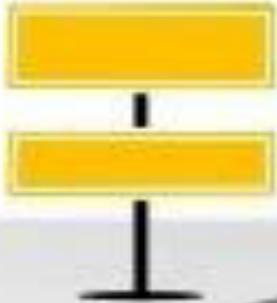




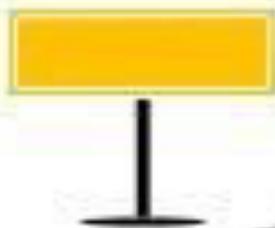
TRANSFER PRICING

ROADMAP

Deemed
International
Transactions



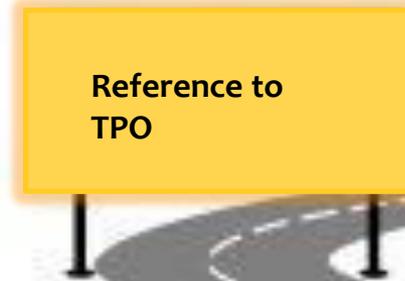
Intra Group Service
(IGS)



AUDIT PROCESS



Reference to
TPO

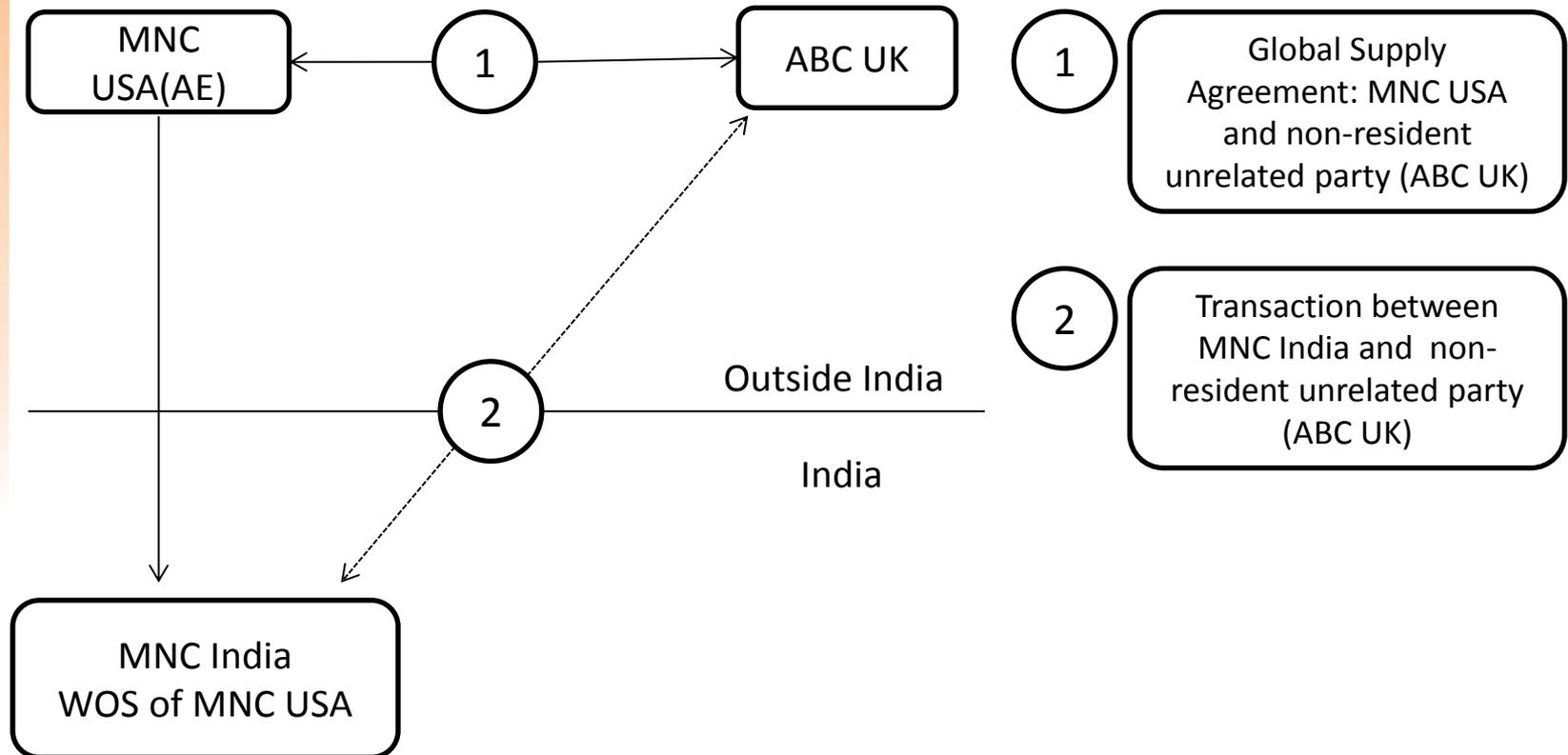


DEEMED INTERNATIONAL TRANSACTION – CASE STUDIES

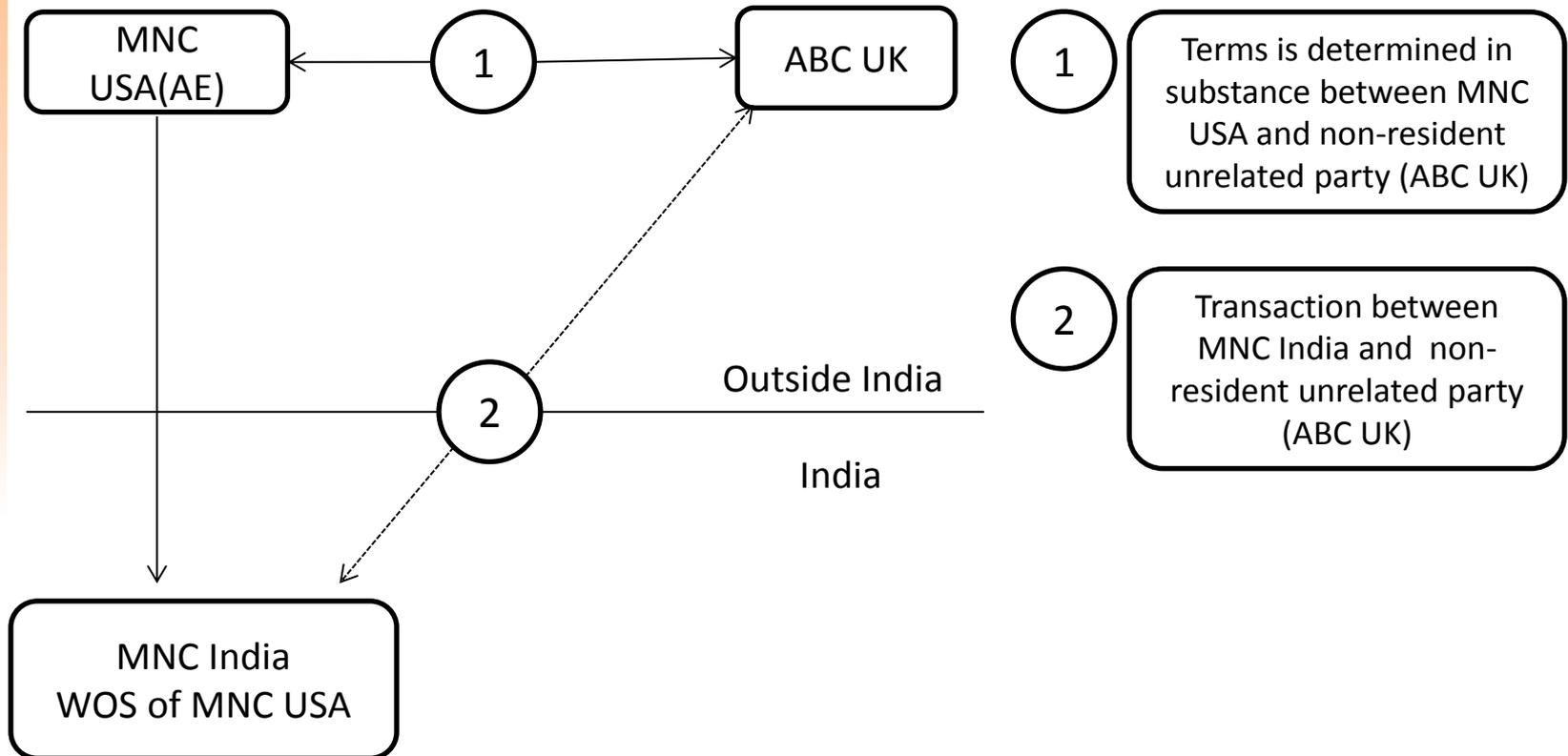
DEFINITION – INTERNATIONAL TRANSACTION

- The term international is exhaustively defined and covers all transaction between two or more AEs, either or both whom are non-residents
- A transaction of a taxpayer with an independent party as a 'deemed international transaction', if following conditions are satisfied:
