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ICAI Hyderabad Branch
Session on

Transfer Pricing:

(Practical Insights on planning, Compliance and Litigation aspects)

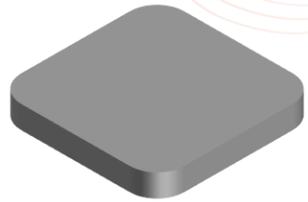
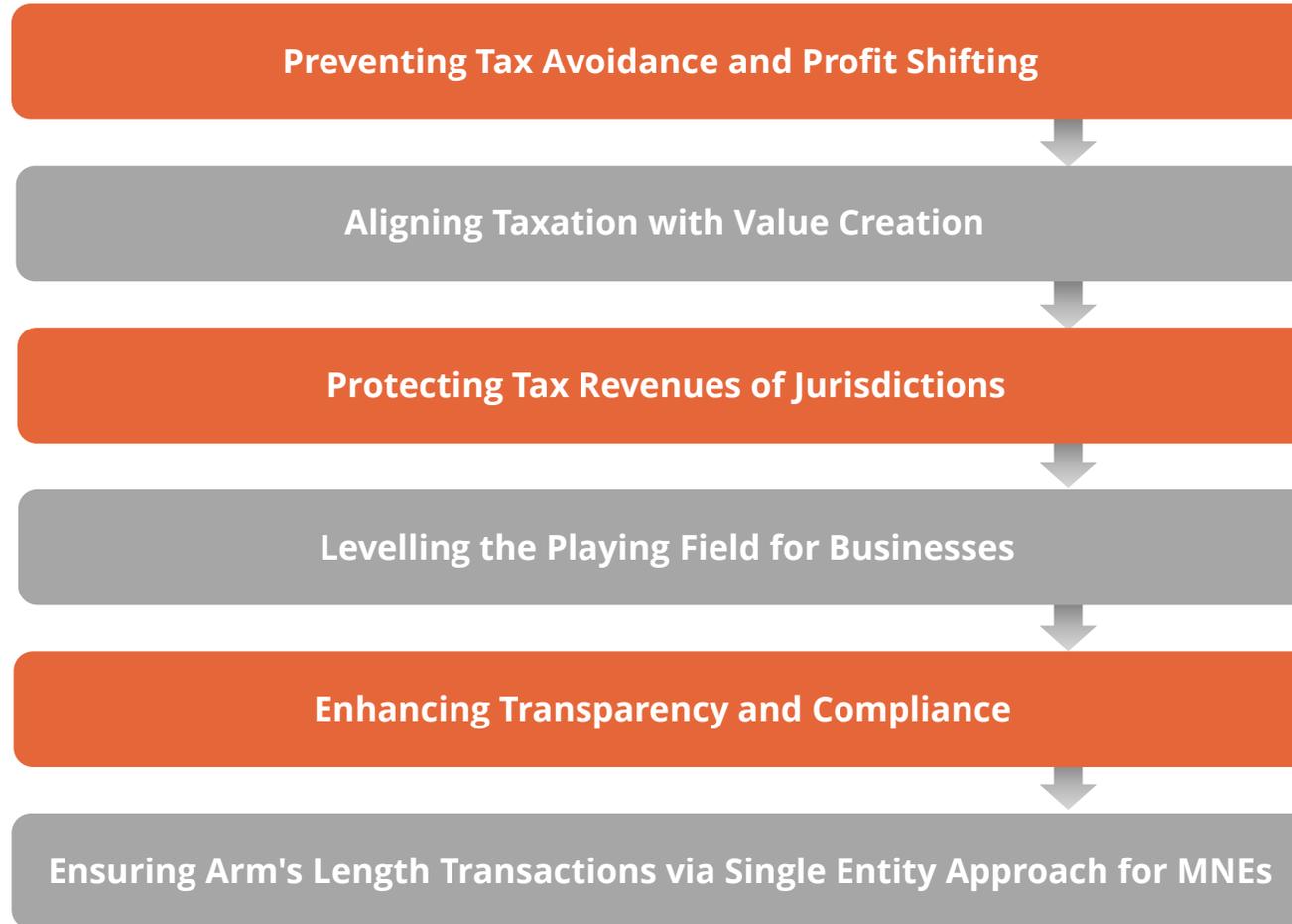
 Monday, 18 November 2024





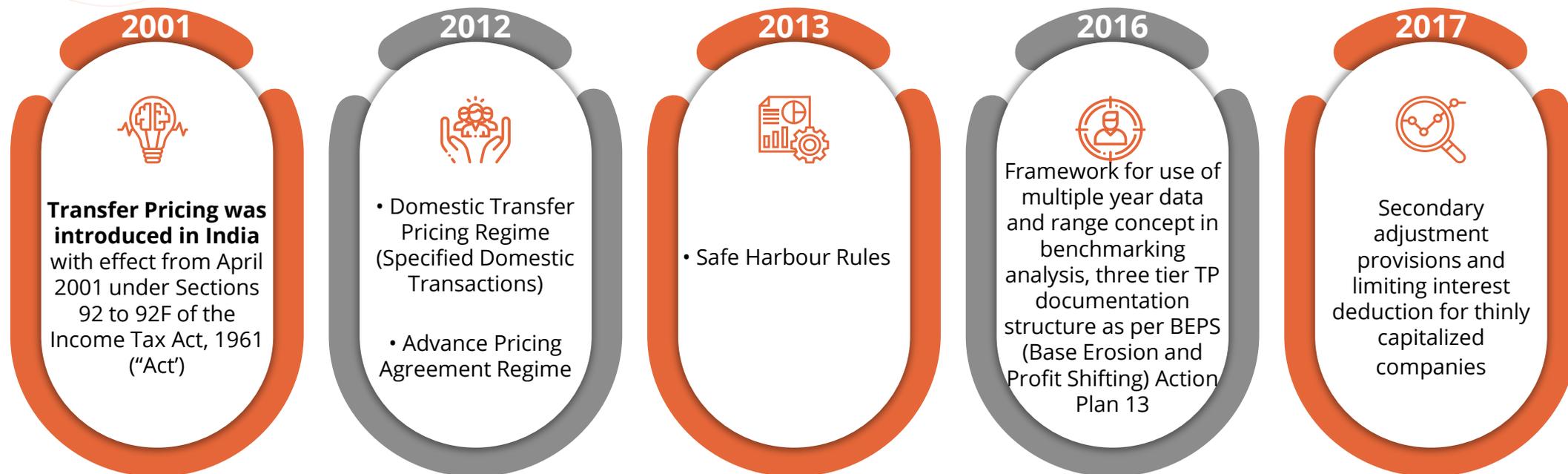
Transfer Pricing - Overview

Why Transfer Pricing Regulations?

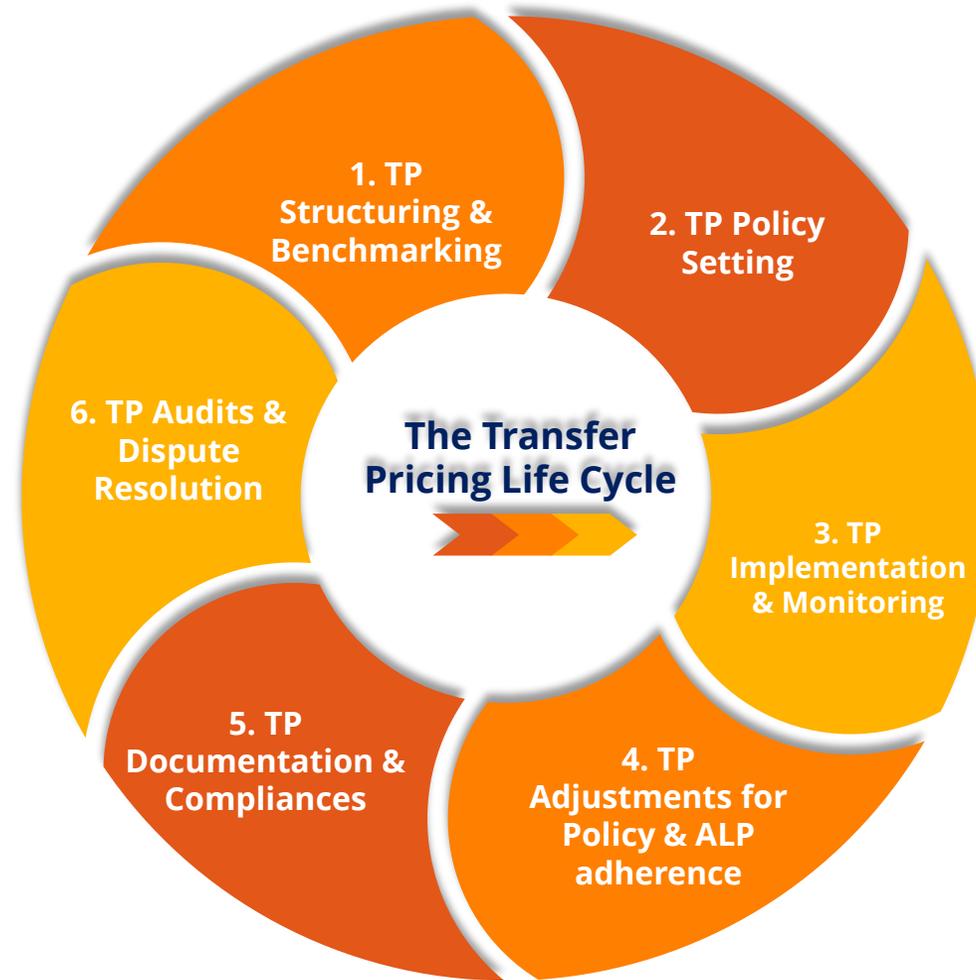


Evolution of Transfer Pricing in India

- The Income-tax Act was introduced in 1961 adopting the erstwhile Act of 1922 wherein the laws of taxation of MNEs became significantly important soon after the globalization of the Indian Economy. India has never become part of the OECD; however, UN Model has already adopted the OECD Model of Transfer Pricing back in the 1980s.
- Following the UN Model in line with the OECD Model Transfer Pricing was introduced in India with effect from April 2001 under Sections 92 to 92F of the Income Tax Act, 1961 ("the Act") which covers intra-group cross-border transactions.
- The sections became applicable from 1st April 2001 for cross border transactions and from 1st April 2012 for Specified Domestic transactions.

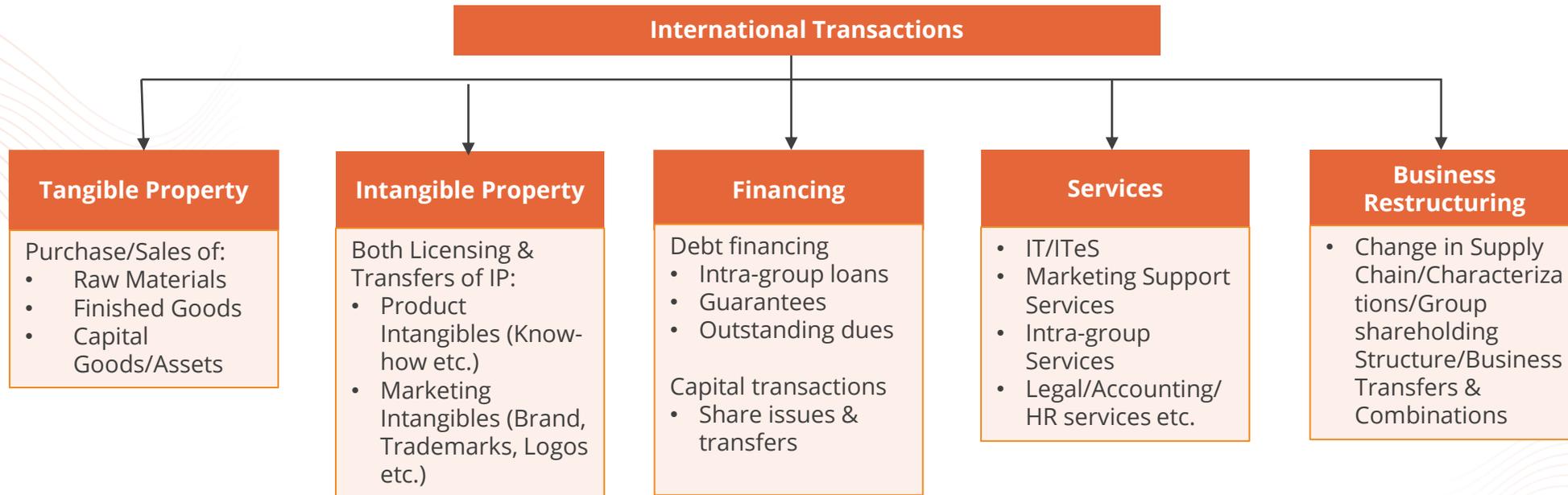


Overview of Transfer Pricing Lifecycle



International Transaction

- Transactions between two or more AEs, **either or both** of whom are non-residents



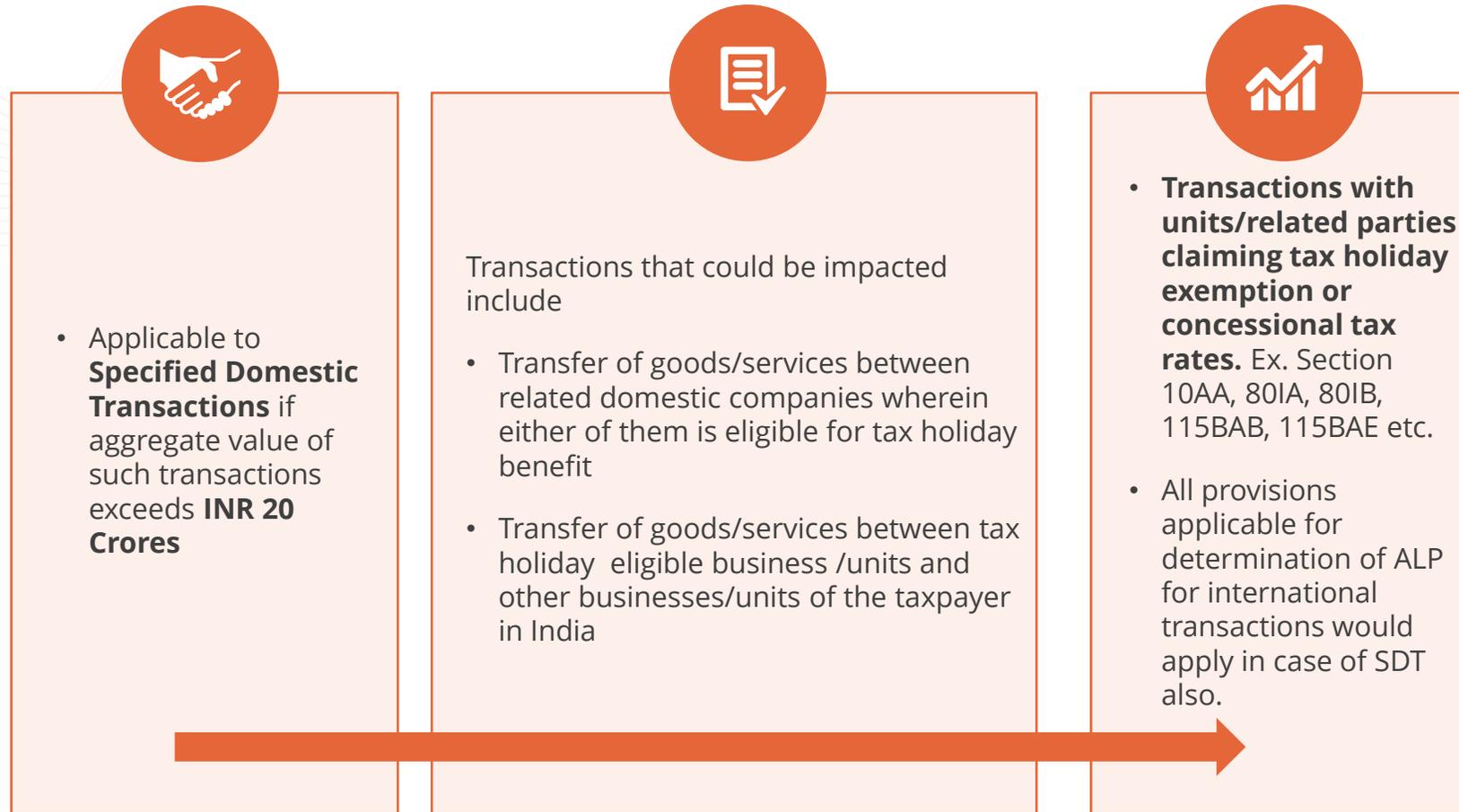
As per Section 92F(V):

“transaction” includes an arrangement, understanding or action in concert –

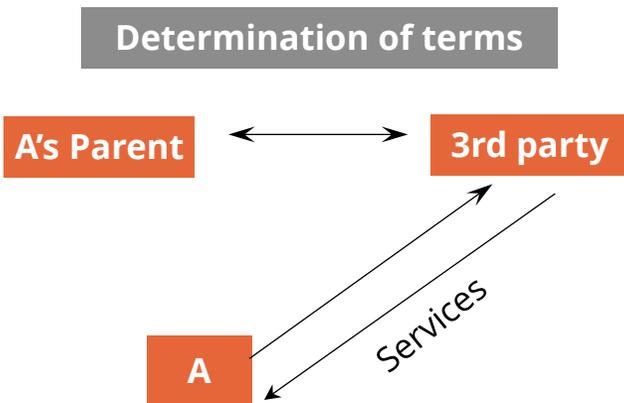
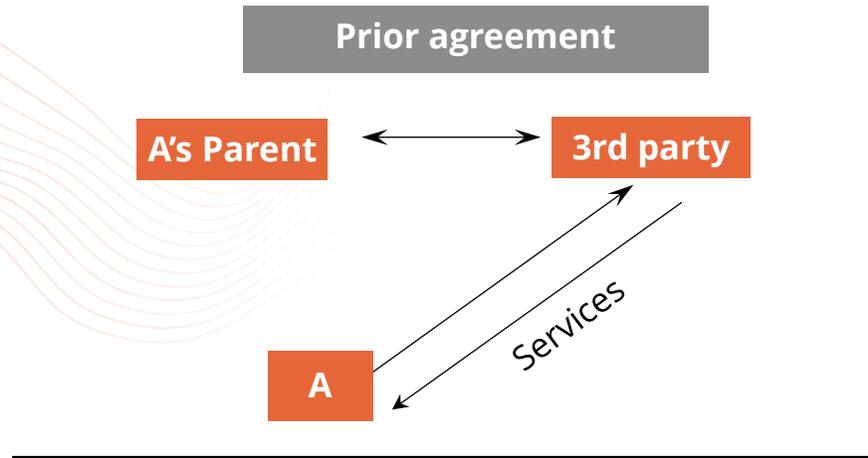
- (A) whether or not such arrangement, understanding or action is formal or in writing: or
- (B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.

Specified Domestic Transaction (SDT)

Scope of transfer pricing provisions expanded (effective FY 2012-13 onwards) to cover **domestic transactions which are not tax neutral:**



Deemed International Transaction (DIT)



- ▶ 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

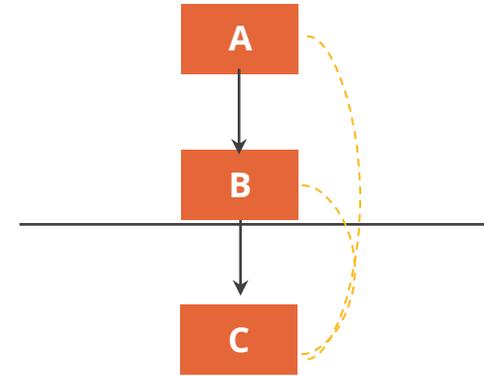
Meaning of Associated Enterprises

Associated Enterprise as per Section 92A of Income Tax Act, 1961

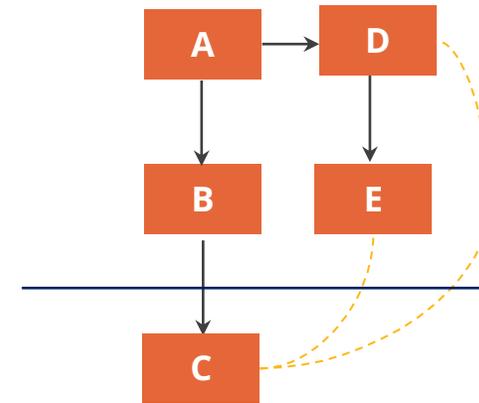
(1) For the purposes of this section and sections 92, 92B, 92C, 92D, 92E and 92F, “**associated enterprise**”, in relation to another enterprise, means an enterprise—

(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.



