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RESEARCH ARTICLE

International Tax Disputes and Resolution: An Update

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Abstract

Tax controversies arise when taxpayers encounter double taxation which might have arisen from the imposition of tax on a particular tax payer on the same income by more than one tax jurisdictions. In the entire universe, there is a movement towards a rising number of global tax controversies. There is a higher possibility of double taxation that jeopardizes cross-border trade, foreign investment and economic growth. Ameliorating the contemporary global controversy settlement strategies is considered essential for countering excessive rise of tax debates. Using exploratory research design, this work highlights the progress made by the international group in making dispute resolution devices more efficient and developing explanations on how to address the obstacles preventing nations from settling treaty-related disputes. It concludes that workable multi-level approaches ought to be adopted for solving international tax controversies.

Keywords	*Double Taxation; International Tax Dispute; Tax and Resolution Tax Treaty*
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Introduction

The considerable boost in international trade and investment s in the previous years has affected global taxation significantly (OECD 2004). OECD (2004) reports that a lot of attention has been focused on adapting substantive tax principles to the prevailing economic circumstances. However, the procedural aspects of international taxation are also critical. Global tax settlement has always been a complex issue because it requires contributions from many parties who have varying presuppositions because of the several juridical legal systems and cultural standards (PwC 2022). PwC asserts that the corona virus pandemic outbreak was accompanied by a sizeable rise in tax disagreements as businesses made frantic effort to meet contractual obligations. Fundamental modifications were made on procedures in order to make sure that the processes of dispute settlement continued safely. For example, hearings were held virtually. Over a long while, people have tried quite often to discover how international disputes can be resolved both promptly and efficiently. In spite of the progress already recorded in global taxation by the global community, it has generated several issues. The latter have been prominent in public debate and are currently receiving tremendous attention from policy makers (International Monetary Fund, 2013).

In addition, they have contributed significantly to the present upsurge and boost in international tax disputes. Prominent among the issues that cause tax disagreements include (legal) tax avoidance by many nationalities and (illegal)tax evasion by rich individuals. The key issue, however, is that in each instance, the basic problem of national tax policies is creating cross-country spillovers as manifested by the opportunities for avoidance and evasion. International Monetary Fund (IMF) (2013) remarks that developments have shown that the framework for global taxation has created room for extensive base erosion and profit shifting (BEPS), the insincere reduction of taxable profits and/or detachment of the location of tax from the location of business activity. Several nations experience problems with tax controversies in some, a serious accumulation of tax matters even threatens revenue collection. Globally, ameliorating the on-going international tax dispute settlement policies is considered essential for countering excessive multiplication of the cases of tax dispute. Generally, the subsisting tax dispute settlement plans of action developed in the Mutual Agreement Procedure (MAP) and absorbed in bilateral treaties increasingly being put under control (OECD 2004). The magnitude of cases and their complication with which the MAP has to contend with have increased sharply. OECD (2004) anticipates that these developments are certain to remain in the near future. Thuronyi (2013) predicts that as cross-border business labor mobility among nationalities continue to be commonplace global economy, disputes concerning which jurisdictions can tax what types of income would inevitably arise on occasion. IMF (2013) asserts that several tax pacts between sovereignties contain some MAP provision that stipulates the procedure for settling such disagreements.

Problem Statement

In spite of the widespread existence of the MAP provision in the tax treaties, extant literature reveals that MAP cases are seldom resolved promptly and implemented quickly. For instance, statistics indicate that tax jurisdictions have continued to close more cases than was the case before. It has been reported that as from 2016, fresh MAP cases have been increasing substantially, thereby mounting more pressure on the MAP inventories of countries. Consequently, the number of MAP cases has kept increasing every year as the number of those closed has been unable to be as many as the fresh cases. This study considers it necessary to that MAP is made effective and efficient between countries so that such cases are settled promptly. Consequently, the study contributes to literature by giving an update on international tax debate and conflict settlement using exploratory research design. The findings of this research will help policy makers and other stakeholders to resolve the menace of tax disputes among nationalities. In addition, the results of this study will be very useful to several regional and national administrations as they making provide an informed basis for policy improvement pertaining to international tax dispute and conflict resolution. The remaining sections of this work arranged as follows: Section 2 contains the review of related literature. Section 3 presents the methodology. Section 4 discusses the rise of international tax disputes. Section 5 gives an update concerning the efforts made to fix the rise of international tax disputes while. Section 6 concludes the study.

