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C.V.O.CA'S

NEWS & VIEWS

FOR MEMBERS / SUBSCRIBERS / VOL. 25 - NO. 3 OCTOBER 2021

From President's Desk...

Dear Professional Colleagues and Readers,

September month was really great start of festival seasons with happy and positive vibes and with effective vaccination drive showing way to back to normal life soon. With extension of various deadlines, which was expected, allows professionals to execute the work without pressure of deadlines and we hope that technical glitches will be resolved soon, which will help us in time management.

This was also month of CA Results and this time more than 50 KVO Students joined our Profession as CAs with flying colours and 3 KVO students secured All India Ranks. Heartiest Congratulations to all students who have qualified. All the very best for future journey and always remember that, ***"Success is not the key of Happiness but happiness is the key of Success"***. If we Love what we are doing, success always reach to us.

On 27th September, Ayushman Bharat Digital Mission was launched. This mission leverages technology to improve access to healthcare & opens doors of new innovations in the healthcare sector.

At Quad Summit 2021, Hon. PM Narendra Modi made his statement to ensure peace and prosperity in the Indo-Pacific as well as the entire world.

Sensex Cross 60,000 mark for the first time. Also, Market capitalisation of BSE listed companies touched high of 239 Lakh Crores, which clearly indicates 'V shaped' recovery of Indian Economy.

"Unlock your Inner Potentials" - I would like to appeal any members, fresher, who would like to be speaker for any expertise area or have some innovative ideas can come forward and take opportunity of this platform.

Programs in Retrospect

Membership Committee of CVOCA has congratulated newly Pass out CAs through Khabar Patrika.

Further, Vacancy Advertisement was published to cater need of CVOCA Firms & Students seeking Job / Articleship. CVOCA is trying its best to act as catalyst between Firms always feeling talent crunch on one side and vast pool of KVO Students seeking guidance for joining right CA Firm for their Articleship.

After becoming CA, there is always a dilemma as regards to choosing right career path. Hence, Membership Committee had organised Panel discussion on Career Guidance, wherein seniors from different fields have provided guidance to new Professionals for their Success Path.

"Everyone can rise above their circumstances and achieve success if they are dedicated to and passionate about what they do." – Nelson Mandela

Thank you all..... Always in Gratitude

"Leadership is unlocking people's potential to become better."
– Bill Bradley

CA Rahul Nagda

October 1, 2021

304, Jasmine Apartment, Dada Saheb Phalke Road, Dadar (East), Mumbai - 400 014. Tel.: 2410 5987 I E-mail : info@cvoca.org I Website : www.cvoca.org
Follow us on : @cvocain @CVOCA Association @cvoca http://bit.ly/cvocayt

TRANSFER PRICING

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COMPATIBILITY MODE

CA Dinesh Shah
Email : swastikdns@hotmail.com

FROM THE DESK OF CHAIRMAN

!!!! So said Mahatma Gandhi SEVEN DEADLY SINS !!!!!

"Generations to come will scare believe that such a one as this ever in flesh and blood walked upon the earth," Albert Einstein wrote of Mohandas Gandhi.

The world will witness 2nd October, birth of two great personalities from India Mohandas Karamchand Gandhi and Lalbahadur Shastri,.

Mohandas Karamchand Gandhi was a man considered one of the great sages and prophets., Indians called him the 'Father of the Nation'. People showered love, respect and devotion in an unprecedented measure. During Independence movement he was almost an incarnation of God, who had come to break the chains of slavery. And hence was popularly called MAHATMA the whole world bowed to him in reverence. Even his opponents held him in great respect.

Truth was his sole guiding star. In days of ever changing situation of Freedom movement he was often found inconsistent. But he preferred to be consistent only with the light within. He believed life without principles is like a Ship without rudder, just as a ship without rudder is tossed about from place to place and never reaches its destination, so will a man without the heart- grasp of principles, without ever reaching his desired goal,

On October, 22 1925. He Published a List he called the seven social sins in day to day life in his weekly newspaper "YOUNG INDIA"

Seven deadly sins:

- Wealth without work
- Pleasure without work
- Knowledge without character
- Commerce without morality
- Science without humanity
- Religion without sacrifice
- Politics without principles

All seven principles are significant. However as a professionals we need to be vigilant about three:

- Wealth without work
- Commerce (profession) without ethics
- Knowledge without character

We all have earned wealth with work – hard work.

We practice the profession with ethics.

We have acquired and we disseminate knowledge with character

Friends there are some things, which a man does by word of mouth, some by observing silence and yet others by action. If all that he does is informed by knowledge, it is a action indeed

Of course there is nothing that cannot be attained by patience and equanimity. The truth of this can be verified in one`s daily experience ……….

An ideal is one thing; living up to it is quite another…….

Mahatma strongly believed It is better to be hated for what you are, than to be loved for what you are not". Yet, by and large, people love to be loved for what they are not, as they are dreadfully afraid of what they are within

Hence the true test of a man's character is what he does when no one is watching Integrity is doing the right thing, even no one is watching

Are we doing the right and honest things when nobody is looking? Are you teaching younger generation to do the same?

The environment in which we operate is transitory and represents the ever changing interplay of variety of factors, technological advances, macroeconomic developments and socio political forces and yet, certain values and principles are indeed eternal. Let us work to rekindle them on the Mahatma`s birthday falling in October.

Do spare a few moments from your precious time to ponder over the above, Most certainly, our future and that of our next generation is at stake.

!!! TREAT OTHERS THE WAY YOU WANT TO BE TREATED.!!!!

!!! REMEMBER THE SOUL IS ON JOURNEY !!!!

Thank you all..... Always in Gratitude

CA Dinesh Shah

BEYOND ARMS LENGTH PRICE: SAFE HARBOURS IN TRANSFER PRICING

CA Jiger Saiya
Email : jigersaiya@bdo.in
CA Darshan Dalal
Email : darshandalal@bdo.in

BACKGROUND

Global trade has significantly increased, creating an unprecedented level of integration in recent years. Globalisation and the rapid growth of international trade have resulted in increased play of cross border related party transactions. Since the launch of the BEPS project by the OECD, transfer pricing has become one of the most important part of board room discussions. In the recent times, the COVID-19 pandemic has given rise to unprecedented uncertainties, which has posed challenges to the conventional principle of arms length price. Absence of precedence, lack of comparable data, changing risk landscape, newer business models, difficulty in determining transfer pricing adjustments are only some of the several challenges faced while determining arms length price. On the other hand, tax administrations across the globe are focused on augmenting tax collections to fund deficits caused by the stimulus packages.

Gaining certainty in tax outcomes on account of transfer pricing, has thus become one of the most important areas of focus for MNEs. Traditionally, safe harbours have been considered to be one of the most cost effective mechanism to gain transfer pricing certainty. Safe harbours, have always been considered an effective tool to it could condense potential tax litigation for eligible taxpayers and also facilitate tax administrations to extend their resources for more convoluted and risky transactions.

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 ('OECD guidelines') have noted the following:

"4.101 Some of the difficulties that arise in applying the arm's length principle may be avoided by providing circumstances in which eligible taxpayers may elect to follow a simple set of prescribed transfer pricing rules in connection with clearly and carefully defined transactions, or may be exempted from the application of the general transfer pricing rules. In the former case, prices established under such rules would be automatically accepted by the tax administrations that have expressly adopted such rules. These elective provisions are often referred to as 'safe harbours'."

Safe harbours are legal provisions which **provide immunity** or **sidestep regulatory liability** for a defined category of taxpayers or transactions provided certain conditions are met.

TYPES OF SAFE HARBOURS

A transfer pricing safe harbour **substitutes simpler obligations** in place of those prescribed under general transfer pricing regime. Often, eligible taxpayers complying with the transfer pricing safe harbour provision are **relieved from compliance obligations and/or documentation requirements**. Several countries across the globe, have incorporated safe harbours as part of their local tax and transfer pricing laws. Transfer pricing safe harbours are majorly of **four different types**:

1. Safe harbours providing **exemption from transfer pricing regulations** or **relief from transfer pricing compliance**

2. Safe harbours for applying **simplified transfer pricing method**

3. Safe harbours in form of **arm's length rates/tolerance ranges** for specific transactions

4. Safe harbour **Interest rates** (in some cases, are a part of '**thin capitalisation**' regulations)

Access to safe harbours may be conditional and subject to:

- Category of taxpayers
- Type of transactions
- Quantitative thresholds
- Profit, Interest rate or price range
- Circumstantial/situational trigger

While most safe harbours are unilateral simplification measures implemented by tax administrations, countries may also agree on a bilateral or multilateral safe harbours. Pertinence of safe harbour can be expected to be most evident when it is **directed at a taxpayer** and/or a **transaction that entails low transfer pricing risk** and is adopted on a **bilateral or a multilateral** basis.

ENIGMAS OF SAFE HARBOUR

While safe harbour regimes do have advantages, they also give rise to some challenges.

- Safe harbours may increase the **risk of double taxation or double non-taxation** when implemented unilaterally. E.g. MNE group entity in Country A earns income on a cost plus mark up basis from related party in Country B and such entity in Country A opts for a prescribed safe harbour at cost plus 18%. Country B does not acknowledge such safe harbour and prescribes application of arm's length principles for such payment, resulting in arms length price of cost plus 15%. In such a case the differential markup may result into a transfer pricing adjustment of 3% (on cost) in the hands of the related party in country B; which may thus resultin the double taxation of the same 3% (on cost).

- Safe harbours may potentially open boulevards for inapt **tax planning**. Groups may enter into artificial arrangements for the purpose of exploiting safe harbour provisions. E.g., In order to access safe harbours in case of a simple transaction, a group may dissect the transaction in smaller parts to make them seem simple.

- Safe harbours may also boost issues around parity and homogeneity. Preferential tax treatment under safe harbour regimes for aspecific category of taxpayers could potentially lead to disparity and entail competitive disruptions.

Safe harbours do not bind or limit in any way any tax administration other than the tax administration that has explicitly embraced the safe harbour leading to above mentioned challenges. Thus, safe harbour rules may raise underlying problems that could potentially have negative effect on the pricing decisions of entities party to controlled transactions. Thus, principally, safe harbours may not be compatible with the arm's length principle of transfer pricing.

SAFE HARBOURS IN INDIA: AN OVERVIEW

As stated above, safe harbour regime aims at increasing the efficacy of transfer pricing analysis by providing specific pricing mechanisms and thereby reducing the compliance cost for the taxpayer and providing tax certainty. It also facilitates in reducing administrative burden of the tax authorities. Considering such benefits, safe harbour provisions were introduced in India vide the Finance Act, 2009.

Section 92CB of the Income-tax Act, 1961 ('IT Act') provides the power to the CBDT to notify the safe harbour rules. Further, Rule 10TA to Rule 10THD of the Income-tax Rules, 1962 encompasses the relevant rules in this regard.

The safe harbour rules were first notified in September 2013 and were applicable for AY 2013-14 onwards. The Central Board of Direct Taxes ('CBDT'), vide a notification dated 7 June 2017, revised the then existing safe harbour rules in India for a three year period beginning AY 2017-18 to AY 2019-20.The revised rules provided taxpayers with an option to choose from erstwhile or revised rules, whichever taxpayer considered more beneficial. Further, the CBDT by way of notification dated 20 May 2020 and 24 September 2021, extended provisions of revised safe harbour rules to AY 2020-21 and AY 2021-22 respectively.

The eligible international transactions notified so far based on the revised safe harbour rules have been tabulated below for a quick reference:

Sr	Nature of International Transaction[1]	Safe Harbour (Appliable from AY 2017-18 to AY 2020-21)
1	Provision of software development services or information technology enabled services	Threshold: Transactions up to INR 100 crores Operating Profit ('OP')/Operating Expenses ('OE') >=17% Threshold: Transactions up to INR 200 crores OP/OE >= 18%
2	Provision of knowledge process outsourcing services	Threshold: Transactions up to INR 200 crores 1. OP/ OE >= 24% and Employee Cost ('EC')/OE >=60% 2. OP/ OE >= 21% and EC/OE >=40% and <=60% 3. OP/ OE >= 18% and EC/OE <=40%
3	Advancing of intra-group loans in INR	Threshold: Transactions upto INR 100 crores One-year SBI MCLR as on April 1 plus 175 to 625 basis points, depending on the credit rating of the associated enterprise[2]
4	Advancing of intra-group loans in foreign currency	Threshold: Transactions upto INR 100 crores Six-month LIBOR of the relevant foreign currency as on 30th September plus 150 to 600 basis points depending on the credit rating of the associated enterprise[2]
5	Providing corporate guarantee	Commission >= 1% p.a. of the amount guaranteed.
6	Provision of contract research and development services wholly or partly relating to 1) software development or 2) generic pharmaceutical drugs	Threshold: Transactions upto INR 200 crores OP/OE>=24%
7	Manufacture and export of auto components	Core: OP/OE >=12% Non- Core: OP/OE>=8.5%
8	Receipt of low value-adding intra-group services	Threshold: Transactions upto INR 10 crores Markup<=5%[2]

[1]For Safe Harbours around Specified Domestic Transactions kindly refer to the Rule 10THC of the Income Tax Rules, 1962
[2]Please refer Rule 10TD (2A) of the Income Tax Rules, 1962 for exact law

In addition to the above, in order to provide tax certainty to the Indian taxpayers and amplify the array of safe harbours, vide Finance Act 2020, specific provision were introduced under the IT Act with respect to bringing attribution of profits to a permanent establishment within the ambit of safe harbour and APA regimes. Specific guidance in relation to such safe harbours is still awaited.

