

**Comments on Workstream III Draft Outline of Issues
Overview and Scope of the Protocol on the Prevention and
Resolution of Tax Disputes of the UN Intergovernmental
Negotiating Committee on the UN Framework Convention
on International Tax Cooperation**

IBFD Centre for Transfer Pricing Studies (CTPS)

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Comments on Workstream III Draft Outline of Issues Overview and Scope of the Protocol on the Prevention and Resolution of Tax Disputes

IBFD Centre for Transfer Pricing Studies

Abstract

This submission presents the comments of the International Bureau of Fiscal Documentation (IBFD) Centre for Transfer Pricing Studies (CTPS), on the Draft Outline of Issues Overview and Scope of the Protocol on the Prevention and Resolution of Tax Disputes, prepared under Workstream III of the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation.

The submission commends the Committee's efforts to strengthen international dispute prevention and resolution and highlights transfer pricing as a key area requiring urgent attention. It stresses the importance of practical implementation support, particularly for developing countries facing capacity constraints, and advocates for early engagement tools, multilateral risk assessments, and the wider use of APAs. While some countries adopt a strict application of the arm's length principle (ALP), even at the cost of revenue loss, others hinder dispute resolution to protect the tax base. Such divergent practices underscore the need for a balanced, principles-based approach to the application of the ALP that promotes trust and consistency.

The document supports a primary focus on cross-border disputes, while recognizing the value of including domestic best practices as optional references. It endorses optionality in the Protocol's mechanisms to ensure inclusivity, while supporting the development of minimum procedural standards where feasible.

Throughout, the comments emphasize that the Protocol's design must foster transparency, cooperation, and trust among tax authorities. Success will depend not only on legal architecture but also on accompanying infrastructure, training, and digital capabilities that enable effective and equitable dispute resolution in all jurisdictions.

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Comments of the International Bureau of Fiscal Documentation (IBFD), Centre for Transfer Pricing Studies (CTPS), on the UN Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation's Workstream III Draft Outline of Issues Overview and Scope of the Protocol on the Prevention and Resolution of Tax Disputes

Introduction

The IBFD Centre for Transfer Pricing Studies (CTPS) is a think-tank of the IBFD Knowledge Centre, dedicated to the production and dissemination of high-quality, technically robust Transfer Pricing (TP) research, content, and training. Our work spans international and country best practices in transfer pricing, TP policy and innovation, and capacity-building efforts with tax administrations worldwide.

We welcome the opportunity to contribute to the development of the proposed Draft Outline of Issues Overview and Scope (the "Outline") of the second early Protocol on the prevention and resolution of tax disputes (the "Protocol") under the Committee's workstream III. We commend the Committee for its efforts in addressing this critical area and appreciate the inclusive approach adopted throughout the consultation.

This submission is made from a transfer pricing perspective, drawing on our practical experience with global and domestic best practices and extensive engagement in technical capacity building across diverse jurisdictions. Transfer pricing disputes constitute a considerable proportion of cross-border tax disputes, by some estimates, TP issues account for 50% or more of cases under the Mutual Agreement Procedure (MAP). These disputes are often complex, resource-intensive, and with high-stakes, involving difficult issues such as the valuation of intangibles, cost-sharing arrangements, and delineation of functions, assets, and risks. Our comments therefore emphasize the importance of preventive mechanisms and dispute resolution frameworks that can manage these challenges effectively.

We support the objective expressed in paragraph 3 of the Outline: strengthening existing tools and testing new tools under a multilateral protocol for tax dispute prevention and resolution. In addition to the measures currently referenced, such as coordinated advance pricing agreements (APAs), administrative assurances, and enhanced cross-border cooperation in joint audits, we encourage the Committee to consider additional critical approaches:

- multilateral non-binding risk assessments;
- early engagement with taxpayers;
- investment in understanding business models;
- wider promotion of APAs; and
- adoption of data-driven, technology-enabled approaches that promote transparency, efficiency, and cooperation.

Our comments are structured into two parts: general remarks on the Issues Overview and responses to the specific questions set out in the Issues for the Committee.

