



# Tax Summit – Johor

18 November 2024

DoubleTree by Hilton  
Johor Bahru

KPMG in Malaysia

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# Transfer Pricing

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# Agenda

- 01** Updates on Malaysia Transfer Pricing
- 02** Malaysia TP Audits & Common TP Issues
- 03** Q&A



# Updates on Transfer Pricing in Malaysia



# Question 1

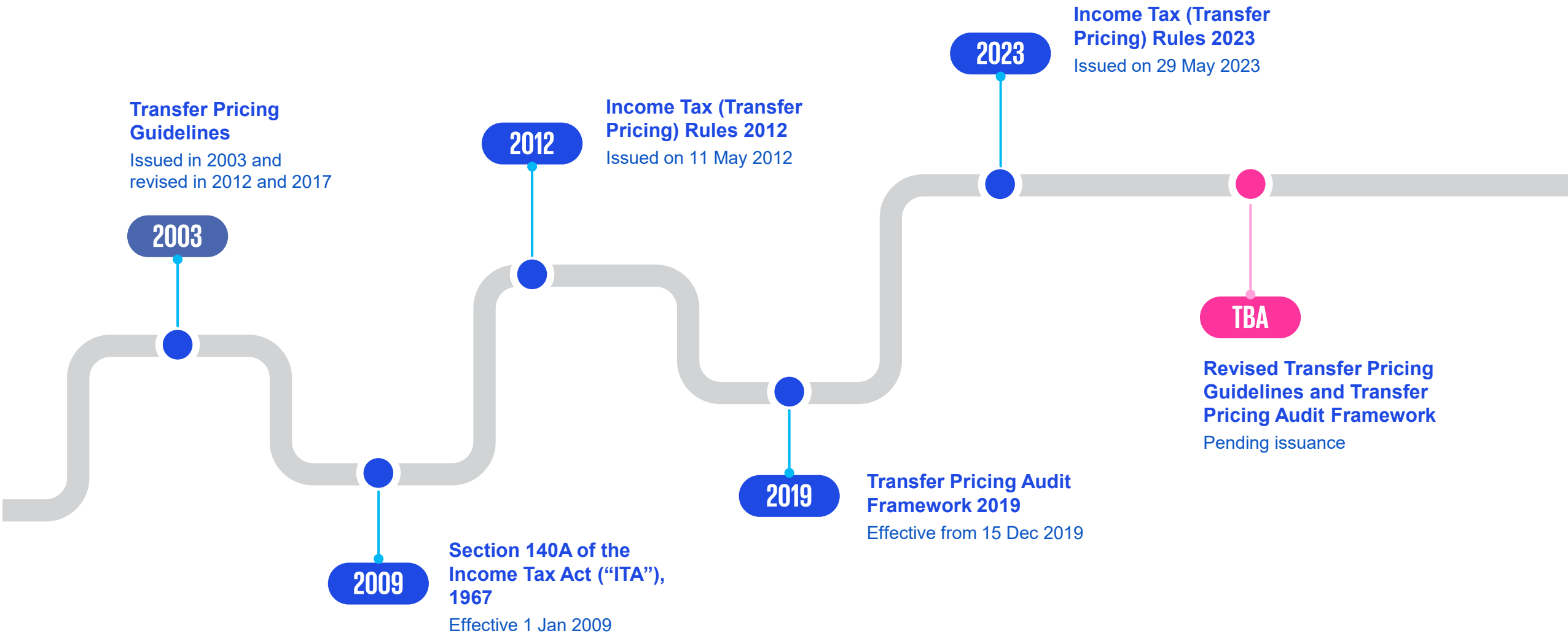


We heard that the requirement of Transfer Pricing in Malaysia has become more stringent.

- a) Should we be complying with the Transfer Pricing Documentation (TPD) preparation according to the Malaysian IRB requirement in TP Rule 2023 for our TPD2023?
- b) Can we rely on our TPD prepared in FY2019 – FY2021 and just update our financial numbers for FY2023?

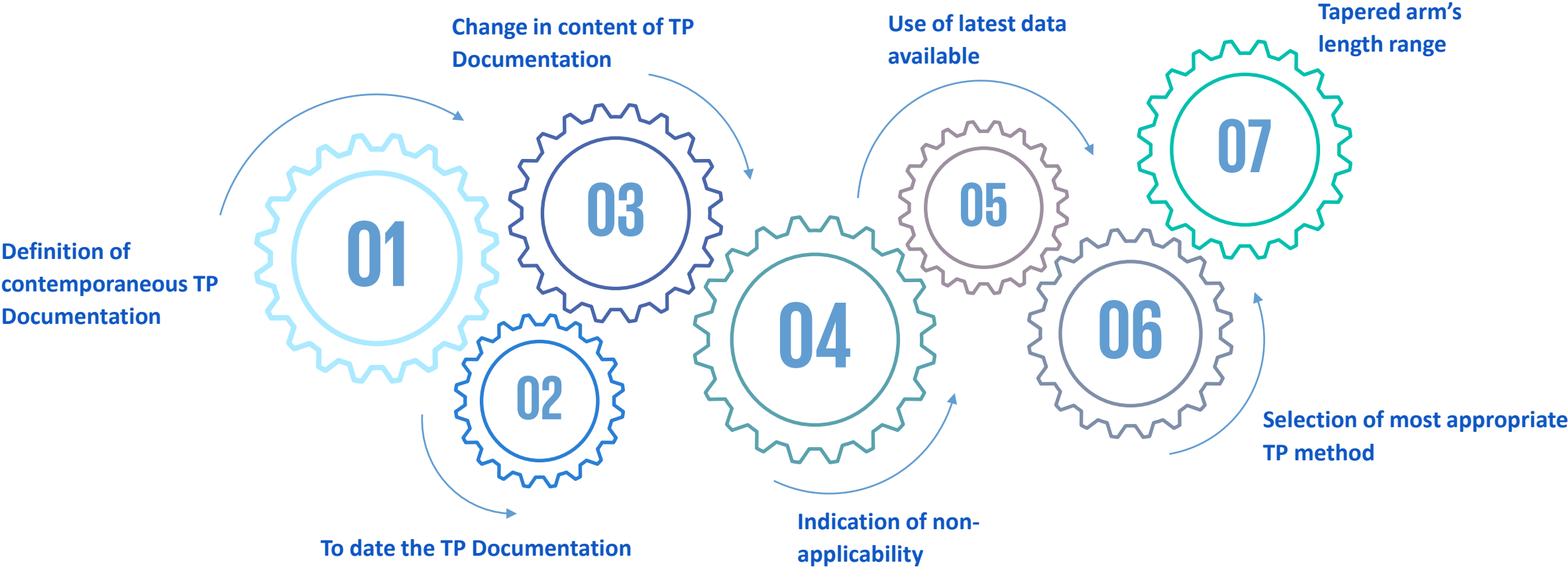
- A. Yes
- B. No
- C. Not sure

# Transfer pricing compliance requirements



# Salient points for TP Rules 2023

TP Rules 2023 was enacted in Malaysia on 29th May 2023. We anticipate that the new TP Guidelines will be released by end of 2024.



