SCHEMES OF

High Tax Risk

CATALOG
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SUNAT

Introduction

This first version of this 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.

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 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.

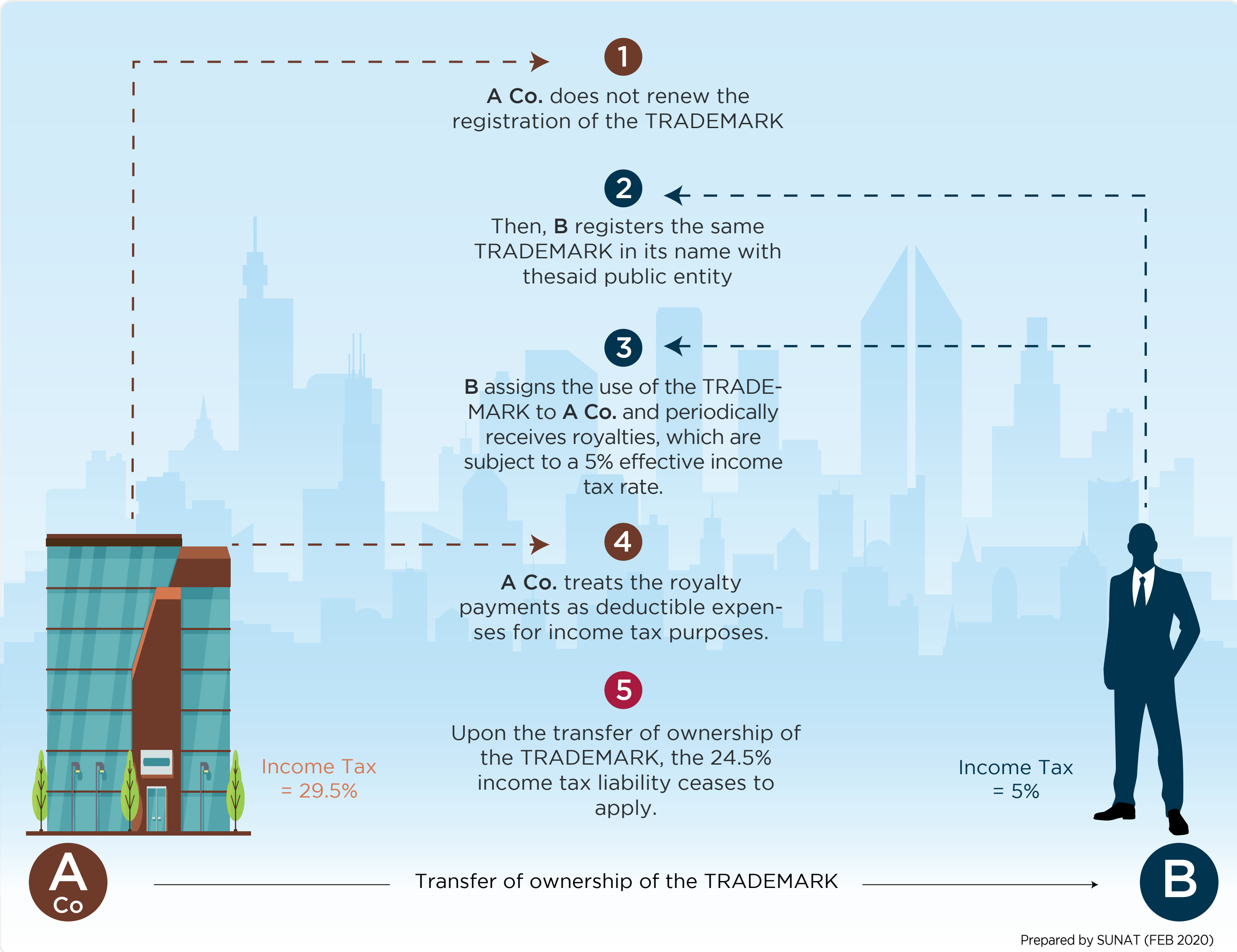
Index of Schemes

E.1 Deduction of royalties for the assignment of trademark use rights

Description of the scheme

A Co — Company incorporated in Peru, owner of a TRADEMARK registered in the registry of the competent institution, the exploitation of which generates taxable income

B — Individual domiciled in Peru and shareholder of A Co., holding an ownership interest of more than 90%.