Review of Related Literature

Conceptual Review

Tax Administration and International Taxation

Tax administration is all about tax assessment, collection and enforcement as required by law.

It is commonly believed that the principal objective efficient tax administration is to achieve tax assessment, collection and enforcement without either the government or the taxpayers incurring unreasonable cost in terms of money, time or convenience. To achieve this objective, a tax administrator has to:

i. facilitate and encourage voluntary compliance with all the requirements of the tax law;
ii. prevent tax evasion and illegitimate tax avoidance;
iii. maintain public confidence in the integrity of the tax system and
iv. administer tax legislation fairly, uniformly and impartially diligently, courteously and efficiently.

As for international taxation, Chaisse and Mosquera (2022) explain that it is not a definite abstraction but an aspect of public international law. However, according to the authors, international taxation can be expressed as an aspect of knowledge concerning the international aspect of cross-border activities which can be controlled through the local law or through bilateral and regional -multilateral tax agreements.

Tax Disputes

A tax dispute is a disagreement arising from dissatisfaction with a tax assessment. It is a disagreement or dissatisfaction between the revenue authority and a tax payer on the tax due with respect to a particular matter in a tax return, transaction or arrangement. In this case, disagreement has been tabled through an enquiry either from the tax authority or the tax payer. Tax dispute arises only when the disagreement or dissatisfaction between the tax authority and tax payer is over issues that are related to tax liability. International tax dispute refers to the tax controversy that exist between the tax authorities of two different countries. Disagreements like this emanate from conflicting and varying interpretations of the provisions of a tax agreement between the two countries. International tax disputes mainly affect the taxpayers that have cross-border economic activities - most often transnational corporations (Picciotto,2016). Taxpayers could approach the court when they are dissatisfied with how a treaty rule is being applied. However, tax pacts also provide aggrieved tax payers the entitlement to protest to the appropriate authority within the relevant national tax jurisdiction. The authority is compelled either to settle the issue or, under the MAP, to consult the competent authority of the tax pact partner. Under the MAP, the appropriate authorities must make effort to settle the disagreement but they are not obliged to do so. The MAP is completely handled secretly. Also, the existence of a claim need not be publicized. Tax advisers usually prefer MAP to court cases which are generally are made public. Nevertheless, the usual complaint against MAP by them is that MAP takes too long fails to guarantee an outcome. For a long time, tax advisers have requested that the disagreements that fail to be resolved should be shifted to some binding third party arbitration.

Tax Dispute Resolution

Tax dispute resolution is an essential aspect of modern administrative system and an element of a tax administrative system designed for settling tax conflicts fairly and amicably (Ibrahim&Akintoye,2021). A system like this is expected to be capable of eliciting from tax payers trust in its impartiality and independence of its processes, procedures and decisions.

Alternative Dispute Resolution Methods (ADR)

Richards (2017) assert that litigation over the past years has demonstrated that it is not the fastest means for resolving tax disputes. However, it is the constitutionally stipulated approach for resolving dispute. In Nigeria, for instance, litigation has been identified by undue delays and attendant high cost. This characteristic has made litigation unattractive, so much so that litigants often wonder why they would ever have chosen that method. The use of Alternative Dispute Resolution (ADR) Mechanisms has become attractive over the years. It gives the individuals to a dispute the opportunity to use other means of settling their disagreements than going through the court process. Using ADR has demonstrated that ADR is an efficient and effective manner to settle tax because of its advantages. Jegede and Idiaru (2021) defines ADR as simply a process of commencing alternative methods and procedures to resolve a civil or commercial dispute without taking to litigation which could be expensive, cumbersome, and time-consuming. The processes of ADR and those of litigation are mutually exclusive and, hence, cannot run together. In Nigeria, ADR is regulated by the Arbitration and Conciliation Act (ACA). The Nigerian constitution also gives constitutional backing to ADR. Its Section 19, provides for settling international tax disagreements by arbitration, mediation, conciliation, negotiation, and adjudication.

