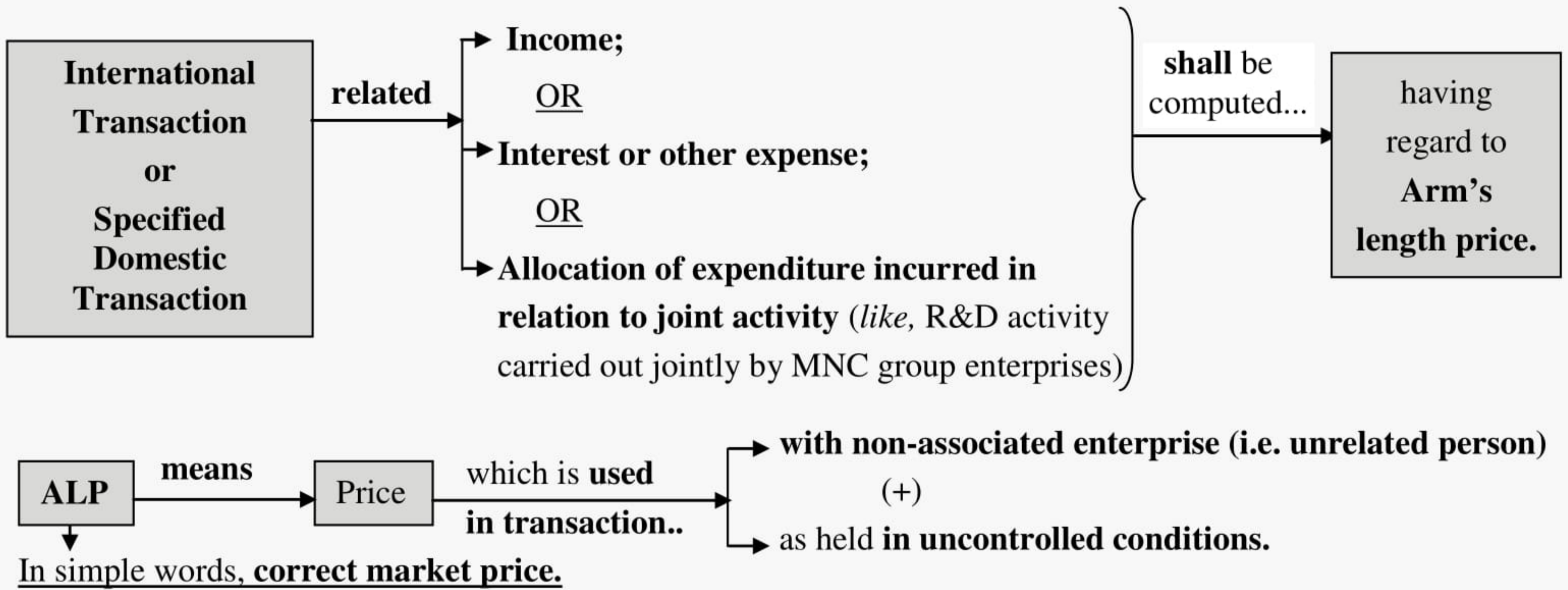
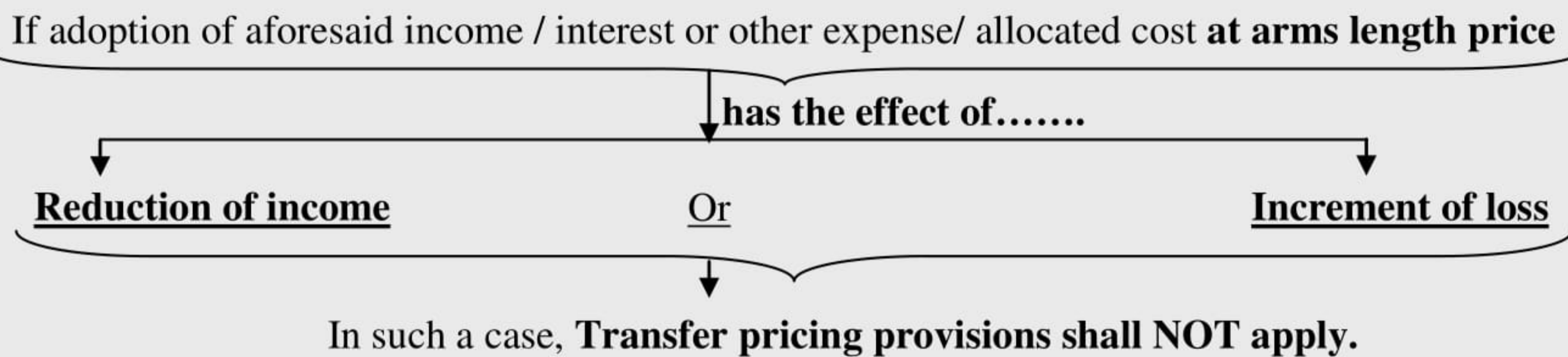


“TRANSFER PRICING”

Section 92: Computation of income from international transaction having regard to ALP:-



Exception of section 92 (i.e. mandatory adoption of income, etc. at ALP):



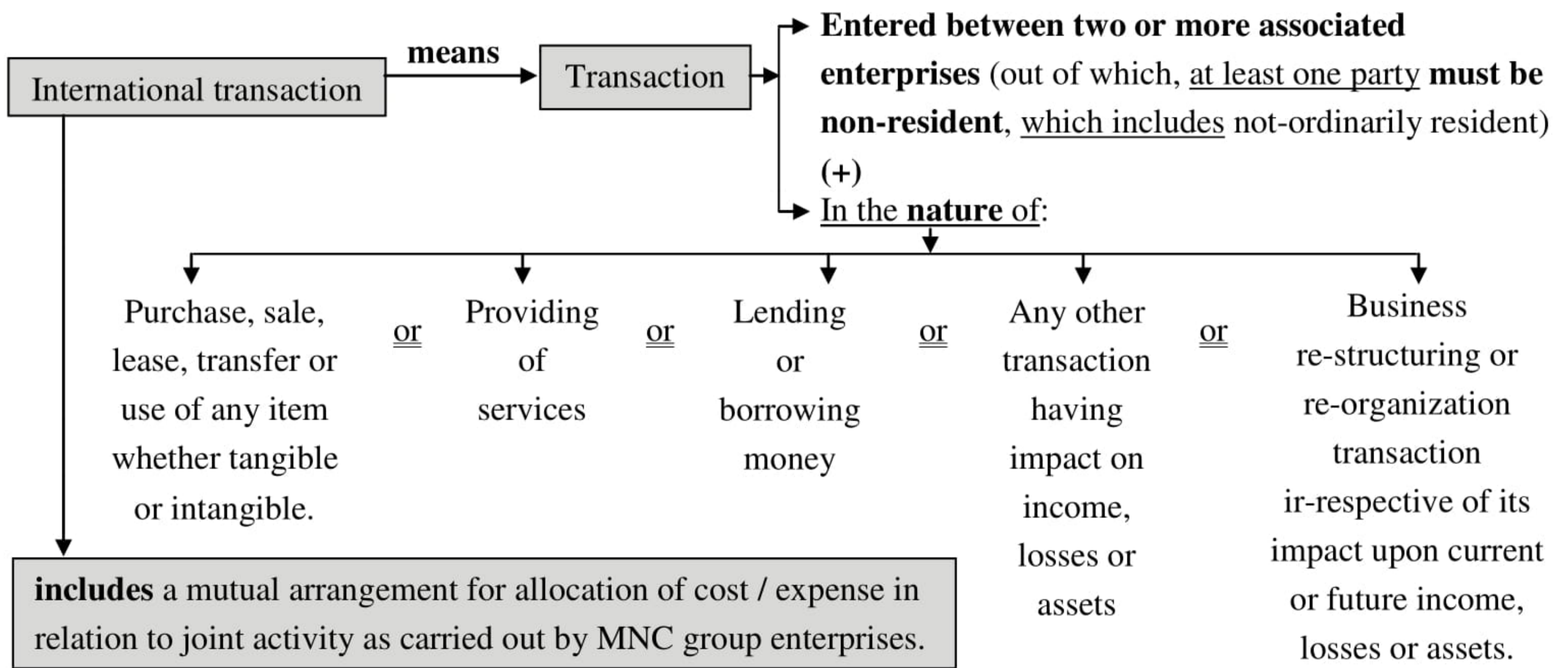
Section 92A: Meaning of associated enterprise :-

Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year, -

(a)	One enterprise <i>holds</i> , directly or indirectly, shares carrying at least 26% of the voting power <i>in other enterprise</i> ; or
(b)	Any person <i>holds</i> , directly or indirectly, shares carrying at least 26% of the voting power <i>in each of such enterprises</i> ; or
(c)	A <i>loan advanced</i> by one enterprise to the other enterprise constitutes at least 51% of the book value of the total assets of the other enterprise; or
(d)	One enterprise <i>guarantees</i> at least 10% of the total borrowings of the other enterprise; or
(e)	<i>More than half directors</i> or members of the governing board or at least one executive director or executive member of the governing board of one enterprise is <i>appointed by the other enterprise</i> ; or
(f)	<i>More than half of the directors</i> or members, or at least one executive director or executive member

	of the governing board of <i>each of the two enterprises are appointed by the same person</i> ; or
(g)	The manufacturing or otherwise business of one enterprise is <i>wholly dependent on any intangible</i> (like, know-how, patents, copyrights, licenses, franchises, etc.) of the other enterprise ; or
(h)	<i>At least 90% of the required raw materials</i> and consumables of one enterprise, <i>are supplied by the other enterprise and the prices and other condition relating thereto are influenced by such other enterprise</i> ; or
(i)	<i>The goods manufactured by one enterprise, are sold to the other enterprise and the prices and other condition relating thereto are influenced by such other enterprise</i> ; or
(j)	<i>Where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual</i> or his relative or jointly by such individual and his relative; or
(k)	<i>Where one enterprise is controlled by a HUF</i> , the other enterprise is controlled by a member of such HUF, or by a relative of such member, or jointly by such member and his relative; or
(l)	<i>Where one enterprise is a firm, association of persons or body of individuals</i> , the other enterprise holds at least 10% interest in such firm, association of persons or body of individuals.
(m)	<i>There exists between two enterprises, any relationship of mutual interest as may be prescribed.</i>

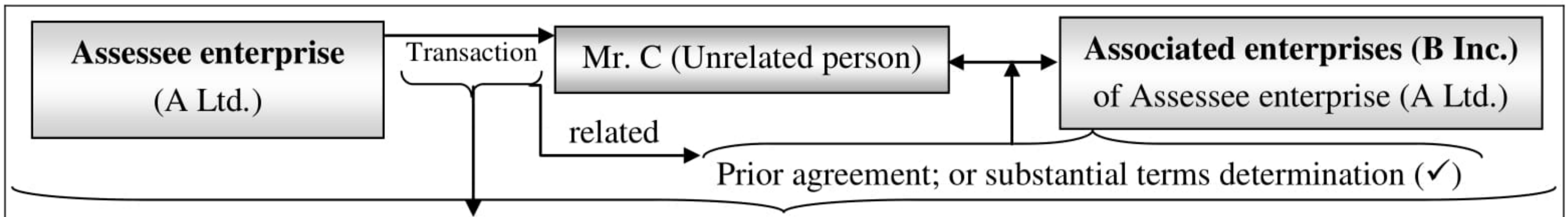
Section 92B : Meaning of international transaction:-



Deemed international transaction:

➤ A transaction of an assessee enterprise **with unrelated person** (whether resident or non-resident) **will be deemed with associated enterprise** (i.e. Deemed international transaction) if in relation to relevant transaction:

- (a) There is *prior agreement* **between such unrelated person and associated enterprise**; or
- (b) *Terms are substantially determined* **between such unrelated person and associated enterprise.**



Then, it will be deemed with associated enterprise (i.e. Deemed International transaction).

Section 92BA: Meaning of specified domestic transaction:-

Specified domestic transaction means:-

(1)	Any inter-unit transfer of goods or services [means, transfer of goods / services by the assessee from his eligible business (i.e. eligible for deduction u/s 80IA to 80RRB or section 10AA), to a normal business or vice-versa <u>and</u> consideration for such transfer does not match with FMV of such goods / services].
(2)	Any transaction between assessee (who is carrying on eligible business i.e. eligible for deduction u/s 80IA to 80RRB or section 10AA) and other person (carrying normal business), which produces profit more than ordinary profit to the assessee.
(3)	Any transaction between assessee (who exercised option u/s 115BAB) and other person carrying normal business, which produces profit more than ordinary profit to the assessee.
(4)	Any transaction between assessee (who exercised option u/s 115BAE) and other person carrying normal business, which produces profit more than ordinary profit to the assessee.

Provided that aggregate of aforesaid transactions during the previous year must exceed ₹ 20 crores.

