

Tax & Legal Symposium

*Navigating the new normal for tax & legal
compliance management*

Transfer Pricing & CbCR update

17 January 2023



Transfer Pricing & CbCR Update

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Thai Transfer Pricing Regulations



Country-by-Country Reporting (“CbCR”)



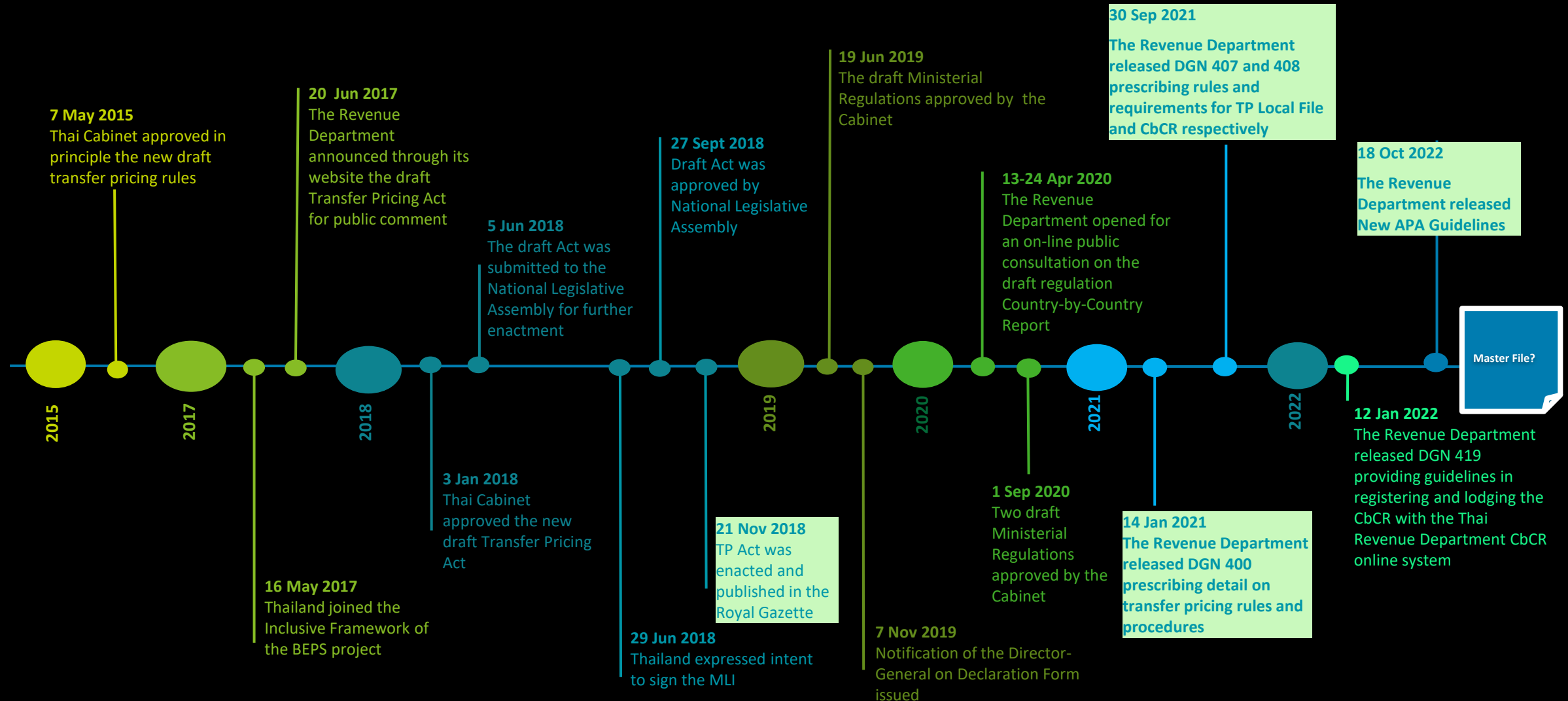
APA in Thailand



Q&A

Thai Transfer Pricing Regulations Update

Transfer Pricing Law Development in Thailand



Thailand TP regulations

Key features

New TP laws are effective for accounting periods commencing **on or after 1 January 2019** onwards. The key features of the laws are as follows:

1. The following reports are required:

- A **disclosure form** to be filed with the annual corporate tax return, which provides information on the relationship between entities and the value of intercompany transactions.
- **Transfer pricing documentation** based on the OECD approach:



Country-by-Country Template

Key financial information on all group members on an aggregated basis, with activity code for each member



Masterfile*

Key information about the group's global operations, including an overview of the company's structure from a transfer pricing perspective



Local File

Detailed transfer pricing analysis of the transactions undertaken by the local taxpayer

Disclosure Form & Local File
Exempted for taxpayers
with total revenue less than
Baht 200 million

* The Thai Revenue Department has not yet issued regulations in relation to the preparation and lodgment of the Master File.

Thailand TP regulations (Cont.)

2. Taxpayers with total revenue **not exceeding Baht 200 million are exempted** from the requirement to lodge the disclosure form and transfer pricing documentation (Local File).
3. The TP laws require that transactions between related parties be determined on an “arm’s length” basis and these related party transactions are required to be disclosed in the disclosure form and transfer pricing documentation. The **definition of related companies** is:
 - i. A juristic person who holds **shares** or becomes a partner of another juristic person, directly or indirectly, with no less than 50 percent of the total equity;
 - ii. A shareholder or a partner who directly or indirectly holds **shares** or is a partner of a juristic person with no less than 50 percent of the total equity, who directly or indirectly holds shares or is a partner of another juristic person with no less than 50 percent of the total equity; or
 - iii. Juristic persons who are related by way of shareholding, **management, or control** whereby one juristic person is not able to act independently from one other juristic person as defined in the Ministerial Regulation.

The Thai Revenue Department has not yet issued the Ministerial Regulation to define “management and control” for the purposes of iii) above.

4. For the purpose of testing whether testing whether a (material) related party transaction is determined on an arm’s length basis, the Thai Revenue Department follows the OECD based **TP methods (DGN 400)**:
 - Comparable Uncontrolled Price Method
 - Cost plus Method
 - Resale Price Method
 - Transactional Net Margin Method
 - Profit Split Method

If another TP method is used, then it will be necessary to submit a letter to the Thai Revenue Department within the accounting period in which the method commenced being used providing a preliminary explanation for the use of the method.

Thailand TP regulations (Cont.)

5. The Thai Revenue Department has provided a required list of the information, which is required to be included in the TP documentation (**Director-General Notification on Income Tax No. 407**).

| Business Overview | Related Party Transactions and TP Analysis |
|---|---|
| <ul style="list-style-type: none">• A description of business operations, value chain including key trading partners, key competitors, business strategies and industry analysis• Local organization chart, including the number of employees• Shareholding structure for the related companies or juristic partnerships that have transactions with the reporting entity• Description of any business restructuring which took place between the related parties during the accounting period or prior period and the impact on profitability of the restructuring.• Description of intangible property transfers between related parties and the impact on profitability on the reporting entity. | <ul style="list-style-type: none">• List of related party transactions showing category, counterparty and their country and amount of transaction. Material related party transactions should also include a description of the transactions and pricing policies.• List of the all the agreements for the material related party transactions, including summary of the main information and pricing conditions.• Analysis of the functions, assets and risks for the reporting entity and related parties in relation to material related party transactions and any differences compared to the prior accounting period.• Rationale for the selection of TP method(s) for the material related party transactions, including reasons for the rejection of other TP methods, and identification of the tested party for the purposes of applying the TP method.• Details of the benchmarking analysis to apply the selected TP method(s), including:<ul style="list-style-type: none">✓ Search process and sources for identifying the comparable transactions or companies/partnerships✓ List of the final set of comparable transactions or companies/ partnerships✓ Arm's length range based on the profit level indicator selected <p><exemption may be applied></p> |

The tax assessment officer may also request other information apart from that listed above for the purposes of the transfer pricing analysis in notification letters approved by the Director-General of the Revenue Department.

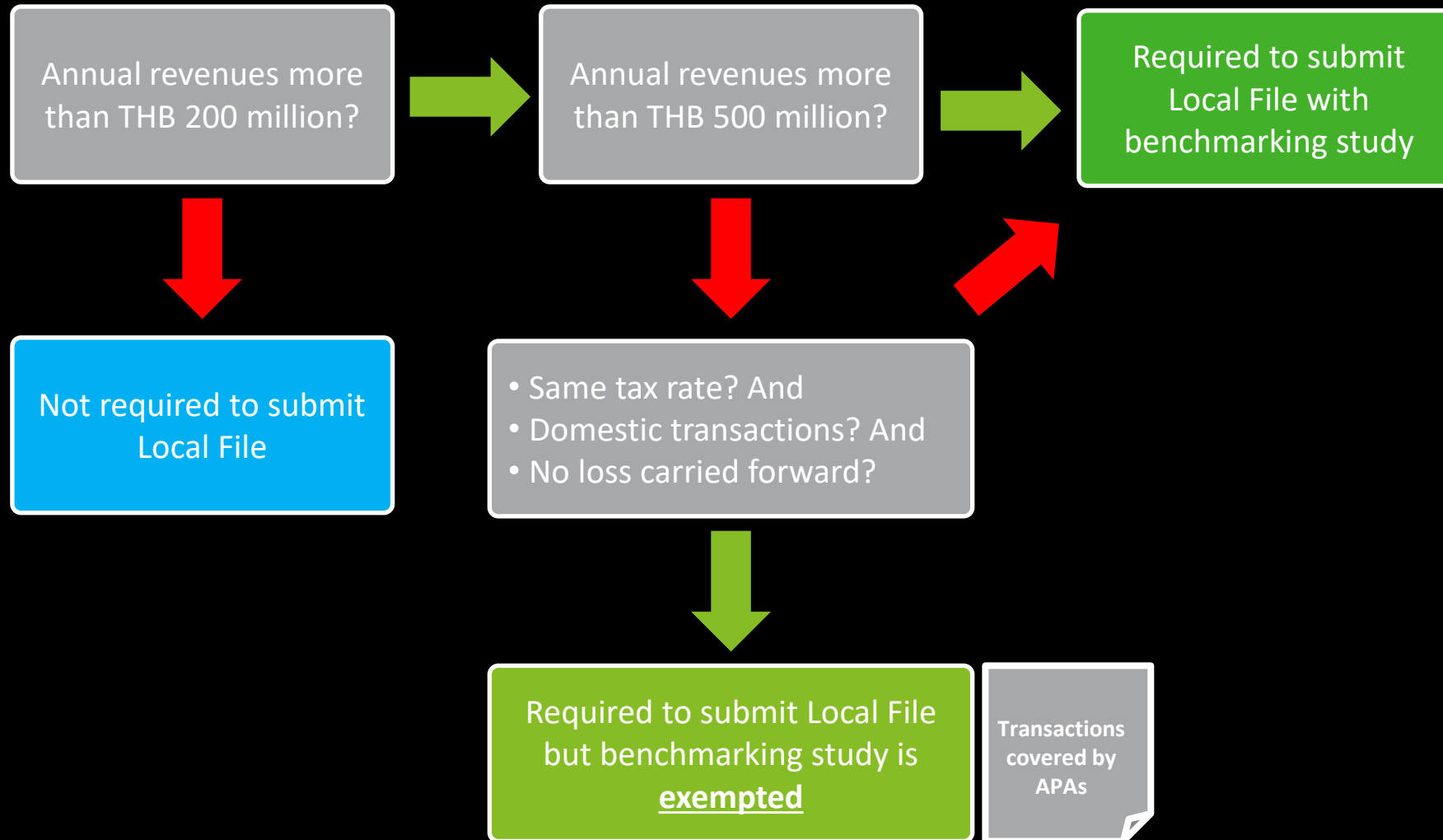
New Local File Requirements

| Required Information | Paw 113/2545 | DGN 407 (FYE 2021 onwards) |
|---|----------------|-------------------------------|
| Language | Not identified | THAI |
| Information regarding business operations | | |
| Shareholding Structure and business operations | • | • |
| Business strategies | • | • |
| Budgets, business plans and financial projections | • | |
| Sales amount and financial results of reporting entity | • | |
| Pricing policies, profitability by products, market information and profit allocation of each party | • | |
| Organization chart including the number of employees | | • |
| Value chain analysis | | • |
| Key trading partners and key competitors | | • |
| Industry analysis | | • |
| Business restructuring | | • |
| Transfer of Intangibles and impact on profitability | | • |

