



Budget 2009

Changes in Transfer Pricing Provisions

Introduction of Safe Harbour Provisions

- Power given to CBDT to formulate safe harbour rules
- To provide the circumstances in which the Income-tax authorities shall accept the transfer price declared by the assessee.

Removal of the +/- 5 percent range benefit for calculating the adjustment

- When more than one price is determined by the MAM, then arithmetical mean is the arm's length price:
- However, if the arithmetical mean, so determined, is within five per cent of the transfer price, then the **transfer price** shall be treated as the **arm's length price** and no adjustment is required to be made.
- Thus, if the arithmetical mean is not within the +/- 5 percent of the transfer price then the arithmetical mean is determined to the ALP and adjustment would then be required to be made from the ALP.
- To be effective in case of proceedings pending before transfer pricing officer on 1 October 2009.

Alternative Dispute Resolution Mechanism (Certain features)

- Another layer of adjudication added which has authority to provide guidance to the AO;

- The assessee has to file the objections within 30 days of the draft order being provided by the AO to the assessee;
- Directions to be issued within 9 months of the draft order provided by the AO to the assessee;
- The directions issued by the ADR Panel are only appealable in the ITAT.

ADR mechanism proposed to facilitate speedy resolution of disputes. Salient features detailed as under:

- Only foreign companies/persons having transfer pricing variations eligible for ADR
- Collaborative process between Assessing Officer, Assessee and the Dispute Resolution Panel ('DRP')
- DRP would comprise of 3 Commissioners of Income-tax constituted by the Board
- Entire process would not exceed 10 months from the date the draft order is provided to the assessee by the Assessing officer
- Every direction by the DRP is binding on the Assessing officer

These amendments will take effect from 1 October 2009

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