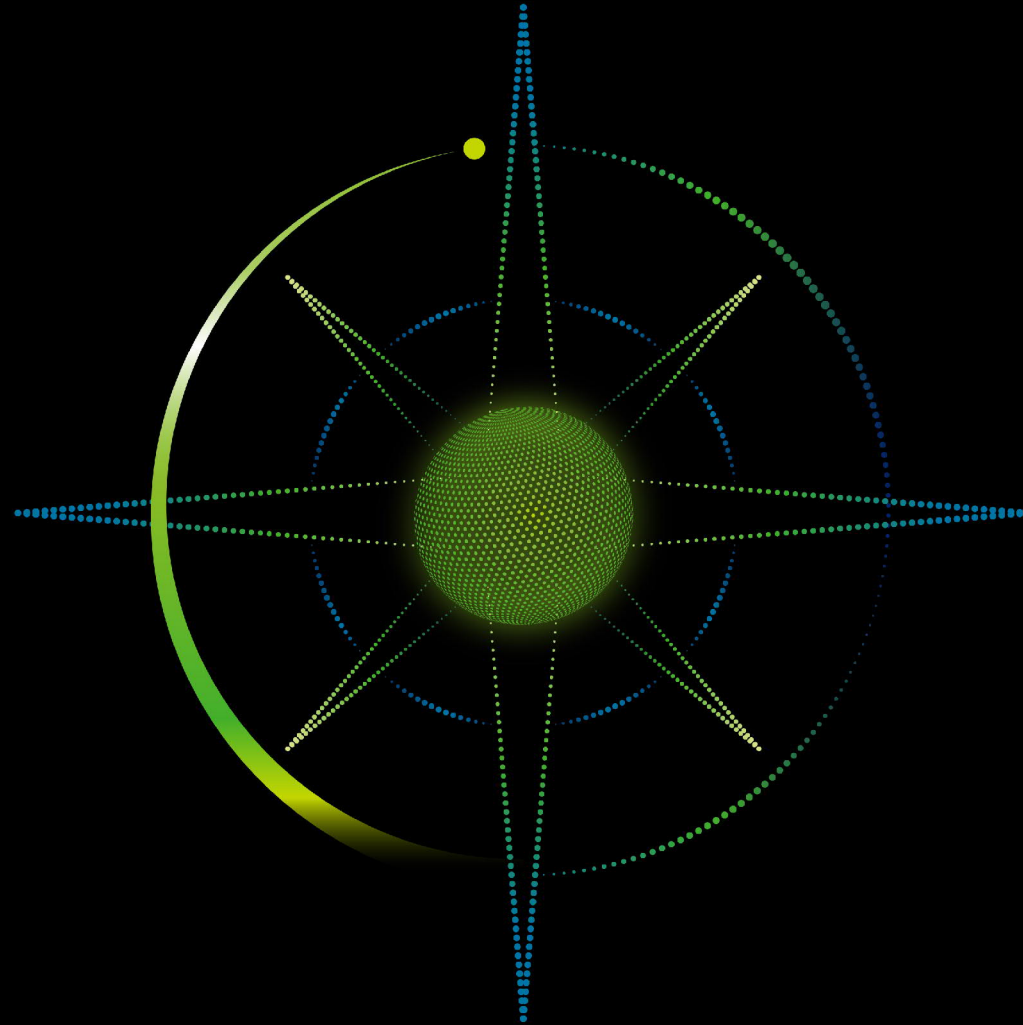


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Sustaining growth for a better tomorrow

