



TP Law in India - Overview

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Table of contents



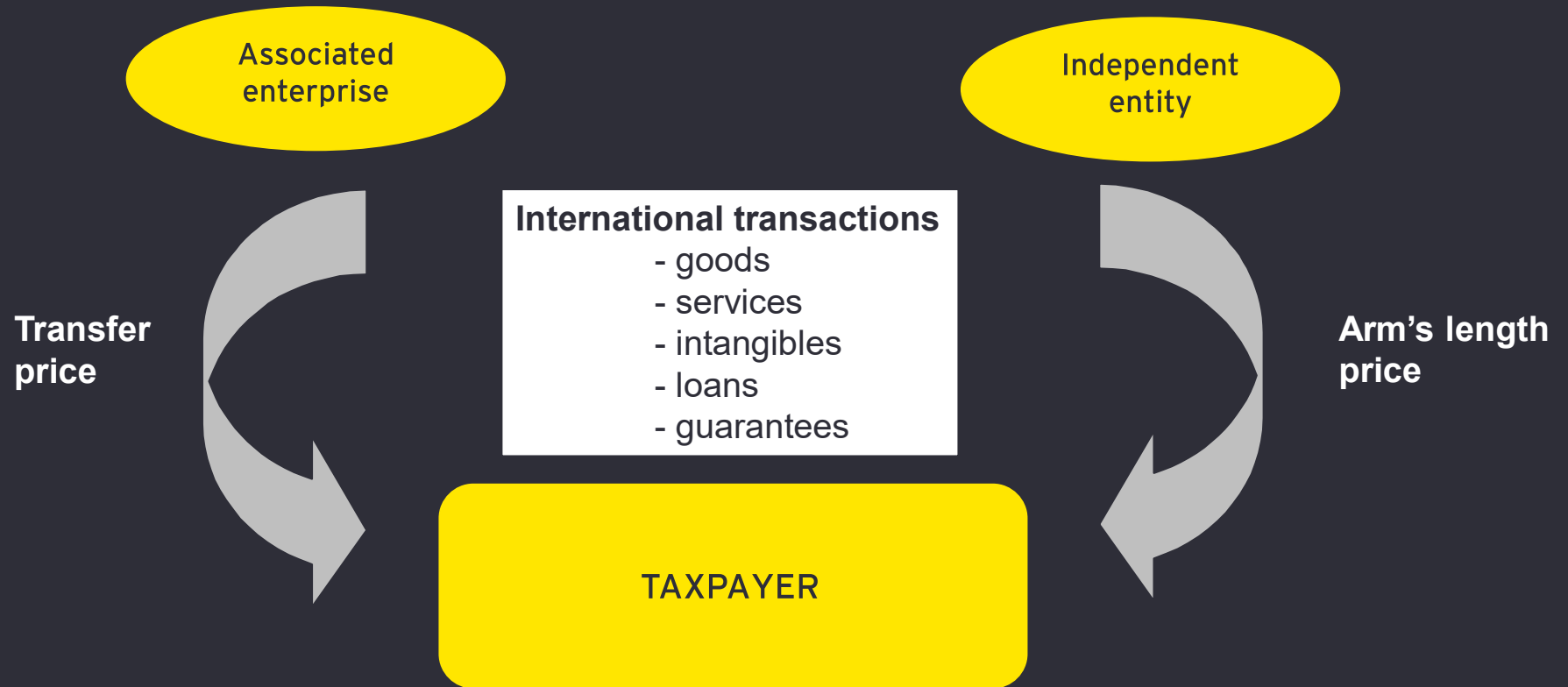
- 1 Overview of Transfer Pricing
- 2 Associate Enterprises
- 3 International Transactions
- 4 Specified Domestic Transactions
- 5 Arm's Length Price, Methods and Range
- 6 TP Compliances
- 7 TP Litigation
- 8 Alternate Dispute Resolution



Overview of
Transfer Pricing

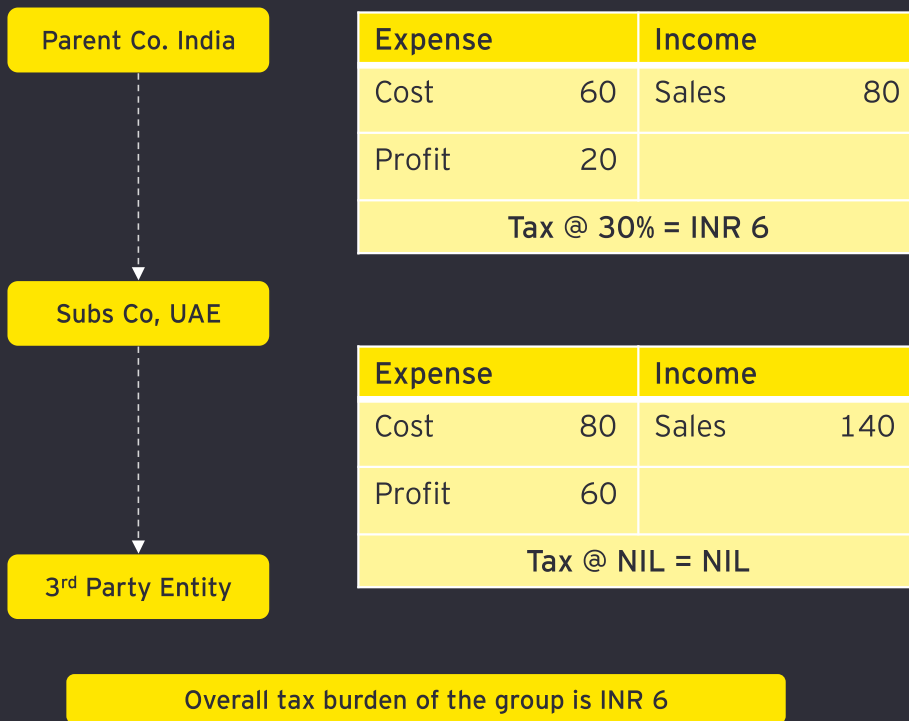
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Concept of Transfer Pricing

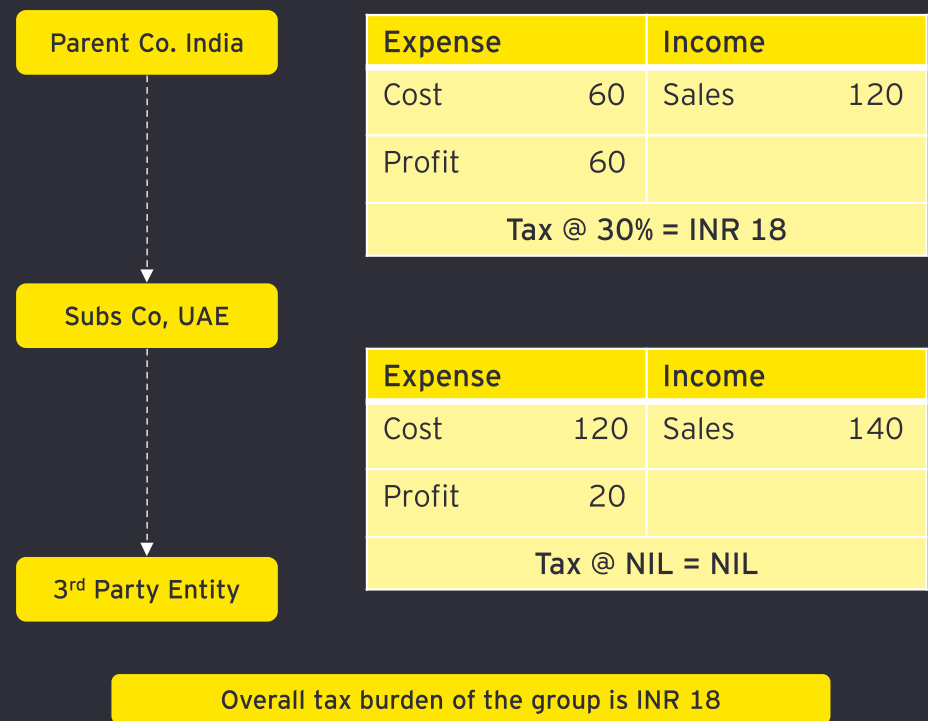


Why Transfer Pricing

Situation 1 - Manipulated Price



Situation 2 - Arm's Length Price



Overview of the TP provisions

- ▶ Section 92 (1) of the Income Tax Act, 1961 states that -

“Any income arising from an international transaction shall be computed having regard to the arm’s length price”

Explanation: “For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm’s length price.”

- ▶ International transaction means
 - ❖ a transaction between two or more associated enterprises, either or both of whom are non-residents.

Section 92F(V)

Section 92 A

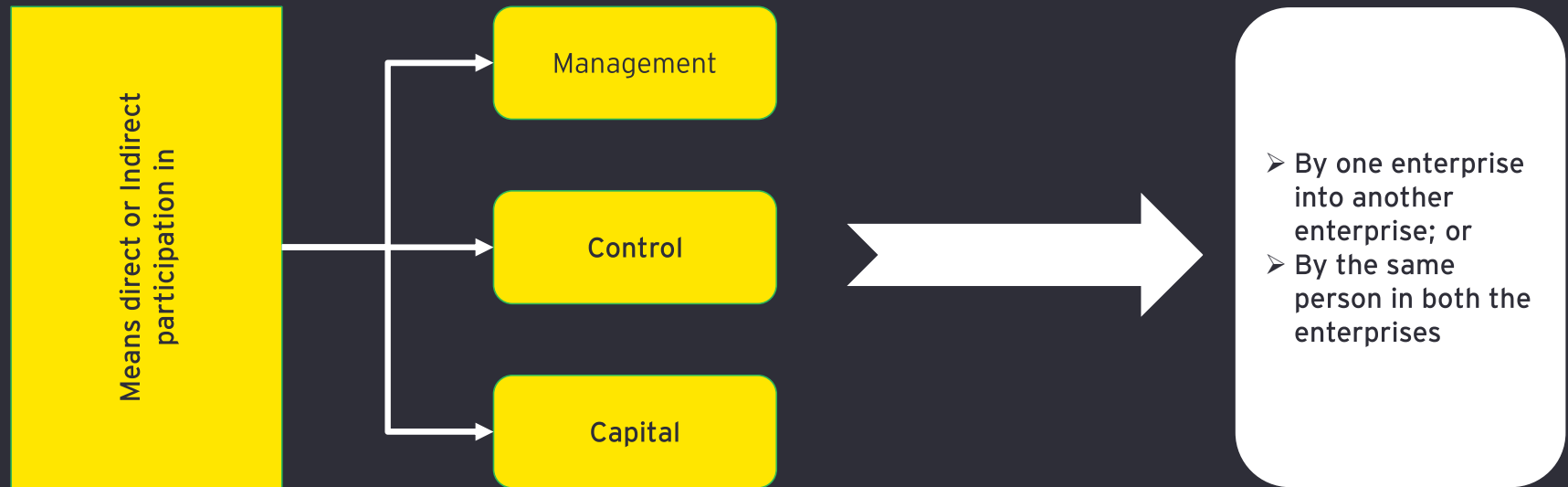
- ▶ Section 92F(V) defines “transaction” includes an arrangement, understanding or action in concert -
 - ❖ (A) whether or not such arrangement, understanding or action is formal or in writing: or
 - ❖ (B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.



