

# Study on the Approaches to International Tax Dispute Resolution under the Belt and Road Initiative

Zijun Bai<sup>1,\*</sup>, Yifan Mao<sup>2</sup>

<sup>1</sup>Economic Law School, Southwest University of Political Science & Law, Chongqing, China

<sup>2</sup>Department of Law, Civil Aviation University of China, Tianjin, China

\* Corresponding Author Email: 2021022067@stu.swupl.edn.cn

**Abstract.** With the development of the Belt and Road initiative (BRI), international cooperation has increased and more international tax dispute cases have occurred. A notable challenge is the inadequacy of mechanisms for the BRI contracting states to resolve these disputes, which undermines the effective implementation of tax agreements and obstructs mutual negotiation processes. This paper embarks on a comprehensive analysis of international tax dispute resolution mechanisms within the BRI framework, with a particular focus on dissecting the dispute cases between China and Tajikistan. These cases serve as a lens to scrutinize the prevailing issues and inefficiencies in the current system of international tax dispute resolution among BRI countries. By highlighting the procedural hurdles, legal ambiguities, and the lack of coherent mechanisms for dispute resolution, the paper sheds light on the crucial areas in need of reform. It argues for the necessity of refining international treaty provisions in tax agreements, diversifying the methods available for dispute resolution, and bolstering the enforcement capabilities of the contracting parties. Through detailed examination and analysis, this study contributes to identifying the gaps in the current framework and proposes targeted strategies to enhance the efficacy and fairness of international tax dispute settlement processes among BRI nations. The findings underscore the importance of collaborative efforts and legal reforms to address the complexities of cross-border taxation, aiming to facilitate smoother international transactions and strengthen economic ties within the BRI.

**Keywords:** International tax dispute resolution, The Belt and Road Initiative (BRI), Mutual Agreement Procedure (MAP).

## 1. Introduction

"The Belt and Road" Initiative (BRI) was proposed to link China, Central Asia and Europe to form an economic cooperation zone to promote infrastructure development and other economic cooperation [1]. In recent years, with the deepening of international trade and investment, tax disputes among the Belt and Road countries have gradually increased. However, there are many problems in the international tax disputes among the Belt and Road countries, such as outdated tax agreements and the inapplicability of Mutual Agreement Procedure (MAP). Therefore, in the context of the Belt and Road Initiative, it is very crucial to find a dispute resolution that respects the sovereignty of the contracting parties and protects the interests of the parties.

Within the BRI framework, the realm of international taxation is fraught with issues such as tax rule ambiguities, international double taxation, tax evasion in the burgeoning digital economy, limited tax collection and administration capabilities, and a general lack of rule of law and transparency in tax matters [2]. Therefore, it is essential to adopt a reasonable and accurate approach to international taxation. China must conduct a thorough analysis of existing solutions for international tax disputes to resolve cross-border tax disputes. This is of great significance in promoting the prosperity and sustainable development of China's international economy.

Regarding the research method, we mainly use the case study method and the comparative analysis method. By analysing representative cases in this field, we illustrate the corresponding problems of tax dispute resolution among Belt and Road countries. By comparing the tax dispute resolution methods of different countries and regions, we combine the advantages and suitability of different methods to give targeted countermeasure suggestions. The article begins by providing an overview

of international tax dispute resolution and reviewing relevant research, setting the stage for a deeper understanding of the challenges involved. It then examines the specific issues related to tax disputes among Belt and Road countries, highlighting the unique circumstances and complexities these countries face. Finally, the paper proposes a set of targeted measures aimed at improving the tax dispute resolution process. These recommendations are intended to streamline procedures, enhance fairness, and ultimately contribute to the reform of the tax system within the BRI framework. Through this concise structure, the article aims to offer practical insights and strategies for addressing international tax disputes effectively.