Ashish Kedia | 21 November 2023

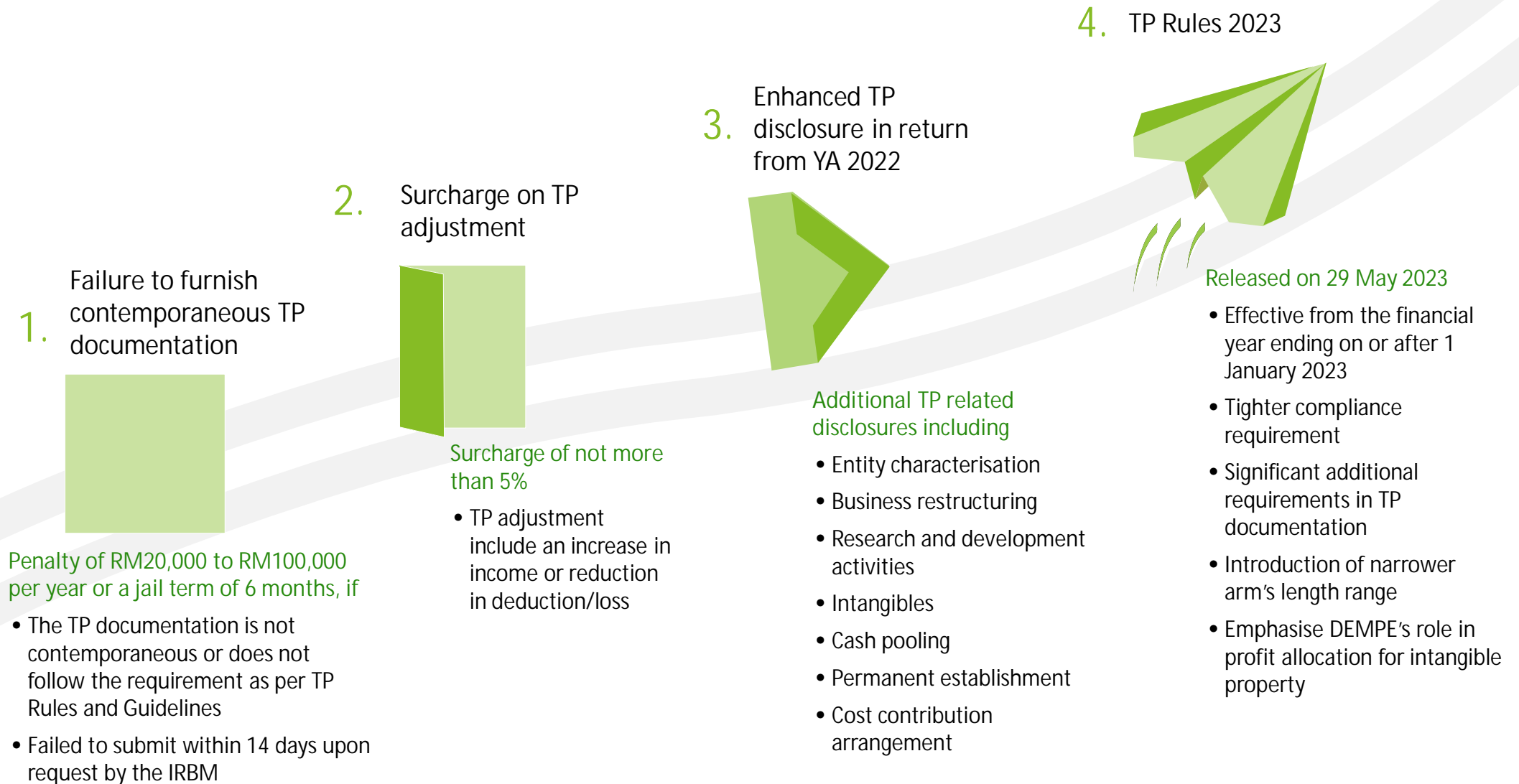


Speaker

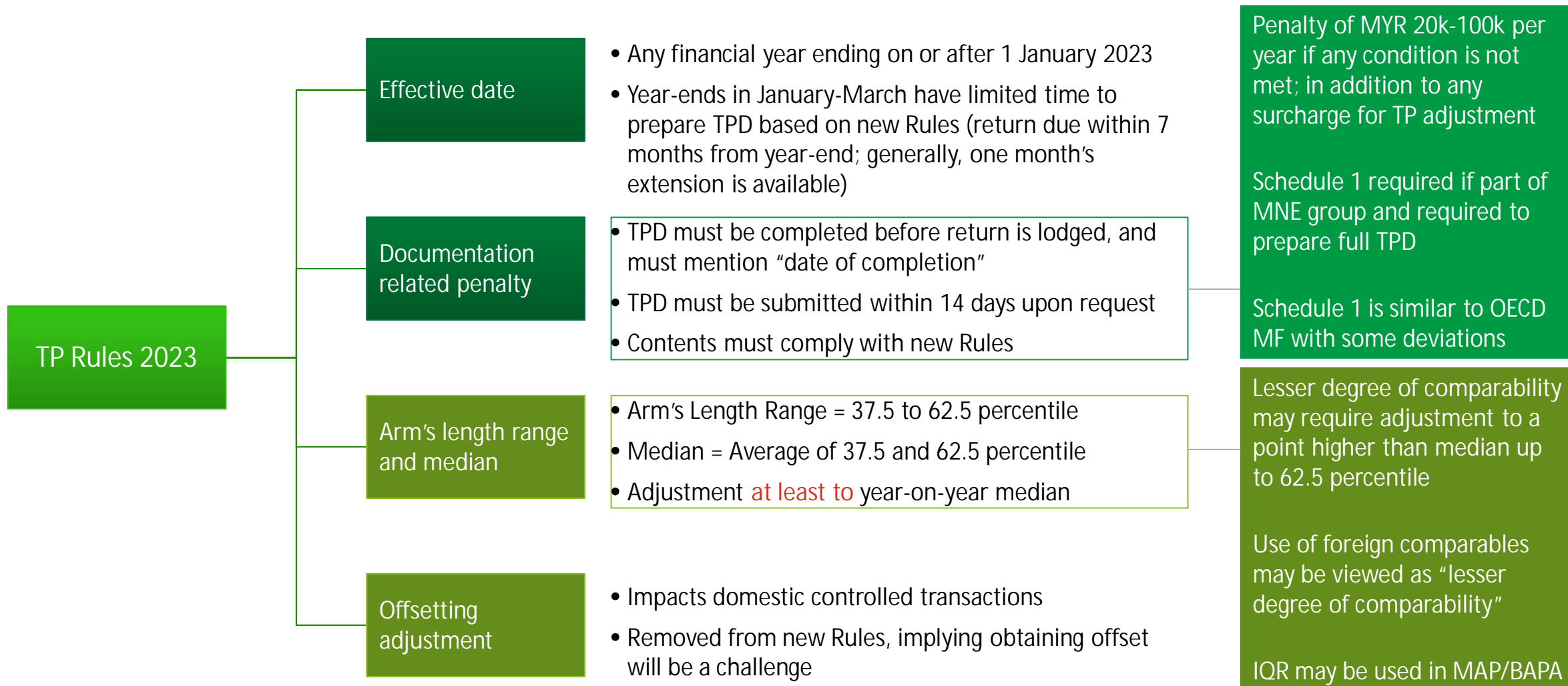


Ashish Kedia
Transfer Pricing Director,
Deloitte Malaysia

Keeping up with the changing landscape of Transfer Pricing ("TP") in Malaysia



Keeping up with the changing landscape of Transfer Pricing (“TP”) in Malaysia (cont.)



Key amendments of TP Rules 2023

Key amendments – Tighter compliance requirement

Prior to TP Rules 2023



TPD should be made available within 14 days upon request by the IRB.

No penalty is imposed as long as TPD is submitted within 14 days upon request



TP Rules 2023

TPD prepared shall contain the date on which it has been completed.

A penalty of MYR 20,000 to 100,000 per YA may still apply in cases where TPD is dated after the return deadline, even if it is submitted to the IRB within 14 days upon their request.

Return deadlines for YA 2023 (subject to 1 month grace period)

■ March 2023	→	30 November 2023
■ June 2023	→	28 February 2024
■ September 2023	→	31 May 2024
■ December 2023	→	31 August 2024

Key amendments – Significant additional disclosure requirements in TP Documentation

Prior to TP Rules 2023

Only companies that are subject to CbCR Rules or whose Parent has prepared a master file are required to submit the master file upon request

No specific information requirements for companies that enter into Cost Contribution Arrangements (“CCA”)

TP Rules 2023

TP Rules 2023 have outlined the contents of contemporaneous TPD for all companies that are required to prepare full TPD in the following three schedules –

Schedule 1 – Similar to master file contents, but specific to Malaysia business

Schedule 2 – Similar to local file contents

Schedule 3 – Information on CCA with associated person

Note: Companies that do not meet the threshold to prepare full TPD, will still need to comply with the documentation requirements for minimum TPD.

