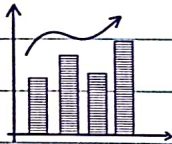


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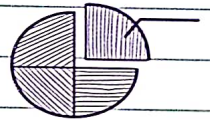
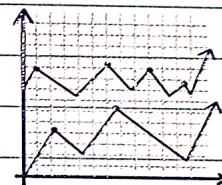
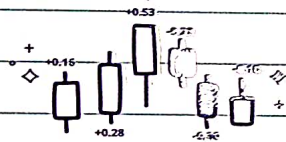


# COMPACT



For MAY / JUNE 2023 EXAMS

Amended By Finance Act, 2022 For A.Y. 23-24



Hand Written Notes

By CA BHANWAR BORANA

Volume-2



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# Handwritten Notes

Direct Tax & International Taxation

# COMPACT

Volume -2

For CA/ CMA Final

May / June 2023

All New Revised Edition A.Y. 2023-24

BY CA BHANWAR BORANA

Published & Distributed by



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# Direct Taxation

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## Preface for 15<sup>th</sup> Edition

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The book will happily answer all the questions. It is written while keeping your convenience in mind. It is easy to read, nice to look and precise for making you understand the key concepts in the most interesting way. I have struggled during my CA final exams when I used to refer to multiple books and notes. Exam time was a mad rush. I often used to get confused with what to refer and how to remember. I always worked hard to make learning simpler and easier for anyone to understand and apply.

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I started writing it, and it took 40 days to complete it. I recognize the efforts of every person who helped me in bringing this idea alive.

I dedicate this book to each student who is aspiring to become a chartered accountant and contribute in the growth of our country.

"COMPACT" is a Color-coded book for easy understanding

- Black-Headings
- Blue - Main Content
- Red - Important Point & Words
- Green - Amendments

Thanks to [makemydelivery.com](http://makemydelivery.com) for publishing this book. I would also like to thank **Aadil Sayyed** for his valuable contribution.

Wishing you all the best for your career.

Happy reading.

Regards,

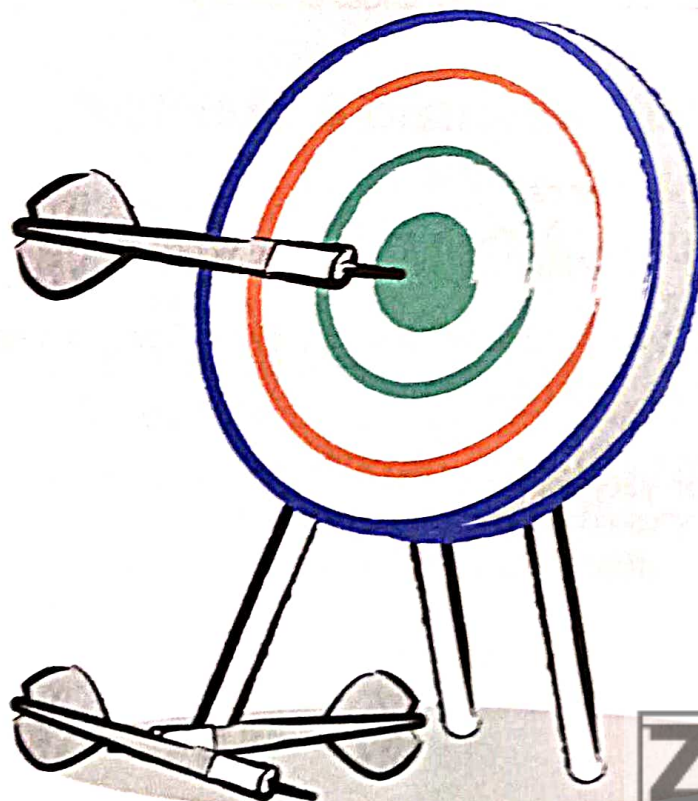
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## Part II International Taxation (30 Marks)

Sections	Weightage	Content Area
1.	75% - 85%	<ol style="list-style-type: none"><li>1. Taxation of international transactions and Non - resident taxation<ol style="list-style-type: none"><li>(i) Provisions of the Income-tax Act, 1961, including -<ol style="list-style-type: none"><li>(a) Specific provisions relating to Non-residents</li><li>(b) Double Taxation Relief</li><li>(c) Transfer Pricing &amp; Other Anti-Avoidance Measures</li><li>(d) Advance Rulings</li></ol></li><li>(ii) Equalisation levy</li></ol></li></ol>
2.	15% - 25%	<ol style="list-style-type: none"><li>2. Overview of Model Tax Conventions – OECD &amp; UN</li><li>3. Application and interpretation of Tax Treaties</li><li>4. Fundamentals of Base Erosion and Profit Shifting</li></ol>



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*Topic - 01*

# **TRANSFER PRICING**

**“Life has got all those twists and turns.  
You’ve got to hold on tight and off you go.”**

# Sec 92 : Any income, expenditure, interest & allocation of cost in relation of international transaction or specified domestic transaction shall be computed having regard to Arm's length price.

ALP means - Correct market price, fair price.

