



# Centralized Controversy Management for Transfer Pricing

DLA Piper

2019 Transfer Pricing Masterclass Series



# Presenters



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**Background & Experience**

- Former transfer Pricing Technical Lead at World Bank Group
- OECD/World Customs Organisation TP/Customs interface
- Transfer Pricing Lecturer at IBFD, UK, Swiss, Swedish universities
- Qualified lawyer



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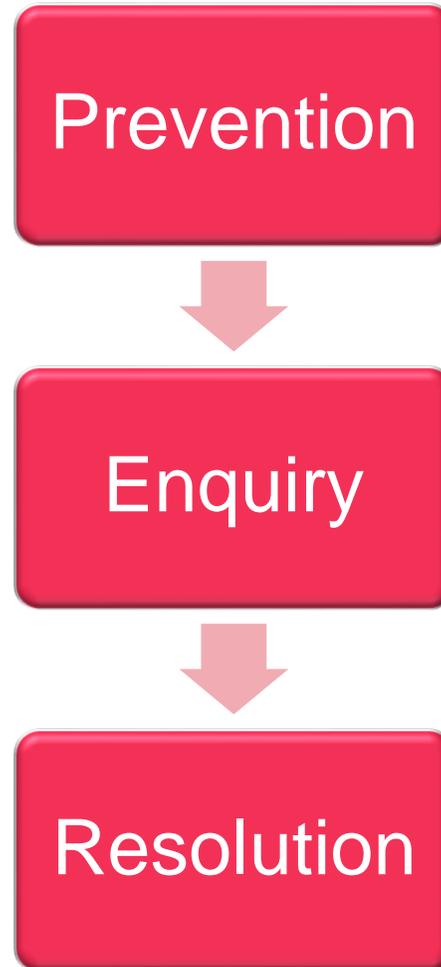
Co-Head International Transfer Pricing

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**Background & Experience**

- Former APA Team Leader and Competent Authority Analyst at US IRS focused on European transfer pricing matters
- Former World Bank transfer pricing technical training to developing countries worldwide
- Member, OECD Business and Industry Advisory Committee
- Economist, IRS Enrolled Agent

# Centralized Transfer Pricing Controversy



# Prevention

## Create a sustainable operating model.

- Ensure model is consistent with business operations – remain close to the business
- Identify and evaluate weaknesses of the model

## Support the operating model with evidence.

- Properly implemented Intra-group agreements
- Board minutes and governance matters
- Documentation of functional interviews (consider affidavits where critical)
- Obtain copies of business presentations, announcements and analyses for the file
- Tax, transfer pricing and legal analyses

