

# Managing transfer pricing risks with an MAP or APA

Presentation by PwC Thailand  
14 November 2023



# Agenda

1. Tax exposures from the RD's TP adjustments 03
2. TP dispute resolution with an MAP 13
3. TP dispute prevention with an APA 18

# Maximise Shareholder Value 2024



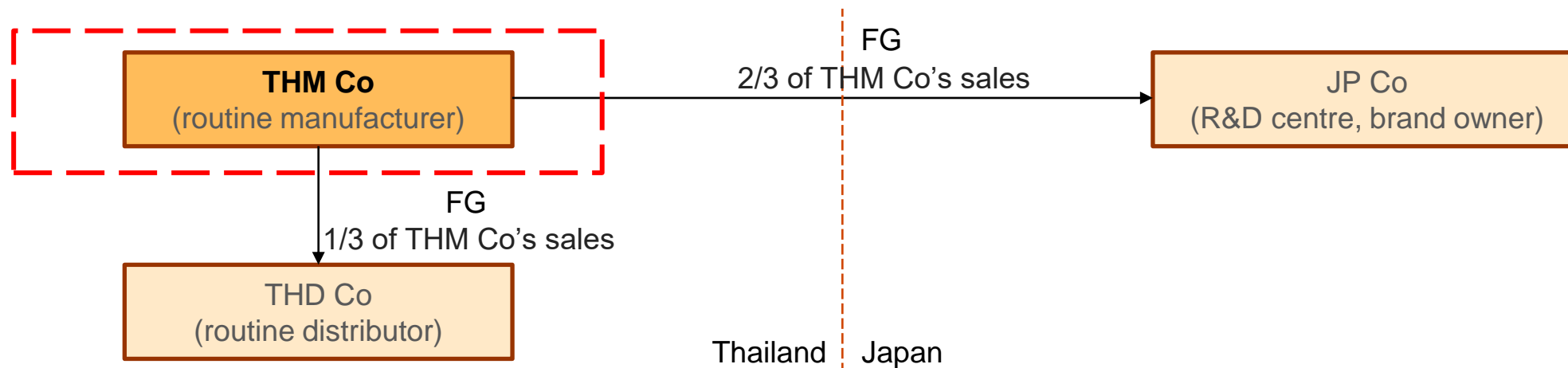
## Have you been audited in TP?

# Managing transfer pricing risks with an MAP or APA

## Tax exposures from the Revenue Department (RD)'s transfer pricing (TP) adjustments

### Example based on THM Co's real TP audit case

- THM Co already prepared TP documents and conducted a benchmarking analysis
- THD Co had sales size of approximately THB 2.84–3.5bn during 2018–2021



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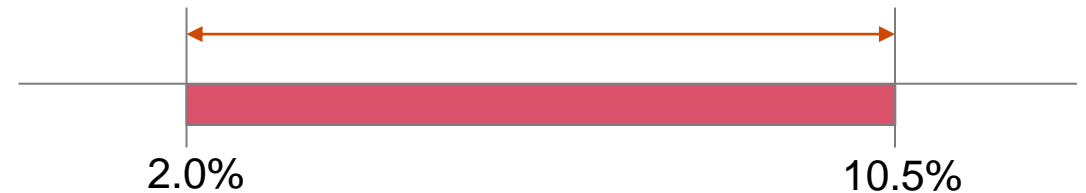
## Tax exposures from the RD's TP adjustments

Example based on THM Co's real TP audit case

### THM Co's original position

	FY	2018	2019	2020	2021
THM Co's results	Actual ROC (unadjusted)	(0.20)	(0.05)	0.5	0.3
	Adjusted ROC proposed by THM Co	2.1	2.5	3	3.5

### THM Co's proposed arm's length range of return on costs (ROC)



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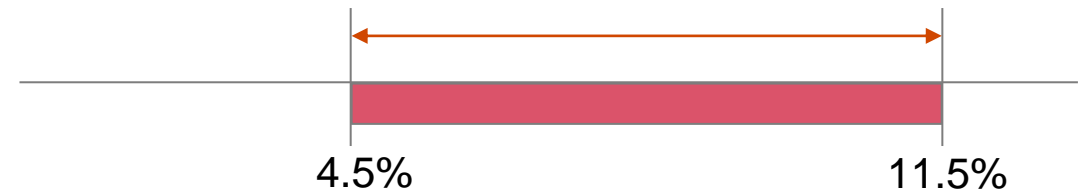
## Tax exposures from the RD's TP adjustments

