

# Overview of Transfer Pricing Regulations

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# What is Transfer Pricing

- What is Transfer Price ?

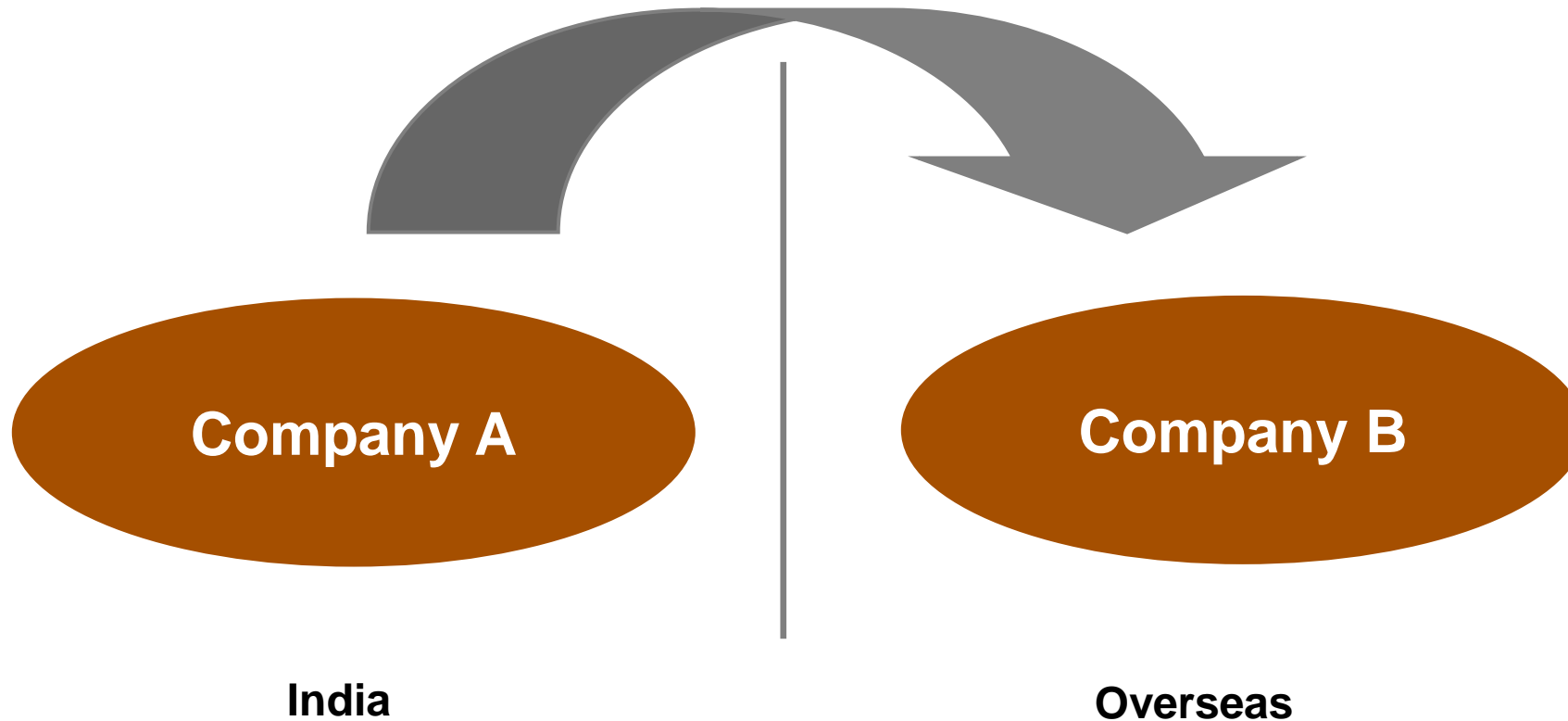
A Price at which one person transfers physical goods, services, tangible or/ and intangibles to another person

- What is Transfer Price in tax ?

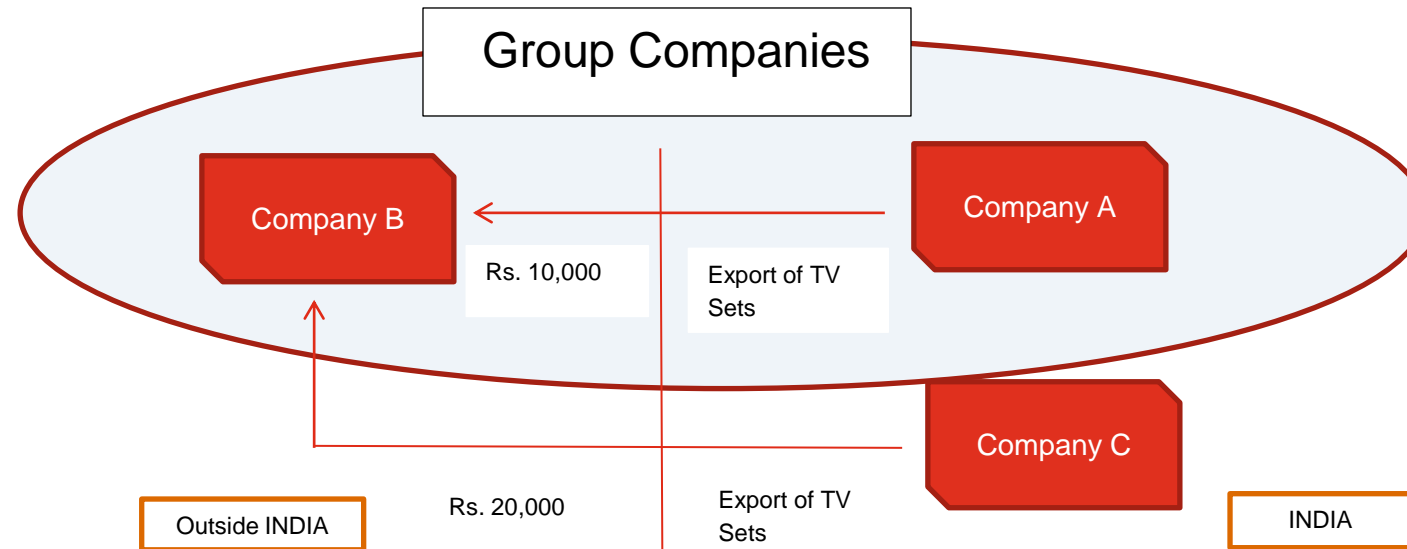
A Price at which one person transfers physical goods, services, tangible or/ and intangibles to another person being an Associated Enterprise

