

ALDER & SOUND

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DISPUTE PREVENTION & RESOLUTION

32E30001 Tax Challenges for MNEs / Tuesday, April 25th 2023

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GUEST SPEAKER

32E30001 Tax Challenges for Multinational Enterprises / Spring 2023



PETTERI RAPO | Managing Partner

- ▶ Master of Science (Business Law, Finance) | Aalto University, School of Business (former HSE).
- ▶ Joined A&S in 2011, previous work experience from accounting and financial administration.
- ▶ Professional experience from working with multinational corporations from a range of industries, including construction, consumer goods, chemicals, food products, engineering, mining and software.
- ▶ Specialized in demanding transfer pricing engagements, intra-group financing, intangible assets and tax considerations related to operating in BRICS and other developing regions.

A photograph of three people sitting around a wooden table in a bright, modern office setting. A woman on the left is laughing heartily, holding a white mug. A man in the middle is also laughing, looking towards the woman on the right. The woman on the right is holding a glass of amber liquid and laughing. The background is filled with green plants and a blurred office environment.

We are
ALDER & SOUND

Company presentation

We are a trusted partner to growth companies and international corporations for all their tax and legal matters.

In addition, we provide wide range of services in connection with M&A transactions and other restructuring arrangements. The corporate solutions are supplemented with personal advisory services to entrepreneurs and other private individuals.

Building success stories together with our clients.

We serve our clients with comprehensive services and solutions to all needs and stages of their business. We grow and succeed together with them.

We are known for our agile mindset and practical advice.

When working with us, you get a team of experienced professionals having a deep understanding of your business and capability of supporting you all the way from design to implementation. Our global partner network ensures local expertise and no-hassle service delivery in all your operating regions.

2010

founded

35+

**experienced
professionals**

3000+

**completed
client engagements**

152+

**countries in global
partner network**

Insight and practical solutions tailored for your individual needs

Growth and international business

ALDER GLOBAL

M&A and other restructuring arrangements

ALDER TRANSACTIONS

Domestic business operations

ALDER DOMESTIC

Private individuals and families

ALDER PRIVATE

- ▶ Tax & legal services
- ▶ Transfer pricing
- ▶ Financial advisory
- + Innovative service concepts
- + Digital solutions
- + Global partner network

HELSINKI

TAMPERE

TURKU

+ rest of the world



Our extensive, carefully selected, and practically tested partner network covers six continents and more than 152 countries.

“We have used Alder & Sound for several years now and the most important factor is that they are very easy to work with.”

AGENDA | Tuesday, April 25th 2023

Dispute prevention & resolution

1) INTRODUCTION

2) DISPUTE PREVENTION

- Pre-emptive discussion
- Advance ruling
- Cross-Border Dialogue (CBD)
- Advance Pricing Agreement (APA)

3) ENHANCED COOPERATION

- Verohallinto / Enhanced cooperation
- OECD / International Compliance Assurance Programme (ICAP)

