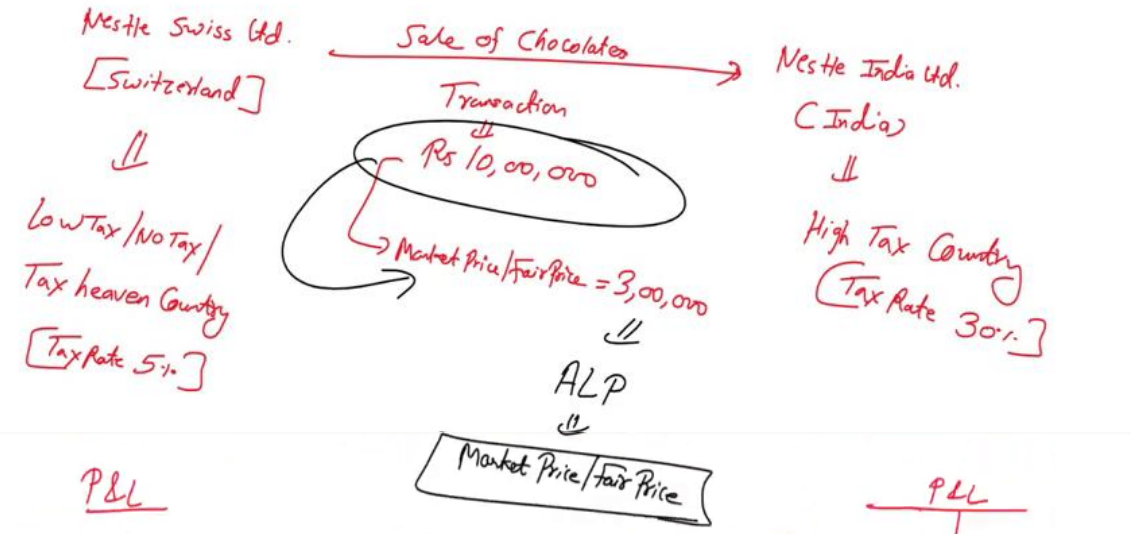
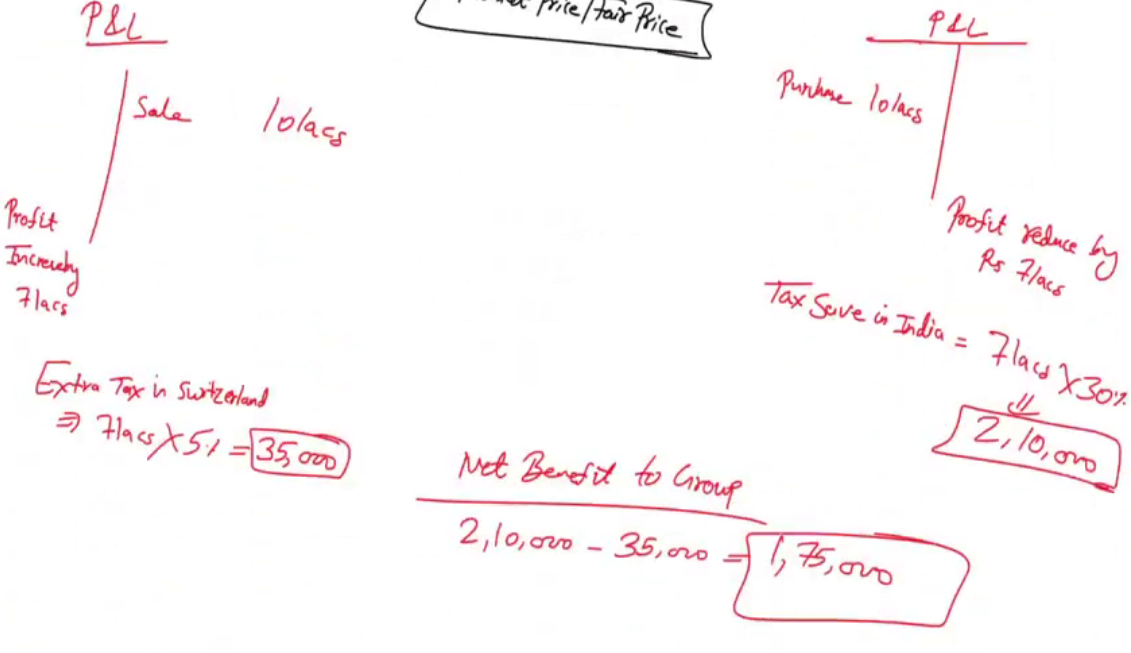
Transfer Pricing

Nestle Group → MNC





Charging Section [Section 92]

Associate Enterprise [AE] [Sec. 92A]

↓

International Transaction [Sec. 92B]

↓

Arm's length Price [ALP] [Sec. 92C]

Associate Enterprise [Section 92A]

Enterprise : Means any Person engaged in any Business Activity

Two Enterprise are deemed to be Associate Enterprise if :

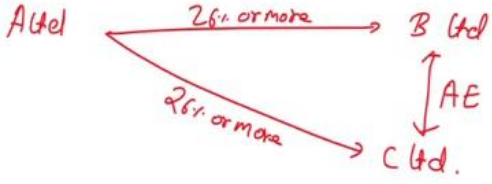
(1) One Enterprise holds 26% or more voting Power in Other Enterprise

A Ltd → B Ltd

26% or more
eg. Share Capital

A & B
||
AE

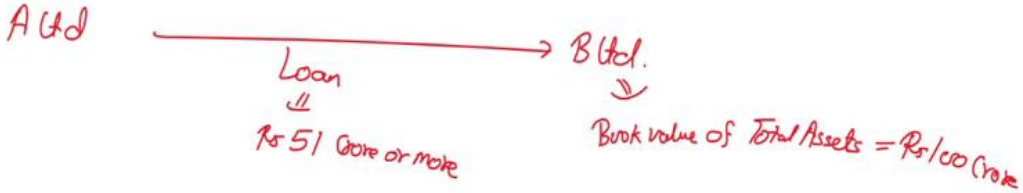
(2) Any Person holds 26% or More Voting Power in each of two Enterprise



A&B
A&C ⇒ AE [Point (1)]

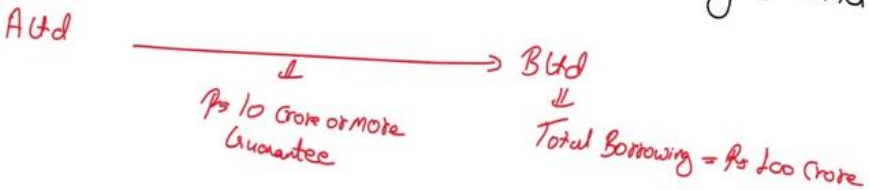
B&C = AE [Point (2)]

