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Subject 1: Dispute Resolution Procedures in International Tax Matters

25 September 2016



Panel

Chair

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A First Look at Our Subject



Judging our Subject by its Title

The given title:

Dispute Resolution Procedures in International Tax Matters

Some deconstruction:

- “International tax matter”
What is an “international tax matter?”
- “Dispute resolution”
But should we use the term “dispute resolution” or is “issue resolution” better?
- “Procedures”
Does use of this word make some of our audience sleepy?



Why this Subject and Why Now?

- The topic certainly is not a new one
- New focus brought about by the BEPS project
- Heightened appreciation for the importance of efficient and effective administration of international principles



What is MAP and How Does it Work?

- How are the mutual agreement procedures established?
- Why are they established?
- Who conducts the procedures?
- How do they work?



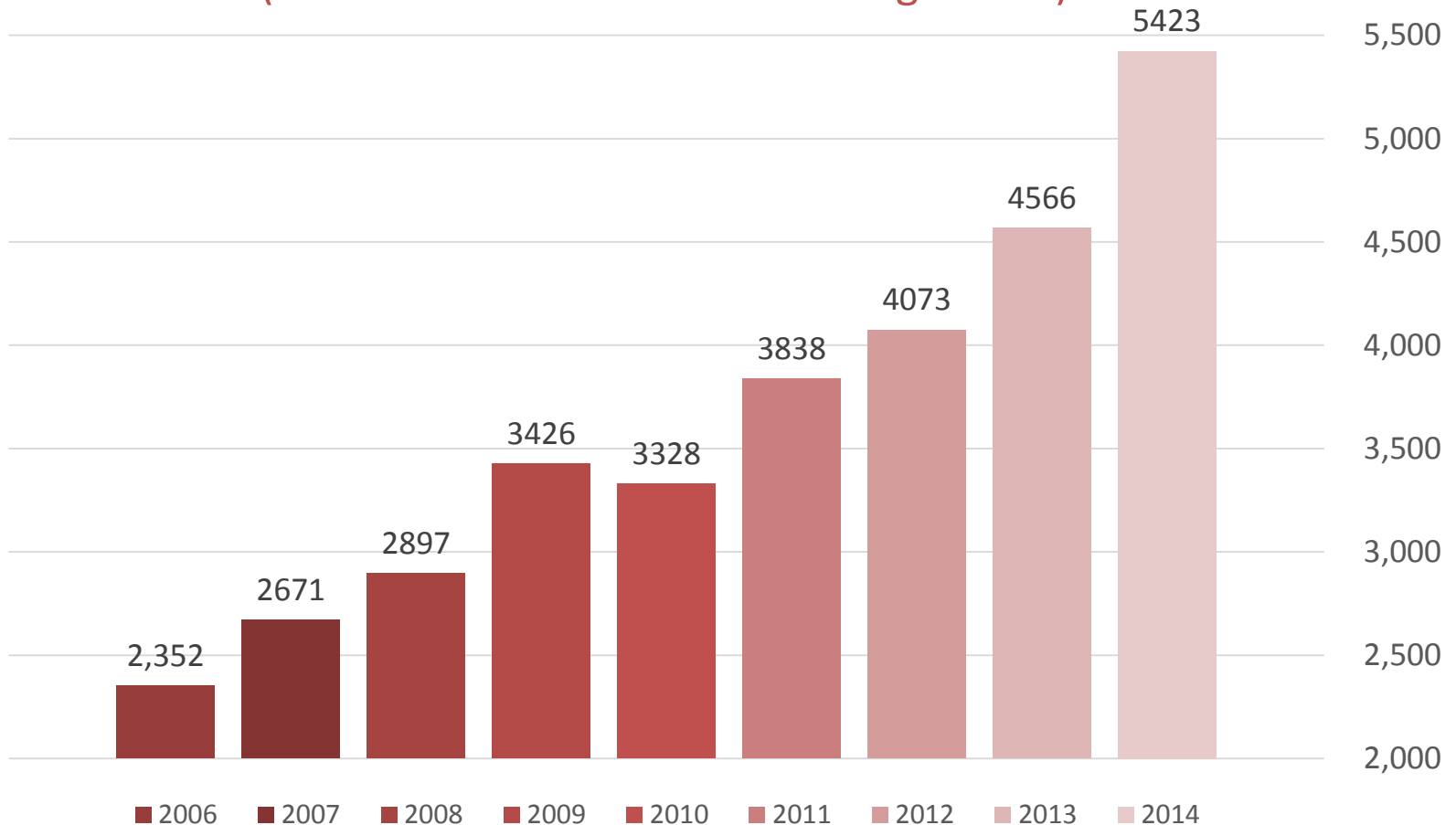
What is Said about the MAP Status Quo?

- “MAP cases are taking too long to resolve”
- “In a growing number of cases, full double-tax relief is not achieved”
- “In too many cases, access to MAP is being denied or discouraged”
- “MAP inventories are building exponentially”
- “Post-BEPS, competent authorities are in danger of being swamped under a tsunami of new MAP cases”



OECD Statistics on MAP Inventories

Pending cases - end of reporting period:
(130% increase from 2006 through 2014)





The MAP Forum and BEPS Action 14

- The MAP Forum
 - Original purpose
 - Action 14 purpose
- BEPS Action 14 final report
 - Minimum standard
 - Best practices
 - Peer monitoring
 - Update on progress
 - Expected outcome and pace of change



Minimum Standards

- Preventing disputes
 - Use of APAs and APA rollbacks
 - Use of Art. 25(3)
- Ensuring availability and access to MAP
 - In the context of, e.g., transfer pricing, anti-abuse adjustments, and audit settlements
- Timely and principled resolution of MAP cases
 - Average target completion timeframe of 24 months
 - Adequate resources
 - Principled resolution
- Timely implementation of MAP agreements

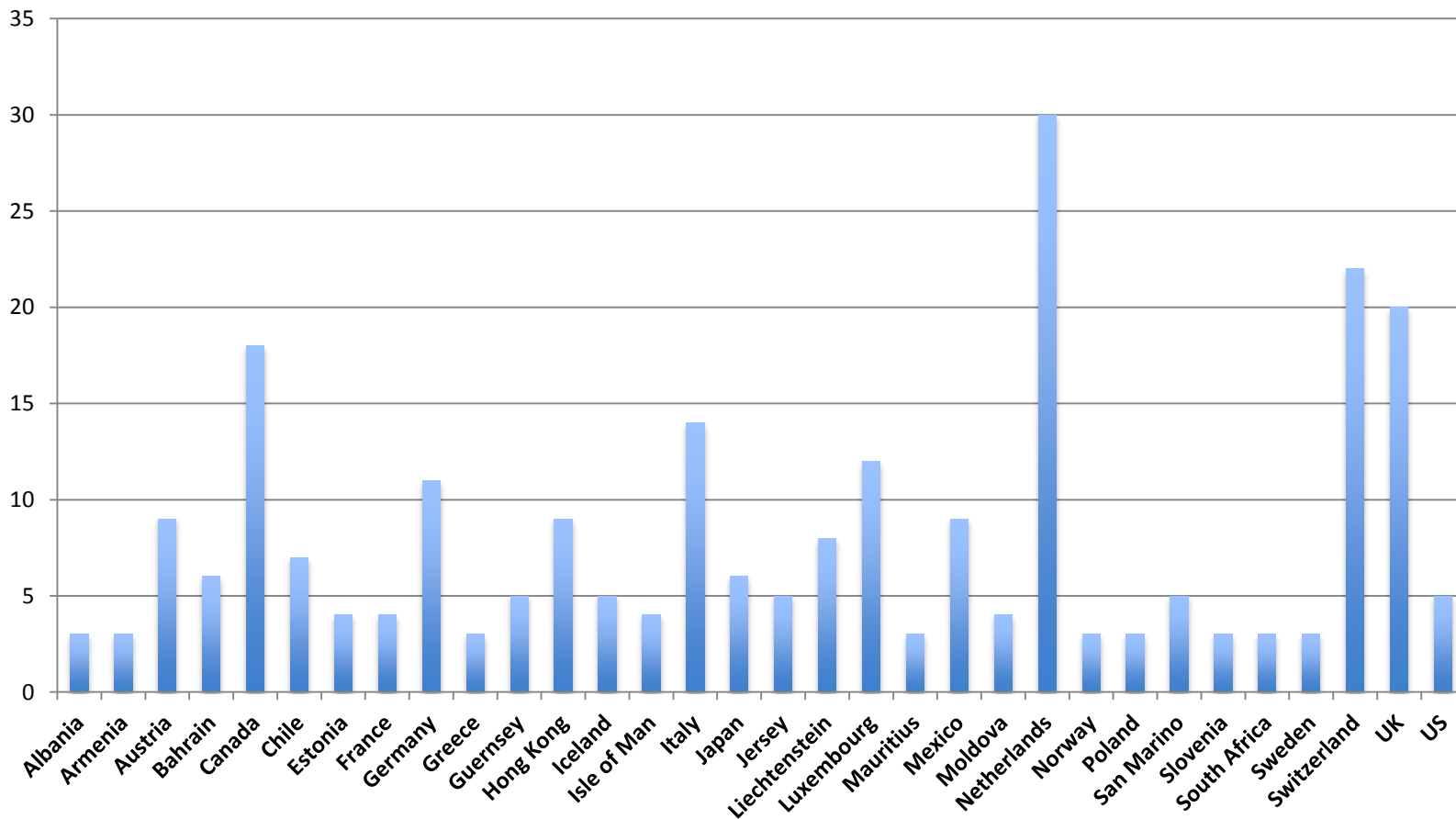


MAP “Supplementation”

- Mandatory binding arbitration
 - Purpose and scope
 - Experience
 - Barriers
 - Future
- Other non-binding resolution mechanisms?



DTCs with Arbitration Clauses per Country





A Second Look at Our Subject



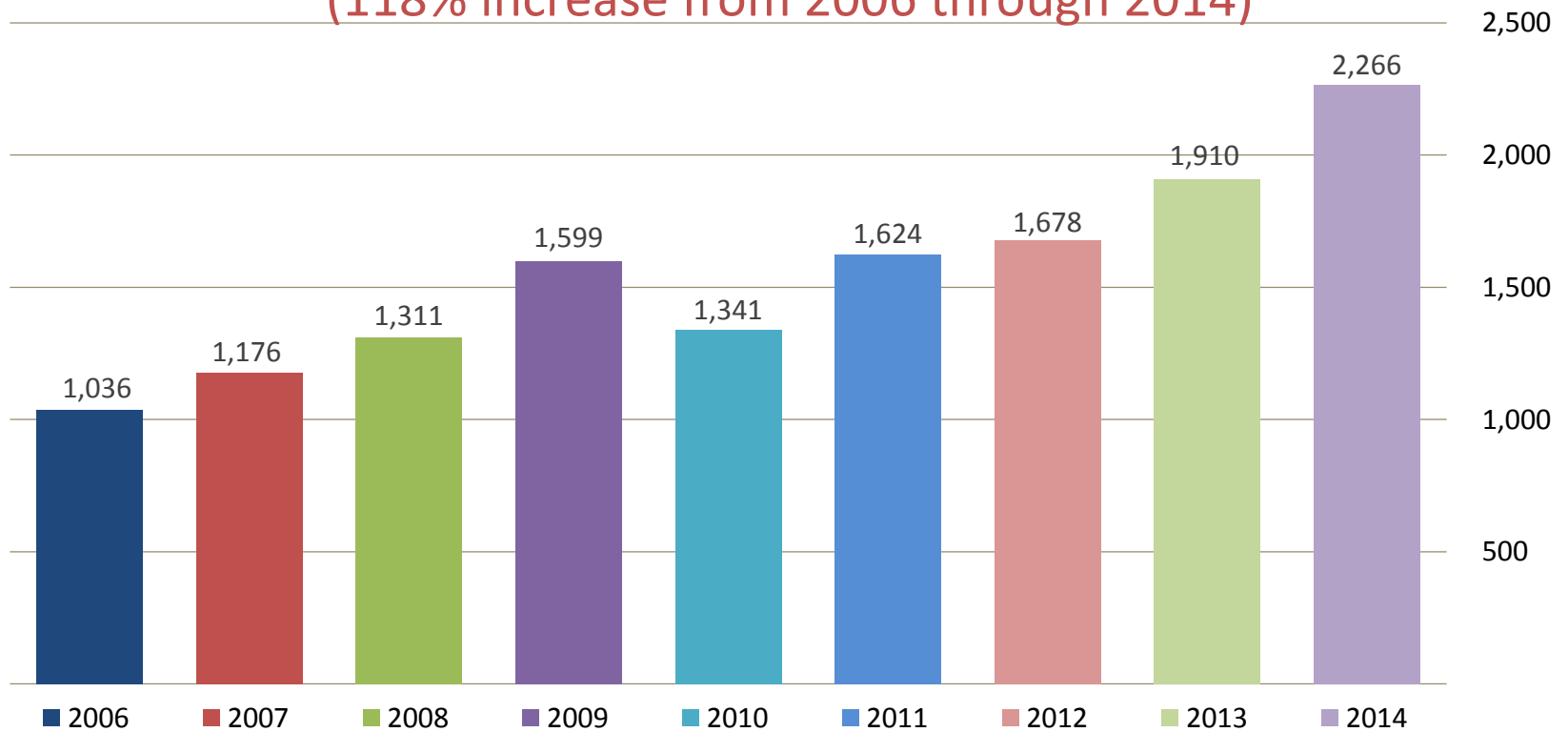
Are MAP Programs Affected by Changing Times?

- Are businesses engaged in more extensive and more complex global transactions?
- Are tax authorities increasingly focused on international tax compliance, particularly as it pertains to transfer pricing?
 - Developing legal systems?
 - Strategic enforcement choices?
- Is the global fiscal crisis driving tax authorities to look for new sources of revenue?



Another Look at the Statistics

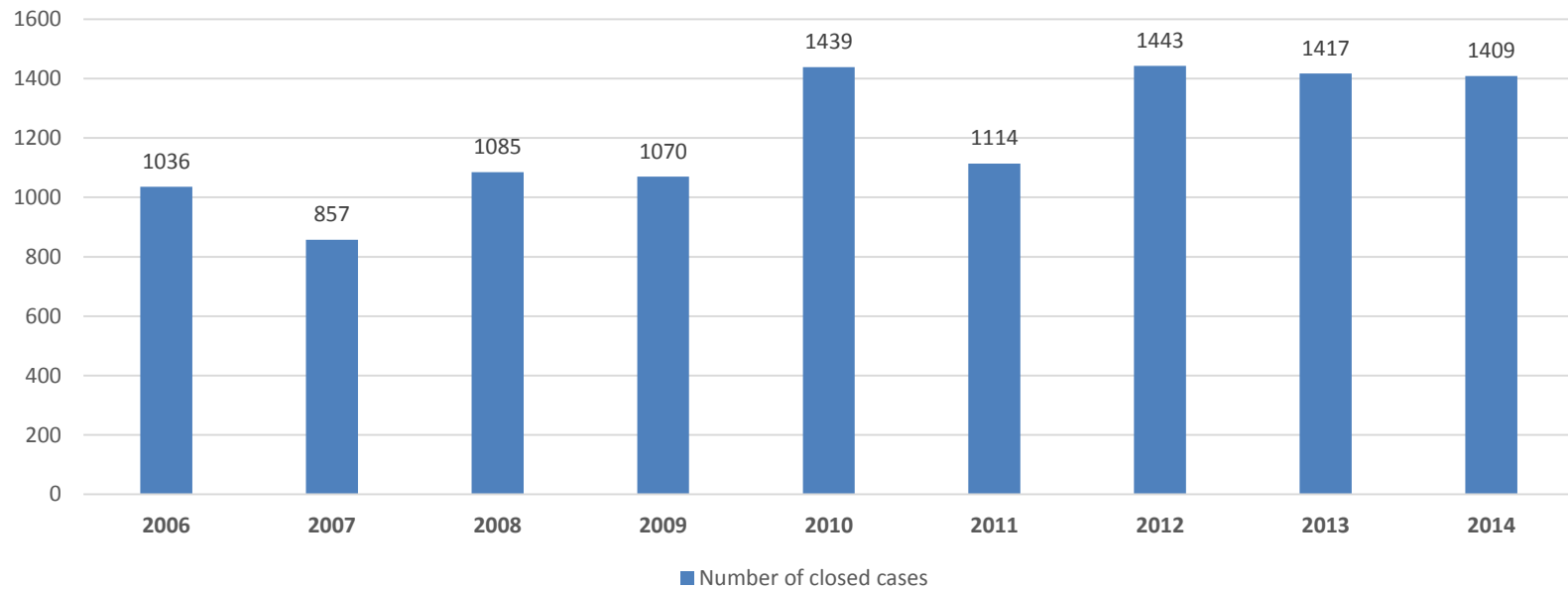
New cases each year:
(118% increase from 2006 through 2014)





A Look at Case Closures

Number of closed cases





Addressing Volume Growth

- Three ways to address growth in volume:
 - Add more resources
 - Use existing resources more efficiently
 - Attempt to manage the volume growth
- Must take into account the expected future growth, not just the growth experienced to date

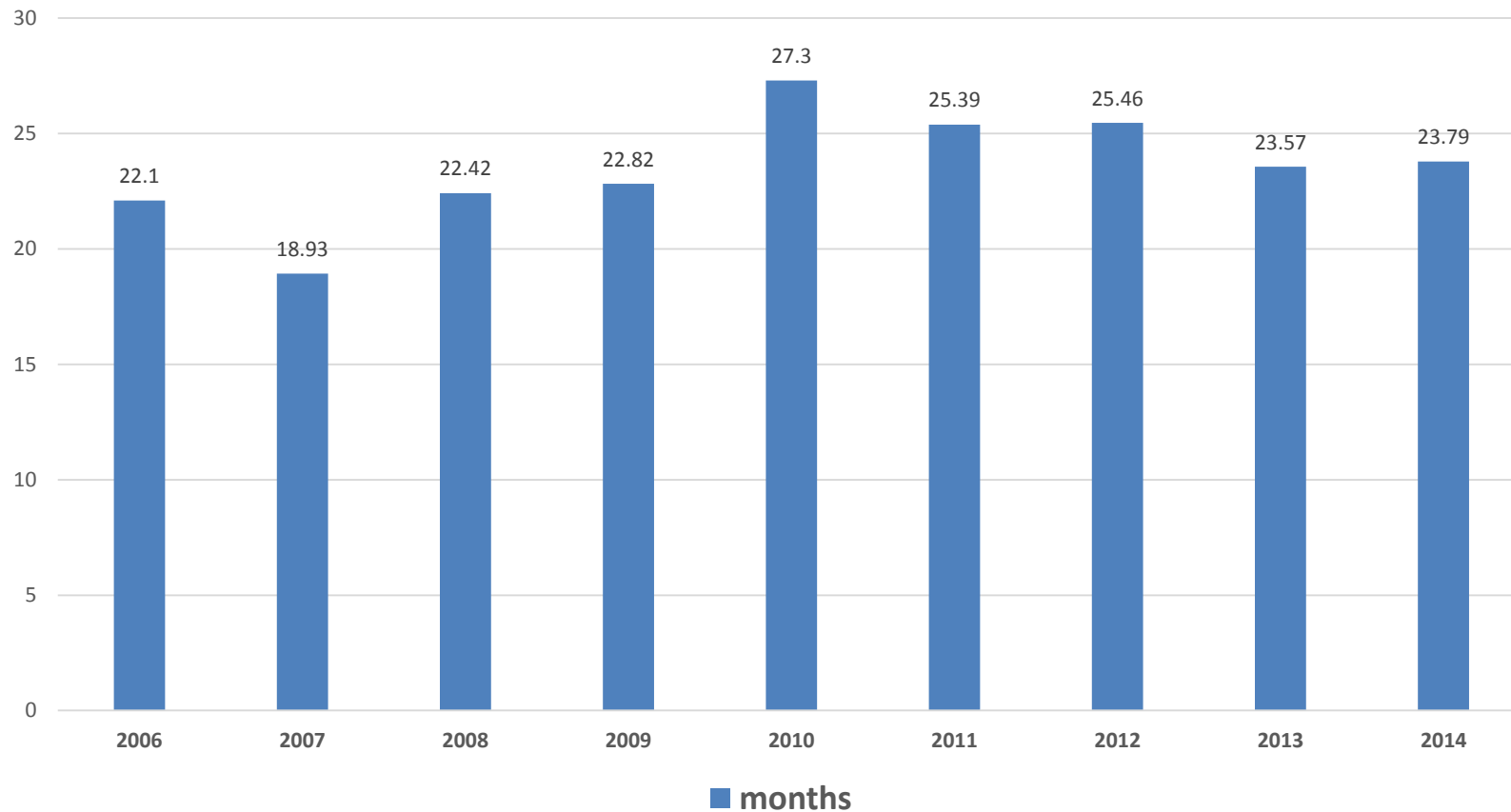


Can/Should Additional Resources be Added?

- And, if so, how do you determine what is needed and where?
- Is the need only for personnel or also for funding for travel/training/etc.?
- Are there practical limitations on governments in this respect?
- Who can make the commitment to provide additional resources?
- Is multilateral attention to this issue helpful?



MAP Cases – Average Completion Time (OECD)





Can MAP Programs be More Efficient?

- A 24-month average case completion target reflects the desired ends, not the means
- Shouldn't countries work together to identify process efficiencies, given that they must work in concert to complete cases?
- Has the MAP Forum turned to this issue yet?



Can We also Stem the Rising Tide?

Are there cases that come into MAP that should not come into MAP?

- Cases that reflect nit-picking around the edges?
- Cases that could be avoided if efforts were made to reach agreement on principles?
 - Safe harbors
 - Art 25(3) agreements
 - More extensive use of APAs, joint audits, etc.



Looking at Global MAP Inventory More Closely

- To manage the growth in new cases, it is first important to understand, in a more specific way, the global inventory
- For example:
 - The 7 countries with the highest MAP inventories (Germany, US, France, Belgium, Switzerland, Canada and Italy) account for 70 percent of the total reported inventories
 - The 14 countries with the highest MAP inventories account for 90 percent of the total reported inventories
- Most of these are relatively high-tax jurisdictions



It would be Helpful to Know More

- Do MAP cases largely involve corporations or individuals?
- Do MAP cases largely involve transfer pricing adjustments or something else?
- Do MAP cases largely involve adjustments on MNEs headquartered inside or outside the country making the adjustment?



Addressing the Volume Challenge

- How would this work be approached/accomplished?
- Are the competent authorities sufficiently empowered to address the volume challenge alone?
- Are those conducting tax examinations sufficiently responsible for, or even aware of, the need to ensure that the international tax issue resolution process works as intended under our tax conventions?



Final Thoughts