# Why Transfer Pricing

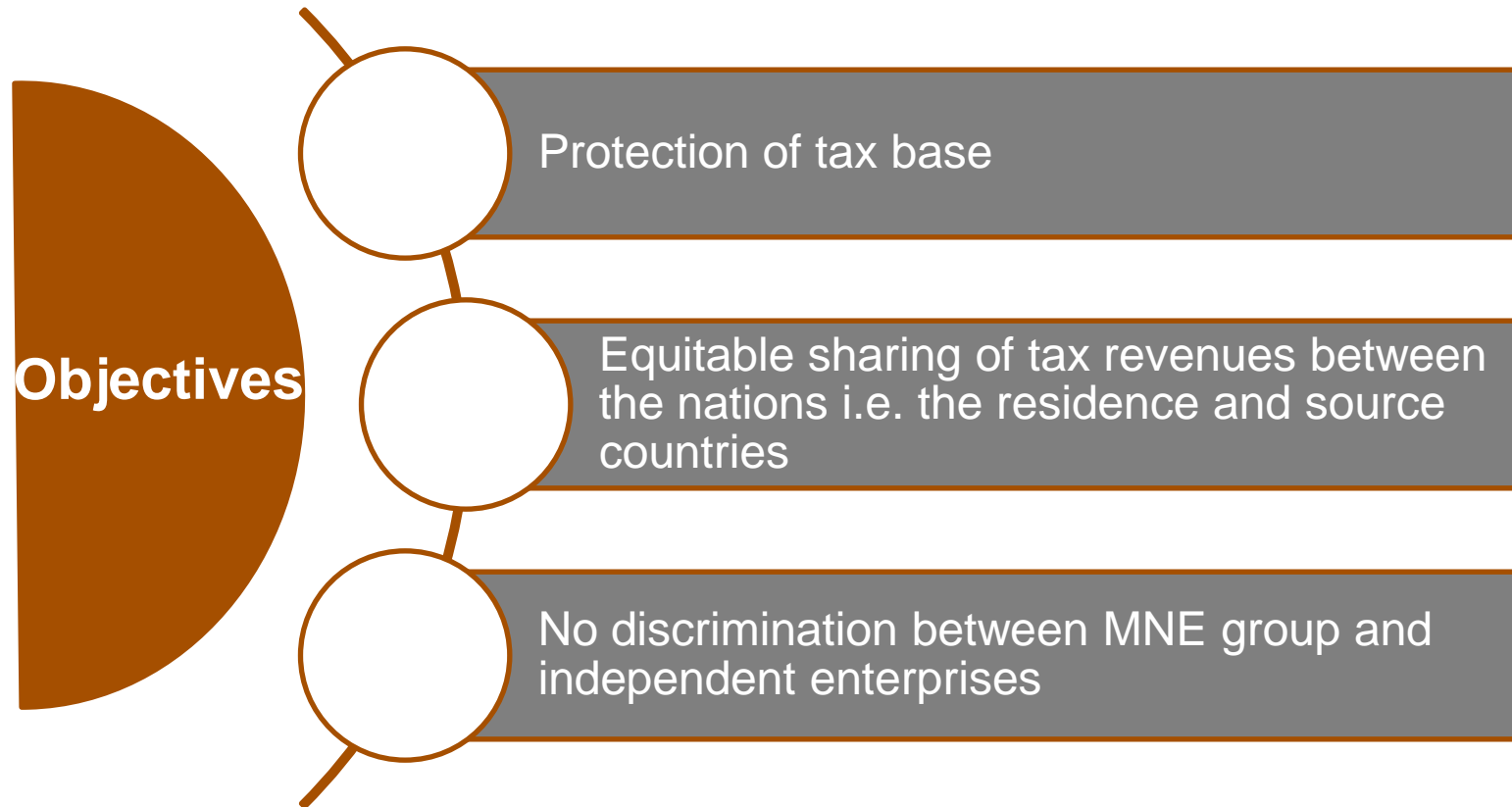
To prevent shifting of profits from one country to another



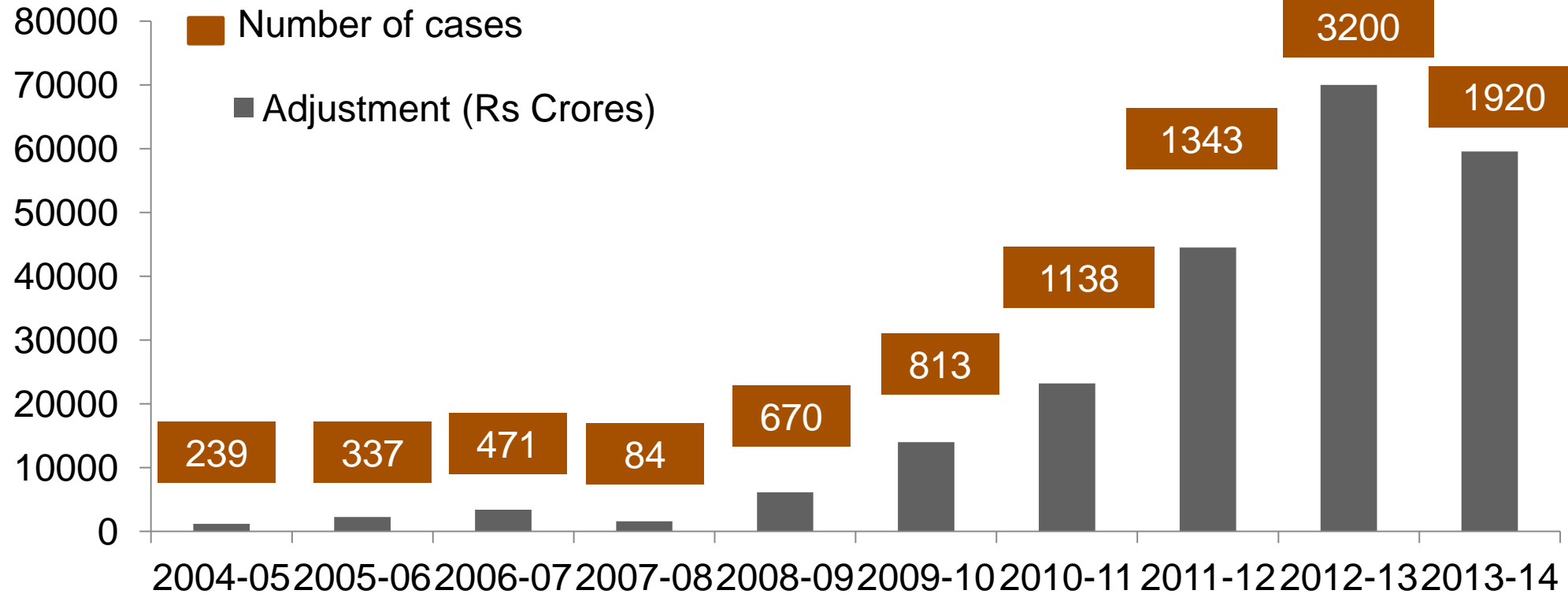
# Why Transfer Pricing



# Evolution of Transfer Pricing



# Trends in TP Assessments in India



Years of Transfer Pricing Assessment

High adjustments on account of issues like corporate guarantees, marketing intangibles, share transfer

