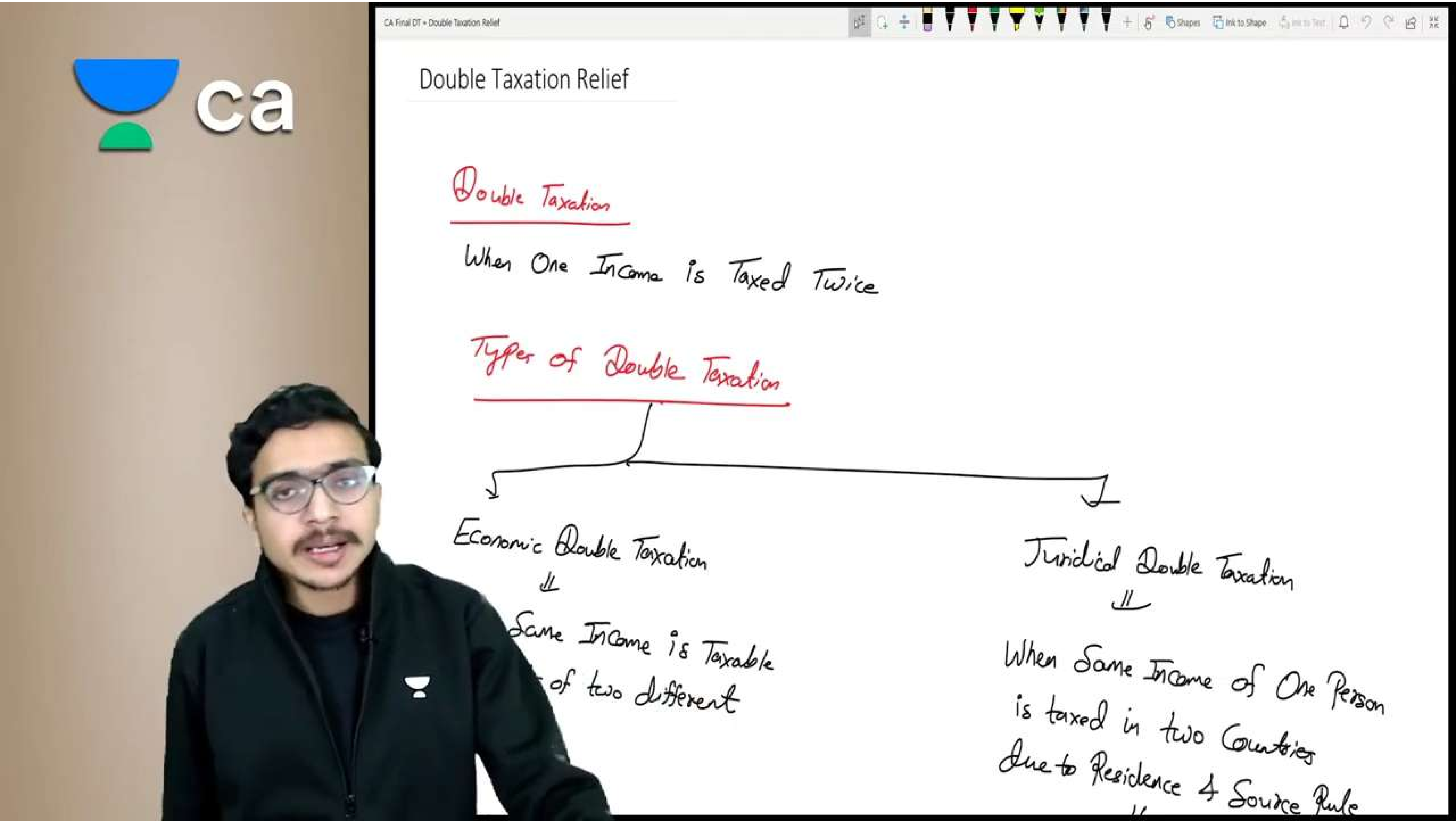
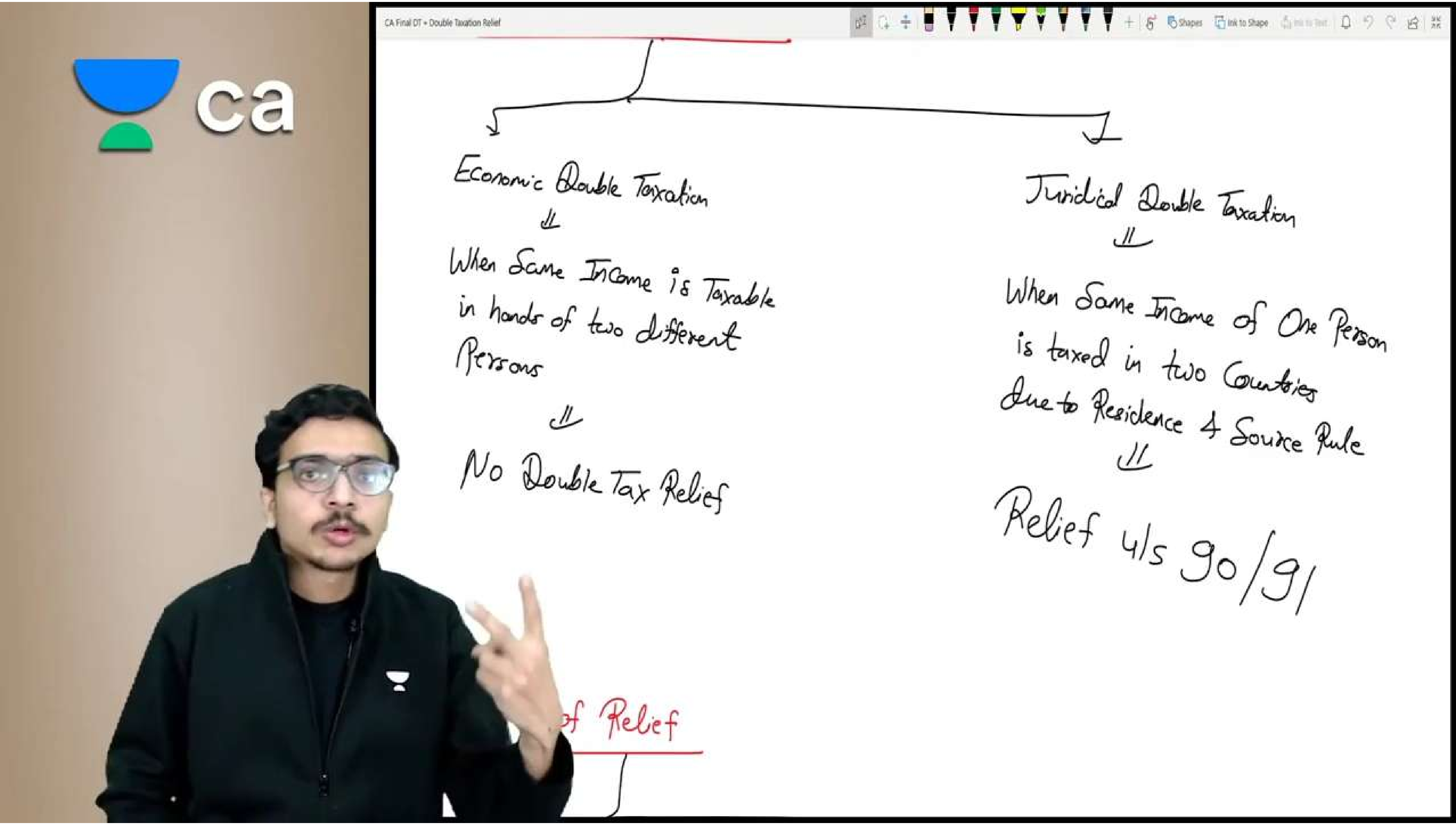

ca
CA Final DT - Double Taxation Relief
Shapes
Ink to Shape
Ink to Text
Double Taxation Relief
Double Taxation
When One Income is Taxed Twice
Types of Double Taxation
Economic Double Taxation
Same Income is Taxable
of two different
Juridical Double Taxation
When Same Income of One Person
is taxed in two Countries
due to Residence & Source Rule


CA Final DT - Double Taxation Relief
Economic Double Taxation
⇓
When Same Income is Taxable in hands of two different Persons
⇓
No Double Tax Relief
Juridical Double Taxation
⇓
When Same Income of One Person is taxed in two Countries due to Residence & Source Rule
⇓
Relief u/s 90/91
of Relief

CA Final DT • Double Taxation Relief

Types of Relief

Bilateral
⇓
Agreement (DTAA) → Tax Treaty | Tax Convention
⇓
Section 90

Unilateral
⇓
No Agreement
⇓
Section 91

Bilateral Relief

CA Final DT - Double Taxation Relief

Bilateral Relief

Exemption Method

Particular Income is Taxable only in One Country

Tax Credit Method

Income is Taxable in both Countries

But

Country of Residence gives Credit of Tax Charged in Source Country

Same as Sec 91

Double Taxation Avoidance Agreement [Section 90]

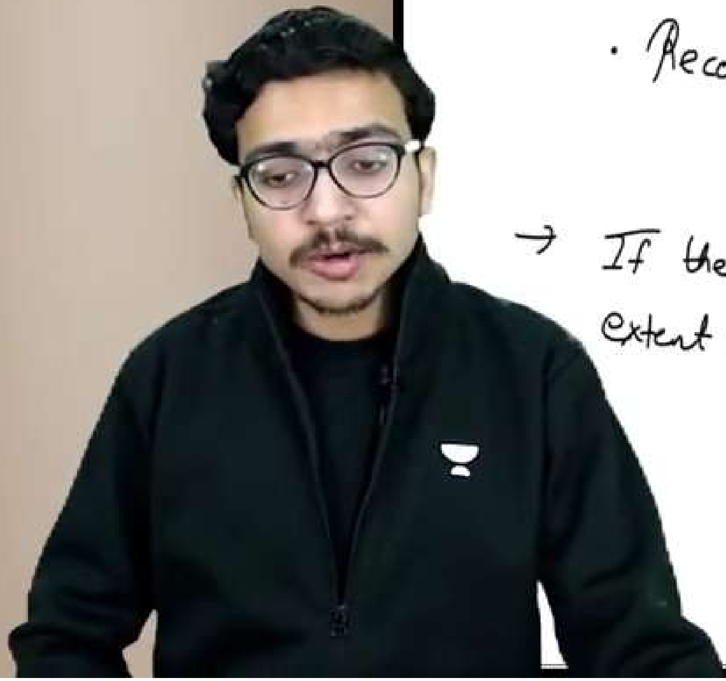
→ Central Government may enter into an agreement with Government of Foreign Country for:

- Avoidance of double taxation
- Exchange of Information
- Recovery of Income Tax

→ If there is DTAA, then DTAA Provisions will override Income Tax Act to the extent they are more beneficial to the Assessee

↓

Provisions of DTAA
or
Income Tax Act ...] ⇒ More Beneficial



→ If there is DTAA, then DTAA Provisions will override Income Tax Act to the extent they are more beneficial to the Assessee

⇓

Provisions of DTAA
or
Income Tax Act [except GAAR Provisions] ⇒ More Beneficial
⇓
Apply to Assessee

→ However, in respect of $\boxed{\text{Tax Rate}}$ of Foreign Company, the Rate shall not be treated as less favourable

⇓

In Other words, Beneficial Provision will not apply for Tax Rate of Foreign Company

CA Final DT » Double Taxation Relief

Double Taxation Avoidance Agreement [Section 90]

→ Central Government may enter into an agreement with Government of Foreign Country for:

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- Exchange of Information
- Recovery of Income Tax

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Provisions of DTAA

[Except GAAR Provision]

Apply to Assessee

→ However, in respect of $\boxed{\text{Tax Rate}}$ of Foreign Company, the Rate shall not be treated as less favourable

⇓

In other words, Beneficial Provision will not apply for Tax Rate of Foreign Company

→ Non Resident Can Claim relief under DTAA only after furnishing TRC [Tax Residency Certificate] along with following Information :

- Status
- Nationality
- Tax Identification Number (TIN)
- Period for which Residential Status is applicable
- Address outside India

In Other words, Beneficial Provision will not apply for Tax Rate of Foreign Company

→ Non Resident Can Claim relief under DTAA only after furnishing TRC [Tax Residency Certificate] along with following Information:

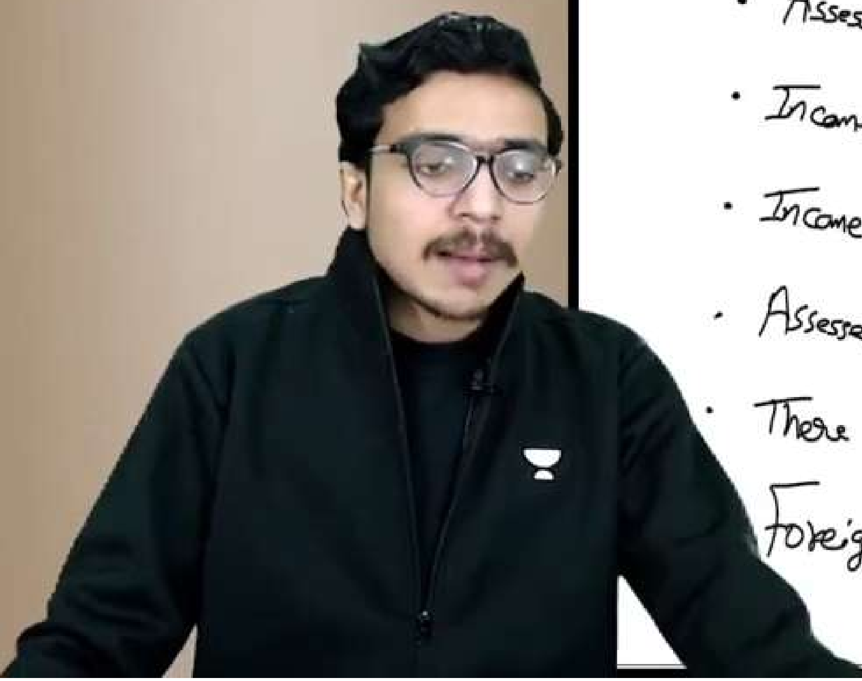
- Status
- Nationality
- Tax Identification Number (TIN)
- Period for which Residential Status is applicable
- Address outside India

Unilateral Relief [Section 91]

Unilateral Relief [Section 91]

→ Assessee would be granted relief u/s 91, if following all Conditions are fulfilled :

- Assessee is **Resident** in India during PY
- Income earned/arise Outside India
- Income Subject to Tax in Foreign Country
- Assessee has Paid Tax on Such Income in Foreign Country
- There is **No Agreement** of Relief u/s 90 between India & Such Foreign Country



→ **Computation of Relief & Net Tax Payable**

First, Compute Total Income

Indian Income	XX
Foreign Income	XX
Gross Total Income	XX
(–) Deductions under Chapter VI-A	(XX)
Total Income	XX
Total Tax in India	XX

Including ... (specify)

CA Final DT – Double Taxation Relief

Indian Income	xx
Foreign Income	xx
Gross Total Income	xx
(–) Deductions under Chapter VI-A	(xx)
Total Income	xx
Total Tax in India	xx
(–) Relief u/s 91 [WN]	(xx)
Net Tax Payable	xx

Including Surcharge (if any) & Cess

→ Given by way of Deduction from Indian Tax Payable

CA Final DT - Double Taxation Relief

Payable

XX

Tax Payable

W.N.