# 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



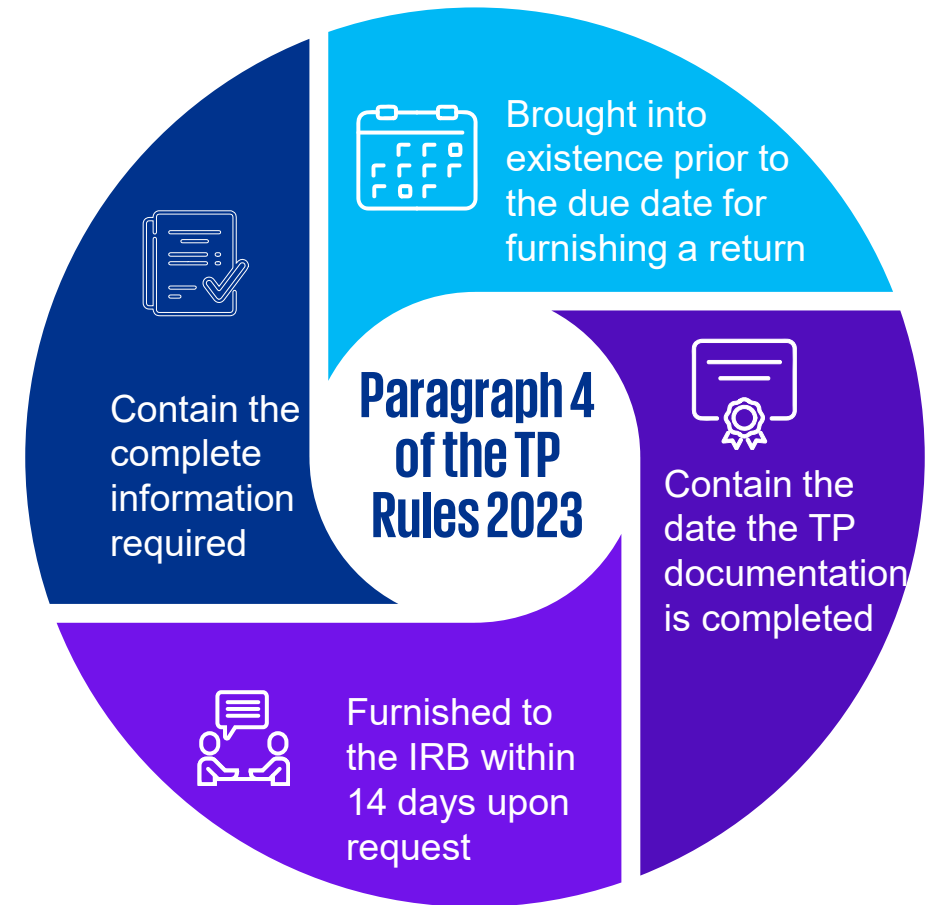
## RM 20,000 to 100,000 Fine

per year of assessment



## Imprisonment ≤ 6 months

If convicted; or both



Source: IRB (2024), MIA TP Conference 2024



# 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

### 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

## TP Rules 2023

# 2023 TP Development - Contemporaneous TPD

## Schedule 1

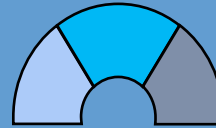


### Multinational Enterprise (“MNE”) Group Information

- ✓ Worldwide organizational structure
- ✓ Product and services , geographic markets, supply chain, functional analysis, etc
- ✓ Intangible properties
- ✓ Financial activities
- ✓ Financial and tax positions

Similar to Master File and relevant to the MNE’s group business in Malaysia

## Schedule 2



### Business Information

- ✓ Organizational structure
- ✓ Nature of the business, industry and market conditions
- ✓ Related party transactions (“RPTs”)
- ✓ Details of pricing policy of RPTs
- ✓ Assumption, strategies and information regarding pricing policy
- ✓ Functional, asset and risk (“FAR”) analysis
- ✓ Comparability analysis
- ✓ Selection and application of TP methodologies

The information are rather extensive and voluminous

## Schedule 3



### Cost Contribution Arrangement (“CCA”)

- ✓ Agreements
- ✓ List and identity of participants
- ✓ Scope of activities
- ✓ Duration
- ✓ Total amount
- ✓ Allocation of task and responsibilities

Detailed information on the CCA activity

# Indication of non-applicability

## Schedule 1

### Multinational Enterprise (“MNE”) Group Information

- Product and services , geographic markets and key competitors
- Supply chain
- Business model and strategies
- Profit driver
- Industry, market, regulatory and market condition
- Functional analysis
- Changes in MNE’s group structure

## Schedule 2

### Business Information

- Organizational structure
- Nature of the business, industry and market conditions
- Related party transactions (“RPTs”)
- Details of pricing policy of RPTs
- Assumption, strategies and information regarding pricing policy
- Functional, asset and risk analysis
- Comparability analysis
- Selection and application of TP methodologies

## Schedule 3

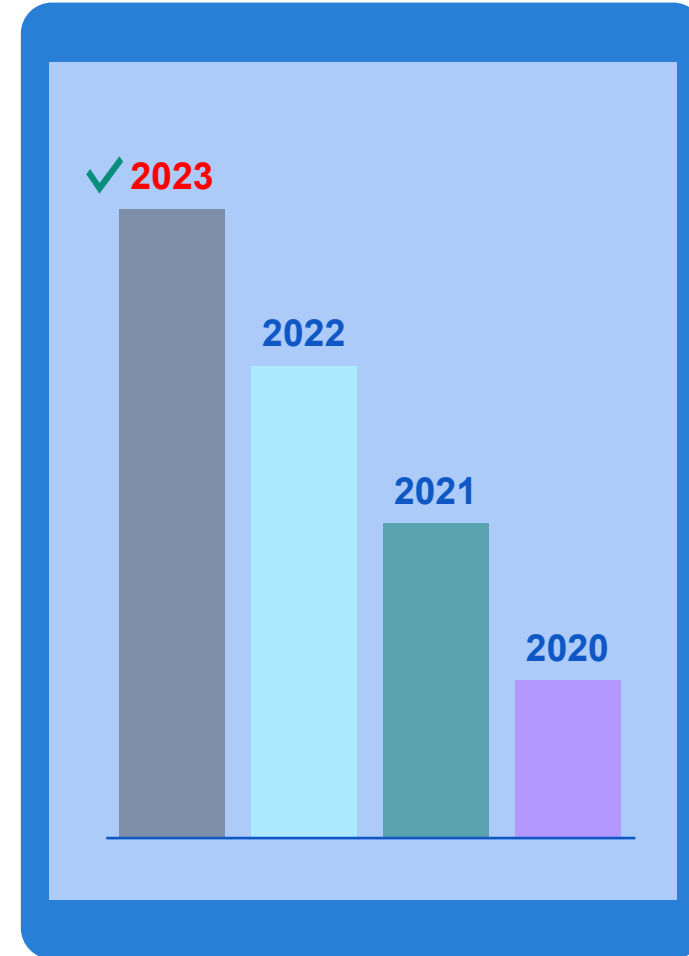
### Cost Contribution Arrangement (“CCA”)

