
***Meaning of Associated
Enterprises***

International and Domestic
Transactions

Speaker – Mr. Anand Kankani

International transactions

Background

- Introduction of Transfer Pricing Regulations - Finance Act 2001
- Section 92A(1)(a) and (b)

92A(1)

For the purposes of this section and section 92, 92B, 92C, 92D, 92E, and 92 F, 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.*

Background

- Section 92A(2)

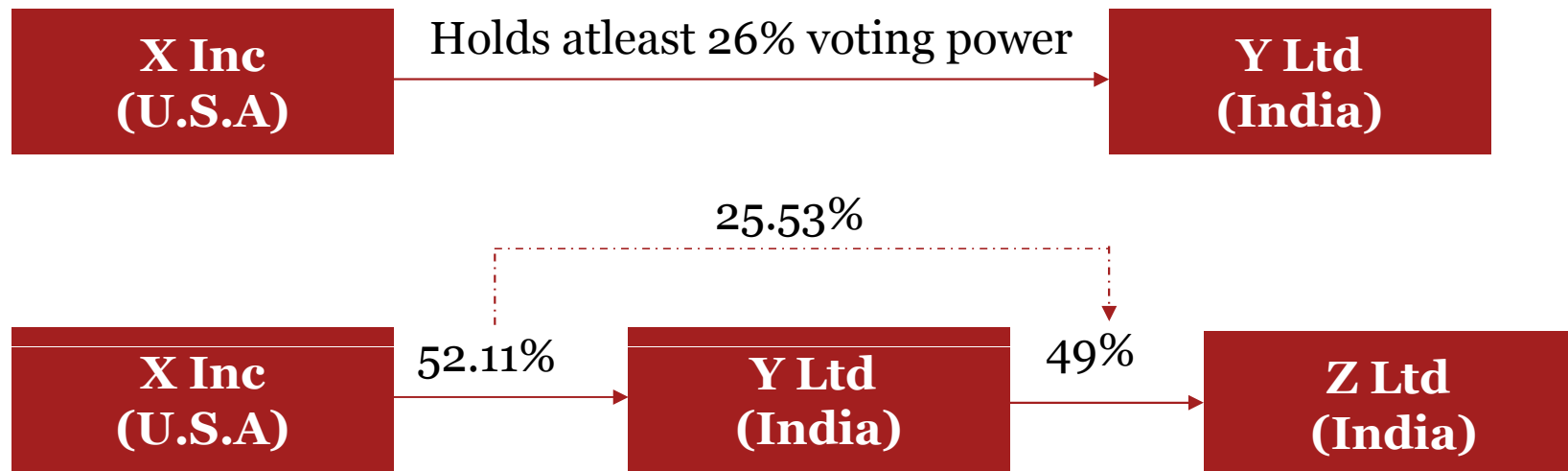
As per Finance Act 2001

“Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year.....”

As per Finance Act 2002

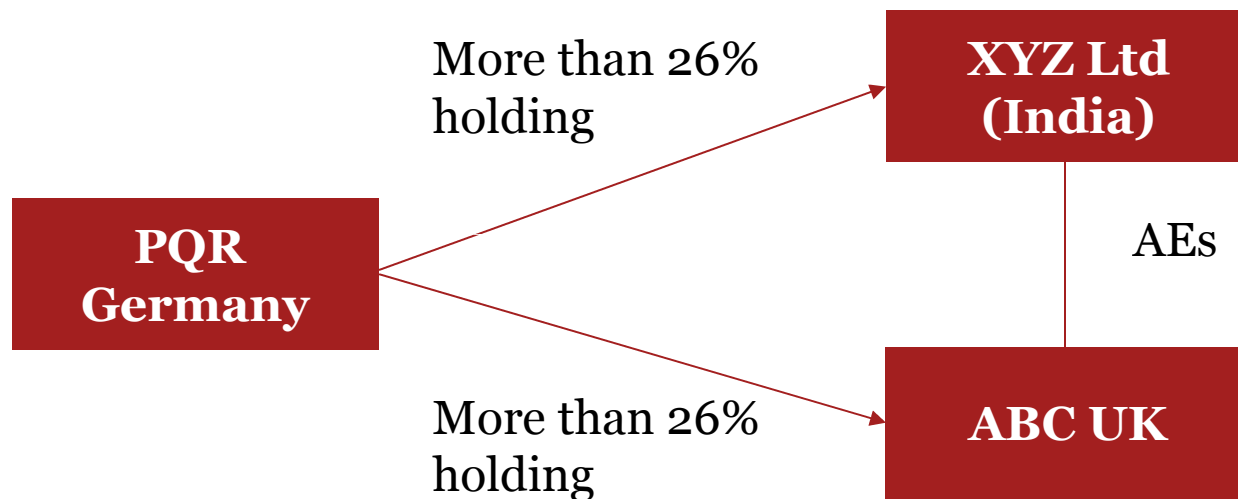
“For the purpose of sub section (1) of Section 92A, two enterprises shall be deemed to be associated enterprises if, at any time during the previous year.....”