 - There should be (i) an enterprise, (ii) an AE of the enterprise (either or both of them could be non-resident) and (iii) an unrelated party (resident or non-resident);
 - There should be a transaction between (i) an enterprise and (ii) an unrelated party;
 - There should exist (i) a prior agreement in relation to the relevant transaction; or (ii) terms of the relevant transaction should be determined in substance between such unrelated party and the AE of the enterprise.

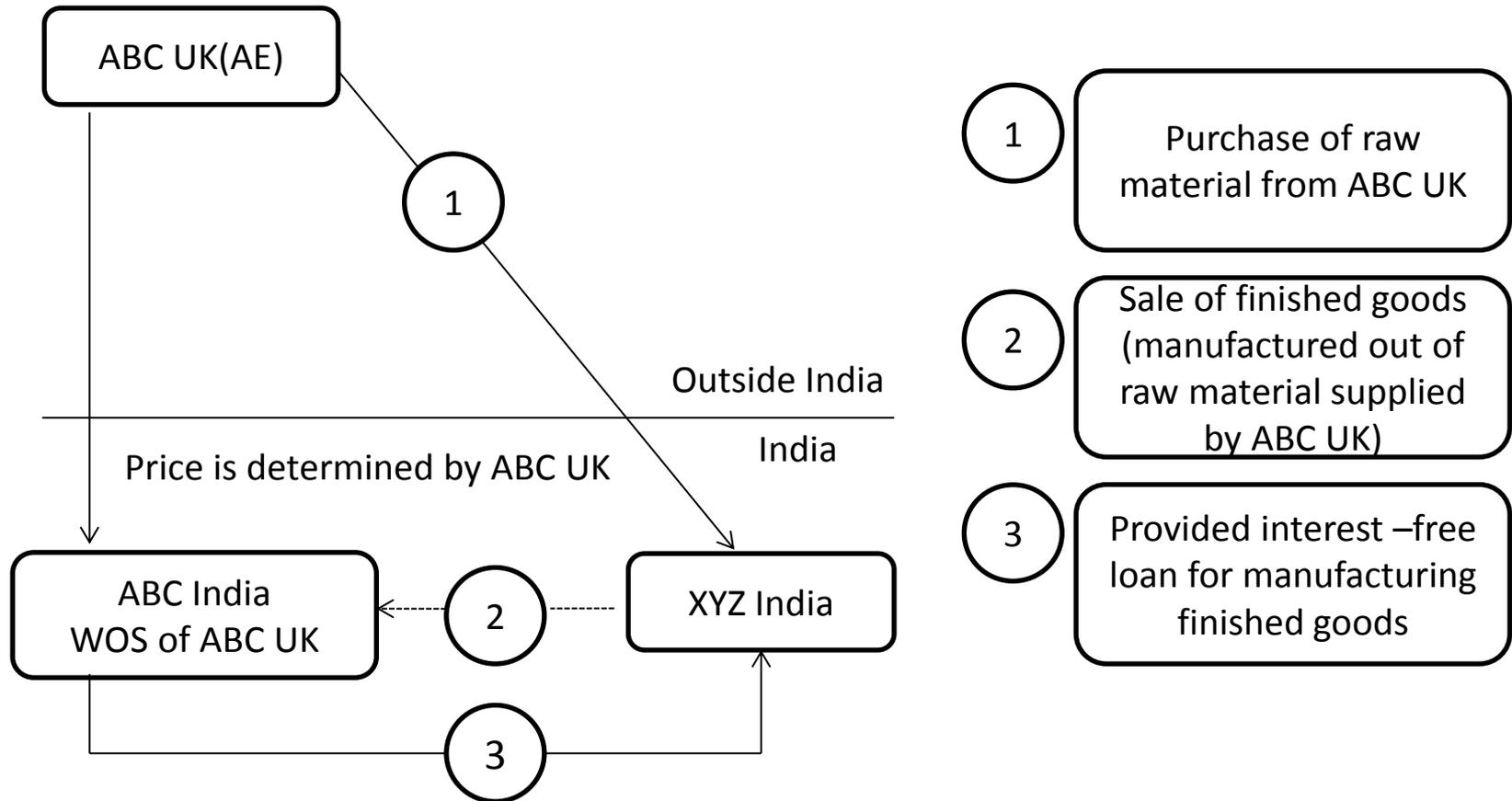
CASE STUDY – 1 (Prior agreement is available)