- Agreements
- List and identity of participants
- Scope of activities
- Duration
- Total amount
- Allocation of task and responsibilities

**Taxpayers are now required to indicate if any of the prescribed information under the documentation requirement is not applicable**

# Use of latest data available

**Taxpayers shall determine the arm's length price using the latest data available at the point of preparation of TP Documentation.**



# Selection of most appropriate TP method



Comparable  
Uncontrolled  
Price Method




Resale Price  
Method



Cost Plus  
Method



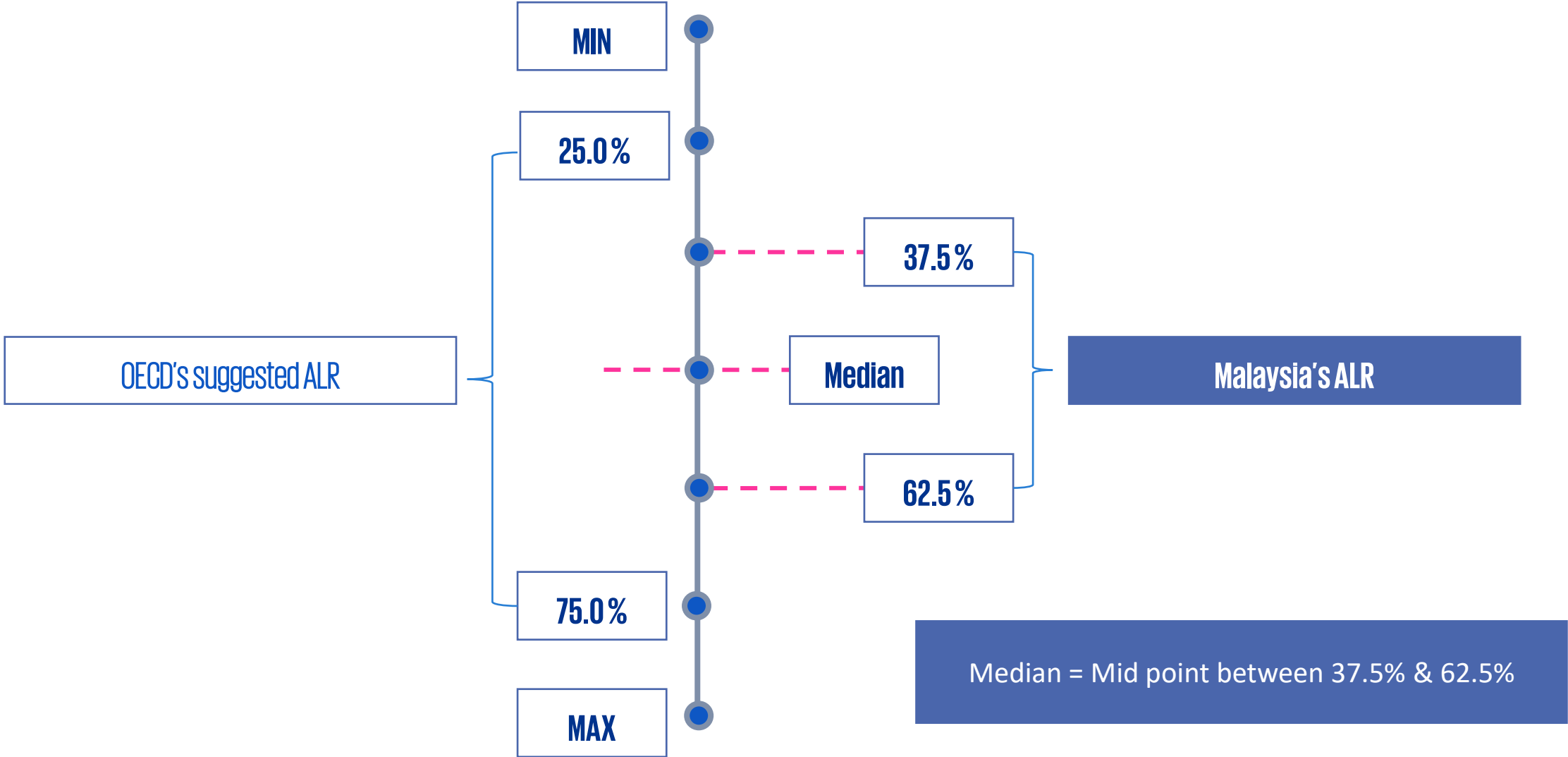
Profit Split  
Method



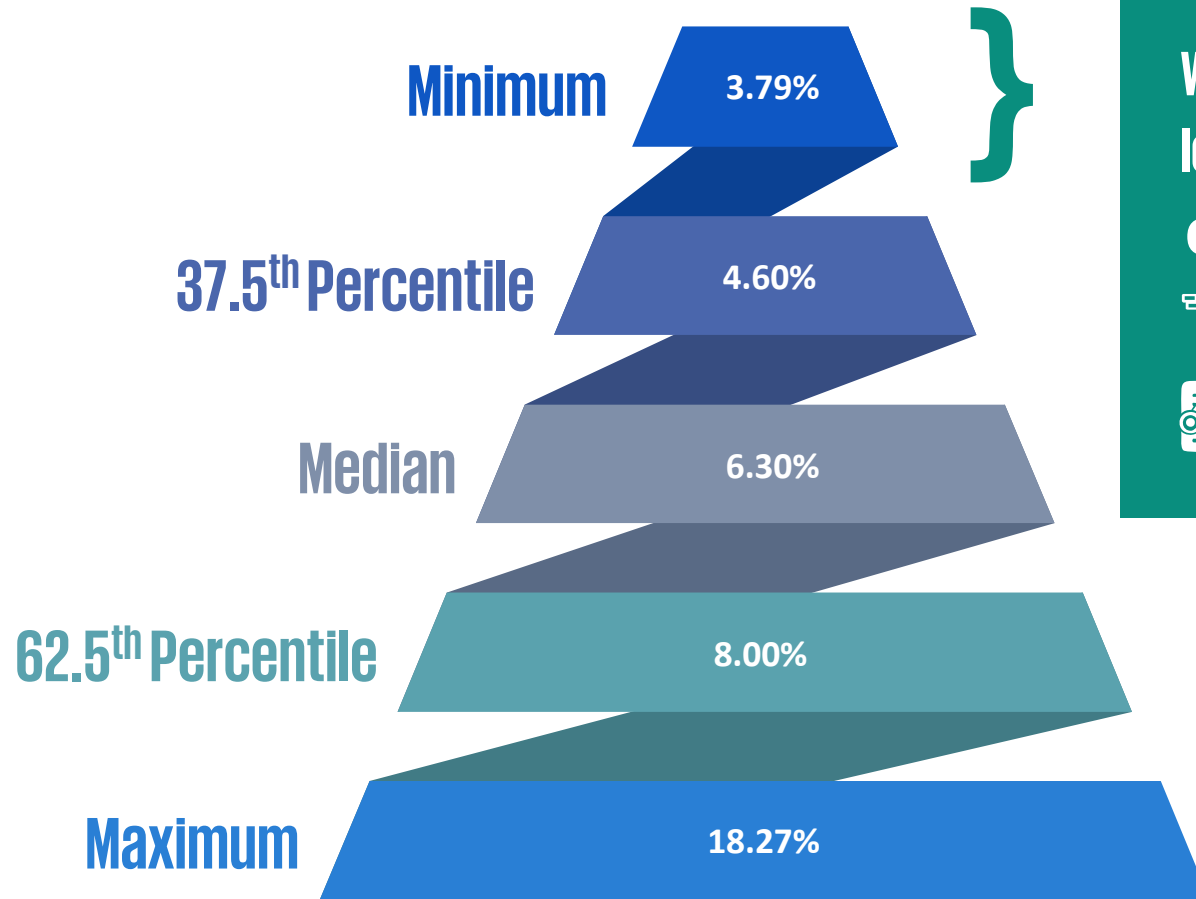
Transactional  
Net Margin  
Method

Taxpayers are not required to follow the hierarchy in selecting the most appropriate TP method.

# 2023 TP Development – Malaysia’s Arms’ Length Range



# What if taxpayers fall below the arm's length range?



## What if taxpayers' result falls below arm's length range or is loss making?



IRB may make TP adjustment to the median and impose surcharge







Profitability analysis is required to explain the position

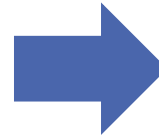
# Illustration of TP adjustment

Details	2023
Company A's OM	2.50%
Median of benchmarking results	6.30%
Difference in OM	3.80%
Revenue	RM100,000,000
TP adjustment	RM3,800,000
TP surcharge of 5% on TP adjustment	RM190,000