Associated Enterprise – Section 92A(2)(a) to (m) ***Section 92A(2)(a)***

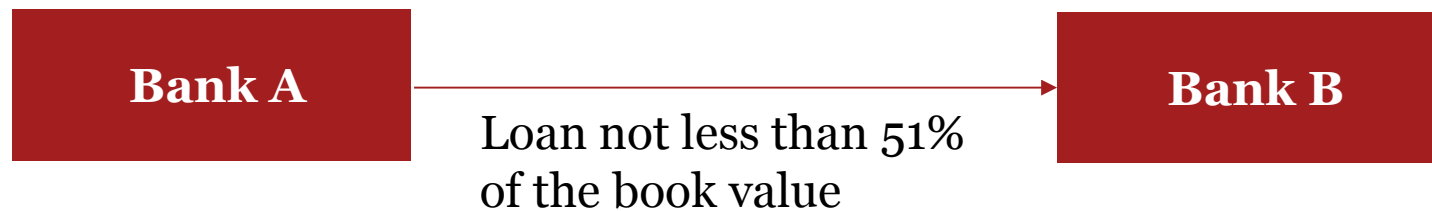


- Directly or indirectly
- Shares – Equity / Preference ?

Associated Enterprise – Section 92A(2)(a) to (m) Section 92A(2)(b)



Associated Enterprise – Section 92A(2)(a) to (m) Section 92A(2)(c)



Balance sheet of B Ltd as on March 31, 2013

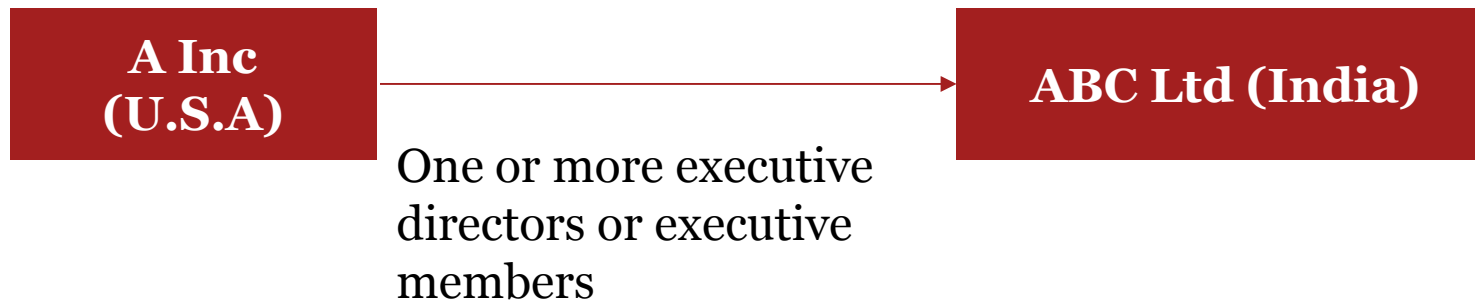
Liabilities	Rs.	Assets	Rs.
Equity	20		
Loan from Bank A	60	Assets	100
Other Liabilities	20		
Total	100	Total	100

- Loan – Short term or Long term
- Implication on Foreign banks
- Its Customers
- Point of time

Associated Enterprise – Section 92A(2)(a) to (m)
Section 92A(2)(d)