Both A and B are associated enterprises of C



D and E are also associated enterprises of C since they have a common ultimate parent (A)

Direct or indirect participation (through one or more intermediaries) in management, control or capital

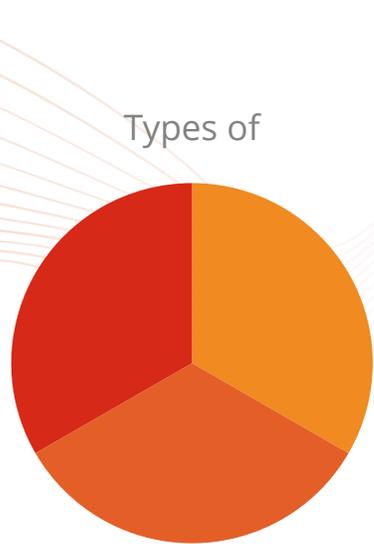
Associated Enterprise Relationship

HOLDING	MANAGEMENT	CONTROL	
<p>1. $\geq 26\%$ direct / indirect holding by enterprise</p> <p><u>OR</u></p> <p>2. By same person in each enterprise</p> <p>3. Loan $\geq 51\%$ of Total Assets</p> <p>4. Guarantees $\geq 10\%$ of debt</p> <p>5. $> 10\%$ interest in Firm / AOP / BOI</p>	<p>6. Appointment $> 50\%$ of Directors / one or more Executive Director by an enterprise</p> <p><u>OR</u></p> <p>7. Appointment by same person in each enterprise</p>	<p>8. 100% dependence on use of intangibles for manufacture /processing/ business</p> <p>9. Direct / indirect supply of $\geq 90\%$ Raw Materials under influenced prices and conditions</p> <p>10. Sale under influenced prices and conditions</p>	<p>11. One enterprise controlled by an individual and the other by himself or his relative or jointly</p> <p>12. One enterprise controlled by HUF and the other by</p> <ul style="list-style-type: none"> - a member of HUF - his relative or - Jointly by member and relative



Transfer Pricing - Methodologies

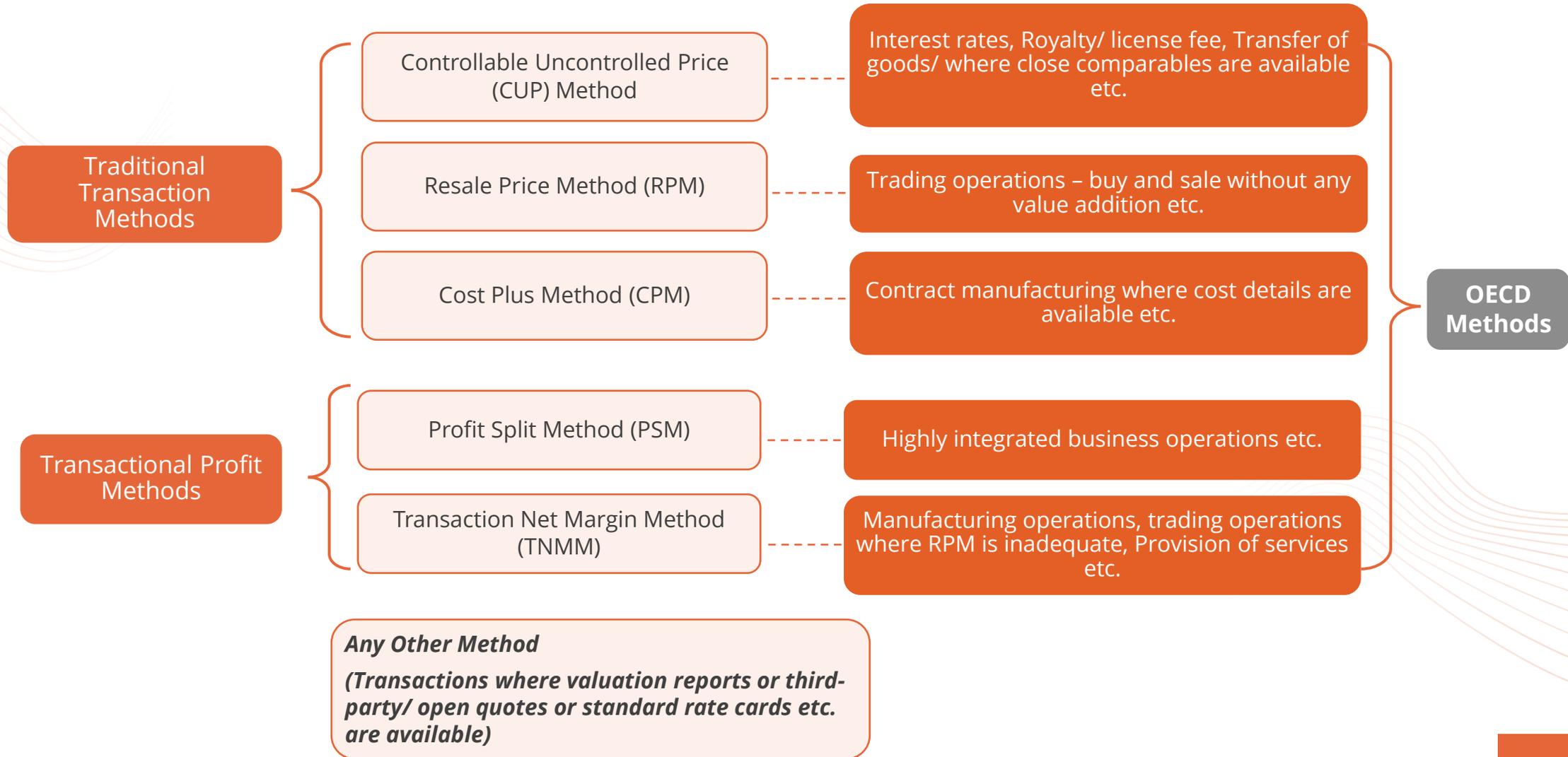
Typical Functional Profiles



- Manufacturing
- Trading/Distribution
- Service

	Limited Risk	Fully Fledged
Manufacturer	<p>Contract Manufacturer:</p> <ul style="list-style-type: none"> ▪ Manufacturing services taking title to raw materials but not for final products ▪ No Inventory or selling risks ▪ Quality control or logistics management as per principal directions ▪ No significant Intangibles ▪ Earns routine profits 	<p>Fully Fledged Manufacturer:</p> <ul style="list-style-type: none"> ▪ Performs all important manufacturing functions ▪ Engages in production planning, sourcing, and procuring inputs, R&D activities design and engineering, quality control and logistics ▪ Assumes market risk, inventory risk, R&D risk, product Liability risk, and other risks ▪ Earns residual profits
Distributor	<p>Agent:</p> <ul style="list-style-type: none"> ▪ Acts as a sales representative, received commission on sales. ▪ Facilitates sales but principal concludes contract ▪ Minimal risks since no title to the products <p>Limited Risk Distributor:</p> <ul style="list-style-type: none"> ▪ Buys goods and markets them to customers ▪ Risks relating to inventory and debtors are limited 	<p>Fully Fledged Distributor:</p> <ul style="list-style-type: none"> ▪ Undertakes all of the sales and distribution function ▪ Bears all material risks relevant to these functions ▪ Buys, holds and sells products, develops necessary intangibles. ▪ Bears significant downside risks as well as receiving upside results of positive outcome of its activity ▪ Often entitles to residual profits
Service Provider	<p>Low-End:</p> <ul style="list-style-type: none"> ▪ Provision of low value adding or supportive services ▪ No significant assets or risks ▪ Predetermined routine return. 	<p>High-End:</p> <ul style="list-style-type: none"> ▪ Provision of high value adding or core services ▪ Ownership of significant assets (e.g. Unique skills, Proprietary software, intangibles) ▪ Potential for higher, non routine returns

Prescribed transfer pricing methods

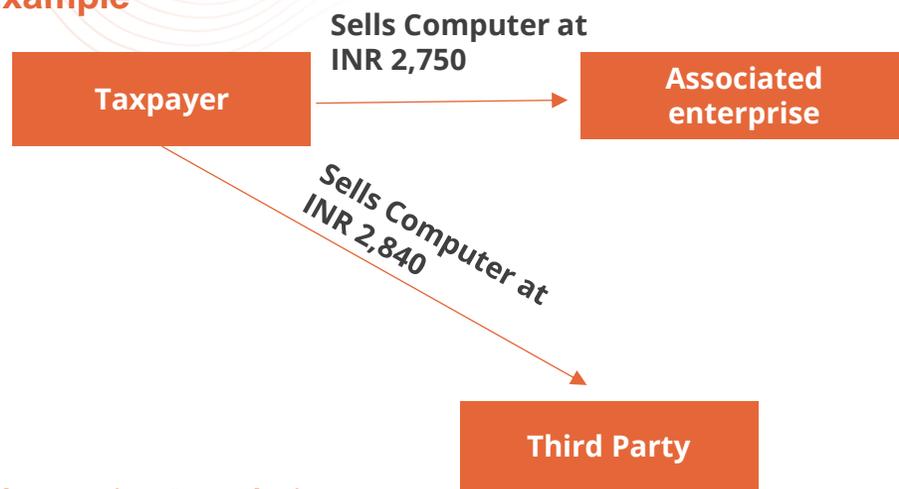


Comparable Uncontrolled Price Method

Internal CUP

- When to use?
- When it is not possible to use?
- Litigation pain points

Example



Observation & Analysis:

Taxpayer sells computer to both related parties and third parties. As price charged by taxpayer to related party is below the prices charged to third parties. From this we can conclude that the price charged to related party is not in arms length and appropriate adjustments to the transfer price has to be made.

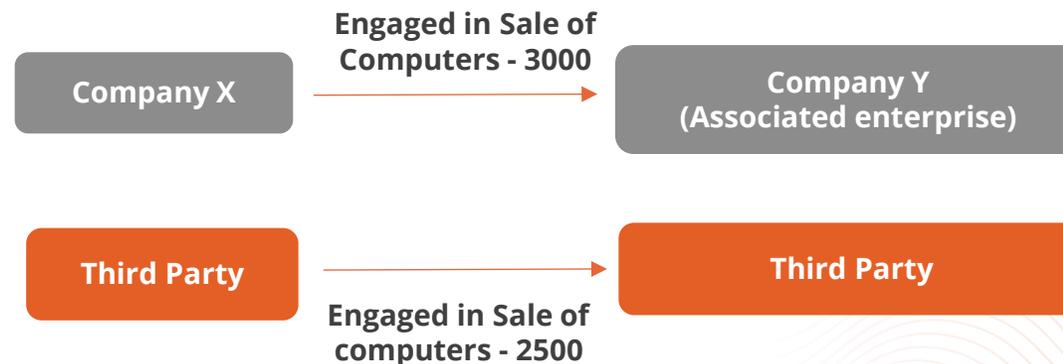
External CUP

When to use?

When it is not possible to use?

Litigation pain points

Example



Observation & Analysis:

- Here in the above scenario the goods sold to the related party by company X and the goods sold by the third party to another party are same. Hence, they are comparable for the purpose of benchmarking.
- It is clear that price charged by company X to Company Y (Associated enterprise) is more than the third parties. From this we can conclude that the price charged to related party is in arms length.

Resale Price Method

- Why gross level comparison?
- Why not net level comparison?
- Litigation pain points?



Foreign entities

Import of goods each at @150Rs



Co. A

Resale of goods each at @180Rs



Co. B
(Related party)

Co. A imports goods from foreign entities and resales the goods to its related party (Co. B) and other independent third parties at markup

GP/Sales

Co. A to Co. B = $30/180 = 17\%$

Comparables Results - TNMM

S.no	Company Name	2020	2021	2022	Weighted Average (3 years)
		GP/Sales	GP/Sales	GP/Sales	GP/Sales
1	ABC Ltd	9.08%	10.66%	12.31%	10.81%
2	DEF Ltd	13.95%	12.12%	9.76%	11.82%
3	XYZ Ltd	19.40%	14.89%	9.10%	15.70%
4	GHI Ltd	18.58%	15.06%	14.36%	16.06%
5	JKL Ltd	14.74%	15.74%	18.98%	16.70%
6	MNO Ltd	17.44%	20.71%	18.33%	19.06%
7	PQR Ltd	19.72%	22.80%	22.53%	21.66%
8	STU Ltd	22.43%	22.50%	30.84%	25.79%

Total no.of comparables		8
Criteria	Data Place	GP/Sales
25th Percentile	2	11.82%
Median	4	16.06%
75th Percentile	6	19.06%

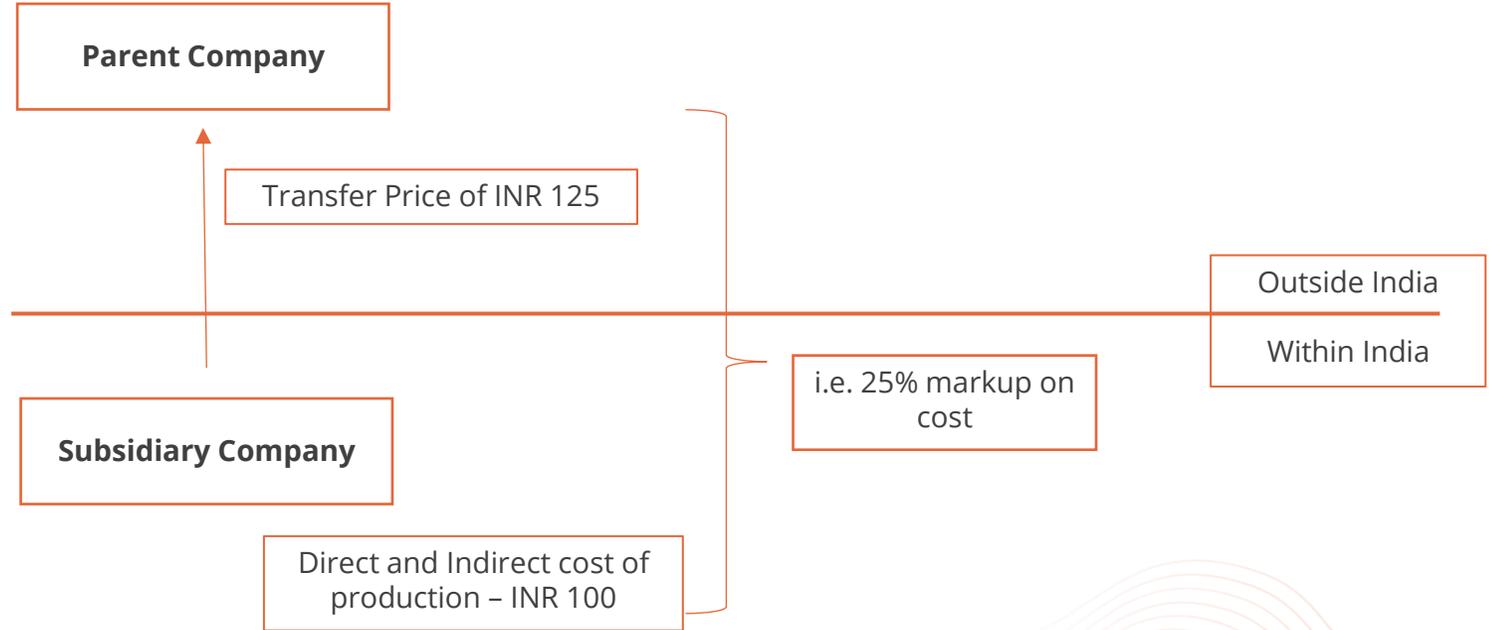
Observation and Analysis

Since the Gross profit margin of the tested party is within the range of comparable companies the international transaction of Sale of goods is at arm's length.

Cost Plus Method

- When to use?
- Is cost plus mark-up same as cost plus method?
- Why is it not often used?

Illustration



Arm's length in multiple scenarios		Whether at ALP?
Margin of Subsidiary Company	Margin of similar assemblers	
25%	25%	Yes
25%	20%	Yes
25%	30%	No

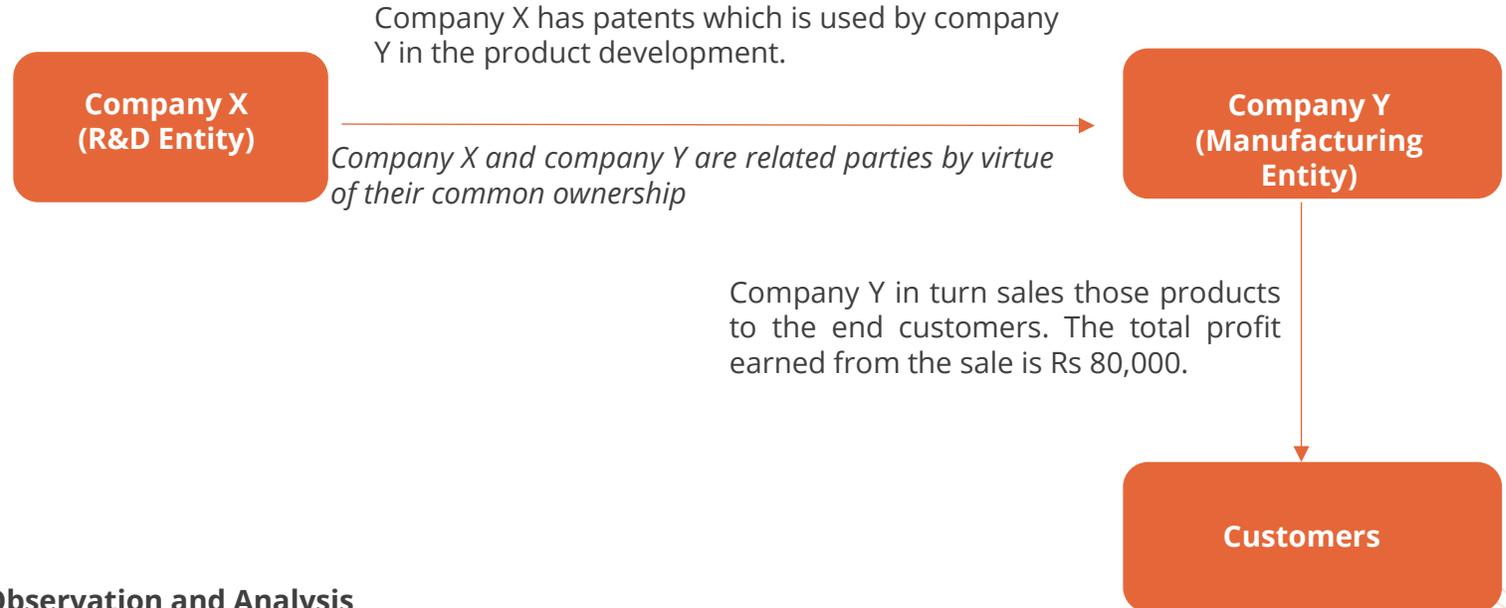
CONCLUSION

Price charged by Subsidiary Company to Parent Company (Related Party) is at arm's length if the 25% mark-up on cost is more than that of similar assemblers.

Profit Split Method

- Is it easy or complex?
- Checkpoint for setting Group TP Policy
- Why is it not often used for compliance purposes?

Illustration



Observation and Analysis

The total profit of Rs 80,000 is splits between both the companies as both are involved in the product development. As company x is more complex than company Y they share the profits on the basis of their risk capabilities **(say 60% and 40%)**

Company X profit = $80,000 * 60\% = \text{Rs } 48,000$

Company Y profit = $80,000 * 40\% = \text{Rs } 32,000$

Transactional Net Margin Method

Why is it widely used?

Entity wide Vs Segment wise

Segregation using MAM Vs Aggregation using TNMM

CO. A (Tested Party)

Provision of Services - 3300
Cost - 3000

CO. B (Related Party)

Computation of net profit margin of Tested Party

Particulars	Amount (Mns)
Revenue from provision of services (OR)	3,300
Less: Operating Cost (OC)	3,000
Operating Profit(OP)	300
Operating Profit/Operating Cost(OP/OC)	10%

Results of Comparable Companies

S.no	Company Name	2020	2021	2022	Weighted Average (3 years)
		OP/OC	OP/OC	OP/OC	OP/OC
1	ABC Ltd	9.08%	10.66%	12.31%	10.81%
2	DEF Ltd	13.95%	12.12%	9.76%	11.82%
3	XYZ Ltd	19.40%	14.89%	9.10%	15.70%
4	GHI Ltd	18.58%	15.06%	14.36%	16.06%
5	JKL Ltd	14.74%	15.74%	18.98%	16.70%
6	MNO Ltd	17.44%	20.71%	18.33%	19.06%
7	PQR Ltd	19.72%	22.80%	22.53%	21.66%
8	STU Ltd	22.43%	22.50%	30.84%	25.79%

Total no.of comparables		8
Criteria	Data Place	Op/oc
25th Percentile	2	11.82%
Median	4	16.06%
75th Percentile	6	19.06%

Observation and Analysis

Since the net profit margin of the tested party is below the range of comparable companies the international transaction of Provision of Services is not at arm's length.

