MUTUAL AGREEMENT PROCEDURE, DOUBLE TAXATION TREATIES AND PROTECTION OF TAXPAYERS' RIGHTS IN THE BRICS COUNTRIES

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Abstract: *Taxpayers' rights are of utmost importance in the context of the fundamental changes in the regulation of international tax relations determined by the necessity to combat tax avoidance at the global level. Consequently, contemporary states should provide high level of efficiency of dispute resolution mechanisms between taxpayers and tax authorities of different states including mutual agreement procedure (MAP) that is the procedural mechanism allowing taxpayers to resolve theirs cases of taxation not in accordance with the provisions of double taxation treaties by the way of initiation of the direct communication between the competent authorities of contracting states. Based on the analysis of pros and cons of MAP, it might be stated that its attractiveness is not so obvious for taxpayers in the absence of certain guarantees such as the right to confidentiality or the right to be informed about the process of negotiation between competent authorities. The success of international community is only partial in this context because of the difficulty to find common denominator and the difference of interests at the global level. At the same time, the example of the EU demonstrates the crucial importance of the regional cooperation for the improvement of taxpayers' rights in the context of MAP that might be taken into account by the BRICS countries in their attempts to improve tax dispute resolution mechanisms.*

Keywords: *double taxation treaties, human rights, taxpayers' rights, mutual agreement procedure, dispute resolution*

INTRODUCTION

As it is stated by M. Lombardo, mutual agreement procedure (MAP) should be understood as "a special procedure outside domestic law aimed at representing the dispute on an amicable basis", i.e. by the agreement between the competent authorities of the contracting states in cases where tax has been charged, or is going to be charged, not in accordance with the provisions of the double taxation treaty concluded between such states.[1] Its potential allows contracting states to strengthen tax certainty that is mentioned by the G20 Leaders as one of the areas of their common efforts in an attempt to promote investment and trade in Hangzhou Communique adopted in September 2016 (para. 19).[2]

The statistics of MAPs demonstrates the obvious fact that its importance is continue to grow among developing and developed states in the context of the post-BEPS era including five BRICS states: Brazil had 13 MAP cases at the beginning of 2017 and 19 – at the end of the same year, China – 111 and 131 respectively, India – 725 and 763, Russia – 7 and 14

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[1] LOMBARDO, M. The Mutual Agreement Procedure (Art. 25 OECD MC) – A Tool to Overcome Interpretation problems? In: M. Schilcher – P. Weninger (eds.). *Fundamental Issues and Practical Problems in Tax Treaty Interpretation*. Wien: Linde, 2008, p. 459.

[2] G20. Leaders' Communiqué: Hangzhou Summit (Hangzhou, 5.9.2016). In: *G20* [online]. 2016 [2019-03-30]. Available at: <http://www.g20.utoronto.ca/2016/160905-communique.html>.

and South Africa – 26 and 28.[3] It should be admitted that the MAP is "the first and most used treaty-based form of international tax dispute resolution".[4]

The absence of effective MAP mechanism deprives the taxpayers of contracting states of opportunities for resolving tax treaty disputes that might lead to double taxation. At the same time, it is worth mentioning that the existence of MAP mechanism is undesirable without clear definition of the content of taxpayers' rights because does not create the conditions for trust as well as confidence between taxpayers and competent authorities. Based on this need, the list of positive taxpayers' rights concerning MAP might be desirable as an additional step in setting the balance between the interests of taxpayers and competent authorities.

PROS AND CONS OF MAP AS DISPUTE RESOLUTION MECHANISM

From the historical point of view, MAP as dispute resolution mechanism that might be initiated by taxpayer first appeared in Art. XVI (1) of the Model Bilateral Convention for the Prevention of the Double Taxation of Income and Property that was published by the League of Nations in 1942. It stated that a taxpayer shall be entitled to lodge a claim with the tax administration of the State in which he has his fiscal domicile or of which he is a national in case where he can show the proof that the action of the tax authorities of one of the contracting states has resulted in double taxation[5,6]. It has become the global recognized practice between contracting states to include the similar provision in the text of double taxation treaty between them since the adoption of the abovementioned model act.

The application of MAP is recommended in case of following situations that might result in double taxation:[7,8]

- questions relating to the attribution of profits to a permanent establishment;
- the taxation in the state of the payer – in case of special relationship between the payer and the beneficial owner – of the excess part of interest and royalties;
- cases of application of legislation to deal with thin capitalization when the state of the debtor company has treated interest as dividends;
- cases where lack of information as to the taxpayer's actual situation has led to misapplication of the provisions of double taxation treaty, especially in regard to the determination of residence, the existence of permanent establishment, or the temporary nature of services performed by an employee.

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[3] OECD. Mutual Agreement Procedure Statistics per jurisdiction for 2017. In: *Organization for Economic Co-operation and Development* [online]. 2018 [2019-03-30]. Available at: <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-2017-per-jurisdiction-all.htm>.

[4] CHRISTIANS, A. How Nations Share. *Indiana Law Journal*. 2012, Vol. 87, p. 1433.

[5] LEAGUE OF NATIONS. *Report on the Work of the Tenth Session of the Fiscal Committee*. Geneva: League of Nations, 1946, p. 26.

[6] KNITTEL, M. Articles 25, 26 and 27 – Administrative Cooperation. In: T. Ecker – G. Ressler (eds.). *History of Tax Treaties. The Relevance of the OECD Documents for the Interpretation of Tax Treaties*. Wien: Linde, 2011, p. 688.

[7] OECD. *Model Tax Convention on Income and on Capital (condensed version) (as it read on 21 November 2017)*. Paris: OECD Publishing, 2017, p. 423.

[8] ISMER, R. Article 25. Mutual Agreement Procedure. In: E. Reimer – A. Rust (eds.). *Klaus Vogel on Double Taxation Convention*. 4th ed. Vol. 2. Aaphen aan den Rijn: Wolters Kluwer, 2015, p. 1741.