## Be mindful of disclosure requirements.

- DAC6 and similar rules
- Masterfile and local file requirements
- CBC

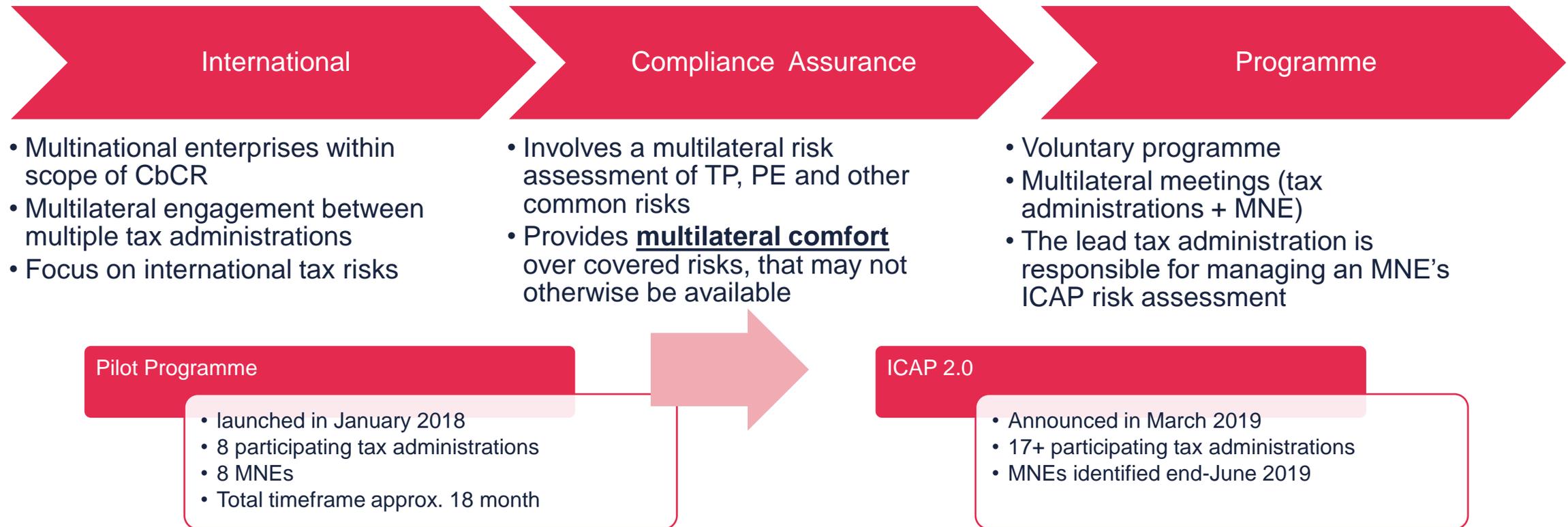
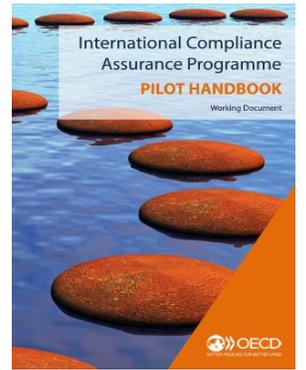
## Obtain advance certainty (or comfort) where needed.

- Strategic use of APAs and rulings
- New tools:
  - ICAP for 'multilateral comfort'
  - Cross Border Dialogue

## Proactively manage communications.

- Communication of tax strategy
- Presentation of operations in public media (website and press releases)
- Monitoring external communications and representations concerning business developments

# In focus: The ICAP 2.0 Programme – Overview



Source: OECD

# Enquiry

## Information requests from tax authorities

- Legal obligations to provide
- Additional explanations
- Provision of unrequested information

## Proactive engagement

- Face to face meetings
- Discussion of information requests
- Business presentations
- Setting a factual baseline

## Third party information

- Know what is out there
- Who else may the authority talk to

## Exchange of information

- Know what powers the relevant authority has
- Consider benefits of providing yourself versus waiting on exchange