Key amendments – Significant additional disclosure requirements (Full TPD)

Schedule 1 Documentation – Similar to master file contents

1.

Organisational structure

- MNE Group's legal and ownership structure and geographical location of operating entities

3.

Intangible property

- List of important agreements related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements
- MNE Group's transfer pricing policies related to R&D and intangibles



5.

Financial and tax position

- Annual consolidated financial statement
- A list and brief description of the MNE Group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

2.

Group's businesses

- Important drivers of business profit
- Main geographic markets for the group's products and services

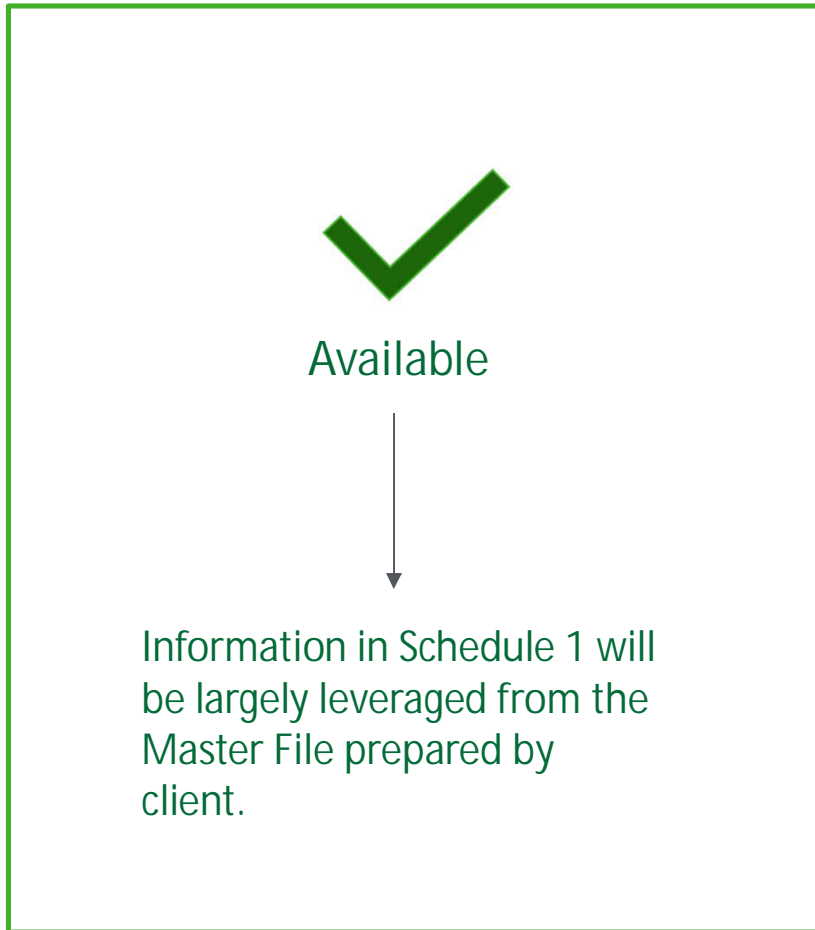
4.