Taxpayers might be motivated to initiate MAP in case of their disagreement with the position of tax authorities on interpretation or application of double taxation treaty because of its obvious benefits as dispute resolution mechanism that are widely recognized and described by S. Kim:[9]

1) the MAP does not require high level of administrative costs associated with the coordination and elimination of international double taxation and the taxpayers are not usually required to pay anything at all to the tax authorities at the time of requesting for a MAP, regardless of the nature of the dispute;
2) taxpayers benefit from the fact that the process is conducted by experienced staff from tax authorities with deep knowledge of national tax system that might limit potential misunderstandings, reduce the processing time and costs of dispute, and increase the probability of non-political resolution of the dispute;
3) taxpayers are able to enjoy the increased guidance and a reduction in risk-associated costs in case of new situations that might be addressed through professional negotiations between competent authorities during the MAP;
4) the increased confidentiality associated with the non-transparent MAP process in contrast with the procedures in domestic courts or international tribunals that might be important in case of strong interest of taxpayers in maintaining their good public reputation;
5) a mutual agreement reached by the competent authorities is not binding unless it is accepted by the taxpayer and the taxpayer might go to domestic court to review the case by rejecting the mutual agreement;

MAP process might reduce the chances that the foreign tax authority will regard it as contentious and subject the taxpayer to informal penalties, such as increased audits and other enforcement measures.

Nevertheless, the existence of advantages of MAP does not exclude the chances of appearance of its shortcomings. Based on its own findings concerning the application of MAPs in the context of the Canada-U.S. double taxation treaty, G. Turner points out at such shortcomings of the abovementioned dispute resolution mechanism as low level of taxpayer involvement, absence of assurance for the taxpayer that any settlement reached will be based on legal principles and absence of guarantees that the competent authorities will reach an agreement.[10] Moreover, some additional disadvantages are described by M. Züger.[11] First, the taxpayer is dependent on the provisions of domestic law in order to initiate a MAP and may not enforce the obligation of competent authority to initiate MAP on the level of international law. Second, there is no time limit for mutual agreement negotiations in most cases that might lead to cases where it took twelve years to reach an

[9] KIM, S. *Study on Arbitration as Institution of International Tax Dispute Resolution: Within the Ambit of MAP as Suggested by the OECD*. PhD Thesis. Seoul: Seoul National University School of Law, 2014, pp. 55-58. 2014 [2019-03-30]. Available at: <http://s-space.snu.ac.kr/bitstream/10371/120836/1/000000017842.pdf>.

[10] TURNER, G. Canada-U.S. Competent Authority MOU: First Steps to Mandatory Arbitration? *Tax Notes International*. 2005, Vol. 39, No. 13, pp. 1228–1229.

[11] ZÜGER, M. *Arbitration under Tax Treaties: Improving Legal Protection in International Tax Law*. Amsterdam: IBFD, 2001, pp. 11–16.

agreement between competent authorities. Thirdly, mutual agreement solutions are often characterized by compromise and consideration of equity that might be determined by the bargaining power of contracting states.

Taking into account pros and cons of MAP, it seems that the central issue of its inefficiency is still to be the limited participation of taxpayers in the process of interaction of competent authorities and the absence of the list of their rights in the process of MAP. As it is stated by A. Christians, "as marginally involved third parties to the proceedings between two governments, taxpayers speculate about what drives MAP outcomes" and the outside observers do not know for sure what are the legal, social, and political factors at play.[12] That is why one should agree with the statement that "the participation rights for taxpayers … are of little practical significance. Thus, the MAP does not contain the principles nor provide the guarantees of formal legal proceedings".[13] Despite all the improvements of MAP that have been made in the context of global ant-BEPS campaign since 2013, the taxpayers continue to be significantly limited in their rights that is the important factor in the process of making decision concerning the initiation of the MAP.

ROLE OF MAP IN THE CONTEXT OF THE PROTECTION OF TAXPAYERS' RIGHTS

Contemporary international actors such as the UN, the OECD and the G20 are concerned about taxation in the context of their activity dedicated to human rights protection and have declared the goals that might determine changes in the tax policy of many states around the world. The evolution of agenda of international actors is confirmed by the example of the UN Human Right Council. Its position is clearly reflected in para. 61 and para. 96 of the Guiding Principles on Extreme Poverty and Human Rights that are the first global policy guidelines focused specifically on the human rights of people living in poverty:[14]

1) states should take into account their international human rights obligations when designing and implementing all policies, including international trade, taxation, fiscal, monetary, environmental and investment policies;
2) states must take deliberate, specific and targeted steps, individually and jointly, to create an international enabling environment conducive to poverty reduction, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection and development cooperation.

These goals do not mention any rights that are obviously connected with the area of dispute resolution in context of interpretation and application of the provisions of double taxation treaties. At the same time, they show the important changes in global policy that

[12] CHRISTIANS, A. Take MAP with a Grain of Salt: Sifto and the Legal Nature of Competent Authority Agreements. *Tax Notes International*. 2017, Vol. 86, p. 82.
[13] ZÜGER, M. *Arbitration under Tax Treaties: Improving Legal Protection in International Tax Law*, p. 14.
[14] OHCHR. The Guiding Principles on Extreme Poverty and Human Rights, A/HRC/21/39, 27.9.2012. In: *Office of the High Commissioner for Human Rights* [online]. 2012 [2019-03-30]. Available at: <https://www.ohchr.org/Documents/Publications/ OHCHR_ExtremePovertyandHumanRights_EN.pdf>.

should be reflected in different areas of taxation starting from the taxation of poor people as the most affected group of taxpayers.

Non-governmental actors are also concerned by the issues of taxation in the context of human rights protection of the most affected people as it follows from the analogous provisions of the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (para. 17 and para. 29) that was adopted by forty international law experts from all regions of the world, including current and former members of international human rights treaty bodies as well as regional human rights bodies in September 2011.[15]

The proactive position of international governmental and non-governmental institutions on the improvement of tax policy in the area of human rights protection helps to make changes in the regulation of tax relations either on international level or on national one. Besides, they are important agents of influence in the context of work that are directed at finding of future strategies of development of regulation mechanism of tax relations. For example, one might admit the provisions on the future goals of states in accordance with the 2030 Agenda for Sustainable Development "Transforming our world":[16]

- states declare that the will adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality (para. 10.4);
- states underline that they will strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection (para. 17.1).

