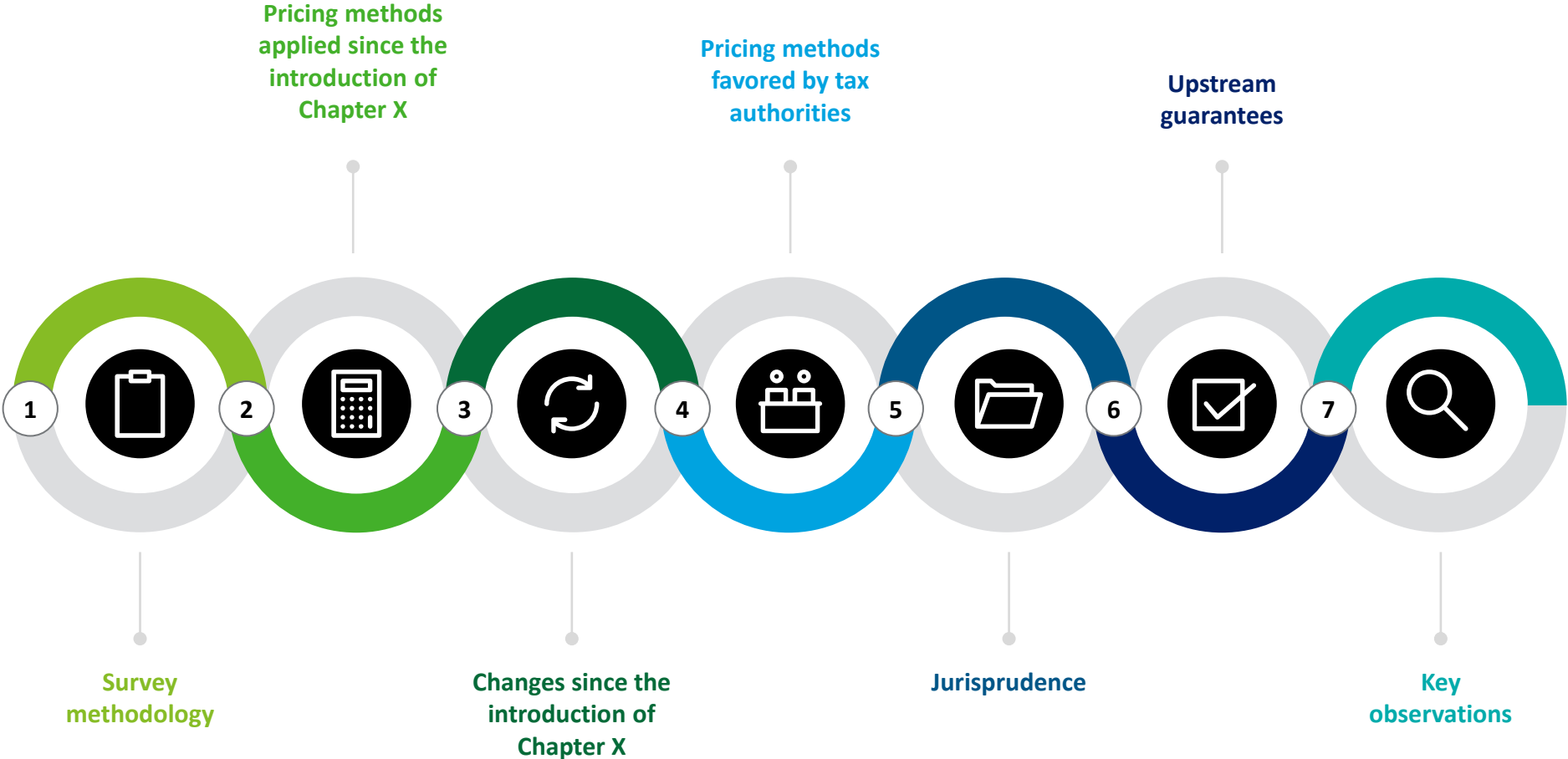


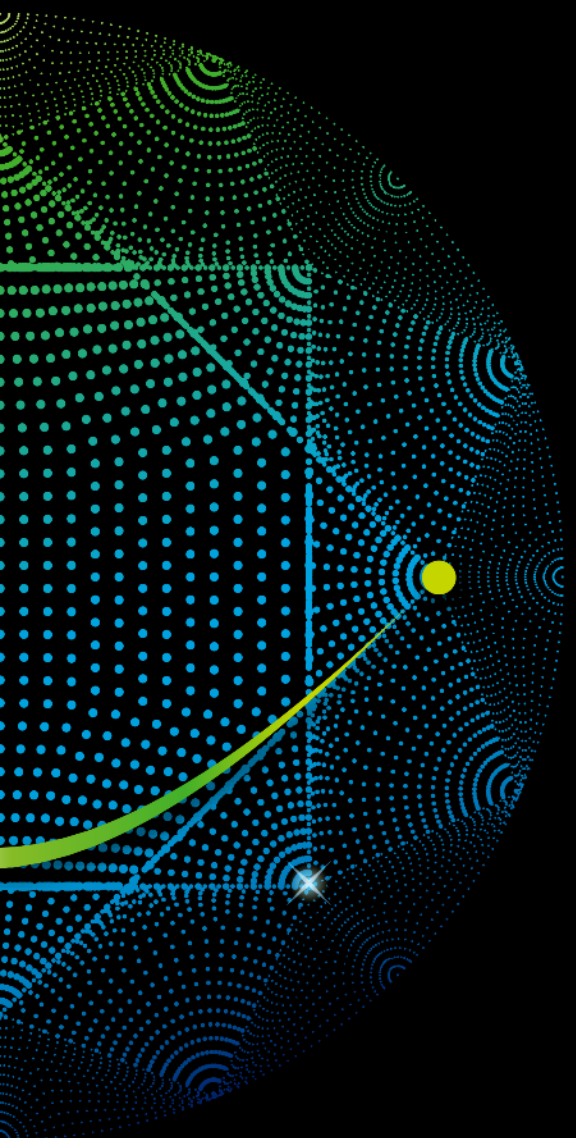
# Transfer Pricing of Financial Guarantees: a Global Survey

May 2022

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# Survey methodology

# About this survey



The survey was conducted by Deloitte Luxembourg within Deloitte's P&E—Financial Transactions network to gather insights on various countries' perspectives and practices regarding pricing financial guarantees.

**Transfer pricing professionals within the network were asked five questions\*:**

1. Which method(s) of pricing financial guarantees have you applied in practice since Chapter X was introduced in the OECD Transfer Pricing (TP) Guidelines in February 2020?
2. Has the pricing of financial guarantees changed in your jurisdiction since the introduction of Chapter X? If yes, is this due to practice or a specific communication by your local tax authorities?
3. Which guarantee pricing method(s) are preferred by your country's tax authorities?
4. Have your country's courts ruled on the transfer pricing of guarantees? If yes, please provide references and a brief comment. What are the typical arguments used by the tax authorities in this regard?
5. How would you approach and evaluate upstream guarantees, in light of any specific rules or practices in your country?