Relief u/s 91

Doubly Taxed Income × $\left.\begin{array}{c}\text{Indian Rate} \\ \text{or} \\ \text{Foreign Rate}\end{array}\right] \Rightarrow$ Lower

Doubly Taxed Income = Income which is taxable in Both Countries [Net of Special Deductions & Loss of Foreign Country setoff]

$$\text{Indian Rate} = \frac{\text{Total Tax in India}}{\text{Total Income}} \times 100$$

Doubly Taxed Income $\times$ Indian Rate or Foreign Rate $\Rightarrow$ Lower

Doubly Taxed Income = Income which is taxable in Both Countries [Net of Special Deductions & loss of Foreign Country setoff]

$$\text{Indian Rate} = \frac{\text{Total Tax in India}}{\text{Total Income}} \times 100$$

$$\text{Foreign Rate} = \frac{\text{Foreign Tax}}{\text{Foreign Income}} \times 100$$

CA Final DT + Double Taxation Relief

If Income is from more than 1 Foreign Country

→ Calculate relief Separately for each Foreign Country Income

⇓

- Calculate Foreign Rate Separately
- Calculate Doubly Taxed Income Separately

→ Calculate Total Relief by adding all

Important Deductions under Chapter VI-A for Double Tax Relief Questions

- 80C

CA Final DT » Double Taxation Relief

by adding all

Important Deduction under Chapter VI-A for Double Tax Relief Question

- 80C
- 80CCC
- 80D
- 80QQB
- 80TTA
- 80TTB

Permanent Establishment [PE]

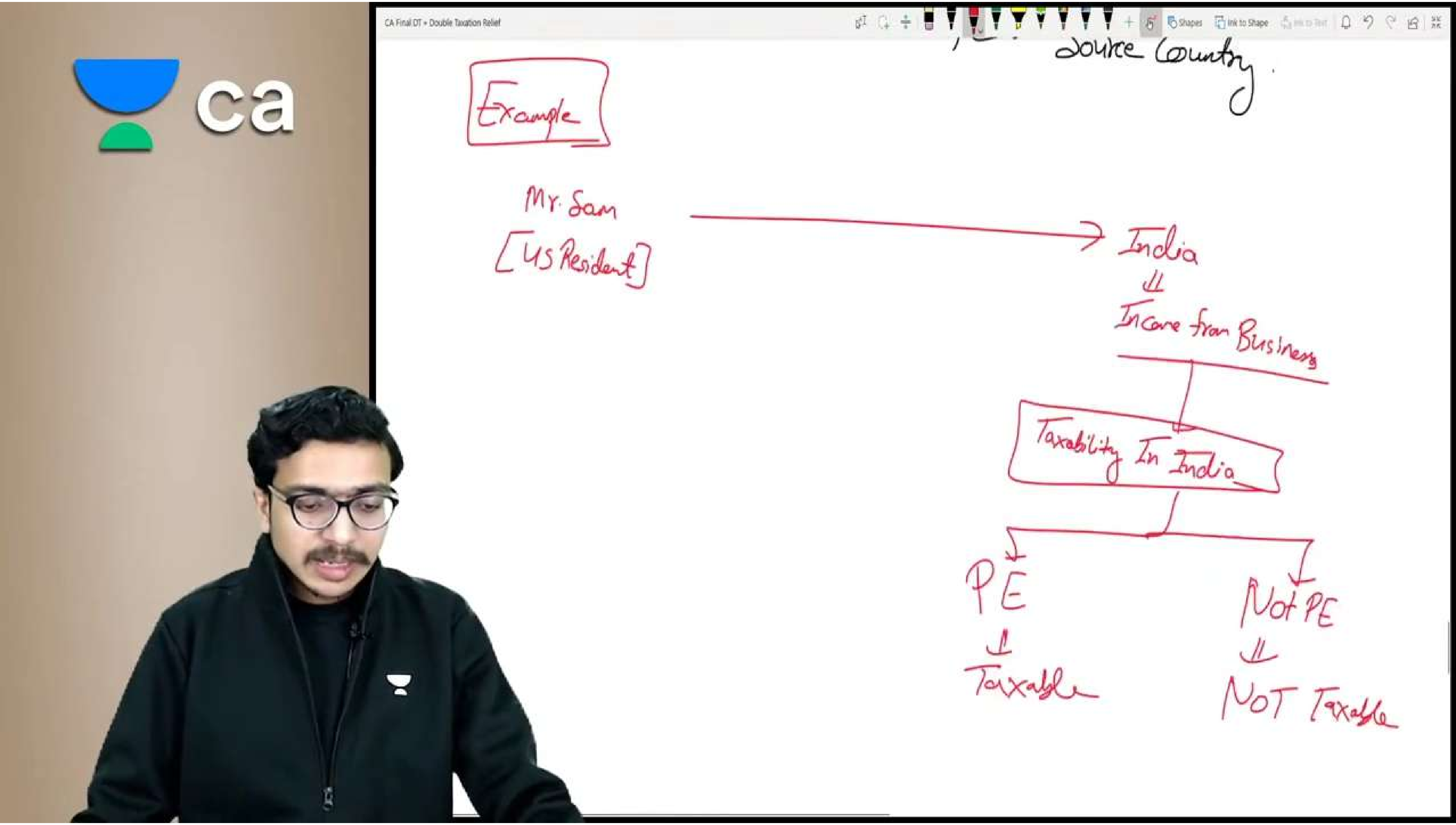
CA Final DT – Double Taxation Relief

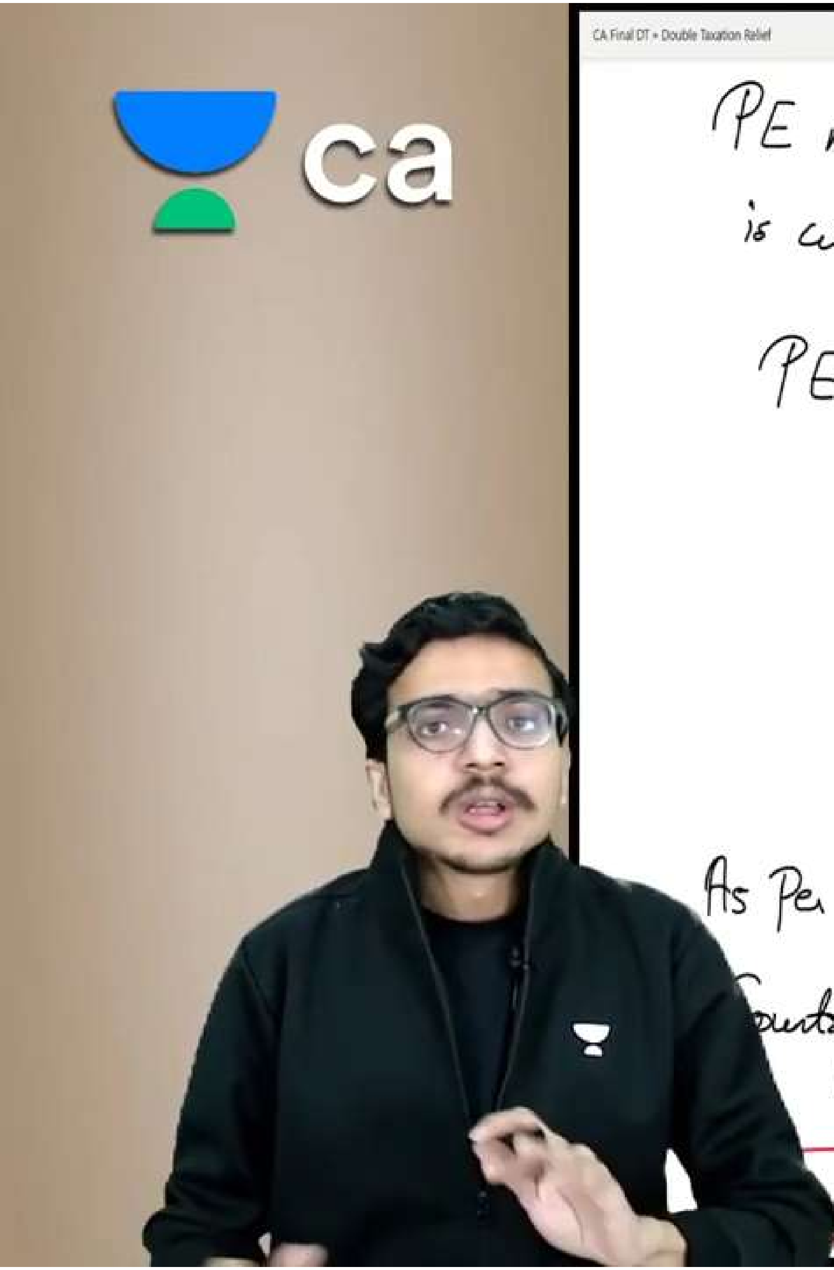
- 80TTB

Permanent Establishment [PE]

PE means a Fixed Place of Business through which Business of Enterprise is wholly or Partly Carried on

PE Includes
- → Branch
- → Office
- → Factory
- → workshop
- → Sales Outlet
- → Place of Extraction of Natural Resources


CA Final DT » Double Taxation Relief
Shapes
Ink to Shape
Ink to Text
Source Country
Example
Mr. Sam
[US Resident]
India
Income from Business
Taxability In India
PE
Taxable
Not PE
NOT Taxable



PE means a Fixed Place of Business through which Business of Enterprise is wholly or Partly Carried on

PE Includes
- → Branch
- → Office
- → Factory
- → workshop
- → Sales Outlet
- → Place of Extraction of Natural Resources

As Per DTAA, Business Income of Person will be taxable in Source ountry only if Such Person has PE in Source Country.

ple

Transfer Pricing

Nestle Group → MNC

Nestle Swiss Ltd.
[Switzerland]
⇓
Low Tax / No Tax / Tax heaven Country
[Tax Rate 5%]

Sale of Chocolates →
Transaction
⇓
Rs 10,00,000
→ Market Price / Fair Price = 3,00,000
⇓
ALP
⇓
$\boxed{\text{Market Price / Fair Price}}$

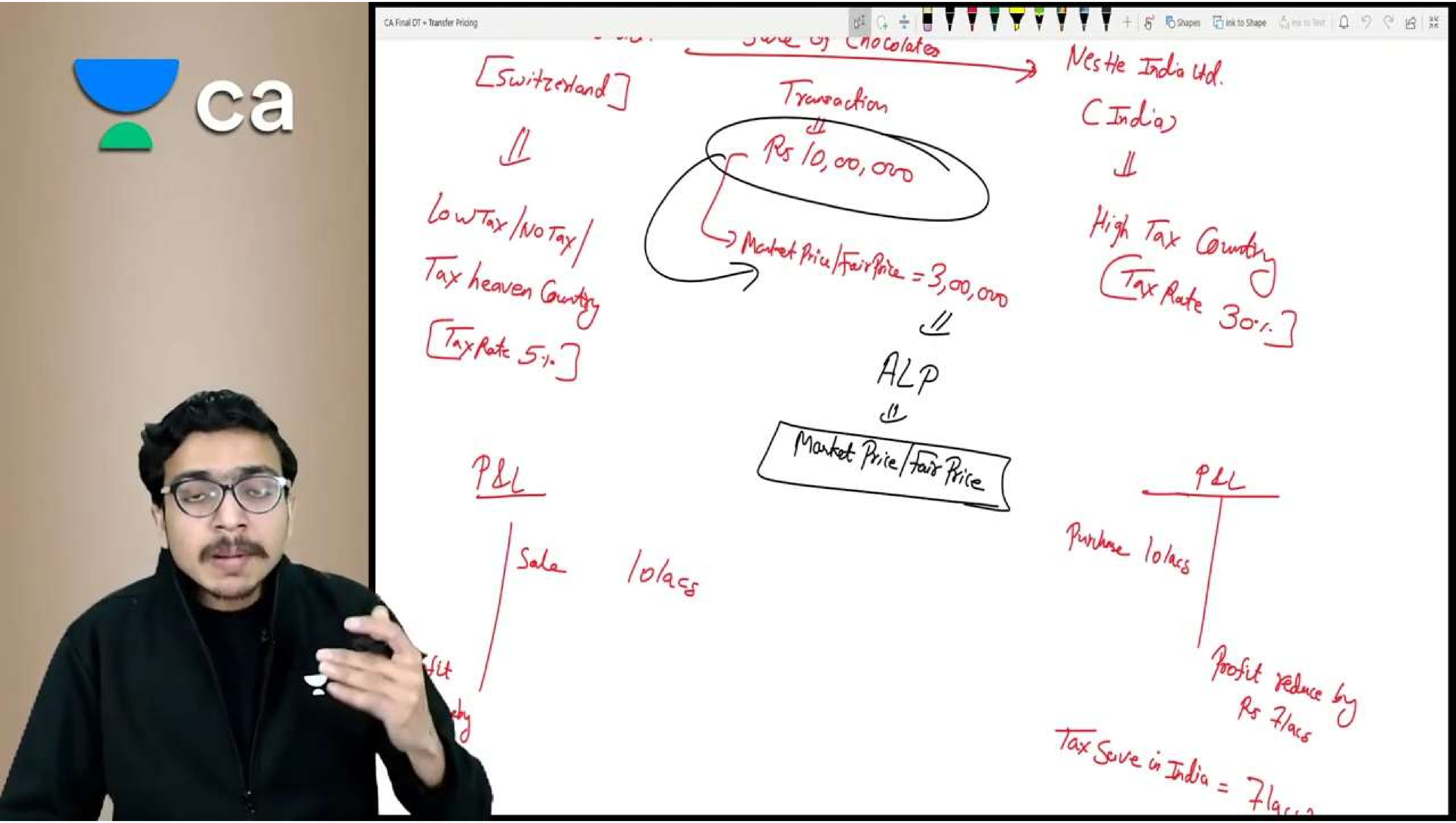
Nestle India Ltd.
(India)
⇓
High Tax Country
(Tax Rate 30%)

P&L

| Sale 10l

P&L

Purchase 10lacs |



ca
CA Final DT » Transfer Pricing
Shapes
Ink to Shape
Sale of Chocolates
[Switzerland]
Transaction
Nestle India Ltd.
(India)
Rs 10,00,000
Low Tax/No Tax/
Tax heaven Country
[Tax Rate 5%]
Market Price/Fair Price = 3,00,000
High Tax Country
(Tax Rate 30%)
ALP
Market Price/Fair Price
P&L
Sale 10lacs
P&L
Purchase 10lacs
Profit reduce by Rs 7lacs
Tax Save in India = 7lac

CA Final DT - Transfer Pricing

Sale of Chocolates

[Switzerland] → Nestle India Ltd. (India)

⇓

Low Tax / No Tax / Tax heaven Country

[Tax Rate 5%]

Transaction

⇓

Rs 10,00,000

Market Price / Fair Price = 3,00,000

⇓

ALP

⇓

$\boxed{\text{Market Price / Fair Price}}$

(India)

⇓

High Tax Country

(Tax Rate 30%)

P&L

Sale 10lacs

Profit Increase by 7lacs

P&L

Purchase 10lacs

Profit reduce by Rs 7lacs

Tax Save in India = 7lacs

Market Price/Fair Price

P&L

Sale 10lacs

3lac

Profit Increase by 7lacs

P&L

Purchase 10lacs

Profit reduce by Rs 7lacs

Tax Save in India = 7lacs X 30%

= $\boxed{2,10,000}$

Extra Tax in Switzerland

⇒ 7lacs X 5% = $\boxed{35,000}$

Net Benefit to Group

2,10,000 - 35,000 = $\boxed{1,75,000}$

CA Final DT – Transfer Pricing

Charging Section [Section 92]

Associate Enterprise [AE] — [Sec. 92A]

↓

International Transaction — [Sec. 92B]

↓

Arm's length Price [ALP] — [Sec. 92C]

CA Final DT » Transfer Pricing

Associate Enterprise [Section 92A]

Enterprise : Means any Person engaged in any Business Activity

Two Enterprise are deemed to be Associate Enterprise if :

(1) One Enterprise holds 26% or more Voting Power in Other Enterprise

A Ltd $\xrightarrow[\text{eg. Share Capital}]{\text{26\% or more}}$ B Ltd

$\boxed{A \& B}$ ⇓ AE

(2) Any Person holds 26...

... Power in Other Enterprise

$$\text{A Ltd} \xrightarrow[\text{e.g. Share Capital}]{\text{26\% or more}} \text{B Ltd}$$

$\boxed{\text{A\&B}} \Rightarrow$ AE

② Any Person holds 26% or More Voting Power in each of two Enterprise

$$\begin{array}{l} \text{A Ltd} \xrightarrow{\text{26\% or more}} \text{B Ltd} \\ \text{A Ltd} \xrightarrow{\text{26\% or more}} \text{C Ltd} \\ \text{B Ltd} \leftrightarrow \text{C Ltd} : \text{AE} \end{array}$$

$\boxed{\text{A\&B} \quad \text{A\&C}} \Rightarrow$ AE [Point ①]

$\boxed{\text{B\&C}}$ = AE [Point ②]

③ Loan Advanced by One Enterprise Constitutes 51% or more of Book Value of Total Assets of Other Enterprise

$$\begin{tikzcd} \text{A Ltd} \arrow[r, "26\% \text{ or more}"] \arrow[dr, "26\% \text{ or more}"'] & \text{B Ltd} \arrow[d, leftrightarrow, "AE"] \\ & \text{C Ltd.} \end{tikzcd}$$

$\boxed{\begin{array}{c} A\&B \\ A\&C \end{array}} \Rightarrow AE$ [Point (1)]

$\boxed{B\&C} = AE$ [Point (2)]

(3) Loan Advanced by One Enterprise Constitutes 51% or more of Book Value of Total Assets of Other Enterprise

$$\text{A Ltd} \xrightarrow{\text{Loan}} \text{B Ltd.}$$

Loan
||
Rs 51 Crore or more

B Ltd.
||
Book value of Total Assets = Rs 100 Crore

$\boxed{A\&B} = AE$

(4) One Enterprise guarantees ...

... Assets of Other Enterprise ... Book Value

A Ltd $\xrightarrow{\text{Loan}}$ B Ltd.

Loan ⇓ Rs 51 Crore or more

B Ltd. ⇓ Book value of Total Assets = Rs 100 Crore

$\boxed{A \& B}$ = AE

(4) One Enterprise guarantees 10% or more of Total Borrowing of Other Enterprise

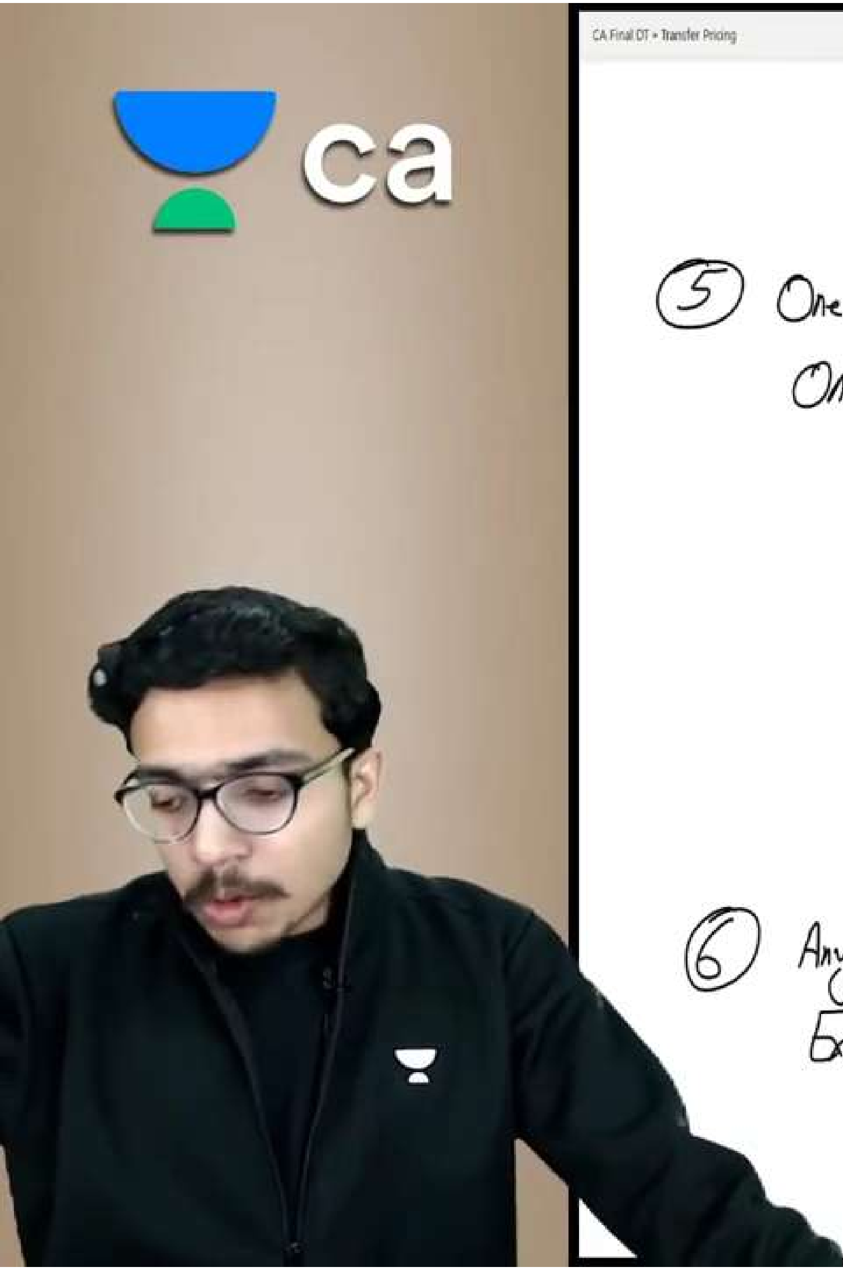
A Ltd ⟶ B Ltd

⇓ Rs 10 Crore or more Guarantee

B Ltd ⇓ Total Borrowing = Rs 100 Crore

$\boxed{A \& B}$ = AE

(5) ... Enterprise appoint ...



