

# GLOBAL FORUM ON TRANSFER PRICING 2016

# WELCOME

2-3 March 2016

**GLOBAL FORUM ON TRANSFER PRICING 2016**

**TRANSFER PRICING  
OUTCOMES IN LINE WITH  
VALUE CREATION**

Plenary Session 1

# TRANSFER PRICING OUTCOMES IN LINE WITH VALUE CREATION

**Marlies de Ruiters**  
*Head of the Tax Treaty, Transfer Pricing  
and Financial Transactions Division*



## Public debate



- Fair share in a time of economic crisis
- Level playing field between multinationals and domestic businesses
- Co-ordinated action by governments is key



# Transfer Pricing:

*The arm's length principle under pressure?*



"My arm hurts."



## Addressing Base Erosion and Profit Shifting



## Action Plan on Base Erosion and Profit Shifting



OECD/G20 Base Erosion and Profit Shifting Project

## Aligning Transfer Pricing Outcomes with Value Creation

ACTIONS 8-10: 2015 Final Reports



February 2013

July 2013

October 2015

# BEPS Action Plan



# Action Items

## Coherence

Hybrid Mismatch Arrangements (2)

CFC Rules (3)

Interest Deductions (4)

Harmful Tax Practices (5)

## Substance

Preventing Tax Treaty Abuse (6)

Avoidance of PE Status (7)

TP Aspects of Intangibles (8)

TP/Risk and Capital (9)

TP/High Risk Transactions (10)

## Transparency

Methodologies and Data Analysis (11)

Disclosure Rules (12)

TP Documentation (13)

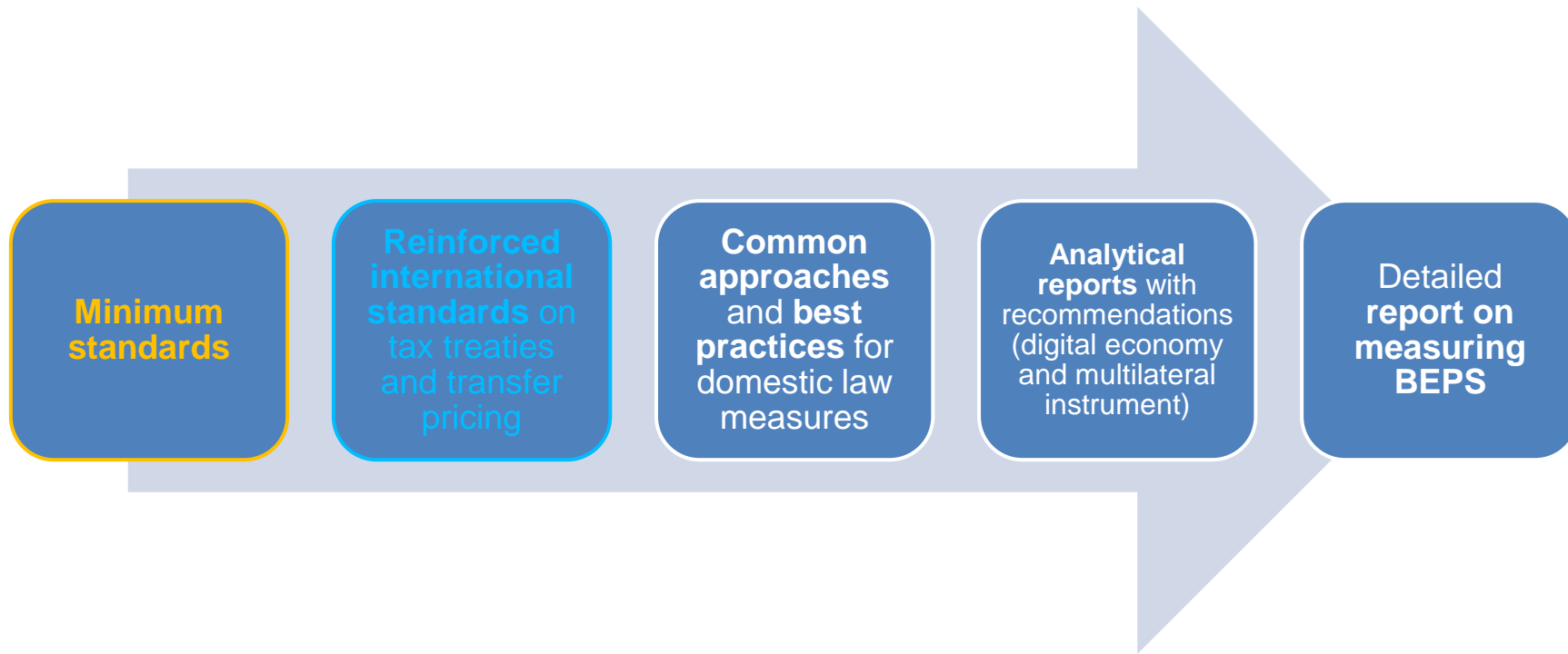
Dispute Resolution (14)

Digital Economy (1)

Multilateral Instrument (15)



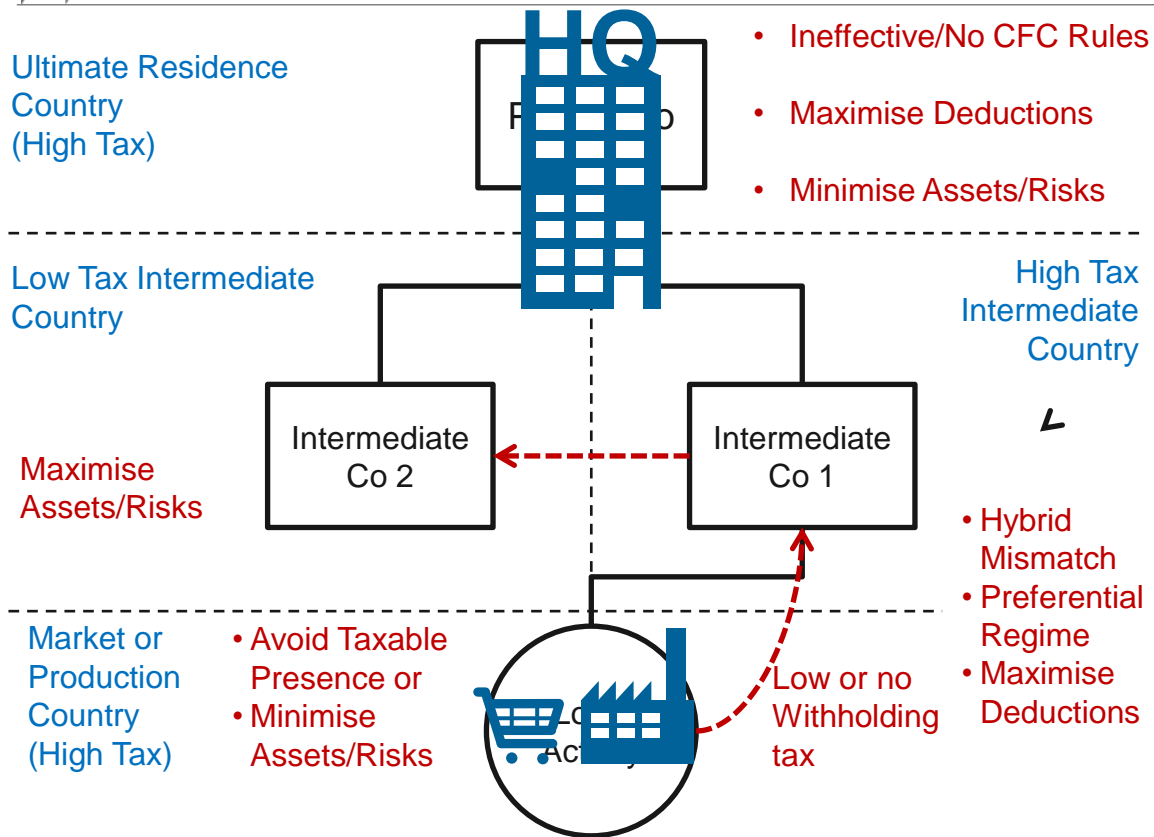
# What's in the BEPS Package?







# Expected impact on BEPS





# TRANSFER PRICING



# Transfer Pricing

## *Report on Actions 8-10*

### *“Aligning Transfer Pricing Outcomes with Value Creation”*

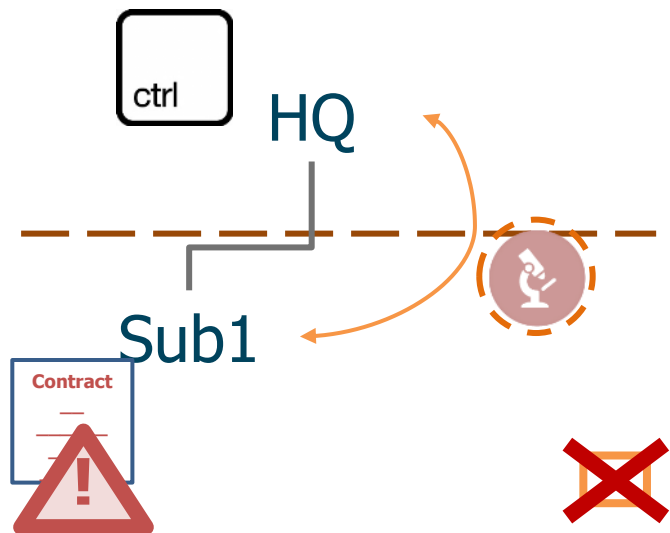
- Applying the Arm’s Length Principle
- Commodity Transactions
- Transactional Profit Split *further work is scoped*
- Intangibles
- Low Value-adding Intra-group Services
- Cost Contribution Arrangements

**Action 13** revised standard for Transfer Pricing Documentation





# Transfer Pricing



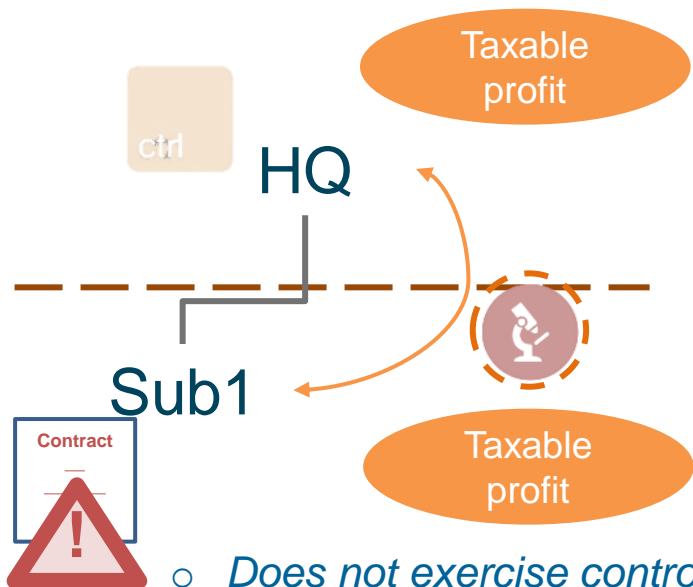
1. Identify risk
2. Determine how risks are contractually assumed
3. Functional analysis
4. Determine whether contractual assumption of risk is consistent with the conduct of the associated enterprises and other facts of the case



# Transfer Pricing

## 5. Apply guidance for allocation of the risk

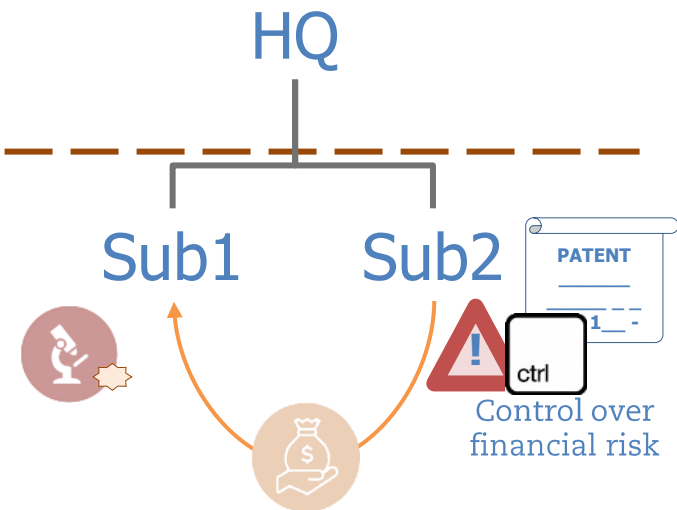
Allocation to party that exercises control and has the financial capacity to assume the risk



- Does not exercise control over the risk?; or
- Does not have the financial capacity to assume the risk



# Transfer Pricing



## Guidance on Intangibles

- Framework Chapter 1



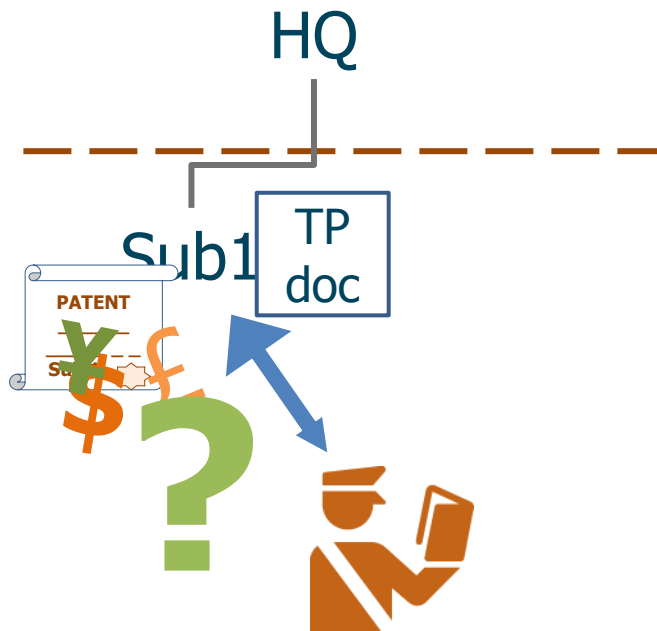
Development  
Exploitation *fx* Enhancement  
Protection Maintenance

- Funder without performing important functions related to intangible and without assuming the risks related to the intangible:  
***risk-adjusted financial return if control over financial risk***
- Funder without control over financial risk: ***no more than risk free financial return***