Example based on THM Co's real TP audit case

### The RD's original position

	FY	2018	2019	2020	2021
THM Co's results	Actual ROC (no adjustments allowed)	(0.20)	(0.05)	0.5	0.3

### The RD's proposed arm's length range of ROC



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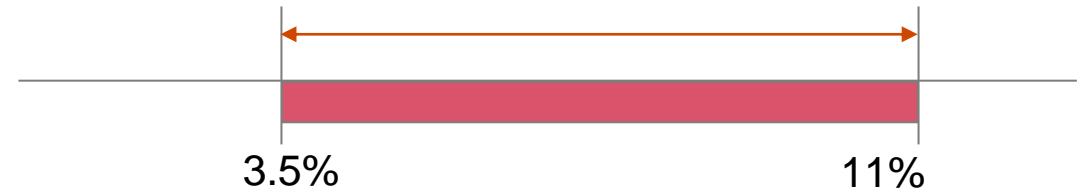
## Tax exposures from the RD's TP adjustments

Example based on THM Co's real TP audit case

### The RD's position after negotiations

	FY	2018	2019	2020	2021
THM Co's results	Adjusted ROC accepted by the RD (some adjustments allowed)	1.96	1.3	1.52	1.14

### The arm's length range of ROC accepted by the RD



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## Tax exposures from the RD's TP adjustments

Example based on THM Co's real TP audit case

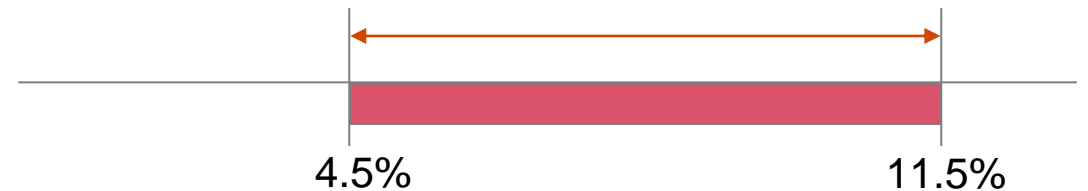
### The RD's original position

	FY	2018	2019	2020	2021
THM Co's results	Actual ROC (no adjustments allowed)	(0.20)	(0.05)	0.5	0.3

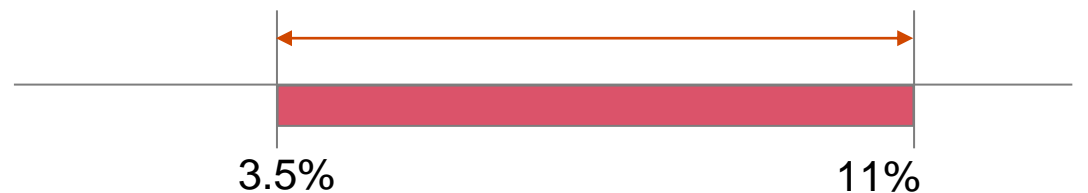
### The RD's position after negotiations

	FY	2018	2019	2020	2021
THM Co's results	Adjusted ROC accepted by the RD (some adjustments allowed)	1.96	1.3	1.52	1.14