CA Final DT » Transfer Pricing

...antee ...owing = Rs 100 Crore

$\boxed{A \& B}$ = AE

⑤ One Enterprise appoints More than half of Board of Directors Or at least One Executive Director of Other Enterprise

A Ltd → B Ltd

⇓

Appointed by A Ltd.

⇓

5 or more

(Total BOD = 9)

$\boxed{A \& B}$ = AE

⑥ Any Person appoints more than half of Board of directors or at least One Executive Director of each of two Enterprise

A Ltd. → B Ltd [Total BOD = 10]

CA Final DT + Transfer Pricing

$\boxed{A\&B} = AE$

(6) Any Person appoints more than half of Board of directors or at least One Executive Director of each of two Enterprise

A Ltd. → B Ltd [Total BOD = 10, Appointed by A = 6]

↕ AE

A Ltd. → C Ltd. [Total BOD = 8, Appointed by A = 5]

$\boxed{\begin{matrix} A\&B \\ A\&C \end{matrix}}$ = AE [Point (5)]

$\boxed{B\&C}$ = AE [Point (6)]

(7) Manufacturing or Processing of One Enterprise is wholly dependent on Intangible Asset [Knowhow, Patent, Copyright, Secret

CA Final DT - Transfer Pricing

A & B
A & C = AE [Point 5]

B & C = AE [Point 6]

(7) Manufacturing or Processing of One Enterprise is wholly dependent on Intangible Asset [Knowhow, Patent, Copyright, Secret Formula etc.] of Other Enterprise

A Ltd ——— B Ltd.

Manufacturing → Dependent on B Ltd.
Secret Formula

A & B = AE

(8) 90% or more Raw Material / Consumable requirement of One Enterprise is Supplied by Other Enterprise $\boxed{\text{and}}$ Price & Terms decided by such Other Enterprise

A Ltd ← B Ltd

CA Final DT - Transfer Pricing

B Ltd.

Manufacturing → Dependent on B Ltd.

Secret Formula

$\boxed{A \& B}$ = AE

(8) 90% or more Raw Material/Consumable requirement of One Enterprise is Supplied by Other Enterprise $\boxed{\text{and}}$ Price & Terms decided by Such Other Enterprise

A Ltd. ← B Ltd.

[RM Requirement
↓
Rs 10 Crores]

Supply 9 Cr. or more RM
and
Price & Terms decided by B Ltd.

$\boxed{A \& B}$ = AE

Goods Manufactured by One Enterprise is Sold to Other Enterprise $\boxed{\text{and}}$ Price & Term decided by Such Other Enterprise

Rs 20 crores]

and
Price & Terms decided by B Ltd. $\boxed{A \& B}$ = AE

(9) Goods Manufactured by One Enterprise is Sold to Other Enterprise $\boxed{\text{and}}$ Price & Term decided by Such Other Enterprise

$$\text{A Ltd} \xrightarrow[\text{Sold Goods to B}]{} \text{B Ltd}$$

⇓

Price & Terms decided by B Ltd. $\boxed{A \& B}$ = AE

(10) If One Enterprise is Controlled by an Individual, Other Enterprise is Controlled by Individual or his relative or Jointly

Mr X

Mr X / ...

Sold Goods to B

⇓

Price & Terms decided by B Ltd. $\boxed{A \& B} = AE$

(10) If One Enterprise is Controlled by an Individual, Other Enterprise is Controlled by Individual or his relative or Jointly

Mr X	Mr X / Mr y [Relative of X] / Jointly
↓ [Control]	↓ Control
A Ltd.	B Ltd.

A Ltd. $\xleftrightarrow{AE}$ B Ltd.

$\boxed{A \& B} = AE$

(11) If One Enterprise is Controlled by HUF, Other Enterprise is Controlled

Control

$$\text{A Ltd.} \xleftrightarrow{\text{AE}} \text{B Ltd.}$$

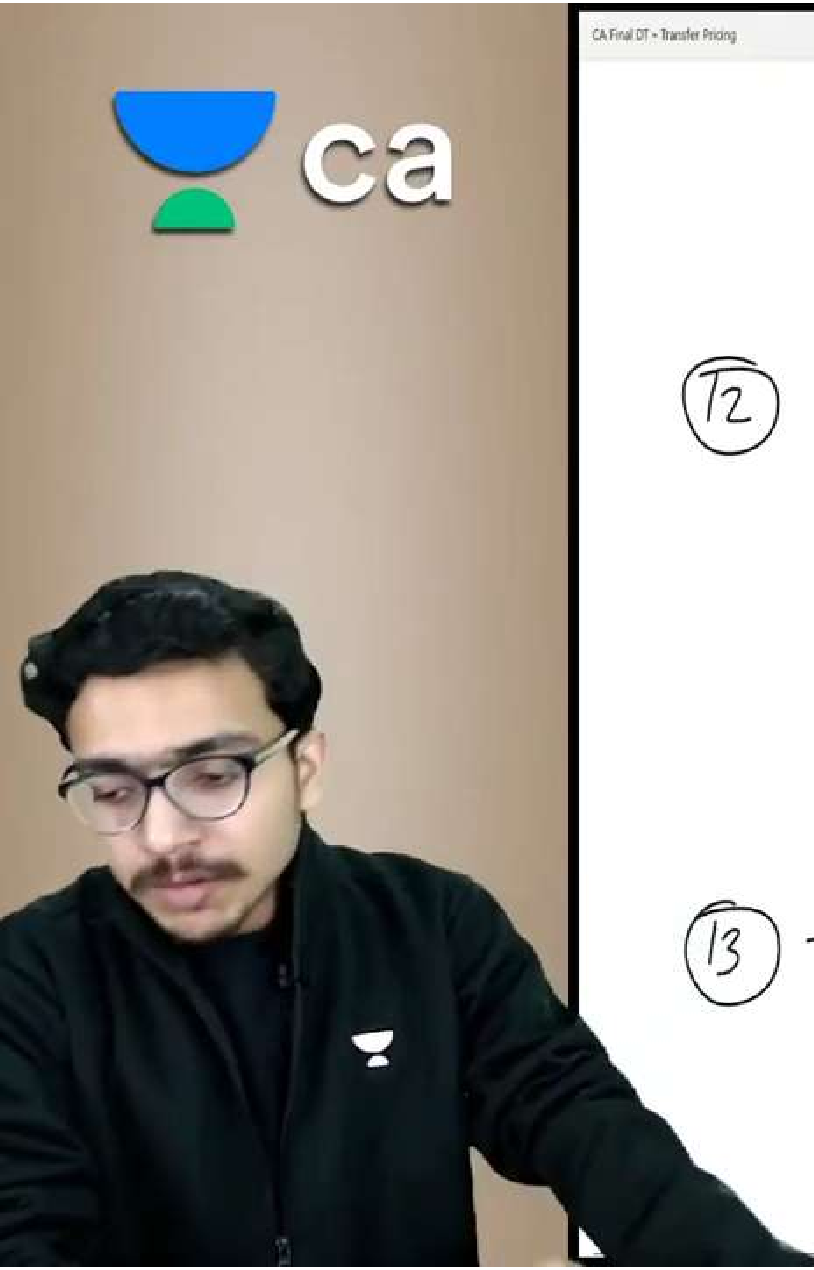
$\boxed{A\&B} = AE$

(11) If One Enterprise is Controlled by HUF, Other Enterprise is Controlled by member of HUF or Relative of member or Jointly

$$\begin{tikzcd}
\text{HUF} \arrow[d, "\text{Control}"] & \text{Member / Relative of member / Jointly} \arrow[d, "\text{Control}"] \\
\text{A Ltd} \arrow[r, leftrightarrow, "\text{AE}"'] & \text{B Ltd.}
\end{tikzcd}$$

$\boxed{A\&B} = AE$

(12) If One Enterprise is Firm / AOP / BOI, Other Enterprise holds atleast



CA Final DT - Transfer Pricing

Control

A Ltd $\xleftrightarrow{\text{AE}}$ B Ltd. $\boxed{\text{A\&B}}$ = AE

(12) If One Enterprise is Firm / AOP / BOI, Other Enterprise holds atleast 10% Profit Share Ratio [PSR] in Such Enterprise

ABC Associate [Firm] $\xrightarrow{50\%}$ A [AE]

ABC Associate [Firm] $\xrightarrow{45\%}$ B [AE]

ABC Associate [Firm] $\xrightarrow{5\%}$ C X

(13) There exist any relationship of mutual Interest between two Enterprise

eg. → Joint Venture

CA Final DT > Transfer Pricing

International Transaction [Section 92B]

→ It means a transaction between Two or More Associate Enterprise in which at least 1 Shall be Non Resident.

AE ⟷ AE

R ⟷ NR ✓

R ⟷ R ✗

NR ⟷ NR ✓

→ Such Transaction should be in the nature of :

- Purchase, Sale or lease of Property
- Provision of Service
- lending or B...

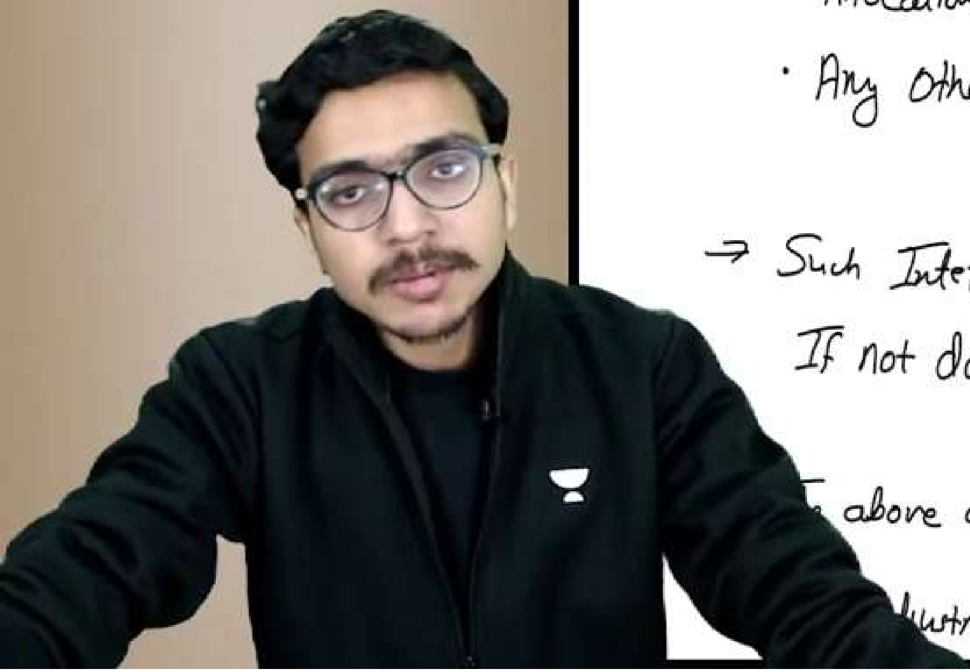
→ Such Transaction should be in the nature of :

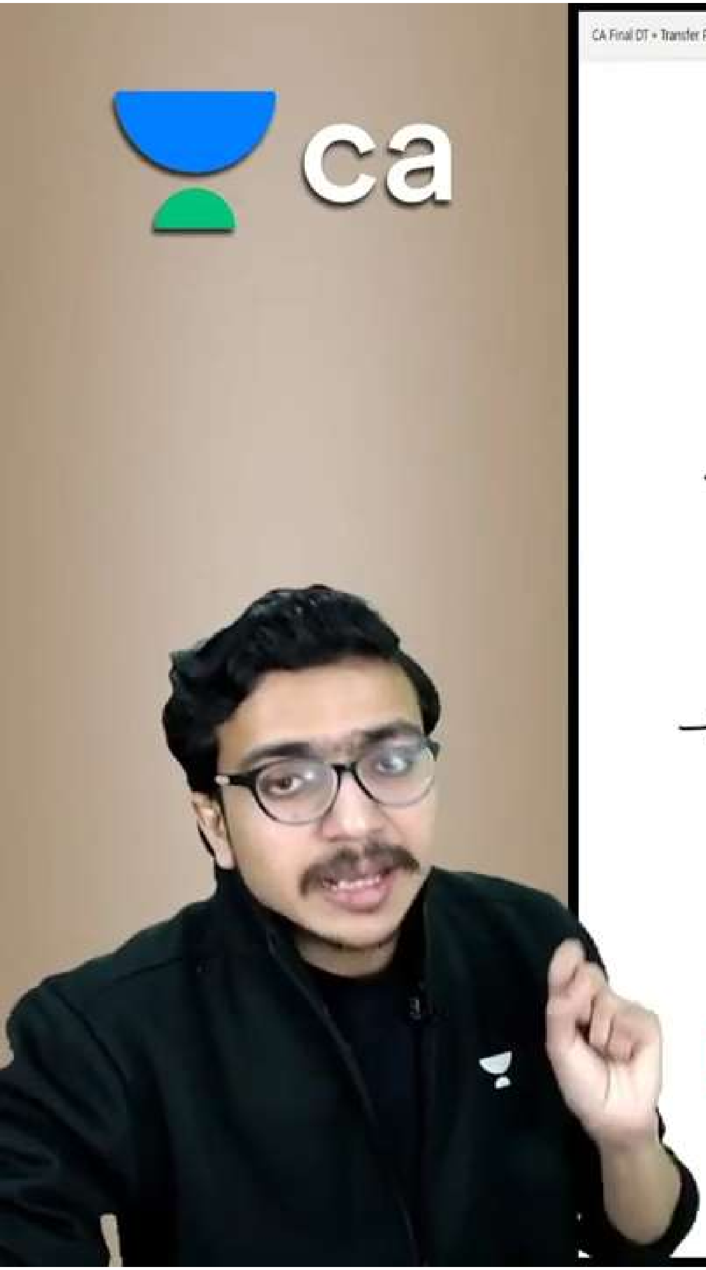
- Purchase, Sale or lease of Property
- Provision of Service
- lending or Borrowing of Money
- Allocation of Cost or Expense
- Any Other Transaction which effects Profit

→ Such International Transaction must be done at Arm' length Price [ALP],
If not done at ALP, it requires adjustment of Income ⇒ Primary Adjustment

... above adjustment shall either result in Increase in Income of Assessee.

...justment results in decrease in Income of A...





