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Cooperation in Tax Matters
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Dispute avoidance and resolution

**Draft Chapter 2 (Approaches to Avoiding Disputes) of the Handbook on
Avoidance and Resolution of Tax Disputes**

Note by the Subcommittee on Dispute Avoidance and Resolution

Summary

This note is presented FOR DISCUSSION (and not for approval) at the twentieth session of the Committee.

The note includes a first draft of Chapter 2 (Approaches to Avoiding Disputes) of the proposed *United Nations Handbook on Avoidance and Resolution of Tax Disputes*.

The draft was revised on the basis of the discussions at the meeting of the Subcommittee on Dispute Avoidance and Resolution held in The Hague on 12-14 February 2020 and of subsequent written comments. It is presented to the Committee for a first discussion at its twentieth session.

Based on the discussion of this note at the Committee's twentieth session and on written comments, the Subcommittee intends to revise this draft chapter at its next meeting and to send it in advance of the Committee's twenty-first session, when the chapter will be presented for discussion with a view to its approval for inclusion in the *UN Handbook on Avoidance and Resolution of Tax Disputes*.

1. Paragraph 10 of note [E/C.18/2019/CRP.18](#), which was discussed at the nineteenth session of the Committee (Geneva, 15-18 October 2019), included a timetable for the presentation to the Committee of the remaining chapters of the proposed *United Nations Handbook on Avoidance and Resolution of Tax Disputes* (the title of the proposed handbook was recently amended to clarify that it deals with tax disputes).
2. In accordance with that timetable, the Subcommittee on Dispute Avoidance and Resolution, at its meeting of 12-14 February 2020 held in The Hague (the Netherlands), discussed a first draft of Chapter 2 (Approaches to Avoiding Disputes).
3. During that meeting, it was agreed to make a number of changes to the structure and contents of the chapter. The draft attached to this note reflects these changes. The Subcommittee did not have time, however, to discuss all the written comments related to the draft that was then discussed.
4. At its twentieth session, the Committee is invited to have a first discussion of the attached draft. Based on that discussion and in the light of the written comments previously submitted by participants in the Subcommittee, the Subcommittee intends to revise this draft chapter at its next meeting and to send it in advance of the Committee's twenty-first session, when the chapter will be presented for discussion with a view to its approval for inclusion in the *UN Handbook on Avoidance and Resolution of Tax Disputes*.

Chapter 2

Approaches to Avoiding Disputes

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2.1 Introduction

2.1.1 Overview

1. For a country's income tax system to operate efficiently and effectively, it is essential that its government and tax administration provides dispute avoidance mechanisms. These mechanisms seek to prevent disputes between the tax administration and taxpayers, which is to the benefit of both parties.

2. This chapter explores various approaches to avoiding disputes that are generally available to prevent income tax disputes from arising between the tax administrations and the taxpayers. Relevantly, the chapter discusses different aspects of creating the environment for avoiding disputes, such as by developing tax policy and legislation with a level of global awareness which is clear and accessible for taxpayers to understand their rights and obligations, and therefore less likely to lead to disputes arising.

3. The goal of this chapter is to assist the tax administrations of developing countries with the further development and implementation of dispute avoidance strategies by describing a number of different approaches to avoiding disputes used around the world. Some of the dispute avoidance approaches may be more appropriate for consideration and implementation by developing countries when their tax administrations have more resources, including staff with the requisite experience and capability. The chapter also considers the potential benefits for taxpayers and tax administrations should such dispute avoidance mechanisms be effectively implemented.

2.1.2 The types of disputes avoided under this chapter

4. This chapter deals with mechanisms which can prevent disputes that may formally arise between the tax administrations and the taxpayers in relation to income taxes. A dispute is taken to formally arise where an audit results in the tax administration issuing a reassessment for additional income tax payable by the taxpayer or a demand for payment of tax.

5. Illustrations of the types of disputes which can arise between a tax administration and the taxpayer at any stage up to, and including the audit (i.e. before the audit results in the tax administration issuing a reassessment for additional income tax payable by the taxpayer or a demand of payment of tax) include disputes in relation to the following matters:

- the amount of taxable income calculated by the taxpayer;
- the taxpayer's choice of transfer pricing method used to value transactions between the taxpayer and its associated enterprises;
- the availability or computation of foreign tax credits;
- the character of items of income for tax purposes;
- the existence or non-existence of a permanent establishment; and
- the taxpayer's country of residence.

6. The income tax disputes which can arise between a tax administration and the taxpayer prior to, or during the audit may be in relation to the facts, the interpretation of the tax law and/or the application of the tax law to the taxpayer's factual circumstances.

2.1.3 Benefits of avoiding disputes

7. Countries should consider adopting a range of dispute avoidance mechanisms discussed in this chapter as there are many material benefits of avoiding disputes for the tax administrations and the taxpayers.

8. From the taxpayer's perspective, a dispute avoidance mechanism will provide the taxpayer transparency, certainty and a greater understanding of their rights and obligations under the tax law which, in turn, will enable them to make informed decisions about their tax affairs. Such mechanisms will also result in compliance cost savings for the taxpayer. By preventing a dispute with the tax administration, the taxpayer will avoid the unnecessary costs and delays associated with a formal dispute proceeding to litigation.

9. From the tax administration's perspective, the development and implementation of an effective dispute avoidance mechanism will enable the tax administration to direct their resources to higher risk taxpayers and areas of the law. Such a mechanism will also provide the taxpayer with transparency which will promote trust and confidence in the tax administration and the integrity of the tax system and consequently encourage voluntary compliance by the taxpayer. Similarly to taxpayers, by preventing a dispute with a taxpayer, the tax administration will save costs and time associated with a formal dispute proceeding to litigation.

2.1.4 Summary of approaches to avoiding disputes

10. While there are considerable differences in the structure and legal form of the different types of dispute avoidance mechanisms that countries have adopted to deal with income tax disputes, these can be placed within a few general categories. Some of the mechanisms, such as advance pricing arrangements, are binding on the tax administration. Other mechanisms, such as the provision of guidance and so-called "cooperative compliance", tend to be non-binding in nature but are instead aimed at ensuring taxpayers have a better understanding of how a tax administration interprets and applies tax law. The common feature of such mechanisms is that they seek to provide taxpayers with a better understanding of how a tax administration will approach a taxpayer's tax affairs with the aim of avoiding disputes arising.

11. The first approach to dispute avoidance, discussed in section 2.3.1, is the provision of advice and guidance by the tax administration. Such advice may be provided directly to a taxpayer or may take the form of a publicly available explanation of how a tax administration interprets relevant tax law. Both approaches seek to ensure taxpayers better understand how a tax administration will apply the tax law to their particular circumstances. The extent to which such guidance is binding on a tax administration will depend on its nature and the laws of the country concerned.

12. The next group of approaches to dispute avoidance concern the way in which tax administrations may work with taxpayers to arrive at a better understanding of each other's position ahead of a taxpayer finalizing their tax position. These include advance/ pre-filing agreements (section 2.3.2), which involve a tax administration agreeing or raising objections to the tax consequences of a transaction or arrangements in advance of a return being submitted, advance pricing arrangements (section 2.3.3) which takes a similar approach for transfer pricing, the appointment of "relationship managers" to taxpayers (section 2.3.4), and "cooperative compliance" (section 2.3.5), which enable a taxpayer to discuss their affairs with the tax administration at regular intervals, and/or prior to a transaction or arrangement to seek certainty of its tax treatment and therefore potentially resolve any issues before a dispute arises.

13. Voluntary cooperation between taxpayers which are multinational enterprise groups and the countries in which they operate is discussed in section 2.3.6, which discusses the International Compliance Assurance Programme and section 2.3.7, which describes the joint audit process.

14. Section 2.3.8 discusses the independent review of a statement of an audit position, a mechanism that seeks to resolve differences of view in the course of an audit.

15. The final approach to avoiding disputes, which is described in section 2.3.9, is the use of mediation. Mediation seeks to bring the taxpayer and tax administration together with the aim of setting out their respective positions and identifying potential solutions in an attempt to reach an agreement. The mediator may come from within the tax administration or be entirely independent of both parties.

2.2 Creating an environment for avoiding disputes

2.2.1 Clear and accessible legislation and interpretative guidance

16. The first and likely most effective way of preventing tax disputes is to ensure that taxpayers can easily determine their tax rights and obligations under the tax law as envisaged by governments, and therefore can easily fulfil their obligations and understand their rights.

17. Specific attention should be given during the legislative process to the question of whether the tax laws can be reasonably understood and implemented by taxpayers. Governments normally have a standard approach to transforming policy into legislation and regulations. This approach addresses the clarity of the legislation, the ability of taxpayers to meet the requirements, the compliance cost for affected taxpayers and the resources required by the tax administration to implement such legislation. Ideally, as part of the process, there should be a public consultation process prior to finalizing the legislation and passing it into law. This would provide stakeholders with the opportunity to provide relevant insights to the legislator on the effectiveness, the ability to implement and the compliance costs of the proposed tax legislation. Moreover, once the legislation and supporting regulations are adopted, it is also important that these are published in a way that make them easy for the taxpayers to access and understand within the scope of the legislation.

