



International Fiscal Association



IFA 75th Annual Congress Cancun, Mexico

ISSUES PAPER

GOOD FAITH IN DOMESTIC AND INTERNATIONAL TAX LAW

Subject 2 | Tuesday, 24 October 2023 | 09.00 – 12.00

General Reporters

Craig Elliffe (New Zealand)
Sjoerd Douma (Netherlands)

Chair

Hon. Marshall Rothstein (Canada)

Panel Members

Vanessa Arruda Ferreira (IBFD)
Céline Braumann (Canada)
Luzius Cavelti (Switzerland)
Daniel Gutmann (France)
Sachit Jolly (India)

Secretary

Ilana Ludwin (Canada)

I. Background and purpose of plenary session

Good faith is a fundamental legal principle in international law and most domestic legal systems worldwide, both civil and common law. The meaning of good faith varies across different contexts and jurisdictions, which can be a challenge in the international context where consistency is desirable.

In the domestic tax context, good faith can be relevant to the relationship between taxpayers and tax authorities. Its relevance can be overt or implied, set out in published guidance or unexpanded, and subject to explicit enforcement mechanisms or not.

In the international tax context, the good faith principle applies to dealings between contracting States, in particular to tax treaties and their interpretation. It is similarly relevant to dealings between taxpayers and the tax authority of a contracting State. The *Vienna Convention on the Law of the Treaties* and the *Charter of the United Nations* are important sources for the principle. Despite these common sources, the influence of the principle of good faith on domestic courts and government administrators, including tax administrators, varies. The willingness of legislatures to give full meaning to the principle of good faith can also vary.

The purpose of this plenary session is:

- (i) to provide a comparative survey of the role and purpose that good faith plays in domestic and international tax systems around the world;
- (ii) to apply this survey to specific case studies based on selected current issues in international tax practice; and
- (iii) to assess whether there is a case for encouraging greater development and reinforcement of this principle in domestic tax systems to promote comity and certainty in legal outcomes amongst States in international tax matters. If so, we make tentative recommendations to achieve this goal.

The panel is structured into five parts.

In Part I, we will present the findings of the General Report. Part II focuses on the history and foundation of the principle of good faith in the international context generally and in the international tax context (including the tax treaty context). Then in Part III, we will discuss concrete case studies where the principle of good faith is relevant. Part IV will discuss available and potential remedies for breaches of the principle of good faith. Lastly, in Part V, we will conclude the panel with policy considerations for the future.

II. Content of plenary session

A. Part I: Introduction and Summary of Good Faith in the Domestic Context

In this part, the general reporter(s) will present a summary of the branch reports, including a brief overview of the principle of good faith in the domestic context. The panelists will highlight broad areas of commonality and divergence in civil and common law systems that are relevant to the subsequent discussion of good faith in the international context.

B. Part II: History and Foundation of Good Faith in the International and International Tax Context

In this part, the history and foundation of the principle of good faith in the international context generally and in the international tax context (including the tax treaty context) will be explored. Noteworthy sources for the principle and cases on its operation in the international context will be discussed.

C. Part III: Application of Good Faith in the International Tax Context

In this part, the panelists will discuss concrete case studies where the principle of good faith is relevant. The case studies will include consideration of digital services taxes, domestic law overrides, and the application of anti-abuse rules.

D. Part IV: Remedies for Breaches of Good Faith

In this part, the panelists will discuss the available and potential remedies for breaches of the principle of good faith, with reference to the case studies discussed in Part III.

E. Part V: Conclusion and Recommendation

In this Part, panelists will have an opportunity to suggest recommendations on what role the principle of good faith should or could have in the context of international tax law based on policy and administrative considerations.