**Footnote**

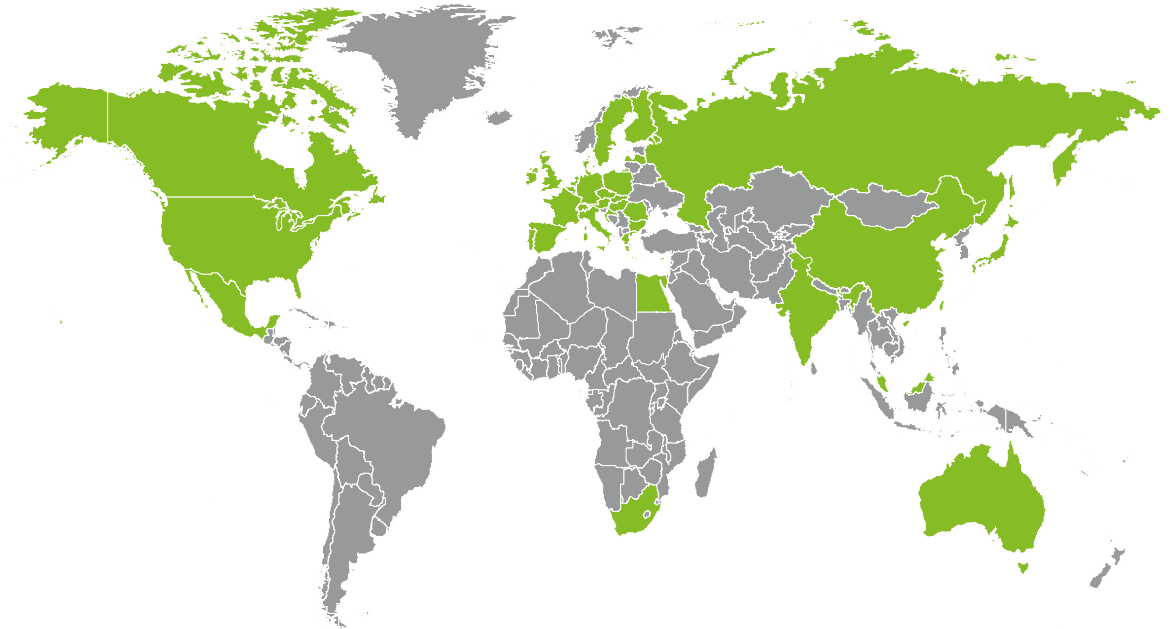
(\*) Responses were gathered between January and April 2022.

# About this survey: geographical coverage



Responses were collected from the following **37** jurisdictions:

• Australia	• Germany	• Portugal
• Austria	• Greece	• Romania
• Belgium	• Hungary	• Russian Federation
• Bulgaria	• India	• Singapore
• Canada	• Ireland	• Slovakia (Slovak Republic)
• China	• Italy	• South Africa
• Croatia	• Japan	• Spain
• Cyprus (*)	• Latvia (**)	• Sweden
• The Czech Republic	• Luxembourg	• Switzerland
• Denmark	• Malaysia	• United Kingdom
• Egypt	• Mexico	• United States
• Finland	• The Netherlands	
• France	• Poland	

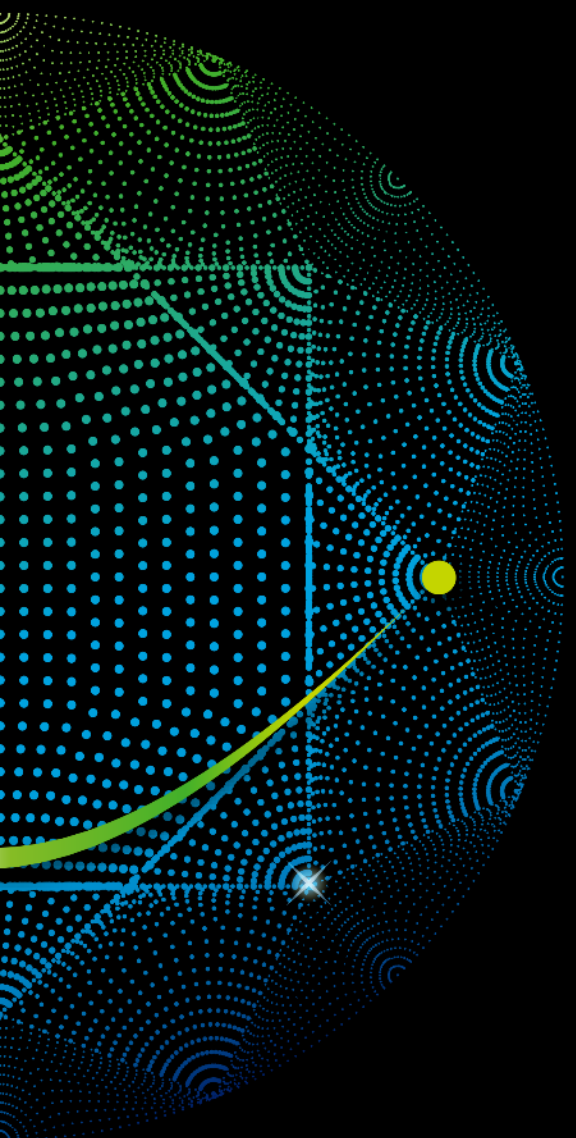


■ Countries covered by the survey    ■ Countries not covered by the survey

### Footnote


(\*) When the survey was conducted, Cyprus had no general TP rules in place (although they are expected to be introduced sometime in 2022 with effect as from 1 January 2022). Given the limited (voluntary) applicability of TP provisions in Cyprus, the Cyprus tax authorities have not focused on guaranteed fees from a TP perspective, and there is generally minimal experience in Cyprus regarding this matter. Therefore, no specific feedback was received for the survey's five questions.

(\*\*) The answers from Latvia also reflect the perspectives of Estonia and Lithuania.

