



# **International Dispute Resolution: Global Perspectives and Opportunities**

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# Panelists

- **Carol Dunahoo**, Partner, Baker & McKenzie LLP (Chair)
- **Jennifer Best**, Director of Treaty and Transfer Pricing Operations, Large Business & International Division, IRS
- **Deborah Palacheck**, Director, Treaty Administration, Large Business & International Division, IRS
- **Achim Pross**, Head, International Co-operation and Tax Administration Division, Centre for Tax Policy and Administration, OECD
- **William Sample**, Vice-President–Tax, Microsoft Corporation
- **Theodore Setzer**, Assistant Deputy Commissioner (International), LB&I, IRS
- **Anna Theeuwes**, TEI EMEA President

# Agenda



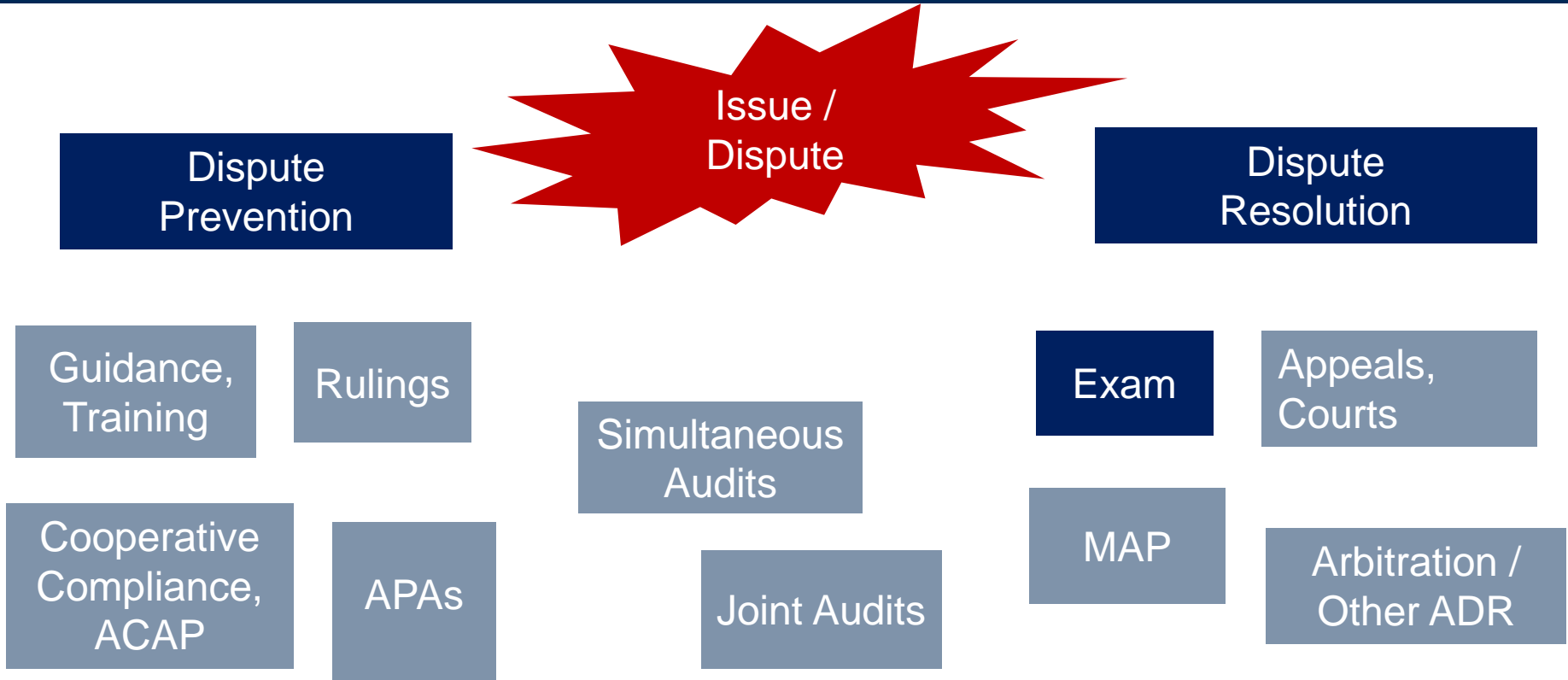
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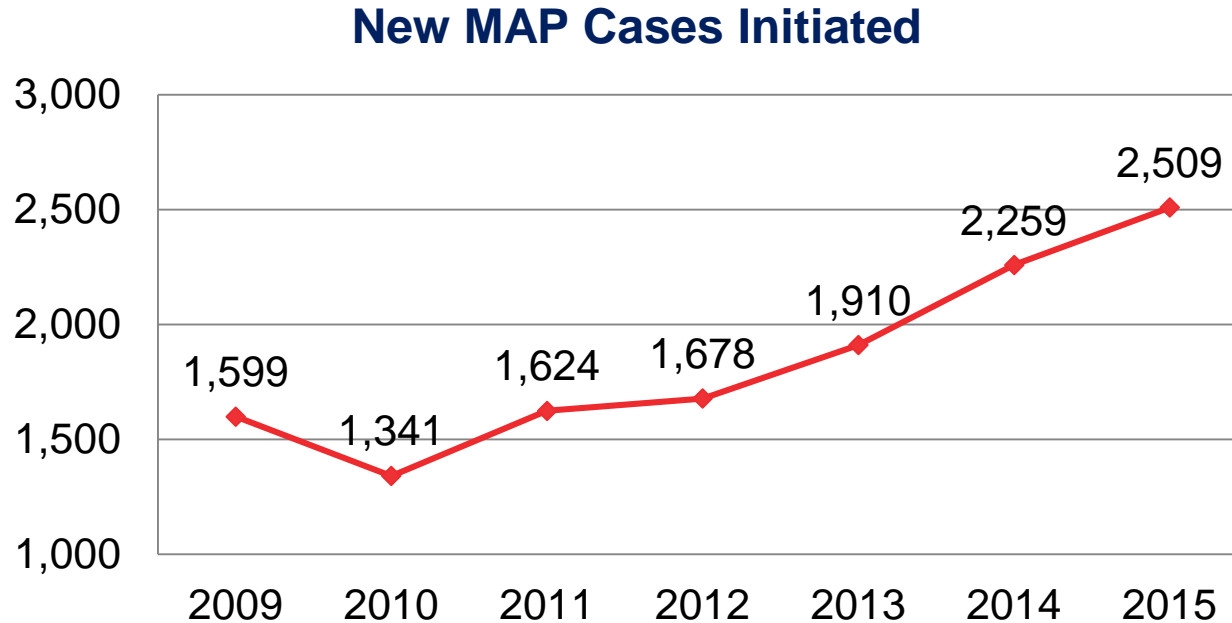
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# Current Landscape

