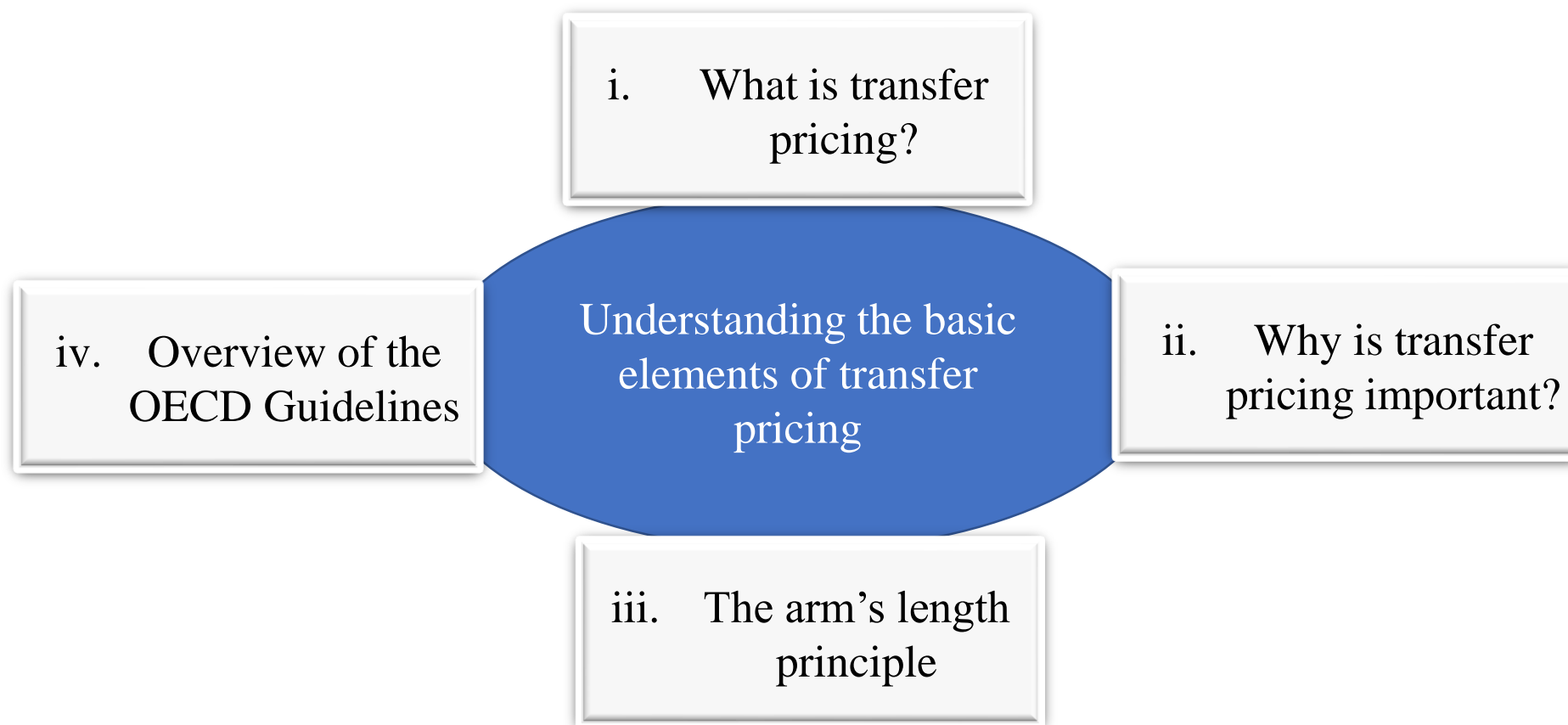


Transfer Pricing: Understanding the Basics

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CCPA-K
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Agenda



Introduction to Transfer Pricing



What is transfer price?