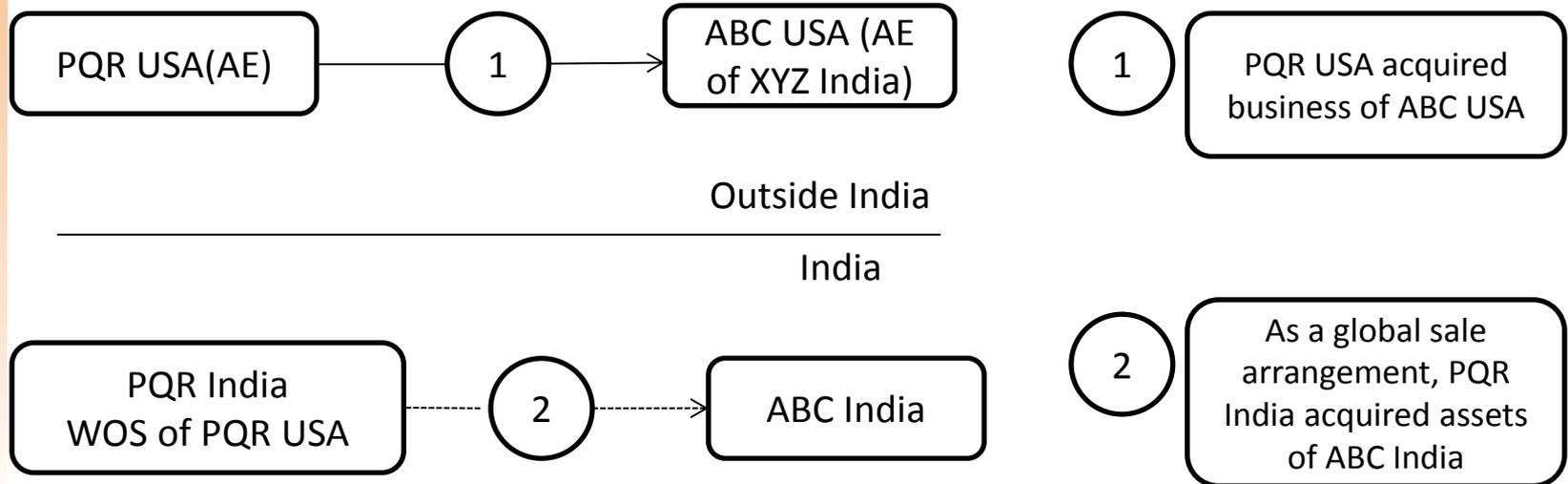
CASE STUDY – 1.1 (No prior agreement is available but terms of the transaction is determined in substance)