(3) Loan Advanced by One Enterprise Constitutes 51% or more of Book Value of Total Assets of Other Enterprise



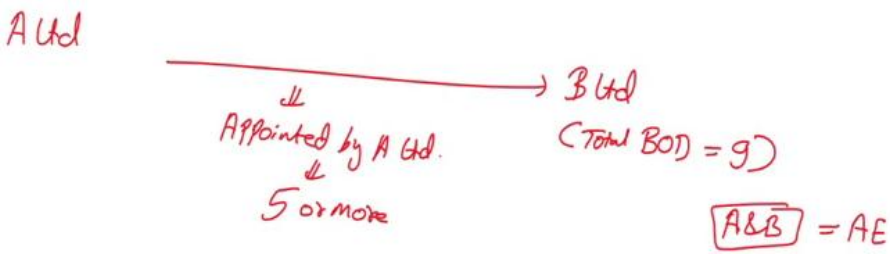
A&B = AE

(4) One Enterprise guarantees 10% or more of Total Borrowing of Other Enterprise



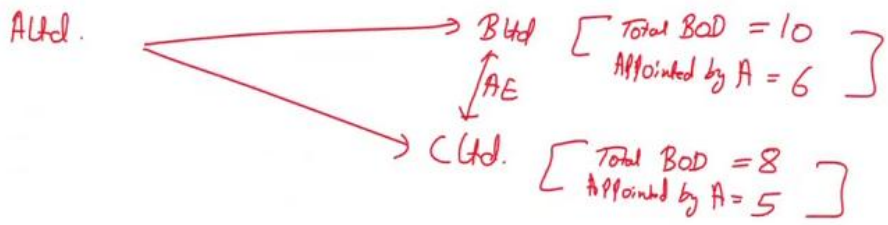
A&B = AE

(5) One Enterprise appoints More than half of Board of Directors Or at least One Executive Director of Other Enterprise



A&B = AE

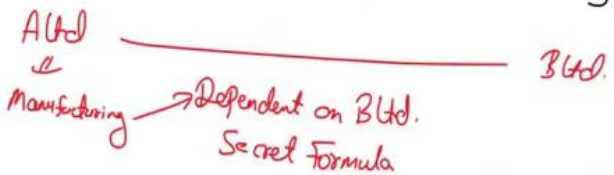
(6) Any Person appoints more than half of Board of directors or at least One Executive Director of each of two Enterprise



A & B, A & C = AE [Point (5)]

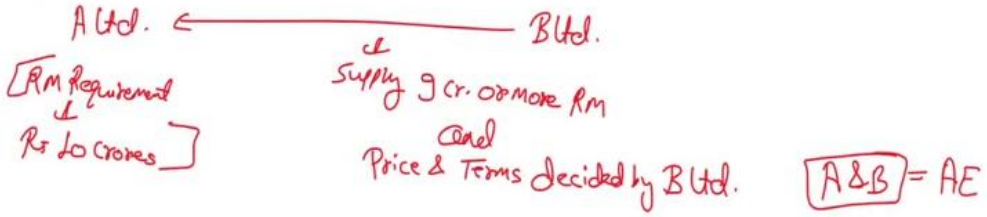
B & C = AE [Point (6)]

(7) Manufacturing or Processing of One Enterprise is wholly dependent on Intangible Asset [Knowhow, Patent, Copyright, Secret formula etc.] of Other Enterprise



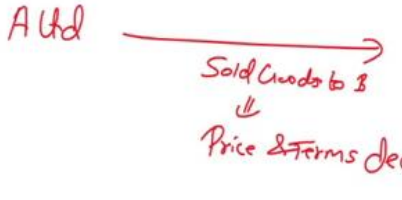
A & B = AE

(8) 90% or more Raw Material/Consumable requirement of One Enterprise is Supplied by Other Enterprise and Price & Terms decided by Such Other Enterprise



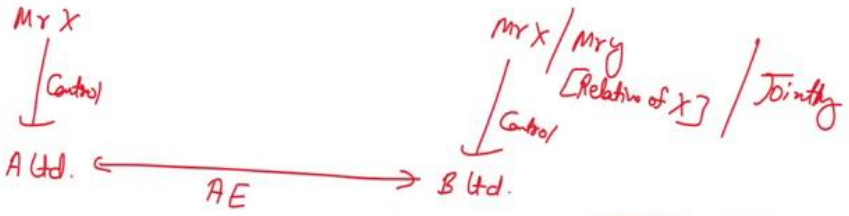
A & B = AE

(9) Goods Manufactured by One Enterprise is Sold to Other Enterprise and Price & Term decided by Such Other Enterprise



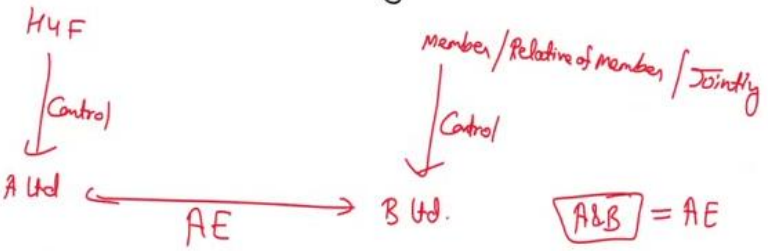
A & B = AE

(10) If One Enterprise is Controlled by an Individual, Other Enterprise is Controlled by Individual or his relative or Jointly



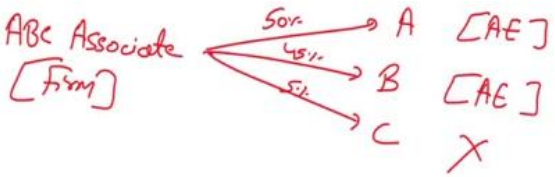
A & B = AE

(11) If One Enterprise is Controlled by HUF, Other Enterprise is Controlled by member of HUF or Relative of member or Jointly



A & B = AE

(12) If One Enterprise is Firm / AOP / BOI, Other Enterprise holds atleast 20% Profit Share Ratio [PSR] in Such Enterprise



(13) There exist any relationship of mutual Interest between two Enterprise

eg. → Joint Venture

International Transaction [Section 92B]

→ It means a transaction between Two or More Associate Enterprise in which at least 1 Shall be Non Resident.

AE ⟷ AE

R ⟷ NR ✓

R ⟷ R ✗

NR ⟷ NR ✓

→ Such Transaction Should be in the nature of :

- Purchase, Sale or Lease of Property
- Provision of Service
- lending or Borrowing of Money
- Allocation of Cost or Expense
- Any Other Transaction which effects Profit

→ Such International Transaction must be done at Arm' length Price [ALP], If not done at ALP, it requires adjustment of Income ⇒ Primary Adjustment

→ The above adjustment Shall either result in Increase in Income of Assessee.