4) TAX AUDITS

5) DISPUTE RESOLUTION

INTRODUCTION

International taxation is (supposed to be) a zero-sum game

INTRODUCTION | ZERO-SUM TAX GAME

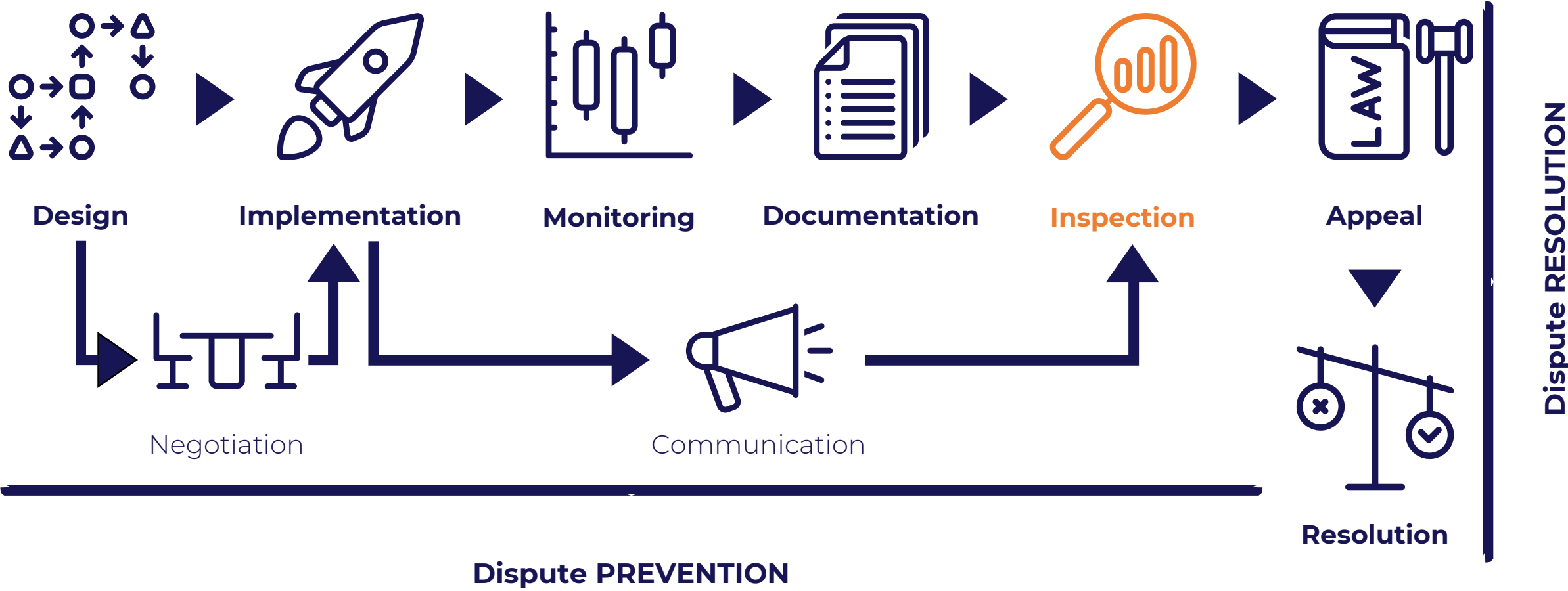
International taxation is (supposed to be) a zero-sum game



Fair distribution of taxing rights?

INTRODUCTION | Typical TP process (in practice)

