

CCH® AnswerConnect

Virtual Coffee Talk

A discussion of the latest tax updates

How to Effectively Comply with New Brazilian Transfer Pricing Rules

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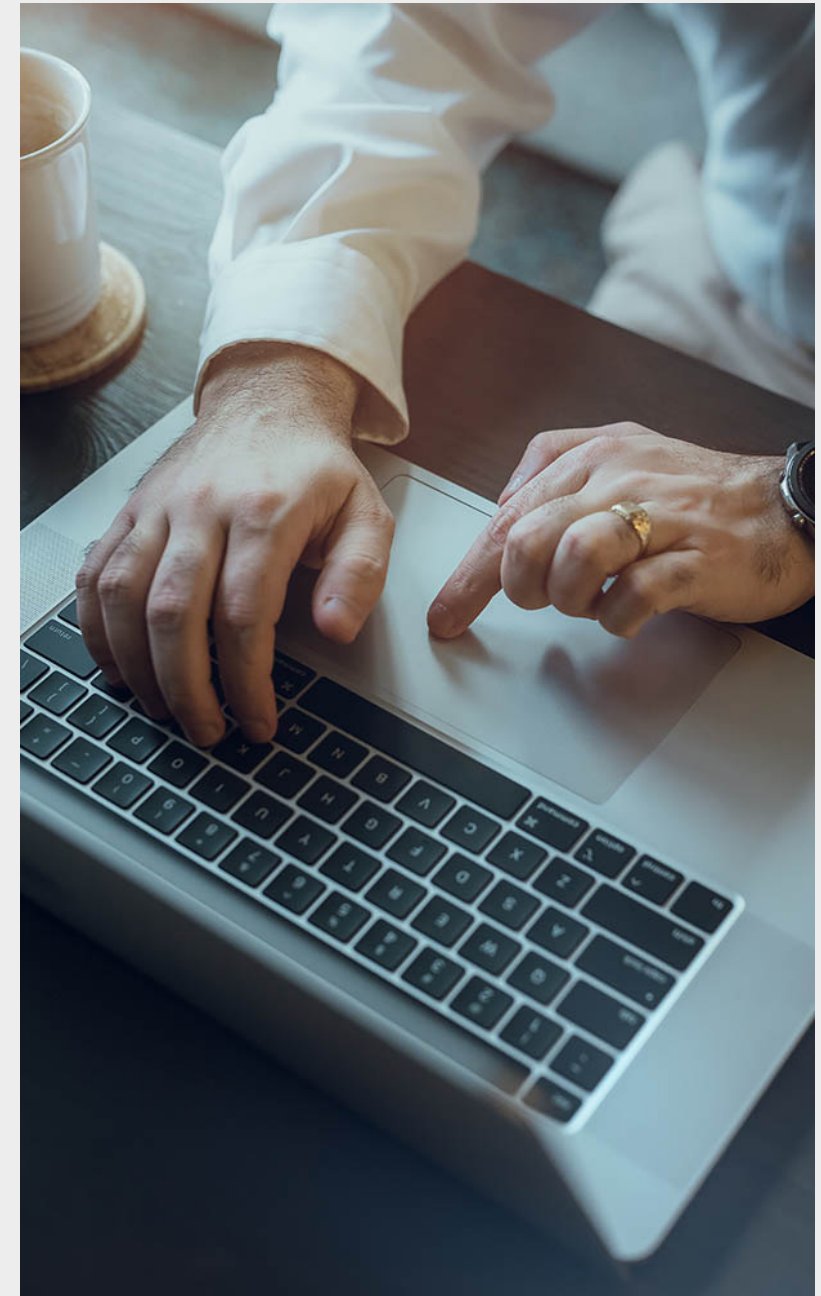
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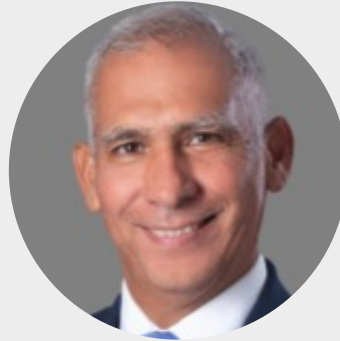
Today's speakers



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Antonio Macias
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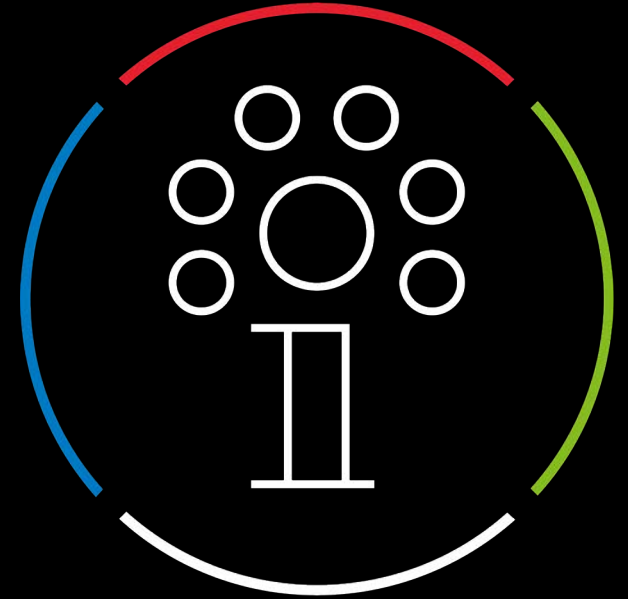
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Lead Product Manager
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Agenda

- Overview of Brazil Tax and TP Reform
- Impact of New Regulation on U.S. MNE
- Action Points and Best Practices
- Example (Cost Sharing)
- Opportunities for U.S. MNE
- Questions
- Additional Information in CCH[®] AnswerConnect



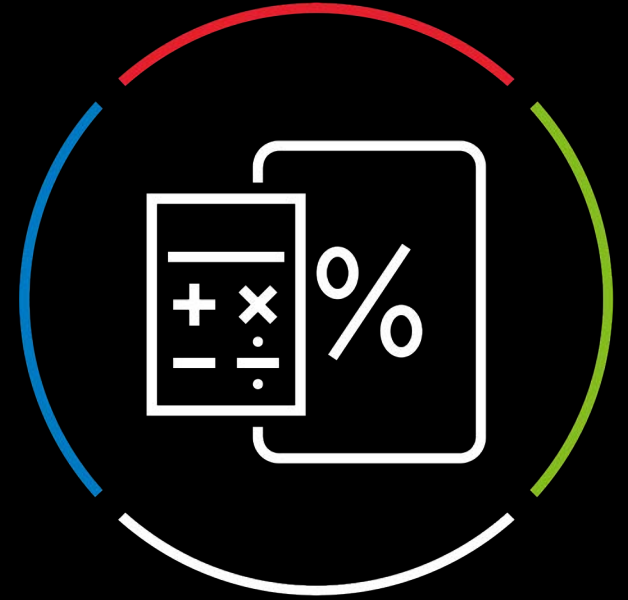
Polling question #1

Have you started to address compliance with the new Brazilian transfer pricing regulations?