- Provision of Service
- lending or Borrowing of Money
- Allocation of Cost or Expense
- Any Other Transaction which effects Profit

→ Such International Transaction must be done at Arm' length Price [ALP], If not done at ALP, it requires adjustment of Income ⇒ Primary Adjustment

→ The above adjustment shall either result in Increase in Income of Assessee. If Adjustment results in decrease in Income of Assesee, Transfer Pricing Provisions shall not apply → Ignore Such Adjustment

Example

Nestle India Ltd. ⇒ Total Income before T/P Adjustment = Rs 50 lacs

Example

Nestle India Ltd. ⇒ Total Income before TP Adjustment = Rs 50 lacs

Case I

Nestle India [AE] —Sale @ Rs 8,00,000→ Nestle US [AE]

ALP = 14,00,000

TI before TP Adjustment	50 lacs
(+) Increase in Income due to TP Adjustment (14 - 8)	6 lacs
	56 lacs

Case II

Nestle India [AE] —Sale @ Rs 20,00,000→ Nestle US [AE]

ALP = 16,00,000

TI before TP Adjustment	50 lacs
TP Adjustment (16 - 20)	—
	50 lacs

⇓

Ignore

Since it results in decrease in Income of Assessee

Deemed International Transaction [Section 92B(2)]

If Transaction entered into by Enterprise with third Person [Not AE]

and

There exist a Prior Agreement between third Person & AE of Such Enterprise

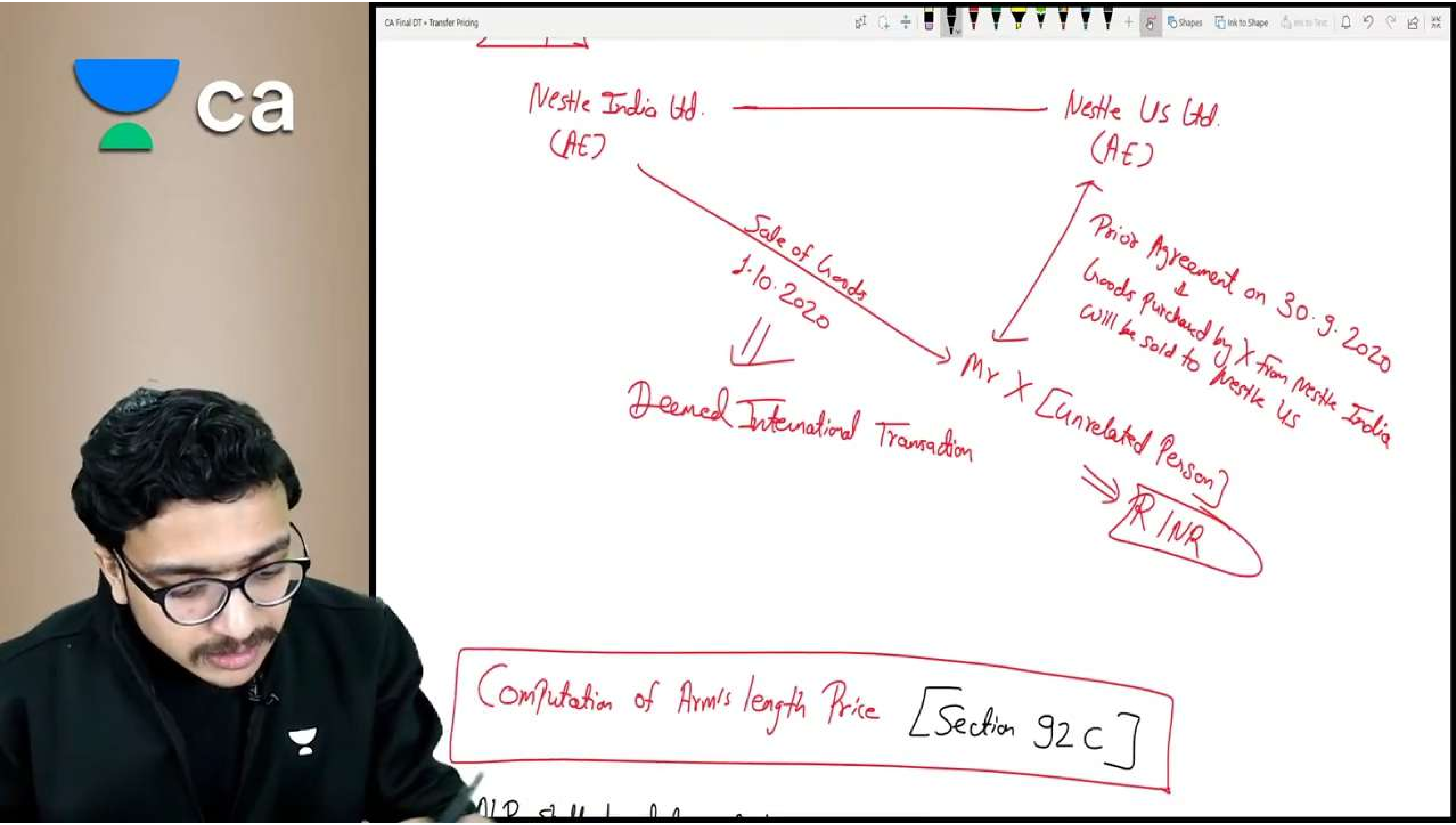
⇓

Such Transaction between Enterprise & third Person Shall be deemed as International Transaction

[whether Such Third Person is Resident or Non Resident]

Example

Nestle India Ltd. (AE) —— Nestle US Ltd. (AE)


CA Final DT + Transfer Pricing
Nestle India Ltd.
(AE)
Nestle US Ltd.
(AE)
Sale of Goods
1.10.2020
Deemed International Transaction
Prior Agreement on 30.9.2020
&
Goods Purchased by X from Nestle India
Will be sold to Nestle US
Mr X [Unrelated Person]
R INR
Computation of Arm's length Price [Section 92C]

CA Final DT » Transfer Pricing

Computation of Arm's length Price [Section 92C]

ALP shall be determined by any of the following Methods:

1. Comparable Uncontrolled Price Method [CUP]
2. Resale Price Method [RPM]
3. Cost Plus Method [CPM]
4. Profit Split Method [PSM]
5. Transactional Net Margin Method [TNMM]

Most Appropriate Method shall be Selected

Comparable Uncontrolled Price Method [CUP]

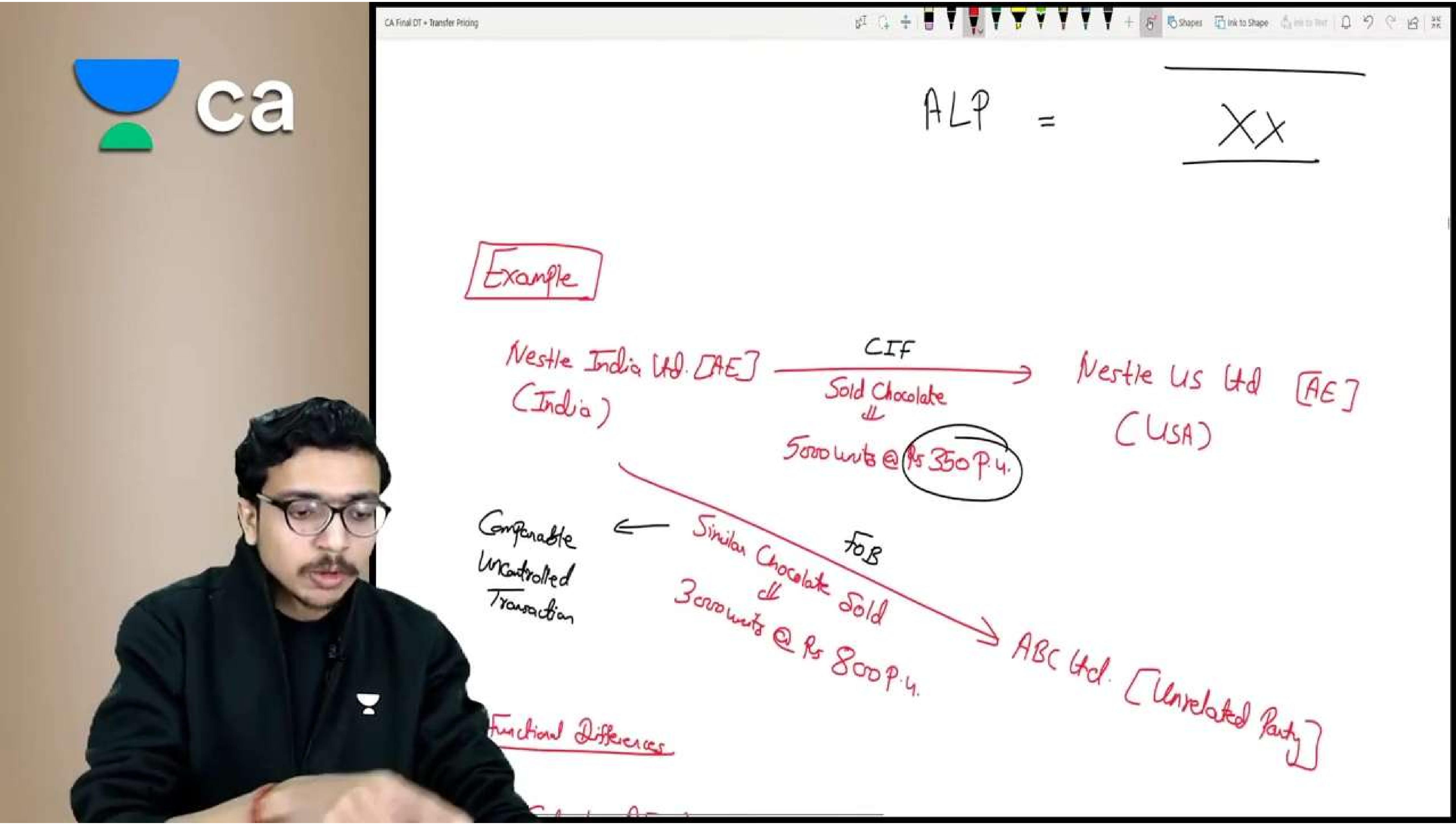
Compare transaction with AE with Similar Uncontrolled Transaction [i.e. Similar Transaction with Outsiders | Unrelated]

$\boxed{\text{Calculation of ALP}}$

Price Charged | Paid in Comparable Uncontrolled Transaction XY

(±) Functional Difference Adjustment

- → FOB & CIF
- → Warranty
- → Quantity Discount


ca
CA Final DT » Transfer Pricing
Shapes
Ink to Shape
ALP = XX
Example
Nestle India Ltd. [AE]
(India)
CIF
Sold Chocolate
5000 units @ Rs 350 P.u.
Nestle US Ltd [AE]
(USA)
Comparable
Uncontrolled
Transaction
Similar Chocolate Sold
3000 units @ Rs 800 P.u.
FOB
ABC Ltd. [Unrelated Party]
Functional Differences

... Transaction [i.e. Similar Transaction with Outsiders / Unrelated]

Calculation of ALP

Price Charged / Paid in Comparable Uncontrolled Transaction	XX
(±) Functional Difference Adjustment	XX
→ FOB & CIF	
→ Warranty	
→ Quantity Discount	
ALP =	XX

= Rs 800 p.u.   ABC Ltd. [Unrelated Party]

Functional Differences

① Sale to AE is on CIF basis, while Sale to ABC Ltd. is on FOB.
Insurance & Freight Cost = Rs 40 p.u.

$\boxed{\text{CIF}}$ to AE
⇓
Insurance & Freight Cost bear by Seller
⇓
Nestle India Ltd.

$\boxed{\text{FOB}}$ to ABC Ltd.
⇓
Insurance & Freight Cost bear by Buyer
⇓
ABC Ltd.

② Nestle India Ltd. gives Warranty to AE for <u>6 months</u> but not to ABC Ltd. Cost of warranty = Rs 70 p.u. per <u>annum</u>

CA Final DT » Transfer Pricing

→ FOB & CIF
→ Warranty
→ Quantity Discount

$$ALP = \frac{XX}{\underline{XX}}$$

$\boxed{FOB}$ ⇓ I/F Buyer

$\boxed{CIF}$ ⇓ Seller

$\boxed{\text{Example}}$

Nestle India Ltd. [AE] (India) $\xrightarrow{CIF}$ Nestle US Ltd [AE] (USA)

Sold Chocolate
⇓
5000 units @ Rs 350 P.u.

Comparable Uncontrolled ← Similar Choc... FOB

CA Final DT – Transfer Pricing

Insurance & Freight Cost = Rs 40 p.u.

CIF to AE

⇓

Insurance & Freight Cost bear by Seller

⇓

Nestle India Ltd.

FOB to ABC Ltd.

⇓

Insurance & Freight Cost bear by Buyer

⇓

ABC Ltd.

(2) Nestle India Ltd. gives Warranty to AE for 6 months but not to ABC Ltd. Cost of warranty = Rs 70 p.u. per annum

(3) Since Sales to AE is high in Quantity, Discount of Rs 60 p.u. is to be given

Solution

... Transaction [i.e. Similar Transaction with Outsiders/Unrelated]

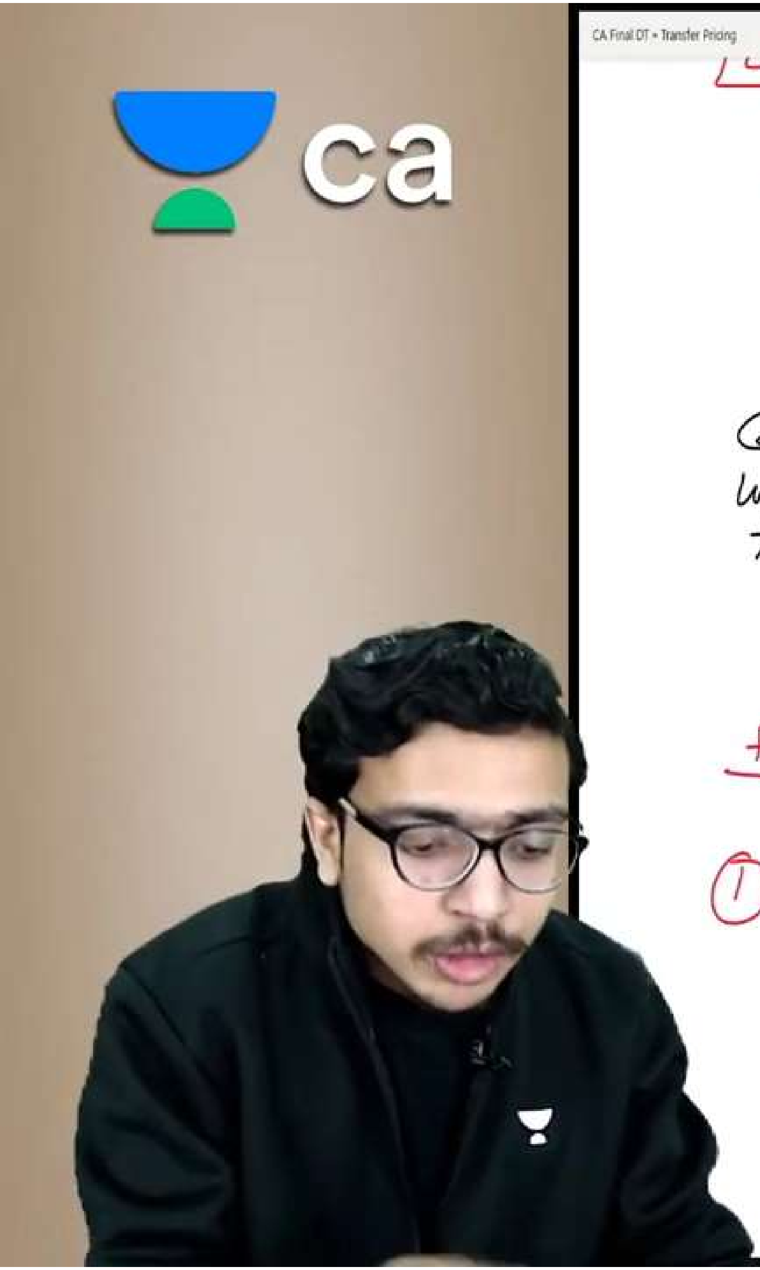
$\boxed{\text{Calculation of ALP}}$

Price Charged/Paid in Comparable Uncontrolled Transaction — 800 — XX

(±) Functional Difference Adjustment

- → FOB & CIF — +40
- → Warranty — $\left(70 \times \frac{6}{12}\right)$ — +35
- → Quantity Discount — -60 — XX

ALP = XX



Warranty 6M
CIF

Nestle India Ltd. [AE] (India) $\xrightarrow{\text{Sold Chocolate}}$ Nestle US Ltd [AE] (USA)

Sold Chocolate
⇓
5000 units @ Rs 350 P.U.

Comparable Uncontrolled Transaction ← Similar Chocolate Sold

FOB No Warranty

Nestle India Ltd. $\xrightarrow{\text{Similar Chocolate Sold}}$ ABC Ltd. [Unrelated Party]

Similar Chocolate Sold
⇓
3000 units @ Rs 800 P.U.

Functional Differences

1. Sale to AE is on CIF basis, while Sale to ABC Ltd. is on FOB.
   Insurance & Freight Cost = Rs 40 P.U.

$\boxed{\text{CIF}}$ to AE
⇓
Insurance & Freight Cost

$\boxed{\text{FOB}}$ to ABC Ltd.
⇓
Insurance & Freight C...

CA Final DT » Transfer Pricing

	(₹.)
Price charged in Comparable Uncontrolled Transaction	800
(±) Functional Adjustment	
FOB & CIF	+ 40
Warranty $\left[70 \times \frac{6}{12}\right]$	+ 35
Discount	− 60
ALP	815

Increase in Income of Nestle India Ltd. $= (815 - 350) \times 5000$

Primary Adjustment

CA Final DT - Transfer Pricing

60

ALP 815

Increase in Income of Nestle India Ltd. $= (815 - 350) \times 5000$

$= 23,25,000$

Primary Adjustment

Resale Price Method

When Purchase made from AE and resale as it is to Outsider

Computation of ALP

CA Final DT > Transfer Pricing

Resale Price Method

When Purchase made from AE and resale as it is to Outsider

Computation of ALP

Resale Price to Outsider	XX
(−) Normal GP Margin	(XX)
	XX
(−) Additional Purchase Related Expenses	(XX)
ALP =	XX

... Expenses (XX)

ALP = XX

Example

Nestle US Ltd. (AE) ← Purchase @ Rs 1,00,000 — Nestle India Ltd. (AE) — Sold @ Rs 1,20,000 → ABC Ltd. (Outsider)

⇓ Additional Purchase Exp. @ Rs 6,000

⇓ Normal GP Margin = 20%

Solution

Calculation of ALP

Resale Price to Outsider	1,20,000
(–) Normal GP Margin ...	