# Current Procedures

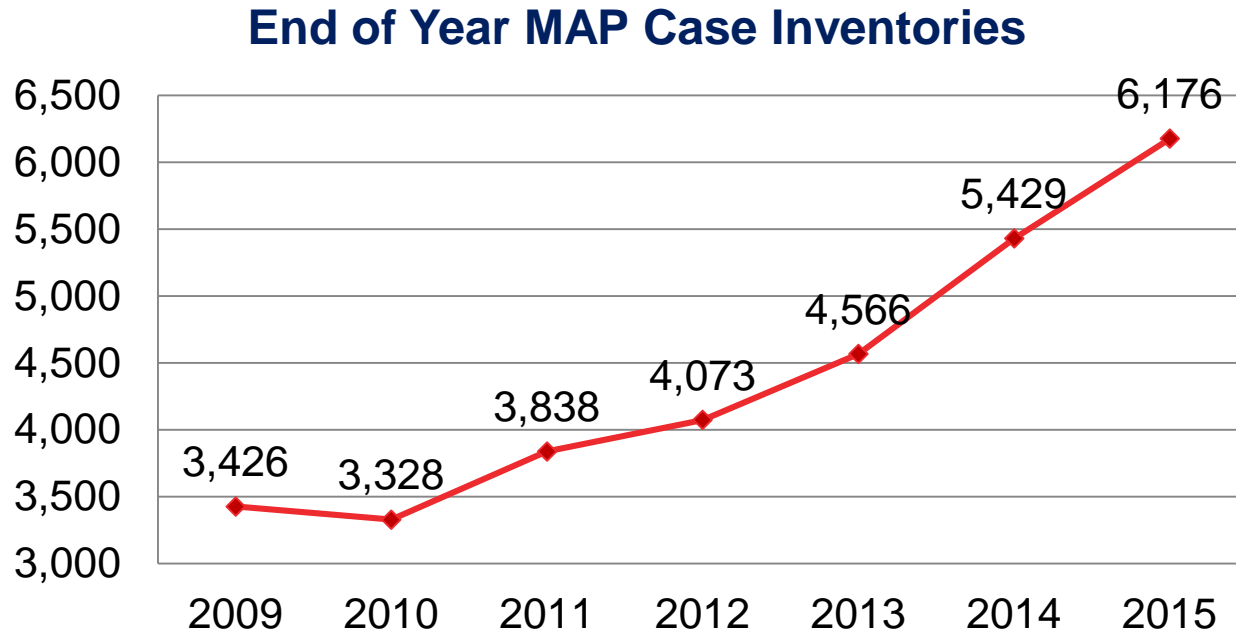


# New MAP Cases Initiated by OECD Member States



Source: <http://www.oecd.org/ctp/dispute/map-statistics-2015.htm>

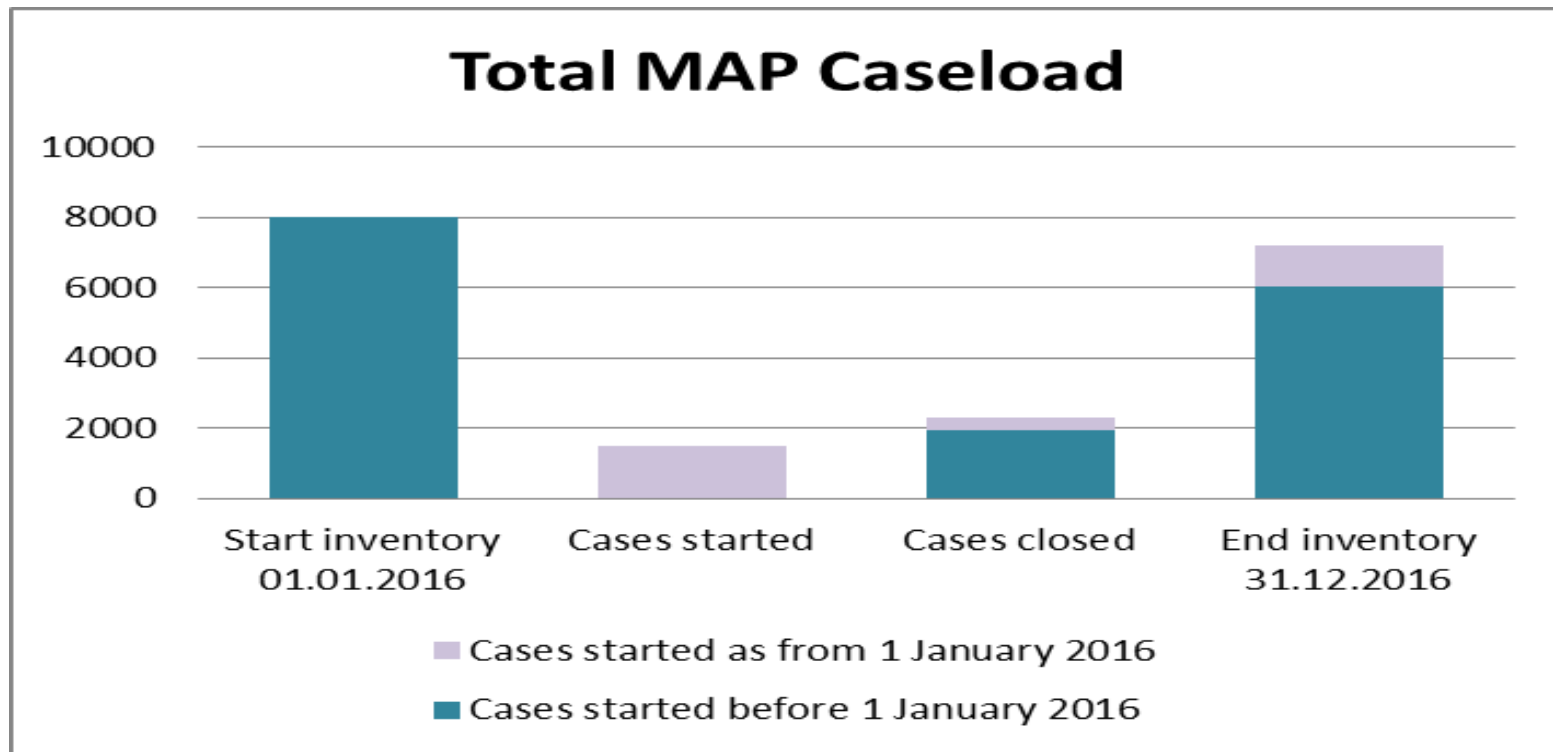
# MAP Caseload of OECD Member States



Source: <http://www.oecd.org/ctp/dispute/map-statistics-2015.htm>



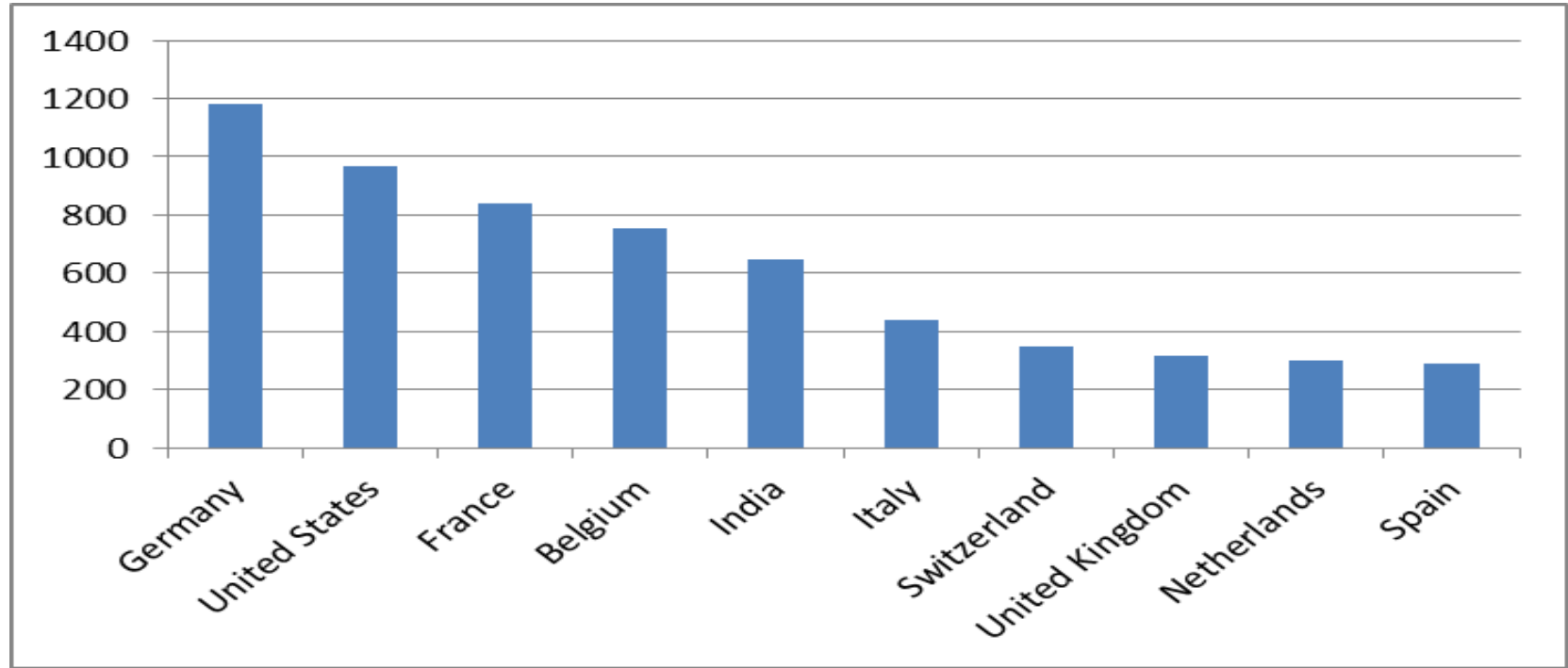
# 2016 MAP statistics







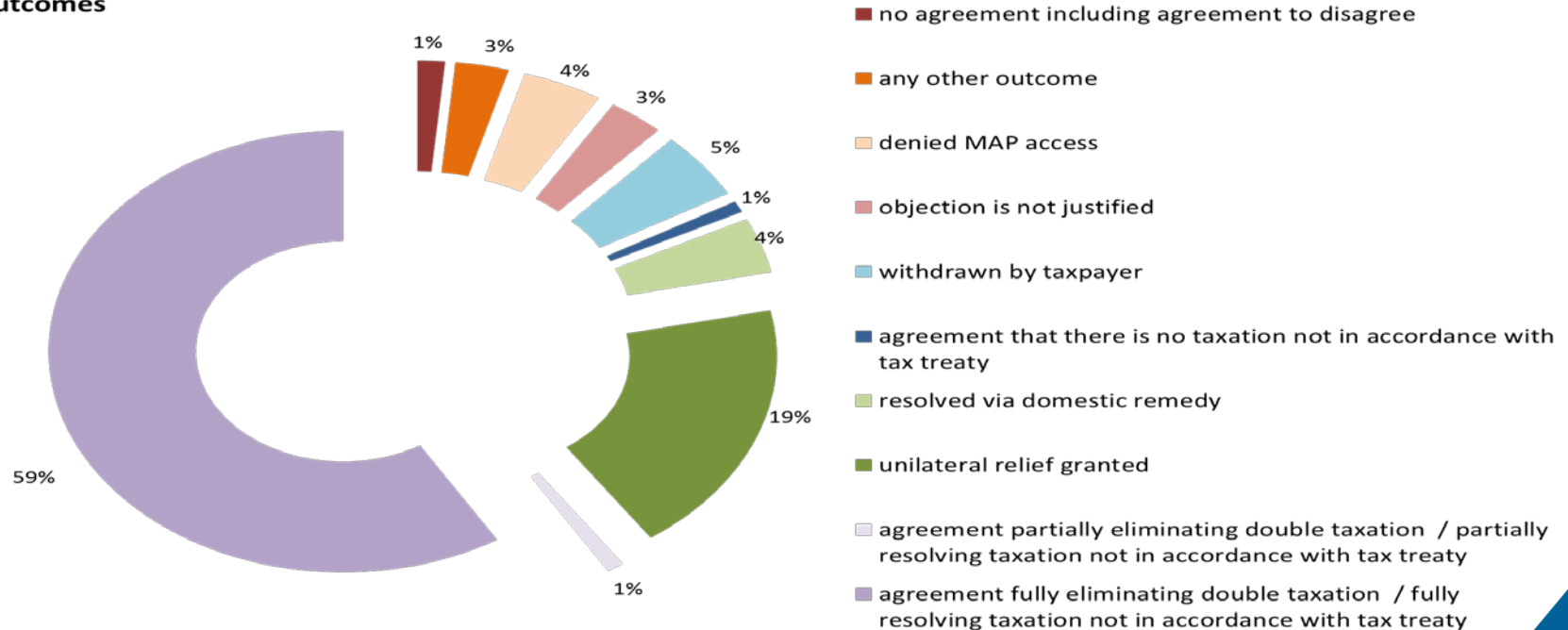
# Jurisdictions with most MAP cases in end inventory





# Outcomes of cases closed in 2016

## MAP Outcomes



# Practical Challenges

**Issues are resolved in most MAP cases, but practical challenges are growing**

- **Barriers to MAP consideration**
  - Settlements forced at exam level
  - Arguments that issue is a domestic law issue, not a treaty issue
  - Imposition of domestic law / procedural deadlines
  - Rejection or inaction on request
  - Cost and process complexity

# Practical Challenges

- **Inappropriate behavior in MAP negotiations**
  - Revenue-driven or other unprincipled positions
  - MAP positions based on policy preferences instead of treaty provisions
  - Unwillingness to concede or compromise particular issues
  - Exclusion of perceived “tax avoidance” cases
  - Stonewalling

# Practical Challenges

- **Institutional issues**
  - Competent Authority may have inadequate authority or institutional power to conclude MAP agreements
  - Competent Authority staffing or other resource constraints
- **Case volumes**



