

The Ideal Model for Resolving International Tax Disputes; A Case Study of Iran's International Tax Agreements (Original Research)

Mohammadreza Zadehnajaf *

Nader Mirzadeh Koohshahi **

Mohammadreza Alipour ***

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Extended Abstract

Given the role of foreign investment in economic growth, various governments, particularly the capital-importing States, have always sought to establish an efficient tax system through different mechanisms. One of the main pillars of an efficient tax system is the existence of a dispute settlement system that aligns with international standards, specifically those set by the United Nations, the Organization for Economic Cooperation and Development (OECD), and the European Union. To resolve international tax disputes between taxpayers and governments, as well as avoiding double taxation, various methods such as consultations, negotiations, mediation, ombudsman services, Mutual Agreement Procedures (MAP), and international arbitration are considered. Among these mechanisms, the mutual agreement procedure and international tax arbitration play significant roles in resolving tax disputes.

Arbitration can generally be classified into institutional arbitration and *ad hoc* arbitration. Institutional arbitration is a type of arbitration where the parties to the dispute agree to use an existing arbitration institution to resolve their dispute. In contrast, *ad hoc* arbitration allows the parties to independently define the dispute resolution rules and procedures. Nowadays, many countries include an arbitration clause in their double tax avoidance

* PhD Student in Public Law, Faculty of Law, Theology and Political Science, Islamic Azad University Science and Research Branch, Tehran, Iran. zadehnajafm@gmail.com

** Assistant Professor, Faculty of Law and Political Science, University of Tehran, Tehran, Iran. mirzadeh@ut.ac.ir

*** Corresponding Author, Assistant Professor, Faculty of Law, Theology and Political Science, Islamic Azad University Science and Research Branch, Tehran, Iran. alipour@srbiau.ac.ir



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agreements, such as France, Germany, Switzerland, the UK, Japan, the United States, and others. It is important to note that tax arbitration is currently accepted as a supplementary method to the Mutual Agreement Procedure, but it remains unclear whether this process is intended for the medium term, or long-term. The United Nations and the OECD mention the Mutual Agreement Procedure and arbitration in Article 25 of their model tax treaties, and the European Union refers to them in Directive 2017/1852 concerning the resolution of tax disputes. Considering the aforementioned points and the important role of resolving tax disputes, a relevant question arises: what model can be considered ideal for Iran within the framework of international tax dispute settlement? It seems that the Mutual Agreement Procedure should be adopted as the primary method for resolving international tax disputes, with institutional arbitration as a mandatory supplementary method, given a pre-established framework. Therefore, this paper, with a descriptive-analytical approach and using documentary (library) research, aims to present an optimal model for resolving international tax disputes for Iran by examining the practices of the United Nations, the OECD, and the European Union. The findings of this research show that the main actors in the international tax system, in addition to offering the mutual agreement procedure as the primary method for resolving international tax disputes, have also used mandatory *ad hoc* arbitration as a complementary method. In Iran's tax system, the Mutual Agreement Procedure is used as the primary method for resolving international tax disputes. While mutual agreement procedures play a key role in resolving tax disputes arising from double tax treaties, they have proven insufficient in this regard. The reasons for the inadequacy of these procedures include: A) The lack of a binding requirement for the competent authorities to reach an agreement, which results in a lack of legal certainty for taxpayers, as there is no guarantee of finding a solution for the issue; B) The failure to include direct participation of taxpayers in these procedures; C) The slow and excessively prolonged nature of the process; D) The lack of consistency in publishing decisions; and E) The absence of guarantees for the enforcement of decisions.

Therefore, arbitration clauses for resolving international tax disputes are not included in Iran's agreements. However, the legal framework to resort to international tax arbitration exists in the Iranian legal system, in accordance with Article 139 of the Iranian Constitution. Notably, arbitration has a longstanding history in Iran's investment protection agreements. Given the model for resolving tax disputes in Iran could be designed as follows: Many disputes arise from the interpretation or implementation of tax treaty provisions. In such cases, the Mutual Agreement Procedure-through negotiations, consultations and the establishment of a joint commission by the competent authorities or their representatives –should be used as the

initial method to resolve the issue. The following considerations should be incorporated: A) It should be clarified whether taxpayers should first approach quasi-judicial authorities, or use the Mutual Agreement Procedure. If the case is referred to quasijudicial authorities, it should not simultaneously be subject to the Mutual Agreement Procedure. B) A specific timeframe, of at least 20, and at most 24 months, should be established for reaching a conclusion under the Mutual Agreement Procedure. If no resolution is reached despite efforts by competent authorities within 24 months, the case should be referred to institutional arbitration, which is less costly, more reasonable, and generally more trusted than *ad hoc* arbitration. It should be noted that, while Iran's model tax treaty currently does not include arbitration, international standards such as the UN model treaties, OECD guidelines, EU practices, and the practices of other countries can provide a reliable, transparent, and efficient method for resolving tax disputes. Therefore, it is recommended to include arbitration in Iran's model tax treaties, either within the dispute resolution section or as a separate arbitration agreement. The following points are recommended for inclusion: A) Taxpayers should be allowed to request arbitration, as this would increase investor confidence and contribute to raising government revenues. The request should be submitted in writing, accompanied by supporting evidence, to the competent authority. B) The competent authority should respond within a specified period, ensuring confidentiality and privacy, and forward the request to the relevant authorities within the same timeframe. Additionally, several other factors should be considered in designing an appropriate arbitration process, such as determining the number of arbitrators. Typically, each party selects one arbitrator, and the two selected arbitrators appoint a third. The arbitration process could take various forms, such as final offer arbitration or independent opinion arbitration. Other practical aspects could follow the section 6 of the Multilateral Instrument (MLI) for the Implementation of Tax Treaties to Prevent Base Erosion and Profit Shifting (BEPS), adopted on December 31, 2016, by the Organization for Economic Cooperation and Development (OECD), EU Directive 2017/1852, or the UK arbitration Memorandum of Understanding.

Keywords

Double Taxation, Mutual Agreement Procedure, OECD, Tax Arbitration, Tax Disputes, Taxpayer, Tax Treaties.

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