

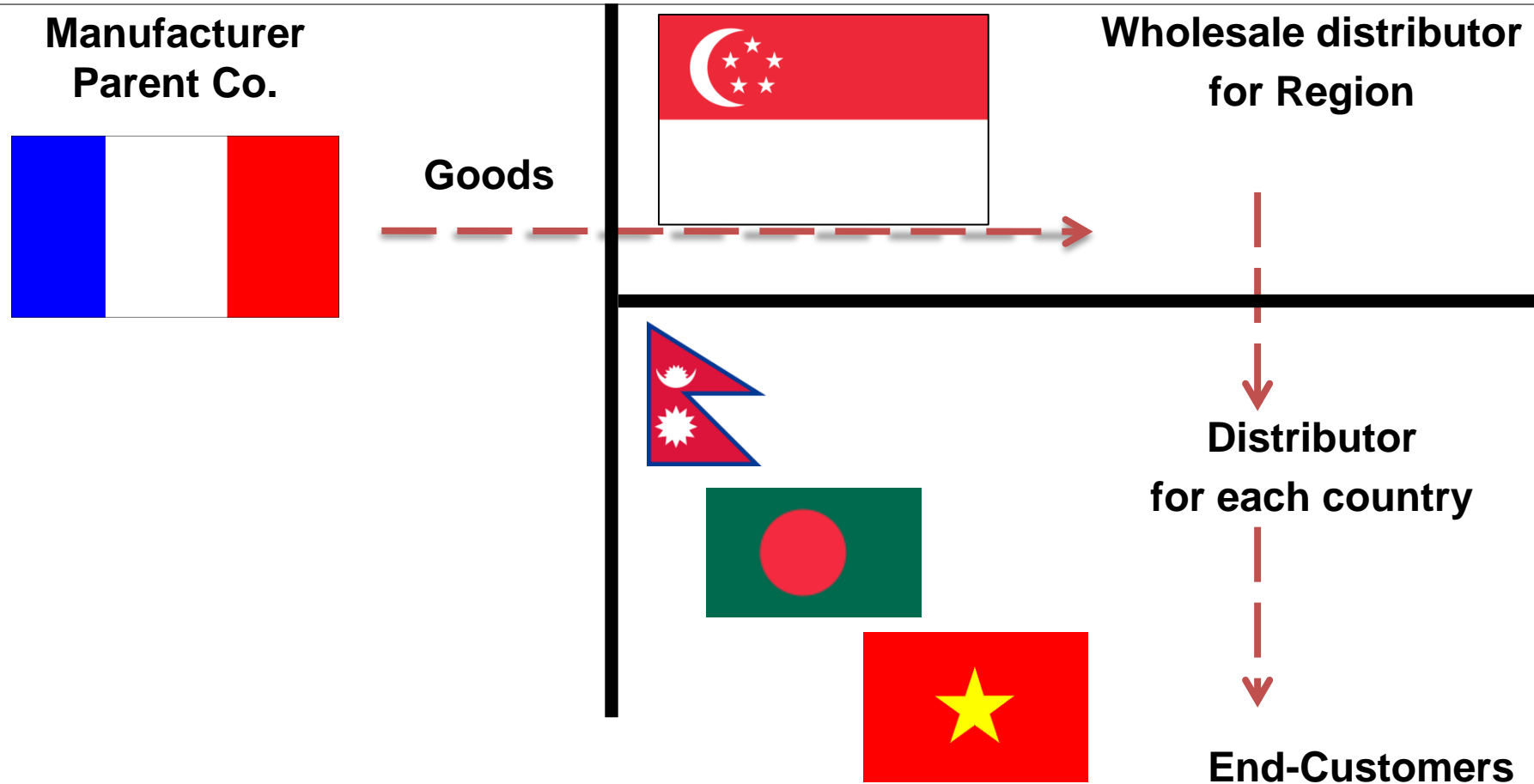


# TRANSFER PRICING WORKSHOP

Key concepts: the arm's  
length principle



# What is Transfer Pricing?

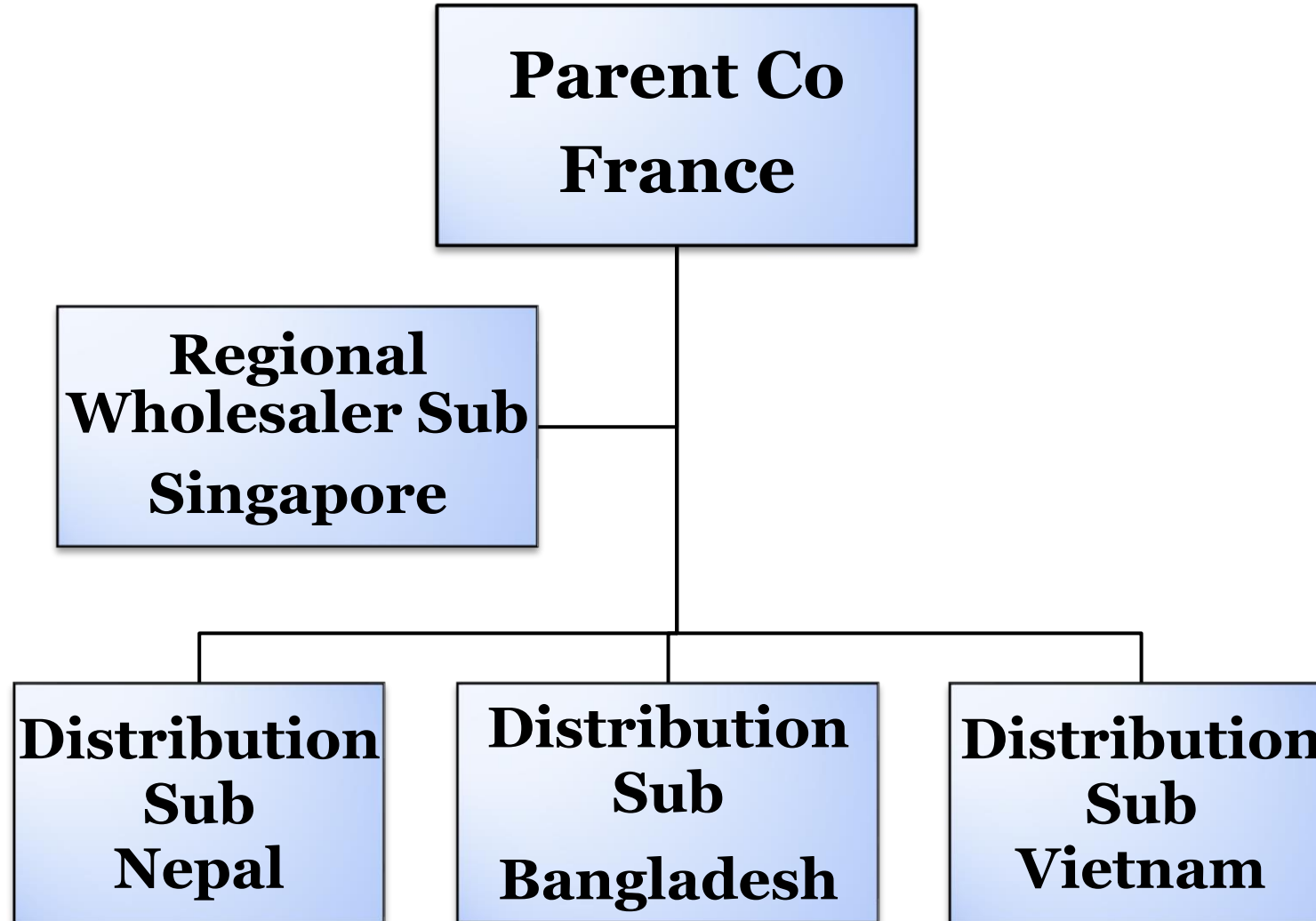


• *What price is applied at each stage?*





# What is Transfer Pricing?





# Relevance of the Subject

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- Approximately 60-70% of world trade is carried on within Multinational Groups of Enterprises (MNEs)
- Cross-border dimension of transactions...  
...due to globalisation and economies of scale
- **Align Transfer pricing outcomes with value creation – (BEPS Actions 8-10)**
- **Transfer prices ...** are prices at which an enterprise transfers property, services or intangibles **to associated enterprises**



