



Ethiopia Tax Conference
International Tax and Transfer Pricing

September 2024



Workshop Agenda

- 1 Eastern Africa Tax Environment Outlook
- 2 Ethiopia Transfer Pricing Outlook
- 3 Triggers of Transfer Pricing Audits & Dispute Resolution
- 4 East African Economic Outlook
- 5 Panel Discussion



Eastern Africa Tax Environment Outlook

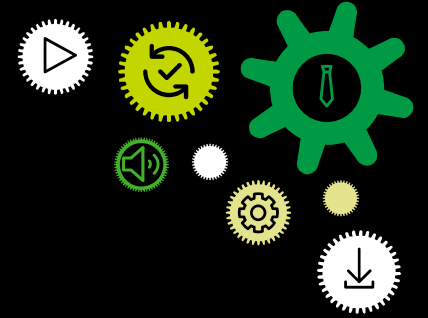
Doris Gichuru

Global Tax Changes

A new age of international tax focusing on transparency, consistency and sharing of information with and between tax authorities.

Why?

- Growth in cross-border trade; MNCs no, size and complexity
- Advent of the digital age
- Concern over gaps in international tax rules, exploitation of such gaps
- Ever increasing pressure for Gov'ts to collect additional revenue



Results

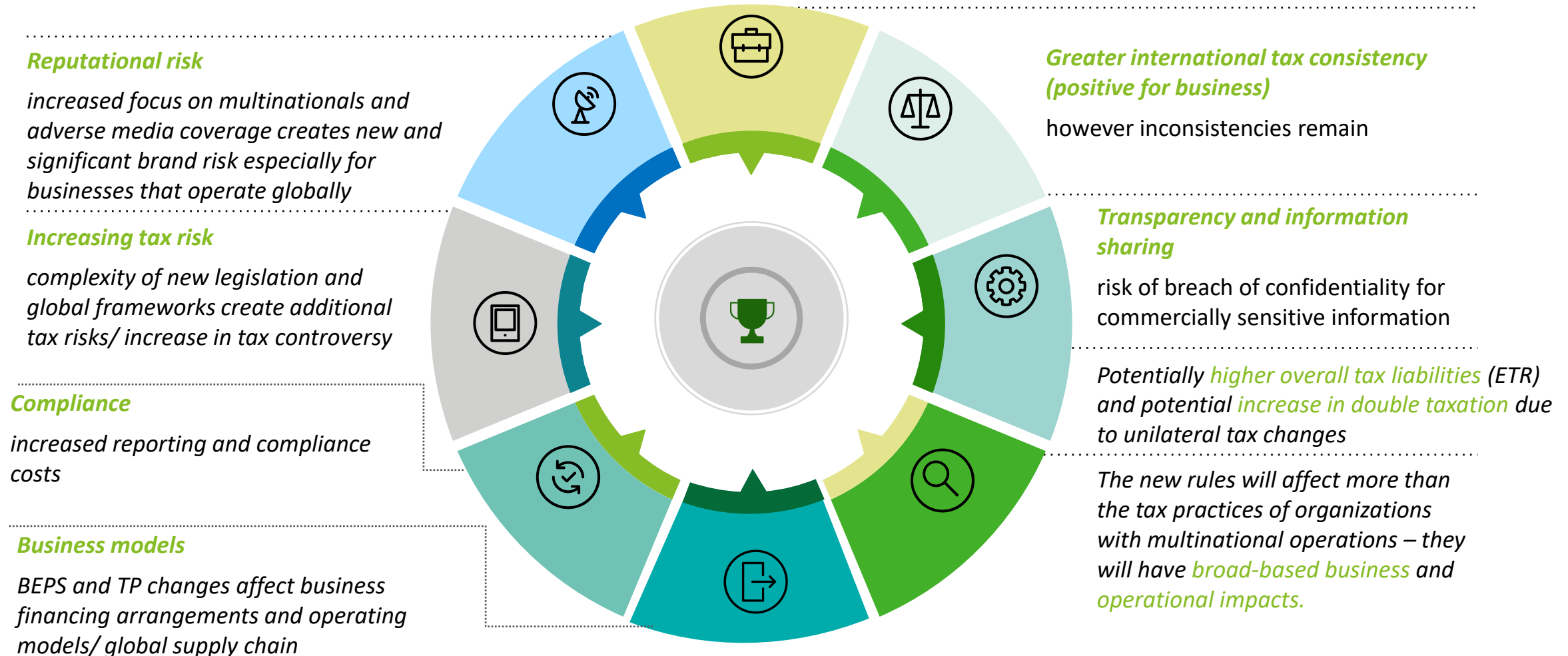
Multinational companies face a number of new tax-related challenges:



- Government deficits and related cut-backs.
- Media attention and activist group interest has resulted in political interest in tax reform



How will the changing tax landscape impact your business?



Recent Tax Developments - An African perspective

African Tax Administration Forum (“ATAF”) welcomes adoption of draft terms of reference (“ToR”) for UN Framework Convention on International Tax Cooperation

- The draft ToR outlines the objectives of the framework convention and lays the groundwork for developing protocols on taxing income from cross-border services in a digitalised economy and other priority areas
- This is a significant step towards establishing a global tax system that is inclusive, transparent, and meets the needs of all nations, including the 44 member states of the ATAF

Shifting relationship between taxpayer and tax authority

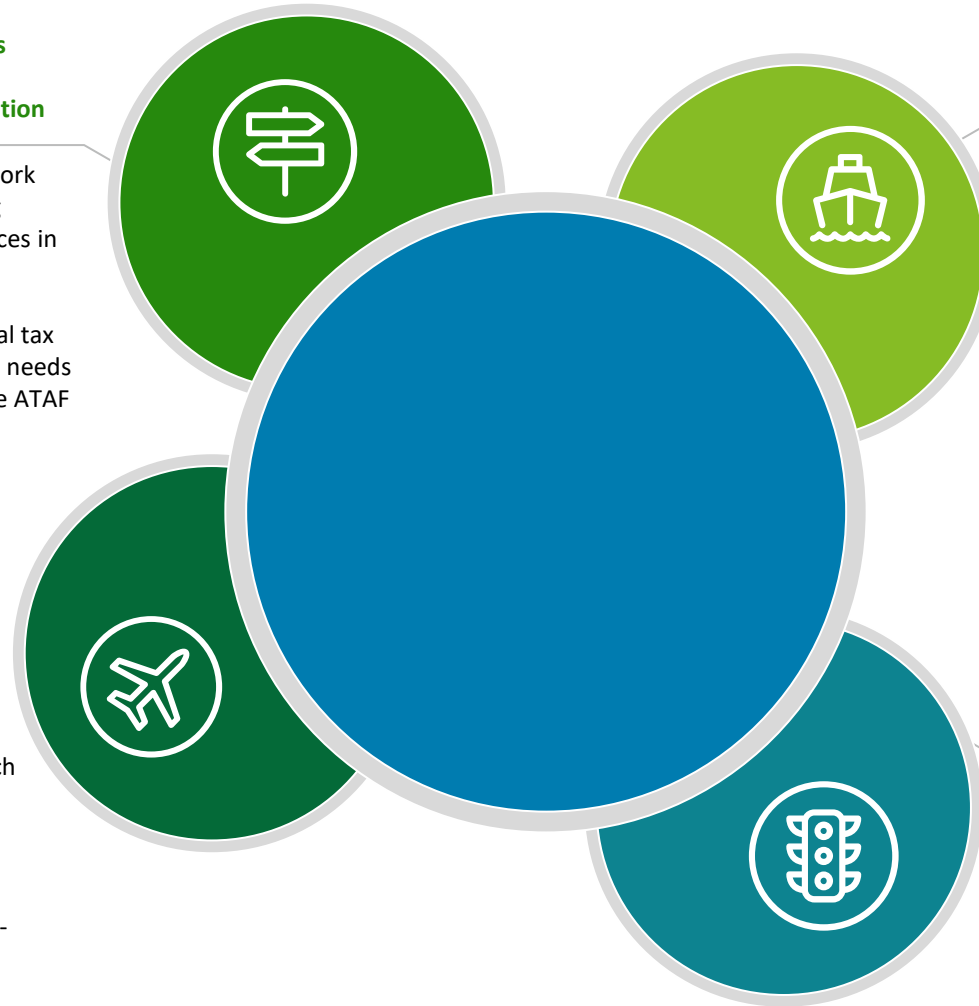
- Focus on the tax governance framework under which tax numbers are calculated
- Review of company’s overall tax policy, and its tax control framework
- Review of involvement of the company board and C-suite in the tax governance

A more challenging overall tax enforcement environment

- Increased tax controversy and enforcement around transfer pricing
- Expansion of both tax transparency regimes & Exchange of information
- Need for companies to take a more proactive global tax controversy management approach
- Public disclosure by large companies of income taxes paid and other tax-related information

Pillar II

- Entry into force of global minimum tax rules in many jurisdictions set to occur
- Need to adapt systems and processes to meet new reporting requirements



Recent Tax Developments - An East African perspective

Ethiopia



Updated transfer pricing regulations

- Transfer pricing was introduced in 2015
- In January 2024, the Ethiopian Ministry of Finance issued directive number 981/2024 and the previous TP Rules Directive 231/2021 was repealed



Scope of the TP regulations

- The scope of Ethiopia's TP rules applies to international and domestic transactions between related persons who have an annual turnover that exceeds ETB 500,000



Penalties

- A taxpayer who fails to maintain the required TP documents may be liable to a penalty of up to 20% of the tax payable for the relevant tax period. If no tax is payable, the penalty shall be Birr 2,000 for each tax period the taxpayer fails to maintain documents

