



Transfer Pricing – Latest updates

Chang Mei Seen

Executive Director | KPMG Tax Services Sdn Bhd





Agenda

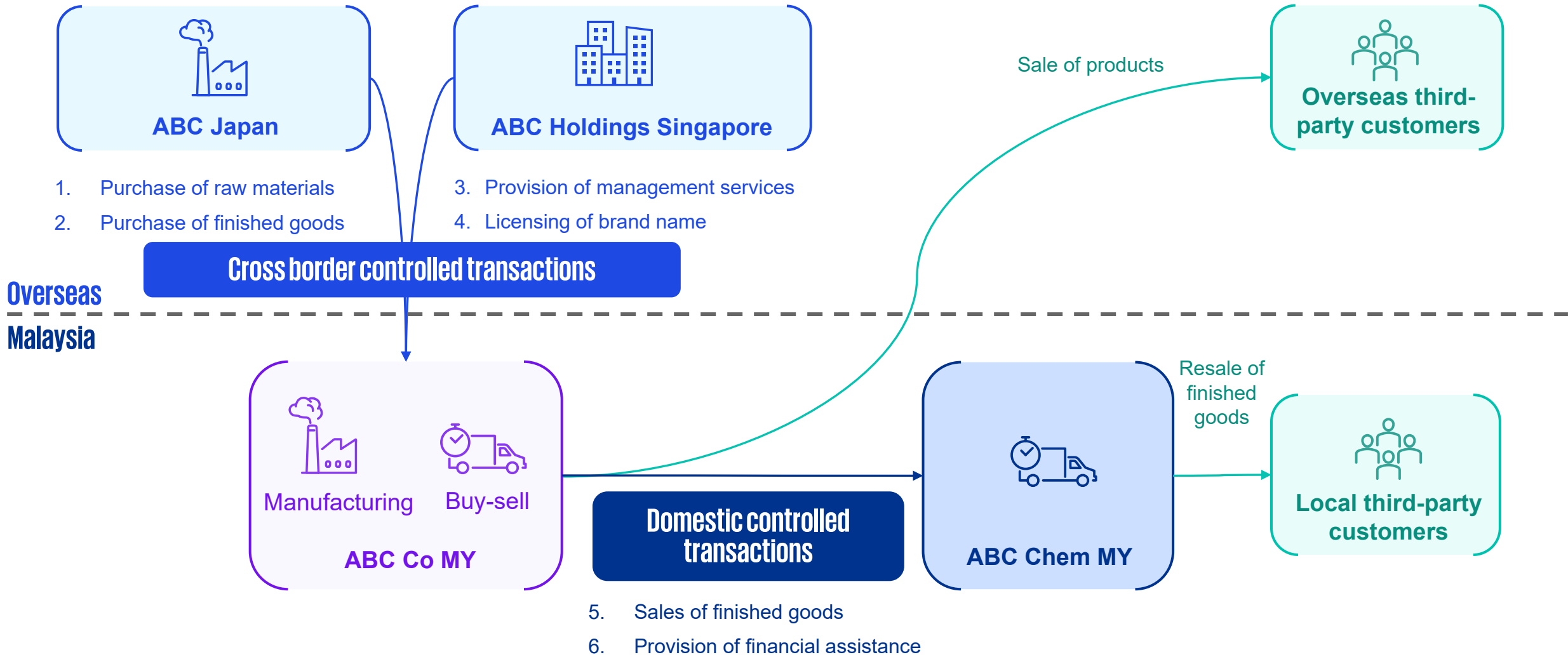
1. Common compliance difficulties

Understanding the current transfer pricing compliance requirements and challenges

