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**Committee of Experts on International
Cooperation in Tax Matters
Twenty-third session**

Virtual meetings of 19 to 28 October 2021

Item 5 (h) of the provisional agenda

Dispute Resolution and Avoidance

Secretariat note

Summary

This note outlines work carried out over the years by the various memberships of the Committee and it is *for decision*. The Committee is called upon to decide whether a Subcommittee will be necessary. The note recommends that it may not be necessary for the current membership of the Committee to form a subcommittee on dispute resolution at this point; however, with the ongoing global efforts to arrive at a solution for taxation of the digitalized economy and feedback from capacity development activities, this issue may be revisited in future.

INTRODUCTION

1. Since the inception of the United Nations Committee of Experts on International Cooperation in Tax Matters (the Committee), the avoidance and resolution of tax disputes, with a particular focus on the mutual agreement procedure, has featured prominently in its work. In its first session in 2005 the Committee discussed pros and cons of international tax arbitration culminating in the formation of a sub-committee that looked at improving dispute settlement and giving practical guidance to make mutual agreement procedures under existing treaties as effective as possible. Over the years the Committee has looked at various ways of improving dispute resolution and the last Committee completed work on the Handbook on the Avoidance and Resolution of Tax Disputes.

2. The work on dispute resolution in the previous memberships of the Committee was carried out by various subcommittees with the first one being formed at the 11th Session of the Committee, in 2015.

3. The Subcommittee's mandate was to consider and report back to the Committee on dispute avoidance and resolution aspects relating to the Mutual Agreement Procedure, with a view to reviewing, reporting on and, as appropriate, considering possible text for the UN Model and its Commentaries, as well as related guidance, on issues such as, in particular:

- (a). Options for ensuring the MAP procedure under Article 25 (in either of its alternatives in the UN Model) functions as effectively and efficiently as possible.
- (b). Other possible options for improving or supplementing the MAP procedure, including the use of non-binding (such as mediation) forms of dispute resolution.
- (c). Explore issues associated with agreeing to arbitration clauses between developed and developing countries.
- (d). Means of dispute avoidance, such as Advance Pricing Agreements (APAs), while recognizing the primary role of the Subcommittee on Article 9 (Associated Enterprises) and the UN Practical Manual on Transfer Pricing for Developing Countries in addressing APAs; and
- (e). The need or otherwise for any updates or improvements to, the Guide to the Mutual Agreement Procedure (GMAP) under Tax Treaties approved by the Committee at its Annual Session in 2012.

4. This Subcommittee worked on several key issues to improve both the efficiency of the MAP procedure, and to clarify some of the terms and procedures used in the context of an alternative dispute resolution mechanism. These issues were:

- (a). Non-Binding Dispute Resolution - Potential Changes to Article 25 of the UN Model
- (b). Changes to the UN Model deriving from the final Report on BEPS Action Plan 14
- (c). Proposed Outline for a UN Handbook on Dispute Resolution
- (d). Potential Improvements and proposed outline to the revised GMAP

5. During the fifteenth Session, the new membership of the Committee approved setting up a Subcommittee on Dispute Avoidance and Resolution with the mandate to consider and report back to the Committee on possible means of dispute avoidance and resolution, on both the domestic and international level.

6. In particular, the Subcommittee was to consider the Mutual Agreement Procedure, with a view to improving its effectiveness, building on the work done by the previous subcommittee. Particular attention was to be paid to:

- (a). Mechanisms to avoid and resolve disputes arising at the domestic level;
- (b). Ways to ensure that the Mutual Agreement Procedure under article 25 (in either of its alternatives in the United Nations Model) functions as effectively and efficiently as possible; and
- (c). Issues associated with arbitration clauses and other means as options to supplement the Mutual Agreement Procedure.

7. Following work on these areas, the Subcommittee would produce the following outcomes:

- (a). A draft United Nations Handbook on Dispute Resolution and Avoidance.
- (b). A draft updated text of the United Nations Guide to the Mutual Agreement Procedure.
- (c). Drafts of possible changes to the United Nations Model Convention and/or Commentaries, as appropriate.

8. The Subcommittee was to focus especially on issues affecting developing economies, possible means of addressing them in a practical manner and ways to build confidence in dealing with them. It would provide recommendations to the Committee within its agreed mandate, on improvements, if any, for inclusion in the next version of the United Nations Model and work on the United Nations Handbook on Dispute Resolution and Avoidance and an update to the Guide to the Mutual Agreement Procedure as a priority.

9. At its sixteenth session in 2017, the Committee revised the outputs expected from the work of the new Subcommittee when it decided that, instead of updating the previously adopted Guide to the Mutual Agreement Procedure, the Subcommittee should incorporate the contents of the Guide into the chapter of the Handbook that would deal with the mutual agreement procedure.

ISSUES

10. The Handbook on the Avoidance and Resolution of Tax Disputes represents the final outcome of the work of the Subcommittee.

11. The handbook on the Avoidance and Resolution of Tax Disputes was approved by the Committee at its last session and will be launched in October 2021. It is a comprehensive guide on the subject. The handbook being so recently completed would benefit from use and review by countries. Feedback from various activities, including capacity development, could be used to improve the handbook for future editions.

12. Following the ongoing work with Pillar One in the taxation of the digitalized economy, it may be necessary to revisit the issue of dispute resolution during this Committee membership's tenure, for those countries adhering to particular outcomes of that process. At this stage, one cannot presume a particular outcome of multilateral negotiations, or that any particular countries will adhere to those outcomes.

RECOMMENDATION

13. At this moment, there may be no need for a Subcommittee on avoidance and resolution of tax disputes, but following feedback received from the capacity development work and any issues arising from the digitalisation work, the Committee could form a small group of Members to follow these developments and report back on the way forward at the 24th Session. The Committee could then decide whether a Subcommittee is necessary.