Other Method : (Rule 10AB)

- The Taxable Person may apply any transfer pricing method other than the methods discussed in the above slides where none of those methods can be reasonably applied to determine an arm's length result.
- In practice the arm's length price of the following transactions can be determined using the Other Method (Sixth Method) mainly because data of uncontrolled comparables is not likely to be available in the public domain:

Comparability factors to be considered while selecting Other Method:



Illustration

The Assessee has transacted with its Associated Enterprise (AE1) to purchase 1000 barrels of crude oil from AE1. Refer below for the analysis of controlled transaction as part of the transaction-based analysis:

International transaction	Location	Amount	Quantity	Rate per barrel
Sale of crude oil	Singapore	INR 27,548	100 barrels	INR 275.48 per barrel

Uncontrolled transaction

Assessee must gather independent quotations from public data for similar commodities locally.

Quotations from the third-party suppliers in India

Quotation Provider	Location	Rate per Sq. Feet
Oilpricez.com	India	INR 282.83 per barrel
Oilmonster.com		INR 275.65 per barrel

The amount paid by Assessee for the purchase is more than the quotations received from thirty party of similar commodity, therefore it can be said that the transaction has been carried out at Arm's length price.

Illustrative applicability of different methods

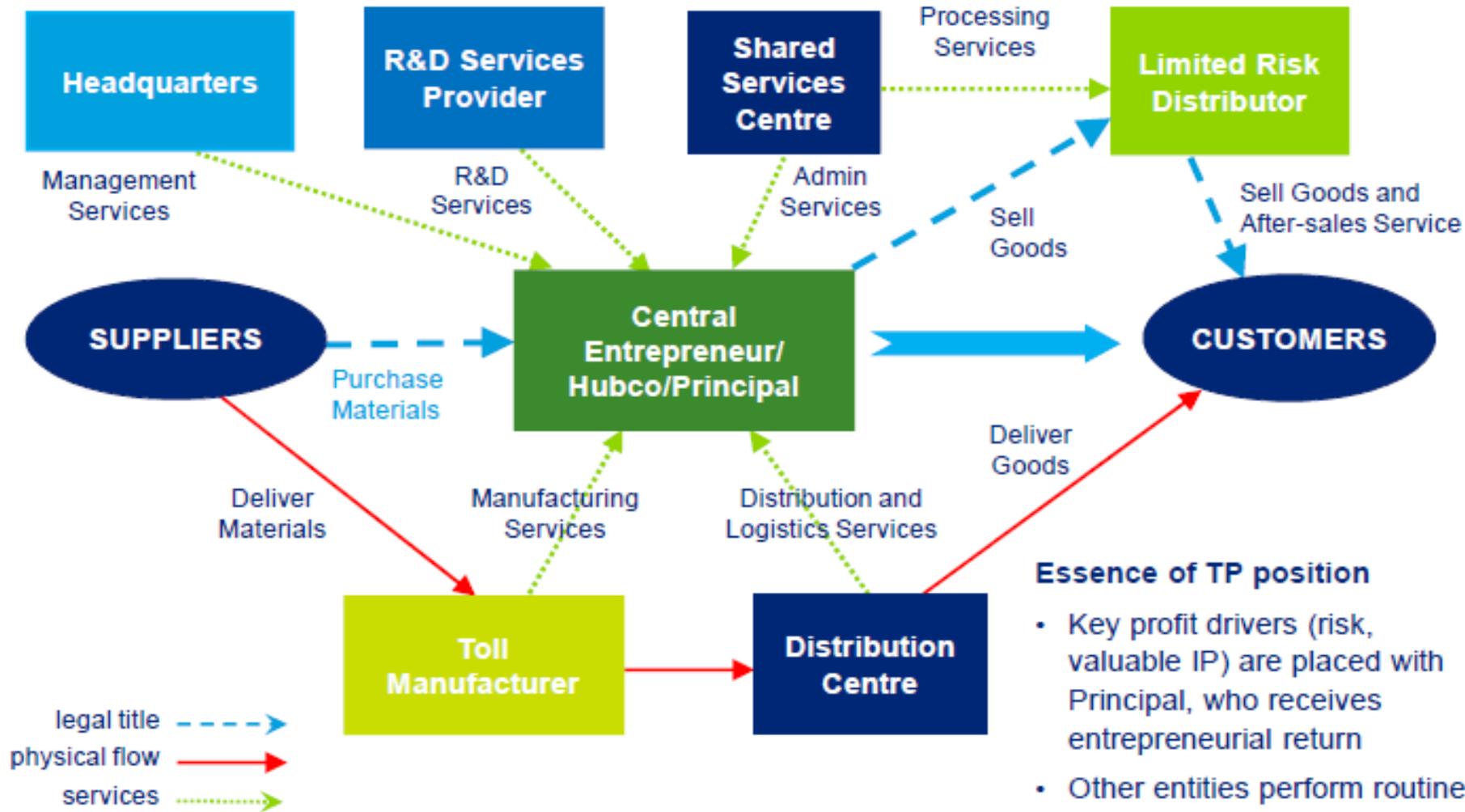
- Some common nature of transactions and the most applicable methods is specified below:

Nature of transactions	CUP Method	RPM	CPM	PSM	TNMM	Other Method
Manufacturing	✓		✓		✓	
Distribution of goods		✓			✓	
Provision of services (IT, ITeS)					✓	
Financial transaction (interest on loan, corporate guarantee)	✓					✓
Royalty Payment	✓				✓	
Highly Integrated and Unique Intangible transactions				✓		
Sale/ purchase of commodities, shares, fixed assets (where value can be substantiated with valuation report, quotation etc.)						✓
Specified Domestic Transaction – Inter-Unit Transfers	✓				✓	

A background image showing a business meeting. Several people are gathered around a table, looking at documents and a laptop. The documents feature various financial charts, including bar graphs and pie charts. One person is pointing at a document, and another is holding a pen. A watch is visible on one of the participants' wrists. The scene is dimly lit, with a focus on the documents and the collaborative work.

TP Models - Planning

Supply chain efficient centralized business model

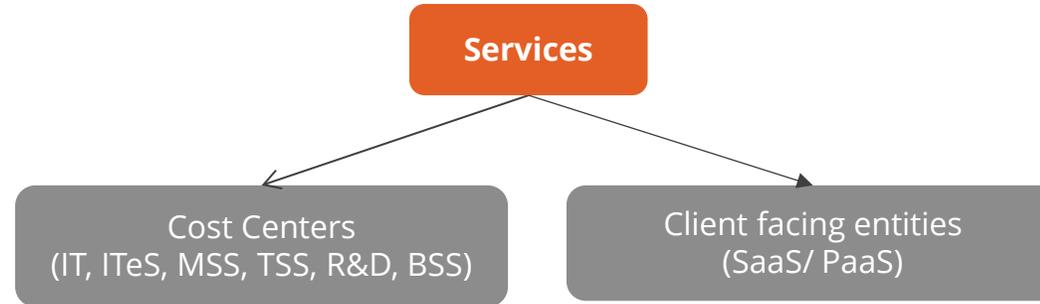


Essence of TP position

- Key profit drivers (risk, valuable IP) are placed with Principal, who receives entrepreneurial return
- Other entities perform routine functions (cost plus return)

Services

Particulars
Operating Cost
Add: Mark-up
Transfer Price Billing



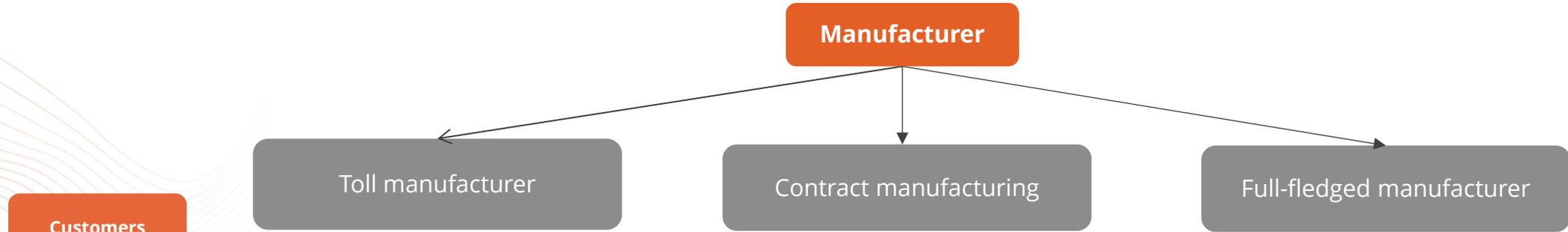
Keys points for consideration

- Characterization of Services
- TP Model - Cost Plus mark-up
- Cost base – OP/OC
- Bench Cost
- Credit period – Reasonable
- Group loss situation
- Third party scenario
- Scope of work
- Employee profile
- Form 3CEB – Clause 13
- TP Method – TNMM
- TP Database – Prowess, Capitaline, Ace TP
- TP Model - sales minus
- Cost base – OP/Sales
- Scope of work – Onsite technical support, sales support
- TP Margins
- Shortfall – Maintain assured margin
- Invoice description
- Form 3CEB - Clause 13
- TP Method – TNMM
- TP Databases

Industry	Expected Mark-up
IT	17% to 22%
ITeS	15% to 20%
KPO	> 30%
R & D	25% to 30%
TSS	15% to 20%
MSS	10% to 15%
EDS	17% to 20%
BSS	5% to 10%

Particulars
Sales to customers
Less: Assured margin
Less: Local operating expenses
TP Billing

Manufacturing



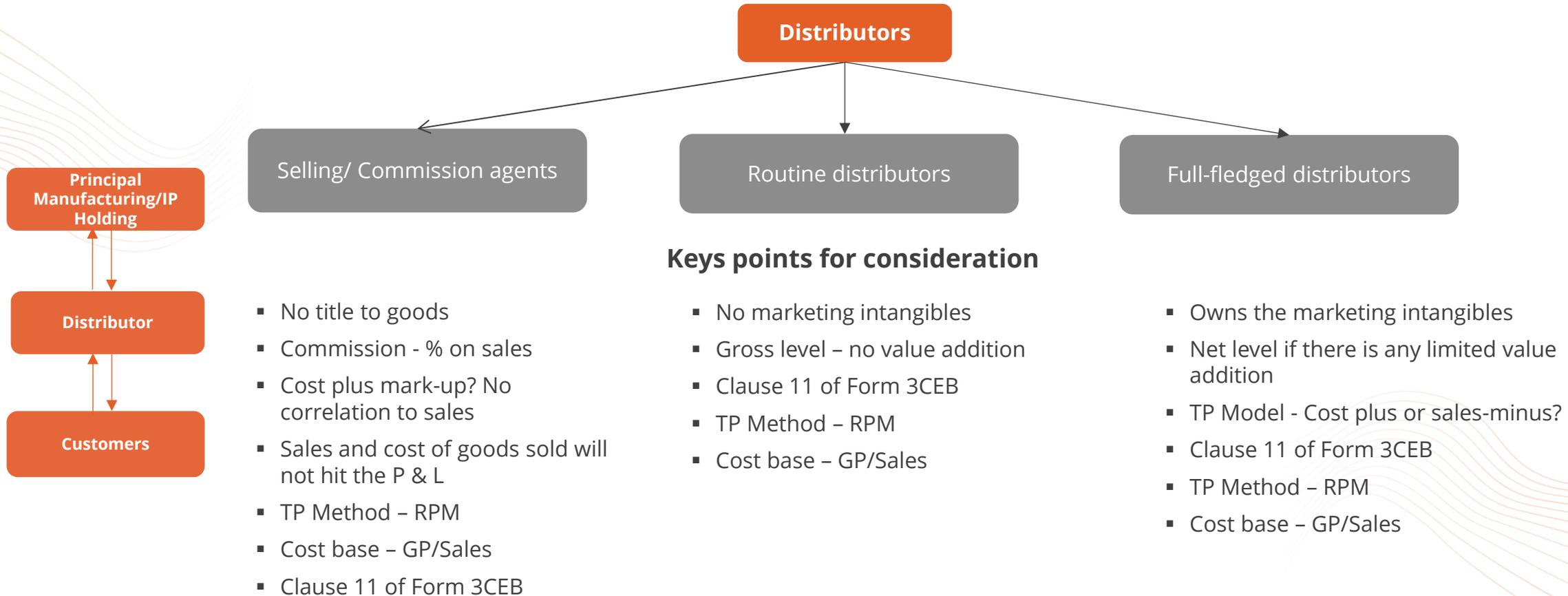
Keys points for consideration

- Job workers
- No title to goods
- Mark-up on value added expenses i.e., labour cost, consumables
- Sale of goods and Purchase of raw material – does not appear in face of P & L
- TP Method – TNMM
- Cost base – OP/OC
- Clause 11 of Form 3CEB

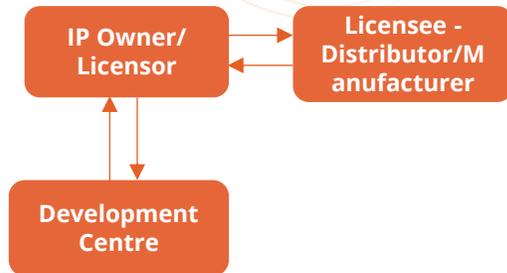
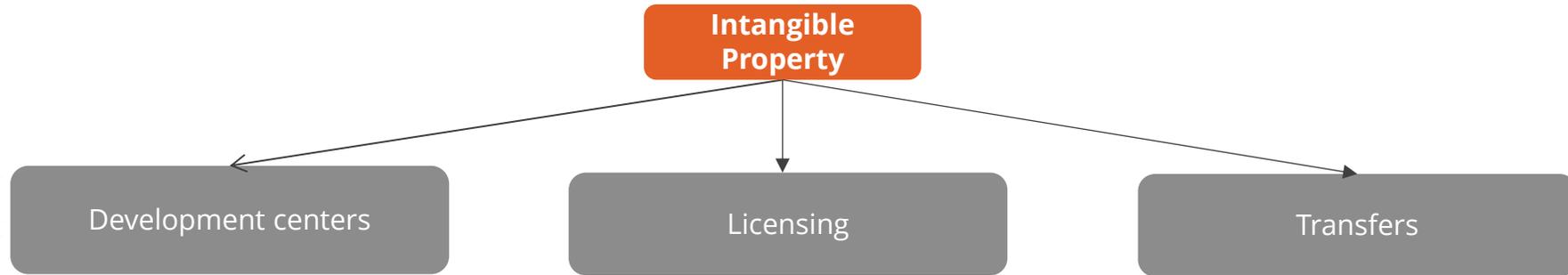
- Title to goods
- Market risks – Borne by?
- Mark-up is charged on Materials & Labour cost, General & Administration expenses (value added expenses)
- Material pass through costs?
- Principal will identify the vendor for purchase of material
- Framework, quality checks, production lines will be decided by principal
- Clause 11 of Form 3CEB

- Owns the Intangible property
- Clause 11 of Form 3CEB
- TP Method – TNMM
- Cost base – OP/OC

Distributors



Intangible Property



- Cost-plus Mark-up Model
- Focus on creating and enhancing IP assets such as software, patents or technology platforms
- Compensation based on operational costs plus an agreed mark-up to cover overheads and provide profit margin
- Clause 12 of Form 3CEB

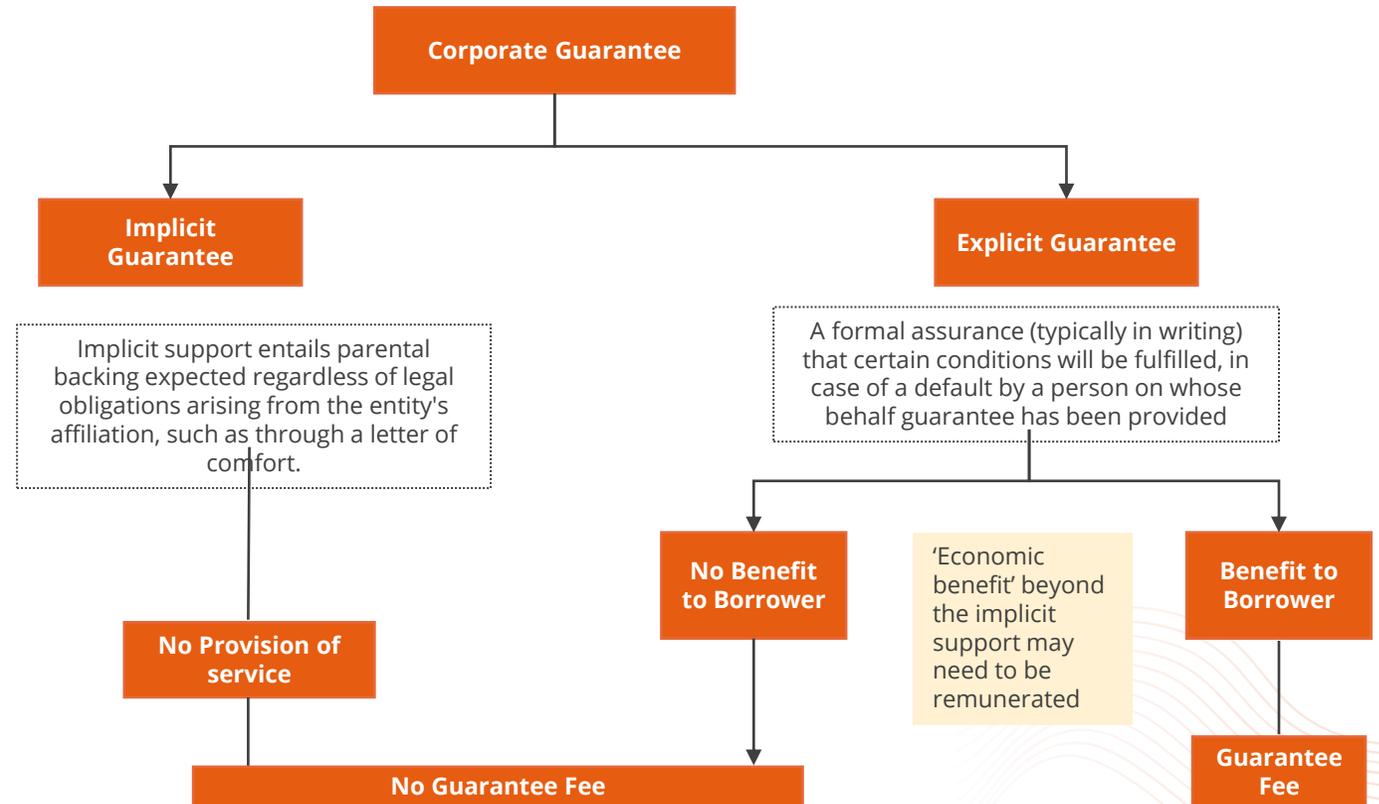
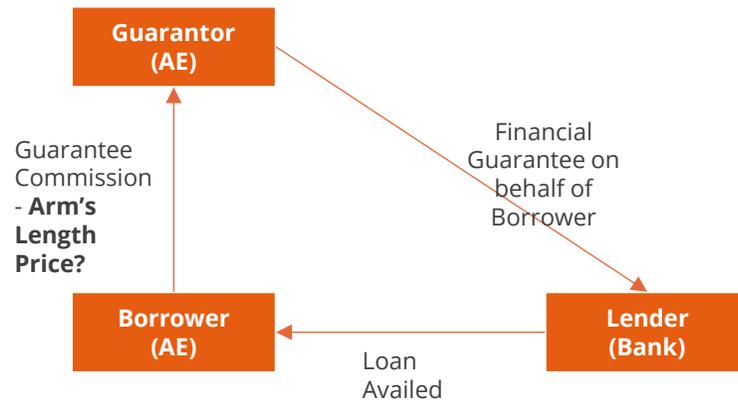
Keys points for consideration

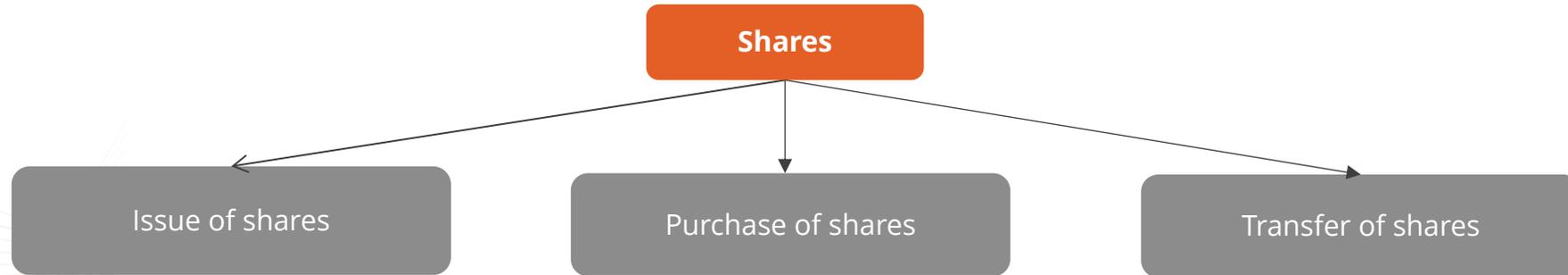
- Royalty or License Fee
 - Granting third parties or group entities the right to use the IP in exchange for periodic payments
 - Fees based on the value derived from IP usage, which can be a percentage of revenue or a fixed amount per usage
 - DEMPE functions
 - TP Database – RoyaltyStat, RoyaltyRange
 - Need benefit test
 - Clause 12 of Form 3CEB
- Valuations
 - Transfer of ownership or rights of IP from one entity to another
 - Valuation methods include relief from royalty methods
 - Clause 12 of Form 3CEB

Corporate Guarantee

Keys points for consideration

- Terms & conditions
- Risks undertaken
- Relationship with bank
- Explicit CG - a shareholder activity?
- TP BM analysis for Comparable CG arrangements – External CUP
- Fee paid by Taxpayer to banks – Internal CUP
- Bank quotes/Open Market quotes – Other Method
- TNMM using aggregation approach
- Clause 15 of Form 3CEB



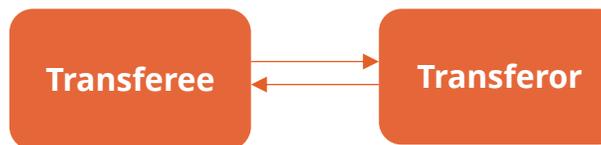


Keys points for consideration

- Initial investment – Fair value or Fair market value
- Funds flows into India
- CBDT
- No tax impact
- Clause 16 of Form 3CEB

- Funds flows outside India
- CBDT
- No tax impact
- Clause 16 of Form 3CEB

- NR to NR
- R to NR – Tax?
- NR to R – Capital asset in India?
- Valuation of underlying asset
- Clause 16 of Form 3CEB

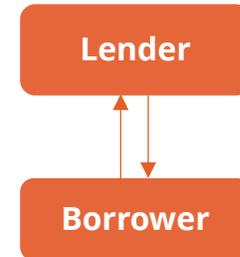


Financial Transactions

Loans

Keys points for consideration

- Filters?
- Invalid coupon rates
- Uncomparable Companies
- Suspended companies
- Different issue dates
- Different interest rates
- Different industries
- TP Method – CUP Method or Other method using NSDL/CDSL
- TP Databases – Loan connector, Bloomberg
- Clause 14 of Form 3CEB



Reimbursements/ Recoveries

Reimbursements/ Recoveries

Keys points for consideration

- Reimbursements – expenses - payments made on behalf of company
- Recoveries – incomes - payments made on behalf of AE
- Pass through or mark-up element?
- Back to back invoices
- Clause 19 of Form 3CEB



Transfer Pricing - Benchmarking

Overview of TP database (1/2)

Provider	Database	Content
Bloomberg	Bloomberg Reference Data Services	Financial markets data
Bureau Van Dijk	Orbis Worldwide	Company financial information (Private & Listed Companies)
	Osiris Worldwide	
	Oriana & Amadeus	
	TP Catalyst	
Capital Market Publishers India	Capitaline TP	Company financial information (Private & Listed Companies)
Centre for Monitoring Indian Economy	Prowess	
Accord Fintech	Ace TP	Company financial information (Private & Listed)
RoyaltyStat	License Agreement Database	Intangibles License Agreements (Sourced from US SEC)
Royaltysource	RoyaltySource	
Royaltyrange	Royaltyrange	

Bloomberg

OSIRIS

orbis

tp catalyst

CAPITALINE
DATABASES

ACE TP

CMIE ProwessIQ

RoyaltyStat
An Exactera company

Overview of TP database (2/2)

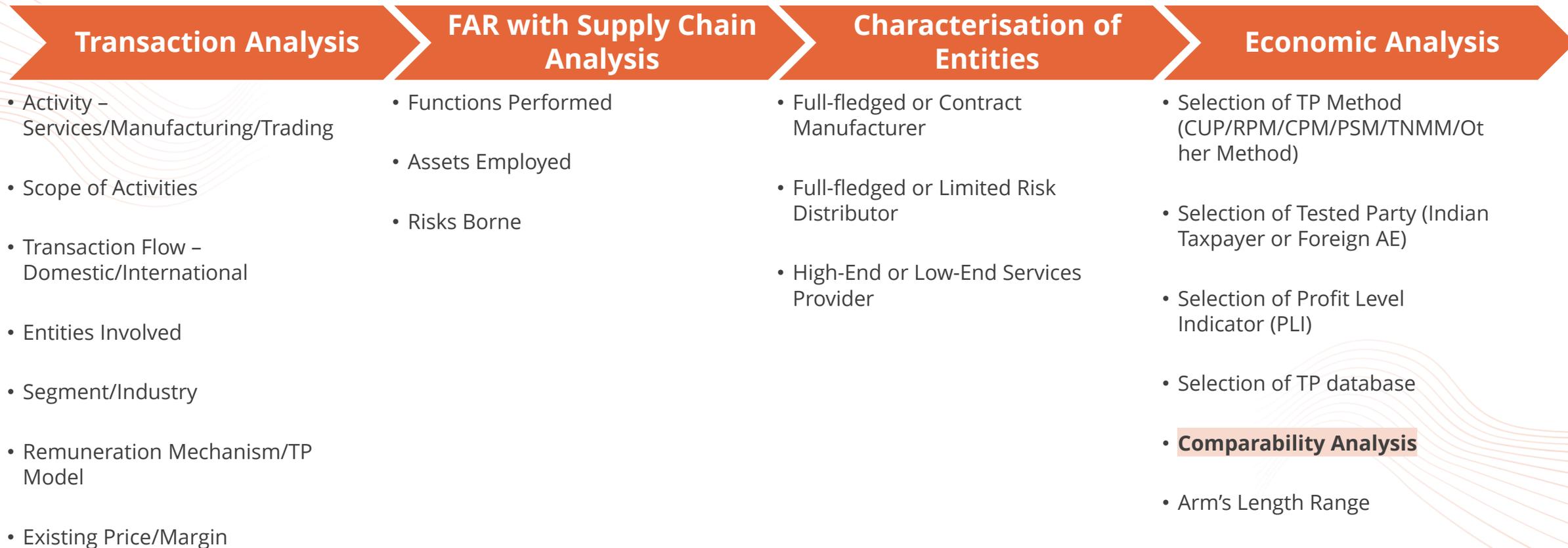
Provider	Database	Content
S & P	Capital IQ – Financials	Company financial information (Private & Listed Companies)
	Compustat – North America	Company financial information (Listed Companies)
	Compustat Global	
	Credit Analytics	Risk of default models (Credit Score)
Reffinitiv/Thomson Reuters (Worldwide)	Dealscan	Financial transactions data (loans)
	Eikon	Financial markets data
	Worldwide public company data	Company financial information (Listed Companies)
	Worldwide private company data	Company financial information (Listed Companies)
	Worldwide intangibles data	Intangibles license agreements and royalty rates



DealScan



Overview of TP Benchmarking Analysis



Profit Level indicator (PLI)

Profit Level Indicators (PLIs) are financial ratios that measure the relationship between profits and costs incurred or resources employed.

The use of an appropriate PLI ensures better accuracy in the determination of the arm's length price of a related party transaction.

The Resale Price Method (RPM), Cost Plus Method (CPM) and Transactional Net Margin Method (TNMM) are the transfer pricing methods that use PLI to determine whether the related party transaction involved is carried out at arm's length.

Factors to consider include but are not limited to in determining the PLI:

- characterization of business;
- availability of comparable data; and
- the extent to which the PLI is likely to produce a reliable measure of arm's length profit.

Generally used PLIs

TP Method	PLI	Formula
RPM	Gross margin	GP/ Sales
CPM	Gross cost-plus margin	GP/ direct & indirect cost of production
TNMM	Cost plus Markup	Operating Profit/Operating Cost
TNMM	Net profit margin	Operating Profit/Operating Revenue
TNMM	Berry ratio	Operating Profit/ Value Addition
TNMM	Cash PLI	Operating profit/PBDIT

Calculation of Tested Party PLI

Particulars	Formula
Total Income (as per P&L)	A
Less: Non-operating items of Income	
Rent received	
Interest/ Dividend received	
Gain on sale of fixed assets	
Other items of non-operating income, etc.	
Total Non-operating Income	B=Sum of all non- operating income
Operating Income	C = A-B
Total Expenditure (as per P&L)	D
Less: Non-operating items of Expenditure	
Interest paid	
Loss on sale of fixed assets, etc.	
Total Non-operating expenditure	E = Sum of all non-operating expense
Operating Expense	F = D – E
Operating Profit	G = C – F
Operating Margin (on appropriate PLI)	H = G / PLI

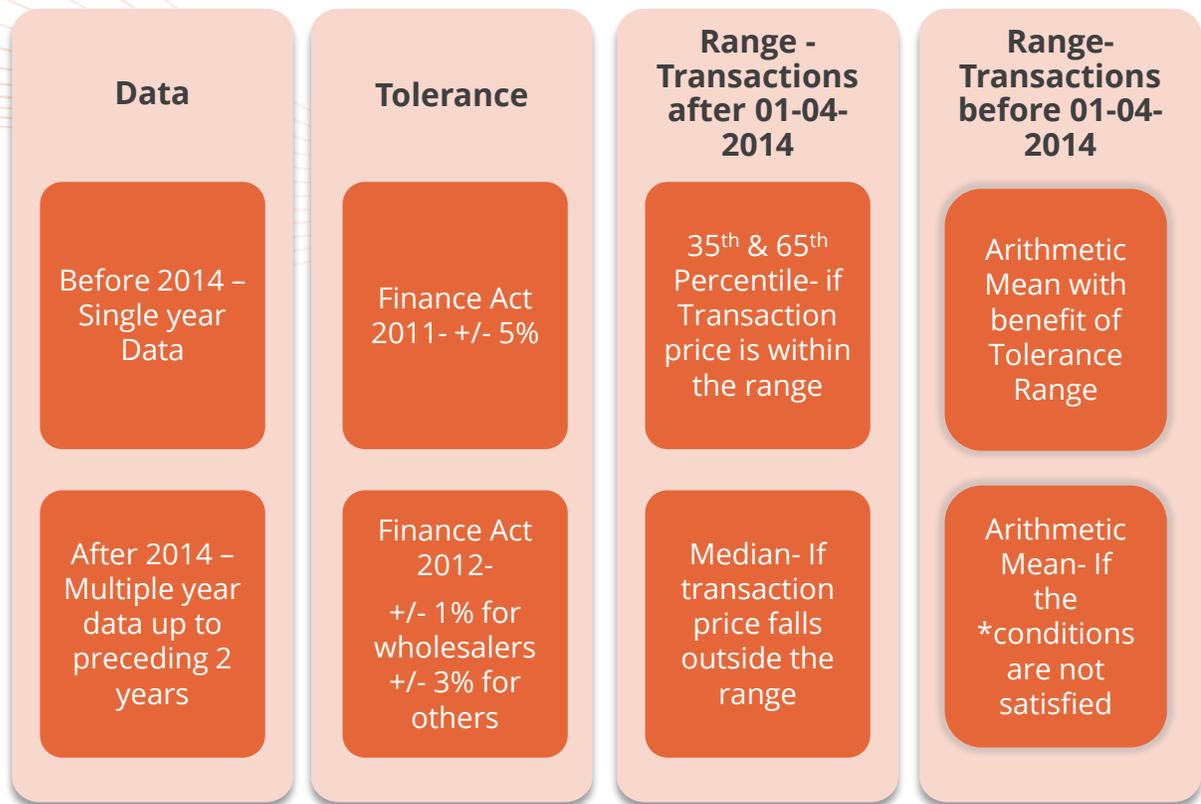
Operating Items vs Non – Operating Items

- For the purpose of transfer pricing margin computation, it is important to only consider those items of income / expense which are directly related to core operations of the company
- Operating items - Those relating to the day-to-day operations of the enterprise, being incurred in the normal course of business and related to the principle revenue generating activities.
- Non-operating items - Includes investing and financing activities which are not related to principle revenue generating activities.

Operating Items	Non – Operating Items
<ul style="list-style-type: none"> ▪ Foreign Exchange Gains/ Losses ▪ Sale of scrap ▪ Provisions/liabilities/balances no longer required written back ▪ Commission received ▪ Interest from customers on delayed payment ▪ Miscellaneous Income ▪ Deferred/ Amortised Expenditure ▪ Bank Charges ▪ Business development expense ▪ Commission paid ▪ Rent paid 	<ul style="list-style-type: none"> ▪ Payment or receipt of Interest/ Dividend ▪ Rent Received ▪ Write-back of provision for diminution in the value of investments /impairment of assets ▪ Profit or Loss on sale of Assets/ Investments/ Assets written-off ▪ Finance charges ▪ Prior period expense ▪ Donations / CSR expenses ▪ Loss on fire/ natural calamities/ thefts etc. ▪ Preliminary and pre-operating cost ▪ Provision for doubtful debts or other contingent provisions ▪ Extra-ordinary incomes or expenses

Range Concept and Multiple year Data

Evolution over years



Applicability to Methods

Method	Multiple year Data	Range
TNMM	✓	✓
CUP	x	✓
RPM	✓	✓
PSM	x	x
CPM	✓	✓
Other Method	x	x

International Practices

- Range – Inter-Quartile range : 25th & 75th Percentiles
- All methods are applicable for Range and Multiple Year data concept
- No minimum comparables required for Range Concept

Applicability of Range concept

As per Rule 10CA, the 'range concept' shall be applicable when:

- (a) the MAM is either CUP, RPM, CPM, or TNMM; and
- (b) there are at least 6 comparables.

Computation Mechanism for ALP

Steps	Particulars
1.	Calculate weighted average margins for all comparables using up to 3 years data (including current year to the extent available)
2.	Arrange the weighted average margins in ascending order
3.	Compute 35th and 65th percentile of the number of comparable companies
4.	35th Percentile = Total no. of comparables * 35% 65th Percentile = Total no. of comparables * 65%
5.	In case of decimals – Round off to next higher value In case of whole number – Average of value at that data place and value at next higher data place
6.	Find 35th and 65th percentile values from weighted average margins in ascending order – these two values will constitute the arm's length range
7.	If transaction price is within the range, then it is at arm's length
8.	If transaction price is outside the range, median (50th percentile) of weighted average margins (in ascending order) will be the ALP. If transaction price is lower (cost) then adjustment of the difference would be made

Multiple Year Data and Range Concept

1. Computation of Weighted Average PLI

Particulars	Year 0 (Current Year)	Year 1	Year 2	Total	Weighted Average PLI (OP/TC) = $46 / 435 = 10.57\%$
Operating Profit ('OP')	21	12	13	46	
Total Cost ('TC')	150	130	155	435	

2. Range Computation: Where the data set comprises 7 data points (arranged in ascending order), and the percentiles computed are of whole numbers.

Table showing Dataset in ascending order

S. No.	1	2	3	4	5	6	7
Values	2.20%	6%	8.20%	9%	10.57%	11.90%	12%

Table showing Computation of arm's length range

Percentile	Formula	Value to be selected (Note 1)	Result
35th	Total no. of data points in dataset * 35% = $[7 * 35\%] = 2.45$	3rd value	8.20%
65th	Total no. of data points in dataset * 65% = $[7 * 65\%] = 4.55$	5th value	10.57%
Median	Total no. of data points in datasets * 50% = $[7 * 0.5] = 3.50$	4th value	9%

Note 1: When the result of analysis of 35th or 65th percentile or median is not a whole number, the value at next higher data place shall be selected.

Multiple Year Data and Range Concept

1. Table showing Dataset in ascending order

Sl. No.	Price (in INR Thousand)	Sl. No.	Price (in INR Thousand)
1	42.00	11	48.45
2	43.00	12	48.48
3	44.00	13	48.50
4	44.50	14	49.00
5	45.00	15	49.10
6	45.25	16	49.35
7	47.00	17	49.50
8	48.00	18	49.75
9	48.15	19	50.00
10	48.35	20	50.15

3. Range Computation: Where the dataset comprises 20 data points (arranged in ascending order), and the percentiles computed are whole numbers.

2. Table showing Computation of Arm's Length Range

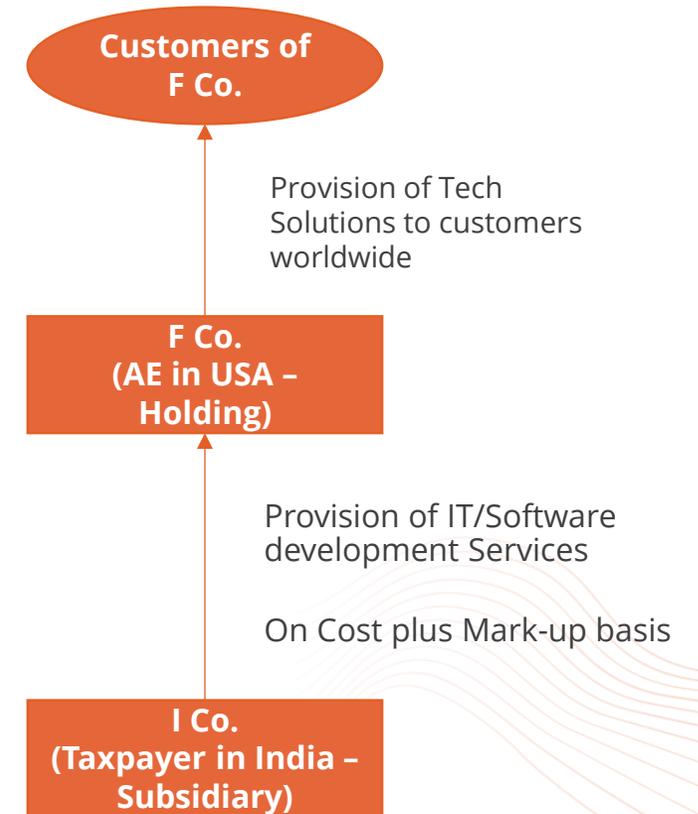
Percentile	Formula	Value to be selected (Note 1)	Result
35 th	Total no. of data points in dataset * 35% = $[20 * 35\%] = 7$	Mean of 7th & 8th value = $(47 + 48)/2$	47.5
65 th	Total no. of data points in dataset * 65% = $[20 * 65\%] = 13$	Mean of 13th & 14th value = $(48.50 + 49)/2$	48.75
Median	Total no. of data points in dataset * 50% = $[20 * 0.5] = 10$	Mean of 10th & 11th value = $(48.35 + 48.45)/2$	48.40

Note 1: When the result of analysis of 35th or 65th percentile or median **is a whole number**, the arithmetic mean of such value and the value immediately succeeding it in the dataset shall be selected.