Section 92C: Computation of arm's length price :-

(1) ALP shall be determined by the most appropriate method, out of the following methods, which will be applied in prescribed manner (as given in Rule 10B) which is as follows:

(1)	COMPARABLE UNCONTROLLED PRICE METHOD:	
	When will it be regarded as most appropriate method?	If details of comparable transaction, prices, etc. are given.
	MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):	
(i)	Identify the price Charged / Paid in comparable uncontrolled transaction	✓
(ii)	Adjust such price to account for the difference between international transaction (or specified domestic transaction) and the comparable uncontrolled transaction	(+)/(-)
		ALP
(2)	RE-SALE PRICE METHOD:	
	When will it be regarded as most appropriate method?	If purchased goods / services from associated enterprise are resold to unrelated person.
	MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):	
(i)	Identify the price charged against resale of such goods or service to unrelated persons	✓

	(ii)	Reduce the normal gross profit margin	(-)
	(iii)	Reduce expense incurred by assessee in relation to purchase of such goods/services	(-)
	(iv)	Adjust such price to account for any other difference (if needed)	(+)/(-)
			ALP
(3)	<u>COST PLUS METHOD:</u>		
	When will it be regarded as most appropriate method?		<i>If details about cost & profit mark up are given.</i>
	MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):		
	(i)	Determine direct & indirect cost of the transaction and comparable uncontrolled transaction for which ALP is being computed	✓
	(ii)	Determine the normal gross profit mark up, and adjust it to account for the difference between above said transaction	✓
	(iii)	Increase the cost by such adjusted Markup	(+)
			ALP
(4)	<u>PROFIT SPLIT METHOD:</u>		
	<u>When will it be regarded as most appropriate method?</u>		
	If there is a case of multiple international transactions (or SDT) and can't be evaluated separately.		
	MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):		
	(i)	Determine the combined net profit (i.e. Total consideration received (-) Total cost incurred upon such project by the group)	
	(ii)	Allocate such profit amongst all involved associated enterprises on the basis of their performed functions, assets employed or risk assumed (i.e. in Relative contribution ratio).	
	(iii)	ALP for assessee associated enterprise: Cost incurred by it : ✓ (+) Allocated net margin : ✓	
(5)	<u>TRANSACTIONAL NET MARGIN METHOD:</u>		
	When will it be regarded as most appropriate method?		When details of net margin of comparable uncontrolled transaction are given.
	MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):		
	(i)	Identify the net margin realized in comparable uncontrolled transaction.	
	(ii)	Adjust such net margin to account for the differences between international transaction and comparable uncontrolled transaction.	
	(iii)	Such adjusted net margin will be treated ALP (in terms of net margin).	
(6)	<u>OTHER METHOD (AS PRESCRIBED BY THE BOARD) [Rule 10AB]:-</u>		

- Consider the price which has been charged or paid, or would have been charged or paid,
- for the same or similar uncontrolled transaction, with or between non-associated enterprises,
- under similar circumstances, considering all the relevant facts.

(2) In a case where more than one price is determined by the most appropriate method, the Arm's length price in relation to such transaction shall be computed in prescribed manner which is as follows:

RANGE CONCEPT:-

(1) Identify the price of, comparable transaction of,		Details (i.e. prices) of six or more entries (i.e. comparable transactions)							
		E1	E2	E3	E4	E5	E6	E7	- - - -
Current Year	:	✓	✓	✓	✓	✓	✓	✓	✓
Ist Last Year	:	✓	✓	✓	✓	✓	✓	✓	✓
IInd Last Year	:	✓	✓	✓	✓	✓	✓	✓	✓
(2) Compute weighted average of such prices	:	✓	✓	✓	✓	✓	✓	✓	✓
(3) Arranged such results in Ascending order	:	✓	✓	✓	✓	✓	✓	✓	✓
Place / No.	:	1	2	3	4	5	6	7	8

(4) Identify 35th percentile i.e. : Total entries in dataset $\times \frac{35}{100} = *$ If this Result is in...
 - Fractional figure (e.g. 4.5) → Value at 5th place (in ascending dataset) : Consider (✓)
 - Whole Number (e.g. 5) → Average of value at 5th & 6th place : Consider (✓)

(5) Identify 65th percentile i.e. : Total entries in dataset $\times \frac{65}{100} = *$ If this Result is in...
 - Fractional figure (e.g. 4.8) → Value at 5th place (in Ascending Dataset) : Consider (✓)
 - Whole Number (e.g. 5) → Average of value at 5th & 6th place (in Ascending dataset) : Consider (✓)

(6) **Construct an Arm's Length Range:** Result of 35th percentile **To** Result of 65th percentile.

(7) If Price actually shown by assessee is →
 - **With in arm's length Range:** Price Actually shown by Assessee shall be taken as **Final ALP.**
 - **Outside Arm's Length Range**
 ↓
 Median of Dataset shall be taken as Final ALP .
 i.e. ↓
 Total entries in Ascending Dataset $\times \frac{50}{100} = *$ If this Result is in...
 - Fractional figure (e.g. 7.6) → Value at 8th place (in ascending dataset) : Consider (✓)
 - Whole Number (e.g. 8) → Average of value at 8th & 9th place : Consider (✓)

ARITHMETICAL MEAN APPROACH:

If range concept is not applicable (i.e. in a case where data set consists of less than six entries), the arm's length price shall be the arithmetical mean (i.e. average) of all the values given.

Provided that if the variation between the arithmetical mean and actual transaction price (as shown by the assessee) does not exceed 3% (in case of wholesale trading: 1%) of the actual transaction price, in such a case, actual transaction price shall be deemed to be the arm's length price. (Means, no adjustment will be required).

Section 92C (3): Circumstances in which ALP can be computed by the AO:

If on the basis of material available to him, he is of the opinion that –

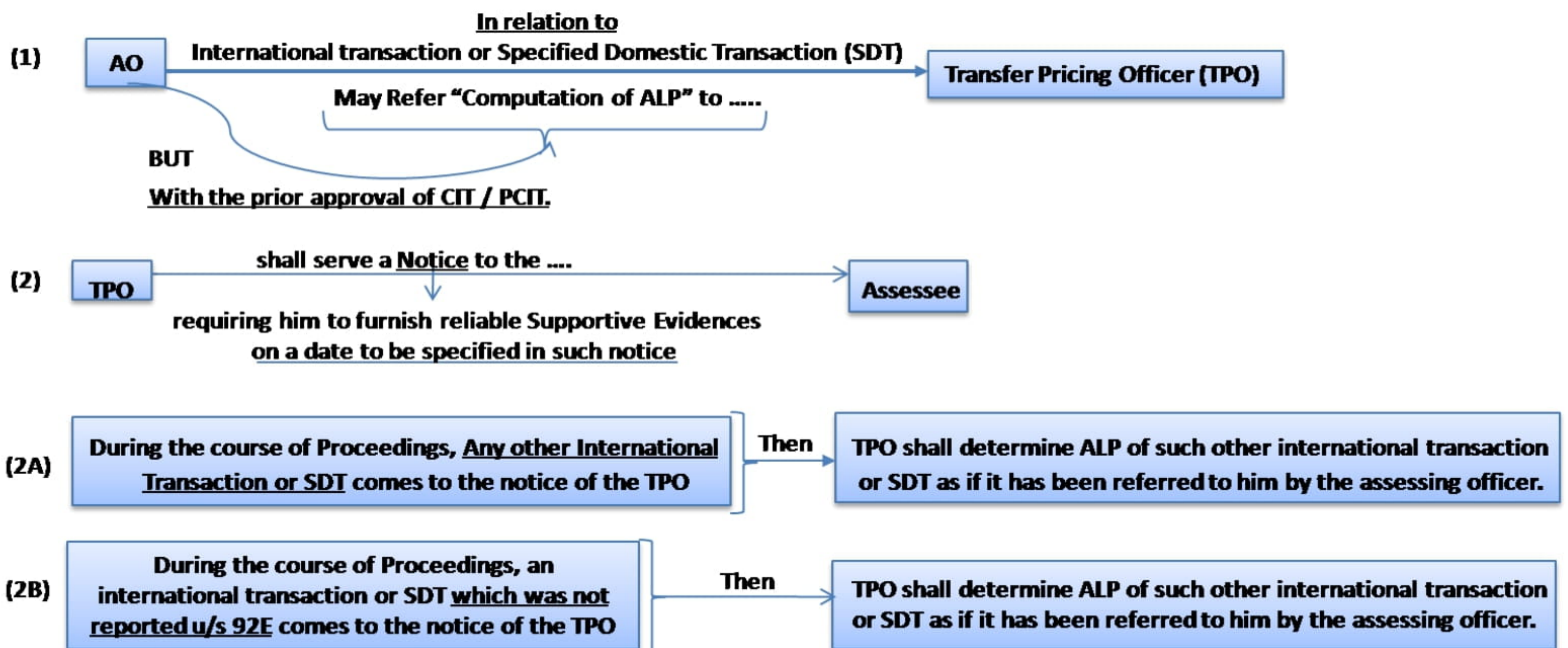
- (a) The price has not been determined as per prescribed method (or in prescribed manner); or
- (b) Any information and document have not been kept and maintained as per section 92D; or
- (c) The information or data used in computation of ALP is not reliable or correct; or
- (d) The assessee has failed to furnish required information or document within the specified time under a notice issued under section 92D,
 - the Assessing Officer may determine the arm's length price **subject to an opportunity** which will be given by the Assessing Officer to the assessee through a show cause notice.