Methods of ADR Used in Nigeria

In Nigeria, the major methods of ADR available for settling disputes are as explained Jegede and Idiaru (2021) thus:

Negotiation

This is a problem-solving process in which the individuals to a dispute or an imminent conflict volunteer to come together, either personally or by their representatives, to discuss their differences and make effort to discuss their differences and make effort to reach joint decision or resolution of the conflict on their own and without involving a third party. Richards (2017) defines negotiation as a process of bargain in which the disputing parties make effort to enter into some agreement on a disputed matter.

Mediation

Mediation is a dispute process in which a neutral and impartial third person referred to as the mediator is invited by the parties in disagreement to assist in resolving the dispute by self-determined agreement of those parties in dispute. The reason behind mediation is that the parties in dispute can accept or have the ability to accept or reject any particular outcome and that it must remain intact. On the other hand, arbitration will continue to guarantee a solution every time (Wolski,2001). Parties may take this into consideration, and make mediation a process of first resort, with arbitration to follow as a backup in the event that agreement is not reached (Wolski,2001).

Conciliation

Conciliation is another dispute resolution method which requires the intervention of a third party who can provide an opinion or suggestion. This third party, known as conciliator, uses the best of his endeavor to persuade the disagreeing parties to voluntarily settle their dispute.

Arbitration

Arbitration is the method of ADR initiated most. Under this method, the parties to a dispute submit themselves to a third party called an arbitrator or arbitral tribunal who settles their disagreement called an award, is deemed as binding on the two parties and is enforceable by the courts. An arbitration clause is at times found in contractual agreements drawn between contracting parties.

Advantages of ADR Process Over Litigation

Jegede and Idiaru (2021) as well as Richards (2017) present the advantages of ADR process over litigation as follows:

i. ADR is cheaper than litigation in the long run.
ii. It is faster
iii. It is less formal
iv. The parties to the disagreement can determine who should serve as the mediator or arbitrator or conciliator that will preside over their case.
v. The ADR processes are parties driven.
vi. ADR process preserves the relationship between the parties in dispute (vii)ADR helps preserve the privacy of the parties. It promotes friendliness
ADR encourages the use of experts.
vii. ADR allows for flexibility in terms of procedure

Despite the advantages of the ADR processes, they are not useful of appropriate in the following circumstances: (i) In criminal cases (ii) election petitions, being matters of public policy. (iii) In matrimonial cases, (iv) Dispute concerning binding interpretations of the law, statute, or document. (v) Urgent cases requiring immediate reliefs such as an injunction.

Mutual Agreement Procedure (MAP)

MAP is a dispute settlement process whereby the competent authority in one country and the competent authority in a foreign country settle tax dispute that affect a tax payer. The issues may be double taxation of a taxpayer and the interpretation and application of a particular tax pact. MAP refers to the avenue through which competent authorities rub minds to settle disputes concerning the application of double taxation agreements. Its article in double taxation conventions permits competent authorities to come together to settle international tax disputes. These profits have been taxed in two tax jurisdictions. The European Union Arbitration Convention has established a procedure for settling transfer pricing disputes for EU Member States. Similar procedure may be applicable where double taxation takes place between companies of different European Union (EU) Member States. The EU Council Directive on Tax Dispute Resolution Mechanisms in the EU makes available a means for resolving cross-border tax disputes. The Regulations apply to disagreements that emanate in respect of tax years beginning on or after 1 January 2018.The cardinal aim of the MAP process is both to:

i. Negotiate an arm's length position which is acceptable to both authorities and
ii. Seek to avoid double taxation for taxpayers

Judicial Courts

Anjos and Mimos (2021) assert that access to the courts is a constitutional guarantee in most countries. Immediately a taxpayer completes a tax audit without an agreement, he has free access to the courts. Usually, special courts are designated to decide tax matters, in recognition of the expertise needed for the issues. The most common approach is to send the case to administrative courts with sections that specialize in tax. In some countries, the taxpayer may choose to have his case decided by an arbitral tribunal. In some other countries such as Brazil, Argentina and Japan, there is an administrative court that belongs to the tax authority as an independent body. This possibility is not presented by all tax administrations. However, where it exists, it is normally a mandatory step before having recourse to a judicial court. In most States, the judicial courts are completely independent of the tax administration and are available to decide tax matters with an expert experience. The major challenge usually related to pointed judicial court is its slowness and its tendency to value formal issues as a way of not knowing the bottom of the legal question.

