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Deloitte TaxMax – The 43rd series

One bold step in the right direction

Ang Weina, Chow Kuo Seng & Izzad Shamsudin | 22 November 2017

By Deloitte Tax Academy

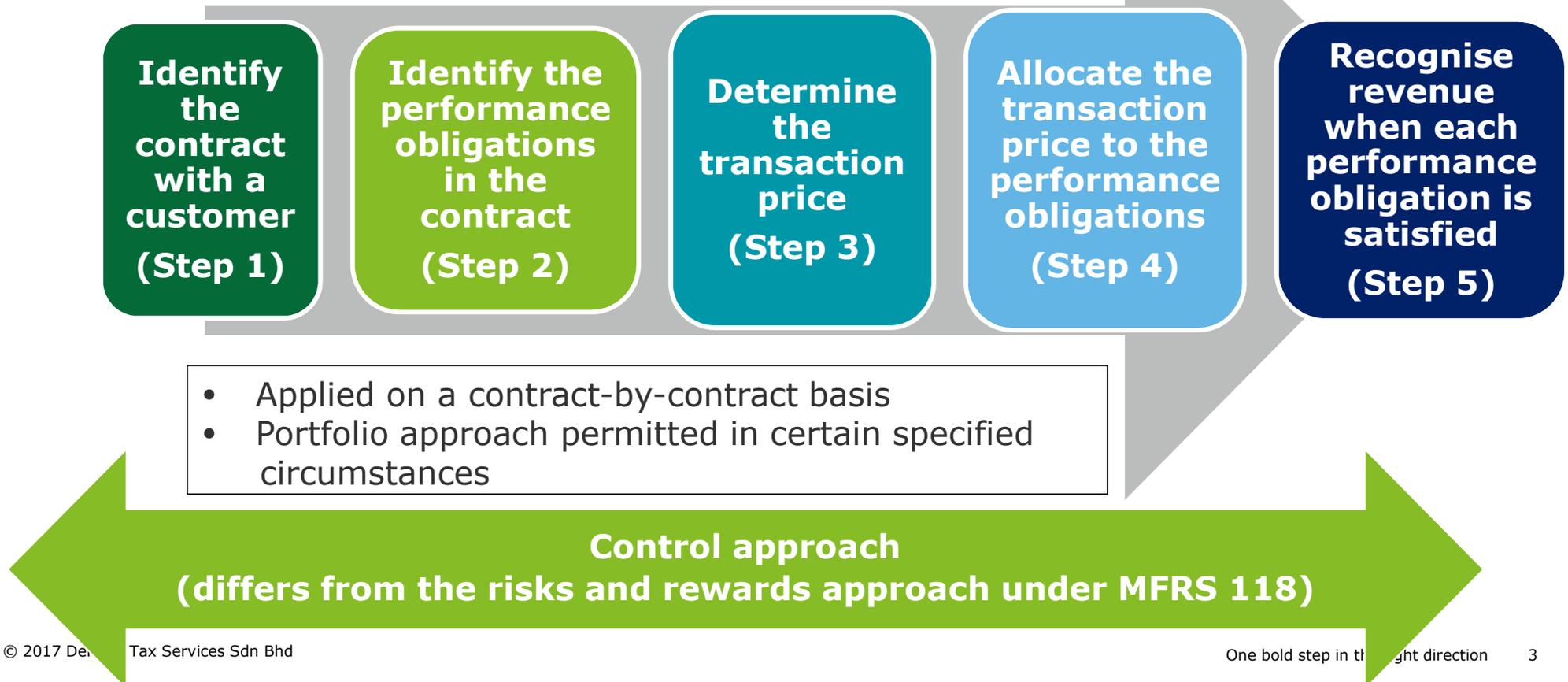
MFRS 15: An overview

MFRS 15 revenue from contracts with customers

Overview - The core principle

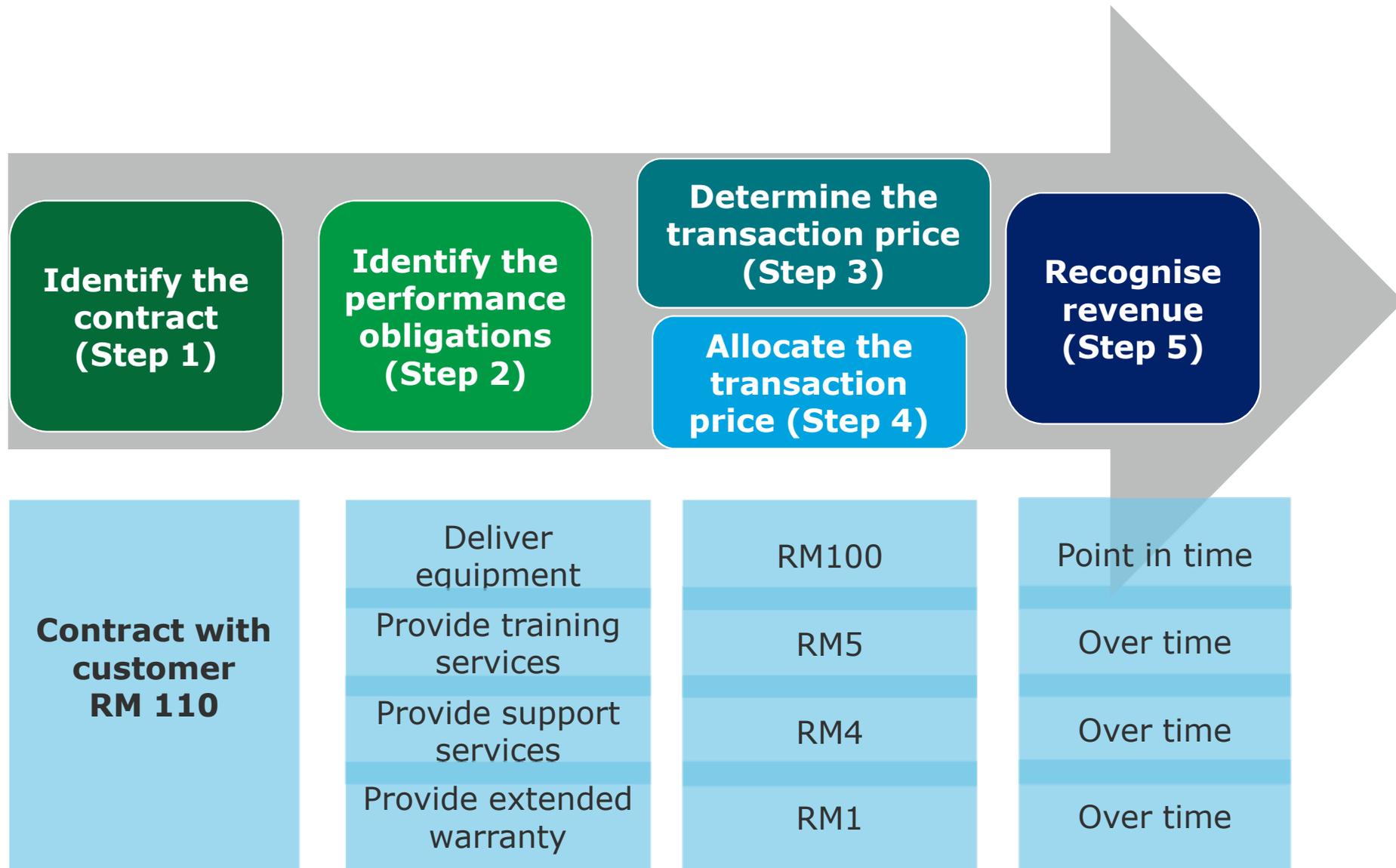
Recognise revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

Five-step model to apply the core principle:



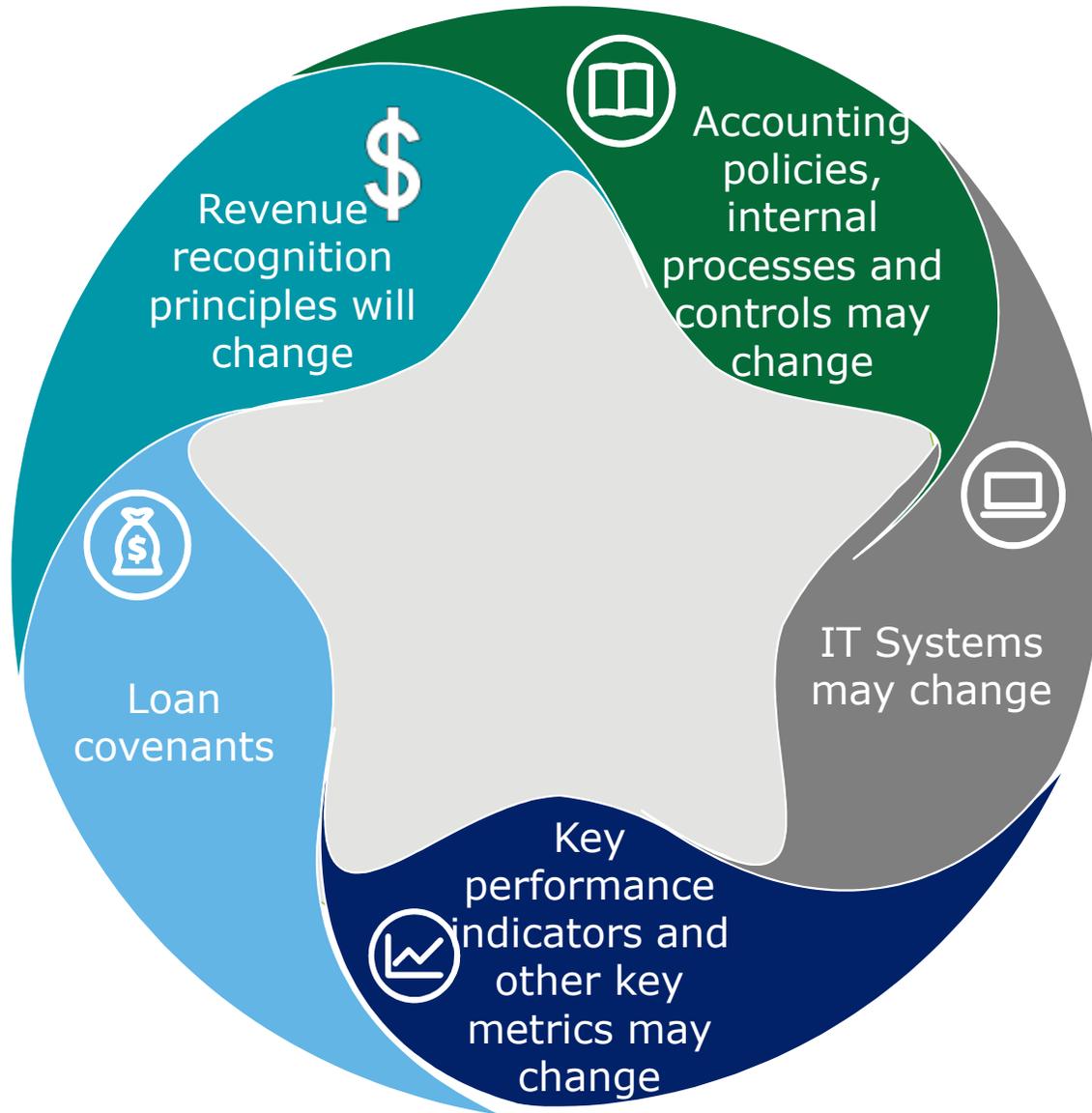
MFRS 15 revenue from contracts with customers

Applying the 5-Step Model - Example



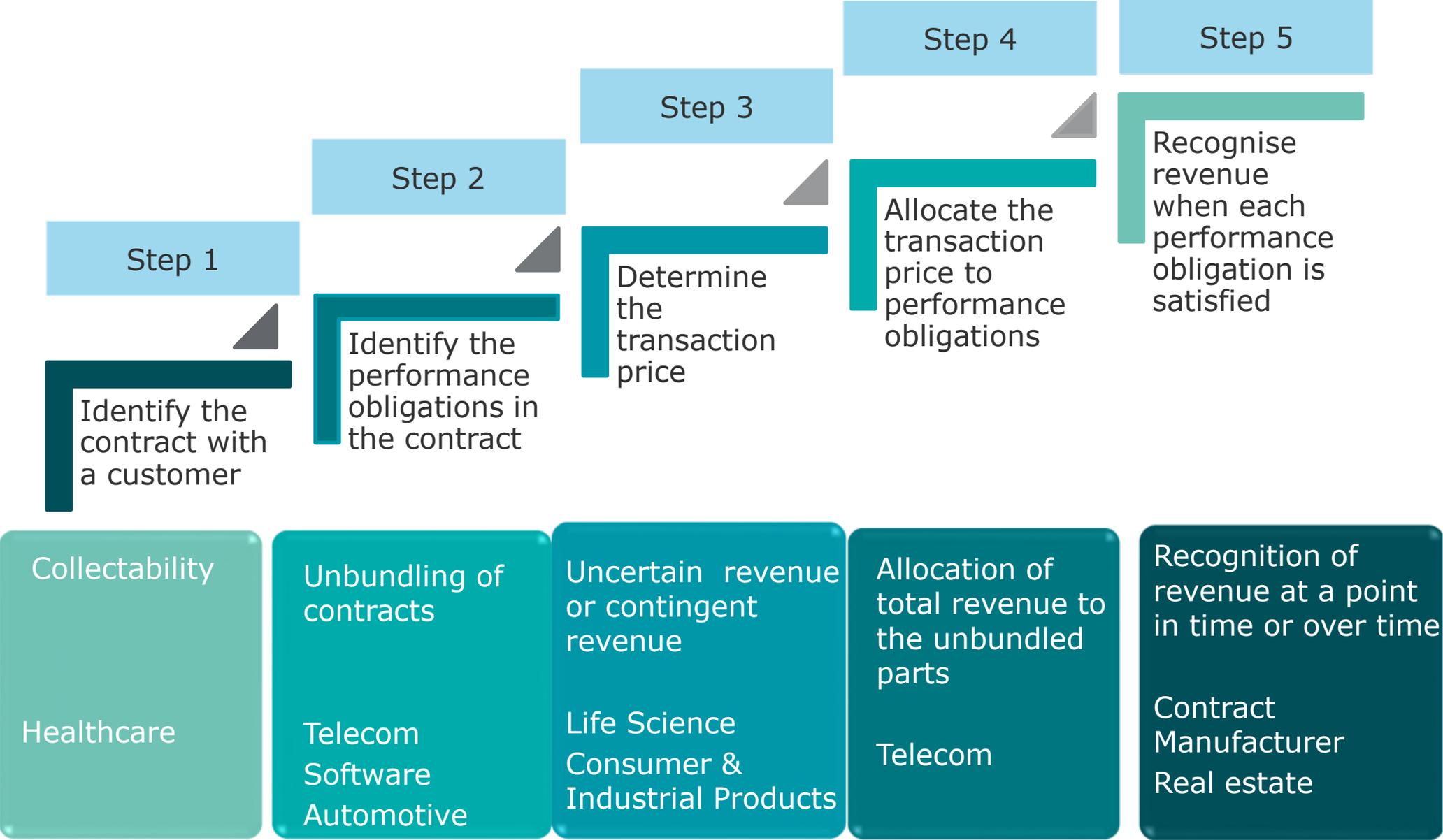
MFRS 15 revenue from contracts with customers

