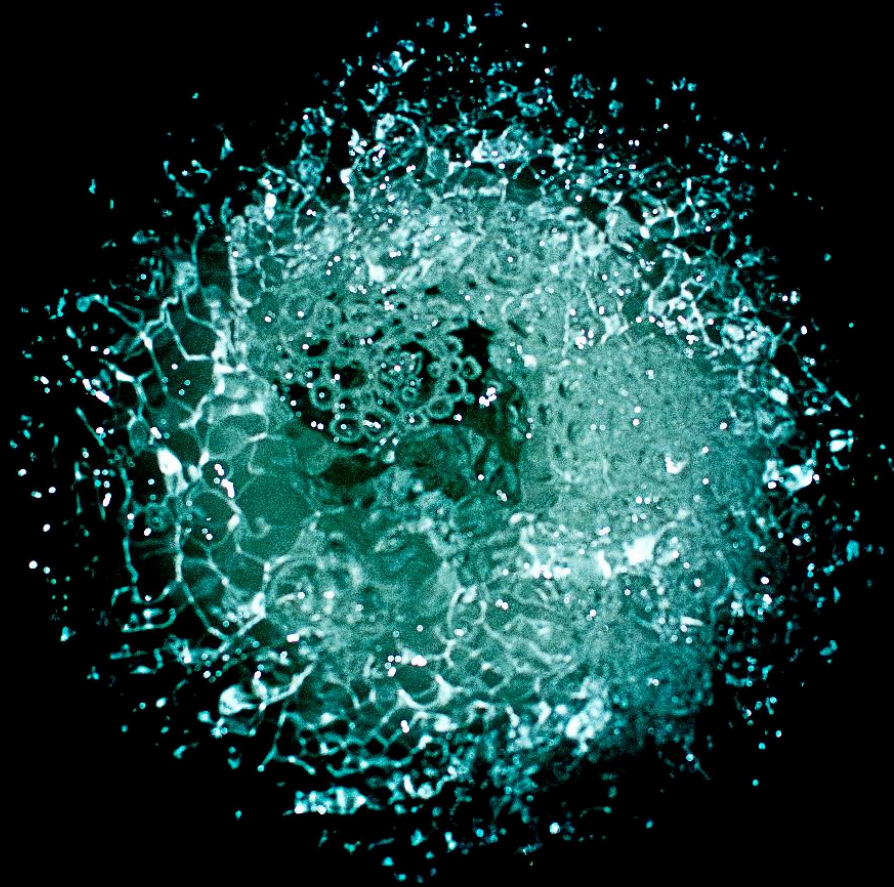


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Tuesday, 27 November 2018 | One World Hotel



Navigating the transfer pricing and international tax landscape confidently

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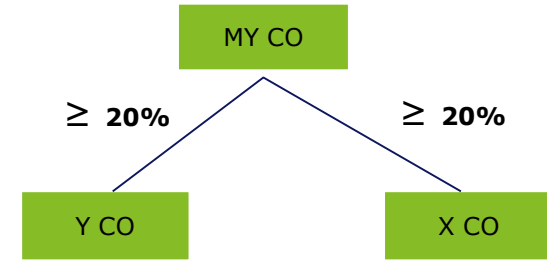
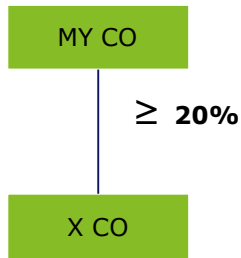
Subhabrata Dasgupta

*Transfer Pricing Executive Director,
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Budget amendment- Transfer Pricing

