

Simplified Assessment of BEPS-related risks year-end alert

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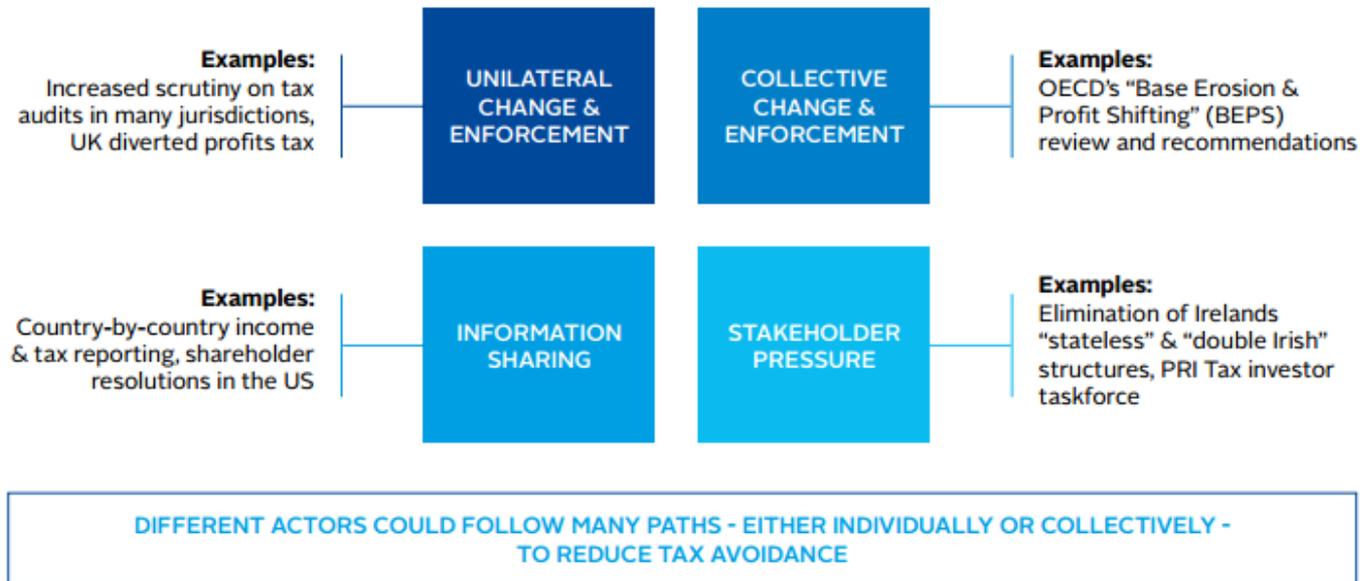
I. Changing Tax Environment

BEPS Related Risks – Summary slide

Action 1	Tax Challenges of the Digital Economy
<i>Action 2</i>	<i>Hybrid Mismatch Arrangements</i>
Action 3	Strengthen CFC rules
<i>Action 4</i>	<i>Interest Deductions and other Financial Payments</i>
Action 5	Harmful Tax Practices
Action 6	Treaty Abuse and Treaty Shopping
Action 7	Prevent the Artificial Avoidance of PE Status
Action 8 - 10	Hard-to-value intangibles, Profit Splits, Low Value-adding Services
Action 11	Improving the analysis of BEPS
Action 12	Mandatory Disclosure
Action 13	TP Documentation and CbC Reporting
Action 14	Make Dispute Resolution Mechanisms more Effective
Action 15	Multilateral Instrument

Ia. Change coming from many angles

Graph 1. Change coming from many angles



Source: MFS Investment Management

Ib. Disputes waves on BEPS

- BEPS sensitivity on tax and transfer pricing preferential regimes?
 - Four waves of challenges:
 1. UK Congress: Amazon, Google & Starbucks
 2. US Congress: CEO of Apple
 3. G20/OECD BEPS Project
 4. EU Commission: Starbucks/NL, Apple/Ireland, Fiat & Amazon/Luxemburg, i.e. action also coincides with Lux LeaksAre you next?
 - How multinational enterprises are dealing with the new BEPS requirements and how they are keeping up with their structures.

Ic. Re-examine Transfer Pricing Documentation – national initiatives (1/4)

- **National initiatives - Spain:**

- (i) The Draft Bill on the Corporate Income Tax Regulations introduces requirement for CbC reporting, expected adoption date – first half of 2015;
- (ii) CbC reporting will be required from 2016 onwards; template to be approved by local tax authorities (contents follows the OECD);
- (iii) To be filed by Spanish-resident entities considered ultimate parent companies of a group with €750 million combined net revenues;
- (iv) From 2018 onwards, Spanish tax authorities will have the right to request CbC information from **any subsidiary** (presumably resident in Spain), owned directly or indirectly by a non-Spanish resident entity, and also from **PEs** of non-resident entities, if there is no CbC reporting requirement with respect to that non-resident entity, or if there is no automatic information exchange agreement with the country or territory in which that non-resident entity resides for tax purposes.

- **National initiatives - UK:**

- (i) Draft legislation with a requirement for CbC reporting in process;
- (ii) No implementation date has been given, however, it is expected that CbC reporting will first apply for the accounting periods beginning on or after 1 January 2016;
- (iii) Will be applicable to a parent company of a multinational enterprise resident in the UK, however, the UK subsidiaries may also be required to file CbC reports if their parent is in a country that does not enact CbC reporting rules quickly.