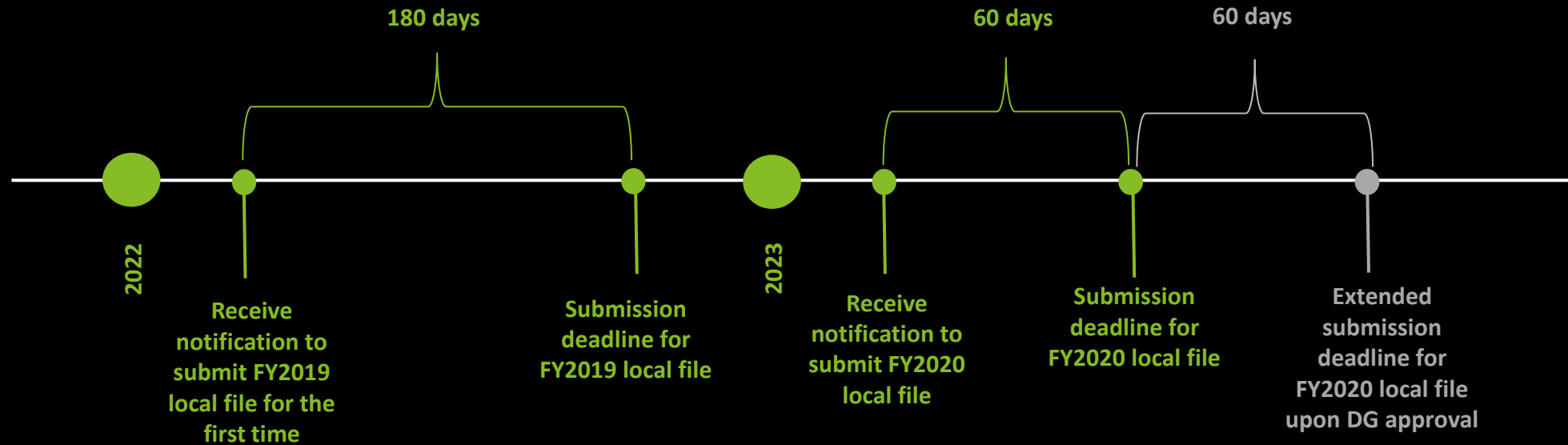
New Local File Requirements (cont.)

| Required Information | Paw 113/2545 | DGN 407 (FYE 2021 onwards) |
|--|--------------|-------------------------------|
| Information regarding controlled transactions | | |
| Reasons for entering into intercompany transactions | • | |
| Evidence of negotiation basis and negotiation process with contractual parties | • | |
| List of all intercompany transactions (categories, amounts, contractual parties, tax jurisdictions) | | • |
| <i>< Below is for material intercompany transactions only ></i> | | |
| Description of intercompany transactions, their pricing policies and assumptions used to set prices | | • |
| List of intercompany agreements and summary of their key terms | | • |
| Function, risk and asset analysis of reporting entity | • | • |
| Function, risk and asset analysis of contractual party(ies) | • | • |
| TP methodologies (including reason for choosing or rejecting particular methods) | • | • |
| Financial information used for application of the selected pricing method | | • |
| A list and description of comparables, profit level indicator, arm's length range, including comparable search process and source of information (Benchmarking Study) <i><exemption may be applied></i> | | • |
| Other related documentation | • | • |

Filing Requirements for Local File Benchmarking Study Exemption



Filing Timeline and Penalty for Local File



Penalty for late submission:

- Submission within 15 days after the due date, a fine of THB 50,000 would apply.
- Submission after 15 days after the due date, a fine of THB100,000 would apply.
- Submission after receiving a late submission notice, a fine of THB200,000 would apply.

Penalty for inaccurate information:

- A fine of THB 25,000 for voluntary lodgement after due date.
- A fine of THB 50,000 after officer finds error.

** Note: Inaccurate information can be amended before the submission deadline without any penalty.*

Penalty for TP Disclosure Form

Penalty for late submission (Manual filling):

- Submission within 7 days after the due date, a fine of THB 50,000 would apply.
- Submission after 7 days after the due date, a fine of THB100,000 would apply.
- Submission after receiving a late submission notice, a fine of THB200,000 would apply.

Penalty for late submission: (E-filing)

- Submission within 30 days after the due date, a fine of THB 10,000 would apply.
- Submission after 30 days but within 60 days after the due date, a fine of THB 25,000 would apply.
- Submission after 60 days after the due date, a fine of THB 50,000 would apply.
- Submission after receiving a late submission notice, a fine of THB 200,000 would apply.

Penalty for inaccurate information:

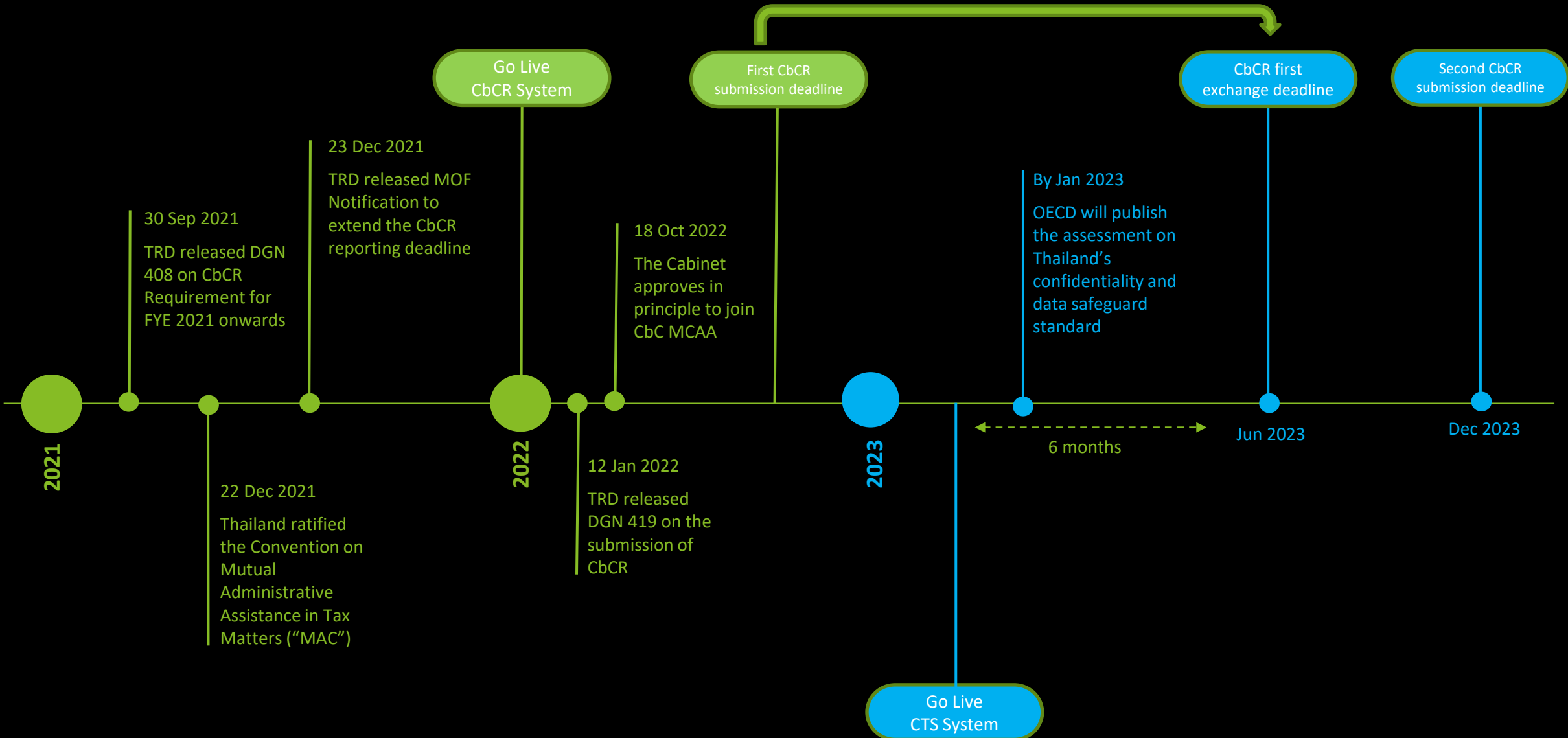
- A fine of THB 25,000 for voluntary lodgement after due date.
- A fine of THB 50,000 after officer identifies error.

** Note: Inaccurate information can be amended before the submission deadline without any penalty.*

Penalty rates are based on
internal practice or
TRD's announcement

Country-by-Country Reporting (“CbCR”) Requirements

Thailand CbCR Implementation Timeline



CbCR Template

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

| Name of the MNE group: Fiscal year concerned: Currency used: | | | | | | | | | | |
|--|-----------------|---------------|-------|---------------------------------------|---------------------------------------|---|----------------|-------------------------|------------------------|--|
| Tax Jurisdiction | Revenues | | | Profit (Loss) before Income Tax | Income Tax Paid (on Cash Basis) | Income Tax Accrued – Current Year | Stated Capital | Accumulated Earnings | Number of Employees | Tangible Assets other than Cash and Cash Equivalents |
| | Unrelated Party | Related Party | Total | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

| Name of the MNE group: Fiscal year concerned: | | | | | | | | | | | | | | | | |
|--|---|---|-----------------------------|--|---------------------------|-----------------------------|-------------------------------------|---|---|------------------------|---------------------------------|-----------|---|---------|--------------------|--|
| Tax Jurisdiction | Constituent Entities Resident in the Tax Jurisdiction | Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence | Main Business Activity(ies) | | | | | | | | | | | | | |
| | | | Research and Development | Holding or Managing Intellectual Property | Purchasing or Procurement | Manufacturing or Production | Sales, Marketing or Distribution | Administrative, Management or Support Services | Provision of Services to Unrelated Parties | Internal Group Finance | Regulated Financial Services | Insurance | Holding Shares or Other Equity Instruments | Dormant | Other ¹ | |
| | 1. | | | | | | | | | | | | | | | |
| | 2. | | | | | | | | | | | | | | | |
| | 3. | | | | | | | | | | | | | | | |
| | 1. | | | | | | | | | | | | | | | |
| | 2. | | | | | | | | | | | | | | | |
| | 3. | | | | | | | | | | | | | | | |

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

CbCR Notification

Revised Disclosure Form for FY 2022

ส่วน ค รายละเอียดอื่นๆ
(Part C Other Information)

1. ผู้ยื่นแบบรายงานฯ อยู่ในกลุ่มบริษัทหรือห้างหุ้นส่วนนิติบุคคลข้ามชาติที่อยู่ในบังคับต้องแจ้งข้อความตามรายงานข้อมูลรายประเทศ (Country-by-Country Report) ใช่ (Yes) ไม่ใช่ (No)
(Taxpayer is a part of a multinational companies or juristic partnerships group obliged to file Country-by-Country Report.)

