

LAMPIRAN III

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Comments of the Indonesian Delegation on the Issue Note for Workstream III - Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation

In response to the invitation to provide input regarding the issues outlined in Section III of the draft outline, we respectfully submit the following views:

(a) Whether Section III describes the primary barriers to prevention and resolution of tax disputes that Member States encounter

Section III provides a comprehensive and accurate overview of the main challenges encountered by Member States in preventing and resolving tax disputes, particularly in a cross-border context. The document effectively identifies key issues such as:

- Limited access to comparable data and reliable information for transfer pricing purposes;
- Disparities in capacity and resources between tax administrations and taxpayers, especially in developing countries;
- The absence of a common legal basis where no tax treaty exists between jurisdictions;
- Limitations of the current Mutual Agreement Procedure (MAP), including delays, lack of binding outcomes, and access issues;
- Concerns among developing countries regarding mandatory binding arbitration, including legal, institutional, and sovereignty-related constraints.

Nevertheless, we note that the section could be further enriched by elaborating on specific barriers faced by developing countries in implementing cooperative compliance or APA programs, as well as the challenges and opportunities of integrating digital tools in dispute prevention processes.

From our perspective, the mandatory arbitration in cross-border dispute resolution developed countries have many challenges in the arbitrary system that might cause by:

- High cost in the arbitration process
Legal fees, arbitrators' fees, and administrative costs for international arbitration can easily reach millions of dollars. Even preparing a defense in an arbitrary court requires hiring international law firms and expert witnesses, which strains public budgets
- Imbalance of power between MNEs, Developing Countries, and Developed Countries
Multinational corporations (MNEs) often have greater financial and legal resources than the governments they sue. Developing countries may struggle to match legal sophistication, resulting in uneven playing fields, and developed countries have enough resources to match legal requirements in an arbitrary court.
- Conflict of Interest in the arbitration court
A small group of arbitrators dominates the court, and their insight might support investors or developed countries.

- Lack of institutional capacity of developing countries
Developing countries may lack technical expertise in international investment law, treaties, and arbitration proceedings. Building this capacity takes time and resources.
- The absence of constitutional bases
Our jurisdiction currently does not recognize arbitration as a legally enforceable dispute resolution mechanism in the context of tax matters, due to the absence of constitutional or statutory provisions enabling such a process. Any effort to introduce this mechanism would require a comprehensive legislative amendment. Given the complexity of constitutional and legislative reform processes, such amendments typically require significant time and resources to complete.
- Position on the Need for an Oversight Mechanism in Arbitration
We recognize that the neutrality, independence, and quality of arbitrators are critical to the integrity and effectiveness of any arbitration process. To uphold these principles, the establishment of an oversight mechanism is necessary. However, the creation and operation of an oversight body would entail additional administrative and financial burdens. This would disproportionately affect developing countries, particularly when they are party to multiple disputes.

All in all, we endorse the more effective and efficient MAP process, both in outcome and the punctuality.

(b) Whether the protocol should address only tax disputes involving cross-border transactions, or whether it might be appropriate to include mechanisms for the prevention or resolution of purely domestic disputes

While we recognize that domestic tax certainty is also important, the protocol should primarily focus on cross-border tax disputes, given their complexity, legal fragmentation, and higher potential for double taxation. These disputes often require coordination between tax administrations, which cannot be effectively addressed through domestic procedures alone.

Regarding domestic disputes, it is better to leave it to the country's sovereignty. Since every country's dispute resolution system is very unique, establishing a new model in domestic dispute resolution might require more resources, both for INC/Tax and for the countries to adopt the latest model.

However, certain best practices in dispute prevention mechanisms—such as cooperative compliance, advance rulings, and administrative guidance—could be encouraged for domestic application, especially where they support broader capacity-building and transparency goals. These elements, however, should be presented in the form of non-binding recommendations rather than binding provisions within the protocol.

(c) Whether the concept of optionality with respect to mechanisms provided in the protocol is generally acceptable to the Committee

We fully support the concept of optionality as a pragmatic and inclusive design feature of the protocol. It provides the necessary flexibility for countries with diverse legal systems, administrative capacities, and policy preferences to participate meaningfully in the dispute resolution framework without compromising their legal sovereignty.

Optionality, through structured opt-in/opt-out provisions, can also promote broader uptake of the protocol. Nevertheless, the protocol should ensure that such flexibility does not undermine its effectiveness. Clear safeguards, minimum standards, and transparency measures should be incorporated to ensure consistency, fairness, and mutual trust among participating countries.



Ditandatangani secara elektronik
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