Dispute prevention covers all phases until the dispute moves to appeal process

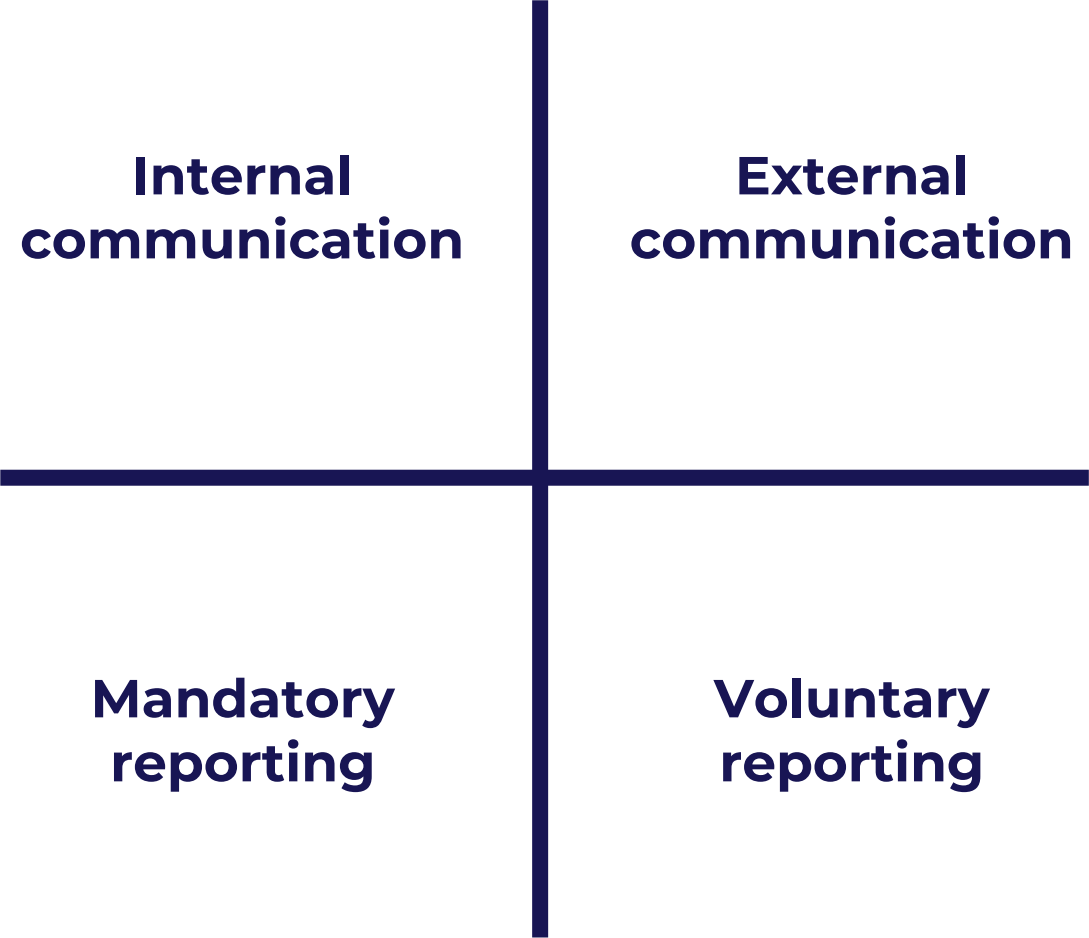


DISPUTE PREVENTION

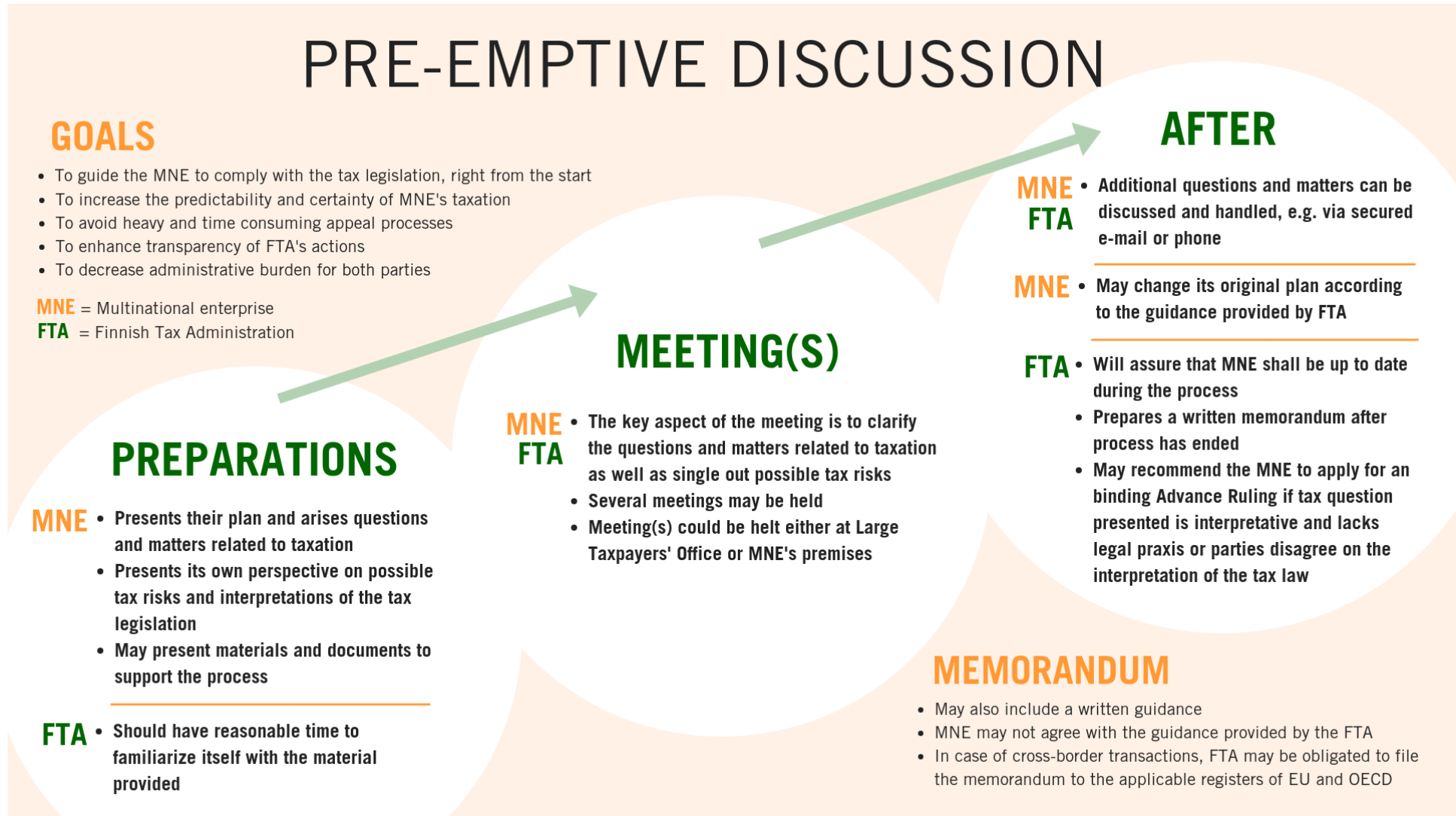
Dispute prevention covers all phases until the dispute moves to appeal process

DISPUTE PREVENTION | Communication

Effective dispute resolution is all about proactive communication towards the key stakeholders



