

Transfer Pricing in UAE – Practical Implementation and Challenges

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UAE Transfer Pricing Rules



On 9 December 2022, the UAE Federal Tax Authority released Federal Decree-Law No. 47 of 2022. The following Articles of that Decree-Law form the UAE Transfer Pricing Regulations.

Article 34 – Arm's Length Principle	Article 35 – Related parties and controls	Article 36 – Payment to connected persons	Article 55 – TP Documentation
<p>This article defines the arm's length standard where the results of the transaction between the related party and that of independent parties has to be similar.</p>	<p>This article defines related parties i.e., the analysis of different transactions performed with related parties is discussed further in detailed.</p>	<p>This article delineates that the payments made to connected parties are deductible only if:</p> <ul style="list-style-type: none">• The transactions are performed at arms length&• The transactions are made at market value	<p>The taxable person needs to maintain (namely Local file, Master file) TP Documentation and file disclosure Form</p> <p>Any information sought by Authority supporting the arm's length range needs to be submitted within 30 days of request.</p>

Scope of UAE Transfer Pricing Rules

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- 1 The transfer pricing rules applicable to businesses involved in transactions with Related Parties and Connected Persons
 - 2 Transfer pricing rules apply to transactions involving exempt and taxable businesses
 - 3 International transactions involving UAE businesses with Related Parties in foreign jurisdictions are fully covered
 - 4 The transactions between branches and head offices fall within the scope of transfer pricing regulations.
 - 5 Payments to Connected Persons, whether resident or non-resident, fall under the scope of the transfer pricing rules
 - 6 Additionally, transfer pricing rules also apply to transactions between a UAE permanent establishment and its non-resident Related Party

Conclusion:

The UAE Transfer Pricing Rules have a broad scope, encompassing both domestic and international transactions with Related Parties and Connected Persons. Businesses operating in the UAE need to ensure compliance with these rules for the appropriate reporting and taxation of such transactions.

Snapshot of UAE TP Compliance Requirements



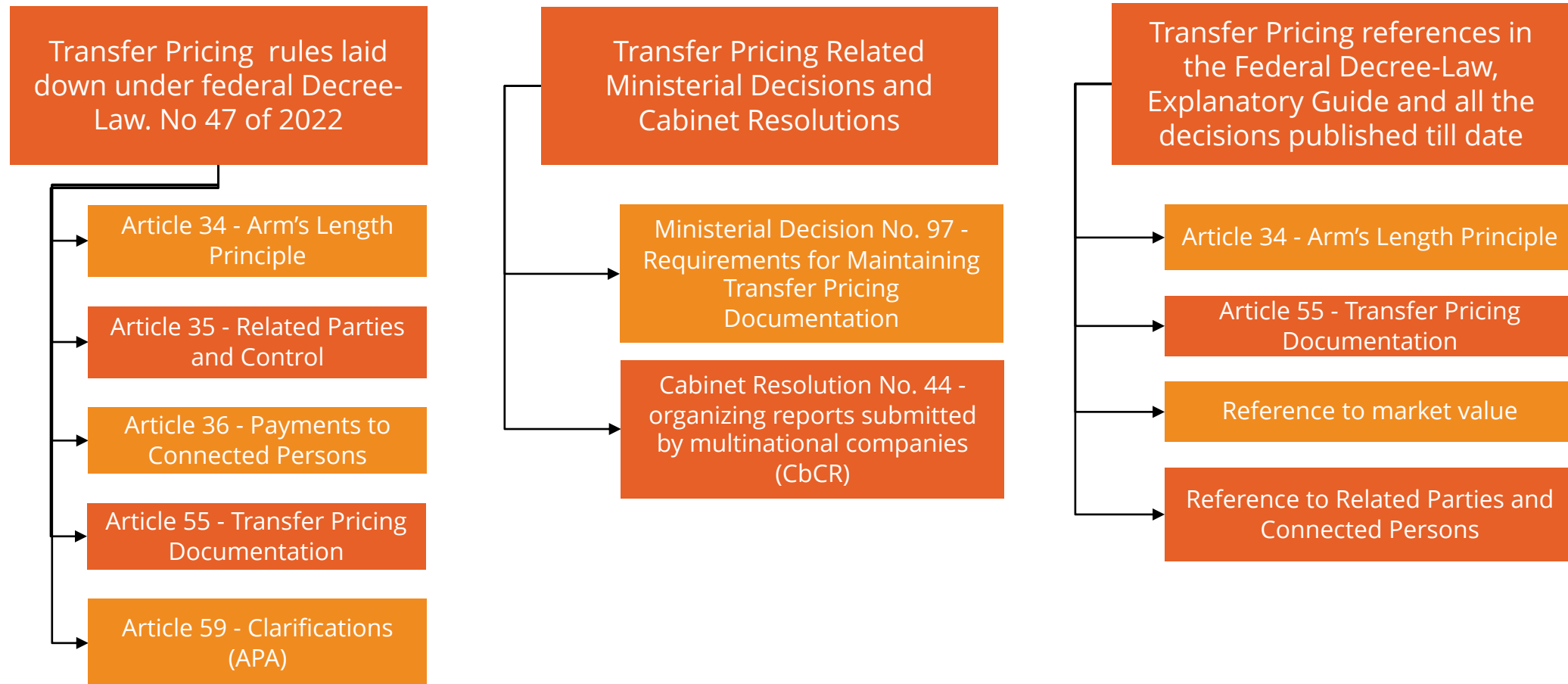
UAE 3 Tier Documentation TP Requirements along with Local Disclosure Form Filing

Transfer pricing documentation requirement		Maintain	File	Related Party Transaction	Connected Person Transaction
BEPS Action 13	Disclosure Form		✓	✓	✓
	Local File	✓		✓	✓
	Master File	✓		✓	✓
	Country-by-Country Report (Introduced in 2019)			✓	

Thresholds for applicability and compliance timelines

TP Compliances	Disclosure Form	Local File and Master File	Country-by-Country Report
Threshold	Yet to announce/clarify	Standalone Revenue of AED 200 Million OR Consolidated Group Revenue of AED 3.15 Billion	AED 3.15 Billion
Timeline	Disclosure form is to be uploaded along with the Tax Return	To be submitted within 30 days from the date of request	<ul style="list-style-type: none"> CbCR notification to be filed before end of the financial year CbC Report to be filed within 12 months from the end of the financial year

Transfer Pricing References (1/4)



Arm's Length Principle References (2/4)



Reference to Arm's Length Principle/Article 34

Article 18(1)(d) - Qualifying Free Zone Person

Ministerial Decision No. 116 of 2023 on the Participation

Article (8) of Ministerial Decision No. 125 Tax Group -Arm's Length Principle and Transfer Pricing Documentation Requirements

Article 24(4) - Foreign PE Exemption (Guide)

Article 36(5) - Payments to Connected Persons

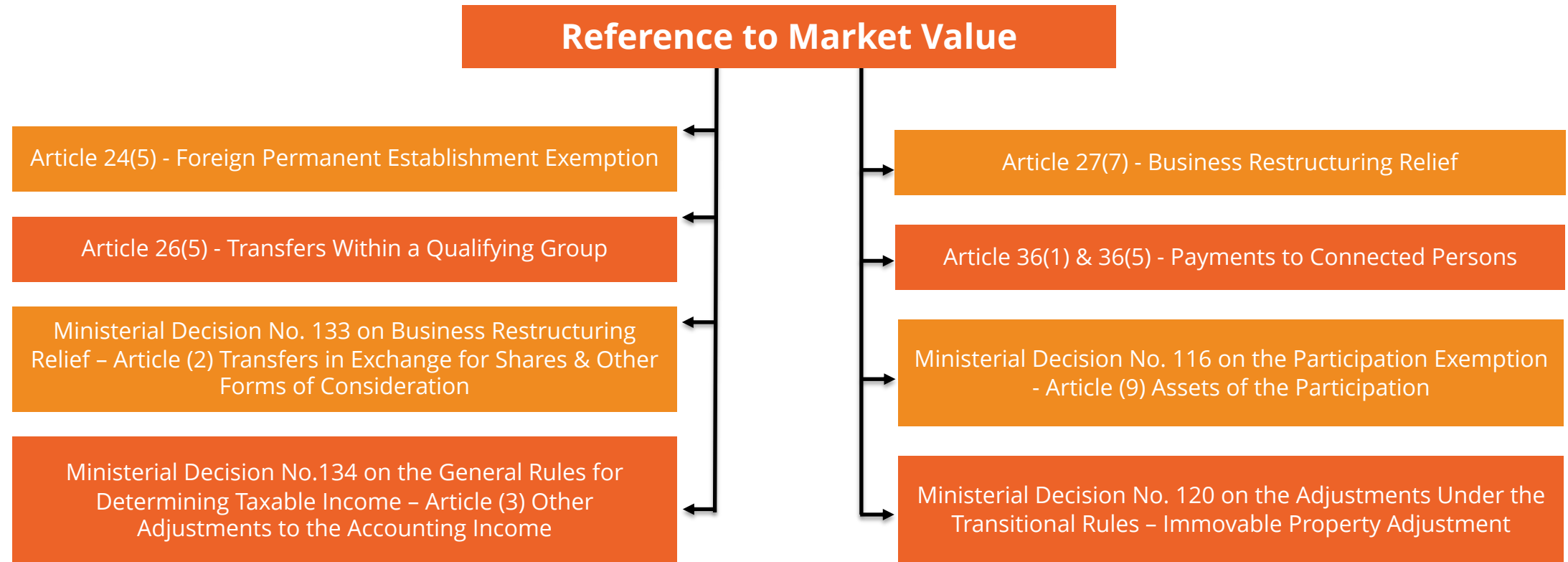
Article 50(5)(g) - General Anti-abuse Rule

Article 55(4) - Transfer Pricing Documentation

Article 59 – Clarifications APA (Explanatory Guide)

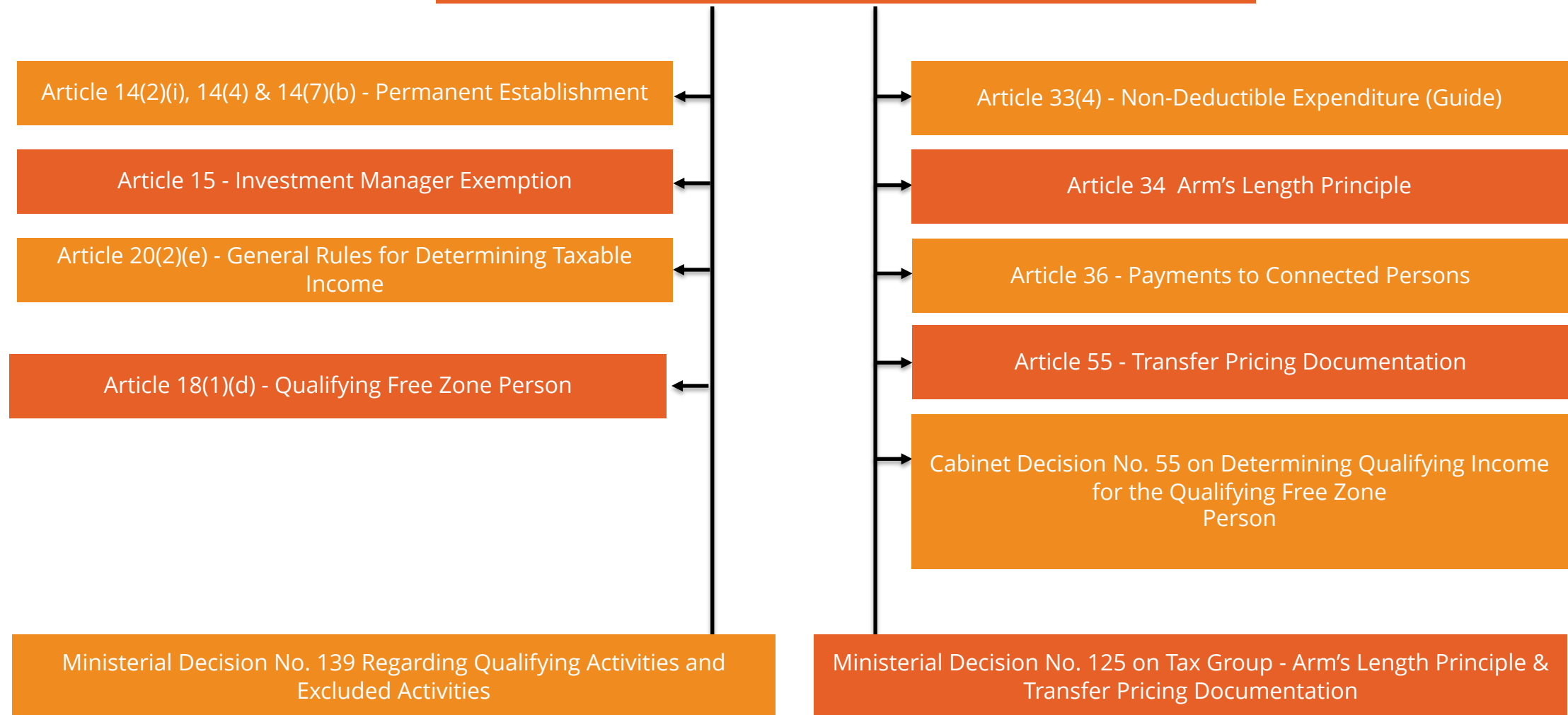
Article 61(2) - Transitional Rules

Market Value References (3/4)



Related and Connected Persons & ALP, TP Doc References (4/4)

Related and Connected Persons & ALP, TP Doc References



Transfer Pricing Documentation Requirements



To comply with transfer pricing documentation requirements, UAE businesses are required to maintain information on transactions with related parties and connected persons. This information should be submitted in a Disclosure Form along with the tax return.

For businesses with revenue exceeding AED 200 million or those in Multinational Groups with Consolidated Group Revenue of AED 3.15 billion or more, the UAE mandates the preparation of Master File and Local File Documentation.

Multinational groups with consolidated revenue above AED 3.15 billion must also comply with Country-by-Country Reporting.

Taxable persons with revenue exceeding AED 50 million and qualifying free zone persons must prepare and maintain audited financial statements. As part of the standard auditing process, companies are required to maintain supporting documentation to confirm adherence to the ALP.

Conclusion:

It's important to note that the thresholds for maintaining the Local File and Master File are specific to documentation requirements and independent of the Arm's Length Standard. The Transfer Pricing Benchmarking Analysis is a separate process designed to determine taxable income based on the arm's length principle. It is highly recommended for businesses to adhere to the arm's length standard in all transactions involving related parties and connected persons. Reporting this adherence in the

Arm's Length Principle vs Market Value



"Arm's Length Principle"

A **transaction or arrangement between Related Parties** meets the **arm's length** standard if the results of the transaction or arrangement are **consistent with the results that would have been realised if Persons who were not Related Parties** had engaged in a similar transaction or arrangement under similar circumstances.

"Market Value"

To prevent the tax evasion, various Articles in the CT Law require the pricing of transactions between Persons under common ownership or between Persons that are otherwise related or connected to be determined by reference to the "Market Value"

The Market Value of an asset, service or benefit provided is the value that asset, service or benefit would ordinarily have in the open market at the time and place of the transaction taking place.

Adherence to Arms Length Principle



Article 20(2)(e): General Rules for Determining Taxable Income

Adjustments are to be made for Related party and connected person transactions

Article 34 – Arm's Length Principle (ALP)

All related party and connected person transactions should follow Arm's Length Principle. Authorities may adjust the taxable income in absence of Arm's Length Principle

Article 36 – Payments to Connected Persons

A Taxable Person can deduct payments to their Connected Person if they align with Market Value of the provided service or benefit and are incurred solely for the Taxable Person's business purposes

Article 55(4) – Transfer Pricing Documentation

A Taxable Person shall provide sufficient information to demonstrate that agreements with Related Parties and Connected Persons are conducted at arm's length.

Application of Transfer Pricing Rules to Exempt Persons

Government Entity (Article 5)

Where a Government Entity is engaged in commercial activities under a license enters into transactions with its other activities will be treated as Related Party transactions subject to transfer pricing rules

Government Controlled Entity (Article 6)

Transactions between the Business of the Government Controlled Entity and its Mandated Activities will be treated as Related Party transactions subject to transfer pricing rules.

Extractive Business (Article 7)

Transactions between the Extractive Business and other businesses of the same Person are treated as Related Party transactions subject to transfer pricing rules.

Non-Extractive Natural Resource Business (Article 8)

Transactions between the Non-Extractive Natural Resource Business and other businesses of the same Person are treated as Related Party transactions subject to transfer pricing rules

Conclusion:

In all these cases, the arm's length principle under Article 34 is applied to ensure fair pricing and compliance with transfer pricing regulations.

TP Considerations for Investment Manager Exemption



- Investment managers and brokers can provide discretionary investment management services and conduct transactions on behalf of foreign customers without triggering a Permanent Establishment
- This exemption is granted when the investment manager meets specific conditions and operates independently from the foreign person.

Independent Agent Status:

- A UAE-based investment manager acting on behalf of a foreign person is treated as an independent agent, as long as the conditions below are met. The investment manager must carry out its business independently and on its own account, separate from the foreign person

Arm's Length Remuneration:

- The investment manager's remuneration must be at arm's length. This means that the investment manager and the foreign person must transact with each other on arm's length terms, reflecting customary and appropriate remuneration for the services provided.
- The remuneration structure should be in line with the level of services, the nature of the foreign person, and the investment strategy employed

Conclusion:

To qualify for this exemption, the investment manager must meet specific conditions and maintain independence from the foreign person. Additionally, the remuneration between the investment manager and the foreign person should be determined on arm's length terms.

Transfer Pricing for Qualifying Free Zone Persons



Qualifying Free Zone Persons are mandated to adhere to the principles of the Arm's Length Principle and fulfill the Transfer Pricing Documentation requirements specified in Article 55.

The Arm's Length Principle requires Qualifying Free Zone Persons to conduct their transactions with Related Parties and Connected Persons at prices and terms that would be agreed upon by unrelated parties under similar circumstances

Transfer Pricing Documentation obligations necessitate Qualifying Free Zone Persons to maintain adequate records and documentation (Disclosure Form, Local File and Master File) to support the arm's length nature of their transactions with Related Parties and Connected Persons.

Conclusion:

Qualifying Free Zone Persons in the UAE are subject to transfer pricing rules, including the Arm's Length Principle and Transfer Pricing Documentation requirements.

Applicability of Transfer Pricing for Small Businesses



Small Business Relief (Article 21) & Ministerial Decision No. 73 of 2023

CT Law provides relief to small businesses by exempting them from certain provisions of the Corporate Tax Law related to the calculation of Taxable Income. To qualify for the Small Business Relief, the Taxable Person's revenue threshold for the relevant Tax Period and previous Tax Periods should be AED 3,000,000 for each Tax Period.

Conclusion:

While small businesses are exempted from Transfer Pricing documentation requirements, they are still expected to adhere to the arm's length standard in determining their Taxable Income. The revenue threshold of AED 3,000,000 establishes the eligibility criteria for small businesses to avail the relief. It is important to note that this revenue should also be in line with the Arm's Length Principle if earned from Related Parties.



Applicability of Transfer Pricing Rules for Foreign Permanent Establishment Exemption

Resident Person can claim an exemption from Corporate Tax for income derived through a Foreign Permanent Establishment that meets the specified conditions.

Scope of Corporate Tax:

Both UAE and non-UAE-sourced income earned by a Resident Person fall under the purview of Corporate Tax, but the Foreign Permanent Establishment exemption provides an opportunity to exempt certain income.

Conclusion:

The applicability of transfer pricing rules, specifically the arm's length principle and market value criteria, is essential for the Foreign Permanent Establishment exemption. By adhering to these rules, Resident Persons can accurately determine their Taxable Income and claim the exemption for income derived through their Foreign Permanent Establishment. **Proper valuation and documentation of transfers between the Resident Person and the Foreign Permanent Establishment are crucial to ensure compliance and optimize tax benefits.**



Applicability of Transfer Pricing Rules for Transfers Within a Qualifying Group

Transfers Within a Qualifying Group: Article 26 of the Corporate Tax Law introduces Corporate Tax neutrality for transfers of assets or liabilities between closely related Taxable Persons who form a Qualifying Group.

Market Value Adjustment: If the conditions in Clause 4 of article 26 are met, **the transfer must be treated as if it occurred at Market Value on the date of the first transfer. This adjustment affects the Taxable Income of the Taxable Persons involved in the transfer.**

Conclusion:

The applicability of transfer pricing rules, specifically the arm's length criteria and market value adjustment, ensures Corporate Tax neutrality for transfers within a Qualifying Group. By adhering to these rules, closely related Taxable Persons can accurately determine the Taxable Income associated with the transfer. It is crucial to not fall within the conditions outlined in Clause 4 to qualify for Corporate Tax neutrality. In cases where these conditions are met, the transfer is treated as if it occurred at Market Value, impacting the Taxable Income of the entities involved. Proper adherence to the transfer pricing rules enhances transparency and fairness in intra-group transfers and helps optimize tax outcome.

Applicability of TP Rules for Business Restructuring Relief



Applicability of Transfer Pricing Rules for Business Restructuring Relief

Business Restructuring Relief (Article 27) & Ministerial Decision No. 133 of 2023 on Business Restructuring Relief

Business Restructuring Relief: Article 27 of the Corporate Tax Law introduces Business Restructuring Relief, which eliminates the Corporate Tax impact of certain transactions undertaken as part of the restructuring or reorganization of a Business.

Conclusion:

Arm's Length value criteria place an important role in Business Restructuring Relief. This relief ensures that certain restructuring transactions can occur in a tax-neutral manner, benefiting businesses undergoing legitimate reorganization. Adherence to the conditions, including the two-year requirement and transfer restrictions, is essential to qualify for the relief. **Failure to meet these conditions may result in the transfer being treated at Market Value, leading to adjustments in Taxable Income and available Tax Losses.** The provisions aim to prevent abuse and maintain the integrity of the tax system while facilitating business restructuring in a fair and transparent manner.



Calculation of Taxable Income:

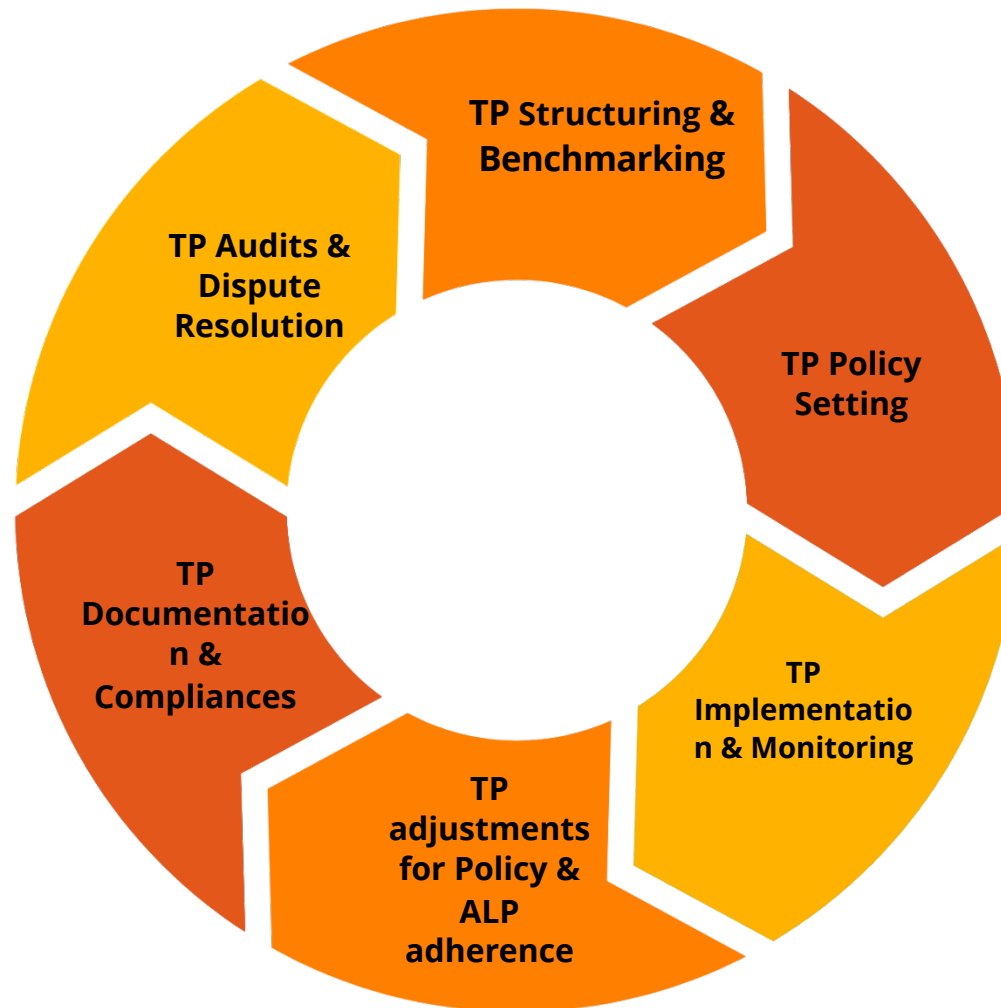
When a Tax Group is required to determine the Taxable Income attributable to its members, they must calculate it for each relevant member based on Article (34) of the Corporate Tax Law.

Transfer pricing principles are used to ensure that the allocated taxable income within the Tax Group is determined appropriately.

Conclusion:

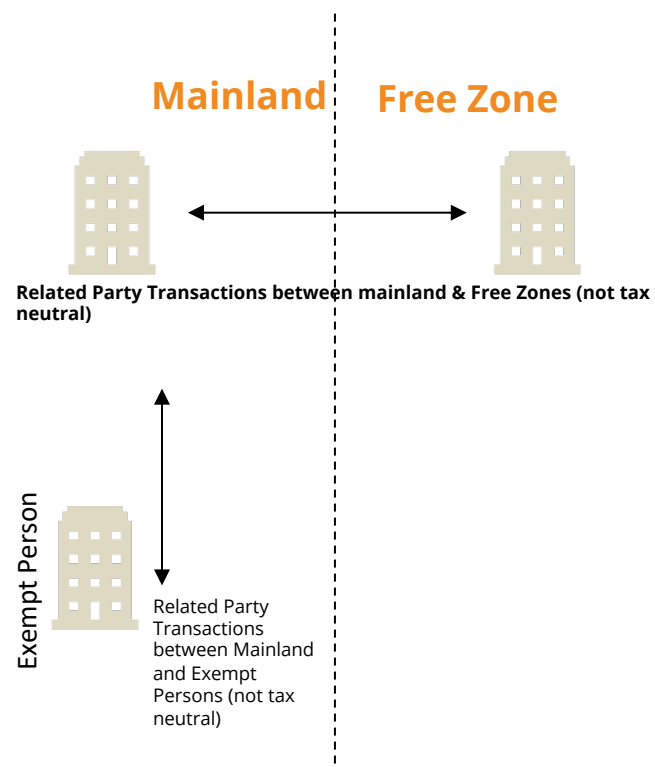
Ministerial Decision 125 of 2023 on Tax Groups outlines the specific circumstances in which transfer pricing rules apply. Tax Groups must calculate the Taxable Income for each member according to transfer pricing principles stated in Article (34) of the Corporate Tax Law. Additionally, they need to disclose relevant information regarding transactions and arrangements within the Tax Group and with Related Parties and Connected Persons.

