

# Asia-Pacific Tax Forum

16-17 July 2024  
Kuala Lumpur, Malaysia



## IMPLEMENTATION OF E-INVOICING SYSTEMS



## IMPLEMENTATION OF E-INVOICING SYSTEMS

Implementing E-invoicing systems can deliver essential gains in efficiency and revenue collection and offer gains for taxpayers and tax authorities.

Several countries in the region, such as Malaysia, The Philippines and Indonesia have announced plans or are in the process of implementing such systems. This panel discussion looks at global good practices in introducing e-invoicing, some common issues that arise and potential solutions.

Moderator: Mr. Hafiz Choudhury, Principal, The M Group, Inc.

Panel:

- Ms. Greta Chan, Senior Tax Manager, Asia Pacific (AWS), Amazon
- Mr. Wenceslao Christian B. Fernandez, Department of Finance, The Philippines
- Mr. Chow Kuo Seng, MATA Technical Advisor
- Mr. ZHENG Jieyan, Deputy Group Leader, Office of the Leading Group For E-Invoicing Reform, State Taxation Administration of China

## Section 82C of the Income Tax Act 1967

### Duty to issue electronic invoice



(1) Subject to this section, a person shall, in a year of assessment, issue an electronic invoice for each transaction in respect of any goods sold or services performed by the person for that year of assessment.

(2) For the purposes of subsection (1):-

the Minister shall prescribe the persons who shall issue the electronic invoice and the particulars to be included in the electronic invoice; and

the conditions and specifications under which an electronic invoice is to be issued shall be as determined by the Director General under the guidelines issued in accordance with section 134A.

w.e.f. 1 January 2024



## e-Invoice Implementation Timeline

### **FY2022 Annual Revenue**

### **Implementation Date**

**> RM100mil**

**1 Aug 2024**

**> RM25mil**

**1 Jan 2025**

**ALL**

**1 July 2025**



The key requirements for e-invoicing will require companies to issue and obtain an IRB validated e-invoice to document all transactions :

- 1. Proof of income:** E-Invoices are to be issued by the taxpayer when a sale or other transaction is made to recognise income.
- 2. Proof of expenses:** E-Invoices issued by vendors should be in place to substantiate the taxpayer's expenses for a tax deduction
- 3. Self-billed e-invoices:** Certain expense transactions will require the payer to issue a self-billed e-Invoice on behalf of the vendor to record the expenses for tax purposes. These include, but are not limited to, payments to agents, dealers, distributors, payments to individuals, and import of goods and services.
- 4. Adjustments to original transactions:** IRB validated e-credit notes, e-debit notes and e-refund notes will need to be issued to record the adjustments.

Failure to comply could have commercial implications as well as potential penalties of RM200 to RM20,000 per transaction.

## Employment perquisites and benefits; and Certain expenses incurred by employee on behalf of the employer

**General rule: Employees required to request for e-Invoices to be issued under Employer's name (where possible)**

### Concessions for e-Invoice issuance to employee

- Businesses / Employers will be allowed to use e-Invoice issued in the name of employee or existing supporting document issued by the Supplier for proof of expense
- Foreign suppliers' bills / receipts will be accepted as proof of expense i.e., no self-billed e-Invoice required for proof of expense (in the event where employees paid for expenses incurred overseas)
- This exception will only be applicable if the perquisites and benefits are clearly stated in the employer's policy

### Examples of employment perquisites & benefits:

- Employees' pecuniary liabilities (e.g., utility bills, parking fees, and car maintenance charges)
- Club membership
- Gym membership
- Professional subscriptions
- Allowances (e.g., travelling, petrol, toll rate, parking rate, meals, etc.)

### Examples of expenses incurred by employee on behalf of the employer:

- Accommodation
- Toll
- Parking
- Telecommunication expenses
- Expenses incurred in a foreign country



## Employer's Tax Compliance

- Review of all payouts to employees and contract employees to whether such disbursements have been tagged correctly for income or benefits declarations in Form E and EA.
- Claims made by the above said categories may also fall as income or benefits. Many have the misconception that payouts outside of payroll as not taxable to recipients.
- Individuals contracted independently – whether the declaration and/or withholding has been administered correctly.
- Non-cash benefits such as discounted school fees should also be reviewed (if applicable) for correct declaration.

# MyInvois API is Live in May with 90 companies have access to production, MyInvois Portal expected to be ready in June



**>3000**

Companies have the access to Sandbox

**90**

Companies have the access to Production

MyInvois Portal Live (Sandbox)

Further announcement by LHDNM

## What can taxpayers do?

1

### Test your API in Sandbox

- Request for Sandbox Client ID and Client Secret from LHDNM

2

### Submit e-Invoice to LHDNM

- Acquire Production Client ID and Client Secret from LHDNM via MyInvois Portal after release in June

3

### Test MyInvois Portal and submit e-Invoice to LHDNM

- Request for access to trial MyInvois Portal (self-service will be available in June)

Note: Statistic as of 29 May 2024

Legend: Completed milestones Upcoming milestone



# Snapshot of E-Invoicing in Malaysia and selected countries



Malaysia	Mandatory <b>MyInvois</b>	1 August 2024 01/01/2025 1 July 2025	Annual turnover > RM100m Annual turnover > RM25m for ALL
Indonesia	Mandatory <b>e-Faktur Pajak</b>	Java & Bali from July 2015 Other region from July 2016	
India	Mandatory GST	From October 2020 As of August 2023 GST taxpayers annual turnover > 50m Rupees (RM2.8m)	
Philippines	Mandatory	Large taxpayers from July 2022 Infrastructure is being developed to accommodate more taxpayers	
Vietnam	Mandatory	All business from July 2022	
Singapore	Voluntary	Early adoption by GST registered business 01-May-25	
China	<b>Golden Tax System</b> <b>Fapiao</b>	The China Tax Bureau required taxpayers to adopt Bz to Bz electronic invoicing system since 2020	
Thailand	Non-mandatory	Voluntary since 2012	



# Comprehensive Digital Electronic Tax Invoice - People's Republic of China Practice

State Taxation Administration, PRC  
17 July 2024

**World**

A new round of technological and industrial transformations



**PRC**

Digital Government Construction Guidelines



**OECD**

Digital transformation vision "Tax Administration 3.0"



**PRC's Tax Authorities**

- Digital upgrading
- Intelligent transformation
- Building smart taxation
  - Highly efficient
  - Secure
  - Functional



**Breakthrough: Comprehensive Digital Electronic Tax Invoice**

# Comprehensive Digital Electronic Tax Invoice

## Significance of invoices



**Foundation of VAT system**

Government

Tax authorities

Taxpayers

Public community

**Pillars to improve taxpayer services**

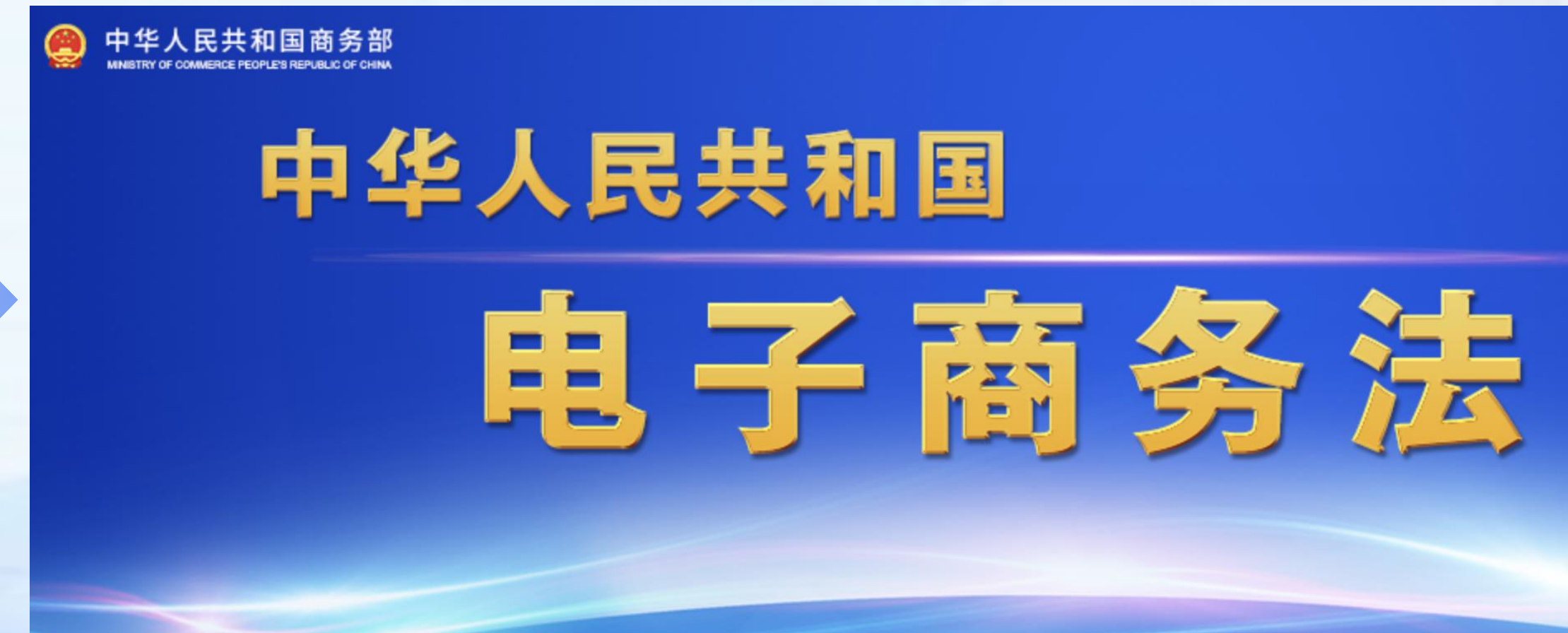
# The development process of electronic invoice in China

2012



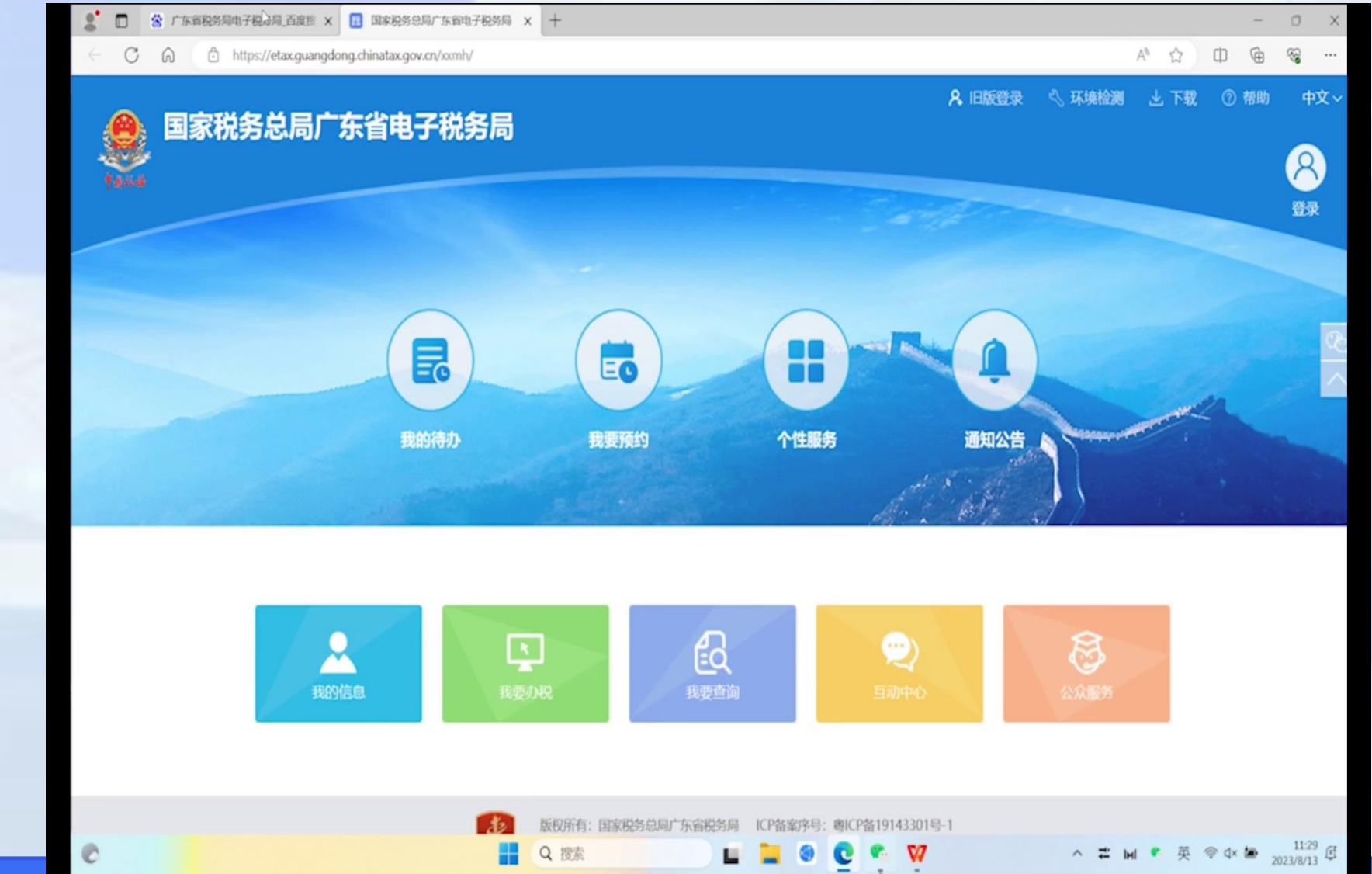
Implemented  
electronic invoice

2018



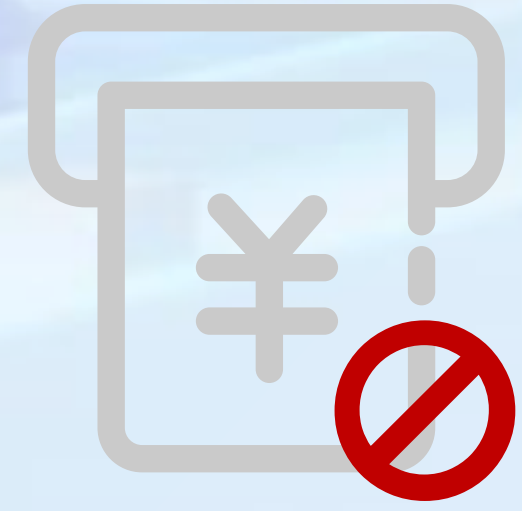
E-commerce Law confirms the  
legal effect of electronic invoice.

2021



Build a national E-invoice platform  
and "DET Invoice" was launched

# The Advantages of DET invoice



1. Eliminate the need for invoice format files

XML



2. Eliminate the need for specific equipment

Trusted Digital Identity System



3. Reduce the cost of using invoice data

Natural System

# Comprehensive Digital Electronic Tax Invoice



**A secure and unique digital identity**

Seamless cross-system interaction and behavioral traceability



**Digital Electronic Tax Invoice (DET Invoice)**



**Cross-border interoperability**

# Comprehensive Digital Electronic Tax Invoice



**A secure and unique digital identity**

Seamless cross-system interaction and behavioral traceability



**Digital Electronic Tax Invoice (DET Invoice)**



**Cross-border interoperability**





# Comprehensive Digital Electronic Tax Invoice



## A secure and unique digital identity

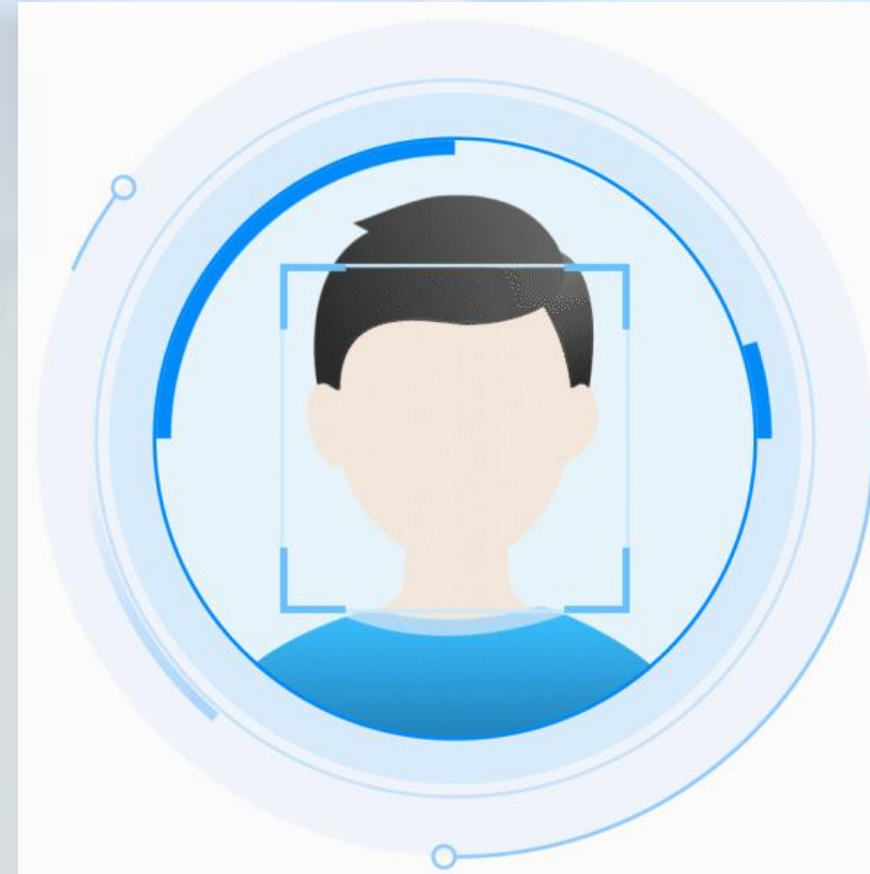
Seamless cross-system interaction and behavioral traceability



