



Tax Summit 2023

KPMG – Johor Chapter

Transfer Pricing

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KPMG Tax Services

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Agenda

- 01** In perspective: The Arms Length Journey in Malaysia
- 02** Truth or Myth: Malaysia TP Audits
- 03** Q&A

In perspective: The Arms Length Journey in Malaysia

Transfer Pricing (“TP”) Fundamentals

What is Transfer Pricing?

Controlled transaction

Sales or purchases of goods, services, use of intangibles (i.e. patent, know-how, trademark, copyright, etc.), financial assistance (i.e. loans, interest bearing trade credits, advance or debt and the provision of any security or guarantee), etc.



Company A

Transfer price



Is it at arm's length?



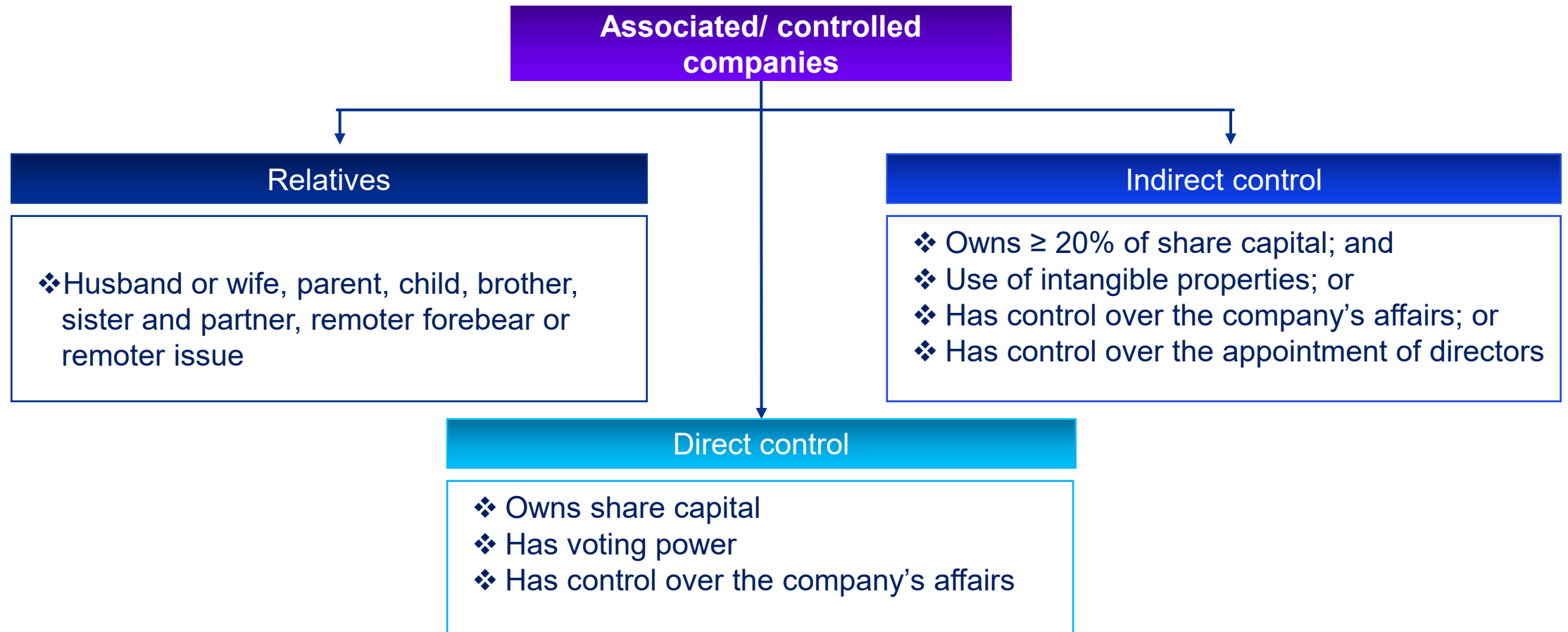
Company B

(i.e. Associated company)