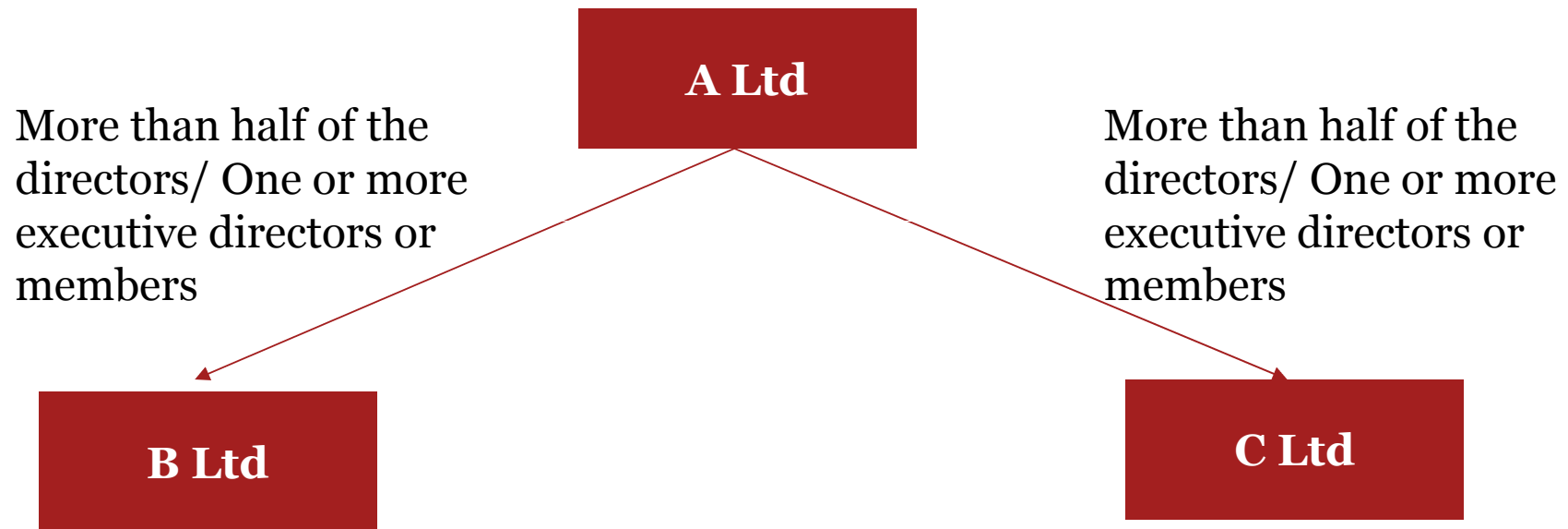


Associated Enterprise – Section 92A(2)(a) to (m) Section 92A(2)(e)

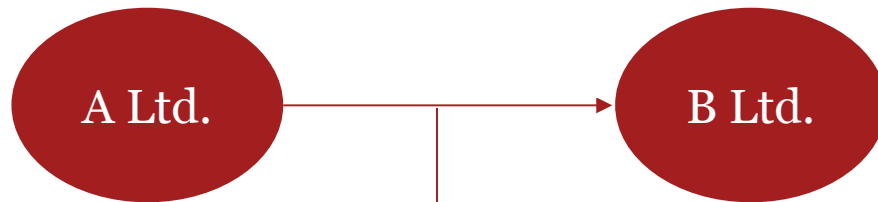


- More than half of the BOD or members of the governing board
- One or more Executive directors or Executive members

Associated Enterprise – Section 92A(2)(a) to (m)
Section 92A(2)(f)



Associated Enterprise – Section 92A(2)(a) to (m) Section 92A(2)(g)



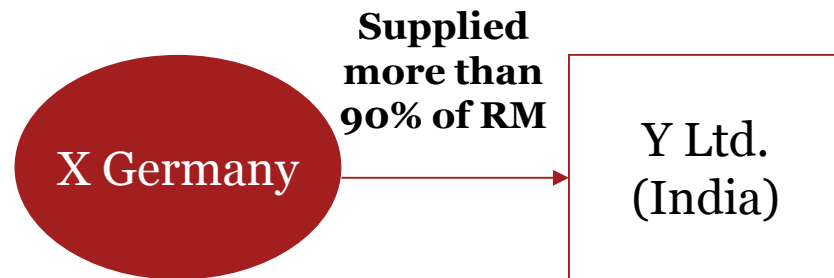
- Engaged in manufacturing/processing
- “Wholly dependent” on



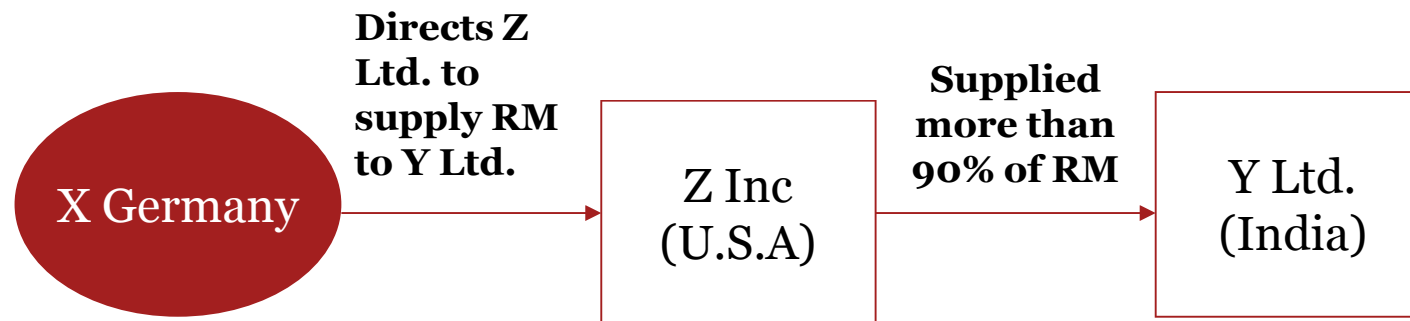
Complete reliance

Technical know-how for
Manufacture / processing
of goods.
Therefore, A and B are AEs.