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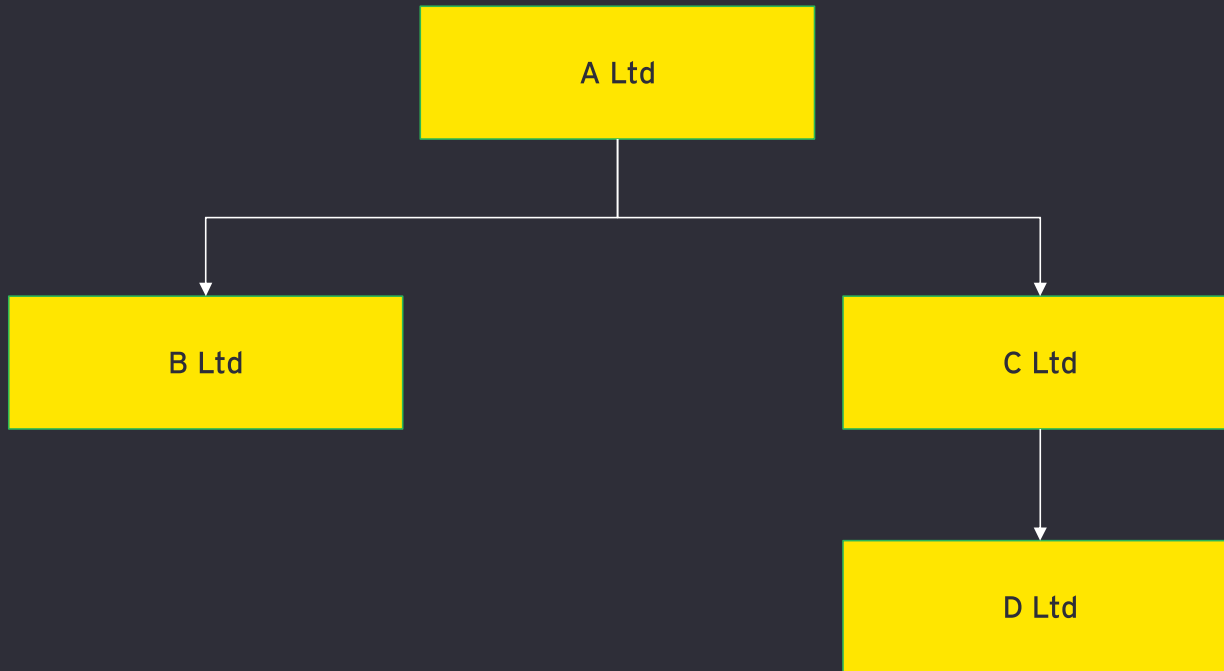
Associate Enterprises

Associate Enterprises (Section 92A)



Definition of Associate Enterprise - Section 92A(1)(a)

Section 92A(1) (a) - an enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise shall be regarded as an associated enterprise”



Definition of Associate Enterprises - Section 92A(1)(b)

Section 92A (1) (b) - “in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise”



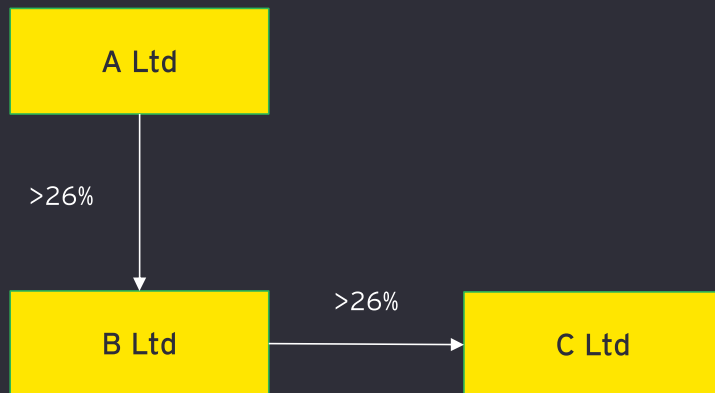
Deemed Associated enterprises (Sec 92A(2))

Holding	Management	Activities	Control
<ul style="list-style-type: none">➤ More than 26% direct / indirect holding by enterprise OR By same person in each enterprise➤ Loan more than 51% of Total Assets➤ Guarantees more than 10% of debt➤ More than 10% interest in Firm / AOP /BOI	<ul style="list-style-type: none">➤ Appointment of more than 50% of Directors / one or more Executive Director by an enterprise OR➤ Appointment by same person in each enterprise	<ul style="list-style-type: none">➤ 100% dependence on use of intangibles for manufacture /processing / business➤ Direct / indirect supply of > = 90% Raw Materials under influenced prices and conditions➤ Sale under influenced prices and conditions	<ul style="list-style-type: none">▸ One enterprise controlled by an individual and the other by himself or his relative or jointly▸ One enterprise controlled by HUF and the other by<ul style="list-style-type: none">▸ a member of HUF▸ his relative or▸ Jointly by member and relative

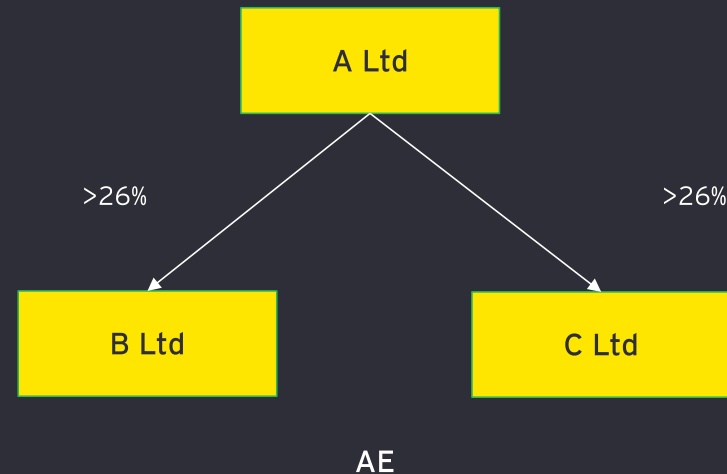
Relationship at any time during the year sufficient to constitute AE

Deemed Associate Enterprises - Ownership

Section 92A(2)(a) - “One enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise”

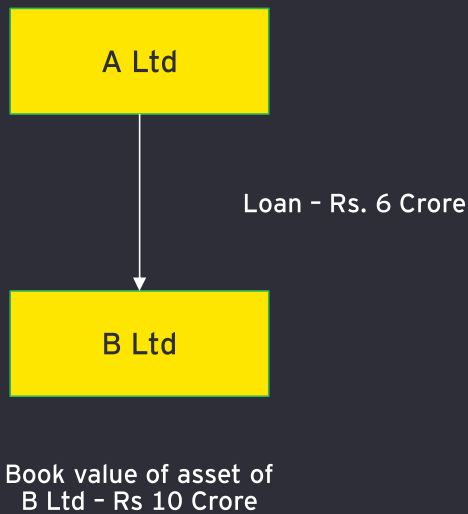


Section 92A(2)(b) - “Any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprise”

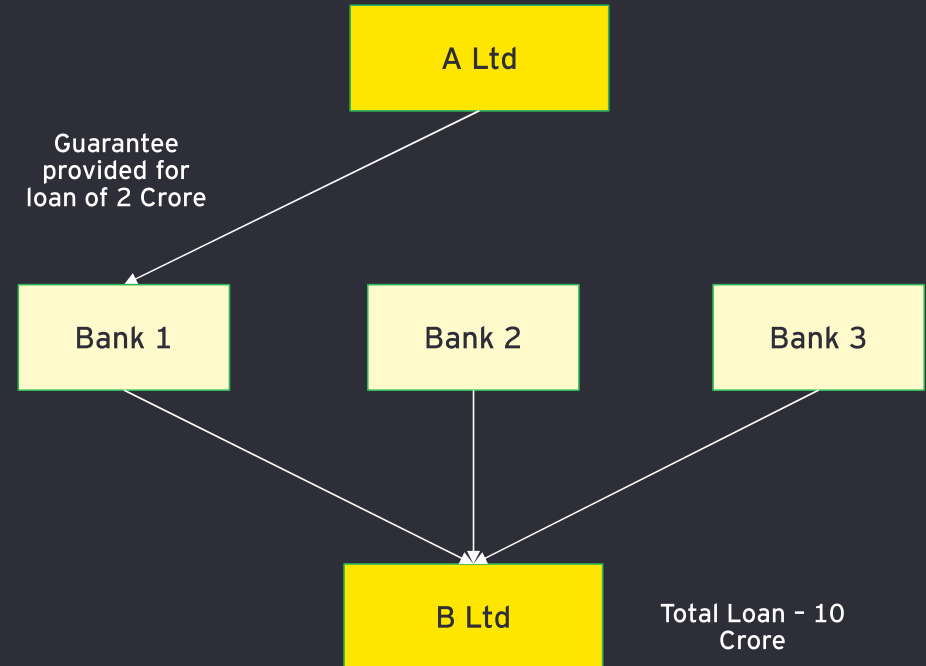


Deemed Associate Enterprises - Loans & Guarantee

Section 92A(2)(c) - "A loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise"

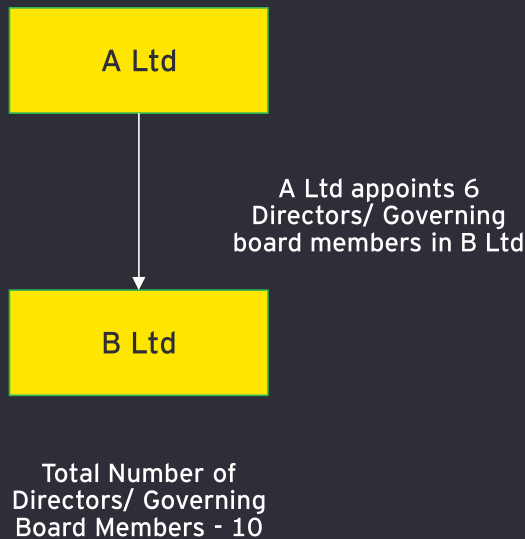


Section 92A(2)(d) - "One enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise"

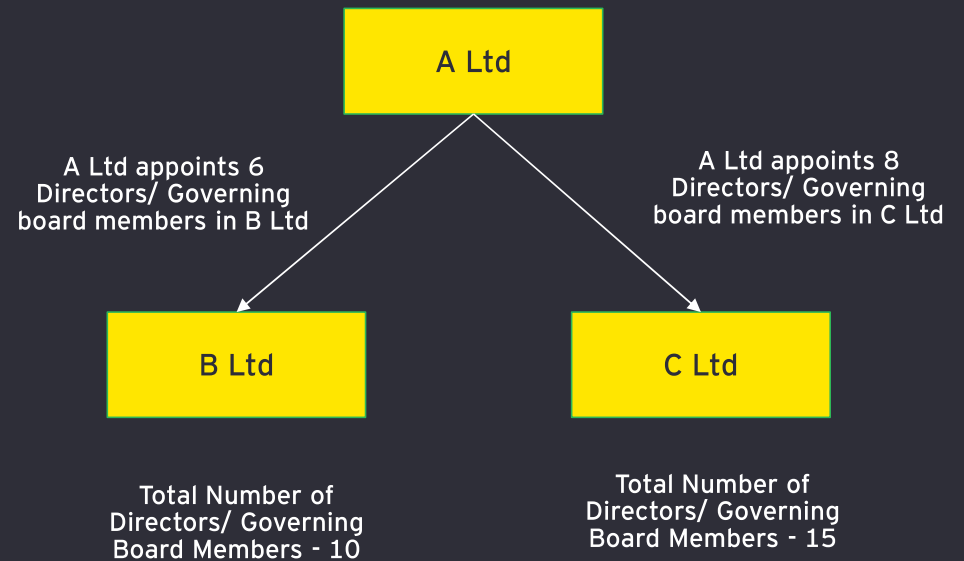


Deemed Associate Enterprises - Management

Section 92A(2)(e) - “More than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise”

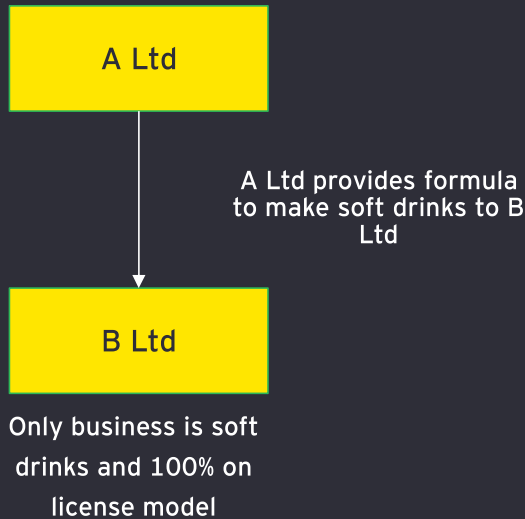


Section 92A(2)(f) - “More than half of the directors or members of the governing board, or one or more executive directors or executive members of the governing board of each of the two enterprises, are appointed by the same person or persons”

