

1st Workshop "Transfer Pricing in V4 Countries", 4 June 2019
Safe Harbours in Transfer Pricing: Who is the winner?



**Safe Harbour as
simplification**



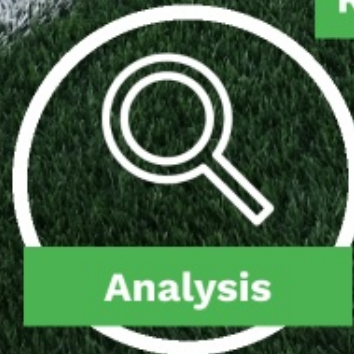
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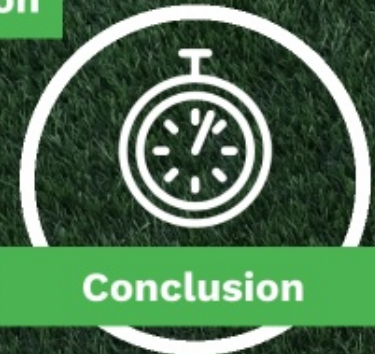
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Conclusion

**Is it time for Safe
Harbour Arm's
length range?**



Author



Author



Project

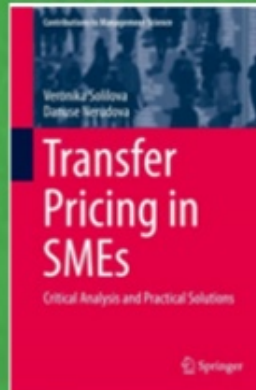
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**Results were published as:
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Critical Analysis and Practical Solution,
Springer International Publishing, 2018**



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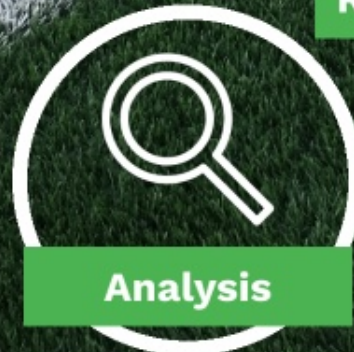
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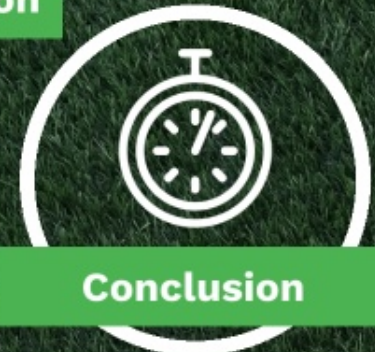
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The Problem



The Problem

high compliance costs of transfer pricing and its increasing

Shall we make TP more complex in all areas or try to switch to the simplification in some areas aiming to decrease TP compliance costs in both sides?

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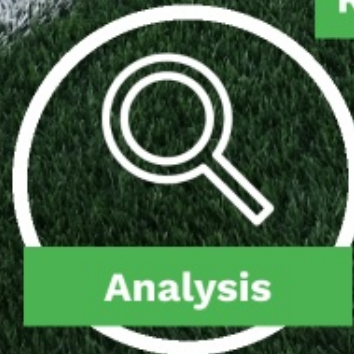
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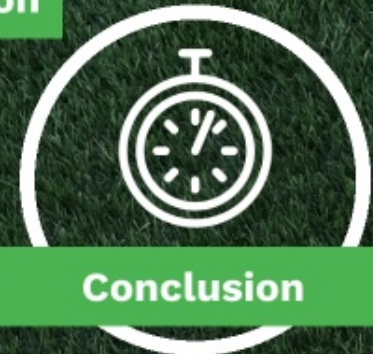
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Current versus past definition of SH