DISPUTE PREVENTION | Pre-emptive discussion



DISPUTE PREVENTION | Advance ruling

The FTA may grant a binding advance ruling on most tax matters

▶ The FTA may grant a binding advance ruling on most tax matters

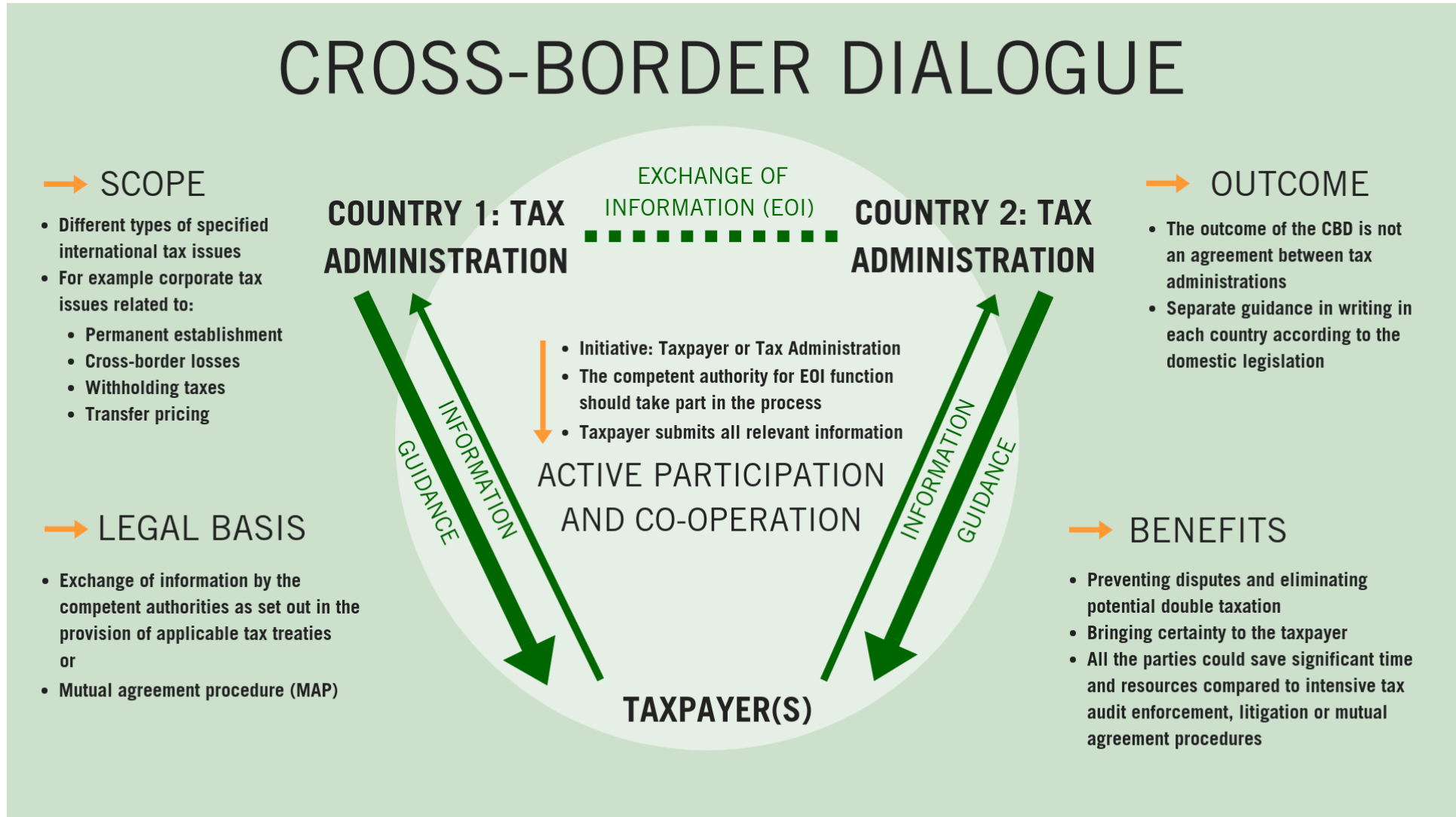
– Examples:

- A foreign company hires an employee in Finland. The employee coordinates sales and works in a client company's facilities. The company asks if this means that it has a permanent establishment in Finland.
- A foreign investment fund purchases shares of a Finnish real estate holding company and receives income from Finland for these shares. The fund asks if it is comparable to a Finnish investment fund and whether it is liable to pay tax to Finland on its income.
- The permanent establishment of a foreign company transfers its business to a new limited company. The company asks if the regulations on transfer of business in the act on the taxation of business income are applicable to business restructuring.
- A non-resident corporate entity outside Finland will receive dividend income for the shares of Finnish listed companies that it owns. The corporation asks if it is comparable to a Finnish corporate entity in accordance with § 20 of the act on income tax, in which case the dividends would be exempt from tax.

▶ The advance ruling must be requested in advance

- In **income tax** matters, the request must be made before the income tax return's filing deadline.
- In **other tax** types, such as tax at source, the request must be made before the filing deadline of the tax in question or the due date of the prepayment in question.

