

GLOBAL IFA TRAVELLING LECTURESHIP PROGRAMME 2024

INTERNATIONAL TAX DISPUTE RESOLUTION

SAO PAULO,
BRAZIL



22 APRIL, MONDAY



International Fiscal Association



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TOPIC: INTERNATIONAL TAX DISPUTE RESOLUTION



Global IFA Travelling Lectureship Programme

April 2024



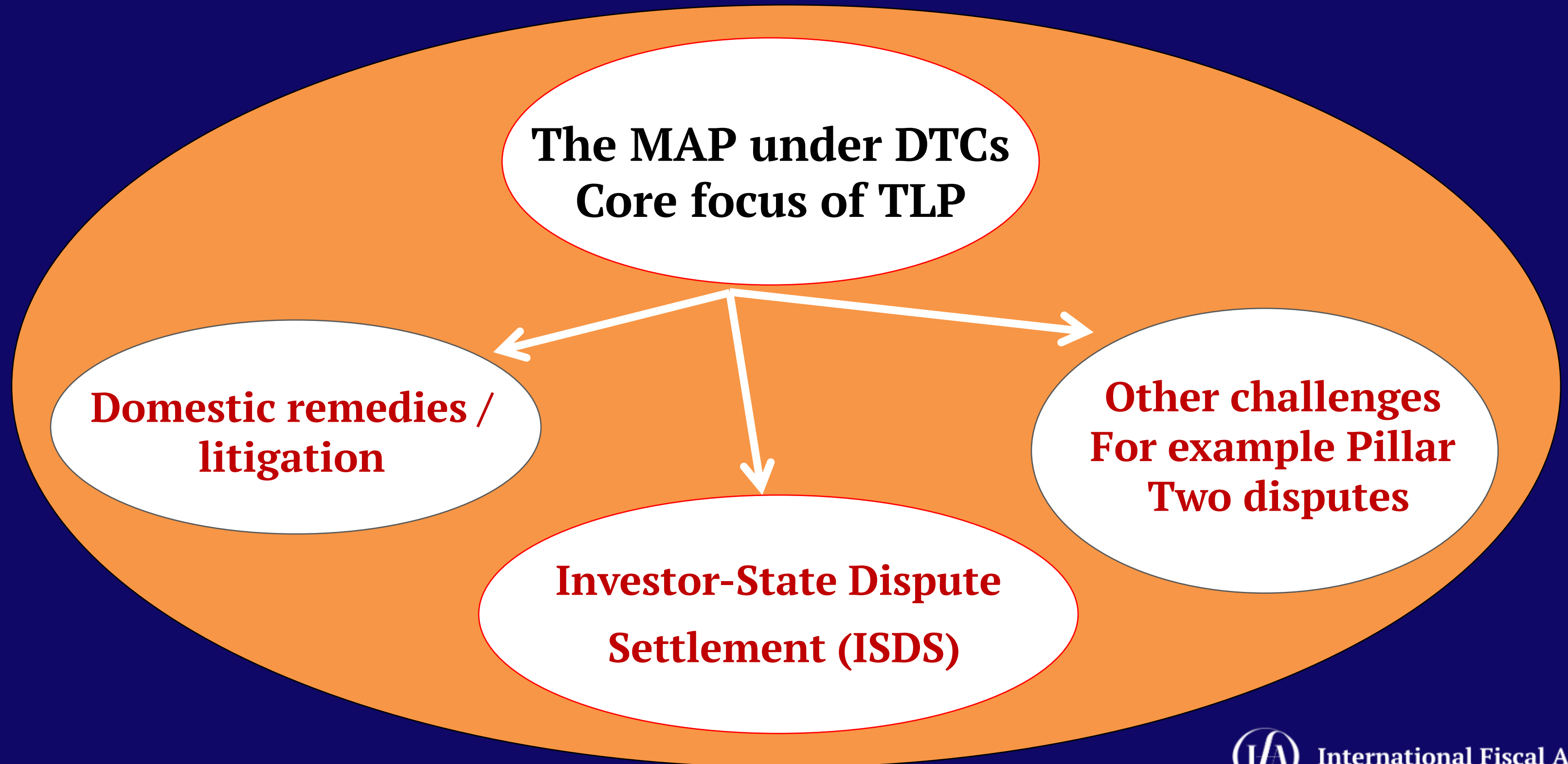
Opening remarks on the scientific programme