If Adjustment results in decrease in Income of Assesee, Transfer Pricing Provisions shall not apply → Ignore Such Adjustment

Example

Nestle India Ltd. ⇒ Total Income before TP Adjustment = Rs 50 lacs

Case I

Nestle India [AE] —Sale @ Rs 8,00,000→ Nestle US [AE]

ALP = 14,00,000

TI before TP Adjustment	50 lacs
(+) Increase in Income due to TP Adjustment (14 - 8)	6 lacs
	56 lacs

Case II

Nestle India [AE] —Sale @ Rs 20,00,000→ Nestle US [AE]

ALP = 16,00,000

TI before TP Adjustment	50 lacs
TP Adjustment (16 - 20) ⇓ Ignore Since it results in decrease in Income of Asses...	—
	50 lacs

Deemed International Transaction [Section 92B(2)]

If Transaction entered into by Enterprise with third Person [Not AE]

and

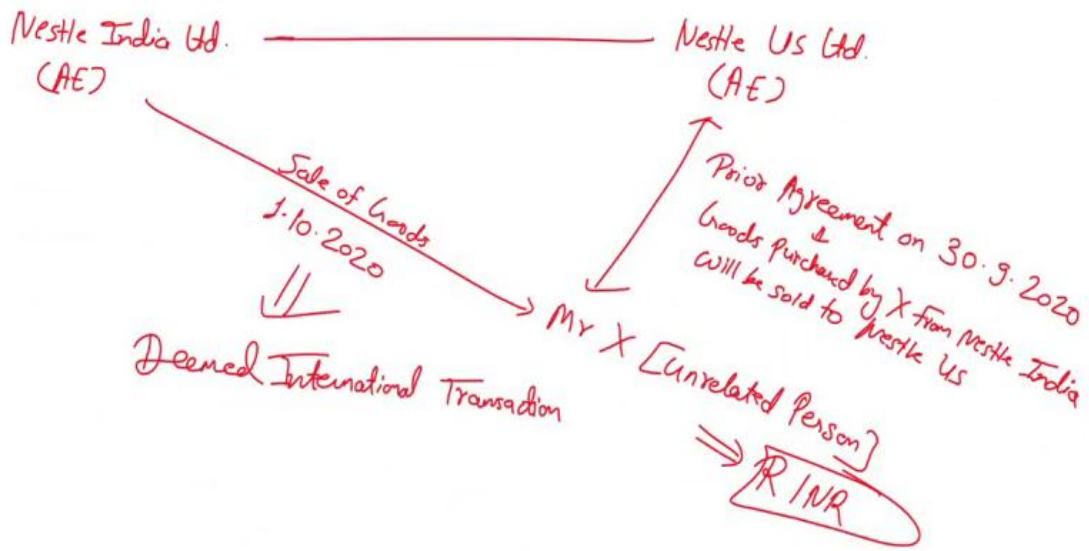
There exist a Prior Agreement between third Person & AE of Such Enterprise

⇓

Such Transaction between Enterprise & third Person shall be deemed as International Transaction

[whether Such Third Person is Resident or Non Resident]

Example



Computation of Arm's length Price [Section 92C]

ALP shall be determined by any of the following Methods :

1. Comparable Uncontrolled Price Method [CUP]
2. Resale Price Method [RPM]
3. Cost Plus Method [CPM]
4. Profit Split Method [PSM]
5. Transactional Net Margin Method [TNMM]

Most Appropriate Method shall be Selected

Comparable Uncontrolled Price Method [CUP]

Compare transaction with AE with Similar Uncontrolled Transaction [i.e. Similar Transaction with Outsiders / Unrelated]

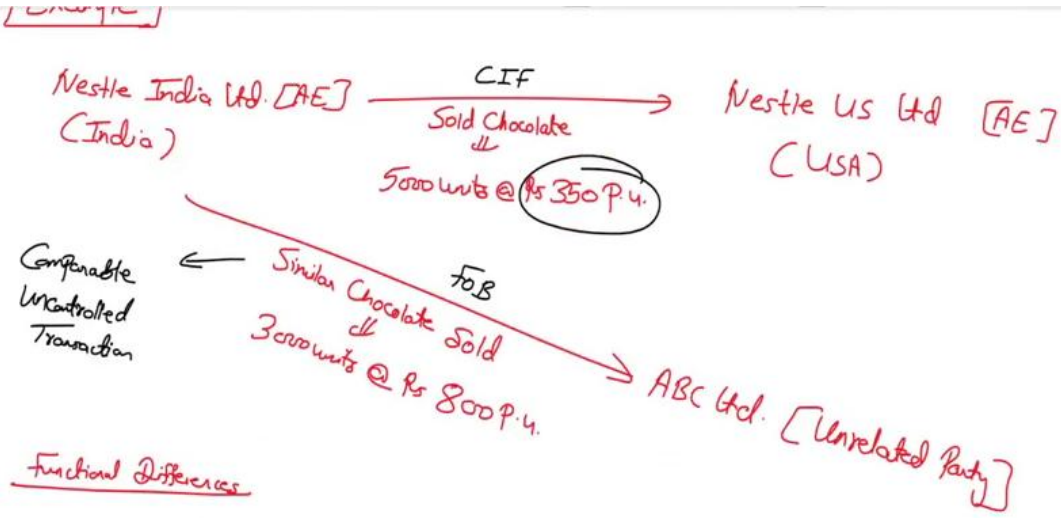
Calculation of ALP

Price Charged / Paid in Comparable Uncontrolled Transaction — XX

(±) Functional Difference Adjustment
- FOB & CIF
- Warranty
- Quantity Discount

XX

ALP = XX



Functional Differences

(1) Sale to AE is on CIF basis, while Sale to ABC Ltd. is on FOB.
Insurance & Freight Cost = Rs 40 P.u.

CIF to AE
⇓
Insurance & Freight Cost bear by Seller
⇓
Nestle India Ltd.

FOB to ABC Ltd.
⇓
Insurance & Freight Cost bear by Buyer
⇓
ABC Ltd.