ถ้าใช่ บริษัทหรือห้างหุ้นส่วนนิติบุคคลใดในกลุ่มบริษัทหรือห้างหุ้นส่วนนิติบุคคลข้ามชาตินั้นเป็นผู้แจ้งข้อความ
(If yes, which company or juristic partnership in the group is designated to file report:

ชื่อ ประเทศหรือเขตเศรษฐกิจที่แจ้งข้อความ ประเทศไทย อื่น ๆ (ระบุประเทศหรือเขตเศรษฐกิจ)
(Name) (Jurisdiction of Filing) (Thailand) (Other: please specify the jurisdiction)

CbCR Notification Template for Uploading thru CbCR System

Excel TemplateEng - View-only

File Home Insert Draw Page Layout Formulas Data Review View Help Viewing

Calibri 11 B I Merge General

| A | B | C | D | E | F | G | H | I | J |
|---|----------------------------------|--|---|---|---|---|---|---|---|
| 1 | Tax Identification Number | Constituent Entity in Thailand (English name) | | | | | | | |
| 2 | 1459900253927 | Company A | | | | | | | |
| 3 | 1234545453927 | Company B | | | | | | | |
| 4 | 3459900123456 | Company C | | | | | | | |
| 5 | | | | | | | | | |
| 6 | | | | | | | | | |

Notification Accounting Period 2564

Ultimate Parent Entity Country: Thailand

Ultimate Parent NID: []

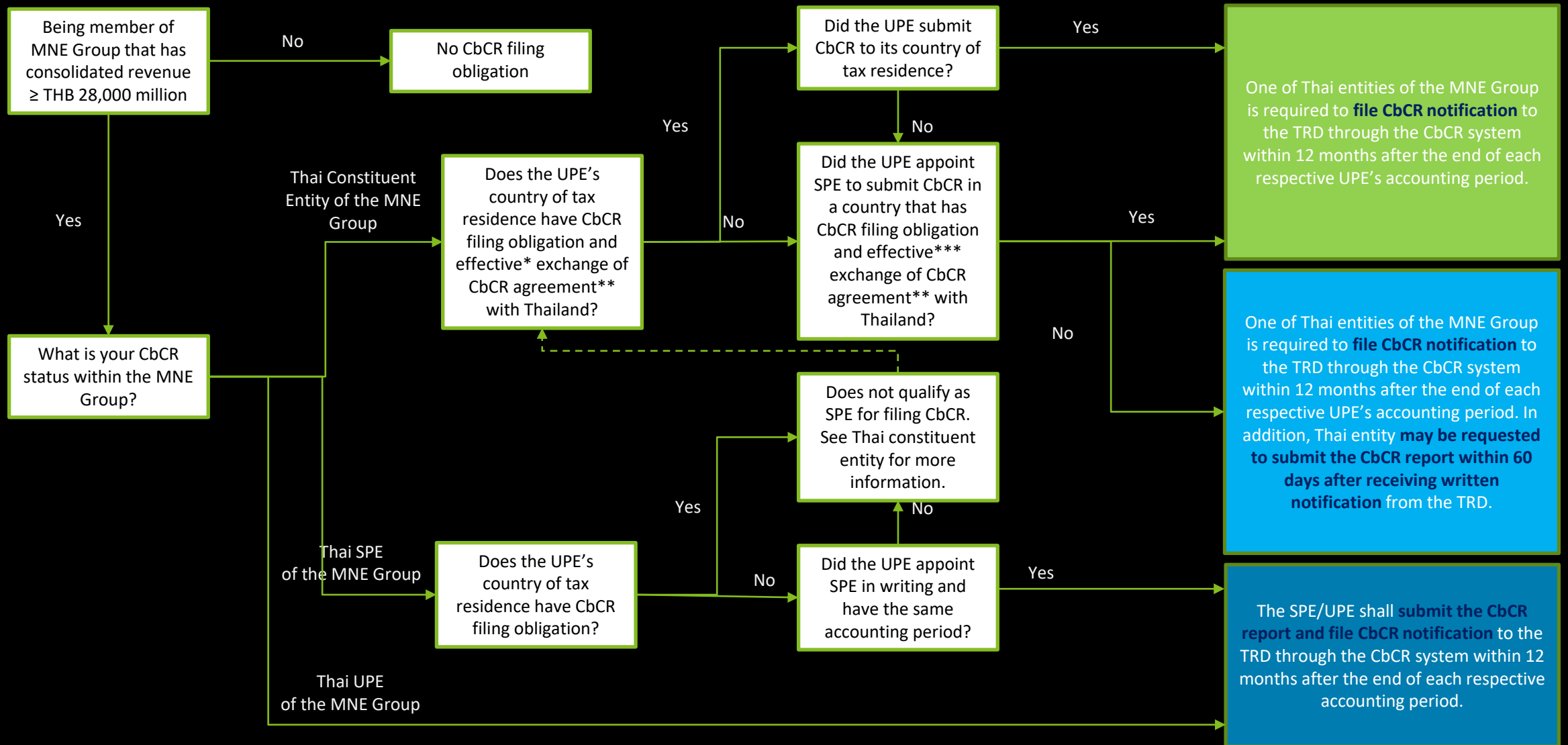
Name of Ultimate Parent Entity: []

CbCR reporting Entity: Ultimate Parent Entity (UPE) Surrogate (SPE)

Fiscal Year Concerned Starting: mm/dd/yyyy Ending: mm/dd/yyyy

List of Constituent Entity to be included in this Notification: [] File size must not exceed 3 MB. Browse

Thailand Country-by-Country Reporting (“CbCR”) Requirements



* Agreement is in place for the reporting accounting period and no systematic failure in exchange

** Exchange of CbCR agreement including, but not limited to, CbCR MCAA and Bilateral TIER with respect to CbCR.

*** Agreement is in place by the end of the prescribed period for CbCR lodgment and no notification of obstacle of failure to exchange

APA In Thailand

Guideline on APA process

The TRD issued revised Guideline on APA process

- **Eligible Applicants:** Thai companies transacting with related companies in countries that have DTA with Thailand
- Provides **list of documents** required for APA application
- **Pre-filing Meeting** required
- **APA Period**
 - Generally, between 3 to 5 accounting periods
 - Last day of the first accounting period must be within or after the date of the submission of APA application
 - “Roll Back” cannot be more than 2 accounting periods
- Provides **criteria for the rejection** of an APA application



Tax & Legal Symposium

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compliance management*

Global Trade Advisory update

17 January 2023

Global Trade Advisory update



Nu To Van
Partner
Deloitte Thailand



Tom Cachet
Senior Manager
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Agenda

1. Overview of typical customs challenges in Thailand
2. Special cases: FTA and anti-circumvention investigations
3. Sustainability initiatives and their impact on the Thai supply chain

Overview of typical customs challenges in Thailand

Customs & Trade Environment in Thailand

What can companies expect?



- More post-entry customs audits and investigations at the port to make up for duty revenue losses during Covid-19



- Increase in customs compliance requirements: not only focus on duty assessments but also import and export licensing for environmental and security policies



- Currently, several incentives exist for importers to self-disclose non-compliance issues to Customs with the possibility of obtaining waivers for duty fines and reduction on duty surcharges.

- Thai exporters face FTA and anti-circumvention investigations by authorities overseas



What companies should do to mitigate risks and exposures

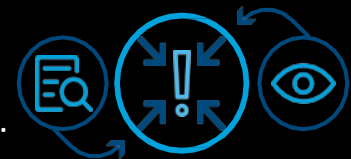
To minimize non-compliance risks and exposure, companies are recommended to:



- Conduct **internal customs compliance and process reviews** to early detect potential non-compliance issues, improve internal procedures and mitigate the risks/exposure.



- Where non-compliance issues are detected, make adjustments to mitigate risks in the future and consider self-disclosure to mitigate past exposures before Customs starts carrying out audits or surprise investigations.



Main types of challenges

1



Customs classification

Common issues

- HS 2022 adjustments
- Customs challenges on 0% tariff codes
- Management of large volume product classifications

2



FTA administration

Common issues

- FTA OCP and CO formalities: challenges on origin criteria, third-country invoicing
- Inconsistent interpretation of rules on export vs import side

3



Customs Valuation

Common issues

- Royalties: broad interpretation by Customs
- TP adjustments: no formalized approach towards Customs

4



Import licensing

Common issues

- NSW limitations
- Proliferation of regulatory restrictions
- Restrictions on retroactive approval of import license

Special focus

FTA compliance and anti-circumvention investigations

FTA compliance investigations

FTA overview Thailand

What are FTAs?

Agreements between two or more countries which allow companies to pay lower or no import duties on import shipments between these countries

With what countries does Thailand have FTAs?

Bilateral or multilateral FTAs with all ASEAN countries, China, Hong Kong, Japan, India, Korea, Australia, New Zealand, Peru, and Chile. Negotiations with Turkey, Sri Lanka, Pakistan and EU are ongoing or being initiated.

What are the advantages?

Reduction or elimination of ad valorem duties reduces the final cost of the product and makes the companies more competitive. Creation of comparative advantage over companies in non-FTA partner countries.

What are the risks?

Exporters must self-certify that they comply with the FTA rules before export. Authorities can conduct retroactive investigations on historic export shipments to verify compliance with the FTA rules. Non-compliance can result in rejection of the duty privileges and clawback of duties and penalties.

FTA compliance investigations

Key FTA requirements



1. Is the product (HS code) covered in the FTA preferential tariff list?

Determine the difference between normal rate and preferential duty rate



2. Does my product meet the applicable rule of origin?

Rules which determine under what conditions a product is “originating” in an FTA country (WO, PE, CTC, RVC, Special Process Rule)

Different FTA → different rules



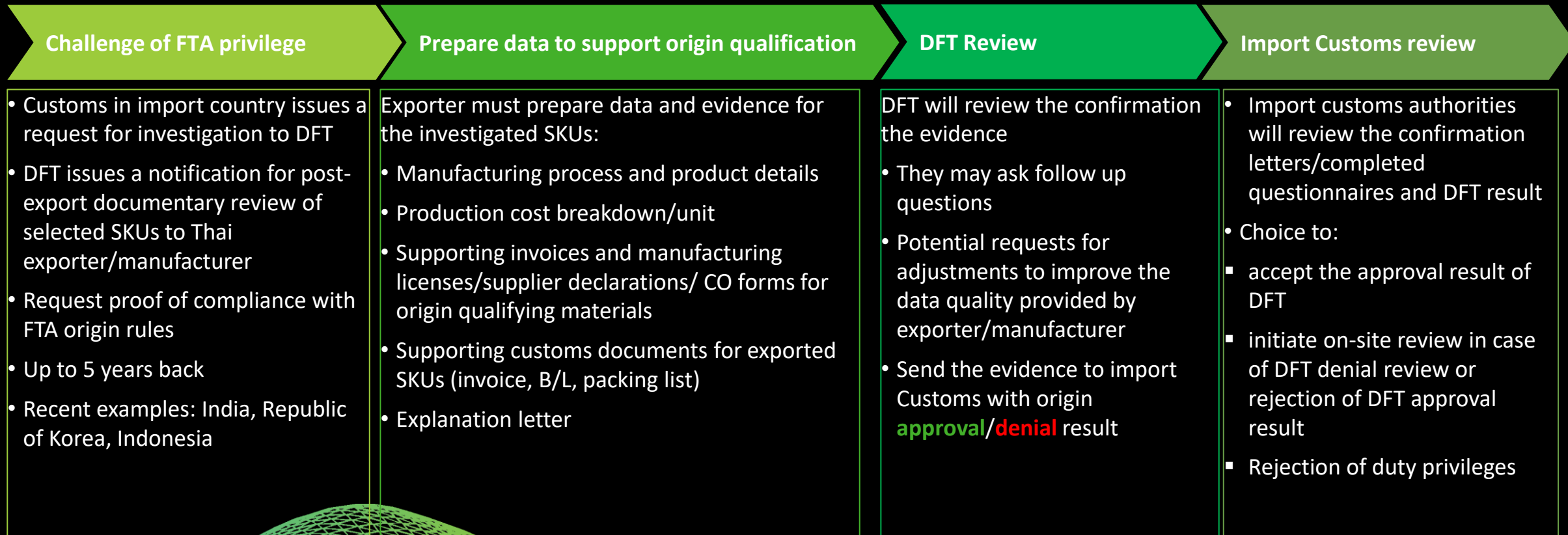
3. Fulfilling the administrative formalities

Pre-verification of cost breakdown and self-certification of origin qualification

Certificate of Origin – are you ticking all the right boxes?

