



# 2023 KPMG regulatory updates

6 June 2023  
Ayana Midplaza Jakarta

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KPMG Indonesia

**01**

# VAT updates

**Eko Prajanto and Andy T. Utomo**

Tax Services, KPMG Indonesia



# Evolving regulations



# GR44 – VAT Government Regulation

No.	Item Changes	Previous GR1 Year 2012 Description	GR44 Year 2022 (Issued 12 Dec 2022) Description
1	Sharing Responsibility: The buyers shall be jointly and severally, with the sellers, responsible for VAT payments	1.) VAT liability shall be collected by the issuance of SKP (Art 4) 2.) Showing a VAT payment receipt but Seller did not settle the output VAT - buyer <b><u>still has an obligation</u></b> to pay the VAT	1.) Similar treatment to GR No. 1/2012 and added VAT liability is not only collected by the issuance of SKP <b><u>but also self-assessed</u></b> (Art 4) 2.) As long as the Buyer can show the <b><u>VAT payment receipt</u></b> , then the Buyer does not have any obligation to settle the VAT that is not paid by Seller.
2	Self-consumption	VAT is liable on the self-consumption of goods limited <b><u>only for the purpose of consumption</u></b> while for purposes of production it is not subject to VAT (Art 5)	VAT is liable on the self-consumption of goods <b><u>for both the purposes of consumption and production</u></b> (Art 6)
3	Foreclosed Assets	VAT is liable on the delivery of foreclosed assets through an auction agency (Art 8)	Reconfirm <b><u>VAT should be imposed</u></b> on the <b><u>sale of foreclosed assets by the banks or multi-finance entities</u></b> (Art 9 and 10)
4	Retail business (sales are directly to end-customers)	The relaxation of the issuance of VAT invoices for retailers (Art 20)	Similar treatment and includes <b><u>e-commerce</u></b> (Art 30)
5	NIK – VAT Invoice	It does not explain in detail how VAT Invoices shall be contained. The rule is referring to VAT Law.	The same requirement to VAT Law i.e NIK is an alternative on the buyer's information (Art 27)
6	Contributions-in-Kind (Inbreg) and Collateral	It does not explain the treatment	The delivery of goods in the context of Inbreg and Collateral are exempt from VAT (Art 11 and Art 12)
7	Consignment	It does not explain the treatment	In terms of a consignment arrangement, VAT is liable when the goods are delivered to the end-user, when used or when income is accrued by the seller (Art 23 and Art 24)
8	Creditable input VAT prior to commercial production	Limited to input VAT incurred on capital goods (Art 16)	No exception as long as input VAT is related to business and is associated with revenue subject to VAT

# Evolving regulations – VAT on foreclosed asset

**SE-121/PJ/2010**  
**VAT on Bank Services**

**?**  
**Unclear**

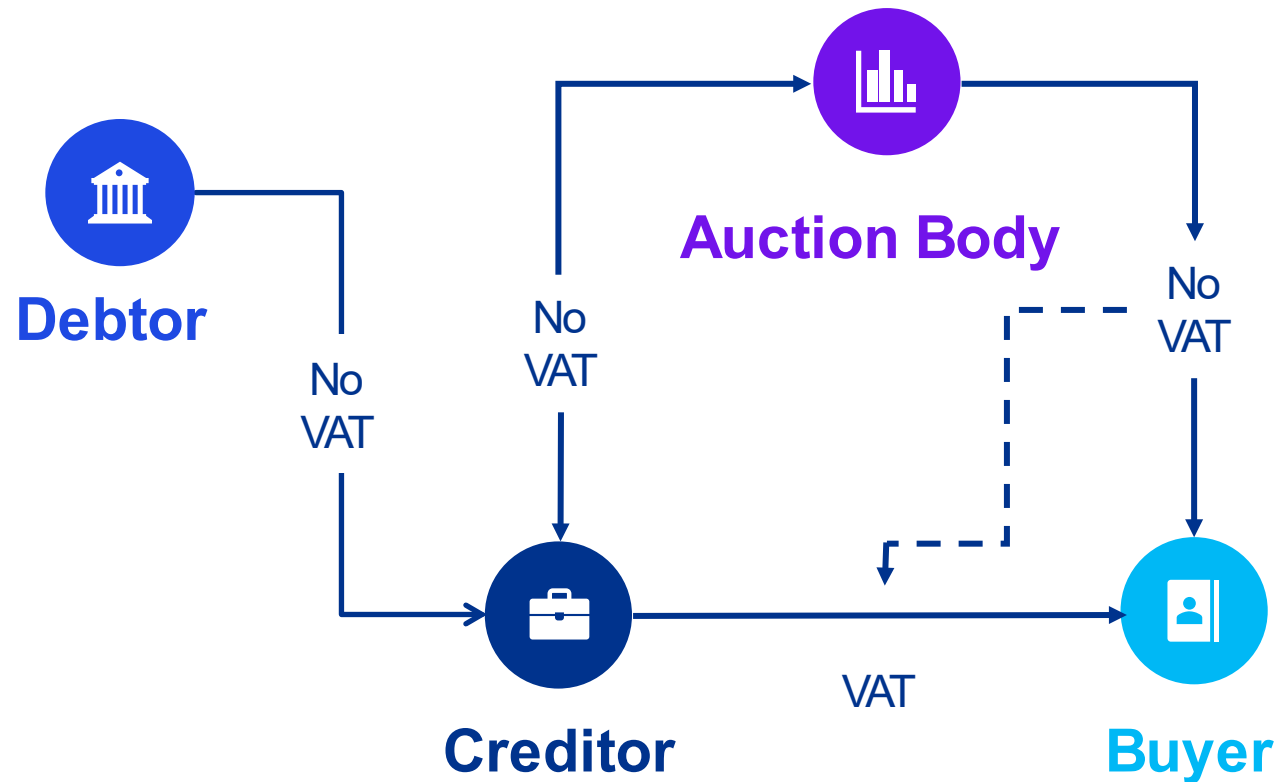
**26 August 2021**  
**Subject to VAT (10%)**  
ND-1329/PJ.02/2021

**2 December 2022**  
**Subject to VAT (Interpreted using 11%)**  
GR44 Year 2022

**1 May 2023**  
**Subject to VAT (1.1%)**  
MoF 41 Year 2023



# Foreclosed asset structure



## Notes:

1. Creditor: specifically mentions Banks and Multi-finance entities
2. Obligation to collect VAT: only for VAT registered companies (same revenue threshold of IDR4.8 billion)

**Collect 1.1% VAT from the buyer and input VAT related to foreclosed assets are not creditable**

**VAT 1.1% - Creditable for buyer**

# GR49 – VAT exemptions on imports and certain goods/services

## Significant Changes:

1. All GR related to VAT exemptions on certain goods under the previous regulations have now been combined in GR49
2. Some non-taxable services have now been categorized as strategic goods under the Harmonization Law and GR49:

### Item Changes

Types of services from Non-Taxable Services changed to Strategic Services which are exempt from VAT under the Harmonization Law

### Strategic Services

1. Medical services under the social security program
2. Social services
3. Financial services
4. Insurance services
5. Education
6. Public transportation
7. Outsourcing services
8. Postage services
9. Broadcasting non advertising
10. Public phones
11. Money transfers with postage
12. Public housing and apartment rental
13. Certain services received by Defense Minister related to demography mapping

3. Issue: whether the delivery of strategic goods/services (like financial services) are now VAT invoices (FP) should be issued? If we refer to strategic goods under 115/PMK.03/2021, tax payers needs to issue FP on the delivery of strategic goods

# MoF144 – custom value

## Significant Changes:

### Previous Regulation - MoF160

Does not specifically provision about software

Custom office typically impose custom duty, Art. 22 WHT import and import VAT on software importation value

### Current Regulation - MoF144

Software should be included to calculate custom value and could be reported separately from related hardware

Not clear on whether Art. 22 WHT import and import VAT should be paid together with custom duty  
However, under socialization, custom office mentioned Art. 22 WHT import and import VAT should be excluded, perhaps to avoid redundant  
From paying self-assessed VAT and Art. 26 WHT



02

# Income tax updates

**Sutedjo and Tjen Julya Permata**

Tax Services, KPMG Indonesia



# Evolving regulations



**Omnibus Law**  
Law No. 2/2020 – KUP,  
ITL & VAT



**MOF Reg No.**  
**18/PMK.03/2021 – KUP,**  
**ITL & VAT**



**HPP Law**  
Law No. 7/2021 –  
KUP, ITL & VAT



**MOF Reg No 51-71**  
**in March 2022 - VAT**



**GR 44/2022**  
**2 Dec 2022 - VAT**



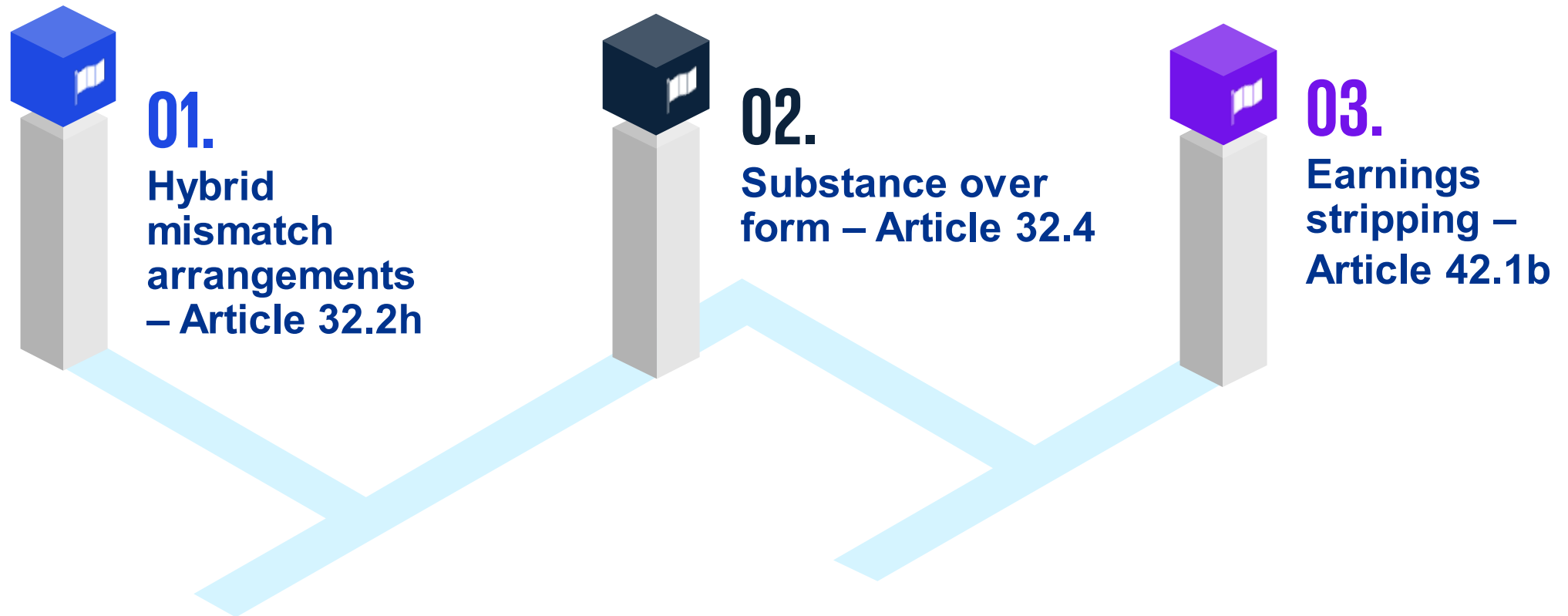
**GR 50/2022 - KUP & GR**  
**49/2022 - VAT dated**  
**12 Dec 2022**



**GR 55/2022**  
**dated 20 Dec 2022 – The**  
**Income Tax Law**

# GR-55 introduces new measures to combat tax avoidance

Three of the measures to combat tax avoidance are:



# Hybrid mismatch arrangements - Article 32.2h

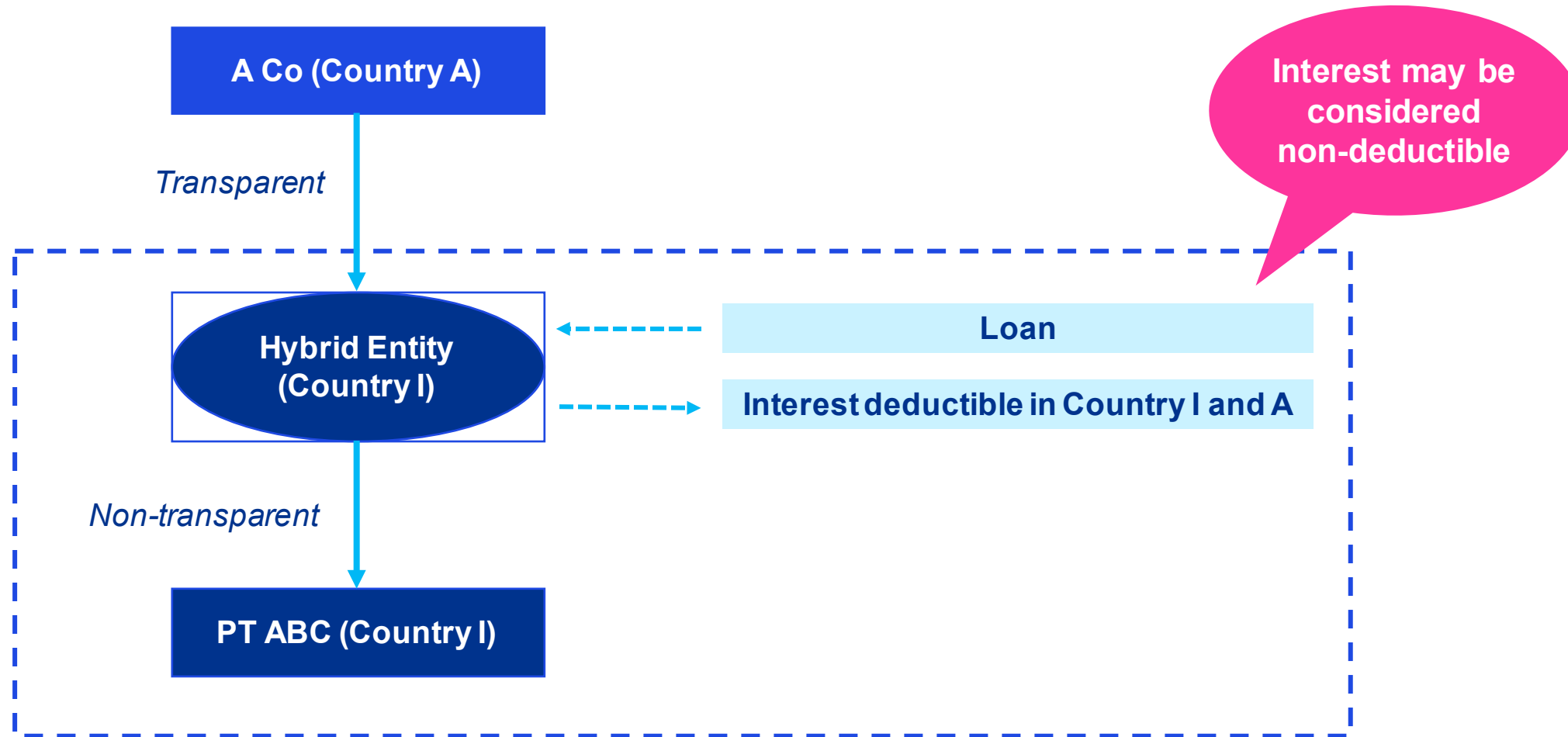
Expenses will be treated as non-deductible if the offshore transaction's counter-party uses differences in the tax treatment of instruments or entities that may have more than one characteristic in the countries or jurisdictions where they are domiciled.