(2) Nestle India Ltd. gives Warranty to AE for 6 months but not to ABC Ltd. Cost of warranty = Rs 70 P.u. Per annum

(3) Since Sales to AE is high in Quantity, Discount of Rs 60 P.u. is to be given

Solution

Calculation of ALP

	(₹ in)
Price charged in Comparable Uncontrolled Transaction	800
(±) Functional Adjustment	
FOB & CIF	+ 40
Warranty [70 × 6/12]	+ 35
Discount	− 60
ALP	815

Increase in Income of Nestle India Ltd. = (815 − 350) × 5000
= 23,25,000
(Primary Adjustment)

Resale Price Method

When Purchase made from AE and resale as it is to Outsider

Computation of ALP

Resale Price to Outsider	XX
(–) Normal GP Margin	(XX)
	XX
(–) Additional Purchase Related Expenses	(XX)
ALP =	XX

Example

Nestle US Ltd. (AE) ← Purchase @ Rs 1,00,000 — Nestle India Ltd. (AE) → Sold @ Rs 1,20,000 → ABC Ltd. (Outsider)

Additional Purchase Exp. Rs 6,000

Normal GP Margin = 20%

Solution

Calculation of ALP

Resale Price to Outsider	1,20,000
(–) Normal GP Margin [1,20,000 × 20%]	(24,000)
	96,000
(–) Additional Purchase Exp.	(6000)
ALP	90,000

Increase in Income of Nestle India [1,00,000 – 90,000] = 10,000

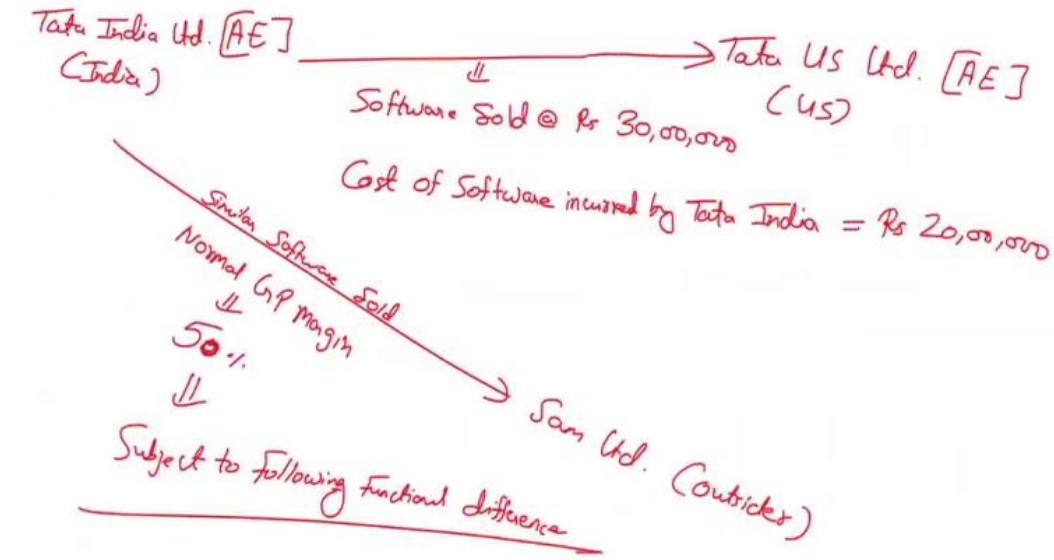
Cost Plus Method

When Goods Manufactured by Enterprise is Sold to its AE

Computation of ALP

Direct & Indirect Cost of Production	XX
Add: Normal GP Margin	XX
(±) Functional Difference Adjustment in GP Margin	
• Technical Support	X
• Quantity Discount	XX
• Credit Period	XX
	XX
ALP =	XX

Example



(1) Tata US Ltd gives technical support to Tata India Ltd but Sam Ltd doesn't gives any support
Value of Technical Support = 8% of GP Margin

(2) Work for Tata US Ltd is huge, so Qty. discount is to be given to Tata US Ltd @ 6% of GP Margin

(3) Tata India Ltd. gives Credit Period to Tata US Ltd. but not to Sam Ltd.
Cost of Credit Period = 2% of Normal Billing Rate

Solution

Calculation of ALP

Cost Incurred		20,00,000
GP Margin	50%	
(±) Functional Adj.		
Technical Support [8% × 50%]	(4%)	
Qty Discount [6% × 50%]	(3%)	
Credit Period	2%	
	45%	16,36,364 [45/55 × 20 lacs]
ALP		36,36,364

Increase in Income of Tata India (36,36,364 − 30,00,000) = 6,36,364

Profit Split Method

Used in Joint Venture

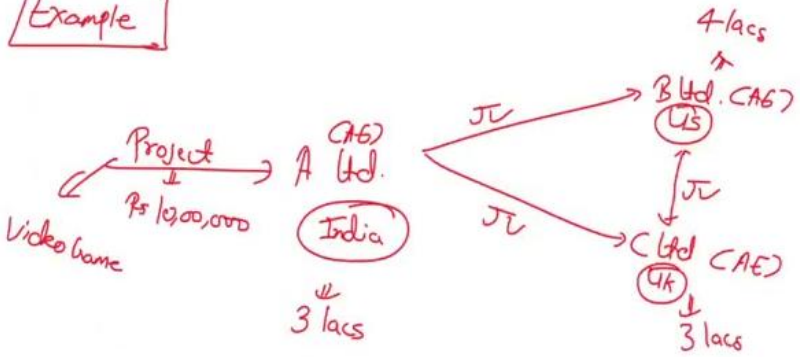
Profit/Contribution Split on the basis of given ratio of Capital Employed, Manpower, Risk Taking etc.

Calculation of ALP

Calculate Combined Net Profit, then divide Net Profit in given ratio

ALP = Cost Incurred + Net Profit Share

Example



Contribution Ratio on basis of Capital Employed, Manpower, Risk Taking etc. = A : B : C = 50 : 25 : 25

Total Cost incurred on Project = 8,00,000

Cost Incurred by A Ltd = 2,50,000

Solution

Combined Net Profit = 10,00,000 − 8,00,000 = 2,00,000

[50:25:25]

A Ltd ⇓ 1,00,000

B Ltd ⇓ 50,000

C Ltd. ⇓ 50,000

ALP for A Ltd. = 2,50,000 + 1,00,000 = 3,50,000

Transactional Net Margin Method [TNMM]

Operating Profit Margin of Other Enterprise in Similar industry shall be taken for Computing ALP

Computation of ALP

Cost Incurred	XX
(+) Operating Profit Margin of Other Enterprise in Similar Industry	XX
⇓	
OP Margin ⇓ Operating Profit / Total Cost ×100	ALP = XX

Infosys India (AE) → Software Support Service @ Rs 50,00,000 → Infosys US (AE)

Cost Incurred for same = Rs 40,00,000

Wipro Ltd. = Operating Profit Margin = 30%

Solution

Cost Incurred by Infosys India	40,00,000
(+) OP Margin of Wipro [30% × 40,00,000]	12,00,000
ALP =	52,00,000

Increase in Income of Infosys India (52 lacs − 50 lacs) = 2,00,000

If More than 1 ALP is arrived by Most Appropriate Method

- If More than 1 but upto 5 ALP Arrived → Arithmetic Mean Concept
- If 6 or more ALP Arrived → Range Concept