18. In order for a public consultation process to be effective, governments may consider conducting the process as follows:

- a) by releasing the text of the proposed draft tax laws and any accompanying explanatory memoranda, in preference to making an enunciation of the proposed amendments to the tax laws and/or the underlying principles of such proposed laws. In this context, it could be expected that governments will elaborate on the validity of proposed draft tax laws under multilateral initiatives (such as, recommendations of the UN and BEPS minimum standards as proposed by the OECD/G-20) with the country's existing tax, legal and constitutional framework. For instance, the relationship between the anti-avoidance rules and constitutional principles has been highlighted in public consultations of countries planning to introduce tax laws in accordance with several action items of the OECD/G-20 BEPS initiative;¹
- b) by ensuring that the relevant stakeholders have sufficient time to review, consider and provide submissions on the proposed draft tax laws, and its potential impact on their interests; and
- c) governments interested in broadening the scope of the participating stakeholders in the legislative process may invite experts, taxpayers, individual businesses or business associations to present their views regarding the operation of the proposed draft tax laws before the legislative branch.

19. Following the public consultation process by the government, but prior to the proposed draft tax laws becoming law, the government can decide whether or not to make any amendments to the proposed draft tax laws to take into account any of the stakeholders' views. Where the government amends the proposed draft tax laws taking into account the stakeholders' views on uncertainty, unnecessary complexity, or unintended tax consequences of the proposed draft tax laws, it may re-release the amended proposed draft tax laws for further consultation before proceeding to pass the new tax laws, or it may proceed to pass the new tax laws. Where the government passes the new tax laws, this will likely result in the new tax laws being more certain, less complex and operating as intended with the effect of preventing, or at least, minimizing the number of disputes arising between the tax administrations and the taxpayers.

20. In contrast, where the government does not amend the proposed draft tax laws taking into account such stakeholders' views, the outcome of this process will have the effect of providing taxpayers transparency and an opportunity to take any action in advance of the new tax laws coming into effect.

¹ This approach has been undertaken by the governments in Australia, Brazil, Canada, Italy, India, the Netherlands, Poland, Singapore, South Africa and the United Kingdom which have released drafts of the proposed tax laws for public consultation on a range of topics from the anti-avoidance rules, transfer pricing documentation requirements, withholding taxes and indirect taxes.

2.2.2 Putting domestic legislation and administration in an international context

21. In designing and passing the domestic legislation into law, governments will generally be conscious of the interaction of the domestic legislation with the legislation of other countries and with the international obligations which are in place, for example, those obligations under bilateral tax treaties. Such global awareness is important to prevent double taxation and tax disputes and is relevant to all phases of introducing and administering tax legislation with cross-border implications, including by ensuring that the availability of tax treaty benefits is clearly communicated to the taxpayers in scope.

22. As international tax issues, such as for example transfer pricing, are considered priority audit areas for many tax administrations, the audit function needs to have a level of global awareness that allows for effectively auditing compliance with the domestic legislation, but also assessing whether bilateral tax treaties have been applied appropriately. Without such global awareness it could, for example, either be that cross-border BEPS issues are not detected, or that adjustments are raised which result in double taxation, while avoidance of double taxation should be available based on the relevant tax treaties.

23. Training, including capacity building, is one of the important building blocks of creating global awareness. Many forms of training are available to both developing and developed countries. However, more than developed countries, developing countries find it difficult to apply the international tax concepts captured in tax treaties in their day-to-day situations, as international tax issues are often complex.

24. Tax Inspectors Without Borders (“TIWB”) is a joint United Nations Development Programme (“UNDP”) and OECD initiative, which was launched in July 2015. The overall objective of the programme is to support developing countries to build the tax audit capacity of their tax administrations. This is achieved by sending experts who provide hands-on assistance, sharing their tax audit knowledge and skills with the developing countries’ tax auditors in order to build their audit and audit-related skills.

25. The programme offers an opportunity to avoid disputes arising by assisting the development of the tax auditors’ skills in relation to cross-border tax issues thus also contributing to global awareness. In turn, this better enables tax administrations to direct their resources to material issues both in the identification of issues appropriate for audit and in conducting the audit process. This decreases the scope for unnecessary disputes and increases the likelihood of an audit being resolved in an efficient manner.

26. For more details of the TIWB’s objective, and areas and forms of assistance, see Box 1 appearing in section 6.2 of Chapter 6.

27. Besides TIWB, which provides training on the job, the Final Report of BEPS Action 14 (dispute resolution) indicates that global awareness is a best practice. The Report refers to delivering the Forum on Tax Administration’s “Global Awareness Training Module” to appropriate personnel as relevant training to secure global awareness of the audit function.

28. In cross-border tax issues, tax administrations may experience an information asymmetry which does not occur in domestic situations, as they may lack extra-territorial information on the relevant tax arrangement. This may make it impossible to make the appropriate assessment of the tax position of the taxpayer. In these situations, it will be important to liaise with the other tax administrations to access the relevant information. This could be done through exchange of information on request. In some situations, a joint audit may also be an appropriate way to ensure the assessments made by the tax administrations involved reflect the reality of the cross-border arrangement.

2.2.3 Dispute avoidance mechanisms

29. Even though governments generally have the best intentions, it can be difficult to anticipate all possible fact patterns and issues and therefore to draft legislation that prevents tax disputes in all situations. For this reason, many countries have dispute avoidance mechanisms in place which provide certainty in advance on cases which come up and for which the interpretation of the tax legislation is not necessarily straightforward. With that, such dispute avoidance mechanisms prevent tax disputes and provide tax certainty.

30. Dispute avoidance, as referred to in this chapter, is part of public (tax) law and hence, it is subject to the same procedural and substantive restrictions that apply to other parts of public law. This should be considered in the design of tax laws, as well as their interpretation, where public law does not allow for the same flexibility as, for example, commercial or civil law.

31. Some of the terms used in dispute avoidance procedures, such as agreement, cooperation, relationship manager, etc. might remind of terms used in fields other than public (tax) law like in commercial relations. This could be misleading. Indeed, other than a party to a commercial transaction, a tax administration is not as free in its activities. For example, it cannot give up a country's taxing right except through a change of that country's tax law or in the context of the proper implementation of, for instance, its tax treaty obligations.

32. One of the most common ways to minimise tax uncertainty or prevent disputes from arising is the provision of rulings, including APAs. This is discussed in section 2.3.3. below. Many countries offer private advice or rulings that are binding on the tax administration. Where such advice or rulings are offered in relation to cross-border tax issues it is important for both the taxpayer and the tax administration to keep in mind that the tax administration in the other country may not agree with the position taken in the advice or ruling. The dispute preventive effect of the advice or ruling may therefore provide less certainty in this context. However, such uncertainty does not occur when all relevant tax administrations are participating in a multilateral ruling or APA, as in that situation the multilateral nature of the cross-border tax issue is captured by the process. However, such multilateral rulings or APAs are not always available. If a unilateral ruling is challenged by the other tax administration, where relevant a MAP under Article 25 paragraph 3 (Alternative A and B) could be considered. In particular where the issue at hand is relevant to more taxpayers.

33. An important aspect to consider when designing, implementing and administering tax legislation is that taxpayers should be treated equally before the law. This applies not only to all dispute avoidance mechanisms, but also to audits. However, it does not mean that all taxpayers have to be dealt with in an exactly similar way. Differences in the taxpayers' attributes (e.g. size, sector etc.) may require different approaches in the cooperation between them and the tax administration. Equality before the law requires that any differentiations made between taxpayers are based on the law and are well reasoned without arbitrarily favoring specific taxpayers or groups of taxpayers over other taxpayers.

2.2.4 Risk-based approaches

34. Early dialogue between a tax administration and a taxpayer will require resources on both sides. Tax administrations in both developed and developing countries have limited resources at hand. To ensure that the tax administration engages the most relevant taxpayers it is important to rely on a general risk assessment of the tax risks that are most important in a particular country. For a discussion of the importance of risk assessment in relation to transfer pricing, see Chapter C.3 in «United Nations, Practical Manual on Transfer Pricing for Developing Countries 2017.»

35. There is a view that dispute avoidance mechanisms may lead tax administrations to focus scarce resources on compliant rather than non-compliant taxpayers, thus “squeezing the wrong end”. Tax administrations with very limited personnel resources may have to wind down their audit attempts to be able to run dispute avoidance programs, which may result in an overall decrease in collected taxes. At the beginning of a tax administration's work in the field of international tax law, and transfer pricing in particular, personnel is typically very scarce. If only a small group of skilled employees is available in a tax administration the decision of where to use them has to be made. Often this group will work in an audit program first, since this promises countable monetary results and at the same time it is a strong signal to the business community. At this stage, ensuring global awareness of the audit function is important to avoid adjustments being made which cannot be upheld in a court or in a MAP procedure. Moreover, audits that are based on prudent risk assessment, including the required global awareness, focus on taxpayers that are unlikely to be compliant, while taxpayers that cooperate with the tax administration voluntarily are more likely to be compliant anyway. Thus, introducing a dispute avoidance program at an early stage could have the effect of withdrawing skilled auditors and result in an unreasonable allocation of scarce resources. However, the more complex and prone to interpretation the tax legislation is, the more difficult it may be for taxpayers to be fully compliant based on their own interpretations. Therefore, for very complex cases or key definitional issues which determine whether taxpayers fall inside or out of the tax measure, a dedicated tax certainty process can help to prevent unintended misinterpretations and with that can secure compliance.

2.3 Approaches to dispute avoidance

2.3.1 Advice and guidance provided by the tax administration

36. An integral part of the self-assessment system is the provision of different forms of advice and guidance by the tax administration to taxpayers in order to assist them with understanding how the tax law applies to their particular circumstances. Such advice and guidance could be effective in preventing disputes from arising. This would occur where the tax administration's advice and guidance is clear, accurate, consistent, and accessible to the taxpayer with the result of providing the taxpayer transparency, certainty and a greater understanding of their rights and obligations under the tax law enabling them to make informed decisions about their tax affairs.