Ic. Re-examine Transfer Pricing Documentation – national initiatives, continued (2/4)

- **National initiatives – Poland**

- (i) Draft amendments to local Polish law were published introducing extensive reform of the rules for the preparation of the mandatory tax documentation;
- (ii) Small taxpayers will not be affected, i.e. entities whose revenues or expenses according the provisions of the Polish accounting act do not exceed EUR 2,000,000;
- (iii) Under the draft amendments if the documentation obligation arises, it will be necessary to prepare the documentation not only in the given tax year, but also automatically in the following year even if in that following fiscal year the prerequisites for the obligation had not been met (neither revenues nor costs exceeded the level of EUR 2,000,000).
- (iv) Taxpayers will still be required to prepare the documentation for transactions where the payment was made to entities established in countries applying harmful tax competition.

- **National initiatives – Netherlands**

- (i) The Dutch State Secretary of Finance stated that the Dutch government supports the new initiatives of the European Commission that are trying to increase the transparency relating to tax matters. In particular the initiative regarding sharing information of tax rulings among tax administrations and also sharing the country-by-country reports that are in accordance with the OECD BEPS project. On the annual Budget Day (3rd Tuesday of September) the introduction of CbC Reporting per 1-1-2016 was included in the 2016 Budget Proposal.
- (ii) He also encouraged to the European Commission to prioritize the impact assessment for the desired potential expansion of the country-by-country reporting requirement for sectors like forestry and banks.

Ic. Re-examine Transfer Pricing Documentation – national initiatives (3/4)

National initiatives for CbC reporting as per 28th October 2015						
Country	Date of announcement	Date of adoption	Date of implementation/ Effective date	Status of the (draft) legislation	Content, including deviations from the OECD	Comments
Effective law / draft law legislation - to become effective as per 1st January 2016 (expected)						
Australia	1 May 2015	September 2015 (expected)	1 January 2016 (expected)	On 6 August 2015, the Australian Treasury released exposure draft law (draft law) for Australia to implement reporting requirements for large MNEs in line with recommendations by the OECD and G20. The draft legislation is reflected in Australia's Budget plan for 2015-2016.	Large multinationals with global revenue of more than AU\$1 billion (\$800 million) will be required to meet the new reporting requirements, i.e. to file an annual statement with the Commissioner of Taxation which includes CbC reporting, or entities whose income year commences 1 January 2016, the reports would be due by 31 December 2017. Australian taxpayers with relatively small Australian operations, that nonetheless satisfy the global A\$1 billion threshold, must comply with the proposed additional reporting requirements. The CbC report will not be required where it will be filed in the jurisdiction of the multinational group's worldwide parent entity and it will be automatically exchanged with Australia under information sharing agreements. At the moment, the content of CbC reporting is not known as it will be developed by the Australian TA by the end of 2015 but it is expected to be in line with the template provided by the OECD.	Source: http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Multinational-tax-avoidance and http://www.ey.com/Global/Services/Tax/International-Tax/Alert-Australia-releases-draft-law-implementing-country-by-country-reporting-and-increasing-penalties-for-tax-avoidance-and-transfer-pricing
France	12 November 2015	December 2015	1 January 2016 (expected)	The French National Assembly on November 12 approved an amendment to the draft Finance Bill for 2016 implementing the country-by-country reporting requirements. The measure must be approved by the full assembly before it can enter into force.	According to this amendment, the companies within the scope of the country-by-country reporting requirement would include: <ul style="list-style-type: none"> • Companies with consolidated accounts; • Companies that control, directly or indirectly, subsidiaries located abroad, or that have branches located abroad; • Companies with annual consolidated group revenue equal to or in excess of EUR 750 million; and • Companies not owned by another French entity already within the scope of this measure, or by a foreign entity within the scope of a similar provision under its local legislation. 	The precise list of data to be included in the French country-by-country report would be defined by an administrative decree. http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-transfer-pricing-alert-15-018-12-november-2015.pdf?mkt_tok=3RkMMUJWWf9wvRnuqz2MXXonjHpf5Xw7%2Bg1T%2Frr28M3109ad%28rmp9y62B3YQlWp8na%2BqWCgs0rQBk8lJv9mWc0Wr60%3D
Mexico	8 September 2015	N/A	1 January 2016 (expected)	The Proposed Tax 2016 Reform	The filing of the CbC information return would be required only from corporations that qualify as Mexican multinational holding companies or those that are designated by the parent company of a foreign multinational group as responsible for filing the CbC Report.	Source: http://www.ey.com/Publication/wwLUAssets/Mexico_President_submits_2016_tax_reform_package_for_Congressional_approval/\$FILE/2015G_CMS753_Mexicos%20President%20submits%202016%20tax%20reform%20package%20for%20Congressional%20approval.pdf
The Netherlands	28 May 2015	15 September 2015	1 January 2016 (expected)	Dutch Tax Plan for 2016 put forward draft legislation for CbC reporting	Follows OECD, Art. 29 b - h of the Dutch tax plan legislation.	Source: https://www.rijksoverheid.nl/documenten/kamerstukken/2015/09/15/belastingplan-2016 (Dutch)