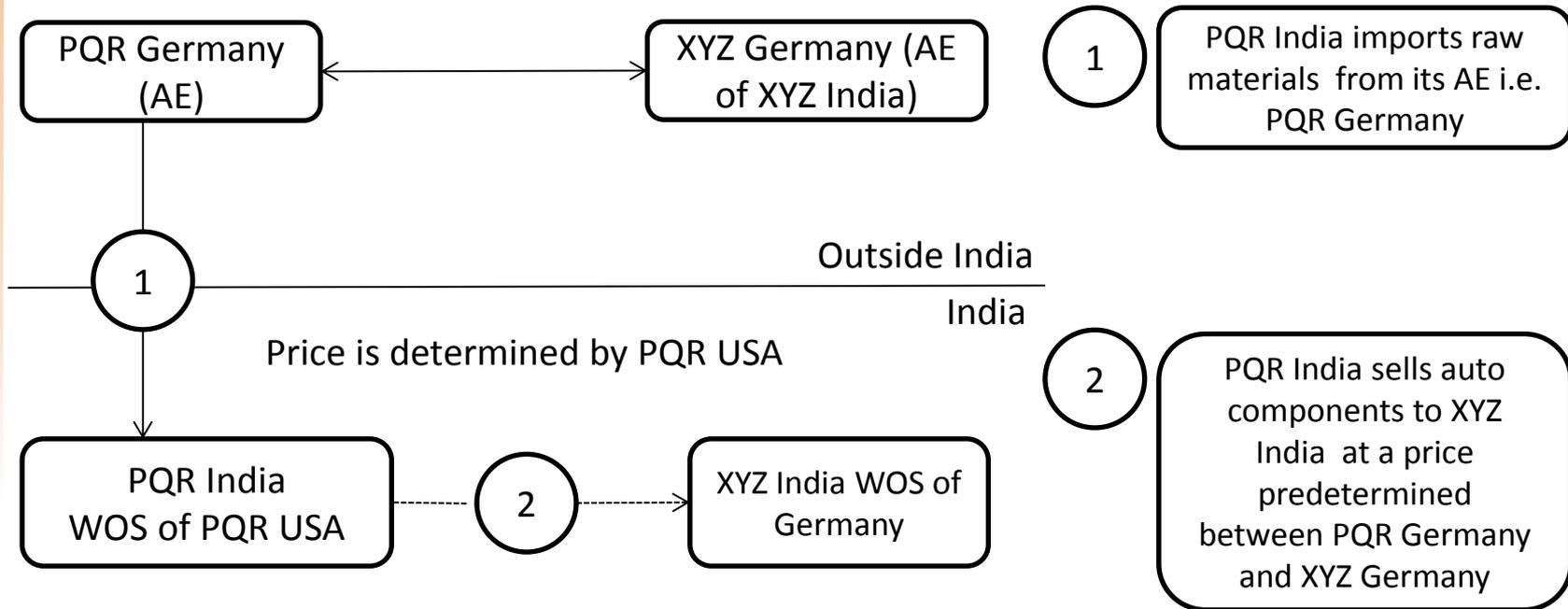
CASE STUDY - 2



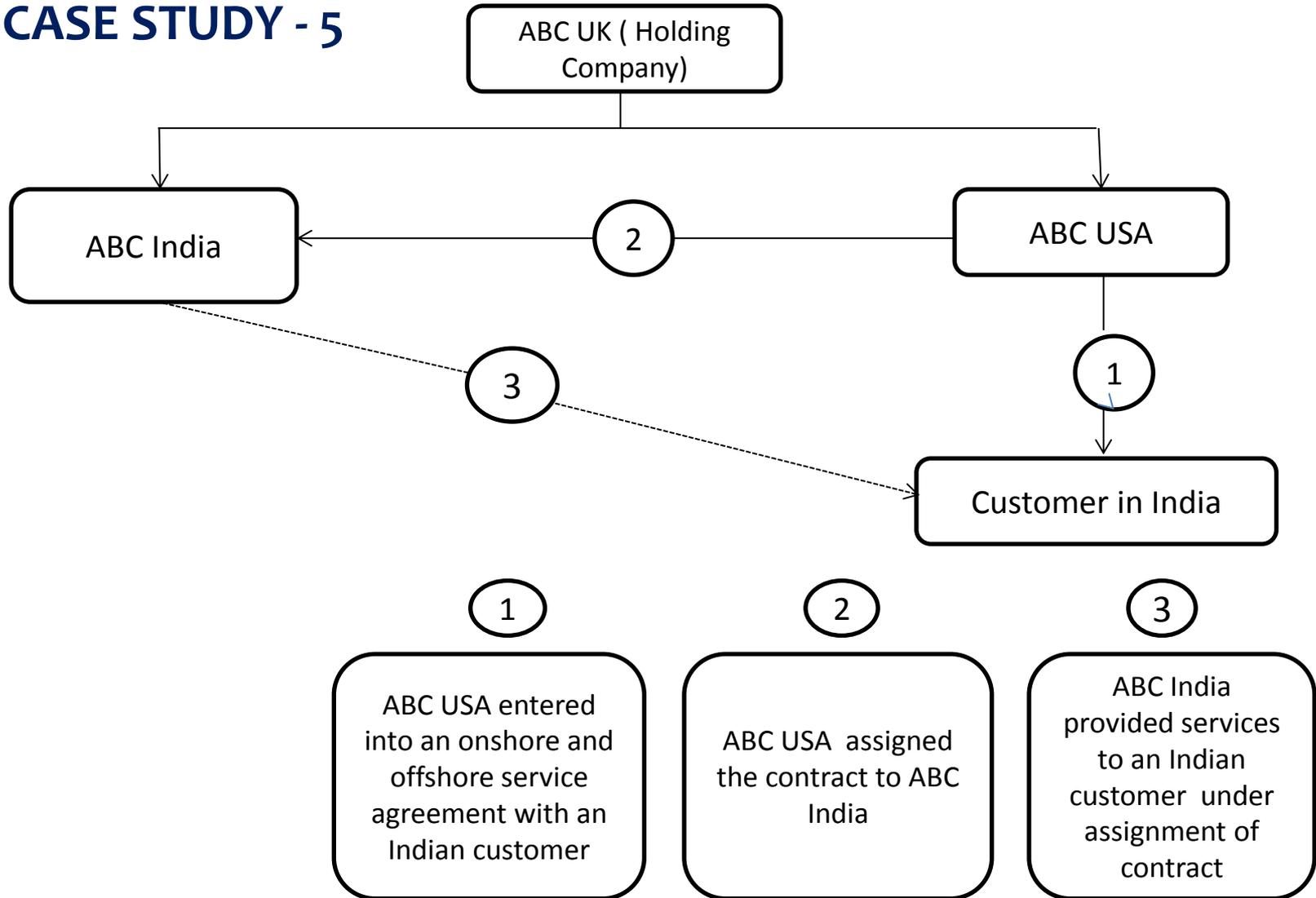
CASE STUDY - 3



CASE STUDY - 4



CASE STUDY - 5

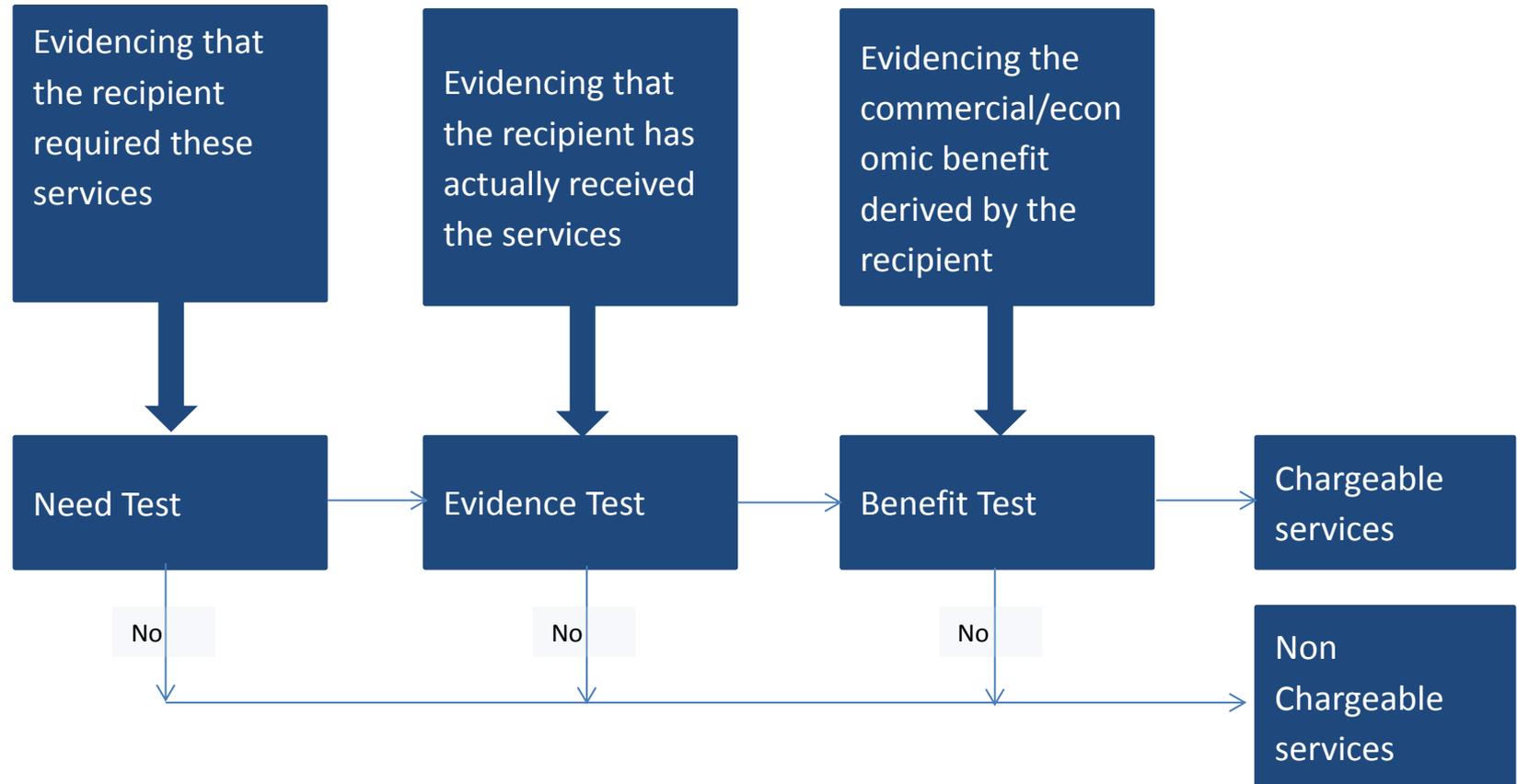


INTRA GROUP SERVICE

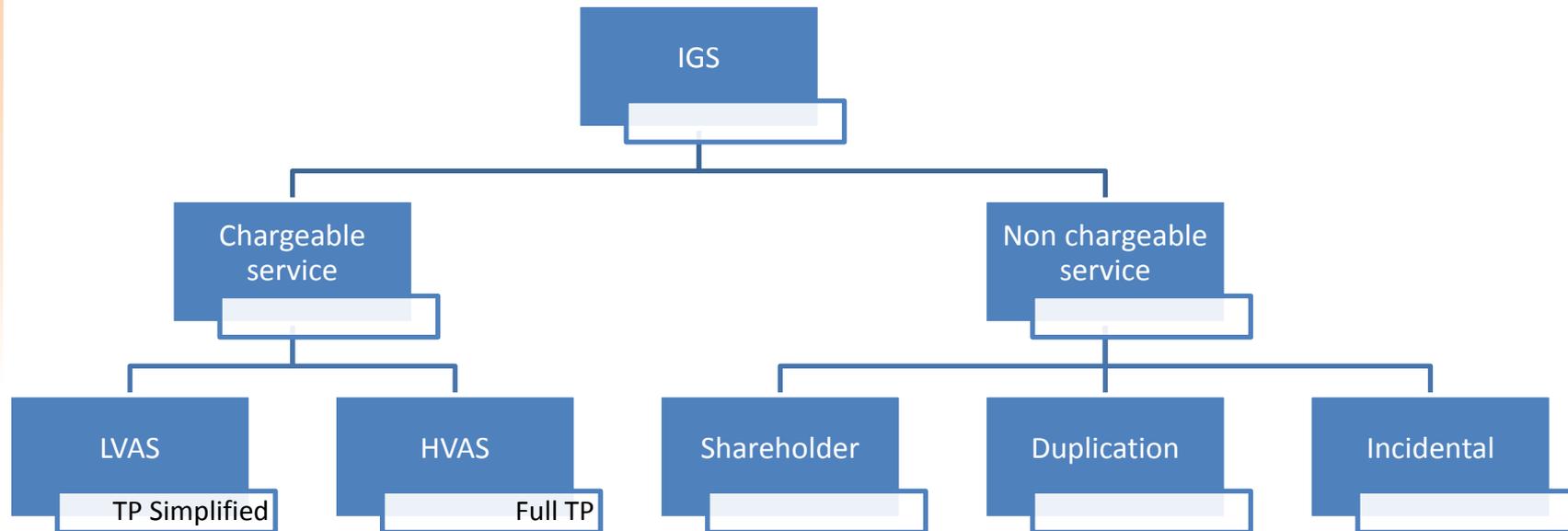
INTRODUCTION

- MNE group may obtain services directly or indirectly from independent companies, or from companies of same MNE group (i.e. intra-group)
- **Benefits** of intra group services
 - Economies of scale, synergy, efficient use of resources & high degree of specialization
 - Developing own expertise, coordination & control and avoiding duplication of work
- Intra Group Service (“IGS”) **includes**
 - Services by One member to other member or members of MNE
 - Services provided by group of members for the benefit of overall group
 - Service by Parent company to member & group of members
 - Service from third party on behalf of member or members

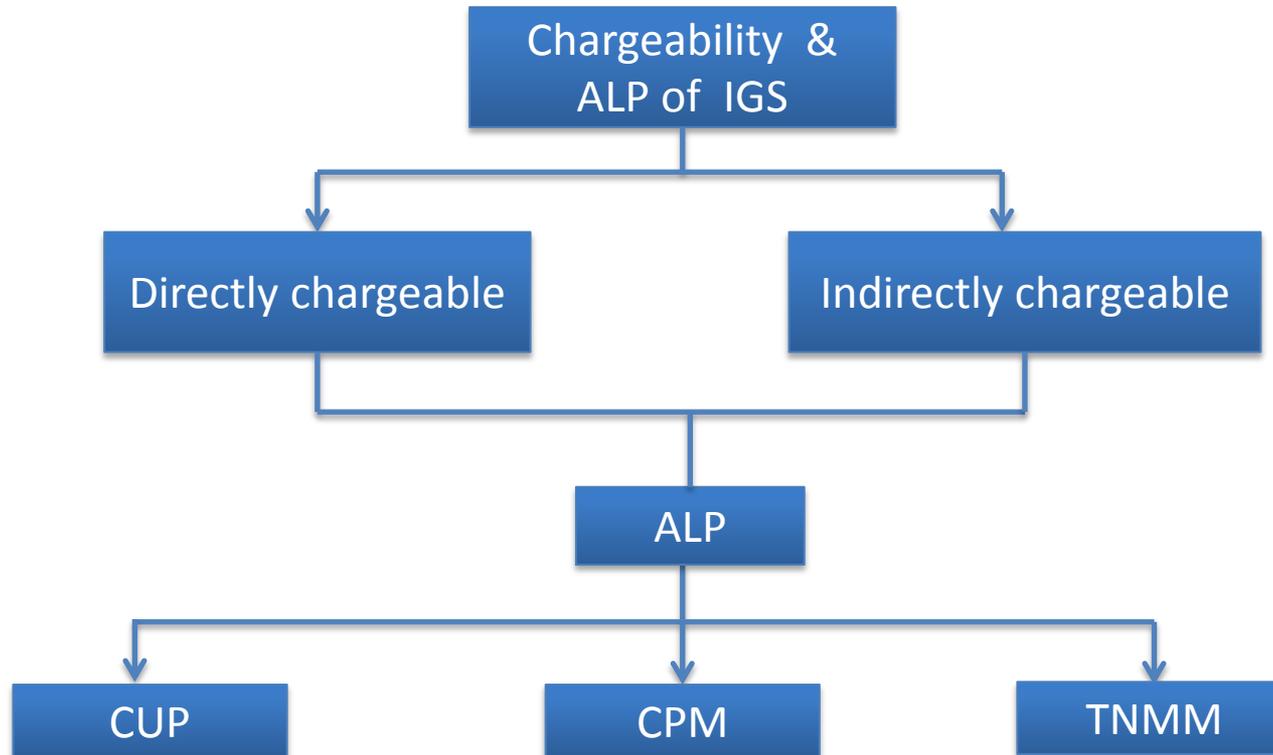
CHALLENGES



INTRAGROUP SERVICES



Chargeability and ALP of IGS



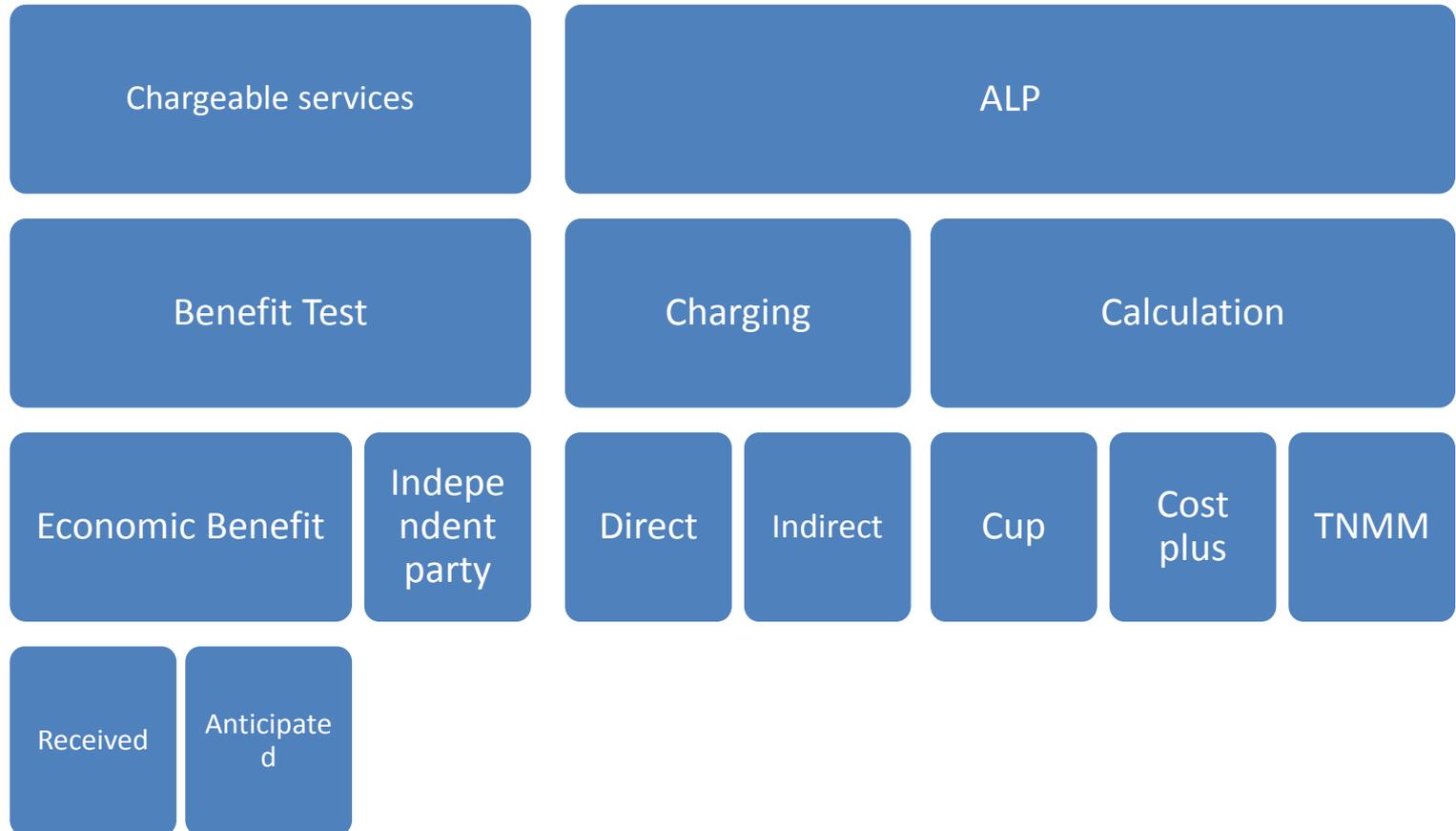
Illustrations

- Whether guarantee given by group member increasing credit rating is IGS?
- appointment and remuneration of parent company directors
- Where the enterprise benefitted from global marketing and public relations campaigns done by Group Company ?
- activity of parent company's in preparation and filing of consolidated financial reports
- Service undertaken to reduce risk of a wrong business decision (e.g. by getting a second legal opinion on a subject)