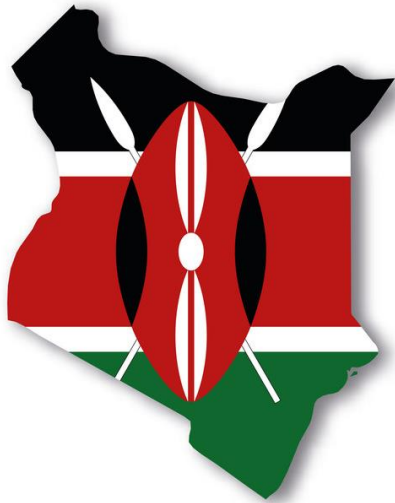


Filing requirement

- Prepare details of the transactions with related persons during a tax year
- The details should be declared with the taxpayer's tax declaration for the year

Recent Tax Developments - An East African perspective

Kenya



Introduction of Advance Pricing Agreements

- Proposal to introduce APAs which will allow taxpayers to agree the appropriate criteria for the determination of the arm's length for future controlled transactions over a fixed period (not exceeding 5 years)



Introduction of Minimum top up tax (Pillar 2)

- Proposal to introduce a minimum top up tax payable by a covered person whose combined effective tax rate in the year of income is less than 15%



Activation of automatic exchange of CbCR information

- An exemption for the secondary filing of the CbC report exists if the report is filed in a jurisdiction that has activated a CbCR information exchange agreement



Revenue authority audits

- Increased emphasis on sufficient supporting documentation to support service transactions
- Quantum of the required documentation not specified, hence protracted audit process

Recent Tax Developments - An East African perspective

Tanzania



Service transactions

- Increased emphasis on sufficient supporting documentation to support service transactions
- Quantum of the required documentation not specified, hence protracted audit process



Loan/ financing transactions

- Loan agreements should be registered at the Bank of Tanzania ("BoT")
- Increased focus by the TRA. Documentation required to show proof of registration of any loans



Digital Services Tax

- Introduction of DST and Value Added Tax ("VAT") on digital services provided by non-resident digital service providers.
- 2% tax on the "gross payment" made for a digital service sold in Tanzania. Since then, non-resident digital service providers have started registering and filing their returns on the new taxpayer portal introduced in January 2023

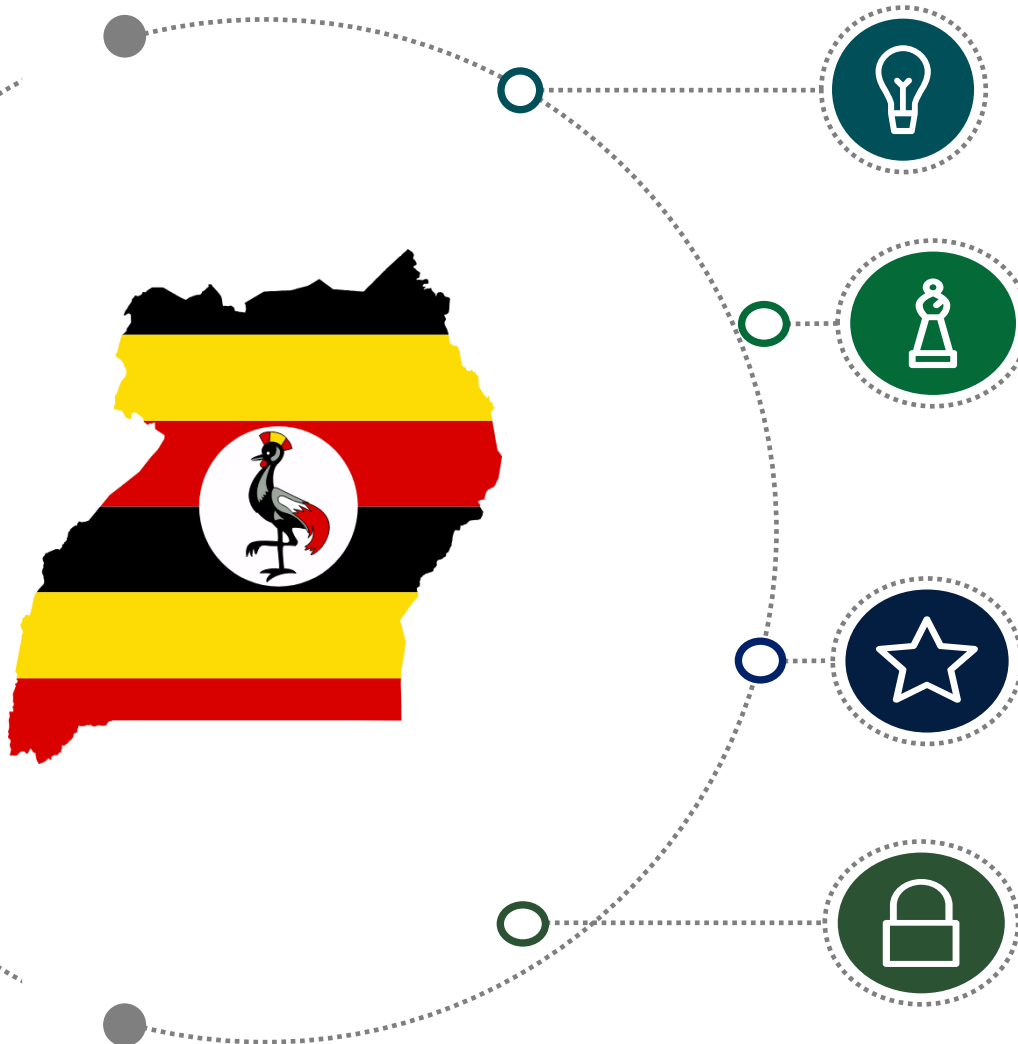


Out of court settlement /ADR

- Accommodative posture with TRA, regarding out-of-court settlement / amicable resolution of tax disputes. This is driven by the intention of resolving long-outstanding tax cases.

Recent Tax Developments - An East African perspective

Uganda



TP filing requirements

- Introduction of additional requirement for taxpayers , through Finance Act 2024, to submit their transfer pricing information at the time of filling returns

Exchange of information

- Uganda signed into law The Convention on Mutual Administrative Assistance in Tax Matters Act 2023, and it took effect on 1 July 2023
- The Act gives force of law in Uganda to the provisions of the Convention on Mutual Administrative Assistance in Tax Matters, the MCAA on Automatic Exchange of Information, and Standard for Automatic Exchange of Information in Tax Matters

Digital Services Tax

- 5% DST introduced for non-resident persons deriving income from providing services in Uganda to customers in the

Alternative Dispute Resolution/ ADR

- Regulations to govern the ADR process with URA
- Taxpayer to apply to the Commissioner within 7 days of a decision and if the Commissioner is to accept to respond within 7 working days.

Recent Tax Developments: An East African Perspective

Rwanda



Capping of intercompany recharges

- Management, technical services and royalty fees paid to a non-resident person exceeding two percent (2%) of the turnover are not deductible expenses from taxable income
- The deductible expenses is to be determined based on the summation of management, technical services and royalty fees in a given tax period



Reduced corporate income tax (CIT) rate

- Reduction of the CIT) rate from 30% to 28% with an eventual target of 20% in the medium term
- Expected to improve Rwanda's competitiveness and position the country as a preferred African investment destination



TP filing requirements

- Companies are expected to have transfer pricing policies and documentation
- Tax Procedures Law (TPL) also requires that documentation be submitted to the revenue authority along with the annual CIT return



Country by Country Reporting

- A CBC report must be filed not later than twelve (12) months after the last day of the reporting fiscal year of the multinational enterprises group

