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

New York | 12 August 2026

The Big Picture: A Protocol with Two Faces

Day 8 marked the beginning of discussions on **Protocol 2 – Prevention and Resolution of Tax Disputes**. The Co-Leads, **Marlene Nembhard-Parker (Jamaica)** and **Michael (Germany)**, presented the first full draft of what they described as a "dense" and "comprehensive" text.

The protocol is intended to provide a common procedural framework for dispute prevention and resolution, particularly for countries that lack existing bilateral mechanisms.

The Co-Leads noted: "*The protocol is not intended simply to replicate mechanisms that already exist. Its value lies in extending their availability, broadening the range of options, and providing a common operational framework.*"

A central tension emerged immediately: **How detailed should the protocol be?**

One side (led by the Africa Group, India, Mauritius, and others) argued the text is "excessively detailed" and should focus on core principles, with procedural details moved to annexes or guidance notes.

The other side (led by the UK, Germany, Netherlands, and others) appreciated the detail as providing much-needed clarity and legal certainty, particularly for countries with less experience in these mechanisms.

The Co-Leads explained that the detail was intentional: "*The draft intentionally goes beyond simply stating that a particular mechanism is available. It seeks to include enough of the procedural architecture needed for that mechanism to function.*"

Chapter 1: General Definitions

What the Chapter Covers

- “**Convention**” means the United Nations Framework Convention on International Tax Cooperation;
- “**Party**” means a State Party to the Convention for which this Protocol is in force;
- "**Applicable tax instrument**" – any bilateral agreement, multilateral convention,

protocol to the Convention other than this Protocol, or any other instrument in force between two or more Parties that establishes rules for the allocation of taxing rights between them.

- **"Tax information exchange instrument"** – any bilateral agreement, multilateral convention, protocol to the Convention other than this Protocol, or other instrument in force, including the Convention, between two or more Parties that provides for exchange of information for tax purposes.

The Debate

Mauritius raised important concerns about legal interpretation: *"It's extremely important to know what is the 'travaux préparatoires' behind the document... judges are going to try to understand what was the intention of the parties."*

Brazil sought clarification on the definition of "applicable tax instrument," asking whether it precisely captures what is intended.

The Netherlands noted that the term "competent authority" may be too rigid, as many functions under the protocol (like joint audits) are performed by tax administrations, not competent authorities.

Ghana (on behalf of the Africa Group) welcomed "the approach of using harmonized definitions across the convention and the protocol" but stressed that terms should be "framed broadly enough to accommodate different legal traditions and administrative structures."

Ghana also questioned whether the protocol should rely on definitions from other instruments, suggesting instead that definitions should be limited to those in the Framework Convention to avoid interpretive disputes.

Kenya noted that "the ambition to be intentional and have an operational detail gives us a lot of substance... but we prescribe the use of high-level language, and then the issues and the detail can be given in the guidelines."

Chapter 2: Dispute Prevention Mechanisms

What the Chapter Covers

Chapter 2 contains six dispute prevention mechanisms:

Taxpayer-initiated mechanisms:

1. **Bilateral and multilateral Advanced Pricing Arrangements (APAs)** – for transfer pricing cases (Article II.1)
2. **Advanced rulings** – for non-transfer pricing issues (Article II.2)
3. **Coordinated unilateral APAs** – where no applicable tax instrument exists (Article II.3)
4. **Cooperative compliance arrangements** – ongoing dialogue between taxpayers and tax administrations (Article II.4)

Tax authority-initiated mechanisms:

5. **Simultaneous tax audits** – coordinated audits conducted separately (Article II.5)
6. **Joint tax audits** – audits conducted together with foreign officials present (Article II.6)

Key Features of the Mechanisms

Article II.1 – Bilateral and Multilateral APAs:

- Taxpayers may request an APA where transactions are covered by an applicable tax instrument.
- All competent authorities must accept the request for the mechanism to proceed.
- The arrangement determines transfer pricing treatment for specified taxable periods.
- Requests must include detailed information, including identification of transactions, taxable periods, and proposed methodology.

Article II.2 – Advanced Rulings (Non-Transfer Pricing):

- Similar structure to APAs but for non-transfer pricing issues.

- Covers questions of interpretation or application of an applicable tax instrument.

Article II.3 – Coordinated Unilateral APAs:

- Available where no applicable tax instrument exists between Parties.
- Requires a tax information exchange instrument to be in force.
- Competent authorities coordinate consideration of domestic unilateral APA applications.
- Results remain unilateral—not binding on other Parties.

Article II.4 – Cooperative Compliance Arrangements:

- Taxpayers seek coordinated consideration of identified tax matters.
- Based on cooperation, transparency, and timely dialogue.
- Outcomes are not binding determinations of tax liability.

