Transfer Pricing (15-15)

Section 92 → $\boxed{\text{International Transaction}}$ between $\boxed{\text{AE}}$ → take $\boxed{\text{ALP}}$

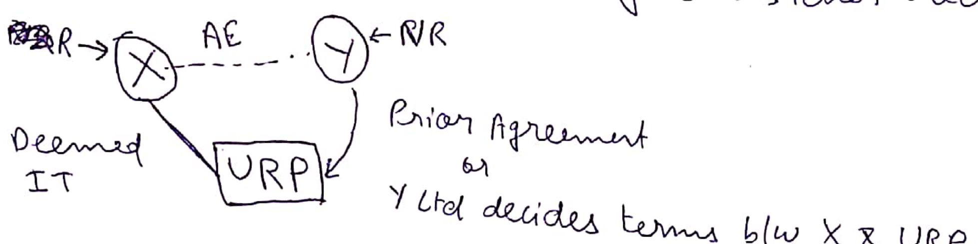
92B | 92 A | 92C

NR ⟷ R	✓
NR ⟷ NR	✓
R ⟷ R	✗

Deemed International Transaction

(a) Prior Agreement b/w AE & Unrelated Party

(b) Terms of Transaction decided by AE



☆ 92A → Associate Enterprise {12}

↓

at any time in PY:

1. Holds 26%/+ VP → Enterprise
2. Enterprise ←(26%/+ VP)— Person —(26%/+ VP)→ Enterprise
3. Ent —(appoints 1 ED / more than half of Board)— Ent
4. Ent —(1 ED / Half of Board)— Person —(1 ED / Half of Board)— Ent
5. Loan → 51% of Asset
6. Guarantee → 10% of loan
7. 90% of Raw Material supplied
8. wholly Dependent on { Knowhow / Patent / copyright } of other enterprise
9. Price influence
10. Individual, Relative, Jointly Control
11. HUF – Member/Member's relative control
12. Holds 10%/+ interest/PSR → Partnership firm
13. Others

Section - 92C → Computation of ALP

Method	CUP	RPM	CPM	PSM	TNMM
used when:	Comparable Uncontrolled Price is available	Buying from AE Selling to outsider	Manufactured by One AE & Sold to another AE	Joint Ventures	where Profit margin of other players in the industry is given.
	Price charged/Paid in Uncontrolled transaction xx +/- Adjustment for difference xx ALP → xx	Resale Price (to outsiders) xx (-) Normal GP margin (xx) (-) Purchase related expenses (xx) ALP → xx	Direct + Indirect Cost + Normal GP Margin +/- Adjustment ALP	Cost incurred by Assessee (Based on ratio of relevant contribution of Manpower, capital, risk etc.) + share of Profit of the enterprise ALP	Take Net Profit earned by other players in the same industry into consideration

Section 92C(2) → One Method — More than 1 ALP

1. Average the ALPs
2. If (Actual ALP − Average ALP) ≤ 3% → Take Actual ALP
   If (Actual ALP − Average ALP) > 3% → Take Average ALP

Tolerance Band always on Actual Transaction Price → 3% — Normal
1% — Trading (wholesale Trading)

Section 92C(3) → AO finds ALP

4 cases
- MAM not used
- Data
  - Incorrect
  - Not reliable
- Document → Not maintained
- Info & Doc → Not furnished

Change in ALP affects only the assessee does not affect any other parties in the transaction. (TDS Case → Hero Honda)

If increase in income due to AO computation
↓
No extra deduction u/s 10AA and Chapter VI-A on the increased portion of income

Rule 10CA → Range Concept → Doesnot apply to Profit Split Method (PSM)
↓
when more than 5 ALP in dataset

1. Ascending order
2. Make range → 35 & 65 percentile {If in decimal → take next number}
3. If Actual TP falls in the range then Actual Transaction Price is ALP.
4. If Actual doesnot fall in the range → ALP will be 50 percentile of the dataset

☆ Important & weird → If whole no. without decimal comes then take average of that no. & next no.

☆ RPM, CPM, TNMM } If Multiple year Data is given → Take weighted average of multiple year data.