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.

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

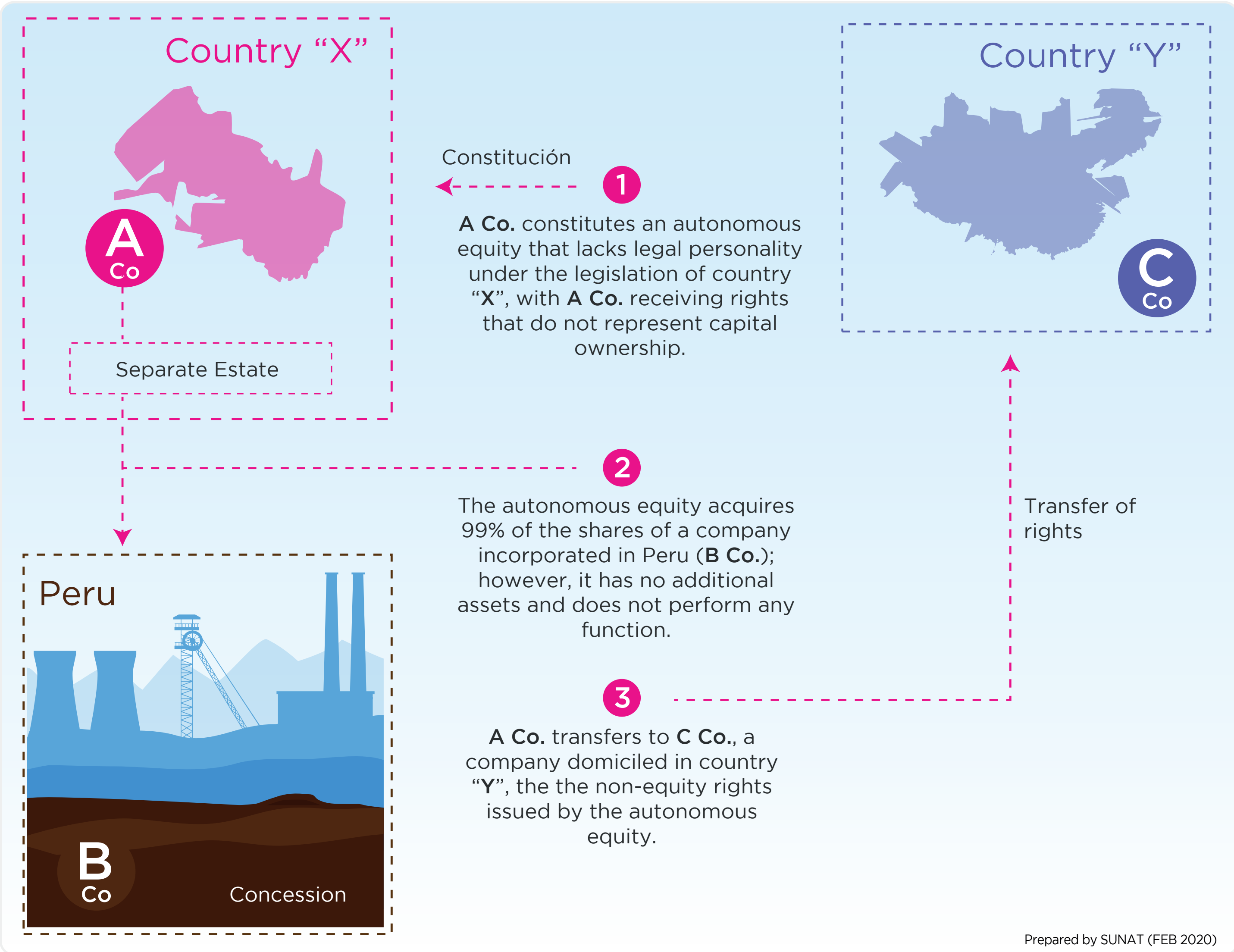
E.2 Disposal of a Peruvian company through a separate estate

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.