# The arm's length principle

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- Treats associated enterprises as separate entities and not as simply parts of a unified whole
- Goal of the approach: associated and independent enterprises are treated the same way
- Application on a transaction-by-transaction basis to achieve closest approximation to open market and economic reality
- Removes tax distortions and encourages international trade and investment



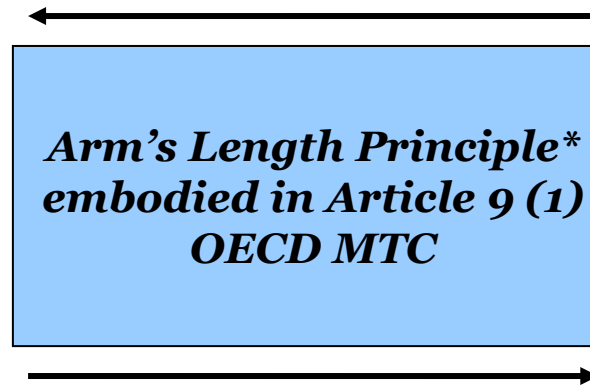
# The arm's length principle

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- Article 9(1) OECD Model Tax Convention:  
“(....) where conditions made or imposed between associated enterprises in their commercial or financial relations differ from those which would have been made between independent enterprises, then profits that, but for those conditions, would have accrued to one of the enterprises may be included in the profits of that enterprise and taxed accordingly.”



# OECD MTC and OECD TPG



OECD MTC → basis for 3,600 legally binding bilateral Tax Treaties

OECD TPG → interpretative tool for Article 9 of the MTC

*\* Also applicable to the UN Model Double Taxation Convention.  
ALP may also be enacted in domestic law, regulations, rulings, case law or guidelines.*



# Definition of “Associated Enterprises”

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- Definition in Article 9 OECD Model Tax Convention:
  - *“Direct or indirect participation in the*
    - *management,*
    - *control or*
    - *capital of an enterprise”*
- No minimum level of participation
- Enterprises are associated where:
  - one enterprises participates in the management control or capital the other, or
  - the same person(s) participate in the management, control or capital of both