# Transfer Pricing



## Guidance on Intangibles Hard-to-Value Intangibles

- Allows taxpayer to demonstrate proper transfer pricing analysis
- Addressing information asymmetries
  - Ex post outcomes



presumptive evidence for  
appropriateness

- Ex ante pricing agreements



# Transfer Pricing

- Transactional profit splits
- Financial transactions
- Complete consolidation of TPG

## Further revised guidance

## TP toolkits Low Income Countries

- Work mandated by the G20 Development Working Group



## Implementation

- Hard to Value Intangibles
- Low Value Adding Services

# TRANSFER PRICING & DEVELOPING COUNTRIES



# Toolkits for low capacity developing countries: deadlines and division of work

	1. Report Tax Incentives	Nov 2015	IMF
TP	2. Toolkit Transfer Pricing Comparability <i>Including supplementary work on mineral pricing</i>	Oct 2016	WBG & OECD OECD
	3. Report Indirect transfers of Assets	Jun 2016	IMF & OECD
TP	4. Toolkit Transfer Pricing Documentation	Oct 2016	OECD
	5. Toolkit Tax Treaty Negotiations	Dec 2016	OECD
TP	6. Toolkit Base Eroding Payments	Jun 2017	OECD
TP	7. Toolkit Supply Chain Management	Mar 2018	OECD
TP	8. Toolkit BEPS risk assessment	Mar 2018	OECD

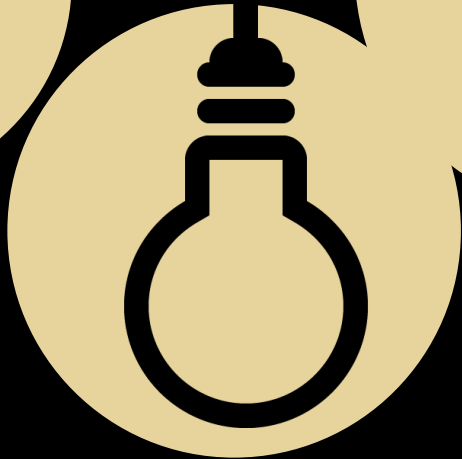
# TRANSPARENCY & CERTAINTY



Exchange  
of  
rulings



FHTP



TP documentation and  
Country-by-Country  
Reporting



Mandatory  
disclosure



MAC  
Membership

# IMPLEMENTATION



# Implementation

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**Domestic Law Measures**  
Domestic Legislative procedures

**Tax Treaty Measures**  
Renegotiations  
Multilateral instrument

**Transfer Pricing Guidance**  
Immediately for article 9

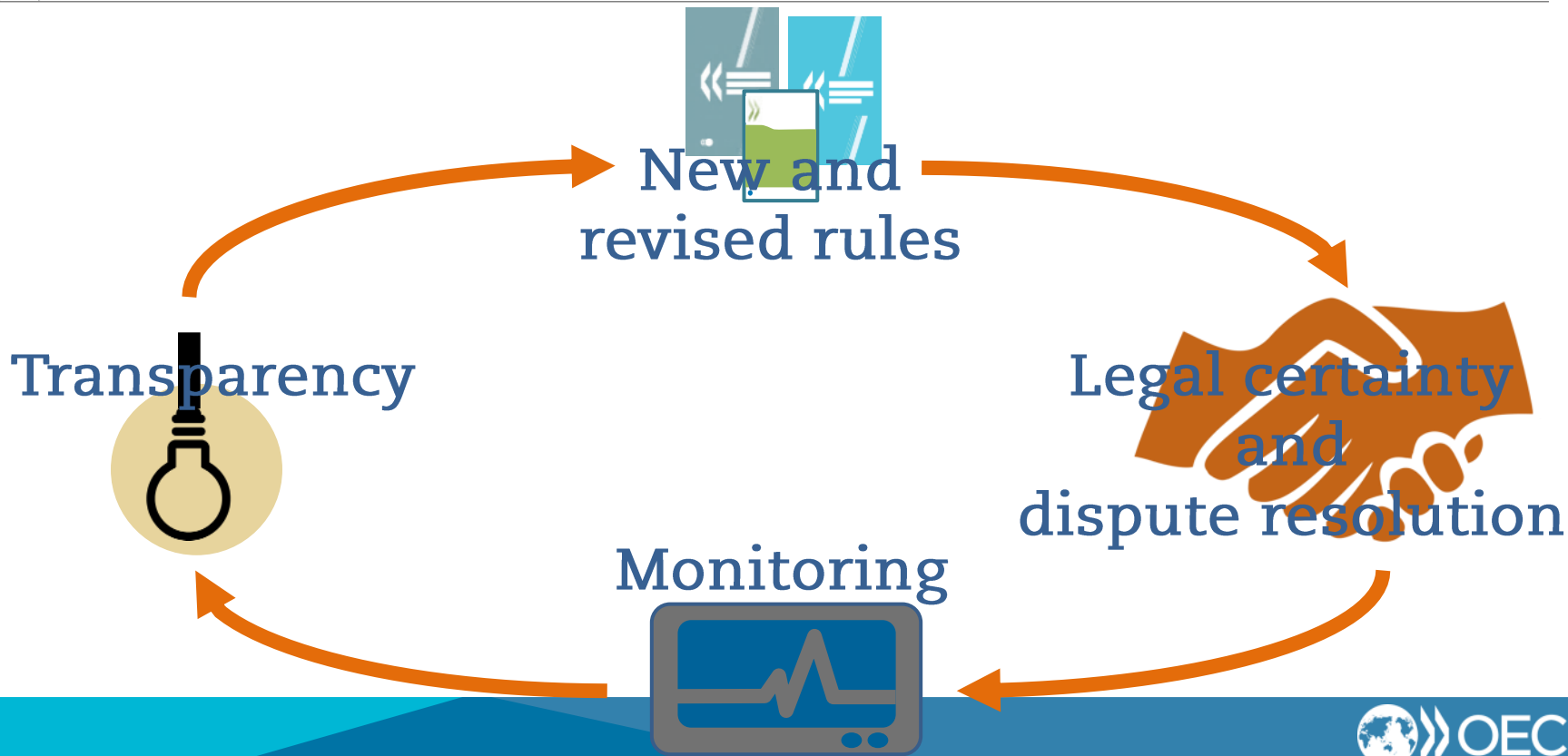




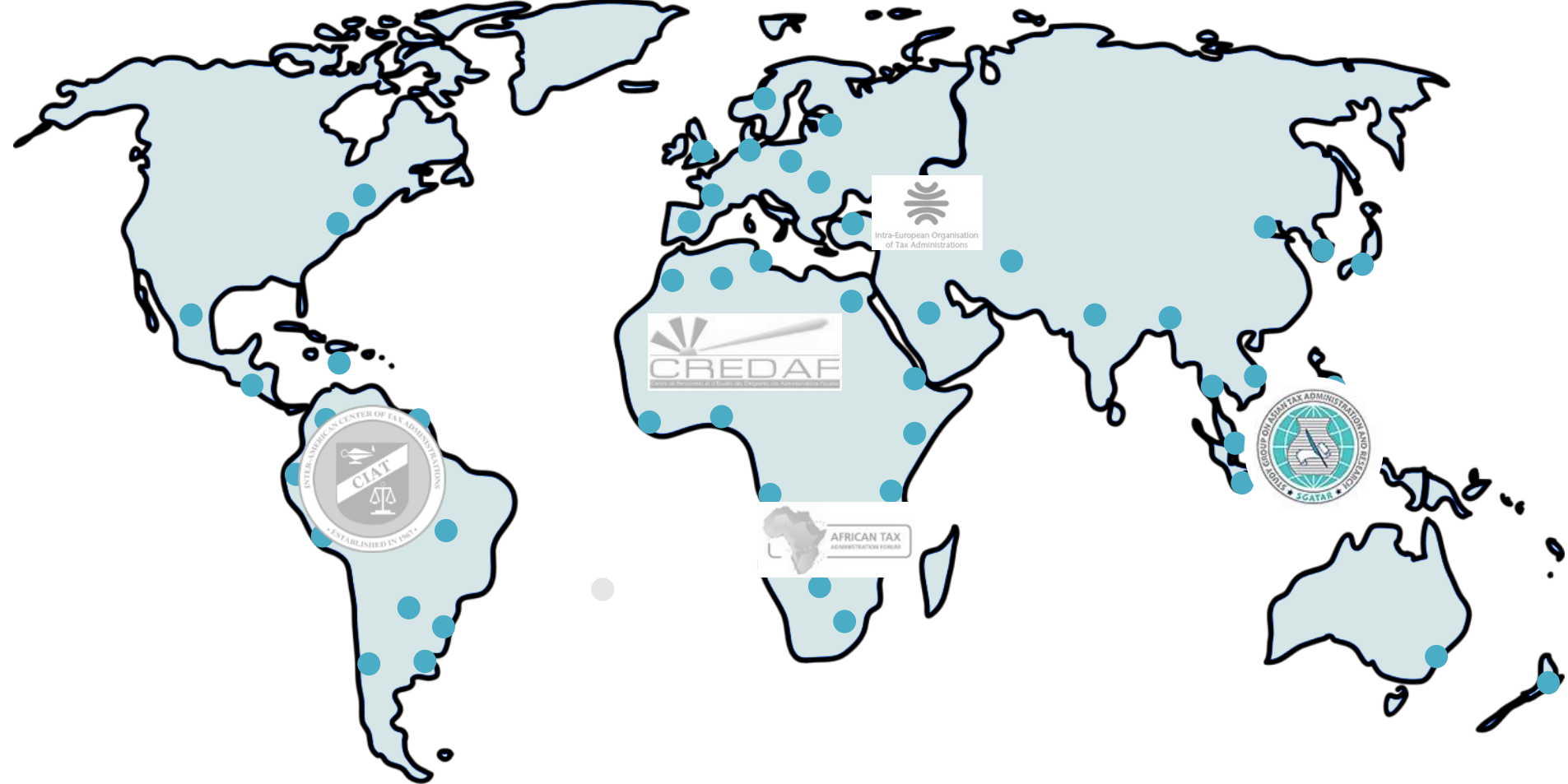
# Monitoring



# Holistic Approach



# INCLUSIVENESS



# International Consensus



# Inclusiveness



**“We, therefore, strongly urge the timely implementation of the project and encourage all countries and jurisdictions, including developing ones, to participate. To monitor the implementation of the BEPS project globally, we call on the OECD to develop an inclusive framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions which commit to implement the BEPS project, including developing economies, on an equal footing.”**

**Website:** [www.oecd.org/tax/beps.htm](http://www.oecd.org/tax/beps.htm)

**Contact:** [CTP.BEPS@oecd.org](mailto:CTP.BEPS@oecd.org)

**Tax email alerts:**  
[www.oecd.org/ctp/tax-news.htm](http://www.oecd.org/ctp/tax-news.htm)

**Via Twitter:** Follow us via @OECDtax

# GLOBAL FORUM ON TRANSFER PRICING 2016

## CHAPTER I: IT'S ALL ABOUT RISK (1)

Plenary Session 2



# Risk

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- One of the key BEPS issues – a piece of paper shifts profits.
- Until now, no framework for analysing risk in Guidelines, even though risk is an extremely important factor in determining price.
- The new framework in Chapter I is based on qualitative, specific functions that exercise control over risk.
- The number of people involved is not relevant.





# But, is the framework for analysing risk

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- Too complex?
- Too subjective?
- Will it move risk, and therefore profits/losses from subsidiaries to head offices?



# TP analysis of risk

- Risk is inherent in business activities
- Opportunities  $\longleftrightarrow$  Risks
- Increased assumption of risk  $\rightarrow$  Increase in expected return
- Identifying SPECIFIC risks IN A TRANSACTION that are ECONOMICALLY SIGNIFICANT goes hand-in-hand with identifying functions and assets





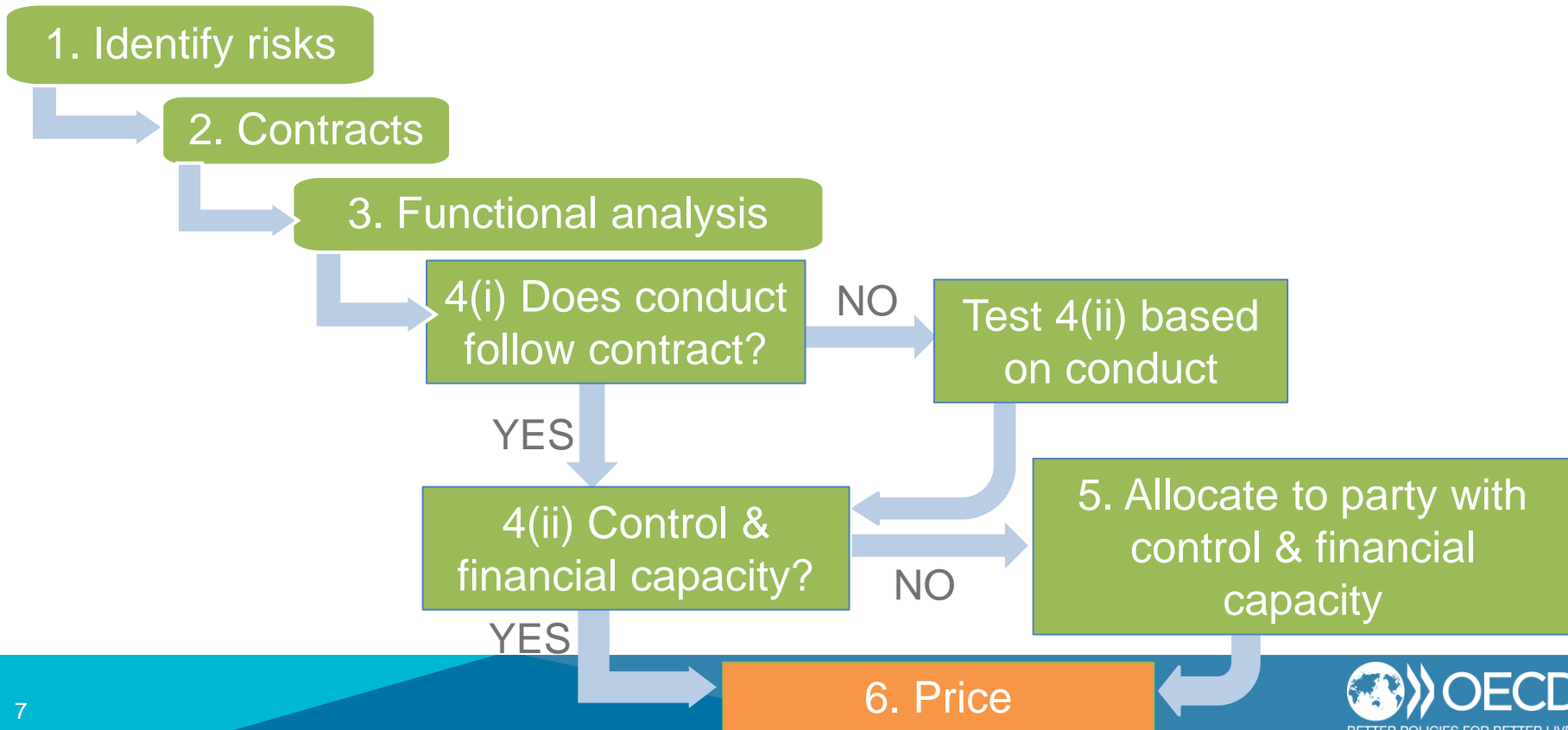
## TP location of risk

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- The contract tells us how parties have allocated risk on paper
- Do the parties follow that allocation in reality?
- Does the party control its risk?
- The Guidelines assert that a party does not assume a risk it does not control



