

**IFA 75th Annual Congress
Cancun, Mexico**

OUTLINE

**Tax adjudicators Seminar (Adjudicative
forums for deciding international tax
disputes - Companion seminar to Subject 2)**

SEMINAR C | Tuesday, 24 October 2023 | 13.30 – 15.30

Chair

Philippe Martin (France)

Panel members

Rita da Cunha (United Kingdom)

Juliane Kokott (CJEU)

Noiana Marigo (USA)

Juan Carlos Roa (Mexico)

Secretary

Cristina Carrasco Briones (Mexico)

The purpose of the seminar is to address common issues related to the function of adjudicating tax disputes, which means deciding upon a disagreement with a binding decision, beyond all mechanisms relying on intergovernmental cooperation, conciliation or dispute prevention. The panel comprises representatives from national courts, the Court of Justice of the European Union, international investment treaty arbitration and domestic tax arbitration. Interaction between these different forums will be analyzed.

This seminar will be divided into 4 parts.

Part 1 : The variety of adjudicative forums

Panel members will shortly present the main characteristics of the tax adjudication system that they are representing.

Part 2 : The function and duties of a tax adjudicator

This topic will address common issues related to expectations from the parties and the public. How do tax adjudication forums organize themselves to meet such expectations?

Five major expectations can be addressed:

- Impartiality: methods followed to guarantee impartiality (selection, behavioral constraints);
- Reliability: methods to establish facts, to apply relevant law, to provide predictability and consistency;
- Dialogue with the parties: methods to guarantee such exchanges;
- Speed: methods to minimize length of proceedings;
- Clarity: wording of decisions, communication.

Part 3 : The standards applied and the objectives pursued

This topic will cover some main steps in deciding on the outcome of a dispute. What is the logic followed by various adjudicative forums?

- Legal sources used : tax law, non-tax sources (Constitution, non-tax treaties), case law or precedents from the same or other adjudicative forums, documents published by international organizations;
- Objectives followed by adjudicators: simplicity, balance of legitimate interests, equity?



- Remedies: choice of effective remedies, fine-tuning of appropriate and proportionate remedies.

Part 4 : The legal approach to disruptive measures taken by States

This part will show examples of legal reasoning in some difficult situations that various tax adjudicators may have to address. States sometimes take disruptive measures, i.e. tax rules that submit some taxpayers to a special unfavorable treatment. But they may have real public-interest justifications for these measures. How do tax adjudicators seek a balance between public interest and taxpayer (investor) rights?

Several examples will be discussed:

- Targeted taxes: taxes with the object or effect of weighing on specific taxpayers. There could be a concern about discrimination. But these taxes may have various justifications (they can be designed to raise revenue, to be a disincentive in economic, social or environmental policies, to ensure a fair allocation of tax burden when some taxpayers have an extraordinary ability to pay, to achieve the recapture of excessive profits...);
- Retroactive or retrospective taxation or withdrawal of tax benefits. These measures may raise issues of retroactivity or legitimate expectations. But there could be public-interest justifications (due to behavior of certain taxpayers, budget constraints, review of tax policies ...);
- Specific or general anti-avoidance measures. These measures submit certain taxpayers to a special tax treatment, beyond the simple application of general tax law. They have Constitutional or public-interest justifications. But they may raise issues such as correct targeting, fairness, guarantees resulting from legal drafting or subsequent interpretation, leeway of tax adjudicators ...