Objectives of Global IFA's 2024 TLP

- Revisit the current and future practical challenges posed by MAP as a state-to-state dispute settlement procedure inspired from diplomatic protection (both at the level of access and operation of the MAP) and explore broader ramifications (for example penalties, criminal law ramifications, relation between TP and custom duties, etc.). Does it work? What can (should) be improved? In countries with no or few tax treaties, should they adopt treaties or other alternative systems of dispute resolution?
- Explore possible improvements in tax dispute resolution (including the context of BEPS Action 14 or outside that context)
- Scientific agenda reflects the strong emphasis put by Global IFA on International Tax Dispute Resolution from a holistic perspective.
- Main topic of the Cape Town Congress “*Practical approaches to International Tax Dispute Prevention and Resolution*” is the first important milestone.



Global IFA's 2024 TLP in the global tax controversy context





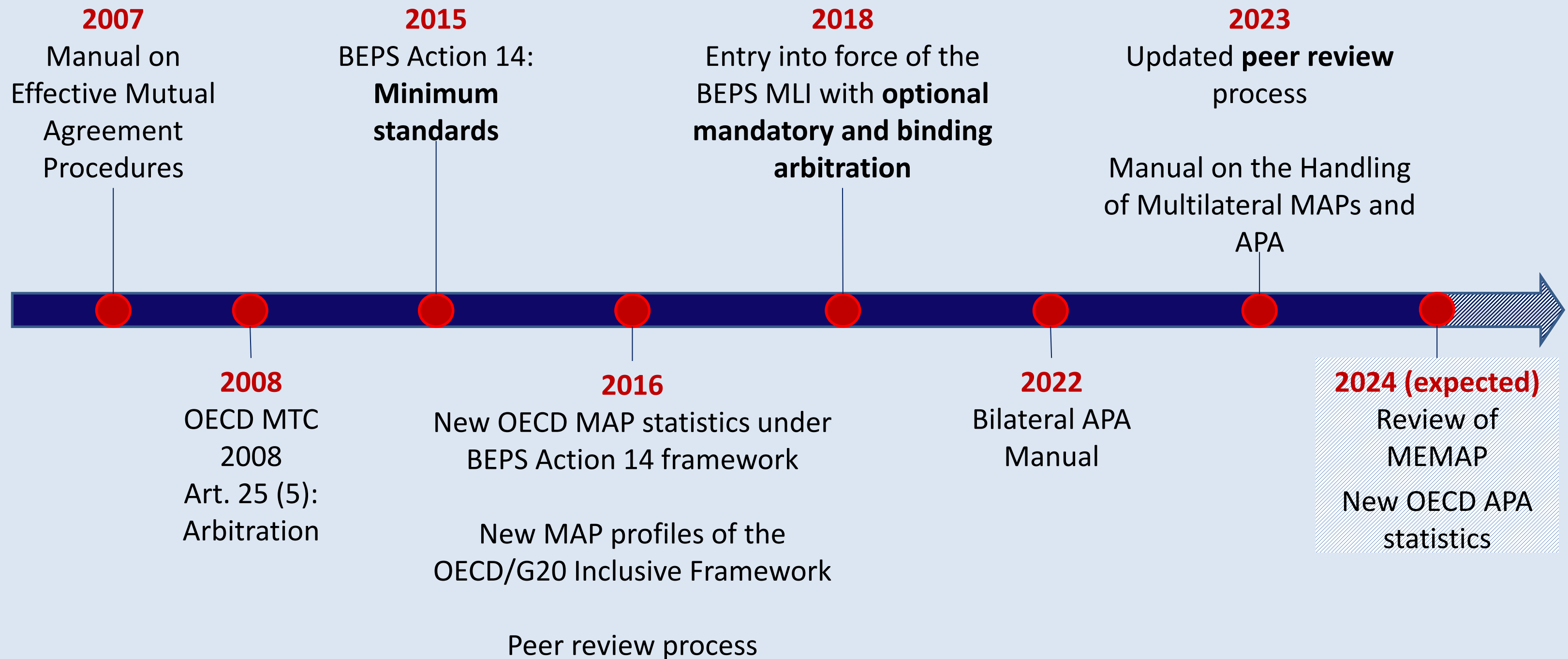
Travelling Lecturer

Prof. Dr. Adolfo Martín Jiménez

Why speaking about tax dispute resolution and BEPS Action 14 in Brazil?