Intercompany financial activities

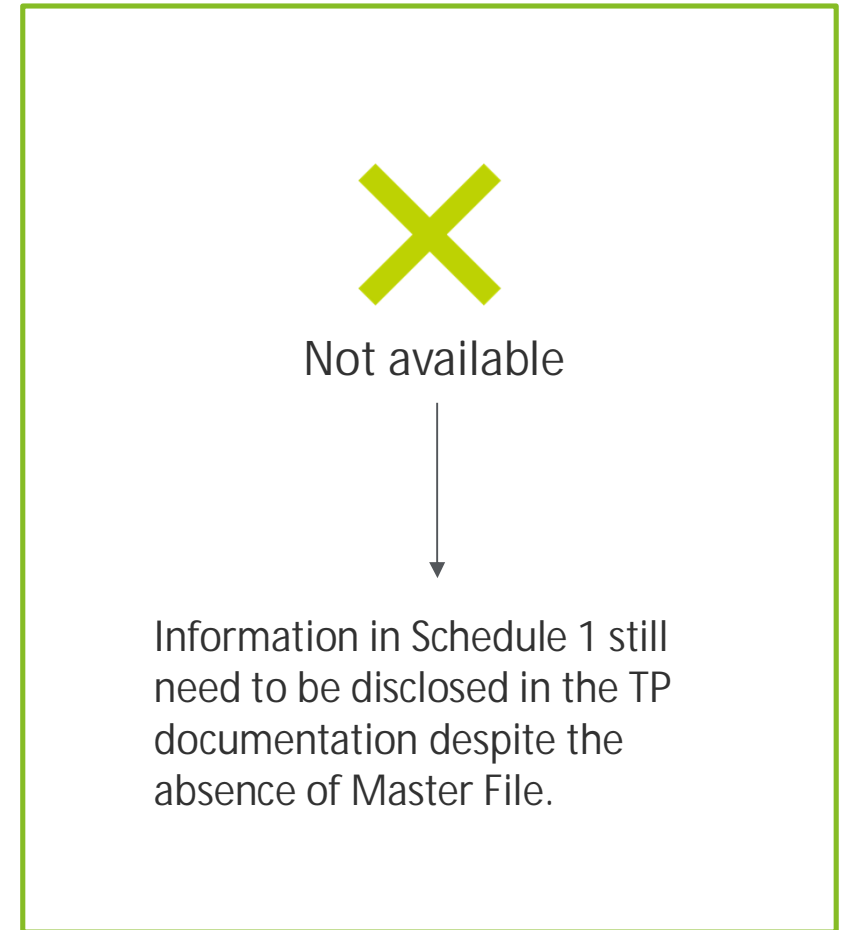
- Central financial function of the Group
- Group's general transfer pricing policies related to financing arrangements between associated enterprises

Key amendments – Significant additional disclosure requirements (Full TPD)

Schedule 1 Documentation – Similar to master file contents cont.



Master file



Key amendments – Significant additional disclosure requirements (Full TPD)

Schedule 2 Documentation – Similar to local file contents

1. Corporate shareholding structure and organisational structure
2. Nature of business, industry and market conditions
3. Controlled transactions such as nature, terms (including prices), conditions of transaction (where applicable), quantum of each transaction (including names and addresses) and relationship with each such associated person
4. Details of the pricing policies
5. Functional, asset and risk analysis
6. Economic analysis



Key amendments – Significant additional disclosure requirements (Full TPD)

Schedule 3 Documentation – Information on CCA with associated person



1. Copy of the cost contribution arrangement and any other agreements
2. List and identity of participants, any other associated person that will be involved or that are expected to exploit or use the results of the cost contribution arrangement activity
3. Scope of the activities and specific projects covered by the cost contribution arrangement, and how the cost contribution arrangement activities are managed and controlled including any intangible property or class of intangible property in existence or intended to be developed
4. Duration, total amount of contribution incurred, allocation of tasks and responsibilities
5. Method used to determine each participant's share of the contributions including projections used to estimate benefits, any rationale and assumptions underlying the projections and an explanation of why that method was selected
6. Each participant's effective ownership interest; manner or basis on which proportionate shares of the expected benefits are to be measured
7. Rationale and any assumptions underlying the projections of expected benefits

Key amendments – Significant additional disclosure requirements (Full TPD)

Schedule 3 Documentation – Information on CCA with associated person cont.