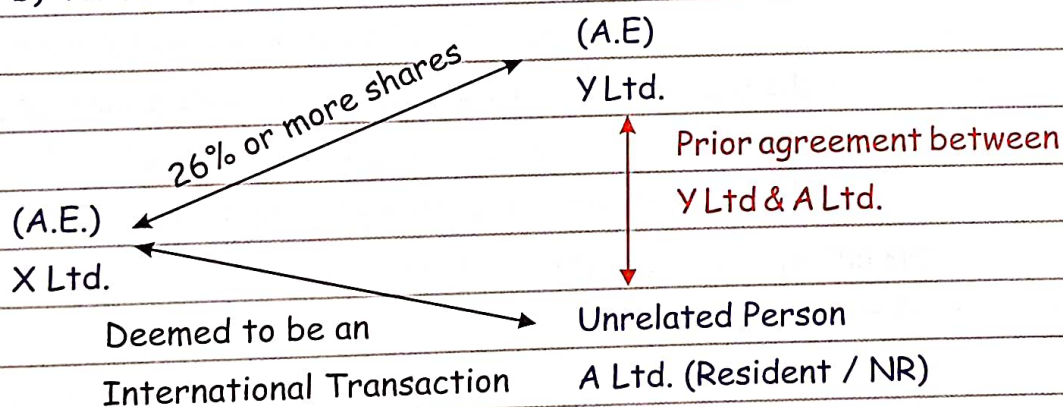
If due to ALP there is reduction in the income or increasing the losses then transfer pricing provisions shall not apply.

# Sec 92B: International Transactions

It means - (a) Transaction between two or more Associated Enterprises (A.E) &  
(b) At least one must be Non Resident (NR)

Note:

1. Transaction should be in the nature of purchase, sale, lease of property, provision of service, lending or borrowing of money etc.
2. If both AE's are NR, then TP shall only apply if income of one of the NR is taxable under IT Act, 1961.
3. Transaction between enterprise & unrelated person shall be deemed to be international transaction, if :
  - a) there exists a prior agreement between AE & unrelated person , or
  - b) terms of transaction are determined by A.E.



In the above example, the transaction between X Ltd. & A Ltd is not an international transaction but if there is prior agreement between Y Ltd & A Ltd. related to transaction between X Ltd & A Ltd & terms are determined by Y Ltd. then the transaction between X Ltd. & A Ltd. is treated as deemed to be international transaction.

# Sec 92A : Associated Enterprise

Two enterprises shall be treated as AE's if at any time during the P.Y.:

a. One enterprise holds at least 26% shares (voting power) of other enterprise.

b. Any person holds at least 26% shares of each of such enterprise.

Note: Above relationship covered direct as well as indirect control.

Ex:1 Tata Ltd. holds 33% of Voting Power in Tata Motors Ltd. and Tata Motors Ltd. holds 80% Voting Power in JLR Ltd.

In above situation, Tata Ltd. holds 26% or more voting power in Tata Motors Ltd., directly and in JLR Ltd. indirectly (i.e. through Tata Motors Ltd.). Therefore, both Tata Motors Ltd. & JLR Ltd. are AE's.

Ex:2 Mr. Tata holds 40% of voting power in both TCS Ltd. and Titan Ltd. where neither TCS Ltd. has any holding in Titan Ltd. nor Titan Ltd. has any holding in TCS Ltd.

In this situation, since Mr. Tata directly holds 40% of voting power in both TCS Ltd. and Titan Ltd., TCS Ltd. & Titan Ltd. will be AE's.

c. One enterprise appoints more than half of the BOD or one or more Executive Director of other enterprise.

d. Any person appoints more than half of the BOD or one or more Executive Director of each of such enterprise.

Ex:1 JLR Ltd. has 15 directors on its Board. Out of that, Tata Motors Ltd. has appointed 8 directors. In such case, JLR Ltd. and Tata Motors Ltd. are AE's.

Ex:2 Mr. Ambani appointed 9 directors out of 15 directors of Jio Ltd. and appointed 2 executive directors on the board of RIL Ltd. In such case, since a common person i.e. Mr. Ambani appointed more than half of the directors in Jio Ltd. and appointed 2 executive directors in RIL Ltd., both Jio Ltd. and RIL Ltd. are AE's.

e. A loan given by one enterprise to other enterprise, at least 51% of the Book Value of Total assets of other enterprise.

Ex: Book Value of total assets of KK Ltd. is ₹100 crores. BB Ltd. advances loan of ₹60 crores to KK Ltd.

In this case, BB Ltd. advances loan of ₹60 crores to KK Ltd, which is 60% of the book value of total assets of KK Ltd. Hence, BB Ltd. & KK Ltd. are AE's.

f. One enterprise guarantees at least 10% of the Total Borrowing of the other enterprise.

Ex: P Inc. has total loan of 1 million dollars from XYZ Bank of America. Out of that, A

