



# Transfer Pricing Update

March 18, 2021

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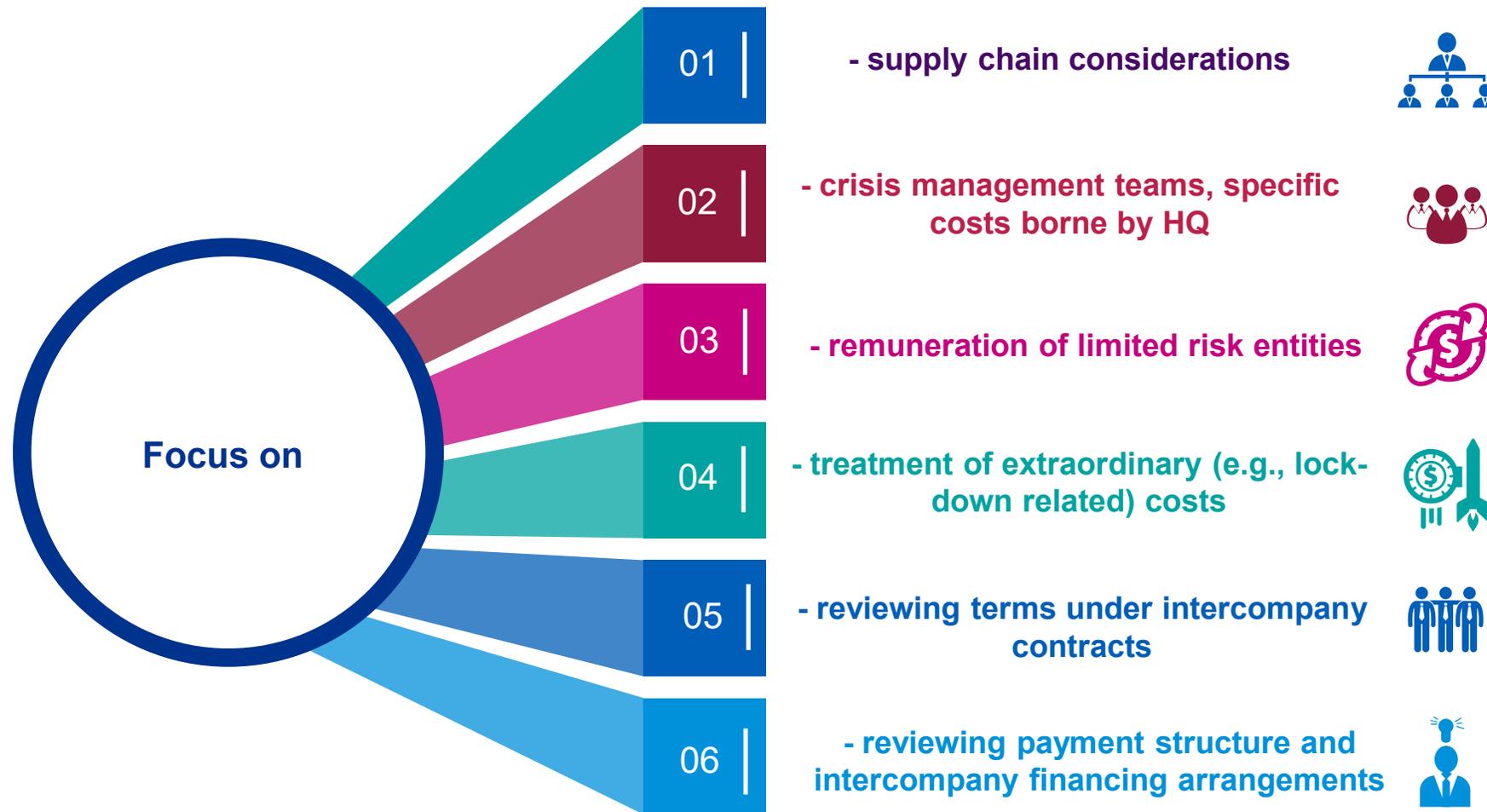
Q&A Session





# Covid-19 implications

# General COVID-19 transfer pricing considerations



# Covid-19: Guidance on Practical Matters (status)



## Guidance on the transfer pricing implications of the COVID-19 pandemic

18 December 2020

- No expansion to the current OECD TP Guidance
- No revision of the current OECD TP Guidance

### **BUT**

- Guidance on application of current OECD Approaches
- COVID 19 constitutes a hazard risk under OECD TP Guidance

# Covid-19: Guidance on Practical Matters (structure)

## Losses and COVID-specific costs

- Limited-Risk entity concept
- Who should take the burden?
- How to allocate?

