

(Draft 17 April 2018)

UN Handbook

Chapter 1: Introduction and Overview

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1.1: Introduction

1. Tax authorities are adapting their enforcement strategies and policies in response to the changing dynamics of business and the need to make sure that the business pay the right amount of tax, in the right place and at the right time. They are developing better compliance tools and processes and enhancing their capacity to ensure that their limited resources are being applied to the right issues with taxpayers. They are also sharing more information with their foreign counterparts, becoming more sophisticated in their analysis, sharpening their enforcement tools and developing new legislations to help them collect tax revenues. One of the side effects of these activities has been more frequent and more complex disputes between tax payers and tax authorities and between tax authorities from different countries. A trend that it is now beginning to emerge is that these disputes are not only between developed countries but also developing countries.

2. Cross-border disputes have drawn considerable attention from the business and government since unresolved tax disputes and unrelieved double taxation can act as significant barriers to international investment and development. The traditional ways of resolving disputes in the tax area is to use the Mutual Agreement Procedure (MAP), which is found in Article 25 of UN and OECD Model Conventions and which is incorporated in some form in the vast majority of bilateral treaties around the world. Due to efforts at country level and of the UN and the OECD, the MAP experience has significantly improved overall in recent years, both in terms of the reducing the time taken to resolve disputes and in reaching agreements between competent authorities based upon internationally accepted rules.

3. A tax treaty is a legal binding official agreement between two countries (“Contracting States”) the primary purpose of which is the prevention of the international double taxation that may arise when a specific transaction or

taxpayer is subject to tax under the domestic tax laws of both Contracting States. Such double taxation discourages the free flow of international trade and investment and the transfer of technology, all of which play important complementary roles in the economic development process.

4. A tax treaty seeks to prevent international double taxation by providing for a uniform allocation of taxing rights with respect to specific classes of income between the residence State (that is, a taxpayer's State of residence) and the source State (that is, the State where the relevant income is considered to arise). A tax treaty will further provide a method through which double taxation will be eliminated by the resident State in situations in which the treaty permits both the residence State and the source State to tax an item of income.

5. For example, the interest Article of a tax treaty may permit interest arising in one Contracting State and paid to, and beneficially owned by, a resident of the other Contracting State to be taxed in both these States, with the tax charged in the source State limited to an agreed-upon rate. Double taxation is then eliminated by the relief from double taxation Article (Article 23 of both the UN and OECD Model Conventions), under which the residence State will generally allow a deduction or credit against its tax for the tax paid to the source State, to the extent that the source State properly taxed the interest income under the treaty.

6. In certain cases, however, international double taxation may arise even where there is a tax treaty between two countries. Such double taxation may result, for example, from the incorrect application of the treaty by one of the Contracting States, or from differing views between the Contracting States (e.g. with respect to the relevant facts or the characterisation of an item of income under domestic law) as to how the treaty should apply in a particular situation or context.

7. In order to resolve such issues, tax treaties typically provide for a mutual agreement procedure along the lines of what is provided for in Article 25 of the UN Model. Essentially, the negotiation of an agreement pursuant to the MAP is a government-to-government process.

8. The MAP is the mechanism that Contracting States use to resolve any disputes or difficulties that arise in the course of implementing and applying the treaty. The MAP thereby ensures that these disputes will not frustrate the treaty's goal of preventing international double taxation. In order to achieve that goal, the competent authorities should make every effort to reach a timely agreement on each issue submitted to the MAP.

9. Despite recent improvements in MAP, there is now a wide spread feeling that more needs to be done, partially because one of the side effects of the G20 / OECD Base Erosion Profit Shifting (BEPS) project is likely to be a significant increase in disputes between countries. Even before the final BEPS recommendations were issued, more than thirty countries had already implemented BEPS related measures and there remain divergent opinions on how to apply some of these actions.

10. These differences of views, at least on the short to medium terms, will likely lead to more disputes between businesses and governments and it is questionable whether the existing MAP processes will be able to deal with these disputes in a timely and effective manner.

1.2 The need for greater tax certainty

1. Governments recognize that they must make every effort to reduce tax uncertainty in a world which is characterized:

- **Political uncertainty:** with the rise of emerging markets and the spread of political conflicts in different parts of the world.
- **Economic uncertainty:** although countries are emerging from the Great Recessions, sustainable growth remains fragile, financial markets largely unstructured and commodity markets continue to be volatile.
- **Digital disruption:** as the pace of the new technology accelerates and the threat of new technology intensifies replacing workers with robots, there is a risk that developing countries may bypass the traditional stage of industrialization which in the past has generated a vast market for manufacturing workers.