The Indian tax administration has also incorporated thin capitalization regime in the Indian IT Act vide section 94B. These have been introduced with a specific intent to curb thin capitalisation in India. These could be considered as a form of safe harbour which puts a cap on excessive interest payments being made beyond a stipulated threshold. The introduction is the said safe harbour is in line with the recommendations by the OECD base erosion and profit shifting (BEPS) project.

SAFE HARBOURS IN INDIA: PROCEDURE AND RELATED SUBTLETIES

Indian Transfer Pricing Regulations provide for the procedure to apply for safe harbours under Rule 10TE and Rule 10THD of the Income-tax Rules, 1962. As prescribed in the said Rules, a taxpayer would have to file an application with the (Form No 3CEFA for International Transactions and Form 3CEFB for Specified Domestic Transactions) assessing officer on or before due date of furnishing the return of income to opt for the said regime. Further, in case of international transactions a taxpayer can opt safe harbours for a single year or multiple years based on his choice. In case of a multi-year application, taxpayer can opt out of the safe harbour regime from the second year onwards, by filing a declaration, if required.

It is worthwhile to note that if an application is filed by the taxpayer opting for the safe harbour and order invalidating the same is not passed by the tax authority within stipulated time-frame, then it would be deemed valid exercise of safe harbour option in such a case. In case the taxpayer fails to furnish the statement to assessing officer from the second year onwards providing information such as eligible transactions, their quantum, profit margins etc. before furnishing the return of income of that year, then in such case the safe harbour would be deemed to have not been exercised validly.

Further, it is also important to note that, Rule 10TA (i.e., safe harbour regime) of the Income-tax Rules, 1962 and Rule 10B of the Income-tax Rules, 1962 are mutually exclusive when it comes to determination of arm's length price. This would mean that the definitions provided in Rule 10TA (for instance operating revenue, operating expense) would not apply in case of determination of arm's length price as per Rule 10B. E.g., A taxpayer may consider foreign exchange fluctuations as operating for the purpose of Rule 10B but, for the purpose of safe harbours such fluctuations will have to be treated as non-operating.

SAFE HARBOURS IN INDIA: AN EVALUATION

Existing safe harbour mechanism in India has failed to cut the mustard as an alternate dispute resolution mechanism. Safe harbour mechanism, compared to other available dispute resolution mechanisms, has showcased a bleak growth. This is evident as the Indian taxpayers have maintained a safe distance from the safe harbours over the years.

Some of the reasons for taxpayer's reluctance to opt for the Indian safe harbour regime have been evaluated below:

- There are number of dispute resolution mechanisms available for a taxpayer in India, which although time consuming but generally yield desired outcome for the taxpayer. Further, the price / margin to be offered under the Indian safe harbours are perceived to be on a higher side compared to the benchmarks and outcome obtained via other dispute resolution mechanisms.

- Safe harbours in India are unilateral leading to a negative impact. E.g., the Indian safe harbour requires a taxpayer to earn a margin of 17% - 18% from provision of software development services. Such an expectation may not be in the interest of the MNE as a whole nor practically acceptable to other jurisdictions of the MNE. This may also lead to the issue of double taxation.
- Rather than simplifying and easing the compliance requirement, the taxpayer is still required to maintain the transfer pricing documentation and furnish report in form 3CEB.
- Rulings by Honourable Tribunal wherein safe harbours relied upon by the TPO without performing any benchmarking have been rejected and lower margin of taxpayer is accepted. Thus, margins lower than those prescribed by the safe harbours are well accepted making safe harbour route less lucrative.
- Under the Indian safe harbour regime forex fluctuations are considered as non-operating activity and thus gain/losses are excluded while calculating margins. This may be so despite such forex fluctuations being related to the core operations of the taxpayer and a revenue expenditure.
- The definition of 'Low Value Added Intra-group Services' in Rule 10TA of the Income Tax Rules, 1962, specifically excludes business process outsourcing services which includes low end services such as accounting, HR and such related support services. Such an exclusion has not been provided in the OECD guidelines. This has restricted the applicability and confused the Indian taxpayer as to what services can really be construed as Low Value Added Intra-group Services.
- Para 4.117 of the OECD Guidelines, explicitly states the below:

  "… the country adopting the safe harbour should generally be prepared to consider modification of the safe-harbour outcome in individual cases under mutual agreement procedures to mitigate the risk of double taxation."

  However, Rule 10TG of the Income-tax Rules, 1962 contrarily states the following:

  "Rule 10TG. Where transfer price in relation to an eligible international transaction declared by an eligible assessee is accepted by the income-tax authorities under section 92CB, the assessee shall not be entitled to invoke mutual agreement procedure under an agreement for avoidance of double taxation entered into with a country or specified territory outside India as referred to in section 90 or 90A."

  Today, when no MNE operates on a sequestered basis, a compelling argument may be drawn against existing safe harbour mechanism.

SAFE HARBOURS IN INDIA: KEY EXPECTATIONS OF TAXPAYERS

- Rationalised safe harbour rates/margins aligned to economic reality and global expectations, especially given the disruption caused by the COVID-19 pandemic.
- Where a taxpayer has opted for a safe harbour mechanism, in order to reduce the compliance burden, statutory requirements of section 92D and section 92E of the IT Act ought to be eased out or done away with.
- The interest rates on loan, guarantee commission rate and markup for services covered under the safe harbour rules be determined based on actual market conditions and the economic outlook for the impact of COVID-19.

- Clarity and guidance could be provided about whether the incremental/unabsorbed costs incurred by the captives due to COVID-19 could be treated as extraordinary costs, thereby excluding the same while computing remuneration under cost-plus mark-up. The definition of Operating expenses provided in the Rule 10TA of the Income Tax Rules, 1962 may be appropriately altered.
- For the fiscal years impacted by COVID-19, the turnover threshold for transactions could be removed to help a greater number of taxpayers become eligible for safe harbours.
- Safe harbours for more activities like contract manufacturing, limited risk distribution, procurement support, marketing and sales support, business support, non-binding investment advisory services, management services, etc.

GLIMPSES OF SAFE HARBOURS ACROSS THE WORLD

Numerous countries across the world have implemented safe harbour provisions in their respective local tax laws. Such provisions or simplification measures in quintessence follow the ideology of safe harbour as described in OECD guidelines i.e., striking a balance between protecting the tax base and restricting the compliance costs.

Tabulated below are the key safe harbours that are currently operational in a few countries:

Country	Nature of transaction / taxpayer / arrangement	Prevailing safe harbour
New Zealand[3]	Low Value Adding Intra Group Services	▪ Cost plus 5% (no benchmarking required)
	Intra-Group Loans	▪ Threshold <= NZD10 million ▪ Rate of interest 3.75% over base indicator
	Foreign Owned Wholesale Distributors	▪ Threshold <= NZD 30 million ▪ Weighted average EBITE >= 3%
Australia[4]	Small Taxpayers or Distributors	▪ Threshold <= AUD 50 million ▪ If classified as a small taxpayer or distributor (specified conditions and thresholds), tax administration would not allocate resources to review the covered transactions.
	Low Value Adding Intra Group Services	▪ Threshold <= AUD 2 million considered immaterial (the *de minimis* rule) ▪ Threshold >= AUD 2 million ▪ Services rendered >= cost plus 5% ▪ Services availed <= cost plus 5%
	Low-Level Inbound Loans	▪ Threshold <= AUD 50 million ▪ Rate of interest <= 1.79% for 2021
	Low-Level Outbound Loans	▪ Threshold <= AUD 50 million ▪ Rate of interest >= 1.79% for 2021
	Materiality	▪ Total international related-party dealings<= 2.5% of total turnover for the group (and other conditions)
	Technical Services	▪ Threshold: Income and /or expenditure from technical services <= 50% of the total international related party dealings ▪ Services rendered >= cost plus 10% ▪ Services availed <= cost plus 10%
Italy	Low Value Adding Intra Group Services	▪ Cost plus 5%

[3]https://www.ird.govt.nz/international-tax/business/transfer-pricing/simplification-measures
[4]https://www.ato.gov.au/law/view/document?DocID=COG/PCG20172/NAT/ATO/00001&PiT=99991231235958

Country	Nature of transaction / taxpayer / arrangement	Prevailing safe harbour
Netherlands[5]	Low Value Adding Intra Group Services	▪ Cost plus 5% markup
	Thin Capitalization	▪ Anti-abuse rules might apply to limit the deduction of interest. These anti-abuse rules vary from the 30% EBITDA rule to limitations on interest deductions on
Czech Republic[6]	Low Value Adding Intra Group Services	▪ Cost plus 3% - 7%
Chile	Royalty	▪ Royalty Rate <=4%
Israel[7]	Low Value Adding Intra Group Services	▪ Cost plus 5% markup
	Limited Risk Marketing Services	▪ Cost plus 10%-12% markup
	Limited Risk Distributor	▪ 3%-4% operating margin
China[8] Argentina[9]	No prescribed safe harbours (even for Low Value Adding Intra Group Services need to be supported by an economic analysis from transfer pricing perspective)	

SAFE HARBOUR SPILLING OVER GLOBE PROPOSAL

Recently, in October 2020, the OECD released blueprints of Unified two Pillar 1 approach to Taxation of the Digital Economy. Simply put, Pillar 1 tries to address the concern about MNEs not paying fair taxes in countries where they have market facing activities. Against the said Pillar 1, which would be applicable to MNEs based on certain thresholds, USA has recently made a representation for an elective safe harbour regime i.e., giving the taxpayer an option to opt out of Pillar 1. The disadvantage of such an elective regime is that it is less likely to stop the proliferation of unilateral measures, as each MNE will have an option to opt in or out of the Pillar 1. Accordingly, at present ambiguity looms globally as to whether Pillar 1 be considered as a safe harbour or that it be applied to all the MNEs globally, uniformly, subject to certain thresholds. Such an elephant in the room definitely needs to be addressed, a fruitful solution and consensus as to the same among the global tax community.

[5] https://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-netherlands.pdf
[6] https://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-czech-republic.pdf
[7] https://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-israel.pdf
[8] https://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-china.pdf
[9] https://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-argentina.pdf

As per the current working mechanism in Pillar 1 to ensure that jurisdictions where marketing takes place are remunerated fairly, some smaller groups could be left out due to applicable thresholds. In such a scenario, in case, suggestion of USA is accepted to provide the taxpayer (currently automatically not subject to Pillar 1 due to applicable thresholds) an option to opt for Pillar 1 by considering the same as a safe harbour, it may be considered to be an important suggestion toward the uniform policy development.

CLOSING REMARKS

While entering into any new arrangement, it is crucial for any MNE to give due regard to other tax jurisdiction's country-specific Regulations, Safe harbour rules, Withholding taxes, GST, Customs and other such regulations, etc. in conjunction with the overall economic situation of the MNE group, so as to bring out a tax effective arrangement.

It is without any element of doubt that safe harbour regime could act as an efficacious dispute resolution mechanism. A dynamic safe harbour regime with a scope that can accommodate the tumult as well as integrate the economic veracities of any MNE would make it a very taxpayer friendly tax regime. With the uncertainties posed by the COVID-19 pandemic, taxpayers world over would be keen evaluate relief under reasonable and fair safe harbour regimes which would allow them to focus their energies and resources in reviving and stabilising businesses.

The views expressed are personal and this article is not intended for any business solicitation purposes. In no manner may this article be construed as a professional advice.

OVERVIEW OF MASTER FILE + COUNTRY-BY-COUNTRY REPORTING PROVISIONS ALONG WITH THEIR COMPLIANCE REQUIREMENT

CA Virav Dedhia
Email : vdedhia@deloitte.com

Introduction:

The Master File ("MF") and Country-by-Country Reports ("CbCR") were introduced through Action 13 of the BEPS program. The BEPS program was introduced to have check on the tax arbitrage sought by the various multinational entities ("MNEs"). Currently, BEPS' Action 13 regulations are made applicable for large MNEs with a consolidated turnover of more than Euro 750 million. However, this limit is only in the nature of guidance and each jurisdiction is eligible to determine their own limits.

These reports are predominantly MNE Group's transfer pricing policies due to which it is important that the MNE Groups file the same reports *(with certain modifications to comply with the local regulations)* across the geographies to maintain a synchronization of the information provided to the Revenue. The Revenue departments across the globe have commenced to analyse these two reports for any possible tax arbitrage. This analysis will get deeper with the Revenue officials learning new techniques of using the available information. Thus, it is important that MNE Groups prepare these reports according to their transfer pricing policies before they are filed as it has become easier to exchange information within the Revenue department of various geographies and at times, without the knowledge of the taxpayer.

The Finance Minister through amendment to Section 92D and introduction of new Section 286 along with introduction of Rules 10TA and 10TB have formally adopted the provisions for the applicability and filing requirements of MF and CbCR.

The Indian Revenue authorities through Rule 10TA and 10TB have determined the eligibility criteria for filing of CbCR. An MNE Group with a consolidated[1] group turnover of above INR 6400 crores[2] would be eligible for CbCR filings in India while for the purpose of filing of MF, entities with a consolidated group turnover of above INR 500 crores **and** tangible international transaction(s) of at least INR 50 crores **or** intangible international transaction(s) of at least INR 10 crores would be eligible.

