



The Co-Leads,

Workstream III

Intergovernmental Negotiating Committee on the United Nations Framework Convention on
International Tax Cooperation,
United Nations Headquarters,
New York,
USA

**WRITTEN COMMENTS FROM THE AFRICAN TAX ADMINISTRATION FORUM (ATAF) ON THE DRAFT
ISSUES NOTE FOR WORKSTREAM III – PREVENTION AND RESOLUTION OF TAX DISPUTES**

1. ATAF thanks the Co-Leads for the opportunity to provide input on the draft issue paper published by Workstream III. We welcome the focus on dispute prevention and resolution and fully support the effort of the Workstream to address persistent challenges in managing cross-border tax disputes through this protocol. This initiative recognises the rising complexity of international tax rules and the inefficiencies of current bilateral mechanisms such as MAP and APAs, particularly for developing countries. It highlights the growing legal uncertainty, administrative asymmetries, and the systemic absence of effective dispute resolution frameworks in many jurisdictions.
2. ATAF's response underscores the importance of designing a protocol that is both inclusive and adaptive to varying national capacities. While the current issues overview largely captures key obstacles, ATAF stresses that capacity constraints, limited treaty networks, and procedural inequities remain underemphasised. We support the focus on cross-border disputes but encourage the inclusion of optional guidance for domestic disputes, especially where domestic and international tax issues interact.

3. ATAF is amenable to exploring the principle of optionality, provided the protocol maintains strong baseline commitments. It cautions against adopting investor-state or baseball-style arbitration, advocating instead for dispute prevention and resolution procedures that are transparent, equitable, and reflective of global tax cooperation objectives. The protocol presents a valuable opportunity to offer practical and scalable solutions for developing countries, advancing fairness and efficiency in international tax dispute resolution.

4. 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 the prevention and resolution of tax disputes that Member States encounter

ATAF believes that Section III broadly captures the range of challenges faced by Member States. The outlined issues—ranging from legal uncertainty, procedural asymmetries, and lack of comparable data to institutional weaknesses in MAP and APA. These issues are particularly relevant for developing countries, including those in Africa. However, ATAF 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 even MAP engagements with more experienced tax administrations.

Therefore, while the coverage is helpful, we urge that the final protocol reflect the differentiated capacity of countries and offer 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

ATAF supports a focus 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 recognise further that any attempt to regulate purely domestic disputes through the protocol may come off as an overreach.

We are therefore amenable to the protocol, which offers optional guidance or best practices that may also support the resolution of purely domestic disputes, particularly where domestic and international aspects are intertwined. A way 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 the establishment of independent revenue courts has accelerated the resolution of domestic tax disputes. In any case, we stress that the primary legal commitments under the protocol should remain focused on cross-border issues, in line with the Convention’s mandate.

We propose an institution-level mechanism within the Framework in accordance with paragraph 13 of the Tor. This mechanism may centre on state-to-state dispute resolution via mediation or facilitation, or through other approaches as parties may agree.

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

We found the concept of optionality with respect to specific mechanisms under the protocol interesting. We consider this essential to ensuring wide participation, preserving national sovereignty, and respecting legal diversity among countries. However, we emphasise that optionality must 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. Areas such as mandatory arbitration, for instance, may need to remain optional, while others, like mutual agreement procedures or structured joint audits, could be strongly encouraged. We further recommend that optional mechanisms be accompanied by detailed technical guidance to support uptake, especially by developing countries.

We do not support the resolution of tax disputes under any investment-style arbitration. Our members have expressed a negative experience under such arbitration. The protocol should seek commitment from parties that tax disputes should only be resolved via the established procedure for settling tax disputes and not via a trade dispute resolution mechanism. We also find it challenging to support baseball-style 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.

5. The early protocol on dispute prevention and resolution is a crucial step in rebalancing global tax cooperation. ATAF 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.
6. ATAF remains ready to collaborate on refining these proposals and ensuring the protocol delivers tangible benefits for all member states. We appreciate the opportunity to contribute to the process.