Tax Treaty

Tax treaty is a two-party pact created by two nations of their respective created by two countries with the intention of settling the cases that involve double taxation of passive and active income of each of their citizens (Kagan & Berry-Johnson 2020). A multilateral tax treaty has not been feasible so far. However, plans are on ground to tackle BEPS project by multinational bodies and to subject the highly digitalized business entities to taxation. This may affect the fair allocation of taxing rights among countries (Ring, 2001; Thuronyi, 2001). As indicated by Kagan and Berry-Johnson (2020), income tax treaties would generally indicate the amount of tax that a country is capable of applying to the income, property or wealth of a tax payer. Another name for income treaty is double taxation agreement (DTA). In order to avoid double taxation, tax treaties may be made to follow one of two models: the OECD Model and the United Nation (UN) Model Convention. The UN Model Convention draws significantly from the OECD Model Convention (Kagan & Berry-Johnson, 2020).

Theoretical Framework

The Peaceful resolution of Territorial Dispute Theory Powell and Wiegand (2020) assert that the peaceful resolution of territorial disputes theory explains how States pursue strategic selection while settling disputes with the intention of maximizing their chances of winning them. The process of strategic selection starts once the disagreement occurs and continues throughout the lifespan of territorial contention. Two types of strategic selection exist, namely choice-of-venue and within-venue. The theory proposes that disputants select the methods of settlement through choice-of-venue mechanisms to minimize uncertainty of the resolution outcomes. Powell and Wiegand (2020) assert that, while choosing a venue, the previous win or loss record of the disputants and the link between domestic and international law determine the selection. Once a method has been chosen, states would then pursue within-venue strategic selections, framing the claim and influencing the outcome of the disagreement. Together, the choice-of-venue and within venue mechanisms are can explain the peaceful conflict management strategies of states involved in territorial disputes. This work is anchored on this theory.

Empirical Review

Richards (2017) contends that litigations that is the traditional approach for settling disputes in Nigeria for several years has demonstrated that nit is not the most effective avenue for resolving tax controversies. The explanation is that the traditional method is identified with undue delays that come with attendant high cost; hence, it is unattractive. Consequently, Richards (2017) deemed it considered it necessary to try to adopt other alternative means of dispute resolution when settling tax conflicts. Richards (2017) examined the constitutional means of tax dispute resolution and advocated adopting the ADR mechanisms and tax amnesty arrangements for settling tax disputes in Nigeria. Mayanja, Mahazi and Twesige (2020) explored and analyzed the impact of tax dispute resolution in Rwanda with respect to the compliance of tax payers. The author selected a sample of 170 from a population of 297 taxpayers. The results of the study showed that there is a significant and positive link between the fairness of tax dispute resolutions and tax compliance. The results from primary data revealed that appeal committee of the Rwandan Revenue Authority excludes external tax experts and solely comprised its own staff. In addition, the respondents disclosed that settling tax disputes through administrative process es instead of judicial procedures affects tax compliance positively. Anjos and Mimos (2021) investigated tax disagreement settlement procedures in global tax relations which they considered as a challenge in the international tax law with significant relevance during the era of globalization. The study adopted the method of studying of APA programs; doing comparative study of the solutions adopted by some countries in the EU and some internal mechanisms for settling disputes in tax law.