- activities of parent company for raising funds used to acquire share capital in subsidiary companies;

Illustrations

- Whether AE received enhance credit rating by reason of its affiliation with larger group; is IGS ?
- activities of the parent company to protect its capital investment in subsidiary companies.
- Resource sharing service
- Whether supplier giving additional credit based on guarantee given by IGS?
- Accounting & Auditing service
- meetings of the parent company's board of directors and shareholder

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IGS – A DOUBLE EDGED SWORD

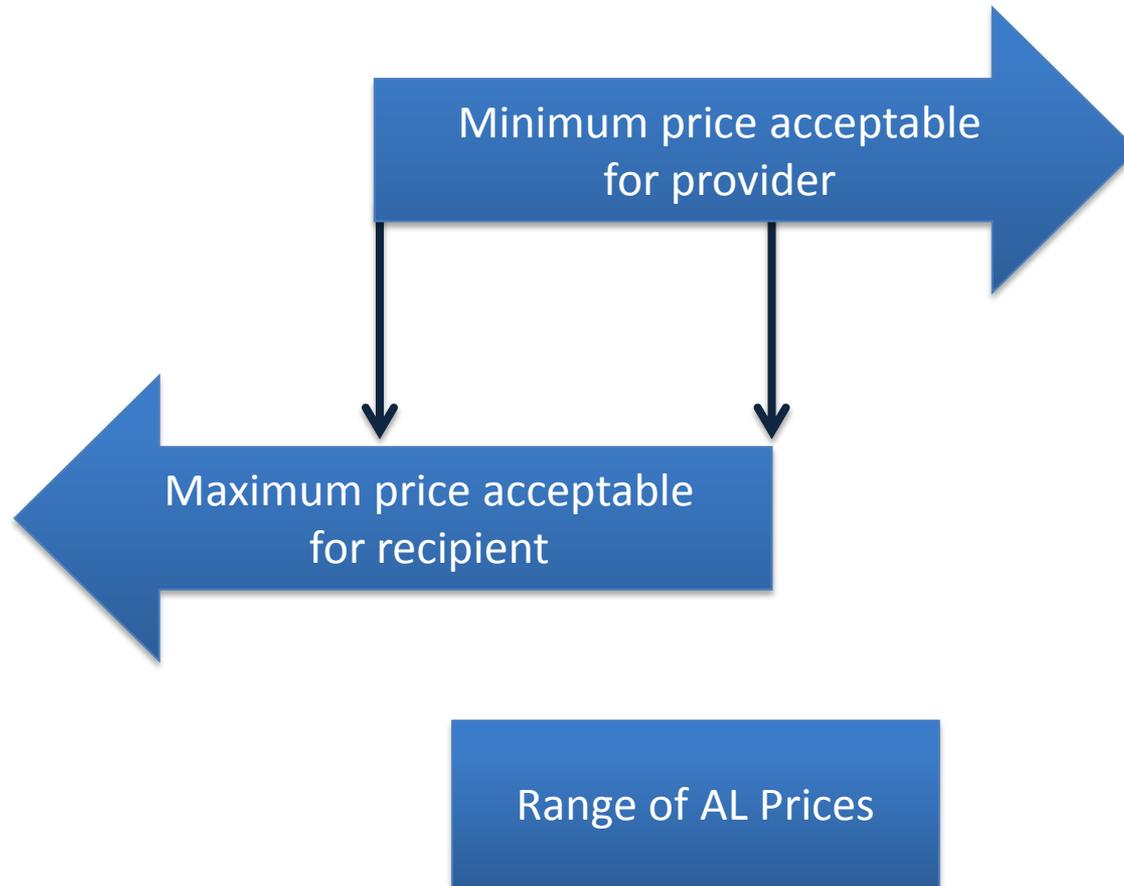
Service Provider

- How much does the service cost?