Expansion of 'control'- Transfer Pricing



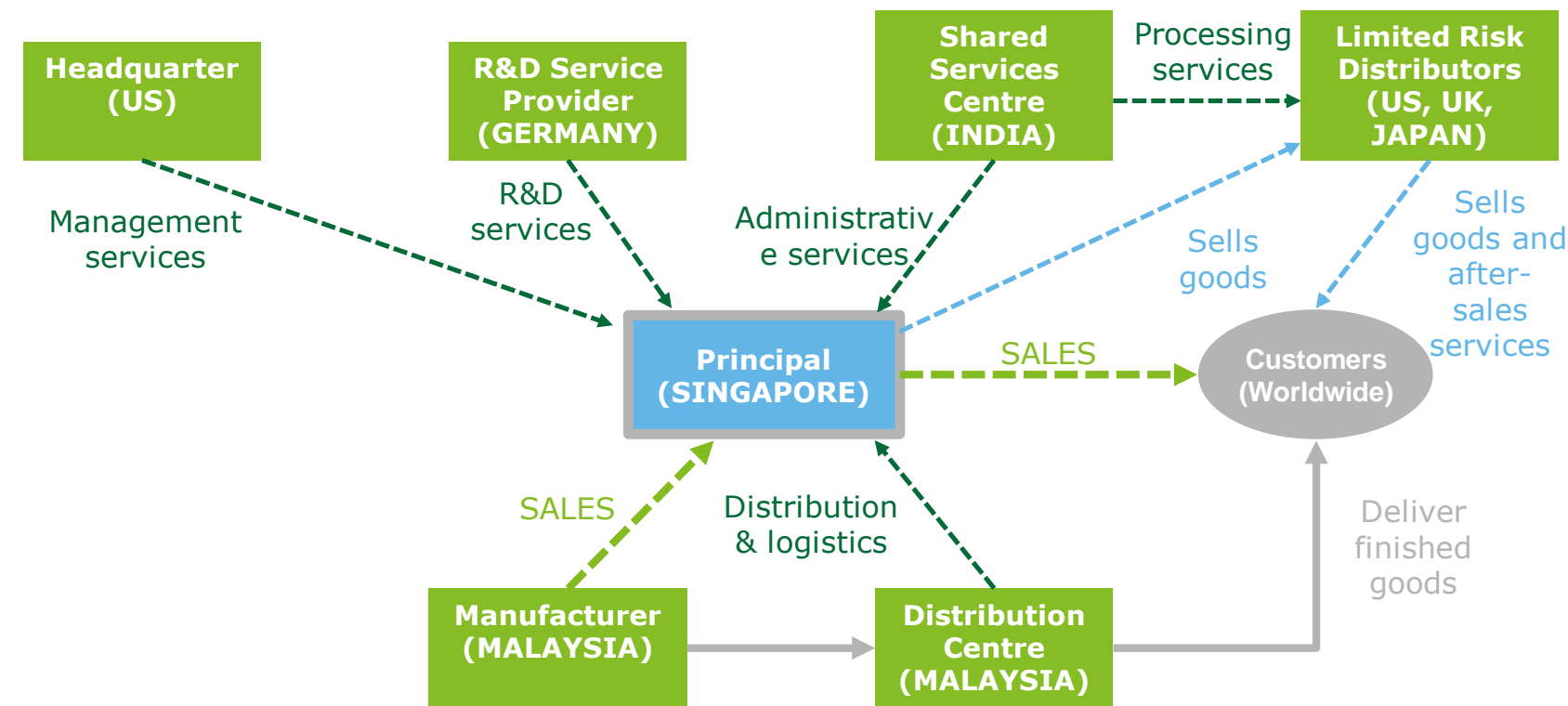
Effective
1st
January,
2019

Satisfy either of the following economic control conditions -

- **IP control** – Dependence upon IP
- **Business activities control**- Influence on the pricing and other conditions
- **Management control** – Appointment of one or more than one Director / BoD