Associated Enterprise – Section 92A(2)(a) to (m) ***Section 92A(2)(h)***

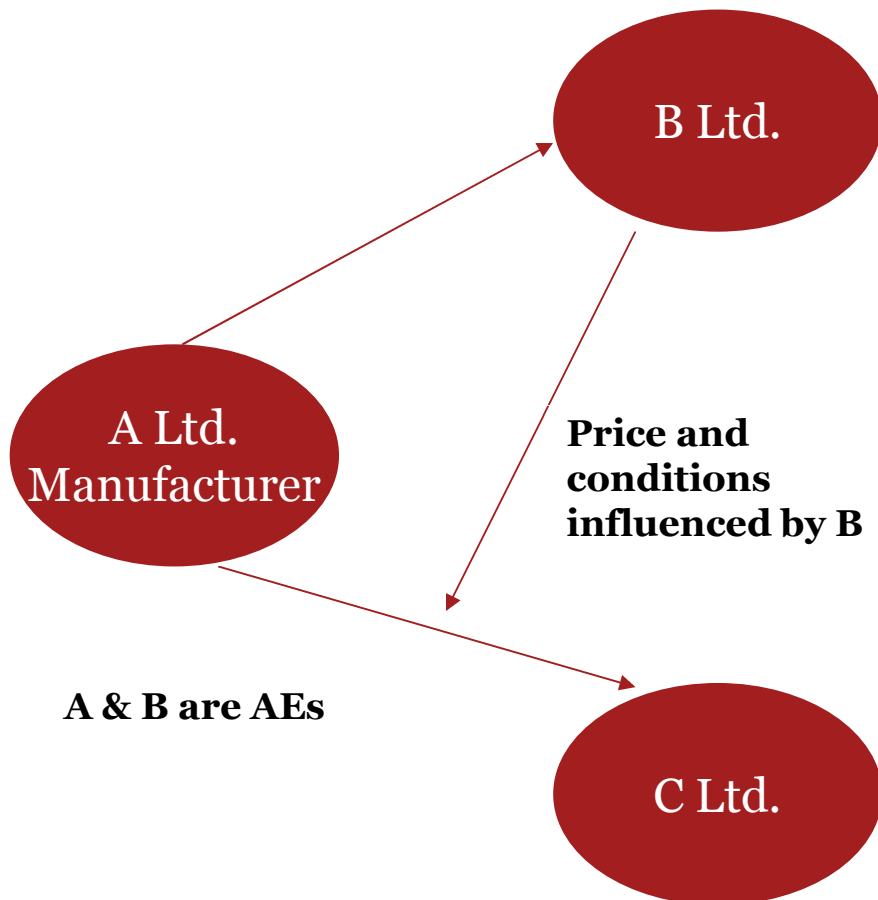


- 90% - “substantial” – dependency on value of raw material and consumables
- Clause relates to manufacturing
- Prices and Other terms and conditions (e.g. credit terms etc) are *influenced* by the AE



X & Y are AEs **Influenced pricing and other conditions of contract**

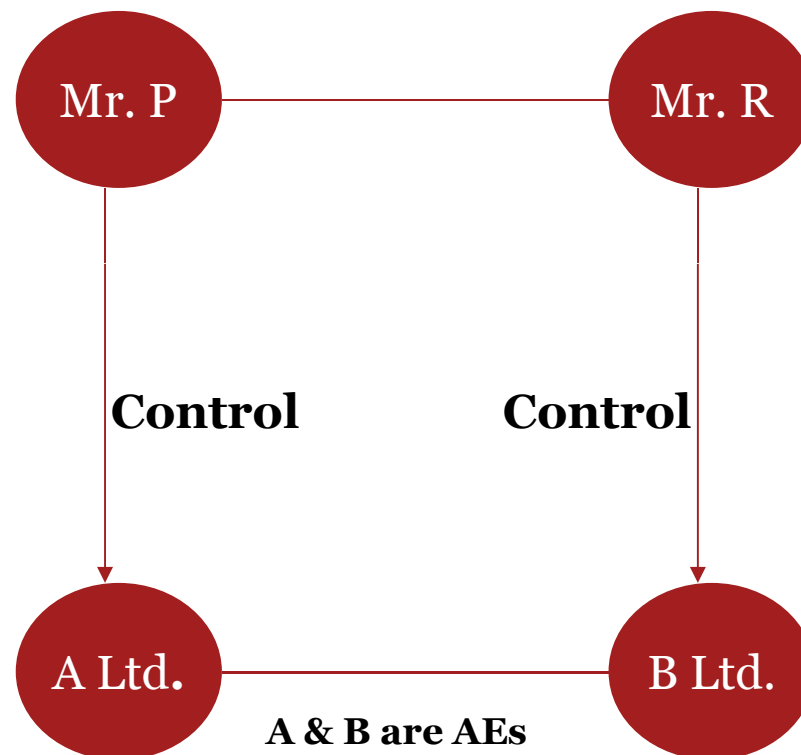
Associated Enterprise – Section 92A(2)(a) to (m) ***Section 92A(2)(i)***



