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Transfer Pricing Concept & The Law in India

2018

INCOME TAX DEPARTMENT

Directorate of Income Tax (PR,P&P)

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This booklet should not be construed as an exhaustive statement of the law. In case of doubt, reference should always be made to the relevant provisions of the Income-tax Act and Rules, and where necessary, notifications issued from time to time.

Akhilesh Ranjan Member (L)
Central Board of Direct Taxes
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FOREWORD

The provisions pertaining to Transfer Pricing (TP) were introduced in the Income Tax Act in the year 2001. The provisions are generally aligned with the OECD guidelines on transfer pricing with some deviations made to adapt the law to the Indian context. Transfer Pricing audits commenced from A.Y 2002-03 and that was when a booklet on "Transfer Pricing Concept & the Law in India" was published by the Income Tax Department in year 2004, purely for the purpose of spreading awareness in the general public about the then existing provisions of Transfer Pricing.

However, the surge in international intra-group transactions in recent times has created a need for preparing a more content-rich reference book for Departmental Officers, given that the jurisprudence in Transfer pricing has rapidly developed. This book explains the provisions of taxation in India relating to Transfer Pricing in a simple, easy to understand manner, which can be of immense use to the officers who are newly posted to TP charges, as well as all other officers for whom the book will go a long way in filling the knowledge-gaps between what they know and what they should know, as far as Transfer Pricing is concerned.

Vatsalaa Jha, Commissioner of Income Tax (Transfer Pricing- III) Delhi and Rahul Navin, Additional Director General of Income Tax (Vigilance), North Zone, Delhi have worked in tandem to pen down twelve chapters that encompass the entire spectrum of the Transfer Pricing Law including the alternate dispute resolution mechanisms such as Safe Harbours and Advance Pricing Agreements. I hope the book proves to be of immense use to Transfer Pricing Officers (TPOs) as well as to other officers of the Income Tax Department.

New Delhi
Date: 12/12/2018

(Akhilesh Ranjan)
Member (L)

PREFACE

The Directorate of Income tax (PR, P&P) had brought out a booklet on "Transfer Pricing Concept & the Law in India" in 2004 for taxpayers' Information only, with a view to spread a basic awareness about the then newly inserted provisions of Transfer Pricing.

Business in India over the last decade is increasingly transcending boundaries and is rapidly increasing both in volume and geographical coverage. This has brought the provisions of the Income tax Act, 1961 relating to Transfer Pricing of cross border transactions of goods and services, into the centre stage. With the introduction of Transfer Pricing concept to 'Specified Domestic Transactions' also, the scope of applicability of these provisions across all sections of taxpayers has increased enormously. Their applicability now concerns even those Assessing Officers who are not dealing with international transactions. These provisions are presently one of the most used and also litigated provisions of the Income-tax Act. With this background, it has been decided to bring out a new and updated book on the provisions of the Transfer Pricing, incorporating the changes that have been taken place over the years, as a Departmental Publication, as a guide to officers and staff of the Department.

The present edition of the book has been updated and expanded by two officers with vast experience in this field viz., Smt. Vatsalaa Jha, Commissioner of Income tax and Shri Rahul Navin, Commissioner of Income-tax .The Chapters of the booklet have increased from four in the earlier version to twelve in the updated version. The updation of the book has been carried out comprehensively so as to provide the reader a proper exposure to this subject. This Directorate places on record its appreciation and sincere thanks for the stellar efforts of both the officers.

It is our earnest hope that the officers of the Department will find this book useful. Valuable suggestions for further improvement of the book may kindly be emailed at delhi.dit.prppol@incometax.qov.in.

New Delhi Date 8.12.2018

(Debjyoti Das)
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CHAPTER 1

TRANSFER PRICING PROVISIONS IN INDIA

1.1 THE CONCEPT OF TRANSFER PRICING

1.1.1 Cross border, intra-group transactions have enabled multinational enterprises (MNEs) to distribute their activities across different locations to take advantage of different costs, tax structures and access to local markets. A significant volume of global trade nowadays consists of international transfer of goods and services, capital (such as money) and intangibles (such as intellectual property) within an MNE group; such transfers are called 'intra-group transactions'. There is evidence that intra-group trade is growing steadily and arguably accounts for more than 30 percent of all international transactions. "Transfer pricing" is the general term for the pricing of cross-border, intra-firm transactions between related parties. Transfer pricing therefore refers to the setting of prices for transactions between associated enterprises involving the transfer of property or services. These transactions are also referred to as "controlled" transactions, as distinct from "uncontrolled" transactions between companies that are not associated and can be assumed to operate independently ("on an arm's length basis") in setting terms for such transactions.

1.1.2 Commercial transactions between different enterprises of a multinational group may not be subject to the same market forces shaping relations between the two independent firms. One party transfers to another goods or services, for a price. That price, known as "transfer price", may be arbitrary and dictated, with no relation to cost and added value and divergent from the market forces. Transfer price is, thus, the price which represents the value of goods or services between independently operating units of an organization.

1.1.3 The effect of transfer pricing is that the parent company or a specific subsidiary tends to produce insufficient taxable income or excessive loss on a transaction. For instance, profits accruing to the parent can be increased by setting high transfer prices to siphon profits from subsidiaries domiciled in high tax countries, and low transfer prices to move profits to subsidiaries located in low tax jurisdiction. The result is revenue loss and also a drain on foreign exchange reserves.

1.2 HISTORY OF TRANSFER PRICING

1.2.1 The Transfer Pricing Guidelines started with the OECD reports on transfer pricing in 1979 and 1984. The OECD Guidelines, which were first published in 1995 represent a consensus among OECD Members, mostly developed countries, and have largely been followed in domestic transfer pricing regulations of these countries. Another transfer pricing framework which has evolved over time is the USA Transfer Pricing Regulations (26 USC 482). The OECD and U.S systems provide that prices may be set by the component members of an enterprise in any manner, but may be adjusted to conform to an arm's length standard. Each system provides for several approved methods of testing prices, and allows the government to adjust prices to the midpoint of an arm's length range. Both systems provide for standards for comparing third party transactions or other measures to tested prices, based on comparability and reliability criteria.

1.2.2 The United Nations published an important report on "International Income Taxation and Developing Countries" in 1988. The report discusses significant opportunities for transfer pricing manipulation by MNEs to the detriment of developing country tax bases. It recommends a range of mechanisms specially tailored to deal with the particular intra-group transactions by developing countries. The United Nations Conference on Trade and Development (UNCTAD) also issued a major report on Transfer Pricing in 1999. The United Nations recently published a Practical Manual on Transfer Pricing for Developing Countries in 2013 providing updated global transfer pricing guidance which can be used by countries all over the world in developing and implementing their transfer pricing regulations. This Manual contains a Chapter on 'Country Practices', which inter alia includes a sub-chapter, titled "Emerging Transfer Pricing Challenges in India", which has been revised in October, 2016.)

1.3 THE ARM'S LENGTH PRINCIPLE

1.3.1 The UN Model Tax Convention's Article 9(1) states as follows:

"Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise

of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for reason of these conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly".

1.3.2 In other words, the transactions between two related parties must be based on the arm's length principle (ALP). The term arm's length principle itself is not a term specifically used in Article 9, but is well accepted by countries with some differing interpretations as to what this means in practice. The principle laid out above in the UN Model has also been reiterated in the OECD Model Tax Convention and the OECD Guidelines as supplemented and amended.

1.3.3 Nearly all systems require that prices be tested using an "arm's length" standard. Under this approach, a price is considered appropriate if it is within a range of prices that would be charged by independent parties dealing at arm's length. This is generally defined as a price that an independent buyer would pay to an independent seller for an identical item under identical terms and conditions, where neither is under any compulsion to act.

1.4 SUMMARY OF TRANSFER PRICING PROVISIONS IN INDIA

1.4.1 Transfer pricing provisions were introduced in the Indian Income-tax Act in 2001. The provisions were broadly aligned with the OECD guidelines on transfer pricing. Over the last 15 years, transfer pricing audits in India have thrown up a number of issues and challenges. Administration of the transfer pricing law has also resulted in a number of disputes and protracted litigation. With a view to reducing transfer pricing disputes, a number of initiatives have been introduced by the tax administration in the recent past. Some of the initiatives have included the introduction of an Advance Pricing Agreement (APA) Scheme, inclusion of Safe Harbor provisions, utilization of the MAP provision in bilateral tax treaties to resolve TP disputes, migration from a quantum of transaction based selection to risk-based selection of TP cases for audit, and issuance of various Circulars and Instructions on transfer pricing matters to provide clarity on TP issues, etc.

1.4.2 Due to these initiatives, there has been an impact on the

number of cases under audit as well as the number of disputes arising from such audits which have both shown a downward trend. Transfer pricing tax administration can now focus on high risk cases and at the same time provide a reasonable degree of certainty to low risk taxpayers. The new approach is expected to raise the quality of transfer pricing audits without creating an environment of tax uncertainty and protracted litigation.

1.4.3 India, as a member of the G-20, has participated in the Base Erosion and Profit Shifting (BEPS) Project on an equal footing with the OECD and other non-OECD member countries and is a party to the consensus developed under the various Action Points of the BEPS Project. The final reports of all the 15 Action Points of the BEPS Project have been endorsed at the highest political level by all G-20 countries, including India. Accordingly, India is committed to implementing all the recommendations contained in the BEPS reports including those on transfer pricing.

1.4.4 In order to provide uniformity in the application of transfer pricing law, there are specialized Commissionerates under the supervision of a Principal Chief Commissioner of Income-tax (International Taxation) at Delhi and two Chief Commissioners of Income-tax (International Taxation) stationed at Mumbai and Bengaluru. Transfer Pricing Officers (TPO) are vested with powers of inspection, discovery, enforcing attendance, examining a person under oath, on-the-spot enquiry/verification and compelling the production of books of account and other relevant documents during the course of a transfer pricing audit. The mechanism of the dispute resolution panel (DRP) is also available to taxpayers to resolve disputes relating to transfer pricing.

1.4.5 The government of India has a dedicated website which contains comprehensive information about the latest provisions of tax law and related rules, Circulars and Instructions including those on transfer pricing. The website has a user friendly interface. It can be accessed at http://www.incometaxindia.gov.in.

CHAPTER 2

INDIAN LAW CONCERNING TRANSFER PRICING

2.1 HISTORICAL BACKGROUND

Section 42(2) in the Income Tax Act, 1922 dealt with the situation concerning 'Transfer pricing'. On the enactment of the Income-tax Act, 1961 (the Act), the provisions of section 42(2) were incorporated in this Act in the form of Section 92. As per erstwhile section 92 of the Act, which was the only section dealing specifically with cross border transactions, an adjustment could be made to the profits of a resident arising from a business carried on between the resident and a non-resident, if it appeared to the Assessing Officer that owing to the close connection between them, the course of business was so arranged so as to produce less than expected profits to the resident. Rule 11of the Income-tax Rules, 1962 (the Rules) prescribed under the section provided a method of estimation of reasonable profits in such cases. However, this provision was of a general nature and limited in scope and did not allow adjustment of income in the case of non-residents. It referred to a "close connection", which was undefined and vague. It provided for adjustment of profits rather than adjustment of prices, and the rule prescribed for estimating profits was not scientific. It also did not apply to individual transactions such as payment of royalty, etc., which are not part of a regular business carried on between a resident and a non-resident. There were also no detailed rules prescribing the documentation required to be maintained.

2.2 STATUTORY RULES AND REGULATIONS

2.2.1 With a view to provide a detailed statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprise, the Finance Act 2001, introduced a set of provisions in Chapter X of the Income tax Act, 1961 under the heading "Special Provisions Relating to Avoidance of Tax". Sections 92A to 92F were inserted, relating to computation of income from an international transaction having regard to the arm's length price, meaning of associated enterprise, meaning of international transaction, computation of arm's length price, maintenance of information and documents by persons entering into international

transactions, furnishing of a report from an accountant by persons entering into international transactions and definitions of certain expressions occurring in the said sections.

2.2.2 The relevant provisions contained in Chapter X of the Act and the provisions dealing with levy of penalties for non-compliance thereof have been provided in Annexure-1 to the Handbook. The Government's objective to be achieved through the new provisions has been explained in detail in circular No.14 dated 20th November 2001, which has been appended to the Handbook in Annexure-4.

2.2.3 Subsequently, from time to time, certain amendments have been made in the Transfer Pricing provisions. The Finance Act, 2002 made certain changes to the provisions contained in sections 92A, 92C, 92F and 271F. The Finance Act, 2006 further amended section 92C. Further, the Finance Act, 2007 inserted sub-sections (3A) and (4) in section 92CA. Finance Act 2009 amended the proviso to section 92C, provided for constitution of the dispute resolution panel and empowered the Board to formulate safe harbor rules. Finance Act 2011 amended the allowable variation as per second proviso to section 92C (2) to be notified by the Central Government, and made changes to Section 92CA. The Finance Act 2012 has introduced significant amendments including inter alia clarifying the coverage of the term 'international transactions', expanding the scope of transfer pricing provisions to Specified Domestic Transactions (SDT) in section 92BA and providing an Advance Pricing Agreement (APA) framework (Section 92CC and Section 92CD). Further changes specifically in respect of arm's length price determination were introduced vide Finance (No. 2) Act 2014 and the Finance Act 2015. The Finance (No. 2) Act 2014 introduced the use of multiple year data and the range concept for determination of arm's length price and roll-back mechanism for APA. The final rules in relation to the range concept and use of multiple year data were notified by the Central Board of Direct Taxes in October, 2015. Further, section 92B extended application of transfer pricing provisions to transaction entered by an Indian entity with a resident independent third party. The Finance Act 2015 increased the threshold limit for the applicability of specified domestic transaction from INR 5 crores to INR 20 crores with effect from Financial Year 2015-16.

2.2.4 The Finance Act 2016, in line with recommendations of the BEPS Action Plan 13, inserted section 286 for furnishing of country-by-country report and inserted proviso to section

92D(1) for maintenance of Masterfile, with effect from Financial Year 2016-17. These provisions are further proposed to be rationlised through Finance Bill, 2018. Further, the existing penalty provisions have been rationalised along with insertion of additional penalties for non-furnishing/ maintenance of country-by-country report and master file.

2.2.5 In order to reduce the compliance burden of the taxpayers, the Finance Act, 2017 has excluded expenditure in respect of which payment has been made by the assessee to a person referred to in under section 40A(2)(b) from the scope of Specified Domestic Transaction (SDT) under section 92BA. Further, with a view to align the transfer pricing provisions in line with OECD transfer pricing guidelines and international best practices, the Finance Act, 2017, has inserted a new section 92CE to provide that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price, has been made suo motu by the assessee in his return of income; or made by the Assessing Officer has been accepted by the assessee; or is determined by an advance pricing agreement entered into by the assessee under section 92CC; or is made as per the safe harbour rules framed under section 92CB; or is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or 90A. The Finance Act, 2017 also provides that where as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee, in the manner as may be prescribed. Such secondary adjustment shall not be carried out if, the amount of primary adjustment made in the case of an assessee in any previous year does not exceed one crore rupees.

2.2.6 The relevant provisions of the Act and the Rules as also the important circulars have been appended as Annexures to this Handbook.

CHAPTER 3

ASSOCIATED ENTERPRISES

3.1 ENTERPRISE

The concept of 'Associated Enterprises' as can be seen from earlier discussions is important in the context of 'transfer pricing' legislation. In common parlance, the expression "enterprise" means an economic activity carried on by a person, capable of producing profits, exercised in an independent manner, consisting of well defined actions, and having an economic character. According to section 92A, this phrase has relevance in the context of section 92, 92B, 92C, 92D and 92E. 'Enterprise', as defined in section 92F means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be engaged in the following activity or business which is carried on, irrespective of whether done directly or through one or more of its units or divisions or subsidiaries and irrespective of whether such unit or division or subsidiary is located at the same or at a different place:

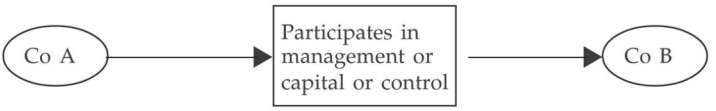
- the production, storage, supply distribution or control of articles or goods, or
- know-how, patent, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, or
- any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has the exclusive rights, or
- the provision of services of any kind, or
- engaged in investment, or providing loan or
- engaged in the business of acquiring, holding, underwriting, or dealing with shares, debentures, or other securities of any other body corporate.

3.2 PARTICIPATION IN MANAGEMENT AND CONTROL

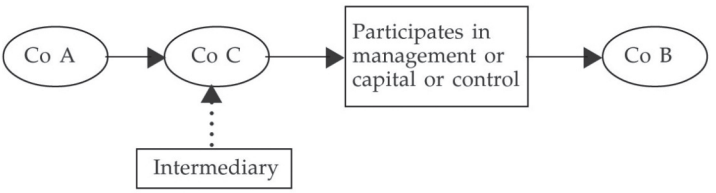
An "enterprise" is an associated enterprise which participates directly or indirectly in the management or control or capital of the other enterprise

This can be explained as follows:

Situation 1 – Direct Participation

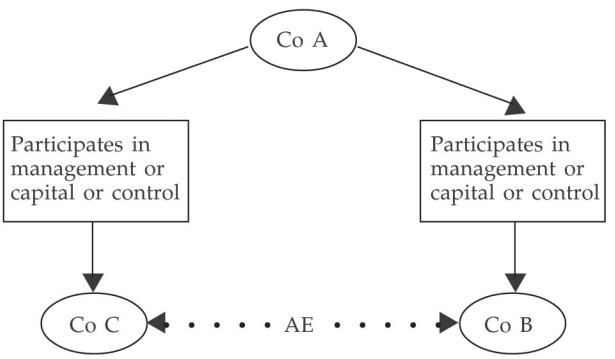


Situation 2 – Participation through Intermediary



- If any person who participates in the management or control or capital of an enterprise also participates in the management or control or capital of the other enterprise, then all the three are AEs.

  This can be explained as under



3.3 ASSOCIATED ENTERPRISE AND DEEMED ASSOCIATED ENTERPRISE

Associated Enterprises are those which are owned and controlled by the person having same or common interest. The control could be direct or indirect, or through intermediaries. According to Sub-section (1), an enterprise which participates directly or indirectly or through one or more intermediaries, in the management or control or capital of the other enterprise shall be regarded as an associated enterprise. Sub-section (2) of section 92A states that two enterprises shall be deemed to be associated enterprises

if at any time during the previous year either of the following conditions are satisfied

- one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise
- any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises
- a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise
- one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise
- more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise
- more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons
- the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights
- ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise
- the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise

- where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual
- where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative
- where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals
- there exists between the two enterprises, any relationship of mutual interest, as may be prescribed

The focus in these clauses is broadly on management or control of capital contribution and is explained in the following Table:

S. No.	Holding / Transaction	Associated Enterprise (s)
1	A holds at least 26% of the voting power of B	A & B
2	A holds at least 26% of the voting power of B & C	B & C
3	A advances a loan to B, constituting at least 51% of the book value of total assets of B	A & B
4	A guarantees at least 10% of the total borrowings of B	A & B
5	A appoints, more than half the directors of B; or, one or more executive directors of B	A & B
6	A appoints, more than half the directors of B & C; or, one or more executive directors of B & C;	B & C
7	The manufacture or processing of goods or articles or business carried on by A is wholly dependent on the use of IPRs (know-how, patents, copyrights etc.) belonging to B or in respect of which B has exclusive rights	A & B

S. No.	Holding / Transaction	Associated Enterprise (s)
8	At least 90% of the raw materials and consumables required for the manufacturing or processing of goods or articles carried out by A, are supplied by B or by persons specified by B, and the prices and other conditions relating to the supply are influenced by B	A & B
9	The goods manufactured or processed by A are sold to B or persons specified by B, and the prices and other conditions relating thereto are influenced by 'B'	A & B
10	Where A is controlled by B (an individual) a transaction between A and C, if C is controlled by B or his relative or jointly by B and his relative	A & C
11	Where A is controlled by B HUF, a transaction between A and C, if C is controlled by a member of B HUF or by a relative of a member of B HUF or jointly by such member and his relative	A& C
12	Where A is a firm, AOP or BOI and B holds at least 10% interest in A	A & B
13	There exists any relationship of mutual interest between A and B as may be prescribed.	A & B

CHAPTER 4

TRANSACTIONS

4.1 TYPES OF TRANSACTIONS COVERED

Indian Transfer Pricing provisions provide that any income arising from an International Transaction or SDT shall be computed having regard to the arm's length price. It has been clarified that any allowance for expenditure or interest or allocation of any cost or expense arising from an international transaction or SDT shall be determined having regard to the arm's length price. Even the cost sharing arrangements between "associated enterprises" (AEs) shall be determined having regard to the arm's length price. The Act also provides that where net result of such computation leads to increase in loss or reduction in the income, the provisions shall not apply.

4.2 INTERNATIONAL TRANSACTION

4.2.1 'International transaction' has been defined in section 92B to mean a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property; or provision of services, or lending or borrowing money or any other transaction having bearing on the profits, income, losses or assets of such enterprises and shall include a mutual agreement or arrangement between the associated enterprises for the allocation or appropriation of any cost or expense contributed or incurred or to be incurred in the context of a benefit, service or facility provided or to be provided to any one or more enterprises.

4.2.2. As per the definition, the associated enterprises could be either two non-residents or a resident and a non-resident; furthermore, a permanent establishment (PE) of a foreign enterprise also qualifies as an associated enterprise. Accordingly, transactions between a foreign enterprise and its Indian PE are within the ambit of the provisions.

4.2.3 Sub-section (2) of section 92B of the Act further states that a transaction entered into by an enterprise with a person other than an AE shall, for the purposes of sub-section (1), be deemed to be an international transaction entered into between two AEs, if there exists a prior agreement in relation to the relevant transaction between such other person and the AE, or the terms

of the relevant transaction are determined in substance between such other person and the AE where the enterprise or the AE or both of them are non-residents irrespective of whether such other person is a non-resident or not.

4.2.4 The term 'transaction' has been defined in clause (v) of section 92F and includes an arrangement, understanding or action in concert:

- whether or not such arrangement, understanding or action is formal or in writing; or
- whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings".

This definition is an inclusive definition and therefore wider in its scope. As per this definition, a transaction includes any arrangement, understanding or action, whether formal or informal, whether oral or in writing, whether legally enforceable or not.

4.2.5 Section 92B defines an international transaction to mean a transaction between two or more AEs, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money or any other transaction having a bearing on the profits, income, losses or assets of such enterprises and shall include a mutual agreement or arrangement between two or more AEs for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service, facility provided or to be provided to any one or more such enterprises.

4.2.6 An explanation having an inclusive list of transactions has been inserted in the definition of "international transaction" by the Finance Act, 2012, with retrospective effect from 1st April, 2002, to specifically cover certain transactions/arrangements such as

- the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing
- the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licenses, franchises, customer list, marketing channel, brand, commercial secret, know-how,

industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature

- 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
- provision of services, including provision of market research, market development, marketing management, administration, technical services, repairs, design, consultation, agency, scientific research, legal or accounting service
- a transaction of business restructuring or reorganization, entered into by an enterprise with an AE, irrespective of the fact that it has a bearing on the profits, income, losses, or assets of such enterprises at the time of transaction or at any future date.

4.2.7 Intangible property has been explained to include marketing intangibles, technology intangibles, artistic intangibles, data processing intangibles, engineering intangibles, customer-related intangibles, contract intangibles, human capital intangibles, location-related intangibles, goodwill and other similar items deriving its value from intellectual content rather than its physical attributes. The expression "intangible property" for purposes of the Indian transfer pricing regulations has been clarified to include

- marketing related intangibles assets, such as, trademarks, trade names, brand names, logos
- technology related intangibles assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how
- artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings
- data processing related intangible assets, such as proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters
- engineering related intangible assets, such as industrial design, product patents, trade secrets, engineering drawing and schema-tics, blueprints, proprietary documentation

- customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders
- contract related intangible assets, such as, favorable supplier, contracts, license agreements, franchise agreements, non-compete agreements
- human capital related intangible assets, such as, trained and organised workforce, employment agreements, union contracts
- location related intangible assets, such as leasehold interest, mineral exploration rights, easements, air rights, water rights
- goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value
- methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data
- any other similar item that derives its value from its intellectual content rather than its physical attributes.

4.3 DEEMED INTERNATIONAL TRANSACTION

Sub-section (2) of section 92B extends the scope of the definition of international transaction, which has been amended by the Finance Act, 2014 to provide that where, in respect of a transaction entered into by an enterprise with a person other than the associated enterprise, there exists a prior agreement in relation to the relevant transaction between the other person and the associated enterprise, or where the terms of the relevant transaction are determined in substance between such other person and the associated enterprise, and either the enterprise or the associated enterprise or both of them are non-resident, then such transaction shall be deemed to be an international transaction entered into between two associated enterprise, whether or not such other person is a non-resident. However, depending on the facts and circumstances of each case, a transaction should be classified as a deemed international transaction.

4.4 SPECIFIED DOMESTIC TRANSACTIONS (SDT)

4.4.1 The Finance Act, 2012 has extended the scope of transfer pricing provisions to SDT, which have been covered under section

92BA of the Act. In this regard, the following transactions of an enterprise (not being an international transaction) would be regarded as SDT under section 92BA of the Act:-

- Any expenditure in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(b);
- 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 taxpayer and other person referred to in section 80-IA(10);
- Any transaction, referred to in any other section under Chapter VI – A or section 10AA, to which provisions of section 80-IA(8) or 80-IA(10), as applicable; or
- Any other transaction as may be prescribed.

4.4.2 The transfer pricing regulations are extended to the transactions specified above if the aggregate value of transactions exceeds INR 50 million in a relevant year. This provision is applicable from A.Y. 2013-14 and onwards. Finance Act, 2015 has amended the provisions with effect from 1st April, 2015, to raise the threshold limit from Rs 50 million to Rs. 200 million.

4.4.3 With regard to payment made by the assessee to certain "specified persons" under section 40A(2)(b), covered within the ambit of SDT, taxpayers need to obtain the Chartered Accountant's Certificate in Form 3CEB providing the details such as list of related parties, nature and value of SDTs, method used to determine the ALP for the SDTs etc. With the intention to reduce the compliance burden of the taxpayers due to the reporting of 40A(2)(b) transactions, the Finance Act, 2017 has excluded expenditure in respect of which payment has been made by the assessee to the "specified persons" under section 40A(2)(b) from the scope of Section 92BA of the Act with effect from 1st April, 2017.

CHAPTER 5

ARM'S LENGTH PRICE

5.1 CONCEPT

5.1.1 The concept of Arm's length principle is not new in the context of income tax administration/legislation. It is generally incorporated in tax treaties (Double Tax Avoidance Agreements). This principle was first incorporated in Article VI of the League of Nations Draft Convention on allocation of Profits and Property of International Enterprises in 1936. It is similar to Article 9 of the 1963 OECD and UN model Convection on tax treaties which was released in 1979 as the Report of the OECD committee on Fiscal Affairs on 'Transfer Pricing & Multinational Enterprises'. The underlying principle in Arm's length dealing is to put controlled and uncontrolled enterprises at par to see whether the apportionment of income between related enterprises are economically reasonable. Under the arm's length principle, controlled or associated taxpayers are expected to realize from their controlled transaction, the results that would have been realized if uncontrolled taxpayers had been engaged in the same transactions under the same circumstances. It covers instances of under or over invoicing of goods or services in trans-border transactions, and in certain cases domestic transactions, between related parties.

5.2 DETERMINATION OF ARM'S LENGTH PRICE

5.2.1 Section 92C of the Act deals with the provisions relating to computation of Arm's length price (ALP) and specifies the methods considered most appropriate for the determination of such price. Broadly stated, Arm's Length Price as per section 92F of the Act is the price applied (or proposed to be applied) when two unrelated persons enter into a transaction in uncontrolled conditions. Persons are said to be unrelated, if they are not associated or deemed to be associated enterprises according to section 92A of the Act. Conditions which are not controlled or suppressed or molded for achievement of pre-determined results are said to be uncontrolled conditions. If a buyer is related to a seller, or where prices are governed by a government policy then a transaction is said to be taking place under controlled conditions.

5.2.2 The price that is exchanged between related parties is the 'transfer price'. The objective of a transfer pricing audit is to

ensure that the transfer price is aligned with the arm's length price applicable to the international transaction. Hence to constitute arm's length price:

a. The price should be applied or proposed to be applied in a transaction;

b. The transaction should be between unrelated persons; and

c. The transaction should have taken place in uncontrolled conditions.

5.2.3 Rule 10A (a) defines an "uncontrolled transaction" to mean "a transaction between enterprises other than associated enterprises, whether resident or non-resident". When an uncontrolled transaction has been entered into, it could be said that it has been contracted under "uncontrolled conditions".

5.3 METHODS OF COMPUTATION OF ALP

5.3.1 Methods considered most appropriate for determining, whether a price is arm's length price or not as provided in section 92C(1) are:

a. Comparable Uncontrolled Price (CUP) Method

b. Resale Price Method (RPM)

c. Cost Plus Method (CPM)

d. Profit Split Method (PSM)

e. Transactional Net Margin Method; (TNMM)

f. Such other method as may be prescribed by the Board.

5.3.2 Any of the above methods can be selected for determining the arm's length price. Rule 10C of the Income-tax Rules, 1962, has prescribed the guidelines for selecting the most appropriate method.

5.4 MOST APPROPRIATE METHOD

5.4.1 For the purposes of sub-section (1) of section 92C, the most appropriate method shall be the method which is best suited to the facts and circumstances of each particular international transaction, and which provides the most reliable measure of an arm's length price in relation to the international transaction.

5.4.2 In selecting the most appropriate method as specified in sub-rule(1), the following factors shall be taken into account:

- the nature and class of the international transaction and
- the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises

5.4.3 Rule 10C(1) lays down the general guidelines for the selection of the most appropriate method. The Rule states that the method to be selected shall be the one best suited to the facts and circumstances of each international transaction or specified domestic transaction and that provides the most reliable measure of the arm's length price.

5.4.4 Rule 10C(2) lists the specific factors that should be taken into account in the process of selecting the most appropriate method. These factors are as under:

- nature and class of international transactions or specified domestic transactions
- class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account the assets employed or to be employed and risks assumed by such enterprises;
- availability, coverage and reliability of data necessary for application of the method. For instance, data relating to transactions entered into by the enterprise itself would be more reliable than the data relating to transactions entered into by third parties;
- the degree of comparability existing between the international transaction or specified domestic transaction and uncontrolled transaction and between enterprises entering into such transaction
- the extent to which reliable and accurate adjustments can be made to account for the difference between the transactions
- the nature, the extent and reliability of assumptions required to be made in application of a method.

CHAPTER 6

METHODS OF COMPUTATION OF ARM'S LENGTH PRICE

6.1 COMPARABLE UNCONTROLLED PRICE (CUP) METHOD

6.1.1 Rule 10B(1)(a) of the Income-tax Rules, 1962 explains that in the 'CUP' method:-

- the price charged for property transferred or services provided in a controlled transaction is compared to price charged in a comparable uncontrolled transaction or a number of such uncontrolled transactions.
- Such price is adjusted for any differences between the comparable uncontrolled transaction and the international transaction or the specified domestic transaction of the enterprise, which could materially affect the prices in the open market.
- The adjusted price arrived at, is taken to be the ALP for the property or the services provided in the international transaction or specified domestic transaction. In practice, CUP is mainly applied in respect of transfer of goods, provision of services, intangibles, loans, provision of finance etc.

6.1.2 The CUP Method compares the price charged for a property or service transferred in a controlled transaction to the price charged for a comparable property or service transferred in a comparable uncontrolled transaction in comparable circumstances. CUP is a direct method and one that can give the most accurate results. This is one method that compares prices exchanged, while other methods compare profits. This method, therefore, calls for a high level of accuracy in the comparability analysis. The uncontrolled transactions that are used as comparables for the price exchanged between the related parties should be as similar as possible and the circumstances of the transactions should be as close as possible. The high level of comparability makes this method difficult to apply.

6.1.3 Typical transactions in respect of which the comparable uncontrolled price method may be adopted are (a) Transfer of goods (b) Provision of services (c) Intangibles and (d) Interest on loans. The steps involved in the application of this method are as under:

- Identify the price charged or paid in comparable uncontrolled transactions
- The above price should be adjusted for transaction level differences on the basis of functions performed, assets used and risks taken (FAR) analysis and enterprise level differences if any
- The adjusted price is the arm's length price.

6.2 RESALE PRICE METHOD (RPM)

6.2.1 Rule 10B(1)(b) of IT Rule 1962 provides the steps to compute the arm's length price according to resale price method. Under this method,

- the price at which the property is purchased or services are obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is taken as the base price;
- such resale price is reduced by the normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions. The price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;
- the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;
- the adjusted price is taken to be the arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

6.2.2 The Resale Price Method is used to determine the price to be paid by a reseller for a product purchased from an associated enterprise and resold to an independent enterprise. The purchase price is set so that the margin earned by the reseller is sufficient to allow it to cover its selling and operating expenses and make an appropriate profit.

6.2.3 The use of RPM is ideal for distribution activities. It is ordinarily applied in cases involving the purchase and resale of tangible property and it is applied when the tested party purchases goods from the AE and re-sells them to a non-AE (unrelated party). Typical transactions where the resale price method may be adopted are distribution of goods involving little or no value addition. Also, it is pertinent to note that while CUP method is a two sided method (wherein the said method can be applied using details / data of either of the transacting parties), RPM is a one sided method wherein only the margins earned by one of the transacting party i.e., the distributor, can be analyzed/ evaluated.

6.2.4 In the scenario of an international transaction involving pure re-sale, the reseller will be the best choice of the tested party. What is imperative for the application of RPM is that the goods purchased from the AE should be resold to unrelated parties without any value addition. The application of RPM involves the comparison of the gross profit earned by the re-seller with the gross profit earned by other parties selling similar goods.