## **2. Theoretical Foundation and Literature Review**

### **2.1. Theoretical Framework for International Tax Dispute Resolution**

#### **2.1.1. Types and Characteristics of Tax Disputes**

Depending on the parties to the dispute, international tax disputes can be divided into two categories. One is a dispute between a multinational taxpayer and the taxing State, and the other is a dispute between the Governments of multiple taxing States over the right to tax from investments or commercial transactions involving their countries. As for the tax disputes between multinational taxpayers and Governments, it tends to have double taxation and international tax avoidance as important themes. The problem of double taxation arises when a State is required to tax income earned by a foreign taxpaying enterprise in its own territory while the source State of the enterprise is also required to tax on enterprise. Additionally, tax avoidance by multinational enterprises through, for example, transfer pricing is also a major kind of international tax controversy. In terms of tax disputes between governments, tax treaties are usually concluded between States, and inter-State disputes mainly arise from conflicting taxing interests between States, for example, if circumstances arise which impair or unfavourably affect the taxing power of one party [3].

#### **2.1.2. Basic Principles of International Tax Dispute Resolution**

International tax disputes are resolved in a variety of ways, firstly, the disputing parties follow tax treaties between each other's countries, which usually include the MAP as a way to intervene in a country's taxation of taxpayers through diplomatic means [4]. In addition, the 2008 OECD Model Income Tax Convention includes an arbitration clause, which facilitates the parties to obtain relief in the event in case of MAP cannot be applied in a timely manner. Moreover, the EU Arbitration Convention also introduced an arbitration clause to address the transfer pricing issues that are currently prevalent.

### **2.2. Literature Review**

#### **2.2.1. Current Research Status at Home and Abroad**

The most recent research report from the China Tax Journal delineates two primary mechanisms for resolving international tax disputes: domestic legal procedures, which encompass administrative review and litigation, and international legal procedures, which encompass mutual agreement procedures, arbitration, appointment pricing agreements, and international judicial procedures. There exist various methods to settle disputes under international legal procedures, such as the MAP, Tax Arbitration Procedure, Appointment Pricing Agreement (APA), WTO Dispute Settlement Mechanism, ICSID Investment Dispute Settlement Mechanism, International Court of Justice, and World Trade Organization Settlement Mechanism.

The introduction of the Belt and Road initiative by China has spurred domestic scholars to conduct in-depth research on national tax dispute resolution mechanisms within this context, more so than their international counterparts. However, international research has primarily focused on the broader aspects of cross-border tax dispute mechanisms, with less emphasis on specifics pertaining to the Belt and Road initiative, indicating a gap in the research specific to this region.

### 2.2.2. Academic Views and Research Differences

Within the scope of the Belt and Road initiative, scholars have offered innovative solutions to international tax disputes, emphasizing the interplay between the economy and taxation systems. Céline Braumann discusses two challenges regarding the resolution of international tax disputes through the International Court of Justice (ICJ). Initially, the adjudicator assumes authority over disputes, potentially creating a dilemma concerning State control. Secondly, the ICJ's deficiency in public transparency could impede commercial confidentiality [5]. According to Ping Liu, a key challenge for a country in formulating a foreign investment tax policy is striking a balance between safeguarding domestic tax interests and offering equitable and favorable tax conditions for taxpayers [6]. Liao Yixin suggests that the current tax treaty dispute resolution mechanism may lack effectiveness and inclusivity. They advocate for further analysis to devise a more open, diverse, and comprehensive international tax dispute prevention and resolution mechanism based on the concept of a 'community of human destiny' within the 'One Belt, One Road' Initiative. This approach, viewed through a constructivist lens, could foster the robust development of the Belt and Road initiative. Additional analysis is required to establish an open, diverse, and comprehensive international tax dispute prevention and resolution mechanism grounded in the concept of 'community of human destiny' within the Belt and Road initiative from a constructivist perspective. This will facilitate the vibrant advancement of the Belt and Road initiative [7].

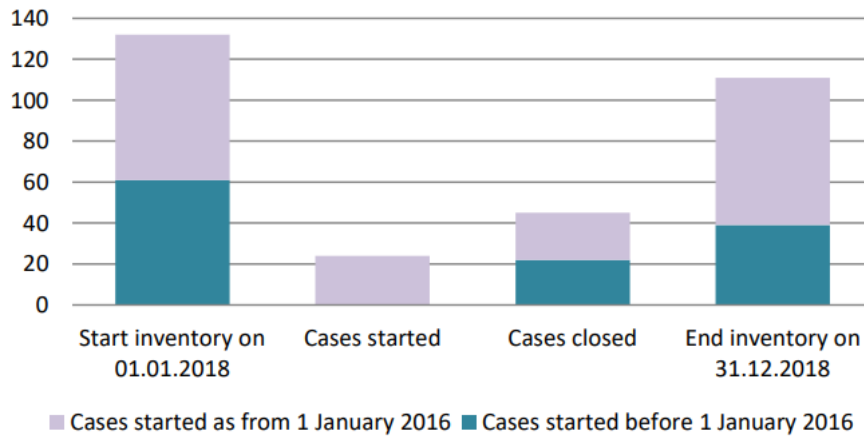
Overall, there is a notable discrepancy between academic research and the implementation of these findings into domestic legislation. A more global perspective is needed to reassess and enhance the international tax dispute resolution mechanisms, especially within the context of the Belt and Road initiative. This reassessment should aim to identify targeted and practical solutions for tax dispute resolution that are both inclusive and effective, bridging the gap between current practices and the innovative solutions proposed by academic research.

## 3. Current Status and Problems of Tax Dispute Resolution among Belt and Road Countries

### 3.1. Current Situation Analysis

#### 3.1.1. Application of MAP

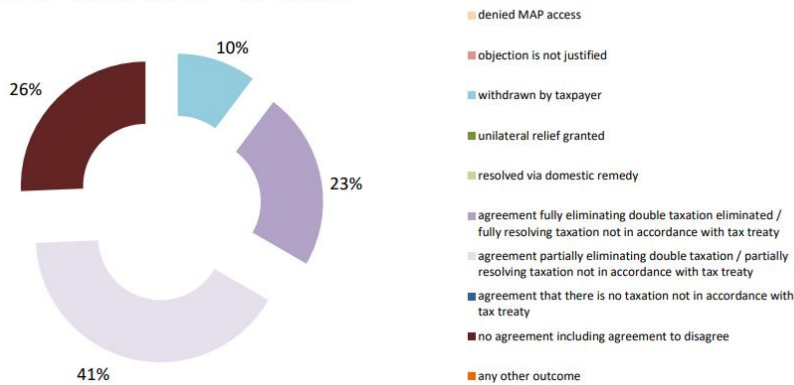
Mutual agreement procedure refers to the resolution of cross-border tax disputes by means of a written, legally binding document negotiated between Governments of countries with international tax agreements for the purpose of resolving tax issues and coordinating cross-border tax payments. The main participants in the mutual agreement procedure are the tax authorities of each country, and in the mutual agreement procedure, the taxpayers involved and the tax authorities of their own countries are in a cooperative relationship, and the taxpayers can only accept the results of the negotiation by the tax authorities, but cannot participate in the mutual agreement process on their own initiative [8]. In terms of application of MAP, this essay choose China's data as an example to illustrate the MAP condition to reflect the universe feature of BMI countries.



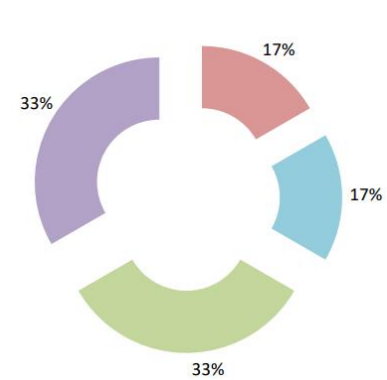
**Fig. 1** Total MAP caseload

According to Fig. 1, in the case of pre-2016 cases, there are still issues with the 2018 balances that expose the long time taken for MAP and the data shows that for other cases, more cases are added than closed meaning that there is a risk of a backlog of cases by which this will put some pressure on the tax authorities