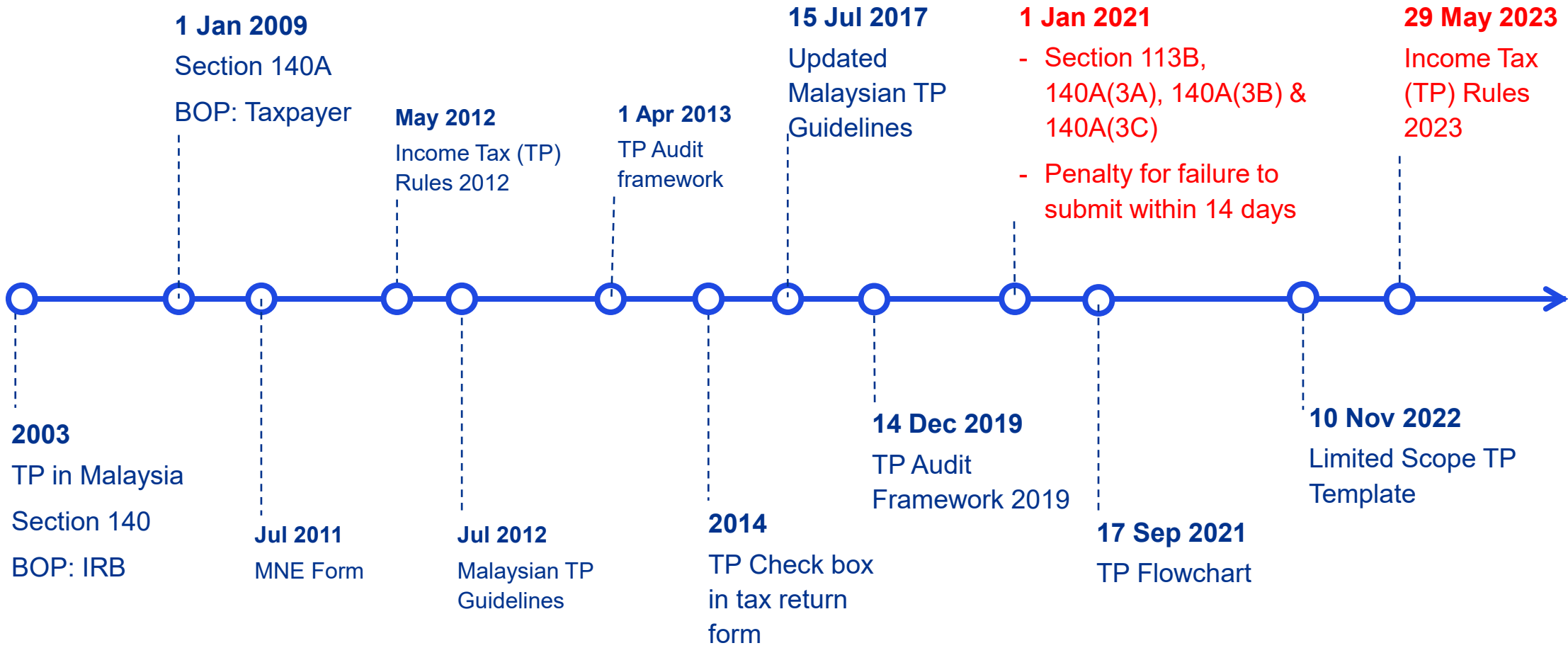
Transfer Pricing (“TP”) Fundamentals

Who is subject to?

The companies are deemed associated or controlled by the virtue of the following:



Timeline summary - TP Developments in Malaysia



2021 TP Development- Section 113B

Failure to furnish contemporaneous TP documentation

According to Section 113B of the ITA 1967, the following penalties would apply for failure to furnish TP documentation on time in respect of any year of assessment (“YA”).