2. Audits & investigations

Navigating transfer pricing audits

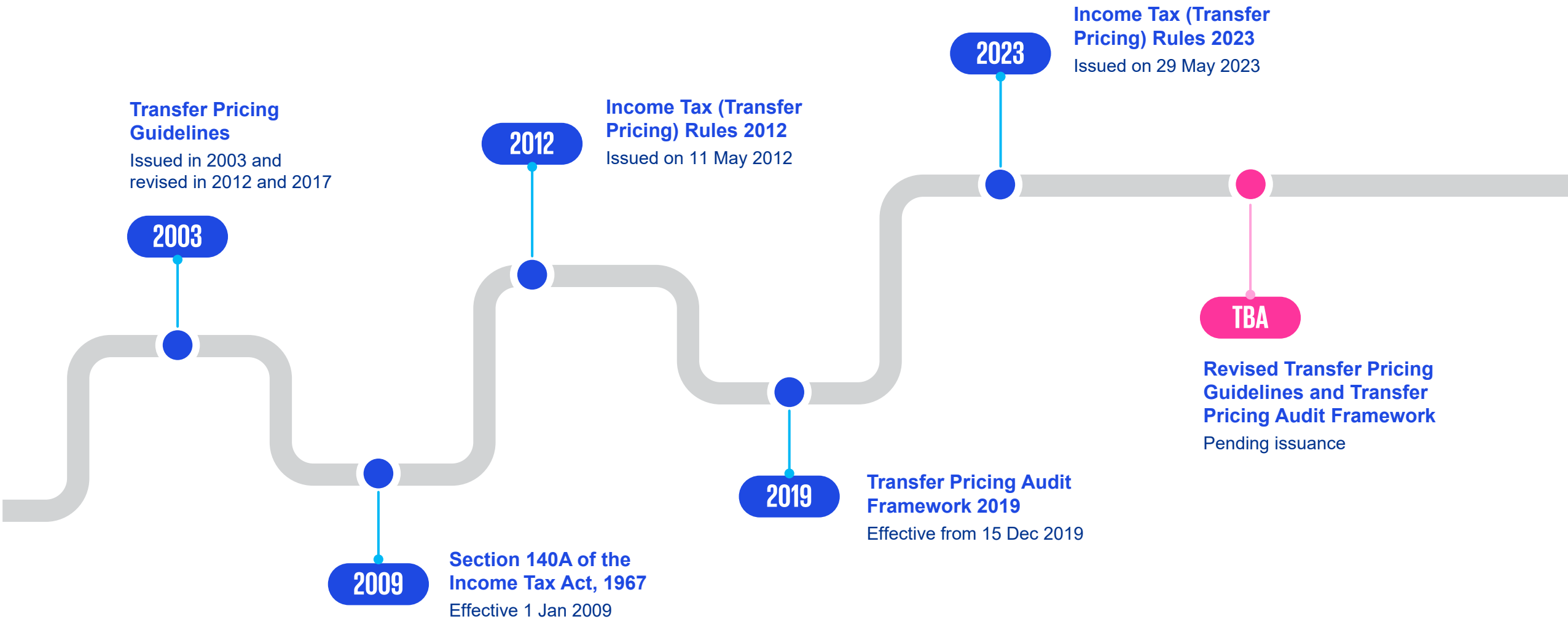
Case study: ABC Group's related party transactions



Transfer pricing - Common compliance difficulties



Transfer pricing compliance requirements



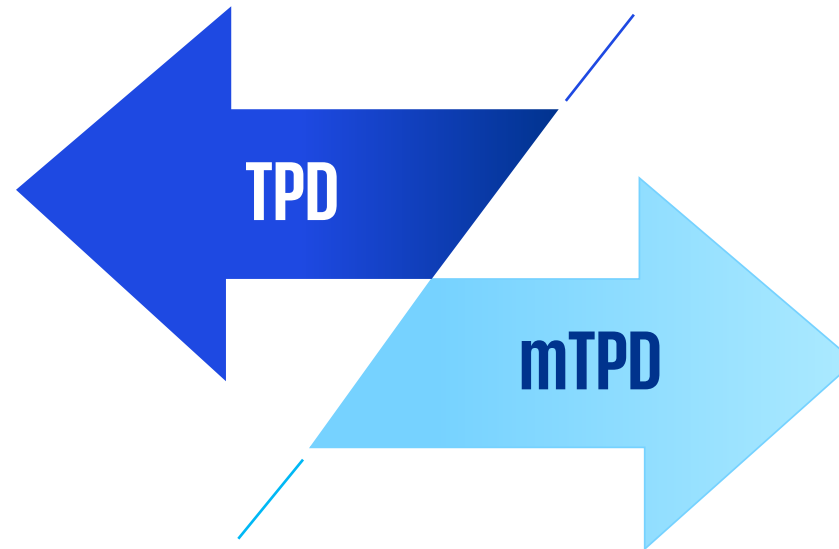


Types of Transfer Pricing Documentation

Persons carrying on a business and falling outside the scope of paragraph 1.3.1 of the Guidelines may opt to use the minimum Transfer Pricing Documentation (“mTPD”) template issued by the Inland Revenue Board (“IRB”).

Contemporaneous transfer pricing documentation (“CTPD”) defined in the TP Rules 2023

- Gross income exceeding RM 25 million; and total amount of related party transactions exceeding RM 15 million
- Financial assistance exceeding RM 50 million