The potential impact of MFRS 15



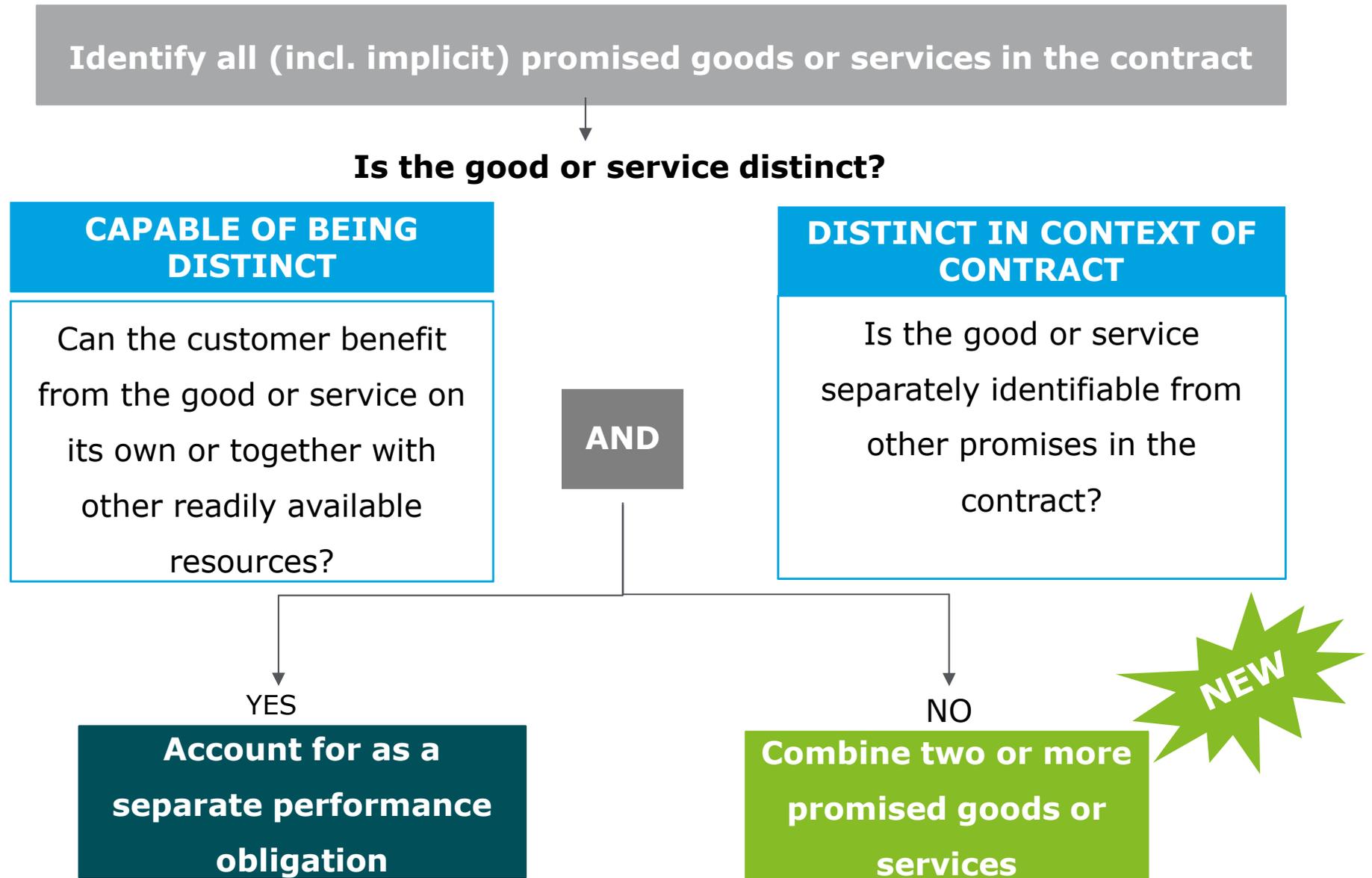
MFRS 15 revenue from contracts with customers

Possible impact by different step



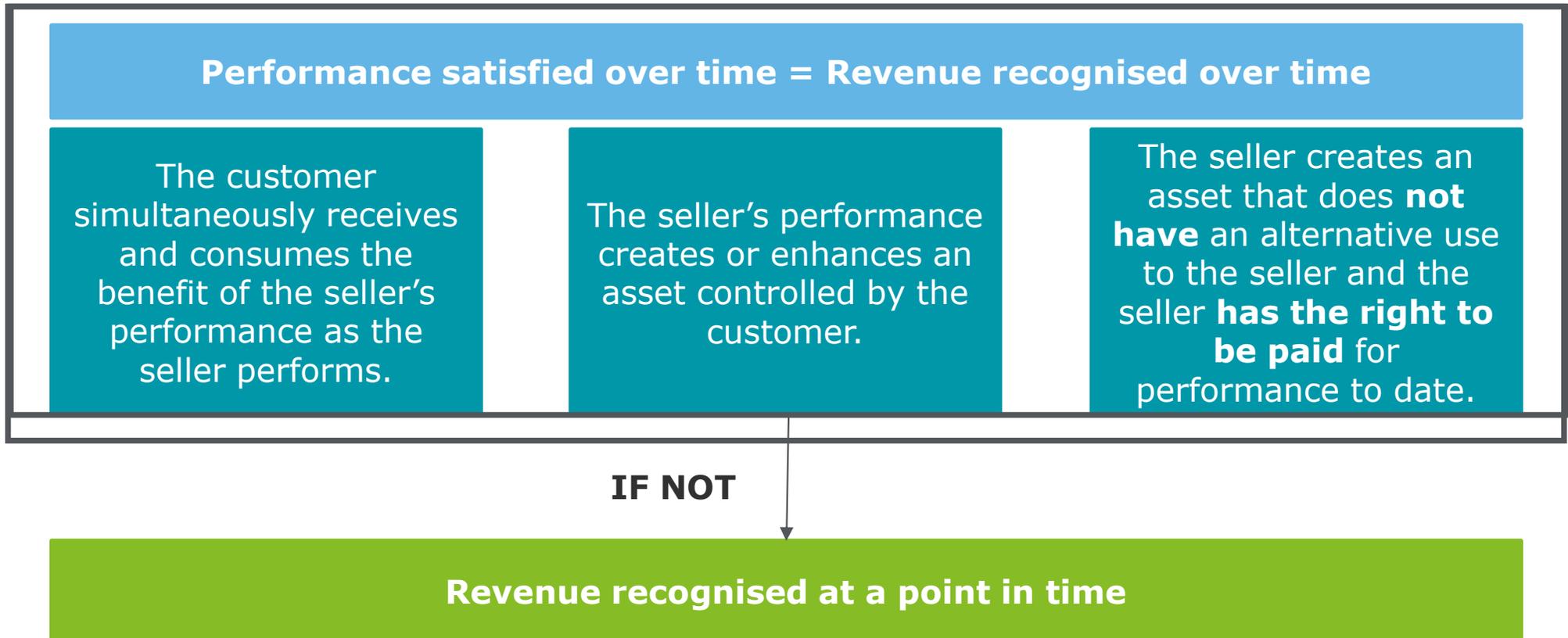
MFRS 15 Revenue from contracts with customers

Step 2: What to watch for?



