



WORKSHOP ON TRANSFER PRICING

Drafting of Study Report & Accountant's Report

CA Gaurav Shah

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WIRC of ICAI

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TRANSFER PRICING DOCUMENTATION



TRANSFER PRICING DOCUMENTATION

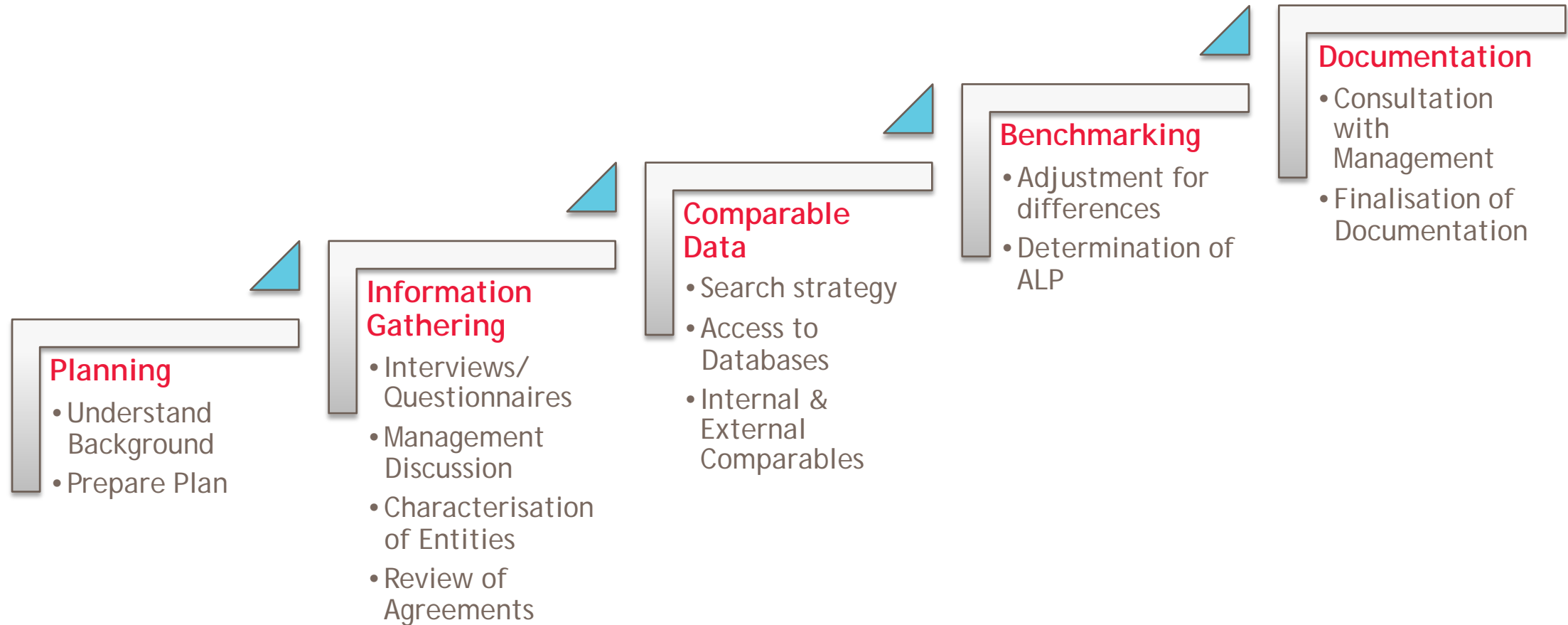
Regulatory Requirement

- Documentation for International Transactions / Specified Domestic Transactions prescribed by Section 92D of the IT Act r.w. Rule 10D of the IT Rules
- Documentation required to be contemporaneous and should exist latest by due date of filing ROI
 - 'Contemporaneous' not defined under the IT Act or IT Rules
 - Dictionary meaning: "Concurrent", "Consistent", "Simultaneous"
 - Inference: Documentation required to be maintained at the time of entering into the relevant transaction
- Relaxation provided in maintenance of documentation if the aggregate value of transactions is less than 1 Cr.
 - Relaxation not applicable for Specified Domestic Transactions
- Documentation required to be maintained for 8 years
- Documentation ought to be produced before the Tax Office within 30/60 days from date of receipt of notice