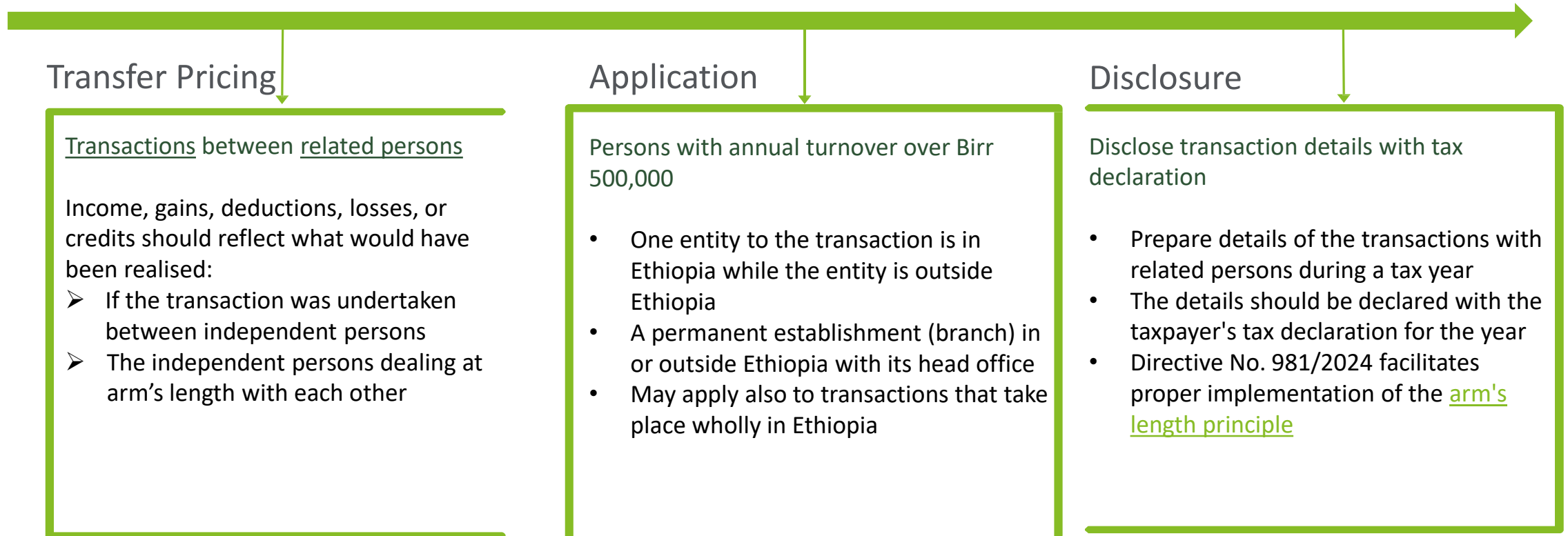


Ethiopia Transfer Pricing Outlook

Nelson Ngaira

Transfer pricing requirements

Art. 79 of the Federal Income Tax Proclamation



Transactions between related persons

Art. 2 of Directive No. 981/2024

Purchase and sale of goods

Purchase, sale, lease, or use of a
tangible asset including capital
goods

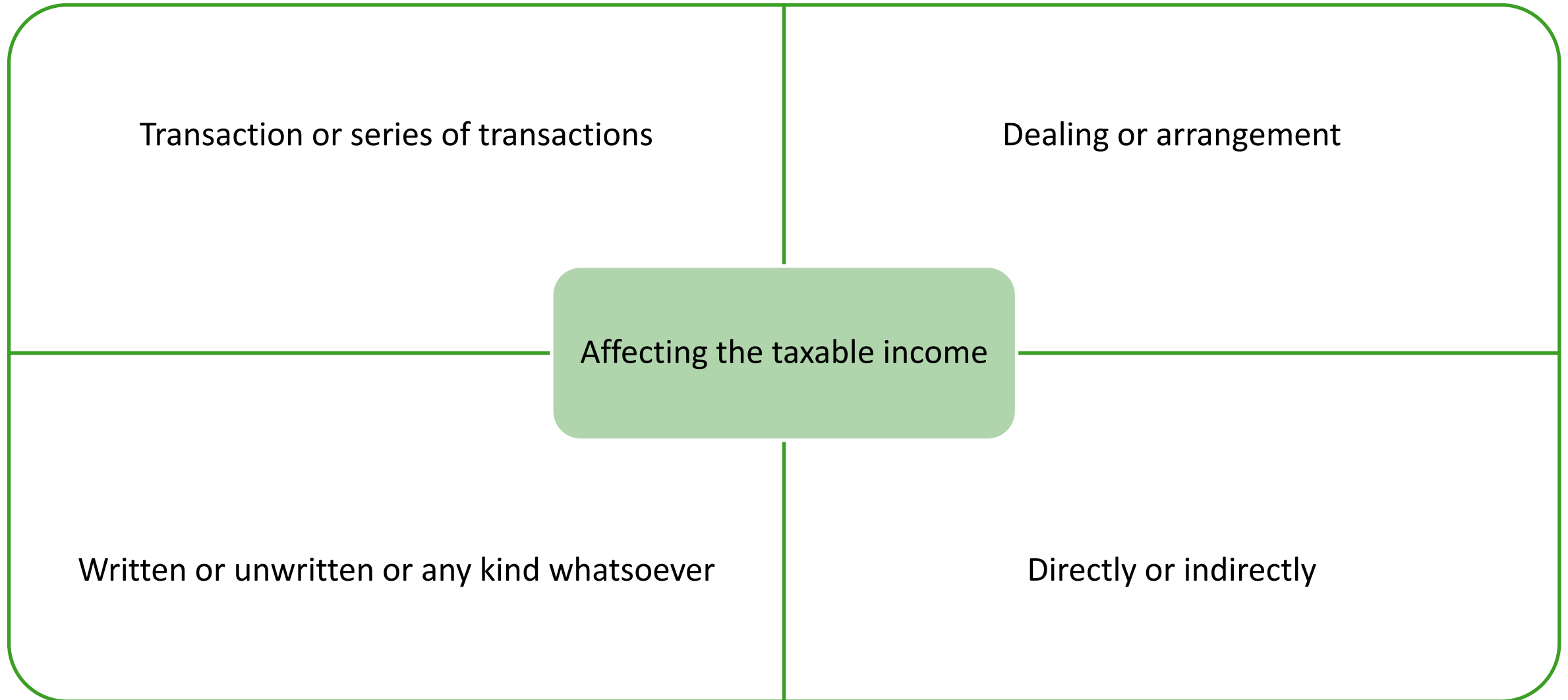
Purchase, sale, lease, or use of
an intangible asset

Provision of services

Provision of finance and other
financial arrangements

Transactions between related persons

Art. 2 of Directive No. 981/2024



Related persons – General rule

Article 4 of the Tax Administration Proclamation No.983/2016

Includes

Reasonably expected to act according to the directions, suggestions, requests, or wishes of another person

May be issued by the other person or a third person to both entities

Excludes

Where one is an employee or independent client of the other

Where both persons are employees or clients of a third person

Related persons – Specific examples

Article 4 of the Tax Administration Proclamation No.983/2016

Relative

- Spouse of the individual
- Lineal descendants of the individual or spouse
- Parent of the adoptive child of the individual or spouse

Control

- 25% or more shareholding by one party or third person
- Either directly or through one or more interposed bodies

Arm's length principle – General rule

Article 4 of the Directive to provide Rules on Transfer Pricing No. 981/2024

Arms Length Transaction

- ☐ Between independent persons
- ☐ Acting independent of each other
- ☐ Striving to optimise individual outcome

Conditions to the Principle

- ☐ Comparable conditions and context
- ☐ Devoid of impactful material differences
- ☐ Possibility of making reliable adjustments

Application of the Arm's Length Principle



Comparability analysis

Article 5 of the Directive to provide Rules on Transfer Pricing No. 981/2024

Comparability factors to be considered

- ☐ Characteristics of the property or services
- ☐ Functions, assets, and risks involved
- ☐ Contractual terms and conditions
- ☐ Economic and market circumstances
- ☐ Business strategies pursued by the parties

When to make comparability adjustments

- ☐ Only if they are expected to increase the reliability of the results
- ☐ Consider materiality of the differences to be adjusted
- ☐ Consider the quality of the data subject to adjustment
- ☐ Consider the purpose of the adjustment to be done
- ☐ Consider the reliability of the approach used to make the adjustment

Transfer pricing methods – Various methods

Article 6 of the Directive to provide Rules on Transfer Pricing No. 981/2024



Transaction Level

- Comparable Uncontrolled Price (CUP)
- Actual price or rate applied to the specific transaction
- Comparability threshold is relatively high



Gross Profit Level

- Resale Price Method (RPM)
- Cost plus Method (CPM)
- Classification of costs as direct and indirect
- Profitability at gross level – Gross margin and mark-up

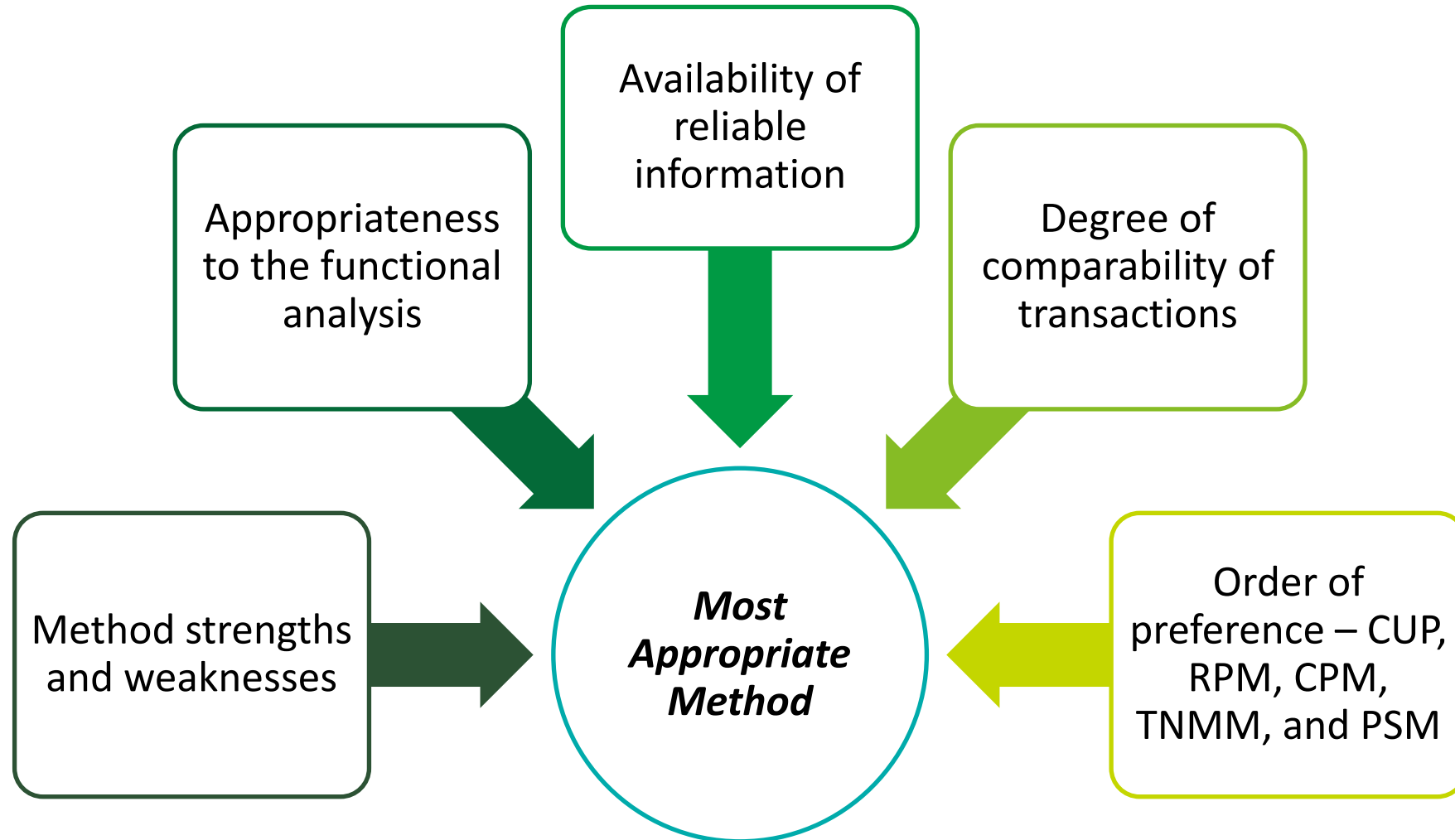


Net Profit Level

- Transaction Net Margin Method (TNMM)
- Profitability as a percentage of an appropriate base
- Profit Split Method (PSM)
- *Split based on contributions*

Transfer pricing methods – Which method?

