

The current legal issues of the Slovak transfer pricing regime

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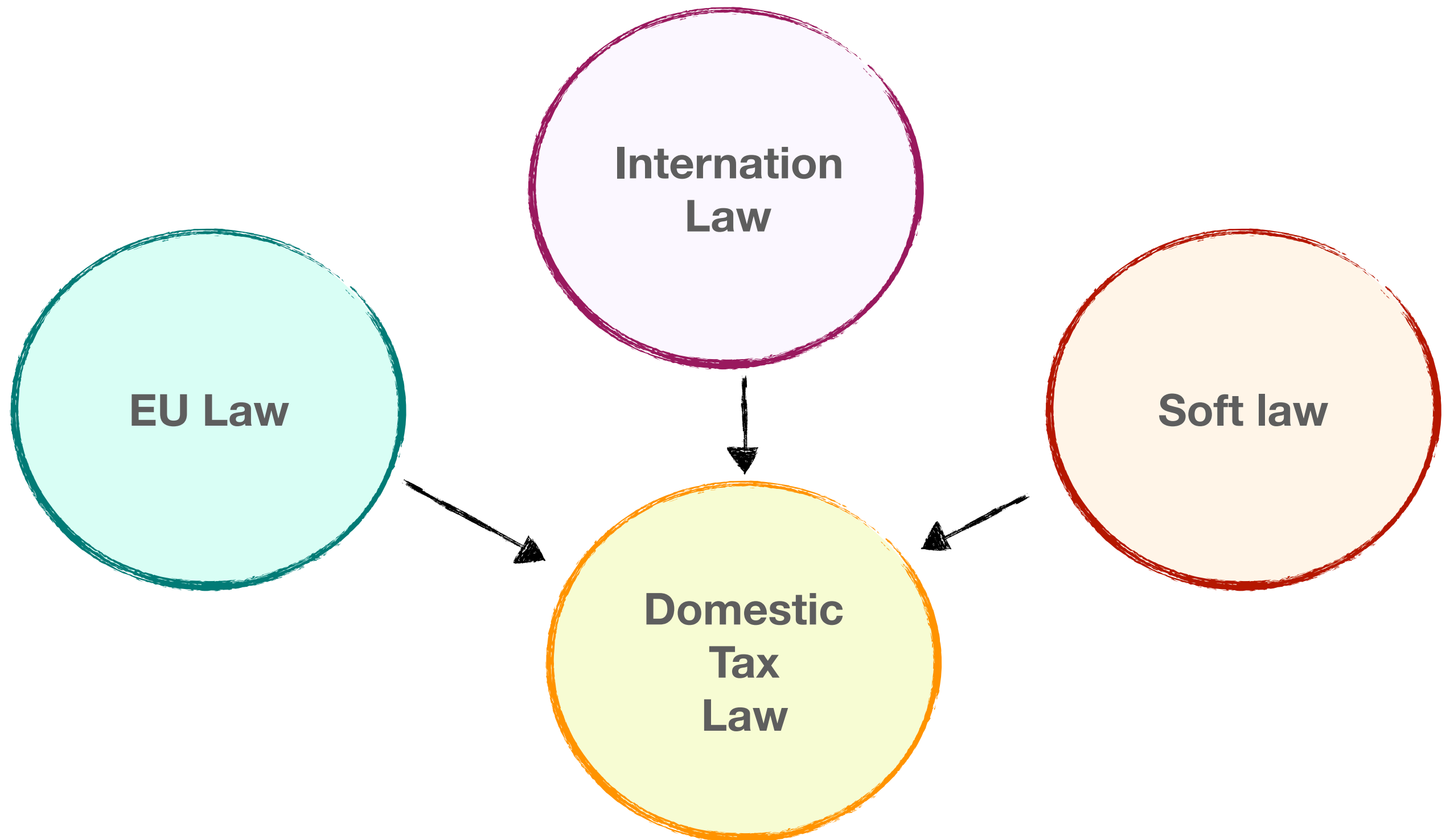
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Current state of the Slovak TP regime

