




The Portuguese tax arbitration regime

Tânia Carvalhais Pereira
(Head of Tax)




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Main questions:

- 1) How did Portugal overcome the opposition/skepticism to settling domestic tax disputes through arbitration?
- 2) What are the key features of the regime that make it an attractive path for taxpayers?
- 3) What are the main takeaways from the Portuguese tax arbitration experience?



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Overcoming opposition and skepticism

- Social and economic costs of judicial delays
- Recognition of the right to effective judicial protection within the framework of fundamental rights
- The arbitration tribunals are included in the list of national courts in Article 209 of the Constitution
- Tax arbitration as a realization of the rule of law
- Call to action: the role of the academic community and public opinion

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Legal grounds

- Decree-Law no. 10/2011 + Ministerial Order + Regulations on fees and procedures
- Prohibition to resort to equity
- Arbitration tribunals as an element of the Portuguese judicial system on a par with the tax judicial courts
- An arbitral award has the same legal force as a judicial tax court decision
- Tax credit vs. disputed credit

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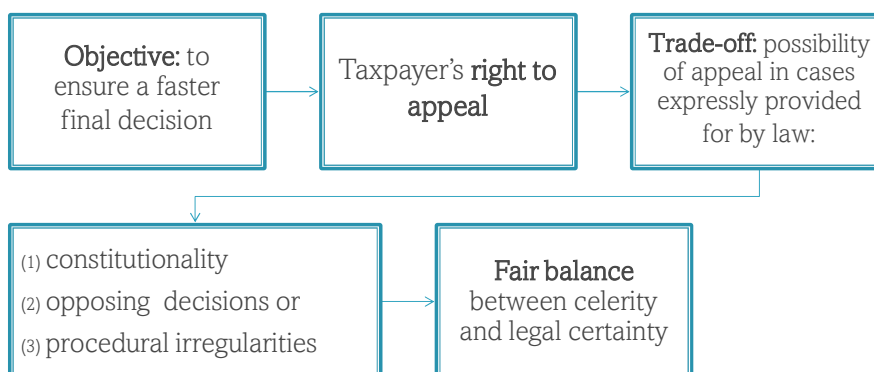
Key features of the Portuguese tax arbitration regime

- . Institutional arbitration through the CAAD
- . Voluntary arbitration
- . Selection/appointment/impediments of arbitrators
- . Comparable costs of litigation
- . Celerity of the proceedings
- . Transparency /publicity / public scrutiny
- . Simplicity and dematerialization

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Limitation to the appeal



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- Fast-track to the European Court of Justice (ECJ)
 - Tax arbitration tribunals have been classified as a “*court or tribunal of a Member State*” (Ascendi Judgement, C-377/13)
 - ECJ have jurisdiction to reply to questions referred for a preliminary ruling by a tax arbitration tribunal
 - Essential in the framework of taxes harmonized at the EU level (such as VAT or excise duties)

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Tax arbitration in action!

- 11 years of practical experience
- Effective instrument for ensuring access to justice
- Reduction of pending cases and “suppressed litigation”
- Emphasis on transparency and celerity
- Special nature of the regime

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Lessons from experience!

- Original tax dispute resolution model tailored to the Portuguese tax system
- Ruled out the application of the commercial arbitration regime
- Continuous improvements and adaptations over time
- Avoiding competition between arbitration centers and "taxpayers shopping"

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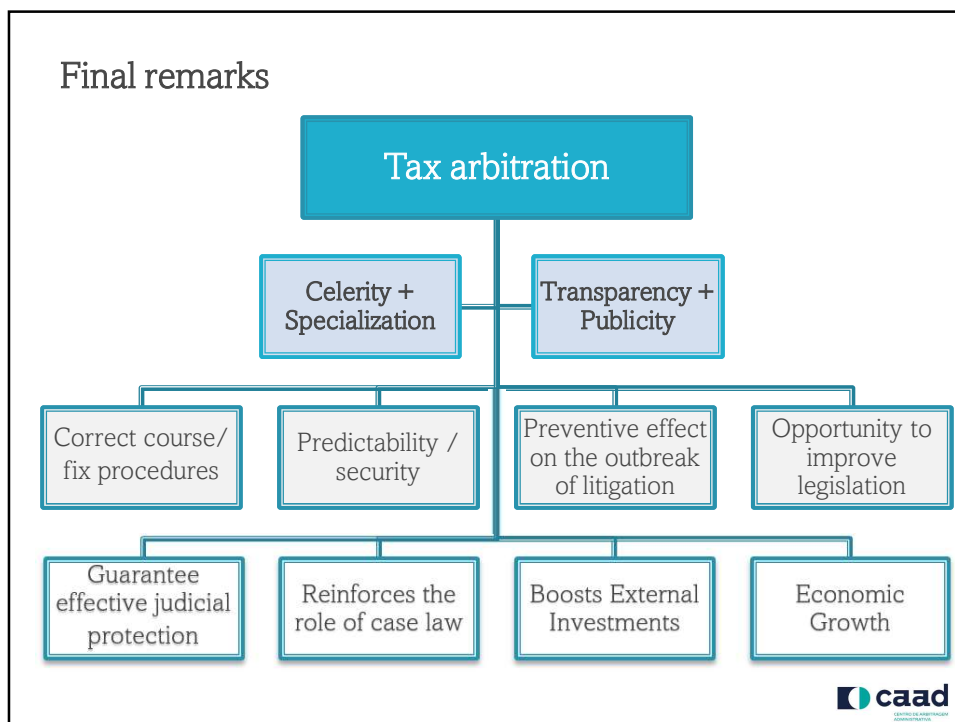
Growing pains: limitations and future considerations

- Re-evaluating the scope of competence for tax arbitration tribunals
- Expanding jurisdiction to VAT on importation and other tax assessments
- Striking a balance between specificity and flexibility in the legal regime



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Thank you for your attention!

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