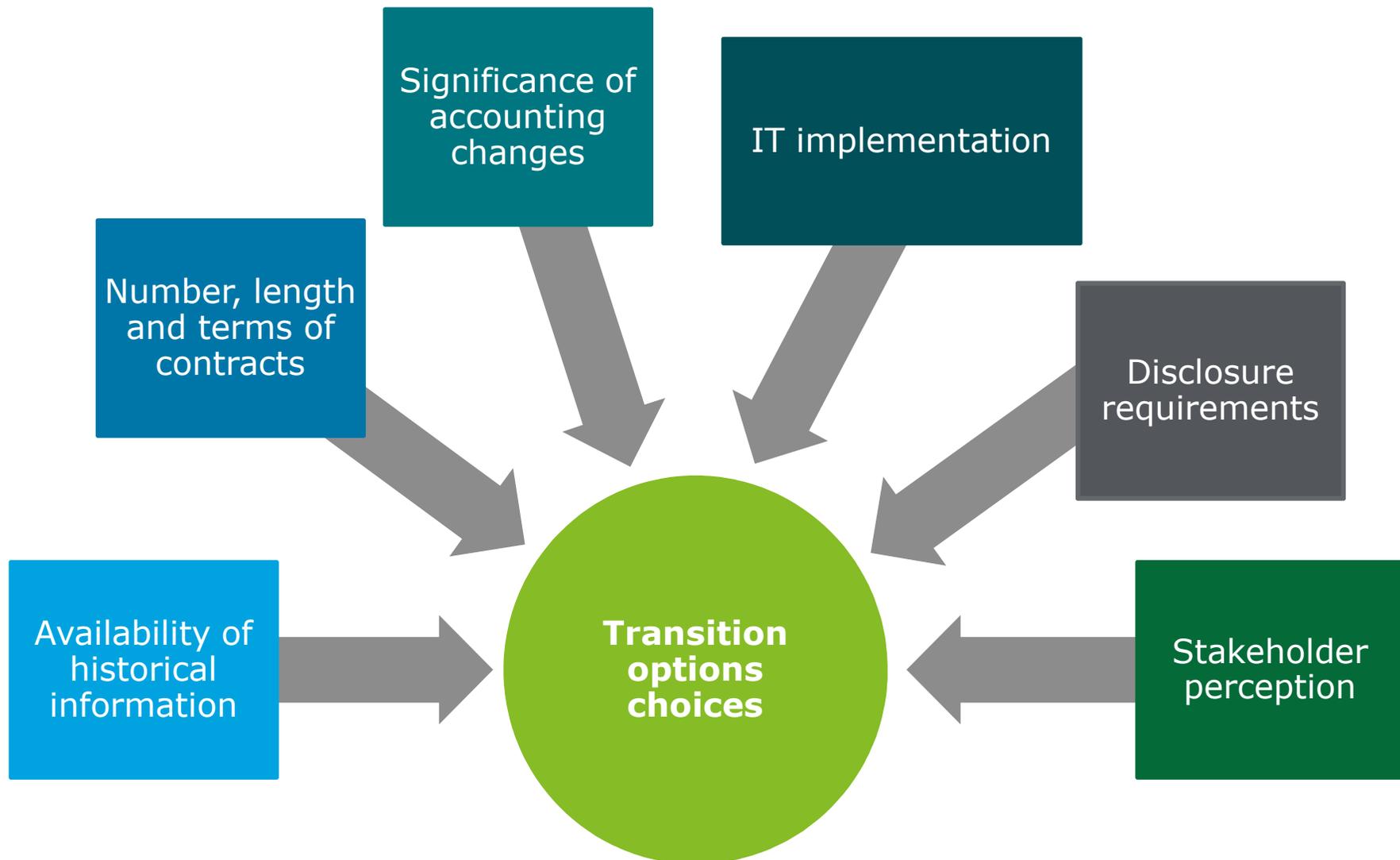
MFRS 15 Revenue from contracts with customers

Step 5: What to watch for?



MFRS 15 Revenue from contracts with customers

Key implementation considerations



Adoption of MFRS 15

Acceptance of accounting revenue as determined under MFRS15 as the revenue figure for tax purpose

1. Tax principle generally provides for income to be subject to tax when it is accrued; and
2. The difference in the amount of revenue recognised as adopted under MFRS 15 is mere timing difference and the entire amount from a contract would eventually be subject to tax.

Exception to accepting the accounting revenue as determined under MFRS 15 as the revenue figure for tax purpose

1. Where specific tax treatment has been established through case law or provided under the law. More details on Sec.24 Gross income for tax purposes; and
2. Section 36 of the ITA 1967 provide for specific tax treatment:

Taxpayers	Published Gazette
Construction business	Income Tax (Construction Contracts) Regulations 2007
Property development	Income Tax (Property Development) Regulations 2007
Leasing transactions	Income Tax Leasing Regulation 1986

MFRS 15 Revenue from contracts with customers

Revenue Recognition – Sec.24 ITA 1967

Gross business income of the relevant person in the relevant period

||

A debt owing to the relevant person in the relevant period arises in respect of:



Stock in trade	Services	Property
<ul style="list-style-type: none"> - Stock in trade sold in or before the relevant period in the course of carrying on a business 	<ul style="list-style-type: none"> - Any services rendered or to be rendered at any time in the course of carrying on a business - Any sum is received in the relevant period in respect of any services to be rendered in the relevant period or in any following period (advance payment received) 	<ul style="list-style-type: none"> - The use or enjoyment of any property dealt or to be dealt with at any time in the course of carrying on a business - Any sum is received in the relevant period in respect of the use or enjoyment of any property to be dealt with in the relevant period or in any following period (advance payment received)



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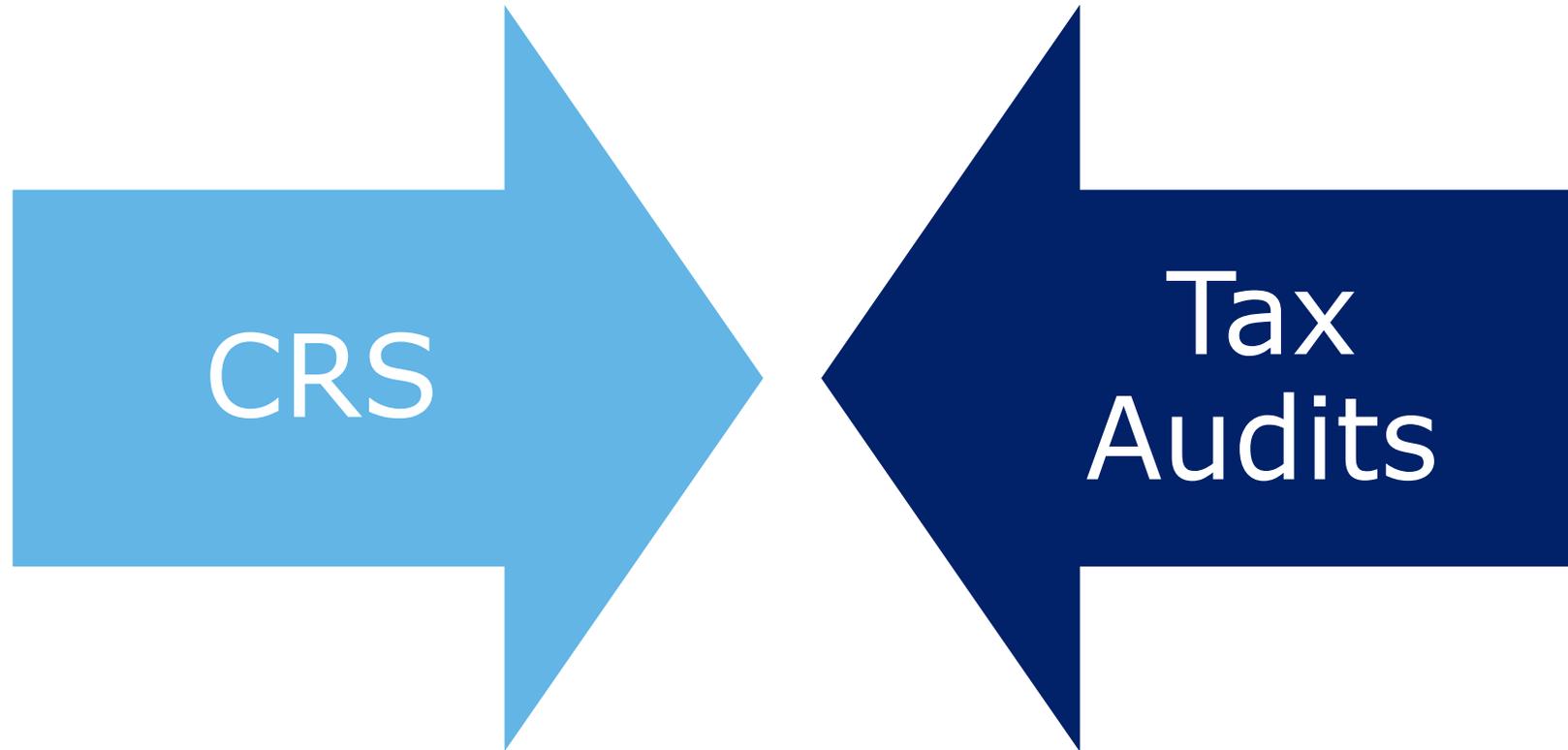
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Personal wealth