2. General Comment on the Issues Overview

Building Trust through Procedural Design

As the Protocol is developed, it may be useful to consider how its design can contribute not only directly to preventing and resolving disputes but also to building trust among tax administrations. Disputes often arise not solely from legal ambiguity, but from a lack of mutual understanding, transparency, and administrative asymmetry. Embedding principles of cooperation, mutual respect for capacity constraints, timely information exchange, and clear procedural safeguards will foster a shift from adversarial enforcement to cooperative resolution. Such trust-enhancing features are essential to achieving sustainable tax certainty.

Practical and realistic implementation

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The success of the Protocol will rest as much on its practical implementation as on its legal architecture. Mechanisms must be supported by technical assistance, peer-learning networks, and institutional infrastructure, particularly for developing countries. The Committee may wish to align implementation support with ongoing initiatives under UN capacity-building platforms and multilateral development agencies.

3. Comments on Specific Questions in the Issues for the Committee

3.1 Does Section III Identify the Primary Barriers to Prevention and Resolution of Tax Disputes?

Capacity Constraints

We strongly agree that resource and capacity limitations, especially in developing jurisdictions, represent one of the most significant impediments to the effective prevention and resolution of disputes. Even where legal frameworks for APAs or MAPs exist, the absence of specialized, adequately resourced teams hinders timely, competent handling of taxpayer requests. The Committee is correct in linking dispute resolution frameworks to broader objectives such as domestic resource mobilization and increased cross-border investment. These goals should be explicitly referenced in the Protocol's objectives and operational design. In addition, the Protocol will create a need for tailored technical assistance and institutional support through capacity building initiatives.

Lack of Access to Reliable Information and Comparables

Paragraph 11 correctly identifies access to relevant information as a persistent challenge. In transfer pricing in particular, the lack of access to costly databases for comparables along with divergence in standards across jurisdictions significantly impairs dispute resolution. Addressing this gap requires targeted investment in data infrastructure, benchmarking tools, training, and analytical capacity. Guidance on address these issues in practice would be highly welcomed by businesses and tax administrations. Technology may also be leveraged to collect relevant data and comparables by setting up a central comparability database.

Importance of Early Dialogue

We emphasize the critical role of early taxpayer engagement in preventing disputes. TP disputes often stem from misaligned expectations at the time of business model implementation. Structured early dialogues, through APAs or cooperative compliance frameworks, can mitigate this. These mechanisms encourage transparency, foster mutual understanding, and allow tax administrations to assess risk and tailor compliance strategies proactively.

Digitalization and Technology

While digital tools offer substantial potential for streamlining dispute prevention and resolution, they also pose implementation challenges. For instance, with CbC reports often submitted in XML format, many tax administrations lack the tools to convert and use this data effectively. Digitalization should be accompanied by technical capacity development, interoperability standards, and investment in analytics platforms. Without such enablers, digital solutions may inadvertently exacerbate capacity asymmetries.

Unilateral APAs and Related Measures

We concur with the concern expressed regarding unilateral APAs. Although useful for resolving domestic uncertainty, they may increase the risk of cross-border disputes if the counterparty jurisdiction does not accept the result. Priority should be given to bilateral and multilateral APA frameworks, which offer greater tax certainty and alignment with international principles. However, unilateral APAs may still have a role as a transitional or exceptional measure in jurisdictions without functioning mutual agreement infrastructure.

Well-functioning APA programmes can act as a foundation for genuine cooperative compliance, fostering behavioural change, transparency, and early resolution of potential disputes. However, in many developing countries, a lack of mutual trust between tax administrations and taxpayers remains a significant barrier. Addressing this trust deficit is essential for the success of preventive mechanisms like APAs. This requires a deliberate shift in mindset on both

sides, from enforcement-driven interactions to collaborative engagement. Building trust must go hand in hand with capacity development, and jurisdictions should be encouraged to invest in robust, transparent APA programmes while acknowledging the limitations of unilateral approaches.

Public Outreach and Taxpayer Education

We support the emphasis in paragraph 14 on the role of domestic legal clarity and taxpayer outreach in dispute prevention. Taxpayers must understand their obligations through clearly articulated legislation and accessible guidance. Supplementary tools such as online portals, helpdesks, public consultations, and taxpayer education programmes reduce compliance burdens and support voluntary compliance. These initiatives require sustained investment in human and technological capacity but deliver high returns in reduced litigation and improved trust.