- Ltd., an Indian company, guarantees 20% of total borrowings in case of any default made by P Inc. In such case, since A Ltd. guarantee 20% of total borrowings of P Inc., P Inc. and A Ltd. are AE's.
- g. The Business of one enterprise is wholly dependent on knowhow, patent, copy right etc. of other enterprise.  
Ex: Kia Motors India Ltd. manufactures cars in India using Knowhow of Hyundai Motors Ltd. south korea.  
In this case, Kia Motors India Ltd. business is totally (100%) depends on Knowhow of Hyundai Motors Ltd. Hence, Kia Motors India Ltd. & Hyundai motors Ltd. are AE's.
- h. 90% or more of raw material required by one enterprise is supplied by other enterprise. and the prices and other conditions relating to the supply are influenced by such other enterprise  
Ex: Sam Ltd. USA supplies raw material of 91 Lakhs to BB Ltd. India and Total RM used by BB Ltd. is 100 lakhs. In this case Sam Ltd. & BB Ltd. are AE's if price influenced by Sam Ltd.
- i. Goods manufactured by one enterprise are sold to other enterprise & price & other condition are influenced by other enterprise.  
Ex: BB Ltd. of India sells good to Martin Ltd. of Canada. In this case BB Ltd. & Martin Ltd. are AE's if price & other conditions related to sales is influence by Martin Ltd.
- j. One enterprise is controlled by individual & other enterprise is controlled by such individual or his relative or jointly by individual & relative.  
Ex : Mr. A and Mr. B are relatives. Mr. A has control over X Ltd. and Mr. B has control over Y Ltd. Therefore, both X Ltd. and Y Ltd. will be deemed associated enterprises.
- k. One enterprise is controlled by HUF & other enterprise is controlled by member, relative of member or jointly by member & relative.
- l. One enterprise has at least 10% interest in another enterprise being partnership Firm, AOP, BOI.
- m. Any relationship of mutual interest, as may be prescribed.

# Sec 92C: Computation of Arm length Price  
ALP shall be computed as per the most appropriate method out of the following.

1.	Comparable uncontrolled Price Method (CUP) Method.	₹
	Price charged /paid in comparable un-controlled transaction	xx
	(+)/(-) Adj for difference between international Transaction & comparable uncontrolled transaction	xx
	ALP	xxx

Note: Normally CUP is applicable when comparable uncontrolled transaction is available.

Refer Compiler Que. No. 3 


2.	Resale Price Method (RPM)	
	Price charged for goods sold to unrelated enterprise (Resale price)	₹
	(-) Normal G.P. margin in similar transaction	xxx
		(xxx)
		xxx
	(-) Purchase related expense	(xxx)
	ALP	xxx

Note: Normally RPM is Applicable when goods purchased from A.E is transferred (sale) to unrelated person.

Refer Compiler Que. No. 22 

3.	Cost Plus method (CPM)	₹
	Direct cost + Indirect cost of production	xxx
	(+) Normal G.P margin in similar transaction	xxx
		xxx
	(+)/(-) Adjustment for difference between international Transaction & comparable uncontrolled transaction	xxx
	ALP	xxx

Note: Normally CPM is applicable when goods manufactured by one A.E. sold to other A.E.

Refer Compiler Que. No. 23 

## 4. Profit split method (PSM)

Normally PSM is applicable where assessee executes an order in joint venture with its associate enterprise. First find out Total profit earned in Joint venture & after that divide that profit between AEs in the ratio of manpower employed, functions performed, risk taken, etc.

Cost incurred by Assessee	₹
(+) Share of profit of such enterprise	xxx
ALP	xxx

Example : MM Ltd incorporated in UK received order to develop a software for Nano Inc. USA and consideration for same is \$ 2,00,000. MM Ltd executed such order in joint venture with BB Ltd & Modi Ltd India based companies. Modi Ltd holds 30% equity shares of BB Ltd and 27% equity shares of MM Ltd. Consideration of \$ 2,00,000 is distributed amongst MM Ltd, BB Ltd. & Modi Ltd., \$ 1,00,000, \$ 50,000 & \$ 50,000 respectively.

Cost incurred to develop the software is \$1,60,000. Relative contributions by MM Ltd, BB Ltd & Modi Ltd. to the earning of such combined net profit on the basis of functions performed, risks assumed and assets employed by each enterprise is 40:40:20. This evaluation is to be made on the basis of reliable external market data which can indicate how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances. Cost incurred by BB Ltd. is \$ 42,000. Calculate ALP for BB Ltd.

Solution : Total Profit from Joint Venture (\$ 2,00,000 - \$ 1,60,000) = \$ 40,000

Distribution of Profit on relevant contribution ratio:

MM Ltd	:	\$ 40,000 × 40% = \$ 16,000
BB Ltd	:	\$ 40,000 × 40% = \$ 16,000
Modi Ltd	:	\$ 40,000 × 20% = \$ 8,000

Calculation of ALP for BB Ltd.

Cost Incurred :	\$ 42,000
+Profit	\$ 16,000
ALP	\$ 58,000

Profit to be increase of BB Ltd: \$ 58,000 - \$ 50,000 = \$ 8,000

Allocation of profits must be made in accordance with one of the following allocation methods:

(a) **Comparable profit split** - Under this method, uncontrolled taxpayer's percentage of the combined operating profit or loss is used to allocate the combined operating profit or loss of the relevant business activity. (Discussed in above example)

(b) **Residual profit split** - Following the two-step process:

i. Allocate income to routine contributions

ii. Allocate residual profit

Suppose in the above example, \$ 30,000 profit on routine contribution (functional /assets returns to each party based on market benchmarks) & ratio of routine contribution is 40:40:20. Balance \$10,000 profit based on each party's ownership of nonroutine intangibles (example network reach, efficiency of sales and marketing team, etc.) & ratio of same is equal.

So, \$ 30,000 shall be distributed in the ratio of 40:40:20 & balance \$10,000 shall be distributed in 1:1:1. Total Profit of BB Ltd will be 15,333.33 and ALP shall be  $(42,000 + 15,333.33) = 57,333.33$ .