Article 7 of the Directive to provide Rules on Transfer Pricing No. 981/2024



Transfer pricing methods – Other Aspects

Article 7 of the Directive to provide Rules on Transfer Pricing No. 981/2024

Tested party for benchmarking

Required to apply RPM,
CPM, and TNMM

Should be consistent with
the transaction's
functional analysis

Combining controlled
transactions

Economically closely
linked to one another

form a continuum such
that they cannot reliably
be analysed separately

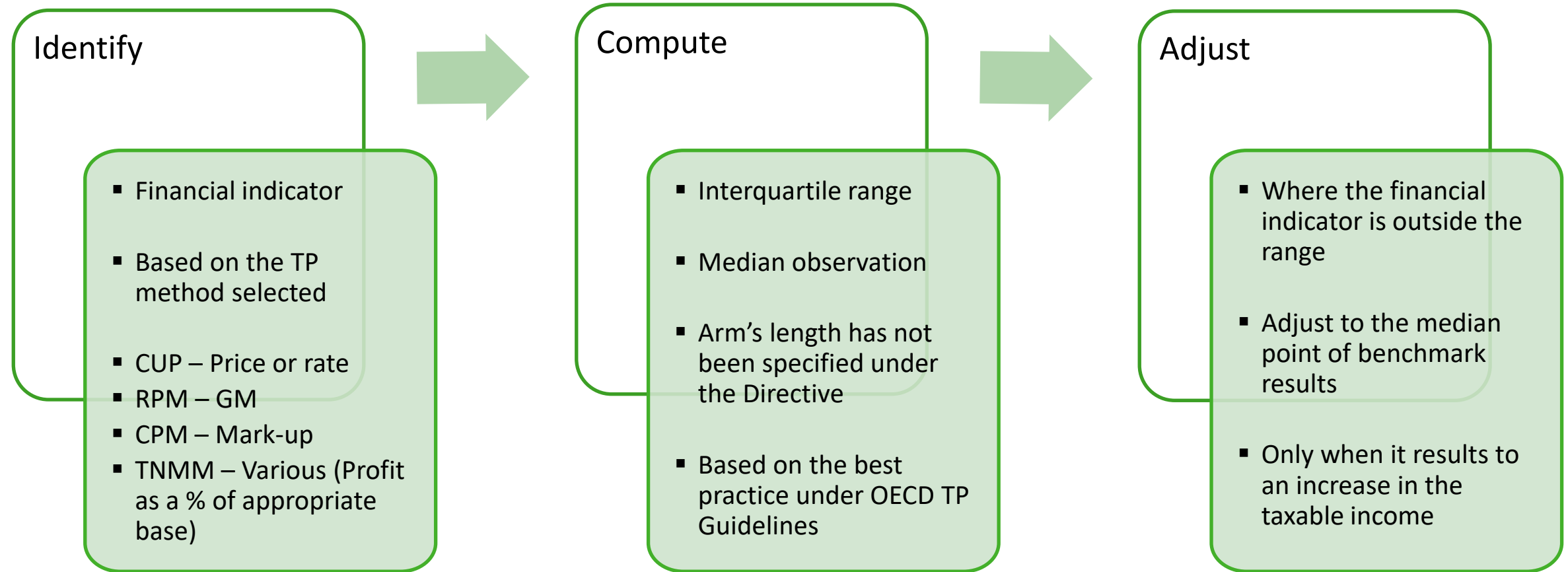
Source of information for
comparability

Should be available
internal or external to
parties to the transaction

Assess expected impact
of factors such as
geographical differences
on price and profitability

Arm's length range – Which range?

Article 10 of the Directive to provide Rules on Transfer Pricing No. 981/2024



TP Application to Specific Transactions



Service transactions – Key considerations

Article 13 of the Directive to provide Rules on Transfer Pricing No. 981/2024

Arm's length service

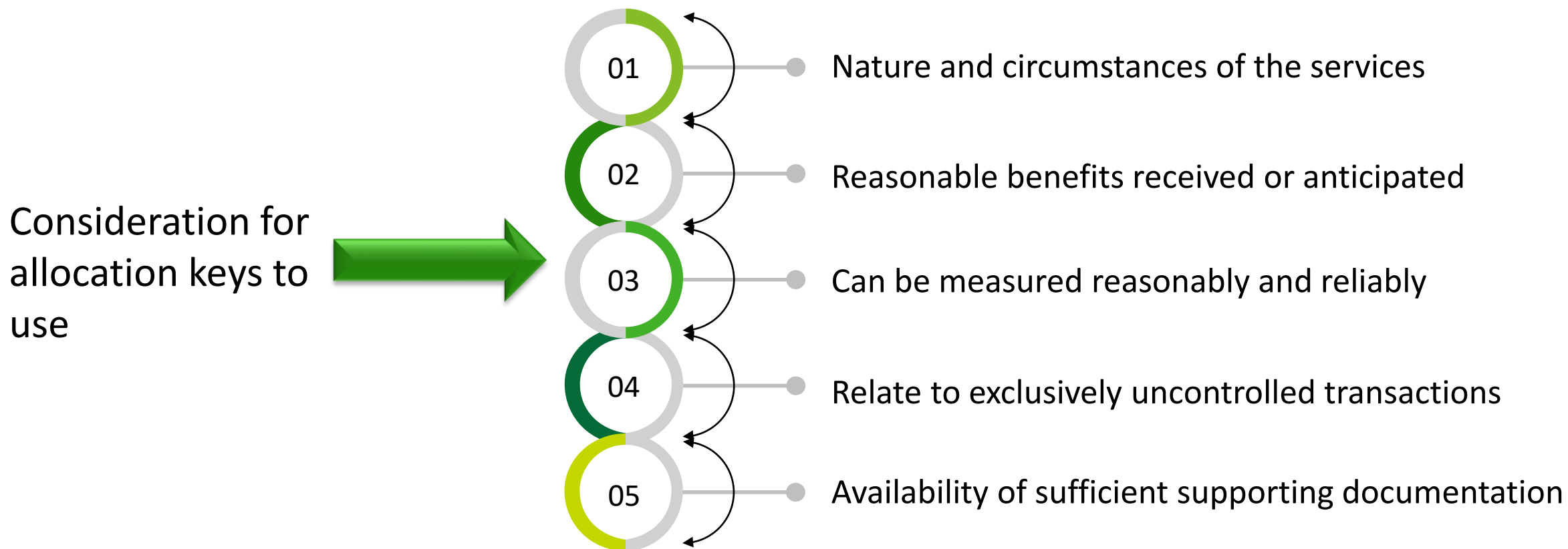
- ☐ A service that is actually rendered
- ☐ Provides economic or commercial value to enhance its commercial position
- ☐ Unrelated person in comparable situation would be willing to pay for it
- ☐ Amount reflects what would have been agreed between independent parties

Non-arm's length service

- ☐ Rendered solely due to the shareholder's ownership interest
- ☐ Costs or activities relating to the juridical structure of the parent company
- ☐ Costs or activities relating to reporting requirements of the parent company
- ☐ Costs or activities related to raising funds for the acquisition of group members