TRANSFER PRICING DOCUMENTATION

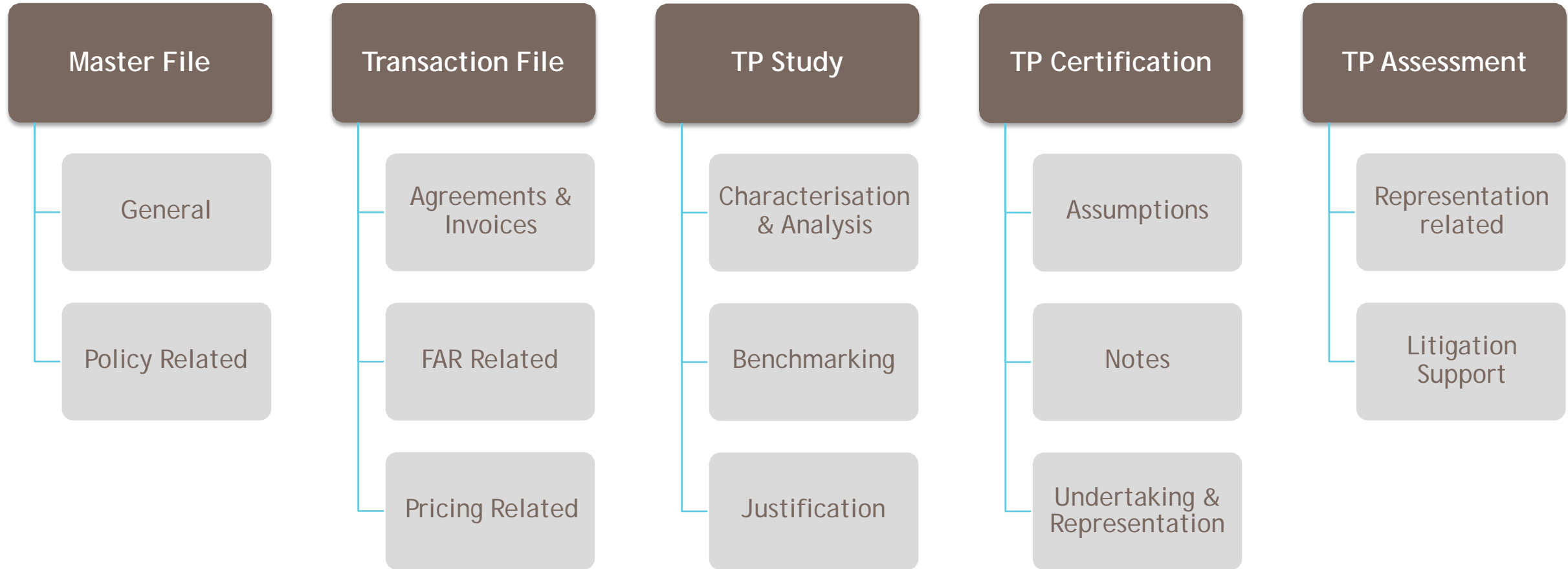
Year End Documentation Process





TRANSFER PRICING DOCUMENTATION

Documentation Best Practices





TRANSFER PRICING DOCUMENTATION

Documentation Best Practices - Master File



Details / Information	Sources / Documentation
<ul style="list-style-type: none"> Ownership & Management structure Lines of business Key products dealt-in Business set-up Functional structure of Group Members Customer profile Key financial numbers 	<ul style="list-style-type: none"> Ownership & Management Chart Group Website Product brochures Management Discussion/ Representation Global Transfer Pricing documentation Consolidated financial statements

Details / Information	Sources / Documentation
<ul style="list-style-type: none"> Historical background Shareholding pattern Organisation structure Business model Key Business segments Key Products and their applications Industry classification Customer profile Physical / Functional set-up Employee profile Research & Development activity Key financial numbers 	<ul style="list-style-type: none"> Business Profile or Brochure Statutory Records/ Registers Information / Reports filed with external agencies Taxpayer Website Product Brochures Historical Annual Reports Books of Accounts Management Discussion/ Representation Registrations & Applications





TRANSFER PRICING DOCUMENTATION

Documentation Best Practices - Master File



Details / Information	Sources / Documentation
<ul style="list-style-type: none"> ▪ Identification of Associated Enterprise(s) ▪ Relationship with the Taxpayer ▪ Business activity ▪ Physical / Functional set-up ▪ Key financial numbers 	<ul style="list-style-type: none"> ▪ Group Holding Structure ▪ Management Discussion / Representation ▪ Website of Associated Enterprise(s) ▪ Annual Report of Associated Enterprise(s)

