

TRANSFER PRICING – Introduction, Issues & Recent Developments

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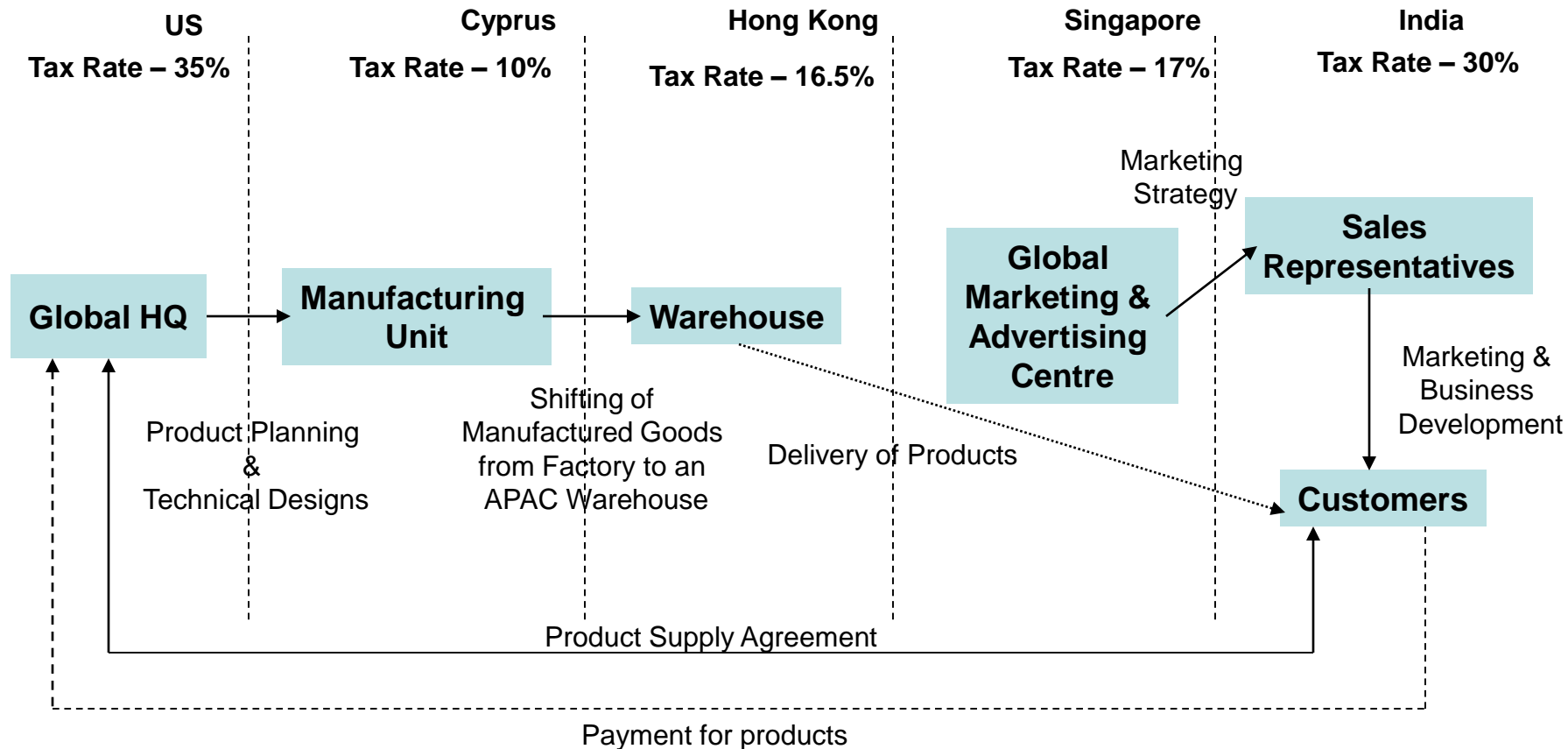
President, Tax Research Foundation

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UNDERSTANDING TRANSFER PRICING



A Typical Global Supply Chain



TOTAL REVENUE = USD 500,000

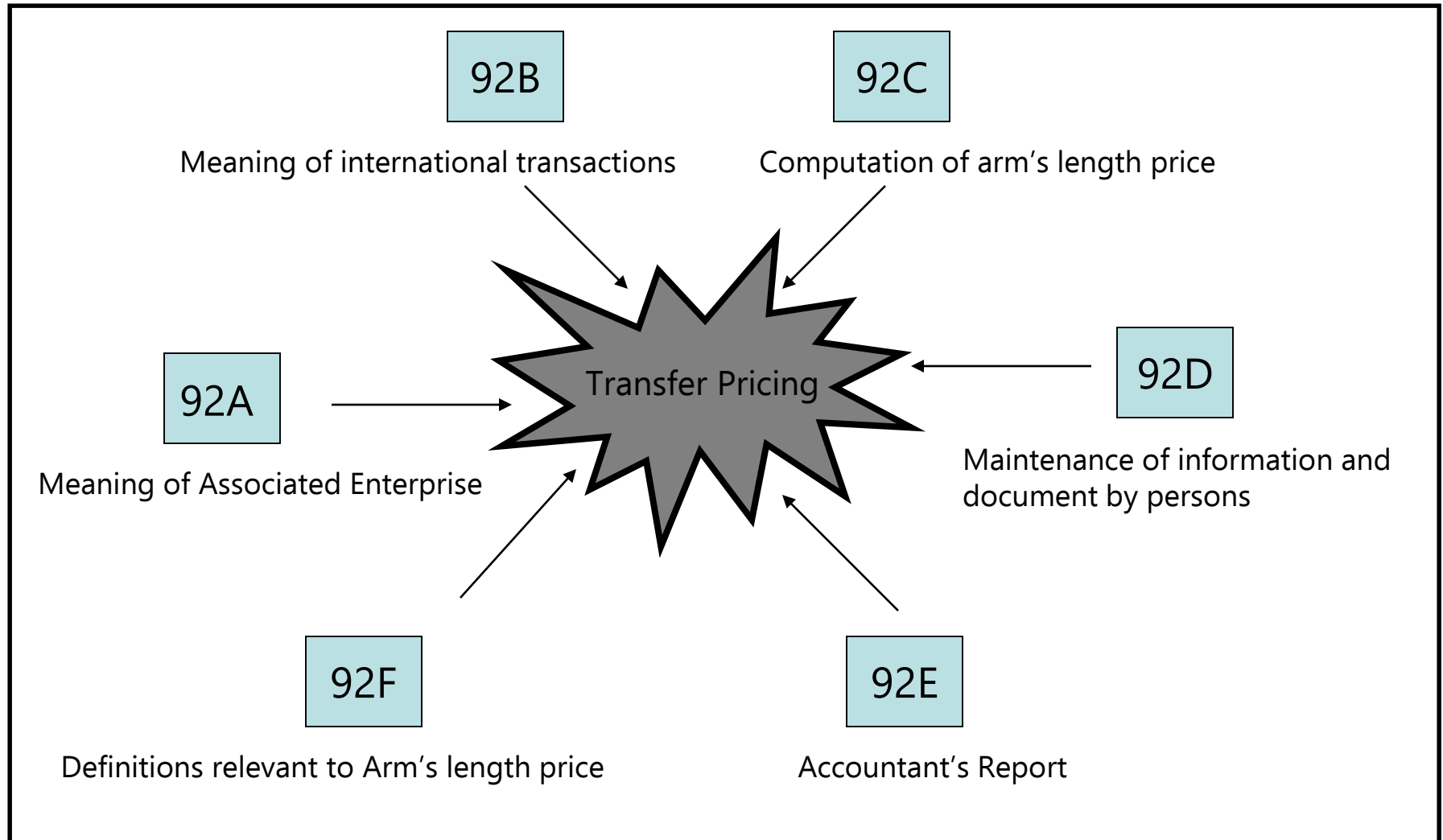
TOTAL GLOBAL COST = USD 400,000

TOTAL PROFIT = USD 100,000 - How to tax it?????