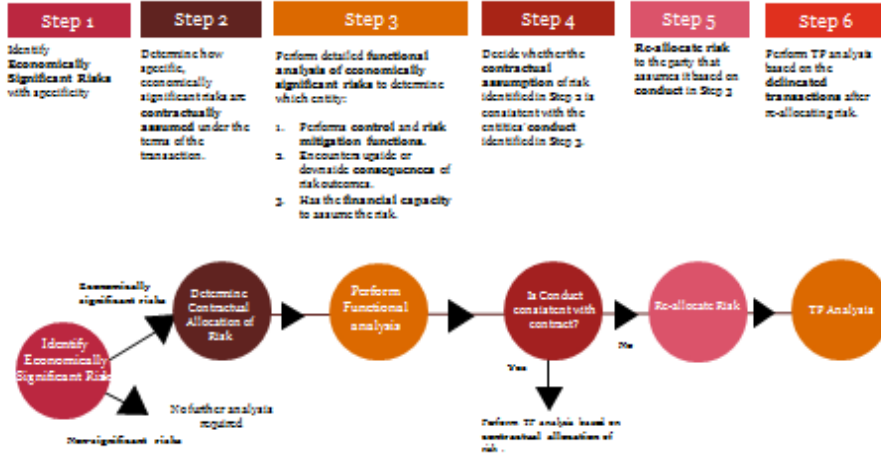
# Risk analysis framework (1.60)





# Practitioners will adopt the framework

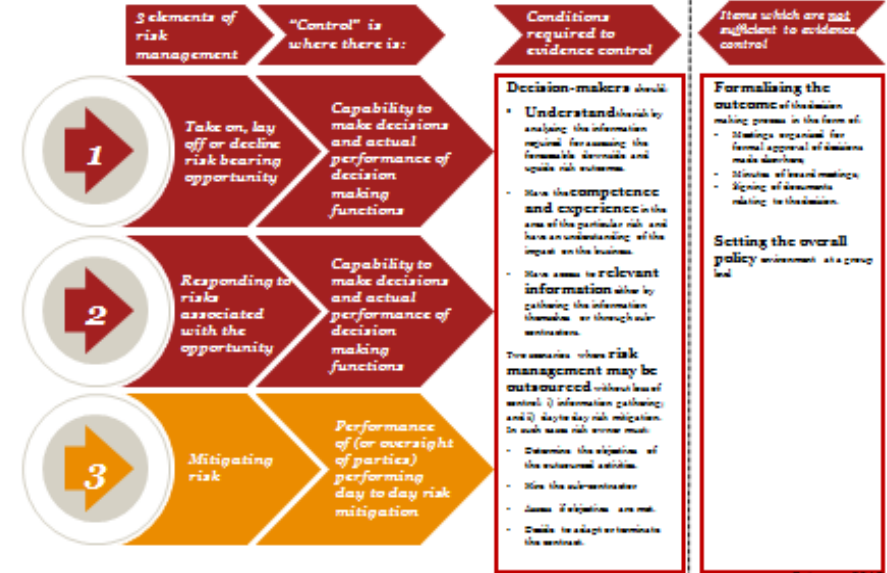
## New Risk Analysis Framework



PwC

February 2016  
6

## Meaning of “control” over risks



PwC

February 2016  
7



## Exercising control over risk (1.65)

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Capability and actual performance:

- i. Decisions to take on, lay off or decline a risk-bearing opportunity
- ii. Decisions on whether and how to respond to the risks associated with the opportunity
- iii. Mitigate risk: to take measures that affect risk outcomes or, if risk mitigation is outsourced,
  - Set objectives
  - Hire, assess and, if necessary, fire the provider



## Financial capacity to assume the risk (1.64)

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- Access to funding to take on the risk or lay off the risk, to pay for the risk mitigation functions and to bear the consequences of the risk if the risk materialises
- Takes into account the available assets and the options realistically available to access additional liquidity, if needed, to cover the costs anticipated to arise should the risk materialise



## In most cases a simple test (1.94)

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- Does the party assuming a risk under the contract exercise control?
- If it does, it assumes the risk
- If other parties also exercise control, then that function should be compensated as normal, but those other parties do not take on the risk





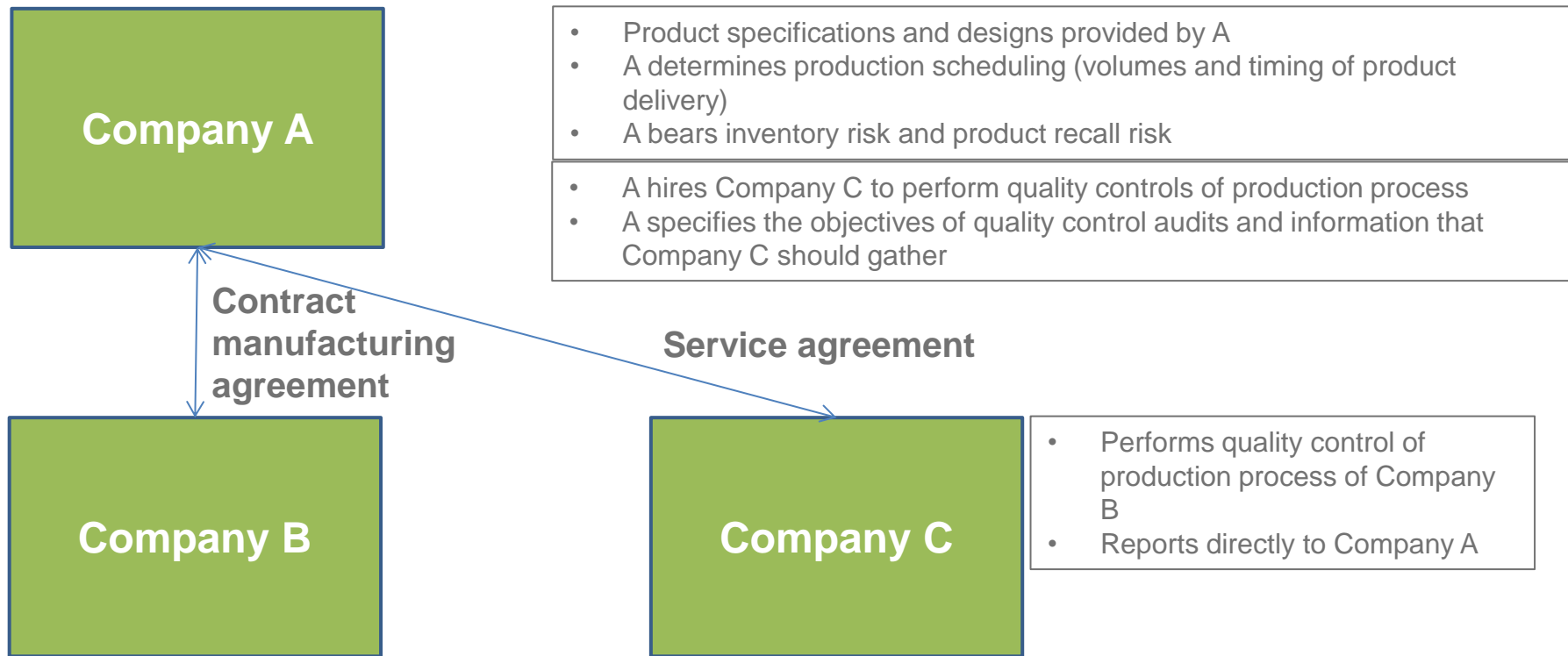
# Transactional risk-taking not policy setting (1.66, 1.76)

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- Control over risk is NOT
  - Formal approval
  - Signing of documents
  - Policy setting
- The Board or committees may set policies, but this is not a decision to take on, lay off, decline, or mitigate the specific risk in the transaction. It is not control.



# Example: Control over risk (1.69)





# Step 1: Distribution of heating oil

- Product is undifferentiated
- Market is competitive
- Market size is predictable
- Players are price-takers



Ability to influence margins may be limited

Credit terms fund working capital



Credit terms are crucial



Risk on cost of capital is significant



## Step 2

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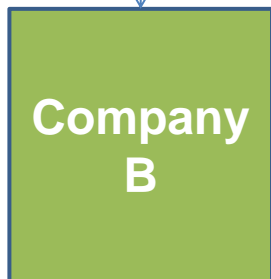
- Identity of parties assuming risk may be set out in written contracts, explicitly or implicitly.
- Contractual assumption of risk = *ex ante* agreement to bear some or all of potential costs associated with the *ex post* materialisation of downside outcomes of risk in return for some or all of potential benefit associated with the *ex post* of materialisation of risk outcomes



# Step 3: Example 1



Contract research agreement



Step 1: development risk is identified as economically significant

Step 2: under the contract, Company A assumes development risk

Step 3: based on the functional analysis, Company A controls its development risk through exercising its capability and authority by:

- Performing part of the development work
- Seeking specialist input
- Hiring researcher
- Deciding the type of research to be undertaken and objectives to be assigned to it
- Allocating budget to Company B
- Mitigating the risk by outsourcing to and controlling development activities of Company B.
- Assessing, based on Company B's reports, the development and the achievement of objectives
- Deciding whether continuing investments are warranted in light of outcomes

Company A has the financial capacity to assume the risk

Company B has no capability to evaluate the development risk and does not make decision about Company A's activities Company B ensures competent performance of research activities



# Step 4: Example 1



Contract research agreement



Step 1: development risk is identified as economically significant

Step 2: under the contract, **Company B** assumes development risk

Step 3: based on the functional analysis, Company A controls its development risk through exercising its capability and authority by:

- Performing part of the development work
- Seeking specialist input
- Hiring researcher
- Deciding the type of research to be undertaken and objectives to be assigned to it
- Allocating budget to Company B
- Mitigating the risk by outsourcing to and controlling development activities of Company B.
- Assessing, based on Company B's reports, the development and the achievement of objectives
- Deciding whether continuing investments are warranted in light of outcomes

Company A has the financial capacity to assume the risk

Company B has no capability to evaluate the development risk and does not make decision about Company A's activities. Company B ensures competent performance of research activities (process, expertise assets).



## Step 4: Example 1

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- Under Step 4(i), absent evidence that the contractual terms are not followed, Company B contractually assumes development risk....
- However, under Step 4(ii), Company B has no capability to evaluate development risk and does not make decisions about Company A's activities
- Company B has no decision making functions leading to control over development risk



Development risk is controlled by Company A → **Apply Step 5**



## Step 5

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- If under Step 4(ii) the party does not control the risk or does not have the financial capacity to assume the risk → allocate the risk to the party **exercising control** and having the **financial capacity to assume the risk**
- If there are multiple parties exercising control and have the financial capacity
  - Allocate the risk to the party exercising most control.
  - Other parties must be remunerated appropriately for control activities





## Step 6: Example 1

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- Company A bears the financial consequences of failure and enjoy the financial consequences of success
- Company B should be appropriately rewarded for the development services provided (including the risk inherent to its activity)



## The assumption of risk dictates the appropriate pricing method (1.81)

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- No inference should be drawn from the pricing adopted that risks are borne in a particular manner
- It is the determination of how the parties control risks that determines risk assumption, and consequently the selection of the most appropriate transfer pricing method.



# Summary

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- We now have an analytical framework to determine the substance requirements for allocating risks
- It is not based on numbers of people, or on organisational hierarchy, but on qualitative, specific decision-making functions relating to a transaction
- Paper allocations of risk cannot override actual decision-making capability and performance



# Risk framework underpins current and future work

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- Attribution of profits to PEs
- Profit Splits
- Financial transactions



# Breakouts: practical aspects of risk

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- Two breakout sessions will look at practical scenarios:
  - Manufacturing
  - Distribution
  - R&D Services
- What are the specific risks that are likely to be economically significant, and how would you expect control to be exercised?
- Does the analytical framework for risk provide useful guidance?