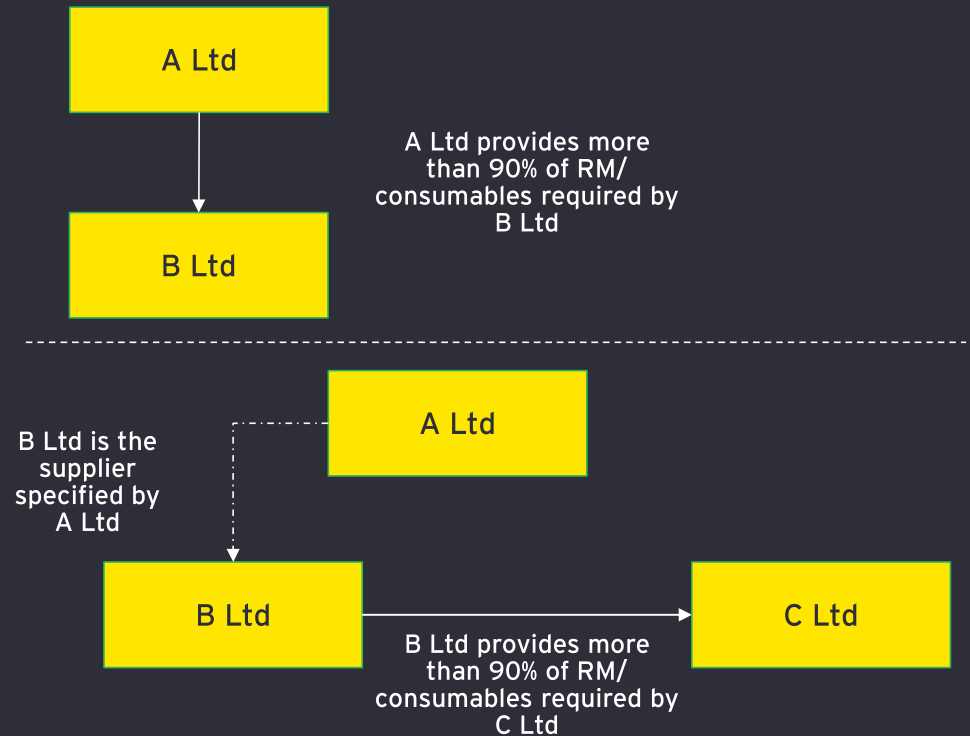


Deemed Associate Enterprises - Activities

Section 92A(2)(g) - “The manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights”

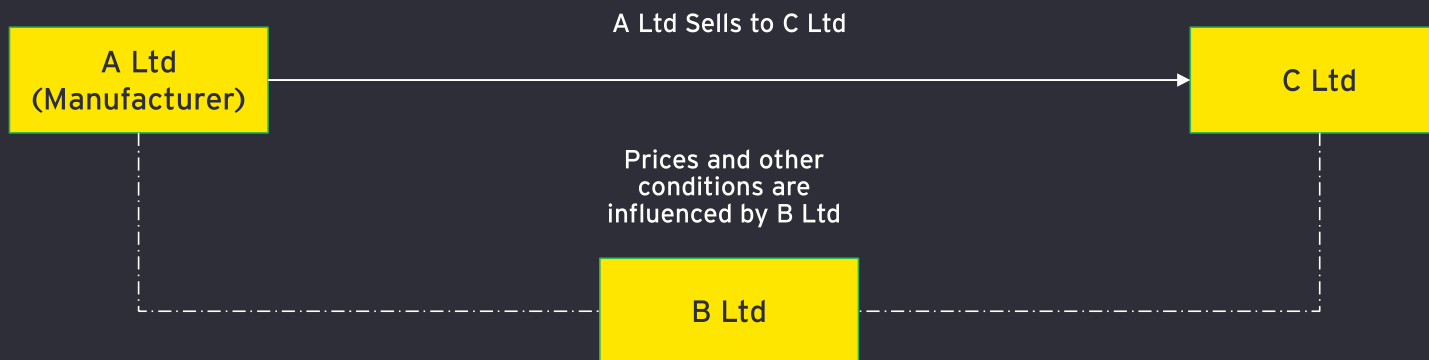


Section 92A(2)(h) - “Ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise”



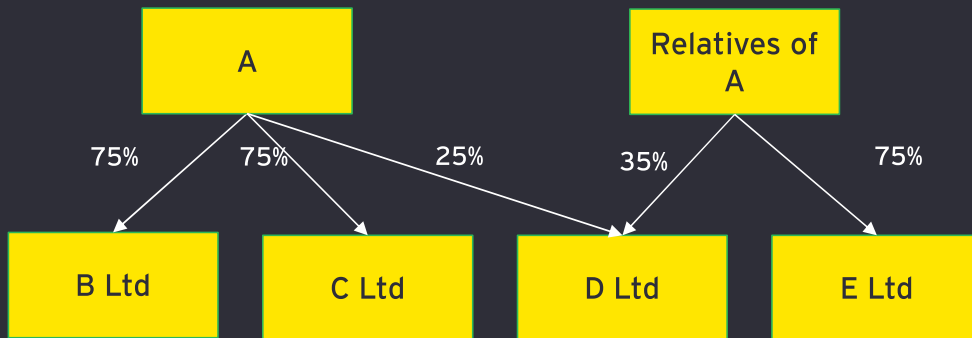
Deemed Associate Enterprises - Activities

Section 92A(2)(i) - “The goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise”

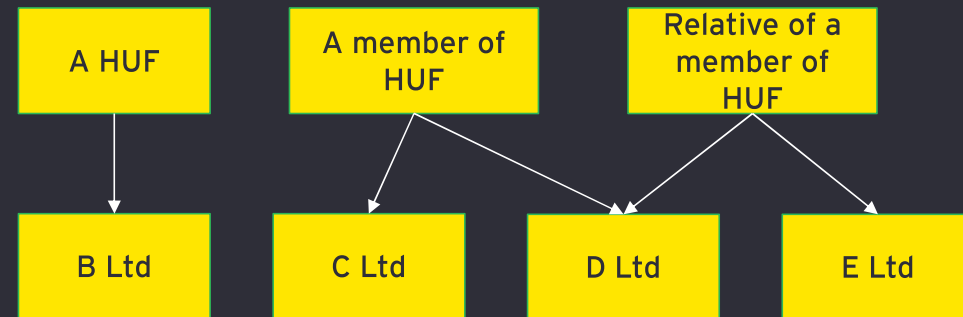


Deemed Associate Enterprises - Control

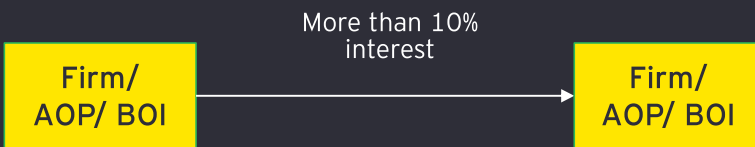
Section 92A(2)(i) - "Where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual"



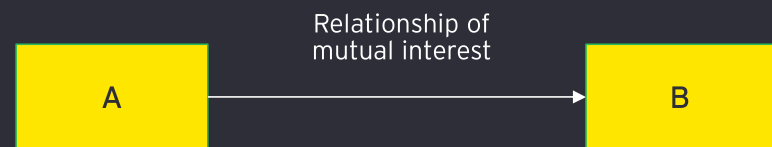
Section 92A(2)(k) - "Where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family, or by a relative of a member of such Hindu undivided family, or jointly by such member and his relative"



Section 92A(2)(l) - "Where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association or body of individuals"



Section 92A(2)(m) - "There exists between the two enterprises, any relationship of mutual interest, as may be prescribed"



Deemed Associate Enterprises - Transaction with persons in Notified Jurisdictions

Section 94A(2)(i)

Notwithstanding anything to the contrary contained in this Act, if an assessee enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area, then—

(i) all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A;

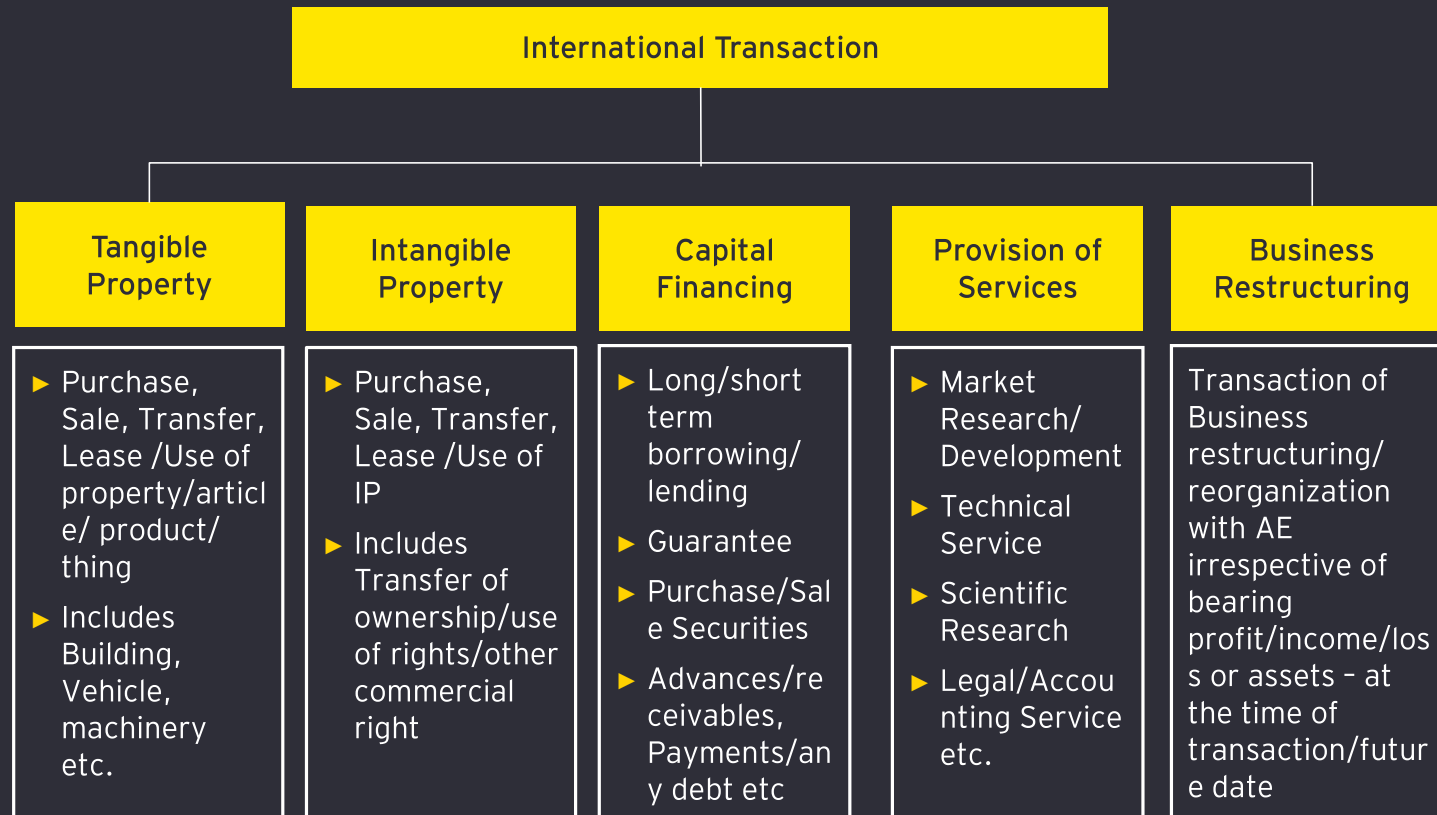
- This clause seeks to cover transactions with persons located in notified jurisdictional areas where there is a lack of effective exchange of information. The relationship with the “person” is not specified in the section.
- Accordingly, a person could be a related or an unrelated person and therefore a person could also include an AE [i.e. an enterprise covered under section 92A(1)/(2)]
- As per Section 94A(1), the Central Government may, specify a country or territory as a notified jurisdictional area.
- The Central Government had specified Cyprus as a notified jurisdictional area. However, the same has been rescinded vide notification no. 114 dated 14-12-2016.
- Therefore, at present there is no such notified jurisdictional area