Service transactions – Shared services

Article 13 of the Directive to provide Rules on Transfer Pricing No. 981/2024



Transfer of intangible property – Considerations

Article 14 of the Directive to provide Rules on Transfer Pricing No. 981/2024



1 >

The expected benefits from the intangible property



2 >

Any geographical limitations on the exercise of rights to the property



3 >

The exclusive or non-exclusive character of the rights transferred



4 >

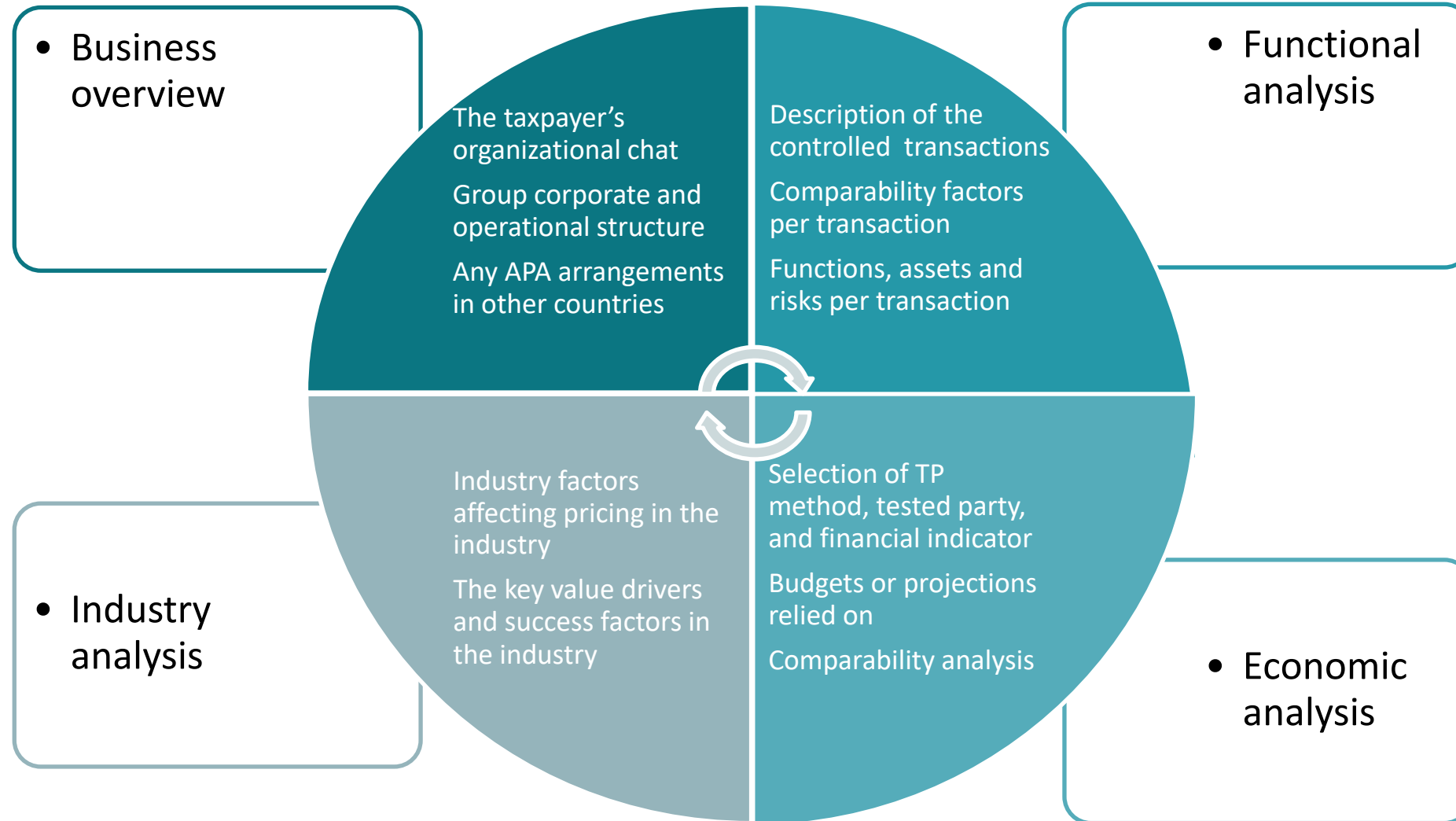
Transferee right to participate in further development of the property by the transferor

Transfer Pricing Compliance



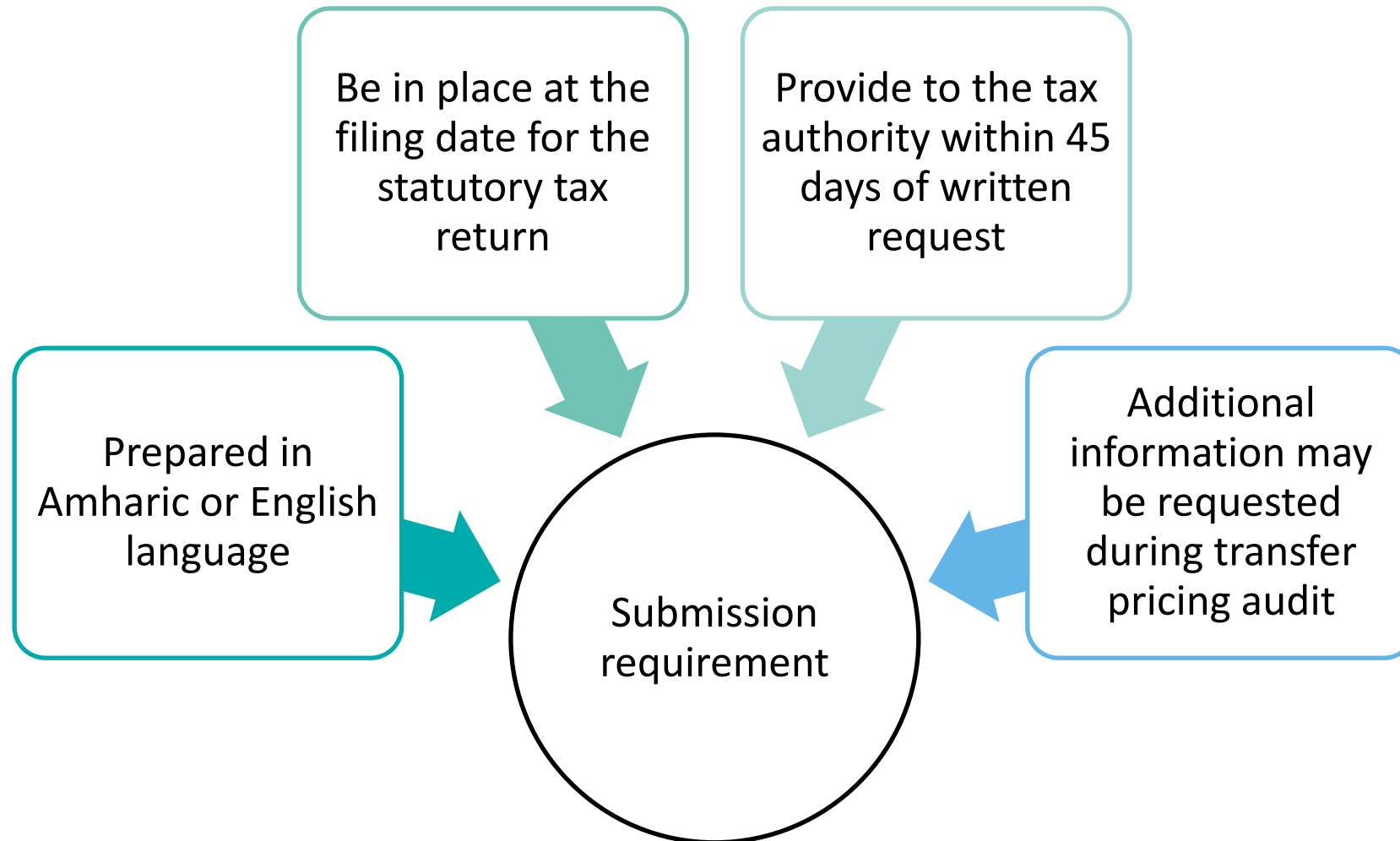
Transfer pricing documentation – Contemporaneous

Article 15 of the Directive to provide Rules on Transfer Pricing No. 981/2024



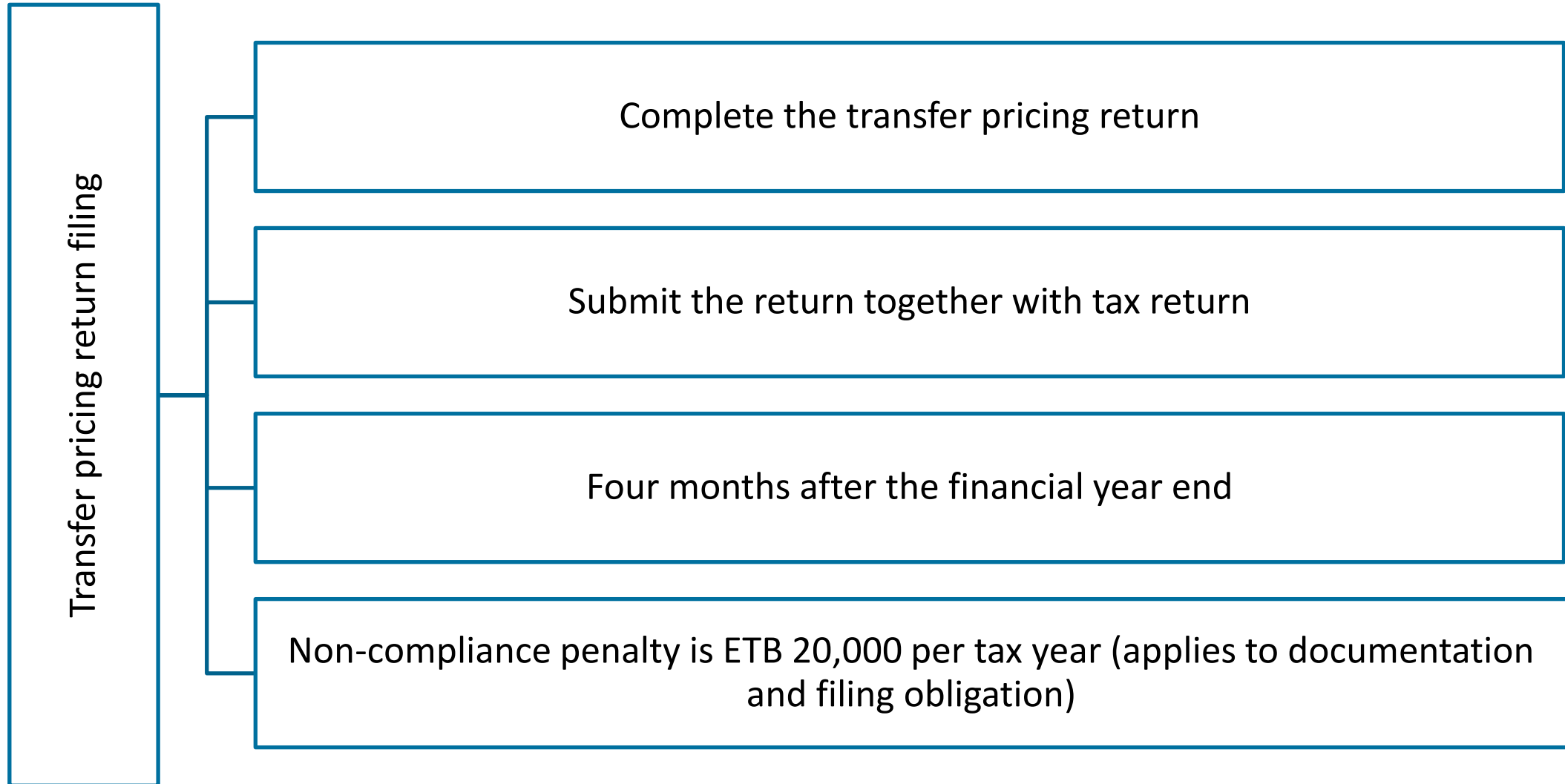
Transfer pricing documentation – Submission