Ic. Re-examine Transfer Pricing Documentation – national initiatives (4/4)

National initiatives for CbC reporting as per 28th October 2015						
Country	Date of announcement	Date of adoption	Date of implementation/ Effective date	Status of the (draft) legislation	Content, including deviations from the OECD	Comments
Effective law / draft law legislation - to become effective as per 1st January 2016 (expected)						
Poland	28 April 2015	N/A	1 January 2016	Draft legislation is issued.	For capital groups with consolidated revenues or costs above EUR 750 million, the Polish parent company will have to prepare the CbC report.	Source: http://www.ey.com/Publication/vwLUAssets/Poland_amends_transfer_pricing_documentation_requirement_as_of_2016/\$FILE/2015G_CM5433_TP_Poland%20amendment%20TP%20doc%20req%20as%20of%202016.pdf
SPAIN	20 January 2015	11 July 2015	1 January 2016	On 11 July 2015 a new Corporate Income Tax Regulation was approved in Spain, introducing, amongst other things, amendments to the Spanish transfer pricing reporting requirements.	<p>Multinational groups with a net turnover of €750 million or more with a parent company (head of a group as defined under Spanish transfer pricing rules) resident for tax purposes in Spain will be obliged to prepare and lodge the relevant annual CBC report, as will Spanish subsidiaries of such Groups (where the parent company is not resident for tax purposes in Spain) and Permanent Establishments (PE) if:</p> <ul style="list-style-type: none"> -The subsidiary or PE is appointed by the non-resident parent company to meet with this obligation, or -There is no CBC reporting obligation in the tax residence country of the parent company in similar terms as stated under Spanish regulations, or -There is no automatic information exchange arrangement with the tax residence country of the parent company in relation with this obligation, or -The information exchange arrangement has been breached by the resident country of the parent company. The nonfulfillment of the agreement must be communicated by the Spanish Tax Authorities to the taxpayer before the end of the fiscal year to be reported. <p>In addition, the CIT regulation include the obligation for Spanish companies belonging to reporting groups to notify the Spanish tax authorities of the name and tax residence of the company within the group filing the CBC report. Such notification must be made before the reporting fiscal year end.</p>	<p>The CbC reporting will first be requested for the FY 2016. Reporting must be completed within a 12 month period from the close of the fiscal year to which the CbC report relates. The information to be provided in the CBC report should be denominated in euros. The required content of the annual CBC report is consistent with the OECD recommendations.</p> <p>Source: https://www.dlapiper.com/en/us/insights/publications/2015/08/country-by-country-reporting-in-the-eu-spain/ and http://www.ey.com/Publication/vwLUAssets/Spain_enacts_regulations_on_new_CbC_reporting_obligations_and_amendments_to_transfer_pricing_rules/\$FILE/2015G_CM5610_Spain%20enacts%20regulations%20on%20new%20CbC%20reporting%20obligations%20and%20amendments%20to%20tp%20rules.pdf</p>
UK	20 September 2014	by the end of 2015 (expected)	The draft legislation published 10 December 2014 did not specify the date of implementation (expected 1st January, 2016)	Draft legislation is issued	The draft legislation confirms that the information required will be the same as that included in the CbC template published by the OECD. CbC will need to be produced by multinational enterprises with parent entities resident in the UK and with consolidated group revenue of £586m (approx. EUR 808 million) or more in a 12 month accounting period.	<p>HMRC has indicated the disclosure rules will apply where a parent company is in the UK, so that UK subsidiaries may still be required to file if their parent is in a country that does not enact these rules quickly.</p> <p>No implementation date has been given.</p> <p>Source: http://www.iasplus.com/en-gb/news/2015/10/hmrc-cbr</p>

II. Relevance for Business

Ila. Operational, legal and financial impacts on companies

Table 2: The rise of tax minimisation impacts on business. Source: [Kepler Cheuvreux](#).

Type	Impacts	Examples
Costs	Settlements in tax disputes i.e. transfer pricing	GSK US\$3.4bn (US), AstraZeneca US\$1.1bn and £550m (UK), Vodafone £1.25bn (UK)
	Tax authority investigations from transfer pricing/cross border M&A	Novo Nordisk US\$1bn disputed (Denmark), Vodafone, SAB Miller, AT&T, Shell (India)
	Delays to M&A/asset freezes and seizure	Nokia factory in India in handset IP tax dispute
	Criminal penalties	Credit Suisse US\$2.8bn settlement and guilty plea for criminal charges of aiding US tax avoidance
	Bail money deposits required in disputes	UBS loses appeal for €1.1bn bail request in French courts for allegedly assisting French client tax avoidance Idem HSBC
	Financial pressure on tax minimisation dependant business	Entire European offshore wealth management business unlikely to recover prior margin levels
	Increased legal and compliance costs	All the above examples
	Potential exclusion from public contracts due to tax evasion convictions	Regulation exists i.e. for EU procurement, current levels of poor enforcement could increase in the long term
	EC investigations into unfair "fiscal state aid"	EC fiscal state aid investigations into Ireland, Netherlands, Luxembourg and Belgium likely to require repayments from companies with special tax agreements – so far Starbucks €30m, Fiat €30m, Amazon, Apple noted
Suspension of key projects	First Quantum/Glencore suspends Zambia copper projects after government withholds US\$ tax refunds, US\$200m for Glencore	
Financial	Earnings volatility as a result of tax dispute/controversies	AstraZeneca
	Low-quality earnings	Various
	Short-term price impacts of regulatory changes (especially use of "executive orders" in US to push through regulation)	Shire/AstraZeneca 5%+ drops Sep 2014 on new tax inversion regulation from US
	Requirement for organisational restructuring (i.e. of location and alignment of subsidiaries) as stricter tax haven legislation is introduced	Various
	License to operate – boycotts and public protests	Vodafone/Starbucks/Amazon UK
Reputational	Negative associations from impacts from televised senate/parliamentary hearings on tax avoidance	Starbucks and Barclays (UK), Apple (US)
	Brand impact on entire bank from tax minimisation dependant business	Barclays tax avoidance units, European offshore wealth management sector

