

ICC comments in response to UN Intergovernmental Negotiating Committee Workstream III Co-Leads' Draft Issues Note

Early Protocol on the prevention and resolution of tax disputes

Abstract: *The International Chamber of Commerce (ICC) would like to provide input on the UN Intergovernmental Negotiating Committee's Workstream III Draft Issues Note - Early Protocol on the Prevention and Resolution of Tax Disputes, emphasizing the need for a consistent, stable, and certain global tax system to foster trade and investment.*

The Draft Issues Note rightly underscores the challenges of litigating tax disputes, including lengthy timelines and high costs, particularly in cross-border cases where double taxation risks may persist. The business community welcomes the Note's emphasis on enhancing domestic resource mobilization through increased cross-border trade and investment, supported by effective tax dispute prevention and resolution mechanisms.

Prevention is key. Legal certainty provided in advance—through clear rules, early engagement, and cooperative approaches—can avoid costly disputes. Mechanisms such as cooperative compliance are gaining traction, particularly in developing countries, and should be further explored. Alternative dispute resolution (ADR) tools like arbitration and mediation are also welcomed by the private sector. These mechanisms offer quicker, more cost-effective solutions than traditional litigation, enhancing certainty and supporting cross-border investment. Binding arbitration, in particular, ensures enforceable outcomes, while mediation encourages open dialogue and mutual understanding.

Taxpayers have a crucial role to play. As holders of key information, their active involvement—especially in clarifying facts and business models—can prevent disputes and aid in timely resolution. Their collaboration is essential in any effective dispute resolution framework.

Clarity is also needed on how new mechanisms interact with existing ones. ICC remains committed to supporting the process and emphasizes the value of taxpayer input in shaping practical and effective solutions.

The International Chamber of Commerce (ICC) is a world business organization that represents enterprises from all sectors in every part of the world. We welcome the opportunity to provide input on the [Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation Workstream III Co-Leads' Draft Issues Note](#). In addition, ICC has Permanent Observer Status at the United Nations per UN General Assembly Resolution. ICC advocates for a consistent global tax system, founded on the premise that stability, certainty and consistency in global tax principles are essential for business and will foster cross-border trade and investment.

ICC appreciates the work of the members of the Bureau of the Intergovernmental Negotiating Committee (INC) and the participants in Workstream III. In this response to the public consultation,

we provide comments on the recently released Draft Issues Note on the topic of the Early Protocol on the Prevention and Resolution of Disputes.

General Comments:

We agree with the premise in the Draft Issues Note that litigation or resolution of tax disputes can be time-consuming and resource-intensive for both taxpayers and tax authorities. The final resolution of a cross-border tax dispute through domestic or national courts may take years, with no assurance that the resulting court decision will be accepted and lead to correlative adjustments by other countries whose tax revenues are affected—thereby allowing the risk of double taxation to persist. We agree with the reference in paragraph 9 of the Draft Issues Note to the overarching objective of enhancing domestic resource mobilization by facilitating cross-border trade and investment through effective prevention and resolution of tax disputes. A well-functioning dispute resolution system can contribute to this goal by providing legal certainty and reducing compliance burdens.

We strongly agree with the emphasis placed on the need for mechanisms to prevent and resolve tax disputes that are fair, independent, accessible, and effective. These mechanisms should be designed not only to resolve disputes in a timely and efficient manner, but also to reduce the potential for disputes arising in the first place. Predictability and clarity in application of rules, combined with meaningful opportunities for recourse, are essential to achieving these goals. Firstly, they provide a more timely and cost-effective alternative to prolonged litigation in domestic courts, which often involves complex procedures, issues novel to such courts, and extended timelines. This is especially critical for companies operating across multiple jurisdictions, where prolonged uncertainty over tax positions can negatively impact financial planning, cash flow, and overall business operations.

Secondly, arbitration and mediation can contribute to greater predictability and legal certainty in the international tax landscape. Businesses value clear and enforceable outcomes. Binding arbitration, in particular, can ensure that disputes are definitively resolved—reducing the risk of double taxation and enhancing investor confidence. It is also important to take into account existing dispute prevention and resolution mechanisms—both at the bilateral and multilateral levels—as these can offer valuable insights, frameworks, and best practices that can inform future developments.

Specific Comments

1. Importance of Prevention of Disputes

In order to promote cross-border trade and investment, it is essential to provide legal certainty on a proactive basis through preventive measures that avoid disputes before they arise. Even when effective dispute resolution mechanisms are in place, the process can be costly and time-consuming for both taxpayers and tax authorities. These burdens can be particularly frustrating when the dispute could have been prevented in the first place through clearer rules, early engagement (pre-audit), or improved cooperation.