	Penalty
Section 113B(1) <i>On conviction</i>	<ul style="list-style-type: none">• A fine of not less than twenty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.• Furnish TP documentation within <u>14</u> days or any other period decided by the Court.
Section 113B(4) <i>If no prosecution</i>	<ul style="list-style-type: none">• Penalty of not less than twenty thousand ringgit and not more than one hundred thousand ringgit.

For example, if the MIRB requests for TP documentation for the YAs 2016 to 2019 and taxpayer is unable to submit on time, penalties of between RM 80,000 to RM 400,000 can be applied (penalty is applicable for each YA).

2021 TP Development- Section 140A(3A)

Section 140A(3A):

“The Director General may disregard any structure adopted by a person in entering into a transaction if

- 1. The economic substance of that transaction differs from its form; or**
- 2. 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.”**

2021 TP Development– Section 140A(3B) and 140A(3C)

Section 140A(3B):

“Where the Director General disregards any structure....., the Director General shall make adjustment to the structure of that transaction as he thinks fit to reflect the structure that would have been adopted by an independent person dealing at arm’s length...”

Section 140A(3C):

“...the Director General may... require that person to pay a surcharge of not more than five percent of the amount of increase of any income generally, or reduction of any deduction or loss,....”

2023 TP Development – Income Tax (TP) Rules 2023



With effect from:
YA 2023

2023 TP Development - Income Tax (TP) Rules 2023



New definition of contemporaneous TP documentation

Prior to YA 2023

- when a person is developing or implementing any controlled transaction; and
- If there are material changes in a controlled transaction during a tax assessment year, the documentation shall be updated prior to the due date for furnishing a tax return for that year.

YA 2023

TP documentation is brought into existence **prior to the due date for furnishing the tax return (i.e., Form C).**



To date the TP documentation

Taxpayers are now required to **indicate the completion date of the TP documentation** to satisfy the contemporaneous requirement, which is prepared **prior / at the point of submission of Form C.**

Failure to Comply



Penalty of RM20,000 to RM100,000



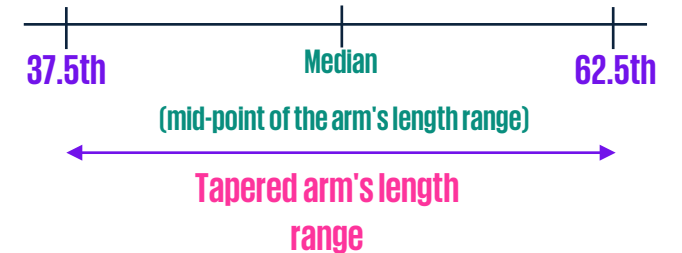
Imprisonment of six (6) months.



Tapered Arm's Length Range

The arm's length range is now defined from **37.5th** percentile to **62.5th** percentile of the benchmarking results.

On top of the tapered arm's length range, it is legislated that IRB can now adjust the taxpayers' results to the median point of the arm's length range in the event of TP audit.



2023 TP Development - Income Tax (TP) Rules 2023



Change in content of TP documentation

Taxpayers are now required to prepare a localized master file (i.e., **Schedule 1**) as part of contemporaneous TP documentation.

There are also other information that are required (i.e., **Schedule 2** and **Schedule 3**) which makes the TP documentation for YA 2023 rather extensive and voluminous.

Schedule 1

Multinational Enterprise ("MNE") Group Information

Schedule 2

Business Information

Schedule 3

Cost Contribution Arrangement ("CCA")



Indication of non-applicability

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

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

2023 TP Development - Contemporaneous TPD

Schedule 1

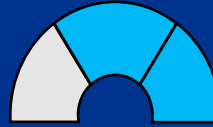


Multinational Enterprise (“MNE”) Group Information

- ✓ 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

2023 TP Development – Completion Date of TPD

TPD will be regard as Contemporaneous TP Documentation 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?