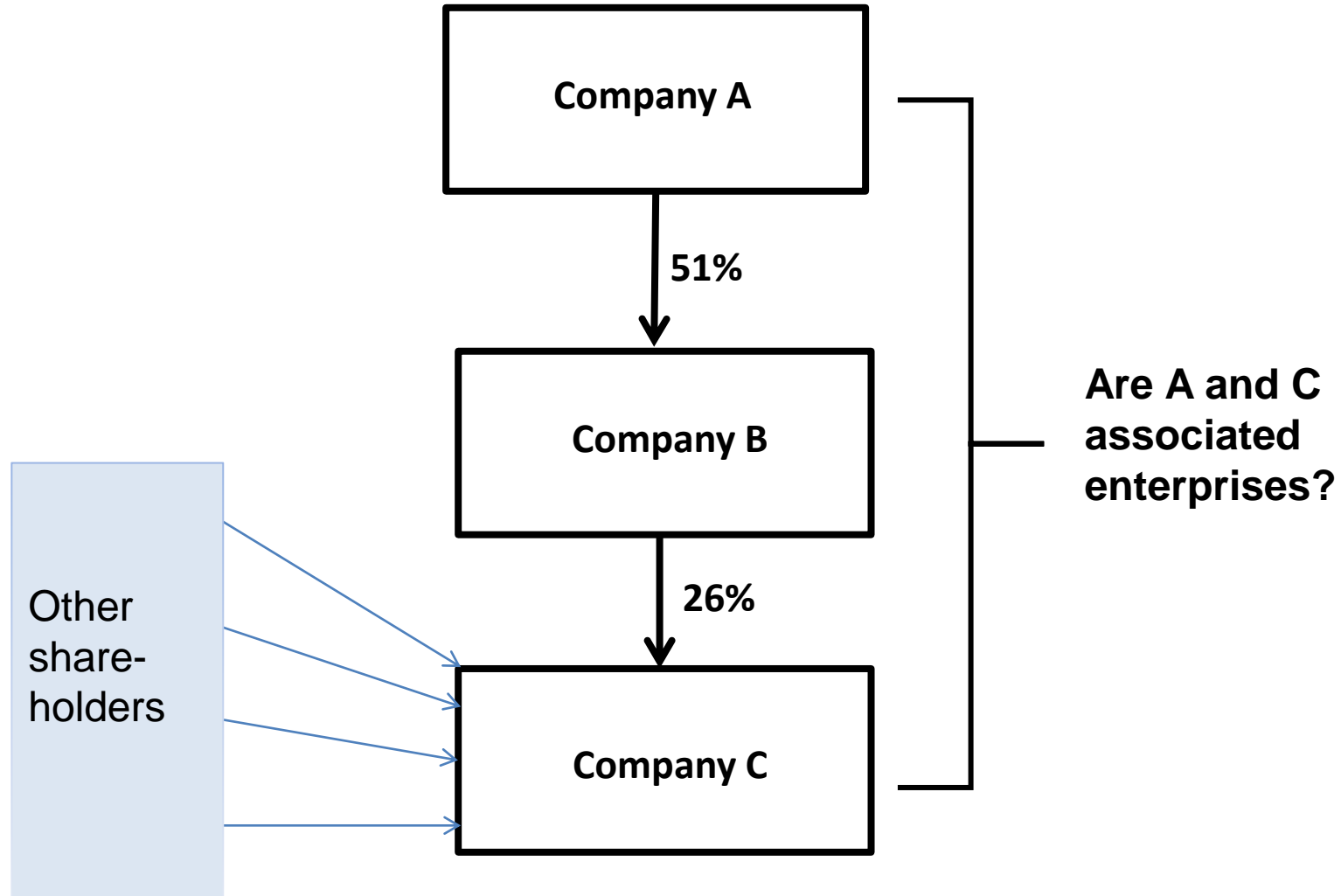
# Participation in management, control or capital

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- Potentially quite wide
- **Domestic rules** may refine or expand what transactions or arrangements are subject to the transfer pricing rules
  - Shareholding (*de jure* control): sometimes > 50%
  - *De facto* control, e.g.
    - same directors in both enterprises
    - sole customer or supplier
  - Association need not be proven