We therefore welcome the ongoing discussions on mechanisms that aim not only to resolve disputes but also to prevent them including well-drafted regulations and clear interpretation guidance for auditors. Approaches such as cooperative compliance can play a valuable role in fostering trust-based relationships between taxpayers and tax authorities. These models are gaining increasing interest among developing countries and are also seen as effective tools for improving tax governance and transparency. Encouraging further exploration and adaptation of such mechanisms can contribute significantly to a more efficient and investment-friendly tax environment globally. Rulings and advanced pricing agreements (APAs) in which taxpayers present details of a transaction in advance of a tax return filing or audit are also very effective ways of preventing disputes and

bilateral APAs will avoid double tax. Many developing countries have not yet implemented the advance pricing agreement option in their domestic legislation. The introduction and effective use of APAs is not only related to the implementation of the instrument into domestic legislation but should also be supported by adequate resources and expertise within the tax authorities. Capacity efforts where knowledge is shared across countries in this field is to be welcomed and encouraged.

2. Tax Arbitration, Mediation, and Alternative Dispute Resolution Mechanisms

We also appreciate that arbitration, mediation, and other forms of alternative dispute resolution (ADR) have been included in the ongoing UN discussions. From a private sector perspective, these instruments can offer significant advantages in addressing the challenges of cross-border tax disputes.

Firstly, they provide a more timely and cost-effective alternative to prolonged litigation in domestic courts, which often involves complex procedures, issues novel to such courts, and extended timelines. This is especially critical for companies operating across multiple jurisdictions, where prolonged uncertainty over tax positions can negatively impact financial planning, cash flow, and overall business operations.

Secondly, arbitration and mediation can contribute to greater predictability and legal certainty in the international tax landscape. Businesses value clear, concise, time-bound and enforceable outcomes. Binding arbitration, in particular, can ensure that disputes are definitively resolved—reducing the risk of double taxation and enhancing investor confidence to bring investments to a destination jurisdiction. Moreover, where these instruments are adopted, practical guidance and procedures should be made publicly available to both tax authorities and taxpayers to smooth the process.

Thirdly, ADR mechanisms can foster a more collaborative and less adversarial relationship between taxpayers and tax administrations. Mediation, in particular, offers a platform for open dialogue and mutual understanding, which can be especially beneficial in addressing misunderstandings or differing interpretations of complex tax rules.

We encourage continued exploration and adoption of these mechanisms—tailored appropriately to different legal systems and capacities—as they have the potential to complement existing instruments and significantly enhance the overall efficiency and fairness of tax dispute resolution processes worldwide.

3. Active Role of Taxpayers in Dispute Resolution Mechanisms

The effectiveness of dispute prevention and resolution systems depends not only on the capabilities of tax authorities but also on the active and constructive participation of taxpayers. As the Draft Issues Note correctly points out, tax authorities do not necessarily have full knowledge of a taxpayer's business models—particularly in complex cross-border situations. Taxpayers possess detailed knowledge of their own structures, operations, and transactions that may not be readily accessible to tax administrations, absent an audit procedure. By being able to share relevant and accurate information at different stages of the dispute resolution mechanism process, taxpayers can play a critical role in reducing misunderstandings, clarifying factual matters, and preventing disputes before they escalate.

Moreover, most disputes do not result from deliberate non-compliance, but rather from different interpretations of legal rules or applications of facts. Here, again, taxpayers have a central role to play in ensuring the resolution of disputes by making available the relevant facts. Taxpayer willingness to explain business models and provide supporting documentation throughout the different stages of the dispute resolution mechanism can greatly enhance mutual understanding.

Encouraging and supporting the active involvement of taxpayers in dispute prevention mechanisms should therefore be a key component of any modern dispute resolution framework.

4. Clarification on the Relationship with Other Dispute Resolution Mechanisms and the Optionality Element

In designing or improving dispute resolution frameworks, it is essential to clearly define as part of the process how any new or proposed mechanisms relate to existing instruments, such as the Mutual Agreement Procedure (MAP), arbitration provisions under tax treaties, domestic remedies, and cooperative compliance programs. From the private sector perspective, this clarity is crucial to ensure that businesses have a coherent understanding of the available pathways for resolving disputes and how these interact or overlap. Ambiguity around sequencing, compatibility, or mutual exclusivity between mechanisms can contribute to uncertainty, delay, and inefficiency—undermining the very goals of an effective tax dispute resolution system.

Further clarification and discussions on the optionality element during the August session would also be appreciated. For taxpayers, the priority and focus continues to be achieving the highest level of certainty.

Conclusion

We would like to re-emphasize the importance of taxpayer participation in the process. Taxpayers can provide concrete examples of the real-world challenges they face in relation to the prevention and resolution of disputes, as well as share reflections on potential improvements. Meaningful stakeholder engagement and dialogue with industry forums should be the cornerstone to achieve the Committee's overarching goal of an efficacious dispute resolution paradigm under the UN framework. We refer to our proposal for a Business Advisory Council as indicated in our responses to the public consultations on the Draft Issues Notes on Workstream I and II.

As ICC, we remain committed to constructively participating in the process.

About the International Chamber of Commerce

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