## Government assistance

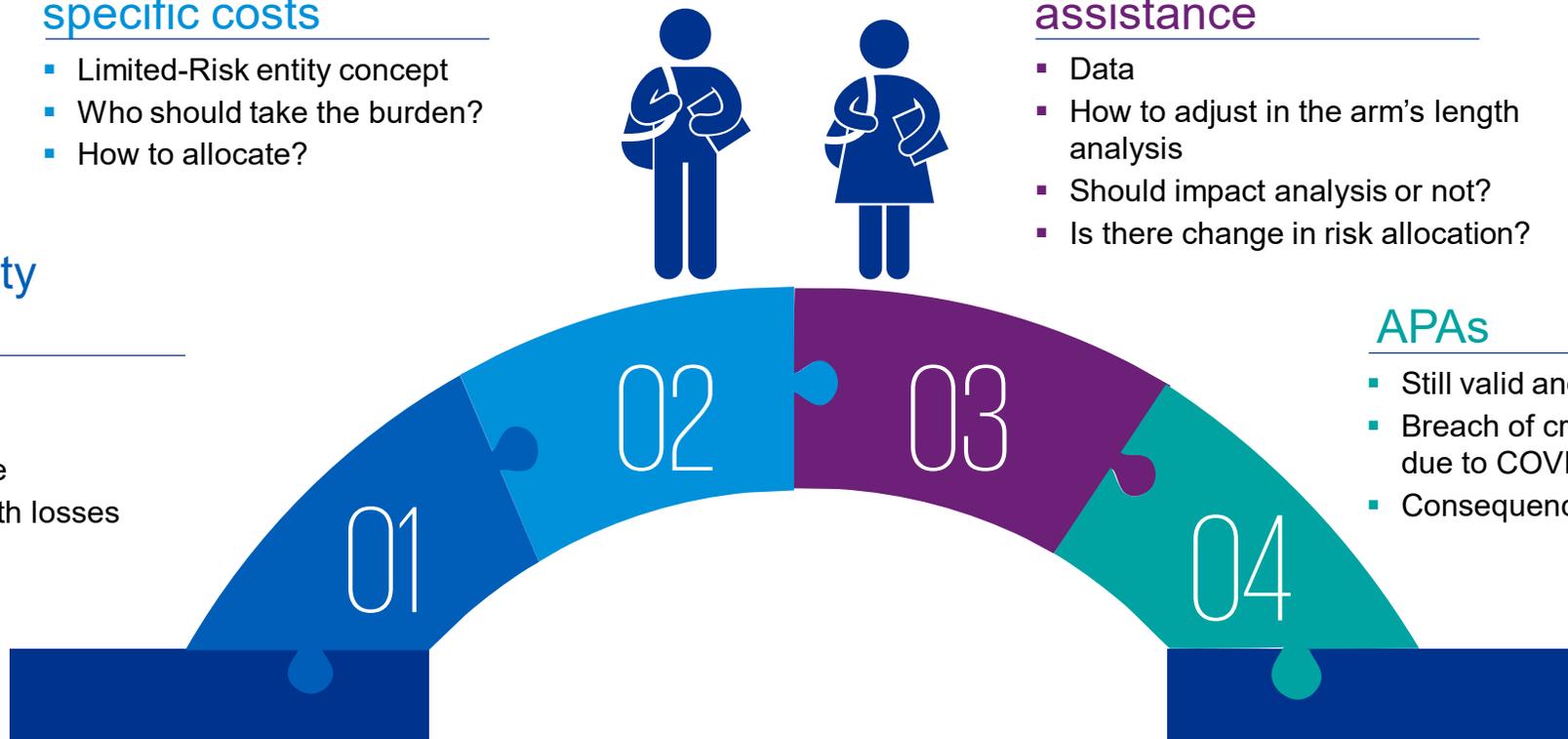
- Data
- How to adjust in the arm's length analysis
- Should impact analysis or not?
- Is there change in risk allocation?

