YTJN New York Tax Talks Day Nine Roundup: Fifth Session of the Intergovernmental Negotiating Committee to Develop a UN Framework Convention on International Tax Cooperation

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The Big Picture: Wrapping Up Protocol 2 and Closing the Fifth Session

Day 9 marked the final day of the Fifth Session. Delegates completed their discussions on **Protocol 2 (Prevention and Resolution of Tax Disputes)**, covering the remaining chapters, Chapter 4 (Consultations in the Absence of an Applicable Tax Instrument) , Chapter 5 (Reservations) , and Chapter 6 (Other Provisions).

The morning session began with the Co-Lead, Michael, reflecting on the progress made over the past two weeks. He noted that while there is still "considerable support for the concept of optionality," there are "very different preferences on what should be a core prevention mechanism."

The session concluded with closing remarks from the Committee Chair, Ramy M. Youssef, and the Director of UN DESA, officially bringing the Fifth Session to a close and setting the stage for the Sixth Session in Nairobi.

Chapter 4: Consultations in the Absence of an Applicable Tax Instrument

Article IV.1 – Process of Consultations:
"Where an identified tax issue involving two or more Parties may result in double taxation or double non-taxation, and no applicable tax instrument is in force between those Parties, a competent authority of any of those Parties may request consultations..."

Article IV.2 – Information Exchange and Confidentiality:
"Taxpayer-specific information may be disclosed, exchanged or used for the purposes of consultations under this Chapter only where such disclosure, exchange or use is permitted under a tax information exchange instrument."

Article IV.3 – Legal Nature and Effects:
"Consultations under this Chapter, and any understanding reached following such consultations, shall not create substantive obligations, allocate or reallocate taxing rights..."

The Core Debate: Is This Mechanism Useful or a Burden?

Brazil raised significant concerns: "*The draft allows extensive consultation, exchanges of views, and even joint fact finding, yet any understanding reached is expressly non-binding... the mechanism may involve significant administrative effort without providing a clear pathway for the resolution of double taxation.*"

Algeria echoed this: "*In the case of African tax administrations, they may be forced to dedicate a great deal of time and resources to these consultations without having the appropriate legal resources... the cost-benefit analysis might not be favorable.*"

Nigeria was more blunt: "*If nothing is broken, we don't believe we shall fix it... we do not see any merit in this article at all.*"

Tanzania added: "*The absence of the applicable tax instruments may create legal and practical uncertainties... it may be difficult for the competent authorities to resolve their differences from conflicting domestic laws.*"

ATAF noted: "*We struggle to see how you end up even having a solution out of it... those consultations are intended to be non-binding.*"

Germany raised a practical question: "*If there is no applicable tax instrument in force, then there are also not specifically assigned competent authorities... we suggest to use the term 'tax administration' instead of 'competent authority.'*"

Lesotho offered a different perspective: "*For us, it's a welcome remark... we have a limited treaty network and we don't intend or it's not possible for us to extend that treaty network... we currently have practical situations whereby taxpayers are upset.*"

Singapore noted the provision could play a useful role: "*For example, in transfer pricing cases where both jurisdictions wish to adopt arm's length pricing in their domestic laws, but lack an applicable tax instrument to jointly develop the appropriate arm's length price.*"

IDS (Institute of Development Studies) suggested: "*The cost should not be underestimated... so it might be appropriate to allow a reservation for that chapter.*"

DMUN Foundation (youth) welcomed the provision: "*This mechanism may be particularly useful for jurisdictions with limited treaty networks while preserving the authority of each party under domestic law.*"

Chapter 5: Reservations and Application in Relation to Other Instruments

Article V.1 – Reservations to Specific Mechanisms:
"*A State may, at the time of ratification, acceptance, approval or accession, reserve the right not to apply, with respect to it, one or more mechanisms provided for in Articles [II.], [II.], [II.], [II.], [II.], [III.] and [III.].*"

Article V.2 – Application in Relation to Other Instruments:
Option A: "*Except as otherwise provided... where another instrument provides for a mechanism that is substantially similar... the mechanism under that other instrument shall continue to apply...*"
Option B: "*Where another instrument provides for a mechanism that is substantially similar... the mechanism under this Protocol shall supersede and apply in place of the mechanism under that other instrument...*"

The Core Debate: Which Default Approach Should Apply?

