

## Comments on CRP.2

-Rajat Bansal, Committee Member

**Para 36:** The last sentence states that because of costs involved, where arbitration is triggered by a competent authority, both competent authorities may wish to request taxpayer's consent before engaging in arbitration, especially since the taxpayer may reject the tentative agreement that seeks to implement the arbitration decision.

**Comment:** Rejection of tentative agreement reached is not contingent on taxpayer's consent at the stage of matter being referred to arbitration. Both UN and OECD Models give option to tax payer to accept or not accept the mutual agreement that implements the arbitration decision. Hence, obtaining taxpayer's consent before engaging in arbitration does not, in any way guarantee acceptance of arbitration decision at the end. There would be costs incurred either way, i.e. whether taxpayer's consent is obtained or not. Therefore, this does not appear to be right justification for obtaining taxpayer's consent prior to engaging arbitration. There could perhaps be a justification from point of view of putting domestic proceedings on hold during pendency of arbitration proceedings. The paragraph may need modification due to this.

**Paragraph 39:** Last two sentences give an impression that making of MAP request to either Competent Authority is the usual practice or the norm and requirement that MAP request be made only to the competent authority of the State of which taxpayer is resident is kind of an exception.

**Comments:** The UN Model has not followed the OECD Model formulation in this regard. Article 25.1 of UNMTC stipulates presenting of MAP request only to the Competent Authority of the State, of which taxpayer is resident. Presenting request to either Competent Authority is an alternative in UNMTC Commentary. Hence, modification needs to be made in drafting of last two sentences of Paragraph 39.