**MAP Outcomes - TP cases**

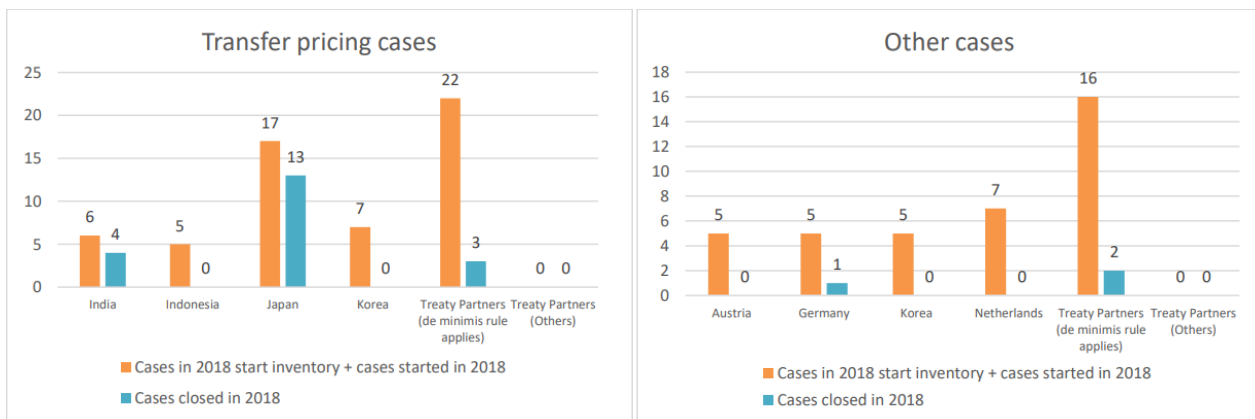


**MAP Outcomes - other cases**



**Fig. 2** MAP outcomes

According to Fig. 2, The rate of MAP settlements is not high, with only 23 per cent of transfer pricing and 33 per cent of other types of cases settled exclusively by MAP. It is noteworthy that in all but one type of transfer pricing case, the use of host country legal remedies was the main modality, accounting for 33 per cent of cases.



**Fig. 3** Overview of MAP partners (only for cases started as from 1 January 2016)

Fig. 3 shows the main countries with which China has engaged in mutual consultation procedures, and it can be seen that the chances of successful use of mutual consultation procedures between China and the Belt and Road countries are not high.

### 3.1.2. Practice of Host Country Relief Approaches

Remedies in this area consist mainly of administrative review and administrative litigation within the host country, as evidenced by applications to and consideration by the host country's administrative authorities regarding the imposition of taxes. Tax administrative litigation is a legally binding procedure before the courts of the host country. While the use of host country tax remedies, such as domestic litigation, to resolve international tax disputes respects national sovereignty, multinational taxpayers lack knowledge of the relevant legal system of the taxing country and the use of litigation to resolve tax proceedings is often time-consuming and cumbersome.

## 3.2. Main Problems

### 3.2.1. Issues with Agreement Coverage and Applicability

Mutual agreement procedure, one of the ways to resolve international tax disputes, is a legalized procedure to resolve tax disputes through direct communication between the relevant authorities of the contracting states as stipulated in international tax agreements [9]. When the Belt and Road countries apply this procedure to resolve tax disputes, the coverage and applicability of the tax agreements between the countries may involve the following aspects.

1. Coverage of agreements: According to the information disclosed by China's State Administration of Taxation, as of 17 October 2023, the coverage of China's tax treaty network has increased to 114 countries and regions, which basically covers the main destinations of China's outbound investments and the main countries and regions that come to invest in China [10].

2. Applicability: When applying the mutual agreement procedure, Belt and Road countries need to consider the applicability of the agreement to their domestic tax policies and legal systems. This involves issues such as the connection between international law and domestic law, and in order to achieve better applicability, it may be necessary for countries to sum up their experiences in practice and to complement the mutual agreement procedure with domestic laws and regulations.

### 3.2.2. Limitations of Dispute Resolution Efficiency and Effectiveness

The performance of MAP in China, illustrated by data from 2007 to 2018 available on the OECD website, highlights inefficiencies. The statistics show that the number of cases resolved is less than those initiated, with even fewer cases being fully settled through MAP. Thus, in general, the resolution of disputes through the MAP route is low, time-consuming and inefficient. Furthermore, the effectiveness of MAP in delivering resolutions is called into question when considering the relatively small fraction of cases that are fully resolved through this procedure. For multinational corporations embroiled in these disputes, the MAP process can become a protracted ordeal. The time and financial resources expended during this period can be substantial, often involving extensive labor costs and lost opportunities. This protracted process not only strains the resources of the companies involved but also casts doubt on the overall utility of MAP as an efficient and effective dispute resolution tool [11].