#### 5. Transactional Net margin method (TNMM)

Under this method, **Profit (Net profit)** earned by **other players in the same industry** under same or similar consideration taken into account for computing ALP.

Refer Compiler Que. No. 13

#### # Sec 92C (2): More than one ALP

If more than one price is determined as per the most appropriate method the Average (arithmetic mean) of such price shall be ALP (Arm's length price).

If the difference between Actual Transaction Price & ALP is upto 3% (1% in case of **wholesale trading**) of **actual transaction price** then such difference shall be ignored & actual transaction price shall be treated as ALP. If such difference is more than 3% of actual transaction price then entire difference shall be added to the income of assessee.

"Wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-



- (i) purchase cost of finished goods is 80% or more of the total cost pertaining to such trading activities; and
- (ii) average monthly closing inventory of such goods is 10% or less of sales pertaining to such trading activities.

Example: Actual Transaction Price : 150

ALP as per Most Appropriate Method

1. 145
2. 152
3. 157
4. 160

Average of ALP : 153.5

Allowed difference (Tolerance Band) is 3% of Actual Transaction Price i.e.  $150 \times 3\% = 4.5$

In this case difference between ALP & Actual Price is up to 3% so Actual Transaction price i.e. 150 is treated as ALP.

# Sec 92C(3): Determination of ALP by A.O.

In the following cases ALP shall be computed by A.O.

- i) Assessee fails to compute ALP as per most appropriate method.
- ii) Data used for computing ALP is not reliable or not correct.
- iii) Documents are not maintained by Assessee as per Sec 92D.
- iv) Assessee fails to furnish info & docs required u/s 92D.

Provided that an opportunity of being heard shall be given by A.O. to the Assessee.

# Sec 92C(4): Effect of ALP determined by A.O.

If ALP is computed by A.O. under sub-section (3) then

- a. If income of one enterprise is increased by A.O. the income of the other Associated enterprise shall not change [unaffected]
- b. If income of one Associated Enterprise is increased by A.O. then deduction under chapter VI-A & Sec 10AA shall not be allowed against increased part of its income.

- # Rule 10CA : Range concept
- Arrange the values in the data set in **Ascending** order.
  - Arrive at a range starting from "35th Percentile" & ending at "65th Percentile" of the data set.
  - In case the actual transaction price falls within the range (i.e. 35-65 percentiles) then actual transaction price shall be deemed to be the ALP.
  - In case the actual transaction price does not fall within the computed range, the Median of the data set (i.e. 50%) shall be deemed to be the ALP.
  - If 35%, 65%, 50% percentiles computed are not whole numbers then we have to consider higher number for range.  
Example :  $7 \times 35\% \text{tile} = 2.45$  we have to select 3<sup>rd</sup> Value in data set.
  - If 35%, 65%, 50% percentiles computed are whole numbers then we have to consider mean of value assign at that number and next number.  
Example :  $20 \times 35\% \text{tile} = 7$  we have to take average of value given at number 7 & 8.

Example 1: Actual transaction Price (i.e. 150)

Sr.NO	1	2	3	4	5	6	7
ALP	162	158	136	145	170	152	154.

Ans: - First arrange all dataset in ascending order

Sr.no	1	2	3	4	5	6	7
ALP	136	145	152	154	158	162	170

Now, 35th & 65th Percentile of dataset shall be computed as follows:-

$$\text{Total no. of values in data-set } 7 \times (35/100) = 2.45$$

$$\text{Total no. of values in data-set } 7 \times (65/100) = 4.55$$

Since 2.45 & 4.55 are not whole numbers, we have to take next higher numbers i.e. 3 & 5.

The arm's length range will be beginning at 152 (3rd number) & ending at 158 (5th number).

So if actual transaction price is within the range (152-158) then the actual transaction price shall be treated as deemed to be ALP, but in our example, Actual Transaction price (i.e. 150) is not falling within Range so ALP shall be median of data set.

Total no. of values in dataset  $7 \times (50/100) = 3.5$  Since, this is not a whole no. & next higher value is 4 & ALP is 154.

Example 2:

1	2	3	4	5	6	7	8	9	10
92	95	100	103	107	111	119	120	121	125
11	12	13	14	15	16	17	18	19	20
127	130	132	135	139	142	144	145	150	152

Total entries in data-set = 20

35th Percentile =  $20 \times (35/100) = 7$

Since this is a whole number, Avg of value at 7 & 8 shall be the 35th percentile  
 =  $(119+120)/2 = 119.5$

65th Percentile =  $20 \times (65/100) = 13$

This is a whole number, Avg of value at 13 & 14 shall be the 65th percentile  
 =  $(132+135)/2 = 133.5$

Median =  $20 \times 50/100 = 10$ .

Since this a whole number, Average of value at 10 & 11 shall be the Median  
 =  $(125+127)/2 = 126$ .

If Actual Transaction price is between 119.5 to 133.5 then actual transaction price is considered as ALP otherwise ALP will be 126.

