

CATALOG OF

# High Tax Risk Schemes

Version 3.0  
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# Introduction

We present the third version of this catalog, which describes different situations that may involve potential tax non-compliance and, if applicable, the evaluation of the application of Regulation XVI of the Preliminary Title of the Unique Ordered Text of the Tax Code. This Regulation addresses the qualification, tax avoidance and simulation, as well as specific anti-avoidance rules and transfer pricing regulations established in the Unique Ordered Text of the Income Tax Law.

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 progressively includes new characterizations, the aim is to encourage taxpayers to voluntarily comply with their tax obligations, as it enables them to prevent or avoid obtaining undue tax savings or advantages.

\*Version 2.0 also included a case in which SUNAT established that there were sufficient elements to apply the general anti-avoidance rule.

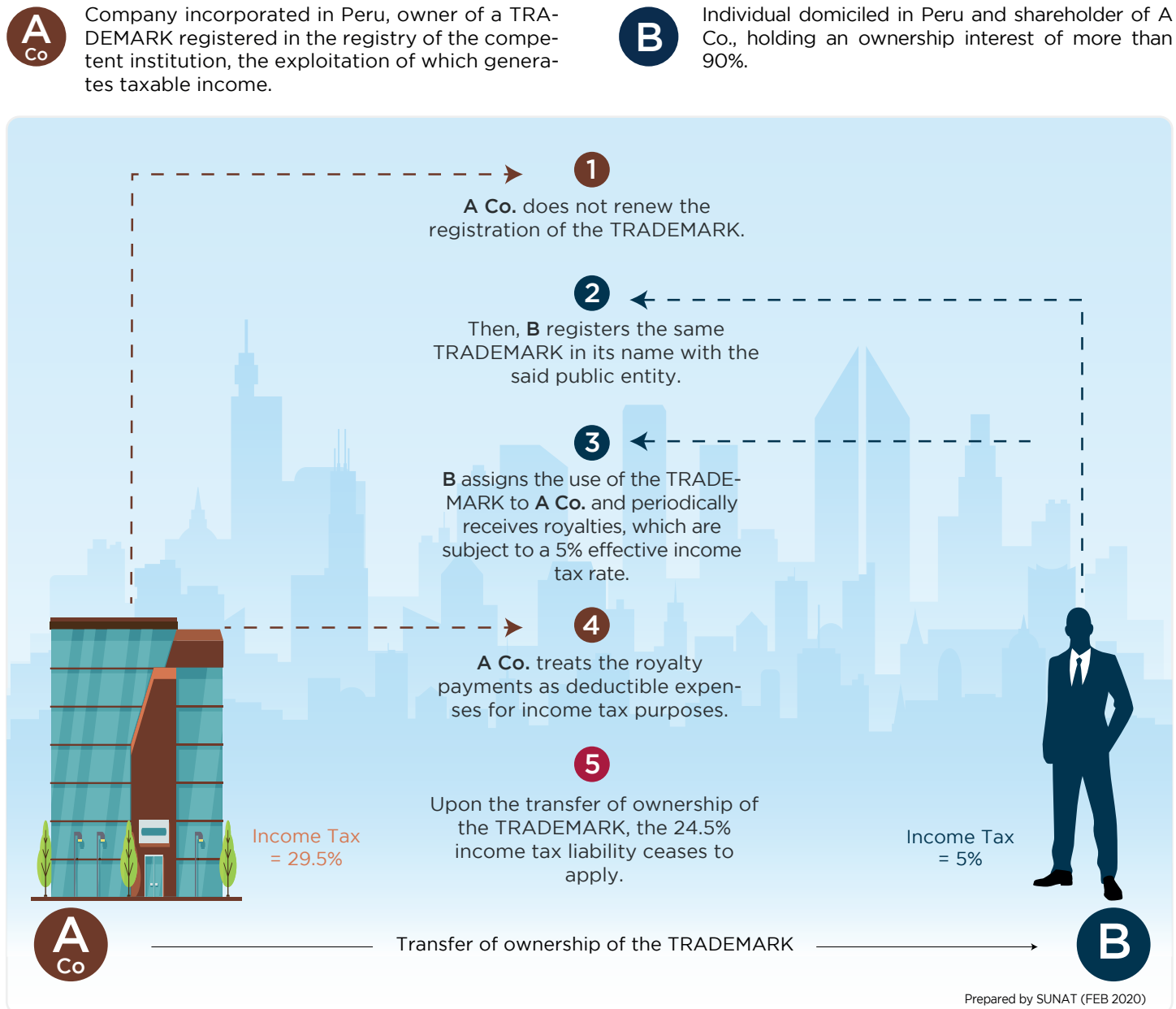
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## Description of the scheme



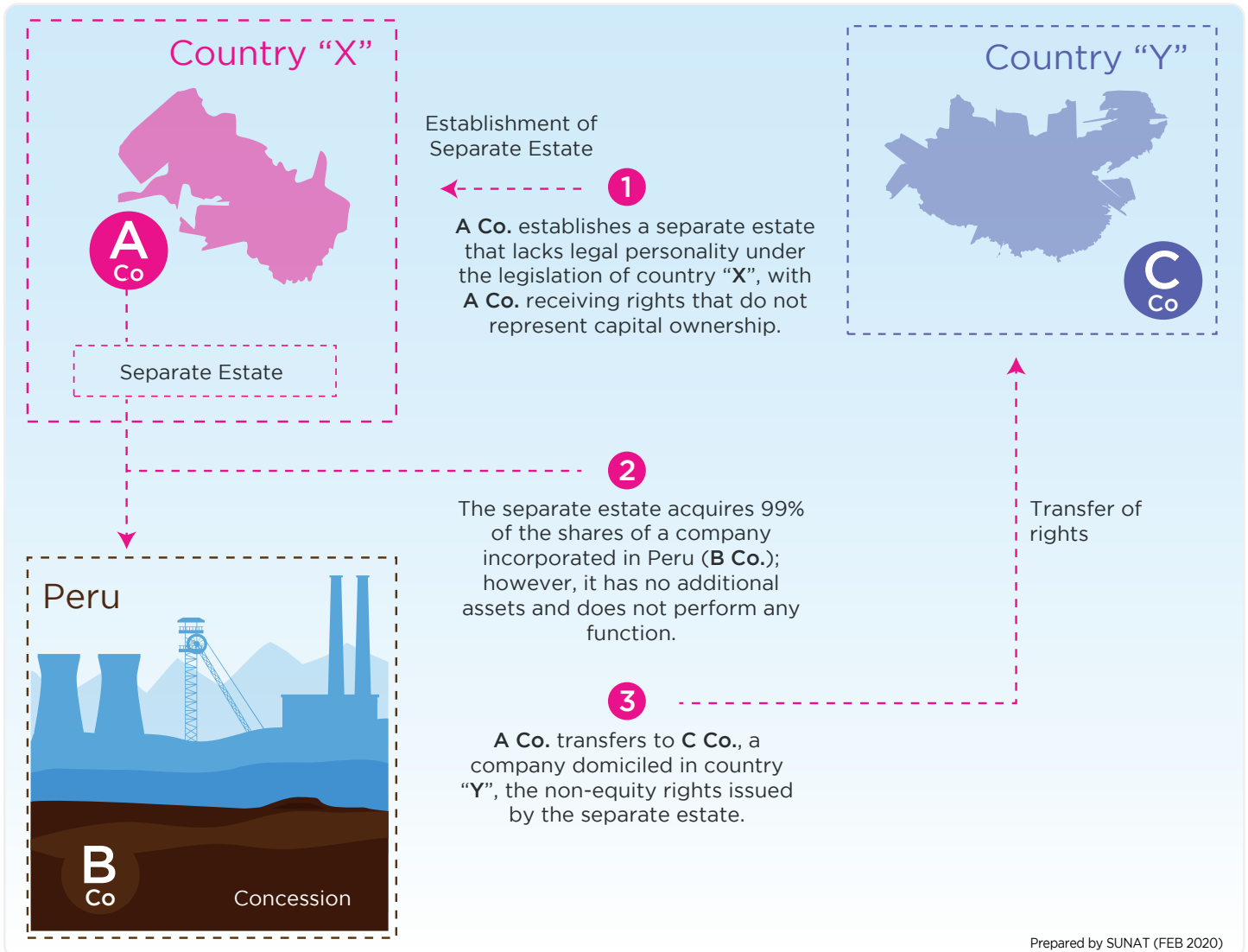
Legal reference: Income Tax Law: Subparagraph c) of Art. 24, Art. 37, Subparagraph g) of Art. 44, Art. 52-A, Art. 55.

## 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.



Prepared by SUNAT (FEB 2020)

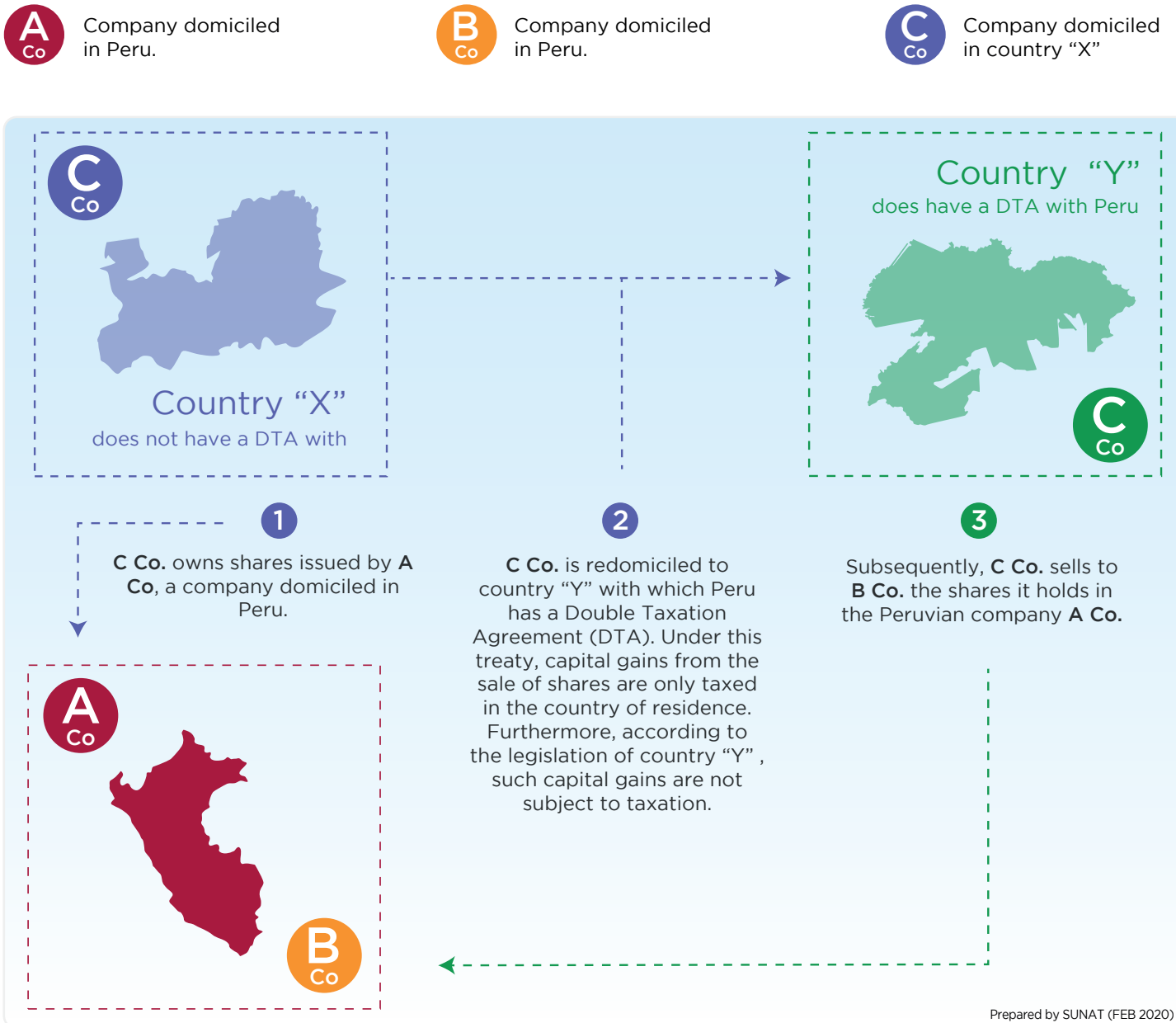
Legal reference: Income Tax Law: Subparagraph h) of Art. 9, Subparagraph e) of Art. 10.

