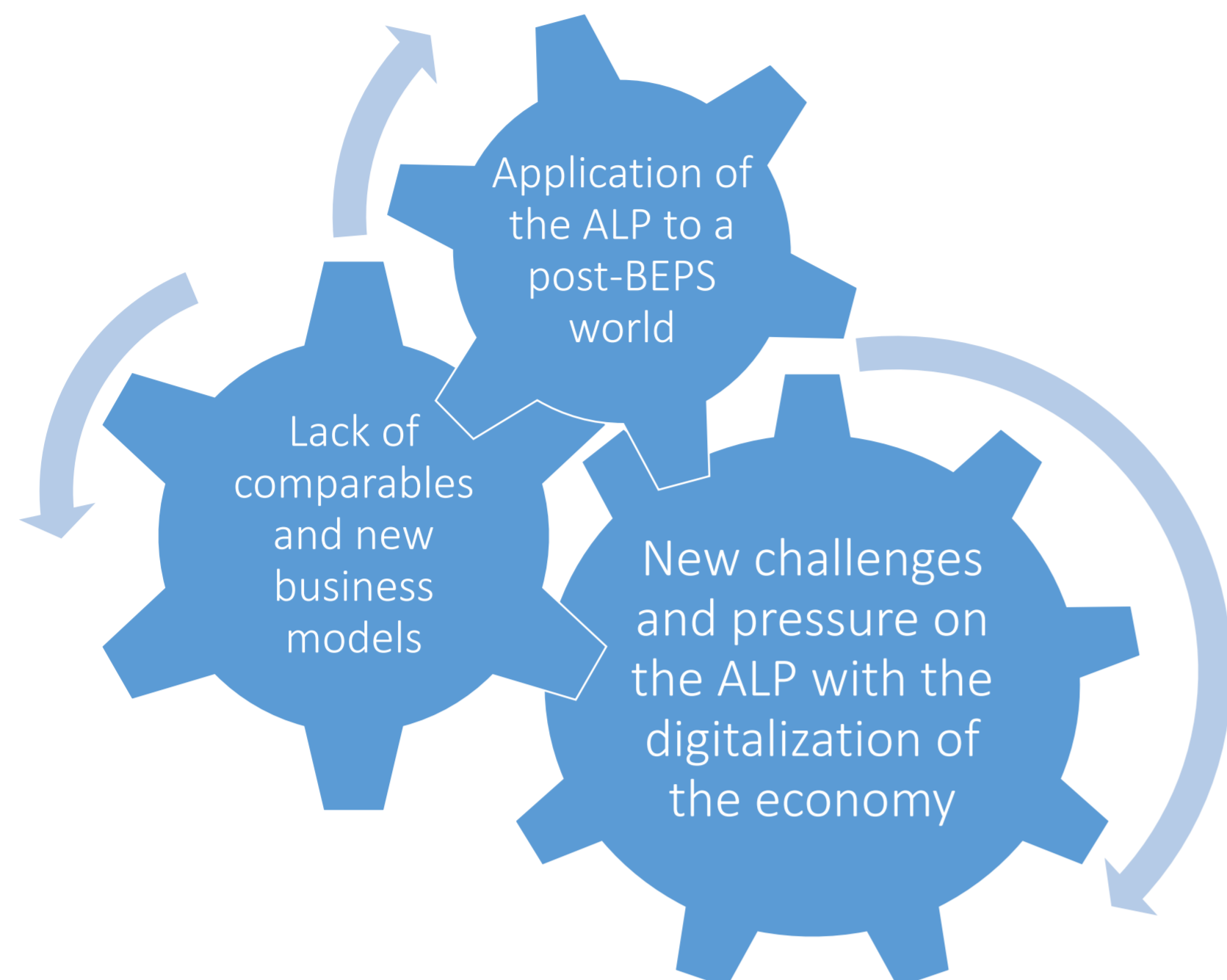


## Simplification measures in transfer pricing and their compatibility with the arm's length principle



### Research question:

- How can simplification measures be used in transfer pricing to enhance legal certainty regarding cross-border intercompany transactions and how are such measures compatible with the application of the arm's length principle under Articles 7 and 9 of the OECD Model Tax Convention on Income and Capital?

### Different ways to promote simplification and legal certainty

#### Safe harbours

- Unclear international definition;
- Different types of safe harbours would simplify different steps of the transfer pricing analysis;
- Revision of Chapter IV of the OECD TPG.

#### Prescriptive methods

- Sixth method for commodities
- Could prescriptive methods be extended to other types of less-complex/ standard transactions?

#### Formulaic approach

- Could formulaic approaches be used as a simplification measure to the arm's length principle instead of a deviation?

### The 4-step approach to the application of the arm's length principle

1. Accurate delineation of the actual transaction



2. Recognition of the accurately delineated transaction



3. Selection of the most appropriate transfer pricing method



4. Application of the selected transfer pricing method

#### Chapter IV OECD TPG

- The OECD has published on 9 May 2018 a call for inputs on Scope the Future Revision of Chapter IV of the OECD Transfer Pricing Guidelines on "Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes".
- Commentators have expressed the need to expand and review the guidance on safe harbours.
- The chapter should also include other simplification measures and expand the definition of safe harbours.

#### Art 9 OECD MTC

- The OECD is not clear whether safe harbours are in line with the arm's length principle.
- Considering the arm's length principle is embedded in Art 9 OECD MTC, it is not clear whether safe harbours are in line with tax treaties.
- If such measures are not in line with the tax treaties, they should not be covered by the taxpayer-initiated mutual agreement procedure in Art 25(1)(2) OECD MTC.

#### Domestic law

- Differences in the definition and application of safe harbours between civil law and common law countries.
- Differences in granting access to tax treaties for taxpayers making use of safe harbours.
- Differences in motives/ benefits in applying safe harbours and other simplification measures.
- Differences in the setting and review process of safe harbour margins.

### Amount B of the Unified Approach under Pillar One:

- The design and implementation of Amount B, if approved, will play an important role in the overall guidance on simplification measures in transfer pricing.