# GO TO BREAKOUTS

SESSION #

# GLOBAL FORUM ON TRANSFER PRICING 2016

## CHAPTER I: IT'S ALL ABOUT RISK (1)

Break-out Sessions  
2A & 2B



# Breakouts: practical aspects of risk

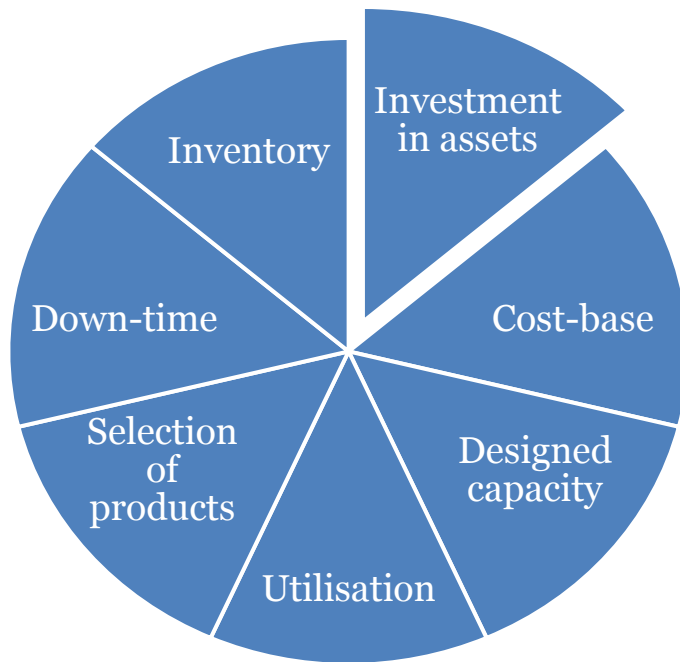
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- Two breakout sessions will look at practical scenarios:
  - Manufacturing
  - Distribution
  - R&D Services
- What are the specific risks that are likely to be economically significant, and how would you expect control to be exercised?
- Does the analytical framework for risk provide useful guidance?





# Manufacturing: Examples of Risk



Market acceptance?  
Sales price achieved?  
Warranty/recall?



# Manufacturing: Examples of capability and performance relating to specific risks

Design of production assets

Planned capacity

Decisions on volumes

Maintenance of plant

Inventory levels

Hiring of distributors

Others?

What does functional analysis tell you about which party has the capability and performance?

What does contract say about specific risks?



# Distribution: Examples of Risk



Manufacturing quality?  
Product recall?



# Distribution: Examples of capability and performance relating to specific risks

---

Design of marketing strategy

Responding to market changes and competition

Price-setting

Range of products

Inventory levels and availability

Hiring of manufacturer

Others?

What does functional analysis tell you about which party has the capability and performance?

What does contract say about specific risks?



# R&D: Examples of Risk



Reputation?  
Market  
acceptance?



# R&D: Examples of capability and performance relating to specific risks

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Focus of research

Design of research process

Determining budgets

Stage-gate stop/go decisions

Hiring of outsourced activities

Others?

What does functional analysis tell you about which party has the capability and performance?

What does contract say about specific risks?



# Summary

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- Does guidance in Chapter I help you identify economically significant risk in the context of the business?
- Does the analytical framework for risk help you to determine the functions which relate to the capability and decision-making relevant to these risks?

# BACK TO PLENARY

SESSION 2A AND 2B



# GLOBAL FORUM ON TRANSFER PRICING 2016

## TAX ADMINISTRATION: IT'S ALL ABOUT RISK

Plenary Session 4

# INTRODUCTION



# Why TP risk assessment is important?

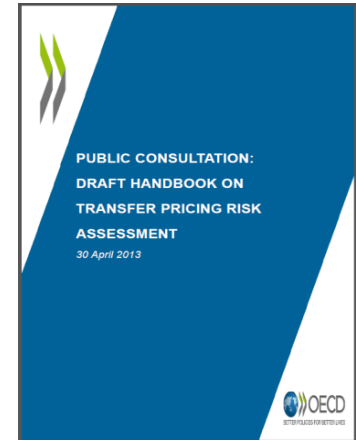
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- TP compliance is **resource and time consuming**
- Tax Administrations face **resource** constraints
- TP risk assessment allows to **allocate** resources in an effective and efficient way
- Recent country trends showing the **benefits** of risk-based approaches (see OECD developments)
- Focus on **countries' priorities** (i.e. relevance of the economic context)



# OECD draft handbook

- The Draft Handbook on Transfer Pricing Risk Assessment was **released for public consultation in April 2013**
- Impact of BEPS Project in 2013-15 on the process
- Need for an update of its content and to put it in the context of recent developments and other **work streams**
- The current Draft Handbook includes:
  - a) major risk factors and various high-risk indicators,
  - b) descriptions of low-risk indicators,
  - c) examples of information sources for risk assessment,
  - d) risk assessment process, and
  - e) country examples of enhanced engagement approach.





# Forum on Tax Administration (FTA) work

- Various initiatives and reports
- For example:
  - “Dealing Effectively with the Challenges of Transfer Pricing” (2012)
  - “*Co-operative Compliance; A Framework – From Enhanced Relationship to Co-operative Compliance*” (2013)
- Current work carried out by LBN





# Toolkits

<b>1. Tax Incentives</b>	<b>Nov 2015</b>
<b>2. Transfer Pricing Comparability</b> <i>Including supplementary work on mineral pricing</i>	<b>Oct 2016</b>
<b>3. Indirect transfers of Assets</b>	<b>June 2016</b>
<b>4. Transfer Pricing Documentation</b>	<b>Oct 2016</b>
<b>5. Tax Treaty Negotiation Capacity</b>	<b>Dec 2016</b>
<b>6. Base Eroding Payments</b>	<b>Jun 2017</b>
<b>7. Supply Chain Management</b>	<b>Mar 2018</b>
<b>8. BEPS risk assessment</b>	<b>Mar 2018</b>



# Toolkit on BEPS risk assessment

- The risk assessment module will be integrated in the toolkit to support the successful implementation by developing countries of the assessments of BEPS risks.
- Toolkit led by the OECD, in cooperation with the IMF, the WBG and the UN.



*February: Terms of reference*

*March: toolkit finalized*

2017

2018

2019

*June: scoping paper*



# Why risk assessment matters

- The answers to the **surveys sent out in 2015** on comparables data and transfer pricing documentation confirm the need of working over risk assessment:
  - **88.6%** of the respondents consider that “**assistance with identifying risks to be addressed**” should be included in the toolkit on TP documentation. *(TP Doc. survey)*
  - **Industry averages** are used for risk assessment purposes by **78.9%** of the respondent. *(TP Comp. survey)*
  - **100%** of the countries plan to **use the data obtained through the Country-by-country** reports for TP risk assessments. *(FTA survey)*







# Toolkit module on Transfer Pricing Risk Assessment

- TP risk assessment: overarching issue common to several toolkits that focus on transfer pricing aspects due by 2016 and 2017.

*LACK OF  
COMPARABLES DATA*



*BASE ERODING  
PAYMENTS*

*TP DOCUMENTATION*

- Need for a toolkit module on transfer pricing risk assessment, consistent to (and part of) the general toolkit on BEPS Risk Assessment.
- Other relevant transfer pricing-related toolkits to include cross-references, avoiding potential overlaps or risking uncoordinated approaches

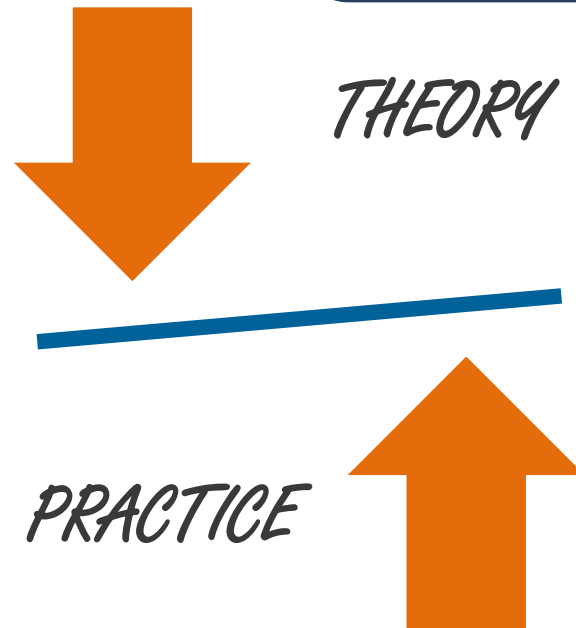
# PROPOSED SCOPE



# Possible outline



- **PART 1 – TP risk analysis in general**
  - Importance of TP risk analysis
  - Notion and relevance of tax risks
  - Different stages of TP risk assessment
  - Sources of information
  - Risk indicators
  - Evaluating and assessing TP risks
- **PART 2 - Practical guidance on how to conduct a TP risk assessment**
  - Organizational issues
  - Practical example of a TP risk analysis process and related steps
  - Application of a typical process to case studies





# Possible areas of analysis

## *Different stages of TP risk assessment*



- A staged approach is generally used by some tax administrations:
  - **STEP 1. High level** screening of specific risk areas;
  - **STEP 2. Further analysis** once a taxpayer is screened up (including the use of targeted requests or questionnaires);
  - **STEP 3. In-depth** transfer pricing risk assessment in a pre-audit phase that can lead to a proper audit or to closing the file.
- Reference to **taxpayer's behaviours** is fundamental:
  - is the MNE engaged in cooperative compliance programmes or APAs?
  - Is there an appropriate tax risk control framework in place?



# Possible areas of analysis

## *Risk indicators*

- Risk assessment is generally based on two parameters: **impact** and **probability** of an event (e.g. under-compliance).
- A hierarchy of the risks needs to be implemented to better target the audits and **identify high and low TP risks**.

PROBABILITY	Expected	Yellow	Orange	Red	Red
	High	Green	Yellow	Orange	Red
	Moderate	Green	Yellow	Yellow	Orange
	Low	Green	Green	Green	Yellow
		Low	Moderate	High	Severe
		IMPACT			

*AUDIT*



# *Possible areas of analysis*

## *Risk analysis process*

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- Countries adopt several approaches
- In broad terms:
  1. Quantitative/massive
  2. Qualitative
  3. Combination of the two
  4. Other

# GLOBAL FORUM ON TRANSFER PRICING 2016

## TAX ADMINISTRATION: IT'S ALL ABOUT RISK

Plenary Session 4

# GLOBAL FORUM ON TRANSFER PRICING 2016

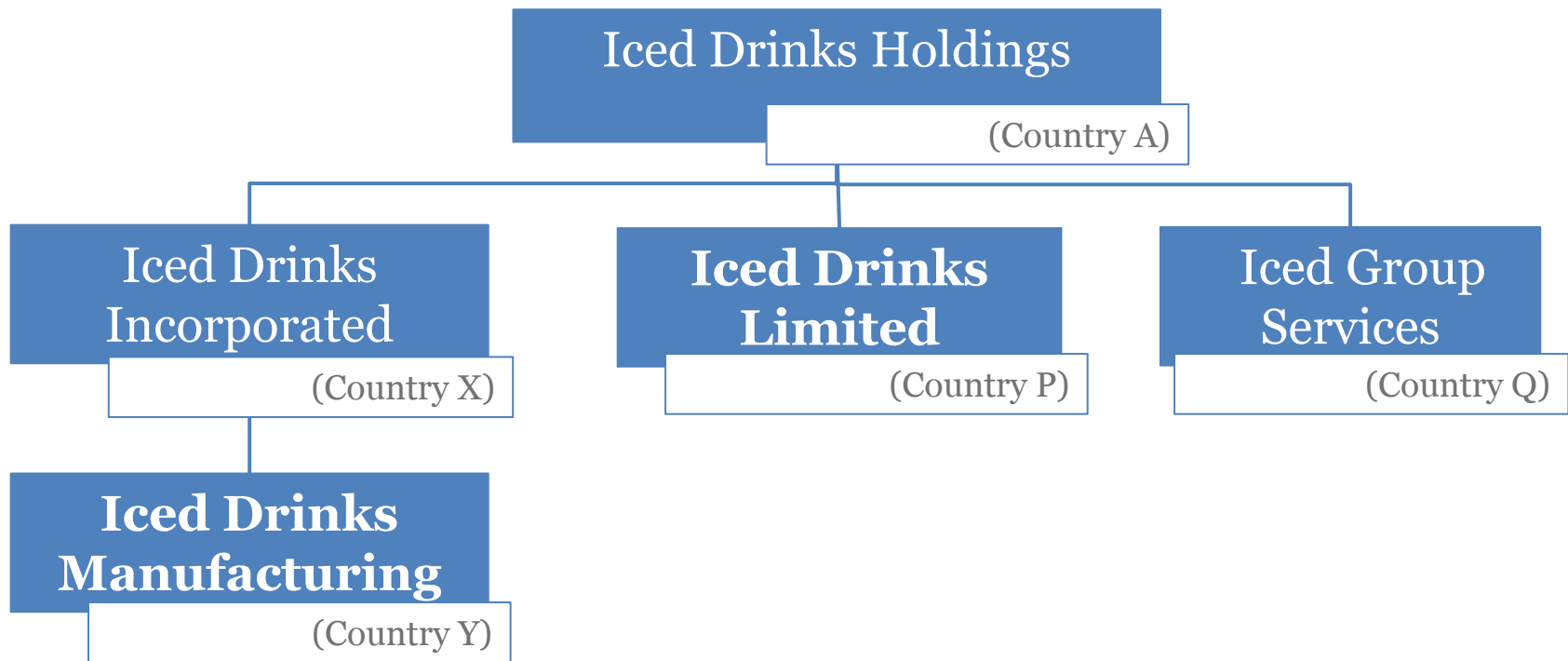
## CASE STUDY: THE ICED DRINKS GROUP

Session 5:  
Introduction to the case study



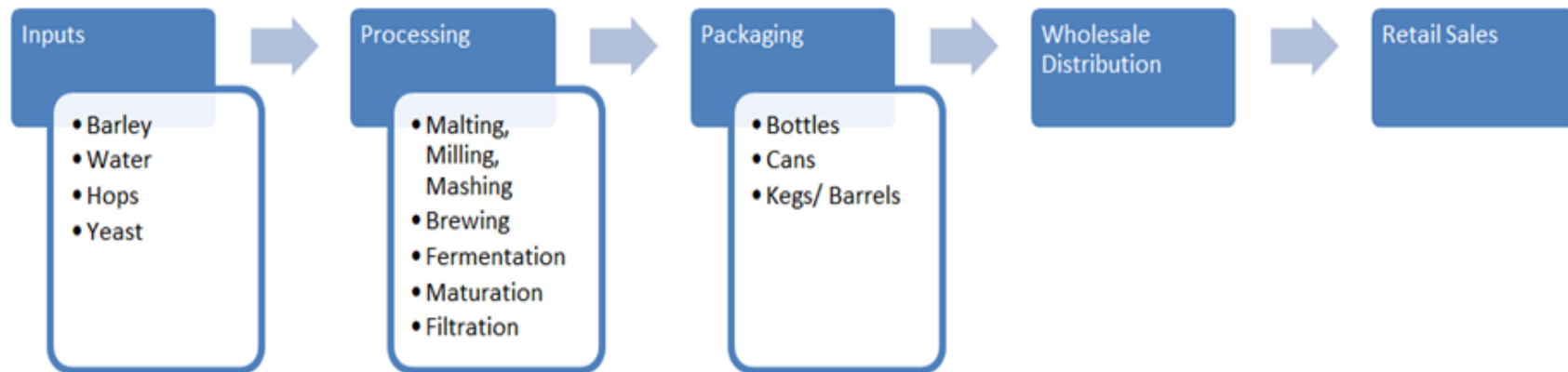


# The Iced Drinks Group





# Supply chain





# Tax return information

<b>Taxpayer Name</b>	<b>Iced Drinks Limited</b>
<b>Address</b>	52 Bracino Way, Hopton, Country P
<b>Name of Ultimate Parent Company</b>	Iced Drinks Holdings, Country A
<b>Description of main business activity</b>	Manufacturing and sales of alcoholic beverages