## Comparability analysis

- Sources
- Timing
- Financials to use
- Comparables with losses

## APAs

- Still valid and be followed?
- Breach of critical assumptions due to COVID?
- Consequences



# Comparability Analysis

## Attention items:

- Which sources of information to use
  - ✓ How to meet the contemporaneous requirement (timing)
  - ✓ How to approach potential adjustments
- How to improve comparability
  - ✓ Financials to use (actuals vs projections)
  - ✓ Comparables with losses

## Types of adjustments: OECD Perspective

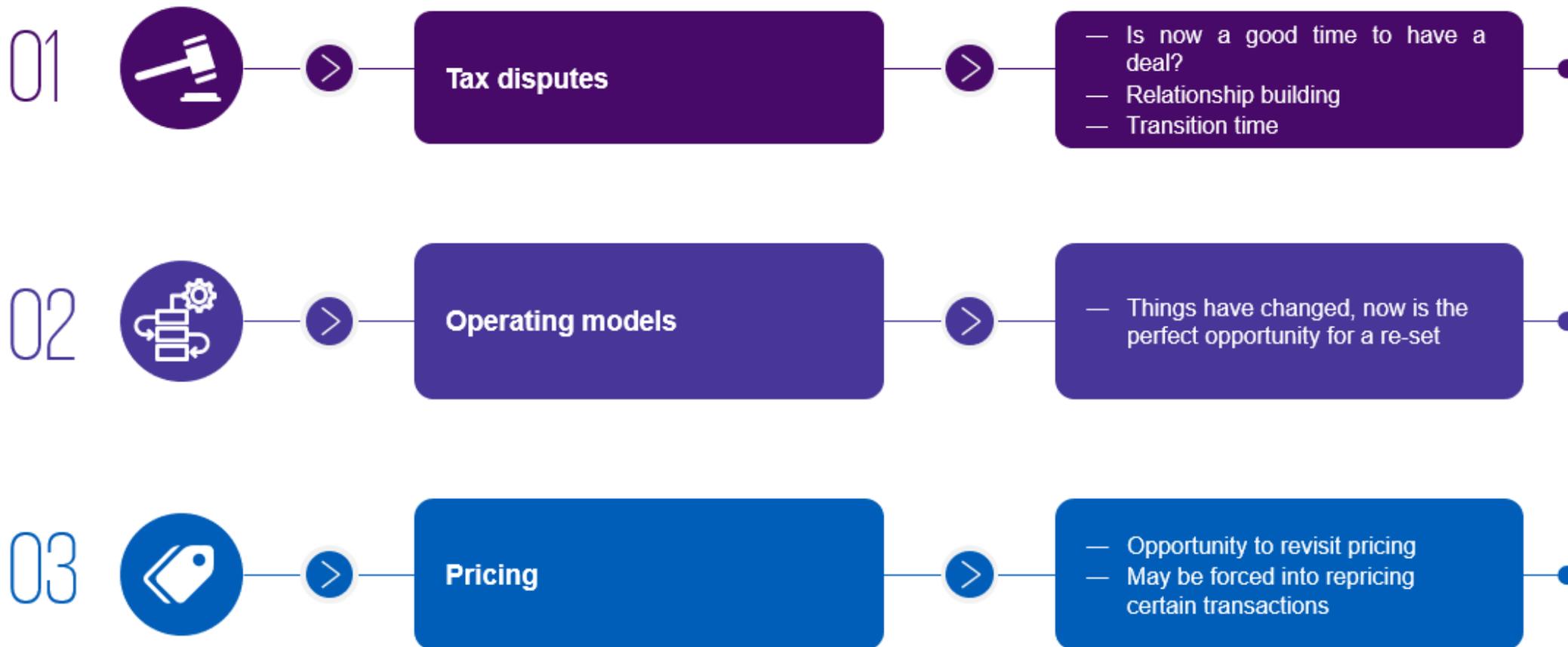
- Adjustments to the tested party financials
- Adjustments to the financials of comparables
- Adjustments to the benchmarking study period
- Adjustment to the tested period of a taxpayer