# Indian TP Regulations

Provision	Reference	
Computation of income from international transaction having regard to arm's length price	Section 92	Charging section
Meaning of associated enterprises	Section 92A	
Meaning of international transaction	Section 92B	Computation section
Meaning of specified domestic transactions	Section 92BA	
Computation of arm's length price	Section 92C	
Reference to transfer pricing officer	Section 92CA	
Power of Board to make safe harbour rules	Section 92CB	
Advance pricing agreements	Section 92CC & 92CD	
<b>Maintenance and keeping of information and document by person entering into an international transaction</b>	<b>Section 92D</b>	

# Indian TP Regulations

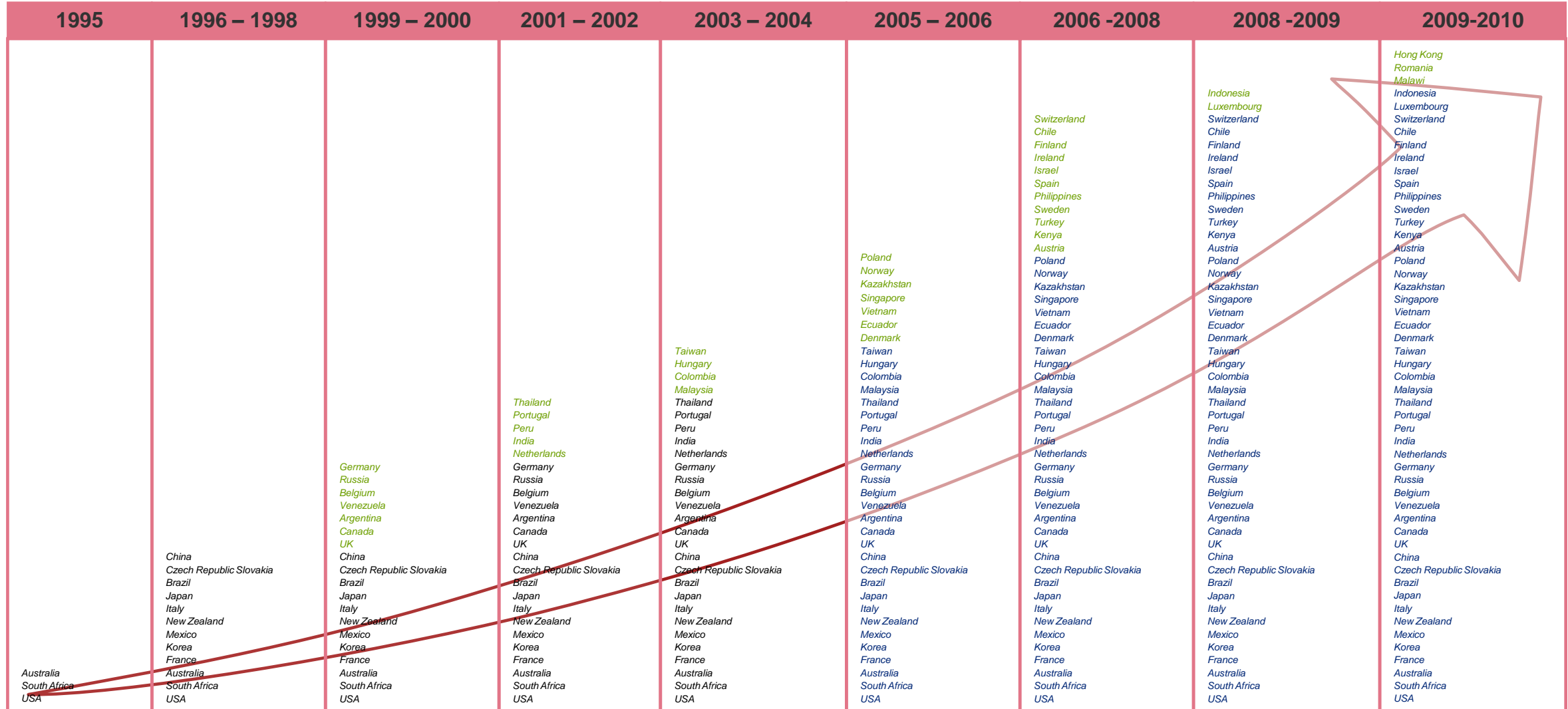
Provision	Reference
Report from an accountant to be furnished by person entering into international transaction	Section 92E
Definitions of various terms	Section 92F
Reference to DRP	Section 144C
Penalty consequent to re-determination of arm's length price	Explanation 7, Section 271(1)(c) of the Act
Penalty for failure to keep and maintain information and document in respect of international transaction	Section 271AA
Penalty for failure to furnish report under section 92E	Section 271BA
Penalty for failure to furnish information or document under section 92D	Section 271G