In the attempt to put these tasks into the agenda of international community, A. Pillay as the Chairperson of the Committee on Economic, Social and Cultural Rights tried to make an accent on the necessity of changes in the rational tax policies of modern states that are the parties to the International Covenant on Economic, Social and Cultural Rights (1966) in the letter that was sent in May 2012. The position of the Committee is that any proposed policy change or adjustment has to meet the necessary requirements because they might lead to retrogression in the enjoyment of economic, social and cultural right on the background of economic and financial crises, and a lack of growth. These criteria are (1) temporary character of the adopted measures, (2) their conformity with the demands of proportionality, (3) non-discrimination and (4) provision of the minimum core content of human rights and social protection. It is worth mentioning that the third requirement demands the inclusion of "all possible measures, including tax matters, to support social transfers to mitigate inequalities that can grow in times of crisis and to ensure that the rights of the disadvantaged and marginalized individuals and groups are not disproportionately affected".[17]

[15] ETO CONSORTIUM. Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. In: *ETOs for Human Rights Beyond Borders* [online]. 2011 [2019-03-30]. Available at: <https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23>.

[16] UN. Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, 25.9.2015. In: *United Nations* [online]. 2015 [2019-03-30]. Available at: <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E>.

[17] UN. Letter from the Committee on Economic, Social and Cultural Rights, CESCR/48th/SP/MAB/SW, 16.5.2012. In: *UN Human Rights* [online]. 2012 [2019-03-30]. Available at: <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>.

At the same time, there are a few projects that clearly state the necessity to recognize the interconnections between the issues of protection of human rights as taxpayers' rights. One of them is the Declaration of Taxpayer's Human Rights. This project has been realized by the Association of World Citizens holding a consultative status with the UN through ECOSOC since December 2012. As it is stated in the preamble, "taxpayer's human rights have naturally become a key universal value to promote as integral to human rights around the world. Thus, a fair, equitable and legitimate taxation scheme is of paramount importance to the protection of human rights and national development".[18]

Among the principles of interaction between taxpayers and national governments included to the list, one might admit the following key provisions:

- the government should define the defenses and remedies available to taxpayers, protection of privacy, right of relief and right to be properly informed;
- the proceedings and the resolutions of tax disputes should follow a legal path within a reasonable timeframe and be made as swift as legally possible;
- tax collections should be based upon evidences and follow the principle of reasoning and the rules of experience in the settlement of tax disputes between taxpayers and the government.

The Declaration of Taxpayer's Human Rights is not the only one example of attempts to strengthen the protection of taxpayers' rights on universal level. In 2016 the Confédération Fiscale Européenne (CFE), the Asia Oceania Tax Consultants' Association and the Society of Trust and Estate Practitioners presented a document titled "A Model Taxpayer Charter" that is intended to "foster a relationship of mutual trust, respect and responsibilities" between taxpayers and tax authorities.[19] It consists of 37 articles and is based on the ten fundamental principles that are integrity and equality; certainty; efficiency and effectiveness; appeal and the right to dispute resolution; appropriate assistance; confidentiality and privacy; payment of correct amount of tax; representation; proportionality, and honesty.

Being aware of the importance of the prevention of double taxation, the content creators of the document has included Art. 19 that states the following: "Legislation shall provide for relief of double taxation, through an exemption or tax credit mechanism or as may be suitable in the circumstances". As it seems, such wording clearly formulates the obligation of states to avoid negative consequences of double taxation and should be applied in the context of conflict between contracting states on interpretation or application of the provisions of double taxation treaties. It has to be mentioned that MAP is the only one dispute resolution mechanism between competent authorities on the basis of the provisions of double taxation treaty that might be used without reference to diplomatic channels. Nevertheless, there is no certainty that the proposed position guarantees the taxpayers the avoidance of double taxation because of the inclusion of words "as may be

[18] ASSOCIATION OF WORLD CITIZENS. Declaration on Taxpayer's Human Rights. In: *Global Endorsement of the Declaration on Taxpayer's Human Rights* [online]. 2016 [2019-03-30]. Available at: <http://www.taxpayerhumanrights.org/endorse/index.php>.

[19] A Model Taxpayer Charter. In: *Towards Greater Fairness in Taxation* [online]. 2015 [2019-03-30]. Available at: <http://www.taxpayercharter.com/charter.asp?id=16>.

suitable in the circumstances". This formulation gives a lot of discretion to tax authorities of contracting states in the absence of clear limits of its application.

Furthermore, in its document entitled "Taxpayers' Rights and Obligations – Practice Note" (2003), the OECD Committee of Fiscal Affairs Forum on Tax Administration presents the view on the content of taxpayers' rights and obligations. Among the other rights, there is also the right to pay no more than the correct amount of tax: "Taxpayers should pay no more tax than is required by the tax legislation, taking into account their personal circumstances and income. Thus, whilst it is acceptable to reduce tax liability by legitimate tax planning, governments make a distinction between this form of tax planning and forms of tax minimization which clearly go against the intent of the legislator. Taxpayers are also entitled to a reasonable measure of assistance from the tax authorities so that they receive all the reliefs and deductions to which they are entitled".[20]

Obviously, the last part of proposed wording allows to predict the right of taxpayer to be entitled to reliefs and deductions in case of the application of the provisions of double taxation treaties. Nevertheless, it seems that there is no clear obligation of tax authorities to resolve the situation of a taxpayer in case of taxation not in accordance with the provisions of double taxation treaty. They are obliged only to assist. As a result, taxpayers are without any guarantees in case of conflicting interpretations by competent authorities of the provisions of double taxation treaties.

Nevertheless, the Fiscal Affairs Department of the International Monetary Fund makes an attempt to clarify the roles and responsibilities of national government based on explicit legal basis for revenue collection by the following statement in its "Manual on Fiscal Transparency": "It is fundamental to fiscal transparency that taxation be under the authority of law and that the administrative application of tax laws be subject to procedural safeguards, such as taxpayer rights and tax dispute procedures".[21]

The list of recommended rights or safeguards should include: (i) confidentiality – the right to have personal information accorded the greatest possible confidentiality with the tax authorities; (ii) notice – the right to be notified of an assessment, a decision on adjudication, or any collection action against the taxpayer's assets; (iii) explanation – the right to an explanation of why a tax is being assessed in the way it is and to an explanation of the reasons for a decision by adjudication; (iv) appeal – the right to an independent administrative appeal and a final judgment appeal; and (v) representation – the right to be represented by a qualified professional (attorney, accountant, etc.) in any dealings with the tax authority.

Taking into consideration the absence of any exclusions from the cited provisions, one might suppose that the area of interpretation and application of the provisions of double taxation treaties is also covered by the proposals of the Fiscal Affairs Department.

