

Transfer Pricing FAQ's

October 27, 2014 at 1:39 pm

When do the transfer pricing rules affect to a business?

When two or more associated enterprises companies enter into a joint contract during an global transaction in order to allocate a particular cost incurred in relation with a profit, service or facility presented by any one or all of the companies, such a cost shall be calculated taking into account the arm's length price of the particular assistance, service, or facility, as applicable.

When can a company called 'associated enterprises?'

According to sections 92, 92A, 92B, 92C, 92D, 92E and 92F, a company can be termed as an associated enterprise with respect to the other enterprise, under the following conditions:

- If the particular company is involved directly or indirectly or with the help of one or more intermediaries in the management, control, or the capital of the other company.
- If any person/persons of the respective company who is/are involved directly or indirectly or with the help of one or more intermediaries in the management, control, or the capital of one company is/are involved directly or indirectly or with the help of one or more intermediaries in the management, control, or the capital of the other company.
- A minimum of 26% share holding in any of the enterprises is required. One enterprise shall be resident and another entity shall be non-resident normally.

What is meant by 'International Transaction' with regard to Transfer Pricing?

An international Transaction is defined as any transaction between two or more associated companies situated in different countries in terms of a property that is tangible or intangible, a service offered by the company, or any form of lending of money, etc. It is compulsory that at least one of the participants involved in the transaction is a non-resident of India. However, a transaction that has been carried out by two non-resident Indians, where one of them possesses a permanent setup in India and whose income is taxable from India, such a type of transaction is also considered as 'International Transaction.'

What are the different Methods to calculate the arm's length price?

The various Methods to calculate the arm's length price with respect to an international transaction are as under :

- Transactional net margin method (TNMM)
- Resale price method (RPM)
- Comparable uncontrolled price method (CUP)
- Cost plus method (CPM)
- Profit Split Method (PSM) (PSM)
- Other Method as prescribed by the Board (CBDT). So far, no method is prescribed by the Board.

What are the documents required to be maintained by a company while executing an international transaction?

The following documents have to be maintained when a company is involved in an international transaction.

- The **details of the ownership** of the person with respect to the company. These include the ownership structure, the details of the shares, and information on ownerships held by any other company on it.
- A **detailed profile of the foreign group** to which the assessed company is associated with for the international transactions. The details such as **name, address, country where tax returns are filed, and the legal status, etc.**, have to be furnished about the multinational group.
- A **detailed description of the business activities** of both the assessed person and the associated group of companies with whom the former has been involved in international transaction.
- **The details of the international transaction**, such as the nature of the transaction, details of the property or services transferred, the terms contained in the transaction, and the amount and value of each transaction.
- **The details of the functions carried out by such a transaction**, the details of the risks involved and the value of the assets used or to be used by the assessed or the associated company that is involved in such a transaction.
- **The details of the records collected for the entire business or a particular division** of the business during the period of the company's business activity in which the foreign transaction has been involved. These include **reports such as the estimates made on various market trends, forecasts about the market, budget analysis or any other such finance-related reports prepared by the company.**
- **The details of the uncontrolled transactions**, if any, that has taken place with a third party during the period of the international transaction. The nature and the terms and conditions of such transaction have to be mentioned as they play an important role in deciding the value of the international transaction.
- **The details of the analysis conducted** in order to assess the impact of the uncontrolled transaction on the international transaction concerned.
- **The details of the various methods considered** and the most appropriate method adopted in deciding the arm's length price with respect to an international transaction. The details should also include the details on why the particular method was adopted and how it was implemented successfully in order to decide the arm's length price and why other methods are rejected / not suitable to the entity, have to be observed.

Who is the authorized person to furnish the report under section 92E of the Transfer Pricing Regulation Act in India ?

Any person who has involved in an international transaction in the previous year shall submit the report in Form 3CEB through a Chartered Accountant, duly verified and certified by him, on or before the date (i.e. 30th September (of every year)) prescribed by the authority, furnishing all the required details .

When is the Transfer Pricing Documentation to be prepared and what is the quantum limit for the international transactions ?

Normally, the Transfer pricing documentation is to be prepared irrespective of the quantum limit of the international transactions. But the threshold limit for the international transactions is Rs.1 Cr for the Assessing Officers for preparation of the TP study. For the TPOs, it is Rs.15 Cr of international transactions for preparation of the TP study.

What will happen if the Report in Form 3-CEB is not obtained, and Transfer pricing documentation is not prepared / maintained in the company ?

In respect of non-filing of Form No.3CEB, a penalty of Rs.1 lakh is leviable by the TPO concerned. In respect of non-maintenance/ non-preparation of the Transfer Pricing documentation, the company is liable to pay a penalty of 2% of the total international transaction value. In respect of non-filing of the T.P. documentation before the TPO concerned, the company is liable to pay another 2% of the total international transaction value.

How to fix or maintain the Arm's Length Standard as per Indian conditions ?

T P India will always predict the unpredictable tax risk in India particularly in respect of International Transfer Pricing matters. To maintain the Arm's length standard in a systematic manner, you can always consult the T P India and avoid huge tax burdens / huge adjustments.

What is the standard search criteria for the uncontrolled comparables in the Public data bases ?

There is no standard search criteria for the uncontrolled comparables in any of the public data bases and the same is not prescribed in the Income-tax Act or in the Income-tax Rules.

How to prepare calculations on working capital adjustments, risk adjustments, adjustments on infrastructure cost, adjustments on depreciation cost, adjustments on intangibles, adjustments on salary cost or employee cost etc. ?

In respect of the above adjustments, a separate formula for each type of adjustment has been prepared by T P India according to OECD guidelines and you can obtain from us by giving the required details by you.

Is there any online preparation of T.P. documentation / TP study in T P India Services ?

Yes. You can obtain online preparation of T.P. documentation / T.P.study through us in a very effective manner. One can believe that " transfer pricing is not an exact science " It is a subjective analysis based on economic principles.