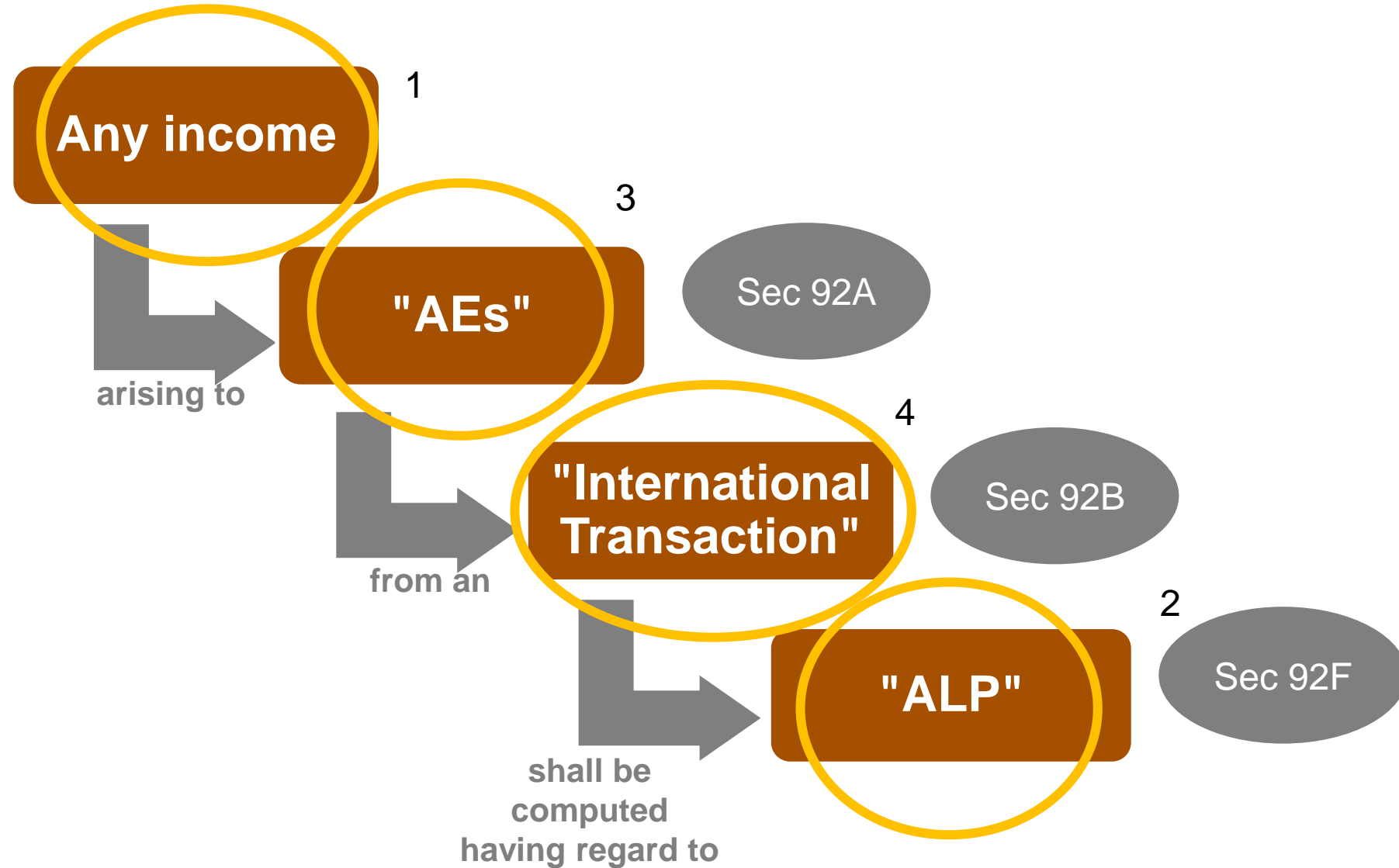
# Indian TP Regulations

Provision	Reference
Meaning of certain expressions	Rule 10A
Other method of determination of arm's length price	Rule 10AB
Determination of arm's length price under section 92C	Rule 10B
Most appropriate method	Rule 10C
Information and documents to be kept and maintained under section 92D	Rule 10D
Report from an accountant to be furnished under section 92E	Rule 10E

# Escalation of Transfer Pricing Rules



# Chargeability (Section 92)



# Chargeability (Income meaning)

Section 92 of the Act

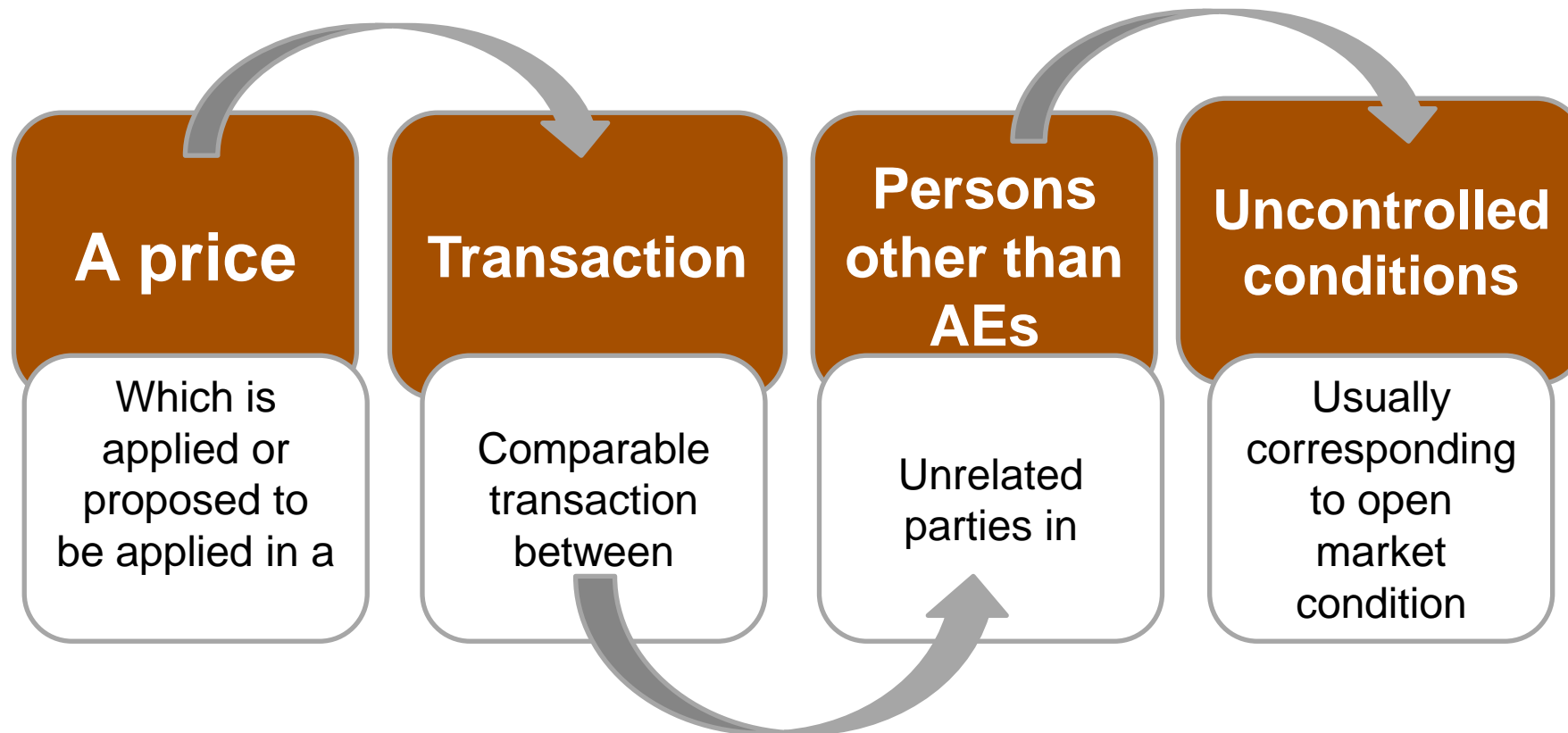
*“Any income arising from an international transaction shall be computed having regard to the arms length price*”

*Explanation - For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arms length price”*

