



Ministry of Finance
Tax and Customs Department

Comments on the Co-Lead's Draft Issues Note for Workstream III

We thank for the opportunity to provide written comments on the Co-Lead's Draft Issues Note for Workstream III (WSIII).

Summary

The protocol should aim for a balanced and fully inclusive approach that can be signed by the broadest possible range of member states while taking into account the member states different experiences on preventing and/or resolving cross-border tax disputes. The protocol should focus on preventing cross-border tax disputes arising under the Framework Convention (FC) and its early protocols without affecting, or to be considered as superior to any existing obligations. We do have strong concerns about the direction of the scope of the protocol if it would focus on developing a mechanism that aims to solve cross-border "tax disputes" where there is no existing tax treaty relationship between the parties and the assessment would be based on interpreting domestic law. In this sense, it must be recognised that every member state has the sovereign right to decide the policies and practices of its domestic tax system. Finally, we are hesitant to focusing on mediation as a possible mechanism to solve disputes.

Issues Overview

Para 10: Perhaps it is worth mentioning that disputes could arise also when the relevant rules are stable and foreseeable, but the situation is, for example complex and/or spans over several years (back in time).

Para 12: In addition, it should be noted that some cross-border MAP cases may require special competence at the Competent Authority and/or the Tax Authority in relation to various industries (finance, insurance, pharma etc.) to fully understand the environment in which MNEs operate (capacity/competence issue). There may also be some language barriers/challenges in relation to the information (documents, agreements, tax audit reports, calculations etc.) that is shared in a cross-border MAP dispute.

Para 19: Mediation has only been briefly mentioned, although it has been discussed in the past, in other forums without success. We are hesitant to focusing on mediation as a possible mechanism to solve disputes going forward.

Issues for the Committee

Para 32 a): In general, we believe that the overview is accurate. However, in our experience it takes more of accurate/special resources to solve some of the cases, mainly relate to transfer pricing, since these cases are increasingly complex and more difficult to get to an agreement on. That is not reflected in the statistics which in our view only gives a very rough overview. Another problem is that denial of access to MAP is getting more common from the other Competent Authority and also that sometimes the other Competent Authority do not receive a notification when an application is rejected.

Para 32 b): Taking into consideration that the overall aim with developing the FC and the two early protocols is to strengthen international tax cooperation, we believe that any mechanism under WSIII should focus on cross-border situations. It would not be appropriate to focus on developing any mechanisms for the prevention or resolution of cross-border situations where there is no common legal basis (e.g. a bilateral tax treaty). It is up to each member state to interpret their own domestic rules.

Para 32 c): As already mentioned we believe that is too early to have this discussion since we have not even discussed different types of mechanisms. Furthermore, we question if we are considering the type of optionality that we have in the OECD/IF Multilateral Instrument? In general, we are openminded to explore different concepts, but we need a better overview of the potential provisions before we can have a view on this.