Written comments Kingdom of the Netherlands
20 July 2026 Co-Lead's draft of Protocol II to the Framework Convention

Abstract

This written submission contains the comments from the Kingdom of the Netherlands on the 20 July 2026 Co-Lead 's Draft Protocol on the Prevention and Resolution of Tax Disputes. The Kingdom of the Netherlands expresses its appreciation for the work by the Secretariat and the co-leads in the preparation of this first draft and is committed to continue to work on improving mechanisms for the prevention and resolution of international tax disputes with a view to provide certainty to states and taxpayers alike. In the following paragraphs we include substantive Chapter-by-Chapter comments and suggestions. These are intended to improve or further strengthen the functioning of the mechanisms and are not a valuation of the proposals from a broader perspective.

Chapter I – General provisions

Protocol II establishes a dedicated framework of technical and procedural rules for the prevention and resolution of international tax disputes. To support the consistent and practical application of its provisions and to reduce the need for users to consult multiple documents for key terminology, the Netherlands believes it would be beneficial for the Protocol to include a list of definitions for terms used throughout the text or, alternatively, clear cross-references to the provisions/documents in which those terms are defined.

While recognizing that the definitions of several terms remain under discussion within the Framework Convention and Protocol I, the Netherlands considers that further consideration could be given to defining, or refining the definitions of, the following terms within Protocol II:

- *Person*: chapter II currently refers to the term "taxpayer." As this term is not defined in the Protocol and differs from the terminology commonly used in bilateral tax conventions, which generally refer to a "person" (as is also the case in Chapter III of this protocol), the Netherlands would suggest considering the use of the term "person" throughout the Protocol. This would promote consistency with existing treaty practice and may help avoid differing interpretations regarding the persons eligible to access the mechanisms provided by the Protocol.
- *Applicable tax instrument*: the current definition does not explicitly indicate the category of instrument to which it applies. While it can be inferred from the procedural scope of the Protocol that income tax treaties are primarily intended, it may be helpful to specify this expressly. Such clarification could contribute to greater certainty regarding the intended scope of application and avoid uncertainty as to whether other tax-related agreements, such as those relating to international shipping or air transport, are also covered.
- *Competent authority*: as different governmental bodies may be designated as the competent authority for different procedures and functions, the Netherlands considers that a definition of this term would be useful. In line with the approach generally adopted in bilateral tax treaties, a broad definition, such as the Minister or an authorized representative, would provide States with sufficient flexibility to designate the appropriate agency or department for the purposes of Protocol II. Such an approach may also help avoid practical difficulties that could arise from organizational restructuring or personnel changes.

Chapter II – Prevention of tax disputes

Article II.1 – Bilateral and multilateral advance pricing arrangements

Paragraph 1

The Netherlands notes that the term "transfer pricing issues" is not defined in the Protocol and is not a term typically used in transfer pricing practice. To enhance clarity and consistency, we suggest to replace the wording:

> *"Where a ~~taxpayer that~~ person is, or ~~taxpayers that~~ person are, party to specified transactions or arrangements with another associated enterprise or enterprises, seeks advance certainty as to the ~~transfer~~ pricing ~~treatment~~ of those transactions or arrangements for specified taxable periods, that ~~taxpayer~~ person or those ~~taxpayers~~ persons may request a bilateral or multilateral advance pricing*

arrangement under this Article by submitting a request to the competent authority of each Party for which the arrangement is sought."

Furthermore, references to "transfer pricing issues" also appear in Article II.1(3)(d), Article II.2(1), and Article II.3(1) and (3). Consideration may be given to ensuring consistent terminology throughout the Protocol.

Paragraph 2
The Netherlands understands the proposed timelines are meant as indicative guidance and to promote timely processing of requests. However, specifying timelines could carry legal implications if seen as creating obligations. The Netherlands therefore suggests either omitting specific timelines or clarifying that they are best-practice objectives, not binding requirements. This applies also to Articles II.2 through II.6.