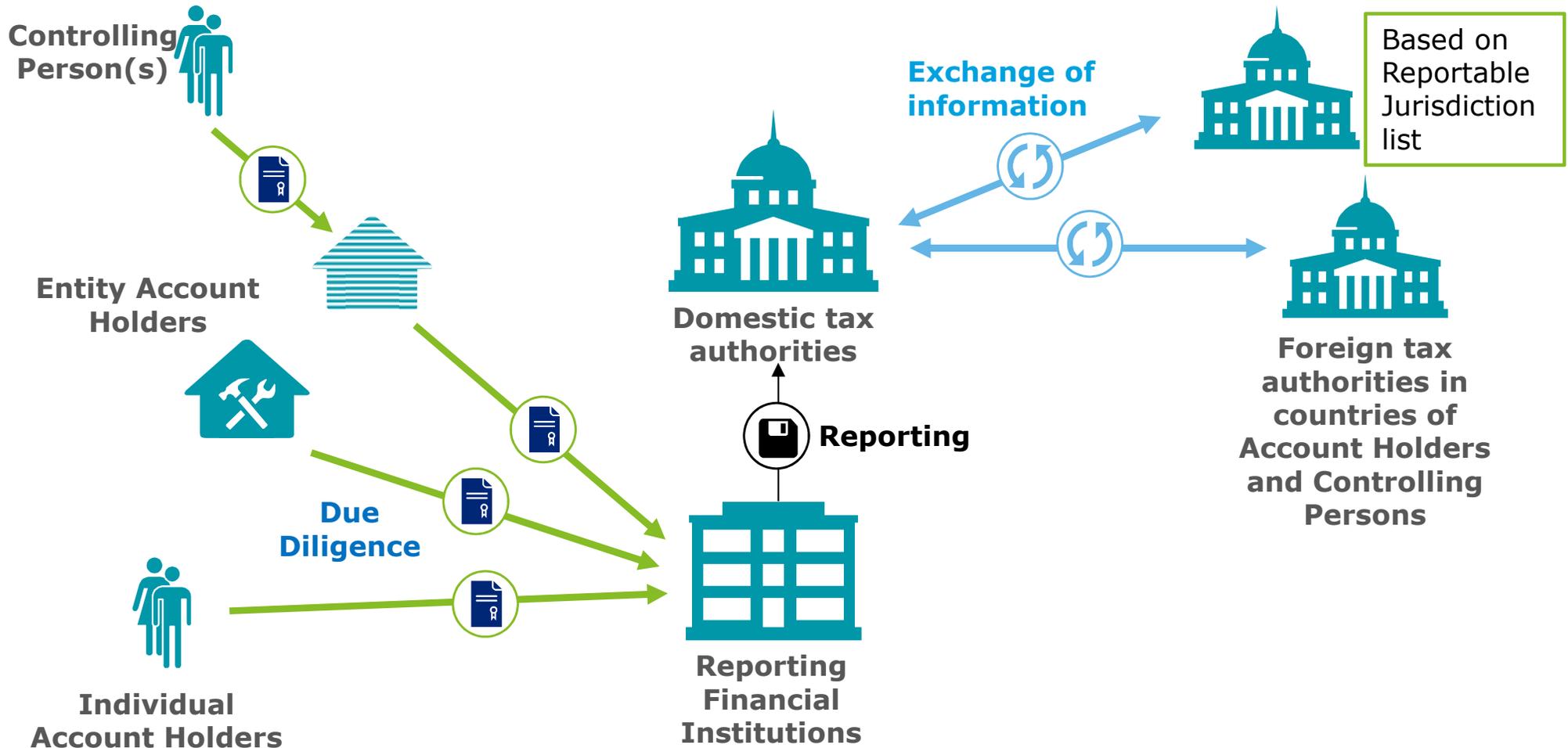
Current issues

Personal wealth
Current issues (1)



Automatic exchange of information - CRS

How does it work?



- FIs to review and identify reportable accounts
- Report to the domestic tax authority
- Domestic tax authority will share information with foreign tax authorities

CRS on individuals

CRS as a new source of information for IRBM

Existing



- Stamp Duty Office/
Property Developers –
Purchase of real
properties
- RTD – Purchase of luxury
motor vehicles.
- BNM – AML channel
- Media