Cost Plus Method

When Goods Manufactured by EnterPrise is Sold to its AE

Computation of ALP

Direct & Indirect Cost of Production	xx
Add: Normal GP Margin → Sales.	xx
(±) Functional Difference Adjustment in GP Margin	
• Technical Support	xx
• Quantity Discount	xx
• Credit Period	xx

CA Final DT – Transfer Pricing

Direct & Indirect Cost of Production xx

Add: Normal G.P Margin xx

50%

(±) Functional Difference Adjustment in G.P margin

- Technical Support +4% xx
- Quantity Discount −3% xx
- Credit Period

xx

xx

ALP = xx

CA Final DT - Transfer Pricing

Example

Tata India Ltd. [AE] (India) → Tata US Ltd. [AE] (US)

⇓

Software Sold @ Rs 30,00,000

Cost of Software incurred by Tata India = Rs 20,00,000

Tata India Ltd. → Sam Ltd. (Outsider)

Similar Software Sold

Normal GP Margin

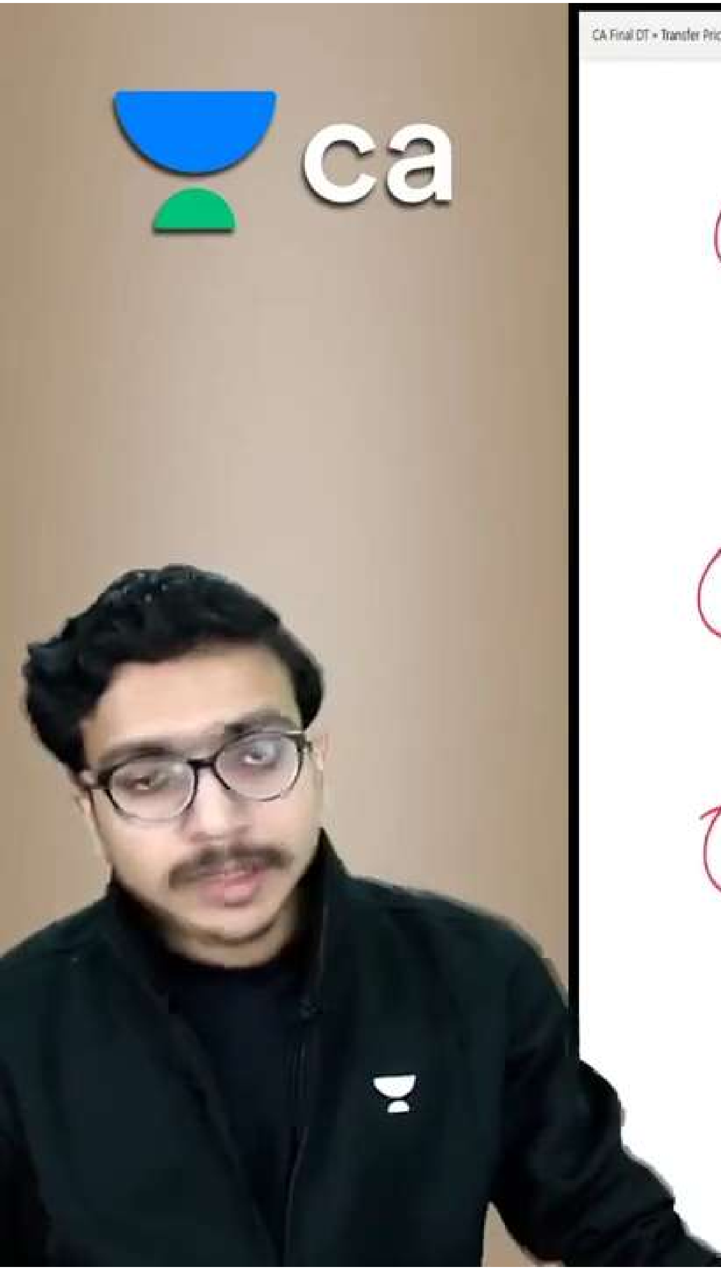
⇓

50%

⇓

Subject to following functional difference

① Tata US Ltd. gives technical support to Tata India Ltd. ...



difference

1. Tata US Ltd. gives technical support to Tata India Ltd. but Sam Ltd. doesn't gives any Support
   Value of Technical Support = 8% of GP Margin

2. Work for Tata US Ltd. is huge, So Qty. discount is to be given to Tata US Ltd. @ 6% of GP Margin

3. Tata India Ltd. gives Credit Period to Tata US Ltd. but not to Sam Ltd.
   Cost of Credit Period = 2% of Normal Billing Rate

Solution

CA Final DT » Transfer Pricing

Solution

Calculation of ALP

Cost Incurred		20,00,000
GP Margin	50%	
(±) Functional Adj.		
Technical Support [8% × 50%]	(4%)	
Qty Discount [6% × 50%]	(3%)	
Credit Period	2%	

CA Final DT » Transfer Pricing

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[0 x 50%]

(3%)

Credit Period

2%

45%

16,36,364 $\left[\frac{45}{55} \times 20 \text{ lacs}\right]$

ALP 36,36,364

Increase in Income of Tata India (36,36,364 - 30,00,000) = 6,36,364

$\boxed{\text{Profit Split Method}}$

Used in Joint Venture

Profit Split Method

Used in Joint Venture

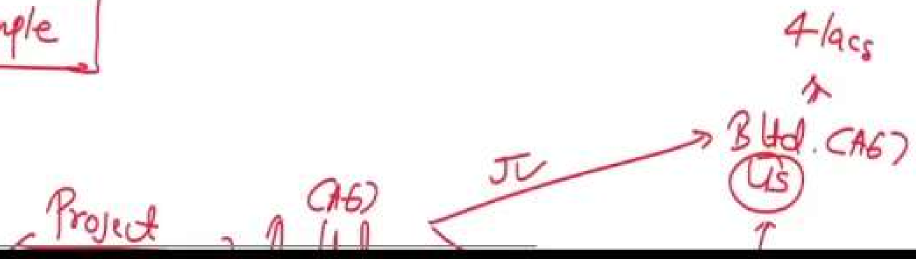
Profit / Contribution Split on the basis of given ratio of Capital Employed, Manpower, Risk Taking etc.

Calculation of ALP

Calculate Combined Net Profit, then divide Net Profit in given ratio

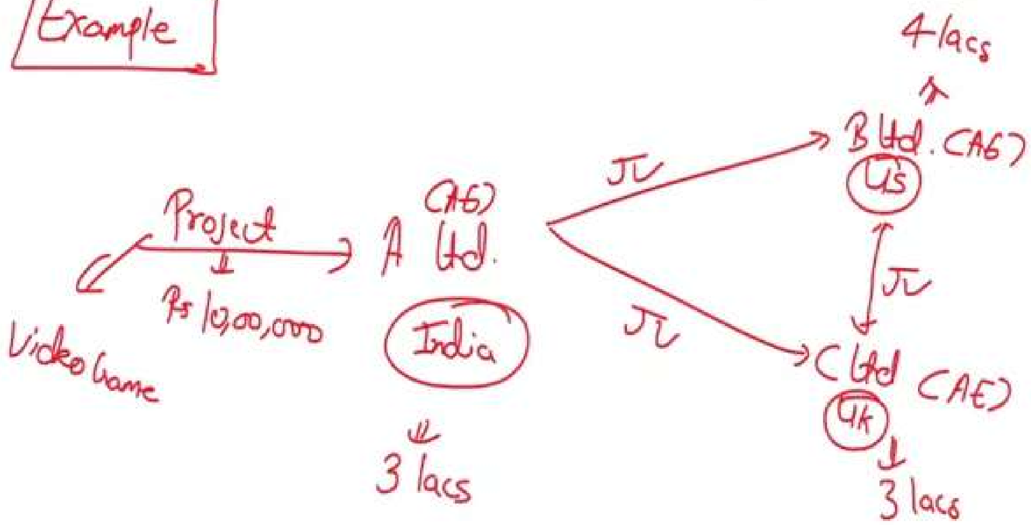
ALP = Cost Incurred + Net Profit Share

Example



CA Final DT – Transfer Pricing

Example



Contribution Ratio on basis of Capital Employed, Manpower, Risk Taking etc. = 50 : 25 : 25 (A : B : C)

Total Cost incurred on Project = 8,00,000

Cost Incurred by A Ltd = 2,50,000

Solution

Combined Net Profit = 10,00,000 − 8,00,000 =

CA Final DT - Transfer Pricing

...ject = 8,00,000

Cost Incurred by A Ltd = 2,50,000

Solution

Combined Net Profit = 10,00,000 − 8,00,000 = $\boxed{2,00,000}$

A Ltd ⇓ 1,00,000

B Ltd ⇓ 50,000

C Ltd. ⇓ 50,000

[50 : 25 : 25]

ALP for A Ltd. = 2,50,000 + 1,00,000 = 3,50,000

CA Final DT + Transfer Pricing

[50:25:25] 1,00,000 50,000 C Ltd. 50,000

ALP for A Ltd. = 2,50,000 + 1,00,000 = 3,50,000

Transactional Net Margin Method [TNMM]

Operating Profit Margin of Other Enterprise in Similar industry shall be taken for Computing ALP

Computation of ALP

Transactional Net Margin Method [TNMM]

Operating Profit Margin of Other Enterprise in Similar industry shall be taken for Computing ALP

Computation of ALP

Cost Incurred	XX
(+) Operating Profit Margin of Other Enterprise in Similar Industry	XX

⇓

OP Margin

ALP =

CA Final DT - Transfer Pricing

Computation of ALP

Cost Incurred	XX
(+) Operating Profit Margin of Other Enterprise in Similar Industry	XX
ALP =	XX

OP Margin

⇓

$$\frac{\text{Operating Profit}}{\text{Total Cost}} \times 100$$

Example

Infosys India (AE) → Software Support Service @ Rs 50,00 → Infosys US (AE)

CA Final DT » Transfer Pricing

... income of Infosys India (52 lacs – 50 lacs) = 2,00,000

If more than 1 ALP is arrived by Most Appropriate Method

If More than 1 but upto 5 ALP Arrived

⇓

Arithmetic Mean Concept

If 6 or more ALP Arrived

⇓

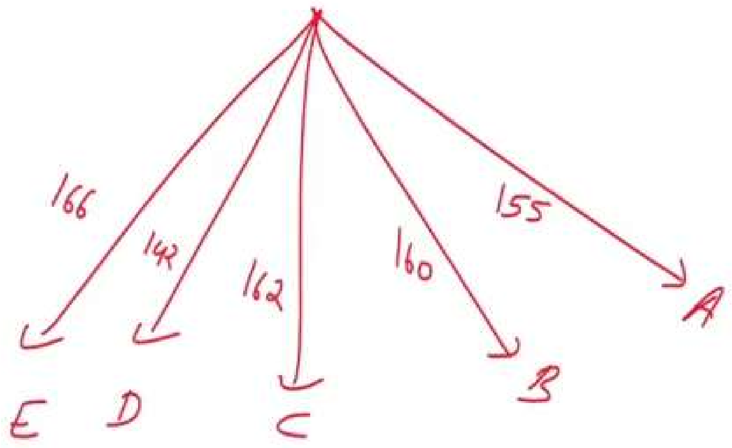
Range Concept

CA Final DT + Transfer Pricing

Example

Nestle India Ltd (AE) $\xrightarrow[\text{Sale @ Rs 150}]{}$ Nestle US Ltd. (AE)

→ Actual Transaction Price



Actual TP	150
(+) 150 × 3%	4.5
	154.5

Solution

$$\text{Average ALP} = \frac{166+142+162+160+155}{5} = 157$$

If diff. b/w Average ALP & Actual TP is upto 3%

CA Final DT » Transfer Pricing

Calculate Average ALP

If difference between Actual Transaction Price and Average ALP is upto 3% of $\boxed{\text{Actual Transaction Price}}$

⇓

ALP = Actual Transaction Price

If difference is more than 3%

⇓

ALP = Average ALP

$\boxed{\text{Example}}$

Nestle India Ltd (AE) ⟶ Nestle US Ltd. (AE)

CA Final DT – Transfer Pricing

162 100

A

E D C B

Actual TP 150

(+) 150 × 3% 4.5

154.5

Solution

$$\text{Average ALP} = \frac{166 + 142 + 162 + 160 + 155}{5} = 157$$

If diff. b/w Average ALP & Actual TP is upto 3% (i.e. Avg ALP is upto 154.5) then Actual TP will be ALP

In this case, since difference is more than 3%, So ALP = Average ALP

157

Arithmetic Mean Concept

Calculate Average ALP

- If difference between Actual Transaction Price and Average ALP is upto 3% of $\boxed{\text{Actual Transaction Price}}$

  $\Downarrow$

  ALP = Actual Transaction Price

- If difference is more than 3%

  $\Downarrow$

  ALP = Average ALP

Example

Range Concept

- Range Concept is not applicable in Case of Profit Split Method
- It is applicable only if Number of Values in dataset is 6 or more [i.e. ALP is 6 or more]

Steps for Range Concept

→ Arrange value in dataset in Ascending Order

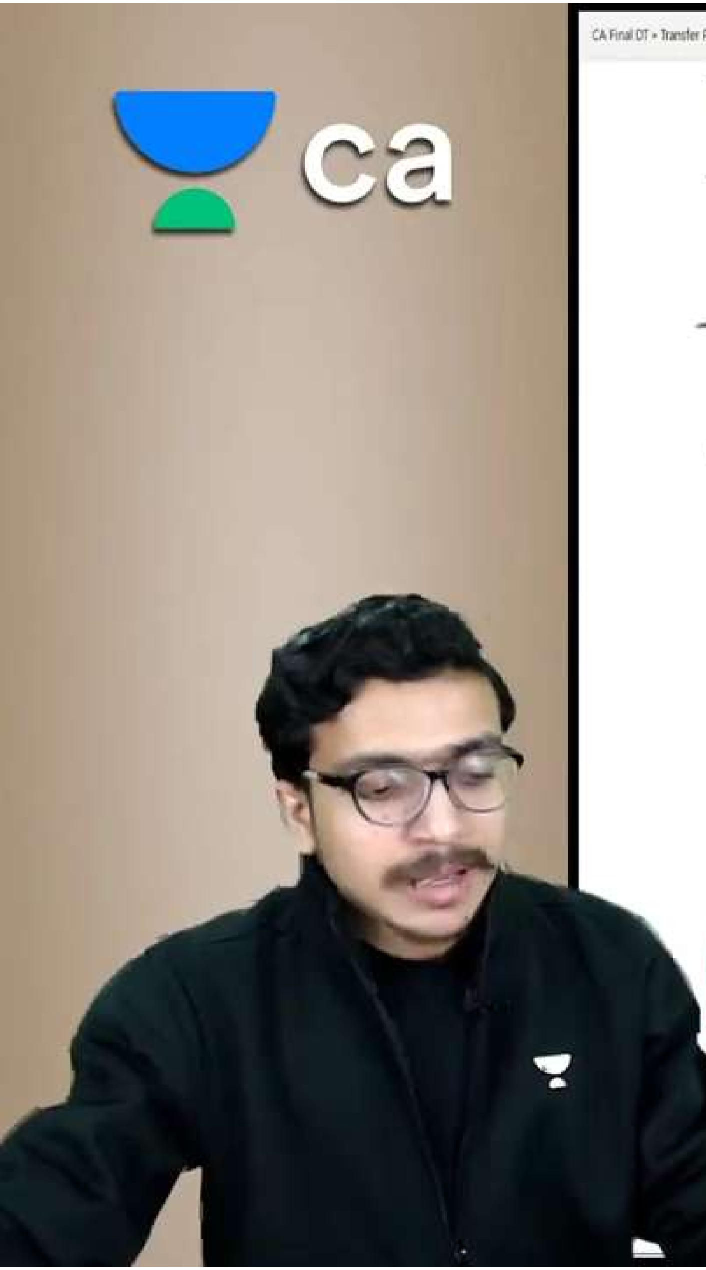
→ Calulate 35% and 65% of Total Number of Values in dataset

→ Range will Start from 35% Value and end at 65% Value

→ If Actual Transaction Price falls within range, then ALP = Actual Transaction Price

→ If Actual Transaction Price doesn't fall within range, Calculate Median [50%] of Total Number of Values in dataset

→ Median Value will be ALP



→ If Actual Transaction Price falls within range, then ALP = Actual Transaction Price

→ If Actual Transaction Price doesn't fall within range, Calculate Median [50%] of Total Number of Values in dataset

→ Median Value will be ALP

Note

- If 35% / 65% / 50% is not a whole Number, then Value of Next Whole Number will be Considered
- If 35% / 65% / 50% is a Whole Number, then take Average of Value of that Whole Number & Value of Next Whole Number

Example 1

Tata India [AE] —Sale @ Rs 150→ Tata US [AE]

@ Rs 150 → Actual Transaction Price

... value of Next Whole Number

Example 1

Tata India [AE] $\xrightarrow{\text{Sale}}$ Tata US [AE]

@ Rs 150 → Actual Transaction Price

ALP = [151, 146, 140, 155, 160, 169, 165]

Solution

	Ascending order → ALP	
1	140	
2	146	
3	151	Range Start
4	155	
5	160	

$7 \times 35\% = 2.45 \rightarrow 3$

not whole no.

CA Final DT » Transfer Pricing

2	146
3	151
4	155
5	160
6	165
7	169

151 → Range Start

160 → Range End

$7 \times 35\% = 2.45 \rightarrow 3$

not whole no.

$7 \times 65\% = 4.55 \rightarrow 5$

not whole no.

Range 151 - 160

If Actual TP falls within Range then ALP = Actual TP

Since Actual TP is 150, it doesn't falls within Range, Calculate 50% [Median]

$7 \times 50\% = 3.5 \rightarrow 4$

not whole no.