Based on the results of the analysis of the abovementioned projects, it would be problematic to state that the modern tendencies of the development of human rights protec-

[20] OECD. Taxpayers' Rights and Obligations – Practice Note. In: *Organization for Economic Co-operation and Development* [online]. 2003. [2019-03-30]. Available at: <http://www.oecd.org/tax/administration/Taxpayers'_Rights_and_Obligations-Practice_Note.pdf>.

[21] IMF. *Manual on Fiscal Transparency*. Revised ed. Washington: Fiscal Affairs Department, 2007, pp. 21-22.

tion clearly demonstrates that the taxpayers' rights in the context of dispute resolution on the basis of double taxation treaties are at the center of the work of human rights institutions: "In most other areas where there is an interaction between the state and the citizen there has been a long-established process of standard setting for the protection of human rights, undertaken through the UN or another intergovernmental organization … In fact, it is really very surprising that this process of standard setting has simply not occurred in the tax field: why, for example, are there no internationally recognized standards for the conduct of tax officials in carrying out a tax audit?"[22]

Nevertheless, it does not mean the ignorance of the taxpayers' rights at all.

First, individuals enjoy the whole complex of human rights, despite their status as taxpayers. It means that the states should respect such their basic rights as the right to an effective remedy, the right to equal protection against any discrimination and the prohibition of arbitrarily deprivation of individual property. All these rights are rooted in the provisions of the Universal Declaration of Human Rights that is a milestone in the history of human rights and was proclaimed in December 1948.

Second, the provisions of double taxation treaty on MAP are "very important" from the procedural point of view because of their opportunities: "give rights to taxpayers who believe that they are not being taxed in accordance with the substantive rules of the convention to request that competent authorities bring their taxation into accordance with convention rules, either unilaterally or in consultation with their treaty partner".[23]

As it is underlined by R. Biçer, "the objective of a MAP is to ascertain the taxpayer's claim to be taxed in accordance with the provisions of an applicable income tax treaty".[24] Thus, the taxpayer might face with the situation of taxation not in accordance with the provisions of double taxation treaty without any opportunity to minimize its negative consequence if the MAP is the only effective remedy. The probability of such situations is underlined by P. Baker and P. Pistone.[25] For example, C. del Campo describes the case of a transfer pricing adjustment where the final resolution necessarily needs two competent authorities to resolve the case; domestic remedies only imply a resolution for double taxation in cases where the courts agree with the company's interpretation, but in a situation where the criteria expressed by the tax authorities are accepted by the court there is no solution for the company except an MAP.[26] It has to be added that the most common cases in which individuals try to initiate MAP have in its basis the issue of dual residency under the provisions of double taxation treaty. If unresolved, the taxpayer could be simultaneously taxed on the same income in both contracting states. The provisions of double taxation treaty include a list of "tiebreaker" rules but they are not effective in resolution of all possible situations of taxpayers. In such case, MAP is as the last resort for taxpayers to

[22] BAKER, P., PISTONE, P. General Report. *Cahiers de droit fiscal international*. 2015, Vol. 100B, p. 21.

[23] AULT, H. Dispute Resolution: the Mutual Agreement Procedure. In: A. Trepelkov – H. Tonino – D. Halka (eds.). *UN Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries*. N.-Y.: UN, 2013, pp. 309-310.

[24] BIÇER, R. The Effectiveness of Mutual Agreement Procedures as a Means for Settling International Transfer Pricing Disputes. *International Transfer Pricing Journal*. 2013, Vol. 21, No.2, p. 76.

[25] BAKER, P., PISTONE, P. *General Report*, p. 53.

[26] CAMPO, C. General Report. *Cahiers de droit fiscal international*, 2016,Vol. 101A, p. 50.

avoid the negative consequences of double taxation.[27] As it seems, there are no doubts that MAPs are "unique procedures which fall outside the domestic law" of a contracting state and are regarded as a part of international obligations of the country concerned.[28]

Third, the process of MAP might affect such important rights as the right to confidentiality and non-disclosure of information (for example, in case of information that represents a trade secret or know-how). Thus, it would be ill-grounded if someone decides to exclude taxpayers' rights from the whole complex of human rights. Moreover, it could harm the realization of specific human rights that are protected by the universal and regional mechanisms of human rights protection. Taking into account the fact that the provisions on MAP in double taxation treaty do not constitute itself a legal basis for exchanging of information that might be relevant for taxpayers, K. Vogel admits that they might allow such exchange between competent authorities of contracting states in case where it is necessary for the operation of MAP as a mechanism for dispute resolution. Thus, the secrecy provisions of treaty norms on the exchange of information must be applied in case of MAP where it includes the exchange of information concerning the taxpayers. It is worth mentioning that "if in the course of negotiations under MAP, more information is exchanges than it is needed for such a procedure, the whole procedure shall be governed" on the basis of the provisions dedicated to the issues of exchange of information.[29] Consequently, the provisions on MAP and the normative basis for the exchange of information are interconnected in the context of implementation of double taxation treaties; they should provide some guarantees for taxpayers especially in case of their application in the context of international relations with authoritarian or non-democratic regimes because the received information might be used in their struggle with the political opponents.

CONTENT OF TAXPAYERS' RIGHTS IN THE PROCESS OF MAP IN ACCORDANCE WITH THE OECD MODEL TAX CONVENTION

The provisions on MAP are implemented in Art. 25 of the OECD MTC that is widely recognized as constituting element of so-called "international tax language".[30] Thus, the appearance of the OECD Model Tax Convention is mentioned by R. Williams as "the beginning of a new era in international taxation" because it was accepted "as a pattern on which bilateral tax conventions might thereafter be shaped".[31] Obviously, the inclusion of Art. 25 has determined the presence of the provisions on MAP in the largest part of modern double taxation treaties.

The abovementioned article consists of five paragraphs.

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[27] LOMBARDO, M. *The Mutual Agreement Procedure (Art. 25 OECD MC) – A Tool to Overcome Interpretation problems?* p. 461.

[28] BIÇER, R. *The Effectiveness of Mutual Agreement Procedures as a Means for Settling International Transfer Pricing Disputes*, p. 81.

[29] VOGEL, K. *Klaus Vogel on Double Taxation Conventions*. 3rd ed. Aaphen aan den Rijn: Kluwer Law International, 1997, p. 1348.