❖ Transfer price is the value or price at which transactions take place amongst related/associated parties

Fact: Over **60%** of international trade occurs within multinational companies rather than between different multinational corporations

Tax regimes in different countries have different tax rates

These two, among other facts creates a tempting recipe for revenue/profit shifting across different jurisdictions with the primary aim of minimising the taxes payable

Introduction to Transfer Pricing



Amazon paid just £15m in tax on European revenues of £19.5bn

Online retailer's UK warehouse and logistics operation more than halved its corporation tax bill from £15.8m to £7.4m



Starbucks' EU unit paid just 2.8% in UK tax last year

Michael Selby-Green ☒

Sep. 19, 2018, 11:02 AM 963



Technology

Google's 'Dutch Sandwich' Shielded 16 Billion Euros From Tax

By [Jeremy Kahn](#)

January 2, 2018, 6:23 PM GMT+3 Updated on January 3, 2018, 12:39 AM GMT+3

- ▶ Amount for 2016 was seven percent higher than the year before
- ▶ Tax shelter saved Google billions of dollars in 2016

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Apple may face \$14.5 billion tax bill after EU rules Irish deal is illegal

Published: Aug 30, 2016 10:41 a.m. ET



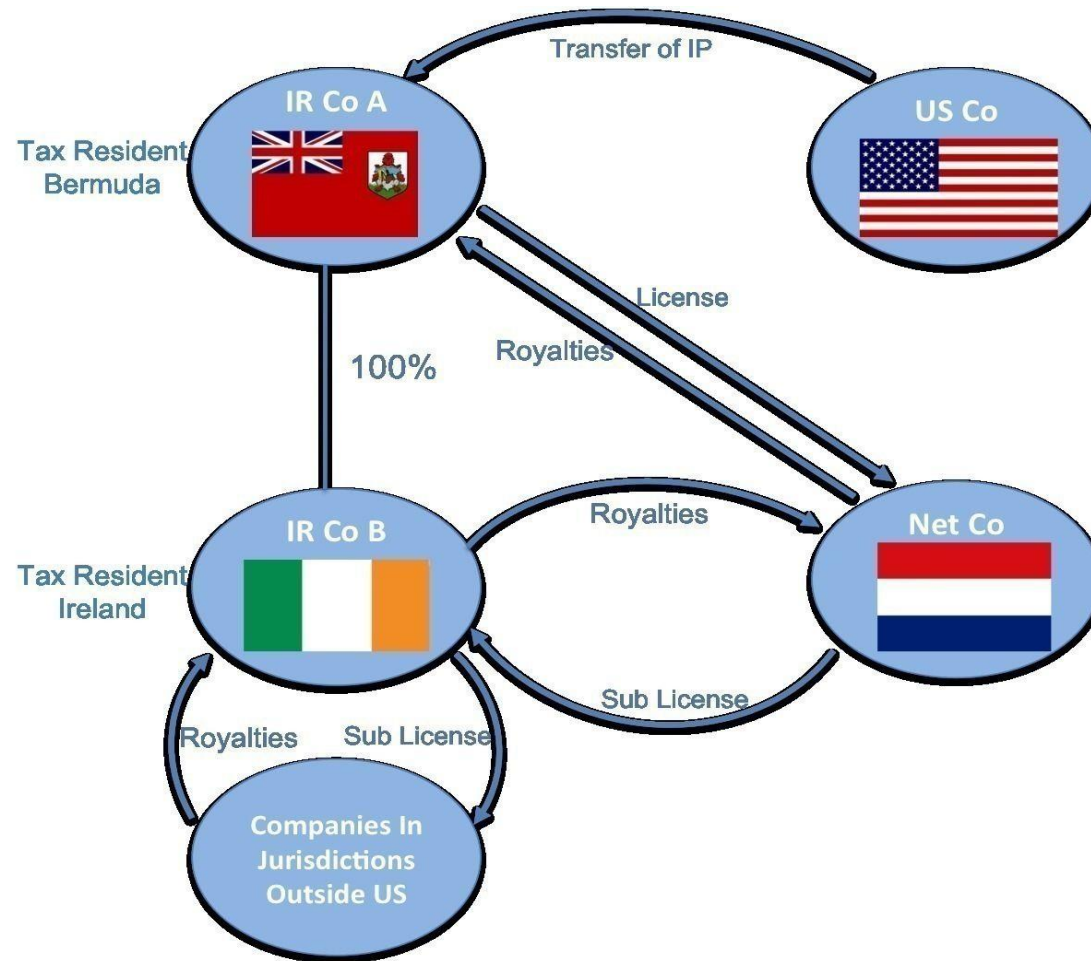
Aa

Ireland ordered to recoup unpaid taxes from Apple



Introduction to Transfer Pricing

The Double Irish with a Dutch Sandwich



Introduction to Transfer Pricing

What is the effect of transfer pricing?

- ❖ Companies are required to ensure their transactions follow the **Arm's Length principle**
- ❖ Revenue Authority TP audits to determine the arm's length nature of pricing arrangements
- ❖ Governments accusing MNEs of paying little/no tax
- ❖ Media reporting on MNEs tax avoidance
- ❖ Tax justice movement and civil societies



Key Terms in Transfer Pricing

Related parties

- ❖ Common shareholding/control/capital
- ❖ Common directorship and management

Control

- ❖ Participate directly or indirectly in the management, control or capital of an enterprise

Transfer pricing

- ❖ The pricing of goods, services, intangibles and financial arrangements between related parties located in the same or different tax jurisdictions.

Transfer mis-
pricing

- ❖ The trade between related parties at prices designed to manipulate markets and to deceive tax authorities (shifting income from a high tax jurisdiction to a low tax jurisdiction)

Key Terms in Transfer Pricing

Controlled
transaction

- ❖ A transaction between related parties

Uncontrolled
transaction

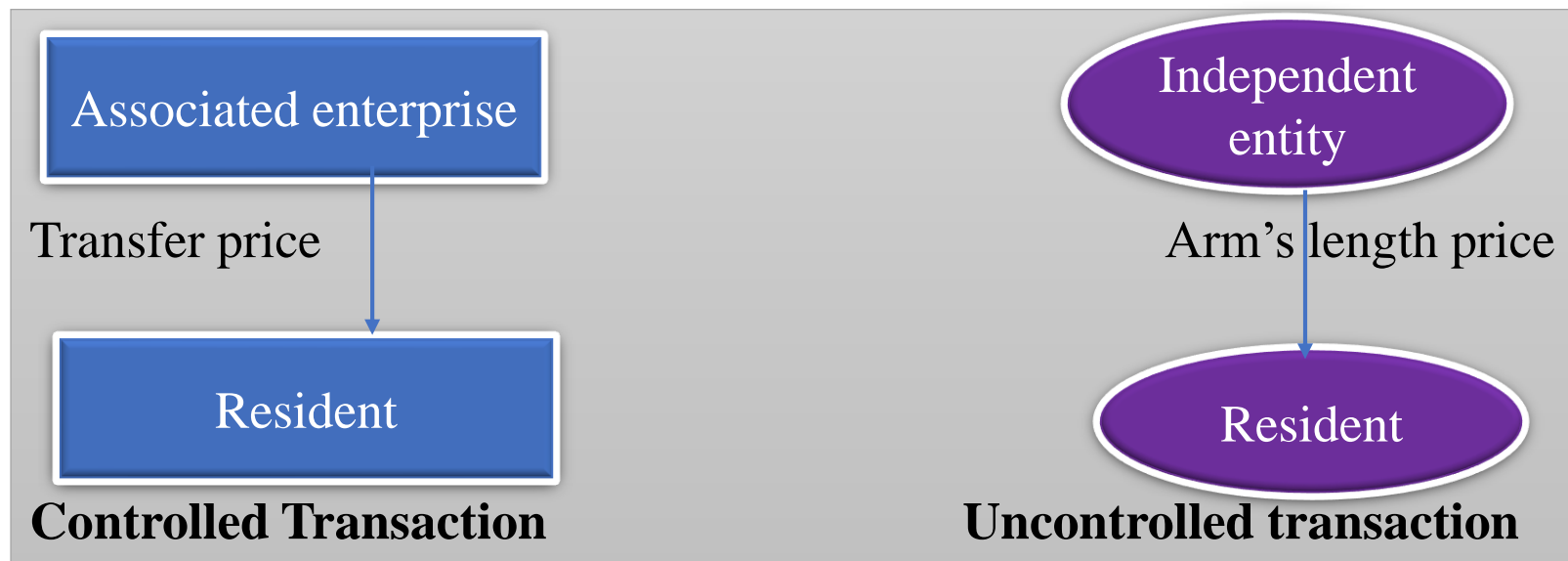
- ❖ A transaction between unrelated/independent parties

Arm's length
price

- ❖ Price which is generally charged in a transaction between independent parties.
- ❖ The price of a transaction in an open market