8. Procedures for entering or withdrawing from the arrangement and the consequences
9. Policies and procedures governing balancing payments or for adjusting the terms of the arrangement
10. Where material differences arise between projected and actual benefits, the assumptions made to project future benefits need to be amended for future years and the revised assumptions
11. Extent of the use of the cost contribution arrangement property by associated person who are not the cost contribution arrangement participants, including the amounts of consideration paid or payable by these non-participants for use of the cost contribution arrangement property
12. Anticipated allocation of responsibilities and tasks, and the mechanisms for managing and controlling those responsibilities and tasks (relating to the development, enhancement, maintenance, protection or exploitation (“DEMPE”) of tangible or intangibles assets used)
13. All material changes to the arrangement

Key amendments – Minimum TPD

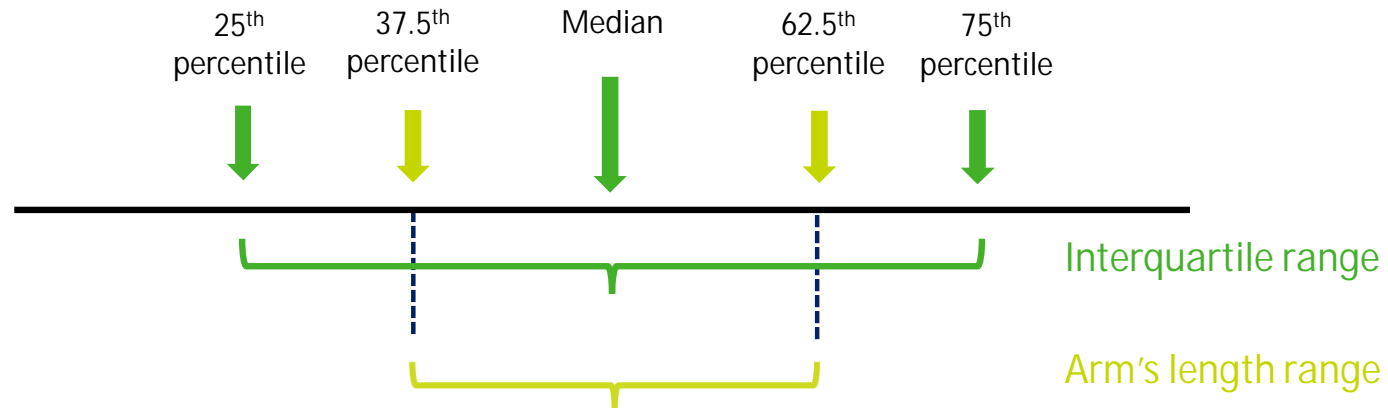
Additional disclosure requirements under the minimum TPD template

1. Company information
 - ✓ Company registration number, Tax Identification No (“TIN”) and business code.
2. Group information
 - ✓ Global organisational chart, affiliates’ address and respective TIN as well as reporting lines between the company’s management and its associate person.
3. Controlled transactions
 - ✓ Percentage of related party transaction / total transaction.
4. Pricing policy for each controlled transaction



Key amendments – Introduction of a narrow arm's length range

Comparables	Prior to TP Rules 2023	Comparables	TP Rules 2023
Maximum	12.39%	Maximum	12.39%
Upper quartile (75 th percentile)	6.16%	62.5 th percentile	5.03%
Median (50 th percentile)	4.77%	Median [(37.5 percentile + 62.5 percentile) / 2]	4.35%
Lower quartile (25 th percentile)	2.45%	37.5 th percentile	3.67%
Minimum	-0.07%	Minimum	-0.07%



What if my company had been applying a cost plus 3%?

What if my company had been charged a cost plus 6%?

Key amendments – Emphasise DEMPE’s role in profit allocation for intangible property

Prior to TP Rules 2023

A person shall be deemed to be an owner of an IP and is entitled to any income attributable to that property if the expenses and risks associated with the development of the IP are borne by that person.



TP Rules 2023

The owner of the IP is not entitled to any income attributable to that IP if he neither performs the functions nor controls the functions or risks related to the development, enhancement, maintenance, protection or exploitation (“DEMPE”) of the intangible property.



Key amendments – Emphasise DEMPE’s role in profit allocation for intangible property (cont.)

