



# How to deal with extreme tax authorities' positions?

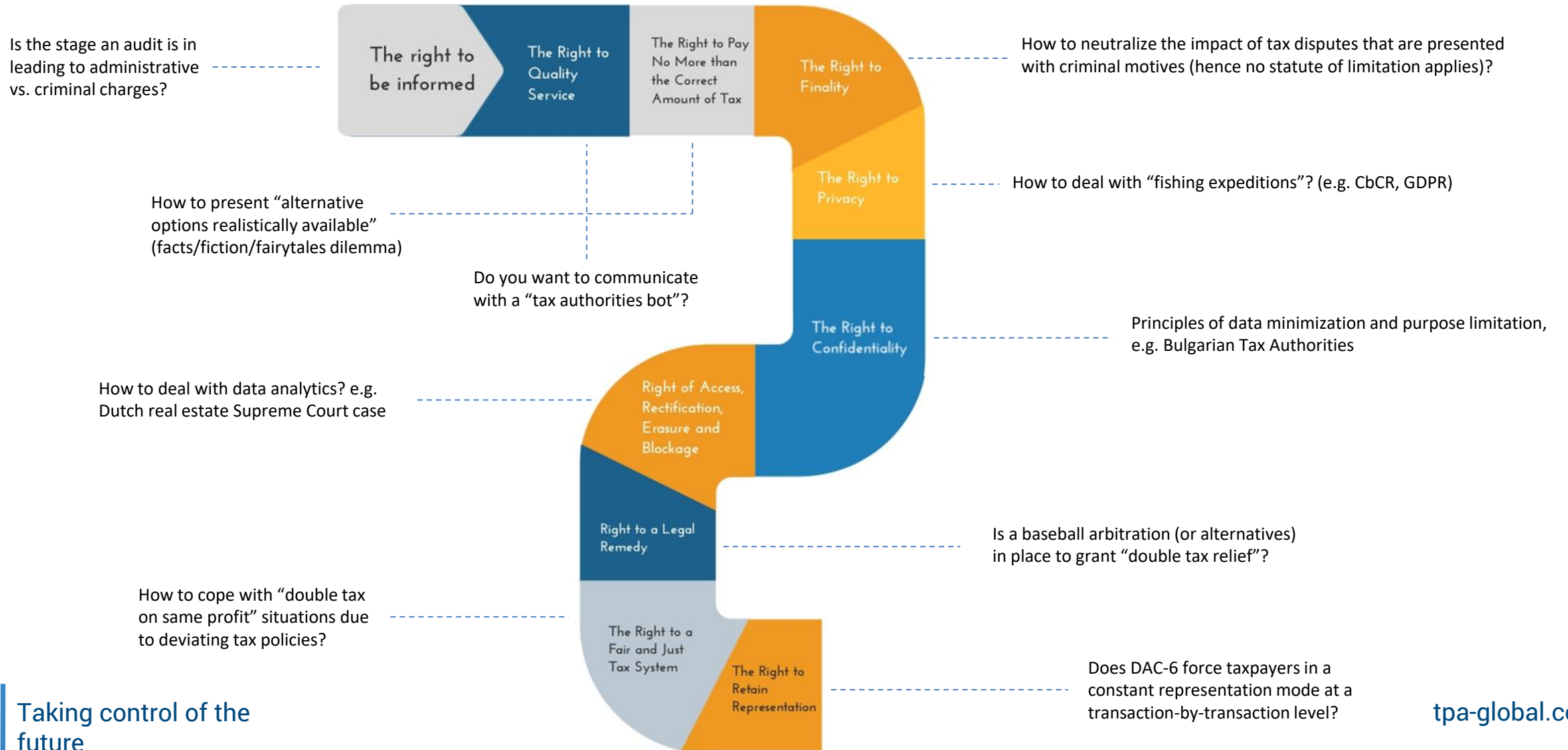
## **Speakers:**

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## **Panelists:**

**Hans van den Hurk, Raymund Gerardu & Maarten Koper**

# Visualization of taxpayers' rights & threats



# Examples of tax authorities' positions and their impact on taxpayers' rights

## Criminal dimension

- Germany - Tax authorities often follow a parallel trail when performing a tax audit also putting the statutory director personally liable for non-compliance with tax matters;
- Italy - considers a significant misstatement of income to be within the scope of criminal law;

## Wrong incentives

- US - a whistleblower obtains a 10% benefit from additional tax being collected from taxpayers not abiding the rules; Example: Caterpillar;
- Colombia – tax authorities' salary bonuses on higher assessments.
- Italy – very low remuneration for representatives of the judicial system
- Cambodia – fear of filing APAs because there is a high risk of it being handed to the competition;

## Blacklists

- Greece published a blacklist of corporates and citizens with a tax debt in excess of Euro 150,000;
- EU blacklist on taxes

## Transparency/Leakage

- Country-by-country reporting - on its way to become a global published standard of disclosure?
- EU - DAC-6 puts both on multinationals as well as their advisors (exceptions apply) the mandatory disclosure rules;
- FATCA - US tax authorities collecting information from local tax residents around the EU;
- Mexico/Greece - Tax authorities using the external auditor to validate the tax and transfer pricing documentation is prepared and in full compliance with local legislation;
- Czech Republic /Portugal/Ukraine/UK have publicly available registers of beneficial ownership, like the UBO disclosure in the EU (5th Anti-money Laundering Directive adopted 30 May 2018);

# Examples of tax authorities' positions and their impact on taxpayers' rights



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## Let's not call it "CIT"

- Digital service taxes unilaterally adopted by countries;
- Brazil – extra contributions paid on royalties;
- US - Alternative Minimum Tax (AMT) rules

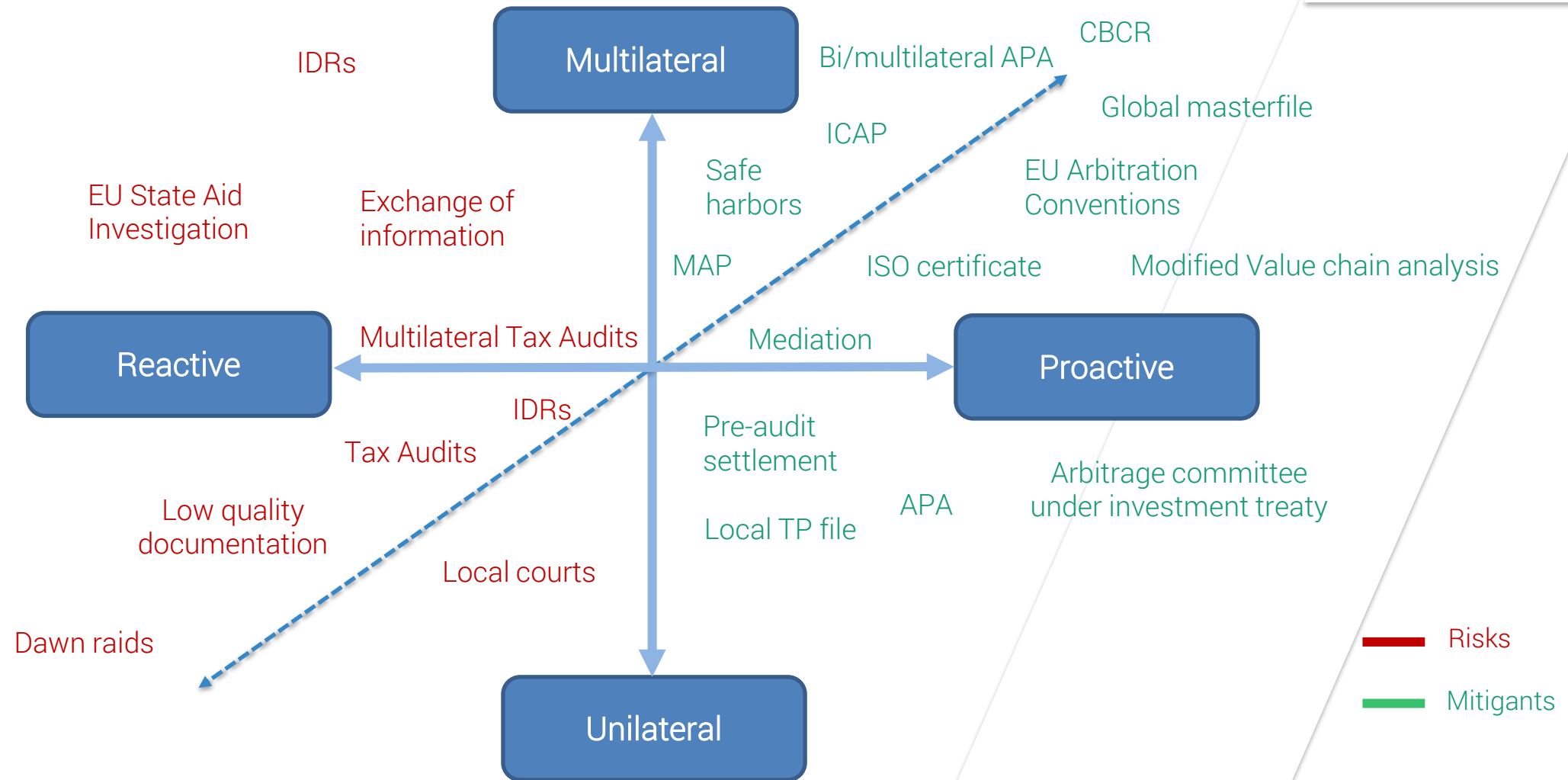
## Treaty override

- Germany - Tax treaty override on withholding tax on certain intercompany royalty flows;
- India - Tax treaty and investment treaty override on the Vodafone case.
- Italy - tax authorities when signing a compromise in an audit with the taxpayer, explicitly requires the taxpayer to abolish its rights under the EU arbitration convention;
- German WHT case