Additional tax payable of 24% on TP adjustment	RM912,000
<b>Total (TP surcharge + additional tax payable)</b>	<b>RM1,102,000</b>





# Why is compliance so important now?

-  No date of completion on TP Documentation
-  Failure to complete TP Documentation before filling return
-  Missing information in TP Documentation
-  Late submission of TP Documentation upon request (i.e. more than 14 days)



## Section 113B and TP Rules 2023

-  Fine of RM20,000 up to RM100,000; **and/ or**
-  Prison term up to 6 months;

# Question 2



So, from FY2023 onwards, there is a new TP requirement to prepare Schedule 1 and Schedule 2.

Our company only have transactions with local related companies. Do we still need to prepare Schedule 1 if we do not have any transactions with our overseas related companies?

- A. Yes
- B. No
- C. Not sure

# IRB – FAQ on TP matters - published 3 September 2024

## 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.

## 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?

## 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.

## Schedule 1 - Dormant / inactive / newly incorporated company

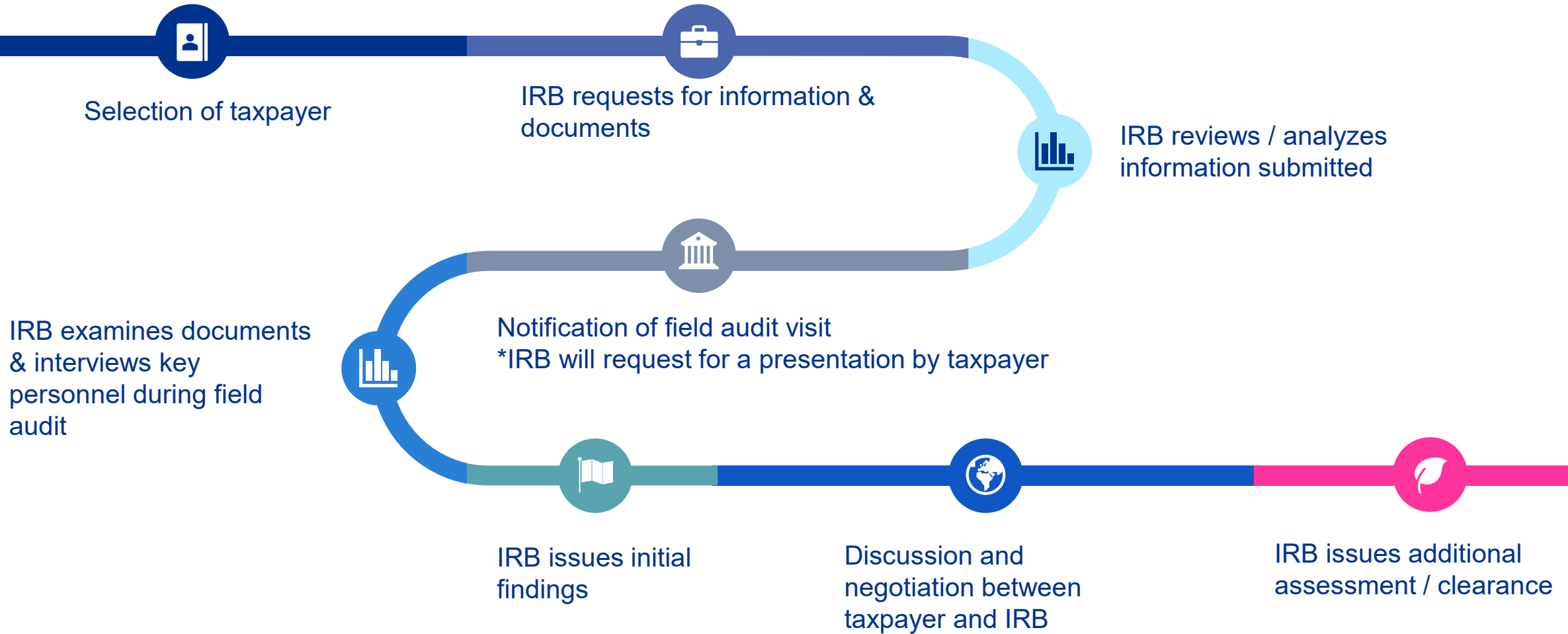
If the overseas companies are dormant, inactive, newly incorporated with no revenue, or have no related party transactions with the Malaysian company for the year of assessment, is the Malaysian company still required to prepare Schedule 1?