Article 15 of the Directive to provide Rules on Transfer Pricing No. 981/2024



Transfer pricing return – Filing obligation

Article 79 (5) of the Federal Income Tax



Advance Pricing Arrangements (APA)



Advance Pricing Arrangements – Managing TP risk

Article 12 of the Directive to provide Rules on Transfer Pricing No. 981/2024

Application request by the taxpayer

Provide description of the transaction, scope and duration to cover

Proposed transfer pricing analysis to the transaction

Identify any other country or countries to be involved in the arrangement

Review by the tax authority

Request for any additional information

May consider the other tax authorities affected

Approve or reject the application

Insure confidentiality of any sensitive information

Monitor operations

Covers a maximum period of 5 years

Operate within the agreed terms of the arrangement

No TP adjustments expected during the period

Can apply to transactions in progress at the time

Advance Pricing Arrangements – Revocation/Cancelation

Article 12 of the Directive to provide Rules on Transfer Pricing No. 981/2024

Revocation

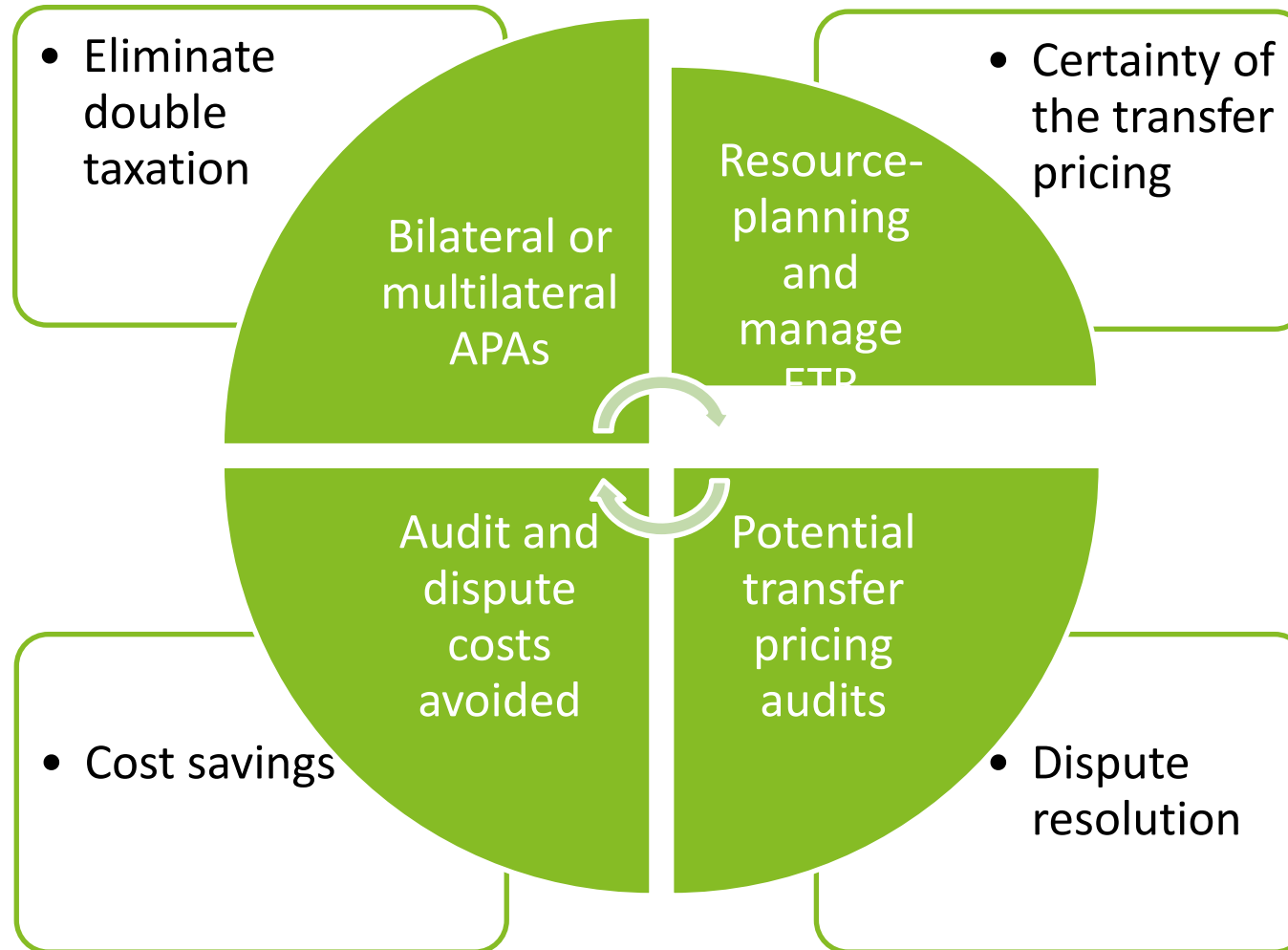
- Neglect or wilful misrepresentation, mistake or omission by the taxpayer
- Failure to materially comply with fundamental terms and conditions of the arrangement
- Revocation has retrospective effect over the period the agreement has been implemented

Cancelation

- Non-wilful misrepresentation, mistake or omission and not by neglect
- Failure to materially comply with a fundamental term or condition of the arrangement
- Material breach of one or more of the critical assumption
- Change in tax law materially relevant to the arrangement
- Cancelation affects the remainder of the period of the agreement

