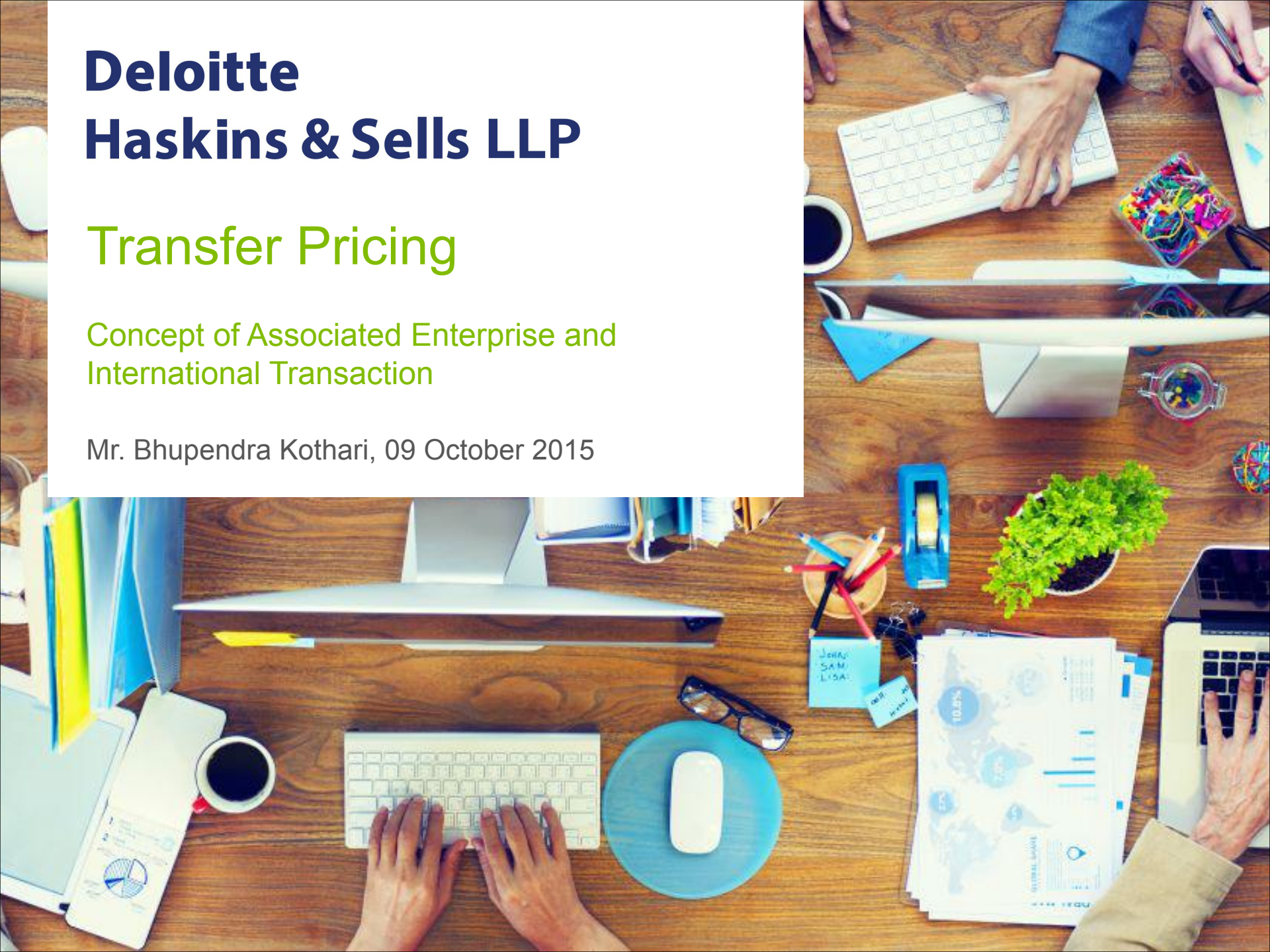


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Transfer Pricing

Concept of Associated Enterprise and
International Transaction

Mr. Bhupendra Kothari, 09 October 2015



TP Applicability

Chapter X provisions:

Section 92(1):

- Any Income
- Arising from an International Transaction
- Shall be computed having regard to Arm's Length Price.