# Malaysia TP Audits & Common TP Issues



# TP audit process



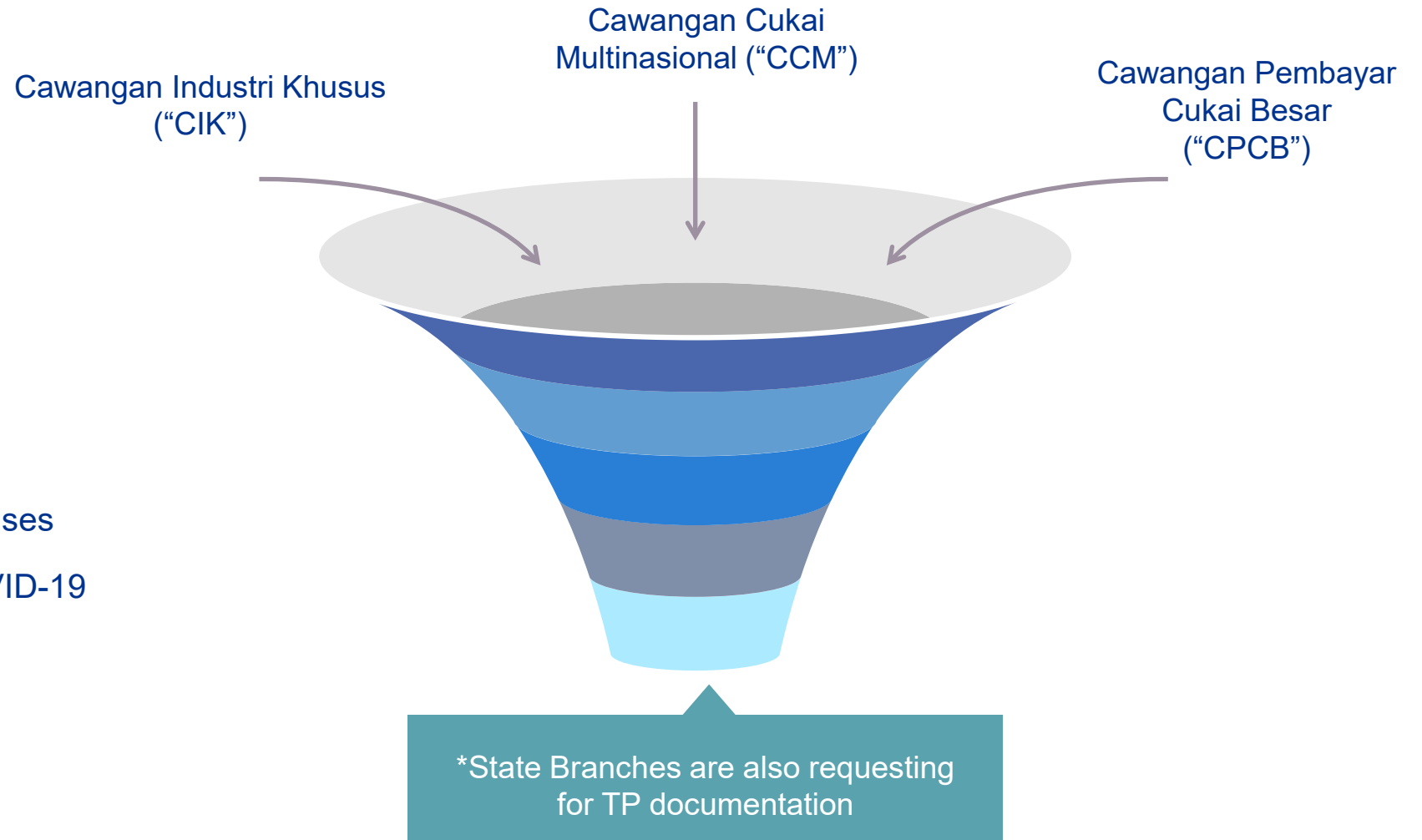
# Types of Audit

## Desk Audit

- Conducted at Inland Revenue Board (“IRB”)’s office

## Field Audit

- Conducted at taxpayers’ premises
- Halted temporarily due to COVID-19 but has now resumed



# Typical information requested by IRB

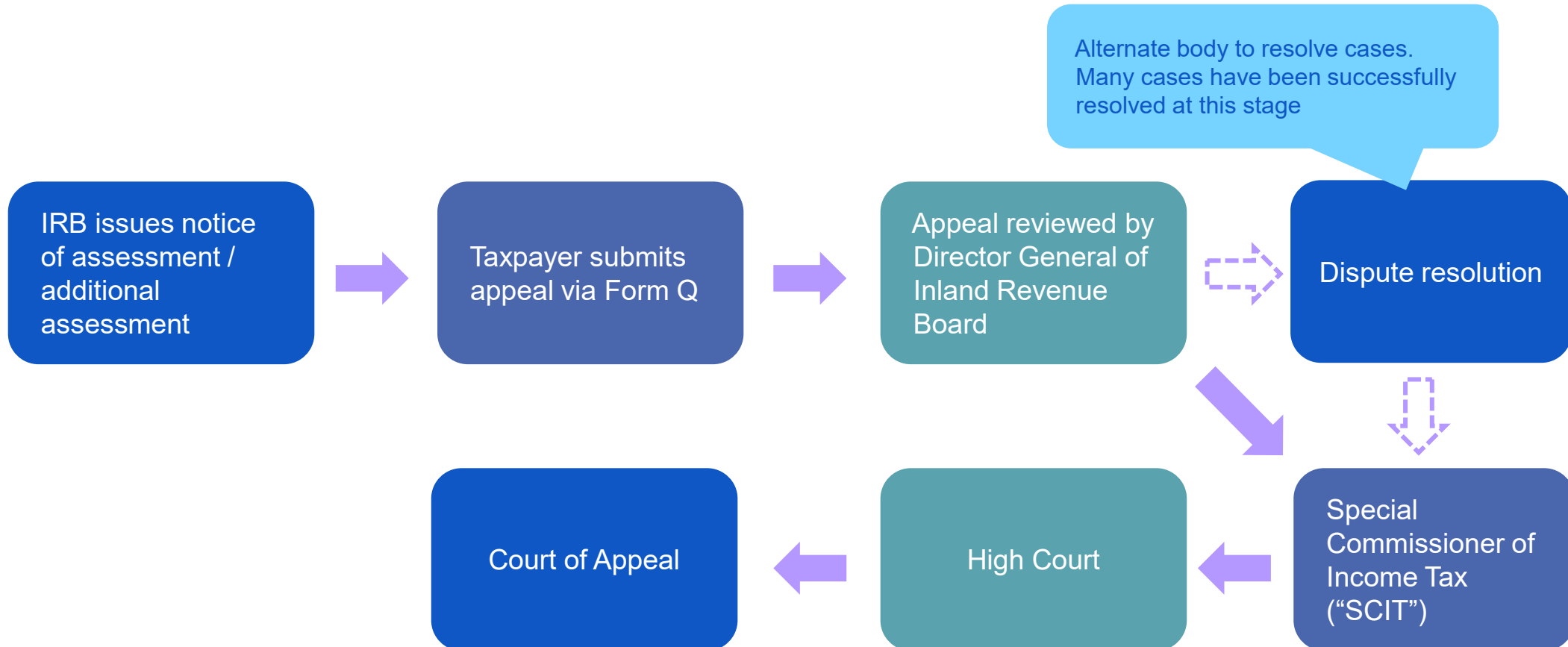
Type of information*	Submission period
Audited accounts	14 days
Tax computations	
Income tax return forms	
Incentives application forms and approvals	
Audit adjustments	
Trial balance and chart of accounts	
Company's accounting information	
Agreement/Contract with related parties	
TP documentation**	14 or 30 days
Functions, assets and risks analysis (Lampiran A)	

\*The list above is not exhaustive.