Some case studies were analyzed. The authors found that when a firm initiates a fresh investment, it should consider the possibility that conflict could arise down the line in relation with the aftermath of the investment on the tax payable. They regarded the APA programs to be very essential and concluded that should the programs fail to be applicable, other mechanisms exist that will to assure the equity in a tax law interpretation and application. The administrative collaboration, the modernization of techniques and change of information were considered by the authors as essential to the international commerce in a globalization age. Chaisse and Mosquera (2022) sought to bring to light the challenges that would arise from the normative expansion of taxation law. The results of the enquiry

showed that scholars have highlighted the need for a multilateral tax pact. However, it was realized during the investigation that similar trials made by the UN and OECD failed because of the difficulties inherent in ensuring the distribution of the power to impose tax between the source and residence states. Further, the authors found that this matter is more spectacular in the case of the taxation of digital economy since the digital companies are likely to trade and carry out operations in a state without some physical presence. The present set of proposals require introducing new rules for fair assigning of taxing rights and responsibility to States to levy tax at a minimum rate.

Methodology

The materials for this study were sourced from extant journals, conference papers, seminar papers, etc. It employed exploratory research design for reviewing the relevant literatures.

The Rise of International Tax Disputes

Since 2006, the number of fresh MAP issues has doubled (Picciotto 2016). In addition, the number of the cases yet to be settled has more than doubled. The tax controversy cases take longer time to be settled. Picciotto (2016) observes that majority of the cases have to do with assigning the profits of transnational corporations among the various taxing jurisdictions. Picciotto reports that since 1995 a pact between EU states has called for the transfer pricing cases which had remained unsettled after two years to be referred to a commission of experts and representatives of each tax authority. The commission is required to produce an expert opinion that can only be published with the consent of the parties to the dispute Contrary to expectation, no such informed opinion has ever published, and less than half a dozen cases have been referred to a Commission within the deadline (Picciotto,2016). According to Picciotto none of those procedures has been capable of decreasing the rate of growth of international tax disputes or the time taken to settle them. The OECD Model Convention of 2007 included arbitration. Arbitration was also included as an alternative choice in the UN Model of model of 2011. Picciotto (2016) notes that more than 200 actual tax pacts, including those with developing nations have a version of arbitration presently. Picciotto (2016) maintains that under four of the developing country treaties, the taxpayer can compel arbitration assuming that the competent authorities cannot agree, as is the case with the OECD model. The other treaties need the agreement of either one or competent authorities.

However, developing nations have had few MAP cases. Majority of them reject compulsory arbitration as what they have experienced with international investment arbitrations, some of which involved tax matters, are not encouraging. On the issues and options regarding international tax disputes, Ji (2019) presents some facts and figures. The author reports that there were 4,566 open OECD reports concerning MAP by the close of 2013These were presented by the OECD member countries. This meant a 12.1% increase when compared with the 2012 reporting period. 15 The 2013 benchmark showed a 94.1%increase in comparison with the 2006 reporting period. Even though MAP is increasingly accepted by the states, some experts do not consider it as an efficient dispute settlement mechanism in tax issues. According to Ji (2019), even though some experts claim that MAP is the ideal win-win platform to effectively resolve treaty-related disagreements between two nations, MAP does not always work effectively. The reason is that any party in the dispute could block the MAP unilaterally. Back in 1984, the OECD committee on fiscal affairs examined MAP. It discovered that, generally, MNCs consider MAP inappropriate because of the protracted feature of its procedure as well as the risks involved. Most enterprises resort to MAP when it is the only feasible approach available. The implication is that shows that states are reluctant to use MAP tend when facing tax controversies. The major reason for this reason is that there is not much trust in MAP (Ji, 2019).

In response to the worldwide outrage over BEPS by MNEs, the BEPS Actions were initiated by OECD. Fourteen out of the fifteen Actions solicit the OECD to makes dispute resolution mechanisms easier for parties in dispute to access and utilize. On October 5, 2015, the BEPS Action 14 was released. The intention was to increase the effectiveness of dispute settlement mechanism. The Actions demonstrate the commitment of the G20 nations and the OECD to implement the so-called "minimum standard" in settling tax- related disputes. However, Action 14 does not offer any remedy for the problems with of MAP. It contains no minimum standard of the mandatory arbitration (Ji,2019). As such, sovereignty concern of the state' s arbitration was not selected as a preferred dispute resolution mechanism. Picciotto (2016) notes that majority of tax disputes emanate from the allocation of the profits of TNCs. Picciotto adds that the rise in the number of those disputes took place with the strengthening of the enforcement

of transfer pricing rules. With the developing countries establishing transfer pricing rules, enforcement now improves. Consequently, TNCs have become jittery that more tax disputes will arise. This fear is justified by the complexity of the OECD transfer pricing guidelines which lacks clarity. The guidelines require tax officials to identify the functions that each aspect of the TNC should perform by analyzing its business model. This requires specialized knowledge and involves discretionary and subjective judgments.