[30] Ibid., p. 37.

[31] WILLIAMS, R. *Fundamentals of Permanent Establishments*. Aaphen aan den Rijn: Kluwer Law International, 2014, p. 10.

The first two paragraphs formulate the obligation of the competent authorities to cooperate in an attempt to endeavor by mutual agreement to resolve the situation of taxpayers where they are subjected to taxation not in accordance with the provisions of double taxation treaty. The third paragraph gives the competent authorities the opportunity to resolve by mutual agreement problems that might arise in the process of interpretation or application of the provisions of double taxation treaty. Besides, it also authorizes the competent authorities to consult together for the elimination of double taxation in cases not provided for in the provisions of double taxation treaty. The fourth paragraph is dedicated to the issue of forms of interaction between competent authorities in the process of MAP and states that they may communicate with each other directly, including through a joint commission consisting of themselves or their representatives. The fifth paragraph provides a mechanism aimed at the arbitration of unresolved issues that hamper reaching a mutual agreement between competent authorities within two years. Such mechanism is activated by sending a request from the affected taxpayer.

It is worth mentioning that the potential of mandatory arbitration is rarely used by developing countries and the BRICS countries are not an exception in this case. They have refused to recognize themselves as being obliged by the provisions of Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) that enables countries to include mandatory binding treaty arbitration in their double taxation treaties in accordance with the special procedures. Besides, mandatory arbitration is not placed among the elements of obligatory minimum standard that has been adopted in the process of the global anti-BEPS campaign. Taking into account cautious positions of the dominant number of modern states concerning mandatory arbitration, it seems that the scope of our research might be limited to the issues of MAP that is initiated by person in case of its taxation not in accordance with the provisions of double taxation treaty.

First of all, one might admit that the text of Art. 25 (1) of the OECD MTC expressively gives a taxpayer the right to initiate the MAP procedure, irrespective of the remedies provided by the domestic law of contracting states, in case of the actions of contracting states that result or might result in taxation not in accordance with the provisions of the double taxation treaty.[32]

The Commentary on Art. 25 of the OECD MTC gives more detailed description of the right to initiate MAP:

- the MAP process is applicable in case of double taxation as well as in the absence of any double taxation contrary to the provisions of double taxation treaty on the basis of the fact that the taxation in dispute is not in accordance with the treaty norms (para. 13);
- a taxpayer might initiate MAP without waiting until the taxation not in accordance with the provisions of double taxation treaty has been charged against or notified to him but it has to be added that such taxation appears at risk which is not merely possible but probable (para. 14);

[32] OECD. *Model Tax Convention on Income and on Capital (condensed version) (as it read on 21 November 2017)*, p. 44.

- a taxpayer should present his objections to the competent authorities of either contracting state and they must be so presented within the three years of the first notification of the action which gives rise to taxation that is in contravention with the provisions of double taxation treaty (para. 16);
- a taxpayer is not precluded from presenting his case to the competent authorities of both contracting states at the same time but there is an obligation of taxpayer to inform both competent authorities about that, in order to facilitate a coordinated approach to the case (para. 17);
- the expression "first notification of the action resulting in taxation not in accordance with the provisions of the Convention" should be interpreted in a way that the time limit begins to run only from the date of the notification of the individual action giving rise to such taxation (para. 21);
- the period of three years for initiating MAP is not interrupted by the fact that there is and domestic law (including administrative) proceedings (para. 25);
- a taxpayer is entitled to present his case to competent authority of either state whether or not he may have made claim or commenced litigation under the domestic law of one (or both) of the contracting states (para. 34);
- the implementation of a mutual agreement between competent authorities should normally be made subject to the acceptance of such agreement by the taxpayer, and to the taxpayers' withdrawal of the suit at law concerning those points settled in the mutual agreement (para. 45);
- interest and administrative penalties accessory to taxation not in accordance with the provisions of double taxation treaty should be appropriately reduced or withdrawn pursuant to the MAP but other administrative penalties (for example, a penalty for failure to maintain proper transfer pricing documentation) are not fall within the scope of the MAP in accordance with the treaty norms (para. 49).

These provisions are not able to hide the fact that there are no more references to rights of taxpayers neither in Art. 25 of the OECD MTC nor its Commentary. As it is stated by M. Lombardo, the legal position of the taxpayer himself in the context of MAP is not spelled out at all in Art. 25 of the OECD MTC: "it has no specifically defined obligation to participate, give evidence or proof any kind any kind, but it is not possible to see how the procedure could be affected if the taxpayer were to be totally uncooperative".[33]

Based on the opportunities of taxpayers to initiate MAP in accordance with Art. 25 (1) of the OECD MTC, M. Lang states that MAP might be considered as an important element in "the legal protection of the taxpayer" because it allows to cure the deficiencies that might arise in case of conflicting interpretations of the same treaty norms by the competent authorities of contracting states. Nevertheless, he has to recognize that the OECD MTC does not include any provisions that refer to the taxpayer's position in the MAP in addition to the taxpayer's right to present objections. At the same time, "it is the duty of the contracting states to give the taxpayers 'certain essential guarantees'".[34] Obviously, the

[33] LOMBARDO, M. *The Mutual Agreement Procedure (Art. 25 OECD MC) – A Tool to Overcome Interpretation problems?* p. 463.

[34] LANG, M. *Introduction to the Law of Double Taxation Conventions*. 2nd ed. Wien: Linde, 2013, pp. 153-154.

content of these guarantees might be interpreted freely by the contracting states in the absence of the clear set of recommended standards that makes the system of the legal protection of the taxpayer weaker than it should be.