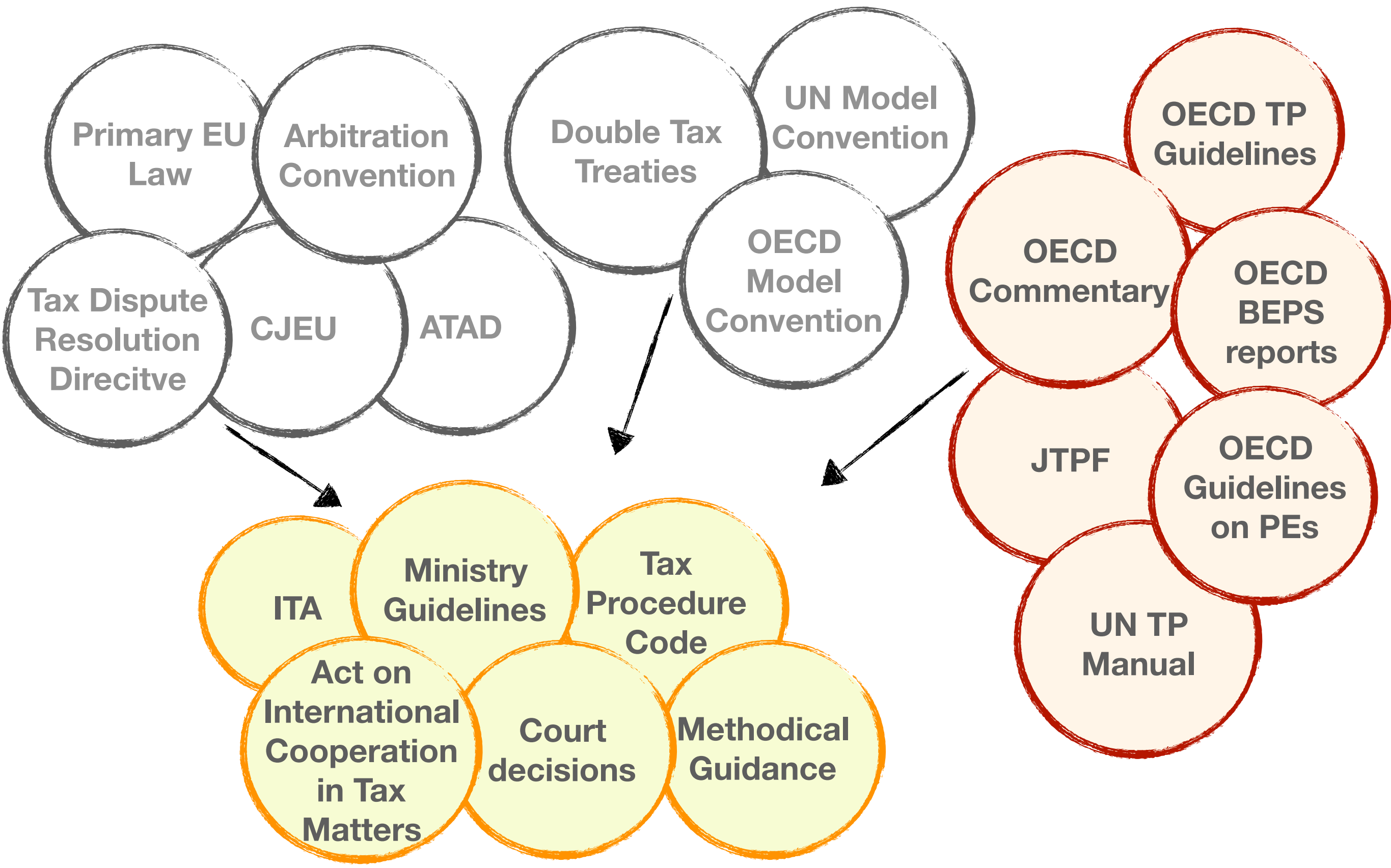
Transfer pricing legislation

mutual relationship between the legal systems



Transfer pricing legislation

mutual relationship between the legal systems



1. One or multiple TP regimes?

Transfer pricing in Slovakia

One or multiple TP regimes?

	DTTs based on OECD/UN Model	DTTs not based on OECD/UN Model	Domestic Associated Enterprises
Income Tax Act	✓	✓	✓
Methodical Guidance	✓	✓	✓
Ministry Guidance on TP Documentation	✓	✓	✓
Double Tax Treaty	✓	✓	✗
OECD Model and Commentary	✓	✗	✗
OECD Transfer Pricing Guidelines	✓	?	?

Transfer pricing case law

The sources of law

Supreme Court of the Slovak Republic, 3 Sžf 101/2008

...the methodical guidelines of the Ministry of finance **shall not be considered source of law, but rather interpretation tools** for the application of law...

Supreme Court of the Slovak Republic, 2 Sžf 18/2012

“ ... the state authority shall not be expected to apply any source of law that is not available to him and to the taxpayer in the official language... the taxpayers and state authorities **are not governed by the sources of law that have not been published...**

“... it is well known and respected practice that the OECD Model Tax Convention and its Commentary does not represent binding law, however it is the most common reference document that is used for the preparation of the international tax treaties ...”

Transfer pricing case law

The sources of law

Supreme Court of the Slovak Republic, 2 Sžf 76/2014

... under the circumstances where the legal norm has not been duly published, where there is absence of the well-established practice, where the OECD Model and Commentary are not available in the official language and where there are contradictory opinions on the binding nature of the interpretative rules ... **it cannot be expected from the taxpayer to follow such interpretative rules, until they become part of the international tax treaty ...**

Supreme Court of the Slovak Republic, 8 Sžf 15/2015

... the OECD TP Guidelines, unless duly published, **shall not be regarded as binding source of law** under Slovak legal order ... it is not binding on the taxpayers or the tax authority ... the same applies for the OECD Commentary that has not been published in the collection of laws and therefore shall be regarded as non-binding recommendation that can only be used for the interpretation of international treaties ...