6.2.5 The steps involved in application of RPM are as under:

- identify the international transaction or specified domestic transaction of purchase of property or services
- identify the price at which such property or services are resold or provided to an unrelated party (resale price)
- identify the normal gross profit margin in a comparable uncontrolled transaction whether internal or external. The normal gross profit margin is that margin which an enterprise would earn from purchase of the similar product from an unrelated party and the resale of the same to another unrelated party
- deduct the normal gross profit from the resale price
- deduct expenses incurred in connection with the purchase of goods
- adjust the resultant amount for the differences between the uncontrolled transaction and the international transaction or the specified domestic transaction. These differences could be functional and other differences including differences in accounting practices. Further these differences should be such as would materially affect the amount of gross profit margin in the open market
- the price arrived at is the arm's length price of the international transaction or the specified domestic transaction

6.3 COST PLUS METHOD (CPM)

6.3.1 Rule 10B(1)(c) provides the steps to compute the arm's length price according to cost plus method. This method determines an ALP by adding an appropriate gross profit margin to an associate enterprise's costs of producing products or services by determining:

- The direct and indirect costs of production incurred by the enterprise in respect of the property transferred or services provided to an associated enterprise are determined.
- To this a normal gross profit mark-up, as found in identical or similar uncontrolled transactions by the enterprise or an unrelated enterprise, is added.
- The price so arrived at is then adjusted to take into account the functional and other differences between the international transaction and the comparable uncontrolled transaction, or between the enterprises entering into such transactions, that could materially affect the amount of gross profit margin in the open market to arrive at the ALP.
- The comparison under CPM should reflect the functions performed, risks involved and contractual terms.

6.3.2 The Cost Plus Method is used to determine the appropriate price to be charged by a supplier of property or services to a related purchaser. The price is determined by adding to costs incurred by the supplier an appropriate gross margin so that the supplier will make an appropriate profit in the light of market conditions and functions performed. This method is mainly applied where semi-finished goods are sold between related parties, where related parties have concluded joint facility agreements or long-term buy-and-supply arrangements, or where the controlled transaction is a provision of services.

6.3.3 The steps involved in application of CPM are as under:

- Determine the direct and indirect cost of production in respect of property transferred or service provided to an AE
- Identify one or more comparable uncontrolled transactions for same or similar property or service
- Determine normal gross profit mark-up on costs in the comparable uncontrolled transaction. Such costs should be computed according to the same accounting norms. In other words, the components of costs of comparable uncontrolled transaction should be the same as those

of international transaction or the specified domestic transaction.

- Adjust the gross profit mark-up to account for functional and other differences between the international transaction or the specified domestic transaction and the comparable uncontrolled transaction. Such adjustments should also be made for enterprise level differences
- The direct and indirect cost of production in the international transaction or the specified domestic transaction is increased by such adjusted gross profit mark-up
- The resultant figure is the arm's length price.

6.4 PROFIT SPLIT METHOD (PSM)

6.4.1 Rule 10B(1)(d) provides steps for determination of the arm's length price under profit split method. The steps involved in applying this method are:

- Determine combined profits of the associated enterprises.
- Evaluate relative contributions of each enterprise towards earning of profits based in functions performed, assets employed and risk assumed.
- Split combined profits in proportion to relative economic contributions.
- The profit thus apportioned is taken into account to arrive at the arm's length price.

6.4.2 Profit-split methods take the combined profits earned by two related parties from one or a series of transactions and then divide those profits using an economically valid defined basis that aims at replicating the division of profits that would have been anticipated in an agreement made at arm's length. Arm's length pricing is therefore derived for both parties by working back from profit to price.

6.4.3 Typical transactions where the profit-split method may be used are transactions involving:

- integrated services provided by more than one enterprise for e.g., in case of financial service sector, where the activities performed by Indian company and foreign AEs in relation of a merger and acquisition transaction are so interrelated that it may not possible to segregate them;
- transfer of unique intangibles, for e.g. two AEs contribute

their respective intangibles to develop a new product or process and earn income from such product or process.

There are two approaches to this method, namely, total profits split and residual profit split.

6.4.4 The steps involved in application of total profits split method are as under:

- Determine the combined net profit of the AEs arising from the international transactions or the specified domestic transaction in which they are engaged. Such profits represent the profits earned from third parties due to the combined efforts of the AEs. It may be noted that the 'combined net profit' referred to in the rule is not the aggregate of entire profits earned by the AEs. Example: AE1 may earn profits from certain transactions wherein there is no contribution by AE2 and vice versa. Such profits do not enter into the determination of combined net profit. Only those profits that are earned as a result of joint efforts of AE1 and AE2 should be taken as combined net profit.
- Evaluate relative contribution made by each entity involved in the transaction on the basis of:
  - functions performed;
  - assets employed;
  - risks assumed;
  - the reliable external market data indicating how such contribution would be evaluatedby unrelated enterprises performing comparable functions in similar circumstances. It may be noted that reference to 'external market data' indicates comparable uncontrolled transactions (CUT). The use of word 'external' does not preclude use of internal CUT. In the process of choosing CUTs, the function performed, assets used and risks taken (FAR) of the uncontrolled transactions would have been compared with the FAR of the international transactions or the specified domestic transaction. When the FAR of the international transaction or the specified domestic transaction and CUT are similar, the relative contribution adopted in the CUT should be applied to the international transaction or the specified domestic transaction. Any significant differences between the two should be suitably adjusted.
- Thereafter, split the combined net profit in proportion to the relative contribution determined as above.

- The profit so apportioned is taken to arrive at the arm's length price in relation to the international transaction or the specified domestic transaction. The profits so apportioned to the AE when added to the costs incurred by it in relation to international transaction or the specified domestic transaction would result in arm's length price.

6.4.5 In the Residual profit split approach, firstly, a basic return is determined for each of the enterprises and profits of each such enterprise is ascertained. This amount is reduced from the combined net profits. Residual profits are allocated on the basis of relative contribution. Steps involved in this approach are as under:

- Determine the combined net profit of the AEs arising from the international transactions or the specified domestic transaction in which they are engaged.
- At the first stage, depending on functions performed, assets employed and risks assumed, determine the basic return appropriate to the respective activities. Allocate the combined net profit on the basis of above. This step results in a partial allocation of the combined net profit to each enterprise. For this purpose, the allocation is undertaken with reference to margins of comparable uncontrolled entities.
- the balance of the combined net profit is allocated on the basis of the evaluation of the relative contribution.
- the total net profit from such two-tier allocation is taken to arrive at the arm's length price. The profits so apportioned to the AE when added to the costs incurred by it in relation to international transaction or the specified domestic transaction would result in arm's length price.

6.5 TRANSACTIONAL NET MARGIN METHOD (TNMM)

6.5.1 Rule 10B(1)(e) of the Rules provides the steps to compute the arm's length price according to transactional net margin method. The transactional net margin method examines

- the net profit margin that a taxpayer realizes from a transaction with an associated enterprise with the net profit margin realized by third parties from similar transactions.
- the net margin is calculated with reference to an appropriate base, say costs, sales or assets.
- the net profit margin is adjusted to take into account the

functional and other differences between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market.

- the adjusted price is taken to be the arm's length price in respect of the international transaction.

6.5.2 The TNMM determines the net profit margin relative to an appropriate base realized from the controlled transactions by reference to the net profit margin relative to the same appropriate base realized from uncontrolled transactions. Typical transactions where the transactional net margin method may be adopted are:

- provision of services
- distribution of finished products where resale price method cannot be applied
- transfer of semi-finished goods where cost plus method cannot be applied
- transactions involving intangibles where profit split method cannot be applied

6.5.3 The TNMM is used only with reference to one of the parties i.e. usually the least complex party, being called the 'tested party' who does not own valuable intangibles that contribute to the resulting profits from its operations. This method is commonly used due to the availability of public data and the relative simplicity in analysis.

6.6 OTHER METHOD

6.6.1 Sub-section (1) of section 92C stipulates that in addition to the aforesaid five methods, the computation of the arm's length price shall be made in accordance with such other method as may be prescribed by the Board. CBDT has notified such other method by way of notification no.18 dated 23rd May, 2012 in Rule 10AB, by the IT (Sixth Amendment) Rules, 2013 with effect from 1st April, 2013, prescribing the "the other method" apart from the five methods already prescribed. It is stated that the Other Method for determination of the arms' length price in relation to an international transaction or the specified domestic transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-AEs, under similar circumstances, considering all the relevant facts.

6.6.2 The introduction of the Other Method as the sixth method allows the use of 'any method' which takes into account (i) the price which has been charged or paid or (ii) would have been charged or paid for the same or similar uncontrolled transactions, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts. It is relevant to note that Rule 10AB does not describe any methodology but only provides an enabling provision to use any method that has been used or may be used to arrive at a price of a transaction undertaken between non-AEs.

6.7 CONCEPT OF TESTED PARTY IN COMPUTING ALP

6.7.1 The 'tested party' is one of the participants of the international transaction and is the one which is being benchmarked. Of the two participants to an international transaction, that party is chosen as the tested party which has less complex functions, does not own valuable assets like intangibles and assumes lower level of risk. Apart from that, complete, accurate and reliable information should also be available in respect of the party chosen as the tested party. The choice of the tested party should be consistent with the functional analysis of the transaction and the characterization of the entities.

6.7.2 Comparable Uncontrolled Price Method is a two sided method i.e., either of the parties to the international transaction or the specified domestic transaction can be selected as the tested party. However, for the application of Cost plus Method, Resale Price Method or Transactional Net Margin Method, it is necessary to choose one of the parties to the transaction as the tested party whose profitability needs to be tested (i.e. mark-up on costs, gross margin, or net profit margins) and compare the profitability of the tested party's transactions with uncontrolled internal or external comparables, as the case may be.

6.8 COMPARABILITY AND COMPARABILITY ADJUSTMENT

6.8.1 As per Rule 10B(2) of the Rules the comparability of the international transactions or SDTs under the methods stated above is judged with reference to the following:

- specific characteristics of the property transferred or services provided in either transaction;
- the functions performed, taking into account assets employed and the risks assumed by the parties to the transactions (FAR analysis);

- the contractual terms which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the parties;
- conditions prevailing in the market in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

6.8.2 Rule 10B(3) of the Rules provides for 'reasonably accurate comparability adjustment' and it states that an uncontrolled transaction shall be comparable to an international transaction or a specified domestic transaction if—

- none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or
- reasonably accurate adjustments can be made to eliminate the material effects of such differences.

6.8.3 Rule 10B(4) of the Rules further provides that the data to be used in analyzing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction shall be the data relating to the financial year in which the international transaction or the specified domestic transaction has been entered into, provided that data relating to a period not being more than two years prior to such financial year may also be considered if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared.

6.9 MOST APPROPRIATE METHOD

6.9.1 Rule 10C of the Rule provides that for the purposes of sub-section (1) of section 92C, the most appropriate method shall be the method which is best suited to the facts and circumstances of each particular international transaction or the specified domestic transaction, and which provides the most reliable measure of an arm's length price in relation to the international transaction or the specified domestic transaction.

6.9.2 The Rules further provides that in selecting the most appropriate method, the following factors shall be taken into account:

- the nature and class of the international transaction or the specified domestic transaction;
- the class or classes of AEs entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises;
- the availability, coverage and reliability of data necessary for application of the method;
- the degree of comparability existing between the international transaction[or the specified domestic transaction] and the uncontrolled transaction and between the enterprises entering into such transactions;
- the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction[or the specified domestic transaction] and the comparable uncontrolled transaction or between the enterprises entering into such transactions;
- the nature, extent and reliability of assumptions required to be made in application of a method.

6.9.3 While selecting the most appropriate method, the factors prescribed in section 92C of the Act and Rule 10C(2) should be considered. Amongst these factors, the functions performed by AEs (including assets employed and risks assumed) should be given due consideration. It is also important to ascertain the extent and reliability of the uncontrolled data that is available. The nature of the available data, and especially the amount and reliability of detail on the factors entering into a comparability analysis, are very important issues in the selection and application of a methodology.

6.9.4 While evaluating each method the distinctive aspects of computation should be borne in mind. For instance, the Resale Price Method requires functional and other differences including accounting practices to be adjusted to the price whereas CPM and TNMM require such differences to be adjusted to the margin.

6.10 ARITHMETIC MEAN AND RANGE CONCEPT

6.10.1 The Indian transfer pricing regulation in section 92C(2) stipulates that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the mean of such prices. The Finance Act, 2002, introduced the concept of 5 percent of tolerance band, as per which in a case where more than one price is determined by the most appropriate

method, the arm's length price shall be taken to be :-

- the arithmetical mean of such prices, or
- at the option of the assessee,
- a price which may vary from the arithmetical mean,
- by an amount not exceeding five percent of such arithmetical mean.

6.10.2 However, from AY 2009-10, a new proviso was inserted to section 92C(2) which provides that variation between the arm's length price and the price at which the international transaction has actually been undertaken does not exceed five percent of the latter, the price at which the international transaction has actually been undertaken shall be deemed to be the ALP.

6.10.3 The Finance Act, 2012, with retrospective effect from 1st April, 2002 clarified that five percent is not a standard deduction. In April 2013, CBDT notified that where the variation between the arm's length price and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one percent of the latter for the wholesale traders and three percent of the latter for all other categories, the transfer price or the price at which the international transaction or the SDT has actually been undertaken shall be deemed to be the ALP.

6.10.4 The Finance Act, 2014, with effect from 1st April, 2015 has provided that for international transactions or specified domestic transactions undertaken after 1st April, 2014, where more than one price is determined using the most appropriate method, the arm's length price would be determined in the manner prescribed by the Board and accordingly the provisions of taking arithmetical mean shall not apply.

6.11 USE OF MULTIPLE YEAR DATA AND APPLICATION OF RANGE

6.11.1 Rule 10CA was notified by the IT (Sixteenth Amendment) Rules, 2015 with effect from 19th October, 2015 to give effect to the use of 'multiple year data' and 'range concept' which were introduced by the Finance Act, 2014. These rules are applicable to international transactions and specified domestic transactions that are entered into by the taxpayers on or after 1st April, 2014.

6.11.2 The salient features of the concept of using the multiple year data are as under:

- As per the notification issued by the CBDT, use of multiple year data (of the comparable companies for the purpose of comparability analysis) is applicable only in cases where Resale Price Method (RPM), Cost Plus Method (CPM) or Transactional Net Margin Method (TNMM) has been selected as the Most Appropriate Method.
- Thus, in cases where CUP, PSM or Other Method are selected as the Most Appropriate Method, multiple year data of comparable companies cannot be used.
- For each comparable selected (under RPM, CPM or TNMM), the data of the current year is required to be considered. In case such data is not available at the time of furnishing the return of income, data pertaining to upto two preceding financial years may be used.
- To illustrate, say if the current year is Year zero and the financial year preceding that is Year 1 and the year prior to such year is Year 2, then it is worth noting that the rules do not envisage a situation wherein a comparable is selected only if it has data relating to Year 2.
- If a comparable is selected on the basis of preceding year data (say Year 1 and Year 2), but is not found to be comparable for the current year (Year 0) for qualitative or quantitative reasons, then such comparable would need to be rejected from the data set.
- When using multiple year data, data for each comparable shall be the weighted average of the selected years. Illustrations for computation of weighted average have been provided in Rule 10CA.
- Further, the notification provides that in the event current year data becomes available during the course of the assessment proceedings, then the same shall be used by the TPO for the purpose of the analysis.

6.11.3 The salient features of the 'Range' concept are as follows:

- A dataset of the results/profit margins of six or more comparable companies are to arranged in an ascending order and an arm's length range beginning with the thirty-fifth percentile of the dataset and ending with the sixty-fifth percentile of the dataset (the "Middle 30" of the dataset) is to be constructed;
- If the price at which the international transaction has actually been undertaken is within the range referred to above, then the price of the transaction shall be deemed to be the arm's length price;

- If the price at which the international transaction has actually been undertaken is outside the range referred to above, then the arm's length price shall be the median of all the values included in the dataset (i.e. the 50th percentile);
- However, if the range is not used due to the non-availability of at least six comparable companies, the arithmetic mean shall continue to be used to determine the ALP.

CHAPTER 7

AUDIT BY TRANSFER PRICING OFFICER (TPO)

7.1 REFERENCE TO THE TPO

7.1.1 Section 92CA was inserted by the Finance Act, 2002, which provides that if any person, being the assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Pr. Commissioner/Commissioner of Income Tax, refer the computation of the arm's length price in relation to the said international transaction or specified domestic transactions under section 92C to the Transfer Pricing Officer. After such a reference is made, the procedure specified in sub-sections (2) to (7) of Section 92CA will follow. For the purposes of this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorized by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons. The AO shall compute the total income of the assessee under subsection (4) of section 92C in conformity with the ALP determined by the TPO.

7.1.2 In order to maintain uniformity of procedure and to ensure that work in this important area proceeds smoothly and effectively, Instruction No. 3 dated 10th March, 2016, has been issued by the CBDT which is appended as Annexure-3 to this Handbook.

7.2 POWERS OF THE TPO

7.2.1 On receipt of a reference under section 92CA as stated above, the TPO shall serve a notice to the assessee requiring him to produce (or cause to be produced) on a specified date any evidence, which the assessee may rely in support of the computation made by him of the arm's length price, in relation to the international transaction. After giving the assessee an opportunity of being heard and after making necessary enquiries, the TPO shall determine the ALP in relation to the international transaction or specified domestic transaction in accordance with subsection (3) of section 92C.

7.2.2 As stated above, a transfer pricing audit starts with a reference made by the AO to the TPO for determination of the ALP of an international transaction or specified domestic transaction reported in Form 3CEB. The Finance Act, 2011 amended the Act by inserting sub-section (2A) to Section 92CA to extend the jurisdiction of the TPO to determine ALP with respect to the international transaction noticed by him during a transfer pricing audit even though the transaction was not referred to the TPO by the AO. The Finance Act, 2012 further amended the Act by inserting sub-section (2B) to Section 92CA with retrospective effect from 1st June, 2012, to provide jurisdiction to the TPO to determine ALP of an international transaction noticed by him during transfer pricing audit even though the transaction was not reported in Form 3CEB. The Finance Act, 2012, with effect from 1st July, 2012, further inserted sub-section (2C) to section 92CA to provide that completed assessments or proceedings will not be re-opened on this basis alone.

7.2.3 Further, in order to enable the TPO to conduct on-the-spot enquiry and verification, the powers of the TPO have been widened by the Finance Act, 2011 by giving explicit powers of survey under section 133A of the Act, whereby a TPO can enter the business premises of taxpayers, record statements, examine records and if required take possession of documents. This amendment came into force from 1st June 2011. These powers are in addition to the powers of the TPO to issue summons under section 131 of the Act and power to call for any information from third parties under section 133(6) of the Act.

CHAPTER 8

DOCUMENTATION

8.1 DOCUMENTATION REQUIREMENT

8.1.1 Section 92D provides for maintenance, keeping of information and documents by persons entering into International transactions or Specified Domestic Transactions as may be prescribed. Rule 10D(1) of the Income-tax Rules, 1962, prescribes the documents of primary and secondary nature that are to be maintained in the context of transfer pricing law. Broadly the information and documents that are required to be maintained are:

A description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held by other enterprises;

- A profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions or specified domestic transactions have been entered into by the assessee and ownership linkages among them;
- A broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;
- The nature and terms (including prices) of international transactions or specified domestic transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each transaction or class of such transaction;
- A description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated involved in the international transaction or specified domestic transactions;
- A record of the economic and market analysis, forecasts, budgets, or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transactions or specified domestic transactions entered into by the assessee;

- A record of uncontrolled transaction taken into account for analyzing their comparability with the international transactions or specified domestic transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions or specified domestic transactions;
- A record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction or specified domestic transactions;
- A description of the methods considered for determining the arm's length price in relation to each international transaction or specified domestic transactions or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in case;
- A record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustment, if any, which were made to account for differences between the international transaction or specified domestic transactions and the comparable uncontrolled transactions, or between the enterprises entering into such transactions;
- The assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price;
- Details of the adjustment, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes.
- Any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

8.1.2 Exemption from Maintenance of Specific Records: Under Rule 10D(2), these documents may not be maintained where the value of international transactions entered into by the assessee does not exceed rupees ten million. However, as per the proviso to Rule 10D(2), the assessee shall be required to substantiate, on the basis of material available with him, that income arising from

international transactions or specified domestic transactions entered into by him has been computed in accordance with arm's length principle.

8.1.3 Supporting Documents: Rule 10D(3) provides that the information compiled, kept and maintained by an enterprise under clauses (a) to (m) of sub-rule (1) of rule 10D, shall, to the extent possible, be further supported by "authentic" documents that provide additional information of the nature specified as under:

- official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise or of any other country;
- reports of market research studies carried out and technical publications brought out by institutions of national or international repute;
- price publications including stock exchange and commodity market quotations;
- published accounts and financial statements relating to the business affairs of the associated enterprises;
- agreement and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions or the specified domestic transactions as the case may be;
- segmented financial statements in accordance with the Accounting standards as prescribed;
- letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;
- documents normally issued in connection with various transactions under the accounting practices followed.

8.1.4 Period of preservation of records: The information and documentation specified above should as far as possible, be contemporaneous and should exist latest by the specified date referred to in clause (iv) section 92F. Under sub-rule (5) of rule 10D, the prescribed information and documents are required to be kept and maintained for a period of 8 years from the end of the relevant assessment year.

8.2 THREE TIERED DOCUMENTATION STRUCTURE

Section 286 of the Act introduces a three-tiered documentation structure, which has been inserted by the Finance Act, 2016 with

effect from 1st April, 2017 (applicable with effect from Financial Year 2016-17). The structure would consist of a "master file", "local file" and "Country-by-Country Report" (CbC Report). The master file seeks to capture information regarding the taxpayer's global operations and their transfer pricing policies. The local file would capture entity-specific information with reference to the related party transactions. In the Indian context, the existing transfer pricing documentation requirements as per Rule 10D of the Income Tax Rules, 1962 already encompasses the local file requirements. The CbC Report would be applicable for large multinational enterprises (MNEs) and would capture key metrics of all entities in the group such as revenue, taxes paid, capital employed, headcount, etc. (as defined in section 286 of the Act). The specific rules on the requirements of information to be covered in the master file and any modifications to the local file requirements in view of the aforesaid changes are yet to be notified.

8.3 REPORT FROM AN ACCOUNTANT

8.3.1 As per section 92E of the Income tax Act, 1961, every person who has entered into an international transaction or specified domestic transactions 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 and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed. The word 'accountant' is to have the same meaning as given in Explanation below sub-section (2) of section 288 and has been defined to mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949, and includes, in relation to any state any person who by virtue of the provisions of sub-section (2) of section 226 of Companies Act, 1956 (1 of 1956) (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State.

8.3.2 The report from an accountant u/s 92E is to be furnished in Form 3CEB, as prescribed under Rule 10E of the IT Rules 1962. The CBDT vide Notification No. 34/2013/F.No.142/5/2013-TPL dated 1st May, 2013, amended Rule 12 of the Income Tax Rule, 1962 with effect from 1st April, 2013, to make procedural changes in return filing compliance. Among others, the said notification introduced requirements for taxpayers liable to transfer pricing provisions to e-file the Accountant's Report independently in addition to e-filing of the return of income. The Accountant's Report in Form 3CEB has undergone significant changes with the

CBDT introducing new details required to be furnished online. Some of these include the business of the taxpayer, transactions related to capital financing, transaction related to guarantees, transactions related to shares/securities and a separate section on specified domestic transactions.

CHAPTER 9

PENALTIES

9.1 INTRODUCTION

9.1.1 Penalty is a civil liability in the form of monetary sanction in consequence of contravention of law by omission or commission. The objective of penalty provisions is to provide disincentives for non-compliance by making it more costly than compliance, by increasing the cost of evasion.

9.1.2 The provisions for penalties relating to transfer pricing fall into two categories. One related to the understatement of income chargeable to tax resulting from international transactions or SDTs not being at arm's length price and the other relates to the failure to keep or maintain or furnish the prescribed documents or to furnish the prescribed reports.

9.2 PENALTY CONCEALMENT AND UNDER REPORTING/ MISREPORTING OF INCOME

9.2.1 Explanation 7 to Section 271 (1)(c), deleted with effect from 1st April, 2017, provided that the assessee who has entered into an international transaction or specified domestic transaction would be deemed to have concealed particulars of its income or furnished inaccurate particulars of such income in respect of the amount added or disallowed in computing its total income under section 92C(4), unless he proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals), or the Pr. Commissioner/Commissioner as the case may be, that the price charged or paid in such transaction was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence. The Assessing officer or the Commissioner (Appeals) or the Pr. Commissioner/Commissioner, as the case may be, may direct that the defaulting person shall pay by way of penalty in addition to any tax payable by it, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to have been evaded by reason of the concealment of particulars of its income or the furnishing of inaccurate particulars of such income.

9.2.2 Section 271(1)(c) has been deleted by the Finance Act, 2016 and in its place Section 270A has been inserted which is

applicable from 1st April, 2017. It seeks to levy penalty on under reporting of income.

9.2.3 Section 270A inserted vide Finance Act 2016 prescribes penalty for under-reporting of income and misreporting of income. Section 270A (7) of the Act prescribes a penalty of 50% of the amount of tax payable on the under-reported income. Further, Section 270A(6)(d) provides that the under-reported income for the purpose of Section 270A shall not include the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the TPO, where the assessee had

- maintained information and documents as prescribed under section 92D,
- declared the international transaction under Chapter X, and,
- disclosed all the material facts relating to the transaction.

9.2.4 Section 270A(8) of the Act provides that where under-reported income is in consequence of any misreporting thereof by any person, the penalty shall be equal to two hundred per cent of the amount of tax payable on under-reported income. Section 270A(9)(f) of the Act provides that the case of misreporting of income shall be failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the transfer pricing provisions apply.

9.3 PENALTY FOR FAILURE TO KEEP AND MAINTAIN INFORMATION AND DOCUMENTS

9.3.1 Penalty for failure to keep and maintain information and documents in respect of international transaction or specified domestic transaction is provided in Section 271AA. Section 271AA has been substituted by a new section with effect from 1st July, 2012. It provides that without prejudice to the provisions of section 270A or section 271 or Section 271BA, if any person in respect of an international transaction or specified domestic transaction:

(a) fails to maintain prescribed documents and information as required by sub-section (1) or sub-section (2) of section 92D;

(b) fails to report any such transaction which is required to be reported; or

(c) maintains or furnishes any incorrect information or documents

the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two percent of the value of each international transaction entered into by such person.

9.3.2 Section 271AA(2) inserted vide Finance Act 2016 prescribes a penalty of Rs. 5,00,000 for failure to furnish master file by the prescribed date.

9.3.3 The above provision is without prejudice to section 270A or section 271 and Section 271BA and is invoked when 'any person' fails to keep and maintain any such information and document as required by section 92D (1) and (2) or fails to report any international transaction or maintains or furnishes any incorrect information or documents. Thus, whether or not an international transaction or specified domestic transaction is determined at arm's length price, any person who has entered into such transaction, shall keep and maintain the information/ document in respect of such transaction.

9.3.4 The penalty is invoked for failure to keep and maintain such information/documents or report the same. In other words, the person who has entered into international transaction or specified domestic transaction should both keep as well as maintain such information/documents as well as report the same. Any failure in respect of the same attracts a penalty of 2% of the value of each international transaction or specified domestic transaction entered into by him.

9.4 PENALTY FOR FAILURE TO FURNISH REPORT UNDER SECTION 92E

Section 271BA provides that if any person fails to furnish a report from an accountant as required under section 92E, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of one hundred thousand rupees. This penalty is invoked if any person fails to furnish a report from an accountant and the same may be levied by the Assessing Officer.

9.5 PENALTY FOR FAILURE TO FURNISH INFORMATION OR DOCUMENT UNDER SECTION 92D

Section 271G provides that if any person who has entered into an international transaction or specified domestic transaction

fails to furnish any such information or document as required by sub-section (3) of section 92D, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two percent, of the value of the international transaction or specified domestic transaction for each such failure. The power to levy this penalty has also been extended now to the Transfer Pricing Officer through an amendment made by Finance (No. 2) Act, 2014.

9.6 PENALTY FOR FAILURE TO FURNISH INFORMATION OR DOCUMENTS UNDER SECTION 286

Finance Act 2016 introduced Section 286 which requires parent entity or the alternative reporting entity, resident in India, to furnish a prescribed report on or before the due date for furnishing the return of income for the relevant accounting year. Section 271GB of the Act provides for penalty for failure to furnish the documents prescribed under Section 286. The penalty prescribed under Section 271GB are as follows:

Nature of penalty	**Penalty (INR)**
Failure to furnish the prescribed documents required to be maintained by the India parent entity of the international group:	
a. Where period of failure is equal to or less than 1 month	Rs. 5,000 per day
b. Where period of failure is greater than 1 month	Rs. 15,000 per day
c. Continuing default after service of penalty order	Rs. 50,000 per day
Furnishing of inaccurate particulars (subject to certain conditions)	Rs. 5,00,000
Failure to produce the information and documents within 30 days (extendable by maximum 30 days)	Rs 5,000 per day upto service of penalty order Rs. 50,000 per day for default beyond date of service of penalty order

CHAPTER 10

EMERGING TRANSFER PRICING ISSUES

10.1 INTRODUCTION

After more than a decade of TP audit cycles, it has emerged that the major challenges are in the areas of benchmarking of intangibles, location savings, R&D activities, financial transactions, intra-group services etc. Chapter X of the United Nations Transfer Manual, 2013 contains the country practice of India under the heading "Emerging Transfer Pricing Challenges in India". Some of these emerging issues are discussed here based on the India's country practice as specified in the United Nations Transfer Pricing Manual, 2013, as modified in October, 2016.

10.2 BENCHMARKING OF INTANGIBLES

10.2.1 Transfer pricing of intangibles has been a difficult area of work for tax administrations across the world. The situation has been same for the Indian tax administration. The pace of growth of the intangible economy has opened up new challenges to the arm's length principle.

10.2.2 Transactions involving intangible assets are difficult to evaluate for the following reasons:

- Intangibles are rarely traded in the external market and it is very difficult to find comparables in the public domain;
- Intangibles are often transferred bundled along with tangible assets; and
- They may be difficult to detect.

10.2.3 A number of complications arise while dealing with intangibles. Some of the key issues revolve around determination of the arm's length rate of royalties, allocation of the cost of development of the market and brand in a new country, remuneration for development of marketing and R&D intangibles, their use, transfer pricing of co-branding, etc. Some of the Indian experiences in this regard are discussed below.

10.2.4 With regard to payment of royalties, MNEs often enter into agreements allowing use of brands, trademarks, know-how, design, technology, etc. by their subsidiaries or related

parties in India. Such payments can be made as a lump sum or by way of periodic payments or a combination of both types of payment. Intellectual property, which is owned by one entity and used by another entity, generally requires a royalty payment as consideration for the use. However, the important issue in this regard has been the determination of the arm's length rate of royalty. The main challenge in determining the arm's length royalty rate is to find comparables in the public domain with sufficient information for comparability analysis. Further, it is difficult to find comparable arm's length prices in most cases.

10.2.5 Serious difficulties have been encountered in determining the rate of royalty charged for the use of brands and trademarks in certain cases. In some cases, the user had borne significant costs in promoting the brand/trademark, and to promote and develop customer loyalty for the brand/trademark in a new market. In these cases, the royalty rate charged by the MNE should depend upon the cost borne by the subsidiary or related party to promote the brand and trademark and to develop customer loyalty for that brand and product. In many cases, no royalty is charged from the local subsidiary in an uncontrolled environment and the subsidiary would require an arm's length compensation for economic ownership of the brand and trademark developed by it and for enhancing the value of the brand and trademark (legally owned by the parent companies) in an emerging market such as India.

10.2.6 In many cases, Indian subsidiaries using the technical know-how of their parent company have incurred significant expenditure to customise such know-how and to enhance its value by their R&D efforts. Costs of activities, such as R&D activities which have contributed to enhancing the value of the know-how owned by the parent company, are generally considered by the Indian transfer pricing administration while determining the arm's length price of royalties for the use of technical know-how.

10.2.7 Significant transfer pricing issues have also arisen in cases of co-branding of a new foreign brand owned by the parent MNE (a brand which is unknown to a new market such as India) with a popular Indian brand name. Since the Indian subsidiary has developed valuable Indian brands in the domestic market over a period of time, incurring very large expenditure on advertisement, marketing and sales promotion, it should be entitled to an arm's length remuneration for contributing to increasing the value of the little known foreign brand by co-branding it with a popular Indian brand and therefore increasing market recognition.

10.3 INTANGIBLES GENERATED THROUGH R&D ACTIVITIES

10.3.1 Several global MNEs have established subsidiaries in India for research and development activities on a contract basis to take advantage of the large pool of skilled manpower which is available at a lower cost. These Indian subsidiaries are generally compensated on the basis of routine and low cost plus mark-ups. The parent MNEs of these R&D centres justify low cost plus mark-ups on the ground that they control all the risks and their subsidiaries or related parties are risk free or limited risk bearing entities. The claim of the parent MNEs that they control the risk and are entitled to a major part of the profits from R&D activities is typically based on the contention that they:

- Design and monitor all the research programmes of the subsidiary;
- Provide the funds needed for the R&D activities;
- Control the annual budget of the subsidiary for R&D activities;
- Control and take all the strategic decisions regarding the core functions of R&D activities of the subsidiary; and
- Bear the risk of unsuccessful R&D activities.