SH in practice in EU

Advantages and
disadvantages of SH

Compliance costs of TP

Definition

SH in
practice in
EU

Advantages

Disadvantages

Compliance
costs of TP

Definition - TP Guidelines, 2013, 2017

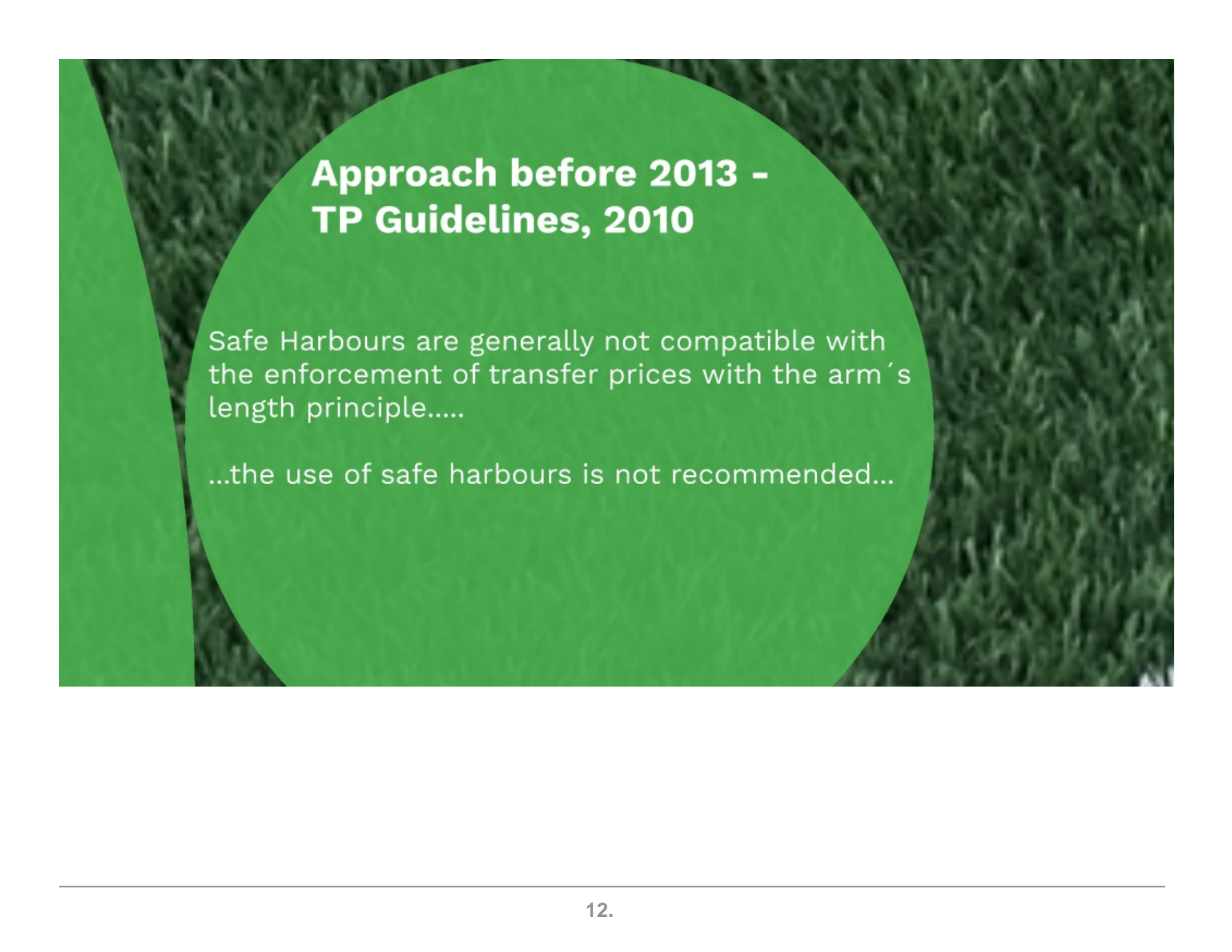
A Safe Harbour relieves eligible taxpayers from certain obligation otherwise imposed by a country's general transfer pricing rules...

A Safe Harbour substitutes simple obligations...