Notes:

1. Range concept is applicable in case of CUP, RPM, CPM & TNMM.
2. Sec 92C(2) is applicable only if number of values in the data set is less than 6. If number of values in the data-set is 6 or more than RANGE CONCEPT shall apply i.e. Rule 10 CA.
3. In Range concept, if 'multiple years' data is given, then we have to take weighted average of multiple year data (current year + Last two years) in case of RPM, CPM, TNMM

Method	Weight
RPM	Sales Quantum
CPM	Cost Incurred
TNMM	Costs Incurred or Sales effected or Assets employed

Example:

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:

S.No	Name	Year1	Year 2	Year 3 (Current Year)	Aggregation of OC & OP	Weighted Avg
1.	A	OC=100	150	225	475	12%
		OP=12	10	35	57	
2.	B	OC=80	125	100	305	8.2%
		OP=10	5	10	25	
3.	C	OC=250	230	250	730	9%
		OP=22	26	18	66	
4.	D	OC=180	220	150	550	6%
		OP=(-9)	22	20	33	
5.	E	OC=140	100	125	365	2.2%
		OP=21	(-8)	(-5)	8	
6.	F	OC=160	120	140	420	11.9%
		OP=21	14	15	50	
7.	G	OC=150	130	155	435	10.57%
		OP=21	12	13	46	

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

S.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  $\times (35/100)$

Total no. of data points in dataset  $\times (65/100)$

Thus, the data place of the thirty-fifth percentile =  $7 \times 0.35 = 2.45$ .

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 =  $7 \times 0.65 = 4.55$ . 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 data set 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 data set  $\times (50/100)$ . In this case it is  $7 \times 0.5 = 3.5$ . 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.

# Sec 92CA: Reference to Transfer Pricing officer

i If AO considers it necessary, he may refer the computation of ALP to TPO, with previous approval of CIT/PCIT.

ii. TPO shall gather material for computation of ALP & shall require assessee to produce evidence.

iii. During the course of proceedings before T.P.O. if any other international transaction

(which was not referred by A.O) comes to his knowledge, then T.P.O. shall consider such other transaction also.

- iv. On the basis of material & evidence, T.P.O. shall compute the ALP & pass an order computing ALP.
- v. Order of T.P.O is binding on A.O.
- vi. The T.P.O shall pass the order before 60 days prior to the last date for completion of Assessment allowed u/s 153.
- vii. If Assessement proceedings are stayed by any court or reference has been made u/s 90/90A, the time available to TPO for making an order [after excluding the time for which assessment proceedings were stayed or time taken for receipt of information us 90/90A) less than 60 days, then remaining period shall be extended to 60 days.
- viii. If any case referred to T.P.O. then time limit allowed u/s 153 shall be increased by 1 year.
- ix. Any Joint /Deputy/ Assistant Commissioner, authorised by CBDT, can be appointed as TPO.
- x. The CG may make and notify scheme for the purpose of Faceless determining ALP by TPO till 31st March, 2024.

Refer Compiler Que. No. 21(ii)

# Sec 92CB: Safe Harbour Rules

For determination of income u/s 9(1)(i) or Arm's length price CBDT may notify safe harbour rules.

"safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

For AY 23-24 Safe Harbour rules not notified till Now. For Exams if any safe harbour rule notify then it will be upload on our website and youtube.

# Sec 92CC: Advance Pricing c Agreement (APA)

1. The CBDT with the approval of Central Govt, may enter into APA with any person for determination;

(a) ALP or specifying the manner in which the ALP is to be determined, in relation to an international transaction to be entered into by that person.



(b) Income referred to in section 9(1)(i), or specifying the manner in which said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a NR.

2. The manner of determination of the ALP referred to in clause (a) or the income referred to in clause (b), may include the methods referred to in sec. 92C(1) or the methods provided by rules made under this Act, respectively, with such adjustments or variations, as may be necessary or expedient so to do.

Note: Rules related to determination of Income u/s 9(1)(i) for NR is not yet notified by CBDT so whatever discussed in this section applicable for calculation of ALP.

3. APA is applicable for maximum consecutive 5 years.

4. The APA shall be binding on

a) The person who entered into APA                      b) The IT Authority till level of CIT/PCIT

5. APA shall not binding if there is change in law / facts.

6. With the approval of CG, CBDT may declare an APA to be void-ab-initio, if it finds that the APA has been obtained by fraud or misrepresentation of facts.

7. APA may apply for any period maximum 4 years preceding the first of the P.Y. referred in APA (Roll back provision).

8. If APA apply then provisions of section 92C & 92CA does not apply.

9. Consequences of declaration of an APA as void ab initio:

(a) All the provisions of the Act shall apply to such person as if such APA had never been entered into.

(b) The period beginning with the date of such APA and ending on the date of order declaring the APA as void ab initio, shall be excluded for the purpose of computation of any period of limitation under this Act (for example period of limitation specified in the section 153). This is irrespective of anything contained in any other provision of the Act.

(c) In case the period of limitation after exclusion of the above-mentioned period is less than 60 days, such remaining period of limitation shall be extended to 60 days.

10. If an application is made by a person for entering into an APA, then, the proceeding, in respect of such person for the purpose of the Act, shall be deemed to be pending.

11. Conditions for applying for rollback provisions:

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 APA applies;
- (ii) The return of income for the relevant rollback year has been or is furnished by the applicant before the due date as specified in section 139(1)
- (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.
- (v) The applicant has made an application seeking rollback in Form 3CEDA with fees ₹5,00,000.

12. Non-applicability of Rollback provision: Rollback provision shall not be provided in respect of an international transaction for a rollback year, if, - [Rule No. 10MA]

- (i) The determination of ALP of the said international transaction for the said year has been subject matter of an appeal before the ITAT and the ITAT 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.

