



BMR Legal

**BEPS AND BEYOND BEPS: IMPACT  
AND NEXT STEPS**

**FOUNDATION FOR INTERNATIONAL  
TAXATION CONFERENCE 2015**

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ITC MARATHA, MUMBAI**

# Tax disputes and their resolution under BEPS? Will they work?

Guest of Honor – Justice V S Sirpurkar, Chairman, AAR (India)

Panelists:

- Jeffrey Owens, UK (Chair)
- Pramod Kumar, ITAT, India
- Arvind Datar, Sr. Advocate, India
- Mohan Parasaran, Sr. Advocate, India
- Rajesh Ramloll, Mauritius
- Daniel Erasmus, South Africa, Africa & USA
- Mukesh Butani, India (Moderator)

Strengthening  
developing nations'  
engagement

Fair and modern  
tax system

Endorsement of  
package of  
measures

Inclusive framework  
with involvement of  
non-G20 nations

Consistent  
implementation

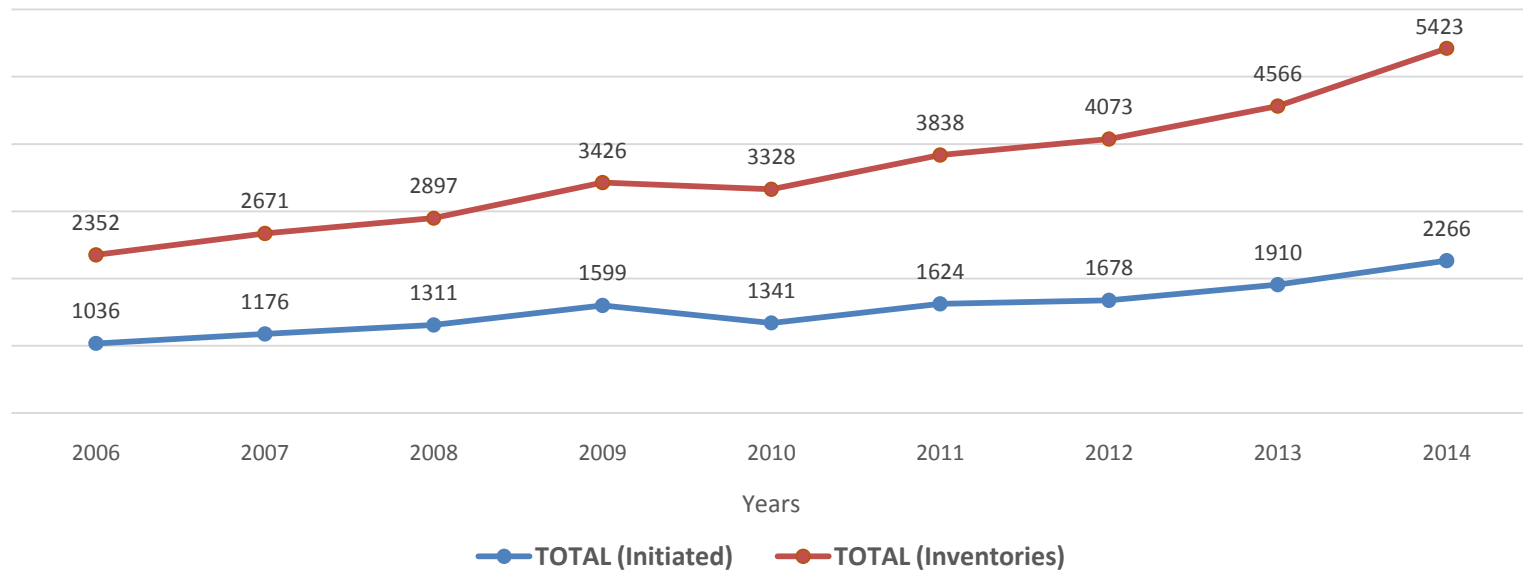
Elimination of  
double taxation

Enhancing  
transparency of  
tax systems

Technical assistance  
to developing  
countries

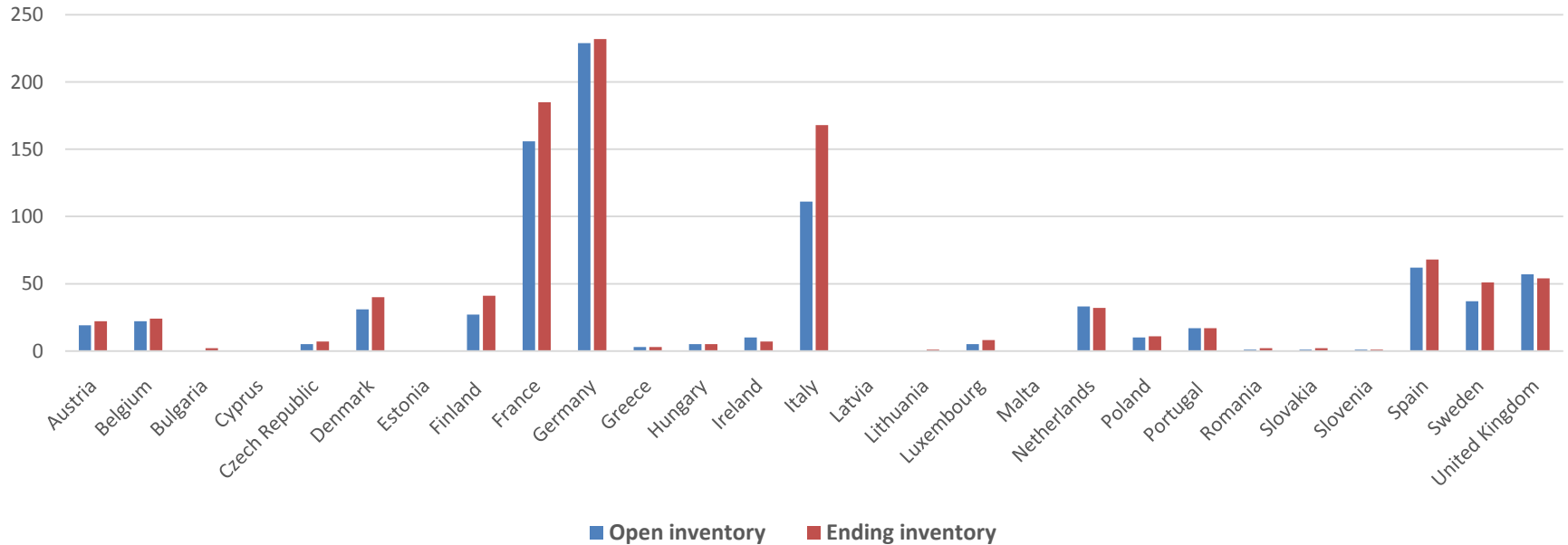
***BEPS is likely to throw up range of new disputes***

# Mutual Agreement Procedure (MAP) cases – General (OECD Countries)



Source: <http://www.oecd.org/ctp/dispute/map-statistics-2014.htm>

# MAP under EU Convention – TP cases (2013)



Source: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf/2014/jtpf\\_008\\_2014\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2014/jtpf_008_2014_en.pdf)

# Why do certain countries have more disputes than others?

## Topics generating controversies (caselaws) –

	Argentina	Australia	Belgium	Canada	Czech Republic	Finland	France	Germany	India	Indonesia	Italy	Malaysia	Netherlands	Portugal	Russia	Spain	Sweden	United Kingdom	United States	Uruguay	Zimbabwe	TOTAL
<b>Related party</b>	7	1	1	1	1		2	4	115	1	3	1	3	8	1	5		4	16			<b>174</b>
<b>ALP</b>	1			5		1	2	1	12		1		2		2	1	2	1	6		1	<b>38</b>
<b>Methodology</b>	5	2	2	3					183				2						2	1	1	<b>201</b>
<b>Comparability</b>	6								238												1	<b>245</b>

Source: IBFD database

- Action Point 14\*
  - Implementation of minimum standards, monitoring mechanism for implementation and identification of best standards
