

CATALOG OF

High Tax Risk Schemes

Version 2.0
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Introduction

This second version of the catalog describes different situations that may involve potential tax non-compliance and, if applicable, the application of Regulation XVI of the Preliminary Title of the Unique Ordered Text of the Tax Code will be evaluated. This Regulation addresses the qualification, tax avoidance and simulation. This catalog also includes a case in which SUNAT established the existence of sufficient elements to apply the anti-avoidance rule.

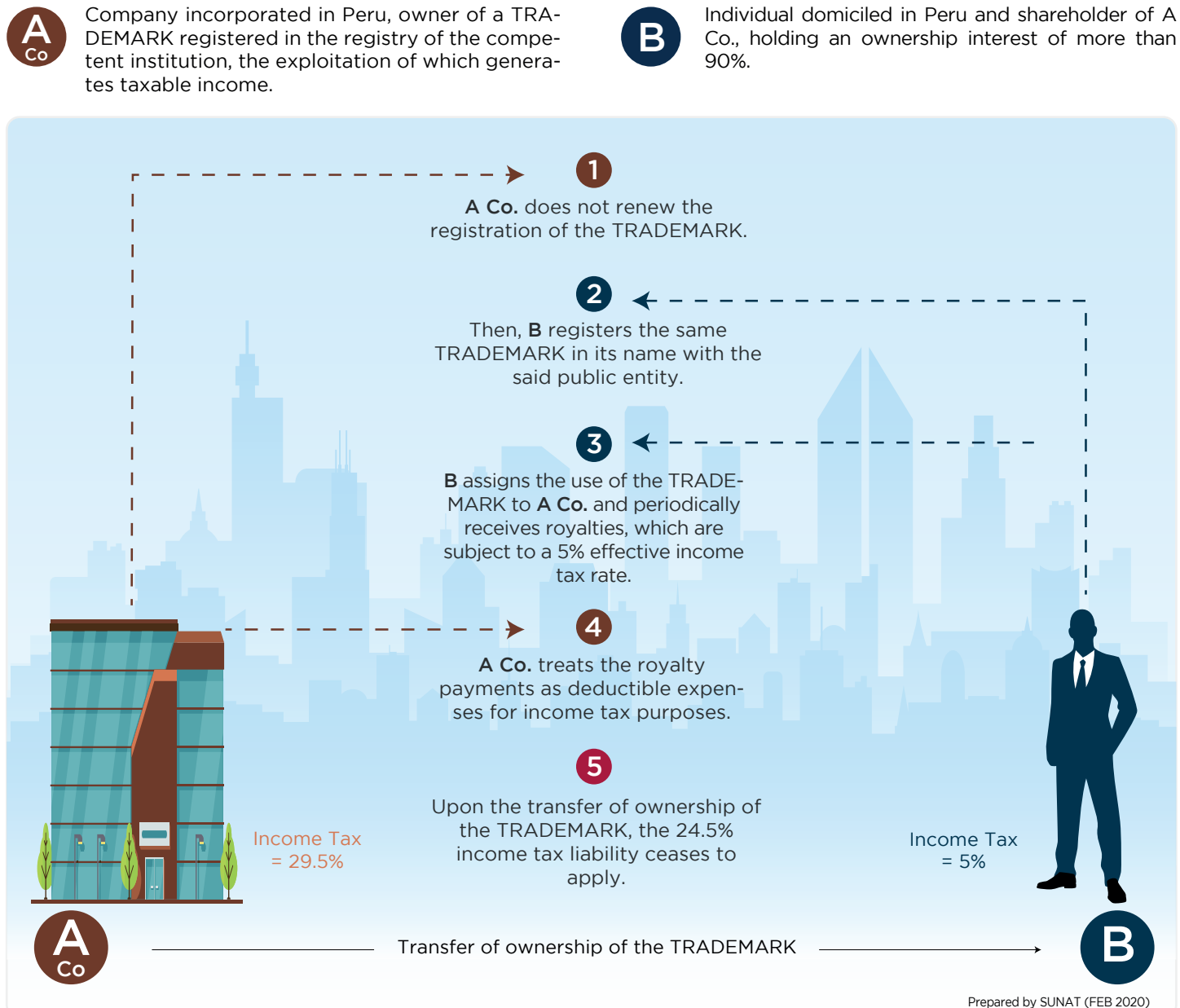
The purpose of the catalog is to make useful information available to all taxpayers and legal and tax advisors, enabling them to understand certain schemes, through their general characterization, which could lead to an incorrect determination of the tax liability or the obtaining of undue tax advantages. These schemes will therefore be subject to priority evaluation by SUNAT, considering the potential harm to the resources of the Peruvian State.

With this updated publication, which will progressively include new characterizations, the aim is to encourage taxpayers to voluntarily comply with their tax obligations, since with the information published, they will be able to prevent or avoid incurring in obtaining undue tax savings or advantages.

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Description of the scheme



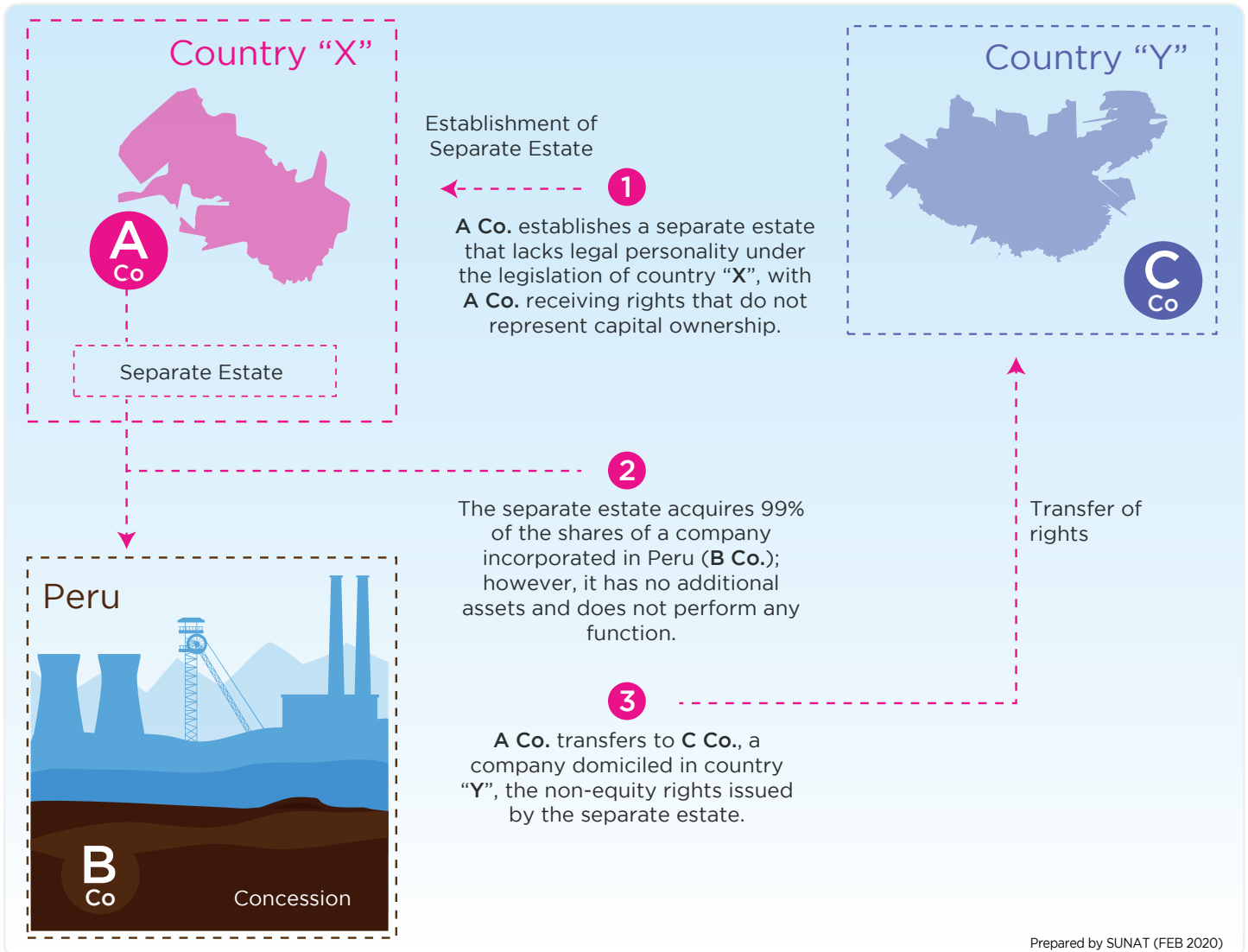
Legal reference: Income Tax Law: Subparagraph c) of Art. 24, Art. 37, Subparagraph g) of Art. 44, Art. 52-A, Art. 55.