FTA compliance investigations

Retroactive review of historic export shipments



FTA compliance investigations

Best practices for maximum benefits with minimal risk



Analyze

- Identify trade flows between countries that are parties to the same FTA
- Compare the normal tariff rates vs FTA tariff rates
- Confirm the correctness of your HS code
- Assess whether your product meets the FTA Rule of Origin



Organize

- Set up a database for FTA eligible products;
- Put in place internal procedures to collect and monitor sourcing and costing info;
- Obtain and record verifiable and legally accepted proofs to support sourcing and costing info;
- Persons in Charge to handle the procedures on transactional basis and perform periodical screenings

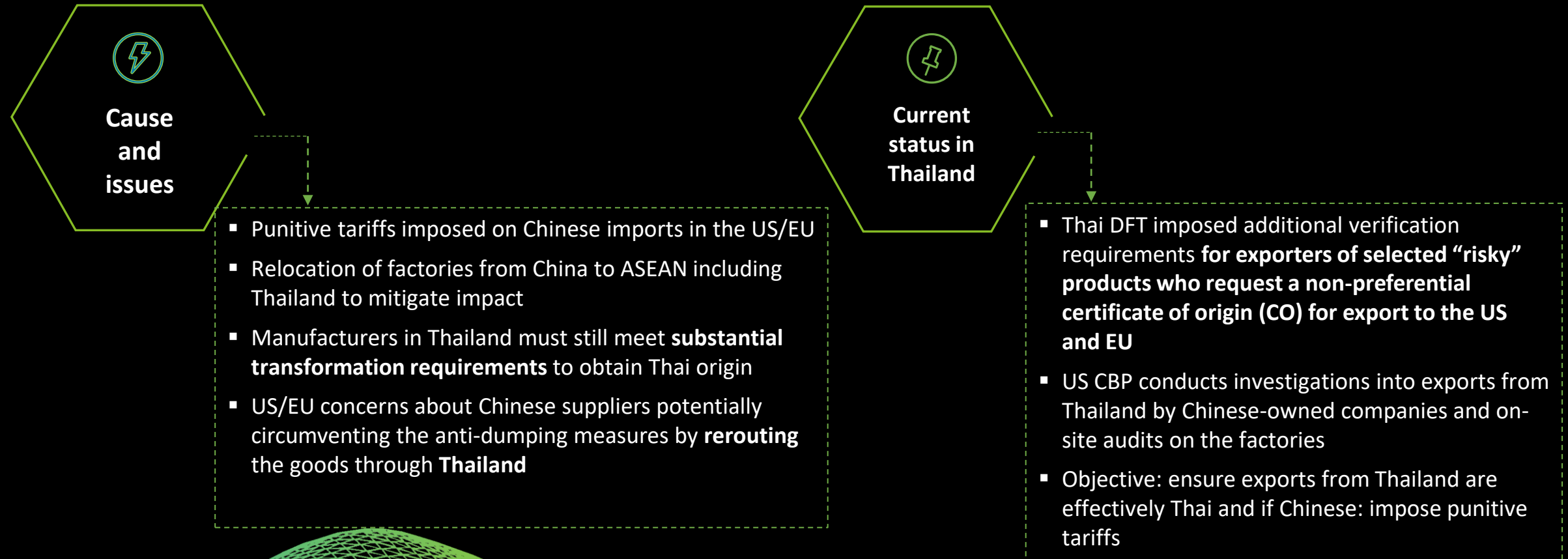


Be ready

- Apply for FTA privileges with accurate supporting information and update when needed;
- Understand the certification conditions for FTA usage and verify COs on transactional basis;
- In case of post-verification challenges, cooperate with authorities and provide accurate product information based on your up-to-date FTA databases to support FTA claims

Anti-circumvention investigations

Are your exports Thai or Chinese?



Anti-circumvention investigations

Are your exports Thai or Chinese?



What to do
when facing
investigation
on origin of
goods

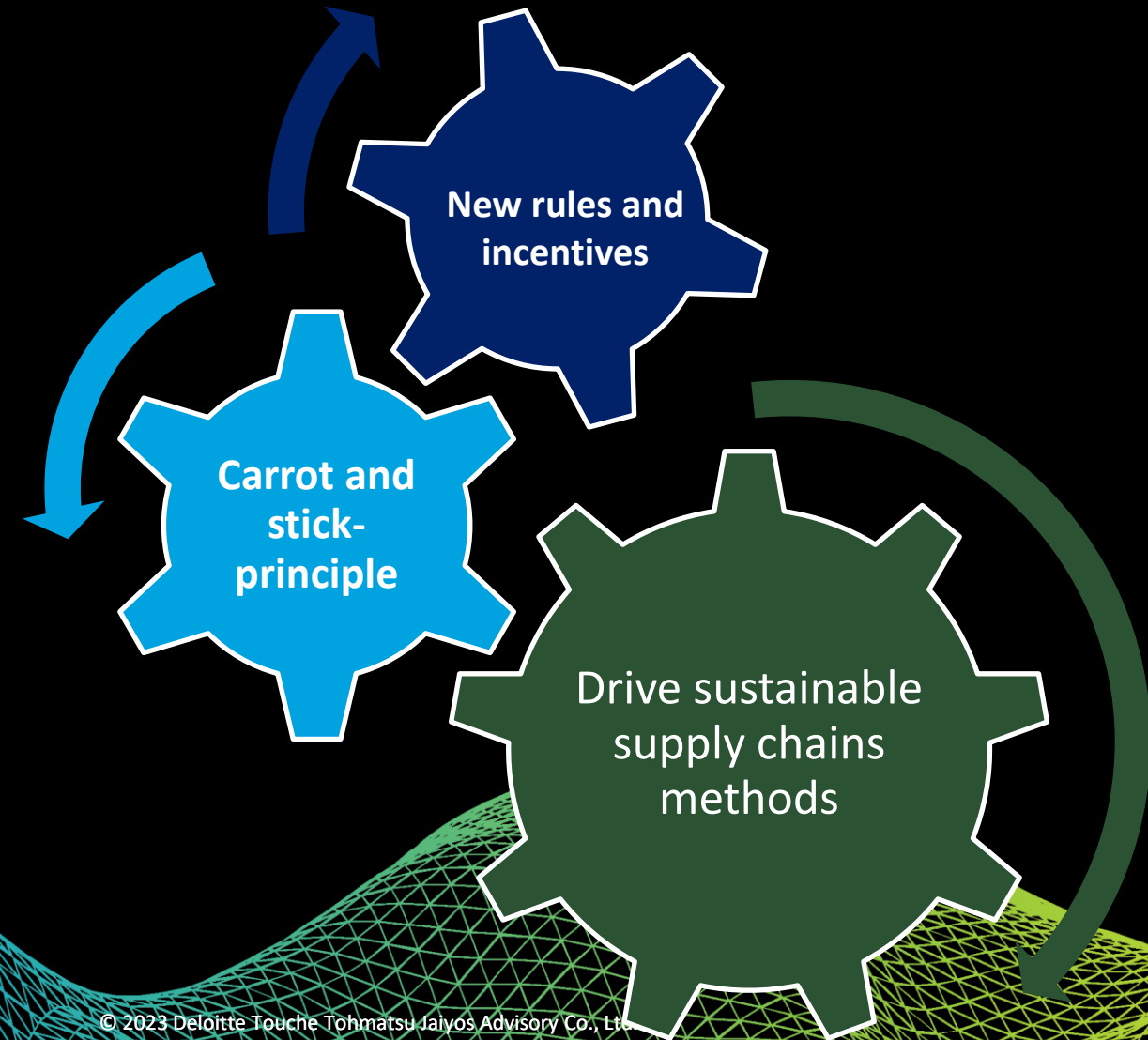
- Prepare for surprise audit/investigation on origin of goods
- Companies may start with the following:
 - Conduct an internal review whether the products **meet non-preferential rules of origin** requirement
 - Ensure that the Certificates of Origin and supporting customs documents are consistent and meet all the formalities
 - Monitor and record supporting documents / evidence (e.g., list of materials and suppliers, invoices, import declarations, flowchart of production process, etc.) as evidence that the products meet the origin rules, if requested.

Sustainability initiatives

Impact on the Thai supply chain

Sustainability initiatives

Impact on the Thai supply chain



| | |
|---|---|
| BCG Policy | <ul style="list-style-type: none">• Promotion and development of bio, circular and green economy models• EEC capacity development• BOI tax and non-tax incentives for sustainable industries and solutions |
| CBAM | <ul style="list-style-type: none">• Measures to counter off-shoring due to EU Emission Trading System• Reporting of emissions embedded in imported goods and purchase of carbon certificates for entry to EU |
| Corporate sustainability due diligence | <ul style="list-style-type: none">• Obligation for EU based companies to implement due diligence measures to identify, report and mitigate adverse impacts on human rights and environment in the supply chain• Scope includes upstream sourcing activities in export countries• Non-compliance results in monetary sanctions |
| Deforestation free products | <ul style="list-style-type: none">• General ban (including for imports) on the sale of products associated with deforestation in the EU• Cattle, cocoa, coffee, palm oil, soy and wood, more to come• Reporting requirements for importers on sourcing/suppliers |

Sustainability initiatives

What's next for Thai companies?

- 1. Educate yourself on the existing and upcoming sustainability policies**
- 2. Assess whether your company activities or products fall within the scope of these policies**
- 3. Study the potential impact (positive/negative) and its exposure (reputation/financial) on your operations**
- 4. Map out the steps to obtain incentives and/or comply with obligations and consider other actions to offset the impact**
- 5. Set up internal compliance procedures and designated roles and responsibilities for the implementation**

Tip: Early adaptors today can be the industry leaders of tomorrow!