## 3.3. Case Analysis

### 3.3.1. Review of Typical Cases

In 2008, China and Tajikistan signed a bilateral tax agreement, and due to the company's lending behaviour to a Chinese financial institution, it submitted interest on the loan to the financial institution in 2013 and 2014, and submitted withholding tax of 12% of the total amount of interest to Tajikistan in 2013 and 2014. However, in 2014, the company learned of the existence of a tax treaty between China and Tajikistan that provided for the exemption of interest from taxation. As a result, the company requested restitution of the relevant taxes from Tajikistan, but Tajikistan did not refund them and did not recognise the provisions of the relevant tax treaty [12].

The dispute in this case centred on whether Yavan could benefit from the tax exemption and recover the tax it had previously paid. Following the case, Yavan reported the case to the Government tax authorities, who called the Tajikistan Tax Administration to request that the case be handled in

accordance with the tax agreement between the two sides, and, after activate MAP between the two sides. As for the application of MAP, the two sides mainly focus on the interpretation on the tax agreement and determination of the legal status of the subjects involved in the case. According to the Agreement between the Government of the People's Republic of China and the Government of the Republic of Tajikistan for the Avoidance of Double Taxation and according to the Agreement Between The Government Of The People's Republic Of China And The Government Of The Republic Of Tajikistan For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income And Capital, 11.2, the total tax shall not exceed 8 percent of the gross amount of the interest if the beneficial owner of the interest is a resident enterprise of one of the contracting parties, and the financial institution can only be subject to a maximum tax of 8 percent as it is a resident enterprise in the PRC, not a government enterprise., it was ultimately concluded that the enterprise was entitled to a tax benefit and agreed to a tax refund.

### **3.3.2. Insights and Analysis from Cases**

The successful use of the mutual agreement procedure by Huaxin Cement is highlighted. The case of Huaxin Cement is a relatively successful case of using the mutual agreement procedure, the effect reaches the expectation [13], intermittent with colleagues, high efficiency, and reduces a great cost for the enterprise. Insights can be gained from this case. [14]

For governments, the Huaxin Cement case underscores the critical need for clarity and precision in the articulation of dispute resolution processes within tax agreements. Clear guidelines can significantly ease the path for transnational investments, ensuring that the rights and interests of international taxpayers are safeguarded. Such clarity and efficiency in dispute resolution are crucial for creating an attractive investment climate, which in turn can draw foreign investment and spur economic growth. Governments should therefore prioritize the establishment of transparent, efficient, and fair tax dispute resolution mechanisms as part of their broader economic development strategies.

For multinational enterprises, the case illustrates the importance of a comprehensive understanding of the international tax landscape. Before embarking on cross-border investments, companies should thoroughly research the tax laws, national policies, and the specific tax preferences of their potential investment destinations. This proactive approach can help identify potential tax implications and avoid disputes. However, should disputes arise, the case demonstrates the value of taking swift action and leveraging the available dispute resolution channels. Engaging promptly with the relevant tax authorities and following the established procedures can lead to a more favorable resolution of disputes, minimizing financial and operational losses.

Moreover, the Huaxin Cement case highlights the importance of collaboration and communication between corporate entities and tax authorities. By actively engaging with the dispute resolution process and making a compelling case for their position, companies can navigate complex tax disputes more effectively. This approach not only benefits the individual company but also contributes to the refinement of international tax dispute resolution practices, fostering a more stable and predictable environment for global business operations.