A Safe Harbour can exempt a defined category taxpayers/transactions from the application of TP rules...



**Approach
before
2013**



Approach before 2013 - TP Guidelines, 2010

Safe Harbours are generally not compatible with the enforcement of transfer prices with the arm's length principle.....

...the use of safe harbours is not recommended...



SH in practice in EU

Usually for:

- SMEs
- small transactions
- low value adding services

Very rarely for:

- financial transactions

Advantages of SH

Decrease in TP disputes,
MAP cases



More certainty



Decrease in costs



Higher efficiency and
effectiveness



Decrease in TP audits



Increase in adm. simplicity



Disadvantages of SH

Risk of double taxation



Investment and trade distortions



Discrimination



Change of tax revenues



Detailed design and updates of SH



Compliance costs of TP

Some major findings on compliance costs of taxation:

- 1) compliance costs are **significant and high** --> it represents 46 % of incurred costs in case of SMEs
- 2) compliance costs **are regressive** i.e. SMEs face the disproportionately high compliance costs of taxation than LEs
- 3) compliance costs **are not reducing over time**
- 4) compliance costs are **significantly higher in case of internationalization of group**

Drivers for compliance costs of taxation:

- Changes of tax system or taxes and complexity of tax system or tax regulation
- Simple tax system --> lower compliance costs of taxation



**CC of TP -
cost
indicator**



**CC of TP -
time
indicator**

Determination of compliance costs of TP – cost indicator

Table 5: Determination of compliance costs of transfer pricing for Medium-sized – based on the costs indicator

Country	Type	Compliance costs for representative sample (in EUR/per year)	Compliance costs for whole group of Medium-sized (in mil. EUR)	Corporate tax collection in 2015 (in mil. EUR)	Compliance costs of transfer pricing / corporate tax collection (in %)
Czech Republic	A	6,430	390.3	3,650.7 ¹	10.69
	B	7,704	467.6		12.81
Slovak Republic	A	3,632	112.1	2,640.5	4.25
	B	4,857	149.9		5.67
Poland	A	7,439	926.9	5,868.4 ²	15.79
	B	8,856	1,103.4		18.80

A) Calculation based on the median values of individual spread of costs set in questionnaire.

B) Calculation based on the highest values of individual spread of costs set in questionnaire.

1) Average exchange rate CZK/EUR for 2015 is CZK 27.283 per 1 EUR. Corporate tax collection for 2015 is CZK 99.6 billion.

2) Average exchange rate PLN/EUR for 2015 is PLN 4.18 per 1 EUR. Corporate tax collection for 2015 is PLN 24 530 mil.

(Source: own calculation, MF Czech Republic, MF Slovak Republic, MF of Poland).

Determination of compliance costs of TP – time indicator

Table 6: Determination of compliance costs of transfer pricing for Medium-sized – based on the time indicator

Country	Type*	Compliance costs for representative sample (in EUR/per year)	Compliance costs for whole group of Medium-sized (in mil. EUR)	Corporate tax collection in 2015 (in mil. EUR)*	Compliance costs of transfer pricing / corporate tax collection (in %)
Czech Republic	A	$210 \cdot 14.6 = 3,066$	186.1	3,650.7	5.10
	B	$276 \cdot 14.6 = 4,029.6$	244.6		6.70
Slovak Republic	A	$205 \cdot 12.26 = 2,513.3$	77.6	2,640.5	2.94
	B	$260 \cdot 12.26 = 3,187.6$	98.4		3.73
Poland	A	$204 \cdot 26.4 = 5,385.6$	671.1	5,868.4	11.44
	B	$268 \cdot 26.4 = 7,075.2$	881.6		15.02

* See explanation above in table 5.

(Source: own calculation, MF Czech Republic, MF Slovak Republic, MF of Poland).