Analysis and effects of the scheme

- A Co. has been the original owner of the trademark and has exploited it even after A Co. did not renew its registration with the competent institution.
- Overall, the facts described in the scheme do not impact the ordinary course of the company's business, except for the tax expense incurred.
- By not renewing the referred registration, A Co. generated a deductible expense for income tax purposes, through the royalty payments made to B, resulting in a lower income tax equivalent to 29.5% of the royalties paid.
- B is taxed at a reduced income tax rate of 5% on the licensing of the trademark in favor of A Co.

Description of the scheme

- A Co** Company domiciled in country "X" - Separate Estate.
- B Co** Company incorporated in Peru - Concession.
- C Co** Company domiciled in country "Y" - Incorporation.

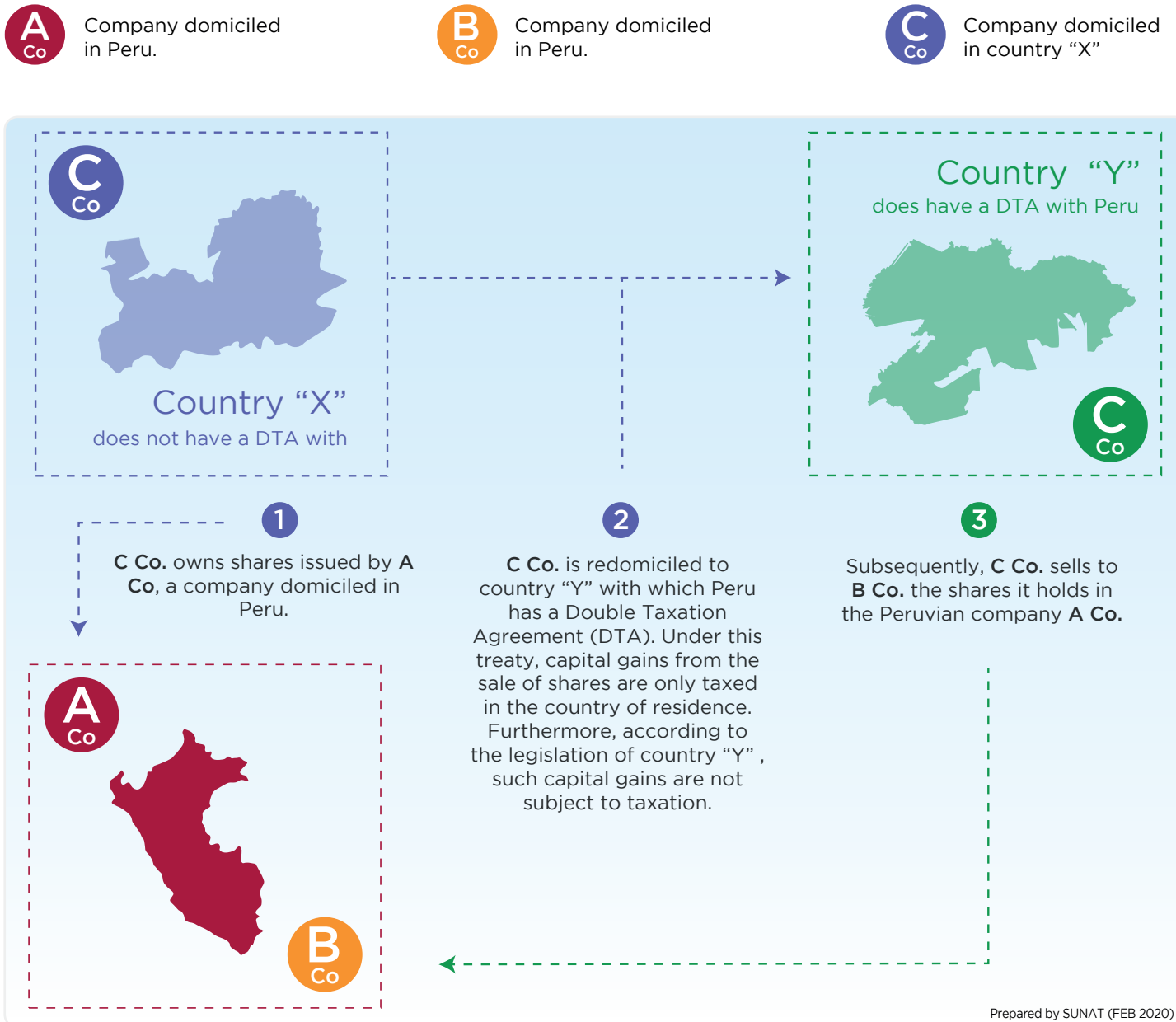


Legal reference: Income Tax Law: Subparagraph h) of Art. 9, Subparagraph e) of Art. 10.

Analysis and effects of the scheme

- The transfer is made through a separate estate established abroad, which was only created to hold the shares issued by B Co.
- Non-equity rights are transferred involving the transfer of B Co. shares.
- Such transfer did not generate taxable income in Peru.
- Except for the tax advantage, the acts described in the scheme are not the regular ones to achieve the disposal of B Co., as similar effects result from a direct disposal, which would have been subject to a 30% income tax rate.

