

## SPANISH COMMENTS

### WORKSTREAM III.

21<sup>st</sup> July 2025

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Dear colleagues, with regard to the invitation to make written comments for the first and second in-person sessions of the Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation, the Spanish delegation would like to make some comments on the 3 Workstreams Issues notes.

Spain welcomes the proposed multilateral approach to addressing the prevention and resolution of tax disputes, particularly in the context of increasingly complex cross-border operations and the digitalization of the economy.

It is essential that the protocol does not conflict with existing mechanisms under bilateral treaties, the Multilateral Instrument on BEPS (MLI), or the EU Tax Dispute Resolution Directive. Complementarity should be a guiding principle.

#### I. Possible Scope and Approach to the Protocol

Spain considers it appropriate for the protocol to focus on **international tax disputes**, as purely domestic disputes are already effectively addressed through internal administrative and judicial mechanisms.

Spain supports the inclusion of **a multilateral framework** that could assist countries in resolving cross-border tax disputes. This initiative could contribute to greater global tax certainty and fairness, particularly for developing countries that face structural limitations in negotiating and implementing bilateral agreements.

However, Spain emphasizes that such a framework must not result in the creation of a parallel system that operates independently of established international tax norms. A fragmented or duplicative system could undermine legal certainty, create inconsistencies in the interpretation and application of tax rules, and increase the risk of forum shopping or conflicting outcomes.

To ensure coherence and predictability, any mechanism designed to address disputes needs to be grounded **in internationally recognized principles**, such as those reflected in the OECD and UN Model Tax Conventions, the arm's length principle, and the standards developed under the Inclusive Framework on BEPS. The resolution of disputes must be based on clear, transparent, and legally binding rules that are consistent with the international tax framework and respect the sovereignty of the states involved.

## II. Dispute Prevention

Spain supports the promotion of **Advance Pricing Agreements** (APAs), particularly bilateral and multilateral ones, as an effective tool for preventing tax disputes.

**Joint Audits and Simultaneous Controls** are recognized as useful, though their implementation requires a solid legal basis and information exchange agreements. Spain already participates in initiatives such as “Tax Inspectors Without Borders.”

Spain considers that the development of a robust and accessible taxpayer **information system** is a cornerstone of effective tax dispute prevention. Clear, timely, and comprehensive guidance enables taxpayers to understand and comply with their obligations, thereby reducing the likelihood of disputes. This includes the publication of interpretative criteria, administrative guidelines, and practical tools—ideally through digital platforms—that facilitate voluntary compliance. Investment in such systems not only enhances transparency and trust in the tax administration but also contributes to legal certainty and the efficient allocation of administrative resources.

## III. Dispute Resolution

Spain considers the **MAP** a key instrument for the resolution of cross-border tax disputes. Nevertheless, Spain is open to exploring and supporting the development of procedural enhancements that could increase the effectiveness of the MAP. These improvements should aim to reinforce legal certainty and reduce the duration and complexity of dispute resolution processes, particularly in transfer pricing cases.

Regarding **arbitration**, as an EU Member State, Spain already applies binding arbitration mechanisms under the EU Dispute Resolution Directive. It is an important tool to assure that tax controversies are solved.

Spain cannot accept **mediation** as a mechanism for resolving tax disputes due to the inherent legal and institutional characteristics of tax obligations, which differ fundamentally from the types of disputes typically suited to mediation. Tax obligations are public law matters governed by principles of legality, equality, and non-discretionary enforcement. Introducing mediation, which is by nature a flexible, confidential, and non-binding process, could undermine legal certainty, transparency and accountability. Allowing tax obligations to be negotiated through mediation could be perceived as discretionary enforcement, potentially eroding public trust in the tax system.

#### **IV. Issues for the Committee**

##### **1. Are the main barriers accurately reflected?**

In our view, the document correctly identifies the possible obstacles, such as information asymmetry, lack of access to comparable data, and limited institutional capacity in some countries.

##### **2. Should domestic disputes be included?**

From Spain's perspective, it is not possible to include purely domestic disputes in the protocol. This is an issue of national sovereignty that can be solved through the national procedures both administrative and judicial.

##### **3. Is optionality acceptable?**

In our view, provided it is carefully designed to avoid fragmentation and ensure interoperability with other international instruments. Spain supports the inclusion of optional mechanisms within the protocol, provided coherence is maintained and the effectiveness of the system is not compromised