

**Intergovernmental Negotiating Committee on the  
UN Framework Convention on International Tax Cooperation  
Workstream III  
Co-Leads' Concept Note on Ideas for Potential Solutions**

## **I. Introduction**

1. Workstream III of INC/Tax is charged with developing the second early protocol, on the “prevention and resolution of tax disputes”<sup>1</sup> (the “protocol”). Under the Terms of Reference (ToR)<sup>2</sup> adopted by the General Assembly in December 2024, the text of the draft protocol will be submitted, along with the draft text of the UN Framework Convention on International Tax Cooperation (the “FC”) and the draft text of the first protocol on the “taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy,” to the UN General Assembly for its consideration in the first quarter of its 82<sup>nd</sup> session in the second half of 2027.

2. Workstream III began its review of the topic under the co-leadership of Marlene Nembhard-Parker (Jamaica) and Michael Braun (Germany). In accordance with its work plan, a scoping phase was carried out to identify the key issues, challenges, and areas of divergence faced by Member States, thereby providing the basis for subsequent work. Following multiple meetings, the co-leads released an Outline of Issues Overview and Scope on 27 June 2025, which provided a general summary of the issues and challenges faced by Member States in preventing and resolving tax disputes. This document served as the point of departure for written inputs from Member States and multi-stakeholders, as well as for discussions during the Committee’s August 2025 Sessions.

3. Following the INC’s August 2025 Sessions, Workstream III entered a new phase focused on exploring potential approaches and solutions under the second early protocol. The present note, conceptual and exploratory in nature, is the first written output of this phase. It outlines preliminary approaches for the Committee’s consideration at its November 2025 session, with a view to informing subsequent work. Coordination has been maintained with Workstream I to ensure legal and technical consistency, given the references to dispute prevention and resolution in the ToR.

4. Section II of this note is organized around the main topics that emerged during the scoping phase. For each topic, it summarizes the issues identified, reflects the discussions held so far on potential approaches and solutions, and presents corresponding proposals for the Committee’s consideration.

## **II. Key topics on the design of the protocol on the prevention and resolution of tax disputes**

### *a. Optionality as a design feature*

5. The protocol was seen as an opportunity to serve as a “universal” framework for tax dispute resolution, providing a series of mechanisms applicable across a broad range of situations.

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<sup>1</sup> See A/AC.298/CRP.5.

<sup>2</sup> See A/AC.298/2.

However, discussions in the workstream and the INC Plenary revealed that not all countries may be equally interested in all mechanisms. Therefore, while participation in the protocol itself will be optional, the question arose as to whether the mechanisms it contains could also be designed as opt-in or opt-out provisions. In that regard, many Member States noted that broad participation might only be achieved if the protocol offers a degree of optionality, allowing States to engage without being bound by mechanisms they consider unsuitable.

6. During the scoping phase, the concept of optionality received strong support. Many highlighted that optionality could encourage adoption of the protocol by allowing countries to choose from a range of mechanisms, those suitable to their legal, political and institutional contexts. In this sense, optionality is not only a technical design feature but also a means to facilitate the widest possible signature and ratification of the protocol, as it reduces the likelihood that signatories will be required to apply mechanisms in which they have little to no interest. Several Member States also highlighted that optionality could allow for gradual engagement, enabling countries to adopt additional mechanisms over time as experience and capacity, or domestic legal frameworks develop. Some Member States also noted that optionality could benefit countries that already have strong dispute prevention and resolution tools by providing flexibility rather than establishing inconsistent obligations.

7. At the same time, some Member States emphasized that greater clarity is needed on how optionality would operate in practice, both to prevent procedural complexity and to allow countries to assess their compatibility with their domestic legal frameworks. It was also noted that optionality should not be applied excessively, in order to maintain a critical balance between inclusiveness and legal certainty. Some Member States therefore stressed the importance of establishing a common baseline that all parties would accept, a view also supported by certain stakeholders, alongside with optionality for all other mechanisms, ensuring that certain elements are consistently applied.

8. Building on these discussions, a proposed approach is to first develop a menu of potential mechanisms for the prevention and resolution of tax disputes. Once this menu has been elaborated to provide a clearer overview, consideration could then be given to identifying which might form the protocol's 'core mechanisms'.

