

Norway's comments on the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation Workstream III Co-Lead's Draft Issues Note

Norway would like to thank the Chair, the Co-Leads and the Secretariat for their leadership in guiding the discussions in Workstream III, and for preparing this Draft Issues Note. The discussions have covered a broad range of issues and provided valuable insights into the diverse perspectives of Member States. We look forward to continuing these discussions in the INC and future discussions in Workstream III.

General remarks

Dispute prevention and dispute resolution both in a domestic and cross-border context provide tax certainty to taxpayers. Tax certainty is often pointed to by business as a very important feature in making decisions relating to trade and investment. Therefore, enhancing tax certainty in all contexts is closely linked to the objective in the Terms of Reference to create an international framework that can strengthen domestic resource mobilisation. Tax certainty is also important in building trust between tax administrations and taxpayers, in turn supporting public trust in the tax system. This Protocol has the potential to be a central tool under the Framework Convention.

The Draft Issues Note covers a wide range of issues. Both dispute prevention and dispute resolution have a solid basis in bilateral and multilateral instruments and processes. The Inclusive Framework on BEPS (IF) also conducts extensive guidance on dispute resolution through MAP and Peer Reviews to monitor members' ability to resolve disputes. The work on this Protocol should include thorough analysis to ensure that it adds value to existing mechanisms. Existing knowledge and expertise within the IF and the OECD could be leveraged.

There are a wide range of possible measures to enhance dispute prevention and dispute resolution. Therefore, the work going forward should analyse how the Framework convention and the Protocol can support various existing measures to prevent and resolve tax disputes.

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

Section III broadly describes the issues relating to barriers to dispute prevention and dispute resolution discussed by the participants in Workstream III.

Tax disputes place significant resource demands on both taxpayers and tax administrations. All tax administrations, in both developed and developing countries, have limited resources. Preventing tax disputes should therefore be a central priority of all tax administrations.

The Draft Issues Note highlights several important features for dispute prevention, such as clear legislation and APA programs. However, it does not explicitly address the importance of robust risk assessment program in tax administrations. Such programs allow the tax administration to identify areas or types of transactions of particular risk to their jurisdiction and spend audit resources where they are of most use. Country-by-country reports can be a

valuable source of information in such programs. Para. 11 suggests that the scope of information in Country-by-Country Reports may present a barrier to dispute prevention and resolution. We note that Country-by-Country Reports are not intended for use in determining tax liability. While the information included in the report is subject to monitoring and revision in the IF, the purpose of high-level risk assessments are maintained.

Moreover, access to information, both domestically and internationally, is key to the effective enforcement of tax legislation. This requires appropriate reporting obligations for taxpayers as well as third parties, such as financial institutions. Domestic accounting laws also play an important role by requiring disclosure of information. This information supports a range of circumstances such as risk assessments and building databases for comparing information.

The Draft Issues Note refers to mediation as a tool for dispute prevention. The relevance of such mechanisms appears limited, as few Member States have introduced them. Hence, it may be more effective for the INC to prioritize other areas of dispute prevention at this point

Our experience with APAs and MAPs is very positive with a high number of cases resolved. Although arbitration mechanisms are included in some of our treaties with countries that are also main trading partners, we have never had invoke them. However, these mechanisms require a common agreed framework for solving a dispute, such as Articles 5, 7 and 9 in the OECD or UN Model Tax Conventions. Resolving a bilateral dispute on the basis of similar legislation in another country is not viable for our tax administration. The Draft Issues Note observes that many countries have included the Arm's Length Principle in their domestic legislation. Yet, in the absence of a tax treaty, the application of the ALP could differ quite significantly among Member States. Norwegian tax legislation on the ALP refers to the OECD Transfer Pricing Guidelines when determining appropriate pricing of intra group transactions. Other countries rely on the TPG only where a tax treaty is in place. Moreover, application of domestic law provisions are often further clarified through court decisions. Therefore, provisions that may seem similar may not have similar application in different jurisdictions.

In para. 28 the issue of the possible scope is discussed. We agree that the Protocol should mainly serve as a mechanism to solve disputes under the Framework Convention and its Protocols Expanding the Protocol to bilateral tax treaties could be explored as an option by Member States willing and able to do so.

It should be clarified whether the Protocol should also apply to disputes relating to the Framework Convention itself. It seems likely that the commitments under the Framework Convention and the obligations under Protocols will be quite different in nature. The commitments under the Framework Convention are expected to be high level and the obligations under the Protocols would be detailed. It should be clarified whether the Protocol on dispute prevention and resolution would be appropriate for disputes that may arise in relation to the Framework Convention.

We support the view that the Protocol should not apply to existing tax treaties or the Multilateral Instrument on BEPS. Furthermore, we do not see merit in extending its

application to tax disputes that arise under free trade agreements, the General Agreement on Tariffs and Trade, the General Agreement on Trade in Services. These agreements differ in nature and scope. Also, tax disputes that arise under such agreements typically concern domestic law. Any consideration of such issues for the protocol would need to involve trade departments of government. At this stage, we are not supportive of such expansion of the INC's considerations.

Question (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.

In line with our comment above on MAP, Norway cannot resolve bilateral cross-border tax disputes without a common agreement on allocation of taxing rights. Therefore, a "universal" approach, as suggested in para 30, would not be feasible to us. The same applies to dispute prevention mechanisms such as APAs, that require an agreement on allocation of taxing rights based on Articles 5, 7 and 9 in the UN and OECD model Tax Conventions. However, such a "universal" approach could be explored and possibly made available to those Member States that have the possibility to implement such arrangements.

It might be possible to examine if other mechanisms on dispute prevention of purely domestic disputes such as a framework for simultaneous controls or joint audits could be developed. These mechanisms could make use of existing mechanisms for the exchange of tax information.

Question (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).

Given the wide range of views expressed by participants and the diversity in limitations to engage in cross-border discussions on dispute prevention and resolution, it seems necessary that the Protocol offers a wide range of options with respect to the mechanisms provided for.