☆ 92CA → Reference to Transfer Pricing Officer

→ AO + Prior Approval of CIT/PCIT make reference to TPO
→ TPO can consider other transactions as well which were not refered by AO
→ Order of TPO binding on both – AO & Assessee

$\boxed{\text{TPO}}$ Pass order atleast $\boxed{\text{60 Days}}$ before last date of competition of assessment by AO → $\boxed{\text{AO}}$

But TPO gets minimum 60 Days in any case

☆ 92D → Maintainance of Documents

Documents
- → Local file (TP study Report)
- → Master file (Constituent entity of international group)

AO/CIT(A) $\xrightarrow[\text{info \& Doc}]{\text{demand}}$ Assessee $\xrightarrow[\text{furnish info/Doc}]{\text{within 30 Days (+ max 30 Days)}}$ AO/CIT(A)

↓ Extension

Documents required for entities whose international transaction are more than 1 cr in a year. Maintain for 8 years from RAY

☆ 92E → CA Audit Report in form 3CEB {30th Nov}

☆ Penalties

Failure →
- Master File → ₹5 lac
- To keep & maintain doc & info
- Report transactions
- Incorrect info
- Furnish ~~Master File~~ Info (92D) & Doc

} 2% of Transaction Value

- ☆ CA Audit Report u/s 92E → ₹1,00,000 (₹1 lac)
- → Report misreporting / underreporting of Income

↓

☆☆☆ Penalty @ 200% of {Tax on underreported Income}

☆ TPO additions not underreported income if Info/Doc maintained as per 92D

☆ Advance Pricing Agreement (APA) – 92CC

CBDT with CG Approval can enter into APA with any person

Only for International Transactions

APA for Maximum 5 Consecutive years

APA binding on
- Person/Assessee
- IT Authority (till CIT/PCIT level)

Not Binding on → Change of Law/Fact
↳ APA obtained by fraud/misrepresentation (void-ab-initio)

Roll Back → Maximum 4 years

Max. 4 years		Max. 5 years
Roll Back	Reference/Application for APA	Applicability

So, Max 9 years (consecutive)

If APA Applies ✓
Doesnot Apply
[92C [ALP] ✗
92CA [TPO] ✗]

Application made under APA
↓
Assessment under ITA, 1961
"Deemed to be Pending"

☆ Conditions for Rollback Provision:

1. Same transaction like the one in APA
2. Furnished ROI before due date u/s 139(1)
3. Report u/s 92E furnished (CA Report → 3CEB)
4. Applicability of Rollback for all the 4 consecutive PYs.
5. Application in Form 3CEDA

☆ Non-Applicability of Rollback Provisions:

1. ITAT Appeal disposed of before signing APA.
2. Effect on declared Income in ROI → Income ↓ Loss ↑

Eg. ROI Income → 143(3) → Assessment Income → Roll back can reduce income from ₹5 lac to ₹3 lac but not ~~more~~ less than income declared in ROI

₹3 lac — ₹5 lac

☆ 92CD → Effect of APA

File Modified Return → within 3 months from end of month of APA was entered
↳ For all the rollback years

Assessment (on date of the Modified Return)
- Pending → AO completes assessment → 1 year extra
- Complete → Pass an AO order modifying Total Income within 1 year of filing of modified Return

(assessee decides)

→ Remember: Rollback is an option. But rollback has to be for all 4 PYs. No rollback without APA.

☆ Amalgamation

A → AB
B → AB

APA	✓
Rollback	✗

☆ Merger

Sai → Shirdi

APA	✓
Rollback	✓

☆ Demerger

Titan Ltd → Titan Ltd, Tanishq Ltd

Titan Ltd

APA	✓
Rollback	✓

Tanishq Ltd

APA	✓
Rollback	✗

92 CE → Secondary Adjustment - Example

BB Ltd (AE) —Sale→ Sunny Ltd (AE)

Actual Transaction Price = 5 cr.

ALP = 7 cr.

[Interest Rate → SBI 1 year lending Rate + 3.25%]

ALP	7
- Actual	(5)
Excess	2

2 → Primary Adjustment → If not repatriated back to India → Make it a Loan (Department) → Secondary Adjustment

92CE - Secondary Adjustment

Primary Adjustment → Due to ALP Principle → Income ↑ or Loss ↓

Secondary Adjustment → Adjustment in Books of Accounts to reflect actual allocation of profit [due to non-patriation of Primary Adjustment amount to India]

Interest Rate for Secondary Adjustment

- International Transaction is denominated in ₹ (INR)
  ↓
  SBI 1 year lending Rate on 1/4 of PY (1st April) + 3.25%
- International Transaction is denominated in $ (Foreign Currency)
  ↓
  LIBOR of 6 mts of 30/6 of PY (30th Sep) + 3%

☆ Cases where Secondary Adjustments are made:

1. suo moto by assessee
2. By AO → Assessee accepts
3. Determined by APA (after 1-4-17) → If Tax Paid under the pre ~~...~~ amendment Section → No Refund allowed! (amendment of FA 2019)

4. Safe Harbour Rules
5. Mutual Agreement Procedure (MAP)
   - → within 90 Days of MAP
   - → other cases → 90 Days from RoI due date u/s 139(1)

Repatriation of Excess Money to India

- Primary Adjustment made by AO / Appelante Authority
  ↓
  within 90 Days of Date of order of AO/AA
- Primary Adjustment due to APA
  - (Before 30th Nov) If APA entered into before due date u/s 139(1) of that PY (ROI)
    ↓
    90 days from due date u/s 139(1) Return
  - (After 30th Nov) If APA entered into after due date u/s 139(1) of that PY (ROI)
    ↓
    90 days from end of month in which APA was entered.