Section 92(B):

- Transaction between two or more associated enterprises (AE)

Section 92F(iii):

- “enterprise” means a person (including a permanent establishment of such person)...

Section 92(A):

- Defines associated enterprises

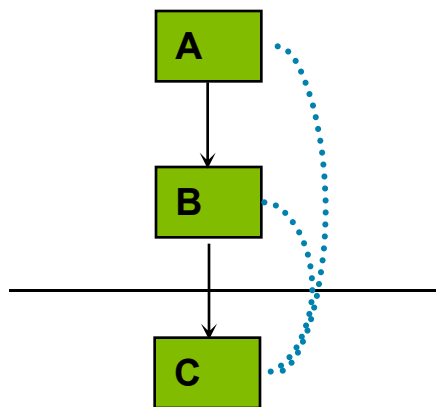


Associated Enterprise

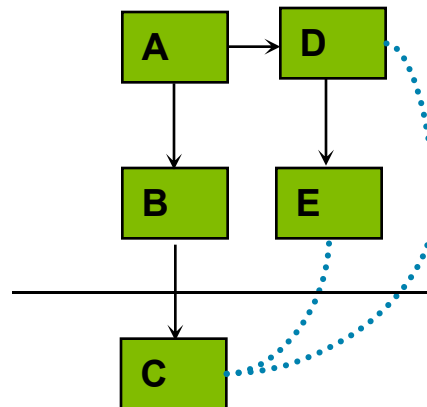
Meaning of associated enterprise

- Sec 92A (1)

- Participation in management or control or capital
- Directly or indirectly or through one or more intermediaries [section 92A(1)(a)]
- Common participation [section 92A(1)(b)]



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)

Deemed to be associated enterprise

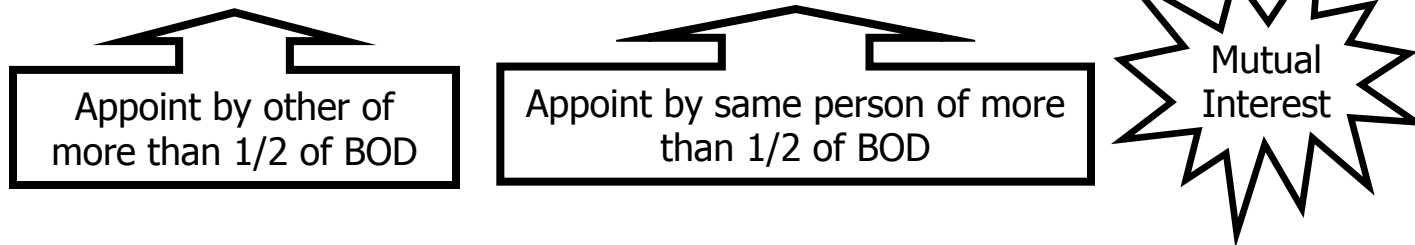
- Sec 92A(2)

- 13 categories mentioned in sub-section (2) can be grouped under 3 heads (not exclusive)

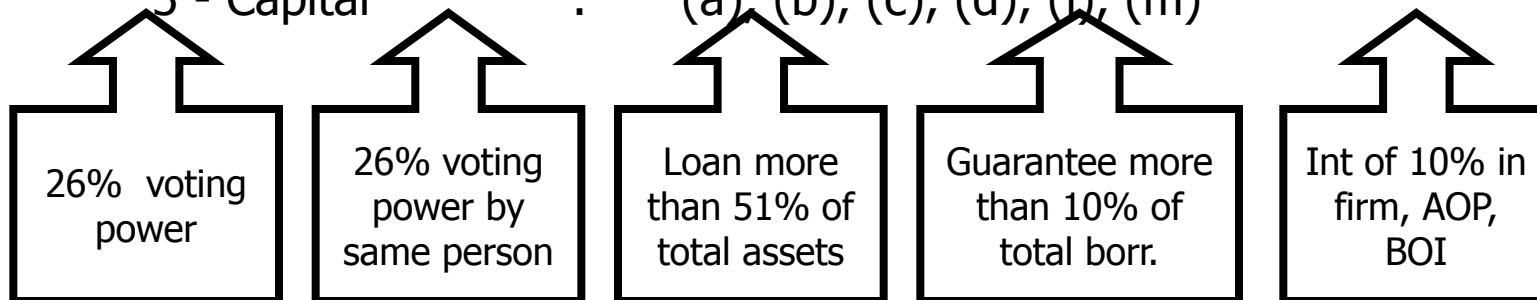
1 - Control : (g), (h), (i), (j), (k), (m)



