
**Committee of Experts on International
Cooperation in Tax Matters
Twenty-first session**

Virtual online meetings of 20 to 29 October 2020

Item 3 (f) of the provisional agenda

Dispute avoidance and resolution

**Draft Chapter 1 (Introduction and Overview) of the Handbook on
Avoidance and Resolution of Tax Disputes**

Note by the Secretariat

Summary

This note is presented FOR DISCUSSION (and not for approval) at the twenty-first session of the Committee.

The note includes a brief outline of Chapter 1 (Introduction and Overview) of the proposed *United Nations Handbook on Avoidance and Resolution of Tax Disputes*. This outline was prepared by the Secretariat on the basis of the discussion at the online meeting of the Subcommittee on Dispute Avoidance and Resolution held on 6 October 2020.

At its twenty-first session, the Committee is invited to have a first discussion of Chapter 1 based on the attached outline.

1. Paragraph 10 of note [E/C.18/2019/CRP.18](#), which was discussed at the nineteenth session of the Committee (Geneva, 15-18 October 2019), included a timetable for the presentation to the Committee of the remaining chapters of the proposed *United Nations Handbook on Avoidance and Resolution of Tax Disputes* (UN Handbook).
2. The Subcommittee on Dispute Avoidance and Resolution, at its online meeting of 6 October 2020, discussed a first draft of Chapter 1 (Introduction and Overview), which is the last chapter of the UN Handbook to be presented to the Committee. It focused primarily on the structure of the Chapter and the various topics that it covered and concluded that the proposed draft needed a substantial overhaul. It was agreed that a brief outline of what the Chapter should cover would be presented to the Committee for discussion at its twenty-first session.
3. This note includes the brief outline of Chapter 1 that was prepared by the Secretariat on the basis of the discussion at the Subcommittee meeting. At its twenty-first session, the Committee is invited to have a first discussion of Chapter 1 based on the attached outline.
4. Based on that discussion, the Subcommittee intends to prepare a complete draft of the Chapter before the end of 2020 and to invite written comments on that draft **before 31 January 2021**. At its next online meeting, which will take place in February or March 2021, the Subcommittee will revise the draft in light of the comments received and will send it in advance of the Committee's twenty-second session, when the chapter will be presented for approval together with the consolidated version of the *UN Handbook on Avoidance and Resolution of Tax Disputes*.

OUTLINE OF CHAPTER 1

PREFACE

Chapter 1 will be preceded by a preface, to be drafted by the Secretariat, that will:

- Explain the link between the Handbook and the overall work on domestic resource mobilization and the 2030 agenda.
- Refer to the work that preceded the setting up of the Subcommittee (including the development of the GMAP).
- Refer to the mandate that was given to the Subcommittee on Dispute Avoidance and Resolution.

CHAPTER 1

INTRODUCTION AND OVERVIEW

1.1 Purpose of the Handbook

This section will describe the purpose of the Handbook and indicate that it is primarily intended for developing countries and, in particular, least developed countries.

It will stress that most of the issues described in the Handbook present themselves to all countries, regardless of their level of development. It will note, however, that the different measures described in the various chapters of the Handbook may not be suitable for all countries. As already stated in Chapter 2, it will explain that some of the measures described in the Handbook may be more appropriate for consideration and implementation by developing countries when their tax administrations have more resources, including staff with the requisite experience and capability.

1.2 Scope and structure of the Handbook

This section will:

- Explain the scope of the Handbook in relation to international and domestic disputes and in relation to taxes covered. In doing so, it will explain that the Handbook deals with disputes that may arise between tax administrations and taxpayers with respect to income taxes (but a footnote, based on footnote 1 of Chapter 3, will indicate that measures described in Chapters 2 and 3 to avoid and resolve such disputes could also be useful to avoid and resolve disputes regarding the application of other types of taxes, such as value-added taxes)
- Describes the two parts of the Handbook:
 - Part 1, which relates to measures that may be taken by countries for the avoidance and resolution of tax disputes that may arise between tax administrations and taxpayers
 - Part 2, which deals exclusively with the mutual agreement procedure provided by tax treaties

- Briefly introduce each chapter of each Part:
 - Part 1:
 - Chapter 2 on Approaches to Avoiding Disputes
 - Chapter 3 on Domestic Dispute Resolution Mechanisms
 - Part 2
 - Chapter 4 on the Mutual Agreement Procedure
 - Chapter 5 on MAP arbitration
 - Chapter 6 on Possible Improvements to MAP

1.3 Importance of appropriate measure for the avoidance and resolution of tax disputes

Section 1.3 will stress the importance of the adoption and correct application of measures for the avoidance and resolution of tax disputes.

This section will, in particular, discuss the relationship between tax certainty and the avoidance and resolution of tax disputes:

- On the one hand, the implementation of good measures for avoiding and resolving tax disputes provide taxpayers with greater certainty that tax laws will be correctly applied and interpreted (as already mentioned in Chapter 2 in relation to the avoidance of disputes). At the international level, this contributes to foreign cross-border investment and cross-border trade of goods and services, including employment services.
- On the other hand, greater tax certainty (e.g. through clear and accessible legislation and interpretative guidance, as explained in Chapter 2) contributes to the avoidance of tax disputes.

Referring to the information already included in Chapter 4 (which will be updated to reflect the latest statistics), the section will explain how disputes related to the application of tax treaties have been increasing over the last decades and why the work on BEPS Action 14 was undertaken. Drawing on paragraphs 4 to 8 of Chapter 4 (which could be moved to this section), it will

- Provide the background for the BEPS project, focussing particularly on the final report on Action 14.
- Explain the Action 14 minimum standard with respect to the resolution of treaty-related disputes through the MAP,
- Describe the role of the Inclusive Framework in monitoring the implementation of that minimum standard.

The section will also explain that new business models and possible changes to the international mechanisms for sharing taxing rights that could be adopted to deal with them could result in an increase of tax disputes and make it even more important to have appropriate mechanisms for the avoidance and resolution of tax disputes.

1.4 Challenges faced by developing countries and, in particular least developed countries

This last section will examine some of the challenges faced by developing countries and, in particular the least developed countries, in relation to the avoidance and resolution of tax disputes.

It will start by noting that while many of the issues described in the Handbook present themselves to all countries regardless of their level of development, the specificities of developing countries, in particular the least developed countries, create a number of challenges.

Drawing from the list which already appears in paragraph 8 of Chapter 4 (MAP), the section will then briefly note some of these challenges:

- Limited capacity to deal with complex international tax treaty issues
- For some countries, limited tax treaty network, which may prevent the resolution of some cross-border issues with other tax administrations, in particular issues related to transfer pricing and attribution of profits to permanent establishments
- The protection of taxpayer rights, including the right to confidentiality, may be an issue in some countries, which may limit the taxpayers' trust in some dispute avoidance and resolution measures

The section will stress the importance of capacity-building in the area of tax dispute avoidance and resolution, outlining the potential role of the Handbook and on training activities based on its contents, in particular in relation to the MAP.