Also includes any type of cost contribution agreement

# Arm's Length Price

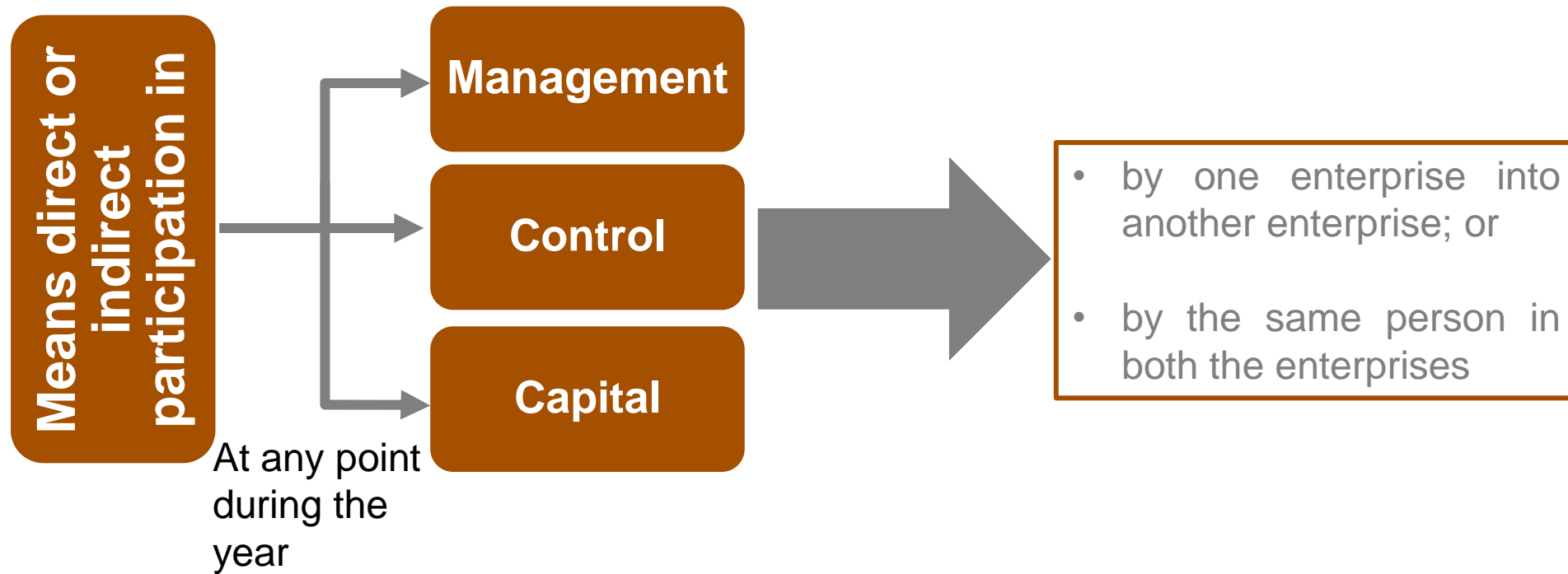
# Arm's Length Price – 92F(ii)



***Uncontrolled Transaction*** means a transaction between enterprise other than AE, whether resident or non-resident

# Associated Enterprise

# Associated Enterprise – 92(A)(1)

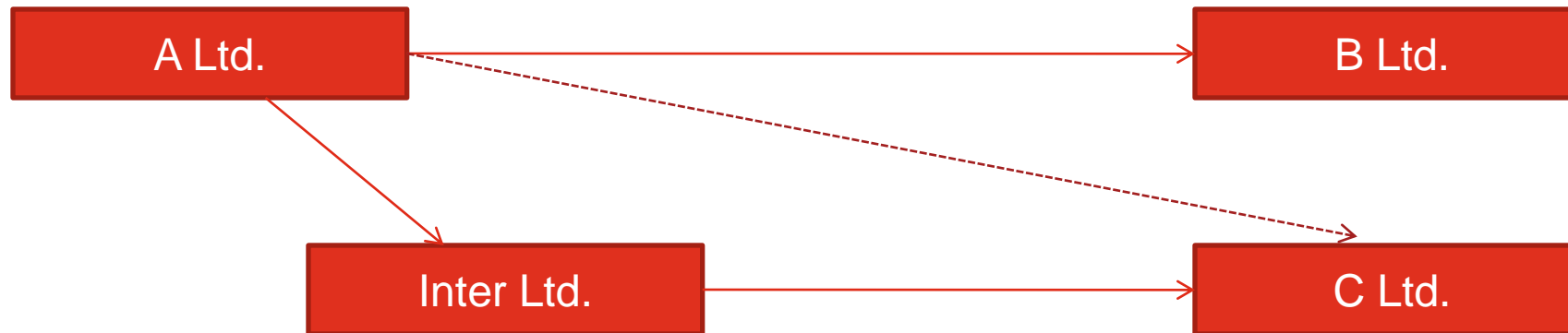




# Meaning of Associated Enterprises

- Section 92A (1) (a)

*“an enterprise which participates directly or indirectly or through one or more intermediaries, in the management or control or capital of the other enterprise shall be regarded as an associated enterprise”*



