

Deloitte TaxMax

Transfer pricing compliance

How proactive organisations can prepare

24 November 2021

Introducing our distinguished speakers from IRBM



Hisham Rusli

Director
Branch Head
Multinational Tax Branch
Inland Revenue Board of Malaysia



Norzilah Mat Arbak

Deputy Director
Field Audit Services Division
Multinational Tax Branch
Inland Revenue Board of Malaysia

Moderators for the session:



Theresa Goh

Transfer Pricing Executive Director
Deloitte Malaysia



Subhabrata Dasgupta

Transfer Pricing Leader
Deloitte Malaysia

Regulatory update

Enhanced compliance standards

Regulatory updates

Penalty for failure to furnish TP Documentation Section 113B

- Fine of RM20K to RM100K or imprisonment up to 6 months or both on conviction

Non-recognition of related party transactions Section 140A(3A)

- Disregard/re-characterise controlled transactions where structures:
 - lack substance
 - substance differs from form
 - commercially irrational arrangements

New penalty on TP adjustment Section 140A (3C)

- 5% surcharge on TP adjustment

Regulatory updates

Penalty for failure to furnish TP Documentation Section 113B

- Fine of RM20K to RM100K or imprisonment up to 6 months or both on conviction

Non-recognition of related party transactions Section 140A(3A)

- Disregard/re-characterise controlled transactions where structures:
 - lack substance
 - substance differs from form
 - commercially irrational arrangements

New penalty on TP adjustment Section 140A (3C)

- 5% surcharge on TP adjustment

TP audit

Risk assessment and case selection

Form MNE (Pin. 1/2021)



INFORMATION ON CROSS BORDER TRANSACTIONS
LEMBAGA HASIL DALAM NEGERI MALAYSIA
 Inland Revenue Board of Malaysia

FORM MNE [PIN 1/2021]

PART A: COMPANY INFORMATION

For Year Ending

1. Name of Company

2. Income Tax No. 3. Registration No.

4. Characterization of Business Activity : (Enter "X" in the relevant box)

Manufacturer :	(a) Toll	<input type="checkbox"/>	(b) Contract	<input type="checkbox"/>	(c) Full-fledge	<input type="checkbox"/>	
Distributor :	(a) Commissionaire	<input type="checkbox"/>	(b) Agent	<input type="checkbox"/>	(c) Limited risk	<input type="checkbox"/>	(d) Full-fledge <input type="checkbox"/>
Service Provider :	(a) Management	<input type="checkbox"/>	(b) IT	<input type="checkbox"/>	(c) Treasury	<input type="checkbox"/>	(d) Others <input type="checkbox"/>

Others (Please specify): _____

PART B: LIST OF SUBSIDIARIES AND AFFILIATES COMPANIES WITH THE RELATED PARTY TRANSACTIONS IN MALAYSIA ONLY

(kindly use attachment if space provided is insufficient)

1. List of Subsidiary Companies in Malaysia

Name	Income Tax No.	Income Tax Branch	Business Characterization	Shareholding %	Tax Incentive (Yes/No)
1.					
2.					
3.					

2. List of Affiliate Companies in Malaysia (including branches and PE)

Name	Income Tax No.	Income Tax Branch	Business Characterization	Tax Incentive (Yes/No)
1.				
2.				

Form MNE (Pin. 1/2021)

...

2. Have you or your related parties in the group encounter **any business restructuring during the last 5 years**? if YES please answer the following questions:

(a) State the relevant date when the business restructuring took place

		-			-				
<i>day</i>			<i>month</i>			<i>year</i>			

(b) State the **nature of business restructuring** (e.g. restructuring of the business activity from a full-fledge manufacturing to contract manufacturing)

(c) Specify the **number of employees** immediately before and after the restructuring

(i) before the restructuring					
(ii) after the restructuring					

...

(d) Is the business restructuring involved a change-in/additional share capital in the last 3 years? If YES, please answer the following questions:

(i) State how the additional share capital is funded

(ii) State the **changes/additional of shareholder**

Name of shareholder	Shareholding % (Before)	Shareholding % (After)
1.	_ _	_ _
2.	_ _	_ _
3.	_ _	_ _

Form MNE (Pin. 1/2021)

3. Do the company perform **Research and Development activity**? If YES, answer the questions below.

(a) The type of R&D activity :

(b) Is the R&D activity involved with the following processes :

(i) enhancement of product's production line or engineering

(ii) enhancement of the current product or updating current model

(iii) **creating new product**

(c) Is the R&D activity is performed for (i) for own use

(ii) on behalf of other related parties

(d) Is there any incentives granted with regards to these activities?

Yes

No

(e) **Does the R&D activity lead to the creation of an Intellectual Property?**

Yes

No

(f) Does the company enter into Cost Contribution Arrangement (CCA) in developing any Intellectual Property?

Yes

No

TP audit

Trends and statistics

Deloitte's 2021 *Global* Tax Controversy Survey

Most common areas covered by audits

Number of countries ranking each audit area by importance/likelihood

Ranking - 1 being the most common and 9 being the least common

Most common areas covered by audits	1	2	3	4	5	6	7	8	9
Loss-making entities	26 (16)	13 (7)	5 (11)	3 (5)	1 (4)	1 (1)	1 (2)	3 (0)	3 (7)
Service arrangements	18 (7)	13 (12)	9 (12)	5 (6)	2 (6)	1 (3)	3 (1)	3 (5)	2 (2)
Intangible transactions	13 (5)	12 (10)	9 (7)	4 (7)	6 (6)	2 (5)	1 (2)	5 (4)	4 (5)
Business restructuring	15 (6)	5 (5)	7 (7)	7 (2)	3 (4)	3 (6)	2 (6)	9 (6)	5 (4)
Financial transactions	8 (6)	9 (2)	8 (7)	11 (11)	9 (12)	3 (8)	4 (3)	2 (3)	2 (0)
Challenge of TP method	8 (8)	9 (3)	5 (4)	7 (5)	5 (6)	8 (7)	4 (7)	3 (6)	7 (7)
Valuation	6 (1)	10 (8)	4 (3)	5 (4)	7 (1)	4 (10)	6 (4)	4 (8)	10 (14)
Challenge of comparables	13 (3)	3 (5)	9 (2)	7 (9)	9 (5)	8 (4)	3 (12)	0 (4)	4 (12)
Substance over form	6 (4)	2 (2)	15 (1)	7 (5)	8 (7)	9 (5)	2 (11)	2 (8)	5 (13)

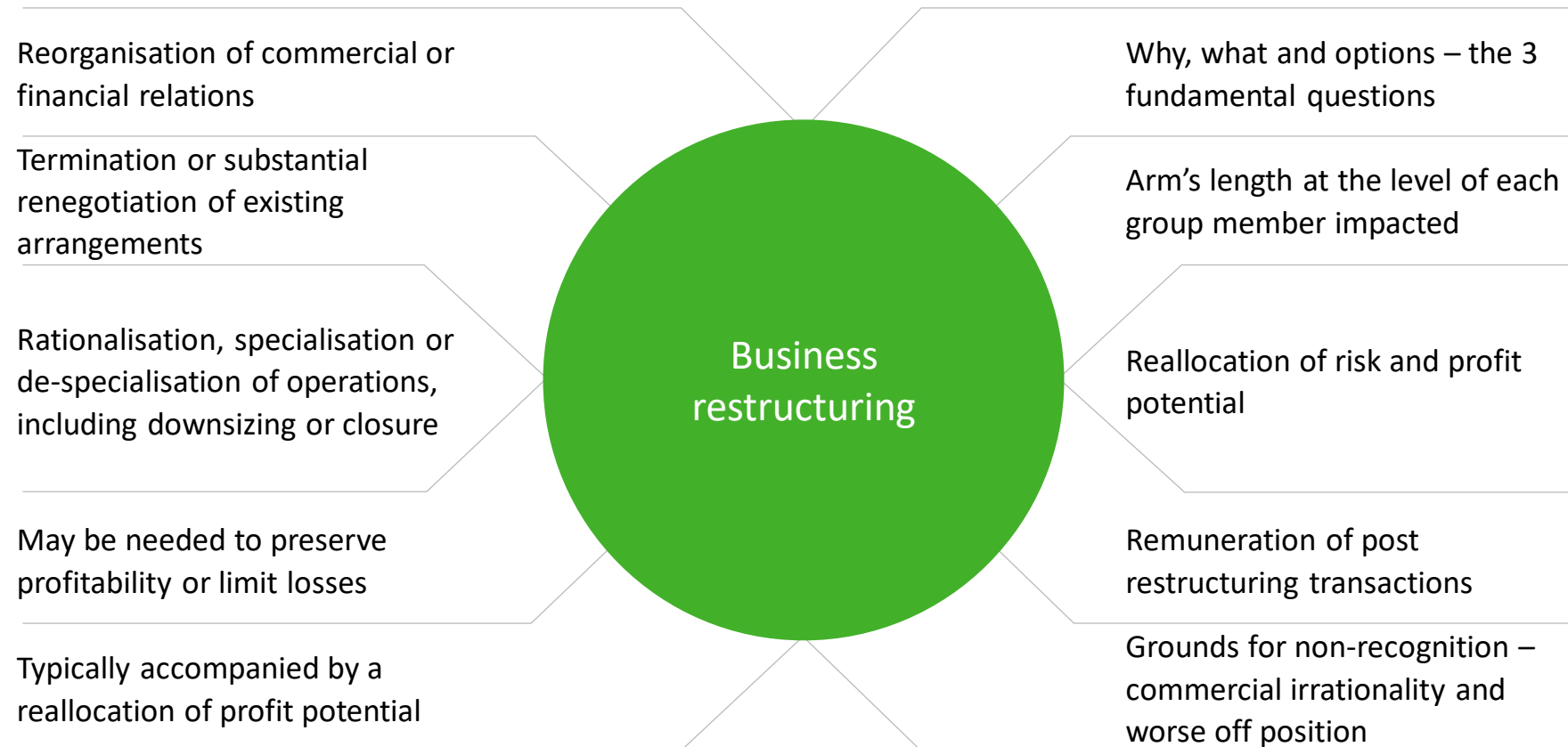
Green highlights indicate the rank at which the Common Area received the most responses.

The numbers inside the parenthesis indicate the previous survey rankings.

TP audit

Business restructuring

Concept and considerations



Potential triggers from restructuring

Relocation of intangibles

Contractual allocation of risks

Significant royalty/intragroup payments

Significant related party transactions

Significant reduction in profits

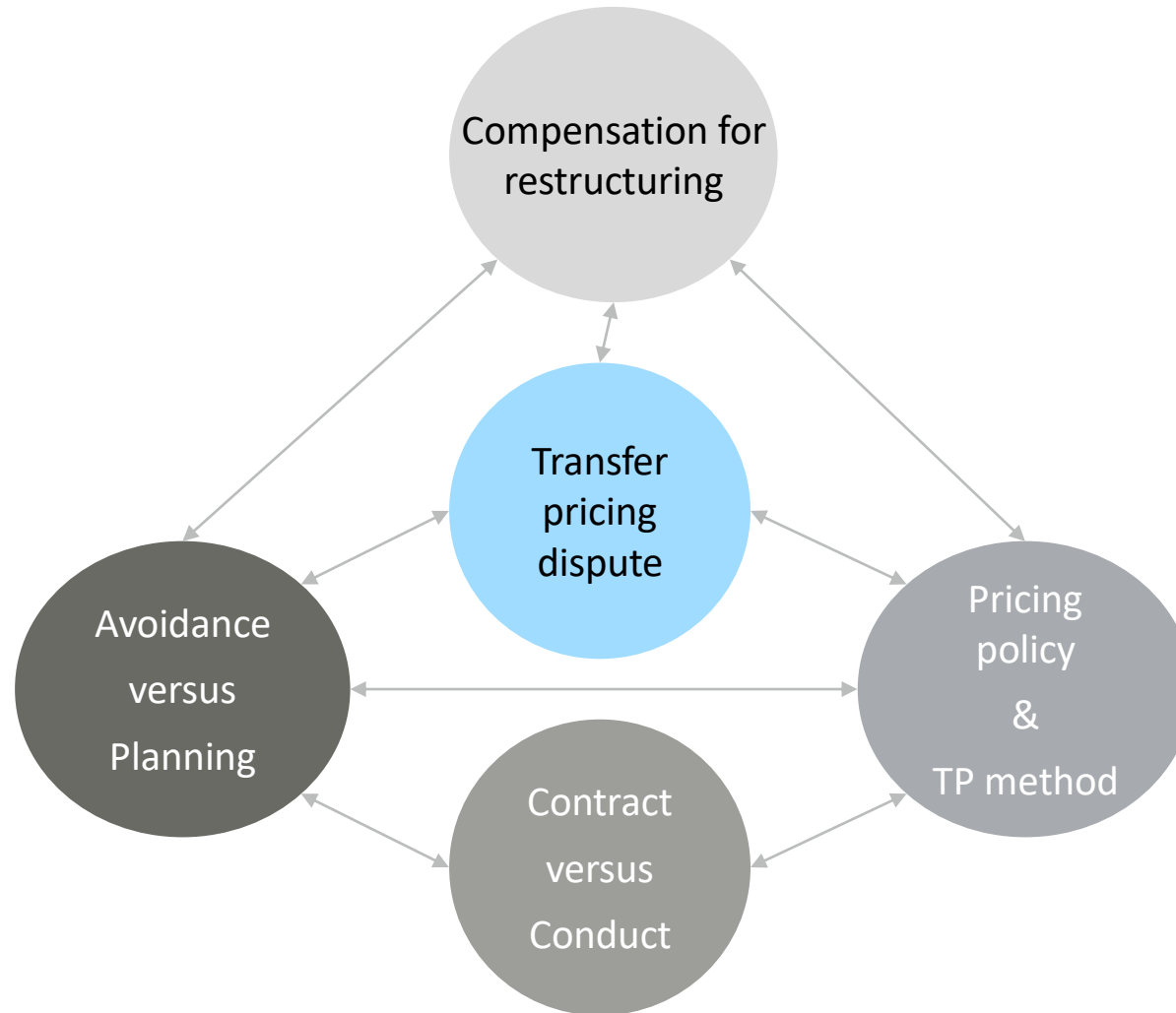
Considerable income in low-tax jurisdictions

**Red flags
=
Audit?**

**Source of information
(non-exhaustive)**

- Audited accounts & tax return
- Form MNE
- Audit history
- Group website and annual report
- CbCR and Master File
- Etc.

Common areas of dispute



Case study #1: Conversion of Full Fledge Manufacturer into Contract Manufacturer

Functions	Risks
<ul style="list-style-type: none"> • Business and corporate strategy development • Undertakes DEMPE functions • Determines pricing, product specifications, annual production forecast • Undertakes sales and marketing functions, and determines product pricing • Manufactures goods • Holds inventory 	<ul style="list-style-type: none"> • Market risk • R&D risk • Inventory risk • Warranty risk • Forex risk • Operational risk • Capacity utilisation risk

Functions	Risks
<ul style="list-style-type: none"> • Manufactures goods • Holds inventory 	<ul style="list-style-type: none"> • Inventory risk (limited) • Operational risk • Forex risk

Full Fledge Manufacturer

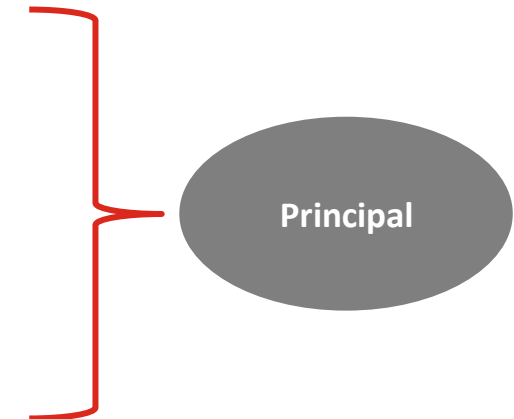


Convert

Contract Manufacturer

Transfer to Principal:

- Certain functions
- Majority of risks
- All intangibles (manufacturing + marketing)



Case study #2: Conversion of Full Risk Distributor into Limited Risk Distributor

Functions	Risks
<ul style="list-style-type: none"> • Business strategy development • Undertakes sales and marketing functions including significant advertising and promotion • Determines product pricing • Holds inventory • Has built strong customer relation and local distribution network 	<ul style="list-style-type: none"> • Market risk • Inventory risk • Warranty risk • Forex risk

Full Risk Distributor

Convert

Limited Risk Distributor

Functions	Risks
<ul style="list-style-type: none"> • Holds inventory • Executes commercial strategy • Undertakes distribution & logistics • Manage local customer relationships 	<ul style="list-style-type: none"> • Inventory risk (limited) • Forex risk

Transfer to Principal:

- Certain functions
- Majority of risks
- Customer relations and distribution network

Principal

Case study #3: Evergreening of incentives

Facts
<ul style="list-style-type: none">• Performs approved activities as per incentives granted• Incentive period: 1 Jan 2010 to 31 Dec 2019 (10 years)

Existing Company



Transfer of business on 30 Dec 2019

New Company

Facts
<ul style="list-style-type: none">• Performs approved activities as per incentives granted• Incentive period: 1 Jan 2020 to 31 Dec 2024 (5 years)

Transfer to New Co:

- All employees
- Long term customer contracts
- Other tangible and intangible assets

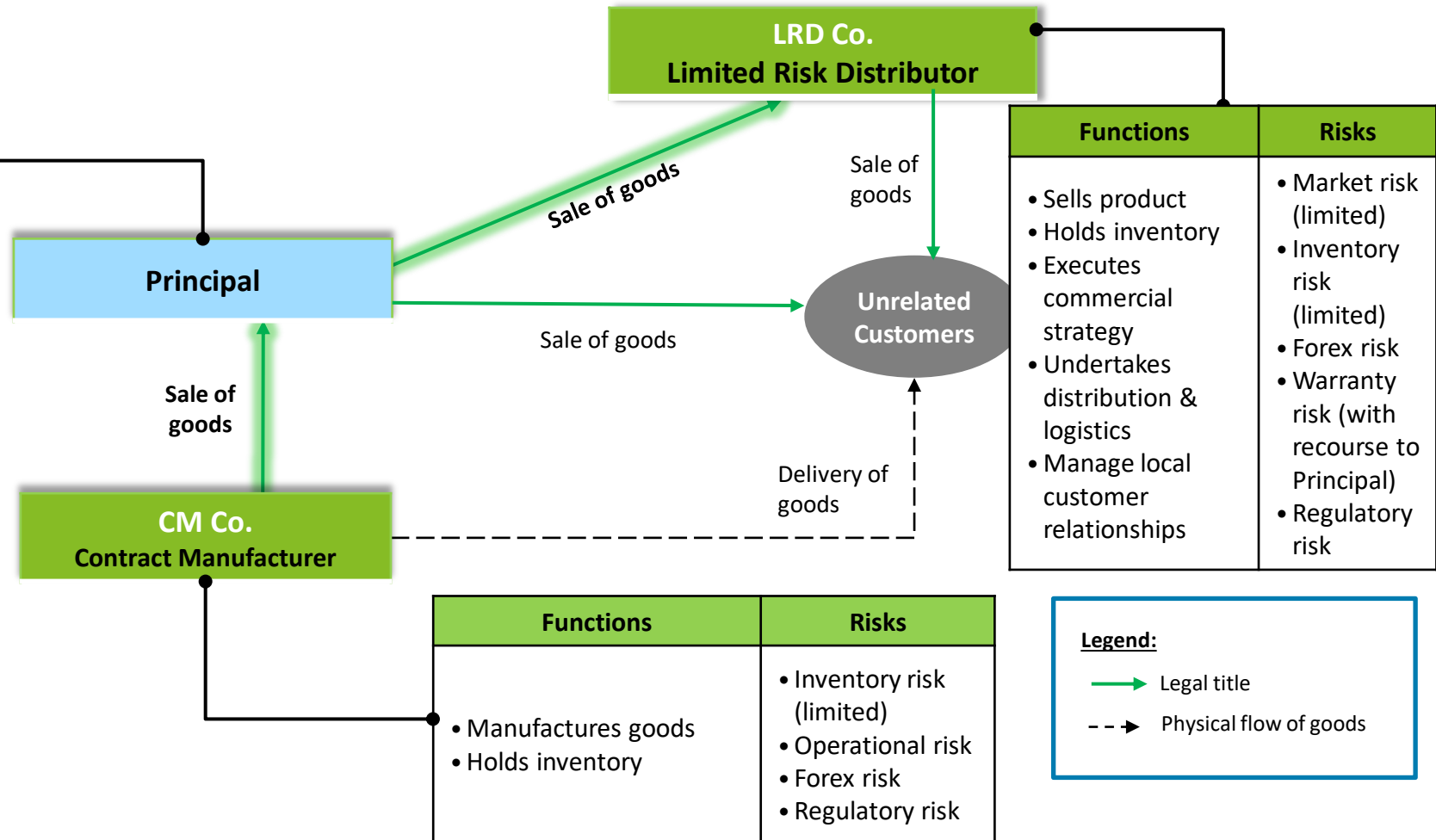
TP audit

Impact of the pandemic

Case study: principal model

Normal circumstances

Functions	Risks
<ul style="list-style-type: none"> • Business and corporate strategy development • Undertakes DEMPE functions • Determines pricing, product specifications, annual production forecast for CM Co. • Undertakes sales and marketing functions, and determines pricing for LRD Co. 	<ul style="list-style-type: none"> • Market risk • R&D risk • Inventory risk • Warranty risk • Forex risk • Capacity utilisation risk • Regulatory risk



COVID-19 impact on a contract manufacturer and a limited risk distributor

Scenario A: Decline in Demand

There has been a decrease in the market demand for Principal's products resulting in a decrease in CM Co.'s and LRD Co.'s sales.

- ✓ Who will bear the losses caused by the decline in demand of the goods sold by the Group in 2020?
 - In what instances will Principal bear the loss?
 - In what instances will CM Co. and LRD Co. bear the loss?
- ✓ What TP adjustments should be made in the books and local files of Principal, CM Co., and LRD Co.?

Contract Manufacturer (in MYR, except units)			
	2020	2019	2018
Revenue	590,000	1,121,000	1,062,000
Units sold:	100,000	190,000	180,000
Cost of sales:	(375,000)	(667,500)	(635,000)
Variable cost of sales	325,000	617,500	585,000
Fixed cost of sales	50,000	50,000	50,000
Gross profit	215,000	453,500	427,000
Operating expenses:	(257,000)	(357,500)	(345,000)
Variable operating expenses	137,000	237,500	225,000
Fixed operating expenses	120,000	120,000	120,000
Operating profit	(42,000)	96,000	82,000

Limited Risk Distributor (in MYR, except units)			
	2020	2019	2018
Revenue	1,500,000	2,850,000	2,700,000
Units sold:	100,000	190,000	180,000
Cost of sales:	(1,000,000)	(1,900,000)	(1,800,000)
Beginning inventory (units)	30,000	20,000	10,000
Purchases (units)	200,000	200,000	190,000
Ending inventory (units)	130,000	30,000	20,000
Gross profit	500,000	950,000	900,000
Operating expenses:	(549,000)	(770,000)	(740,000)
Variable operating expenses	349,000	570,000	540,000
Fixed operating expenses	200,000	200,000	200,000
Operating profit	(49,000)	180,000	160,000

COVID-19 impact on a contract manufacturer and a limited risk distributor

Scenario B: Operational Disruption

From March until May 2020 when the lockdown was imposed, CM Co. and LRD Co. closed their manufacturing facility and offices, and stopped the production and sale of goods, respectively. Both entities resumed operation in June, though production and sales level were significantly low due to inefficiencies brought about by the lockdown.

There was a disruption in operations of both entities due to the lockdown. Hence, production and sales were negatively impacted.

In compliance with government-imposed COVID guidelines, CM Co. and LRD Co. incurred significant COVID-related expenses, such as sanitation, transportation assistance to employees, etc.

Contract Manufacturer (in MYR, except units)			
	2020	2019	2018
Revenue			
Units sold:			
Cost of sales:			
Variable cost of sales			
Fixed cost of sales			
Gross profit			
Operating expenses:			
Variable operating expenses	(257,000)	(357,500)	(345,000)
Fixed operating expenses	137,000	237,500	225,000
	120,000	120,000	120,000
Operating profit	(42,000)	96,000	82,000

Variable operating expenses:

COVID-related expenses MYR 50,000

Normal operating expenses MYR 87,000

Limited Risk Distributor (in MYR, except units)			
	2020	2019	2018
Revenue	1,500,000	2,850,000	2,700,000
Units sold:			
Cost of sales:			
Variable cost of sales			
Fixed cost of sales			
Gross profit			
Operating expenses:			
Variable operating expenses	(549,000)	(770,000)	(740,000)
Fixed operating expenses	349,000	570,000	540,000
	200,000	200,000	200,000
Operating profit	(49,000)	180,000	160,000

Variable operating expenses:

COVID-related expenses MYR 100,000

Normal operating expenses MYR 249,000

COVID-19 impact on a contract manufacturer and a limited risk distributor

Scenario B: Operational Disruption

From March until May 2020 when the lockdown was imposed, CM Co. and LRD Co. closed their manufacturing facility and offices, and stopped the production and sale of goods, respectively. Both entities resumed operation in June, though production and sales level were significantly low due to inefficiencies brought about by the lockdown.

- ✓ Who will bear these fixed and additional variable costs? How will this be treated from a transfer pricing perspective? What will be the required TP adjustments in the books and local files of Principal, CM Co., and LRD Co.?
- In what instances will Principal bear the loss?
- In what instances will CM Co. and LRD Co. bear the loss?

Contract Manufacturer (in MYR, except units)			
	2020	2019	2018
Revenue			
Units sold:			
Cost of sales:			
Variable cost of sales			
Fixed cost of sales			
Gross profit			
Operating expenses:			
Variable operating expenses	(257,000)	(357,500)	(345,000)
Fixed operating expenses	137,000	237,500	225,000
	120,000	120,000	120,000
Operating profit	(42,000)	96,000	82,000

Variable operating expenses:

COVID-related expenses MYR 50,000

Normal operating expenses MYR 87,000

Limited Risk Distributor (in MYR, except units)			
	2020	2019	2018
Revenue	1,500,000	2,850,000	2,700,000
Units sold:			
Cost of sales:			
Variable cost of sales			
Fixed cost of sales			
Gross profit			
Operating expenses:			
Variable operating expenses	(549,000)	(770,000)	(740,000)
Fixed operating expenses	349,000	570,000	540,000
	200,000	200,000	200,000
Operating profit	(49,000)	180,000	160,000

Variable operating expenses:

COVID-related expenses MYR 100,000

Normal operating expenses MYR 249,000

COVID-19 impact on a contract manufacturer and a limited risk distributor

Scenario C: Receipt of Government Grants

In FY2020, CM Co. and LRD Co. received domestic wage subsidies under job retention programs offered by the local government as an incentive to keep employees during the COVID-19 pandemic outbreak.

- ✓ Under what circumstances will the benefits of the grant be passed on to the end customers, or CM Co./ LRD Co.?
- ✓ How will the receipt of grants affect the comparability analysis?
- ✓ How will the tax authority view this?

Contract Manufacturer (in MYR, except units)			
	2020	2019	2018
Revenue	590,000	1,121,000	1,062,000
Units sold:	100,000	190,000	180,000
Cost of sales:	(375,000)	(667,500)	(635,000)
Variable cost of sales	325,000	617,500	585,000
Fixed cost of sales	50,000	50,000	50,000
Gross profit	215,000	453,500	427,000
Operating expenses:	(257,000)	(357,500)	(345,000)
Variable operating expenses	137,000	237,500	225,000
Fixed operating expenses	120,000	120,000	120,000
Operating profit	(42,000)	96,000	82,000
Receipt of gov't grants	500,000	-	-
Profit after grants	458,000	96,000	82,000

Limited Risk Distributor (in MYR, except units)			
	2020	2019	2018
Revenue	1,500,000	2,850,000	2,700,000
Units sold:	100,000	190,000	180,000
Cost of sales:	(1,000,000)	(1,900,000)	(1,800,000)
Beginning inventory (units)	30,000	20,000	10,000
Purchases (units)	200,000	200,000	190,000
Ending inventory (units)	130,000	30,000	20,000
Gross profit	500,000	950,000	900,000
Operating expenses:	(549,000)	(770,000)	(740,000)
Variable operating expenses	349,000	570,000	540,000
Fixed operating expenses	200,000	200,000	200,000
Operating profit	(49,000)	180,000	160,000
Receipt of gov't grants	500,000	-	-
Profit after grants	451,000	180,000	160,000

Audit defence strategies

Protective vs Proactive

Dispute resolution/prevention

1. Protective

- Domestic appeal / MAP
- MAP update – Malaysia recorded 8 TP cases on hand @ 2019
 - average time for settlement 30.5 months, targeting 24 months

2. Proactive

- APA – many UAPA/BAPA cases on hand
 - some cases settled
- Voluntary Disclosure - quicker turnaround
 - reduced surcharge
 - friendlier approach
 - less time and resources

Audit defense strategies

Transfer pricing
documentation

Domestic
dispute
resolution

Advance
pricing
agreements

Risk analysis

Mutual
agreement
procedures

Voluntary
disclosure



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.



