The Exchange of Tax Information as Exemplified by the Panama–Argentina Case

Małgorzata Wróblewska[1]

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Abstract
Recently, international tax cooperation has been developing very intensively what is extremely important from the point of view of fiscal interests of states. This article deals with the transparency of the exchange of information in tax matters. This issue was presented in the case of Panama–Argentina and introduces the OECD and the WTO points of view. The main aim of the contribution is to confirm or disprove a hypothesis that the OECD regulations in the field of tax exchange information are global and coherent with the WTO law. The scientific methods of analysis, synthesis and comparison have been employed.

Keywords
the WTO; harmful tax competition; the OECD; tax; the exchange of tax information; Panama–Argentina case

1 Introduction

Recently, international tax cooperation has been developing very intensively. The reason for such concentrated concern can be the global character of modern economy and the lack of efficient taxation imposed by tax jurisdictions. Considering a historical perspective, tax regulations as a domain of sovereign administration were developed as internal regulations

[1] PhD at the Institute of Law and Security Sciences at WSB University in Gdansk, Poland. The author specialises in WTO tax regulations and local government finance especially in real estate taxation. She is the author of more than 30 reviewed articles. She is a member of the Information and Organization Centre for the Research on the Public Finances and Tax Law in the Countries of Central and Eastern Europe. Contact email: mwroblewska1@tlen.pl.

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in isolation from tax regulations of other countries (Harmful Tax Competition, 1998). The advancing process of globalisation in trade and investment along with the integration of national economies have enforced a change of relations among national tax systems. At present, competition has been crossing the borders, and it results in the fact that the countries which practise harmful tax competition (tax havens) offer more favourable conditions for capital investing than national jurisdictions, and in such a way they accumulate foreign capital. Such conditions are understood as any kind of tax preferences which are aimed at gaining profit; they mainly refer to lower tax rates or their lack, tax reliefs and exemptions. Taking into account the global scale, such a situation results in disturbances in trade and investment, and it leads to an undesirable "race-to-the-bottom".

A fundamental aim of work carried out at an international level is providing a uniform standard of tax information exchange which will come as an efficient tool to fight against tax fraud and tax evasion and which will be used to increase tax transparency. This article presents the problem of tax information exchange viewed from the perspective of protecting fiscal interests of the state – not protecting taxpayers' interests related to evasion of double taxation. Considering the size of the article, the discussion is limited to mention the most valid regulations established by the OECD/G-20, and it does not refer to the initiatives undertaken by the USA and the EU in this field.

The discussed problem is of an important practical value. Considered from the OECD/G-20 point of view, tax information exchange is broadly discussed on the WTO forum, indicating the advisability of some further research on legal regulations established within each of such international organisation. This can be proved by the first dispute in the WTO, referring to financial services and tax information exchange, between Panama and Argentina. Hence, the aim of the article is to provide an answer to the following questions: are the current OECD policy in the field of tax information exchange of global character and are they efficient, that is: respected by other international organisations and states in their national governance? Are these regulations coherent with other regulations of the international law at the global level? Do they complement each other or do they function in isolation?

The article is composed of an introduction, three parts and conclusions. The first part refers to the initiatives undertaken on the OECD/G20 forum in the field of tax information exchange. The second part presents the GATS tax regulations. The third part outlines the dispute between Argentina and Panama.

2 International Tax Cooperation

The most important forum for international cooperation in the field of taxes is the Organisation of Economic Cooperation and Development (OECD). Its first significant initiative[2] was the Harmful Tax Competition: An Emerging Global Issue

[2] In 1923, the Model Tax Conventions were published under the auspices of the League of Nations. Art. 2 stated provisions which referred to tax information exchange (Model Tax Conventions, 1923).

