

Book Review

Alternative Dispute Resolution and Tax Disputes, by Werner Haslehner, Timothy Lyons, Katerina Pantazatou, Georg Kofler and Alexander Rust (eds), (Elgar, 2023), 341pp, £160, ISBN: 978-1-80392-037-5.

This book is the result of collaborative effort by a network of European and international tax experts assembled by the ATOZ Chair for European and International Taxation at the University of Luxembourg. The book deals with the very important topic of alternative dispute resolution, gathering contributions from some of the most well-known academics in the area of international and EU tax law.

Alternative dispute resolution has grown significantly in the last two decades and has been an integral feature of the resolution of commercial disputes. Alternative dispute resolution is also becoming prevalent for tax disputes. As the editors note, this gives rise to questions of integration into domestic procedures, “their correct interpretation and best practices in their application by tax officials, lawyers and arbitrators”.¹ The book tries to deal with some of these important questions.

The book is comprised of 13 chapters. The first four chapters of this book give an overview of existing treaty norms and their practice application in MAP and arbitration procedures. The first chapter reviews how dispute resolution is evolving in a multilateral context. There is a very interesting analysis of scenarios of potential disputes resulting from the application of Pillars One and Two. The author of the chapter argues that there will likely be a messy transition period with respect to these Pillars until countries come back to the negotiating table to find a multilateral solution. I found the first chapter to be one of the most thought-provoking chapters of the book.

The second chapter examines article 25 of the OECD Model in detail. The third chapter reviews the different types of arbitration procedures, especially post-BEPS tax arbitration. It is concluded that the existing choice of types of arbitration “are not adequate to fully shield tax arbitration from the exponential growth of tax disputes”.² The fourth chapter examines the role of competent authorities in the context of international tax arbitration and discusses best practices to achieve effective and efficient arbitration.

The next two chapters review primary and secondary EU law on tax dispute resolution and their interaction with general principles under EU law and fundamental rights. Chapter 5 is devoted to the Tax Dispute Resolution Mechanisms Directive³ and contains a very comprehensive analysis of this Directive, its benefits and its weaknesses. Chapter 6 navigates the difficult question of the applicability of the fundamental rights, the fundamental freedoms and state aid as regards tax arbitration under the Tax Dispute Resolution Mechanisms Directive and tax treaties.

¹ Werner Haslehner, et al. (eds), *Alternative Dispute Resolution and Tax Disputes* (Elgar, 2023), p.xiii.

² Haslehner, et al. (eds), *Alternative Dispute Resolution and Tax Disputes* (2023), p.67.

³ Council Directive 2017/1852/EU of 10 October 2017 on Tax Dispute Resolution Mechanisms in the European Union [2017] OJ L265/1.

The following three chapters focus on the position of the taxpayer in the administrative process of dispute resolution. Chapter 7 examines taxpayer rights in MAP and arbitration. It addresses the question whether the taxpayer should be more involved in MAP procedures and whether this might be problematic for competent authorities. Chapter 8 examines the enforcement and judicial control of arbitration decisions. Enforcement is reviewed from the perspective of the Tax Dispute Resolution Mechanisms Directive and the Multilateral Instrument. Judicial review is considered from the perspective of domestic courts and international bodies. Chapter 9 looks at alternative dispute resolution through mediation.

Chapter 10 considers the relationship between dispute resolution under tax treaties and investment treaties. The author shows how international investment arbitration has become increasingly relevant to cross-border disputes. However, investment treaties have a very different objective to that of tax treaties. Whilst there is a growing trend towards excluding taxation matters from the scope of recent investment agreements, this is not always the case. It is argued that, in some situations, the OECD Model commentaries could be used to give content to a general principle of law, relevant in the context of an investment treaty. Chapter 12 contains an additional excellent analysis and comparison of the dispute settlement mechanisms of tax treaties and investment treaties.

Chapter 11 examines the topic of independence and impartiality of arbitrators and draws guidance from guidelines from international commercial arbitration. The guidelines are often only partially applicable, as such leaving the current tax arbitration system with shortcomings.

The final chapter of this book examines dispute settlement procedures in the context of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO). The theme is similar to that of Chapters 10 and 12, as the author tries to consider what lessons these procedures may hold for tax dispute resolution. Two common trends appear to emerge for both: multilateralism and formalisation of the dispute resolution process. The author concludes that the experience of dispute resolution under GATT and the WTO provides much to reflect upon.⁴ The MLI,⁵ with respect to dispute resolution, has a lot to gain from some spillovers.

Overall, this is an excellent book that covers a wide range of topics relating to tax dispute resolution. The contributors to this book comprehensively analyse the practical and legal challenges of tax dispute resolution from a number perspectives: EU law, tax treaty law, investment treaty law, GATT and WTO regimes. The comparative analysis with other dispute settlement procedures in the last part of this book is invaluable, if multilateralism in tax dispute resolution is to gain momentum.

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⁴ Haslehner, et al. (eds), *Alternative Dispute Resolution and Tax Disputes* (2023), p.313.

⁵ Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting 2016.

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