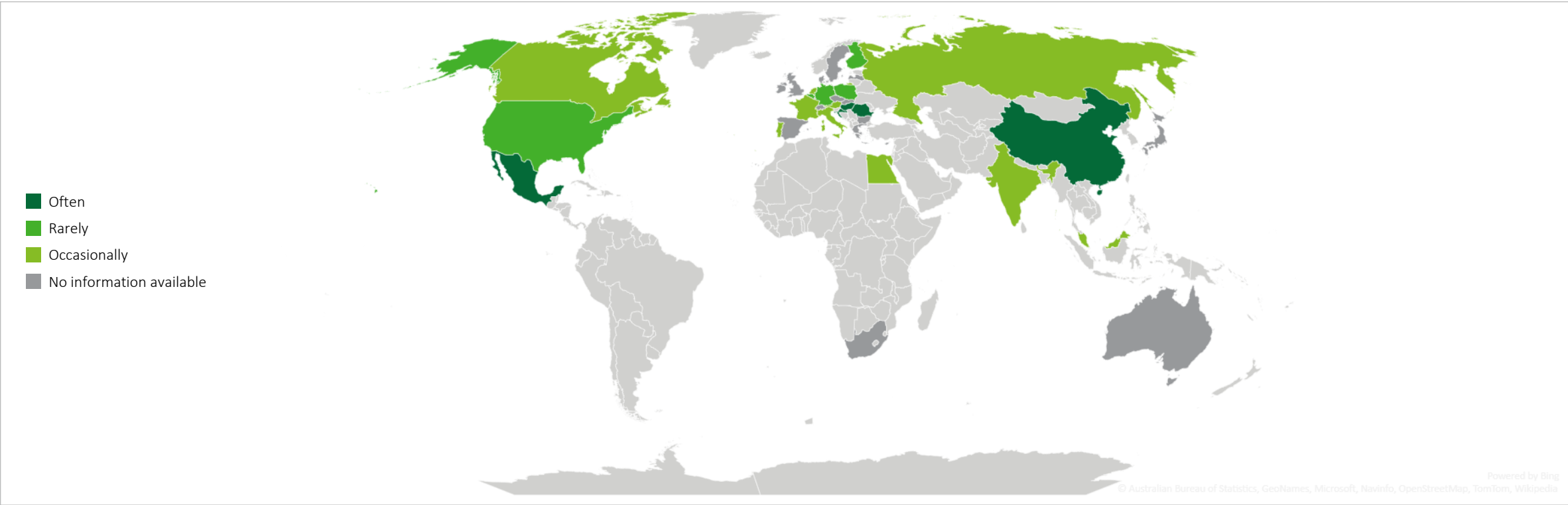


# Pricing methods applied since the introduction of Chapter X


# Which method(s) of pricing financial guarantees have you applied in practice since Chapter X was introduced in the OECD TP Guidelines in February 2020?

 The following graphs summarize the types of pricing methods applied and the frequency of their application

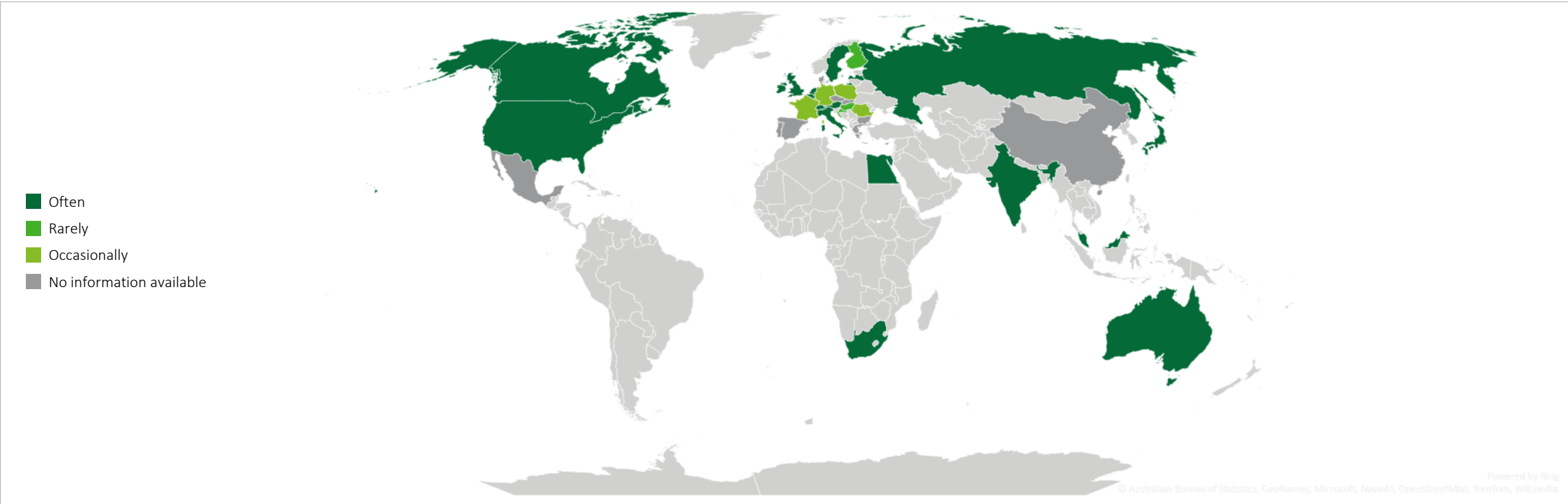
## The comparable uncontrolled price (CUP) method



# Which method(s) of pricing financial guarantees have you applied in practice since Chapter X was introduced in the OECD TP Guidelines in February 2020?


 The following graphs summarize the types of pricing methods applied and the frequency of their application