(Harmful Tax Competition, 1998), published in 1998 by the Tax Committee at the OECD. This Report was followed by a report in June 2000 entitled *2000 Progress Report: Towards Global Tax Cooperation: Progress in Identifying and Eliminating Harmful Tax Practices*. Since then, the OECD has been systematically launching initiatives in the field of international tax cooperation which is aimed at the counteraction of unjustified transfer of profits to other countries. The other most important initiatives include Convention on Mutual Administrative Assistance in Tax Matters introduced jointly by the OECD and the Council of Europe in 1988 and amended by the Protocol in 2010 (the Convention on Mutual Administrative Assistance),[3] the Agreement on Exchange of Information on Tax Matters and its commentary (the Agreement on Exchange of Information)[4] which was adopted in 2002 and the 2002 OECD Model Tax Convention on Income and on Capital and its commentary, as updated in 2004 (Art. 26 OECD Convention) (Mączyński, 2015: 135; Mączyński, 2009: 17).

The Global Forum on Transparency and Exchange of Information for Tax Purpose (the Global Forum) and the Inclusive Framework on BEPS come as a basic stage for the OECD in the promotion of transparency and cooperation in the field of taxes. The Global Forum was established in 2000, and now it consists of approximately 150 Member States,[5] including the OECD Members and the jurisdictions which agree to follow transparency and to exchange information for tax purposes.[6]

It should be emphasised that some of the OECD countries which should be interested in quick adoption of the abovementioned standards in practice do not meet the discussed requirements. Switzerland comes as one of the examples: in this country

[3] The Convention on Mutual Administrative Assistance allows the interested parties to cooperate during all the stages of a broadly understood tax assessment and collection. It also facilitates entering into bilateral tax information exchange agreements between State Parties. At present, the Convention has been acceded by 122 jurisdictions, including the parties of all the countries of the G20, BRICS and OECD.

[4] The Agreement on Exchange of Information does not provide any obligatory legal standards, however, it includes two models to be followed by the particular countries in regulations applied in their tax law. Based on them, it is possible to enter bilateral and multilateral contracts. The Agreement plays an important role in the process of tax information exchange as a basis of 400 bilateral international agreements. It should be emphasised that among the Parties of these agreements there are also some countries which practice harmful tax competition, and this fact indicates a significant practical value of the models. In 2015 the OECD adopted the Model Protocol to the Agreement on Exchange of Information (the Model Protocol). Based on the provisions stated in the Model Protocol, jurisdictions can extend the scope of the international agreements by automatic and spontaneous tax information.

[5] The Global Forum has 15 observer countries, half of which are developing countries.

[6] It has adopted and has been promoting two standards, one of which facilitates cross-border exchange of tax-relevant information on request (the EOIR Standard), and another one which enables an automatic exchange of information on the financial accounts of non-residents (the AEOI Standard). In 2006 the Global Forum introduced Tax Cooperation Towards a Level Playing Field report, in which the notion of a level playing field was defined. It refers to fairness which all the parties are obliged to follow. In 2009, as a result of the pressure exerted by the G20 countries, the Global Forum underwent a fundamental reform which was aimed at the strengthening of the implementation of the standards developed by national jurisdictions. As a result, applying the peer review process, the Global Forum is able to monitor the implementation of the principles referring to transparency and exchange of information on request, as it has been declared by the involved parties (OECD, 2009).

legal authority to exchange information derives from bilateral tax conventions and also from the Multilateral Convention 2013. Theoretically, Switzerland guarantees the operation of the tax information exchange mechanism but in some particular situations it limits the scope of such information, because it follows strong confidentiality provisions (Global Forum on Transparency, 2016). According to a peer review of 2015, also Lichtenstein should streamline its process of tax information exchange (Global Forum on Transparency, 2015).[7] It indicates that the Global Forum systematically verifies the national legislation of the OECD countries, providing them with relevant recommendations. In the Author's opinion, however, there are not any efficient mechanisms to execute the absolute obligation of adjusting the internal law to international regulations.[8]