India witnessed a rapid growth in tax disagreements in 2001 after introducing transfer pricing rules that were based on the OECD Guidelines. By 2012, India was already having over 3000 unsettled tax tribunal cases. India is not used to publishing publish MAP data. However, a conflict that arose between the US and Indian competent authorities were publicized. In January2015, the US and India signed a pact in order to facilitate the settlement of about 200 cases. A year later, a report had it that about half of those cases had been resolved. On the contrary, Brazil that employs fixed transfer pricing margins that is easy to implement but regarded as unorthodox by the OECD noticed little court actions and few MAP claims (Picciotto,2016). Cross-border business and global labor mobility continues being rampant in 21st century global economy (OECD & G20, 2022). Similarly, disputes concerning which jurisdictions can tax what types profit inevitably arise. Many tax pacts between tax jurisdictions contain a MAP provision that shows a procedure that should be employed to settle such disputes. This MAP, which is provided for by Article 25 of the OECD Model Tax Convention is fundamentally important for the appropriate application and interpretation of tax agreements The rationale behind this is to prevent the taxpayers qualified to enjoy the benefits of the treaty from being subjected to taxation by either of the contracting states in such a way that is not in alignment with the conditions of the tax treaty (OECD & G20, 2022). Recent statistics indicate that tax jurisdictions are recording tax dispute cases more than ever before Reports reveal that from 2016 fresh MAP started moving up astronomically and consequently began to mount upward pressure on countries' MAP inventories. The total inventory of MAPs has kept increasing every year because the number of the cases closed is yet to be at the same pace with the number of fresh ones. EY Global (2019) quoted OECD as warning the businesses that find themselves deep in a disagreement with tax authorities presently to realize that the number of the unsettled MAP cases has grown by 163% since 2006.MAP cases arise in situations where two or more parties in a tax dispute become incapable of reaching an following an audit and subsequent negotiations. Jeffrey Owens of EY Global note that the rising number of MAP cases by 14% in 2015 points to the level to which tax controversies increasing.

The Future Outlook

Kollmann and Turcan (2016) anticipates that the work on BEPS will further increase the number of treaty disputes. In the same vein, Also, Owens of EY global forecasts that the BEPS initiative is capable creating more disputes in future as governments distribute more information but have different thinking on the thinking of a taxpayer's filing According to Kollmann and Turcan (2016), the implementation of the BEPS project may culminate in introducing some changes in the OECD model and its interpretations. They maintain that will require some time for both the taxpayers and tax administration to adjust to the changes and that this situation may lead to an era of uncertainty.

BEPS and International Tax Disputes

Tax avoidance challenge is increasingly receiving the attention of politicians (Reuven Avi-Yonah & Xu 2017). It is usual for technology firms to employ different tax policies so as to pay less taxes (Hickey 2013). For example, both Apple Inc .and Microsoft engage in tax avoidance (Hickey 2013). With the development of the internet, the traditional firms and the digital mega multinational enterprises have committed tax avoidance (Brittin,2016). For instance, the famous digital companies like Google and Amazon are taken into consideration by the EU in subjecting their turnover to taxation. Those technology conglomerates are alleged to be routing most of their incomes to low tax regions, including Ireland and Luxembourg. In 2016, Google committed around 130 million dollars avoidance of tax (Brittin,2016). To resolve the serious tax avoidance problems, report was issued by the OECD and G20 countries. Both the developed and developing states have extensively engaged in the consultation process (Markham, 2015). The manner in which the BEPS project is applied may lead to some alterations in the OECD model as well as its interpretations (Kollmann & Turcan, 2016). It requires time to adjust to the changes for the taxpayers and administrations (Kollmann & Turcan, 2016). However, this may lead an era of uncertainty (Kollmann & Turcan, 2016)