\*\* TP Guidelines has been updated on 29 Jan 2021 to require taxpayer to submit TP documentation within 14 days upon request by the IRB.

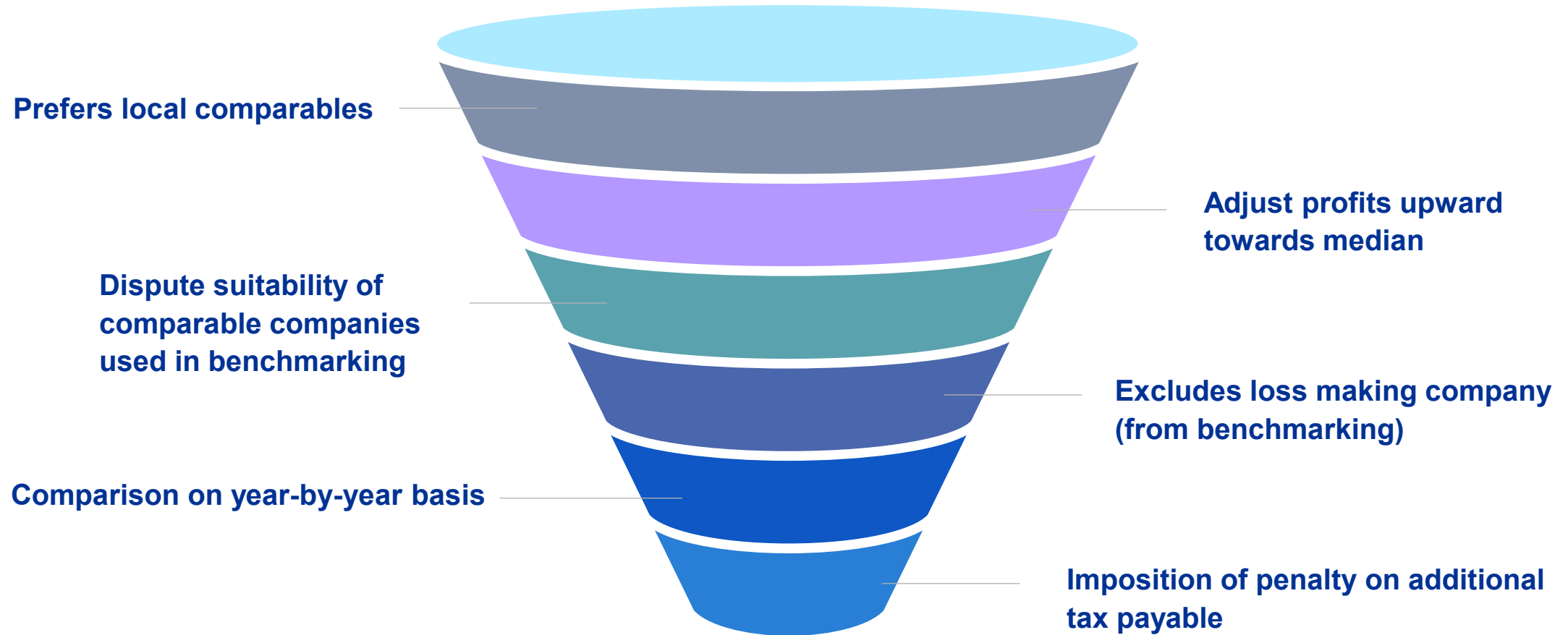
# Post-audit and appeals

What are the options if the taxpayer and IRB cannot reach an amicable resolution?