Median Value [50%] will be ALP, So ALP = $\boxed{155}$

Shapes Ink to Shape Ink to Text

Example 2

Actual Transaction Price = 150

1	140
2	146
3	151
4	155
5	160
6	165
7	169
8	170
9	171
10	172
11	174
12	177
13	178
14	180
15	189
16	191
17	193
18	194
19	198
20	200

169.5 Range start

179 Range end

$20 \times 35\% = 7$ Whole no $= \frac{169+170}{2} \Downarrow 169.5$

$20 \times 65\% = 13$ Whole no. $= \frac{178+180}{2} \Downarrow 179$

Range 16

1	155
5	160
6	165
7	169
8	170
9	171
10	172

169.5
Range start

14	180
15	189
16	191
17	193
18	194
19	198
20	200

179
Range end

$20 \times 35\% = 7$ Whole no. $= \dfrac{169+170}{2} = 169.5$

$20 \times 65\% = 13$ Whole no. $= \dfrac{178+180}{2} = 179$

Range 169.5 – 179

Median (50%) $= 20 \times 50\% = 10$ Whole no. $= \dfrac{172+174}{2} = 173$ = ALP

CA Final DT » Transfer Pricing

Circumstances where AO may determine ALP [Section 92C(3)]

1. If Assessee fails to compute ALP as per Most Appropriate Method
2. Data Used in Computation of ALP is not reliable or Correct
3. Documents Specified in Section 92D not maintained
4. Documents called by AO is not furnished within time

Consequences of ALP determined by AO [Section 92C(4)]

1. Deduction under Chapter VI-A or Section

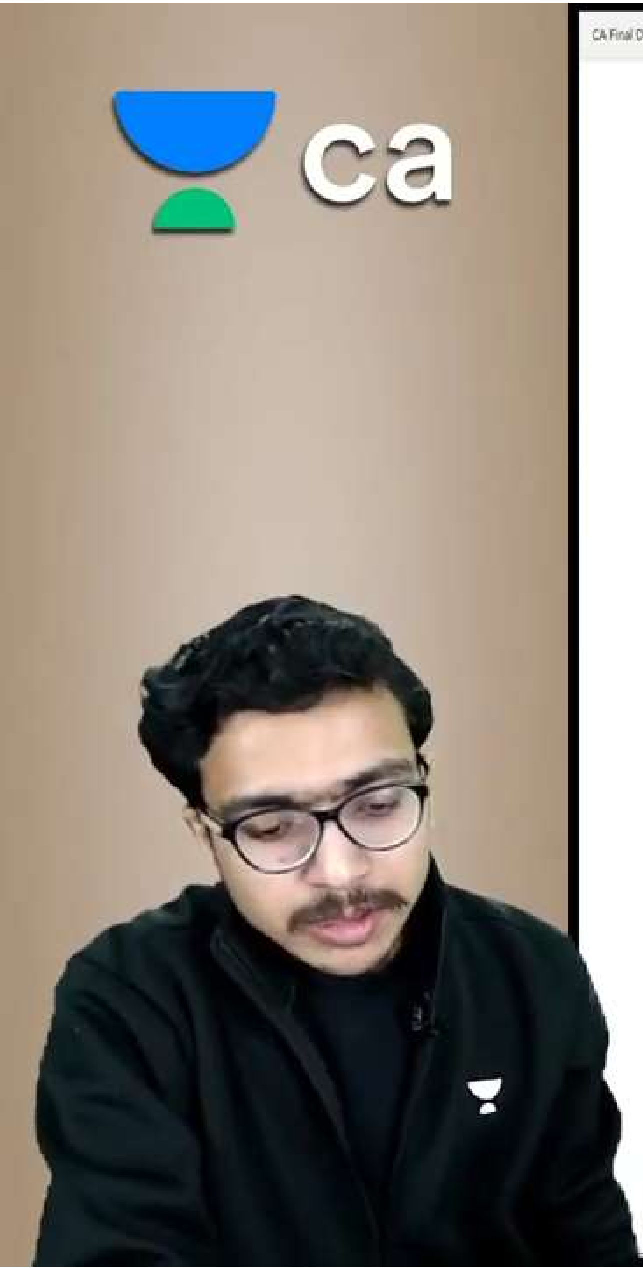
CA Final DT - Transfer Pricing

Example (1)

Tata India Ltd.
(SEZ)

TP Provision Apply

	As Per ROI	As Per AO
PGBP (export)	100 cr.	160 cr.
GTI	100 cr.	160 cr.
(−) Deduction u/s 10AA	(100 cr.)	(100 cr.)
TI	—	60 cr.



CA Final DT + Transfer Pricing

TI (100 cr.) 60 cr.

Example 2

Tata India Ltd. [AE] (India) ← Patent — Tata US Ltd. [AE] (US)

→ Royalty Payment

AO determine ALP = 250 cr.

Increase in Income of Tata India = 50 cr.

Deemed to be earned in India
⇓
Taxable for Tata US @10%

Rs 300 crore
⇓
TDS @10% = 30 cr.

⇓
Income = 300 crore

Reference to Transfer Pricing Officer (TPO) [Section 92CA]

- Option to make reference to TPO is given to AO but not to Assessee
- Before Making Reference, Prior Permission of CIT shall be taken
- TPO can call upon assessee to produce documents & evidence
- TPO can also determine the ALP of Other International Transactions identified subsequently during Proceedings
- Order of TPO is binding upon AO and AO shall compute Total Income of Assessee in Conformity with ALP determined by TPO

Safe Harbour Rules [Section 92CB]

→ To Reduce Transfer Pricing disputes, CBDT can make Safe Harbour Rules.

→ If Assessee declares minimum Margin as given in Safe Harbour Rules, then AO shall Accept the Transfer Price declared by Assessee

→ For AY 21-22, Safe Harbour Rules are not notified by CBDT till yet

Advance Pricing Agreement [APA] [Section 92CC & 92CD]

→ An APA is an agreement between Assessee & CBDT for determination of ALP of an International T...

Advance Pricing Agreement [APA] [Section 92CC & 92CD]

→ An APA is an agreement between Assessee & CBDT for determination of ALP of an International Transaction as per Method & Manner given in Agreement

→ CBDT can enter into APA with Applicant [Assessee] only after Approval of Central Government

→ If APA exist, Section 92C & 92CA shall not apply

→ APA shall be Valid for Maximum 5 Consecutive Previous Years from Application year

CA Final DT - Transfer Pricing

Government

→ If APA exist, Section 92C & 92CA Shall not apply

→ APA shall be Valid for Maximum 5 Consecutive Previous years from Application year

→ Binding Nature of APA

- Applicant
- Income Tax Authority upto the level of CIT
- In Respect of Transaction for which APA was entered

→ APA to be Void

If APA entered by assessee by Fraud or Misrepresentation of Facts, CBDT May declare Such APA to be void ab initio

CA Final DT – Transfer Pricing

Central Government

→ If APA exist, Section 92C & 92CA Shall not apply

→ APA shall be Valid for Maximum 5 Consecutive Previous years from Application year

15-16
16-17
17-18
18-19 ⇒ Rollback APA

Application ⇐ PY 19-20

20-21
21-22
22-23
23-24 ⇒ Max 5 Normal APA

→ Binding Nature of APA

- Applicant
- Income Tax Authority upto the level of CIT
- In Respect of Transaction for which APA was entered

→ APA to be Void

If APA entered by assessee by Fraud or Misrepresentation of facts, CBDT May declare Such APA to be void ab initio

... such APA to be void ab initio ... , CBDT

Roll Back Provisions for APA

- A Person who makes application for APA can apply for Rollback for Maximum 4 Preceding PY from application year
- Conditions for Applying for Rollback

1. Assessee has to make application for Rollback in Form No. 3CEDA along with Fees of Rs 5,00,000
2. Request has been made by Assessee for All Rollback years
3. International Transaction is Same as Mentioned in APA

23-24 APA

- A Person who makes application for APA Can apply for Rollback for Maximum 4 Preceding PY From application year

- Conditions for Applying for Rollback

(1) Assessee has to make application for Rollback in Form No. 3CEDA along with Fees of Rs 5,00,000

(2) Request has been made by Assessee for All Rollback years

(3) International Transaction is Same as mentioned in APA

(4) Return for Rollback years is furnished by Assessee on or before due date

Non Applicability of Rollback

Determination of ALP is Subject Matter of APA

(2) Request has been made by Assessee for All Rollback years

(3) International Transaction is Same as Mentioned in APA

(4) Return for Rollback years is furnished by Assessee on or before due date

- Non Applicability of Rollback

(1) Determination of ALP is Subject Matter of Appeal before ITAT and ITAT Pass Order before Signing of APA

(2) Rollback has the effect of reducing Total Income as declared in ROI

Example

Total Income

As Per ROI | As Per AO | As P

① Determination of ALP is Subject Matter of Appeal before ITAT and ITAT Pass Order before Signing of APA

② Rollback has the effect of reducing Total Income as declared in RoI

Example

Total Income

	As Per RoI	As Per AO [Assessment]	As Per Rollback APA	Rollback
Case I	30 cr.	35 Cr.	32 Cr.	✓
Case II	30 cr.	35 cr.	25 Cr.	✗
Case III	30 cr.	No Assessment	26 Cr.	✗

- **Roll Back Provision in Case of Merger or Demerger**

Only the Companies which exist in Rollback years at the time of making APA Application after merger/demerger are entitled for Rollback

Example

Merger

Case 1 →

A Ltd, B Ltd, C Ltd —Merger→ ABC Ltd. (New Company)

ABC Ltd. Cannot Apply for Rollback

Case 2 →

A Ltd, B Ltd, C Ltd → A Ltd.

A Ltd. Can Apply for Rollback

Demerger

CA Final DT » Transfer Pricing

... are entitled for Rollback

Example

Merger

Case 1 →

A Ltd $\xrightarrow{\text{Merge}}$
B Ltd →
C Ltd →

ABC Ltd. (New Company)

ABC Ltd. Cannot Apply for Rollback

Case 2 →

A Ltd →
B Ltd →
C Ltd →

A Ltd.

A Ltd. Can Apply for Rollback

Demerger

Hero Ltd $\xrightarrow{\text{Demerge}}$ Hero Ltd.

Hero Ltd $\xrightarrow{\text{Demerge}}$ Heroine Ltd (New)

Hero Ltd. Can Apply for Rollback

CA Final DT » Transfer Pricing

Effect of APA

- If ROI already filed for any year to which APA/Rollback Applies, Modified ROI is to be filed within 3 months from end of Month in which APA was entered

- If Assessment of any PY to which APA/Rollback Applies already Completed, AO shall reassess such year Assessment as Per APA

- If Assessment of any PY to which APA/Rollback Applies is Pending, AO Shall Complete Assessment of Such Year as Per APA

Secondary Adjustment [Section 92CE]

99.99%

Primary Adjustment : Increase in Income of Assessee due to ALP Adjustment

Secondary Adjustment : Treating 'Excess Money' as deemed Loan & Calulating Interest Income on Such Excess Money

$\boxed{\text{Excess Money}}$ = ALP − Actual Transaction Price

Forms of Secondary Adjustment : Dividend, Equity or Loan

India Follows deemed loan Approach

Cases where Secondary Adjustment

CA Final DT - Transfer Pricing

② If Primary Adjustment is made in Respect of Ay 2016-17 or Earlier

Example

Nestle India Ltd. [AE] (India) $\xrightarrow[\text{Chocolate Sold @ Rs 10 Crore}]{\text{Ay 20-21}}$ Nestle US Ltd. [AE] (US)

⇓

ALP = Rs 15 Crore

Increase in Income of Nestle India = ALP - Actual TP

⇓

Suo Moto in RoI

⇒ 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjustment

CA Final DT - Transfer Pricing

Example

Nestle India Ltd. [AE] (India) $\xrightarrow{\text{Py 20-21}}$ Nestle US Ltd. [AE] (US)

Chocolate sold @ Rs 10 Crore

⇓

ALP = Rs 15 Crore

Increase in Income of Nestle India = ALP - Actual TP

⇒ 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjustment

⇓

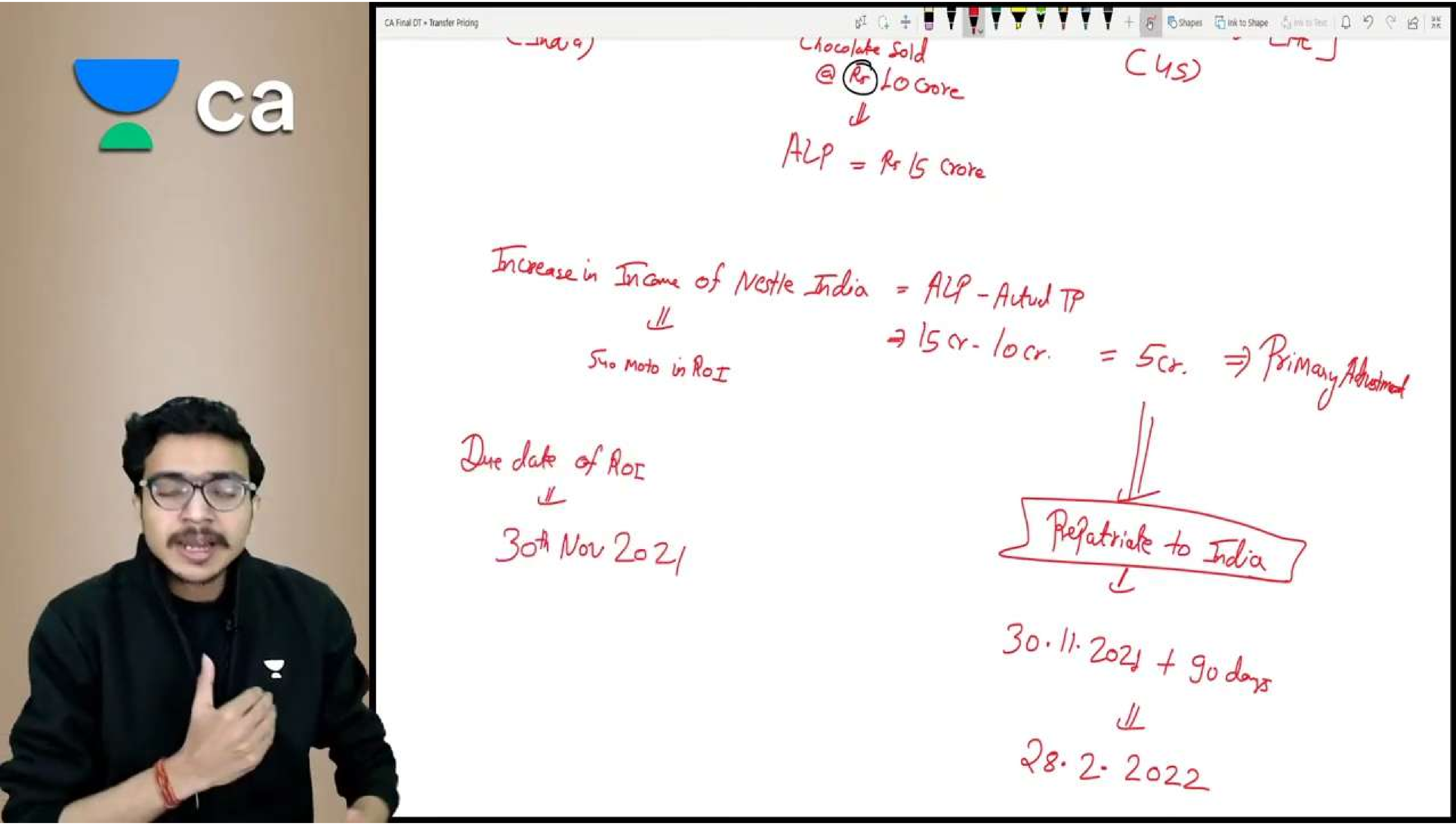
Suo Moto in RoI

Repatriate to India

Due date of RoI

⇓

30th Nov 2021


CA Final DT + Transfer Pricing
Shapes
Ink to Shape
Ink to Text
(India)
Chocolate Sold
@ Rs 10 Crore
(US)
ALP = Rs 15 Crore
Increase in Income of Nestle India = ALP - Actual TP
Suo moto in ROI
⇒ 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjustment
Due date of ROI
30th Nov 2021
Repatriate to India
30.11.2021 + 90 days
28.2.2022

Secondary Adjustment [Section 92CE]

Primary Adjustment : Increase in Income of Assessee due to ALP Adjustment

Secondary Adjustment : Treating 'Excess Money' as deemed Loan & Calulating Interest Income on Such Excess Money

$\boxed{\text{Excess Money}}$ = ALP − Actual Transaction Price

Forms of Secondary Adjustment : Dividend, Equity or Loan

India Follows deemed loan Approach

Cases Where Secondary

CA Final DT - Transfer Pricing

Cases where Secondary Adjustment has to be made

Where Primary Adjustment of Transfer Price has been :

1. Made suo-moto by Assessee in RoI
2. Made by AO / Appellate Authority **AND** Accepted by Assessee
3. Determined by APA
4. Made due to Safe Harbour Rules

Excess Money Repatriation

Excess Money available with AE shall be Repatriated to India within

90 days

(4) Made due to Safe Harbour Rules

Excess Money Repatriation

Excess Money available with AE Shall be Repatriated to India within 90 days from
- → Date of Order [If Primary Adjustment made by AO/ Appellate Authority]
- → Due Date of RoI [Other Case]
  - ‖ 30th Nov of AY

If not repatriated within 90 days, Excess Money shall be deemed to be an Advance given to AE and Interest Income on Such Advanc

Excess Money available with AE shall be Repatriated to India within 90 days from
- → Date of Order [If Primary Adjustment made by AO/ Appellate Authority]
- → Due Date of RoI [Other Case]

If not repatriated within 90 days, Excess Money shall be deemed to be an Advance given to AE and Interest Income on such Advance shall be Computed from
- → Date of order [If Primary Adjustment made by AO/ Appellate Authority]
- → Due Date of RoI [Other Case]

Calculation of Interest Rate for S...

