

**Outline Subject 2:
Practical Approaches to International Tax Dispute Avoidance and Resolution**

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A. Introduction

Avoidance and efficient resolution of tax disputes is a matter of critical concern to both corporate taxpayers operating globally, who wish to achieve tax certainty and minimize exposure to double taxation, and tax authorities focused on tax compliance. The volume of cross-border disputes continues to rise and with the rapid development of new business models and implementation of BEPS and other anti-abuse measures, interest in effectively addressing disputes is bound to grow commensurately. The purpose of this report is to provide a comprehensive, comparative assessment of mechanisms currently¹ in use around the world for avoiding and resolving tax disputes; briefly put, what works and what does not and why?

The scope of branch reports will be limited to direct tax (focus on corporate income tax) in the cross-border situation, e.g., tax residence, PE, transfer pricing matters. Reporters will be asked to comment briefly on whether, and to what extent, investment treaties are used to resolve tax disputes. The scope is intended to be broad - it will however be advisable to be very brief regarding the more generally available mechanisms, and more detailed with respect to more unique mechanisms. Proportionality will be critical in drafting response reports. With respect to each specific mechanism, the description should focus on practical considerations, such as legal/procedural requirements, scope, resources required, and the like. Reporters are requested to add relevant articles, reports etc., both to underpin their evaluations and to enable a more in depth-analysis by the General Reporters.

Available mechanisms will in the forthcoming more detailed Directives be addressed in three groupings: (a) those available in the pre-dispute phase; (b) those available in the dispute phase; and (c) environmental and other characteristics facilitating avoidance or resolution of disputes, such as internal tax authority and taxpayer risk assessments. With respect to each mechanism, branch reporters should enumerate pros, cons, and opportunities for improvement. In view of grouping (c) above, it is strongly recommended that the branch pursue a “dual reporting” approach, to include a private practitioner reporter and a policy-oriented reporter,

¹ Reporters are not asked to speculate regarding dispute resolution mechanisms not currently in use, e.g., mechanisms that may be recommended as part of the OECD’s digital economy project.

such as a government official or former official with knowledge of tax authority programs or procedures. EU mechanisms will be the subject of a parallel report(s) and branch reporters will only be asked to comment on any local experience with those mechanisms.

B. Prior IFA Work on Related Topics

Interesting prior work has been conducted by IFA on some elements of the current topic, but no such broad, practical evaluation has yet been undertaken. In the Directives references to such previous work will be included for the reporters both to compare current circumstances with prior analysis, but also as a general reference for potentially relevant considerations for their reports. Examples from the IFA Cahiers include:

- 1980 nr. 65A The Dialogues between the Tax Administration and the Taxpayer up to the filing of the tax return
- 1981 nr. 65A Mutual Agreement Procedure and Practice
- 1999 nr. 84B Advance Rulings
- 2015 nr. 100B The practical Protection of Taxpayers' Fundamental Rights
- 2016 nr. 101A Dispute Resolution Procedures in International Tax Matters

The Directives will obviously at the appropriate places also contain references to relevant recent tax literature.

C. Structure of the Reports

Reports should begin with a very brief, high-level description of the corporate income tax compliance system in the jurisdiction, as it may apply to international tax matters, including where appropriate and relevant to the scope of the Report: (1) legal framework; (2) organization of tax authority; (3) size of any tax treaty network; (4) filing/assessment procedures; (5) audit selection/process; (6) admin/pre-litigation remedies; and (7) court system.

Reports should then include a **concise discussion of mechanisms** available during the pre-dispute and dispute phases, both domestically and internationally, both formally and informally, and under any applicable tax conventions, and also under investment treaties to the extent specifically requested in forthcoming branch report Directives.

The discussion of mechanisms available in the **pre-dispute phase** should be divided into two sections, the first laying out the purely *domestic* options, and the second describing available *cross-border* procedures, if any. Domestic options would include, for example, procedures for advance (unilateral) pricing agreements, "collaborative compliance" measures, such as pre-filing (real time) audits, and elevation within the tax authority management structure. International "cross-border" options may include interpretative clarifications under the mutual agreement procedure of a tax treaty, bilateral advance pricing agreements, and bi- or multi-lateral dispute avoidance programs, such as mediation, arbitration, and the International Compliance Assurance Program ("ICAP"). The discussion of remedies available in the **dispute phase** should be similarly organized. Examples of domestic dispute avoidance mechanisms are administrative appeals (within the tax authority), judicial review, and mediation. Cross-border dispute resolution options could include mutual agreement procedures or arbitration under tax treaties.

The report should, where feasible, include a third grouping, briefly described above, that addresses mechanisms not covered in the pre-dispute and dispute phase categories, specifically including any mechanisms or institutional procedures or approaches that are primarily internal to the tax authority, such as cross-functional consultations, audit manuals or other compliance training, risk assessments, periodic progress reporting, or the like; or internal to MNEs headquartered in the jurisdiction, such as risk mitigation infrastructure or public reporting requirements. Any relevant pending legislative or regulatory initiatives should also be included.

Assessments of specific mechanisms should be based in the following practical criteria (by way of example only), to the extent applicable:

- Legal and other requirements and procedural or substantive conditions or limitations
- Typical level of cross-border tax expertise of parties involved
- The extent to which the taxpayer and/or its advisers have the right or are permitted to participate in the process and to what extent the process is transparent to the taxpayer
- The costs involved, both absolute and relative to the amounts in issue
- Legal status of the outcome, for example and in particular, the enforceability of MAP resolutions

As appropriate, reports should include a brief evaluation of the pros and cons of the most commonly-used mechanisms discussed, or any other observations, recommendations or reference to pending developments, such as proposed legislation. These could be included as part of the discussion of each mechanism, as above, and/or incorporated in an overall assessment of the options available in the branch.

We look forward to co-operating with the branch reporters, where possible in sessions at future IFA Congresses, or online, to answer questions or to discuss draft reports before the final reports are submitted.