## Important:

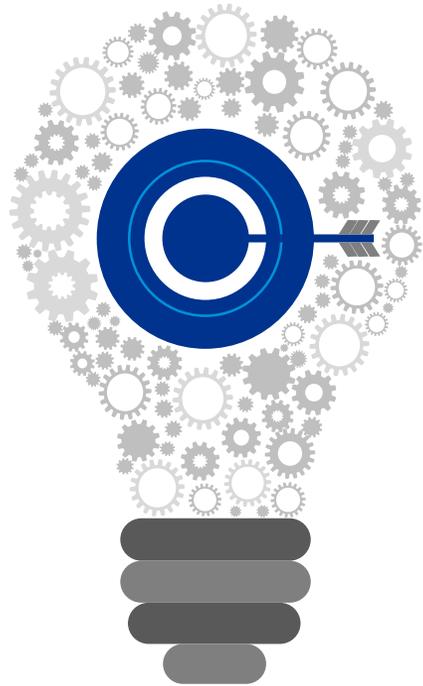
...good faith efforts to determine arm's length prices in the context of the information deficiencies associated with the COVID-19 pandemic

"...in principle, any form of publicly available information regarding the effect of COVID-19 on the business, industry and controlled transaction may be relevant in ascertaining the arm's length nature of an enterprise's transfer pricing policy implemented for 2020"

# Transfer pricing priorities for the months after lockdown



# Polling question



Has your business experienced a significant impact (positive / negative) due to COVID-19?

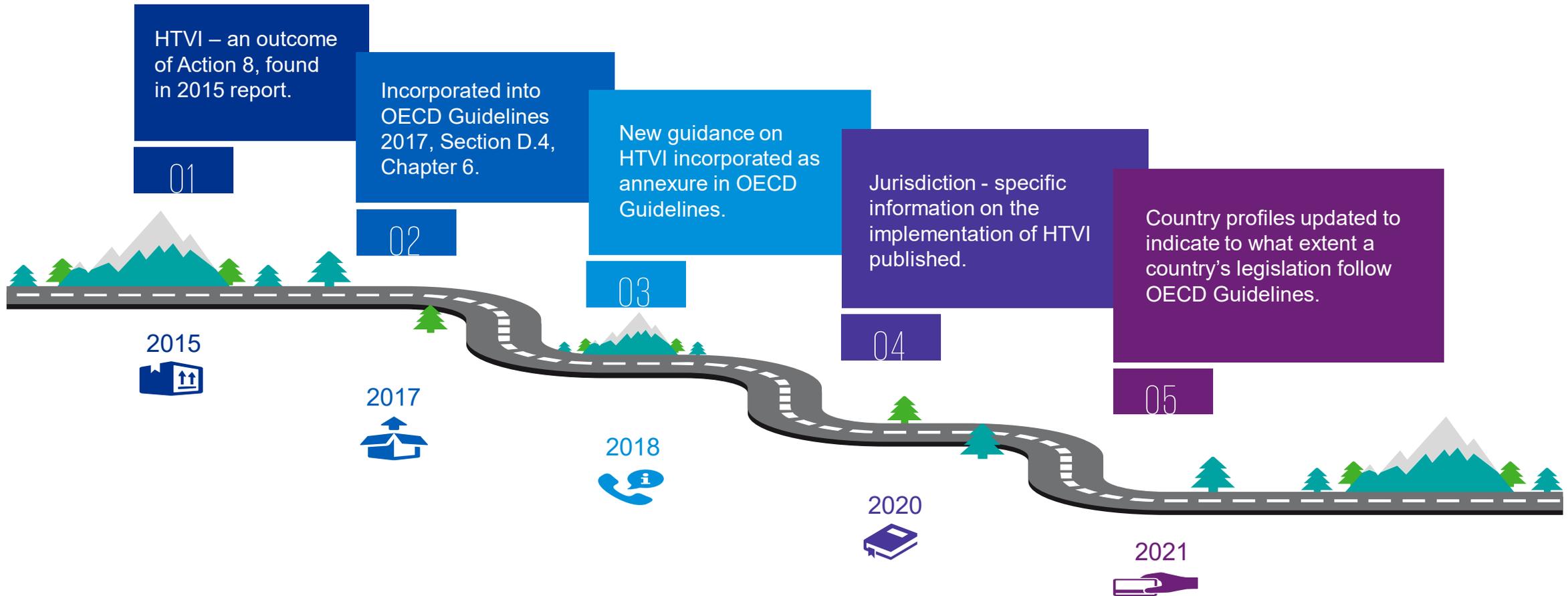
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- A. Yes
- B. No
- C. The impact is rather limited

The background features a dark blue gradient that transitions from a lighter blue on the left to a darker blue on the right. Overlaid on this gradient is a pattern of small, white, semi-transparent dots arranged in a grid that appears to curve or warp across the frame.