## The yield approach

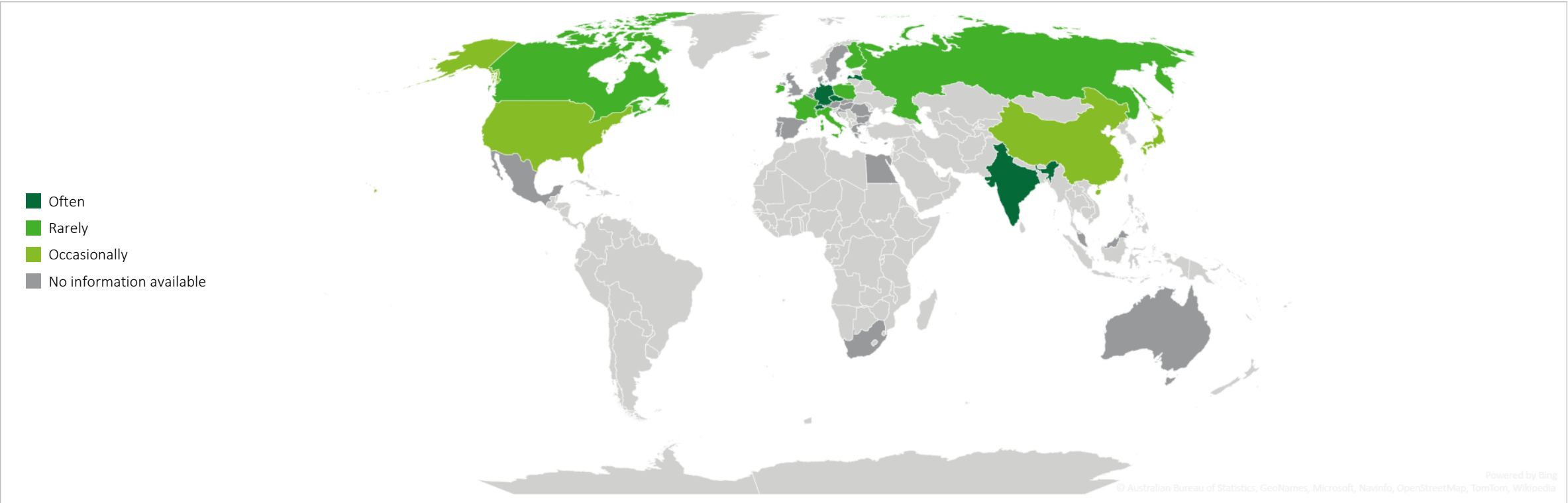





# Which method(s) of pricing financial guarantees have you applied in practice since Chapter X was introduced in the OECD TP Guidelines in February 2020?

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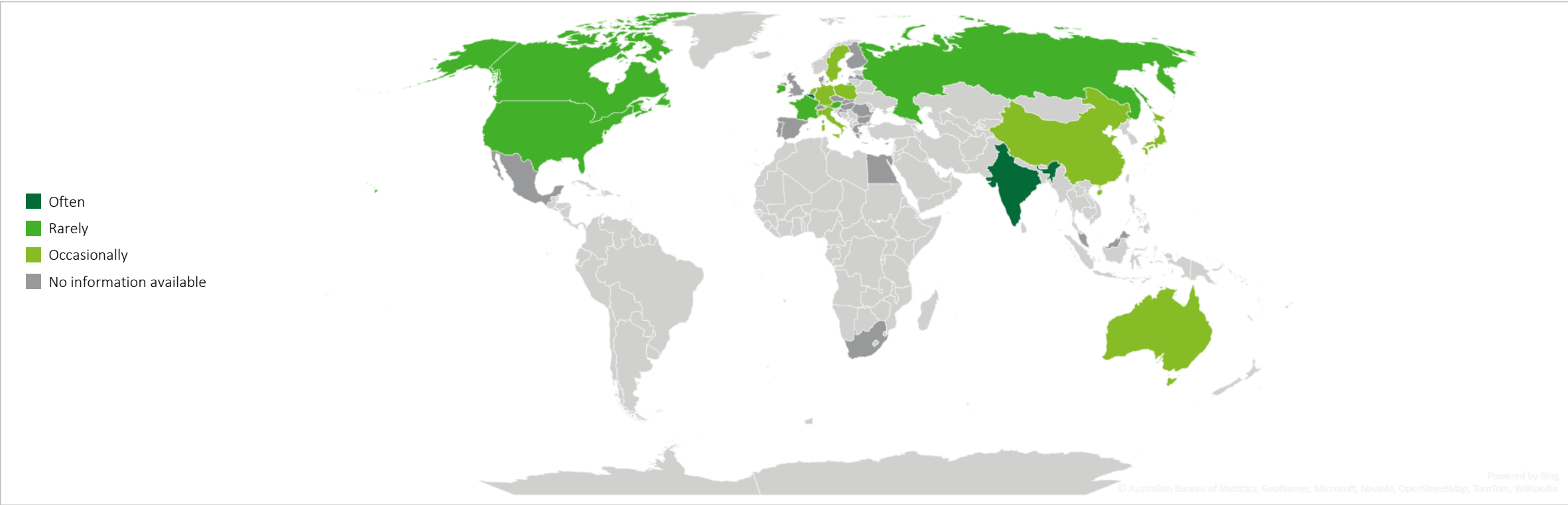
## The cost approach




# Which method(s) of pricing financial guarantees have you applied in practice since Chapter X was introduced in the OECD TP Guidelines in February 2020?

 The following graphs summarize the types of pricing methods applied and the frequency of their application

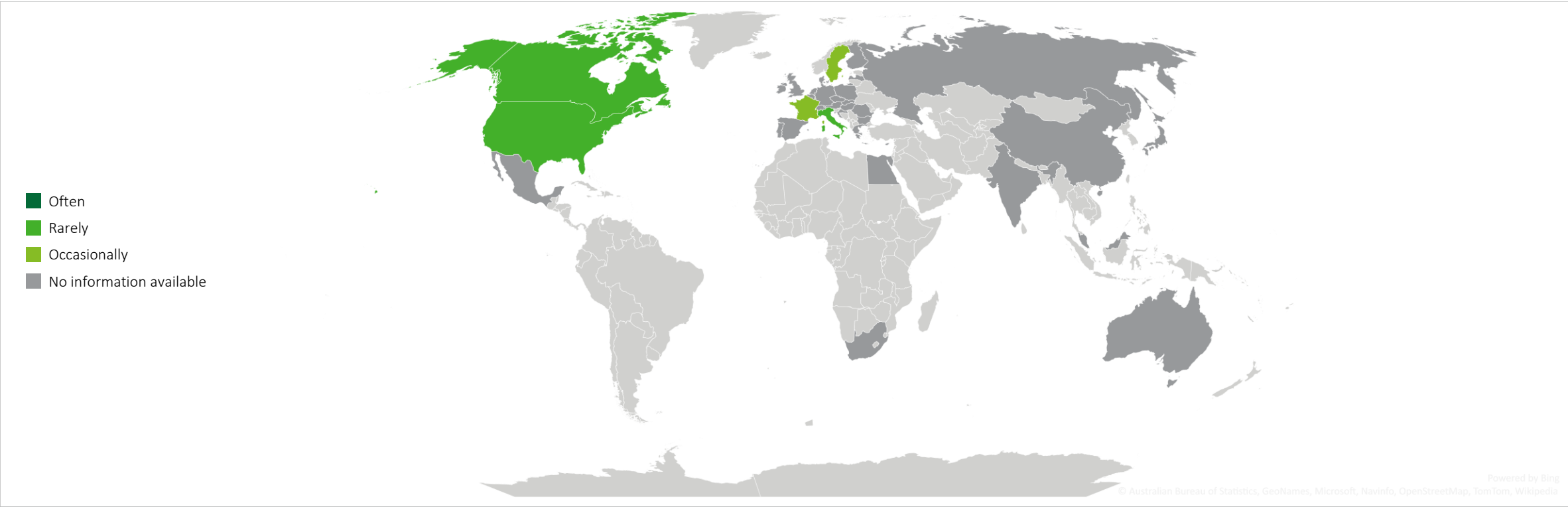
## The valuation of expected loss approach