37. Further, where the taxpayer relied on advice or guidance, which may or may not be binding on the tax administration, and where such advice or guidance is subsequently found to be incorrect, or misleading² and results in the taxpayer making a mistake, formal disputes could be avoided as, in these circumstances, the taxpayer may be afforded different levels of protection from the imposition of a tax liability, interest and penalty charges.

2.3.1.1 Advice

38. A tax administration may provide advice on a taxpayer's obligations or entitlements under a provision of a tax law, which is generally in the form of a legally binding ruling. Generally, a public ruling sets out the tax administration's interpretation of the law. It is a published statement of the tax administration's opinion of how a provision of a tax law applies, or would apply, to taxpayers in relation to a class of schemes or to a class of taxpayer generally, rather than in respect of the specific circumstances of a particular taxpayer. For examples of the different types and forms of advice which could be provided by a tax administration, see Box 1 below, which describes those provided by the Australian Taxation Office.

39. The issue of whether or not advice is binding (legally or administratively) on the tax administration will depend on the laws of each individual country. For example, in Australia, the effect of the advice being legally or administratively binding on the Commissioner of Taxation ("Commissioner") who administers the tax laws is that where a taxpayer relies on the advice, and it is subsequently found to be incorrect or misleading and results in the taxpayer making a mistake, the law will protect the taxpayer from the imposition of a tax shortfall, interest on the tax shortfall and a false or misleading statement penalty.

Box 1. Different forms of advice – Australian Taxation Office

2 For example, this could occur in the following instances:

- (a) where there have been legislative changes since the advice was given;
- (b) a tribunal or court decision affected the tax administration's interpretation of the law since the advice was given; and
- (c) for other reasons, the advice is no longer considered appropriate (e.g. if the advice has been exploited in an abusive or unintended way).

- a. Public rulings – set out the Commissioner’s interpretation of the law, and include:
 - i. Product rulings – provide certainty to participants on the tax consequences of an arrangement, provided it is carried out as described in the ruling.
 - ii. Class rulings – provide certainty to a specific class of participants by explaining how a relevant provision of the tax law applies to them in relation to a particular scheme.
 - iii. Law companion rulings – provide clarity and certainty on the Commissioner’s interpretation of new legislation.
- b. Private rulings – provide certainty on how a tax law applies to a particular taxpayer in relation to a specific scheme or circumstance.
- c. Early engagement for advice – this can be requested by the taxpayer for advice on a complex transaction being considered, or implemented.
- d. Oral rulings – given over the phone, it is the Commissioner’s opinion of how a provision of a tax law applies to an individual in their specific circumstances.
- e. Administratively binding advice – provided in a limited range of circumstances in relation to certain laws which the Commissioner administers but is unable to provide legally binding advice.

2.3.1.2 *Guidance*

40. A tax administration may provide guidance on how the tax law operates generally. Guidance is general in nature and simply expressed, to assist taxpayers and their advisors to understand and meet their obligations under the tax laws administered by the tax administration. Guidance can be provided in various forms as shown in Box 2 below, which describes the guidance provided by the Australian Taxation Office.

41. Similar advice, the extent to which guidance is binding on a tax administration depends on the laws of each country. In Australia, where a taxpayer relies on the non-binding guidance provided by the tax administration and it is subsequently found to be incorrect, or misleading and results in the taxpayer making a mistake, the Commissioner will impose a tax shortfall, but not a false and misleading statement penalty. Further, where the taxpayer has relied on the guidance reasonably and in good faith, the Commissioner will not impose interest on the tax shortfall.

Box 2. Guidance – Australian Taxation Office

- a. Practical compliance guidelines – provide broad administration guidance, addressing the practical implications of tax laws and outlining the Commissioner’s administrative approach.
- b. Oral guidance – given by the phone or in person at a shopfront on matters of a general, straightforward or simple nature.

- c. Written guidance –
 - i. The tax administration’s website – provides extensive information, general in nature and often simply expressed, to assist taxpayers and their advisors to understand and meet their obligations under the tax laws administered by the Commissioner.
 - ii. Decision impact statements – set out the Commissioner’s view on the implications of a particular court or tribunal decision.
 - iii. Media releases and speeches – brief announcements of the Commissioner’s position on a newsworthy topic.
 - iv. Consultation – this includes matters under consultation, papers for comment, and how to get involved in consultation.
- d. Audio and visual guidance – the tax administration’s podcast “TaxinVoice”, which enables taxpayers to listen to the latest tax information in order to meet their tax obligations.
- e. Taxpayer alerts – warn taxpayers of the Commissioner’s concerns about new or emerging high-risk tax arrangements or issues to assist taxpayers with making informed decisions about their tax affairs.
- f. Interpretative decisions – is an edited version of a decision the Commissioner has made on an interpretative matter and gives an indication as to how the Commissioner might apply a provision of a law.
- g. Law administration practice statements – provide direction to the tax administration staff on approaches to take when performing certain duties involving the tax law administered by the tax administration.
- h. Tax administration’s website tools and calculators – assist the taxpayer with self-assessing a tax liability or entitlement.

2.3.1.3 Development and management, or enhancement of public advice and guidance

42. As the provision of public advice³ and guidance by the tax administration to taxpayers could be effective in avoiding disputes from arising, tax administrations may wish to develop and manage such advice and guidance, or enhance their existing advice and guidance. This could involve the following:

- (a) assessing the risk associated with the issue;
- (b) working with industry and tax professionals to identify topics for future advice and guidance, and to update existing advice and guidance, as required;

³ Public advice provided by the tax administration refers to advice which sets out the tax administration’s interpretation of how the law applies to taxpayers in general, as opposed to how it applies to a particular taxpayer’s circumstances.

- (c) consulting stakeholders early and frequently throughout the process to obtain their practical assistance with identifying the most important issues and developing the most effective form to address those issues;
- (d) ensuring that appropriately qualified officials of the tax administration produce the advice and guidance with the right tools to support them;
- (e) ensuring the advice and guidance is tailored, clear, current and accessible; and
- (f) ensuring the advice and guidance is provided at the time required, in the most appropriate form and via the most effective channel.

2.3.2 Advance Agreements/Pre-Filing Agreement

43. As countries seek to provide certainty to taxpayers and reduce their compliance costs, variations on the advance ruling concept have emerged. The goal of these advance rulings is to allow a taxpayer to obtain certainty on an issue, by engaging directly with the tax administration in advance of a dispute on a particular issue. This early engagement benefits both the taxpayer and the tax administration, by allowing for up-front discussions and resolution, thereby obviating the need for protracted discussions on the issue at a later date. For an example of such an advance ruling, see Box 3 for a description of the Pre-Filing Agreement (“PFA”) issued under the Pre-Filing Agreement Program (“Program”) of the U.S. Internal Revenue Service (“IRS”).

Box 3. Pre-Filing Agreement Program - IRS

In the U.S., the IRS offers its corporate taxpayers the opportunity to enter into the Pre-Filing Agreement Program (“Program”), which oversees the issuance of a Pre-Filing Agreement (“PFA”). If accepted into this Program, the taxpayer will undergo an examination of a specific issue in advance of the return being filed, with the end goal of obtaining a PFA, a form of closing agreement which binds both the taxpayer and the tax administration.⁴

A critical difference between a PFA and other types of advance rulings is that the PFA will only be provided with respect to a “closed transaction” for which a position has not yet been taken on a return. The PFA does not comment on or provide guidance on a prospective or future transaction. Rather, it provides an opportunity for the taxpayer and the tax administration to discuss an issue and a position in advance of filing, in order to agree on the treatment to be reflected on the return.⁵

Pre-Filing Agreement Process

In order to obtain a PFA, a taxpayer must submit an application to the PFA Program Manager. The application must provide certain basic information including the taxpayer’s

4 See, Revenue Procedure 2016-30.

5 The PFA is akin to the U.S. Compliance Assurance Program (“CAP”) which provides a taxpayer with a “real-time” audit, allowing them to agree their return positions in advance of filing. CAP is a form of cooperative compliance (see, section 2.4.3). Where the CAP exam provides certainty on the overall return, the PFA provides certainty on one specific issue.

name and address, as well as a statement of the relevant facts, the issue to be considered and an analysis of the relevant law. Specific guidance on the contents of the submission is provided in publicly available guidance.⁶ The availability of this public guidance is a best practice, as it provides taxpayers with knowledge of the Program, the process and the expectations of the tax administration.

If accepted into the Program, an examiner is assigned to the matter, and an examination of the issue is commenced. The same procedures for gathering information which are used during an examination, apply during the PFA process.

The taxpayer and the tax administration then enter into a discussion of the technical issue and work to reach an agreement on the position to be taken on the tax return. This agreement is memorialized in a PFA.

Pre-Filing Agreement

The PFA is a form of closing document which legally binds both the taxpayer and the IRS to the terms of the agreement. Once executed, the PFA cannot be re-opened absent a showing of fraud, malfeasance or other bad faith act. Because of the binding nature of the PFA, it is important that both parties to the agreement carefully review the terms and agreement clauses.

In the U.S., it is customary for the taxpayer to provide the first draft of the PFA, which is then reviewed and revised in collaboration with the tax administration. Generally, the legal division at the IRS will become involved in the drafting and revision process, as the PFA is binding.

Benefits

The PFA provides an excellent tool for taxpayers and tax administrations to achieve certainty in advance of a return being filed. The benefit of certainty to both the taxpayer and the tax administration is clear; by addressing and agreeing issues in advance of filing, the need for post filing activity is eliminated. Thus, both the taxpayer and the tax administration conserve resources and time.