Description of the scheme



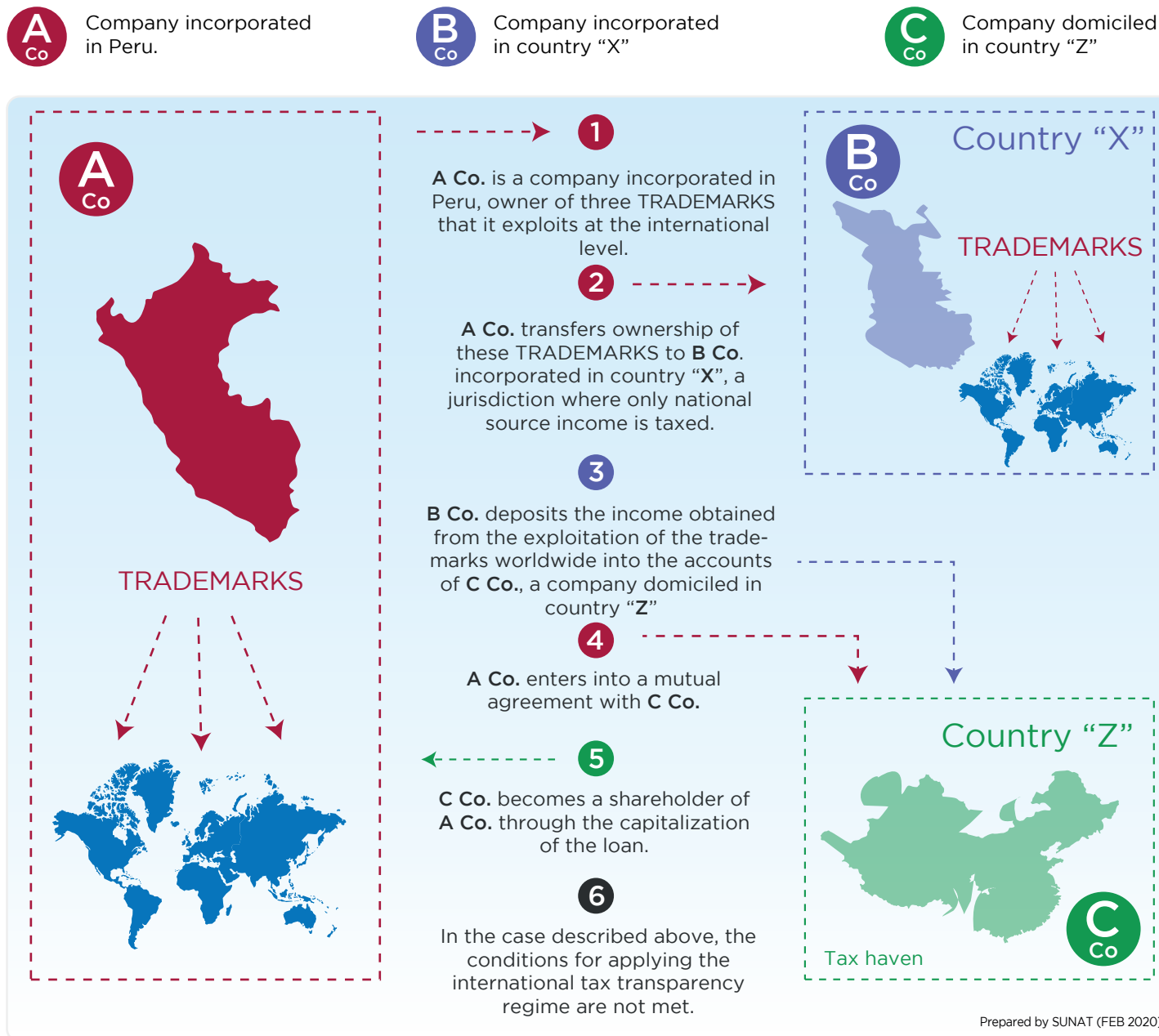
Legal reference: Income Tax Law: Subparagraph h) of Art. 9, subparagraph j) of Art. 56, Art. 76.
Double Taxation Agreement with country "Y".

Analysis and effects of the scheme

- C Co. is redomiciled from country "X" to country "Y" to make use of the DTA.
- The use of the DTA means that capital gains tax is payable exclusively in the country of residence.
- C Co. takes advantage of a tax benefit in country "Y" on its capital gains.
- C Co. does not pay income tax in Peru, even though it has generated Peruvian-source income, due to the application of the DTA with country "Y".
- C Co. does not pay income tax in Country "Y" either, due to the benefits established in that country.
- C Co. obtains double non-taxation, as it does not pay income tax in either country.

" In this case, the application of Regulation XVI of the Preliminary Title of the Tax Code will be evaluated "

Description of the scheme

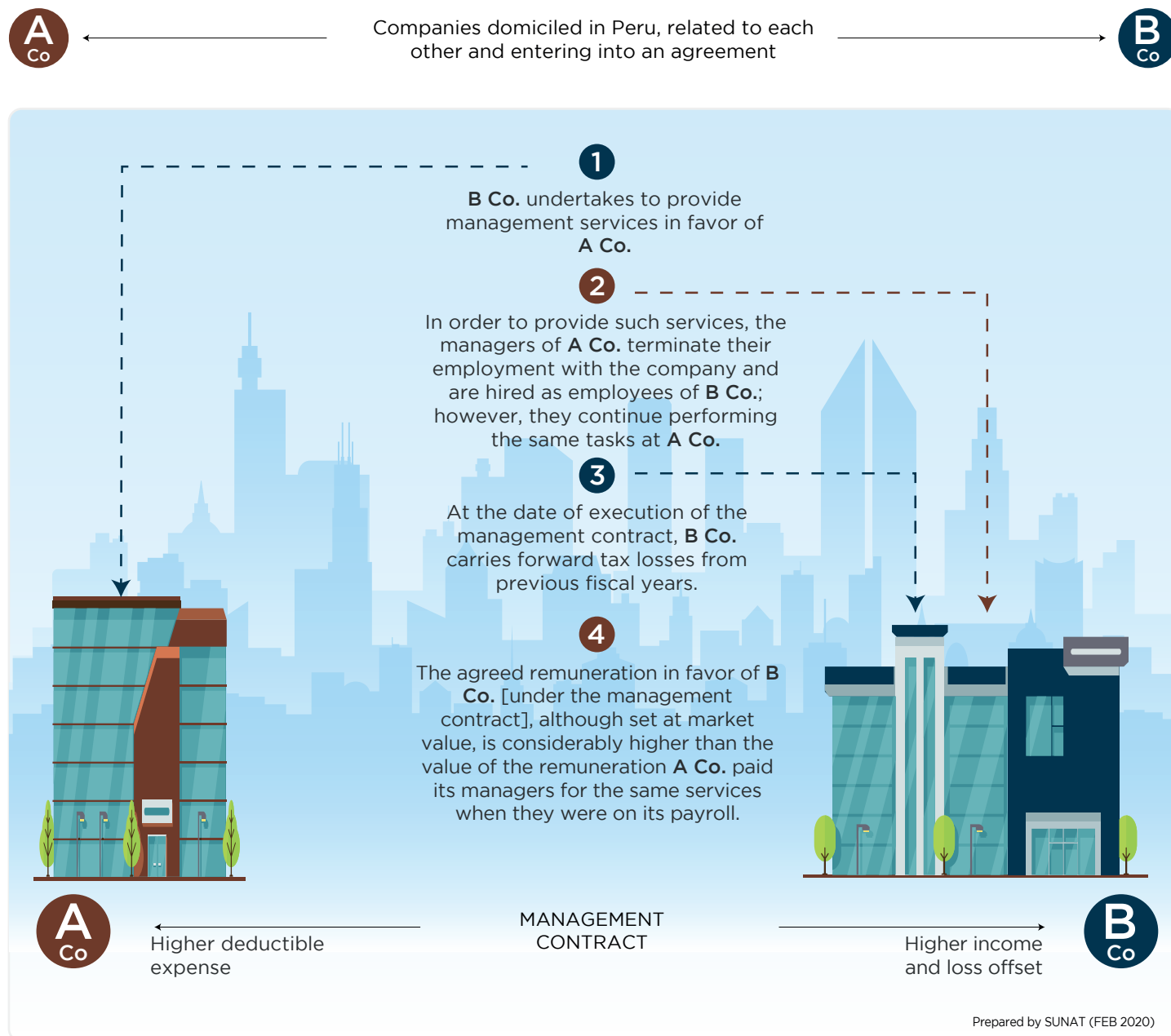


Legal reference: Income Tax Law: Subparagraph a) of Art. 1, Art. 6.

Analysis and effects of the scheme

- A Co. transfers its trademarks to country "X" where only domestic income is subject to taxation.
- The facts described in the scheme did not change the way A Co. exploits its trademarks, except for the tax savings obtained.
- After the transfer of the trademarks, the royalties they generate are not subject to income tax in Peru or in any other country.
- The income generated by the exploitation of the trademarks is received by A Co. through a loan from C Co. and therefore A Co. does not pay any tax on it.