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Developments EU / The Netherlands

17 January 2023

Agenda

Introduction

Outline of changes as per 2023 and relevant pending proposals

More detail on ATAD3

More detail on Pillar 2

More detail on DAC7



Introduction of EU / NL team

Dutch and European tax specialists

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Outline Dutch CIT/WHT legislative amendments as per 1/1/2023

Dutch CIT amendments per 1 January 2023

Corporate Income Tax

- Amendment to the CIT rate structure

| Year | 2022 | 2023 |
|------------|--|--|
| Basic rate | 15.0% (taxable amount up to EUR 395,000) | 19.0% (taxable amount up to EUR 200,000) |
| Top rate | 25.8% (taxable amount > EUR 395,000) | 25.8 (taxable amount > EUR 200,000) |

- Temporary solidarity contribution for companies within the Energy & Resources Industry

EU/international tax developments

EU and international tax developments – State of play (I)

- Public Country-by-Country Reporting
 - Deadline to implement the rules into domestic law by 22 June 2023
 - NL published its draft implementation in July 2022
- ATAD3 – Preventing the misuse of shell entities (ATAD3)
 - Final draft proposal expected Q1 2023
- EU Minimum Tax Directive (OECD Pillar 2)
 - Unanimous agreement has been reached by the Council of the EU
 - Deadline to implement the rules into domestic law by 31 December 2023
 - NL already published draft legislation in October 2022
- OECD Pillar 1 - Reallocating profits of MNE's to market jurisdictions
 - No international agreement reached yet
 - Public consultation on Amount B launched by the IF on 8 December 2022

EU/international tax developments

EU and international tax developments – State of play (II)

- DAC7 – EU reporting rules for platforms
 - Into effect as of 1 January 2023
- Securing the Activity Framework of Enablers (SAFE)
 - To improve a regulatory framework for tax intermediaries, to tackle the role of enablers that facilitate tax evasion and aggressive tax planning in the EU
 - Indicative timeline of the proposal seems to be Q1 2023
- Business in Europe: Framework for Income Taxation (BEFIT)
 - Common set of rules for EU companies to calculate their taxable base with an allocation of profits between EU member states based on a formula
 - Consultation launched by European Commission on 18 October 2022 (closed on 5 January 2023)
 - Aim to propose the directive by Q3 2023
- Debt-equity bias reduction allowance (DEBRA)
 - Suspended until further notice (probably waiting for the BEFIT initiative)

ATAD3: Shell entities

What is ATAD3 and why is it important?

What is the purpose?

- Combatting tax avoidance by multinational companies due to the use of shell companies
- Proposed legislation published late 2021
- Intention to be final mid-2023 and in force in every EU Member State as per 2024
- However, unanimity of all EU Member States required.
- Still a lot uncertain and adjustments expected

When to report?

- Only applicable if an EU resident entity passes through three so-called 'Gateways':
 - more than 75% of the revenues accruing to the undertaking in the preceding two tax years is *passive income* (typically interest, royalties, dividends and other financial income);
 - the undertaking is mainly engaged in cross-border activity; and
 - in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions (seems to cover both the outsource via trust offices as the outsource within the group).
- If all Gateways are met, the EU-entity will in principle be subject to the reporting rules of ATAD3.
- However, various carve-outs (exemptions):
 - listed entities;
 - vehicles regulated in accordance with EU directives and regulations, such as credit institutions;
 - holding entities held (directly - or indirectly, under certain conditions) by shareholders or an ultimate parent company located in the same country;
 - entities with at least five own full-time employees in charge of managing the activities generating the passive income;
 - entities used in purely domestic situation, i.e. located in the same country as its shareholder(s) and its investment(s).

What to report?

In its annual return to state whether the company has:

- its own premises – or premises for its exclusive use – in the relevant Member State;
- at least one bank account in the EU; and
- one of the following indicators:
 - i) One or more directors of the undertaking:
 - Are resident for tax purposes in the Member State of the undertaking, or at no greater distance from that Member State insofar as such distance is compatible with the proper performance of their duties;
 - Are qualified and authorized to take decisions in relation to the activities that generate relevant income for the undertaking or in relation to the undertaking's assets;
 - Actively and independently use the authorization on a regular basis;
 - Are not employees of an enterprise that is not an associated enterprise and do not perform the function of director or equivalent of other enterprises that are not associated enterprises;

OR:

(ii) the majority of the full-time equivalent employees of the undertaking are resident for tax purposes in the Member State of the undertaking, or at no greater distance from that Member States insofar as such distance is compatible with the proper performance of their duties, and such employees are qualified to carry out the activities that generate relevant income for the undertaking.

Escapes if the substance requirements are not met

- An entity may provide additional evidence, by for example demonstrating:
 - (i) commercial; and/or
 - (2) non-tax reasons for establishing in a Member State.

ATAD3

Potential impacts

Reporting

- If an undertaking crosses all three gateway criteria ('undertaking at risk'), is not covered in the carve-outs and not exempt for lack of tax motives, it is required to report information in its annual tax return on whether it meets the minimum substance requirements, regardless of whether these requirements are met.
- The statement regarding the minimum substance requirements needs to be substantiated with documentary evidence supplied with the tax return. Among other things, this includes the address and type of premises, the type of business activities performed to generate the relevant income and the number of directors, their qualifications, authorizations, and place of residence for tax purposes or the number of full-time equivalent employees performing the business activities that generate the relevant income, their qualifications, and their place of residence for tax purposes.
- Failure to comply leads to a penalty that at minimum includes a fine of at least **5%** of the undertaking's turnover in the relevant tax year.

Tax consequences

- When not all the minimum substance requirements are met, one or more of the following tax consequences may be imposed:
 1. Denial of withholding tax exemption for interest, royalty's or dividends;
 2. No certificate of residence (or a CoR with reservations) for use in another country;
 3. CFC-taxation at the shareholder of the shell entity; or
 4. Denial of domestic participation exemption.
- Even if ATAD3 does not oblige any of the above-mentioned tax consequences, the exchange of information may lead to application of domestic anti-abuse rules, or trigger the application of the Principal Purpose Test leading to bilateral tax treaty benefit refusal.

ATAD3 – Proposed amendments

ATAD3 - amendments

ECON's proposed amendments

1 Gateways

- **Number:** tightening proposed by lowering this to meeting at least 2 of the 3 gateways criteria in order to qualify as a reporting undertaking.
- **Outsourcing:** relaxation proposed that this gateway criterium is not met if the undertaking outsources to an associated enterprise within the same jurisdiction. Another relaxation is proposed that this gateway criterium is fully deleted and moved to the minimum substance criteria.
- **Percentage:** a change in the percentages applied for the thresholds was proposed.

2 Carve-outs

- **Regulated financial undertakings:** relaxation proposed that subsidiaries of regulated financial undertakings (e.g., Holdcos/Propcos held by a regulated fund) are also carved-out. Also tightening is proposed by deleting this carve-out.
- **Holding companies:** relaxation proposed that this carve-out also applies in case the undertaking resides in the same Member State as the majority of the undertaking's shareholders. Also tightening is proposed by deleting this carve-out.
- **Five FTE employees:** tightening proposed that these employees should also work in the Member State of the undertaking. Also, it is proposed that this carve-out is deleted. Relaxation is proposed by replacing 'five FTE' with 'three FTE' or 'a reasonably adequate number of full-time employees'.

3 Minimum substance

- **Declaration in tax return:** relaxation proposed by only requiring reporting undertakings that do not meet the minimum substance criteria to declare this in their tax return.
- **Office space:** relaxation is proposed that premises shared between entities within the same group also suffices.
- **Directors:** it is proposed to remove the requirements that at least one director should actively and independently use its authorization to take decisions that generate relevant income, and that this director may not be a director or an employee of another entity that is not an associated entity.

4 Timing

- **Entrance into force:** relaxation proposed by postponing entry into force date to 1 January 2025.

Please note that the different amendments were proposed by different groups in the European Parliament, hence leading to contradictory proposed changes.

ATAD3 - amendments

Amendments proposed by the Czech presidency of the EU Council

1 Gateways/Minimum substance

- Allegedly, the Czech presidency has expressed the intention to merge the two steps of the gateway criteria and the substance criteria into one single test.
- Furthermore, criteria to determine an entity's substance related to the presence of a bank account in the EU and premises of its own in the member state are rumored to have been removed from the proposal, as has the criterion saying that "the majority of the full-time equivalent employees of the undertaking are resident for tax purposes in the Member State of the undertaking, or at no greater distance from that Member State". Unclear is what substance criteria would be used in replacement.

2 Exchange of information

- The presidency also has allegedly proposed to reduce the scope of the exchange of information between member states to data on companies that do not have minimum substance and are considered shell entities, rather than to all companies falling in the scope of the directive.
- Lastly, also the presidency intends to extend the deadlines for the exchanges apparently.

ATAD3 example

ATAD3

Example

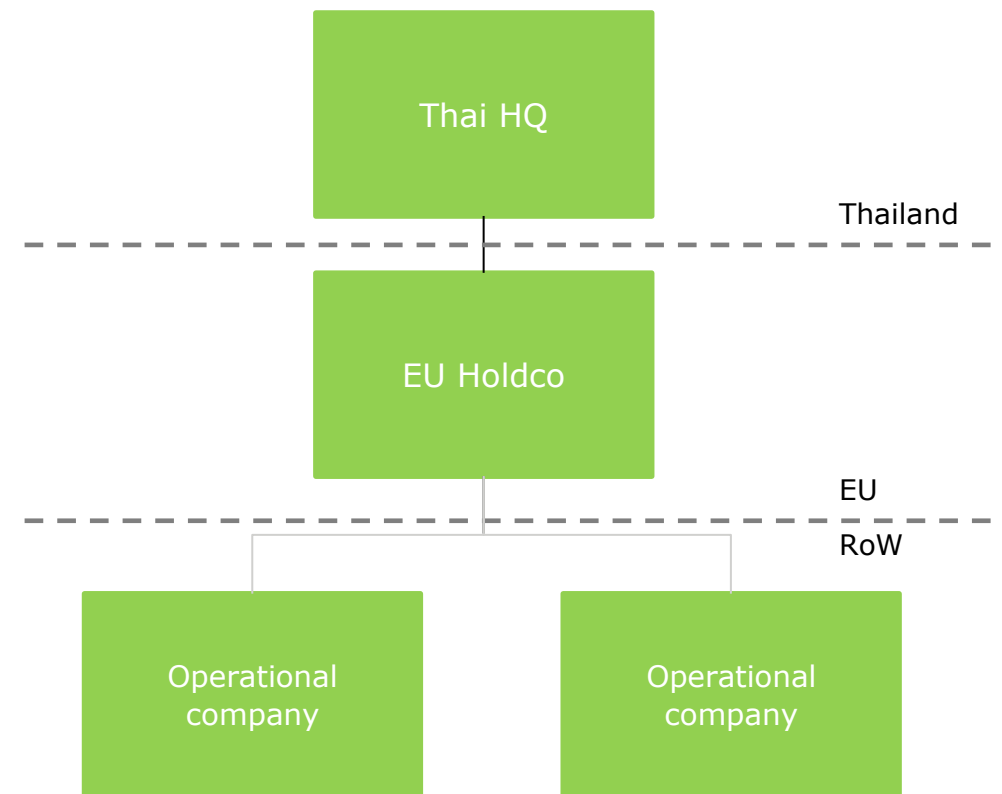
Scope and application

- Gateway criteria:

- > 75% of revenue accruing in two previous tax years is “relevant” (passive) income;
- >60% of transactions cross-border or >60% of assets is located outside of the Member State;
- Outsourcing of management and administration in the 2 previous tax years?
 - *A common example that may be applicable in this case is the following: Assume that the board of EU Holdco comprises of one local trust director and one foreign (Thai) director, who sign all relevant board decisions. EU Holdco will in that scenario likely surpass the gateway criteria.*

- Substance criteria:

- Bank account in the EU and premises in the Member State where the entity is located;
- Sufficient in-country personnel/directors?
 - *Using the above example, as 0 in-country directors that are not employees of unaffiliated enterprises, this criterium will likely not be met.*