10.3.2 In transfer pricing audits of certain contract R&D centres, the following facts have emerged:

- Most parent companies of MNEs were not able to file relevant documents to justify their claim of controlling the risk of core functions of R&D activities and assets (including intangible assets), which are located in the country of their subsidiary;
- Contrary to the claims made by the parent companies, it was found that day-to-day strategic decisions and monitoring of R&D activities were carried out by personnel of the subsidiary who were engaged in actual R&D activities and bore relevant operational risks;
- The management of the Indian subsidiary also took decisions concerning the allocation of budget to different streams of R&D activities and Indian management also monitored the day-to-day performance of R&D activities; and
- While it was true that funds for R&D activities were provided by the MNE parents that bore the financial risk of the R&D activities, other important aspects of R&D activities, such as technically skilled manpower, know-

how for R&D activities, etc. were developed and owned by the Indian subsidiaries. Accordingly, control over risks of R&D activities lay both with the MNE parent and the Indian subsidiary but the Indian subsidiary controlled more risks as compared to its MNE parent.

10.3.3 Thus, it has been inferred that the Indian subsidiaries were not risk-free entities but bore economically significant risks. Accordingly, Indian subsidiaries were entitled to an appropriate return for their functions, including strategic decision-making, monitoring R&D activities, use of their tangible and intangible assets and exercising control over the risks. In view of these facts, a routine and low cost plus compensation model would not arrive at an arm's length price.

10.4 MARKETING INTANGIBLES

10.4.1 Transfer pricing aspects of marketing intangibles have been a focus area for the Indian transfer pricing administration. The issue is particularly relevant to India due to its unique market specific characteristics such as location advantages, market accessibility, large customer base, market premium, spending power of Indian customers, etc. The Indian market has witnessed substantial marketing activities by the subsidiaries/ related parties of MNE groups in the recent past, which have resulted in creation of local marketing intangibles.

10.4.2 The functions carried out by Indian subsidiaries of an MNE Group relating to marketing, market research and market development, including adding value to intangibles such as brands, trademarks and trade names owned by parent companies, as well as creation and development of marketing intangibles like customer lists and dealer networks, have been the subject matter of transfer pricing adjustments in India. The expenditure incurred on these marketing functions has been considered for adjustment by Indian tax authorities on the premise that the Indian taxpayers were incurring these expenses for and on behalf of their parent companies outside India, and that:

- these expenses promoted the brands / trademarks that are legally owned by foreign parent AEs.
- these expenditures created or developed marketing intangibles in the form of brands / trademarks, customer lists, dealer/distribution channels, etc. even though the Indian company may have had no ownership rights in these intangibles.

Based on this premise, it has been held by the Indian tax

authorities that the functions carried out, which are in the nature of development of the relevant intangibles, deserve compensation.

10.4.3 For computing the value of compensation and the required adjustment, a comparison with the average of AMP (Advertisement, Marketing and Promotion) spends by comparables in a broadly similar line of business has been made to determine the routine spend on AMP for product sale. The expenditure over and above this has been held to be purely for developing the brand value or other marketing intangibles for the benefit of the AE and as a service to the AE, and considered for adjustment along with a mark-up of the service charge on the same, worked out on a cost-plus basis. The understanding going into this approach has been that functions relating to development, enhancement and exploitation of marketing intangibles, now termed as DEMPE (Development, Enhancement, Maintenance, Protection and Exploitation) functions under the BEPS final report on Action Point 8, result in the following two-fold benefit to the AEs:-

(a) Direct Benefit: by way of increased revenue from the territory on account of Sale/Royalty/Fee for Technical Services etc. In many of the cases, such functions may have an impact on revenue enhancement of the associated enterprises in other parts of the world. For example sponsorship of events or sports watched in many countries, launching of brands developed in India in other parts of the world etc.

(b) Indirect Benefit:

(i) Development of Market: the AEs, who are owners of intangibles, obtain an advantage in terms of development of market for themselves. While this kind of advantage builds over a period of time, it is manifested in different ways, e.g. when the AE enters into an agreement with a third party for directly selling goods in India. It is observed in many cases that agreements are concluded in India by the foreign AEs with retail chain companies or e-sellers or large corporate houses, etc. Here, the awareness about the trade intangibles owned by the AE, which were not well-known in the Indian market, is enhanced by the marketing efforts made by the Indian taxpayer, thus adding value to the same. This practice of the Indian subsidiary also creates a platform for the AE when it launches new products in India. Although some of the Indian taxpayers are being compensated partly and some of them not, invariably no separate accounts are maintained by the taxpayer to show

which part of the expenditure pertains to the DEMPE functions related to the intangibles and consequent benefits provided to the associated enterprise and which is incurred for routine promotion of the product. The pattern of compensation, if any, by the AEs for such functions is varied. While some of them provide a subsidy to the Indian subsidiary to maintain an agreed profit level, others grant a lump sum compensation which is generally not correlated by the taxpayer to functions discharged by it.

(ii) Enhancement of Exit Value: The marketing activity of the taxpayer bestows another kind of advantage to the AE which is realised when there is a change in ownership of the business – either by way of restructuring within the group or by way of divesting either a part or full business to a third party. At this stage, the exercise of market development, brand development or other value additions to the intangibles like copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret etc. are of tremendous importance while negotiating the price of divestment and valuation of assets.

10.4.4 The adjustments made by the transfer pricing officers (TPOs) have been subject to judicial reviews in India and although the matter is still to be finally adjudicated by the Supreme Court, the following principles have emerged from the decisions of the High Courts and Tribunals:

(i) The existence of an international transaction in relation to any service or benefit will have to be established before transfer pricing provisions can be applied to place a value on the service or benefit for the purpose of determining compensation.

(ii) The mere fact of unusual or excessive AMP expenditure cannot establish the existence of such a transaction. However, once such a transaction is established, it is possible to benchmark it separately and it need not always be aggregated with other international transactions.

10.4.5 The present approach of the Indian tax administration for carrying out transfer pricing adjustments in accordance with the above judicial principles is as below:

- Requesting the taxpayers to produce documents and evidence in a uniform manner including information of previous years

- Carrying out a detailed FAR analysis to identify all the functions of the taxpayer and the AEs pertaining to all international transactions e.g. purchase of raw material/ components, payment of royalty, purchase of finished goods, export of finished goods, support services, and direct sales by the AE in India etc.
- Examining whether the marketing activities, marketing research, market development, distribution channel, dealers channel, customer list etc. (DEMPE functions) reflected by the expenditure incurred by the taxpayer and the AE in India are in conformity with the functional and risk profiles and the benefits derived by the taxpayer and the AE, and whether the AE, assuming a risk in the Indian market or benefitting from India in one way or the other, is dependent upon the DEMPE functions carried out by the Indian subsidiary.
- Finding the most appropriate method to determine the arm's length compensation for the functions performed, assets used, and risks assumed by the Indian entity. The most appropriate method would depend on the facts of the case and could be the CUP method if suitable comparable uncontrolled transactions are found or could be the TNNM or PSM in appropriate cases.

10.4.6 The BEPS Report on transfer pricing issues illustrates through examples, the situations in which a marketeer/ distributor can expect compensation for the AMP functions carried out by it. The common threads arising from these examples are that compensation for the AMP function will depend on the intensity with which the function is performed, the extent of assets employed and the amount of risk borne by the parties in respect of the AMP function. Compensation need not be separate. It can be part of the price of another transaction. Where the AMP function is performed with the intention by the taxpayer to exploit the results itself, no separate compensation is receivable for the function. The person who takes the important decisions relating to the AMP function such as deciding the strategy, fixing the budget and exercising overall control over the function is the person who bears the risk relating to the AMP activity and he is entitled to all the excess profits generated on account of the function.

10.4.7 The Indian tax administration has been applying these principles to make adjustments but it is apparent that the process is complex, fact intensive and not free from disputes. The efforts being made by the Indian tax authorities to bring uniformity

in approach and the expected judicial verdict from the Indian Supreme Court are likely to bring more clarity in the process.

10.5 INTRA GROUP SERVICES

10.5.1 Globalisation and the drive to achieve efficiencies within MNE groups have encouraged sharing of resources to provide support to group entities in one or more locations by way of shared services. Some of the services are relatively straightforward in nature, such as marketing, advertisement, trading, management consulting, etc. However, other services may be more complex and can often be provided either on a stand-alone basis or as part of a package and are linked one way or other to the supply of goods or intangible assets.

10.5.2 The following questions are relevant to identify intra-group services requiring arm's length remuneration:

- Have the Indian subsidiaries received any related party services, i.e. intra-group services?
- What are the nature and details of services, including the quantum of services received by the related party?
- Have services been provided in order to meet the specific needs of the recipient of the services?
- Are they duplicate services (i.e., was the Indian subsidiary availing similar services on its own)?
- Did the Indian subsidiary have the capacity to absorb the services provided by the AE?
- What are the economic and commercial benefits derived by the recipient of intra-group services?
- In comparable circumstances, would an independent enterprise be willing to pay for and procure such services?
- Would an independent third party be willing and able to provide such services?

10.5.3 The answers to the above questions help in determining if the Indian subsidiary has received or provided intra-group services that require arm's length remuneration. Determination of the arm's length price of intra-group services normally involves the following steps:

- Identification of the cost incurred by the group entity in providing intra-group services to the related party;
- Understanding the basis for allocation of cost to various related parties, i.e., the nature of "allocation keys" used by the MNE;

- Considering whether intra-group services will require reimbursement of expenditure along with mark-up; and
- Identification of the arm's length price of a mark-up for rendering such services.

10.5.4 Identification of the services requiring arm's length remuneration is one of the main challenges for the transfer pricing administration. India believes that shareholder services, duplicate services and incidental benefits from group services do not give rise to intra-group services requiring arm's length remuneration. However, such a conclusion would need a great deal of analysis. The biggest challenge in determination of the arm's length price is the allocation of cost by using allocation keys. The nature of allocation keys generally varies with the nature of services.

10.5.5 Another challenge for the transfer pricing administration is the identification of pass-through costs, on which mark-ups should either not be paid (if the Indian entity is the recipient of such services) or not received (if the Indian entity is the service provider). Wherever a mark-up is to be paid or received, the determination of an arm's length mark-up is also a challenge.

10.5.6 In view of the above facts, transfer pricing of intra-group services is considered a high risk area in India. India considers the payment for such intra-group services to be base-eroding in nature and, accordingly, attaches great importance to the transfer pricing of such payments. Further, even if an arm's length result is achieved in respect of such payments from India, an additional protection in the form of an overall ceiling on the amount of such payments may be required. This may be justified because even an arm's length payment might result in erosion of all the profits of the Indian entity or in enhancement of losses of the Indian entity, thereby, making the arm's length nature of such payments questionable. Thus, an overall ceiling on such payments in the form of a certain percentage of the sales or revenue of the Indian entity is being used in appropriate cases.

10.6 FINANCIAL TRANSACTIONS

10.6.1 In India, the transfer pricing approach for inter-company loans and guarantees revolves around:

- Examination of the loan agreement;
- A comparison of terms and conditions of loan agreements;
- The determination of credit ratings of lender and borrower;

- The identification of comparable third party loan agreements; and
- Suitable adjustments to the comparables to enhance comparability.

10.6.2 The Indian transfer pricing administration has come across cases of outbound loan transactions where the Indian parent has advanced to its AEs in a foreign jurisdiction interest free loans or loans either at LIBOR (London Interbank Offered Rate) or EURIBOR (Euro Interbank Offered Rate). The main issue before the transfer pricing administration is the benchmarking of these loan transactions to arrive at the ALP of the rates of interest applicable on these loans.

10.6.3 A further issue in financial transactions is credit guarantee fees. With the increase in outbound investments, the Indian transfer pricing administration has come across cases of corporate guarantees extended by Indian parents to their associated entities abroad, where the Indian parent as guarantor agrees to pay the entire amount due on a loan instrument on default by the borrower. The guarantee helps an associated entity of the Indian parent to secure a loan from the bank. The Indian transfer pricing administration generally determines the ALP of such guarantee under the Comparable Uncontrolled Price Method. In most cases, interest rate quotes and guarantee rate quotes available from banking companies are taken as the benchmark rate to arrive at the ALP. The Indian tax administration also uses the interest rate prevalent in the rupee bond markets in India for bonds of different credit ratings. The difference in the credit ratings between the parent in India and the foreign subsidiary is taken into account and the rate of interest specific to a credit rating of Indian bonds is also considered for determination of the arm's length price of such guarantees.

10.6.4 However, the Indian transfer pricing administration is facing a challenge due to the non-availability of specialised databases and of comparable transfer prices for cases of complex inter-company loans and mergers and acquisitions that involve complex inter-company loan instruments as well as an implicit element of guarantee from the parent company in securing debt.

10.7 LOCATION SAVINGS

10.7.1 The concept of "location savings", i.e. cost savings in a low-cost jurisdiction such as India, is one of the aspects taken into account while carrying out comparability analysis during

transfer pricing audits. The expression "location savings" has a much broader meaning; it goes beyond the issue of relocating a business from a "high-cost" to a "low-cost" location and relates to any cost advantage that a jurisdiction can provide. MNEs continuously search for options to lower their costs in order to increase their profits. In this respect, India provides various operational advantages to the MNEs, such as availability of low-cost labour or skilled employees, lower raw material cost, lower transaction cost, reasonably priced rental space, lower training costs, availability of infrastructure at a lower cost, various direct and indirect tax incentives, etc.

10.7.2 In addition to the above cost advantages, India provides the following Location-Specific Advantages (LSAs) to MNEs:

- Highly skilled, specialised and knowledgeable workforce;
- Access and proximity to large and growing local/regional markets;
- Large customer base with increased spending capacity;
- Superior information networks;
- Superior distribution networks;
- Various policy incentives; and
- Market premium.

10.7.3 The incremental profit from LSAs is known as "location rents". The main issue in transfer pricing is the quantification and allocation of location savings and location rents among the associated enterprises. Using an arm's length pricing approach, the allocation of location savings and rents between associated enterprises should be made by reference to what independent parties would have agreed in comparable circumstances. It is possible to use the Profit Split Method to determine arm's length allocation of location savings and rents in cases where comparable uncontrolled transactions are not available. In these circumstances, it is considered that the functional analysis of the parties to the transaction (functions performed, assets owned and risks assumed), and the bargaining power of the parties (which at arm's length would be determined by the competitiveness of the market, availability of substitutes, cost structure, etc) should both be considered as appropriate factors.

10.7.4 However, in situations where comparable uncontrolled transactions are available, the comparability analysis and benchmarking by using the results/profit margins of such local comparable companies will determine the arm's length price of a

transaction with a related party in a low-cost jurisdiction. If good local comparables are available, the benefits of location savings can be said to have been captured in the ALP so determined. However, if good local comparables are not available that could capture the benefits of location savings or where the overseas associated enterprise (AE) is chosen as the tested party, the issue of capturing the benefits of location savings would remain an issue in determining the ALP.

10.8 ISSUES RELATING TO RISKS

10.8.1 A comparison of functions performed, assets employed and risks assumed is the basis of any comparability analysis. Indian practice has been to evaluate the risk in conjunction with functions and assets. India believes that it is unfair to give undue importance to risks in determination of the arm's length price in comparison to functions performed and assets employed.

10.8.2 Identification of risks and of the party which bears such risks are important steps in comparability analysis. India believes that the conduct of the parties is key to determining whether the actual allocation of risks conforms to contractual risk allocation. Allocation of risks depends upon the ability of parties to the transaction to exercise control over such risks. Core functions, key responsibilities, key decision-making and levels of individual responsibility for the key decisions are important factors to identify the party which has control over the risks. Besides, financial capability to bear the risk is also important in establishing whether a party actually bears or controls the risk.

10.8.3 In India, MNEs make claims before the transfer pricing officers that related parties engaging in contract R&D or other contract services in India are risk-free entities. Accordingly, these related parties are said to be entitled to only routine (low) cost plus remuneration. MNEs also contend that the risks of R&D activities or services are being controlled by them and Indian entities being risk-free entities are only entitled to low cost plus remuneration.

10.8.4 The notion that risks can be controlled remotely by the parent company and that the Indian subsidiary engaging in core functions, such as carrying out research and development (R&D) activities or providing services, is a risk free entity has not been found acceptable. India believes that in many cases the core function of performing R&D activities or providing services is located in India, which in turn requires important strategic decisions to be taken by the management and employees of

the Indian subsidiaries. These strategic decisions could be in terms of designing the product or the software; the direction of R&D activities or providing services; and the monitoring of R&D activities. Accordingly, the Indian subsidiary exercises control over the operational and other risks. In these circumstances, the ability of the parent company to exercise control over the risks remotely from a place where core functions of R&D and services are not located is very limited.

CHAPTER 11

DISPUTE RESOLUTION MECHANISMS

11.1 INTRODUCTION

The transfer pricing administration is more than a decade old in India and disputes are increasing with each transfer pricing audit cycle, due to the following factors:

- Exponential increase in cross border transactions in the last decade;
- Lack of international consensus on taxation of certain group cross-border transactions such as intangibles, financial transactions, intra-group services etc;
- Difficulty in applying the arm's length principle to complex transactions such as business restructuring and
- Taxpayers in India can postpone payment of tax liability by resorting to litigation in various appellate bodies.

The tax authorities are aware of the problem of increasing disputes and have taken several steps to reduce litigation and the time needed to resolve the same. The steps taken by the tax authorities are:

- No adjustments are made in cases where the variation between the arm's length price determined and the price of the international transaction does not exceed 3 per cent or other notified percentage;
- Significant efforts have been made to provide certainty in the application of transfer pricing laws;
- There is a time limit for disposal of objection of the taxpayer by the DRP;
- Indicative time limits have been provided for various judicial forums;
- Direct appeal to the tax tribunal is provided against transfer pricing orders approved by the DRP;
- Dedicated and specialized appellate Commissioners and benches of tax tribunals have been put in place to deal with disputes on transfer pricing;
- The process for mutual agreement procedure has been put

on fast track; An Advance Pricing Agreement Scheme has been put in place; and

- The Safe Harbor Rules have been prescribed

11.2 DISPUTE RESOLUTION PANEL (DRP)

11.2.1 To facilitate the expeditious resolution of taxpayer disputes, including those related to transfer pricing, on a fast track basis, and to bring in certainty, the Finance Act, 2009 introduced an alternate dispute resolution mechanism under section 144C with an objective to facilitate expeditious resolution of disputes involving foreign companies and transfer pricing matters. The memorandum to the Finance (No.2) Bill, 2009 highlights the fact that the dispute resolution mechanism presently in place is time-consuming and finality in high-demand cases is attained only after a long drawn litigation up to the level of the Supreme Court. Considering this, the Act provides for a DRP mechanism with an objective to facilitate expeditious resolution of disputes on a fast track basis. The Board notified the Income tax (Dispute Resolution Panel) Rules, 2009 vide notification no. 84/2009 dated 20.11.2009.

11.2.2 The CBDT also issued a clarification stating that a choice has been given to the taxpayer either to go before the Dispute Resolution Panel or to prefer the normal appellate channel. As a part of the legal process in all cases, the assessing officer incorporates the order of the TPO in his order and issues a draft order to the taxpayer. The taxpayer has the option to file an objection before the Dispute Resolution Panel against the draft order of assessment or not to exercise this option. In cases where the taxpayer chooses not to file an objection before the DRP, the draft order by the AO incorporating the order of TPO becomes the final order and the taxpayer may file an appeal before the CIT(A) against the order.

11.2.3 Rule 3 of the Income tax (DRP) Rules, 2009 empowers the Board to constitute panels all over the country, and to assign by name three Commissioners to each panel. Each panel has a secretariat for receiving objections, correspondence and other documents to be filed by the eligible assessee.

11.2.4 The Panel has been provided with wide powers like that of a Court under Code of Civil Procedure, 1908. The DRP has to pass a direction within nine months from the end of the month in which the draft order is forwarded to the eligible assessee. The panel has the powers to confirm, reduce or enhance the

variations proposed in the draft order. However, the panel cannot set aside any proposed variation or issue directions for further enquiry. The DRP's directions are binding on the AO and on the receipt of the directions, the AO shall complete the assessment in conformity with the directions within one month from the end of the month in which such direction is received by him.

11.2.5 In the original DRP rules, the Income tax Department did not have the right to appeal against the directions of the DRP. However, the Finance Act, 2012, empowered the department to prefer an appeal against the directions issued by the DRP to the ITAT, in line with that of the orders passed by Commissioner (Appeals). This right of the Department to appeal against the directions of the DRP has been omitted by the Finance Act, 2016 with effect from 1st June, 2016, and, therefore, the Department cannot now file any appeal against the directions of the DRP.

11.3 FIRST APPEAL – COMMISSIONER OF INCOME-TAX (APPEALS)

After the final order is passed by the AO (if the taxpayer does not prefer the DRP option) incorporating the TPO's order, the taxpayer can appeal against such order before the first level of appellate authority. Commissioner of Income-tax(Appeals), a quasi judicial authority, will hear the taxpayer and pass the appellate orders. The order passed by the CIT(Appeals) is binding on both the parties and appealable by either of them, whoever is aggrieved, before the Income-tax Appellate Tribunal.

11.4 INCOME TAX APPELLATE TRIBUNAL (ITAT)

This is the second level of Appellate forum and is governed by the Ministry of Law. At this stage, the taxpayer or the tax authorities can appeal against the order of the CIT(Appeals). The taxpayer can appeal against the order of the DRP to the ITAT. The Income Tax Appellate Tribunal is not a court but a tribunal exercising the judicial powers of the State. The tribunal's powers in dealing with the appeals are very wide and have, in some cases been held similar to be identical with the powers of an appellate court under the Civil Procedure Code. The Tribunal, for the purposes of discharging its functions, is vested with all the powers which are vested in the income-tax authorities referred to in Section 131 of the Income-tax Act, 1961. Any proceedings before the tribunal are also deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860). It is also deemed to be a civil

court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898) corresponding to section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

The jury consists of two to three members or more depending on the importance of the case. There shall be constituted a special bench to discuss the specific legal issue, if required. ITAT shall discuss the factual matters placed before it and pass necessary orders or directions to the jurisdictional lower authorities as the case may be. The orders passed shall be binding on both the parties and they have a right to appeal against the orders before the jurisdictional High Court.

11.5 HIGH COURTS

The High Courts are governed by the Ministry of Law and each state or a group of states have a High Court. It shall discuss and decide on the issues of law and not 'issues of the facts'. A person aggrieved by the orders of the High Court can appeal before the Supreme Court of India.

11.6 THE SUPREME COURT OF INDIA

This is the Apex Court of India and the orders issued by this Court are binding on all concerned in the country including the administrators. It protects the constitutional sovereignty of the country and discharges the legal disputes in accordance with the Supreme Court Rules.

The matter will be heard if the special leave petition (SLP) is admitted for a hearing. Only if there is a legal case for argument, the same is allowed at SLP stage and thereafter if admitted, the matter will be adjudicated on questions of Law.

CHAPTER 12

ALTERNATIVE DISPUTE RESOLUTION AND MITIGATION CHANNELS

12.1 ADVANCE PRICING AGREEMENTS (APA)

12.1.1 To bring about certainty and uniformity with regard to determination of arm's length price of the international transaction, the Finance Act, 2012 inserted Sections 92CC and 92CD in the Income-tax Act, 1961 introducing the provisions of Advance Pricing Agreement (APA). The Ministry of Finance notified the Advance Pricing Agreement Scheme (Rules 10F to 10T of Income Tax Rules, 1962) vide Notification no.36/2012 dated 30th August, 2012. The APA process is voluntary and was introduced to supplement appeals and other Double Taxation Avoidance Agreement mechanism for resolving transfer pricing disputes.

12.1.2 An APA is a formal agreement for a specified period between the Central Board of Direct Taxes (CBDT) and the taxpayer specifying in advance, the ALP or specifying the manner of the determination of the ALP (or both), in relation to an international transaction. The APA once entered into shall be binding on the taxpayer as well as the tax Authorities having jurisdiction over such taxpayer and such transaction. The agreement entered into is valid for a period, not exceeding five years, as may be specified in the agreement.

12.1.3 The APA scheme envisages three types of APAs viz. Unilateral, Bilateral and Multilateral. Unilateral APA is an agreement between the Board and the applicant. In Bilateral APA, the applicant is required to make an application with the competent authority of India and simultaneously, the applicant or its AE should apply to the competent authority of the other country. The two competent authorities are required to reach an arrangement through mutual agreement procedure (MAP). In Multilateral APAs the applicant makes an application with the Competent Authority of India and simultaneously the applicant or its AE applies to the CA of the other countries.

12.1.4 The APA scheme involves the following process:

- pre-filing consultation (optional);

- furnishing of an APA application;
- Acceptance/rejection of an APA application;
- Action by the taxpayer, the assessing officer and the transfer pricing officer while the APA is processed or negotiated;
- Amendment to an APA application;
- Assignment of an APA application to APA team;
- Examination and analysis of an APA application;
- Conversion of a unilateral APA into bilateral APA
- Entering into a unilateral APA
- Negotiation by the competent authority in bilateral/ multilateral APA and entering into an APA
- Action by the taxpayer and the assessing officer on entering into an APA
- Annual compliance report;
- Compliance audit of the agreement
- Cancellation and revision of the APA

12.1.5 To further reduce litigation, Finance (No.2) Act, 2014 amended section 92CC of the Act to provide for roll back mechanism in the APA Scheme with effect from 1st October, 2014. The rules for roll back have been notified vide CBDT Notification No.23/2015 dated 14th March, 2015.

12.2 SAFE HARBOR RULES

12.2.1 The 'Safe Harbor Rule' was introduced by the Finance Act, 2009, through insertion of Section 92CB in the Income Tax Act, 1961. This meant that a defined set of transactions will be identified and defined to have a particular margin limit. If a particular International Transaction with the related party falls within the set margin range, then the said transaction shall be deemed to be within the Arms Length price. The Safe Harbor Rules were notified by the CBDT vide Notification No.73/2013 [F.No. 142/28/2013-TPL] dated 18th September, 2013. The salient features of the rules are as under:

- The Rules prescribe safe harbor for five FYs commencing from FY 2012-13, the eligible taxpayer may opt for safe harbor regime either for one or more year subject to maximum period of five years by furnishing Form 3CEFA

- Safe harbor option can be exercised by furnishing the prescribed Form 3CEFA with the Assessing Officer (AO) on or before the due date of filing the return of income – for the relevant financial year or for more than one year
- A declaration needs to be filed by the taxpayer for opting out of safe harbor for subsequent years, after the initial assessment year. Once the Operating Profit Margin is agreed upon, there can be no adjustment for comparables or allowance for range

12.2.2 The following eligible international transactions are covered under Safe Harbor:

- Software Development Services
- Information Technology Enabled Services
- Knowledge Process Outsourcing services
- Financial transactions –outbound intra-group loans and outbound corporate guarantees
- Contract R&D services in software development and generic pharmaceutical drugs
- Manufacture and export of core/non-core auto components.

12.2.3 The eligible international transactions, threshold limit prescribed and the safe harbor margin are summarized as below:

Eligible international transaction	**Threshold limit prescribed**	**Safe harbour margin**
Provision of software development services &information technology enabled services with insignificant risks	Up to Rs 500 Crore	20 % or more on total operating costs
	Above Rs 500 Crore	22 % or more on total operating costs
Provision of knowledge processes outsourcing services with insignificant risks	25 % or more on total operating costs	
Advancing of intra-group loan to a non-resident wholly owned subsidiary	Interest rate equal to or greater than the base rate of SBI as on 30th June of relevant previous year	
	Up to Rs 50 Crore	Plus 150 basis points

Eligible international transaction	Threshold limit prescribed	Safe harbour margin
	Above Rs 50 Crore	Plus 300 basis points
Providing explicit corporate guarantee to wholly owned subsidiary (WOS)	The commission or fee declared in relation to the international transaction is	
	Up to Rs 100 Crore	at the rate of 2% or more per annum on the amount guaranteed
	Above Rs 100 Crore, provided the WOS has been rated to be of adequate to highest safety by a rating agency registered with SEBI	at the rate of 1.75% or more per annum on the amount guaranteed
Provision of specified contract R&D services wholly or partly relating to software development with insignificant risks	30% or more on total operating costs	
Provision of contract R&D services wholly or partly relating to generic pharmaceutical drugs with insignificant risks	29% or more on total operating costs	
Manufacture and export of core auto components	12% or more on total operating costs	
Manufacture and export of noncore auto components where 90% or more of total turnover during the relevant previous year is in the nature of original equipment manufacturer (OEM) sales	8.5% or more on total operating costs	

12.2.4 The rules lay down detailed procedure for verification of the safe harbor by the Assessing Officer (AO).

12.2.5 Once, a safe harbor option is exercised for more than one F.Y. by the taxpayer and the same is declared to be valid by the AO in the first F.Y., the A.O. cannot re-examine the same in respect of subsequent FYs unless there is a change in the facts and circumstances.

- In case the AE is located in a country where the tax rate is nil or less than 15 per cent or where the AE is located in a notified jurisdictional area (where there is lack on effective exchange of information with any country or territory outside India), then safe harbor shall not be applicable.
- In case the safe harbor exercised has been accepted by the income-tax authorities, the taxpayer shall not be entitled to invoke mutual agreement procedure (MAP) under the DTAA.

The existing safe harbor rules are applicable upto A.Y. 2017-18 and maybe reviewed thereafter.

12.2.6 The safe harbor rules for certain specified domestic transactions were introduced in the Income-tax Rules, 1962, through IT (Second Amendment) Rules, 2015, with effect from 4th February, 2015. These rules are applicable to the SDTs undertaken by Government companies engaged in business of generation, transmission or distribution of electricity (i.e., eligible taxpayer). The transfer price declared by the taxpayer in respect of eligible SDTs shall be accepted by Income-tax-authorities if the tariff in respect of supply of electricity, transmission of electricity, wheeling of electricity, as the case may be, is determined by appropriate commission as per provisions of the Electricity Act, 2003. Eligible taxpayer can furnish application to the tax officer in Form 3CEFB to opt for Safe Harbor Rules in respect of eligible SDTs. Such application is required to be furnished on or before due date of furnishing return of relevant assessment year, provided that return of income is furnished by taxpayer on or before the date of furnishing Form 3CEFB. Further, Form 3CEFB can be furnished on or before 31st March 2015 in respect of eligible SDTs undertaken during F.Y.s 2012-13 and 2013-14.

12.2.7 These safe harbor rules were extended to SDTs comprising of purchase of milk or milk products by a co-operative society from its members through IT (Nineteenth Amendment) Rules, 2015, with effect from 8th December, 2015. No adjustments would be made if the price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not Fat (SNF) content of milk and (a) the said rate is irrespective of (i) the quantity of milk procured; (ii)

the percentage of shares held by the members in the co-operative society; (iii) the voting power held by the members in the society; and (b) such prices are routinely declared by the cooperative society in a transparent manner and are available in public domain.

12.3 TRANSFER PRICING DISPUTE RESOLUTION UNDER MAP

12.3.1 Mutual Agreement Procedure is another good mode for resolving transfer pricing disputes. Article 25 (Mutual Agreement Procedure or MAP) of the OECD Model Tax Convention provides for a mechanism of dispute resolution. As per Article 25, the competent authorities of the two contracting states could get into an agreement which regard to an international tax dispute in one of the contracting states of a taxpayer who is resident of the other contracting state, thereby eliminating double taxation for the taxpayer.

12.3.2 The MAP procedure is governed by rule 44H of the Rules. In transfer pricing cases, there may arise 'economic' double taxation– i.e. the same income suffering tax in two separate hands, in the hands of the taxpayer and the AE. Juridical double taxation arises where the same taxpayer suffers tax on the same income in two separate jurisdictions. To eliminate economic double taxation in transfer pricing cases, Article 25 may be invoked to resolve disputes. In TP disputes, Article 25 may be invoked to consider requests for corresponding adjustments as provided in Article 9(2) of the OECD Convention. That paragraph provides for the competent authorities to negotiate and settle any disagreement with regard to determination of corresponding adjustments. This implies that where a treaty does not have Article 9(2), no MAP is available to resolve TP disputes. While the matter is pending with the competent authorities, the taxpayer is empowered to continue with the domestic litigation process (Dispute Resolution Panel, ITAT, High Court and Supreme Court). If the competent authorities reach an agreement, they would make an offer to the taxpayer. The taxpayer has the option whether to accept or reject the agreement. If the taxpayer rejects the agreement, the two competent authorities are no longer bound by the terms of their settlement and the taxpayer would have the recourse of the domestic litigation only. If the taxpayer accepts the terms of the settlement, the two tax authorities would honor the agreement and the taxpayer shall get an order from the tax authorities in the respective jurisdictions as per the terms of the agreement between the two competent authorities and shall withdraw the appeals.

ANNEXURE – 1

EXTRACTS OF RELEVANT PROVISIONS FROM INCOME-TAX ACT, 1961

COMPUTATION OF INCOME FROM INTERNATIONAL TRANSACTION HAVING REGARD TO ARM'S LENGTH PRICE

92. (1) Any income arising from an international transaction shall be computed having regard to the arm's length price.

Explanation.— For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

(2) Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(2A) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

(3) The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or sub-section (2A), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.

MEANING OF ASSOCIATED ENTERPRISE.

92A. (1) For the purposes of this section and sections 92, 92B,

92C, 92D, 92E and 92F, "associated enterprise", in relation to another enterprise, means an enterprise—

(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

(2) For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—

(a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or

(b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or

(c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or

(d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or

(e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or

(f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or

(g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

(h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

(i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

(j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

(k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or

(l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or

(m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

MEANING OF INTERNATIONAL TRANSACTION.

92B. (1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

(2) A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-

section (1), be deemed to be an international transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not.

Explanation.— For the removal of doubts, it is hereby clarified that—

(i) the expression "international transaction" shall include—

(a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(c) 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;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

(ii) the expression "intangible property" shall include—

(a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;

(b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;

(c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;

(d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

(e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation;

(f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;

(g) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;

(h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;

(i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;

(j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;

(k) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

(l) any other similar item that derives its value from its intellectual content rather than its physical attributes.

MEANING OF SPECIFIED DOMESTIC TRANSACTION.

92BA. For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—

(i) any transaction referred to in section 80A;

(ii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;

(iii) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;

(iv) 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

(v) any other transaction as may be prescribed, and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of five crore rupees.

COMPUTATION OF ARM'S LENGTH PRICE.