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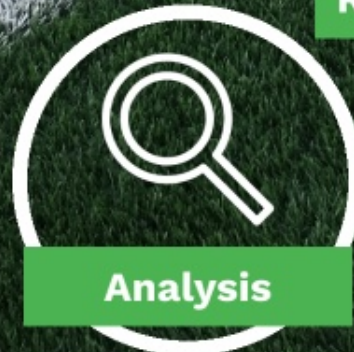
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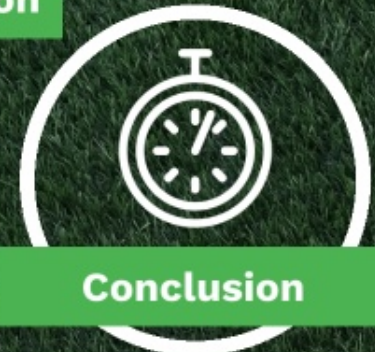
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TP services - suitable for SH?

Profitability across time and services



TP services



Profitability
- all



Profitability
- services

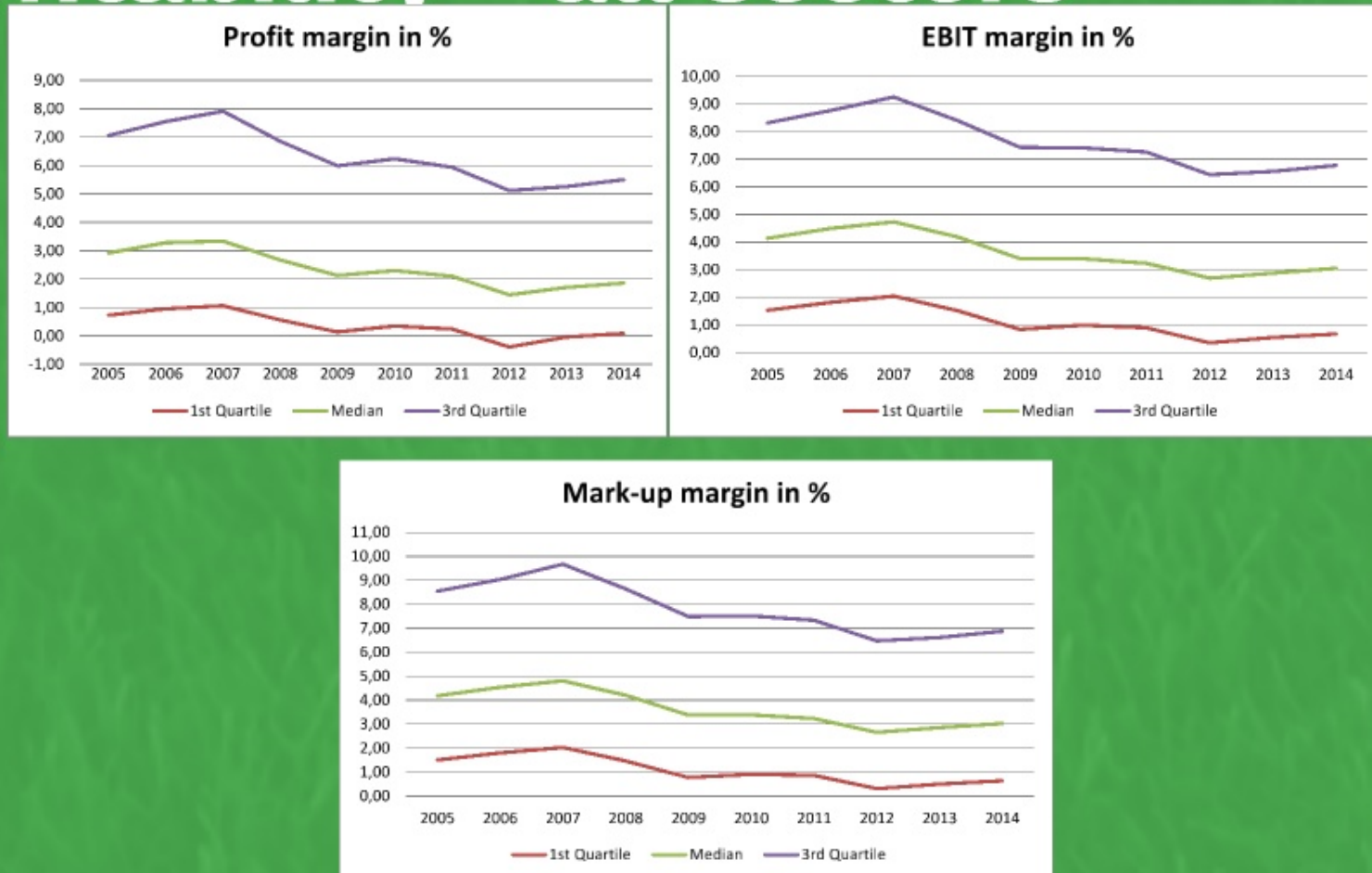
TP services - suitable for SH?

Typical TP services:

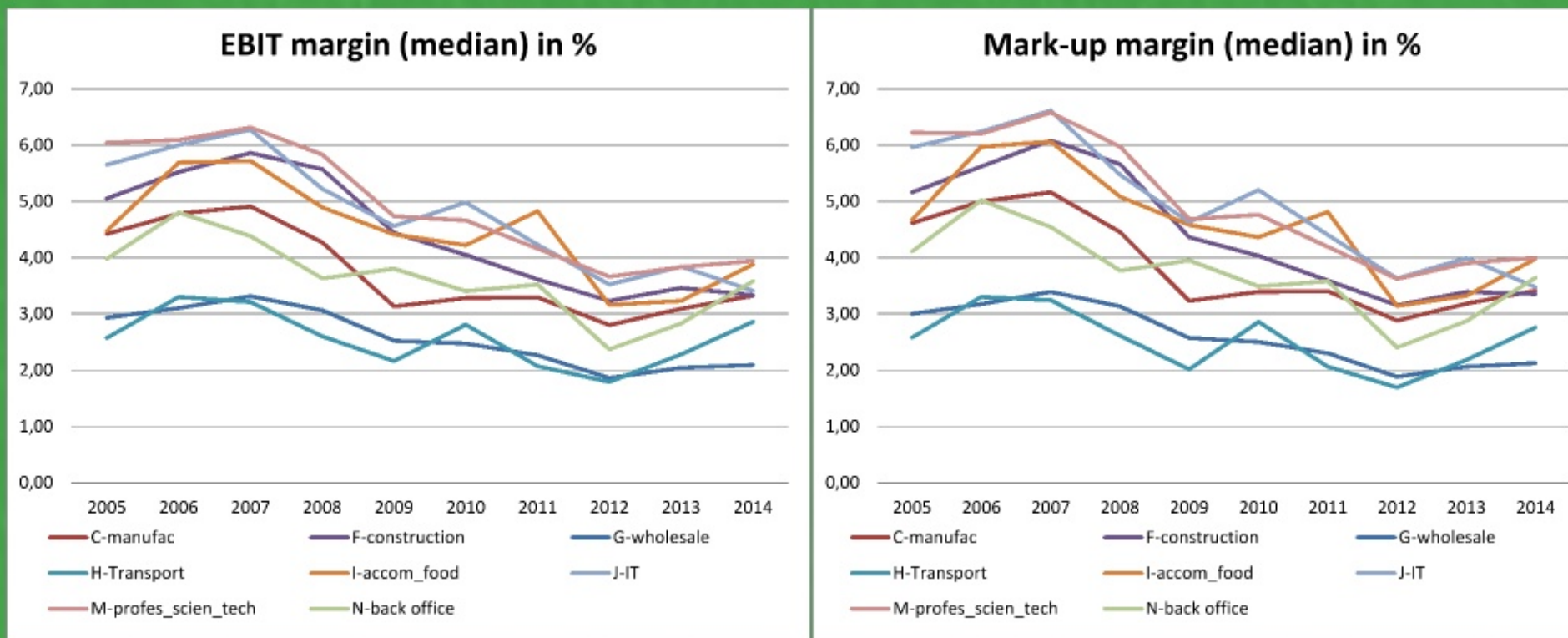
- transport
- IT
- marketing and PR
- legal
- accounting
- management
- R&D
- HR
- back office

Other services???? - manufacturing, wholesale, construction, accommodation and food...