*Menghitung kembali besarnya pajak yang seharusnya terutang dengan tidak membebankan pembayaran yang dilakukan oleh Wajib Pajak dalam negeri kepada Wajib Pajak luar negeri sebagai biaya yang mengurangi penghasilan akibat dari pemanfaatan perbedaan perlakuan perpajakan suatu instrumen atau entitas yang dapat mempunyai lebih dari satu karakteristik di negara atau yurisdiksi di mana Wajib Pajak berdomisili.*

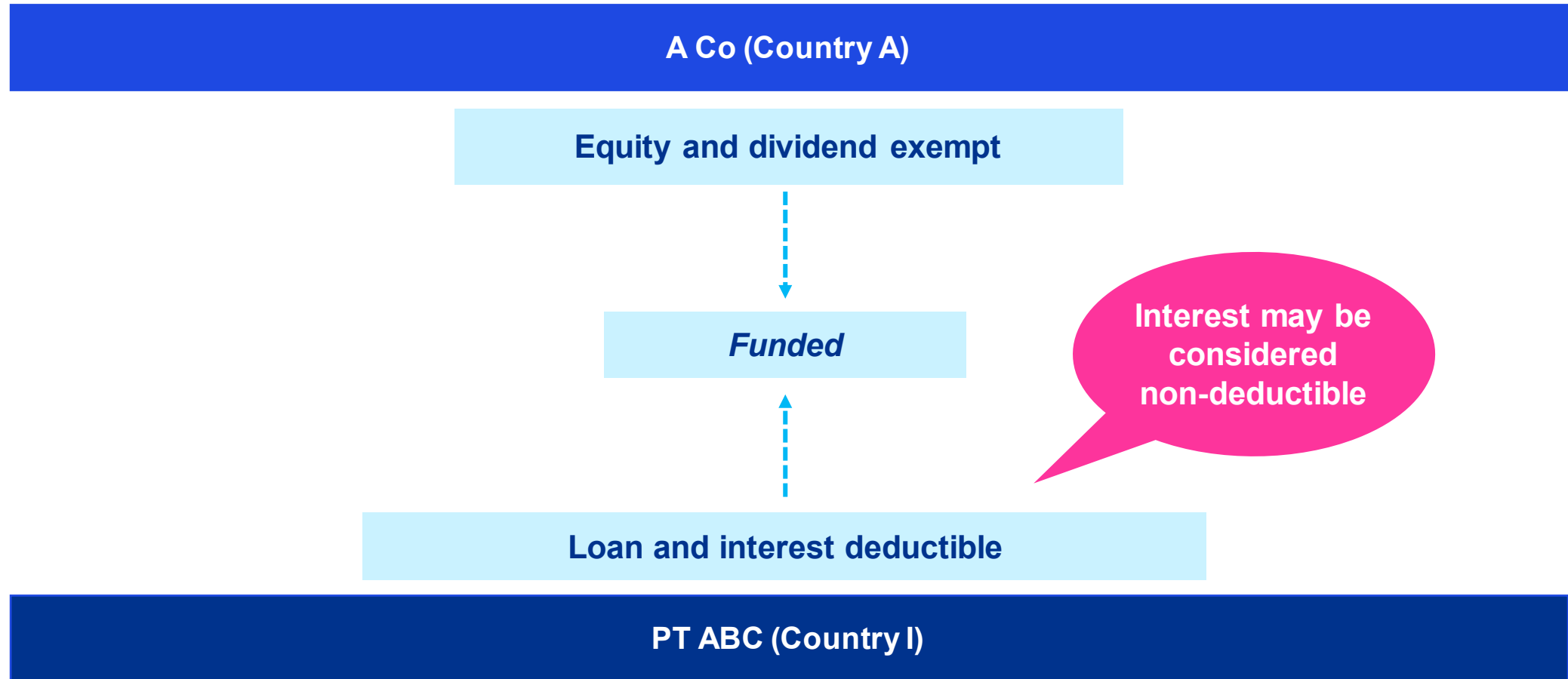


# Hybrid mismatch arrangements – Double Deduction

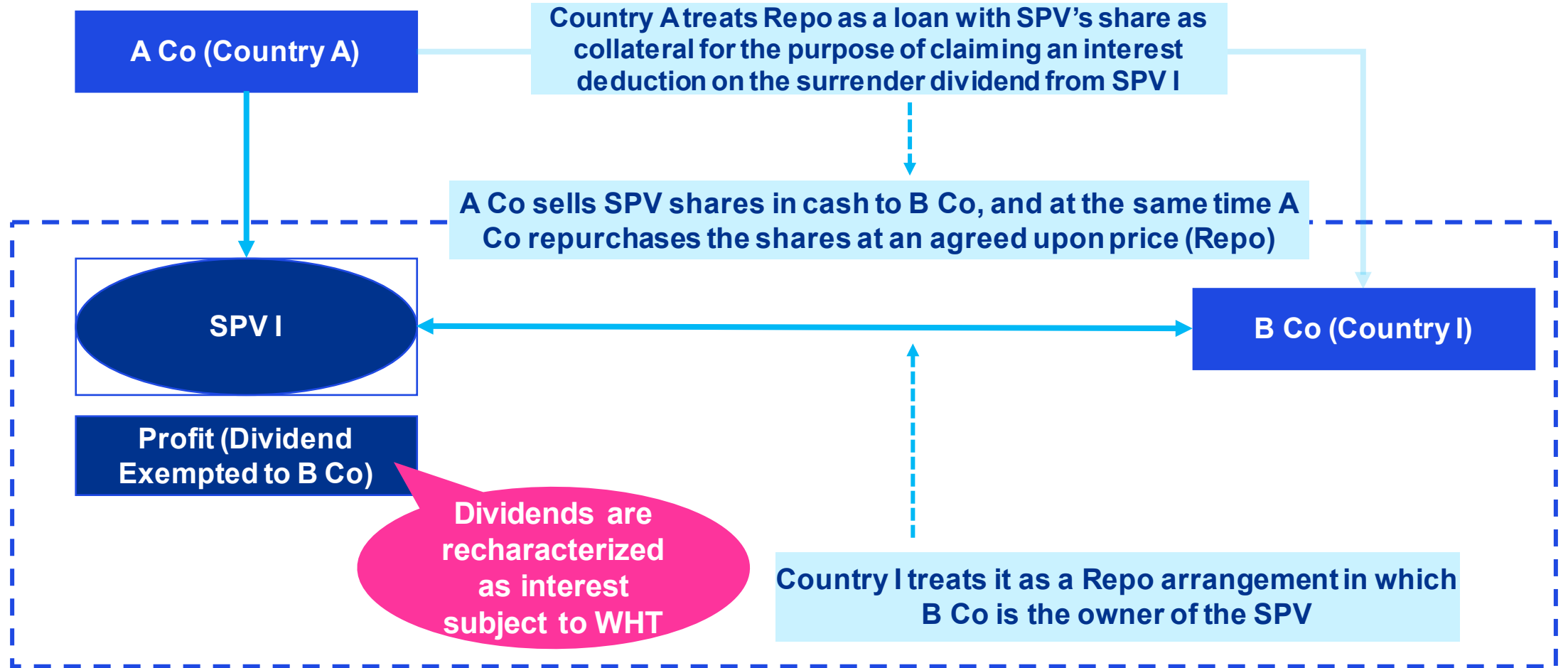




# Hybrid mismatch arrangements – Deduction/no inclusion (1/2)



# Hybrid mismatch arrangements – Deduction / No inclusion (2/2)



# Substance over form - Article 32.4

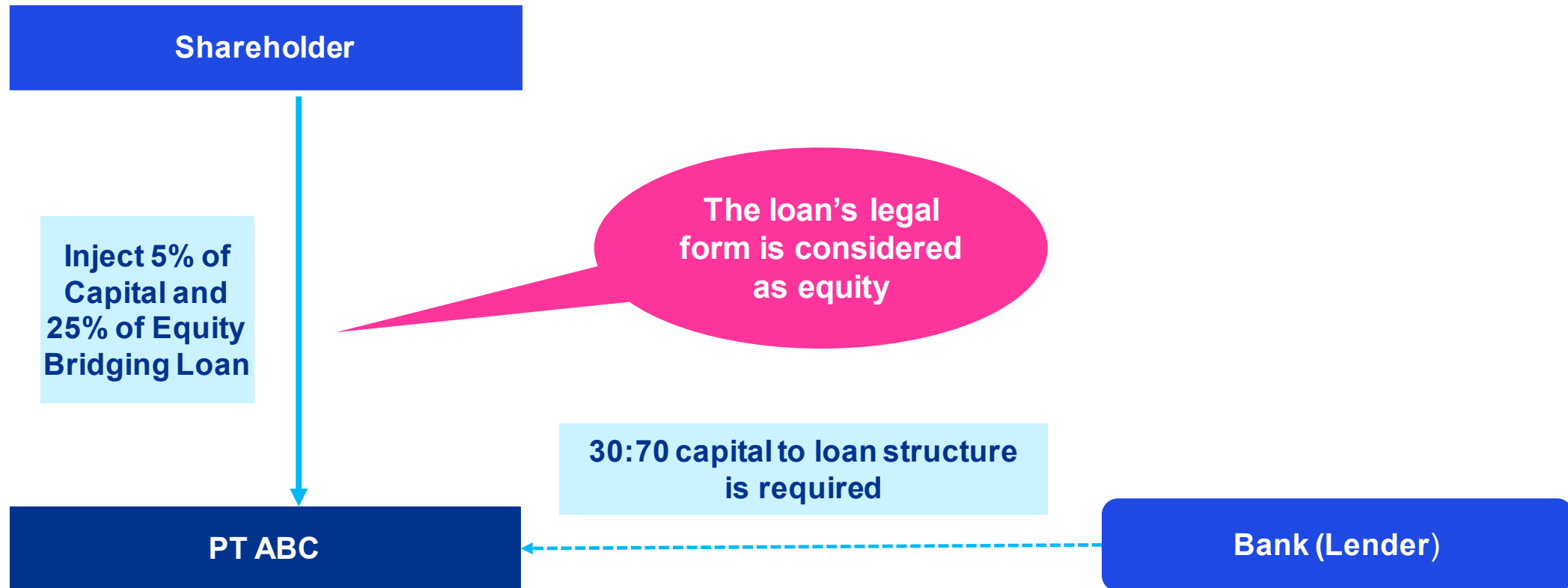
The ITO may redetermine transactions and their tax liabilities based on their economic substance rather than their legal form.



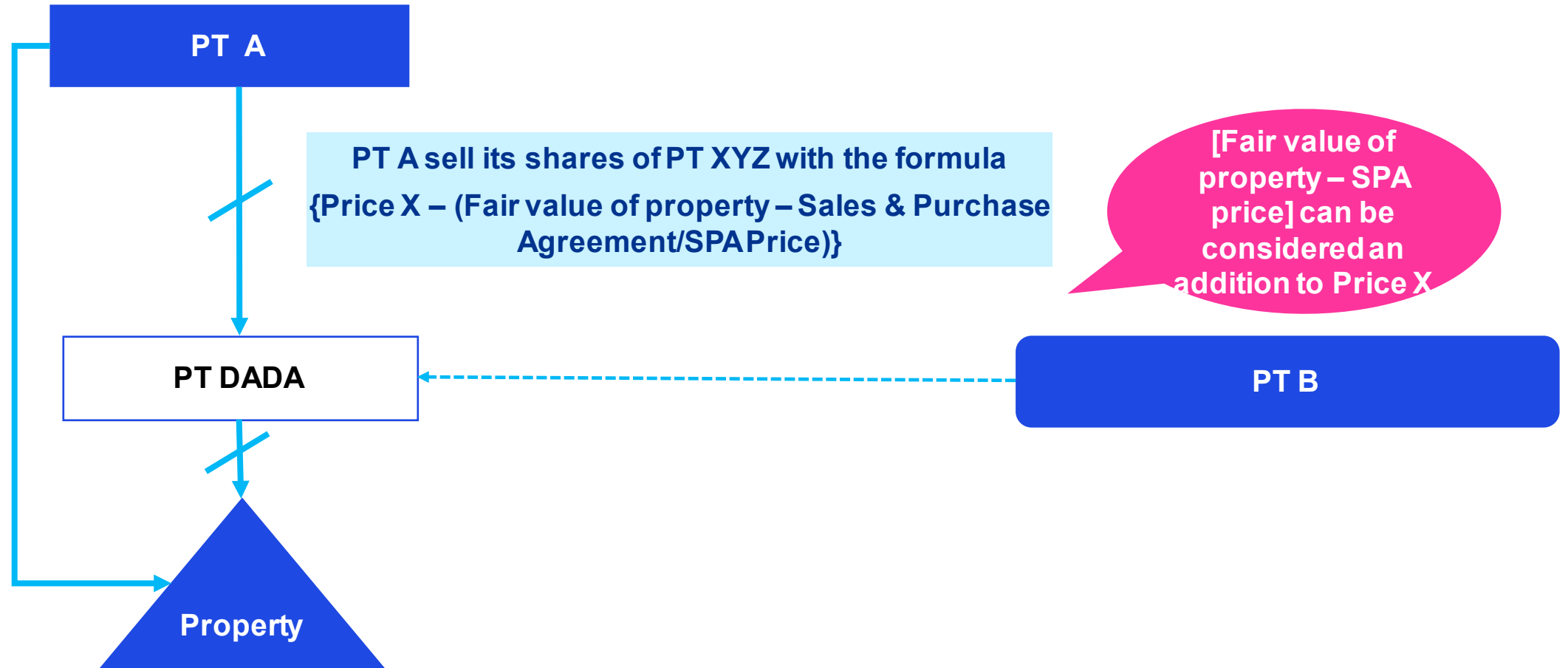
*Dalam hal terdapat praktik penghindaran pajak sebagaimana dimaksud pada ayat (1) yang tidak dapat dicegah menggunakan mekanisme yang diatur pada ayat (2), Direktur Jenderal Pajak dapat menentukan kembali besarnya pajak yang seharusnya terutang dengan berpedoman pada prinsip pengakuan substansi ekonomi di atas bentuk formalnya.*



# Substance over form - Equity Bridging Loan ("EBL")



# Substance over form - Transfer of shares





# Earnings stripping - Article 42.1b

Restrict interest expense deductions based on Earnings Before Income Tax Depreciation and Amortization (EBITDA).