- A. Yes, we are ahead of the game
- B. No, but we have started making a game plan to do so
- C. Does not impact the Company I work for



Overview of Brazilian Transfer Pricing Regulations



Overview of Brazilian Transfer Pricing Regulations



More than 100 countries have transfer pricing regulations based on the arm's length principle.

One of the only countries in the world that had transfer pricing regulations that did not apply the arm's length principle was Brazil until now.

Brazil Economic Highlights:

- 12th economy in the world in terms of GDP
- 24th and 27th in total exports and imports
- 49th most complex economy*

Brazil was considered an outlier related to transfer pricing and some MNE follow different TP policies or models.

Brazil had certain constraints and impacts in certain types of intercompany transactions (royalties and management fees) that generated double taxations.

* According to Economic Complexity Index (ECI)

A summary of the current Brazilian tax reforms (Transfer Pricing)

New Transfer Pricing Rules

- **Law #14.596/2023:** Sanctioned on June 15th, 2023, based on OECD standards.
- Effective as of **January 1st, 2024.**
- Possibility of early adoption in FY23, which must be formalized by **September 2023.**
- Regulations are still pending to be formalized by tax authorities.

Former Rules

- Fixed methods and margins
- Mainly designed for goods and services
- An exhaustive list of related parties
- Taxpayers are generally free to choose the preferred method
- Little room for discussion with tax authorities

X

New Rules

- Arm's length principle
- OECD — Transactional Net Margin Method (TNMM), Profit Split Method (PSM), Valuation
- Applicable for all transactions
- Criteria for the selection of the most appropriate method
- More flexibility for discussion with tax authorities — e.g., Advance Pricing Arrangement (APA)

U.S. Multinational general impact from this new TP regulation



General Benefits of New TP Regulations

✓ U.S. Foreign Tax Credit

The 2022 U.S. Final Regulations introduced an attribution requirement as a new element to the net gain requirement to allow FTC. For resident taxpayers, the attribution requirement will be satisfied if the foreign base is determined using **arm's length principles**.

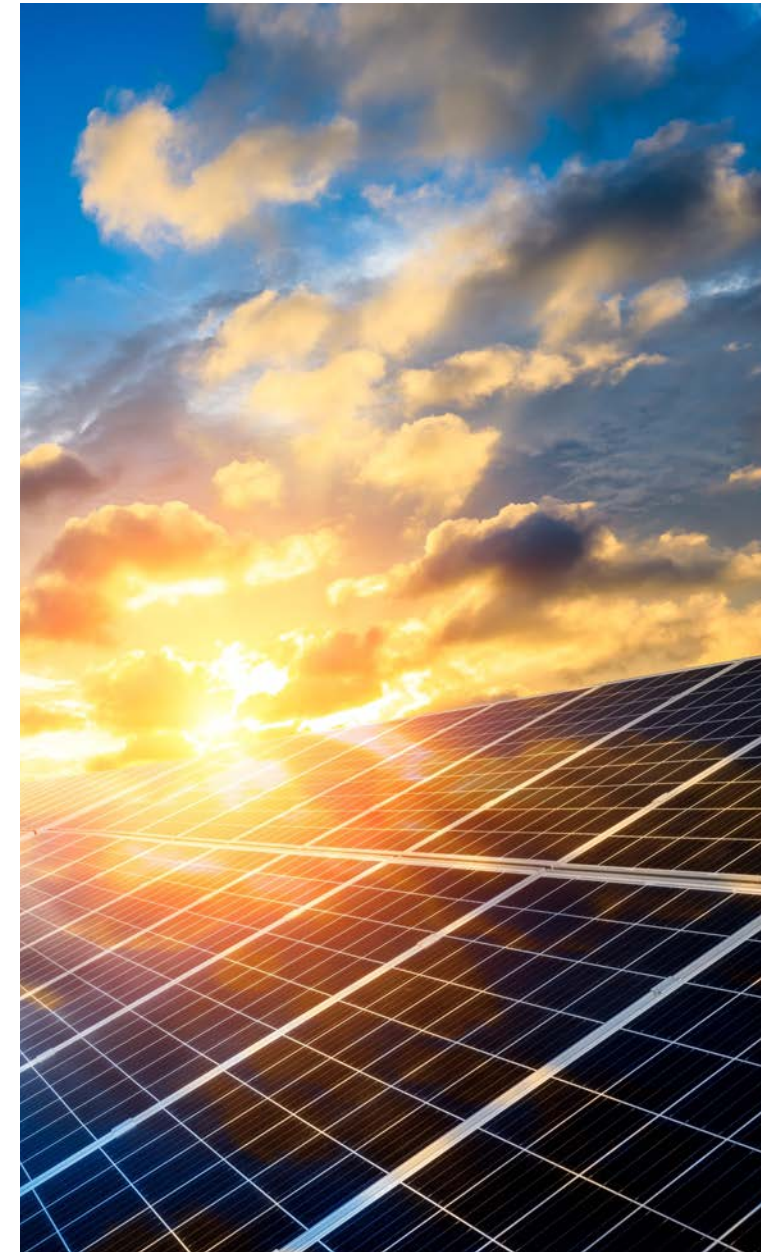
Recent government rollback of foreign tax credit rules, allows companies to continue relying on old rules on the foreign tax credit for 2022 and 2023.