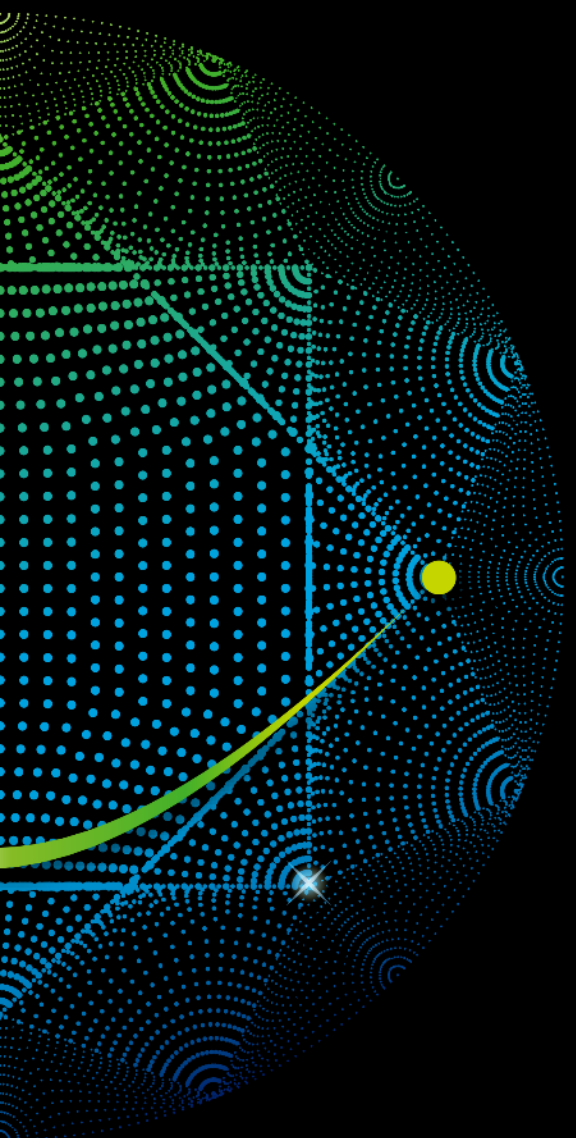


# Which method(s) of pricing financial guarantees have you applied in practice since Chapter X was introduced in the OECD TP Guidelines in February 2020?

 The following graphs summarize the types of pricing methods applied and the frequency of their application

## The capital support method





# Changes since the introduction of Chapter X

# Has the pricing of financial guarantees changed in your jurisdiction since the introduction of Chapter X? If yes, is this due to practice or a specific communication by your local tax authorities?



Based on the majority of the responses, there has been no distinct change in the pricing of financial guarantees since Chapter X was introduced, despite being considered the key guidance that tax authorities in the surveyed countries are supposed to follow. This is most likely because previous local approaches were already largely aligned with Chapter X's guidance.

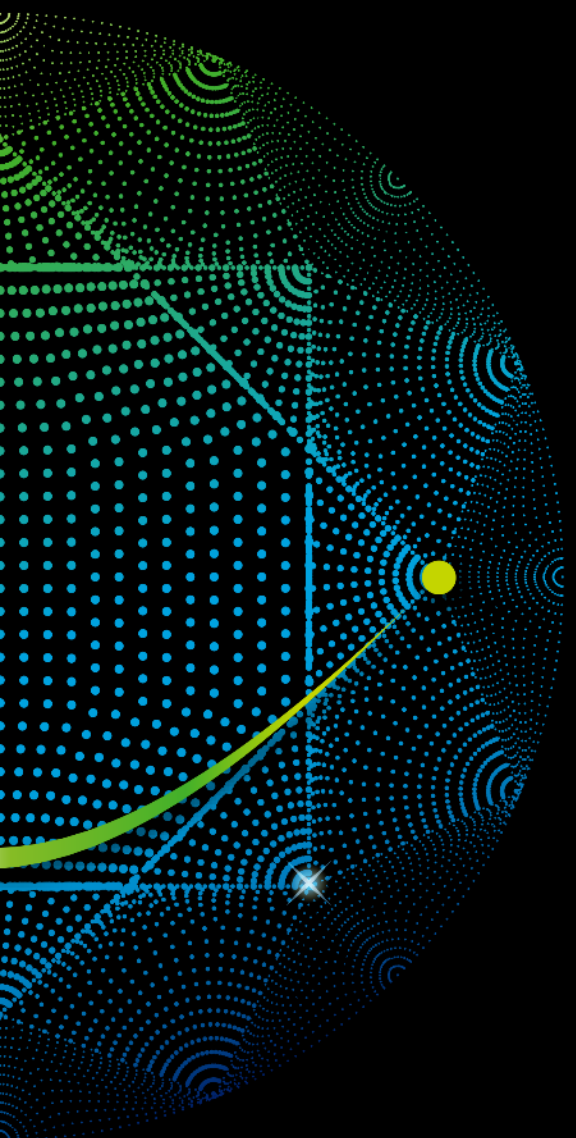
However, some respondents reported changes in their local practices following the introduction of Chapter X, for example:

- **Austria:** while tax authorities have accepted bank guarantees or even bank offers in the past, such approaches are less likely to be accepted in the future.
- **France:** before the introduction of Chapter X, many groups relied on the Carrefour court case (1992), where the French Supreme Administrative Court considered a rate of 0.25% for a loan guarantee to be at arm's length.
- **Japan:** Japanese multinationals have started to set guarantee fees based on economic analysis or benchmarking studies using market data.

Only a few respondents reported that Chapter X had been formally referenced in their local regulations. More

specifically, respondents from the following countries stated that Chapter X had been implemented in domestic law or was the object of a specific communication by the local tax authorities:

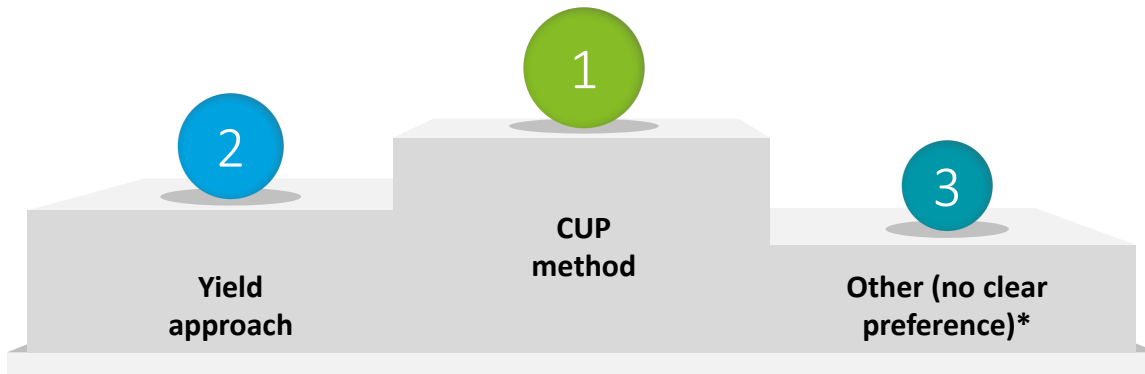
- **Belgium:** the Belgian tax authorities issued a circular validating the methods listed in Chapter X, with a clear preference for the yield approach if and where applicable.
- **Denmark:** the Danish tax authorities have incorporated the principles of Chapter X in their administrative guidance.
- **Finland:** the Finnish tax authorities published a communication on Chapter X, but without further guidance.
- **Ireland:** while Chapter X was introduced into Irish law for accounting periods from 1 January 2022, it is unlikely that specific or detailed guidance for the pricing of guarantees will be issued. However, existing guidance from the Irish tax authorities is explicit that Chapter X is considered best practice, and groups should have a detailed rationale for deviating from its guidance.
- **Sweden:** the Swedish tax authorities have clarified that they expect Chapter X to be followed regarding guarantees.



# Pricing method(s) favored by tax authorities

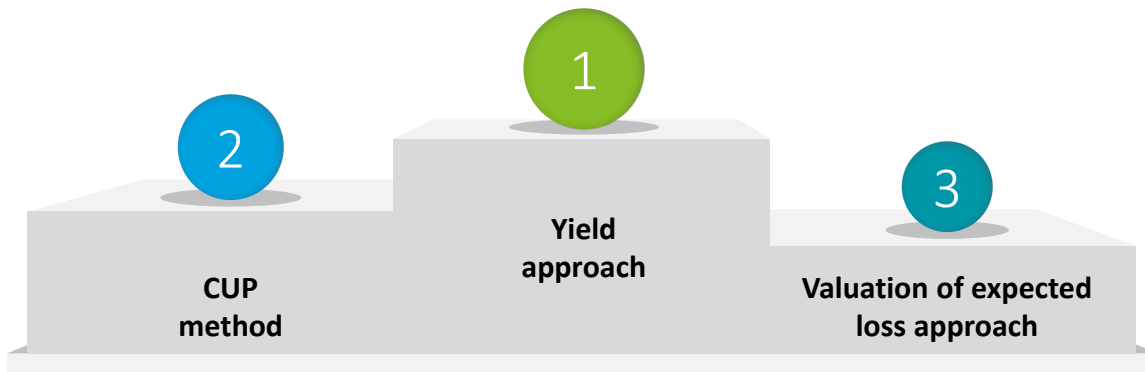
# Which guarantee pricing method(s) are preferred by your country's tax authorities?

## Tax authorities' preferred methodology



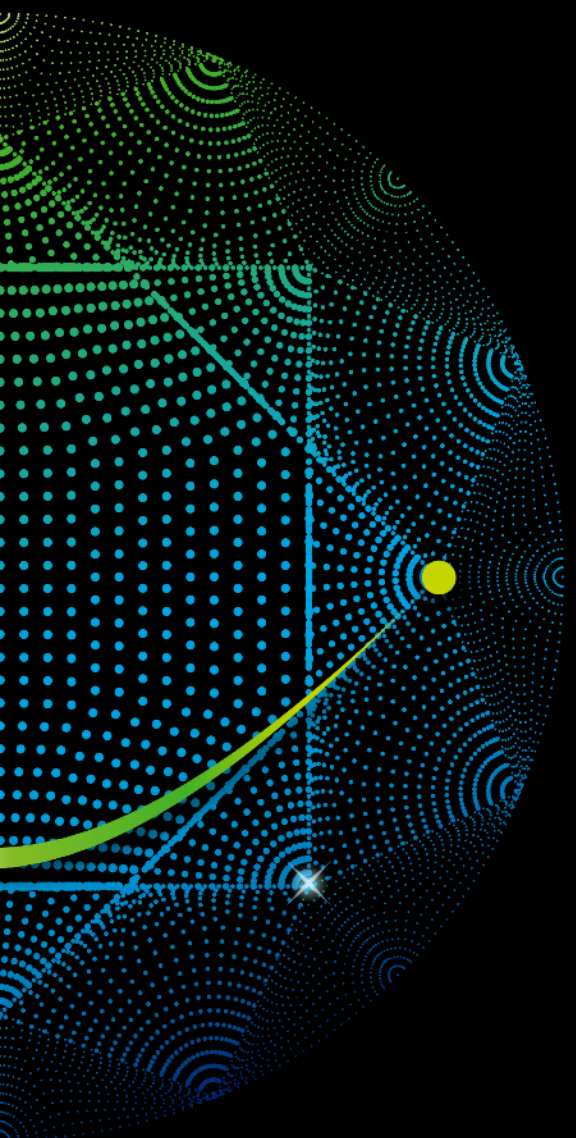
1. While the most used method since Chapter X's introduction is the yield approach, local tax authorities seem to be favoring the CUP method.
2. Several tax authorities have not indicated a preference for any method. Therefore, in principle, all the methods listed in Chapter X should be acceptable if at arm's length.
3. It is also worth noting that some participants seem to consider the CUP method and the yield approach as not wholly separate methodologies, which could also reflect the perception of the local tax authorities.

## Most used methods after Chapter X's introduction



### Footnote

(\*) Based on respondents' feedback, local tax authorities have not indicated any clear preference for a particular method. Therefore, no hierarchy is discernible in these countries.