9. The 'core mechanisms' could, in principle, be available for application by all parties, although their practical application would depend on whether relevant mechanisms exist between particular parties, or whether those parties agree to apply the mechanisms under the protocol in lieu of or to complement such other mechanisms. Importantly, the application of mechanisms under the protocol, including those considered the core mechanisms, shall not supersede any dispute prevention or resolution mechanisms already contained in other bilateral or multilateral instruments, or in any other relevant instrument or arrangement, between the same parties, unless those parties expressly decide otherwise.

10. Thus, parties could continue to rely on their other arrangements where preferred, or jointly agree to apply one or more of the mechanisms available under the protocol, whether as an alternative to or in addition to such arrangements. Furthermore, where no relevant mechanism exists between certain parties, the protocol's mechanisms could be available if such parties agree.

This would address cases, for example, where a bilateral or multilateral instrument does not contain a MAP provision and parties concerned wish to use such resolution mechanism, or where, after having used the MAP procedure under their bilateral treaty, parties voluntarily opt for an arbitration process under the protocol's arbitration mechanism, in the absence of such a mechanism in their bilateral treaty.

11. At this stage, the considerations outlined above are intended to serve only as general guidance and are not meant to define the detailed structure or functioning of the protocol. The practical application and modalities could then be further developed as work progresses during the drafting phase, with specific provisions to operationalize optionality to be designed and drafted in close coordination with Workstream I. In that context, careful drafting will be required to accommodate the feature of optionality with the concept of “core mechanisms”, recognizing that their relationship and dynamics remain to be further developed.

*b. Scope of the protocol*

*Cross-border vs. domestic tax disputes*

12. During the scoping phase, some Member States had the view that the scope of the protocol, in accordance with the ToR, would not be limited to cross-border transactions, noting that taxpayers may also require certainty in relation to purely domestic tax issues. The Committee was therefore invited to consider whether the protocol should address only cross-border tax disputes or whether it might be appropriate to also include mechanisms for purely domestic disputes.

13. Later input indicated broad support for limiting the scope of the protocol to exclusively cross-border tax disputes. It was noted that domestic disputes are generally considered a matter of national sovereignty. At the same time, some Member States expressed openness to the development of best practices or optional guidance for domestic disputes, particularly where such disputes may be linked to international aspects, a view that was also suggested by some stakeholders, although questions were also raised regarding how such situations could be distinguished.

14. On the basis of these discussions, the proposed approach is that the protocol should focus exclusively on cross-border tax disputes. In this context, it is important to clarify the meaning and scope of a “cross-border tax dispute”, as different approaches in this regard could have practical implications for the operation of the protocol. Accordingly, it is proposed that the definition and scope of what constitutes a cross-border tax dispute under the protocol be further examined during the November 2025 INC session, with a view to developing a clear and workable understanding that could guide the drafting phase. The guiding questions in paragraph 32 are intended to support this discussion and help shape this general understanding. Regarding purely domestic disputes, consideration may be given to the possibility, at a later stage, of empowering the Conference of the Parties (the “CoP”) to develop and recommend optional future guidance or best practices on such matters. It should be noted, however, that any future work by the CoP in this area should be mindful of the non-binding nature of such guidance or best practices, and of how these may interact with domestic frameworks while fully respecting national sovereignty.

### *Types of tax disputes covered*

15. During the scoping phase, some Member States considered that the protocol should be confined strictly to disputes arising under the FC and its protocols. Others argued that the protocol could rationalize and provide coherence across the multiplicity of existing dispute resolution mechanisms, potentially establishing a hierarchy among them. Another view was to see the protocol as a means of filling gaps where no tax treaty relationship exists between countries. It was also noted that existing dispute resolution mechanisms currently derive from tax treaties and concern disputes arising from the application of those treaties.

16. During discussions in the August sessions, a number of Member States emphasized the importance of addressing “no-treaty” situations, given the fact that many countries have small treaty networks, leaving them without a mechanism to resolve any disputes that may arise. Accordingly, they suggested that the protocol could provide a legal basis for resolving such disputes, at least where domestic laws are sufficiently aligned, welcoming the idea of a multilateral mechanism accessible to all countries. However, some Member States stressed the legal and procedural challenges it might pose, including the absence of a shared substantive legal framework for resolving such disputes; others even questioned whether there could be a “dispute” without a substantive legal agreement allocating taxing rights. Suggestions were made that some elements, such as exchange of information, could nevertheless be addressed multilaterally even without a treaty basis containing substantive provisions. Overall, broad interest was expressed in further exploring the feasibility of multilateral mechanisms to address “no-treaty” situations. Finally, it was generally noted that the inclusion of disputes arising under the FC itself, or under other protocols, would need to be addressed as part of the broader drafting process of those instruments.