Overview of Indian Transfer Pricing Regulations

Sec 92 – Special Provisions



Transfer Pricing Definition

“Prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises” [OECD]

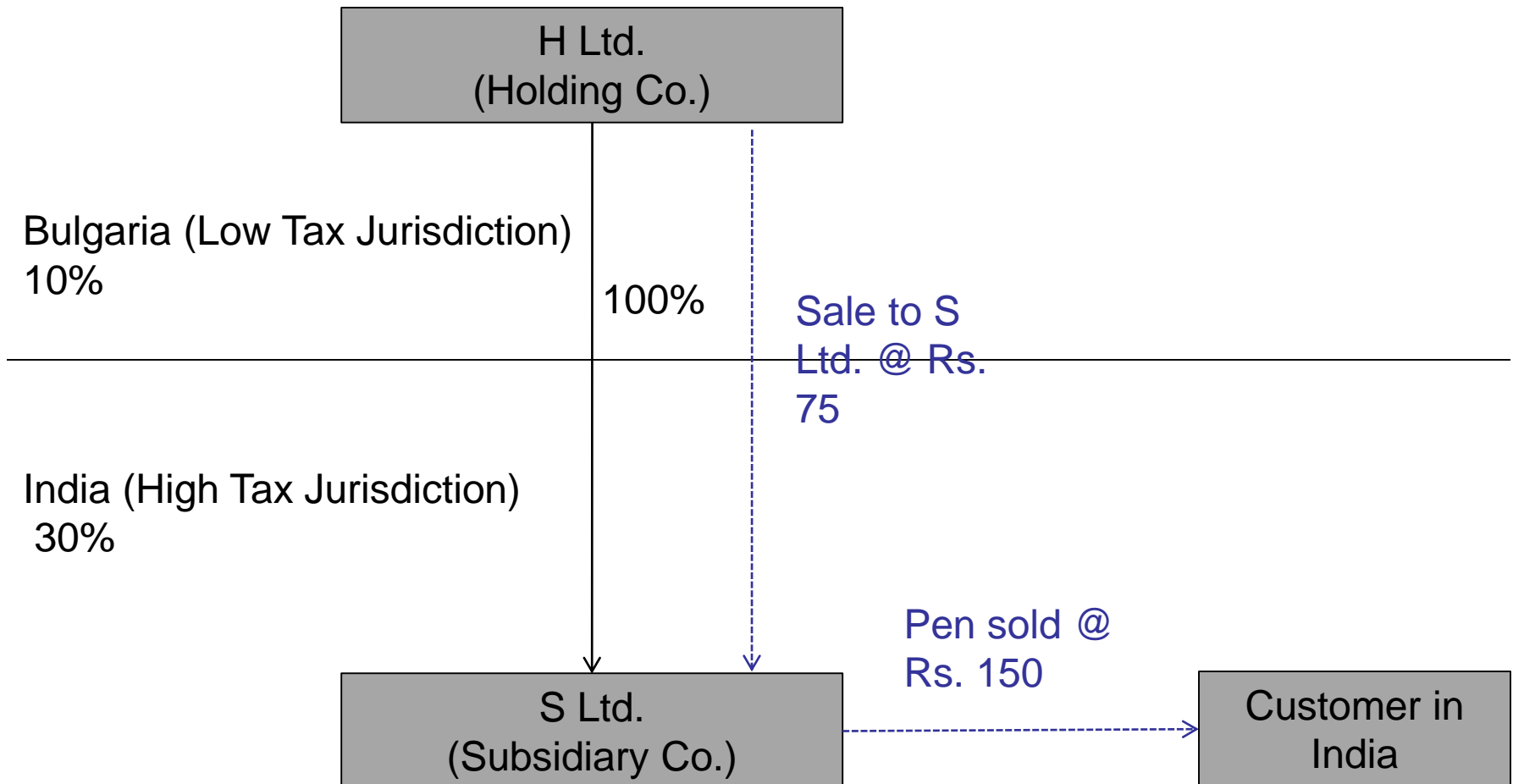
Relates to the system of pricing the transfer of goods, services and intangibles between associated enterprises of a multinational enterprise.

Case for Transfer Pricing – Example

Let us consider the following facts:

- H Ltd. manufactures pens in a low tax country say Bulgaria where tax rate is 10%.
 - It forms a subsidiary in India (Tax rate 30%) - S Ltd.
 - S Ltd. Purchases pens from H Ltd. and sells them in Indian Market.
 - Cost of 1 pen to H = Rs. 50
 - S Ltd. sells the pens in the Indian market for Rs. 150
 - Such pens can locally be acquired @ Rs. 75
-

Case I – Purchase @ 75 from H Ltd.



Implication of Case I

H Ltd.

Profit = 75 less 50 = Rs. 25

*Tax payable = 25 * 10% = Rs. 2.50*

S Ltd.

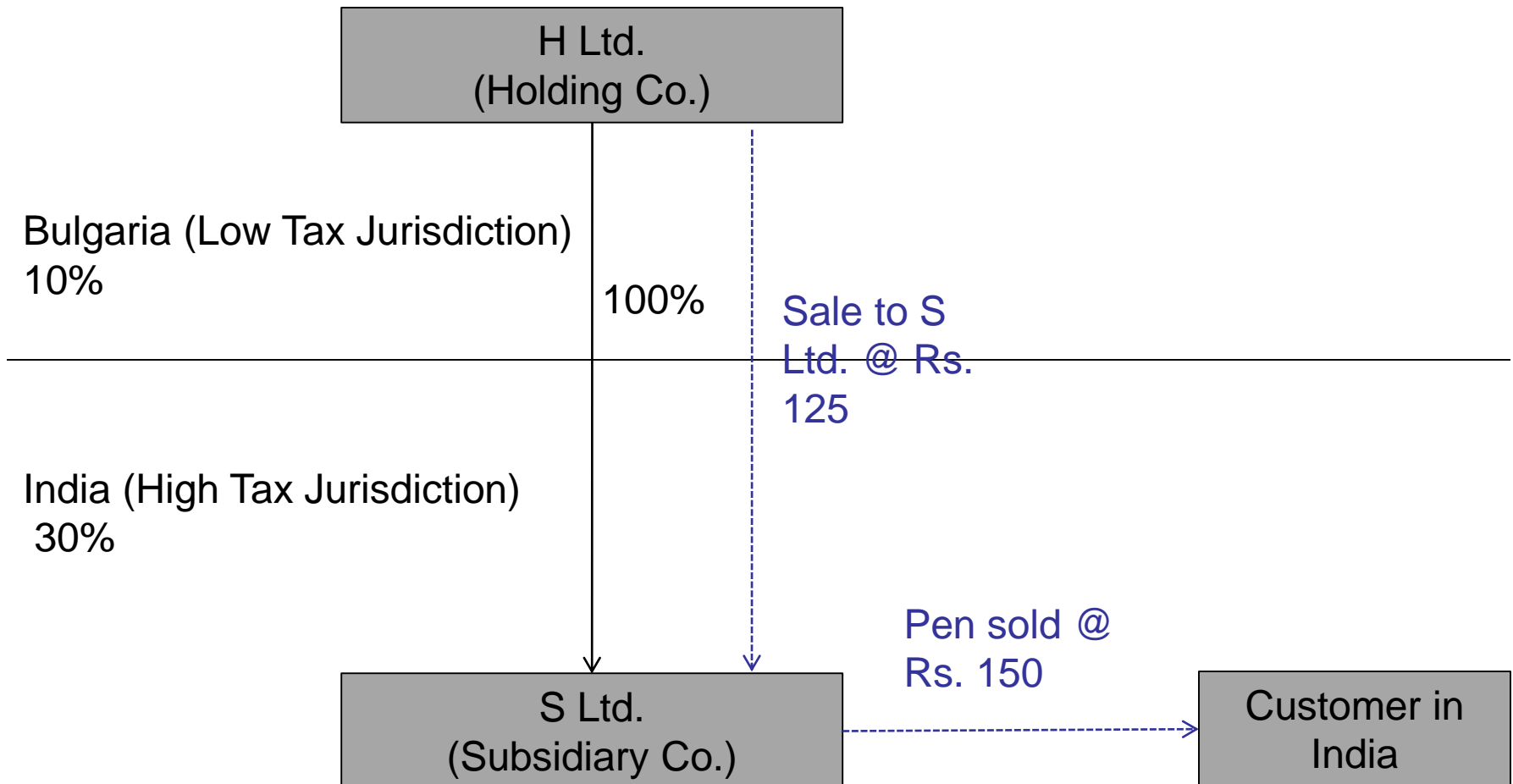
Profit of S = 150 less 75 = Rs. 75

*Tax payable = 75 * 30% = Rs. 22.50*

Total Profit = Rs. 100

Total Tax payable = Rs. 25

Case II – Purchase @ 125 from H Ltd.



Implication of Case II

H Ltd.

Profit = 125 less 50 = Rs. 75

*Tax payable = 75 * 10% = Rs. 7.50*

S Ltd.

Profit of S = 150 less 125 = Rs. 25

*Tax payable = 25 * 30% = Rs. 7.50*

Total Profit = Rs. 100

Total Tax payable = 7.5 + 7.5 = Rs. 15

Analysis of the Example

- Total profits of the group remain the same
- Tax Payable reduced = 25 less 15 = Rs. 10
- Profits Shifted from India to Bulgaria
- Loss of revenue to Indian Revenue Department

In order to curb such shifting of profits from high tax countries to low tax countries Transfer Pricing Legislation was introduced by Finance act 2001

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TRANSFER PRICING LAW



Rationale

- Providing a statutory framework for computation of reasonable, fair & equitable profits and tax.
 - Protect the right of a country to collect its due share of tax in respect of transactions between related entities.
 - Preventing MNEs from shifting profits to low tax jurisdictions by manipulating prices of intra-group transactions
-

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 schema-tics, 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, licence 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.

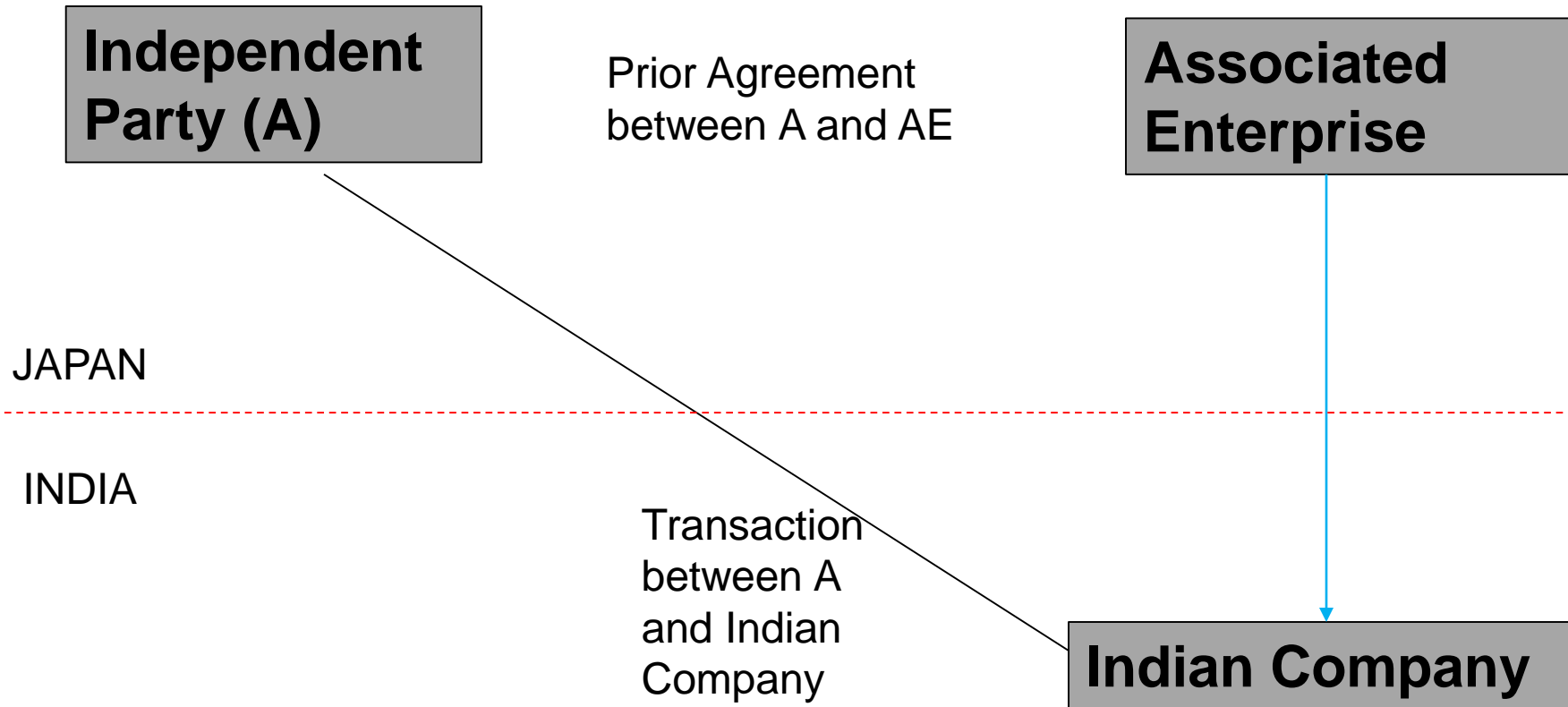
International Transaction

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.*
-

Domestic Transfer Pricing

Section 92BA defines Specified Domestic Transaction (SDT) as under:

“specified domestic transaction” in case of an assessee means any of the following transactions, not being an international transaction, namely :—

- ~~any expenditure in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(b);~~
 - any transaction referred to in section 80A;
 - any transfer of goods or services referred to in section 80-IA(8);
 - any business transacted between the assessee and other person as referred to in section 80-IA(10);
 - any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of section 80-IA(8) or (10) are applicable; or
 - any other transaction as may be prescribed,
-

Domestic Transfer Pricing

Threshold Limit:

All the transactions covered in last slide will be regarded as SDT only if the aggregate value of all transactions exceeds threshold of ` 20 crore.

Once the threshold limit is crossed, the taxpayer will be required to comply with TP requirements with reference to all the transactions.

Question: Whether Indirect Taxes like Service Tax or VAT will be included in the limit specified above?

Deductions covered

- 80-IA – Infrastructure development, etc
 - 80-IAB – SEZ Development
 - 80-IB – Industrial undertakings
 - 80-IC - Industrial undertakings in specified area
 - 80-ID – Hotels and Convention Centres
 - 80-IE – Undertaking in North-Eastern states
 - 80JJA- Collection and processing of bio-degradable waste
 - 80JJAA – Employment to new workmen
 - 80LA – Offshore Banking unit and International Financial Service Centre
 - 80-P – Cooperative societies
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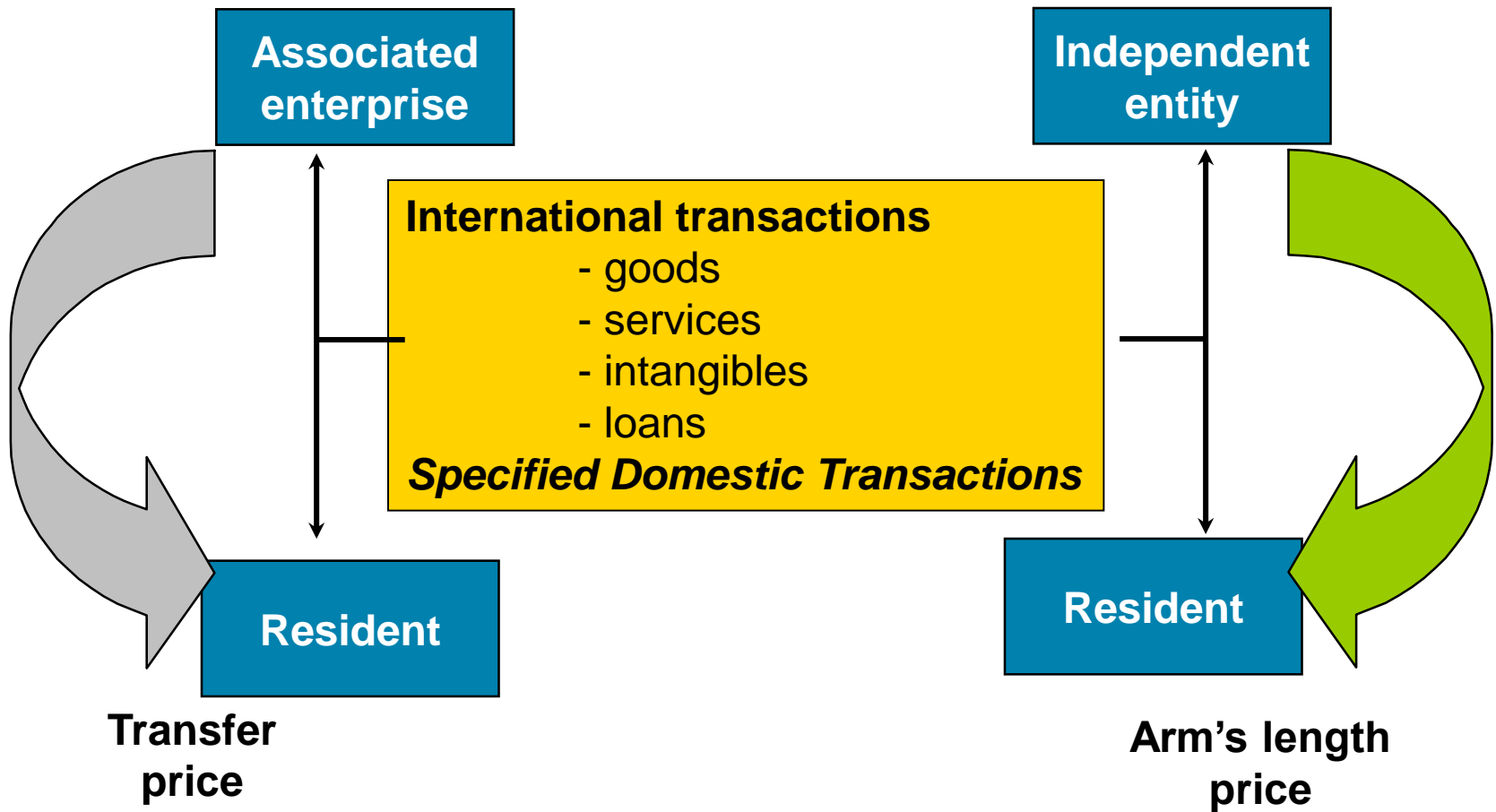
Arm's Length Price

- **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

Concept



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TRANSFER PRICING METHODS



How to arrive at the ALP

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

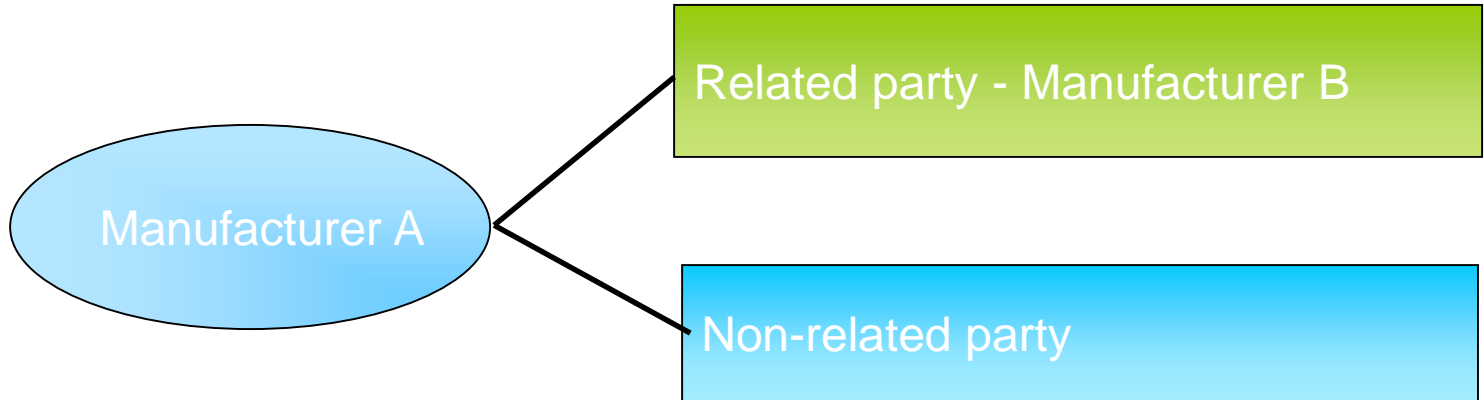
- (a) comparable uncontrolled price method (CUP Method);
 - (b) resale price method (RPM);
 - (c) cost plus method (CPM);
 - (d) profit split method (PSM);
 - (e) transactional net margin method (TNMM);
 - (f) such other method as may be prescribed by the Board.
-

CUP Method

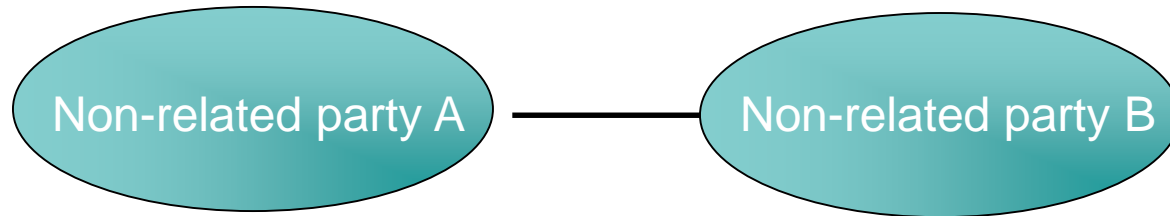
- Price charged for property or services transferred in a controlled transaction is compared to price charged in a comparable uncontrolled transaction.
 - Price for identical or nearly identical property traded between two independent parties under the same or similar circumstances.
 - Sources of CUP: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

Comparable Uncontrolled Price Method

➡ Internal CUP

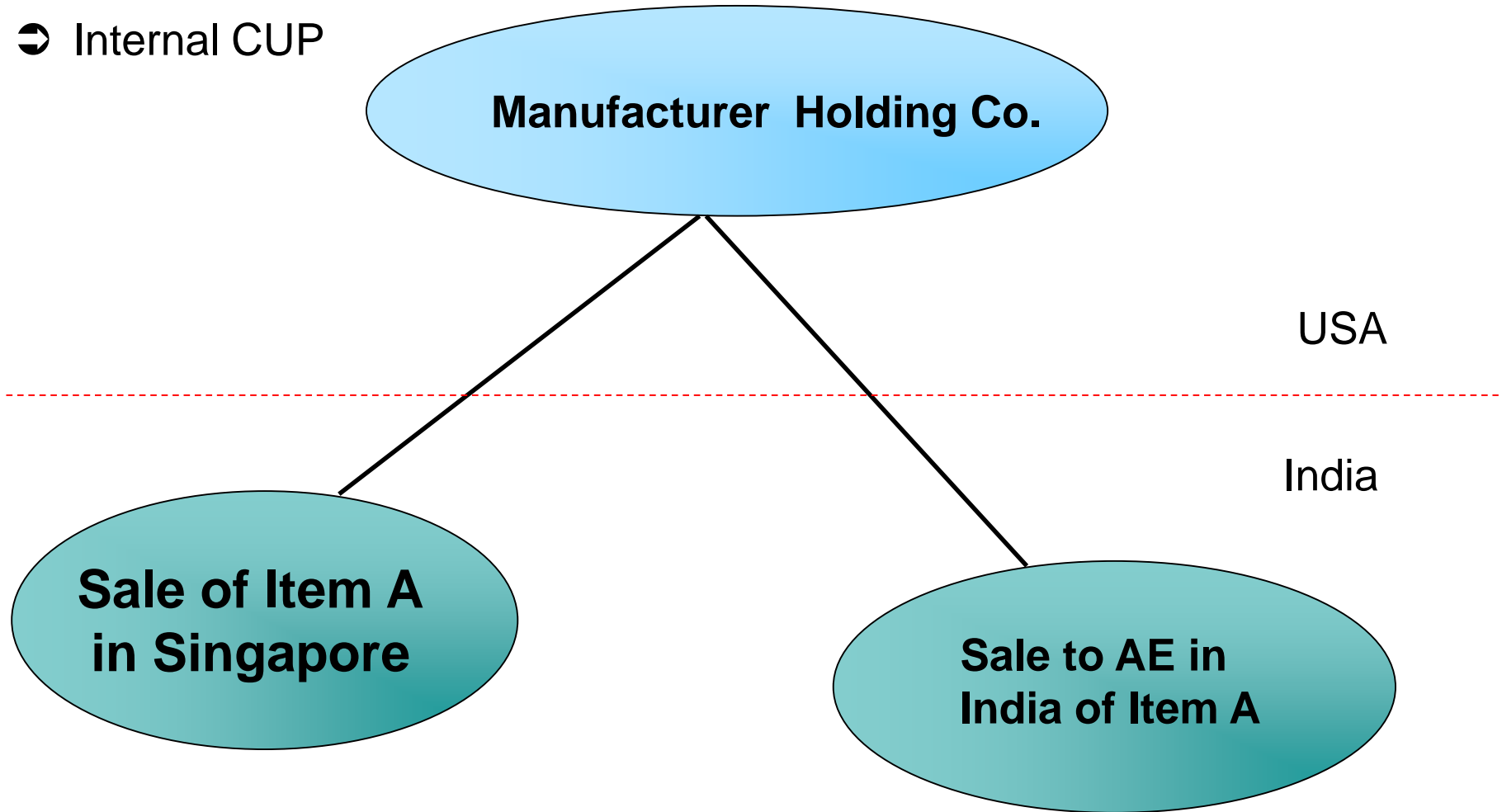


➡ External CUP



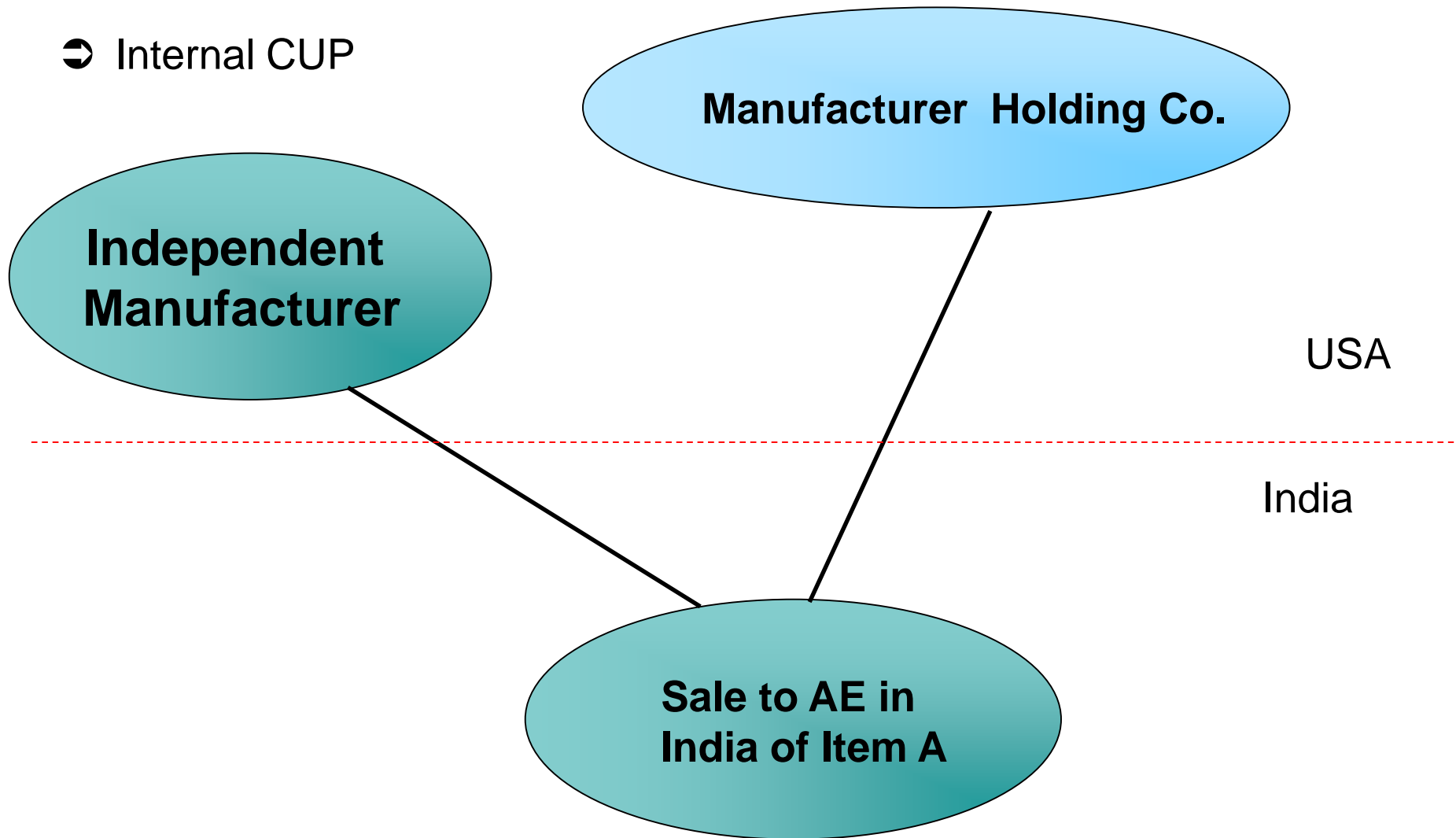
Comparable Uncontrolled Price Method

➡ Internal CUP



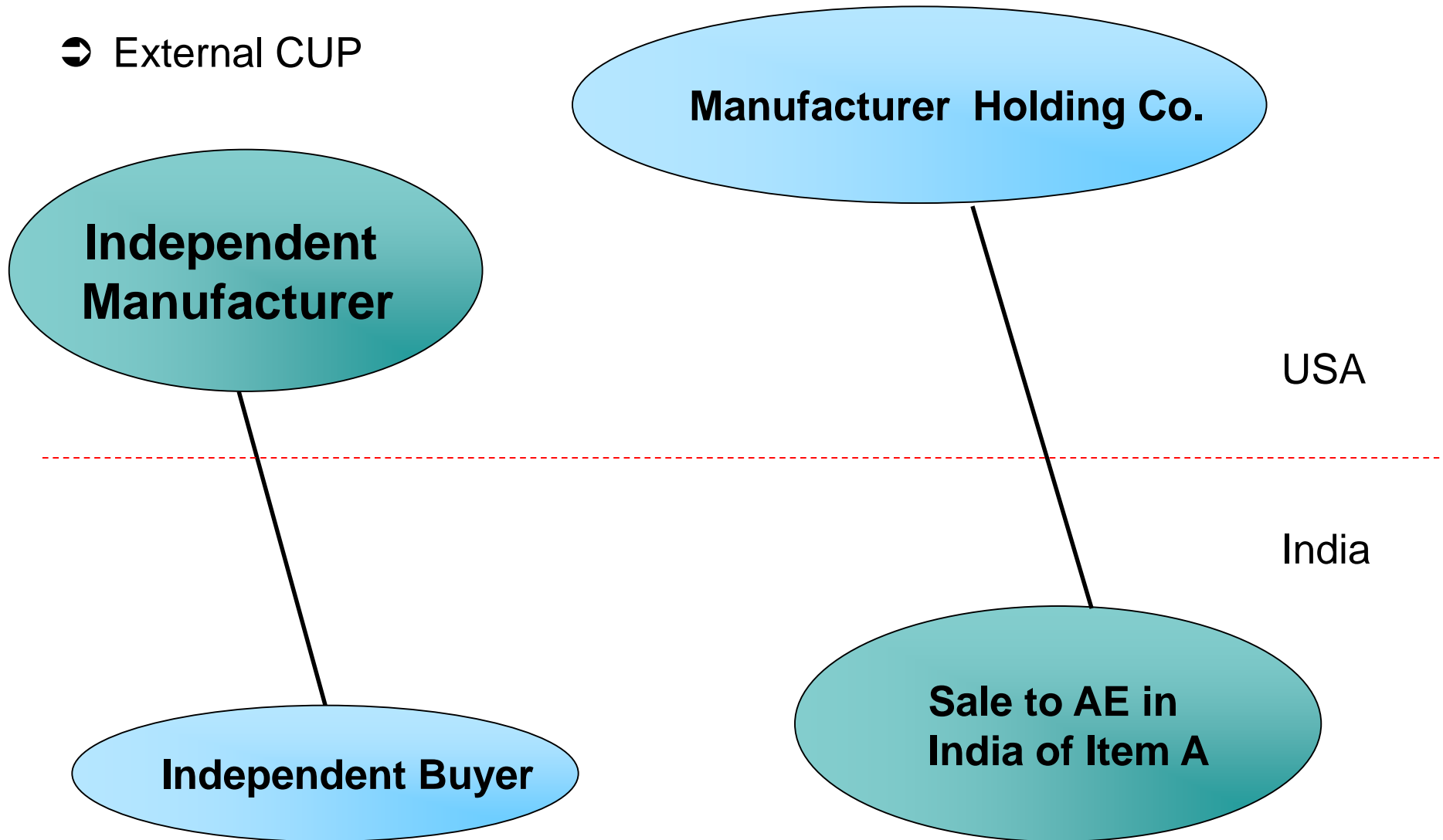
Comparable Uncontrolled Price Method

➡ Internal CUP



Comparable Uncontrolled Price Method

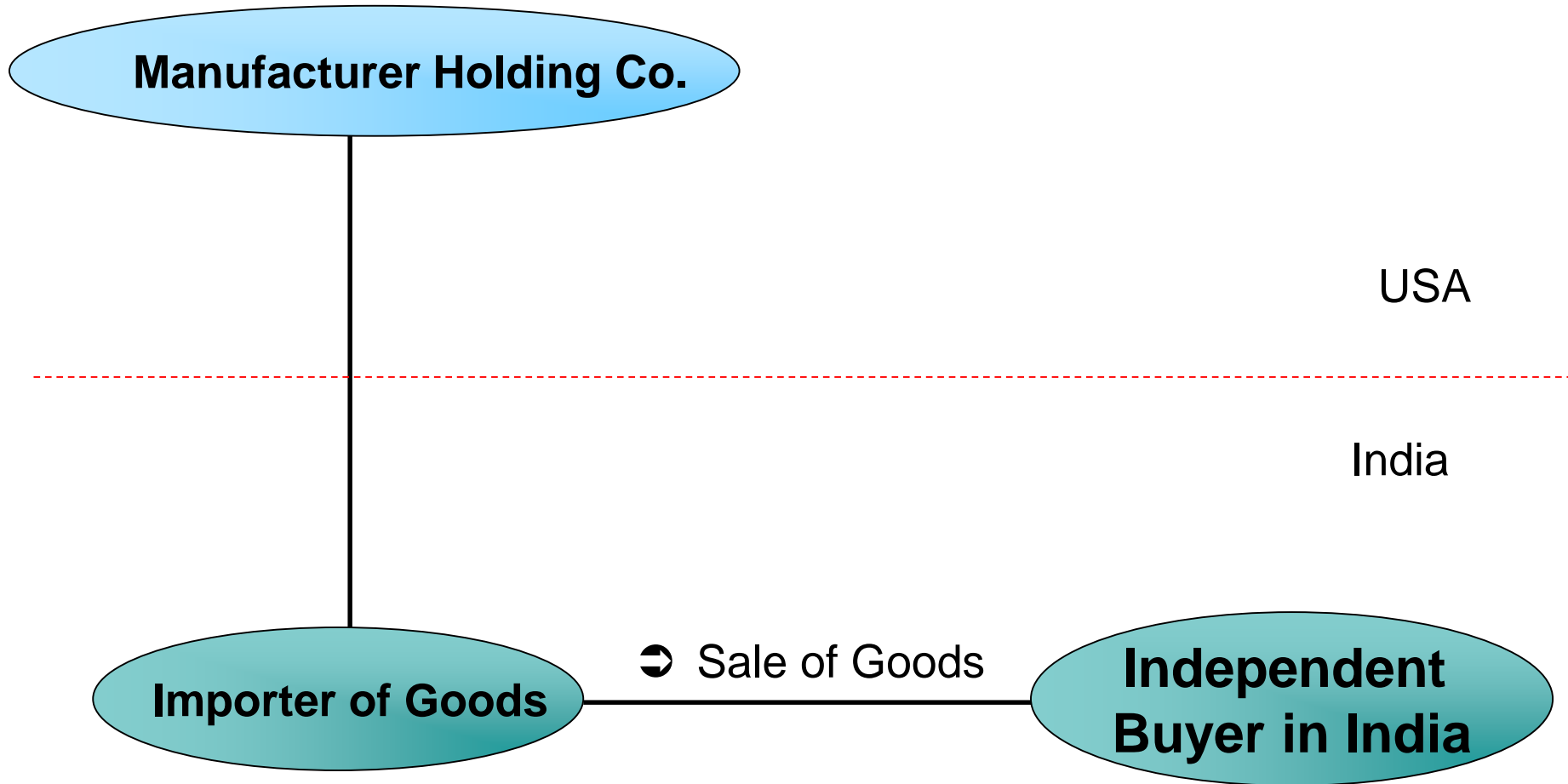
➡ External CUP



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% |

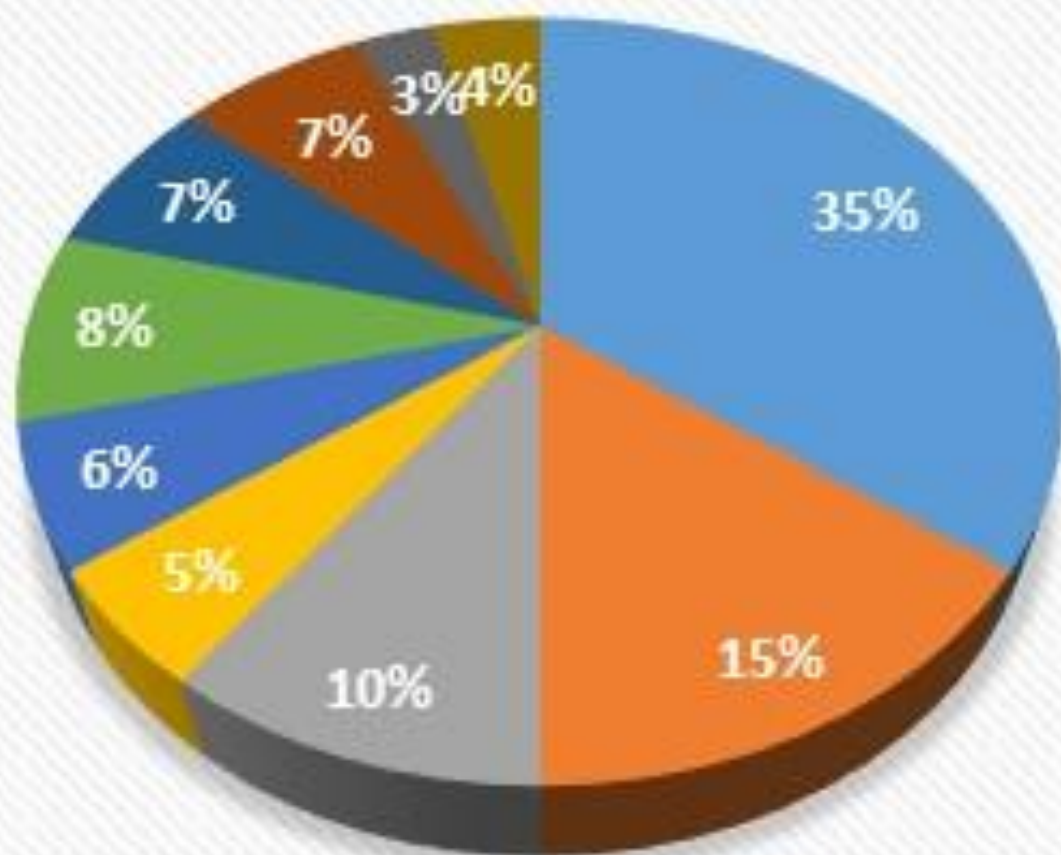
Compare

- | | |
|------------------------|----------|
| ▪ 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

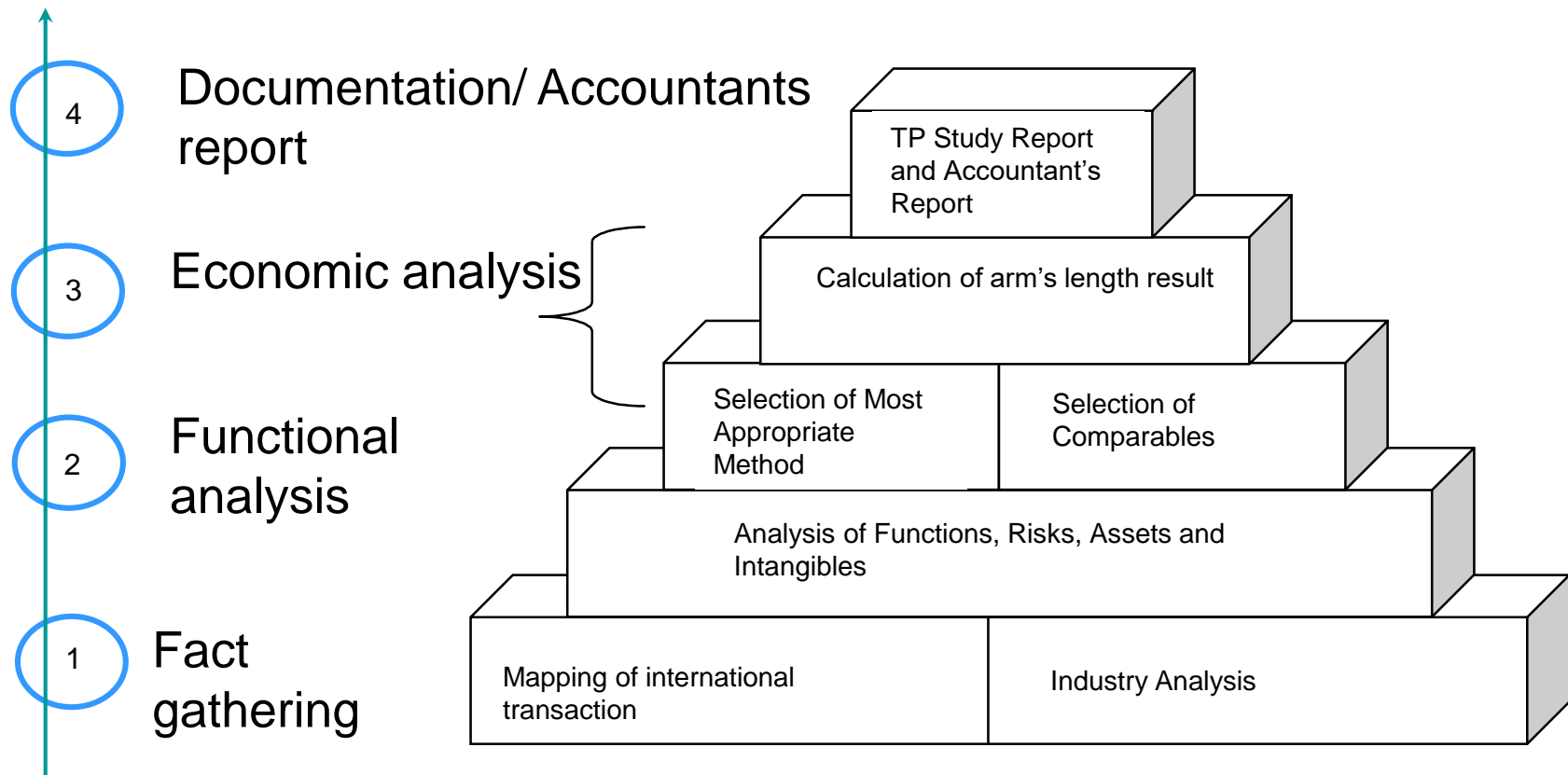
- SDT TP provision are applicable from AY 2013-14.
 - Assesses must compute an arm's length price as per the methods prescribed under section 92C.
 - Burden of proof is on the taxpayer to establish the arm's length price and to maintain related documents.
 - Must obtain a report under Form 3CEB from 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



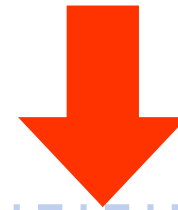
- Profile of industry
- Profile of group
- Profile of Indian entity
- Profile of associated enterprises

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)