Source: MFS Investment Management

IIb. Identifying red flags in your portfolio companies

Graph 2. Profit shifting: assessing the risk



IIC. MSCI Tax Gap Analysis

The 2015 [MSCI Tax Gap Analysis](#) shows (despite lack of transparency making it difficult to identify cases) the potentially high exposure across an investment portfolio:

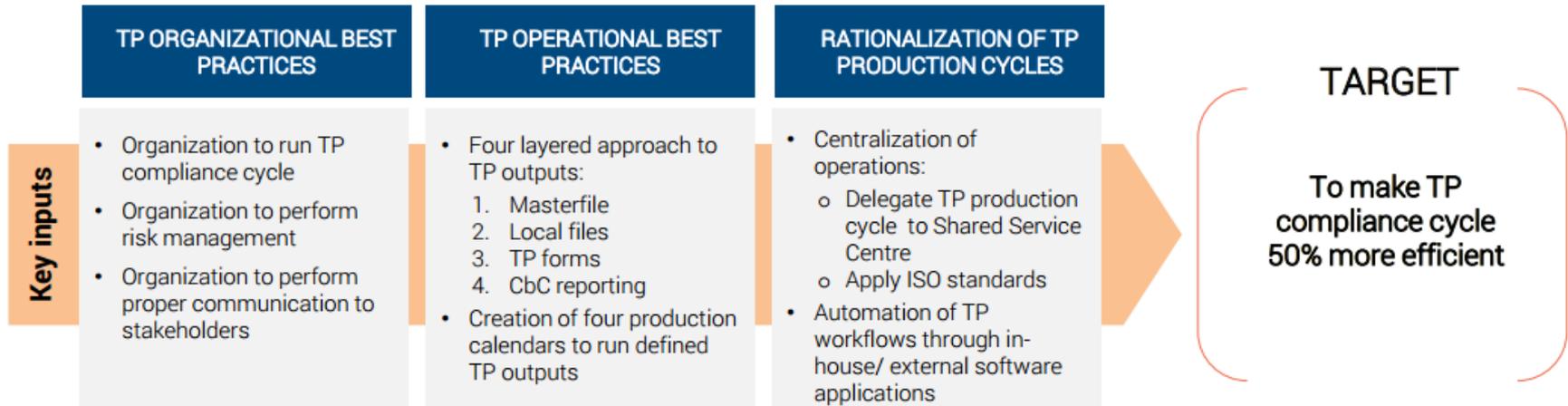
- 243 out of 1,093 companies in the MSCI World Index had a large tax gap⁵;
- 20% of those companies' profit after taxes could result from tax strategies rather than core business activity;
- 26% of those companies use [tax havens](#) (compared to 16% in the wider index).

⁵ Defined by MSCI as the difference between the reported tax rate paid and the tax rate of where companies generate revenues, also see glossary

Source: MFS Investment Management

III. TP Control Framework

IIIa. Moving towards higher efficiency of TP compliance cycles



BEPS compliant organisation + automated software solutions = increased process and compliance efficiency by >50%