Managing TP in post-BEPS era

Typical supply chain

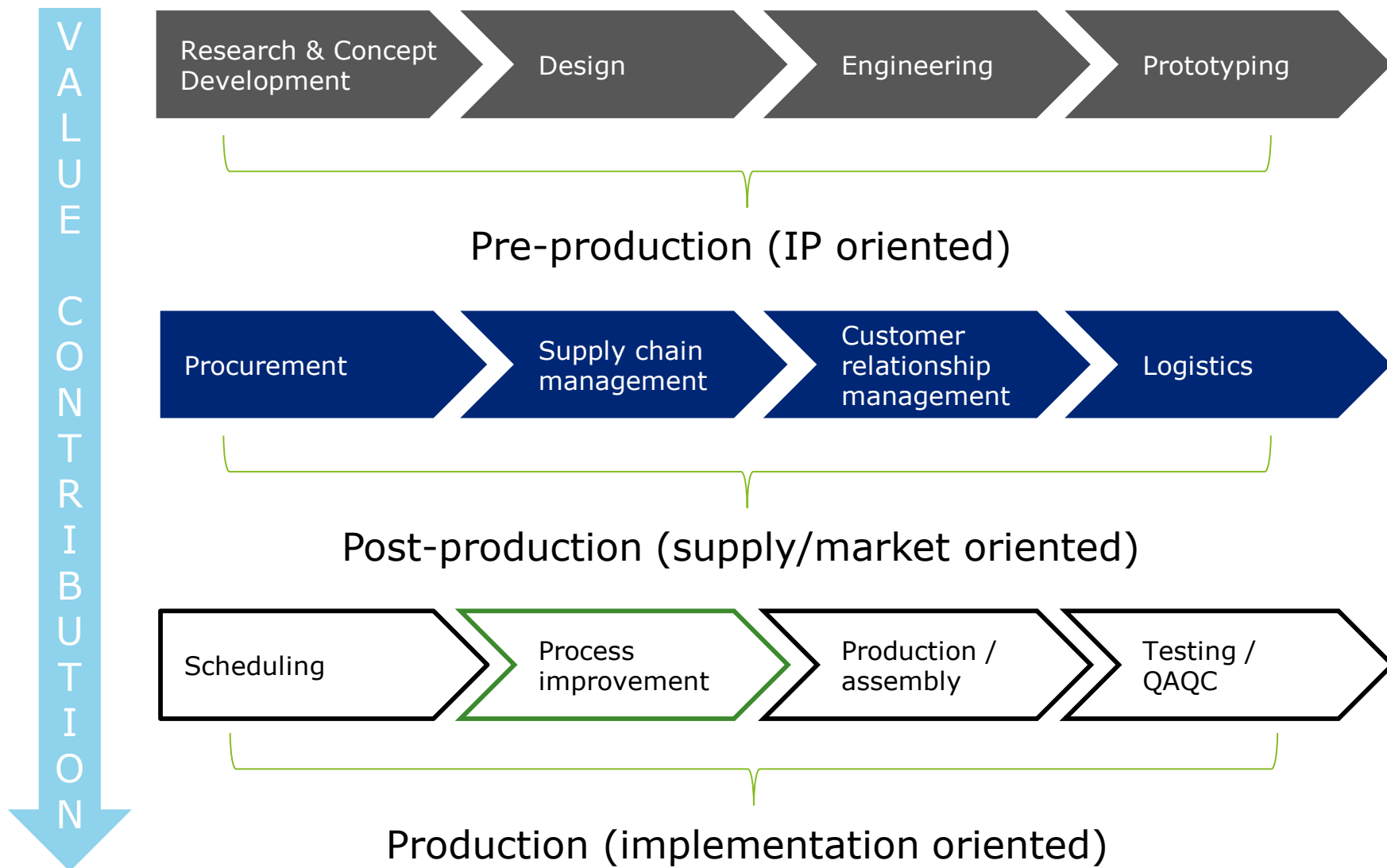


- >** LEGAL TITLE
- >** Physical flow of goods
- - ->** Services

Essence of TP position:

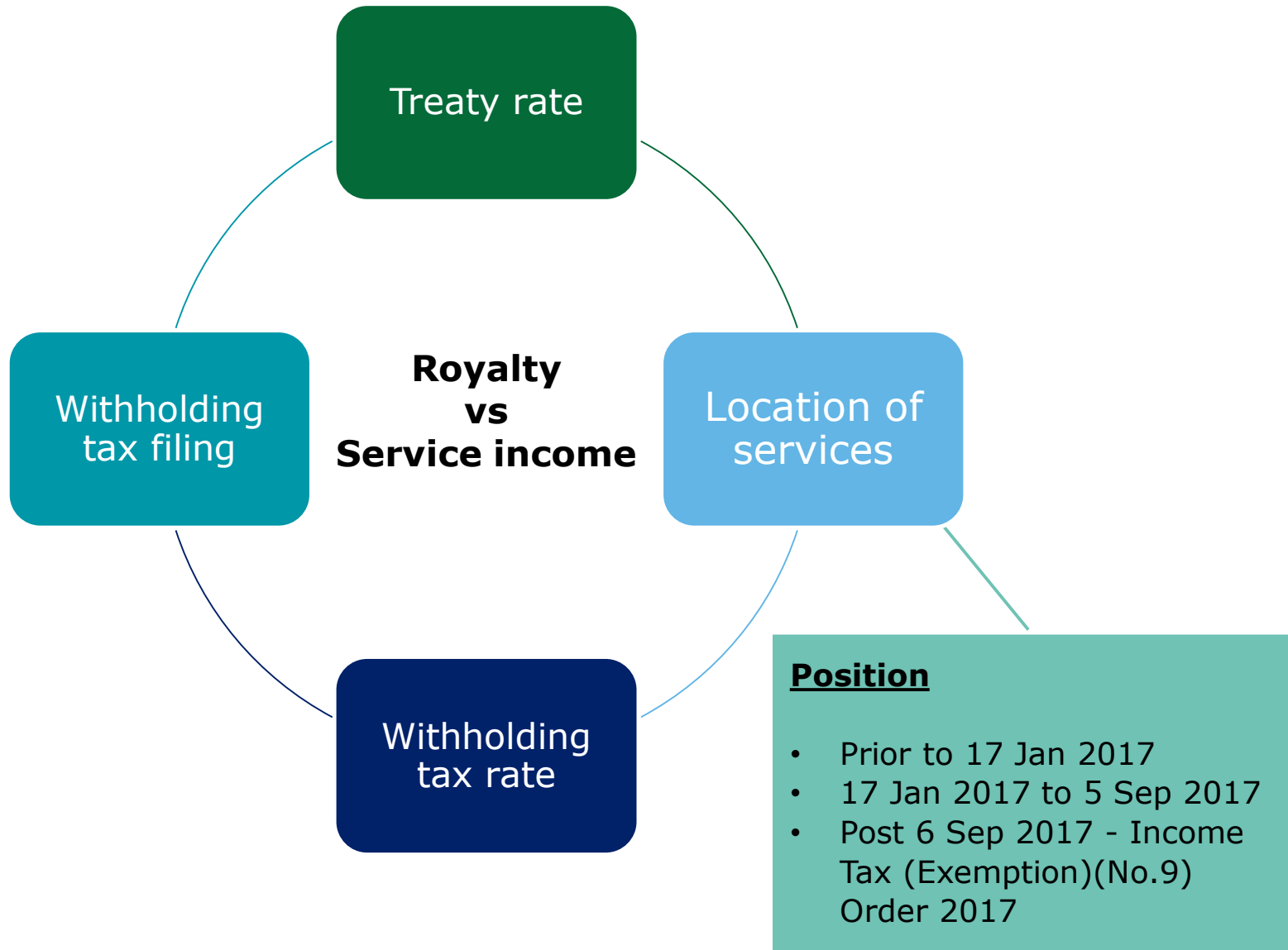
- Key profit drivers (risk, valuable IP) are placed with Principal, who receives entrepreneurial returns
- Other entities perform routine functions

The "Evolved" value chain



Royalty vs service fee

Why is it important to differentiate?



Redefinition of “royalty” under Finance Act 2017

Potential payments that may fall under new definition of royalty payments

Definition widened. **“Royalty”** includes, amongst others, any sums paid as consideration for, or derived from:

a) The use of, or the right to use in respect of, any copyrights, **software**, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trademarks or other like property or rights.

- Payment for use of software
- Purchase of software?