Description of the scheme

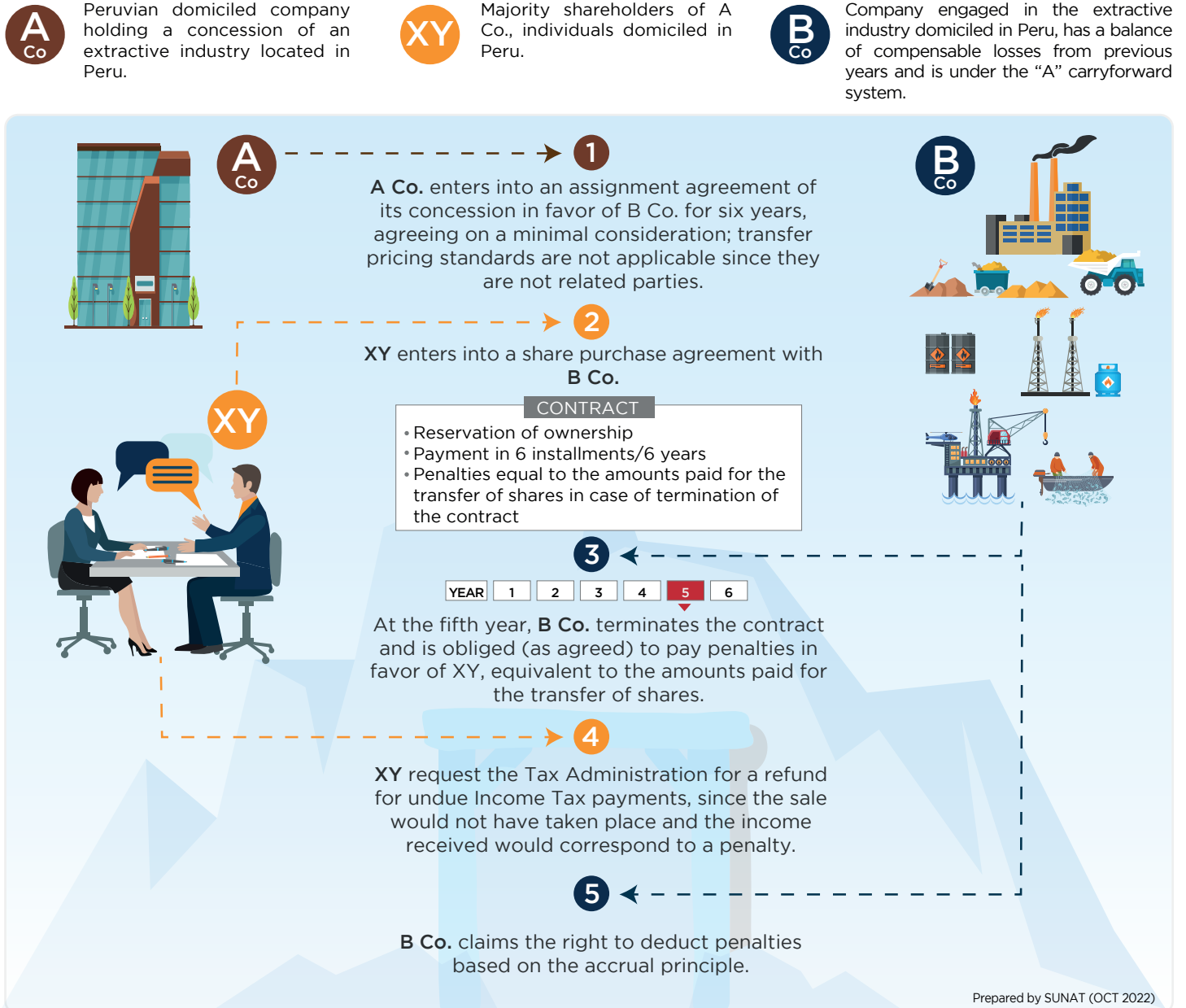


Legal reference: Income Tax Law: Art. 37, Art. 50.

Analysis and effects of the scheme

- A Co. has kept the same managers performing the same functions, even after their employment termination.
- The management contract had no impact on the business development of A Co.
- A Co. no longer deducts the salaries it used to pay its managers for income tax purposes; however, it deducts a higher amount for the remuneration it pays to B Co.
- B Co. generates taxable income from the remuneration it receives from A Co.; however, it does not pay any tax since it has losses from previous years.

Description of the scheme



Legal reference: Income Tax Law: Art. 1, Art. 2, Art. 3, Art. 37, Art. 50.
Civil Code: Art. 1583.

Analysis and effects of the scheme

- A Co. receives a low consideration for the assignment of its concession and justifies this through the share purchase agreement entered into between XY and B Co.
- B Co. pays part of the price for the purchase of A Co. shares, but in the end decides not to buy them and instead pays a penalty equivalent to the amount already paid, without any economic justification for this decision.
- The shareholders of A Co. maintained ownership of the company at all times. However, they generated non-taxable income by treating the amount received as a payment of a penalty.
- A Co. ceased to pay 29.5% income tax on the amounts that its shareholders received over five years for the assignment of the concession, which was concealed as a resolved share sale.
- B Co. did not pay the 29.5% income tax during the first four fiscal years because it had accumulated losses.
- In the fifth fiscal year, B Co. treated the penalty for terminating the agreement as a deductible expense, thereby avoiding the payment of 29.5% income tax, even though such deduction is not permitted.

“In this case, the application of Regulation XVI of the Preliminary Title of the Tax Code will be evaluated”

Description of the scheme



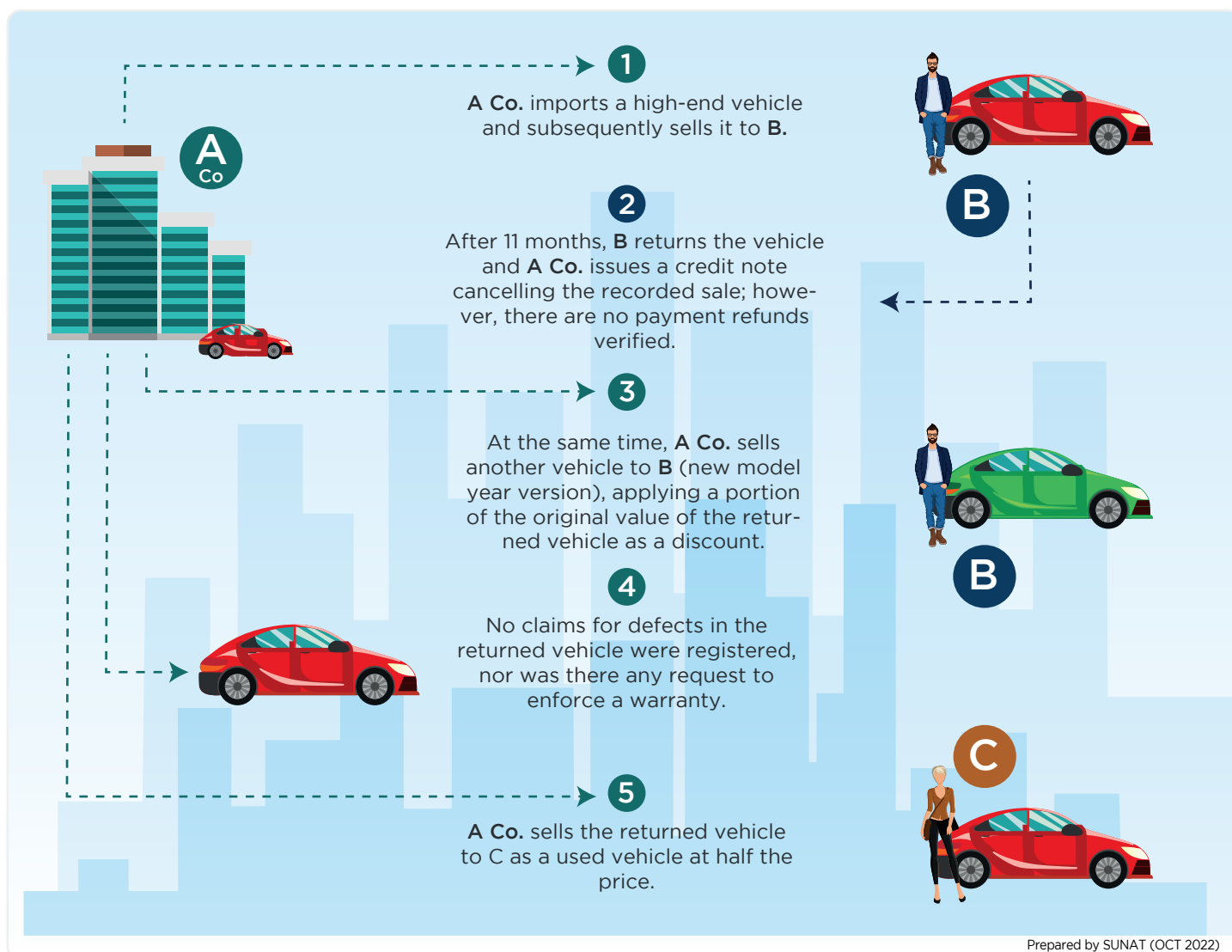
A Co. Company domiciled in Peru, engaged in the importation and sale of vehicles.