3 GATS Tax Regulations

WTO is an international organisation the aim of which is to liberalise trade flows and to take care of fair trade. Therefore, regulations referring to taxes are not of prevailing nature – quite the opposite: they are of rudimental character and they can be interpreted in a very broad way. They can be found in the General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS) and Agreement on Subsidies and Countervailing Measures (SCM Agreement). However, none of those Agreements provides a direct reference to the questions of harmful tax competition or transparent information exchange (Wróblewska, 2016: 13–23). Despite this fact, the specificity of the GATS regulations and their application in the sector of services allows the interested parties to settle the disputes which have not been directly stated there. It proves the universal and unique character of this Agreement. Considering the case between Argentina and Panama, the complainant referred to the violation of the GATS resolutions.[9] Therefore, the considerations presented below are limited to the regulations in question.

7 In 2002, the OECD listed the Principality of Lichtenstein, Andorra, the Principality of Monaco among the non-cooperative jurisdictions. In 2009, as a result of some protests, the Committee on Fiscal Affairs decided to remove the abovementioned countries from the list.

8 In 2012, being aware of that weakness, the G20 countries launched an initiative on the basis of which it was decided to intensify activities against tax avoidance at the global level (Liebman et al., 2016: 102–105). As a result, the OECD/G20 adopted a Project to Address Base Erosion and Profit Shifting and in 2016 proposed the architecture of an Inclusive Framework on BEPS (the Inclusive Framework). At present, there are 118 members (OECD, 2018) who can take its provisions into consideration while entering bilateral agreements. Despite its important role, it has the character of a soft law which means that it does not have any binding force.
A more efficient method applied to implement the Inclusive Framework regulations is an instrument referred to as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention), adopted in November 2016. It came into force on 1 July 2018.

9 The complainant also raised the violation of Art. I:1, Art. III:4 and Art. XI:1 of the GATT 1994, however, the Panel rejected that statement.

The GATS was established in 1994 at the end of the trade negotiation cycle referred to as the Uruguay Round. The Agreement entered into force on 1 January 1995, and it was the first multilateral agreement which defined the legal and contractual framework for international trade in services. According to Art. I:1 of the GATS, this Agreement applies to measures taken by the Members affecting trade in services. Trade in services is defined as the supply of services through one of the four modes listed in subparas. (a) to (d) of Art. I:2 of the GATS.[10] In general, tax issues which affect trade in services refer to the non-discrimination principle. It applies to indirect taxes on providing cross-border services, to the consumption of services and to taxation of the income earned by service providers who run their business activities or temporarily reside in the territory of any Member State. The non-discrimination principle applies to the most favoured nation (MFN) clause and the national treatment (NT) clause. With reference to Art. II:1 of the GATS, each WTO Member State must grant another member's services and service suppliers treatment no less favourable than treatment granted to like services and service suppliers of any other country. In order to decide whether the MFN clause has been violated, the same must apply when comparing with like services and service suppliers of national origin (MFN clause).

In accordance with Art. XVII:1 of the GATS, in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers' national treatment (NT clause).

Art. XIV of the GATS sets out the general exceptions from the obligations under that Agreement. The issue in this dispute relates to subpara. (c), which states that subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures: necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to: 1. the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts; 2. the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; 3. safety. In US-Gambling (WT/DS285/R) Panel stated that the abovementioned Article contains an illustrative list of law and regulations which are not inconsistent with the GATS provisions. It means that the Article does not

[10] Therefore, for trade in services to exist a service must be supplied under one of those four modes. The provisions of the Agreement do not provide any legal definition of the term *service.* According to Art. I:3 (b) of the GATS, it applies to any service in any sector except for services supplied in the exercise of governmental authority, and in the sector of air transport, where it applies to the air traffic right and any other services related to the exercise of that right.

include any limitations to their types, and it allows the countries to decide freely on that question. In other words, the Member Countries are entitled to apply various treatment to services and service suppliers from third countries with regard to their own citizens. However, such freedom in treatment is not of absolute nature, and its boundaries have been defined as rejection of any regulations which could result in arbitrary or unjustified discrimination or to latent limitation of trade in services.