17. Building on these discussions, the proposed approach is that the protocol could apply to the range of cross-border tax disputes, as informed by the discussions to be held during the next INC plenary session, with a view to developing a shared understanding of this concept. This range may include disputes arising from the interpretation and application of provisions in existing tax treaties (in accordance with paragraphs 8 to 11 above). Depending on the understanding of what constitutes a cross-border tax dispute, consideration could also be given to the possibility of addressing non-treaty situations, subject to further discussions on the legal framework and practical examples that would clarify the types of disputes to be covered. In such cases, the mechanisms under the protocol could be applied on an optional basis and if parties concerned agree, allowing Member States with limited treaty networks to benefit from an intergovernmental mechanism while ensuring that participation in non-treaty situations remains voluntary. Furthermore, the inclusion of disputes under the FC or its protocols would be addressed in the drafting of those instruments, taking into account the guidance from the INC plenary and in due coordination with the other workstreams.

### *c. Dispute prevention*

18. During the scoping phase, it was noted that tax dispute prevention has traditionally been considered primarily a matter of domestic law and administration. Preventive tools under domestic law include cooperative compliance programmes and advance pricing agreements (APAs). However, they often require significant capacity and, in order to be truly effective, a framework

for cross-border cooperation, which is not uniformly available across jurisdictions. Other approaches, such as joint audits or simultaneous examinations, require legal instruments for exchange of information and cooperation.

19. Discussions in the August sessions confirmed that there is broad recognition of the value of prevention mechanisms in reducing the likelihood of tax disputes. Member States and stakeholders underlined the importance of strengthening preventive tools, particularly those that have already demonstrated effectiveness and proven useful in practice, such as cooperative compliance, APAs, joint audits, and simultaneous examinations. There was strong support for exploring diverse mechanisms, with many Member States emphasizing that those should accommodate a range of approaches tailored to national circumstances. Capacity-building emerged as a recurring topic, with calls for technical assistance, training, and knowledge-sharing, and transfer pricing being an area where support is particularly needed. Some Member States also stressed the importance of robust information systems to support preventive approaches, noting that the availability of timely and reliable data and its efficient assessment can help avoid tax disputes before they arise.

20. On the basis of these discussions, the proposed approach is that the protocol should provide a legal basis for cross-border administrative cooperation in tax dispute prevention. Such a legal basis could address a range of preventive mechanisms, with particular emphasis on the exchange of information as a key element to facilitate early prevention of potential cross-border disputes. Those mechanisms may include APAs, joint audits and simultaneous examinations. These mechanisms would be available to parties in line with the optionality features as outlined earlier in this note, that is, applicable in lieu of or to complement existing arrangements, with the aim of offering added value or addressing gaps. In designing this legal basis, close coordination with Workstream I should be ensured, particularly to maintain coherence with the exchange of information provisions being developed under the FC. Further consideration could be given to the potential role of the United Nations in supporting these mechanisms.

21. This proposed approach would be complemented by additional measures aimed at strengthening the effective use of preventive mechanisms. These could include, on the one hand, addressing prevention through the capacity-building commitment of the FC, and on the other, empowering the CoP to develop and recommend best practices on tax dispute prevention in order to reinforce the effective use of these mechanisms and ensure that preventive approaches remain responsive to evolving challenges and opportunities. In this way, prevention would be addressed from multiple complementary angles, combining legal provisions, capacity-building and practical guidance.

#### *d. Dispute resolution*

22. The scoping phase confirmed that the Mutual Agreement Procedure (MAP) remains the principal government-to-government mechanism for resolving disputes arising under tax treaties. However, concerns about MAP were related to the absence of an obligation for competent authorities to reach agreement, the length of time required to resolve cases, the limited access for some jurisdictions and taxpayers, and the large volume of unresolved cases. Against this backdrop, mandatory arbitration was seen by some Member States as a way to encourage timely MAP

settlements, whereas many other countries expressed caution, citing, inter alia, negative experiences in investor-state arbitration, constitutional limits, and concerns over power asymmetries and high costs.