# Iced Drinks Limited

## Tax return information

	2015	2014
<b>Taxable income:</b>		
<b>Sales of goods and services</b>	500	530
<b>Deductible expenses:</b>		
<b>Cost of Goods Sold</b>	400	410
<b>Sales, distribution, marketing expenses</b>	46	48
<b>Management fees</b>	6	6
<b>Administrative expenses</b>	3	4
<b>Licence fees</b>	40	42
<b>Other deductible operating expenses</b>	15	16
<b>Profit before interest and taxes</b>	<b>-10</b>	<b>4</b>



# Iced Drinks Limited

## Tax return information

	2015	2014
Inventory	32	29
Trade and other receivables	18	19
Property, plant and equipment	50	51
Trade and other payables	11	10
Number of employees		
Sales division	33	32
Production division	75	74
Other	8	8



# Tax return information

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<b>Taxpayer Name</b>	<b>Iced Drinks Manufacturing</b>
<b>Address</b>	4 Bierfarejo Road, Maltville, Country Y
<b>Name of Ultimate Parent Company</b>	Iced Drinks Holdings, Country A
<b>Description of main business activity</b>	Manufacturing of alcoholic beverages



# Iced Drinks Manufacturing

## Tax return information

	2015	2014
<b>Taxable income:</b>		
<b>Sales of goods and services</b>	105	100
<b>Deductible expenses:</b>		
<b>Production related expenses</b>	89	84
<b>Management fees</b>	6	6
<b>Administrative expenses</b>	2	2
<b>Other deductible operating expenses</b>	2	2
<b>Profit before interest and taxes</b>	6	6



# Iced Drinks Manufacturing

## Tax return information

---

	2015	2014
Inventory	1	1
Trade and other receivables	5	6
Property, plant and equipment	51	50
Trade and other payables	2	2
Number of employees		
Production division	76	75
Other	15	15



**ENJOY THE  
COCKTAIL  
PARTY!**

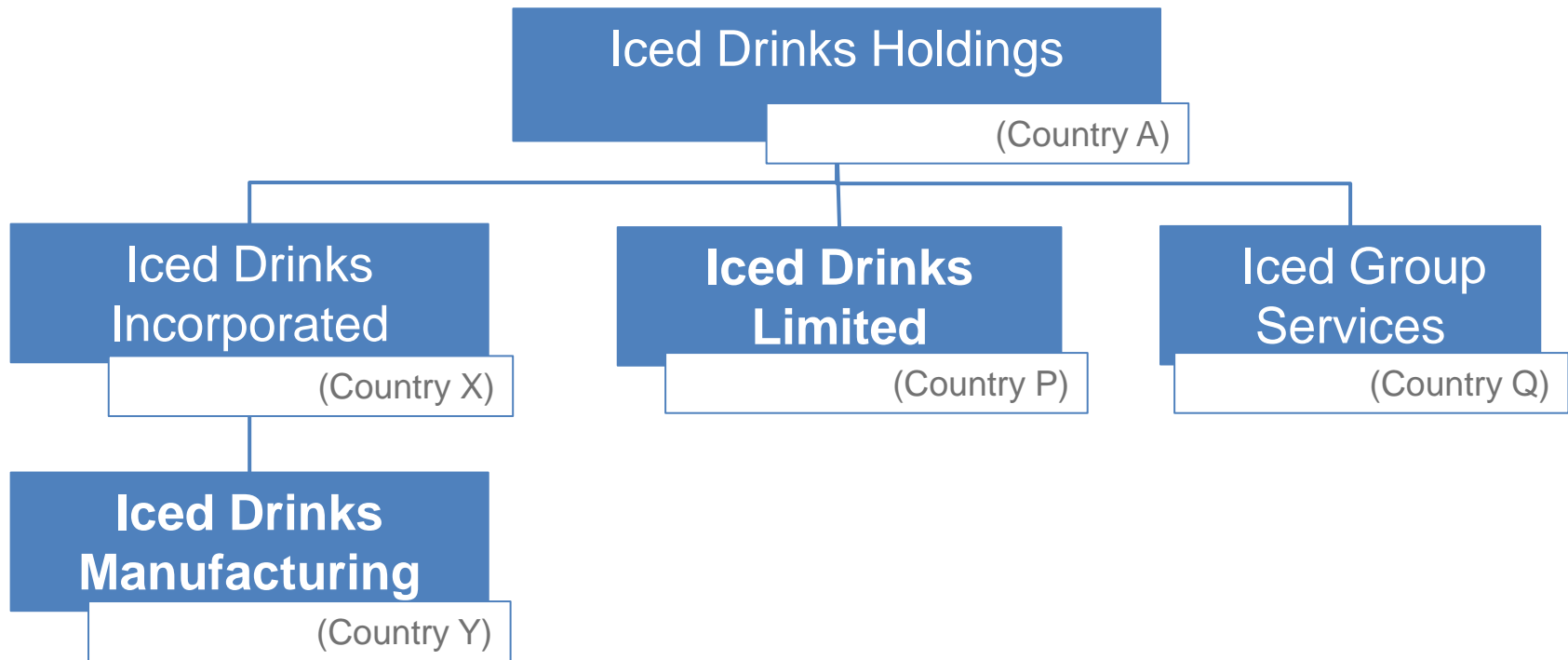
# GLOBAL FORUM ON TRANSFER PRICING 2016

## CASE STUDY PART 1: THE ICED DRINKS GROUP

Session 6:  
What we know...



# The Iced Drinks Group





## Tax return information

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<b>Taxpayer Name</b>	<b>Iced Drinks Limited</b>
<b>Address</b>	52 Bracino Way, Hopton, Country P
<b>Name of Ultimate Parent Company</b>	Iced Drinks Holdings, Country A
<b>Description of main business activity</b>	Manufacturing and sales of alcoholic beverages



# Iced Drinks Limited

## Tax return information

	2015	2014
<b>Taxable income:</b>		
<b>Sales of goods and services</b>	500	530
<b>Deductible expenses:</b>		
<b>Cost of Goods Sold</b>	400	410
<b>Sales, distribution, marketing expenses</b>	46	48
<b>Management fees</b>	6	6
<b>Administrative expenses</b>	3	4
<b>Licence fees</b>	40	42
<b>Other deductible operating expenses</b>	15	16
<b>Profit before interest and taxes</b>	<b>-10</b>	<b>4</b>



# Iced Drinks Limited

## Tax return information

	2015	2014
Inventory	32	29
Trade and other receivables	18	19
Property, plant and equipment	50	51
Trade and other payables	11	10
Number of employees		
Sales division	33	32
Production division	75	74
Other	8	8



# Tax return information

<b>Taxpayer Name</b>	<b>Iced Drinks Manufacturing</b>
<b>Address</b>	4 Bierfarejo Road, Maltville, Country Y
<b>Name of Ultimate Parent Company</b>	Iced Drinks Holdings, Country A
<b>Description of main business activity</b>	Manufacturing of alcoholic beverages



# Iced Drinks Manufacturing

## Tax return information

	2015	2014
<b>Taxable income:</b>		
<b>Sales of goods and services</b>	105	100
<b>Deductible expenses:</b>		
<b>Production related expenses</b>	89	84
<b>Management fees</b>	6	6
<b>Administrative expenses</b>	2	2
<b>Other deductible operating expenses</b>	2	2
<b>Profit before interest and taxes</b>	<b>6</b>	<b>6</b>





# Iced Drinks Manufacturing

## Tax return information

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	2015	2014
Inventory	1	1
Trade and other receivables	5	6
Property, plant and equipment	51	50
Trade and other payables	2	2
Number of employees		
Production division	76	75
Other	15	15

# DISCUSSION



# The Iced Drinks Group's business

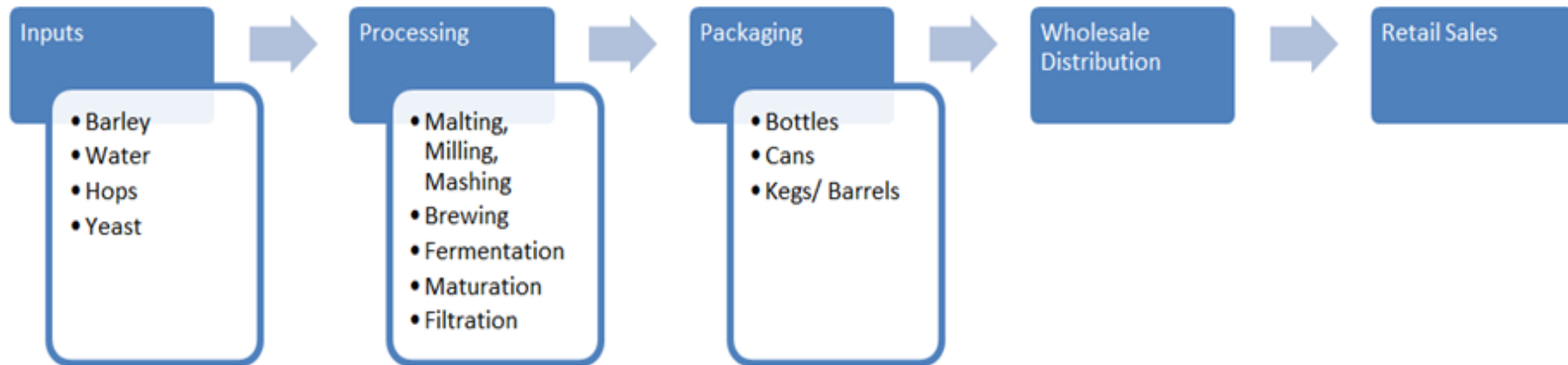
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## Main brands

- Globally:
  - Ice Lager
  - Ice Pilsner (premium beer)
  - Cool Ale
- In Country P:
  - Polar Beer (flavoured with desert midyim berry)