# Hard-to-value Intangibles

# Key developments on hard-to-value intangibles



# What are hard-to-value intangibles

HTVI are Intangibles or rights in intangibles for which, at the time of their transfer



Difficult to predict the level of ultimate success of the intangible at the time of the transfer.



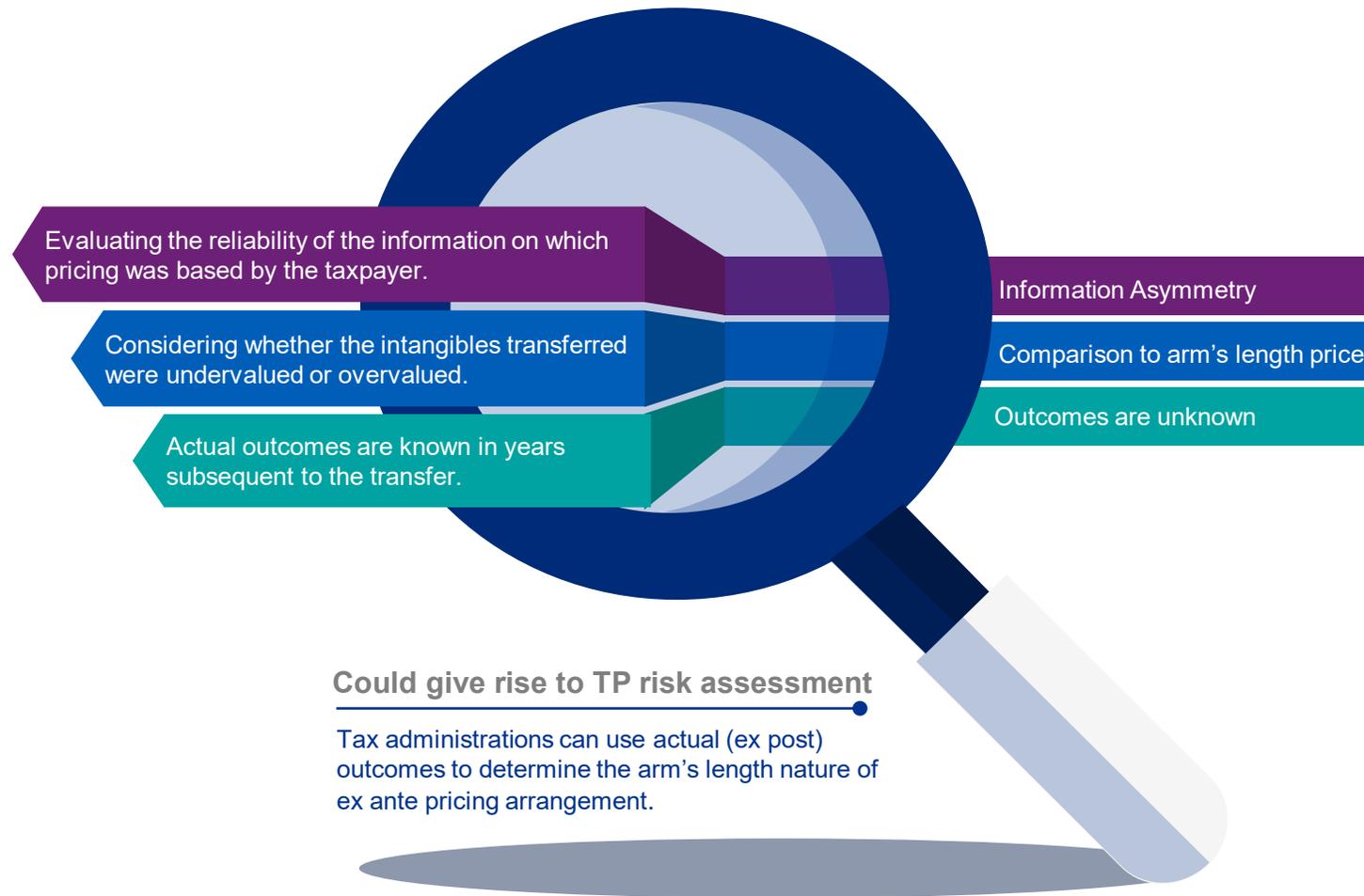
# Characteristics of hard-to-value intangibles