(d) *The reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by*
(i) satellite; or (ii) cable, fibre optic or similar technology

- Movies or music streamed via the internet or received via satellite.
- E.g. iTunes, Netflix, Spotify, Amazon, Google Play

(e) *The use of, or the right to use, visual images or sounds, or both, in connection with television broadcasting or radio broadcasting, transmitted by* **(i) satellite; or (ii) cable, fibre optic or similar technology**

- Payments made by satellite TV, cable TV or online streaming TV operators to non-residents for right to broadcast movies or music which are transmitted via satellite or internet

(f) *The use of, or the right to use, some or all of the part of the radio frequency spectrum specified in a relevant licence*

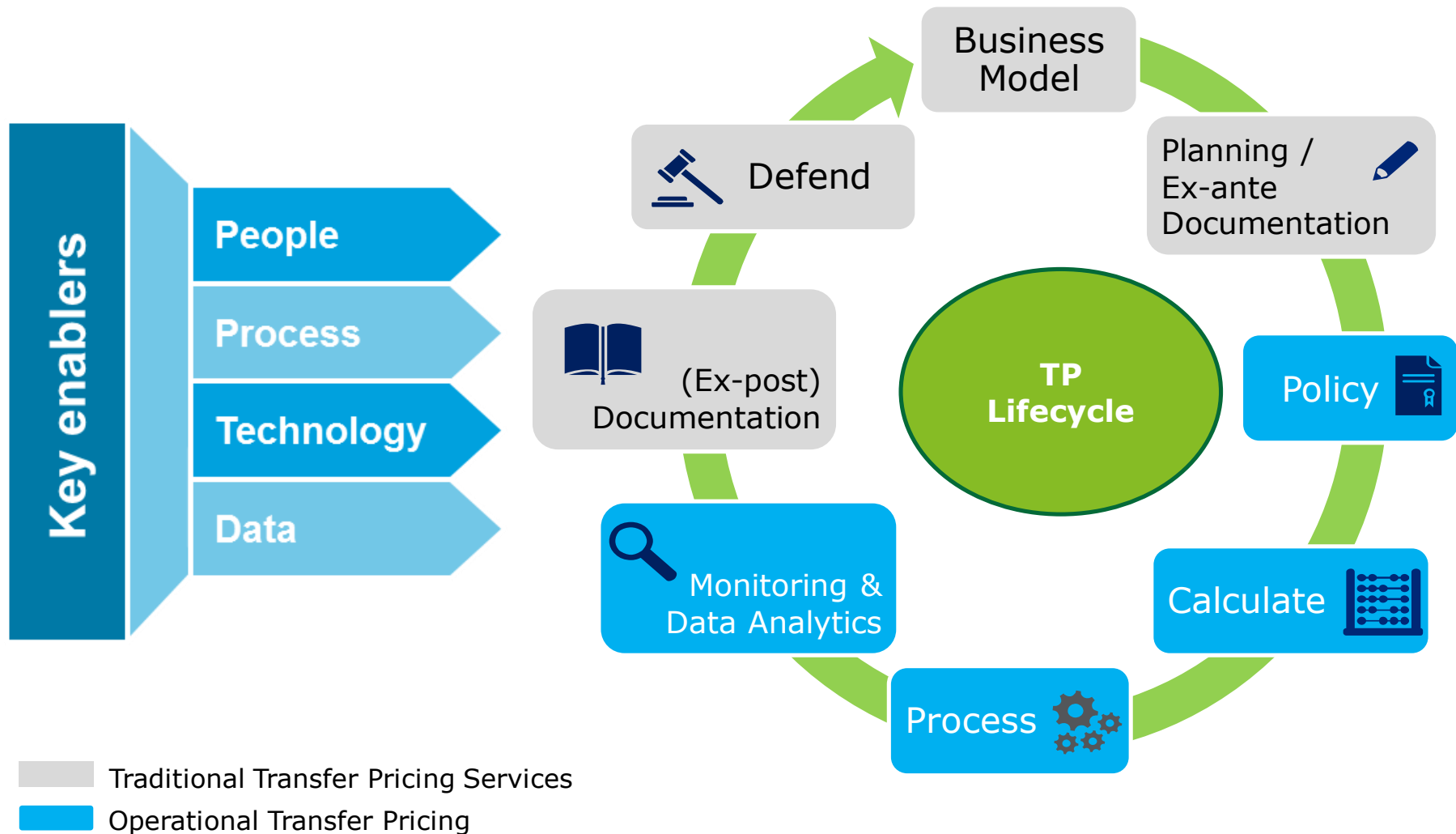
- Payment in relation to spectrum licences (including rights to use such licences) to non-resident who holds the relevant licence