*Pembatasan jumlah biaya pinjaman yang dapat dibebankan untuk keperluan penghitungan pajak sebagaimana dimaksud dalam Pasal 32 ayat (2) huruf g dilakukan oleh Menteri menggunakan metode penetapan persentase tertentu dari biaya pinjaman dibandingkan dengan pendapatan usaha sebelum dikurangi biaya pinjaman, pajak penghasilan, penyusutan, dan amortisasi.*



# Earnings stripping – Examples

**01**

**Malaysia, Japan - Interest deductions are limited to 20% of adjusted taxable income (“Tax-EBITDA”).**

**02**

**Italy - Interest deductions are limited to 30% of EBITDA.**

**03**

**The Netherlands – An entity may only deduct interest up to 30% of fiscal EBITDA or EUR 1 million.**

**04**

**France – Limits interest deductions to Euro 3 million or 30% of EBITDA.**

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# Beneficial ownership and reporting

**Andina Sitoresmi**

Legal Services – Roosdiono & Partners



# Beneficial ownership reporting

01

Regulated under Presidential Regulation No. 13 of 2018 on the Implementation of the Know-Your-Beneficial-Owner Principle by Corporations for the Prevention and Eradication of the Criminal Acts of Money Laundering and Terrorism Financing (“**PR 13/2018**”)

02

## Definition:

A beneficial owner is an individual who has the authority to appoint or dismiss the board of directors, board of commissioners, management, advisors, or supervisors within a corporation. They possess the power to control the corporation and have the right to directly or indirectly receive benefits from the corporation. Additionally, the beneficial owner is the actual owner of the funds or shares of the corporation and meets the criteria as stipulated in PR 13/2018

# The criteria used to determine the beneficial owner



Holds more than 25% of the shares in the company, as specified in the AoA



Possesses more than 25% of the voting rights in the company, as indicated in the AoA



Receives more than 25% of the annual income or profit earned by the company



Has the authority to appoint, replace, or dismiss members of the BoD and/or BoC



Holds the authority or power to influence or control the company without requiring authorization from any other party



Receives benefits from the company



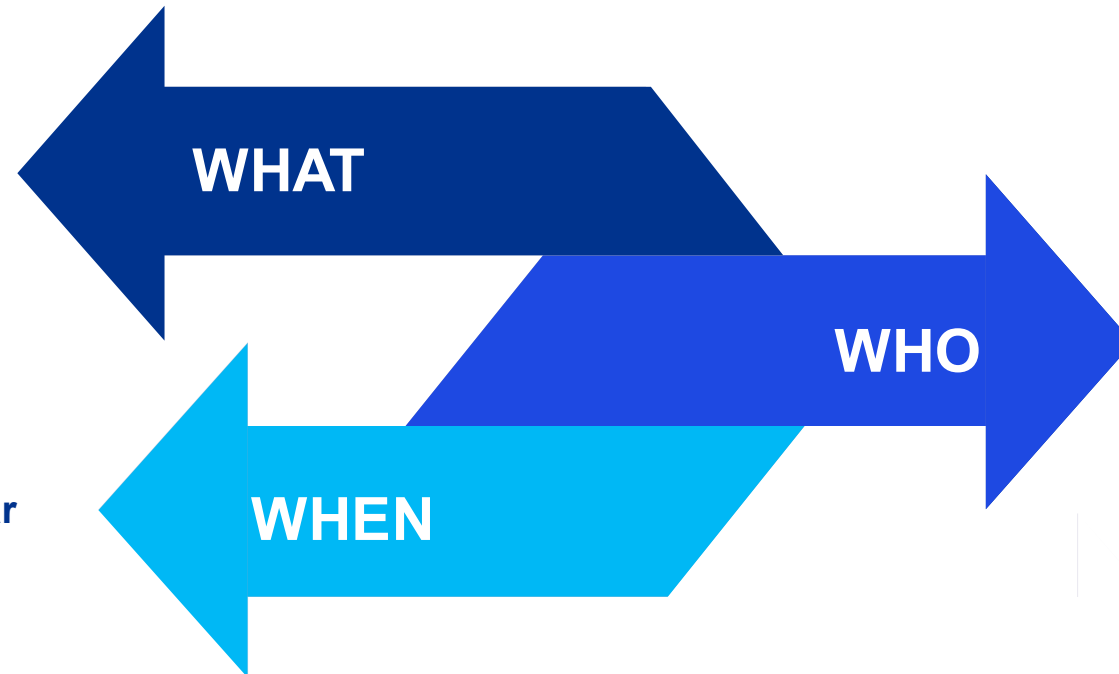
Is the true owner of the source of funds used to acquire the company's shares



# Beneficial ownership reporting submission

- A beneficial owner (“BO”) statement letter executed by the director of the company; and
- Power of attorney to submit a beneficial owner statement letter (if the company authorized another party to conduct the submission)

Every year



- The company;
- A notary; or
- Another authorized party (i.e. external counsel)

# Beneficial ownership reporting submission

HOW

Submitted online through:  
<https://bo.ahu.go.id/site/login>

Log in or create an account  
in the MLHR system

Fill out the BO form in the  
MLHR system

Upload the BO  
statement letter  
and any other  
supporting  
documents

Submit and obtain the  
submission receipt

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# Individual tax update

**Natalia Yamin**

Global Mobility Services, KPMG Indonesia



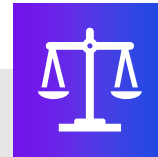
# Benefits-in-kind

The Harmonization of Tax Regulations (*Harmonisasi Peraturan Perpajakan/HPP*) Law and Government Regulation No. 55 changed the tax treatment of benefits-in-kind (“BIK”):



## Law No. 36 Year 2008

- Non taxable to employees
- Non-deductible expense for the employer

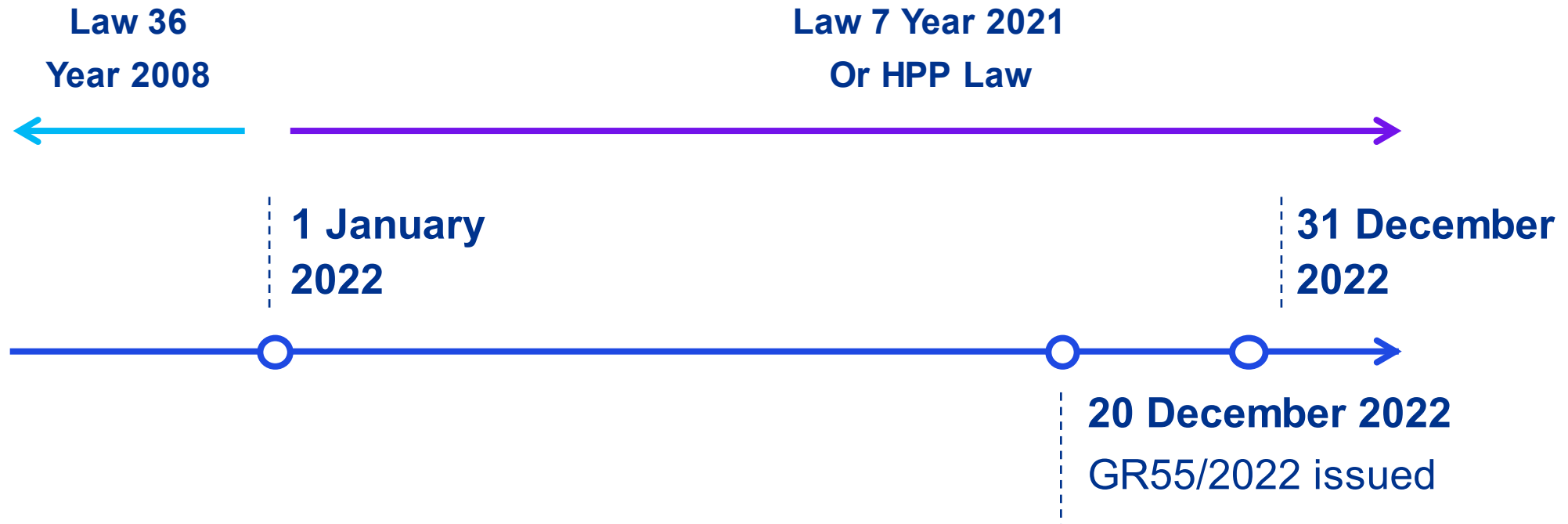


## Law No. 7 Year 2021/HPP Law

- Taxable to the employees
- Deductible expense for the employer (obtaining, collecting, and maintaining taxable revenue).

The top marginal tax rate is 35%, additional BIK will push the employees paying tax to the highest rate.

# Benefits-in-kind (cont')



# Benefits-in-kind (cont')

Changes according to GR 55 Year 2022 :



**Employers who provide BIK  
are obliged to withhold  
income tax starting 1  
January 2023**

**For fiscal year 2022:  
BIKs should be taxed and  
reported in SPT 1770 or 1770S =  
self-assessment, unless those  
have been withheld and reported  
by employers in SPT 1721.**



# Tax exemption on dividends

## OMNIBUS LAW

## PREVIOUS LAW



NO TAX

10% FINAL



NO TAX

5% - 30%  
FTC IS CLAIMABLE

## INVESTED IN INDONESIA

# Tax exemption on dividends (cont')

## REQUIREMENTS



**Reinvest in qualifying investments in Indonesia, e.g. shares, deposits, marketable securities, properties etc.**



**Holding period: minimum three years**



**Submit an annual Investment Realization Report**

# New format of the NPWP (Indonesian Tax Filing Number)

Type of taxpayer	New format of NPWP
Individual taxpayers who are residents (“penduduk”)	16-digit Resident Identity Number ( <i>Nomor Induk Kependudukan/NIK</i> )
Non-resident individuals + others	16-digit NPWP
Branch taxpayers	Identity number for the place of business

**The current 15-digit NPWP format will remain valid until 31 December 2023**

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# BEPS 2.0

**Jacob Zwaan**

International tax, KPMG Indonesia



# BEPS 2.0 Pillars

The OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) in October 2021 reached an agreement on a reform of international tax rules. This was endorsed by 137 out of 141 IF members and by G20 finance ministers.

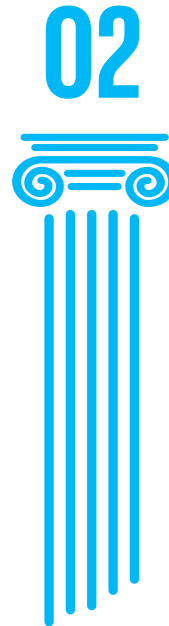


**Pillar One** moves away from the idea that taxation requires a physical presence in a country before that country has a right to tax.

This applies to multinational groups that have more than EUR 20 billion of global turnover, and a return on sales above 10 percent. Over 100 global groups are likely in scope.

The Amount A profit allocation to markets is 25 percent of profits above a 10 percent profit margin.

Efforts are also ongoing for a simplified approach to determining TP returns for routine marketing and distribution activities (Amount B).



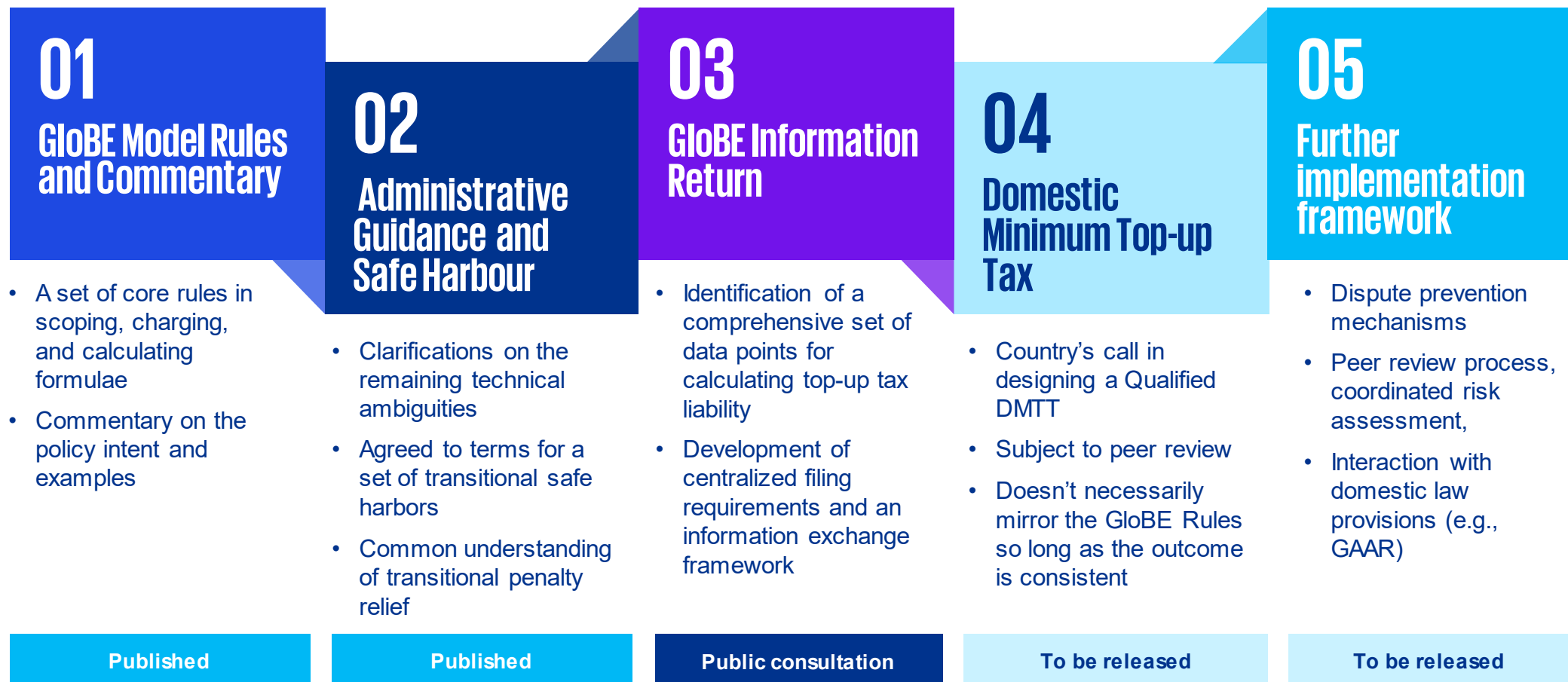
**Pillar Two** rules subject thousands of multinational groups around the world to a global minimum tax of 15 percent.

Every jurisdiction in which the group has operations is looked at separately to see if their effective tax rate falls under 15 percent. If so, then a top-up tax will need to be calculated and paid.

Pillar Two will apply to multinational groups if they have revenues over EUR750 million.

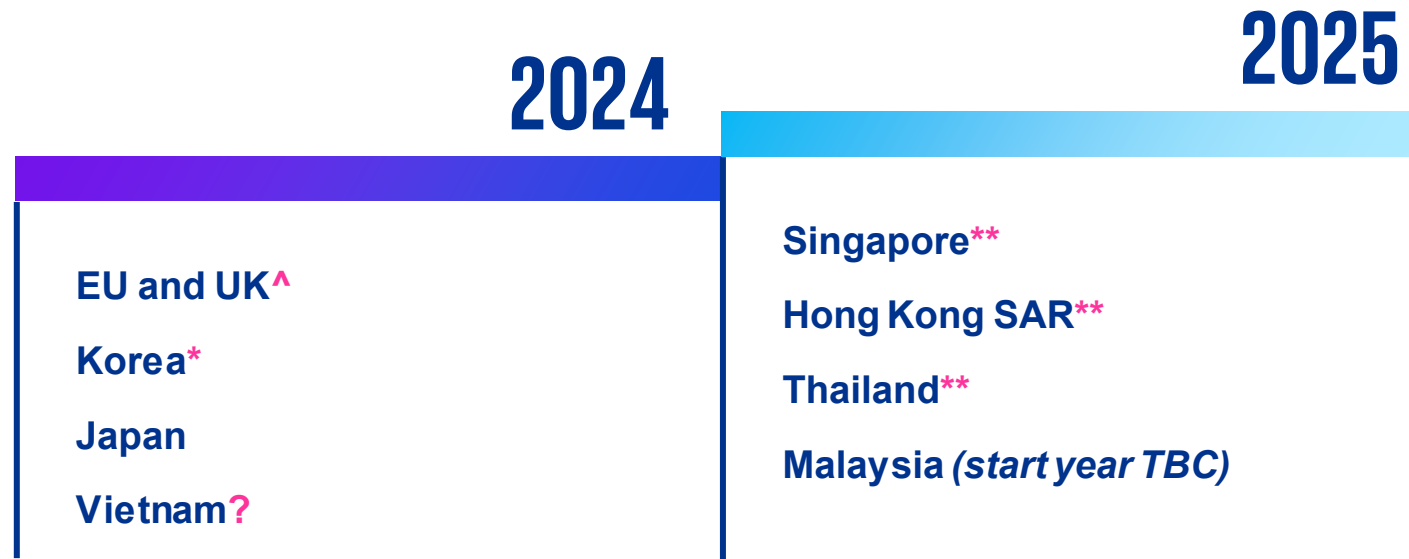
In a separate set of rules, it is intended that specified intra-group payments made to related parties and taxed below 9 percent may be subject to a top up tax.

# Substantial work has been done to implement the GloBE rules





# Announcements on the IIR implementation plan



<sup>^</sup> Draft legislation released

<sup>\*</sup> Korea's plan is to adopt UTPR in 2024

<sup>\*\*</sup> Jurisdictions with plans to introduce QDMTT and UTPR in the same year as IIR

<sup>?</sup> Information indication but no confirmed announcement

# Pillar 2 Basic rules

# Scope of the GloBE rules



## 1.1 What is a “MNE group”?

A group with at least one entity or permanent establishment (PE) that is not located in the jurisdiction of the ultimate parent entity (UPE).



## 1.2 Identify MNE groups within scope

- Annual consolidated group revenue of €750m or more in 2 of the 4 prior fiscal years of the UPE
- Special rules for mergers / demergers.



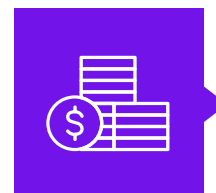
## 1.3 Identify constituent entities (CEs) within the MNE group

All consolidated/controlled entities + PEs.



## 1.4 Remove excluded entities

- Investment funds and REITs that are the UPE
- Certain SPVs held by excluded entities
- Pension funds, etc.



## 1.5 Exclude international shipping income

- International shipping income + Qualified ancillary international shipping income
- Excluded from GloBE Income/Loss
- Strategic or commercial management of ships is effectively carried on from within the location of the CE

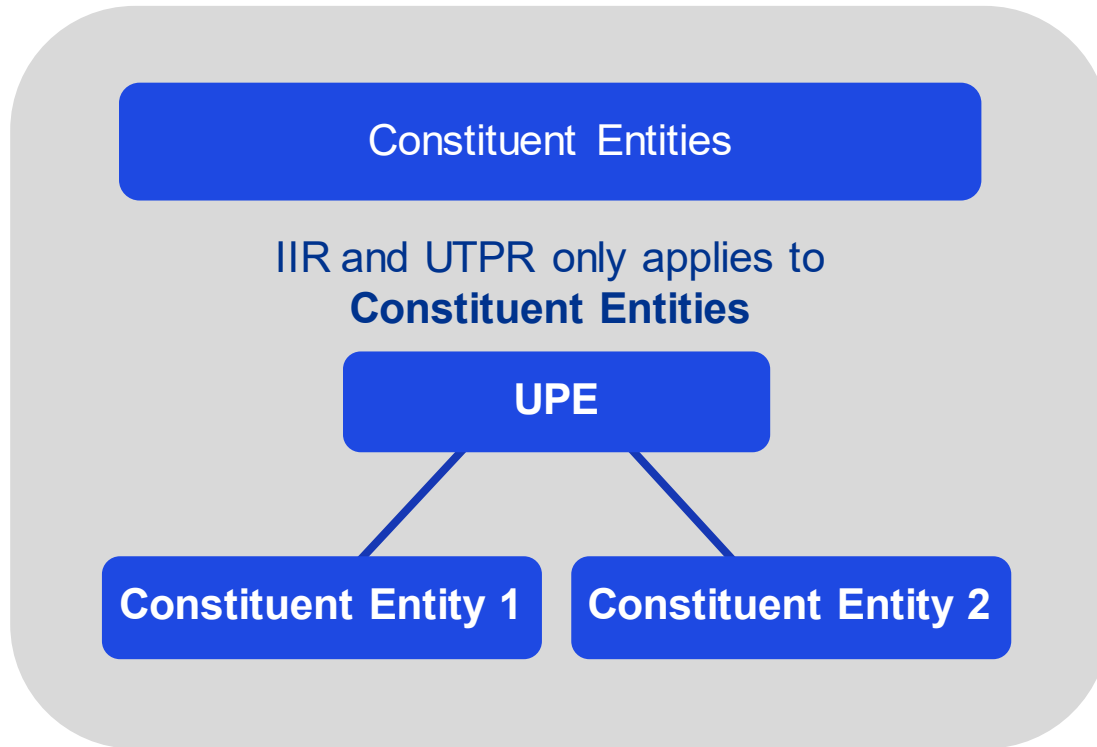


## 1.6 De minimis exclusion (for jurisdictions)

- Average GloBE Revenue < €10m + Average GloBE Income/Loss < €1m or is a loss in the current and 2 preceding fiscal years of the UPE
- Subject to annual election

# MNE Group = Constituent Entities + Excluded Entities

MNE Group = Constituent Entities + Excluded Entities



## Excluded Entities

IIR or UTPR does not apply to  
**Excluded Entities**

Government

International Organizations

Non-Profits

Pension Funds

Investment Funds (UPE)

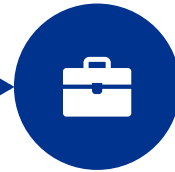
REIV (UPE)

# Three shots at achieving a global minimum tax rate of 15%



## 1. Domestic tax in jurisdiction

- ETR of an MNE group in each jurisdiction < 15%?
- Calculate Jurisdictional top-up tax
- Reduce Jurisdictional top-up tax by any domestic top-up tax



## 2. IIR

- Jurisdictions of parent entities of the MNE group adopt an IIR?
- If yes, determine jurisdictional top-up tax absorbed by the IIR
- If no or unabsorbed amount, determine if the UTPR applies



## 3. UTPR Back Stop

- Determine the total remaining top-up tax owed by the MNE group
- Allocate the total UTPR top-up tax to each jurisdiction that has adopted UTPR

$$50\% \times \frac{\text{No. of employees in the jurisdiction}}{\text{No. of employees in all UTPR Jurisdictions}} +$$

$$50\% \times \frac{\text{CV of tangible assets in the jurisdiction}}{\text{CV of tangible assets in all UTPR Jurisdictions}}$$

CV = Carrying value

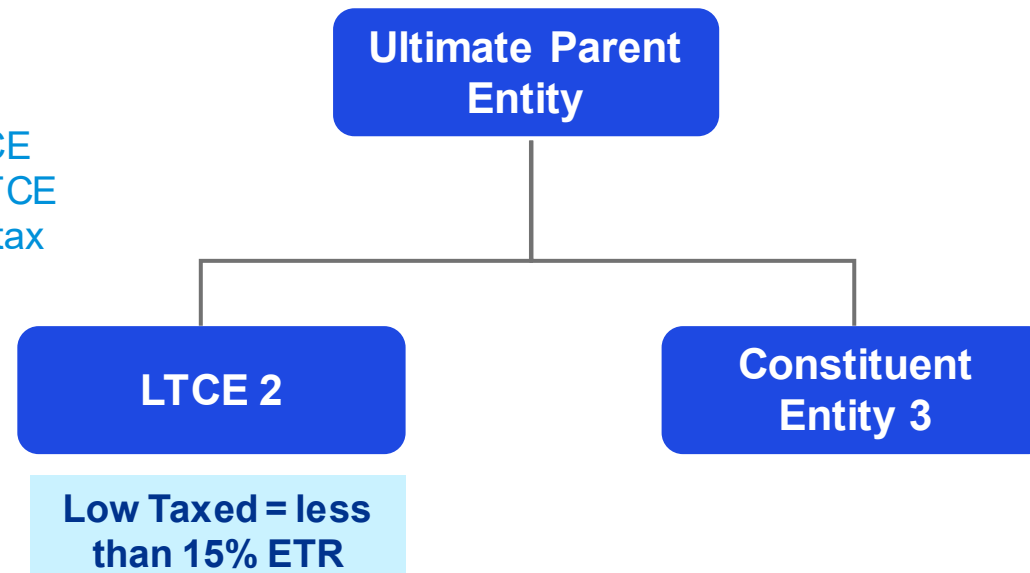
# GloBE Rules – The Concepts (simplified)

The new GloBE rules provide for a co-ordinated system of interlocking rules that:

1. Defines MNE groups and who falls within the scope of the new global **minimum tax (15%)** rule;
2. Establishes a methodology for calculating an MNE's effective tax rate (on a jurisdictional basis), and for determining the amount of top-up tax payable under the rules; and
3. Imposes the **Top-Up Tax** on a member of the MNE group in accordance with an agreed rule order.