# Sec 92CD: Effect of APA

1. Where prior to the date of entering APA, any return of income has already been furnished for any P.Y. to which APA applies, then such person shall furnish modified return as per APA within 3 months from the end of the month in which APA was entered into.
2. Where assessment for any P.Y. to which APA applies are pending on the date of modified return, the AO shall complete assessment as per APA, AO will get extra one year for completion of Assessment.
3. Where assessment for P.Y. to which APA applies already completed before filing of modified return then A.O. shall pass an order modifying the total income of that P.Y.



pass an order modifying the total income of that P.Y. within one year from the end of financial year in which modified return was furnished

# CBDT Circular: 10/2015- Some clarification on Rollback

1. Applicant cannot be selective on the years for which it wants to apply for rollback. He has to either apply for all 4 preceding PY or not apply at all. However, rollback would not apply to years which does not satisfy basic conditions mentioned above.
2. Rollback provisions can be applied as long as original return was filed before the due date u/s139(1), even if the applicant files a revised return u/s 139(5) later.
3. Rollback can be applied only when international transaction undertaken is of same nature, with same AE. Also, FAR analysis is materially same with APA entered into for future years. (Including choice of method, comparability analysis & tested party)
4. Although rollback cannot be applied in case it has the effect of reducing income or increasing losses as compare to returned income or loss. APA can be applied in case if its reducing income or increasing losses as compare to Assessed Income or Loss. For example, if the returned income is ₹ 100, income adjusted by TPO is ₹ 120, and application of rollback results in income of ₹ 90, roll back for the year would be determined in manner that returned income of ₹ 100 is treated as final.
5. Applicant has the option to withdraw rollback application while maintaining the APA application for future years. However, reverse is not true. Rollback cannot be accepted without accepting APA for future years.
6. Rollback can only be availed only by person who entered into the international transaction. Hence, in case of merger of companies, amalgamated co. will not be entitled to roll back for transactions carried out by amalgamating co.  
Ex. If A merges into B, only B will be entitled to roll back carried out by himself in earlier years. Further. If A and B merge to form a new company C, nobody would be entitled to rollback.
7. Similarly, in case of de-merger, resulting co. will not be eligible for rollback as it was not in existence in rollback years.

## # Compliance Procedure under APA

- Person proposing to enter into APA shall make an application to DGIT (International Taxation) requesting for pre-filing consultation.
- The Pre-filing consultation shall determine suitability of international transaction for APA scope & terms of APA and identify TP issues.
- Person treated eligible may make an application for APA before the 1st April of PY relevant to first AY for which application is made or before undertaking transaction after payment of requisite fees.

Value of International Transaction	Fees (₹)
» Upto 100 Crores	10 lakhs
» >100 Crores upto 200 Crores	15 lakhs
» > 200 Crores	20 lakhs

- Application made can be withdrawn any time before finalization of APA but fees paid shall not be refunded.
- CBDT shall enter into the APA after obtaining approval from CG. The APA shall include international transaction covered, agreed TP methodology or determination of ALP critical assumptions, roll back provisions etc.
- Person shall file an annual compliance report in quadruplicate (4 copies) for every year covered under APA within 30 days of due date for filing return or 90 days of entering into APA whichever is later.
- TPO of the person shall carry out compliance audit for every year covered under APA and furnish the same within 6 months from end of month in which compliance report is received from person.

Refer Compiler Que. No. 5(i), 6(i), NOV-19 Q 4(b)

## # Sec 92CE: Secondary Adjustment

- "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.
- "Secondary adjustment" means an adjustment in the books of accounts 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.

- Cases where secondary adjustment has to be made - The assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price:
- (i) has been made *suo moto* by the assessee in his return of income; or
  - (ii) Made by the Assessing Officer has been accepted by the assessee; or
  - (iii) Is determined by an *APA entered into* by the assessee u/s 92CC on or after 1/4/17
  - (iv) Is made as per the *safe harbour rules* framed u/s 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 u/s 90 or 90A for avoidance of double taxation.

- Non-repatriation of excess money by the associated enterprise deemed to be an advance - 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 or part thereof which is available with its associated enterprise, if not repatriated to India within the prescribed time, 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 prescribed manner.

Explanation : For the removal of doubts, it is hereby clarified that the excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.

- "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 taken place.

Example: BB Ltd entered into international transaction of sales with AE & actual Transaction Price is 3,000 lakhs  
ALP determined is 4,760 lakhs.

So here excess money is 1,760 lakhs shall be first added to income of BB Ltd is known as Primary adjustment. BB Ltd have to repatriate ₹ 1,760 lakhs within 90 days otherwise treated as loan and the interest thereon shall be computed & added to the income until its repatriation is known as secondary adjustment.

→ Excess money or part thereof should be repatriate within:-

- a. If Primary Adjustment made by A.O. or Appellate Authority: 90 days from the date of order of AO or Appellate Authority.
- b. If Primary Adjustment due to APA:
  - (i) 90 days from the date of filing of ROI u/s 139(1) if APA has entered into on or before due date of ROI u/s 139(1) of that PY
  - (ii) 90 days from the end of the month in which APA was entered into after due date of ROI for relevant PY.
- c. If Primary Adjustment due to Mutual Agreement Procedure: 90 days from the date of giving effect by AO of MAP.
- d. If Primary adjustment due to any other reason: 90 days from the due date of ROI u/s 139(1).