✓ Avoid double Taxation

One of the countries with more self-made adjustments in tax returns is Brazil. In most cases, those adjustments generated double taxation due to the Brazilian formalistic methods. New Regulations will avoid systematic double taxation.

✓ Consistency in Global Transfer Pricing Policies

One of the most valuable assets in the transfer pricing systems of MNE Group is global consistency and certainty in their transfer pricing policies. These new rules will allow the U.S. MNE to achieve global consistency in its transfer pricing policies.



Issues still to be resolved



No double Tax Treaty between the U.S. and Brazil

The lack of a tax treaty generates certain uncertainty as there is no access to the MAP process. This puts significant stress on the *Receita Federal* audits and transfer pricing adjustments as still will be required to be resolved under the local judicial power.

Still withholding taxes will be calculated on the local tax rate and no treaty rate (impact mainly in management fees and services).



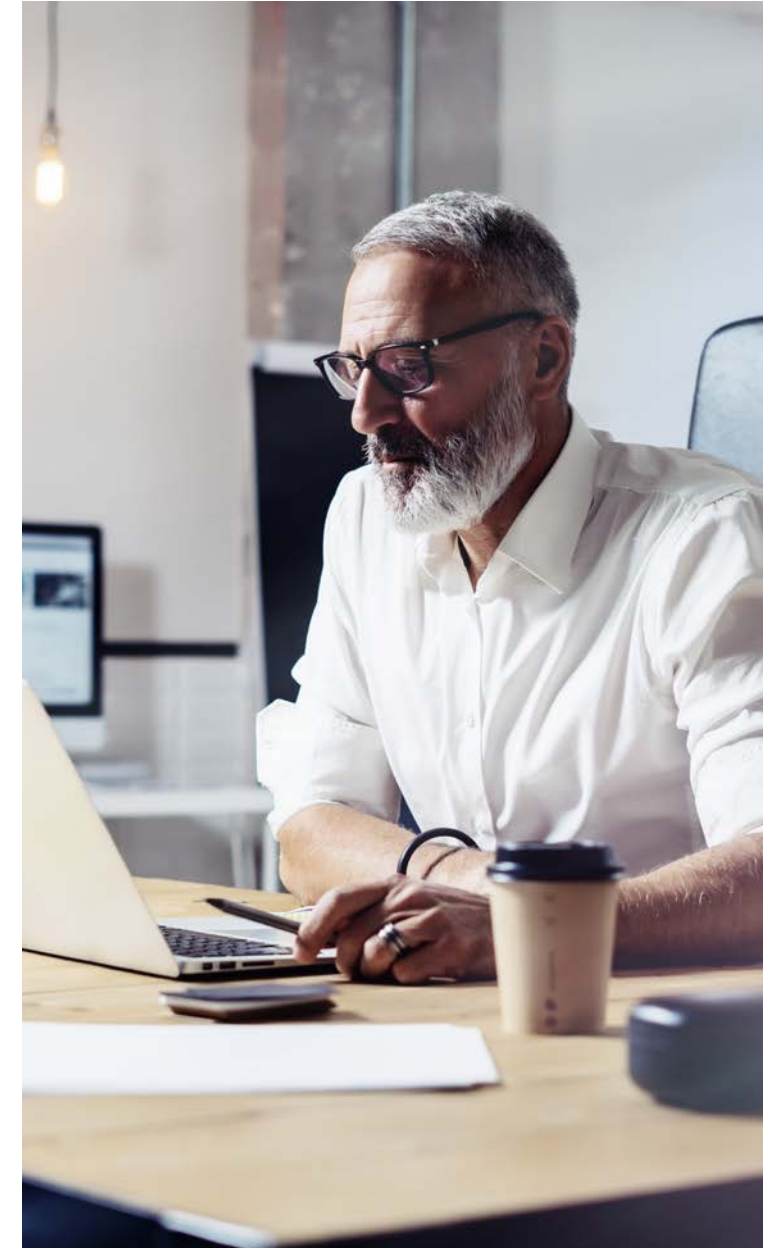
Still High Indirect Taxes

Brazil will still charge PIS, COFIS and CIDE in certain intercompany transactions based on local regulations with a higher tax burden in certain intercompany transactions.



State and Cities Taxes

Brazil still has a complex system of state and city taxes related to the movement of goods and services within Brazil that impact the overall tax rate. The proposed tax reform is trying to simplify this process.



Most complete and sophisticated OECD-Transfer Pricing regulations in the World

- Design of Controlled Transaction — Article 9
- Realistically available options — availability for recharacterization Article 10
- Contractual Terms — facts and circumstances will precedence over the written documents — Article 12
- Risk — exercises the management of economic risk
- Business Strategies — any strategy should be outlined and agreed prior to implementation (Marketing campaigns) –Article 17 § 2
- **Business restructuring — changes in commercial or financial relationships between related parties will trigger an arm's length remuneration**
- **Tested Party — If there is non-compliance in the documentation only the functions, risks and assets will be allocated to the related party in Brazil - Article 46§ 6**
- Range of Comparable — limitation of 20% deviation between upper and lower quartile — Article 47 § 4
- Country Risk Adjustment and use of local comparable



A&M Insight

Detail on the implementation and documentation of the transfer pricing policies is key to avoid any unexpected adjustments or non-compliance with local requirements.