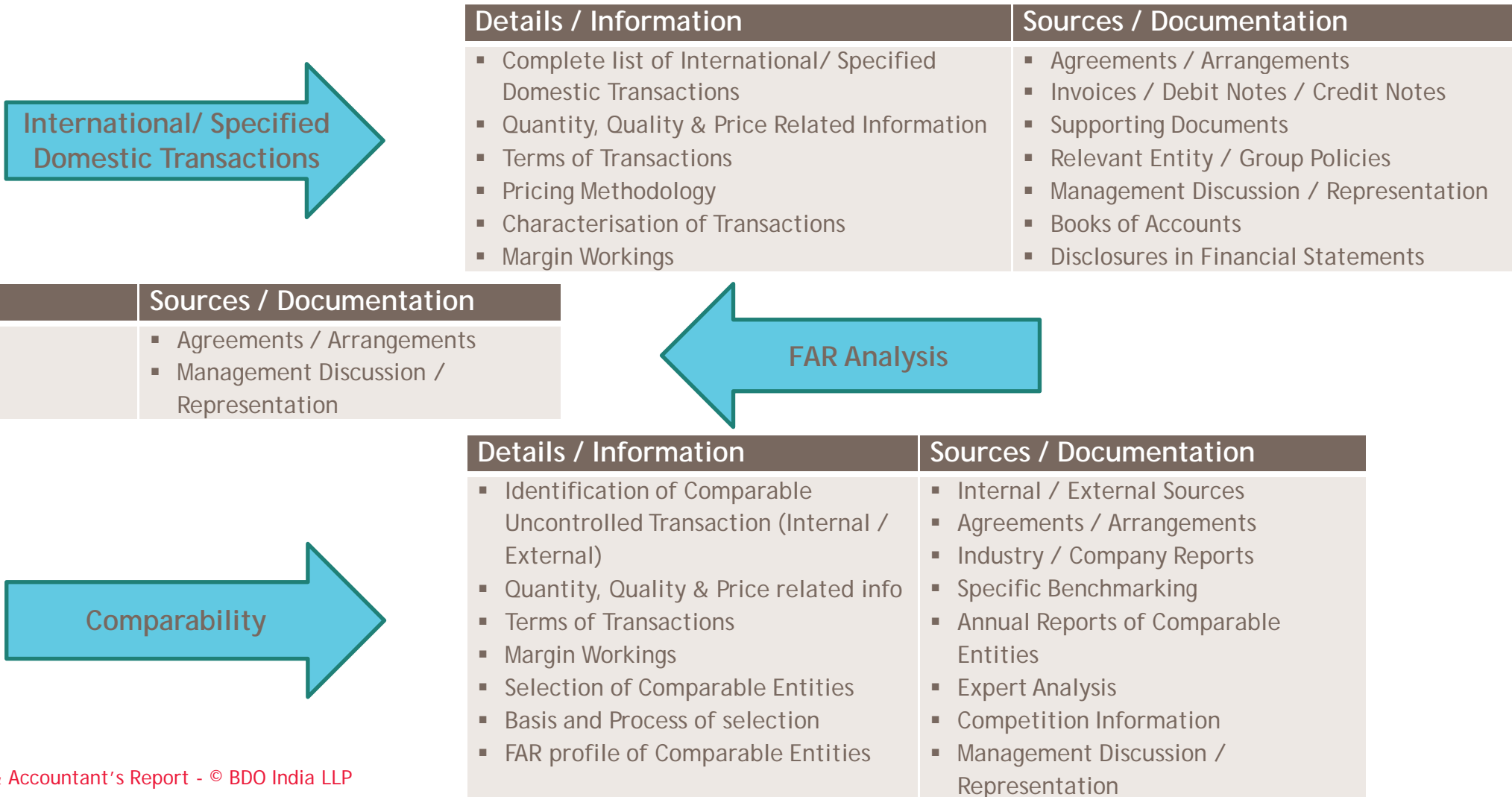
Details / Information	Sources / Documentation
<ul style="list-style-type: none"> ▪ Global Scenario ▪ Indian Scenario ▪ Industry constituents ▪ Key Value Drivers & Weights thereof ▪ Internal / External dependence ▪ Market Size/ Market Share ▪ Regulatory Framework ▪ SWOT Analysis 	<ul style="list-style-type: none"> ▪ Authentic Internal / External Sources ▪ Publications from Industry Associations ▪ Analysts Reports ▪ Reports of Research Agencies ▪ Government Body / Ministry Report ▪ Offer Document / Annual Report of Peers ▪ Local/ International Publications ▪ Published Reports ▪ Industry Magazines





TRANSFER PRICING DOCUMENTATION

Documentation Best Practices - Transaction File





TRANSFER PRICING DOCUMENTATION

Contemporaneous Documentation Issues

- Availability of data while entering into controlled transaction
- Availability of data by the due date of filing ROI (Extended due date for Transfer Pricing Cases)
- Use of earlier years data
- Use of subsequent years data
- Databases updates - Fresh Search by TPO
- Restatement of Financials
- Difference in financial year end