Service Recipient

- How much is the service worth?
- How much would a comparable independent enterprise be prepared to pay for that service in comparable circumstances?
- How much would it cost to provide the service in-house?
- How much would an external service provider charge?

Determination of ALP



CHECKLIST OF DOCUMENTS

Sr No	Particulars	Docs to be collected	
		Local entity	Parent entity
1.	Intercompany service agreement	✓	
2.	Evidence demonstrating <i>receipt of service</i>	✓	
3.	Copy of emails, correspondence etc demonstrating scope of work and <i>negotiation of price</i> between group companies	✓	
4.	Copy of invoices raised – recommended by BEPS for LVAS	✓	
5.	Details of <i>cost incurred by group company</i> for providing such services		✓
6.	Documents demonstrating the <i>charge made on other group entities</i>		✓
7.	In case of <i>allocation of cost</i> , <i>certificate</i> from an independent auditor certifying the basis of allocation key used and calculation of charges		✓
8.	Benchmarking study done/ Transfer pricing report		✓
9.	Detail write up should be maintained to demonstrate following points: <ul style="list-style-type: none"> ○ Difference between regular service received by local entity v/s headquarter service received so as to prove that there is <i>no duplication of service</i> ○ Reasons for availing such service ○ Documents to substantiate that the services were actually received and were consistently received 	✓	

Case laws

Cushman & Wakefield India Pvt Ltd (Delhi High Court)

M/s. Fosroc Chemicals India Pvt. Ltd (Bangalore ITAT) [ITA No. M.P. No.47/Bang/2015]

Reimbursement to AEs of cost for coordination and liaison service

Technical and management services under CCA

- Sec 92(3) does not allow to reduce profit which was rejected by HC
 - AO after reference to TPO cannot verify the allowability of claim u.s 37 was also rejected by HC
 - HC demands benchmarking of cost to cost arrangement from ALP test to verify price charge and to verify whether the cost is inflated or not
- Commercial expediency can be verified by AO and not TPO
 - In a case where expenses are actually reimbursed without a mark-up, tax base erosion can happen only if the costs reimbursed are inflated.
 - It is important to determine whether the costs claimed to have been apportioned between the various group entities have not been inflated and are allocated on a proper basis

McCann Erickson India Pvt Ltd. - (Delhi ITAT) ITA No. 5871/Del/2011 - Management and co-ordination service

- Need Test: Only a business expert can evaluate true intrinsic and creative value of services received. Reference of need test complied by the taxpayer
- Benefit Test: Over the years 14% revenue growth substantiated by Taxpayer
- TNMM justified if
 - Transaction if interrelated
 - Nexus with core revenue generating activity
 - No revenue generating capacity in isolation
 - Only one class of business
- DRP direction of reducing adjustment to 40% cannot be denied by the TPO & AO

Dresser Rand India Pvt. Ltd. - (Mumbai ITAT) ITA No. 8753/Mum/2010 - HR, Treasury, various support services

- Need Test : Tax authorities cannot question the commercial expediency, In house presence of team does not stop AE to take specialised service
- Evidence Test : Contemporaneous documentation submitted – 300 pages
- **Benefit Test** : TPO did trend analysis of growth in the business (being first year of service) and in absence of increase in growth contented that the service was not required – not accepted by Tribunal
- Separation of transaction and benchmarking it not possible and TNMM accepted as most appropriate method

TNS India Pvt Ltd (HYD ITAT) ITA No 944/HYD/2007 – Evidence test accepted based on detailed submission of functions performed by AE without corroborated documentation

<p>Gemplus India Pvt. Ltd. (Bangalore ITAT) ITA No.352/Bang/2009</p>	<p>Marketing and sales and other support, customer</p>	<p>No details available on record in respect of services rendered</p> <p>Taxpayer has not proved any commensurate benefits against the payments of service charges to its Singapore affiliate</p> <p>Cost must be allocated on actual basis and not on pre determine basis</p>
<p>Knorr-Bremse India Pvt. Ltd. (Delhi ITAT) ITA No. 5097/Del/2011</p>	<p>SAP implementation fees</p>	<p>CUP method rejected</p>

**AWB India Pvt. Ltd.
(Delhi ITAT) ITA No.
4454/Del/2011**

- Not possible to document every receipt of the service in question
- Tax authorities cannot question the commercial expediency
- CUP method applied by the TPO cannot be considered in view of non-availability of CUP data

**Avery Dennison India Private
Limited v. ACIT (Delhi ITAT) (ITA
No.4868/Del/2014)**

- The HC held in the case of the taxpayer that mere profitability or benefit cannot be the basis for determination of ALP for intra-group service fee payments.
- The Tribunal, has observed that the intra-group services, if part of a composite contract, cannot be unbundled for the purpose ALP determination, and thereby allowed aggregation of the transaction under TNMM.

REFERENCE TO TPO

REFERENCE TO TPO

Case selected for scrutiny on TP risk parameter	Case selected for scrutiny on non-TP risk parameter
If TP risk pertains to only IT, then only IT to be referred to TPO	Where the taxpayer has not filed Form No. 3CEB at all or has not disclosed IT or SDT which comes to the notice of the AO which has not been disclosed in the Form No. 3CEB
If TP risk pertains to only SDT, then only SDT to be referred to TPO	Where there has been a TP adjustment of INR 10 crores or more in an earlier assessment year and such adjustment has been upheld by the judicial authorities or is pending in the appeal
If TP risk pertains to IT and SDT, then both shall be referred together to TPO	Where search and seizure or survey operations have been carried out and findings regarding transfer pricing issues in respect of IT or SDT or both have been recorded by the Investigation Wing or the AO





Thank you

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S N & Co
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O Tax o Audit o Consulting

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