2.3.3 Advance pricing arrangements

2.3.3.1 Introduction

44. An advance pricing arrangement (“APA”) is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables, an appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time. This could be an

⁶ See, Revenue Procedure 2016-30.

effective tool in avoiding disputes between tax administrations,⁷ especially since 50% of MAP cases relate to transfer pricing.

45. An APA is formally initiated by a taxpayer and requires negotiations between the taxpayer, one or more associated enterprises, and one or more tax administrations.⁸ An APA can be concluded unilaterally, bi- or multilaterally. Questions of transfer pricing can occur on different levels. First, they can be discussed between a taxpayer and the tax administration of the country of residence. Secondly, as they arise in cross border transactions, they can be a matter between the tax administrations of different jurisdictions.

46. The legal basis for unilateral APAs can be found in the respective domestic tax law, either in legislation on transfer pricing, in specific legislation or in general procedural rules. The legal basis for bi- or multilateral APAs can be found in international treaties such as double taxation conventions (“DTCs”). Usually provisions implementing Article 25 of the UN or OECD model conventions on the Mutual Agreement Procedure (“MAP”) serve as a basis for bilateral APAs. While some countries consider that such an international treaty provision is a sufficient basis for a bi- or multilateral APA, other countries require more specific domestic and international legislation for the conclusion of such an arrangement. An APA, as defined and used by the UN and OECD is based on the Arm's Length Principle (“ALP”).⁹

47. A bi- or multilateral APA can also be a tool for avoiding future disputes between tax administrations. Legally they are usually based on the same provisions in the DTCs as common dispute resolution mechanisms and they follow comparable procedures. An APA is an individual arrangement between its signatories. Therefore, standardized templates are usually not available. Some key elements of APAs include: i) the parties of the agreement, ii) methodology, iii) comparability analysis, iv) critical assumptions¹⁰; and v) duration/termination of the APA.¹¹

2.3.3.2 *Establishing an APA programme*

48. The goals of an APA programme, which are in particular avoiding future conflicts and offering an attractive governance environment, need sustainable and enduring commitments.

7 See Section C.4.4.2.2. ‘Advance pricing agreements’ of Chapter C.4 ‘Dispute Avoidance and Resolution’ in the United Nations Practical Manual on Transfer Pricing for Developing Countries 2017.

8 OECD TPG Para 4.

9 The ALP is incorporated in Article 9(1) of both the UN and OECD Model Tax Convention. This provision says: [Where] conditions are made or imposed between two [associated] enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

10 Critical assumptions are a core element of an APA since they reflect the factual assumptions under which the applied method is considered to be appropriate. Generally, an APA applies only under the condition that the critical assumptions are met.

11 There is also often a lack of clear deadlines or timeframes, but that could be solved.

49. The following issues should be considered by a country wishing to establish an APA programme:

- (a) Employees with specific skills. In particular, employees should have knowledge of, and experience in tax law, transfer pricing and domestic procedural law. In addition, communication and organizational skills are important;
- (b) The personnel running an APA programme need access to certain resources, many of which are similar to those used by transfer pricing auditors. Most importantly, this will likely mean access to commercial databases to allow a comparability analysis. In addition, bi- and multilateral APAs will necessitate face-to-face meetings between representatives of the tax administrations and this will mean travel and subsistence costs. In some countries, like Canada, taxpayers meet the travel expenses of a tax administration during APA negotiations;
- (c) For a suitable procedure it is important to take into account the following: (i) target time frames for each stage; (ii) more targeted documentation/ information; (iii) increased tax administration resources; (iv) focus on multilateral APAs; and (v) greater use of benchmarks /safe harbours;¹² And
- (d) There should be consideration of any collateral issues, such as a roll back of the APA result to income years prior to those covered by the proposed APA, and an agreement with the taxpayer on the approach to resolve those issues.

2.3.3.3 *Funding of an APA Programme*

50. Alternative sources for funding an APA programme can be considered by tax administrations wishing to establish such a programme. Usually the expenses of an APA programme are met from that administration's budget. However, some countries charge a fee to taxpayers making use of the programme. Such fees take various structures including a fixed, hourly or graduated fees structure, or a revenue neutral structure, which may be particularly attractive for LDC.

51. The so gained additional revenue of a tax administration can be reinvested in the programme and help reducing the potential resource constraints as described above. Specific fees can have a regressive effect hampering smaller business from applying for an APA. Paying additional fees will pose -in relation to their income- a higher burden for smaller businesses. Even if fees may vary depending on the size of the taxpayer this effect usually can't be completely avoided. This adds to the fact that the administrative burden of applying for an APA is typically relatively higher for smaller businesses. Countries with mainly small and medium size companies may want to take this into account.

¹² TAX CERTAINTY DAY Item 3 – Advance Pricing Arrangements, 16 September 2019, OECD Conference Centre.

2.3.4 Relationship managers

52. The appointment of a single point of contact or relationship manager between the tax administration and the taxpayer, who is responsible for the tax administration's overall relationship with the taxpayer could have the effect of preventing disputes arising.¹³

53. Under such an approach, there is an on-going and transparent dialogue between the tax administration and the taxpayer. This may involve structured and planned discussions, such as a formal annual risk assessment, as well as ad hoc discussion of particular issues as they arise. The taxpayer is able to discuss with their relationship manager a proposed transaction or arrangement and an analysis of the tax consequences either at the annual review, or at a time when the taxpayer is seeking certainty of its tax treatment. The tax administration will then comment on those consequences. Any difference of opinion can be discussed, and therefore potentially resolved, before the taxpayer goes ahead with the transaction and/ or before the taxpayer is required to file its position for the relevant period. One of the aims of this approach is therefore to resolve any issues before a dispute arises.

54. The development of a relationship between a tax administration and the taxpayer fosters greater trust and transparency if the arrangements are approached in the right way. This relationship works to the benefit of both parties. Where the taxpayer and the tax administration reach an agreement on the tax treatment of a proposed transaction or arrangement, it will provide taxpayers with certainty of its tax treatment before they reach their filing position, therefore preventing a dispute from arising. However, where no such agreement is reached, the taxpayer will obtain an understanding of the tax administration's position, including the likelihood that such a filing position will result in a dispute arising.

55. From the tax administration's perspective, the development of such a relationship with the taxpayer will result in it having a deeper understanding of the taxpayer's business model and operating environment and how these, and other commercial factors, impact upon the tax position of the taxpayer. This will inform an understanding of the particular needs of the taxpayer and how they behave, including by reference to their approach to tax compliance. This can be an effective way of avoiding disputes based on an understanding of the motivations for particular arrangements. It also allows a tax administration to identify tax risks at an early stage and therefore, potentially, allow resolution of any issues before they become a dispute.

56. For a description of the Client Relationship Manager Programme provided by the Tax Administration Jamaica, see Box 3 below.

Box 3: Client Relationship Manager Programme - Tax Administration Jamaica

The Large Taxpayer Office

Tax Administration Jamaica ("TAJ") opened the Large Taxpayer Office ("LTO") in April 2009. The LTO was established in keeping with a commitment of the Government of

13 This approach is taken in the UK, Belgium, Australia and Ireland.

Jamaica to provide service of the highest quality, accessibility, convenience and responsiveness to the taxpayers or clients who contributed a significant portion of the country's revenue. The LTO enables tax administrators via their Client Relationship Managers ("CRMs") to interface with, and meet the needs of the clients in a more proactive and systematic manner in order to improve service delivery and foster greater compliance, and therefore may be effective in preventing disputes from arising.

Clients

The LTO facilitates taxpayers who have total sales or turnover of over \$500 million Jamaican dollars or approximately \$3.7 million USD (1 USD =135.72 Jamaican Dollars), or contribute tax revenues in excess of \$50 million per annum for any of the following taxes, being Corporate Income Tax, Pay-As-You-Earn, General Consumption Tax and Stamp Duty.

These taxpayers comprise 3% of the tax paying population and contribute 80% of tax revenue. Typically, these clients are highly sophisticated in their operations and are usually involved in complex domestic and international commercial transactions.

Client Relationship Management

Client Relationship Management involves understanding the client, understanding the objectives of the TAJ, and continuously improving service quality. Where this is satisfactorily done, the outcome should be the maintenance of a nurturing environment where the clients feel that their needs are met.

The Client Relationship Management functions at the TAJ are carried out by CRMs acting under the supervision of the Director of Client Relationship Management ("Director").

Role of the Director

The Director of Client Relationship Management is responsible for planning, organizing, directing, coordinating and supervising the activities of the CRMs. Among the duties of the Director are the following:

- ensuring that all CRMs adopt and comply with the policies of the LTO;
- identifying training needs of the CRMs in tax laws and other relevant laws and practices;
- assisting the CRMs with meeting the needs of clients, in particular where there are complex tax issues involved;
- assisting the CRMs with conducting workshops and seminars targeting clients;
- establishing protocols between the CRMs and other units internal to TAJ, as well as other external stakeholders such as other government agencies and the various private sector bodies;
- conducting periodic reviews of strategies and protocols; and

- ensuring that CRMs have ongoing training.

Role of the CRM

The CRM is the main contact point between the client and TAJ, and provides personalized service to the client. This requires that the CRM should have a good understanding of the business environment and a working knowledge of the client's modus operandi.

Professionally, CRMs are required to possess at least a first degree in Accounting, ACCA level 2, or other equivalent professional qualifications from a recognized university. They are also required to have at least 4 years working experience and must display a knowledge of tax laws, and skills in communication of complex technical issues.

The duties and functions of the CRMs cover 2 broad areas, Managing the Interface between TAJ and the client, and Research and Dissemination of Information.

1. Managing the interface between TAJ and the client in order to prevent or minimize disputes and avoid misunderstandings. This function includes the following activities:

- establishing and maintaining protocols for the relationship between TAJ and the client;
- consulting on complex tax issues with in-house legal and technical staff in order to reach consensus on the response from TAJ to the client's concerns;
- facilitating the flow of documents and payments between the client and TAJ;
- facilitating the refund process as well as the timely issuance of documents such as the Tax Compliance Certificate;
- ensuring that accounts of clients are reconciled and updated and that clients receive timely updates on accounts;
- facilitating electronic transactions and direct bank payments;
- ensuring timely and professional responses to complaints, questions and requests of clients by keeping them informed on the progress of queries and the timeline for resolution of issues; and
- making courtesy calls on clients.

2. Conducting research and dissemination of information. This function includes the following activities:

- conducting ongoing research in order to appreciate the nature, characteristics and operations of the business of the assigned client;
- consulting with industry specialists to ensure full understanding of the complexities associated with the client's industry;
- conducting seminars and workshops aimed at informing clients about changes to domestic and international tax matters, as well as soliciting feedback from clients;

- liaising with legal and other technical staff members who assist with presentations at the various workshops and seminars; and
- tracking, maintaining and analyzing statistical data associated with the business of the assigned client.

57. The appointment by a tax administration of a relationship manager to a taxpayer may, however, be resource-intensive and potentially expensive for a tax administration. It also requires a commitment from the taxpayer to engage in the process. As such, this approach is often limited to large and/or complex taxpayers. Taking this approach may ensure the use of a taxpayer relationship manager is cost-effective because resource is allocated to a population of taxpayers most likely to give rise to high-value disputes. A broad understanding of the risk profile of businesses, the sectors in which they operate and areas of tax risk by topic also allow a tax administration to make an informed decision about the businesses and issues in which resource should be focused.

58. The extent of the resources committed to the relationship by a tax administration will generally be determined by an assessment of the likely cost-effectiveness. For the largest taxpayers, it is likely that the tax administration commits a team that extends beyond just a point of contact. That team may include the relationship manager, who has oversight of interactions with the taxpayer, supported by a support team who may each have responsibilities for different aspects of the taxpayer's affairs, for example across different taxes. This assists with avoiding disputes by embedding a deep understanding of the factors that are relevant to a business and its tax position across a broad range of people working within a tax administration, particularly if those teams are responsible for the affairs of a number and range of different businesses.

59. The resources that taxpayers are required to commit is also a consideration in designing such an approach given the process extends beyond statutory obligations to file a tax return. It is likely that only larger taxpayers will have the necessary willingness or capacity to engage in such a relationship in a meaningful way. For such a process to be truly effective, the taxpayer must be committed to engaging with the tax administration in a fully transparent fashion. Absent such a commitment from both the tax administration and the taxpayer, the process cannot succeed.

60. A tax administration may wish to modify its general approach in others ways to ensure the most efficient use of resources. For example, the level of engagement may be more limited where, after a period of time, a taxpayer is able to demonstrate that it does not present sufficient tax risk to justify all of the governance procedures generally applicable. This might mean, for example, that there is no need for an annual risk review and that such reviews may only be required at longer intervals. For example, in the United Kingdom, a "low risk" taxpayer is only required to take part in a risk review every three years, rather than on an annual basis. Similarly, in the U.S., if a taxpayer is deemed to be sufficiently low risk, a year may be "skipped" if it is determined that there is insufficient reason to allocate resources to an annual review. This

allows the tax administration's resources to be better-targeted at avoiding and, if necessary, discussing, disputes with taxpayers for whom the avoidance of disputes is more likely to require attention. In addition, the appointment of a relationship manager may be voluntary, that is, at the discretion of the taxpayer, rather than mandatory.

61. A modified approach may be extended to other taxpayers. For example, taxpayers that are not in the largest or most complex population may nonetheless be appointed a relationship manager within the tax administration, but the level of engagement and associated responsibilities may be reduced. For example, there may only be a single point of contact allocated to the taxpayer and the requirement to hold an annual risk review meeting may not apply. Instead, the relationship manager may only engage with the taxpayer where there is potential for a dispute to arise, for example if the taxpayer considers that there is scope for ambiguity in the application of statute to a proposed transaction. This approach may balance the risk associated with this population of taxpayers against the need to avoid disputes arising by dealing with issues in real time.

2.3.4.1 Other approaches to dealing with taxpayers in "real time"

62. There will be groups of taxpayers for whom it is not cost-effective for a tax administration to appoint a relationship manager. For example, the value of the tax risk presented by small businesses, of which there is inevitably a larger population, will likely mean it is not practicable to appoint a taxpayer relationship manager. The individual tax risks presented by this population may be small in value, but cumulatively the tax risk may nonetheless be significant. Different approaches may therefore be taken to manage the relationship between the tax administration and these other groups of taxpayers.

63. A tax administration may create facilities that allow taxpayers to visit an office of the tax administration to discuss affairs, including presentation of any appropriate paperwork. The majority of tax administrations provide a telephone service, albeit such an approach may make the sharing of relevant papers more difficult and often offers advice of a general nature. Increasingly, it may mean digital forms of communication, such as an on-line messaging service or use of a dedicated email address. These will likely complement the provision of guidance, as discussed in 2.4.2.2.

64. While these approaches offer scope for cooperative compliance with a larger population, they also come with difficulties. They, too, come with associated resource constraints and often there will need to be defined circumstances in which it is appropriate for taxpayers to engage in this way. The scope for real time engagement is significantly reduced if this service is not sufficiently resourced and delays become inevitable.

65. It may also be difficult to ensure auditors providing advice have knowledge that is broad enough to be able to deal with the wide-range of issues with which they may be presented. Cross-border issues may be particularly complex and require specialist knowledge. It follows that such approaches may be best-suited to avoiding disputes that are of limited complexity.

2.3.4.2 Accelerated engagement

66. A tax administration may identify, sometimes working in collaboration with the taxpayer, either a potential high-value dispute, or a number of potential disputes in which the sum results in a larger amount of disputed tax. In such cases, which will be of significance to both the tax administration and the taxpayer, it may be in the interests of both parties to work together to an accelerated timescale to avoid those issues becoming a dispute. As such, both parties may sign up to a process that seeks to resolve those issues outside of the normal compliance process.

67. The general aim is for both parties to cooperate intensively over a set period of time with the aim of reaching a mutual agreement on the best way to progress those issues, be that because a dispute is avoided or that dispute resolution is required.

68. Such a process will generally require a mutual commitment by the parties to provide the necessary resources, as well as a good faith approach to the discussions. The engagement may involve senior leaders from within the tax administration and the taxpayer, as well as tax auditors and tax specialists from both sides, including, if necessary, head office specialists. In a cross-border context, that may involve insight from those working for the taxpayer in other jurisdictions.

69. The potential resource commitment may require the tax administration to set parameters on the nature of the issues that may be accepted into such a program. These may include the total tax under consideration, prospects of success, the compliance history and approach taken by the taxpayer, the number of issues and their complexity, and the likely implications for future compliance. This is especially true as there is no guarantee that the process will avoid a dispute arising.

70. There will need to be sufficient oversight of any conclusions reached between the taxpayer and the tax administration through such a process. Any settlement reached will need to be in accordance with a country's generally stated litigation and settlement principles.

2.3.5 Cooperative compliance

2.3.5.1 Overview

71. Cooperative compliance is one way in which tax administrations of developing countries can develop an overall compliance strategy that encourages greater voluntary compliance by multinational enterprises ("MNEs"), and in the process, obtain a greater understanding of how MNEs operate, make decisions and manage their tax exposure. This approach could have the effect of avoiding disputes from arising between the tax administrations and the taxpayers.

72. Cooperative compliance refers to a concept that builds on a reciprocal relationship of trust and cooperation between the tax administrations and the taxpayers. It is a relationship that

favours collaboration over confrontation and is anchored more on mutual trust than on enforceable obligations, with both parties going beyond their statutory obligations.

73. Cooperative compliance can also assist countries to create a tax compliance climate that encourages foreign direct investment (“FDI”) while improving tax morale by demonstrating to society as a whole that large taxpayers are paying their fair share of tax.

2.3.5.2 Relevance of cooperative compliance to developing countries

74. The cooperative compliance model has a number of characteristics that suggest it could play a positive role in the strategic response of developing countries to improve tax compliance by taxpayers and prevent or minimise tax disputes between the tax administrations and the taxpayers.

75. Under a cooperative compliance approach, the tax administration may engage early with the taxpayer to discuss the tax consequences of a proposed transaction or arrangement. Where this occurs, the parties will be able to identify if they have any differences of opinion on the tax issues, and therefore potentially resolve those tax issues before the taxpayer undertakes the transaction or arrangement, or files its position. Where the tax administration and taxpayer identify and resolve their tax issues prior to the taxpayer undertaking the transaction or arrangement, or the filing of its position, the cooperative compliance approach will have had the effect of preventing disputes from formally arising.

76. Cooperative compliance assists with building the capabilities of tax administrations by improving commercial awareness, and familiarising MNEs with the concerns of the tax administrations. The introduction of cooperative compliance could improve the knowledge of tax administrations in this area. Tax administrations that have already segmented their taxpayer population by size and economic sector may find it easier to implement the model, as they have already recognized the differentiating qualities of large taxpayers and specific industries.¹⁴

77. Cooperative compliance also improves the tax transparency as a result of the greater openness and responsiveness expected of both the tax administration and the MNE. In some developing countries a lack of transparency has had a corrosive effect on the relationship between government and taxpayer businesses, and in the worst case, has facilitated corruption and other dysfunctions.¹⁵ As a result, cooperative compliance may play a role in improving the legitimacy of the whole tax system, by contributing to tax compliance and assisting with eliminating corruption. The concept of cooperative compliance enshrines a set of principles that ensure that the officials of the tax administration dealing with taxpayers’ affairs will adhere to the principles that underpin a transparent relationship.