Section 92C (4): *Where an arm's length price is determined by the Assessing Officer, the Assessing Officer may compute the total income of the assessee having regard to such arm's length price.*

- ☞ No deduction under section 10AA or under Chapter VI-A shall be allowed in respect of the enhanced amount of income which is in effect of such ALP.
- Considering the ALP (as determined for payer), payee can not claim refund of excess TDS.

Section 92CA: Reference to Transfer Pricing Officer:-

* Underlined words added by F.A. 2024



Note: As per amendment of F.A. 2024, if during the proceedings, TPO detect new SDT, then he is empowered to determine ALP for the same under this section.

- (3) TPO After considering all Documents, evidences Shall pass... Order determining ALP.
Time limit : 60 days before the date on which time Limit for completion of assessment/Re-assessment as given u/s 153/153B Expires.

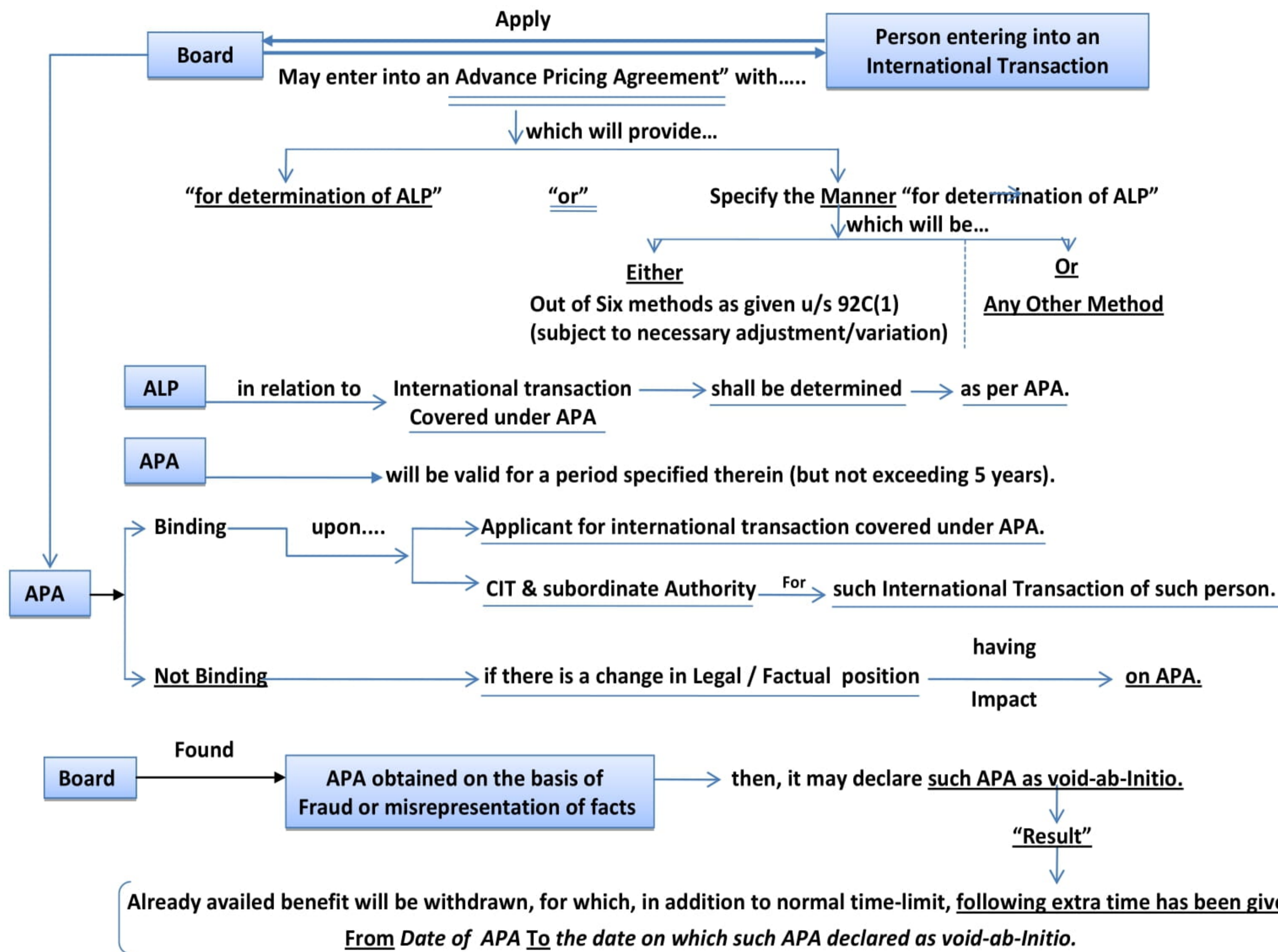
However, where assessment proceedings are stayed by any Court or where a requisition for exchange of information has been made from foreign tax authority under the DTAA u/s 90/90A,

- the time available to TPO for making an order after excluding (i.e. adding) the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be
- is less than 60 days, then
- such remaining period shall be extended to 60 days.

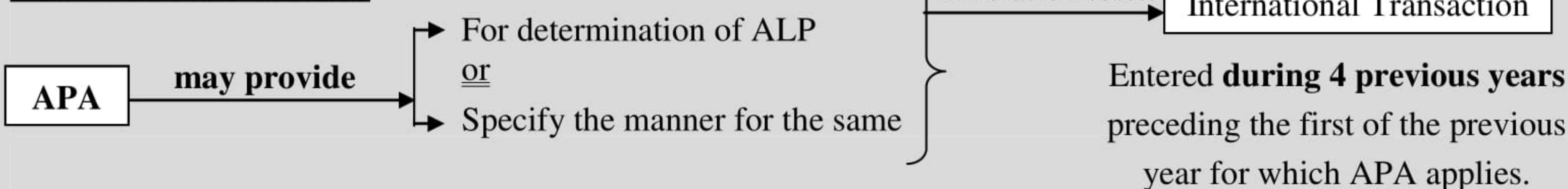
❖ In such a case, time left for AO (after the extended time-limit of TPO) is less than 60 days, it shall be extended to 60 days.

- (4) AO → **Shall pass his Assessment order In conformity of order of T.P.O, (means, order of TPO shall be binding upon AO).**
- (5) TPO → in case his order having mistake Apparent from Record... → **"MAY AMEND HIS ORDER" But subject to the Provisions of Section 154.**
- (6) Powers of TPO →
 - As given u/s 131 [i.e. To issue summons]
 - As given u/s 133 (6) [i.e. To Require Bank statement]
 - As given u/s 133A [i.e. Power to survey]

Section 92CC: Advance pricing Agreement (APA):-



Roll back Mechanism:



Rule 10MA: Roll Back of the Agreement:-

(1) The agreement shall contain rollback provision in respect of an international transaction subject to the

following, namely:—

- (i) the **return of income for the relevant rollback year has been or is furnished** by the applicant before the due date specified in sub-section (1) of section 139;
 - (ii) the **report in respect of the international transaction had been furnished** as per section 92E;
 - (iii) the **applicability of rollback provision, in respect of an international transaction, has been requested by the applicant** for all the rollback years in which the said international transaction has been undertaken by the applicant; and
- (2) Notwithstanding anything contained in sub-rule (2), **rollback provision shall not be provided in respect of an international transaction for a rollback year, if,—**
- (i) the determination of arm's length price of the said international transaction for the said year has been **subject matter of an appeal** before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement; or
 - (ii) the application of rollback provision **has the effect of reducing the total income or increasing the loss** of the applicant as declared in the return of income of the said year.

Section 92CD: Effect to Advance Pricing Agreement:-

(1)	If return for any previous year <u>to which APA applies</u> has already been furnished before the date of such APA, <u>assessee shall furnish a modified return within 3 months</u> from the end of the month in which such APA was entered, and such return shall be deemed to be a return u/s 139.
(2)	<p><u>If on the date of filing of modified return assessment or re-assessment for such year is pending:</u></p> <p style="padding-left: 40px;">AO shall consider such APA and modified return in completing such assessment / re- assessment.</p> <p>☞ Time limit as otherwise available for completion of such assessment / re- assessment shall be extended by one year.</p>
(3)	<p><u>If without awaiting for modified return (i.e. before the expiry of time limit of modified return), assessment or re-assessment for any year to which APA applies has already been completed.</u></p> <p>In such a case, to give effect of APA, AO shall pass an order modifying the total income of the relevant asstt. year (determined in such assessment/reassessment) having regard to and in accordance with APA.</p> <p>Such proceedings <u>must be completed within one year</u> from the end of the year of filing of modified return.</p>

Note:

- It may be noted that entire discussion on APA is relevant **only for** international transaction (not for S/D/T).

Amendment in Section 92CC as made by the Finance Act, 2020:-

- The *scope of section 92CC has been widened* to provide that **the CBDT may also enter into an Advanced Pricing Agreement (APA) with any person determining income referred to in section 9(1)(i), or specifying the manner in which said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident.**

Section 92CB: Power of Board to make safe harbour rules:-

- (1) The determination of ALP by AO or TPO (u/s 92C or 92CA) shall be subject to safe harbour rules.
- (2) The Board may, for the purposes of sub-section (1), make rules for safe harbour.

Explanation: For the purposes of this section, “safe harbour” means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

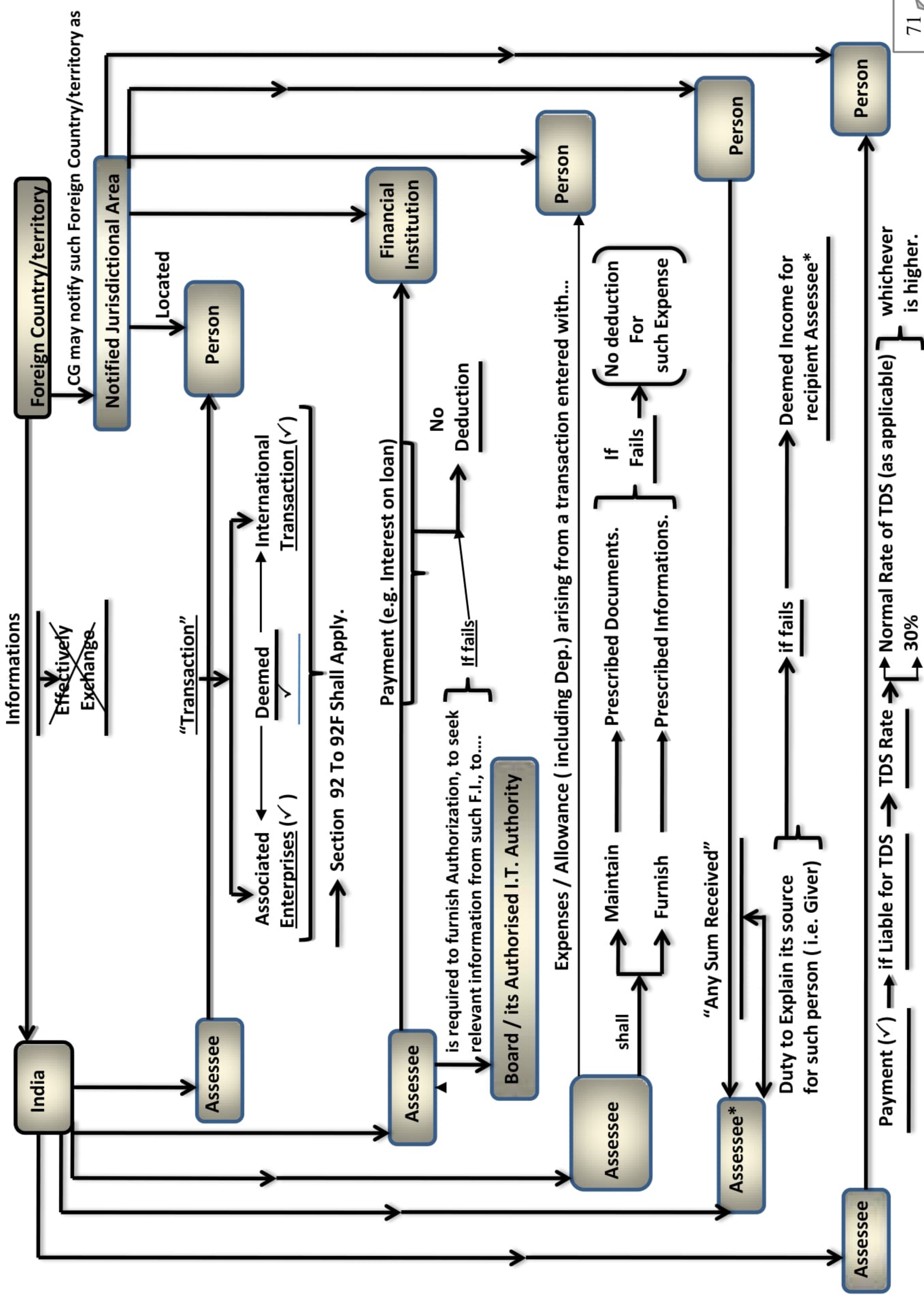
Amendment made by the Finance Act, 2020:-

➤ Explanation to section 92CB defining safe harbour is, amended to provide that safe harbour would now also include circumstances in which income tax authorities shall accept the income u/s 9(1)(i) declared by the assessee.

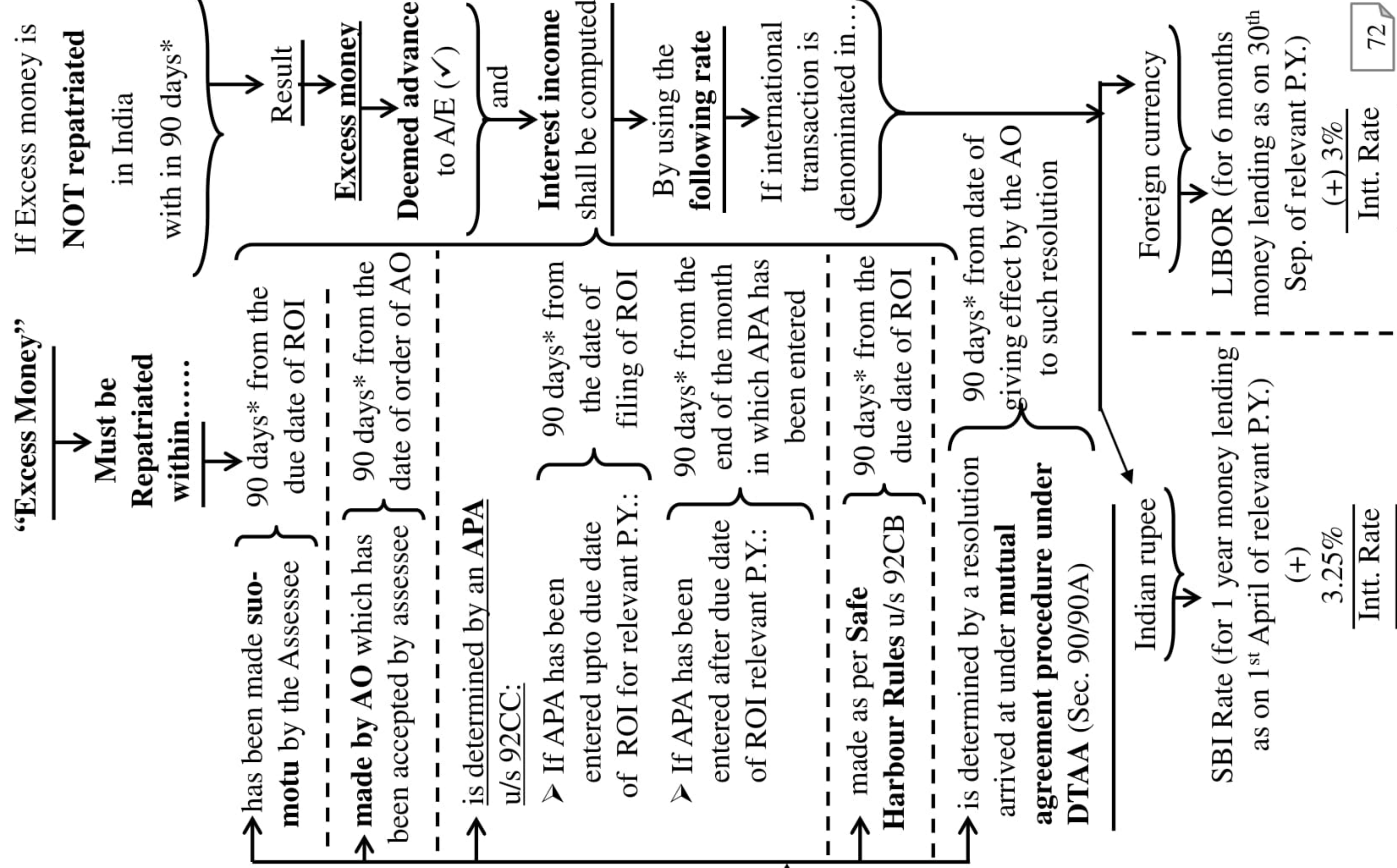
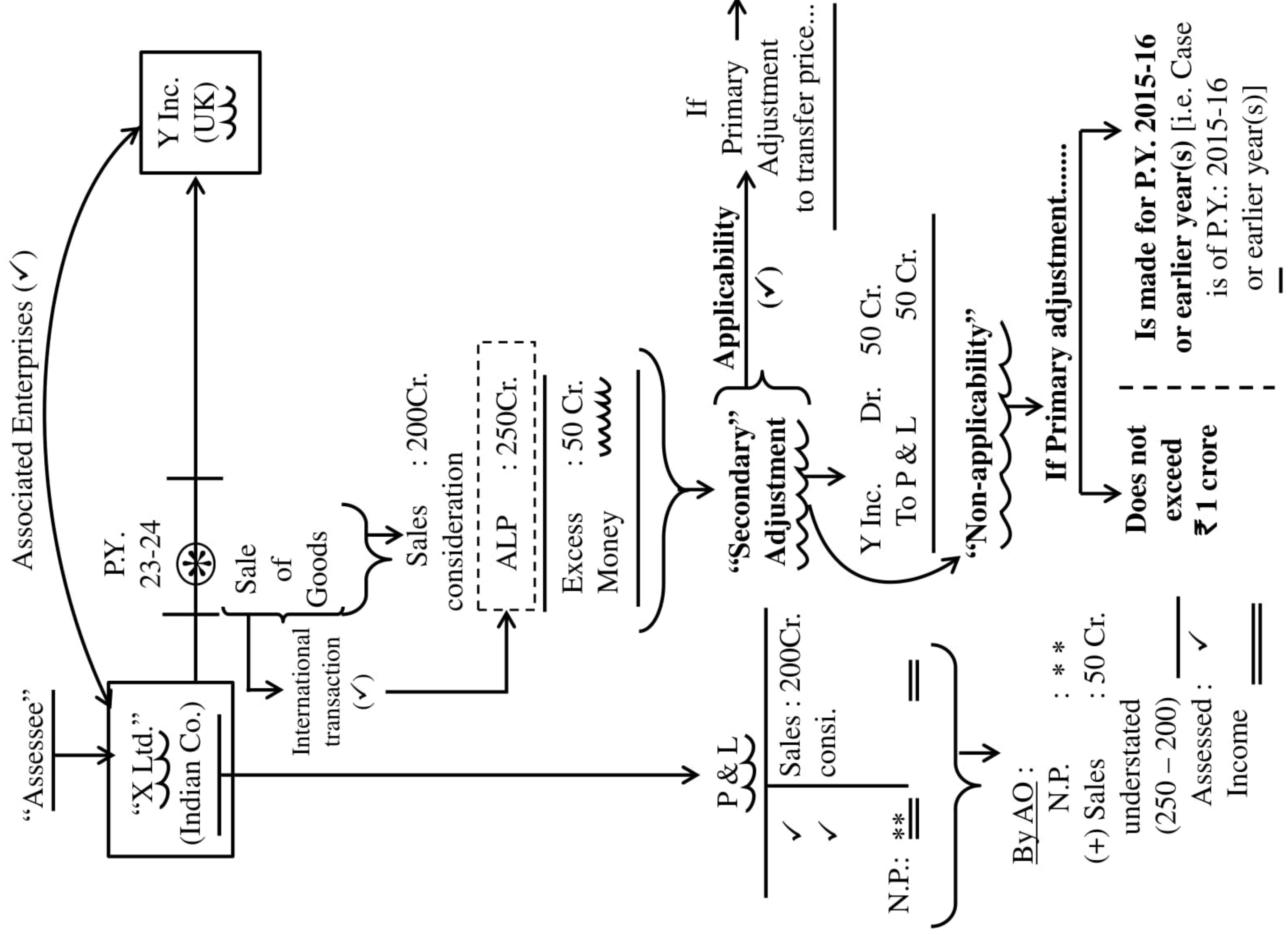
Combined effect of section 92D, 92E, 271AA, 271BA and section 271G:-

Obligations		Default	Penalty
<div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 5px; margin-right: 10px;">Assessee</div> <div style="border-left: 1px solid black; border-right: 1px solid black; padding: 10px; flex-grow: 1;"> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px; text-align: center;"> In relation to International transaction or specified domestic transaction </div> <div style="display: flex; align-items: center; margin-bottom: 10px;"> <div style="margin-right: 5px;">shall</div> <div style="border-left: 1px solid black; border-right: 1px solid black; padding: 5px; flex-grow: 1;"> <ul style="list-style-type: none"> → Keep & maintain prescribed information & documents (Except where aggregate value of transaction doesn't exceed ₹ 1Cr.) upto prescribed period viz. 8 years from the end of the relevant assessment year. → Furnish such information within 10 days from receipt of notice in this regard from AO/CIT(A). The AO / CIT(A) is also empowered to extend time (on request) by a further period not exceeding 30 days. </div> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px; text-align: center;"> Obtain and furnish a report from Chartered Accountant one month prior to the due date of ROI. Section 92 E </div> </div> </div>	<p>If fails to keep and maintain the same 271AA</p>	<p>2% of value such transaction</p>	
	<p>If fails to furnish such information 271G <small>(This may be levied by TPO also)</small></p>	<p>2% of value such transaction</p>	
	<p>Furnish incorrect information 271AA</p>		
	<p>If fails to furnish such report 271BA</p>	<p>₹ 1,00,000</p>	
	<p>Fails to report any transaction in such report 271AA</p>	<p>2% of value of such transaction</p>	
	<p>is constituent entity of an international group</p>	<p>shall</p> <ul style="list-style-type: none"> → Also keep and maintain prescribed information & documents in respect of the international group → Furnish prescribed information to prescribed authority upto prescribed date. 	<p>—</p>

Section 94A: Anti-Tax Avoidance Measures:



Section 92CE: Secondary Adjustment in certain international transactions:-



Section 92CE: Secondary adjustment in certain international transactions:-**Rule 10CB: Computation of interest income pursuant to secondary adjustments:-**

	Case	Excess money or part thereof must be repatriated to India with in <u>90 days</u> from:	Interest on the non-repatriated excess money or part thereof within the specified time limit, is chargeable from:
(i)	Where a primary adjustment to transfer price has been made suo-motu by the assessee in his ROI	<i>the due date of filing of ROI u/s 139(1)</i>	the due date of filing of ROI u/s 139(1)
(ii)	Where a primary adjustment to transfer price made by the Assessing Officer / Appellate Authority has been accepted by the assessee	<i>the date of the order of Assessing Officer / Appellate Authority</i>	the date of the order of Assessing Officer / Appellate Authority
(iii)	Where a primary adjustment to transfer price is determined by an advance pricing agreement entered into by assessee u/s 92CC		
	➤ If the APA has been entered into upto the due date of ROI for the relevant P.Y.	<i>the date of filing of ROI u/s 139(1)</i>	the due date of filing of ROI u/s 139(1)
	➤ If the APA has been entered into after the due date of filing of return for the relevant P.Y.	<i>the end of the month in which the APA has been entered into</i>	the end of the month in which the APA has been entered into
(iv)	Where assessee has exercised option as per the safe harbour rules u/s 92CB	<i>the due date of filing of ROI u/s 139(1)</i>	the due date of filing of ROI u/s 139(1)
(v)	Where a primary adjustment to transfer price is determined by a resolution arrived at under mutual agreement procedure under DTAA entered into u/s 90 or 90A.	<i>the date of giving effect by the A.O. under Rule 44H to such resolution</i>	the date of giving effect by the A.O. under Rule 44H to such resolution

In case of failure to repatriate the excess money with in the above time-limit, interest would be computed as follows:

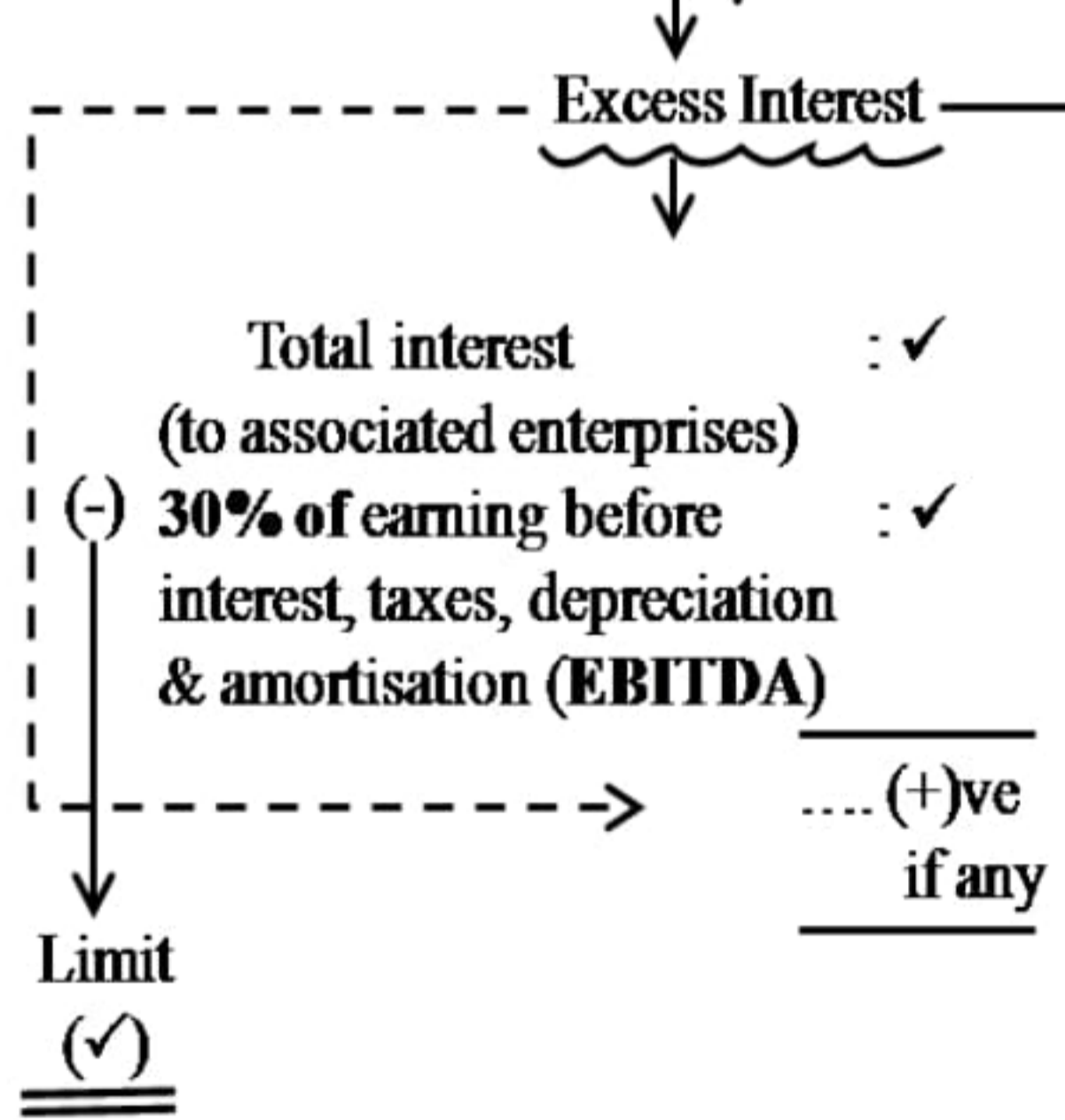
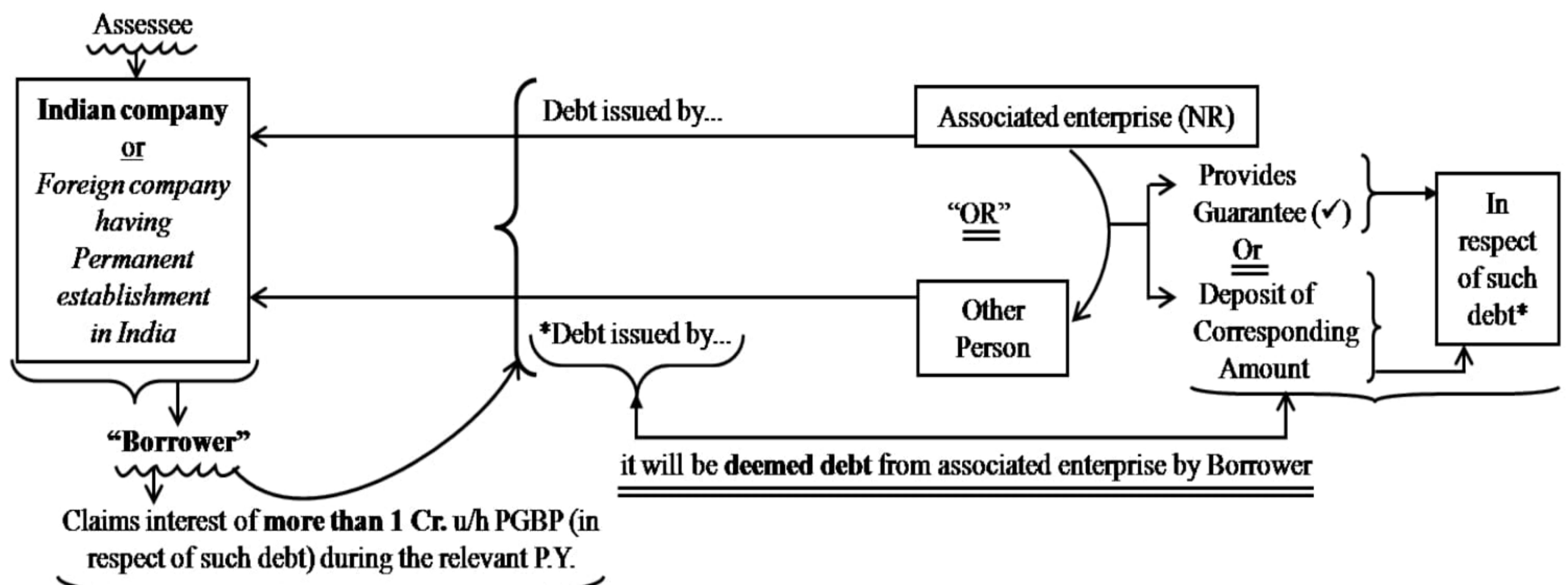
	Case	Rate
(i)	Where the international transaction is denominated in Indian rupee	At the one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year + 3.25% .
(ii)	Where the international transaction is denominated in foreign currency	At six month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year + 3.0% .

Scheme relating to one-time payment named as additional income-tax on excess money [sub-sections (2A) to (2D)]:

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- Where the excess money or part thereof has not been repatriated in prescribed time, the assessee may at his option pay additional income-tax at the rate of 18% (+12% surcharge + 4% HEC) on such excess money (or part thereof).
- If the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest after the date of payment of such tax.
It is needless to say here that he is required to make secondary adjustment pertaining to interest till the date of payment of additional tax.
- The tax so paid shall be the final payment of tax and no credit shall be allowed in respect of such tax.

Section 94B: Limitation on interest deduction in certain cases:-



Excess Interest shall be disallowed in Relevant P.Y. But can be carried forward upto next 8 years. (but will be allowed subject to Limit)

Section 94B Not apply on ...

- An Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.
- Interest paid in respect of a debt issued by a lender which is a PE of a non-resident, engaged in the business of banking in India.
- Non-banking financial companies as may be notified by the Central Government. [as inserted by Finance Act, 2023]
- Finance Company located in IFSC which satisfies such conditions and carries on such activities, as may be prescribed. [as inserted by Finance Act, 2024]