B Client 1.



C Client 2.



Prepared by SUNAT (OCT 2022)

Legal reference: Income Tax Law: Art. 20.
General Sales Tax Law: Art. 13, Art. 26.

Analysis and effects of the scheme

- A Co. issues the credit note for the cancellation of the sale of the vehicle to Client 1; however, there is no valid economic reason to support this action.
- By issuing the credit note, A Co. reduces the amount of its income for Income Tax and VAT purposes, by the amount stated in said credit note, thus paying a lower tax in both cases.
- When selling the used vehicle to Client 2, A Co. considers the original acquisition cost as computable cost and not the repurchase cost, thus generating a loss on the sale of said vehicle.
- A Co. does not pay 29.5% on the income obtained from the sale of the first vehicle to B, which was cancelled, as well as 18% VAT.
- A Co. does not pay the 29.5% income tax by applying the higher accounting cost with respect to the difference between the original cost and the repurchase value (actual cost) of the used vehicle sold to C.
- A Co. does not pay VAT on the 18% of the sale value of the vehicle sold to C by using a tax credit that is not applicable.

Description of the scheme



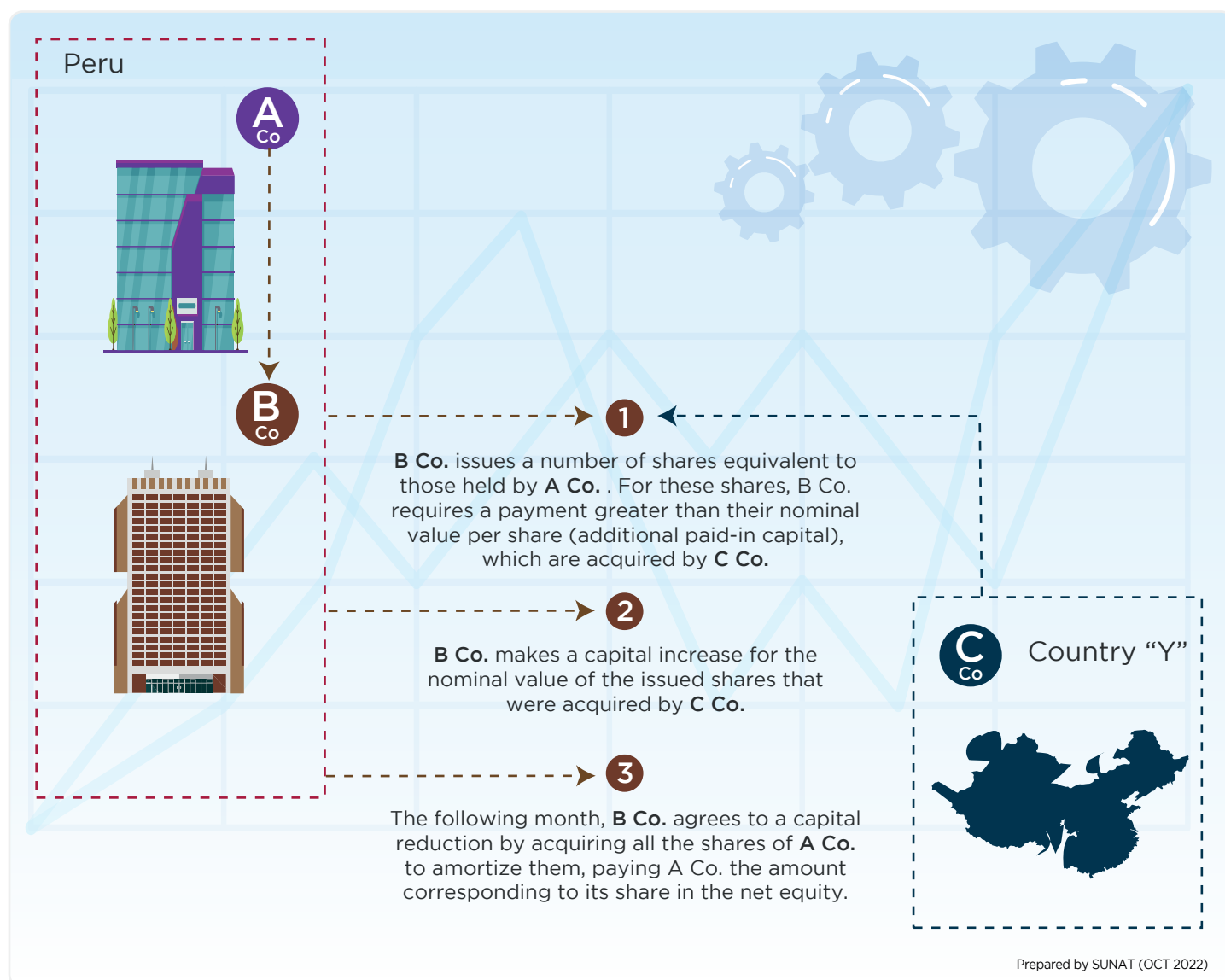
A Co. Company domiciled in Peru, shareholder of B Co. which holds 98% of the shares in B Co.



B Co. Company domiciled in Peru.



C Co. Company domiciled in country "Y"



Legal reference: Income Tax Law: Subparagraph d) of Art. 24-A, Art. 24-B, Art. 73-A. Peruvian Companies Act.

Analysis and effects of the scheme

- A Co. is a majority shareholder of B Co., but after the described scheme, it ceases to be a shareholder and C Co. obtains ownership of the majority of the shares, without any share purchase having taken place.
- The capital increase of B Co. lacks economic substance, specially considering that a capital reduction is later agreed upon. The only result of both agreements was the change in the majority shareholder.
- By means of the capital reduction, A Co. ceased to be a shareholder of B Co., generating income that qualifies as a distribution of profits that is not subject to Income Tax.
- Except for the tax advantage, the actions described in the scheme are not the regular means for the disposal of the company B Co., as similar effects result from a direct disposal, which would have been subject to a 29.5% income tax.