Taking into account the nature of the MAP as intergovernmental mechanism of dispute resolution, M. Züger admits that "the taxpayer is not party to the procedure and has – subject to domestic law providing otherwise – neither a right to inspect the case files nor the right to be heard in the procedure". Moreover, he states that the tax authorities of the OECD member states are only willing to give taxpayers two rights: 1) the right to present written or oral statements themselves or through a representative; 2) the right to choose a counsel in case of the joint commission formed by the competent authorities of the contracting states in accordance with Art. 25 (4) of the OECD MTC. It has to be added that there is no visible result of the presence of such common willing in the provision of Art. 25 of the OECD MTC and its Commentary despite the fact that they have been changed in the provisions on MAP in 2017. The taxpayers are still lack the concrete procedural rights in the context of MAP. Thus, one might agree with the statement that "the participation rights for taxpayers promised by the OECD Commentaries are of little practical significance" because there is no consensus on their content between states.[35]

GLOBAL ANTI-BEPS CAMPAIGN AND ITS IMPACT ON THE DEVELOPMENT OF TAXPAYERS' RIGHTS IN MAP

In 2013, the OECD published the report "Addressing Base Erosion and Profit Shifting" that became the starting point for the global anti-BEPS campaign aimed at reforming the existing rules of international taxation originated from 1920s: "the international tax system was created before the massive growth of digital economy, cross-border trade and globalization. Tax laws are therefore facing difficulties in keeping pace with global corporations, fluid movement of capital and the rise of the digital economy; leaving gaps and mismatches that can be exploited to generate double non-taxation".[36]

As it was pointed out earlier, "OECD has developed standards to eliminate double taxation and should ensure that this goal is achieved while efforts are deployed to also prevent double non-taxation. In this respect, a comprehensive approach should also consider possible improvements to eliminate double taxation, such as increased efficiency of mutual agreement procedures and arbitration provisions".[37]

There is no doubt that the necessity of improvement of the dispute resolution mechanism on the basis of MAP is determined in the context of the global anti-BEPS campaign by the demands to ensure certainty and predictability for business in the period of changes and afterwards because the realization of the planned measures bring elements of uncertainty that should be minimized as much as possible. It allows to explain why the aim of Action 14 of the anti-BEPS campaign is formulated as it is: "develop solutions to address

[35] ZÜGER, M. *Arbitration under Tax Treaties: Improving Legal Protection in International Tax Law*, pp. 13-14.
[36] CHAISSE, J. Making Tax Dispute Resolution Mechanisms More Effective – the Base Erosion and Profit Shifting Project and Beyond. *Contemporary Asia Arbitration Journal*. 2017, Vol. 10, No. 1, p. 4.
[37] OECD. *Addressing Base Erosion and Profit Shifting*. Paris: OECD Publishing, 2013, p. 53.

obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases".[38]

The next step was taken in 2015 when the OECD released its final report on improving the effectiveness of dispute resolution mechanisms under the Action Plan on BEPS (Action 14). It contains a package of measures that reflect the consensus of the participating countries to take specific measures aimed at resolving treaty-based disputes in a timely manner. They should be able to:[39]

- ensure that treaty obligations related to the MAP are fully implemented in good faith and that MAP cases are resolved in a timely manner;
- ensure the implementation of administrative processes that promote the prevention and timely resolution of treaty-related disputes; and
- ensure that taxpayers can access the MAP when eligible.

Additionally, there are also eleven so-called Best Practices that complement the abovementioned package of measures but are not obligatory because they have not been approved by all G20 and OECD countries.

Following the approach rooted in the provisions of Art. 25 of the OECD MTC and its Commentary, there is no references to the taxpayers' rights in the process of MAP on the basis of double taxation treaty except to make a request for MAP by the taxpayers in case of taxation not in accordance with the treaty norms. Thus, it is obvious that the participating states have decided to be concentrated more on the procedural aspects of improvement of MAP as a dispute resolution mechanism than on the definition of the list of taxpayers' positive rights that might be difficult task. Nevertheless, the final report on Action 14 includes some references to the taxpayers' rights.

First, there is the obligation of states to provide MAP access in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. It is one of the elements of minimum standard to ensure the timely, effective and efficient resolution of treaty-related disputes (element 1.2). From the point of view of taxpayers, it is important because tax authorities have had a lot of discretion on the stage of initiating of MAP by taxpayers that should be limited by clear set of rules.

Second, the element 2.6 of the minimum standard points out that countries should clarify domestically that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If countries have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, countries may limit access to the MAP with respect to the matters resolved through that process.

[38] OECD. *Action Plan on Base Erosion and Profit Shifting*. Paris: OECD Publishing, 2013, p. 23.
[39] OECD. *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*. Paris: OECD Publishing, 2015, p. 9.

Third, it is mentioned that procedures for the publication of mutual agreements between competent authorities in the context of the provisions similar to Art. 25(3) of the OECD MTC must include appropriate provisions to protect the confidentiality of taxpayer information (para. 44).

At the same time, one should admit that some representatives of business, non-governmental organizations or law firms have criticized the proposed approach based on the necessity to strengthen the taxpayers' protection. One of these critics is the International Alliance for Principled Taxation that is a group of major multinational corporations based throughout the world and representing business sectors as diverse as consumer products, media, mining, telecommunications, oilfield services, transportation, computer technology, energy, pharmaceuticals, entertainment, software, IT systems, publishing, beverages, and electronics. The common opinion of its participants is that the proposed approach omits some best practices included in the OECD Manual on Effective Mutual Agreement Procedures (MEMAP), such as that which are "aimed at protecting the rights of taxpayers (such as advising taxpayers of their treaty rights and elevating MAP cases that cannot be resolved within two years), and even signals a fundamental revisiting of some of the MEMAP best practices (such as the ones relating to the relationship of MAP and arbitration to domestic law remedies, to exclusions for 'anti-abuse' cases, and to the collection of tax). These differences risk creating potentially unhelpful negative inferences".[40]

Moreover, commenting the propositions on the right of a competent authority to refuse unilaterally in case of a non-justified taxpayer's objection, Institut der Wirtschaftsprüfer adds that "taxpayers must be guaranteed the right to a legal remedy against any unilateral decision. Ideally, such legal remedy will include the right to involve the tax authorities of the other Contracting State and grant access to a neutral arbitration panel".[41]

Based on the interests of employees, the Trade Union Advisory Committee to the OECD mentions that "Action 14 is not concerned with the right to information of other corporate stakeholders with regard to MAP issues, which would help them make an informed judgement about the company's exposure to tax risk. Corporate stakeholders, including workers and their representatives, creditors, shareholders and, not least, citizens at large, have an interest in accessing information on MAP".[42]

Representing the interests of top of U.S.-based global companies and professional services firms from every sector, United States Council for International Relations calls to make "clearer, taxpayers should always have the right to make a written presentation on an issue. Taxpayers are uniquely able to explain their business and the facts involved in any dispute and should therefore be able to present their view in writing".[43]

As it follows from the abovementioned positions, the business community and non-governmental sector have a low level of expectations concerning the changes of modern

[40] OECD. Comments Received on Public Discussion Draft "BEPS Action 14: Make Dispute Resolution Mechanisms More Effective". In: *Organization for Economic Co-operation and Development* [online]. 2015 [2019-03-30]. Available at: <http://www.oecd.org/tax/dispute/public-comments-action-14-make-dispute-resolution-mechanisms-more-effective.pdf>. p. 160.

[41] Ibid., p. 207.

[42] Ibid., p. 388.

[43] Ibid., p. 408.

situation where taxpayers are not sure about their procedural rights in the context of MAPs on the basis of double taxation treaties. First of all, Action 14 of the global anti-BEPS campaign initiated by the OECD and the G20 are focused on the procedural improvements that might make MAP more effective dispute resolution mechanism in case of taxation not in accordance with the provisions of double taxation treaties. Nevertheless, it is difficult to suggest that the issue of taxpayers' protection might be ignored in face of the increasing number of disputes between taxpayers and tax authorities on interpretation and application of double taxation treaties. Besides, the data provided by clearly demonstrates that there is "an OECD trend towards MAPs and away from court cases".[44] At the same time, the EU provides an example of strengthening of taxpayers' rights in the context of MAP as it followed from Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU (EU Directive).

PROTECTION OF TAXPAYERS' RIGHTS IN THE CONTEXT OF MAP: THE POSITION OF THE EU

The EU Directive "plays a supplementary role in relation to the Arbitration Convention and provides a dispute resolution mechanism for disputes between Member States over the interpretation and application of treaties. It was implemented in the aftermath of the discussions following the BEPS project, specifically Action 14 of the BEPS Project".[45]

Thus, one might suggest that the provisions of the EU Directive might be a further development of the approach implemented in the final report on Action 14.

The authors of the document clearly state that its provisions "respects the fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union". Moreover, they seek "to ensure full respect for the right to a fair trial and the freedom to conduct a business".[46]

Among all the provisions of the EU Directive, it should be paid attention to the following ones except the provisions on the right to initiate MAP:

- a taxpayer has a right to withdraw its request for MAP by submitting a written notification of withdrawal to each competent authority in accordance with Art. 3(6);
- a taxpayer might accept or reject the mutual agreement reached by competent authorities of member states as a result of MAP, but the taxpayer should renounce the right to any other remedy in case of the acceptance of the conditions determined by the mutual agreement (Art. 4(2));
- a taxpayer initiated the MAP should be informed by competent authorities about the general reason for the failure to reach agreement between them (Art. 4(3));
- a taxpayer shall be entitled to appeal against the decision of the competent authorities of the member states concerned in accordance with national rules where all compe-

[44] BAISTROCCHI, E., HEARSON, M. Tax Treaty Disputes: A Global Quantitative Analysis. In: Eduardo Baistrocchi (ed.). *A global analysis of tax treaty disputes*. Cambridge: Cambridge University Press, 2017, p. 1536.

[45] LANG, M., PISTONE, P., SCHUCH, J., STARINGER, C. (eds.). *Introduction to European Tax Law on Direct Taxation*. 5th ed. Wien: Linde, 2018, p. 21.

[46] EU. Council Directive 2017/1852 of 10.10.2017 on tax dispute resolution mechanisms in the EU. *Official Journal of the European Union*. 2017, L. 265, p. 60.

tent authorities of the member states concerned have rejected taxpayer's complaint (Art. 5(3));
- a taxpayer might have recourse to the remedies available under the national law of the member states concerned but if the proceedings to seek such a remedy has been commenced, the terms of periods referred to in Art. 3(5) and 4(1) respectively shall commence from the date on which a judgement delivered in those proceedings has become final or on which those proceedings have otherwise been definitively concluded or where the proceedings have been suspended (Art. 16(3));
- there are special provisions for individuals and smaller undertakings that might submit the complaints, replies to a request for additional information, withdrawals and requests specified in Art. 3(1), 3(4), 3(6) and 6(1), by way of derogation from those provisions, only to the competent authority of the Member State in which the taxpayer is resident (Art. 17);
- a taxpayer initiated the MAP may request the competent authorities not to publish information that concerns any trade, business, industrial or professional secret or trade process, or that is contrary to public policy (Art. 18).

Obviously, the EU Directive proposes wider list of taxpayer's rights in the context of MAP on the basis of the provisions of double taxation treaty between member states as it is in case of the OECD MTC. It allows to set a better balance between the interests of taxpayers and the member states on the interpretation and application of the provisions of double taxation treaties in comparison with the approach recommended in Art. 25 of the OECD MTC and its Commentary.

Moreover, the taxpayers are entitled to make the request to set up an Advisory Commission in case of the rejection of the complaint by the competent authorities, their inability to reach the mutual agreement, or the decision of the relevant court or judicial body on the taxpayer's appellation against the decision of the competent authorities of the member states concerned in accordance with national rules where all competent authorities of the Member States concerned have rejected the complaint (Art. 6(1)). It should be noted that competent authorities of the EU member states might create the Alternative Dispute Resolution Commission instead of the Advisory Commission (Art. 10(1)). If the competent authorities fail to reach a mutual agreement as to how to resolve the question in dispute, they shall be bound by the opinion of the Advisory Commission or Alternative Dispute Resolution Commission (Art. 15(2)). Consequently, this eventual effect might stimulate the competent authorities to reach the consensus over the situation of the taxpayer because they could control the MAP but not the activity of the Advisory Commission or Alternative Dispute Resolution Commission.

PROTECTION OF TAXPAYERS' RIGHTS IN THE CONTEXT OF IMPROVEMENT OF MAP AS DISPUTE RESOLUTION MECHANISM AT THE LEVEL OF THE BRICS COUNTRIES

Higher level of protection of taxpayers' rights in the context of MAP on the basis of double taxation treaties of the EU member states clearly points out at the advisability of further improvements of the approach implemented in the OECD MTC and its Commentaries. Additionally, there are demands from the taxpayers concerning further develop-

ments of their procedural rights in the context of MAP as it follows from the materials of discussion concerning the final report on Action 14 of the anti-BEPS campaign described above.