For the purpose of reporting of MF and CbCR the Indian Revenue has introduced various Forms including Forms for filing notification. These forms are in-line with the OECD recommended forms with limited edits to serve for Indian Revenue. Each of these Forms and their usage is discussed in the ensuing paragraphs:

A. Master File

Section 92D requires a constituent entity[3] to maintain, keep and furnish information and documentation related to the international transactions and specified domestic transactions. Section 92D(1)(ii) requires a constituent entity to keep and maintain information relating to the MNE Group. The details to be maintained as per this clause is provided for in Rule 10DA which was introduced vide Income-tax (Twenty Forth Amendment) Rules 2017 w.e.f. 31 October 2017 and later substituted by the Income-tax (Second Amendment) Rules, 2020, w.e.f. 1-4-2020.

[1]For the purposes of determining the INR value of the consolidated group turnover, the Telegraphic Transfer Buying Rate (TTBR) of such foreign currency would be considered.
[2]Erstwhile INR5500 crores was amended vide the Income-tax (Ninth Amendment) Rules, 2021, w.e.f. 1-4-2021.
[3]Constituent Entity is defined in Section 286(9)(d) of the Income-tax Act, 1961.

Details to be maintained:

Rule 10DA(1) provides for the details of the information to be maintained by the constituent entity, some of the key information to be maintained includes:

1. list of all the entities of the international group (including branch offices, permanent establishments and dormant entities) along with their addresses
2. MNE Group's ownership chart along with the legal status of each of the constituent entity
3. nature of the business
4. important profit drivers of such businesses
5. supply chain for the MNE Group's five largest products or services
6. details of important service arrangements made among the constituent entities (except for R&D services)
7. details of the main service providers within the MNE Group
8. details of the major geographical markets for the products and services offered by the MNE Group
9. detailed functional, asset and risk analysis of the entities constituting to at least ten (10) percent of revenues or assets or profits of the MNE Group
10. details of any business restructuring transactions including acquisitions, divestments, etc.
11. details related to intangible properties of the MNE Group
12. details of the policies and arrangements relating to R&D
13. details relating to the MNE Group's top ten (10) unrelated lenders
14. details pertaining to MNE Group's financing arrangements
15. copy of annual consolidated financials of the MNE Group
16. details of any unilateral advance pricing agreements, etc.

Forms for filing along with the due dates:

Rule 10DA(2) states that the MF has to be filed in **Form 3CEAA** to the Joint Director **on or before the due date of filing the return of income** as per Section 139(1).

However, if there are **more than one constituent entities in India** then the MNE Group may **nominate one entity** to file the MF on behalf of all the entities in India. The said nominated entity would have to convey this information to the Revenue by filing **Form 3CEAB thirty (30) days before the due date of filing the Form 3CEAA**.

It is pertinent to note here that Rule 10D provides that **part A of Form 3CEAA**has to be filed by **all** the constituent entities of the MNE Group irrespective of any international transactions undertaken by the said entity with their related parties.

Nature of filing

These Forms are to be filed **electronically** by the constituent entity through the **Income-tax e-filing portal**. It is pertinent to note that these Forms are not required to be certified by an independent Chartered Accountant but to be verified and signed by the authorized signatory of the constituent entity / assessee.

B. Country-by-Country Report

CbCR was introduced vide a insertion of a new Section 286 in the Income-tax Act, 1961. This section provides for furnishing of a report (i.e. CbCR) in respect of an international group (i.e. MNE Group). The details pertaining to the Forms to be used and the information to be maintained and furnished is provided in Rule 10DB which was introduced by the Income-tax (Twenty-fourth Amendment) Rules, 2017, w.e.f. 31-10-2017.

Details to be maintained:

As per Rule 10DB(3), the details to be maintained by the Indian parent entity or Indian alternate reporting entity is provided in Form 3CEAD. The said Form requires overview of the MNE Group's information in each tax jurisdiction. The said Form requires key information like

1. revenues earned from related entities and unrelated entities
2. profit / Loss before income-tax
3. income-tax paid (on cash basis)
4. income-tax accrued
5. stated capital
6. accumulated earnings
7. number of employees
8. details of tangible assets other than cash and cash equivalents
9. details of entities engaged in R&D activities, manufacturing activities, purchase or procurement activities, sales activities, dormant entities, etc.

Forms for filing along with the due dates

Form Number	Applicability	Due Date	Remarks
Form 3CEAC	If the Indian constituent entity is not a parent entity or the alternate reporting entity of the MNE Group	Two (2) months before the due date of filing Form 3CEAD	This Form is to be used for notifying the details of the parent entity or the alternate reporting entity of the MNE Group where there is exchange of information agreed between the country of resident of such entity and India
Form 3CEAD	Parent entity or the alternate reporting entity of the MNE Group who is resident in India	Twelve (12) months from the end of the accounting / reporting period	This Form is the CbCR to be maintained and filed.
Form 3CEAE	Notification to convey that the Parent entity or the alternate reporting entity of the MNE Group is a resident of such a country / territory where : (a) parent entity is not obligated to file the CbCR; or (b) India does not have an agreement for exchange of report; or (c) there has been a systemic failure of the said country / territory	Immediately on learning of the systemic failure	The Indian constituent entity of such a parent or alternate reporting entity would be required to furnish the report in Form 3CEAD within Twelve (12) months from the end of the accounting period of the Indian entity. If there are more than one constituent entities in India, then the information in Form 3CEAD needs to be furnished by any one entity if such an intimation is conveyed to the Revenue.

Nature of filing

These Forms are to be filed **electronically** by the constituent entity through the **Income-tax e-filing portal**. It is pertinent to note that these Forms are not required to be certified by an independent Chartered Accountant but to be verified and signed by the authorized signatory of the constituent entity / assessee.

Conclusion:

Considering the above, it is pertinent that the MNE Groups would now have to report significant group related information to the Revenue which not only pertains to financial information but also pertains to operational information. Accordingly, the MNE Group and their constituent entities would have to demonstrate substance in each jurisdiction of their presence failing which the Revenue of respective jurisdictions may undertake stringent actions.

◆◆◆

COMMON ERRORS IN PREPARATION OF FORM NO. 3CEB

CA Bhavya Haria
Email : bhavya.haria@gmail.com

A. *Introduction to transfer pricing*

With the advent of liberalization in 1991, India started to emerge as the new 'global economic hotspot' which resulted in globalization and there emerged a need to introduce new requirements relating to taxation and other laws as many multinational corporations began investing in India and local companies started acquiring companies outside India.

The Finance Act, 2001 introduced the Transfer Pricing (TP) regime in India in the form of sections 92 to 92F (w.e.f. 1 April 2002) to cover cross border transactions within its ambit.The transfer pricing provisions enable cross border transactions between two related parties to be undertaken at arm's length, i.e. as if they were undertaken between two third parties, such that countries of either companies do not lose-out on their fair share of revenue due to influence which exists between two closely held / related enterprises.

Over the last 20 years, Indian TP legislation has seen some drastic changes both on the judicial as well as regulatory front. India introduced various reforms in the last two decades like introduction of Advance Pricing Agreements, Safe Harbour Rules, Other Method prescribed under Rule 10AB as the sixth method, secondary adjustment, etc. The Indian TP Regulations have also evolved over the years to catch up with the international principles on implementation of OECD's Base Erosion and Profit Shifting ('BEPS') recommendations, i.e. introduction of Master File, Country-by-Country Reporting, interest limitation rules, etc.

B. *Application of transfer pricing provisions*

For applying the principles of transfer pricing, one has to undertake a detailed functional and economic analysis, i.e. identifying the functions performed, assets employed and risks assumed (FAR) within the transaction. This is followed by economic characterization of the tested party, post which one selects the most appropriate method for benchmarking the transaction and then determines the arm's length price of the transaction.

The maintenance of TP documentation capturing the FAR and arm's length analysis, is one of the key steps in building robust defences to justify the arm's length mechanism before the Transfer Pricing Officers (TPOs) during TP assessments. It provides a contemporaneous analysis undertaken by the taxpayer for establishing the arm's length nature of related party transactions.

C. *Transfer pricing audit – Form No. 3CEB*

1. Applicability and contents

As per section 92E of the Income-tax Act, 1961, every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed.

The term 'Accountant' is defined under section 288 to mean a chartered accountant as per section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice. Rule 10E of the Income-tax Rules, 1962 requires to furnish a report in Form No. 3CEB.

Integral parts of Form No. 3CEB:

- Accountant's report: Certifying true and correct particulars of the transactions captured and accountant's opinion on information maintained and records examined
- Part A of Annexure to Form No. 3CEB: General information of the taxpayer along with the aggregate value of international transactions and specified domestic transaction
- Part B of Annexure to Form No. 3CEB: Requires the taxpayer to provide the details of the international transactions and specified domestic transactions entered into during the Financial Year. This covers details in a tabular format like name and address of associated enterprise (AE), nature of transaction, most appropriate method adopted, value of transactions, arm's length price, etc.

2. Who has to file Form No. 3CEB?

Every person who has entered into an international transaction or specified domestic transaction is required to prepare and e-file Form No. 3CEB.

The term 'every person' includes foreign companies, permanent establishment of a foreign company, etc. It has been held by the Hon'ble Income-tax Appellate Tribunal (ITAT) in the case of a foreign company[1] that the assessee's claim that it had obtained a report from an Independent Accountant in Form No. 3CEB and filed the same along with the returns is not sufficient. The ITAT observed that the requirement of furnishing Form No. 3CEB in terms of section 92E and the documents to be maintained under section 92D are different. Accordingly, the ITAT concluded that mere submission of Form No. 3CEB with accountant's report will not be treated as documents submitted under section 92D of the Act.

It can be seen from the above decision that the ITAT has accepted the Form No. 3CEB filed by the foreign company, there by reiterating the interpretation that the filing of Form No. 3CEB includes foreign companies within its purview.

International Transaction refers to the transactions between two or more associated enterprises, where at least one of the parties is a non-resident. Section 92B and Explanation have elaborated the definition of international transaction.

Specified domestic transactions is defined to mean any of the following transactions, not being an international transaction, namely:

- any transaction referred to in section 80A;
- any transfer of goods or services referred to in section 80-IA(8);
- any business transacted between the assessee and other person as per section 80-IA(10);
- any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or
- any business transacted between the persons referred to in 115BAB(6)
- any other transaction as may be prescribed *(not yet prescribed)*,

[1] *Convergys Customer Management Group Inc [TS-690-ITAT-2020(DEL)-TP]*

and where the aggregate of such transactions entered by the assessee in the previous year exceeds a sum of twenty crore rupees.

3. **What are the thresholds for filing Form No. 3CEB**

As per the provisions of section 92 to 92F, there are no thresholds for reporting an international transaction in Form No. 3CEB and hence, any person who has entered into an international transaction, shall file Form No. 3CEB *irrespective* of the of value of transactions.

Further, the qualification of specified domestic transaction requires the aggregate value of such transactions to exceed twenty crore rupees. Hence, one may interpret that if the threshold of twenty crore rupees is not crossed, then such transactions would not qualify as specified domestic transactions and hence, no reporting is required in Form No. 3CEB.

4. **Due date of furnishing Form No. 3CEB**

The due date for filing a report pertaining to international and/or specified domestic transactions in Form No. 3CEB is the date[2] one month prior to the due date for furnishing the return of income under section 139(1).The original due date for filing Form No. 3CEB for AY 2021-22 was 31st October 2021whereas based on the extension granted by CBDT Circular[3], the revised due date is 31st January 2022.

5. **Maintenance of transfer pricing documentation**

As per section 92D read with Rule 10D(4) the information and documents specified under rule 10D need to be contemporaneous and should exist latest by the specified date i.e. before furnishing Form No. 3CEB electronically. Hence, it is pertinent to carry out a detailed functional analysis, selection of most appropriate method, benchmarking analysis, determination of arm's length price, before the filing of Form No. 3CEB.

6. **Amendment to Form No. 3CEB**

With the omission of clause (i) of section 92BA w.e.f. 01.04.2017 by Finance Act, 2017, which included the provisions of section 40A(2) within the purview of specified domestic transactions, a similar amendment was undertaken in the Form No. 3CEB. The erstwhile clause 22 was omitted[4] w.e.f. 01-10-2020 and hence, from AY 2017-18 onwards, there is no requirement to report any transactions entered between parties covered under section 40A(2).

Further, a new clause 24 has been inserted[5], which encompasses details of any business transacted between the persons referred to in section 115BAB(6). Hence, from AY 2020-21 onwards, any person claiming beneficial rate of 15% under section 115BAB, should comply with the provisions of section 92E, if the value of transactions exceeds the thresholds given in section 92BA for qualifying as specified domestic transactions.

[2] *Amendment made to the definition of 'specified date' w.e.f. 1-4-2020*
[3] *CBDT Circular No. 17 of 2021 dated 09 September 2021*
[4] *Income-tax (Twenty Second Amdt.) Rues, 2020 w.e.f. 01-10-2020*
[5] *Income-tax (Twenty Second Amdt.) Rues, 2020 w.e.f. 01-10-2020*

7. UDIN Requirement

The Professional Development Committee of ICAI implemented an innovative concept of UDIN i.e. Unique Document Identification Number with effect from 1st February, 2019, which requires Chartered Accountants having full-time Certificate of Practice to register on UDIN Portal and generate UDIN before attesting or certifying the documents. Form No. 3CEB is a report which is to be obtained from an accountant and hence, attestation of Form No. 3CEB should contain the UDIN generated from the UDIN portal.

The schema for filing From No. 3CEB from the income-tax portal does not have any specific tab for capturing UDIN, however, as practical measure some professionals include it under the 'Address' tab so that the uploaded 'xml' of Form No. 3CEB contains the UDIN at the time of filing.