## Digital Electronic Tax Invoice (DET Invoice)



## Cross-border interoperability



- Nationwide uniform
- Lifelong unique
- Real-person authentication

### Security means

Identity granting

Identity verification

### Addressing issues

Identity theft

Account confusion

### Verification methods

Collaborative signatures

Facial recognition

Digital certificate

### Service users

Taxpayers in their hundreds of millions

Tax officials in their hundreds of thousands

Granting users with a nationwide uniform, lifelong unique digital identity

# Comprehensive Digital Electronic Tax Invoice



**A secure and unique digital identity**

Seamless cross-system interaction and behavioral traceability



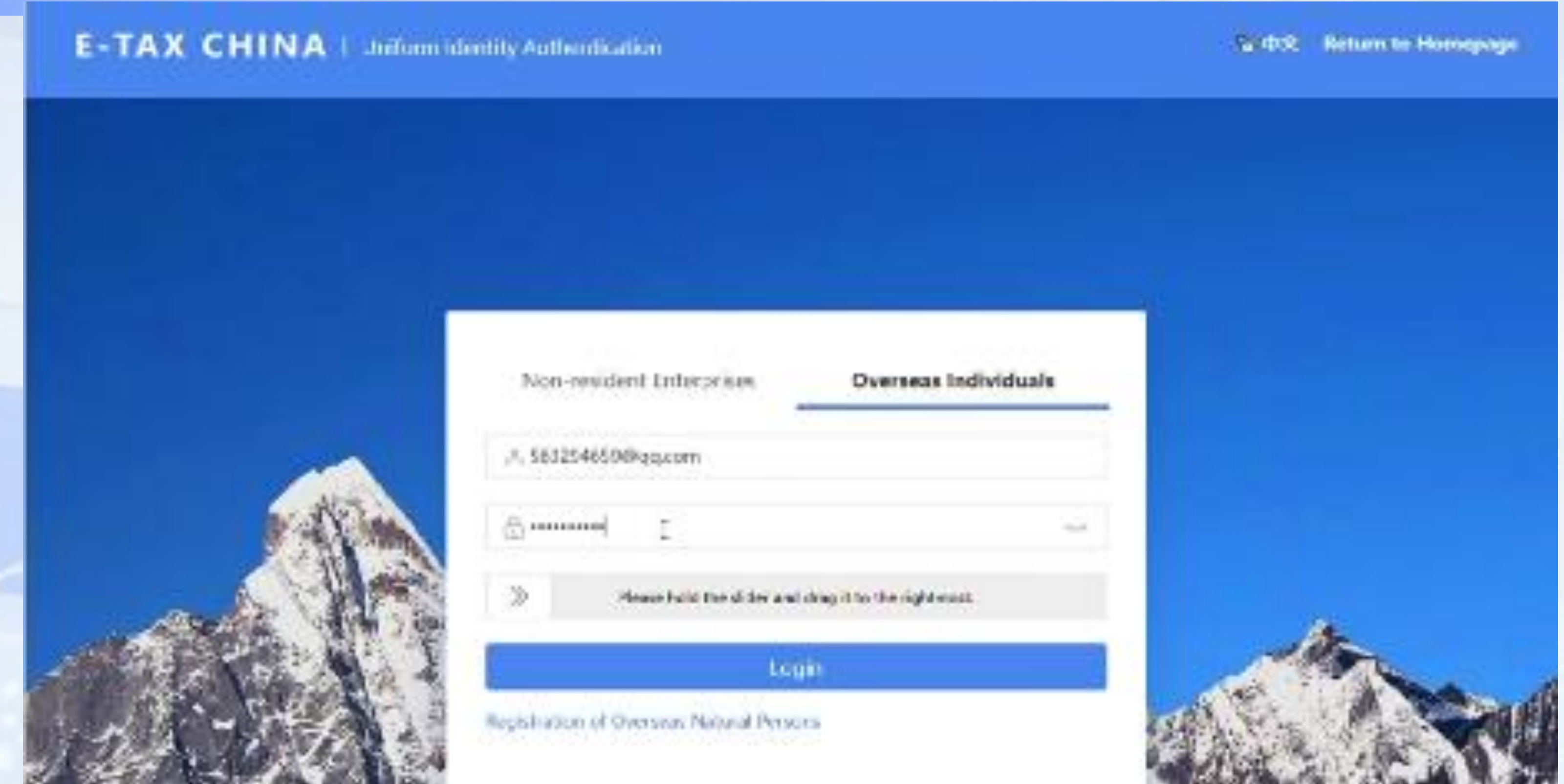
**Digital Electronic Tax Invoice (DET Invoice)**



**Cross-border interoperability**

**Cross-system**

**Cross-system interaction**



Trusted tax identity management platform

PRC's national e-government platform

# Comprehensive Digital Electronic Tax Invoice



**A secure and unique digital identity**

Seamless cross-system interaction and behavioral traceability



**Digital Electronic Tax Invoice (DET Invoice)**



**Cross-border interoperability**



**Authorizing**



**Taxpayers**

**Publishing a list of information items collected**

**Trusted tax identity management platform**

**encryption algorithms**

**digital certificates**

**signature verification**

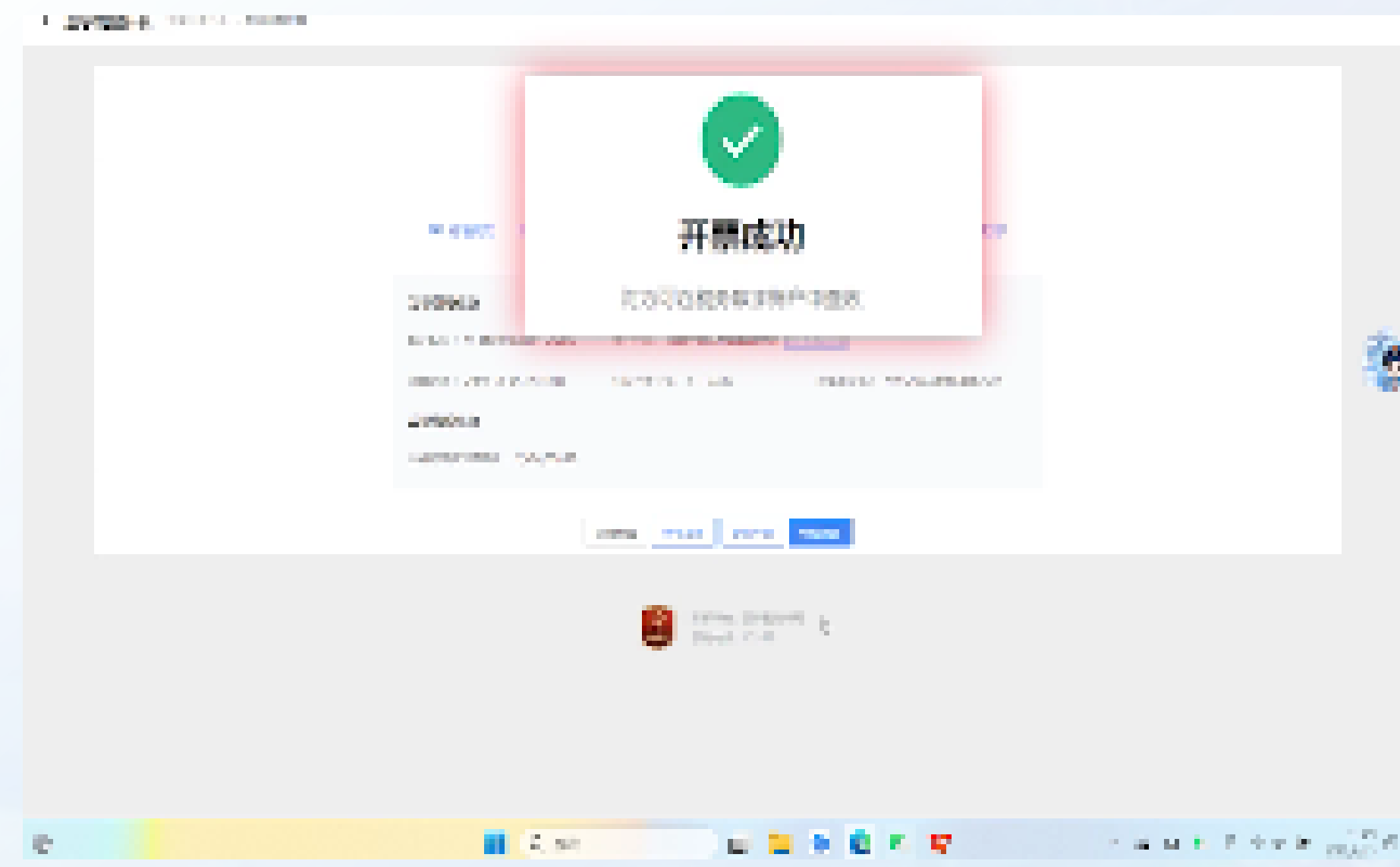
**Enhanced privacy protection**

# Comprehensive Digital Electronic Tax Invoice

## 1. real-time issuance and delivery



Invoicing upon login



Successfully issued



Automatically transmitted to recipient

# Comprehensive Digital Electronic Tax Invoice

## 2. Comprehensively collecting invoice data- Digital Tax Account

电子发票(普通发票) 发票号码: 2344200000059933934 开票日期: 2023年05月02日

购买方信息: 名称: [redacted] 统一社会信用代码/纳税人识别号: [redacted]

销售方信息: 名称: [redacted] 统一社会信用代码/纳税人识别号: [redacted]

项目名称	规格型号	单位	数量	单价	金额	税率/征收率	税额
*餐饮服务*餐费			1	871.7	871.70	6%	52.30
合计					¥871.70		¥52.30
价税合计(大写)					玖佰贰拾肆圆整		(小写) ¥924.00

开票人: 林伟吟

Buyer info

Seller info

Goods details

Price and tax total

Comprehensively collecting transaction data

开票业务 当前月份: 2022年7月

可用授信额度(元)	当前可用纸票数量(张)	蓝字发票开具金额(元)	红字发票开具金额(元)
6,998,141.48 去调整	182	46,820.20	27,655.17
总授信额度: 7,500,000.00元	已开具: 10张	蓝字发票累计税额: 3,409.81元	红字发票累计税额: 1,699.92元
		蓝字发票数量: 19张	红字发票数量: 3张

用票业务

当前可选增值金额(元)	已确认增值金额(元)	取得异常凭证数量(张)	取得异常凭证金额合计(元)
205,297.43 去勾选	0.00	0 去查看	0.00
增值税税额: 22,256.30元	增值税税额: 0.00元		异常凭证税额: 0.00元
抵扣凭证数量: 95张	抵扣凭证数量: 0张		

风险提示

Invoice issuance service

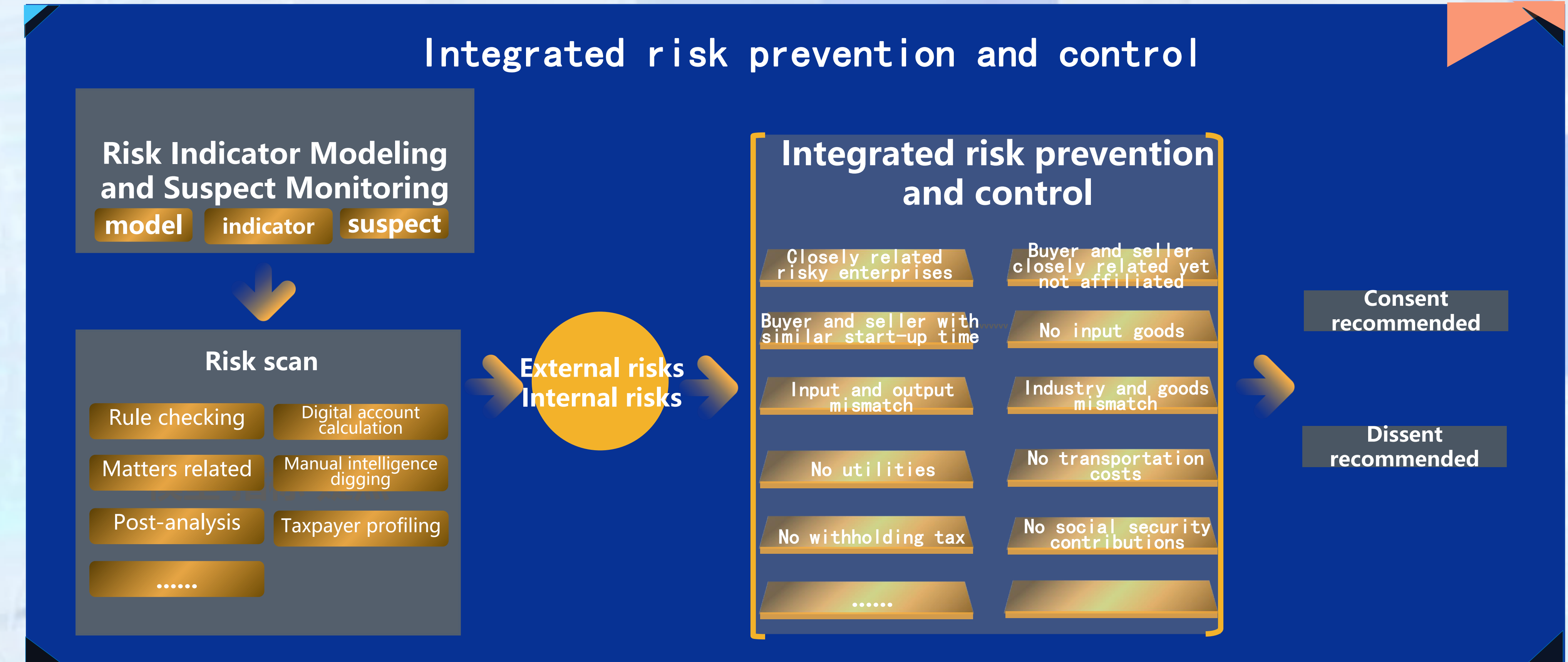
Invoice use service

Risk warning

Automatic info sorting and archiving for enhanced visibility of business flow

# Comprehensive Digital Electronic Tax Invoice

## 3. Targeted risk control



# Comprehensive Digital Electronic Tax Invoice



A secure and unique digital identity



**Digital Electronic Tax Invoice  
(DET Invoice)**

Reducing costs and increasing efficiency for taxpayers



**Cross-border interoperability**

In reference to *Tax Administration 3.0*



Use raw data  
as much  
instead of  
processed data

## LeQi Direct Connection Model

**Tax rules embedded into systems  
Data mutually shared**



Reducing compliance burden



Ensuring tax compliance

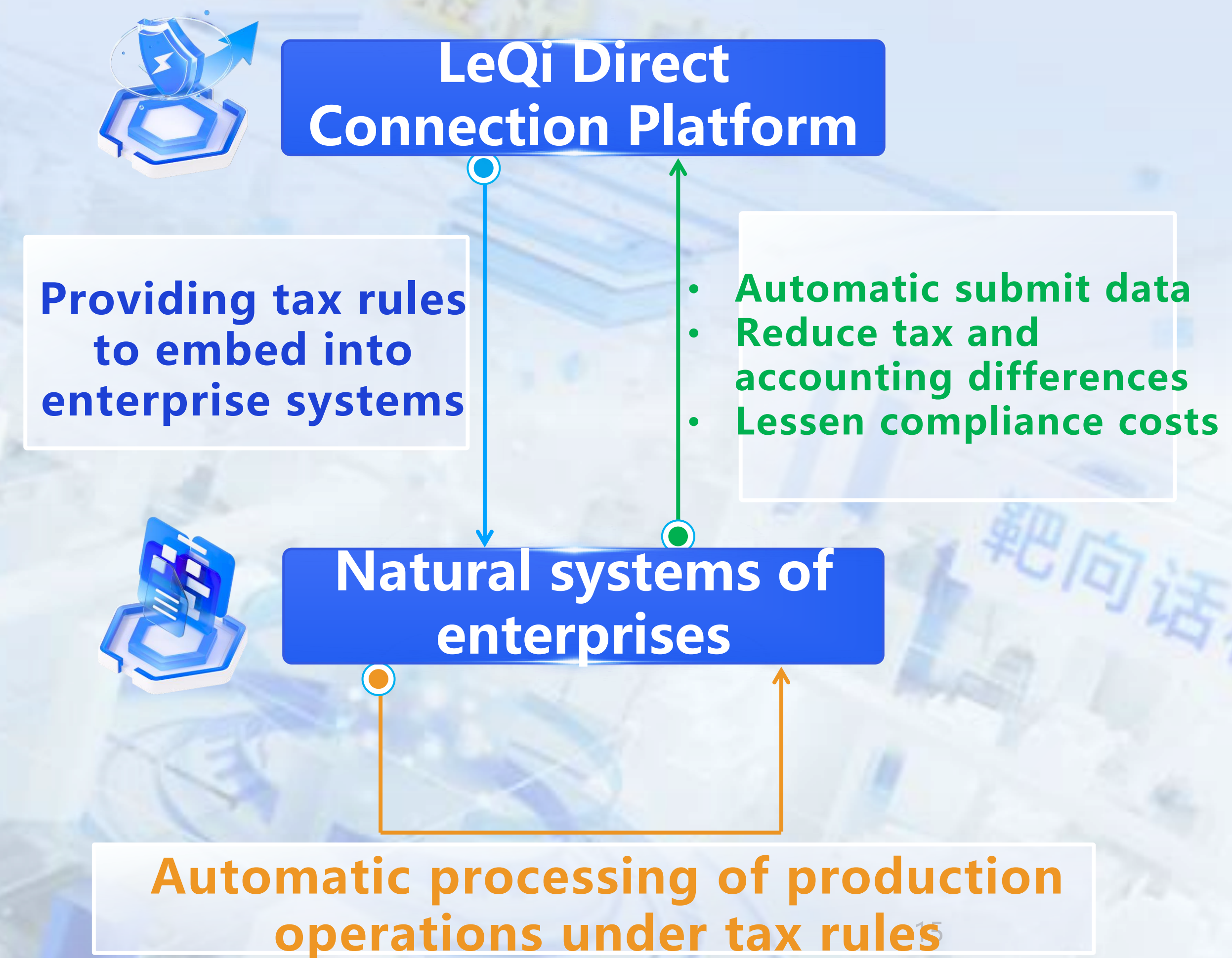
# Comprehensive Digital Electronic Tax Invoice

## LeQi Direct Connection Model

**Tax rules embedded into systems**  
**Data mutually shared**

Reducing compliance burden

Facilitating timely administration  
Ensuring tax compliance





# Comprehensive Digital Electronic Tax Invoice

**Effects: noticeable reduction in costs, e.g. invoices**



A secure and unique digital identity

Easier and nimbler to use invoices

Accurate and authentic invoice data



**Digital Electronic Tax Invoice  
(DET Invoice)**

Reducing costs and increasing efficiency for taxpayers

Transactions automatically triggering invoicing

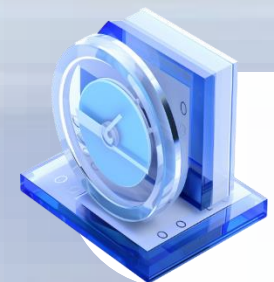
issuing

delivering

collecting

archiving

**Connecting before filing:  
a more seamless  
experience of taxpayers**



Cross-border interoperability

System of the Buyer

Tax information system

System of the Seller

# Comprehensive Digital Electronic Tax Invoice



A secure and unique digital identity



Digital Electronic Tax Invoice (DET Invoice)

**cross-border interoperability**

**international general rules**  
**Common technical standards**



**Development and cooperation  
needs of the digital economy**



**Construction of electronic invoice  
rules and standards**



**Cross-border  
interoperability**

feasibility for cross-border interaction for DET Invoice.