mTPD Template



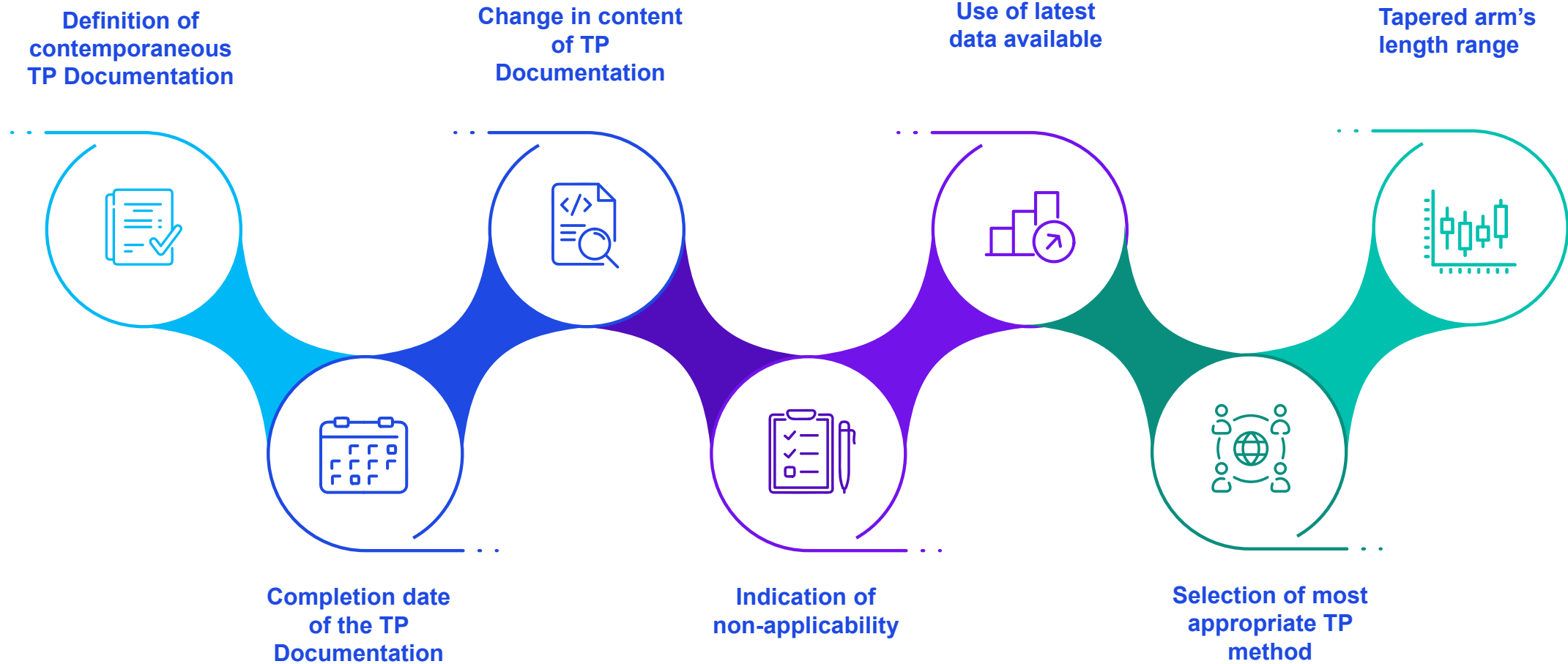
Persons falling outside the scope of paragraph 1.3.1

- [Minimum transfer pricing documentation template](#)
- [Explanatory notes](#)





What's new on TP Rules 2023



Meeting the definition of a contemporaneous TP documentation

Failure to furnish contemporaneous TP documentation is subject to penalty under Section 113B of the Income Tax Act, 1967



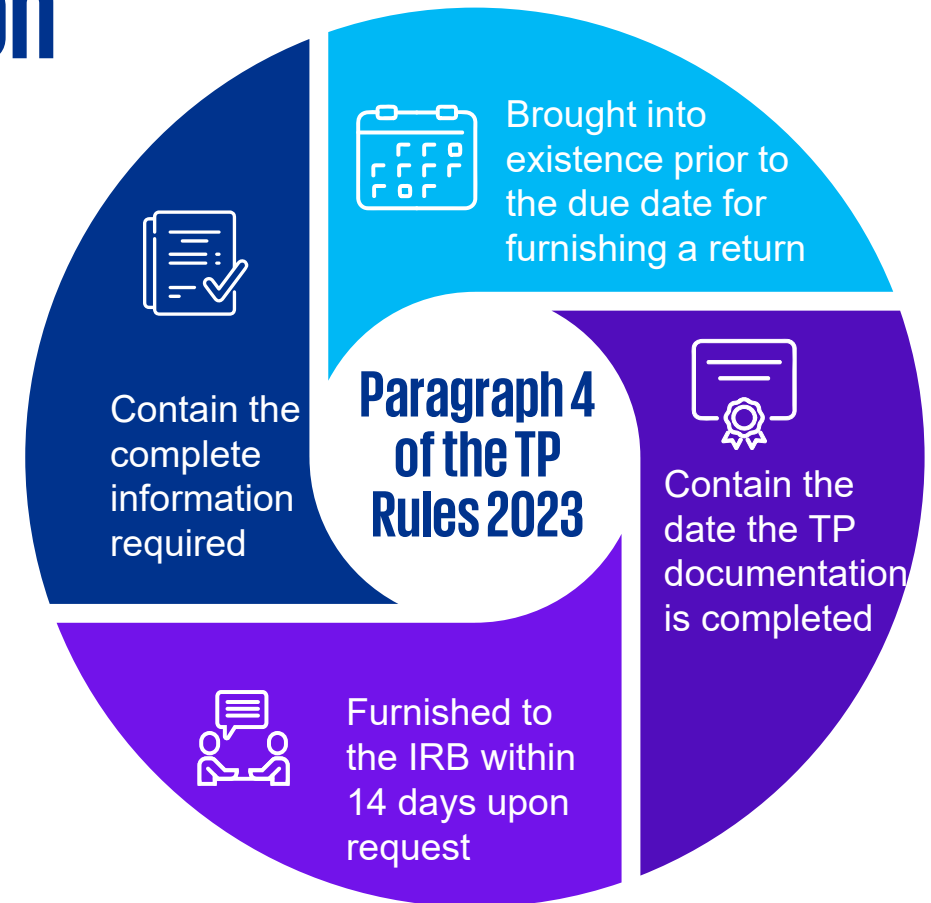
RM 20,000 to 100,000 Fine

per year of assessment



Imprisonment ≤ 6 months

If convicted; or both



Meeting the deadline

“Brought into existence **prior to** the due date for furnishing a return ...”