## **4. Optimization Strategies for Tax Dispute Resolution among Belt and Road Countries**

### **4.1. Updating Tax Agreements**

#### **4.1.1. Refining the Content of Agreements in Key Areas**

Although tax agreements between the Belt and Road contracting states generally agree that domestic tax legal remedies and international tax resolution avenues such as MAP are not mutually exclusive, rules on harmonising domestic law with MAP are still not established. For instance, current tax treaties do not address the question of whether one procedure should be followed in parallel with the other and the legal effects of different outcomes. Implementing the recommendations from Action Plan No. 14 of the BEPS initiative could be instrumental. This plan advocates for collaborative efforts

to mitigate the challenges of double taxation faced by multinational corporations. To align with these goals, Belt and Road countries should focus on revising their tax treaties to ensure they complement domestic tax laws effectively [15].

#### **4.1.2. Incorporating Arbitration Clauses**

The current dispute resolution method of international tax law among Belt and Road countries is still mainly MAP, but a single MAP cannot solve all tax dispute cases, especially for the cases with complex and constantly updated circumstances. Therefore, the introduction of neutral arbitration to increase the dispute resolution channels can better resolve tax disputes. Besides, the time-consuming mutual agreement procedure and the shortage of relevant professional law enforcement personnel have also contributed to the birth of other dispute resolution procedures.

#### **4.1.3. Confirmation of Arbitration Rules in Agreements**

The biggest problem with introducing arbitration as a means of dispute resolution is how to establish an arbitration institution and the relevant arbitration clause. Contracting States may refer to the European Union's Dispute Resolution Directive for a series of criteria on alternative dispute resolution, including the scope of the case, the time limit for review, and the criteria for the selection of arbitrators. At the same time, the application of arbitration rules should be guided by the principles of the Belt and Road policy of "sharing and building together".

### **4.2. Protecting Taxpayer Rights**

#### **4.2.1. Establishing a Unified Tax Service Organization among Contracting Countries**

Differences in the interpretation of tax treaties between countries may lead to inconsistencies in the application of tax treaties to resolve disputes. Currently, China has signed a memorandum of understanding with Kazakhstan on cooperation between the Cadre Training Institute of the State Administration of Taxation of China and the Fiscal Institute of Kazakhstan, which provides a platform for in-depth study of the two tax regimes for tax officials. Countries can learn from this model and establish joint committees between the contracting states, which will allow tax officials of the contracting states to have more opportunities for exchanges and learning about the tax laws of the different contracting states [16]. Such collaborative efforts are anticipated to minimize inconsistencies in applying MAP and other international dispute resolution methods, enhancing coherence and effectiveness.

#### **4.2.2. Enhancing Transparency of MAP**

The current MAP framework primarily involves government-to-government communication, which can often exclude transnational taxpayers from the process, making it seem opaque and unilateral. To address this, introducing mechanisms that allow for the participation of transnational taxpayers in the MAP process, under specific conditions, could be transformative. Such inclusion would not only incentivize these taxpayers but also ensure a more comprehensive understanding of the facts, facilitating dispute resolution. Furthermore, taxpayer involvement could help mitigate potential biases that might arise from the interests of the international bodies themselves, making the negotiation process more balanced and equitable. This adjustment towards inclusivity and transparency in the MAP could significantly enhance the fairness and effectiveness of tax dispute resolutions, safeguarding the rights of all stakeholders involved.

### **4.3. Expanding Dispute Resolution Approaches**

#### **4.3.1. Supplementing and Perfecting MAP Rules**

The current MAP framework exhibits inefficiencies and constraints in adequately resolving tax disputes. To address these challenges within the Belt and Road context, there's a pressing need to refine MAP rules to boost the process's flexibility and transparency. Learning from the United States' approach, which includes a streamlined process for minor disputes, can offer valuable insights [17]. This can reduce the work pressure of tax authorities and save time for all parties, which is beneficial

to both sides of the dispute. Therefore, countries should simplify the procedures and processes of MAP, reduce unnecessary and cumbersome links, and improve efficiency [18]. They should also strengthen the cooperation mechanism by setting up specialized agencies or groups to target the resolution of disputes in specific areas. Additionally, a supervision mechanism should be established to ensure effective supervision of the implementation of MAP rules, enhance the efficiency of the process, and prevent errors. Experience should be summarized in a timely manner, and the content of the rules should be optimized to continuously improve the institutional mechanism. To improve the resolution of tax disputes between countries, it is important to ensure that tax agencies in each country can resolve disputes quickly and create a favorable tax environment. Additionally, the establishment of an Intra-territorial Arbitration Court under the Belt and Road initiative can optimize countermeasures for resolving tax disputes between countries.