Best Approach and TP Practices



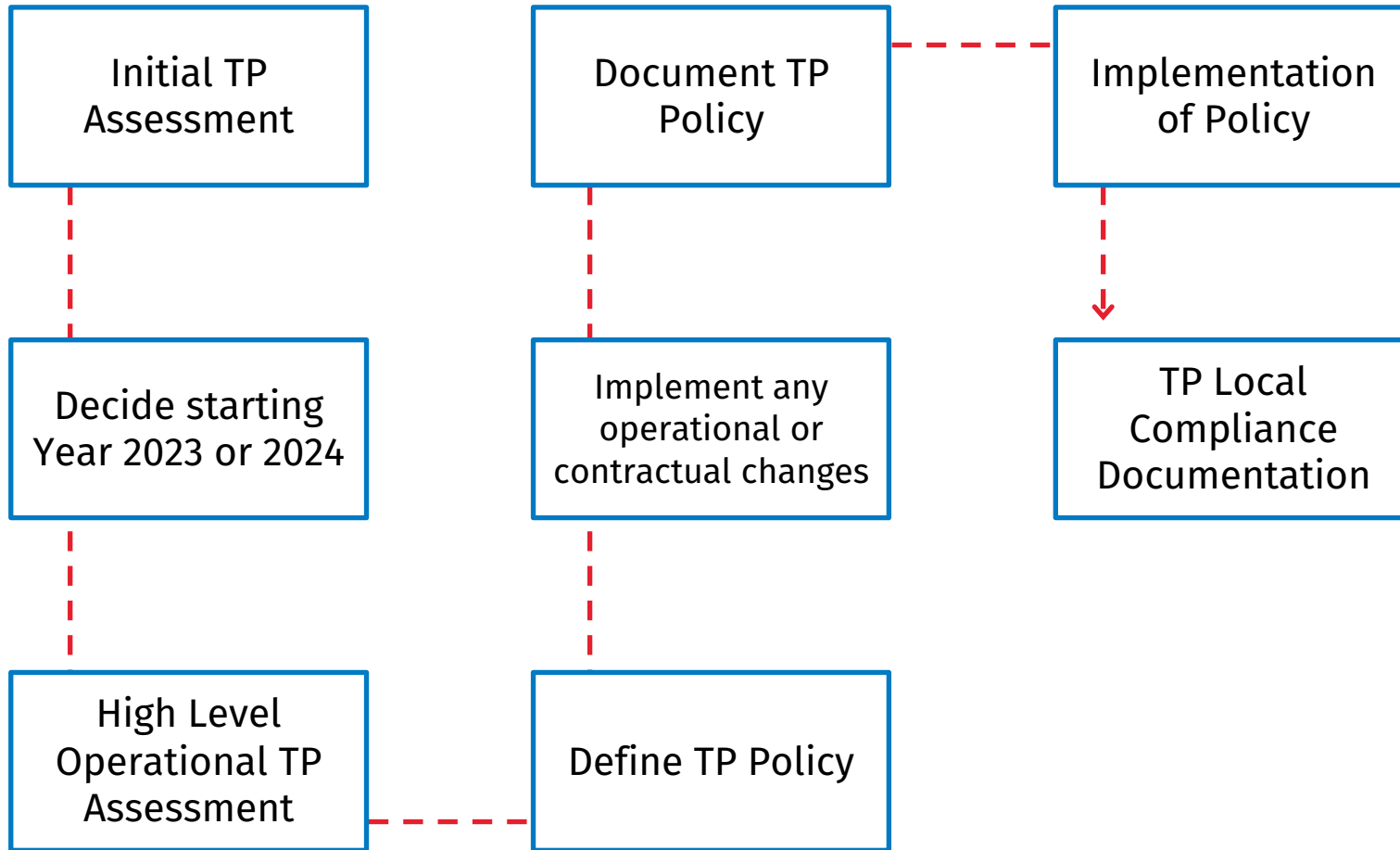
Polling question #2

Do you plan to make changes to your transfer pricing process to align with the new Brazilian TP Regulations?

- A. Yes
- B. No
- C. We already had implemented changes in the tax/transfer pricing team



Brazil TP Roadmap

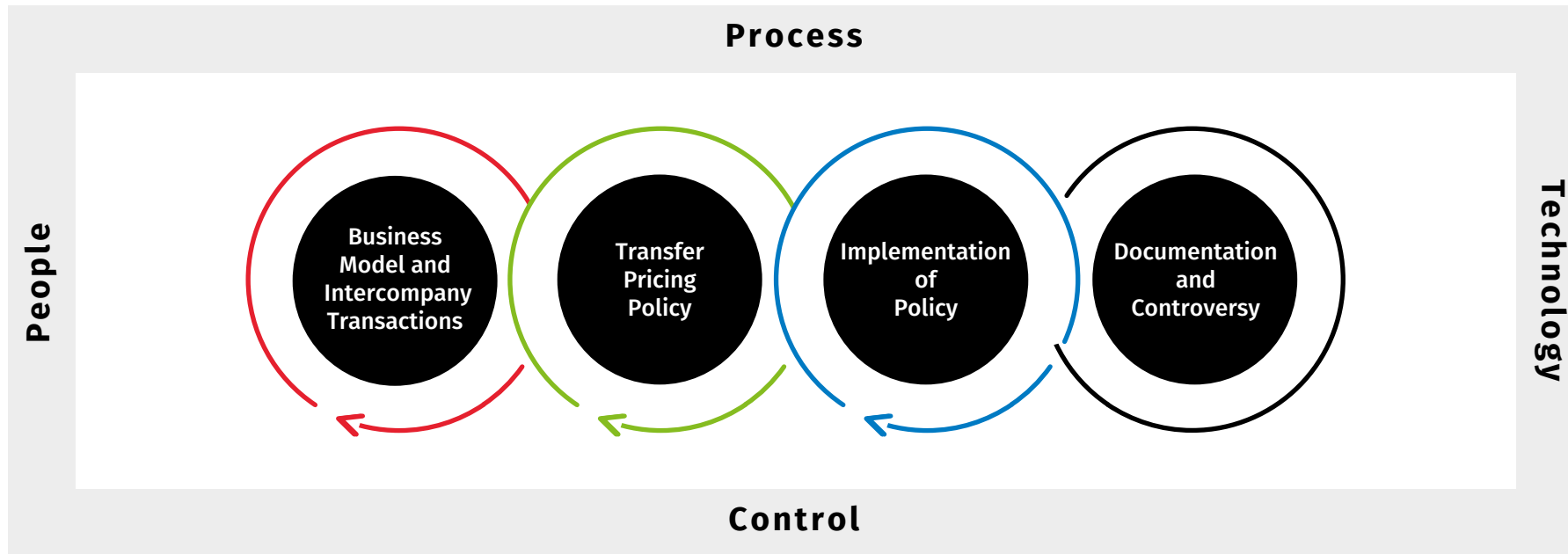


A&M Insight

It should be viewed as an operational change that will require adaptations in Company's process, system, and documentation. It is not just a pure tax compliance function.

Adaptation Process of Global TP Systems

Early Diagnostic and implementation of the Global TP policies is key to successfully adapting the global transfer pricing systems of the Group to the Brazilian Subsidiary.