## Income Inclusion Rule (IIR)

Top-Up Tax collected at UPE level on low tax profits of LTCE 2 if the effective tax rate of LTCE 2 is below a global minimum tax rate of 15%



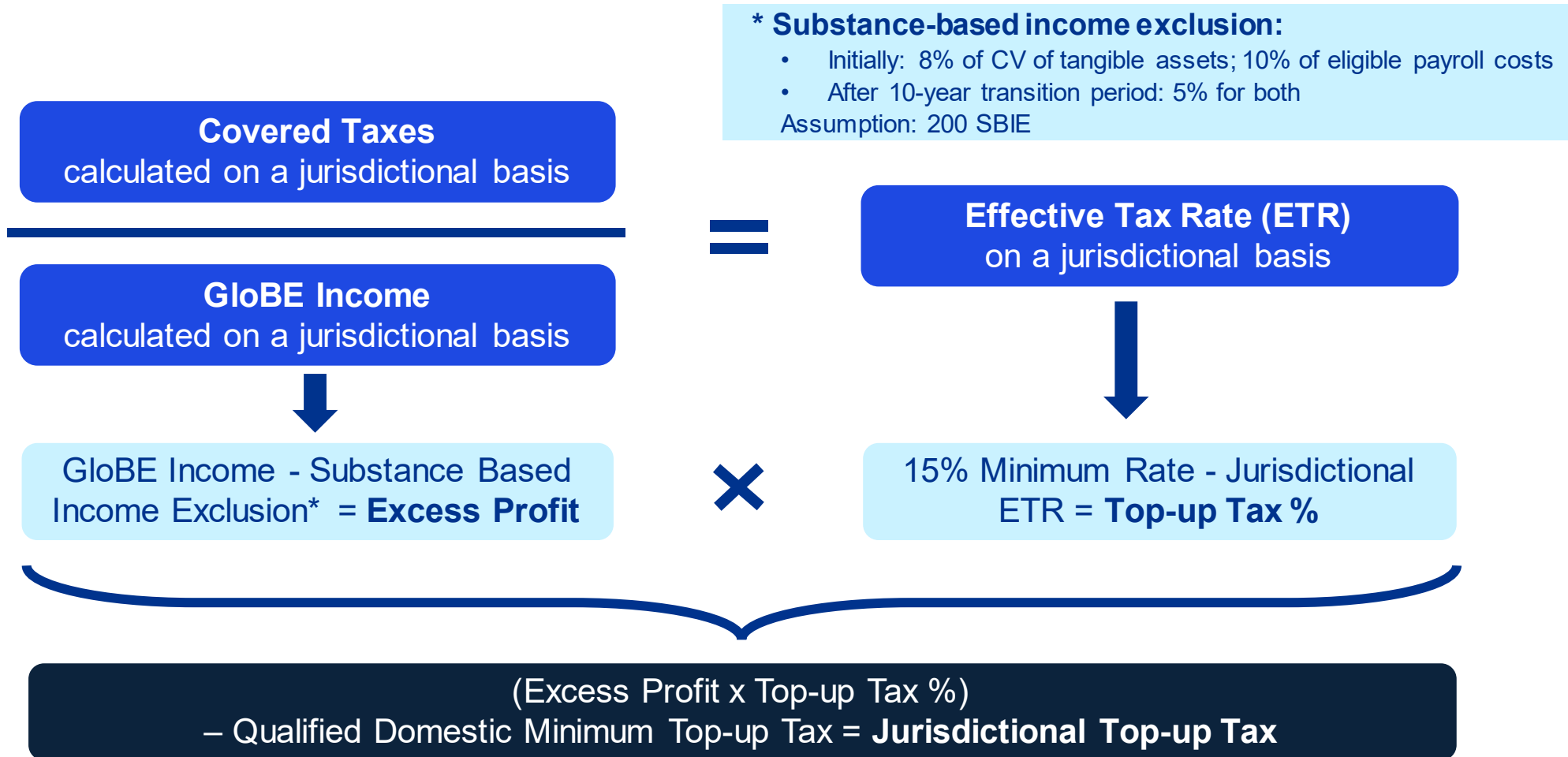
## Under-Taxed Payments Rule (UTPR)

Tax is collected at CE 3, UPE and/or LTCE 2 (based on a ratio of tangible assets and number of employees) if UPE does not levy an IIR on LTCE 2 profits.

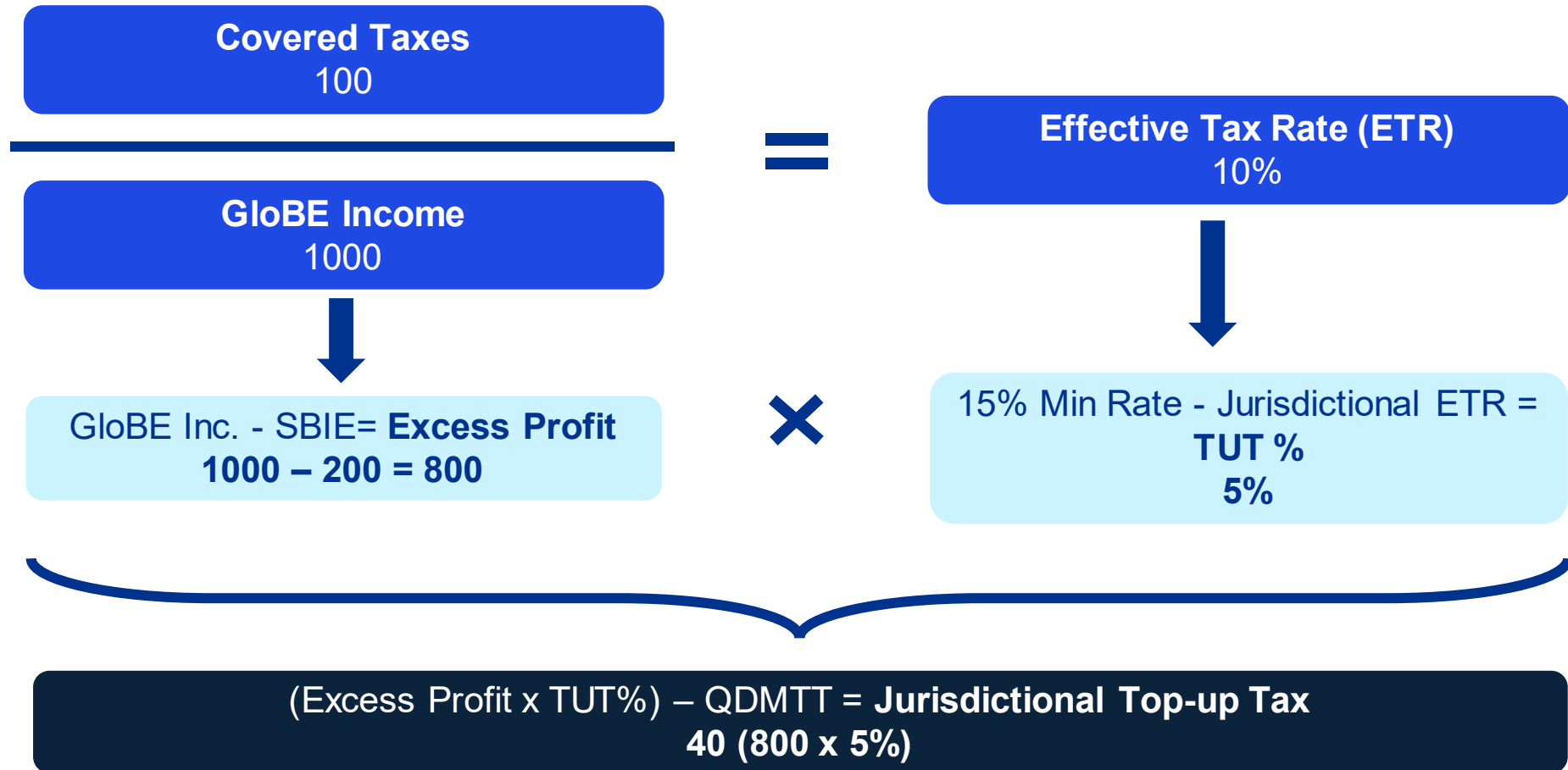
This is achieved via a right to deny tax deductions or impose other adjustments.



# GloBE top-up tax calculation



# GloBE top-up tax calculation



# Compliance and Filing obligations

## Filing Obligations

- ✔ File a GloBE Information Return for each **Constituent Entity** of an MNE Group.
- ✔ Alternatively, the **Designated Entity** files the return.
- ✔ File **within 15 months (or 18 months in the Transition Year)** after the end of the fiscal year to which they relate to

## Standardized GloBE Information Return

### Filing Content



#### 01. General Information

Information about the MNE Group and the Filing Constituent Entity



#### 02. Corporate Structure

Details on the UPE and on each CE's ownership structure  
Information on whether a CE is required to apply the IIR and whether the UTPR could apply with respect to it  
Details on any Excluded Entities



#### 03. ETR computation and Top-up Tax computation

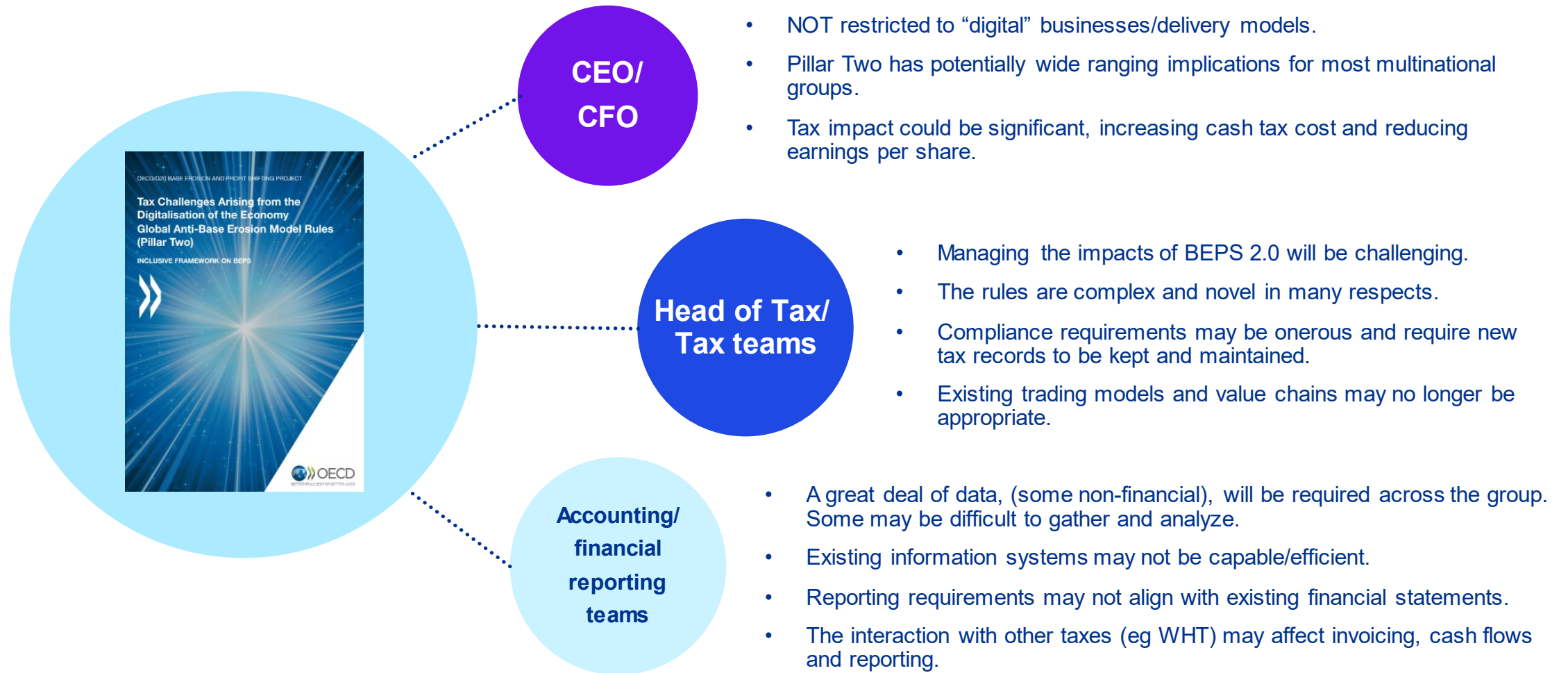
Including information about any elections made and information required for the application of the de-minimis exclusion and (transitional) safe harbors



#### 04. Top-up Tax allocation and attribution

Including IIR and UTPR top-up tax allocation, details on the computation of each parent entity's allocable share of top-up tax

# Compliance – affected teams and decision factors



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# Transfer pricing updates

Iwan Hoo

Transfer pricing, KPMG Indonesia



# Agenda

## 01

**PP No. 50/2022**

- Mutual Agreement Procedures

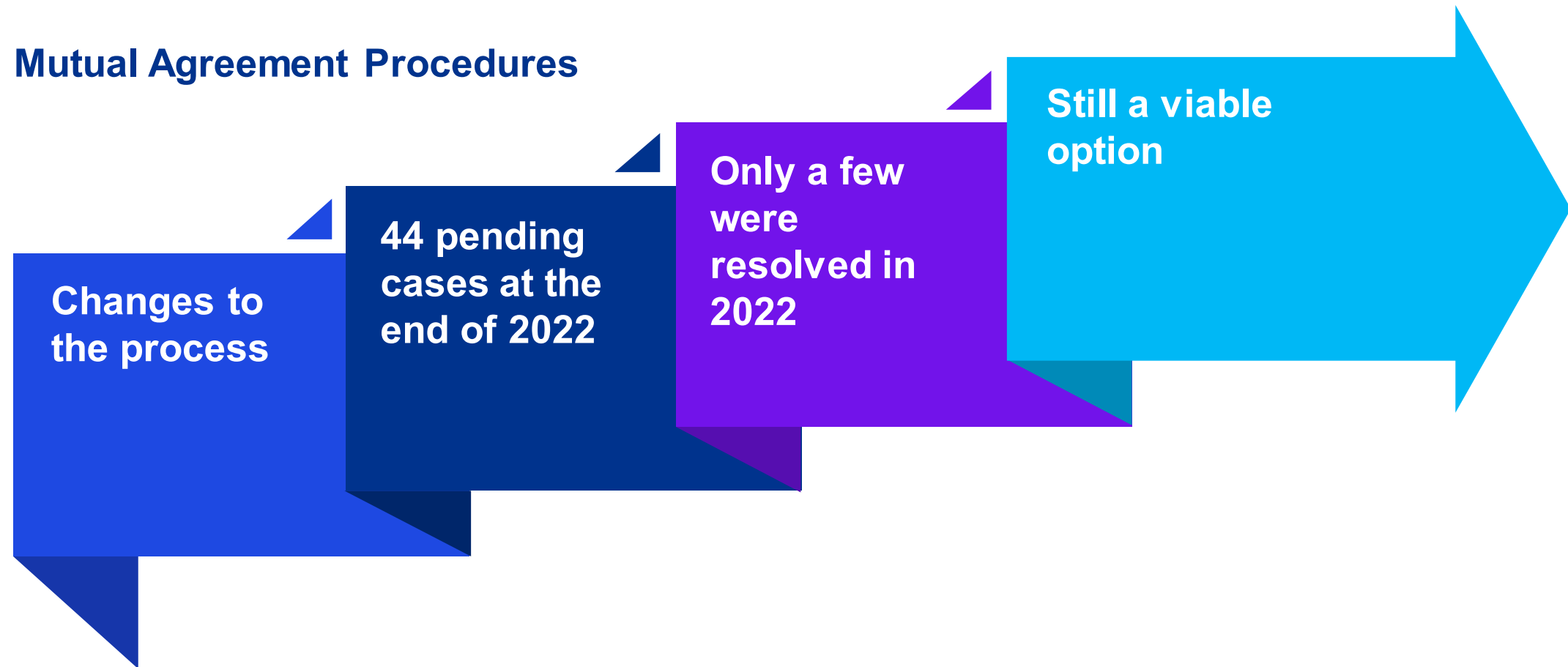
## 02

**PP No.55/2022**

- New types of related parties
- New transfer pricing methodologies
- Secondary adjustments