2. This is the context in which the UN Committee on Taxation decided to launch its work on tax dispute avoidance and resolution.

3. Emerging and developing economies have made major strides in recent years to develop their expertise on domestic and international taxation issues, but are still in need of capacity building measures. There is a consensus that existing domestic dispute resolution processes are costly and that unilateral actions can create tax uncertainty, particularly where there is a failure to alleviate double taxation. Unilateral actions by tax authorities can lead to double taxation and domestic resolution processes can be expensive, and do not always resolve bilateral or double taxation matters.

4. Sustainable and inclusive growth, especially in developing countries, critically depends on domestic and foreign investment. Such investment requires a predictable and consistent approach to taxation. This in turn requires expertise in tax administrations in examining and evaluating the tax returns of companies and individuals conducting business, assuring that appropriate levels of tax are being paid and collected. Dispute avoidance and resolution mechanisms can contribute significantly to providing a predictable, consistent and understandable tax regime.

5. In order to minimize disputes, both companies and tax authorities will need to adapt. Companies, especially large multinationals (MNES), have to become more transparent, more open, more prepared to explain their business models and tax strategies to the tax authorities, and more willing to follow the spirit and the letter of the law. Tax administrations will have to be prepared to be more transparent and open regarding their policies and expectations and how they will respond to and, as appropriate apply, the new rules that have emerged from the G20 OECD / BEPS initiative and have been widely picked up since. This is against a background that the design of a country's tax system must reflect its current economy and political environment in a consistent and fair way to deal with sensitivities that countries are not bound to the BEPS outcomes unless they bind themselves to them, and most binding is to a minimum package.

6. Disputes between countries can arise either because of different interpretations of tax treaties or by factual problems (e.g., due to a lack of information) or legal problems (e.g., different domestic legislation.) In order to resolve these issues, Art. 25 of the UN and OECD Models Conventions provides for Mutual Agreement Procedure. Tax administrations in developing, and even some developed countries sometimes lack the experience and resources needed to deal with MAP, which was not always seen as a priority despite being an integrated part of their treaty commitments. It might be the case that the authorities lack the qualified staff or that the competent authorities are too closely connected by the audit authority.

1.2.7. In 2008 an arbitration provision was added to both the UN and the OECD Models, as an optional component of MAP, since MAP in its more traditional form was perceived by some countries as not always achieving the elimination of double taxation. Countries remain divided on the merits of such a provision, as noted below, but the inclusion shows a recognition of the need to try to improve the operation of MAP more generally.

1.3 The Impact of BEPS on Tax Disputes

1. In 2013, the OECD in conjunction with the G20 launched the BEPS project to address the growing concerns that governments were losing substantial corporate tax revenues because of the aggressive tax planning and that domestic and international rules on the taxation of cross-border profits were not “fit for purpose”. The BEPS report identifies six pressure areas that needed to be addressed in order to limit the opportunities of profit shifting. As a second step, the OECD issued an action plan defining topics that would be addressed. Each topic was assigned a separate action and schedule for completion. The first set of Actions were completed in 2014 with the OECD publishing reports with recommendations for a coordinated international approach to combating base

erosion and profit shifting. A series of clarifying reports were issued between 2014 and 2018.

2. Most of these actions have a substantial impact on the application of tax treaties, which required changes in the wording of the articles of the OECD Model, including its commentaries. The 2017 UN Model adopted many of these changes as useful for developing as well as developed countries. Tax payers and tax administrations will need time to adjust to these profound changes. In the interim, there will be a period of high uncertainty with some tax administrations applying a very strict approach and tax payers challenging this, leading to numerous disputes. The problem will only be compounded by the different interpretation between individual countries and the way some countries have already put in measures which go beyond the BEPS recommendations.