Multilateral, Non-Binding Risk Assessment Frameworks

We encourage the Committee to consider the inclusion of non-binding, multilateral risk assessment initiatives such as the OECD's International Compliance Assurance Programme (ICAP) and EU's European Trust and Cooperation Approach (ETACA). While they do not provide legal certainty, these cooperative platforms have proven effective in reducing audit risk and promoting early alignment on TP positions. They offer a pragmatic, resource-efficient solution that can be adapted to different country contexts.

Policy towards application of the arm's length principle

An important barrier to effective TP dispute prevention and resolution is the policy or political choice made by countries toward the application of the arm's length principle (ALP). We observe two differing approaches among countries:

- Both upward and downward TP adjustments are permitted: strict or formalistic application of the ALP even when its application results in eroding the country's tax base; and
- Only downward TP adjustments are permitted: revenue protection approach i.e. countries not accepting APA / MAP cases where application of ALP reduces tax base.

This divergence in administrative behaviour creates a disconnect between the theoretical objective of full ALP compliance and the pragmatic reality of revenue pressures and political economy constraints. The Committee should recognize that differing application of the ALP, especially when politically or economically unsustainable, may hinder the effective functioning of dispute prevention mechanisms such as APAs. It may lead to stalled negotiations, unresolvable disputes, or de facto discouragement of APA programs, particularly in developing countries. A more balanced, principles-based application of the ALP, supported by capacity building, mutual trust, and transparency, would better serve the long-term goals of tax certainty, fairness, and cooperative international tax administration.

Other Systemic Barriers

Additional systemic barriers to effective dispute resolution include:

- The **complexity and interdisciplinary nature** of TP issues, which require expertise in law, economics, accounting, international tax, and valuation, among others.
- **Divergent interpretations of the ALP**, leading to inconsistent audit outcomes.
- Procedural inefficiencies, including language barriers, communication delays, and lack of streamlined MAP/APA processes.

3.2 Should the Protocol Include Mechanisms for Domestic Disputes, or Focus Solely on Cross-Border Cases?

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We support a primary focus on cross-border disputes, which require international coordination and where multilateral forums such as the United Nations can provide unique added value. A narrower scope improves manageability and allows the Protocol to target areas of greatest need.

That said, we recognize that principles and practices effective in cross-border contexts such as cooperative compliance, internal appeal mechanisms, and early engagement frameworks can also enhance domestic dispute resolution. If the Protocol adopts a best-practice-based approach rather than binding obligations, it may be beneficial to include illustrative examples of domestic tools that promote compliance and prevent disputes.

3.3 Is the Concept of Optionality Generally Acceptable with Respect to Protocol Mechanisms?

The principle of optionality is essential for ensuring broad political buy-in within a diverse multilateral membership. Legal systems, administrative capacities, and tax policy priorities vary widely among Member States. A flexible opt-in/opt-out approach permits jurisdictions to adopt provisions suited to their context while contributing to shared objectives.

Potential for Minimum Standards

Nevertheless, the Protocol may consider establishing minimum procedural standards such as timeframes for MAP processes, transparency commitments, or access to early engagement tools. These standards could improve predictability and coherence in dispute resolution practices without compromising sovereignty.

The suggestion in paragraph 29 to distinguish between binding provisions and shared best practices is well-founded. A hybrid model that combines flexible optionality with core baseline norms could serve as a model for gradual convergence toward international good practices.

Conclusion

The IBFD Centre for Transfer Pricing Studies supports the Committee's work on developing a multilateral Protocol for tax dispute prevention and resolution. The design and implementation of such a Protocol present a unique opportunity to address long-standing gaps in the international tax system, particularly in relation to transfer pricing, where disputes are frequent, complex, and economically significant.

We encourage the Committee to ensure that the Protocol reflects:

- Practical solutions to address capacity and resource constraints;
- Investment in early engagement and trust-building mechanisms such as APAs;
- Increased use of digital tools coupled with technical capacity building;
- A flexible legal architecture with core procedural safeguards;
- Promotion of multilateral cooperative platforms to reduce the likelihood and intensity of disputes.

We remain available to engage further as this important work progresses.