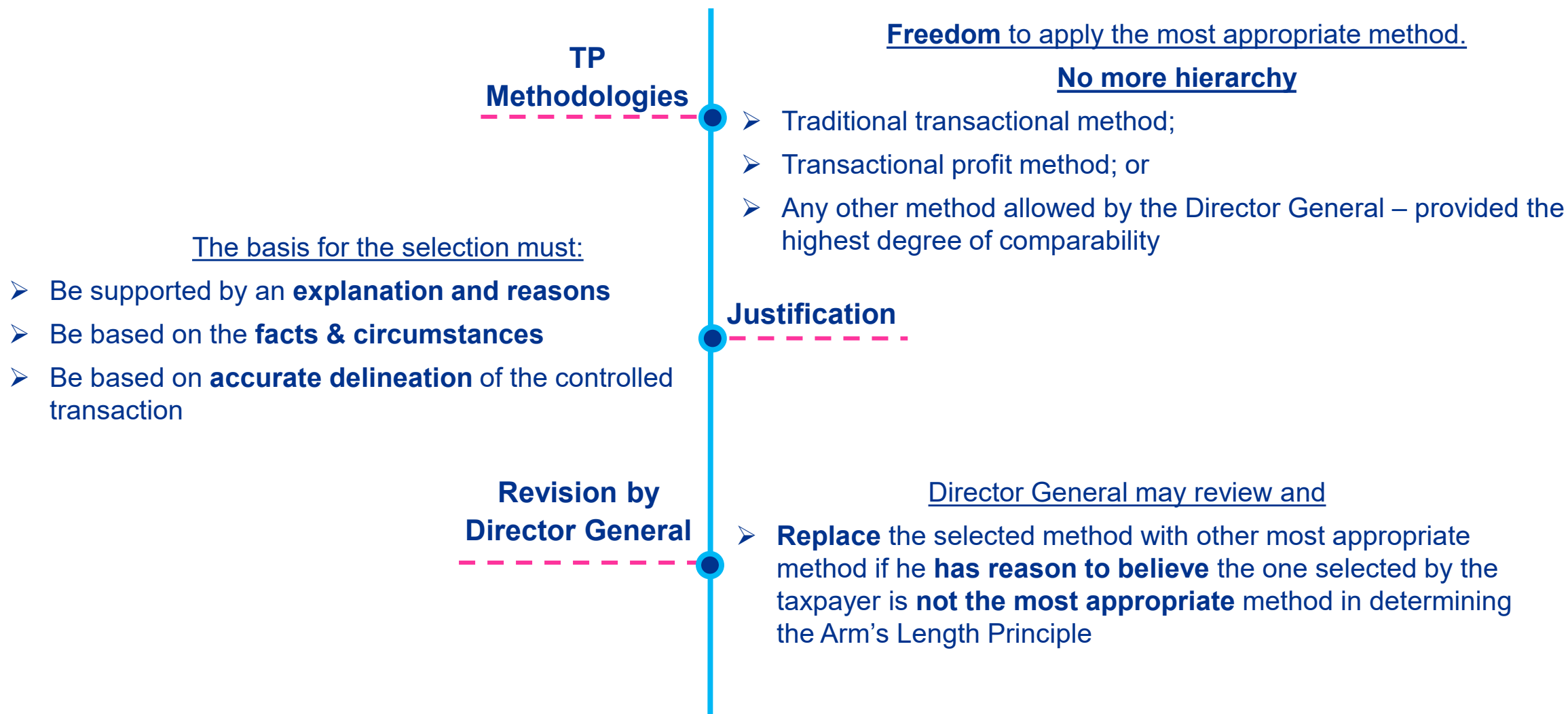
The date that the company finalized the TPD prepared.



