

International

Maximizing Value through Arbitral Power within the International Tax Dispute System

A Derivative and Qualquant Analysis

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This article provides a theoretical foundation with potential for direct practical implementation on the use of arbitral powers within international tax dispute resolution for the benefit of arbitrators and competent authorities. First, it introduces the notion of inherent and implied powers as a means to show how the characteristics of panels and interpretation can be used for the purposes of achieving faster the “right” solution to a dispute. Second, it shows how value created by disputes should be measured – through returns on investment of the dispute. The work shows that the measure can be used to compare the possible impact on the creation of value of different decisions of competent authorities in terms of drafting the legal framework of the dispute and arbitrators. Third, it gives an example on how arbitral powers can be used, making a case for the use of bifurcation within the context of international tax dispute resolution showing how further analysis of panel power is useful to enhance the system as *is*, without further reform. The work therefore raises awareness on how the current system can benefit from a broader discretion of arbitrators in managing international tax disputes especially if competent authorities expressly allow it and shows how such benefits can be measured. The article concludes with a practical example on the use of bifurcation to limit costs of a dispute and consequently enhance value.