Description of the scheme



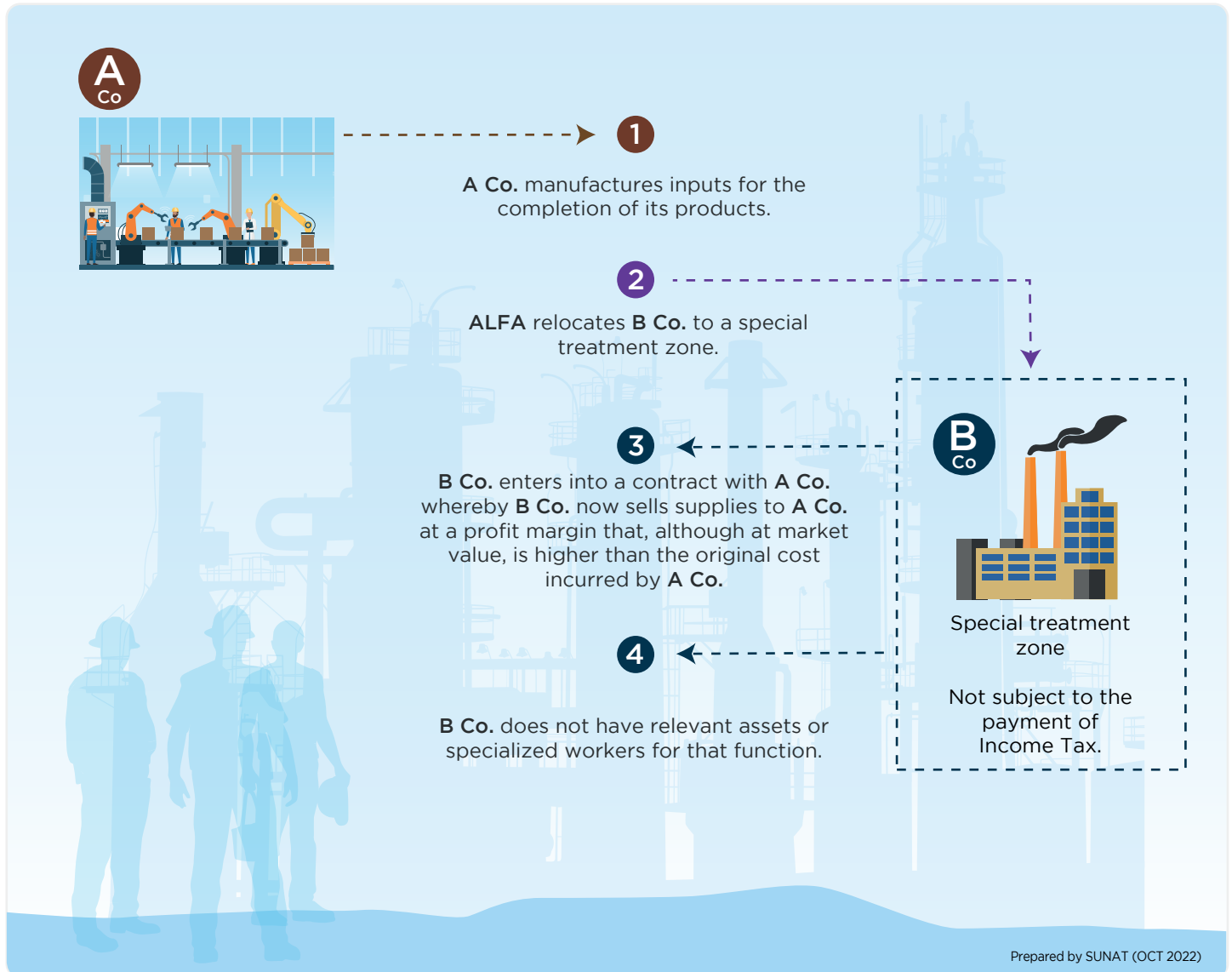
Economic group composed of A Co. and B Co.



Company domiciled in Peru, engaged in the industrial transformation under the General Income Tax Regime.



Company domiciled in Peru.



Legal reference: Income Tax Law: Art. 20.

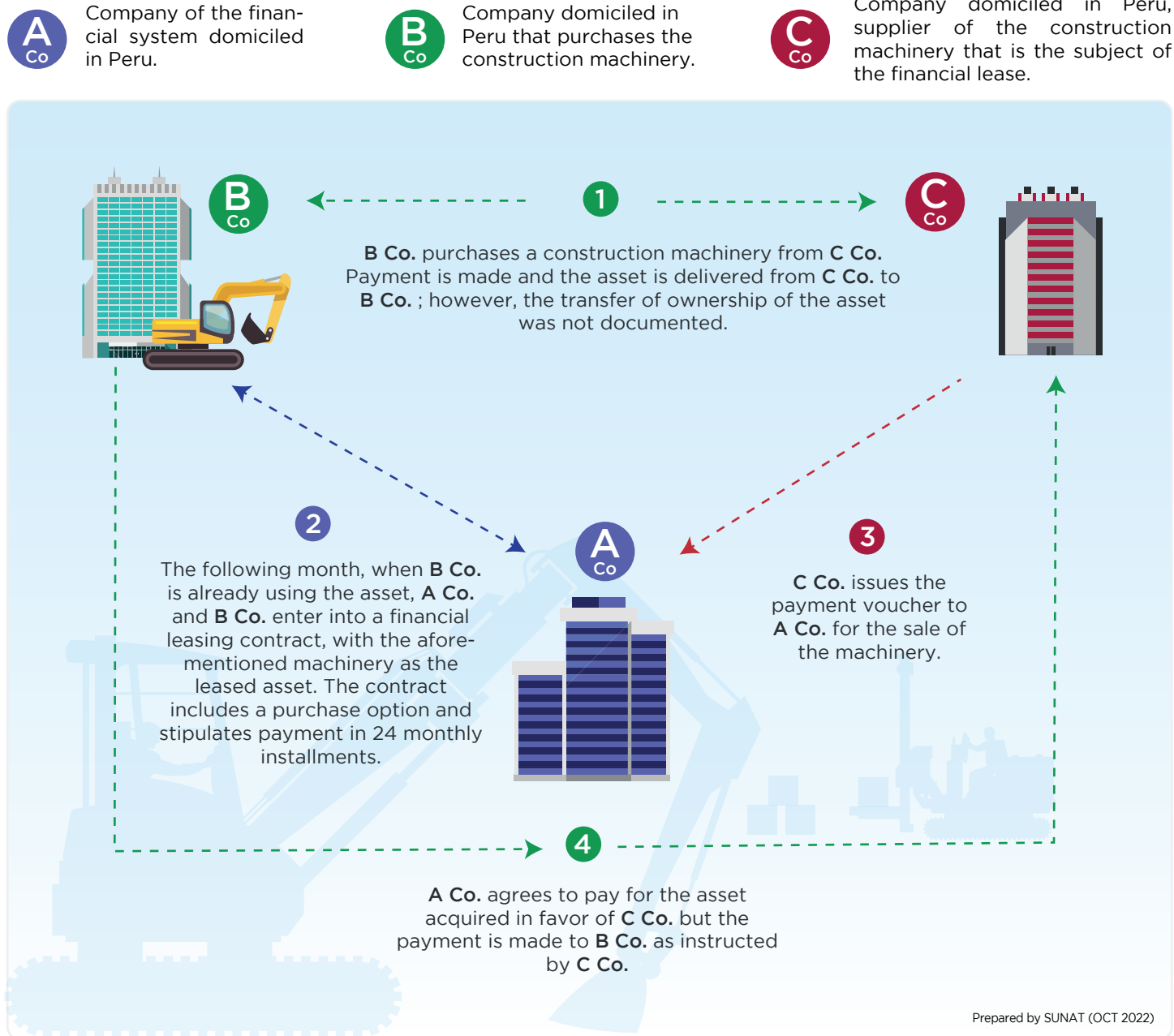
Law for the Strengthening of Centers for Export, Transformation, Industry, Commercialization and Services (CETICOS), among other laws that grant tax benefits.

Analysis and effects of the scheme

- A Co. continues to carry out the same productive activities, which has not changed with the described scheme.
- A Co. uses the terms of the contract signed with B Co. to increase its cost by acquiring supplies from B Co.
- B Co. lacks economic substance.
- Although part of this income is transferred to B Co., B Co. does not pay such tax since it is located in a special treatment zone.
- A Co. reduces its income and generates a lower tax burden in Peru by avoiding the payment of a 29.5% income tax corresponding to the increase in the cost of inputs.