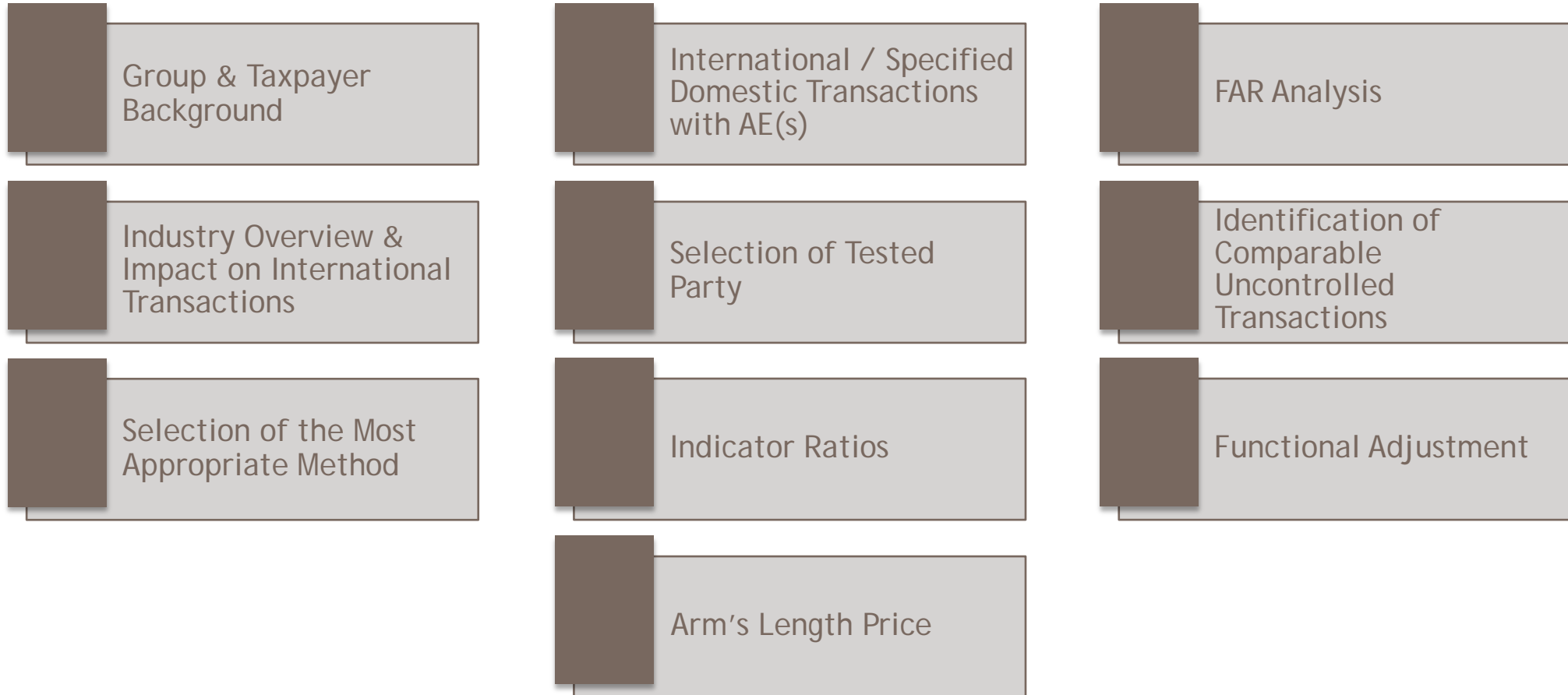
DRAFTING TRANSFER PRICING STUDY REPORT





DRAFTING TRANSFER PRICING STUDY REPORT

Contents of Study Report





DRAFTING TRANSFER PRICING STUDY REPORT

Background of Group and Taxpayer

Background of Multinational Group

- History and background of origin & growth of group
- Business Profile
- Key business verticals and service lines
 - Segmental Revenue
- Geographical Presence
- Brief financial summary of the group

Background of Taxpayer

- History and background of the taxpayer
- Business Profile
- Service lines / product offerings
- Geographical Presence
- Shareholding pattern
- Brief financial summary of the taxpayer
 - Segmental Revenue
- Key Competitors / peers

Background of AEs

- Name, address, legal status and country of tax residence
- Nature of relationship (ownership linkages) with taxpayer
- Business Profile
- Service lines / product offerings
- Geographical Presence

Sources of Information:

1. Individual Company and Group Websites
2. Financials of the company
3. Management Discussion & Representation



DRAFTING TRANSFER PRICING STUDY REPORT

Overview of Industry

Coverage

- Description of Industry of Taxpayer (for the transactions)
 - Current Scenario
 - Pricing Trends
 - Economic and market analysis
 - Degree and nature of competition
 - Statistics of Industry and Industry Segments
 - Forecasts
- Global and Domestic Scenario
- Cross-check with taxpayer's financial situation
- Special Considerations - Highly volatile industries
 - Shipping, Mining, Trading, Financial Service, etc.