### *Mutual Agreement Procedure*

23. Written inputs and discussions during the August plenary sessions underscored the recognition of the MAP as a central element of the dispute resolution system. At the same time, it was also stressed that MAPs have not provided a satisfactory solution for many countries. Some Member States stressed the need for significant reinforcement of that mechanism, highlighting concerns regarding time limits, effectiveness and accessibility. A number of Member States also noted the existence of bilateral treaties that do not contain a MAP provision at all.

24. Building on these discussions, the proposed approach is that MAPs could be strengthened — through both the protocol and the future development of best practices — by making them more effective and accessible. This could involve considering more flexible and realistic timeframes for the resolution of cases, recognizing that the frequently-cited 24-month target (also commonly linked to the activation of arbitration mechanisms where those exist) may be too ambitious for some jurisdictions and too long in certain tax cases. However, timeframes represent only one possible area of improvement, and further work could explore additional measures to address the underlying causes that affect the effectiveness and accessibility of MAPs. In addition, promoting transparency, information-sharing practices and capacity-building measures could help address imbalances across administrations and reinforce the overall effectiveness of MAP. In practical terms, and subject to the discussions that will shape the understanding of what constitutes a cross-border tax dispute, the protocol could include a MAP provision that may apply in situations where no bilateral tax treaty exists between two Member States or where, despite the existence of a tax treaty or other legal instrument, the parties agree to rely on the MAP provision of the protocol, either in place of their existing clause or to fill a gap where no such clause is included.

### *Arbitration and Other Mechanisms Aimed at Settling Disputes*

25. The scoping phase reflected diverging views on arbitration. Some Member States emphasized the value of mandatory arbitration, arguing that arbitration provisions create the right incentives for resolving MAP cases, noting that most cases are resolved before they actually reach arbitration. Many Member States, however, rejected it entirely due to concerns about sovereignty, power asymmetries and high costs, as well as constitutional barriers, and negative past experiences. Some Member States supported further discussions on the design of a more inclusive system of arbitration, e.g., through the composition of panels. Other approaches, in which a third party provides non-binding assistance or proposals for solutions to help parties reach agreement, such as mediation or conciliation, were suggested as more flexible options, though their suitability for cross-border tax disputes remains to be further explored. There was also a call for exploring potential institutional arrangements, including the idea of a UN-based advisory group or forum to support the resolution of tax disputes.

26. On the basis of these discussions, the proposed approach is that the protocol could provide arbitration and other mechanisms, such as mediation or conciliation, as optional tools for dispute resolution. Further consideration could be given to the design features of such mechanisms,

including the composition of panels and the cost of the procedures, and how such costs would be borne or shared among the parties. Regarding arbitration, establishing a pool of arbitrators could therefore be explored, including the requirements, the process for their selection, and the mode of appointment for particular cases.

27. An additional issue for further consideration is the potential role of the United Nations in supporting these resolution mechanisms. One possible approach could involve providing assistance to parties in order to ensure accessibility and effective use of the mechanisms. The UN could also play a facilitating role by hosting or acting as a permanent or ad hoc forum for the resolution of cross-border tax disputes, thereby providing a neutral and inclusive platform. The UN's role could also combine different functions as appropriate. The design of any such role would need to balance resource considerations, confidentiality issues and accessibility to all parties.

*e. Access to information: transfer pricing databases*

28. It has been widely recognized that information asymmetries pose a fundamental challenge to both the prevention and resolution of tax disputes. Taxpayers hold detailed knowledge of their own operations, often leaving tax administrations at a disadvantage during audits, negotiations or litigation. These asymmetries are particularly critical in the field of transfer pricing, where many countries lack access to appropriate comparable data. Commercial databases are often very expensive or provide information of limited relevance. Concerns were also raised about the credibility of information used in cost contribution arrangements and the additional challenges created when many years have passed between the transaction and its review. APAs were noted as one tool that can reduce these asymmetries by requiring taxpayers to disclose information upfront, but they are not equally available to all countries. While APAs are well established in some countries, especially developed ones, others noted the absence of a legal framework enabling the implementation of such programs. Where programs do exist, many are unilateral. Thus, the agreements may not be recognized by other jurisdictions and therefore could generate more cross-border disputes.