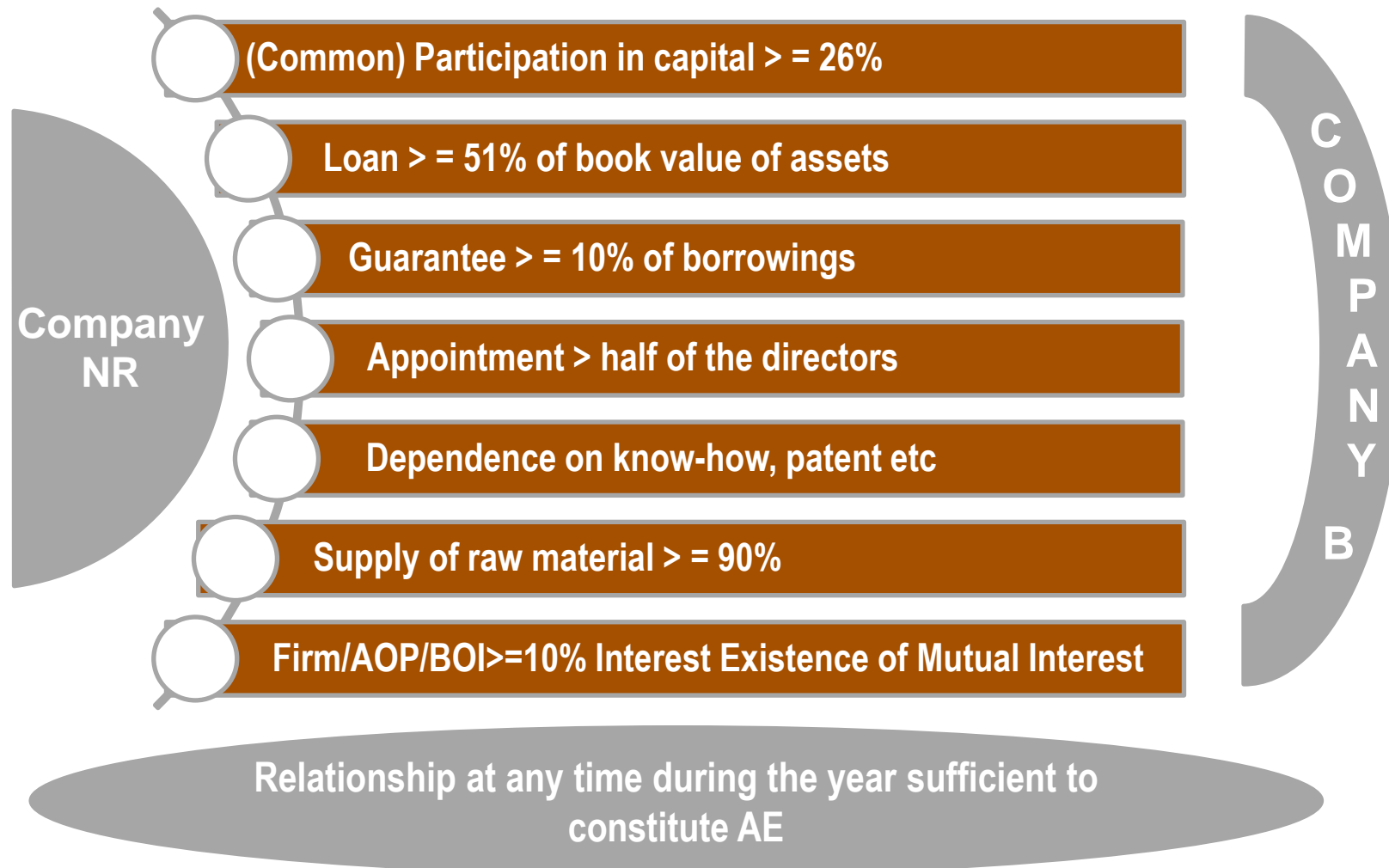
# Meaning of Associated Enterprises

- Section 92A (1) (b)

*“in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise”*



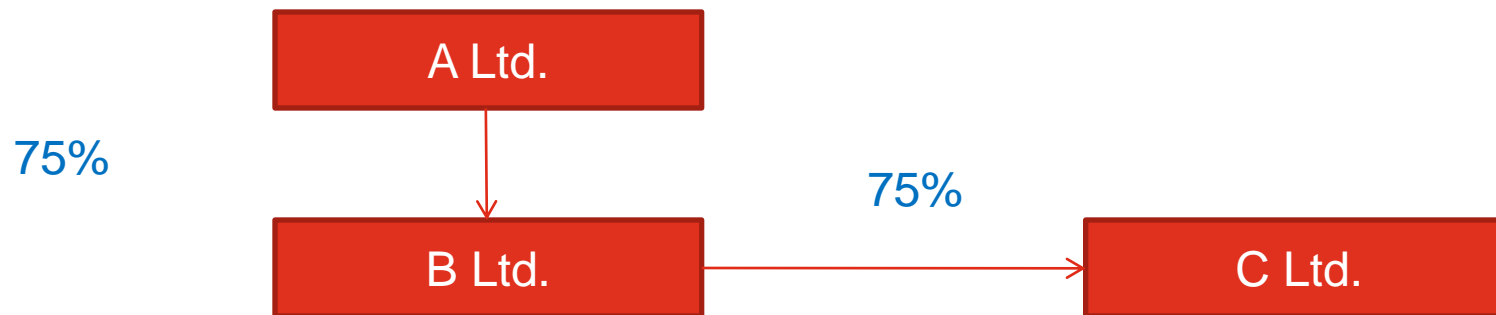
# Deemed Associated Enterprise – 92(A)(2)



# Meaning of Associated Enterprises

- Section 92A (2) (a)

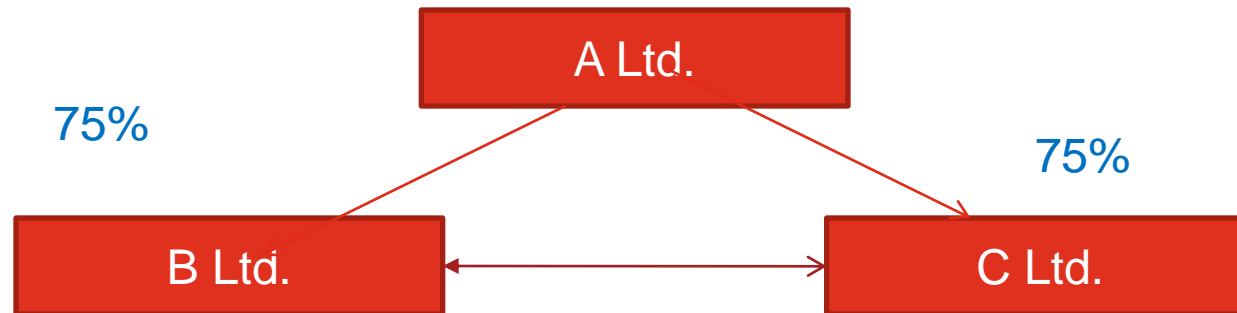
*“One enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise”*



# Meaning of Associated Enterprises

- Section 92A (2) (b)

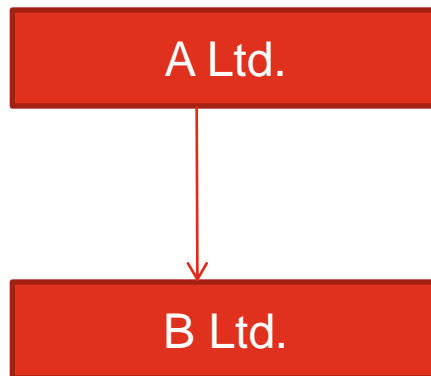
*“Any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprise”*



# Meaning of Associated Enterprises

- Section 92A (2) (c)

*“A loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise”*



- B's book value of asset Rs.10cr
- Loan from A Ltd. Rs.6cr

Points to ponder:

Citibank USA has given loan of INR 50 crore and book value of asset is INR 80 core

Can Citibank USA be considered as an AE?

# Meaning of Associated Enterprises

- Section 92A (2) (d)

*“One enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise”*

# Meaning of Associated Enterprises

- Section 92A (2) (e)

*“More than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise”*

- As per section 2(6) of the Companies Act, 1956, the term “board of directors” would refer to the board of directors of a company
- The term “governing board”, correspondingly, would refer to a body or council that has the executive authority to manage the affairs of the enterprise to which it relates
- These enterprises could be artificial juridical non-corporate bodies

## Points to ponder:

Co A has no relation with Co B, but it has power to appoint Managing Director of Co B where the board strength is 8 Directors. Is Co A an AE of Co B?



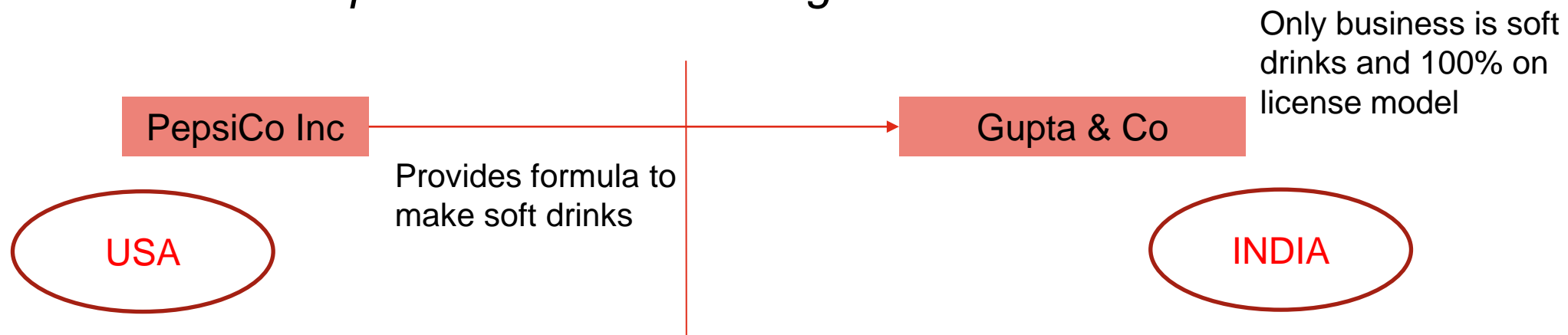
# Meaning of Associated Enterprises

- Section 92A (2) (f)

*“More than half of the directors or members of the governing board, or one or more executive directors or executive members of the governing board of each of the two enterprises, are appointed by the same person or persons”*

# Meaning of Associated Enterprises

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



# Meaning of Associated Enterprises

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

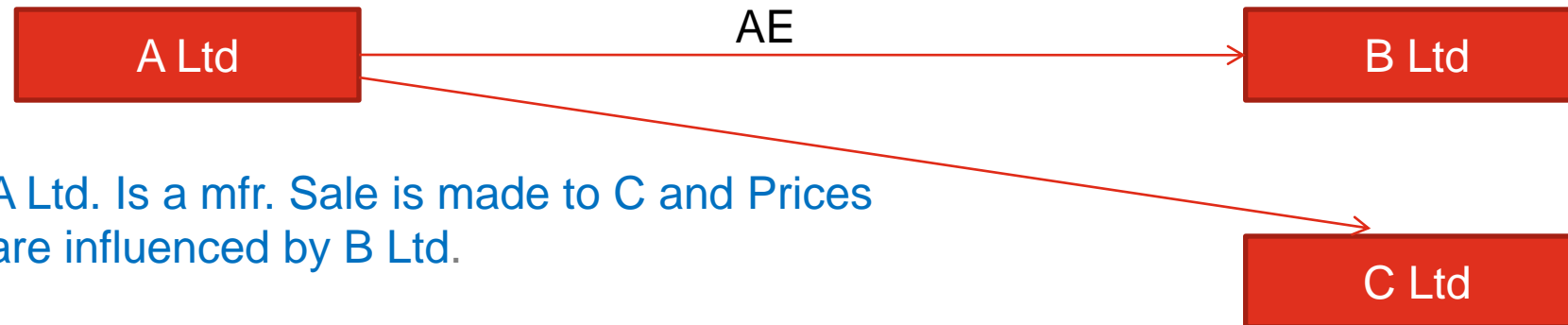
## Points to ponder

90% of quantity or in value terms?

# Meaning of Associated Enterprises

- Section 92A (2) (i)

*“The goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise”*



# Meaning of Associated Enterprises

## 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”*

## Section 92A (2) (k)

*“Where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family, or by a relative of a member of such Hindu undivided family, or jointly by such member and his relative”*

# Meaning of Associated Enterprises

## Section 92A (2) (l)

*“Where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association or body of individuals”*

## Section 92A (2) (m)

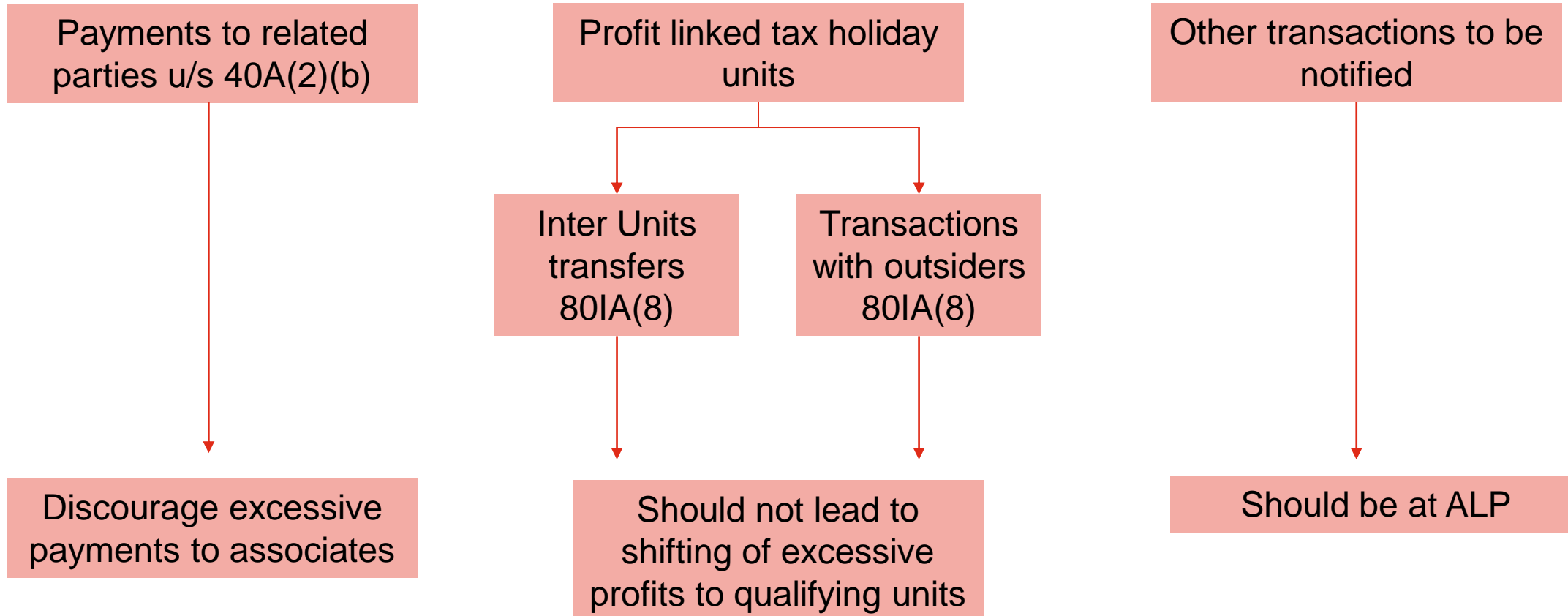
*“There exists between the two enterprises, any relationship of mutual interest, as may be prescribed”*

