

Intergovernmental Negotiating Committee on the UN Framework Convention on International
Tax Cooperation Workstream III
Saudi Arabia's written comments

We thank the Co-Leads for their efforts in preparing the draft issues note on the prevention and resolution of tax disputes. We appreciate that the note reflects and provides a foundational overview of the issues that were discussed during the workstream meetings and takes into consideration the Member States' divergent views on several aspects on tax disputes mechanisms.

Abstract

Binding arbitration in tax disputes: Further elaboration is needed on the full range of concerns that explains why many jurisdictions reject to arbitration as it remains underdeveloped and lacks legal procedures and certainty. We suggest that these additional points are included going forward.

Mediation: It may be premature to describe mediation as a generally agreed option, it still lacks sufficient legal procedures, safeguards and understanding of the interaction with existing mechanisms. We suggest that this is framed as an unclear concept requiring further exploration.

Capacity building: this matter should be seen as a primary concern and a foundation that builds an effective dispute prevention and resolution mechanism.

Coordination with Workstream I: explicit differentiation of responsibilities is needed.

Focus of the protocol: In our view, the protocol should focus on cross-border tax disputes, particularly those that arise from interpretation or application of international tax provisions.

Optionality: we support the principle of optionality but it must be clearly defined, ensuring no disadvantages arise from a country's decision not to opt for a mechanism.

Workstream III: Dispute prevention and resolution

Saudi Arabia written comments highlight areas where further clarifications and elaboration is needed as well as particular matters to be taken into consideration and strengthen the basis for future drafting work. The following comments answers each question raised in the note.

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

We welcome the broad structure of Section III and recognize that the note touches on several important challenges in tax disputes prevention and resolution. However, it may not fully capture the primary concerns or barriers faced by jurisdictions regarding binding arbitration, mediation, capacity constraints and coordination with Workstream I.

Section III paragraph 24 – 25 presents that developing countries objection on binding arbitration is particularly because of constitutional constraints and experience. However, further elaboration is needed on the full range of concerns that explains why many jurisdictions reject to arbitration when it comes to tax disputes resolution. Tax arbitration remains underdeveloped as an institutional practice, it lacks established procedures and enforcement systems.

There are also other concerns with regards to legal uncertainty and fairness in applying arbitrations in developing countries, which can lead to unpredictable and potentially inequitable outcomes in jurisdictions that lack developed systems or prior experience with arbitration.

Additionally, further considerations should be given to the significant administrative burdens and capacity constraints that arbitration imposes, especially in complex disputes such as transfer pricing. We therefore suggest that these additional points reflected in the issues to provide a more complete picture of Member States' concerns moving forward.

We acknowledge the reference to mediation in Section III as a possible dispute resolution tool and the general positive experience that other countries mentioned. Most countries in the workstream meeting however, expressed that they have neither experience nor positive experience with mediation and this point is critical to be taken into consideration. It may be premature to describe mediation as a generally agreed option, it still lacks sufficient legal procedures and safeguards and understanding of the interaction with existing mechanisms such as MAP. Therefore, it requires further exploration and technical work.

While Section III generally references capacity building, we still believe that this matter should be seen as a primary concern and a foundation that builds an effective dispute prevention and resolution

mechanism. For illustration, APAs requires significant technical / legal expertise and a well-established administrative infrastructure to support their multilateral, bilateral and unilateral forms and for many developing countries, it is more practical to begin with unilateral APA that are simpler to administer yet still effective, and then build toward bilateral and multilateral arrangements. Therefore, capacity building should not be viewed as separate issue when developing tax disputes mechanisms.

The note also mentions the need for coordination with Workstream I in drafting provisions on the effective prevention and resolution of tax disputes within the Framework Convention, we noticed in practice that the discussions between the commitment in Framework Convention and Protocol remains unclear and explicit differentiation of responsibilities is needed.

(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

In our view, the protocol should focus on cross-border tax disputes, particularly those that arise from interpretation or application of international tax provisions. We believe that expanding the scope to include domestic disputes should be limited to exchanging best practices related to domestic remedies and feasible solutions that can be implemented in practice.

Additionally, the need to resolve cross-border disputes is already a pressing issue for many countries especially those with limit treaty network and the protocol should prioritize addressing these gaps.

(c) 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)

We support the concept of optionality in principle that will allow a more inclusive multilateral instrument and for it to be meaningful and acceptable, it must be clearly defined and does not allow interpretation ambiguity, choosing not to adopt a mechanism should not result in a disadvantage.