A clear divide emerged over the relationship between Protocol 2 mechanisms and existing instruments.

Those who supported Option A (existing mechanisms continue to apply):

Italy: "*We think that the supersession of existing treaty by the protocol should be done in an alternative way. So existing treaty should prevail unless the parties otherwise agree.*"

The UK: "*We strongly support having to positively accede to these provisions under Article A... the mechanisms in this protocol should not automatically supersede existing, well-functioning and well-understood mechanisms.*"

Spain: "*Several mechanisms can coexist without any issues... this did not create legal uncertainty, on the contrary.*"

France: "*We strongly support option A, which provides for an opt-in mechanism... it's also easier for us to manage administratively.*"

China: "*We don't think the mechanisms under this protocol should supersede any existing mechanism and other instruments automatically... we prefer alternative A.*"

Singapore: "*Existing tax related instruments are concluded after much negotiation and compromise and should be respected with any superseding requiring the consent of the parties involved.*"

Austria: "*Austria already participates in a well-functioning international framework... the protocol should complement, rather than duplicate or undermine existing mechanisms.*"

Switzerland: "*Not surprisingly, we strongly are for option A.*"

The Netherlands: "*In principle, we would also support alternative A.*"

Liechtenstein, **Ireland**, **Portugal**, **the UAE**, **Poland**, **Estonia**, **Malta**, and **Israel** all expressed support for Option A.

Those who supported Option B (protocol supersedes existing mechanisms):

The Africa Group (Kenya): "*The Africa group recommends that the article on MAP should not be subject to any form of reservation... the Africa group supports an approach under which the protocol serves as the default framework.*"

Ghana: "*Ghana strongly aligned itself with the Africa group position in choosing option B... many existing treaty provisions reflect historical imbalances in negotiating power.*"

Nigeria: "*We therefore go for option B... the current rules have certain imbalances that are being addressed... why don't we go for a newer fashion that we are developing?*"

Zambia: "*We support option B, which was also supported by the African group.*"

Tanzania: "*Tanzania supports alternative B.*"

Senegal: "*We think alternative B is the most realistic option.*"

ATAF: "*We strongly support option B, which is really intended to address the problems and the gaps that exist within the current mechanism.*"

The "Substantially Similar" Question

Mauritius asked: "*What is substantially similar? The question is, in the application of... these instruments, what is substantially similar?*"

The Netherlands sought clarification: "*For us, it's not entirely clear what is meant by the clarification given... it would be helpful to get some clarifications on that point.*"

India noted: "*The experience with the MAC vis-à-vis the bilateral tax agreements may be relevant... more clarity on these parameters would be really helpful.*"

The Definition of Dispute

Ghana raised a fundamental question: "*What is a dispute?... one of the two parties have signed on to a particular agreement... we have a common ground to then come – there's a dispute because we have a disagreement on a common basis. But when there is no applicable instrument... it becomes quite difficult.*"

Morocco added: "*We might have cross-border situations... but there is no common instrument to solve it. Here it's a cross-border situation, but it's not a dispute... to have a dispute, we need a common legal instrument.*"

The Reservation Question

BCAS (Bombay Chartered Accountants Society) raised a practical concern: "*The state gets rights to make a reservation at the time of signature... however, the article does not allow the state to make a reservation at a future date.*"

Ramy M. Youssef, Chair of the Intergovernmental Negotiating Committee (INC) to draft a United Nations Framework Convention on International Tax Cooperation and Two Early Protocols

Germany asked: "*It is not envisaged that a reservation can be made at a later date. We would like to find out the background to this restriction.*"

The Co-Lead responded: "*The idea is... it is possible to withdraw your reservation... we could end up in a situation where a country is opting in, is opting out, is opting in, is opting out. This is also not very helpful for tax certainty.*"

Chapter 6: Other Provisions (Exchange of Information and Confidentiality)

"1. Where an Article of this Protocol requires a tax information exchange instrument to be in force, that requirement is met only to the extent that the instrument permits the exchange of information required for the application of that Article...