92C. (1) The arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely :—

(a) comparable uncontrolled price method;

(b) resale price method;

(c) cost plus method;

(d) profit split method;

(e) transactional net margin method;

(f) such other method as may be prescribed by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed:

Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices:

Provided further that if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price

at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price :

Provided also that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after the 1st day of April, 2014, shall be computed in such manner as may be prescribed and accordingly the first and second proviso shall not apply.

Explanation.— For the removal of doubts, it is hereby clarified that the provisions of the second proviso shall also be applicable to all assessment or reassessment proceedings pending before an Assessing Officer as on the 1st day of October, 2009.

(2A) Where the first proviso to sub-section (2) as it stood before its amendment by the Finance (No. 2) Act, 2009 (33 of 2009), is applicable in respect of an international transaction for an assessment year and the variation between the arithmetical mean referred to in the said proviso and the price at which such transaction has actually been undertaken exceeds five per cent of the arithmetical mean, then, the assessee shall not be entitled to exercise the option as referred to in the said proviso.

(2B) Nothing contained in sub-section (2A) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154 for any assessment year the proceedings of which have been completed before the 1st day of October, 2009.

(3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that—

(a) the price charged or paid in an international transaction or specified domestic transaction has not been determined in accordance with sub-sections (1) and (2); or

(b) any information and document relating to an international transaction or specified domestic transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or

(c) the information or data used in computation of the arm's length price is not reliable or correct; or

(d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D,

the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction or specified domestic transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined :

Provided that no deduction under section 10A or section 10AA or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section :

Provided further that where the total income of an associated enterprise is computed under this sub-section on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XVIIB, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.

REFERENCE TO TRANSFER PRICING OFFICER.

92CA. (1) Where any person, being the assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Principal Commissioner or Commissioner, refer the computation of the arm's length price in relation to the said international transaction or specified domestic transaction under section 92C to the Transfer Pricing Officer.

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction or specified domestic transaction referred to in sub-section (1).

(2A) Where any other international transaction [other than an international transaction referred under sub-section (1)], comes to the notice of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply as if such other international transaction is an international transaction referred to him under sub-section (1).

(2B) Where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1).

(2C) Nothing contained in sub-section (2B) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July, 2012.

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be

made at any time before sixty days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires.

Provided that in the circumstances referred to in clause (ii) or clause (x) of Explanation 1 to section 153, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly.

(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer.

(5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly.

(6) Where any amendment is made by the Transfer Pricing Officer under sub-section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

(7) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (a) to (d) of sub-section (1) of section 131 or sub-section (6) of section 133 or section 133A.

Explanation.— For the purposes of this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.

POWER OF BOARD TO MAKE SAFE HARBOUR RULES.

92CB. (1) The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules.

(2) The Board may, for the purposes of sub-section (1), make rules for safe harbour.

Explanation.— For the purposes of this section, "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

ADVANCE PRICING AGREEMENT.

92CC. (1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.

(2) The manner of determination of arm's length price referred to in sub-section (1), may include the methods referred to in sub-section (1) of section 92C or any other method, with such adjustments or variations, as may be necessary or expedient so to do.

(3) Notwithstanding anything contained in section 92C or section 92CA, the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered.

(4) The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement.

(5) The advance pricing agreement entered into shall be binding—

(a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(b) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

(7) The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

(8) Upon declaring the agreement void ab initio,—

(a) all the provisions of the Act shall apply to the person as if such agreement had never been entered into; and

(b) notwithstanding anything contained in the Act, for the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of order under sub-section (7) shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(9) The Board may, for the purposes of this section, prescribe a scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

(9A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm's length price of such international transaction shall be determined in accordance with the said agreement.

(10) Where an application is made by a person for entering into an agreement referred to in sub-section (1), the proceeding shall be deemed to be pending in the case of the person for the purposes of the Act.

EFFECT TO ADVANCE PRICING AGREEMENT

92CD. (1) Notwithstanding anything to the contrary contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement.

(2) Save as otherwise provided in this section, all other

provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

(3) If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the agreement.

(4) Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished.

(5) Notwithstanding anything contained in section 153 or section 153B or section 144C,—

(a) the order of assessment, reassessment or recomputation of total income under sub-section (3) shall be passed within a period of one year from the end of the financial year in which the modified return under sub-section (1) is furnished;

(b) the period of limitation as provided in section 153 or section 153B or section 144C for completion of pending assessment or reassessment proceedings referred to in sub-section (4) shall be extended by a period of twelve months.

(6) For the purposes of this section,—

(i) "agreement" means an agreement referred to in sub-section (1) of section 92CC;

(ii) the assessment or reassessment proceedings for an assessment year shall be deemed to have been completed where—

(a) an assessment or reassessment order has been passed; or

(b) no notice has been issued under sub-section (2) of section 143 till the expiry of the limitation period provided under the said section.

SECONDARY ADJUSTMENT IN CERTAIN CASES

92CE. (1) Where a primary adjustment to transfer price,—

(i) has been made suo motu by the assessee in his return of income;

(ii) made by the Assessing Officer has been accepted by the assessee;

(iii) is determined by an advance pricing agreement entered into by the assessee under section 92CC;

(iv) is made as per the safe harbour rules framed under section 92CB; or

(v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation, the assessee shall make a secondary adjustment:

Provided that nothing contained in this section shall apply, if,–

(i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and

(ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

(2) Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

(3) For the purposes of this section,—

(i) "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;

(ii) "arm's length price" shall have the meaning assigned to it in clause (ii) of section 92F;

(iii) "excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken;

(iv) "primary adjustment" to a transfer price means the determination of transfer price in accordance with the

arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

(v) "secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

Maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction.

92D. (1) Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed.

Provided that the person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed.

Explanation.—For the purposes of this section,—

(A) "constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of section 286;

(B) "international group" shall have the meaning assigned to it in clause (g) of sub-section (9) of section 286.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction or specified domestic transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard:

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

(4) Without prejudice to the provisions of sub-section (3), the person referred to in the proviso to sub-section (1) shall furnish the information and document referred to in the said proviso to the authority prescribed under sub-section (1) of section 286, in such manner, on or before the date, as may be prescribed.

Report from an accountant to be furnished by persons entering into international transaction or specified domestic transaction.

92E. 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 and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.

Definitions of certain terms relevant to computation of arm's length price, etc.

92F. In sections 92, 92A, 92B, 92C, 92D and 92E, unless the context otherwise requires,—

(i) `"accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

(ii) "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;

(iii) "enterprise" means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights, or the provision of services of any kind, or in carrying out any work in pursuance of a contract, or in investment, or providing loan or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, whether such activity or business is carried on, directly or through one

or more of its units or divisions or subsidiaries, or whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or places;

(iiia) "permanent establishment", referred to in clause (iii), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;

(iv) "specified date" shall have the same meaning as assigned to "due date" in Explanation 2 below sub-section (1) of section 139;

(v) "transaction" includes an arrangement, understanding or action in concert,—

(A) whether or not such arrangement, understanding or action is formal or in writing; or

(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.

Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions.

271AA. (1) Without prejudice to the provisions of section 270A or section 271 or section 271BA, if any person in respect of an international transaction or specified domestic transaction,—

(i) fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D;

(ii) fails to report such transaction which he is required to do so; or

(iii) maintains or furnishes an incorrect information or document,

the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of each international transaction or specified domestic transaction entered into by such person.

(2) If any person fails to furnish the information and the document as required under sub-section (4) of section 92D, the prescribed income-tax authority referred to in the said sub-section may direct that such person shall pay, by way of penalty, a sum of five hundred thousand rupees.

PENALTY FOR FAILURE TO FURNISH REPORT UNDER SECTION 92E.

271BA. If any person fails to furnish a report from an accountant as required by section 92E, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of one hundred thousand rupees.

Penalty for failure to furnish information or document under section 92D.

271G. If any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by sub-section (3) of section 92D, the Assessing Officer or the Transfer Pricing Officer as referred to in section 92CA or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of the international transaction or specified domestic transaction for each such failure.

Penalty for failure to furnish report or for furnishing inaccurate report under section 286.

271GB. (1) If any reporting entity referred to in section 286, which is required to furnish the report referred to in sub-section (2) of the said section, in respect of a reporting accounting year, fails to do so, the authority prescribed under that section (herein referred to as prescribed authority) may direct that such entity shall pay, by way of penalty, a sum of,—

(a) five thousand rupees for every day for which the failure continues, if the period of failure does not exceed one month; or

(b) fifteen thousand rupees for every day for which the failure continues beyond the period of one month.

(2) Where any reporting entity referred to in section 286 fails to produce the information and documents within the period allowed under sub-section (6) of the said section, the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of five thousand rupees for every day during which the failure continues, beginning from the day immediately following the day on which the period for furnishing the information and document expires.

(3) If the failure referred to in sub-section (1) or sub-section (2) continues after an order has been served on the entity, directing

it to pay the penalty under sub-section (1) or, as the case may be, under sub-section (2), then, notwithstanding anything contained in sub-section (1) or sub-section (2), the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of fifty thousand rupees for every day for which such failure continues beginning from the date of service of such order.

(4) Where a reporting entity referred to in section 286 provides inaccurate information in the report furnished in accordance with sub-section (2) of the said section and where—

(a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority; or

(b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or

(c) the entity furnishes inaccurate information or document in response to the notice issued under sub-section (6) of section 286,

then, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of five lakh rupees.

Furnishing of report in respect of international group.

286. (1) Every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority (herein referred to as prescribed authority) in the form and manner, on or before such date, as may be prescribed,—

(a) whether it is the alternate reporting entity of the international group; or

(b) the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

(2) Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of twelve months from the end of the said reporting accounting year.

(3) For the purposes of sub-section (2) and sub-sections(4), the report in respect of an international group shall include,—

(a) the aggregate information in respect of the amount of revenue, profit or loss before income-tax, amount of income-tax paid, amount of income-tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates;

(b) the details of each constituent entity of the group including the country or territory in which such constituent entity is incorporated or organised or established and the country or territory where it is resident;

(c) the nature and details of the main business activity or activities of each constituent entity; and

(d) any other information as may be prescribed.

(4) A constituent entity of an international group, resident in India, other than the entity referred to in sub-section (2), shall furnish the report referred to in the said sub-section, in respect of the international group for a reporting accounting year within the period specified in that sub-section, if the parent entity is resident of a country or territory,—

(aa)with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2); or

(a) Where the parent entity is not obligated to file the report of the nature referred to in sub-section(2);

(b) there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity:

Provided that where there are more than one such constituent entities of the group, resident in India, the report shall be furnished by any one constituent entity, if,—

(a) the international group has designated such entity to furnish the report in accordance with the provisions of sub-section (2) on behalf of all the constituent entities resident in India; and

(b) the information has been conveyed in writing on behalf of the group to the prescribed authority.

(5) Nothing contained in sub-section (4) shall apply, if, an alternate reporting entity of the international group has furnished a report of the nature referred to in sub-section (2), with the tax authority of the country or territory in which such entity is

resident, on or before the date specified in that country or teritory and the following conditions are satisfied, namely:—

(a) the report is required to be furnished under the law for the time being in force in the said country or territory;

(b) the said country or territory has entered into an agreement with India providing for exchange of the said report;

(c) the prescribed authority has not conveyed any systemic failure in respect of the said country or territory to any constituent entity of the group that is resident in India;

(d) the said country or territory has been informed in writing by the constituent entity that it is the alternate reporting entity on behalf of the international group; and

(e) the prescribed authority has been informed by the entity referred to in sub-section (4) in accordance with sub-section (1).

(6) The prescribed authority may, for the purposes of determining the accuracy of the report furnished by any reporting entity, by issue of a notice in writing, require the entity to produce such information and document as may be specified in the notice within thirty days of the date of receipt of the notice:

Provided that the prescribed authority may, on an application made by such entity, extend the period of thirty days by a further period not exceeding thirty days.

(7) The provisions of this section shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed the amount, as may be prescribed.

(8) The provisions of this section shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed.

(9) For the purposes of this section,—

(a) "accounting year" means,—

(i) a previous year, in a case where the parent entity or alternate reporting entity is resident in India; or

(ii) an annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being

in force or the applicable accounting standards of the country or territory of which such entity is resident, in any other case;

(b) "agreement" means a combination of all of the following agreements, namely:-

(i) an agreement entered into under sub-section (1) of section 90 or sub-section (i) of section 90A; and

(ii) an agreement for exchange of the report referred to in sub-sections (2) and (4) and notified by the central Government;

(c) "alternate reporting entity" means any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in sub-section (2) in the country or territory in which the said constituent entity is resident on behalf of such group;

(d) "constituent entity" means,—

(i) any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange;

(ii) any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or

(iii) any permanent establishment of any separate business entity of the international group included in sub-clause (i) or sub-clause (ii), if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;

(e) "group" includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes,—

(i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or

(ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident;

(f) "consolidated financial statement" means the financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity;

(g) "international group" means any group that includes,—

(i) two or more enterprises which are resident of different countries or territories; or

(ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories;

(h) "parent entity" means a constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group, such that,—

(i) it is required to prepare a consolidated financial statement under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident; or

(ii) it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange,

and, there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a consolidated financial statement, under the circumstances referred to in *clause (i) or *clause (ii), that includes the separate financial statement of the first mentioned constituent entity;

(i) "permanent establishment" shall have the meaning assigned to it in clause (iiia) of section 92F;

(j) "reporting accounting year" means the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-sections (2) and (4);

(k) "reporting entity" means the constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report of the nature referred to in sub-section (2);

(l) "systemic failure" with respect to a country or territory means that the country or territory has an agreement with India providing for exchange of report of the nature referred to in sub-

section (2), but—

(i) in violation of the said agreement, it has suspended automatic exchange; or

(ii) has persistently failed to automatically provide to India the report in its possession in respect of any international group having a constituent entity resident in India.

ANNEXURE-2

RELEVANT PROVISIONS OF THE INCOME TAX RULES, 1962

MEANING OF EXPRESSIONS USED IN COMPUTATION OF ARM'S LENGTH PRICE.

10A. For the purposes of this rule and rules 10AB to 10E,—

(a) "associated enterprise" shall,—

(i) have the same meaning as assigned to it in section 92A; and

(ii) in relation to a specified domestic transaction entered into by an assessee, include —

(A) the persons referred to in clause (b) of sub-section (2) of section 40A in respect of a transaction referred to in clause (a) of sub-section (2) of the said section;

(B) other units or undertakings or businesses of such assessee in respect of a transaction referred to in section 80A or, as the case may be, sub-section (8) of section 80-IA;

(C) any other person referred to in sub-section (10) of section 80-IA in respect of a transaction referred to therein;

(D) other units, undertakings, enterprises or business of such assessee, or other person referred to in sub-section (10) of section 80-IA, as the case may be, in respect of a transaction referred to in section 10AA or the transactions referred to in Chapter VI-A to which the provisions of sub-section (8) or, as the case may be, the provisions of sub-section (10) of section 80-IA are applicable;

(aa) "enterprise" shall have the same meaning as assigned to it in clause (iii) of section 92F and shall, for the purposes of a specified domestic transaction, include a unit, or an enterprise, or an undertaking or a business of a person who undertakes such transaction;

(ab) "uncontrolled transaction" means a transaction between enterprises other than associated enterprises, whether resident or non-resident;

(b) "property" includes goods, articles or things, and intangible property;

(c) "services" include financial services;

(d) "transaction" includes a number of closely linked transactions.

OTHER METHOD OF DETERMINATION OF ARM'S LENGTH PRICE.

10AB. For the purposes of clause (f) of sub-section (1) of section 92C, the other method for determination of the arm's length price in relation to an international transaction or a specified domestic transaction]shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

DETERMINATION OF ARM'S LENGTH PRICE UNDER SECTION 92C.

10B. (1) For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction or a specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, in the following manner, namely :—

(a) comparable uncontrolled price method, by which,—

(i) the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of such transactions, is identified;

(ii) such price is adjusted to account for differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market;

(iii) the adjusted price arrived at under sub-clause (ii) is taken to be an arm's length price in respect of the property transferred or services provided in the international transaction or the specified domestic transaction;

(b) resale price method, by which,—

(i) the price at which property purchased or services obtained by the enterprise from an associated enterprise

is resold or are provided to an unrelated enterprise, is identified;

(ii) such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;

(iii) the price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;

(iv) the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;

(v) the adjusted price arrived at under sub-clause (iv) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise;

(c) cost plus method, by which,—

(i) the direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise, are determined;

(ii) the amount of a normal gross profit mark-up to such costs (computed according to the same accounting norms) arising from the transfer or provision of the same or similar property or services by the enterprise, or by an unrelated enterprise, in a comparable uncontrolled transaction, or a number of such transactions, is determined;

(iii) the normal gross profit mark-up referred to in sub-clause (ii) is adjusted to take into account the functional and other differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect such profit mark-up in the open market;

(iv) the costs referred to in sub-clause (i) are increased by the adjusted profit mark-up arrived at under sub-clause (iii);

(v) the sum so arrived at is taken to be an arm's length price in relation to the supply of the property or provision of services by the enterprise;

(d) profit split method, which may be applicable mainly in international transactions or specified domestic transactions involving transfer of unique intangibles or in multiple international transactions or specified domestic transactions which are so interrelated that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction, by which—

(i) the combined net profit of the associated enterprises arising from the international transaction or the specified domestic transaction in which they are engaged, is determined;

(ii) the relative contribution made by each of the associated enterprises to the earning of such combined net profit, is then evaluated on the basis of the functions performed, assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances;

(iii) the combined net profit is then split amongst the enterprises in proportion to their relative contributions, as evaluated under sub-clause (ii);

(iv) the profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction or the specified domestic transaction:

Provided that the combined net profit referred to in sub-clause (i) may, in the first instance, be partially allocated to each enterprise so as to provide it with a basic return appropriate for the type of international transaction or specified domestic transaction in which it is engaged, with reference to market returns achieved for similar types of transactions by independent enterprises, and thereafter, the residual net profit remaining after such allocation may be split amongst the enterprises in proportion to their relative contribution in the manner specified under sub-clauses (ii) and (iii), and in such a case the aggregate of the net profit allocated to the enterprise in the first instance together with the residual net profit apportioned to that enterprise on the basis of

its relative contribution shall be taken to be the net profit arising to that enterprise from the international transaction or the specified domestic transaction;

(e) transactional net margin method, by which,—

(i) the net profit margin realised by the enterprise from an international transaction or a specified domestic transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;

(ii) the net profit margin realized by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;

(iii) the net profit margin referred to in sub-clause (ii) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;

(iv) the net profit margin realized by the enterprise and referred to in sub-clause (i) is established to be the same as the net profit margin referred to in sub-clause (iii);

(v) the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction or the specified domestic transaction;

(f) any other method as provided in rule 10AB.

(2) For the purposes of sub-rule (1), the comparability of an international transaction or a specified domestic transaction with an uncontrolled transaction shall be judged with reference to the following, namely:—

(a) the specific characteristics of the property transferred or services provided in either transaction;

(b) the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions;

(c) the contractual terms (whether or not such terms are

formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;

(d) conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

(3) An uncontrolled transaction shall be comparable to an international transaction or a specified domestic transaction if—

(i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or

(ii) reasonably accurate adjustments can be made to eliminate the material effects of such differences.

(4) The data to be used in analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction shall be the data relating to the financial year in which the international transaction or the specified domestic transaction has been entered into :

Provided that data relating to a period not being more than two years prior to such financial year may also be considered if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared.

Provided further that the first proviso shall not apply while analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction, entered into or after the 1st day of April, 2014.

MOST APPROPRIATE METHOD.

10C. (1) For the purposes of sub-section (1) of section 92C, the most appropriate method shall be the method which is best suited to the facts and circumstances of each particular international transaction or specified domestic transaction, and which provides the most reliable measure of an arm's length

price in relation to the international transaction or the specified domestic transaction, as the case may be.

(2) In selecting the most appropriate method as specified in sub-rule (1), the following factors shall be taken into account, namely:—

(a) the nature and class of the international transaction or the specified domestic transaction;

(b) the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises;

(c) the availability, coverage and reliability of data necessary for application of the method;

(d) the degree of comparability existing between the international transaction or the specified domestic transaction and the uncontrolled transaction and between the enterprises entering into such transactions;

(e) the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions;

(f) the nature, extent and reliability of assumptions required to be made in application of a method.

COMPUTATION OF ARM'S LENGTH PRICE IN CERTAIN CASES.

10CA. (1) Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in sub-section (1) of section 92C results in determination of more than one price, then the arm's length price in respect of such international transaction or specified domestic transaction shall be computed in accordance with the provisions of this rule.

(2) A dataset shall be constructed by placing the prices referred to in sub-rule (1) in an ascending order and the arm's length price shall be determined on the basis of the dataset so constructed:

Provided that in a case referred to in clause (i) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of data relating to the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or

the specified domestic transaction referred to in sub-rule (1)], has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then,—

(i) the most appropriate method used to determine the price of the comparable uncontrolled transaction or transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the current year and in the aforesaid period preceding it shall be included in the dataset instead of the price referred to in sub-rule (1):

Provided further that in a case referred to in clause (ii) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of the data relating to the financial year immediately preceding the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in the financial year immediately preceding the said financial year undertaken the same or similar comparable uncontrolled transaction then,—

(i) the price in respect of such uncontrolled transaction shall be determined by applying the most appropriate method in a similar manner as it was applied to determine the price of the comparable uncontrolled transaction undertaken in the financial year immediately preceding the current year; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the aforesaid period of two years shall be included in the dataset instead of the price referred to in sub-rule (1) :

Provided also that where the use of data relating to the current year in terms of the proviso to sub-rule (5) of rule 10B establishes that,—

(i) the enterprise has not undertaken same or similar uncontrolled transaction during the current year; or

(ii) the uncontrolled transaction undertaken by an enterprise in the current year is not a comparable uncontrolled transaction,

then, irrespective of the fact that such an enterprise had undertaken comparable uncontrolled transaction in the financial year immediately preceding the current year or the financial year immediately preceding such financial year, the price of comparable uncontrolled transaction or the weighted average of the prices of the uncontrolled transactions, as the case may be, undertaken by such enterprise shall not be included in the dataset.

(3) Where an enterprise has undertaken comparable uncontrolled transactions in more than one financial year, then for the purposes of sub-rule (2) the weighted average of the prices of such transactions shall be computed in the following manner, namely:—

(i) where the prices have been determined using the method referred to in clause (b) of sub-rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of sales which has been considered for arriving at the respective prices;

(ii) where the prices have been determined using the method referred to in clause (c) of sub-rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs which has been considered for arriving at the respective prices;

(iii) where the prices have been determined using the method referred to in clause (e) of sub- rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs incurred or sales effected or assets employed or to be employed, or as the case may be, any other base which has been considered for arriving at the respective prices.

(4) Where the most appropriate method applied is a method other than the method referred to in clause (d) or clause (f) of sub-section (1) of section 92C and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule (5) and sub-rule (6).

(5) If the price at which the international transaction or the

specified domestic transaction has actually been undertaken is within the range referred to in sub-rule (4), then, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(6) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the arm's length range referred to in sub-rule (4), the arm's length price shall be taken to be the median of the dataset.

(7) In a case where the provisions of sub-rule (4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset:

Provided that, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(8) For the purposes of this rule,—

(a) "the thirty-fifth percentile" of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least thirty five per cent of the values included in the dataset are equal to or less than such value:

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the thirty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(b) "the sixty-fifth percentile" of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least sixty five per cent of the values included in the dataset are equal to or less than such value:

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the sixty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(c) "the median" of the dataset, having values arranged in an

ascending order, shall be the lowest value in the dataset such that at least fifty per cent of the values included in the dataset are equal to or less than such value:

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the median shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.

Illustration 1.— The data for the current year of the comparable uncontrolled transactions or the entities undertaking such transactions is available at the time of furnishing return of income by the assessee and based on the same, seven enterprises have been identified to have undertaken the comparable uncontrolled transaction in the current year. All the identified comparable enterprises have also undertaken comparable uncontrolled transactions in a period of two years preceding the current year. The Profit level Indicator (PLI) used in applying the most appropriate method is operating profit as compared to operating cost (OP/OC). The weighted average shall be based upon the weight of OC as computed below :

Sl. No.	Name	Year 1	Year 2	Year 3 [Current Year]	Aggregation of OC and OP	Weighted Average
1	2	3	4	5	6	7
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	B	OC = 80 OP = 10	OC = 125 OP = 5	OC = 100 OP = 10	Total OC = 305 Total OP = 25	OP/OC = 8.2%
3	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%
4	D	OC = 180 OP = (-)9	OC = 220 OP = 22	OC = 150 OP = 20	Total OC = 550 Total OP = 33	OP/OC = 6%
5	E	OC = 140 OP = 21	OC = 100 OP = (-)8	OC = 125 OP = (-)5	Total OC = 365 Total OP = 8	OP/OC = 2.2%
6	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9%
7	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%

From the above, the dataset will be constructed as follows :

Sl. No.	1	2	3	4	5	6	7
Values	2.2%	6%	8.2%	9%	10.57%	11.9%	12%

For construction of the arm's length range the data place of thirty-fifth and sixty-fifth percentile shall be computed in the following

manner, namely:

Total no. of data points in dataset *(35/100)

Total no. of data points in dataset *(65/100)

Thus, the data place of the thirty-fifth percentile = 7*0.35=2.45.

Since this is not a whole number, the next higher data place, i.e. the value at the third place would have at least thirty five per cent of the values below it. The thirty-fifth percentile is therefore value at the third place, i.e. 8.2%.

The data place of the sixty-fifth percentile is = 7*0.65=4.55.

Since this is not a whole number, the next higher data place, i.e. the value at the fifth place would have at least sixty five per cent of the values below it. The sixty-fifth percentile is therefore value at fifth place, i.e. 10.57%.

The arm's length range will be beginning at 8.2% and ending at 10.57%.

Therefore, if the transaction price of the international transaction or the specified domestic transaction has OP/OC percentage which is equal to or more than 8.2% and less than or equal to 10.57%, it is within the range. The transaction price in such cases will be deemed to be the arm's length price and no adjustment shall be required. However, if the transaction price is outside the arm's length range, say 6.2%, then for the purpose of determining the arm's length price the median of the dataset shall be first determined in the following manner:

The data place of median is calculated by first computing the total number of data point in the dataset * (50/100). In this case it is 7*0.5=3.5.

Since this is not a whole number, the next higher data place, i.e. the value at the fourth place would have at least fifty per cent of the values below it (median).

The median is the value at fourth place, i.e., 9%. Therefore, the arm's length price shall be considered as 9% and adjustment shall accordingly be made.

Illustration 2.—The data of the current year is available in respect of enterprises A, C, E, F and G at the time of furnishing the return of income by the assessee and the data of the financial year preceding the current year has been used to identify

comparable uncontrolled transactions undertaken by entrprises B and D. Further, if the enterprises have also undertaken comparable uncontrolled transactions in earlier years as detailed in the table, the weighted average and dataset shall be computed as below:

Sl. No.	Name	Year 1	Year 2	Year 3 [Current Year]	Aggregation of OC and OP	Weighted Average
1	2	3	4	5	6	7
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	B	OC = 80 OP = 10	OC = 125 OP = 5		Total OC = 205 Total OP = 15	OP/OC = 7.31%
3	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%
4	D		OC = 220 OP = 22		Total OC = 220 Total OP = 22	OP/OC = 10%
5	E			OC = 100 OP = (-)5	Total OC = 100 Total OP = (-)5	OP/OC = (-)5%
6	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9%
7	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%

From the above, the dataset will be constructed as follows :

Sl. No.	1	2	3	4	5	6	7
Values	(-)5%	9%	9.56%	10.57%	11.35%	11.9%	12%

Illustration 3.— In a given case the dataset of 20 prices arranged in ascending order is as under :

Sl. No.	Profits (in Rs. Thousand)
1	2
1	42.00
2	43.00
3	44.00
4	44.50
5	45.00
6	45.25
7	47.00
8	48.00
9	48.15

10	48.35
11	48.45
12	48.48
13	48.50
14	49.00
15	49.10
16	49.35
17	49.50
18	49.75
19	50.00
20	50.15

Applying the formula given in the Illustration 1, the data place of the thirty-fifth and sixty-fifty percentile is determined as follows:

Thirty-fifth percentile place = 20* (35/100) = 7.

Sixty-fifth percentile place = 20* (65/100) = 13.

Since the thirty-fifth percentile place is a whole number, it shall be the average of the prices at the seventh and next higher, i.e.; eighth place. This is (47+48)/2 = Rs.47,500.

Similarly, the sixty-fifth percentile will be average of thirteenth and fourteenth place prices. This is (48.5+49)/2=Rs.48,750

The median of the range (the fiftieth percentile place) = 20*(50/100)=10

Since the fiftieth percentile place is a whole number, it shall be the average of the prices at the tenth and next higher, i.e.; eleventh place. This is (48.35+48.45)/2= Rs.48,400.

Thus, the arm's length range in this case shall be from Rs.47,500 to Rs.48,750.

Consequently, any transaction price which is equal to or more than Rs.47,500 but less than or equal to Rs.48,750 shall be considered to be within the arm's length range.

COMPUTATION OF INTEREST INCOME PURSUANT TO SECONDARY ADJUSTMENT

10CB (1) For the purposes of sub- section (2) of section 92CE of the Act, the time limit for repatriation of excess money shall be on or before ninety days ,—

(i) from the due date of filing of return under sub-section (1) of section 139 of the Act where primary adjustments to transfer price has been made suo-moto by the assessee in his return of income;

(ii) from the date of the order of Assessing Officer or the appellate authority, as the case may be, if the primary adjustments to transfer price as determined in the aforesaid order has been accepted by the assessee;

(iii) from the due date of filing of return under sub-section (1) of section 139 of the Act in the case of agreement for advance pricing entered into by the assessee under section 92CD ;

(iv) from the due date of filing of return under sub-section (1) section 139 of the Act in the case of option exercised by the assessee as per the safe harbour rules under section 92CB;or

(v) from the due date of filing of return under sub-section (1) section 139 of the Act in the case of an agreement made under the mutual agreement procedure under a Double Taxation Avoidance Agreement entered into under section 90 or 90A;

(2) The imputed per annum interest income on excess money which is not repatriated within the time limit as per sub-section (1) of section 92CE of the Act shall be computed,—

(i) at the one year marginal cost of fund lending rate of State Bank of India as on 1st of April of the relevant previous year plus three hundred twenty five basis points in the cases where the international transaction is denominated in Indian rupee; or

(ii) at six month London Interbank Offered Rate as on 30th September of the relevant previous year plus three hundred basis points in the cases where the international transaction is denominated in foreign currency.

Explanation- For the purposes of this rule "International transaction" shall have the meaning assigned to it in section 92B of the Act.'

INFORMATION AND DOCUMENTS TO BE KEPT AND MAINTAINED UNDER SECTION 92D .

10D. (1) Every person who has entered into an international transaction or a specified domestic transaction shall keep and

maintain the following information and documents, namely:—

(a) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;

(b) a profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions or specified domestic transactions, as the case may be, have been entered into by the assessee, and ownership linkages among them;

(c) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;

(d) the nature and terms (including prices) of international transactions or specified domestic transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction;

(e) a description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction or the specified domestic transaction ;

(f) a record of the economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transactions or the specified domestic transactions entered into by the assessee;

(g) a record of uncontrolled transactions taken into account for analysing their comparability with the international transactions or the specified domestic transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions or specified domestic transactions, as the case may be ;

(h) a record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction or specified domestic transaction ;

(i) a description of the methods considered for determining the arm's length price in relation to each international transaction or specified domestic transaction or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case;

(j) a record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions;

(k) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price;

(l) details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes;

(m) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

(2) Nothing contained in sub-rule (1), in so far as it relates to an international transaction, shall apply in a case where the aggregate value, as recorded in the books of account, of international transactions entered into by the assessee does not exceed one crore rupees :

Provided that the assessee shall be required to substantiate, on the basis of material available with him, that income arising from international transactions entered into by him has been computed in accordance with section 92.

(2A) Nothing contained in sub-rule (1), in so far as it relates to an eligible specified domestic transaction referred to in rule 10THB, shall apply in a case of an eligible assessee referred to in rule 10THA and, the said eligible assessee, shall keep and maintain the following information and documents, namely :—

(i) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;

(ii) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;

(iii) the nature and terms (including prices) of specified domestic transactions entered into with each associated enterprise and the quantum and the value of each such transaction or class of such transaction;

(iv) a record of proceedings if any before the regulatory commission and orders of such commission relating to the specified domestic transaction;

(v) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;

(vi) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price;

(vii) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the transfer price.]

(3) The information specified in sub-rules (1) and (2A] shall be supported by authentic documents, which may include the following :

(a) official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise, or of any other country;

(b) reports of market research studies carried out and technical publications brought out by institutions of national or international repute;

(c) price publications including stock exchange and commodity market quotations;

(d) published accounts and financial statements relating to the business affairs of the associated enterprises;

(e) agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions or the specified domestic transactions, as the case may be;

(f) letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;

(g) documents normally issued in connection with various transactions under the accounting practices followed.

(4) The information and documents specified under sub-rules (1), (2) and (2A), should, as far as possible, be contemporaneous and should exist latest by the specified date referred to in clause (iv) of section 92F:

Provided that where an international transaction or a specified domestic transaction continues to have effect over more than one previous year, fresh documentation need not be maintained separately in respect of each previous year, unless there is any significant change in the nature or terms of the international transaction or the specified domestic transaction, as the case may be, in the assumptions made, or in any other factor which could influence the transfer price, and in the case of such significant change, fresh documentation as may be necessary under sub-rules (1), (2) and (2A) shall be maintained bringing out the impact of the change on the pricing of the international transaction or the specified domestic transaction.

(5) The information and documents specified in sub-rules (1), (2) and (2A) shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

INFORMATION AND DOCUMENTS TO BE KEPT AND MAINTAINED UNDER PROVISO TO SUB-SECTION (1) OF SECTION 92D AND TO BE FURNISHED IN TERMS OF SUB-SECTION (4) OF SECTION 92D.

10DA. (1) Every person, being a constituent entity of an international group shall,—

(i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds five hundred crore rupees; and

(ii) the aggregate value of international transactions,—

(A) during the accounting year, as per the books of account, exceeds fifty crore rupees, or

(B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ten crore rupees,

keep and maintain the following information and documents of the international group, namely:—

(a) a list of all entities of the international group along with their addresses;

(b) a chart depicting the legal status of the constituent entity and ownership structure of the entire international group;

(c) a description of the business of international group during the accounting year including,—

(I) the nature of the business or businesses;

(II) the important drivers of profits of such business or businesses;

(III) a description of the supply chain for the five largest products or services of the international group in terms of revenue and any other products including services amounting to more than five per cent of consolidated group revenue;

(IV) a list and brief description of important service arrangements made among members of the international group, other than those for research and development services;

(V) a description of the capabilities of the main service providers within the international group;

(VI) details about the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services;

(VII) a list and description of the major geographical markets for the products and services offered by the international group;

(VIII) a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent of the revenues or assets or profits of such group; and

(IX) a description of the important business restructuring transactions, acquisitions and divestments;

(d) a description of the overall strategy of the international group for the development, ownership and exploitation of intangible property, in cluding location of principal research and development facilities and their management;

(e) a list of all entities of the international group engaged in development and management of intangible property along with their addresses;

(f) a list of all the important intangible property or groups of intangible property owned by the international group along with the names and addresses of the group entities that legally own such intangible property;

(g) a list and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements;

(h) a detailed description of the transfer pricing policies of the international group related to research and development and intangible property;

(i) a description of important transfers of interest in intangible property, if any, among entities of the international group, including the name and address of the selling and buying entities and the compensation paid for such transfers;

(j) a detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders;

(k) a list of group entities that provide central financing functions, including their place of operation and of effective management;

(l) a detailed description of the transfer pricing policies of the international group related to financing arrangements among group entities;

(m) a copy of the annual consolidated financial statement of the international group; and

(n) a list and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries.

(2) The report of the information referred to in sub-rule (1) shall be in Form No. 3CEAA and it shall be furnished to the Director General of Income-tax (Risk Assessment) on or before the due date for furnishing the return of income as specified in sub-section (1) of section 139:

Provided that the information in Form No.3CEAA for the accounting year 2016-17 may be furnished at any time on or

before the 31st day of March, 2018.

(3) Information in,—

(i) Part A of Form No. 3CEAA shall be furnished by every person, being a constituent entity of an international group, whether or not the conditions as provided in sub-rule (1) are satisfied;

(ii) Part B of Form No. 3CEAA shall be furnished by a person, being a constituent entity of an international group, in those cases where the conditions as provided in sub-rule (1) are satisfied.

(4) Where there are more than one constituent entities resident in India of an international group, then the report referred to in sub-rule (2) or information referred to in clause (i) of sub-rule (3),as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity to the Director General of Income-tax (Risk Assessment) in Form 3CEAB.

(5) The intimation referred to in sub-rule (4) shall be made at least thirty days before the due date of filing the report as specified under sub-rule (2).

(6) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAA and Form No. 3CEAB and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

(7) The information and documents specified in sub-rule (1) shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

(8) The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year.

Explanation.— For the purposes of this rule,—

(A) "telegraphic transfer buying rate" shall have the same meaning as assigned in the Explanation to rule 26;

(B) the terms 'accounting year', 'consolidated financial statement' and 'international group' shall have the same meaning as assigned in sub-section (9) of section 286.]

FURNISHING OF REPORT IN RESPECT OF AN INTERNATIONAL GROUP

10DB. (1) For the purposes of sub-section (1) of section 286, every constituent entity resident in India, shall, if its parent entity is not resident in India, intimate the Director General of Income-tax (Risk Assessment) in Form No. 3CEAC, the following, namely:-

(a) whether it is the alternate reporting entity of the international group; or

(b) the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.

(2) Every intimation under sub-rule (1) shall be made at least two months prior to the due date for furnishing of report as specified under sub-section (2) of section 286.

(3) Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall, for every reporting accounting year, furnish the report referred to in sub-section (2) of section 286 to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAD.

(4) A constituent entity of an international group, resident in India, other than the entity referred to in sub-rule (3), shall furnish the report referred to in sub-rule (3) within the time specified therein if the provisions of sub-section (4) of section 286 are applicable in its case.

(5) If there are more than one constituent entities resident in India of an international group, other than the entity referred to in sub-rule (3), then the report referred to in sub-rule (4) may be furnished by that entity which has been designated by the international group to furnish the said report and the same has been intimated to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAE.

(6) For the purposes of sub-section (7) of section 286, the total consolidated group revenue of the international group shall be five thousand five hundred crore rupees.

(7) Where the total consolidated group revenue of the international group, as reflected in the consolidated financial

statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year.

(8) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAC, Form No. 3CEAD and Form No. 3CEAE and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

Explanation.- For the purposes of this rule,-

(A) "telegraphic transfer buying rate" shall have the same meaning as assigned in the Explanation to rule 26;

(B) the terms 'accounting year', 'alternate reporting entity', 'consolidated financial statement', 'international group' and 'reporting accounting year' shall have the same meaning as assigned in sub-section (9) of section 286."

REPORT FROM AN ACCOUNTANT TO BE FURNISHED UNDER SECTION 92E.

10E. The report from an accountant required to be furnished under section 92E by every person who has entered into an international transaction or a specified domestic transaction during a previous year shall be in Form No. 3CEB and be verified in the manner indicated therein.

MEANING OF EXPRESSIONS USED IN MATTERS IN RESPECT OF ADVANCE PRICING AGREEMENT .

10F . For the purposes of this rule and rules 10G to 10T,—

(a) "agreement" means an advance pricing agreement entered into between the Board and the applicant, with the approval of the Central Government, as referred to in sub-section (1) of section 92CC of the Act;

(b) "application" means an application for advance pricing agreement made under rule 10-I;

(ba) "applicant" means a person who has made an application;

(c) "bilateral agreement" means an agreement between the Board and the applicant, subsequent to, and based on,

any agreement referred to in rule 44GA between the competent authority in India with the competent authority in the other country regarding the most appropriate transfer pricing method or the arms' length price;

(d) "competent authority in India" means an officer authorised by the Central Government for the purpose of discharging the functions as such for matters in respect of any agreement entered into under section 90 or 90A of the Act;

(e) "covered transaction" means the international transaction or transactions for which agreement has been entered into;

(f) "critical assumptions" means the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed;

(g) "most appropriate transfer pricing method" means any of the transfer pricing method, referred to in sub-section (1) of section 92C of the Act, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or function performed by such persons or such other relevant factors prescribed by the Board under rules 10B and 10C;

(h) "multilateral agreement" means an agreement between the Board and the applicant, subsequent to, and based on, any agreement referred to in rule 44GA between the competent authority in India with the competent authorities in the other countries regarding the most appropriate transfer pricing method or the arms' length price;

(ha) "rollback year" means any previous year, falling within the period not exceeding four previous years, preceding the first of the previous years referred to in sub-section (4) of section 92CC;

(i) "tax treaty" means an agreement under section 90, or section 90A of the Act for the avoidance of double taxation;

(j) "team" means advance pricing agreement team consisting of income-tax authorities as constituted by the Board and including such number of experts in economics, statistics, law or any other field as may be nominated by the Director General of Income-tax (International Taxation);

(k) "unilateral agreement" means an agreement between the Board and the applicant which is neither a bilateral nor multilateral agreement.

PERSONS ELIGIBLE TO APPLY.

10G. Any person who—

(i) has undertaken an international transaction; or

(ii) is contemplating to undertake an international transaction, shall be eligible to enter into an agreement under these rules.

PRE-FILING CONSULTATION .

10H . (1) Any person proposing to enter into an agreement under these rules may, by an application in writing, make a request for a pre-filing consultation.

(2) The request for pre-filing consultation shall be made in Form No. 3CEC to the Director General of Income-tax (International Taxation).

(3) On receipt of the request in Form No. 3CEC, the team shall hold pre-filing consultation with the person referred to in rule 10G.

(4) The competent authority in India or his representative shall be associated in pre-filing consultation involving bilateral or multilateral agreement.

(5) The pre-filing consultation shall, among other things,—

(i) determine the scope of the agreement;

(ii) identify transfer pricing issues;

(iii) determine the suitability of international transaction for the agreement;

(iv) discuss broad terms of the agreement.

(6) The pre-filing consultation shall—

(i) not bind the Board or the person to enter into an agreement or initiate the agreement process;

(ii) not be deemed to mean that the person has applied for entering into an agreement.

APPLICATION FOR ADVANCE PRICING AGREEMENT

10-I . (1) Any person, referred to in rule 10G may, if desires to enter into an agreement furnish an application in Form No. 3CED along with the requisite fee.

(2) The application shall be furnished to Director General of Income-tax (International Taxation) in case of unilateral agreement and to the competent authority in India in case of bilateral or multilateral agreement.

(3) Application in Form No. 3CED may be filed by the person referred to in rule 10G at any time—

(i) before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or

(ii) before undertaking the transaction in respect of remaining transactions.

(4) Every application in Form No. 3CED shall be accompanied by the proof of payment of fees as specified in sub-rule (5).

(5) The fees payable shall be in accordance with following table based on the amount of international transaction entered into or proposed to be undertaken in respect of which the agreement is proposed:

Amount of international transaction entered into or proposed to be undertaken in respect of which agreement is proposed during the proposed period of agreement.	Fee
Amount not exceeding Rs. 100 crores	10 lacs
Amount not exceeding Rs. 200 crores	15 lacs
Amount exceeding Rs. 200 crores	20 lacs

WITHDRAWAL OF APPLICATION FOR AGREEMENT.

10J. (1) The applicant may withdraw the application for agreement at any time before the finalisation of the terms of the agreement.

(2) The application for withdrawal shall be in Form No. 3CEE.

(3) The fee paid shall not be refunded on withdrawal of application by the applicant.

PRELIMINARY PROCESSING OF APPLICATION .

10K . (1) Every application filed in Form No. 3CED shall be complete in all respects and accompanied by requisite documents.

(2) If any defect is noticed in the application in Form No. 3CED or if any relevant document is not attached thereto or the application is not in accordance with understanding reached in any pre-filing consultation referred to in rule 10H, the Director General of Income-tax (International Taxation) (for unilateral agreement) and competent authority in India (for bilateral or multilateral agreement) shall serve a deficiency letter on the applicant before the expiry of one month from the date of receipt of the application.

(3) The applicant shall remove the deficiency or modify the application within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf, may be extended, so however, that the total period of removal of deficiency or modification does not exceed thirty days.

(4) The Director General of Income-tax (International Taxation) or the competent authority in India, as the case may be, on being satisfied, may pass an order providing that application shall not be allowed to be proceeded with if the application is defective and defect is not removed by applicant in accordance with sub-rule (3).

(5) No order under sub-rule (4) shall be passed without providing an opportunity of being heard to the applicant and if an application is not allowed to be proceeded with, the fee paid by the applicant shall be refunded.

PROCEDURE.

10L. (1) If the application referred to in rule 10K has been allowed to be proceeded with, the team or the competent authority in India or his representative shall process the same in consultation and discussion with the applicant in accordance with provisions of this rule.

(2) For the purpose of sub-rule (1), it shall be competent for the team or the competent authority in India or its representative to—

(i) hold meetings with the applicant on such time and date as it deem fit;

(ii) call for additional document or information or material from the applicant;

(iii) visit the applicant's business premises; or

(iv) make such inquiries as it deems fit in the circumstances of the case.

(3) For the purpose of sub-rule (1), the applicant may, if he considers it necessary, provide further document and information for consideration of the team or the competent authority in India or his representative.

(4) For bilateral or multilateral agreement, the competent authority shall forward the application to Director General of Income-tax (International Taxation) who shall assign it to one of the teams.

(5) The team, to whom the application has been assigned under sub-rule (4), shall carry out the enquiry and prepare a draft report which shall be forwarded by the Director General of Income-tax (International Taxation) to the competent authority in India.

(6) If the applicant makes a request for bilateral or multilateral agreement in its application, the competent authority in India shall in addition to the procedure provided in this rule invoke the procedure provided in rule 44GA.

(7) The Director General of Income-tax (International Taxation) (for unilateral agreement) or the competent authority in India (for bilateral or multilateral agreement) and the applicant shall prepare a proposed mutually agreed draft agreement enumerating the result of the process referred to in sub-rule (1) including the effect of the arrangement referred to in sub-rule (5) of rule 44GA which has been accepted by the applicant in accordance with sub-rule (8) of the said rule.

(8) The agreement shall be entered into by the Board with the applicant after its approval by the Central Government.

(9) Once an agreement has been entered into the Director General of Income-tax (International Taxation) or the competent authority in India, as the case may be, shall cause a copy of the agreement to be sent to the Commissioner of Income-tax having jurisdiction over the assessee.

TERMS OF THE AGREEMENT .

10M. (1) An agreement may among other things, include—

(i) the international transactions covered by the agreement;

(ii) the agreed transfer pricing methodology, if any;

(iii) determination of arm's length price, if any;

(iv) definition of any relevant term to be used in item (ii) or (iii);

(v) critical assumptions;

(va)rollback provision referred to in rule 10MA;

(vi) the conditions if any other than provided in the Act or these rules.

(2) The agreement shall not be binding on the Board or the assessee if there is a change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into.

(3) The binding effect of agreement shall cease only if any party has given due notice of the concerned other party or parties.

(4) In case there is a change in any of the critical assumptions or failure to meet the conditions subject to which the agreement has been entered into, the agreement can be revised or cancelled, as the case may be.

(5) The assessee which has entered into an agreement shall give a notice in writing of such change in any of the critical assumptions or failure to meet conditions to the Director General of Income-tax (International Taxation) as soon as it is practicable to do so.

(6) The Board shall give a notice in writing of such change in critical assumptions or failure to meet conditions to the assessee, as soon as it comes to the knowledge of the Board.

(7) The revision or the cancellation of the agreement shall be in accordance with rules 10Q and 10R respectively.

ROLL BACK OF THE AGREEMENT.

10MA. (1) Subject to the provisions of this rule, the agreement may provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during the rollback year (hereinafter referred to as "rollback provision").

(2) The agreement shall contain rollback provision in respect of an international transaction subject to the following, namely:—

(i) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies;

(ii) the return of income for the relevant rollback year has been or is furnished by the applicant before the due date specified in Explanation 2 to sub-section (1) of section 139;

(iii) the report in respect of the international transaction had been furnished in accordance with section 92E;

(iv) the applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and

(v) the applicant has made an application seeking rollback in Form 3CEDA in accordance with sub-rule (5);

(3) Notwithstanding anything contained in sub-rule (2), rollback provision shall not be provided in respect of an international transaction for a rollback year, if,—

(i) the determination of arm's length price of the said international transaction for the said year has been subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement; or

(ii) the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year.

(4) Where the rollback provision specifies the manner in which arm's length price shall be determined in relation to an international transaction undertaken in any rollback year then such manner shall be the same as the manner which has been agreed to be provided for determination of arm's length price of the same international transaction to be undertaken in any previous year to which the agreement applies, not being a rollback year.

(5) The applicant may, if he desires to enter into an agreement with rollback provision, furnish along with the application, the request for the same in Form No. 3 CEDA with proof of payment of an additional fee of five lakh rupees:

Provided that in a case where an application has been filed on or before the 31st day of March, 2015, Form No.3CEDA along with proof of payment of additional fee may be filed at any time on or before the 30th day of June, 2015 or the date of entering into the agreement whichever is earlier:

Provided further that in a case where an agreement has been entered into on or before the 31st day of March, 2015, Form No.3CEDA along with proof of payment of additional fee may be filed at any time on or before the 30th day of June, 2015 and, notwithstanding anything contained in rule 10Q, the agreement

may be revised to provide for rollback provision in the said agreement in accordance with this rule.

AMENDMENTS TO APPLICATION.

10N. (1) An applicant may request in writing for an amendment to an application at any stage, before the finalisation of the terms of the agreement.

(2) The Director General of Income-tax (International Taxation) (for unilateral agreement) or the competent authority in India (for bilateral or multilateral agreement) may, allow the amendment to the application, if such an amendment does not have effect of altering the nature of the application as originally filed.

(3) The amendment shall be given effect only if it is accompanied by the additional fee, if any, necessitated by such amendment in accordance with fee as provided in rule 10-I.

FURNISHING OF ANNUAL COMPLIANCE REPORT.

10-O. (1) The assessee shall furnish an annual compliance report to Director General of Income-tax (International Taxation) for each year covered in the agreement.

(2) The annual compliance report shall be in Form 3CEF.

(3) The annual compliance report shall be furnished in quadruplicate, for each of the years covered in the agreement, within thirty days of the due date of filing the income-tax return for that year, or within ninety days of entering into an agreement, whichever is later.

(4) The Director General of Income-tax (International Taxation) shall send one copy of annual compliance report to the competent authority in India, one copy to the Commissioner of Income-tax who has the jurisdiction over the income-tax assessment of the assessee and one copy to the Transfer Pricing Officer having the jurisdiction over the assessee.

COMPLIANCE AUDIT OF THE AGREEMENT.

10P. (1) The Transfer Pricing Officer having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement.

(2) For the purposes of sub-rule (1), the Transfer Pricing Officer may require—

(i) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method;

(ii) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.

(3) The Transfer Pricing Officer shall submit the compliance audit report, for each year covered in the agreement, to the Director General of Income-tax (International Taxation) in case of unilateral agreement and to the competent authority in India, in case of bilateral or multilateral agreement, mentioning therein his findings as regards compliance by the assessee with terms of the agreement.

(4) The Director General of Income-tax (International Taxation) shall forward the report to the Board in a case where there is finding of failure on part of assessee to comply with terms of agreement and cancellation of the agreement is required.

(5) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report referred to in rule 10-O is received by the Transfer Pricing Officer.

(6) The regular audit of the covered transactions shall not be undertaken by the Transfer Pricing Officer if an agreement has been entered into under rule 10L except where the agreement has been cancelled under rule 10R.

REVISION OF AN AGREEMENT.

10Q. (1) An agreement, subsequent to it having been entered into, may be revised by the Board, if,—

(a) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;

(b) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding; or

(c) there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

(2) An agreement may be revised by the Board either suo motu or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation).

(3) Except when the agreement is proposed to be revised on the request of the assessee, the agreement shall not be revised unless an opportunity of being heard has been provided to the assessee and the assessee is in agreement with the proposed revision.

(4) In case the assessee is not in agreement with the proposed revision the agreement may be cancelled in accordance with rule 10R.

(5) In case the Board is not in agreement with the request of the assessee for revision of the agreement, the Board shall reject the request in writing giving reason for such rejection.

(6) For the purpose of arriving at the agreement for the proposed revision, the procedure provided in rule 10L may be followed so far as they apply.

(7) The revised agreement shall include the date till which the original agreement is to apply and the date from which the revised agreement is to apply.

CANCELLATION OF AN AGREEMENT .

10R. (1) An agreement shall be cancelled by the Board for any of the following reasons:

(i) the compliance audit referred to in rule 10P has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;

(ii) the assessee has failed to file the annual compliance report in time;

(iii) the annual compliance report furnished by the assessee contains material errors; or

(iv) the agreement is to be cancelled under sub-rule (4) of rule 10Q 1[or sub-rule (7) of rule 10RA].

(2) The Board shall give an opportunity of being heard to the assessee, before proceeding to cancel an application.

(3) The competent authority in India shall communicate with the competent authority in the other country or countries and provide reason for the proposed cancellation of the agreement in case of bilateral or multilateral agreement.

(4) The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation and for non-acceptance of assessee's submission, if any.

(5) The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.

(6) The order under the Act, declaring the agreement as void ab initio, on account of fraud or misrepresentation of facts, shall be in writing and shall provide reason for such declaration and for non-acceptance of assessee's submission, if any.

(7) The order of cancellation shall be intimated to the Assessing Officer and the Transfer Pricing Officer, having jurisdiction over the assessee.

PROCEDURE FOR GIVING EFFECT TO ROLLBACK PROVISION OF AN AGREEMENT.

10RA. (1) The effect to the rollback provisions of an agreement shall be given in accordance with this rule.

(2) The applicant shall furnish modified return of income referred to in section 92CD in respect of a rollback year to which the agreement applies along with the proof of payment of any additional tax arising as a consequence of and computed in accordance with the rollback provision.

(3) The modified return referred to in sub-rule(2) shall be furnished along with the modified return to be furnished in respect of first of the previous years for which the agreement has been requested for in the application.

(4) If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year.

(5) If any appeal filed by the Assessing Officer or the Principal Commissioner or Commissioner is pending before the Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the Assessing Officer or the Principal Commissioner or the Commissioner, as the case may be, within three months of filing of modified return by the applicant.

(6) The applicant, the Assessing Officer or the Principal Commissioner or the Commissioner, shall inform the Dispute Resolution Panel or the Commissioner (Appeals) or the Appellate Tribunal or the High Court, as the case may be, the fact of an agreement containing rollback provision having been entered into along with a copy of the same as soon as it is practicable to do so.

(7) In case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled.

RENEWING AN AGREEMENT.

10S. Request for renewal of an agreement may be made as a new application for agreement, using the same procedure as outlined in these rules except pre-filing consultation as referred to in rule 10H.

MISCELLANEOUS.

10T. (1) Mere filing of an application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into.

(2) The negotiation between the competent authority in India and the competent authority in the other country or countries, in case of bilateral or multilateral agreement, shall be carried out in accordance with the provisions of the tax treaty between India and the other country or countries.]

DEFINITIONS.

10TA. For the purposes of this rule and rule 10TB to rule 10TG,—

(a) "accountant" means an accountant referred to in the Explanation below sub-section (2) of section 288 of the Act and includes any person recognised for undertaking cost certification by the Government of the country where the associated enterprise is registered or incorporated or any of its agencies, who fulfils the following conditions, namely:—

(I) if he is a member or partner in any entity engaged in rendering accountancy or valuation services then,—

(i) the entity or its affiliates have presence in more than two countries; and

(ii) the annual receipt of the entity in the year preceding the year in which cost certification is undertaken exceeds ten crore rupees;

(II) if he is pursuing the profession of accountancy individually or is a valuer then,—

(i) his annual receipt in the year preceding the year in which cost certification is undertaken, from the exercise of profession, exceeds one crore rupees; and

(ii) he has professional experience of not less than ten years.

(aa) "contract research and development services wholly or partly relating to software development" means the following, namely:—

(i) research and development producing new theorems and algorithms in the field of theoretical computer science;

(ii) development of information technology at the level of operating systems, programming languages, data management, communications software and software development tools;

(iii) development of Internet technology;

(iv) research into methods of designing, developing, deploying or maintaining software;

(v) software development that produces advances in generic approaches for capturing, transmitting, storing, retrieving, manipulating or displaying information;

(vi) experimental development aimed at filling technology knowledge gaps as necessary to develop a software programme or system;

(vii) research and development on software tools or technologies in specialised areas of computing (image processing, geographic data presentation, character recognition, artificial intelligence and such other areas);or

(viii) upgradation of existing products where source code has been made available by the principal, except where the source code has been made available to carry out routine functions like debugging of the software;

(b) "core auto components" means,—

(i) engine and engine parts, including piston and piston rings, engine valves and parts cooling systems and parts and power train components;

(ii) transmission and steering parts, including gears, wheels, steering systems, axles and clutches;

(iii) suspension and braking parts, including brake and brake assemblies, brake linings, shock absorbers and leaf springs;

(c) "corporate guarantee" means explicit corporate guarantee extended by a company to its wholly owned subsidiary being a non-resident in respect of any short-term or long-term borrowing.

Explanation.—For the purposes of this clause, explicit corporate guarantee does not include letter of comfort, implicit corporate guarantee, performance guarantee or any other guarantee of similar nature;

(ca) "employee cost" includes,—

(i) salaries and wages;

(ii) gratuities;

(iii) contribution to Provident Fund and other funds;

(iv) the value of perquisites as specified in clause (2) of section 17 of the Act;

(v) employment related allowances, like medical allowance, dearness allowance, travel allowance and any other allowance;

(vi) bonus or commission by whatever name called;

(vii) lump sum payments received at the time of termination of service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

(viii) expenses incurred on contractual employment of persons performing tasks similar to those performed by the regular employees;

(ix) outsourcing expenses, to the extent of employee cost, wherever ascertainable, embedded in the total outsourcing expenses:

Provided that where the extent of employee cost embedded in the total outsourcing expenses is not ascertainable, eighty per cent of the total outsourcing expenses shall be deemed to be the employee cost embedded in the total outsourcing expenses;

(x) recruitment expenses;

(xi) relocation expenses;

(xii) training expenses;

(xiii) staff welfare expenses; and

(xiv) any other expenses related to employees or the employment;

(d) "generic pharmaceutical drug" means a drug that is comparable to a drug already approved by the regulatory authority in dosage form, strength, route of administration, quality and performance characteristics, and intended use;

(e) "information technology enabled services" means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:—

(i) back office operations;

(ii) call centres or contact centre services;

(iii) data processing and data mining;

(iv) insurance claim processing;

(v) legal databases;

(vi) creation and maintenance of medical transcription excluding medical advice;

(vii) translation services;

(viii) payroll;

(ix) remote maintenance;

(x) revenue accounting;

(xi) support centres;

(xii) website services;

(xiii) data search integration and analysis;

(xiv) remote education excluding education content development; or

(xv) clinical database management services excluding clinical trials, but does not include any research and development services whether or not in the nature of contract research and development services;

(f) "intra-group loan" means loan advanced to wholly owned subsidiary being a non-resident, where the loan—

(i) is sourced in Indian rupees;

(ii) is not advanced by an enterprise, being a financial company including a bank or a financial institution or an enterprise engaged in lending or borrowing in the normal course of business; and

(iii) does not include credit line or any other loan facility which has no fixed term for repayment;

(g) "knowledge process outsourcing services" means the following business process outsourcing services provided mainly with the assistance or use of information technology requiring application of knowledge and advanced analytical and technical skills, namely:—

(i) geographic information system;

(ii) human resources services;

(iii) engineering and design services;

(iv) animation or content development and management;

(v) business analytics;

(vi) financial analytics; or

(vii) market research,

but does not include any research and development services whether or not in the nature of contract research and development services;

(ga) "low value-adding intra-group services" means services that are performed by one or more members of a multinational enterprise group on behalf of one or more other members of the same multinational enterprise group and which,—

(i) are in the nature of support services;

(ii) are not part of the core business of the multinational enterprise group, i.e., such services neither constitute the profit-earning activities nor contribute to the economically significant activities of the multinational enterprise group;

(iii) are not in the nature of shareholder services or duplicate services;

(iv) neither require the use of unique and valuable intangibles nor lead to the creation of unique and valuable intangibles;

(v) neither involve the assumption or control of significant risk by the service provider nor give rise to the creation of significant risk for the service provider; and

(vi) do not have reliable external comparable services that can be used for determining their arm's length price, but does not include the following services, namely:—

(i) research and development services;

(ii) manufacturing and production services;

(iii) information technology (software development) services;

(iv) knowledge process outsourcing services;

(v) business process outsourcing services;

(vi) purchasing activities of raw materials or other materials that are used in the manufacturing or production process;

(vii) sales, marketing and distribution activities;

(viii) financial transactions;

(ix) extraction, exploration, or processing of natural resources; and

(x) insurance and reinsurance;

(h) "non-core auto components" mean auto components other than core auto components;

(i) "no tax or low tax country or territory" means a country or territory in which the maximum rate of income-tax is less than fifteen per cent;

(j) "operating expense" means the costs incurred in the previous year by the assessee in relation to the international transaction during the course of its normal operations including 6[costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee, reimbursement to associated enterprises of expenses incurred by the associated enterprises on behalf of the assessee, amounts recovered from associated enterprises on account of expenses incurred by the assessee on behalf of those associated enterprises and which relate to normal operations of the assessee and depreciation and amortisation expenses relating to the assets used by the assessee, but not including the following, namely:—

(i) interest expense;

(ii) provision for unascertained liabilities;

(iii) pre-operating expenses;

(iv) loss arising on account of foreign currency fluctuations;

(v) extraordinary expenses;

(vi) loss on transfer of assets or investments;

(vii) expense on account of income-tax; and

(viii) other expenses not relating to normal operations of the assessee:

Provided that reimbursement to associated enterprises of expenses incurred by the associated enterprises on behalf of the assessee shall be at cost:

Provided further that amounts recovered from associated enterprises on account of expenses incurred by the assessee on behalf of the associated enterprises and which relate to normal operations of the assessee shall be at cost;

(k) "operating revenue" means the revenue earned by the assessee in the previous year in relation to the international transaction during the course of its normal operations 8[including costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee] but not including the following, namely:—

(i) interest income;

(ii) income arising on account of foreign currency fluctuations;

(iii) income on transfer of assets or investments;

(iv) refunds relating to income-tax;

(v) provisions written back;

(vi) extraordinary incomes; and

(vii) other incomes not relating to normal operations of the assessee.

(l) "operating profit margin" in relation to operating expense means the ratio of operating profit, being the operating revenue in excess of operating expense, to the operating expense expressed in terms of percentage;

(la) "relevant previous year" means the previous year relevant to the assessment year in which the option for safe harbour is validly exercised;

(m) "software development services" means,—

(i) business application software and information system

development using known methods and existing software tools;

(ii) support for existing systems;

(iii) converting or translating computer languages;

(iv) adding user functionality to application programmes;

(v) debugging of systems;

(vi) adaptation of existing software; or

(vii) preparation of user documentation,

but does not include any research and development services whether or not in the nature of contract research and development services.

ELIGIBLE ASSESSEE.

10TB. (1) Subject to the provisions of sub-rules (2) and (3), the 'eligible assessee' means a person who has exercised a valid option for application of safe harbour rules in accordance with rule 10TE, and—

(i) is engaged in providing software development services or information technology enabled services or knowledge process outsourcing services, with insignificant risk, to a non-resident associated enterprise (hereinafter referred as foreign principal);

(ii) has made any intra-group loan;

(iii) has provided a corporate guarantee;

(iv) is engaged in providing contract research and development services wholly or partly relating to software development, with insignificant risk, to a foreign principal;

(v) is engaged in providing contract research and development services wholly or partly relating to generic pharmaceutical drugs, with insignificant risk, to a foreign principal;

(vi) is engaged in the manufacture and export of core or non-core auto components and where ninety per cent or more of total turnover during the relevant previous year is in the nature of original equipment manufacturer sales; or

(vii) is in receipt of low value-adding intra-group services from one or more members of its group.

(2) For the purposes of identifying an eligible assessee, with insignificant risk, referred to in item (i) of sub-rule (1), the

Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the following factors, namely:—

(a) the foreign principal performs most of the economically significant functions involved, including the critical functions such as conceptualisation and design of the product and providing the strategic direction and framework, either through its own employees or through its other associated enterprises, while the eligible assessee carries out the work assigned to it by the foreign principal;

(b) the capital and funds and other economically significant assets including the intangibles required, are provided by the foreign principal or its other associated enterprises, and the eligible assessee is only provided a remuneration for the work carried out by it;

(c) the eligible assessee works under the direct supervision of the foreign principal or its associated enterprise which not only has the capability to control or supervise but also actually controls or supervises the activities carried out through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;

(d) the eligible assessee does not assume or has no economically significant realised risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant;

(e) the eligible assessee has no ownership right, legal or economic, on any intangible generated or on the outcome of any intangible generated or arising during the course of rendering of services, which vests with the foreign principal as evident from the contract and the conduct of the parties.

(3) For the purposes of identifying an eligible assessee, with insignificant risk, referred to in items (iv) and (v) of sub-rule (1), the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the following factors, namely:—

(a) the foreign principal performs most of the economically significant functions involved in research or product development cycle, including the critical functions such as conceptualisation and design of the product and providing the strategic direction and framework, either through its own employees or through its other associated enterprises while the eligible assessee carries out the work assigned to it by the foreign principal;

(b) the foreign principal or its other associated enterprises provides the funds or capital and other economically significant assets including intangibles required for research or product development and also provides a remuneration to the eligible assessee for the work carried out by it;

(c) the eligible assessee works under the direct supervision of the foreign principal or its other associated enterprise which has not only the capability to control or supervise but also actually controls or supervises research or product development, through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;

(d) the eligible assessee does not assume or has no economically significant realised risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant;

(e) the eligible assessee has no ownership right, legal or economic, on the outcome of the research which vests with the foreign principal and is evident from the contract as well as the conduct of the parties.

ELIGIBLE INTERNATIONAL TRANSACTION.

10TC. 'Eligible international transaction' means an international transaction between the eligible assessee and its associated enterprise, either or both of whom are non-resident, and which comprises of:

(i) provision of software development services;

(ii) provision of information technology enabled services;

(iii) provision of knowledge process outsourcing services;

(iv) advance of intra-group loan;

(v) provision of corporate guarantee, where the amount guaranteed,—

(a) does not exceed one hundred crore rupees; or

(b) exceeds one hundred crore rupees, and the credit rating of the associated enterprise, done by an agency registered with the Securities and Exchange Board of India, is of the adequate to highest safety;

(vi) provision of contract research and development services wholly or partly relating to software development;

(vii) provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs;

(viii) manufacture and export of core auto components;

(ix) manufacture and export of non-core auto components; or

(x) receipt of low value-adding intra-group services from one or more members of its group by the eligible assessees.

SAFE HARBOUR.

10TD. (1) Where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid under rule 10TE, the transfer price declared by the assessee in respect of such transaction shall be accepted by the income-tax authorities, if it is in accordance with the circumstances as specified in sub-rule (2) 13a[or, as the case may be, sub-rule (2A)].

(2) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:—

Sl. No.	Eligible International Transaction	Circumstances
(1)	(2)	(3)
1.	Provision of software development services referred to in item (i) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is -
		(i) not less than 20 per cent, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of five hundred crore rupees; or (ii) not less than 22 per cent, where the aggregate value of such transactions entered into during the previous year exceeds a sum of five hundred crore rupees.

2.	Provision of information technology enabled services referred to in item (ii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is
		(i) not less than 20 per cent, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of five hundred crore rupees; or
		(ii) not less than 22 per cent, where the aggregate value of such transactions entered into during the previous year exceeds a sum of five hundred crore rupees.
3.	Provision of knowledge process outsourcing services referred to in item (iii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 25 per cent.
4.	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan does not exceed fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30th June of the relevant previous year plus 150 basis points.
5	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan exceeds fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30th June of the relevant previous year plus 300 basis points.
6	Providing corporate guarantee referred to in sub-item (a) of item (v) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 2 per cent per annum on the amount guaranteed.
7.	Providing corporate guarantee referred to in sub-item (b) of item (v) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 1.75 per cent. per annum on the amount guaranteed.

8.	Provision of contract research and development services wholly or partly relating to software development referred to in item (vi) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 30 per cent.
9.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to in item (vii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 29 per cent.
10.	Manufacture and export of core auto components referred to in item (viii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 12 per cent.
11.	Manufacture and export of non-core auto components referred to in item (ix) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.

(2A) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:—

Sl. No.	**Eligible International Transaction**	**Circumstances**
(1)	(2)	(3)
1.	Provision of software development services referred to in item (i) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is - (i) not less than 17 per cent, where the value of international transaction does not exceed a sum of one hundred crore rupees; or

		(ii) not less than 18 per cent, where the value of international transaction exceeds a sum of one hundred crore rupees but does not exceed a sum of two hundred crore rupees.
2.	Provision of information technology enabled services referred to in item (ii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is - (i) not less than 17 per cent, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of one hundred crore rupees; or
		(ii) not less than 18 per cent, where the aggregate value of such transactions entered into during the previous year exceeds a sum of one hundred crore rupees but does not exceed a sum of two hundred crore rupees.
3.	Provision of knowledge process outsourcing services referred to in item (iii) of rule 10TC.	The value of international transaction does not exceed a sum of two hundred crore rupees and the operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is - (i) not less than 24 per cent. and the Employee Cost in relation to the Operating Expense is at least sixty per cent.

		(ii)	not less than 21 per cent. and the Employee Cost in relation to the Operating Expense is forty per cent. or more but less than sixty per cent. or
		(iii)	not less than 18 per cent and the Employee Cost in relation to the Operating Expense does not exceed forty per cent.
4.	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in Indian Rupees (INR).	The interest rate declared in relation to the eligible international transaction is not less than the one-year marginal cost of funds lending rate of State Bank of India as on 1st April of the relevant previous year plus,-	
		(i)	175 basis points, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent;
		(ii)	325 basis points, where the associated enterprise has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent;
		(iii)	475 basis points, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent;
		(iv)	625 basis points, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or

		(v) 425 basis points, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises in Indian Rupees does not exceed a sum of one hundred crore rupees in the aggregate as on 31st March of the relevant previous year.
5	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in foreign currency.	The interest rate declared in relation to the eligible international transaction is not less than the six-month London Inter-Bank Offer Rate of the relevant foreign currency as on 30th September of the relevant previous year plus, -
		(i) 150 basis points, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent;
		(ii) 300 basis points, where the associated enterprise has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent;
		(iii) 450 basis points, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent;
		(iv) 600 basis points, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or

		(v) 400 basis points, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises does not exceed a sum equivalent to one hundred crore Indian rupees in the aggregate as on 31st March of the relevant previous year.
6	Providing corporate guarantee referred to in sub-item (a) or sub-item (b) of item (v) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than one per cent per annum on the amount guaranteed.
7.	Provision of contract research and development services wholly or partly relating to software development referred to in item (vi) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 24 per cent, where the value of the international transaction does not exceed a sum of two hundred crore rupees.
8.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to in item (vii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 24 per cent, where the value of the international transaction does not exceed a sum of two hundred crore rupees.
9.	Manufacture and export of core auto components referred to in item (viii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 12 per cent.
10.	Manufacture and export of non-core auto components referred to in item (ix) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.

11.	Receipt of low value-adding intra-group services in item (x) of rule 10TC.	The entire value of the international transaction, including a mark-up not exceeding 5 per cent., does not exceed a sum of ten crore rupees: **Provided** that the method of cost pooling, the exclusion of shareholder costs and duplicate costs from the cost pool and the reasonableness of the allocation keys used for allocation of costs to the assessee by the overseas associated enterprise, is certified by an accountant.

(3) The provisions of sub-rules (1) and (2) shall apply for the assessment year 2013-14 and four assessment years immediately following that assessment year.

(3A) The provisions of sub-rules (1) and (2A) shall apply for the assessment year 2017-18 and two assessment years immediately following that assessment year:

Provided that where an eligible assessee is eligible to exercise option under sub-rule (2) or, as the case may be, sub-rule (2A) above, the assessee shall have the right to choose the option which is most beneficial to him.

(4) No comparability adjustment and allowance under the second proviso to sub-section (2) of section 92C shall be made to the transfer price declared by the eligible assessee and accepted under sub-rules (1) and (2) or, as the case may be, (2A) above.

(5) The provisions of sections 92D and 92E in respect of an international transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

PROCEDURE.

10TE. (1) For the purposes of exercise of the option for safe harbour, the assessee shall furnish a Form 3CEFA, complete in all respects, to the Assessing Officer on or before the due date specified in Explanation 2 below sub-section (1) of section 139 for furnishing the return of income for—

(i) the relevant assessment year, in case the option is exercised only for that assessment year; or

(ii) the first of the assessment years, in case the option is exercised for more than one assessment year:

Provided that the return of income for the relevant assessment year or the first of the relevant assessment years, as the case may be, is furnished by the assessee on or before the date of furnishing of Form 3CEFA.

(2) The option for safe harbour validly exercised shall continue to remain in force for the period specified in Form 3CEFA or a period of five years whichever is less:

Provided that the assessee shall, in respect of the assessment year or years following the initial assessment year, furnish a statement to the Assessing Officer before furnishing return of income of that year, providing details of eligible transactions, their quantum and the profit margins or the rate of interest or commission shown:

Provided further that an option for safe harbour shall not remain in force in respect of any assessment year following the initial assessment year, if—

(i) the option is held to be invalid for the relevant assessment year by the Transfer Pricing Officer under sub-rule (11) or by the Commissioner under sub-rule (8) in respect of an objection filed by the assessee against the order of the Transfer Pricing Officer under sub-rule (11), as the case may be; or

(ii) the eligible assessee opts out of the safe harbour, for the relevant assessment year, by furnishing a declaration to that effect, to the Assessing Officer.

Provided also that in case of the option for safe harbour validly exercised under sub-rule (2A) of rule 10TD, the word "three" shall be sustituted for "five".

(3) On receipt of Form 3CEFA, the Assessing Officer shall verify whether—

(i) the assessee exercising the option is an eligible assessee; and

(ii) the transaction in respect of which the option is exercised is an eligible international transaction, before the option for safe harbour by the assessee is treated to be validly exercised.

(4) Where the Assessing officer doubts the valid exercise of the option for the safe harbour by an assessee, he shall make a

reference to the Transfer Pricing Officer for determination of the eligibility of the assessee or the international transaction or both for the purposes of the safe harbour.

(5) For the purposes of sub-rule (4) and sub-rule (10), the Transfer Pricing Officer may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

(6) Where—

(a) the assessee does not furnish the information or documents or other evidence required by the Transfer Pricing Officer; or

(b) the Transfer Pricing Officer finds that the assessee is not an eligible assessee; or

(c) the Transfer Pricing Officer finds that the international transaction in respect of which the option referred to in sub-rule (1) has been exercised is not an eligible international transaction,

the Transfer Pricing Officer shall, by order in writing, declare the option exercised by the assessee under sub-rule (1) to be invalid and cause a copy of the said order to be served on the assessee and the Assessing Officer:

Provided that no order declaring the option exercised by the assessee to be invalid shall be passed without giving an opportunity of being heard to the assessee.

(7) If the assessee objects to the order of the Transfer Pricing Officer under sub-rule (6) or sub-rule (11) declaring the option to be invalid, he may file his objections with the Commissioner, to whom the Transfer Pricing Officer is subordinate, within fifteen days of receipt of the order of the Transfer Pricing Officer.

(8) On receipt of the objection referred to in sub-rule (7), the Commissioner shall after providing an opportunity of being heard to the assessee pass appropriate orders in respect of the validity or otherwise of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(9) In a case where option exercised by the assessee has been held to be valid, the Assessing officer shall proceed to verify whether the transfer price declared by the assessee in respect of the relevant eligible international transactions is in accordance

with the circumstances specified in sub-rule (2) or, as the case may be sub-rule (2A) of rule 10 TD and, if it is not in accordance with the said circumstances, the Assessing Officer shall adopt the operating profit margin or rate of interest or commission specified in sub-rule (2) or, as the case may be sub-rule (2A) of rule 10TD.

(10) Where the facts and circumstances on the basis of which the option exercised by the assessee was held to be valid have changed and the Assessing Officer has reason to doubt the eligibility of an assessee or the international transaction for any assessment year other than the initial Assessment Year falling within the period for which the option was exercised by the assessee, he shall make a reference to the Transfer Pricing Officer for determination of eligibility of the assessee or the international transaction or both for the purpose of safe harbour.

Explanation.—For purposes of this sub-rule the facts and circumstances include:—

(a) functional profile of the assessee in respect of the international transaction;

(b) the risks being undertaken by the assessee;

(c) the substantive contractual conditions governing the role of the assessee in respect of the international transaction;

(d) the conduct of the assessee as referred to in sub-rule (2) or sub-rule (3) of rule 10TB; or

(e) the substantive nature of the international transaction.

(11) The Transfer Pricing Officer on receipt of a reference under sub-rule (10) shall, by an order in writing, determine the validity or otherwise of the option exercised by the assessee for the relevant year after providing an opportunity of being heard to the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(12) Nothing contained in this rule shall affect the power of the Assessing Officer to make a reference under section 92CA in respect of international transaction other than the eligible international transaction.

(13) Where no option for safe harbour has been exercised under sub-rule (1) by an eligible assessee in respect of an eligible international transaction entered into by the assessee or the option exercised by the assessee is held to be invalid, the arm's length price in relation to such international transaction shall be determined in accordance with the provisions of sections 92C

and 92CA without having regard to the profit margin or the rate of interest or commission as specified in sub-rule (2) or, as the case may be sub-rule (2A) of rule 10TD.

(14) For the purposes of this rule,—

(i) no reference under sub-rule(4) shall be made by an Assessing Officer after expiry of a period of two months from the end of the month in which Form 3CEFA is received by him;

(ii) no order under sub-rule (6) or sub-rule (11) shall be passed by the Transfer Pricing Officer after expiry of a period of two months from the end of the month in which the reference from the Assessing officer under sub-rule(4) or sub-rule (10), as the case may be, is received by him;

(iii) the order under sub-rule (8) shall be passed by the Commissioner within a period of two months from the end of the month in which the objection filed by the assessee under sub-rule (7) is received by him.

(15) If the Assessing Officer or the Transfer Pricing Officer or the Commissioner, as the case may be, does not make a reference or pass an order, as the case may be, within the time specified in sub-rule (14), then the option for safe harbour exercised by the assessee shall be treated as valid.]

SAFE HARBOUR RULES NOT TO APPLY IN CERTAIN CASES.

10TF. Nothing contained in rules 10TA, 10TB, 10TC, 10TD or rule 10TE shall apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 94A or in a no tax or low tax country or territory.

MUTUAL AGREEMENT PROCEDURE NOT TO APPLY.

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.

SAFE HARBOUR RULES FOR SPECIFIED DOMESTIC TRANSACTIONS

10TH. Definitions.— For the purposes of this rule and rules

10THA to 10THD,—

(a) "Appropriate Commission" shall have the same meaning as assigned to it in sub-section (4) of section 2 of the Electricity Act, 2003 (36 of 2003);

(b) "Government company" shall have the same meaning as assigned to it in sub-section (45) of section 2 of the Companies Act, 2013 (18 of 2013);

ELIGIBLE ASSESSEE.

10THA. The 'eligible assessee' means a person who has exercised a valid option for application of safe harbour rules in accordance with the provisions of rule 10THC, and—

(i) is a Government company engaged in the business of generation,[3][supply,] transmission or distribution of electricity; or

(ii) is a co-operative society engaged in the business of procuring and marketing milk and milk products.

ELIGIBLE SPECIFIED DOMESTIC TRANSACTION.

10THB. The "Eligible specified domestic transaction" means a specified domestic transaction undertaken by an eligible assessee and which comprises of :—

(i) supply of electricity or

(ii) transmission of electricity; or

(iii) wheeling of electricity; or

(iv) purchase of milk or milk products by a co-operative society from its members.

SAFE HARBOUR.

10THC. (1) Where an eligible assessee has entered into an eligible specified domestic transaction in any previous year relevant to an assessment year and the option exercised by the said assessee is treated to be validly exercised under rule 10THD, the transfer price declared by the assessee in respect of such transaction for that assessment year shall be accepted by the income-tax authorities, if it is in accordance with the circumstances as specified in sub-rule (2).

(2) The circumstances referred to in sub-rule (1) in respect of the eligible specified domestic transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:—

Table

S. No.	Eligible specified domestic transaction	Circumstances
1.	2.	3.
1.	Supply of electricity, transmission of electricity, wheeling of electricity referred to in clause (i), (ii) or (iii) of rule 10THB, as the case may be	The tariff in respect of supply of electricity, transmission of electricity, wheeling of electricity, as the case may be, is determined3 [or the methodology for determination of the tariff is approved] by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003 (36 of 2003).
2.	Purchase of milk or milk products referred to in clause (iv) of rule 10THB.	The price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not FAT (SNF) content of milk ; and— (a) the said rate is irrespective of,— (i) the quantity of milk procured; (ii) the percentage of shares held by the members in the co-operative society; (iii) the voting power held by the members in the society; and (b) such prices are routinely declared by the co-operative society in a transparent manner and are available in public domain.

(3) No comparability adjustment and allowance under the second proviso to sub-section (2) of section 92C shall be made to the transfer price declared by the eligible assessee and accepted under sub-rule (1).

(4) The provisions of sections 92D and 92E in respect of a specified domestic transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

PROCEDURE.

10THD. (1) For the purposes of exercise of the option for safe harbour, the assessee shall furnish a Form 3CEFB, complete in all respects, to the Assessing Officer on or before the due date specified in Explanation 2 to sub-section (1) of section 139 for furnishing the return of income for the relevant assessment year:

Provided that the return of income for the relevant assessment year is furnished by the assessee on or before the date of furnishing of Form 3CEFB:

Provided further that in respect of eligible specified domestic transactions, other than the transaction referred to in clause (iv) of rule 10THB, undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014 or beginning on the 1st day of April, 2015, Form 3CEFB may be furnished by the assessee on or before the 31st day of March, 2016:

Provided also that in respect of eligible specified domestic transactions, referred to in clause (iv) of rule 10THB, undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014 or beginning on the 1st day of April, 2015, Form 3CEFB may be furnished by the assessee on or before the 31st day of December, 2015.

(2) On receipt of Form 3CEFB, the Assessing Officer shall verify whether—

(i) the assessee exercising the option is an eligible assessee; and

(ii) the transaction in respect of which the option is exercised is an eligible specified domestic transaction,

before the option for safe harbour by the assessee is treated to be validly exercised.

(3) Where the Assessing Officer doubts the valid exercise of the option for the safe harbour by an assessee, he may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

(4) Where—

(a) the assessee does not furnish the information or

documents or other evidence required by the Assessing Officer; or

(b) the Assessing Officer finds that the assessee is not an eligible assessee; or

(c) the Assessing Officer finds that the specified domestic transaction in respect of which the option referred to in sub-rule (1) has been exercised is not an eligible specified domestic transaction; or

(d) the tariff is not in accordance with the circumstances specified in sub-rule (2) of rule 10THC,

the Assessing Officer shall, by order in writing, declare the option exercised by the assessee under sub-rule (1) to be invalid and cause a copy of the said order to be served on the assessee:

Provided that no order declaring the option exercised by the assessee to be invalid shall be passed without giving an opportunity of being heard to the assessee.

(5) If the assessee objects to the order of the Assessing Officer under sub-rule (4) declaring the option to be invalid, he may file his objections with the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, to whom the Assessing Officer is subordinate, within fifteen days of receipt of the order of the Assessing Officer.

(6) On receipt of the objection referred to in sub-rule (5), the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, shall after providing an opportunity of being heard to the assessee, pass appropriate orders in respect of the validity or otherwise of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(7) For the purposes of this rule,—

(i) no order under sub-rule (4) shall be made by an Assessing Officer after expiry of a period of three months from the end of the month in which Form 3CEFB is received by him;

(ii) the order under sub-rule (6) shall be passed by the Principal Commissioner or Commissioner or Principal Director or Director, as the case may be, within a period of two months from the end of the month in which the objection filed by the assessee under sub-rule (5) is received by him.

(8) If the Assessing Officer or the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, does not pass an order within the time specified in sub-rule (7), then the option for safe harbour exercised by the assessee shall be treated as valid.

ANNEXURE-3

INSTRUCTION NO. 3 OF 2016

F.No. 500/9/2015-APA-I1
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Foreign Tax and Tax Research Division-I
APA-II Section

New Delhi, dated 10th March, 2016

Subject: Guidelines for Implementation of Transfer Pricing Provisions -Replacement of Instruction No. 15/2015 – Regarding

The provisions relating to transfer pricing are contained in Sections 92 to 92F in Chapter X of the Income-tax Act, 1961. These provisions came into force w.e.f. Assessment Year 2002-2003 and have seen a number of amendments over the years, including the insertion of Safe Harbor and Advance Pricing Agreement provisions and the extension of the applicability of transfer pricing provisions to Specified Domestic Transactions.

2. In terms of the provisions, any income arising from an international transaction or specified domestic transaction between two or more associated enterprises shall be computed having regard to the Arm's Length Price. Instruction No. 3 was issued on 20th May, 2003 to provide guidance to the Transfer Pricing Officers (TPOs) and the Assessing Officers (AOs) to operationalise the transfer pricing provisions and to have procedural uniformity. Due to a number of legislative, procedural and structural changes carried out over the last few years, Instruction No. 3 of 2003 was replaced with Instruction No. 15/2015, dated 16th October, 2015. After the issuance of Instruction No. 15/2015, the Board has received some suggestions and queries, which have been examined in detail. Accordingly, this Instruction is being issued to replace Instruction No. 15 of 2015. This Instruction is applicable for both international transactions and specified domestic transactions between associated enterprises. The guidelines on various issues are as follows:

3. REFERENCE TO TRANSFER PRICING OFFICER (TPO)

3.1 The power to determine the Arm's Length Price (ALP) in an international transaction or specified domestic transaction is contained in sub-section (3) of Section 92C. However, Section 92CA provides that where the Assessing Officer (AO) considers it necessary or expedient so to do, he may refer the computation of ALP in relation to an international transaction or specified domestic transaction to the TPO. For proper administration of the Income-tax Act, the Board has decided that the AO shall henceforth make a reference to the TPO only under the circumstances laid out in this Instruction.

3.2 All cases selected for scrutiny, either under the Computer Assisted Scrutiny Selection [CASS] system or under the compulsory manual selection system (in accordance with the CBDT's annual instructions in this regard -for example, Instruction No. 6/2014 for selection in F.Y 2014-15 and Instruction No. 8/2015 for selection in F.Y 2015-16), on the basis of transfer pricing risk parameters [in respect of international transactions or specified domestic transactions or both] have to be referred to the TPO by the AO, after obtaining the approval of the jurisdictional Principal Commissioner of Income-tax (PCIT) or Commissioner of Income-tax (CIT). The fact that a case has been selected for scrutiny on a TP risk parameter becomes clear from a perusal of the reasons for which a particular case has been selected and the same are invariably available with the jurisdictional AO. Thus, if the reason or one of the reasons for selection of a case for scrutiny is a TP risk parameter, then the case has to be mandatorily referred to the TPO by the AO, after obtaining the approval of the jurisdictional PCIT or CIT.

3.3 Cases selected for scrutiny on non-transfer pricing risk parameters but also having international transactions or specified domestic transactions, shall be referred to TPOs only in the following circumstances:

(a) where the AO comes to know that the taxpayer has entered into international transactions or specified domestic transactions or both but the taxpayer has either not filed the Accountant's report under Section 92E at all or has not disclosed the said transactions in the Accountant's report filed;

(b) where there has been a transfer pricing adjustment of Rs. 10 Crore or more in an earlier assessment year and such adjustment has been upheld by the judicial authorities or is pending in appeal; and

(c) where search and seizure or survey operations have been carried out under the provisions of the Income-tax Act and findings regarding transfer pricing issues in respect of international transactions or specified domestic transactions or both have been recorded by the Investigation Wing or the AO.

3.4 For cases to be referred by the AO to the TPO in accordance with paragraphs 3.2 and 3.3 above, in respect of transactions having the following situations, the AO must, as a jurisdictional requirement, record his satisfaction that there is an income or a potential of an income arising and/or being affected on determination of the ALP of an international transaction or specified domestic transaction before seeking approval of the PCIT or CIT to refer the matter to the TPO for determination of the ALP:

- where the taxpayer has not filed the Accountant's report under Section 92E of the Act but the international transactions or specified domestic transactions undertaken by it come to the notice of the AO;
- where the taxpayer has not declared one or more international transaction or specified domestic transaction in the Accountant's report filed under Section 92E of the Act and the said transaction or transactions come to the notice of the AO; and
- where the taxpayer has declared the international transactions or specified domestic transactions in the Accountant's report filed under Section 92E of the Act but has made certain qualifying remarks to the effect that the said transactions are not international transactions or specified domestic transactions or they do not impact the income of the taxpayer.

In the above three situations, the AO must provide an opportunity of being heard to the taxpayer before recording his satisfaction or otherwise. In case no objection is raised by the taxpayer to the applicability of Chapter X [Sections 92 to 92F] of the Act to these three situations, then AO should refer the international transaction or specified domestic transaction to the TPO for determining the ALP after obtaining the approval of the PCIT or CIT. However, where the applicability of Chapter X [Sections 92 to 92F] to these three situations is objected to by the taxpayer, the AO must consider the taxpayer's objections and pass a speaking order so as to comply with the principles of natural justice. If the AO decides in the said order that the transaction in question needs to be referred to the TPO, he should make a reference after

obtaining the approval of the PCIT or CIT.

3.5 In addition to the cases to be referred as per paragraphs 3.2 and 3.3, a case involving a transfer pricing adjustment in an earlier assessment year that has been fully or partially set-aside by the ITAT, High Court or Supreme Court on the issue of the said adjustment shall invariably be referred to the TPO for determination of the ALP.

3.6 Since the provisions of Section 92CA of the Act, inter-alia, refer to the computation of the ALP of the international transaction or specified domestic transaction, it is imperative for the AO to ensure that all international transactions or relevant specified domestic transactions or both, as the case may be, are explicitly mentioned in the letter through which the reference is made to the TPO. In this regard, guidelines as under may be followed:

(a) If a case has been selected for scrutiny on a TP risk parameter pertaining to international transactions only, then the international transactions shall alone be referred to the TPO;

(b) If a case has been selected for scrutiny on a TP risk parameter pertaining to specified domestic transactions only, then the specified domestic transactions shall alone be referred to the TPO; and

(c) If a case has been selected for scrutiny on the basis of TP risk parameters pertaining to both international transactions and specified domestic transactions, then the international transactions and the specified domestic transactions shall together be referred to the TPO.

Since international transactions may be benchmarked together at the entity level due to the inter-linkages amongst them, if a case has been selected for scrutiny on a TP risk parameter pertaining to one or more international transactions, then all the international transactions entered into by the taxpayer – except those about which the AO has decided not to make a reference as per paragraph 3.4 – shall be referred to the TPO.

3.7 For administering the transfer pricing regime in an efficient manner, it is clarified that though AO has the power under Section 92C to determine the ALP of international transactions or specified domestic transactions, determination of ALP should not be carried out at all by the AO in a case where reference is not made to the TPO. However, in such cases, the AO must record in the body of the assessment order that due to the

Board's Instruction on this matter, the transfer pricing issue has not been examined at all.

4. ROLE OF TRANSFER PRICING OFFICER (TPO)

4.1 The role of the TPO begins after a reference is received from the AO.

In terms of Section 92CA, this role is limited to the determination of the ALP in relation to international transactions or specified domestic transactions referred to him by the AO. However, if any other international transaction comes to the notice of the TPO during the course of the proceedings before him, then he is empowered to determine the ALP of such other international transactions also by virtue of Section 92CA (2A) and (2B). The transfer price has to be determined by the TPO in terms of Section 92C. The price has to be determined by using any one of the methods stipulated in sub-section (1) of Section 92C and by applying the most appropriate method referred to in Sub-section (2) thereof. There may be occasions where application of the most appropriate method provides results which are different but equally reliable. In all such cases, further scrutiny may be necessary to evaluate the appropriateness of the method, the correctness of the data, weight given to various factors and so on. The selection of the most appropriate method will depend upon the facts of the case and the factors mentioned in Rule 100. The TPO, after taking into account all relevant facts and data available to him, shall determine the ALP and pass a speaking order.

4.2 The TPO's order should contain details of the data used, reasons for arriving at a certain price and the applicability of methods. It may be emphasised that the application of method including the application of the most appropriate method, the data used, factors governing the applicability of respective methods, computation of price under a given method will all be subjected to judicial scrutiny. It is, therefore, necessary that the order of the TPO contains adequate reasons on all these counts. Copies of the documents or the relevant data used in arriving at the arm's length price should be made available to the AO for his records and the use at subsequent stages of appellate or penal proceedings.

4.3 The TPO, being an Additional/Joint CIT, shall obtain the approval of the jurisdictional CIT (Transfer Pricing) before passing the order. On the other hand, the TPO, being a Deputy/Assistant CIT, shall obtain the approval of the jurisdictional Additional/ Joint CIT before passing the order. The jurisdictional CIT (TP)

should assign a limited number of important and complex cases, not exceeding 50, to the Additional/Joint CsIT (TPOs) working in the same jurisdiction. For the selection of such important and complex cases by the CsIT (IP), the concerned CCsIT (International Taxation) shall frame appropriate guidelines.

4.4 In addition to the above, the TPO is required to carry out the Compliance Audit of the Advance Pricing Agreements (APAs) entered into by the Board and the taxpayers in accordance with Rule 10P of the Income-tax Rules.

4.5 The TPO is also required to play an important role in respect of Safe Harbour provisions. Whenever a reference is made to the TPO under sub-rule (4) or sub-rule (10) of Rule 10TE of the Income-tax Rules, the TPO has to carefully examine all the facts and circumstances of the taxpayer's exercise of an option for Safe Harbour and pass an order in writing as mandated in sub-rule (6) or sub-rule (11) of the said Rule, respectively.

5. ROLE OF THE AO AFTER DETERMINATION OF ALP BY THE TPO

Under sub-section (4) of Section 92C (read with sub-section (4) of Section 92CA), the AO has to compute the total income of the assessee in conformity with the ALP determined by the TPO under sub-section (3) of Section 92CA.

6. MAINTENANCE OF DATA BASE

It is to be ensured by the CIT (TP) that the references received from the AOs by the TPOs in his jurisdiction are dealt with expeditiously and accurate record of all events connected with the whole process of determination of ALP is maintained. This record is to be maintained by each TPO, separately for international transactions and specified domestic transactions, in the formats enclosed as Annexure-I and Annexure-II to this Instruction and the same shall be maintained electronically on the Department's ITBA system as and when the same becomes fully functional. These formats will serve as an important database for future action and also help in bringing about uniformity in the determination of the ALP in identical or substantially identical cases. The CsIT (TP) must ensure that a consolidated report for the entire Charge is generated and stored after the completion of each transfer pricing audit cycle.

7. This issues under Section 119 of the Income-tax Act, 1961 and replaces Instruction No. 15 of 2015 with immediate effect.

References made to TPOs u/s 92CA of the Act after the issuance of Instruction No. 15/2015, which are not in conformity with this Instruction, may be withdrawn by the concerned PCIT or CIT.

[Sobhan Kar]
Director (APA),
Government of India

Annexure-1

Register of Record to be Maintained by the Transfer Pricing Officer (TPO) for International Transactions

1	2	3	4	5	6	7	8
Sl. No.	Date of Receipt of Reference from AO and the Assessment Year to which if pertains	Name and Designation of the AO making the Reference	Name, PAN and Address of the taxpayer	Nature of Business of the taxpayer	Description of International Transaction as per Section 928 and Value of such Transaction Received by the Taxpayer	Description of International Transaction as per Section 92B and Value of such Transaction paid by the Taxpayer	Name and Address of the Associated Enterprise

9	10	11	12	13	14	15	16
Nature of Association in terms of Section 92A	Date of Issue of First Notice to Taxpayer	Transfer Price as Computed by the Taxpayer	Transfer Pricing Method Applled by the Taxpayer	Arm's Length Price as Determined by the TPO under Section 92CA(3)	Transfer Pricing Method Applied by the TPO	Date of Order under Section 92CA(3)	Date of Dispatch of the Order to the AO

Annexure-II

Register of Record to be Maintained by the Transfer Pricing Officer (TPO) for Specified Domestic Transactions :

1	2	3	4	5	6	7	8
Sl. No.	Date of Receipt of Reference from AO and the Assessment Year to which it pertains	Name and Designation of the AO making the Reference	Name, PAN and Address of the Taxpayer	Nature of Business of the taxpayer	Description of Specified Transaction as per Section 92BA and Value of such Transaction Received by the Taxpayer	Description of Domestic Transaction as per Section 92BA and Value of such Transaction Paid by the Taxpayer	Name and Address of the Associated Enterprise

9	10	11	12	13	14	15	16
Nature of Association with Associated Enterprise	Date of Issue of First Notice to Taxpayer	Transfer Price as Computed by the Taxpayer	Transfer Pricing Method Aplied by the Taxpayer	Arm's Length Price as Determined by the TPO under section 92CA(3)	Transfer Pricing Method Applied by the TPO	Date of Order under Section 92CA(3)	Date of Dispatch of the Order to the AO

ANNEXURE-4

IMPORTANT CIRCULARS AND INSTRUCTIONS

1. CIRCULAR NO.12 OF 2001 DATED 23RD AUGUST, 2001

To

All the Chief Commissioners/ Director-General of Income-tax

Subject: Provisions governing transfer price in an international transaction - regarding.

The Finance Act, 2001, has substituted the existing section 92 of the Income- tax Act by new sections 92 and 92A to 92F. These new provisions lay down that income arising from an international transaction between associated enterprises shall be computed having regard to the arm's length price. The term "associated enterprise" has been defined in section 92A. Section 92B defines an "international transaction" between two or more associated enterprises. The provisions contained in section 92C provide for methods to determine the arm's length price in relation to an international transaction, and the most appropriate method to be followed out of the specified methods. While the primary responsibility of determining and applying an arm's length price is on the assessee, sub-section (3) of section 92C empowers the Assessing Officer to determine the arm's length price and compute the total income of the assessee accordingly, subject to the conditions provided therein. Section 92D provides for certain information and documents required to be maintained by persons entering into international transactions, and section 92E provides for a report of an accountant to be furnished along with the return of income.

The Board have prescribed rules 10A to 10E in the Income-tax Rules, 1962, giving the manner and the circumstances in which different methods would be applied in determining arm's length price and the factors governing the selection of the most appropriate method. The form of the report of the accountant and the documents and information required to be maintained by the assessees have also been prescribed.

The aforesaid provisions have been enacted with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profit and tax in India so that the profits chargeable to tax in India do not get diverted elsewhere by

altering the prices charged and paid in intra-group transactions leading to erosion of our tax revenues.

However, this is a new legislation. In the initial years of its implementation, there may be room for different interpretations leading to uncertainties with regard to determination of arm's length price of an international transaction. While it would be necessary to protect our tax base, there is a need to ensure that the taxpayers are not put to avoidable hardship in the implementation of these regulations.

In this background the Board have decided the following:

(i) The Assessing Officer shall not make any adjustment to the arm's length price determined by the taxpayer, if such price is up to 5 per cent less or up to 5 per cent more than the price determined by the Assessing Officer. In such cases the price declared by the taxpayer may be accepted.

(ii) The provisions of sections 92 and 92A to 92F come into force with effect from 1st April, 2002, and are accordingly applicable to the assessment year 2002-03 and subsequent years. The law requires the associated enterprises to maintain such documents and information relating to international transactions as may be prescribed. However, the necessary rules could be framed by the Board only after the Finance Bill received the assent of the President and have just been notified. Therefore, where an assessee has failed to maintain the prescribed information or documents in respect of transactions entered into during the period 1.4.2001 to 31.8.2001 the provisions of section 92C(3) should not be invoked for such failure. Penalty proceedings under section 271AA or 271G should also not be initiated for such default.

(iii) It should be made clear to the concerned Assessing Officers that where an international transaction has been put to a scrutiny, the Assessing Officer can have recourse to sub-section (3) of section 92C only under the circumstances enumerated in clauses (a) to (d) of that sub-section and in the vent of material information or documents in his possession on the basis of which an opinion can be formed that any such circumstance exists. In all other cases, the value of the international transaction should be accepted without further scrutiny.

This may be brought to the notice of all the officers working in your region.

Yours faithfully
(Sd.)
Batsala Jha Yadav
Under Secretary (TPL-IV)
F.No.142/41/2001-TPL]

2. Extracts from the CBDT's Circular No. 14 dated 20.11.2001 containing Explanatory Notes on the provisions relating Finance Act, 2001 (paragraphs 55 to 55.23)

New Legislation to curb tax avoidance by abuse of transfer pricing.