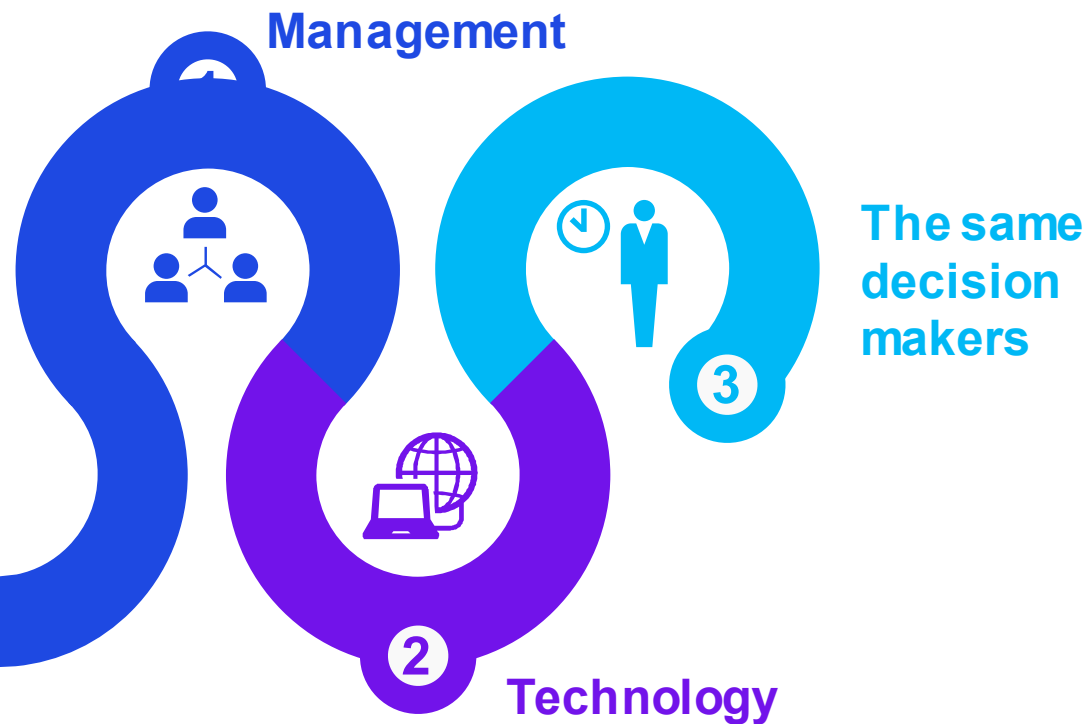


## Mutual Agreement Procedures



# PP No. 55/2022: Introduces new types of related parties

## Control through:

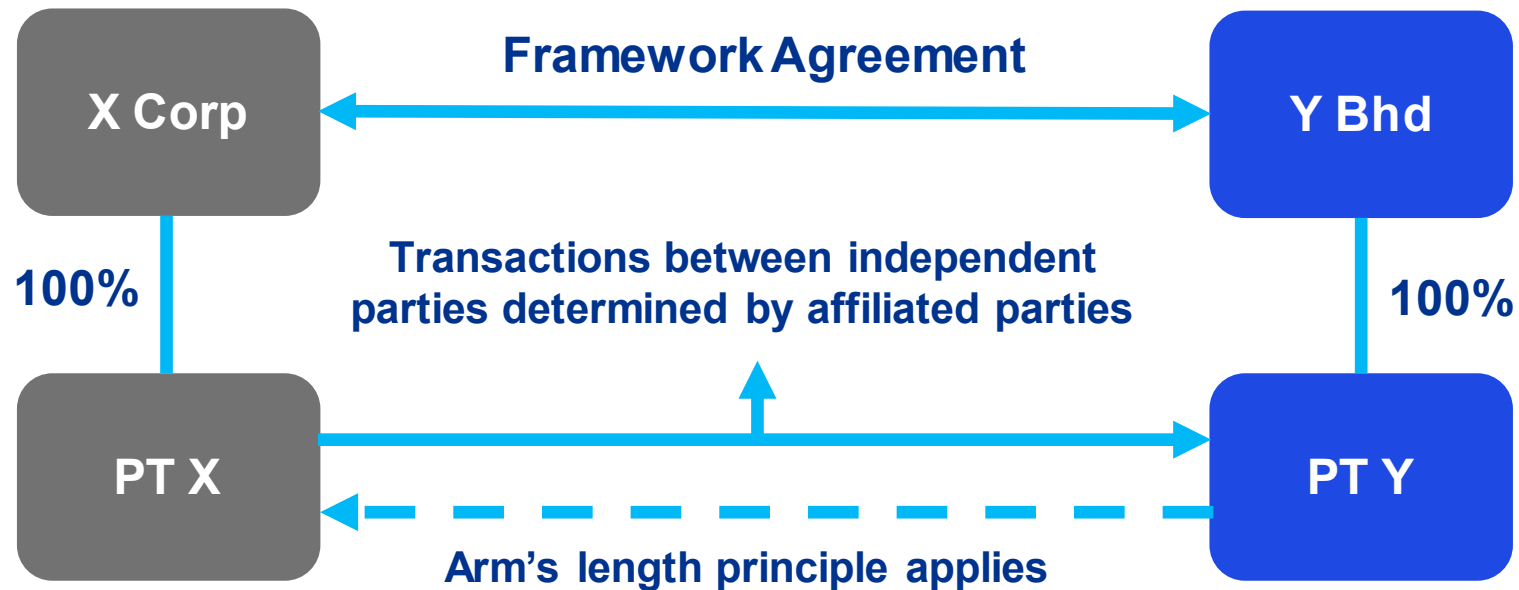


## ✓ Known commercial or financial links

“Transactions where an affiliated party of one or both parties involved determines the counterparty and price will be treated as related party transactions, irrespective of direct relationship status.”

# PP No.55/2022: New types of related parties

“Transactions where an affiliated party of one or both parties involved determines the counterparty and price will be treated as related party transactions, irrespective of direct relationship status.”



# PP No. 55/2022: Transfer pricing methodologies

## 01

Five commonly used TP methods that are still permitted:

- CUP Method
- Resale Price Method
- Cost Plus Method
- Profit Split Method
- Transactional Net Margin Method (TNMP)

## 02

New additional methods are:

- Independent transaction comparison method
- Methods in valuing tangible assets and/or intangible assets
- Methods in business valuation

# Secondary adjustments

Primary adjustment : Transfer pricing adjustment

Secondary adjustment : Dividend withholding tax

PT X		CITR
Revenue		1,000
COGS		<u>600</u>
Gross Profit		400
OPEX		<u>300</u>
Operating Profit		100
CIT @22%		<u>22</u>
Profit after tax		78



Tax audit result	
1,050	
<u>600</u>	
450	
<u>300</u>	
<u>150</u>	
<u>33</u>	
<u>117</u>	

Missing:  $117 - 78 = 39$



# Secondary adjustments

PT X		CITR	Tax audit result	
Revenue		1,000	1,050	
COGS		<u>600</u>	<u>600</u>	
Gross Profit		400	450	
OPEX		<u>300</u>	<u>300</u>	
Operating Profit		100	<u>150</u>	
CIT @22%		<u>22</u>	<u>33</u>	
Profit after tax		78	117	

**The difference is treated as the dividend**

**Subject to Art. 26 withholding tax**

**It nearly doubles the TP adjustment**



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# Transactions with affiliates

**Grace Novia**

Legal services, Roosdiono & Partners



# Transaction with Affiliates

OJK Regulation No. 42/POJK.04/2020 regarding Affiliated Transactions and Conflict of Interest Transactions (“**POJK 42**”)

## Affiliated Transactions:

Activities and/or transactions conducted by a public company or controlled company with (i) Affiliates of a public company or (ii) affiliates of members of the BOD, BOC, majority shareholders, or a Controller. It includes any activity and/or transaction conducted by the public company or controlled company for the benefit of an Affiliate of a public company or an affiliate of a member of the BoD, BoC, majority shareholder, or the Controller.

## Definition of “Affiliates”:

- Family relations due to marriage or descent to the second degree, both horizontally and vertically;
- Relationship between the party and the employee, director, or commissioner of that party;
- Relationship between two companies where there are one or more members of the same BOD or BOC;
- Relationship between a company and a party that is directly or indirectly controlled by that company;
- Relationship between two controlled companies, whether directly or indirectly by the same party; or
- Relationship between a company and the majority shareholder.

# Requirements for Affiliated Transactions

## If it is considered an Affiliated Transaction, what should the company do?

### 01

Appoint an Appraiser to determine the fair value of the object of Affiliated Transaction and/or transaction fairness;

### 02

Disclose information related to the Affiliated Transaction to public;

### 03






Submit disclosure information in point 2 along with supporting documents to OJK

### 04

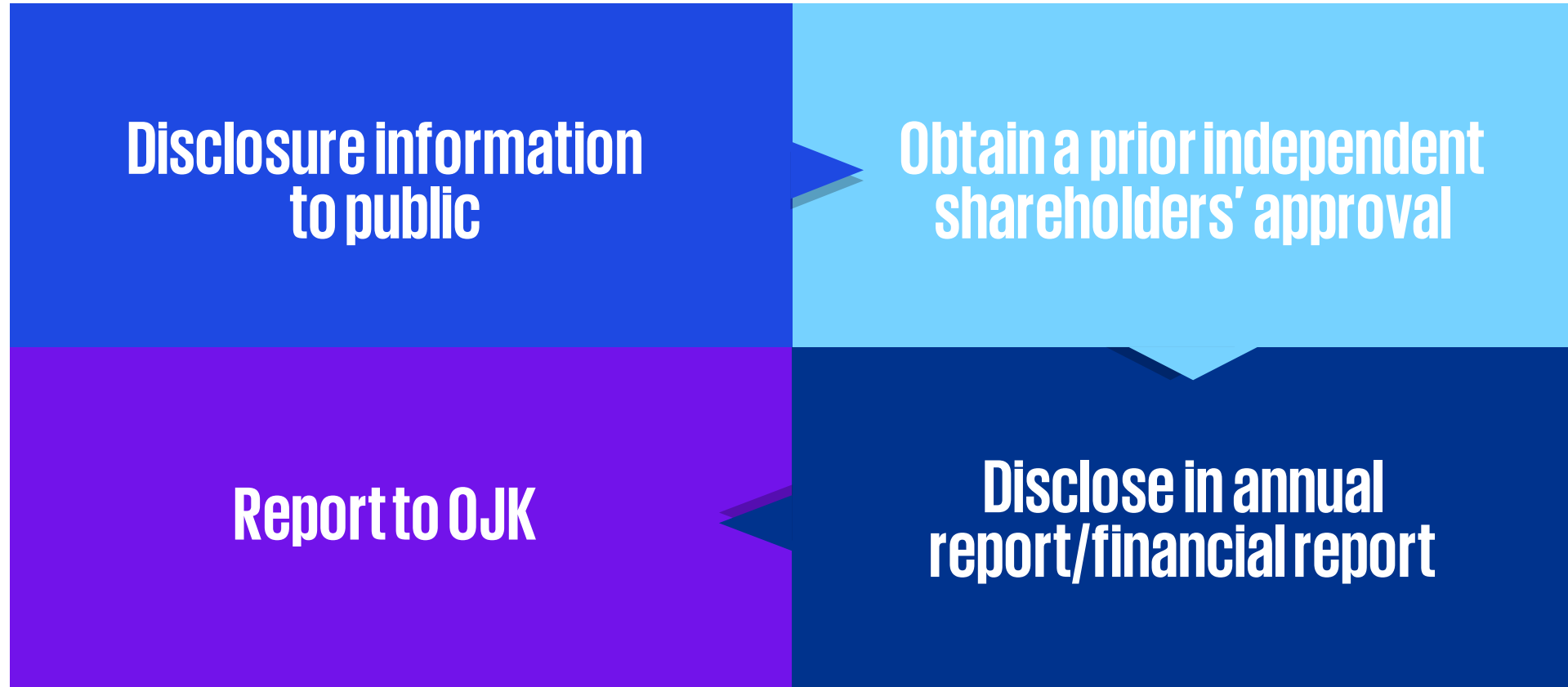
A prior independent shareholders' approval in GMS must be obtained before conducting the following Affiliated Transaction:

- The Affiliated Transaction's value exceeded the material transaction threshold that requires GMS approval;
- The Affiliated Transaction adversely affect business of the Public Company; and/or
- At the discretion of OJK, such Affiliated Transaction requires independent shareholders' approval

**Affiliated Transactions that are excluded from the abovementioned requirements but need to be reported to OJK at least 2 days upon the occurrence of the Affiliated Transaction:**

Transactions required by laws or courts	.....		.....	Direct financing from banks, venture capital, financing companies or infrastructure financing companies whether onshore or offshore
Transactions between a Public Company with a Controlled Company which shares are owned for at least 99% of the paid-up capital by the said Public Company	.....		.....	Granting of corporate guarantees to the bank, venture capital, financing company or infrastructure financing company whether onshore or offshore in relation to the loan facility received by the Public Company or Controlled Company
Transactions between a Controlled Company which shares are owned for at least 99% of the paid-up capital by the said Public Company	.....		.....	Transaction to increase or decrease paid-up capital to retain an ownership percentage in the company after such investment is conducted for a minimum of 1 year
Transactions between a Controlled Company and a company which shares are owned by the Controlled Company for at least 99% of the paid-up capital by said company	.....		.....	Transaction between a Public Company being a financial institution with a Controlled Company being a syariah financial institution with respect to the development of such syariah financial institution; and/or
Transactions with value not exceeding 0,5% of paid-up capital of the Public Company or not exceeding 5 billion Rupiah (whichever one has the lower value)	.....		.....	Transaction with respect to restructuring conducted by a Public Company controlled directly or indirectly by the government.

