

International arbitration and double taxation: all over the MAP

Cross-border tax disputes are on the rise...

2500

Approximate number of outstanding Mutual Agreement Procedure (MAP) cases at the end of the year. (OECD, 2015)

It can be difficult to resolve tax disputes amicably. Access to MAP is problematic; in some countries domestic law thresholds are imposed.

BEPS Action 14 (Making dispute resolution procedures more effective) lays down minimum standards for countries to adopt to make MAP more effective and accessible.

OECD MAP peer review process is already under way and is driving certain countries, such as China, to ensure that targets are met.

Arbitration: emerging from the shadows?

Arbitration is a potentially effective way to resolve tax disputes, but it is rarely used.

In that respect, change could be on the way. An optional treaty article on mandatory binding arbitration in the BEPS Action 15 Multilateral Instrument could make a difference.

27

Number of 27 countries likely to opt into mandatory binding arbitration.

Which arbitration method will be favoured:

BASEBALL
(last best offer)

REASONED
OPINION

Baseball forces parties to put forward a reasonable position, and has been used successfully in the US and Canada, but it is less familiar outside the US. There is some resistance from developing countries, owing to a lack of resources and experience, which affects their bargaining position.



The European Commission is also getting in on the act with its own, quite radical proposals on tax dispute resolution. These include a fast-track process for arbitration by an advisory commission. It could become much more common in treaty-based tax disputes, and no longer restricted to transfer pricing.