8. Reliance on signed Financial Statements and Statutory Auditors' Report

In case of a company, the chartered accountant signing Form No. 3CEB may place reliance on the financial statements prepared by the management and the report of the statutory auditor[6]. The reference to the audited financial statements can be brought out by the Accountant in the Form No. 3CEB - Accountant's Report.

The Accountant may place reliance on the related party disclosure made by the management in the notes to accounts forming part of the financial statements, however, in addition to the same, the Accountant should undertake independent evaluation as well. Though the definition of AE as per section 92A or rule 10A may not be the same as related parties under Accounting Standard 18, which is reflected in the notes to accounts, but one may draw reference from this disclosure to verify the arithmetic accuracy and nature of transactions.

Since, Form No. 3CEB is a type of an audit report where an accountant provides an opinion, the auditor must obtain a detailed representation[7] from the management which may encompass listing of associated enterprises, shareholding structure, transaction listing, data regarding comparable uncontrolled transactions, segmental data, etc. As per ICAI[8], one must follow the principles provided in 'SA 230 - Audit Documentation'.

Penalty on accountants for furnishing incorrect information in reports

The Finance Act 2017 has introduced section 271J for levying penalty of ten thousand rupees on accountants for furnishing incorrect information in reports or certificates furnished under any provisions of the Act or the rules made there under.

9. Penalty for non-filing or delayed filing

Penalty for non-filing:

Penalty of a sum of one hundred thousand rupees under section 271BA may be levied by the AO if any person fails to furnish report as per section 92E, i.e. Form No. 3CEB.

[6]Refer Para 2.30 of the Guidance Note on Report Under Section 92E of the Income-tax Act, 1961 (Transfer Pricing)published by ICAI (Revised 2020) ('ICAI Guidance Note')
[7]Refer Para 2.32 of the ICAI Guidance Note
[8]Refer Para 2.26 of the ICAI Guidance Note

The Chandigarh ITAT in the case of Shree Ram Dass Rice & General Mills[9] held that no penalty "shall be" imposed if the assessee "proves that there was a reasonable cause for the said failure". In the instant case, the assessee pleaded ignorance in regard to the said legal requirement and has demonstrated that the said Form was made available in the assessment proceedings to the AO which fact is not disputed by the revenue also. Further, no transfer pricing adjustment was proposed by the TPO. Since, this was the first year of reporting the international transaction, the ITAT has allowed the claim of the assessee being bonafide and fit case to drop the penalty proceedings.

Whether delay in filing of Form No. 3CEB may entail penalty u/s 271BA?

Section 92E specifies that the report from an accountant in Form No. 3CEB needs to be furnished before the *specified due date*. Thus, what is required is timely filing of the Form No. 3CEB. Hence, in case there is a delay in filing Form No. 3CEB, there may be a levy of penalty under section 271BA.

Whether delay in filing of Form No. 3CEB may entail penalty u/s 271AA?

Section 271AA deals with levy of penalty equal to two percent of value of the international transaction in case of (a) failure to maintain documentation as per section 92D, or (b) failure to report transaction, or (c) maintaining and furnishing incorrect information.

In case of Tussor Machine Tools[10], the company had filed Form No. 3CEB after 2 days of the finalisation of assessment by the AO without making a transfer pricing adjustment. The AO initiated penalty proceedings under section 271AA, which were upheld by the CIT(A). The Chennai ITAT held that provisions of section 271AA apply to a case where the assessee fails to keep and maintain its documents in respect of international transactions. The ITAT concluded that, *"this is not failure of the assessee to keep and maintain the record. Rather, it is a case of not producing the record before assessment's finalization which is not covered by the tenor of the provisions."*Thus, one may say that no penalty under section 271AA may be leviable for delay in filing Form No. 3CEB. However, ITAT made a passing remark that for such cases, there is a specific penalty provision u/s 271G.

Penalty for non-reporting of transaction

A penalty under section 271AA equal to two percent of value of the international transaction may be leviable for non-reporting a transaction in Form No. 3CEB. Further, penalty provisions under section270A inserted vide Finance Act, 2016 w.e.f. 1-4-2017 have provided for a penalty equal to two hundred per cent of tax payable on under-reported income if such income is in consequence of any misreporting.

As per section 270(9), failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply, shall be considered as mis-reporting. Further, the provisions of section 271AA start with the words '*Without prejudice to the provisions of section 270A……*'. Hence, one may face a double whammy of dual penalty exposure for failure to report any transaction (271AA and 270A). However, such a position of law is not yet tested in jurisprudence.

[9] *Shree Ram Dass Rice & General Mills Vs DCIT (ITAT Chandigarh) (ITA No. 833/CHD/2018)*
[10] *Tussor Machine Tools India (P) Ltd [TS-42-ITAT-2013(CHNY)-TP]*

10. Reporting of typical transactions

Deemed International Transactions

As per the provisions of section 92B(2), a transaction between an enterprise and a third party shall be deemed to be an international transaction, if

(a) there exists a prior agreement in relation to the relevant transaction between third party and the AE, or

(b) the terms are in substance determined between third party and the AE where either or both of them are non-residents irrespective of whether the third party is a non-resident or not.

Thus, a transaction between the taxpayer and domestic third party may also get covered under the ambit of deemed international transaction if the AE of the taxpayer has a prior agreement with such third party or terms of transaction between taxpayer and third party are influenced by the AE.

Such a transaction would not get reflected under the related party disclosure in the financial statements, hence, the accountant should ensure diligence to identify such arrangement, if any, or seek representation from the management.

Share Application Money

There has been immense discussion on the reporting of issue of equity shares by tax payer to its associated enterprise. The Hon'ble Bombay High Court in the case of Vodafone India Services Private Limited[11] held that issue of equity shares by an Indian company to non-resident company does not give rise to any income and thus, provision of Chapter X of the Act is not applicable. This decision of Bombay High Court has been accepted by the CBDT vide Instruction No. 2/2015 dated 29 January 2015. However, the Bombay High Court did not delve into the question whether issue of equity shares is an international transaction which needs to be reported in Form No. 3CEB.

The decision of Bombay High Court has enunciated the basic principles of taxation that only income which is chargeable to tax can be governed by the provisions of Chapter X. Hence, a question arises that if there is no income which emanates from issue of shares, then can one argue that such a transaction is not an international transaction as per section 92, r.w.s. 92B. However, there is no clarity on this position yet.

The Mumbai ITAT in case of BNT Global Private Ltd[12]. upheld the levy of penalty under section 271BA of the Income-tax Act, 1961 (the Act) for taxpayer's failure to file the audit report in Form No. 3CEB in respect of its international transaction of receiving foreign remittance from its Non-Resident Indian (NRI) Director who was also a beneficial shareholder, on account of share capital and share premium in its own company.

Thus, a practical view would be to report the transaction of issue of equity shares in Clause 16 of the Form no. 3CEB out of abundant caution and capture a brief note stating that no income is emanating from such transaction and that the reporting is without prejudice to the contention that issue of equity shares is not an international transaction. Generally, issue of shares to non-resident would be undertaken by obtaining a valuation report from an independent valuer. Hence, 'Other Method' as prescribed by Rule 10AB may be considered as the most appropriate method for reporting the transaction in Form No. 3CEB.

[11] *Vodafone India Services Private Limited [WP No. 871 of 2014, (2014) 50 taxmann.com 300 (Bombay), dated 10th October, 2014]*

[12] *BNT Global Pvt. Ltd.(ITA No. 4111/Mum/2016) (Mumbai ITAT)*

Trade Receivables / Trade Payables

Clause 14 of Form No. 3CEB requires the reporting of international transactions in respect of lending or borrowing of money including any type of *advance*, payments, *deferred payments*, *receivable*, non-convertible preference shares/debentures or *any other debt arising during the course of business* as specified in Explanation (i)(c) below section 92B(2).

In case of Bartronics India[13], the TPO has noted that the assessee has not reported the outstanding receivables in Form No. 3CEB and also initiated penalty proceedings under section 271AA. However, there is no discussion of the same in the merit order of ITAT.

The Delhi High Court in case of Kusum Healthcare[14] held that if arm's length price of the main sale transaction computed under TNMM is accepted, no separate adjustment on account of outstanding receivables can be made. The TPO tried to impute interest income on such outstanding receivables which was rejected by the Deli High Court. Similar ruling has been passed by Mumbai ITAT[15].

One may argue that the 'receivable' mentioned under clause (c) (capital financing including….) apply to the loan funds only. Hence, the charging of interest is applicable only with the lending or borrowing of funds and not in the case of commercial over-dues / trade receivables, which is already subjected to transfer pricing. The outstanding receivable is on account of certain commercial circumstances and general business practices, one may choose to apply 'Other Method' as prescribed by Rule 10AB as the most appropriate method for reporting the transaction in Form No. 3CEB.

Further, in case of trade payables, no such interest imputation is possible as the provisions of section 92(3) restricts such action. Hence, one may take a practical position to report the transaction of trade receivables and ignore trade payables in Form No. 3CEB.

Loan taken / advanced / repaid

Since as per section 92B, lending and borrowing money qualifies as an international transaction, though the loan is a capital account transaction, the same should be reported in Form No. 3CEB. Similarly, any addition to loan or repayment should also be reported in the year when the transaction takes place. Since, there can be no separate benchmarking undertaken for the transaction of loan, one may report the most appropriate method adopted for benchmarking interest, even for the loan transaction.

11. Mentioning Notes to Form no. 3CEB

Paragraph 3 of Form No. 3CEB requires the accountant to state whether the prescribed particulars are furnished in the annexure to the report and whether in his opinion and to the best of his information and according to the explanations given to him, they are true and correct. The accountant may have a difference of opinion with regard to the particulars furnished by the assessee and he has to bring these differences under various clauses in Form No.3CEB. As per ICAI[16], the accountant should make a specific reference to those clauses in Form No. 3CEB in which he has expressed his reservations, difference of opinion, disclaimer etc. in this paragraph.

[14] *Kusum Healthcare (P.) Ltd [TS-412-HC-2017(DEL)-TP]*
[15] *Rusabh Diamonds [TS-145-ITAT-2016(Mum)-TP]*
[16] *Refer Para 2.35 of the ICAI Guidance Note*

3. The particulars required to be furnished under section 92E are given in the Annexure to this Form. In [ ] opinion and to the best of [ ] information and according to the explanations given to [ ] , the particulars given in the Annexure are true and correct.

Since, However, the online filing schema did not provide for a facility for documenting notes by the accountant in each of the relevant clauses or Annexure to Form No.3 CEB, ICAI had suggested that the assessee may consider filing the Form No. 3CEBalong with the applicable notes with the Indian tax department.

However, the online version of Form No. 3CEB released for AY 2020-21 contained a separate column for capturing the 'observations, if any' for each transaction. Hence, if any amount is reported out of abundant caution, one may specifically capture a brief note in the observation column. It would also be a good-to-have practice to physically sign a copy of Form No. 3CEB to cover all points, notes, etc. in detail.

12. Requirement of e-filing

As per Rule 12(2) of the Income-tax Rules, 1962, Form No. 3CEB needs to be furnished electronically on the income-tax portal.

Can we file Form No. 3CEB after filing income-tax return?

The provisions of section 92 enable computation of income emanating from international transactions entered between two related parties having regard to arm's length price. Hence, the income computed as per section 92 needs to be charged to income-tax while preparing the computation of total income. Hence, computation of income and filing of return of income cannot precede filing of Form No. 3CEB.

Requirement of reporting the details of filing Form No. 3CEB in ITR-6

Below is the screenshot of the details required to be filled in ITR-6 applicable to companies (other than companies claiming exemption under section 11):

(di)	**Are you liable for Audit u/s 92E? ☐ Yes ☐ No**		
(dii)	**If (di) is Yes, whether the accounts have been audited u/s. 92E?**	**☐ Yes ☐ No**	**Date of furnishing audit report? DD/MM/YYYY**

13. Revision of Form No. 3CEB

There is no provision in the Income-tax Act, 1961 which permits or restricts the furnishing of a revised Form No. 3CEB. However, as a matter of general law and natural justice, correction of a mistake in any form / report should be permissible. This position has been tested in jurisprudence and held in the favour of the assessee.

In case of Ashok Leyland[17], the TPO had rejected the filing of revised Form No. 3CEB by the assessee before the completion of assessment. TPO treated the revised Form No. 3CEB as belated and held that the time limit for filing Form No. 3CEB was along with the income-tax return. The assessee referred to the provisions of section 92CA(3) and contended that there was no time limit specified for filing revised Form No. 3CEB. The ITAT stated that the report of the CA cannot be ruled out and also factual position had to be considered to correct any mistake in calculating of ALP for valuation, and hence, the ITAT set aside the matter and directed AO to consider revised Form No. 3CEB filed by the assessee for calculation of arm's length price.

Is there any due date for revising Form No. 3CEB?

No timeline has been prescribed under the Income-tax Act for revision of Form No. 3CEB. However, can one argue that the time limit for filing belated returns or revised returns should be followed for revision of Form No. 3CEB. However, there have been certain instances in jurisprudence[18], where Form No. 3CEB has been accepted at the stage of assessment as well. As per practical experience, the erstwhile income-tax portal allowed to file revised returns without any restrictions on the time limit.

D. *Conclusion:*

Furnishing of Form No. 3CEBis the first step in complying with the arm's length principles enunciated in the Income-tax Act, 1961. Form No. 3CEB acts as the first line of defence before the income-tax office in justifying arm's length price of all the transactions in an appropriate manner. Further, since the penal provisions for non-filing of Form No. 3CEB and non-reporting of transactions are stringent, one should comply with these provisions on a timely manner.