The Annex on Financial Services (FSA) comes as an integral part of the GATS. The text of para. 2(a) of the FSA provides notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement. This means that para. 2(a) indicates some flexibility in the application of internal regulations. The WTO law does not require the full integration of standards developed by the member countries with the GATS provisions. Furthermore, such standards may come as the violation of the obligations under the GATS, and they can be justified by the prudential reason.

4 The Argentina–Panama Dispute

The problem analysed here comes as a pattern example of a conflict between the countries which – while striving to increase their fiscal gain – present various models of economic development. It results from a longstanding tradition, and it is not conditioned by culture, because both countries belong to a similar religious circle. The problem refers to two jurisdictions which follow the principles commonly applied in other economies. In 2001, Argentina ceased to service its external debt at the amount of USD 95 billion, and it declared bankruptcy. The total debt reached an approximate level of USD 100 billion, and it was defined as the highest debt in the history of the world. Unfortunately, the bankruptcy of Argentina took place at a time of chaos on the financial markets and resulted in an increased outflow of USD deposits. Because of the lack of financial liquidity, Argentina declared bankruptcy once again in 2014 (IMF, Argentina 2017). Panama's economic situation is completely different from Argentina's. Panama has been one of the fastest-growing economies in the world (Palgrave, 2018: 937). The main service sector is based on the financial market. Since the bank secrecy and the low or zero tax rates, Panama has appeared as a regional financial centre and a tax haven.

Therefore, the dispute is defined by the Author as typical, and the way it is solved is extremely important, because it may come as a model to be followed by other countries. A direct cause of the dispute is the tightening of Argentinean legal regulations in the field of financial means transfer to the countries which practice harmful tax competition.

Despite the fact that since the 1990s, Argentina has been involved into a longstanding relation with the OECD, it has not joined that organisation yet.[11] However, it is a Member of the Global Forum and G20 which work closely and support the OECD. The Panama situation is quite similar. It belongs to the Global Forum but is not a Member of the OECD.

4.1 The background of the dispute

In 2012, Panama sued Argentina for giving it the status of a non-cooperative state for the purposes of transparent tax information exchange[12] (WT/DS 453/R). In 2013, Argentina published Decree No. 589/2013 under which cooperative states were defined. Pursuant to Art. 1 of the Decree, countries, dominions, jurisdictions, territories, associate states or special tax regimes are granted the status of cooperative for tax transparency purposes if: 1. they have signed an agreement with the Government of the Argentine Republic on the exchange of tax information or a convention for the avoidance of international double taxation with a clause of broad information exchange, provided that effective exchange of information takes place; or 2. have initiated negotiations with Argentina, which are necessary for concluding such an agreement and/or a convention.

A Panel was established in June 2013. It should be noticed that the notion of a non-cooperative state was not defined in the internal legislation, and Panama had been classified in such a way for several years.[13] In January 2014, after the establishment of the Panel, Argentina changed its status for a cooperative state, despite the fact that both parties did not enter any agreement on information exchange and on the avoidance of double taxation.[14] While Panama did not challenge the Decree directly, it challenged eight of the retaliatory measures imposed by Argentina against non-cooperative countries under the Decree. On 30 September, the Panel decided that the measures

[11] Despite that fact, Argentina has joined the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and to the OECD Declaration on International Investment and Multinational Enterprise as one of the first countries of Latin America. At present, there is a discussion going on in the OECD about the membership of six countries in the organisation: Argentina, Brazil, Bulgaria, Croatia, Peru and Romania.