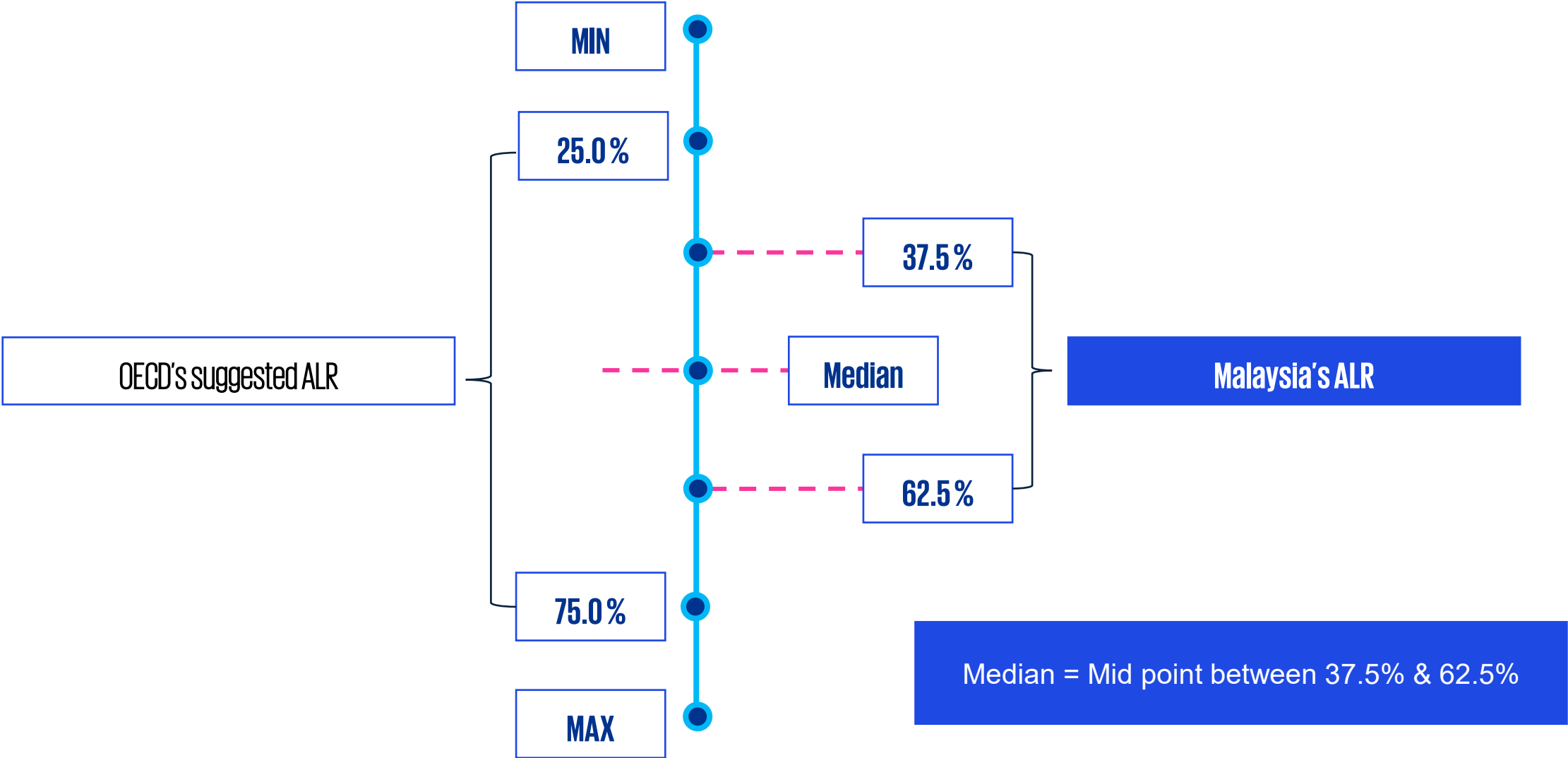
What are the consequences in the following scenarios?

