

From ECJ as a Tax Court to an International Tax Court ?



Court of Justice of the European Union



International Tax Court

- Generalists or Specialists within ECJ ?
- Specialization Limited to Tax Law ?
- Which Judges / Advocate General ?



Specialized Court at EU level ? (Art. 257 TFEU)

- “The European Parliament and the Council ... may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas.”
Commission/ECJ may propose / request
- Members appointed by the Council unanimously (how many? / AG?)
Example: Civil Service Tribunal 2004-2016,
7 judges



Arbitration ?

- Achmea, C-284/16
Intra-Union arbitration clause in investment protection agreement violates the autonomy of EU law (Art. 267, 344 TFEU), but limited judicial review of arbitral awards in commercial arbitration justified; commercial arbitration proceedings “originate in the free will of the parties”(nos. 54-55).
- Pl Holdings, C-109/20 – pending
Also valid for tacit ad hoc Agreements?
- Pending: Avis (Opinion) 1/20 and C-741/19, Opinion Szpunar of 3.3.2021 – Energy Charter
Also valid for Plurilateral Agreement where EU is a party?
- Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union of 05.05.2020



Implications for Tax Dispute Resolution?

- Art. 15 (4) tax dispute resolution directive 2017/1852: “The final decision [of the competent authorities] shall be binding on the Member States concerned and shall not constitute a precedent. The final decision shall be implemented subject to the affected person(s) accepting the final decision and renouncing the right to any domestic remedy within 60 days from the date when the final decision was notified, where applicable”.
- Autonomy of EU Law (Art. 267, 344 TFEU)



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Thank you for your Attention!