3. Some commentators have predicted that the BEPS project will lead to an increase in international disputes. They have noted the inconsistency between the proposals to address the tax challenge of the digital economy and those addressing transfer pricing aspects of the intangibles and the exceeding complicated proposals to address hybrid mismatch arrangements as well as the fact that in order to achieve consensus, several equally acceptable solutions have been presented for some issues. Moreover, the old tensions concerning the allocation of taxing rights between source and residence countries have resurfaced and have led to attempts to use the BEPS project to address this balance. The International Chamber of Commerce caution that in the absence of an enhanced disputes mechanism, there is a risk of double taxation. The G20 / OECD were aware of these risks, which is why they decided to address these concerns by means of Action 14 of the BEPS Action plan, that specifically deals with such issues. A Final Report on Action 14 was released in October 2015 as part of the second set of deliverables and encourages participating countries to address obstacles that prevent them from resolving the tax-related disputes under MAP. The main goals of BEPS Action 14 are:

1. Countries should ensure that treaty obligations related to MAP are fully implemented in good faith and that MAP cases are resolved in a timely manner;
2. Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes; and
4. Action 14 of the BEPS project sets out recommendations on how countries should improve MAP. To ensure this goal is met, the G20/OECD created a monitoring process in the form of a MAP Forum under the FTA which has responsibility for the peer reviews. Today there are more than 110 countries that have committed to this peer review process.

5. In 2017, the UN Tax committee analyzed the changes proposed as a result of the BEPS Actions for the OECD Model and agreed on inserting many of these changes into the 2017 version of the UN Model. The Committee also agreed on which changes would not be incorporated, but subject to an ongoing debate within the Committee, which it is expected in some cases will lead to additional modifications to the UN Model. This Handbook will assist in the Committee's review of these changes.

1.4 Existing Disputes Mechanisms in Tax Treaties

1.4.1 Mutual agreement procedure

1. In an international context it can be said that in order for a dispute to arise, a conflict regarding the interpretation or application of a treaty needs to occur. The use of provisions found in the UN and OECD Model Conventions, with their detailed Commentaries will help reduce the scope for such disputes, but will not eliminate them. Other reasons for conflicts to occur might be a different appraisal of the facts related to the case or treaty interpretation biased by national legislation and against the principle of good faith.

2. There are various mechanisms for dispute resolution at the international level, both for tax and non-tax disputes. Some of the most prominent measures for settling tax disputes are those found in DTCs and the EU Arbitration Convention (see section 2.4.1.). Of these, the MAP still remains the key tool for resolving treaty-related disputes. MAP is included in the equivalent to article 25 of almost every DTC following the OECD or UN Model and provides guidance for the development of a process between tax administrations to eliminate double taxation. The MAP can be used to eliminate economic or juridical double taxation.

3. The importance of the MAP stems from the fact that it provides taxpayers with an alternative to tax litigation, which can be cumbersome and uncertain, especially since it needs to be taken up in both of the contracting states in order to provide an effective relief for double taxation. It also entails a timing advantage, since the taxpayer is not obliged to wait until the taxation has been charged or notified to him in order to set the procedure in motion. It is sufficient if he establishes that the actions of one or both contracting states will probably result in taxation not in accordance with the Convention.

1.4.2. UN Model Convention

1. The UN Model contains two provisions dealing with MAP. Article 25 A and 25 B mostly reproduce the text of the OECD Model. Paragraphs 1 to 3 of Article 25 are identical in all three provisions. Also, the first sentence of article 25(4) is identical, while the second sentence of the UN Model provisions is not contained in the OECD Model. It deals with the implementation of the MAP and allows the competent authorities to develop bilateral procedures for that purpose. This does not constitute a substantial deviation, since it only spells out the possibility entailed in both Model Conventions. Additionally, the Commentary on the UN Model contains suggestions regarding certain

procedures that can be implemented by competent authorities. This Section C of the UN Commentary deals with procedural aspects that are especially pertinent for developing countries and suggests procedural rules concerning, for instance, the information that could be required of the taxpayer upon submission of its MAP request. The UN has also released a MAP Guide as part of its capacity-building initiative. While the Guide is based on the OECD's MEMAP, it pays special attention to the needs of developing countries and is tailored to the specifics of the UN Model.

1.4.3. OECD Model Convention

1. Under Article 25 of the OECD Model, three different types of procedures are envisioned.

2. First, Article 25(1) of the OECD Model (MAP in a “narrower sense”) provides for relief of double taxation not in accordance with the double tax convention. Only the taxpayer may initiate this type of proceedings, if he believes that taxation is not or will not be in accordance with the tax treaty. This is the most common type of procedure. The taxpayer-initiated MAP under the OECD Model is divided into two stages. Pursuant to article 25(1), a taxpayer may submit a request to the competent authority in his residence state if he considers that the actions of one or both contracting states have resulted in taxation not in accordance with the provisions of the convention. This constitutes the first stage of the MAP and takes place exclusively between the taxpayer and the requested competent authority. The competent authority is obliged to take the objection into consideration and, if it is justified, to take action. If the taxation not in accordance with the convention is due entirely to its actions, then it must remove the grounds for objection by granting an adjustment or relief. Should it not be able to arrive at a satisfactory solution on its own, because the issue is caused, at least in part, by the actions of the other

contracting state, then it must initiate the second stage of the proceedings, the MAP proper, as soon as possible. The second stage of MAP takes place exclusively between the competent authorities of the contracting states. One of the weaknesses of this stage is that the competent authorities are only required to negotiate and it is not mandatory to reach an agreement to eliminate double taxation.

