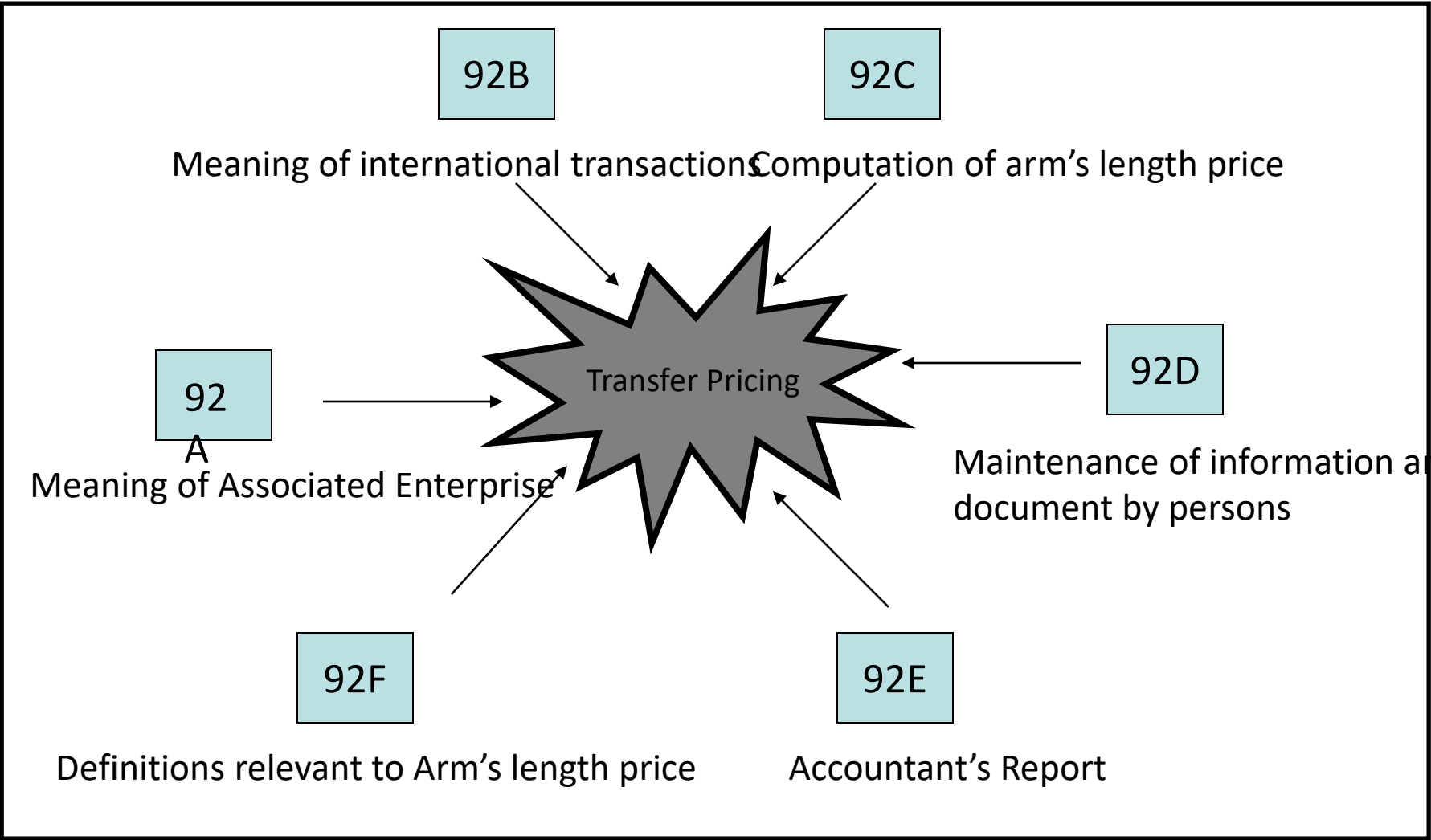


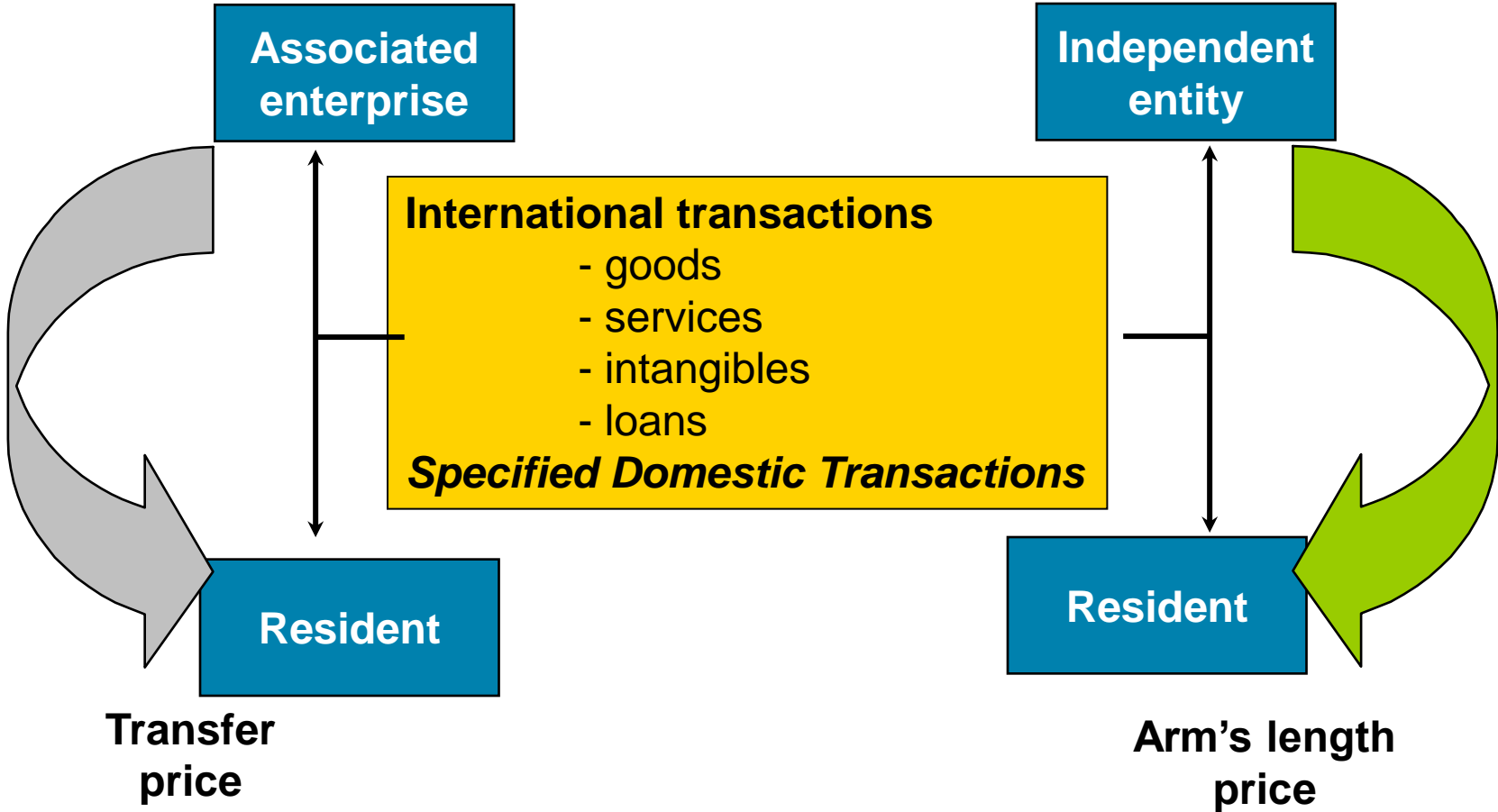
TRANSFER PRICING – Introduction, Issues & Recent Developments

Presented by CA Avinash Gupta
Assisted by CA Rishabh Agarwal

Sec 92 – Special Provisions



Concept



Form 3CEB U/s 92E r.w Rule 10E

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. "I/We have examined the accounts and records of..... (name and address of the assessee with [*Permanent Account Number or Aadhaar Number*]) relating to the international transaction(s) and the specified domestic transaction(s) entered into by the assessee during the previous year ending on 31st March,
2. In "my/our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transaction(s) and the specified domestic transactions entered into so far as appears from "my/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 "my/our opinion and to the best of my/our information and according to the explanations given to "me/us, the particulars given in the Annexure are true and correct.

Place:.....

Date:.....

***Signed*.....

Name:.....

Address:.....

.....
Membership No.:.....

Notes :

1. "Delete whichever is not applicable.
2. "This report has to be signed by—
 - (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
 - (ii) any person who, in relation to any State, is, by virtue of the provisions in sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State.

Annexure to Form 3CEB - Part A

ANNEXURE TO FORM NO. 3CEB

Particulars relating to international transactions and specified domestic transactions required to be furnished under section 92E of the Income-tax Act, 1961

PART A

1. Name of the assessee
2. Address
3. [*Permanent Account Number or Aadhaar Number*]
4. Nature of business or activities of the assessee*
5. Status
6. Previous year ended
7. Assessment year
8. Aggregate value of international transactions as per books of account
9. Aggregate value of specified domestic transactions as per books of account

*Code for nature of business to be filled in as per instructions for filling Form ITR 6

Annexure to Form 3CEB – Part B

PART B (International Transactions)

10.	<i>List of associated enterprises with whom the assessee has entered into international transactions, with the following details:</i> <ul style="list-style-type: none">(a) Name of the associated enterprise.(b) Nature of the relationship with the associated enterprise as referred to in section 92A(2).(c) Brief description of the business carried on by the associated enterprise	
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Annexure to Form 3CEB – Part B

11. *Particulars in respect of transactions in **tangible property**:*

A. **Has the assessee entered into any international transaction(s) in respect of purchase/ sale of raw material, consumables or any other supplies for assembling or processing/manufacturing of goods or articles from /to associated enterprises?**

Yes/No

If 'yes', provide the following details in respect of each associated enterprise and each transaction or class of transaction :

- (a) Name and address of the associated enterprise with whom the international transaction has been entered into.
- (b) Description of transaction and quantity purchased/ sold.
- (c) Total amount paid/received or payable/receivable in the transaction—
 - (i) as per books of account;
 - (ii) as computed by the assessee having regard to the arm's length price.
- (d) Method used for determining the arm's length price [See section 92C(1)]

Annexure to Form 3CEB – Part B

	<p><i>B</i> Has the assessee entered into any international transaction(s) in respect of purchase/sale of traded/finished goods?</p> <p>If 'yes', provide the following details in respect of each associated enterprise and each transaction or class of transaction :</p>	Yes/No
	<p>(a) Name and address of the associated enterprise with whom the international transaction has been entered into.</p> <p>(b) Description of transaction and quantity purchased/sold.</p> <p>(c) Total amount paid/received or payable/receivable in the transaction</p> <p style="padding-left: 40px;">(i) as per books of account;</p> <p style="padding-left: 40px;">(ii) as computed by the assessee having regard to the arm's length price.</p> <p>(d) Method used for determining the arm's length price [See section 92C(1)]</p>	

Annexure to Form 3CEB – Part B

C Has the assessee entered into any international transaction(s) in respect of purchase, sale, transfer, lease or use of any other tangible property including transactions specified in *Explanation (i)(a)* below section 92B(2)?

Yes/No

If 'yes', provide the following details in respect of each associated enterprise and each transaction or class of transaction:

- (a) Name and address of the associate enterprise with whom the international transaction has been entered into.
- (b) Description of the property and nature of transaction.
- (c) Number of units of each category of tangible property involved in the transaction.
- (d) Amount paid/received or payable/receivable in each transaction of purchase/sale/transfer/use, or lease rent paid/received or payable/receivable in respect of each lease provided/entered into —
 - (i) as per books of account;
 - (ii) as computed by the assessee having regard to the arm's length price.
- (e) Method used for determining the arm's length price [See section 92C(1)]

Annexure to Form 3CEB – Part B

12.	<p><i>Particulars in respect of transactions in intangible property:</i></p> <p>Has the assessee entered into any international transaction(s) in respect of purchase, sale, transfer, lease or use of intangible property including transactions specified in <i>Explanation (i)(b)</i> below section 92B(2)?</p> <p>If 'yes', provide the following details in respect of each associated enterprise and each category of intangible property :</p> <ul style="list-style-type: none">(a) Name and address of the associated enterprise with whom the international transaction has been entered into.(b) Description of intangible property and nature of transaction.(c) Amount paid/received or payable/receivable for purchase/sale/transfer/lease/use of each category of intangible property—<ul style="list-style-type: none">(i) as per books of account;(ii) as computed by the assessee having regard to the arm's length price.(d) Method used for determining the arm's length price [See section 92C(1)]	Yes/No
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Annexure to Form 3CEB – Part B

13.	<p><i>Particulars in respect of providing of services:</i></p> <p>Has the assessee entered into any international transaction(s) in respect of Services including transactions as specified in <i>Explanation (i)(d)</i> below section 92B(2)?</p> <p>If 'yes', provide the following details in respect of each associated enterprise and each category of service :</p> <ul style="list-style-type: none">(a) Name and address of the associated enterprise with whom the international transaction has been entered into.(b) Description of services provided/availed to/from the associated enterprise.(c) Amount paid/received or payable/receivable for the services provided/taken—<ul style="list-style-type: none">(i) as per books of account;(ii) as computed by the assessee having regard to the arm's length price.(d) Method used for determining the arm's length price [<i>See section 92C(1)</i>].	Yes/No
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Annexure to Form 3CEB – Part B

<p>14.</p>	<p><i>Particulars in respect of lending or borrowing of money:</i></p> <p>Has the assessee entered into any international transaction(s) in respect of lending or borrowing of money including any type of advance, payments, deferred payments, receivable, non-convertible preference shares/debentures or any other debt arising during the course of business as specified in <i>Explanation (i)(c)</i> below section 92B(2)?</p> <p>[If 'yes', provide the following details in respect of each associated enterprise and each loan/advance :]</p> <ul style="list-style-type: none">(a) Name and address of the associated enterprise with whom the international transaction has been entered into.(b) Nature of financing agreement.(c) Currency in which transaction has taken place.(d) Interest rate charged/paid in respect of each lending/borrowing.(e) Amount paid/received or payable/receivable in the transaction—<ul style="list-style-type: none">(i) as per books of account;(ii) as computed by the assessee having regard to the arm's length price.(f) Method used for determining the arm's length price [See section 92C(1)]	<p>Yes/No</p>
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Annexure to Form 3CEB – Part B

<p>15. <i>Particulars in respect of transactions in the nature of guarantee:</i> Has the assessee entered into any international transaction(s) in the nature of guarantee?</p> <p>If 'yes', provide the following details:</p> <ul style="list-style-type: none">(a) Name and address of the associated enterprise with whom the international transaction has been entered into.(b) Nature of guarantee agreement(c) Currency in which the guarantee transaction was undertaken(d) Compensation/fees charged/paid in respect of the transaction(e) Method used for determining the arm's length price [See section 92C(1)]	<p>Yes/No</p>
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Annexure to Form 3CEB – Part B

16. *Particulars in respect of international transactions of purchase or sale of marketable securities, issue and buyback of equity shares, optionally convertible/partially convertible/compulsorily convertible debentures/preference shares:*

Has the assessee entered into any international transaction(s) in respect of purchase or sale of marketable securities or issue of equity shares including transactions specified in *Explanation (i)(c)* below section 92B(2)?

If 'yes', provide the following details:

- (a) Name and address of the associated enterprise with whom the international transaction has been entered into.
- (b) Nature of transaction
- (c) Currency in which the transaction was undertaken
- (d) Consideration charged/paid in respect of the transaction.
- (e) Method used for determining the arm's length price [See section 92C(1)]

Yes/No

Annexure to Form 3CEB – Part B

17. *Particulars in respect of mutual agreement or arrangement:*

Has the assessee entered into any international transaction with an associated enterprise or enterprises by way of a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises?

If 'yes', provide the following details in respect of each agreement/arrangement:

- (a) Name and address of the associated enterprise with whom the international transaction has been entered into.
- (b) Description of such mutual agreement or arrangement.
- (c) Amount paid/received or payable/receivable in each such transaction—
 - (i) as per books of account;
 - (ii) as computed by the assessee having regard to the arm's length price.
- (d) Method used for determining the arm's length price [See section 92C(1)].