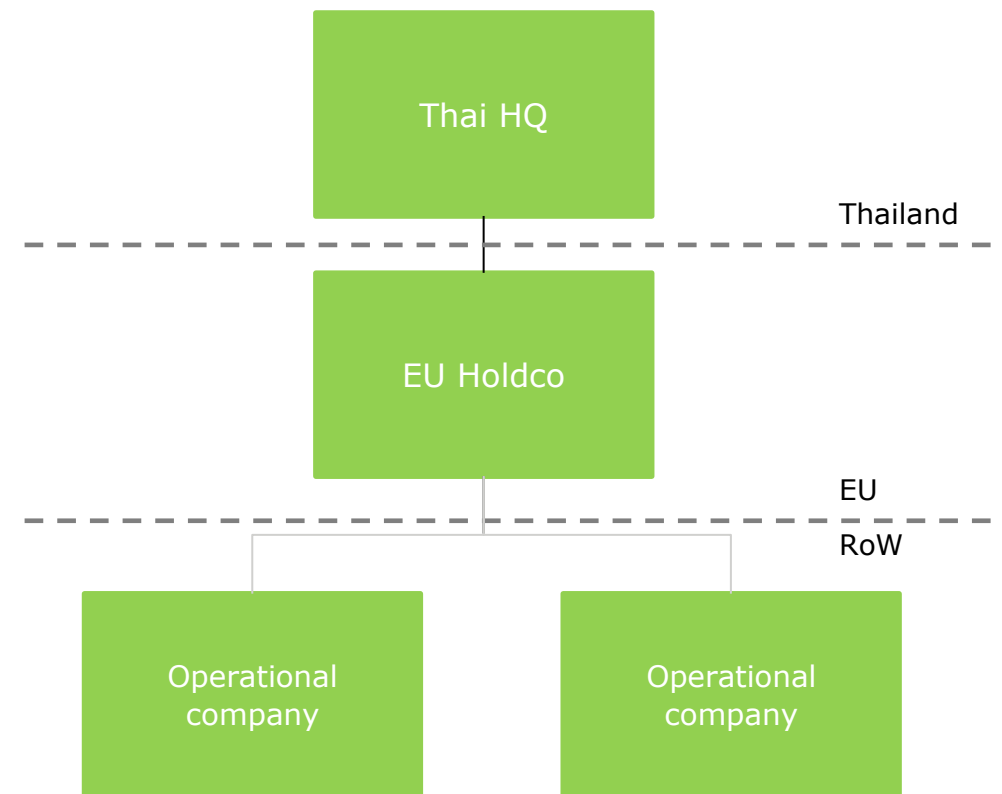


ATAD3

Example (cont'd)

Scope and application

- **Carve-out:**
 - Undertaking performing holding activities that are resident for tax purposes in the same Member State as the undertaking's shareholder(s) or the ultimate parent entity:
 - *Not met given the direct (and ultimate) shareholder is tax resident in Thailand.*
- **Tax consequences:**
 - Reporting information on whether it meets the minimum substance requirements.
 - Potentially, EU country may not provide a Certificate of Residence (or one with a caveat that no entitlement exists to a lowered WHT rate).



Pillar 2 – Minimum taxation

Pillar 2 Overview

Global minimum tax

WHAT? Global minimum tax on corporate income of 15% on multinational groups with **annual consolidated revenue ≥ €750 million**.

WHEN? Implementation per **2024**, with some specific rules per 2025.

HOW? Set of rules that operate as a **“top-up” to a minimum rate**, of which the **two key rules** are:

MAIN RULE:
Income Inclusion Rule (“IIR”)

BACKSTOP RULE:
Undertaxed Profits Rule (“UTPR”)

- Top-up tax imposed on parent entity under IIR
- UTPR applies on any **residual** top up tax
- Note: **Domestic top-up tax** may apply before IIR

- Move towards new global tax system based on commercial accounts
- New space in between Accounting and Tax
- Adjustments per jurisdiction

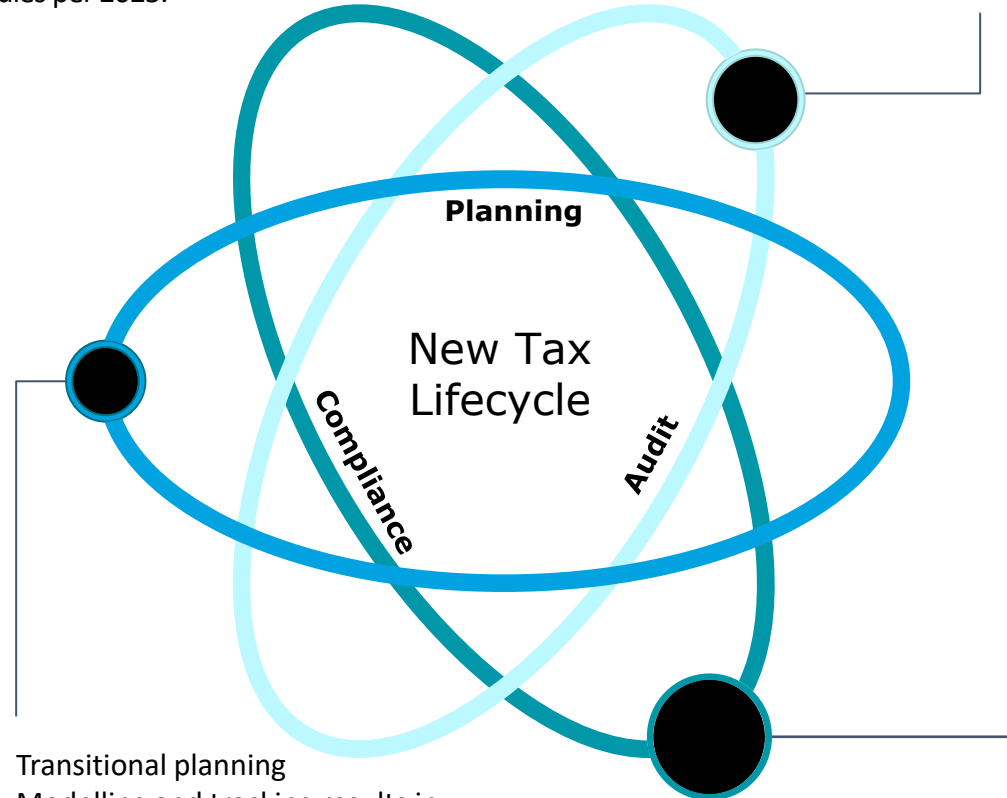
- Systems need to produce the right data
- Keeping tax attributes per jurisdiction (NOLs, deferred taxes, credits, book to tax differences, etc.)
- Increased compliance budgets needed
- Connection between finance and tax functions

Potential Policy Effects

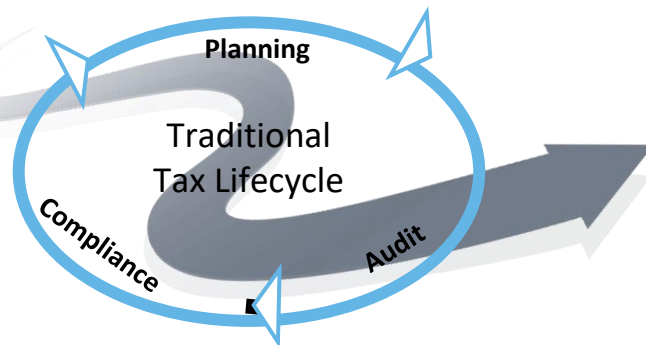
- Interaction with CFC legislation unclear
- Expected adoption of domestic top-up taxes
- Shift in tax competition to wage tax and VAT

Moving Forward

- Impact Assessment and Transition Planning
- Data, Reporting and Compliance
- Ongoing ETR Monitoring and Planning



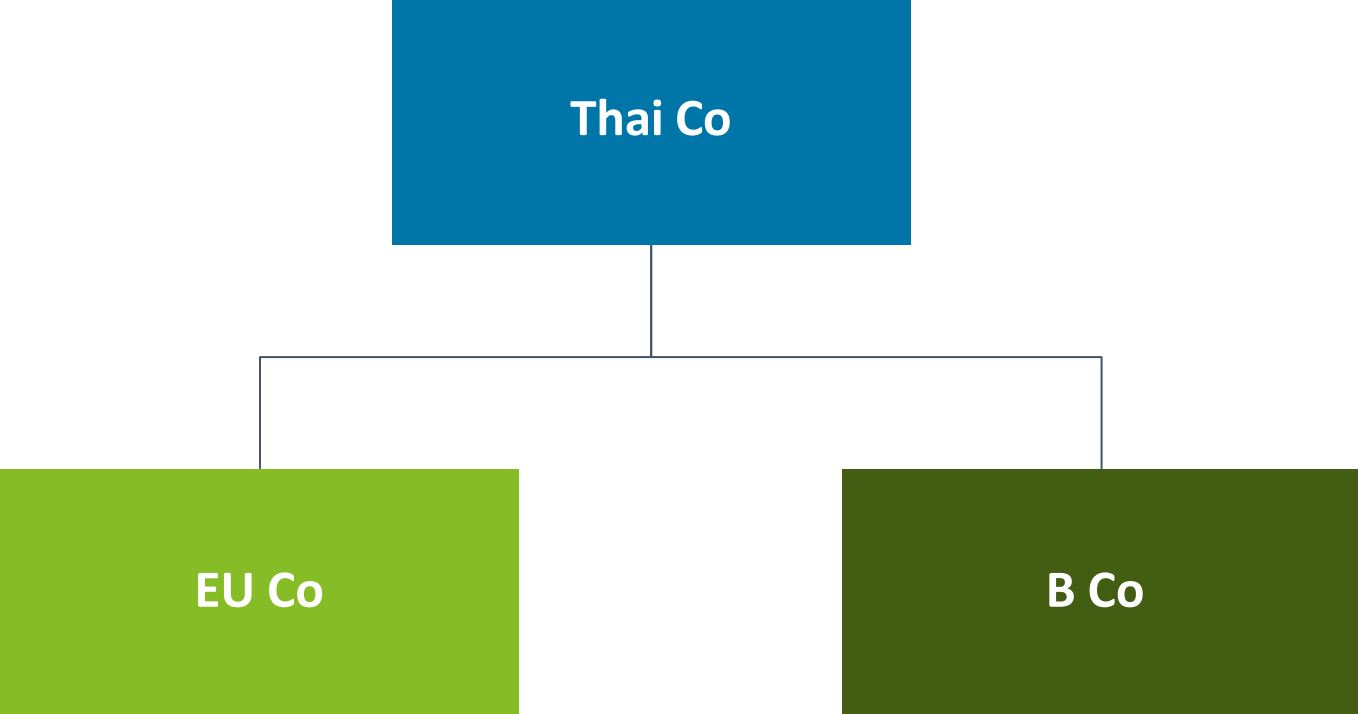
- Transitional planning
- Modelling and tracking results in real-time/ transactional basis
- M&A / tax attributes