## 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.

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

## Description of the scheme



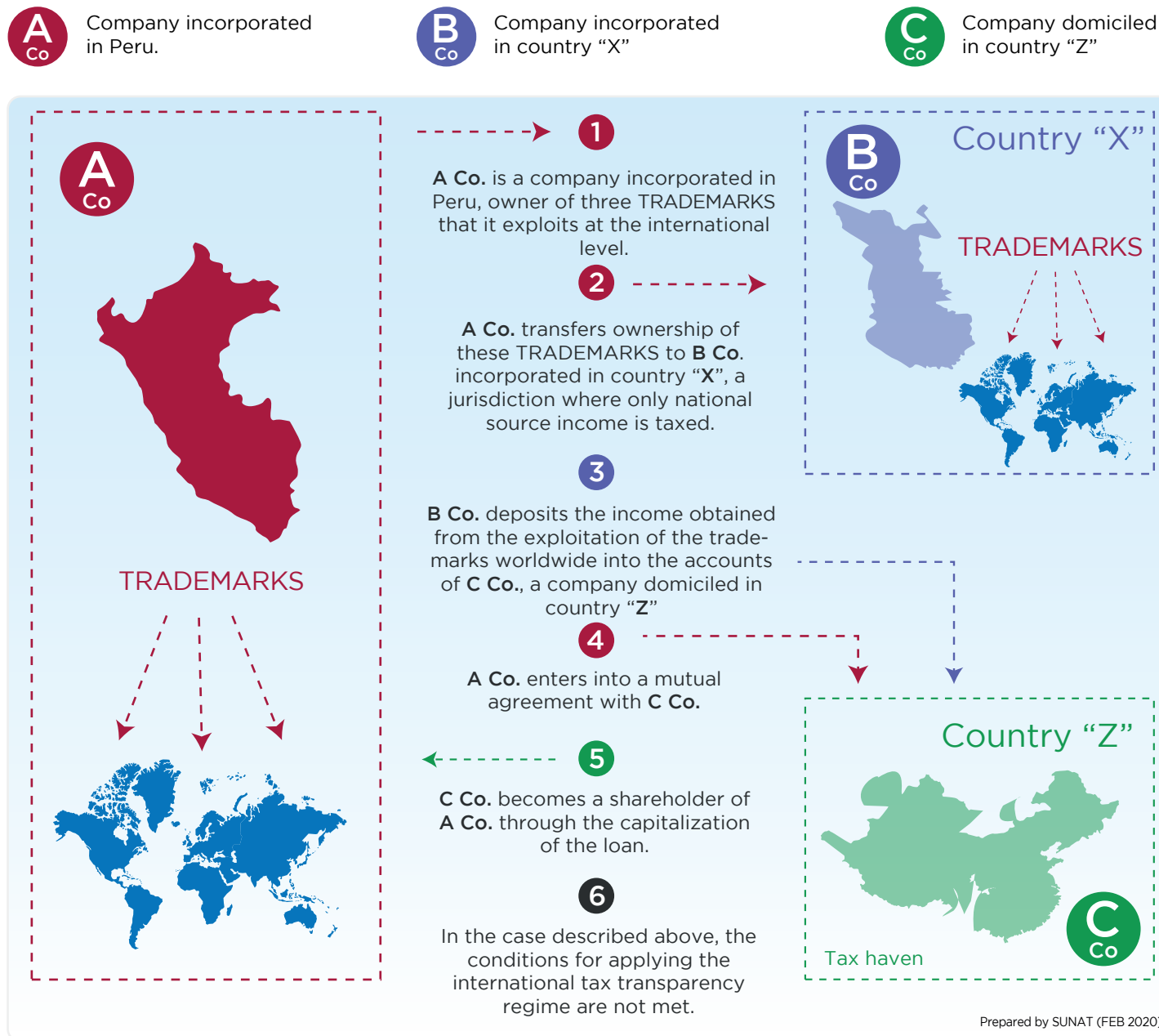
Legal reference: Income Tax Law: Subparagraph h) of Art. 9, subparagraph j) of Art. 56, Art. 76.  
Double Taxation Agreement with country "Y".

## 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



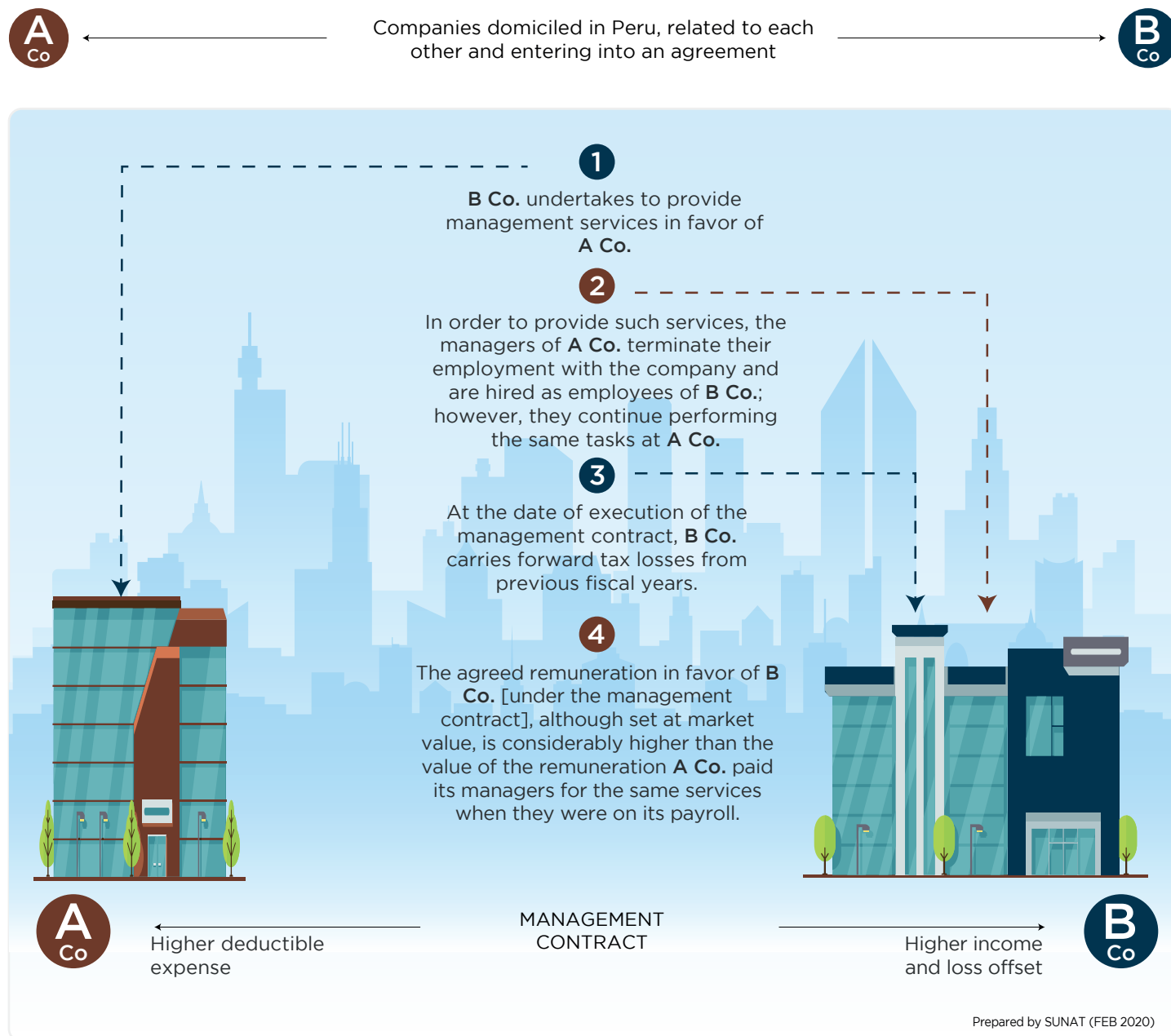
Legal reference: Income Tax Law: Subparagraph a) of Art. 1, Art. 6.

## 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

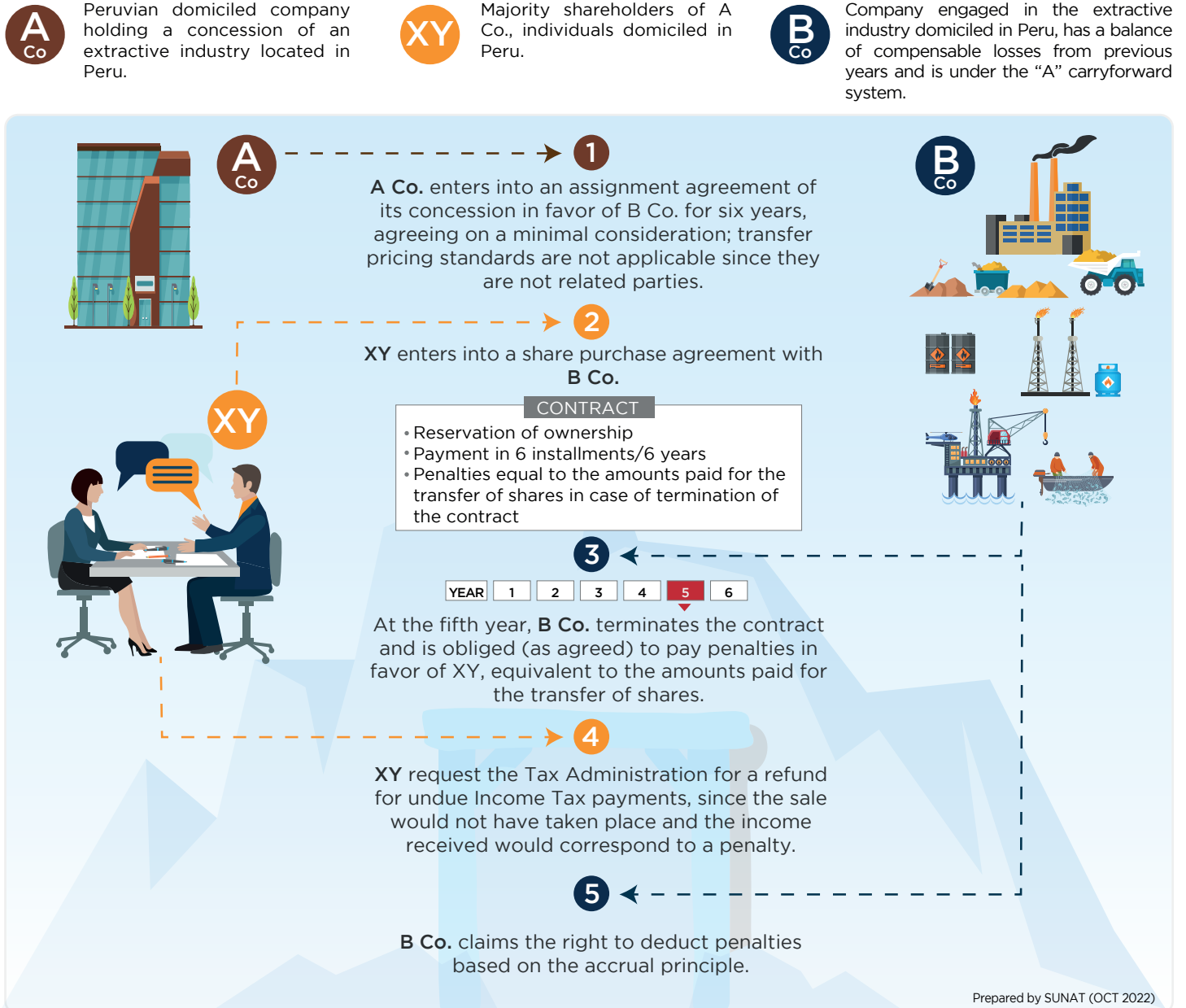


Legal reference: Income Tax Law: Art. 37, Art. 50.