Yes/No

Annexure to Form 3CEB – Part B

18.	<p><i>Particulars in respect of international transactions arising out/being part of business restructuring or reorganizations:</i></p> <p>Has the assessee entered into any international transaction(s) arising out/being part of any business restructuring or reorganization entered into by it with the associated enterprise or enterprises as specified in <i>Explanation (i)(e)</i> below section 92B(2) and which has not been specifically referred to above?</p> <p>If 'yes', provide the following details:</p> <ul style="list-style-type: none">(a) Name and address of the associated enterprise with whom the international transaction has been entered into.(b) Nature of transaction(c) Agreement in relation to such business restructuring/reorganization.(d) Terms of business restructuring/reorganization.(e) Method used for determining the arm's length price [See section 92C(1)].	Yes/No
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Annexure to Form 3CEB – Part B

19.	<p><i>Particulars in respect of any other transaction including the transaction having a bearing on the profits, income, losses or assets of the assessee:</i></p> <p>Has the assessee entered into any other international transaction(s) including a transaction having a bearing on the profits, income, losses or asset, but not specifically referred to above, with associated enterprise?</p> <p>If 'yes', provide the following details in respect of each associated enterprise and each transaction :</p> <ul style="list-style-type: none">(a) Name and address of the associated enterprise with whom the international transaction has been entered into.(b) Description of the transaction.(c) Amount paid/received or payable/receivable in the transaction—<ul style="list-style-type: none">(i) as per books of account;(ii) as computed by the assessee having regard to the arm's length price.(d) Method used for determining the arm's length price [See section 92C(1)].	Yes/No
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Annexure to Form 3CEB – Part B

20.	<p><i>Particulars of deemed international transactions:</i></p> <p>Has the assessee entered into any transaction with a person other than an AE in pursuance of a prior agreement in relation to the relevant transaction between such other person and the associated enterprise?</p> <p>If 'yes', provide the following details in respect of each of such agreement:</p> <ul style="list-style-type: none">(a) Name and address of the person other than the associated enterprise with whom the deemed international transaction has been entered into.(b) Description of the transaction.(c) Amount paid/received or payable/receivable in the transaction—<ul style="list-style-type: none">(i) as per books of account;(ii) as computed by the assessee having regard to the arm's length price.(d) Method used for determining the arm's length price [<i>See section 92C(1)</i>].	Yes/No
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Annexure to Form 3CEB – Part C

<i>PART C (Specified domestic transaction)</i>	
21.	<p><i>List of associated enterprises with whom the assessee has entered into specified domestic transactions, with the following details:</i></p> <ul style="list-style-type: none"><i>(a) Name, address and [Permanent Account Number or Aadhaar Number] of the associated enterprise.</i><i>(b) Nature of the relationship with the associated enterprise.</i><i>(c) Brief description of the business carried on by the said associated enterprise.</i>

Annexure to Form 3CEB – Part C

2[22]	<i>Particulars in respect of transactions in the nature of transfer or acquisition of any goods or services:</i>	
A.	Has any undertaking or unit or enterprise or eligible business of the assessee [as referred to in section 80A(6), 80-IA(8) or section 10AA] transferred any goods or services to any other business carried on by the assessee?	Yes/No
	If 'yes', provide the following details in respect of each unit or enterprise or eligible business:	
	<ul style="list-style-type: none">(a) Name and details of business to which goods or services have been transferred(b) Description of goods or services transferred.(c) Amount received/receivable for transferring of such goods or services –<ul style="list-style-type: none">(i) as per the books of account;(ii) as computed by the assessee having regard to the arm's length price.(d) Method used for determining the arm's length price [See section 92C(1)]	
B.	Has any undertaking or unit or enterprise or eligible business of the assessee [as referred to in section 80A(6), 80-IA(8) or section 10AA] acquired any goods or services from another business of the assessee?	Yes/No
	If 'yes', provide the following details in respect of each unit or enterprise or eligible business:	
	<ul style="list-style-type: none">(a) Name and details of business from which goods or services have been acquired(b) Description of goods or services acquired(c) Amount paid/payable for acquiring of such goods or services—<ul style="list-style-type: none">(i) as per the books of account;(ii) as computed by the assessee having regard to the arm's length price(d) Method used for determining the arm's length price [See section 92C(1)].	

Annexure to Form 3CEB – Part C

² [23]	<p><i>Particulars in respect of specified domestic transaction in the nature of any business transacted:</i></p> <p>Has the assessee entered into any specified domestic transaction(s) with any associated enterprise which has resulted in more than ordinary profits to an eligible business to which section 80-IA(10) or section 10AA applies?</p>	Yes/No
	<p>If 'yes', provide the following details:</p> <ul style="list-style-type: none">(a) Name of the person with whom the specified domestic transaction has been entered into—(b) Description of the transaction including quantitative details, if any.(c) Total amount received/receivable or paid/payable in the transaction—<ul style="list-style-type: none">(i) as per books of account;(ii) as computed by the assessee having regard to the arm's length price.(d) Method used for determining the arm's length price [See section 92C(1)].	

Annexure to Form 3CEB – Part C

³[24. *Particulars in respect of specified domestic transaction in the nature of any business transacted between the persons referred to in sub-section (6) of section 115BAB:*

Has the assessee entered into any specified domestic transaction(s) with any persons referred to in sub-section (6) of section 115BAB which has resulted in more than ordinary profits expected to arise in such business?

If "yes", provide the following details:

- (a) Name of the person with whom the specified domestic transaction has been entered into*
- (b) Description of the transaction including quantitative details, if any.*
- (c) Total amount received/receivable or paid/payable in the transaction-*
 - (i) as per books of account;*
 - (ii) as computed by the assessee having regard to the arm's length price.*
- (d) Method used for determining the arm's length price [See section 92C(1)].*

Yes/No

_____]

Annexure to Form 3CEB – Part C

<p>25. <i>Particulars in respect of any other transactions:</i></p> <p>Has the assessee entered into any other specified domestic transaction(s) not specifically referred to above, with an associated enterprise?</p> <p>If 'yes', provide the following details in respect of each associated enterprise and each transaction :</p> <ul style="list-style-type: none">(a) Name of the associated enterprise with whom the specified domestic transaction has been entered into.(b) Description of the transaction.(c) Amount paid/received or payable/receivable in the transaction—<ul style="list-style-type: none">(i) as per books of account;(ii) as computed by the assessee having regard to the arm's length price.(d) Method used for determining the arm's length price [See section 92C(1)].	<p>Yes/No</p>
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Transfer Pricing Law

Section 92(1) of the Income tax act deals with Transfer Pricing which states:

*“Any income arising from **an international transaction** or **specified domestic transaction** shall be computed having regard to the **arms 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 arms length price.”*

Transfer Pricing Law

Section 92(2) of the Income tax act deals with Transfer Pricing which states:

“Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.”

Transfer Pricing Law

Section 92(2A) - Any *allowance* for an expenditure or *interest* or *allocation* of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

Transfer Pricing Law

As per Section 92(3) –

The provisions of this section shall not apply in a case where the computation of income after applying all previous provisions, **has the effect of reducing the income chargeable to tax or increasing the loss**, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.

Meaning of International Transaction

Section 92 B defines International Transaction as:

*“a transaction between two or more **associated enterprises**, either or both of whom are **non-residents**, in the nature of **purchase, sale or lease of tangible or intangible property**, or **provision of services**, or **lending or borrowing money**, or any other transaction having a **bearing on the profits, income, losses or assets** of such enterprises, and*

shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.”

Takeaways:

- Transaction to be between Associated Enterprises (AEs)
 - At least one of the AE should be NR
 - Transactions to have a bearing on profits, income, losses & Assets
-

International Transaction

Finance Act, 2012 added the Explanation to Sec 92 :

For the removal of doubts, it is hereby clarified that—

(i) the expression "international transaction" shall include—

*(a) the purchase, sale, transfer, lease or use of **tangible property** including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;*

*(b) the purchase, sale, transfer, lease or use of **intangible property**, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;*

International Transaction

(c) *capital financing*, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(d) *provision of services*, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of *business restructuring or re-organisation*, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

International Transaction

(ii) the expression "intangible property" shall include—

(a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;

(b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;

(c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;

(d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

(e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation;

(f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;

International Transaction

(g) contract related intangible assets, such as, favourable supplier, contracts, license agreements, franchise agreements, non-compete agreements;

(h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;

(i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;

(j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;

(k) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

(l) any other similar item that derives its value from its intellectual content rather than its physical attributes.

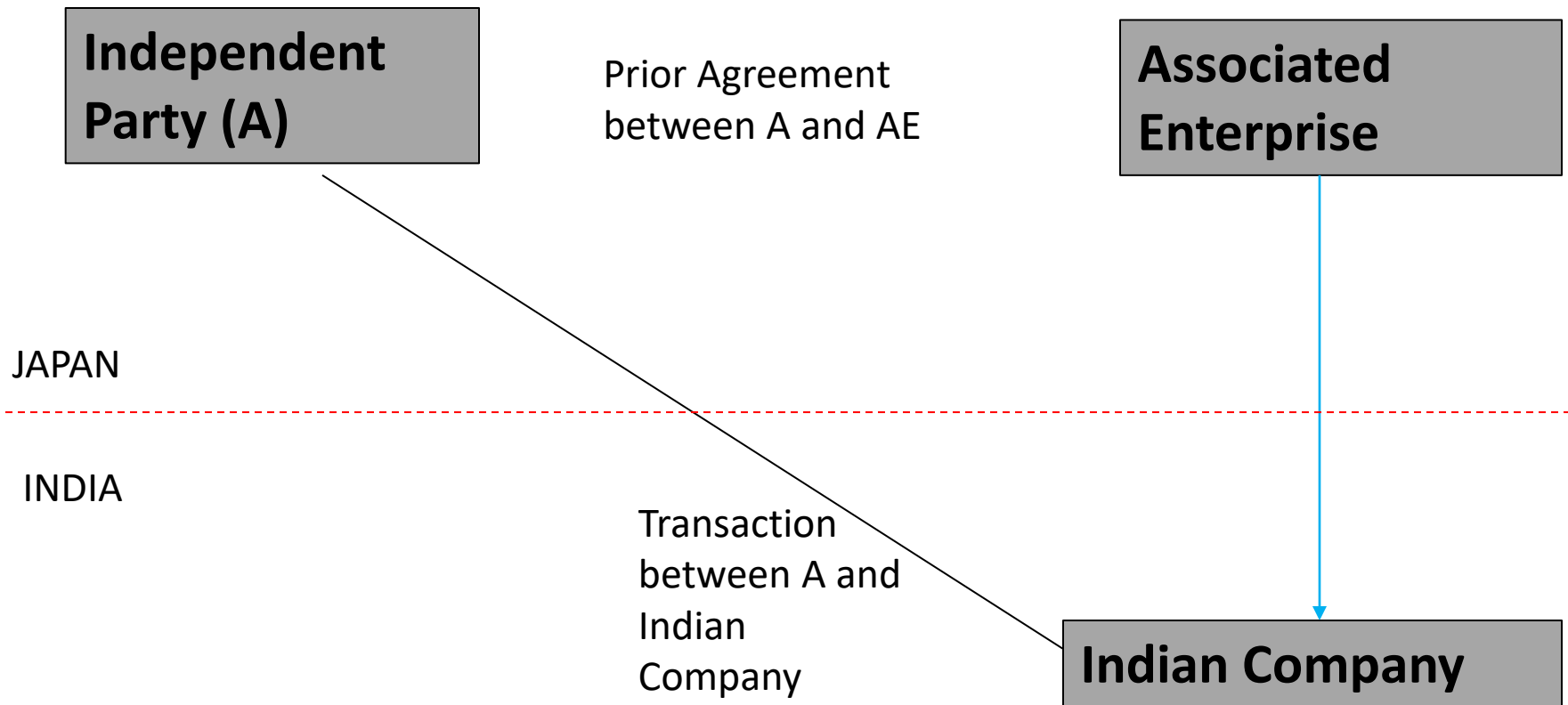
International Transaction

Section 92B (2) International Transaction as:

“a transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be a transaction entered into deemed to be a transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.”

What is an Associated enterprise?

International Transaction - Deemed



Associated Enterprise

Meaning of AE (Section 92A).

An enterprise

- (a) which participates, directly or indirectly, or through one or more intermediaries, in the **management or control or capital** of the other enterprise; or*
- (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.*

Contd...

Associated Enterprise

Meaning of AE (Section 92A).

For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,

*(a) one enterprise holds, directly or indirectly, shares carrying not less than **twenty-six per cent** of the voting power in the other enterprise; or*

*(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 enterprises; or*

*(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; or*

Contd...

Associated Enterprise

- (d) one enterprise guarantees not less than **ten per cent** of the total borrowings of the other enterprise; or*

- (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; or*

- (f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or*

Contd...

Associated Enterprise

- (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, trade-marks, licences, 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; or
- (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; or

Contd...

Associated Enterprise

- (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; or*
 - (j) 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; or*
 - (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; or*
 - (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 of persons or body of individuals; or*
 - (m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.*
-

Arm's Length Price

- **Meaning of Arm's length price (ALP) (Financial Definition)**

The price at which a **willing** buyer and a **willing** unrelated seller would freely agree to **transact** or a **trade** between related parties that is conducted as **if they were unrelated**, so that there is no conflict of interest in the transaction.

In our example ALP was Rs. 75 being the price at which S Ltd. could have procured the pen locally

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TRANSFER PRICING METHODS



How to arrive at the ALP

Choice to be made from the following methods (Section 92C):

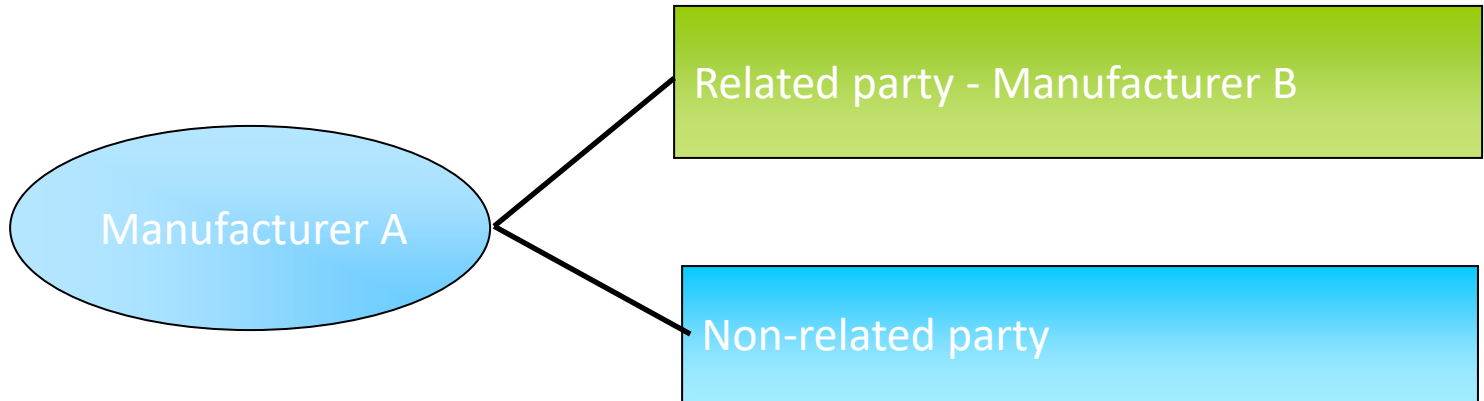
- (a) comparable uncontrolled price method (CUP Method);
 - (b) resale price method (RPM);
 - (c) cost plus method (CPM);
 - (d) profit split method (PSM);
 - (e) transactional net margin method (TNMM);
 - (f) such other method as may be prescribed by the Board.
-

CUP Method

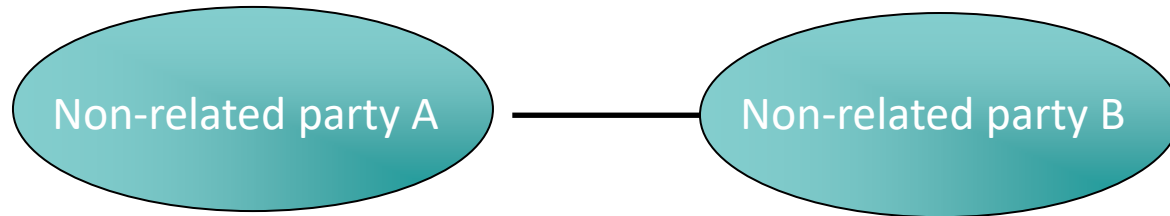
- Price charged for property or services transferred in a controlled transaction is compared to price charged in a comparable uncontrolled transaction.
 - Price for identical or nearly identical property traded between two independent parties under the same or similar circumstances.
 - Sources of CUP:
 - Internal (Inter Company Data)
 - External (Price Lists, Website, Trade Directories etc.)
-

Comparable Uncontrolled Price Method

➔ Internal CUP

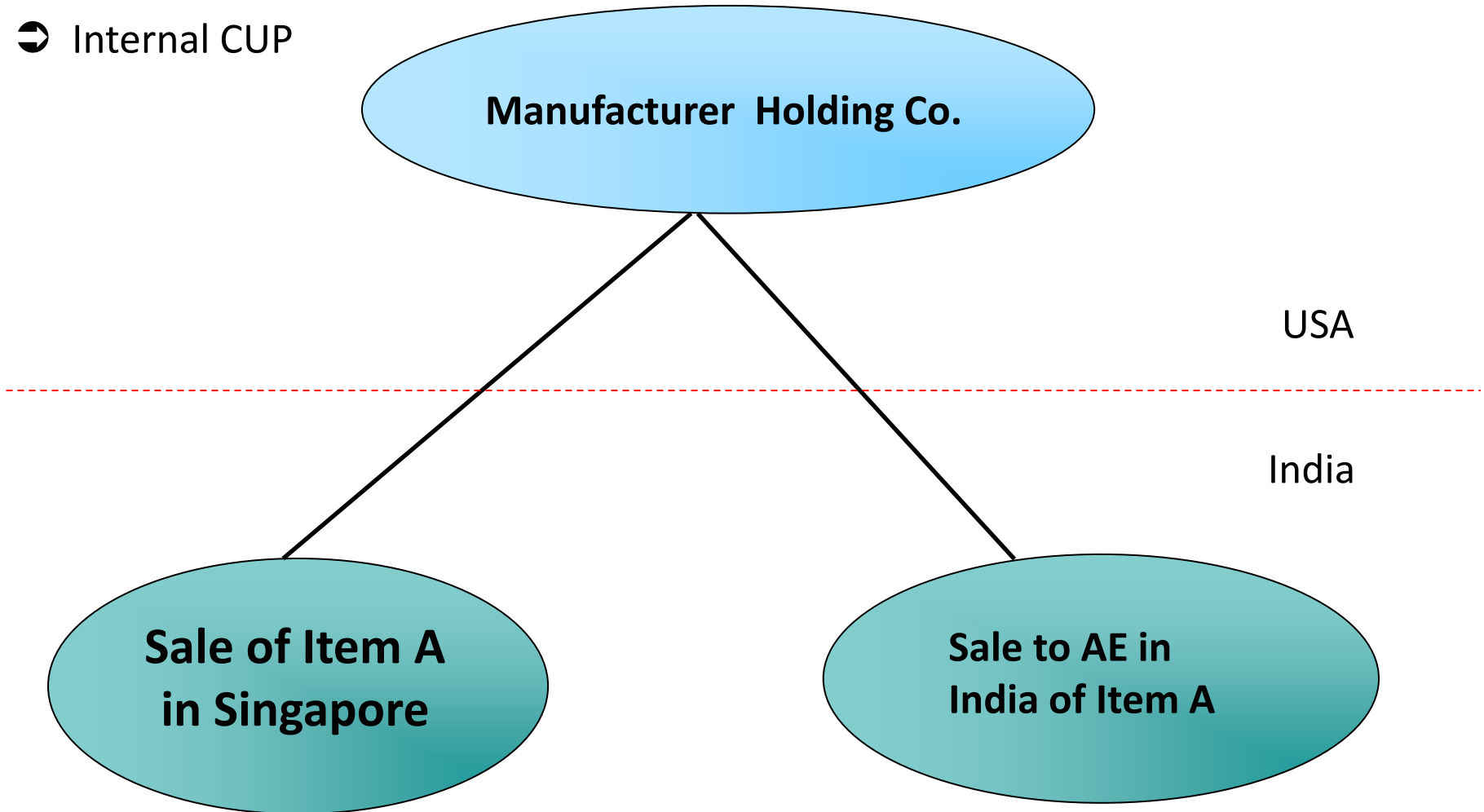


➔ External CUP



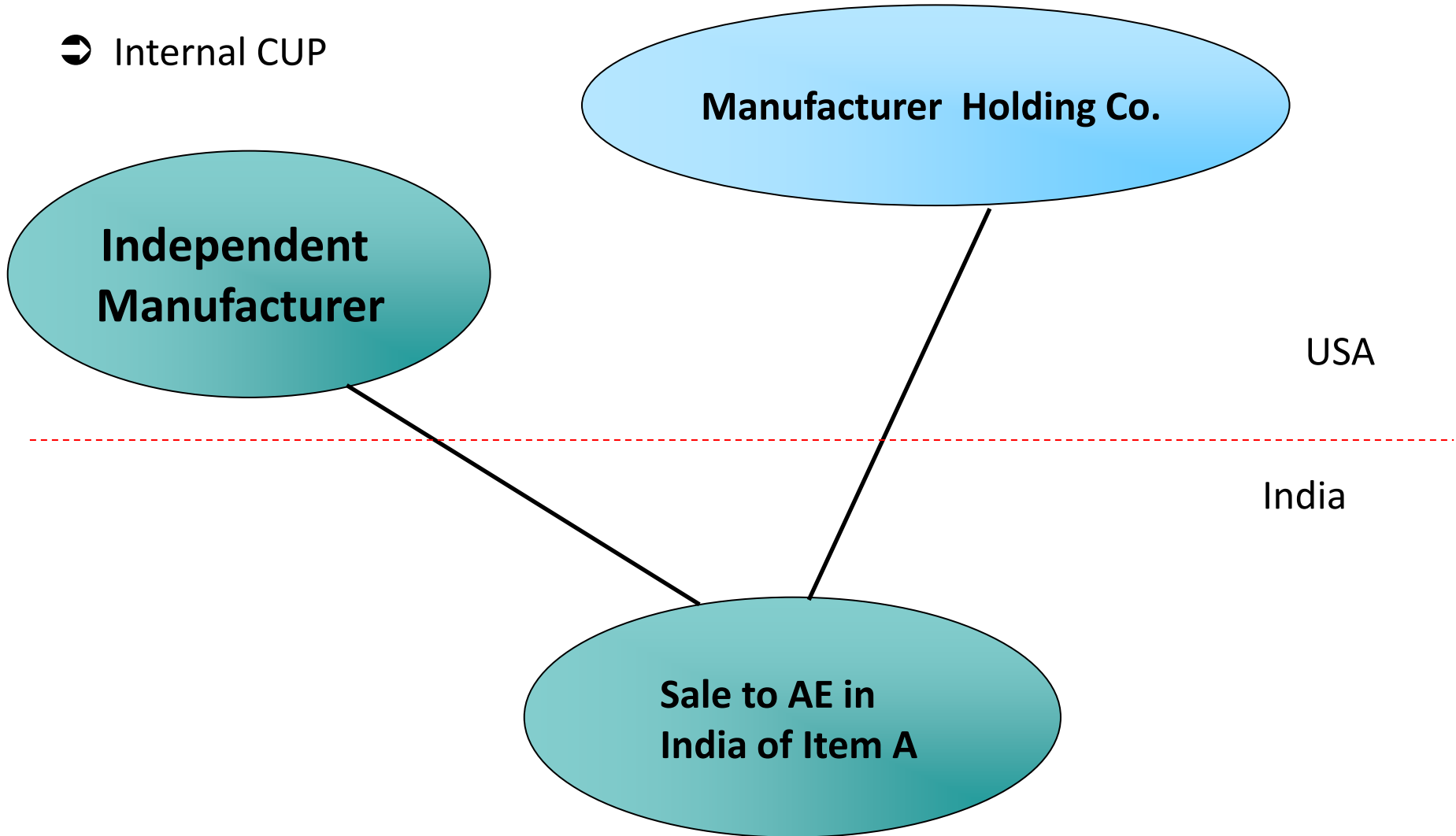
Comparable Uncontrolled Price Method

➔ Internal CUP



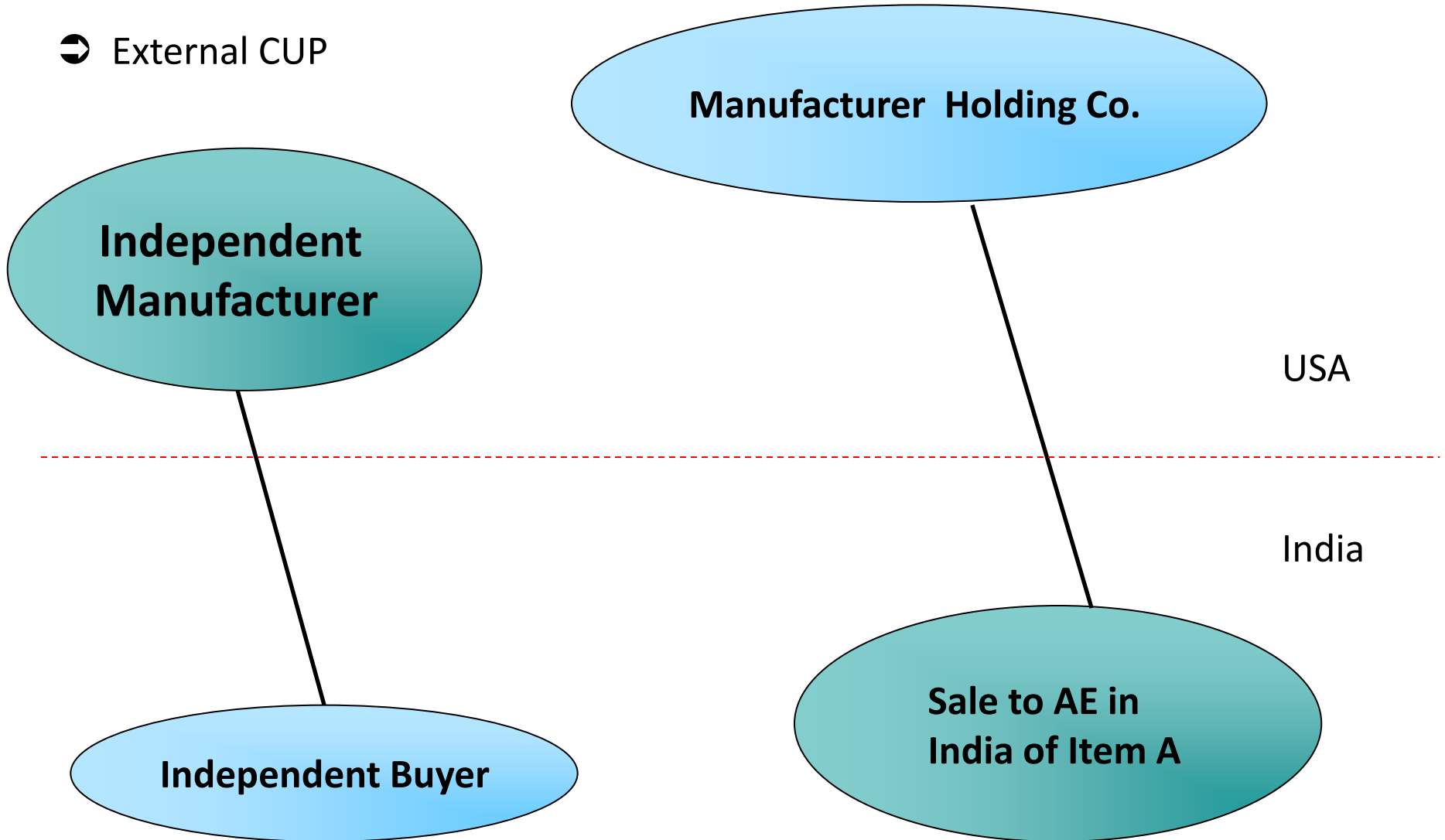
Comparable Uncontrolled Price Method

➡ Internal CUP



Comparable Uncontrolled Price Method

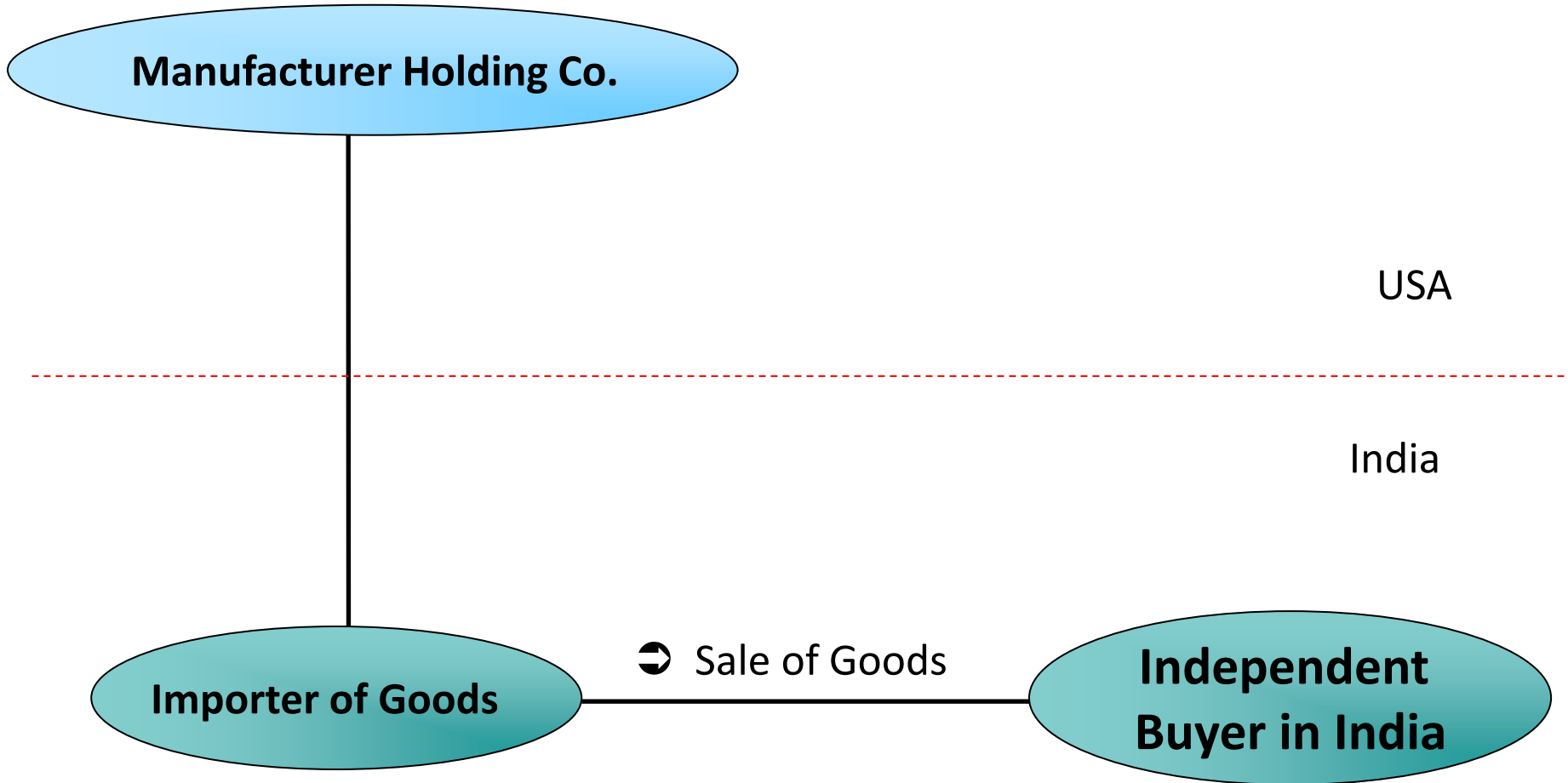
➡ External CUP



RPM

- Method begins with the price at which a product purchased from an associated enterprise is resold to an independent enterprise. This price is reduced by appropriate gross margin or resale price margin. This represents the amount out of which a reseller would cover its other costs and selling expenses. The residuary figure is the arm's length price.
 - The resale margin may be determined by reference to margin that may be earned by a reseller in comparable uncontrolled transactions or margin earned by an independent enterprise in comparable transactions.
-

Resale Pricing Method



RPM

- Sale Price to Independent Party XXXX
- Less Distribution Cost XXXX
- Less Normal Marketing Expenses XXXX
- Less Normal Distributor's Margin XXXX
- Purchase Price (ALP) XXXX

Compare

- Actual Purchase Price (AE) XXXX
-

CPM

- This method begins with the costs incurred by the supplier of property or services in a controlled transaction.
 - An appropriate markup is added to the cost in the light of functions performed and market conditions.
 - The price after adding the cost plus mark up to these costs is arm's length price of the controlled transaction.
-

CPM

- Operating Income (OI) XXXX
- Less Total Cost (TC) XXXX
- Profit Margin (PM) XXXX
- Ratio (PM/ TC) X%

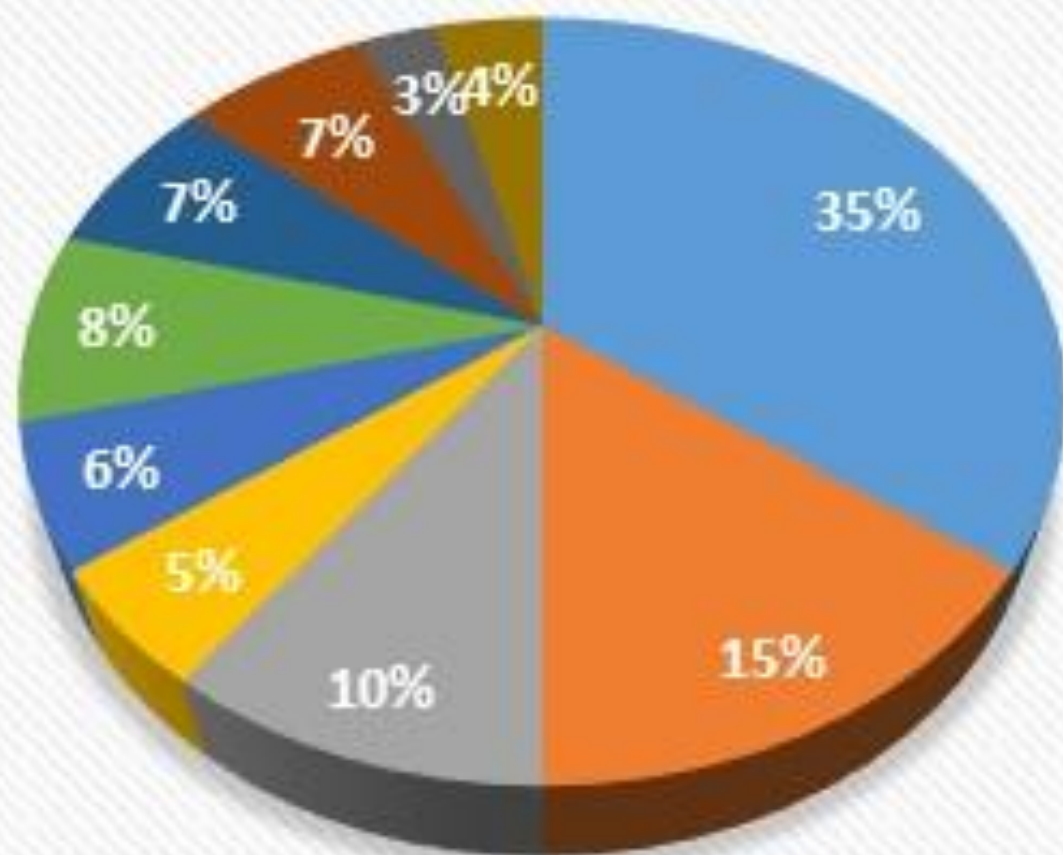
Compare

- Ratio of Comparables X% - XX%
-

PSM

- ALP is determined through a division of the consolidated profits of the AEs. Commonly applied methods are Contribution Analysis and Residual Analysis.
 - The method is applicable in cases involving multiple transactions which are so interrelated that they cannot be evaluated separately.
-

Profit Split Method



USA HO

India

Singapore

Germany

Italy

Middle East

China

UK

Brazil

Africa

TNMM

- Net profit margin realized by taxpayer from a controlled transaction is determined by reference to the net margin earned in comparable uncontrolled transactions.
 - Net margin is calculated with reference to appropriate base say costs, sales assets etc.
 - Comparability of transactions is judged with reference to specific characteristics of the property or services, functions performed, contractual terms or conditions prevailing in the market.
-

TNMM

- Sales and Other Income XXXX
 - Less Non-Operating Income XXXX
 - Operating Income (OI) XXXX
 - Total Cost (TC) XXXX
 - Less Non-operating cost XXXX
 - Operating Cost (OC) XXXX
 - Operating Profit (OP) XXXX
 - Ratio (OP/ OC) or (OP/OI) X%
- Compare
- Ratio of Comparables X% - XX%
-

Selection of most appropriate method

Method selected taking into account-

- Nature and class of the international transaction
 - Class or classes of associated enterprises
 - The availability, coverage and reliability of data
 - The degree of comparability existing between the international transaction and uncontrolled transaction
 - Extent to which reliable adjustments can be made
 - The nature, extent and reliability of assumptions required to be made
-

Few Examples - MAM

- Export of Goods from Indian Subsidiary to AE
 - Bank Guarantee given by Foreign Company to its AE in India
 - Import of Computers and sale in India by AE
 - Purchase of API and Sale of medicine in India
 - BPO Service Given to AE outside India
 - KPO Service given to AE outside India
 - R & D services undertaken in India on behalf of NR AE
 - JV in India having Indian and Foreign Partners
 - ECB taken from AE company
 - Loan given to AE outside India
-

PLI

PLI stands for Profit Level Indicator

- $PLI = GP/Sales$
 - $PLI = OP/OC$
 - $PLI = OP/OI$
 - $PLI = Profit / TC$
-

Statutory Compliance

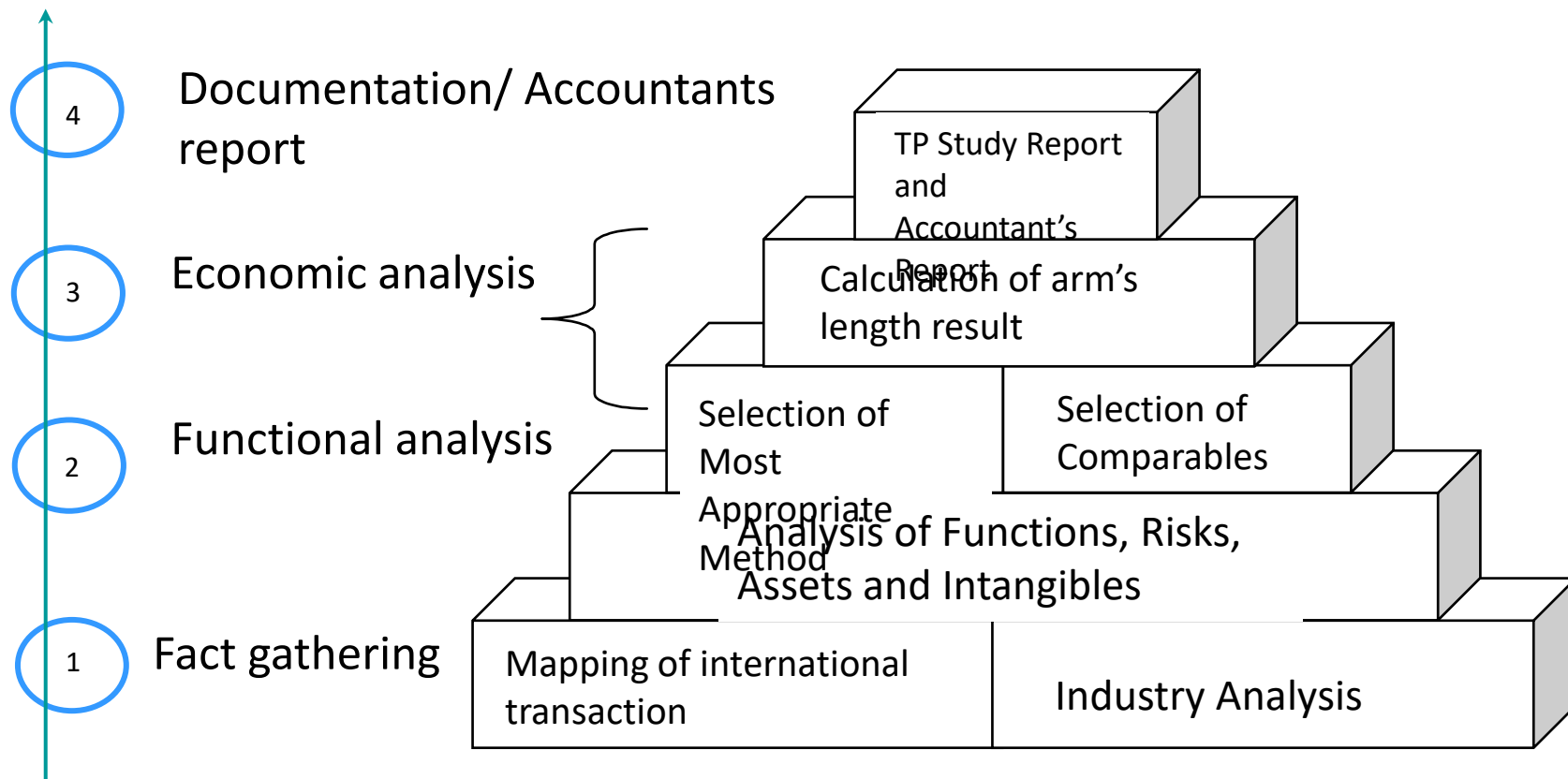
- SDT TP provision are applicable from AY 2013-14.
 - Assesses must compute an arm's length price as per the methods prescribed under section 92C.
 - Burden of proof is on the taxpayer to establish the arm's length price and to maintain related documents.
 - Must obtain a report under Form 3CEB from a Chartered Accountant and file it online on or before one month from the due date of filing of return of income i.e. 31st October.
-

TP Penalties-Section 271

Default	Penalty
Post-inquiry adjustment (deemed concealment of income)	100-300% of tax on the adjusted amount
Failure to maintain documents	2% of the transaction value
Failure to furnish documents	2% of the transaction value
Failure to furnish accountants report	Rs 100,000

Documentation – Rule 10D

The approach for TP documentation may be summarised in the following phases of work:



Documentation-Rule 10D

Entity related



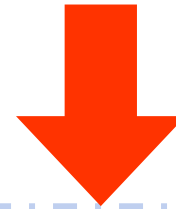
- Profile of industry
- Profile of group
- Profile of Indian entity
- Profile of associated enterprises

Price related



- Transaction terms
- Functional analysis (functions, assets and risks)
- Economic analysis (method selection, comparable benchmarking)
- Forecasts, budgets, estimates

Transaction related



- Agreements
- Invoices
- Pricing related correspondence (letters, emails etc)

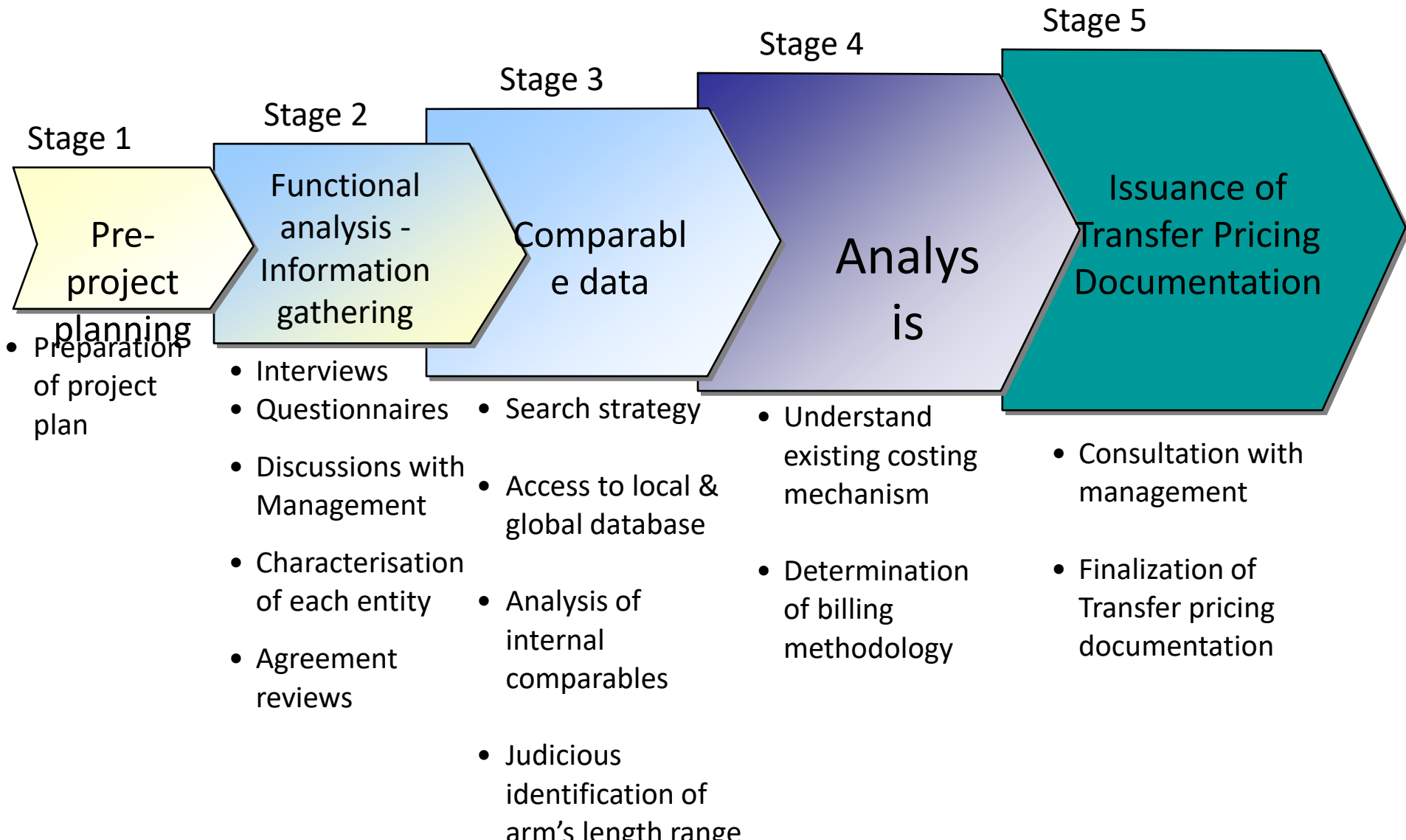
- Documentation to be retained for 9 years from financial year
- Documentation is not required to be maintained if the **aggregate value** of all international transactions does not exceed **one crore rupees**

INDEX

OUR ROLE



Compliance – A step by step approach



Transfer Pricing Planning

- Assistance in framing the transfer pricing policy
- Suggesting remuneration model
- Computing arm's length margins

Transfer Pricing Documentation

- Statute to file Transfer Pricing report and to maintain TP Documentation substantiating the above report when international transactions exceed 1 crore
 - Documentation includes:
 - Executive summary
 - Group overview
 - Details of international transactions
 - Functions, Assets and Risk analysis
 - Economic Analysis
-

TP Study Layout

[Name of the company]

Transfer Pricing Study

Financial Year _____

Assessment Year _____

Privileged and Confidential
Draft Report Dated _____

Chartered Accountants

TP Study Layout

CONTENTS		
S. No.	Particulars	Page No.
1	Executive Summary 1.1 Introduction & Scope 1.2 Brief on INC 1.3 Brief on AE Group 1.4 Use of Comparables 1.5 Economic Analysis	
2	Overview 2.1 General 2.2 Profile of AE Group 2.3 Profile of the company 2.4 Relationship structure between INC & AE	

TP Study Layout

S. No.	Particulars	Page No.
3	Industry Overview	
4	Applicability of Transfer Pricing Regulations	
5	Functional Analysis 5.1 Objective 5.2 Analysis of Transactions 5.3 Risk Analysis	
6	Economic Analysis 6.1 Selection of most appropriate method 6.2 Search process for comparables 6.3 Conclusions	

TP Study Layout

List of Appendices

Appendix A : *Scope and Limitation*

Appendix B : *Indian Transfer Pricing Regulations*

Appendix C : *Accept Reject Matrix*

Appendix D : *Results of Selected Comparable Companies*

Appendix E : *Brief about the selected companies*

Appendix F : *Financial Information of the company to compute its margins*

Filters

- Quantitative Filters

- Data availability
- Net Sales \geq 1 Cr
- Net worth $>$ 0
- Service Income is \geq 75%
- Salary Expenses $>$ 50%
- R & D Expenses $<$ 25%
- Marketing Expenses $<$ 25%

- Qualitative Filters

- Non- Comparable Product/Function
 - Related Party Transactions $<$ 10%
-

Data

- Multiple Year Data or Single Year Data

Making adjustments to the ALP

- Working capital adjustment
 - Capacity Utilization adjustment
 - R&D Adjustment
 - Risk Adjustment
-

A magnifying glass with a silver frame and handle is positioned over a document. The document contains dense, small text, likely legal or financial in nature. The magnifying glass is focused on a specific section of the text, which is partially legible and includes the words "LIMITATION OF LIABILITY FOR THE ENGLISH AND ALL OTHER WISE".

TP of Corporate Guarantee
TP of Inter Group Finance

Corporate Guarantee

- Safe Harbour Rule (Section 92CB r.w. Rule 10TD)
The commission or fee declared in relation to the eligible international transaction is at the **rate not less than one per cent per annum** on the amount guaranteed.
- Form 3CEFA is to be submitted to avail the benefits of Safe Harbour Rules



Safe Harbour
Rules

Intra-Group Loans

- Loan Provided by Indian AE:
It can be benchmarked with the SBI FD Rate of the date of transaction using the External CUP Method

The transaction will be deemed to be on Arm's Length if the rate of interest charged by the Indian AE is more than or equal to the SBI FD Rate.

Intra-Group Loans-Safe Harbour Rule

CRISIL Credit Rating	Denominated I INR	Denominated in Foreign Currency
BASE RATE	1 Year SBI Lending rate on 1st April of PY PLUS	6 Month LIBOR on 30th Sept of PY PLUS
AAA to A	175 Basis Points (1.75%)	150 Basis Points (1.50%)
BBB-, BBB or BBB+	325 Basis Points (3.25%)	300 Basis Points (3.00%)
BB to B	475 Basis Points (4.75%)	450 Basis Points (4.50%)
C to D	625 Basis Points (6.25%)	600 Basis Points (6.00%)
Not Available	425 Basis Points (4.25%)	400 Basis Points (4.00%)

(Section 92CB r.w. Rule 10TD)

THANK YOU

For any query Feel free to contact:

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