Top-up Tax mechanics – Pillar 2

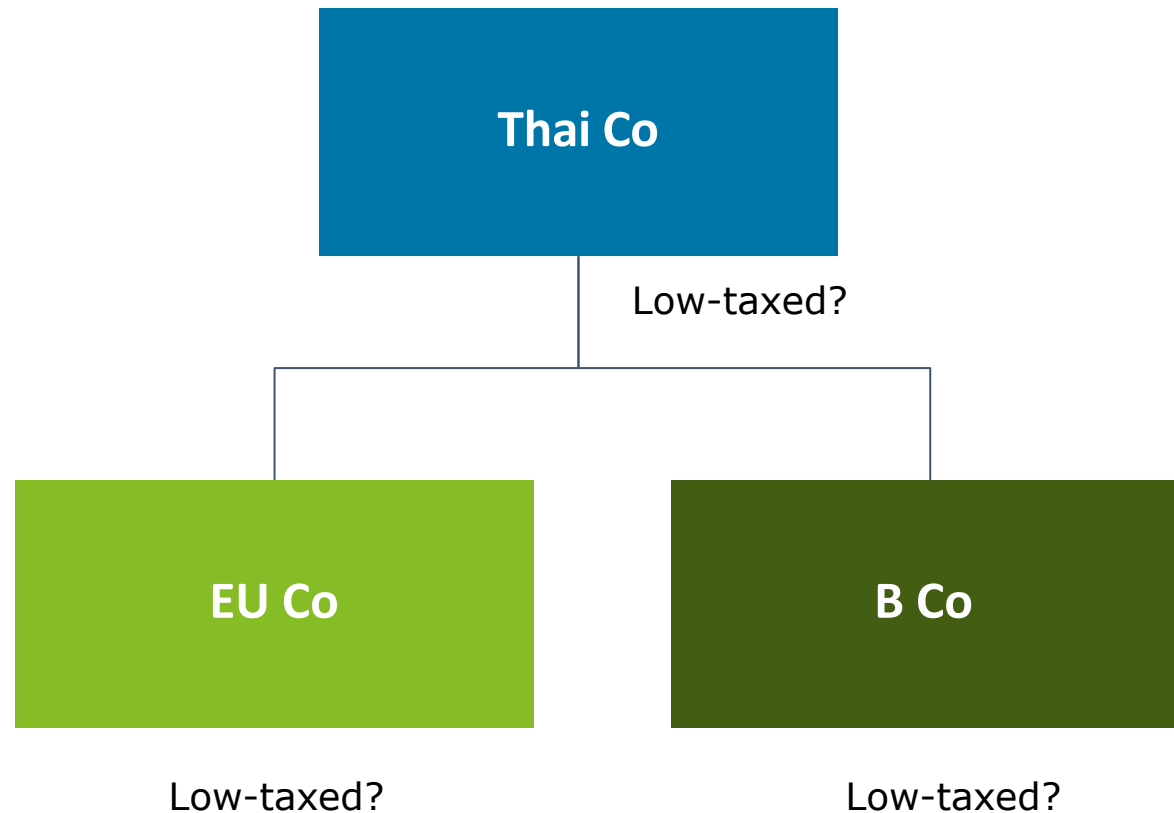
Pillar 2 basics – Example

Thai Co holds controlling interests in 2 subsidiaries



Pillar 2 basics – Example

Is EU Co low-taxed?

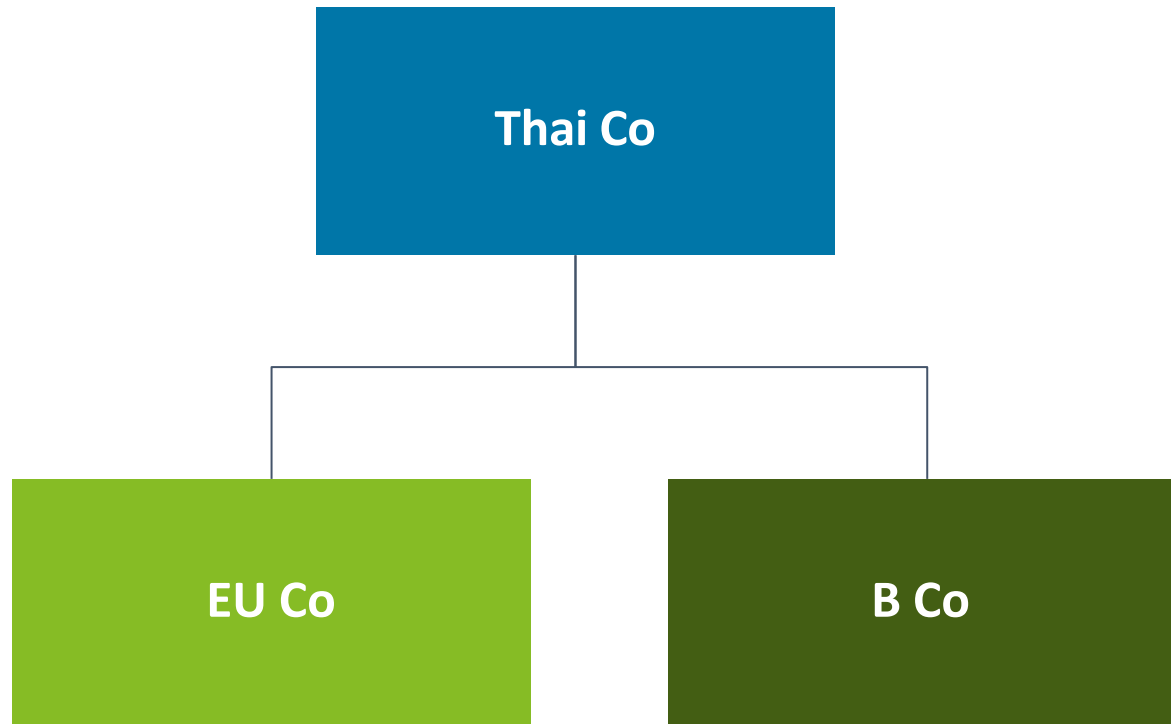


Top-up Tax assessment

- Is an entity low taxed, e.g. EU Co?
- Calculation of GloBE income / loss:
 - IFRS figures as starting point, adjustments to this:
 - Shipping exemption?
 - Excluded dividends?
- Calculation of covered taxes:
 - Current tax expense in financial statements as starting point, adjustments to this.
 - Adjustments for deferred tax assets / liabilities?
- $\text{GloBE income} / \text{Covered taxes} = \text{ETR}$. If the ETR < 15%, company is low-taxed and a Top-up Tax should be levied

Pillar 2 basics – Example

In case Thailand adopts IIR



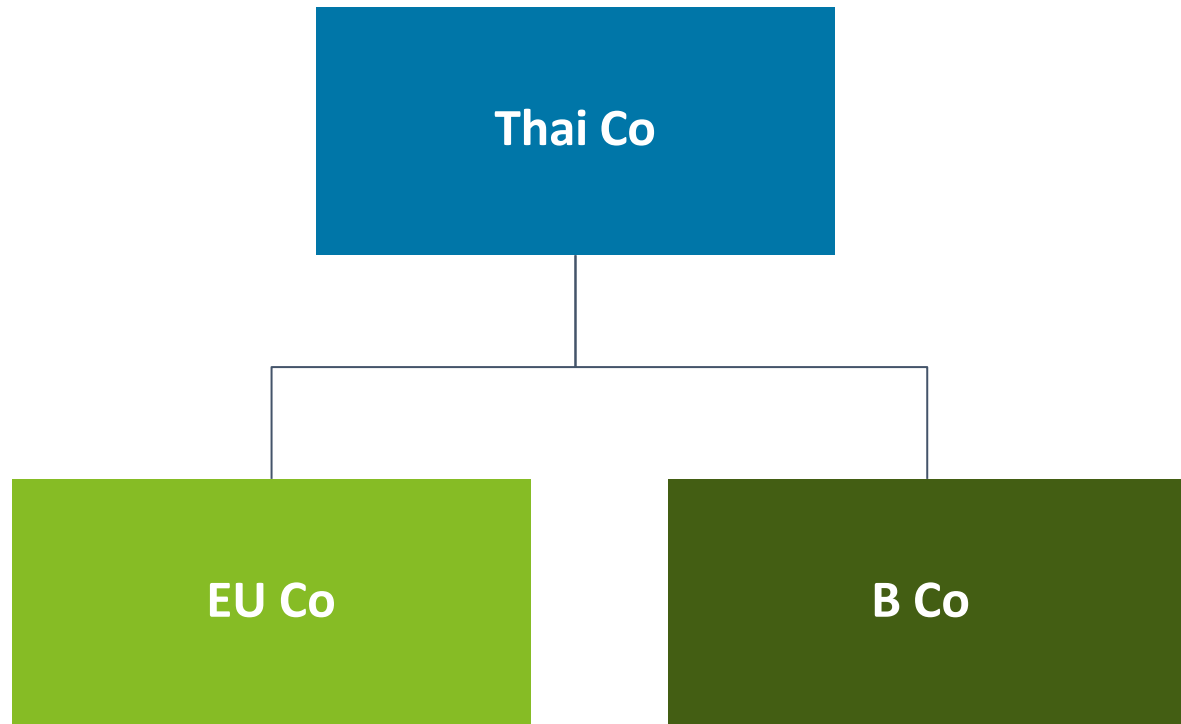
Low-taxed:
Top-up Tax

Top-up Tax assessment

- Assume EU Co is low taxed
- Priority rule: the Ultimate Parent Entity in a jurisdiction that has adopted Pillar 2, applies the IIR (Income Inclusion Rule)
- In such case Thailand would levy Top-up Tax with regard to EU Co. This would be paid to the Thailand tax authorities
- If Thailand will not implement Pillar 2, this scenario would not apply

Pillar 2 basics – Example

Thailand does not adopt IIR – EU Co is low-taxed



Low-taxed:
Top-up Tax



Top-up Tax of 20 of
EU Co is levied
under the UTPR in
Country B

Under Taxed Profits Rule (UTPR) impact

- Assume EU Co is low-taxed
- If EU Co is low-taxed and Thailand has not implemented Pillar 2, no IIR will be levied
- This may lead to other entities of the group to apply the Under Taxed Profits Rule (UTPR)
- If Country B has implemented the UTPR, Country B may effectuate the Top-up Tax
- However, under Pillar 2, countries have the option to implement a Qualifying Domestic Top-up Tax. This QDTuT has priority over the IIR and UTPR. If the EU Country has implemented the QDTuT, the EU Country will levy the Top-up Tax and not Thailand or Country B

DAC7



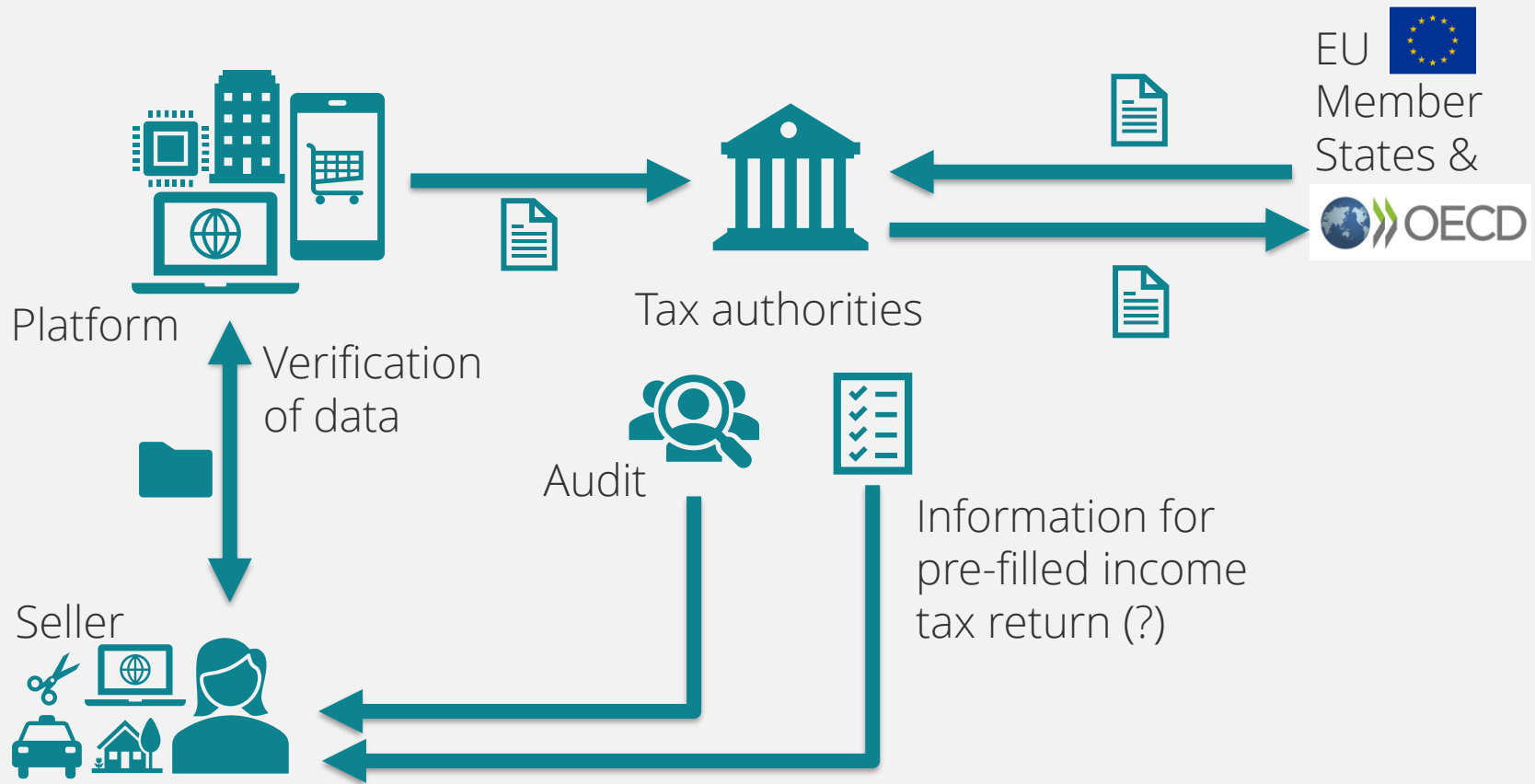
What is DAC7?