The increasing participation of multinational groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group transactions, thereby, leading to erosion of tax revenues.

Under the existing Section 92 of the Income-tax Act, which was the only section dealing specifically with cross border transactions, an adjustment could be made to the profits of a resident arising from a business carried on between the resident and a non-resident, if it appeared to the Assessing Officer that owing to the close connection between them, the course of business was so arranged so as to produce less than expected profits to the resident. Rules 11 prescribed under the section provided a method of estimation of reasonable profits in such cases. However, this provision was of a general nature and limited in scope, it did not allow adjustment of income in the case of nonresidents. It referred to a "close connection" which was undefined and vague. It provided for adjustment of profits rather than adjustment of prices, and the rule prescribed for estimating profits was not scientific. It also did not apply to individual transactions such as payment of royalty, etc., which are not part of a regular business carried on between a resident and a non-resident. There were also no detailed rules prescribing the documentation required to be maintained.

With a view to provide a detailed statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprise, the Act has substituted section 92 with a new section, and has introduced new sections 92A to 92F in the Income –tax

Act, relating to computation of income from an international transaction having regard to the arm's length price, meaning of associated enterprise, meaning of international transaction, computation of arm's length price, maintenance of information and documents by persons entering into international transactions, furnishing of a report from an accountant by persons entering into international transactions and definitions of certain expressions occurring in the said sections.

The substituted section 92 provides that income arising from an international transaction between associates enterprises shall be computed having regard to the arm's length price. Any expense or outgoing in an international transaction is also to be computed having regard to the arm's length price. Thus in the case of a manufacture, for example, the provisions will apply to exports made to the associated enterprises as also to imports from the same or any other associated enterprise. The provisions is also applicable in a case where the international transaction comprises only an outgoing from the Indian assessee.

The new section further provides that the cost or expenses allocated or apportioned between two or more associated enterprises under a mutual agreement or arrangement shall be at arm's length price. Examples of such transactions could be where one associated enterprise carries out centralized, or two or more associated enterprises agree to carry out a joint activity, such as research and development, for their mutual benefit.

The new provisions are intended to ensure that ensure that profits taxable in India are not understated (or losses are not overstated) by declaring lower receipts or higher outgoings than those which would have been declared by persons entering into similar transactions with unrelated parties in the same or similar circumstances. The basic intention underlying the new transfer pricing regulations is to prevent shifting out of profits by manipulating prices charges or paid in international transactions, thereby eroding the country's tax base. The new section 92 is therefore, not intended to be applied in cases where the adoption of the arm's length price determined under the regulations would result in a decrease in the overall tax incidence in India in respect of the parties involved in the international transaction.

The substituted new Sections 92A and 92B provide meanings of the expression "associated enterprise" and " international transaction" with reference to which the income is to be computed under the new Section 92. While sub-section (1) of Section 92A gives a genera definition of associated enterprises, bases on the

concept of participation in a management, control or capital, sub section (2) specifies the circumstances under which the two enterprises shall be deemed to be associated enterprises.

Section 92B provides a board definition of international transactions, which is to be read with the definition of transaction given in Section 92F. An international transaction is essentially a cross board transaction between associated enterprises in any sort of property, whether tangible or intangible, or in the provision of services, lending of money etc. At least one of the parties to the transaction must be a non-resident. The definition also covers a transaction between two non-residents, where for example, one of them has a permanent establishment whose income is taxable in India.

Sub-section (2) of Section 92B extends the scope of the definition of international transaction by providing that a transaction entered into with an unrelated person shall be deemed to be a transaction with the associated enterprise, if there exists a prior agreement in relation to the transaction between such other person shall be the associated enterprise, or the terms of the relevant transaction are determined by the associated enterprise. An illustration of such a transaction could be where the assessee, being an enterprise resident in India, exports goods to unrelated person abroad, and there is a separate arrangement or agreement between the unrelated person and an associated enterprise which influences the price at which the goods are exported. In such a case the transaction with the unrelated enterprise will also be subject to transfer pricing regulations.

The new Section 92C provides that the arm's length price in relation to an international transaction shall be determined by (a) comparable uncontrolled price method; or (b) resale price method; or (c) cost plus method; or (d) profits split method; or (e) transactional net margin method; or (f) any other method which may be prescribed by the Board. For the present, no additional method has been prescribed by the Board.

One of the five specified methods shall be the most appropriate method in respect of a particular international transaction, and shall be applied for computation of arm's length price in the manner specified by the rules. Rules 10A to 10E, which have been separately notified, vide S.S. 808(E), dated 21.08.2001 inter alia. Provide for the factors which are to be considered in selecting the most appropriate method. The major consideration in this regard have been specified to be the availability, coverage and reliability of data necessary for application of the method,

the extent and reliability of data necessary for application of the method, the extent reliability of data necessary for application of the method, the extent and reliability of assumptions required to be made and the degree of comparability existing between the international transaction and the uncontrolled transaction. The rules also lay down in detail the manner in which the methods are to be applied in determining the arm's length price.

Applying the most appropriate method to different sets of comparable data can possibly result in computation of more that one arm's length price. With a view to avoid unnecessary disputes, the proviso to Section 92C (2) provides that in such a case the arithmetic mean of the prices shall be adopted as the arm's length prices. In the normal course, if the different sets of comparable data are equally reliable there may not be any significant divergence between the various arm's length prices determined.

Under the new provisions the primary onus is on the taxpayer to determine an arm's length price in accordance with the rules, and to substantiate the same with the prescribed documentation. Where such onus is discharged by the assessee and the data used for determining the arm's length price is reliable and correct, there can be no intervention by the Assessing Officer. This is made clear by sub-section (3) of section 92C which provides that the Assessing Officer may intervene only if he is, on the basis of material or information or document in his possession, of the opinion that the price charged in the international transaction has not been determined in accordance with sub-sections (1) and (2), or information and documents relating to the international transaction have not been kept and maintained by the assesses in accordance with the provisions contained in sub-section (1) of section 92D and the rules made thereunder: or the information or data used in computation of the arm's length price is not reliable or correct; or the assessee has failed to furnish within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D. if any one of the such circumstances exists, the Assessing Officer may reject the price adopted by the assessee and determine the arm's length price in accordance with the same rules. However, an opportunity has to be given to the assessee before determining such price. Thereafter, as provided in sub-section (4) of section 92C, the Assessing Officer may compute the total income on the basis of the arm's length price so determined by him.

The first proviso to section 92C(4) recognizes the commercial reality that even when a transfer pricing adjustments is made under that sub-section, the amount represented by the adjustments would not actually have been received in India or would have actually gone out of the country. Therefore, it has been provided that no deductions under section 10A or 10B or under Chapter VIA shall be allowed in respect of the amount of adjustment.

The section proviso to section 92(4) refers to a case where the amount involved in the international transaction has already been remitted abroad after deducting tax at source and subsequently, in the assessment of the resident payer, an adjustment is made to the transfer price involved and thereby, the expenditure represented by the amount so remitted is partly disallowed. Under the Income-tax Act, a non-resident in receipt of income from which tax has been deducted at source has the option of filing a return of income in respect of the relevant income. In such cases, a non-resident could claim a refund of a part of the tax deducted at source, on the ground that an arm's length price has been adopted by the Assessing Officer in the case of the resident and the same price should be considered in determining the taxable income of the non-resident. However, the adopting of the arm's length price in such cases would not alter the commercial reality that the entire amount claimed earlier would have actually been relieved by the entity located abroad. It has therefore been made clear in the second proviso that income of the associated enterprise shall not be recomputed merely by reason of an adjustment made in the case of the other associated enterprise on determination of arm's length price by the Assessing Officer.

The new section 92D provides that every person who has undertaken an international transaction shall keep and maintain such information and documents as may be specified by rules made by the Board. The Board may also specify by rules the period for which the information and documents are required to be retained. The documentation required to be maintained has been prescribed under rule 10D such documentation includes background information on the commercial environment in which the transaction has been entered into, an information regarding the international transaction entered into, the analysis carried out to select the most appropriate method and to identify comparable transaction, and the actual working out of the arm's length price of the transaction. The documentation should be available with the assessee by the specified date defined in section

92F and should be retained for a period of 8 years. During the course of any proceedings under the Act, an Assessing Officer or Commissioner (Appeals) may require any person who has undertaken an international transaction to furnish any of the information and documents specified under the rules within a period of thirty days from the date of receipt of a notice issued in this regard, and such period may be extended by a further period not exceeding thirty days.

The new section 92E provides that every person who has entered into an international transaction during a previous year shall obtain a report from accountant and furnish such report on or before the specified date in the prescribed form and manner. Rule 10E and Form no. 3CEB have been notified in this regard. The accountant's report only requires furnishing of factual information relating to the international transaction entered into, the arm's length price determined by the assessee and the method applied in such determination. It also requires an opinion as to whether the prescribed documentation has been maintained.

The new section 92F defines the expression "accountant", "arm's length price", "enterprise", "specified date" and "transaction" used in sections 92, 92A, 92B, 92C, 92D and 92E. The definition of enterprise is broad and includes a permanent establishment, even though of PE is not a separate legal entity. Consequently, transactions between a foreign enterprise and its PE, for example, between the head office abroad and a branch in India, are also subject to these transfer pricing regulations. Also the regulation 33 would apply to transactions between a foreign enterprise. The term permanent establishment has been defined in the provision but its meaning may be understood which reference to the tax treaties entered into by India.

With a view to ensure that multinational enterprises comply with the requirements of the new regulations, the Act was has also amended section 271 and inserted new Section 271AA, 271BA and 271G in the Income-tax Act, so as to provide for penalty to be levied in cases of non-compliance with procedural requirements, and in cases of understatement of profits through fraud or willful negligence.

The new Explanation 7 to sub-section (1) of section 271 provides that where in the case of an assessee who has entered into an international transaction, any amount is added or disallowed in computing the total income under sub-section (1) and (2) of section 92, then, the amount so added or disallowed shall be deemed to represent income in respect of which particulars have

been concealed or inaccurate particulars have been furnished. However, no penalty under section 271(1(c) shall be levied where the assessee proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) that the price charge or paid in such transaction has been determined in accordance which section 92C in good faith and with due diligence.

The new section 271AA provides that if any person who has entered into an international transaction fails to keep and maintain any such information and documents as specified under section 92D, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of the international transaction entered into by such person.

The new section 271AA provides that if any person fails to furnish a report from an accountant as required by section 92E, the Assessing Officer may direct that such person shall pay by way of penalty, a sum of one lakh rupees.

The new section 271G provides that if any person who has entered into an international transaction fails to furnish any information or documents as required under sub-section (3) of Section 92D, the Assessing Officer or the Commissioner(Appeals) may directed that such person shall pay, by way of penalty, a sum equal to two percent of the value of the international transaction.

The Act has also amended section 273B to provide that the above mentioned penalties under section 271AA, 271BA and 271G shall not be imposable if the assessee proves that there was reasonable cause for such failures.

The amendments will take effect from 1st April, 2002 and will accordingly apply to the assessment year 2002-03 and subsequent years.

These circular reproduced above explains the various aspects of the law relating to transfer pricing as also in regard to penalties which could be imposed for non-compliance. However, some major concepts which underline the basis of new law are being elaborated further hereinafter. The penalties portion would be discussed in a separate chapter.

3. CIRCULAR NO. 2/2013 [F. NO. 500/139/2012] DATED 26-3-2013

It has been brought to the notice of CBDT that clarification is needed for selection of profit split method (PSM) as most

appropriate method. The issue has been examined in CBDT. It is hereby clarified that while selecting PSM as the most appropriate method, the following points may be kept in mind:

1. Since there is no correlation between cost incurred on R&D activities and return on an intangible developed through R&D activities, the use of transfer pricing methods [like Transactional Net Margin Method] that seek to estimate the value of intangible based on cost of intangible development (R&D cost) plus a return, is generally discouraged.

2. Rule 10B(1)(d) of Income-tax Rules, 1962 (the Rules) provides that profit split method (PSM) may be applicable mainly in international transactions involving transfer of unique intangibles or in multiple international transactions which are so interrelated that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction. The PSM determines appropriate return on intangibles on the basis of relative contributions made by each associated enterprise.

3. Selection and application of PSM will depend upon following factors as prescribed under rule 10C(2) of the Rules :

- the nature and class of the international transaction;
- the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprise;
- the availability, coverage and reliability of data necessary for application of the method;
- the degree of comparability existing between the international transaction and the uncontrolled transaction and between the enterprise entering into such transactions;
- the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprise entering into such transactions;
- the nature, extent and reliability of assumptions required to be made in application of a method.

4. It is evident from the above that rule 10C(2) of the Rules stipulates availability, coverage and reliability of data necessary for the application of the method as one of the several factors

in selection of most appropriate method. Accordingly, in a case, where the Transfer Pricing Officer (TPO) is of view that PSM cannot be applied to determine the arm's length price of international transactions involving intangibles due to non-availability of information and reliable data required for application of the method, he must record reasons for non-applicability of PSM before considering TNMM or comparable uncontrolled price method (CUP) as most appropriate method depending upon facts and circumstances of the case.

5. Application of Profit Split Method requires information mainly about the taxpayer and associated enterprises. Section 92D of the Income-tax Act,

1961 provides for maintenance of relevant information and documents by the taxpayer as prescribed under rule 10D of the Rules. Therefore, there should be good and sufficient reason for non-availability of such information with the taxpayer.

6. Depending upon facts and circumstances of the case, TPO may consider TNMM or CUP method as appropriate method by selecting comparables engaged in development of intangibles in same line of business and make upward adjustments taking into account transfer of intangibles without additional remuneration, location savings and location specific advantages

The above may be brought to the notice of all concerned

4. CIRCULAR NO. 3/2013 [F NO. 500/139/2012], DATED 26-3-2013

It has been brought to the notice of CBDT that there is divergence of views amongst the field officers and taxpayers regarding the functional profile of development centres engaged in contract R&D services for the purposes of transfer pricing audit. Moreover, while at times taxpayers have been insisting that they are contract R&D service providers with insignificant risk, the TPOs are treating them as full or significant risk-bearing entities and making transfer pricing adjustments accordingly. The issue has been examined in CBDT. It is hereby clarified that a development centre in India may be treated as a contract R&D service provider with insignificant risk if the following conditions are cumulatively complied with:

1. Foreign principal performs most of the economically significant functions involved in research or product development cycle whereas Indian development centre would largely be involved in economically insignificant functions;

2. The principal provides funds/ capital and other economically significant assets including intangibles for research or product development and Indian development centre would not use any other economically significant assets including intangibles in research or product development;
3. Indian development centre works under direct supervision of foreign principal who not only has capability to control or supervise but also actually controls or supervises research or product development through its strategic decisions to perform core functions as well as monitor activities on regular basis;
4. Indian development centre does not assume or has no economically significant realized risks. If a contract shows the principal to be controlling the risk but conduct shows that Indian development centre is doing so, then the contractual terms are not the final determinant of actual activities. In the case of foreign principal being located in a country/territory widely perceived as a low or no tax jurisdiction, it will be presumed that the foreign principal is not controlling the risk. However, the Indian development centre may rebut this presumption to the satisfaction of the revenue authorities; and
5. Indian development centre has no ownership right (legal or economic) on outcome of research which vests with foreign principal, and that it shall be evident from conduct of the parties.

The satisfaction of all the above mentioned conditions should be borne out by the conduct of the parties and not merely by the contractual terms.

The above may be brought to the notice of all concerned.

5. CIRCULAR NO.06/2013 [F NO. 500/139/2012], DATED 29-6-2013

It has been brought to the notice of CBDT that there is divergence of views amongst the field officers and taxpayers regarding the functional profile of development centres engaged in contract R&D services for the purposes of determining arm's length price/ transfer pricing. In some cases, while taxpayers insist that they are contract R&D service providers with insignificant risk, the TPOs treat them as full or significant risk-bearing entities and make transfer pricing adjustments accordingly. The issue has been examined in the CBDT.

The Research and Development Centres set up by foreign companies can be classified into three broad categories based on functions, assets and risk assumed by the centre established in India. These are:

1. Centres which are entrepreneurial in nature;
2. Centres which are based on cost-sharing arrangements; and
3. Centres which undertake contract research and development.

While the three categories are not water-tight compartments, it is possible to distinguish them based on functions, assets and risk. It will be obvious that in the first case the Development Centre performs significantly important functions and assumes substantial risks. In the third case, it will be obvious that the functions, assets and risk are minimal. The second case falls between the first and the third cases.

More often than not, the assessee claims that the Development Centre in India must be treated as a contract R&D service provider with insignificant risk. Consequently, the assessee claims that in such cases the Transactional Net Margin Method (TNMM) must be adopted as the most appropriate method.

The CBDT has carefully considered the matter and lays down the following guidelines for identifying the Development Centre as a contract R&D service provider with insignificant risk.

1. Foreign principal performs most of the economically significant functions involved in research or product development cycle either through its own employees or through its associated enterprises while the Indian Development Centre carries out the work assigned to it by the foreign principal. Economically significant functions would include critical functions such as conceptualization and design of the product and providing the strategic direction and framework;
2. The foreign principal or its associated enterprise(s) provides funds/capital and other economically significant assets including intangibles for research or product development. The foreign principal or its associated enterprise(s) also provides a remuneration to the Indian Development Centre for the work carried out by the latter;
3. The Indian Development Centre works under the direct supervision of the foreign principal or its associated

enterprise which has not only the capability to control or supervise but also actually controls or supervises research or product development through its strategic decisions to perform core functions as well as monitor activities on regular basis;

4. The Indian Development Centre does not assume or has no economically significant realized risks. If a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the Indian Development Centre is doing so, then the contractual terms are not the final determinant of actual activities;

5. In the case of a foreign principal being located in a country/ territory widely perceived as a low or no tax jurisdiction, it will be presumed that the foreign principal is not controlling the risk. However, the Indian Development Centre may rebut this presumption to the satisfaction of the revenue authorities. Low tax jurisdiction shall mean any country or territory notified in this behalf under section 94A of the Act or any other country or territory that may be notified for the purpose of Chapter X of the Act;

6. Indian Development Centre has no ownership right (legal or economic) on the outcome of the research which vests with the foreign principal and that this is evident from the contract as well as from the conduct of the parties.

The Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the guidelines above and shall take a decision based on the totality of the facts and circumstances of the case. In doing so, the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall be guided by the conduct of the parties and not merely by the terms of the contract.

The Assessing Officer or the Transfer Pricing Officer, as the case may be, shall bear in mind the provisions of section 92C of the Act and Rule 10A to Rule 10C of the Rules. He shall also apply the guidelines enumerated above and select the'most appropriate method'.

The above may be brought to the notice of all concerned.

6. INSTRUCTION NO.2/2015

F No.500/15/2014/APA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Foreign Tax & Tax Research- 1 Division
APA-1 Section

New Delhi, Dated the 29th January, 2015

To

All Principal CCsIT/DsGlT and CCsIT/DsGlT

Madam/Sir

Subject Acceptance of the Order of the Hon'ble High Court of Bombay in the case of Vodafone India Services Pvt. Ltd.-reg.

In reference to the above cited subject, I am directed to draw your attention to the decision of the High Court of Bombay in the case of Vodafone lndia Services Pvt. Ltd. for AY 2009-10(WP No.871/2014), wherein the Court has held, inter-alia, that the premium on share issue was on account of o capital account transaction and does not give rise to income and, hence, not liable to transfer pricing adjustment.

2. lt is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgment, it is directed that the ratio decidendi of the judgment must be adhered to by the field officers in all cases where this issue is involved. This may also be brought to the notice of the ITAT, DRPs, and CslT(Appeals).

3. This issues with the approval of Chairperson CBDT.

(Anchal Khandelwal)
Under Secretary to the Govt. of India

ANNEXURE-5 FORMS

OTHER FORMS PRESCRIBED UNDER INCOME-TAX RULES, 1962

FORM NO. 3CEAA

[SEE RULE 10DA]

MASTER FILE

Report to be furnished under sub-section (4) of section 92D of the Income-tax Act, 1961

PART – A

1. Name of the assessee –
2. Address of the assessee –
3. Permanent account number of the assessee –
4. Name of the international group of which the assessee is a constituent entity –
5. Address of the international group of which the assessee is a constituent entity –
6. Accounting Year for which the report is being submitted –
7. Number of constituent entities of the international group operating in India –
8. Name, permanent account number and address of all the constituent entities included in item No. 7-

Serial Number	Name of the constituent entities of the international group	Permanent account number of the constituent entities of the international group	Address of the constituent entities of the international group

PART – B

1. List of all entities of the international group along with their addresses –

Serial Number	Name	Address

2. Chart depicting the legal status of the constituent entity and ownership structure of the entire international group–
3. Written description of the business of the international group during the accounting year in accordance with clause (c) of sub-rule (1) of rule 10DA containing the following, namely:-
   (i) the nature of the business or businesses;
   (ii) the important drivers of profits of such business or businesses;
   (iii) a description of the supply chain for the five largest products or services of the international group in terms of revenue and any other products including services amounting to more than five per cent. of the consolidated group revenue;
   (iv) a list and brief description of important service arrangements made among members of the international group, other than those for research and development services;
   (v) a description of the capabilities of the main service providers within the international group;
   (vi) the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services;
   (vii) a list and description of the major geographical markets for the products and services offered by the international group;
   (viii) the functions, assets and risks analysis of the constituent entities of the international group that contribute at least ten per cent. of the revenues or assets or profits of such group; and
   (ix) a description of the important business restructuring transactions, acquisitions and divestments.
4. Description of the overall strategy of the international group for the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management –
5. List of all entities of the international group engaged in development of intangible property and in management of intangible property along with their addresses –

Serial Number	Name of the entity of the international group	Address of the entity of the international group

6. List of all the important intangible property or groups of intangible property owned by the international group along with the names and addresses of the group entities that legally own such intangible property –

Serial Number	Intangible property / group of intangible property	Name of the entity who legally owns the intangible property/ group of intangible property	Address of the entity

7. List and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements –
8. Description of the transfer pricing policies of the international group related to research and development and intangible property –
9. Description of important transfers of interest in intangible property, if any, among entities of the international group, including the names and addresses of the selling and buying entities and the compensation paid for such transfers –
10. Detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders –
11. List of group entities that provide central financing functions, including their addresses of operation and of effective management –
12. Detailed description of the transfer pricing policies of the international group related to financing arrangements among group entities –
13. A copy of the annual consolidated financial statement of the international group –
14. A list and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries –

I ..... son/daughter/wife* of Shri ..... hereby declare that I am furnishing

the information in my capacity as ..... (designation) of .....(name of the assessee) and I am competent to furnish the said information and verify it.

Place: ....
Signature**

Date: ....
Address of the declarant

.....
PAN of the declarant

Note 1: *Strike off whichever is not applicable.

**This form has to be signed by the person competent to verify the return of income under section 140

FORM NO. 3CEAB

[SEE RULE 10DA]

Intimation by a designated constituent entity, resident in India, of an international group, for the purposes of sub-section (4) of section 92D of the Income-tax Act, 1961

1. Name of the designated constituent entity –
2. Address of the designated constituent entity –
3. Permanent account number of the designated constituent entity –
4. Name of the international group –
5. Name of the parent entity of the international group –
6. Address of the parent entity of the international group –
7. The country of residence of the parent entity –
8. Accounting Year for which the report is being submitted –

I, ..., son/daughter/wife* of Shri ..... hereby declare that I am furnishing the information in my capacity as ..... (designation) of ..... (name of the assessee) and I am competent to furnish the said information and verify it.

Place: ....

Signature**

Date: ....

Address of the declarant

.....

PAN of the declarant

Note: *Strike off whichever is not applicable.

**This form has to be signed by the person competent to verify the return of income under section 140.

FORM NO. 3CEAC

[SEE RULE 10DB]

Intimation by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in India, for the purposes of sub-section (1) of section 286 of the Income-tax Act, 1961

1. Name of the constituent entity –
2. Address of the constituent entity –
3. Permanent account number of the constituent entity –
4. Name of the international group –
5. Name of the parent entity of the international group –
6. Address of the parent entity of the international group –
7. The country of residence of the parent entity –
8. Whether the international group has designated an alternate reporting entity in place of the parent entity to furnish the report referred to in sub-section (2) of section 286 - Yes/No
9. If yes, name and address of the alternate reporting entity of the international group –
   (i) Name of alternate reporting entity
   (ii) Address
10. The country of residence of the alternate reporting entity –
11. Reportable Accounting Year –

I, ..., son/daughter/wife* of Shri ..... hereby declare that I am furnishing the information in my capacity as ..... (designation) of ..... (name of the assessee) and I am competent to furnish the said information and verify it.

Place: ....

Signature**

Date: ....

Address of the declarant

.....

PAN of the declarant

Note: *Strike off whichever is not applicable.

**This form has to be signed by the person competent to verify the return of income under section 140.

FORM NO. 3CEAD

[SEE RULE 10DB]

COUNTRY-BY-COUNTRY REPORT

Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the purposes of sub-section (2) or sub-section (4) of section 286 of the Income-tax Act, 1961

Name of the reporting entity	
PAN of the reporting entity	
Address of the reporting entity	
Whether the reporting entity is the parent entity of the international group	

PART A: OVERVIEW OF ALLOCATION OF INCOME, TAXES AND BUSINESS ACTIVITIES BY TAX JURISDICTION

Name of the Multinational Enterprise group: Reportable accounting year : Currency used:										
Tax Jurisdiction	Revenues			Profit (Loss) before Income Tax	Income Tax Paid (on Cash Basis)	Income Tax Accrued – Reportable Accounting Year	Stated Capital	Accumulated Earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

PART B: LIST OF ALL THE CONSTITUENT ENTITIES OF THE MULTINATIONAL ENTERPRISES GROUP INCLUDED IN EACH AGGREGATION PER TAX JURISDICTION

Tax Jurisdiction	*Name of the Multinational Enterprise group: Fiscal year concerned:*														
	Tax				Main Business Activity (ies)										
	Constituent entities Resident in the Tax Jurisdiction	Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management and Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or other Equity instruments	Dormant	Other
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

PART C: ADDITIONAL INFORMATION

Name of the Multinational Enterprises group: Reportable accounting year :
Please include any further brief information or explanation that is considered necessary or that would facilitate the understanding of the compulsory information provided in Part A and Part B. (e.g. Source of Data)

I ..... son/daughter/wife* of Shri ..... hereby declare that I am furnishing the information in my capacity as ..... (designation) of .....(name of the assessee) and I am competent to furnish the said information and verify it.

Place: ....

Signature**

Date: ....

Address of the declarant

.....

PAN of the declarant

Note 1: *Strike off whichever is not applicable

**This form has to be signed by the person competent to verify the return of income under section 140.

Note 2: Specific instructions

PART A

1. In the column titled "Tax Jurisdiction", the Reporting multi-national enterprise (MNE) should list all of the tax jurisdictions in which Constituent Entities of the MNE group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line should be included for all Constituent Entities in the MNE group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity's place of effective management.
2. In the three columns of the template under the heading "Revenues", the Reporting MNE should report the following information: (i) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with associated enterprises; (ii) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with independent parties; and (iii) the total of (i) and (ii). Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues should exclude payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction.
3. Under the column titled "Profit (Loss) before Income Tax", the Reporting MNE should report the sum of the profit (loss) before income tax for all Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax should include all extraordinary income and expense items.
4. Under the column titled "Income Tax Paid (on Cash Basis)", the Reporting MNE should report the total amount of income tax actually paid during the relevant fiscal year by all Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid should include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid should

include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B should be reported by company A.

5. Under the column titled "Income Tax Accrued – Reportable Accounting Year", the Reporting MNE should report the sum of the accrued tax expense recorded on taxable profits or losses of the year of reporting of all Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The tax expense should reflect only operations in the reportable accounting year and should not include deferred taxes or provisions for uncertain tax liabilities.
6. Under the column titled "Stated Capital", the Reporting MNE should report the sum of the stated capital of all Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.
7. Under the column titled "Accumulated Earnings", the Reporting MNE should report the sum of the total accumulated earnings of all Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.
8. Under the column titled "Number of Employees", the Reporting MNE should report the total number of employees on a full-time equivalent (FTE) basis of all Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

9. Under the column titled "Tangible Assets other than Cash and Cash Equivalents", the Reporting MNE should report the sum of the net book values of tangible assets of all Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

PART B

10. Under the column titled "Constituent Entities Resident in the Tax Jurisdiction", the Reporting MNE should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the Constituent Entities of the MNE group which are resident for tax purposes in the relevant tax jurisdiction. As stated above with regard to permanent establishments, however, the permanent establishment should be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment should be noted (e.g. XYZ Corp – Tax Jurisdiction APE).
11. Under the column titled "Tax Jurisdiction of Organization or Incorporation if different from Tax Jurisdiction of Residence", the Reporting MNE should report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE is organised or incorporated if it is different from the tax jurisdiction of residence.
12. Under the column titled "Main Business Activity(-ies)", the Reporting MNE should determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes. In this column, if the Reporting MNE chooses the option 'Other', then it shall be required to specify the nature of the activity of the Constituent Entity in the "Part C: Additional Information" section.

FORM NO. 3CEAE

[SEE RULE 10DB]

COUNTRY-BY-COUNTRY REPORT

Intimation on behalf of the international group for the purposes of the proviso to sub-section (4) of section 286 of the Income-tax Act, 1961

1. Name of the international group –
2. Name of the parent entity of the international group –
3. Address of the parent entity of the international group
4. Name of the constituent entity designated to furnish the report under sub-section (4) of section 286 of the Income tax Act, 1961 –
5. Address of the constituent entity designated to furnish the report under sub-section (4) of section 286 of the Income-tax Act, 1961 –
6. Permanent account number of the designated constituent entity –
7. Names, permanent account numbers and addresses of all other constituent entities of the international group resident in India –

Sl. No.	Name of the constituent entity	Permanent account number	Address

I ..... son/daughter/wife* of Shri ..... hereby declare that I am furnishing the information in my capacity as ..... (designation) of..... (name of the assessee) and I am competent to furnish the said information and verify it.

Place: ....
Signature**

Date: ....
Address of the declarant

.....
PAN of the declarant

Note 1: *Strike off whichever is not applicable

**This form has to be signed by the person competent to verify the return of income under section 140.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) vide number S.O. 969 (E) dated the 26th March, 1962 and were last amended vide notification number GSR No. 1221(E), dated the 5th of October, 2017.

FORM NO. 3CEB

[SEE RULE 10E]

Report from an accountant to be furnished under section 92E relating to international transaction(s) and specified domestic transaction(s)

1. *I/We have examined the accounts and records of _____ (name and address of the assessee with PAN) relating to the international transaction (s) and the specified domestic transaction(s) entered into by the assessee during the previous year ending on 31st March, _____

2. In*my/our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transaction(s) and the specified domestic transactions entered into so far as appears from *my/our examination of the records of the assessee.

3. The particulars required to be furnished under section 92E are given in the Annexure to this Form. In*my/our opinion and to the best of my/our information and according to the explanations given to *me/us, the particulars given in the Annexure are true and correct.

Place : _____ **Signed.....

Date : _____ Name.....

Address

.....

Membership No

.....

Notes :

1. *Delete whichever is not applicable.
2. **This report has to be signed by—
   (i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
   (ii) any person who, in relation to any State, is, by virtue of the provisions in sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State.