## 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



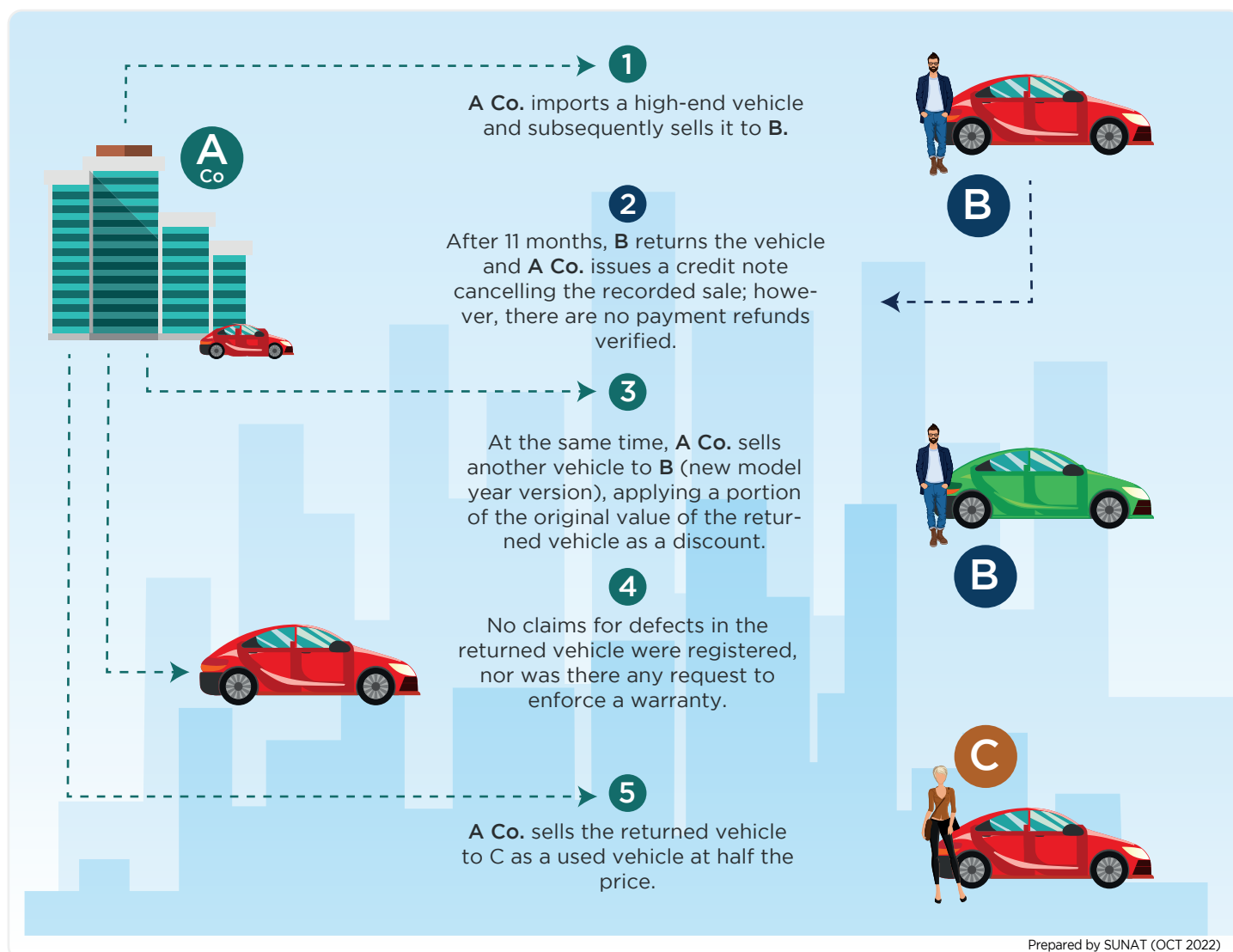
**A Co.** Company domiciled in Peru, engaged in the importation and sale of vehicles.



**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



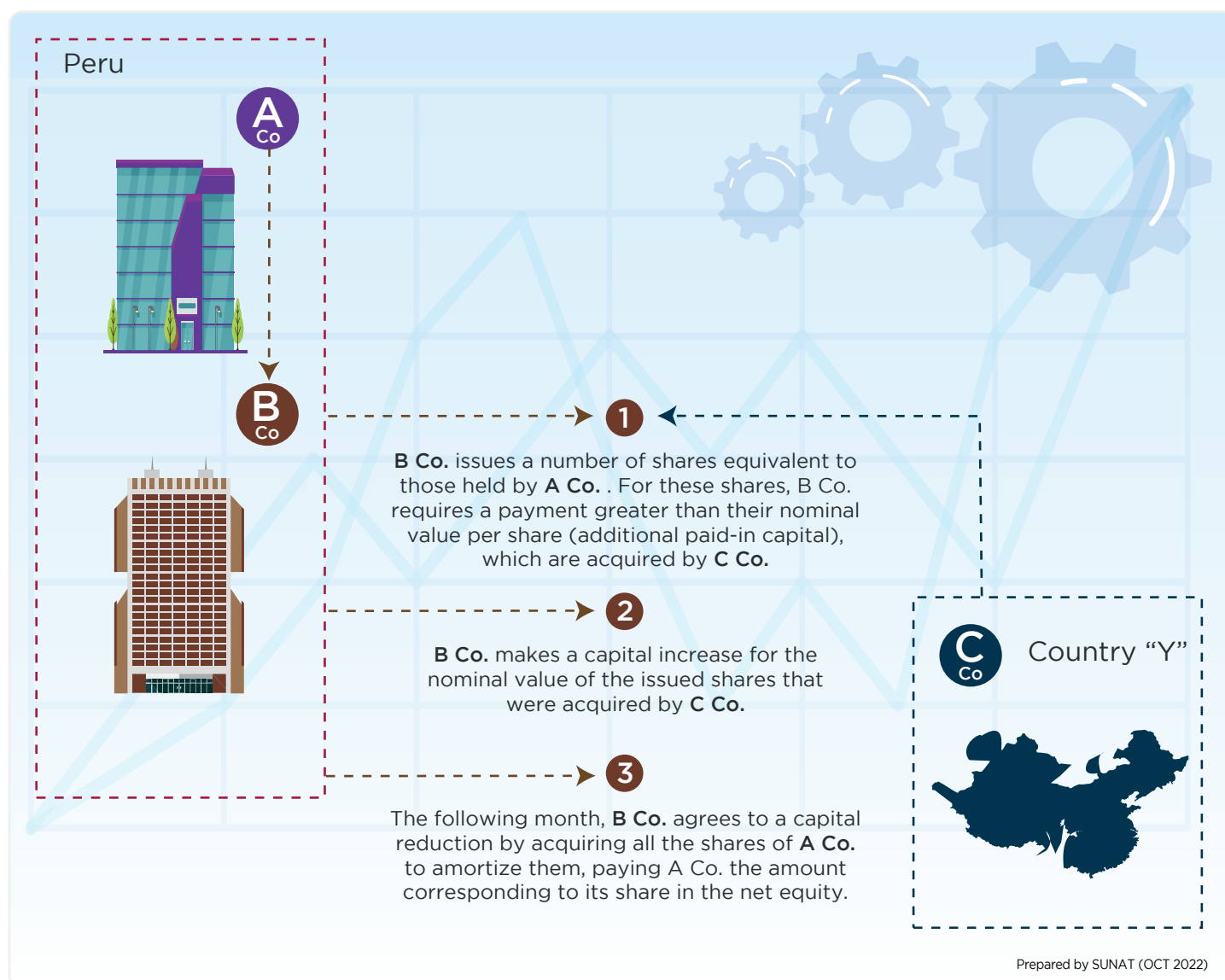
**A Co.** Company domiciled in Peru, shareholder of B Co. which holds 98% of the shares in B Co.



**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



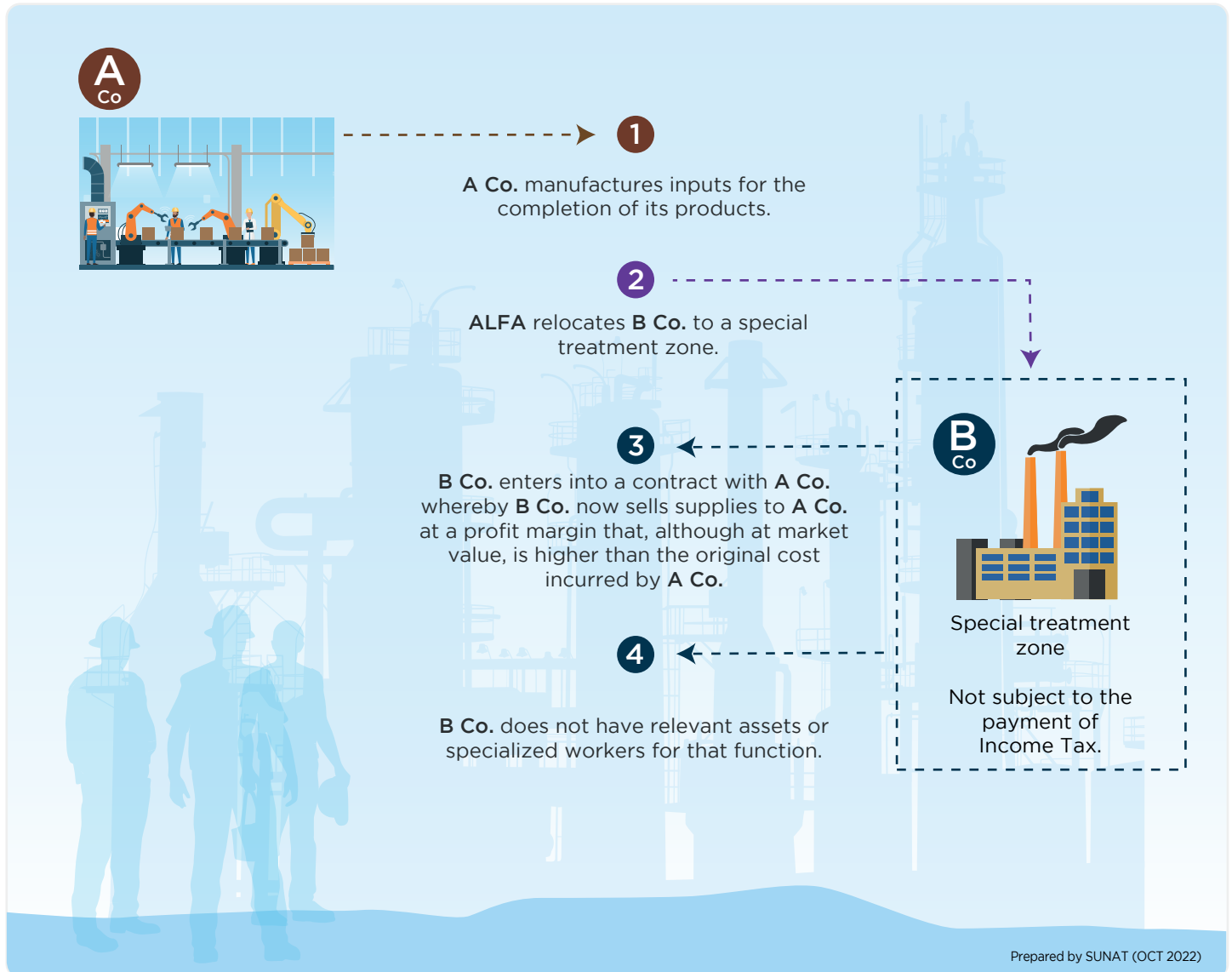
Economic group composed of A Co. and B Co.



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.

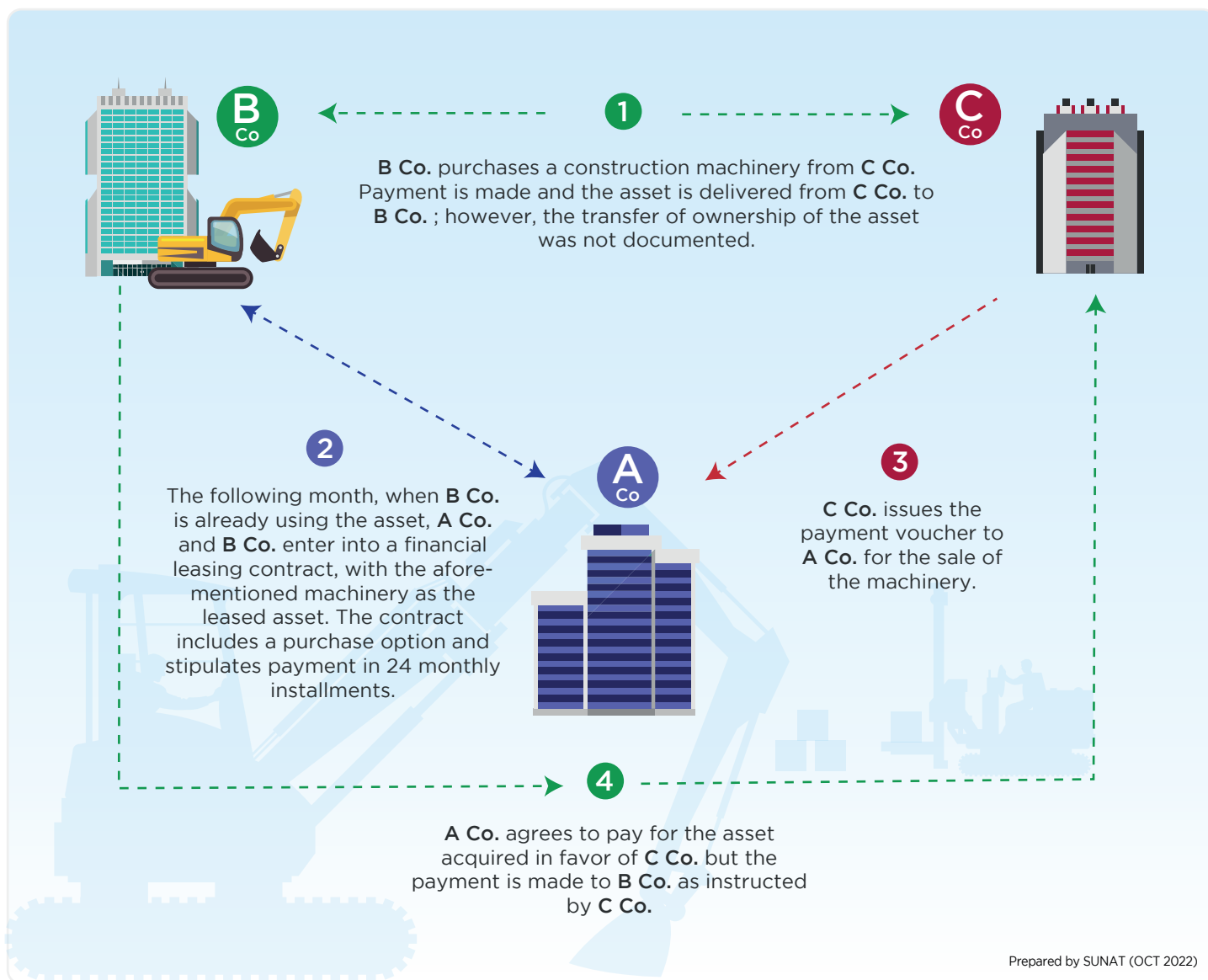
### Analysis and effects of the scheme

- 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

- A Co** Company of the financial system domiciled in Peru.
- B Co** Company domiciled in Peru that purchases the construction machinery.
- C Co** Company domiciled in Peru, supplier of the construction machinery that is the subject of the financial lease.