Transfer Pricing Life Cycle

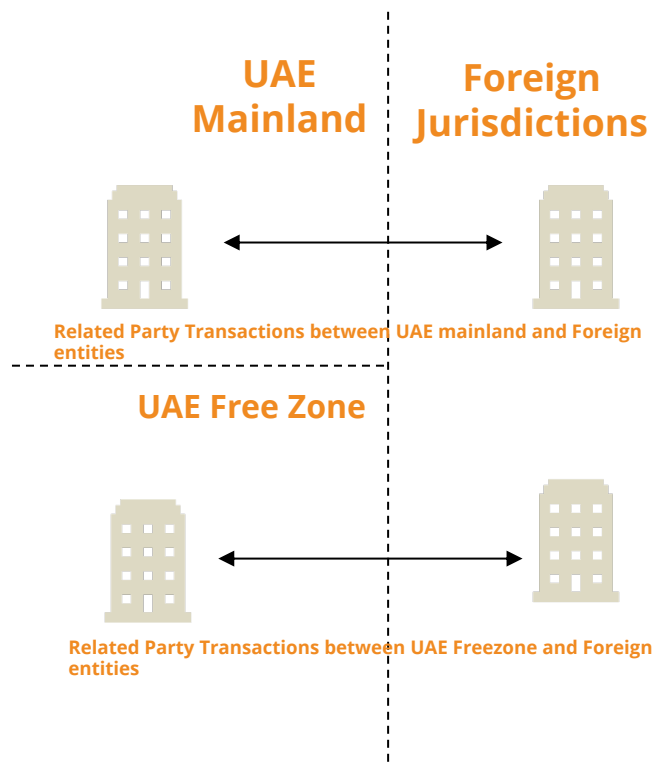


Transactions Covered UAE TP Regulations

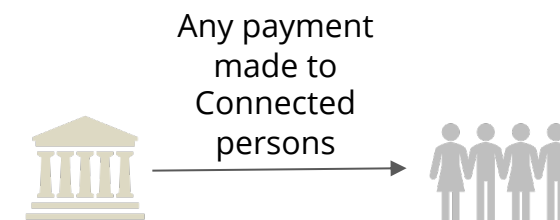
Domestic Transactions



International Transactions



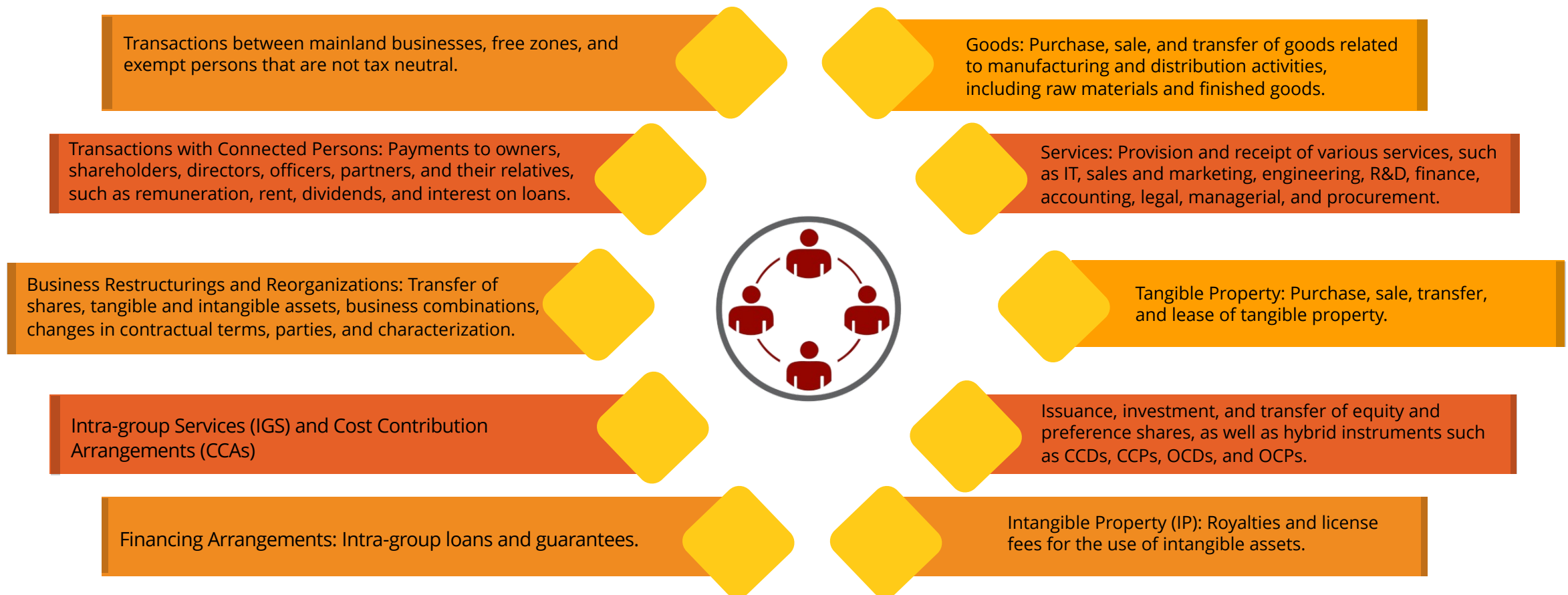
Payment to Connected Persons



However, this shall not apply to persons:

1. whose shares are traded in stock exchange
2. who is subject to regulatory oversight.
3. determined by the cabinet

Types of Related Party Transactions



Related Parties for UAE TP Purposes (1/5)



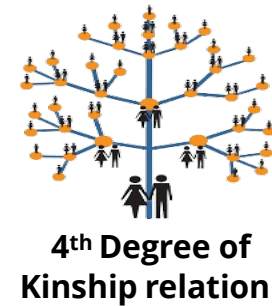
A related party is an individual or entity who has a pre-existing relationship with a business that is within the scope of the UAE CT regime through **Ownership, Control** or **Kinship** (in the case of natural persons).

Related Parties for UAE CT & TP purposes	
Ownership / Control	An individual and a legal entity where alone, or together with a related party, the individual directly or indirectly owns a 50% or greater share in, or controls, the legal entity
	Two or more legal entities where one legal entity alone, or together with a related party, directly or indirectly owns a 50% or greater share in, or controls, the other legal entity
	Two or more legal entities if a taxpayer alone, or with a related party, directly or indirectly owns a 50% share of each or controls them
Branch / PE	A taxpayer and its branch or permanent establishment
Partnership	Partners in the same unincorporated partnership
Exempt/ Non-exempt business activities	Exempt and non-exempt business activities of the same person
Kinship (natural persons)	Two or more individuals related to the fourth degree of kinship or affiliation, including by birth, marriage, adoption or guardianship

Related Parties for UAE TP Purposes (2/5)

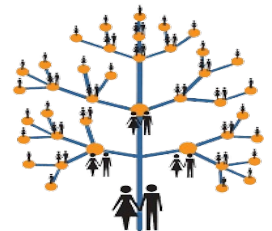
RP: Natural person[Article 35 1(a)]

Related within the 4th degree of kinship* or affiliation, including adoption or guardianship



RP: Natural person and Juridical Person[Article 35 1(b)]

- i) NP or ≥ 1 RP of NP are shareholders in JP, and the NP, alone or together with its RP, directly or indirectly owns $\geq 50\%$ ownership interest in the JP; or
- ii) NP, alone or together with its RP, directly or indirectly Controls the JP



SH & Owns $\geq 50\%$ Ownership

Or, Control



*Generally, a first-degree, second-degree, third-degree, or fourth-degree kinship or relative of the individual means:

(i) **First-degree relatives** include an individual's parents, siblings, and children.

(ii) **Second-degree relatives** include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.

(iii) **Third-degree relatives** include an individual's great-grandparents, great grandchildren, great uncles/aunts, and first cousins.

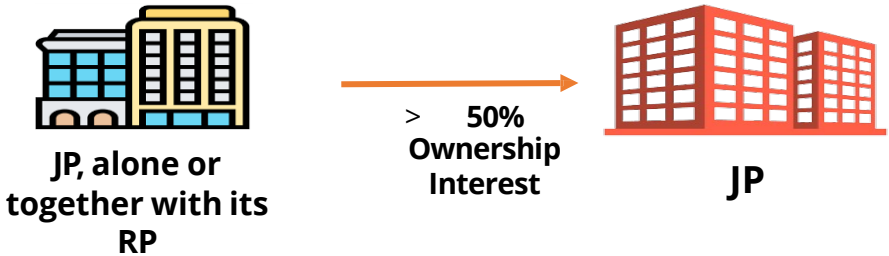
(iv) **Fourth-degree relatives** include an individual's great-great-grandparents, great-great-grandchildren, and first cousins once-removed (i.e., the children of the individual's first cousins).

Related Parties for UAE TP Purposes (3/5)

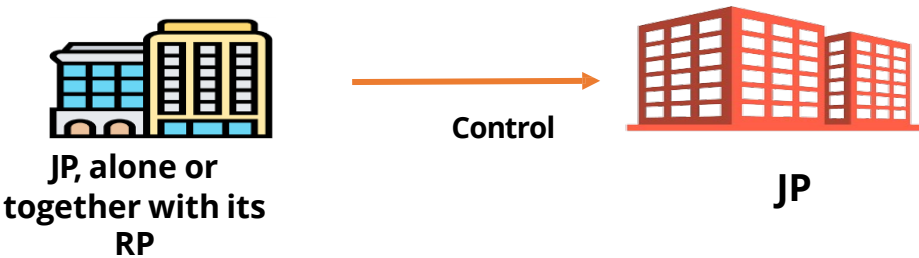


RPs: Two or more juridical persons where [Article 35 1(c)]

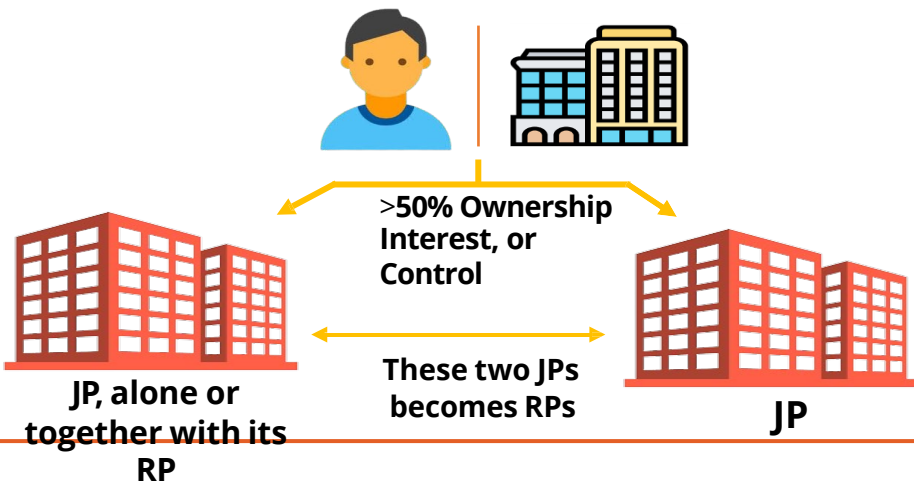
One JP, alone or together with its RP, directly or indirectly owns $\geq 50\%$ ownership interest in the other JP;



One JP, alone or together with its RP, directly or indirectly Controls the other JP; or



Any Person, alone or together with its RP, directly or indirectly owns $\geq 50\%$ ownership interest in or Controls such two or more juridical persons

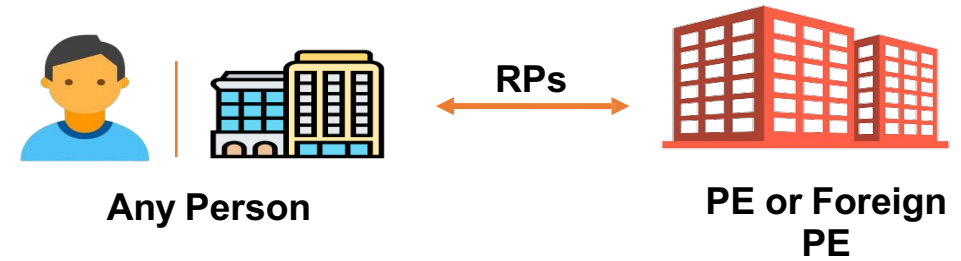


Related Parties for UAE TP Purposes (4/5)

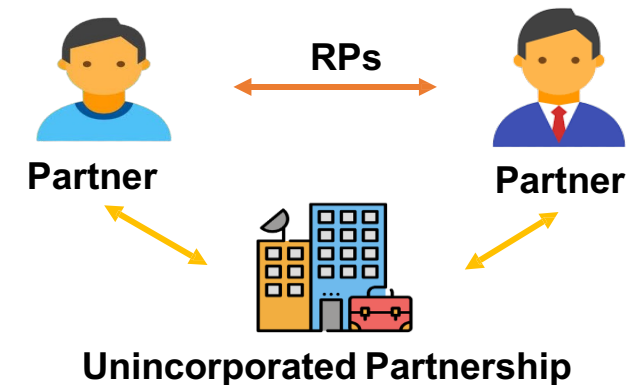


RP's [Article 35 1(d), (e), (f)]

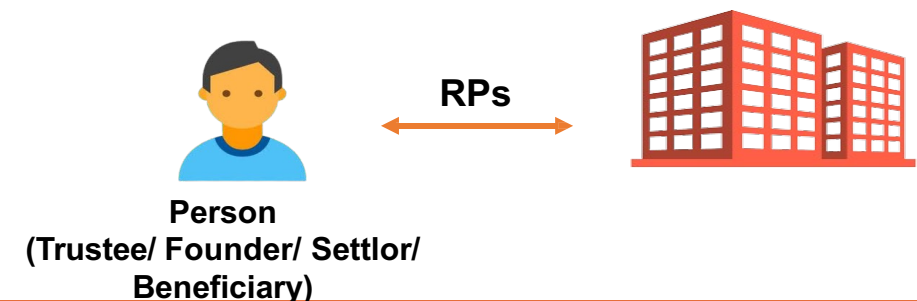
D. A Person and its Permanent Establishment or Foreign Permanent Establishment.