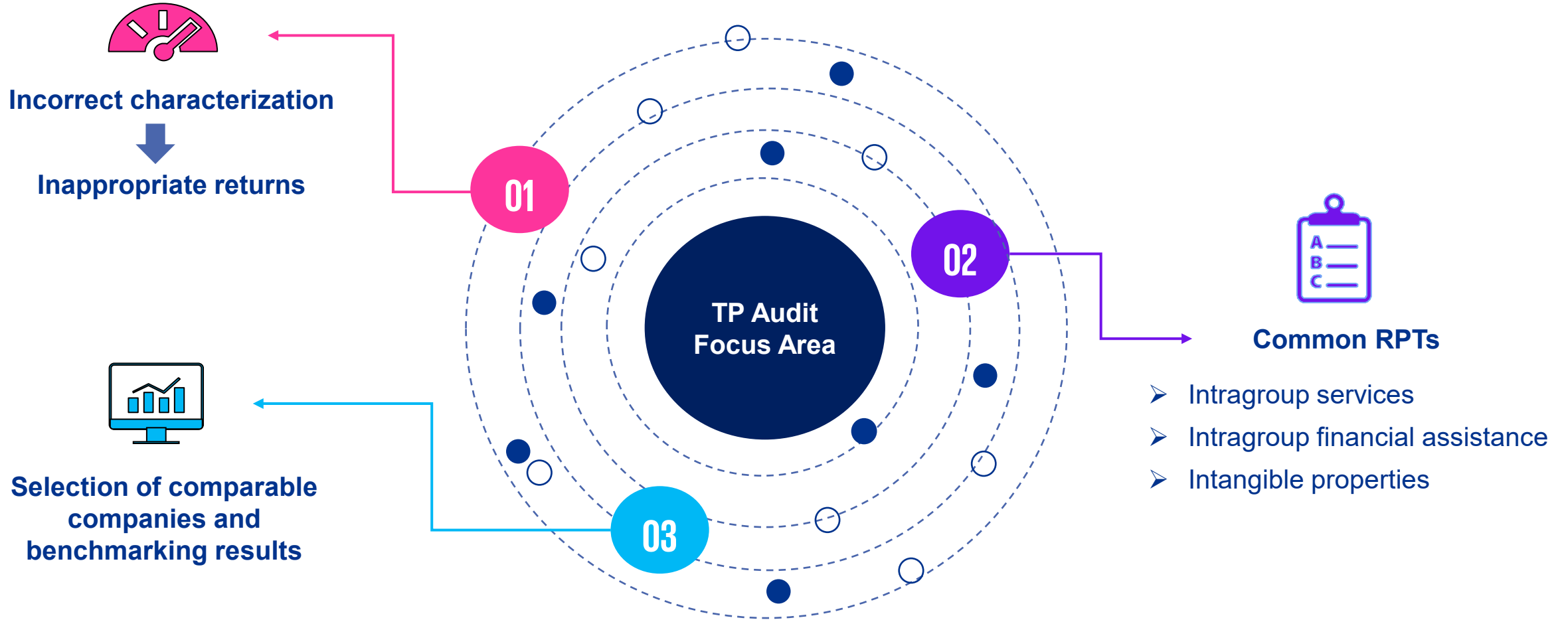




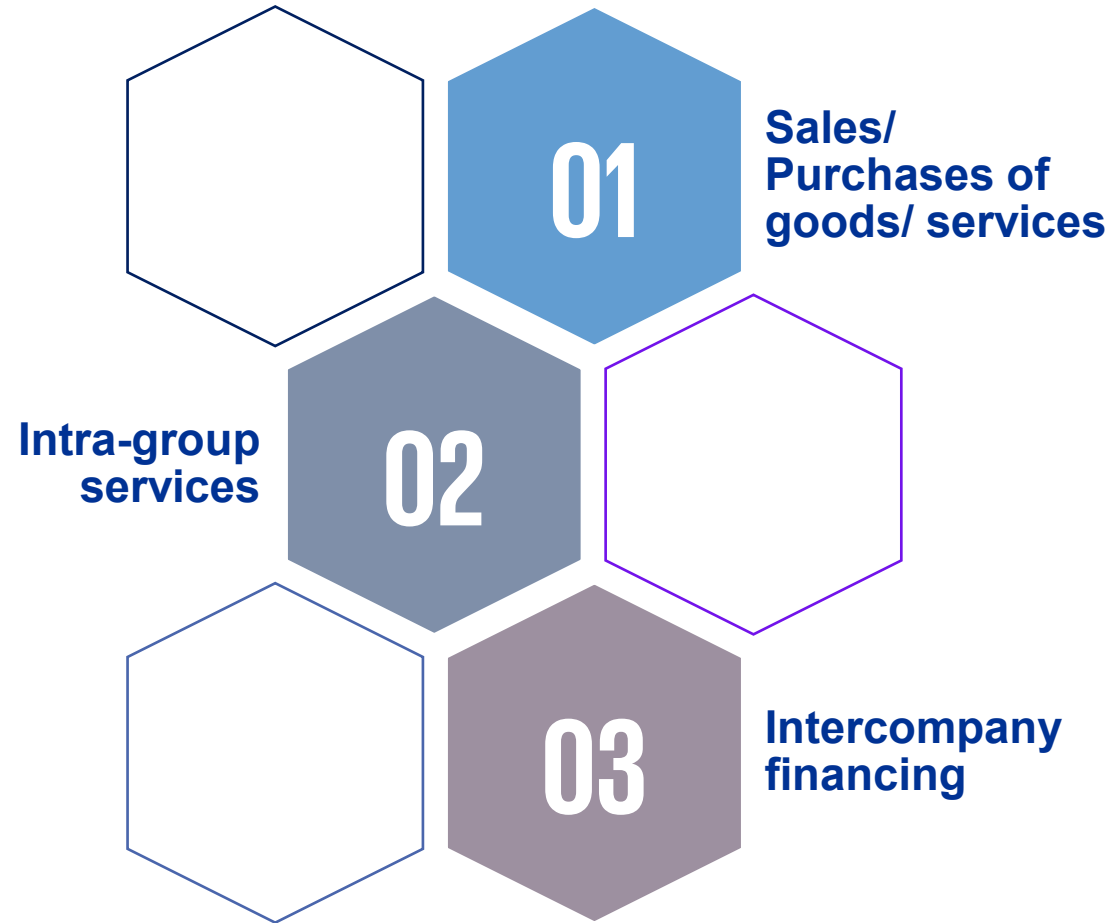
# IRB's Approach & Practice



# Focus Areas in TP Audit



# Common TP Issues

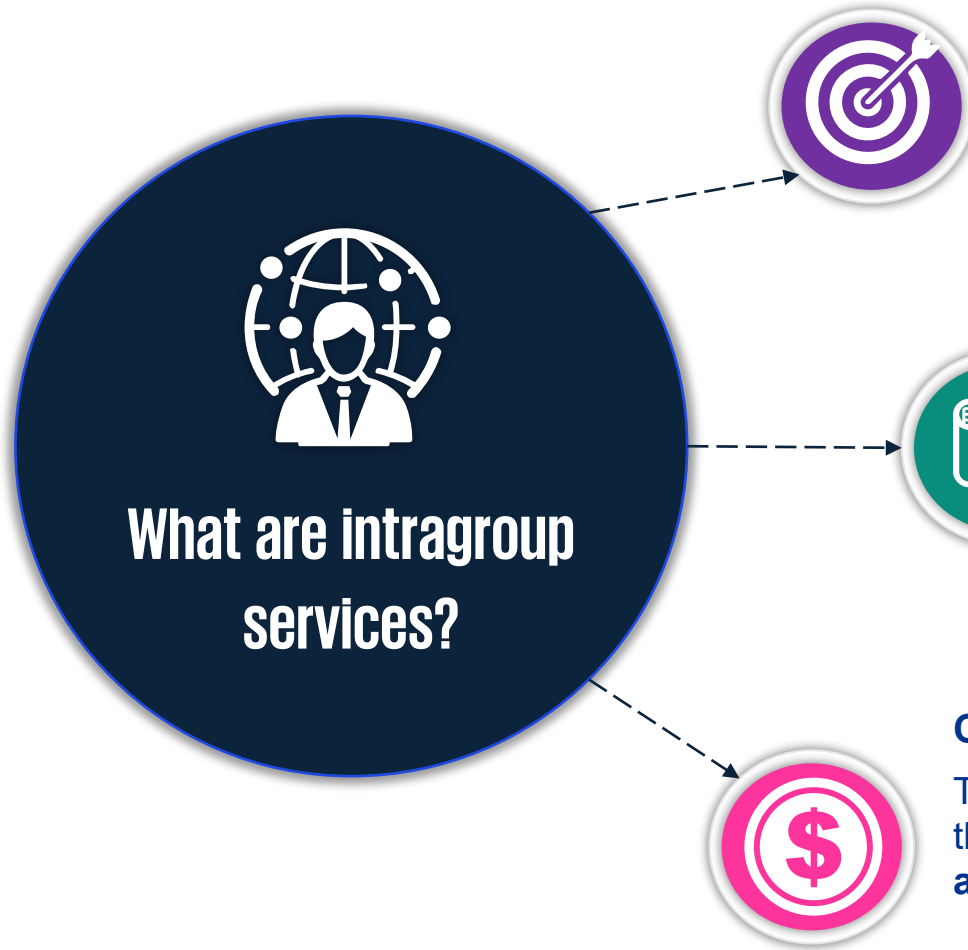




# Intragroup Services



# What are intragroup services?



## Definition

Services provided by one or more members of a multinational group for the benefit of the other members within the group.

## Types

Include but not limited to, strategic management services, administrative services, and other commercial services that typically can be provided about the nature of the group's business.

## Charging mechanism

The costs in providing the services are initially borne by the service provider are eventually **recharged with an arm's length mark-up** to the service recipients.