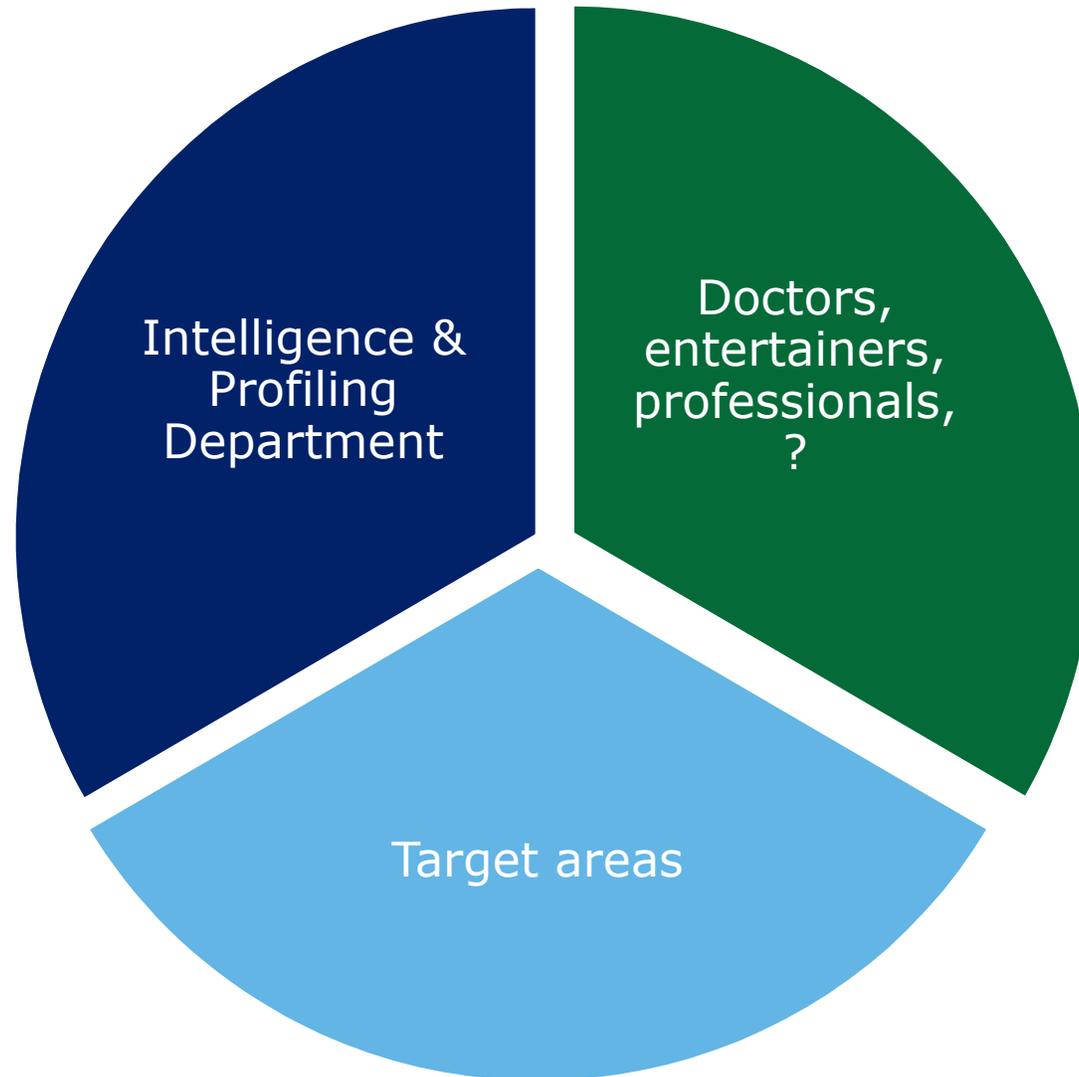
New in the future



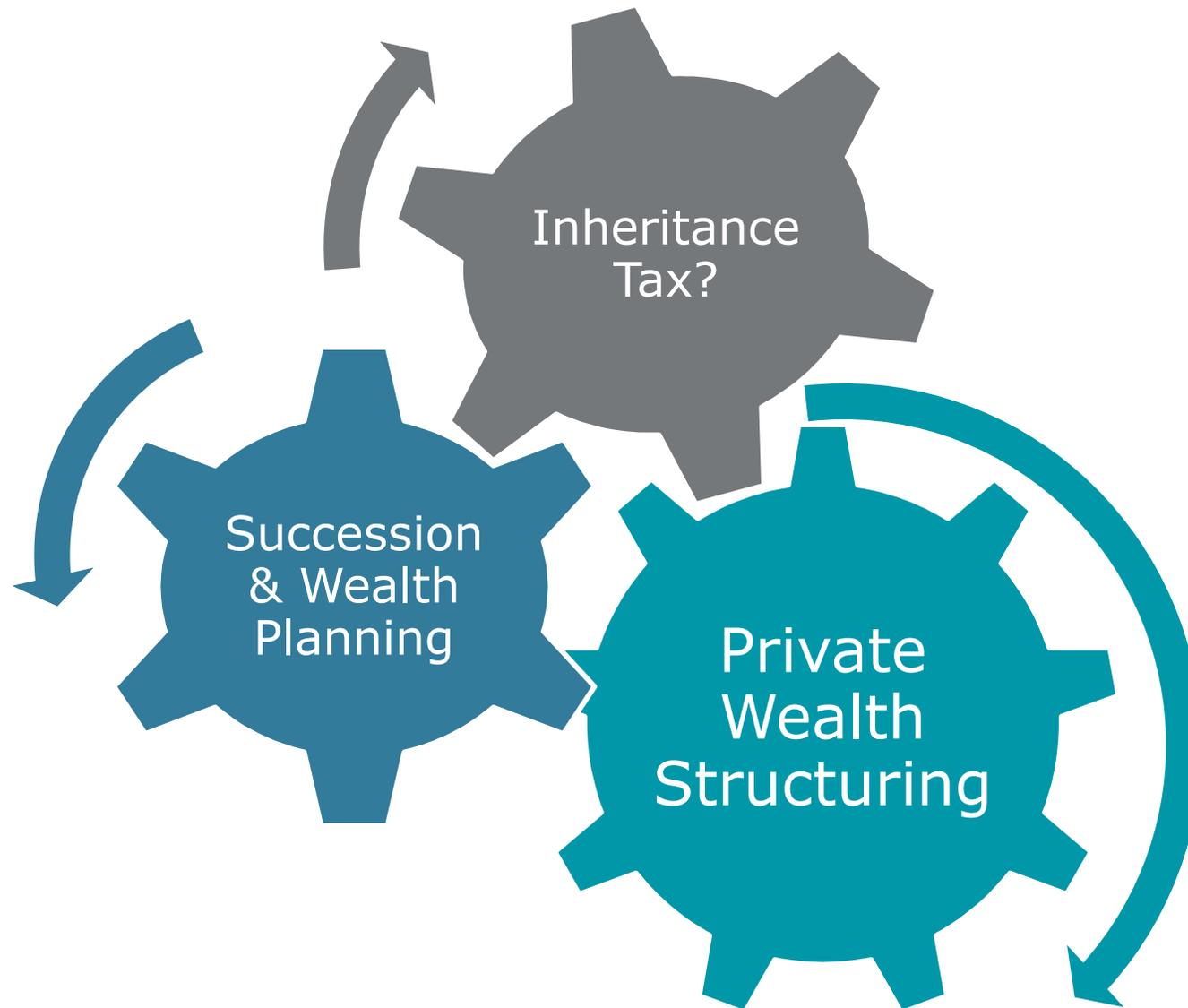
- Foreign tax authorities –
Financial account
information under CRS

Individual tax audits

State of play



Personal wealth Current issues (2)



Issues related to unplanned wealth transfer

Management succession

Who takes over the helm?

Sale of business

Will the heirs sell everything?