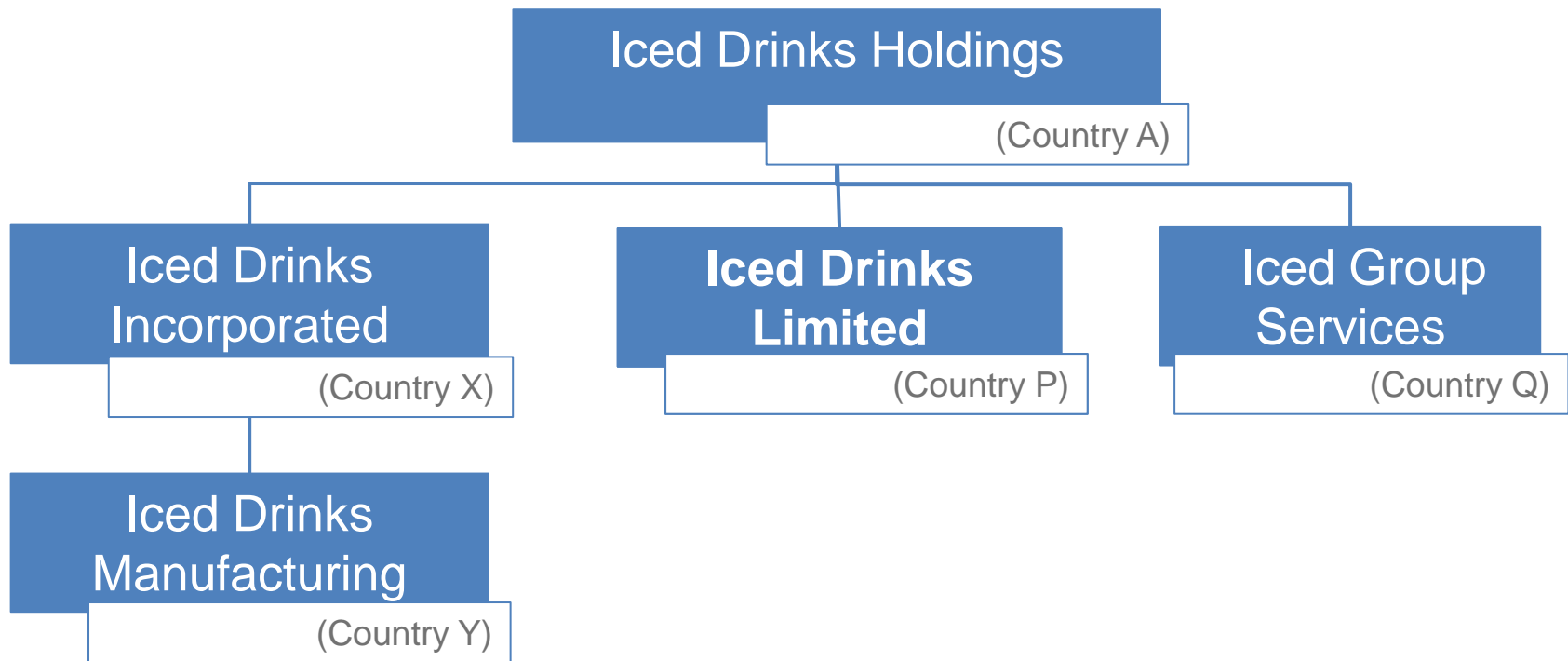


# Supply chain



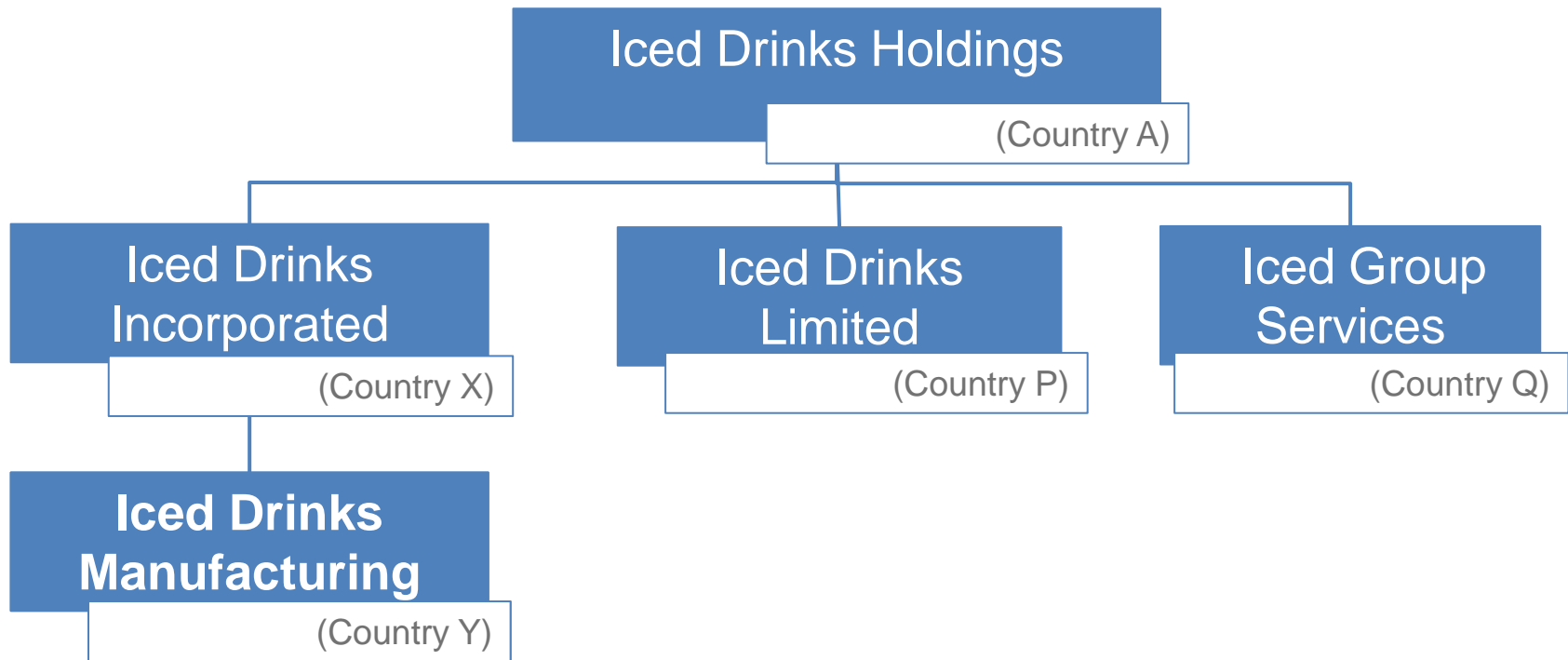


# Iced Drinks Limited





# Iced Drinks Manufacturing



# DISCUSSION



# Key profit drivers

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- Beer brands
- Customer and supplier relationships
- Efficiency of production





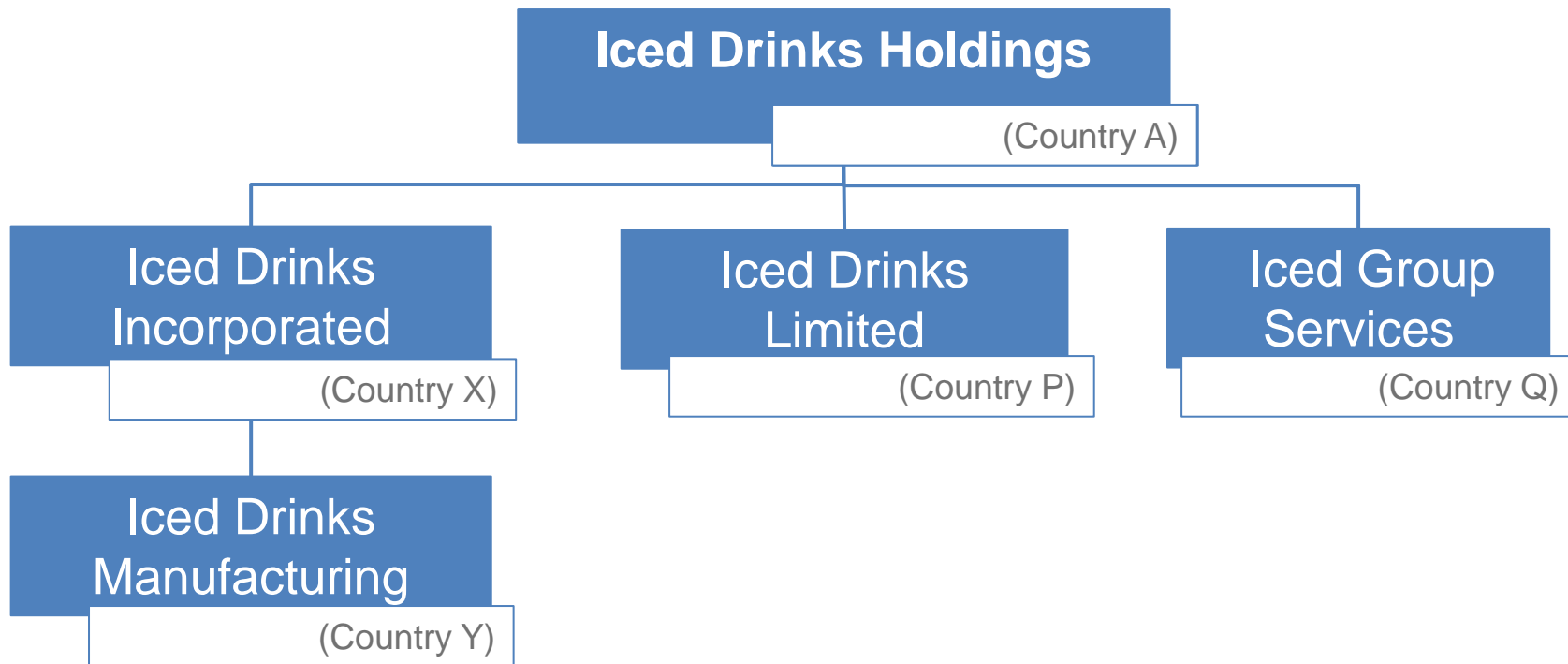
# Market conditions

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- Growth
- Volatility
- Competition

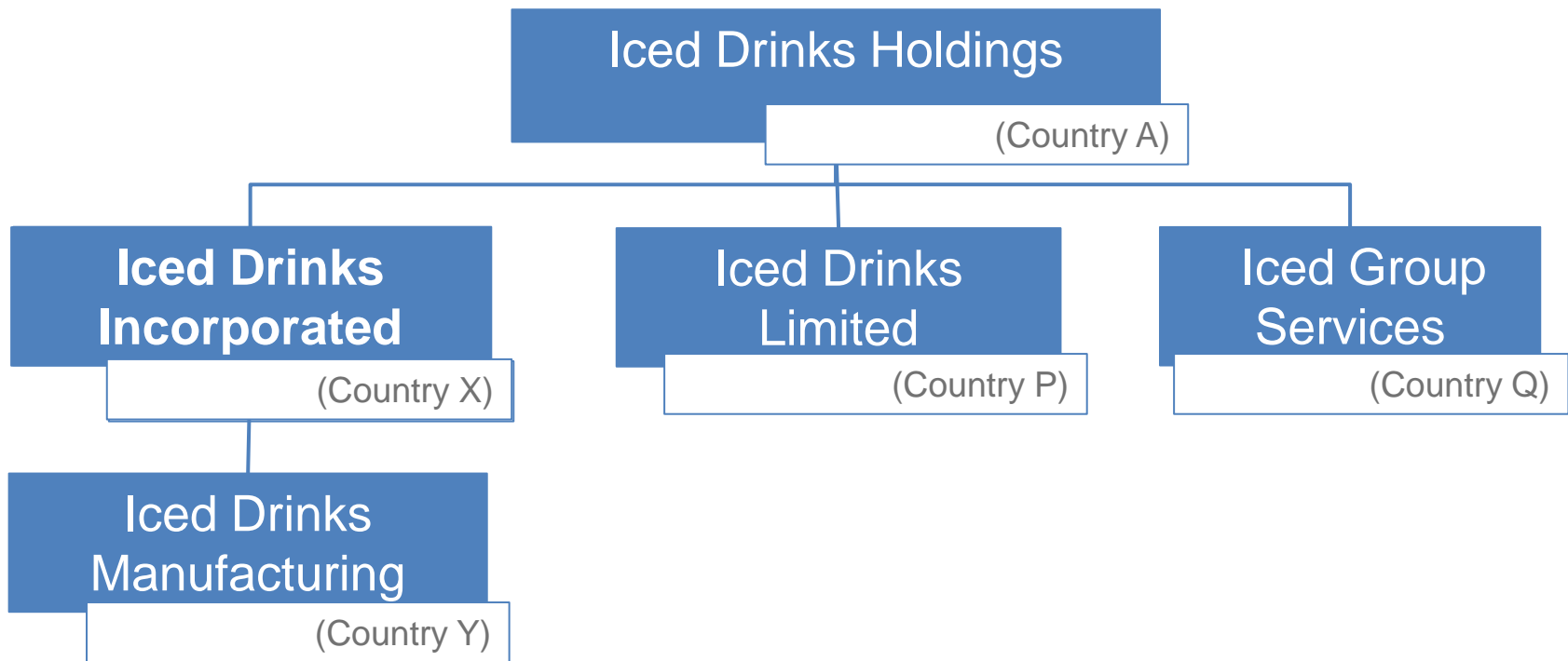


# Iced Drinks Holdings





# Iced Drinks Incorporated



# DISCUSSION

# GLOBAL FORUM ON TRANSFER PRICING 2016

## CASE STUDY PART II: THE ICED DRINKS GROUP

Session 7:  
Further facts...



# Polar Beer and Iced Drinks Limited

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- Polar Beer was developed by IDL in the 1970s
- IDL has successfully promoted the brand as unique to Country P
- Polar Beer is currently only produced and sold in Country P
- Polar Beer is marketed as a premium beer



# Polar Beer



- Secret recipe for beer flavoured with desert midyim berry
- To prevent spoiling, Polar Beer must be kept cold, so it is expensive to store and transport. For this reason, it is not exported from Country P



## Polar Beer



- Desert midyim berries:
  - Are native to country P and not commercially available elsewhere
  - Are highly perishable and difficult to transport
  - Have a distinctive flavour, popular in Country P but not used elsewhere
  - Are high in anti-oxidants





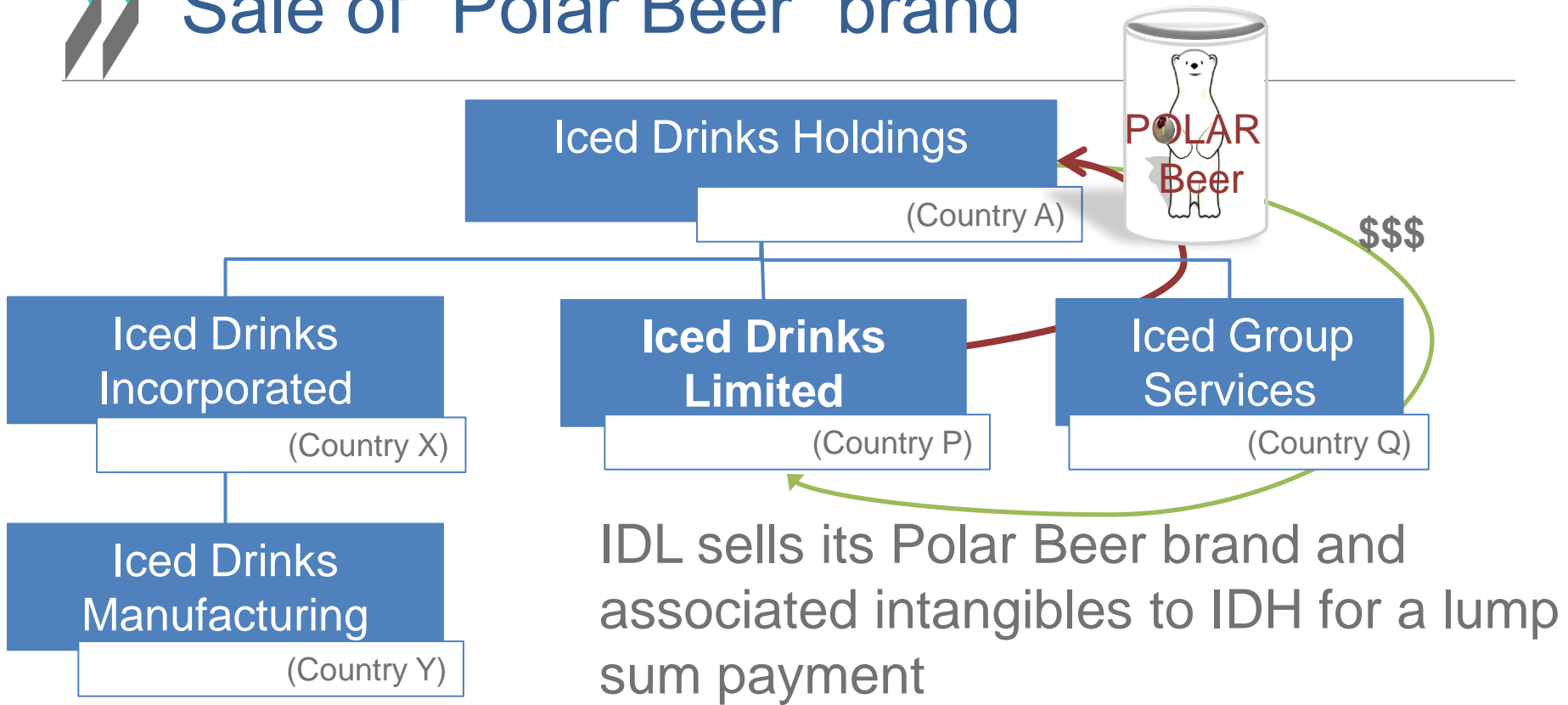
## Sale of the “Polar Beer” brand

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- The Iced Drinks group has a policy to centralise its key intangibles
  - Greater efficiency in administration and protection of valuable intangibles
  - Greater consistency and effectiveness of marketing efforts to develop and maintain intangibles