### The RD's proposed arm's length range of ROC

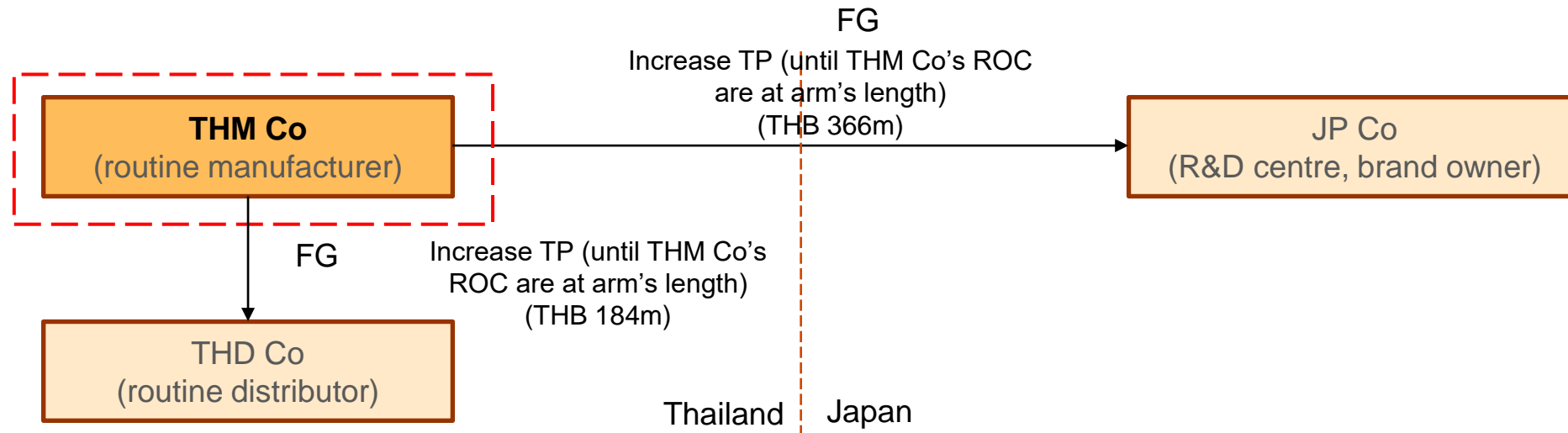


### The arm's length range of ROC accepted by the RD



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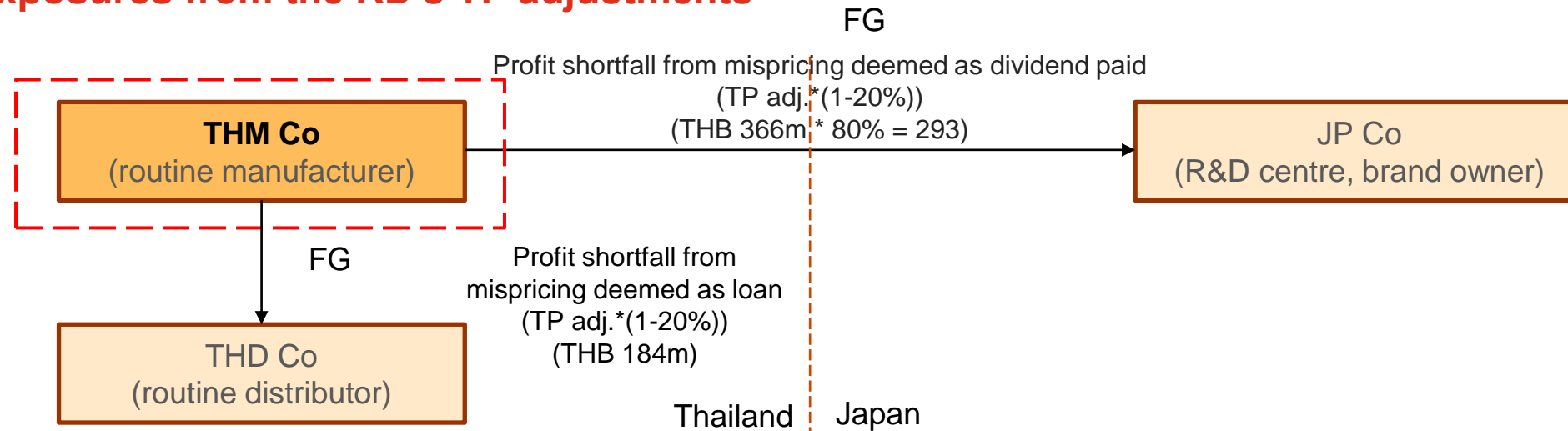
## Tax exposures from the RD's TP adjustments



Assessment		FY2018–2021 tax exposure (million THB)
		Original
Primary adjustment	Additional taxable profit assessed	550
	CIT + surcharge	<b>150</b>

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## Tax exposures from the RD's TP adjustments