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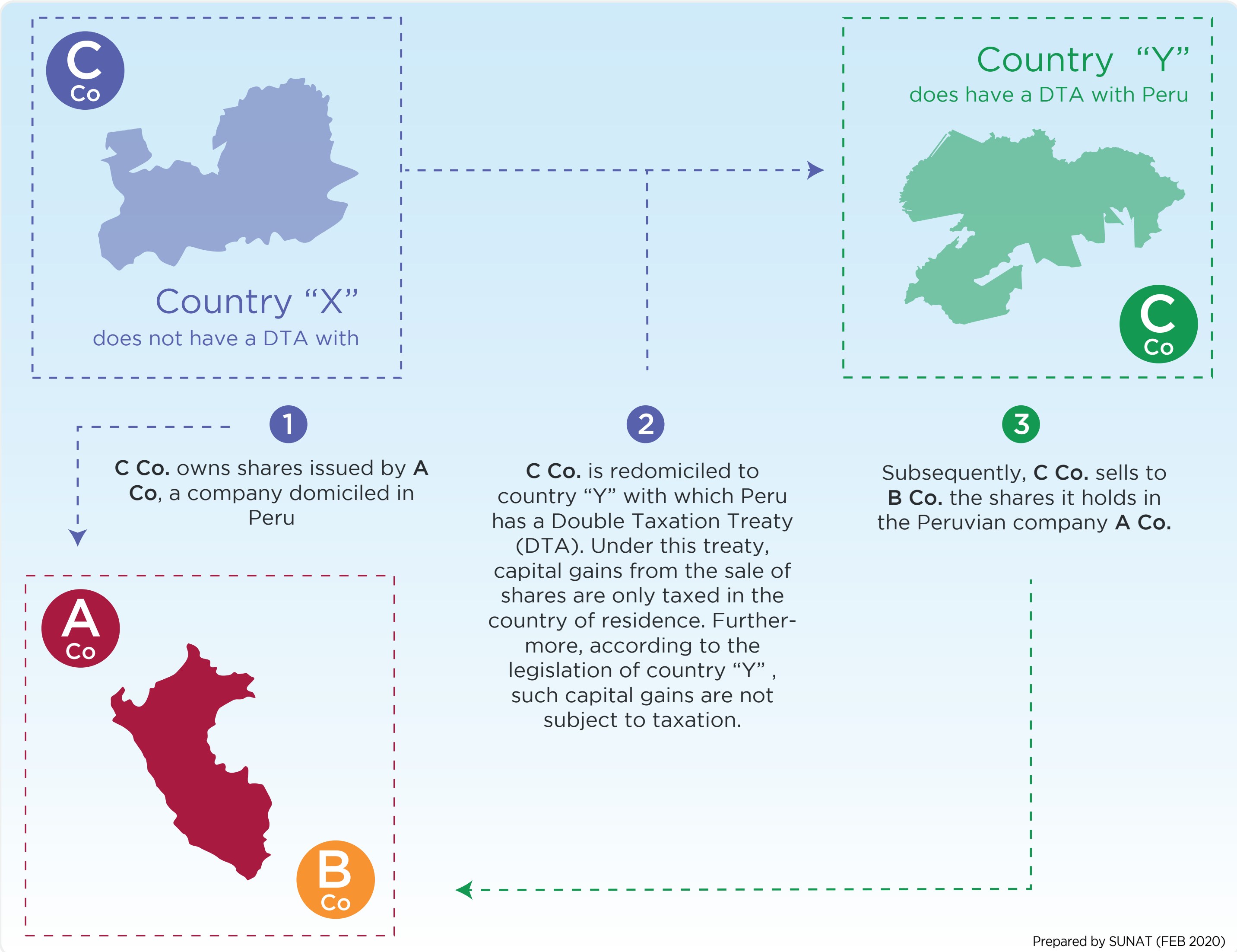
E.3 Redomiciliation of a company and use of a DTA

Description of the scheme

A Co Company domiciled in Peru

B Co Company domiciled in Peru

C Co Company domiciled in country "X"



Legal reference: **Income Tax Law:** Subparagraph h) of Art. 9, subparagraph j) of Art. 56, Art. 76.
Double Taxation Treaty 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.