Arithmetic Mean Concept

Calculate Average ALP

If difference between Actual Transaction Price and Average ALP is upto 3% of Actual Transaction Price

⇓

ALP = Actual Transaction Price

If difference is more than 3%

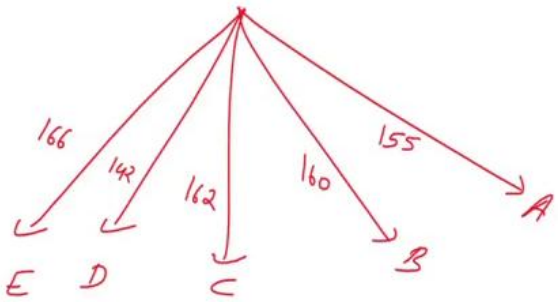
⇓

ALP = Average ALP

Example

Nestle India Ltd (AE) → Sale @ Rs 150 → Nestle US Ltd. (AE)

→ Actual Transaction Price



Actual TP 150

(+) 150 × 3% 4.5

154.5

Solution

Average ALP $= \frac{166+142+162+160+155}{5} = 157$

If diff. b/w Average ALP & Actual TP is upto 3% (if Avg ALP is upto 154.5) then Actual TP will be ALP

In this case, Since difference is more than 3%, So ALP = Average ALP

157

Range Concept

- Range Concept is not applicable in Case of Profit Split Method
- It is applicable only if Number of Values in dataset is 6 or more [i.e. ALP is 6 or more]

Steps for Range Concept

→ Arrange value in dataset in Ascending Order

→ Calculate 35% and 65% of Total Number of Values in dataset

→ Range will start From 35% value and end at 65% value

→ If Actual Transaction Price falls within range, then ALP = Actual Transaction Price

→ If Actual Transaction Price doesn't fall within range, Calculate Median [50%] of Total Number of Values in dataset

Median Value will be ALP

Steps for Range Concept

→ Arrange value in dataset in Ascending Order

→ Calculate 35% and 65% of Total Number of Values in dataset

→ Range will start from 35% value and end at 65% value

→ If Actual Transaction Price falls within range, then ALP = Actual Transaction Price

→ If Actual Transaction Price doesn't fall within range, Calculate Median [50%] of Total Number of Values in dataset

→ Median Value will be ALP

Note

- If 35%/65%/50% is not a whole Number, then Value of Next Whole Number will be Considered
- If 35%/65%/50% is a whole Number, then take Average of Value of that Whole Number & Value of Next Whole Number

Example 1

Tata India [AE] —— Sale @ Rs 150 → Actual Transaction Price ——→ Tata US [AE]

ALP = [151, 146, 140, 155, 160, 169, 165]

Solution

Ascending order → ALP

1	140
2	146
3	151 ← Range Start
4	155
5	160 ← Range End
	165
	169

7 × 35% = 2.45 (not whole no.) → 3

7 × 65% = 4.55 (not whole no.) → 5

Range 151 - 160

If Actual TP falls within Range then ALP = Actual TP

Since Actual TP is 150, it doesn't falls within Range, Calculate 50% [Median]

$7 \times 50\% = 3.5 \rightarrow 4$

(it not whole no.)

Median Value (50%) will be ALP, so ALP = **155**

Example 2

Actual Transaction Price = 150

1	140
2	146
3	151
4	155
5	160
6	165
7	169
8	170
9	171
10	172
11	174
12	177
13	178
14	180
15	189
16	191
17	193
18	194
19	198
20	200

169.5 Range start

173 Range end

$20 \times 35\% = 7$ Whole no $= \frac{169+170}{2} \Rightarrow 169.5$

$20 \times 65\% = 13$ Whole no. $= \frac{178+180}{2}$

Range 169.5 - 179

Median (50%) = 20 × 50% = 10th Whole no. = (172 + 174)/2 = 173

ALP

Circumstances where AO may determine ALP [Section 92C(3)]

1. If Assessee Fails to Compute ALP as Per Most Appropriate Method
2. Data Used in Computation of ALP is not reliable or Correct
3. Documents Specified in Section 92D not Maintained
4. Documents called by AO is not furnished within time

Consequences of ALP determined by AO [Section 92C(4)]

1. Deduction under Chapter VI-A or Section 10AA shall not be allowed From Income enhanced by AO
2. If Income of One AE is Increased by AO, Income of Other AE Shall not Change

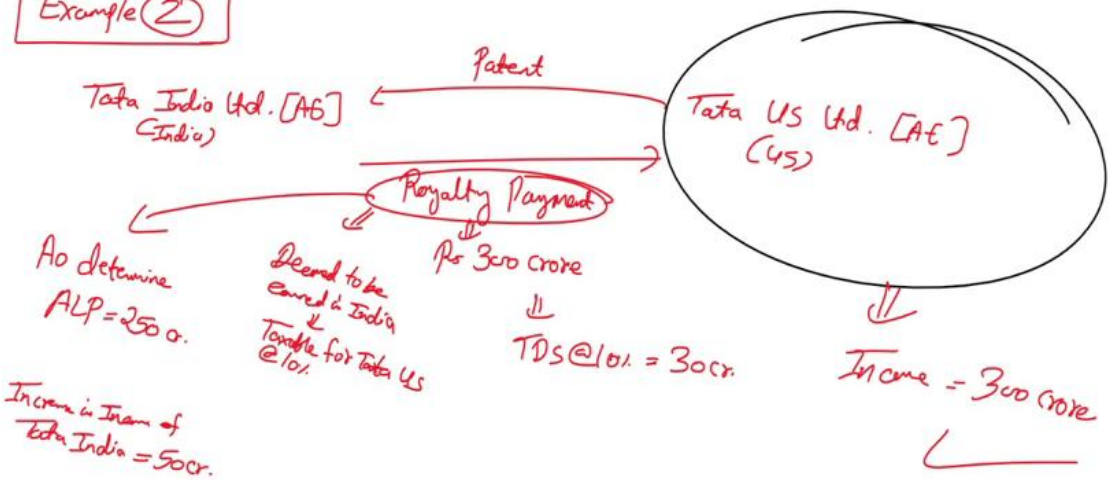
Example (1)

Tata India Ltd.
(SEZ)

TP Provisions Apply

	As Per RoI	As Per AO
PLBP (export)	100 cr.	160 cr.
GTI	100 cr.	160 cr.
(–) Deduction 46 10AA	(100 cr.)	(100 cr.)
TI	—	60 cr.