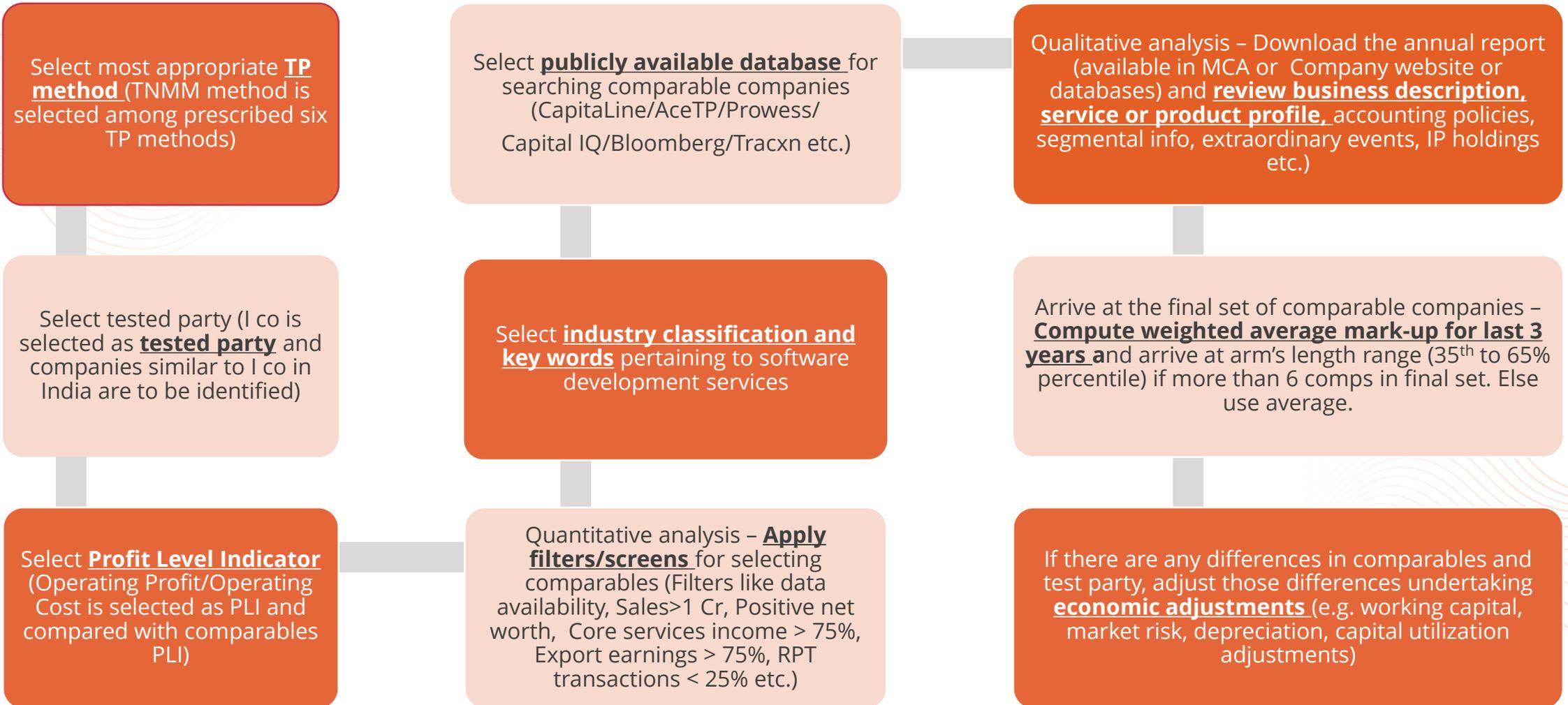
Steps for determination of comparables in Transfer Pricing context

Case study:

- Indian resident entity - I co. is engaged in providing software development services to its holding company in US - F co.
- I co. is earning a mark-up of cost plus 15% for the services rendered to F co.
- We have to evaluate mark-up of 15% earned by I co from the International transaction of Provision of software development services from an arm's length standpoint.
- Here are the steps involved in the benchmarking analysis undertaken to arrive at the arm's length mark-up earned by comparable companies engaged in similar software development services in India.



Steps for determination of comparables in Transfer Pricing context



Keywords

Prowess IQ (a database compiled and managed by Centre for Monitoring Indian Economy Private Limited)

A search query on Prowess updated **until 4th October 2023**, using the following keywords in the 'Query by Business Segments & Products' module:

Broad Classification	Keywords	Resultant Companies
Main products services group of companies {CMIE}	<ul style="list-style-type: none">• Trade in readymade software products.• Information technology.• Software services	1286
Main Product/Services Group of Company (NIC)	<ul style="list-style-type: none">• '46512' Wholesale of software.• '62013' Providing software support and maintenance to the clients.• Software Services	253
Structured Search on Products & Raw Materials	<ul style="list-style-type: none">• Trade in readymade software products• Information technology• Software services	596
Business Segment-wise Information	<ul style="list-style-type: none">• Trade in readymade software products• Information technology• Software services	240

Search Strategy

A. Prowess IQ

Companies reviewed in detail	2375
Less: Companies rejected on the following criteria	
Companies having insufficient financial Information to carry out analysis	1008
Companies having different financial year end	17
Companies not having 12 months Financial Information	4
Companies having turnover less than One Crore	147
Companies having Negative Net worth	53
Companies having Persistent losses for 2 or more years	64
Companies having Service revenue less than 75%	67
Companies having Compensation to employees greater than 25%	172
Companies having Export revenue less than 75%	603
Companies having significant Related party transactions (in excess of 25%)	194
Companies engaged in dis-similar Functions	36
Companies retained as comparable	10

Business Descriptions

Brief Business Description of the Comparable Companies – SWD Service Segment

1. Sybrant Technologies Pvt. Ltd.

Sybrant Technologies Private Limited is an acclaimed software development company that provides Software development services, Data services, Platform Based Services, and other Real Estate services.

2. Harbinger Systems Pvt. Ltd.

Harbinger Systems is a private company providing software technology services for independent software vendors and enterprises. Harbinger Systems builds software solutions leveraging digital technologies for domains such as HRTech, Healthtech, and Learning Tech.

3. Wipro Ltd.

Wipro Limited specializes in IT and computer related technologies. The Group's services encompass a number of areas, including software architecture, business intelligence systems, e-commerce, data warehousing, Internet access devices, network management, system administration, messaging systems, IT consulting and design. Wipro also has a presence in niche markets of consumer products.

4. Athena Global Technologies Ltd.

Athena Global Technologies Limited provides information technology services. The Company offers software application development, infrastructure management, product engineering, e-commerce web, digital transformation, and consulting services. Athena Global Technologies



Accept Reject Matrix

Accept Reject Matrix (Prowess IQ)			
Companies reviewed in detail			2,375
Less: Companies rejected under quantitative filters			
Companies having Insufficient Financial Information			1,008
Companies having Different Financial Year End			17
Companies not having 12 months information			4
Companies having Turnover Less than 1 crore			147
Companies having Negative Network			53
Companies having Persistent Losses for 2 or more years			64
Companies having Service revenue less than 75%			67
Companies having Compensation to employees greater than 25%			172
Companies having Export revenue less than 75%			602
Companies having RPT In Excess of 25%			192
Companies engaged in dissimilar Functions			42
Total companies eliminated			2,368
Companies engaged in similar functions			7
S No	Company Name	Accept/Reject	Reason for rejection
1	XClusive Business Centre Pvt. Ltd.	Reject	Companies having insufficient Financial Information
2	24-7 Intouch India Pvt. Ltd.	Reject	Companies having RPT In Excess of 25%
3	24/7 Customer Pvt. Ltd.	Reject	Companies having Export revenue less than 75%
4	3 K Technologies Ltd.	Reject	Companies having insufficient Financial Information
5	3D P L M Global Services Pvt. Ltd.	Reject	Companies having Export revenue less than 75%
6	3I Infotech Consultancy Services Ltd.	Reject	Companies having Export revenue less than 75%
7	3I Infotech Digital B P S Ltd.	Reject	Companies having Export revenue less than 75%
8	3I Infotech Ltd.	Reject	Companies having Export revenue less than 75%
9	63 Moons Technologies Ltd.	Reject	Companies having Persistent Losses for 2 or more years
10	7Seas Entertainment Ltd.	Reject	Companies having Turnover Less than 1 crore
11	99Games Online Pvt. Ltd.	Reject	Companies having Negative Network
12	A A M India Mfg. Corpn. Pvt. Ltd.	Reject	Companies having Persistent Losses for 2 or more years
13	A B B Global Inds. & Services Pvt. Ltd.	Reject	Companies having different Financial Year End
14	A B B Power Technology Services Pvt. Ltd.	Reject	Companies not having 12 months information
15	A B Inbev G C C Services India Pvt. Ltd.	Reject	Companies having Export revenue less than 75%
16	A B M Knowledgeware Ltd.	Reject	Companies having Export revenue less than 75%
17	A C E Bpo Services Pvt. Ltd.	Reject	Companies having insufficient Financial Information
18	A C S Technologies Ltd. [Merged]	Reject	Companies having Compensation to employees greater than 25%
19	A D A Software & Services Pvt. Ltd.	Reject	Companies having insufficient Financial Information
20	A D P Pvt. Ltd.	Reject	Companies having insufficient Financial Information
21	A D P Pvt. Ltd. (2015)	Reject	Companies having Export revenue less than 75%
22	A E I Infotech Ltd. [Merged]	Reject	Companies having insufficient Financial Information

Comparable Summary

Sl No.	Name of the company	FY 2020-21	FY 2021-22	FY 2022-23	Weighted Average (3 years)
		OP/OC			
1	Sybrant Technologies Pvt Ltd	10.27%	-0.16%	NA	5.06%
2	Harbinger Systems Pvt Ltd	5.29%	5.24%	NA	5.26%
3	Evoke Technologies Pvt Ltd.	7.91%	3.59%	NA	5.53%
4	Suntec Web Services Pvt. Ltd.	6.82%	9.77%	NA	6.85%
5	Orion India systems Pvt Ltd	13.90%	14.47%	NA	14.23%
6	CONGA Software Pvt Ltd	17.29%	14.80%	NA	14.80%
7	Wipro Limited	27.34%	23.02%	15.88%	21.41%
8	Mindtree Ltd. [Merged]	21.69%	24.82%	NA	23.46%
9	Athena global technologies Ltd	47.11%	16.21%	NA	30.76%
10	Net4Nuts Limited	36.24%	30.74%	NA	33.25%
No of Companies					10
Criteria		Data Place		OP/OC	
35 th Percentile		4		6.85%	
Median		5,6		14.52%	
65 th Percentile		7		21.41%	

Comparability Adjustments

Why?

Loss situation

Not par with Industry trends

Guidance in place?

Practical implementation issues

Litigation pain points

What is Comparability Adjustments

- Adjustment made to uncontrolled transactions/ comparable companies to enhance comparability with the controlled transactions/ tested party
- Adjustment is required in case of any mismatch between FAR profile of comparables and tested party.
- Reasonably accurate adjustments should be made to eliminate the effect of any differentiating factors.
- It is to be noted that while performing comparability adjustments, the margins of comparables were adjusted to eliminate the effect of material discrepancies.

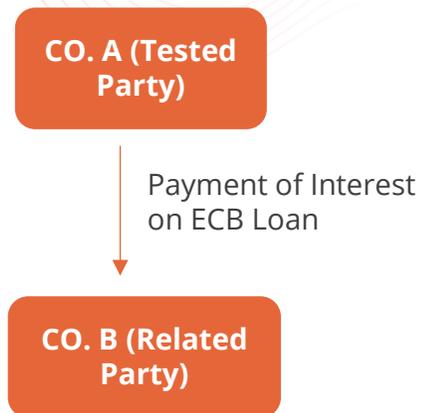
Types of Comparability Adjustments



Special Transactions – (1/3)

Availing of Loan from Related Party

Company A (Tested Party) has availed loan from Company B (Related Party) and pays interest at the rate of USD 6months LIBOR+300 bps Effective interest rate 6.95%



Key factors that would impact the pricing of the loan

1. Issue date
2. Currency
3. Country of the borrower
4. Tenor
5. Options
6. Type of rates & Industry

Interest Rate of Comparable Companies - CDSL - Other Method

S.no	Company Name	ISIN	Interest rate
1	ABC Ltd	INE019A07423	8.90%
2	DEF Ltd	INE01XX07026	8.95%
3	XYZ Ltd	INE219X07033	9.10%
4	GHI Ltd	INE477L07AD0	9.18%
5	JKL Ltd	INE722A07AG5	9.25%
6	MNO Ltd	INE866I07CK1	9.50%
7	PQR Ltd	INE180C07072	10.05%
8	STU Ltd	INE890A08011	10.55%
9	VW Ltd	INE124N07333	11.94%
10	XY Ltd	INE04VS07107	12.85%

Total no.of comparables		10
Criteria	Data Place	Interest rate
25th Percentile	4	9.18%
Median	5,6	9.38%
75th Percentile	7	10.05%

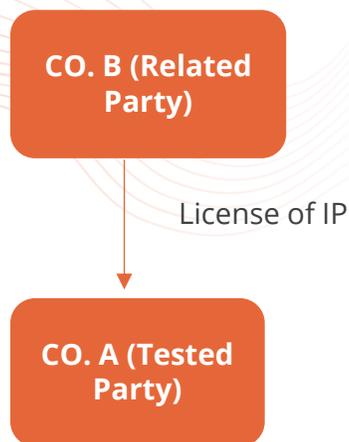
Observation and Analysis

Since the tested party paid interest at an average effective rate of 6.95% which is within the range of interest rates charged by comparable instruments in similar transitions hence concluded to be at arm's length.

Special Transactions – (2/3)

License of Intangible Property

Company B (Related Party) has licensed Intangible property to Company A (Tested party) in return Company A pays Royalty for use of Intangibles.



Co. A pays 0.5% of gross sales as Royalty for use of Intangibles

Observation and Analysis

Since the tested pays less than the comparable companies engaged in similar industry the transaction of payment of royalty for the use of Intangibles is said to be at arm's length.

S.no	Company Name	Agreement type	Duration	Royalty rate	Additional payments
1	ABC Ltd	Franchise; Trademark; Trade Name	10	6.00%	Advertising Fee; Franchising Fee; Other Payments
2	DEF Ltd	Franchise; Trademark; Trade Name	5	6.00%	Advertising Fee; Franchising Fee; Other Payments
3	XYZ Ltd	Franchise; Trademark; Trade Name	15	6.00%	Advertising Fee; Franchising Fee; Other Payments
4	GHI Ltd	Franchise; Trademark; Trade Name	99	6.00%	Advertising Fee; Franchising Fee;
5	JKL Ltd	Franchise; Sublicense; Trademark; Trade Name	10	7.00%	Advertising Fee; Franchising Fee; Other Payments
6	MNO Ltd	Copyrights; Franchise; Know-how; Trademark; Trade Name	10	7.00%	Advertising Fee; Franchising Fee; Other Payments
7	PQR Ltd	Franchise; Trademark; Trade Name	20	7.00%	Advertising Fee; Franchising Fee; Other Payments
8	STU Ltd	Franchise; Patent; Trademark; Trade Name	17	7.00%	Advertising Fee; Franchising Fee; Other Payments
9	VW Ltd	Franchise; Trademark	5	9.00%	Advertising Fee; Franchising Fee; Other Payments
10	XY Ltd	Franchise; Trademark; Trade Name	10	8.00%	Franchising Fee; Other Payments
Total Agreements					10
35th Percentile					6.00%
Median					7.00%
65th Percentile					7.00%

Special Transactions – (3/3)

Intragroup Services

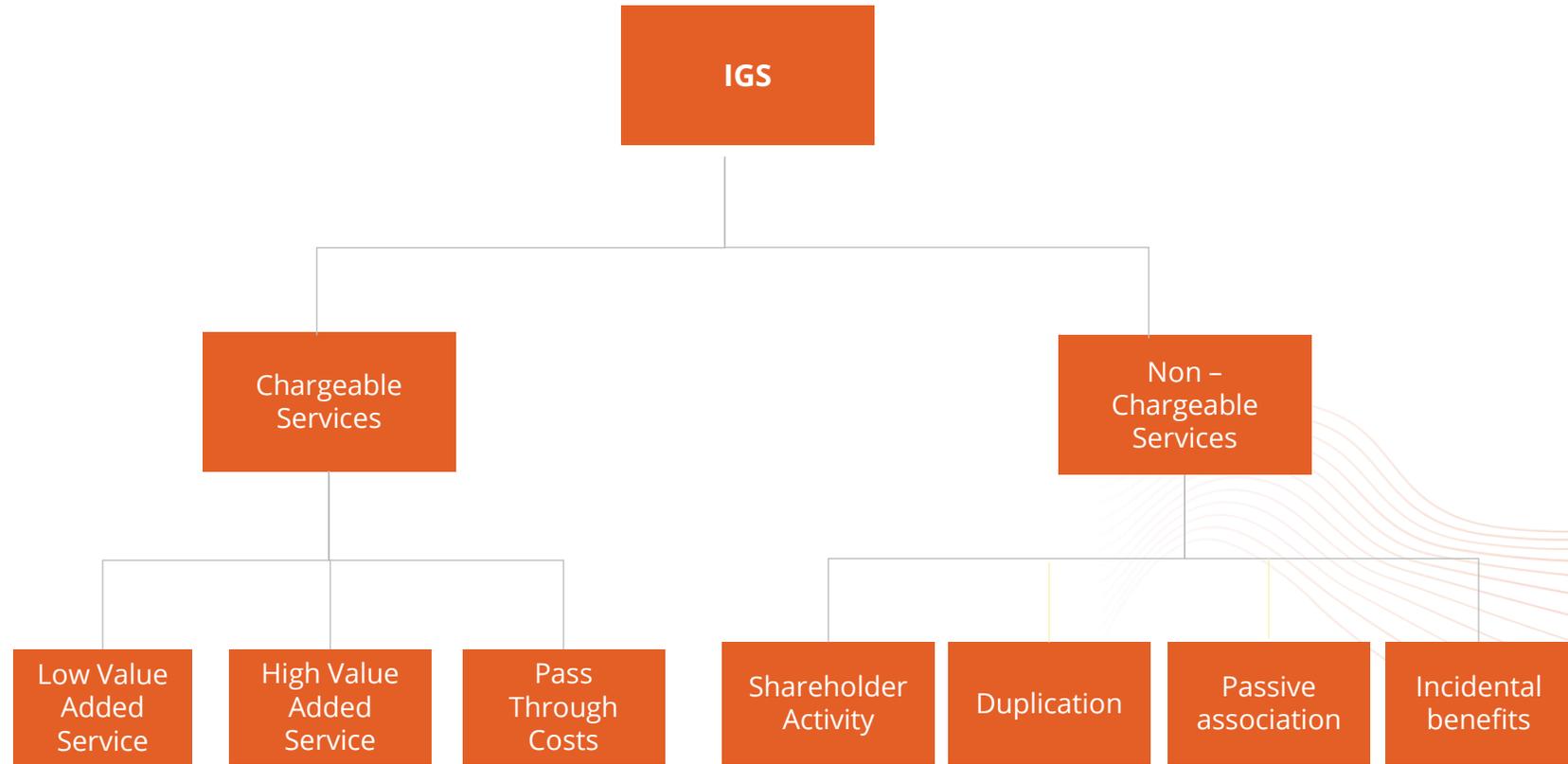
Intra-group services refer to the provision of various services within a multinational group of companies, often across different nations and jurisdictions, it involves:

- Services by one member to other member or members of MNE group.
- Services provided by group of members for the benefit of overall group.
- Service by parent company to member & group of members.