Managing disputes in post-BEPS era

Key challenges

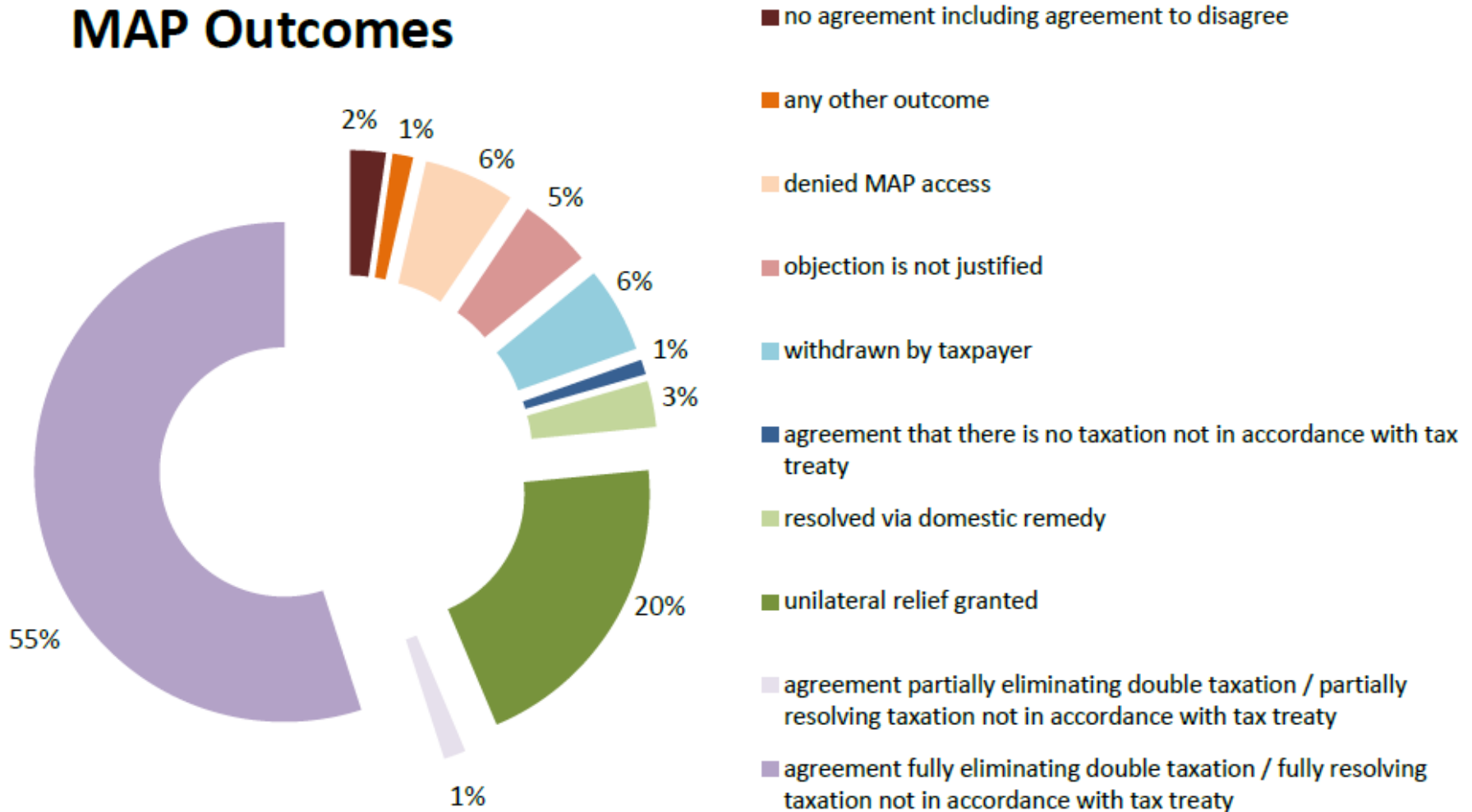
	Audit Readiness	Operational Alignment	TP Control	Documentation
★	--	--	--	✓
★ ★	--	--	✓	✓
★ ★ ★	--	✓	✓	✓
★ ★ ★ ★	✓	✓	✓	✓

What can taxpayers do?



