

ABSTRACT FOR GENERAL PUBLIC

The issue of tax dispute resolution is of key importance for the tax system, therefore the state should strive to ensure that tax disputes that arise are resolved quickly, objectively and at the lowest possible fiscal cost to the state budget. Lengthy court processes do not serve to deepen the trust of citizens in the state, and put into question the effective functioning of the justice system. Moreover, the activities of public administration based on principles such as unilateralism, rulership and subordination in modern societies are ineffective. Therefore, an extremely important element in ensuring adequate access to justice for citizens is the state's acquiescence to the existence of amicable methods of dispute resolution. Particularly with regard to the settlement of tax disputes by means of the aforementioned methods.

The delegation of states' powers to resolve tax disputes to institutions offering amicable dispute resolution may be controversial. However, such arrangements are already implemented in a number of countries. The introduction of tax arbitration in Portugal is an example of how alternative dispute resolution results in the streamlining of the justice system.

Portugal introduced tax arbitration tribunals into its legal system in 2011 as a remedy for lengthy and costly tax litigation in state courts. These operate under the Centre for the Administration of Arbitration (Centro de Arbitragem Administrativa - CAAD)¹. Cases with a small value of the dispute and those where the disputed amount of tax exceeds €10 million are excluded from the cognisance of the tax arbitration tribunals. Depending on the value of the tax in dispute, cases are heard by an arbitral panel consisting of between 1 to 3 arbitrators. The arbitrators are appointed by the CAAD Ethics Council and have a legal or economic background and practised in the field of tax law for at least 10 years. Arbitrators deciding tax disputes are obliged to rule on the basis of the law, which is the opposite of the principle that arbitrators are not bound by the law when ruling in classic arbitration proceedings. The Portuguese case highlights that the objective of speed of adjudication in tax proceedings has been achieved. The average time for a case to be heard by a tax arbitral tribunal is 4.5 months, when court proceedings take an average of 37 months². It should be added that tax arbitration tribunals adjudicate as many as 1/4 of tax disputes. Portugal's success achieved in this area deserves a deeper analysis, as there can be no democratic rule of law when the administration of justice consumes too much time. Furthermore the Portuguese reform also aimed to strengthen the effective protection of taxpayers' rights and interests. The aim of this research project is to comprehensively examine and explain the phenomenon of tax arbitration, as well as the resolution of tax disputes through mediation, using the example of the legislative and case law in Portugal, Ireland, Finland and Spain, as well as in the United Kingdom. In the selected jurisdictions, alternative dispute resolution structures have been put in place whereby the taxpayer can assert his rights related to tax disputes. Research in this area may also indicate that amicable resolution of tax disputes also operates in jurisdictions outside the European continent.

The research panel will also investigate the legitimacy of tax arbitration and other amicable tax dispute resolution methods under the primary and secondary law of the European Union.

The possibility of resolving tax disputes through arbitration between investors and states under investment treaties will also be analysed.

The research panel will also analyse Polish civil procedure and administrative law in the context of the possibility of functioning of tax arbitration in the domestic legal system. The result of the research in this regard will be the development of *de lege ferenda* comments concerning the creation of a Polish model of tax arbitration. This project will also examine the macroeconomic conditions for the introduction of tax arbitration in the Polish legal system.

The project will also present tax arbitration in the context of the concept of civil society. The concept of social control over the tax dispute resolution system will also be considered.

A large-scale study of this subject will allow the most effective solutions to be selected for introduction into the national legal system. The expected results of the research in this area are to indicate whether a framework for tax arbitration and amicable tax dispute resolution could or exists in the Polish legal and social system.

In order to carry out the above-mentioned research, a comparative legal method will be applied, but also a dogmatic-legal and empirical method, thanks to which the research team will make a reliable comparison of the legal norms regulating the functioning of the institution of tax arbitration in selected legal systems and will compare the functioning of this institution in the social space of these countries.

¹ Ferreira, Guerra, Pires, RFF and Associados Law Firm, *Tax Arbitration in Portugal: A New Tax Dispute Resolution Model*. The Comparative Law Yearbook of International Business. Volume 35, 2013, p. 189.

² B. Brzeziński, *Tax arbitration- an idea to consider*. Taxpress, <https://taxpress.pl/baza-wiedzy/5426-n-a> (accessed at 12.08.2024).