2 - Management : (e), (f), (m)



3 - Capital : (a), (b), (c), (d), (l), (m)



Deemed to be associated enterprise

– Sec 92A(2)

- one has direct or indirect share holding carrying not less than 26% voting power in the other
- common parent / person holds 26% of voting power in both enterprises
- one advances loan constituting not less than 51% of book value of total assets of the other enterprise
- one provides guarantees of not less than 10% of total borrowings of the other enterprise
- Appoints more than half of board of directors of one enterprise or one or more executive directors are appointed by the other enterprise
- Appoints more than half of the board of directors of both enterprises are appointed by the same person or persons
- one enterprise is wholly dependent on use of IPRs of the other enterprise for manufacturing
- At least 90% of raw materials and consumables required by a enterprise are supplied by the other enterprise, or by persons specified by the other enterprise, and prices and conditions relating to supply are influenced by such other enterprise

Deemed to be associated enterprise

– Sec 92A(2)

- Goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and prices and conditions relating thereto are influenced by such other enterprise
- Both enterprises controlled by same the same individual singly or jointly with relatives
- One enterprise controlled by HUF and other controlled by member of HUF or his relative or jointly
- One enterprise being a firm, association of persons or body of individuals, the other enterprise holds not less than 10% interest therein
- There exists between the two enterprises, any relationship of mutual interest, as may be prescribed
- The relationship of associated enterprises with reference to “as may be prescribed”