Most prevalent Intra-Group Services

1. Strategic and Managerial Services
2. Accounting and Auditing
3. IT Support Services
4. Engineering Services
5. Finance, Legal And Tax Related
6. Administrative Support Services
7. Laboratory and technical assistance
8. HR Support Services
9. Procurement & Assembly Support Services

Chargeability





Transfer Pricing - Compliances

Overview of TP Documentation Requirements

1. Transfer Pricing Benchmarking Report

2. Transfer Pricing Policy Document

3. Inter-Company Agreement

4. Disclosure Form (TP Audit/ Certificate)

5. Local File/TP Study Report

6. Master File

7. Country-by-Country Report

Snapshot of TP Compliances – (1/2)

Relevant for AY 2024-25 (for FY 2023-24)

#	TP compliance	Applicability	Due date	Penalty for non-compliance
Local File	TP Study to be maintained u/s 92D	If aggregate value of International Transactions > INR 1 Crore or If Specified Domestic Transactions (SDT) > INR 20 Crores [transactions with entities/units claiming special tax holiday exemptions or deductions u/s 80IA or 80IB or 10AA or with entities claiming concessional tax rates of u/s 115BAB]	31 October 2024 (1 month prior to ITR filing due date)	2% of value of International Transactions or SDT
	Form No. 3CEB Report by an Accountant u/s 92E	If International Transactions (irrespective of threshold) are undertaken with foreign Associated Enterprises (AEs) or If SDTs are undertaken with Indian AEs (either of the parties are claiming any tax holiday exemptions or concessional tax rates and the overall transactions value exceeds INR 20 Crores)	31 October 2024 (1 month prior to ITR filing due date)	INR 1,00,000
Master File	Form No. 3CEAA (Part A) - Master File u/s 92D(4) (<i>One Page Form</i>)	Part A is applicable if International Transactions are undertaken during the financial year (Part A is applicable to all MNEs irrespective of threshold)	30 November 2024 (Same as ITR filing due date)	INR 5,00,000 - Non-furnishing of information and documentation
	Form No. 3CEAA (Part B) - Master File u/s 92D(4) (<i>Detailed Form</i>)	Part B is applicable if below twin conditions are satisfied: - Consolidated Group Revenue exceeds INR 500 Crores and - Aggregate value of all International Transactions exceeds INR 50 crores or the Intangible Property related International Transactions exceeds INR 10 Crores		
	Form No. 3CEAB Master File Intimation u/s 92D(4) (<i>One Page Form</i>)	It is applicable to MNEs crossing the above Master File filing thresholds and having more than one entity operating in India	31 October 2024 (30 days prior to MF filing due date)	

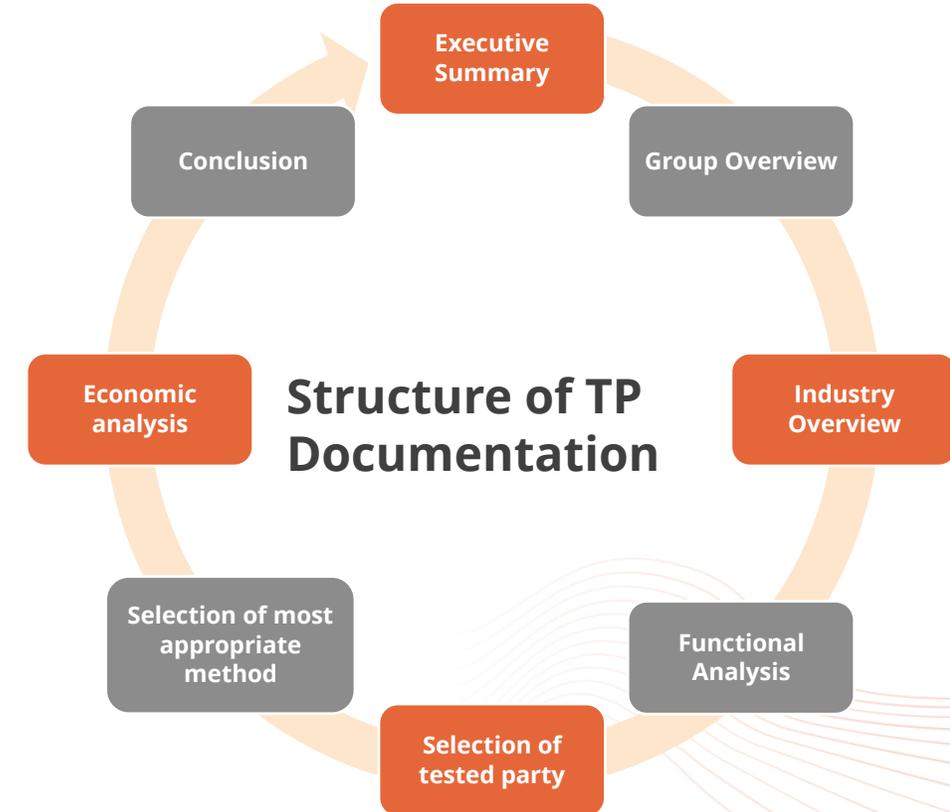
Snapshot of TP Compliances – (2/2)

#	TP compliance	Applicability	Due date	Penalty for non-Compliance
Country-by-Country-Report (CbCR)	Form No. 3CEAD CbC Report u/s 286(2)/(4) <i>(Detailed Form)</i>	<p>If Consolidated Group Revenue for preceding accounting year exceeds INR 6,400 Crores.</p> <p>However, if the bilateral exchange relationship for the automatic exchange of CbC Reports between tax authorities of Parent Entity/Alternate Reporting Entity (ARE) Jurisdiction and Indian jurisdiction is activated, then the Indian entity need not file CbCR in India as per Form No. 3CEAD. Indian entity is only required to file a CbCR Notification via Form No. 3CEAC.</p> <p>Link to check activated exchange relationships for CbCR https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm</p>	31 December 2023 (if Group's accounting year is ending on 31 December 2022 – 12 months from the end of group's accounting year)	<p>INR 5,00,000 - Furnishing of inaccurate information in CbCR</p> <p>INR5,000/15,000/50,000 per day - Non-furnishing of CbCR – Depending on the days of delay of violation</p>
	Form No 3CEAC CbCR Notification u/s 286(1) <i>(One Page Form)</i>	<p>CbCR Notification is to be filed when Parent Entity/ ARE is filing CbCR in its respective jurisdiction and there is an automatic exchange of CbCR activated between Parent/ARE's jurisdiction and the jurisdiction of Constituent entity i.e., India</p>	31 October 2023 (10 months from the end of group's accounting year)	

Transfer pricing documentation – Local File

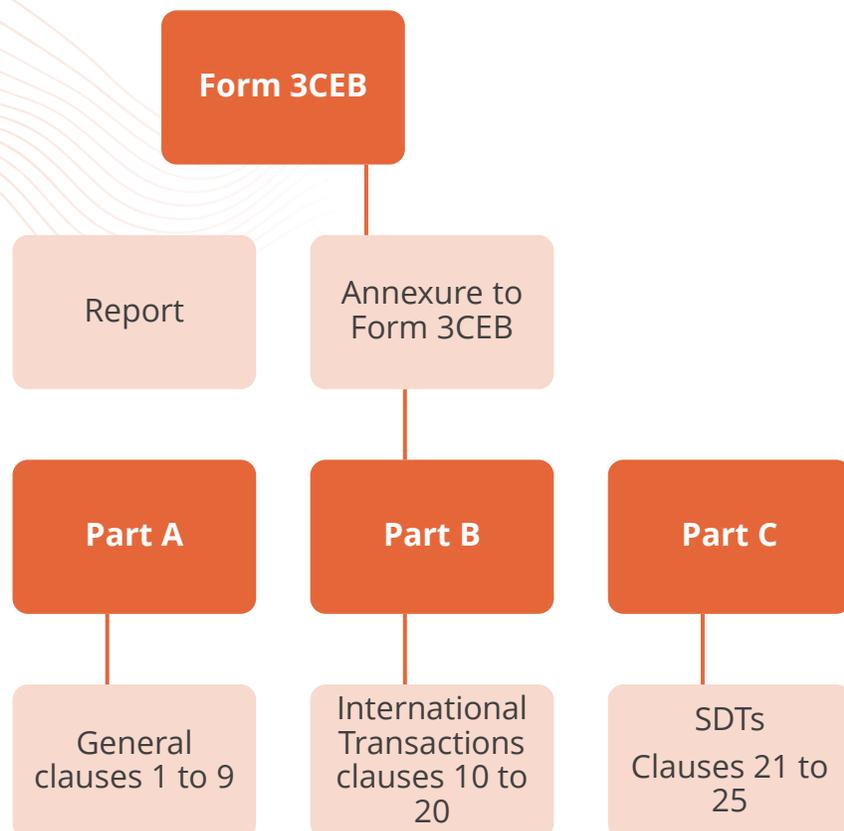
A detailed list of mandatory documents are given in Rule 10D(1) of the Rules.

- Ownership Structure
 - Profile of multinational group
 - Business description/ Profile of industry
- Entity Related**
- 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
- Price Related**
- Details of transfer pricing adjustment(s) made (if, any)
 - Any other information e.g. data, documents like invoices, agreements, price related correspondence etc.
 - Detailed documentation not required in case aggregate transaction value is less than **INR 1 Crore**
 - List of supporting documents are also provided in the law
 - Contemporaneous data requirements
 - Documents to be retained for a fixed period from end of the assessment year
 - Need to obtain Accountant’s report (under Form 3CEB) to be filed along with the return of income
- Transaction Related**



Accountant's Report (Form 3CEB) - Rule 10E - Applicability

Structure of Form 3CEB



Remarks on Form 3CEB

- **Verify** the nature and value of international transaction and SDT as provided by the Taxpayer
- **Classify** appropriately the transactions under relevant clauses of Form 3CEB
- **Reconcile** Form 3CEB details with related party schedule as per Notes to Account & identify discrepancies, if any.
- **Undertake** test checks for invoices, agreements, correspondence etc.
- **Documenting** the positions applied relying on judicial precedents, Accounting Standards, Auditing standard or Guidance note issued by ICAI.
- **Review** of intercompany ledger
- Additional **cross check** for expenditure in forex, earnings in forex and CIF value of imports as per Notes to Accounts
- **Compare** last year's Form 3CEB with current year's to ensure no regular international transactions are missed out.
- **Prepare** notes to Form 3CEB and file a hard copy before the Assessing Officer within 15 days of online filing

Obtain Management representation for backup documentation & supporting available with Taxpayer to justify arm's length nature, amounts reported in Form 3CEB, particular of facts on the transactions reported.

A Penalty of INR 10,000 is levied under Section 271G if the Assessing officer believed that the CA has furnished incorrect information in his report.

Annexures to Form 3CEB – Part A, B & C

Part A	Part B (International Transactions)	Part C (Specified Domestic Transactions)
<ul style="list-style-type: none"> • Name, Address, PAN of the assessee & AY for which 3CEB is being filed. • Nature of business/ activities of the Assessee (code for nature of activity to be filled as per instruction for filing ITR-6) • Aggregate value of International Transactions as per books of accounts • Aggregate value of SDT as per books of accounts 	<ul style="list-style-type: none"> • List of AEs with whom assessee has entered into international transactions, the relationships between them and their business activities in brief • Purchase/ sale of raw materials, consumables or any other supplies for • Assembling/processing/manufacturing of goods/articles • Purchase/ sale of traded/finished goods • Purchase/ sale of any other tangible moveable/ immovable property or lease of such property • Purchase/ sale/ use of intangible property such as know-how, patents, copyrights, licenses, etc. • Provision/ availing of services • Capital Financing • Business Restructuring • Other mutual agreements • Deemed International Transactions • Any other transactions 	<ul style="list-style-type: none"> • Name, address and PAN of the associated enterprises • Nature of relationship • Brief description of the business carried out by the associated enterprises • Transactions disclosure: <ul style="list-style-type: none"> ○ Eligible business referred to in section [80A(6), 80IA(8) or 10AA] transferring / acquiring any goods or services to/from any other business carried on by the Assessee ○ Any SDT(s) resulted in more than ordinary profits to an eligible business to which section 80IA(10) or section 10AA applies ○ Any SDT(s) resulted in more than ordinary profits with any persons referred to in sub-section (6) of section 115BAB (newly inserted clause vide Notification No. 82/2020 dated 1 October 2020) ○ Any other SDT not specifically referred to the above

Master file

Contents	Information to be included in Master File
Organisational structure	<ul style="list-style-type: none"> • Chart illustrating the MNE group's ownership structure & geographical location of operating entities.
Description of MNE group's business(es)	<ul style="list-style-type: none"> • Important drivers of business profit • Supply chain for the group's five largest products/ services offerings by turnover • Important service arrangements between members of the MNE group, other than R&D services • Main geographic markets for the group's products and services • Functional, Assets & Risk Analysis of principal contributions that contribute at least 10% of Revenues/Assets/Profits • Important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year
MNE group's intangibles	<ul style="list-style-type: none"> • MNE group's overall strategy for the development, ownership and exploitation of intangibles • List of important intangibles of MNE group • Important agreements related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements • Group's transfer pricing policies related to R&D and intangibles • Important transfers of intangibles during the fiscal year
MNE group's intercompany financial activities	<ul style="list-style-type: none"> • Description of how the MNE group is financed, including important financing arrangements with Top 10 unrelated lenders. • Identification of members of MNE group providing central financing function for the group • Group's transfer pricing policies related to intra-group financing arrangements
MNE group's financial and tax positions	<ul style="list-style-type: none"> • MNE group's annual consolidated financial statement for the fiscal year • MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among jurisdictions

Country-by-country ('Cbc') report

Table 1: Information included in CbCR for each tax jurisdiction



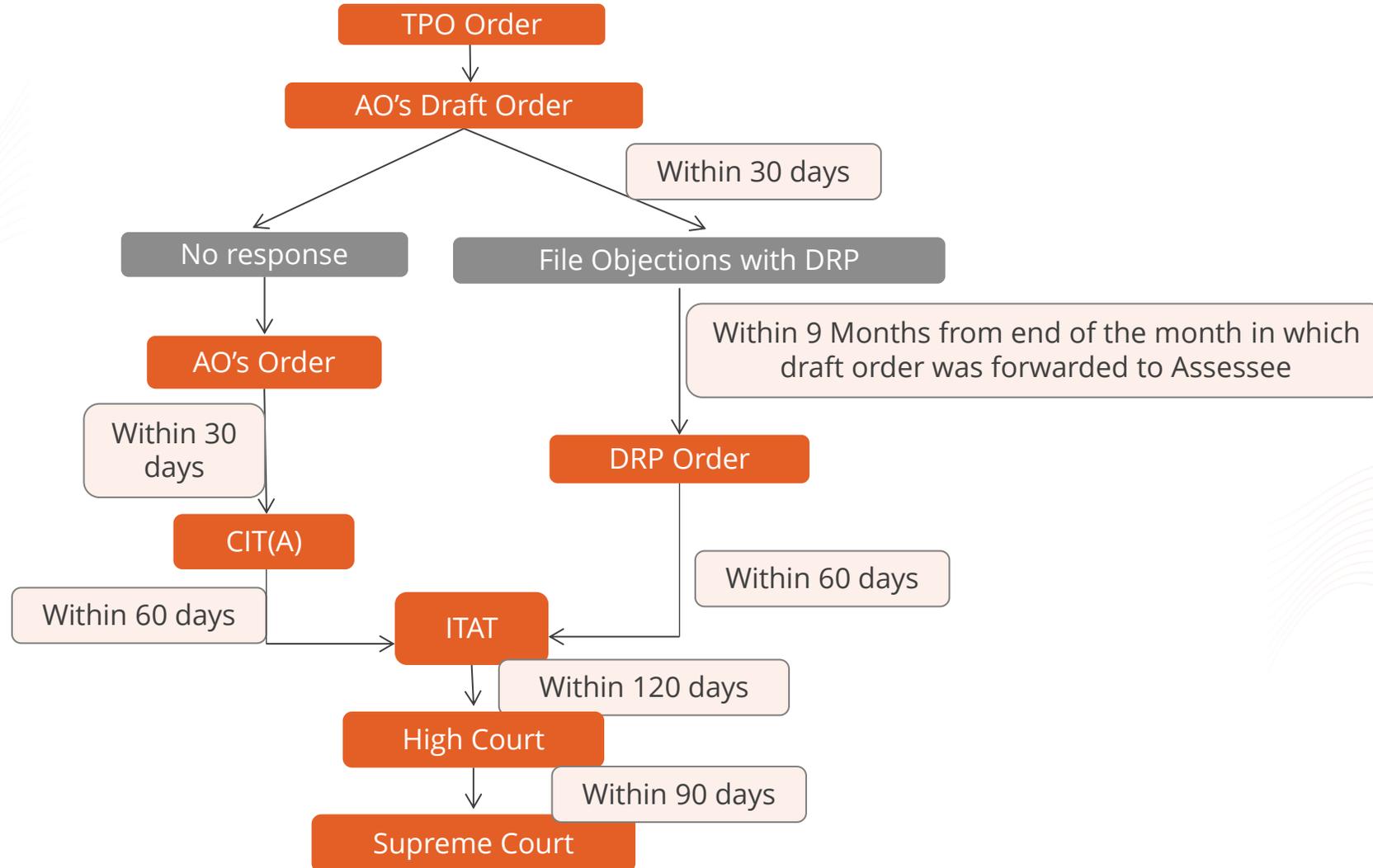
Table 2: Information included in CbCR for each tax jurisdiction

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)		
1. Research & Development	5. Sales, Marketing or distribution	9. Regulated Financial Services
2. Holding or managing intellectual property	6. Administrative, Management and Support Services	10. Insurance, Holding shares
3. Purchasing or procurement	7. Provision of services to unrelated parties	11. Dormant and others
4. Manufacturing or production	8. Internal Group Finance	

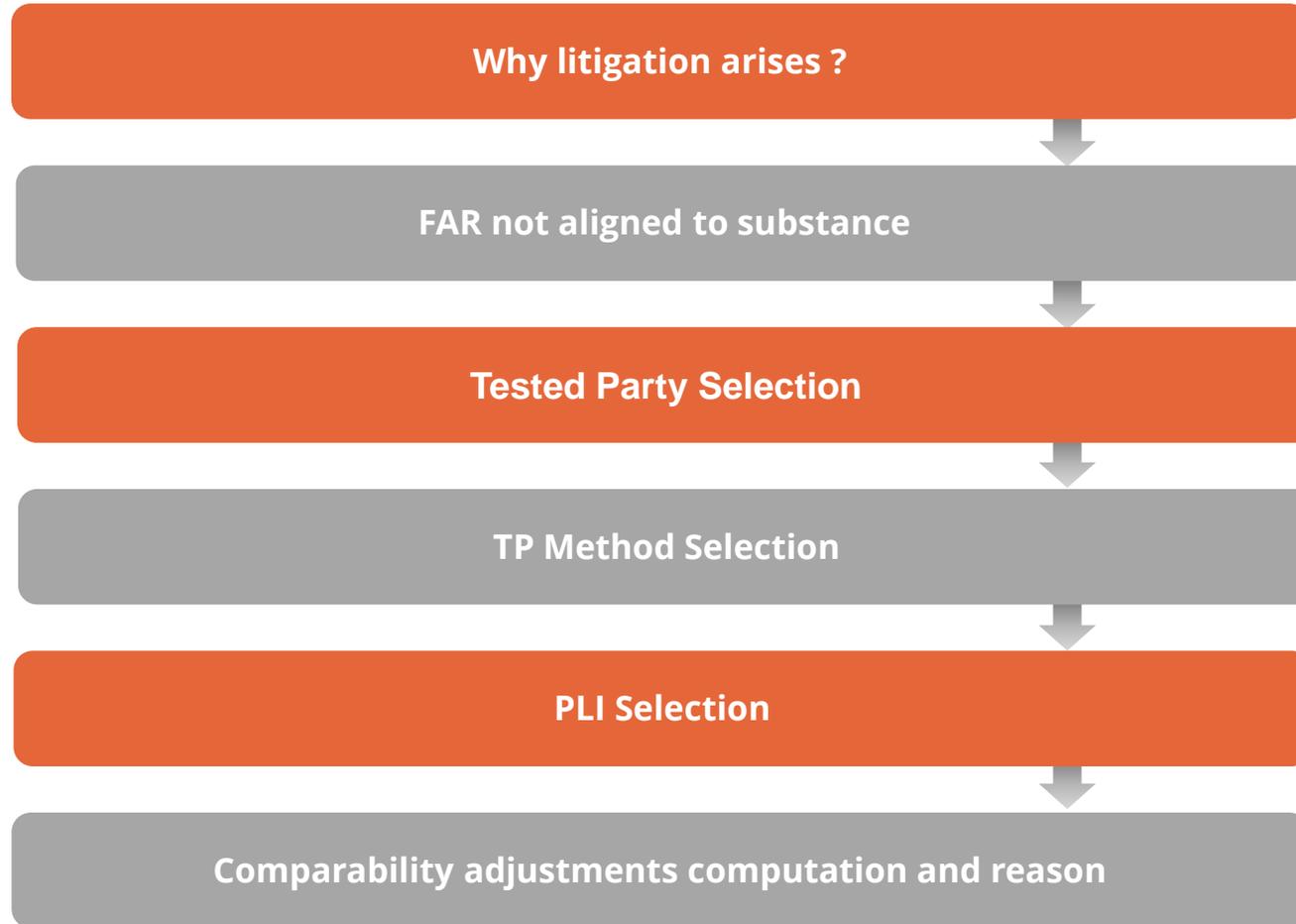


Transfer Pricing - Litigation

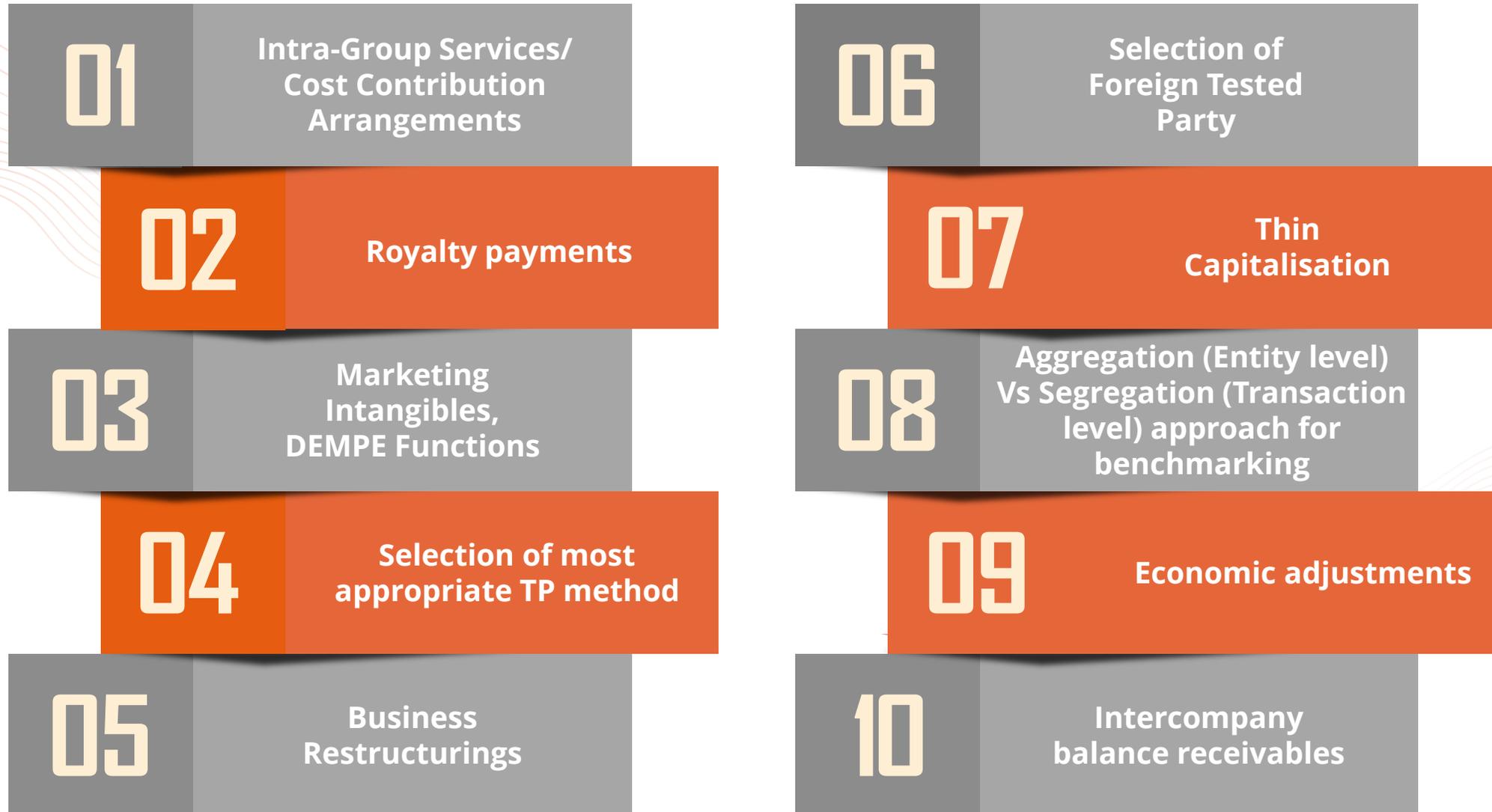
Indian Domestic Transfer Pricing Litigation Cycle