[12] The dispute has had a significant impact on the international community because the question of profit transfer to tax havens is a very current issue. The main interest is raised, first of all, by tax evasion and avoidance practised by companies and rich people. In 2015, 11 million documents leaked out of the Mossack Fonseca law firm in Panama (Panama Papers incident). The documents referred to confidential data about various interests run by millionaires, heads of states, famous sportsmen and criminals who established offshore companies with the assistance of Mossack Fonseca and other Panamanian companies.

[13] Argentina declared annual update of the list of cooperative states.

[14] There were not any negotiations initiated in this field. Argentina considered such countries as Cyprus, Gibraltar and Hong Kong non-cooperative despite the fact that they did start negotiations in the field of tax information exchange. Luxemburg and British Virgin Islands were placed on the list of cooperative countries in spite of the fact that they did not meet any OECD standards in that field.

undertaken by Argentina undermined the GATS.[15] According to Argentina, such measures were consistent with the OECD recommendations and the Financial Action Task Force, which was aimed at counteracting such activities as money laundering and terrorist financing.

On 14 April 2016, the AB reversed the Panel finding, that such defensive tax measures were inconsistent with the GATS obligations of MFN and NT clauses. That decision has been of high significance, considering the perspective of cohesion in the activities undertaken in the international field, because it indicates that the WTO countries can implement legal regulations in order to protect their fiscal systems against the practice applied in other countries which do not have transparent tax regulations.

4.2 Disputable measures

In the discussed case, Panama has challenged eight Measures referring to the market of financial services adopted by Argentina under its tax law (WT/DS453/6, 2.9). Among them, there are some which *per se* refer to taxation, and some which refer to the access to the market of financial services (Delimatsisis and Hoekman, 2017: 5). The first four measures (1–4) are focused on taxation issues, and they refer to an increase in the base for capital gains taxation with regard to capital transfer to the non-cooperative jurisdictions. The remaining Measures indicate higher costs which must be incurred by entities from non-cooperative countries, which want to operate in the Argentinian market of financial services.

In the discussed case, Panama stated that all eight Measures violated Art. II: GATS, because services and service suppliers from non-cooperative countries were treated in a less favourable way than those who came from cooperative countries. Furthermore, considering Measure 2, 3, and 4, Panama indicated the violation of Art. XVII: GATS, which included the NT clause. Argentina claimed that its legislation was consistent with the GATS, and it resembled internal regulations applied in other WTO countries. Moreover, it emphasised the fact that its tax agreements followed the UN and the OECD Model Tax Convention, which included a clause on tax information exchange. It was supposed to provide efficiency of the national tax law.

As a justification for the application of Measures 1–4 and 8, Argentina referred to Art. XIV (c) GATS on security exception. Argentina particularly argued that defensive tax measures were necessary to secure compliance with Argentina's tax law, and especially to provide prevention of deceptive and fraudulent practices which could be observed during transactions with non-cooperative countries. Argentina also emphasised that the measures it had undertaken were consistent with the recommendations of the OECD's Global Forum on counteracting harmful tax competition and providing integrity and stability of the tax system.

[15] Panama claimed that the measures undertaken by Argentina affected trade of goods to a small extent.

Table 1. The disputable measures

No.	Measure description
1.	Tax treatment in the collection of gains on certain transactions involving non-cooperative countries (hereinafter withholding tax on payments of interests or remuneration).
2.	Tax treatment imposed on the entry of funds from non-cooperative countries (hereinafter presumption of unjustified increase in wealth).
3.	Valuation of transactions with entities from non-cooperative countries (hereinafter transaction valuation based on transfer prices).
4.	Criteria for applying deductions (hereinafter payment received rule for the allocation of expenditure).
5.	Measures affecting trade in reinsurance and retrocession services (hereinafter requirements relating to reinsurance services).
6.	Measures affecting trade in financial instruments (hereinafter requirements for access to the Argentine capital market).
7.	Requirements for the registration of companies, branches and shareholders of certain foreign service suppliers (hereinafter requirements for the registration of branches).
8.	Measures affecting the repatriation of investments (hereinafter foreign exchange authorisation requirements).