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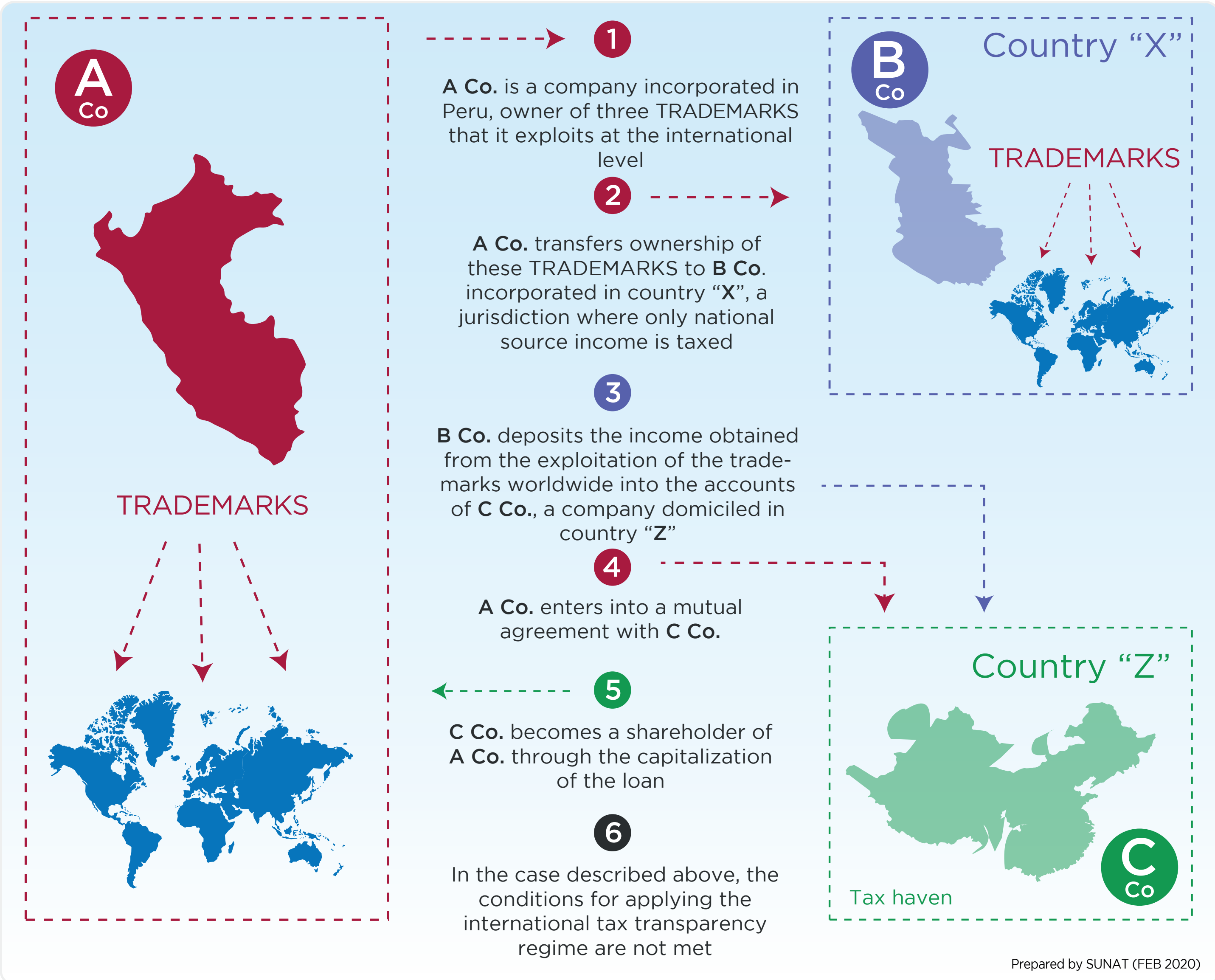
E.4 Assignment of trademarks and capitalization of credits

Description of the scheme

A Co — Company incorporated in Peru

B Co — Company incorporated in country “X”

C Co — Company domiciled in country “Z”



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.