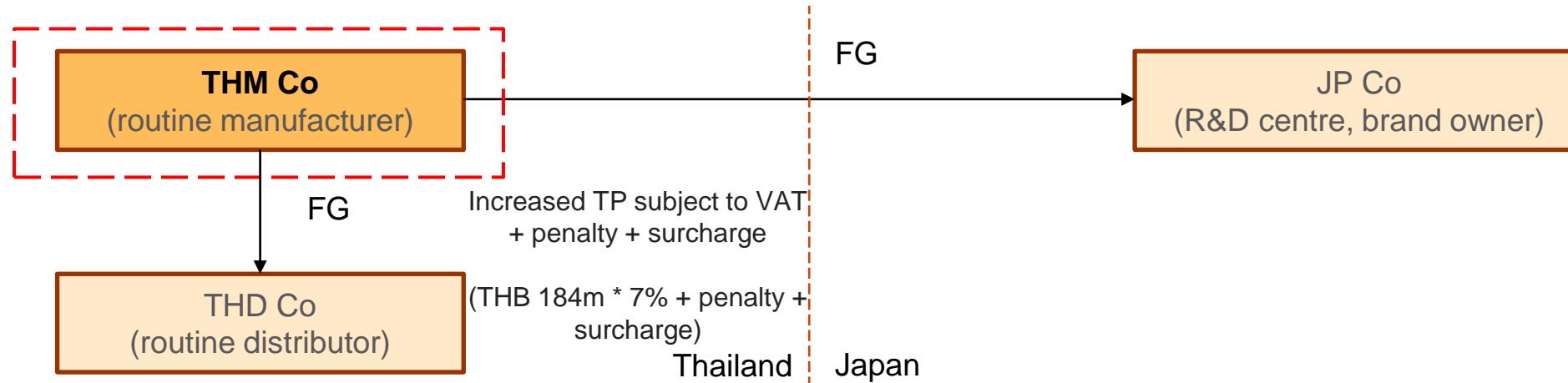


Assessment		FY2018–2021 tax exposure (million THB)
		Original
Secondary adjustment	Deemed dividend (for portion of sales to JP Co)	293
	Deemed loan (for portion of sales to THD Co)	184
	WHT from deemed dividend + surcharge	<b>33</b>
	CIT from deemed interest on loan + surcharge	<b>5</b>
	SBT from deemed interest on loan + surcharge + penalty	<b>1.25</b>

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## Tax exposures from the RD's TP adjustments



Assessment	FY2018–2021 tax exposure (million THB)
	Original
VAT + surcharge + penalty (for portion of sales to THD Co)	30

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## Tax exposures from the RD's TP adjustments

Assessment		FY2018–2021 tax exposure (million THB)	
		Original	After negotiations
Primary adjustment	Additional taxable profit assessed	550	250
	CIT + surcharge	<b>150</b>	<b>68</b>
Secondary adjustment	Deemed dividend (for portion of sales to JP Co)	293	133
	Deemed loan (for portion of sales to THD Co)	184	67
	WHT from deemed dividend + surcharge	<b>33</b>	<b>15.15</b>
	CIT from deemed interest on loan + surcharge + penalty	<b>5</b>	<b>2.4</b>
	SBT from deemed interest on loan + surcharge + penalty	<b>1.25</b>	<b>0.6</b>
VAT + surcharge + penalty (for portion of sales to THD Co)		<b>30</b>	<b>13.5</b>
<b>Total additional tax exposure</b>		<b><u>219.25</u></b>	<b><u>99.65</u></b>

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## How familiar are you with MAP/APA?

# Managing transfer pricing risks with an MAP or APA

## Alternative option for cross-border TP dispute resolution

### Mutual Agreement Procedure (MAP)

#### What is it?

A cross-border income tax dispute resolution mechanism stated within a double taxation agreement (DTA). An MAP is carried out directly between competent authorities of Thailand and a counterpart country to resolve tax dispute.

#### Who can apply?

Taxpayers who carry out **cross-border transactions** with counterparties in **other jurisdictions**. Those other jurisdictions must have a **DTA** with Thailand that contains a **corresponding adjustment paragraph**\*.