Source: Panel Report WT/DS453/6, 2.9

In order to settle the question of the GATS violation, it was necessary to decide whether the discussed Measures were applied to the agreement (WT/DS453/6). Having referred to the case of Canada Autos (WT/DS139/AB/R), the Panel indicated that two questions had to be examined. Firstly, was there any trade in services, as stated in Art. I:2 GATS? Secondly, did the applied Measures affect trade in service, as stated in Art. I:1 GATS? In the opinion of Argentina, the relation observed in the discussed case was merely theoretical. Therefore, the complainant had to prove that effective – and not potential – trade in services took place between the parties of the dispute or between other WTO countries and the complainant. Such a necessity did not result from the GATS resolutions. Hence, the Panel decided that all eight Measures were covered by the scope of the GATS. The key decision of the Panel however, was the one stating that Argentina, on the basis of its internal legislation, did introduce various treatment of services and service suppliers from cooperative and non-cooperative countries. As a result, each of the eight Measures violated the MFN clause. It was so because service suppliers from non-cooperative countries did not immediately and unconditionally undergo any less favourable treatment, whereas those from cooperative countries did. The difference in treatment did not result from the access to information. It was proved by the inconsistency of Argentina in qualifying jurisdictions into one of two categories.

It should be noticed that the Panel did not question the opinion of the OECD and the G20 on the influence exerted by harmful tax practice on the conditions of competition. This was negative influence, because it resulted from the lack of tax transparency, and the measures undertaken by the defendant were aimed to counteract such practice – not to strengthen its position on the market of financial services.

As a result, the Panel did not agree with the arguments presented by the defendant, according to which Measures 2, 3 and 4 were supposed to change the conditions of competition, giving privilege to services and service suppliers from Argentina.

Considering Measures 2, 3, 4, 7 and 8, Argentina referred to the chapeau of Art. XIV (c) GATS. In the Panel's opinion, Argentina proved that the undertaken Measures were necessary to provide consistency with the national law. However, the division of jurisdictions into cooperative and non-cooperative was not efficient for the requirements of the information access, because the status of the first group was granted to the countries which did not meet such requirements reciprocally. Therefore, the Panel decided that the defensive Measures gave rise to arbitrary or unjustifiable discrimination.

The case Argentina v. Panama is of crucial significance for the interpretation of the GATS for one more reason. For the first time, the Panel analysed the concept of a prudential reason resulting from para. 2(a) FSA, which had never been analysed before. Considering Measure 5 and 6, the main argument presented by Argentina was the fact that they were covered by the prudential purpose to protect financial consumers on the insurance market. In the defendant's opinion, it was necessary because reinsurance institutions insured the risk which was not known with regard to the lack of efficient information exchange. Considering the size of the reinsurance market and security of customers and the state, the following information should be known: ownership structure or the amount of invested funds in order not to generate any higher systemic risk. Additionally, there is a high probability that the sector could be used for money laundering (WT/DS453/6, 7.83). The Author of the article believes that the presented arguments were coherent and logical, and they proved the integrity and stability of the financial system.

On 15 April, the AB reversed the decision of the Panel. It is of great significance for the countries which do not agree to the lack of tax transparency in the jurisdictions practising harmful tax competition. Despite the fact that the AB changed the decision of the Panel, Argentina could not enjoy its full victory. The AB decided that 1. all eight defensive Measures imposed by Argentina were inconsistent with Art. II:1 GATS; 2. Measures 2–4 violated Art. XVII GATS but they were justified on the basis of Art. XIV (c) as necessary to provide consistency with the national law.