Mark Chan
Financial Services Industry Tax Leader,
Deloitte Malaysia



Tan Wei Chuan
Transfer Pricing Executive Director,
Deloitte Malaysia

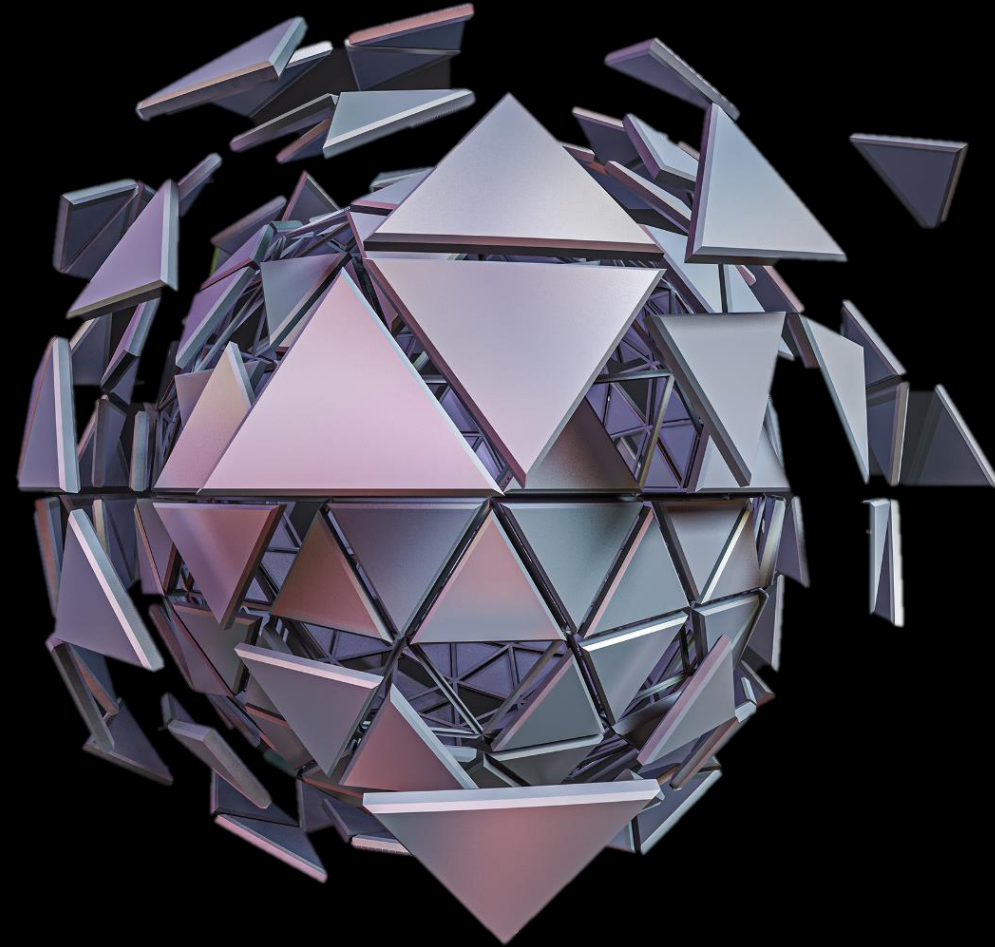


Thin Siew Chi
Business Tax Executive Director,
Deloitte Malaysia

Deloitte TaxMax - The 47th series | Building resilience for tomorrow

Latest tax development





Deloitte TaxMax
Latest tax development

Mark Chan | 24 November 2021

Public Ruling No.1/2021

Taxation of Unit Holders of Real Estate Investment Trusts (“REIT”) / Property Trust Funds (“PTF”)

Public Ruling (“PR”) No.1/2021

Taxation of Unit Holders of Real Estate Investment Trusts (“REIT”) / Property Trust Funds (“PTF”)



When are unit holders taxed and how is the tax determined?

- REIT/PTF unit holders are taxed in the year of assessment (YA) the distribution of income is received.
- REIT/PTFs that are listed on Bursa Malaysia and distribute 90% or more of their total income are granted tax exemption on their total income (Section 61A of the ITA).
- The tax treatment for unit holders are as follows:
 - Income distributed by a REIT/PTF that is exempt under Section 61A of the ITA is taxable to the unit holder and there are no tax credits available to unit holders.
 - Where the income has been taxed at REIT/PTF level, the unit holder is entitled to a tax credit to be offset against the tax payable of the unit holder.
 - Where the unit holder is tax exempt and income distributed has been subjected to withholding tax (WHT), the unit holder would be entitled to a refund of the tax withheld.



Tax rate

- Tax rates applicable to unit holders depend on their resident status, as follows:

Chargeable person	YA 2016 to YA 2025	
	Type of tax	Rate
Company		
- Resident	Corporate	24%
- Non-resident	WHT*	24%
Foreign institutional investor	WHT*	10%
Individual		
- Resident	WHT*	10%
- Non-resident	WHT*	10%
Others		
- Resident	WHT*	10%
- Non-resident	WHT*	10%

* Final tax

Public Ruling (“PR”) No.1/2021

Taxation of Unit Holders of Real Estate Investment Trusts (“REIT”) / Property Trust Funds (“PTF”)



Declaration of income for unit holders

- The income from REIT/PTF which is subject to WHT need not be included in the tax return as the tax withheld is a final tax.
- The income from REIT/PTF must be reported in the tax return and claim a set-off for tax credits where:
 - Taxpayer is a resident company; **and**
 - Where REIT/PTF –
 - is not exempt from tax under Section 61A of the ITA; and
 - Distributes income which carries a tax credit proportionate to each unit of the taxable income in respect of the tax paid by the REIT/PTF



Changes from previous version of PR

- PR No.1/2021 supersedes PR No.9/2018.
- There are no material changes to the tax treatment set out in PR No.1/2021 compared to PR No.9/2018.
- Changes are to incorporate the provision introduced in Budget 2021 (under the Finance Act 2020) in relation to withholding tax as a final tax.

* *Final tax*

Compensation on late refund of overpayment of tax

Compensation on late refund of overpayment of tax

Effective from YA 2013

Compensation on late refund of overpayment of tax by IRBM

A taxpayer who filed their Income Tax Return Form (ITRF) for a year of assessment (YA) by the due date may be eligible for a compensation of 2% on tax refunded late by the Inland Revenue Board of Malaysia (IRB).

This is calculated on a **daily basis**, starting from the first day after the period stated as below:

- 90 days from the date a return for that YA, in the case of online submission (e-Filing)
- 120 days from the date a return for that YA, in the case of manual submission

Compensation of 2% shall be paid in accordance with the following formula:

$$\text{A (Refund Amount)} \times \frac{\text{B (Number of days late)}}{\text{C (Number of days in a year: 365 / 366)}} \times 2\%$$

Compensation on Late Refund of Overpayment of Tax

Guidance

A taxpayer should apply for the refund in a timely manner

Where the refund is beyond 90/120 days from the date of filing, taxpayer to write in formally to the IRB requesting for an update on the refund, and the compensation for late refund.

Taxpayers should demonstrate that the ITRF has been submitted on time for that YA by showing the Acknowledgment Receipt of the submitted ITRF accordingly.

Section 111D Income Tax Act, 1967
Guidelines on Compensation on Late Refund of Overpayment of Tax
(GPHDN 2/2021) (*updated 21 May 2021, superseded GPHDN 1/2014*)

Taxpayers eligible for compensation on late refund

ITRF submitted on time i.e., within the deadline / extended deadline approved by IRB.

Types of tax refunds eligible:

Section 107 – Monthly Tax Deductions (for Employee)

Section 107B – Instalment Notice issued (CP500)

Section 107C - Estimated Tax Payable by Companies / LLP / Society

ITRF should be correct and complete.

Taxpayers not eligible for compensation on late refund

If ITRF is submitted late, after the due date provided by the IRB

If there is an assessment raised under Sections 90(3), 91, 91A, 92 and 96A of the Income Tax Act, 1967

If the taxpayer has applied for an extension of time for submission of tax return, beyond the extended due date specified by the IRB

If there are audit findings which resulted in taxes / additional taxes to be paid within 90 days from e-filing / 120 days from manual filing

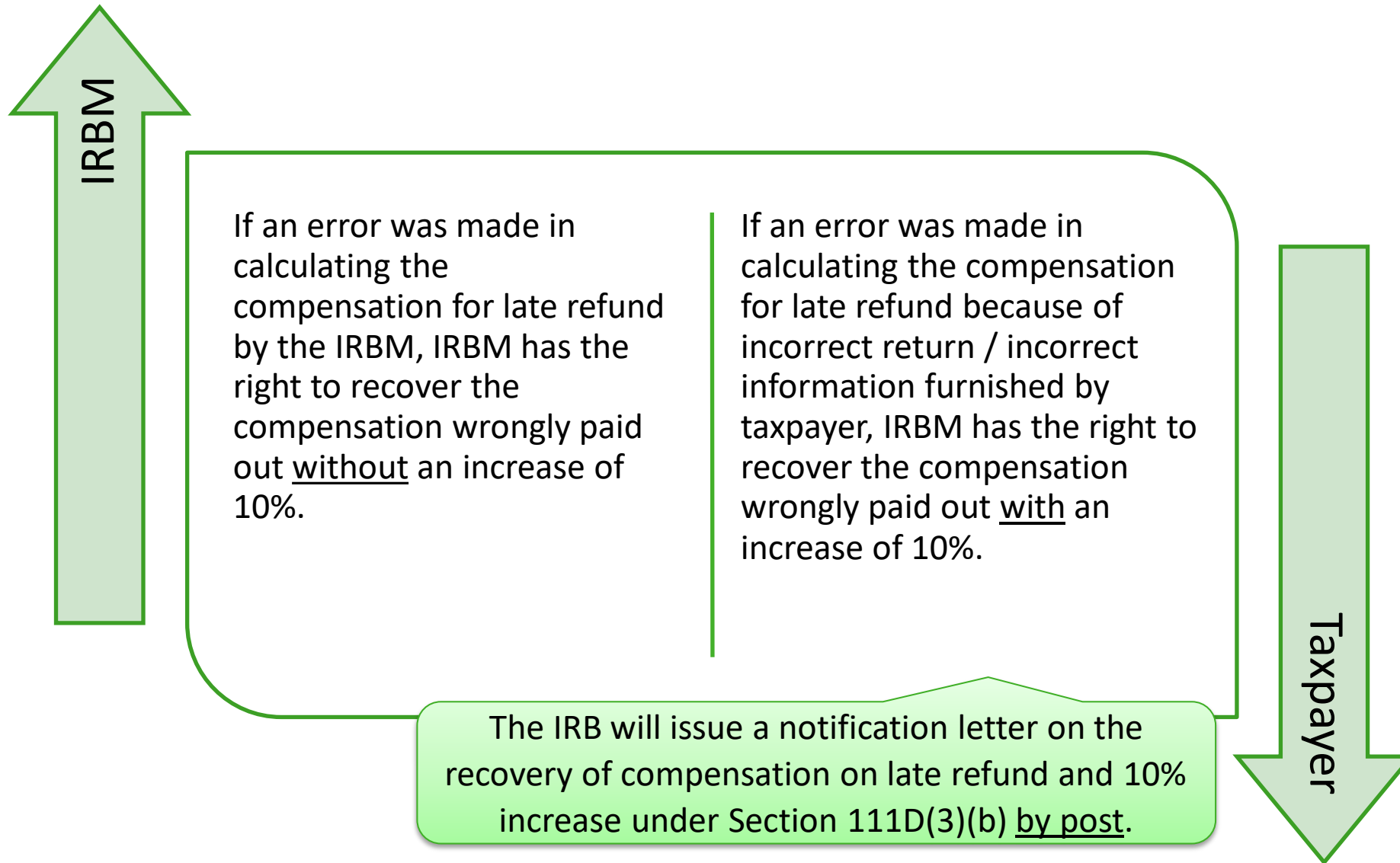
If the excess taxes were not paid according to the tax instalment schedule under Sections 107, 107B and 107C of the Income Tax Act, 1967.

If it is a credit under Section 110

If the taxpayer is currently appealing an assessment under Section 99 (i.e. Form Q)

Error in compensation

Where the IRBM discovers that the whole or part of the compensation ought not to have been made



Guidelines on application for deduction under Section 34(6)(h) of the Income Tax Act 1967

Section 34(6)(h) deduction

Criteria for eligible charity or community projects

Tax deduction from gross business income equal to the amount incurred on the provision of:

- Services;
- Public amenities; and
- Contributions

to a charity or community project, approved by the Minister of Finance, in relation to:



Education



Health



Housing



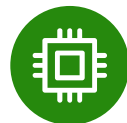
Infrastructure



Environmental
conservation



Enhancement of
income of the poor



Information and
communication
technology



Maintenance of a
heritage building

Section 34(6)(h) deduction

Criteria for eligible charity or community projects

Criteria for deduction

Exclusively benefits Malaysian public

No vested interest to contributor

Contribution is voluntary

Not conditional to authorities' rules

Value / quantum of deduction

Value of equipment, sponsorship and services to be verified by the appropriate government agency

Types / Form of contribution

Cash contribution

New equipment (i.e., medical equipment)

Sponsorship that is approved by the appropriate agency (i.e., Subsidy for infrastructure).

Service in a program that is approved by the appropriate agency (Including cost of consumables within the service period)

Section 34(6)(h) deduction

Qualifying criteria

For company, individual, partnership, trust body and corporation.

Cash, Equipment or Services

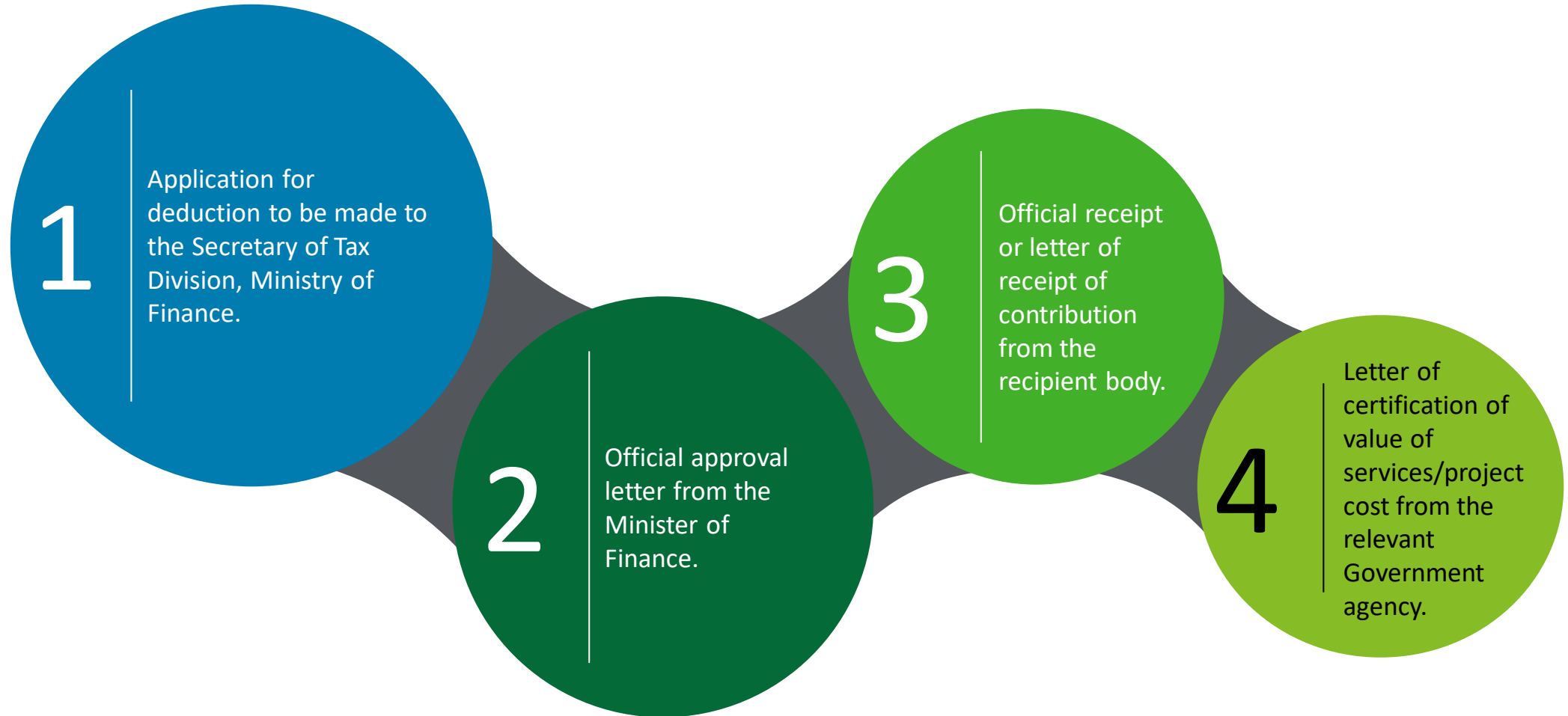
- Contribution must be channelled via the relevant Government agency or non-Government agency that is not-for-profit and politics.
- The contributor must obtain an official receipt or letter of receipt with the amount from the recipient body.
- If the contribution is channelled via a non-Government agency, the official receipt or letter of receipt has to be verified by the relevant Government agency with the official stamp to validate the value of cash/equipment/services.

Sponsorship

- The contributor has to obtain prior approval from the Government body responsible to approve the project (if required).
- E.g. a public hall has to be approved by the District Council or City Hall.
- The contributor has to obtain a letter of verification of project cost from the relevant Government department/agency that is signed by the Head of Department together with the department's official stamp.

Section 34(6)(h) deduction

The procedure to enjoy the deduction



Section 34(6)(h) deduction

Changes from the previous Guidelines



1 >

Addition of conservation or preservation of environment and enhancement of income of the poor

As eligible charity or community project (with effect from YA 2009).



2 >

Addition of maintenance of a building designated as a heritage site by the Commissioner of Heritage under the National Heritage Act 2005

As eligible charity or community project (with effect from YA 2020).



3 >

Application to be made to Secretary of Tax Division

Previously to be made to Tax Analysis Division.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

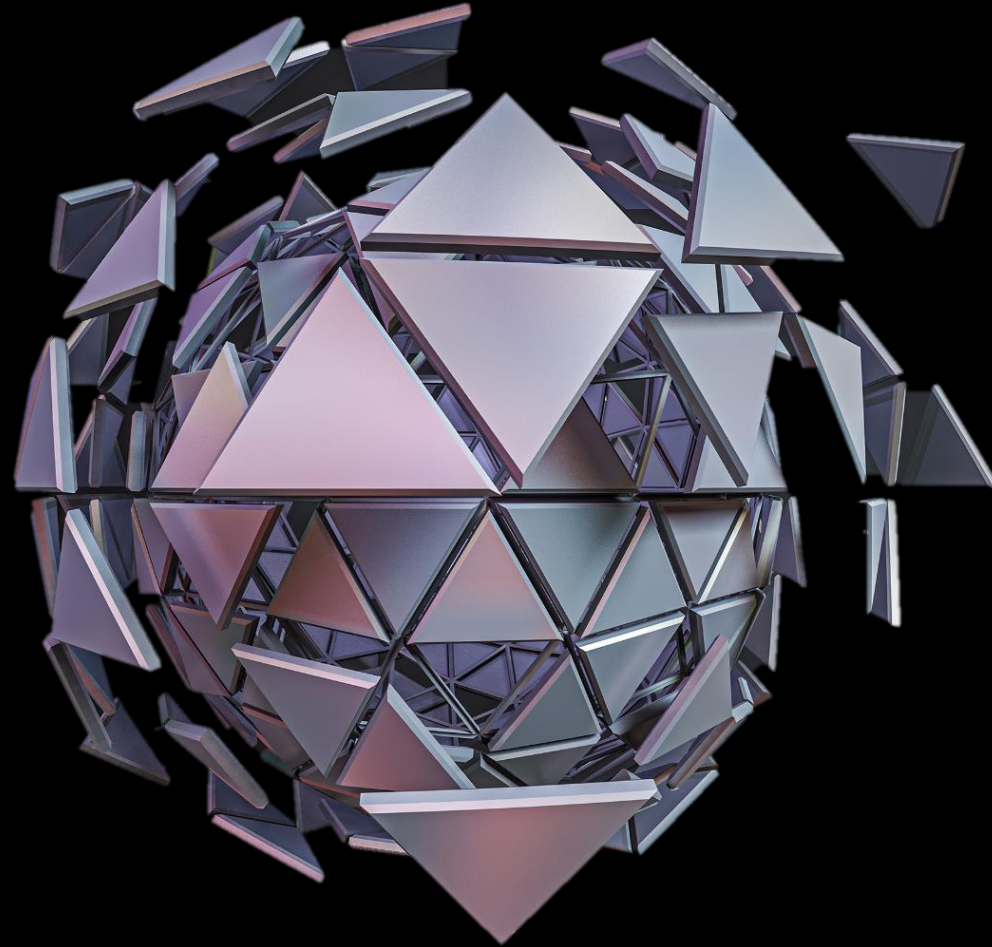
Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.



Deloitte TaxMax
Latest tax development

Tan Wei Chuan | 24 November 2021

Contents

1. Audit framework on employer
2. Transfer pricing (“TP”)
 - *TP documentation flowchart and self-test*
 - *Latest clarification from the Inland Revenue Board*
3. Case law: Keysight Technologies Malaysia Sdn Bhd
 - *Gains from the transfer of technical know how – Revenue vs Capital*

Audit framework on employer

Audit framework on employers

Type of audits

External / MTD audit

Legislation

- s107 of the ITA

Objectives

- MTD – correctly deducted and remitted on timely basis

Information reviewed

- Payroll records
- Other payroll-related information

Location of audit

- Employer's premises
- MIRB office
- Any mutually agreed upon location

Audit framework on employers

Desk audit

Legislation

- s83 of the ITA

Objectives

- Compliance with all employer's obligations (Employer's Return (Form E), notification of commencement and cessation of an employee's employment)

Information reviewed

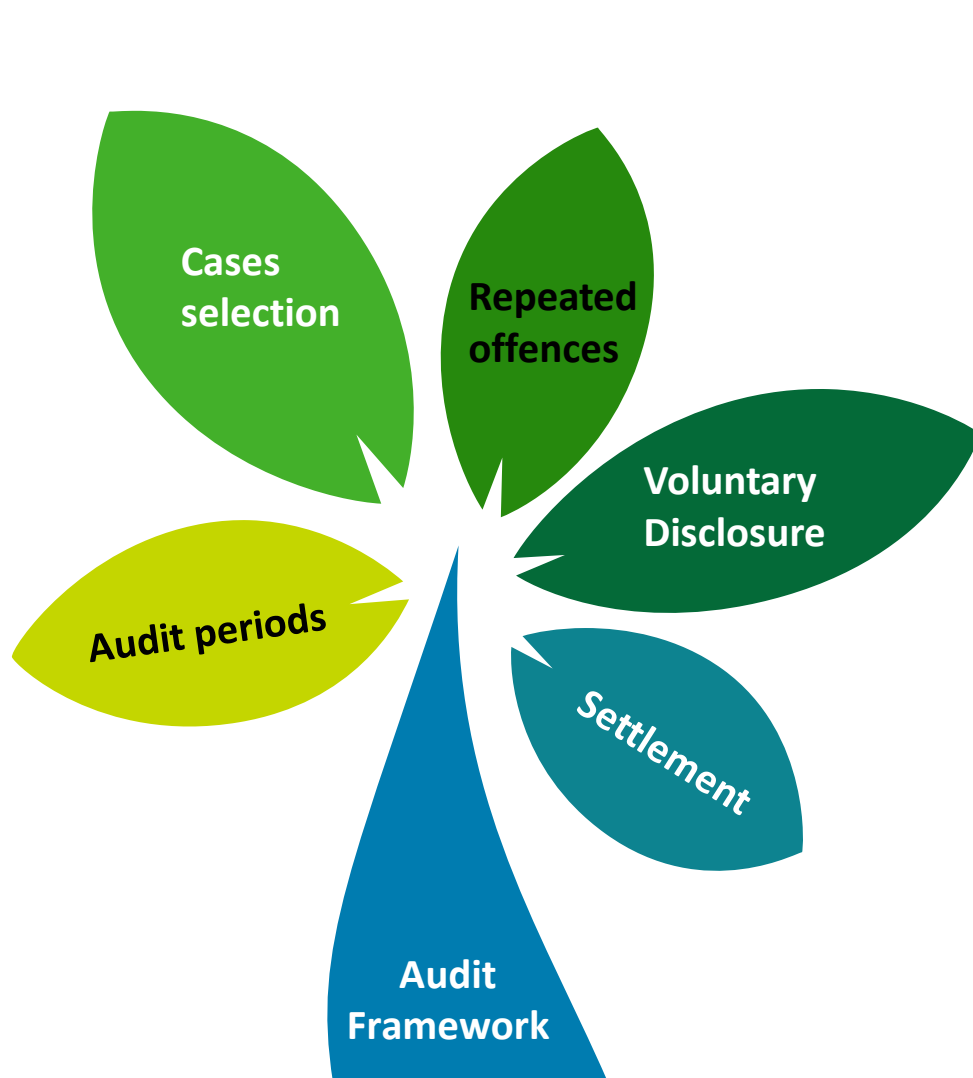
- Payroll records, Form E / CP8D
- Written notification submitted to MIRB e.g. CP22/21

Location of audit

- MIRB office (The employer may be requested to be present at the MIRB office to confirm/discuss the audit finding)

Audit framework on employers

Other salient features



Audit periods

- Up to 2 years
- May be extended indefinitely under the following circumstances:
 - Failure to remit MTD
 - Insufficient MTD remittance
 - Repeated failure to comply with tax laws
 - Complaint cases

Cases selection

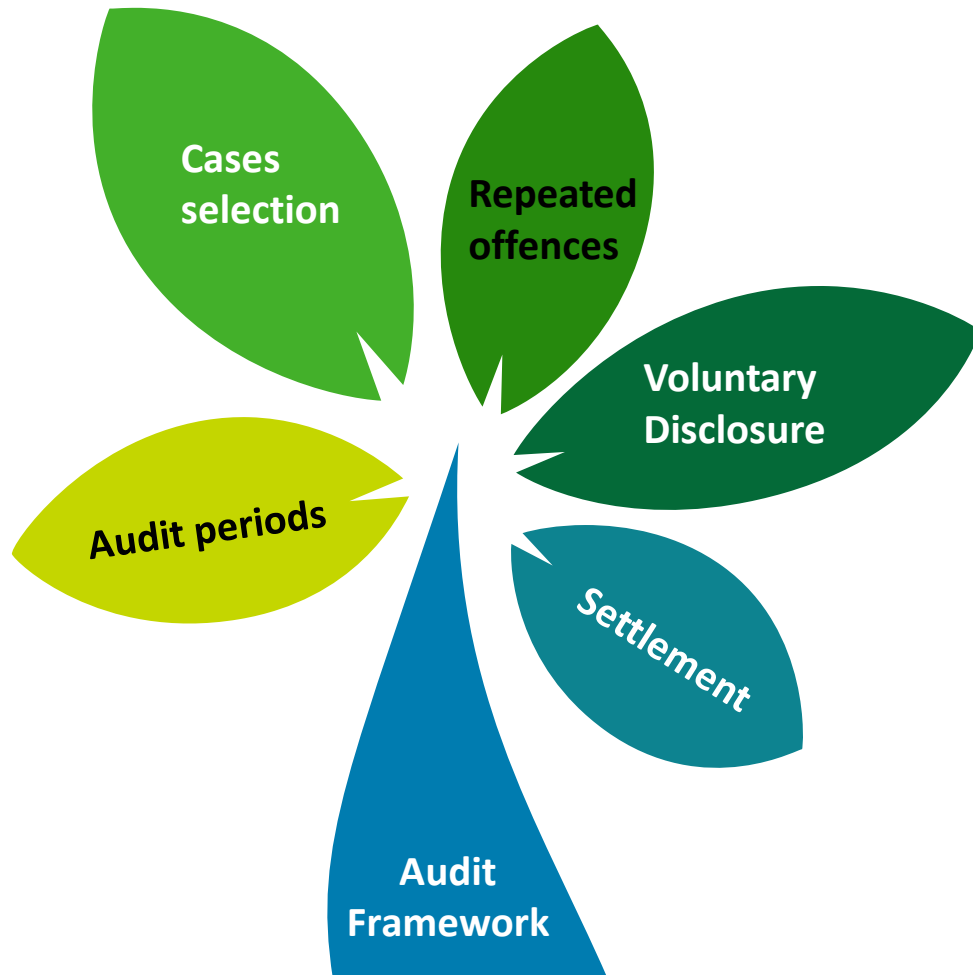
- MIRB's risk assessment criteria
- Industry-specific
- Specific issues for specific groups of employers
- Location specific
- Information received from 3rd parties

Repeated offences

- Under-deduction of / failure to deduct MTD
- Under remittance of / failure to remit MTD (Prosecution)
- Late remittance of MTD

Audit framework on employers

Other salient features



Voluntary disclosure

- In writing anytime before the commencement of audit
- No concessionary penalty rates are explicitly provided

Audit settlement

- Within 90 days from the date of receipt of documents or date of field audit. MIRB will notify if additional time required.
- Completed audit cases will not be re-audited
- Re-audit may be carried out in respect of complaint cases involving the failure to remit / under-remittance of MTD
- Appeal / objection on audit findings can be made within 18 days from the date of audit findings letter

Audit framework on employers

Penalties

Audit	Offences	Penalties
External audit	Failure to comply with the rules in relation to: i. Payment of amounts deducted and returns, ii. notification of cessation of remuneration payment.	Liable to prosecution and, upon conviction, can be fined between RM200 to RM20,000 or imprisoned for a term not exceeding six months, or both.
Desk audit	Failure to furnish / issue the Form E, Statement of Remuneration (Form EA) / Statement of Monetary and Non-Monetary Incentives to Agent, Dealer or Distributor (Form CP58) <hr/> Failure to issue and submit notification of commencement and cessation of an employee's employment, i.e. Forms CP22, CP22A/ CP22B or CP21 <hr/> Failure to comply with instructions in relation to withholding of monies / deduction of tax from emoluments and pensions	Fine between RM200 to RM20,000 or to imprisonment for a term not exceeding six (6) months or both.

Transfer pricing

- TP documentation flowchart and self-test
- Latest clarification from the IRB

TP documentation flowchart and self-test

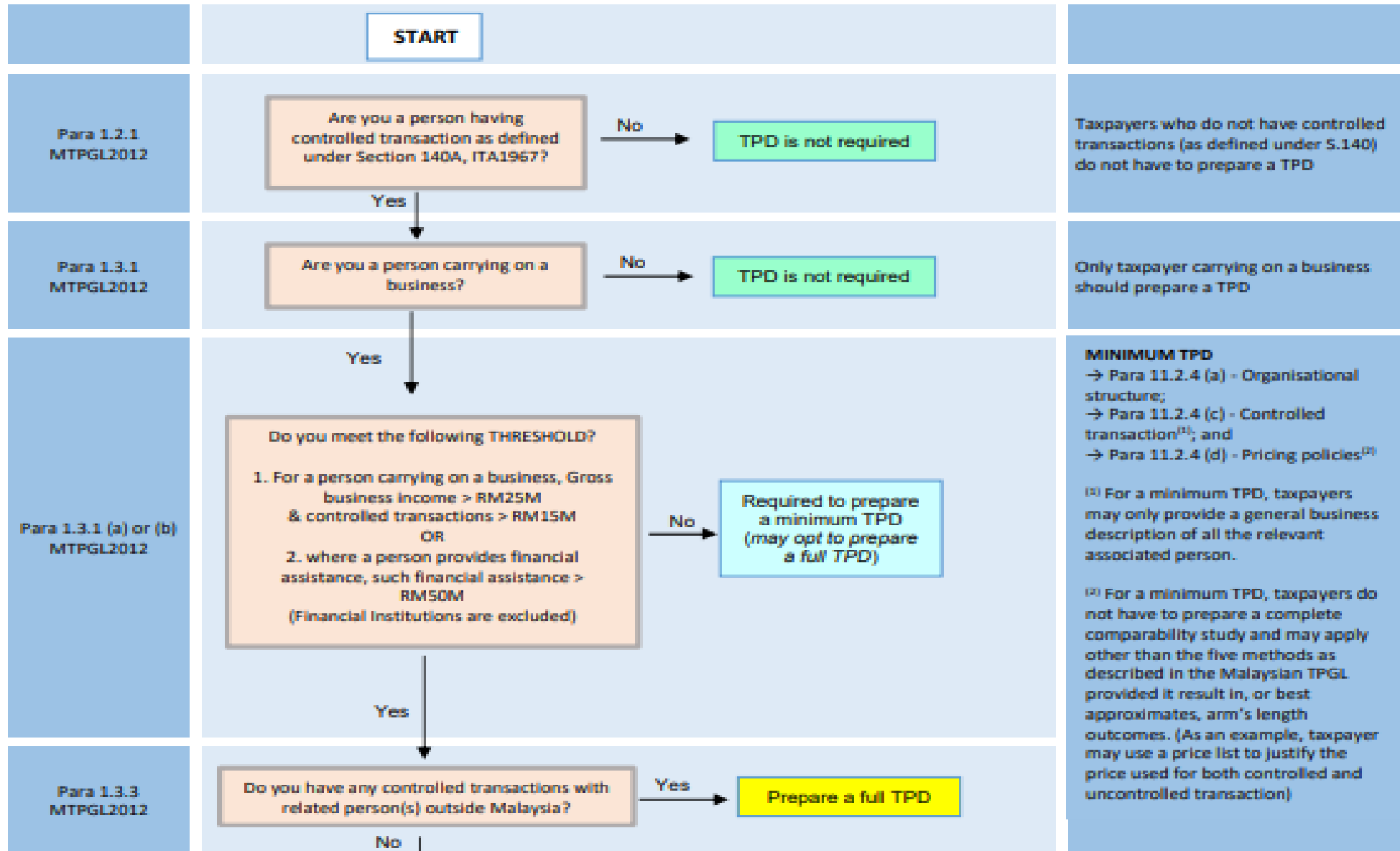
TPD flowchart

- The Flowchart shows the steps to be taken for identifying the requirement in the preparation of a contemporaneous TPD.
- It helps to identify the circumstances where a full or minimum TPD is required, and the extent of information needed from the taxpayer.

TPD self-test

- The TPD Self-test helps to determine if the taxpayer fulfills the TPD requirement through a series of questions and answers.
-

TP documentation flowchart



Taxpayers who do not have controlled transactions (as defined under S.140) do not have to prepare a TPD

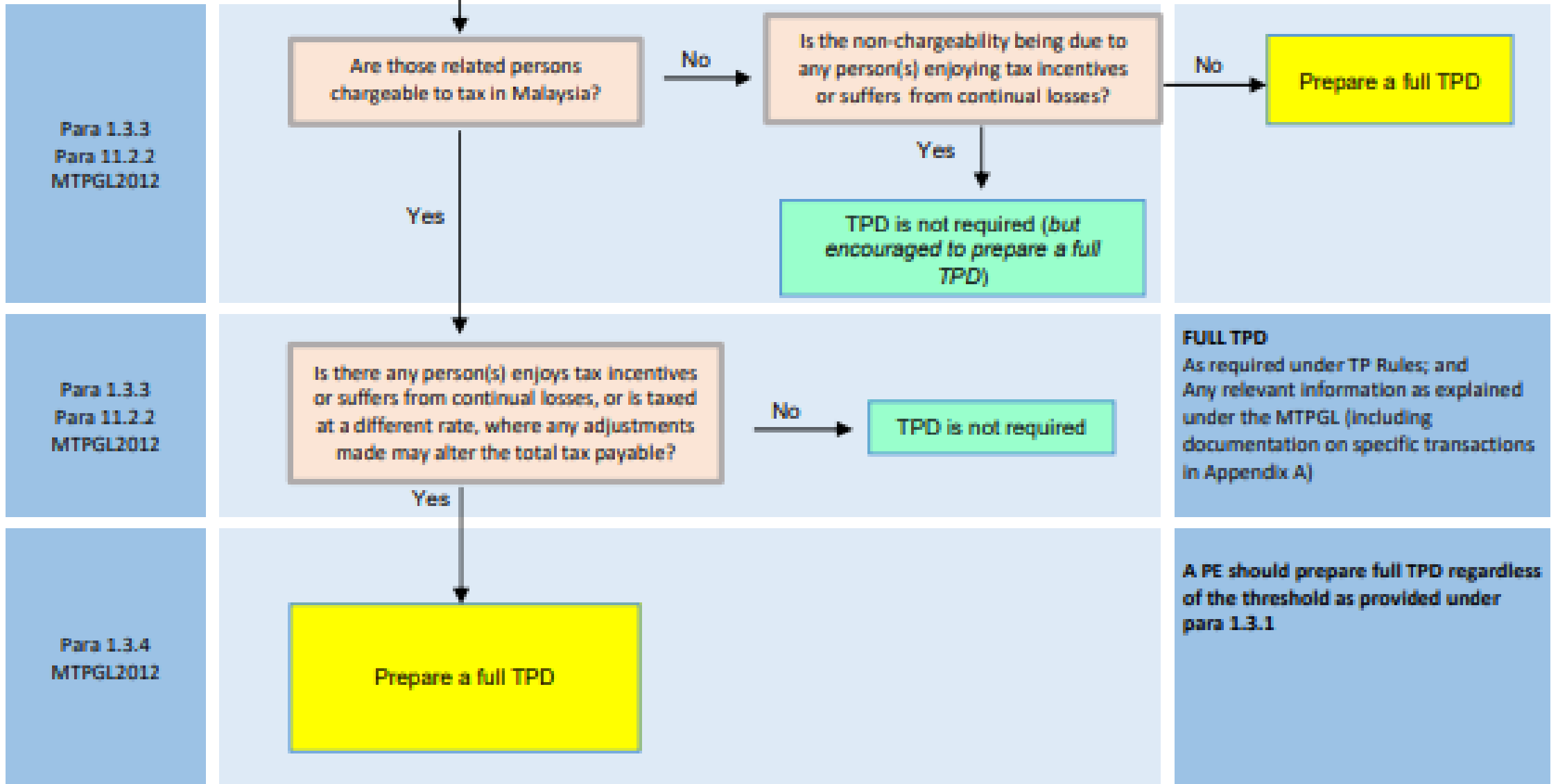
Only taxpayer carrying on a business should prepare a TPD

MINIMUM TPD
 → Para 11.2.4 (a) - Organisational structure;
 → Para 11.2.4 (c) - Controlled transaction⁽¹⁾; and
 → Para 11.2.4 (d) - Pricing policies⁽²⁾

⁽¹⁾ For a minimum TPD, taxpayers may only provide a general business description of all the relevant associated person.

⁽²⁾ For a minimum TPD, taxpayers do not have to prepare a complete comparability study and may apply other than the five methods as described in the Malaysian TPGL provided it result in, or best approximates, arm's length outcomes. (As an example, taxpayer may use a price list to justify the price used for both controlled and uncontrolled transaction)

TP documentation flowchart (cont.)



TP documentation self-test - Illustration

Preparation of TPD

Instructions:

This self-test contains macros and requires them to run smoothly. When prompted, kindly click 'Enable contents'.

Please select the answer to the questions below and click ENTER.

If no further questions appear, please click the Results button.

Your results will appear in the red box below.

Question

Select Yes or No and click ENTER

1	Do you have a controlled transaction as per Section 140A?	
---	---	--



Results

Clear last answer

Clear all



TP documentation self-test - Illustration (cont.)

Preparation of TPD

Instructions:

This self-test contains macros and requires them to run smoothly. When prompted, kindly click 'Enable contents'.

Please select the answer to the questions below and click ENTER.

If no further questions appear, please click the Results button.

Your results will appear in the red box below.

Question

Select Yes or No and click ENTER

1	Do you have a controlled transaction as per Section 140A?	No
---	---	----

i

Results

Clear last answer

Clear all

TPD is not required

TP documentation self-test - Illustration (cont.)

Question Select Yes or No and click ENTER

1	Do you have a controlled transaction as per Section 140A?	Yes	<i>i</i>
2	Are you a person carrying on a business?	Yes	
3	<p>Are the following thresholds met?</p> <p>For a person carrying on a business: Gross business income > RM25M AND Amount of controlled transaction > RM15M</p> <p style="text-align: center;">OR</p> <p>Where a person (excluding financial institutions) provides financial assistance: The controlled financial assistance > RM50M</p>	Yes	
4	Do you have any controlled transactions with related person(s) outside Malaysia?	Yes	

Results

Clear last answer

Clear all

Full TPD is required

TP documentation self-test – Illustration (cont.)

Question		Select Yes or No and click ENTER
1	Do you have a controlled transaction as per Section 140A?	Yes
2	Are you a person carrying on a business?	Yes
3	Are the following thresholds met? For a person carrying on a business: Gross business income > RM25M AND Amount of controlled transaction > RM15M OR Where a person (excluding financial institutions) provides financial assistance: The controlled financial assistance > RM50M	No

Results

Clear last answer

Clear all

Minimum TPD is required (may opt for full TPD)

Latest clarifications

Question	Answer
<p>Is a taxpayer (business owner) with controlled transactions required to prepare contemporaneous TPD if it does not meet the thresholds mentioned in Paragraph 1.3.1 of MTPG?</p>	<p>Based on the Malaysian Transfer Pricing Guidelines (“MTPG”), the flowchart, and the self-test file, such a taxpayer must prepare at least a TPD on a contemporaneous basis as per Paragraph 1.3.2 of MTPG.</p> <p>IRBM has mentioned in the feedback to Deloitte that exceptions will be given to a person who is only engaged in domestic control transactions, provided that any adjustments made will not alter the total tax payable or suffered by the person and its related person(s). IRBM will update the flowchart to provide clarity on this matter.</p>
<p>What is the definition of “continual losses” mentioned in the flowchart?</p>	<p>Continual losses include both current year and/or unabsorbed business losses.</p>
<p>Malaysia Co. only receives interest income from foreign related Co., and the income is exempted due to foreign-sourced. Is Malaysia Co. required to prepare TPD?</p>	<p>The Malaysia Co. must prepare contemporaneous TPD, although the income from the controlled transaction is exempted.</p>
<p>Malaysia XCo. manufactures and sells goods to Malaysia YCo. Neither Malaysia XCo. nor Malaysia YCo. enjoys tax incentives or has tax attributes, i.e., the effective tax rate of the two entities is the same. Is Malaysia XCo. or Malaysia YCo. required to prepare TPD?</p>	<p>Malaysia XCo. and Malaysia YCo. need not prepare contemporaneous TP documentation with prove that any adjustments made will not alter the total tax payable or suffered by the person and its related person(s). However, Malaysia XCo and Malaysia YCo still need to comply with Section 140A and TP Rules, i.e., the controlled sales transaction must be at arm’s length price. To demonstrate this and for record-keeping purposes, Malaysia XCo and YCo are encouraged to prepare contemporaneous TP documentation.</p>

Latest clarification (cont.)

Question	Answer
<p>Is one good quality comprehensive TPD, covering the relevant information suffice for two Malaysian entities' compliance purposes?</p> <p>For instance, if Malaysia XCo. is a contract manufacturer for Malaysia YCo., a TPD prepared by Malaysia XCo. that contains sufficient detailed information on both XCo. and YCo., including their functional analysis and one benchmarking study for XCo. (tested party – less complex entity), would be sufficient for compliance purposes for both Malaysia XCo. and Malaysia YCo.</p>	<p>Both Malaysia XCo. and Malaysia YCo. need to prepare separate contemporaneous TPD which addresses the analysis from each perspective based on their controlled transactions.</p> <p>However, if XCo. and YCo. decide to develop one TPD that fulfils all the requirements under TP Rules and MTPG from the perspectives of both companies, IRBM can allow such practice.</p>
<p>Please confirm that the surcharge under S.140A(3C) can be imposed as long as a transfer pricing adjustment is made by the IRBM during audit regardless the Companies is required to prepare TPD or not?</p>	<p>Yes, because the surcharge is not linked to the availability of TPD and will be imposed based on the adjustment upon the audit findings.</p>
<p>Please confirm that penalty under S.113B will not be applicable to taxpayers that are not required (instead encouraged) to prepare TP documentation.</p>	<p>Yes, for taxpayers who are not required to prepare TP documentation, the penalty under S.113B will not apply to them.</p>

Source :IRBM's feedback to Deloitte on queries pertaining to TPD Flowchart and TPD Self-test

Case law: Keysight Technologies Malaysia Sdn Bhd

- Gains from the transfer of technical know how: revenue vs capital

Keysight Technologies Malaysia Sdn Bhd v DGIR (HC)

Background



Keysight Technologies Malaysia Sdn Bhd (“KTMSB”)

- Incorporated on 6 June 1998
- a full fledged manufacturer



1 March 2008

- Under the group’s global restructuring exercise, KTMSB has converted its functions from full-fledged manufacturer to contract manufacturer.
- As part of the exercise, the “technical know-how” (i.e., marketing and manufacturing intangibles) developed by KTMSB was transferred to ATIS by way of sale agreement
- KTMSB entered into manufacturing services management with ATIS (related company).
- The “technical know-how” was licensed for the use of KTMSB under the manufacturing services management with ATIS.
- The proceeds from the sale was declared as a sale of capital assets not taxable under the ITA 1967.



Agilent Technologies International Sarl, Switzerland (“ATIS”)

Keysight Technologies Malaysia Sdn Bhd v DGIR (HC)

IRB's findings and issues



9 June 2017

DGIR issued letter in relation to tax audit conducted on KTMSB



Keysight Technologies Malaysia Sdn Bhd ("KTMSB")

Whether the gains arising from the transfer of "technical know-how" were revenue receipt under Section 4(f) of the ITA 1967 ?

- Gains made by KTMSB from the transfer of "technical know-how" amounting to RM821,615,000 to ATIS in YA 2008 were revenue receipt under Section 4(f) of the Income Tax Act, 1967 ("ITA 1967").
- The transfer of "technical know-how" was not "outright sale" and the gains were not capital receipt as KTMSB was still using the "technical know-how" in its manufacturing of products
- The gains were payment on lost of income in relation to conversion from full fledge manufacturer to contract manufacturer due to restructuring exercise that caused drastic fall in KTMSB's profit margin.

Whether the DGIR is time-barred under Section 91(1) of the ITA 1967 to raise additional assessment for the YA 2008

Keysight Technologies Malaysia Sdn Bhd v DGIR (HC)

Decision of the High Court of Malaya, Kuala Lumpur



1 >

Income under Section 4(f) of ITA 1967

- ✓ The High Court had affirmed the decision of the SCIT that the Appellant's gains on the transfer of technical know-how in the amount of RM821,615,000.00 is assessable as income under Section 4(f) of ITA 1967.



2 >

DGIR: Application of Badges of Trade test

- ✓ Badges of trade test would only be applicable if the gains are being taxed as business income under paragraph 4(a) of the ITA.
- ✓ Paragraph 4(f) of the ITA 1967 is a 'catch all' provision for income that does not fall under paragraph 4(a)-(e) ITA 1967.



3 >

Conclusions

- ✓ The sale of the technical know-how took place due to the restructuring and KTMSB carried on the same business using the technical know-how after the restructuring.
- ✓ The technical know-how was not recorded in the audited accounts as part of KTMSB's assets.
- ✓ The valuation of the IP is based on the projection of KTMSB's future income which KTMSB would have received from the use of the technical know-how.

Note: Details of the above tax case at both SCIT and HC levels are not available as of this date of publication. It is also noted that this case is pending appeal to the Court of Appeal.

Scope of “other income”

Ruling No. 1/2010 – “Withholding Tax on Income under Paragraph 4(f)” (“the PR”)

As a guide, the PR provided that the following criteria can be considered to determine if a payment made to a non-resident (“NR”) falls under Section 4(f) of the ITA 1967:

- a) the payment is revenue and not capital in nature;
- b) the payment is not income that falls under Sections 4(a) to 4(e) and Section 4A of the Act;
- c) the payment received by a NR person is in the nature of a miscellaneous income. Such income is often casual in nature. Casual income means an occasional income, which is received outside the ordinary course of trade or vocation;
- d) the payment is for an isolated transaction; and
- e) there is an absence of repetition of transactions to indicate the commercial nature of the transaction.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

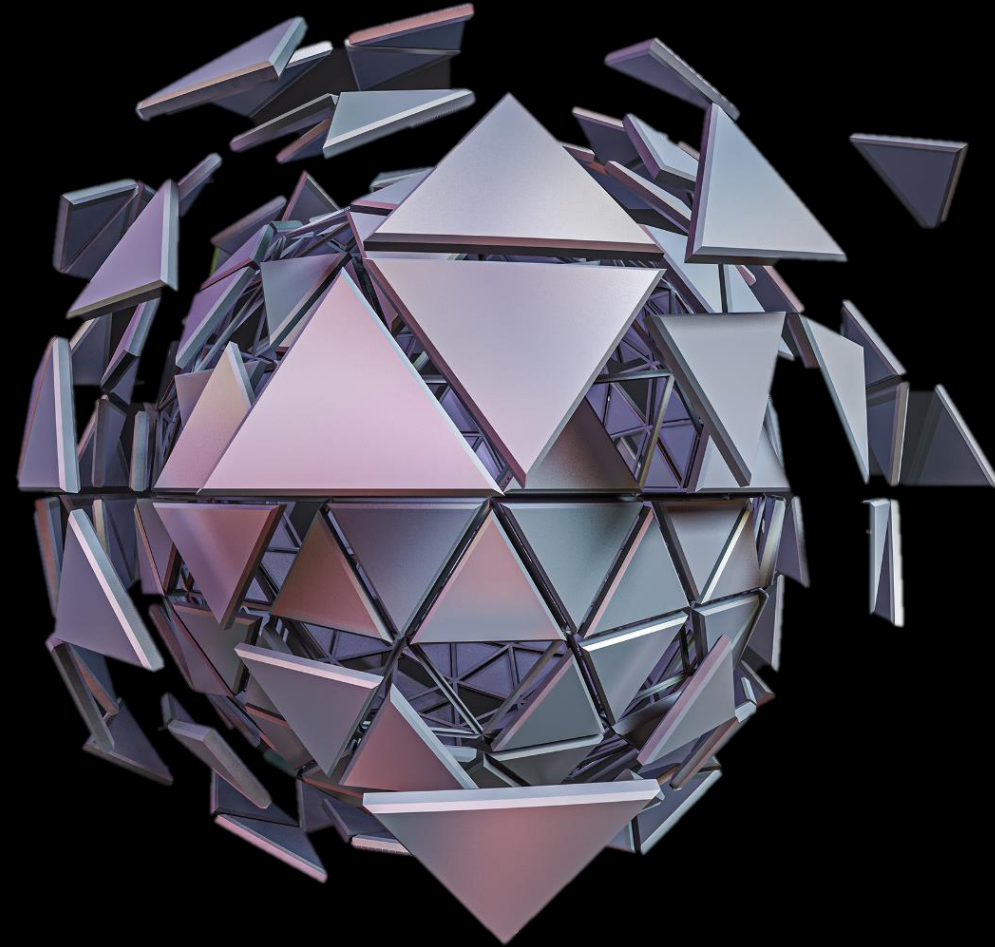
Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.



Deloitte TaxMax
Latest tax development

Thin Siew Chi | 24 November 2021

Latest tax development

Tax incentive guidelines:

- Principal Hub 3.0
- Global Trading Centre
- Special Tax Incentive under Economic Recovery Plan

Principal Hub (“PH”)

Evolution of PH incentive

April 2015 – Introduction of PH

- 3-tiered tax rate (0, 5% or 10%)
- 5 + 5 years
- Services & trading income
- Min. employment headcount & annual business spending depending on tier
- 1 May 2015 – 30 Apr 2018

July 2017 – Revised PH guidelines

- New co – 3-tiered tax rate
- Existing co – full tax exemption on value added income
- Must perform Regional P&L / Business Unit Management
- Removal of 30:70 threshold for services / goods-based company inside & outside Malaysia
- Definition of annual business spending

2018 – Revised PH1.0 guidelines

- Exclusion of IP-related income, such as royalty and other income from sale of IP asset & embedded IP income from sale of products and use of processes directly related to IP assets

2019 – PH 2.0 guidelines

- New co – 2-tiered tax rate (0 or 5%)
- Existing co – 10% concessionary rate for 5 YAs
- Increased annual sales for trading companies (RM300mil to RM500mil)
- Undertake Strategic Business Planning & Corporate Development in addition to Regional P&L / Business Unit Management
- Definition of operating expenditure
- Removal of minimum no. of network companies outside Malaysia to be served & controlled

Evolution of PH incentive

2020 – PH 2.0 guidelines

- No material changes from 2019 guidelines

2021 – PH 3.0 guidelines

- Tax exemption on service income only
- Definition of network companies: non-related companies which have contractual agreement of at least 2 years (previously at least 3 years)
- Relaxation of qualifying conditions
- 1 Jan 2021 to 31 Dec 2022

Approved Investments for PH (2015 – 2020)

- ✓ 38 approved projects
- ✓ RM47.8bil approved investments
- ✓ 3,282 high value job opportunities created

Salient features and qualifying conditions of PH3.0



A locally incorporated company that uses Malaysia as a base for conducting its regional or global businesses and operations to manage, control, and support its key functions including management of risks, decision making, strategic business activities, finance, management, and human resource

	New company	Existing company (manufacturing / services)
Concessionary corporate income tax rate	<ul style="list-style-type: none"> Tiered rate for 10 years (5 + 5) on statutory income based on level of commitment <ul style="list-style-type: none"> ✓ Tier 1 – 0 ✓ Tier 2 – 5% 	10% rate on total statutory income from qualifying PH activities (5 YAs only)
High value jobs (basic monthly salary at least RM5k and at least 50% filled by Malaysians)	<ul style="list-style-type: none"> First 5 years <ul style="list-style-type: none"> ✓ Tier 1 – 50 ✓ Tier 2 – 30 Second 5 years <ul style="list-style-type: none"> ✓ Tier 1 – 60 (add. 20%) ✓ Tier 2 – 36 (add. 20%) 	30

Salient features and qualifying conditions of PH3.0

	New company	Existing company (manufacturing / services)
Key positions (basic monthly salary at least RM25k)	<ul style="list-style-type: none"> • First 5 years <ul style="list-style-type: none"> ✓ Tier 1 – 5 ✓ Tier 2 – 4 • Second 5 years <ul style="list-style-type: none"> ✓ No additional headcount required 	5
Minimum network companies served / controlled	<ul style="list-style-type: none"> • Tier 1 – 10 (including 4 related companies) • Tier 2 – 7 (including 3 related companies) 	7 (including 3 related companies)
Annual operating expenditure	<ul style="list-style-type: none"> • First 5 years <ul style="list-style-type: none"> ✓ Tier 1 – RM10mil ✓ Tier 2 – RM5mil • Second 5 years <ul style="list-style-type: none"> ✓ Tier 1 – RM13mil (add. 30%) ✓ Tier 2 – RM7mil (add. 40%) 	RM10mil
Qualifying services	Regional P&L / Business Unit Management, Strategic Business Planning & Corporate Development + 2	

Global Trading Centre (“GTC”)

Salient features and qualifying conditions

Locally incorporated company - uses Malaysia as international trading base

Operate in LMW / Free Zone / Bonded Warehouse

Usage of Malaysian ports and airports

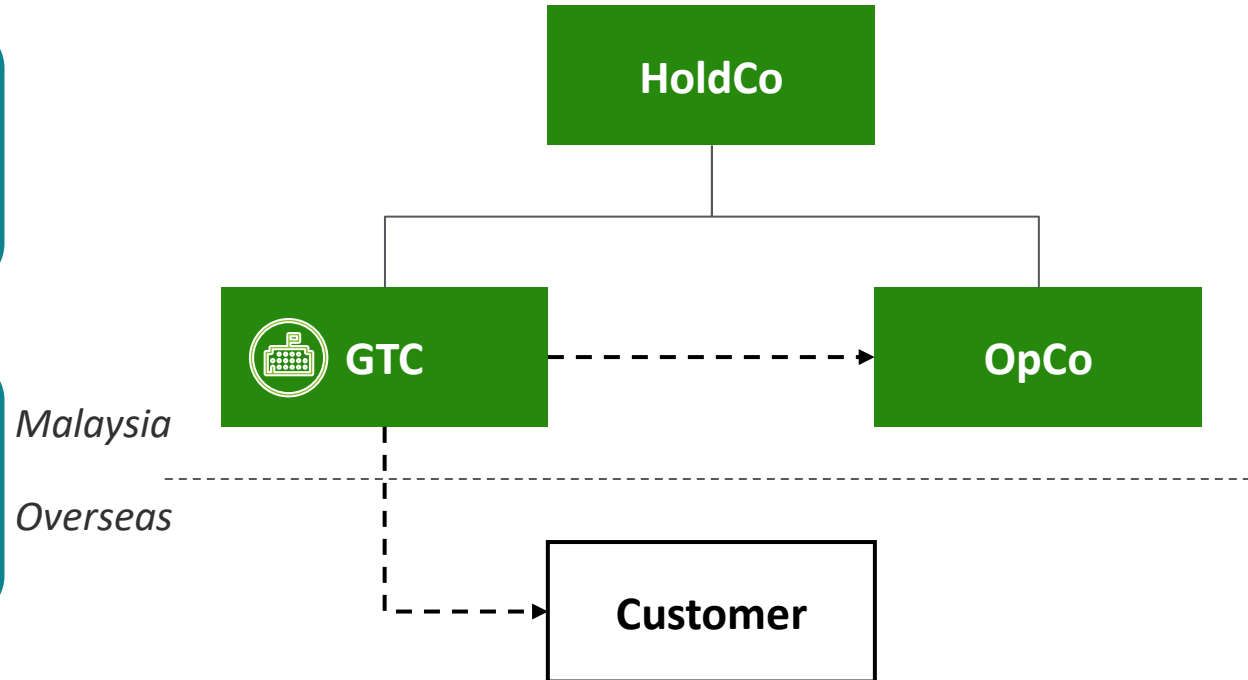
Annual OPEX – RM1.5mil

Strategic sourcing, procurement & distribution – raw materials, components & finished products to related & unrelated companies in & outside Malaysia

Concessionary tax rate – 10% for 10 years (5 + 5)

Paid-up capital – RM1mil

Annual sales turnover – RM300mil



High value jobs – 15

Some outstanding ambiguities

**Strategic sourcing,
procurement & distribution –
must undertake all 3?**

**Raw materials, components &
finished products – must trade
all 3?**

**Must serve both related &
unrelated companies in
Malaysia & abroad?**

**Can carve out existing trading
function to new company?**

**Any relaxation on timing to
achieve RM300mil annual
sales?**

**Office outside LMW / Free
Zone / Bonded Warehouse?**

Drop shipment?

Must use both ports & airports?

**Other conditions / mutual
exclusion?**

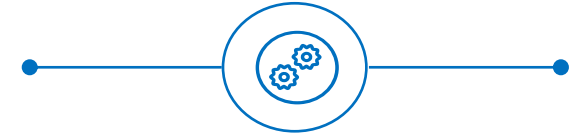
Special Tax Incentive under the Economic Recovery Plan (“PENJANA”)

Expansion of PENJANA relocation incentive

Manufacturing



Selected Services



Full income tax exemption or Investment Tax Allowance
+
Special personal income tax rate for non-citizen C-suite – 15%

Full income tax exemption
+
Special Personal Income Tax Rate of 15% for non-citizen C-suite

New manufacturing company

- Investment – RM300mil to RM500mil
→ 0% tax rate (10 years)
- Investment > RM500mil
→ 0% tax rate (15 years)

Existing manufacturing company

- Investment > RM300mil
→ 100% ITA (5 years)

Incur 1st capital expenditure (capex) within 1 year from approval date.
Total minimum capex to be incurred within 3 years from date of 1st capex

New services company

→ 0 – 10% tax rate (10 years)

Existing services company

→ 10% tax rate (up to 10 years)

Commence operation within 1 year from date of approval, or

Incur 1st capex within 1 year from approval date. Total capex to be incurred within 3 years from date of 1st capex

Expansion of PENJANA relocation incentive (services)



Promoted services activities



Provision of technology solution

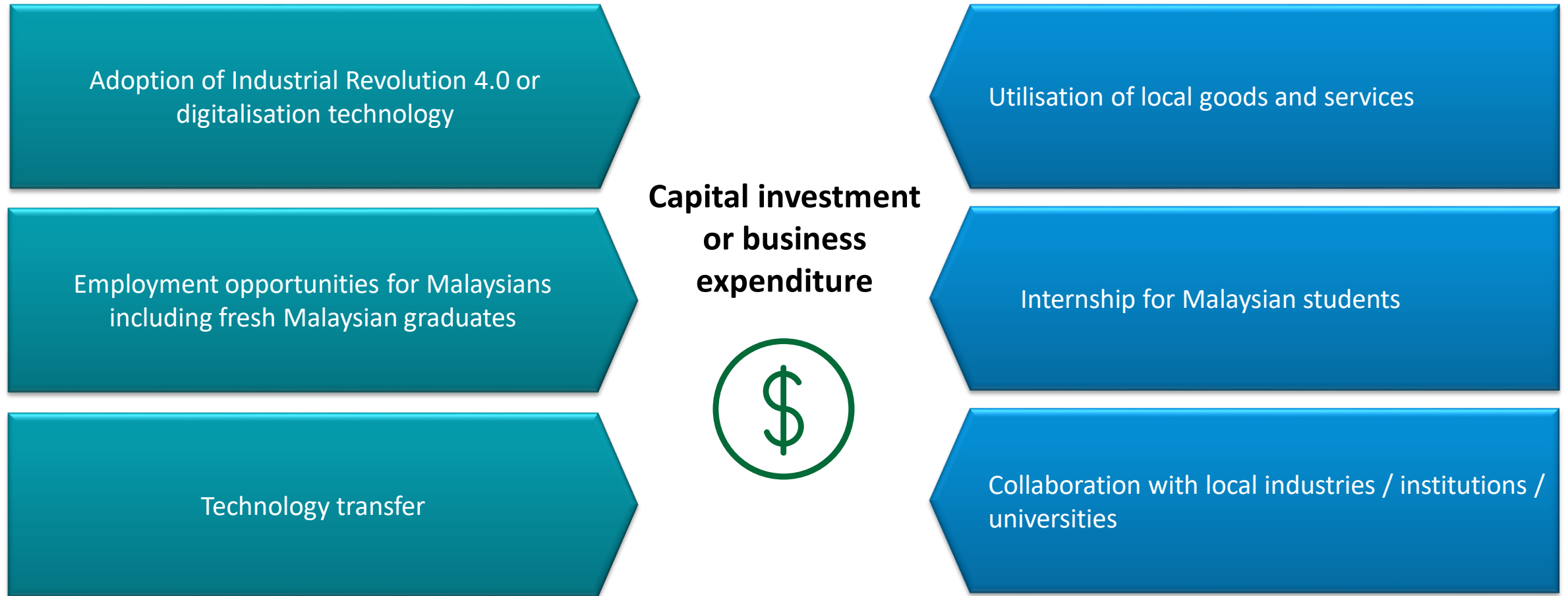
Provision of infrastructure and technology for cloud computing

R&D or design and development activities

Medical devices testing laboratory and clinical trials

Any services or manufacturing-related services activities, as determined by the Minister of Finance

Additional Incentive Conditions





Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.



Chee Pei Pei (Moderator)
Deloitte Private Leader



Chin Shin Yi
Chief Financial Officer,
BIG Pharmacy Group



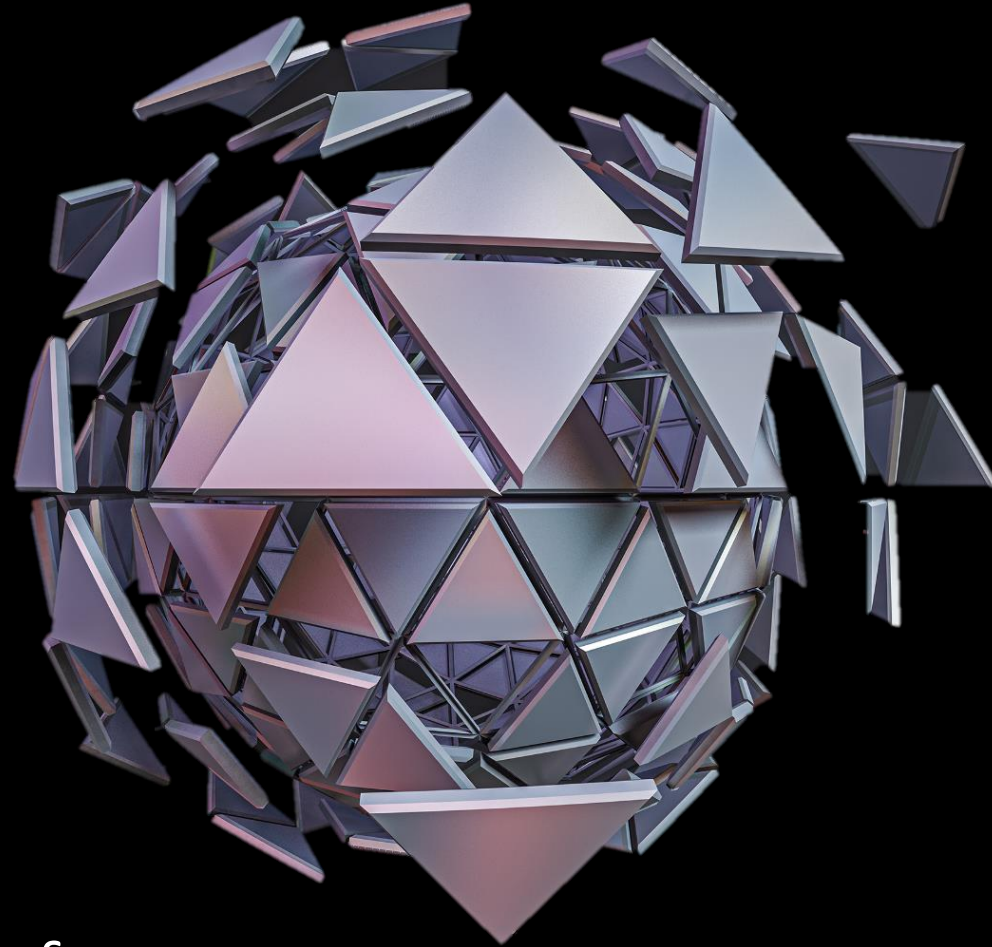
Pierre Pang
Group Executive Director,
MAMEE-Double Decker



Prof Yeah Kim Leng
Professor of Economics,
Sunway University Business School

Deloitte TaxMax - The 47th series | Building resilience for tomorrow

Views from winners of Malaysia's Best Managed Companies 2021

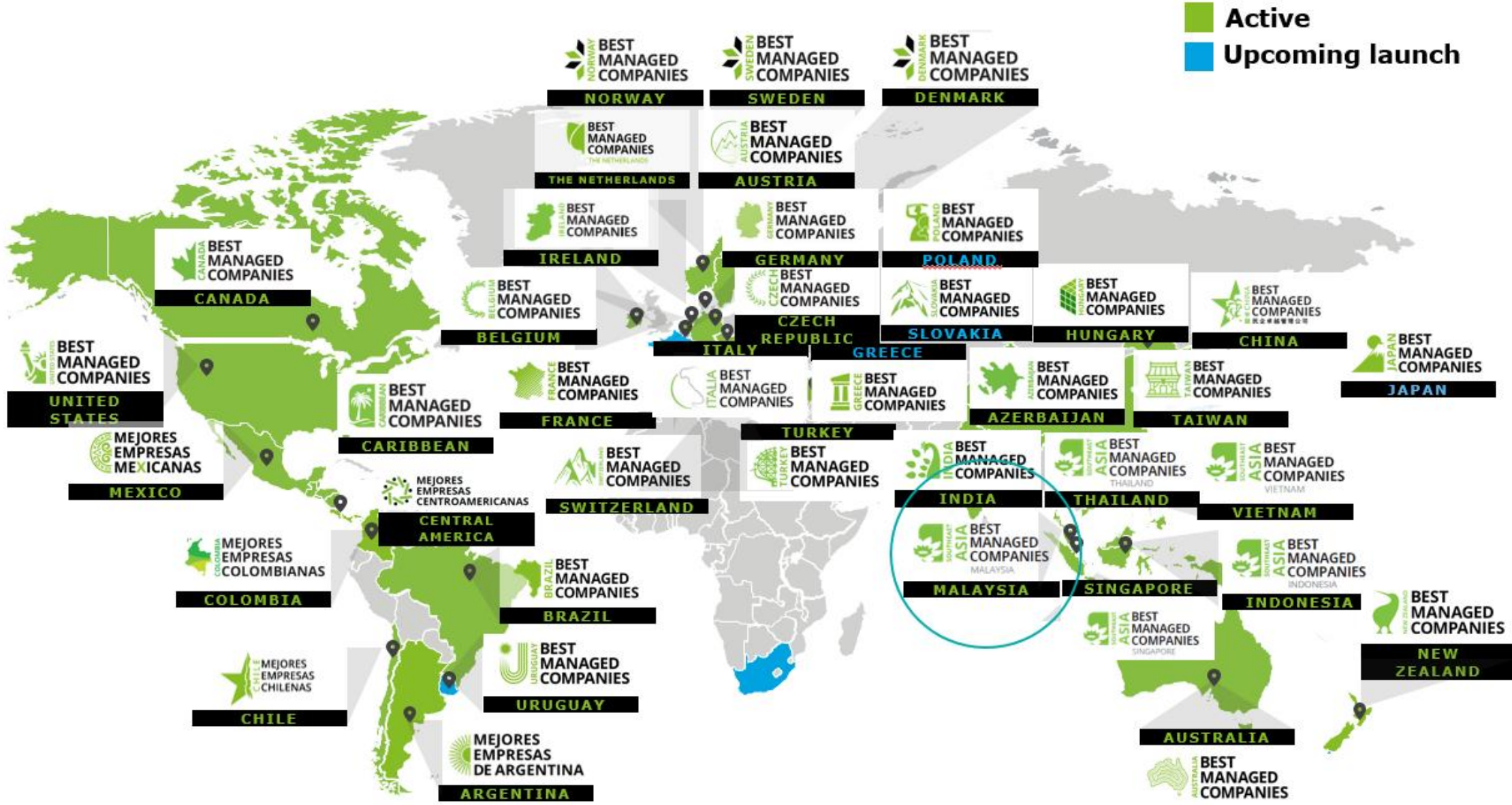


Deloitte TaxMax

Views from winners of
Malaysia's Best Managed Companies 2021

Chee Pei Pei | 24 November 2021

The global community



Benefits for participants

For applicants



- Gain an independent view of your business
- Benchmark against some of the best
- Learn of practical solutions that leaders apply
- Explore growth opportunities during the applicant labs

For winners



- Enjoy exclusive use of the Best Managed Companies' title
- Join a community of Best Managed companies
- Attract and retain great talent
- Network with other private company business leaders
- Attract business and investment
- Raise company profile
- Access a range of business forums



TaxMax – The 47th series
Building resilience for
tomorrow

Tuesday & Wednesday, 23 & 24 November 2021, Live Webcast
An event by Deloitte Tax Academy

An economist's perspective on Budget 2022

Prof Yeah Kim Leng 24th November 2021

1. What's needed to maximise short term gain and minimize long-term pain?

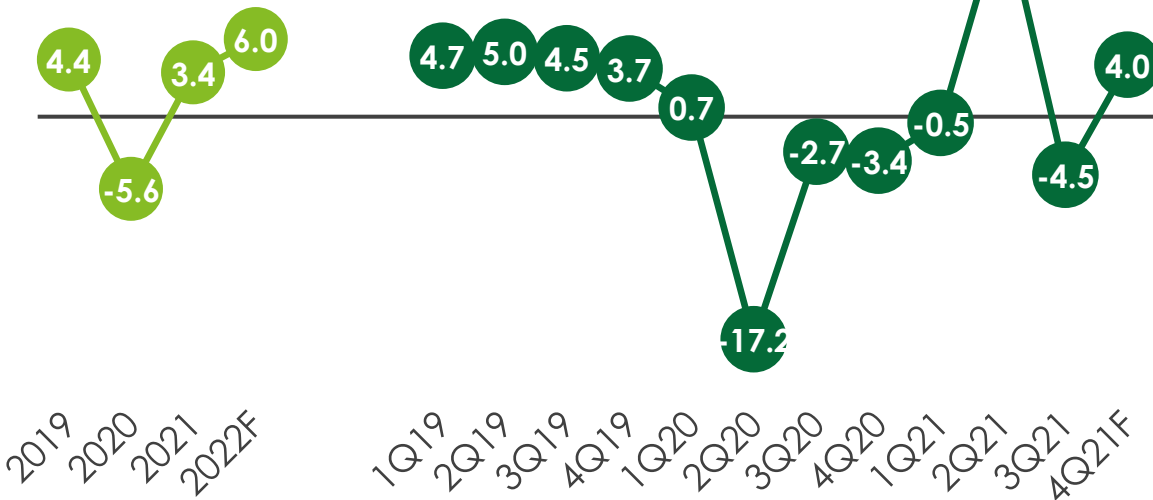
Expansionary budget for 2022 appropriate given...

I. Weaker recovery of Malaysian economy in 2021 due to prolonged pandemic

II. Less robust-than-expected global recovery amid inflation threat

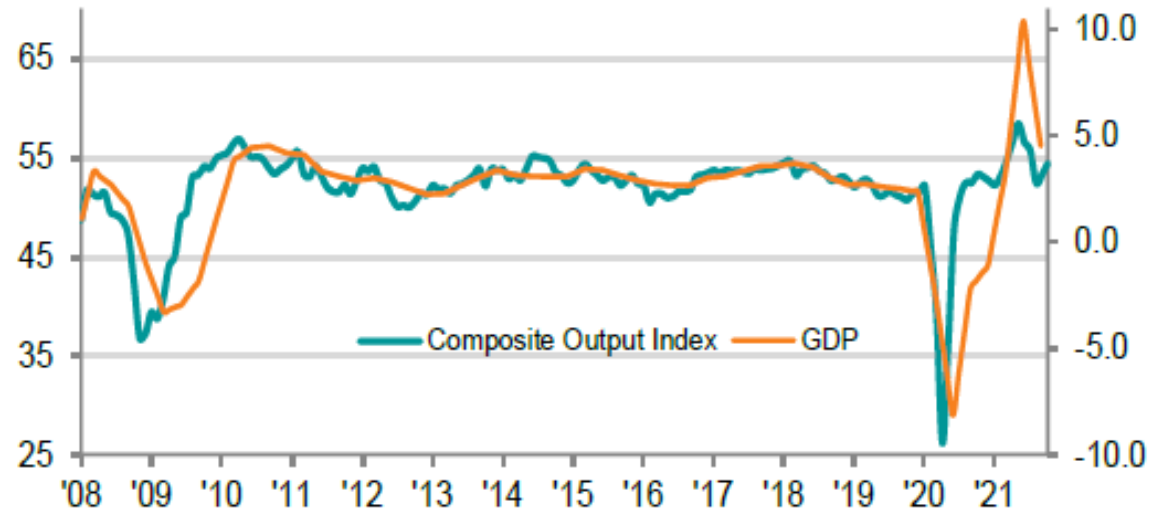
Annual real GDP growth (%)

Quarterly real GDP growth (% yoy)



J.P.Morgan Global Composite Output Index
sa, >50 = growth since previous month

Global GDP %yr/yr



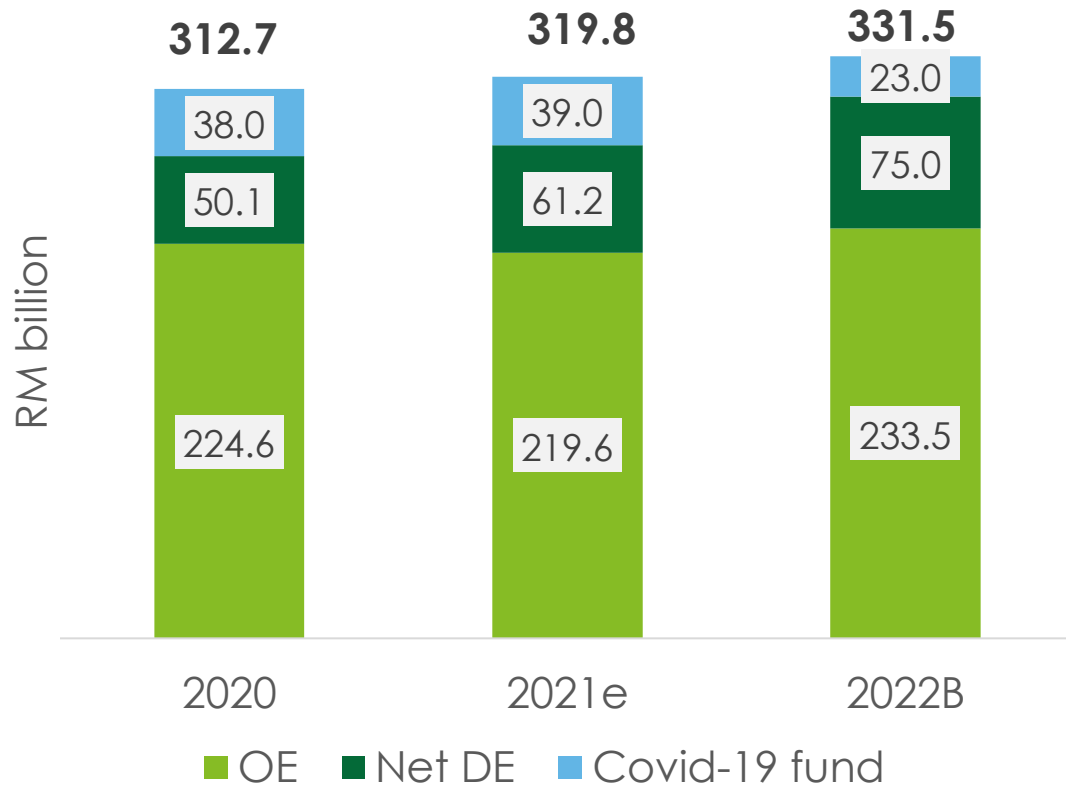
Sources: J.P.Morgan, IHS Markit.

Source: IHS Markit

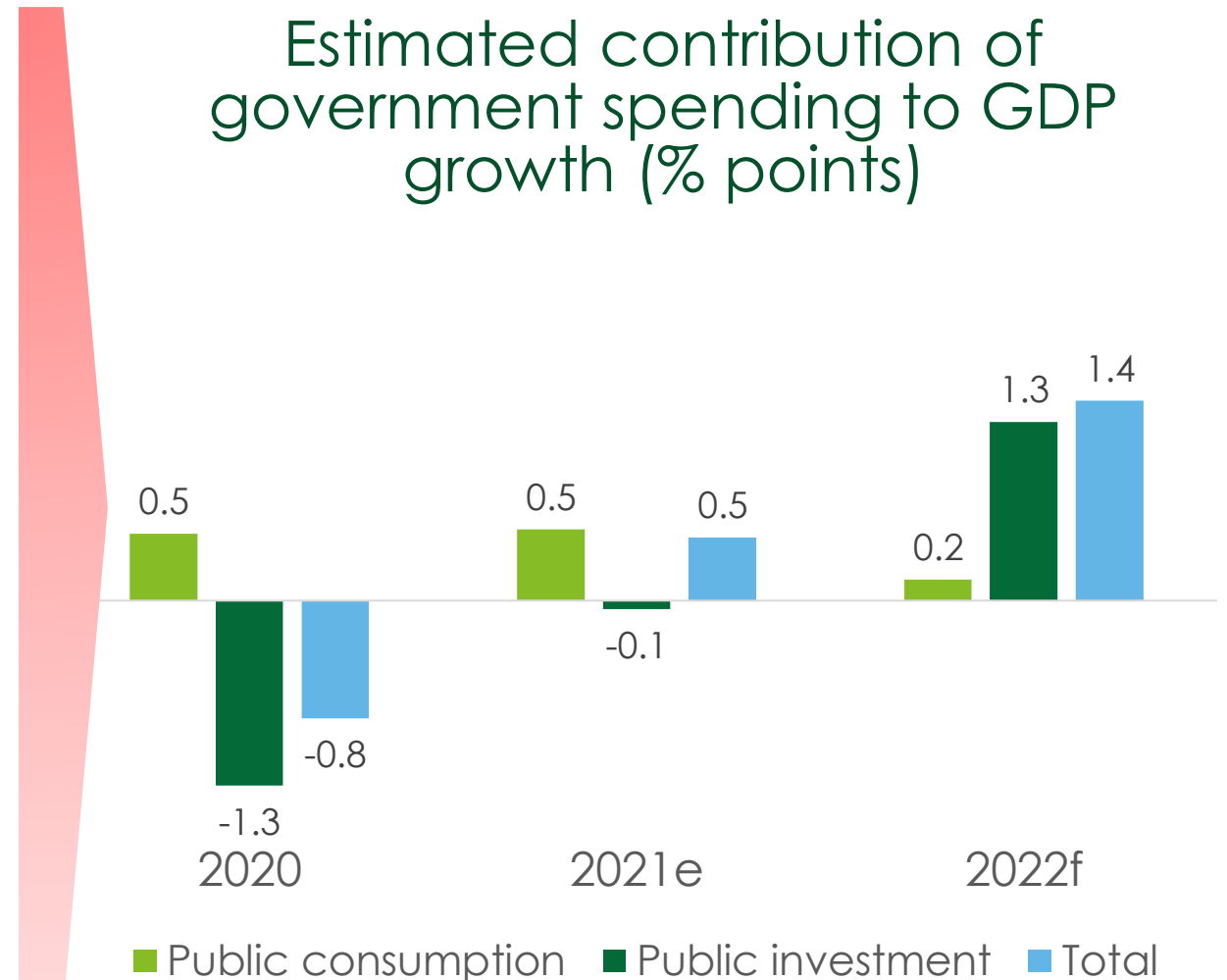
1. What's needed to maximise short term gain and minimize long-term pain?

By how much will the budget boost 2022 growth?

Government operating (OE) and development expenditure (DE) and budget for 2022



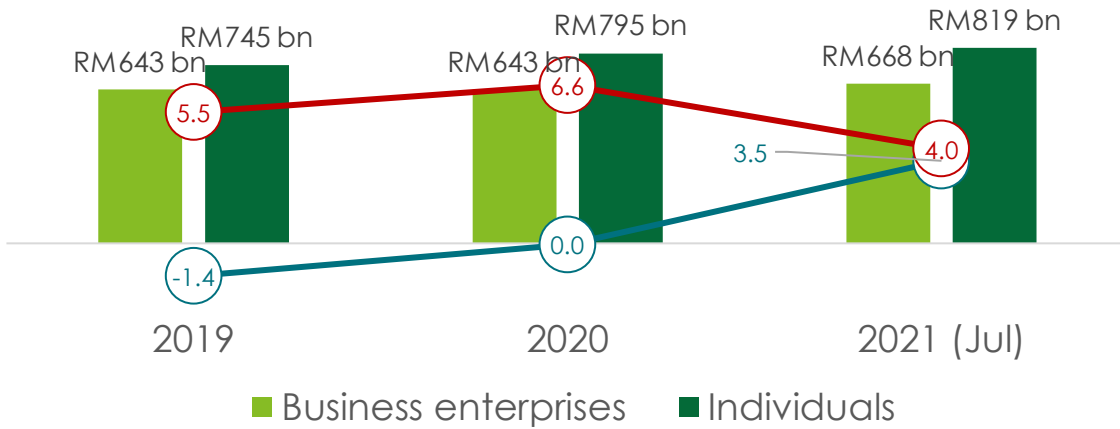
Estimated contribution of government spending to GDP growth (% points)



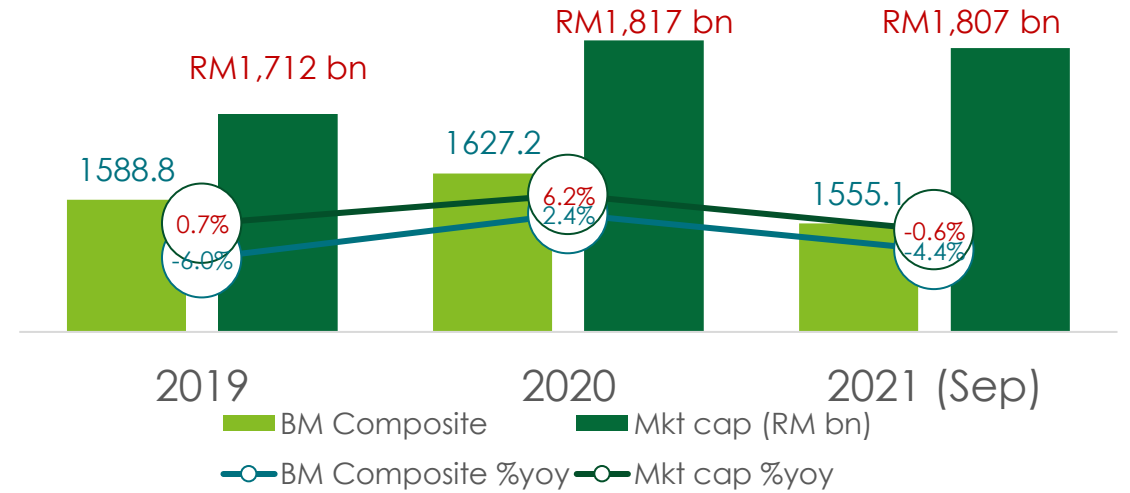
1. What's needed to maximise short term gain and minimize long-term pain?

Short term resilience to cyclical downside risks

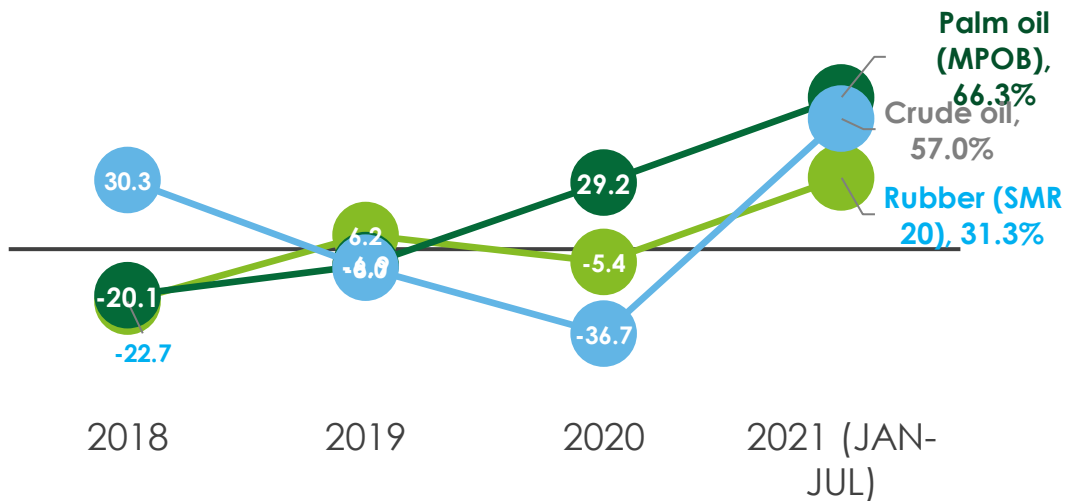
Rise in bank deposits of business enterprises and individuals



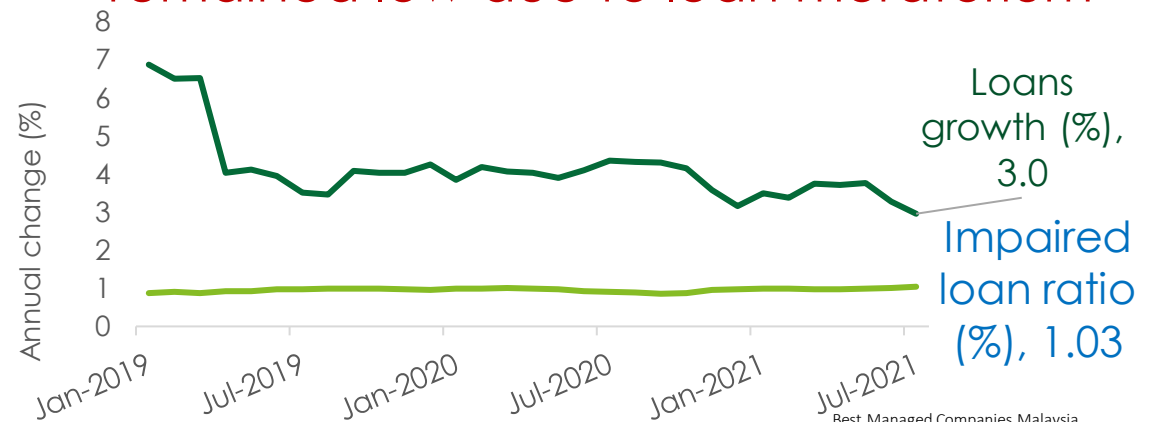
Stock market capitalisation rose in 2020, remains relatively unchanged as of Sep



Strong commodity price increases



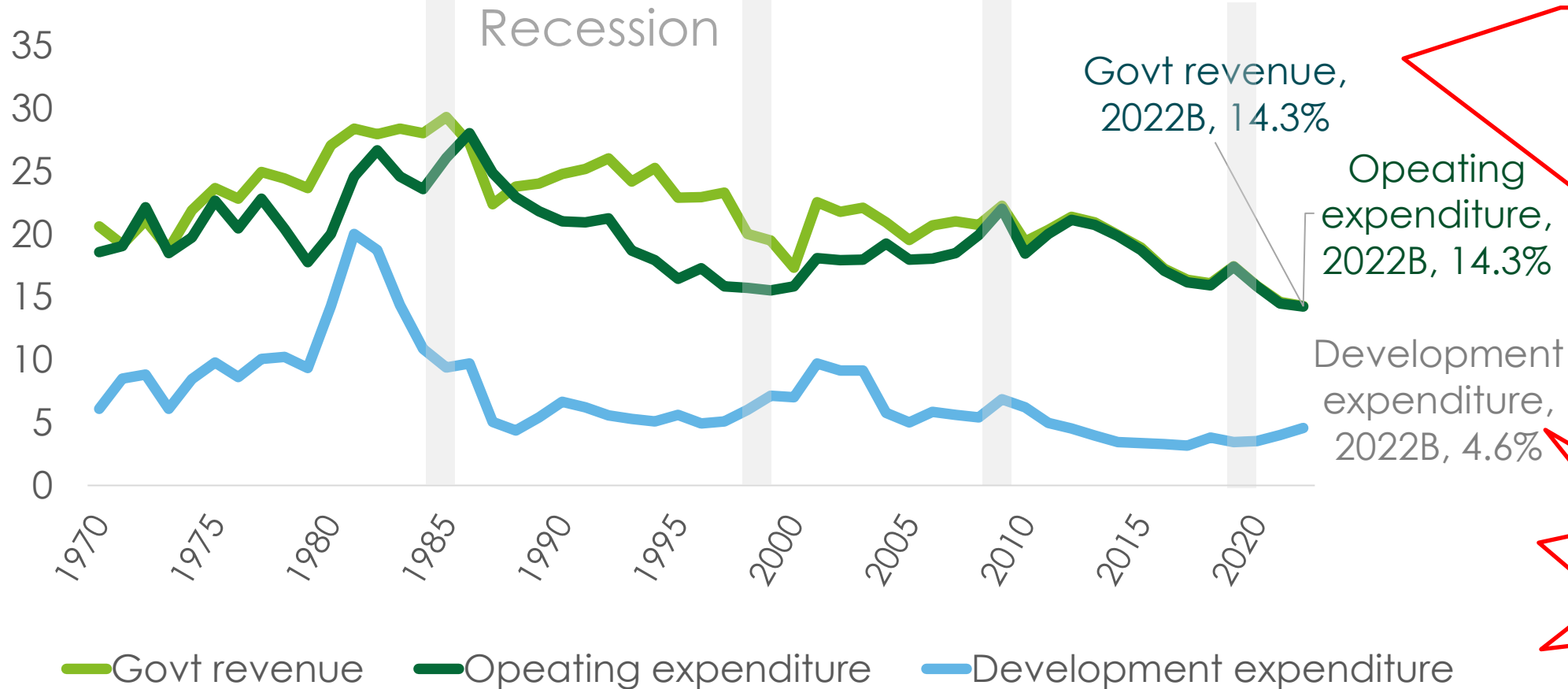
Slowdown in bank lending but still positive; NPLs remained low due to loan moratorium



1. What's needed to maximise short term gain and minimize long-term pain?

Long term pain points: Declining revenue-to-GDP needs to reverse

% of nominal GDP



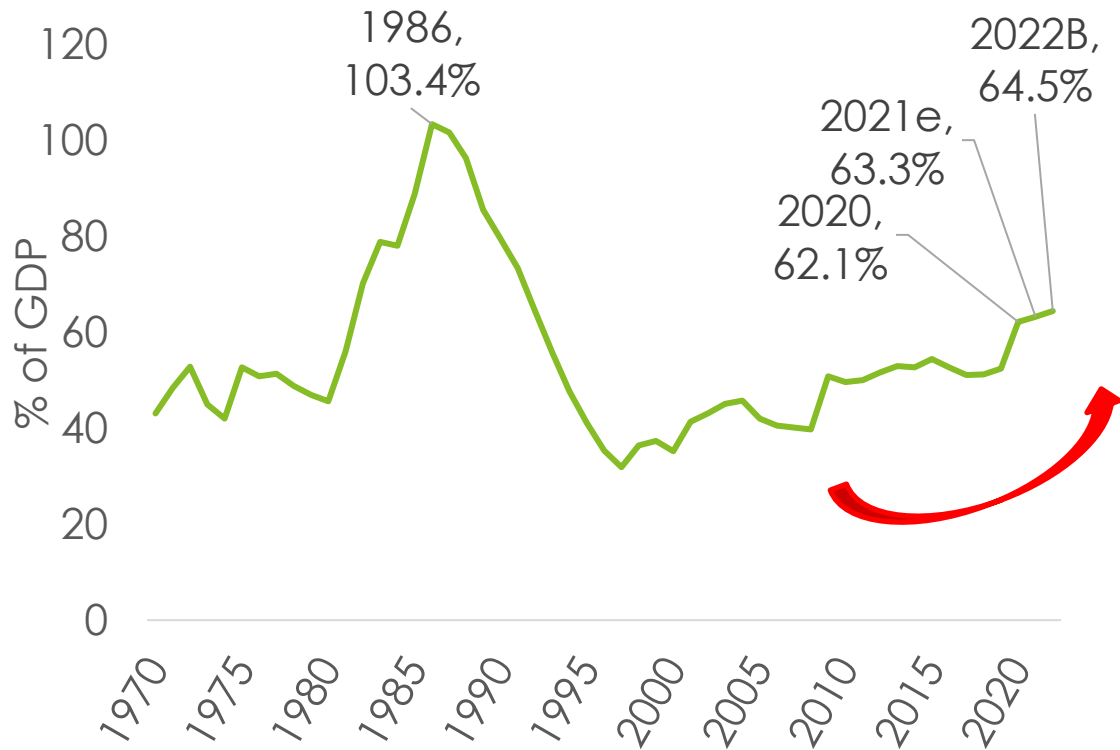
Operating surplus marginally positive, less than a billion

DE funded by debt

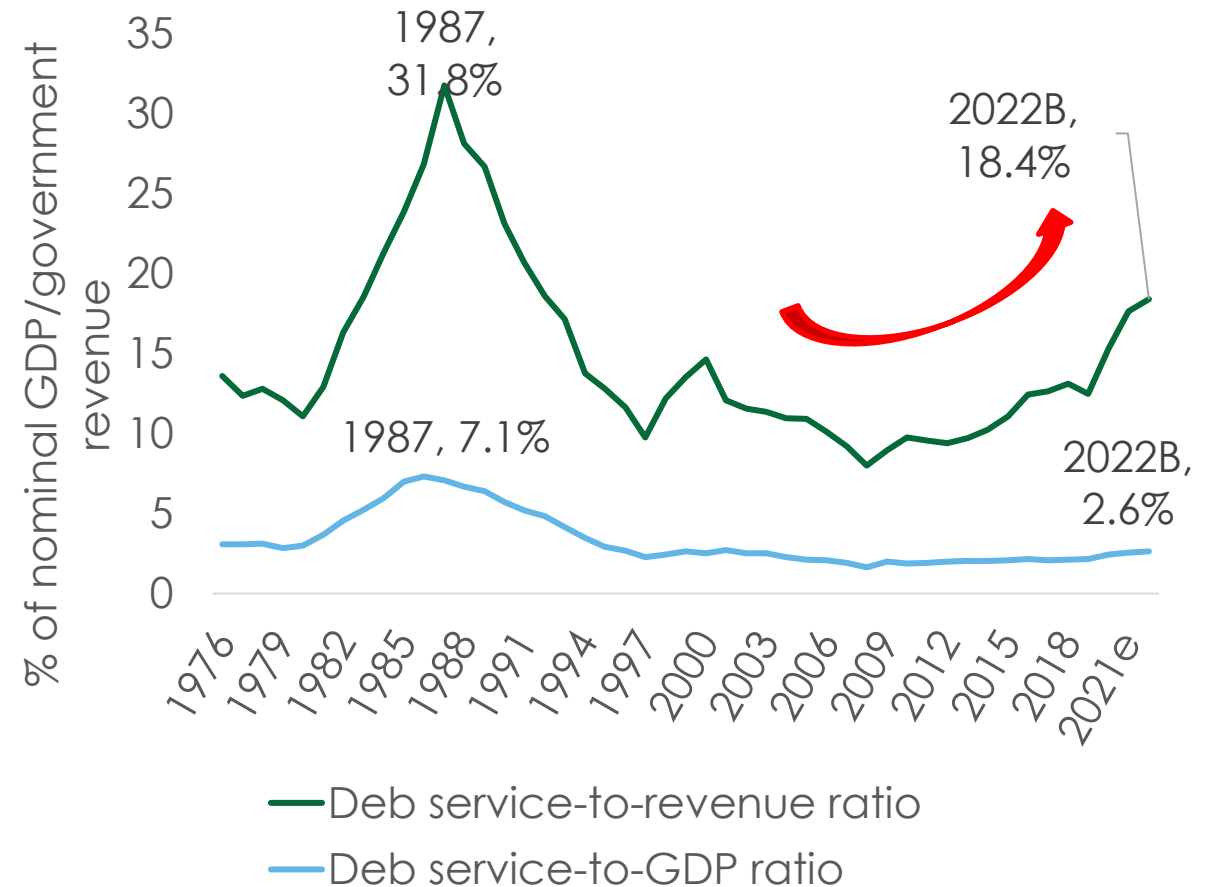
1. What's needed to maximise short term gain and minimize long-term pain?

Long term pain points: Rising debt load and debt servicing

Steadily rising government debt level to 64.5% of GDP estimated for 2022



Debt servicing nearing 20% of government revenue



1. What's needed to maximise short term gain and minimize long-term pain?

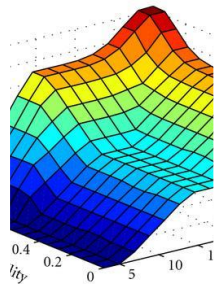
Effective implementation needed to minimize long term pain & reap long term 'dynamic efficiency gains'



Minimal wastage and leakages in government spending



Raise economic efficiency and productivity; investor confidence



Shift resources (capital, labour, managerial) from low growth to high growth sectors



Raise competitiveness and technological capabilities of firms



Create an enabling and attractive environment for sustained business and enterprise growth

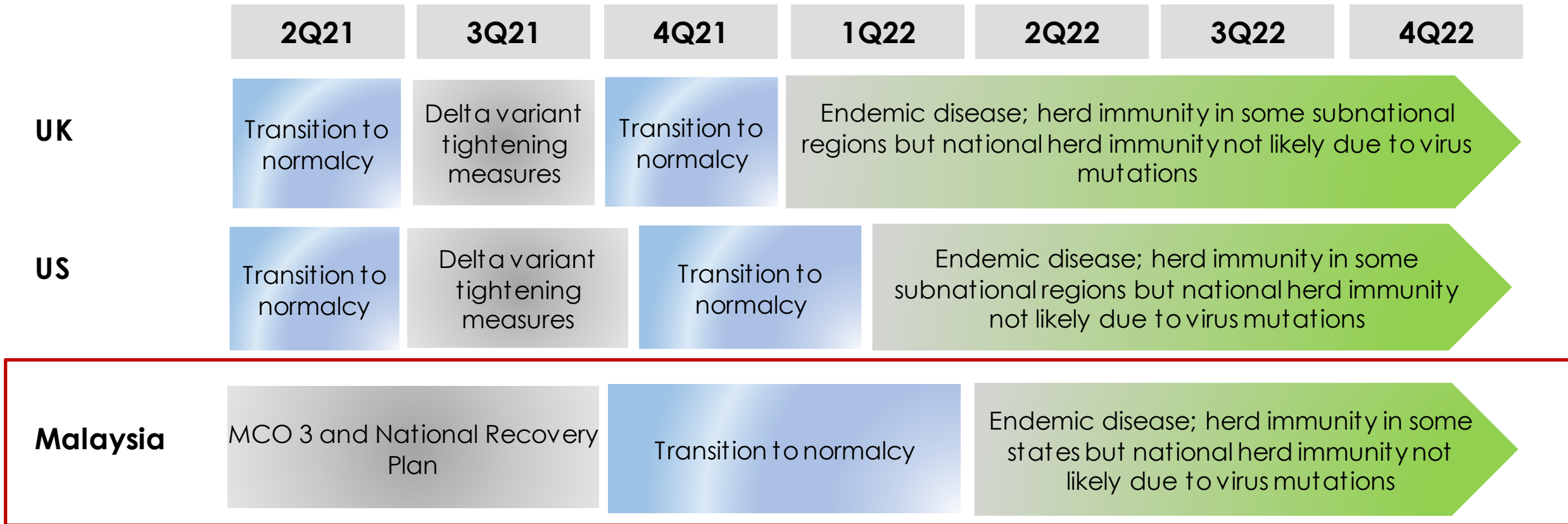
2. Are the budgetary measures adequate to revive economic growth in 2022?

Fiscal channels that boost short term growth

Raise household income	Increase government spending	Incentives to spend	Incentives to invest
<ul style="list-style-type: none">• Direct cash assistance & welfare (RM8.2b)• Subsidies, aid and incentives (RM31b)• Lower EPF contribution• Senior citizen assistance (RM0.6b)	<ul style="list-style-type: none">• Education (RM67.1b)• Public healthcare spending increase (RM32.4b)• Job creation programmes (RM4.8b)• Reskilling & upskilling programmes (RM1.1b)• Social protection programmes• Bumiputera development (RM11.4b)• Community & rural infrastructure development (RM4b)• Infrastructure development (RM3.5b)	<ul style="list-style-type: none">• Automobile sales tax exemption• Home ownership incentives (RM1.5b) and financing (RM2b)• Public transport subsidies (RM0.5b)• Tourism (RM1.6b, creative industry (RM0.2b), retail industry (RM0.3b) and agro-industry (RM1.7b) support programmes.• Low carbon matching facility (RM1b)• Environment and biodiversity programmes (RM0.5b)	<ul style="list-style-type: none">• Job guarantee & employment incentives (RM8.6b)• Youth & sports development programmes• Microcredit scheme (RM1.8b)• Business financing and alternative financing (RM2.8b)• BNM funds for various purposes (RM31.1b)• Business financing guarantee schemes• Strategic investment fund for MNCs (RM2b)• GLC-MSMEs empowerment (RM5b)• Sustainability sukuk (RM10b)• Digital connectivity project (RM1b)

2. Are the budgetary measures adequate to revive economic growth in 2022?

Adequacy of Budget 2022 dependent on how well the transition to an endemic situation is managed



Source: McKinsey Report, "When will Covid-19 pandemic end? August 2021 Update; Malaysia – own estimate

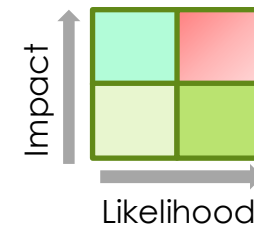
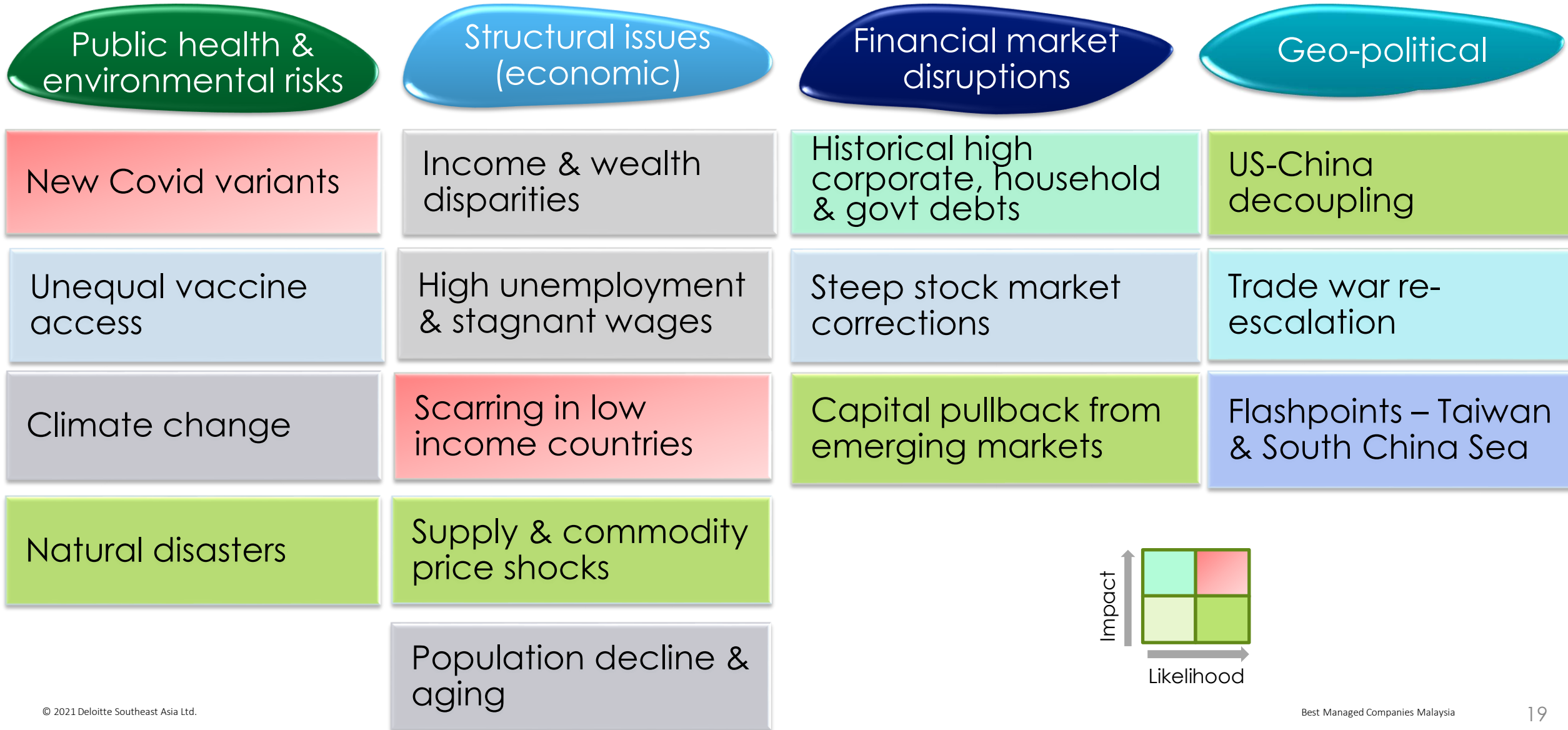
3. Will the budget unlock 'build back better' opportunities?

Budget 2022 measures that have long term impact (in bold red)

Raise household income	Increase government spending	Incentives to spend	Incentives to invest
<ul style="list-style-type: none">• Direct cash assistance & welfare (RM8.2b)• Subsidies, aid and incentives (RM31b)• Lower EPF contribution• Senior citizen assistance (RM0.6b)	<ul style="list-style-type: none">• Education (RM67.1b)• Job creation programmes (RM4.8b)• Reskilling & upskilling programmes (RM1.1b)• Social protection programmes• Bumiputera development (RM11.4b)• Community & rural infrastructure development (RM4b)• Infrastructure development (RM3.5b)	<ul style="list-style-type: none">• Public healthcare spending increase (RM32.4b)• Automobile sales tax exemption• Home ownership incentives (RM1.5b) and financing (RM2b)• Public transport subsidies (RM0.5b)• Tourism (RM1.6b, creative industry (RM0.2b), retail industry (RM0.3b) and agro-industry (RM1.7b) support programmes.• Low carbon matching facility (RM1b)• Environment and biodiversity programmes (RM0.5b)	<ul style="list-style-type: none">• Job guarantee & employment incentives (RM8.6b)• Youth & sports development programmes• Microcredit scheme (RM1.8b)• Business financing and alternative financing (RM2.8b)• BNM funds for various purposes (RM31.1b)• Business financing guarantee schemes• Strategic investment fund for MNCs (RM2b)• GLC-MSMEs empowerment (RM5b)• Sustainability sukuk (RM10b)• Digital connectivity project (RM1b)

3. Will the budget unlock 'build back better' opportunities?

Need to build resilience to post-Covid global risks



3. Will the budget unlock 'build back better' opportunities?

“Build-back-better” opportunities



Accelerated shift to digital & smart economy (automation, AI, robotics, IOT, machine learning, big data, etc)



Pursuit of green and sustainable growth (Net zero carbon and SDGs-driven)



Leverage on regional cooperation and trade agreements to face common threats and accelerate recovery



Attract new investments arising from post-pandemic relocation of production out of China and US



Supply chain reconfiguration from both national and firm-level perspectives



Address structural issues such as low wages, inadequate social safety net, affordable housing, healthcare and education systems, low innovation and productivity growth

Concluding observations

- Malaysian economy on track for **a moderately strong recovery in 2022** with adequate support from expansionary Budget but rising fiscal constraints and vulnerabilities need close attention.
- **To raise long term growth**, we need to: (1) attract high quality domestic and foreign investments; (2) develop complementary assets and supporting services, and (3) ensure market-friendly and attractive investment climate, and a stable political and policy environment.
- **Rising fiscal constraints** suggest that efforts to restructure, upgrade and strengthen resilience need to shift more aggressively toward incentivising the private sector to unleash entrepreneurship and technological innovations.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

Deloitte.



Toh Hong Peir (Moderator)
Oil, Gas and Chemicals Sector Leader



Choy Mei Won
Business Tax Executive Director



Chee Ying Cheng
Global Employer Services
Executive Director



Leonard Woo
Financial Advisory Executive Director



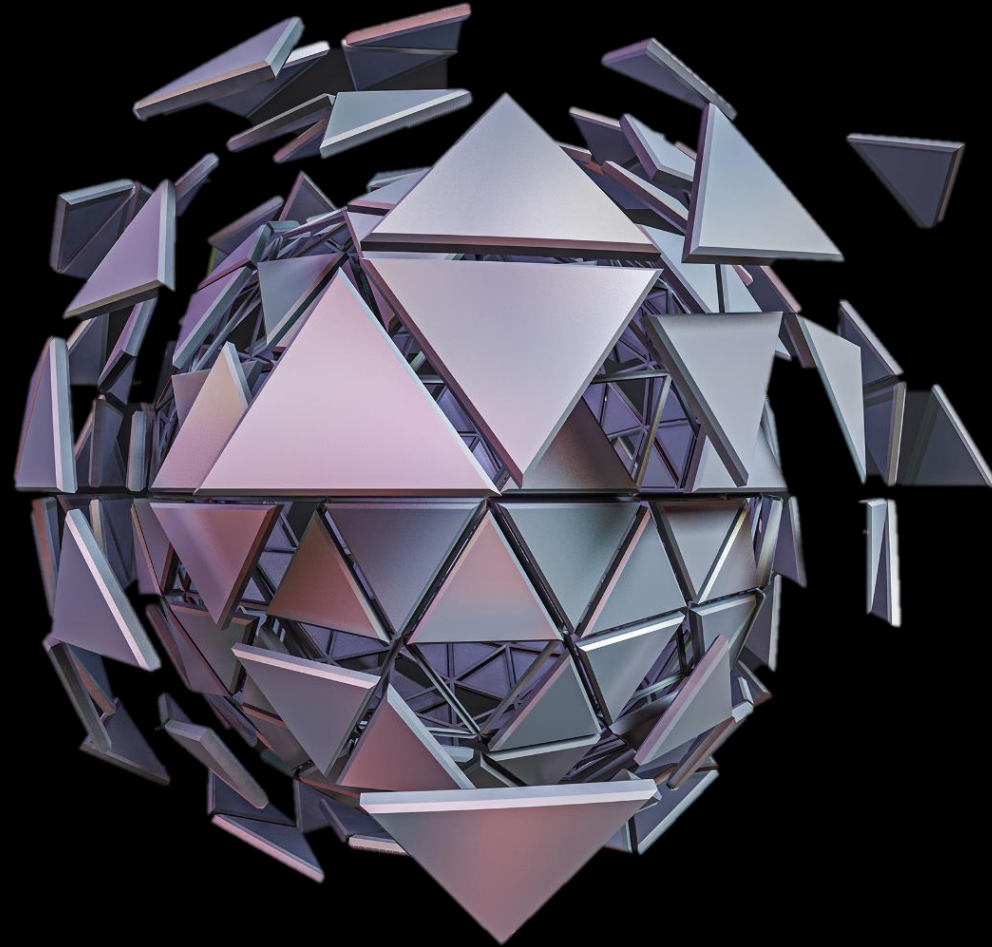
Wong Kar Choon
IPO Leader

Deloitte TaxMax - The 47th series | Building resilience for tomorrow

Embarking on your IPO journey



Deloitte.



Deloitte TaxMax

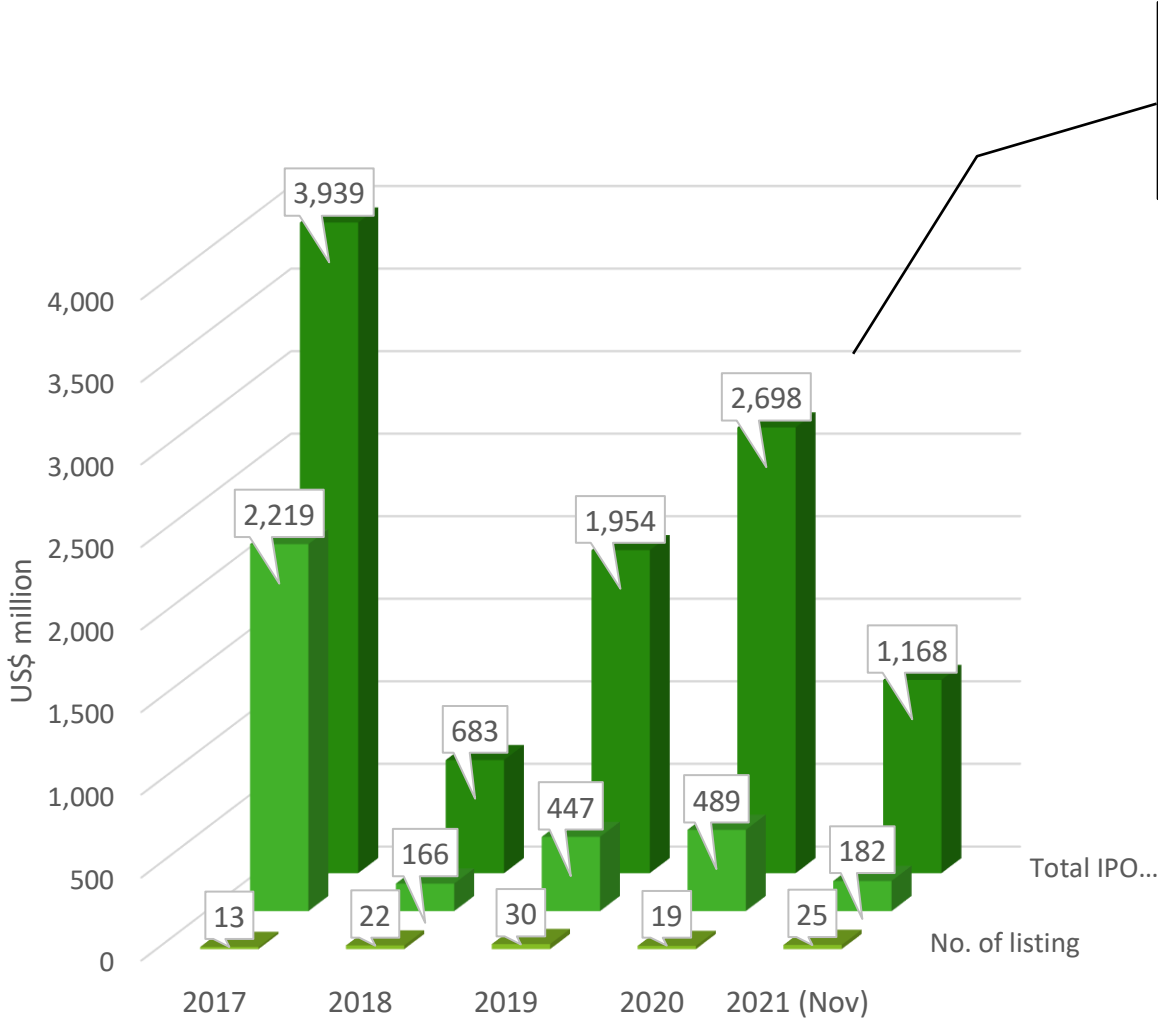
Embarking on your IPO journey

Toh Hong Peir, Wong Kar Choon, Leonard Woo, Choy Mei Won, Chee Ying Cheng
24 November 2021

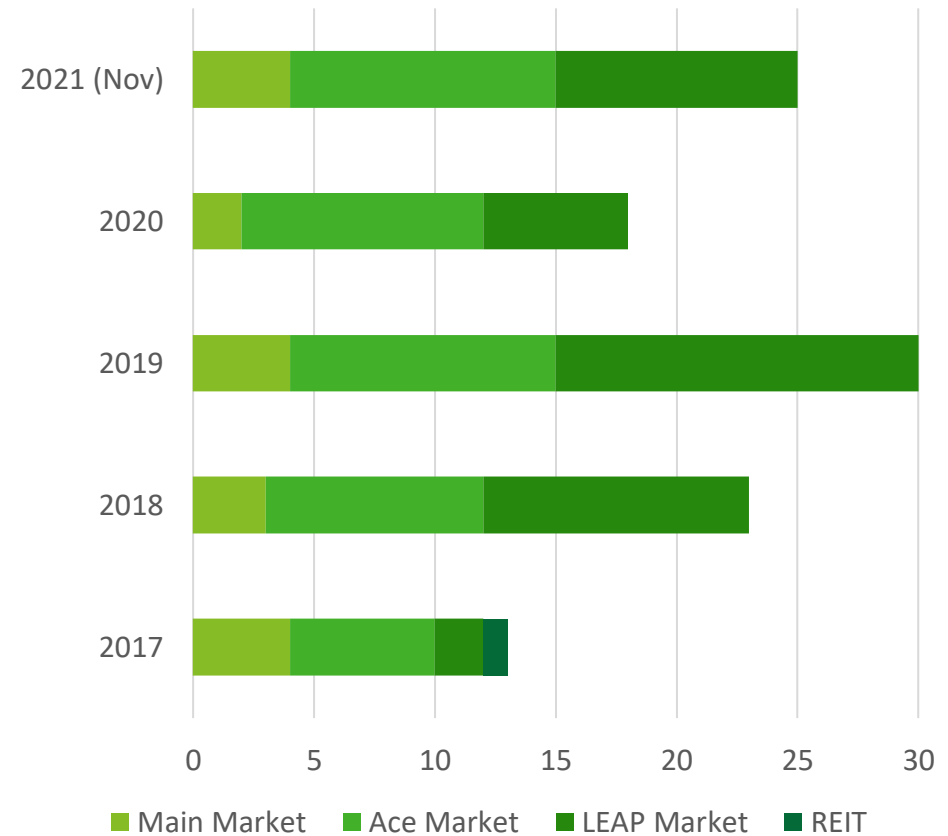


SEA IPO Market Review: Malaysia

Overall Malaysia IPO performance from 2017 to 2021



Lesser funds raised and market capitalisation but increased in number of listing.



■ No. of listing ■ Total fund raised ■ Total IPO market cap

SEA IPO Market Review: Malaysia

Overall Malaysia IPO performance in 2021

Top 5 IPO Companies in Malaysia in 2021 (As of 8 November 2021)

Company	Industry (per Deloitte)	Listing date	Amount raised (US\$ million)	IPO Market Cap (US\$ million)
CTOS Digital Berhad *	Financial Services	19-Jul-21	53	580
Teladan Setia Group Berhad	Real Estate	16-Mar-21	23	93
Yenher Holdings Berhad	Consumer Business	15-Jul-21	15	69
Tuju Setia Berhad	Real Estate	19-May-21	14	54
Nestcon Berhad	Real Estate	29-Jun-21	11	44

* At PE ratio of 61.8, CTOS Digital Berhad has recorded oversubscription rate of 27.57 times.

SEA IPO Market Review: Malaysia

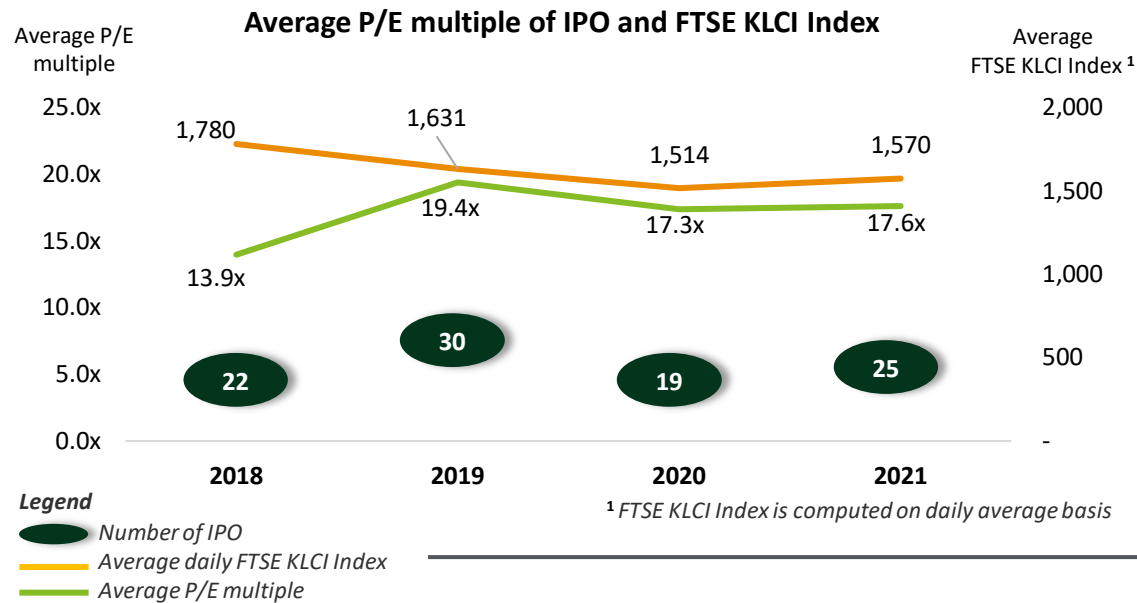
Performance of Malaysia's IPO market in 2021

Top 3 best performer	Offer price at IPO date (RM/share)	Current closing price* (RM/share)	Change (%)
Carzo Holdings Berhad	0.29	3.56	1149
Steek Hawk Berhad	0.20	0.70	250
Onetech Solutions Holdings Berhad	0.20	0.55	175

* As at 8 November 2021

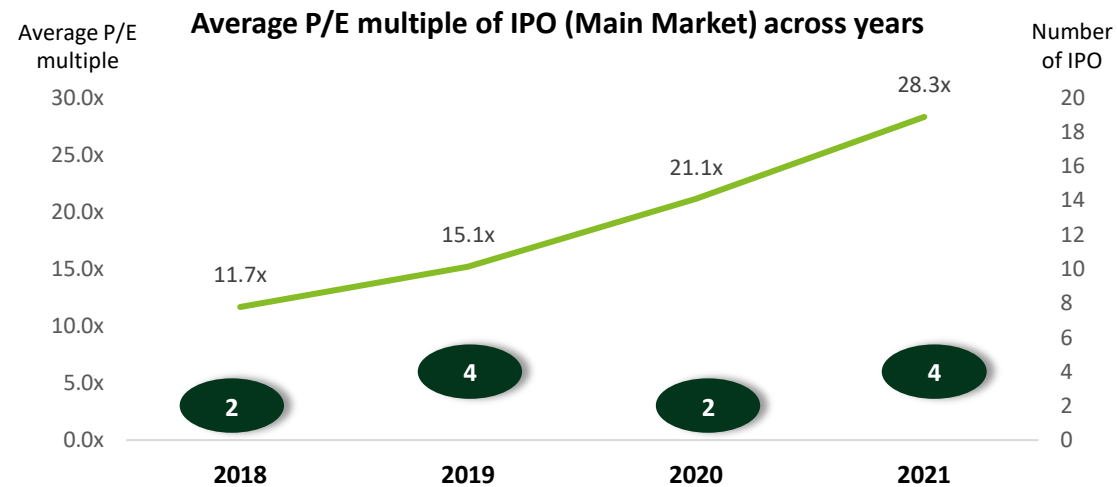
SEA IPO market review: Malaysia

Valuation multiple of IPO in Malaysia for recent years



Average of P/E Multiple (Main + ACE + LEAP Markets)					
Sector/Year	2018	2019	2020	2021	Average
Construction	15.4x	10.8x	7.5x	12.9x	11.4x
Consumer products & services	14.6x	25.7x	18.9x	12.0x	20.0x
Healthcare	16.6x	28.2x	10.3x	-	17.5x
Industrial products & services	13.2x	15.0x	14.1x	13.9x	14.2x
Technology	12.5x	17.1x	46.7x	31.0x	22.8x
Telecommunications & media	10.2x	-	-	-	10.2x
Transportation & logistics	16.9x	-	-	-	16.9x
Energy	-	-	13.8x	10.9x	12.8x
Real Estate Investment Trusts	-	-	-	23.0x	23.0x
Property	-	-	-	8.9x	8.9x
Average	13.9x	19.4x	17.3x	17.6x	17.3x

*The average is computed by simple average method



Average of P/E Multiple (Main Market)					
Sector/Year	2018	2019	2020	2021	Average
Construction	-	11.7x	-	13.6x	12.7x
Consumer products & services	-	20.8x	21.1x	12.7x	18.9x
Industrial products & services	11.3x	15.1x	-	-	13.2x
Technology	12.0x	13.0x	-	63.7x	29.6x
Real Estate Investment Trusts	-	-	-	23.0x	23.0x
Average	11.7x	15.1x	21.1x	28.3x	19.9x

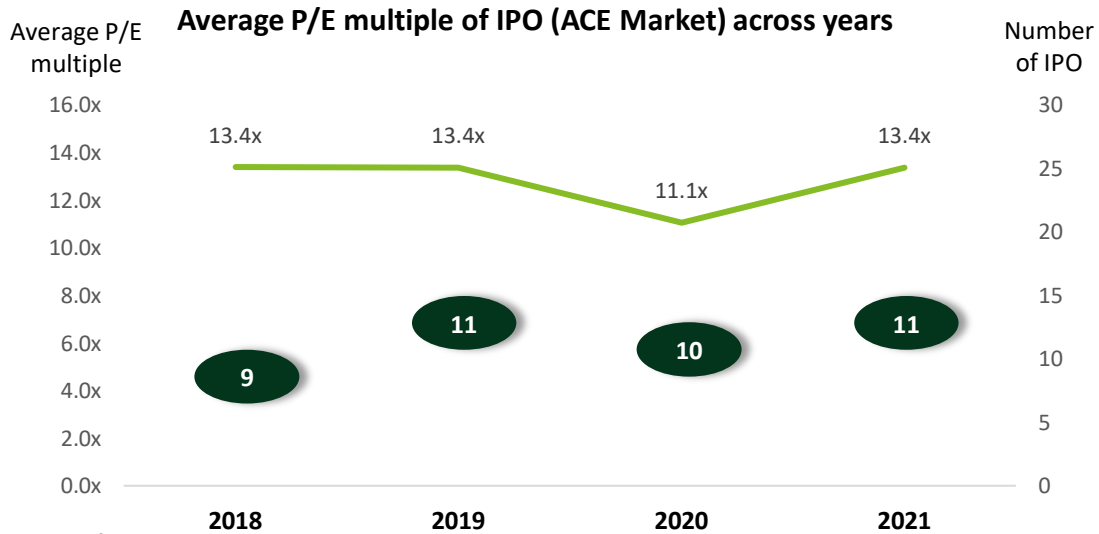
*The average is computed by simple average method

Source: Capital IQ, Bursa's Website and Company's prospectus

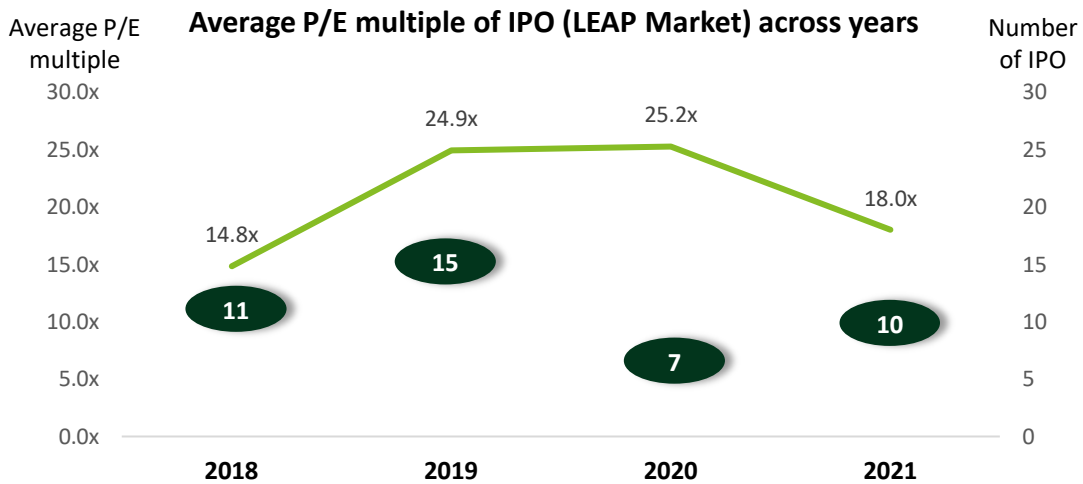
© 2021 Deloitte Tax Services Sdn Bhd

SEA IPO market review: Malaysia

Valuation multiple of IPO in Malaysia for recent years



Legend
 Number of IPO
 Average P/E multiple



Average of P/E Multiple (ACE Market)					
Sector/Year	2018	2019	2020	2021	Average
Construction	15.4x	4.5x	7.5x	12.1x	9.8x
Consumer products & services	9.5x	14.7x	-	12.2x	13.3x
Health care	12.7x	-	10.3x	-	11.5x
Industrial products & services	15.2x	13.6x	11.6x	15.0x	13.5x
Technology	13.0x	14.7x	-	14.3x	13.8x
Telecommunications & media	11.9x	-	-	-	11.9x
Transportation & logistics	16.9x	-	-	-	16.9x
Energy	-	-	13.8x	-	13.8x
Property	-	-	-	8.9x	8.9x
Average	13.4x	13.4x	11.1x	13.4x	12.8x

*The average is computed by simple average method

Average of P/E Multiple (LEAP Market)					
Sector/Year	2018	2019	2020	2021	Average
Construction	-	16.1x	-	13.8x	14.9x
Consumer products & services	15.9x	33.9x	14.5x	10.7x	24.3x
Health care	17.9x	28.2x	-	-	20.5x
Industrial products & services	13.1x	16.3x	17.2x	12.1x	15.3x
Technology	12.1x	20.1x	46.7x	27.0x	26.0x
Telecommunications & media	8.4x	-	-	-	8.4x
Energy	-	-	-	10.9x	10.9x
Average	14.8x	24.9x	25.2x	18.0x	20.7x

*The average is computed by simple average method

Source: Capital IQ, Bursa's Website and Company's prospectus

© 2021 Deloitte Tax Services Sdn Bhd

SPACs

What is SPAC?

- Frequently known as “blank cheque” companies, Special Purpose Acquisition Company (“SPACs”) are shell companies set up by sponsors through an IPO to acquire one or more unspecified existing private businesses and bring them to public.
- SPACs usually offer shares with warrants attached, entitling investors to buy shares at a certain price, becoming valuable if the stock price goes up.
- Amid the pandemic and the resultant market volatility, 2020 saw a sudden surge in popularity of SPAC listings, especially in the US largely propelled by attracting high-profile investors and executives.

Information by Spacktrack.net

Overview				
Total Active SPACs	660			
Total Trust Size (M)	\$182,810,232,840			
	2021	2020		
Total SPAC IPOs	553	248		
Total IPO Proceeds (M)	\$149,456	\$83,301		
	Searching	LOI	Definitive Agreement	Pre IPO
Total # of SPACs	543	0	117	288
Total Trust Size (M)	\$150,790	\$0	\$32,020	\$63,485
Market Cap	\$127,680,533,615	\$0	\$35,102,790,805	

SPAC Count by Target and Stage

(Target here is referring to what industry the SPAC notes it is targeting from its prospectus, **not** the industry of announced merger partners)

	Searching	LOI	Definitive Agreement	Total Active	Pre IPO
Tech	279	0	59	338	121
Cannabis	5	0	3	8	1
Energy	37	0	8	45	23
Healthcare	69	0	16	85	34
Fintech	56	0	16	72	25
Tech, Media, Telecom	5	0	5	10	2
Sustainability	37	0	16	53	14

Carsome eyes US listing via SPAC – RM8.3b valuation would make used car platform Malaysia’s first unicorn

In Local News / By Danny Tan / 21 June 2021 5:49 pm / 13 comments



Singapore

Grab to list in the US through world's biggest SPAC merger, valued at nearly US\$40 billion



IPO considerations

Successful IPO considerations



“To complete a successful IPO, it is vital that you are ready to list at the right moment. Many IPOs are delayed, or even fail completely, due to a lack of rigorous up-front planning.”

Key accounting area to consider

- 1) Restructuring
- 2) Compliance matters
- 3) Completeness of RPT
- 4) Segmental reporting

Valuation considerations

Concept of value

Price vs Value - "Price is what you paid. Value is what you get." *Warren Buffett*

Price is "market driven" and value is "fundamental"

Price

Assess in terms of affordability

- Buyers' unique situation – knowledge, negotiating abilities, synergies, financial strengths
- Emotional considerations may override objective analysis and evidence
- Legal and contractual restrictions may also arise
- A result of forced or compulsive acts on behalf of either the buyer or the seller

Value

Assess in terms of underlying worth of the asset

- The value that an investor considers, on the basis of an evaluation or available facts, to be the "true" or "real" value
- The value that will become the market value where other investors would reach the same conclusion
- Use as a starting point for pricing the shares

Valuation consideration

Components in valuation consideration



Growth prospects & industries

- Stable, cyclical, high growth potential
- Competitive landscape
- Potential market share



Fundamental valuation

- Intrinsic value
- Quality of earnings
- Robustness of forecast
- Track record vs future promises
- Comparative multiples



Book building

- Cornerstone investors
- Generate demand tension ahead of pricing
- Achieve balance of sustainable price

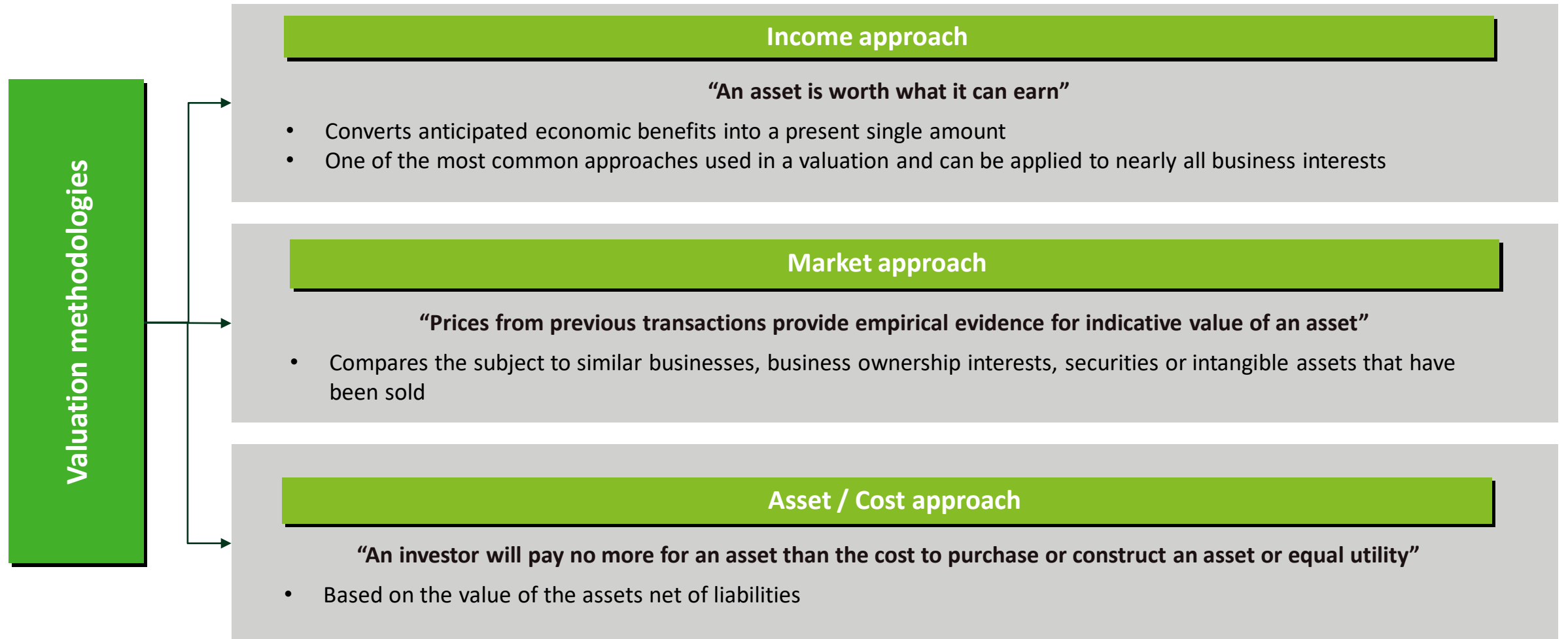


IPO stories

- Continuity of sponsor
- Utilisation of proceeds
- Timing and trend
- Luck?

Common valuation approaches

Three (3) common approaches to measure value – income approach, market approach and asset / cost approach

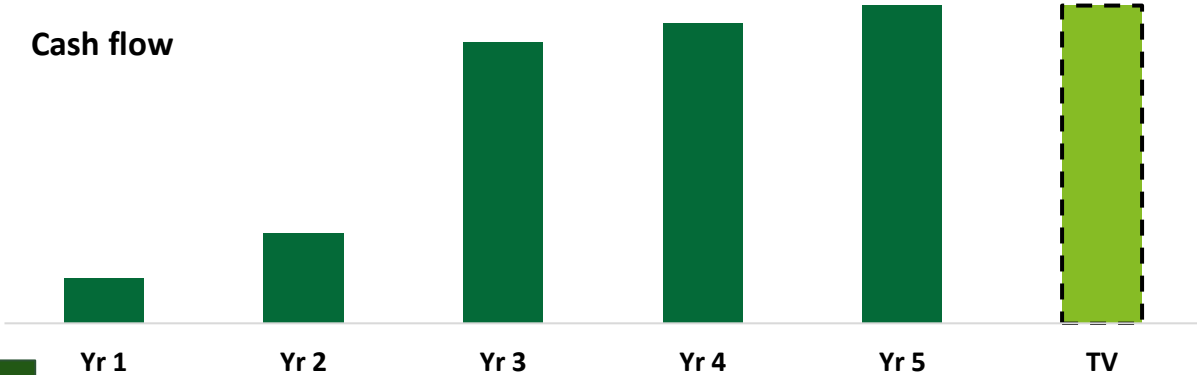


Income approach – DCF method

An illustration of the components within a DCF valuation at a glance

Illustrative example (DCF method)

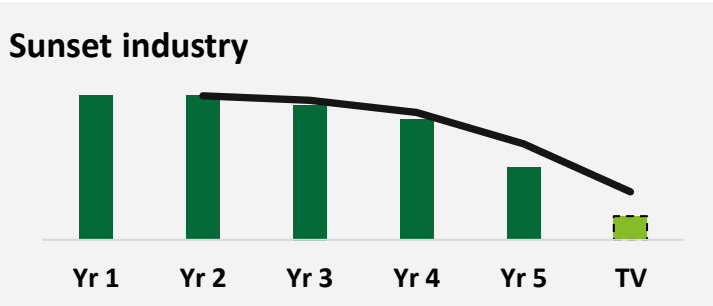
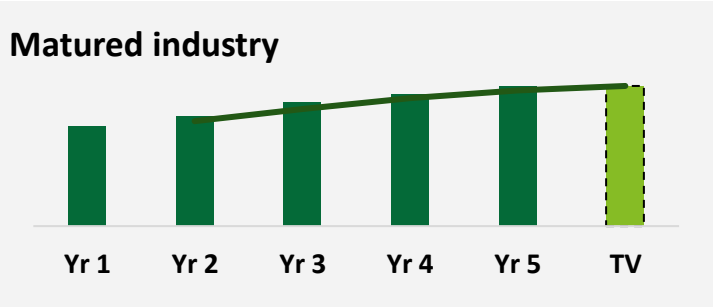
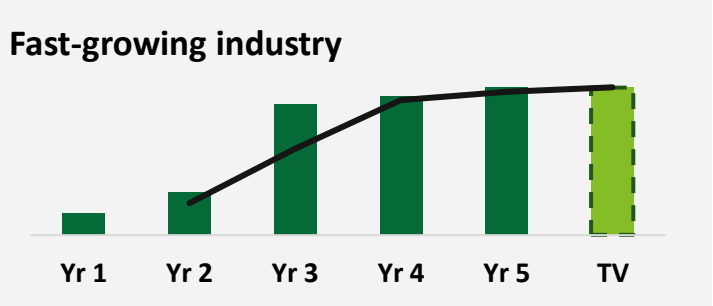
CF Yr1	CF Yr2	CF Yr3	CF Yr4	CF Yr5	TV
×	×	×	×	×	×
$\frac{1}{(1+r)^{n+1}}$	$\frac{1}{(1+r)^{n+2}}$	$\frac{1}{(1+r)^{n+3}}$	$\frac{1}{(1+r)^{n+4}}$	$\frac{1}{(1+r)^{n+5}}$	$\frac{1}{(1+r)^{n+5}}$



Present value (n=0)

Present value of cash flow with discount rate (r)

All future cash flows are discounted to present by a cost of capital which reflects the risks of the investment.



Market approach – GPCM and GTM

Commonly used market multiples – selection should be based on value drivers of business

	Equity value	Enterprise value
Revenue & profit	Market capitalisation / Sales Market capitalisation / Earnings (Price / Earnings)	Enterprise value / Sales Enterprise value / EBITDA Enterprise value / EBIT
Assets	Market capitalisation / Book (Net assets)	Enterprise value / Invested Capital
Commercial metrics	Market capitalisation / subscriber Market capitalisation / Floor space Market capitalisation / capacity unit	Enterprise value / subscriber Enterprise value / Floor space Enterprise value / capacity unit

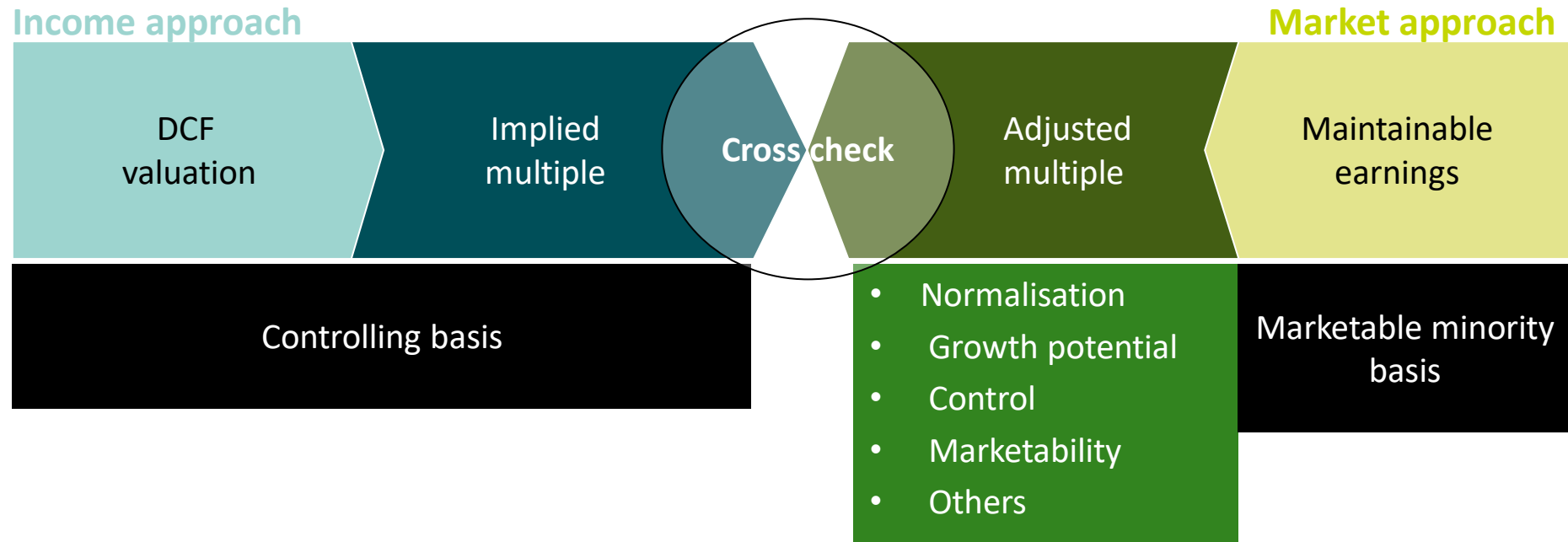


The choices of market multiples depend on the industry being valued:

- Asset dependent industries such as banking institutions and property development companies normally use assets-based market multiples
- Start-up and technology companies often use revenue or commercial metrics as there is no or little profit

Sanity-check is crucial in all the valuation exercises

Cross check of income approach and market approach using implied multiples



An illustrative example

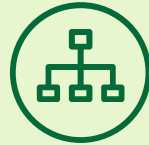
- Income approach: Main approach used to value the business and selection of the appropriate approach is dependent on the nature, financial performance and availability of information.
- Market approach: Used to cross-check the value derived from primary approach.

Corporate tax considerations

Snapshot of pre and post IPO considerations

Each have their own tax considerations

Pre-IPO



Corporate structure



Due diligence

Post-IPO



Financing structure



Role of listed company



Maximizing shareholder returns



Risk management

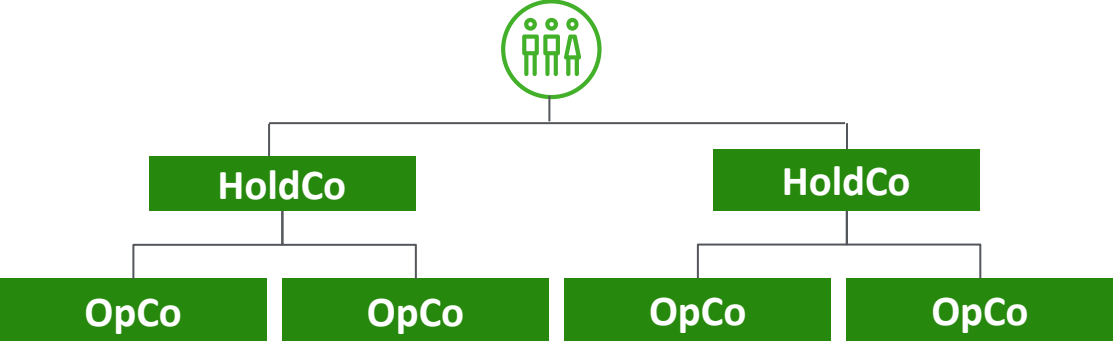
Corporate structure

Common pre-IPO shareholding structures

Scenario 1: Companies are held directly by the individual shareholders

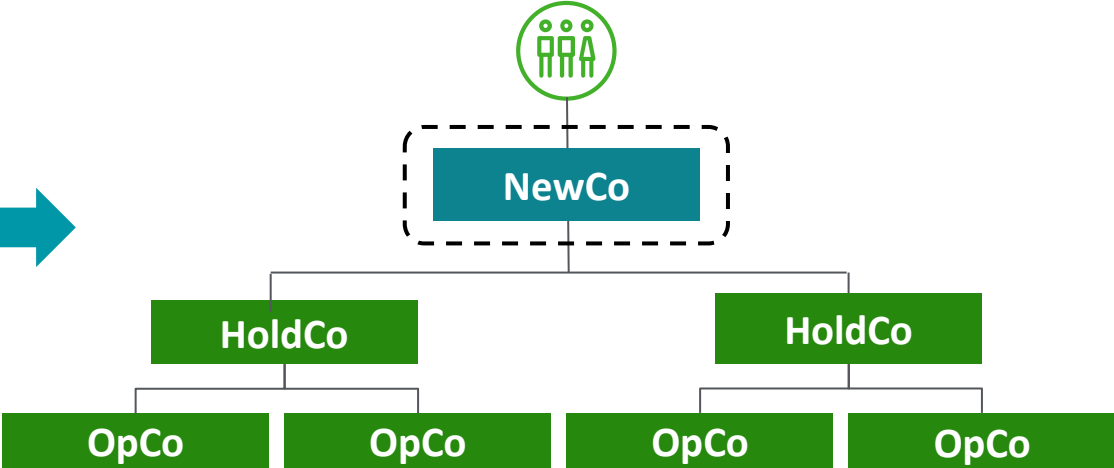
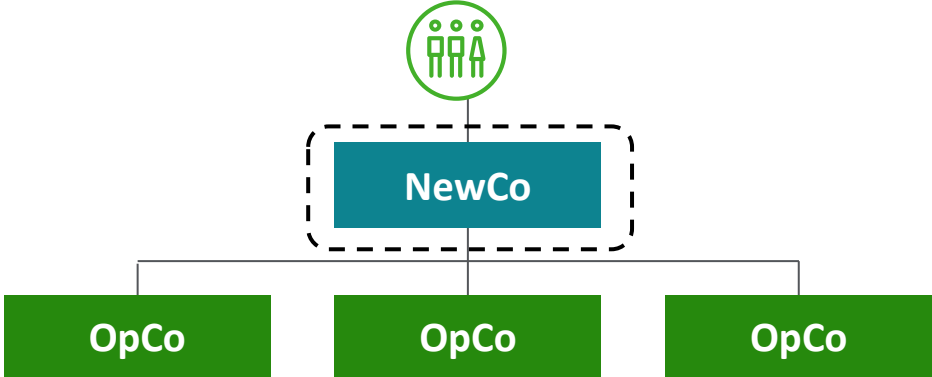


Scenario 2: Companies are held by the individual shareholders via separate holding companies



Common example of pre-IPO restructuring

Individual shareholders transfer their existing investments to a new company ("NewCo") in exchange for NewCo shares.
NewCo will be the listing vehicle



Corporate structure

Pre-IPO restructuring – Tax considerations

Step 1: Individual shareholders transfer their existing investments to NewCo

Income Tax – will gains be subject to income tax?

- Badges of trade
- Not be taxable if gains are capital in nature

e.g. individuals are long-term investors (not engaged in share dealing / trading)

transfer of shares to NewCo is pursuant to internal restructuring to facilitate future IPO

Real Property Gains Tax (RPGT) – capital gains subjected to RPGT?

- Are real property companies (RPC) shares being transferred?
- Current RPGT rates for individuals:

Malaysian citizen / PR Date of disposal	RPGT rate
Within 3 years after date of purchase	30%
In 4 th year after date of purchase	20%
In 5 th year after date of purchase	15%
6 th year onward	5%*

* Budget 2022 proposal – Rate be reduced from 5% to 0% wef 1.1.2022

Non-Malaysian citizen / non-PR Date of disposal	RPGT rate
Within 5 years after date of purchase	30%
6 th year onwards	10%

RPGT – any exemption / relief?

May be RPGT-neutral (no gain and no loss) for the disposer under Paragraph 3(1)(b), Schedule 2 of RPGT Act 1976

Stamp Duty – any stamp duty on transfer of shares?

0.3% on the price or value of the shares on date of transfer, whichever is greater

Stamp Duty – any exemption / relief?

Consider Section 15 stamp duty relief (prior approval from Stamp Office)

Corporate structure

Pre-IPO restructuring – Tax considerations

Step 2: NewCo issues new shares to individual shareholders

RPGT

- No RPGT on issuance of new shares
- If any of the investments are RPCs and “no-gain, no-loss” treatment has been applied – future disposal of NewCo shares by individual shareholders shall be deemed disposal of a RPGT chargeable asset [Paragraph 34(2), Schedule 2 of RPGT Act]

Stamp Duty

- No stamp duty on issuance of new shares

Pre-IPO due diligence

Tax compliance

Due diligence to confirm historical regulatory compliance (including Tax) for declaration in IPO prospectus

Historical

- Consider voluntary disclosure(s) to IRB before listing
- Budget 2022 proposal: Special Voluntary Disclosure Programme for indirect taxes
- Start on “clean slate” post-IPO

Moving forward

- Put in place appropriate tax treatment. E.g. (non-exhaustive):
 - ✓ Arm’s length TP policies and documentation
 - ✓ Robust supporting documentation
 - ✓ Periodic tax health checks
- Mitigate post-IPO tax non-compliances

Post IPO - Financing structure

Additional equity / loan injection

Dividend - Malaysia OpCo

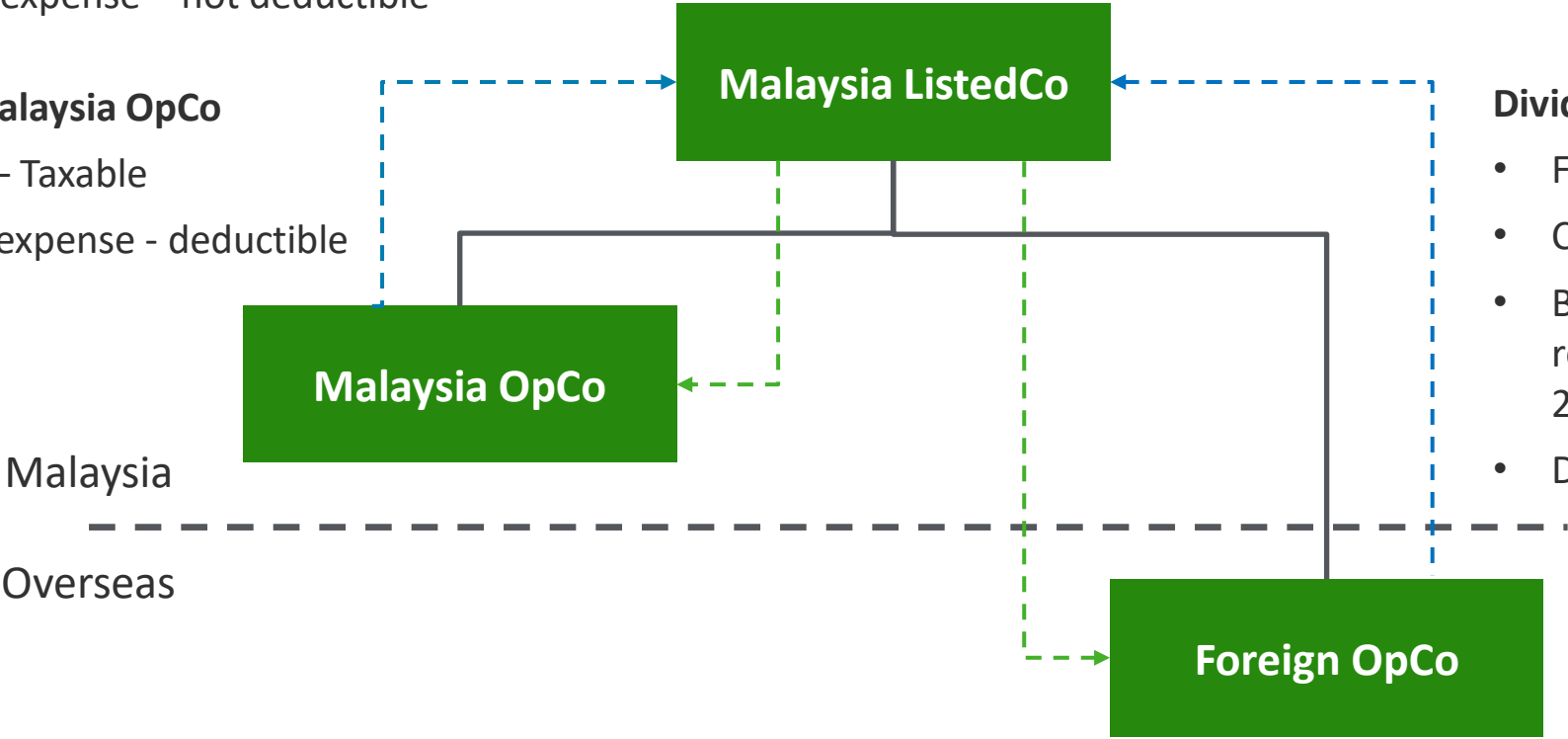
- Income - Tax exempt
- Interest expense – not deductible

Interest - Malaysia OpCo

- Income – Taxable
- Interest expense - deductible

Dividend / Interest from Foreign OpCo

- Foreign source income
- Currently tax exempt
- Budget 2022 proposal: Taxable if received in Malaysia from 1 Jan 2022 onwards
- Double taxation relief claimable

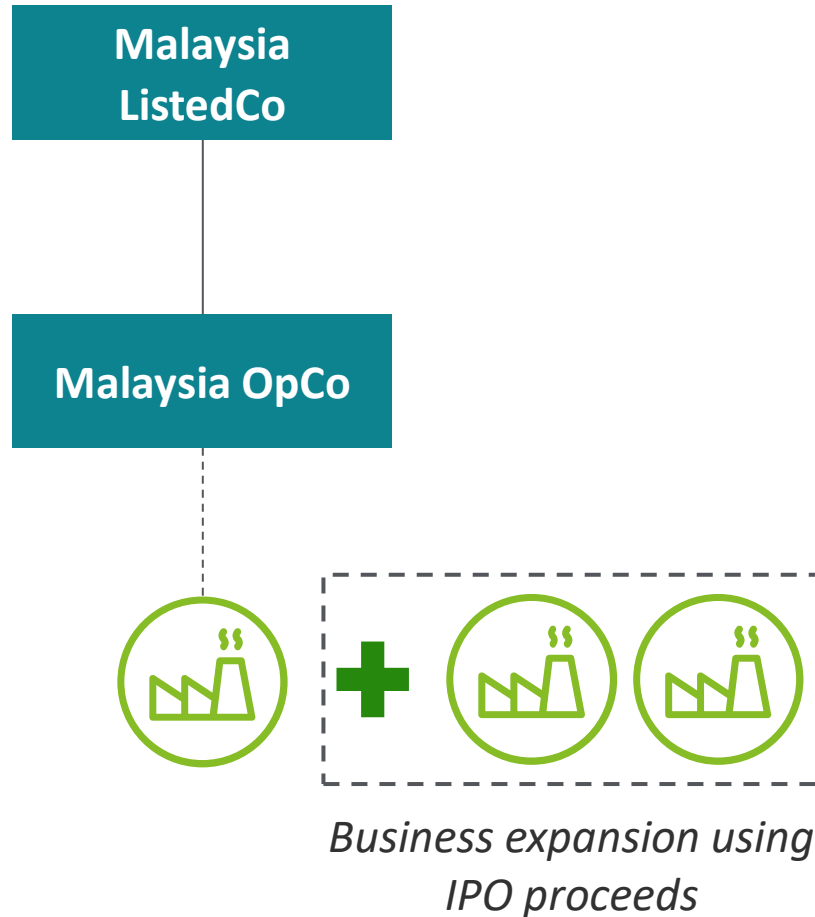


---> Dividend / interest payment

---> Equity / loan injection

Post IPO - Maximizing shareholders' ROI

Consider tax incentives



Pioneer Status (PS) or Investment Tax Allowance (ITA)

- Promoted product / activity
- PS – income tax holiday. 70% exemption of statutory business income
- ITA – additional 60% tax depreciation for set off against 70% of statutory business income
- Mutually exclusive

Reinvestment Allowance (RA)

- Qualifying project carried out by manufacturing company
- Expansion, modernization, automation or diversification
- Additional 60% tax depreciation for set off against 70% of statutory business income
- Qualifying period: 15 consecutive YAs
- Budget 2022 proposal: extension of additional RA initially provided under PENJANA. Qualifying capex incurred from YA2023 until YA2024

Post IPO - Corporate income tax treatment of the listed company

1. Determine if it is an “investment holding company” under S.60F of Income Tax Act

- Definition of IHC:
 - i. A company whose activities consist mainly in the holding of investments; and
 - ii. Not less than 80% of its gross income, other than gross income from a source consisting of a business of holding of an investment (whether exempt or not), is derived from the holding of those investments

2. Malaysian tax resident IHC listed on Bursa Malaysia – S.60FA of Income Tax Act

- Income from holding of investments (e.g. interest, dividend, rental) – separate business source
- No deduction of expenses if no business income from that source
- Direct expenses – deduction restricted to gross income from that source. Any excess cannot be carried forward
- Common expenses & capital allowances – apportioned using gross income. Deduction restricted to gross income and adjusted income respectively from that source. Any excess cannot be carried forward
- Management fee – normal tax treatment for deductibility of expenses and capital allowances. Ensure compliance with TP arm’s length requirements

Post IPO - Risk management

Tax governance framework and internal controls to mitigate risks

Establish clear policy against tax evasion and avoidance

Internal controls for immediate escalation of contentious tax issues

Internal audit to cover tax risk management

Regular review & discussion of tax affairs at C-suite level

Inclusion of tax in corporate governance statement in annual report

Regular updates / training to employees in charge of tax compliance

Employees share plans

Types of Employees Share Plan

Share settled plans			Cash settled plans	
Employee Share Purchase Plan ("ESPP")	Restricted Shares	Equity Share Option Scheme ("ESOS")	Share Appreciation Rights ("SAR")	Restricted Shares Awards
<ul style="list-style-type: none"> • Purchase stock at a discount price from market price. • Payment for purchase is done through salary deduction. 	<ul style="list-style-type: none"> • Provide employees actual shares for free or for less than their market value once certain targets such as working a certain number of years, or meeting a performance target are met. 	<ul style="list-style-type: none"> • Offer employees an option, but not the obligation to purchase equity shares at a predetermined price for a specified period. 	<ul style="list-style-type: none"> • Give employees the right, at a specific time, to receive a cash award equal to the appreciation in value of a certain number of shares. • Allows an employee to share in the appreciation of the employer's stock without having to make any cash outlay. 	<ul style="list-style-type: none"> • Awards entitling employees to receive cash instead of shares.

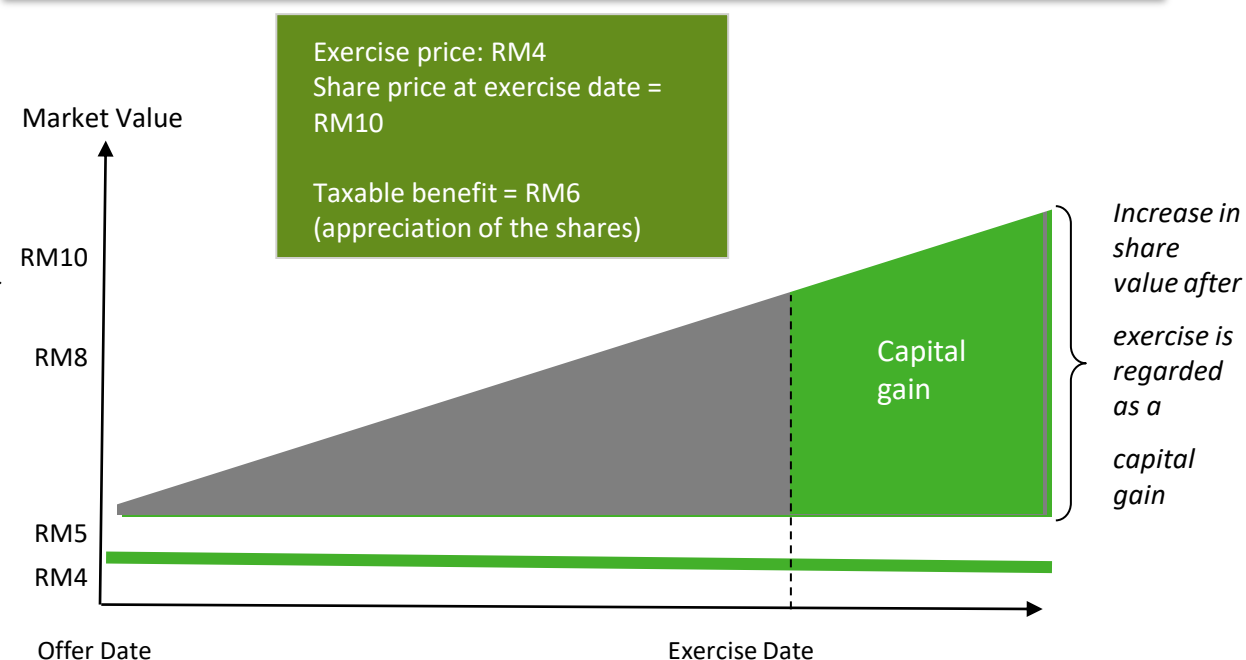
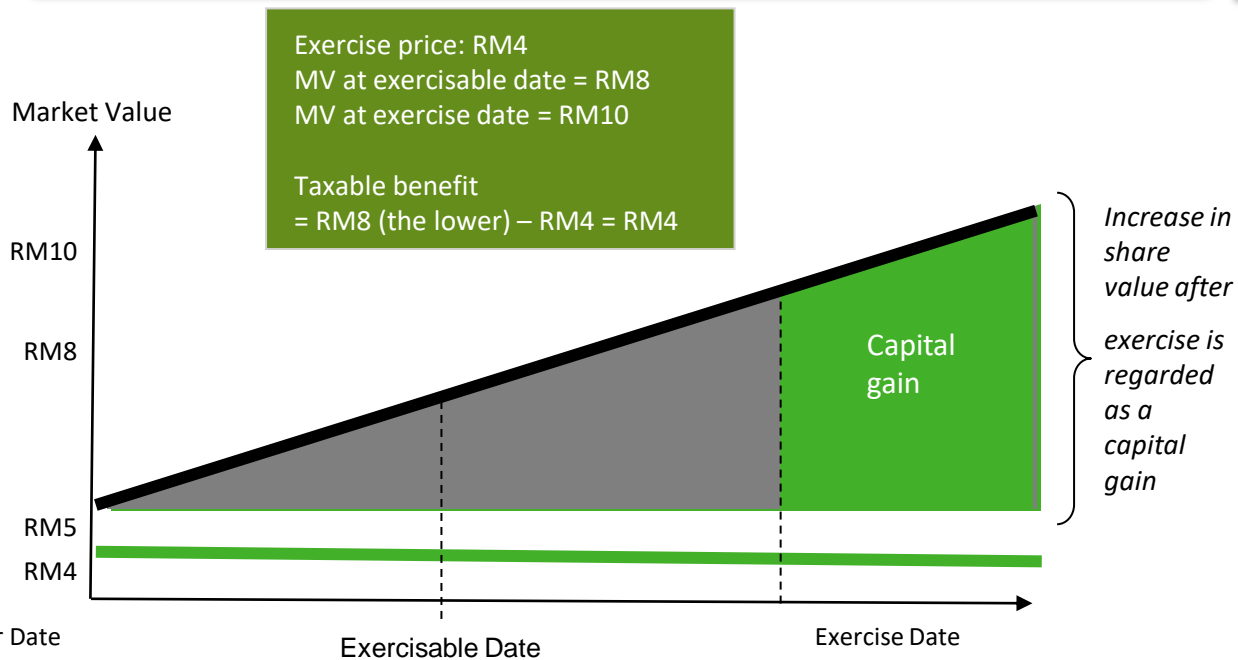
Types of Employees Share Plan – tax implications

Share settled plans

- Tax trigger is when the employee has exercised/vested/purchased the share.
- Taxed on the difference between market value of the shares on exercise date (or the 1st day of a specified exercise period, whichever is lower) and the amount paid for the shares. Market value is determined at the average of the highest and lowest price on the day concerned.
- Reported in the year of exercise as current year income and the tax paid in the year of exercise.

Cash settled plans

- Total cash payout is fully taxable at the point of receipt/receivable as income arising from the year it is earned.
- The cash payout is reported (as income for the year when it is receivable) and tax is paid in the year of exercise.



Employees Share Plans

Key considerations in plan design

(A) Plan objective

- Whether this should be a broad-based plan that includes more employees within the organisation (i.e. business critical talent)?
- Finding the right balance of incentive (short until long) that meets employee's needs whilst balancing organisation's cost efficiencies
- Determining the appropriate performance measurement to drive employee behaviours

(B) Mechanics of the plan

- Determination of Market value
- Exercise date
- Exercise price



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.



Tan Hooi Beng (Moderator)
Deputy Tax Leader/International
Tax Leader
Deloitte Malaysia



Prof Dr Jomo Kwame Sundaram
Senior Adviser,
Khazanah Research Institute



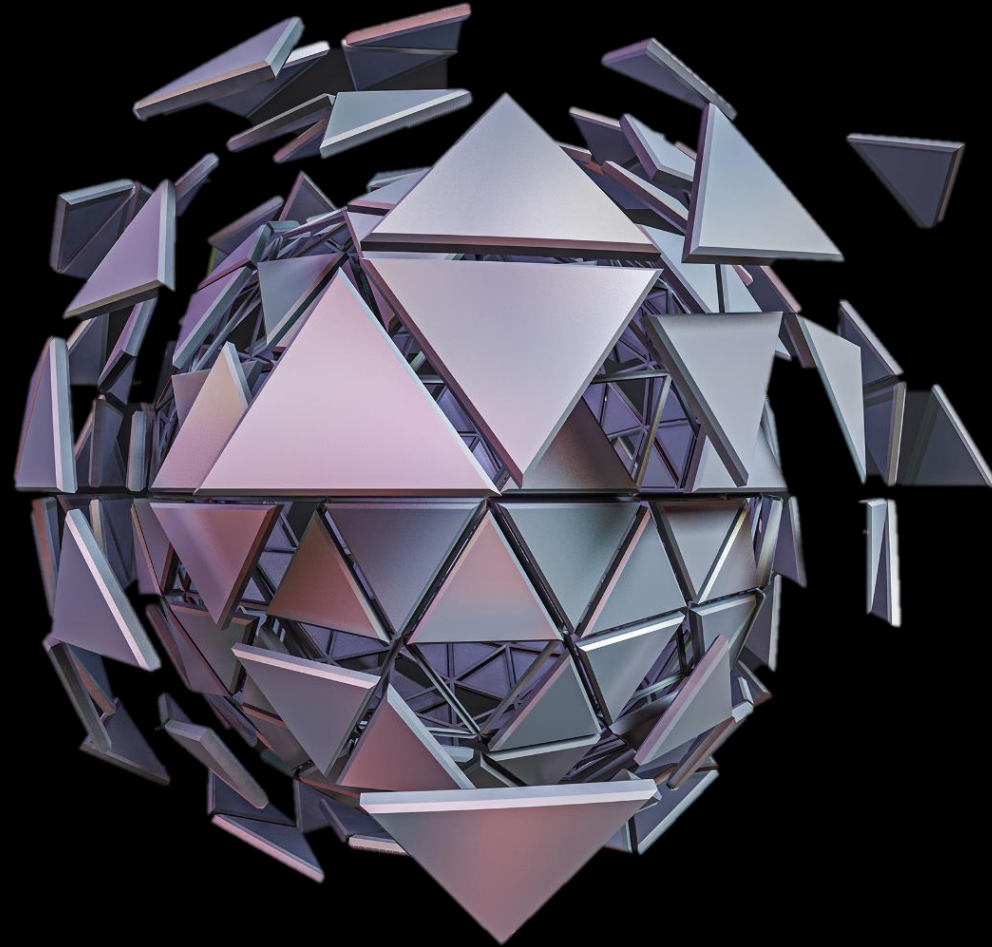
Dr Esther A.P. Koisin
Director,
Department of International
Taxation, IRBM



**Sivasuriyamoorthy Sundara
Raja**
Deputy Chief Executive Officer,
Investment Promotion &
Facilitation, MIDA

Deloitte TaxMax - The 47th series | Building resilience for tomorrow

Global minimum tax – The good, the bad and the ugly



Deloitte TaxMax
Global Minimum Tax –
The Good, The Bad and The Ugly

Tan Hooi Beng | 24 November 2021

Who do we have today?



**Prof Dr Jomo Kwame
Sundaram**
Senior Adviser
Khazanah Research Institute



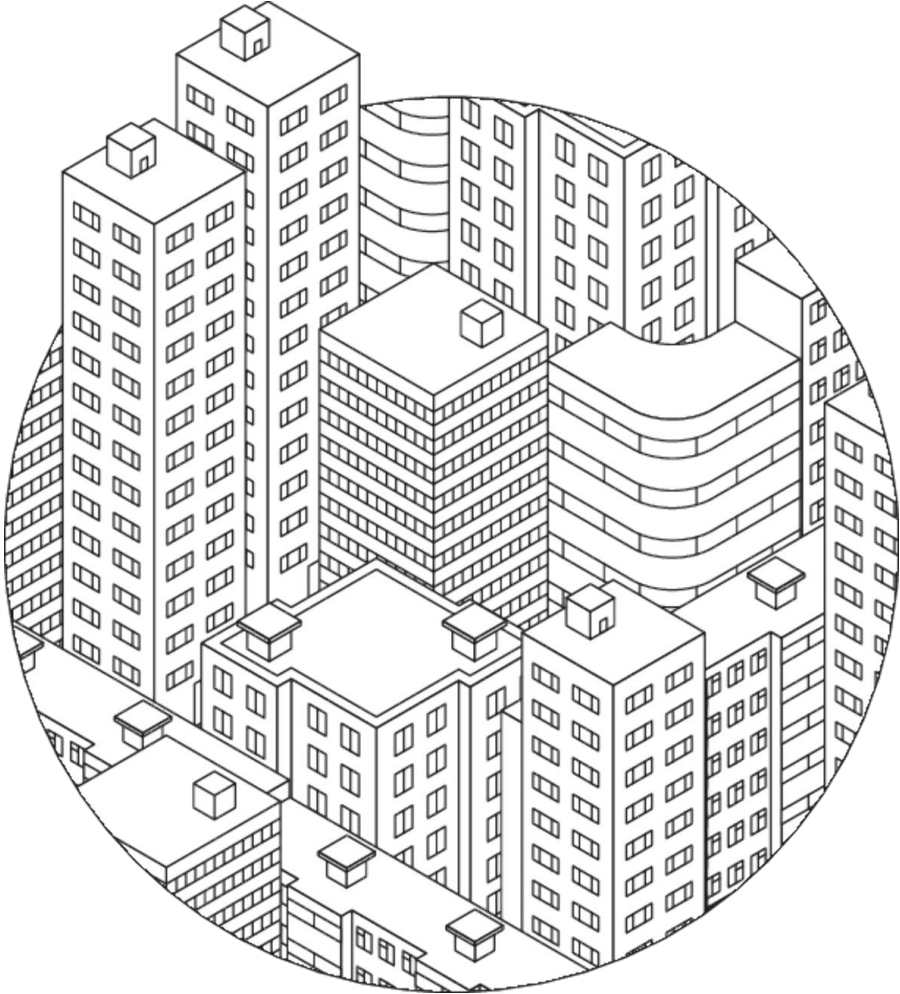
Dr Esther A.P. Koisin
Director
Department of International
Taxation
Inland Revenue Board of Malaysia
(IRBM)



**Sivasuriyamoorthy
Sundara Raja**
**Deputy Chief Executive
Officer**
Investment Promotion &
Facilitation
Malaysian Investment
Development Authority
(MIDA)

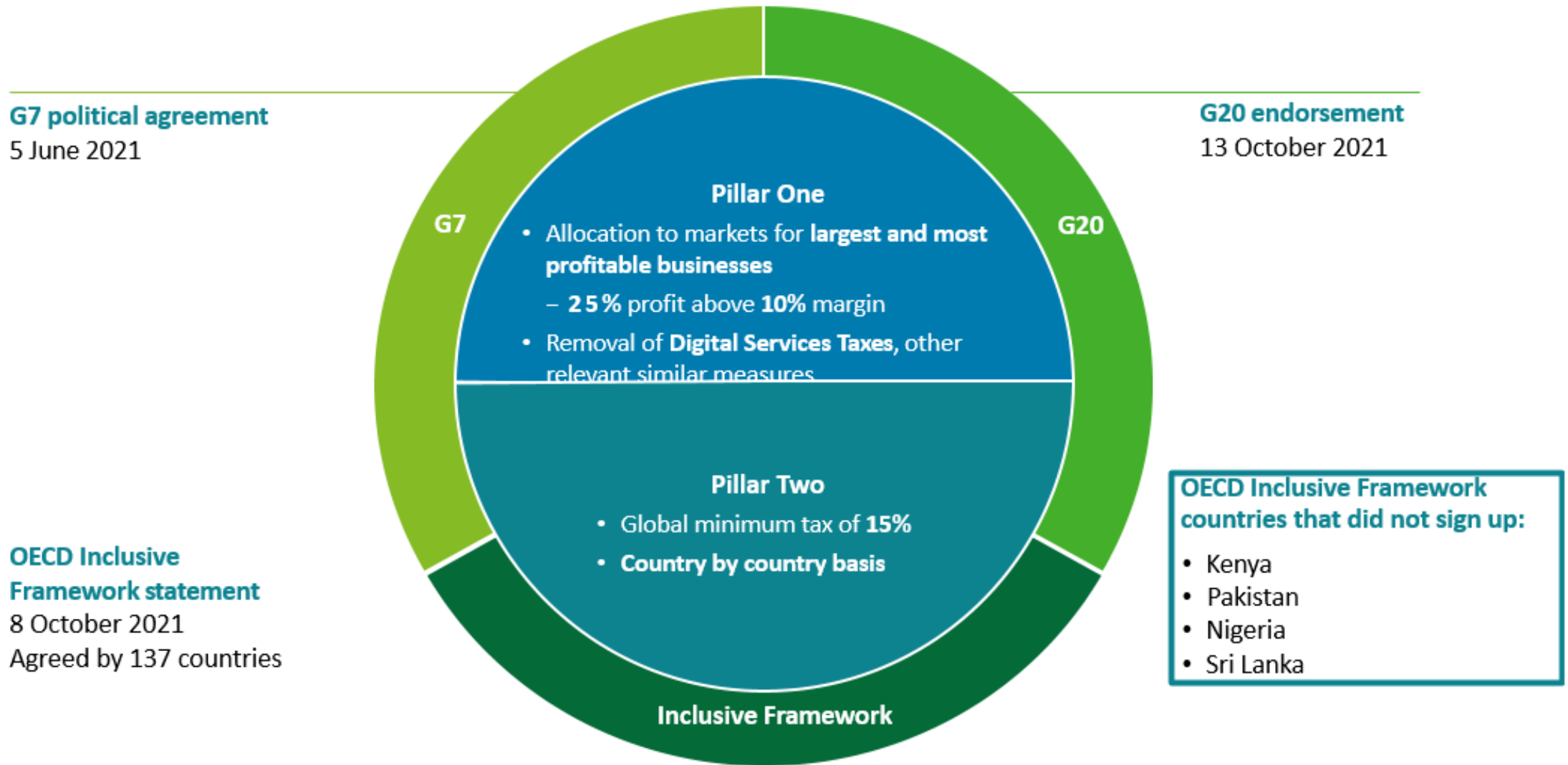
Agenda

What are today's objectives?



- 1. A helicopter view on G7, G20, and OECD Inclusive Framework**
- 2. Pillar Two – Key elements**
 - Income Inclusion Rule and Undertaxed Payments Rule
 - Subject To Tax Rules
- 3. What are taxpayers doing?**
- 4. Panel Session**
- 5. Q & A**

Pillar One and Two – G7, G20, and OECD Inclusive Framework



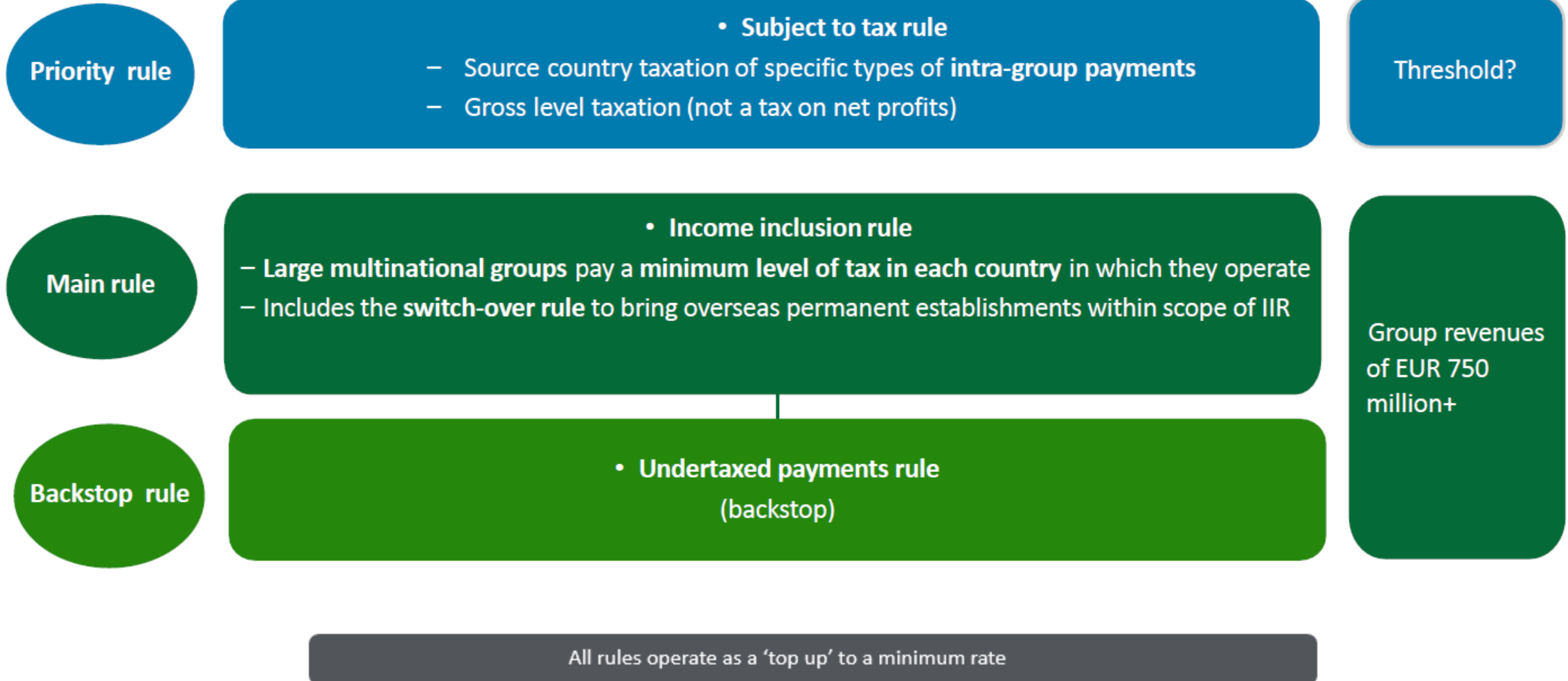
Pillar Two

Key Elements



Pillar Two – Global Minimum Tax

Key elements



Income inclusion rule and undertaxed payments rule

Scope

Excluded ultimate parent entities:

Investment funds, pension funds, governmental entities, international organisations, non-profit organisations (or any holding vehicles used by them)

Rules can apply instead to the **subgroups** held by excluded entities

International shipping industry to be excluded

Income inclusion rule and undertaxed payments rule

Calculation of effective tax rate

$$\text{ETR} = \frac{\text{Amount of covered taxes}}{\text{Amount of Globe income}}$$

De minimis exclusion where less than €10 million revenue and less than €1 million profit in a country

Jurisdictional-blending basis:

- Effective tax rate calculated annually **for each country** where the group has entities
- The **covered taxes** and the **tax base** need to be calculated for each country

Covered taxes are taxes on a group company's **income or profit**:

- Domestic and foreign taxes on income, including tax paid under subject to tax rule
- Taxes such as sales taxes, VAT, digital services taxes, are **not** covered taxes

Taxes paid under **controlled foreign company (CFC)** rules are attributed to the country with the underlying income

Income inclusion rule and undertaxed payments rule

Calculation of effective tax rate – tax base per blueprint

$$\text{ETR} = \frac{\text{Amount of covered taxes}}{\text{Amount of Globe income}}$$

Group accounting
entity-level
profit (or loss)
before tax

Starting point: entity-level data used in preparation of parent company's consolidated financial accounts

Subject to some adjustments (e.g. transfer pricing)

Profits attributable to a permanent establishment determined in accordance with **local tax rules**

Limited number
of book-to-tax
adjustments

• Limited number of adjustment for common **permanent items**, including:

- dividends
- gains/loss on disposal of shares
- share-based compensation expenses

• Additional rules to:

- mirror local tax deferrals arising from **intragroup transfers of assets/reorganisations**
- account for **immediate expensing** and accelerated depreciation of **business assets**
- classify **government grants** and **tax credits**

Tax base

Income inclusion rule and undertaxed payments rule

Formulaic substance-based carve-out

Regimes compliant with BEPS Action 5 (harmful tax practices) are not excluded



Payroll component

10% mark-up on payroll costs of in-country employees moving to 5% over a 10-year period

Includes bonuses, pensions, benefits, and employer social security contributions

Includes independent contractors



Tangible asset component

8% mark-up applied to carrying value of tangible assets moving to 5% over a 10-year period

Inclusions in tangible assets still to be determined

'Limited impact' on 'real economic activities with substance'

OECD Inclusive Framework Statement – 1 July

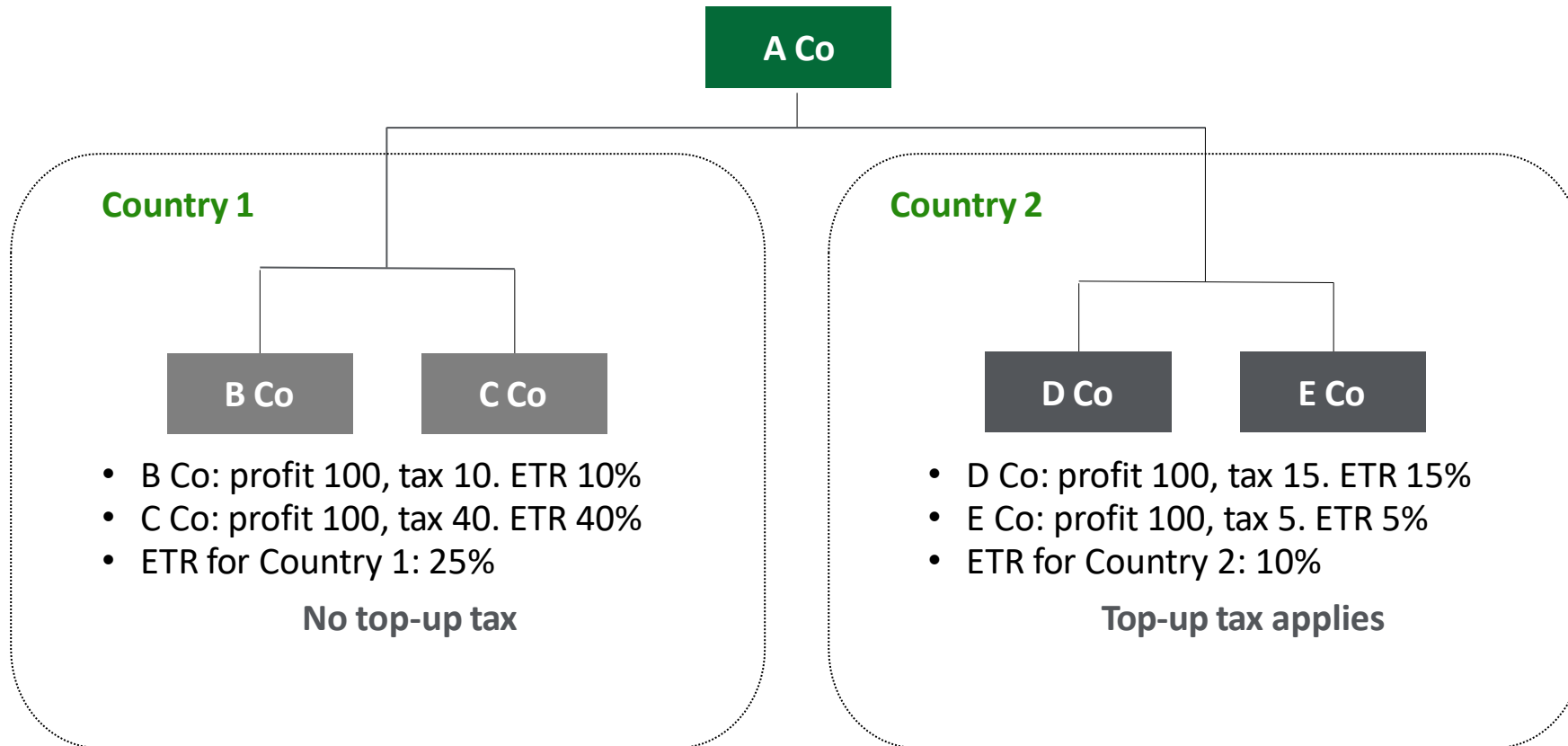


Pillar Two

Income inclusion rule and undertaxed payments rule

Income inclusion rule

Minimum tax rate of **15%** on a jurisdictional basis



Countries can apply rules to smaller businesses headquartered in their country

Operation of the undertaxed payments rule

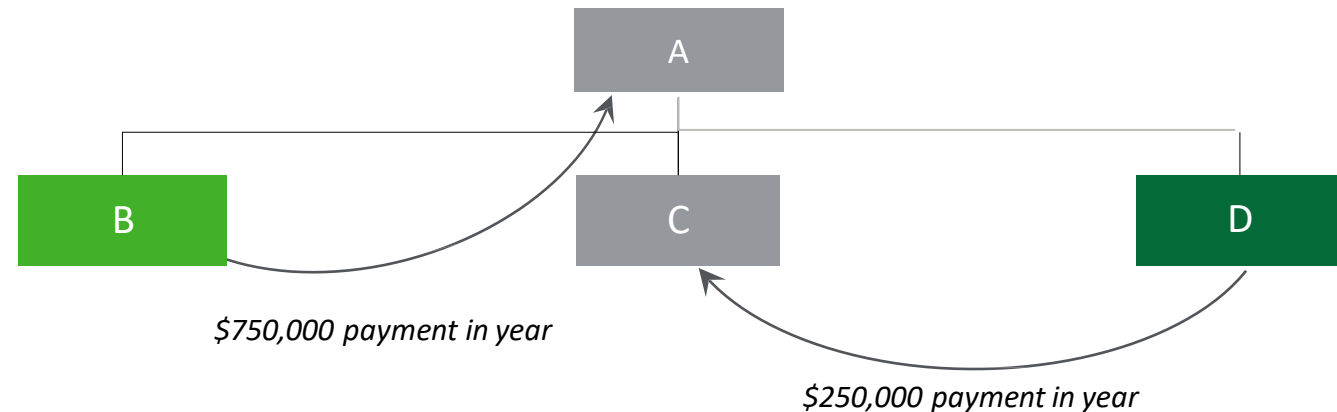
Allocates top-up tax from low-tax companies (including in parent company country) - methodology to be agreed

OECD Inclusive Framework Statement – 1 July 2021

Per Blueprint:

Secondary rule / backstop: Applies only where the income inclusion rule has not been applied.
Top-up tax allocated to **other companies in the group** based on a **formulaic approach**.
Transitional rules and deferred implementation to 2024.

Minimum rate	15%
ETR for grey companies	9%
No income inclusion rule in Country A	

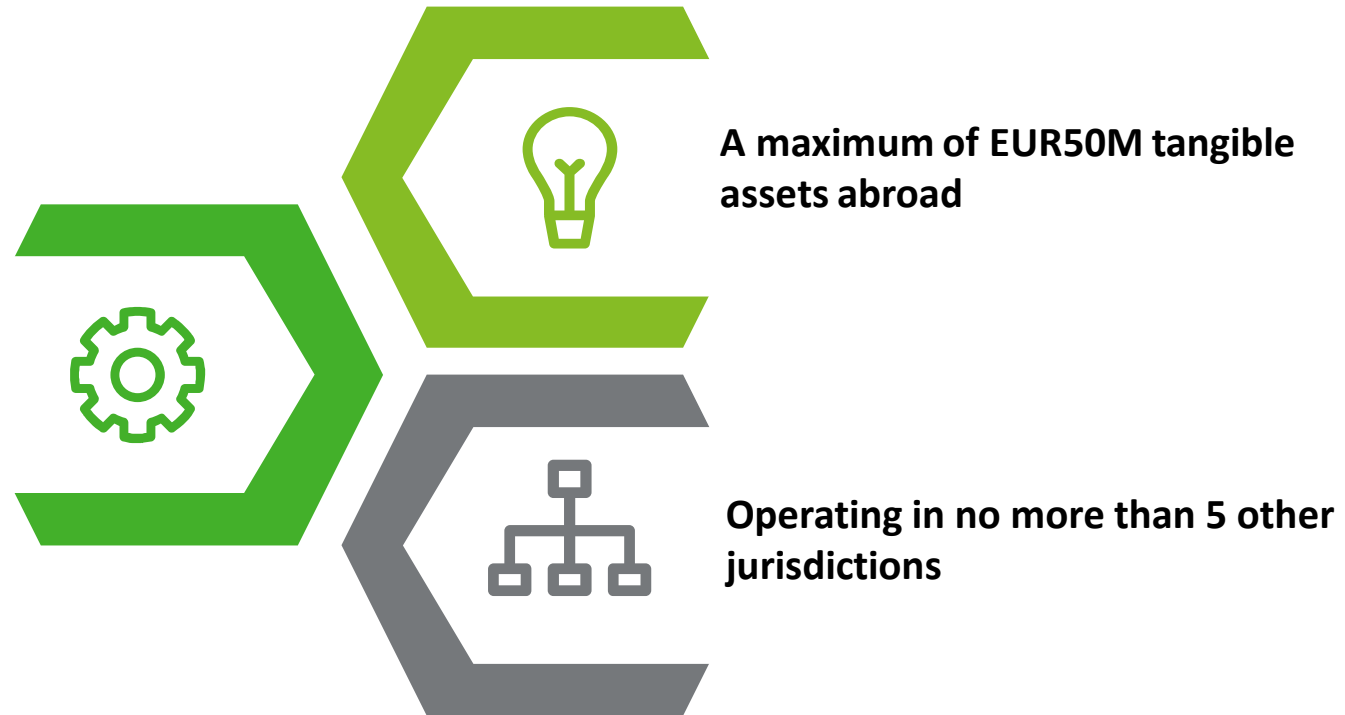


No tax will be allocated to countries with an effective tax rate below the minimum rate.
Amounts may be **subject to a cap** equal to domestic tax rates multiplied by deductible intragroup payments made.

Undertaxed payments rule

UTPR exclusion

**Exclusion available
for a period of 5 years**
(after MNE comes into scope of the GloBE rules)



* Work on the design of the allocation of top-up tax under UTPR and the corresponding cap is still in progress.



Pillar Two

Subject to tax rule

Pillar Two: Subject to tax rule

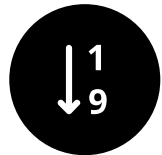
Double tax treaty amendments

The minimum rate will be **9%**



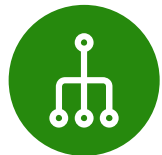
Applies when the **'adjusted nominal tax rate'** is below the minimum rate

- Based on **nominal statutory tax rate** applicable to company receiving the payment
- Adjusted for **local preferential tax regimes** etc.



Applies **in priority** to the income inclusion and undertaxed payment rules

- Developing countries with low GNI per capita (e.g. India, South Africa, Philippines, Jamaica) can request
- Only if recipient country has a nominal tax rate below the minimum rate
- **Gross** level taxation (not a tax on net profits)



Rule applies only to **payments between connected parties**

- Based on **common control**

Pillar Two: Subject to tax rule

Double tax treaty amendments proposed – per Blueprint



Interest

Royalties

Rule applies only to **defined categories of payments**

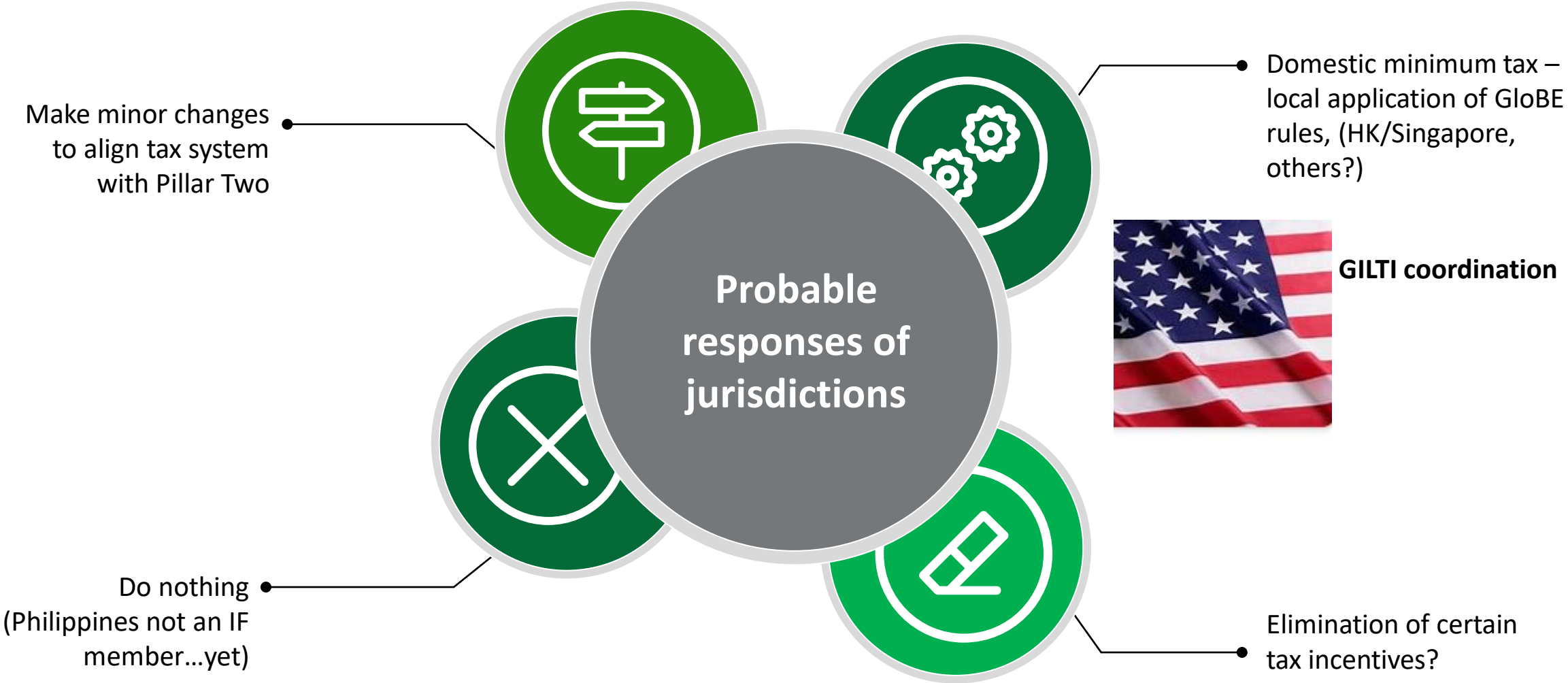
Other payments

- **Franchise fees or other payments for use of intangibles** in combination with services
- **Insurance/reinsurance** premiums
- **Guarantee, brokerage or financing fees**
- **Rent or moveable property payments**
- Payments for **marketing, procurement, agency or other intermediary services**

Subject to a
low profit margin exclusion

Pillar Two

What will jurisdictions do/Coordination



What are taxpayers doing?



What are taxpayers doing?

Our observations

Performing high-level computations of the potential impact of Pillar One and Pillar Two

- Educate the C-Suite and/or Board of Directors on potential implications

Analysing the data sources that will be needed to comply; determining whether the tax department currently has access to such data

Connecting with industry groups and/or submitting comments to the OECD in order to influence ongoing discussions

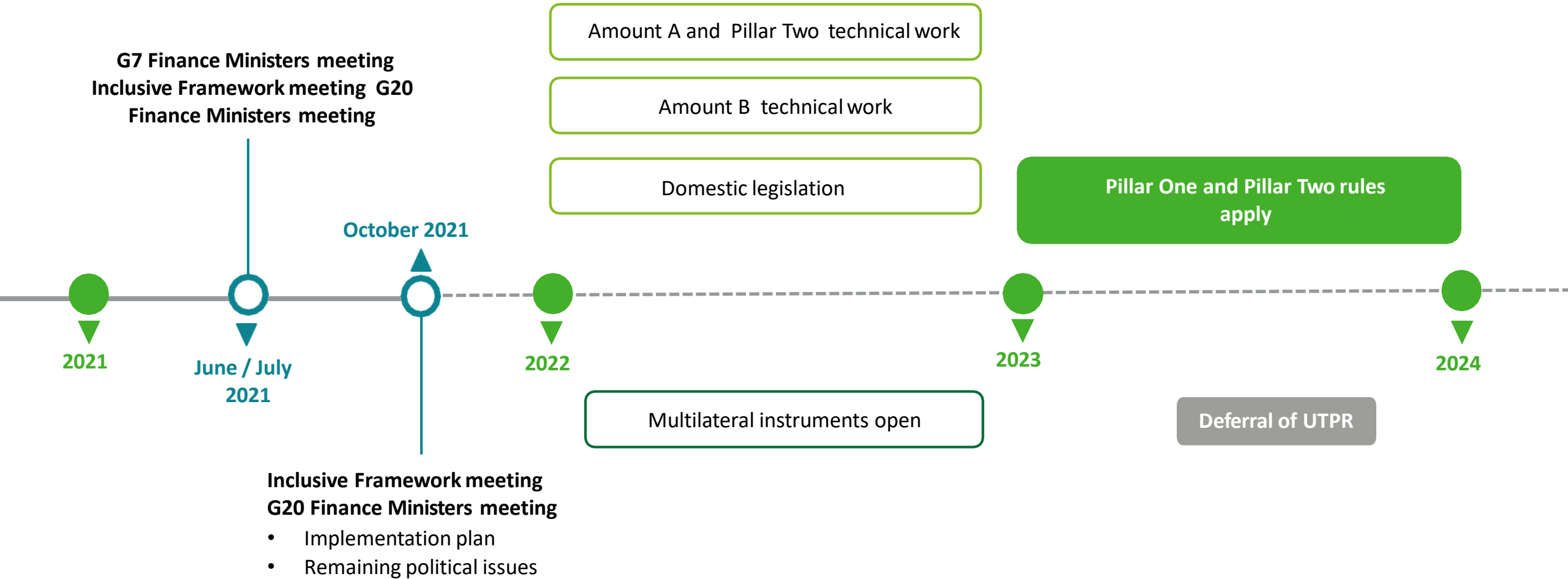
Tax holidays

- Evaluating the impact of existing tax holidays, particularly in regards to Pillar Two
- Considering the impact of Pillar One and Pillar Two when negotiating future tax holidays

Initial discussions regarding tax mitigation in the wake of Pillar One and Pillar Two

Next steps

Key dates



Panel session



Global responses



Global responses



Avg 21.80%

European Union

Commission president, Ursula Von Der Leyen, hails ground-breaking OECD-led Global Tax Agreement.

"We want a society in which there is one set of rules for all. All companies have to pay their fair share."

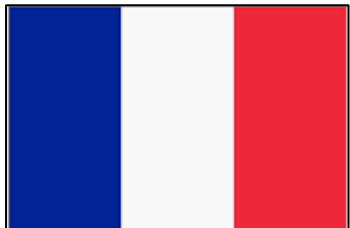
United Kingdom

United Kingdom Chancellor Welcomes OECD/G20 Inclusive Framework Global Tax Deal

"We now have a clear path to a fairer tax system, where large global players pay their fair share wherever they do business"



19%



26.50%

France

French Minister of Finance welcomes reached agreement on global tax reform, and will try to win over countries holding out to reach bloc-wide agreement.

"This agreement is a real tax revolution for the 21st century"

United States

US Treasury Secretary Janet Yellen

"Virtually the entire global economy has decided to end the race to the bottom on corporate taxation. Rather than competing on our ability to offer low corporate rates, America will now compete on the skills of our workers and our capacity to innovate, which is a race we can win,"



21%

Global responses

Africa

African Tax Administration Forum welcomes both the final agreement and criticises elements of it.

Pillar Two UTPR should have priority over IIR, and the 15% rate is too low –

“needed to be at least 20%... If it is to stem artificial profit shifting out of Africa as most African countries have a statutory corporate income tax rate of between 25% and 35%.”



28.50%



30%

Argentina

Argentine Economy Minister Martin Guzman expressed concerns over the deal.

“We policymakers from developing countries are forced to choose between something bad and something worse, worse is to get nothing and bad is what we are getting”

“We are not using this opportunity to actually correct one of the most toxic aspects of globalisation and digitalisation of the economy, which is tax avoidance”



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.