



## Are we ready to deal with the tsunami of upcoming tax disputes? The role of the ITIC

by

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### Avoiding and Resolving Tax Disputes

The statement by Jean Baptiste Colbert, French Economist and Minister of Finance under King XIV of France that “The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing,” is very relevant to the issue of avoiding and solving disputes. I think that we would all like to keep the level of hissing to a minimum, but the tension between taxman and taxpayer is as old as taxation. That does not mean that we have to resign ourselves to the fact that disputes are an inevitable consequence of taxation. Both the taxman and the goose can benefit from a better relationship and enhanced rules of engagement

### The Current BEPS Environment

Countries are clearly thinking about how to better manage disputes, both between taxpayers and tax authorities; and in a cross-border context where two or more jurisdictions are trying to pluck the same goose. A range of strategies and mechanisms have emerging that aim to avoid disputes occurring in the first place and, if the dispute does escalate, to better resolve it in a fair, timely and efficient manner.

The OECD’s statistics on MAP cases has shown a marked increase in disputes over the last two years. Before we look at what could be done, or what is being done by some to address disputes, it is important that we understand why the risk of tax disputes, both domestically and internationally, has increased. What are the possible reasons?

- Is there increased pressure on tax administrations to raise revenue?
- Is the tax cost incurred by corporates coming under greater scrutiny by senior managers, shareholders and investment analysts, with the result that more aggressive positions are being taken to minimize that cost?
- Are advisors, corporate tax managers and revenue officials under greater pressure to justify their work measured by tax saved or tax assessed?
- Has globalization and improved telecommunications resulted in a more complex corporate structures that can take advantage of tax rate arbitrage?
- Has globalization resulted in increased related party cross border transfers that are difficult to price and prone to disputes?
- Are taxpayers and tax administration becoming more litigious?
- Do performance measurement standard of tax administrations encourage ambitious opening positions and deter settling those assessments before litigation?
- Has the move to low-rate broad-based tax systems resulted in more complex rules that are increasing open to dispute?

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- Is there increased awareness of contentious issues as a result of staff becoming better informed and more competent?
- Are countries anticipating outcomes from BEPS as more and more countries feel “BEPS” inspired?”
- Is it that the BRICS are increasingly assertive in claiming their tax rights?

Mechanisms have been adopted to address the problem of tax disputes, both through avoiding disputes in the first place and the way that we resolve them. Some innovative mechanisms have emerged that aim to avoid disputes including:

- Various initiatives to improve the relations or level of cooperation between the tax administrations and taxpayers, including providing opinions and/ or rulings on proposed transactions where greater disclosure is rewarded with greater certainty (cooperative compliance).
- Large business units that can competently offer targeted services to targeted groups of important taxpayers.
- The CAP type approach.
- Greater use of risk management.
- Objective review of cases before assessment or during the appeal process.

Initiatives have also emerged that aim to resolve disputes, including

- Independent review of disputes
- Use of mediation (UK small business and mediation pilot) and arbitration.
- Improved mutual agreement procedures and enhanced management of MAP cases.
- Use of mandatory arbitration whether in tax treaties or BIT.

Some of the questions that the group may wish to discuss are:

1. Why have tax disputes increased at the domestic and international level?
2. What mechanisms do we have to avoid conflicts occurring?
3. What mechanisms do we have to resolve tax disputes?
4. Is there a role for ITIC, in partnership with other institutions, to undertake a study on these issues?