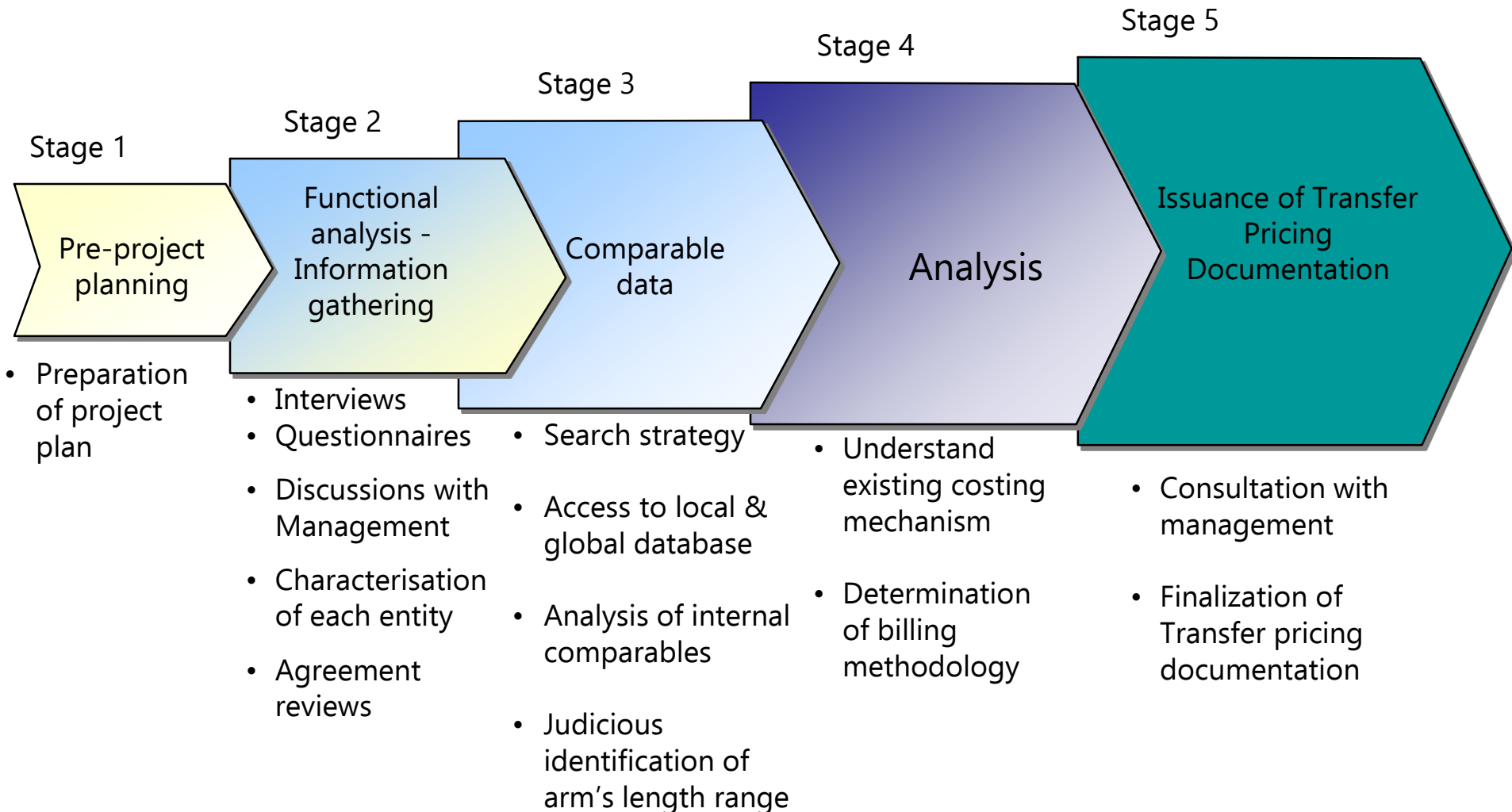
- Documentation to be retained for 9 years from financial year
- Documentation is not required to be maintained if the **aggregate value** of all international transactions does not exceed **one crore rupees**

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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 ≥ 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

Transfer Pricing Assessments

- Attempt made by revenue to enhance the Taxable income by making TP additions
 - Updating the margins
 - New Search
 - Change of method
 - Rejection of comparables selected by the assessee
 - Reply to Show cause Notices

Transfer Pricing Assessments

- Next Steps after TP Assessment -
 - First level Assessments i.e. TPO level
 - DRP or CIT(A) level
 - ITAT
 - High Court
 - Supreme Court

DRP

- Application and Paper book to be filled in 4 sets
 - Proper Spiral Binding required
 - Objections and Paper-book to be properly seriously numbered
 - All objections should be listed on the first page of submissions
 - Counsel should be professionally dressed
 - Synopsis should be submitted at the time of hearing
-

DRP

- Brief Background of the case
 - Past assessment history of the case
 - Ground wise issue
 - Submissions
 - Case Laws relied
-
- Grounds relating to non-TP matters should be taken at the end.
-

TP of Marketing Intangibles
TP of Inter Group Finance
TP of Business Restructuring
TP of Issue of Shares

A magnifying glass with a silver-colored frame and handle is positioned diagonally across the page. The lens is focused on the text, which is slightly blurred in the background. The document appears to be a legal or financial document, with various headings and paragraphs visible. The overall tone is professional and analytical.

Marketing Intangibles

- Big issue in mature economies
- Applied on transaction between principals and distributors
 - Where advertisement, marketing and promotion expenses is incurred by distributors **though they do not own trade marks.**
- It refers to the benefits like brand name, customer lists, unique symbols, logos, distribution network, etc.
- Bright Line Test is to be applied for determining ALP
 - Maruti Suzuki Ltd. – Delhi HC
 - LG Electronics – Delhi ITAT (SB)

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ISSUES IN TRANSFER PRICING



Issues

- Use of multiple year data vs Current year data
 - *TNT Communications Pvt Ltd.*
 - *Mentor graphics*
 - Abnormal Profit / Loss making comparables –
 - *Quark Systems Pvt. Ltd.*
 - *Sapient corporation Pvt. Ltd.*
 - Transactions involving intangibles
 - *Maruti Suzuki case*
 - Computation of 5% range whether to be allowed as a standard deduction or not?
 - *Sony India Pvt Ltd.*
-

Issues

- Ranbaxy Laboratories – Delhi ITAT

2008-TIOL-75-ITAT-DEL

- Powers to Commissioner to re-open case if not examined properly by TPO

- I Gate Global – Bangalore ITAT

112 TTJ 1002

- Voluntary TP adjustment eligible for Section 10A benefit

- Cargill India – Delhi ITAT

2008-TIOL-94-ITAT-DEL

- Penalty not leviable for non-provision of documents beyond taxpayer's control
-

Issues

- Philips Software – Bangalore ITAT / Karnataka High Court
2009-TIOL-123-HC-KAR
 - AO / TPO required to demonstrate tax avoidance before / during assessment proceedings
 - TPO cannot reject taxpayer analysis without due reasons
 - Recognized importance of economic adjustments
 - Karnataka High Court has admitted revenue's appeal against the ITAT order and stayed the order of ITAT
-

Issues

- Coca Cola India – Punjab & Haryana High Court
2008-TIOL-656-HC-P&H
 - Permission granted by the Reserve Bank of India ('RBI') under the Foreign Exchange Regulation Act ('FERA') cannot control the provisions of the Income-tax Act, 1961 ('the Act')
 - Adjustments to comparable data
 - Benchmarking difficulties in case of unique services where comparables are not available
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Issues

- Justification for use of unspecified method for determining arm's length price
 - Use of foreign database to which access not available to the Transfer Pricing Officer
 - Acceptance of prices approved by other Govt. Departments like Custom valuation
 - Use of Secret Comparables
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