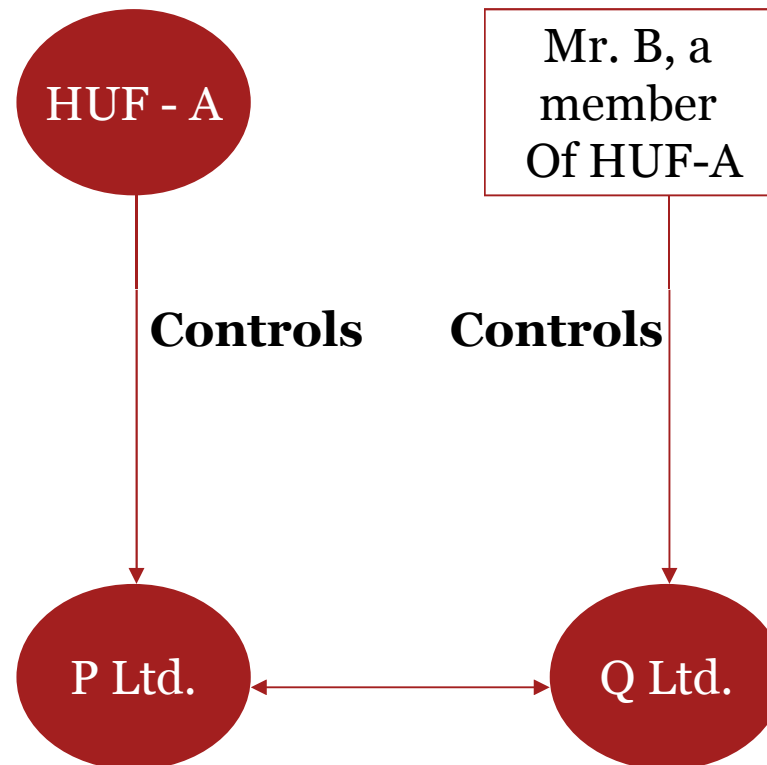
- Seller should be manufacturer
- No minimum threshold limit
- Literal interpretation – “Every sale of goods or articles covered”
- Intention of law – “Control” – “All or 100% of goods or articles sold by one enterprise to other”

Associated Enterprise – Section 92A(2)(a) to (m) ***Section 92A(2)(j)***

Mr. P and Mr. R are relatives



Associated Enterprise – Section 92A(2)(a) to (m) Section 92A(2)(k)



Associated Enterprise – Section 92A(2)(a) to (m) ***Section 92A(2)(l)***



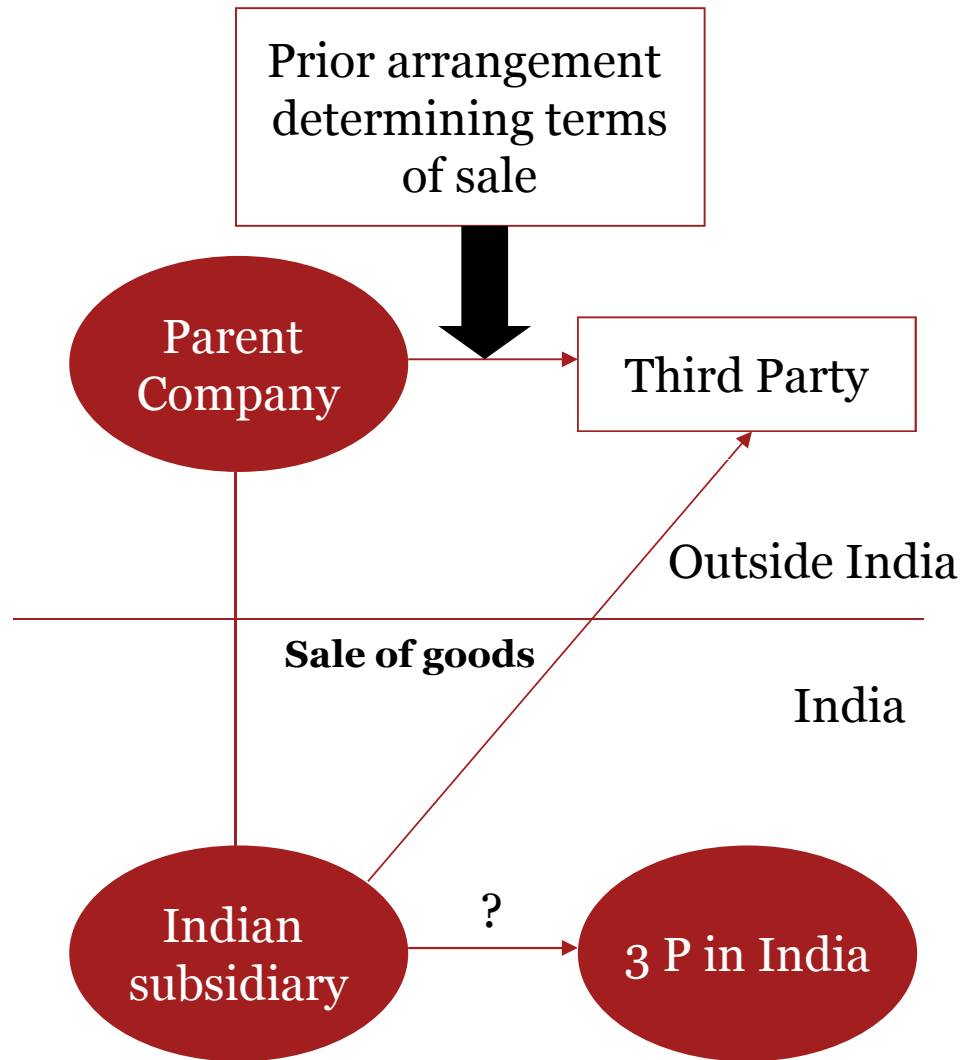
- At least 10% interest (control)
- Applicable to Firm / AOP / BOI