## Cultural dimension

- Sweden - public access to official documents allows any citizens in Sweden to call the tax authorities and ask for the income of your neighbour;
- Journalist - Lux Leaks, Panama Papers and Paradise papers;

# Controversy management instruments





# Appendices

# Linking tax controversy management instruments with value chain analysis

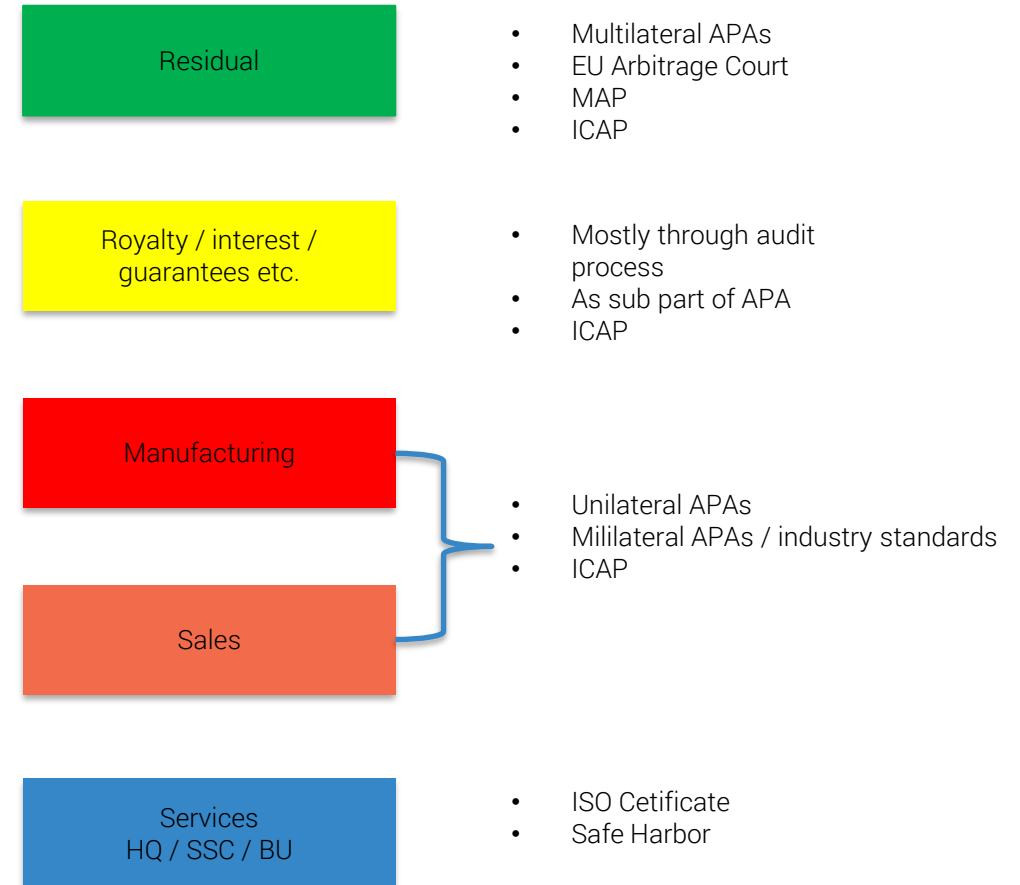
## A. A value chain analysis after BEPS



## C. Main questions:

- which disputes to handle?
- which toolbox to use?
- what timing of risk management?
- what professional process to use?

## B. Dispute avoidance / resolution toolbox



# Decision tree on managing controversy – an illustration on controversy case



Question/ anticipated questions from tax authorities (i.e. before or in the year of your intercompany transactions)

**Step 1**

Run it through consistent storyboard + "fit for purpose" FAQs

Yes (i.e. answer located in the storyboard/FAQ and it is accepted by tax authority)

No (i.e. either no answer located in the storyboard/FAQ or it is accepted by tax authority)

No further controversy instrument needed until audit

Adopt a controversy management instrument based on your value chain

**Step 2**

Check the **CONTENT** required by the local country for your chosen instrument based

No

Yes

Too much unpredictable content request or multiple rounds of additional information requested\*

Content request is more or less similar to ICAP process (see slide 70)

**Step 3**

Check the **PROCESS** required by the local country for your chosen instrument based

No

Yes

>12 - 24 months (depending on severity of the case) from the date of disclosure of content\*

Process is more or less similar to ICAP process (see slide 70)

**Step 4**

Stability of business model i.e. how compatible is your current business model to stay the same for the next 3-5 years.

No

Yes

Wait until audit

i.e. likely to change within the next 1-2 years

Choose and APA/ BAPA\*

**\*Note:** In case the deviations on process and/or content persist significantly beyond the norm or no economic/econometric/statistical defense is given by the tax authorities i.e. the reasoning is more politically driven than an actual intention to resolve disputes, your best alternatives may be to choose from:

- Local courtroom litigation against local tax authority
- MAP procedure
- EU Arbitration Convention
- Mediation Procedure with local government and/or tax authority
- Filing claims against local governments
- ICAP



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