After the adoption of the new income-tax portal, no updated version of Form No. 3CEB has been updated on the portal. Hence, one would need to keep a close tab on the income-tax portal to see if there is any updation in the Form No. 3CEB or the filing procedure for complying with the transfer pricing provisions for AY 2021-22.

[17]Ashok Leyland Limited [TS-487-ITAT-2016(CHNY)-TP]

[18]Johnson & Johnson (ITA No.7865/Mum/2010) (Mumbai ITAT)

BROAD CONTENTS OF TRANSFER PRICING STUDY REPORT

CA Kushal Dedhia
Email : kushaldedhianco@gmail.com

Background:

Transfer Pricing Documentation around the world is prepared to justify the arm's length price('ALP') with respect to an international transaction(s)entered into by the taxpayer with its Associated Enterprise(s) and India is no exception to it.

As per Indian Transfer Pricing Regulations, every person who has entered into an international transactions and/or specified domestic transactions ('SDTs') are required to maintain contemporaneous and robust transfer pricing documentation (referred to as "the TP Documentation") in order to justify and support the ALP.

Section 92D(1)(i) of the Income-tax Act, 1961 ('Act') requires that every person who has undertaken international transaction and SDTs shall keep and maintain such information and documents as specified by Rule 10D of the Income-tax Rules, 1962 ('Rules'). Rule 10D(1) lays down different types of documents and information to be maintained by the taxpayers in respect of its international transactions and SDTs whereas Rule 10D(3) specifies the documents to be maintained in support of the same.

As it can be seen from the above Rule, the documentation requirement is broadly divided into two parts. First part of the Rules lists down mandatory documents /information that a taxpayer must maintain with respect to the international transaction/SDT whereas the second part of the Rules require supporting documentation to be maintained that substantiates the documents/information documented under the first part. The list of mandatory and supporting documents prescribed are given below:

Mandatory Documents [Rule 10(1)]			Supporting Documents [Rule 10(3)]
Entity Related	**Price Related**	**Transaction Related**	
• Ownership Structure • Profile of Group • Profile of Indian Entity and its Industry • Profile of associated enterprises	• Transaction Nature and Terms • FAR Analysis • Economic Analysis • Comparable Analysis • Budgets, Forecasts, Estimates	• Agreements • Invoices • Pricing Related Correspondence (Letters, Emails etc.) • Transfer Pricing Adjustments	• Official Publications Reports, Studies from Government • Report of Market Research Studies, Technical Publications • Price Publications • Published Accounts and Financial Statements • Agreements & Contracts related to international transaction/SDTs • Letter and Other Correspondences • Any other Documents

Relaxation from mandatory maintenance of documentation offered in respect of international transaction not exceeding INR one crore.

In nutshell, Rule 10D provides for 13 line items of mandatory documentation and additional 7 line items of supporting documentation.

The aforesaid documentation for each year should be prepared and documented by 31st October (i.e. the date one month prior to the due date of furnishing Return of Income which is 30th November) and should be retained for the period of 8 years from the end of the assessment year to which the said documentation relates.

Although the Act do not specify any particular format in which Transfer Pricing Documentation is to be prepared and maintained, however over the years, since the implementation of the Transfer Pricing Regulations in India, tax officers have favored an organized and systematic approach to maintenance of TP Documentation which is called as Transfer Pricing ('TP') Study Report.

The TP Study Report starts with the most basic and generic information, building a context for the specific international transactions/ SDTs of the taxpayer during the year under review and then delving into the more specific aspects such as functional analysis, which will in turn help in the economic analysis section to compute the ALP concluding finally with the comparability analysis between the ALPs so determined with the transfer prices of the taxpayer.

With the aforesaid brief background, we will now understand how a typical TP Study Report looks like or contains and its flow of presentation.

Contents of the Transfer Pricing Study Report:

The table of contents of the TP Study Report is as under:

- Executive Summary
- Group Overview
- Industry Overview
- Functional Analysis [International Transaction(s) / SDT(s)]
- Economic Analysis [International Transaction(s) / SDT(s)]
- Appendices

Now let's dwell into the contents for each of the aforesaid section of the TP Study Report in detail:

1. Executive Summary

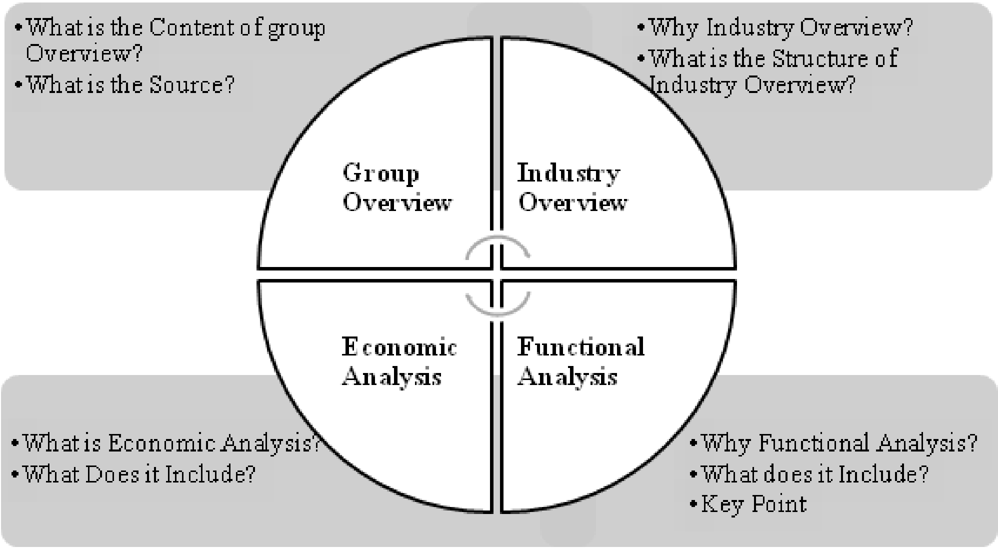
This section should start with the introductory para on the objective of this TP Study Report stating that the international transaction(s)/ SDT(s) entered into by the taxpayer with its AE(s) which adhere to the arm's length principle, embodied in the Indian Transfer Pricing Regulations contained in Sections 92D of the Act read with Rule 10D of the Rules. One can mention about various Principles/Guidelines considered/ followed while drafting the TP Study Report.

Second para shall comprise about the brief overview of the taxpayer as a whole and the business it operates into.

And lastly the taxpayer will have to summarize all the international transaction(s)/SDT(s) entered into with its AE(s) as per the below format (please note there is no such standard format of summarizing)

Sr. No.	Nature of International Transaction(s) / SDT(s)	Most Appropriate Method	Tested Party Data		Comparable Companies Data
			Book Value of Transaction (Amount in INR)	Pricing or Margin Data	Arm's Length Price (incl. Median with Range or Mean)

After the executive summary, four main pillars of the TP Study Report have to be drafted and documented. While drafting the four main pillars, one will have the following basic questions with respect to each of the four sections of the TP Study Report which are as under:



Let us now discuss each of the aforesaid four main pillars of the TP Study Report in detail:

2. Group Overview

The purpose of this section is to provide a brief overview, ownership structure and the broad description of the business activities. Group overview broadly should be divided into three parts:

- MNC Group Profile;
- Indian Taxpayer Profile; and
- Each of the transacting AE(s) Profile

<u>MNC Group Profile</u>

The TP Study Report should contain an overview of the business of the MNC Group as a whole, different line of business in which the Group is engaged, its presence in the countries all over the world, key products and/or services of the MNC Group.

Such information can be obtained from the MNC Group's website, Taxpayer's website, Consolidated Financial Statement of the Group and other publicly available authentic data.

<u>Indian Taxpayer Profile</u>

After giving brief overview of the Group as a whole, now the taxpayer will have to document its shareholding structure with the Group and its subsidiary Companies along with the Country of Incorporation in the form of a diagrammatic presentation which would provide a better visual of the Group Structure and would be easy to understand.

This section should include historical background of the taxpayer's operations, date of incorporation, its presence in India and outside India, no of employees, list of brands owned by the taxpayer and any significant events like acquisition, merger, demerger, etc.

Then, the TP Study Report should mention the brief description of the business activities carried out by the taxpayer and the key products and services offered by the Company to its AE(s) and/or third parties.

Such information can be obtained from the Taxpayer's/Group website, Standalone/Consolidated Financial Statement of the Group and any other publicly available authentic data.

Each of the transaction AE(s) Profile

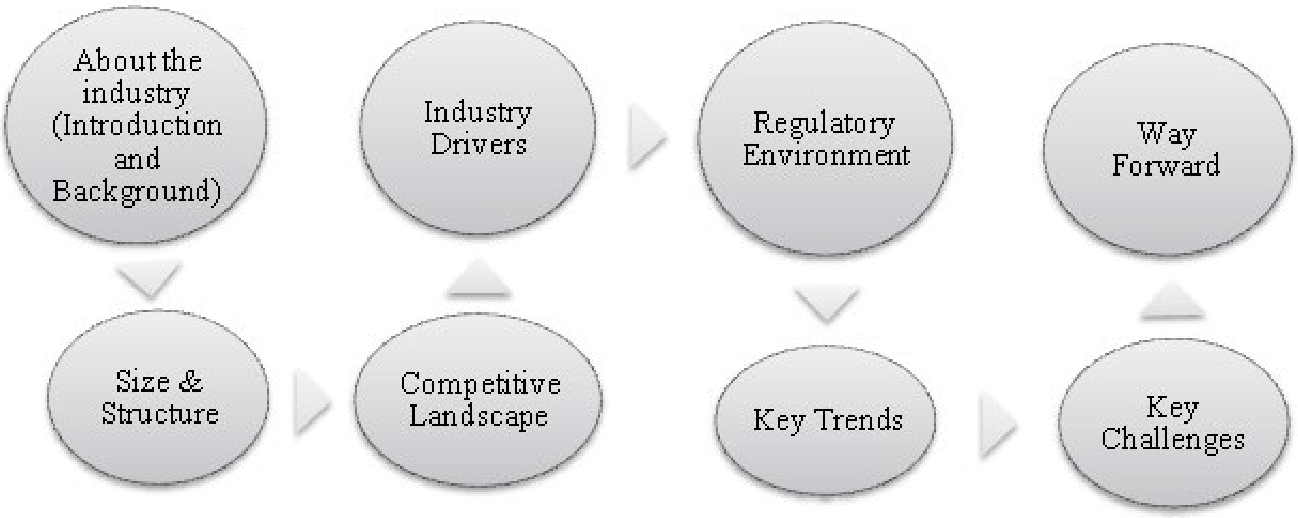
Lastly, a brief business description of each of the AE(s) with whom the transaction has been entered into by the taxpayer during the Financial Year which will help in understanding the business activities of the AE(s) and a complete perspective of the activities of all the AE(s).

3. Industry Overview

The purpose of this section is to provide the following results:

- an overall justification of the taxpayer's financial performance vis-à-vis the industry or verticals in which it operates;
- assist in understanding the taxpayer's relative positioning in the Industry or verticals vis-à-vis other players;
- helps in screening factors when undertaking comparability analysis

The structure of the Industry Overview in the TP Study Report should be as under:



The aforesaid industry overview can be sourced from internal sources such as Financial Statements, Director's Report and other similar documents and external sources such as Reports prepared by external agencies like Reuters, Bloomberg, CRISIL, etc. One can mention the source of information as a foot note for the reliability and authenticity of the information mentioned in the TP Study Report.

4. Functional Analysis

Overview of the International Transaction 1

Brief description of the international transaction entered into by the taxpayer with its Associated Enterprise(s). In addition, details from the agreement to be produce here such as broad range of services to be performed, type of goods purchased or sold, pricing, allocation of costs methodology, if any, payment/receipt terms and any other important terms and conditions of the agreement.

Functional Analysis

The functional analysis facilitates the characterization of the transaction between the AE(s) after taking into account their functions performed, assets employed and risk assumed ('FAR analysis') and helps in establishing a degree of comparability with similar transactions in uncontrolled transactions. One has to give detailed analysis of functions performed, assets employed and risk assumed by the taxpayer and its AE(s) with respect to the said international transaction/ SDTs.

- Functions Performed

The identification of relevant functions and processes will support in understanding the specific roles and responsibilities associated with the transactions. Further, this analysis can aid in identifying specialized and critical business assets and activities that are fundamental to the business.

- Assets Employed

Any business requires tangible and/or intangible assets without which it cannot carry out its business activities. An understanding of the assets employed by the taxpayer and its AE(s) provides an insight into the resources deployed by them and their contribution to the economic activities. Hence, it is relevant and useful in identifying the assets employed while conducting functional analysis.

- Risk Assumed

Functional analysis is incomplete unless the material risks assumed by each of the transactional party have been considered since the assumption or allocation of risks would influence the pricing of transactions between the AE(s).

FAR analysis is the heart of the TP Study Report as it lays down the foundation for establishing the transfer pricing methodology and for determination of the ALP.

Typically, the type of international transactions/ SDTs entered into with the AE(s) fall under either of the broad category i.e. manufacturing model or distribution model or service model. Manufacturing model comprises of Toll or Contract or Licensed or Entrepreneur Manufacturer whereas Distribution model comprises of Low Risk or Normal Risk or Entrepreneur Risk Distributor and Service Model comprises of Captive or Limited Risk or Entrepreneur Risk Service Provider. Basis these models, commonly used functions, assets and risks are as under:

Functions Performed	Assets Employed	Risks Assumed
Procurement of Raw Materials	Tangible Assets	Market Risk
Research and Development	- Plant & Machinery	Inventory Risk
Manufacturing Process	- Office Equipments	Credit Risk
Budgeting	- Factory Building, etc.	Service Liability Risk/ Product Defect Risk/Product Failure Risk
Marketing Services	Intangible Assets	Manpower Risk
Negotiation of Prices	- Brands	Foreign Exchange Risk
Inventory management	- Patents	Capacity Utilisation Risk
Providing after Sales Services	- Trademarks	
Warranty Services	- Softwares, etc.	