Tax Competition, Harmful Tax Practices and International Tax Disputes

Tax competition often invites harmful tax practices which might lead to international tax disputes. Among all the BEPS Actions, 5 is aimed at regulating harmful tax practices effectively. This Action 5 demands that transparency and substance be taken into account while taming harmful tax practices (OECD 1998). Generally, any preferential tax regime of a nation that provides for a small tax rate or a tax exemption and can accessed by mobile types of businesses like financial services is of a) review in scope (Heitmüller & Mosquera, 2021). Tax jurisdictions including usually employ preferential regimes so as to attract FDI. Fundamentally, Action 5 of BEPS requires an overhaul of the work on harmful tax practices through the priority given to the improvement of transparency. In addition, the introduction of a minimum tax that is aimed at tackling tax competition (Pillar 2) will also minimize the (harmful or not) preferential regimes which will be needed for introducing a minimum tax of 15 per cent among other measures (Mosquera, 2021).

Taxation and the Digital Economy

The emergence of digital economy presents fundamental challenges to taxation (Chaisse & Mosquera,2022). The bases for regulating taxation establishment are anchored on a perpetual establishment (i.e., profits). Contrarily, the digital economy motivates the sellers of goods and services to transact with an ever-increasing number of buyers without the need for physical interaction and presence. The digital economy is growing with the standard of a trade without borders and a number of other characteristics like tax payer's identity, natural tax status, etc.). It requires redefining international taxation. The OECD has been in forefront in the reflection and activity to modernize global tax laws in light of the digital economy. It has done this by introducing the important milestones of the BEPS Projectin2013 and the BEPS Action Plan in 2015. The 2013 BEPS Project comprises fifteen recommendations (Actions). Among these, the Action1 invites jurisdictions to address the problems of the digital economy but without the imposition of solutions that are pre-defined. However, because of the absence of consensus regarding Action 1, its content was suspended after BEPS Project was introduced. A fresh project branded BEPS 2.0 was proposed by OECD. The aim was to address the taxation of highly digitalized (Pillar1) and tax competition by introducing a minimum rate (Pillar 2). Presently, countries like Australia, India, Kenya, and EU countries such as France, Spain, and Austria have put in place some unilateral measures for imposing tax on digital economy impose tax usually called digital service tax (Geringer 2021). As regards digital service tax in Australia, the DEG has addressed its concerns over this tax which can be regarded as an extraterritorial tax collection obligation which cannot be imposed unless there are conditions that lead to voluntary compliance.

Efforts Made to Fix the Rise of International Tax Disputes

In response to the situation highlighted above and, as an attempt to minimize the rate of growth in the volume of tax disputes cases, a final report containing a minimum standard of BEPS, was put up adopted in October 2015. The Action 14 Minimum Standard comprises 21 elements and more effective 12 best practices. The elements examine a jurisdiction's legal and administrative framework in four major areas, namely; (i) preventing disputes, (ii) availability and access to MAP, (iii)resolution of MAP cases and (iv) implementation of MAP agreements (OECD & G20, 2022).

Apart from adopting the BEPS minimum standard, the BEPS Inclusive Framework members agreed on the following:

i. To establish a peer review process for evaluating how the standard is to be implemented and
ii. To report MAP statistics under a reporting framework developed recently ("MAP Statistics Reporting Framework").

Towards the end of 2016, the Action 14 peer review process was launched which required that 82 jurisdictions be reviewed from 2016 onwards. The process consisted of two stages. In the first stage, the manner of implementing the Action 14 Minimum standard by jurisdictions is evaluated. Recommendations are made where jurisdictions need to improve to make them fully compliant with the requirements under the standard. The follow-up the recommendations would be measured in the second stage of the process. Wolski (2001) observes that several international organizations, including the International Chamber of Commerce and the United Nations Commission on International Trade Law were taking small and tentative steps to establish an infrastructure of laws, rules and

procedures which recognize ADR clauses and settlements reached in ADR proceedings.

