



CA / CMA FINAL



Direct Tax
& International Taxation

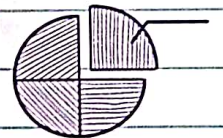
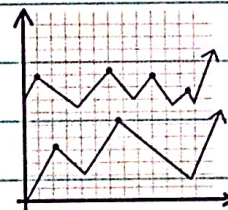
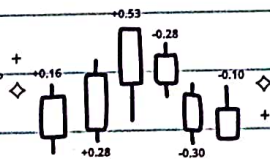
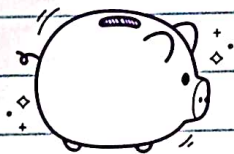


COMPACT



For NOV / DEC. 2023 EXAMS

Amended By Finance Act, 2022 For A.Y. 23-24



Hand Written Notes

By CA BHANWAR BORANA

Volume-2



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Sec 92 : Any income, expenditure, interest & allocation of cost in relation of international transaction or specified domestic transaction shall be computed having regard to Arm's length price.

ALP means - Correct market price, fair price.

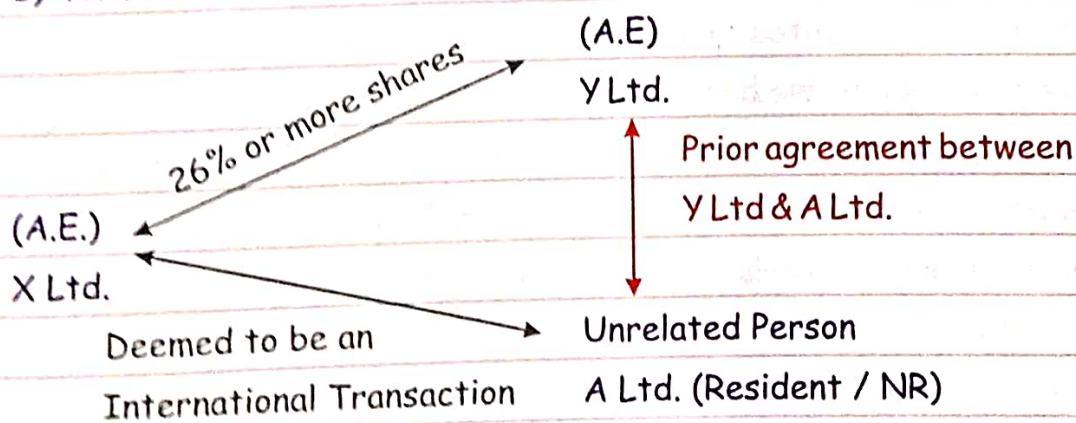
If due to ALP there is reduction in the income or increasing the losses then transfer pricing provisions shall not apply.

Sec 92B: International Transactions

It means - (a) Transaction between two or more Associated Enterprises (A.E) &
(b) At least one must be Non Resident (NR)

Note:

1. Transaction should be in the nature of purchase, sale, lease of property, provision of service, lending or borrowing of money etc.
2. If both AE's are NR, then TP shall only apply if income of one of the NR is taxable under IT Act, 1961.
3. Transaction between enterprise & unrelated person shall be deemed to be international transaction, if :
 - a) there exists a prior agreement between AE & unrelated person , or
 - b) terms of transaction are determined by A.E.



In the above example, the transaction between X Ltd. & A Ltd. is not an international transaction but if there is prior agreement between Y Ltd. & A Ltd. related to transaction between X Ltd. & A Ltd. & terms are determined by Y Ltd. then the transaction between X Ltd. & A Ltd. is treated as deemed to be international transaction.

Sec 92A: Associated Enterprise

Two enterprises shall be treated as AE's if at any time during the P.Y.:

- a. One enterprise holds at least 26% shares (voting power) of other enterprise.
- b. Any person holds at least 26% shares of each of such enterprise.

Note: Above relationship covered direct as well as indirect control.

Ex:1 Tata Ltd. holds 33% of Voting Power in Tata Motors Ltd. and Tata Motors Ltd. holds 80% Voting Power in JLR Ltd.