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## Improvement Initiatives

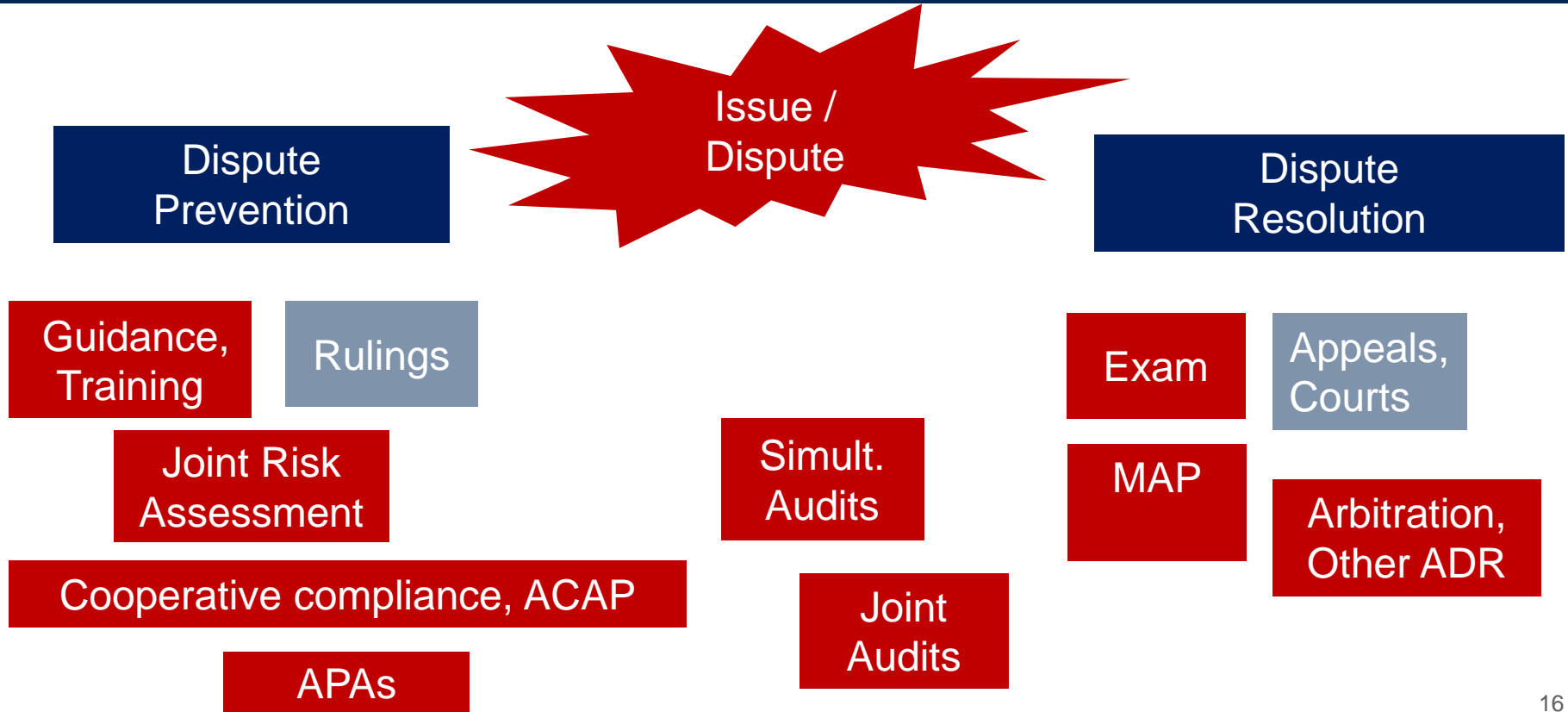
# Why Does it Matter? **does it matter?**



“We are also working on  
***enhancing tax certainty...***”