Article II.5 – Simultaneous Tax Audits:

- Competent authorities examine tax affairs simultaneously but independently.
- Conducted in each Party's territory in accordance with domestic law.
- Requires a tax information exchange instrument to be in force.

Article II.6 – Joint Audits:

- Tax authorities conduct audits in a pre-agreed and coordinated manner.
- Foreign officials may be present during audit activities.
- Requires a tax information exchange instrument to be in force.

Common Provisions (Articles II.7–II.10)

Article II.7 – Relationship with Other Mechanisms and Domestic Procedures:

- Submission of a request does not require suspension of domestic procedures.
- Unilateral arrangements do not bind other Parties.

Article II.8 – Common Rules for Taxpayer-Initiated Mechanisms:

- Requests must contain the same relevant information for all Parties.
- Competent authorities have 24 months (best efforts) to conclude processes.
- Timelines may be extended by agreement for complex cases.
- Requests may be declined based on scope, feasibility, and available resources.

Article II.9 – Common Rules for Audit Mechanisms:

- Similar criteria for accepting requests.
- Memoranda of understanding may record practical modalities.

Article II.10 – Capacity Building:

- Parties shall make efforts to support effective implementation of prevention mechanisms.
- Phased implementation may be agreed for Parties with limited capacity.

The Core Debate: APA as Core Mechanism?

The Africa Group (Ghana) expressed concern that APAs "may place considerable pressure on already constrained tax administrations" due to the "highly specialized transfer pricing expertise and extensive economic analysis" required.

India proposed a phased approach: "*India would be open to considering unilateral APAs for a limited initial period... providing tax jurisdictions with the necessary experience and institutional preparedness before moving towards wider adoption.*"

Singapore argued that APAs "most closely represent an existing tool as they provide certainty before investment decisions are taken and before tax positions are established."

The United Arab Emirates suggested that the protocol should explicitly allow for a "rollback" for open years, as "dispute prevention is always better than dispute resolution."

Azerbaijan cautioned that "rollback should not apply automatically and should remain subject to domestic law."

Germany welcomed the 24-month best efforts timeframe but suggested that "timelines alone are often not enough to ensure timely completion" and proposed language encouraging "competent authorities and taxpayers to agree where appropriate on a project plan."

The Netherlands noted that "reality in practice today is that [APAs] are hardly done within 24 months," suggesting that the timeline should be more flexible.

Kenya supported the 24-month timeframe, calling it "most optimal also for offering certainty to taxpayers."

Nigeria suggested that 24 months may be insufficient for many jurisdictions: "we need to look at more than 24 months, maybe 30 months or more would be a suggestion."

The Debate: Joint Audits and Simultaneous Audits

Japan raised concerns about joint audits: "*Participation by foreign officials may raise issues relating to domestic legal requirements, which could make implementation difficult in some states.*"

Japan also questioned "the usefulness of conducting a joint audit where not all relevant jurisdictions agreed to participate."

Kenya noted that "the level of information exchange and collaboration required will be quite high" for joint audits and stressed the need for "clear and workable procedures that are very detailed."

The Optionality Debate

Switzerland made a general point about optionality: "*If we know that there's certain aspects, procedures... that you can't sign up to, but it's optional and you're not going to have to, then it might influence the drafting you can accept.*"

India argued that optionality should be balanced with core mechanisms: "*There should be some minimum commonality in the dispute prevention and resolution framework... so that the protocol remains effective and functional.*"

India identified the Mutual Agreement Procedures (**MAP)** as "the most appropriate mechanism" for the core of dispute resolution, given its "substantial basis in existing treaties."

China stressed that "optionality is very important for the broader participation of state parties."

Ghana (on behalf of the Africa Group) stated that "MAP [should] become the core mechanism and not subject to any form of reservations whatsoever."

Israel noted that "optionality will enable smaller countries or developing countries to sign up in phases."

The Co-Leads clarified that the debate on core mechanisms is ongoing: "*We are still working on identifying what the core mechanisms for the protocol will be.*"

The Level of Detail Debate

Mauritius observed: "*The issue is about whether we go into so much of detail in the text itself, or we do it high level and leave it somewhere else.*"

India cautioned: "*It is important to ensure that in seeking to provide detailed guidance... we do not lose sight of the legal character of the instrument.*"

The Africa Group (Ghana) stated that the draft "is excessively detailed and does not reflect a framework legal instrument."

The UK took a different view: "*The UK supports the current direction of this protocol, and we're pleased to see that it draws from existing, well-functioning and well-understood measures.*"

Germany welcomed "that Chapter two is designed as a flexible toolbox of prevention mechanisms rather than a set of mandatory procedures."