The transactions involving the use of HTVI exhibit one or more of the following features:

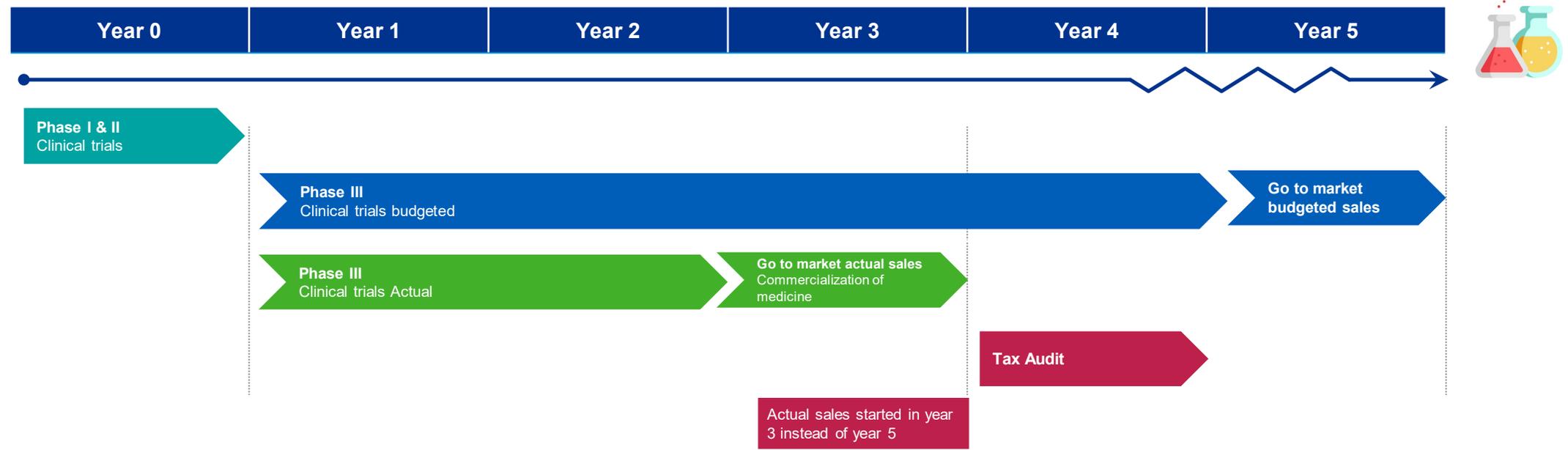
- Partially developed.
- Commercialization after several years.
- Integral to the development another HTVI.
- HTVI transferred to an associated enterprise for a lump sum payment.
- Novel exploitation at the time of the transfer.
- Used or developed under a cost contribution agreement.

# Challenges of hard-to-value intangibles

There are various challenges to determine the arm's length price of hard to value intangibles.