The Results obtained so far

The last batch of Action 14 stage 1 MAP peer review reports were published in February 2021. Out of the more than 1750 recommendations made, approximately 66% relate to the deficiencies in tax pacts as regards the MAP article. Close to 34% of the recommendations concern MAP practices and policies that do not agree with the MAP standard. Further, there exist almost 400 recommendations for jurisdictions to continue the practices which were already in accordance with the minimum standard. (OECD & G20 2022). Reports indicate that the minimum standard of Action16 has had a greater effect on MAP and tax certainty...The report notes that many countries are now making efforts to address the defects found in their respective reports Examples are as follows:

I. The peer review process has stimulated some regard to the structure and charges organization of competent authorities to arrange their processes in better way for resolving MAP cases promptly.
II. There is a significant boost in the number of closed tax dispute cases in almost all the jurisdictions reviewed.
III. The number of Inclusive Framework MAP profiles continues to rise There are now over 100 jurisdictions.
IV. An increasing number of jurisdictions have made available or updated comprehensive MAP guide to provide tax payers clear rules and guidance on MAP.
V. Access to MAP is now given for transfer pricing cases. Also, as of April 2022, Stage 2 reports for 69 jurisdictions which were peer – reviewed in batches 1-9 were published from August 2019 onwards (OECD & G20 2022).

The progress in addressing the menace of international tax disputes is reflected in the following developments:

I. In addition to two-party treaty alterations, The Multilateral Instrument was signed and ratified by majority of the jurisdictions. This brings a reasonable number of pacts in line with the standard.
II. Almost all jurisdictions have either brought in or updated publicly available MAP guidance to make available more clarity and details to tax payers
III. Most of the jurisdictions reduced the amount of time required to close MAP case and a majority of these jurisdictions met or were near to desired 24-month average timeframe to close MAP cases. (iv)Following legislative or policy related changes or the effect of the multilateral Instrument since stage 1, several of the jurisdictions are now capable of implementing MAP agreements, notwithstanding their domestic time limits.

Conclusion

There is a global movement in the direction of escalating number of international tax disputes. Several factors account for this phenomenon. Some of them are the actions mounted to counter base erosion and profit-shifting which created fresh guidelines and interpretation challenges. The result is a higher probability of double taxation that jeopardizes cross-border trade, foreign investment and economic growth. Generally, ameliorating the present global tax dispute settlement procedures is regarded essential for countering excessive rise in international tax dispute. Using exploratory research approach, this research threw some light on the progress made by the international groups in making the dispute settlement mechanisms more efficient and developing solutions for addressing obstacles preventing nations from settling pact- related dis agreements This work observed that significant progress is already made in the direction of reducing the rise of international tax disputes after fine-tuning the BEPS Action 14 minimum standards recently. The study suggests that flexible multi-level approaches be adopted by the universe for resolving international tax controversies

Recommendations

In alignment with EY Global (2019), we recommend as follows:

1. In a universe identified by political and economic uncertainty, public authorities should avoid adding tax uncertainty which would in turn require that cross border tax controversies are resolved quickly and effectively.
2. Every tax jurisdiction should all the time regard the litigation approach in dispute resolution as the last resort
3. Prevention is still regarded the optimal cure. An initial step for businesses should be to confirm that their transfer pricing strategies and practices are up-to-date and perfectly BEPS-compliant. Should they be invited to audit, they can present their case quickly and confidently.
4. The most efficient avenue for a tax jurisdiction is to submit proposed transfer pricing methodologies to authorities within an application for the sake of an advance pricing agreement.
5. In such instances that a tax audit fails to end in a successful finding and conclusion, the tax payer has the prerogative to pursue a MAP where available.
6. National tax officials that handle MAP cases should be separate from the frontline audit staff and provide autonomous rulings (Picciotto 2016).
7. To minimize conflicts, rules ought to be made that are clear and easy to apply.
8. The MAP should be used to agree general interpretations which can be published. This should deal not only with taxpayer claims of double taxation but also issues concerning double non-taxation that are particularly especially important during this era of change.
9. The publication of the results of actual MAP cases should provide a guide for other treated alike, and reassure a larger public that decisions arrived at are fair. Also, reforms should be directed towards allocating the profits of TNCs based on clear and quantifiable criteria that reflect the actual economic activities and values created in each nation.

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