Advance Pricing Arrangements – Advantages

Article 12 of the Directive to provide Rules on Transfer Pricing No. 981/2024

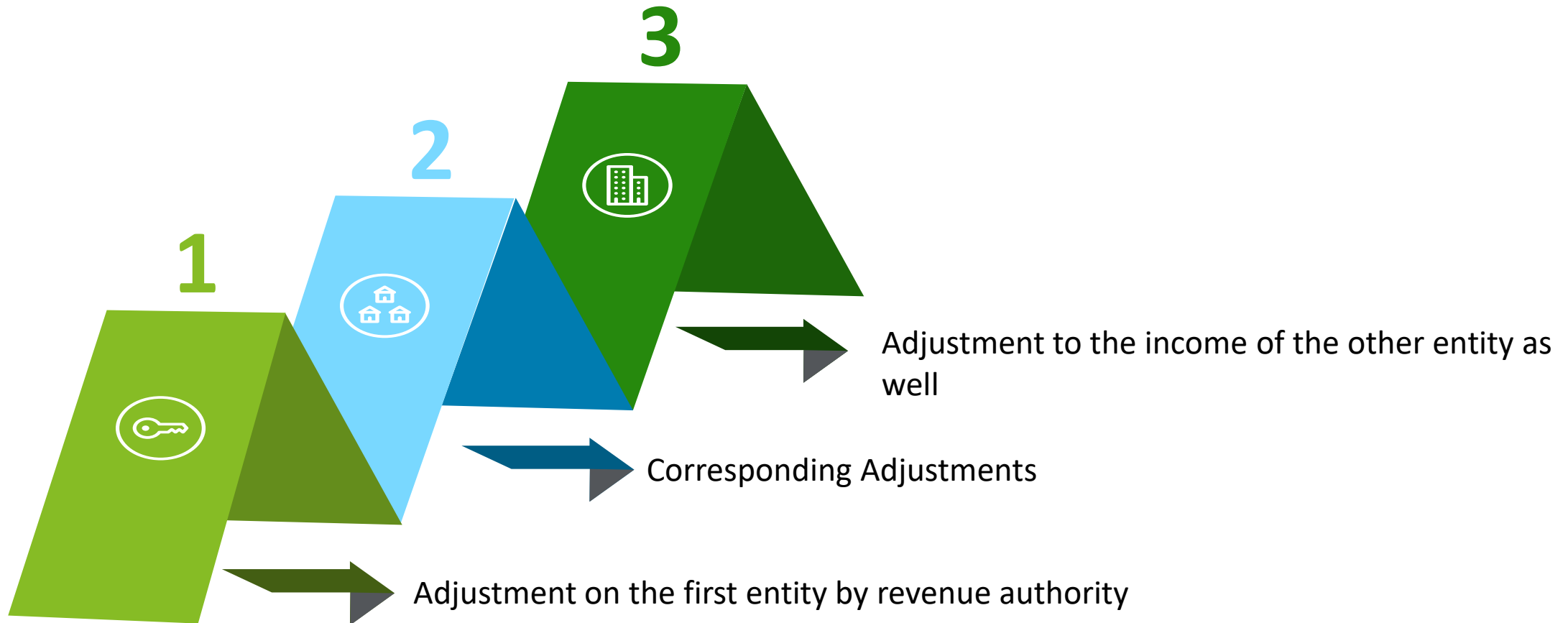


Corresponding Adjustments



Corresponding adjustments – Domestic transactions

Article 16 of the Directive to provide Rules on Transfer Pricing No. 981/2024



Corresponding adjustments – International transactions

Article 17 of the Directive to provide Rules on Transfer Pricing No. 981/2024

Applicability

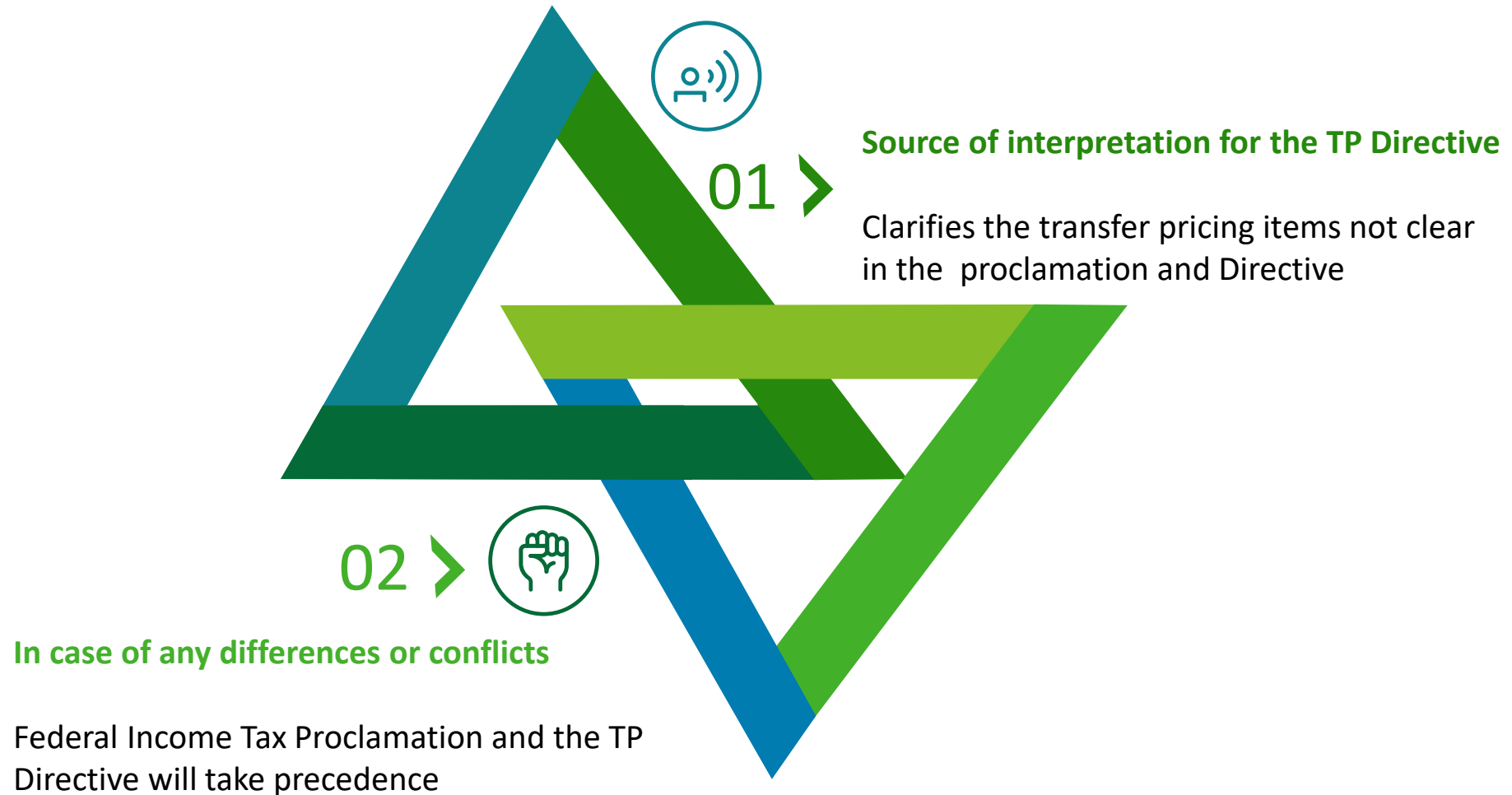
- ☐ Adjustment made by a tax administration of another country
- ☐ The adjustment relate to an amount that has already been taxed in Ethiopia
- ☐ There is a double tax treaty with the other country
- ☐ Adjustment must be consistent with the arm's length principle

Information required

- ☐ The name, registered address and, trading name(s), if any of the related person
- ☐ Evidence of the tax residence of the related person;
- ☐ Amounts and year in which the adjustment was done
- ☐ Evidence of the adjustment and indication that there is no further recourse action

Applicability of the OECD TP Guidelines

Article 18 of the Directive to provide Rules on Transfer Pricing No. 981/2024



Contemporary Issues

Minase Tessema



Taxation of related party service recharges (technical and head office)



- WHT @ 15% on the gross amount
- Reverse VAT @ 15% on the gross amount
- Tax residence certificate to justify use of lower DTT rates, where applicable
- Repatriation tax @10% for branch and project offices

Deduct and Remit



- Must have a service level agreement
- Must comply with the arm's length principle
- Necessary for generation of income reported
- Justify that the services cannot be provided locally

Factors to Consider



- Must be based on a policy followed by the Group
- Common costs should be allocated reasonably
- Cost allocation mechanism should be objective
- The cost base need to tie to the financial statements

Conditions for Deduction

Tax Controversy

Doris Gichuru



Overview

Types of key audits
carried out by the
tax authority

01

Transfer pricing
audit strategy

03

Tax dispute process

04

Key factors that
trigger a transfer
pricing audit

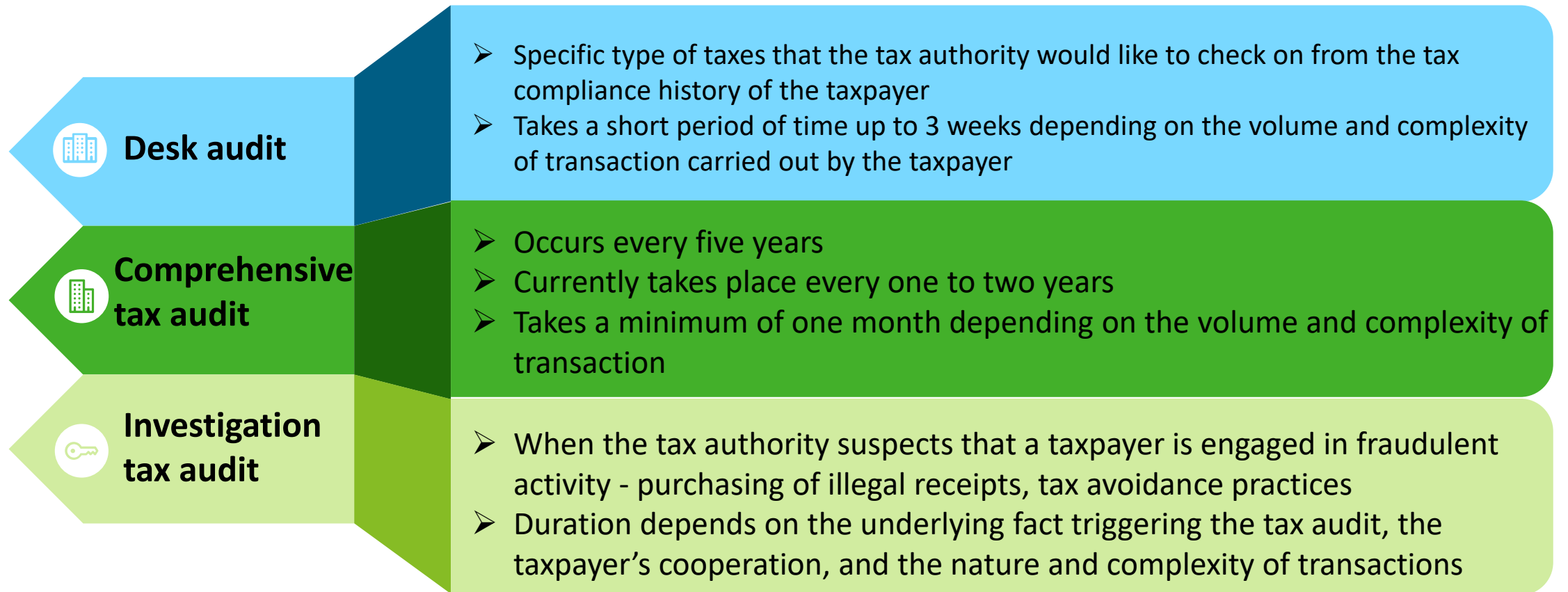
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05