# Comprehensive Digital Electronic Tax Invoice



A secure and unique digital identity



Digital Electronic Tax Invoice (DET Invoice)



Cross-border interoperability

feasibility for cross-border interaction for DET Invoice.

```
<?xml version="1.0" encoding="utf-8" standalone="yes"?>
<EInvoice>
  <Header>
    <EIid>23442000000000130159</EIid>
    <EInvoiceTag>SWEI4400</EInvoiceTag>
    <Version>0.2</Version>
    <InherentLabel>
      <InIssuType>
        <LabelCode>Y</LabelCode>
        <LabelName>是否蓝字发票标志</LabelName>
      </InIssuType>
    <EInvoiceType>
      <LabelCode>01</LabelCode>
      <LabelName>电子发票</LabelName>
    </EInvoiceType>
    <GeneralOrSpecialVAT>
      <LabelCode>01</LabelCode>
      <LabelName>增值税专用发票</LabelName>
    </GeneralOrSpecialVAT>
    <TaxpayerType>
      <LabelCode>1</LabelCode>
      <LabelName>一般纳税人</LabelName>
    </TaxpayerType>
  </Header>
</EInvoice>
```

DET Invoice Example

1. Share the same data format

```
<?xml version="1.0" encoding="UTF-8"?>
<Invoice xmlns="urn:oasis:names:specification:ubl:sch
xmlns:cac="urn:oasis:names:specification:ubl:sch
xmlns:cbc="urn:oasis:names:specification:ubl:sch
  <cbc:UBLVersionID>2.1</cbc:UBLVersionID>
  <cbc:ID>TOSL108</cbc:ID>
  <cbc:IssueDate>2009-12-15</cbc:IssueDate>
  <cbc:InvoiceTypeCode listID="UN/ECE 1001 Subset"
  <cbc:Note languageID="en">Ordered in our booth a
  <cbc:TaxPointDate>2009-11-30</cbc:TaxPointDate>
  <cbc:DocumentCurrencyCode listID="ISO 4217 Alpha
    >EUR</cbc:DocumentCurrencyCode>
  <cbc:AccountingCost>Project cost code 123</cbc:A
  <cac:InvoicePeriod>
    <cbc:StartDate>2009-11-01</cbc:StartDate>
    <cbc:EndDate>2009-11-30</cbc:EndDate>
  </cac:InvoicePeriod>
  <cac:OrderReference>
    <cbc:ID>123</cbc:ID>
  </cac:OrderReference>
  <cac:ContractDocumentReference>
    <cbc:ID>Contract321</cbc:ID>
  </cac:ContractDocumentReference>
</Invoice>
```

UBL Invoice Example

# Comprehensive Digital Electronic Tax Invoice

电子发票(普通发票)

发票号码: 2344200000059933934  
开票日期: 2023年07月02日

购买方信息: 名称: \_\_\_\_\_ 统一社会信用代码/纳税人识别号: \_\_\_\_\_

销售方信息: 名称: \_\_\_\_\_ 统一社会信用代码/纳税人识别号: \_\_\_\_\_

项目名称	规格型号	单位	数量	单价	金额	税率/征收率	税额
*餐饮服务*餐费			1	871.7	871.70	6%	52.30
合计					¥871.70		¥52.30
价税合计(大写)					玖佰贰拾肆圆整		(小写) ¥924.00

开票人: 林伟吟

DET Invoice Example

Buyer info

Invoice number and issue date

Seller info

Goods details

Price and tax total

**INVOICE**

Order Number: SG38KDLTED9A  
Order date: 07.11.23  
Date of document: 07.11.23  
Invoice number: 12302900000260266

**DECATHLON**  
Decathlon Singapore Pte. Ltd.  
230 Stadium Boulevard  
Singapore 397799  
GST Registration Number: 201225519M

**BILLING ADDRESS**  
WENQI Hu  
356 Alexandra Road  
#04-03  
159949 QUEENSTOWN, TIONG BAHRU Singapore

**DELIVERY ADDRESS**  
WENQI Hu  
302 Tiong Bahru Rd, #01-106, Tiong Bahru Plaza  
168732 Singapore

All our products on [www.decathlon.sg](http://www.decathlon.sg)

Reference	Article Number	Quantity	Unit amount per item	GST	GST amount	Total
100 Women's Horse Riding Jodhpurs - Black	2390487	1	18.43	8%	1.47	\$19.90
Table Tennis Balls TTB 100 1* 40+ 6-Pack	4714062	5	1.82	8%	0.72	\$9.83
Total without taxes						\$27.54
Total GST 8%						\$2.19
<b>Total</b>						<b>\$29.73</b>

UBL Invoice Example(Singapore)

2. Share the same invoice elements

# Comprehensive Digital Electronic Tax Invoice



A secure and unique digital identity



Digital Electronic Tax Invoice (DET Invoice)



Cross-border interoperability

feasibility for cross-border interaction for DET Invoice.

电子发票 (增值税专用发票)

发票号码: 2344200000000033395  
开票日期: 2023年03月02日

购买方信息	名称: 上海莘威运动品有限公司 统一社会信用代码/纳税人识别号: 91310000607362964M	销售方信息	名称: 台山市江恒运动品有限公司 统一社会信用代码/纳税人识别号: 91440781588286731L																																
<table border="1"> <thead> <tr> <th>项目名称</th> <th>规格型号</th> <th>单位</th> <th>数量</th> <th>单价</th> <th>金额</th> <th>税率/征收率</th> <th>税额</th> </tr> </thead> <tbody> <tr> <td>*体育用品*RS H Lite500 DREA MING PINK 头盔</td> <td>4518804958</td> <td>个</td> <td>1188</td> <td>38.8</td> <td>46094.40</td> <td>13%</td> <td>5992.27</td> </tr> <tr> <td>*体育用品*RS H Lite500 Space Travel 头盔</td> <td>4518816445</td> <td>个</td> <td>963</td> <td>41.78</td> <td>40234.14</td> <td>13%</td> <td>5230.44</td> </tr> <tr> <td colspan="4">合计</td> <td></td> <td>¥86328.54</td> <td></td> <td>¥11222.71</td> </tr> </tbody> </table>				项目名称	规格型号	单位	数量	单价	金额	税率/征收率	税额	*体育用品*RS H Lite500 DREA MING PINK 头盔	4518804958	个	1188	38.8	46094.40	13%	5992.27	*体育用品*RS H Lite500 Space Travel 头盔	4518816445	个	963	41.78	40234.14	13%	5230.44	合计					¥86328.54		¥11222.71
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合计					¥86328.54		¥11222.71																												
价税合计 (大写)		玖万柒仟伍佰伍拾壹圆贰角伍分		(小写) ¥97551.25																															
购方开户银行: 渣打银行(中国)有限公司上海分行; 银行账号: 4040614165520133; 销方开户银行: 广东台山农村商业银行股份有限公司大江支行; 银行账号: 80020000003524375;																																			
开票人: 雷文健																																			

## 3. determining the mapping relationship

XML Schema Mapping Diagram:

- esc:AdditionalDocumentReference (12)**
  - esc:ID (1, 4400223130)
  - esc:DocumentTypeCode (1, 4400223130)
  - esc:DocumentTypeCode (2, 李妙兰)
  - esc:DocumentTypeCode (3, 27-2)
  - esc:DocumentTypeCode (4, 09f798f19b40129b512872014e722)
  - esc:DocumentTypeCode (5, 4400223130-27764834)
  - esc:DocumentTypeCode (6, 4400223130-27764833)
- esc:AccountingCustomerParty**
  - esc:Party (1, 上海莘威运动品有限公司)
  - esc:Party (2, 台山市江恒运动品有限公司)
- esc:TaxTotal**
  - esc:TaxAmount (1, 11222.71)
  - esc:TaxSubtotal (1, 11222.71)
  - esc:TaxableAmount (1, 86328.54)
  - esc:TaxAmount (2, 11222.71)
  - esc:TaxCategory (1, S)
  - esc:TaxScheme (1, 13.00)
- esc:LegalMonetaryTotal**
  - esc:LineExtensionAmount (1, 86328.54)
  - esc:TaxExclusiveAmount (1, 11222.71)
  - esc:TaxInclusiveAmount (1, 11222.71)
  - esc:PayableAmount (1, 11222.71)
- esc:InvoiceLine (2)**
  - Line 1: \*体育用品\*RS H Lite500 DREAMING PINK 头盔
  - Line 2: \*体育用品\*RS H Lite500 Space Travel 头盔

# Comprehensive Digital Electronic Tax Invoice



A secure and unique digital identity



Digital Electronic Tax Invoice (DET Invoice)



**Cross-boarder interoperability**

feasibility for cross-border interaction for DET Invoice.

## *Practical application of cross-border interoperability*



Certified as PEPPOL access point

Convert and transmit domestic invoice through PEPPOL



Construct "single window"

Connected with PEPPOL for international trade

# Comprehensive Digital Electronic Tax Invoice

1

**China's National Electronic Invoice Standard**

2

**Integration of international E-invoices and the digital economy**

3

**Global digital trade needs**

4

**Compatibility of market access and supervision**

**Vision**

**International electronic  
invoicing standard  
framework**



中國稅務

**Thank you!**



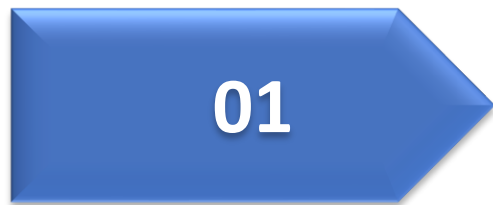
# *Issues & Opportunities*



Suhani Anuar  
Transfer Pricing Division,  
Department of International Taxation  
Inland Revenue Board of Malaysia

**15<sup>th</sup> Annual Asia-Pacific Tax Forum**  
*17 July 2024 – Sheraton Imperial KL*

# What will be covered?



**RULES, REGULATIONS & REFERENCES**

*General & domestic*



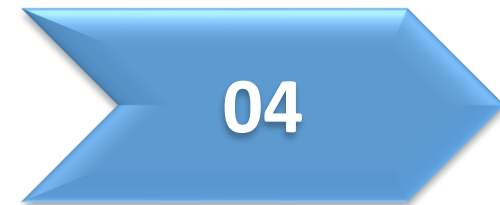
**TP RULES 2012 vs 2023**

*Differences that matters*



**TP CONTROVERSY ISSUES**

*???*



**MAP & APA**

*Resolution & Prevention*

# Rules, Regulations & References for TP compliance in Malaysia

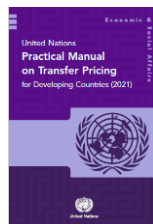
General references

Domestic rules & regulations



**OECD TPGL for MNE & tax administrations 2022**

**UN Practical Manual on TP for developing countries 2021**



**Income Tax Act 1967 – specific provision – section 140A**

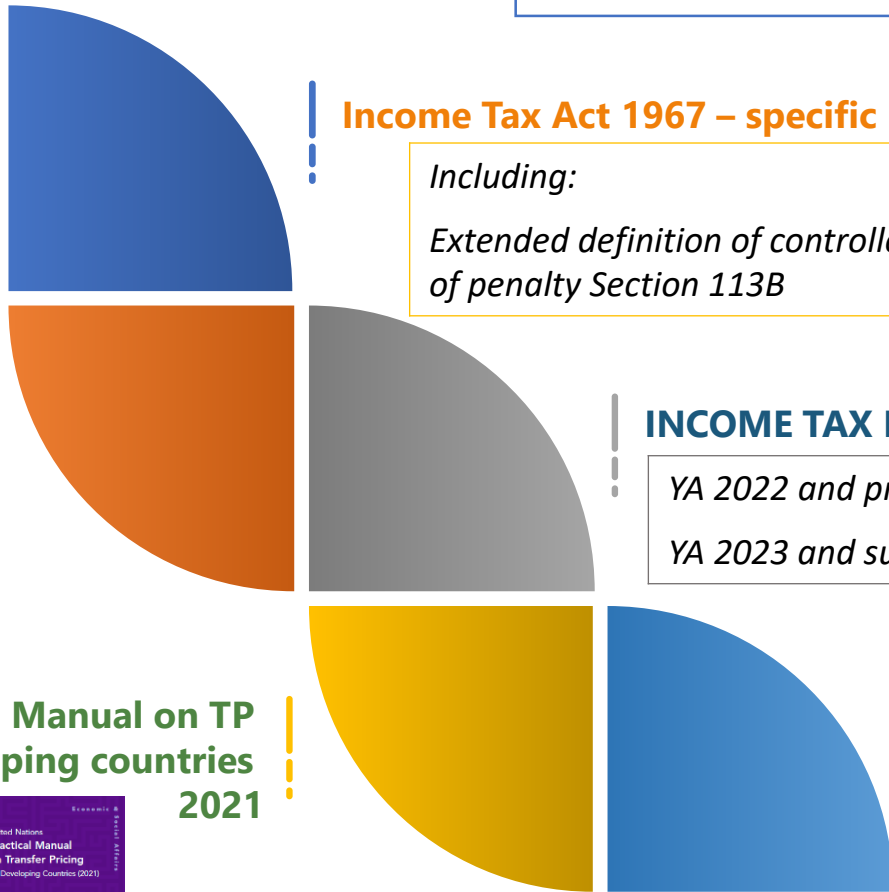
*Including:*  
 Extended definition of controlled, Surcharge and introduction of penalty Section 113B

**INCOME TAX RULES – subsidiary legislation**

YA 2022 and prior years	TPR 2012
YA 2023 and subsequent years	TPR 2023

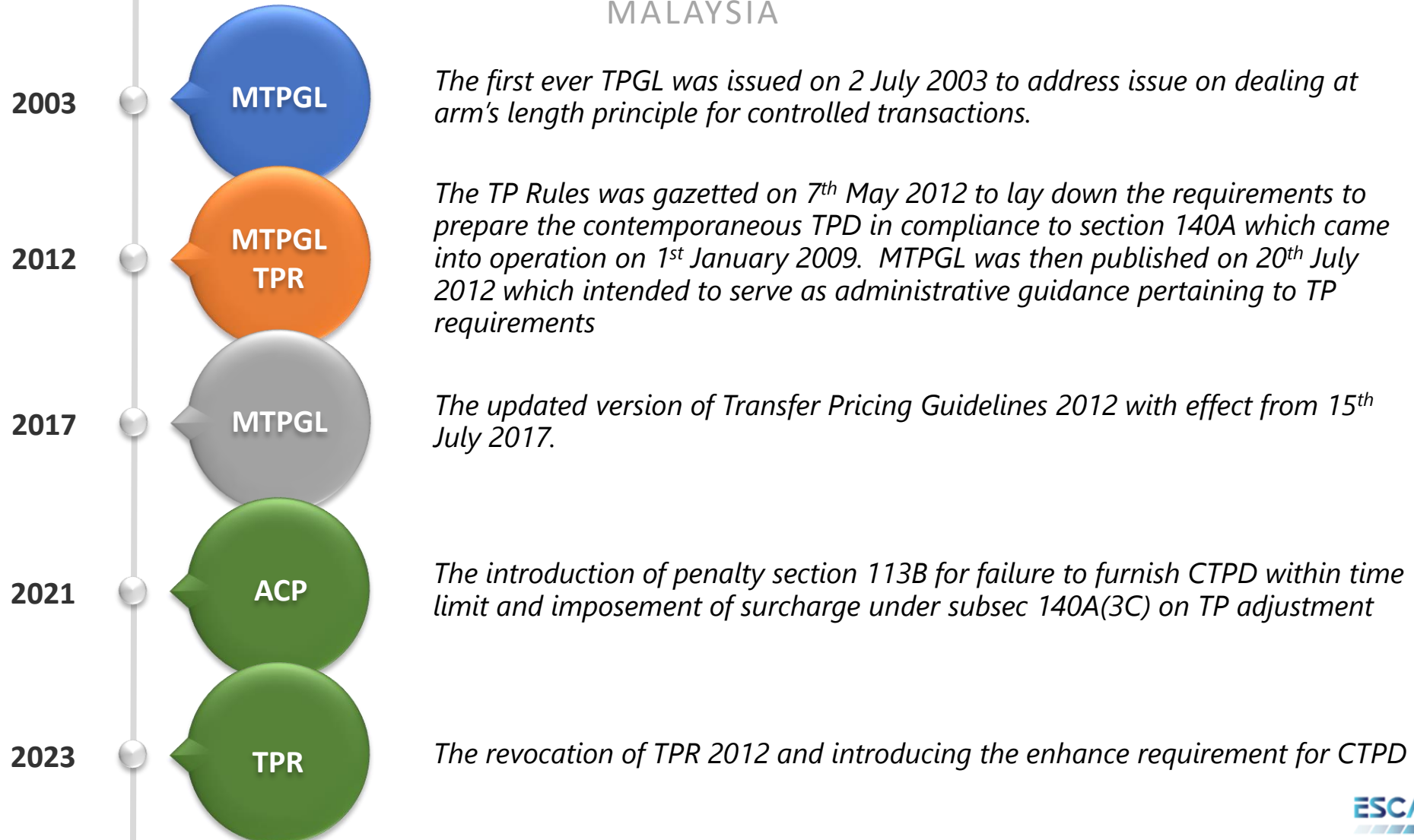
**Malaysia TPGL & TP Audit Framework**

*Currently in the revised process*



## RULES & REGULATION MILESTONES

### MALAYSIA

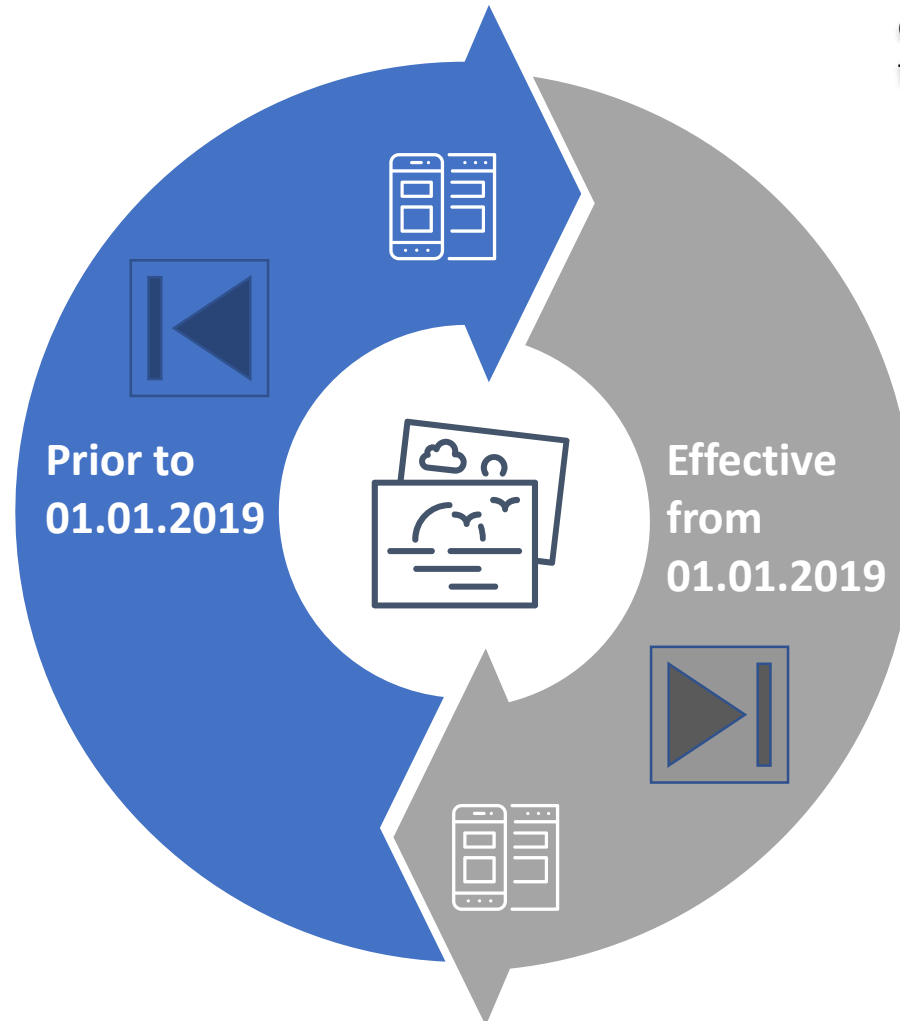


# Changes in controlled definition – wef 1.1.2019 (broader)

A controlled transaction is transaction between:

- Person one of whom **has control over** the other
- Individuals who are **relatives of each other**; or
- Persons **both of whom are controlled by some other person**

140A(5)



With effect from **1.1.2019**, Subsec 140A(5A) expands “control” for TP purposes –test on share cap held (**20% or more**) & meets **one** of the following conditions:

- (a) **Business operations** of that person **depends on the propriety rights**, such as patents, non-patented technological know-how, trademarks, or copyrights, provided by the other person or a third person;
- (b) The **business activities**, such as purchases, sales, receipt of services, provision of **services**, of that person **are specified** by the other person, and the prices and other conditions relating to the supply are **influenced** by such other person or a third person; **or**
- (c) Where **one or more of the directors or members of the board** of directors of a person are **appointed by the other person** or a third person.

140A(5A)

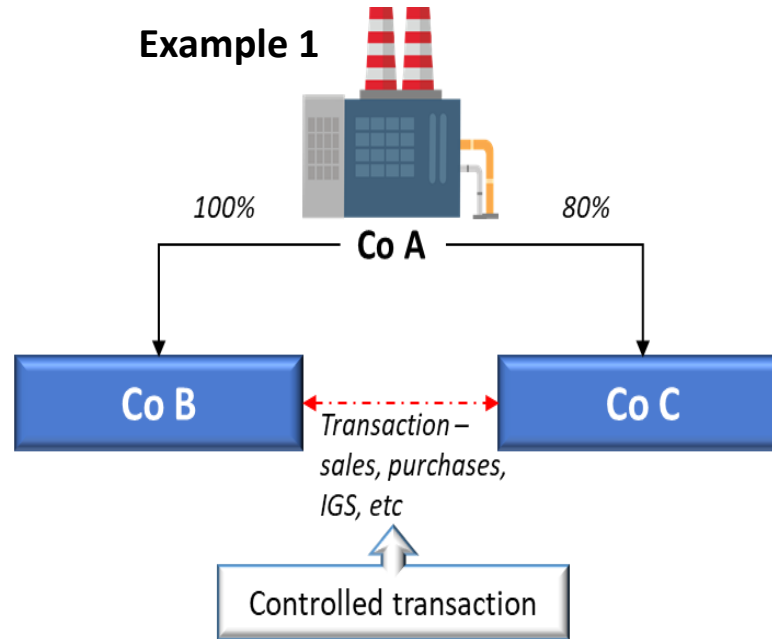
# Controlled transaction & associated person – prior to 01.01.2019

Transactions between associated person are controlled transactions.

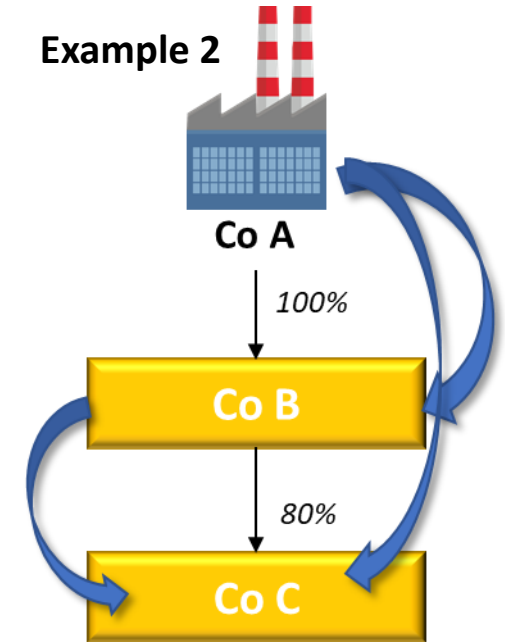
For the purpose of TP, **associated person** refers to:

- Person one of whom **has control over the other**
- Individuals who are **relatives of each other; or**
- Persons **both of whom are controlled by some other person**

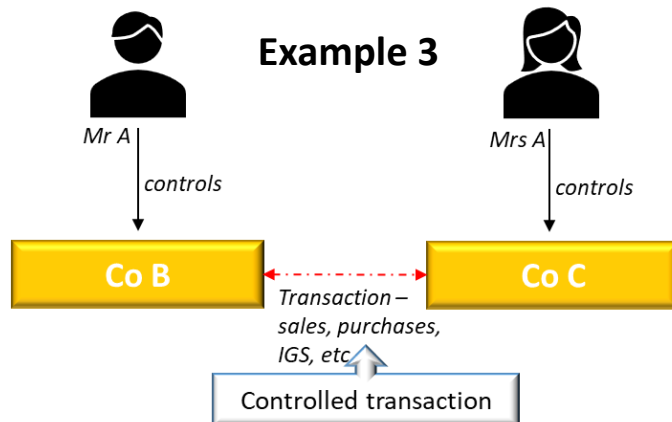
Example 1



Example 2



Example 3



In these examples, Co A, Co B and Co C are **associated persons** and transactions between them are **controlled transactions**

# Controlled definition broaden – wef 01.01.2019

**140A(5A)(a)**

FCo held 25% share in MCo and balance 75% held by XYZ SB. MCo relies entirely on the intellectual property (IP) owned by FCo in its production activities in Malaysia. FCo has control over MCo for TP purposes & transactions between FCo and MCo are controlled transactions

**140A(5A)(b)**

QBV Co in Netherlands holds 35% stake in PSB and also provides management services to PSB. Besides, QBV has also directed R Ltd in Germany to supply raw materials to PSB. Thus, transactions between QBV and PSB are controlled transactions for TP purposes. However, between R Ltd & PSB, the transactions are not controlled transactions

**140A(5A)(c)**

Shareholding in MJSB is hold by Z Ltd & Q Ltd. Transactions between MJSB & Q Ltd (Spore) is a controlled transaction for TP purposes due to the fact that Z Ltd (UK) has the authority to appoint 1 or more directors or board members in both MJSB and Q Ltd.

# DGIR power to disregard structure – wef 01.01.2021

- ❑ **SECTION 140A(3A) & (3B) – POWER TO DISREGARD STRUCTURE IN A CONTROLLED TRANSACTION**
  - ✓ Subsection 140A(3A) – DG has the power to **disregard any structure** in a controlled transaction if:
    - (a) the economic substance of that transaction **differs** from its form; or*
    - (b) the form and substance of that transaction are the **same** but the arrangement made in relation to the transaction, **viewed in totality, differs** from those which would have been adopted by **independent persons behaving in a commercially rational manner** and **the actual structure impedes** the Director General from determining an appropriate transfer price.*
  - ✓ Subsection 140A(3B) – When DG has disregards any structure, he shall make **adjustments to that structure as he thinks fit** to reflect the structure that would be adopted by independent persons dealing at arm’s length having regard to the economic and commercial reality



# Introduction of surcharge – wef 01.01.2021

## ❑ SECTION 140A(3C) – IMPOSITION OF SURCHARGE ON TP ADJUSTMENTS

- ✓ The DG may require PC to pay surcharge of **not more than 5%** of the amount **increase of any income** generally or **reduction of any deduction or loss**, as **consequence** of exercising his powers to **substitute** the price in respect of a transaction entered into by a person to reflect an **arm's length price** for that transaction or to **disregard any structure** adopted by a person in entering into a transaction.
- ✓ Surcharge may be imposed on TP adjustments on all cases whether taxable or not

*Regardless of whether the company is a loss making or a tax-exempt entity, the surcharge will still be applicable as long as there is a TP adjustment*

## Failure to furnish CTPD – wef 01.01.2021

### ❑ SECTION 113B (1), (2), (3) & (4)

- ✓ Failure to furnish CTPD in respect of any YA in accordance with TPR, **has committed a criminal offence** and upon conviction, be liable to a fine **RM20,000 ≤ X ≤ RM100,000** or to imprisonment for a term ≤ **6 months** or **both**.
- ✓ The burden of prove is on the accused person. Even if a person has been convicted, the person still need to furnish the CTPD within 30 days or such other period the court deems fit.
- ✓ If no prosecution, DG may require PC to pay penalty of **RM20,000 ≤ X ≤ RM100,000 for each YA** of the offence

***Subrule 5(3) of TPR 2023*** – CTPD should be furnished within 14 days from IRBM request. A notice will be issued if PC fail to comply and will expose to penalty section 113B

# Transfer Pricing Rules (TPR) 2012 vs 2023



Citation & commencement



Contemporaneous TPD[CTPD]



Comparability



Cost contribution arrangement (CCA)



Adjustment by DG



Application



Preparation & furnishment CTPD



TP for separate & combined transaction



Intangible property



PE as separate entity



Interpretation



Method to determine ALP



Intra group services



Interest on financial assistance



Revocation



CTPD



Prepare & Furnish



ALP determination

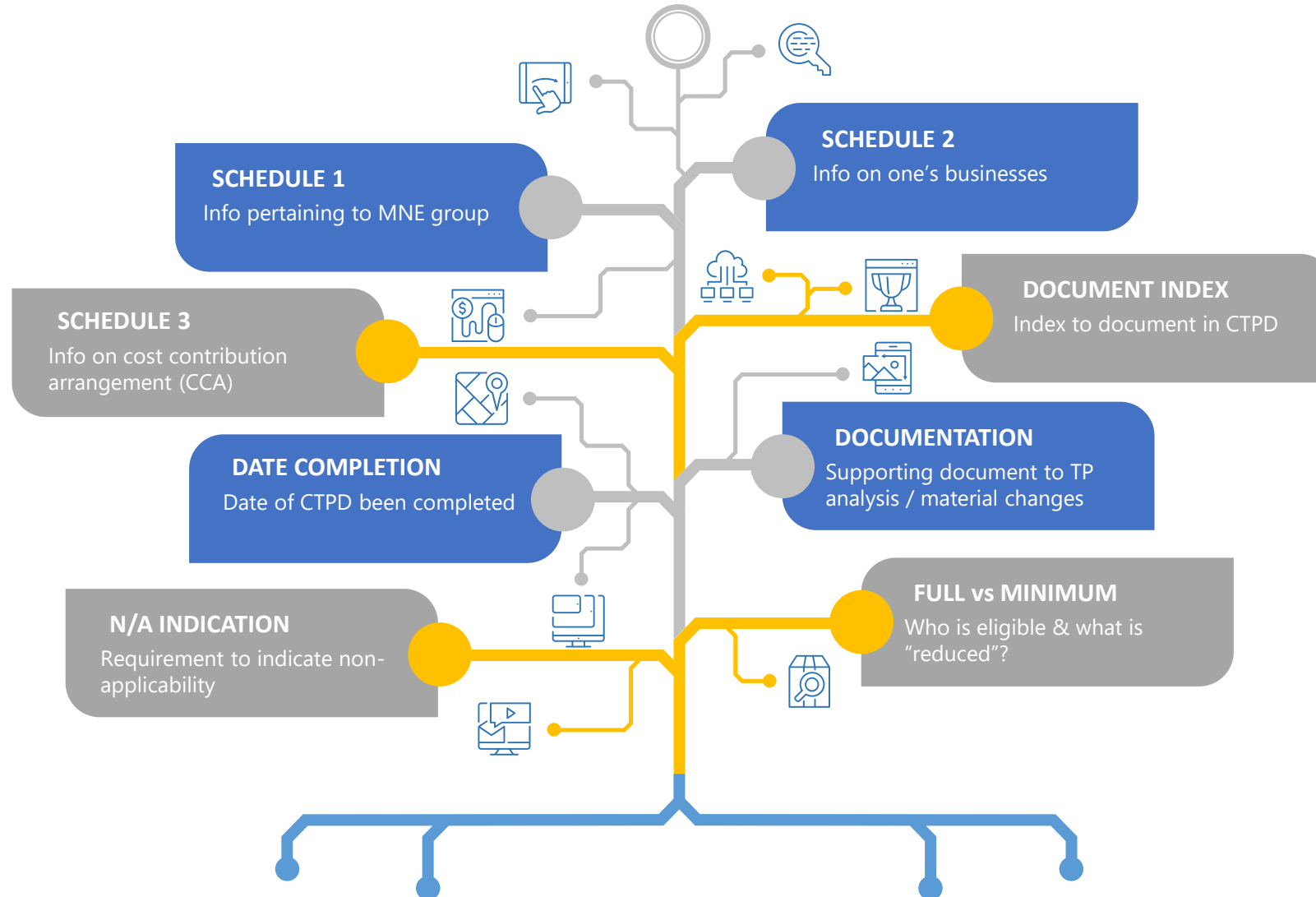


TP Adjustment



Commencement & Revocation

## CTPD comprises...subrule 4(2)



## SCHEDULE 1

- MNE group info
- Similar to Master File
- Relevant to MNE's group business in Malaysia

**(a)**

MNE group worldwide organizational structure inclusive of location & ownership linkages of all entities in the Group transacting with the taxpayer.

**(b)**

Description of MNE businesses that are relevant to the business of the taxpayer including products/services, market they operate, supply chain, FAR and any relevant changes

**(c)**

Description of the Multinational Enterprise Group's intangible property that are used in or applied to the business of the taxpayer including development, & exploitation, agreement & transfer

**(d)**

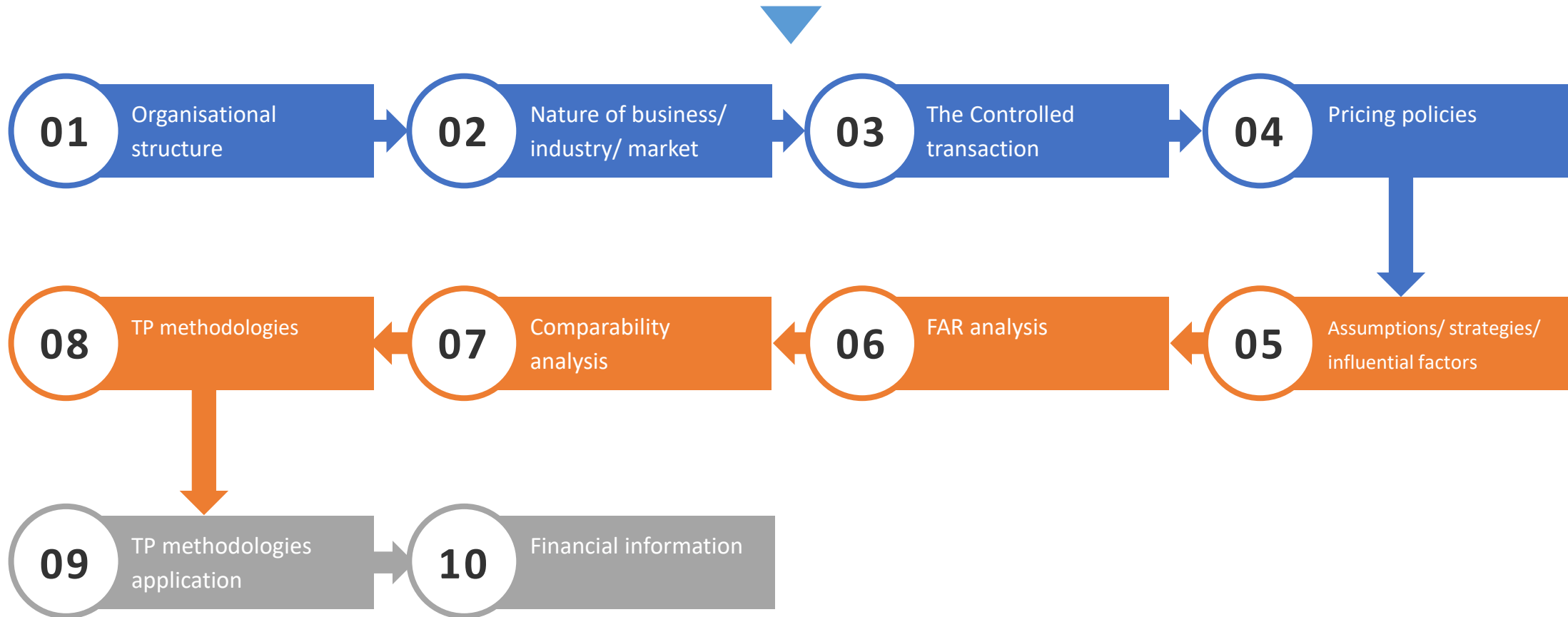
MNE's financial activities that are connected to the business of the taxpayer including financial activities and financing arrangement as well as central functions entity in the Group