3. Article 25(1) sets a time limit of 3 years from the notification of the action for the submission of the request. This is intended to protect tax administrations against late objections and must be regarded as a minimum requirement. The mutual agreement reached is binding on the competent authorities and must be implemented into domestic law. Since the obligation to implement the agreement is clearly stated in article 25(2), domestic law cannot provide a justification for a failure to implement the agreement.⁴⁴¹ While article 25(1) stipulates that access to MAP is available “irrespective of the remedies provided by domestic law”, in practice this may not always occur. As the OECD Commentary points out, most countries adopt a practical approach pursuant to which the MAP and domestic remedies cannot be pursued simultaneously. If the domestic procedures are still available, the taxpayer must first exhaust them or agree to waive his right to them. If the domestic remedies are pursued first, then a MAP can only be pursued in order to obtain relief in the other state. This greatly restricts the scope of application of the MAP and its attractiveness to taxpayers suffering from double taxation.

4. Second, article 25(3), first sentence, provides that MAP can be used for removing difficulties regarding the interpretation or application of the DTC. The competent authorities are free to initiate proceedings in order to eliminate difficulties concerning the interpretation and application of the treaty as well as double taxation. This applies to legal as well as factual matters of a general nature that concern a category of taxpayers. More precisely, it allows the

competent authorities to complete or clarify the definition of a term in the convention, settle difficulties arising from changes in national law and determine factual issues, for instance, the conditions under which interest may be treated as dividends as a result of domestic thin capitalization rules.

5. Third, Article 25(3), second sentence, allows tax authorities to consult together in cases of double taxation not provided for in the Convention. This category extends beyond the interpretation or application of the convention. Some countries exclude this type of MAP from their bilateral tax treaties because of incompatibilities with domestic law.

6. The second and third types of MAP are usually related to issues of a general nature and may be initiated by the competent authorities. As is the case for a taxpayer-initiated MAP, the agreements reached under article 25(3) are binding.

7. While working on the improvement of the existing international tax dispute procedures, which eventually led to the inclusion of the arbitration clause into the 2008 OECD Model as an option,^[54] the OECD also developed the Manual on Effective Mutual Agreement Procedures (MEMAP). The MEMAP is intended to increase awareness of the MAP process and its desired functioning by providing tax administrations and taxpayers with basic information on the operation of MAP as well as a set of best practices. It is aimed at resolving the most common problems occurring in the context of MAP. Although MAP does not impose binding rules on competent authorities in the view of some commentators, it cannot ensure an increase in the effectiveness of the proceedings. The efficiency of the MAP ultimately depends on the willingness of the contracting states to improve it and their domestic capacities and resources.

8. As the number of tax disputes is steadily increasing, the OECD has launched several other initiatives in order to make the MAP more accessible. It provides statistics for each country on the number of MAPs initiated and completed and country profiles detailing the contact information for the competent authorities and the procedural requirements for filing a MAP as well as the applicable guidelines and legislative provisions, among others.

9. The OECD has recognized this threat and proposed Action 14 of BEPS Action plan encourages countries to move towards a more effective MAP. In 2017 in that context, the Forum on Tax Administration MAP Forum (FTA MAP Forum) agreed:

Statement of Vision and Commitment

“The competent authorities participating in the FTA MAP Forum recognize that the purpose of the mutual agreement procedures, and thus the central mission of the competent authorities, is to ensure that the principles embodied in our global network of tax conventions are properly applied to minimize to the fullest possible extent incidents of double taxation, unintended double non-taxation and taxation otherwise not in accordance with the provisions of applicable tax conventions. It is the vision of all MAP Forum participants that the effectiveness of our mutual agreement procedures should be collectively improved in order to meet the needs of both governments and taxpayers and so assure the critical role of those procedures in the global tax environment, and that this can best be accomplished through the collaborative work of the MAP Forum in accordance with this Multilateral Strategic Plan.”

1.4.4. Some common features of the UN and OECD Models

[To be re-worked and elaborated] 1. Both the OECD and the UN Commentaries address the issue of taxpayer rights and state that it is the duty of the competent authorities to give taxpayers whose cases are brought before the joint commission essential guarantees, namely the right to make oral or written representations and the right to be assisted by counsel. Nevertheless, the Commentaries do not require that taxpayers be granted access to the documents of the case.

2. The intention of both Models is to provide broad access to the MAP, which is why the Commentaries specify that there is no general rule denying taxpayers the right to request a MAP in situations perceived as abusive. Even for severe violations of domestic law, the circumstances in which the contracting states wish to restrict access should be made clear into the bilateral treaty. However, in practice, the use of the MAP is often restricted due to constitutional and other domestic law provisions. For instance, final court decisions, to which the tax authorities are obliged to adhere by virtue of the constitution, could prevent them from granting relief. As the Commentaries to the two Models point out, it is a generally recognized principle of international law that even constitutional domestic law does not justify the failure to meet treaty obligations. Moreover, the terms of the convention itself generally do not provide grounds to justify the denial of access.

1.5 Changes to the UN Model deriving from the Report on BEPS Action Plan 14

In 2017, the Committee analyzed each of the changes related to BEPS Action 14 that were made to the OECD Model. It concluded that it was

necessary to examine these changes in order to ensure that quotations included in the UN Model correctly identify the relevant paragraphs of the OECD Model. It agreed that a number of changes proposed to the OECD Model are relevant for the UN Model and provide useful clarifications or additional explanations: The 2017 version of the UN Model now includes the changes to the Commentary on the UN Model that resulted from that analysis. It also includes a number of changes that could either be made to the Commentary on the UN Model or incorporated into the UN Guide to the Mutual Agreement Procedure.

1.6 The Position of Emerging and Developing Economies

1. This Handbook is intended to assist developing and developed countries to minimize cross-border disputes and when they arise, to resolve them in an effective and principle fashion, thereby implementing their commitments in the tax treaties they have signed. The Committee recognized that developing countries do face specific challenges in this area, namely:

- Many of these countries have limited tax treaty networks and therefore do not have access to MAP;
- Most of them have limited resources that they can devote to MAP and other dispute resolution mechanisms; and
- Very few have any practical experience with non-binding dispute mechanisms or MAP and even fewer with arbitration.

2. Some developing countries perceive MAP to be a “black box” and may therefore give a low priority to MAP because of a lack of confidence in the integrity of the process or a feeling that they are better able to resolve cross-border disputes outside of the MAP framework. Yet this situation is beginning to change:

- Governments in emerging and developing economies are increasingly competing by means of their tax system for foreign direct investment and

recognize that effective cross border dispute mechanisms can be a way to provide certainty to investors, which in turn improves the business climate;

- An increasing number of cross-border tax disputes are arising between developed and developing countries and between developing countries themselves;
- Many emerging and less developed economies have signed up to the G20 / OECD inclusive framework which includes a commitment to implement three MAP “minimum standards” in the BEPS Action 14 outcomes. These countries are already expected to abide by these standards and will eventually be subject to a peer review to ensure they implement them consistently.

3.

1.7 The Conceptual Framework of the Handbook

1. At the outset of its work the Subcommittee on Dispute Avoidance and Resolution decided to adopt a broad approach to its mandate (see Box I.) on dispute avoidance and resolution, building upon the work it had previously undertaken on MAP and in particular the Committee’s GMAP manual and its work on the Transfer Pricing Manual which has a Chapter on dispute resolution. The Subcommittee felt that prior to addressing mechanisms to resolve cross border disputes it was essential to analyze why disputes arose in the first place and the mechanisms available at the domestic level to resolve them. In undertaking this work the Subcommittee was able to draw upon the rich experience of both developed and less developing countries in using domestic mechanisms to minimize disputes and different approaches that had been adopted to resolve cross border disputes at the national level, ranging from audit and litigation to the use of tribunals, tax ombudsmen and other alternative

dispute resolution mechanisms, including non-binding dispute resolution processes.

Box.1: The Mandate of the Subcommittee on Dispute Avoidance and Resolution

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;
- Ways to ensure that the MAP procedure under Article 25 (in either of its alternatives in the UN Model) functions as effectively and efficiently as possible; and
- Issues associated with arbitration clauses and other means as options to supplement MAP.

