



**Mr. Ramy Youseff,**

Chair of the Intergovernmental Negotiating Committee to draft a United Nations Framework Convention on International Tax Cooperation and two early protocols (INC) and

**Ms. Marlene Nembhard Parker & Mr. Michael Braun,** Co-Leads of **Workstream III,**

United Nations Headquarters,

New York, USA,

**Cc: Permanent Representatives and Observers to the UN in New York**

Sirs/Ma,

**Re – Call for written inputs from Stakeholders and Member States on the Issues Notes on Workstream III: Prevention and Resolution of Tax Disputes.**

**Abstract**

1. The African Union (AU) 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. This initiative comes at a critical time, as African countries continue to face complex cross-border tax challenges in an increasingly globalised 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. From the AU's perspective, the protocol must reflect 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 AU supports a protocol that prioritises cross-border tax disputes, while allowing for non-binding guidance that helps improve domestic dispute processes where appropriate.
3. Flexibility will be key. The AU 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 AU 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.

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 prevention and resolution of tax disputes that Member States encounter**

5. We believe 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, AU 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.
6. 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**

7. AU 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 recognize further that any attempt to regulate purely domestic disputes through the protocol may come off as an overreach.
8. We are therefore amenable to the protocol offering 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 resolution of domestic tax disputes has been accelerated by establishment of independent revenue courts. 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.

9. We propose an institution-level mechanism at the Framework in line with paragraph 13 of the ToR. This mechanism may focus on state-to-state dispute resolution 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**

10. 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 emphasize 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.
11. We do not support resolution of tax disputes under any 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
12. The early protocol on dispute prevention and resolution is a crucial step in rebalancing global tax cooperation. AU 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.
13. AU, working with its partners in Africa, remains available to support the workstream with technical input and regional perspectives.