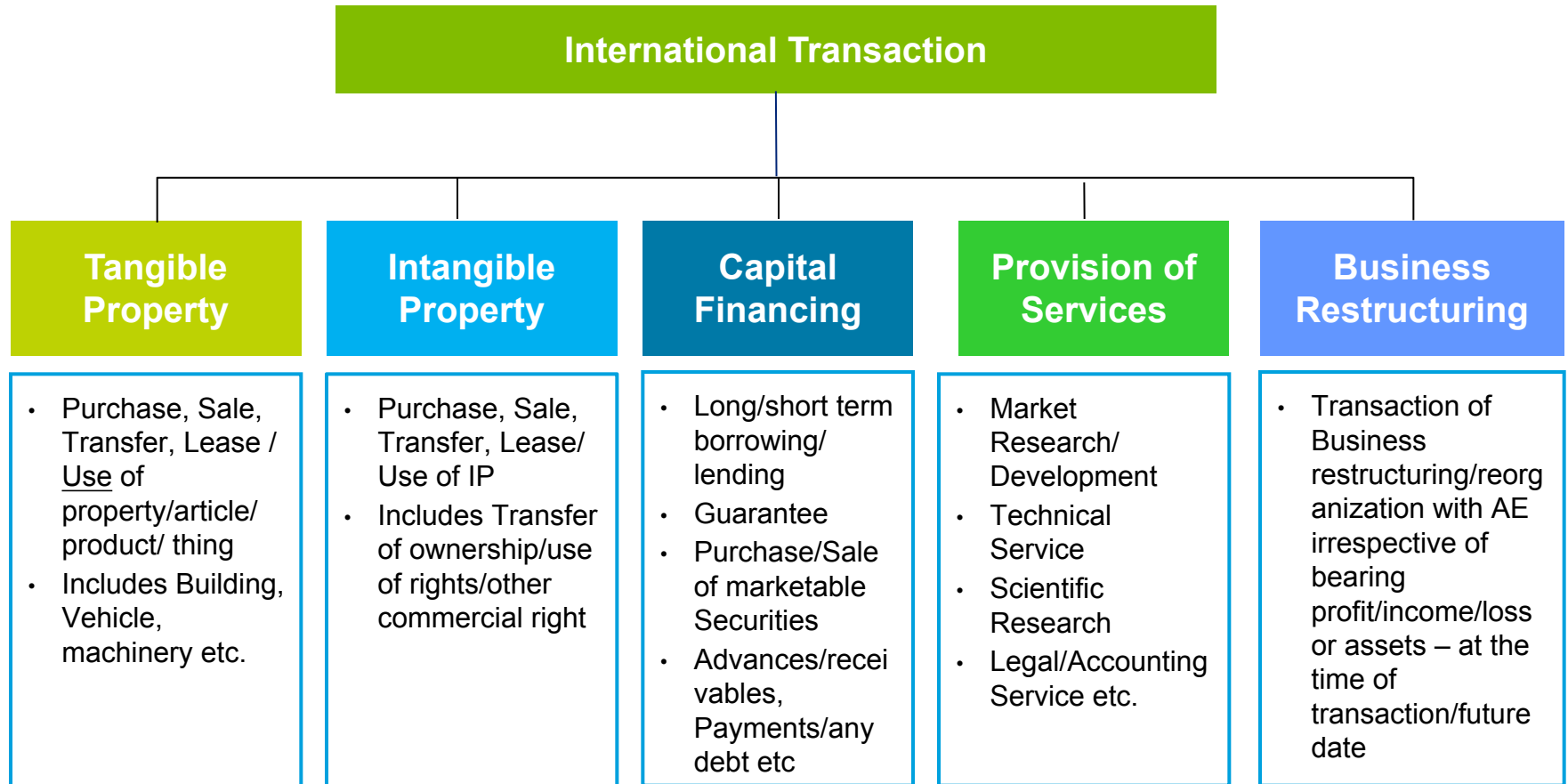
International Transactions

Transfer Pricing Regulations

Section 92B of the Act: International Transactions

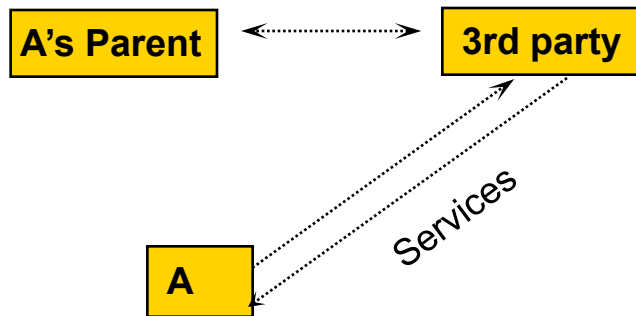
- ✓ Transaction between two or more associated enterprises,
- ✓ Either or both of whom are non-residents
- ✓ **Definition of transaction u/s 92F(v) r.w.r 10A**
 - transaction” includes an arrangement, understanding or action in concert –
 - (A) formal or in writing or
 - (B) whether or not enforceable by legal proceeding.
 - “transaction" includes a number of closely linked transactions
- ✓ **Type of transactions covered:**
 - Purchase, sale or lease of tangible or intangible property, or
 - Provision of services, or
 - Lending or borrowing money, or
 - Any other transaction having a bearing on the profits, income, losses or assets of such enterprises,
 - Any mutual agreement or arrangement on allocation or apportionment or any contribution of cost or expenses

Enhanced definition of International transaction (w.r.e.f. 1 April 2002)

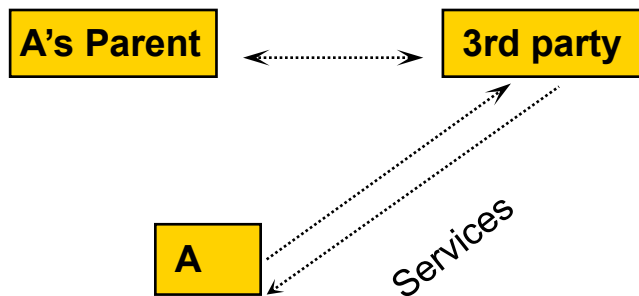


Deemed international transaction- Sec 92B(2)