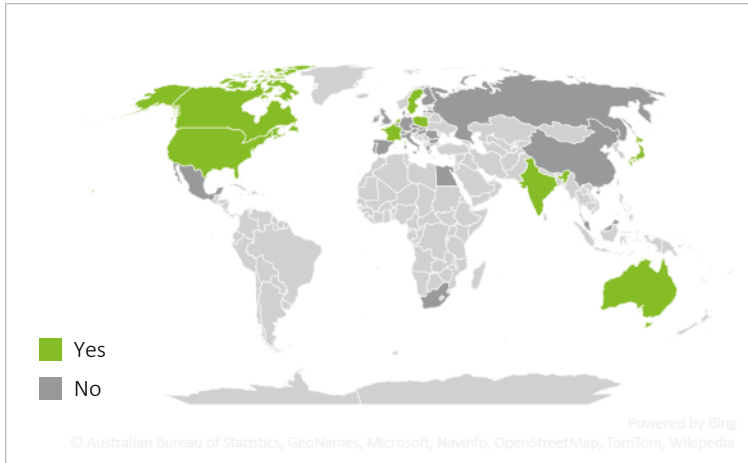


# Jurisprudence



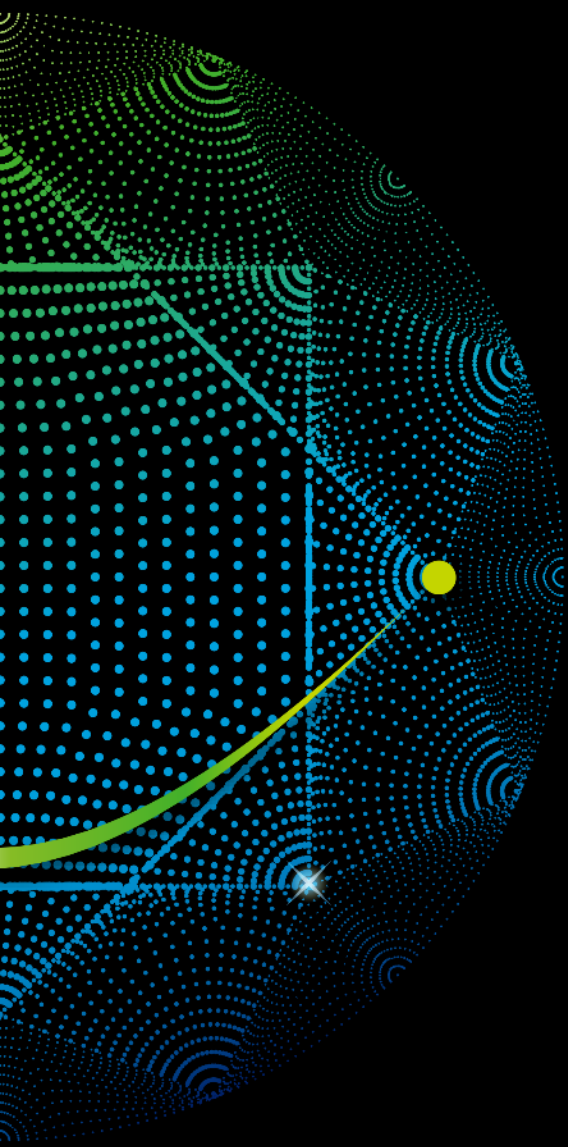
# Have your country's courts ruled on the transfer pricing of guarantees? If yes, please provide references and a brief comment. What are the typical arguments used by the tax authorities in this regard?

## Have your country's courts ruled on the transfer pricing of guarantees?



Based on our respondents' answers, the following countries' courts have ruled on the transfer pricing of guarantees:

<p><b>Australia:</b>  <b>Relevant transfer pricing cases:</b> Chevron and Singtel  <b>Key issues addressed:</b></p> <ul style="list-style-type: none"> <li>• Implicit support</li> <li>• Assuming hypothetical parental guarantees</li> </ul>	<p><b>India:</b>  <b>Key issues addressed:</b></p> <ul style="list-style-type: none"> <li>• whether the guarantee should be considered as a shareholder activity or not.</li> </ul>	<p><b>Poland:</b>  <b>Relevant transfer pricing cases:</b> the Polish Supreme Administrative Court of 16 January 2020 (II FSK 373/18).  <b>Key issues addressed:</b></p> <ul style="list-style-type: none"> <li>• the chargeable nature of the guarantees.</li> </ul>
<p><b>Canada:</b>  <b>Relevant transfer pricing cases:</b> General Electric Capital Canada  <b>Key issues addressed:</b></p> <ul style="list-style-type: none"> <li>• Implicit support   benefit test</li> </ul>	<p><b>Japan:</b>  <b>Relevant transfer pricing cases:</b> in 2002, a tax tribunal decided on the CUP approach for an intercompany guaranteed fee. The original assessment was made based on a variation of the cost approach; however, the tribunal denied the approach and surveyed market prices for guarantees.</p>	<p><b>Sweden:</b>  <b>Key issues addressed:</b></p> <ul style="list-style-type: none"> <li>• benefit test, whether a charge   deduction should be made (i.e., not concerning how to price the guarantee as such).</li> <li>• In most situations, the Swedish courts have concluded that a Swedish parent does not have to charge a guarantee to its operating subsidiaries. The Swedish tax authorities have clarified that they will follow Chapter X going forward.</li> </ul>
<p><b>France:</b>  <b>Relevant transfer pricing cases:</b> Carrefour and CIC  <b>Key issues addressed:</b></p> <ul style="list-style-type: none"> <li>• In the Carrefour case, the French court considered that an appropriate remuneration for a guarantee was 0.25%, although no economic rationale was provided.</li> <li>• In the CIC case, the French tax authorities accepted the approach of relying on the credit default swap (CDS) market to determine a spread.</li> </ul>	<p><b>The Netherlands:</b>  <b>Relevant transfer pricing cases:</b> the Dutch Supreme Court ruled on umbrella guarantees, dealing with the arm's length nature of guarantees itself, although not necessarily on the guaranteed fee.</p>	<p><b>United States:</b>  <b>Relevant transfer pricing cases:</b> Older cases that tangentially focus on transfer pricing aspects of financial guarantees but are not the primary Focus.</p>