Profitability - all sectors



Profitability - services



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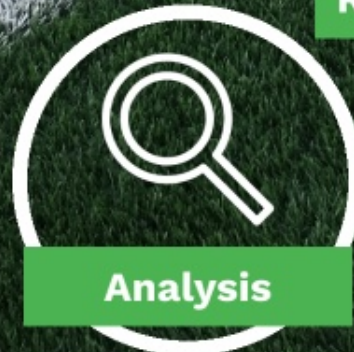
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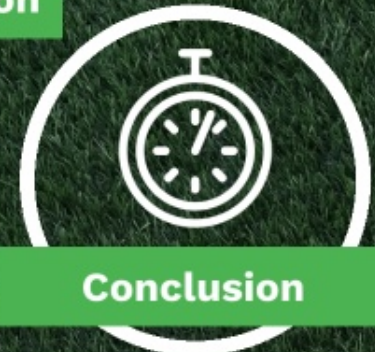
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SH for services - yes or no?

Rules for its determination



SH for
services



Rules



Complex TP

SH for services



Rules

- set by TA based on the detailed analysis
 - No. of tax audits in a year
 - No. of hours spend and costs
 - category of transactions/taxpayers (size and type)
- SH shall take into account
 - industry specificity
 - industry comparability
 - economic cycle and other aspects

Rules

- Complex TP analysis and approach should be namely applied in transactions covering IP and where taxpayers make unique and valuable contributions to the transactions .

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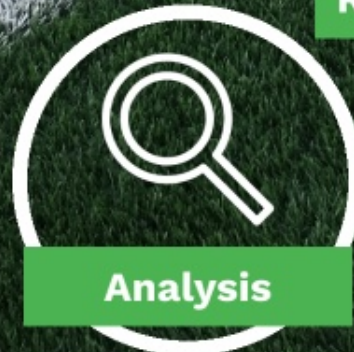
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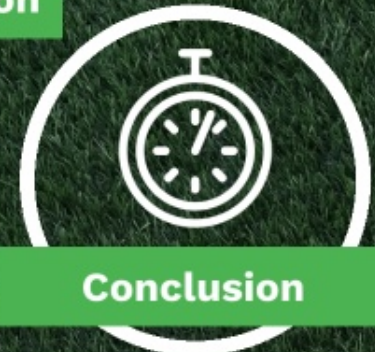
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Conclusion

Who is really winner?

- Taxpayer
- Tax authority

Well designed SH can:

- reduce compliance costs and administration costs
- increase certainty
- improve effectiveness.

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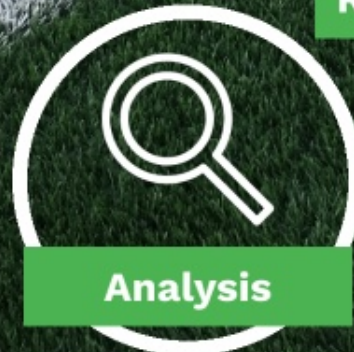
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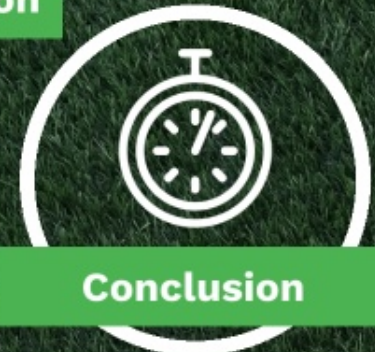
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