The Arm's Length
Principle

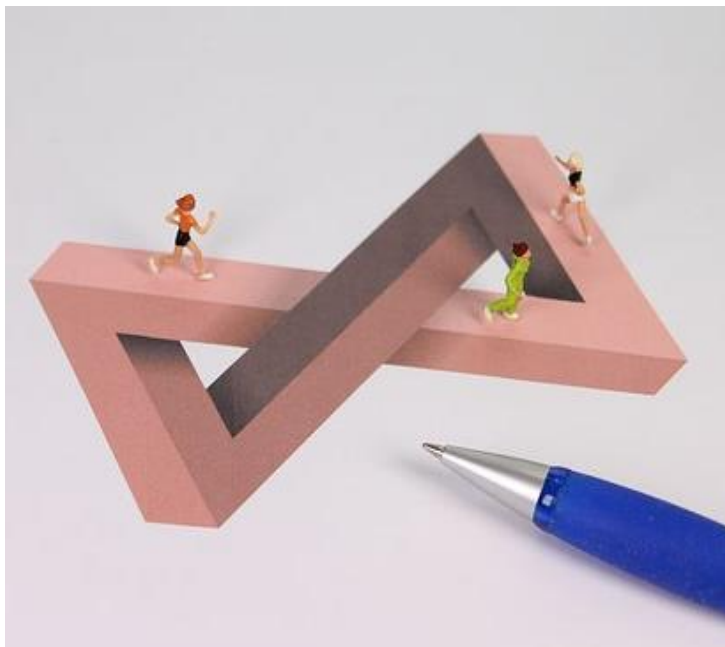
The arm's length principle



Arm's-length principle: “the amount charged by one related party to another for a given transaction must be the same as if the parties were not related (independent parties)”

- ❖ Reference is made to the profits that would have arisen if a similar transaction to the controlled transaction had been executed by or between independent enterprises

The arm's length principle



Rationale for the application of the arm's length principle (ALP)

- ❖ Markets govern the transactions between unrelated (independent) parties
 - ❖ Prices charged between related parties should be based on the margins earned/prices charged in comparable unrelated party transactions
 - ❖ Ensures a market based allocation of income between the related parties
- It prevents shifting of profits to jurisdictions with lower tax rates

Note:

- ❖ The ALP is generally accepted rule in establishing **acceptable** transfer prices
- ❖ In majority of the countries across the world, the ALP lays the basis for **TP rules** and **bilateral trade agreements**

Transactions subject to the Arm's Length Principle



Transactions subject to the arm's length principle

- ❖ Purchase and sale of goods (including assets);
- ❖ Rendering or receiving services;
- ❖ Agency arrangements, leasing arrangements, & license agreements;
- ❖ Financial transactions including guarantees and collaterals;
- ❖ Transfer of Intangible including R&D;
- ❖ Management contracts; and
- ❖ Any other transactions which may affect the profit or loss of involved entity

Overview of the OECD Guidelines



- ❖ OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010 (OECD TP Guidelines) are a revision of the 1979 Report
- ❖ Originally approved for publication by the OECD Council in July 1995
- ❖ The Guidelines have been updated and reviewed through the years and are supplemented by additional guidance
- ❖ OECD released its 2017 edition of the TP Guidelines which incorporated changes to the 2010 edition. (Amendments based on BEPS Action 8 - 10 and Action 13)

These OECD Guidelines provide detailed guidance on applying the arm's length principle

The Guidelines are accepted and followed by most countries and are routinely used in resolving cross border transfer pricing disputes

Note: The UN Manual is generally consistent to the OECD Guidelines

Overview of the OECD Guidelines



Applying the arm's length principle (ALP)

The OECD Guidelines generally revolve around the application of the ALP in conducting a transfer pricing analysis

The general provisions cover the following

- i. Functional analysis
- ii. Comparability analysis
- iii. Selection and application of the most appropriate TP Method
- iv. Selection of the tested party
- v. Burden of proof and safe harbours

Overview of the OECD Guidelines



Point to remember

- ❖ The arm's length principle is key in transfer pricing
- ❖ TP is not a science - it's principle based
- ❖ Revenue authorities often focus on large transactions with material amount of tax at stake

Interactive Session



Uphold public interest