ANNEXURE TO FORM NO. 3CEB

Particulars relating to international transactions and specified domestic transactions required to be furnished under section 92E of the Income-tax Act, 1961

PART A

1. Name of the assessee _____
2. Address _____
3. Permanent account number _____
4. Nature of business or activities of the assessee* _____
5. Status _____
6. Previous year ended _____
7. Assessment year _____
8. Aggregate value of international transactions as per books of accounts_____
9. Aggregate value of specified domestic transactions as per books of accounts_____

* Code for nature of business to be filled in as per instructions for filling Form ITR 6

PART B (International Transactions)

10	List of associated enterprises with whom the assessee has entered into international transactions, with the following details : (a) Name of the associated enterprise. (b) Nature of the relationship with the associated enterprise as referred to in section 92A(2). (c) Brief description of the business carried on by the associated enterprise	
11	Particulars in respect of transactions in tangible property. A. Has the assessee entered into any international transaction(s) in respect of purchase/sale of raw material, consumables or any other supplies for assembling or processing/manufacturing of goods or articles from/to associated enterprises?	Yes/ No

11	If 'yes', provide the following details in respect of each associated enterprise and each transaction or class of transaction : (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Description of transaction and quantity purchased/sold. (c) Total amount paid/received or payable/ receivable in the transaction— (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See section 92C(1)]	Yes / No
	B. Has the assessee entered into any international transaction(s) in respect of purchase/sale of traded/ finished goods? If 'yes' provide the following details in respect of each associated enterprise and each transaction or class of transaction : (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Description of transaction and quantity purchased/sold. (c) Total amount paid/ received or payable/ receivable in the transaction (i) as per books of accounts; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See section 92C(1)] C. Has the assessee entered into any international transaction(s) in respect of purchase, sale, transfer, lease or use of any other tangible property including transactions specified in Explanation (i)(a) below section 92B(2)?	Yes / No

	If 'yes' provide the following details in respect of each associated enterprise and each transaction or class of transaction: (a) Name and address of the associate enterprise with whom the international transaction has been entered into. (b) Description of the property and nature of transaction. (c) Number of units of each category of tangible property involved in the transaction. (d) Amount paid/received or payable/receivable in each transaction of purchase/sale/transfer /use, or lease rent paid/received or payable/receivable in respect of each lease provided/entered into — (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (a) Method used for determining the arm's length price [See section 92C(1)]	
12	Particulars in respect of transactions in intangible property : Has the assessee entered into any international transaction(s) in respect of purchase, sale, transfer, lease or use of intangible property including transactions specified in Explanation (i)(b) below section 92B(2)? If 'yes' provide the following details in respect of each associated enterprise and each category of intangible property : (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Description of intangible property and nature of transaction. (c) Amount paid/received or payable/receivable for purchase/sale/transfer/lease/use of each category of intangible property— (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price.	Yes / No

	(d) Method used for determining the arm's length price [See section 92C(1)]	
13	Particulars in respect of providing of services : Has the assessee entered into any international transaction(s) in respect of Services including transactions as specified in Explanation (i)(d) below section 92B(2)? If 'yes' provide the following details in respect of each associated enterprise and each category of service : (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Description of services provided/availed to/from the associated enterprise. (c) Amount paid/received or payable/receivable for the services provided/taken— (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See section 92C(1)]	Yes/ No
14	Particulars in respect of lending or borrowing of money : Has the assessee entered into any international transaction(s) 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)? (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Nature of financing agreement. (c) Currency in which transaction has taken place (d) Interest rate charged/paid in respect of each lending/borrowing. (e) Amount paid/received or payable/receivable in the transaction as per books of account;	Yes/ No

	(ii) as computed by the assessee having regard to the arm's length price. (f) Method used for determining the arm's length price [See section 92C(1)]	
15	Particulars in respect of transactions in the nature of guarantee: Has the assessee entered into any international transaction(s) in the nature of guarantee? If yes, provide the following details: (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Nature of guarantee agreement (c) Currency in which the guarantee transaction was undertaken (d) Compensation/ fees charged/ paid in respect of the transaction (e) Method used for determining the arm's length price [See section 92C(1)]	Yes/ No
16	Particulars in respect of international transactions of purchase or sale of marketable securities, issue and buyback of equity shares, optionally convertible/ partially convertible/ compulsorily convertible debentures/ preference shares: Has the assessee entered into any international transaction(s) in respect of purchase or sale of marketable securities or issue of equity shares including transactions specified in Explanation (i)(c) below section 92B (2)? If yes, provide the following details: (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Nature of transaction (c) Currency in which the transaction was undertaken (d) Consideration charged/ paid in respect of the transaction.	Yes/ No

	(e) Method used for determining the arm's length price [See section 92C(1)]	
17	Particulars in respect of transactions in the nature of guarantee: Has the assessee entered into any international transaction(s) in the nature of guarantee? If yes, provide the following details: (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Nature of guarantee agreement (c) Currency in which the guarantee transaction was undertaken (d) Compensation/ fees charged/ paid in respect of the transaction (e) Method used for determining the arm's length price [See section 92C(1)]	Yes/ No
18	Particulars in respect of international transactions arising out/ being part of business restructuring or reorganizations: Has the assessee entered into any international transaction(s) arising out/being part of any business restructuring or reorganization entered into by it with the associated enterprise or enterprises as specified in Explanation (i) (e) below section 92B (2) and which has not been specifically referred to above? If 'yes', provide the following details: (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Nature of transaction (c) Agreement in relation to such business restructuring/ reorganization.	Yes/ No
	(d) Terms of business restructuring/ reorganization. (e) Method used for determining the arm's length price [See section 92C(1)]	

19	Particulars in respect of any other transaction including the transaction having a bearing on the profits, income, losses or assets of the assessee: Has the assessee entered into any other international transaction(s) including a transaction having a bearing on the profits, income, losses or asset, but not specifically referred to above, with associated enterprise? If 'yes' provide the following details in respect of each associated enterprise and each transaction : (a) Name and address of the associated enterprise with whom the international transaction has been entered into. (b) Description of the transaction. (c) Amount paid/received or payable/receivable in the transaction— (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See section 92C(1)]	Yes / No
20	Particulars of deemed international transactions: Has the assessee entered into any transaction with a person other than an AE in pursuance of a prior agreement in relation to the relevant transaction between such other person and the associated enterprise? If yes, provide the following details in respect of each of such agreement (a) Name and address of the person other than the associated enterprise with whom the deemed international transaction has been entered into. (b) Description of the transaction. (c) Amount paid/received or payable/receivable in the transaction— (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price.	Yes / No

	(d) Method used for determining the arm's length price [See section 92C(1)].	
	PART C (Specified domestic transaction)	
21	List of associated enterprises with whom the assessee has entered into specified domestic transactions, with the following details: (a) Name, address and PAN of the associated enterprise. (b) Nature of the relationship with the associated enterprise (c) Brief description of the business carried on by the said associated enterprise.	
22	Particulars in respect of transactions in the nature of any expenditure: Has the assessee entered into any specified domestic transaction (s) being any expenditure in respect of which payment has been made or is to be made to any person referred to in section 40A(2)(b)? If "yes", provide the following details in respect of each of such person and each transaction or class of transaction: (a) Name of person with whom the specified domestic transaction has been entered into. (b) Description of transaction along with quantitative details, if any (c) Total amount paid or payable in the transaction— (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See section 92C(1)]	Yes / No
23	Particulars in respect of transactions in the nature of transfer or acquisition of any goods or services: A. Has any undertaking or unit or enterprise or eligible business of the assessee [as referred to in section 80A(6), 80IA(8) or section 10AA)]transferred any goods or services to any other business carried on by the assessee?	

	If yes, provide the following details in respect of each unit or enterprise or eligible business: (a) Name and details of business to which goods or services have been transferred (b) Description of goods or services transferred (c) Amount received/receivable for transferring of such goods or services –	
	(i) as per the books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See section 92C(1)]. B. Has any undertaking or unit or enterprise or eligible business of the assessee [as referred to in section 80A(6), 80IA(8) or section 10AA] acquired any goods or services from another business of the assessee? If yes, provide the following details in respect of each unit or enterprise or eligible business: (a) Name and details of business from which goods or services have been acquired (b) Description of goods or services acquired	Yes / No Yes / No
	(c) Amount paid/payable for acquiring of such goods or services– (i) as per the books of account; (ii) as computed by the assessee having regard to Yes/No the arm's length price (d) Method used for determining the arm's length price [See section 92C(1)]	
24	Particulars in respect of specified domestic transaction in the nature of any business transacted: Has the assessee entered into any specified domestic transaction(s) with any associated enterprise whichhas resulted in more than ordinary profits to an eligible business to which section 80IA(10) or section 10AA applies? If "yes", provide the following details:	

	(a) Name of the person with whom the specified domestic transaction has been entered into (b) Description of the transaction including quantitative details, if any. (c) Total amount received/receivable or paid/ payable in the transaction – (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See section 92C(1)].	Yes / No
25	Particulars in respect of any other transactions : Has the assessee entered into any other specified domestic transaction(s) not specifically referred to above, with an associated enterprise ? If 'yes' provide the following details in respect of each associated enterprise and each transaction : (a) Name of the associated enterprise with whom the specified domestic transaction has been entered into. (b) Description of the transaction. (c) Amount paid/received or payable/receivable in the transaction— (i) as per books of account; (ii) as computed by the assessee having regard to the arm's length price. (d) Method used for determining the arm's length price [See section 92C(1)].	Yes / No

Place : _____

**Signed.....

Date : _____

Name.....

Address

.....

Membership No

.....

Notes :**This annexure has to be signed by –

(i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

(ii) any person who, in relation to any State, is, by virtue of the provisions in sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as.

FORM NO. 3CEC

[SEE SUB-RULE (2) OF RULE 10H]

Application for a pre-filing meeting

To,

The Director General of Income-tax (International Taxation)
New Delhi

Sir/Madam,

I propose to apply for an Advance Pricing Agreement. In this regard I give below the necessary particulars for a pre-filing meeting:

1.	Particulars of the applicant	
	a. Full name of the applicant:	
	b. Permanent account number:	
	c. Address of the applicant:	
	d. Location(s) of the business enterprises in India:	
	e. Details of applicant authorized representative:	
	f. Address for communication:	
	g. E-mail Id and the contact numbers of the person with whom correspondence is required to be made:	
2	The global structure of the applicant's group and the industry in which it operates:	
3	Names of all the associated enterprises (AE's) with which international transactions have been either undertaken or proposed to be undertaken:	
4.	Name of country(s) in which (AE's) is located:	

5.	Business model and overview of the applicant's business operations in prior 3 years:	
6.	Functional and Risk Profile of the applicant and associated enterprises:	
7.	a. Details of all the international transactions proposed to be covered in the APA:	
	b. Value of such international transactions covered under Transfer Pricing audit in prior 3 years:	
8.	Details of all other international transactions not proposed to be covered in the APA:	
9.	Type of APA proposed:	
	a. Are you proposing a unilateral APA?	☐ Yes ☐ No
	b. If yes the reasons for the same:	
	c. Are you proposing a Bilateral or Multilateral APA?	☐ Yes ☐ No
	d. If yes, provide the names of the country(ies) in which the associated enterprises are located:	
10.	Number of years for which APA is proposed to be applied including the roll back years	
11.	Proposed transfer pricing methodology to be used with supporting documentation:	
12.	Identification of third party comparable:	
13.	Details of arm's length price or profit level indicator:	
14.	Details of critical assumptions, that the applicant considers, may affect the business or the transfer pricing methodology:	
15.	The history of the Competent Authority issues, requests and settlements:	

16.	History of transfer pricing audits, assessments and present status of appeals:	
17.	Names and designation of the representatives who would be appearing before the authorities for pre-filing discussions:	

Any other relevant information:

I declare that to the best of my knowledge and belief, the information furnished in the application is correct and truly stated.

Place: Yours faithfully,

Date: Applicant

Notes:

1. The application must be filed in triplicate.
2. If the space provided for answering any item in the application is found insufficient, separate enclosures may be used for the purpose. These enclosures should be signed by the person authorised to sign the application.
3. In case the pre-filing meeting is requested on an anonymous basis, no names of the applicant or associated enterprises are to be given.
4. With regard to details of all the international transactions proposed to be covered in the APA, please furnish agreements with associated enterprises, if any, relating to the international transactions along with the reasons for covering these transactions in APA.
5. In case the applicant is applying for a Bilateral or Multilateral APA, the applicant must state whether India has an existing comprehensive DTAA with such country(ies). It may also be verified whether such country(ies) has APA program in place?
6. In case the pre-filing request is on anonymous basis, details of the representatives of the applicant who would be appearing before the authorities for pre-filing discussions must be furnished.

FORM NO. 3CED

[SEE SUB-RULE (1) OF RULE 10-I]

Application for an Advance Pricing Agreement

To,

The Competent Authority of India

or

Director General of Income-tax (International Taxation)

New Delhi

Sir/Madam,

This is to state that ..... (Name of the Applicant)..... wishes to negotiate an APA with the Central Board of Direct Taxes. I am submitting herewith the necessary particulars hereunder:

I. General

1.	Particulars of the applicant:		
	a.	Full name of the applicant:	
	b.	Permanent account number:	
	c.	Address of the applicant:	
	d.	Address for communication:	
	e.	Location(s) of the business enterprises in India:	
	f.	E-mail Id and the contact numbers of the person with whom correspondence is required to be made:	
	g.	Names and designation of the authorised representatives who would be appearing before the authorities for negotiations of the APA:	
2.	Whether pre-filing discussions were sought by the applicant? If yes, please furnish:		
	a.	Date of application for prefiling meeting:	

	b.	Date of pre-filing meeting(s) with the APA Team:	
3.	Particular(s) of the Associated Enterprises with whom the APA is requested for :		
	a.	Name(s) of the Associated Enterprise(s):	
	b.	Name(s) of the country(ies) in which the associated enterprises mentioned in clause (a) are located:	
	c.	Taxpayer Registration Number/ Taxpayer Identification Number/ Functional equivalent/ Any unique number used for identification of the Associated Enterprise by the Government of that country/ specified territory in which the Associated Enterprise claims to be located:	
4.	**Particulars of the Parent Company(ies) of the applicant:**		
	a.	Name of Immediate parent company of applicant:	
	b.	Address of Immediate parent company of applicant:	
	c.	Country of residence of Immediate parent company of applicant:	
	d.	Taxpayer Registration Number/ Taxpayer Identification Number/ Functional equivalent/ Any unique number used for identification of the Immediate parent company by the Government of that country/ specified territory of which it claims to be a resident:	
	e.	Name of Ultimate parent company of applicant:	
	f.	Address of Ultimate parent company of applicant:	

	g.	Country of residence of Ultimate parent company of applicant:	
	h.	Taxpayer Registration Number/ Taxpayer Identification Number/ Functional equivalent/ Any unique number used for identification of the Ultimate parent company by the Government of that country/ specified territory of which it claims to be a resident:	
5.	a.	Are you applying for a Unilateral, Bilateral or Multilateral APA:	□ Unilateral □ Bilateral □ Multilateral
	b.	If you are applying for a Bilateral or Multilateral APA, have the Associated Enterprises applied for APA with the Competent Authority in the country of its residence?	□ Yes □ No
	c.	If yes, enclose evidence of furnishing such application with the other Competent Authority:	
	d.	If no, by what date the application is proposed to be furnished to the other Competent Authority:	
	e.	If the application is for Unilateral APA and it involves international transactions with an entity located in a jurisdiction with which India has an agreement under section 90 or 90A of the Act for avoidance of double taxation, kindly provide explanation for why the request is not for bilateral or multilateral APA.	
	f.	Whether any rollback request is made.	□ Yes □ No
	g.	If yes, enclose copy of relevant Form No. 3CEDA	

6.	Particulars of fee paid by the applicant	Amount in Rs. Challan No. : Dated:
7.	Period of APA proposed along with the date from which APA is sought to be applicable:	
8.	Details of the international transactions proposed to be covered in the APA (Description of the property or services to which the proposed APA relates):	
9.	Proposed Transfer Pricing Method(s):	
10.	Proposed terms and conditions, and critical assumptions, for the APA:	
11.	History and background of the applicant and the associated enterprise:	
12.	General description of business and products/services:	
13.	Multinational structure, organizational arrangement, operational set-up, including major transaction flows:	
14.	Identify all other transaction flows of the multinational enterprise (volumes, directions and amounts) that may have an impact on the pricing of the covered transactions:	
15.	Functional currency for each entity and the currency which is used for the proposed transactions to be covered under the APA:	
16.	Accounting and costing system, policies, procedures, and practices, including any significant financial and tax accounting differences that may affect the TPMs:	
II	**Functional analysis**	
17.	Detailed functional analysis of the applicant and all relevant entities with respect to the covered transactions:	

18.	Business strategies - current and future Budget statements, projections and business plans for future period covered by proposed APA, general business and industry trends, future direction/ business strategy including R&D, production and marketing:		
19.	Financial and operating information, including corporate annual reports: (Please enclose copies)		
	a.	Financial statements on a consolidated and unconsolidated basis for the prior five years, or the most recent business cycle as appropriate (Also provide interim statements for the most recent period prior to the date of the submission):	
	b.	Income-tax returns and related supporting schedules for th e prior three years including Form 3CEB:	
	c.	Operating data (gross and net) segmented by product line, division, unit, and geographic region for the prior five years, or the most recent business cycle as appropriate:	
20.	Relevant marketing and financial studies: (Please enclose copies)		
21.	Copies of all relevant inter-company agreements (pricing, cost sharing, licensing, distributorship etc.): (Please enclose copies)		
III.	**Industry and market analyses**		
22	Detailed industry analysis:		
	a.	Comprehensive description of industry as well as generally accepted industrial and commercial practices:	

	b.	Identification and general profile of competitors, including respective market shares:	
	c.	Industry and general business statistics, financial ratios, and analyses/studies:	
	d.	Critical success factors:	
23.	Detailed analysis of the markets for all countries involved:		
IV	**Transfer pricing background**		
24.	Discussion of relevant legal considerations and requirements as per:		
	a.	Indian law	
	b.	Foreign law	
	c.	Income-tax treaty between India and the foreign country	
25.	Discussion of transfer pricing methodologies, policies, and practices used by the applicant and associated enterprises for the covered transactions during the past three years, or business cycle as appropriate:		
26.	Discussion of relevant rulings, APAs/ BAPAs/MAPAs, and other similar arrangements entered into with foreign tax administrations, for transfer pricing or other valuation bases, or other taxation matters entered into by the applicant (or its associated enterprises) and Indian or foreign tax administrations:		
27.	Discussion of relevant Indian income-tax audit, appeals, judicial and competent authority history:		
28.	Discussion of relevant foreign income-tax audit, appeals, judicial and competent authority history		

29.	Discussion of un-assessed taxation years (Indian and foreign) and related outstanding tax, legal and other pertinent issues:	
V.	**Transfer Pricing Methodology analysis**	
30.	Provide all information, including detailed analyses and explanations needed to establish the appropriateness of a proposed TPM, in accordance with transfer pricing regulations as contained in the Indian Income-tax law:	
31.	Discussion and analysis of each transfer pricing method, applied or rejected, for each covered transaction. In particular provide details on accepted or rejected internal comparables. (Indicate assumptions, strategies and policies that may have influenced the acceptance or rejection of each TPM):	
32.	Summary of selected TPMs and secondary TPMs, if used as a sanity check:	
VI.	**Impact of proposed TPMs**	
33.	Application of the proposed TPMs to the covered transactions for the three prior years' operations or the most recent business cycle, and discuss results:	
34.	Application of the proposed TPMs to the time period applicant wants the APA to cover and discuss results:	
35.	Discussion and quantification of the variance, if any, from the methodology applied in section IV:	

I declare that to the best of my knowledge and belief, the information furnished in

the application is correct and truly stated.

Place: Yours faithfully,

Date: Applicant

Notes:

1. Bilateral or multilateral APA application shall be filed with the Competent Authority i.e. the Joint Secretary FT&TR-I, New Delhi in triplicate.
2. Unilateral APA application shall be filed with the Director General of Income-tax (International Taxation), New Delhi in triplicate.
3. If the space provided for answering any item in the application is found insufficient, separate enclosures may be used for the purpose. These enclosures should be signed by the person authorised to sign the application.
4. The fee shall be computed in accordance with the sub-rule (5) of rule 10-I.
5. The application shall accompany with all the relevant documents.

FORM NO. 3 CEDA

[SEE SUB-RULE (5) OF RULE 10 MA]

Application for rollback of an Advance Pricing Agreement

To,

The Competent Authority of India

or

Director General of Income Tax (International Taxation)

New Delhi

Sir/Madam,

This is to state that ..... (Name of the Applicant)... wishes to negotiate an APA with the Central Board of Direct Taxes containing rollback provision. I am submitting herewith the necessary particulars hereunder:

1.	Particulars of the applicant:		
	(a)	Full name of the applicant:	
	(b)	Permanent Account Number:	
	(c)	Address of the applicant:	
	(d)	Address for communication:	
	(e)	Location(s) of the business enterprises in India:	
	(f)	Email id and the contact numbers of the person with whom correspondence is required to be made:	
	(g)	Names and designation of the authorised representatives who would be appearing before the authorities for negotiations of the APA:	
2.	Whether pre-filing discussions in respect of rollback were sought by the applicant? If yes, please furnish:		

	(a)	Date of application for pre-filing meeting:	
	(b)	Date of pre-filing meeting(s) with the APA Team:	
3.	Whether application in Form 3CED is being filed simultaneously:		
4.	Details of international transaction(s) including Name(s) of the Associated Enterprises in respect of which rollback is requested for:		
5.	Whether the international transaction(s) is the same as that in respect of which APA request is being made in Form 3CED by the applicant:		
6.	Particulars of additional Fee paid by the applicant:		Amount in Rs.… Challan No: …… Dated: ……
7.	The details of previous years for which rollback is being sought:		
8.	Has the same international transaction been undertaken in any other year for which rollback is permissible but the same is not being requested for. If yes, the reasons for the same be provided:		
9.	Period of APA proposed along with the date from which APA is sought to be made applicable in the application in Form 3CED:		
10.	Whether return of income for all the previous years mentioned in 7 above have been furnished on or before the due date:		
11.	If yes, provide details including acknowledgement No., date of furnishing etc.		

12.	Whether audit report under section 92 E in respect of the international transaction referred to in 4 above for all the previous years mentioned in 7 above have been furnished on or before the due date:	
13.	If yes, provide details including date of furnishing etc.	
14.	Details of pending proceedings including appeals for the years mentioned in 7 above in respect of international transaction(s) mentioned in 4 above	
15.	Whether Appellate Tribunal has disposed of any appeal in respect of international transaction mentioned in 4 above for any of the years mentioned in 7 above? if yes, then details may be provided:	

I declare that the information furnished in the application is correct and truly stated.

.....

Yours faithfully,

Place: .....

Date: .....

.....

Applicant

Notes:

1. The Form shall be filed along with an application in Form 3CED for entering into an APA.
2. If the space provided for answering any item in the application is found insufficient, separate enclosures may be used for the purpose. These enclosures should be signed by the person authorised to sign the application in Form 3CED.
3. The Form shall be accompanied with proof of having paid fee of five lakh rupees. This fee is in addition to any fee payable along with Form 3CED.
4. The application shall be accompanied by all the relevant documents.".

FORM NO. 3CEE

[SEE SUB-RULE (2) OF RULE 10J]

Application for withdrawal of APA request

To,
The Competent Authority of India,
or
The Director General of Income-tax (International Taxation),

New Delhi

Sir/Madam,

This is to state that..... (Name of the Taxpayer) had filed an application for Unilateral/Bilateral/Multilateral APA on ...dd/mm/yyyy. For the reasons stated below, the application is hereby withdrawn:

.....

.....

.....

.....

I declare that to the best of my knowledge and belief, the information furnished with regard to the withdrawal of the application is correct and truly stated and I fully understand that the fee paid by me under rule 10-I of Income-tax Rules shall not be refunded.

Place: Yours faithfully,

Date: Applicant

Notes:

1. The Withdrawal Application must be filed in triplicate.
2. The Withdrawal Application shall be filed before the authority, before whom the application for APA was made.
3. If the space provided for answering any item in the application is found insufficient, separate enclosures may be used for the purpose. These enclosures should be signed by the person authorised to sign the application.

FORM NO. 3 CEF

(SEE SUB-RULE (2) OF RULE 10-O)

Annual Compliance Report on Advance Pricing Agreement

To,

The Director General of Income-tax (International Taxation)

New Delhi

Sir/Madam,

I am submitting herewith Annual Compliance Report for the period beginning from dd/mm/yyyy to dd/mm/yyyy for Advance Pricing Agreement entered into between.....(Name of the taxpayer).....and the Central Board of Direct Taxes, vide APA Reference No. .....dated.....In this regard I give below the necessary information:

1.	Particulars of the applicant:		
	a.	Full name of the Taxpayer:	
	b.	Permanent Account Number:	
	c.	Address of the Taxpayer:	
	d.	Address for communication:	
	e.	Email Id and the contact numbers of the person for correspondence:	
2.	Type of APA entered into:		
	a.	Have you entered into a unilateral APA or Bilateral APA or Multilateral APA?	□ Unilateral □ Bilateral □ Multilateral
	b.	If you have entered into a Bilateral APA or Multilateral APA, provide the names of the country(ies) with which the APA has been entered into.	
3.	Name(s) of the associated enterprise(s) with which international transactions have been undertaken during the year.		
4.	Details of Covered Transactions:		

	a.	Nature of Covered Transaction:	
	b.	Amount of Covered Transaction:	
	c.	Country(ies) involved:	
	d.	Agreed transfer pricing method:	
	e.	Agreed profit level indicator:	
	f.	Actual result achieved:	
	g.	Adjustment required:	
	h.	How the adjustment if any is reflected in the income-tax return:	
5.	Are there any changes in the business model of the taxpayer in the current financial year as compared to:		
	a.	Immediately preceding year:	
	b.	Year immediately preceding to the first year to which APA is applicable:	
6.	Are there any changes in the Functional and Risk Profile of the taxpayer and the associated enterprises in the current financial year as compared to:		
	a.	Immediately preceding year:	
	b.	Year immediately preceding to the first year to which APA is applicable:	
7.	Transfer pricing methodology:		
	a.	Agreed upon in the APA:	
	b.	Followed during the year to justify the arm's length price of the international transactions covered by APA:	
	c.	Variations between (a) and (b) above, if any:	
	d.	Reasons for variations:	
8.	Critical assumptions:		
	a.	Agreed upon in the APA:	

	b.	Whether the critical assumptions have been met during the year or there has been a change in critical assumptions:	
	c.	Reasons for not meeting the critical assumptions or change in critical assumptions:	
9.	Are there any changes in the organisational structure of the taxpayer group by way of amalgamation, acquisition, merger, demerger or sale of business or by any other methods? If yes, please furnish complete details thereof and show its impact on the critical assumptions agreed upon in the APA:		
10.	Specify all other terms and conditions agreed upon in the APA and show whether they have been complied with. In case of non-compliance, furnish the reasons thereof:		

I declare that I have examined the information contained in this APA Annual Compliance Report, including the accompanying documents, and to the best of my knowledge and belief, the facts presented within this report and accompanying documents are true, comprehensive and accurate.

Place: Yours faithfully,

Date: (Name of the Taxpayer)

Notes:

1. The Annual Compliance Report shall be filed quadruplicate.
2. The Annual Compliance Report shall be filed for every year covered in the APA Separate report shall be filed for each year.
3. The information relating to "Covered Transaction" in item No. 4 above is required to be furnished for each covered transaction separately.
4. Please attach all documents as agreed upon in the APA to justify the transfer pricing methodology and computation of arm's length price."

FORM NO. 3CEFA

(SEE SUB-RULE (1) OF RULE 10 ...)

Application for Opting for Safe Harbour

To,

The Assessing Officer

_____

Sir/Madam,

I propose to opt for the safe harbour rules under section 92CB of the Income-tax Act, 1961 read with rule 10TA to rule 10TG of Income-tax Rules, 1962. In this regard the particulars are as under:

1.	General:			
a.	Full name of the assessee:			
b.	Permanent Account Number:			
c.	Address of the assessee:			
d.	Nature of business or activities of the assessee:#			
e.	Status			
f.	Whether the option is to be exercised for one assessment year? yes/no			
	(i)	if yes, following details be provided,-		
		(1)	previous year ended	
		(2)	assessment year	
		(3)	date of furnishing of return of income for the assessment year	
	(ii)	if no, following details be provided,-		
		(1)	assessment years for which the option is exercised;	
		(2)	date of furnishing of return of income in respect of the first of the assessment years mentioned in (1)	
2.	Eligible International Transaction:			

Sl. No	Particulars in respect of eligible international transaction		Remarks
1.	Has the eligible assessee entered into any international transaction in respect of the provision of software development services referred in item (i) of Rule 10TC? If Yes, provide the following details*:		Yes/No
	(a)	Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered into.	
	(b)	Name of the country or territory in which AE(s) is located.	
	(c)	Whether country or territory is a no tax or low ta x country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction	
	(e)	Amount received or receivable for the services provided.	
	(f)	Operating profit margin in relation to operating expense declared	
	(g)	Whether transfer price is in accordance with the circumstances specified under rule 10TD	
2.	Has the eligible assessee entered into any international transaction in respect of the provision of information technology enabled services referred to in item (ii) of rule 10TC? If Yes, provide the following details*:		Yes/No
	(a)	Name and address of the associated enterprises with whom the eligible international transaction has been entered into	

Sl. No	Particulars in respect of eligible international transaction		Remarks
	(b)	Name of the country or territory in which AE(s) is located.	
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction	
	(e)	Amount received for the services provided	
	(f)	Operating profit margin in relation to operating expense declared	
	(g)	Whether transfer price is in accordance with the circumstances specified under rule 10TD	
3.	Has the eligible assessee entered into any international transaction in respect of the provision of knowledge processes outsourcing services referred to in item (iii) of rule 10TC? If Yes, provide the following details*:		Yes/No
	(a)	Name and address of the associated enterprises with whom the eligible international transaction has been entered into	
	(b)	Name of the country or territory in which AE(s) is located.	
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction	

Sl. No	Particulars in respect of eligible international transaction		Remarks
	(e)	Employee cost in relation to operating expense declared	
	(f)	Amount received for the services provided	
	(g)	Operating profit margin in relation to operating expense declared	
	(h)	Whether transfer price is in accordance with the circumstances specified under rule 10TD	
4.	Has the eligible assessee advanced intra-group loans as referred to in item (iv) of rule 10TC? If Yes, provide the following details*:		Yes/No
	(a)	Name and address of the associated enterprises with whom the eligible international transaction has been entered into	
	(b)	Name of the country or territory in which AE(s) is located.	
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction	
	(e)	Currency of denomination of the amount of loan for each loan transaction	
	(f)	Whether credit rating of AE has been done? If yes, the credit rating rank and the name of the credit rating agency	

Sl. No	Particulars in respect of eligible international transaction		Remarks
	(g)	The rate at which interest has been charged in respect of each lending	
	(h)	Whether transfer price is in accordance with the circumstances specified under rule 10TD	
5.	Has the eligible assessee provided corporate guarantee(s) as referred to in item (v) of rule 10TC? If Yes, provide the following details*:		Yes/No
	(a)	Name and address of the associated enterprises with whom the	
	(b)	Name of the country in which AE(s) is located.	
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction	
	(e)	The rate at which the commission or fee has been charged in respect of the transaction declared	
	(f)	Whether AE is required to be credit rated, if yes, the credit rating and the name of rating agency	
	(g)	Whether transfer price is in accordance with the circumstance specified under rule 10TD	

Sl. No	Particulars in respect of eligible international transaction		Remarks
6.	Has the eligible assessee entered into any international transaction in respect of the provision of contract research and development services wholly or partly relating to software development services as referred to in item (vi) of rule 10TC? If Yes, provide the following details*:		Yes/No
	(a)	Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered	
	(b)	Name of the country or territory in which AE(s) is located.	
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction.	
	(e)	Amount received for the services provided.	
	(f)	Operating profit margin in relation to operating expense declared.	
	(g)	Whether transfer price is in accordance with the circumstances specified under rule 10TD	
7.	Has the eligible assessee entered into any international transaction in respect of the provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs as referred to in item (vii) of rule 10TC? If Yes, provide the following details*:		Yes/No

Sl. No	Particulars in respect of eligible international transaction		Remarks
	(a)	Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered into.	
	(b)	Name of the country or territory in which AE(s) is located.	
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction.	
	(e)	Amount received for the services provided.	
	(f)	Operating profit margin in relation to operating expense declared.	
	(g)	Whether transfer price is in accordance with the circumstance specified under rule 10TD	
8.	Has the eligible assessee entered into any international transaction in respect of manufacturing and export of core auto components as referred to in item (viii) of rule 10TC? If Yes, provide the following details*:		Yes/No
	(a)	Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered into	
	(b)	Name of the country or territory in which AE(s) is located.	

Sl. No	Particulars in respect of eligible international transaction		Remarks
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction.	
	(e)	Amount received or receivable in relation to such transaction.	
	(f)	Operating profit margin in relation to operating expense declared.	
	(g)	Whether transfer price is in accordance with the circumstance specified under rule 10TD.	
9.	Has the eligible assessee entered into any international transaction in respect of manufacturing and export of non-core auto components as prescribed in item (ix) of rule 10TC? If Yes, provide the following details*:		Yes/No
	(a)	Name and address of the associated enterprises (AE) with	
	(b)	Name of the country or territory in which AE(s) is located.	
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction.	
	(e)	Amount received or receivable in relation to such transaction.	

Sl. No	Particulars in respect of eligible international transaction		Remarks
	(f)	Operating profit margin in relation to operating expense declared.	
	(g)	Whether transfer price is in accordance with the circumstance specified under rule 10TD.	
10.	Has the eligible assessee entered into any international transaction in respect of receipt of low value-adding intra-group services as referred to in item (x) of rule 10TC? If yes, provide the following details:		Yes/No
	(a)	Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered into.	
	(b)	Name of the country or territory in which AE (s) is located.	
	(c)	Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.	
	(d)	Description of the eligible international transaction.	
	(e)	Amount paid or payable in relation to such transaction.	
	(f)	Mark-up charged in per cent	
	(g)	Whether transfer price is in accordance with the circumstances specified under rule 10TD.	

I declare that to the best of my knowledge and belief, the information furnished

herein is correct and truly stated.

Yours faithfully,

Place:_____

Date:_____

Signature_____

Name _____

Designation/Capacity_____

Address_____

Notes:

Details of the assessee as per rule 10TB to be provided.

* Details for the relevant assessment year or first of the relevant assessment years, as the case may be, to be provided.

- Particulars of each eligible international transaction should be reported separately along with transfer price declared.
- The a pplication should be signed by the person authorised to sign the return of income under section 140.

FORM NO. 3CEFB

(SEE SUB-RULE (1) OF RULE 10THD)

Application for Opting for Safe Harbour in respect of Specified Domestic Transactions

To,

The Assessing Officer

.....

Sir/Madam,

I propose to opt for the safe harbour rules under section 92CB of the Income-tax Act, 1961 read with rules 10TH to 10THD of the Income-tax Rules, 1962. In this regard the particulars are as under:

1. General:

(a) Full name of the assessee:

(b) Permanent Account Number:

(c) Address of the assessee:

(d) Nature of business or activities of the assessee:

(e) Status

(f) Assessment Year

2. Eligible Specified Domestic Transaction:

Sl. No.	Particulars in respect of eligible specified domestic transaction		Remarks
1.	Has the eligible assessee entered into any specified domestic transaction in respect of supply of electricity, transmission of electricity or wheeling of electricity referred in items (i), (ii) or (iii) of Rule 10THB? If Yes, provide the following details:		Yes/No
	(a)	Name and address of the associated enterprises(AE) with whom the eligible specified domestic transaction has been entered into.	
	(b)	Description of the eligible specified domestic transaction.	

Sl. No.	Particulars in respect of eligible specified domestic transaction		Remarks
	(c)	Details of relevant order of the Appropriate Commission determining the tariff.	
	(d)	Amount received or receivable/paid or payable in respect of the eligible specified domestic transaction.	
	(e)	Whether transfer price is in accordance with the circumstances specified under rule 10THC.	Yes/No

I declare that the information furnished herein is correct and truly stated.

Yours faithfully,

Place:

Date:

Signature

Name

Designation/Capacity

Address

Note

1. Associated enterprise shall have the same meaning as provided in clause (a) of rule 10A.
2. The application shall be verified by the person authorised to verify the return of income under section 140.