Unplanned inheritance

Forced heirship

Fragmentation of shareholding

Loss of control

Creditors' claims and taxes

Debts, lawsuits and inheritance tax

Spendthrift heirs

Lack of financial wisdom

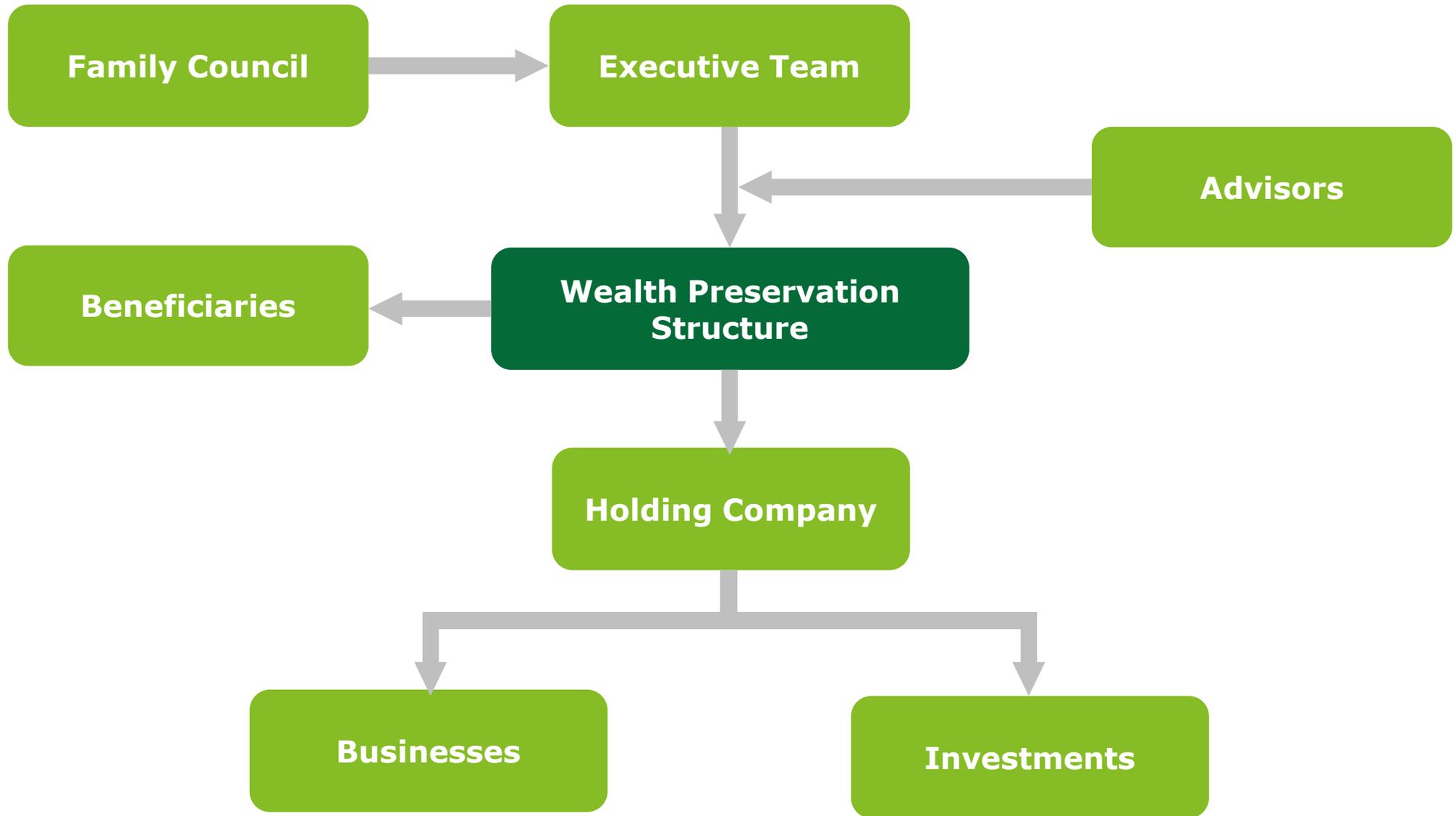
Welfare of minor children

Guardianship and living expenses

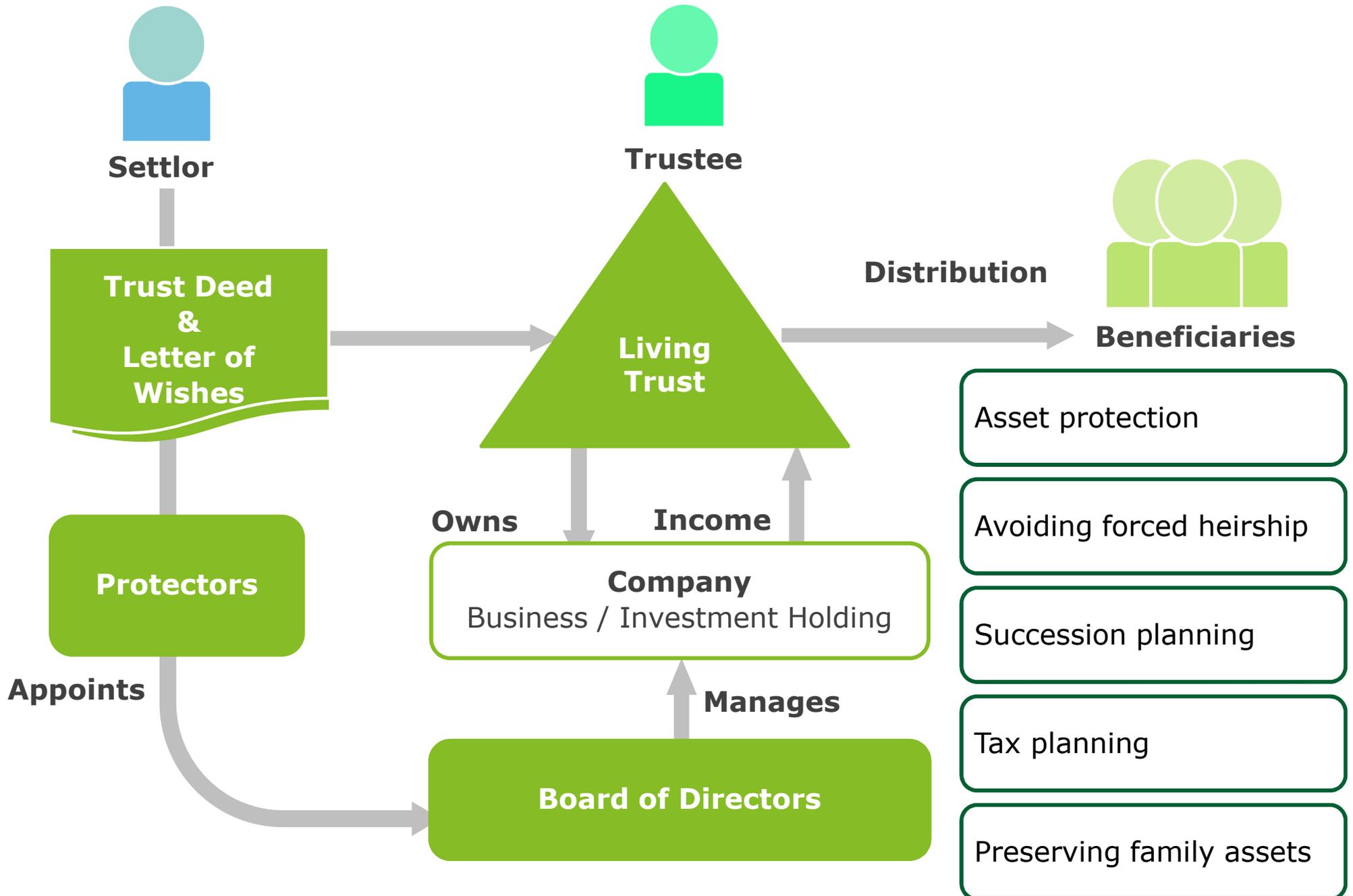
Family issues

Matrimonial claims

Multigenerational wealth succession plan



Family business and wealth preservation trust





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Withholding tax on services

The past, the present and the future

Overview of special classes of income

Section 4A of the Malaysian Income Tax Act (“MITA”) reads as follows:

Notwithstanding the provisions of section 4 and subject to this Act, the income of a person not resident in Malaysia for the basis year for a year of assessment in respect of-

- i. amounts paid in consideration of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;
- ii. amounts paid in consideration of **technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme**; or
- iii. rent or other payments made under any agreement or arrangement for the use of any moveable property,

which is derived from Malaysia is chargeable to tax under this Act.

(Emphasis added)

Prior to 17 January 2017, only onshore services are subject to withholding tax.

Re-imposition of Malaysian withholding tax on offshore services: One step forward, two steps back?

21 October 1983

Sections 4A and 15A were introduced

Payment to non-resident under Sections 4A(i) and 4A(ii) is subject to withholding tax ("WHT")

21 September 2002

Section 15A were amended

Payment to non-resident under Sections 4A(i) and 4A(ii) is subject to withholding tax if **services are performed in Malaysia**

Effective 17 January 2017

Payment to non-resident is subject to WHT irrespective of where the services are performed

6 September 2017

Blanket exemption!

WHT on Offshore services and Short-term Onshore Services

- In line with international trend?

- OECD
- UN
- BEPS Action 1 (Digital Economy)

Section 4A – Larger than life?

- Technical vs non-technical
- Second limb – “*in connection with*”..
 - ❑ Erria Shipping
 - ❑ Teraju Sinar
- Wide scope - Bank charges, printing charges, insurance premium etc?
- 1983 – 2002 era
- FTC
 - ❑ Without Art 13
 - ❑ Art 13
 - ❑ 1983 – 2002 era
- Alam Maritim