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



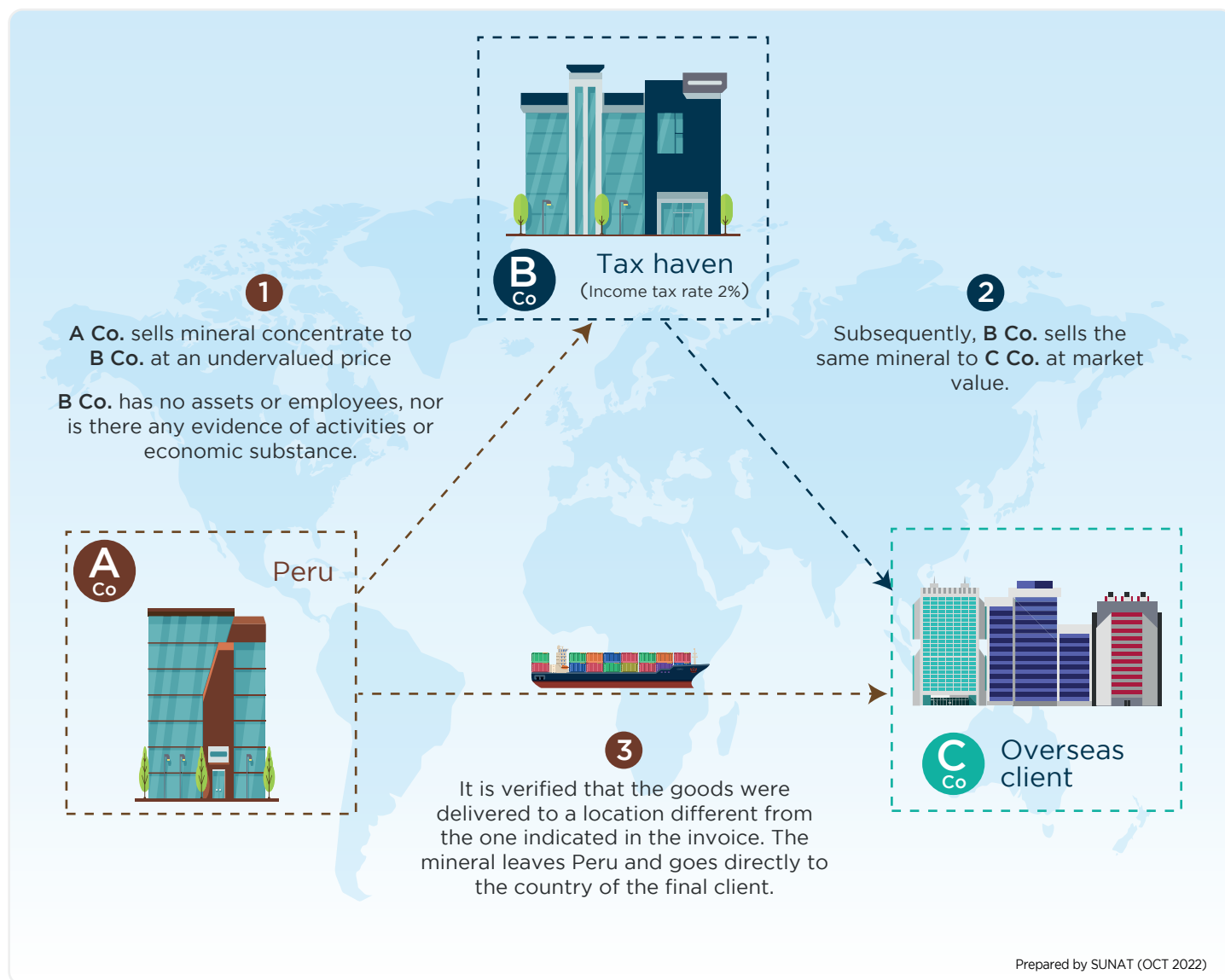
**A Co.** Company domiciled in Peru, holder of a mining concession.



**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



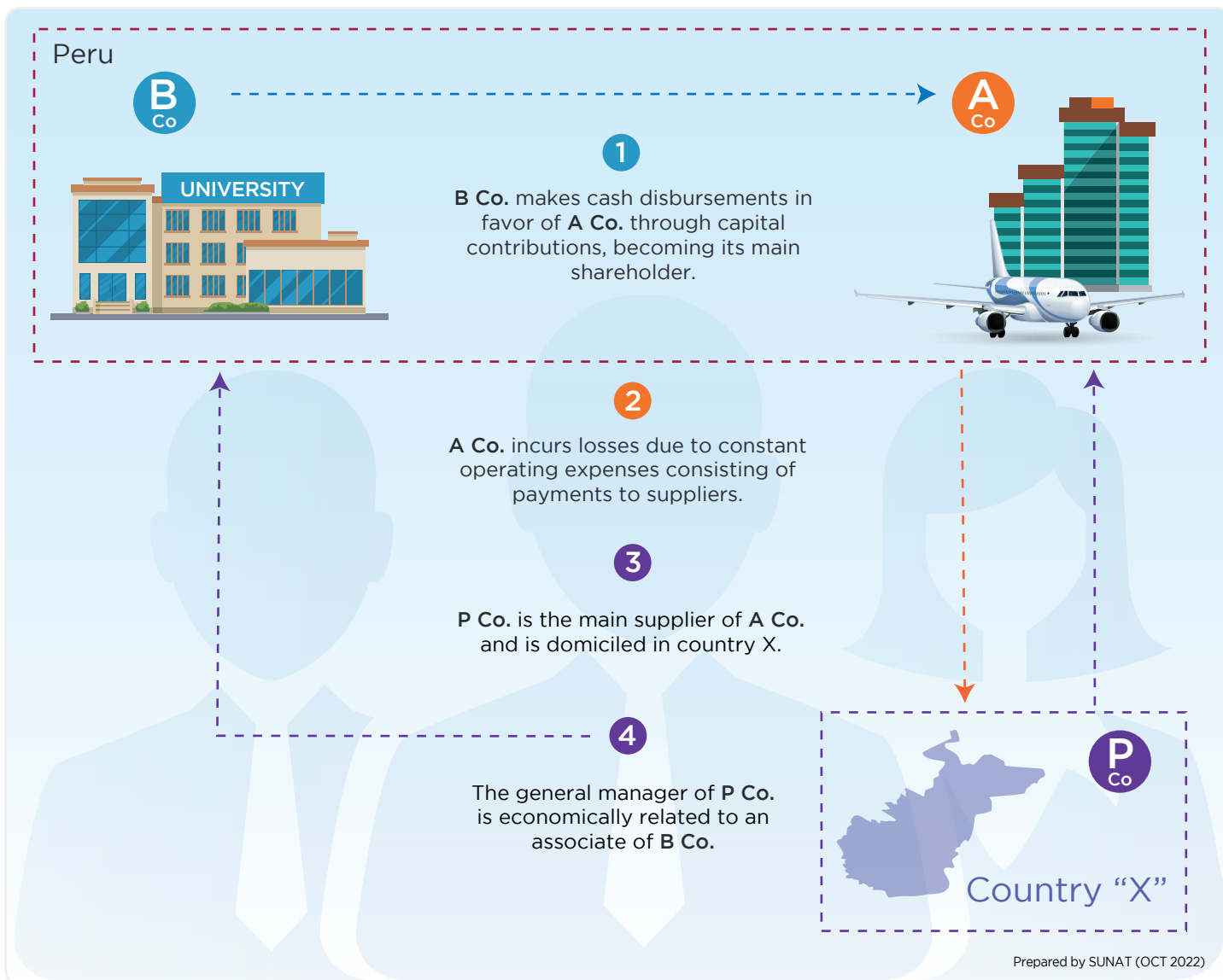
**A Co.** Company domiciled in Peru, engaged in the provision of transportation services nationwide.



**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.



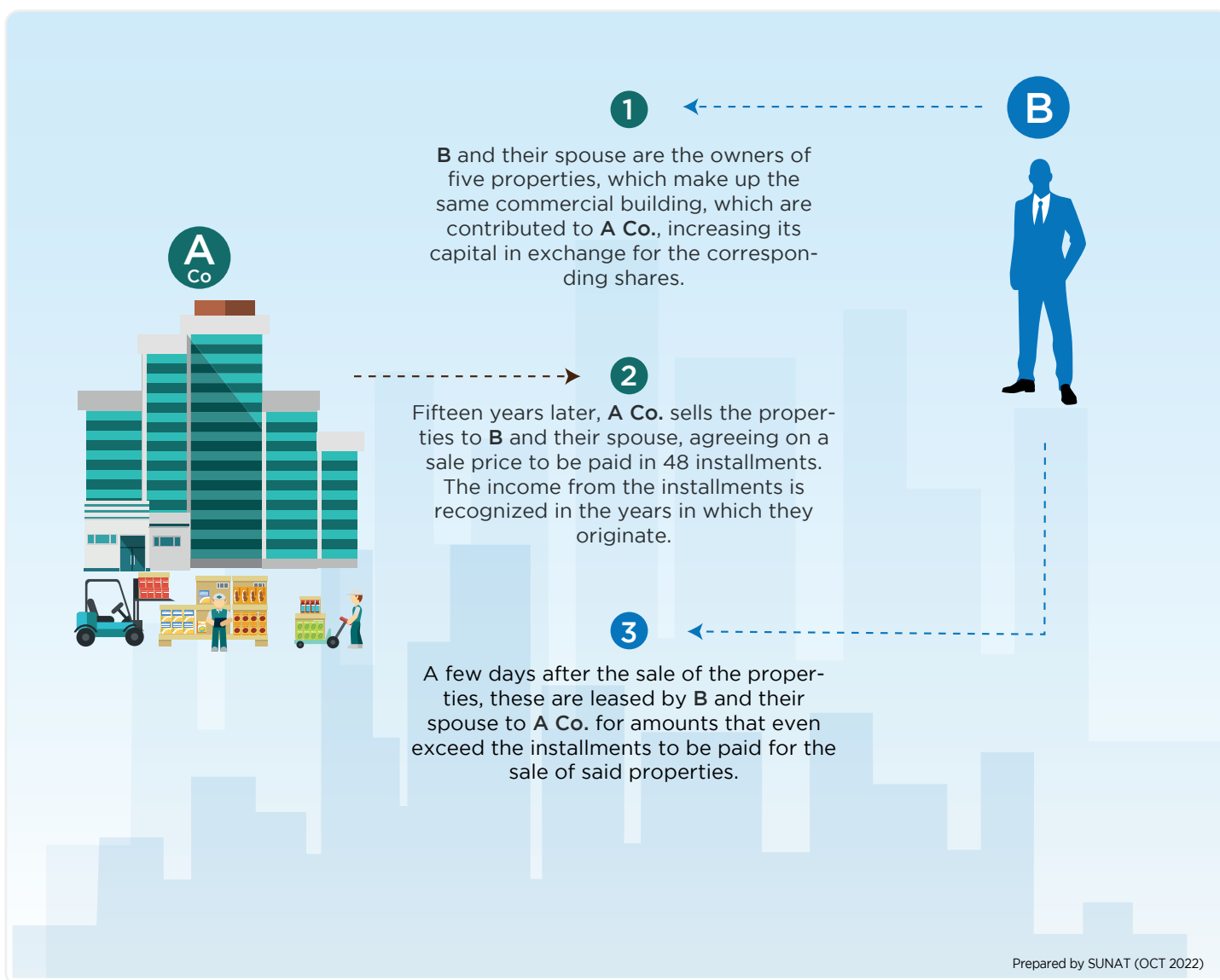
## Description of the scheme



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.

