

The Chairman

Intergovernmental Negotiating Committee to draft United Nations Framework Convention on International Tax Cooperation
And two early Protocols

The Co-Lead

Workstream III: Prevention and Resolution of Tax Disputes.

Re: Written inputs from Nigeria for Workstream III Issues Note on Protocol 2: Prevention and Resolution of Tax Disputes.

Nigeria welcomes the opportunity to provide comments to the Intergovernmental Negotiation Committee on the Protocol on Prevention and Resolution of Tax Disputes. Nigeria supports the comments submitted by the Africa Group, and supports the work in designing a Protocol that addresses the imbalances and the challenges in the existing mechanisms, including taking into account the different levels in capacity of jurisdictions.

Abstract

Nigeria' submission advocates for a protocol designed as a universal framework for dispute resolution. Nigeria supports a framework designed to handle both bilateral and multilateral disputes, which may include a government-to-government facilitated process for resolution of disputes to ensure tax certainty is achieved.

Nigeria supports a multilateral approach that provides a comprehensive legal framework for the implementation of preventive mechanisms such as joint audits, cooperative compliance programs, and multilateral risk assessment.

To prevent tax disputes arising from information asymmetries that exist between taxpayers and tax authorities, Nigeria propose that the Protocol makes provision for commitments on exchange of relevant information for tax purposes, including the creation of a central public CbCR for automatic exchange of tax-relevant information.

1. Comments

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

Nigeria agrees that Section III has identified several key barriers, particularly:

- Information asymmetry between taxpayers (especially MNEs) and tax authorities.

- Capacity gaps in developing countries, limiting effective participation in existing dispute resolution mechanisms.
- The slow and non-binding nature of MAP, which remains a significant challenge.
- A significantly few tax treaty network of many developing countries, leaving disputes without a legal basis for resolution.

However, Nigeria observes that Section III does not adequately capture some critical barriers encountered by developing countries such as:

- The complexity of Transfer Pricing issues and divergent interpretation of the arm's length principle contributes significantly to tax disputes and creates barriers to resolution of cross border tax disputes.
- Developed countries and large corporations often have greater technical, legal, and financial resources that influences the outcome of dispute resolutions, putting developing countries at a disadvantage.

Nigeria recommends the Committee explicitly acknowledge these issues and emphasize capacity-building and preventive approaches as foundational elements to curbing them.

(b) On 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

Nigeria is of the view that the protocol should primarily address cross-border tax disputes, consistent with the Framework Convention's international character and focus. However, we note that developing countries also face significant challenges in preventing and resolving domestic disputes that often intersect with cross-border issues (e.g., transfer pricing affecting domestic tax liabilities). Including mechanisms for domestic disputes:

- Could promote broader tax certainty for taxpayers and administrations alike.
- Would enhance fairness in countries where domestic disputes are highly influenced by global MNE structures.

Nigeria recommends that any dispute resolution mechanism on purely domestic disputes should remain optional, to respect national sovereignty and differences in legal frameworks. The protocol should encourage the sharing of best practices on domestic dispute resolution and provide guidance rather than impose binding obligations.

(c) On whether the concept of optionality with respect to mechanisms provided in the protocol is generally acceptable to the Committee (with specifics to be elaborated as the protocol is drafted).

Nigeria is open to the discussions on the inclusion of optionality in aspects of the Protocol, recognizing the divergent legal systems of jurisdictions and the need for inclusivity in the mechanism to be designed. Optionality will allow States that are Parties to the Protocol to adopt mechanisms suited to their capacity and legal frameworks, while still participating meaningfully in the Convention. However, to ensure the effectiveness of the Protocol, some minimum level of commitment needs to be incorporated within its design. Thus, a hybrid model that incorporates some minimum standards and flexibility may ensure consensus is achieved, while allowing the Protocol to be used both in a bilateral and multilateral context.

Many developing countries, including Nigeria, cannot commit to binding mechanisms like arbitration due to constitutional constraints and sovereignty concerns. We recommend the protocol incorporate opt-in or opt-out clauses for contentious mechanisms (e.g., arbitration, mediation), and a graduated approach that allows countries to enhance their engagement as capacity strengthens over time.