E. ≥ 2 Persons that are partners in the same Unincorporated Partnership.

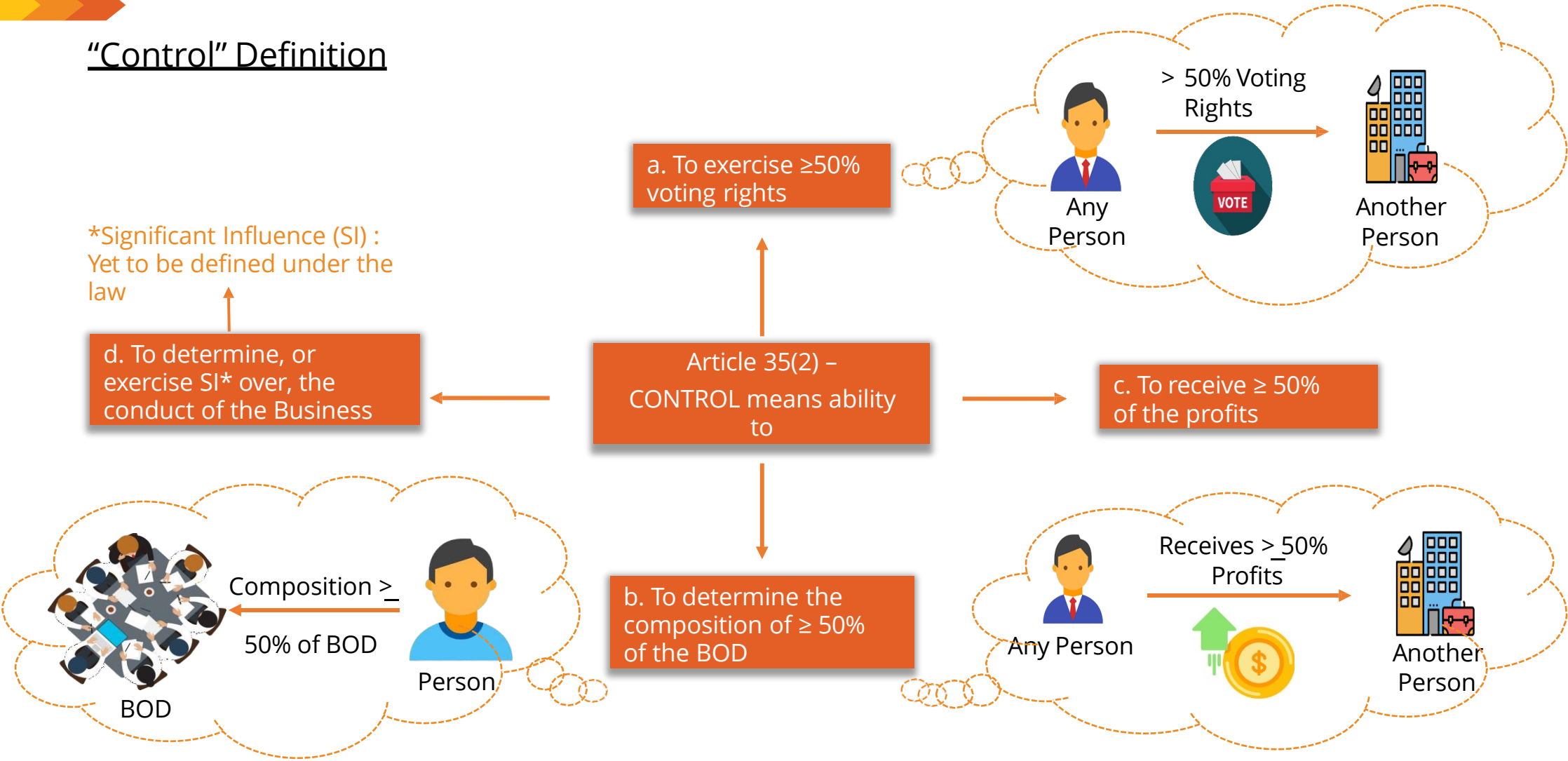


F. A person who is trustee, founder, settlor or beneficiary of trust or foundation, and its RPs.



Related Parties for UAE TP Purposes (2/5)

“Control” Definition



Connected Persons for UAE TP Purposes (1/3)

- Concept for Connected Persons is very specific to the UAE and is generally not present in most other countries.
- Absence of a Personal Income Taxation in the UAE can generate incentives for individual owners of taxable businesses to erode the UAE CT base by making excessive payments to themselves or persons connected with them.
- Connected Persons are different from Related Parties. A person will be considered as 'connected' to a business that is within the scope of the UAE CT regime if he/ she is -

Connected Persons for UAE CT & TP Purposes

Ownership / Control	An individual who directly or indirectly has an ownership interest in, or controls, the taxable person
Director / Officer	A director or officer of the taxable person
Kinship with owner/ director/ officer	An individual related to the owner, director or officer of the taxable person to the fourth degree of kinship or affiliation, including by birth, marriage, adoption or guardianship
Partnership	Where the taxable person is a partner in an unincorporated partnership, any other partner in the same partnership
Related Party	A Related Party of any of the Related Parties referred in earlier slide will also be considered as Connected Person

Payments or benefits by businesses to Connected Persons will be Tax Deductible only if they:

Corresponds with the Market Value (Arm's Length Test)

Incurred wholly and exclusively for the purposes of the taxpayer's business.

Exemption for:

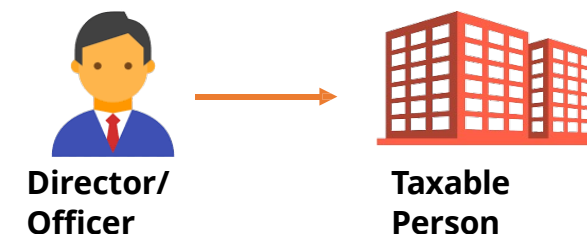
- Listed Entity
- Taxable Person subject to regulatory oversight of a competent authority
- Any other person determined by decision of cabinet

Connected Persons for UAE TP Purposes (2/3)

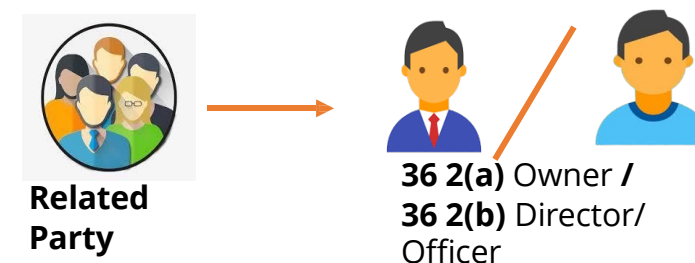
- **36 2(a)** An owner of the Taxable Person
- **36 (3)** An owner of the taxable Person is any natural person who is directly/indirectly owns a ownership interest in the taxable person or controls such taxable person



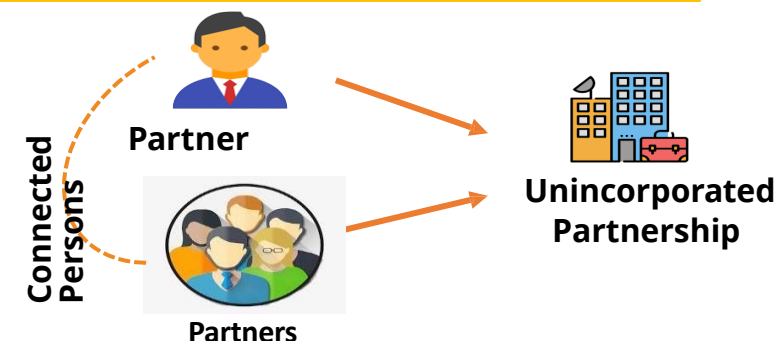
36 2(b) A Director or Officer of the Taxable Person



36 2(c) A Related Party of any of the Persons referred to in paragraph (a) & (b) mentioned above.



36 (4) - Where the Taxable Person is a partner in an Unincorporated Partnership, a Connected Person is any other partner in that same Unincorporated Partnership, and any Person that is a Related Party of that partner.



Substantiating Connected Party Payments



Deductibility

Market Value/ Arm's Length
Principle

- ✓ Value Addition
- ✓ Scope of Services
- ✓ Qualification & Experiences
- ✓ Roles & Responsibilities
- ✓ Agreement
- ✓ Turnover Analysis Quantification/ Industry Benchmarking
- ✓ HR/ Industry Quotations/ Salaried Employee
- ✓ FTS/ Management Fees – Need Benefit Analysis

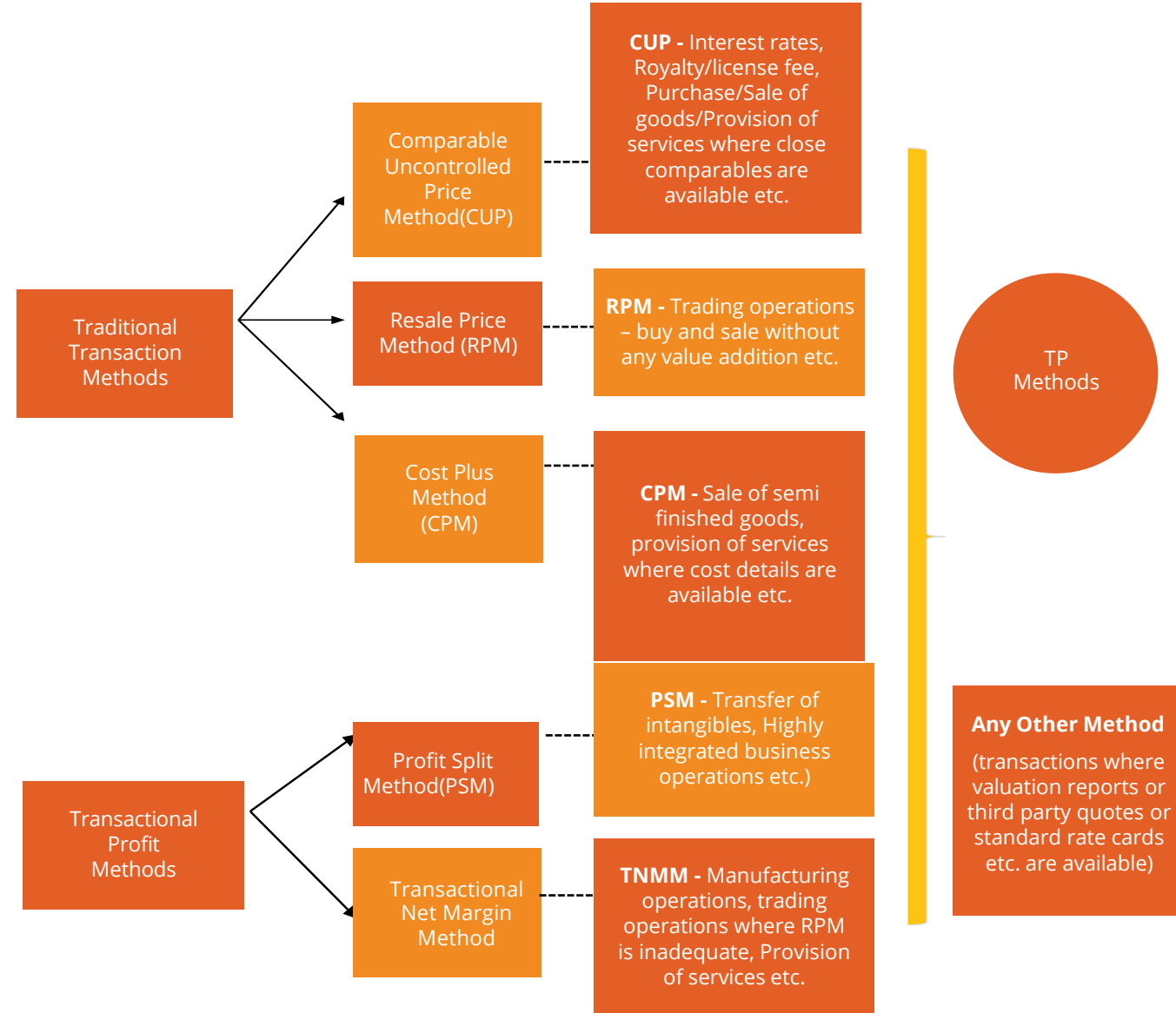
Article 179 of Decree 32 of 2021 – Managerial Remuneration can be maximum of 10% of Net profits. However, it not applicable to Public Joint Stock companies and Limited Liability Companies

Functional Profiles



	Limited Risk	Fully Fledged
Manufacturer	Toll Manufacturer: <ul style="list-style-type: none"> • Manufacturing services without taking title to raw materials or final products • No Inventory or selling risks • Limited Quality control or logistics management • No significant Intangibles 	Fully Fledged Manufacturer: <ul style="list-style-type: none"> • Performs all important manufacturing functions • Engages in production planning, sourcing, and procuring inputs, R&D activities design and engineering, quality control and logistics • Assumes market risk, inventory risk, R&D risk, product Liability risk, and other risks • Earns residual profits
Distributor	Agent: <ul style="list-style-type: none"> • Acts as a sales representative, received commission on sales. • Facilitates sales but principal concludes contract • Minimal risks since no title to the products Limited Risk Distributor: <ul style="list-style-type: none"> • Buys goods and markets them to customers • Risks relating to inventory and debtors are limited 	Fully Fledged Distributor: <ul style="list-style-type: none"> • Undertakes all of the sales and distribution function • Bears all material risks relevant to these functions • Buys, holds and sells products, develops necessary intangibles. • Bears significant downside risks as well as receiving upside results of positive outcome of its activity • Often entitles to residual profits
Service Provider	<ul style="list-style-type: none"> • Provision of low value adding or supportive services • No significant assets or risks • Predetermined routine return. 	<ul style="list-style-type: none"> • Provision of high value adding or core services • Ownership of significant assets (e.g. Unique skills, Proprietary software, intangibles) • Assumption of substantial operational and financial risks • Potential for higher, non routine returns

Selection of MAM



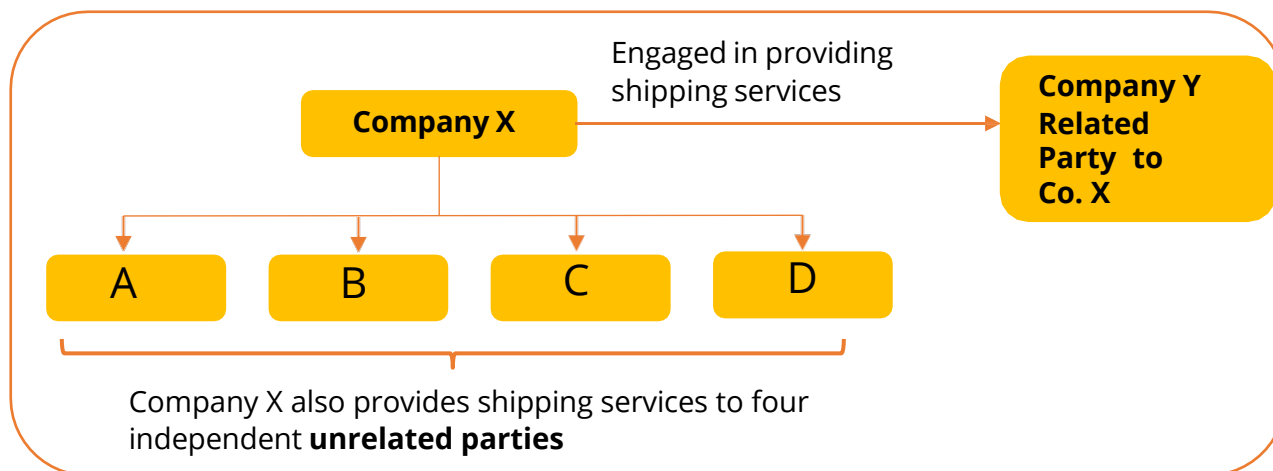
Comparable Uncontrolled Price Method (CUP) (1/2)

- CUP method requires a high degree of comparability between controlled and uncontrolled transactions.
- CUP method compares the price charged on the transaction between controlled party and an independent unrelated party or between two independent unrelated parties.
- This method is generally used when both transactions being compared are identical or exist only minor quantifiable differences.
- ALP can be derived by using both Internal CUP and External CUP.