# Compliance



# Compliance

**Disclosure  
information to  
public**

**Obtain a prior  
independent  
shareholders'  
approval**

**Disclose in  
annual report/  
financial report**

**Report to OJK**



00

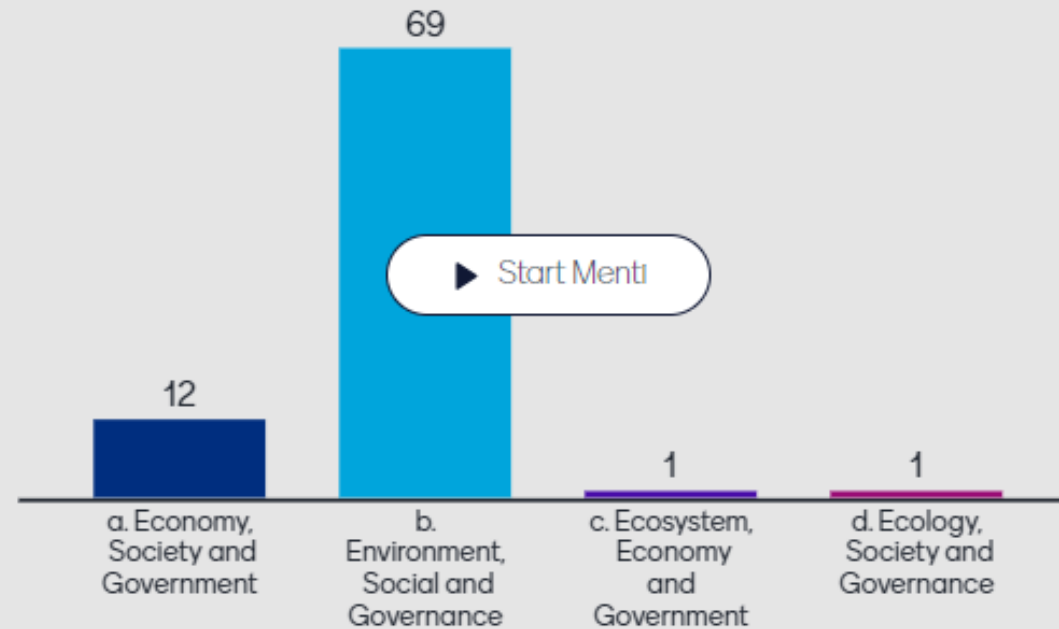
# ESG regulatory trends



# What does ESG stand for?

- a. Economy, Society and Government**
- b. Environment, Social and Governance**
- c. Ecosystem, Economy and Government**
- d. Ecology, Society and Governance**

# 1. What is the full term of ESG?



Press **ENTER** to show correct answer



# How many sustainable development goals are there?

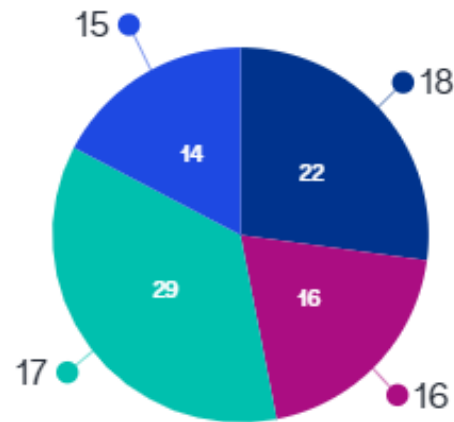
a. 18

b. 16

c. 17

d. 15

## 2. How many Sustainable Development Goals are there?



Press **ENTER** to show correct answer



# What is the target year for Indonesia's Net Zero commitment?

- a. 2030
- b. 2060
- c. 2050
- d. 2100



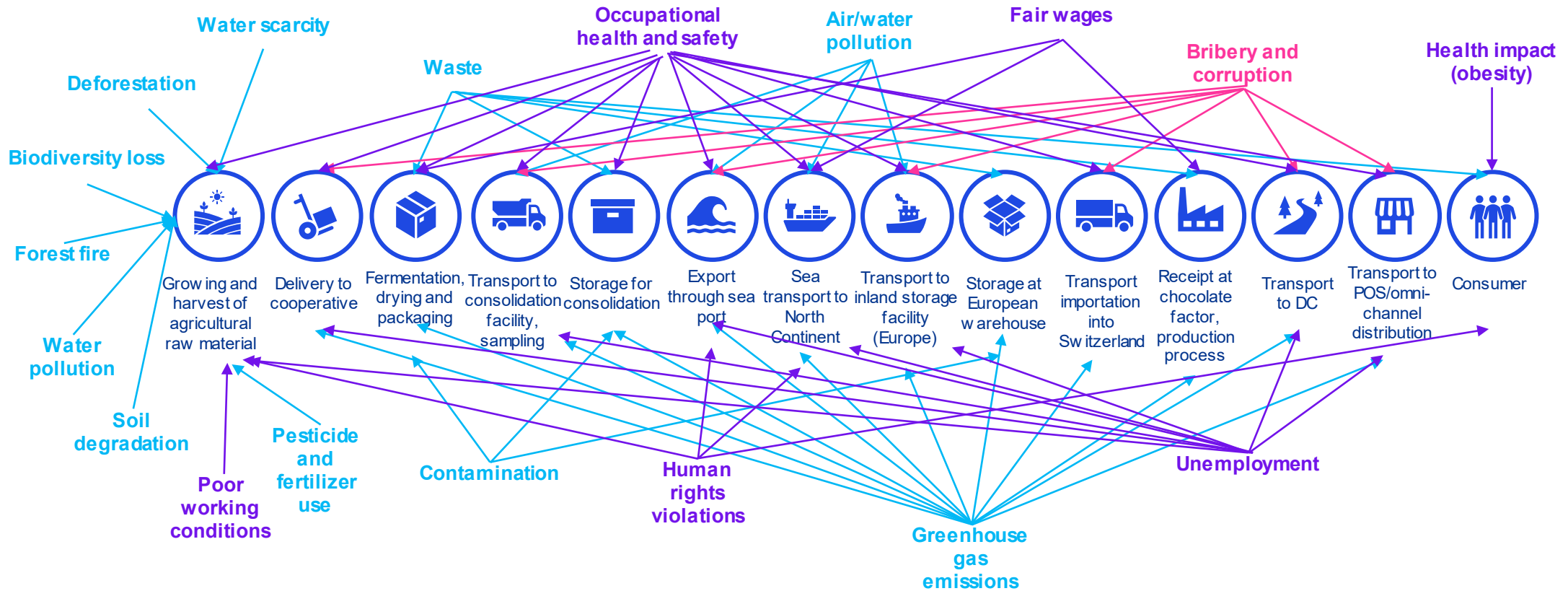
### 3. What is the target year of Indonesia's Net Zero?



Press **ENTER** to show correct answer

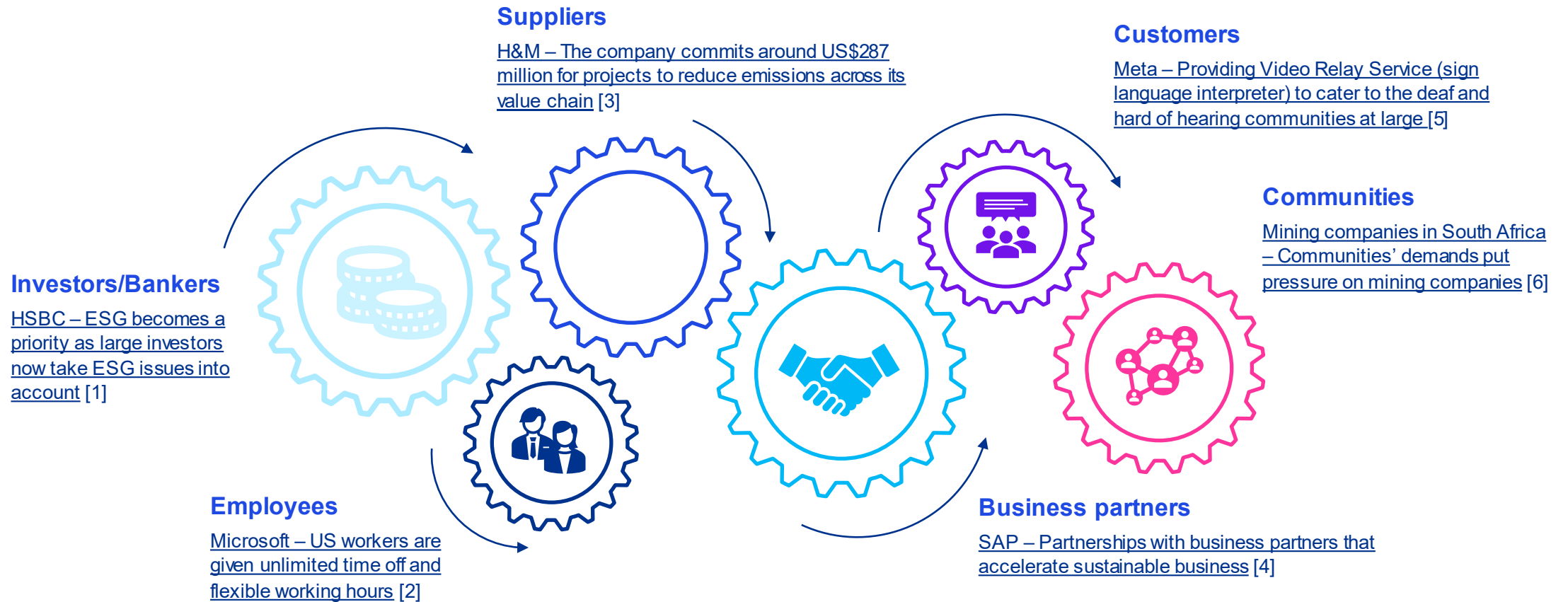


# ESG issues exist along value chain



Source: "ESG in the Supply Chain." KPMG, <https://kpmg.com/ch/en/home/insights/2022/06/esg-supply-chain.html>

# Stakeholders drive companies to operate more sustainably



# There are various ESG regulations and standards



There are lots of ESG frameworks and standards

1. Global Reporting Initiative (GRI)
2. Sustainability Accounting Standards Board (SASB)
3. Task Force on Climate-related Financial Disclosures (TCFD)
4. Carbon Disclosure Project (CDP)
5. UN Sustainable Development Goals (SDG)
6. World Economic Forum (WEF) ESG Metrics
7. Global Real Estate Sustainability Benchmark (GRESB)
8. International Integrated Reporting Council (IIRC) Framework
9. Greenhouse Gas Protocol (GHG Protocol)
10. United Nations Sustainable Development Goals (UN SDGs)
11. International Sustainability Standards Board (ISSB)

ESG ratings have become important when investors analyze their potential future investments

MSCI, Moody's, Sustainalytics, S&P

# Survey KPMG – ESG specific management is increasing, requiring more attention (1/3)

## ASPAC executives less bullish than others about the ESG impact on financial performance

ASPAC CEOs recognize the importance of ESG initiatives on their businesses, especially with regards to improving financial performance, driving growth and meeting stakeholder expectations. At the same time, most of them are feeling the pressure of an increasing public perception that it is up to corporations to deliver, as confidence and trust in governments decline, temporary freezes in hiring; some firms are also downsizing their labor force.

70%

of ASPAC CEOs say that fulfilling their ESG strategy and commitments will have an impact on their organization over the next three years

73%

of them agree that major ESG challenges such as income inequality and climate change are a threat to their company

63%

agree that the public is looking to businesses to stand in the gap for societal challenges such as inclusion, diversity, equality, climate change or social justice

61%

agree that corporations would be suited to help governments find solutions to pressing global challenges with stronger government support

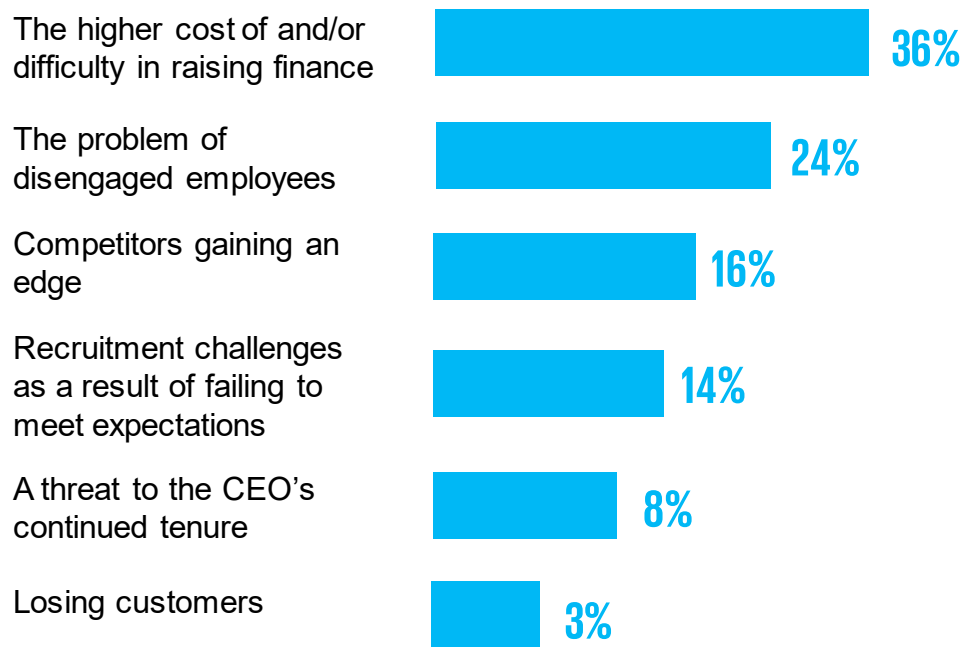
Source: ["KPMG 2022 CEO Outlook Asia Pacific."](#)





# Survey KPMG – ESG specific management is increasing, requiring more attention (2/3)

## Downsides to failing to meet stakeholders' ESG expectations



## Key challenges in reporting ESG performance



Source: ["KPMG 2022 CEO Outlook Asia Pacific."](#)



# Survey KPMG – ESG specific management is increasing, requiring more attention (3/3)

**01**

Less than half of the companies report on biodiversity loss

**02**

TCFD adoption nearly doubled in 2 years

**03**

Increased disclosures of carbon reduction targets

Source: [“KPMG Survey of Sustainability reporting 2022 – Big shifts, small steps”](#).