Example (2)



Reference to Transfer Pricing Officer (TPO) [Section 92CA]

- Option to make reference to TPO is given to AO but not to Assessee
- Before Making Reference, Prior Permission of CIT shall be taken
- TPO can call upon assessee to produce documents & evidence
- TPO can also determine the ALP of Other International Transactions identified subsequently during Proceedings
- Order of TPO is binding upon AO and AO shall compute Total Income of Assessee in Conformity with ALP determined by TPO

Safe Harbour Rules [Section 92CB]

→ To Reduce Transfer Pricing disputes, CBDT can make Safe Harbour Rules.

→ If Assessee declares minimum Margin as given in Safe Harbour Rules, then AO shall Accept the Transfer Price declared by Assessee

→ For AY 21-22, Safe Harbour Rules are not notified by CBDT till yet

Advance Pricing Agreement [APA] [Section 92CC & 92CD]

→ An APA is an agreement between Assessee & CBDT for determination of ALP of an International Transaction as per Method & Manner given in Agreement

→ CBDT can enter into APA with Applicant [Assessee] only after Approval of Central Government

→ If APA exist, Section 92C & 92CA shall not apply

→ APA shall be valid for Maximum 5 Consecutive Previous years from Application year

→ Binding Nature of APA

- Applicant
- Income Tax Authority upto the level of CIT
- In Respect of Transaction for which APA was entered

Py 20-21 Application
21-22
22-23
23-24
Py 24-25

→ APA to be Void

If APA entered by assessee by Fraud or Misrepresentation of facts, CBDT may declare such APA to be void ab initio

Roll Back Provisions for APA

- A Person who makes application for APA can apply for Rollback for Maximum 4 Preceding Py From application year

- Condition for Applying for Rollback

(1) Assessee has to make application for Rollback in Form No. 3CEDA along with Fees of Rs 5,00,000

(2) Request has been made by Assessee for All Rollback years

(3) International Transaction is Same as Mentioned in APA

(4) Return for Rollback years is furnished by Assessee on or before due date

- Non Applicability of Rollback

(1) Determination of ALP is Subject Matter of Appeal before ITAT and ITAT Pass Order before Signing of APA

(2) Rollback has the effect of reducing Total Income as declared in RoI

Example

Total Income

	As Pe. RoI	As Per AO [Assessment]	As Per Rollback APA	Rollback
Case I	30 Cr.	35 Cr.	32 Cr.	✓
Case II	30 Cr.	35 Cr.	25 Cr.	✗
Case III	30 Cr.	No Assessment	26 Cr.	✗

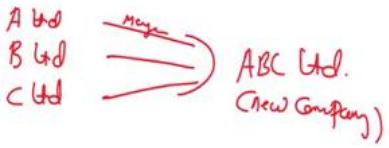
- **Roll Back Provision in Case of Merger or Demerger**

Only the Companies which exist in Rollback years at the time of making APA Application after merger/demerger are entitled for Rollback

Example

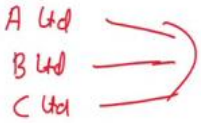
Merger

Case 1 →



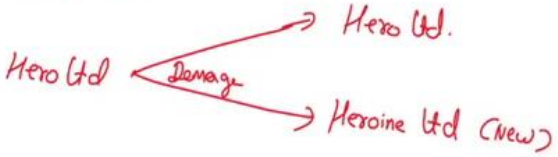
ABC Ltd. Cannot Apply for Rollback

Case 2 →



A Ltd. Can Apply for Rollback

Demerger



Hero Ltd. Can Apply for Rollback

Effect of APA

- If ROI already filed for any year to which APA/Rollback Applies, Modified ROI is to be filed within 3 months from end of Month in which APA was entered
- If Assessment of any Py to which APA/Rollback Applies already Completed, Ao shall reassess such year Assessment as Per APA
- If Assessment of any Py to which APA/Rollback Applies is Pending, Ao Shall Complete Assessment of such year as Per APA

Secondary Adjustment [Section 92CE]

Primary Adjustment : Increase in Income of Assessee due to ALP Adjustment

Secondary Adjustment : Treating 'Excess Money' as deemed Loan & Calculating Interest Income on Such Excess Money

Excess Money = ALP - Actual Transaction Price

Forms of Secondary Adjustment : Dividend, Equity or Loan

India follows deemed loan Approach

Cases where Secondary Adjustment has to be made

Where Primary Adjustment of Transfer Price has been :

1. Made suo-moto by Assessee in RoI
2. Made by AO / Appellate Authority AND Accepted by Assessee
3. Determined by APA
4. Made due to Safe Harbour Rules

Excess Money Repatriation

Excess Money available with AE shall be Repatriated to India within 90 days from
- Date of Order [If Primary Adjustment made by AO/ Appellate Authority]
- Due Date of RoI [Other Case]

If not repatriated within 90 days, Excess Money shall be deemed to be an Advance given to AE and Interest Income on Such Advance shall be Computed from → Date of order [If Primary Adjustment made by AO/ Appellate Authority]
→ Due Date of RoI [Other Case]

Calculation of Interest Rate for Secondary Adjustment

If International Transaction is denominated in Indian Rs
⇓
1 year SBI Rate as on 1st April of Py
+
3.25%

If International Transaction is denominated in Foreign Currency
⇓
6 Months LIBOR Rate as on 30th September of Py
+
3%

Option to Pay Additional Income Tax, if the excess Money is Not Repatriated

- Assessee has option to Pay Additional Income Tax @ 20.9664% [18% Tax + 12% Surcharge + 4% cess] on Such Excess Money
- If Assessee Paid Additional Income Tax, he will not required to Make Secondary Adjustment and there is no Interest Income from Date of Payment of Such Tax

No Requirement of Secondary Adjustment in following Cases:

(1) If Amount of Primary Adjustment is upto Rs 1 Crore

Or

(2) If Primary Adjustment is made in Respect of Ay 2016-17 or Earlier

Example

Nestle India Ltd. [AE] (India) → Ay 20-21 → Nestle US Ltd. [AE] (US)

Chocolate Sold @ Rs 10 Crore

⇓

ALP = Rs 15 crore

Increase in Income of Nestle India = ALP - Actual TP

⇓ → 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjustment

Suo Moto in RoI

Due date of RoI

⇓

30th Nov 2021

Repatriate to India

⇓

30.11.2021 + 90 days

⇓

28.2.2022

Assume, Not repatriated upto 31.3.2022

1 Year SBI Rate as on 1.4.2021 = 8%

Solution

Interest Income for PY 21-22 = 5 Cr. × 11.25% [8.1% + 3.25%] × 122/365

From due date of ROI

From 30.11.21 to 31.3.2022

= 122 days

= 18,80,137

If Assessee Opts to Pay Additional Tax on 1.4.22

Additional Tax = 5 Cr. × 20.966% = 1,04,83,200

In that Case No need to Repatriate Excess Money and there is no Interest Income from 1.4.22