Internal CUP: Internal CUP compares the prices charged by the tested party to third parties with the prices charged to related party.

External CUP: External CUP compares the prices charged between two independent parties and related parties.

Example for Internal CUP:



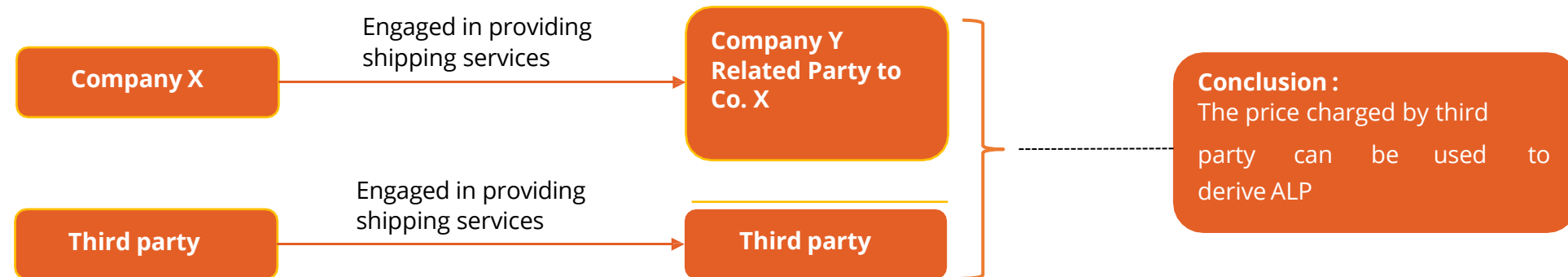
Conclusion :

Company X and company Y both are related party. Company X is engaged in providing shipping business to both AE and third parties. As the prices charged to third parties are available and the transaction are also similar, internal CUP can be used to derive at ALP.

Comparable Uncontrolled Price Method (CUP) (2/2)

Example for external CUP:

External CUP uses the prices charged by the independent parties.

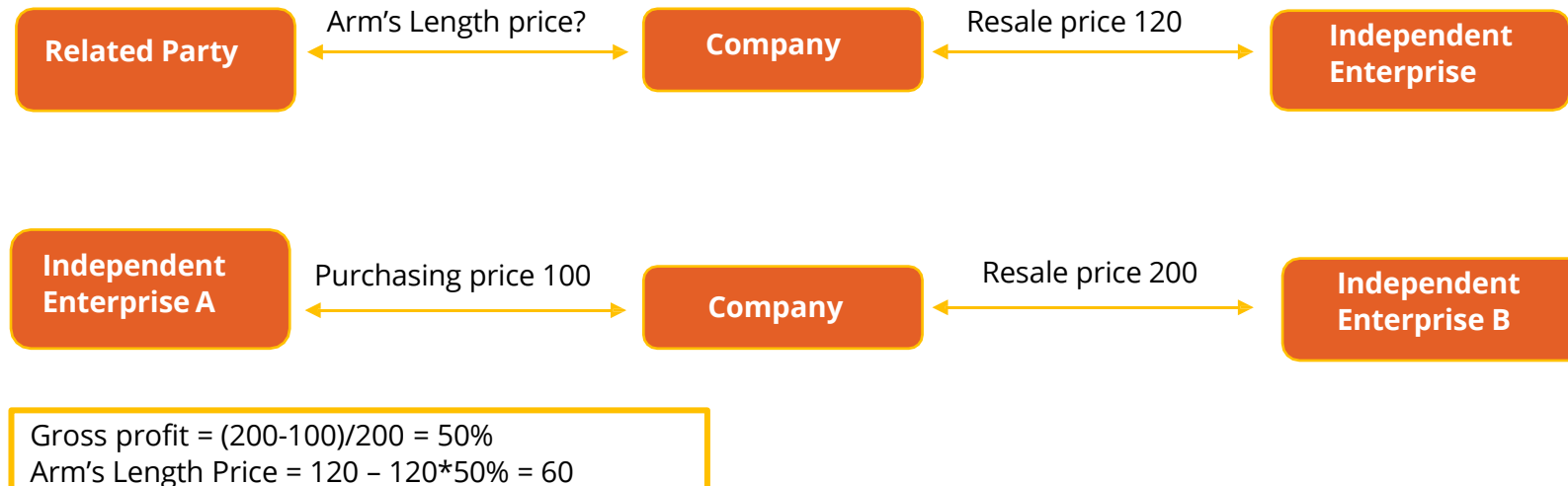


Facts to be considered

- Similarities of products
- Geographical conditions
- The products must be at same stage of production

Resale Price Method (RPM)

- RPM compares the price at which a product that has been purchased from an AE and resold to an Independent enterprise
- RPM focuses on the related sales company which performs marketing & selling functions as a tested party.
- Less product comparability is required.
- The arm's length price can be derived by deducting resale price margin from the resale price.

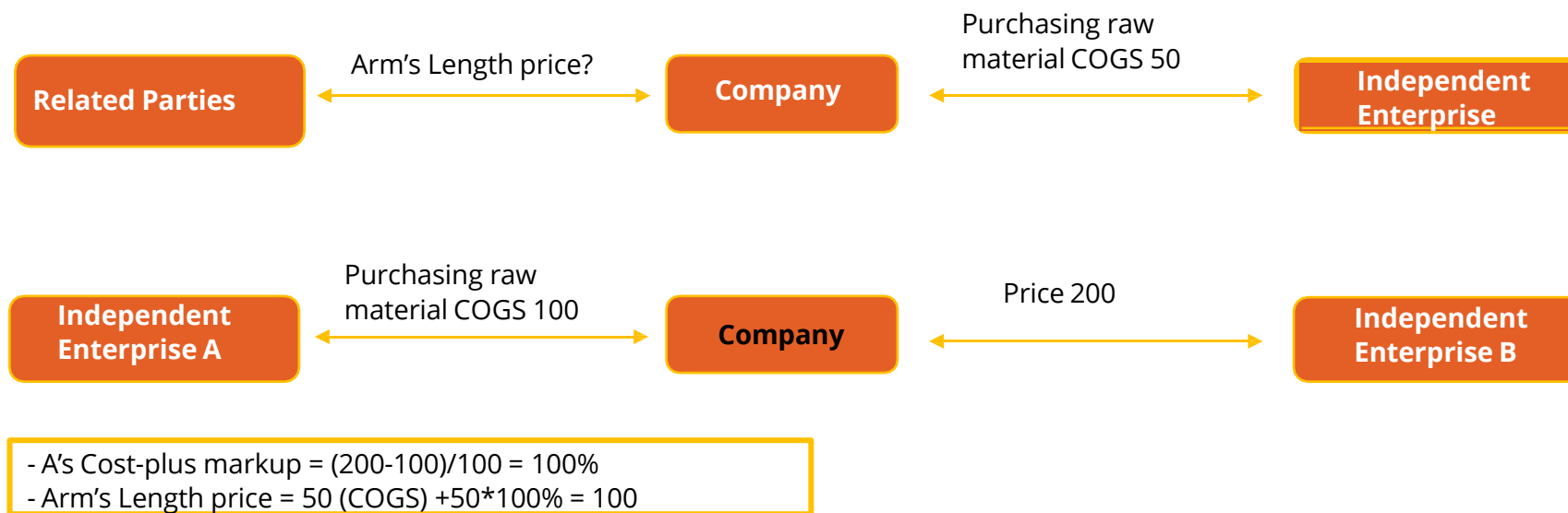


Factors to be considered:

- This method is used in cases involving purchase and resale of goods.
- Reseller should **not make any changes** to the product.
- Packaging, labelling or minor assembly are acceptable.

Cost Plus Method (CPM)

- The cost plus mark up of the supplier in the controlled transaction should be ideally be established by reference to the cost plus mark up that the same supplier earns in comparable uncontrolled transactions is called as Internal comparable.
- The cost plus mark up that would have been earned in comparable transactions by an independent enterprise may be taken as external comparable.
- This method is probably most useful where semi finished goods are sold between associated parties.



Factors to be considered:

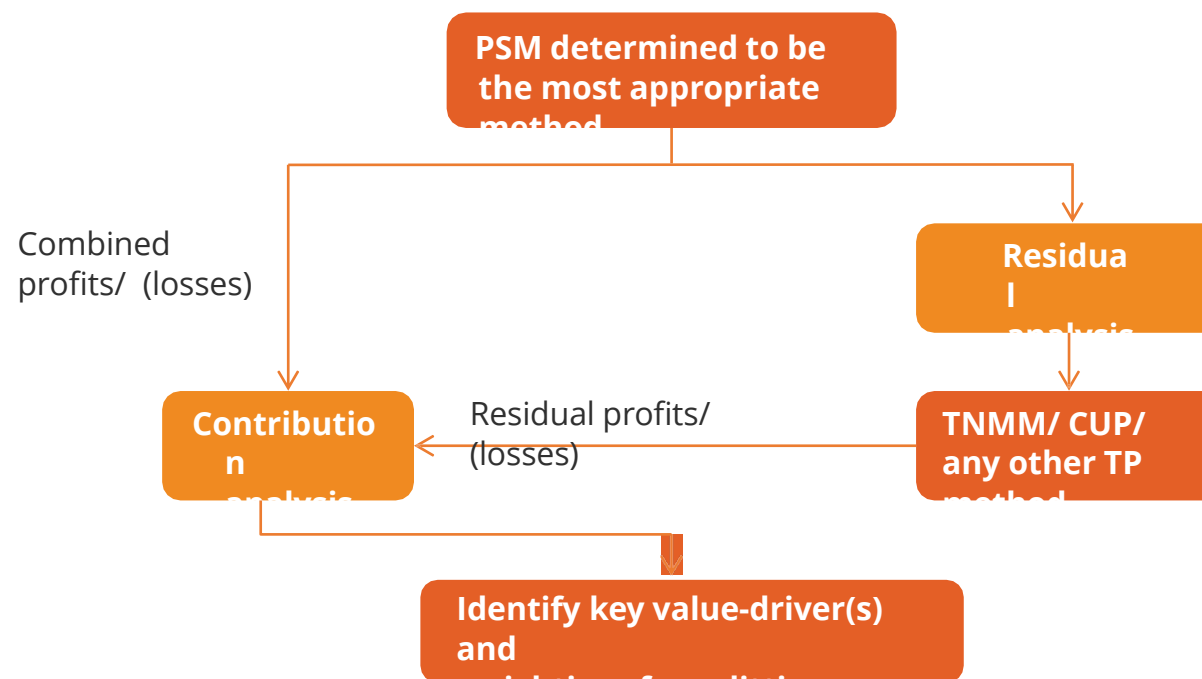
- Cost should include all costs associated with the process (manufacturing, provision of services)
- Mark up applied to the total cost is tested

ALP Calculation Using CPM



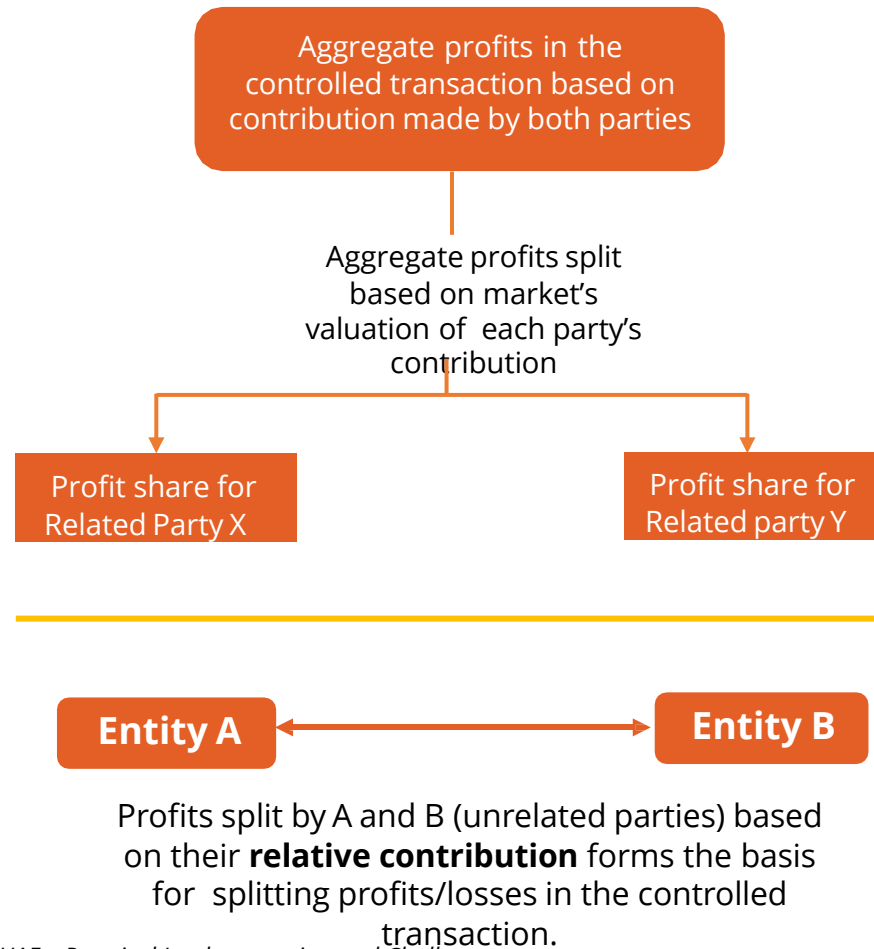
Profit Split Method (PSM) (1/2)