International
Transactions

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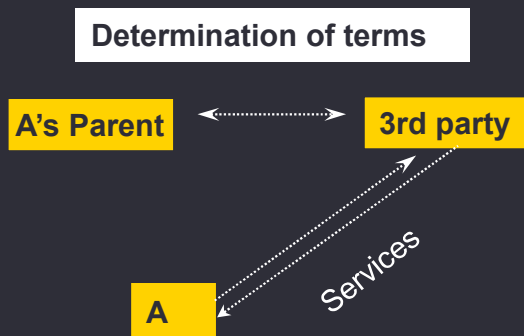
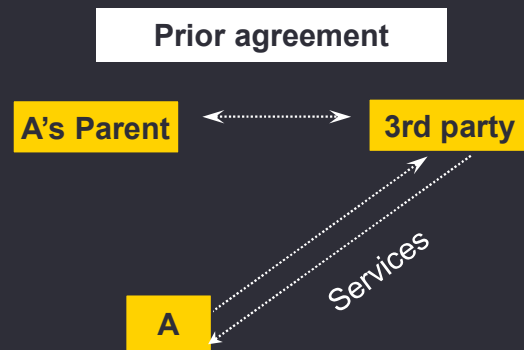
International Transaction - Section 92B



Examples of Business Restructuring (only indicative and not exhaustive):

- Conversion of a full-fledged distributor into a LRD.
- Conversion of a full-fledged manufacturer into a contract manufacturer
- Transfer of IP rights to a central entity within the group
- Business restructuring may also involve termination or substantial renegotiation of existing arrangements, reallocation of risks/ intangibles, specialisation or de-specialisation of operations i.e. manufacturing sites/ processes, R&D activities, sales activities etc.
- Transfer of valuable intangibles
- Termination or substantial renegotiation of existing arrangements
- Conversion of full-fledged manufacturers into contractors or toll manufacturer
- Conversion of full-fledged distributor into LRD or commissionaires
- Outsourcing of manufacturing to AE in a low cost location
- Centralization of intangibles assets and of risks (eg. to so called “IP Company”) or that of regional management
- Revision of business model rationalization/ specialization/ despecialization of operations (R&D, manufacturing, sales/ services) including downsizing and closing operations
- The UN practical manual on TP for developing countries defines Business restructuring as the cross-border redeployment of functions, assets and risks by an MNE

Deemed international transaction- Sec 92B(2)



- An transaction with an unrelated company (3rd party) is deemed to be an international transaction and subject to transfer pricing regulations if -
 - ❖ a **prior agreement** exists between A's AE and 3rd party in relation to services rendered by A to the 3rd party; or
 - ❖ **terms of transaction** are determined in substance by A's AE and 3rd party
- A or A's AE or both of them could be non-residents
- 3rd Party could be a Resident or a non-resident



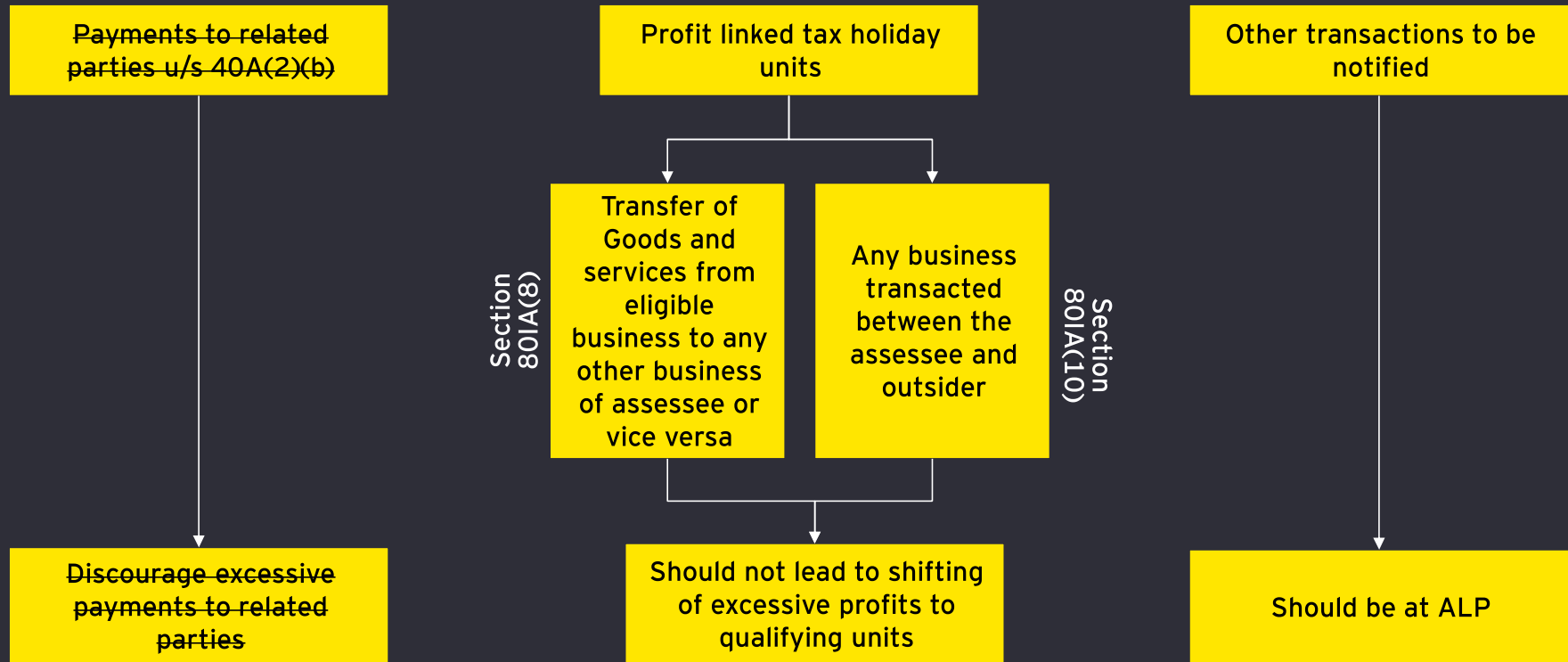
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Specified Domestic
Transactions

Specified Domestic Transaction - Sec 92BA

- ▶ Supreme Court decision in CIT V Glaxo SmithKline Asia (P) Ltd (195 Taxman 35 (SC))
- ▶ Suggested that Finance Ministry should consider making Transfer Pricing provisions applicable to transactions with tax holiday to arrive at Fair Market value or Market value
- ▶ The Finance Act 2012 extended the scope of TP provisions expanded w.e.f. AY 2013-14 by including "SDT" if aggregate value of such transaction exceeds INR 20 Crores
- ▶ Applicability of TP regulations (including procedural and penalty provisions) to specified transactions between domestic related parties and payments made to related parties.
- ▶ Section 92BA - "**Specified Domestic Transactions**" in case of an Assessee means any of the following transactions, not being an international transaction, namely -
 - i. ~~Any expenditure in respect of which payment is made or to be made to a person u/s 40A(2)(b);~~
 - ii. Any transaction referred u/s 80A;
 - iii. Any transfer of goods/services u/s 80-IA;
 - iv. Any business transaction u/s 80-IA(10);
 - v. Any transaction under Chapter VI-A or u/s 10AA - to which provisions of Sec 80-IA (8) or (10) applies; or
 - vi. Any other transaction as may be prescribed.
- ▶ All provisions applicable for determination of ALP for international transactions would apply in case of SDT.
- ▶ Penalty provisions applicable to international transactions would apply to SDT

Applicability - SDT



This section is now deleted

Applicability - SDT

Section 80A, 80IA, 80IB, 10AA
and other tax holiday unit sections
prescribed



Charging Section

Section 92C
(Regarding SDT)



Computation Section

What has changed is that now the word FMV or market value is replaced by ALP,
rest all other things in the charging section staying constant

FMV vs ALP





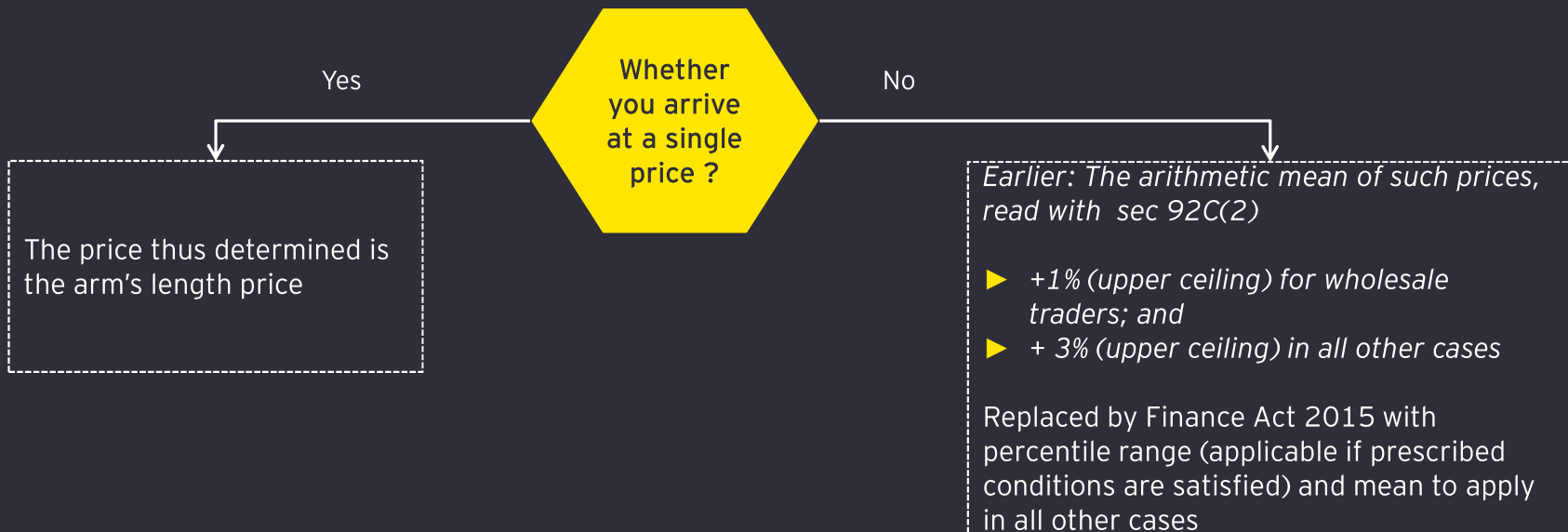
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Arm's Length Price,
Methods and Range

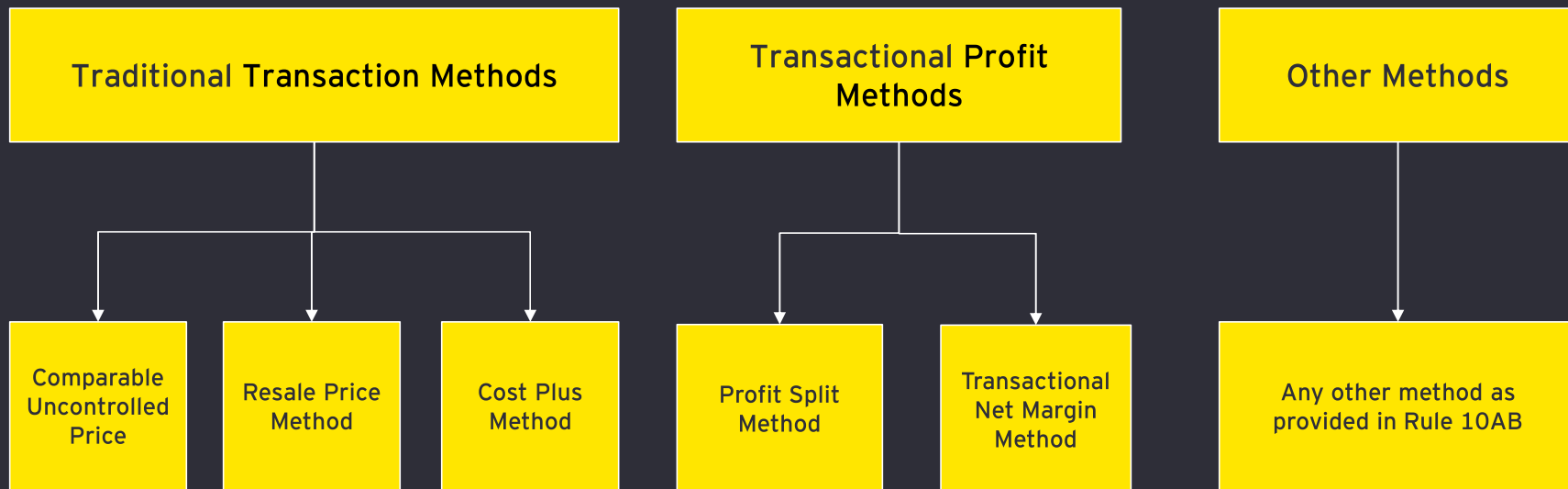
Arm's Length Price - 92F(ii)

Price applied or proposed to be applied in a transaction between persons other than AEs, in uncontrolled conditions

Determination of arm's length prices using one of the Prescribed methods



Prescribed Transfer Pricing Methods



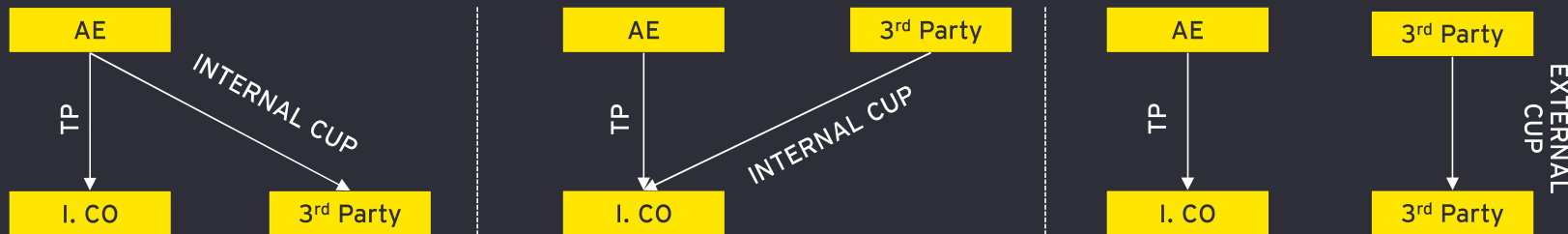
- ▶ Taxpayer may apply any of the above methods that is considered most appropriate for a transaction. There is no preference of one method over another

Comparability

- ▶ All methods require comparables
- ▶ Transfer price is set/ defended using data from comparable transactions
- ▶ Comparable transaction should be independent and similar to tested transactions
- ▶ Factors for judging comparability (Rule 10C(2)):
 - ❖ nature of transactions undertaken (i.e. type of goods, services etc.)
 - ❖ company functions
 - ❖ risks assumed
 - ❖ contractual terms (i.e. similar credit terms)
 - ❖ economic and market conditions

Comparable Uncontrolled Price ('CUP') - Rule 10B(1)(a)

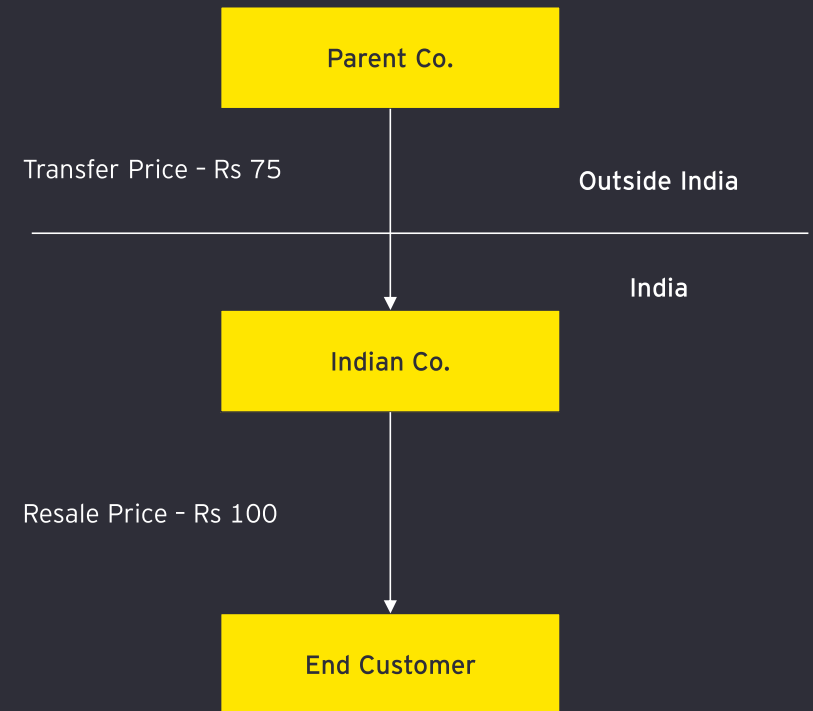
- ▶ Most Direct Method
- ▶ Prices are benchmarked without any reference to the profits
- ▶ Requires strict comparability in products, contractual terms, economic terms, etc - often a challenge to get!
- ▶ Commonly used for testing Product Pricing, Royalty Rates, Financing transaction terms
- ▶ Suitable adjustments to be made to iron out differences for volume, credit terms, etc
- ▶ Not suitable where product/ terms of the contract unique and/ or accurate adjustments to eliminate differences not possible
- ▶ Internal CUP/ External CUP



Internal CUP preferable over External CUP due to higher degree of comparability

Resale Price Method ('RPM') - Rule 10B(1)(b)

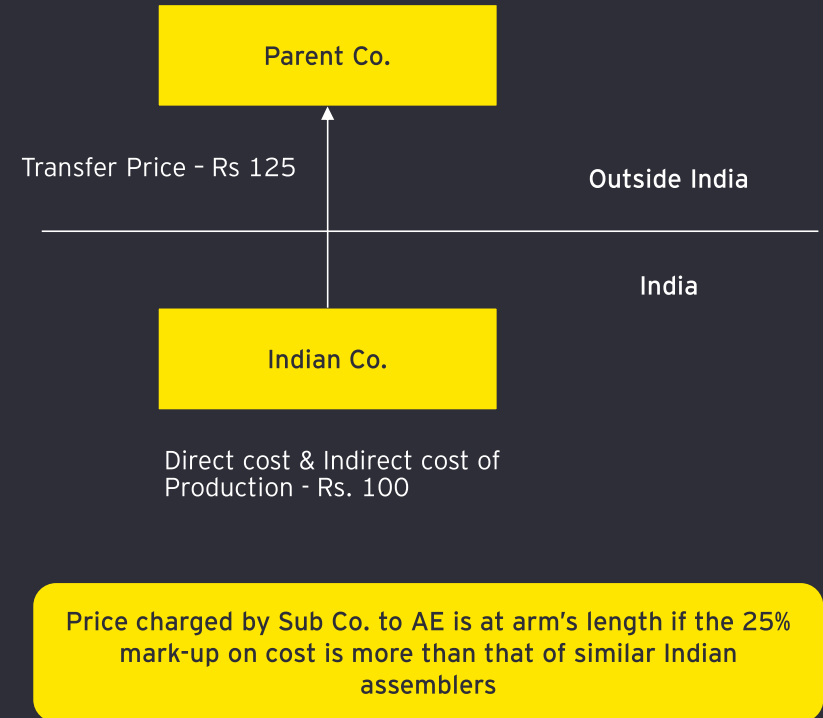
- ▶ Applicable in a resale situation ie where property/ goods/ services purchased/ procured from an AE are resold/ provided onwards to a third party
- ▶ Reseller expected to retain an arm's length gross profit
- ▶ Product similarity threshold lower than that for CUP
- ▶ Used when reseller does not add substantial value to the goods and does not apply intangible assets to add value
- ▶ Difficult to apply where goods are further processed before resale
- ▶ Focus more on activity similarity and availability of gross margin data - available at times for pure distribution companies
- ▶ Better when goods sold within a short span else price may need to be adjusted for items such as inventory holding cost, exchange rate fluctuations



Price paid by Sub Co. to AE is at arm's length if the 25% resale margin earned by Sub Co. is more than margins earned by similar Indian distributors

Cost Plus Method ('CPM') - Rule 10B(1)(c)

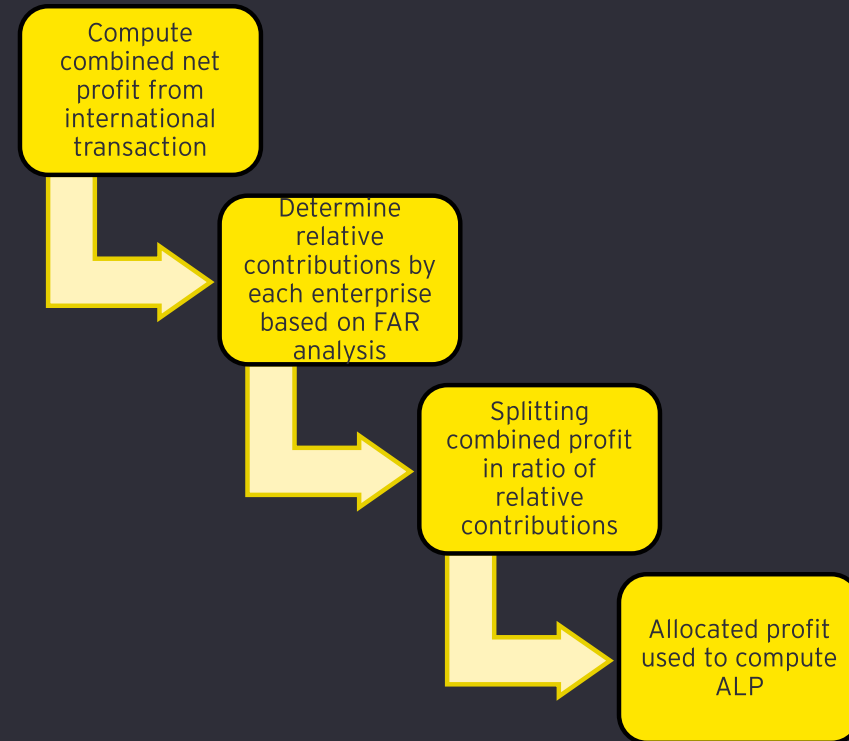
- ▶ Compares and identifies mark-up earned on direct and indirect costs of production incurred with that of comparable independent companies
- ▶ Preferred method in case -
 - ❖ Semi-finished goods sold between related parties
 - ❖ Contract Manufacturing agreement
 - ❖ Provision of services
- ▶ Higher level of comparability required in terms of: FAR profiles & accounting policies
- ▶ Comparability is relatively less dependent on strict product comparability and additional emphasis is on similarity of functions performed & risks assumed
- ▶ As sufficient data for comparison/ making accurate adjustments is generally not available in public domain, difficult to apply this method in most cases



Profit Split Method ('PSM') - Rule 10B(1)(d)

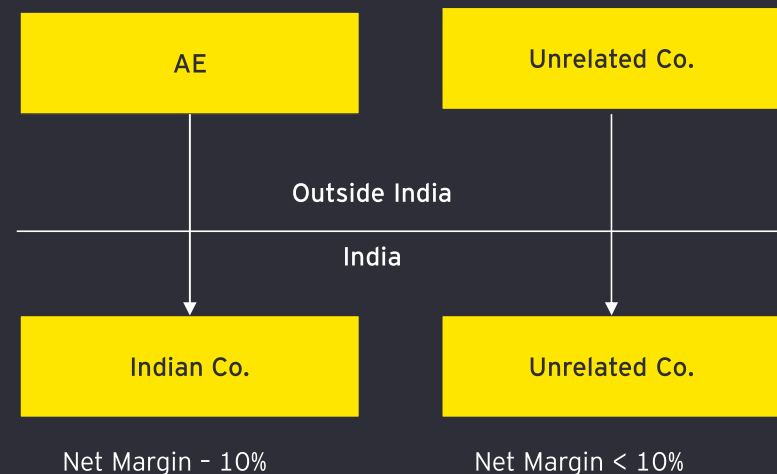
- ▶ PSM is applied in cases involving transfer of unique intangibles or multiple international transactions that cannot be evaluated separately
- ▶ PSM requires selection and application of appropriate allocation keys for splitting profits amongst the members of the MNE group contributing to generation of combined profits
- ▶ Strengths and weakness of PSM -

Strengths	Weakness
Offers solutions for integrated operations not offered by one sider methods	Difficulty in application
Helps share profits for unique intangibles contributed	Requirement to have similar accounting policies and standards
Less dependant on comparable	Selection of allocation keys
Less likely to leave any party to the transaction with extreme profitability as both parties are evaluated	Reluctance of tax authorities to accept



Transactional Net Margin Method ('TNMM') - Rule 10B(1)(e)

- ▶ Most frequently used method, due to lack of availability of data for application of other methods
- ▶ Examines net operating profit from transactions as a percentage of a certain base (can use different bases i.e. costs, turnover, etc)
- ▶ Both internal TNMM and external TNMM are possible
- ▶ Broad level of product comparability and high level of functional comparability
- ▶ Applicable for most categories of transaction and often used to supplement analysis under other methods
- ▶ Comparable data relatively easier to procure as databases available - important to apply correct filters
- ▶ Closely linked international transactions can be benchmarked using combined TNMM approach (aggregation)



Usually regarded as an indirect and one-sided method, but is most widely adopted

TNMM: Identifying comparable companies to computing ALP

Some Quantitative filters for identifying comparables

- Relevant financial year(s) data not available
- Insufficient financial information
- RPT more than identified threshold
- Persistent loss maker/ sick company (if appropriate)

Some Qualitative filters for identifying comparables

- Different product/ service (need to drill down to specifics)
- Different business model (broker vs investment advisor | commission agent vs distributor | manufacturer vs assembler)
- Different stage of business
- Different asset intensity
- Intangibles involved

Some economic adjustments for computing ALP

- Working Capital
- Depreciation
- Customs Duty
- Risk
- Capacity
- Marketing intensity

Other Method - Rule 10AB

- ▶ Effective 1 April 2012, CBDT introduced Rule 10AB notifying the "Other Method"
- ▶ Enabling provision to use 'any method' which takes into account
 - ❖ the price which has been charged or paid or
 - ❖ would have been charged or paid forthe same or similar uncontrolled transactions, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts
- ▶ Useful where application of the earlier mentioned five specific methods difficult on account of absence/ lack of comparable data or due to uniqueness of transactions
 - ❖ Typical Transactions: Transfer of intangibles, business restructuring related payment, cost allocations, unique services/ arrangements, financial transactions etc
- Various data which may possibly be used for comparability purposes could be*:
 - ❖ Third party quotations/ invoices | Valuation reports | Tender/Bid documents | Documents relating to the negotiations | Standard rate cards | Commercial & economic business models etc.

* ICAI Guidance Note on Report under Section 92E of the Income-tax Act, 1961

Summary of methods

Methods	Comparability Requirements	Approach	Applicability
CUP	<i>Very</i> High	<i>Prices</i> are benchmarked	Every transaction including intangibles, transfer of commodities, loans, provision of financing
RPM	High	<i>Gross Profit margins</i> are benchmarked	Distribution of finished products
CPLM	High	<i>Gross Profit margins</i> are benchmarked	Provision of services, transfer of semi finished goods, sale of finished goods
PSM	Medium	<i>Individual transaction margins</i> are benchmarked	A group of AE's involved in integrated transactions, <i>usually involves intangibles</i>
TNMM	Medium	<i>Net Operating Profit margins</i> are benchmarked	Provision of services, where other methods are inadequate

Methods - Advantages and disadvantages

Method	Advantages	Disadvantages
CUP	Easy to use and most reliable , if available	Very difficult to apply as very high degree of comparability required
RPM	Few adjustments are needed to account for product differences	Reliability is affected if material differences in carrying out business activities exist
CPM	Few adjustments are needed to account for product differences	Gross margins are affected even with minor functional differences; availability of data
PSM	Does not rely on closely comparable transactions	Complex Method; sparingly used
TNMM	Most preferred and practically applicable method	Accurate and reliable determinations of arm's length margin/range difficult

Introduction of 'range' concept

- ▶ "Range" concept followed internationally; also propounded by OECD
- ▶ Use of inter-quartile range is amongst the globally accepted best practice and also closer to economic realities wherein prices, and or margins, are compared to those within a range and not at to a particular point.
- ▶ In order to align the transfer pricing regulations in India with international best practices, "range" concept introduced by Finance Act 2015 for determination of arm's length price.
 - ❖ Applicable for international transactions and SDTs undertaken w.e.f. 1 April 2014
 - ❖ To be used only (a) if the dataset has six or more comparables; and (b) most appropriate method selected is CUP, RPM, CPM or TNMM
 - ❖ Dataset to be constructed by considering weighted average margin of comparables
 - Where the transfer price falls within 35th and 65th percentile of the dataset so constructed, the transaction will be accepted to be at arm's length
 - Where the transfer price does not fall within the above range, then median shall be taken as the ALP
 - ❖ Where the above conditions are not satisfied, the concept of arithmetic mean shall continue to apply and benefit of 1% (wholesale traders) / 3% (others) is available

Illustration depicting the application of percentile range

Name of the company	Operating Margin
A Limited	-5.38%
B Limited	0.89%
C Limited	2.33%
D Limited	5.18%
E Limited	9.02%
F Limited	13.47%
Tested Party margin	5.01%
35 th percentile	2.33%
65 th percentile	5.18%
Median	3.75%
Percentile range (35 th percentile to 65 th percentile)	2.33% to 5.18%

Since taxpayer's margin falls within the percentile range, the transaction will be accepted to be at arm's length

Use of multiple year data

- Issue of 'single year data vs multiple data' has been a subject matter of debate and litigation so far.
- Rule 10B(5) inserted by Finance Act 2015 (w.e.f. 1 April 2014) provides that for application of RPM, CPM and TNMM, an enterprise shall be considered as comparable for determination of ALP if it has undertaken same or similar transaction (a) in current-year; or (b) immediately preceding year (if current-year data is not available) at the time of filing return of income
- Where an enterprise is considered comparable, weighted average of comparable prices shall be computed (by assigning costs/sales as weights for different years, as applicable)
- The Rule also provides that where current-year data subsequently becomes available to tax authorities at the time of assessment, then such data shall be used for determining ALP
- The Rule also provides that if the enterprise is not comparable for the current year, then irrespective of the fact that such an enterprise was comparable for the financial year preceding current year or the financial year immediately preceding such financial year, such enterprise shall not be included in the dataset.
- **Position in other countries**
 - ❖ Most of the countries including United Kingdom, Denmark, Bulgaria, Belgium, France, Finland, Luxembourg, Italy, Poland, Norway, Netherland, Switzerland, Spain, Thailand, Australia, Indonesia, New Zealand allow use of multiple year data (generally from 3-5 years).
 - ❖ Certain countries like Korea, Malaysia, Germany specifically prescribe use of single year data.
 - ❖ Japanese regulations, in principle do not permit multiple year averaging for comparables. However, in exceptional cases, it allows to evaluate taxpayer's result using multiple years for transfer pricing analysis.

Summary: Use of Multiple Year data/ Range

Method	Use of Multiple year data	Use of Range
CUP	No	Yes
RPM	Yes	Yes
CPM	Yes	Yes
PSM	No	No
TNMM	Yes	Yes
Sixth Method	No	No

Secondary Adjustment [Section 92CE]

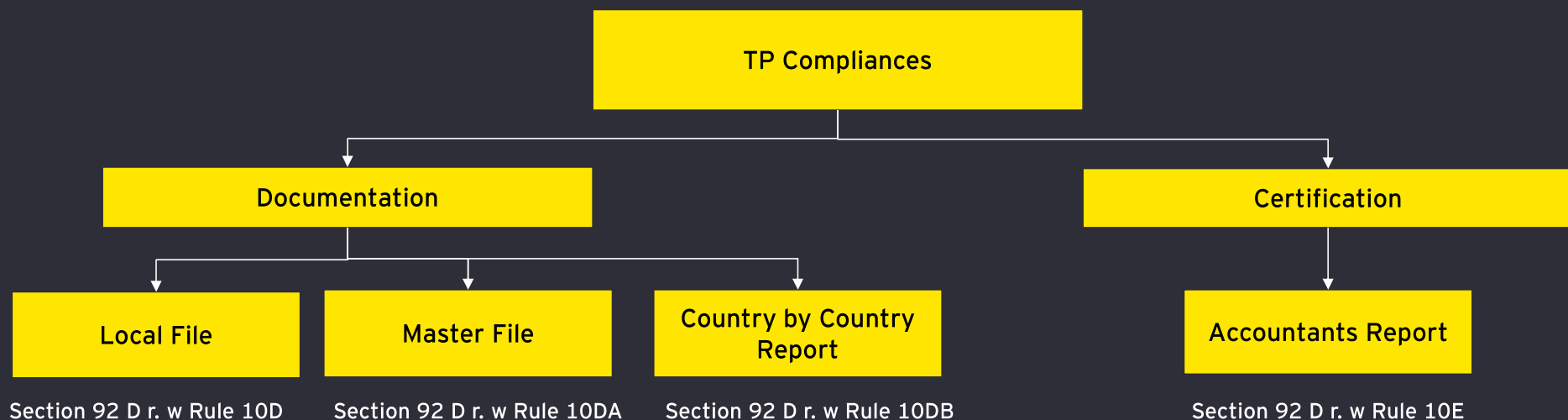
- ▶ Applicable where Primary TP Adjustment done on or after AY 2017-18 and is of a sum of greater than INR 1 crore in following cases:
 - ❖ Voluntary adjustment
 - ❖ Adjustment made by tax office accepted by assessee
 - ❖ Adjustment determined by an APA
 - ❖ Adjustment made as per SHR
 - ❖ Adjustment as a result of a MAP
- ▶ Provisions aimed at aligning tax profits with books of accounts/ protecting forex reserves
- ▶ Requires amount equal to Primary TP adjustment to be brought into India within 90 days from applicable dates failing which said amount is treated as a deemed advance and interest is computed thereon as per prescribed rules
- ▶ Interest rates
 - ❖ Where transaction is in Indian Rupees: MCLR as on April 1 of relevant previous year plus 325 bps
 - ❖ In case of foreign currency transaction: 6 month LIBOR as on 30th Sept of relevant previous year plus 300 bps
- Option given to get remittance from any non-resident AE. If remittance not possible, assessee can pay one time tax at 18% (plus applicable surcharge and cess)



6

TP compliances

TP Compliance requirements



S. No	TP Compliance	Indian Forms
1	Country By Country Report	Form No. 3CEAD - CbyC Form No. 3CEAC - Intimation by Indian CE of Foreign Parent Form No. 3CEAE - Intimation by Indian reporting CE filing under certain circumstances
2	Master File	Form No. 3CEAA - Part A - Applicable to all CE's in India irrespective of threshold Form No. 3CEAB - Intimation to be filed by designated entity
3	Local File	TP Documentation as per Rule 10D of the Rules.
4	Accountants Report	Form No. 3CEB - Accountants Report certifying the Arm's length nature of the International and Specified Domestic Transactions

Accountant's Report in Form 3CEB

- To be obtained by every person entering into an international transaction and specified domestic transaction
- To be filed by 31 October (e-filing Mandatory)
- Opinion on -
 - whether the tax payer has maintained the transfer pricing documentation as required by the legislation,
 - whether as per the transfer pricing documentation the prices of international transactions are at arm's length, and
 - certifies the value of the international transactions as per the books of account and as per the transfer pricing documentation are "true and correct"
- Inputs -
 - ❖ Related party ledgers extracts
 - ❖ Related party Schedule under AS-18
 - ❖ Sample Invoices/ Vouchers / DN / CN
 - ❖ Relevant intra-group agreements
 - ❖ CUP/ Internal comparison info

FORM NO. 3CEB

[See rule 10E]

Report from an accountant to be furnished under section 92E relating to international transaction(s) and specified domestic transaction(s)

1. We have examined the accounts and records of (name and address of the assessee and PAN) relating to the international transactions and the specified domestic transactions entered into by the assessee during the previous year ending on 31st March, ____.
2. In our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transactions and the specified domestic transactions entered into so far as appears from our examination of the records of the assessee.
3. The particulars required to be furnished under section 92E are given in the Annexure to this Form. In our opinion and to the best of our information and according to the explanations given to us, the particulars given in the Annexure are true and correct.