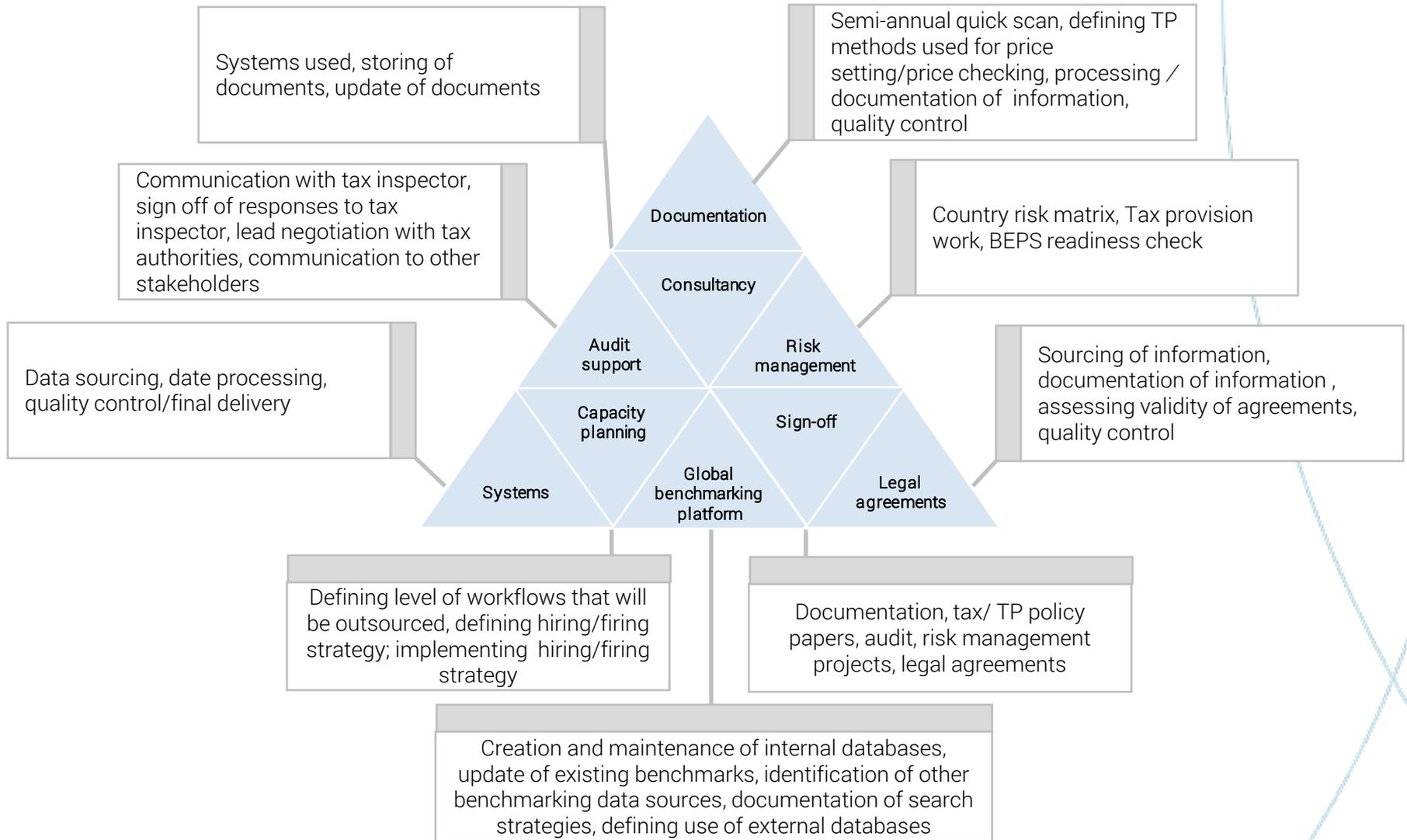
IIIb. Four Layers of TP documentation

- Master file
- Local file
- CbC
- Local TP forms

Questions:

- What information / data goes where?
- Do you have production / compliance calendar in place?
- Saving time / use of TP Software?

IIIc. Example: Being in control - Nine building blocks of a successful TP function (1/2)



IIId. Example: Being in control – RACI matrix (2/2)

	Head of Tax	Head of TP	Central tax/finance team	Local tax/finance team	Legal team	Business team	...
1. Development/maintenance of TP documentation							
2. Consultancy – Advisory and implementation							
3. Audit support							
4. Risk Management							
5. Systems (central data management & retrieval)							
6. Capacity planning – Insource/ outsource							
7. Global benchmarking platform (outsourced to third parties)							
8. Sign-off TP documents							
9. Legal agreements- set up and implementation							