- The PSM evaluates whether the allocation of the combined operating profit or loss attributable to one or more controlled transactions is at arm's length with reference to the relative value of each controlled taxpayer's contribution to that combined operating profit or loss.
- The relative value of each controlled taxpayer's contribution to the transaction is determined that reflects the functions performed, risks assumed, and resources employed by each participant in the transaction.
- PSM is appropriate for transactions which are not capable of being evaluated separately (*Suitable for analyzing tangible and Intangible or services issues*).
- The allocation of profit/ loss under this method must be in accordance with one of the following approaches to splitting profits:
 - Contribution analysis
 - Residual analysis

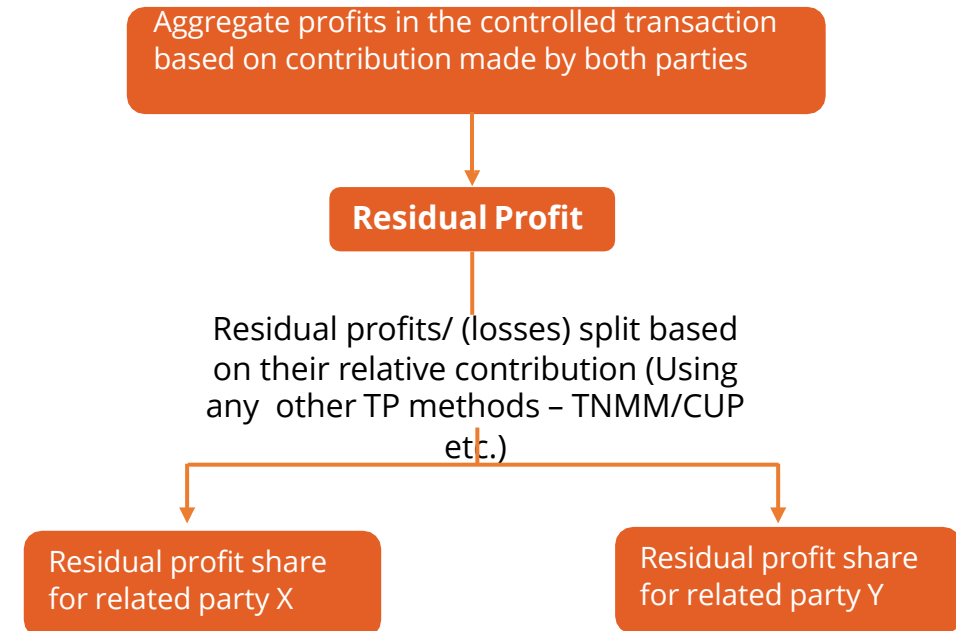


Profit Split Method (PSM) (2/2)

Contribution Method



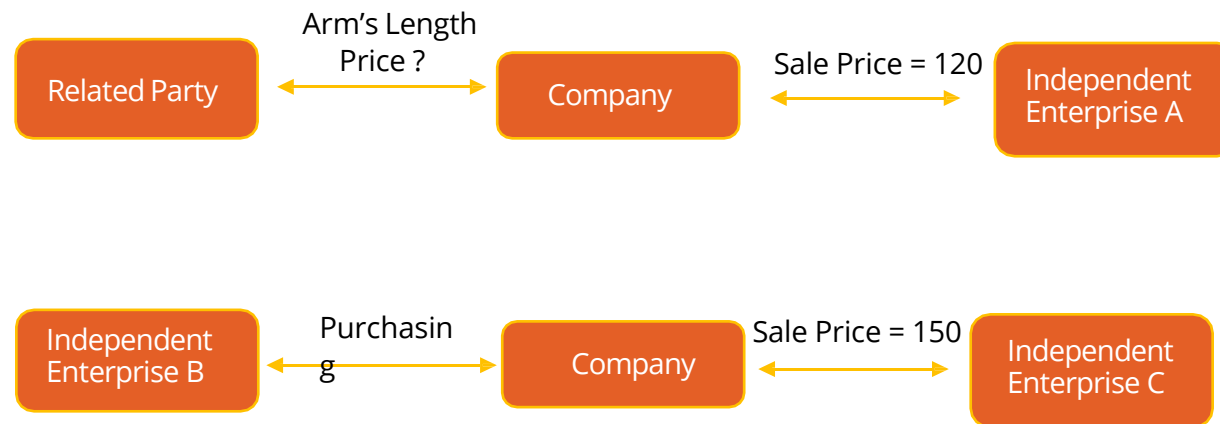
Residual Method



Transactional Net Margin Method (TNMM)

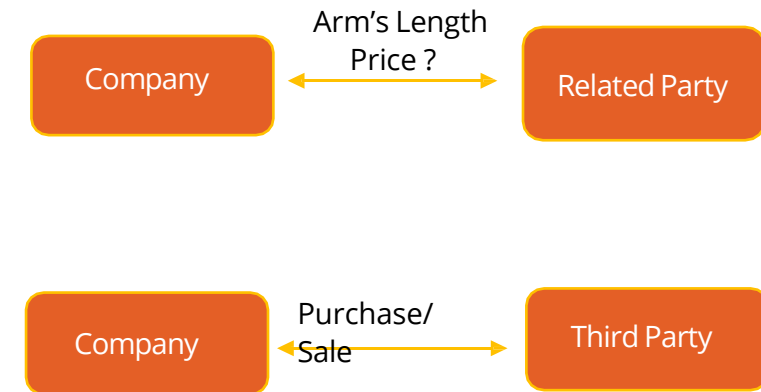
- The TNMM examines the net profit margin relative to appropriate base that a taxpayer realizes from a controlled transaction.
- There are two types of TNMM (1) Internal TNMM (2) External TNMM.

EXTERNAL TNMM



- Company Operating Margin = $15/150 = 10\%$
- Arm's Length Price (ALP) = $120 \times 10\% = 12$

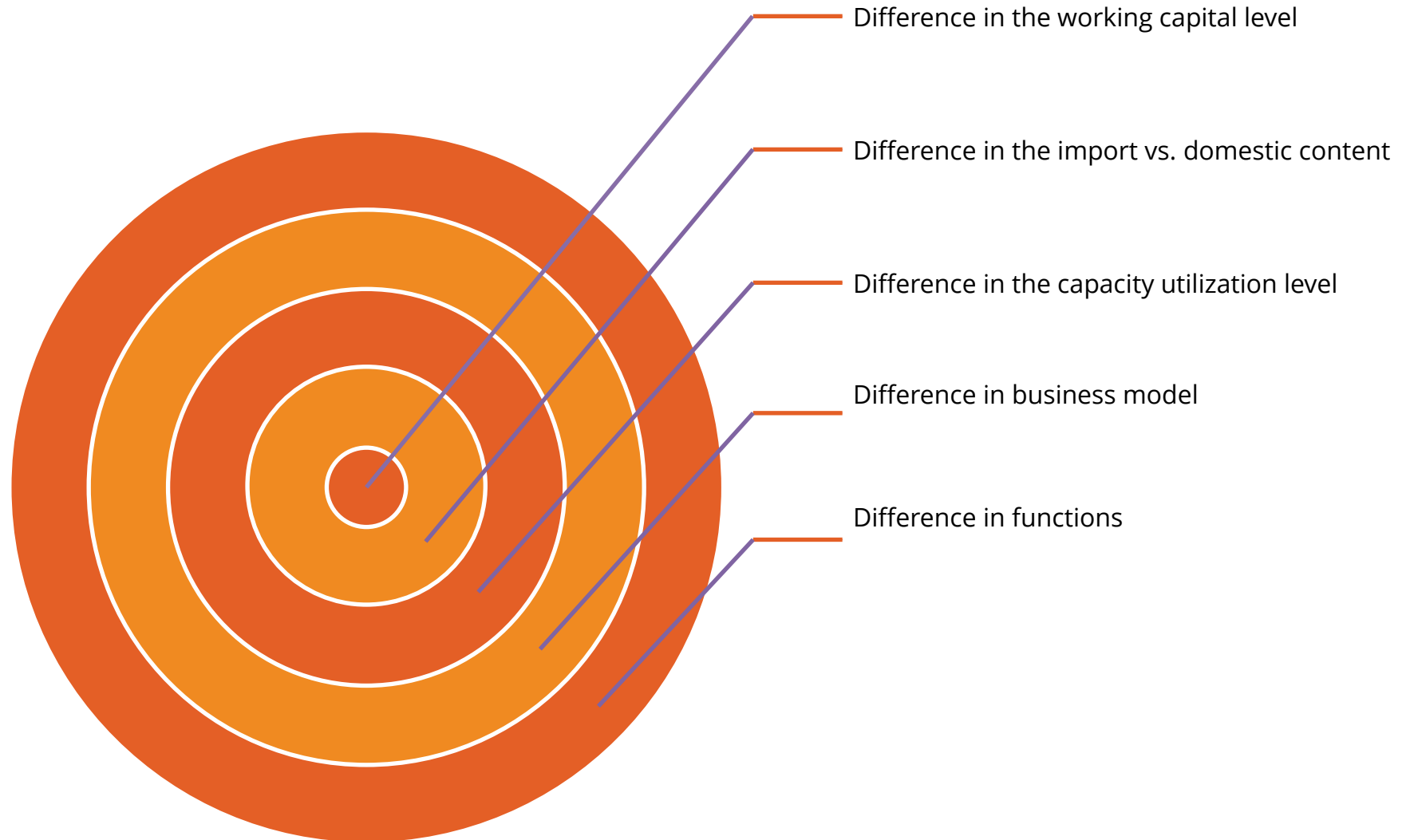
INTERNAL TNMM



Company Operating Margin should be greater than or equal to margin maintained with the third-party transaction

- External TNMM compare the price charged/paid by the taxpayer in a controlled transaction with the price charged/paid in an uncontrolled transaction.

Adjustments under TNMM





- Central Board of Direct Taxes has introduced a new method for determination of arm's length price under Indian Transfer Pricing regulations.
- Other Method takes into account the following :
 - the price which has been charged or paid, or
 - would have been charged or paid
 - for the same or similar uncontrolled transactions
 - with or between non-associated enterprises
 - under similar circumstances, considering all the relevant facts.

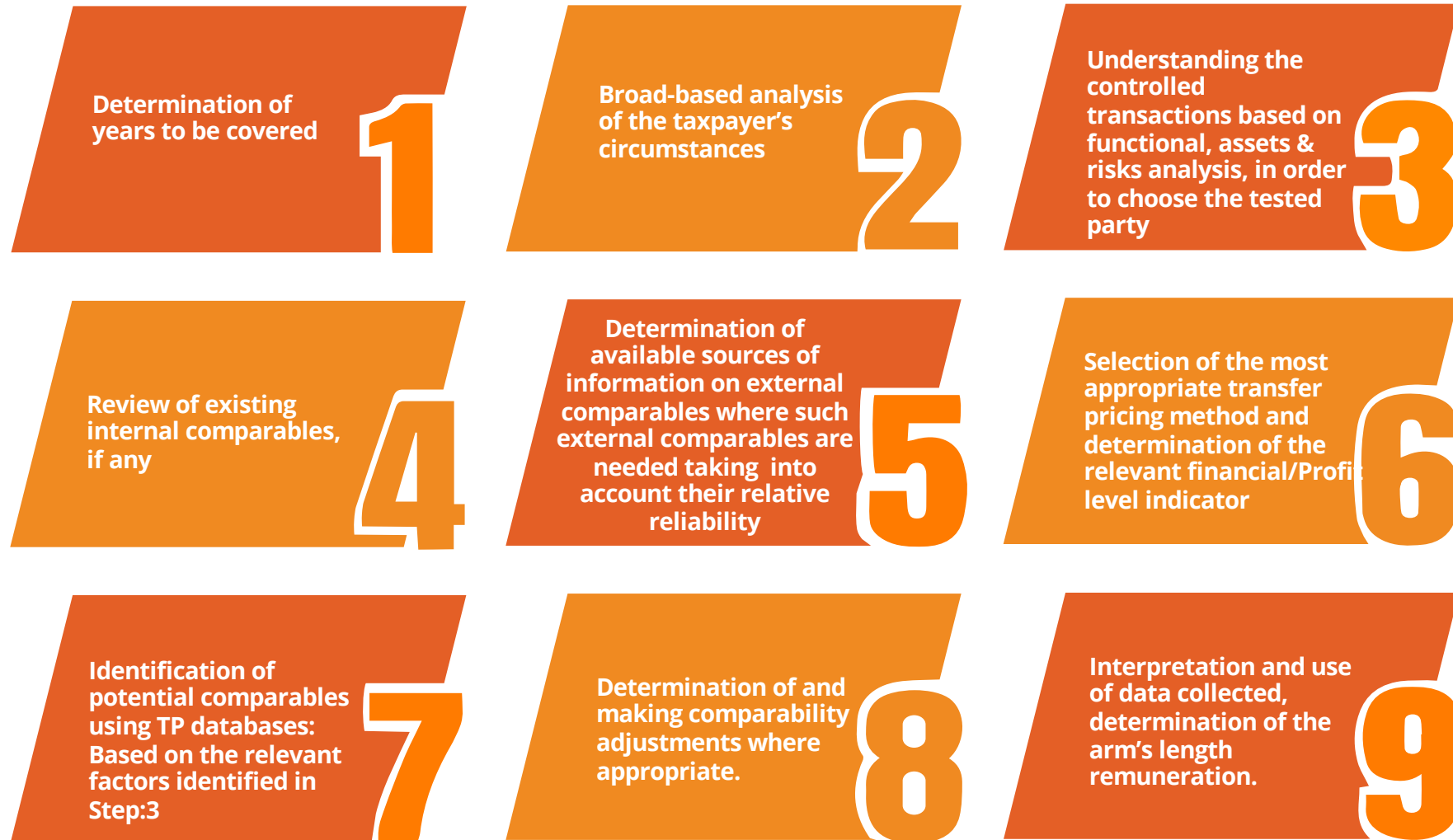
Other method can be used when the following are available :