**(e)**

financial and tax position of the MNE Group including info on unilateral APA

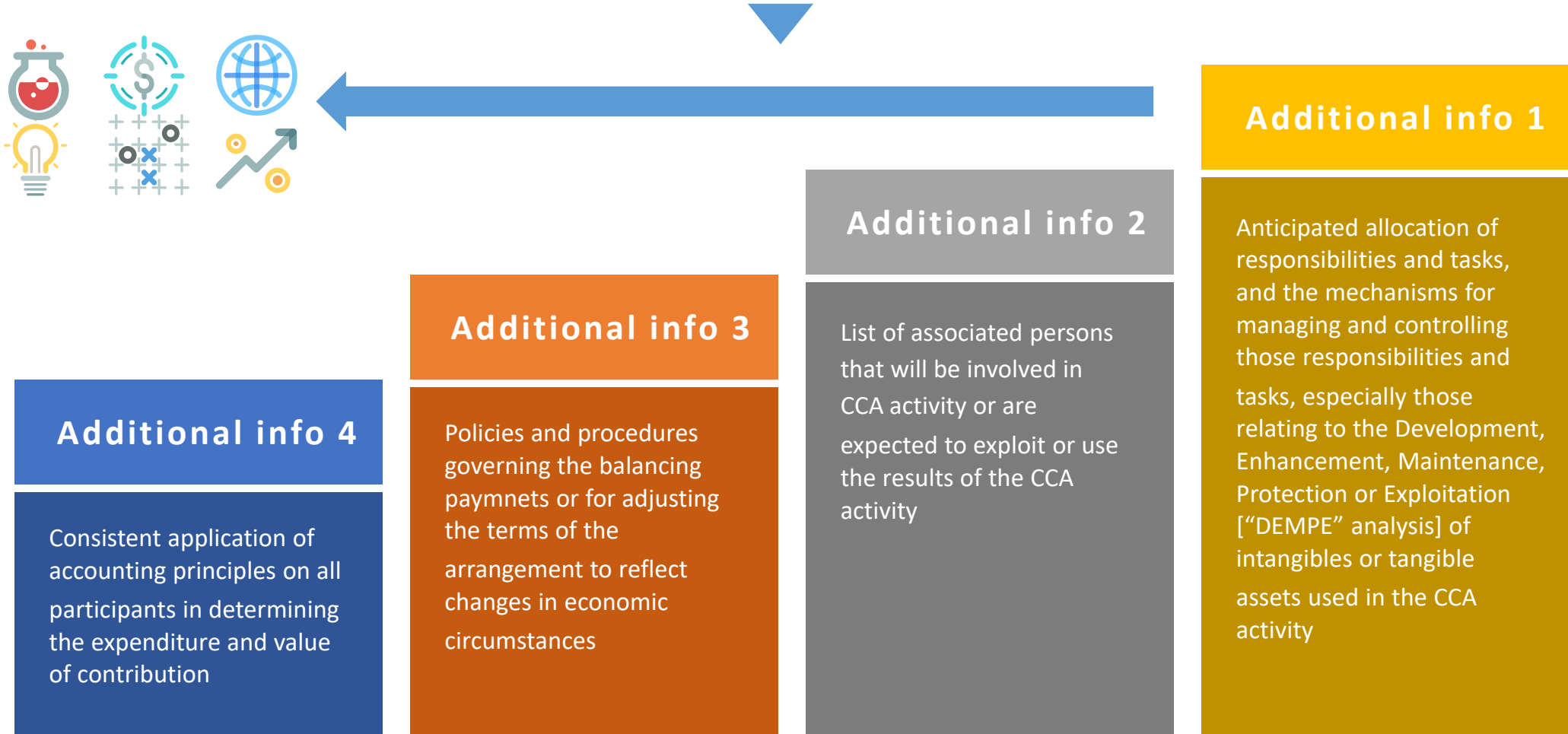
## Schedule 2 – Business information

Information regarding the taxpayer's businesses **shall include** transactions with its associated person in **a basis period** in which the **controlled transactions are entered into**, and the following information:



## SCHEDULE 3 - CCA

Similar to the requirements in current TPGL with additional disclosures on:



# DATE OF COMPLETION

*TPD will be regard as CTPD if it is brought into existence **prior to the due date for furnishing a return in the basis period for a year of assessment** in which a controlled transaction is entered into.*

**When should the TPD be dated? eg for YA2023**

FYE	FY CTPD to be completed & dated
January 2023	Within 7 months from the date following the close of the accounting period which constitutes the basis period for the year of assessment.
March 2023	
June 2023	
September 2023	
December 2023	

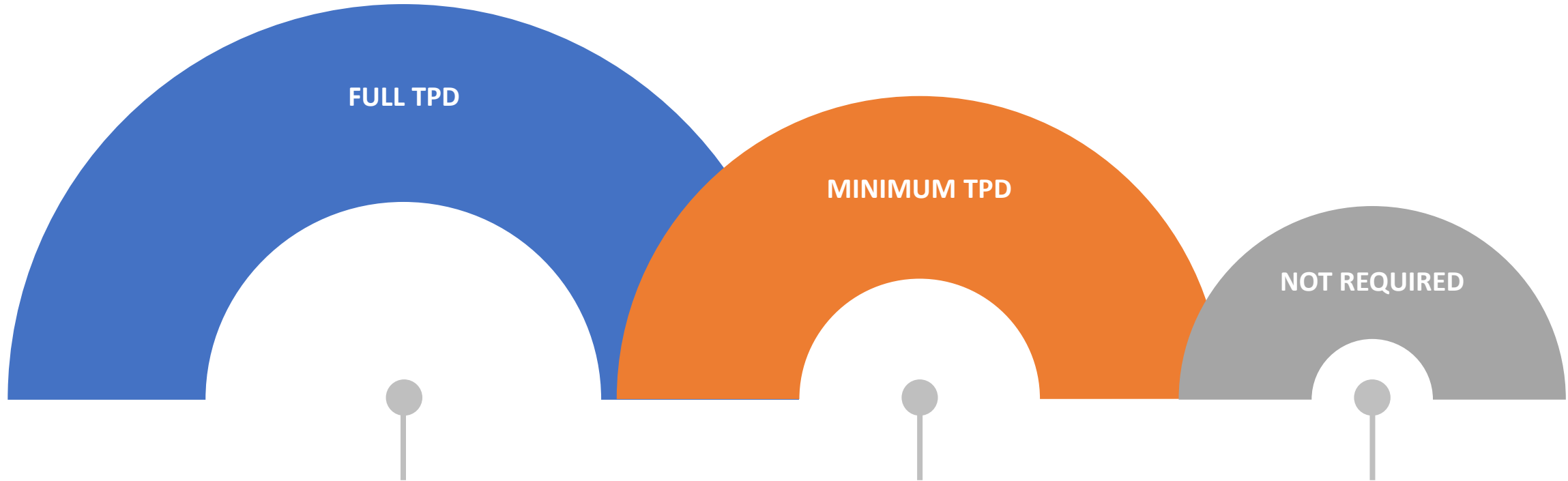
**What are the consequences in the following scenarios?**

Scenario	CTPD
EOT is granted on submission of Return Form	Follow EOT
TPD is not specified	Not CTPD
TPD is dated after the date of furnishing RF	Not CTPD



## Not required vs Minimum vs Full

Please refer to the TPD flowchart in HASiL official portal to determine the category



Taxpayers are required to comply with all the requirements set under the TPR

- ✓ Taxpayers who fall outside the threshold. However, they may opt to prepare full TPD.
- ✓ For minimum TPD, taxpayers do not need to prepare comparability study and may use other methods to justify the compliance of ALP

- ✓ Taxpayers who do not have controlled transactions & do not carrying on a business
- ✓ Taxpayers with only domestic controlled transaction which can be proven any adjustment made will not alter the tax payable/suffered

These requirements maybe different under the revised TPGL. The info will be updated accordingly

## PREPARATION & FURNISHMENT CTPD

01

Data used – the most current reliable information, data or documents that are reasonably available at the time of determination of the ALP.

02

Those information, data & documents must be kept and retained and readily accessible and ascertained

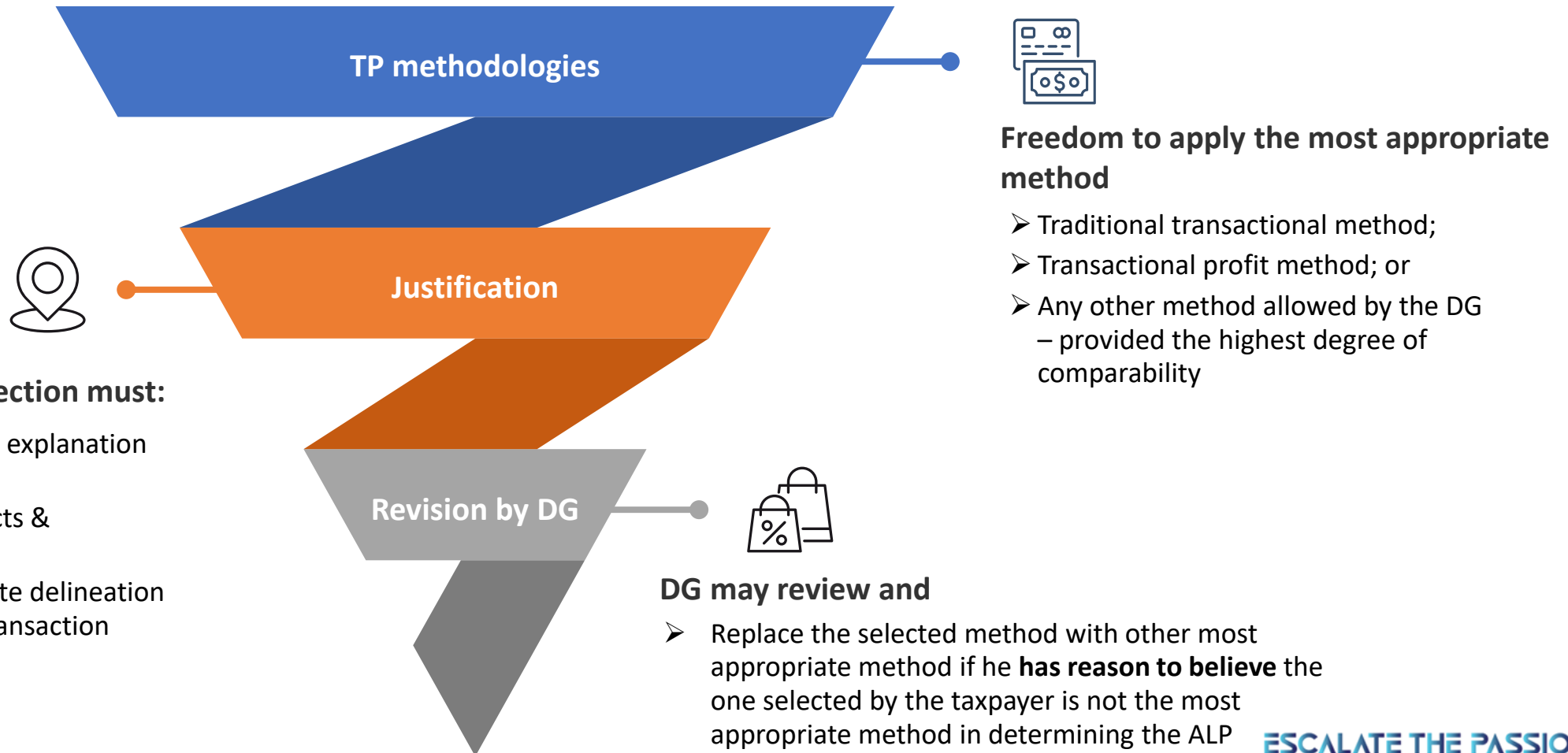
03

The CTPD shall be furnished within 14 days from the service of notice



1. What if only PY data is available?
2. What is meant by date of service?
3. How penalty sec 113B be imposed?

# METHOD DETERMINATION OF ALP



## COMPARABILITY ANALYSIS

### COMPARABLE COMPANY

May be used if

- ✓ Economic relevant characteristic are sufficiently similar;
- ✓ None of the difference are likely due to materially affect the price/ cost charged or paid/ profit arising – in open market
- ✓ Reasonably accurate adjustment can be made to eliminate the material effects of such differences

### COMPARISON

An uncontrolled transaction shall be used as a comparable in determining ALP of a controlled transaction but the controlled transaction shall be accurately delineated



- ✓ The comparison shall be the **same basis year**; and
- ✓ The application of CY and PY data is to assist on selection of comparable and **not for weighted averages**



### ECONOMICALLY RELEVANT CHARACTERISTICS FOR DELINEATION

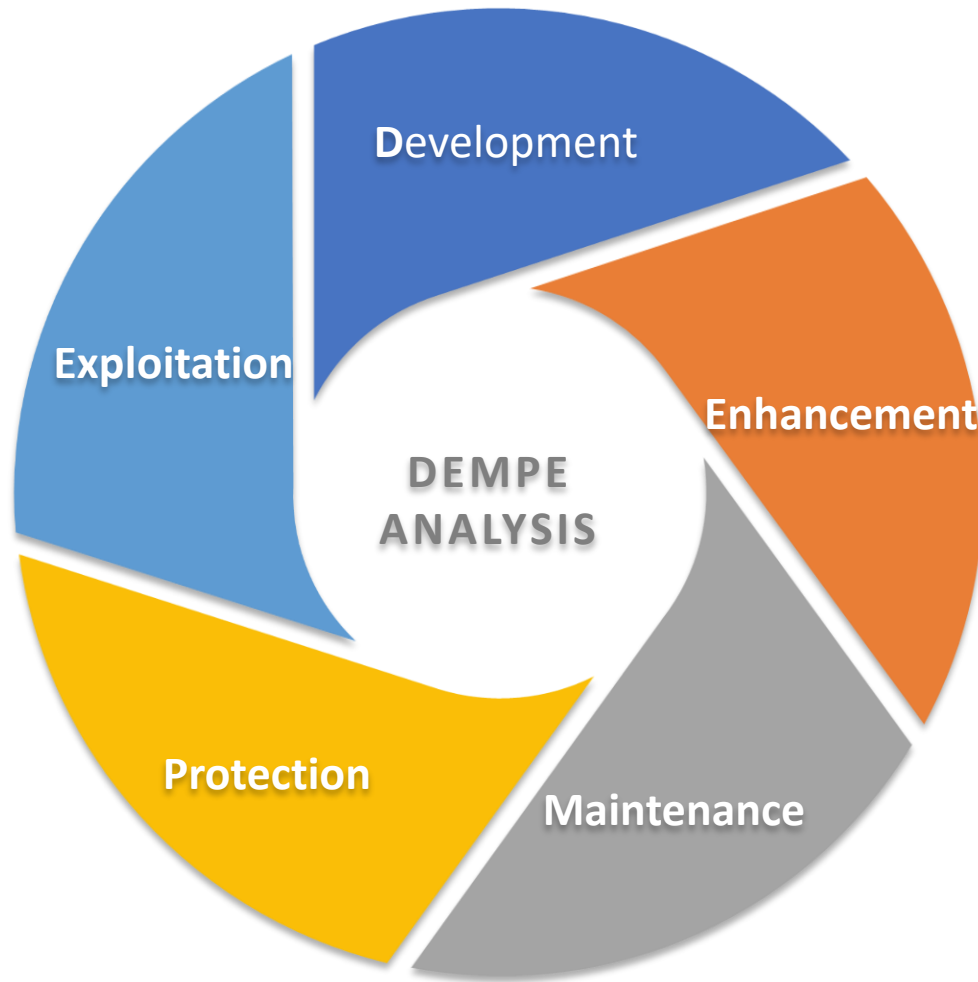
- ✓ Contractual terms;
- ✓ Functions performed;
- ✓ Characteristics of the goods/ services;
- ✓ Economic circumstances/ market which the parties operates;
- ✓ Business strategies pursued

### DG MAY ALLOW:

The application of data from the CY and PY if

- ✓ complete and accurate data are able to reflect the market/ industries conditions where such data can increase the reliability of the comparability analysis; and
- ✓ Those data are not impacted by controlled transactions

# INTANGIBLE PROPERTY (IP)



- ❑ Taxpayers must include in CTPD details of the IP used, the group’s strategy for the development, ownership & exploitation of the IP, locations of the R&D facilities and other information
- ❑ DEMPE analysis is required to determine the appropriate allocation of profits and ensure that the economic value created by the intangible assets is appropriately attributed to the contributors

- 01 CONTRIBUTOR**  
The contributor to the value of the IP through DEMPE is entitled to an arm’s length consideration, regardless of legal ownership
- 02 OWNERSHIP**  
The owner of the IP is not entitled to any income attributable to that IP if he neither performs the functions nor controls the functions/ risks related to the DEMPE of the IP
- 03 ENHANCEMENT**  
Provide clarity on definition of IP and marketing intangible in TP context

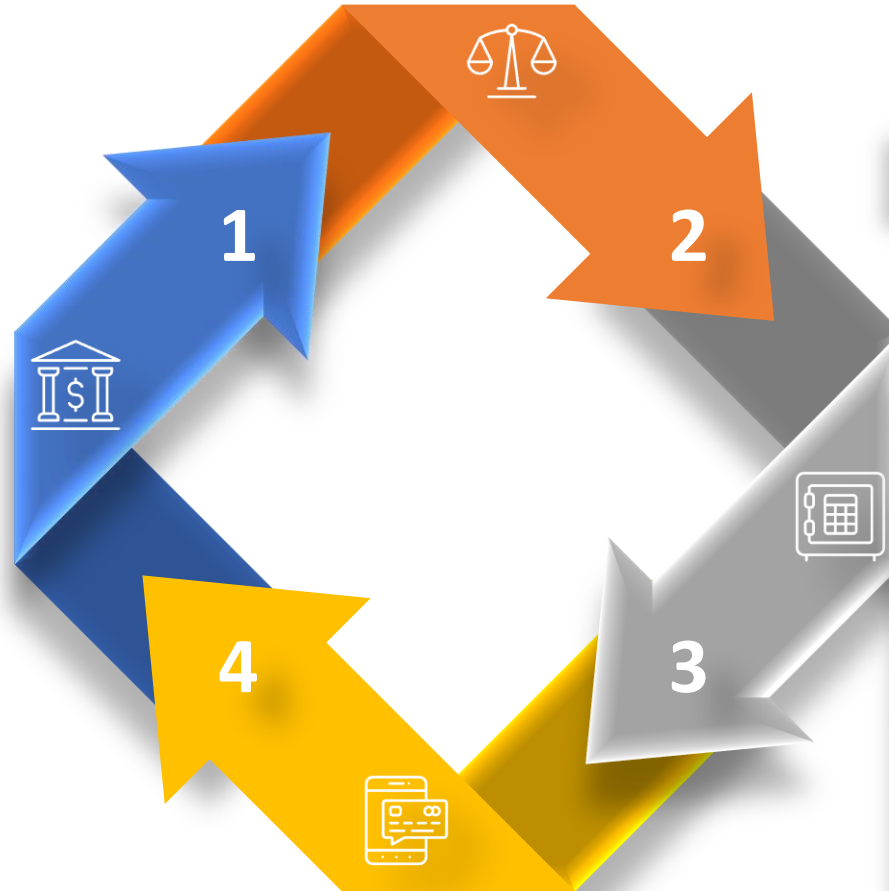
# TP ADJUSTMENT BY THE DG

## CALCULATE THE ALR

Arm's Length Range (ALR) is defined as a range of figures or a single figure **falling between the value of 37.5 percentile to 62.5 percentile of the data set & acceptable by the Director General.**