1. Brazil's transfer pricing reform to adapt to OECD standards and its candidacy to OECD
2. Brazil has been trying to adapt its tax treaties and legislation to BEPS Action 14
3. Not many MAPs yet, but raising number in the last years (OECD Statistics):
 - a) Need to increase taxpayers' awareness of MAPs as alternatives to domestic dispute resolution procedures
 - b) Need to also know the limits of international tax dispute resolution procedures
4. Need for other countries to learn also from Brazilian experience, problems and perspectives

OECD: Making dispute resolution mechanisms more effective



BEPS Action Plan 2013: February 2013

P. 53: *“A comprehensive approach should also consider possible improvements to eliminate double taxation, such as increased efficiency of MAPs and arbitration provisions”*”

BEPS Action Plan 2013: final document

The actions to counter BEPS must be complemented with actions that ensure certainty and predictability for business. Work to improve the effectiveness of the mutual agreement procedure (MAP) will be an important complement to the work on BEPS issues. The interpretation and application of novel rules resulting from the work described above could introduce elements of uncertainty that should be minimised as much as possible. Work will therefore be undertaken in order to examine and address obstacles that prevent countries from solving treaty-related disputes under the MAP. Consideration will also be given to supplementing the existing MAP provisions in tax treaties with a mandatory and binding arbitration provision.

ACTION 14: Make dispute resolution mechanisms more effective

Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.

BEPS Action 14: minimum standards (17 elements + 11 Best Practices)

- 1 Full implementation in good faith of MAPs and timely resolution
- 2 Ensure administrative processes promote the prevention and timely resolution of disputes
- 3 Taxpayers' access to MAP

BEPS Action 14 Minimum Standard: 1. Full implementation in good faith of MAPs and timely resolution:

- Articles 25.1-3 OECD MC + access and adjustment in TP cases + access in cases of application of (domestic / treaty) anti-abuse provisions
- Commit to a timely resolution of MAP cases (within an average 24 months).
- Membership of CA of FTA, timely and complete reporting of statistics, having the compliance with the minimum standard reviewed by their peers, plus transparency on positions on MAP / arbitration

BEPS Action 14: Minimum Standard 2. Ensure administrative processes promote the prevention and timely resolution of disputes

- National transparency of MAP rules and procedures so that taxpayers know how to proceed and publication of MAP profiles
- Ensure independence of MAP CA (autonomy in taking decisions+resources), no incentives to 'maintained revenue'
- Clarifying in their MAP guidance that audit settlements do not preclude access to MAP. If countries have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, countries may limit access to the MAP with respect to the matters resolved through that process
- BAPA roll-backs for countries with APA programs subject to verification in audits