A & B are AEs

Section 92A(2)(m)

- Refers to any other relationship of mutual interest between enterprises;
- Yet to be prescribed

Section 92B(2) - Deemed International transaction



Meaning of Associated Enterprise

- Definition of International transaction enlarged
 - Existence of prior agreement
 - Between such other person and associated enterprise
- OR
- Terms of relevant transaction determined in substance
 - Between such other person and associated enterprise

Domestic transactions

Domestic TP - Scope

Expenditure incurred between related parties defined u/s 40A

Tax holiday undertakings covering:

- inter-unit transfer of goods and services
- transactions with entities having close connection

Any other transaction that may be specified

Aggregate transaction value exceeds Rs 50 million in a financial year

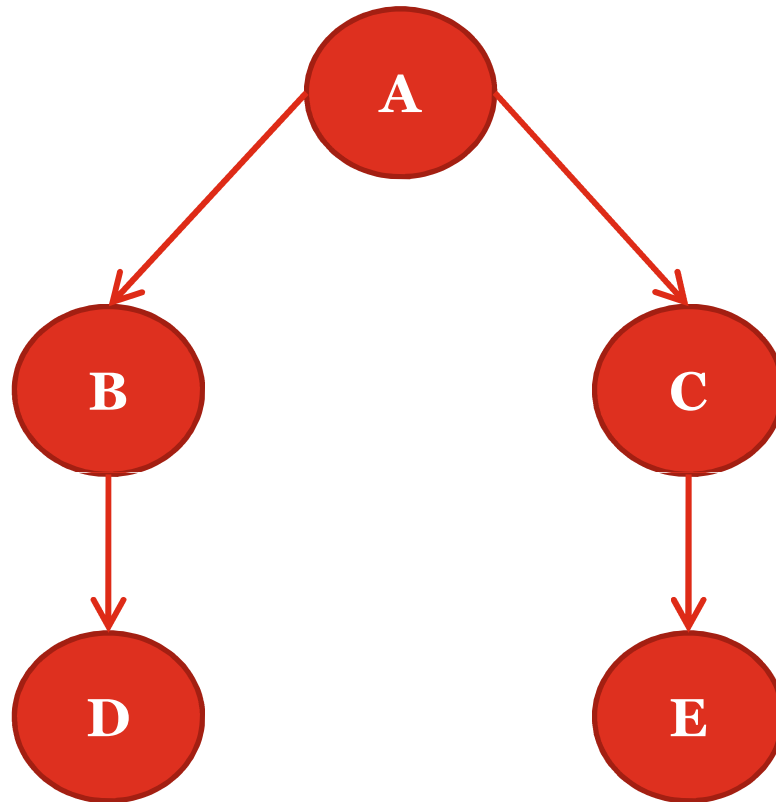
All compliances prescribed under earlier TP regulations apply in same manner to specified domestic transactions

40A(2)(b) Transactions - Persons covered

In case of a Company (say *Company X*) payments to the following persons are covered:

Type of person	When Covered
Investor Company	Any Company (say <i>Company Z</i>) which is a beneficial owner of shares carrying not less than 20% of voting power in <i>Company X</i>
Sister Company	Any Company in which <i>Company Z</i> is a beneficial owner of shares carrying not less than 20% of voting power
Investee Company	A company in which <i>Company X</i> is a beneficial owner of shares carrying not less than 20% of voting power
Group Company	<ul style="list-style-type: none">• Any company of which a director (or relative of such director) is a beneficial owner of shares not carrying less than 20% of voting power in <i>Company X</i>; and• Any company in which a director (or relative of such director) of <i>Company X</i> is a beneficial owner of shares carrying not less than 20% of voting power;
Certain individuals	<ul style="list-style-type: none">• any director of <i>Company X</i> or of <i> Holding Co.</i>, or to any relative of such director; and• any individual who is a beneficial owner of shares not carrying less than 20% of voting power in <i>Company X</i> or any relative of such individual.

Illustration



Transactions covered ?