E.10 Loan under the guise of a financial lease

Description of the scheme



Legal reference: Financial Leasing Law (Legislative Decree 299): Art. 18.

Analysis and effects of the scheme

- Having paid the purchase price of the machinery to C Co., B Co. enters into a financial lease contract to own the machinery under the legal title of lessee pursuant to that contract.
- C Co. received the consideration for the sale of the machinery from B Co., which payment should have been made by A Co.
- The disbursement made by A Co. in favor of B Co. would constitute financing for the latter.
- Owning the asset acquired under such contract, allows B Co. to have a higher depreciation deduction each fiscal year, than it would have it had acquired the asset directly.
- B Co. benefits from the accelerated depreciation, resulting in a lower payment of the 29.5% income tax due to the higher depreciation rate applied in the years the contract is in effect.

"In this case, the application of Regulation XVI of the Preliminary Title of the Tax Code will be evaluated"

Description of the scheme



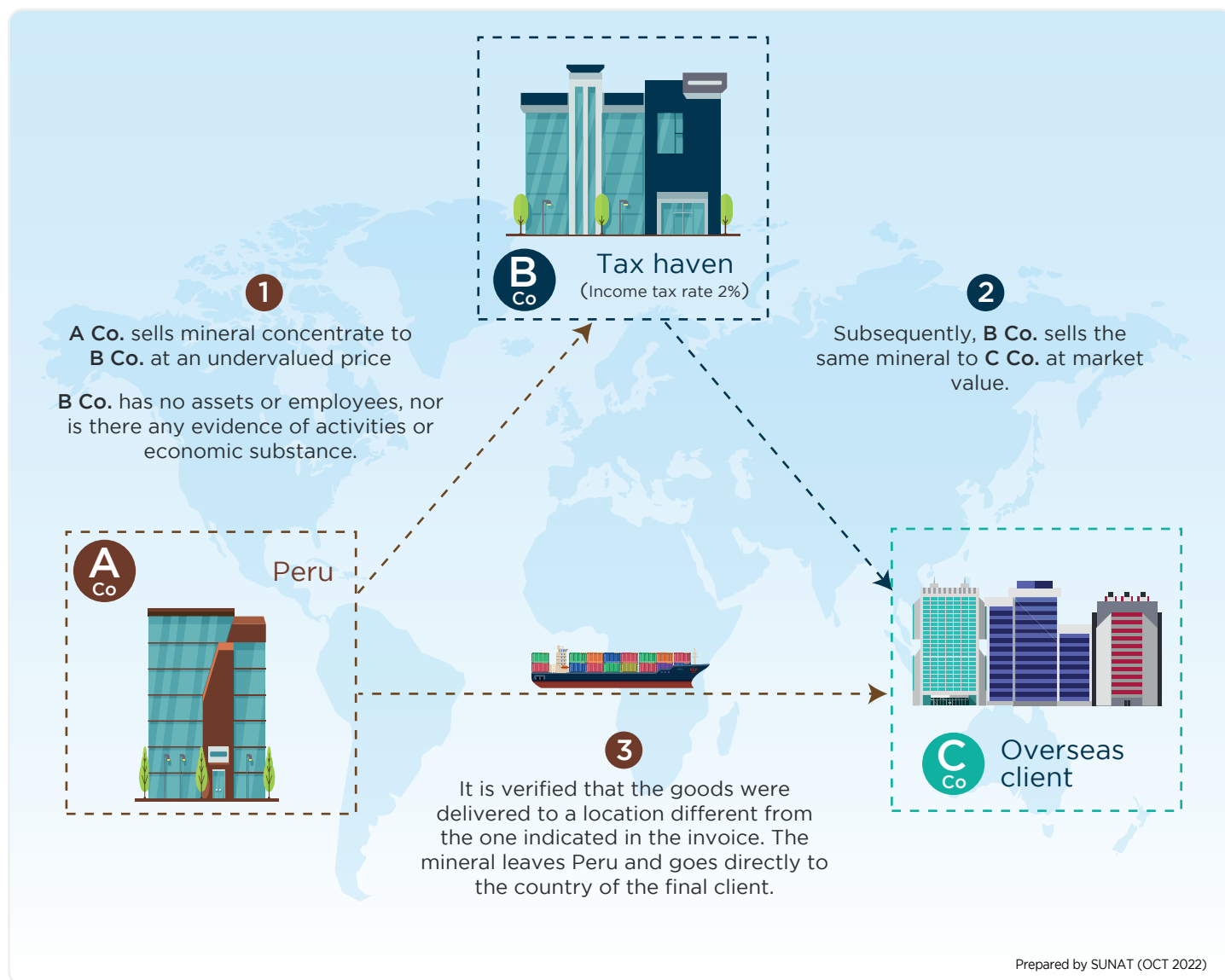
A Co. Company domiciled in Peru, holder of a mining concession.



B Co. Company located in a tax haven and related to A Co.



C Co. Overseas Client.



Legal reference: Income Tax Law: Art. 28, Art. 32-A.

Analysis and effects of the scheme

- B Co. acquires and sells ore concentrate -according to documentation- however, this company lacks economic substance and, therefore, there is no evidence that it performs any actual activity.
- The transfer of goods carried out by A Co. (through B Co.) results in part of the profits being shifted to the tax haven.
- The facts described in the scheme do not modify the purpose of the transaction, which is the sale of the concentrate to C Co. except for the tax savings obtained.
- The shifting of the profit generated from the sale of the mineral concentrate implies that the group pays a reduced 2% tax rate in the tax haven on the portion of income that should have been taxed in Peru.
- A Co. pays a lower 29.5% income tax in Peru due to the higher sale price invoiced by B Co.

"In this case, the application of Regulation XVI of the Preliminary Title of the Tax Code will be evaluated"

Description of the scheme



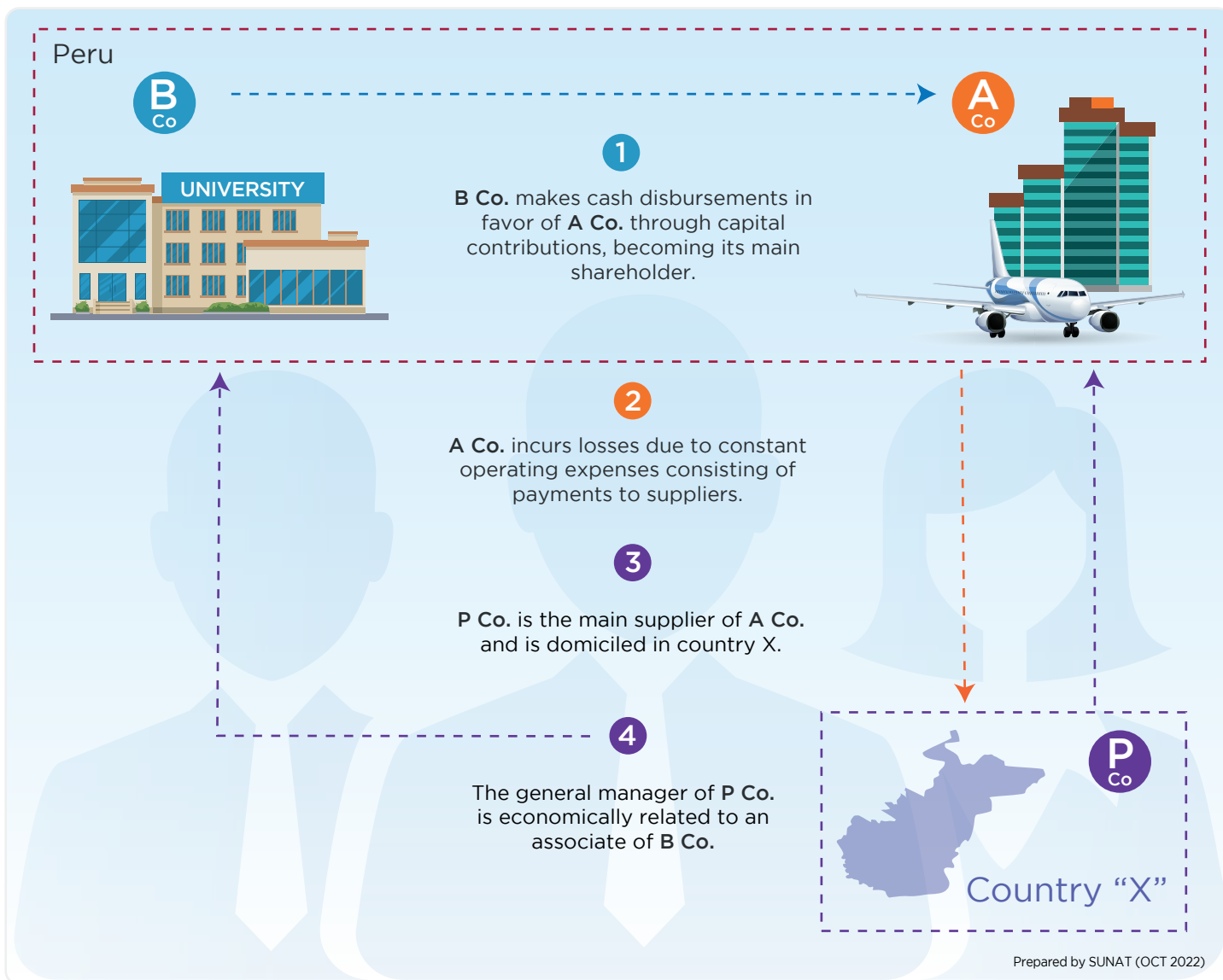
A Co. Company domiciled in Peru, engaged in the provision of transportation services nationwide.