Paragraph 3
While Article II.8(8) confirms that domestic legal and administrative procedures are unaffected once an agreement is reached, paragraph 3 addresses the information required for a request. The Netherlands considers the listed information a minimum requirement; additional information may be needed under national rules. To clarify this, we suggest adding "which in any case includes" to paragraph 3, and amending sub (h) to reference information required by Parties' domestic laws. Similar clarifications could be made in Articles II.2- II.4. Finally, an explicit reference to Article III.1(8) (and similarly in II.2(3)) may further clarify these provisions.

Article II.2 – Bilateral and multilateral advance rulings not related to transfer pricing
The Netherlands supports the option for advance rulings beyond transfer pricing, since no international procedure for this currently exists. Given the article's reference to multilateral advance rulings, we would appreciate examples clarifying when a multilateral ruling would be appropriate, given that legal grounds are usually found in bilateral treaties.

Article II.3 – Coordinated unilateral advance pricing arrangements
General
The Netherlands would welcome further clarification regarding the rationale for limiting the scope of this article to situations where no applicable tax instrument is in force between the Parties concerned.

For example, situations may arise where one State operates a bilateral APA programme while another does not, although both States maintain unilateral APA programmes and have concluded a tax treaty. In such circumstances, a coordinated unilateral APA may still offer practical benefits and contribute to greater certainty where Article II.1 is not available.

The Netherlands also observes that the rationale underlying this provision could potentially be relevant in relation to advance rulings outside the transfer pricing context. Where Article II.2 is not applicable, coordinated unilateral approaches could similarly contribute to consistency and reduce the risk of information mismatches.

Paragraph 5
The final sentence refers to domestic law and administrative practice relating to the processing of unilateral APA requests. As this appears to relate primarily to the admissibility and acceptance phase, the Netherlands wonders whether it may fit more naturally within paragraph 2.

Article II.4 – Cooperative compliance arrangements
Scope
While we understand the rationale for including this article in the draft protocol, it is our understanding that cooperative compliance programs generally concern the application of domestic legislation and are typically operated between the taxpayer and the tax administration of the state concerned.

To better understand the intended operation of this provision, the Netherlands would welcome further clarification regarding the types of cases that would be suitable for an international cooperative compliance arrangement and how such arrangements would interact with the mechanisms provided in Articles II.1, II.2 and II.3.

Competent authorities v tax administrations

The Netherlands notes that cooperative compliance programs are generally administered by tax administrations rather than competent authorities. While competent authorities may play a coordinating role in international arrangements, States may designate different agencies or departments for this purpose. In this regard, consideration could be given to referring to "Parties" rather than "competent authorities," thereby preserving flexibility for States in determining the appropriate institutional arrangements.

Article II.5 – Simultaneous tax audits and Article II.6 Joint audits

Competent authorities v tax administrations

The Netherlands notes that audit activities are ordinarily carried out by tax administrations. Accordingly, it may be preferable to refer to the "tax administration of a Party" rather than the competent authority. This observation applies equally to Article II.6.

Paragraph 2

The Netherlands understands the intention of the final sentence of paragraph 2. To avoid any possible ambiguity, consideration could be given to clarifying that the restriction relates specifically to audit activities undertaken as part of the proposed simultaneous tax audit, rather than to all audit activities that may otherwise be permitted under domestic law.

Article II.7 – Relationship with other mechanisms and domestic procedures

With reference to the suggestion for articles II.4 and II.5, if also the terms "Party" and "tax administrations" are being referred to, the Netherlands suggests Article II.7 is updated accordingly to maintain consistency throughout the Protocol.

Article II.8 – Common rules for taxpayer-initiated mechanisms

Paragraph 1

The Netherlands would appreciate further clarification regarding the concept of "cost recovery" in the context of dispute prevention mechanisms, including whether this refers to administrative fees, reimbursement of costs, or another form of recovery of costs.

Paragraph 2

The Netherlands recognizes the objective of this provision but observes that certain concepts may benefit from further clarification to promote consistent application. In particular, additional guidance regarding the meaning of "sufficiently in advance" and "reasonable opportunity" would be helpful.

The Netherlands also notes that Articles II.1 through II.4 contain indicative review periods. Clarification regarding the interaction between those timeframes and the concepts used in paragraphs 2 and 3 may contribute to greater certainty and consistency.

Paragraph 5

The Netherlands acknowledges that resource constraints can affect the use of dispute prevention mechanisms. However, applying these constraints on a case-by-case basis is less desirable than making a general decision not to use a mechanism.

Regarding the final sentence, while we support avoiding resource allocation to cases concerning anti-abuse provisions, the rule could also exclude genuine requests, such as those involving limitation-on-benefits provisions. Such cases may still qualify for MAP under current treaty practice.

Paragraph 7

The Netherlands supports the objective of concluding cases within a reasonable timeframe in order to provide certainty for both taxpayers and administrations. While the proposed period of 24 months may prove challenging in some circumstances, the Netherlands welcomes the fact that the provision is framed as a best-efforts commitment rather than a mandatory deadline.

Paragraph 8

The Netherlands understands the first sentence to mean that an arrangement or ruling becomes effective only where it is accepted by the taxpayer in accordance with the legal or administrative requirements of the participating States. The Netherlands would welcome confirmation that this interpretation is intended, as such acceptance is an important feature of existing APA practice

Chapter III – Resolution of tax disputes

General
The Netherlands notes that Chapter III envisages the establishment, by the Meeting of the Parties, of rosters of mediators, conciliators and arbitrators. To better understand the practical operation of these mechanisms, the Netherlands would welcome further clarification how this system would work and on the basis of what rules such roster would be established.

Article III.1 – Mutual agreement procedure
Paragraph 1
The Netherlands understands that paragraph 1 is modelled on Article 25(1) of the UN Model Tax Convention and therefore contemplates that a request for mutual agreement procedure (MAP) assistance is submitted to the competent authority of the State of residence of the person concerned.

The Netherlands notes that a significant number of bilateral tax treaties include an alternative formulation allowing taxpayers to submit a MAP request to either competent authority. Consideration could therefore be given to providing States with the option to apply a similar approach under the Protocol.

In addition, the Netherlands would appreciate clarification as to whether the inclusion of such an alternative provision would be regarded as constituting a substantially comparable mechanism for purposes of Article V.2.

The Netherlands would also welcome further guidance regarding the extent to which the Commentaries to Article 25 of the UN and OECD Model Tax Conventions may serve as interpretative guidance where the provisions of Article III.1 correspond closely to those treaty provisions.

Paragraph 3
The Netherlands observes that, under the BEPS Action 14 minimum standard, competent authorities may either consult with or notify the other competent authority where they consider an objection raised in a MAP request not to be justified. Under the current drafting of paragraph 3, consultation appears to be required in all cases. While the Netherlands appreciates the objective of promoting cooperation and consistency, it would welcome further clarification regarding the rationale for adopting an approach deviating from this standard and that may also not fully align with established domestic practices of states.

Paragraph 4
The Netherlands would appreciate further clarification regarding the purpose and intended application of this paragraph. Based on our experience, we have not encountered any situations in which constitutional limitations have prevented either the consideration of a case under MAP or the implementation of an agreement reached by competent authorities. Additional explanation concerning the situations that this provision seeks to address would therefore be helpful.

Paragraph 11
In practice, decisions on MAP-request admissibility and whether an objection is justified are usually made at the same stage. The Netherlands suggests considering a single indicative timeframe instead of two periods. More generally, we are cautious about procedural timelines unless clearly intended as guidance, not obligations. With that clarification, a three-month review period and 24 months to resolve a MAP case are suitable indicative timeframes and align with international standards.

Article III.3 – Arbitration
General
Article III.3's arbitration provisions are more detailed than those in the UN and OECD Model Conventions, but less prescriptive than the Multilateral Instrument. While the article covers many elements, some details are left to agreement between competent authorities, or—if no agreement—the rules set by the Meeting of the Parties apply. The Netherlands requests clarification on the form and content of these supplementary rules, and how they relate to the procedural provisions already in the article.