A & B → Yes

A & C → Yes

B & C → Yes*

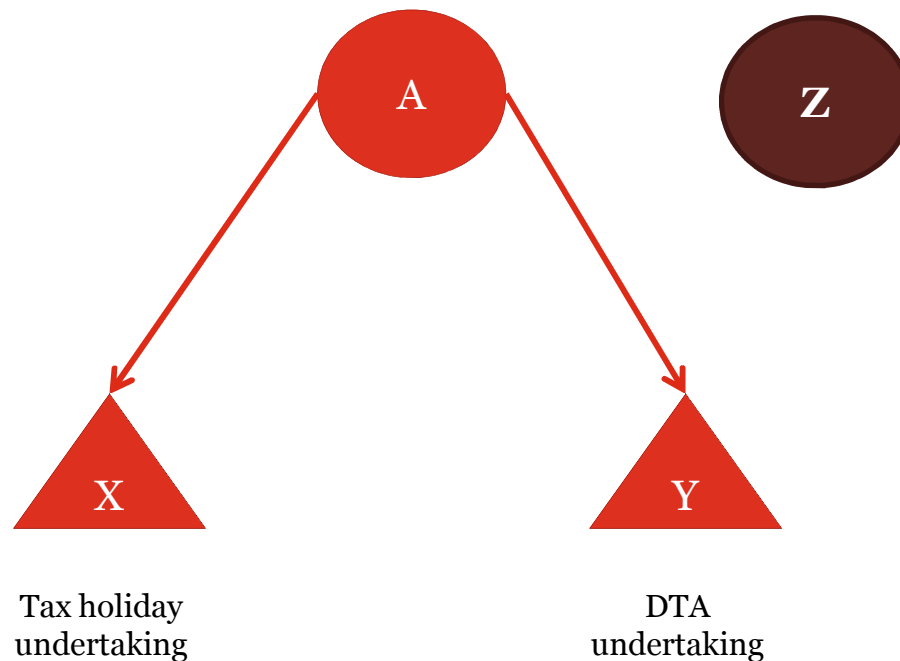
A & D → No

A & E → No

D & E → No

* Post Budget 2012 amendment under section 40A

Illustration – Tax holiday undertakings



Transactions covered ?

X & Y → Yes

Y & Z → No

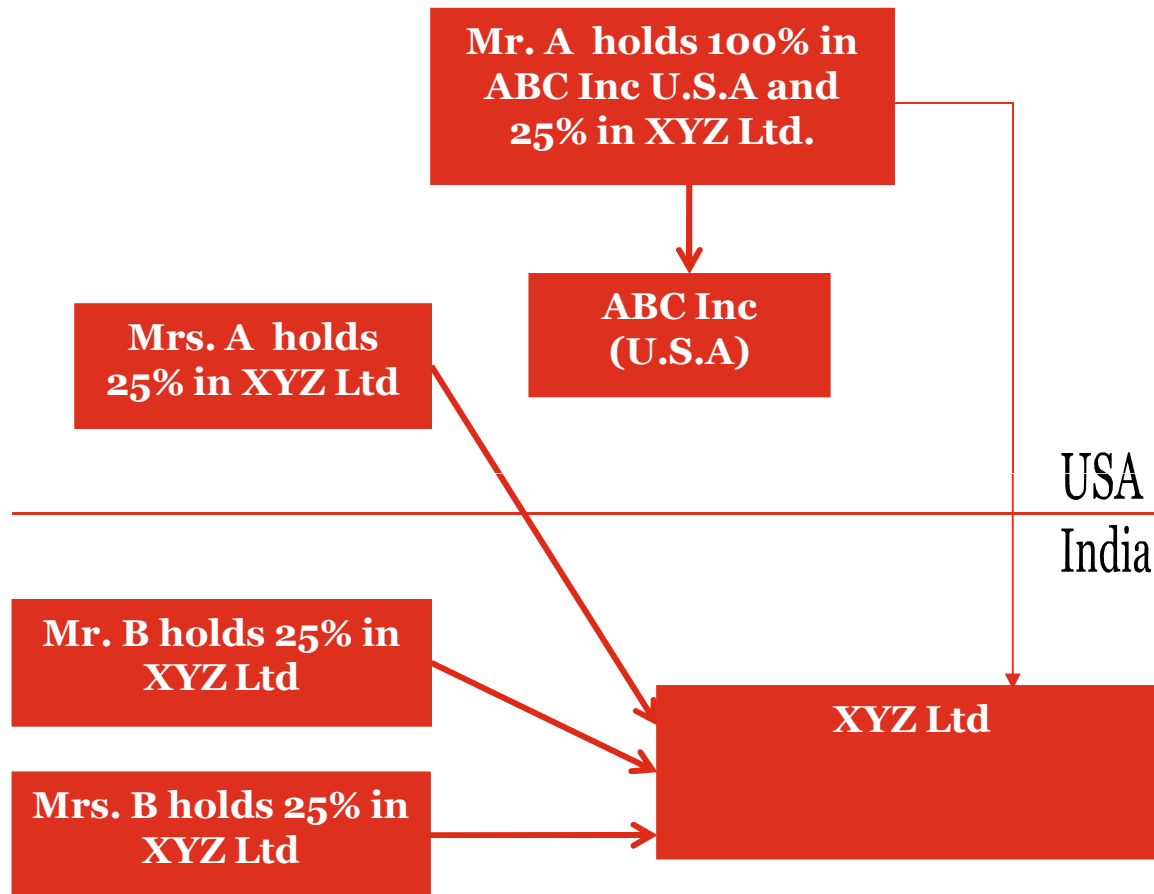
X & Z → Yes, if Z is
“closely
connected”
to A

