

The Chairman

Intergovernmental Negotiations Committee to draft United Nations Framework Convention on International Tax Cooperation and two early Protocols.

The Co-Lead

Workstream III: **Prevention and Resolution of Tax Disputes.**

Re – Written inputs from Africa Group on the Issues Notes on Workstream III: Prevention and Resolution of Tax Disputes.

The Africa Group (AG) welcomes the opportunity to submit these written comments on behalf of our member States. We appreciate the focus of Workstream III on the development of a dedicated protocol for the prevention and resolution of tax disputes under the emerging UN Framework Convention on International Tax Cooperation (UNFTC).

Abstract

1. This submission presents the AG's position on negotiation of protocol 2 under the UNFTC, which comes at a critical time as African countries face complex cross-border tax challenges in an increasingly globalized economy. Dispute resolution frameworks have often favoured jurisdictions with greater technical capacity and broader treaty networks, leaving many African States exposed to prolonged disputes, revenue loss, and legal uncertainty.
2. The AG proposes that the protocol reflects the realities of countries with limited access to established mechanisms, such as MAP and arbitration. It should support the building of fair, accessible, and balanced dispute prevention and resolution systems that do not replicate inequities seen in investor-State arbitration forums. The AG supports a protocol that prioritises cross-border tax disputes, while allowing for non-binding guidance that helps improve domestic dispute processes where appropriate.
3. The AG supports the inclusion of optional mechanisms, provided they are accompanied by strong safeguards and technical support. The protocol should promote inclusive approaches such as structured joint audits, capacity-sensitive APAs, and regionally adaptable cooperative compliance frameworks. For the African continent, this protocol presents a vital opportunity to reshape dispute resolution in line with the principles of equity, sovereignty, and sustainable development. The AG remains committed to engaging constructively to ensure that the outcome serves the interests of all Member States, particularly those historically underserved by the international tax system.

Specific Comments

We provide the following responses to the specific questions raised in paragraph 32 of the note:

- A. On whether Section III describes the primary barriers to prevention and resolution of tax disputes that Member States encounter**

1. We believe that Section III broadly captures the range of challenges faced by Member States. The outlined issues include legal uncertainty, procedural asymmetries, lack of comparable data and institutional weaknesses in MAP and APA. These issues are particularly relevant for developing countries, including those in Africa. However, the AG notes that the section may still understate the limited or non-existent access to effective bilateral treaties or dispute resolution mechanisms faced by many developing countries, capacity gaps in handling complex transfer pricing and treaty-based disputes, and power asymmetries in arbitration proceedings and MAP engagements with more experienced tax administrations.
2. Thus, while the coverage is helpful, we urge that the final protocol reflects the differentiated capacity of countries and offers scalable and regionally adaptable tools for both prevention and resolution.

B. On whether the protocol should address only cross-border tax disputes, or also domestic disputes

1. The AG supports that the primary legal commitments under the protocol should remain focused on cross-border tax disputes as the central objective of the protocol, particularly as this is where the greatest legal uncertainty, revenue loss, and risk of double taxation or non-taxation occur. That said, we recognise that many African Member States face *overlapping issues* between domestic and cross-border contexts—especially when domestic disputes arise from international arrangements or legislation influenced by such rules. We recognize further that any attempt to regulate purely domestic disputes through the protocol may come off as an overreach.
2. We are therefore amenable to the protocol offering optional guidance or practices that may also support the resolution of purely domestic disputes, particularly where domestic and international aspects are intertwined. One of the ways of dealing with domestic disputes may also include holding parties to the framework to discharge their commitment to “fair, inclusive, effective, efficient and timely prevention and resolution of disputes for taxpayers and tax authority” by reforming their domestic tax dispute resolution processes towards efficiency and timely resolution of tax disputes. Examples abound where resolution of domestic tax disputes has been accelerated by establishment of independent domestic revenue courts. In any case, we stress that the primary legal commitments under the protocol should remain focused on cross-border tax issues, in line with the Convention’s mandate.
3. We propose an institution-level mechanism at the Framework in line with paragraph 13 of the Terms of Reference. This mechanism may focus on state-to-state dispute resolution,

both bilateral and multilateral, through mediation or facilitation or through such other approaches as parties may approve.

C. On whether the concept of optionality within the protocol is generally acceptable

1. The AG posits that the Protocol becomes a “universal” framework for dispute resolution. We call for further discussions on the concept of optionality with respect to specific mechanisms, which may be needed to ensure wider participation. However, such optionality should not dilute the effectiveness of the protocol. It should be structured clearly, with minimum core commitments, and optional mechanisms available through clear opt-in or opt-out modalities. We further recommend that optional mechanisms be accompanied by detailed technical guidance to support uptake, especially by developing countries.
2. We do not support resolution of tax disputes under certain types of arbitration, especially investment styled arbitration: our members have bitter experience under such arbitration. The protocol should seek commitment from parties that tax dispute should only be resolved via established procedure for settling tax disputes and not via trade dispute resolution mechanism. We also find it difficult to support baseball styled arbitration, final offer arbitration or any similarly styled dispute resolution mechanism. We propose that any dispute resolution or prevention forum that may arise from the protocol must be inclusive in its constitution, substance and procedure.
3. The early protocol on dispute prevention and resolution is a crucial step in rebalancing global tax cooperation. The AG urges that it be drafted with flexibility, fairness, and capacity support at its core. The protocol should deliver practical solutions for countries with limited treaty networks and avoid importing mechanisms that replicate known imbalances in existing forums.

The AG appreciates the immense efforts devoted to the developments of the Issues Notes and further reaffirms its commitments to contribute to the discussions across the workstreams.