# Sale of “Polar Beer” brand



# DISCUSSION



## Further information

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- IDL's procurement quality control manager invents a new freeze-drying process which allows desert midyim berries to be stored
  - This could allow for Polar Beer to be produced elsewhere
- Information on the process is to be sold to IDH together with the “Polar Beer” brand intangibles (such information is not publicly disclosed)

# DISCUSSION

# DISCUSSION

# MANAGEMENT SERVICES



# Management services

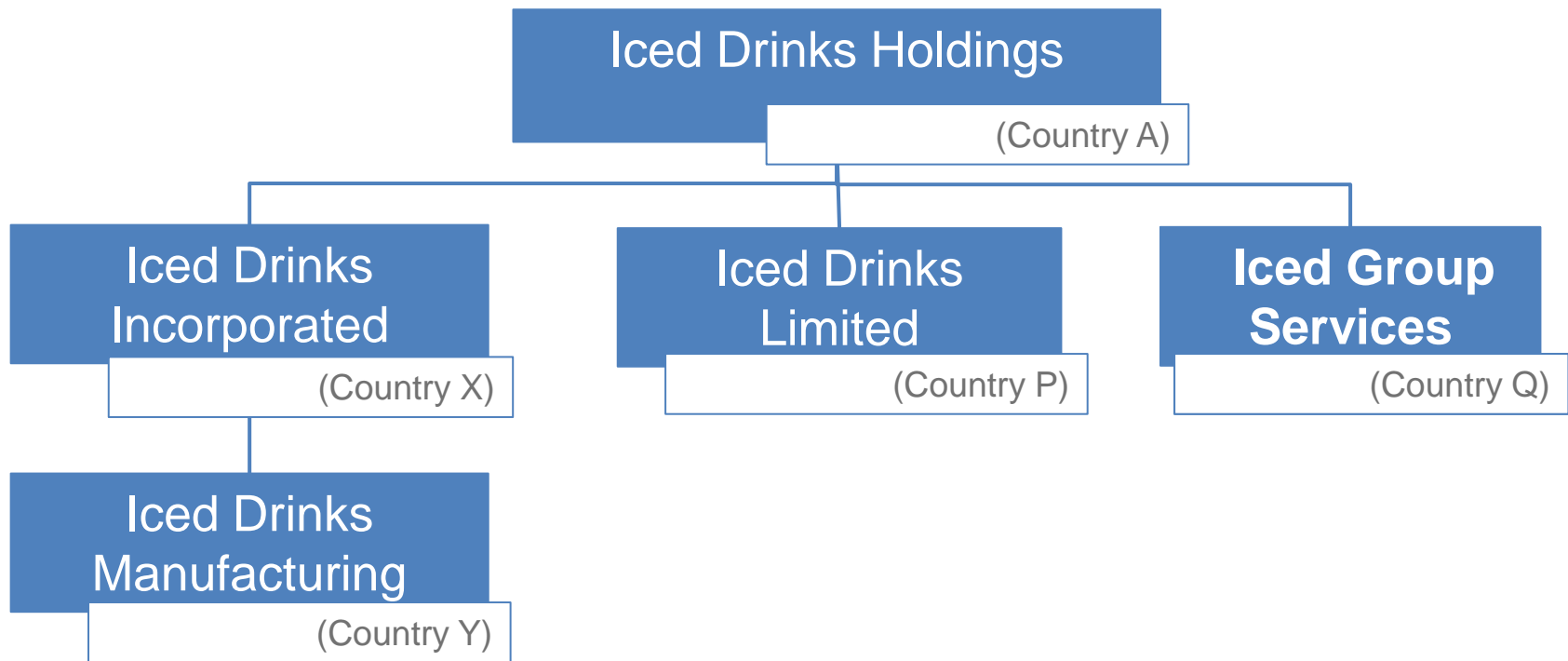
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- Iced Group Services is the group's central services provider
- It provides management and other services, most of which relate to the brewing and bottling process to IDL and IDM





# Iced Group Services





# Management services

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- The group considers that the services provided by IGS qualify for the simplified Low Value-Adding Services treatment
- Total cost of providing the services + 5% mark up
  - Allocated to IDL and IDM on the basis of the number of beer production employees

# DISCUSSION

# GLOBAL FORUM ON TRANSFER PRICING 2016

## CASE STUDY PART III: THE ICED DRINKS GROUP

Session 8:  
Risk Assessment



# Risk Assessment

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- In relation to the manufacturing (and sales) activities of IDL and IDM
  - Accurately delineate the transaction(s)
  - Does pricing need to be tested?

# DISCUSSION



## Iced Drinks Manufacturing (Country Y)

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- Data on comparable transactions in Country Y are not available
- Data on potentially comparable transactions has been found from Countries F and J

# DISCUSSION





## Iced Drinks Limited (Country P)

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- Data on comparable transactions in Country P are not available
- Data on potentially comparable transactions has been found from Countries F and J

# DISCUSSION

	Country Y	Country J	Country F
Level of development	Emerging economy	Developed economy	Developed economy
Main industries in the country	Manufacturing, Assembly, Agriculture	Extraction of minerals, Services	Manufacturing, Services
Inflation	4% per annum	1% per annum	0.5% per annum
Avg interest rate on cash deposits	5% per annum	2% per annum	1% per annum
GDP growth	4%	1.5%	2%



## Iced Drinks Manufacturing (Country Y)

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- Data on comparable transactions of entities undertaking brewing and bottling services are not available
- Data on potentially comparable transactions in other industries has been found (Companies 1, 2, 3)

Potential Comparable	IDM	Company 1	Company 2	Company 3
Functional characterisation	<b>Manufacturing services</b>	Assembly services	Processing services	Processing services
Industry	<b>Brewing</b>	Consumer goods	Paper products	Pharma products
Tot op. costs to op. rev	<b>0.94</b>	0.95	0.93	0.85
Employee exp to tot op. cost	<b>0.27</b>	0.30	0.35	0.24
Fixed asset cost to tot op. cost	<b>0.62</b>	0.55	0.52	0.64

# DISCUSSION

# GLOBAL FORUM ON TRANSFER PRICING 2016

## CASE STUDY PART III: THE ICED DRINKS GROUP

Session 8A:  
Benchmarking



## Local vs functional comparables

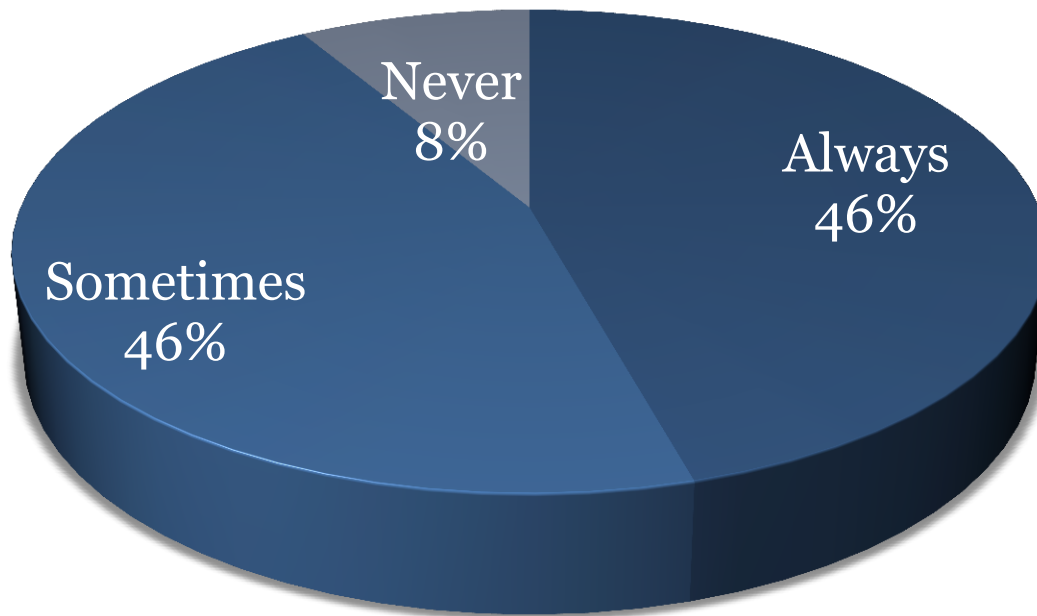
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- Lack of local comparables data is often cited as a problem, especially in developing countries
- 72% of all respondents cited lack of local comparables as a significant challenge
- 74% of all respondents cited lack of functional comparables as a significant challenge



