

800 cos slapped with Rs 10k cr transfer pricing demand

MUMBAI: The transfer pricing regime, which came into force in 2001 to check loss of revenue to the government during cross-border deals involving Indian firms, has raised the demand for Rs 10,000 crore during the financial year 2009-10 (for the cases relating to time barring assessments for the Asst. years 2006-07 mostly).

Officers have asked about 800 companies in India to pay additional tax on account of transactions with their parent companies/subsidiaries or associate companies overseas. As these are related parties, the actual transaction value may not be reported to authorities. Transfer pricing rules make it mandatory for counterparties to provide documentary proof of the transaction value.

In the current fiscal year, the transfer pricing regime has examined over 1,600 transactions between corporates in India and their parent companies/associates abroad. Mostly, these deals include banks, FMCG companies, brokerages, pharma and diamond companies, which have been asked to cough up additional taxes.

However, unlike in the past, when the transfer pricing officer's order was binding, the tax demand from this year will be finalised only after the newly set-up Dispute Resolution Panel passes an order. Provisions for DRP were incorporated in the last Budget. At present, DRPs have been set up in eight cities and will start hearing disputes within a month.

The opinion of the DRP, which comprises two commissioners and a director (international taxation), is binding on the I-T department. However, taxpayers are free to appeal before the I-T Appellate Tribunal.

In many cases, the transfer pricing regime has managed to unveil the actual income which is typically concealed by showing losses, comparing transaction values incorrectly or showing artificial expenses.

For example, officers have come across a diamond merchant who had been consistently showing losses for four years even though he was cutting and polishing diamonds on a contract basis. This contract was at a fixed rate of \$100 a diamond. He failed to provide a satisfactory answer when asked why he had been charging the same rate year after year despite making losses.

Thereafter, the officers compared the rates prevalent for such contract work and



found the merchant had been making profits consistently over the past five years.

In another case, a major detergent manufacturer had filed returns comparing its transaction value with that of a shoe manufacturer.

Under transfer pricing rules, a [taxpayer](#) is supposed to compare the transaction value of similar companies in the industry. When pressed for an explanation, the detergent major said a shoe and a detergent manufacturer belonged to the same sector—FMCG. The authorities refused to accept the explanation and levied tax.

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