Source of Industry Reports:

- Economic and Trend Analysis - Multinational Group or Taxpayer
- Reports by Reputed Organisations
 - Industry Reports
 - Rating Agencies (CARE, ICRA, Fitch, D&B etc.)
 - Stock Exchanges
 - Others
- Newspapers / Journals / Magazines / Newsletters
- Annual Reports by Government Bodies & Ministries
 - Shipping, Road & Transport, etc.
- Publications by Trade Associations and Trade Bodies
- Annual Reports of Taxpayer and peers / competitors



DRAFTING TRANSFER PRICING STUDY REPORT

Details of Transactions / FAR Analysis

Details of International/ Specified Domestic Transactions

- Nature of transaction and parties involved
- Description of Transaction during the year
 - Details of products, services, etc
 - Amount of transaction
- Basis of pricing of transaction
- Terms of Transaction
 - Agreements
- Impact of transaction on business of taxpayer, if any

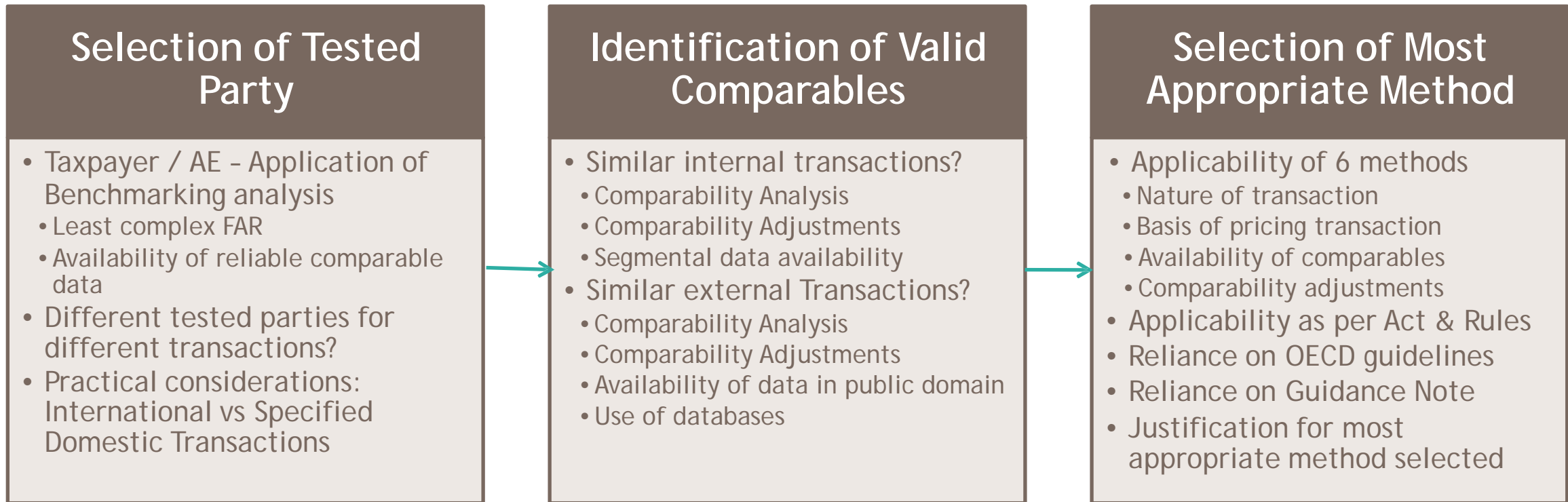
FAR Analysis

- Thorough understanding of
 - Business of Taxpayer and AE
 - Role of each party in the transaction
- Contractual Terms: financial and operational
- Significance of items of FAR in the overall scheme of things
- Relationship with third parties essential for risk assessment
 - Liability towards third parties in case of default



DRAFTING TRANSFER PRICING STUDY REPORT

Benchmarking Analysis





DRAFTING TRANSFER PRICING STUDY REPORT

Determination of Arm's Length Price

Computation of Profit Level Indicator

- Applicable for CPM, RPM and TNMM
- Use of Sales Vs. Cost as base - removal of related party element
- Use of Berry Ratios
- Exclusion of Depreciation (Profit on Cash cost basis)
- Availability of sufficient data for Comparables

Comparability Adjustments

- Type of adjustments:
 - Risk Adjustment
 - Working Capital Adjustment
 - Functional Adjustments
- Suitable Justification Required
 - Write-up on functional/ risk adjustments
 - Numerical Calculations
 - Supporting Documentation



DRAFTING TRANSFER PRICING STUDY REPORT

What When Benchmarking Is Not Feasible??

- Exhaust all possible sources of benchmarking & documents
- Demonstrate due diligence
- Reliance on International Guidance
- Reliance on Expert Opinions
- Documentation for inter-company negotiations
- Documenting complete transactional profile
- Next best possible comparable (Lateral Comparable)
- Earlier/subsequent year's benchmark
- Group level transfer pricing policies
- Industry best practices
- Compile robust documentation for each stage





DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB



DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB

Form 3CEB Requirements

Report from an accountant to be furnished under section 92E relating to international transactions and specified domestic transactions

- *I/We have examined the accounts and records of <<Name of Company>>, <<Address of Company>>, <<PAN of Company>> relating to the international transaction(s) and the specified domestic transaction(s) entered into by the assessee during the previous year ended on 31st March, <<year ending of relevant previous year>>.
 - In *my/our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transaction(s) and the specified domestic transaction(s) entered into so far as appears from *my/our examination of the records of the assessee.
 - The particulars required to be furnished under section 92E are given in the Annexure to this Form. In *my/our opinion and to the best of my/our information and according to the explanations given to *me/us, the particulars given in the annexure are true and correct.
- Digital signature, Name, Membership number, Date, Firm Name and Registration number



DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB

Annexure to Form 3CEB

Part A - General Information

1. Name of the assessee
2. Address
3. Permanent account number
4. Nature of business or activities of the assessee (for business codes refer ITR 6)
5. Status
6. Previous year ended
7. Assessment year
8. Aggregate value of international transactions as per books of accounts
9. Aggregate value of specified domestic transactions as per books of accounts



DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB

Annexure to Form 3CEB

Part B - International Transactions

10. List of associated enterprises with whom the assessee has entered into international transactions

- Name of the associated enterprise
- Nature of Relationship with associated enterprise
- Brief description of the business of associated enterprise

Key Consideration: Identification of entities located in Cyprus with whom transactions have been entered into!

11. Transactions of tangible property

- A. Purchase / sale of raw material, consumables or any other supplies for assembling / processing / manufacturing of goods / articles from / to associated enterprises
- B. Purchase / sale of traded / finished goods
- C. Purchase / sale of any other tangible movable / immovable property or lease of such property

Key consideration: Reporting quantities!



DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB

Annexure to Form 3CEB

Part B - International Transactions

12. Transactions of intangible property (purchase / sale / use of intangible property such as know-how, patents, copyrights, licenses, etc.)

13. Service transactions

Key Consideration: Reporting requirements for AMP expenses incurred by the Indian entities!

14. Lending or borrowing of money (any type of advance payments, deferred payments, receivable, non-convertible preference shares/ debentures or any other debt arising during the course of business)

Key Consideration: Reporting requirements for trade receivable/payables!



DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB

Annexure to Form 3CEB

Part B - International Transactions

15. Transactions in the nature of guarantee

Key Consideration: Arm's length price computation for transactions relating to guarantee?

16. International transaction of purchase or sale of marketable securities, issue and buyback of equity shares, optionally convertible/ partially convertible/ compulsorily convertible debentures/ preference shares

Key Consideration: Whether issue of equity shares is a international transaction to be reported in Form 3CEB?

17. Mutual agreement or arrangement



DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB

Annexure to Form 3CEB

Part B - International Transactions

18. International transactions arising out of/ being part of business restructuring or reorganizations

Key Consideration: Details of the agreement and terms of the business restructuring / reorganization!

19. Any other transaction

20. Deemed international transaction

Key Consideration: Wide coverage of deemed international transaction!



DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB

Annexure to Form 3CEB

Part C - Specified Domestic Transactions

21. List of associated enterprises with whom the assessee has entered into specified domestic transactions

- Name, Address and PAN of the associated enterprise
- Relationship with associated enterprise
- Brief description of the business of associated enterprise

Key Consideration: Challenges with obtaining PAN of certain parties!

22. Transactions in the nature of payment for any expenditure to persons referred to in section 40A(2)(b)

23. Transfer or acquisition of any goods or services to/from eligible business of the same assessee

24. Any business transacted by an eligible taxpayer

25. Any other transaction

Key Consideration: Wide coverage of Clause 24 (any business transacted by an eligible taxpayer)!



DRAFTING ACCOUNTANT'S REPORT: FORM 3CEB

Annexure to Form 3CEB

Information required in respect of Specified Domestic Transactions

- Name of person with whom the specified domestic transaction has been entered into
- Description of transaction/goods and services, along with quantitative details
- Total amount
 - As per books of accounts
 - As per arm's length price
- Method used to determine arm's length price



ACCOUNTANT'S REPORT – RISK MITIGATION





ACCOUNTANT'S REPORT - RISK MITIGATION

Check Points for the Accountant and Taxpayer

Coverage of Relationships

- Check for completeness and correctness
- Check points
 - Previous year's form 3CEB
 - Financial Statements
 - Notes to Accounts - AS 18 disclosures
 - Form 3CD - Sec. 40A(2)(b) disclosures
 - Cost Audit Report of the company
 - Company / group website
 - Companies Act compliances
 - SEBI's Listing Agreement requirements
 - Relevant Income tax forms
 - Shareholding pattern as per Members' Register and Annual Return
 - Management discussion and representation

Coverage of Transactions

- Reconciliation with disclosures
 - Notes to Accounts [AS-18]
 - Tax Audit Report [Section 40A(2)(b)]
 - Cost Audit Report
 - Companies Act compliances
 - SEBI's Listing Agreement requirements
- Ledger scrutiny
 - Ledger of Party Concerned
 - Transaction Ledger
- Reconciliation with amounts as per Financial Statements
- Details of foreign exchange transactions as provided in the audited accounts
- Management discussion and representation