B Co. Non-profit entity, registered in the registry of entities exempt from income tax, whose purpose of incorporation includes the development of higher education activities in Peru.



P Co. Service provider located in country "X".



Legal reference: **Income Tax Law:** Art. 19 and Art. 37
Income Tax Law Regulations: Art. 8-D and Art. 8-E. R

Analysis and effects of the scheme

- A Co. generates constant losses from its transactions with P Co. which is controlled by a person economically related to an associate of B Co.
- B Co. is a shareholder of A Co. and permanently makes contributions to it without any reasonableness.
- In order to maintain its income tax exemption, B Co. pretends not to distribute profits either directly or indirectly.
- B Co. is an entity that benefits from income tax exemption despite the fact that there is an indirect distribution of income to one of its associates, through a person economically related to it.
- B Co. does not pay the 29.5% income tax on all the profits it generates.

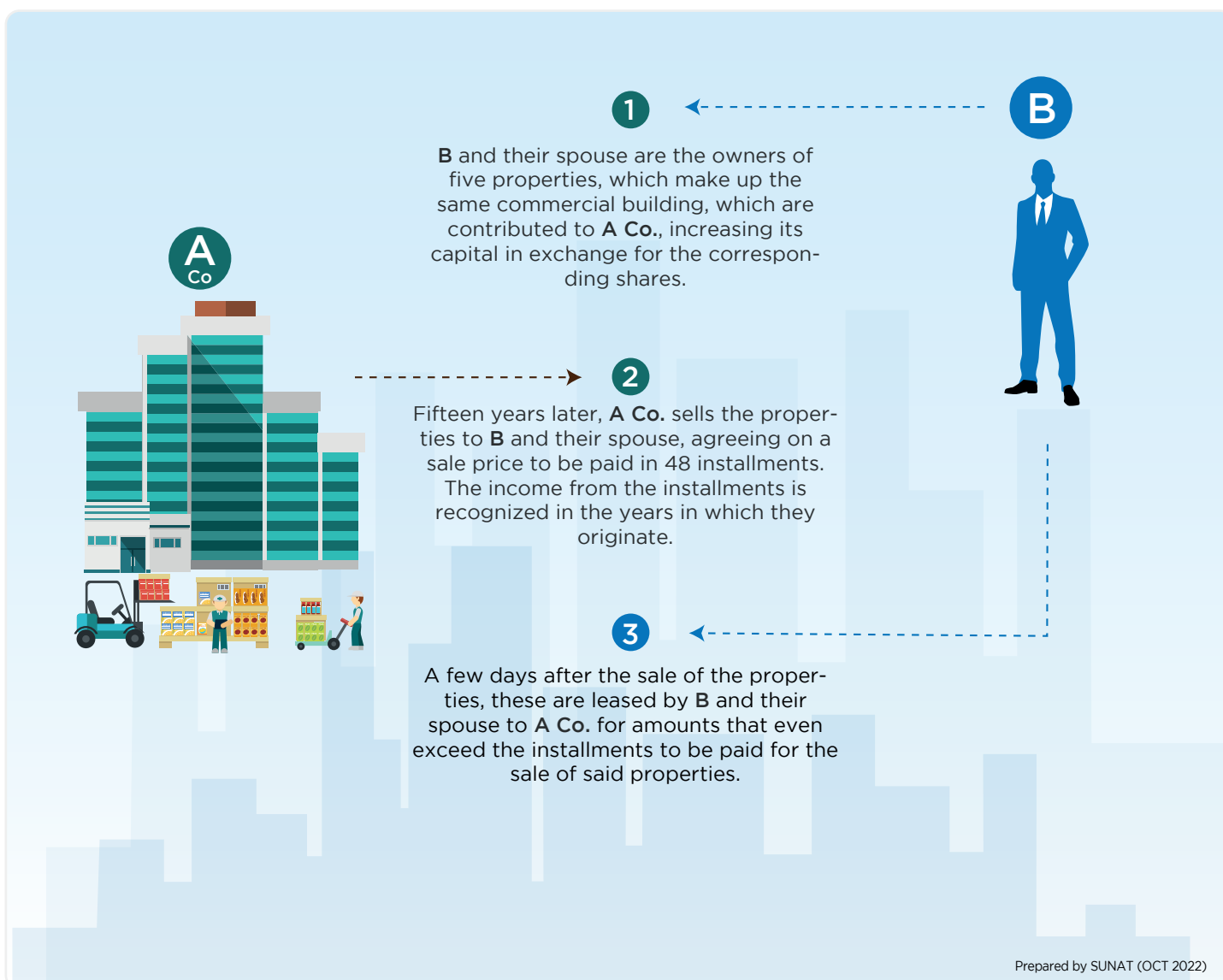
Description of the scheme



Company domiciled in Peru, engaged in the commercialization of products.



Individual domiciled in Peru and shareholder of A Co. holding more than 90% ownership, general manager and director of A Co.



Legal reference: Tax Code: Regulation XVI of the Preliminary Title.

Supreme Decree 145-2019-EF that approves the substantive and formal parameters for the application of the general anti-avoidance standard
Income Tax Law and its regulations.

Analysis and effects of the scheme

- The real estate that A Co. used for its business activity was recorded as fixed assets, with depreciation that was close to depletion.
- A Co. has used the properties as offices continuously, even after their sale to B. The change in ownership has not affected the use of the properties nor the operations of A Co.
- Since neither the use of the properties nor the activity of A Co. is affected, the sale and subsequent leasing of the properties, viewed jointly, have no economic or commercial rationale for A Co. except for the generation of a permanent deductible expense.
- By leasing the properties from the shareholder and their spouse at installment amounts higher than those charged for the sale of the properties, A Co. is able to claim a greater deduction than it would have obtained through depreciation alone.
- A Co. benefits from a higher deduction, making a lower payment of the 28% Income Tax (rate corresponding to the audited fiscal year) due to the higher expense generated by the leasing of the properties.