Litigation Issues



Litigation Issues



Litigation Issues

11 Share Transfers – Valuation Issues

12 Comparability analysis

13 Hybrid Instruments (CCD/FCCD/OFCD - Debt to Equity Re-characterization)

14 Pass thru costs /Berry Ratio

15 Corporate Guarantee

16 Secondary adjustments

17 Profit attribution to PE

18 Re-characterisation based on FAR

19 Search Process for TP benchmarking analysis

20 Deemed International/Covered Transactions

Secondary Adjustment

Secondary adjustment has been defined to mean an adjustment in the books of accounts of the taxpayer and its AE to reflect the actual allocation of profits between the taxpayer and its AE consistent with the transfer price determined as a result of primary adjustment.

- **Secondary Adjustment Provisions u/s 92CE are attracted in the following cases:**



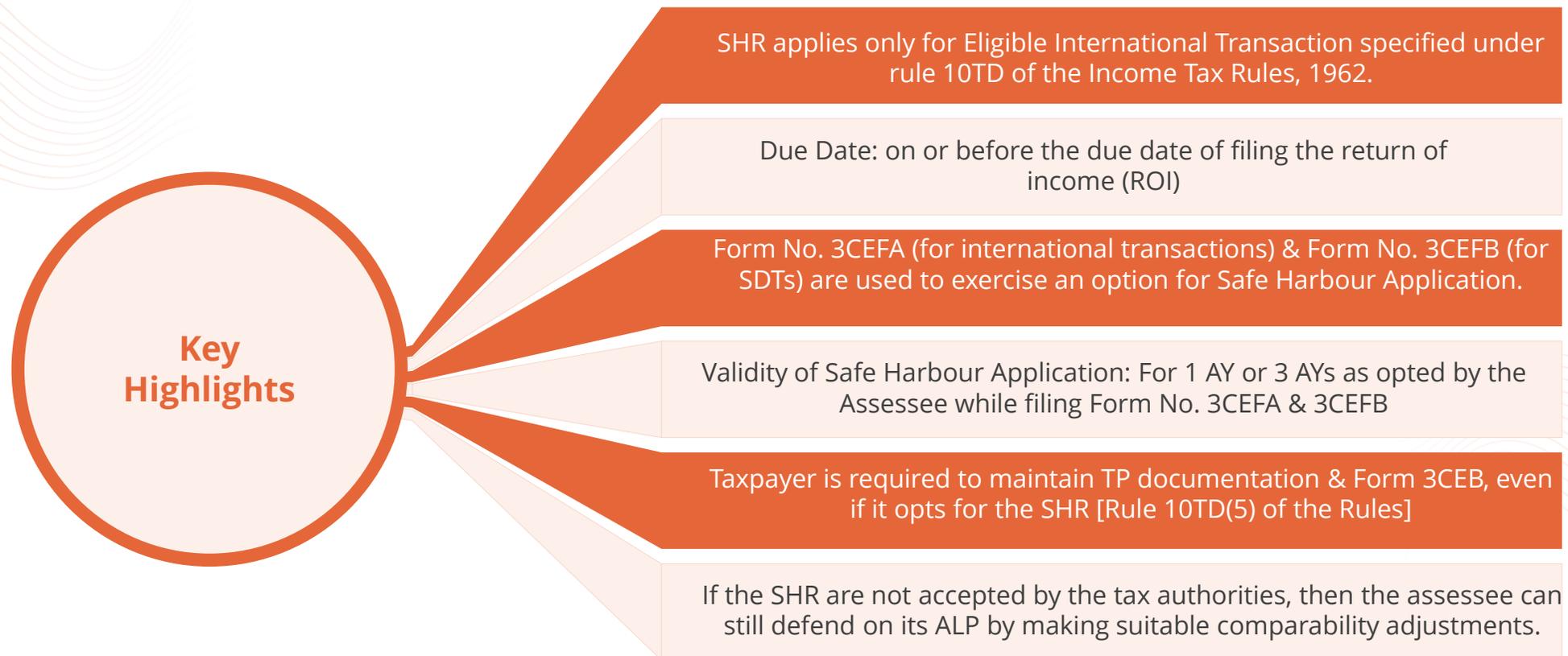
- **Exemptions to Secondary Adjustment:**
 - Amount of Primary Adjustment is not exceeding Rs. 1 Crore.
 - Primary Adjustment is made prior to AY 2016-17 (FY 2015-16).

A circular graphic with an orange-to-white gradient overlay is centered on a background image of a business meeting. The background shows hands pointing at a document with various charts, including bar and pie charts, and a laptop keyboard. A person's wrist with a watch is also visible. The text 'Transfer Pricing - Dispute Prevention' is written in white, bold, sans-serif font across the center of the orange circle.

Transfer Pricing - Dispute Prevention

Indian Safe Harbour Rules - SHR

Safe Harbour Rules contain the eligible transactions and thresholds along with safe harbour margins. This is transfer pricing dispute prevention mechanism.

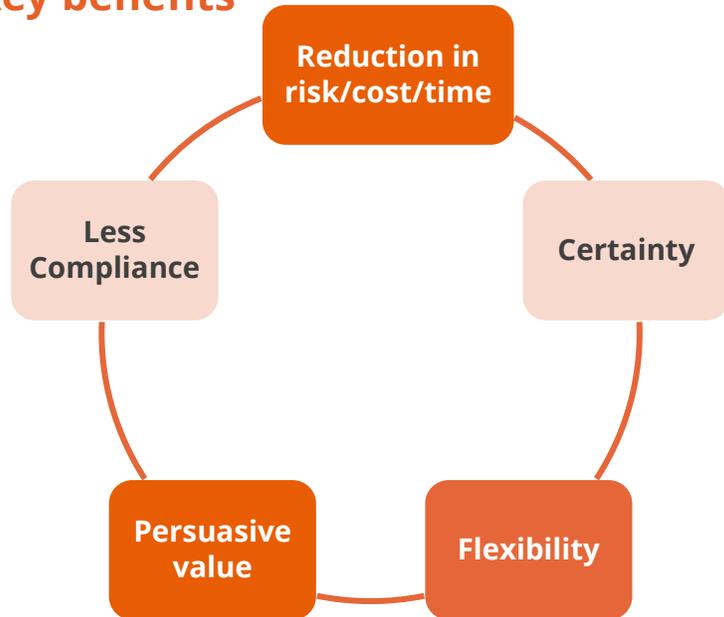


Advance Pricing Agreement Regime - APA

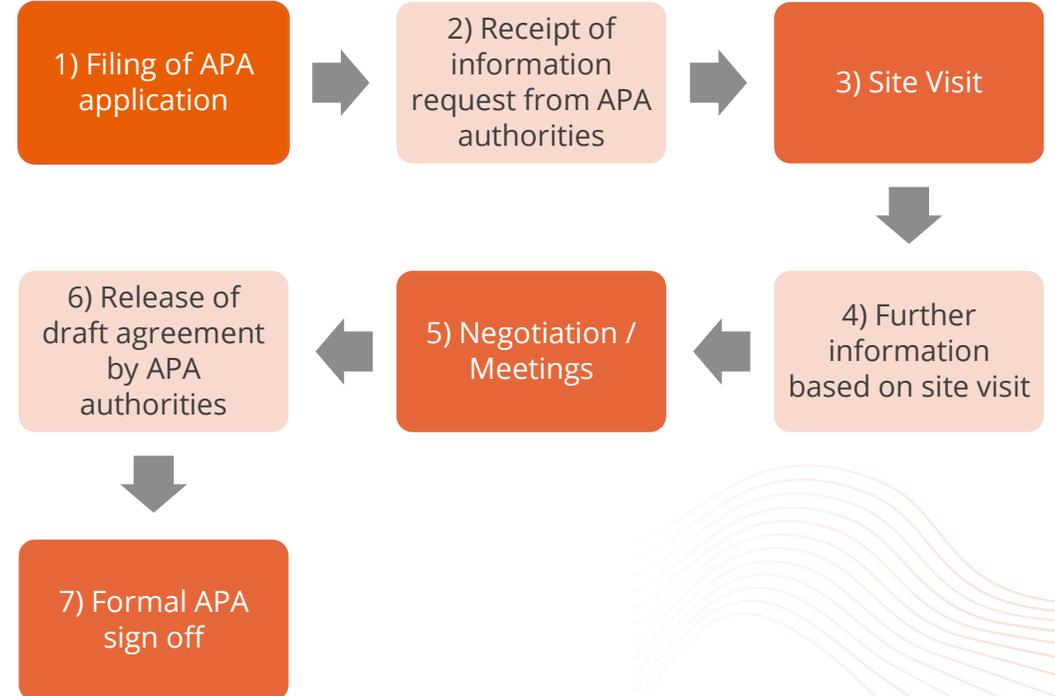
APA - Phases



APA - Key benefits



APA - Framework



Mutual Agreement Procedures - MAP

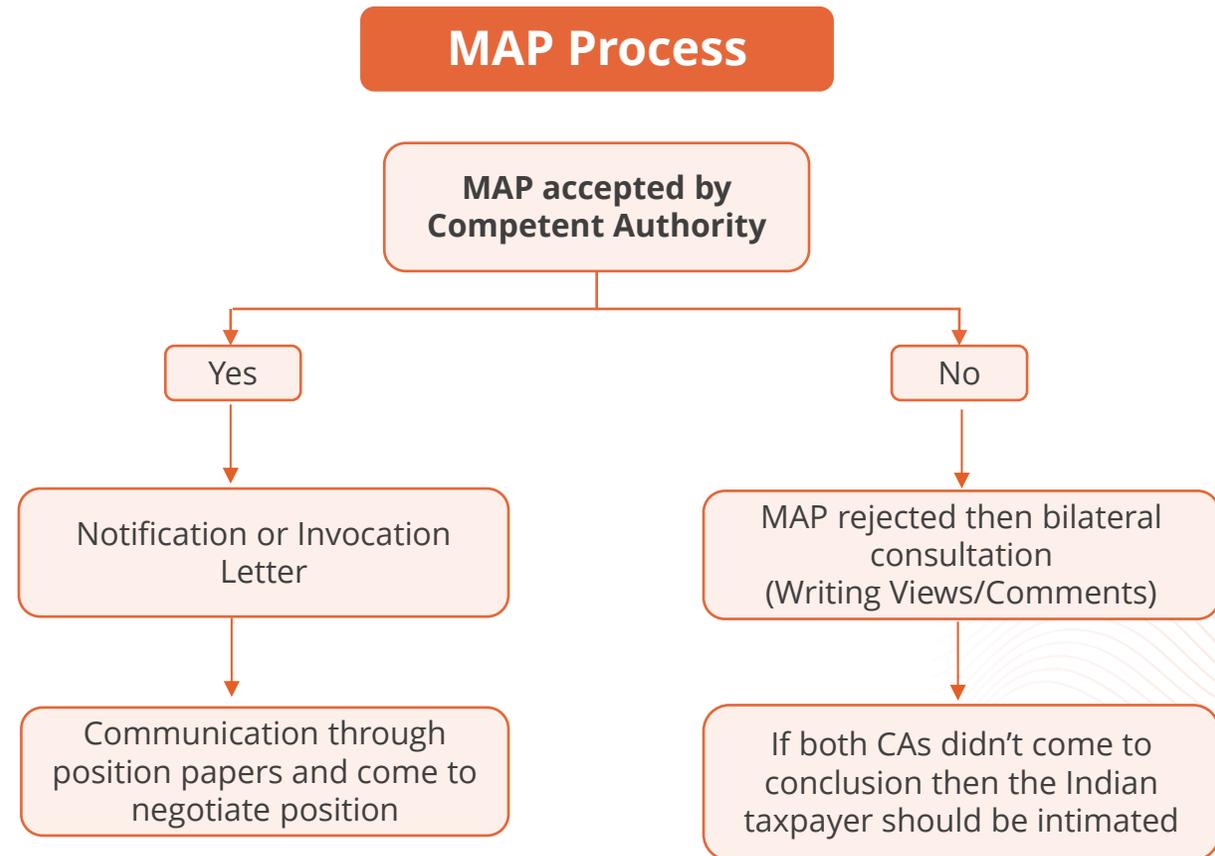
MAP is an alternate tax dispute resolution mechanism available for resolving disputes giving rise to double taxation or taxation not in accordance with DTAA

Making a MAP Application in India

A taxpayer resident in India can make an application to the CA of India having jurisdiction over the case (depending on the location of treaty partner) if it considers that the actions of the tax authorities of the treaty partner resulted or will result in taxation not in accordance with the relevant tax treaty. Such an application has to be made in Form No. 34F in accordance with rule 44G.

Time frame for resolving and implanting MAP cases

Indian is committed to endeavor to resolve MAP cases within an average timeframe for 24 months.





Transfer Pricing - Practice Areas

Transfer Pricing Domain



TP Benchmarking & Policy Setting

- Local, Regional And Global Transfer Pricing Benchmarking Analyses
- Drafting/Review Of Inter-company Agreements
- Group TP Policy Document Preparation
- TP Benchmarking Reports Review & Recommendations
- Transactional TP Policy Setting



Global TP Compliance

- Disclosure Form
- Local File
- Master File
- Country-by-country Report
- Group Level Transfer Pricing Compliances Management
- Comfort Letters/Memos For Statutory Auditors
- Fin 48 Assistance



Tax Controversy Management

- Representations In Case Of TP Audit/Scrutiny
- Filing Of TP Submissions And Supporting TP Workings & Back-up Documentation In Response To Notices, Information Requests
- Strategy Based On Facts, Law And Judicial Precedents
- Cost Benefit Analysis For Litigation Vs Dispute Resolution
- TP Adjustments & Provisioning Review

Transfer Pricing Domain

TP Structuring & Advisory Service

- Transactional Level and Group Level Structuring Advisory
- Value Chain Analysis
- Operational Transfer Pricing
- Drawing Segmental P&L for Transfer Pricing Purposes
- Complex Intra-group Transactions Review & TP Policy Setting
- TP /Economic/Secondary/ Corresponding Adjustments Computation

TP Technology

- Monitor Due Date and Track Progress
- Data Gathering & Aggregation
- Design & Execute Legal Framework
- Analyze Inter Company Transaction Values
- Establish arm's length Price
- Prepare Country specific documentation
- Monitor TP Policy

Dispute Resolution

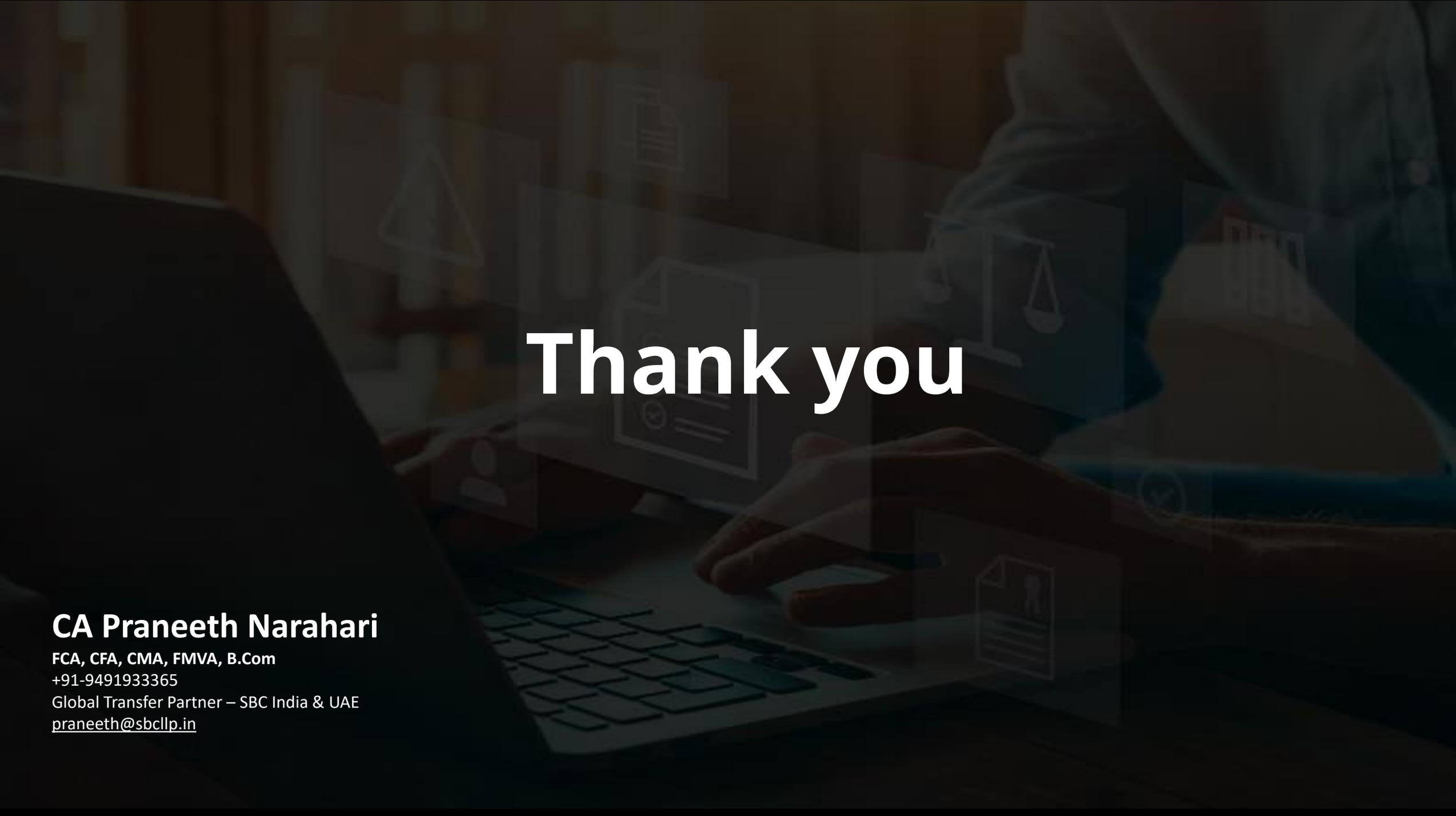
- Transfer Pricing Health Check-Up to avoid/mitigate risks
- Transfer Pricing Due Diligence
- TP Risk Assessment
- Advance Pricing Agreements Assistance
- Mutual Agreement Procedures
- Safe Harbour Applications

BEPS & International Taxation

- BEPS Impact Analysis
- OECD Pillar 1 & 2 – Readiness, Implementation & Impact
- CbCR Risk Assessment
- IP Structuring /DEMPE analysis in view of Action 8
- PE Evaluation & Profit Attribution
- Thin Cap Evaluation
- POEM Risk Assessment & Recommendations

TP Reference Material

- ✓ Income Tax Act & Rules
- ✓ TP Case laws/Rulings - ITAT & HC
- ✓ ICAI Guidance Note Nov 2022
- ✓ OECD TP Guidelines 2022
- ✓ UN TP Manual 2021
- ✓ BEPS/OECD Publications

A dark, semi-transparent overlay covers the entire image. In the background, a person's hands are visible typing on a laptop keyboard. Faint, light-colored icons are scattered across the scene, including a scale of justice, a document with a checkmark, and a bar chart. The overall tone is professional and modern.