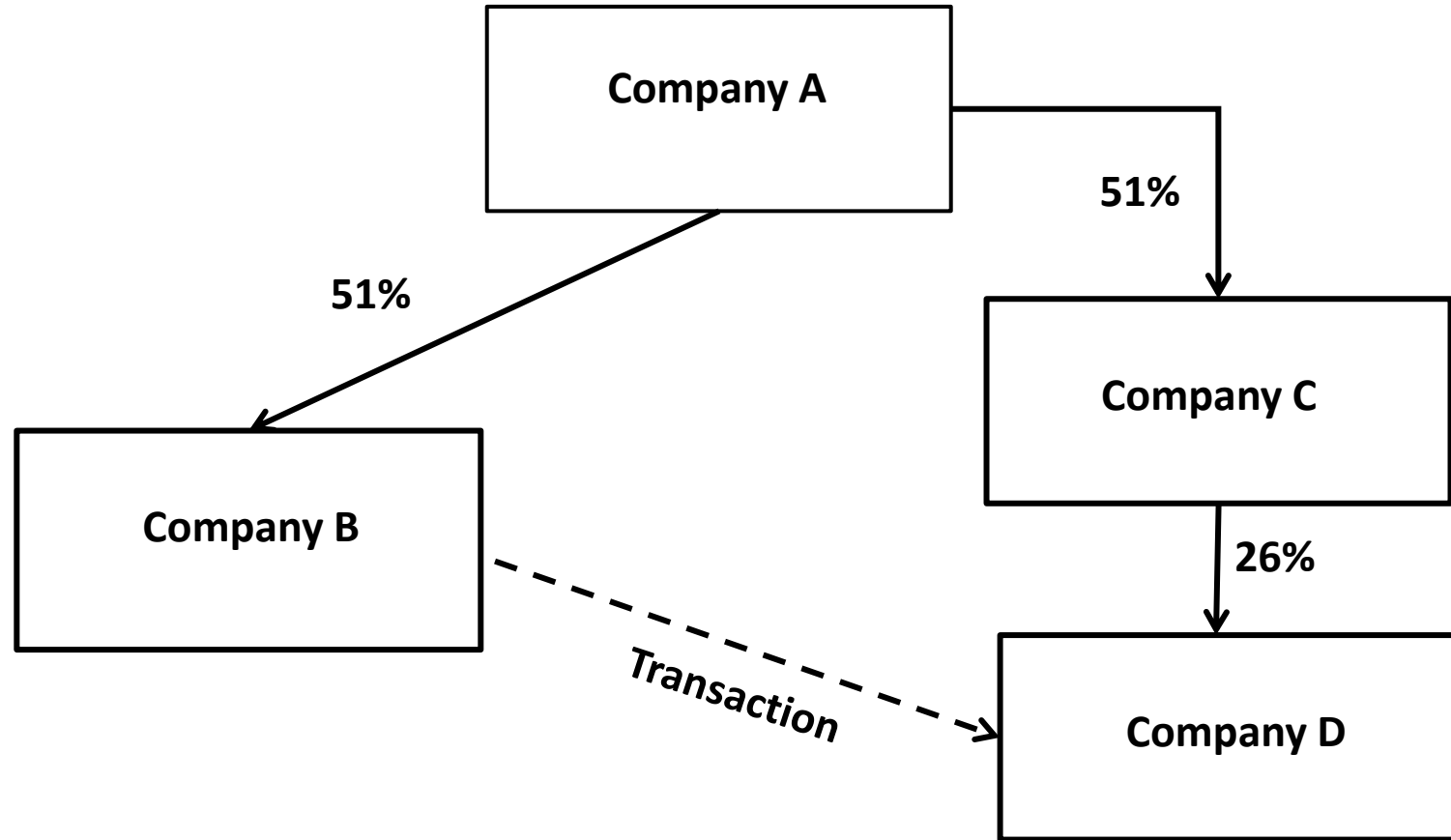


# Participation in management, capital or control





# Control



**Are B and D  
associated enterprises?**

# OECD Transfer Pricing Guidelines

- ❑ Consensus definition of the arm's length principle
- ❑ Pricing methods and guidance used by countries around the world
- ❑ 2017 Updated to incorporate BEPS 8-10, 13 outcomes; 2018 updated to incorporate Profit split guidance

Further updated 2018 (not yet republished)





# OECD Transfer Pricing Guidelines

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- Chapter I: Guidance for applying the ALP
- Chapter II: Transfer Pricing Methods
- Chapter III: Comparability Analysis
- Chapter IV: Administrative approaches to avoiding & resolving TP disputes (MAP, APAs, etc.)
- Chapter V: Documentation
- Chapter VI: Intangibles
- Chapter VII: Intra-Group Services
- Chapter VIII: Cost Contribution Arrangements
- Chapter IX: Business Restructurings
- Chapter X ...