Examples

FYE	Income tax return deadline	TP documentation completion date	Contemporaneous TP documentation?
31.03.2024	30.11.2024	30.11.2024	No
31.12.2024	31.08.2025	30.08.2025	Yes*
31.12.2024	31.10.2025	30.10.2025	Yes*

*Subject to the TP documentation containing the complete information required in the TP Rules 2023

Change in content of the contemporaneous TP documentation

TP Rules 2012

Information regarding the person's business

- This information is reflected in Schedule 2 of the TP Rules 2023, but only a part of it

Documentation

- Documents that provide the foundation for or otherwise support or were referred to in developing the transfer pricing analysis
- Any other information, data or document considered relevant by the person to determine an arm's length price

Index to documents

Paragraph 4 of the TP Rules

Schedules 1, 2, 3 – information on

- The multinational enterprise (“MNE”) Group
- The person's business
- Cost contribution arrangements

TP Rules 2023

Date of completion

The date on which the CTPD is completed

Indication of non-applicability

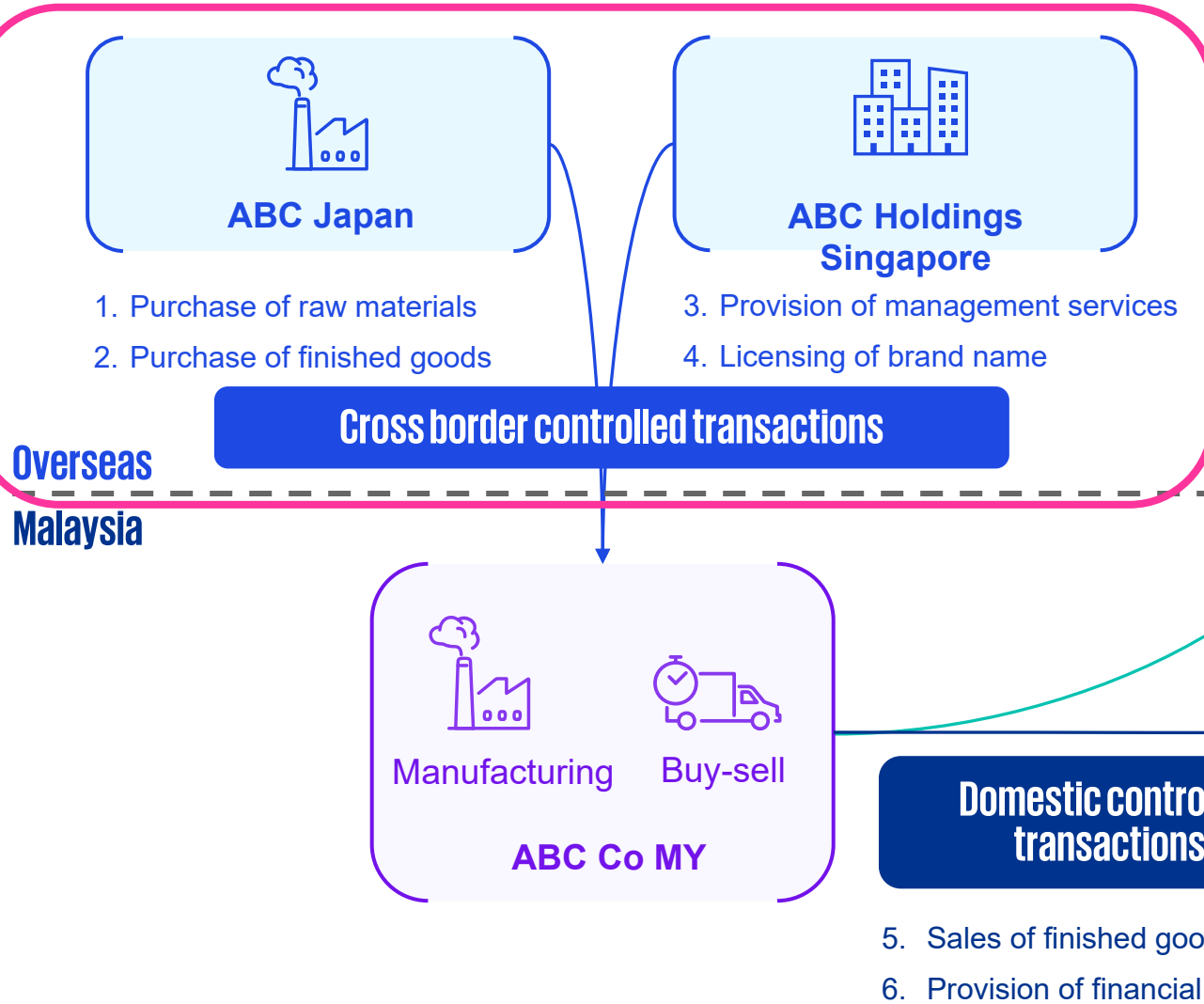
Requirement to indicate non-applicability

Documentation

- Documents which become the foundation for, support or were referred to in the development of the transfer pricing analysis
- Any information, data or other related documents used by the person to determine an arm's length price under Rule 6, including the effect of the material changes to the business conditions during the basis period