EXEMPTION ORDER – OFFSHORE SERVICES

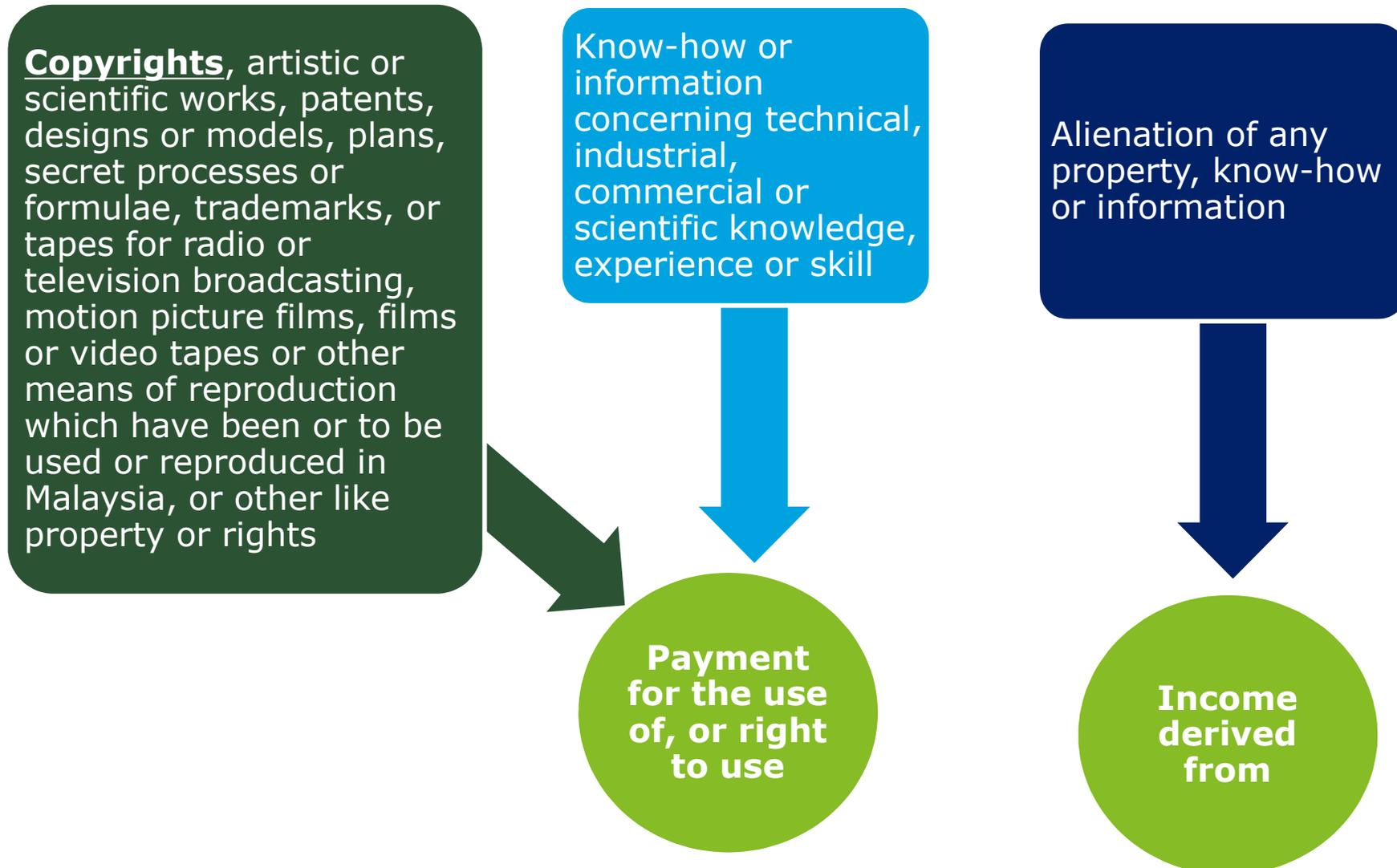
- 6 September 2017 – refers to when services are rendered vs payment is made?
- 17 January 2017 to 5 September 2017 – ?
- 6 September and onwards –refund?
- A shift of focus to royalty?

Redefinition of royalty

Alignment with international practice?

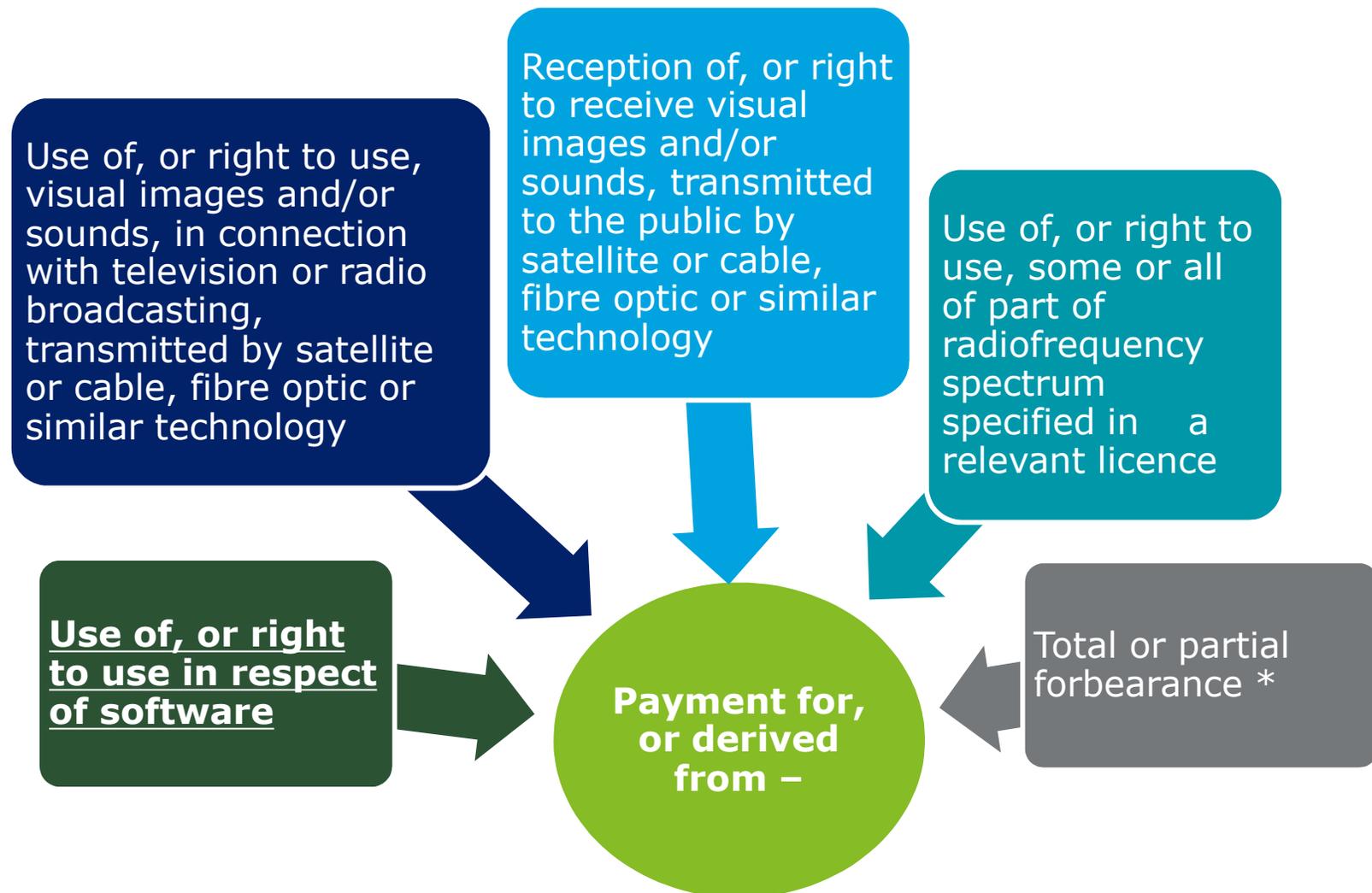
Redefinition of "royalty"

Section 2 of MITA (prior to 17 January 2017)



Redefinition of "royalty"

New definition under Finance Act 2017 - Additional items



Australian example:

- * E.g. 1. Payment for the owner of an industrial process / technology acquired so as not to make the industrial process / technology available to any other person.
- E.g. 2. Payment to prevent another person obtaining a dealer franchise.

Redefinition of “royalty”

Payment for software – The saga continues

Old definition	New local law definition	MY-SG DTA	MY-JP DTA
Any sums paid as consideration for the use of, or the right to use (i) copyright	Any sum paid as consideration for, or derived from (a) The use of, or the right to use in respect of any copyrights, software ,	Payments of any kind received as a consideration for the use of, or the right to use, any copyright	Payments of any kind received as a consideration for <u>the use of, or the right to use, any copyright</u> of literary, artistic or scientific work including software

- Copyright vs copyrighted item
- OECD’s position – Commentaries on Article 12
- Non-OECD member’s position on Article 12 (Royalties) and its commentary - Malaysia reserves its position on the treatment of software
- IRAS Rights-based Approach
- BEPS Action 1 – Digital Services
- *Mudah.my’s* case

The way forward

The way forward

- Redefinition of Section 4A
- Art 13
- Litigations/MAP



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