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✯ Interest charged from? (Secondary Adjustment)

Order of AO/AA APA/MAP/other —— 90 Days ✓ —— Extra Days taken. Say, 5 ✓

Interest on 90 + 5 = 95 Days

not (only 5 Days) X

✯ **Remember**: If Primary Adjustment (excess amount) is more than ₹1 crore → Only then secondary Adjustments will happen.

✯ **New Amendment** → Assessee will have an option to pay income tax on excess income @ 18% + 12% + 4% ≈ 20.9664%
(Surcharge)(HEC)

w.e.f 1st Sep, 2019

- → Tax Paid will be Final payment on Excess Amount
- → No Deduction for the tax payment

✯ Excess Money can be repatriated from any AE which is Non-Resident

Section 94 A → Transaction with person in Notified Jurisdictional Area (NJA)

Me (India) —"Deemed as International Transaction"→ Mr X (in Cyprus) ← NJA ← "Deemed as AE"

- → Deemed AE
- → Deemed International Transaction
- → For Payments made to NJA → TDS @ 30% (minimum)
- → All provisions of transfer Pricing will apply (except for 3% tolerance band)

✯ **Section 92 BA** → Specified Domestic Transactions to which TP applies

↓

If aggregate value of transactions in PY exceeds ₹20 cr.

↓

Section 80-I (A) & (B) Transactions

Country - by - Country Reporting

→ CBC Report submited by Parent Entity in country of residence.
→ Based on Consolidated financial statements of the group.

→ Report annually info on:
1. Amt of Revenue
2. PBT - Profit Before Tax
3. Income Tax Paid
4. Total Employment, Capital & earning

☆ Section 286 → Report in case of International Group

Parent Entity which is resident in India ↓ Form 3CEAD

if group revenue (Total) as per Consolidated FS is ₹5500 cr / +
↓
Report to DGIT (Risk Assessment) → (CBC Report)
↓
within 12 months of end of accounting year

(For forex Conversion → Take TTBR on 31st March (last day of Accounting Year))

→ Constituent Entity in India $\xrightarrow{\text{notify to}}$ DGIT (RA) {Form 3CEAC}
atleast 2 months prior to filing of CBC Report Due Date
↓
(a) whether it is an alternative reporting entity of an international group.
(b) Details of Parent company of the international group & country it is a resident of.

☆ Penalty u/s 286 → Not filing CBC Report

Delay

≤ 1 month → ₹5000/day

> 1 month → ₹15000/day (after 1 month)

Service of order levying penalty for the ~~defau~~ delay → ₹50000/day from date of service of order of penalty

☆ Inaccurate / Wrong Info in CBC Report

Flat Penalty → $\boxed{₹ 5 \text{ lac}}$ → Not levied if reasonable cause for failure is proved.

If:
1. Entity had knowledge at the time of filing → didn't inform
2. Entity discovers inaccuracy in CBC Report & doesnot file Correct report within 15 Days of discovery.
3. Entity furnishes inaccurate info in response to → Notice.

Not V. Imp
↓
☆ Maintainance & Furnishing of Master File → Form 3CEAA (Part A, Part B)

→ Every constituent entity of an international group in India whose:

For filing Part B:
(a) Consolidated Revenue of Group this A/c year exceeds ₹500 cr.
(b) Aggregate International Transactions in A/c year as per Books of A/cs:
(i) Exceeds ₹50 cr or Purchase / Sale of Intangible Property exceeds ₹10 cr.

→ Part A shall be furnished by every person → whether or not there is international transactions

☆ 94B → Limitation on Excess Interest Deduction (V. Imp) ☆

Indian Company or PE of foreign company in India ← Debt ← Non-Resident (AE)

Indian Company or PE of foreign company in India → Interest / Commission Paid → Non-Resident (AE)

↓

Limit → 30% of EBITDA
(Beyond 30% of EBITDA amount can be carried forward for 8 years)

{Applies only where Interest Paid exceeds ₹1 crore}
If assessee is in Banking / Insurance Business → 94B ~~not applies~~ will not be applicable

Also, $\boxed{\text{AB Ltd}}$ ← Loan matching amount (₹10 cr) ☆☆ ← $\boxed{\text{HSBC Bank}}$ ← Deposit / Guarantee (₹10 cr.) ← $\boxed{\text{CD Ltd}}$ → Foreign AE of AB Ltd

☆ Deemed to be Loan from AE (i.e CD Ltd)