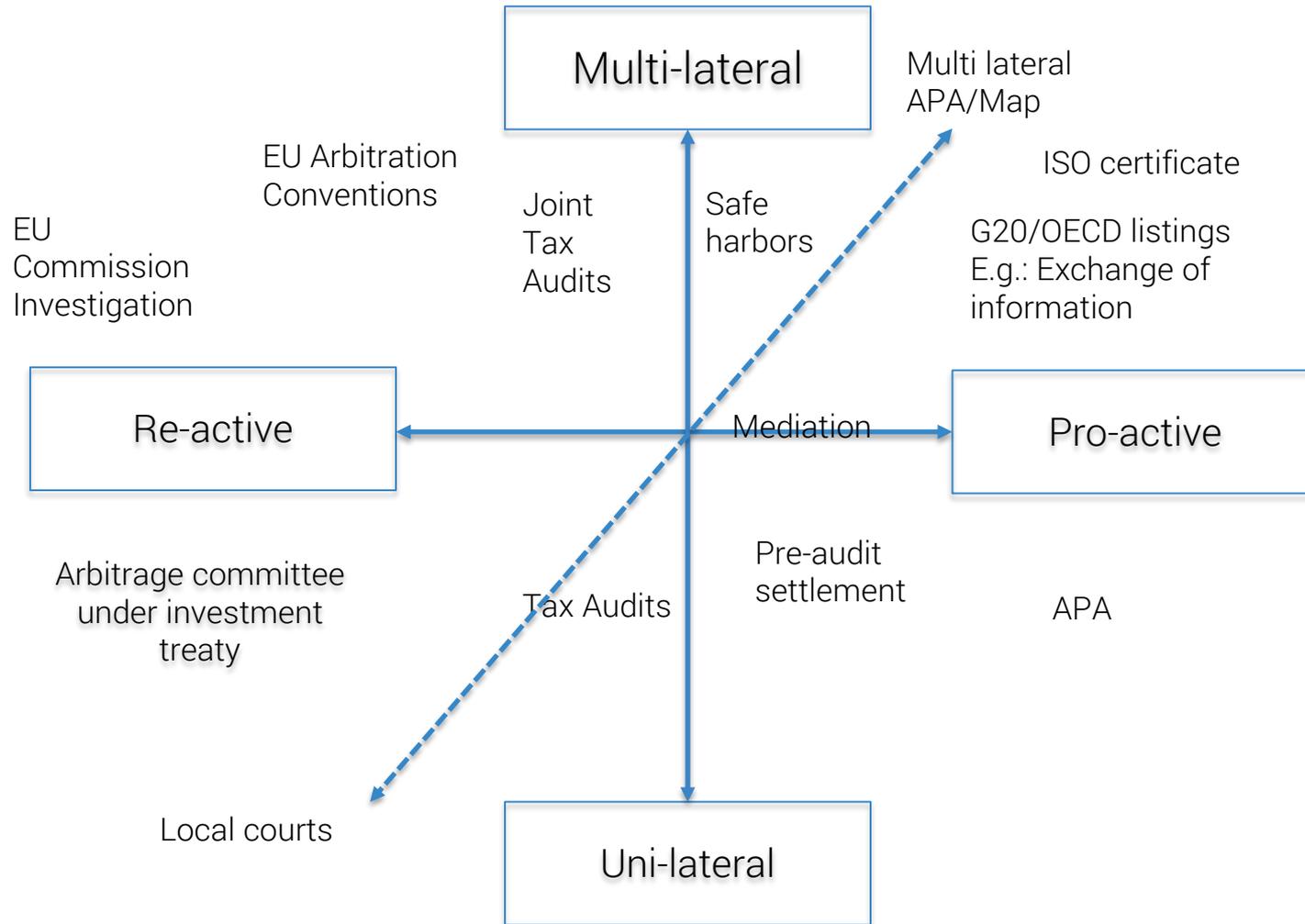
R (Responsible): Person who is assigned to perform part or all of the work, *A (Accountable)*: Person who has the authority to sign off on the work before it is effective (ONLY ONE PERSON!), *C (Consulted)*: Person who provides information or expertise necessary to complete the project, *I (Informed)*: person who needs to be notified of results but need not necessary be consulted.

IIIe. Why do you need to reassess your 'in control' mechanism?

- BEPS, today, is driving TP compliance costs for MNEs upwards by 25%
- 70% of global cross-border trade is between related parties
- Varying tax and TP compliance requirements to comply with in different jurisdictions
- Rise of new business model configurations
- Growing level of documentation requirements under BEPS
- Increasing number of TP audits

IV. Dispute Resolution

IVa. How should business be addressing increased level of disputes? (1/3)



TPA Global Dispute Avoidance and Resolution Matrix

IVb. How should business be addressing increased level of disputes? (2/3)