29. During the scoping phase, there was broad recognition of the importance of improving access to information. Member States highlighted, in particular, the value of access to transfer pricing databases to strengthen tax administration capacity, especially in countries with limited resources or experience in transfer pricing. At the same time, Member States acknowledged persistent challenges, including high subscription costs, limited regional coverage and concerns about data quality. The idea of establishing a public UN-managed transfer pricing database accessible to all Member States was raised and met with strong interest, although caution was expressed regarding the cost, governance, complexity and feasibility of such an initiative, with some countries noting that any database ultimately depends on the quality of the information populating it. An alternative proposal was to explore pooled purchasing or coordinated arrangements, whereby countries could collectively negotiate reduced-cost subscriptions to existing databases.

30. Building on these discussions, the proposed approach is to continue exploring the most efficient ways to improve access to transfer pricing databases. Further work will be required to assess the technical, financial and governance implications of any approach before concrete

proposals can be developed. Regarding the broader issue of information asymmetries, it should be noted that, over time, the application and implementation of other measures under the protocol on the prevention and resolution of tax disputes could also contribute to reducing such asymmetries, complementing these efforts.

### III. Issues for the Committee

31. As this concept note is intended to support the Committee's November 2025 discussions, it presents a set of proposals on the prevention and resolution of tax disputes. The questions below are intended to frame discussion in a way that enables delegations to provide views on the direction of work under the protocol.

32. *The Committee is therefore invited to discuss:*

*on optionality,*

*(a) whether the Committee finds appropriate the proposed approach of first elaborating a comprehensive menu of mechanisms for prevention and resolution of tax disputes, and subsequently identifying those core mechanisms which, in principle, should be available for use by all parties;*

*(b) whether the mechanisms under the protocol, including the core mechanisms, should not have a superseding effect, unless the concerned parties agree otherwise, in order to apply such mechanisms in lieu of or to complement existing ones, or in the absence of any such mechanisms;*

*(c) whether there are views on how optionality could be operationalized in practice to balance broad participation, inclusiveness and legal certainty (e.g., through prior opt-in or opt-out declarations, on a case-by-case basis, or through other modalities);*

*on scope,*

*(d) whether the Committee has views on the key elements that could help shape a definition of a cross-border tax dispute for the purposes of the protocol, and in particular, whether the following situations could fall within its scope:*

- situations involving two or more national tax law frameworks providing taxing rights over the same taxpayer, transaction or income;*
- the possibility of double taxation or double non-taxation, even if largely theoretical;*
- issues of double taxation arising from the differing application of the arm's length principle by different tax administrations in transfer pricing adjustments;*
- issues related to permanent establishment determinations, tax residence or withholding taxes arising in one jurisdiction but with implications for another*



*in relation to potential double taxation or non-taxation;*

- *differing views regarding the interpretation and application of tax related provisions in bilateral or multilateral instruments by tax administrations; and*
- *situations that meet most of the identified characteristics of a cross-border tax dispute but lack a shared legal basis, such as a bilateral treaty;*

*(e) whether the Committee could provide practical examples of cross-border tax disputes in “no-treaty” situations;*

*(f) whether, with respect to domestic disputes, the Committee supports the possibility of empowering the CoP, at a later stage, to develop and recommend optional future guidance or best practices on such matters;*

*on dispute prevention,*

*(g) whether the protocol should provide a legal basis for cross-border administrative cooperation in tax dispute prevention, and what preventive mechanisms should be addressed by such a legal basis;*

*(h) whether the Committee finds appropriate addressing prevention through the capacity-building commitment of the FC and the possible development by the CoP of best practices, or whether there are additional views or suggestions on this approach;*

*on dispute resolution,*

*(i) whether the proposed approach of reinforcing MAP through both the protocol and best practices is adequate to make it more effective and accessible;*

*(j) whether the Committee has views on the possible design features of a protocol’s MAP provision, such as measures to promote transparency and information-sharing, or other measures addressing the root causes of current limitations;*

*(k) whether the Committee finds appropriate the approach of having arbitration and other mechanisms such as mediation or conciliation as optional tools in the protocol, and whether there are views on their possible design features, including issues such as inclusiveness in the composition of panels, the non-binding nature of some mechanisms, and the conditions under which they could be applied;*

*(l) whether the Committee has views on a possible role for the UN in supporting the operation of these resolution mechanisms, including through assistance, hosting or acting as a permanent or ad hoc forum;*

*on information asymmetries and databases,*

*(m) whether Member States could share perspectives on the possible governance arrangements of a potential UN-managed database, including questions of financial implications, management responsibilities, participation of Member States, and*

*safeguards for data confidentiality and integrity;*

*(n) whether other types of databases could be considered, such as databases compiling bilateral APAs or MAP cases.*