Paragraph 9
The Netherlands notes that paragraph 1 makes arbitration available in respect of any unresolved issue, where the relevant conditions have been met. Paragraph 9, however, appears to contemplate situations in

which an arbitration decision addresses only certain unresolved issues. As arbitration generally represents the final stage of the dispute resolution process, the Netherlands would welcome further clarification regarding the circumstances in which only part of the unresolved matters would be submitted to, or resolved through, arbitration.

Article III.4 - Rules applicable to the mediator, conciliator or arbitrator

Paragraph 2

The Netherlands notes that, under existing international arbitration mechanisms, each competent authority appoints one arbitrator, while those arbitrators jointly appoint a chairperson. Although all arbitrators are expected to satisfy independence and impartiality requirements, the appointing authorities generally retain discretion regarding the selection of suitable candidates. In practice, this framework does not necessarily preclude an arbitrator from being a national or resident of the appointing State, while the chairperson is typically selected from a third jurisdiction.

The Netherlands therefore wonders whether the requirement in subparagraph (a) is necessary in relation to the two arbitrators initially appointed by the competent authorities, particularly given the safeguards already provided through the roster system and applicable independence requirements.

With respect to subparagraph (b), the Netherlands suggests that the provision also expressly encompasses individuals who currently work, or have previously worked, for the competent authority concerned.

Paragraph 4

While the Netherlands subscribes to the replacement rule in this paragraph. It would, however, be helpful to clarify how this provision is intended to operate where the individual requiring replacement is the chairperson or third arbitrator, who would ordinarily have been appointed by the other arbitrators rather than by the competent authorities themselves.

Article III.5 – Fees, remuneration and expenses

The Netherlands would appreciate further clarification regarding the meaning of the phrase: "shall take into account the need to ensure equitable access to the mechanisms." In particular, additional guidance on how this consideration is intended to operate in practice, including whether it is aimed at addressing cost allocation, taxpayer access or broader procedural fairness considerations, would be welcomed.

Chapter IV – Consultations in the absence of an applicable tax instrument

The Netherlands welcomes this provision as it offers a useful framework for addressing double taxation where no tax treaty exists. It can also support cooperation when authorities need to verify facts under domestic law.

The Netherlands notes that the mechanism is initiated by the authorities concerned rather than at the request of a taxpayer. This feature appears to provide an appropriate safeguard, ensuring that consultations are undertaken only where both sides consider them appropriate and useful in the specific circumstances of a case.

However, in the absence of a tax treaty, a competent authority may not always be designated. We suggest referring more broadly to the relevant tax administration or the Parties themselves to allow greater flexibility in such cases.

Chapter V – Reservations

Article V.2 – Application in relation to other instruments

The Netherlands supports Alternative A, as it appears to offer participating States an appropriate degree of flexibility in determining the interaction between the Protocol and existing international instruments. More generally, the Netherlands notes that, within the current treaty landscape, mutual agreement procedures and arbitration provisions are typically the principal dispute resolution mechanisms already addressed within bilateral treaties. Accordingly, Chapter V may be expected to have particular relevance in relation to those provisions.

Further, the Netherlands would welcome a clarification regarding paragraph 4. While the inclusion of this provision is understandable within the broader structure of Article V.2, a number of concepts would benefit from additional guidance, including "substantially comparable framework", "substantially comparable level of protection", "safeguards" and "legal effects".

For example, it would be helpful to understand whether a MAP provision modelled after Article 25 of the UN or OECD Model Tax Convention would generally be regarded as constituting a substantially comparable framework for the purposes of the Protocol.

The Netherlands would also welcome clarification regarding the practical operation of Article V.2, including whether a central mechanism, database or publicly available reference source is envisaged to assist States and taxpayers in identifying treaties that are considered to provide substantially comparable mechanisms and situations in which the provisions of the Protocol are applicable.

Chapter VII – Other provisions

The Netherlands notes that information exchanged under the Protocol may be handled by either the competent authority or the tax administration. To reflect these operational realities, we suggest to add explicit reference to "tax administration" in paragraph 3.