A. A value chain analysis after BEPS

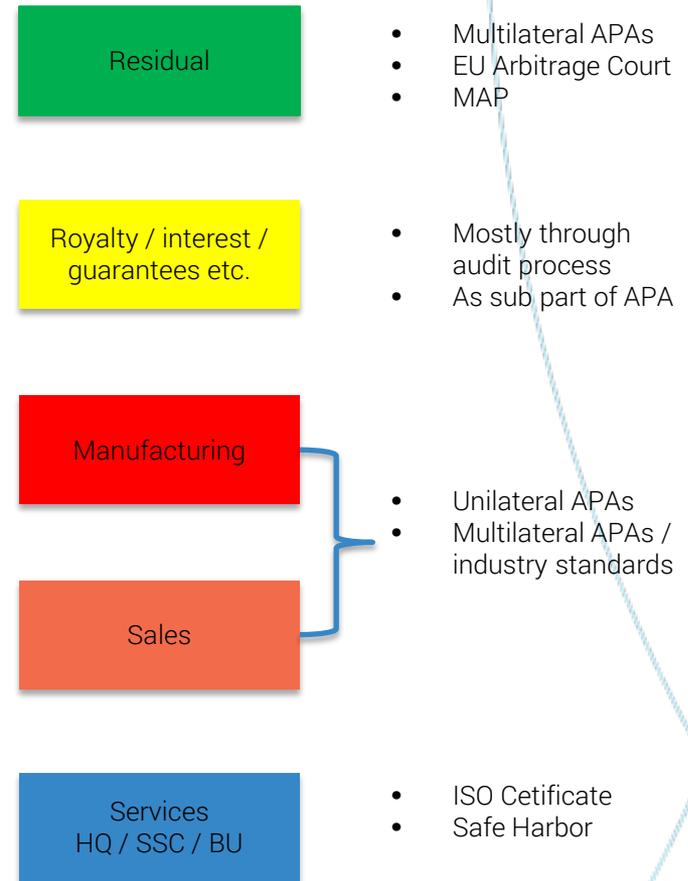


C. Main questions:

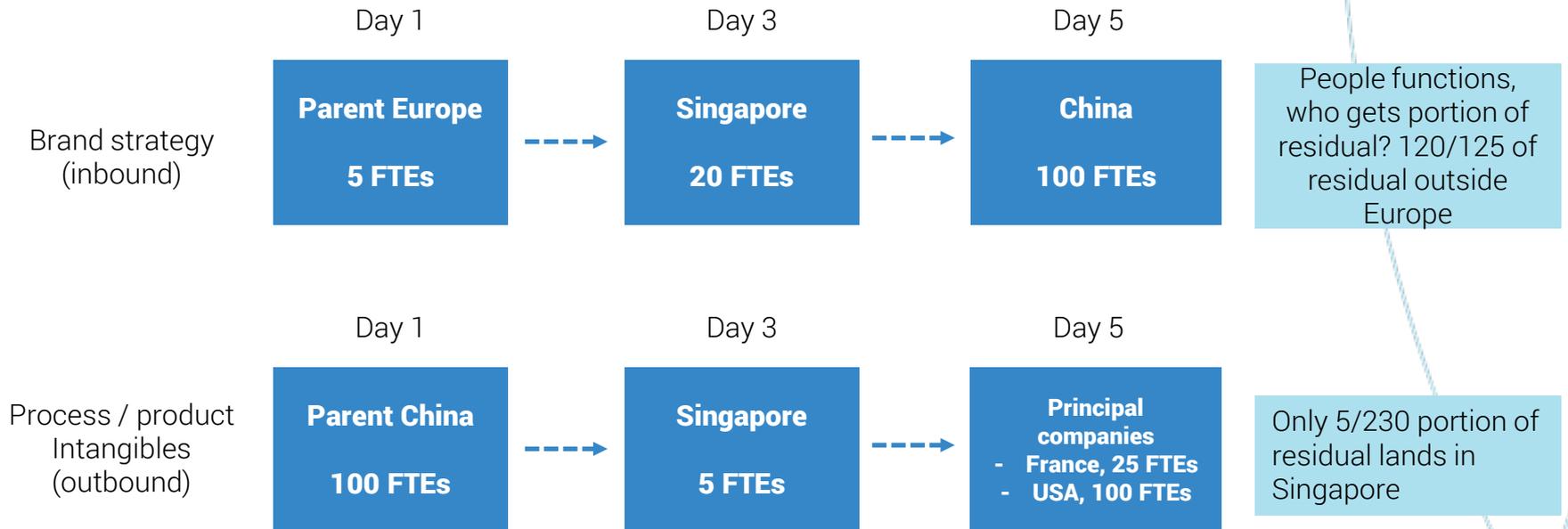
- which disputes to handle?
- which toolbox to use?
- what timing of risk management?
- what professional process to use?

➔ What will be your Global TP risk mitigation strategy?

B. Dispute avoidance / resolution toolbox



IVc. How should business be addressing increased level of disputes? (3/3)



V. Best Corporate Responsibility

V. Examples of comprehensive tax policies

BOX 3. EXAMPLES OF COMPREHENSIVE TAX POLICIES

UNILEVER

Unilever's Global Tax principles "illustrate good corporate practice in the area of tax management and tax transparency, balancing the interests of our various stakeholders". The principles, for which internal training is provided, cover the following areas:

- compliance
- transparency
- transfer pricing
- structure
- tax havens
- tax rulings
- relationships with governments
- relationships with tax authorities
- accountability and governance

The company explicitly states that "secrecy jurisdictions or so-called 'tax havens' are not used for tax avoidance", while under the last point, the company makes reference to its commitment to annual reporting to the Board on adherence to the tax principles.

GRUPO NUTRESA

Grupo Nutresa's tax policy reflects "Responsible Corporate Citizenship". The policy includes a set of seven principles and twenty rules that govern the formulation and implementation of the company's tax strategy. The guiding principles include:

- ethics
- integrity and good faith
- legality
- responsible corporate citizenship
- world-class competitiveness
- social responsibility
- sustainable development

In addition, the policy attributes responsibility to the Board for ensuring compliance in all the companies that are part of the group.

VI. TP Automation

Vla. Types of TP software applications

Functionality	MNEs need	Description
TP system design and planning	Strategic & Operational TP	<ul style="list-style-type: none"> • Draws inter-company relationships (design) • Links TP specialists' recommendations to financials (test)
TP capacity planning	Strategic & Operational TP	<ul style="list-style-type: none"> • Assists in planning your insourcing/ outsourcing cycles
Benchmarking	Operational TP	<ul style="list-style-type: none"> • Automates comparable company searches
Consultancy	TP Knowledge	<ul style="list-style-type: none"> • Acts as a "Google" for transfer pricing
TP report writing	TP Compliance	<ul style="list-style-type: none"> • Generates standard TP documents, graphics, tables, etc. • Generates CbC reports
Audit process	TP Compliance	<ul style="list-style-type: none"> • Streamlines tax audit process • Records and maintains a log of all TP activities and calculations
Tax provisioning	TP Compliance	<ul style="list-style-type: none"> • Assists in reporting current and deferred income taxes • Runs global tax provision calculations
Data collection, retrieval & conversion	TP Infrastructure	<ul style="list-style-type: none"> • Collects data in the right format • Allows for standardized reporting across jurisdictions
Workflow management	TP Infrastructure	<ul style="list-style-type: none"> • Embeds workflows into an IT platform • Enables automation of tax/ TP processes
Repository for documents	TP Infrastructure	<ul style="list-style-type: none"> • Contains streamlined and structured TP related information • Automates document management

