

Spotlight on Tax Arbitration

In 2016, the PCA cooperated with TRIBUTE, a Netherlands-based organization of tax experts, in proposing an arbitral procedure and administering role for the PCA in relation to disputes between national tax authorities over double taxation.

In collaboration with TRIBUTE, the PCA developed a “fast-track arbitration” proposal to supplement existing, yet largely unused, dispute settlement mechanisms in various bilateral taxation treaties and the European Arbitration Convention. The proposal is based on the PCA Arbitration Rules 2012, which embody a comprehensive set of procedural rules that can be customized by disputing parties to suit their specific needs.

Separately, the proposal has been submitted for consideration during the OECD’s negotiations over binding arbitration in its Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

(“BEPS Multilateral Instrument”). The final text of the BEPS Multilateral Instrument, published in late November 2016, contains provisions on mandatory binding tax arbitration, but leaves it to the parties to the treaty to agree bilaterally on the applicable arbitral procedure and, if so desired, case administration by a third party. Given its experience as one of the oldest fora for the peaceful settlement of international disputes, the PCA is prepared to put its services at the disposal of States that wish to obtain the PCA’s assistance in facilitating the resolution of their tax disputes.

In 2017, the PCA, together with TRIBUTE, will continue its engagement with governmental advisers, business representatives, academics, and other stakeholders in the field of international tax arbitration to further promote its initiatives.