ACCOUNTANT'S REPORT - RISK MITIGATION

Roles and Responsibilities

Taxpayer

- Recognition of parties and transactions where transfer pricing applies
- Determination of the most appropriate transfer pricing methodology
 - Recognizing comparable transactions / entities, as much as is relevant from TP perspective
 - Providing relevant industry-level and market-level information, such as key markets, major customers, competitors etc.
 - Providing insight into price-setting mechanism
- Determination of Arm's Length Price
- Compilation of relevant documents as proof of Arm's Length Price on real time basis
- Maintenance of transfer pricing documentation (as per section 92D r.w. Rule 10D)

Accountant

- Independence in Transfer Pricing work
- Clearly defined Scope of examination
 - Importance of signed engagement Letter
- Communication with outgoing auditor
- Adherence to Code of Conduct
- Adherence to Guidance Note
- Quality control and peer review
- Timely issuance of the Accountant's Report (Form 3CEB) to client
- Maintenance of client file and documentation
- Management Representation Letter

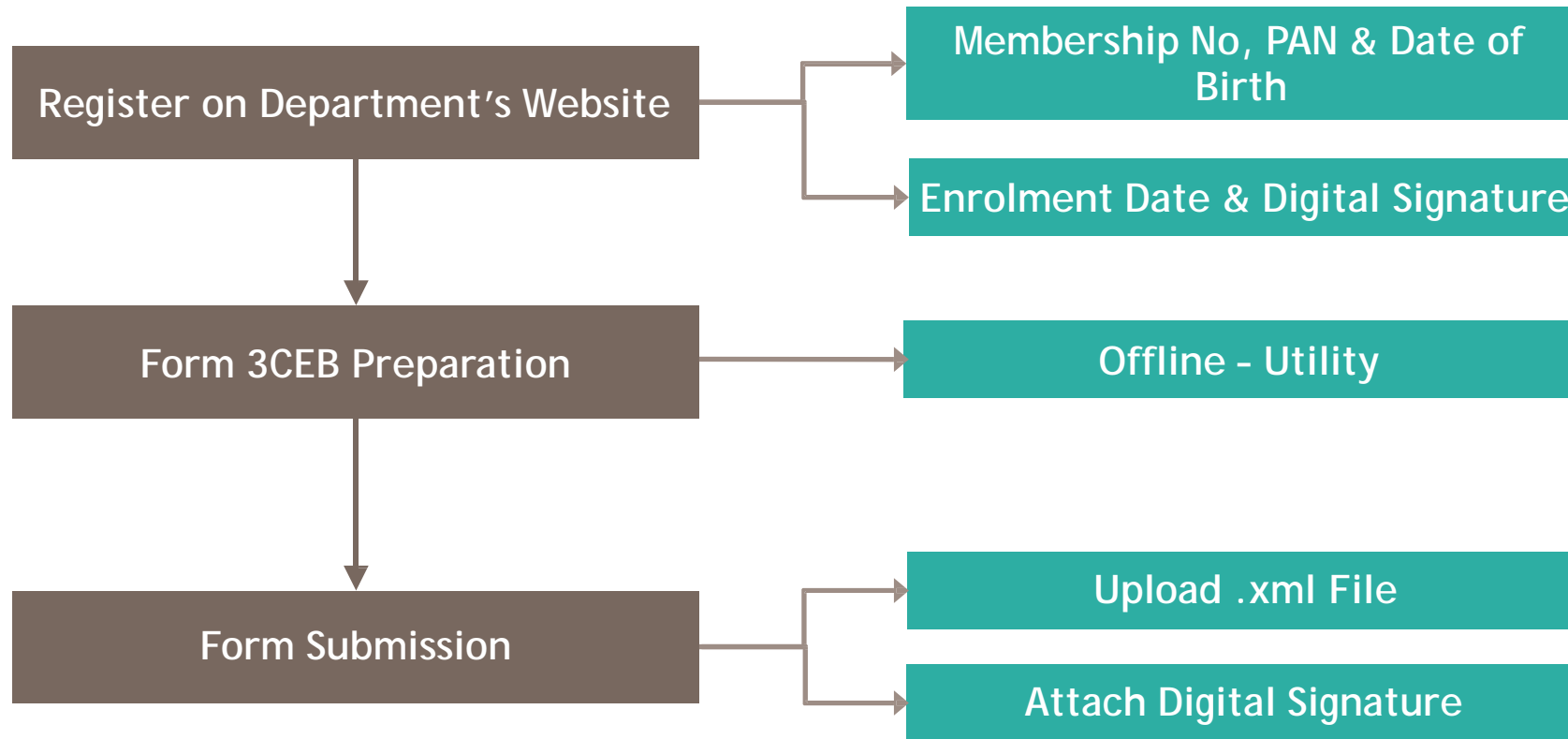


E-FILING ACCOUNTANT'S REPORT: FORM 3CEB



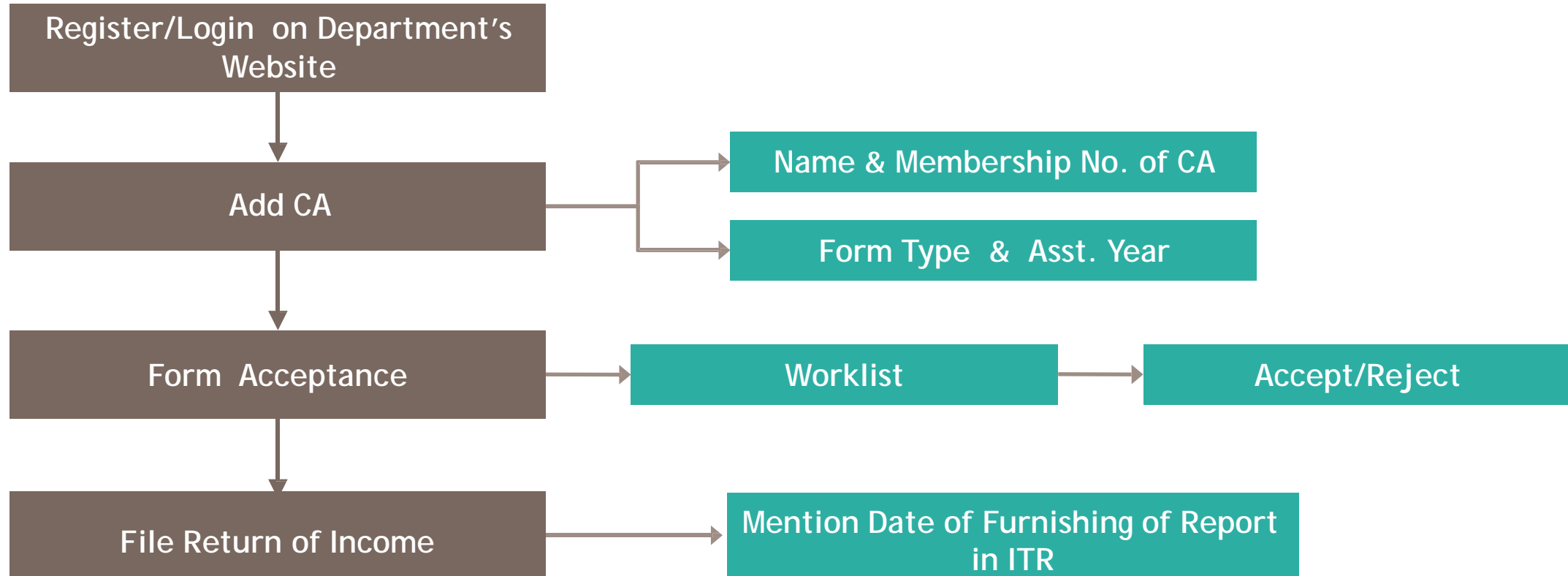
E-FILING ACCOUNTANT'S REPORT: FORM 3CEB

Procedure For E-filing - Chartered Accountant



E-FILING ACCOUNTANT'S REPORT: FORM 3CEB

Procedure For E-filing - Taxpayer



E-FILING ACCOUNTANT'S REPORT: FORM 3CEB

Challenges

- Notes and additional disclosures?
- Qualified Accountant's Report?
- Modification in Accountant's Report?
- Accountant's Report for Foreign Companies?
- Separate report for international and specified domestic transactions?