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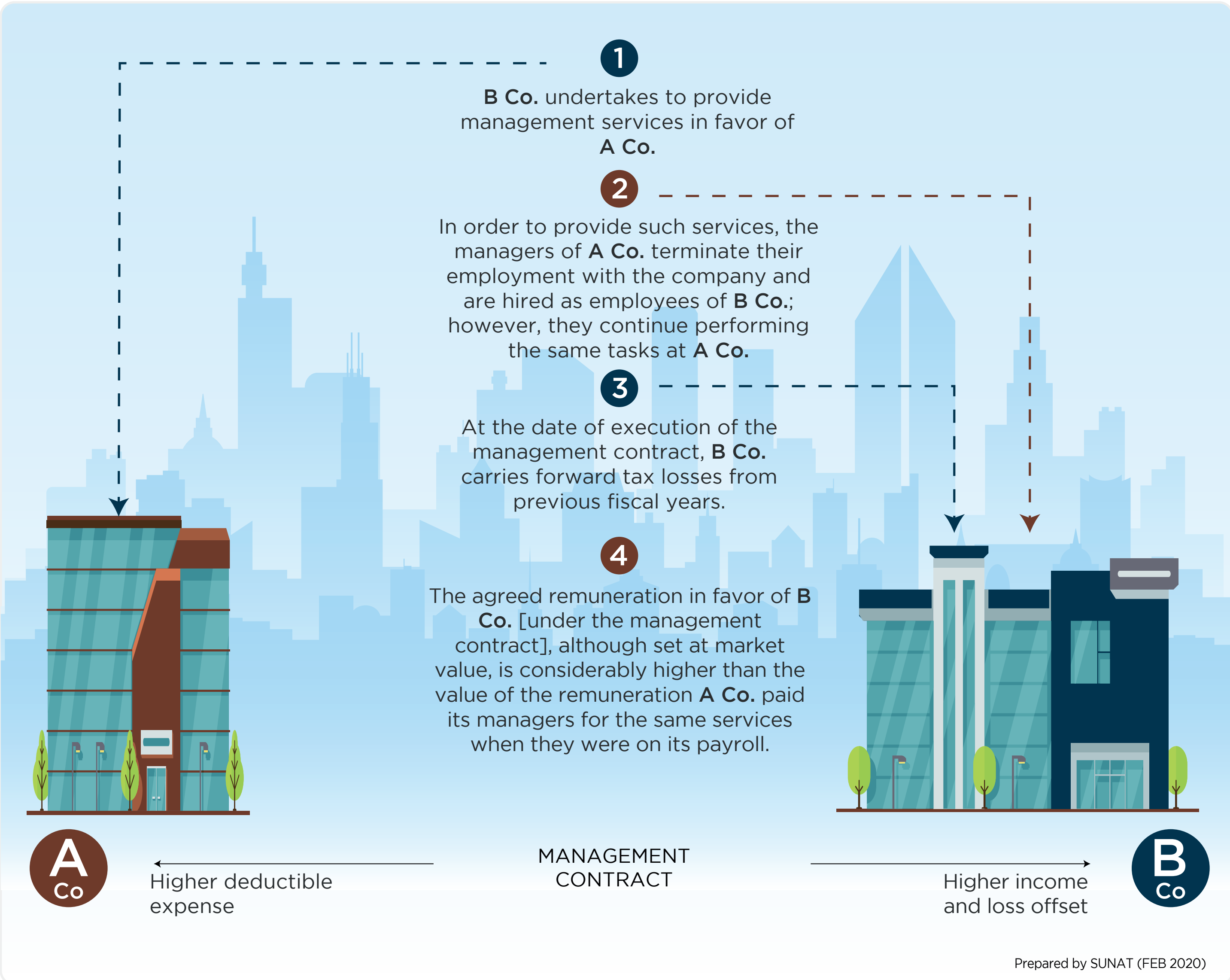
Description of the scheme

A Co ← Companies domiciled in Peru, related to each other and entering into an agreement → **B** Co



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.

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