

KPMG Submission on Workstream III – Dispute prevention and resolution

Summary

We strongly support efforts to improve dispute prevention and resolution mechanisms.

It is clear that such mechanisms would give rise to greater economic growth, lower costs of compliance, faster revenue collection, lower double taxation, better revenue administration focus, a greater level playing field for business and more generally flow-on benefits of greater ‘tax morale’ for all in the global tax environment.

It is equally clear that business needs to be an intrinsic part of discussions for this workstream along with revenue authorities, in analysing the nature of problems and the potential for solutions.

The Committee should undertake evidenced-based work on the legal clarity and administrability of tax rules; the level of trust in revenue administration; and the extent to which, and benefits from, a jurisdiction’s conformity with international norms.

Work should be commissioned to analyse the economic benefits of best practice on negotiation, mediation, arbitration and litigation. Such practice could be the foundation of charters and codes of conduct adapted for local jurisdictions.

Recommendations

1. The Committee should adopt an evidence-based approach to dispute prevention and resolution recognising the substantial economic and social benefits of reduced tax disputation. This could be based on an analysis of the fundamental sources of disputes which may include a lack of legal clarity, rule of law, public trust, administrability of rules and divergence from international norms.
2. Business experience is key to such an approach and business should be heavily involved in addition to revenue authorities in assisting the Committee in the shape of such a project.
3. Economic analysis should be undertaken to quantify the benefits of a significant reduction in taxation disputes. This may be a very substantial number.
4. The Committee should aim to produce a best practice charter for implementation by Member States on negotiation, mediation, arbitration and litigation. A peer review process could be undertaken to assist in the implementation of best practice if desired by the parties.
5. It should be acknowledged that all parties in the tax system have rights and responsibilities including an obligation to assist in building public trust in international business taxation.
6. In respect of substantive law changes to international tax rules, it is likely that the Committee’s findings on a Protocol will be limited to international transactions. However, to the extent that the Protocol suggests best practice methodologies, jurisdictions may well seek to adopt measures for both international transactions and domestic disputes involving international groups.

7. It is noted that many jurisdictions have concerns about binding mandatory arbitration. Those concerns need to be analysed to determine whether there are acceptable solutions to provide additional certainty for participants in the system without compromising sovereignty. This may involve bilateral rather than multilateral paths, additional safeguards or potentially best practice solutions only.