#### **4.3.2. Establishing a Belt and Road Arbitration Court**

To expand the options for resolving disputes, international arbitration can be implemented. Another option is to establish an intra-territorial arbitration tribunal for the Belt and Road initiative, jointly formed by relevant countries and located in key cities, with professionals knowledgeable in tax law. Additionally, mandatory tax arbitration can be piloted as an alternative method for resolving disputes Utilizing the class arbitration mechanism outlined in the EU's Dispute Resolution Directive, we have established dispute resolution rules that offer negotiation flexibility while adhering to arbitration constraints. Additionally, we take advantage of the EU's supranational nature by relying on a multilateral cooperation platform between countries. Compared to traditional tax dispute resolution mechanisms, this approach is more applicable and efficient. It also aligns with the OECD's global tax reform multilateral reform idea and can be applied to the regional cooperation nature of the Belt and Road, increasing the efficiency and feasibility of taxation.

### **4.4. Improving Enforcement Capacity**

#### **4.4.1. Expanding International Tax Cooperation Network**

Efforts should be intensified to secure tax agreements with nations yet to participate, leveraging the Belt and Road Tax Administration Cooperation Mechanism as a pivotal forum for inviting additional countries to engage in discussions on cross-border taxation. This will help to reduce the differences in cross-border tax administration. Finally, it is important to update and expand the content of the existing tax agreements. The agreement should include turnover tax and cross-border income from e-commerce, among other relevant aspects [19]. Inapplicable provisions should be repealed, and the agreement should be regularly updated and linked to international tax agreements and conventions signed by our country. Additionally, multilateral unified tax rules should be established.

#### **4.4.2. Ensuring Smooth Tax Information Exchange Mechanism**

An effective tax information mechanism is crucial to international tax cooperation. China should further promote the establishment of a regional multilateral tax information exchange network with countries along the route. Through increased cooperation, tax authorities from different countries can establish efficient and secure mechanisms for exchanging information, share overseas account information, and exchange tax-related information in a timely manner. This can help to unify tax rules among countries, eliminate tax barriers, and improve the efficiency of tax administration. By monitoring and preventing tax evasion and avoidance in cross-border taxation, we can safeguard the fairness of international tax collection and the stability of the environment.

#### **4.4.3. Strengthening Training for Tax Collection and Management Personnel**

To enhance enforcement capacity, countries must strengthen the construction of tax collection and administration talents. This can be achieved by training professionals to improve the level of tax administration and technical capacity. Simultaneously, encourage personnel exchanges and training among the countries in the region. Promote experience sharing and cooperation to jointly address

taxation challenges. This will improve the level of rule of law and transparency in taxation, as well as enhance the international tax legal framework and law enforcement capacity of the countries in the region.

## 5. Conclusion

This paper discusses how to solve the challenge of international tax dispute resolution among Belt and Road countries. By critically analyzing existing frameworks and identifying key areas for improvement, the paper offers a comprehensive suite of strategies aimed at enhancing the resolution process. It proposes ways to update the tax treaties of the contracting parties, clarify the coordination of the various means of settlement, add arbitration as a new means of settlement, and strengthen the participation of taxpayers in the MAP. In addition, the paper underscores the importance of bolstering the tax enforcement capabilities of contracting states to navigate the complexities of international taxation effectively.

As we look to the future, it is evident that addressing the challenges of international tax dispute resolution under the BRI requires a concerted effort from all participating nations. The path forward demands a commitment to continuous dialogue, shared learning, and mutual support, ensuring that the international tax landscape evolves in a manner that is both equitable and conducive to the sustainable development of global economic relations. Through such collaborative efforts, it is possible to achieve a more cohesive and transparent international tax framework, thereby facilitating the resolution of tax disputes and reinforcing the economic objectives of the Belt and Road Initiative.

## Author contribution

All the authors contributed equally and their names were listed in alphabetical order.

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