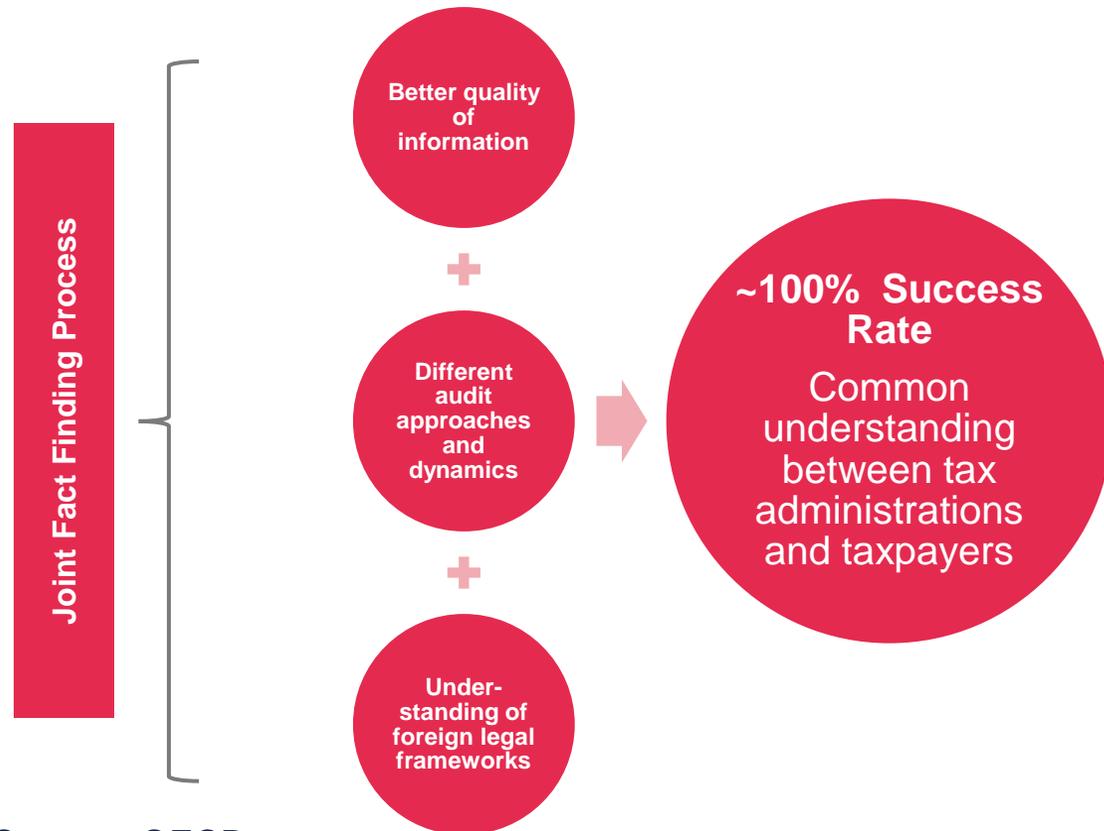
## Consistency of representations

- What are you telling other tax authorities
- What is public
- New tool: joint audits

# In focus: Joint Audits – Key benefits & Holistic Approaches



TWO audit teams – ONE common solution – ZERO double taxation



Source: OECD

- Separate unilateral audits of bi- and multilateral tax issues can only be a plan B
- Tax administrations increasingly realise that Joint Audits are an effective tool to achieve common understanding on TP and PE questions
  - 20 participating jurisdictions
- The joint fact finding process can be used to enhance the outcome of other tax certainty approaches (e.g. APA roll forward etc.)

# Resolution

## Domestic remedies

- Relevance of tax treaties
- Interaction with MAP

## Settlement

- Interaction with MAP
- Broader implications (latter years, other countries)

## Mutual Agreement Procedures

- What basis (tax treaty, EU arbitration convention, EU directive)
- Impact of BEPS and MLI
- Interaction with domestic remedies
- Arbitration option, where possible
- Broader implications