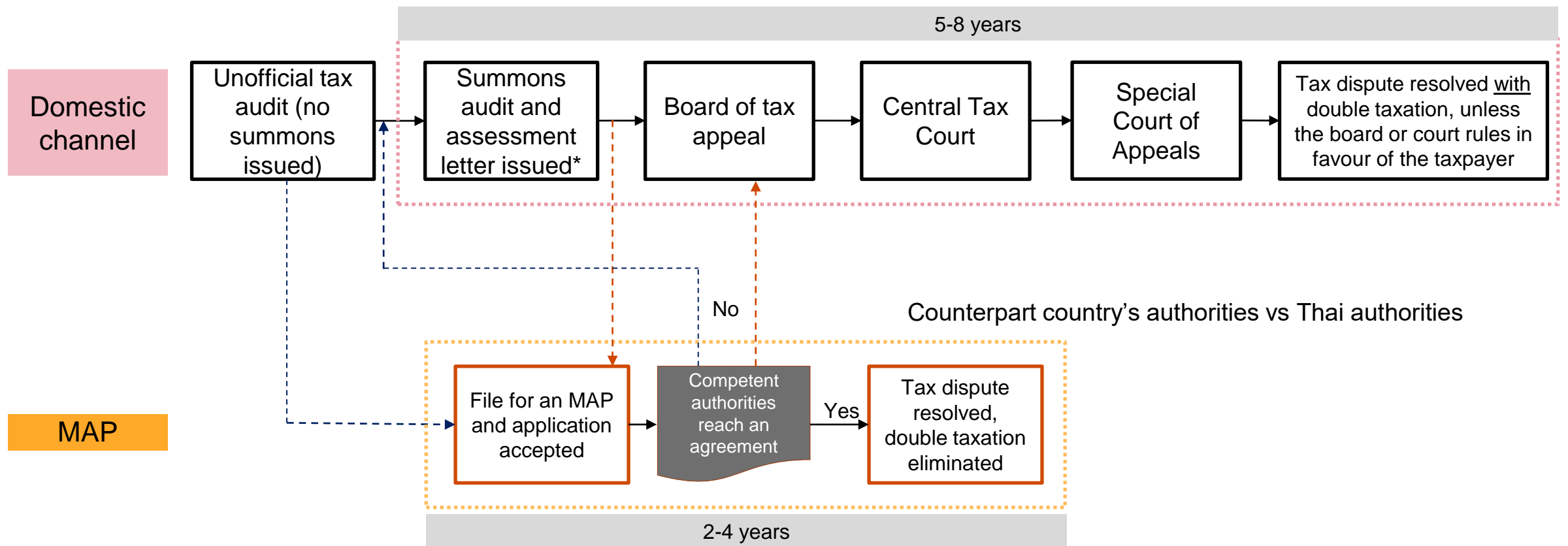
*\* Remark: More to be covered by MLI*

#### Deadline?

Within three years of receiving a notice of action (e.g. a tax assessment notice or ruling) from either country that will or may cause double taxation

# Managing transfer pricing risks with an MAP or APA

## Alternative option for cross-border TP dispute resolution



# Managing transfer pricing risks with an MAP or APA

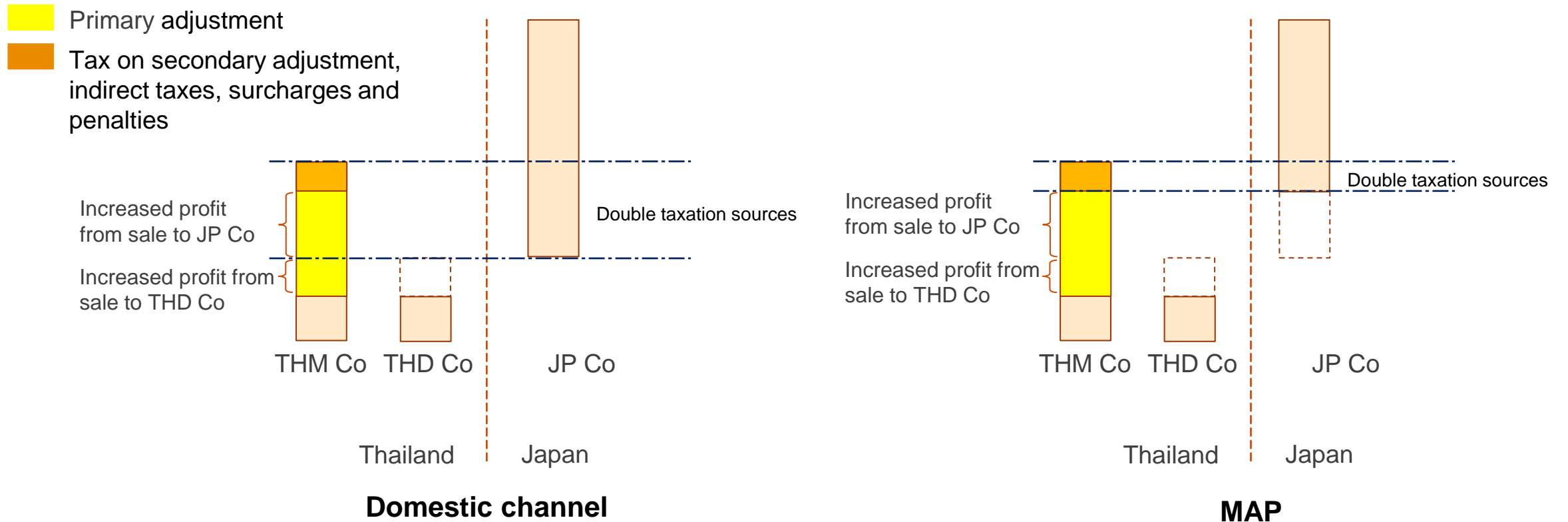
## Comparison of domestic channel vs MAP