2. Nothing in this Protocol shall be construed as requiring or authorizing the disclosure or exchange of information unless such disclosure or exchange is permitted under the specific legal basis governing the disclosure or exchange of information...

3. Information obtained... shall remain subject to the confidentiality, data protection, and use limitations applicable under the specific legal basis governing that disclosure or exchange."

The Debate

Italy welcomed the approach: "*We agree by the fact that the tax pains of exchange of information should be found in something that is already in place because for us, the rights of the taxpayers are very important in this respect... we welcome the approach you have taken.*"

Germany asked: "*If such a tax instrument does not exist, there is usually no other legal basis for tax related exchange of information. Against this background, does paragraph two fall short because it only enables exchange in anonymized form?*"

The Co-Lead clarified: "*It is not necessary to limit the exchange of information to anonymous data... you can have an instrument that allows for the exchange of information without having necessarily a substantive legal basis, like you don't have a DTA, but you have a tax information exchange agreement.*"

Closing Remarks

Committee Chair (Ramy M. Youssef)

The Chair reflected on the session's achievements: "*For the first time, the committee had before it draft texts for the Framework Convention and both early protocols. Our task was no longer primarily to discuss concepts or possible approaches in the abstract, but to test those approaches against concrete provisions.*"

He outlined the path ahead:

- Written inputs are due by 24 August (Protocol 2), 26 August (Protocol 1), and 28 August (Framework Convention)
- Workstream meetings will resume during the intersessional period
- The Sixth Session will take place in Nairobi (expected to focus on the Framework Convention and Protocol 2)
- The January session in New York will be the final stage for written inputs

UN DESA Director (Ms. Cherry)

She thanked delegations and stakeholders: "*The committee has also engaged directly with a number of important and substantive questions... These questions will be important in determining the effectiveness of what is being built.*"

She also expressed gratitude to **Lisa Kana**, who concluded her service as Co-Lead of Workstream II: "*I would like to express our particular gratitude to Ms. Lisa Kana, who concludes her service as co-lead at the end of the session, for her expertise and her strong commitment to this process.*"

What's Next?

- **Intersessional period**: Workstream meetings to address specific issues identified during the session
- **24 August**: Deadline for written inputs on Protocol 2 (CRP.34)
- **26 August**: Deadline for written inputs on Protocol 1 (CRP.33)

- **28 August**: Deadline for written inputs on Framework Convention (CRP.32)
- **Sixth Session (Nairobi)**: Focus on the Framework Convention and Protocol 2
- **January 2027**: Final session in New York

What Do YOU Think? 🤔

On consultations without a tax treaty (Chapter 4):

- Should the protocol provide a framework for consultations where no tax treaty exists or is this an unnecessary administrative burden? Some say it helps countries with limited treaty networks. Others say it's ineffective without a binding outcome.

On reservations (Chapter 5):

- Should countries be able to opt out of certain mechanisms or should there be core mechanisms that all parties must accept? Some say optionality encourages broader participation. Others say it undermines the protocol's effectiveness.

On the relationship with existing treaties:

- Should the protocol supersede existing mechanisms (Option B) or should existing mechanisms continue to apply (Option A)? Some say we need a fresh start. Others say existing treaties should be respected.

On MAP as a core mechanism:

- Should the Mutual Agreement Procedure be a core mechanism that no country can opt out of? Many developing countries say yes. Some developed countries prefer optionality.

On arbitration:

- Should arbitration be included in the protocol and if so, should it be mandatory or optional? Some say it's a useful last resort. Others say it undermines sovereignty.

We want to hear from YOU! Share your thoughts on these questions. Tag us on social media or write to us. Your voice matters in building a tax system that works for people not just profits.

Stay Engaged

The UN Framework Convention on International Tax Cooperation is one of the most important negotiations of our time. **Young people have a stake in the outcome.** Follow YTJN for daily updates and use your voice to demand a tax system that works for people—not just profits.