The aforesaid detailed FAR analysis data is collated by conducting interviews with the respective team of the taxpayer and its AE(s) involved in the international transaction/ SDTs and from the agreements/ contracts entered into by the taxpayer with its AE(s) for such transaction.

Characterisation

Based on the facts presented above in the analysis of functions performed, assets employed and risk assumed, one can determine the economic characterization of the taxpayer and its AE(s) with respect to the aforesaid transaction. The economic characterization helps to determine which of the methods might be appropriate and also what type of comparable would be require for benchmarking the said transaction.

5. Economic Analysis

The economic analysis section includes selection of the tested party, selection of the most appropriate method ('MAM'), application of the MAM, selecting the appropriate profit level indicator ('PLI') conducting a search for uncontrolled companies based on the application of the MAM, and then finally determining the ALP. Now, let's discuss the content to be included for each of the section.

Selection of the Tested Party

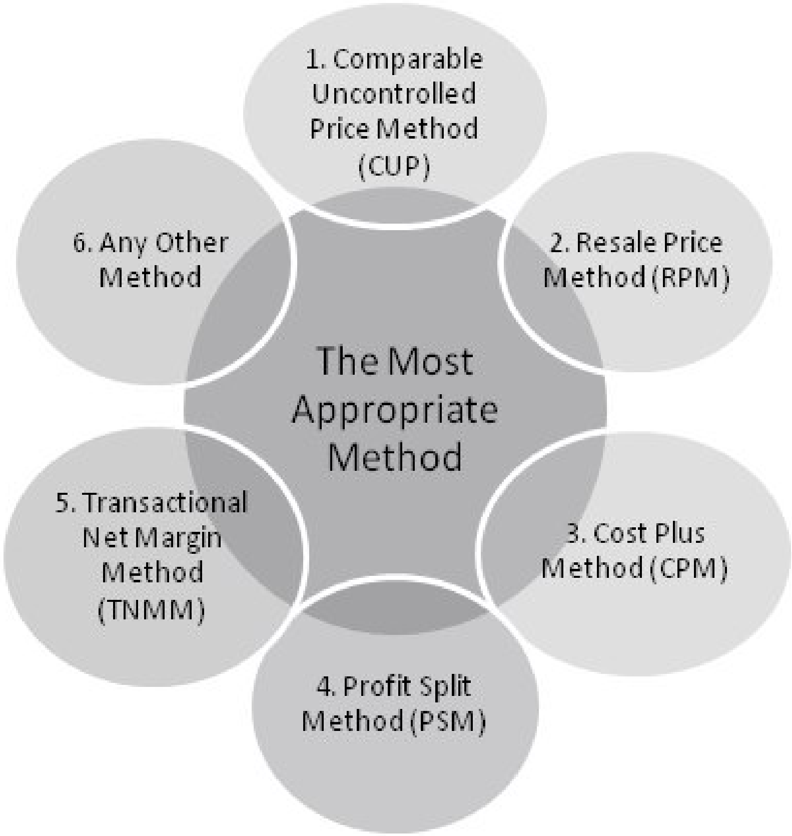
Tested party means a party to an international transaction/SDT with reference to which the said transaction is tested basis the functional analysis of the said transaction. Please note the term 'tested party' is not defined in the Act and therefore there are no Rules prescribed laying down the selection of the tested party.

However, as a golden rule, the tested party is the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found i.e. it will most often be the one that has the less complex functional analysis.

In the TP Study Report, one has to first give the background i.e. what is the tested party, why it is required and how it is selected and then in the ensuing para select and provide the name of the tested party with proper reasoning of its selection.

Selection of the Most Appropriate Method

As per Section 92C of the Act, the calculation of the ALP has to be carried out by using the MAM. The MAM should be selected from the following methods:



The Regulations do not provide for any hierarchy of methods instead, the MAM should be the method which is best suited to the facts and circumstances of each particular international transaction/ SDTs and which provides the most reliable measure of ALP. In determining the most reliable method following factors to be considered:

- Availability of data;
- Coverage and reliability of data;
- Degree of comparability between controlled and uncontrolled transactions; and
- Extent to which accurate and reliable adjustments can be made to account for differences, if any.

This section of the TP Study Report should first start with the introductory para on selection of MAM, then give brief on each of the method along with the reasoning for its selection or rejection.

Application of the MAM

Pursuant to the above analysis of each of the method, now one needs to apply the MAM concluded to determine the ALP of the international transaction/SDT.

Choice of the PLI, if applicable

The application of the few methods requires selection of an appropriate PLI. The PLI measure the relationship between profits and either revenue earned or cost incurred or assets employed. The choice of the PLI depends upon the actual nature of the international transaction/SDT, the reliability of the available data, etc.

This section too first start with what is the PLI and how it is to be derived at and then the ensuing para should contain an appropriate PLI selected as the acceptable PLI for setting the arm's length operating margin for the said international transaction/ SDT.

Search for Uncontrolled Comparable Companies

This section should start with the brief para on the database selected for carrying out the search of uncontrolled comparable companies. Then, one can summarise the type of Comparable Companies searched for in the database and arrived at along with the final comparable list with the adjusted average PLI for each of the Comparable Company. The details of entire search process carried out in the database to arrive at the final list for Comparable Uncontrolled Companies along with the PLI computation for each of the year can be given as part of the Appendix, however an appropriate reference should be given here.

Determination of Arm's Length Price

In the initial para, the taxpayer can provide the margin/price details of its international transaction/ SDT with its AE(s) into consideration with the reference to a detailed working forming part of the Appendices.

Based on the aforesaid analysis, the taxpayer will have to conclude that the ALP (i.e. median along with range or mean) of the Comparable Uncontrolled Companies vis-à-vis the taxpayer's margin would meet the arm's length standard as required under the Indian TP Regulations.

The aforesaid process of functional and economic analysis has to be carried out for each of the international transaction/SDT having altogether different nature and which cannot be inter-linked or aggregated with a particular transaction.

6. Appendices

In my view, all the TP Study Report should have a separate section as Appendices which may include the following items:

- Indian Transfer Pricing Regulations as per the Act;
- Databases and their limitations (only if search carried out through external databases);
- Steps of Search Process for Comparable Uncontrolled Companies (if applicable);
- Brief Business Description of final set of Comparable Companies (if applicable);
- PLI computation for each of the final set of Comparable Uncontrolled Companies (if applicable);

- PLI computation of the taxpayer's margin;
- Scope and Limitations;
- Abbreviations;
- Finally, summarise the Rue 10D details in a tabular format giving reference number to the TP Study Report for each of the clauses of Rule 10D.

Please note the aforesaid details are not mandatorily to be included as part of Appendices and can be included in the main Report itself but if presented in the above manner will help the taxpayer in better presentation.

Penalty Provisions:

The penalty provisions in connection with the failure to prepare and maintain TP documentation are contained in Section 271 of the Act and the same are summarised in the below table:

Sr. No.	Type of Penalty	Section	Penalty Quantified
1	• Failure to maintain prescribed documentation, • Failure to report transactions, or • Maintenance or furnishing of incorrect	271AA(1)	2% of transaction value
2	Failure to furnish information/ documents during assessment	271G	2% of transaction value

Conclusion:

The TP Study Report must be prepared or collated regularly at the time of occurrence of the transactions and continuously, rather than waiting for the notice from the tax authorities to present the same, as the information is more accessible at the time of occurrence of transactions and thereby helps in maintaining contemporaneous and reliable records and to safeguard the taxpayer from the aforesaid penalty provisions.

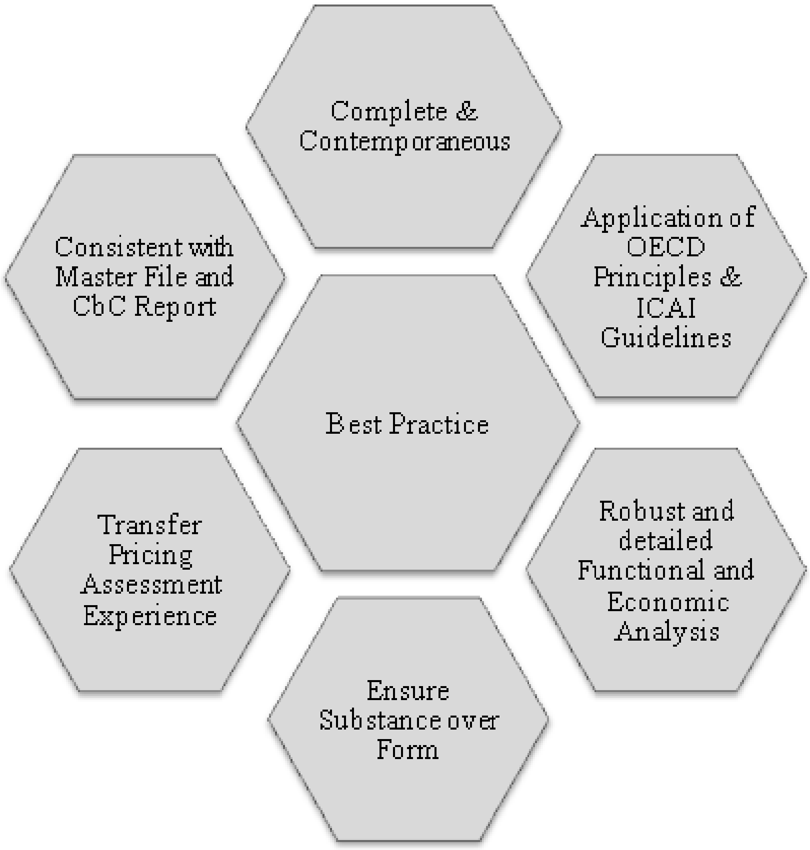
Based on the information and details contained in TP Study Report, it may be reasonably concluded that the analysis in TP Study Report meets the specified requirements and contains all of the relevant documents required to be maintained under the standards of the Indian Transfer Pricing Regulations.

In a nutshell, the taxpayer has to maintain an adequate, appropriate and contemporaneous documentation with respect to the international transaction(s)/ SDT(s) before the filing of the Accountant's Report (i.e. Form 3CEB).

Pointers for preparation of the TP Study Report:

- Discussion with only tax or finance team of the Client will not help, instead one will have to carry out the functional interview with respective Heads of the Department to understand the business which in turn will help to draft the FAR Analysis for international transaction/ SDT entered into by the taxpayer. This should be carried out in the year in which the transaction was entered for the first time and later at least once in every three year or when there is a substantial change;

- Be creative in the drafting of the TP Study Report – such as include executive summary to the Report, present value chain analysis of the business of the taxpayer with its AE(s), diagrammatic presentation wherever possible, etc.;
- Mention the source of information wherever required as a foot note for the reliability and authenticity of the information/details mentioned in the TP Study Report;
- Ensure that the FAR aligns with the actual conduct of the business of the taxpayer with its AE(s);
- Update the TP Study Report based on recently concluded transfer pricing assessment proceedings, if required;
- Ensure that the TP Study Report is in alignment with what has been included in the Master File of the taxpayer or the Group and also in alignment with the Country-by-Country Report (if any) of the Group;
- Avoid cherry picking of the Comparables; and
- Lastly ensure that the details mentioned in the TP Study Report are contemporaneous in nature.



RECENT TRENDS IN TRANSFER PRICING LITIGATION

CA Bhavesh Dedhia
Email : bdedhia@bsraffiliates.com
CA Anjul Mota
Email : anjulmota@bsraffiliates.com

Backdrop:

Traditionally, the landscape on Transfer Pricing litigations globally as well as in India has seen high-impact, long-standing disputes resulting into vitiated environment amongst the business community. The major factors contributing to the same are aggressive approach of revenue authorities, lower threshold for audit selection, inadequate guidance in law leading to conflicting interpretation, lack of preparedness of tax payers to meet voluminous information requirement and slow disposal at appellate forum leading to cascading litigation.

There have been conscious efforts on the part of Governments across to ease out the burden by carefully curated tools such as APA, MAP, etc, which has resulted in considerable relief to the tax payers. Further, automated selection of scrutiny cases has reduced transfer pricing audits drastically, yet the latest assessment cycles have shown that the fire is still burning.

In this article, we have endeavored to discuss certain key issues and the experience in dealing with such issues, from the perspective of Income-tax Act, 1961 ('the Act'):

Key issues:

1. Valuation dispute in transactions relating to transfer of intangible assets

The ownership and pricing of valuable and unique intangibles are the areas which have garnered growing interest and are facing considerable challenges. Increasingly, complicated business structures and policies being adopted by Multi-National Entities ('MNEs') in order to efficiently manage their global businesses has contributed in fair measure to this trend.

In emerging markets such as India, the issue assumes particular relevance as many MNEs have set up their manufacturing base, captive research and development centers and sales and distribution entities to reap benefits of the location savings, vast pool of skilled workforce and huge consumer base.

Several difficulties arise while dealing with intangibles. The retrospective amendment made in the Indian transfer pricing regulation to incorporate exhaustive definition of intangible was a significant step. Further, the guidance contained in the BEPS Action Plan ('AP') 8 to 10 supports the historic view adopted by Indian revenue authorities i.e. to lay emphasis on substance and functions rather than contractual allocation of risks and rewards.