78. The implementation of cooperative compliance should also result in the better management of resources by the tax administration so that it can focus on those taxpayers that

14 IMF, Current challenges in revenue mobilization: Improving tax compliance. April 2015, p. 16.

15 var Kolstad, Arne Wiig, and Aled Williams, CMI, Tackling corruption in oil rich countries: The role of transparency, February 2008 - No. 3.

engage in aggressive tax planning facilitated by nondisclosure, which is particularly important for developing countries that struggle with limited resources and capabilities. From the perspective of taxpayers, it should result in greater proportionality of actions undertaken by the tax administration.

2.3.5.3 Tax control framework at the heart of trust

79. An essential feature of the cooperative compliance model is the tax control framework (“TCF”) within an MNE. This is understood as “*the part of the system of internal control that assures the accuracy and completeness of the tax returns and disclosures made by an enterprise.*”¹⁶ It gives legitimacy to the cooperative compliance programme by providing a clear and objective basis on which the tax administration can base its decision to trust the statements made by the taxpayer. Box 5 below gives an overview of the features of the TCF.

Box 5: Features of the TCF

TCF must include the following features:

- **Tax strategy:** this should set out the strategic objectives of the business, the role of the tax administration, and its approach to ensuring compliance with the law. It should address all aspects of the business at all levels, from the strategic to the operational. In particular, it should set out the business’ attitude to and appetite for tax risk. The strategy should be owned at Board level.
- **Comprehensiveness:** the TCF should cover all policies, procedures and processes that can affect the correct assessment and reporting of tax liabilities.
- **Responsibility:** the TCF should be developed by the senior management and approved by the Chief Financial Officer (“CFO”) or the Board. It should provide that any tax strategy is executed by a sufficient number of people with the right skills and experience.
- **Governance:** the TCF should describe the mechanisms, processes and relations by which tax issues are controlled and directed. The prime responsibility for ensuring the system works according to the declaration provided in the TCF should lie with the Board.
- **Testing:** this feature of the TCF refers to its maintenance and monitoring. The system should contain feedback tools which aim at preventing, detecting and correcting errors. Regular testing of the TCF should make it possible to assess whether the system is adequate. The TCF should be dynamic, so that it responds to changes in the underlying business and issues that have arisen from the regular testing of the integrity of the control regime.
- **Assurance:** is provided when all the other features of the TCF are fully implemented. That is what provides assurance to all stakeholders, including the

16 OECD (2013), Cooperative Compliance: A Framework: From Enhanced Relationship to Cooperative Compliance, OECD Publishing, p. 58.

tax administration, that the taxpayer has an effective system which enables it to control all tax risks and issue reliable tax outputs.

80. A TCF that has all the above features delivers the justified trust that is central to the cooperative compliance model.¹⁷ It enables the tax administration to focus on assuring the integrity of the control processes of the MNEs, rather than trying to routinely undertake its own verification of the way in which individual transactions have been recorded in taxpayers' accounting systems.

2.3.5.4 Developing countries have different options in designing a legal framework for cooperative compliance

81. Although the developing countries' legal systems differ, there are some fundamental principles common to most jurisdictions where the rule of law applies.¹⁸ The rule of law requires that "all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefits of laws publicly and prospectively promulgated and publicly administered in the courts."¹⁹ This concept of the rule of law implies some limitations imposed on governments and their actions. Among these, two principles features are prominent: the principles of legal equality²⁰ and legal certainty.²¹

82. In respect of the principle of legal equality, there may be some concerns that cooperative compliance violates this principle, because the model is designed only for a select group of the largest taxpayers.²² However, upon a closer look at the cooperative compliance model, it shows that it relates to taxpayers who are in a different legal situation than the majority of taxpayers due to the size and complexity of their tax affairs. It is often the case that larger taxpayers are subject to additional tax reporting and compliance obligations (transfer pricing documentation being a good example). Moreover, the model and its benefits are justified as an integral part of a risk-based approach to managing tax compliance. Some questions could also be raised about programmes that grant benefits above and beyond the greater tax certainty and reduced compliance costs associated with cooperative compliance. Nevertheless, even in these cases, these programs should be justified by reference to the taxpayer's improved tax compliance and overall improvements to tax compliance risk management.

17 E.v.d. Enden & K. Bronzewska, *The Concept of Cooperative Compliance*, op. cit. note 12, p. 572.

18 See: Statement of UN Secretary-General, *Fundamental Principle of Rule of Law 'Our Best Hope for Building Peaceful, Prosperous Societies'*, 11 April 2011. Available: <http://www.un.org/press/en/2011/sgsm13505.doc.htm>.

19 T. Bingham (2007), *The rule of law*, *Cambridge Law Journal*, 66 (1), pp. 67-85, p. 69.

20 J. L. M. Gribnau and C. Peters (2003), *Introduction*, (in:) *Legal Protection Against Discriminatory Tax Legislation. The Struggle for Equality in European Tax Law*, H.L.M. Gribnau (ed.), p. 1.

21 Gribnau, H., (2013). *Equality, Legal Certainty and Tax Legislation in the Netherlands. Fundamental Legal Principles as Checks on Legislative Power: A Case Study*. *Utrecht Law Review*. 9(2), pp.52–74, p. 53.

22 OECD (2013), *Cooperative Compliance: A Framework: From Enhanced Relationship to Cooperative Compliance*, OECD Publishing, p. 45-48.

2.3.5.5 *Benefits of cooperative compliance programmes*

83. From the perspective of governments, cooperative compliance programmes are beneficial as they:

- **Improve tax compliance:** Cooperative compliance facilitates compliance by providing timely advice on tax issues. It affects the behaviour of a broad group of taxpayers for whom avoidance of tax disputes is a tangible benefit of the programme.
- **Secure revenue base:** As a result of improved tax compliance, in the longer-term the revenues paid voluntarily will increase. In the short term, settlement of legacy issues, which is a first step in establishing the new relationship, may deliver an immediate yield.
- **Improve compliance risk management:** As part of a risk-based compliance strategy, cooperative compliance assists the tax administration with allocating resources to focus on high risk taxpayers.
- **Save resources by reducing the scope of audits:** As a result of transparency and full disclosure, the tax administration may get a better understanding of current issues impacting the taxpayer, and therefore may be able to reduce the scope of audits.
- **Improve capabilities:** With cooperative compliance the tax administration may improve its commercial awareness, develop a better understanding of how MNEs' manage their business including their control systems which ensure that their accounts and returns are accurate.

84. From the perspective of taxpayer businesses, the benefits are:

- **Avoid or minimise tax disputes:** Cooperative compliance provides a platform for discussing any tax issues with the tax administration and can substantially reduce the risk of dispute.
- **Better and easier tax risk management:** Tax issues are better integrated in the taxpayer's processes and are underpinned by a TCF.
- **Lower compliance costs:** The taxpayer is less exposed to administrative penalties, can file and settle tax returns quicker, and may require less assistance from tax intermediaries (such as, lawyers, accountants and tax professionals). Also the number of disputes that involve extra costs should be lower.
- **Corporate Social Responsibility:** Taxpayers may benefit from reputational gains. Company's stakeholders will perceive the enterprise as more reliable and a good corporate citizen. Shareholders and institutional investors will have greater confidence in the returns from investments.
- **Better investment climate:** An improved relationship between large taxpayers and the tax administration will encourage FDI as MNEs can achieve certainty about the tax treatment of their investments.

2.3.5.6 Developing countries taking the first steps towards cooperative compliance programmes

85. Although to date cooperative compliance programmes have been mainly deployed in developed countries, a number of emerging and developing countries (e.g. Chile, Ghana, Malaysia, Nigeria, South Africa and Zambia) are exploring this concept.²³ For a description of Brazil's experience in taking the first steps towards a cooperative compliance programme, see Box 6.

Box 6: Tax Compliance Incentive Programme (Pro-Conformity) – Brazil

In 2018, the Secretariat of Brazilian Federal Revenue (“RFB”) released a public consultation on a draft ordinance establishing the Tax Compliance Incentive Programme (Pro-Conformity). The proposal was inspired by good practices adopted by other national and international tax administrations, following a globally recognized model of favoring tax compliance practices. This draft ordinance has received several suggestions from different sectors in Brazil.

The RFB's objective is to create more favorable conditions for taxpayers who have a good relationship with the tax administration, facilitating the fulfilment of their obligations and providing them with efficient and agile service, when they demand it. The compliant taxpayer will have priority in his demands (for example: tax refund) and will be previously notified of his pending matters, for the purpose of self-regulation.

As a previous step to the implementation of the programme, the RFB will carry out the classification of taxpayers taking into account the following four criteria:

1. registration status compatible with the company's activities;
2. adherence to information provided to the RFB through declarations and bookkeeping;
3. timeliness in the presentation of declarations and bookkeeping; and
4. compliance in the payment of taxes due.

2.3.5.7 Guidelines for setting up pilot studies in countries which wish to establish a cooperative compliance programme

86. Countries which desire to establish a cooperative compliance programme may initially consider setting up a pilot study to test how such a programme can operate within their political, legal and administrative environment. Box 7 sets out some guidance which may assist them.

Box 7: Some general implementation recommendations

- A written agreement should be a sufficient basis for the necessary cooperation between the tax administration and the taxpayer during the pilot phase although

²³ See [Cooperative Compliance Pilot Programmes](#) by Global Tax Policy Center at the Institute for Austrian and International Tax Law, WU (Vienna University of Economics and Business).

some countries may already at this stage prefer to develop a legal framework. If it is successful, the need and case for legislative change can be considered later.

- The pilot should ideally involve taxpayers that are reasonably representative of the type of taxpayer that is likely to participate in a fully-fledged programme and which have shown by their past behaviour that they are willing to be transparent.
- Large business taxpayers in developing countries are often subsidiaries with the parent company located offshore. Therefore, it is important that the group as a whole is committed to participating in the pilot. Timely access to relevant data held in the foreign headquarters and to key decision makers should be an essential part of the disclosure that is expected from the taxpayer.
- Both the taxpayer and the administration should recognise the central importance of the TCF (see Box 5).
- Agreement on evaluation measures constitutes an important aspect of the pilot programme design. The pilots should be evaluated from the perspective of the tax administration, taxpayers and also the wider community. Among the possible measures of success could be: improved trust in the tax administration, greater speed of exchange of information, cordial interactions, and increased collection of taxes. Agreement on a set of indicators evaluating the programme requires certain data to be in place. Indicators, quantitative and qualitative, should be based on information that is accessible to tax administrations. It will be important to establish a baseline of current performance against which progress can be measured as the pilots unfold.

2.3.6 International Compliance Assurance Programme

87. The International Compliance Assurance Programme (“ICAP”)²⁴ provides for a multilateral approach to early tax certainty for eligible multinational enterprise groups (“MNE groups”), which could have the effect of preventing disputes from arising between those MNE groups and the tax administrations.

88. ICAP is a voluntary programme for a multilateral co-operative risk assessment and assurance process. It was launched in January 2018 as a pilot programme with only eight participating countries and five MNE groups. Based on feedback received from the initial pilot programme, ICAP 2.0 (the second iteration of the programme) was announced in March 2019. As of February 2020, there were 19 participating countries. It is designed to be an efficient, effective and co-ordinated approach to provide MNE groups which are willing to engage actively, openly and in a fully transparent manner with increased tax certainty with respect to certain of their activities and transactions. ICAP does not provide an MNE group with the legal certainty of other approaches such as, for example, through an APA. It does, however, give comfort and assurance to the MNE group where the participating tax administrations undertaking the MNE group’s risk assessment consider an issue covered represents no or a low tax risk. In this case, the participating tax administrations will each issue an assurance letter

24 <http://www.oecd.org/tax/forum-on-tax-administration/international-compliance-assurance-programme.htm>

setting out these findings, the form of which will vary by jurisdiction. Where an area is identified as requiring further attention, work conducted in ICAP can improve the efficiency of actions taken outside the programme, if needed.

89. As ICAP is still in its infancy, there is a limited track record to provide guidance to countries considering participation in the programme. Moreover, participation in ICAP is extremely resource intensive for both the tax administrations and the MNE groups.

2.3.7 Joint audits

2.3.7.1 Definition

90. In 2010, the OECD Forum on Tax Administration introduced “joint audits” as a new form of coordinated action between and among tax administrations.²⁵ They are described as follows:

...two or more countries joining together to form a single audit team to examine an issue(s) / transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities, perhaps including cross-border transactions involving related affiliated companies organized in the participating countries, and in which the countries have a common or complementary interest; where the taxpayer jointly makes presentations and shares information with the countries, and the team includes Competent Authority representatives from each country.

91. Joint audits can be relevant when countries have a common or complementary interest in the fiscal affairs of one or more related taxpayers. They can also be most useful when a domestic audit does not allow the auditor to obtain a complete picture of a taxpayer's tax liability in relation to some portion of its operations or to a specific transaction. Transfer pricing audits are one example of audits where the information available in the jurisdiction does not always show the full picture.

92. Joint audits are distinguishable from the conduct of simultaneous tax examinations. A simultaneous tax examination is an arrangement by two or more countries to examine simultaneously and independently, each on its own territory, the tax affairs of a taxpayer in which they have a common or related interest with a view to exchanging any relevant information which they obtain.²⁶ Such examinations ensure high levels of efficiency regarding the exchange of information between tax administrations and enable a comprehensive review of all relevant business activities.²⁷ This may assist in averting double taxable and therefore preventing disputes from arising.

25 Joint Audit report, available at <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/45988932.pdf>

26 OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes, Module 5, paragraph 5.

27 Ibid paragraph 6.

2.3.7.2 *Benefits of joint audits*

93. Joint audits may provide tax certainty, and therefore could be effective in preventing disputes from arising between taxpayers and the tax administrations. This is because joint audits may result in quicker issue resolution, more streamlined fact finding and more effective compliance. Joint audits may also have the potential to shorten examination processes and reduce costs, both for tax administrations and taxpayers.

94. Additional benefits of joint audits include, reducing taxpayer burden of multiple countries conducting audits of similar interests and/or transactions, enhancing the awareness of tax officers of the opportunities available in dealing with international tax risks, assisting with gaining an understanding of the differences in legislation and procedures and if necessary accelerating the MAP by early involvement of the Competent Authority, where double taxation is involved and for all participating countries reaching a joint/mutual agreement on the audit results to avoid double taxation.

95. According to the 2019 Joint Audit report²⁸, joint audits may be beneficial as they assist with building capacity in international taxation matters, including on transfer pricing:

- (a) less experienced tax administrations can gain a better understanding of the tools and approaches used in tax audits and case selection in more advanced jurisdictions, including the use of country-by-country reports (“CbC reports”) and other risk assessment tools;
- (b) they can gain from the experience of seasoned auditors in issue spotting, developing the case, through to taxpayer engagement and issue resolution; and
- (c) joint audits also ensure that there is no information asymmetry as by definition the engagement is joint. This means that representatives of less experienced jurisdictions will not only interface with the local tax function of the taxpayer, but could be present at the tax examination at e.g. the headquarter location.

96. The joint audit process could be supported by the joint UN/OECD TIWB initiative, which provides and finances experienced, independent auditors to developing countries to support real time audits of MNE groups and to provide tax administrations with less experience additional comfort in engaging in a joint audit with another tax administration.

2.3.7.3 *Legal basis*

97. The term “joint audits” is not a legal term that is defined in international legislation. From a practical perspective, most of the joint audits seen so far are audits where two or more tax administrations work together and form a highly integrated team that interacts jointly with the taxpayer. If countries want to carry out a joint audit, they need to determine the legal framework on which they will co-operate. The basis for co-operation can be found in bilateral

28 Joint Audit 2019 – Enhancing Tax Co-operation and Improving Tax Certainty, available at <http://www.oecd.org/ctp/joint-audit-2019-enhancing-tax-co-operation-and-improving-tax-certainty-17bfa30d-en.htm>

and multilateral tax treaties and other instruments which provide for varying degrees of mutual assistance. Procedural aspects of the co-operation during the audit are not covered in these instruments and are therefore governed by the domestic law of the participating countries. It is, however, possible for countries to conclude a working agreement that identifies legal issues and determines mitigation strategies. This could be done in the form of a Memorandum of Understanding.

2.3.8 Independent review of the statement of audit position

98. An independent review of the statement of audit position (“independent review”) is a procedure provided by a tax administration during an audit which could operate as a dispute avoidance mechanism. This would occur where the outcome of the independent review procedure conducted during the audit stage had the effect of preventing a dispute from formally arising, that is, the audit would not result in the tax administration issuing a reassessment for additional income tax payable by the taxpayer.

99. The overall objective of the independent review procedure is to allow eligible taxpayers who disagree with the statement of audit position to request a review of the technical merits of their case by an official of the tax administration who works independently and separately from the audit function, prior to the finalization of the tax administration’s audit position. Following such a review, the independent review official will make recommendations, which may or may not be binding, to the taxpayer and the audit team on what the official considers is the better position on those issues. For a description of the independent review procedure provided by the Australian Taxation Office, see Box 8 below.

Box 8: Independent review of the statement of audit position – Australian Taxation Office

Independent review procedure

Under the independent review procedure, the independent review official will consider the facts, evidence and arguments that have been raised during the audit which are relevant to the issues of disagreement between the taxpayer and the tax administration as identified in the taxpayer’s request and facilitate a case conference between the parties to clarify the issues in order to make recommendations on what the official considers is the better position on those issues.

A critical aspect of the independent review procedure is the case conference, which is an informal meeting attended by the taxpayer, the audit team and the independent review official. The purpose of the case conference is for the taxpayer and audit team to meet with the independent review official to discuss and clarify the factual and legal issues of disagreement raised at the audit for the benefit of the review. Although the independent review official will facilitate the case conference, the official will not provide any observations, recommendations or preliminary conclusions during the case conference.

Outcome of independent review procedure

The outcome of the independent review procedure will be in the form of recommendations containing the reasons for the conclusions made by the independent review official to the taxpayer and the audit team on what the official considers is the better position of the issues of disagreement raised in the statement of audit position. In Australia, as the independent reviewer's recommendations are binding, the audit team will complete the audit in line with the recommendations.

If the independent review official agrees with the statement of audit position, the auditors will complete the audit in line with the recommendations which will result in the tax administration issuing a reassessment for additional income tax payable by the taxpayer. Although the independent review procedure will not prevent a dispute from formally arising, the official's recommendations will provide the taxpayer greater clarity and understanding of the initial positions taken in the audit.

In contrast, if the independent review official does not agree with the statement of audit position, the matter will be escalated to the Chief Tax Counsel if it relates to the interpretation of a critical question of law which has broader strategic or policy implications. The Chief Tax Counsel would be the final arbiter of the best view in the circumstances. If the Chief Tax Counsel agrees with the independent reviewer's recommendations, the auditor's initial positions will be altered in line with the independent review. In these circumstances, the outcome of the independent review procedure will prevent a dispute from formally arising.