Prior agreement



Determination of terms

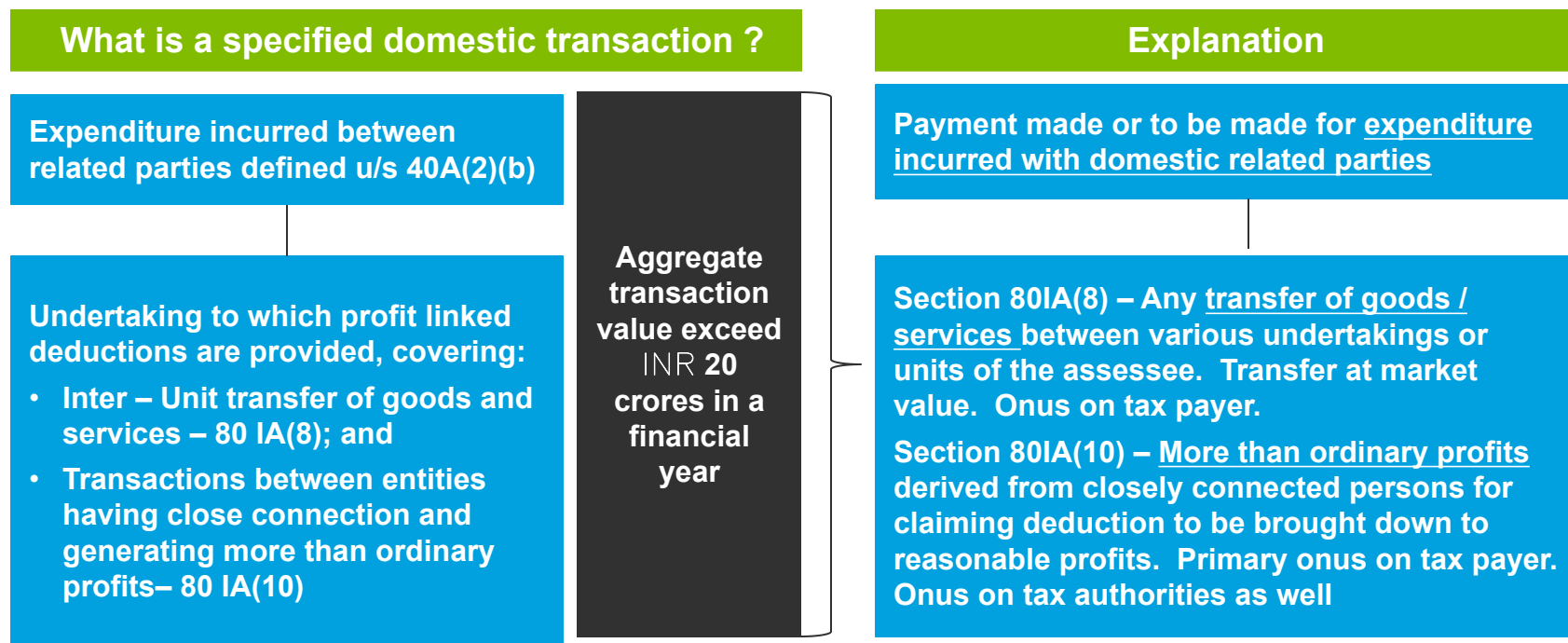


- ✓ An transaction with an unrelated company (3rd party) is deemed to be an international transaction and subject to transfer pricing regulations if
 - a **prior agreement** exists between A's AE and 3rd party in relation to services rendered by A to the 3rd party; **or**
 - **terms of transaction** are determined in substance by A's AE and 3rd party
- ✓ Amendment in Finance Act, 2014.

Specified Domestic Transactions

Specified Domestic Transactions – what it includes?

•“Specified domestic transaction” in case of an assessee means any of the following transactions, not being an international transaction, namely:



Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the Specified Domestic Transaction shall be computed having regard to the arm's length price

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