Some of the key issues revolve around determination of the arm's length price for the transfer and use of intangibles, ownership of intangibles, remuneration for development of intangibles, transfer pricing of co-branding etc.

BEPS AP 8 to 10 provides guidance on applying 'arm's length principle' on intangibles, focusing on economic substance, risks /control and corresponding rewards, rather than merely focusing on the legal ownership. Each respective entity which is engaged in Development, Enhancement, Main-tenance, Protection and Exploitation of intangible(s) [in short, DEMPE] is entitled to the arm's length remuneration (after compensating other MNE Group entities for the activity performed by them) from the overall revenue generated from intangible instead of the erstwhile practice wherein only the legal owner of intangible(s) was entitled to the residual returns.

In the case of Sun Pharmaceutical Industries[1], the Hon'ble Ahmedabad bench of the Income-tax Appellate Tribunal ('ITAT')

accepted Assessee's TNMM and rejected the application of Profit Split Method by tax authorities in respect of a contract manufacturing function undertaken by tax-payer post transfer of Intellectual Property Rights to its AE

key risks relating to IPRs such as risk of loss, litigation/infringement risks etc., were borne by the AE.

The Assessee performed only one function i.e. manufacturing and for such simple functions and therefore transaction profit split method typically would not be appropriate.

In the case of DQ International[2], the Hon'ble Hyderabad bench deleted TPadjustment in respect of sale of IPR of 'Jungle Book Animation Series' at the stage of development by the Assessee to its AE. It observed that

the Assessee had arrived at sale consideration after considering independent valuation from two valuers while TPO had replaced the projected cash flows with actual total revenues of AE and proposed a TP adjustment.

The ITAT stated that value at the time of making the business decision is important and opines that

When the values are replaced subsequently, it is not valuation but evaluation i.e. moving the post of result determined out of projections

For valuation of an intangible asset, only the future projections alone can be adopted, and such valuation cannot be reviewed with actuals after 3 or 4 years down the line

In the case of Tally Solutions, the Hon'ble Bangalore bench held that

once IPR is sold and arm's length price is determined, IPR becomes property of AE and any subsequent transaction between AE with outsiders or outside the jurisdiction of the Indian territory does not give rise to international transaction between the Assessee and AE

Dealing with intangible is highly complex, subjective and often involves significant stakes. A thoughtful approach is required to recoginse and value intangibles. Further, in today's all-pervasive digital era there are enough trail internally and externally with which intangibles related position needs corroboration. The disclosure in tax filings is stringent and ambiguous leading to penal consequences for taxpayers in case of oversight or inadequate furnishing of information. The problem is further aggravated due to lack of sufficient and quality data in public domain to benchmark intangible related transaction.

[1] *Sun Pharmaceutical Industries Ltd v. ACIT [TS-596-ITAT-2017 (Ahd)-TP]*
[2] *DQ International Ltd. (ITA No. 151/HYD/2015)*

Recognizing above issues, OECD has issued guidance on hard-to-value intangibles[3]. Several taxpayers are resorting to the same and formalizing their position.

The guidance acknowledges that intangible related valuation involves estimation and there is bound to be ex-ante deviation with actual results. Only in cases deviation exceeds 20 percent, therevenue authorities are authorized to challenge and substitute projection with actual data to rework pricing for intangibles.

Considering above, it would be of utmost importance for an MNE to formulate an appropriate strategy and structure for effective compliance when planning cross border restructuring of operations, changing or aligning business models or shifting of resources.

2. Marketing intangibles

“Marketing intangibles”, in the form of advertisement, marketing and sales promotion (AMP) expenses is one of the key areas of dispute between the Indian tax authorities and taxpayers. Increasingly, complicated business structures and policies being adopted by Multinational Entities ('MNEs') in order to efficiently manage their global businesses has contributed in fair measure to this trend.

In emerging markets such as India, the issue assumes particular relevance as many MNEs have set up their sales and distribution entities to reap benefits of huge consumer base. A number of difficulties arise while dealing with marketing intangibles i.e. conflicting rulings from the Courts, evolving and disruptive business models and retrospective amendment made in the Indian transfer pricing regulations to incorporate exhaustive definition of intangibles.

The main dispute has been in the area of excessive expenditure incurred on advertising, marketing and sales promotion activities and whether such expenses are of routine or non-routine nature. If the expenses are non-routine nature, the Indian entity should be adequately compensated with arm's length remuneration so that there is no creation of marketing intangibles.

The Hon'ble Special Bench at Delhi delivered a controversial ruling on this vexed issue in the case of LG Electronics[4], by upholding TP adjustment in relation to AMP expenditure on the basis of the Bright Line Test ('BLT').

The controversy, to some extent, was put to rest by the Hon'ble Delhi High Court in the landmark cases of Sony Ericsson and Maruti Suzuki[5], which laid down some important principles on the concept of marketing intangibles. Hon'ble Delhi High Court, in the case of Sony Ericsson, concluded that AMP expenses is an international transaction, however, rejected the applicability of BLT to determine ALP. Subsequently, in the case of Maruti Suzuki, HC held that AMP expenses incurred by the Assessee could not be categorized as an international transaction u/s 92B.

Post the Delhi HC rulings in Sony Ericsson and Maruti Suzuki, there have been a spate of High Court and ITAT decisions wherein the earlier judgments have been analyzed, discussed or simply been followed. The controversy has reached the doors of the Apex Court and only time will tell as to which way the pendulum will swing.

[3] *Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles issued in June 2018*

[4] *LG Electronics India Pvt Ltd [TS-11-ITAT-2013(DEL)-TP]*

[5] *Sony Ericsson Mobile Communications India Pvt Ltd [TS-96-HC-2015(DEL)-TP] and Maruti Suzuki India Ltd [TS-595-HC-2015(DEL)-TP]*

While these rulings lay down important guiding principles in connection with marketing intangibles, unfortunately these have not been able to provide finality on the issue with both taxpayers and the tax authorities now knocking at the doors of the Supreme Court to resolve the issue and the same are likely to be heard over the next few weeks.

It seems that the AMP matter itself being dependent on various business models adopted by the taxpayers, the Supreme Court rulings on marketing intangible may be highly fact-specific, which both taxpayers and tax authorities will not be able to uniformly follow in other cases. Hence, prolonged litigation seems inevitable.

Each taxpayer would, therefore, need to find its own resolution to the marketing intangible controversy. Besides pursing normal litigation route, alternate modes for seeking resolutions could be explored such as Advance Pricing Agreements (for future years) and Mutual Agreement Process (for existing disputes).

3. Overdue receivables

Vide Finance Act, 2012, section 92B was amended to widen the definition of 'international transaction', with retrospective effect from 1st April 2002, to include the following amongst various others:

capital financing, including any type of long term or short term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business

While Memorandum contains generic reference as regards the purpose of inclusion of various items in the definition, there is no specific mention of 'capital financing' and the purpose / implication of its inclusion within the definition of 'international transaction'.

While the above clause is inclusive in nature, the various components of 'capital financing' mentioned in the said clause broadly cover all the transactions that would be covered under the general definitions of 'capital' and / or 'financing'.

We have discussed below one such item of overdue receivable / payable since the same has been a matter of debate over past few years.

As per OECD[6], 'Trade Credits and Advances' are defined as follows:

Trade credits and advances are trade credit for goods and services extended directly to corporations, to government, to non-profit institutions, to households and to the rest of the world and also advances for work that is in progress (if classified as such under inventories) or is to be undertaken

The issue to be considered is whether the trade advances / trade receivables / similar deferred payments should be treated as:

- Trade debts in the ordinary course of the business of the tax payer and hence would not constitute a separate "international transaction" (the impact of the interest loss on account of the credit period would get offset by the higher profits earned on account of the increase in sales / pricing as a result of extending such credit terms to customers); OR
- Separate lending / borrowing transactions wherein a separate interest charge needs to be computed / imputed.

[6] *As per the OECD Glossary of Statistical Terms*

In absence of specific guidelines in this regard under the Indian Transfer Pricing regulations or the OECD commentary, reliance could be placed on certain Indian judgments, discussed below:

In the case of M/s. Indo American Jewellery, Nimbus Communication and Tech Mahindra[7], Hon'ble Mumbai bench held that

An outstanding debit balance on account of services rendered to the Group companies does not qualify as an international transaction since the same is not an independent transaction, but merely the result of a commercial transaction

The charging of interest is applicable only with the lending or borrowing of funds and not in the case of commercial over dues

In case the Assessee has not charged any interest on overdue receivables to external parties, following the internal CUP method, the rate of interest should be NIL

For repayment of dues reasonable period may be provided as interest free period and interest to be computed only for the period greater than the reasonable time limit

The aforesaid position is also confirmed by Hon'ble Bombay High Court[8].

It would be pertinent to note adverse decisions notably by Hon'ble Bombay High Court[9], wherein it was held that

extension beyond normal credit period would amount to granting loan to AE

Considering the same and post the aforementioned amendment to section 92B, it would be imperative for taxpayers to assess whether interest should be charged / paid on overdue amounts especially those beyond reasonable period.

It is also debatable whether overdue amounts should be reported under accountant's report or mere disclosure either in notes or in TP report is fine

In the case of Perot Systems[10], Hon'ble Delhi bench has specifically held that

Supreme Court judgment in the case of S.A. Builders does not apply to the Indian Transfer Pricing Regulations since the same are specific provisions relating to computation of income from international transactions having regard to arm's length price.

Hence, the argument that such interest free loans should not be treated as separate international transactions for the purposes of transfer pricing would not be tenable.

Having regard to the factual matrix, decision needs to be made whether to report the transaction or mere disclosure by way of a note would be sufficient. This also poses increased difficulties in terms of reluctance of jurisdictional tax officers to accept the physical notes separately in certain situations.

Another pertinent issue is how should one benchmark these transactions. Usually, in a commercial situation, the terms of credit are generally co-related with the price of goods, considering that the same has a direct bearing on the funding cost of the seller and receiver entities.

[7]Deputy Commissioner of Income-tax, Circle 9(2) vs. Indo American Jewellary Ltd.[50 SOT 528(2010]), Nimbus Communications Ltd. vs ACIT, Mumbai [28 SOT 246(2010)], Tech Mahindra Limited vs. DCIT [46 SOT 141 (2011)]
[8]Indo-American Jewellery (2014 223 Taxmann8)(Bom)
[9]Technimont Pvt Ltd (ITA no. 56 of 2016) (Bom)
[10]Perot Systems TSI (India) Limited (ITA no 2320, 2321, 2322 / Del / 2008)

The entities operating as captives/limited risk units tend to bear lesser risks and have low levels of working capital as compared to entrepreneurial / higher risk-taking entities.

Due to limitation of the databases, the comparables obtained are generally entrepreneurial / higher risk-taking entities and hence, to ensure proper comparison, a suitable adjustment to the profitability of such comparables becomes imperative to compensate for the differences in the working capital levels.

Having regard to the facts of the situation, one may look at undertaking working capital adjustment to adjust the margins to reflect the appropriate level of comparability.

4. Deemed international transactions:

As per section 92B(2) of the Act:

A transaction between an Indian taxpayer with an unrelated party could be regarded to be deemed international transaction in case it is influenced by a prior agreement between the associated enterprise ('AE') of an Indian taxpayer with such third party or the terms of relevant transaction are agreed between the associated enterprise of Indian taxpayer with such third party

The Finance Act, 2014 amended section 92B(2) ***to include transactions with resident entities as well***

Thus, a transaction where Indian taxpayer enters into with a resident unrelated party which has prior agreement or terms agreed with such Indian taxpayer's AE will get covered within the ambit of Transfer Pricing provisions.

Further, a transaction where Indian taxpayer enters into with a resident unrelated party, the related party of whom has prior agreement or terms agreed with such Indian taxpayer's AE, will also get covered within the ambit of Transfer Pricing provisions.

E.g. central procurement, referrals, restructuring arrangements could get covered within the ambit of deemed international transactions.

The intention of this section was that taxpayers should not escape the rigors of transfer pricing in cases where the transaction when viewed in isolation appears to be between independent parties, but the same is influenced by a related party or the AE.

In the case of Kodak India[11], Hon'ble Mumbai bench held that that

even though the taxpayer entered into transaction of sale of imaging business segment in India as a consequence of global agreement between overseas holding companies, as there was no prior agreement and/ or terms and conditions for sales were not dictated by non-resident agreement, thus the transaction does not fall within ambit of deemed international transaction.

The appeal filed by Revenue against the above decision has been rejected by Hon'ble Bombay High Court[12].

In the case of Novo Nordisk[13],Hon'ble Bangalore bench observed that

the concept of transaction between two residents who are AEs, being regarded as international transaction, was implicit in the scheme of TP provisions in India, if it impacted or eroded tax base in India. Amendment to Section 92B(2) by Finance Act, 2014 was inserted only way of abundant precaution. It is made with a view to clarify the position that by entering into series of transactions with third parties who are not associated enterprises or non-residents, one cannot claim that TPregulations were not applicable, if in reality and in substance transactions were with related parties - one or both of whom might be non-residents.

[11] Kodak India Pvt. Ltd v. ACIT(ITA No. 7349/Mum/2012)
[12] Kodak India Pvt Ltd [TS-471-HC-2016(BOM)-TP]
[13] Novo Nordisk India Pvt Ltd Vs DCIT [TS-249-ITAT-2015(Bang)-TP]

In the case of Regus Business Centre[14], Hon'ble Mumbai bench

rejected invocation of Section 92B(2) in relation to loans granted by Assessee to its domestic group entities as international transactions noting that the transactions in question are with domestic entities only and no overseas entity is involved.