Documents to be Maintained [Section 92D]

- Every Person who enters into an International Transaction is required to Maintain Documents & Records as Prescribed [TP Study Report]
- TP Study Report is to be maintained for Period of 8 years from end of Relevant AY
- TP Study Report is Not required to be maintained if aggregate Value of International Transactions is upto Rs 1 crore
- If Any Document is required by AO/TPO/CIT(A) during any Proceeding, it shall be Furnished within 30 days [Additional time of 30 days]

Audit Report [Section 92E]

- Every Person who enters into an International Transaction is required to obtain report from Chartered Accountant in form No. 3CEB
- Due date of filing Audit Report is 31st Oct of Ay [i.e. One Month Prior to due date of filing of RoI]

Penalties

Nature of Default	Penalty
Failure to Report International Transaction at ALP [Misreporting of Income u/s 270A] Note: If Assessee maintains documents u/s 92D, declare International Transaction and disclose all facts = No Penalty u/s 270A	200% of Tax on Underreported Income
Failure to Furnish Audit Report u/s 92E	Rs 1,00,000
Failure to Furnish Audit Report u/s 92E	Rs 1,00,000
Fails to keep & Maintain Documents u/s 92D Fails to Report International Transaction Fails to Furnish Documents required by AO/CIT(A) within time Maintain or Furnish Incorrect Information or Documents	2% of Value of International Transaction

Country by Country [CbC] Reporting Requirement [Section 286]

- By Action Plan 13 of BEPS
- Three level of documentation
  - → Local file : TP Study Report
  - → Master File : Contains Group Overview [Submitted by Constituent Entity]
  - → Country by Country [CbC] Report : Contains detail information regarding Profit, Assets, Employees etc [Submitted by Parent Entity]

Parent Entity ⇒ Ultimate Holding Company [CFS Prepare]

Constituent Entity ⇒ AE of such Parent Entity

Master File

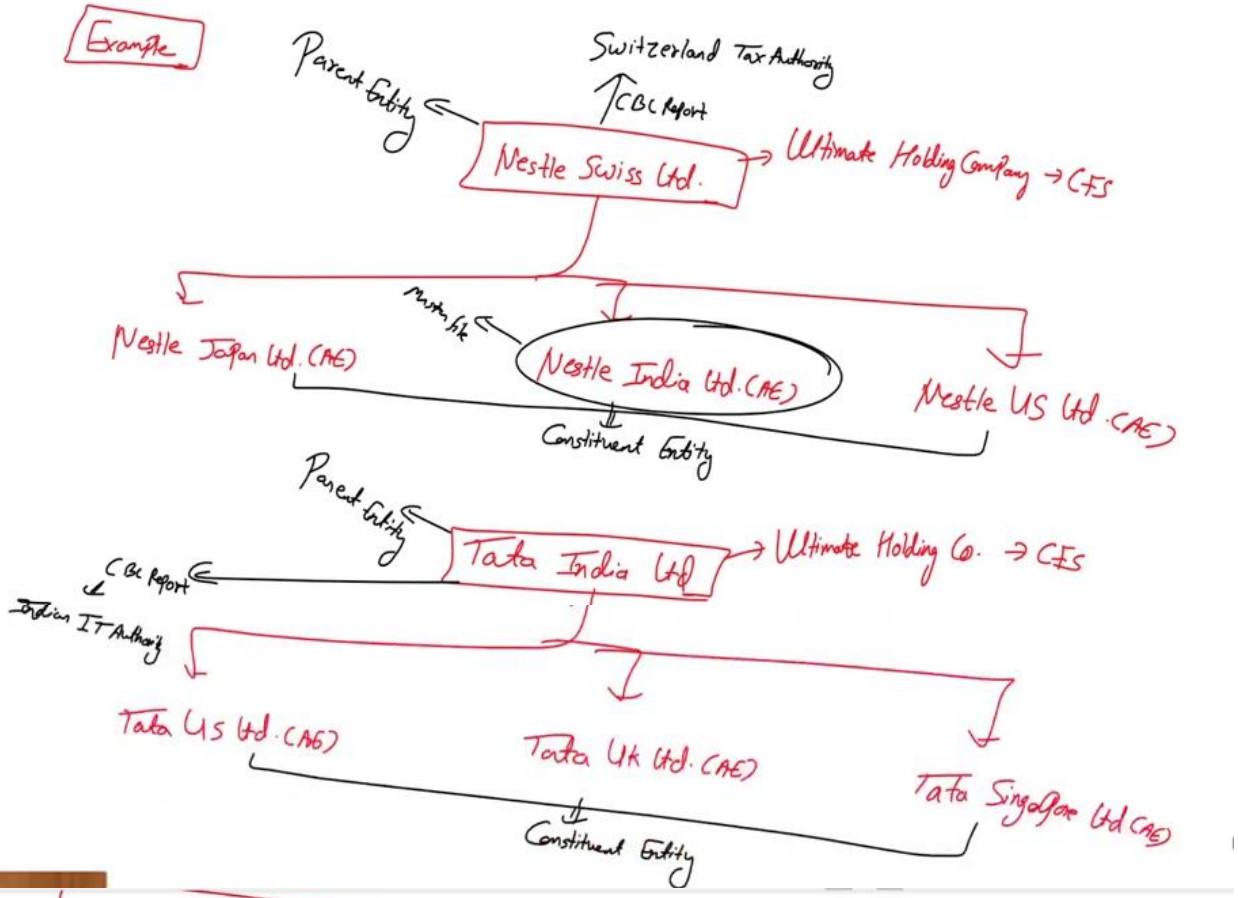
- Master file Contains Group Overview
- Master file shall be furnished by Constituent Entity Resident in India upto due date of RoI
- Master file is required to be furnished if Consolidated Group Revenue exceeds Rs 500 crores
- If Master file is not filed within Time, Penalty will be Rs 5,00,000

Country by Country [CbC] Report

- CbC Report contains details of Multinational Group for each Country in which they do business regarding
  - Profit before Tax
  - Income Tax
  - Capital Employed / Assets
  - Employees
- It is submitted by Parent Entity to the Tax Authority in its Country of Residence
- Parent Entity Resident in India shall be required to furnish CbC Report to Joint Commissioner (JC) for every Accounting year within 12 Months from end of said year
- CbC Report is required to be furnished if Consolidated Group Revenue exceeds Rs 5500 Crores
- Constituent entity Resident in India shall be required to furnish CbC Report, if :
  - Parent entity is resident of Country where no obligation to File CbC Report
  - Parent entity is resident of Country with which India has no Information Sharing Agreement
  - There is a Systematic Failure
- Penalty for Non Furnishing of CbC Report on time