# Strategic Use of MAP

## Choice of MAP:

- Arbitration convention
- Double taxation treaty
- EU Directive

## Basis for MAP:

- 'Taxation not in accordance with the treaty'
- Other cases of double taxation

## Domestic settlements

- Impact on access to and options under MAP

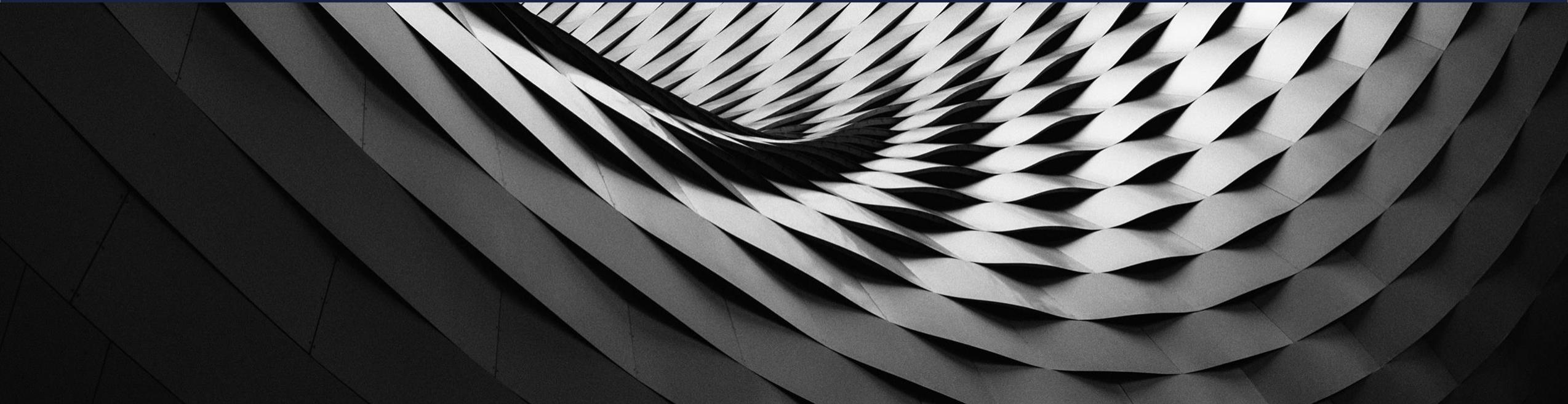
## Understanding and aligning interests

- Revenue v principle focus
- Timelines
- Broader impact

## Best use of resources

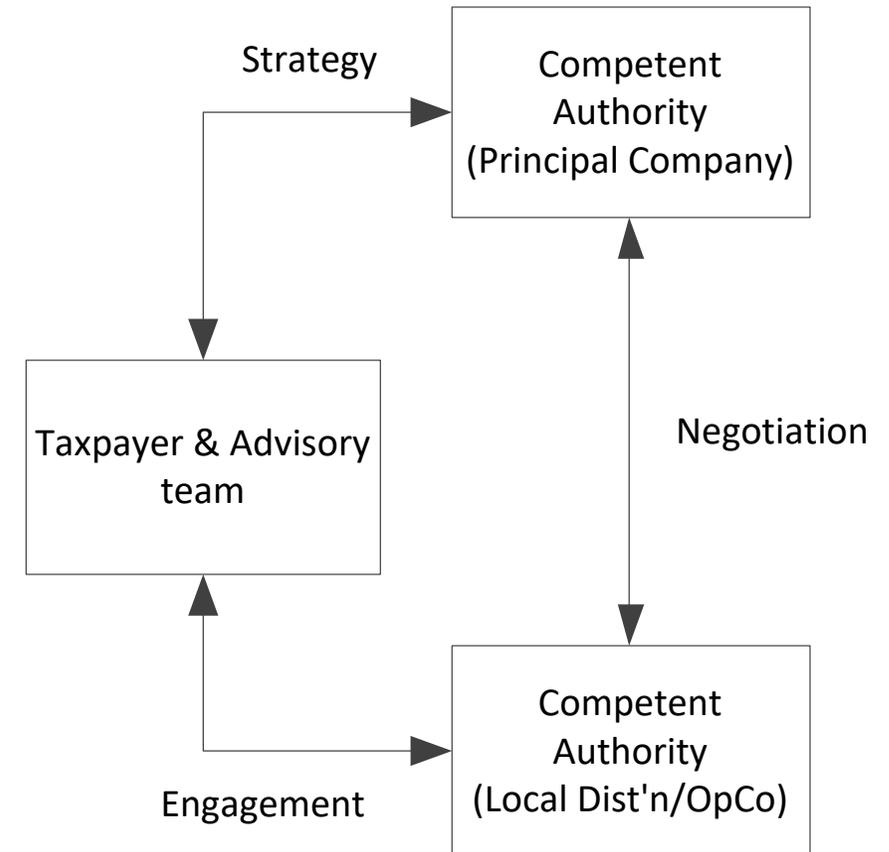
- Use MAP combined with an APA to settle disputes and obtain certainty

# Client strategies



# Client Strategy: Maximum Transparency and Certainty

- Several companies have taken certainty and transparency to the max with a a multi-faceted approach that includes:
  - **Bilateral APA strategy:** Aligning with the principal competent authority, pursuit of multiple strategically selected bilateral APAs with the goal of consistent arm's length results
  - **ICAP:** multilateral comfort for an additional 'halo effect'
  - **Proactively documented tax strategy:** further transparency to avoid press surprises
  - **Communications and government affairs:** public speaking at tax events (particularly with governments present) about the strategy and transparency exhibited by the company
  - **Global TP dispute framework:** centralized management to ensure consistent replies, use of transcription for business interviews to be referenced by APA applications and TP doc



# Why consider a bilateral APA strategy?



**CERTAINTY**  
Certainty with respect to transfer pricing: eliminate both current and future transfer pricing audit risk



**COOPERATION**  
Provides a cooperative way of resolving disputes or potential disputes, and builds trust and transparency with governments



**RESOURCE PLANNING**  
Removal of transfer pricing audit threat, allowing the company to resource plan appropriately



**COST REDUCTION**  
Significant reduction of compliance costs over the term of the APA



**REPUTATION**  
Agreement provides enhanced reputation with an increasingly interconnected tax administration community

# APA strategy steps



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