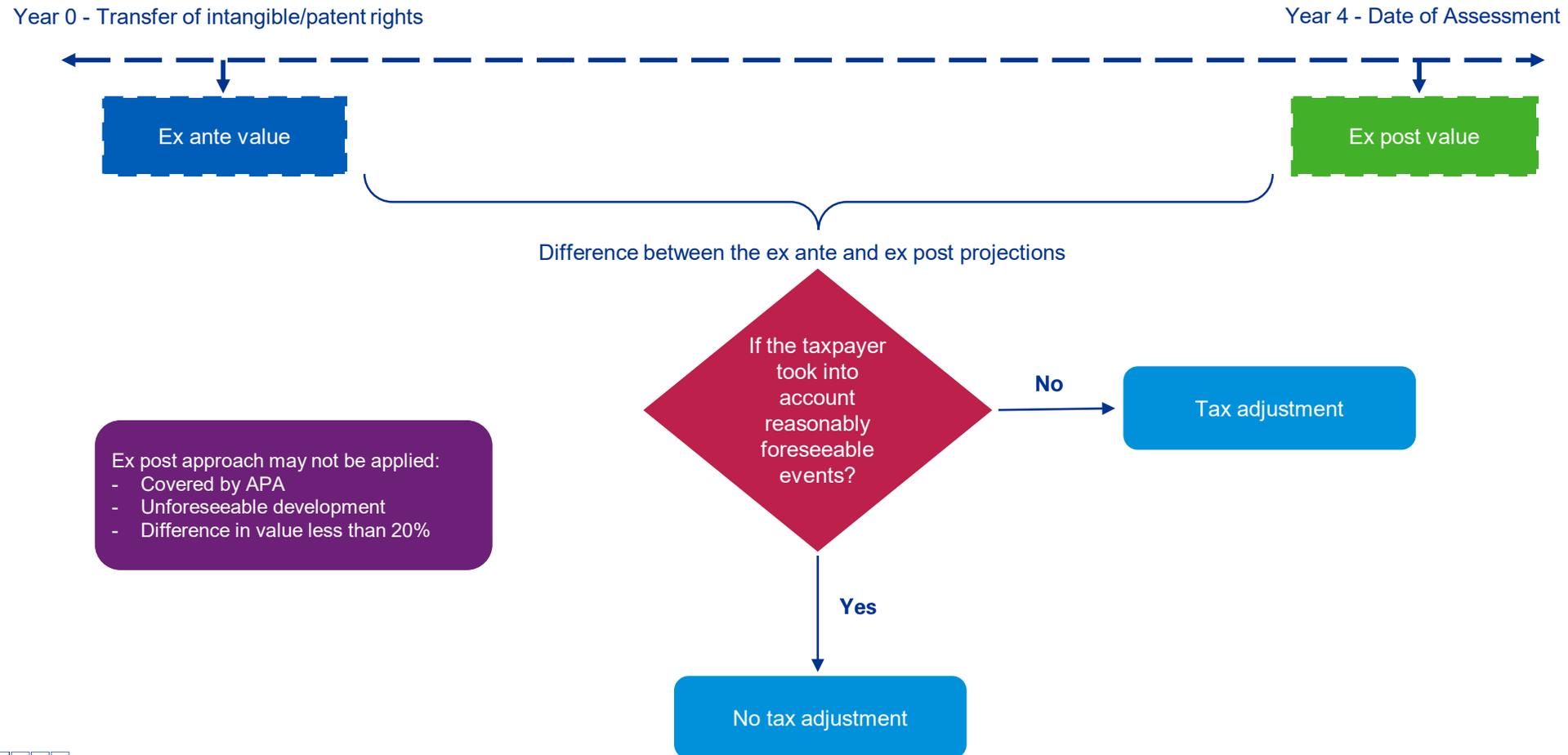


# Example: Hard-to-value intangibles



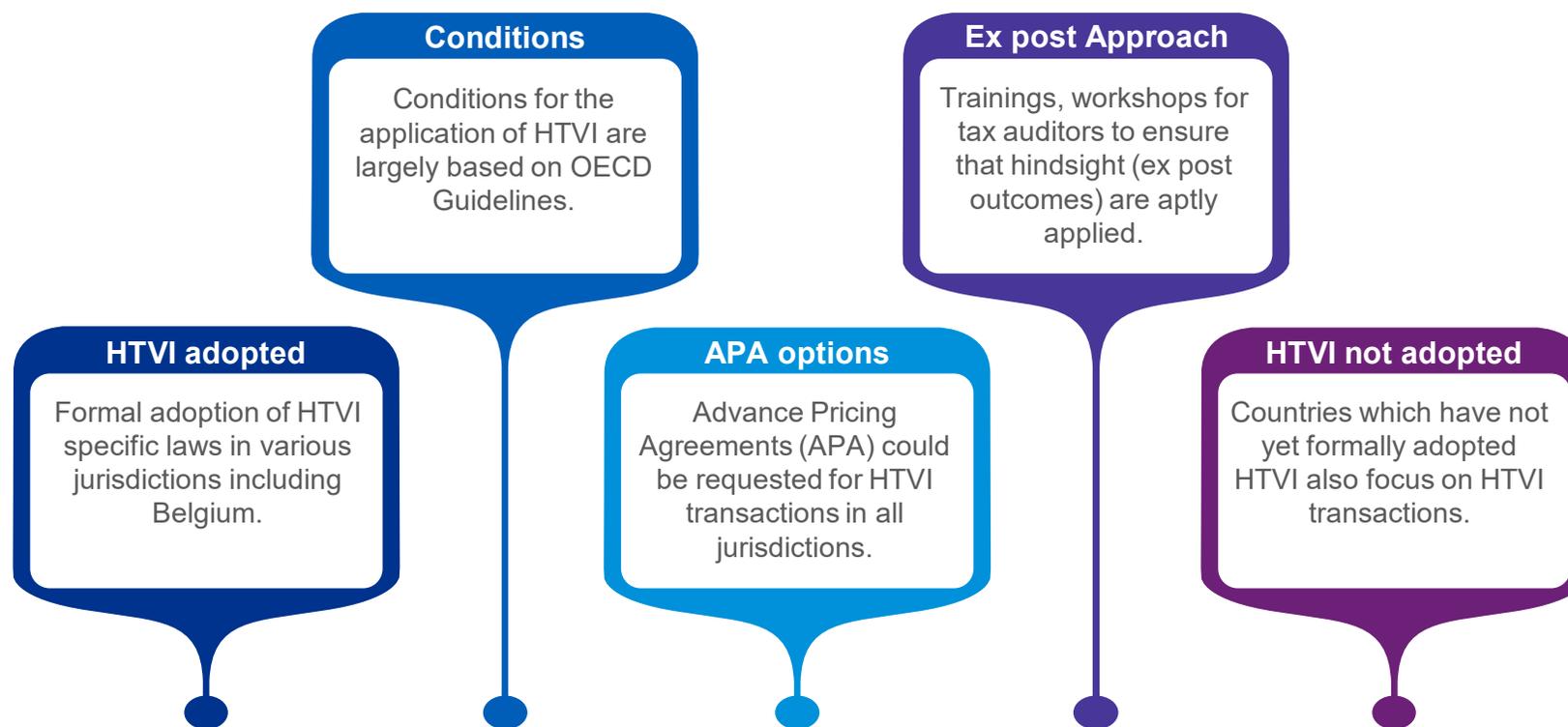
- What are the reasons of difference between ex ante projections and ex post results?
- Did the original valuation of patented pharmaceutical compound (HTVI) took into the possibility of earlier sales?
- Was it foreseeable at the time of transfer of HTVI that clinical trials could be completed earlier?

# Application of ex post approach



# Implementation of HTVI approach in various jurisdictions

In December 2020, the OECD published 40 responses to a questionnaire that asked officials whether their country has adopted transfer pricing rules for hard-to-value intangibles that are consistent with the OECD transfer pricing guidelines.



# HTVI in Belgium- Increasing significance

## Legislation and Documentation

- Belgian circular letter in line with OECD Guidelines.
- Local file forms require information on intangibles.
- Master File and Local File reports necessitate facts on intangibles.