Period of Delay	Penalty
Not More than 1 Month	Rs 5,000 Per Day
Beyond 1 Month	Rs 15,000 Per Day [Beyond 1 Month]
Continuing default even after Notice	Rs 50,000 Per Day [From Notice Date]

- Penalty For Submission of Inaccurate Information in CbC Report = Rs 5,00,000



Domestic Transfer Pricing

- Applicable on Specified **Domestic Transaction**

  ⇓

  Transaction between Two or More AE in which both are Residents

- Specified Domestic Transaction
  - → Shifting of Profit to Tax holiday Enterprise [i.e. 80IA]
  - → Shifting of Profit to Loss Making Enterprise
- Applicable only if Aggregate Value of Specified Domestic Transactions exceed Rs 20 crore
- Sec. 92A, 92C, 92CA, 92D, 92E, Penalties shall apply as it is

Transaction with Person located in Notified Jurisdictional Area (NJA) [Section 94A]

NJA

Central Government may notify any Country as NJA

Earlier Central Govt. declared Cyprus as NJA, but later on Central Govt. by Notification removed Cyprus as NJA

NJA Provisions

→ Any Transaction with Person located in NJA shall be deemed to be an International Transaction [whether such Person is AE or Not] and Transfer Pricing Provisions shall Apply

→ Any Amount received from Person located in NJA shall be deemed to be Income of Recipient if recipient does not explain Source of such Income

→ Rate of TDS for any Payment made to Person located in NJA shall be ⇒ Higher of:
- Rate specified in Income Tax Act
- or
- 30%.

Limitation of Interest Deduction [Section 94B]

By Action Plan 4 of BEPS to remove Thin Capitalisation [i.e. Preference of debt over Equity]

→ Applicable to

Indian Company
or
PE of Foreign Company in India

Who incurrs Interest Expenditure on Any Debt taken from AE

Limitation of Interest Deduction [Section 94B]

By Action Plan 4 of BEPS to remove Thin Capitalisation [i.e. Preference of debt over Equity]

→ Applicable to

Indian Company
or
PE of Foreign Company in India

Who incurrs Interest Expenditure on Any Debt taken from AE

→ **Interest Meaning**

Interest includes Interest, discount, Other financial Charges such as Commission, Fees, Brokerage related to Any debt

→ **Excess Interest would be disallowed**

Excess Interest

Interest to AE − 30% of EBITDA
or
Interest to AE
} ⇒ lower ⇒ Disallowed

In Other Words, Interest upto 30% of EBITDA is Allowed

EBITDA = Earning before Interest, Tax, Depreciation and Amortisation

Example

EBITDA = 100 Cr.

Interest to AE = 48 Cr.

Solution

Excess Interest to be disallowed

48 Cr. − 30% × 100 Cr. (30 Cr.) = 18 Cr.
Or
48 Cr.
} ⇒ lower ⇒ Disallowed
18 Cr.

→ Carry forward & Set off of Disallowed / Excess Interest

Excess Interest can be C/f for Maximum 8 Ay and can be Claimed/ Setoff as deduction under PGBP head upto that Limit

→ Special Point

Where debt is given by Other Person which is not AE, but

- AE either Provides guarantee to Other Person for such debt

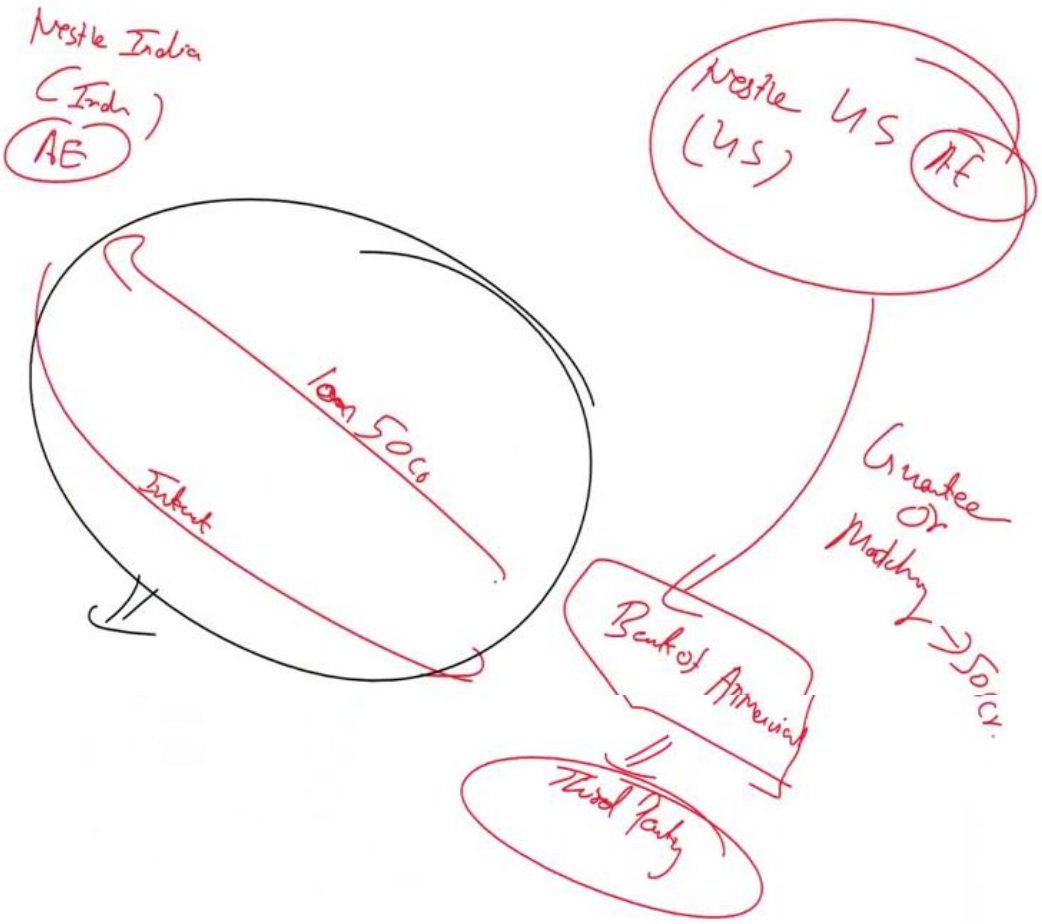
or

- Deposit Matching & Corresponding Amt with such Other Person

Such Debt shall be deemed to be taken from AE

→ Non Applicability of Section 94B

- If Total Interest to AE is upto Rs 1 Crore in Py
- If borrower is Banking or Insurance Company


Nestle India
(Indn)
AE
Nestle US
(US)
AE
Loan 50Cr
Interest
Guarantee
Or
Matching → 50Cr.
Bank of America
Third Party