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

- A draft UN Handbook on Dispute Resolution and Avoidance;
- A draft updated text of the UN Guide to MAP;
- Drafts of possible changes to the UN 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 UN Model. The Subcommittee should work on the UN Handbook on Dispute Resolution and Avoidance and an update to the Guide to MAP as a priority

2. Nevertheless, the main focus of the handbook is on how countries can use the MAP more effectively to resolve cross border disputes. Here the UN Tax Committee was able to draw upon its past work as set out in its 2008 GMAP which has been updated and is now incorporated in to chapter 5 of this handbook. Early in its work the Committee realized that there are specific issues that emerging and developing countries face in this area. The Committee examined what has been the experience to date of these countries with MAP,

what type of disputes do they typically encounter and why do so few of the countries have any experience with MAP at all.

3. At the outset of its work the committee felt that it was appropriate to have an in-depth discussion of mandatory dispute mechanisms, what is commonly referred to as mandatory arbitration. Even though many OECD and non-OECD countries remain hesitant about engaging in mandatory dispute settlement, it is important that as far as possible countries, whatever their position on the relevance of mandatory arbitration to their situations, should have a shared understanding of how arbitration operates in practice. The UN guidance for those countries that wish to include arbitration in their tax treaties, including how they should go about designing such a clause, should be helpful in this respect. This will enable a considered approach to an often difficult question, without either preferencing or else discouraging arbitration clauses.

4. In examining dispute resolution mechanisms more generally, the Committee felt that it was appropriate to look at what has been the experience with dispute resolution mechanisms in non-tax agreements, especially in the areas of investment and trade. The discussions in the Committee showed that there are both positive and negative lessons that can be learnt from the way in which these dispute mechanisms operate, both in terms of substantive clauses and the institutional framework. [The Committee intends to continue its discussion in this area and in particular to examine in more depth how taxes are treated in these non-tax agreements. *Guidance to be sought on extent to which handbook should have an awareness raising role on coverage/ non coverage of taxes by trade and investment treaties*]

5. Throughout the handbook there is extensive use made of practical case studies since this provides a “hands on” experience for countries that may have little expertise in dispute resolution mechanisms. Annexes to the relevant

chapters provide standard forms and practical guidance on how to go about initiating a MAP and implementing the outcomes.

6. It is not the intent of the handbook to set firm recommendations that would apply across a wide range of countries, since it was recognized that countries have to adopt the approach which is best suited to their own political, economic and institutional environment. Nevertheless, it is hoped that by identifying good practices countries will be able to better evaluate their options and their pros and cons, and to move forward in both minimizing disputes at the domestic level and in resolving them at the international level.

1.8 The Outline of the Handbook

1. The handbook is structured around 9 chapters, beginning with a discussion on what countries can do at the domestic level to avoid tax disputes arising (Chapter 2) ranging from redesigning performance appraisal methods for tax officials to looking at new ways (e.g., cooperative compliance programs) of changing the dynamics of the relationship between tax authorities and tax payers. Chapter 3 then explores the mechanisms used by tax administrations at the national level to resolve disputes, examining the use of litigation processes, as well as mediations and settlement mechanisms.

2. At the outset of its work, the Committee undertook research of the experience on the less developing countries on cross-border disputes and the results are reproduced in Chapter 4. Chapter 5, is very much at the core of the Handbook, examines the operation of MAP. The chapter examines the legal basis for MAP, the different approaches to MAP in both UN and OECD Models, the role of the competent authority and tax payers and pays particular attention to the need to improve the capacity of emerging economies to engage in MAP. This chapter updates the Guidance provided in the Committee's GMAP and a

large part of the Chapter is in fact the GMAP, having both a role as an important part of any consideration of the MAP as a dispute resolution measure and a role as a “pop-out” and self contained practical guide to actual conduct of MAP proceedings. Chapter 6 analyzes the use of none-binding disputes mechanism as a supplement to MAP, describing how countries that may wish to do so can you use this approach. Chapter 7 examines in detail the current approach to mandatory dispute settlement (MDS, Arbitration) as set out in the UN and OECD Article 25 and the OECD MLI’s instrument. The chapter is in two parts: an in-depth discussion of how arbitration works in practice; secondly, some guidance for those countries that wish to introduce arbitration into their tax treaties on how they can go about designing the arbitration provision so that they can best fit in their economic, political and administrative structure. The chapter does not take any position on whether or not a country should adopt arbitration since it is a sovereignty decision for each country.

3. A concluding chapter sets out the main action suggested by the Handbook that countries may wish to consider as they go about improving the effectiveness of their dispute minimization mechanisms and resolution instrument.