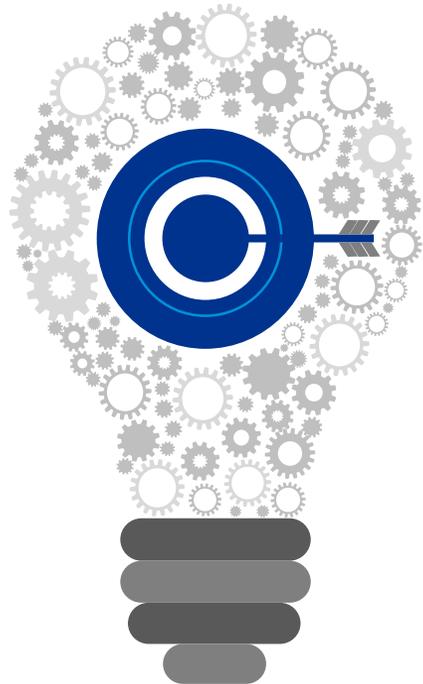
## Audits and Advance Rulings

- TP audits starting point is “all intangibles are HTVI”.
- Use of HTVI principles even before the guidelines were formalized.
- Discussions/ reflections on HTVI in various rulings.

## DAC 6 Requirements

- Cross border arrangement reportable for transfer of HTVI – Hallmark E.
- Transfer to be understood in economic sense, not in strict legal sense - FAQ published on June 26, 2020.
- Example – Granting the right to use HTVI under cost contributing arrangement, could be considered as transfer of HTVI.

# Polling question



Can you think of any hard-to-value intangible (HTVI) already existing in your company or recently faced a TP audit that looked into the HTVI?

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- A. Yes
- B. No
- C. Not sure, need to further evaluate if it could be classified as a HTVI.

# Questions ?



# Thank You

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