However, if the Chief Tax Counsel does not agree with the independent reviewer's recommendations, the outcome of the independent review procedure will not prevent a dispute from formally arising but it will provide the taxpayer with greater clarity and understanding of the auditor's initial positions.

100. Countries interested in establishing an independent review procedure in their tax administration should consider creating a division that works independently and separately from the audit function. Further, as such a division would be dedicated to facilitating the early resolution of factual and legal issues of disagreements between the taxpayer and the tax administration during the audit stage it should be staffed with officials having an appropriate level of expertise in substantive tax matters that will allow them to fully and competently perform a review of the initial audit positions.

101. When a tax administration desires to provide such a dispute avoidance mechanism for its taxpayers, it must take into account its financial and human resources, which are often limited. As such, a division dedicated to the resolution of factual and legal disagreements between taxpayers and the tax administration during the audit stage to prevent disputes arising by providing a service like an independent review may have a small number of employees. In such cases, the tax administration may need to limit the number and nature of cases eligible for an independent review. For example, it may be more efficient to provide access to the

independent review procedure only for audits of large taxpayers, with an annual turnover in excess of an established amount.

2.3.9 Mediation during tax audit

2.3.9.1 Mediation

102. Mediation is a form of process-related assistance that involves the use of a mediator or facilitator to assist two parties resolve their dispute. This mediation process can be conducted during the audit stage to assist the taxpayer and the tax administration case officers to identify the issues of disagreement and options for resolution, and to evaluate those options in an attempt to reach an agreement.

103. This section discusses two different types of mediation processes which can be conducted during the audit stage which primarily depend on who acts as a mediator. “In-house facilitation” (discussed in section 2.3.9.2) involves an impartial official of the tax administration acting as a facilitator, whilst the mediator in “independent mediation” (discussed in section 2.3.9.3) is an independent body.

2.3.9.2 In-house facilitation for individuals and small businesses

104. “In-house facilitation” is a voluntary mediation process generally provided by a tax administration during the audit stage to individuals or small businesses with less complex issues of disagreement with the tax administration.²⁹ As this mediation process is provided during the audit stage, where the outcome of the mediation results in the resolution of the issues of disagreement between the taxpayer and the tax administration, it will have the effect of preventing a dispute from formally arising.

105. The in-house facilitation process involves an impartial official of the tax administration who is professionally trained in facilitative mediation and has no prior knowledge or involvement in the case, acting as a facilitator to assist the taxpayer and the tax administration case officers to identify the issues of disagreement and options for resolution, and to evaluate the options in an attempt to reach a resolution.

106. The in-house facilitation process can be requested by either, the taxpayer, their representatives or the tax administration case officers. In some countries (e.g. in the United Kingdom), the tax administration has a discretion as to whether to accept such a request. Where the request is accepted, the facilitator will contact the parties to provide them with an outline of the process, including what is expected of them. For the in-house facilitation process to be effective as a dispute avoidance mechanism, the taxpayer should prepare for the facilitation

29 This mediation process can be provided at any stage from audit up to and including the litigation stage. Where it is provided after the conclusion of the audit which results in the tax administration issuing a reassessment for additional income tax payable by the taxpayer, it is similar to the dispute resolution mechanism described as Administrative Mediation discussed in section 3.4.2 of Chapter 3.

day including, by ensuring that all relevant persons will be participating or directly accessible and that they are authorized to discuss and resolve the issues of disagreement.

107. On the day of facilitation, the facilitator will commence by outlining the meeting structure and the mutual expectations of the parties. The facilitator will invite the parties to present their view of the facts and issues of the case before assisting them to identify the issues of disagreement, the options for resolution, and to evaluate the options in an attempt to reach a resolution. The role of the facilitator is not to establish facts, give advice or decide which party is right or wrong, but to guide the discussion with a view to resolving the issues of disagreement, or at least make progress towards such a resolution.

108. An important aspect of this process is that any information that is shared during the process, including any admission by, or new evidence obtained from a participant, is confidential between the participants, the facilitator and any other people specifically involved in the process, such as lawyers or expert advisors. Such information is only to be used for this process, unless authority is provided by the disclosing party, or disclosure is required by law.

109. For the in-house facilitation process to be effective, it is imperative that the parties participate in good faith, are respectful of the other participants and the facilitator, are open and transparent in providing information relevant to the case, and are willing to negotiate and attempt to resolve all aspects of their disagreement.

110. Where the outcome of the in-house facilitation process during the audit stage does not result in the resolution of the issues of disagreement between the taxpayer and the tax administration, the parties will have obtained the benefit of a greater understanding of their issues of disagreement with a clearer path of the dispute going forward. In contrast, where the outcome of the in-house facilitation process during the audit stage results in the resolution of the issues of disagreement between the taxpayer and the tax administration, it will have the effect of preventing a dispute from formally arising.

2.3.9.3 Independent mediation

111. Independent mediation during tax audits could be effective as a dispute avoidance mechanism as it may eliminate or minimize the possibility of the audit resulting in the tax administration issuing a reassessment for additional income tax payable by the taxpayer.

112. The main difference between in-house facilitation or administrative mediation and independent mediation is that the mediator in an independent mediation is an independent body and not an impartial official of the tax administration. For a description of the main features of the independent mediation procedure in Mexico, see Box 9 below.

Box 9. Main features of independent mediation procedure in Mexico

Independent mediation

Independent mediation will consider the findings of a tax audit before that audit has been formally determined. The mediation may cover issues of interpretation of legislation and/ or a review of the findings of fact and associated evidence.

Independent mediator

The mediator is an independent body and has knowledge and expertise in tax matters. In Mexico, PRODECON³⁰ acts as an independent mediator. It is an independent public body which according to the law is recognized as an expert in tax matters with the necessary knowledge to conduct the procedure effectively, therefore creating an optimal environment for the parties to reach an agreement.

Further, if no agreement is reached, the parties understand that PRODECON will not be part of any future litigation. This engenders trust in the parties to have an exhaustive negotiation during the mediation process.

Taxpayer's mediation request and tax administration's response

A taxpayer dissatisfied with the tax administration's audit position may file a mediation request with the independent mediator.³¹ In the request, the taxpayer may submit some or all of the issues discussed as part of the audit. In relation to the submitted issues, the taxpayer will provide reasons for their dissent including their interpretation of the facts, omissions, tax provisions and/or evidence involved in the audit.

Once the taxpayer's mediation request is filed, the independent mediator will give notice to the tax administration of the request and request a response within 20 working days.

Suspension of time limits

With the filing of the mediation request, all time deadlines (statutes of limitations) relating to the audit are suspended. This allows the tax administration time to carefully consider the arguments and evidence provided by the taxpayer. Notwithstanding, the mediator must ensure that the mediation procedure is agile and expeditious.

Process of mediation

The mediation procedure is effective as it is mandatory for the officials of the tax administration who are conducting the audit to attend the mediation.

The mediation procedure is flexible to deal with a range of circumstances as it is subject to few regulations. Assuming the good faith of the parties in trying to find a consensual solution, the mediator may order, any action which may contribute to the parties reaching an agreement.

The mediation procedure is confidential and does not set any sort of precedent. The parties know that their proposals, offers and positions will be safeguarded by the mediator and will not be public knowledge. This engenders trust in the parties to give-in to some of their claims in an attempt to reach an agreement.

Outcome of mediation

The tax administration may or may not accept the taxpayer's proposed terms, or propose alternative terms.

Where the tax administration agrees to the taxpayer's proposed terms, the mediator will prepare and explain the clauses of the proposed agreement before sending these to the parties for their observations or suggestions. Where the parties agree to the proposed agreement, they will be contacted to sign the agreement.

However, where the tax administration does not agree to the taxpayer's proposed terms but proposes alternative terms, the taxpayer will be notified of these and requested to provide their approval or disapproval.

Where the taxpayer is notified of the tax administration's proposed alternative terms, the taxpayer may modify their original proposal by presenting a counter offer, or to achieve consensus with the tax administration.

The mediator may contact the tax administration and the taxpayer to clarify any specific issue in the conflict or to discuss any issue in more depth (e.g. complex transfer-pricing conflicts). These meetings could be an opportunity for a negotiation led by the mediator.

Where the tax administration and the taxpayer do not reach an agreement on some of the tax administration's observations, the tax administration may issue a reassessment for the tax payable related to those issues, which the taxpayer retains the right to challenge. Further, the tax administration must provide reasons for not accepting the taxpayer's proposed terms. Where this occurs, the mediator will close the mediation procedure and the suspended deadlines will be lifted allowing the tax administration to continue the audit and issue the reassessment for tax payable by the taxpayer.

Where the tax administration and the taxpayer reach an agreement, the agreed outcome will need to be in accordance with the relevant law and in line with any guidelines dictating how the tax administration should reach settlements with taxpayers.

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- 30 In Mexico the protection of the taxpayers' rights is entrusted to PRODECON, a public organism created by the Federal Congress which though it is part of the Federal Administration, it is not dependant from the tax collection body. It has an autonomous budget which allows it to carry out actions without any pressure. This organism, known as the *tax ombudsman* started operating in 2011. Since 2014 when the mediation procedure was enacted by the Federal Congress, it can act as a mediator between the tax administration and the taxpayer in conflicts that arise during an audit.
- 31 The taxpayer has the right to file a mediation request, but the tax administration does not have such a right.

Legal consequences of the Agreement

Once the parties sign the agreement, the agreed tax outcomes in relation to the stated issues will come into effect. The agreement will provide the parties legal certainty and closure in relation to those issues.