The sixth addition to EU Directive 2011/16/EU regarding administrative cooperation in relation to tax, based on which:

Electronic interfaces that connect suppliers of certain services and goods with customers become responsible to collect, verify and report extensive (personal) information and the revenues of the suppliers.

1. What is DAC7?

Reporting flow



DAC7 on one page

From 2023 onwards all qualifying platform operators will be required to **collect, verify and report data** from **sellers on their platforms**.

When?

1 January 2023: collecting and verifying
31 January 2024: 1st reporting due

Who?

EU platforms and non-EU platforms. Platform meaning any software, such as a part of a website, (mobile) applications), which can be used by sellers to be connected to other users to carry out a relevant activity directly or indirectly.

Exclusions for:

- Processing of payments
- Listing or advertising a relevant activity
- Redirecting or transferring users to a platform

How?

Annual reporting to local tax authority. Relevant data must be submitted to the tax authorities within one month of the end of the reporting period (i.e. by 31 January of the following year).

Why?

Taxing income on activities via platforms

Allowing tax authorities to tax the income that sellers earn from the sale of goods and services to EU customers via digital marketplaces.

Which transactions?

- Personal Services
- Sales of goods
- Rental of immovable property
- Rental of any mode of transport

Excluded suppliers

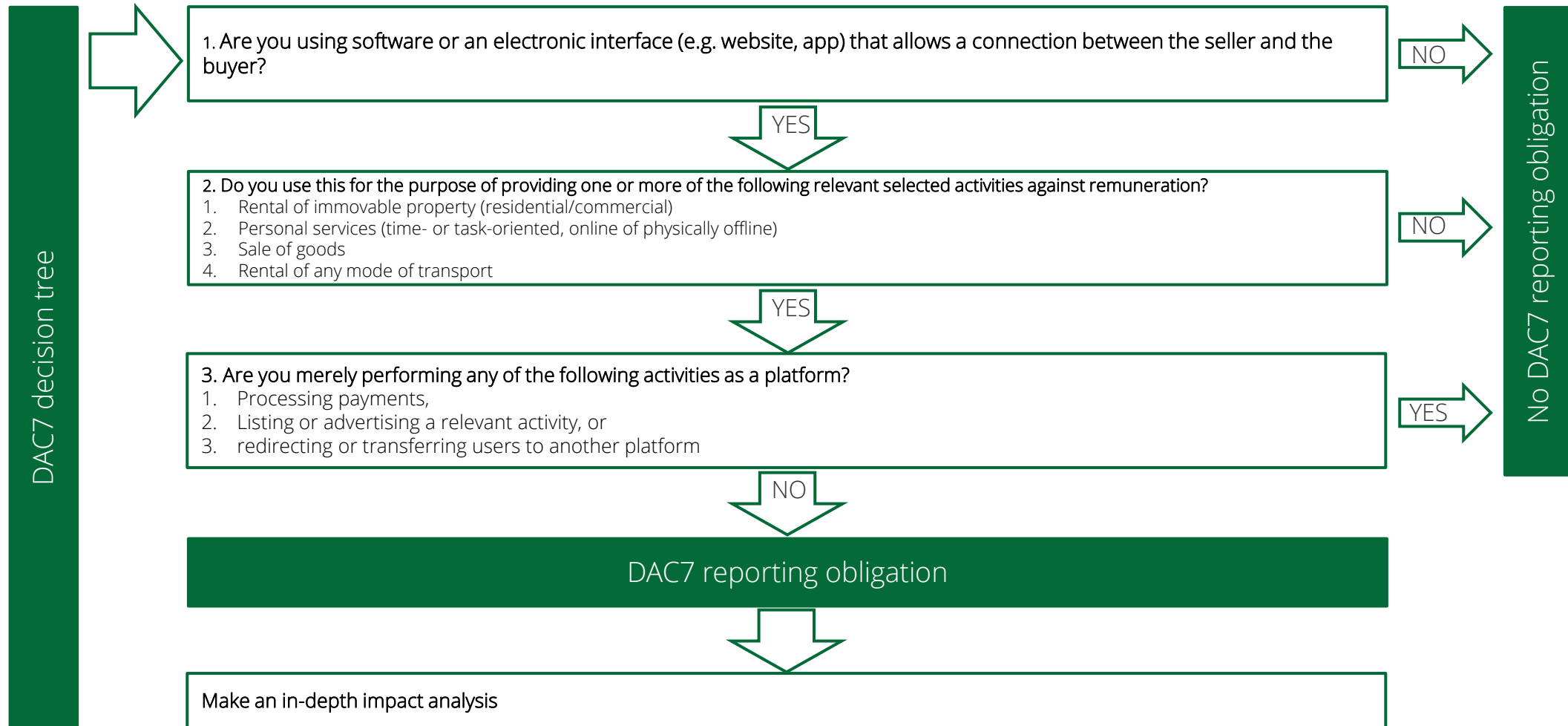
- Governmental entities
- Publicly Traded Entities
- > 2,000 rentals/year
- < 30 sales of goods and total consideration not exceeding EUR 2,000

What data?

1. Names;
2. Addresses;
3. Dates of birth (if TIN not available);
4. Place of birth (if TIN not available);
5. Tax identification numbers;
6. VAT identification numbers;
7. Business registration numbers,
8. Information in respect of any permanent establishments in the EU;
9. Financial account identifiers;
10. The address and land registration number of each property listing;
11. The number of days each property listing was rented;
12. Total consideration paid during each quarter; and
13. Any fees, commissions or taxes withheld or charged by the platform during each quarter

DAC7

Decision tree



The rules in practice

Relevant platforms and activities – the usual suspects



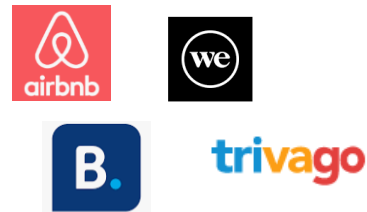
Sale of goods any tangible property



Personal services time-limited or task-oriented activity at the request of a user, either online or physically offline



Rental of immovable property including both residential and commercial property



Rental of transport Any mode of transport



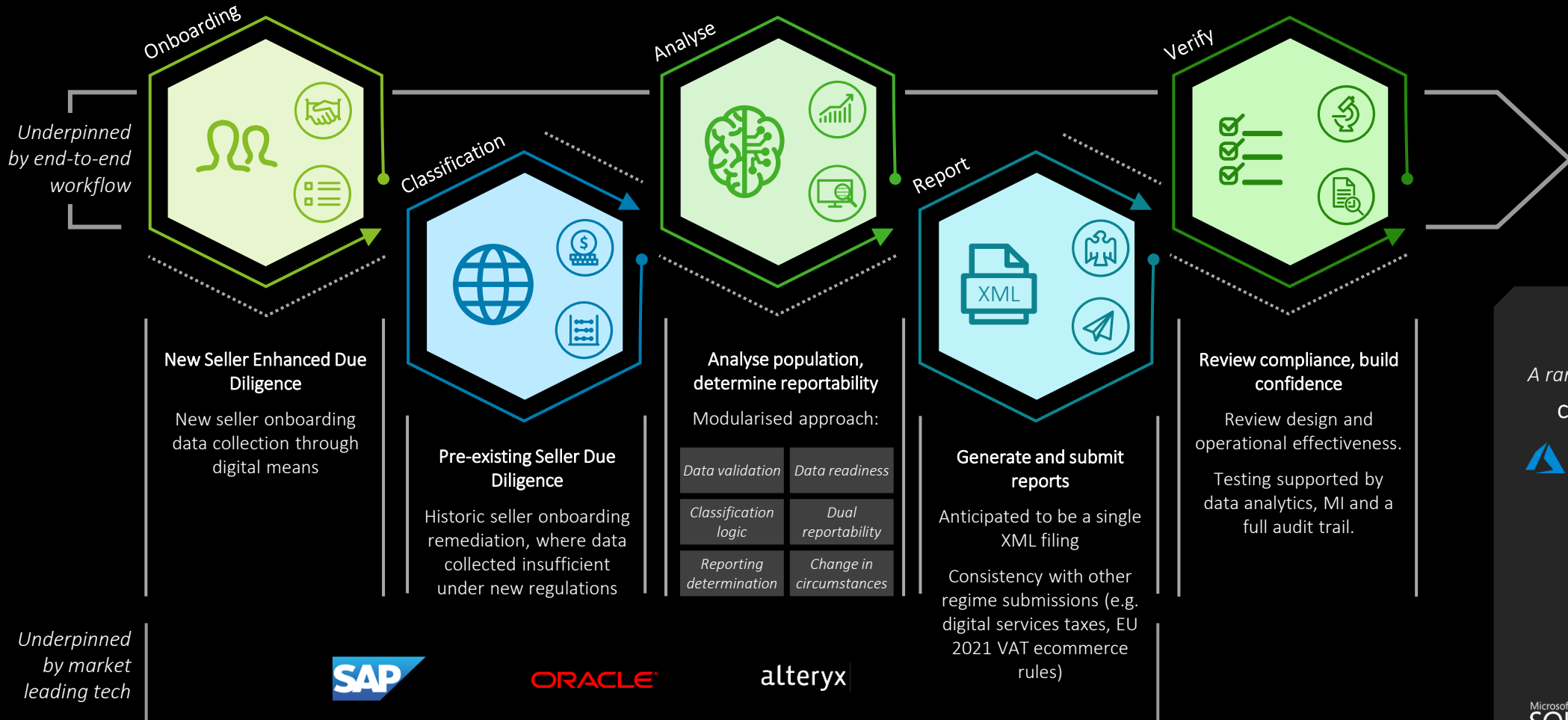
Practical steps to compliance

Businesses need to understand the extent of the impact quickly to form a proportionate and effective response



EU reporting rules for online marketplaces (DAC 7) - Deloitte services

We provide a fully modularised offering that covers the end to end process from onboarding, pre-existing seller due diligence remediation, calculation, data analysis, reporting and assurance/verification



A range of customisable options

Cloud deployment options

Technology options



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