

CHAPTER 11: DISPUTE AVOIDANCE AND RESOLUTION

11.1 Introduction to Dispute Avoidance and Resolution in Domestic and Cross-Border Contexts

- Importance
- Goals of dispute avoidance and resolution mechanisms
- Differences between domestic and cross-border disputes

11.2 Special Considerations for Developing Countries

- Resource limitations
- Limited experience so far

11.3 Dispute Avoidance Mechanisms – Domestic

11.3.1 Legislation and Other Guidance

- Benefits of transfer pricing legislation and other guidance
- Situations in which transfer pricing legislation may not be needed

11.3.2 Rulings

11.3.3 Role of Audit Practices and Policies

11.4 Dispute Avoidance Mechanisms – Cross-Border

11.4.1 Tax Treaty Provisions

- Division of taxing jurisdiction
- Interpretive guidance

- Procedural provisions

11.4.2 Multilateral Agreements

- Interpretive guidance
- Procedural provisions

11.5 Dispute Resolution Mechanisms – Domestic

11.5.1 Audit Settlements

11.5.2 Administrative Appeals

11.5.3 Judicial System

11.6 Dispute Resolution Mechanisms – Cross-Border

11.6.1 Mutual Agreement Procedure (MAP) Under Tax Treaties

- Overview of MAP Procedures
- Structural Considerations
- Operational Considerations

11.6.2 Advance Pricing Agreements (APAs)

- Policy Considerations
- Administrative Considerations
- Developing and Operating an APA Program

11.6.3 Other Dispute Resolution Programs

- Mediation / Conciliation
- Arbitration

11.7 Coordination of Domestic and Cross-Border Dispute Resolution Mechanisms

Dispute Avoidance and Resolution—Issues for Discussion

1. Why do we need dispute avoidance and resolution mechanisms?
2. What should the goal or goals of such mechanisms be?
3. What special considerations do developing countries face?
4. How can disputes be avoided through domestic mechanisms?
5. Are there effective ways to avoid disputes through cross-border mechanisms?
6. Where a dispute cannot be avoided, can it be resolved through domestic mechanisms?
7. How can cross-border dispute resolution mechanisms best be designed and implemented, and what are the pros and cons of each?
 - a. Mutual agreement procedures (MAPs)
 - i. What are the goals of a MAP program?
 - ii. What are the key features of successful MAP programs?
 - iii. What are some of the common challenges encountered?
 - iv. How can such challenges be addressed?
 - b. Advance pricing agreements (APAs)
 - i. How do APAs differ from MAPs?
 - ii. When might APAs make sense for a developing country tax administration?
 - c. Mediation / conciliation
 - i. How do mediation and conciliation work?
 - ii. Are they effective compared to other mechanisms?
 - d. Arbitration

- i. How does tax treaty arbitration work and how does it differ from commercial arbitration?
 - ii. What benefits can arbitration provide?
 - iii. What are the challenges presented by arbitration from the perspective of developing countries?
 - iv. Are there ways to address those challenges satisfactorily?
8. What issues need to be addressed in coordinating domestic and cross-border dispute resolution mechanisms?
9. How can the challenges we have identified best be addressed?