The proposed way of further development of MAP as dispute resolution mechanism is also supported by researchers. Among them are P. Baker and P. Pistone. They propose a list of rights that might be understood "as a 'minimum standard' in the regulation of MAP by contracting states. It includes the following: 1) a right to initiate an MAP; 2) the taxpayer should be given a challengeable reason why the matter has not been taken forward if for any reason the competent authority decides not to take forward the procedure; 3) the taxpayer should be kept fully informed during the procedure; 4) the taxpayer should be entitled to see any documents employed in the process (except those for which a genuine case for secrecy can be made); 5) a right of taxpayer to be represented; 6) a right of taxpayer to a hearing by one or both competent authorities before a resolution is reached".[47]

The proposed list of taxpayers' rights in the context of MAP might be criticized in some of its elements. For example, H. Ault states that the right of direct participation of taxpayers and the right to make presentations should be conditioned by the presence of permit from the competent authorities of contracting states: "Depending on the situation, the competent authorities may permit the taxpayer to submit briefs or make presentations to either one or both of them. These presentations may also contain taxpayer proposals for the resolution of the case. However, direct taxpayer's participation in the competent authority negotiations would not be appropriate, given the differing interests of the parties, through timely indications to the taxpayer of the status of the negotiations would be useful in moving the case forward".[48]

Despite the difference among researchers on the content of taxpayers' rights under MAP, it is obvious that strengthening their protection might be desirable based on the needs of taxpayers and the changes of modern system of regulation of international tax relations that might have negative influence on investment and trade activity. This trend might be affirmed by the example of setting of higher standards of taxpayers' protection in the EU.

At the same time, the BRICS states decide to follow the approach that is stricter in comparison with the EU approach as it is followed from the provisions of draft of Multilateral Convention between the Government of Brazil, the Government of the Russian Federation, the Government of India, the Government of People's Republic of China and the Government of Republic of South Africa for Settlement of Cross-Border Tax Disputes. This document is the result of work of the Second Coordination Committee Meeting of the BRICS Law Institute and the BRICS and Developing Countries Legal Experts Forum (Yekaterinburg, 2-10 June 2017) (draft of the BRICS Convention)[49]. Its provisions give taxpayers the right to tax arbitration in case where MAP between the competent authorities of the contracting states does not eliminate taxation that does not comply with the double taxation treaty between the contracting states (Art. 3).

[47] BAKER, P., PISTONE, P. *General Report*, p. 54.
[48] AULT, H. *Dispute Resolution: the Mutual Agreement Procedure*, p. 320.
[49] VINNITSKY, D. BRICS and Developing Countries Legal Experts Forum: Emergence of International Coordination in Economic and Tax Law. *BRICS Law Journal*. 2018, Vol, 5, No. 1, pp. 147–148.

First, the provisions of the draft of the BRICS Convention concerning the right of tax arbitration include the threshold of the amount of the dispute that should exceed $100,000 or the equivalent amount in the national currency of the contracting states. One might suggest that usual taxpayers might be in a less favorable position than large taxpayers only based on the amount of the dispute.

Second, the provisions of the draft of the BRICS Convention adds nothing to the list of the taxpayers' rights in the context of MAPs based on the double taxation treaties of the BRICS states if it is compared with the OECD approach in Art. 25 of the OECD MTC and its Commentaries. The only exception is the right to tax arbitration.

Third, the taxpayer initiated the MAP is deprived of the right of refusal in case of the decision of the Arbitration Panel (Art. 5(2)). It has to be noted that the OECD approach includes the condition of taxpayer's acceptance of the arbitration decision in accordance with Art. 25(5) of the OECD MTC. In other words, the proposed approach limits the list of rights that is included in Art. 25 of the OECD MTC.

It is widely recognized that tax arbitrage "is an integral part" of MAP on the basis of the provisions of double taxation treaties and does not constitute an alternative route to solving disputes concerning the application of the treaty norms (para. 5 of the Commentary on Art. 25 of the OECD MTC). Thus, the right to tax arbitrage should complement the right to initiate MAP.

Consequently, the protection of taxpayers demands to make the list of their rights wider than it is proposed now in the context of MAP on the basis of double taxation treaties concluded by the BRICS states. As minimum, these rights should include the right to be informed about the process of negotiation between competent authorities, the right to be informed of all documents that are presented in the process of MAP by competent authorities (except those for which a genuine case for secrecy can be made), the right to be informed about the reasons of refusal in initiating of MAP by competent authorities and the right of refusal of the mutual agreement negotiated by the competent authorities or the arbitration decision.

CONCLUSION

Taking into consideration unique characteristics of MAP as dispute resolution mechanism, the right to initiate MAP is of paramount importance in the process of the interpretation and application of double taxation treaties especially these days. The unprecedented changes of tax rules resulted from the global anti-BEPS campaign has created the necessity in the efficient and effective MAP since the beginning of the project. In the other case, negative effects of taxation not in accordance with the provisions of double taxation treaties might destimulate the development of transboundary economic relations between contracting states.

At the same time, there is no consensus among the members of international community on the issue of concrete package of taxpayers' rights in the process of MAP except the right to initiate MAP. It is also absent at the level of researchers. Nevertheless, the example of the EU member states cooperation on improvement of dispute resolution on the basis of MAP demonstrates that the list of taxpayers' rights has a real chance to be widened at the regional level because of the similarity of economic interests of cooperating states.

The EU member states widened the package of taxpayers' rights in the context of MAP on the basis of their double taxation treaties by the way of adopting of the Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU.

Based on the example of the EU Member States in the context of improvement of MAP, it is suggested that the similar approach might be tried to realize by the BRICS countries. Thus, the list of taxpayers' rights need to be widened in the process of MAP by adding (1) the right to be informed about the process of negotiation between competent authorities, (2) the right to be informed of all documents that are presented in the process of MAP by competent authorities (except those for which a genuine case for secrecy can be made), (3) the right to be informed about the reasons of refusal in initiating of MAP by competent authorities and (4) the right of refusal of the mutual agreement negotiated by the competent authorities or the arbitration decision. The realization of this opportunity gives the BRICS countries the chance to avoid possible negative effects of unresolved problems of taxation not in accordance with the treaty norms, to strengthen the atmosphere of trust and confidence of taxpayers and to provide the balance between public and private interests in the area of taxation. Thus, the appropriate changes should be made in the draft of Multilateral Convention between the Government of Brazil, the Government of the Russian Federation, the Government of India, the Government of People's Republic of China and the Government of Republic of South Africa for Settlement of Cross-Border Tax Disputes.