- Acceptance of the Form 3CEB by the taxpayer?
- Specific disclosures
 - Quantitative details
 - Business restructuring
 - PAN of domestic parties
- Importing data from MS-Excel
- Carrying forward data to the next year
- Issues with the Income Tax Department's Utility

Imperative to demonstrate due diligence and safeguard from penalties !



KEY TAKEAWAYS





KEY TAKEAWAYS

Penalties

Section	Default	Penalty
271(1)(c)	Transfer Pricing Adjustment considered as concealment of income	100% to 300% of Tax on the Adjustment made
271G	Failure to furnish documentation	2% of Value of International Transactions and/or Specified Domestic Transactions
271BA	Failure to furnish Form 3CEB	INR 100,000
271AA	Failure to keep or maintain required documentation	2% of Value of International Transactions and/or Specified Domestic Transactions
	Failure to report required transactions	
	Furnish incorrect information or documentation	

KEY TAKEAWAYS

Mitigating Transfer Pricing Risks

- Expanded coverage
 - Expanded definition of Associated Enterprise and International Transactions
 - Coverage of capital transactions
 - Deemed international transactions
 - Specified domestic transactions
 - Business Restructuring
- Change in approach due to applicability to tax holiday taxpayers
- Impending introduction of Arm's length Range and Multiple Year Data
- Challenges with e-filing
- Tolerance Band notified - Clarification on the term 'Wholesale trading'
- Wide gamut of application of other method
- Increased penalty exposure
- Importance of Management Representation Letter and its coverage
- No provision for revision of Form 3CEB

DOCUMENTATION IS THE KEY!

THANK YOU

CA Gaurav Shah