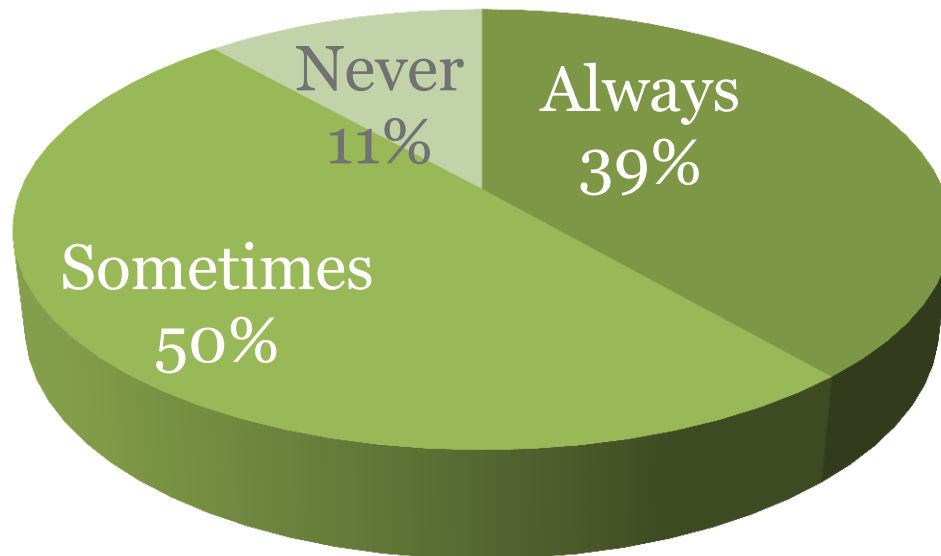


# Use of foreign data in comparability searches (all respondents)



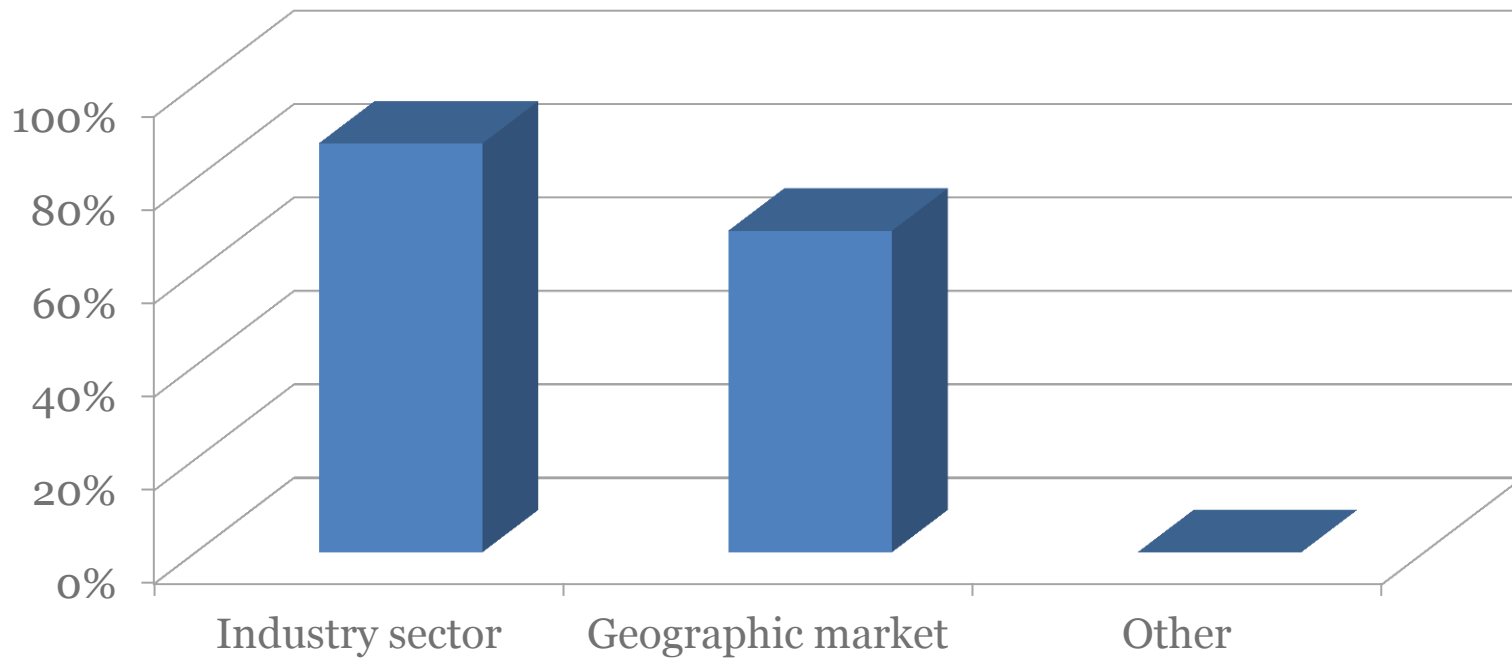


# Use of foreign data in comparability searches (non-OECD respondents)





# If sometimes, it depends on...





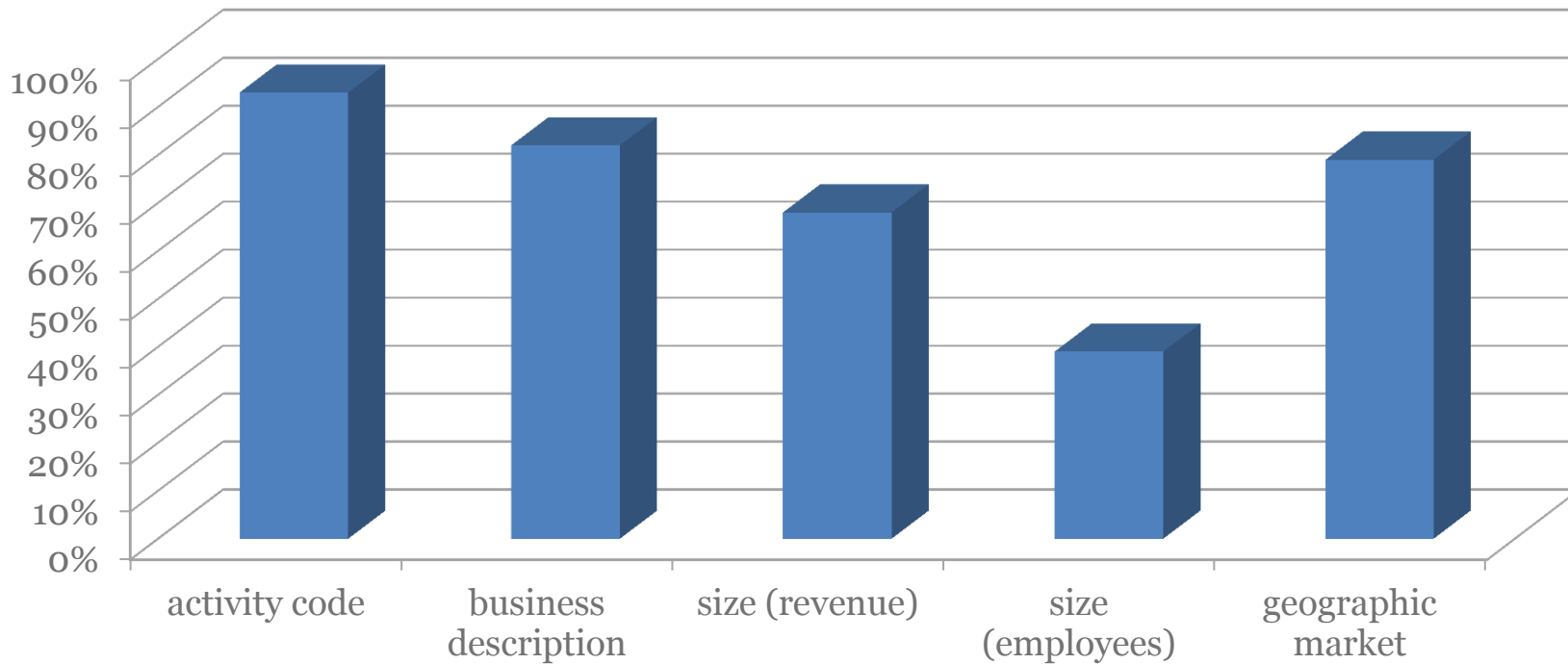
## Data on potential comparables

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- Evaluating the five comparability criteria
- When is having a similar geographic market likely to be essential to comparability?



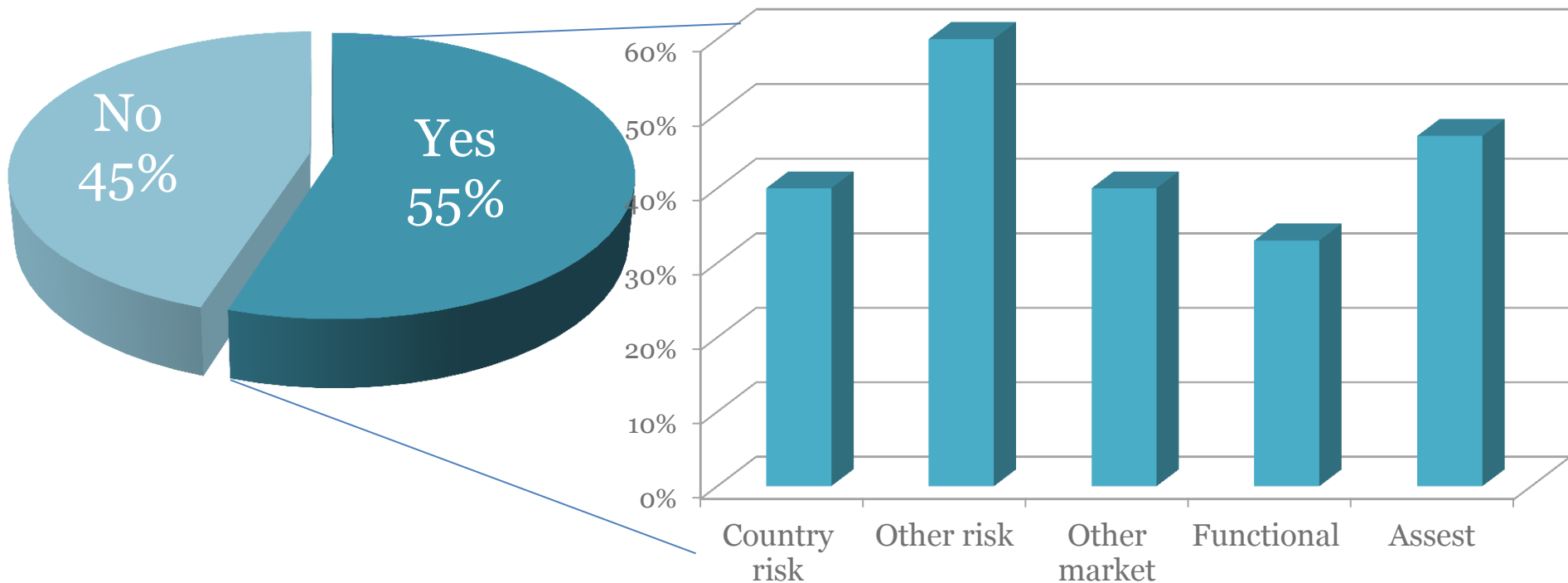
# Initial screening criteria used



# DISCUSSION



# Comparability adjustments for foreign data



	Country Y	Country J	Country F
Level of development	Emerging economy	Developed economy	Developed economy
Main industries in the country	Manufacturing, Assembly, Agriculture	Extraction of minerals, Services	Manufacturing, Services
Inflation	4% per annum	1% per annum	0.5% per annum
Avg interest rate on cash deposits	5% per annum	2% per annum	1% per annum
GDP growth	4%	1.5%	2%



Potential Comparable	IDM	Company 1	Company 2	Company 3
Functional characterisation	<b>Manufacturing services</b>	Assembly services	Processing services	Processing services
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# DISCUSSION

# GLOBAL FORUM ON TRANSFER PRICING 2016

## CASE STUDY PART III: THE ICED DRINKS GROUP

Session 8B – Benchmarking and  
alternatives



## Lack of comparables

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- Lack of comparables data is often cited as a problem, especially in developing countries
- 72% of all respondents cited lack of local comparables as a significant challenge
- 74% of all respondents cited lack of functional comparables as a significant challenge



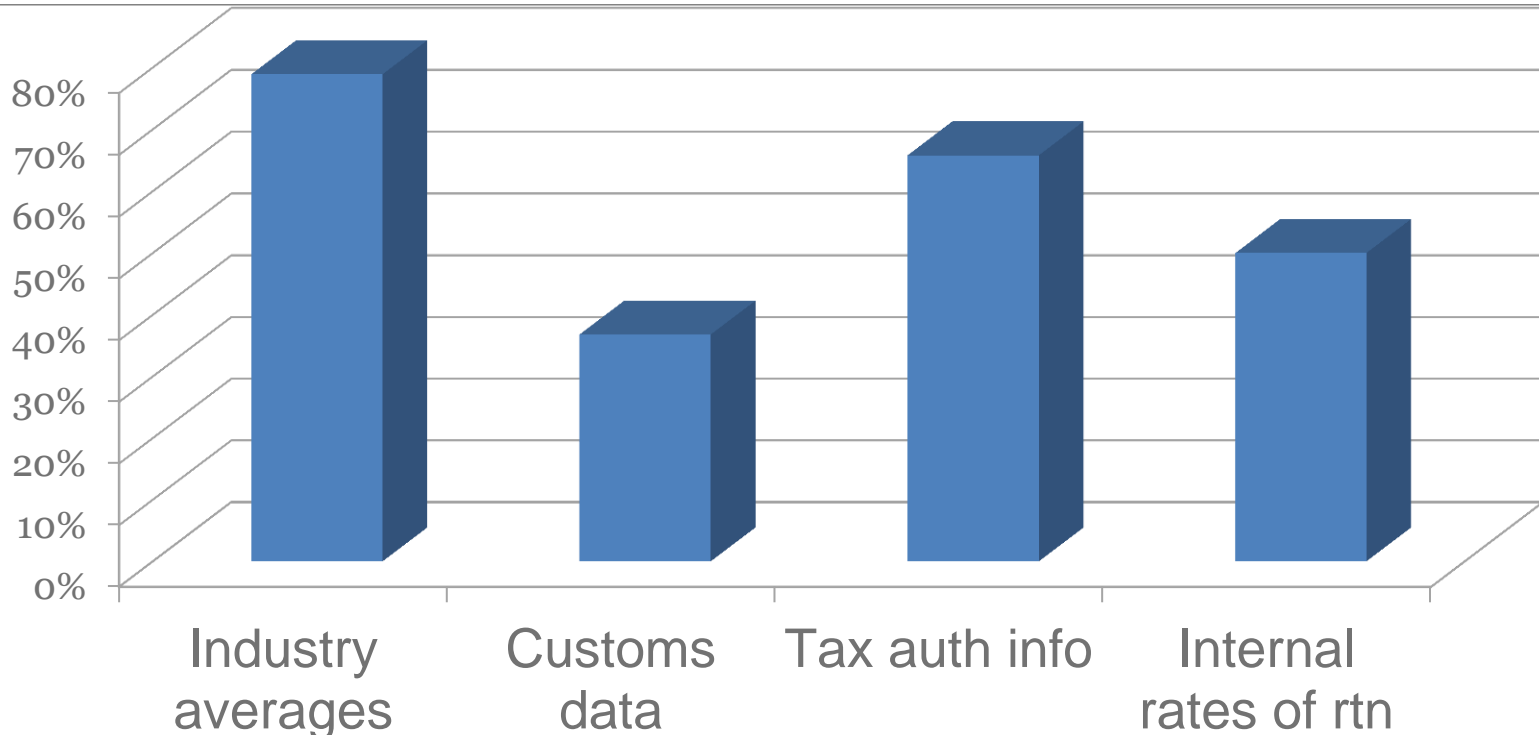
# The role of risk assessment

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- Is benchmarking always required?
- How can risk assessment processes be strengthened?



# Sources of data – risk assessment





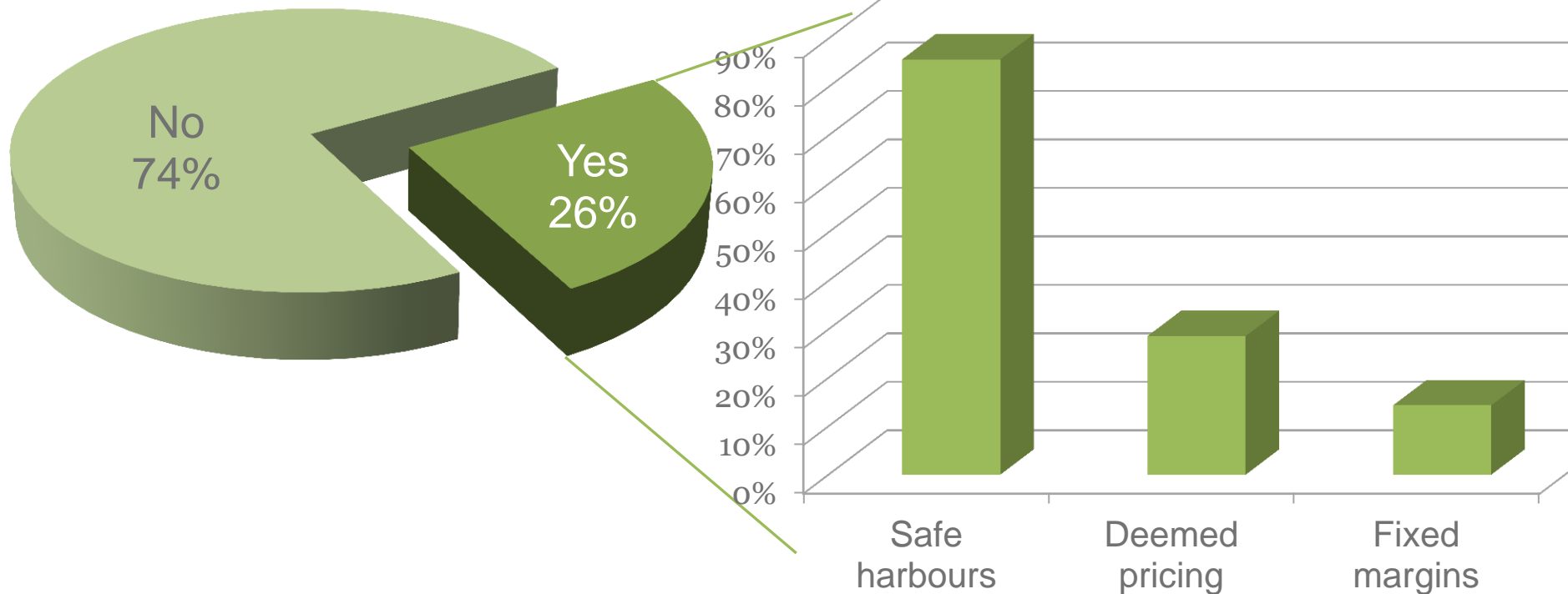
# Alternatives to benchmarking

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- Different approaches for low risk and high risk transaction types?
- Role of simplification measures



# Use of simplification measures







# Dealing with high risk transactions and a lack of comparables data

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- Deemed pricing / fixed margins
  - Design issues
- Joint or parallel audits
- APAs
- Sector or industry-based practices



# A risk-based “menu” of options?

- How to make the best use of available information?
- Different transaction types – different options?
- Pros and cons of the different options?



# DISCUSSION