BEPS Action 14: Minimum standard 3. Taxpayers' access to MAP

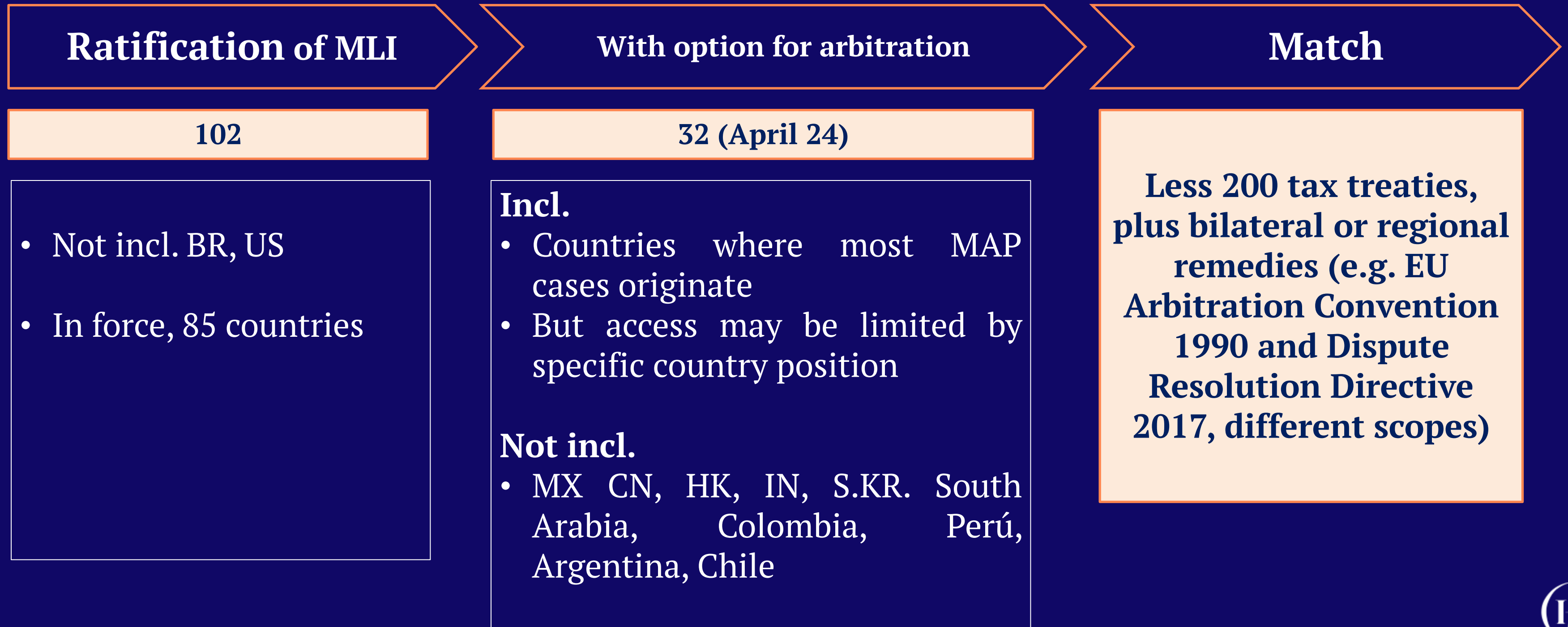
- Implement art. 25.1 OECD MC (request to any of the CAs or notification system)
- Clear rules on documentation to be provided by taxpayer with MAP request
- Implementation of any agreement reached notwithstanding any domestic time limits (second sentence of article 25.2 OECD MC)

Subsequent work: public consultation BEPS Action 14 (2020)

Proposal for elevating to 'minimum standard' 8 best practices:

1. Introduce BAPA program except for jurisdictions with low volume TP MAP cases
2. Obligation to roll-out Global Awareness Training Module or similar
3. Definition of access to MAP and minimum list of documents (annex A) to be attached to MAP request (also transparency in country guidelines on these elements)
4. Suspend tax collection for the duration of the MAP process as in domestic rules
5. Align interest and penalties in proportion to the outcome of the MAP
6. Ensure that all MAP agreements can be implemented regardless of time limits
7. Allow multi-year resolution through MAP of recurring issues with respect to filed years
8. Implement MAP arbitration (or other dispute resolution mechanism to guarantee the effective resolution of cases through MAPS)

Optional mandatory and binding arbitration: implementation through MLI (Art. 18 to 26)



BEPS Action 14: internal limits

- OECD: Gradual approach to improve MAP, including arbitration to put pressure on CAs
- Many practical problems of MAP after BEPS Action 14, including:
 1. Connection with tax audits (current and later years)
 2. Taxpayer participation
 3. Transparency and incoherent, unprincipled solutions
 4. Commentaries OECD not fully adapted to international public law and many obstacles to MAP initiation remain

BEPS Action 14: external limits

- The 'dispute resolution gap': limited scope of MAP / arbitration
- Very limited role of investment treaties in tax disputes
- Unilateral systems (FTC, TP, Ombudsman / mediation)
- MAAC + domestic provisions (the case of P2)
- Dispute prevention

Focus on Brazil: panel discussion

- Luis Eduardo Schoeri Full Professor of Tax Law at USP Law School. Vice-President of IFA Brazil/ABDF
- Anelize De Almeida, IRS Brazil
- Rogério Araújo, Tetra Pack
- Lionel Bonner, Dell Technologies
- Q&A