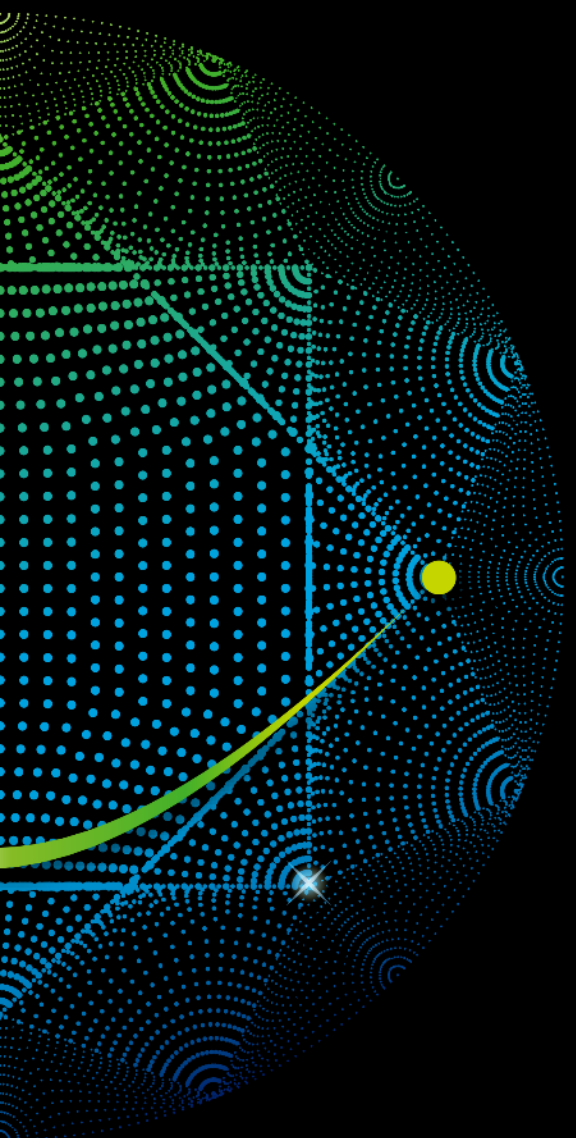
# Upstream guarantees

# How would you approach and evaluate upstream guarantees, in light of any specific rules or practices in your country?



- Most of our respondents did not report specific local rules or practices regarding the transfer pricing considerations of upstream guarantees.
- Although there is limited experience across jurisdictions in analyzing upstream guarantees, the generally adopted approach is to follow the general principles of the OECD TP Guidelines and Chapter X.
- The key conceptual question is whether there is a benefit arising from the upstream guarantee provided by the guarantor. Once the benefit/purpose of the upstream guarantee is assessed and it is determined that a guaranteed fee is to be paid, the standard approaches should be used.
- Some jurisdictions (e.g., Belgium) have explicitly confirmed that they do not expect upstream guarantees to need pricing (depending on the context and the group's shareholding structure).
- Regarding specific rules on upstream guarantees, Portugal published a legislative amendment on 11 January 2022, which determines any credit granted to an insolvent entity by a lender belonging to a group that directly or indirectly controls more than 50% of the insolvent entity will be considered unsecured and subordinated. This means that any guarantee associated with that credit will be disregarded. Additionally, there are rules in Portugal that consider invalid downstream guarantees.





# Key observations

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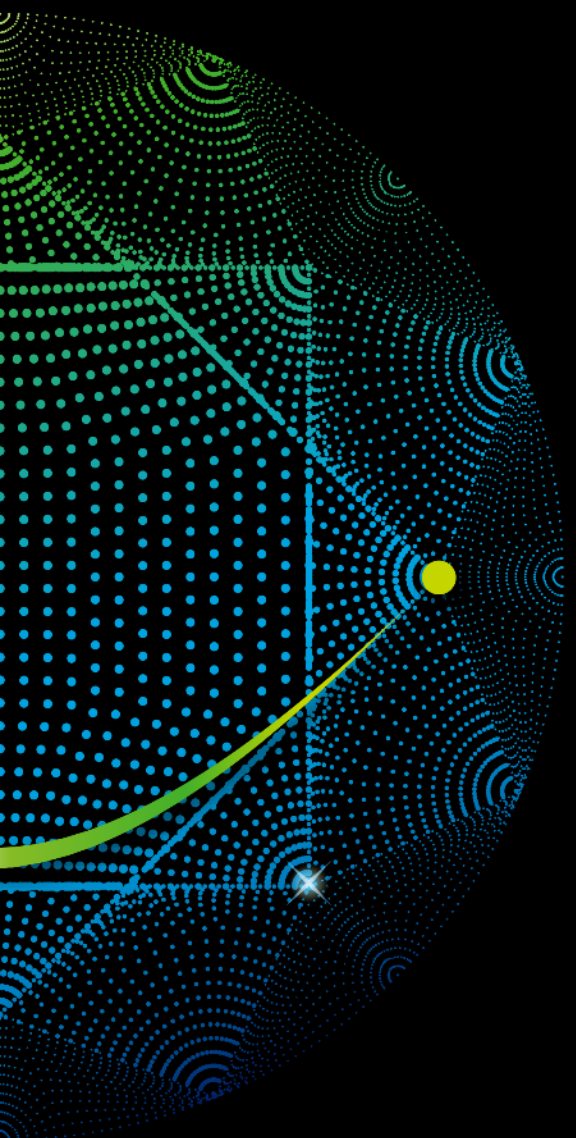


**Based on the responses received, the following observations can be made:**

1. There has been no distinct change in the pricing of financial guarantees since Chapter X was introduced.
2. The most popular pricing approaches are the CUP method and the yield approach.
3. There are no locally specific rules or practices regarding the transfer pricing considerations of financial guarantees—as well as of upstream guarantees—that deviate from Chapter X.
4. There is limited jurisprudence on guarantees, and court cases on pricing intragroup guarantees are rare.
5. No one overall approach has been adopted by local tax authorities regarding the methodologies for pricing financial guarantees.







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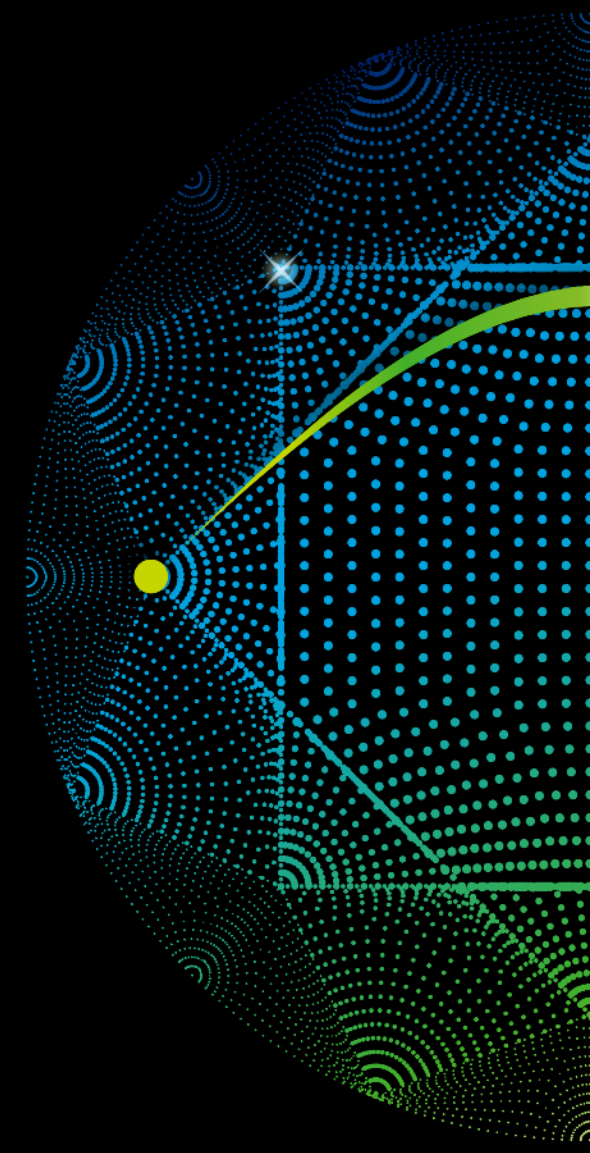
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