Index to documents

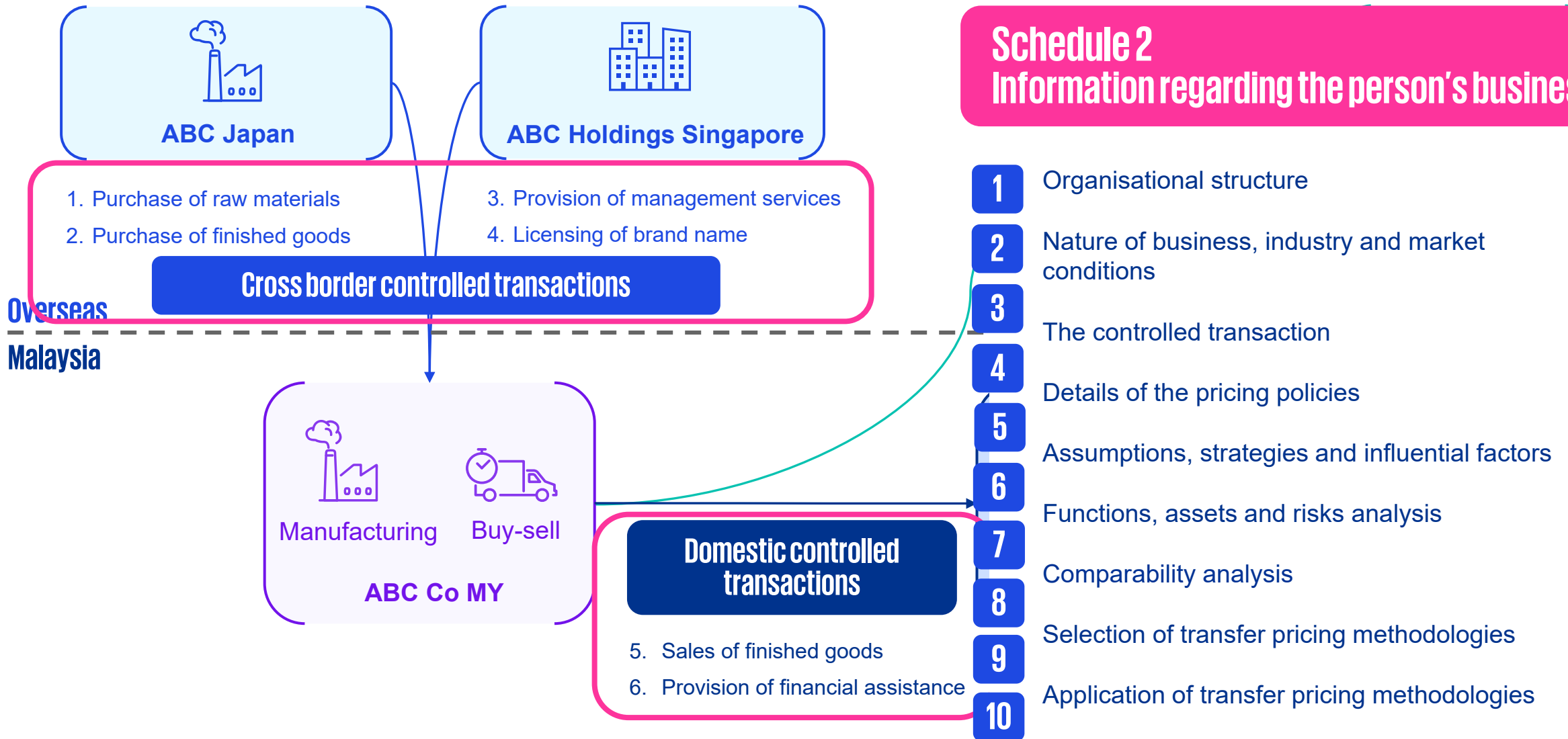
Case study: ABC Group's related party transactions



Schedule 1 Information of the MNE Group

- 1 The MNE Group's worldwide organisational structure
- 2 A description of the MNE Group's businesses that are relevant to the business of the person in the basis period
- 3 A description of the MNE Group's intangible property that are used in or applied to the business of the person in Malaysia in that basis period
- 4 The MNE Group's financial activities that are connected to the business of the person in Malaysia in the basis period
- 5 The financial and tax position of the MNE Group

Case study: PJ Group's related party transactions



Case study: PJ Group's related party transactions



ABC Japan

1. Purchase of raw materials
2. Purchase of finished goods



ABC Holdings Singapore

3. Provision of management services
4. Licensing of brand name

Cross border controlled transactions

Overseas

Malaysia



Manufacturing



Buy-sell

ABC Co MY

Domestic controlled transactions

5. Sales of finished goods
6. Provision of financial assistance

Rule 11 Intangible property

- 1 The owner of the intangible property is **not entitled** to any income attributable to that intangible property if he **neither performs the functions nor controls the functions or risks related to the development, enhancement, maintenance, protection or exploitation (“DEMPE”)** of the intangible property.