Scenario	Contemporaneous TPD
EOT is granted on submission of Return Form & date follow EOT date	Yes
Date not specified on TPD	No
Date later than e-form C filing deadline	No

2023 TP Development - Determining Arm's Length



2023 TP Development – Malaysia’s Arms’ Length Range



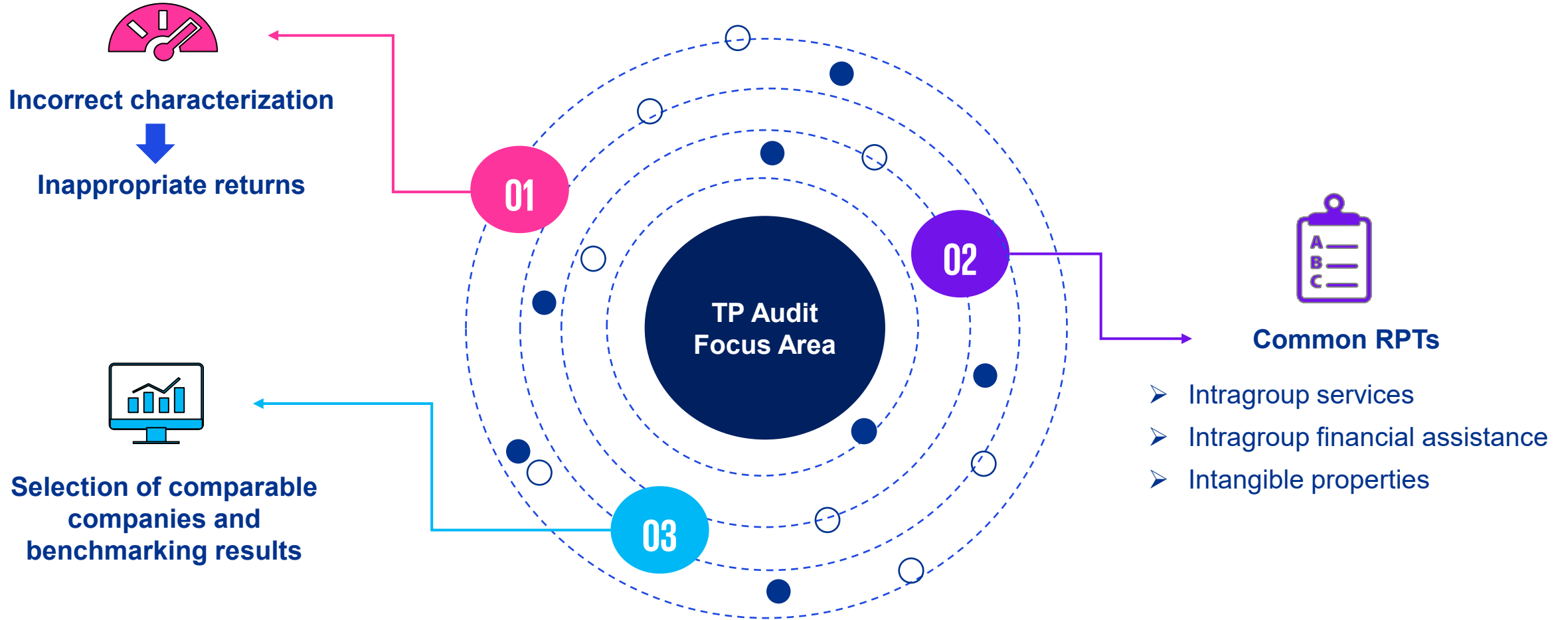
Truth or Myth: Malaysia TP Audits

Truth or Myth: Malaysia TP Audits

Truth or Myth:

Once a company gets tax audited for Transfer Pricing matters, the company will surely have to pay additional tax – either from TP adjustment, TP penalties or TP surcharge

Focus Areas in TP Audit



Truth or Myth: Malaysia TP Audits

Truth or Myth:

As a group of companies, it's common to provide services to each other. Applying the cost plus 5% mark-up on the services rendered to each other is sufficient proof that we have rendered services at arms' length.

TP Audit: 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.)



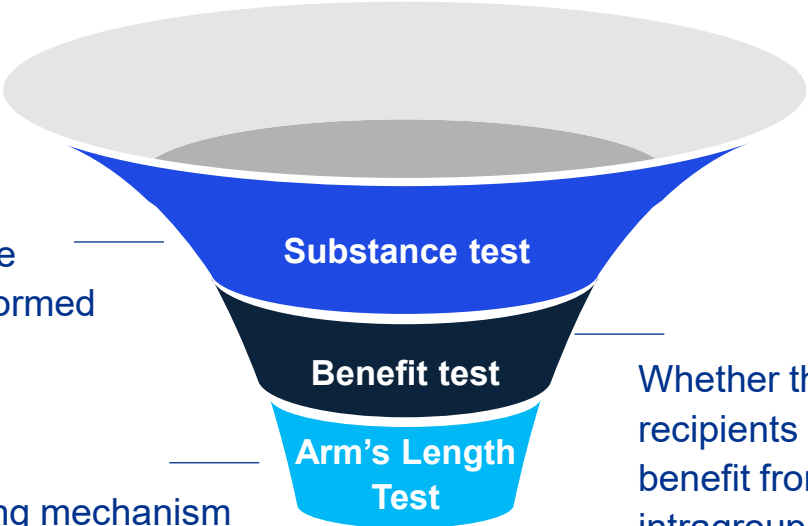
Distribution and commission services



Leasing



Treasury



Whether the services were actually performed

Substance test

Benefit test

Whether the service recipients receive any benefit from the intragroup services

Whether pricing mechanism applied by service provider is in compliance with the arm's length principle

Arm's Length Test

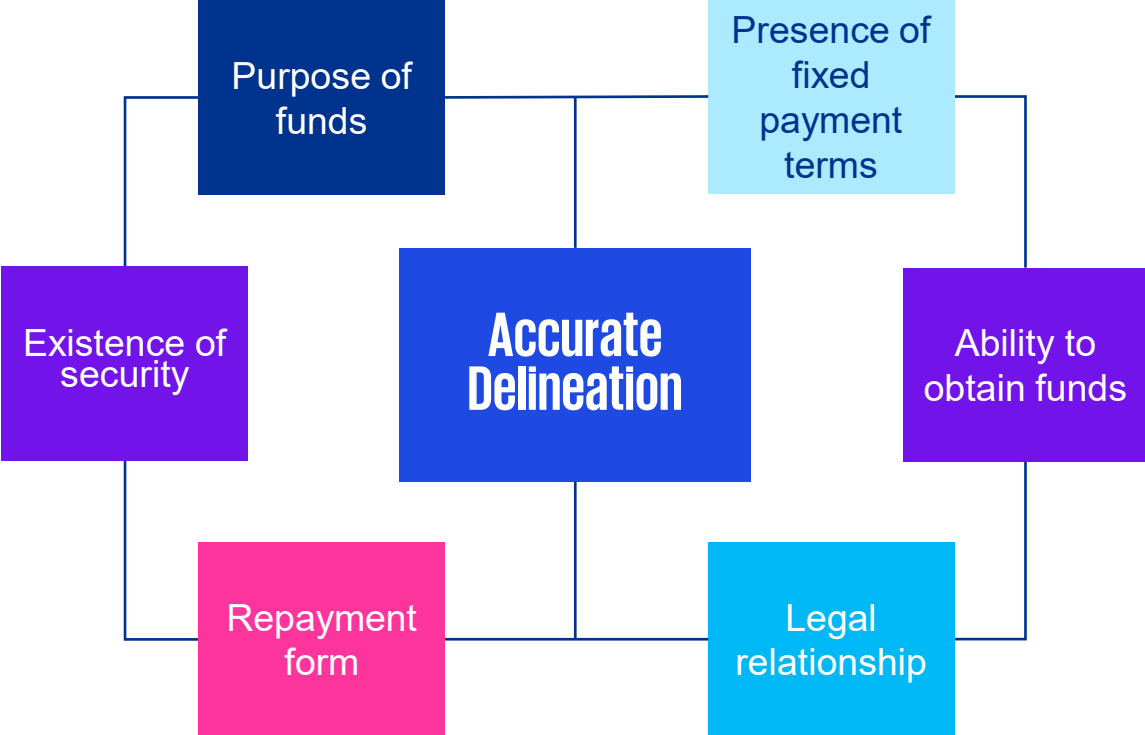
Truth or Myth: Malaysia TP Audits

Truth or Myth:

As a holding company, if we provide advances to our subsidiaries, we can argue that it is capital in nature and thus, no interest charged on the amount.

TP Audit: Intragroup Financial Assistance

What is the nature of the funds?



Truth or Myth: Malaysia TP Audits

Truth or Myth:

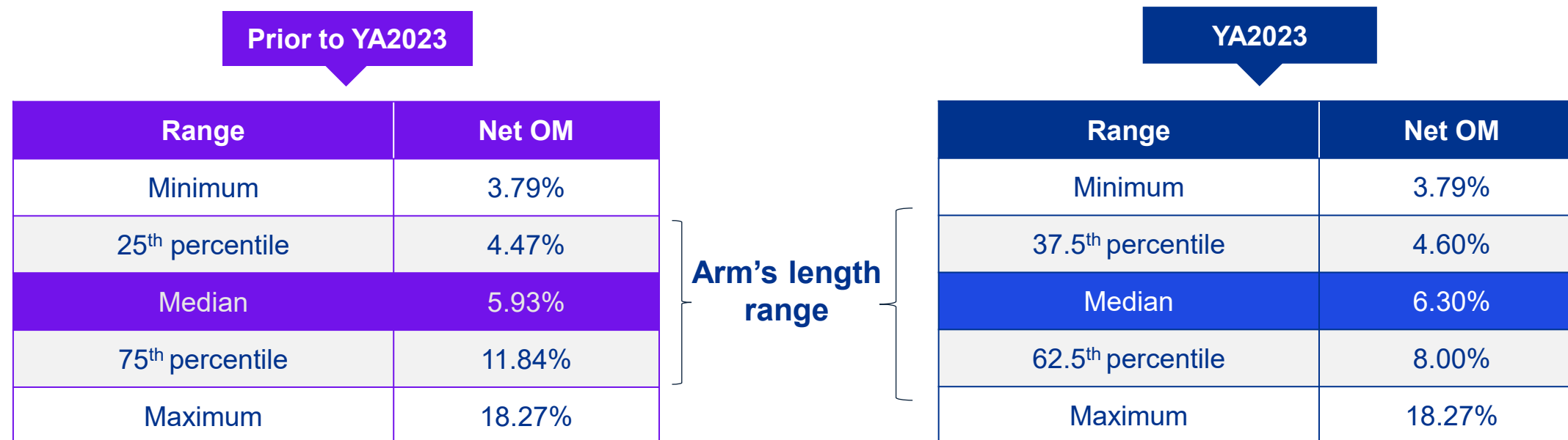
In concluding the TP Audits, the Inland Revenue may adjust the company's margin to the range that is above median of the benchmarking analysis.

Illustration of the tapered arm's length range

Set of comparable:

Net Operating Margin ("OM")	Company A	Company B	Company C	Company D	Company E	Company F
	4.42%	7.23%	4.63%	3.79%	18.27%	13.38%

Benchmarking range of results:





“

TP Documentation is the
FIRST LINE OF DEFENSE
in the event of TP audit

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Key takeaways



Q&A session



The image features a large, white, stylized KPMG logo centered over a scenic view of a city skyline. The skyline includes several prominent skyscrapers, notably the Petronas Twin Towers on the left and the Kuala Lumpur Tower in the center. In the foreground, a large body of water reflects the sky and buildings, with a fountain spraying water upwards. The overall scene is captured during the day under a clear blue sky.

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