In above situation, Tata Ltd. holds 26% or more voting power in Tata Motors Ltd., directly and in JLR Ltd. indirectly (i.e. through Tata Motors Ltd.). Therefore, both Tata Motors Ltd. & JLR Ltd. are AE's.

Ex:2 Mr. Tata holds 40% of voting power in both TCS Ltd. and Titan Ltd. where neither TCS Ltd. has any holding in Titan Ltd. nor Titan Ltd. has any holding in TCS Ltd. In this situation, since Mr. Tata directly holds 40% of voting power in both TCS Ltd. and Titan Ltd., TCS Ltd. & Titan Ltd. will be AE's.

- c. One enterprise appoints more than half of the BOD or one or more Executive Director of other enterprise.
- d. Any person appoints more than half of the BOD or one or more Executive Director of each of such enterprise.

Ex:1 JLR Ltd. has 15 directors on its Board. Out of that, Tata Motors Ltd. has appointed 8 directors. In such case, JLR Ltd. and Tata Motors Ltd. are AE's.

Ex:2 Mr. Ambani appointed 9 directors out of 15 directors of Jio Ltd. and appointed 2 executive directors on the board of RIL Ltd. In such case, since a common person i.e. Mr. Ambani appointed more than half of the directors in Jio Ltd. and appointed 2 executive directors in RIL Ltd., both Jio Ltd. and RIL Ltd. are AE's.

A loan given by one enterprise to other enterprise, at least 51% of the Book Value of Total assets of other enterprise.

Ex: Book Value of total assets of KK Ltd. is ₹100 crores. BB Ltd. advances loan of ₹60 crores to KK Ltd.

In this case, BB Ltd. advances loan of ₹60 crores to KK Ltd, which is 60% of the book value of total assets of KK Ltd. Hence, BB Ltd. & KK Ltd. are AE's.

One enterprise guarantees at least 10% of the Total Borrowing of the other enterprise.
Ex: P Inc. has total loan of 1 million dollars from XYZ Bank of America. Out of that, A

g.

h.

i.

j.

k.

l.

m.

Ltd., an Indian company, guarantees 20% of total borrowings in case of any default made by P Inc. In such case, since A Ltd. guarantee 20% of total borrowings of P Inc., P Inc. and A Ltd. are AE's.

- g. The Business of one enterprise is **wholly dependent on knowhow, patent, copy right etc.** of other enterprise.

Ex: Kia Motors India Ltd. manufactures cars in India using Knowhow of Hyundai Motors Ltd. south korea.

In this case, Kia Motors India Ltd. business is totally (100%) depends on Knowhow of Hyundai Motors Ltd. Hence, Kia Motors India Ltd. & Hyundai motors Ltd. are AE's.

- h. **90% or more of raw material** required by one enterprise is supplied by other enterprise. and the prices and other conditions relating to the supply are influenced by such other enterprise

Ex: Sam Ltd. USA supplies raw material of 91 Lakhs to BB Ltd. India and Total RM used by BB Ltd. is 100 lakhs. In this case Sam Ltd. & BB Ltd. are AE's if price influenced by Sam Ltd.

- i. Goods manufactured by one enterprise are **sold to other enterprise & price & other condition are influenced** by other enterprise.

Ex: BB Ltd. of India sells good to Martin Ltd. of Canada. In this case BB Ltd. & Martin Ltd. are AE's if price & other conditions related to sales is influence by Martin Ltd.

- j. One enterprise is **controlled by individual & other enterprise is controlled by such individual or his relative** or jointly by individual & relative.

Ex : Mr. A and Mr. B are relatives. Mr. A has control over X Ltd. and Mr. B has control over Y Ltd. Therefore, both X Ltd. and Y Ltd. will be deemed associated enterprises.

- k. One enterprise is **controlled by HUF & other enterprise is controlled by member, relative of member** or jointly by member & relative.

- l. One enterprise has **at least 10% interest** in another enterprise being **partnership Firm, AOP, BOI.**

- m. Any relationship of mutual interest, as may be prescribed.