Main Components of the Initial Transfer Pricing Analysis



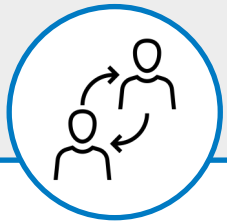
Non-invasive analysis



Provide a big picture of actual situation

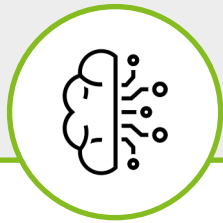


Allow companies to act on a timely basis



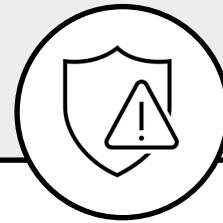
Business Model Assessment

- High-Level Review of Group's Business Model
 - Review of Masterfile focusing on Brazil Entity's Business Model
 - Actual Brazilian Entity's intercompany transactions are reflecting the Group's TP Model
- Brazilian Entity High-Level Functional Analysis Review



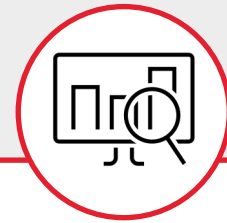
Intellectual Property Analysis

- Identification of Value Drivers on Brazilian Entity's Business Model
- Ownership of IP - Economic and Legal
- Activities related to IP
- IP Risk Path Analysis



Risk Characterization Analysis

- Strategic Decision Matrix
- Risk Assumption
- Impact analysis
- Link to transactions
- Link to people
- Characterization of entities



Transfer Pricing Policy and Economic Results

- High-Level TP Review
 - TP Policy
 - Undertake Benchmark Analysis
 - High-Level Modeling of Tax Benefit applying new regulations
 - Internal Systems and Procedures for complying with new regulations

Case Study



Polling question #3

Do you have a management cost allocation, or Cost Sharing, in place with your Brazilian entity?

- A. Yes
- B. No
- C. We haven't even thought about it yet



Case Study (Brazilian Cost Sharing)



Background

- A significant number of Brazilian entities implemented Cost Sharing agreements for their Management activities
- Characterization of the transaction allows for certain tax treatment regarding certain charges (PIS and COFINS)
- No transfer pricing compliance from previous Brazilian TP regulations

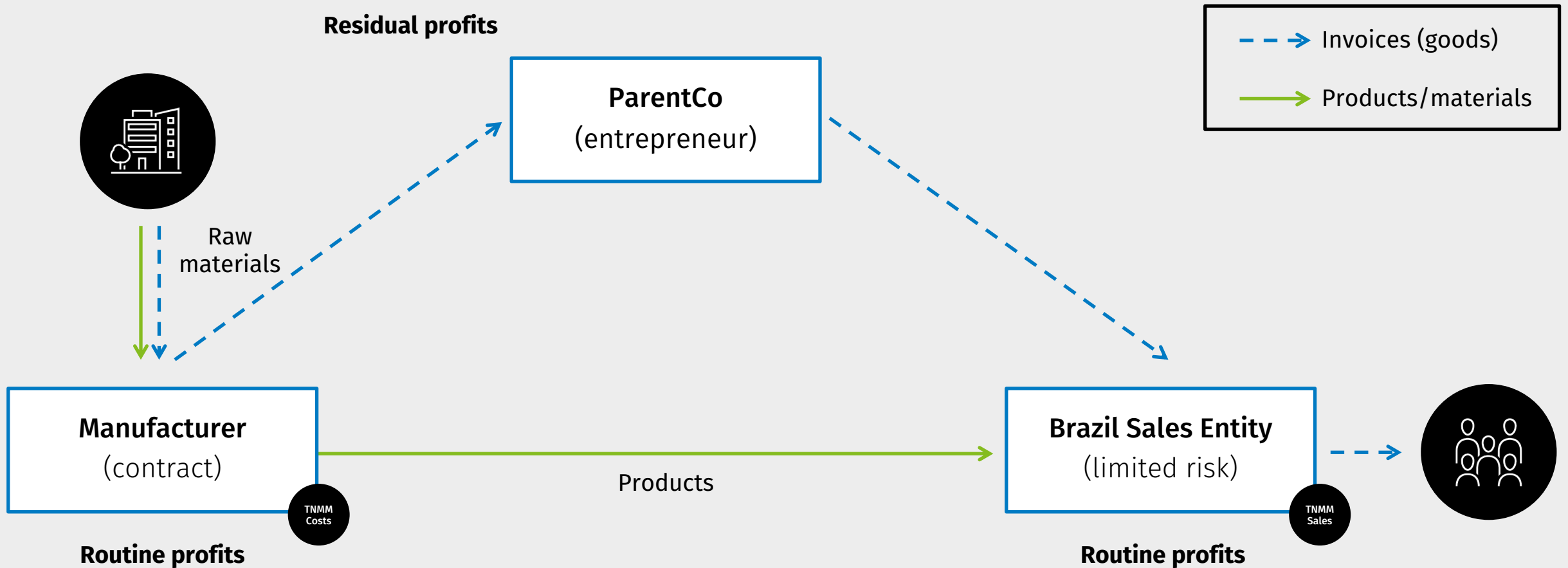
Potential Issue

- This intercompany transaction will be required to comply with the arm's length principle
- Realistically available options and non-recognition of the controlled transaction could allow the recharacterization of transactions

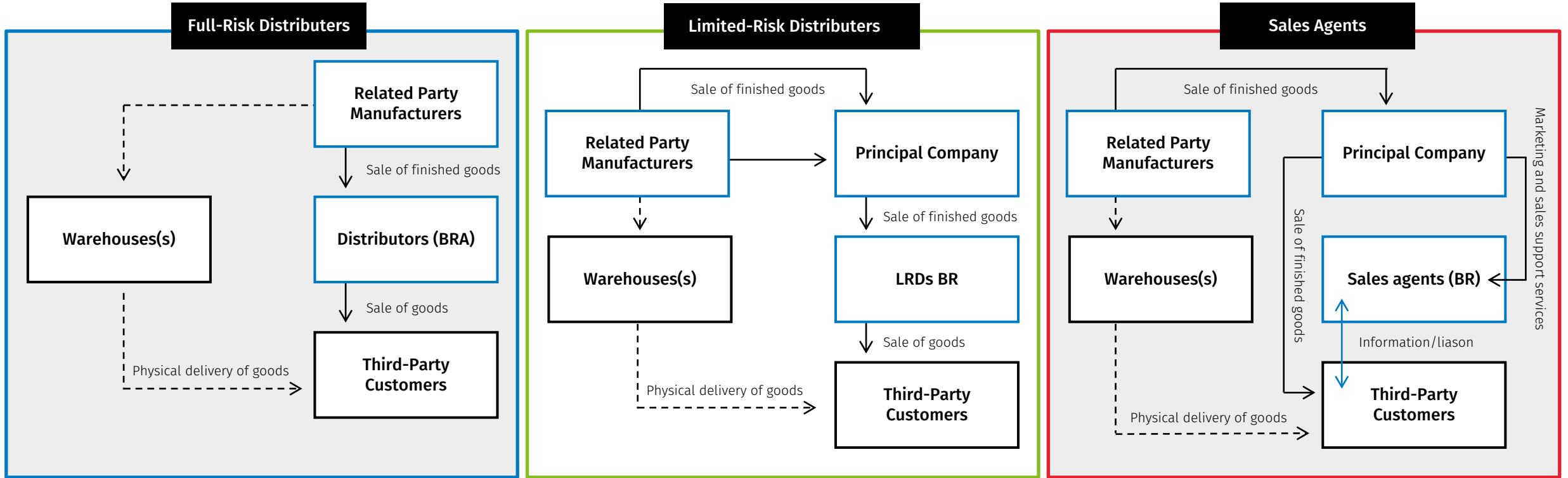
Supply Chain TP Opportunities



Implementing Limited Risk Distributor Model

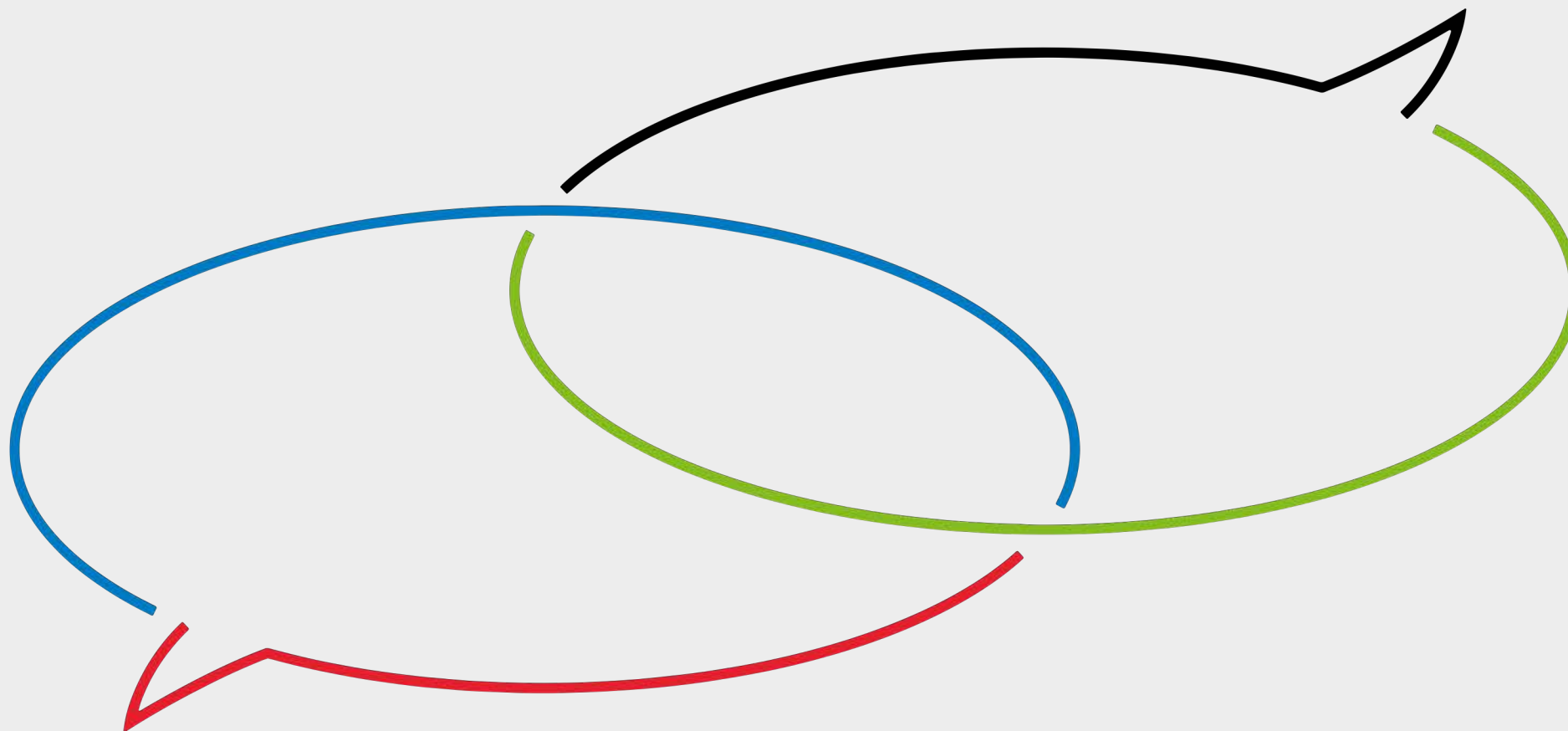


Implementing Limited Risk Distributor Model

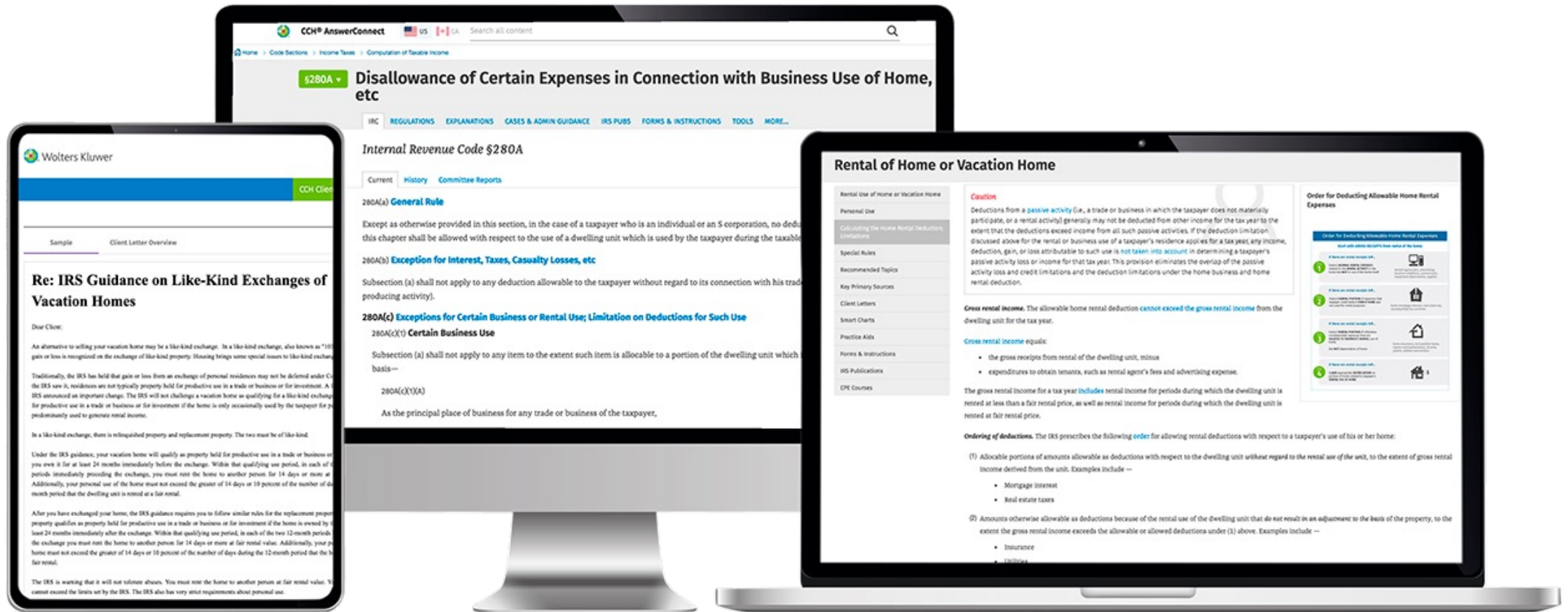


| Models | Full-Risk Distributors | Limited-Risk Distributors | (Disclosed) Sales Agents |
|------------------|---|---|--|
| Key Features | <ul style="list-style-type: none"> Act as "principals" Buy finished goods from related party manufacturers / suppliers Take title to goods which they retain until sale to end customers Bear all risks associated with their distribution function (e.g. market, sales and marketing strategy, pricing, inventory obsolescence, inventory management, bad debt, foreign exchange) Earn full-risk return | <ul style="list-style-type: none"> Work within operating guidelines set by Principal Company Enter into sales contracts with customers Buy and sell goods on their own behalf and on their own account Take "flash" title to goods Manage their operating costs Bear limited inventory risk and may bear other risks (market, volume, foreign exchange) | <ul style="list-style-type: none"> Provide sales support and marketing services to Principal Company Collect info on customers Carry out market research Pass on product and pricing info to customers Do negotiate or conclude contract with customers Are not seen as contracting party by customers |
| Transfer Pricing | <ul style="list-style-type: none"> TNMM — Profit Margin (EBIT) | <ul style="list-style-type: none"> Commission TNMM - Profit Margin (EBIT) | <ul style="list-style-type: none"> Net cost plus Commission (if available) |

Q&A



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Additional information in CCH[®] AnswerConnect



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Polling question #4

Would you like a more in-depth demo or further details on the resources and tools available in CCH® AnswerConnect?

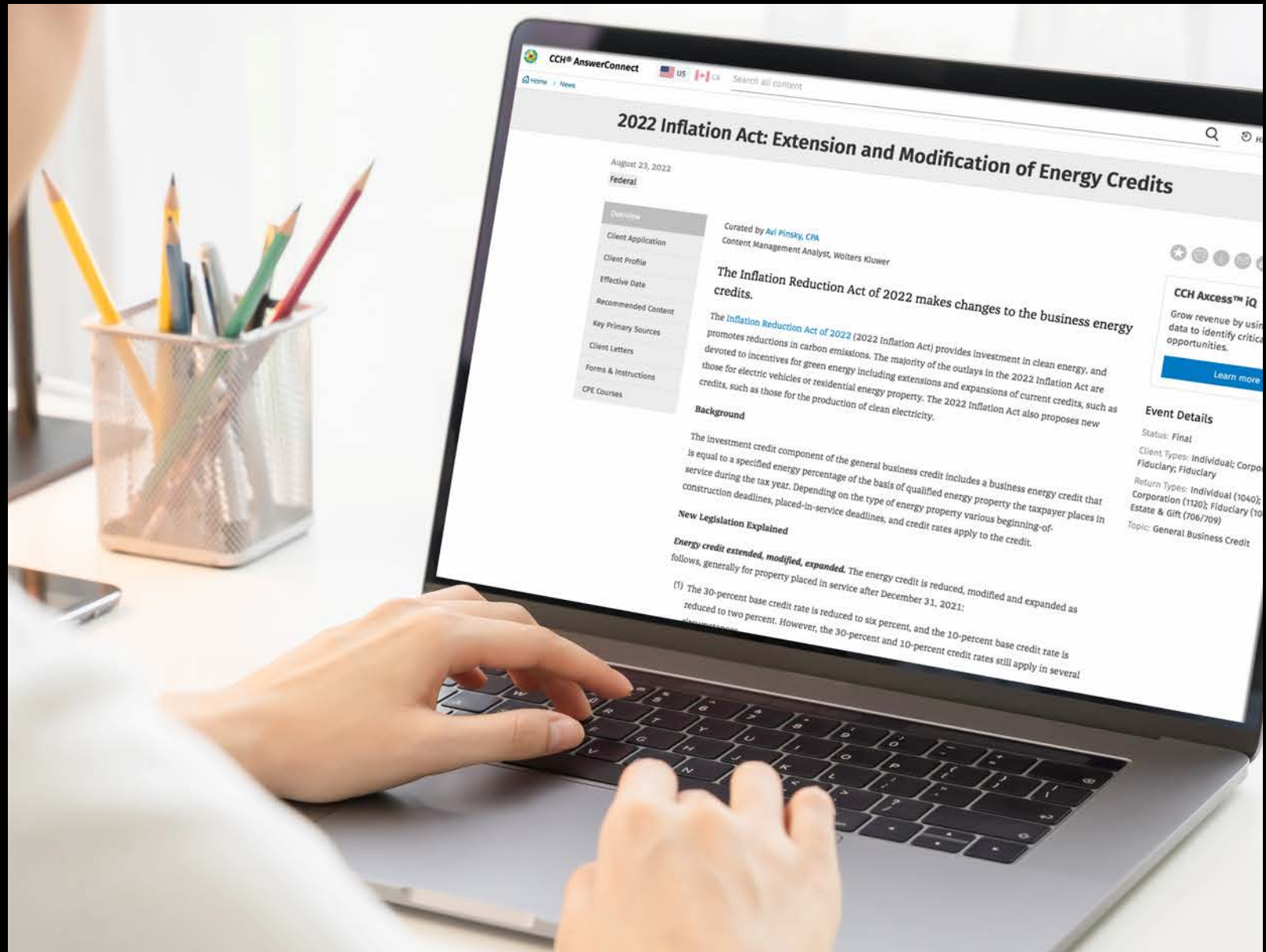
- A. Yes
- B. No



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Kevin M. Jacobs

Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Tax in Washington D.C. and the National Tax Office Practice Leader. Mr. Jacobs co-leads the firm's Restructuring Tax Service (RTS) initiative, which aligns with A&M's core restructuring business assisting distressed companies with complex tax matters. He brings more than 15+ years of experience in tax matters in both the public and the private sectors.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate re-organizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel.

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (*magna cum laude*) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts and to the District of Columbia and Florida Bars. He is also a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association, the American Institute of Certified Public Accountants, the International Fiscal Association, and the New York State Bar Association.

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Antonio Macias Valdes

Antonio Macias Valdes is a Senior Director with Alvarez & Marsal Tax, LLC in Miami. He has over 24 years of experience in transfer pricing at leading global consulting and law firms.

Mr. Macias Valdes's notable engagements include assisting multinational companies optimize, implement, and document transfer pricing policies and reconciling their business and tax objectives with the requirements of global tax authorities. In his transfer pricing assignments, he has led transformational projects related to business models, supply chains, and intellectual property.

Throughout his career, Mr. Macias Valdes has established, led, and expanded several transfer pricing practices in Latin America. He was one of the leading professionals assisting companies in complex transfer pricing matters in Latin America.

Prior to joining A&M, Mr. Macias Valdes spent six years with DLA Piper, LLP in Miami, where he most recently served as Principal Economist. He assisted clients in controversial issues related to transfer pricing; designed transfer pricing compliance procedures from a corporate governance perspective; advised clients with complex inter-company transactions in Latin America; and reviewed inter-company transactions in an M&A environment.

Mr. Macias Valdes earned a bachelor's degree in economics from Instituto Tecnológico Autónomo de México and a post-graduate diploma in international tax from Instituto Tecnológico Autónomo de México and Harvard University.

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Marc Alms

Marc Alms is a Managing Director with Alvarez & Marsal Tax in New York. He focuses on the integration of transfer pricing policies following a merger or other business restructuring event, which may include global transfer pricing planning and policy development relating to the development and exploitation of intellectual property rights.

With more than 20 years of experience assisting both public and privately held clients, Mr. Alms led engagements in planning and documentation of transfer pricing policies; in obtaining advance pricing agreements; and assisting with competent authority for multinational corporations across a broad range of industries. Mr. Alms has assisted clients with the valuation of intellectual property rights for tax purposes, the establishment of cost-sharing arrangements, and the defending of such policies before the IRS and other revenue authorities.

[Click here for Mr. Alms' thought leadership on Country-by-Country Reporting \(CbCR\)](#)

Mr. Alms' background includes leading teams in the evaluation of intercompany transactions to determine whether they meet applicable U.S. and foreign transfer pricing regulations, including the latest OECD BEPS guidelines. Having worked in various countries including Canada, India, Japan, Australia, New Zealand, Ireland, and the U.K., Mr. Alms has significant experience providing clients with practical advice in their transfer pricing arrangements and helping to resolve international tax controversies matters.

Prior to joining A&M, Mr. Alms spent nine years with KPMG in New York, most recently serving as a Managing Director. He was a member of their global transfer pricing services and global dispute resolution teams and a member of their transfer pricing practice in Sydney, Australia, handling tax matters in the ASPAC region and working with the Australian Tax Office. Previously, he spent five years with the International Tax Services and Transfer Pricing practice of Ernst & Young.

Mr. Alms earned a bachelor's degree in history from the University of California, San Diego, and a Juris Doctor degree from the University of Pennsylvania Law School. He was admitted to the bar in California and is a member of the California State Bar Association. In addition, he has written articles on transfer pricing issues for various publications and is a regular speaker at tax-related events.

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Andre Rosa

Andre Rosa is a Director with Alvarez & Marsal's Tax and Labor Group in São Paulo. He has over 13 years of experience in providing tax advisory on M&A transactions; and assisting both local and foreign entities, including corporations, private equity funds, sovereign wealth funds, and pension funds.

Prior to joining A&M, Mr. Rosa was a Senior Manager with KPMG's International Tax and M&A department in Brazil. He assisted more than 40 M&A transactions and has extensive experience in structuring both foreign investments in Brazil and investments of Brazilian multinationals offshore. He also has experience providing tax assistance on corporate reorganizations, structuring efficient tax structures, and on the review of tax aspects of complex financial models as well as knowledge about the key areas of interest of industries like private equity, real estate, and infrastructure, such as agribusiness, mining, construction, retail, information technology and manufacturing.

Mr. Rosa earned a bachelor's degree in law from Pontifícia Universidade Católica (PUC) of São Paulo. He is registered before the Bar Association of Brazil (OAB-SP) and is a member of the Brazilian Institute of Tax Law (IBDT). Mr. Rosa is a Portuguese native speaker, is fluent in English and Spanish, and has good knowledge of German.

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Thank you for joining us today!

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