DISPUTE PREVENTION | Cross-Border Dialogue



DISPUTE PREVENTION | APA

Advance Pricing Agreement (Arrangement)

▶ **APA process is initiated by the company**

- Neuvotteluissa osapuolina ovat yrityksen toimintavaltiot, yrityksen (tai neuvonantajan) roolina fasilitoida keskusteluja ja tarjota tarvittaessa lisätietoja

▶ **No mandatory conclusion or deadline**

- The main challenges related to APA processes consist of long duration, administratively burdensome process and uncertainty over the outcome of the process

▶ **Three levels of APAs:**

- Unilateral APA = one (1) country
- Bilateral APA = two (2) countries
- Multilateral APA = three or more (3+) countries

TAX AUDITS

A tax audit is the most comprehensive form of tax monitoring involving a taxpayer

TAX AUDITS | OVERVIEW

A tax audit is the most comprehensive form of tax monitoring involving a taxpayer



DISPUTE RESOLUTION

Controlled dispute resolution process aims at minimizing damages

DISPUTE RESOLUTION | Alternative processes

Domestic appeal process vs. international resolution process

▶ DOMESTIC appeal process → legal question

- Domestic appeal process in Finland: Tax Administration, Board of Appeals, (Supreme) Administrative Court

▶ INTERNATIONAL resolution process → damage control

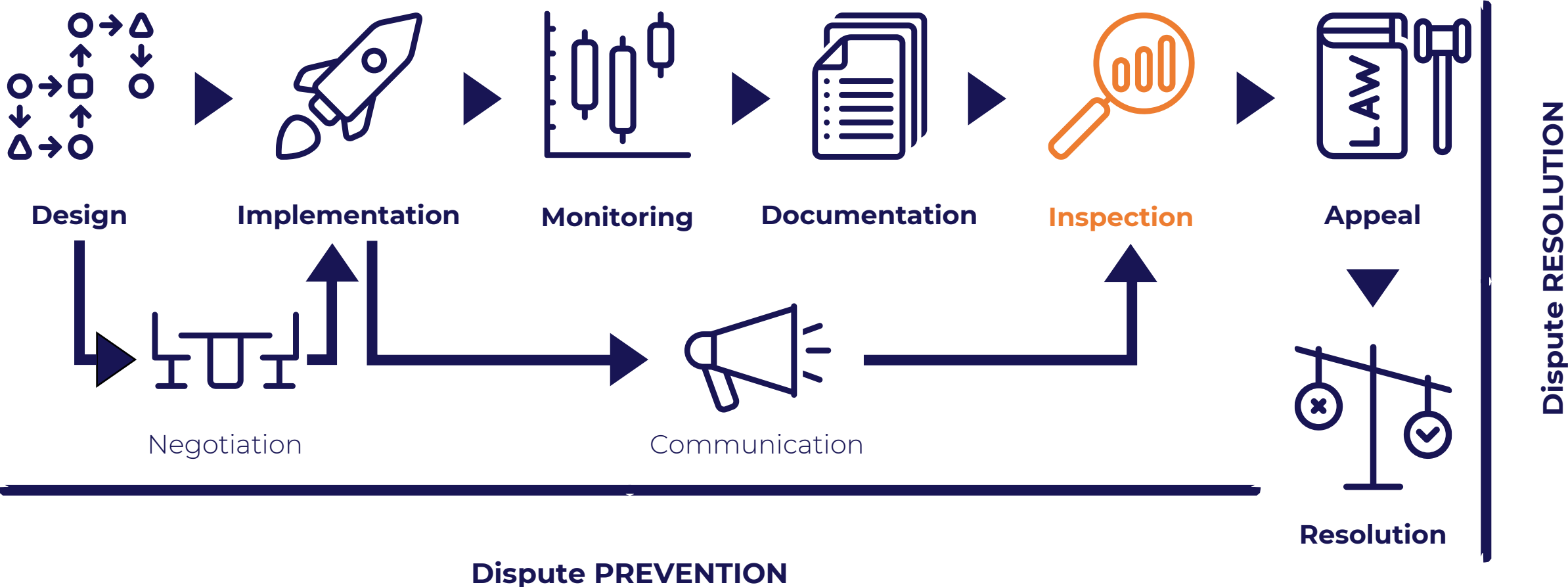
- Mutual Agreement Procedure (MAP)
- Arbitration (mostly EU)