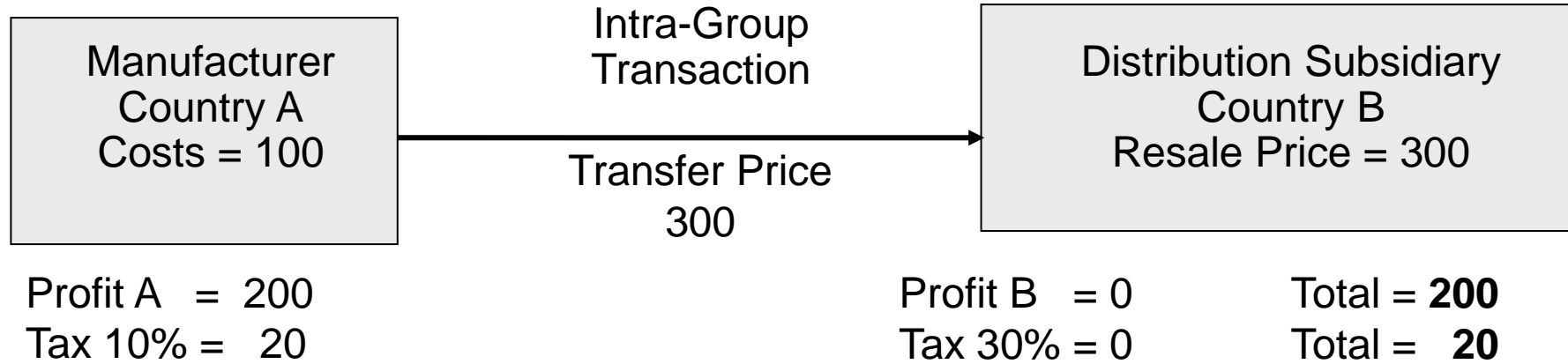
# Transfer Pricing and profit shifting



<u>Group Profit</u>	<u>Transfer Price</u>	<u>Profit A</u>	<u>Gross Profit B</u>
200	150?	50	150
200	200?	100	100
200	250?	150	50
200	300?	200	0
200	350?	250	-50