This case pertains to the assessment year prior to the amendment inserted by Finance Act, 2014.

Thus, it can be inferred that the actual conduct of the parties and the economic circumstances surrounding the transaction are the cornerstones analysis of deemed international transaction. In situations where the tax payer enters into a transaction with unrelated party as per directions of the AE, evaluation of deemed international transaction becomes critical. However, if the taxpayer can demonstrate that such transaction was independently negotiated, entered without any influence of AE and no benefit has flown to the AE then a view can be taken that such transaction should not fall within ambit of deemed international transaction provisions.

5. Comparability adjustments:

This is yet another contentious and litigative matter between the Revenue authorities and taxpayers. The Indian TP law recognizes the need to make reasonable and accurate adjustments for material difference in the functional and risk profile of taxpayer and selected comparable companies ('comparability adjustments').

The TP rules have outlined certain factors for judging comparability, but it does not provide adequate guidance on quantitative adjustments. Also, due to lack of quality comparable data in public domain assumption needs to be made by tax payers which is disputed by tax authorities.

A practical problem also arises at the time of preparing the TP documentation by the taxpayer, as at that point of time the relevant financial year data may not be available. In this backdrop, taxpayers may need to consider performing comparability adjustments based on certain financial and economic models.

The need for carrying out suitable comparability adjustments is supported by the joint publication of IMF, OECD, UN, World Bank group namely ***'A Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses'***, OECD Transfer Pricing guidelines[15] as well as under the guidance note on Transfer Pricing issued by the ICAI.

We have outlined below comparability adjustments in specific situations, as claimed by the taxpayer and stand adopted by the Revenue authorities in such cases:

5.1. Adjustment for fixed overheads and start up inefficiencies:

It is a common phenomenon for an entity to earn lower profit or incur loss in the start-up phase on account of high fixed overheads, start-up inefficiencies and inadequate revenue. At initial stage, an entity focuses its efforts in setting up of operations, recruiting and training manpower, building sales and distribution network and framing market penetration strategies. Also, to attract customers, an entity may have to give additional incentive, offer discounts, float schemes and make heavy marketing and advertisements expenditure.

[14] Regus Business Centre Pvt. Ltd [TS-377-ITAT-2020(Mum)-TP]

[15] Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations issued by the OECD in July 2017

It is observed that the Revenue authorities generally do not give adequate weightage to the same and allege that low profit or loss at the start-up phase is on account of under/over-pricing of international transactions. Typically, they reject the claim of adjustment stating that an adjustment should be made to the margins of the comparable companies and not to the margin of the taxpayer. Further, as most of the arguments raised by the taxpayer are qualitative, it is stated that the taxpayer failed to justify its claim with adequate documentary evidence.

In the case of Skoda Auto[16], Hon'ble Pune bench held that

the comparability analysis should also consider unusually high costs incurred by the taxpayer during its start-up phase and referred the matter back to the TPO for fresh adjudication with specific instructions.

In the case of Global Vantege[17], Hon'ble Delhi bench allowed the adjustment of 33.33 percent of the installed capacity as

the adjustment in the profitability of comparable companies for idle capacity of Assessee in the start-up phase based on the industry standards

In the case of Visteon Engineering Center[18], Hon'ble Pune bench allowed the adjustment on account of capacity utilization based on the reasoning that

although the global meltdown affected the entire auto industry worldwide, the bankruptcy of the parent company was an event that was particular to the Assessee

Further, the TPO was directed to ***consider the issue de-novo*** comparing the approved billable hours in the two years under consideration, after examining the documentary evidences filed by the Assessee to contend that the business of the Assessee had substantially reduced.

However, in an another case[19], the Hon'ble Delhi bench disallowed ***the Assessee's claim for adjustment citing that the Assessee is a software service provider to its AE and the AE had initiated such expansion; hence, the costs towards the same should be borne by the AE.*** Further, it was stated that the Assessee did not submit material to establish an objective basis on which its claim was supported.

At the same time, there are few decisions[20] which mention that ***if the differences between the companies or transactions are so material that it is not possible to perform a reasonably accurate adjustment, then the comparables should be rejected.***

5.2. Adjustment for non-recurring and exceptional items of income and expenses:

Another issue of an adjustment which has always been on the forefront is for non-recurring and exceptional items.

The Indian TP regulations requires that material effect of differences in comparables vis-à-vis the taxpayer to be eliminated by carrying out adjustments in reasonably accurate manner.

The taxpayer may earn lower profit on account of exceptional / non-recurring expenses E.g. increase in bad debt provisions due to change in accounting policy. Similarly, comparable companies may earn higher profit on account of exceptional income.

[16]Skoda Auto India Pvt. Ltd. (2009) ITA No. 202/PN/07 (Pune)
[17]Global Vantege (2010-TIOL-24-ITAT-DEL)
[18]Visteon Engineering Center (India) Private Limited [TS-462-ITAT-2018(PUN)-TP]
[19]ION Trading India Private Ltd. Vs ITO [TS-643-ITAT-2015(DEL)-TP]
[20]Mentor Graphics (Noida) (P.) Ltd. v. DCIT [2007] 109 ITD 101 (DELHI) / 112 TTJ 408, Egain Communication (P.) Ltd. v. Income-tax Officer [2008] 23 SOT 385

The Revenue authorities generally adopt stringent approach while evaluating non-recurring / exceptional items and allow adjustment for the same, in the instances where such items are specifically disclosed as exceptional / non-recurring in the financial statements.

In the case of Honeywell Automation India and HCL Technologies BPO Services[21], Hon'ble benches of the ITAT held that

abnormal costs should be excluded while calculating normalized profit for the purpose of undertaking benchmarking analysis.

5.3. Adjustment for difference in depreciation policy:

Few taxpayers charge higher depreciation on assets as per the group policy or due to peculiarities of the products e.g. following Straight Line Method and at a higher rate, they deal with which impacts their profits. However, comparable companies could be charging depreciation as per the rates prescribed in the Companies Act e.g. following Written Down Value Method and at a lower rate. In such cases, the difference in the depreciation methodology warrants an adjustment.

The taxpayer contends that either profit before depreciation charge should be considered for evaluation or an appropriate adjustment for differences in depreciation rates /methodologies should be made to the margin of the taxpayer / comparables.

The Revenue typically rejects the taxpayer's contentions stating that the TP rules do not permit the evaluation based on profits before depreciation. Further, the term net profit margin has not been defined under the Act and the Rules, thus the same has to be construed and given a meaning which is generally understood in the commercial parlance.

In the case of Schefenacker Motherson[22], Hon'ble Delhi bench held that

no standard test exists for deciding what constitutes operational income or profit. A receipt or expenditure would constitute operational income depending upon the facts and circumstances of the case and nature of business involved.

Thus, the Revenue's conclusion that operating profit or manufacturing cost must include "depreciation" irrespective of peculiar facts of case cannot be accepted as correct. Further, the Rules do not compulsorily require use of post-depreciation net profit.

On this basis, Hon'ble ITAT accepted the use of pre-depreciation net profit for the purposes of arm's length price computation.

In the case of Sabic Research and Technology Pvt Ltd[23], Hon'ble Ahmedabad bench held that

depreciation cost be excluded from operating cost for computing PLI.

Recently, in the case of DHR Holding India[24], Hon'ble Delhi bench held that

amortization of goodwill and non-compete fees shall be treated as a non-operating, since the same do not pertain for provision of services to AEs. Further, such expenses are also held to be abnormal and non-recurring expenses.

[21]Honeywell Automation India Ltd [2009] TIOL-104-ITAT-PUNE ITA No. 4/PN/08, HCL Technologies BPO Services Ltd (ITA No. 3547/Del/2010)]

[22]SchefenackerMotherson Ltd [2009] 123 TTJ 509 (Del)/(2009) ITA No. 4459/DEL/07 (Del)]

[23]Sabic Research and Technology Pvt Ltd TS-327-ITAT-2017(Ahd)-TP ITANo.1065

[24]DHR Holding India Private Limited (ITA No. 953/DEL/2017)

6. Covid Impact

Under uncertain economic environment combined with current pandemic situation, various businesses are evaluating change in supply chain and re-negotiation of terms not only with third parties and also with related parties. Thus, it would be critical to proactively plan ahead for the impacted and post impact periods.

For the period of impact, it would be important to work out differential margins for differences in working capital cycles, idle capacity, extra-ordinary costs like relocation, extra precautionary costs, increase in logistical and warehousing costs, discounting of prices and contraction of volumes from customers.

It would also be important to evaluate using different comparability mechanism such as change in tested party, usage of net level margin with suitable adjustments, gross profit level margins, different profit level indicators such return on capital assets, berry ratio, cost to cost reimbursement of certain items or for certain period, certain items being considered as non-operating / extra-ordinary, etc.

Due regard could also be made to the ICAI guidance note on financial reporting aspects of Covid impact and SEBI circular, whereby detailed guidelines are provided to quantify impact of Covid in the financial statements.

Conclusion:

Despite being in prevalence of two decades in Indian tax legislations, Transfer Pricing remains an intriguing and sensitive topic for MNEs to constantly evolve and adapt to. While the Revenue authorities are trying to align the Indian tax legislations with global principles, a more detailed and robust guidance would help the businesses for implementation and monitoring the laid out principles effectively as well as will help field officers to tackle the issues more pragmatically especially with the advent of the era of faceless assessments and appeals.

"DREAMZZ UNLIMITED": STORIES THAT INSPIRE

CA Samir Shah
Email : srshah@deloitte.com

My professional journey – key attributes

Looking back at past 25 years of my professional journey, I have grown and learned so much, I never thought that I would accomplish my professional and personal dreams so well. During this exciting journey, certain things are done right and certain ones are done wrong – indeed lessons learnt for life. At this juncture, I find it important to look back and reflect so that our young professionals can pick something relevant and apply in their professional lives.

I would like to share **five** of these lessons along with my real-life experiences –

1. Take Decisions

I learnt this very early in my life, in fact in school days. I was contracted with a life-threatening disease in class IX and two long years went in surgeries, treatment, and recovery. A month ahead of my Xth board exams, I had to undergo second surgery. My parents, friends and principal advised me to skip the March exam and appear in October. Against everyone's' advise, I took decision not to waste six months and appear for March exam. It involved lot of hard work and grit – and outcome was merit rank with flying colors.

We often fear taking bold decisions and keep suffering. I have made it a point to make the decisions, albeit informed ones, and own the consequences – and have never regretted irrespective of any outcome.

2. Build a personal brand

As we go with flow in our professional lives, we do not focus enough on building our personal brand – what are our values, what I stand for, what are my strengths, what problem can I resolve better and quicker than others, are some of key points to ponder on. Each of us are unique and have innate ability to make the difference – and that is what we ought to be known for – the personal brand. Since my college days, I was fortunate enough to begin my inner journey and be utterly clear about these attributes. It helped me in making right choices early on and shape up my professional career in the way I always wanted. After qualifying as chartered accountant in 1997, I joined job with one of the big4 firms, and also simultaneously started my practice – it was allowed then. Within a year, I observed that whilst I was earning more money in personal practice, the job would give me a wider canvas to do what I always wanted to do. Within two days I made the decision to shut down the practice and focus on the job. It helped me put my full energy in one direction rather than riding on two horses and I started growing immensely fast in the ladder of the firm as firm was also growing exponentially. In the process, I concentrated on building my personal brand with my colleagues, seniors and clients – a consistent one. This has helped me immensely in building eminence and recognition in the professional world and marketplace at large.

3. Balance is the key

It is immensely important to strike a right balance as one undertakes professional journey. I call it – QRC rule i.e. Quality, Risk and Commercial. There have been many occasions where this rule has proven to be profoundly relevant and helped me make a right choice. I distinctly remember an occasion where a client (a large conglomerate) wanted my service and was ready to pay any fee. On risk front, it didn't make sense luring commercial offer was. I politely turned down the request, and future events proved my decision to be appropriate at that time.

4. Focus on essentials

As a professional, time is an invaluable resource we have. Unless the time is spent on essentials, it gets royally wasted. I learnt technique of time management early in life – deciding what I need to do and what can be delegated. This is a journey and there is always a scope of improvement. I maintain daily journal for last 32 years, and amongst other things, jolt down what I could have done in less time or delegated. There was a time I used to work for 12-14 hours a day with one holiday (Sunday) in a month. Over a period, as my work increased, due to effective time management, I don't work for more than 7-8 hours a day and take almost all weekends, 3-4 vacations and 5-6 staycations in a year. This helps me rejuvenate, build next line of leadership, and focus on what is strategic and requires my time.

5. Learn to say NO

There was time I picked everything that came my way. I realised over a period that this habit was draining my energy and resources, and I was often failing in my commitments. I decided to take up the commitments which added value and learnt to say NO. This may sound harsh initially; however, ultimately, this has gained me better respect and quality of work. We must make conscious choices based on our set parameters and stay consistent with the same - you can never go wrong.

I have attempted to articulate above five essentials for being a successful professional which have helped along my journey so far.

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Speaker	Attendance / Views
24th September 2021 (From 6:00 PM to 8:00 PM	Member-ship & Recreation Committee	Online Panel discussion on topic- Choosing the Right Career Choice	Moderator - CA Atul Bheda Speakers - CA Umesh Gala CA Heetesh Veera CA Harish Shah Ms. Harini Dedhia CA Jay Savla	51