Thank you

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Rules for Valuation of Property under the IT Act & IT Rules

CA Rajesh Vaishnav,
Partner – Direct taxes, SBC

Content

- ✓ **Specific Rules for Valuation**
- \$ **Angel Tax and its Valuation(Amendment)**
- ⚖ **Tax authorities can refer valuation to a Valuation Officer during assessment proceedings**
- 📄 **Comparison of valuations under FEMA, Income Tax Act, and Companies Act**
- 📄 **Valuation of Intangibles and its relevance**
- ⚖ **Key Litigation Trends**

Specific Rules for Valuation

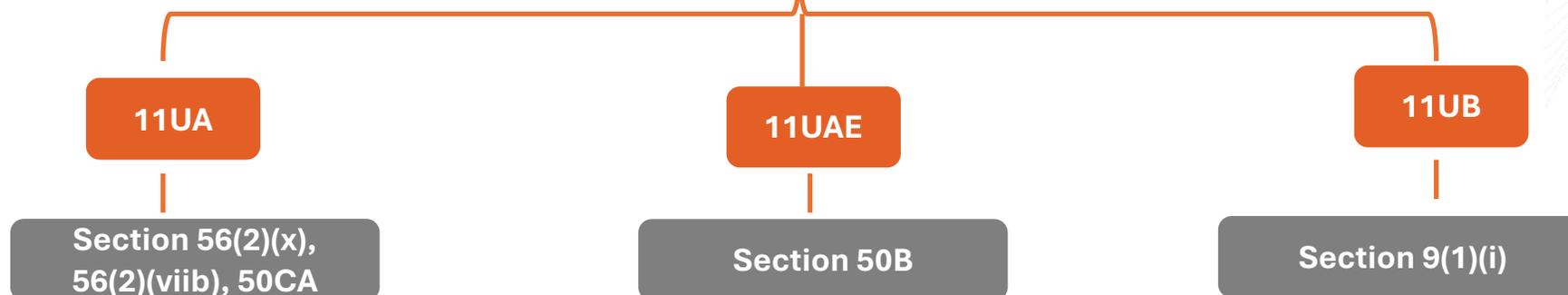
Income may be realized in cash or in kind. When income is in the form of assets (money's worth), a **fair market valuation** must be carried out to ascertain the taxable amount.

Legal Framework:

Income Tax Act provides provisions for the valuation of assets. Rule 11U defines the key terms. Importantly, Valuation Date means the date on which the property or consideration, as the case may be, is received by the assessee or the date on which capital asset is transferred (for Section 50CA purposes).

Key Rules for Valuation:

- **Rule 11UA** : Valuation of assets (shares, securities, etc.)
- **Rule 11UAE** : Valuation for transfer of assets in specific transactions.
- **Rule 11UB** : Valuation for certain revaluation of capital assets in relation to indirect transfers.



Overview

Type of Property	Relevant Section	Relevant Rule	Valuation Basis
Quoted Shares	112A r.w Rule 11UA	Rule 11UA	Recognised Stock Exchange
Unquoted Shares	50CA, 56(2)(viib)	Rule 11UA and Rule 11UAA and Rule 11UAD	Net Asset Value (NAV), DCF etc.,
Jewelry, Bullion, Art, etc.	56(2)(x)	Rule 11UA	Market rates or Report form Registered Valuer
Immovable Property	50C, 56(2)(x), 43CA	Not under Rule 11UA	Stamp Duty Value (SDV) or valuation officer
Business in Slump Sale	50B	Rule 11UAE	Net Worth
Transfer of shares of a foreign company (Indirect Transfers)	9(1)(i)	Rule 11UB, Rule 11UC	Various valuation approaches
Inventory converted to stock in trade	28(via)	Rule 11UAB	Immovable property – SDV Jewellery, bullion etc. – Rule 11UA Any other – Open market value

Section 50CA, 56(2)(viib), 56(2)(x)

Provision	Section 50CA	Section 56(2)(viib) – Now removed w.e.f. AY 2024-25	Section 56(2)(x)
Applicability	Applies to transfer of unquoted shares at a price below FMV	Applies when unlisted company issues shares at a premium exceeding FMV	Applies when movable property and immovable property is transferred with no or inadequate consideration
Taxable Event	If the consideration for the transfer is below FMV , the FMV is considered the Full Value of Consideration (FVOC) for calculating capital gains	If consideration exceeds FMV for shares issued, the excess amount is treated as income under “ Income from Other Sources ”	If the FMV of the movable property exceeds ₹50,000 and it is transferred for no consideration or inadequate consideration , the difference is treated as income .
FMV Determination	FMV determined as per Rule 11UA using methods like Net Asset Value (NAV) or Discounted Cash Flow (DCF)	FMV determined as per Rule 11UA , typically using Net Asset Value (NAV) or Discounted Cash Flow (DCF)	FMV determined based on market value or SDV of the property

Section 50CA, 56(2)(viib), 56(2)(x)

Provision	Section 50CA	Section 56(2)(viib) - Now removed w.e.f. AY 2024-25	Section 56(2)(x)(c)
Taxable Income	Difference between FMV and actual transfer price is capital gains	Difference between FMV and issue price is taxed under Income from Other Sources	Difference between FMV and consideration paid is taxed under Income from Other Source
Threshold for Taxability	Not applicable unless transfer price is below FMV	Applies if issue price exceeds FMV of shares	FMV must exceed ₹50,000 for the provision to apply
Example	If FMV of shares is ₹100 but they are transferred for ₹80, the excess ₹20 is taxed.	If FMV of a share is ₹100 but issued at ₹150, ₹50 is treated as income.	If FMV of jewelry is ₹1,00,000 and it is received for ₹30,000, ₹70,000 is taxable as income.
Exceptions	As covered in Section 241 (Oppression and Mismanagement) and 242 (Powers for Application of Section 241) of the Companies Act, 2013 or as notified by CBDT.	By Venture Capital (VC) undertaking from a VC Co or VC Fund or specified fund	Relative, Marriage, Will/Inheritance, contemplation of death, As mentioned in Section 47 and other specified transfers.

What does Rule 11UA say?

Rule 11UA outlines the method of determining fair market value for various properties, excluding immovable property.

Valuation of Jewellery and artistic work

Fair market value is estimated based on the open market price on the valuation date.

If purchased on the valuation date from a registered dealer, the invoice value is considered fair market value.

For other modes of acquisition exceeding INR 50,000, a registered valuer's report may be obtained

Valuation of Shares and Securities:

For quoted shares, fair market value is the transaction value recorded in a recognized stock exchange.

Unquoted equity shares' fair market value is determined using the formula given in next slide*

Unquoted shares and securities, other than equity, may require a valuation report from a merchant banker (SEBI – Category 1) or accountant.

Special Provisions:

Rule 11UA(2) provides alternative methods for determining fair market value of unquoted equity shares, considering considerations from residents or non-residents.

Various valuation methods, including Discounted Free Cash Flow, Comparable Company Multiple, etc., are provided.

Rule 11UA(3) allows the valuation report's date to be deemed the valuation date under certain conditions

11UA(4) addresses scenarios where the issue price exceeds the determined value, with specific adjustments

Valuation of unquoted Equity Shares u/s 11UA

The FMV of unquoted equity shares is calculated as:

$$\text{FMV} = (\text{A} - \text{L}) / \text{PE} \times \text{PV}$$

A = Book value of the total assets in the balance sheet (excluding certain adjustments).

L = Book value of liabilities shown in the balance sheet (adjusted as specified below).

PE = Paid-up equity share capital.

PV = Paid-up value of equity shares being valued.

Adjustments to Consider:

▪ Assets (A):

- Exclude the following from total assets:
 - Advance tax and tax deducted at source (TDS), if any.
 - Deferred tax asset (DTA).
 - Unrealized gains or losses from investments or assets.

▪ Liabilities (L):

- Exclude the following from liabilities:
 - Paid-up capital (equity and preference).
 - Reserves and surplus (excluding depreciation reserves).
 - Contingent liabilities, unless they have a present obligation.

Valuation for Immovable Property

Relevant Provisions:

- **Section 50C (Capital Gains):** If the sale consideration for a property is less than the stamp duty value, the latter is deemed as the sale consideration for calculating capital gains.
- **Section 56(2)(x) (Gift Taxation):** If immovable property is received for inadequate consideration or as a gift, and the difference exceeds ₹50,000, the stamp duty value is taxed as income.

Valuation Rule:

- Stamp duty value as determined by the **state authority** on the date of transfer is considered the FMV.
- If the taxpayer disputes the value, they can approach a **valuation officer** for re-assessment under the Income Tax Act.

Section 50B of Income Tax Act

Sec 50B provides that where a slump sale of capital asset has occurred, for determination of capital gain chargeable to tax, the net-worth of the undertaking or division shall be deemed to be the cost while the FMV of the capital assets as on the date of transfer, shall be deemed to be the FVOC.

▪ **Applicability:**

- **Section 50B** applies when there is a **transfer of a business or undertaking**, including the transfer of **capital assets** and **stock-in-trade** that form part of the business. It specifically deals with situations where the entire business or a part of the business is transferred.

▪ **Transfer of Business:**

- **Transfer of a business** includes the sale or transfer of **capital assets** and **stock-in-trade** of the business as a going concern. It can involve the sale of:
 - **Tangible assets** (such as buildings, machinery, etc.),
 - **Intangible assets** (such as goodwill, patents, trademarks),
 - **Stock-in-trade** (inventory of the business).

▪ **Calculation of Capital Gains: Sale consideration - Net worth of the business.**

▪ **Net Worth of Business:**

- **value of assets** (capital assets and stock-in-trade) - **liabilities.**

Provisions of Rule 11UAE

Rule 11UAE serves the purpose of determining the fair market value (FMV) of capital assets for Section 50B. The FMV for the capital assets transferred via a slump sale is determined based on two options: FMV1 and FMV2. The higher value between FMV1 and FMV2 is considered.

FMV1 Calculation:

FMV1 is calculated using the formula :

$$\mathbf{A + B + C + D - L}$$

- A:** Book value of assets (excluding certain items) in the books of accounts.
- B:** Price of jewellery and artistic work in the open market (valuation report from a registered valuer).
- C:** Fair market value of shares and securities (determined as per Rule 11UA).
- D:** Value for stamp duty of immovable property.
- L:** Book value of liabilities (excluding certain items) in the books of accounts.

FMV2 Calculation:

FMV2 is calculated using the formula:

$$\mathbf{E + F + G + H}$$

- E:** Monetary consideration received.
- F:** Fair market value of non-monetary consideration represented by property (as per Rule 11UA).
- G:** Price of non-monetary consideration represented by property (other than immovable property) in the open market (valuation report from a registered valuer).
- H:** Value for stamp duty of immovable property.

Section 9(1)(i) of Income Tax Act

The amendments to the **Income Tax Act** following the Supreme Court's decision in favor of **Vodafone International Holdings BV** led to significant changes in the taxation of indirect transfers of Indian assets by foreign entities. Here's a breakdown of the key provisions and how they function:

Amendments to Sections 2(47) and 9(1)(i) of the Income Tax Act:

- **Section 2(47):** This section defines a "transfer" for the purpose of taxation. With the amendment, it now includes **indirect transfers** of shares or interest in a foreign company, where such foreign company holds assets located in India.
- **Section 9(1)(i):** This section deals with the income deemed to accrue or arise in India. The amendment extends the provision to cover **indirect transfers** of assets that are located in India. In other words, even if the transfer occurs outside India, if the underlying assets in India are substantial, the income may be taxed in India.

Conditions for Taxation of Indirect Transfers:

The transfer of shares of a foreign company (or other interest) is now taxable in India if the foreign company holds **substantial value** in Indian assets. The conditions for this are:

- **Value of Indian Assets:** The fair market value (FMV) of assets located in India should be at least **50% of the total value** of the foreign company's assets.
- **Threshold Limit:** The FMV of the Indian assets must be greater than **₹10 crore** (Indian Rupees 10 crore or more). If both of these conditions are satisfied, the transaction is considered to be an indirect transfer of Indian assets and, consequently, will be subject to taxation in India.

Section 9(1)(i) of Income Tax Act

Determination of FMV:

To determine whether the assets held by the foreign company meet the **50% threshold** for Indian assets and exceed the ₹10 crore threshold, the **Central Board of Direct Taxes (CBDT)** has prescribed specific rules under **Rule 11UB**.

- **Rule 11UB** outlines the methodology for calculating the FMV of assets located in India. This may involve various valuation approaches, depending on the nature of the asset (e.g., property, shares, or other securities).
- **Key Factors for FMV:** The CBDT's guidelines under Rule 11UB would help in determining the fair market value based on the following:
 - The actual market value or cost of acquisition.
 - The nature of the asset (whether it is tangible, intangible, or financial).
 - Independent third-party valuations, in some cases, may be required to arrive at an accurate FMV.
- The retrospective amendments to **Section 9(1)(i)** and **Section 2(47)**, along with the introduction of **Rule 11UB** for FMV determination, were introduced to address concerns over indirect transfers of Indian assets by foreign companies. The changes have significant implications for cross-border transactions and foreign investments in India, emphasizing the need for careful compliance and proper valuation of Indian assets when dealing with indirect transfers.

Rule 11UB of the Income Tax Act

A Model Convention is a **blueprint** of a tax treaty that serves as a guide to drafting and interpreting a tax treaty.

01

- Rule 11UB pertains to the determination of the fair market value of assets and apportionment of income in specific cases under the Income Tax Act.

02

- Applies to companies or entities registered outside India ("foreign company or entity") for determining the fair market value of assets:
- For shares of an Indian company listed on a recognized stock exchange, the fair value will be
 - (i) Observable price on the stock exchange, or
 - (ii) $(\text{Market Cap} + \text{Liabilities}) / \text{Total number of outstanding shares}$ depending on management or control rights.
- For unlisted Indian company shares: Merchant banker or accountant's valuation based on internationally accepted methodology.
- For partnership firm or association of persons interest: Valuation by merchant banker or accountant based on accepted methodology.
- For other assets: Open market sale price determined by merchant banker or accountant

03

- Different formulas have been provided for Foreign Company or Entity for fair market value based on listing status of shares and transfer scenarios.

04

- If fair market value determined based on interim balance sheet, adjustments required after finalization of the relevant financial statement. For Indian company shares or partnership/association interest, consider all assets and business operations globally.

Tax authorities can refer valuation to a Valuation Officer during assessment proceedings

➤ Under Section 55A – Valuation of Capital Assets

- The AO can refer the valuation of a capital asset (like property or shares) if:
 - The FMV of the asset claimed by the assessee is less than its actual FMV.
 - The assessee uses the FMV as of **April 1, 2001**, for indexation benefits.
- This applies to cases where:
 - The AO believes the declared value does not reflect the true FMV.
 - The AO needs to compute capital gains.

➤ Under Section 69, 69A, and 69B – Unexplained Investment, Money, or Assets

- If the AO suspects that:
 - The declared investment value is **understated**, or
 - The source of funds for investments is **unexplained**,
- The AO may refer the valuation to determine the **actual FMV** and tax the excess amount as **unexplained income**.

Tax authorities can refer valuation to a Valuation Officer during assessment proceedings

➤ Under Rule 11UA – Valuation of Shares and Securities

- For transactions involving **unlisted shares**, if the declared value is:
 - Lower than the FMV as per prescribed rules.
 - Challenged under scrutiny.
- The AO may refer to a Valuation Officer or rely on prescribed valuation methods.

➤ Under Section 142A – General Reference for Valuation

- The AO can refer valuation of any property, investment, or asset if:
 - The value is relevant to determining taxable income.
 - The AO requires an expert opinion for accuracy.
- This section is often used in cases involving:
 - Real estate transactions.
 - Undisclosed or undervalued assets.
 - Determination of wealth or capital gains.

Comparison of valuations under FEMA, Income Tax Act, and Companies Act

Aspect	FEMA	Income Tax Act	Companies Act, 2013
Purpose	Foreign investment, transfer pricing, or overseas transactions.	Tax computation (capital gains, gifts, etc.).	Issue of shares, mergers, or restructuring.
Valuation Basis	Fair Market Value (FMV) as per RBI/SEBI guidelines.	FMV as per prescribed methods (e.g., Rule 11UA).	FMV using DCF or other valuation standards.
Who Can Perform	SEBI-registered Merchant Banker or Chartered Accountant (CA) with certification.	Merchant Banker or Valuation Officer (depending on the case).	Registered Valuer (as per IBBI guidelines).
Methodology	Comparable valuation methods (DCF, NAV, or as directed by RBI).	Rule-based valuation (e.g., DCF, book value, etc.).	As per internationally accepted standards (e.g., DCF, NAV).
Legal Framework	FEMA, RBI Guidelines, Companies (Indian Accounting Standards).	Income Tax Act, Rule 11UA, Section 50C, etc.	Companies Act, 2013, and IBBI (Valuation Rules).

Valuation of Intangibles and its relevance

Aspect	Details	Relevance
What Are Intangibles?	Non-physical assets like goodwill, trademarks, patents, copyrights, customer lists, proprietary tech.	Critical to business value, especially in IP-heavy or service-based industries.
Methods of Valuation	Income Approach: DCF, Relief-from-Royalty. Market Approach: Comparable transactions. Cost Approach: Reproduction/replacement cost.	Different methods ensure fair value based on asset type, purpose, and available data.
Financial Reporting	As per IND-AS/IFRS, required for Purchase Price Allocation (PPA) during M&As.	Ensures compliance with accounting standards and reflects asset value in financial statements.
Taxation	Used in transfer pricing (Section 92C), capital gains, and share issuance.	Accurate valuation prevents disputes with tax authorities and ensures compliance with arm's length pricing .
Regulatory	Required for transactions under FEMA, SEBI , and Companies Act.	Meets legal requirements for fair market value in international and domestic transactions.
Startup Valuation	Important for raising or valuing IP assets in tech-driven businesses.	Avoids disputes related to angel tax and attracts investors with reliable asset valuation.

Valuation of Intangibles and its relevance

Aspect	Details	Relevance
Mergers & Acquisitions	Valuation of intangibles like brand value or customer base during deals	Ensures fair pricing and enhances due diligence in M&A transactions.
Litigation & Disputes	Used in IP infringement, compensation claims, or contractual disputes	Provides a basis for settlements and legal resolutions
Challenges	Subjectivity in valuation, lack of market comparables, and complexity in future benefit estimation.	Requires expert opinion to ensure accuracy and reliability

Key Litigation Trends for valuation

Valuation of Unquoted Shares:

- Disputes over the use of NAV vs. DCF methods for fair market value determination.
- Assessing Officers (AOs) challenging the taxpayer's chosen method.

Section 50C – Immovable Property Transactions:

- Stamp duty value deemed as sale consideration if higher than actual consideration.
- Taxpayer objections to stamp duty value often lead to referrals to Valuation Officers.

Section 56(2)(viib) – Share Premium Taxation:

- Taxing premium over FMV when closely held companies issue shares.
- Frequent disputes on FMV determination and rejection of taxpayer valuations by AOs.

Transfer Pricing Adjustments:

- Issues in valuing intangibles and intra-group cross-border transactions.
- Focus on ownership and pricing of valuable intangibles in scrutiny by tax authorities.

Section 263 – Revision of Erroneous Orders:

- Discrepancies between guideline value and sale consideration in property transactions.
- Use of Section 263 to revise orders in such cases questioned in courts.

Valuation in Slump Sales (Section 50B)

Thank You

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