## SURCHARGE IMPOSEMENT

- ❖ The DG may impose **surcharge up to 5%** of the amount **increase of any income generally or reduction of any deduction or loss;**
- ❖ Surcharge may be imposed on all cases whether taxable or not
- ❖ **It is mutually exclusive with penalty subsection 113(2) of Income Tax Act 1967**



## IDENTIFY THE MEDIAN

median – the value at the **mid-point of the arm's length range**

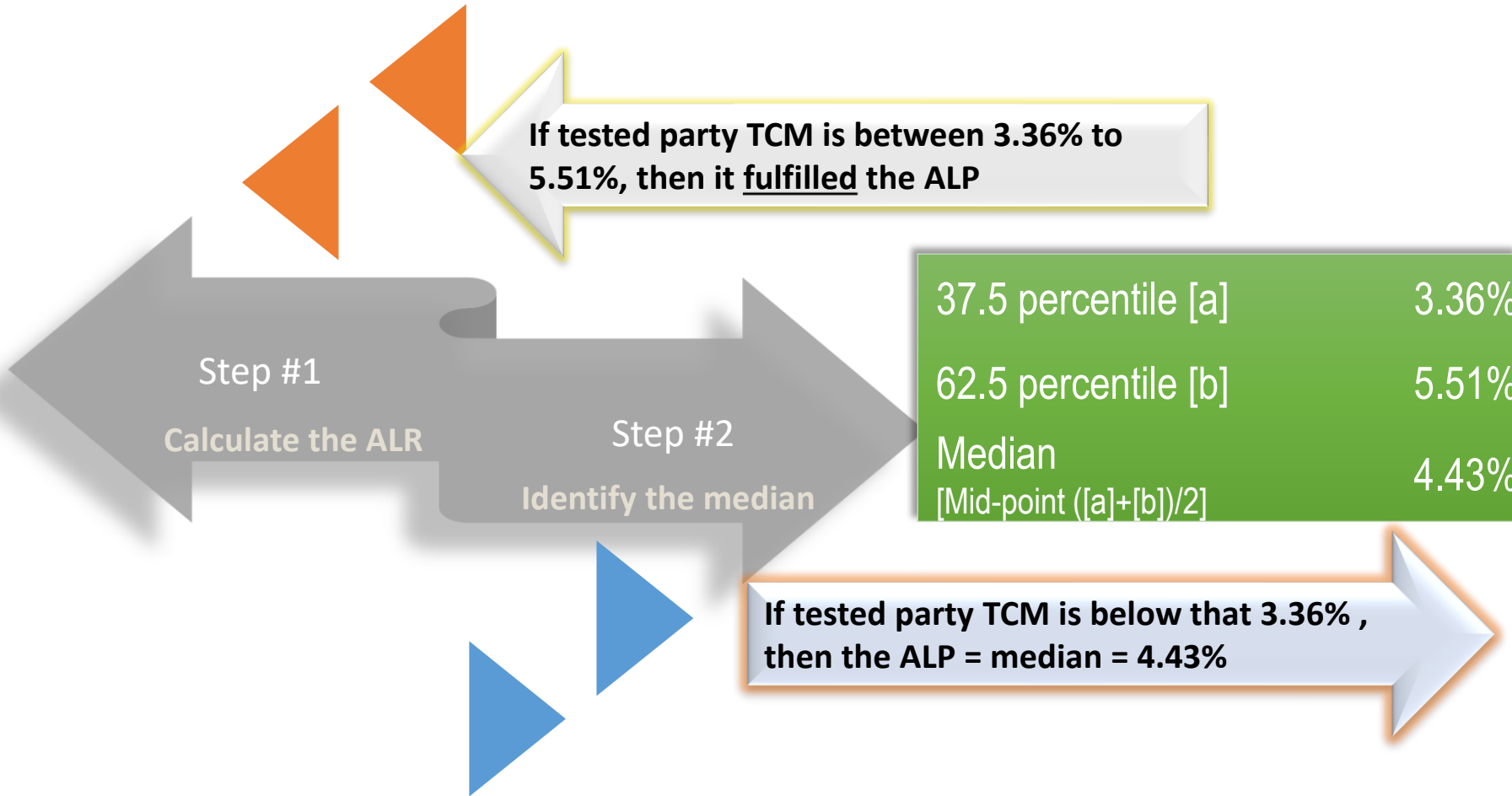
## CHECK THE ARM'S LENGTH PRICE

Price for a controlled transaction:

- ✓ may be regarded as the arm's length price if it **falls within the arm's length range**
- ✓ Shall be taken **to be the median if it falls outside the arm's length range**
- ✓ DG may adjust to the median or any point above median within the ALR where:
  - ❑ There is evidence of lesser degree of comparability; or
  - ❑ Comparability defects cannot be quantified, identified or adjusted

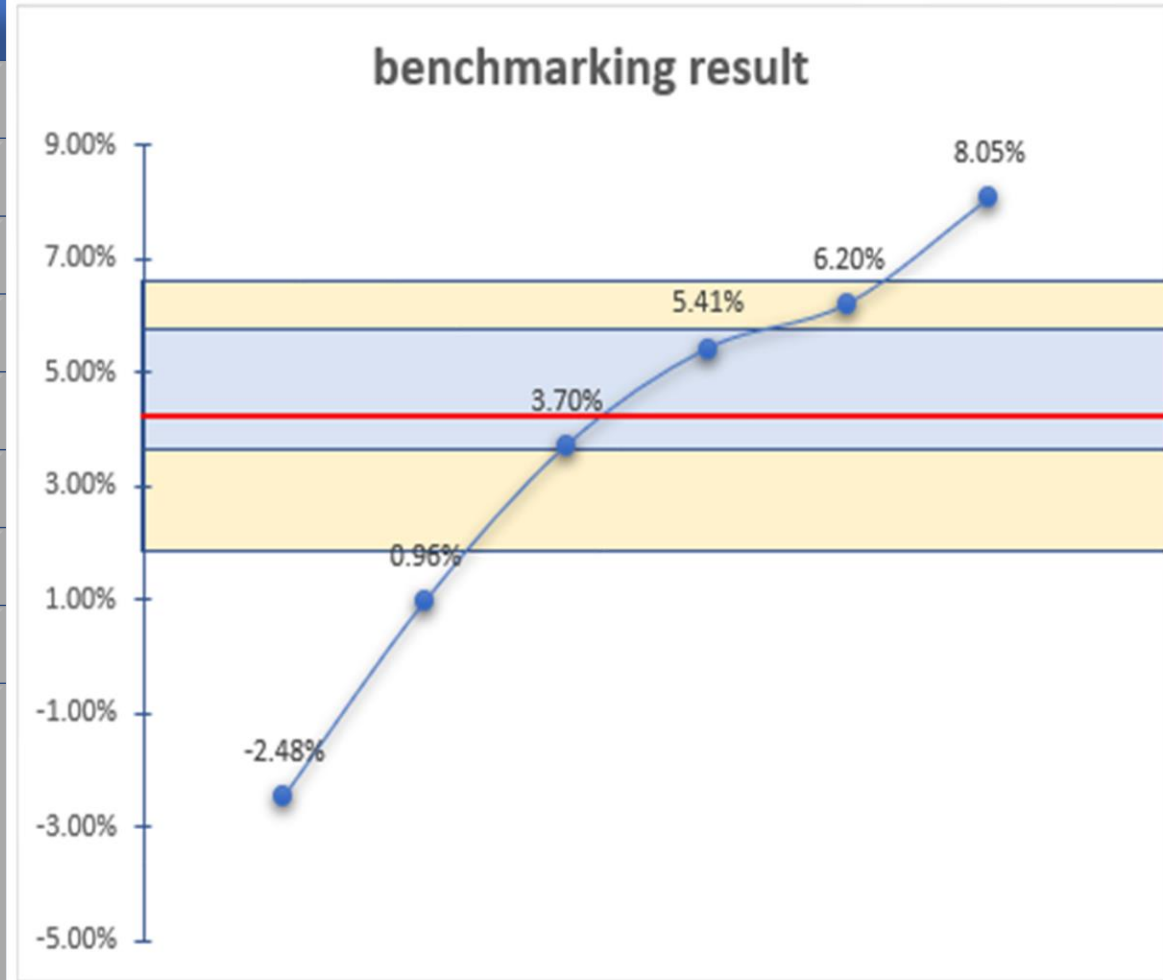
# Sample calculation of ALR & median – eg 1

Comparable	TCM %
Co A	3.70%
Co B	(2.48%)
Co C	5.41%
Co D	8.05%
Co E	0.96%
Co F	6.20%
37.5 percentile [percentile.inc(dataset, 0.375)]	3.36%
62.5 percentile [percentile.inc(dataset, 0.625)]	5.51%



# Analysis of the result

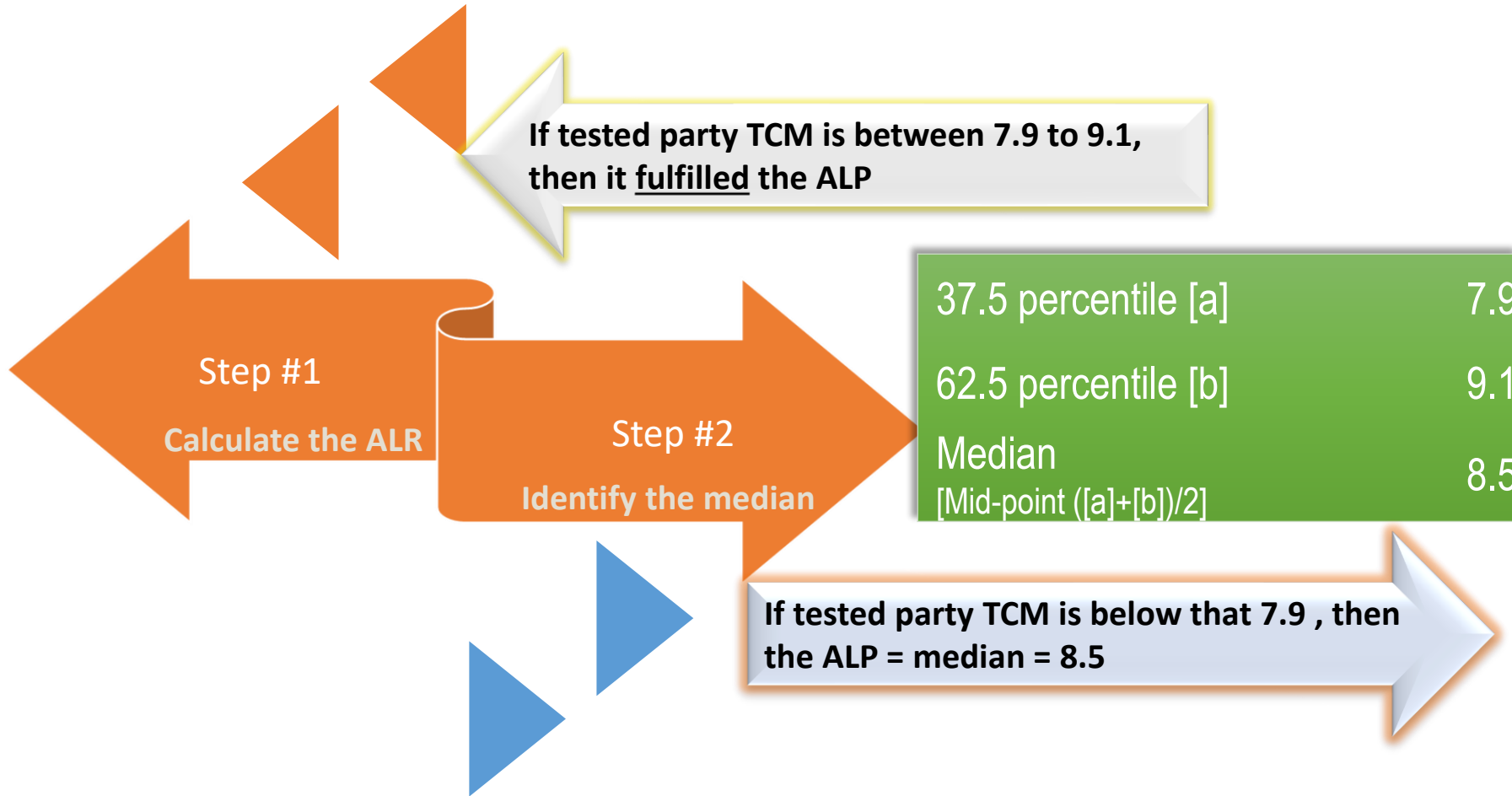
Desc	Old practice	TPR 2023
Tested party	3.89%	
No of comparables	6	
Lower quartile [25%]	1.65%	
37.5 percentile		3.36%
Median	4.56%	4.43%
62.5 percentile		5.51%
Upper quartile	6.00%	
Within ALR	?	Yes
Adjustment to median or above median	Probably	Only if any comparability defect/ lesser degree of comparability





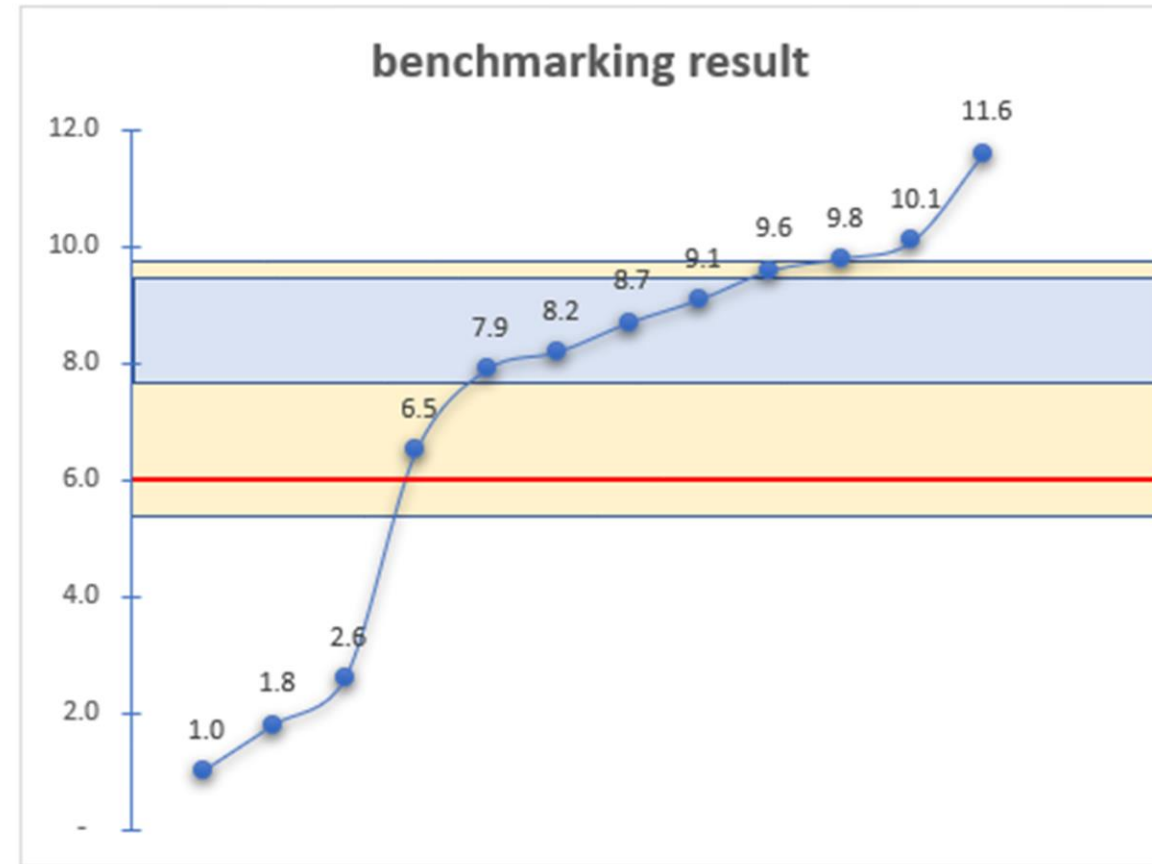
# Sample calculation of ALR & median – eg 2

Comparable	OM
Co A	1.0
Co B	1.8
Co C	2.6
Co D	6.5
Co E	7.9
Co F	8.2
Co G	8.7
Co H	9.1
Co I	9.6
Co J	9.8
Co K	10.1
Co L	11.6
37.5 percentile [percentile.inc(dataset, 0.375)]	7.9
62.5 percentile [percentile.inc(dataset, 0.625)]	9.1