Transfer pricing case law

The sources of law

Supreme Court of the Slovak Republic, 8 Sžf 15/2015

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Regional Court Bratislava, 1S/231/2016

... it can be concluded that the tax authority referred to the OECD TP Guidelines only to explain its procedural steps, as it is a guidance for the application of the ALP in cross-border controlled transactions ...

...although the taxpayer disputes the applicability of the OECD TP Guidelines, he refers to the Guidelines for example when explaining application fo the TP methods ...

Transfer pricing in Slovakia

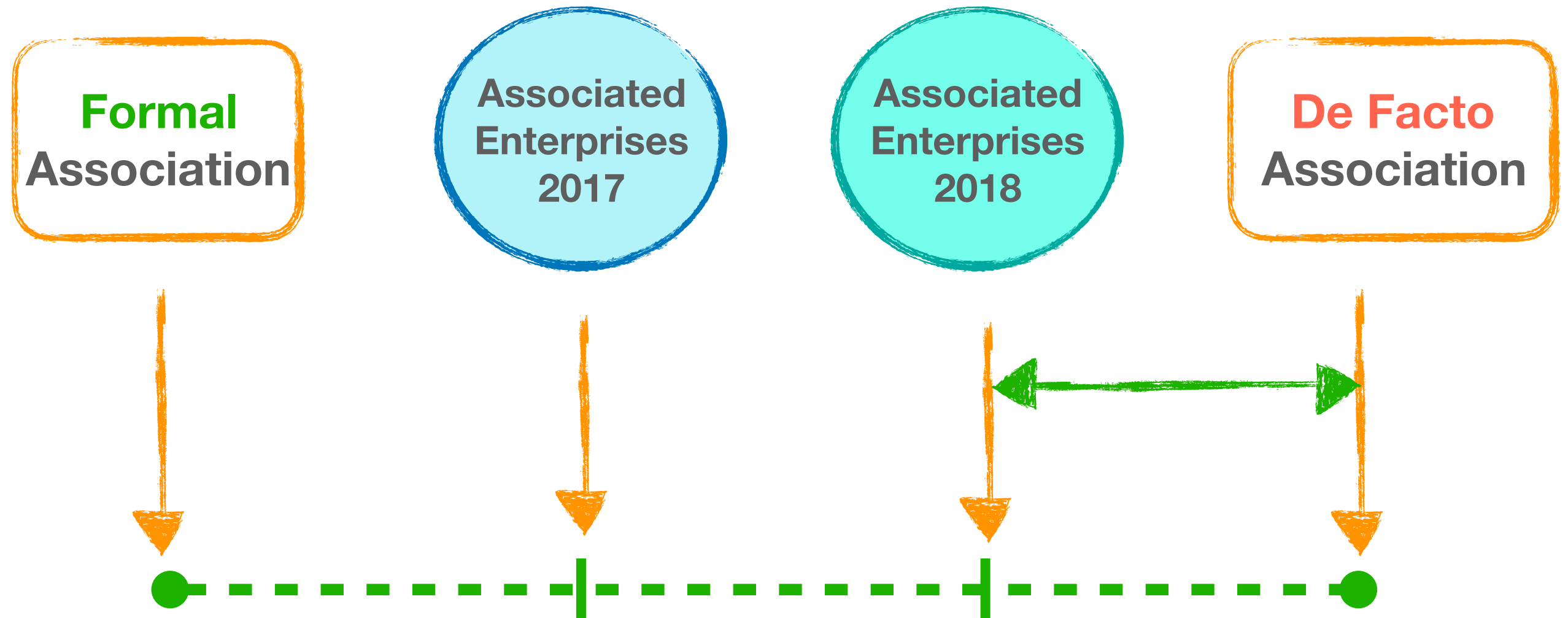
One or multiple tax regimes?

- 1.** The scope of the Slovak domestic TP regime may be seen as not identical for international and domestic transactions.
- 2.** According to our opinion the definition of “arm’s length principle” may differ for domestic transactions and for different versions of the OECD TP Guidelines.
- 3.** There is no explicit recognition of the latest TP developments in the Slovak legislation. Consequently, the Slovak legislation does not explicitly provide for revised treatment of intellectual property, services, etc.

2. Associated Enterprises

Associated Enterprises

Formal vs. De Facto association (control)



As from January 2018 the associated enterprises definitions are more sensitive to de facto association (control).

However, even after the recent changes in legislation the associated enterprises still do not cover pure de facto association.

Associated Enterprises

Legal issues

1. The 2018 amendment included inter alia the “entity” as another type of associated enterprise. The entity definition, however, appears as very broad and unclear, thus contributing to legal uncertainty.

2. The 2018 amendments are result of the ATAD transposition. It is explicitly stated in the ATAD it shall not affect the taxpayers’ obligations to comply with the arm’s length principle. In the Slovak legislation, however, the ATAD contributed to significant change in the personal scope of transfer pricing.

3. As a result, the domestic concept of associated enterprises could result in double taxation due to possible different approaches to the association in various tax jurisdictions.

Thank you!

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