1. Third party quotations
2. Valuation reports
3. Tender/Bid documents
4. Documents relating to negotiations
5. Standard rate cards
6. Commercial and economic business models

Other methods can be used for the following transactions

1. Revenue split
2. Valuation of intangible property
3. Valuation of shares
4. Cost allocation
5. Reimbursements

TP Benchmarking Steps



UAE TP Compliances (Article 55 of UAE CT Law)



Article – 55 (1)



Taxpayer

Disclosure Form

Taxpayers have to file TP Disclosure Form
(Form contents and conditions for applicability are yet to be prescribed)



To be filed along with
Tax Return in the
Prescribed Form



Federal Tax Authority (FTA)

Article 55 (2), (3) & (4)



Taxpayer

Local File and Master File

Taxpayers have to prepare and maintain Local
File and Master File (to be filed upon request)
(Form contents and conditions for applicability are yet to be prescribed)



To be filed upon
request by FTA within
30 days



Federal Tax Authority (FTA)

Disclosure Form – Indicative Contents & Checkpoints



Check Points for Disclosure

Report absolute numbers in the disclosure form prepared

Mention full names of the related parties/ connected persons

Mention appropriate relation between related party/ connected persons

Mention appropriate description of transactions reported in the disclosure form

Appropriate TP method should be selected for the reported transaction

File disclosure form within the appropriate time line

Report the transactions under appropriate clause or section in the disclosure form as will be prescribed by FTA

Disclosure Form - Indicative Contents

- Details of Related Parties/ Connected Persons
- Details of Related Party Transactions (Nature, Volumes etc.)
- Brief Transfer Pricing Analysis

Inclusions and Exclusions from Local File



Related Party/Connected Person Transactions and Arrangements with all the following shall be included in the Local File Documentation:

Inclusions	Exclusions
<ul style="list-style-type: none">• Non-Resident Person• Exempt Person• Resident Person claiming Small Business Relief• Resident Person subject to different Corporate Tax Rate (non tax neutral)	<ul style="list-style-type: none">• Resident Persons other than those specifically included.• Natural Persons if acting independent of each other• Juridical Person being a Partner in an Unincorporated Partnership if acting independent of each other• Permanent Establishment of a Non-Resident Person subject to same Corporate Tax Rate

Parties will be treated as acting independent of each other if:

- Transaction is undertaken in ordinary course of business
 - Parties are not exclusively or almost exclusively transacting with each other
- AND

Parties will NOT be treated as acting independent of each other if one person in a transaction is subject to:

- Detailed instructions by other person
 - Comprehensive control by other person
- OR

Master File – Contents (BEPS Action Plan 13)



Contents	Information to be included in Master File
Organisational structure	<ul style="list-style-type: none"> • Chart illustrating the MNE group's ownership structure & geographical location of operating entities.
Description of MNE group's business(es)	<ul style="list-style-type: none"> • Important drivers of business profit • Supply chain for the group's five largest products/ services offerings by turnover • Important service arrangements between members of the MNE group, other than R&D services • Main geographic markets for the group's products and services • Functional, Assets & Risk Analysis of principal contributions to value creation within the group • Important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year
MNE group's intangibles	<ul style="list-style-type: none"> • MNE group's overall strategy for the development, ownership and exploitation of intangibles • List of important intangibles of MNE group • Important agreements related to intangibles, including cost contribution arrangements, principal research service agreements and license agreements • Group's transfer pricing policies related to R&D and intangibles • Important transfers of intangibles during the fiscal year
MNE group's intercompany financial activities	<ul style="list-style-type: none"> • Description of how the MNE group is financed, including important financing arrangements with unrelated lenders. • Identification of members of MNE group providing central financing function for the group • Group's transfer pricing policies related to intra-group financing arrangements
MNE group's financial and tax positions	<ul style="list-style-type: none"> • MNE group's annual consolidated financial statement for the fiscal year • MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among jurisdictions

Master File – Checkpoints

1

Group Structure/Chart has to be appropriately presented by including only those entities that qualify as constituent entities.

2

Group's business overview, important profit drivers and supply chain are to be thoroughly reviewed from a 360 degree perspective to mitigate/avoid any tax litigation due to BEPS tax risks

3

Business restructuring transactions, acquisitions and transfer of any intangibles reported in Master File should have been appropriately benchmarked and reported in the Local file of contracting group entities.

4

FAR analysis of constituent entities provided in the Master File has to be aligned with the Local Files of respective entities.

5

Financial Transactions, Intangibles/R&D and Important Service Arrangements disclosed in the Master File have to be back-up by Group TP Policy, Intercompany agreement, TP benchmarking analysis and relevant supporting documentation.

6

Ensure disclosing only relevant & appropriate information and avoid disclosure of unwarranted/ too much information.

7

Confidentiality aspect is of prime importance while preparing/filing the Master File.

Common Transfer Pricing Litigation Issues



<ul style="list-style-type: none"> Intra-Group Services (IGS)/Cost Contribution Arrangements (Need-benefit-evidence test, Commercial expediency, Shareholder activity, duplication, Cost pooling & allocations, benchmarking, profit sharing allegation) 	<ul style="list-style-type: none"> Comparability analysis (functional dissimilarity, fluctuations in margins, lack of segmental information, extra-ordinary activities during the year, loss marking companies, Product Vs Service companies, High end Vs Low end etc.)
<ul style="list-style-type: none"> Royalty payments (Need-benefit- evidence test, benchmarking, profit sharing allegation) 	<ul style="list-style-type: none"> Group losses and test party losses situation
<ul style="list-style-type: none"> Marketing Intangibles, DEMPE Functions, AMP Expenses 	<ul style="list-style-type: none"> Profits attribution to PE
<ul style="list-style-type: none"> Selection of most appropriate TP method (CUP Vs TNMM, RPM Vs TNMM, TPSP Vs TNMM) 	<ul style="list-style-type: none"> Use of CbCR information for Tax/BEPS assessment
<ul style="list-style-type: none"> Business Restructurings 	<ul style="list-style-type: none"> Hybrid Instruments (CCD/FCCD/OFCD) - Debt to Equity Re-characterisation
<ul style="list-style-type: none"> Selection of Foreign Tested Party 	<ul style="list-style-type: none"> Corporate Guarantee
<ul style="list-style-type: none"> Thin Capitalisation/ Interest deduction limitation 	<ul style="list-style-type: none"> Secondary adjustments and Corresponding adjustments
<ul style="list-style-type: none"> Aggregation (Entity level) Vs Segregation (Transaction level) approach for benchmarking 	<ul style="list-style-type: none"> Re-characterisation based on FAR (High end to low end, limited to full fledged)
<ul style="list-style-type: none"> Search Process to be followed for TP benchmarking analysis (Filters/Screens, Single Year/Multiple Year information, Profit Level Indicator, Operating & Non- operating items for PLI computation) 	<ul style="list-style-type: none"> Economic adjustments (Working Capital adjustment, Risk adjustment, Forex adjustment, Cash PLI/Depreciation adjustment, Capacity Utilisation adjustment)
<ul style="list-style-type: none"> Internal Vs External Comparable Companies 	<ul style="list-style-type: none"> Share transfers – Valuation issues
<ul style="list-style-type: none"> Location Savings 	<ul style="list-style-type: none"> Deemed Related Party Transactions
<ul style="list-style-type: none"> Intercompany balance receivables 	<ul style="list-style-type: none"> Legal entity rationalisation
<ul style="list-style-type: none"> Value Chain Analysis 	<ul style="list-style-type: none"> Pass thru costs /Berry Ratio

Transfer Pricing Adjustment & Corresponding Adjustments



Clause 8, 10 & 11 of Article 34 – Arm's Length Principle

Transfer Pricing Adjustment

- ❑ If the results of a transaction or arrangement with related parties do not fall within the arm's length range, the Authority is obligated to make a transfer pricing adjustment to the Taxable Income in order to reflect the arm's length price.

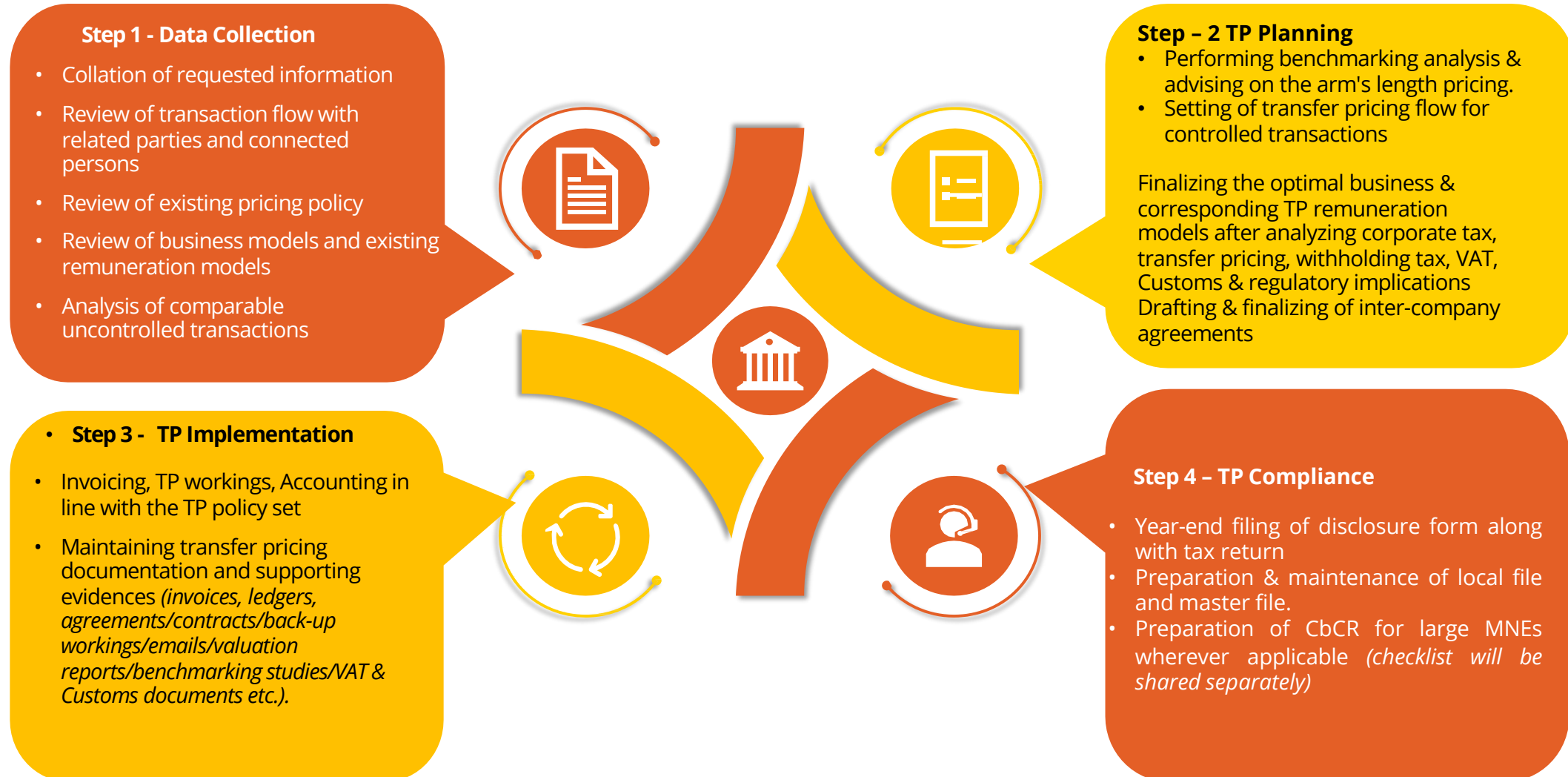
Corresponding Adjustment in case of Domestic Transfer Pricing Adjustment

- ❑ The UAE Rules also encompass the corresponding adjustment principle to achieve tax neutrality. Therefore, when a transfer pricing adjustment is made, a corresponding adjustment should be made to the Taxable Income of the affected counterparty.

Corresponding Adjustment in case of Foreign Transfer Pricing Adjustment

- ❑ This applies even when the transfer pricing adjustment is made by a foreign competent authority. In such cases, a Taxable Person can apply to the Authority to make a corresponding adjustment to their Taxable Income.