For (name of firm)

(name of partner / proprietor)

Partner / Proprietor

Firm Registration No. : _____

Membership No. _____

Place: _____

Date: _____

Local File

A detailed list of mandatory documents are given in Rule 10D(1) of the Rules.

- Ownership Structure
- Profile of multinational group
- Business description/ Profile of industry

- Nature and terms (including price) of international transactions
- Description of functions performed, risk assumed and assets employed (functional analysis)
- Records of economic and market analysis (economic analysis)
- Record of budgets, forecasts, financial estimates
- Any other record of analysis (if, any) to evaluate comparability of international transaction with uncontrolled transaction(s)
- Description of method considered with reasons of rejection of other methods
- Details of transfer pricing adjustment(s) made (if, any)

- Any other information e.g. data, documents like invoices, agreements, price related correspondence etc.

**Entity
Related**

**Price
Related**

**Transaction
Related**

1. Detailed documentation not required in case aggregate transaction value is less than INR 1 Crore
2. List of supporting documents are also provided in the law
3. Contemporaneous data requirements
4. Documents to be retained for a fixed period from end of the assessment year



Documentation
summary

Master File

Applicability

Particulars	Value during the accounting year
Consolidated group revenue for the reporting accounting year exceeds	INR 500 Crore
<u>And</u>	
Aggregate Value of international transactions:	
1. Overall as per books exceeds	INR 50 Crore
<u>Or</u>	
2. Of Intangible transactions as per books exceeds	INR 10 Crore

- Master File filing in [Form 3CEAA](#)
- In case of one or more than one resident CE in India, the Group shall designate one CE to undertake aforesaid compliance - [Form 3CEAB](#)

Due Date - 30 November following the fiscal year end in March

Section 271AA(2)
Failure to furnish Master File by the due date will attract penalty of be [INR 500,000](#)

Master File

Organization structure	Business description	Intangibles	Intercompany financial activities	Financial and tax positions
Structure chart:	Important drivers of business profit	Overall strategy description	Financing arrangements for the group	Annual consolidated financial statements
<ul style="list-style-type: none"> ➤ Legal ownership ➤ Geographic location 	Supply chain of: <ul style="list-style-type: none"> ➤ 5 largest products/services by turnover ➤ Products/services generating more than 5% of turnover 	List of important intangibles and legal owners	Identification of financing entities	List and description of existing unilateral Advance Pricing Agreements (APAs) and other tax rulings
	Main geographic markets of above products	List of important intangible agreements	Details of financial transfer pricing policies	
	List and brief description of important service arrangements	R&D and intangible transfer pricing policies		
	Functional analysis of principal contributions to value creation by individual entities	Details of important transfers		
	Business restructuring/ acquisitions/ divestitures during fiscal year			

Country By Country Report

Applicability

Particulars	Value during the accounting year
Consolidated group revenue for the accounting year preceding the reporting year exceeds	INR 5500 Crore (in line with Action 13 threshold of EURO 750 million)

Penalty for CbCR : (Section 271GB)	Delay upto one month	Delay beyond one month	Delay in payment of Penalty - after receipt of penalty order
Failure to furnish CbCR by the due date of filing of return of income	INR 5,000 per day	INR 15,000 per day	INR 50,000 per day
Failure to furnish additional information and documents sought by the Revenue authorities	INR 5,000 per day from the day on which the period for furnishing the information and document expires		INR 50,000 per day
Inaccurate information filed under the CbCR	INR 500,000		

Due Date for notification by Constituent entities (CE) of foreign outbound MNE's - 2 Months prior to deadline for filing CbCR

Due Date - Within a period of 12 months from the end of reporting accounting

Country By Country Report - Template

Table 1

Tax jurisdiction	Revenues			Profit (loss) before income tax	Cash Tax Paid (CIT and WHT)	Current year tax accrual	Stated capital	Accumulated earnings	Tangible assets other than cash and cash equivalents	Number of employees
	Unrelated party	Related party	Total							
1.										
2.										
3.										
4.										
5.										

Table 2

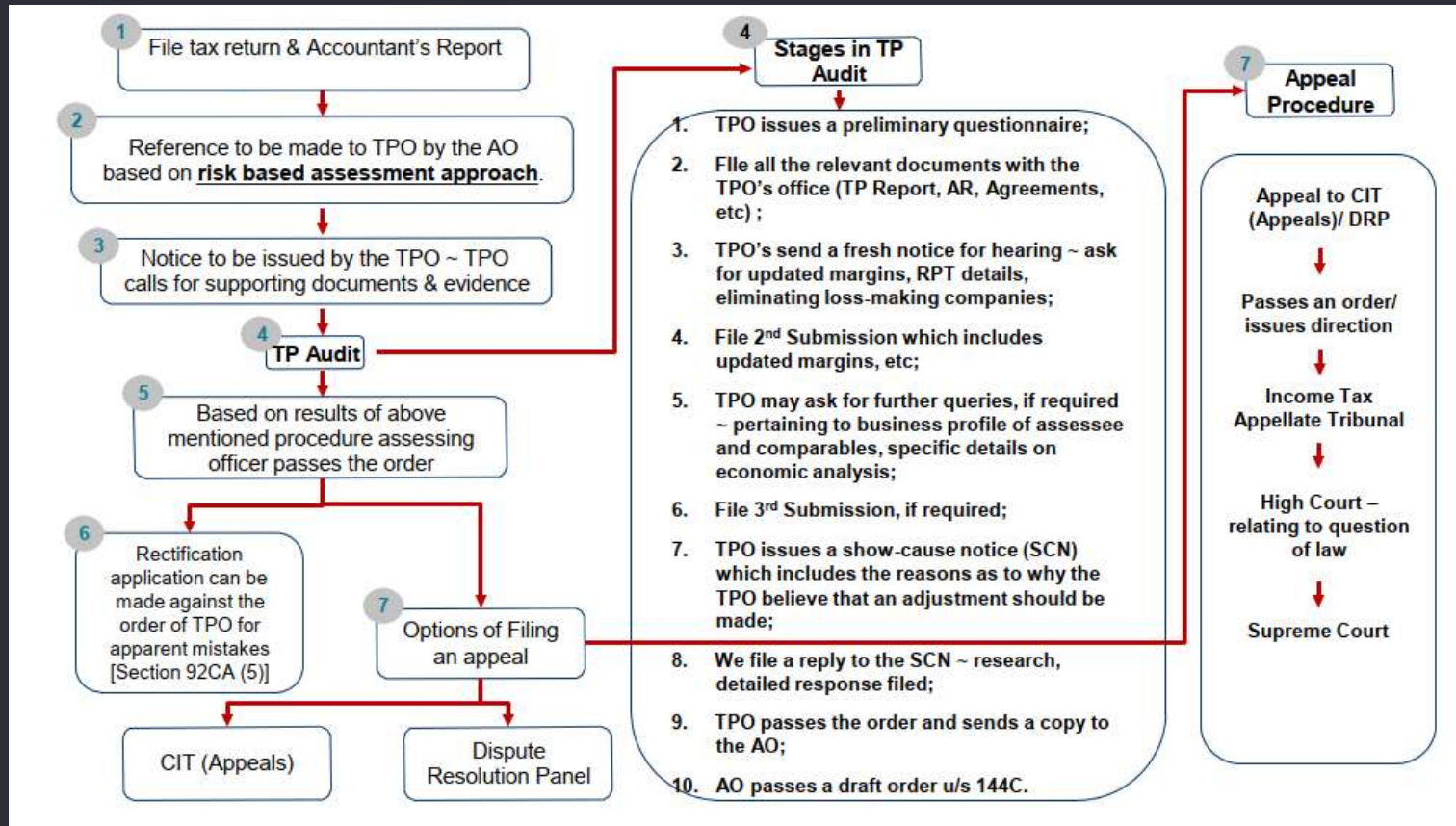
Tax jurisdiction	Constituent entities resident in the tax jurisdiction	Tax jurisdiction of organization or incorporation if different from tax jurisdiction of residence	Main business activity(ies)														
			R & D	Holding or managing IP	Purchasing or procurement	Mfg or production	Sales, marketing or distri.	Admin., Mgmt or support services	Provision of services to unrelated parties	Internal group finance	Regulated financial services	Insurance	Holding shares or other equity instruments	Dormant	Other		
	1.																
	2.																
	3.																
	1.																
	2.																



TP Litigation

7

TP Litigation Process



TP Penalties

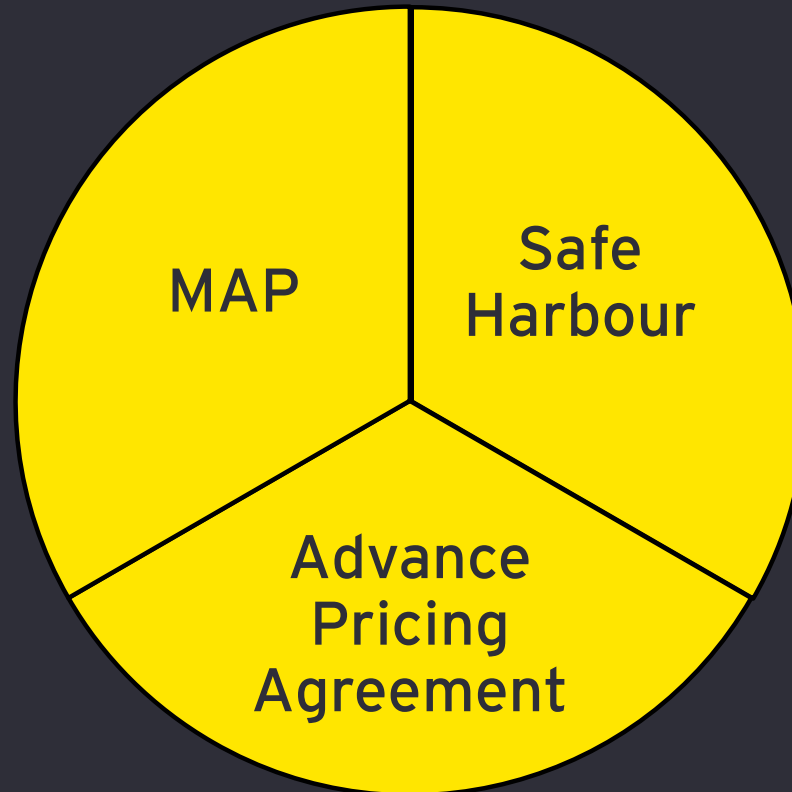
Default	Penalty
In case of a post-inquiry adjustment, there is deemed to be a concealment of income / inaccurate (Section 271(1)(c) of the Act)	100-300% of tax on the adjusted amount
Penalty for underreporting and misreporting of Income (Section 270A shall replace Section 271(1)(c) wef 1 April 2017)	<ul style="list-style-type: none"> ➤ 50% of tax payable on under reported transactions ➤ 200% of the tax payable on misreporting of transaction
Failure to maintain documents (Section 271AA of the Act)	2% of the value of transaction
Failure to report a transaction in accountant's report (Section 271AA of the Act)	2% of the value of transaction
Maintaining or furnishing incorrect information or documents (Section 271AA of the Act)	2% of the value of transaction
Failure to furnish accountant's report (Section 271BA of the Act)	Rs. 100,000
Failure to furnish documents (Section 271G of the Act)	2% of the value of transaction



