The Resolution of International Tax Disputes through Arbitration

Fundamental, practical and procedural issues

In cooperation with the International Fiscal Association

Wednesday 3 May 2006

International Chamber of Commerce
38, Cours Albert 1er
75008 Paris, France

Objective
Arbitration as a means for resolving international tax disputes is becoming a reality. The EU arbitration convention is in place for transfer pricing conflicts. The Organization for Economic Co-operation and Development (OECD) has recently proposed to amend the OECD model tax convention to provide for a mandatory resolution of unresolved mutual agreement procedures by arbitration. The ICC previously published a policy paper and model clause, and the International Fiscal Association (IFA) commissioned a study on “Income Tax Treaty Arbitration”. Although the idea of using arbitration is thus gaining ground, many questions regarding the implementation of this dispute settlement technique are still open.

In this conference, internationally recognized experts in international taxation and international arbitration will present their views regarding some of the procedural and practical aspects of international fiscal arbitration. Participants will have the opportunity to discuss solutions based on their own experience in international dispute resolution.

Discussions will specifically focus on
- Recent OECD developments regarding dispute resolution through arbitration
- EU arbitration convention and the EU Code of Conduct
- ICC model clause and arbitration clauses in bilateral tax treaties
- Design of arbitration clauses for taxation conflicts and the scope of fiscal arbitration
- Specific procedural issues such as place, time frame, costs, etc.
- Composition of the arbitral tribunal
- Rights and obligations of taxpayers, tax authorities, advisors and arbitrators
- Enforcement of the arbitral award

Participants
The conference will be of particular interest to those who might be involved in the arbitration of international tax disputes, including advisors, tax directors of international groups, arbitrators and party representatives, as well as to those in charge of designing and applying arbitration clauses, in particular tax administration officials.

Supporters
- BIAC
- Deutsche Institution für Schiedsgerichtsbarkeit e.V. (German Institution of Arbitration)
- European Company Lawyers Association (ECLA) / Association Européenne des Juristes d’Entreprise (AEJE)
- International Bar Association (IBA)
- OECD
- Swiss Arbitration Association (ASA)
Programme

Wednesday 3 May 2006

Registration

Welcome

Pierre Tercier, Professor of Law, University of Fribourg, Switzerland; Chairman, ICC International Court of Arbitration

MORNING SESSION

The morning session will provide background information about recent developments, current practice and changes envisaged in the field of resolving international tax disputes.

The session will be divided into four presentations, each followed by a Q & A period.

Chairman

Peter Baumgartner, Director, Federation of Swiss Industrial Holding Companies, Berne; Chairman, ICC Commission on Taxation

09.15-09.45

Why international fiscal arbitration: the past and current state

- Dispute resolution bilateral tax treaties
- Arbitration as a complement to existing procedures
- Clauses in current conventions
- Elements of the ICC model approach
- Basic questions regarding the design of an arbitration clause for tax disputes
- Expectations of the international business community

Robert Couzin, Partner, Couzin Taylor LLP/Ernst & Young LLP, Toronto; Incoming Chairman, ICC Commission on Taxation; Member, Permanent Scientific Committee, IFA

09.45-10.15

Dispute resolution under the OECD model tax convention: latest developments

- OECD efforts to improve the dispute settlement procedures under tax treaties
- Proposal for a supplementary dispute resolution mechanism and other improvements to the Mutual Agreement Procedure (MAP) process
- Results of mid-March consultation with business in Tokyo
- Next steps

Mary Bennett, Head of Tax Treaty, Transfer Pricing & Financial Transactions Division, Centre for Tax Policy and Administration, OECD

10.15-10.45

Arbitration on transfer pricing disputes in the EU

- EU Arbitration Convention for the resolution of transfer pricing disputes
- Code of conduct worked out by the EU Joint Transfer Pricing Forum
- Practical experiences regarding the application of the convention in an international transfer pricing case
- Suggestions for the future

Guy Gest, Professor, University Panthéon-Assas (Paris II), France

10.45-11.15

Contact break

11.15-11.45

International Arbitration: lessons to be learned from state-state, investor-state and commercial arbitration

- Taxation conflicts as disputes between two or more taxing jurisdictions
- Special position of the taxpayer
- Similar procedural questions in other forms of arbitration
- Important elements for a successful arbitration procedure

Pierre Tercier, Professor of Law, University of Fribourg; Chairman, ICC International Court of Arbitration
Panel discussion: Will arbitration in international tax matters become reality?
The panel will discuss the chances that arbitration will actually be used by states as a supplementary means for the resolution of international taxation disputes. It will analyse whether the solutions suggested by the OECD are acceptable for tax authorities and taxpayers and which procedural aspects must be solved when states agree to accept mandatory arbitration in their bilateral tax treaties.

Moderator
David R. Tillinghast, Partner, Baker & McKenzie, United States; former Chairman, Permanent Scientific Committee, IFA

Panellists
Members of the morning and afternoon sessions

AFTERNOON SESSION
The afternoon session will focus on procedural and practical issues by establishing an arbitration panel which will deal with a real tax dispute of the past. Participants will be given the opportunity to interact during Q & A period.

14.30-15.30 Practical aspects of tax arbitration: a dispute on the characterization of royalty payments under a tax treaty
- Bringing the claim
- Selection of arbitrators
- Selection of chairperson
- Organization of arbitration
- Written pleadings
- Hearings, evidence and experts
- Deliberation and award

Moderator
William W. Park, Professor of Law, Boston University, United States

Panellists
Axel H. Baum, Partner, Hughes Hubbard & Reed LLP, France
Marcus Desax, Partner, Pestalozzi Lachenal Party, Switzerland; President, IFA
Pierre A. Karrer, Lawyer, Cabinet Dr Pierre Karrer, Switzerland
Philip R. Kimbrough, Lawyer, Founding Partner, Kimbrough & Associés, France
David W. Rivkin, Attorney, Partner, Debevoise & Plimpton, United States
Pierre Tercier, Professor of Law, University of Fribourg; Chairman, ICC International Court of Arbitration

Contact break

16.00-17.00 Continuation of panel discussion and Q & A period

17.00-17.15 Closing remarks and outlook for the future
Jean-Pierre Le Gall, Professor Emeritus, University Panthéon-Assas (Paris II), France; Of Counsel, Sullivan & Cromwell; Chairman, Permanent Scientific Committee, IFA
Logistical Note

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English

- 680 Euros for ICC/Supporter members
- 780 Euros for non-members

The contribution to costs covers all conference activities, including documentation, a lunch and contact breaks. All fees are exclusive of travel and accommodation.

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Participants are responsible for making their own travel and hotel arrangements. A list of hotels in Paris, with which ICC has negotiated preferential room rates, will be sent upon receipt of the registration form, together and the contribution to costs.

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