No guidance on
meaning of
“close connection”

- Requirement to justify that goods and services transactions are at ALP
- Requirement that profits of undertaking are ‘ordinary profits’ having regard to ALP

Case study

Case study - 1



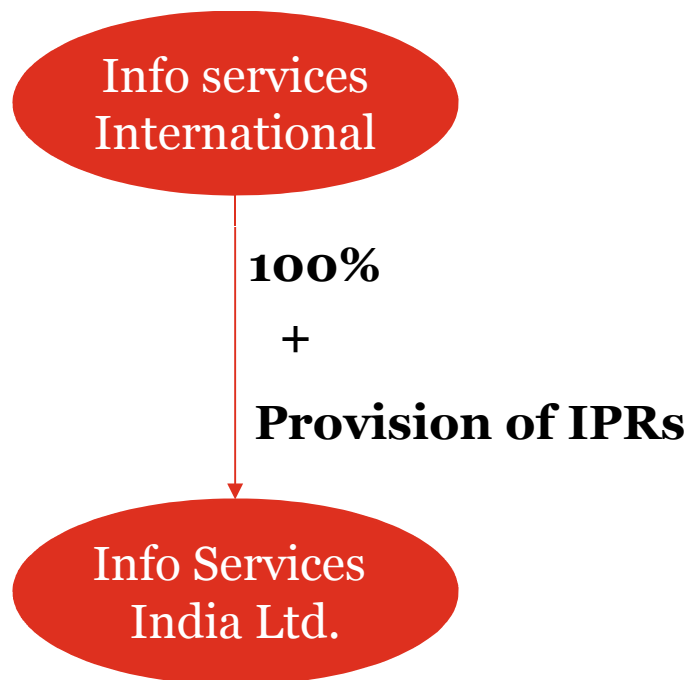
- XYZ Ltd provides services to ABC Inc

- Relative - Section 2 (41) of the Indian Income Tax Act

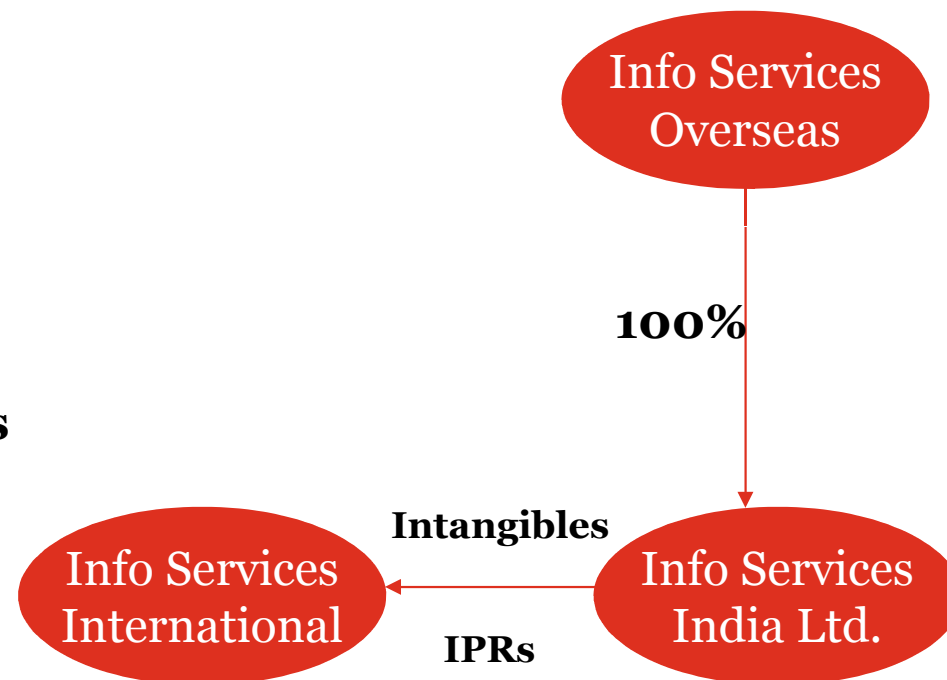
- Section 92A(2)(j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual

Case study - 2

Upto March 31, 2013



April 1, 2013 onwards



Case study - 2 contd..

- Evaluation of AEs on year-on-year basis
- Info Services India is now owned by Info Services Overseas
- However, Info Services India is “wholly dependent” for intangibles on Info Services International, who has “exclusive rights” to such intangibles / IPRs

Info Services International is an AE of Info Services India u/s 92(A)(2)(g)

Thank you