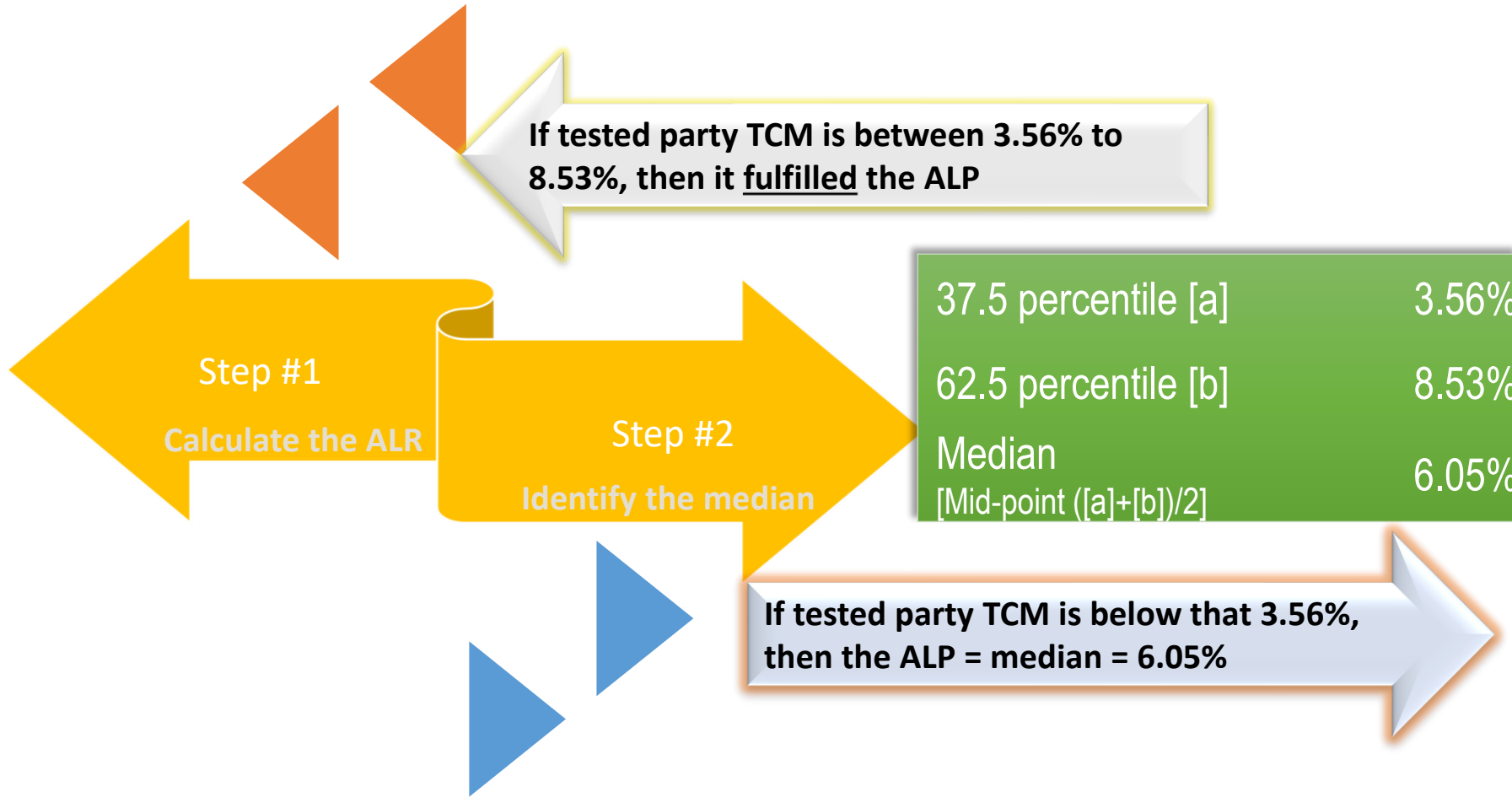
# Analysis of the result

Desc	Old practice	TPR 2023
Tested party		<b>6.0</b>
No of comparables		<b>12</b>
Lower quartile [25%]	5.5	-
37.5 percentile	-	<b>7.9</b>
Median	8.5	<b>8.5</b>
62.5 percentile	-	<b>9.1</b>
Upper quartile	9.7	-
Within ALR	?	<b>No</b>
Adjustment to median or above median	Probably	<b>Yes ALP = 8.5</b>



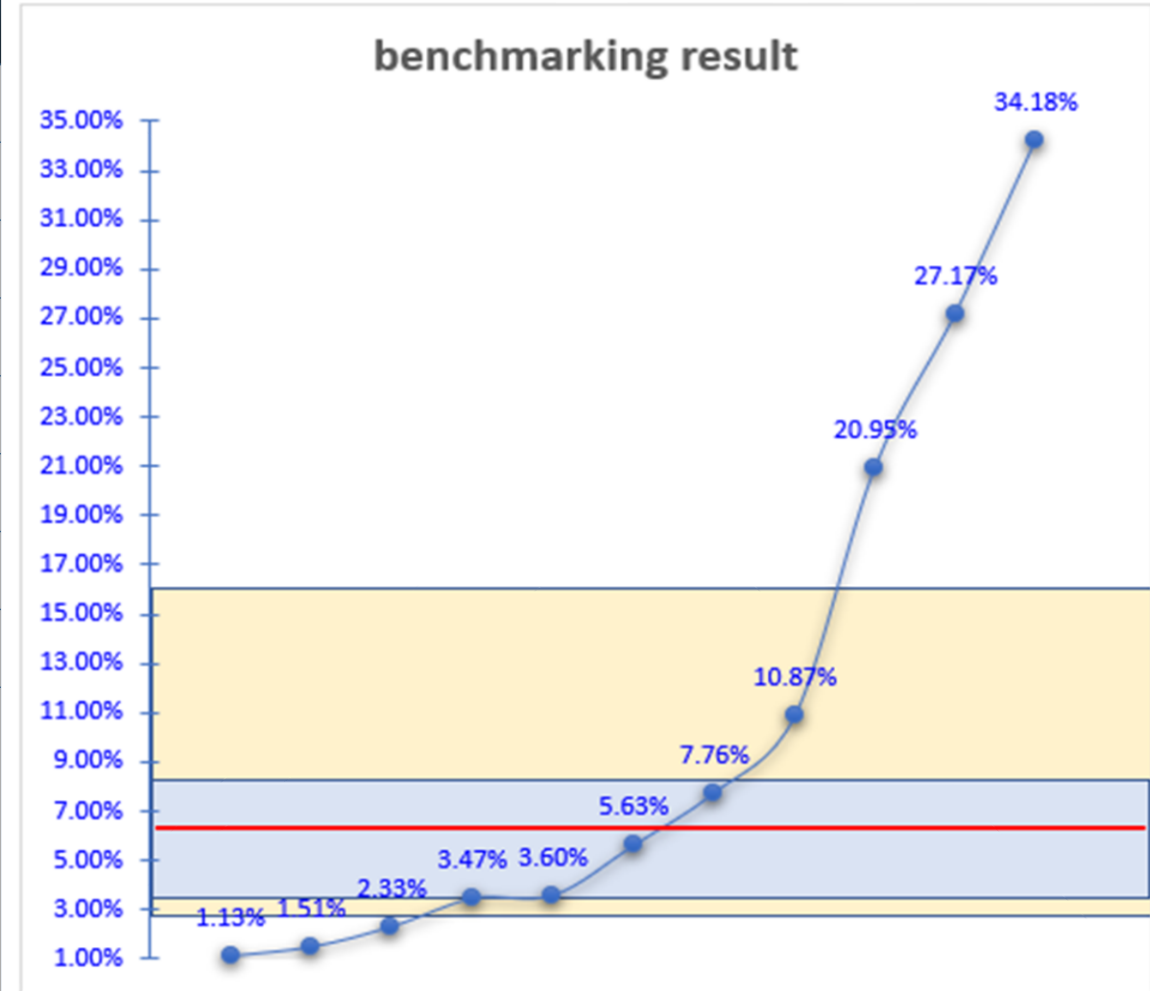
# Sample calculation of ALR & median – eg 3

Comparable	NCPM
Co A	27.17%
Co B	7.76%
Co C	2.33%
Co D	3.47%
Co E	3.60%
Co F	20.95%
Co G	1.15%
Co H	1.13%
Co I	34.18%
Co J	5.63%
Co K	10.87%
37.5 percentile [percentile.inc(dataset, 0.375)]	3.56%
62.5 percentile [percentile.inc(dataset, 0.625)]	8.53%



# Analysis of the result

Desc	Old practice	TPR 2023
Tested party	5.78%	
No of comparables	11	
Lower quartile [25%]	2.90%	-
37.5 percentile	-	3.56%
Median	5.63%	6.05%
62.5 percentile	-	8.53%
Upper quartile	15.91%	-
Within ALR	Yes	Yes
Adjustment to median or above median	No. Already above median	Only if any comparability defect/ lesser degree of comparability



## OFFSETTING ADJUSTMENT

Any adjustment under these rules in respect of an assessment made on one of the persons in a controlled transaction may be reflected by an offsetting adjustment on the assessment of the other person in that transaction upon request by that other person [subrule 13(2) TPR 2012]



### DOMESTIC CONTROLLED TRANSACTIONS

- ✓ Normal application will apply.
- ✓ Will be subjected to audit; and
- ✓ No obligation to automatically agreed with the request

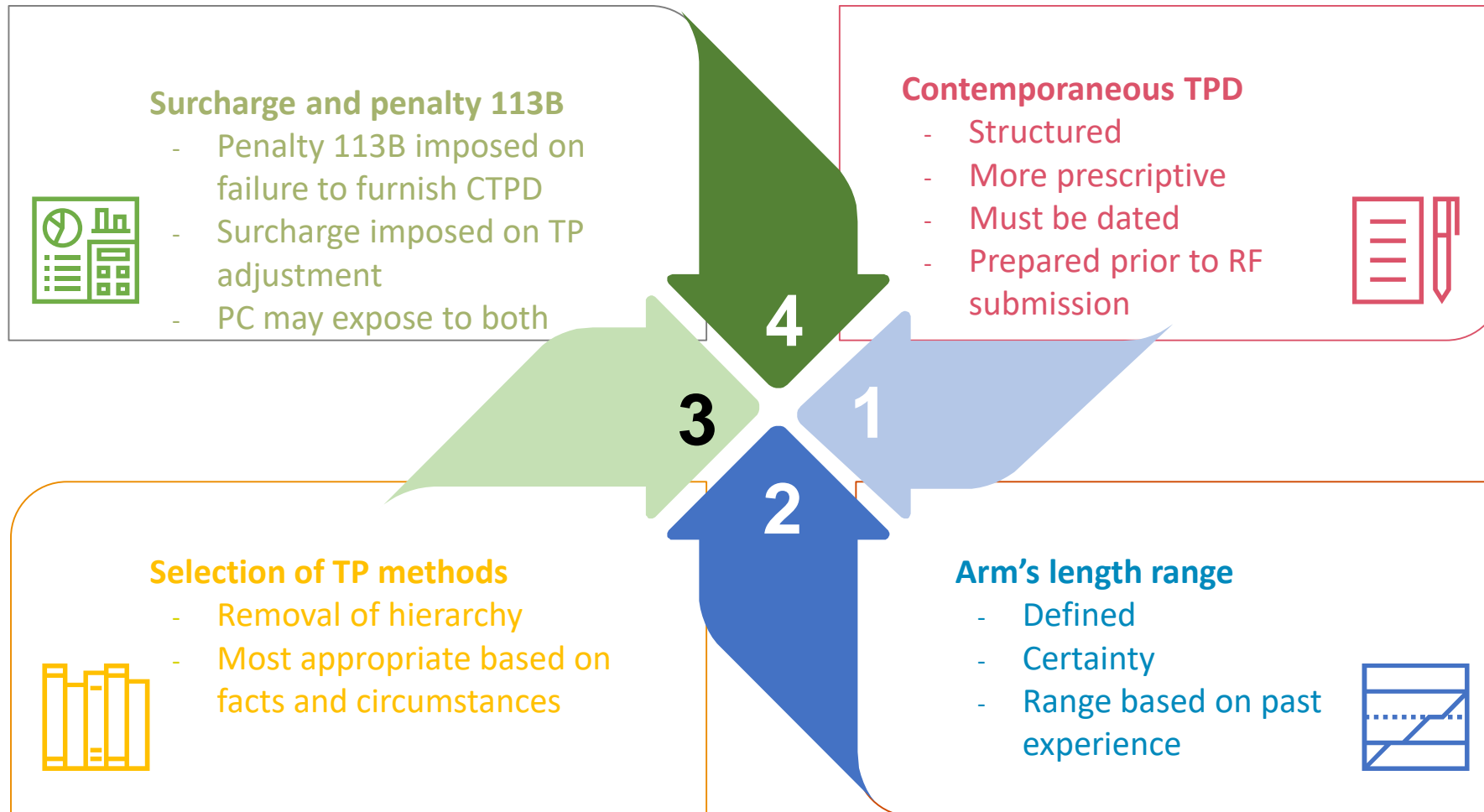


### CROSS BORDER CONTROLLED TRANSACTIONS



The request for offsetting adjustment must be made through the **MAP**.

# TP controversy issues



# Mutual Agreement Procedure (MAP) – key considerations

## 2. Cases suitable for MAP:

- Transfer pricing
- Resident status
- Withholding tax
- Permanent establishment
- Characterization of classification of income

## 4. Application of MAP:

- Used in conjunction with domestic dispute resolution.
- Can be initiated from either jurisdiction



## 1. Prevailing legal framework:

- Treaty – Existence of option
- Sec 102 (1A) and 132 of the Income Tax Act\*
- Updated Mutual Agreement Procedure Guidelines 2023

## 3. MAP initiation:

- Preliminary / pre-filing meeting
- Endeavour to resolve the case via unilateral resolution (*para 13.1*)

## 5. Interaction between MAP and domestic remedies processes:

- Appeal put on hold till MAP outcome
- When decision is made on the same issues in same tax appeal case (*Para 23.4*)

*\*Subsection 102(1A) - Interaction between MAP and domestic remedies where an application to invoke a MAP has been made.*

*Section 132 - Procedures relating to the MAP Article under an applicable Tax Treaty.*

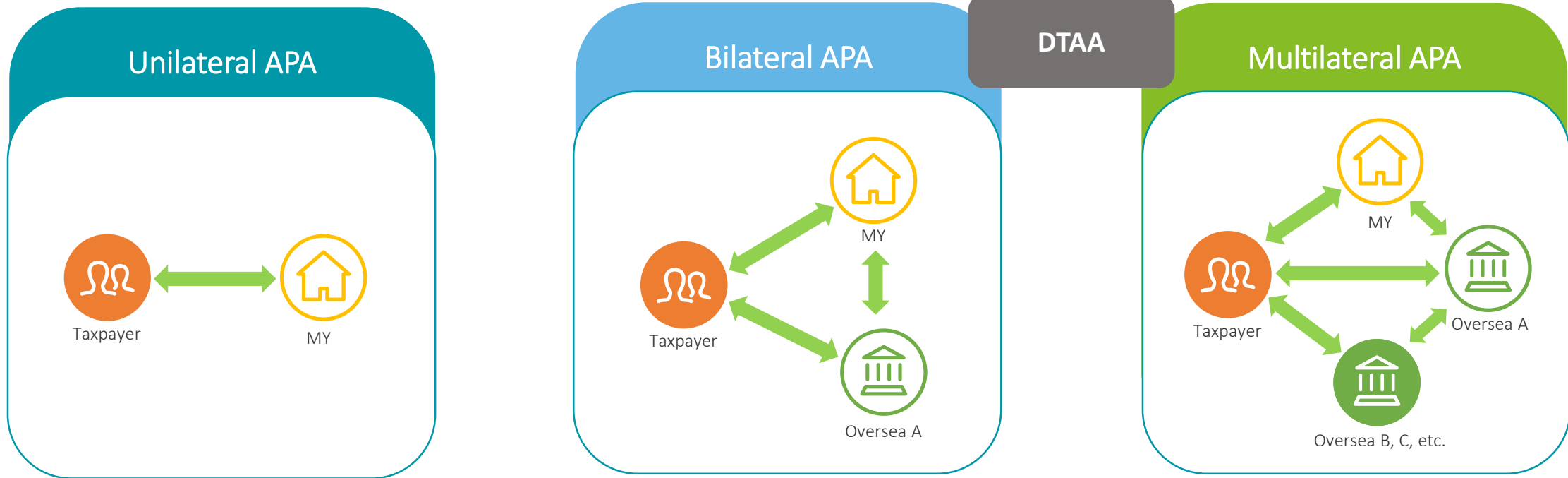
## MAP – key benefits

- ✓ Double taxation is mitigated efficiently
- ✓ Cost-effective approach as compared to legal proceedings
- ✓ Negotiation will be more effective due to involvement of treaty country
- ✓ Flexibility to pursue domestic litigation if MAP discussions are not resolved
- ✓ Endeavour to resolve the cases within two years (OECD standard)
- ✓ Would serve as basis for future APAs (persuasive value only)



# Advance Pricing Arrangement (APA)

*An arrangement available for taxpayers to gain certainty around their transfer pricing policies. This helps to avoid disputes and time-consuming of transfer pricing audits.*



## APA – Rules, References, Eligibility and Threshold

Item	Explanation
Rules	Income Tax (Advance Pricing Arrangement) Rules 2023 [replacing APAR 2012]
Guidelines	Advance Pricing Arrangement Guidelines 2024
Eligibility & threshold	<ul style="list-style-type: none"> <li>▪ Available only to taxpayers assessable and chargeable to tax, and only for cross-border transactions;</li> <li>▪ Turnover value exceeding RM 100 million;</li> <li>▪ The value of the proposed covered transaction is:                             <ol style="list-style-type: none"> <li>a. Sales (exceeds 50% of turnover); or Purchases (exceeds 50% of total purchases); or other transactions, (total value exceeds RM 25 million);</li> <li>b. Financial assistance (total value exceeds RM50 million)</li> </ol> </li> </ul>

## APA – When to pursue and its key benefits

### When is right to pursue an APA

PC operates in jurisdiction with APA program

Provide certainty on the pricing of multiple / high volume / complex transactions (eligibility threshold)

PC subject to frequent/ recurring audit and having fluctuating margins

Pre-condition during a transfer pricing audit / settlement

### Key benefits

Pro-longed certainty (APA period 5 years, roll-back up to 3 years and renewal

Eliminate double taxation

Timely and accurate year end adjustments

Eliminate penalty particularly where novel/ complex transactions are involved

Reduce TP compliance and audit defence costs



# VAT Updates in the Philippines

Atty. **RODELIO T. DASCIL**, *MNSA*

**Director General**

**Senate Tax Study and Research Office (STSRO)**

15<sup>th</sup> Asia-Pacific Tax Forum

July 17, 2024

Kuala Lumpur, Malaysia

# Scope of Presentation

- **VAT in the Philippines**

- Definition
- Persons Required to file VAT Returns
- Rate
- Rates in Southeast Asia
- Collection

- **VAT on Digital Service Transactions**

- Definition of Terms
- Features of the Measure
- Examples of Digital Goods that are subject to VAT
- Digital Goods that are VAT-exempt
- Reverse Charge Mechanism

# Value Added Tax (VAT)

- is a form of sales tax;
- is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on importation of goods into the Philippines; and
- is an indirect tax, which may be shifted or passed on to the buyer, transferee or lessee of goods, properties or services.