# Types of intragroup services

## Types of services usually provided within a group of companies



**Management services**



**Business consultancy**



**Support services (accounting, tax, public relations, personnel, IT, etc.)**



**Distribution and commission services**



**Leasing**



**Treasury**



**Staff secondments**

## Technical and strategic

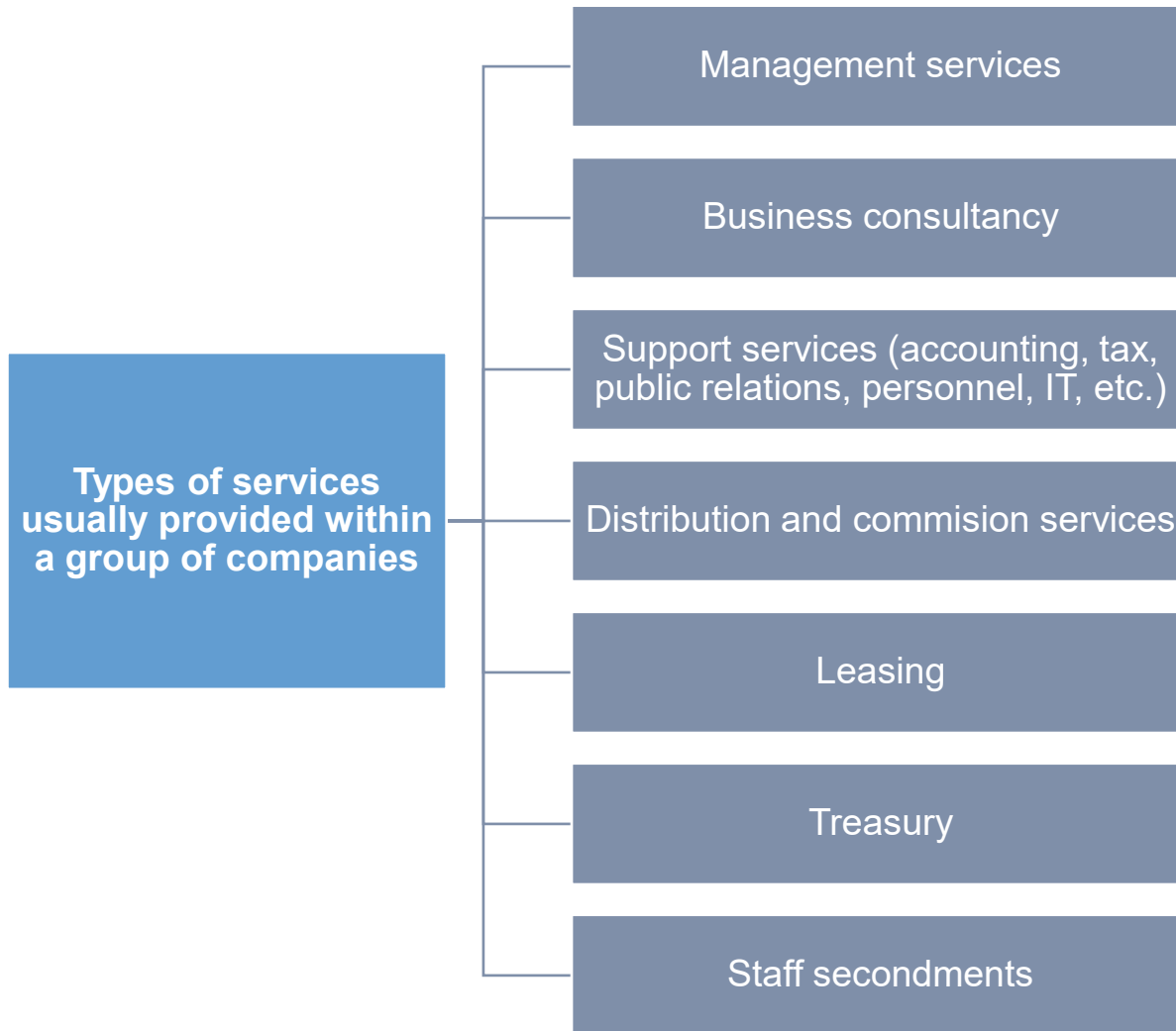
- In-depth analytical skills and judgment calls
- E.g. software development, specialized engineering, consultancy, R&D, etc

## Routine and administrative

- Administrative in nature and driven by pre-defined sets of rules and processes
- E.g. shared services, helpdesk support, accounting and book-keeping

- ❑ Important to characterise the nature of services in order to perform benchmarking exercise to determine/ evaluate arm's length mark-up

# Intragroup Services



## Special Transfer Pricing Considerations for Intragroup Services

### **Substance test**

Whether the services were actually performed

### **Benefit test**

Whether the services bring stated benefits to all interested parties better than any other transaction could

### **Arm's length test**

Whether price for the services correspond with those which would be made between independent enterprises

Transfer pricing documentation should be complemented with information package proving that the tests were actually met.

# Benefit test – how to prove?

01

Email correspondences

02

Meeting minutes

04

Frameworks or guidelines

03

Tickets raised and resolved

05

Presentation slides or report analyses

## Practical difficulties



**Mismatch of documentary evidences to services provided**



**Reliance on Global Transfer Pricing Documentation**



**Struggle to identify the relevant personnel receiving the services**



**Services received are not in accordance with Service Level Agreement**





# TP common questions



# Question 3

Our company have extra cash which we provide to our subsidiary company as a loan. Our subsidiary company is a newly set-up company and their business is yet to be profitable. Can we not charge them any interest for the loan since they are not able to pay us anyway?

- A. Yes
- B. No
- C. Maybe



# Question 4



Our company obtained extension of time (“EoT”) of 15 days from the extended submission deadline to submit our e-form C for the FY.

Can we use this approved extended date as the deadline for our TPD as well?

- A. Yes
- B. No
- C. Not sure

# Question 5

There are no similar companies operating in Malaysia that my company can use as comparable companies in our TPD. My holding company in Singapore has prepared their TPD using Asia Pacific companies in their benchmarking set.

Can I use the same Asia Pacific set to test my RPTs?

- A. Yes
- B. No
- C. Not sure



# Question 6



In FY2022 and FY2023, our company had sales transactions with our related companies in Japan and Australia. We have prepared the relevant TPDs for those FY. This FY, there is no revenue transactions with our related companies, only amount due from them in our balance sheet. Do we need to prepare TPD for FY2024?

- A. Yes
- B. No
- C. Depends

# Question 7



We have received the IRB's e-mail requesting for submission of documents for Tax Audit purposes of our FY2021 to FY2023. One of the documents requested is our company TPD. We have prepared our TPD for FY2021 and FY2022 but not for FY2023. We need time to prepare and complete the TPD for FY2023.

Can we request for extension of time ("EoT") for the submission of the TP Doc for FY2023?

- A. Yes
- B. No
- C. Not sure

# 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**

**Always enquire and understand the basis of charges received from related companies and request for the supporting documents**

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



# Q&A session







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