# Managing ESG agenda in the board room

Board members have a different lens when looking at ESG and its drivers

## Head of Risk

How do we measure and quantify our ESG risk and map that out in our risk matrix? How far do we navigate in the ESG risk lens? How do we anticipate its velocity?

## CEO

What factors are driving our ESG agenda?

## Head of Tax

How can tax transparency be an explicit part of the ESG narrative to support access to wider green funding?

## CFO

Has ESG impacted our access to or cost of capital? What are lenders and investors asking you about your company's ESG agenda?

## CSO

How well do we communicate the environmental and social impact of our business?

## Head of Human Resources

Are our employees able to express their opinions freely, ask challenging questions and make bold proposals on how the company is responding to ESG demands from society/clients/investors?

## COO

Are we addressing emissions up and down our supply chain? To our customers? How do you engage with suppliers and customers to deliver targets?



00

# Omnibus Law: Manpower

**Ray Sitanggang**

Legal Services, Roosdiono & Partners



# Legal basis

**01**

**Law No. 13 of 2003  
on Manpower**

**02**

**Law No. 6 of 2023  
on Stipulation of  
Government  
Regulation in Lieu  
of Law No. 2 of 2022  
on Job Creation**

**03**

**Government Regulation  
No. 35 of 2021 on Fixed-  
Term Employment  
Agreement,  
Outsourcing, Working  
Time and Rest Time,  
and Termination of  
Employment**

# Journey of Job Creation Law 2023

**2 Nov  
2020**

**Law No. 11 of 2021 on  
Job Creation issued**

Amended 76 laws and  
revoked 2 laws

**30 Dec 2022**

**Perppu on Job Creation  
issued**

Revoked and replaced the Job  
Creation Law 2020

**25 Nov 2021**

**Constitutional Court Decision No.  
91/PUU-XVIII/2020**

- Required the Job Creation Law to be corrected within 2 years
- Refrained the issuance of new implementing regulations of the Job Creation Law

**31 Mar 2023**

**Law No. 6 of 2023 issued**

Enacting the Job Creation  
Perppu into Law (Job Creation  
Law 2023)

# What's new about fixed-term employment agreement provisions?

●	<b>Requirements</b>	In writing and in the Indonesian language
★	<b>Probation</b>	Not allowed. <u>The probationary period will be counted as years of service.</u>
★	<b>Permitted term</b>	Maximum of five years, including the extensions
	<b>Post-signing requirement</b>	Registered at the Ministry of Manpower's office within 3 days (if online) or 7 days (if offline)

★ **Legal consequences of non-written fixed-term contract:**

Law No. 13 of 2003 on Manpower	Job Creation Law 2023
✓ Automatically changed to Indefinite-Term Employment Contract	✓ Null and void

	<b>Early termination effect</b>	Obligation to compensate the non-terminating party amounting to the employee's wages until the expiry date of employment agreement										
★	<b>Company's post-termination obligation</b>	<p>Compensation payment</p> <p><b>Calculation:</b></p> <table border="1"> <thead> <tr> <th>Service Period</th> <th>Compensation</th> </tr> </thead> <tbody> <tr> <td>&lt; 1 month</td> <td>None</td> </tr> <tr> <td>1 month up to &gt; 12 months</td> <td>(Service period/12) x 1 month salary<sup>*)</sup></td> </tr> <tr> <td>12 consecutive months</td> <td>1 month salary<sup>*)</sup></td> </tr> <tr> <td>&gt; 12 months</td> <td>(Service period/12) x 1 month salary<sup>*)</sup></td> </tr> </tbody> </table>	Service Period	Compensation	< 1 month	None	1 month up to > 12 months	(Service period/12) x 1 month salary <sup>*)</sup>	12 consecutive months	1 month salary <sup>*)</sup>	> 12 months	(Service period/12) x 1 month salary <sup>*)</sup>
Service Period	Compensation											
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12 consecutive months	1 month salary <sup>*)</sup>											
> 12 months	(Service period/12) x 1 month salary <sup>*)</sup>											
		<i>*) Salary means basic salary plus fixed allowance (if any)</i>										



# Working time & overtime work

## What is new about the working time provision?

The terms for the implementation of working hours **must be included in the employment contract, Company Regulations or the Collective Labor Agreement.**

## What is new about the overtime time provision?

Law No. 13 of 2003 on Manpower	Job Creation Law 2023
✓ Overtime work is limited to <b>3 hours a day and 14 hours a week</b>	✓ Overtime work is limited to <b>4 hours a day and 18 hours a week</b>

# Outsourcing

**Companies can now outsource certain functions again through a written outsourcing agreement.**

## Significant changes

There are no restrictions on work functions that can be outsourced until implementing regulations are issued.

## Anticipated Update

The government will issue a regulation determining work functions that can be outsourced.

# Key takeaways

	<b>A call to action</b>	<b>Companies should expect to make changes to their company regulations, collective labor agreements, or employment contracts to ensure compliance with the Indonesian Manpower Law, as amended by the Job Creation Law 2023, and its implementing regulations.</b>
	<b>Keep monitoring any update</b>	<b>It is prudent to monitor the issuance of the implementing regulations of the Job Creation Law 2023 for regulatory compliance.</b>

# Termination of Employment

Based on Indonesian Law and Regulations



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# 3 Key points on the termination

1

## Grounds

To identify the Grounds for Termination that are justified by the Law and Regulations.

2

## Employee's Rights

To calculate the Employee's rights that must be given based on the grounds for Termination.

3

## Termination Procedure

To identify Termination procedures that are in line with the Law and Regulations.

# Grounds for Termination

Employee  
Application  
Request

Company's  
Condition



**Grounds for  
Termination**  
Art 153 – 154A of  
Law No. 6 of 2023

**Employee's Condition**



# Employee's rights - PKWT

Law No. 13 of 2003	Law No. 6 of 2023
<p>The party terminating the employment relationship is required to pay compensation to the other party in the amount of the Employee's wages until the expiration date of the PKWT (Art 62 of Law 13 of 2003).</p>	<p>PKWT Employee is entitled to compensation at the end of the PKWT. PKWT Employees who have worked continuously for 1 month are entitled to compensation (<i>uang kompensasi</i>). (Art 16 GR 35 of 2021)</p>
	<p>Under the condition that one of the parties (Employee/Company) terminated the employment relationship before the period that was stipulated in the PKWT, the Company is obliged to provide compensation, the amount of which is calculated based on the PKWT period that has been carried out by the Employee.</p>
	<p>If the PKWT is terminated prematurely, the provisions in Article 62 of Law 13 of 2003 are still valid, namely the party terminating the employment relationship is required to pay compensation to the other party in the amount of the Employee's wages until the expiration date of the PKWT</p>

# Employee's rights - PKWTT

## Article 40 paragraph (2), paragraph (3) and paragraph (4) of the GR No. 35 of 2021:

Severance pay ( <i>Pesangon</i> )	Service time award ( <i>Penghargaan masa kerja</i> )	Compensation of rights ( <i>Penggantian hak</i> )
working period is less than 1 (one) year, 1 (one) monthly Wage;	working period is 3 (three) years or more, but less than 6 (six) years, 2 (two) monthly Wage;	annual leave that has not been taken and has not expired;
working period is 1 (one) year or more, but less than 2 (two) years, 2 (two) monthly Wage;	working period is 6 (six) years or more, but less than 9 (nine) years, 3 (three) monthly Wage;	fees or return fare for Employees and their family to the place where Employees are accepted to work;
working period is 2 (two) years or more, but less than 3 (three) years, 3 (three) monthly Wage;	working period is 9 (nine) years or more, but less than 12 (twelve) years, 4 (four) monthly Wage;	
working period is 3 (three) years or more, but less than 4 (four) years, 4 (four) monthly Wage;	working period is 9 (nine) years or more, but less than 12 (twelve) years, 4 (four) monthly Wage;	other matters that are stipulated in the employment agreement, company regulations, or collective employment agreement
working period is 4 (four) years or more, but less than 5 (five) years, 5 (five) monthly Wage;	working period is 15 (fifteen) years or more, but less than 18 (eighteen) years, 6 (six) monthly Wage;	
working period is 5 (five) years or more, but less than 6 (six) years, 6 (six) monthly Wage;	working period is 18 (eighteen) years or more, but less than 21 (twenty-one) years, 7 (seven) monthly Wage;	
working period is 6 (six) years or more, but less than 7 (seven) years, 7 (seven) monthly Wage;	working period is 21 (twenty-one) years or more, but less than 24 (twenty-four) years, 8 (eight) monthly Wage;	
Working period 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months Wages;	working period is 24 (twenty-four) years or more, 10 (ten) monthly Wage.	
working period is 8 (eight) years or more, 9 (nine) monthly Wage.		

# Calculation on termination

Grounds of termination	Article of GR No. 35 of 2021	Severance pay (Pesangon)	Service time award (Penghargaan masa kerja)	Compensation of rights (Penggantian hak)	Separation money (Uang pisah)
The company conducts a merger, consolidation, acquisition or spin-off and employees are not willing to continue their employment relationship, or the company is not willing to accept the employees	41	1x	1x	Yes	No
Termination by the company because the company is acquired (in an acquisition scheme)	42 (1)	1x	1x	Yes	No
The company conducts efficiency to prevent losses	43 (2)	1x	1x	Yes	No
The company is closed – which was not caused by the company incurring losses	44 (2)	1x	1x	Yes	No
The company is in the suspension of a debt payment obligation and not because the Company is incurring losses	46 (2)	1x	1x	Yes	No
The company conducts efficiency which is caused by the company incurring a loss	43 (1)	0,5x	1x	Yes	No
The company is bankrupt	47	0,5x	1x	Yes	No
The company is closed because the company incurred losses for two years continuously or incurred losses for two years not continuously	44 (1)	0,5x	1x	Yes	No

# Calculation on termination

Grounds of termination	Article of GR No. 35 of 2021	Severance pay ( <i>Pesangon</i> )	Service time award ( <i>Penghargaan masa kerja</i> )	Compensation of rights ( <i>Penggantian hak</i> )	Separation money ( <i>Uang pisah</i> )
The company closed because the company experienced losses for two consecutive years	42 (2)	0,5x	1x	Yes	No
The company is closed due to force majeure	45 (1)	0,5x	1x	Yes	No
Force majeure that does not cause the company to close	45 (2)	0,75x	1x	Yes	No
The company is in the suspension of a debt payment obligation which is caused by the Company incurring losses	46 (1)	0,5x	1x	Yes	No
The company is bankrupt	47	0,5x	1x	Yes	No

# Comparison of termination procedures

The difference in termination procedures after the amendment to the Employment Law are as follows:

Law No. 13 of 2003	Law No. 6 of 2023
the intention to carry out the Termination must be negotiated between the Employer and the Employee. (Article 151 Paragraph (2) Law No. 13 of 2003)	the objectives and grounds for the Termination shall be given by the Employer to the Employee and/or Employee Union (Article 151 Paragraph (2))
If the negotiation fails to result in any agreement, the Employer may only terminate the employment after receiving a decision from the institution for the settlement of industrial relations disputes. (Article 151 Paragraph (3) Law No. 13 of 2003)	Bipartite negotiations regarding the termination will only start if the Employee refuses the grounds for Termination that was given by the Company.  (Article 151 Paragraph (3))
Termination can only be carried out through an application for a termination decision to an industrial relations dispute settlement institution.	The notification of the grounds for Termination is sufficient to carry out the Termination. After there is no rejection from the Employee, the Termination must be reported to the Ministry of Employment and/or the Department of Employment ( <i>Dinas Tenaga Kerja</i> ) (Article 38 GR No. 35 of 2021)
	The notice of termination is made in the form of a notification letter and given legally and appropriately by the Company to the Employee and/or Employee Union no later than 14 working days prior to the Termination. (Article 37 paragraph (3) GR No. 35 of 2021)
	In the event that the Termination is carried out during a probationary period, the notification letter should be submitted no later than 7 working days prior to the Termination (Article 37 paragraph (4) of GR No. 35 of 2021)

# Procedure of termination by the company



If the Employee refuses, the Employee must make a rejection letter accompanied by grounds no later than 7 (seven) working days after receiving the notice of termination

**Art 39 Par. (1)  
GR No. 35 of 2021**



Bipartite Negotiations between the Company and Employee and/or Employee Union

**Art. 39 Par. (2)  
GR No. 35 of 2021**



If the Bipartite Negotiation fails to reach an agreement, the next settlement stage for the Termination is carried out through the industrial relations dispute settlement mechanism in accordance with the law and regulations

**Art. 39 Par. (3)  
GR No. 35 of 2021**



(1) Company notifies Employees and/or Trade Unions in the form of a (written) notification letter no later than 14 (fourteen) working days prior to termination of employment.

**Art. 37 Par. (2) and (3)  
GR No. 35 of 2021**



**Employees do not reject the Termination**



the Company reports the Termination to the Department of Employment (*Dinas Tenaga Kerja*) in the Province and Regency/City

**Art. 38  
GR No. 35 of 2021**



Collective Agreement must be registered at the Industrial Relations Court in the area where the Collective Agreement is made

**(Art. 7 Par (2) Law No. 2 of 2004 on Industrial Relation Dispute Settlement)**



# Thank you



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