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**Committee of Experts on International  
Cooperation in Tax Matters  
Sixteenth Session**

New York, 14-17 May 2018

Item 3 (c) (v) of the provisional agenda\*

**Dispute Avoidance and Resolution**

**MUTUAL AGREEMENT PROCEDURE—  
DISPUTE AVOIDANCE AND RESOLUTION**

**Introduction**

At the sixteenth session of the Committee in October 2017, the work of the previous membership of the Subcommittee on the Mutual Agreement Procedure — Dispute Avoidance and Resolution (the previous Subcommittee) was put before the Committee. It had been previously recognized that there was a lack of sufficient guidance on how to conduct the mutual agreement procedure; how to conduct other dispute resolution mechanisms within the mutual agreement procedure context, including arbitration, which was incorporated into the 2011 update of the Model Convention as an option; and how to avoid disputes arising. The previous Subcommittee had been created in 2015 against this background and had begun the work of updating the Guide to the Mutual Agreement Procedure under Tax Treaties agreed by the Committee in its eighth session in 2012 (“the Guide”) and on drafting a handbook on dispute avoidance and resolution (“the Handbook”).

The Committee approved setting up a Subcommittee to continue this work, jointly coordinated by Mr. Cezary Krysiak and Mr. George Obell and with the following mandate:

The Subcommittee should consider and report back to the Committee on possible means of dispute avoidance and resolution, on both the domestic and international level. In particular, the Subcommittee will consider the Mutual Agreement Procedure, with a view to improving its effectiveness, building on the work done by the previous subcommittee. Particular attention will be paid to:

- Mechanisms to avoid and resolve disputes arising at the domestic level;

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\* E/C.18/2018/1

- Ways to ensure that the Mutual Agreement Procedure under article 25 (in either of its alternatives in the United Nations Model) functions as effectively and efficiently as possible; and
- Issues associated with arbitration clauses and other means as options to supplement the Mutual Agreement Procedure.

Following work on these areas, the Subcommittee will produce the following outcomes:

- A draft United Nations Handbook on Dispute Resolution and Avoidance;
- A draft updated text of the United Nations Guide to the Mutual Agreement Procedure;
- Drafts of possible changes to the United Nations Model Convention and/or Commentaries, as appropriate.

The Subcommittee is to focus especially on issues affecting developing economies, possible means of addressing them in a practical manner and ways to build confidence in dealing with them. It will provide recommendations to the Committee within its agreed mandate, on improvements, if any, for inclusion in the next version of the United Nations Model. The Subcommittee should work on the United Nations Handbook on Dispute Resolution and Avoidance and an update to the Guide to the Mutual Agreement Procedure as a priority

The Subcommittee notes that the reference in the Mandate to “United Nations Handbook on Dispute Resolution and Avoidance” should preferably read “United Nations Handbook on Dispute **Avoidance and Resolution**” and requests the Committee to consider making such a change.

### **The Membership of the Subcommittee**

The Membership of the Subcommittee is at present: Cezary Krysiak (Poland) (Co-Coordinator); George Obell (Kenya) (Co-Coordinator); Stephanie Smith (Canada); Mitsuhiro Honda (Japan); Aart Roelofsen (The Netherlands); Sing Yuan Yong (Singapore); Jorge Antonio Deher Rachid (Brazil); Marlene Patricia Nembhard-Parker (Jamaica); William Babatunde Fowler (Nigeria); Rajat Bansal (India); Ingela Willfors (Sweden); Eric Nii Yarboi Mensah (Ghana); Yan Xiong; Jeffrey Owens (WU-Global Tax Policy Center) (Austria); Cym Lowell (ICC) (USA); Norbert Roller (World Bank) (Austria); Jan J.P. de Goede (IBFD) (The Netherlands); Sandra Knaepen (OECD); Ria Sotiropoulos (Barrister) (Australia); Susana Bokobo (Repsol); Christophe Waerzeggers (IMF); Carol A Dunahoo (Baker & McKenzie); Edson Uribe (Mexico); Sharon Katz-Pearlman KPMG (USA); Emilio Herrera (Ecuador) Lee Harley, HMRC (UK); Marlies de Ruiter (EY) (Netherlands); and Armando Lara (Mexico).

### **First Meeting of the Subcommittee**

The first meeting of the Subcommittee was very effectively hosted by PRODECON, the Mexican Tax Ombudsman Agency, on 22-23 January, 2018 in Mexico City. The meeting advanced existing draft texts of the Handbook. It also agreed to propose to the Committee an approach to avoid possible overlap between Chapter 5 of the Handbook on the Mutual Agreement Procedure on the one hand and the proposed Guide to the Mutual Agreement Procedure (the update to the 2012 Guide to the Mutual Agreement Procedure under Tax Treaties).

In this respect it proposed that the first part of Chapter 5 of the Handbook will cover any preliminary issues to a country committing to MAP procedures that may not be included in the Guide to the MAP. The rest of the Chapter will comprise the Guide to the MAP, based on the 2012 guidance, but elaborated and with more examples, sample documents and the like. Thus, the Guide will form both a stand alone practical guidance on MAP and the major part of Chapter 5 of the Handbook more generally.

### **Overview of the Subcommittee Work and Guidance Sought**

The drafts of the Handbook Chapters are at various stages of readiness, but are provided as Attachments to this paper. The drafts do not seek to represent consensus decisions of the Subcommittee, and will still be subject to considerable, though varying amounts, of redrafting before their presentation for a section-by-section consideration by the Committee. It is projected that this more intensive “read-through” will be first sought, for some chapters at least, at the October 2018 session of the Committee. It is noted that some potentially useful suggestions could not be fully evaluated in the time available, so are therefore not included in the attachments. They will be considered further at the next meeting of the Subcommittee expected to be held in Vienna from 9-10 July 2018.

With that said, any suggestions on either broader or more specific points from the Committee would be extremely valuable to the Subcommittee, especially for the July meeting,

As noted above the Subcommittee also asks the Committee to:

- Approve the alteration of the reference in the Handbook from “United Nations Handbook on Dispute Resolution and Avoidance” to “United Nations Handbook on Dispute **Avoidance and Resolution**”; and
- Approve the approach proposed approach to integrating the Guide with Chapter 5 of the Handbook.