

Distr.: Restricted  
22 October 2007

ENGLISH ONLY

---

**Economic and Social Council**  
**Committee of Experts on International Cooperation**  
**in Tax Matters**  
**Third session**  
Geneva, 29 October-2 November 2007

**Dispute Resolution\***

---

\* The present paper was prepared by the Coordinator of the subcommittee on Dispute Resolution (Professor Waldburger). The views and opinions expressed do not necessarily represent those of the United Nations.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
1. Introduction.....		3
2. Methodology of this Paper.....		3
3. Questions Regarding Possible Deviations from the OECD Report .....		3
4. A Multilateral Approach?.....		5

## **1. Introduction**

At its 2006 meeting, the Committee of Experts on International Cooperation in Tax Matters (“the Committee”) took note of the Developments in this area in the OECD and decided to evaluate possibilities to including a similar provision in the UN Model Tax Convention<sup>1</sup>. According to its mandate<sup>2</sup>, the Committee has especially to take into account possible changes in light of the specific situation of developing countries

**Questions:**

- a) Should the UN Model also provide for mandatory arbitration?
- b) Is the delay of two years appropriate or is it too short for the UN Model?

**3.3. Relation to internal legal procedures**

The OECD rule states that arbitration is not possible if a court or a administrative tribunal has already rendered a decision on the case. The footnote however states that OECD Member Countries may be able to remove that condition

**Question:**

What approach should the UN Model take in this area. (flexible, the same as with the OECD? Strict in one way or another?)

**3.4. Possibility for the taxpayer to refuse the arbitration solution?**

Since the arbitration procedure is embedded in the MAP, the taxpayer is - as regarding MAP solutions - given the right to refuse the arbitration solution. If he does so, the case is treated according to the national laws and procedures in both contracting states. The commentary of the OECD provision however states that the cases where a taxpayer rejects the result of a MAP are very rare. This will most probably true for the arbitration solution as well. Nevertheless it has to be decided, whether the taxpayer should be given the right to reject the result decided by the arbitration body.

**Question:**

Should the taxpayer have the right to reject the arbitration solution?



## References

- Cahiers de droit fiscal international* (2005) Volume 90a: "Source and residence: new configuration of their principles." Buenos Aires, pp. 34 and 84-87.
- Kemmeren, Eric C.C.M. (2001) *Principle of Origin in Tax Conventions: A Rethinking of Models*. Dongen, Netherlands: Pijnenburg.
- Messere, K. and Owens, J (1988) "The impact of different income tax systems on international flows of capital, services and technology." Paper presented at the 44th Congress of the International Institute of Public Finance, Istanbul, p. 87.
- Pijl, H. (2002) "The concept of permanent establishment and the proposed Changes to the OECD commentary with special reference to Dutch case law." *Bulletin* (International Bureau of Fiscal Documentation, Amsterdam, pp. 554-562. November.
- (2005) "The relationship between article 5, paragraphs 1 and 3, of the OECD Model Commentary." *Intertax*, No. 4 (April), p. 189.
- United Nations (2001). *United Nations Model Double Taxation Convention between Developed and Developing Countries*. Sales No. E.01.XVI.2.
-