→ Selection of the applicable process is to be done with **overall situation** in mind

→ Selected process should lead to an **anticipated** outcome

DISPUTE RESOLUTION | Typical TP process (in practice)

Dispute prevention covers all phases until the dispute moves to appeal process



Dispute resolution | Overview

The global nature of modern business dictates the need for efficient dispute resolution

1) National appeal process (+ECJ)

2a) Mutual Agreement Procedure (MAP)

2b) Arbitration

3) Advance negotiation

Mutual Agreement Procedure (MAP)

MAP allows the Competent Authorities to interact with the intent to resolve tax disputes

- ▶ **Mutual Agreement Procedure (MAP)** allows the Competent Authorities or designated representatives of the Competent Authorities from the governments of the Contracting States/Parties to interact with the intent to resolve international tax disputes.
- ▶ MAP is suitable for both dispute prevention and dispute resolution:
 - **Dispute prevention:** bilateral or multilateral advance agreements (Advance Pricing Agreement, APA)
 - **Dispute resolution:** elimination of double taxation
- ▶ MAP is based on corresponding Articles in the bilateral or multilateral tax treaties (Article 25 of the OECD Model Tax Convention).
- ▶ In order to mitigate international double taxation, there are ongoing initiatives to make the intergovernmental dispute resolution more efficient through mutual agreement procedure:
 - **OECD:** Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (OECD Multilateral Instrument; MLI)
 - **EU:** Dispute Resolution Directive

OECD Multilateral Instrument (MLI)

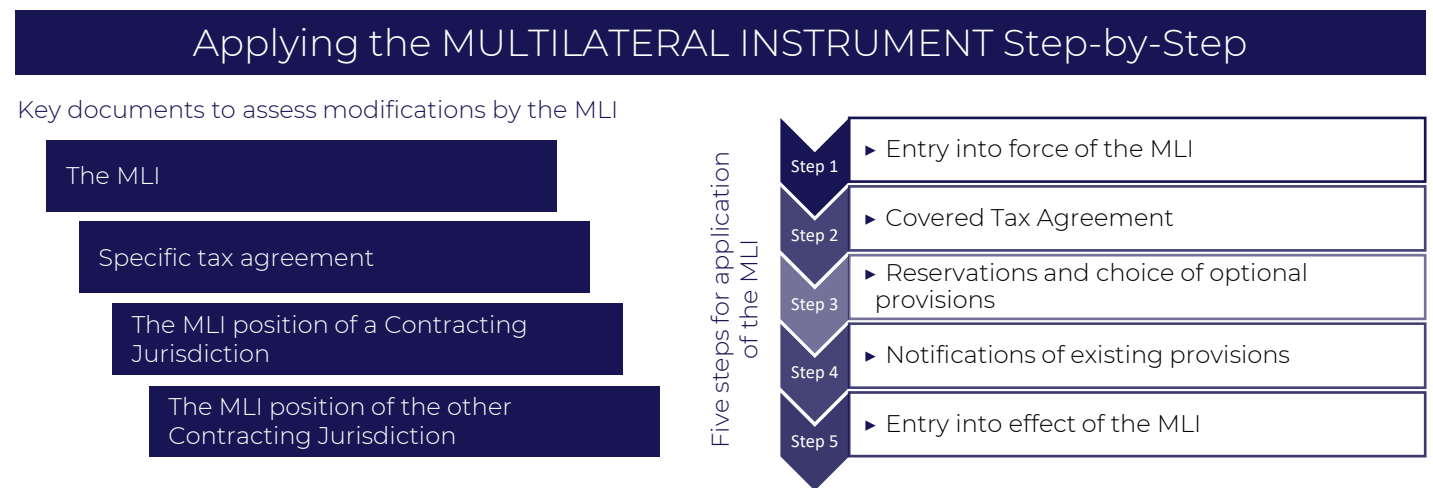
Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