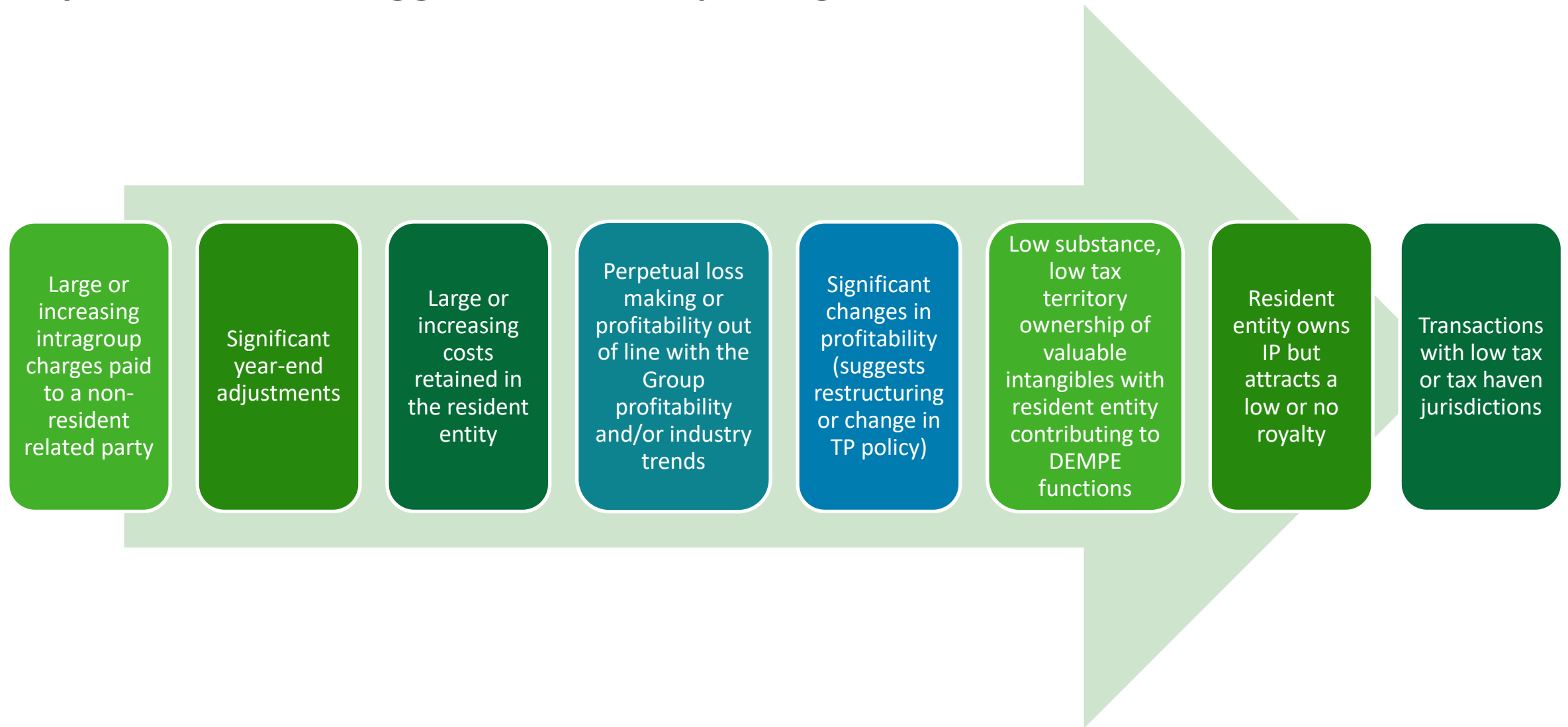
Avenues for dispute resolution



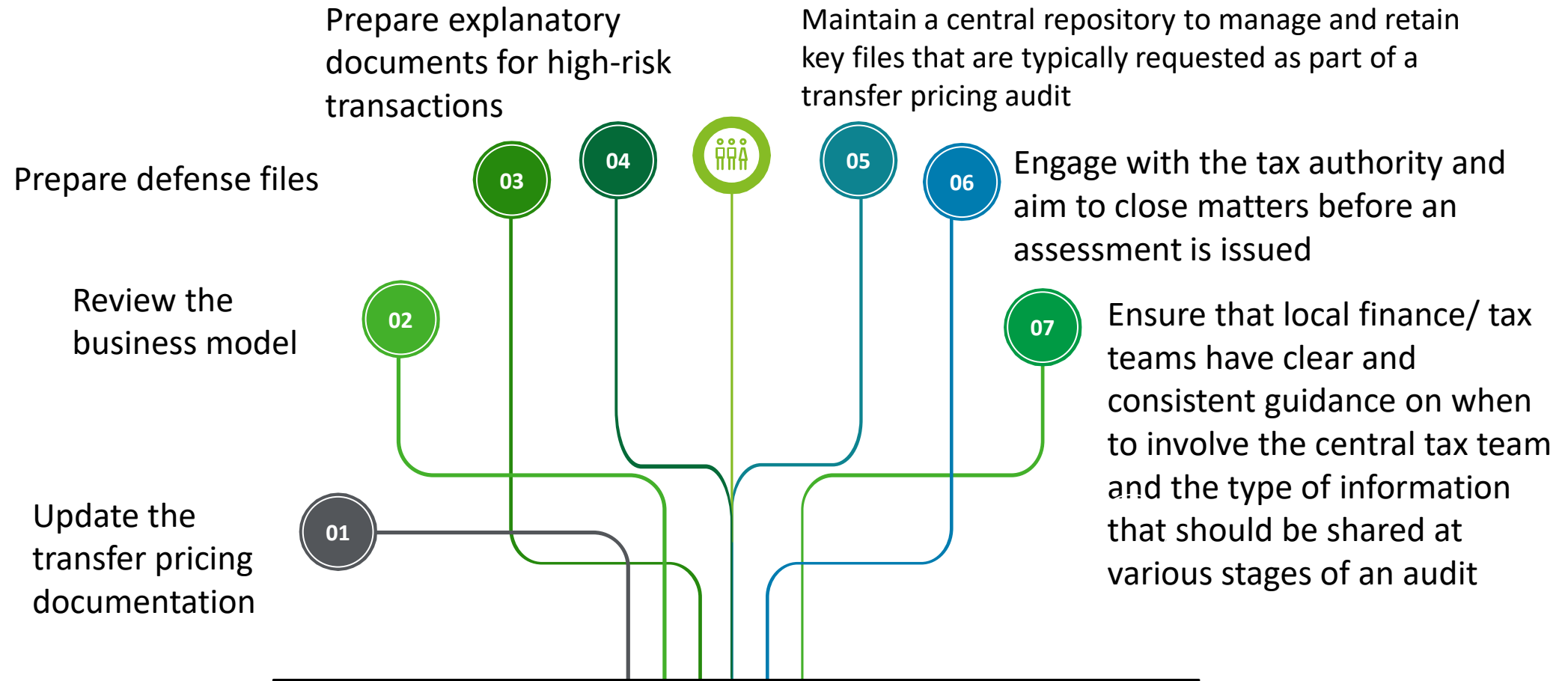
Types of audits carried out by the tax authority



Key factors that trigger a transfer pricing audit



Transfer pricing audit strategy



Tax dispute process (1 of 4)

Notice of intention to audit – accompanied by information request

Review of documentation and seeking clarification

Preliminary findings letter

Tax assessment

Notice of objection

- To be filed within 21 days after receiving the assessment
- Validity – precise grounds are stated, payment of tax not in dispute, full payment of tax in dispute for payment made in protest
- Invalidity? Tax authority to notify taxpayer immediately providing reasons and indicating when the objection will lapse
- Extension of time – maximum of 10 days from the objection due date by reasons of either sickness, absence, reasonable cause, no unreasonable delay

Tax dispute process (2 of 4)

Objection Decision

01



Reviewed by a tax review committee (TRC) to provide an independent review

02



What happens where the TRC is of the view that the tax assessed should be increased?

- ✓ TRC recommends to the tax authority to refer to the tax office for reconsideration

03



TRC should issue the decision not later than 180 days from the date the taxpayer filed the notice of objection

04



Decision to allow the objection in whole or part or disallow entirely

- ✓ What happens if the tax authority has not given a decision within 180 days? The taxpayer should appeal to the tax appeal commission with 30 days once 180 days end

05



Where the decision is in favor of the taxpayer, the tax authority should implement the decision, including serving notice of an amended assessment, within 30 days of receiving notice of the decision

- ✓ Can the tax authority appeal? Yes.

Tax dispute process (3 of 4)

Appeal to the Tax Commission

1

Taxpayer to file a notice of appeal within 30 days (in the approved form) after the end of 180 days from the date the taxpayer filed the notice of objection stating reasons

2

Pay 50% of tax in dispute (excluding penalties and interest)

4

When can an appeal be dismissed, and can it be reinstated?

- Failure to appear in person or be represented
- Failure to comply with a direction of the Commission
- Appellant to apply for reinstatement within 30 days

3

An appellant may discontinue or withdraw an appeal to the Commission at any time by filing written notice with the Registrar of the Commission and the Commission shall dismiss the appeal

Tax dispute process (4 of 4)

1

Appeal to the Federal High Court

- ✓ To file notice of appeal within 30 days after being served with the Commission's decision
Taxpayer may request for an extension of time
- ✓ Applies on questions of law only
- ✓ Pay 75% of tax in dispute (excluding penalties and interest)

2

Appeal to the Federal Supreme Court

- ✓ To file notice of appeal within 30 days after being served with the decision of the Federal High Court

Avenues for dispute resolution (1 of 2)



Mutual Agreement Procedures

Transfer pricing adjustments

- A transfer pricing adjustment will typically create double taxation

MAP application

- An adjustment to the conditions of a controlled transaction is made by a tax administration of another country;
- The adjustment results in the taxation in that other country of an amount of profits on which the party to the controlled transaction is a taxpayer in Ethiopia and has already been charged to tax in Ethiopia; and
- The country proposing the adjustment has a treaty with Ethiopia that reflects an intention to provide for the relief of economic double taxation

Initiated by a taxpayer in Ethiopia

- Tax authority examines the consistency of that adjustment in line with the arm's length principle
- Tax authority makes an appropriate adjustment to the amount of the tax charged

Avenues for dispute resolution (2 of 2)

- Request for a corresponding adjustment must include:
 - The name, registered address and, where applicable, trading name(s) of the related person;
 - Evidence of the tax residence of the related person;
 - The year(s) in which the adjusted controlled transaction(s) took place;
 - The amount of the requested corresponding adjustment and the amounts of the adjustment made by the tax administration of the other country;
 - Evidence of the adjustment made by the tax administration of the other country and the basis for the adjustment, including details of comparability analysis relied upon and the transfer pricing method applied; and
 - Confirmation that the related person party will not, or is unable to, pursue any further recourse under the domestic law of the other country that may result
- Can Advance Pricing Arrangements be entered into following a transfer pricing audit?





Eastern Africa Economic Outlook

Messai Tadesse

Panel Discussion





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