The Netherlands noted that APAs are "not foreseen in any tax treaty so far... so with this, you would introduce it."

The Co-Leads explained their rationale: "*For parties that do not have a bilateral tax treaty, several mechanisms may operate on the basis of an existing tax information exchange relationship... the protocol can make available additional tools that may not currently exist.*"

The Capacity Building Question

Papua New Guinea stressed: "*Capacity building is not a supplementary element of the protocol, but a prerequisite for its successful implementation.*"

The Africa Group (Ghana) called for "detailed capacity building provisions to take care of issues that have been raised with respect to different capacities."

Honduras noted: "*Capacity building, technical assistance, and practical experience sharing are particularly relevant for us.*"

Algeria emphasized: "*Without real support, training, exchange of tools and experiences, these mechanisms will remain, unfortunately, just theoretical.*"

Lichtenstein questioned whether capacity building should also apply to Chapter 3 (dispute resolution), not just Chapter 2 (dispute prevention).

The Africa Group's Comprehensive Position

Ghana, speaking on behalf of the Africa Group, laid out a detailed position:

1. **The protocol is excessively detailed**: Procedural provisions should be moved to "annexes or guidance or notes for conference of parties"
2. **The protocol must reflect differing administrative capacities**: Phased implementation should be allowed
3. **The protocol should only apply to cross-border tax disputes**: A definition is needed

4. **MAP should be the core dispute resolution mechanism**: Not subject to reservations
5. **Dispute prevention mechanisms should be optional**: "Mechanisms for preventing dispute are largely domestic matters"
6. **Timelines should be indicative, not rigid**: "What may be achievable for a well-resourced administration within a short period would take a relatively longer period for lower capacity jurisdictions"
7. **Advanced rulings need clarity on anti-abuse provisions**: The protocol must ensure such mechanisms "are not used to undermine legitimate anti-avoidance measures"
8. **Capacity building provisions must be strengthened**: Moving from "aspirational wishes" to specific commitments

What's Next?

Day 9 will continue with **Chapters 3, 4, 5, and 6** of Protocol 2:

- **Chapter 3 – Dispute Resolution**: MAP, mediation, conciliation, and arbitration (Articles III.1–III.6)

- **Chapter 4 – Consultations in the Absence of an Applicable Tax Instrument**: The consultation process, information exchange, and confidentiality (Articles IV.1–IV.3)
- **Chapter 5 – Reservations**: Reservations to specific mechanisms and application in relation to other instruments (Articles V.1–V.3)
- **Chapter 6 – Other Provisions**: Exchange of information, confidentiality, and use of information

Key Questions to Watch:

- **Chapter 3 (Dispute Resolution):** Will MAP be confirmed as the core dispute resolution mechanism? Will arbitration be included—and if so, will it be optional or mandatory? The protocol currently offers arbitration as a mechanism but allows reservations (Article V.1).
- **Chapter 4 (Consultations without an Applicable Tax Instrument):** How will consultations work when no tax treaty exists between Parties? The protocol provides for consultations based on tax information exchange instruments (Article IV.1).
- **Chapter 5 (Reservations):** The protocol presents two alternatives (A and B) for how it interacts with existing instruments. Option A allows existing mechanisms to continue applying; Option B makes the protocol supersede existing mechanisms unless a reservation is made.
- **Chapter 6 (Other Provisions):** How will information exchange and confidentiality be governed under the protocol? The protocol provides for information exchange only where permitted under the specific legal basis governing that exchange.
- **The Level of Detail:** Will the protocol remain a comprehensive procedural guide, or will details be moved to annexes, guidance notes, or competent authority agreements?
- **The Core Mechanisms:** Will MAP and APAs be confirmed as the core mechanisms that cannot be reserved against?
- **Capacity Building:** Will capacity building provisions be strengthened and extended to dispute resolution mechanisms?

What Do YOU Think? 🤔

On the level of detail:

- Should the protocol be detailed and self-contained (to help countries without existing mechanisms) or high-level with details in annexes (to maintain the legal character of the instrument)?

On optionality:

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

On APAs:

- Should APAs be a core mechanism (given their value in providing certainty) or optional (given their complexity and resource requirements)?

On joint audits:

- Should foreign officials be allowed to participate in tax audits on another country's territory or does this raise unacceptable sovereignty concerns?

On timelines:

- Should timelines be fixed in the protocol (providing certainty) or flexible (recognizing capacity differences)?

On capacity building:

- Should capacity building be a core part of the protocol—or should it be left to the Framework Convention?

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.