- Does the report go beyond minimum standards and proposal for monitoring body?
- Treaty obligations (related to MAP) to be implemented in good faith and cases resolved in timely manner
- Commit to resolve MAP cases within 24 months; country wise progress to be reviewed
- Countries to become members of the Forum on Tax Administration (FTA) MAP Forum to enhance Competent authority relationships

*\* Action Point 14: “Develop solutions to address obstacles that prevent countries from [re]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”*

## Minimum standards vs best practices (2/2)

- Timely reporting of MAP statistics
- Commit to peer review (of compliance) with minimum standard through FTA MAP Forum
- Transparency regarding country positions vis-à-vis MAP arbitration



## What's missing and wrong

- Mere focus on improving tax authority processes
- Improving taxpayer experiences is secondary
- The word 'taxpayer' is missing
- What about taxpayer involvement in the process?
- Entire focus is on tax authorities and their conduct
- Onus on countries to improve domestic resolution standards

## Arbitration – an unfinished agenda

- Has Mandatory Binding Arbitration (MBA) been adequately addressed
- BEPS to put further pressure on strained MAP process
- No recommendation for MAP to be extended to MBA
- Though 20 (out of 34) OECD nations have consented to MBA, these cover 90 percent of tax disputes
- Will Multilateral Instrument (Action Point 15) cover MBA or merely repeat the OECD and UN arbitration clauses
- Will FTAs cover tax cases
- How far can countries not supporting MBA stretch the argument on sovereignty?

## Could BEPS have been a springboard for ADR

- Recommend a default mechanism for MBA/ ADR – kicking in say after 2 year target for unresolved MAP
- Is mediation an option for non-OECD countries
- If countries do not implement MAP processes how does the MFN clause in GATS assist? If at all?
- Outcome of UN tax committee report on ADR (October 2015 Geneva meeting)
- Actions to guide promotion of international trade and investment

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