Schedule 3 Information and documents regarding a cost contribution arrangement (“CCA”)

- 1** A framework contractually agreed among business enterprises to share the costs and risks of developing, producing or obtaining assets, services or rights, and to determine the nature and extent of the interests of each participant in those assets, services or rights.
- 2** Overall contributions shall be proportionate with the overall expected benefits.
- 3** The participant would be entitled to exploit its interest in the CCA separately as an effective owner, not as a licensee.
- 4** Where a taxpayer enters into a CCA with its associated persons, the arrangement should reflect that of an arm's length arrangement.

Frequently asked questions

01

TPD - SMEs

Can SMEs be granted exemptions from having to prepare a TPD if they engage in controlled transactions below a specific threshold?

Currently, exemption is given only to individuals who are not carrying on a business. Therefore, SMEs engaged in controlled transactions should prepare a full or minimum TPD, depending on the threshold stated in the TP guidelines.

Preparation of a full TPD is not required for transactions between persons who are both assessable and chargeable to tax in Malaysia, provided it can be proven that any adjustments made under the Guidelines will not alter the total tax payable by both parties. These persons are allowed to prepare a mTPD.

02

TPD – Domestic RPTs

Is a TPD required for taxpayers with only local RPTs if it can be proven that any adjustments made will not alter the tax payable?

03

Extension of time (“EOT”) for TPD

Can a company request for EOT to complete the TPD and for it to still be considered contemporaneous?

The CTPD must be prepared prior to the due date for furnishing a tax return. If an EOT is granted for tax return filing, the same extended due date would apply for the preparation of the TPD.

To qualify as a CTPD, the TPD should contain all requirements stipulated under subrules 4(1) and 4(2) of the TP Rules 2023.

04

Contemporaneous TPD

What is the difference between a CTPD and a TPD?

Source: IRB (2024), [FAQ on matters arising from transfer pricing 1.0](#) and [FAQ on matters pertaining to transfer pricing \(TP\) 2.0](#)



Frequently asked questions (continued)

05

Schedule 1 - Malaysian parent company

If the parent company is incorporated in Malaysia and the subsidiary is incorporated overseas, is Schedule 1 still required given that Schedule 2, paragraph 1(a) includes a worldwide organisational and ownership structure?

Schedule 1 (info on MNE group) and Schedule 2 (detailed info on taxpayer's business) serve different purposes.

Thus, both Schedule 1 and Schedule 2 requirements should be met, regardless of whether the parent company is incorporated in Malaysia and the subsidiary is incorporated overseas or vice versa.

If the MNE group businesses are relevant to the business in Malaysia, Schedule 1 should be prepared, even if the taxpayers only engage in domestic controlled transactions.

06

Schedule 1 - Domestic controlled transactions

If a Malaysian subsidiary of an MNE group is only involved in domestic controlled transactions and is required to prepare a full TPD, is it still required to prepare Schedule 1?

07

Schedule 1 - Consolidated financial statements

The TP Rules 2023 mention that an MNE is a group that is required to consolidate its financial statements. My group operates in a foreign country but does not consolidate its results. Does the taxpayer still need to prepare Schedule 1?

For purposes of TPD in Malaysia, Schedule 1 applies to MNE groups with business establishments in two or more jurisdictions, regardless of whether the MNE group has consolidated its financial statements. These businesses also include permanent establishments. The TP Rules 2023 will be amended accordingly to address this purpose.

MNE groups refer to business establishments in two or more jurisdictions. These business establishments include, but are not limited to, dormant companies, newly established companies, and inactive companies. Therefore, if the group fulfils this definition, Schedule 1 is applicable.

08

Schedule 1 - Dormant / inactive / newly incorporated company

If the overseas companies are dormant, inactive, newly incorporated with no revenue, or have no related party transactions with the Malaysian company for the year of assessment, is the Malaysian company still required to prepare Schedule 1?

Transfer Pricing - Audits & investigations



Transfer pricing audit environment

01

“Focus will be put on cross border transactions, domestic TP, ...”

IRB chief executive officer Datuk Dr Abu Tariq Jamaluddin

[IRB to focus on increasing tax collection](#)

New Straits Times, 1 March 2024

[Tax Matters – Exercise vigilance over areas under focus by IRB](#)

The Sun, 20 May 2024

02

“The IRB has openly come out that its **main areas of focus in carrying out its enforcement activities will cover domestic transfer pricing, ...**

The intention here is to, firstly, collect extra taxes and penalties and, secondly, the punishment imposed on such taxpayers should serve as a deterrent to others not to follow suit.”

03

“The IRB across all branches is now **focusing on interest-free loans between related parties and imposing retrospectively deemed interest income on the lender on the grounds that **interest-free loans are not being provided on an arm’s length basis.****

If the interest-free loan is between two **domestic companies, there is no guarantee**

that the section of the IRB that raises the tax on the income side will ensure that the

corresponding deduction is given on the deemed interest payment which may be dealt with by a different section of the IRB.”