Description of the scheme

**BETA**

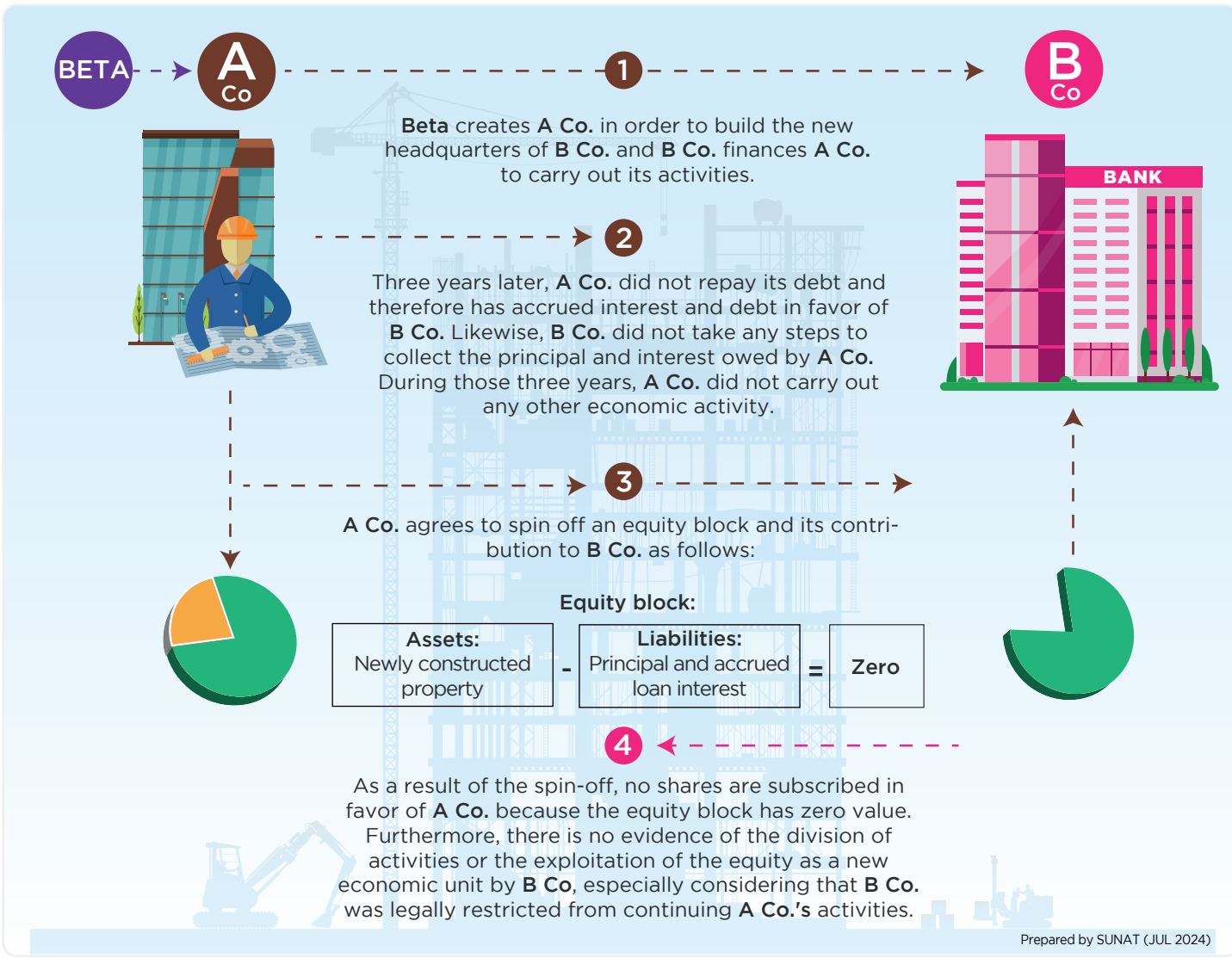
Economic group composed of A Co. and B Co.

**A Co**

Company domiciled in Peru with real estate and construction activities.

**B Co**

Company of the financial system domiciled in Peru.



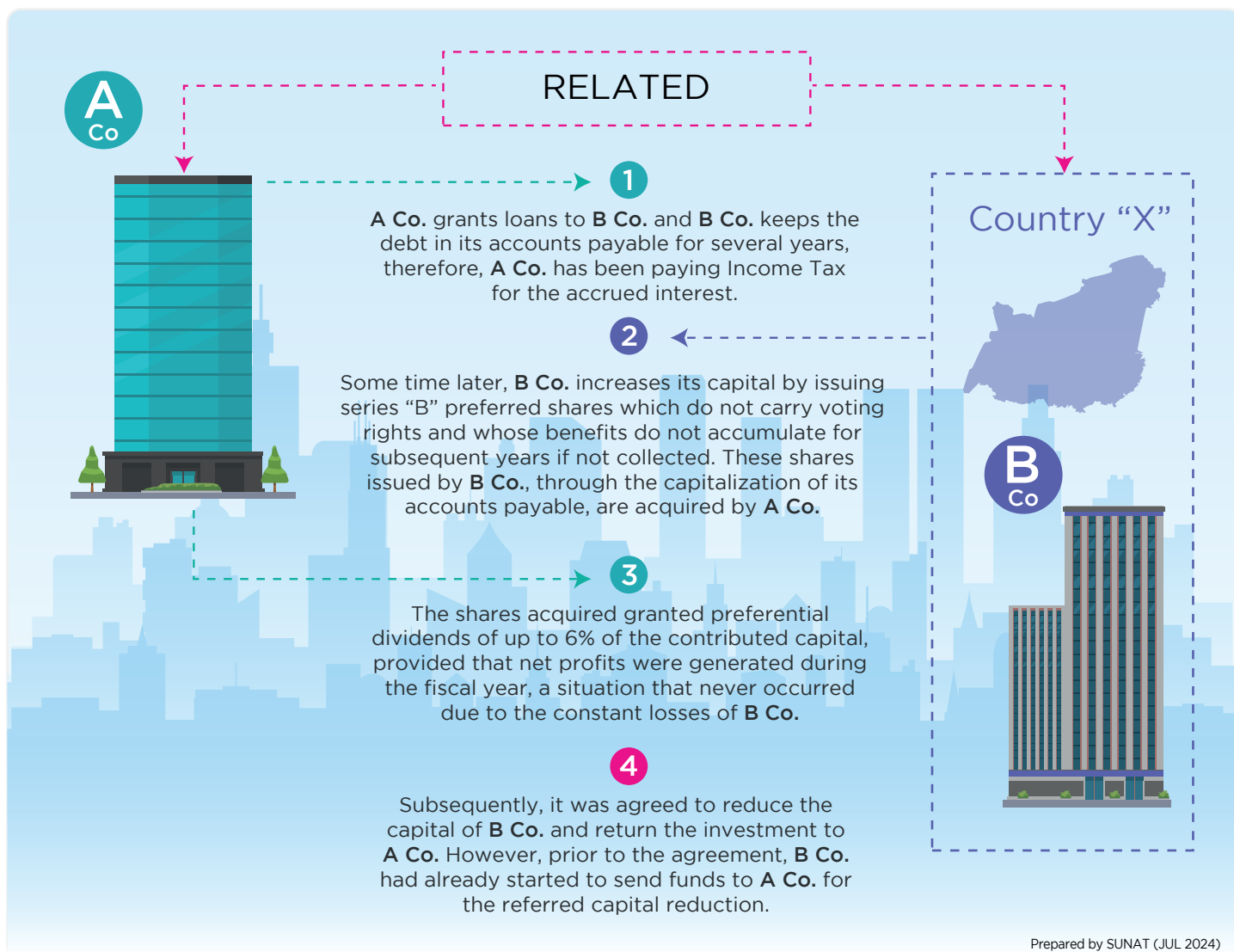
Legal reference: Income Tax Law: Art. 5, Art. 103.  
Value-Added Tax Law: Subparagraph d) of Art. 1, subparagraph c) of Art. 2.  
Peruvian Companies Act: Art. 367, 378.

Analysis and effects of the scheme

- Considering the set of facts and using the mechanism of a spin-off, A Co. transfers the ownership of the property and extinguishes the debt it owes to B Co. without obtaining economic benefits other than tax savings.
- There is no economic or commercial reason to spin-off an equity block without receiving in exchange participations in the shares of the spin-off company.
- The purpose of the spin-off is not consistent with the going concern concept that motivates a corporate reorganization. In addition, there is no purpose for carrying out the said reorganization.
- Except for the tax advantage, the acts described in the scheme are not the regular ones to achieve the transfer of the property to B Co., while similar effects result from a sale which required paying 18% VAT on the first sale of the property by the builder.
- Under the tax treatment applicable to reorganizations, B Co. does not pay income tax on the difference between the transfer value of the property and its accounting cost, which would have been subject to a 29.5% income tax.

## Description of the scheme

- A Co.** Company domiciled in Peru, related company of B Co.
- B Co.** Company domiciled in country "X", which according to information exchange, has incurred tax losses in various fiscal years.



Legal reference: Income Tax Law: 32-A.

## Analysis and effects of the scheme

- In this case, given B Co.'s constant losses, there are no economic or commercial reasons to invest in this company, due to the low probability that this company will generate profits, and there is also a high risk of losing the investment.
- The transfer of resources from A Co. to B Co. was made under the guise of a capitalization of accounts payable of B Co. and the issuance of preferred shares for subsequent acquisition by A Co., when the actions and behavior of the parties evidenced the nature of a different transaction; that is, a loan of money.
- A Co. avoids paying income tax on the interest generated from the disguised loan by acquiring the shares issued by B Co. through the capitalization of its accounts payable, thus not paying 29.5% income tax on all accrued interest.
- As A Co. and B Co. are related parties, the determination of interest is governed by the transfer pricing guidelines.

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

## Description of the scheme



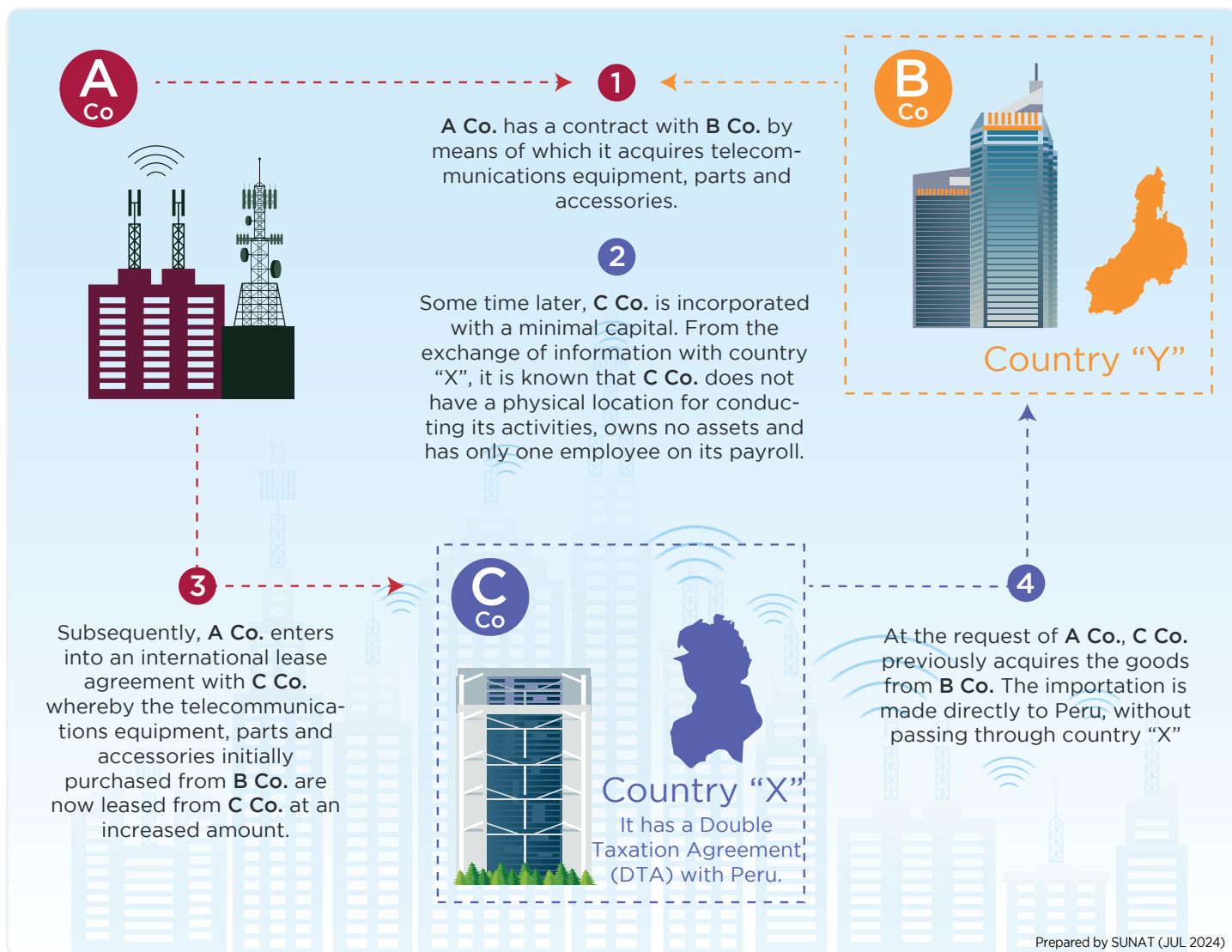
Company domiciled in Peru.



Company domiciled in country "Y", supplier of A Co.



Company domiciled in country "X", related company to A Co.



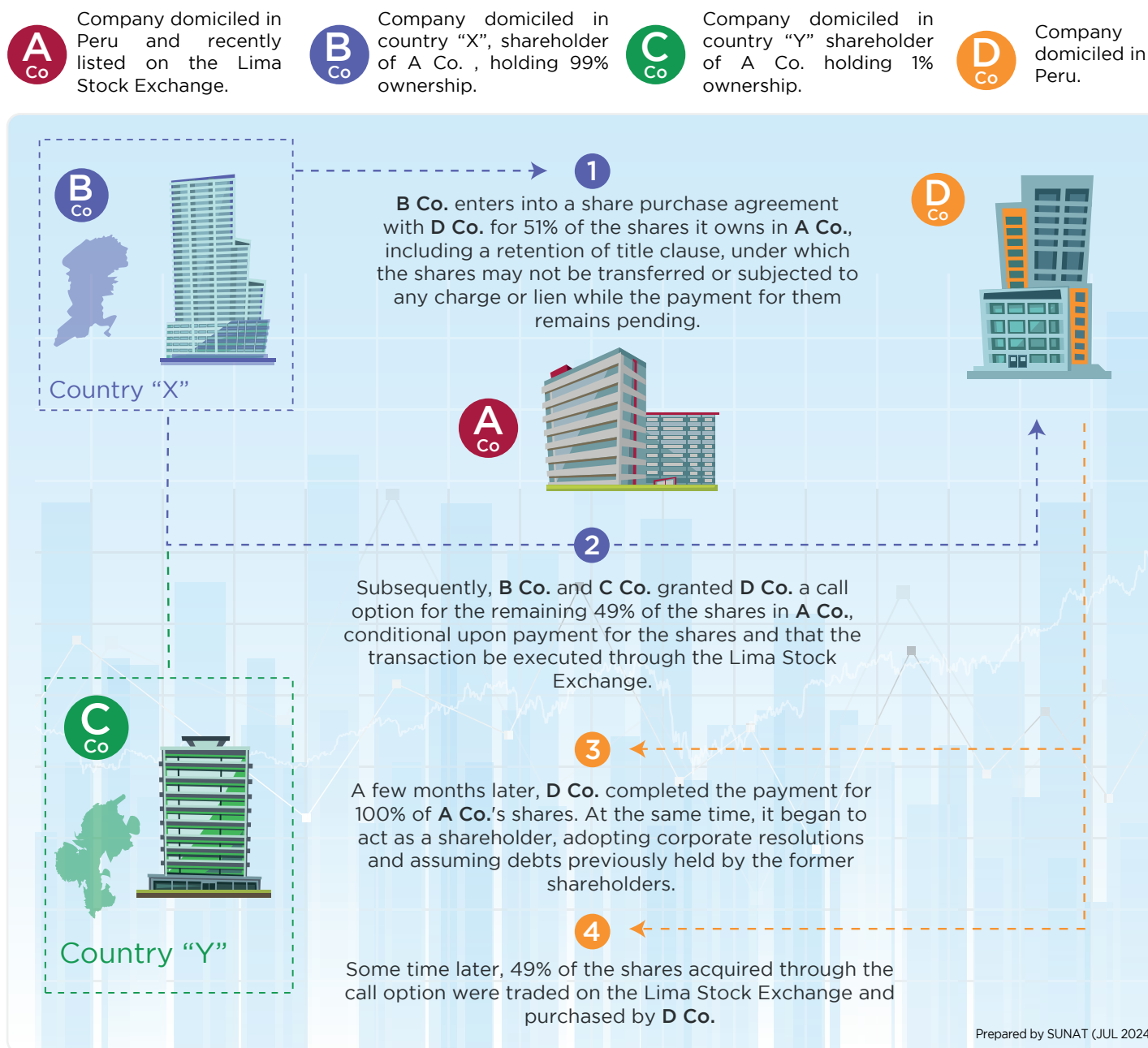
Prepared by SUNAT (JUL 2024)

Legal reference: Income Tax Law: Art. 9, Art. 56, Art. 76.  
Double Taxation Agreement with country "X".

## Analysis and effects of the scheme

- C Co. leases goods to A Co., according to contract; however, this company lacks economic substance and, therefore, there is no evidence that it carries out any activity.
- A Co. acquires the goods from B Co., which has not changed under the described scheme, since the goods were always sent from country "Y" directly to Peru, without passing through country "X". Thus, the interposition of C Co. is irrelevant to the operations of A Co.
- With this scheme, A Co. obtains a tax saving due to the higher deductible expense, leading to a lower payment of Income Tax, even considering that it withholds 15% from C Co. for Peruvian-source income tax generated by the lease, in accordance with the DTA with country "X".
- Based on the terms of the contract signed with C Co. and in accordance with the DTA with country "X", A Co. withholds only 15% for Income Tax, when a 30% withholding should apply, as C Co. does not qualify as the beneficial owner.

## Description of the scheme



Legal reference: Income Tax Law: Subparagraph h) and j) of Art. 56, Art. 76.  
Income Tax Law Regulations: Subclause 3 of Art. 30-B.

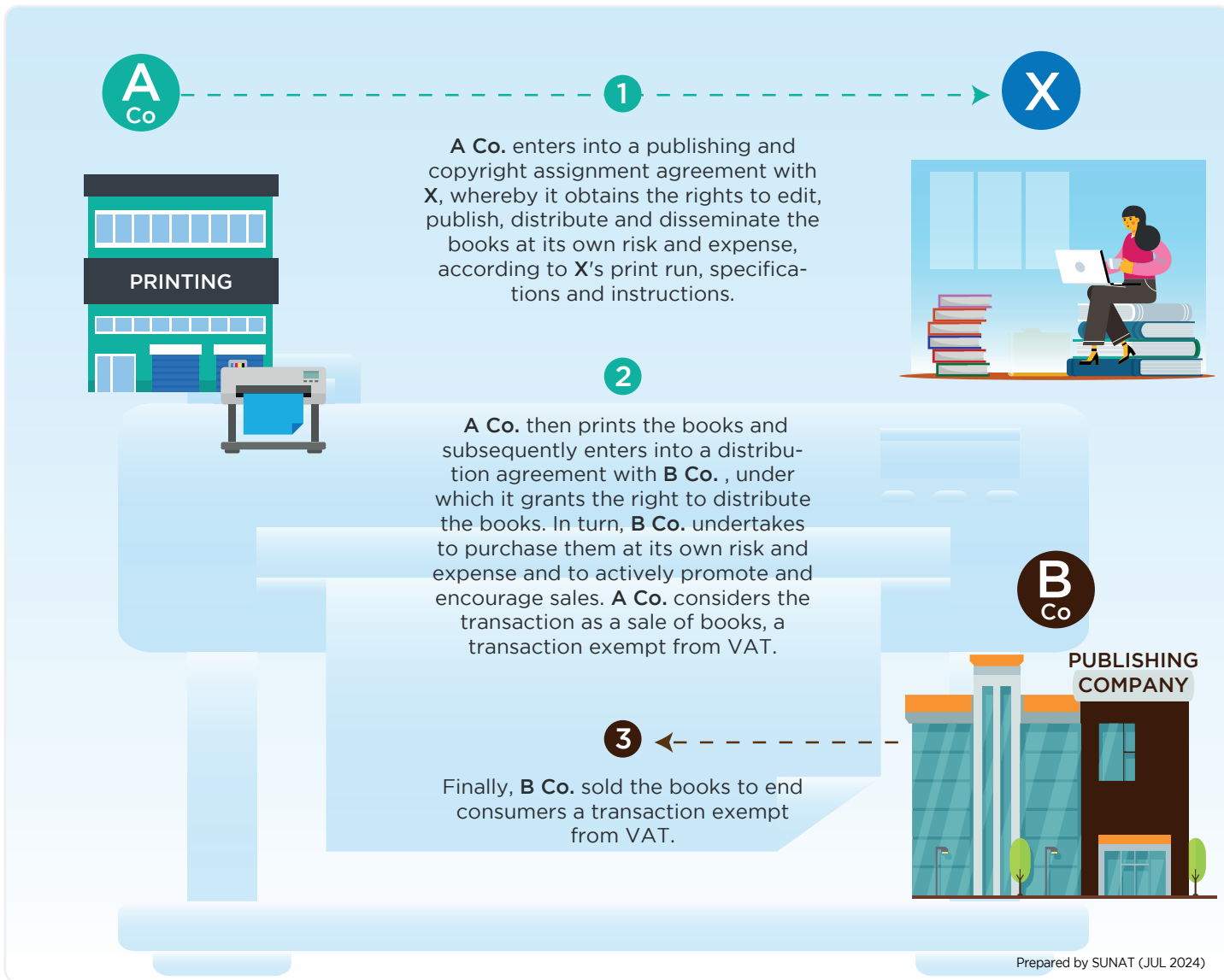
## Analysis and effects of the scheme

- Since D Co. paid 100% of the purchase price for the shares— and before they were traded on the Lima Stock Exchange—it had already begun acting as the owner of A Co., entering into corporate agreements, assuming debts held by the selling shareholders, among other actions.
- The trading of the 49% shareholding on the Lima Stock Exchange was no longer necessary for the acquisition of the shares, since the price had been set in advance and the shares had already been transferred to D Co., a previously designated buyer.
- The disposal of 49% of the shares had already taken place outside the Lima Stock Exchange, through the exercise of the call option granted to D Co., and a 30% income tax withholding was applicable on the total amount of shares sold.
- Under the described scheme B Co. and C Co. paid only 5% Income Tax via withholding by the Securities Clearing and Settlement Institution 49% of the shares sold through a Centralized Trading Mechanism (the Lima Stock Exchange), resulting in an undue tax saving of 25% of the applicable income tax.

"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 providing printing services.
- B Co** Company domiciled in Peru that does not meet the conditions and requirements to access the VAT tax refund for publishers.
- X** Book writer and main shareholder of B Co.



Legal reference: General Sales Tax Law: Inc. b) of Art. 1  
Law on strategic measures and economic and tax provisions for the strengthening and positioning of the book and reading ecosystem: Law No. 31893

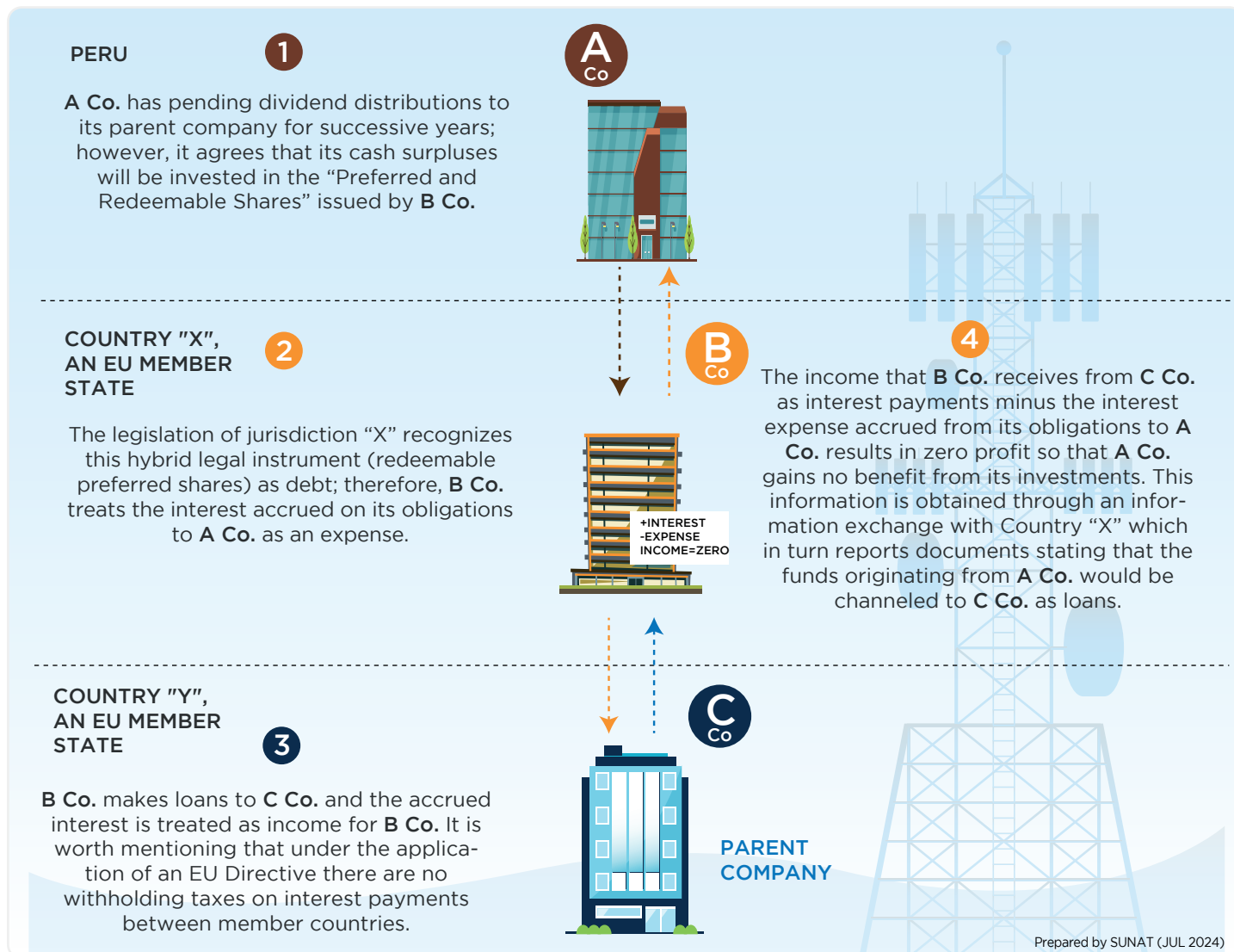
## Analysis and effects of the scheme

- The actions and behavior of the parties show that A Co. only carries out the printing of the books without assuming any risk related to their distribution and sale; however, it simulates a book sale to B Co. and improperly claims the exemption from the General Sales Tax.
- Since B Co. does not comply with the conditions and requirements to access the benefit of the VAT tax refund, X transferred its copyright to A Co., which then gave its printing services the legal form of a book sale.
- The actions described in the scheme were solely aimed at achieving tax savings through the exemption of the transaction carried out by A Co.
- A Co. does not pay the 18% VAT for the provision of book printing services.