Aspect		Domestic channel	MAP
Negotiation power		Thai authorities vs taxpayer  Higher adversity	Thai authorities vs counterpart country's authorities  Lower adversity
Double taxation	Income tax from primary adjustment	Yes (cross-border transactions)  No (domestic transactions for FY starting 1 January 2021)	No
	Income tax from secondary adjustment	Yes	Yes
	VAT and SBT	Yes (domestic transactions and deemed loans)	Yes (domestic transactions and deemed loans)
	Surcharges and penalties	Yes	Yes
Uncertainty		Higher	Lower
Preparation costs		Lower*	Higher

\* Remark: Assuming no appeal process under the domestic channel

# Managing transfer pricing risks with an MAP or APA

## Double taxation illustration



# Managing transfer pricing risks with an MAP or APA

**Alternative option for cross-border TP dispute prevention**

## Advanced Pricing Agreement (APA)

### What is it?

An advanced MAP to prevent a TP dispute.

The tax authorities of Thailand and the counterpart country negotiate and mutually agree in advance on the TP to be adopted by the taxpayer.

### Who can apply?

Taxpayers who carry out **cross-border transactions** with counterparties in other jurisdictions. Those other jurisdictions must have a **DTA** with Thailand.

### Covered years?

Five future years **and** the two most recent past years (if circumstances are similar).

# Managing transfer pricing risks with an MAP or APA

Alternative option for cross-border TP dispute prevention

## APA

### Why an APA?



Prevents tax exposure and double taxation from TP adjustments



Covers a maximum of seven years and is cost effective



Presents a less adversarial environment



Provides a degree of certainty

# Managing transfer pricing risks with an MAP or APA

Alternative option for cross-border TP dispute prevention

## APA

When to apply for an APA?



Already under transfer pricing examination by tax authorities



Virtually certain to be audited by tax authorities



In special circumstances

# Managing transfer pricing risks with an MAP or APA

## Comparison of domestic channel, MAP, and APA

Aspect		Domestic channel	MAP	APA
Negotiation power		Thai authorities vs taxpayer  Higher adversity	Thai authorities vs counterpart country's authorities  Lower adversity	Thai authorities vs counterpart country's authorities  Lower adversity
Double taxation	Income tax from primary adjustment	Yes (cross-border transactions)  No (domestic transactions) for FY starting 1 January 2021	No	No
	Income tax from secondary adjustment	Yes	Yes	No**
	VAT and SBT	Yes (domestic transactions and deemed loans)	Yes (domestic transactions and deemed loans)	No**
	Surcharges and penalties	Yes	Yes	No**
Uncertainty		Highest	Lower	Least**
Preparation costs		Lower*	Higher	Highest

**Remark**

\* Assuming no appeal process under the domestic channel

\*\* Except past years.

# Managing transfer pricing risks with an MAP or APA

## Key takeaways

Domestic  
channel

MAP

APA

Wait for a TP dispute and take the domestic route to resolve it

Wait for a TP dispute and use an MAP to resolve it

Prevent a TP dispute with an APA



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# Thank you

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