Appellate Authority]

↳ Due Date of RoI [Other Case]

Calculation of Interest Rate for Secondary Adjustment

If International Transaction is denominated in Indian Rs

⇓

1 Year SBI Rate as on 1st April of PY

+

3.25%

If International Transaction is denominated in Foreign Currency

⇓

6 Months LIBOR Rate as on 30th September of PY

+

3%

SBI Rate as on 1st April of Py + 3.25%

6 Months LIBOR Rate as on 30th September of Py + 3%

Option to Pay Additional Income Tax, if the excess Money is Not Repatriated

- Assessee has option to Pay Additional Income Tax @ 20.9664% [18% Tax + 12% Surcharge + 4% Cess] on Such Excess Money
- If Assessee Paid Additional Income Tax, he will not required to Make Secondary Adjustment and there is no Interest Income from date of Payment of Such Tax

CA Final DT » Transfer Pricing

Option to Pay Additional Income Tax, if the excess Money is Not Repatriated

- Assessee has option to Pay Additional Income Tax @ 20.9664% [18% Tax + 12% Surcharge + 4% Cess] on Such Excess Money
- If Assessee Paid Additional Income Tax, he will not required to Make Secondary Adjustment and there is no Interest Income from date of Payment of Such Tax

No Requirement of Secondary Adjustment in following Cases:

1. If Amount of Primary Adjustment is upto Rs 1 Crore

or

Adjustment and there is no Interest Income from date of Payment of Such Tax

No Requirement of Secondary Adjustment in following Cases:

1. If Amount of Primary Adjustment is upto Rs 1 Crore

or

2. If Primary Adjustment is made in Respect of AY 2016-17 or Earlier

$\boxed{\text{Example}}$

Nestle India Ltd. [AE] (India) $\xrightarrow[\text{Chocolate Sold @ Rs}]{\boxed{\text{PY 20-21}}}$ Nestle US Ltd. AE] (US)

CA Final DT - Transfer Pricing

(India) Chocolate Sold @ Rs 10 Crore (US)

⇓

ALP = Rs 15 Crore

Increase in Income of Nestle India = ALP - Actual TP

⇓

Suo moto in ROI

⇒ 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjustment

⇓

Repatriate to India

30.11.2021 + 90 days

⇓

28.2.2022

Due date of ROI

⇓

30th Nov 2021

CA Final DT » Transfer Pricing

30.11.2021 + 90 days

⇓

28.2.2022

Assume, Not repatriated upto 31.3.2022

1 year SBI Rate as on 1.4.2021 = 8%

$\boxed{\text{Solution}}$

Interest Income for PY 21-22 = 5 Cr. × 11.25% × $\frac{122}{365}$

11.25% → [8% + 3.25%]

$\frac{122}{365}$ From Due date of RoI

From 30.11.21 to 31.3.2022

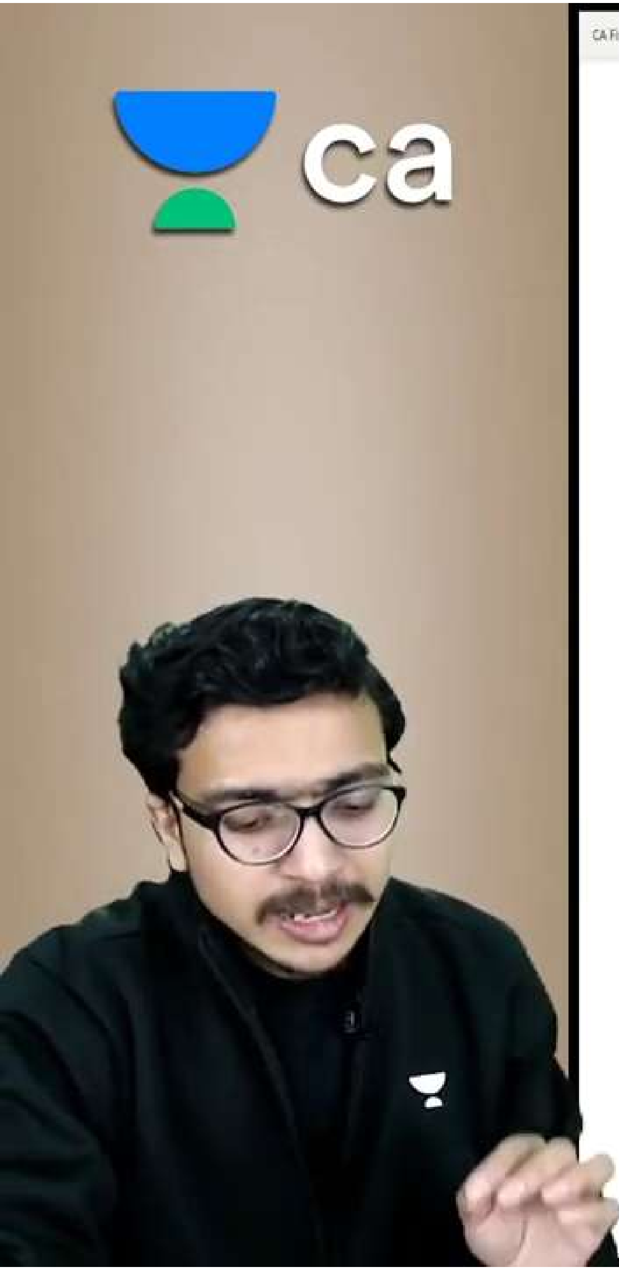
⇓

$\boxed{\text{122 days}}$

⇓

18,80,137

CA Final DT + Transfer Pricing



... 2. 2022

Assume, Not repatriated upto 31.3.2022

1 year SBI Rate as on 1.4.2021 = 8%

$\boxed{\text{Solution}}$

Interest Income for PY 21-22 $= 5\text{Cr.} \times 11.25\% \times \frac{122}{365}$

$11.25\% \rightarrow [8\% + 3.25\%]$

$= \boxed{18,80,137}$

From Due date of RoI

From 30.11.21 to 31.3.2022

$= \boxed{122 \text{ days}}$

If Assessee Opts to Pay Additional Tax on 1.4.2...

CA Final DT - Transfer Pricing

$\boxed{18,80,137}$

From 30.11.21 to 31.3.2022

⇓

$\boxed{122 \text{ days}}$

If Assessee Opts to Pay Additional Tax on 1.4.22

Additional Tax = 5 cr. × 20.9664% = 1,04,83,200

⇓

In that Case No need to Repatriate Excess Money and there is no Interest Income From 1.4.22

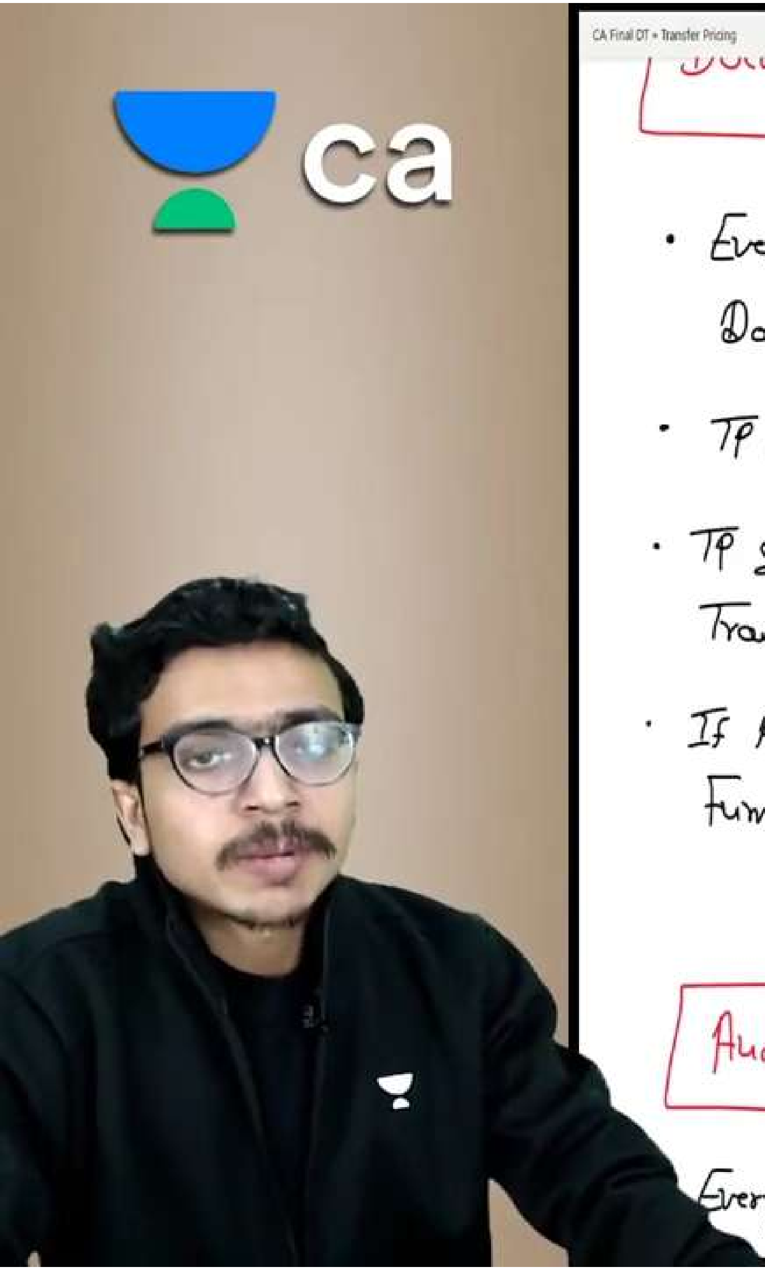
CA Final DT » Transfer Pricing

Documents to be Maintained [Section 92D]

- Every Person who enters into an International Transaction is required to Maintain Documents & Records as Prescribed [TP Study Report]
- TP Study Report is to be maintained for Period of 8 years from end of Relevant AY
- TP Study Report is Not required to be maintained if aggregate Value of International Transactions is upto Rs 1 Crore
- If Any Document is required by AO/TPO/CIT(A) during any Proceeding, it shall be Furnished within 30 days [Additional time of 30 days]

Audit Report [Section 92E]

Every Person who enters into an International Transaction is required to obtain



Audit Report [Section 92E]

- Every Person who enters into an International Transaction is required to obtain report from Chartered Accountant in form No. 3CEB
- Due date of filing Audit Report is 31st Oct of AY [i.e. One Month Prior to due date of filing of RoI]

Penalties

Nature of Default	Penalty
Failure to Report International Transaction at ALP [Misreporting of Income u/s 270A] Note: If Assessee maintains documents u/s 92D, declare International Transaction and disclose all Facts → No Penalty u/s 270A	200% of Tax on Underreported Income

CA Final DT - Transfer Pricing

Nature of Default	Penalty
Failure to Report International Transaction at ALP [Misreporting of Income u/s 270A] Note: If Assessee maintains documents u/s 92D, declare International Transaction and disclose all Facts = No Penalty u/s 270A	200% of Tax on Underreported Income
Failure to Furnish Audit Report u/s 92E	Rs 1,00,000
Fails to keep & Maintain Documents u/s 92D Fails to Report International Transaction Fails to furnish Documents required by AO/[TPO] within time Maintain or furnish Incorrect Information or Documents	2% of Value of International Transaction

CA Final DT » Transfer Pricing

Country by Country [CbC] Reporting Requirement [Section 286]

- By Action Plan 13 of BEPS
- Three level of documentation
  - → Local file : TP Study Report
  - → Master file : Contains Group Overview [Submitted by Constituent Entity]
  - → Country by Country [CbC] Report : Contains detail information regarding Profit, Assets, Employees etc [Submitted by Parent Entity]

Parent Entity ⇒ Ultimate Holding Company [CFS Prepare]

Country by Country [CbC] Reporting Requirement [Section 286]

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  - → Local file : TP Study Report
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Parent Entity ⇒ Ultimate Holding Company [CFS Prepare]

Constituent Entity ⇒ AE of Such Parent Entity

CA Final DT - Transfer Pricing

Master file

- Master file Contains group Overview
- Master file shall be furnished by Constituent Entity Resident in India upto due date of RoI
- Master file is required to be furnished if Consolidated Group Revenue exceeds Rs 500 crores
- If Master file is not filed within Time, Penalty will be Rs 5,00,000

Country by Country [CbC] Report

- CbC Report Contains details of Multinational Group for each Country in which they do business regarding
  - → Profit before Tax
  - → Income Tax
  - → Capital Employed / Assets
  - → Employees

is Submitted by Parent Entity to the Tax Authority in its Country of Resid

- CbC Report contains details of Multinational Group for each Country in which they do business regarding
  - → Profit before Tax
  - → Income Tax
  - → Capital Employed / Assets
  - → Employees
- It is submitted by Parent Entity to the Tax Authority in its Country of Residence
- Parent Entity Resident in India shall be required to furnish CbC Report to Joint Commissioner (JC) for every Accounting year within 12 Months from end of said year
- CbC Report is required to be furnished if Consolidated Group Revenue exceeds Rs 5500 Crores
- Constituent entity Resident in India shall be required to furnish CbC Report, if:
  - → Parent entity is resident of Country where no obligation to file CbC Report
  - → Parent entity is resident of Country with which India has no Information Sharing Agreement
  - → There is a Systematic Failure

... is a Systematic failure ... Information Sharing Agreement

- Penalty for Non Furnishing of CbC Report on time

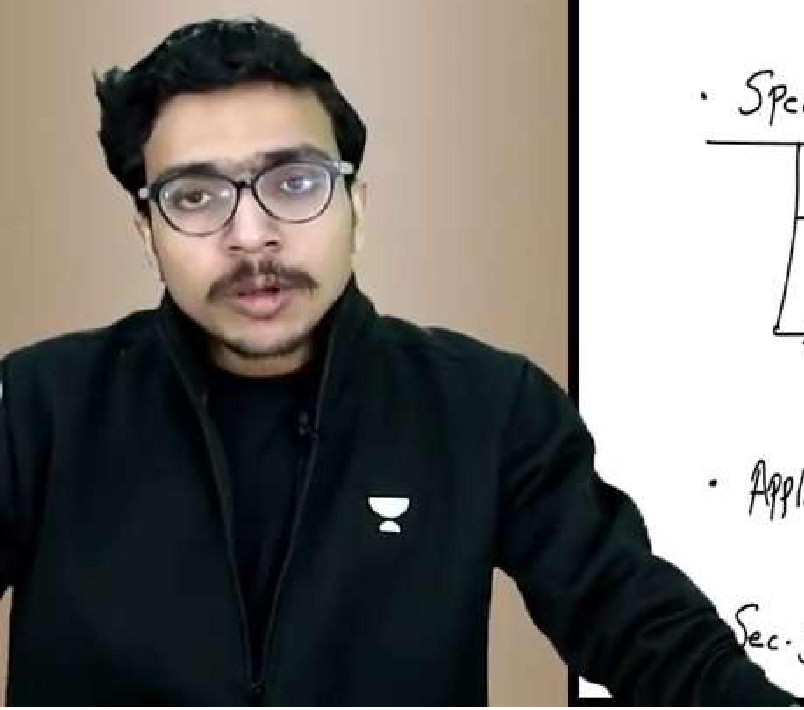
Period of Delay	Penalty
Not More than 1 Month	Rs 5,000 Per Day
Beyond 1 Month	Rs 15,000 Per Day [Beyond 1 Month]
Continuing default even after Notice	Rs 50,000 Per Day [From Notice Date]

- Penalty for Submission of Inaccurate Information in CbC Report = Rs 5,00,000

Example

Par...

Switzerland Tax Authority



CA Final DT » Transfer Pricing

Domestic Transfer Pricing

- Applicable on Specified $\boxed{\text{Domestic Transaction}}$

  ⇓

  Transaction between Two or More AE in which both are Residents

- Specified Domestic Transaction
  - → Shifting of Profit to Tax holiday Enterprise [i.e. 80IA]
  - → Shifting of Profit to Loss Making Enterprise

- Applicable only if Aggregate Value of Specified Domestic Transactions exceed Rs 20 Crore

Sec. 92A, 92C, 92CA, 92D, 92E

CA Final DT » Transfer Pricing

Transaction between Two or More AE in which both are Residents

- **Specified Domestic Transaction**
  - → Shifting of Profit to Tax holiday Enterprise [i.e. 80IA]
  - → Shifting of Profit to Loss Making Enterprise

- Applicable only if Aggregate Value of Specified Domestic Transactions exceed Rs 20 crore

- Sec. 92A, 92C, 92CA, 92D, 92E, Penalties shall apply as it is

Transaction with Person

to core

- Sec. 92A, 92C, 92CA, 92D, 92E, Penalties shall apply as it is

Transaction with Person located in Notified Jurisdictional Area (NJA) [Section 94A]

NJA

Central Government may notify any Country as NJA

Earlier Central Govt. declared Cyprus as NJA, but later on Central Govt. by Notification removed Cyprus as NJA

NJA Provisions

Cyprus as NJA

NJA Provisions

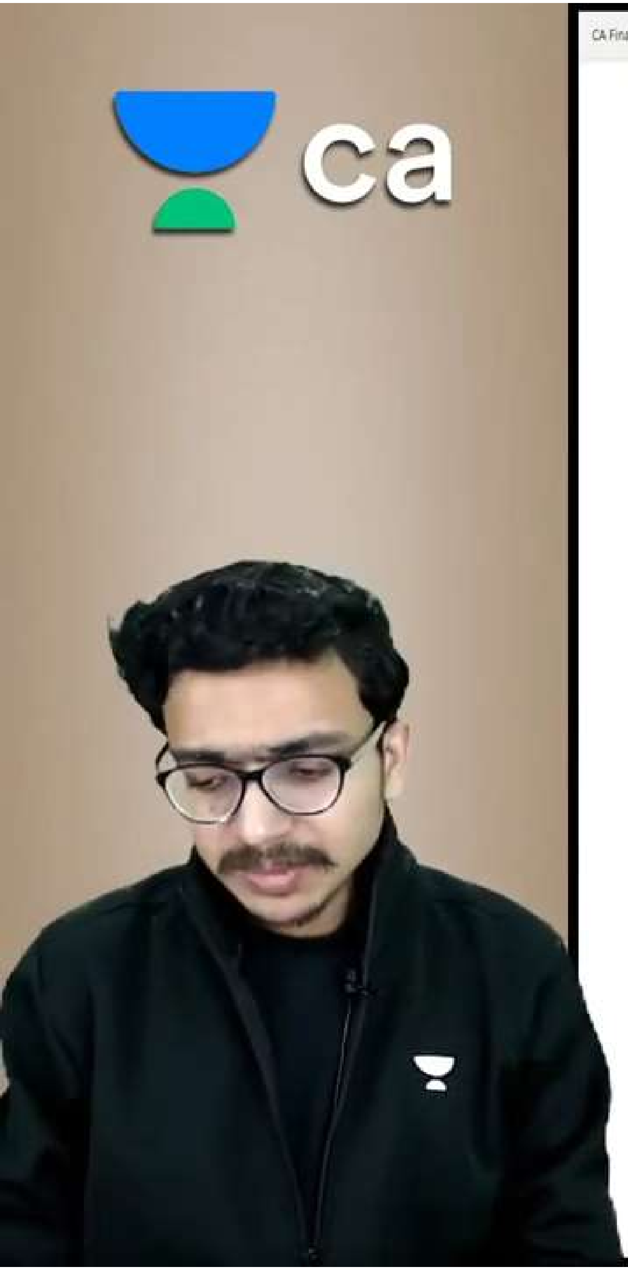
→ Any Transaction with Person located in NJA Shall be deemed to be an International Transaction [whether Such Person is AE or Not] and Transfer Pricing Provisions Shall Apply

→ Any Amount received From Person located in NJA Shall be deemed to be Income of Recipient if recipient does not explain Source of Such Income

→ Rate of TDS for any Payment made to Person located in NJA Shall be
- → Rate Specified in Income Tax Act
- or
- → 30%

} ⇒ Higher

CA Final DT » Transfer Pricing



Limitation of Interest Deduction [Section 94B]

By Action Plan 4 of BEPS to remove Thin Capitalisation [i.e. Preference of debt over Equity]

→ Applicable to

Indian Company
or
PE of Foreign Company in India

Who incurrs Interest Expenditure on Any Debt taken from AE

→ Interest Meaning

Interest includes

CA Final DT - Transfer Pricing

By Action Plan 4 of BEPS to remove Thin Capitalisation [i.e. Preference of debt over Equity]

→ Applicable to

Indian Company

or

PE of Foreign Company in India

Who incurrs Interest Expenditure on Any Debt taken from AE

→ Interest Meaning

Interest includes Interest, discount, Other financial Charges such as Commisson, Fees, Brokerage related to Any debt

→ Excess Interest Would be disallowed

CA Final DT » Transfer Pricing

Interest includes Interest, discount, Other financial Charges such as Commisson, Fees, Brokerage related to Any debt

→ Excess Interest Would be disallowed

$\boxed{\text{Excess Interest}}$

Interest to AE − 30% of EBITDA

or

Interest to AE

} ⇒ lower ⇒ Disallowed

In Other Words, Interest upto 30% of EBITDA is Allowed

Interest includes Interest, discount, Other financial Charges such as Commission, Fees, Brokerage related to Any debt

→ Excess Interest Would be disallowed

EBITDA = 100 cr.