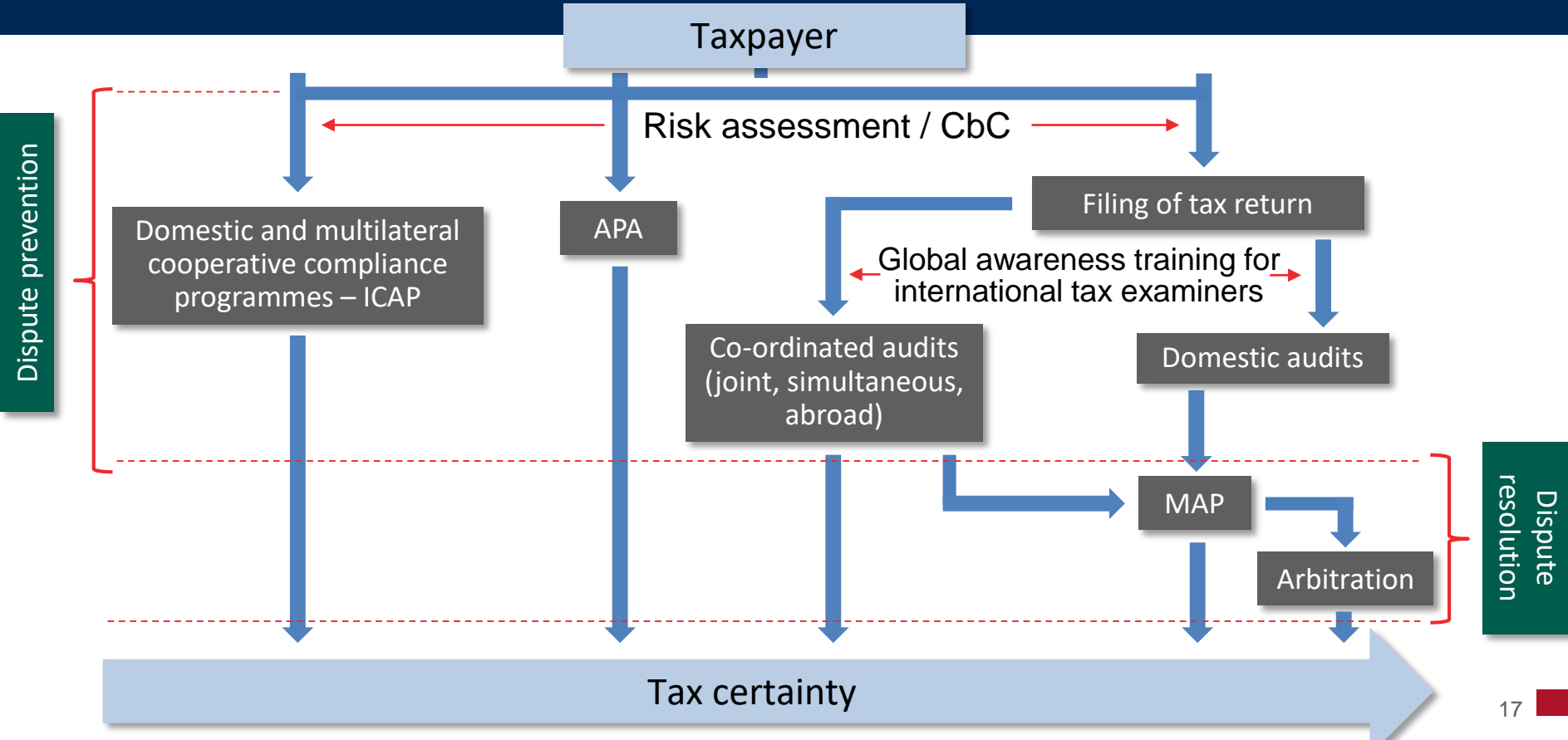
G20 Leaders' Communiqué, Hamburg, 8 July 2017

# New Initiatives





# Process Overview



# New Initiatives – Dispute Prevention

- **Pre-filing initiatives**
  - Improved risk assessment – CbC reporting, other?
  - “Global awareness” training
  - Improvements to APA / ACAP procedures
- **Cooperative compliance programs**
  - ICAP
  - National-level programs

# New Initiatives – Dispute Prevention

- **Coordinated audits**
  - Joint audits - FTA initiative
  - Simultaneous audits - EU *Fiscalis 2020* program

# New Initiatives – Dispute Resolution

- **BEPS Action 14 “minimum standards”** – obligatory for all Inclusive Framework members
  - MAP improvement measures
  - MAP peer review process
  - MAP case statistics reporting
- **BEPS Action 14 “best practices”** - optional
  - MAP process improvements
- **UN, EU, other initiatives**

# New Initiatives – Dispute Resolution

- **Arbitration**

- MLI – optional, with scope and process options
- EU Arbitration Directive – required but limited in scope (trumps bilateral treaty or MLI provisions)
- OECD Model – political commitment of OECD members (superseded by MLI where applicable)
- UN – optional in current Model, further discussion in process



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## Outlook

# Outlook

**What is on your wish list for the future?**