Technical Intangibles	Marketing Intangibles
<ul style="list-style-type: none">• Patent• Invention/model• Formula/process• Design• Trade secret• Know-how	<ul style="list-style-type: none">• Trademark• Trade name• Customer list• Customer relationships• Proprietary market• Customer data

An Intangible Property (IP) has value if:

- You can limit the use of that IP by others
- You can derive future benefits from its exploration

The use of Intangible Property generates non-routine profits that need to be allocated between the developer and user of the IP

Need to determine who owns the Intangible property and who explores

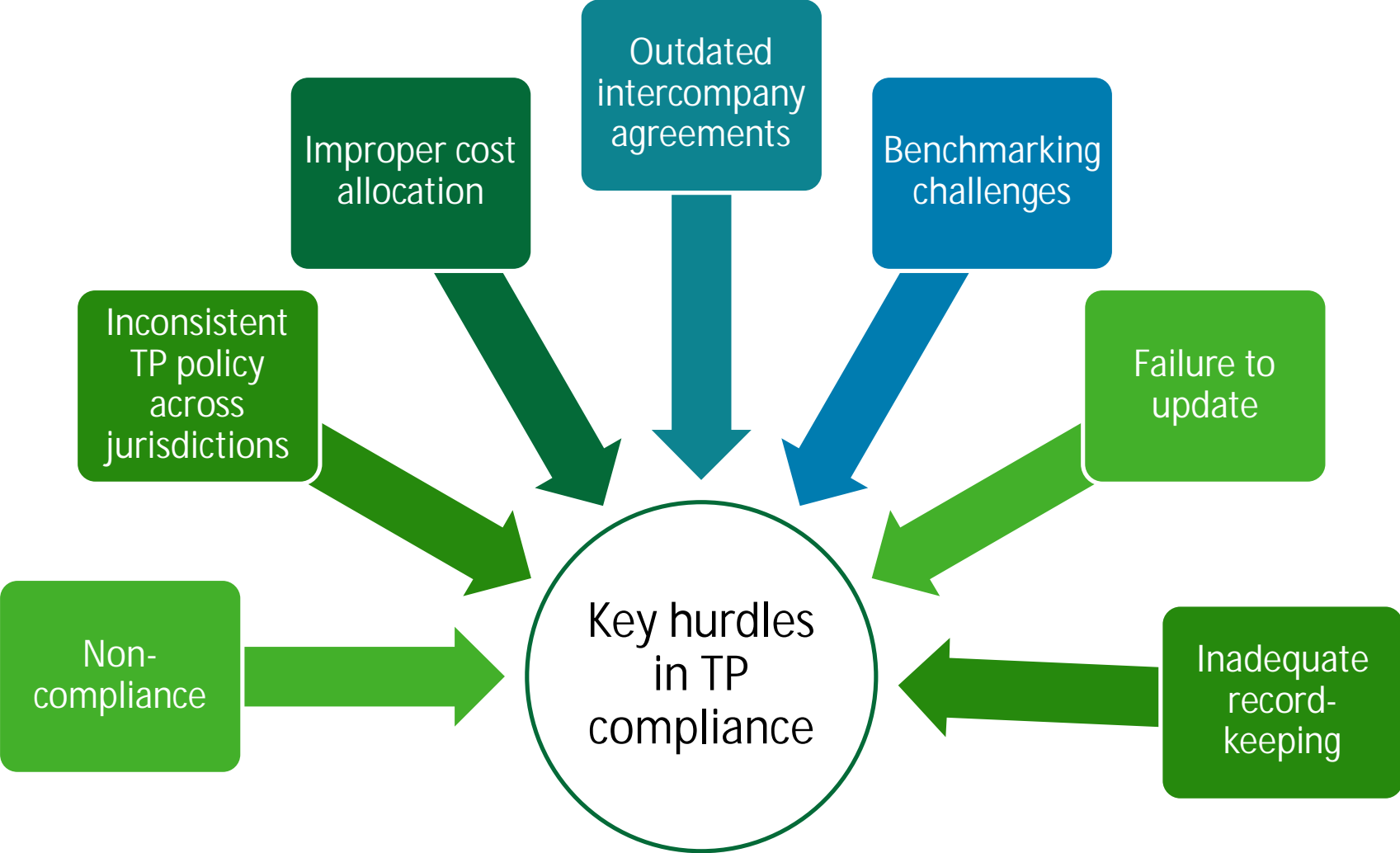
Audit readiness – Navigating TP red flags

Audit readiness – Navigating TP red flags



TP compliance – Key hurdles and solutions

TP compliance – Key hurdles and solutions





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