# Specified Domestic Transactions

- Supreme Court decision in CIT V Glaxo SmithKline Asia (P) Ltd ( 195 Taxman 35 (SC))
- Suggested that Finance Ministry should consider making Transfer Pricing provisions applicable to transactions with tax holiday to arrive at Fair Market value or Market value
- The Finance Act 2012 extended the scope of Transfer Pricing provision to ‘Specified Domestic Transactions’ (‘SDT’)



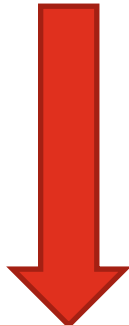
# Applicability - SDT



Transfer Pricing provisions to apply to the 'Specified Domestic Transactions' if the aggregate value exceeds five crores

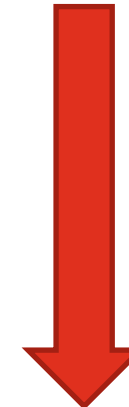
# Applicability - SDT

Section 40A(2), 80A,  
80IA, IB, 10AA and  
other tax holiday unit  
sections as prescribed



Charging Section

Section 92C  
( Regarding SDT)



Computation section

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

# FMV vs. ALP

## Fair Market Value

No method prescribed for computing FMV

No documentation required to be maintained

Reporting in tax audit report- no other compliances

Assessment done by the assessing officer



## Arms Length Price

Six methods prescribed for computing ALP

Contemporaneous documentation

Accountants report in form 3CEB signed by a CA to be filed

Assessment done by the Transfer Pricing Officer

# SDT Regarding 40A(2)

- 92BA. For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—
- (i) any **expenditure** in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(b) –

# Relations Covered by 40A(2)(b)

Taxpayer	Illustrative coverage
Individual	<ul style="list-style-type: none"> <li>• Relatives</li> <li>• Firm in which he is a partner</li> <li>• Company in which he is a director or has more than 20% SH</li> </ul>
Firm	<ul style="list-style-type: none"> <li>• Partners or relatives of partners</li> <li>• Company or firm in which partner or relative has more than 20% interest</li> </ul>
Company	<ul style="list-style-type: none"> <li>• Director or relatives</li> <li>• Company or firms in which director or relatives have substantial interest ( &gt;20%)</li> <li>• Parent company</li> <li>• Sister subsidiary ( common parent holding &gt; 20%)</li> </ul>

## Points to Ponder:

- (1) Whether the section includes income?
- (2) Whether capital or revenue expenditure?
- (3) What if the expenditure is less than what it should be?
- (4) Direct or indirect holding?

# Not Restricted to Transactions With Residents

S 92BA excludes International transactions from within its scope

However few transactions with non – residents may be covered under SDT

- Remuneration paid by Indian company to a non resident director
- Payment by Indian company to foreign company, where foreign company holds 20 to < 26% in Indian company

# Applicability – SDT

*(ii) any transaction referred to in section 80A*



# Applicability – SDT

*(iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA*



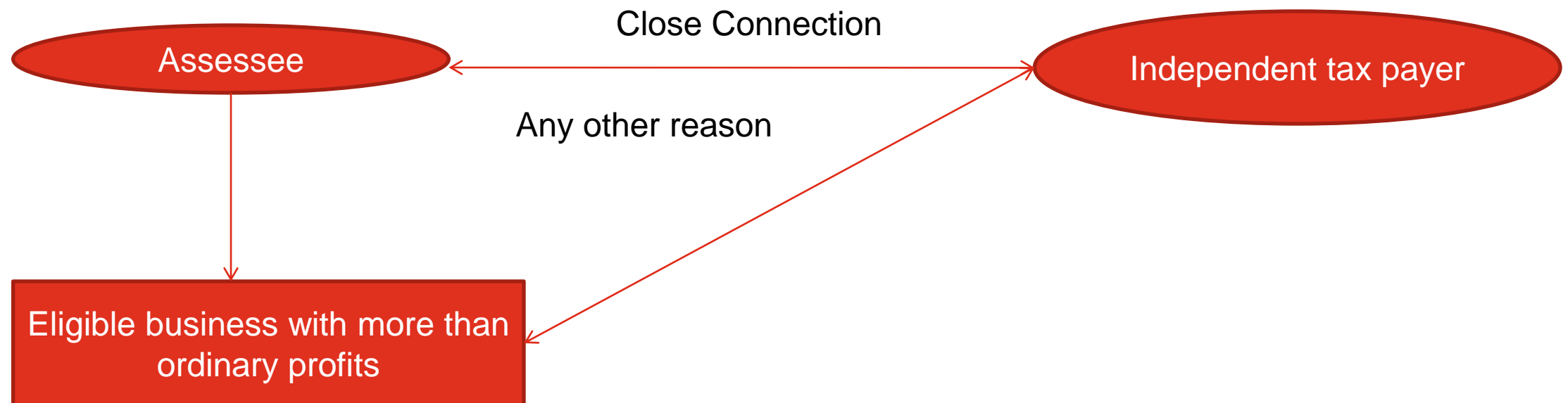
Points to Ponder

Transactions between 2 eligible units?



# Applicability – SDT

*(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA*



# Example:

During FY 2013-14, A Ltd. entered into following transactions with its related parties:

- (a) Salary paid to Directors : Rs. 60 lakhs
- (b) Purchases from related party : Rs.2.5 crores
- (c) Sales to related party : Rs.3.5 crores
- (d) Loan taken from related party : Rs.10 crores
- (e) Provision for interest on loan taken: Rs.1crores
- (f) Purchase of capital asset : Rs.1.5 crores

Also A Ltd. as two units and one of the unit is a Chapter VI-A unit claiming tax deduction, following transactions in relation to same:

- (g) inter-unit transfers : Rs.2 crores
- (h) Allocation of common expenses : Rs.1 crore