Source: BIR; Section 105 of the NIRC

# Persons Required to file VAT Returns

- Any person or entity who, in the course of his trade or business, sells, barter, exchanges, leases goods or properties and renders services subject to VAT, if the aggregate amount of actual gross sales or receipts exceed Three Million Pesos (Php3,000,000.00);
- A person required to register as VAT taxpayer but failed to register; and
- Any person, whether or not made in the course of his trade or business, who imports goods.

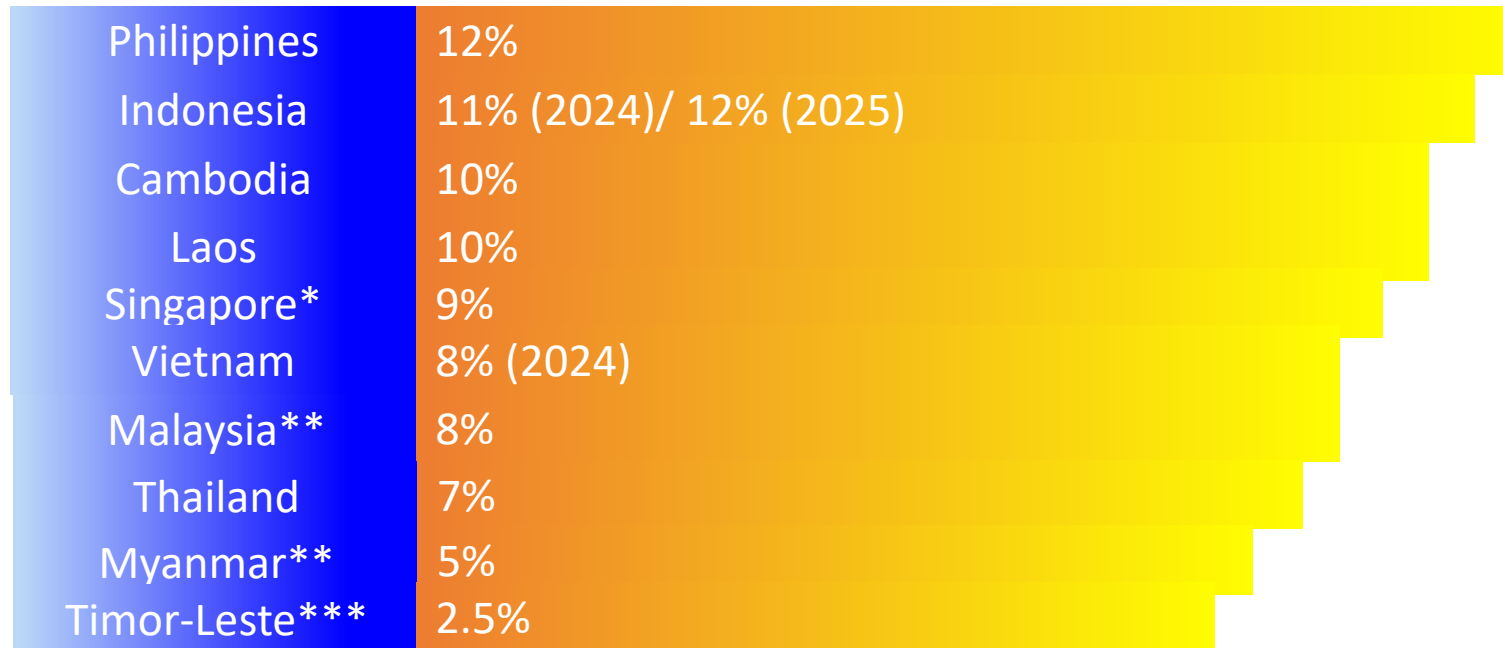
Source: BIR



# Value Added Tax Rates

NIRC Section	Particulars	Tax Rate
Sec. 106 (A)	On sale of goods /properties	12%
Sec. 108 (A)	On sale of services/ lease of properties	12%
Sec. 106 (A)(2)	On export of goods	0%
Sec. 108 (B)	On export of services	0%
Sec. 107	On importation of goods	12%
Sec. 105	On importation of services	12%
Sec. 109	Goods/services VAT exempt transactions	exempt

# PH has the highest VAT Rate in Southeast Asia



\*Goods and Services Tax

\*\*Service Tax

\*\*\* Import Sales Tax

# VAT Collection in the PH

YEAR	Collection (in billion pesos)	% share from the whole BIR collection
2022	Php 476.14	20.38%
2021	Php 385.67	18.49%
2020	Php 351.85	17.99%
2019	Php 406.08	18.57%
2018	Php 358.17	18.25%
2017	Php 365.24	20.51%
2016	Php 331.41	21.03%
2015	Php 295.50	20.50%
2014	Php 278.79	20.89%
2013	Php 250.15	20.56%

Source: BIR Annual Reports

# VAT on Digital Service Transactions



Bicameral Conference Committee Meeting on June 27, 2024

# VAT on Digital Service Transactions

## FEATURES OF THE MEASURE:

- Clarify the imposition and collection of value-added tax (VAT) from digital service providers, which are required to help the government monitor and collect VAT from persons engaging business on their digital platforms (Section 1);
- Strengthen and streamline the Bureau of Internal Revenue's authority to collect VAT on digital services and transactions by providing measures on how resident and nonresident digital service providers should comply with the VAT requirements imposed by the National Internal Revenue Code (Section 14); and
- Augment the revenues to support the government in its path towards economic recovery and growth (Section 12).

## Digital Service

is any service that is supplied over the internet or other electronic network with the use of information technology and where the supply of the service is essentially automated. Digital services shall include, but not limited to:

- (1) online search engine;
- (2) online marketplace or e-marketplace;
- (3) cloud service;
- (4) online media and advertising;
- (5) online platform; or
- (6) digital goods.

(Section 3)

## Digital Service Provider

means a resident or nonresident supplier of digital services to a consumer who consumes taxable digital services in the Philippines.

(Section 3)

## Non-resident Digital Service Provider

refers to a digital service provider that has no physical presence in the Philippines.

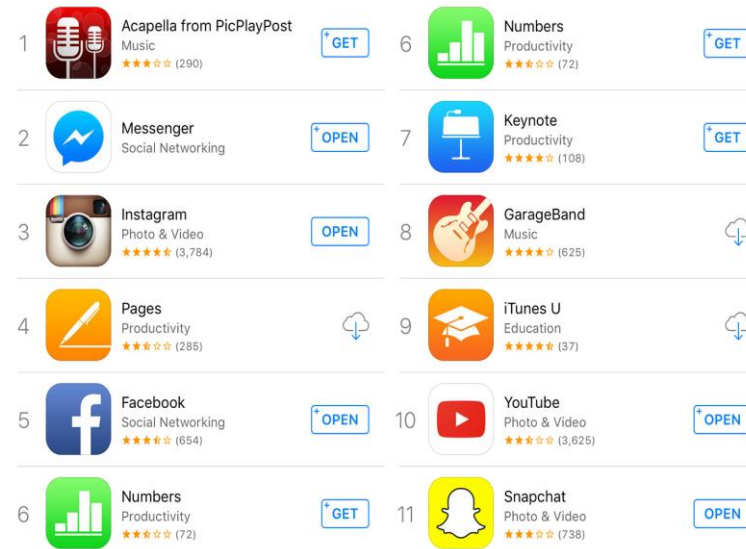
(Section 3)

# Digital Goods that are subject to VAT

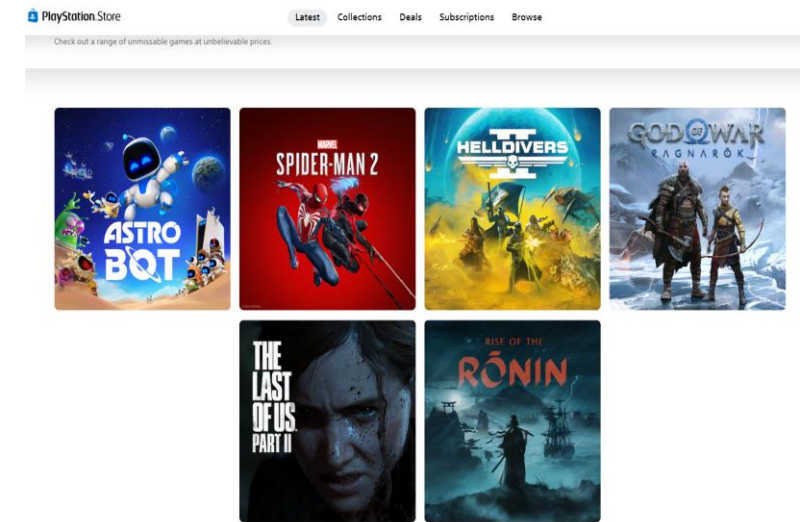
In-game purchases from STEAM, such as costumes, events, skills, etc.



Apple Album



PlayStation games purchases online



# Online Marketplaces that are covered by VAT

- online marketplace selling goods for its own behalf;
- online marketplace selling goods for the seller and buyer, and the marketplace is not part of the sale; and
- another marketplace for hosting online auctions.





# Digital Goods that are VAT-exempt

(Section 5)

- Educational services including online courses, online seminars and online trainings rendered by private educational institutions, duly accredited by DepEd, CHED, TESDA, and those rendered by government educational institutions;
- Sale of online subscription-based services to DepEd, CHED, TESDA, and educational institutions recognized by these agencies;
- Services of banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries, including those rendered through the different digital platforms.

# Reverse Charge Mechanism of the VAT

(Section 8)

- The reverse charge mechanism is a B2B scheme used to collect VAT on the sale of digital goods and services.
- In most transactions, suppliers/sellers collect the VAT from the buyer then remit it to the government. The reverse charge mechanism is designed to hollow out this step. It is designed to prevent tax fraud, especially when the suppliers/sellers are foreign.
- The responsibility for the collection of the VAT reverses from the supplier/seller back to the buyer. Thus, the tax money goes directly from the buyer to the government, or stays with the buyer whose purchases are VAT-deductible.
- In the EU, millions of euros are lost each year due to fake businesses collecting the VAT, or buying items without paying the tax, then disappear overnight. The VAT never makes it to the tax agency but stays in the fraudsters' pockets.
- Tax authorities in the EU, Japan, Norway, Australia and India use the reverse charge mechanism for VAT collection from foreign businesses.

# Non-resident DSP's Failure to comply with the VAT requirements

(Section 9)

- Just like resident VAT-liable business, a non-resident DSP's operations may be suspended and temporarily closed (Section 115 of the National Internal Revenue Code, as amended).
- This suspension may be in the form of blocking of digital services provided in the country, done through the National Telecommunications Commission (NTC).

**Maraming Salamat Po!**

**Thank You**

**Terima kasih**

**Dhanyawad**

**Xie xie**

# **Global Developments in VAT**

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# Overview

- VAT vs sales tax
- Factors affecting VAT revenue performance
- VAT and digital economy
- Other current VAT issues

# VAT Principles

- VAT applies to both goods and services
- Destination principle applies
  - VAT is imposed at the place of consumption
  - Imports are taxed, while exports are zero-rated
- VAT is a multi-staged tax
  - VAT is imposed at each stage of production and distribution
  - Input tax credit (ITC) mechanism avoids cascading of tax
  - ITC mechanism means that VAT taxes final domestic consumption only
- VAT is broad-based—should be imposed on most goods and services consumed in a country
  - Some exceptions—exempt and zero-rated supplies
- Best practice is a single positive rate

# Advantages of VAT

- Economically neutral (if properly designed)
  - Broad base (few distortions)
  - Imposed on consumption not investment (ITC mechanism)
  - Internationally competitive – no tax on exports
  - Overall, limited distortions means that VAT is a pro-growth tax instrument
- Harder to evade than other consumption taxes
  - Tax collected at each stage of production
  - Large intermediate producers are easier to monitor than small retailers
  - Transactions between producers create an “audit trail”
- Can generate significant and reliable government revenue
  - Very few countries have removed a VAT
    - Malaysia’s experience
  - Revenue “workhorse” for most countries



# Disadvantages of VAT

- Regressive (same for other consumption taxes)
  - Higher burden on lower income earners
  - **But** higher income earners pay more tax overall
  - Progressivity addressed by other instruments (particularly the PIT)
- Refunds are the “Achilles heel” of VAT
  - Opportunities for fraud and corruption
  - Long delays in paying, or non-payment of, refunds means VAT ends up as a tax on investment
- Imperfect implementation
  - Exemptions
  - Multiple rates

# VAT vs Retail Sales Tax

- Retail sales tax (RST) is a single stage tax with tax collected at the most vulnerable point in the supply chain (retail level)
  - Exemption system applies to B2B transactions (transactions within the ring of producers)
- Difficult to coordinate taxation of sales and services
- Risk of tax cascading
- Limited revenue potential compared to VAT

# **FACTORS AFFECTING REVENUE PERFORMANCE**

# Problem of VAT Exemptions

- Exemptions are referred to as the new Achilles heel of the VAT
- Come at a significant revenue cost
- Create economic distortions
- Classification of supplies and apportionment of ITCs increases compliance and administrative costs
- Create tax avoidance opportunities
  - In EU, most VAT avoidance cases concern exemptions – misclassification of supplies or claims for ITCs relating to exempt supplies

# Why Exemptions?

- Exemptions often provided on social policy grounds
  - However, there is little evidence that VAT exemptions achieve their intended social and distributional goals
  - In absolute terms, they tend to benefit the well off more than the poor
  - Better to collect VAT on a broad base and provide direct transfers to poor
- Exemptions may be seen as a means of providing sectorial support
  - **But** exemption of intermediate supplies can cause tax cascading because of the loss of ITCs
  - Also, can favour imports over domestic supplies

# **VAT AND DIGITAL ECONOMY**

# Potential Impact of Digital Economy

- The risks posed by the digital economy relate primarily to Business-to-Consumer (B2C) transactions
- Digital products (such as downloaded books, music, movies, and software) are treated as services under VAT laws
- Risk that B2C imported services are untaxed being a zero-rated export in the country of origin and no Customs control over services in the country of consumption
- Taxation of B2C imported goods depends on Customs control
  - **But** low value imported goods may be formally or notionally exempt through the absence of Customs control

# **Imported Services**



# Models for Taxation of Imported Services

- Reverse charge model
  - Recipient self-charges VAT on imported services
  - That is, the normal operation of the VAT is reversed
- Vendor registration model
  - Foreign suppliers required to register and account for VAT
  - Simplified reporting and payment obligations

# B2B vs. B2C Imported Services

- VAT systems distinguish between B2B and B2C imported services
- B2B imported service is a service supplied by a foreign supplier to a VAT registered person
  - **Reserve charge model** applies
- B2C imported service is a service supplied by a foreign supplier to a final consumer
  - **Vendor registration model** applies

# B2B - Reverse Charge

- The VAT-registered recipient of imported services self-charges VAT
- Revenue positive if the registered person uses the services wholly or partly to make exempt supplies (e.g., financial institution)
- Recent trend to extend to large unregistered persons and Government bodies
- Policy: in the absence of reverse charging, there is an incentive to acquire services from foreign suppliers as no VAT is payable (zero-rated export in country of origin)
  - Reverse charging ensures a level playing field with domestic suppliers of the same services

# B2C – Vendor Registration Model

- Foreign service provider required to register for VAT if the level of their taxable supplies exceeds the registration threshold
  - No requirement for a place of business in the jurisdiction
- Requires some fine tuning of the place of supply rules and implementation of administrative processes to support compliance by foreign service providers
- Place of supply rule for “remote services”
  - Supplier outside and recipient inside the jurisdiction
  - Based on residence of the recipient
  - Residence determined by commercially observable indicators of residence

# Vendor Registration Model – Design and Administration Issues

- Apply the same or lower registration threshold?
- Pay-only registration – no input tax credits
- Permit reporting and payment in foreign currency?
  - Currency translation rules if pay in local currency
- Quarterly reporting
- Foreign service provider deals wholly electronically with tax administration
  - Electronic registration, reporting, and payment
  - Dedicated electronic communications channel for foreign service providers

# **Low Value Imported Goods**

# Low Value Imported Goods (LVIG) Exemption

- LVIG exemption – aligned with the customs duty exemption
- Facilitates trade and achieves a balance between the cost of collection and the revenue received (simplification)
- Globally, there has been a significant increase in level of imported goods by consumers
  - Online ordering of goods from foreign suppliers
- But:
  - Distortion in favour of foreign suppliers as equivalent local purchases are subject VAT
  - Revenue cost to government if imports are not exempt from VAT

# Remove LVIG Exemption

- Trend to remove LVIG exemption for VAT
- Foreign supplier to register and account for VAT
- Same administrative processes as for imported services
- Process for VAT-paid LVIG to pass through Customs control without further VAT charge
- Does not apply to any goods that are subject to customs duty and/or excise duty at the border
- Apply to “personal shopper” type arrangements



# **Electronic Platforms**

# Electronic Platforms

- Digital products and physical goods ordered online may be supplied through the intermediary of an electronic platform
- Buyers transact only with the operator of the platform who has control over the key elements of the transaction
  - Setting terms and conditions
  - Receiving payment
  - Delivery
- Require the operator of the platform to register and account of VAT on the supply
- Apply to both imports and domestic transactions

# Supplies Through Platforms

- Some suppliers making supplies through an electronic platform may be registered, while others may not (below the threshold)
  - E.g., Airbnb – some property owners may be VAT registered while others may not be registered; same with ride share platforms, such as Uber
- Trend to register the operator of the platform so that all transactions through the platform are subject to VAT regardless of turnover of the underlying supplier
- Equitable treatment of suppliers and recipients

# Intermediation Services

- Electronic platform brings buyers and sellers together
- For goods or services provided through an electronic platform, need to distinguish the price for the underlying good or service, and the fee for the use of the platform (intermediation fee)
- Fee may be charged only to the supplier of the goods or services
- Some platforms may also charge the customer (recipient) a fee
- Place of supply of the intermediation service should be where the underlying service takes place regardless of the residence of the recipient
- Airbnb/Homestay – supply relating to immovable property in the jurisdiction should be treated as a supply in the jurisdiction even if the customer is resident outside the jurisdiction

# **Other Current Issues**

# Other Current Issues

- Taxing fee-based financial services
- Taxing supplies of general insurance
- VAT treatment of digital currencies
- Review of VAT treatment of vouchers
  - Multi-purpose vs. single purpose vouchers