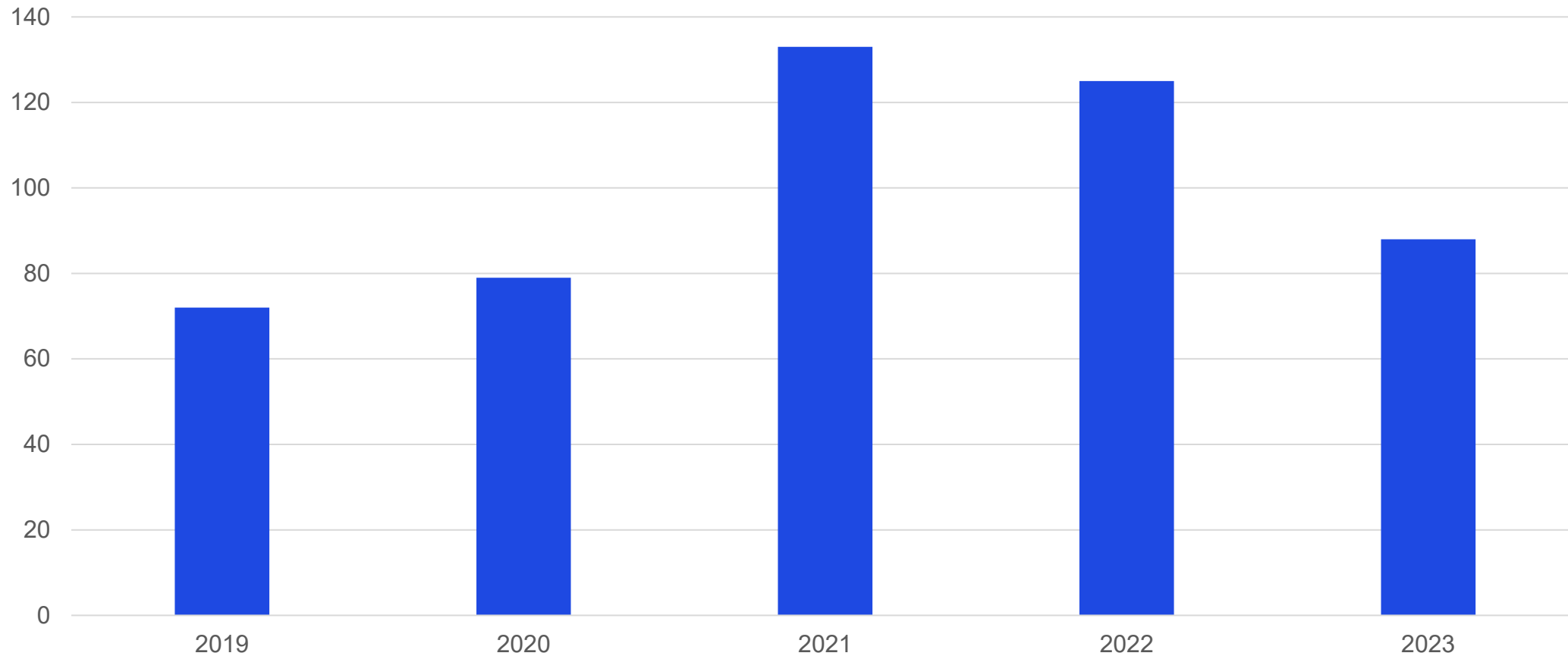
[Tax Matters – Interest-free loans blitz is now haunting taxpayers](#)

The Sun, 26 August 2024



Audit statistics in the Multinational Tax Branch (CCM)

Number of field audit across the years



Source: IRB (2024)



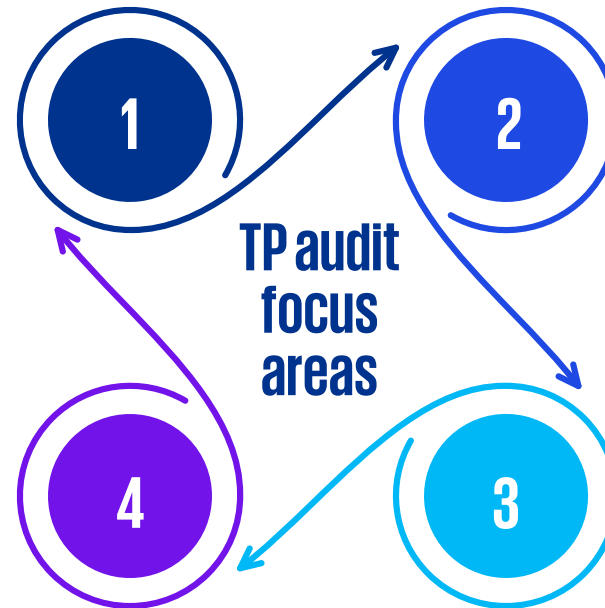
Transfer pricing audit focus areas



Description of related party transactions



Appropriate TP methods



Intragroup services and financing



Characterisation for each business segment

Effective strategies for dispute resolution

01

Description of related party transactions

- Apart from the nature of related party transactions and pricing policies, what additional information would the IRB expect?
- What are the best practices for conducting a periodic review of transfer pricing policies?
- Is it necessary to disclose the functional profiles of both parties in the TP documentation?

Case study

- 6 types of RPTs
- 3 related parties
- 2 business segments

02

Intragroup services and financing

- Is there a “rule of thumb” in Malaysia in determining the arm’s length mark-up for provision of management services?
- What supporting documents should be maintained to prove the benefits received, and what challenges might arise in gathering this evidence?
- Is it appropriate to use fixed deposit (“FD”) rates as an arm’s length interest rate?