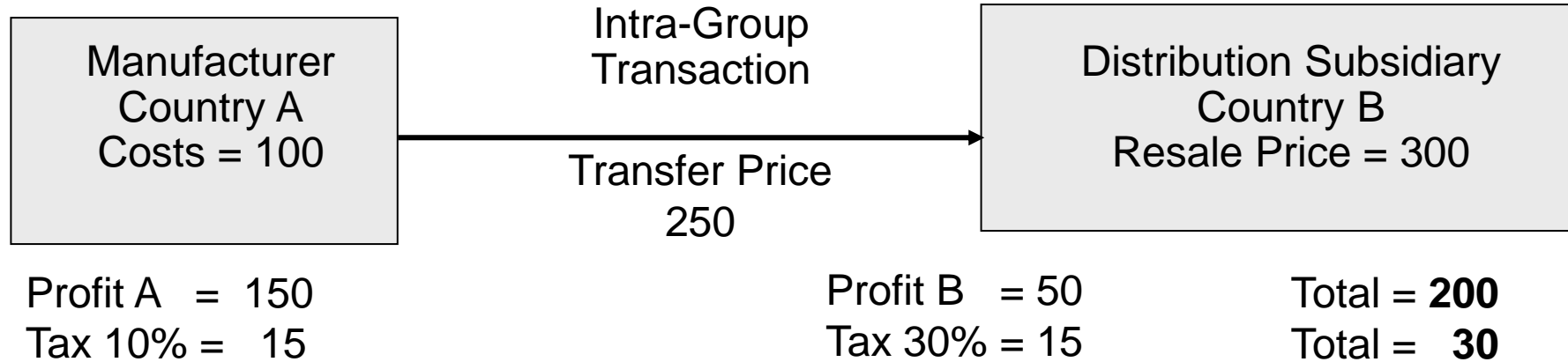
# Transfer Pricing and profit shifting



Position as filed by taxpayer



# Transfer Pricing and profit shifting

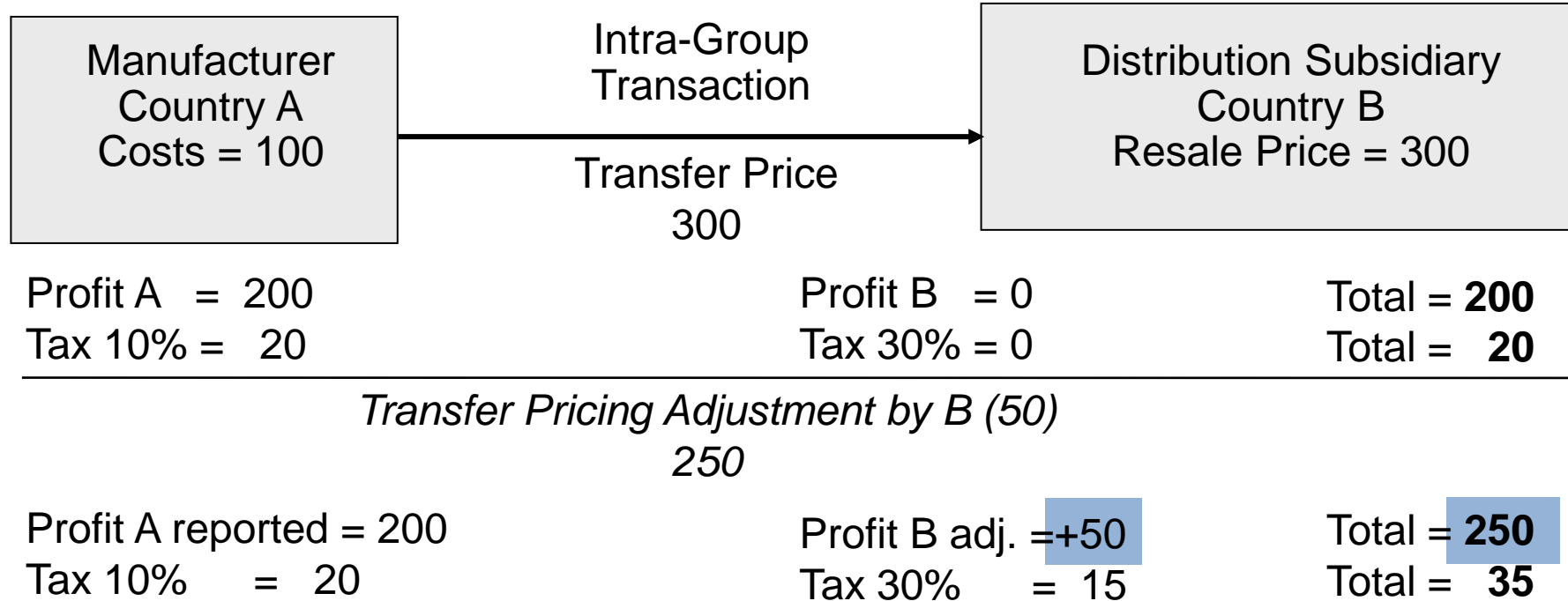


Country B audits and an adjustment of 50 is agreed



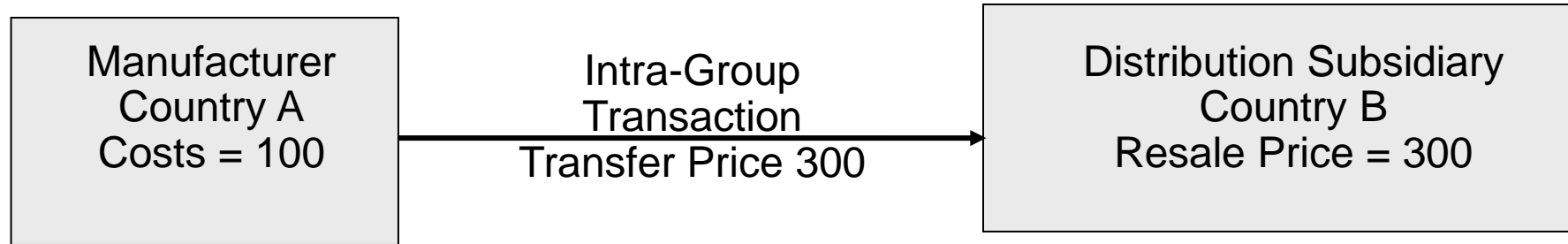


# Transfer Pricing Adjustment and Economic Double Taxation





# Transfer Pricing Adjustment and Economic Double Taxation



Profit A = 200  
Tax 10% = 20

Profit B = 0  
Tax 30% = 0

Total = 200  
Total = 20

*Transfer Pricing Adjustment by B (50)*  
250

Profit A reported = 200  
Tax 10% = 20

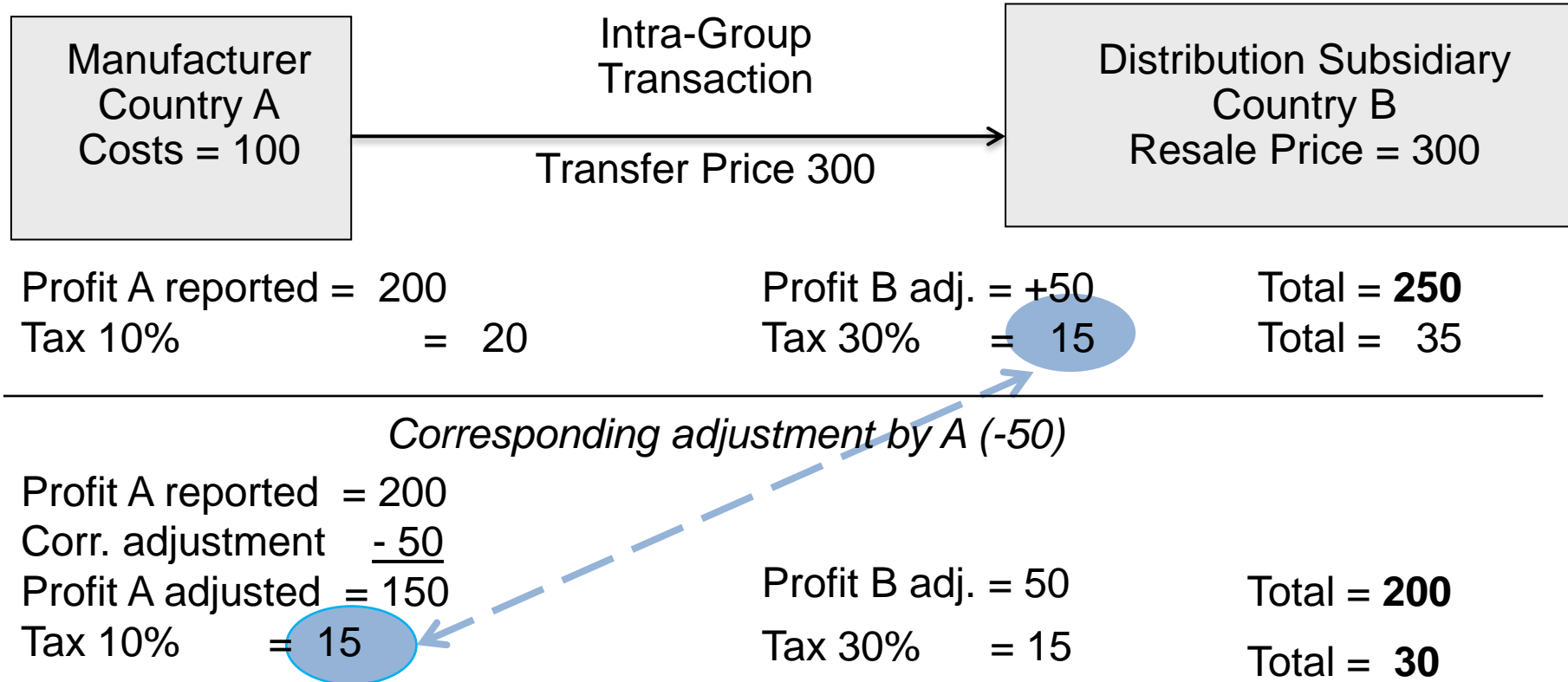
Profit B adj. = +50  
Tax 30% = 15

Total = 250  
Total = 35

Profit doubly taxed = 50



# Elimination of Double Taxation by Corresponding Adjustment





Questions,  
comments?