## Description of the scheme

- GAMMA** Economic group composed of A Co., B Co. and C Co.
- A Co.** Company domiciled in Peru, engaged in telecommunications and post-sales support activities.
- B Co.** Company domiciled in country "X", member of the EU engaged in treasury activities of the GAMMA group and issues securities.
- C Co.** Company domiciled in country "Y", member of the EU, parent company of the GAMMA group.



Legal reference: Income Tax Law: Subparagraph e) of Art. 56, Art. 76

## Analysis and effects of the scheme

- The purpose of the movement of funds between A Co., B Co. and C Co. is the distribution of outstanding dividends from A Co. to its parent company C Co.; however, the legal structures adopted are not appropriate for this purpose.
- The scheme does not generate benefits for B Co. where the potential profits are concentrated; however, since it accrues interest through a hybrid instrument, it does not generate profits and therefore A Co. is not entitled to any benefits.
- It has been verified that there were never any returns of funds from Company B to A Co. nor did A Co. redeem the preferred shares over the fiscal years, ruling out the possibility that the transaction qualifies as a loan.
- Except for the omission of paying tax on dividends outstanding for consecutive years, the actions described lack economic and commercial reason for A Co. and the entire corporate group.
- A Co. does not withhold and fails to pay the 5% tax on dividends generated over several years, which were in fact distributed to its parent company through the described scheme.

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

## Description of the scheme

XYZ

Individuals domiciled in Peru, shareholders of A Co. and B Co.

A Co

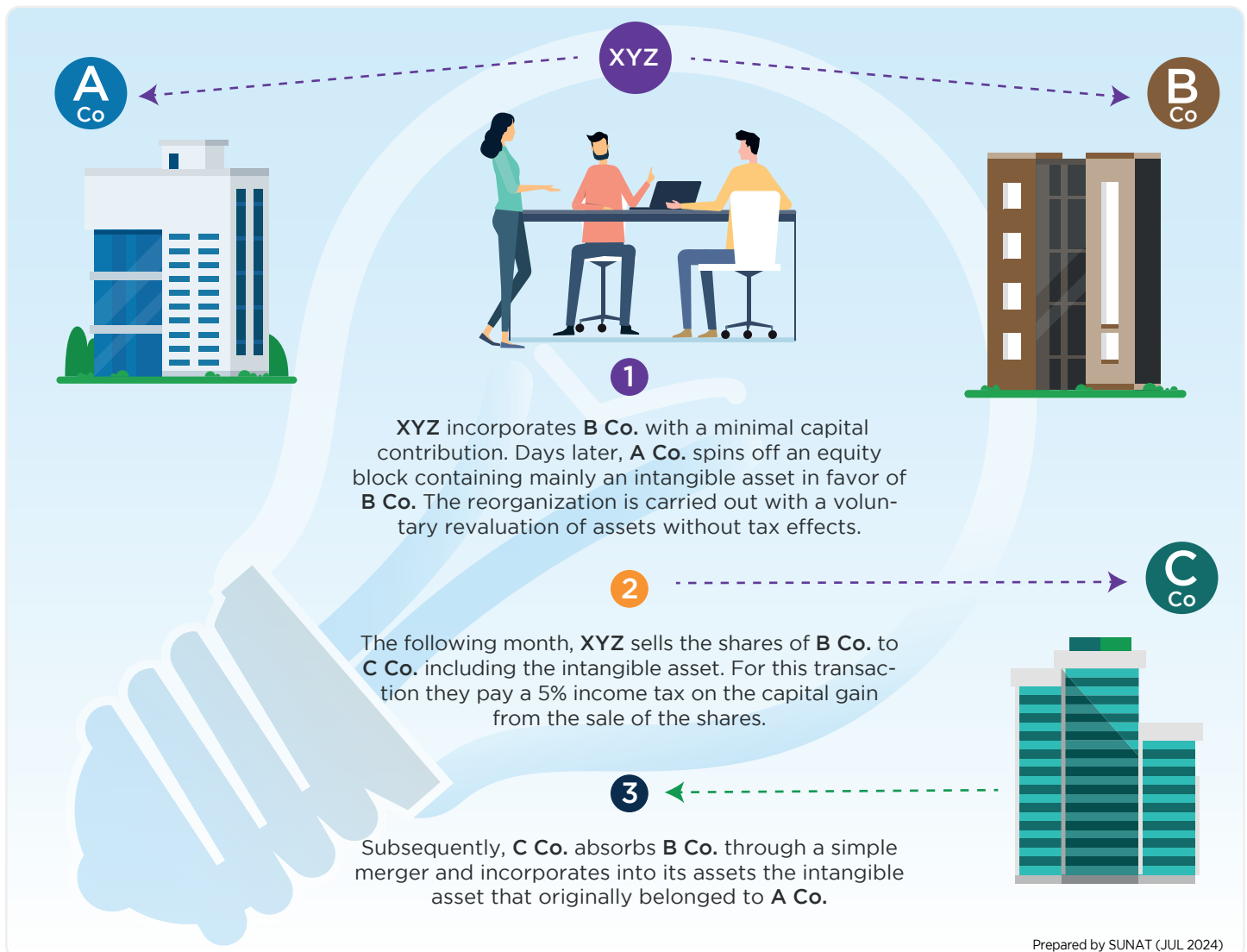
Company domiciled in Peru, owner of an intangible asset.

B Co

Company domiciled in Peru.

C Co

Company domiciled in Peru.



Prepared by SUNAT (JUL 2024)

Legal reference: Income Tax Law: Subclause 2 of Art. 104, Subclause 3 of Art. 105.

## Analysis and effects of the scheme

- A Co. is the owner of an intangible asset, but after the described scheme, ownership was acquired by C Co., without a sale taking place.
- Aside from the tax advantage, jointly, the corporate reorganization and subsequent share sale are not the usual means for transferring an intangible asset.
- XYZ is subject to a reduced effective income tax rate of 5% on the sale of B Co. shares to C Co.
- Similar tax effects arise from a direct sale of the intangible asset, in which A Co. is required to pay a 29.5% Income Tax.



## Description of the scheme



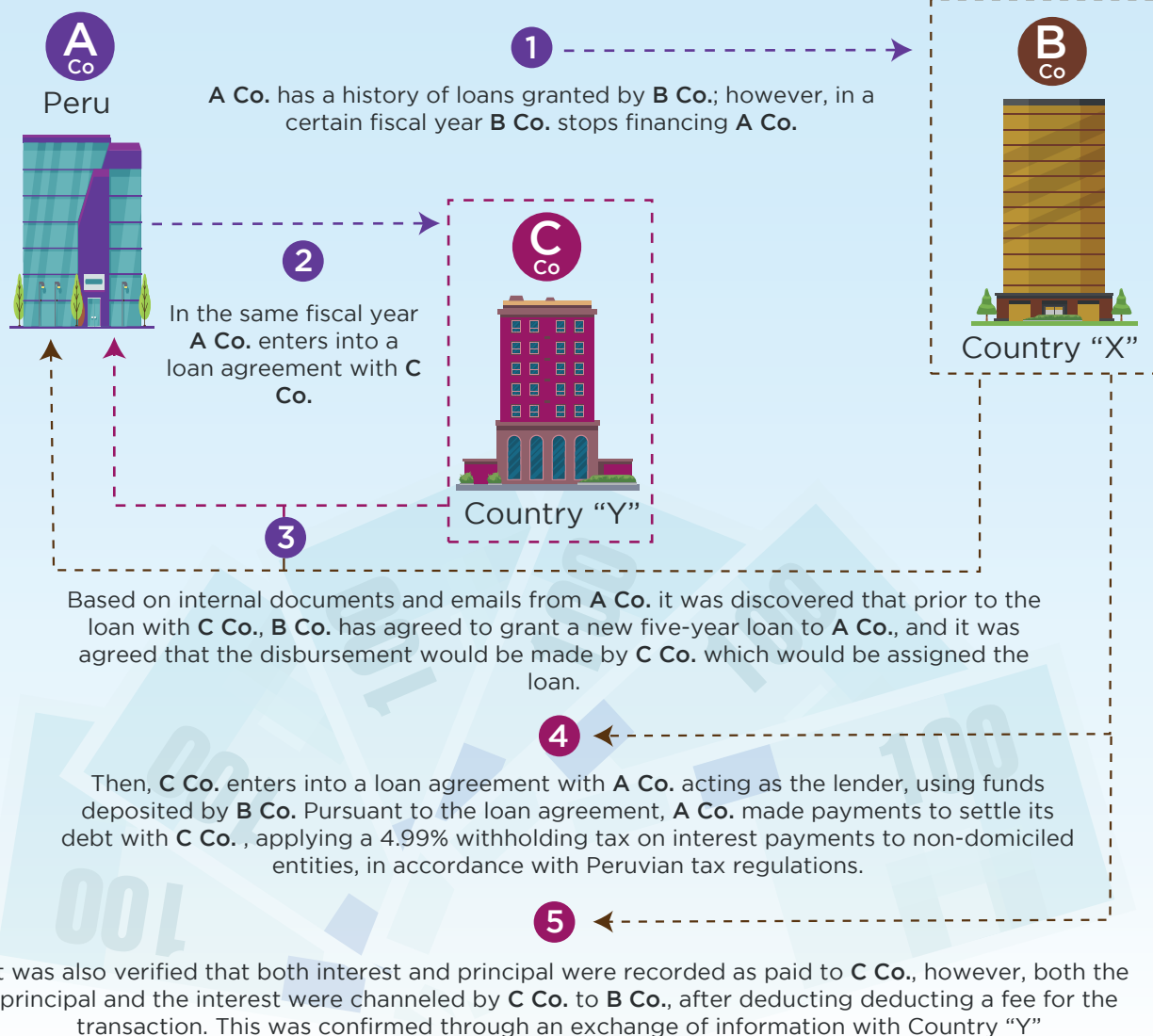
Company domiciled in Peru, related to B Co.



Company domiciled in Country "X"



Company of the financial system domiciled in Country "Y", independent third party.



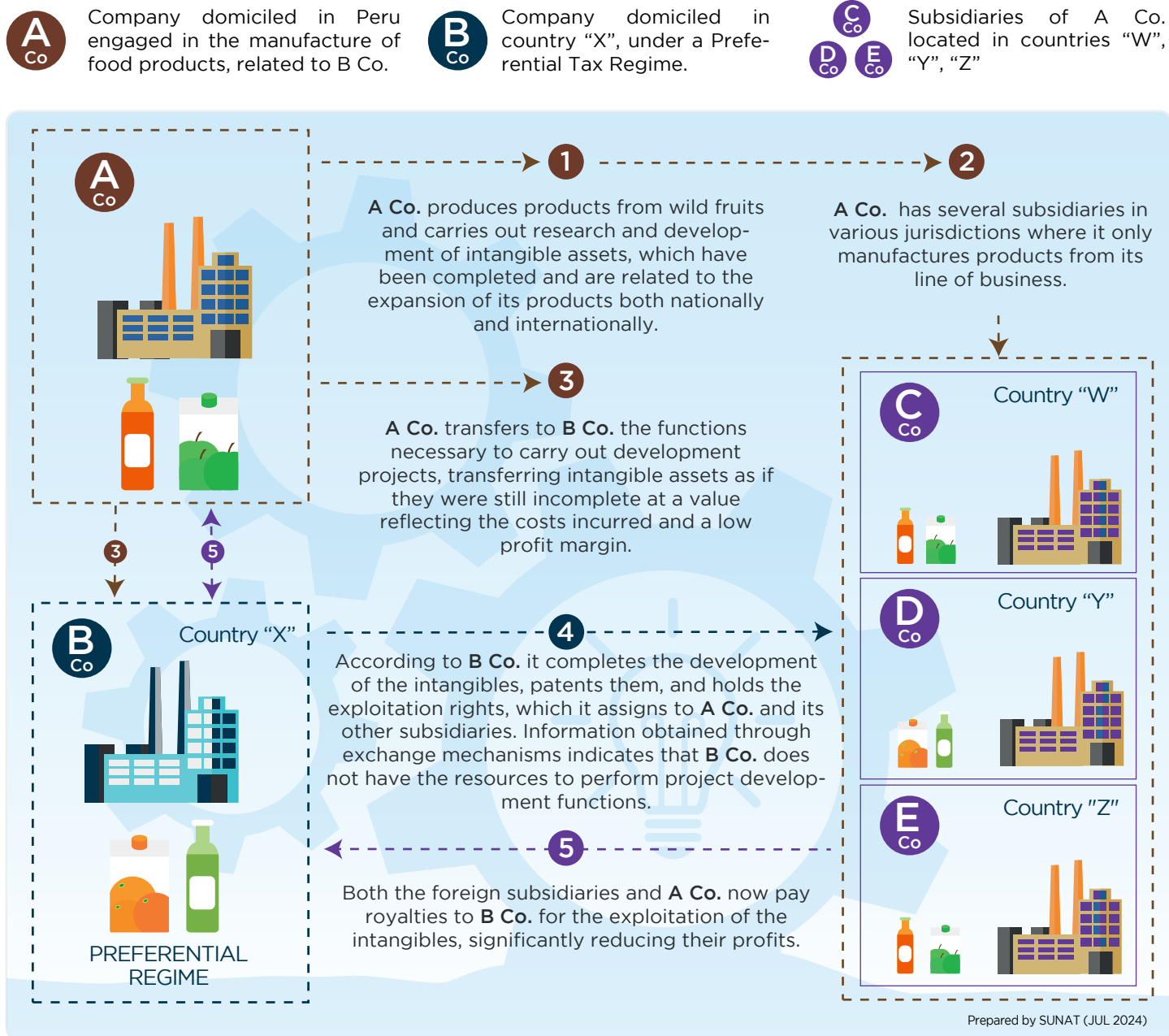
Prepared by SUNAT (JUL 2024)

Legal reference: Income Tax Law: Subparagraph a), j) of Art. 56, Art. 76

## Analysis and effects of the scheme

- A Co. records interest expenses on debts with C Co. in its accounting books; however, the loan is actually executed through deposits made by B Co., thereby disguising a credit operation granted by a foreign company with which it is related.
- The facts described in the scheme do not alter the purpose of the transaction, which is the financing of A Co. through loans from abroad, except for the tax savings obtained.
- A Co. made payments for non-domiciled income tax on the interest paid to a non-domiciled banking entity, applying a 4.99% rate. However, the 30% rate should have been applied, as the loan originated from B Co. according to information and financial flows between B Co., C Co. and A Co.
- Since it is a disguised loan between related parties, the tax loss amounts to 25.01% on the interest calculated at market value.

## Description of the scheme



Legal reference: Income Tax Law: Art. 32-A, Art. 37.

## Analysis and effects of the scheme

- The development of intangibles is carried out in Peru by A Co.; however, these functions are transferred in a way that creates the appearance that B Co. completes them in country X, despite there being no economic or commercial justification for A Co. As a result, the intangible is now attributed to B Co.
- A Co. inappropriately reassigns functions to B Co., with the purpose of shifting a significant portion of the group's profits to B Co., which does not pay income tax due to being under a preferential regime.
- Except for the tax savings derived from the exploitation of intangibles, the actions described in the scheme are not those that a company would typically undertake with unrelated parties.
- A Co., along with its subsidiaries, obtains significantly reduced profits due to the high costs paid to B Co. for the right to exploit the intangibles.
- As a result, 29.5% income tax is not paid in Peru on both local and foreign profits, which are reduced as a result of the payment of intangible exploitation rights to another jurisdiction.

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

Description of the scheme

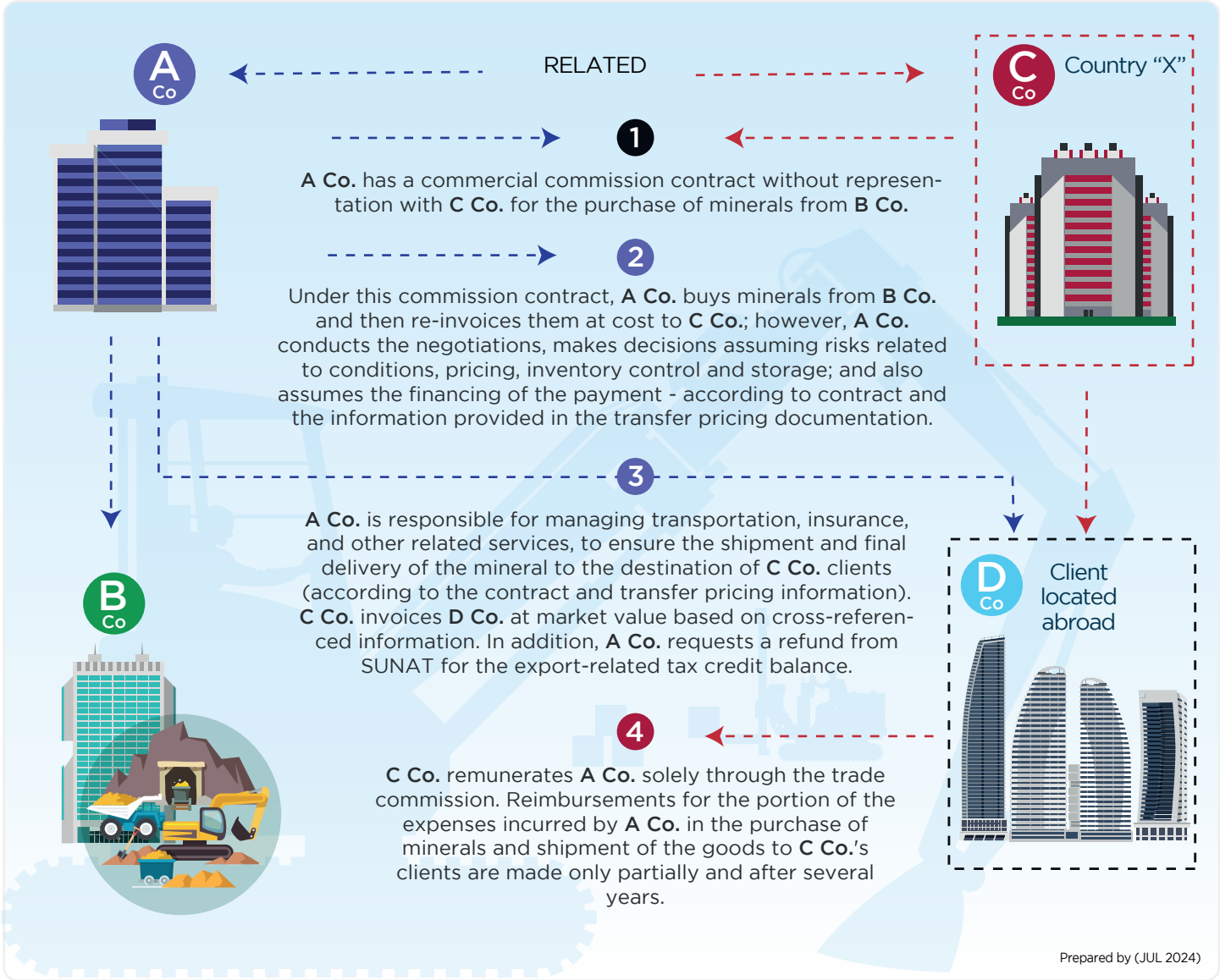
- A Co

Company domiciled in Peru, related to C Co.
- B Co

Company domiciled in Peru, engaged in mineral exploitation.
- C Co

Company domiciled in country "X"
- D Co

Client located abroad.



Legal reference: Income Tax Law: 32-A  
Commercial Code: Art. 239, 272  
Civil Code: Art. 1810

Analysis and effects of the scheme

- The functional analysis determines that the relationship between A Co. and C Co. is not that of a commission agent; since the assets, functions and risks assumed in the transactions go beyond those typically associated with such an activity, which would otherwise be limited to executing a purchase order.
- The assets, functions and risks assumed, reveal that A Co. operates as a distributor (marketer), acting in its own name before third parties, acquiring rights, assuming the obligations arising from the transactions it enters into.
- A Co. fails to determine the corresponding market value adjustment for transfer pricing related to the sale of goods to C Co. including the profitability of a distributor.
- A Co. also fails to pay the 29.5% income tax on the resulting transfer pricing adjustment.

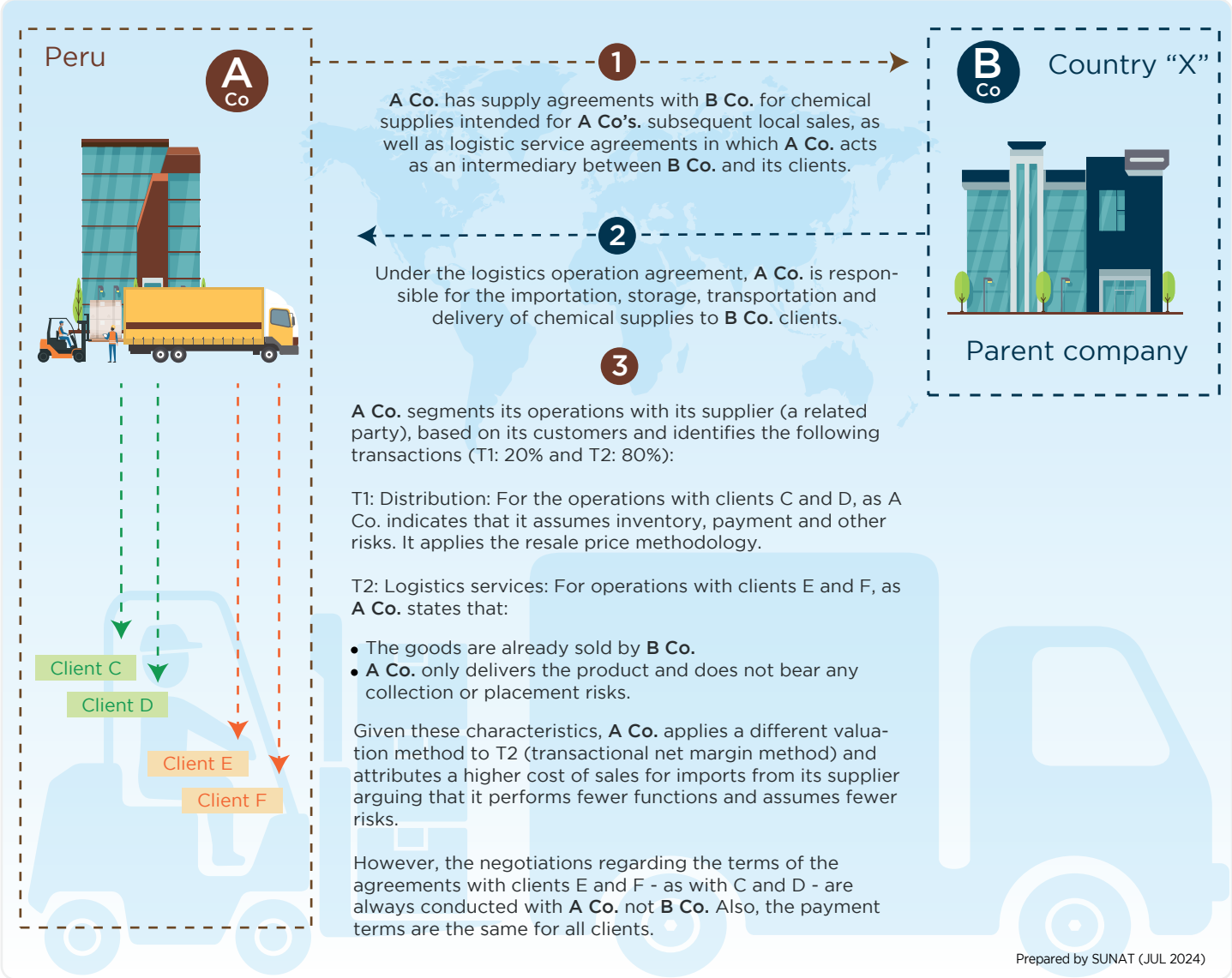
## Description of the scheme



Company domiciled in Peru, engaged in the distribution of chemical products and supplies.



Company domiciled in country “X”, parent company of A Co.



Legal reference: **Income Tax Law:** Subparagraph. d) and e) of Art. 32-A  
**Income Tax Law Regulations:** Art. 110, Art. 113.

## Analysis and effects of the scheme

- The sales model used by A Co. for chemical supplies sold to clients E and F is not significantly different from that used with customers C and D, particularly given that the negotiations in both cases are conducted with A Co., not B Co. Certain operational differences in the transactions do not alter the nature of A Co.’s role as a distributor, even though the company attempts to characterize itself as a logistics service provider for a group of operations (with clients E and F).
- The imported goods do not undergo any substantial transformation or modification, nor is significant value added in the distribution, commercialization or resale operations that would justify the taxpayer’s improper segmentation of transaction types to apply a different valuation method and, consequently, a lower profit margin.
- A Co. improperly reduces its taxable base by deducting a higher cost allocated to transactions with clients E and F through the application of different transfer pricing methods, despite the fact that these are similar transactions.
- By reducing the taxable base, A Co. pays 29.5% less in income tax on the transfer pricing difference for purchases valued at market value.

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