→ If Excess money or part thereof not repatriated in above time then interest shall be charge from:

- a. If Primary Adjustment made by A.O. or Appellate Authority: from the date of order of AO or Appellate Authority.
- b. If Primary Adjustment due to APA:
  - (i) from due date u/s 139(1) if APA has entered into on or before due date of ROI u/s 139(1) of that PY
  - (ii) from the end of the month in which APA was entered into after due date of ROI for relevant PY.
- c. If Primary Adjustment due to Mutual Agreement Procedure: from the date of giving effect by AO of MAP.
- d. If Primary adjustment due to any other reason: from the due date of ROI u/s 139(1).

→ Summary: Time Limit for repatriation of money and Interest period

If primary adjustment is made by	T/L for Repatriation : 90 days	Interest period
» Order of AO or appellate authority	From date of order of AO or appellate authority	Same
» APA - - entered upto due date of ROI in that PY	From Actual date of filing ROI	Due date of ROI
- entered after due date of ROI in that PY	From end of the month in which APA entered	Same
» Mutual agreement procedure	From the date of giving effect by AO to MAP	Same
» Other reasons	From Due date of ROI	Same

# If excess money not repatriated within above time limit then interest income shall be computed as follows :-

a.) Where the international transaction is denominated in Indian rupee

- At the one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year + 3.25%

b.) Where the international transaction is denominated in Foreign currency

- At six month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year + 3.00%

# No requirement of secondary adjustment in certain cases -

The amount of primary adjustment made in the case of an assessee in any previous year does not exceed ₹1 crore or the primary adjustment is made in respect of A.Y. 2016-17 or an earlier assessment year.

Example: 1 BB Ltd of India holding 36% equity shares of Trump Inc. USA. In PY 19-20 BB Ltd exported goods worth ₹6,00,00,000 to Trump Inc. The ALP of such transaction is ₹ 8,20,00,000. Due date of BB Ltd is 30<sup>th</sup> Nov. 2020. Transaction designated in Indian rupees. SBI one-year marginal cost of lending rate is 11.25% on 1<sup>st</sup> April 2020.

Solution : In this case excess money is 2.20 Crore. BB Ltd should repatriate such money within 90 days from the due date of ROI. i.e. till 28.02.2021 (30<sup>th</sup> Nov 2020 +90 days)

If excess money not repatriate in India upto 28.02.2021 then following shall be treated as income of BB Ltd. for PY 20-21 (AY 21-22)

$2.20 \text{ Crore} \times 14.50\% \times 121 \text{ days}/365 \text{ days} (1^{\text{st}} \text{ Dec. } 20 \text{ to } 31^{\text{st}} \text{ March } 21) = 10,57,507.$

» Suppose in above example excess money not repatriated till 31<sup>st</sup> March 22 then following income shall be added for PY 21-22 (AY 22-23). SBI one-year marginal cost of lending rate is 11.25% on 1<sup>st</sup> April 2021 = ₹2.20 Crore  $\times$  14.50% = ₹31,90,000.

Note : Interest income is computed for every year till excess money repatriated in India.

# Section 93CE(2A) : Additional Income Tax instead of Secondary adjustment

1. In a case where the excess money or part thereof has not been repatriated in time, the assessee will have the option to pay additional income-tax at the rate of 18% + surcharge of 12% + HEC 4% (effective rate is 20.9664%) on such excess money or part thereof in addition to the existing requirement of calculation of interest till the date of payment of this additional tax.
2. The tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid.
3. The deduction in respect of the amount on which such tax has been paid, shall not be allowed under any other provision of this Act; and
4. If the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest from the date of payment of such tax.

Example : Suppose in above example, BB Ltd not repatriated excess money and wants to pay additional tax on 1<sup>st</sup> July 2022.

In this case BB Ltd required to pay addition tax on 1<sup>st</sup> July 22 at 18% (+12%+4%)  
 Additional Tax = ₹ 2,20,00,000  $\times$  20.9664% = ₹ 46,12,608.

In this case following interest income shall be included in Total Income of PY 22-23.

SBI one year marginal cost of landing rate is 12% on 1<sup>st</sup> April 2022.

$\text{₹}2,20,00,000 \times 15.25\% \times 91 / 365 \text{ days (1<sup>st</sup> April 22 to 30<sup>th</sup> June 22)} = \text{₹} 8,36,452$

Refer Compiler Que. No. 11, JAN-21 Q 4(b)



# Sec 92D: Maintenance of information & Documents

- (i) Assessee entering into International transaction or specified domestic transaction required to maintain documents as specified by CBDT (TP study report).
- (ii) Constituent entity of an international group, shall keep and maintain such information and document in respect of an international group as may be prescribed (master file).
- (iii) The AO or the CIT (A) may, in the course of any proceeding under this Act, require any person referred to point (i) to furnish any information or document referred therein, within a period of 30 days from the date of receipt of a notice. (It may be extended by further 30 days)
- (iv) Constituent entity shall furnish the information and document referred therein to the authority prescribed u/s 286 within the time and manner as may be prescribed.

Note: 1. Documents are required to be maintained only if value of International transaction is more than ₹ 1 cr.

2. Documents are required to be kept for 8 years from the end of relevant A.Y.

# Sec 92E: Report of CA

Assessee required to file report of CA in the Form No. 3CEB upto 31<sup>st</sup> Oct. of A.Y.