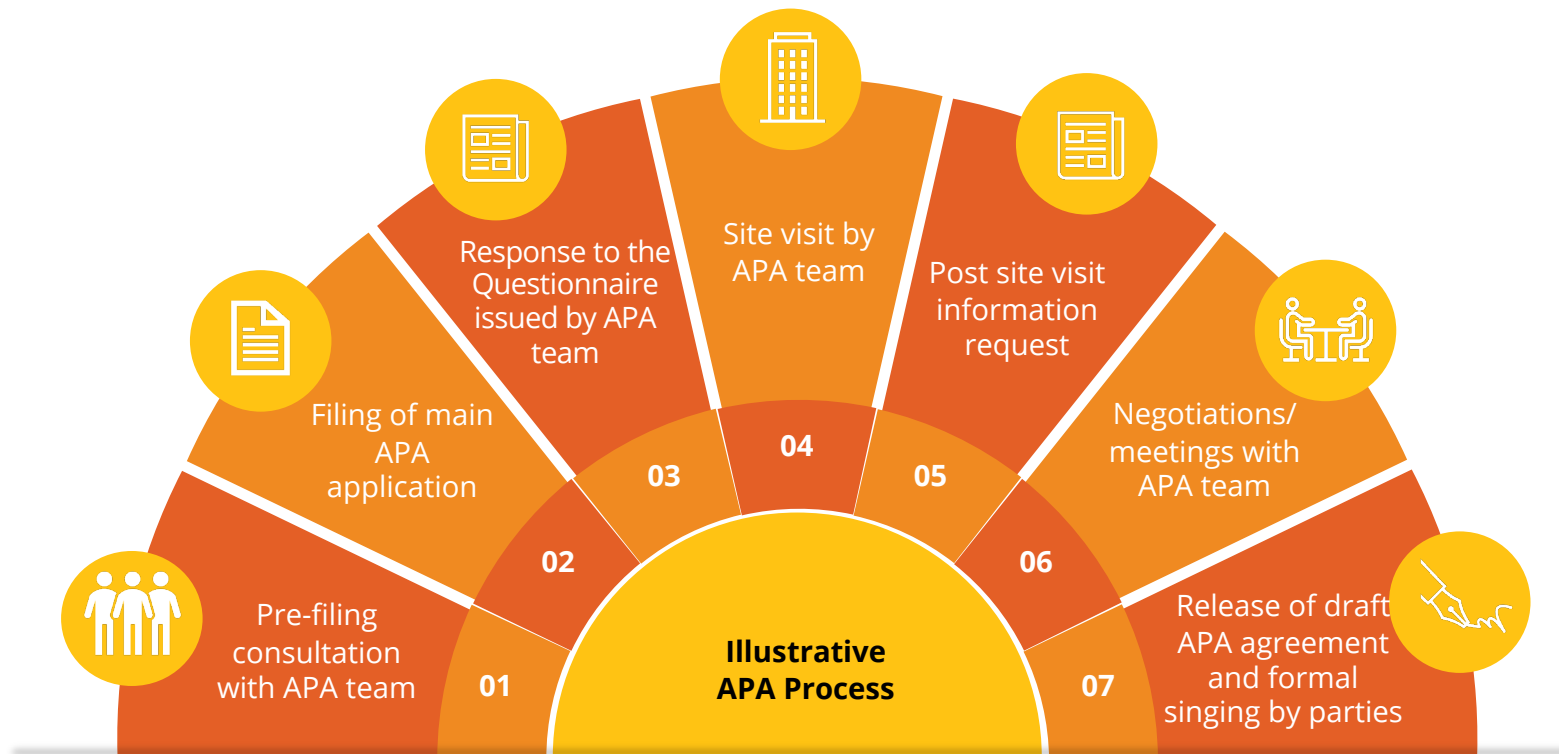
Step Plan for UAE TP Implementation



Advance Pricing Agreement (APA) Regime

APA – Introduced (Article 59 of UAE CT Law)

- Alternative Dispute Resolution Mechanism to obtain TP certainty on existing/proposed inter-company transactions.
- UAE CT Law incorporates APA regime like other jurisdictions
- APA application process and the manner of APA site visit, re-negotiation and signing is to be prescribed by FTA.



What is a Comparability Adjustment ? (1/2)



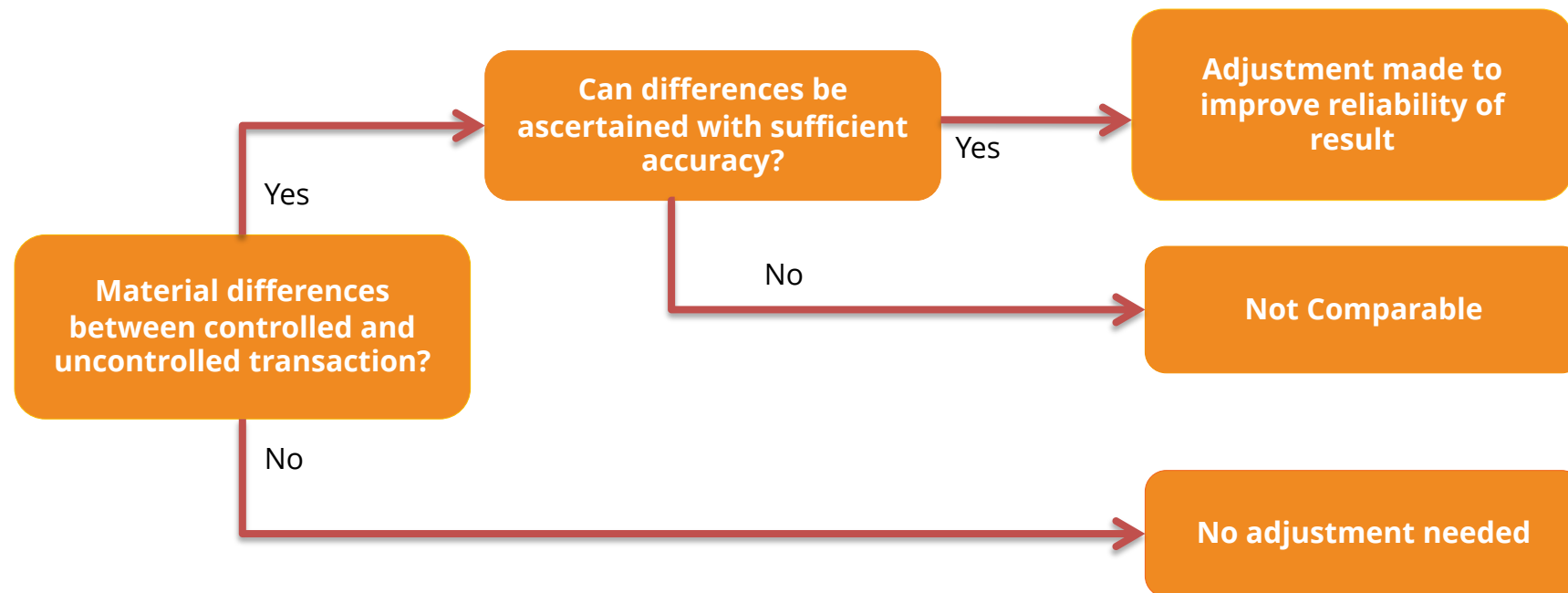
Adjustment made to uncontrolled transactions/ comparable companies to enhance comparability with the controlled transactions/ tested party

Adjustment is required in case of any mismatch between FAR profile of comparables and tested party.

Reasonably accurate adjustments should be made to eliminate the effect of any differentiating factors.

It is to be noted that while performing comparability adjustments, the margins of comparables were adjusted to eliminate the effect of material discrepancies.

Federal Tax Authority (FTA) has not specifically included any guidance allowing to make comparability adjustments. Moreover, UAE CT Decree has placed reliance on the OECD Transfer pricing Guidelines 2022.



What is a Comparability Adjustment ? (2/2)



Identification of Material Differences

- Functions Asset and Risk (“FAR”) analysis
- Review of financial statements
- Review of agreements
- Key diagnostic ratios
 - Selling general & administrative overheads/Sales
 - Average collection period
 - Fixed costs to sales ratio
 - Y-o-y fluctuations in forex and sales turnover
- To identify whether difference in transactions being compared on account of:
 - Level of capacity utilization
 - Working capital positions
 - Risk profile
 - Economies of scale
 - Accounting policies for depreciation, Foreign Exchange Transactions etc.

Types of Comparability Adjustments



Working Capital Adjustment

Market Risk Adjustment

Capacity Under Utilization Adjustment

Depreciation Adjustment

Forex Adjustment

Transfer Pricing – Clarifications Expected



The Authority will issue **guidelines for maintenance of transfer pricing documentation** (as specified in Ministerial Decision 97).

Contents for the master file documentation are yet to be specified.

Format of disclosure form that is to be filed along with Tax Return is yet to be prescribed.

The specific criteria for determining the transfer pricing adjustment within the **arm's length range, such as using the interquartile range or other percentiles**, have not been prescribed yet.

Further clarification is anticipated regarding the selection of data for arm's length determination analysis, specifically whether **single-year data or multiple-year data** should be used.

Mechanism for conducting transfer pricing and corresponding adjustments will be clarified, taking into account timing issues, necessary accounting and tax adjustments, and other uncontrollable factors related to the counterparty involved in the transactions.

Due to the **unavailability of publicly accessible financial data for companies in the UAE region**, using regional comparable data is currently not possible. **Multijurisdictional data** of Middle East, Asia Pacific, Europe and global to be used on case to case basis.

Advance Pricing Agreement (APA) regime is introduced. **Administrative and operational framework of APA** will be clarified.

Releasing the **transfer pricing audit/scrutiny framework** will enable Taxable Persons to be aware of potential audit risk parameters or exposures that may arise in the event of non-compliances with transfer pricing rules.

Comparative Analysis of TP Regulations of GCC Countries & India (1/3)

	India	UAE	Saudi Arabia	Qatar	Bahrain	Kuwait	Oman
TP Coverage & Regulations	In line with OECD TP Regulations in Chapter X, 2002	In line with OECD Federal decree law - 03 Oct 2022	In line with OECD TP Bylaws – Feb 2019	In line with OECD Executive Regulations – Dec 2019	No TP law	No TP law	No TP law
Mandatory Language	English	English or Arabic	Arabic or English	Arabic or English	NA	NA	Arabic or English
TP Methods & ALP Range	CUP,RPM,CPM,PSM,TNMM & Other method under rule 10AB	CUP,RPM,CPM,PSM,TNMM & Other method	CUP,RPM,CPM,PSM,TNMM & Other method	Only CUP Method can be used, others require approval	NA	NA	NA
Local file - Threshold - Due date	International transaction > INR1Cr or SDT > INR 20 Cr Maintain before 31 st October File within 10 days upon request by authority	Revenue > AED 200 Million File within 30 days upon request by authority	Transactions > SAR 6 Million File within 30 days upon request by authority	Revenue > QAR 50 Million Maintain before 30 th June	NA	NA	NA
Master File - Threshold - Due date	Consolidated Group Revenue > INR 500 Cr AND International Transactions > INR 50 Cr OR Purchase, sale or lease of Intangibles > INR 10 Cr File by 30 th November				NA	NA	NA

Comparative Analysis of TP Regulations of GCC Countries & India (2/3)

	India	UAE	Saudi Arabia	Qatar	Bahrain	Kuwait	Oman
CbCR - Threshold - Due date	Consolidated Group revenue > INR 6400 Cr File within 12 months from the end of accounting year	Consolidated Group revenue > AED 3.15 billion File within 12 months from year end	Consolidated Group revenue > SAR 3.2 billion File within 12 months from the end of accounting year	Consolidated Group revenue > QAR 3 billion File within 12 months from the end of accounting year	Consolidated Group revenue > BHD 342 Million File within 12 months from the end of accounting year	NA	Consolidated Group revenue > OMR 300 Million File within 12 months from the end of accounting year
Disclosure Forms to be filed & due date	Form No. 3CEB (CA Certificate) – File before 31st October	File Disclosure Form for RP and CP transactions along with Tax Return Threshold to be prescribed	File Disclosure Form for RP transactions along with Tax Return (within 120 days after the fiscal year) Submit affidavit from CA	File Disclosure Form if total revenue or assets is > or = QAR 10 Million along with Tax Return	NA	NA	NA

Comparative Analysis of TP Regulations of GCC Countries & India (3/3)

	India	UAE	Saudi Arabia	Qatar	Bahrain	Kuwait	Oman
Penalties - Disclosure Form - TP Study - Master File - CbCR	INR 1,00,000 (Form 3CEB) 2% of RPT (TP Study) INR 5,00,000 (Master File) 5,000 per day (CbCR)	AED 1 Million + 10,000 per day upto AED 250,000 (CbCR)	Non-disclosure of information - penalty of 25%	Non-disclosure of information - QAR 500,000	Upto BHD 100,000 (CbCR)	NA	NA
Dispute Prevention & Resolution mechanism - APA & Safe Harbour - MAP	Has Safe Harbour, APA & MAP regimes	APA regime is introduced (Article 59)	Has MAP regime in line with Action Plan 14	MAP regime is introduced	Not yet specified		
Corporate Tax Rate	25%/30%	9%	20%	10%	0%	15%	15%

Access to Global Transfer Pricing Databases



Provider	Database	Content
Bloomberg	Bloomberg Reference Data Services	Financial markets data
Bureau Van Dijk	Orbis Worldwide	Company financial information (Private & Listed Companies)
	Osiris Worldwide	
	Oriana & Amadeus	
	TP Catalyst	
Capital Market Publishers India	Capitaline TP	Company financial information (Private & Listed Companies)
Centre for Monitoring Indian Economy	Prowess	
Accord Fintech	Ace TP	
RoyaltyStat	License Agreement Database	Intangibles License Agreements (Sourced from US SEC)
Royaltysource	RoyaltySource	
Royaltyrange	Royaltyrange	Royalty rate reports

Provider	Database	Content
S&P	Capital IQ – Financials	Company financial information (Private & Listed Companies)
	Compustat – North America	Company financial information (Listed Companies)
	Compustat Global	
	Credit Analytics	Risk of default models (Credit Score)
Thomson Reuters	Dealscan (Worldwide)	Financial transactions data (loans)
	Eikon (Worldwide)	Financial markets data
	Worldwide public company data (Worldwide)	Company financial information (Listed Companies)
	Worldwide private company data (Worldwide)	Company financial information (Listed Companies)
	Worldwide intangibles data (Worldwide)	Intangibles license agreements and royalty rates



Does a Qualifying Free Zone Person have to maintain transfer pricing documentation if its turnover is less than AED 200 Million?

Does all related party and connected persons transactions need to be at ALP?

Should we benchmark the tax neutral transactions i.e. transactions between 2 mainland RPs?

Is application of ALP only mandatory for taxable persons exceeding the threshold of TP documentation i.e. AED 200 Million?

How to benchmark the director's remuneration?

Our USP



- ❑ **Global Network** – SBC is a member of PrimeGlobal, a global network of 300 highly successful member firms having presence in 100+ countries.
- ❑ **Big4 alumni** – Being Big 4 Alumni, our CT & TP team has direct hands-on experience in handling complex assignments and leverages on the best practices drawn from the team's collective experience with a view to deliver a robust CT & TP solutions that can be defensible from a Corporate Tax and TP audit/scrutiny standpoint.
- ❑ **Global TP Benchmarking Team** – SBC has a specialized team working with global benchmarking databases thereby having capabilities of handling end to end global benchmarking exercises of MNE groups spread across various jurisdictions
- ❑ **Access to Global databases/Software** – SBC has access to all major Global databases/software – Prowess, CapitalineTP, AceTP, S&P Capital IQ, TP Catalyst, Reffinitiv Eikon, Bloomberg, Loan Connector, RoyaltyStat, Orbis etc.
- ❑ **Collaboration** – Our network partners are former Tax Officers, Ex-Regulators, Senior Counsels who share their expert opinions & views for countering aggressive regulatory positions.

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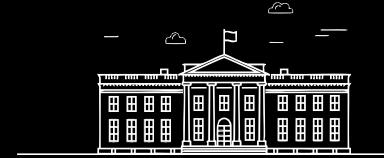
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Thank You



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