8

Alternate Dispute
Resolution

Alternate Dispute Resolution options



Advance Pricing Agreements



Validity

5 years forward and 4 years back with an option to renew for another 5 years

No TP Audits

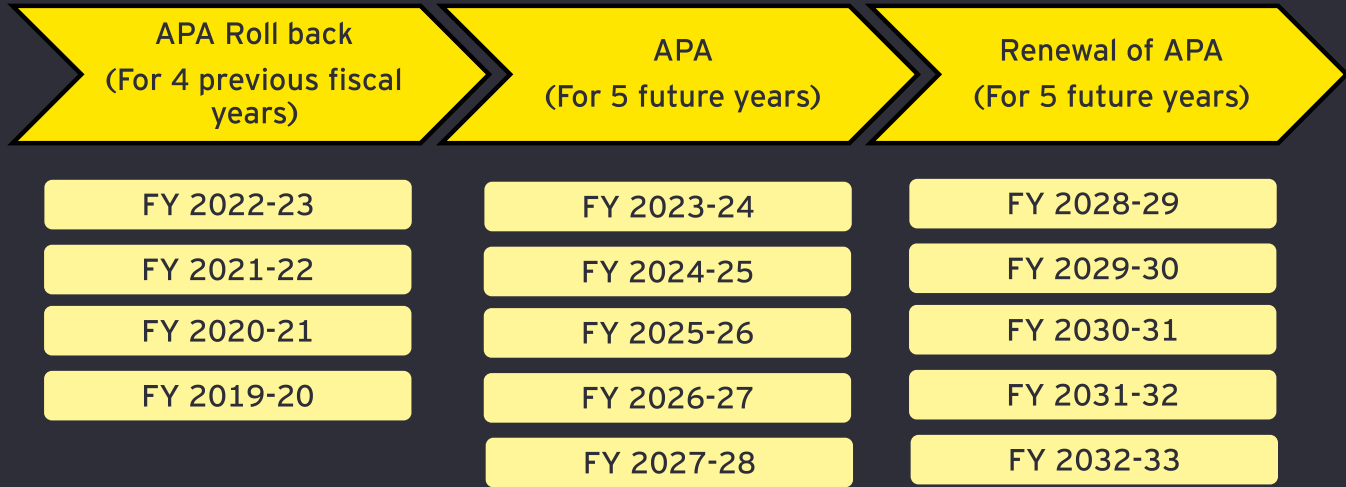
Post APA no regular audits. Simple annual compliance and annual compliance audit

Types of APA

Unilateral and Bilateral APA. There is also an option to convert a Unilateral APA into Bilateral APA before the signing of the agreement

Option to withdraw

Taxpayer can withdraw the APA application



Assuming the original APA application is filed before 31 March 2023 and renewal application is filed before 31 March 2028

Safe Harbor Rules

Meaning

- ▶ Safe Harbour Rules refers to determination of price margin which are acceptable to tax authorities to provide protection to taxpayers from TP scrutiny proceedings
- ▶ Prices established under such rules would be automatically accepted by the tax administrations that have expressly adopted such rules

Applicability

- ▶ Rules to be applicable for a maximum period of 5 years beginning AY 2013-14 or the period opted by the Assessee
- ▶ Does not apply where the AE is located in any country or territory notified under section 94A or in a no tax or low tax country or territory

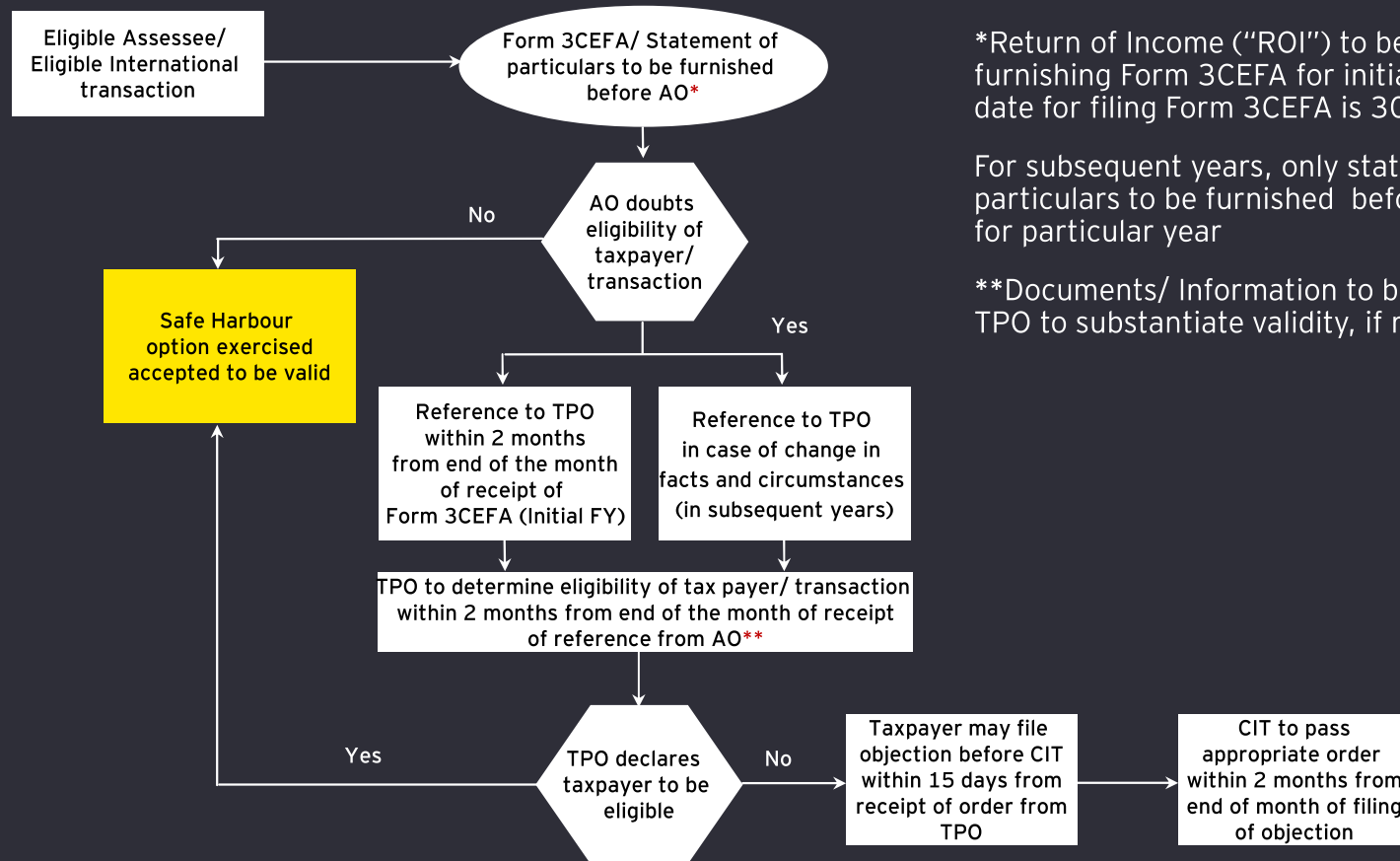
Compliance

- ▶ The Assessee shall furnish a Form 3CEFA on or before 30 November of the first assessment year of the covered period for which it is seeking protection

Arbitration

- ▶ Objection to Commissioner within 15 days of receipt of TPO order
- ▶ Commissioner shall pass its order within 2 months from the end of the month in which the objection is received by him

Safe Harbour rules - Compliance Procedure



*Return of Income ("ROI") to be filed on or before furnishing Form 3CEFA for initial year. The due date for filing Form 3CEFA is 30 November.

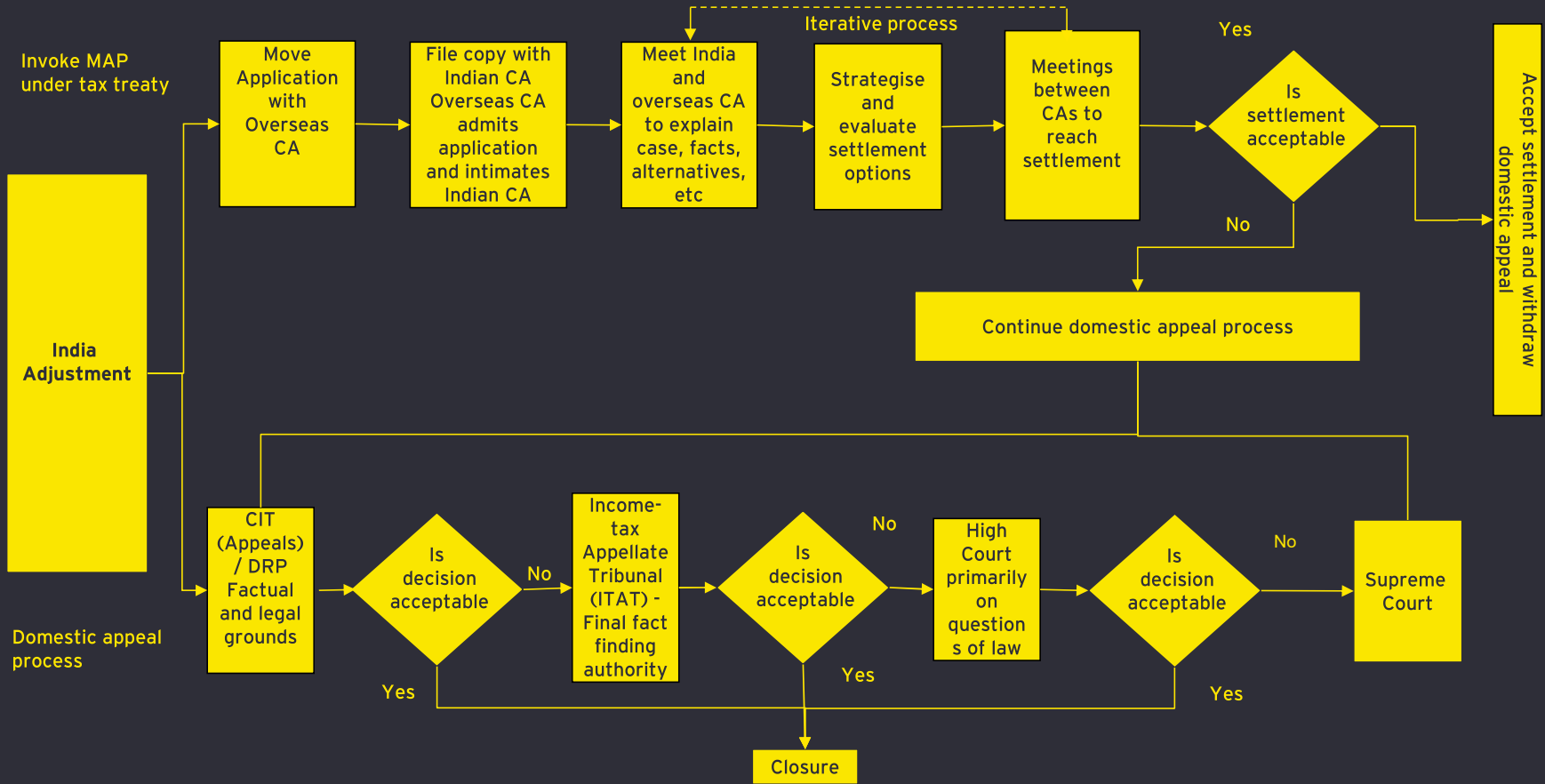
For subsequent years, only statement of particulars to be furnished before filing the ROI for particular year

**Documents/ Information to be submitted to TPO to substantiate validity, if required

Mutual Agreement Procedure (MAP)

- ▶ MAP is an alternate mechanism for the resolution of international tax and transfer pricing disputes which are not in accordance with tax treaty
- ▶ Resolution of dispute through the intervention of Competent Authority (CA) of each state
- ▶ Aim to arrive at a mutually acceptable solution (resolution not a compulsion for the CA's)
- ▶ Relief through MAP possible irrespective of remedies available under domestic tax laws
- ▶ Described and authorized by Article 25 of the OECD Model Tax Convention
- ▶ Can be used to eliminate double taxation that could arise from a tax / transfer pricing adjustment (OECD Guidelines)
- ▶ Issues which can be tackled through MAP
 - ❖ Double taxation that could arise from a transfer pricing adjustment
 - ❖ Dispute on characterization of income
 - ❖ Dispute relating to existence of Permanent Establishment ("PE") in one of the contracting states
 - ❖ Issues related to attribution of profits to a PE in the other state

MAP - Process of resolution





Thank You