax Assessments and Decisions in Tax Cases that contravene EC Law. *EC Tax Review* 19: 247.

van der Bruggen, Edwin. 2001. Compulsory Jurisdiction of the International Court of Justice in Tax Cases: Do We Already Have an 'International Tax Court'? *Intertax* 29: 250. [CrossRef]

Voje, Jasna. 2018. EU Tax Dispute Resolution Directive (2017/1852): Paving the Path toward a European Tax Court? *European Taxation* 58: 309. [CrossRef]

Voje, Jasna. 2020. The Limits to the Participation of the Taxpayer in Tax Dispute Resolution Procedure under the Dispute Resolution Directive. *Intertax* 48: 157. [CrossRef]

Wang, Guiguo. 2014. *Judicial Independence in the Context of International Investment Law*. Leiden: Brill.

Wolf, Sonja. 2003. Scrutiny: Trial Within a Reasonable Time: The Recent Reforms of the Italian Justice System in Response to the Conflict with Article 6(1) of the ECHR. *European Public Law* 9: 189. [CrossRef]

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