The arguments presented by the AB were based on the statement that services and service providers from cooperative countries were not like services and service providers from non-cooperative countries. In its appeal, Argentina stated that the Panel misinterpreted the MFN clause, indicating the similarity based on the origin. Considering the fact that the GATS analysis often referred to the systemic interpretation, Argentina proved that on the basis of the GATT MFN clause, the features of goods always come as their inseparable characteristics. Therefore, it should be assumed *per analogiam* that services are inseparably related to their providers' features, and in the discussed case there were different service providers. If we assume that the origin comes as a basic premise for the comparison of service providers, it seems that it will

be advisable to compare their other features, such as the segment of the market where they belong. The AB decision is right, however, the identification of the like term of GATS and the similar term of GATT is faulty, because the aims of both agreements are different. GATS refers to trade of services and GATT refers to trade of goods. The Panel wrongly transposed the likeness term from the GATS MFN clause to the NT clause (Bhala et al., 2017: 432).

The AP agreed with the Panel's decision that para. 2(a) of the FSA should be interpreted in a broad way, and its understanding should not be limited to domestic regulations. Hence, the concept of prudential reason justifies the implementation of any national regulations in the field of financial services which violate the GATS or FSA provisions (Eskelinen and Ylönen, 2017). The Author of the article believes that this is the right interpretation, because it provides countries with a possibility of fighting against jurisdictions to which taxpayers transfer their profits.

5 Conclusion

Without any doubt the issue of trade of services and taxation is complementary. Although it is relatively easy to analyse trade *per se* and individual types of taxes, sometimes it is difficult to present the relationship between them. This results from insufficiently clear GATS regulations in this area which influences the ambiguous interpretation of the law and causes a growing number of disputes between Member States. An additional difficulty is the fact that GATS fails to address the questions of harmful tax competition and a transparent exchange of information on tax. Therefore, Member States call upon the policy of the OECD using the GATS norms.

The OECD embraces 37 State Parties from all over the world which generate 75–80% of the global volume of trade. The Global Forum functions under the auspices of the OECD and consists of 150 member states. Participation in the Global Forum is quite separate from membership of the OECD. To illustrate this point, although both Argentina and Panama belong to the Global Forum, neither of them is a member of the OECD. The OECD is a global organisation which means that its tax policy is also of this nature. This is justified in the number of initiatives carried out in the scope of the exchange of information and cooperation in this field. In my opinion, the OECD regulations in the field of tax exchange information seem to be global and the OECD is attempting to create an effective tax policy. The problem is that each Member State interprets its contents differently which is why conflicts about values occur in the forum of the WTO. In the Panama–Argentina case, the value concerned is market protection, the definition of which is understood differently by each party. Panama defines this as protecting the interests of the state, which manifests in a lack of transparent tax exchange regulations which leads to transfers of funds by non-residents. Argentina, on the other hand, treats the transparency of the exchange of information in tax matters as a guarantee to increase budgetary income and to protect the consumer on the financial

services market. I believe that a solution to conflicts of values can only happen through a strengthened tax policy no matter if this takes places in the forum of the OECD or of the WTO. The best outcome would be to do so on the level of both organisations. It is essential not to treat this policy as a soft law.

The Panama–Argentina case illustrates the problem of using unclear jurisdictions for tax avoidance and evasion as well as money laundering. The lack of effective exchange of information is one of the key criteria in determining harmful tax practices. The decision of the Panel undermines the coherence of the WTO regulations with the OECD tax policy in the scope of transparency. This means that the WTO initially approved the use of the GATS to achieve particular interest which are at odds with the policy aims of the OECD. Therefore, it is correct that this decision was then reversed by the AB by finally stating that Argentina did not violate the MFN clause in the GATS. In order to implement the Global Forum initiative, Argentina committed itself to introduce internal tax regulations, which were questioned by the Panel. Undoubtedly Argentina was not consistent in dividing jurisdictions into cooperative and non-cooperative. However, being a State Party of the Global Forum (as Panama also is), it is evident that it is obliged to do so. I am convinced that the conflict of norms created by the international organisations is only possible to eliminate when the policy of these organisations will take preference over their regulations and therefore when they will find a common aim to aspire to.

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