- ▶ The MLI is intended to offer concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into bilateral tax treaties worldwide.
- ▶ The MLI modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation. It also implements agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms.
- ▶ MLI applies in intergovernmental relations once both parties have signed the agreement and certain transition period has passed

→ Majority of modifications are expected to become effective in the course of 2019,

→ Applying the MLI into practice involves five (5) steps

→ MLI does not override national legislation or create taxing powers



OECD MLI | Finnish positions

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

- ▶ The minimum standards do not significantly alterate the current practices followed by Finland in international tax matters. Finland has made reservations for all other Articles of the MLI.
- ▶ The most significant change relates to mandatory binding arbitration which may be applied in situations where the MAP process does not result in resolution of double taxation:
 - Finland made certain reservations on the arbitration Article of the MLI; application of the Article requires corresponding selection by the other Contracting Party
 - Does not alter the situation between EU Member States (Arbitration Convention / Dispute Resolution Directive)

OECD MLI | Practical application

MLI Matching Database makes projections on how the MLI modifies a specific tax treaty

MLI Matching Database
beta © OECD 2017



Select jurisdictions:	<u>Finland</u>	<u>Russia</u>
	Finland	Russia
Signature MLI	07/06/2017	07/06/2017
Ratification MLI		
Status of List	Provisional	Provisional

[Read the Disclaimer](#)

Article 2 Covered Tax Agreement		The agreement would be a 'Covered Tax Agreement'.
Article 6 Purpose of a Covered Tax Agreement		The preamble language would be replaced by the text described in Article 6(1). Article 6(3) would not apply.
Article 7 Prevention of Treaty Abuse		Article 7(1) would apply and supersede the provisions of the agreement to the extent of incompatibility. Article 7(4) would not apply. The Simplified Limitation on Benefits Provision would not apply.
MAP	Article 16 Mutual Agreement Procedure	A.24(1)1st would be replaced by the first sentence of Article 16(1). The second sentence of Article 16(1) would not apply. The first sentence of Article 16(2) would not apply. The second sentence of Article 16(2) would not apply. The first sentence of Article 16(3) would not apply. The second sentence of Article 16(3) would not apply.
Article 35 Entry into Effect MLI		For the purposes of the application by Finland, the reference to 'taxable periods beginning on or after 1 January of the next year beginning on or after the expiration of a period' would apply. Article 35(4) would not apply.

EU Dispute Resolution Directive

EU Dispute Resolution Directive replaces the current Arbitration Convention

- ▶ EU Dispute Resolution Directive (“Directive”) replaces the current Arbitration Convention and covers a wide range of tax disputes among the Member States causing international double taxation (incl. transfer pricing and permanent establishments).
 - Contains provisions on the appeal process, mutual agreement procedure (MAP) and mandatory binding arbitration procedure
 - EU Member States must give the Directive priority over the signed tax treaties if found to be in contradiction.
 - ECJ shall issue rulings on the correct application of the Directive if necessary.
- ▶ The national implementation of the Directive **by June 30th, 2019**; applies to appeals that have been submitted after July 1, 2018 and covering tax years that have started on or after January 1, 2018.

EU Dispute Resolution Directive vs. national appeal process

EU Dispute Resolution Directive replaces the current Arbitration Convention

- ▶ If the taxpayer is simultaneously engaged in the national appeal process, the deadlines for processing the appeal and conducting the mutual agreement procedure under the Directive are observed only after the national process has been ended or halted
 - In certain situations, an enforceable ruling resulting from the national appeal process may restrain the access to the dispute resolution under the Directive
 - The potential restraints for application of the Directive depend on the national legislation:
 - Situations which characterize double non-taxation or cases of tax fraud, wilful default or gross-negligence are excluded from the scope of the Directive
 - ECJ shall issue rulings on the correct application of the Directive if necessary.

Q & A



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