Int. to AE = 48 cr.

$\boxed{\text{Excess Interest}}$

Interest to AE − 30% of EBITDA

48cr − 30cr = 18 cr.

Or

Interest to AE

or 48 cr.

} ⇒ lower ⇒ Disallowed

18 cr.

In Other Words, Interest upto 30% of EBITDA is Allowed

$\boxed{\text{EBITDA}}$ = E…

CA Final DT - Transfer Pricing

→ Carry Forward & Setoff of Disallowed / Excess Interest

Excess Interest can be C/f for Maximum 8 Ay and can be Claimed/Setoff as deduction under PGBP head upto that limit

→ Special Point

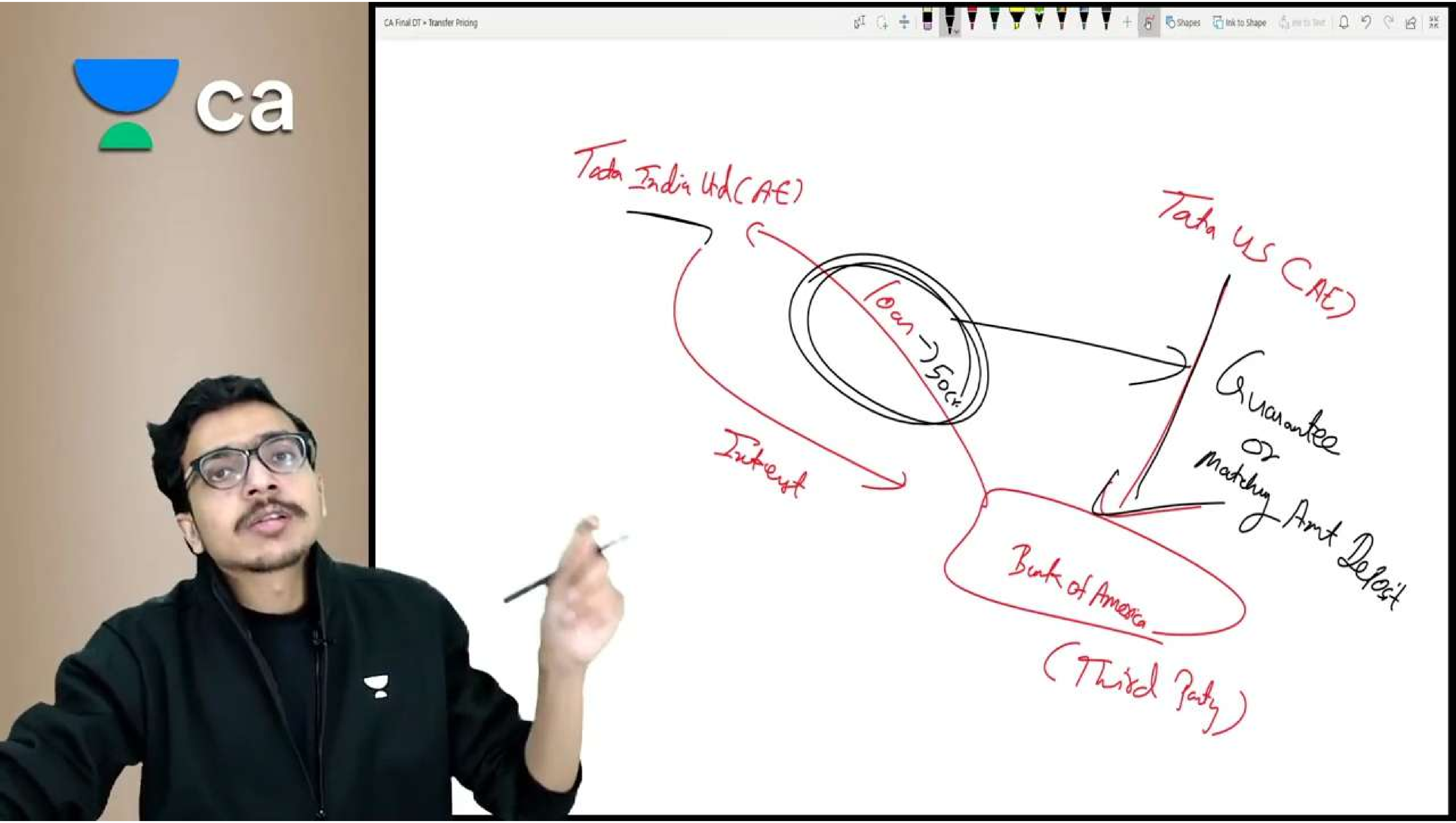
Where debt is given by Other Person which is not AE, but

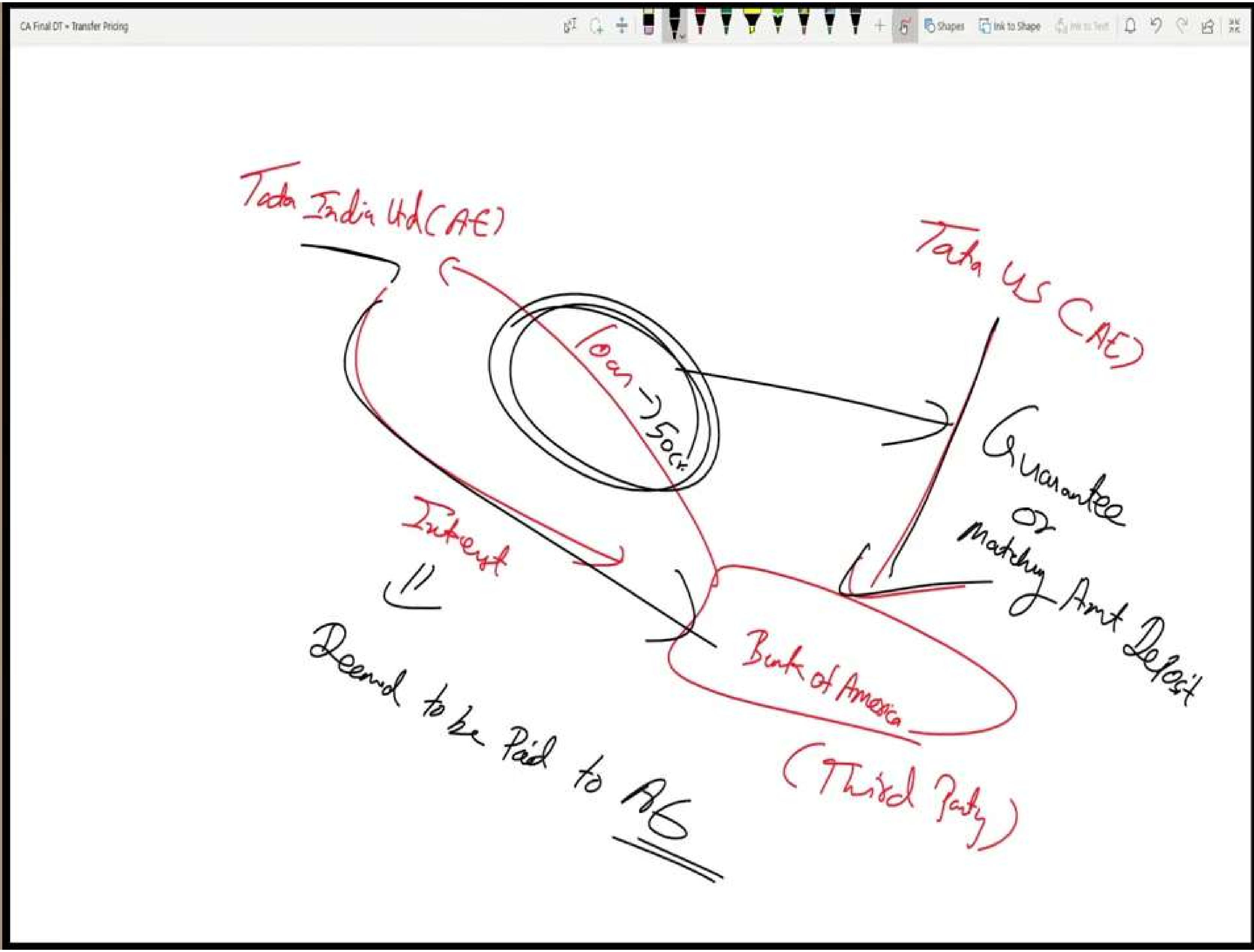
- AE either Provides guarantee to Other Person for such debt

or

- Deposit Matching & Corresponding Amt with such Other Person

⇓


CA Final DT > Transfer Pricing
Shapes
Ink to Shape
Tata India Ltd (AE)
Tata US (AE)
loan -> 50cr
Interest
Guarantee or Matching Amt Deposit
Bank of America
(Third Party)


CA Final DT - Transfer Pricing
Tata India Ltd (AE)
Tata US (AE)
loan → 50cr
Guarantee
or
Matching Amt Deposit
Interest
Bank of America
(Third Party)
Deemed to be Paid to AE

- AE either Provides guarantee to Other Person for Such debt

or

- Deposit Matching & Corresponding Amt. with Such Other Person

⇓

Such Debt Shall be deemed to be taken From AE

→ Non Applicability of Section 94B

- If Total Interest to AE is upto Rs 1 Crore in PY
- If borrower is Banking or Insurance Company

Non Resident Taxation

Residential Status [Section 6]

- ROGM
- 9(1)(i)(vi)(vii)
- 44B, 44BBA
- XII-A ⇒ NRI
- 115A → Int./Roy./FTS
- 115AD → FII
- 115BBA ⇒ Sportsmen

Residential Status of Individual

Individual

Resident
⇓
If Satisfy any 1 Basic Condition

Non Resident
⇓
If does not Satisfy any basic Condition

adjustment and compute interest from the date of payment of such tax. The additional income-tax so paid by Allepey Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to Allepey Ltd. or to any other person in respect of the amount of additional income-tax so paid.

Question 8

Yamuna Ltd., an Indian Company, on 01-04-2020 has borrowed ₹ 80 crores from Rhine Inc, a Company incorporated in Country P, at an interest rate of 8% p.a. The said loan is repayable over a period of 12 years. Further, loan is guaranteed by Prague Inc incorporated in Country P. Brussels Inc, a non-resident, holds shares carrying 40% of voting power both in Yamuna Ltd. and Prague Inc. Brussels Inc has also deposited ₹ 80 crores with M/s Rhine Inc.

The net profit of Yamuna Ltd. was ₹ 7 crores after debiting the above interest, depreciation of ₹ 4 crores and income-tax of ₹ 2.70 crores. Yamuna Ltd. wants to know if interest is allowable as deduction under the head "Profits and gains of business or profession" and if so, to what extent.

Answer

If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise (AE) and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since Brussels Inc. holds 40% of voting power i.e., 26% or more of voting power in both Yamuna Ltd and Prague Inc., Yamuna Ltd. and Prague Inc. are deemed to be associated enterprises.

Since loan of ₹ 80 crores taken by Yamuna Ltd., an Indian company from Rhine Inc, is guaranteed by Prague Inc. an associated enterprise of Yamuna Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to Rhine Inc shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of interest to be allowed in the computation of income under the head profits and gains of business or profession of Yamuna Ltd.

Particulars		₹
Net profit		7,00,00,000
Add: Interest already debited (₹ 80 crores x 8%)		6,40,00,000
Depreciation		4,00,00,000
Income tax		2,70,00,000
EBITDA		**20,10,00,000**
Interest paid or payable by Yamuna Ltd.		6,40,00,000
Less: Excess interest – Lower of		
Interest paid or payable in excess of 30% of EBITDA		
- ₹ 6,40,00,000 (-) ₹ 6,03,00,000	₹ 37,00,000	
Interest paid or payable to non-resident AE	₹ 6,40,00,000	
		37,00,000
Interest allowable as deduction		**6,03,00,000**

Note *– Since Brussels Inc., an associated enterprise of Yamuna Ltd., has deposited a matching amount of ₹ 80 crores with Rhine Inc., the interest payable by Yamuna Ltd. to Rhine Inc. on loan of ₹80 crores borrowed from Rhine Inc. would be subject to limitation of interest deduction on the basis of this line of reasoning also.*

As per section 92CA(2A), the Transfer Pricing Officer (TPO) can also determine the ALP of other international transactions which have not been referred to him, but which have come to his notice subsequently in the course of proceedings before him.

The Assessing Officer has made reference for determination of ALP in respect of the manufacturing unit at Hyderabad which shall be taken as the proceedings before him (TPO).

The TPO can enlarge his scope of work during the course of proceedings before him of Hyderabad unit by calling for details of trading activity at Surat, and the same is within the powers conferred by section 92CA(2A).

Question 7

Allepey Ltd. is an Indian Company in which Andes Inc., a Country Z company holds 38% shareholding and voting power. During the previous year 2018-19, the Indian company supplied computers to the Country Z based company @CZD 1100 per piece. The price of computer supplied to other unrelated parties in Country Z is @CZD 1400 per piece. During the course of assessment proceedings relating to A.Y.2019-20, the Assessing Officer carried out primary adjustments and added a sum of ₹ 168 lakhs, being the difference between actual price of computer and arm's length price for 700 pieces and it was duly accepted by the assessee. The Assessing Officer passed the order, in which the primary adjustments were made, on 1.6.2020. On account of this adjustment, the excess money of ₹ 168 lakhs is available with Andes Inc, Country Z. In this context, Allepey Ltd. wants to know the effect of this transaction for the assessment year 2021-22 on the basis that it declared an income of ₹ 300 lakhs and the excess money is still lying with Andes Inc. till today. Assume the rate of exchange as 1 CZD = ₹ 80. [CZD stands for Country Z Dollars, which is the currency of Country Z]; six month LIBOR as on 30.9.2020 is 9.50%.

Answer

In this case, Allepey Ltd., the Indian company, and Andes Inc., a Country Z company, are deemed to be associated enterprises as per section 92A(2) since Andes Inc. holds shares carrying not less than 26% voting power in Allepey Ltd.

On account of the primary adjustment of ₹ 168 lakhs made by the Assessing Officer, the total income of Allepey Ltd. for A.Y.2019-20 would increase by ₹ 168 lakhs.

I. **If Allepey Ltd. opts not to pay additional income-tax on such excess money not repatriated**

In this case, secondary adjustment has to be made under section 92CE, since –

(1) The company has accepted the primary adjustment made by the Assessing Officer;

(2) The primary adjustment is in respect of A.Y.2019-20; and

(3) The primary adjustment exceeds ₹ 100 lakhs.

Accordingly, the excess money (i.e., ₹ 168 lakhs) available with the associated enterprise (i.e., Andes Inc., Country Z) not repatriated to India within 90 days of the date of the order of the Assessing Officer would be deemed as an advance made by the Allepey Ltd. to its associated enterprise, Andes Inc. Interest would be calculated on such advance at 12.50% [i.e., the rate of six month LIBOR as on 30th September, 2020 (i.e., 9.50%)+ 3%], since the international transaction is denominated in foreign currency. Such interest computed from 1.6.2020 to 31.3.2021 amounting to 303/365 x 168 lakhs x 12.50% = ₹17,43,288 would be added to its total income for A.Y.2021-22.

II. **If Allepey Ltd. opts to pay additional income-tax on such excess money not repatriated**

In such a case, Allepey Ltd. has to pay additional income-tax @20.9664% (tax @18% *plus* surcharge @12% *plus* cess@4%) on ₹ 168 lakhs, which amounts to ₹ 35,22,355. Where additional income-tax is so paid by Allepey Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax. The additional income-tax so paid by Allepey Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to Allepey Ltd. or to any other person in respect of the amount of additional income-tax so paid.

Question 8