2017 MAP statistics (OECD)

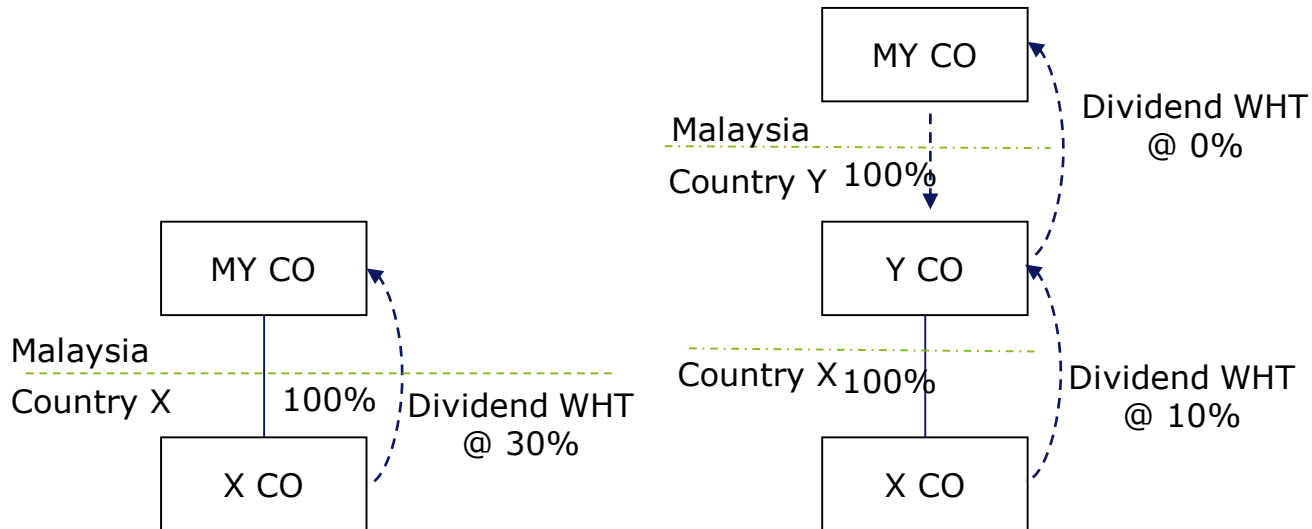
MAP Outcomes



Treaty shopping and PE risk

BEPS Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances (cont'd)

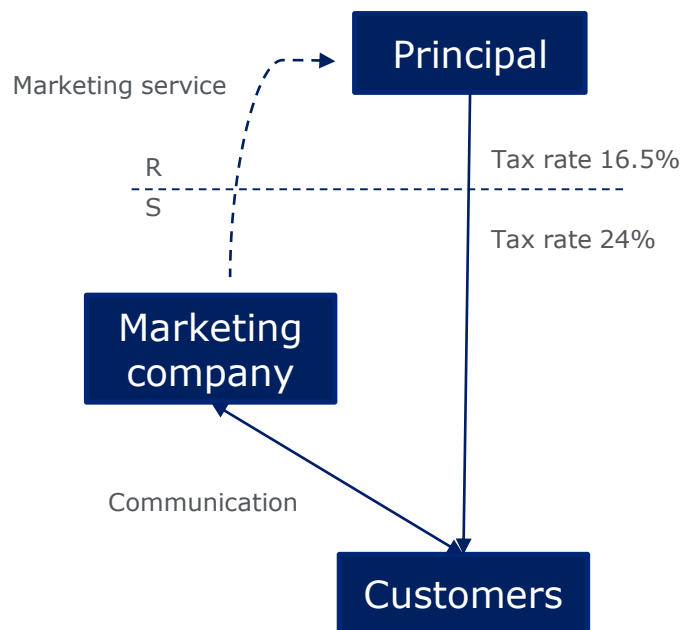
Example A (Pre – BEPS era)



Post BEPS era – Will this pass the Principle Purposes Test (“PPT”)?

Action 7: Permanent Establishment (PE) Changes to Article 5 of Tax Treaty

Article 5(5) (Agency PE)



Why would MNCs use a marketing company?

- Client's management?
- Tax arbitrage?



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