VIb. Benefits

1. You will be able to plan and optimize your tax/ TP structures:

- Plan and manage your TP on a “real time” basis
- Run various “what-if” financial simulations and analysis for any tax/ TP scenario
- Perform “before and after” intercompany transactions impact analysis on your ETR
- Long-term succession planning of your in-house TP team
- Proactive management of your TP documentation production and submission calendars

2. You will be able to mitigate your tax/ TP risks:

- Better control over your TP processes
- Accurate data captured and reported in the required format
- Timely filing of TP documentation across all jurisdictions
- Automated CbC reporting and TP report writing facilities
- One central place to store TP information
- Effective audit trail

3. You will be able to save costs:

- More structured and efficient TP processes/ in-house team
- A significant reduction of manual work intervention
- Less usage of external advisors

Vlc. TPA Global software solutions portfolio

TPA Global brings TP software solutions in close cooperation with its trusted members and alliance partners:



Transfer Pricing for Hyperion TPH
www.transferpricingforhyperion.com



Tax Technologies, Inc.
Tax Series
www.taxtechnologies.com



Intra Pricing Solutions
TP Genie
www.intrapricing.com



ALDER&SOUND
[X]VIEW
www.aldersound.fi/xview



Uwe Kaestner TP-EXPERTISE
FinAppSuite
www.tp-expertise.com

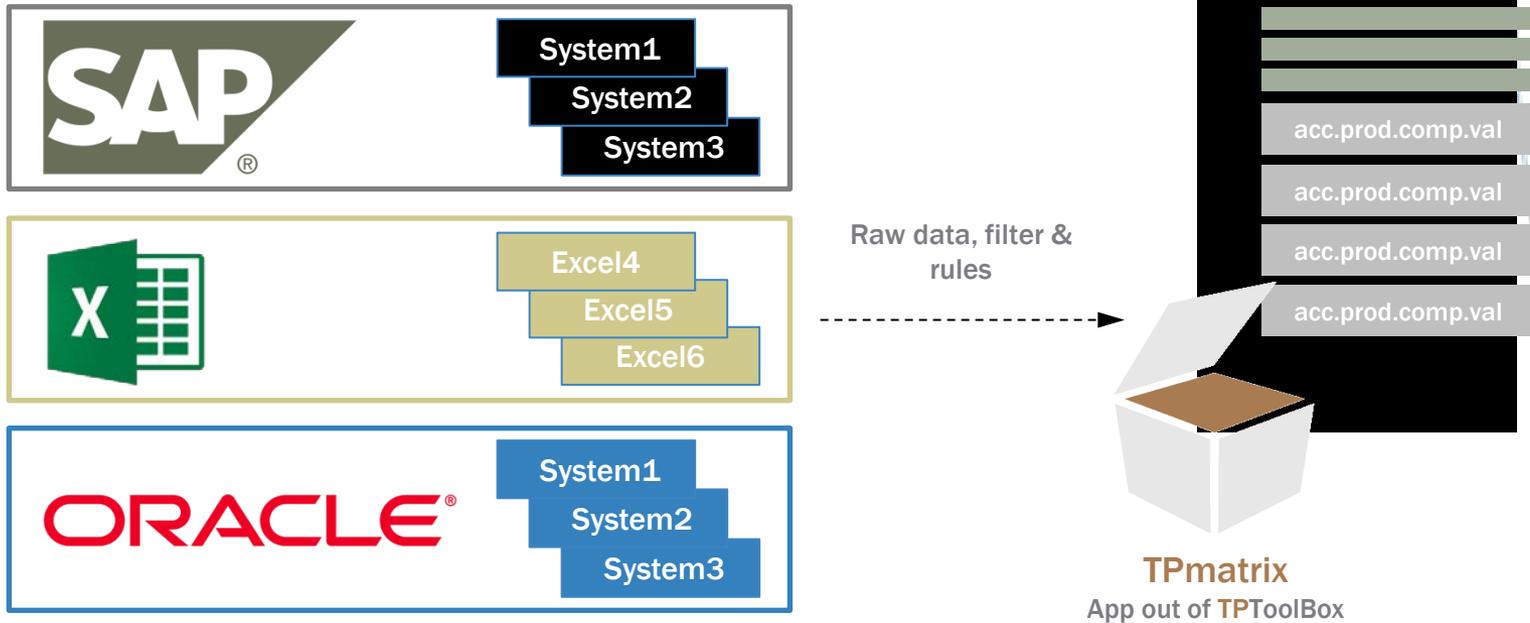


RoyaltyStat
Online TP Solutions
www.royaltystat.com



edgarstat
Transfer pricing analytics
www.edgarstat.com

Vld. TP matrix: Processing of raw data



Transfer & processing of raw data from SAP or out of other systems

- Individual transaction raw data (voucher level) and/ or consolidated data level are typically transferred by headquarter unit out of SAP system (if applicable business warehouse) and/ or additional systems
- The source data can be loaded in various level of details, e.g. goods transactions aggregated, services detailed
- Product hierarchy or type of companies can additionally be defined as enrichment

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