# Penalties

Section	Default	Penalty
271 AA	i. Failures to keep & maintain info & docs as Per Sec 92D.	2% of transactions Value
	ii. Fails to report transactions.	
	iii. Fails to maintain / furnish correct info/ document.	
	iv. Fails to furnish info & doc. (Master File)	₹ 5,00,000
271G	Failure to furnish info & documents as Per Sec 92D.	2% of Transactions Value

271BA	Failure to furnish report of CA as per Sec 92E.	₹ 1,00,000
270A	Failure to report any transactions would constitute 'misreporting of income'	Penalty of 200% of Taxes apply

Note: However, the amount of underreported income represented by any addition made in conformity with the arm's length price determined by the TPO would not be included within the scope of underreported income under section 270A, where the assessee had maintained information and documents, as per 92D, declared the international transactions and disclosed all material facts relating to the transaction.

- # Sec 94A: Special Provision in respect of transaction with person located in NJA  
CG may notify any country or territory outside India to be a notified Jurisdictional area (NJA). If Assessee enters into transaction with any person located in NJA then:
- All the parties shall be deemed to be associated enterprises (as per 92A).
  - The transaction shall be deemed to be an international transaction (as per 92B).
  - The provision of Transfer pricing shall apply to Assessee (except tolerance band of 3%).
  - Assessee have to submit documents & information required by IT Authority.
  - If any payment made to person located in NJA then min. TDS rate will be 30%.
  - If Assessee recd any sum from person located in NJA then assessee have to offer explanation about the source of the fund in the hands of that person or in hands of beneficial owner (if that person is not beneficial owner).  
If assessee doesn't offer explanation or explanation is not satisfactory, then such sum shall be treated as income of Aseeesee.

Refer Compiler Que. No. 18

- # Sec 92BA: Specified Domestic Transactions  
Any of the following transactions where the aggregate value of such transactions in the P.Y. is more than ₹ 20 cr.
- Inter-unit transfer of goods and services referred to in Sec 80A.
  - Inter-unit transfer of goods or services referred to in Sec 80-IA(8).
  - Business Transacted between assessee and his closely connected person referred to in Sec 80IA(10).
  - Transaction referred to in any other section of Chapter VI-A or 10AA to which



provisions of sec 80IA(8) or(10) apply.

v. Business transacted between assessee and his closely connected persons referred to in Sec 115BAB(4).

vi. Any other transaction as may be prescribed.

Note: The above sections refer to transactions between eligible business/units (claiming deduction u/s 10AA or Income based deductions u/c VI-A or opting for concessional tax rates u/s 115BAB) and non-eligible business/units where the consideration for transactions does not correspond to the market value resulting in higher profits in the eligible business/units.

#### # Country-by-country Report: Reporting Requirements of MNES

The Country-by-Country (CBC) report has to be submitted by parent entity of an international group to the prescribed authority in its country of residence. This report is to be based on consolidated financial statement of the group.

(a) MNEs have to report annually and for each tax jurisdiction in which they do business:

(1) the amount of revenue;

(2) profit before income tax; and

(3) income tax paid and accrued.

(b) MNEs have to report their total employment, capital, accumulated earnings and tangible assets in each tax jurisdiction.

(c) MNEs have to identify each entity within the group doing business in a particular tax jurisdiction and provide an indication of the business activities each entity engages in

#### # Sec 286: Furnishing of Report in respect of International Group

1. If parent entity of the international group / alternate reporting entity is resident in India shall be required to furnish CbC report (if the group revenue as per CFS of last year ₹6400 crore or more) in respect of the group in Form 3CEAD to JDIT designated by DGIT/PDGIT (system) within 12 months from the end of the relevant accounting year.

Note: Rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate (TTBR) of such currency on the last day of the accounting year preceding the accounting year [Rule 10DB(7)].

2. Every resident constituent entity of the international group, whose parent entity is non-resident, shall notify in Form 3CEAC, at least 2 months prior to due date for furnishing CbC report stating:
    - » whether it is the alternate reporting entity of the international group, or
    - » details of parent entity/ alternate reporting entity of the international group & the country of which the said entities are resident.
  3. Resident constituent entity (other than parent entity/ alternate reporting entity) shall to furnish CbC report in India, if parent entity of the group is resident of a country or territory:
    - » In which it is not obligated to file CbC report
    - » With which India does not have an arrangement for exchange of the CbC report; or
    - » Which is not exchanging information with India even though there is an agreement (systemic failure), and this fact has been intimated to the entity by JDIT- CbC shall be file within 6 months from the end of the month in which systemic failure has been intimated.

} within 12 months from end of accounting year
  4. If there are more than one resident constituent entity of the group, then the group can nominate one constituent entity in Form 3CEAE who shall furnish the CbC report on behalf of the group.
  5. If the non-resident parent entity had designated an alternate entity for filing CbC report in the tax jurisdiction of the alternate entity & alternate entity has furnished such report on or before date specified by that country or territory, then the resident constituent entities would not be obliged to furnish the report if it can be obtained by Indian tax authorities under the agreement of exchange with that country.
  6. JDIT can call for documents and information from the entity furnishing the report for the purpose of verifying the accuracy & they shall produce the same within a period of 30 days from the date of receipt of a notice (Can be further extended by maximum 30 days).
- Notes:
1. "Alternate reporting entity" means an entity which has been designated by the group to file CbC report in place of the parent entity.
  2. "Accounting year" means: