



BMR Legal

TAX DISPUTE RESOLUTION

ICRIER: Release of book '*Challenges of Indian Tax Administration*'

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SUBJECT: 'Tax Dispute Resolution in India – Challenges and Opportunities'

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- Sachit Jolly, Advocate

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- II. BEST PRACTICES AND SOME LEARNINGS
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 - EXISTING FRAMEWORK
 - EMERGING LANDSCAPE

TAX LITIGATION – TRENDS & TRIGGERS

- Estimated ~ INR 8,000 Bn of tax revenue locked up in litigation before Courts /Appellate authorities

Snapshot of cases pending at various levels

| Direct tax | Cases pending on March 2015* | Amount involved* (INR Mn) |
|------------------|------------------------------|---------------------------|
| Commissioner (A) | 232,000 | 3,837,970 |
| ITAT | 37,506 | 1,455,347 |
| HC | 34,281 | 376,840 |
| SC | 5,661 | 46,545 |

| Indirect tax | Cases pending on December 2015** | Amount involved** (INR Mn) |
|------------------|----------------------------------|----------------------------|
| Commissioner (A) | 41,224 | 100,927 |
| CESTAT | 77,501 | 1,613,522 |
| HC | 14,985 | 287,034 |
| SC | 3,007 | 122,005 |

*Source: Department of Revenue, Report No. 3 of 2016

** Source: Ministry of Finance, Department of Revenue, Annual Report 2015-16

- India host to ~ 70 percent of TP disputes globally
- FY 2014-15 TP audit stats
 - Audits completed – 4,290
 - Audits with adjustments – 2,353 (55 percent!)
 - Quantum of adjustments – INR 464.66 Bn



Law making

- Lack of stakeholder engagement
- Retrospective amendments – *practice fading away!*
- Inadequate subordinate legislation
- Non-mandatory timelines

Approach of authorities

- Target driven assessments
- Fixing accountability
- Differences in central and state level authorities
- Quality of assessment
- Invoking extended period of limitation

Procedures

- Inefficient refund mechanism
- Frequent transfer of tax officials
- Failure of LTU



TRADITIONAL FORUMS FOR TAX DISPUTE RESOLUTION – CHALLENGES

COMMISSIONER (APPEALS)

- Frequent transfers
- Inadequate infrastructure
- Delay in disposal

SC and HC

- Ineffective performance of lower authorities
- Lack of permanent /dedicated tax bench/es
- Vacancies

KEY CHALLENGES

ITAT /CESTAT

- Over burdened – inadequate benches
- Absence of mandatory time limits
- Shortage of specialised benches
- Conflicting rulings
- Frequent rotation of bench members
- Increasing tendency to 'set aside' matters

BEST PRACTICES AND SOME LEARNINGS

Canada

- Publishing Interpretative Bulletins
- Majority disputes resolved at audit stage
- Appeals branch - independent function of CRA



UK

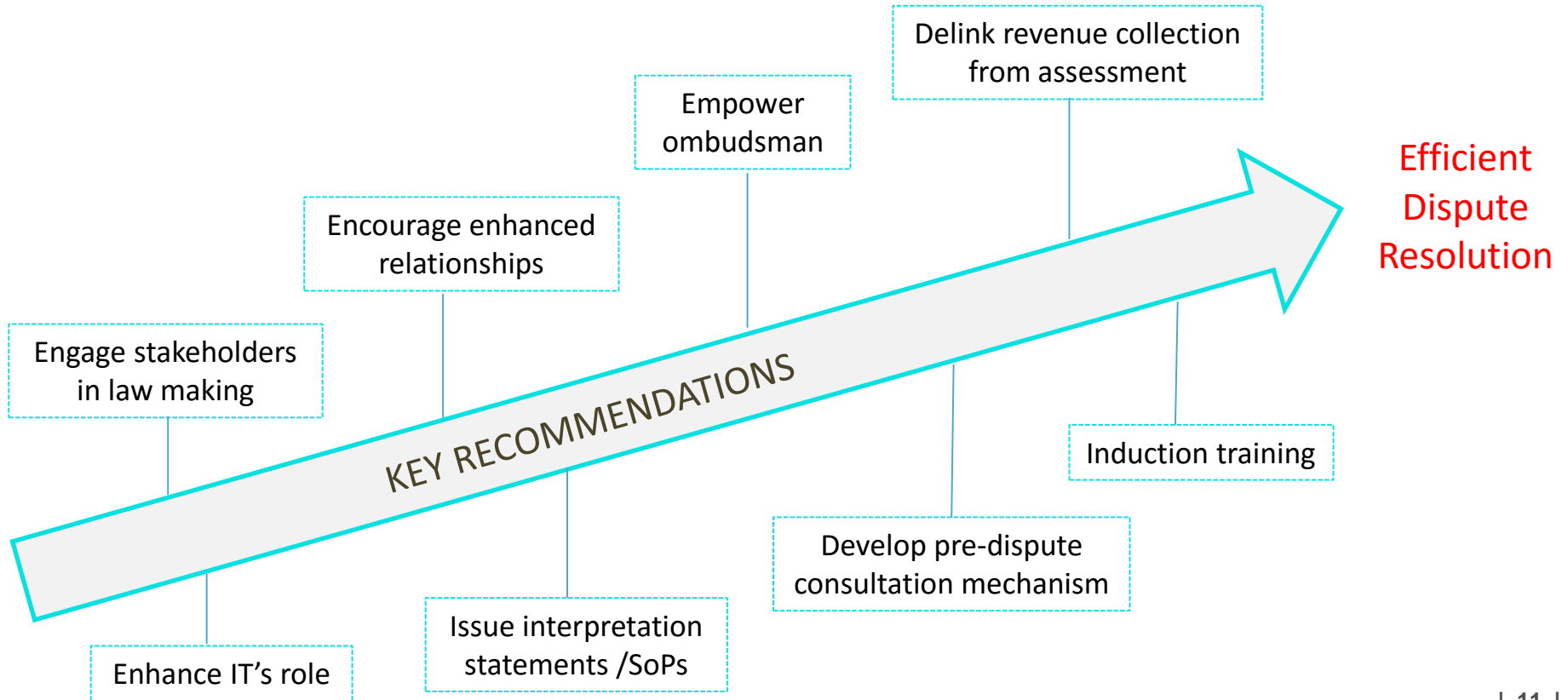
- Technical guidance issued along with draft legislation
- Tax issues of large businesses resolved by negotiation /agreement
- ‘Collaborative Dispute Resolution’ approach

US

- Publish treasury regulations
- Official tax guidance
- Issue private letter ruling

Australia

- Publish Interpretative Decisions
- Independent review of audit position
- Right to object ATO’s decision



Commissioner (Appeals)

- Strengthen functional independence
- Replace by collegium of three commissioners
- Right to further appeal - exceptional situations
- Strengthen cadre
- Beef up administrative support
- Introduce mandatory time limit

ITAT /CESTAT

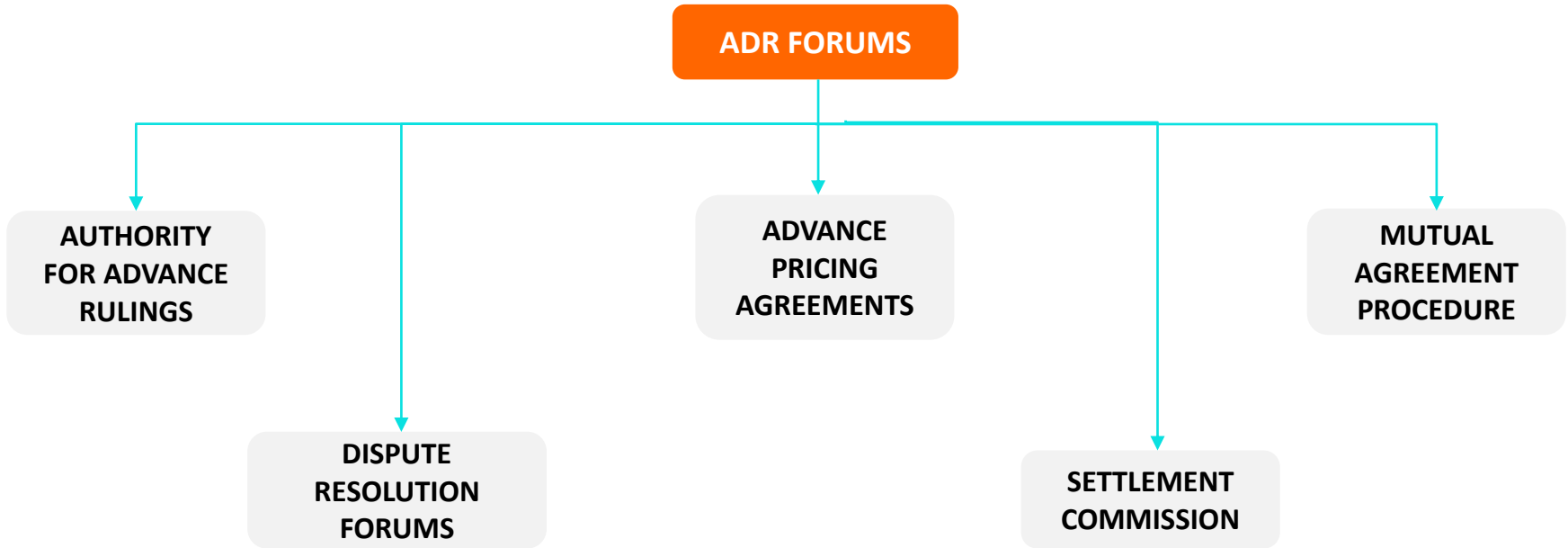
- Sufficient budgetary allocations needed
- Develop e-Tribunal
- Automatic constitution of special bench
- Lay out formal process for examining expert witness

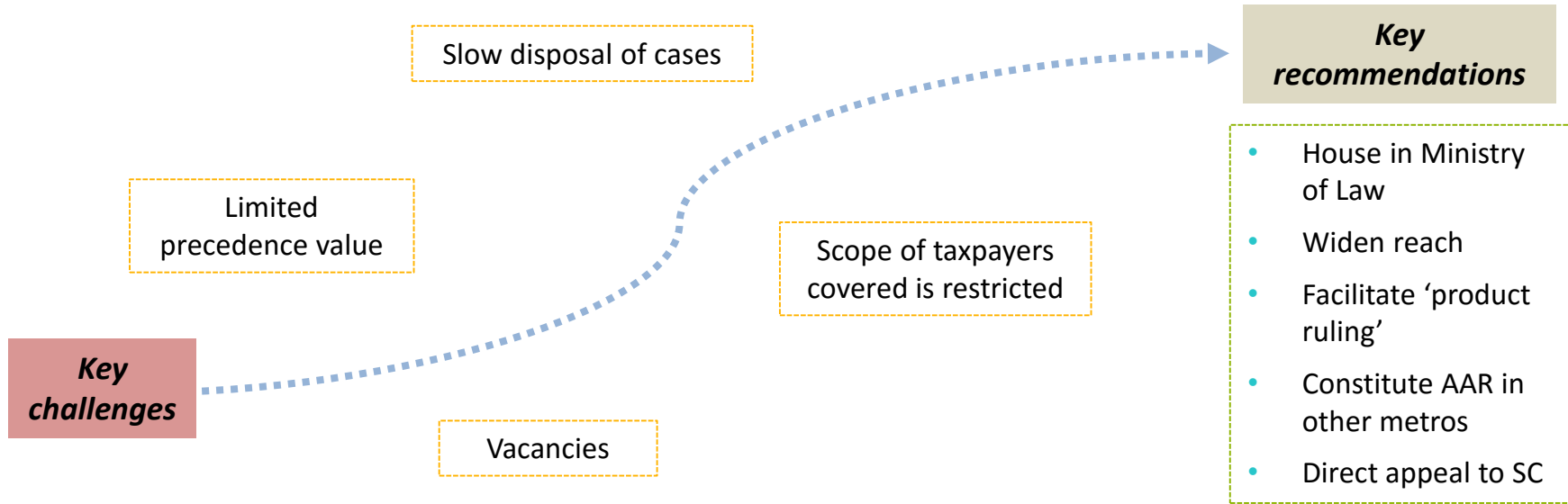
SC and HC

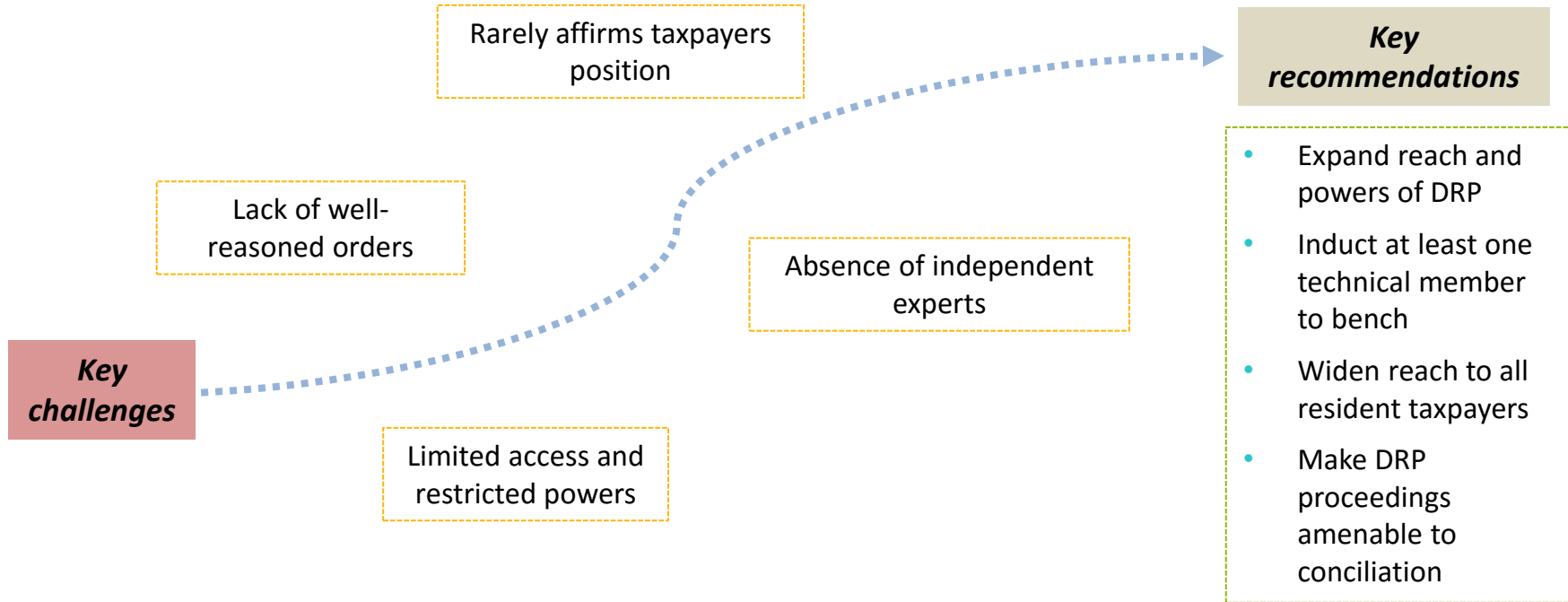
- Permanent tax bench in SC
- Club matters on common issues
- Direct appeal to SC on complex issues
- Efficient deployment of judicial resources
- 'Judicial impact assessment'

ALTERNATE DISPUTE RESOLUTION

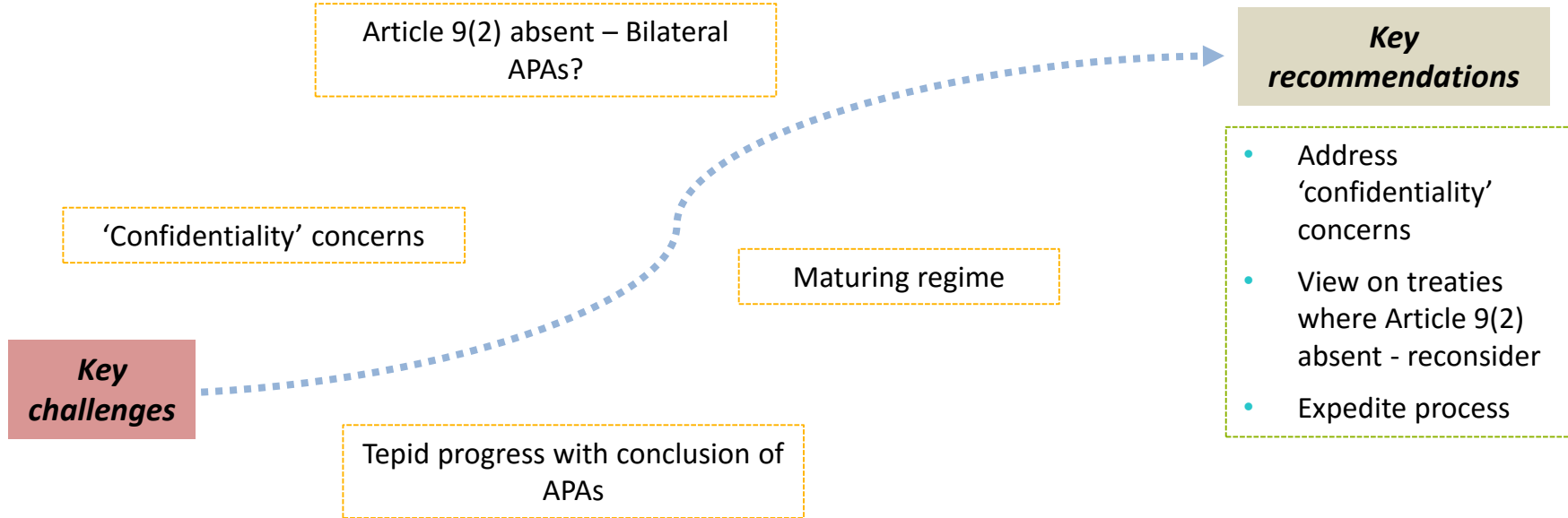
EXISTING FRAMEWORK FOR TAX DISPUTES

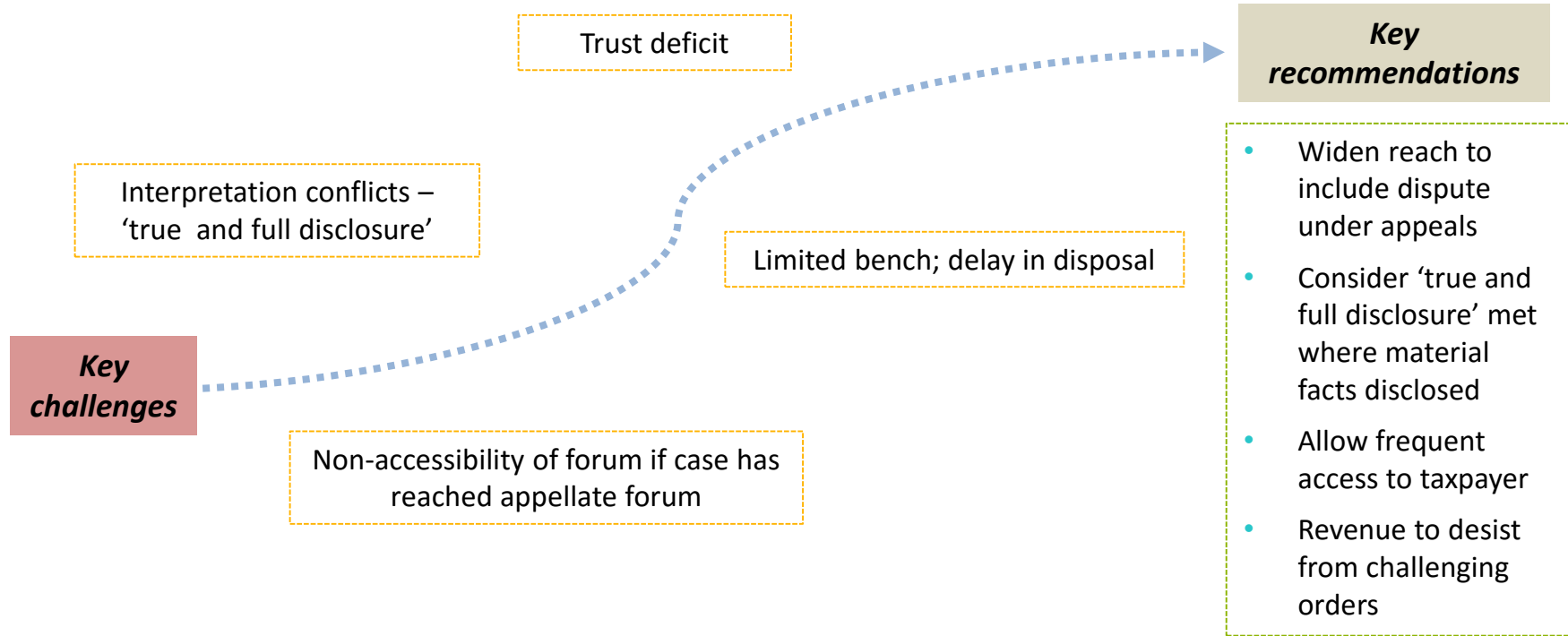




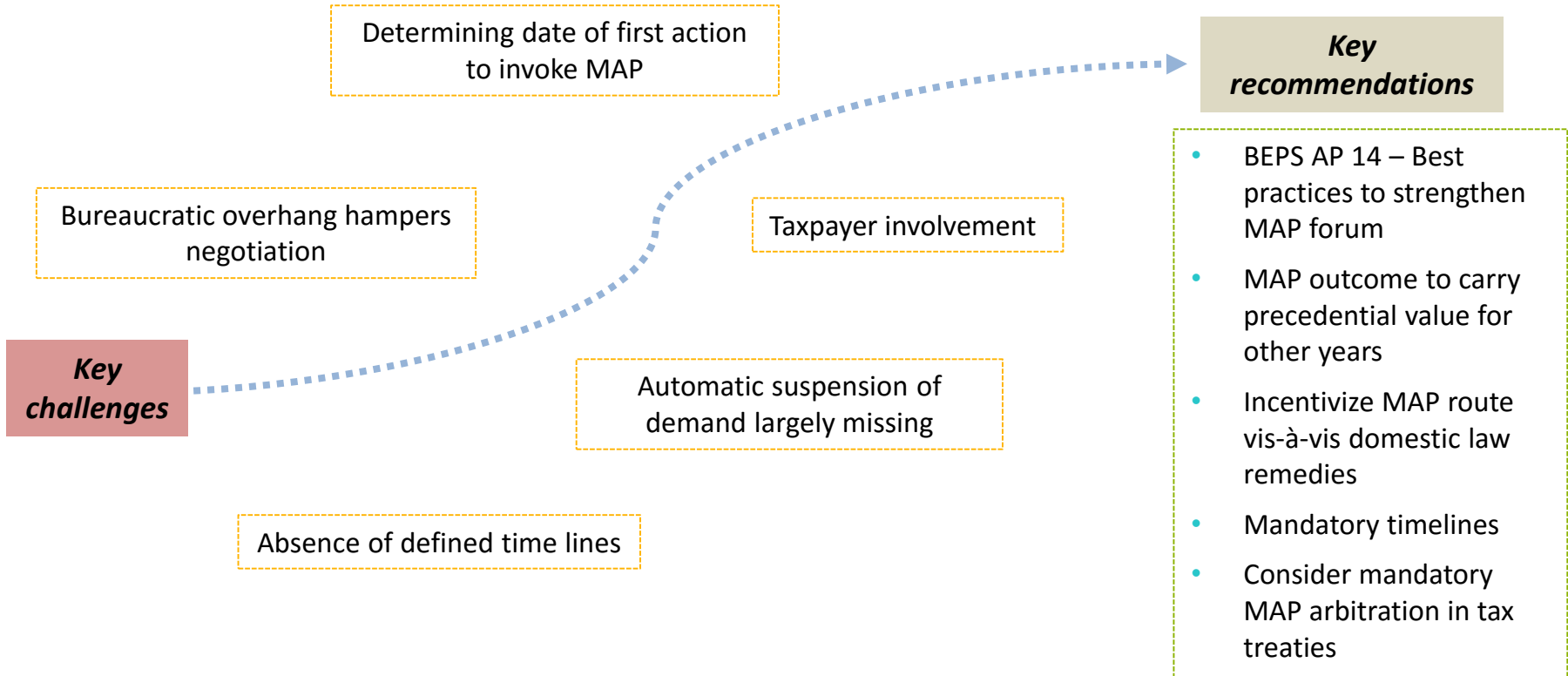


APA – CHALLENGES & RECOMMENDATIONS



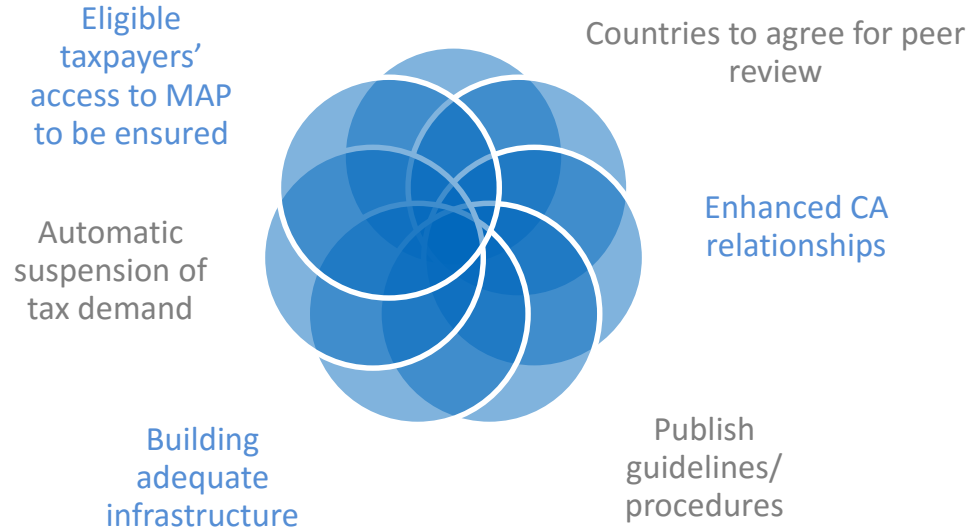


MAP – CHALLENGES & RECOMMENDATIONS



ADR – EMERGING LANDSCAPE

Implement of Article 25 in good faith
– *resolve in 24 months!*



- Enhanced emphasis on ‘taxpayer focused’ administration
- Efficacy of traditional appellate forums in dealing with complex cross-border tax dispute?
- Consultative approach at the core of dispute resolution globally
- Independence of the forum has emerged as key ingredient of efficient dispute resolution framework
- Need of hour – more sophisticated ADR forums, eg Arbitration /conciliation /negotiation, etc
- Entertain tax disputes under BIT framework?

Q&A

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