- Provision of management services
- Provision of financial assistance

03

Characterisation for each business segment

- Is it important to characterise the company based on business segments?
- Is it necessary to maintain segmented accounts and perform separate economic analysis?
- What are the common challenges faced in preparing segmented accounts, especially on shared expenses?

- Manufacturing
- Trading

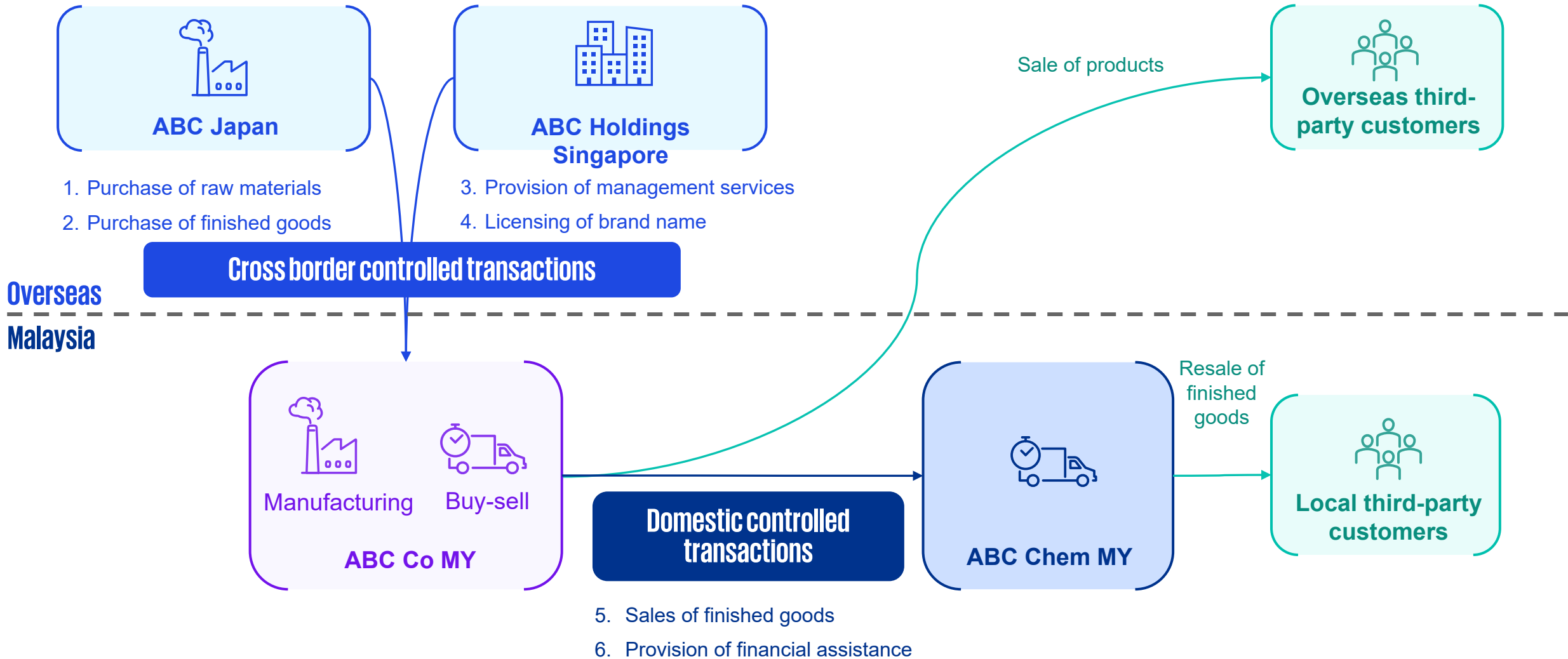
04

Appropriate TP methods

- From a commercial perspective, is Comparable Uncontrolled Price (“CUP”) method challenging to apply in commodity transactions?
- Which benchmarking approach is more appropriate: an entity-wide approach or a transactional approach?
- Is there room for discussion if taxpayers fall outside the arm’s length range?

- Transactional
- Segmental
- Entity-wide

Case study: ABC Group's related party transactions



Navigating TP audits under TP Rules 2023

Question 1

When is the IRB likely to commence TP audits for YA 2023?



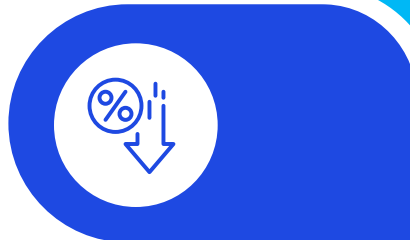
Question 4

What types of documents are typically requested during a TP audit?



Question 2

How can taxpayers reduce the risks associated with TP audits?



Question 5

Does IRB audit domestic controlled transactions?



Question 3

What are the main considerations for intragroup services and intragroup financing?



Question 6

What avenues are available to mitigate TP risks?



Key takeaways

How can I mitigate TP audit risk?

Considerations



Ensure that robust TP documentation is in place to meet the contemporaneous requirements



Maintain accessible supporting documents and evidences to deal with TP audit upheaval



Participate in various tax initiative programs (e.g., Voluntary Disclosure, Advance Pricing Arrangements and Tax Corporate Governance Framework)



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