

Transfer pricing in India was commence in 2001 for decrease tax avoidance by laying down norms for “income arising from cross-border transactions” to be calculated at “arm's length price”.

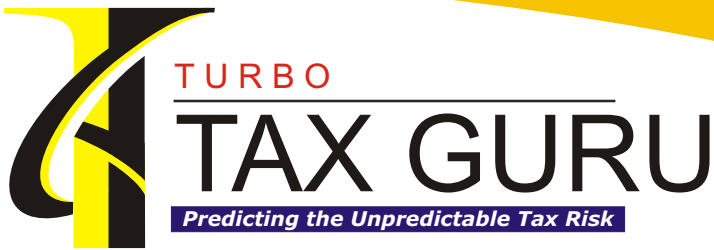


Transfer Pricing Services:

- ✦ Transfer Pricing Documentation
- ✦ Selection of Most appropriate method
- ✦ Benchmarking Analysis / Fixation of Arm's Length Price
- ✦ Industry Analysis
- ✦ Functional, Assets and Risks Analysis (FAR Analysis)
- ✦ Economic Analysis
- ✦ Accountant's Report in Form 3CEB.
- ✦ Transfer Pricing - Tax Planning.

Visit Us

www.transferpricing-india.com



ABOUT TURBO TAXGURU

Ours is a Tax Advisory and Consulting services based in India, Hyderabad city, and is expanding globally, by establishing Representative Offices. Under the umbrella of our company, we have specialized team of experienced Chartered Accountants, Tax Consultants, Legal Professionals etc., to deal with various unpredictable tax risks in India and in the world. One of such unpredictable tax risk is in the area of “Transfer Pricing”. We have specialized and experienced “**Transfer Pricing Managers**” / “**Transfer Pricing Analysts**”, who have qualified and trained Chartered Accountants to predict the unpredictable tax risks in this area of “Transfer Pricing” and to fix the suitable Arm's Length Price as per OECD, Indian and other countries' Regulations.

TRANSFER PRICING CONCEPT

Transfer Pricing refers to prices of transactions between associated enterprises which may take place under conditions differing from those taking place between independent enterprises. It refers to the value attached to transfers of goods, services and technology between related entities, which have not been fairly arrived at. It can also refer to the value attached to transfers between unrelated parties which are controlled by a common entity. The essence of transfer pricing is that it is not set by an independent transferor and transferee in arm's length negotiations. It is within the discretion of a single enterprise. 'Transfer price' will represent the value of goods or services between independently operating units may be between the same group.

Transfer prices are widely used in multinational organizations, which typically involve a parent company domiciled in one country and a number of subsidiary companies operating in other countries. When multinational firms conduct business within their group, the concept of **market pricing or arm's length pricing** has generally no relevance. Income or deduction is arbitrarily shifted. Thus, the effect of transfer pricing is to pass on some or all profit by a parent or controlling enterprise to its subsidiary entity to produce lesser taxable incomes or even less in the case of parent or controlling company. It can work in the opposite direction also. If the subsidiary or the controlled unit is based in a high tax jurisdiction and the controlling or the parent company is based in a jurisdiction where the tax rates are low or it is a tax heaven in the sense that no tax is charged in that jurisdiction, profit of such entities can be increased by siphoning profits from high tax jurisdictions to low tax jurisdictions.

ASSOCIATED ENTERPRISES & ITS TRANSACTIONS

“ Enterprise “ has been, or is proposed to be engaged in the following activity or business which is carried on, irrespective of whether done directly or through one or more of its units, divisions or subsidiaries and irrespective of whether such unit or division or subsidiary is located at the same or at the different place. The activities mentioned relate to :

- ✓ The production, storage, supply, distribution or control of articles or goods, or
- ✓ Know-how, patent, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, or
- ✓ Any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has the exclusive rights, or
- ✓ The provisions of services of any kind, or
- ✓ Engaged in investment or providing loan or
- ✓ Engaged in the business of acquiring, holding, underwriting, or dealing with shares, debentures or other securities of any other body corporate;
- ✓ Royalty transactions
- ✓ Technical services fees
- ✓ Management fees charges etc.

Associated Enterprises are those which are owned and controlled by the persons having same or common interest. The control could be direct or indirect or through intermediaries.

REPORT FROM A CHARTERED ACCOUNTANT

Every Person who has entered into an international transaction during a previous year shall obtain a report from an Accountant and furnish such report on or before 30th September of every year, in the prescribed Form No.3CEB duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.

TRANSFER PRICING DOCUMENTATION

The Transfer Pricing Officer or Revenue Authorities may in the course of any proceedings, require any person who has entered into an international transaction to furnish any information or document in respect thereof, at the relevant time and it should be made available before the Tax Authorities by the due date of submission of return of income. The client / the tax payer shall be required to substantiate, on the basis of material available with him, that income arising from international transactions entered into by him has been computed in accordance with arm's length principle. Further, the information and documents specified in the Rules, shall be kept and maintained in the company, failing which a penalty will be levied under the Act.

REQUIREMENTS FOR PREPARATION OF T.P. DOCUMENTATION

The maintenance, keeping of information and documents of primary and secondary nature in the context of transfer pricing law, by persons entering into International transactions as may be prescribed in the Rules, is necessary and mandatory. Broadly, the following information and documents that are required to be maintained are :

- ✓ A description of the ownership structure of the assessee-enterprise with details of shares Or other ownership interest held by other enterprises;
- ✓ A profile of the multinational group of which the assessee-enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions have been entered into by the assessee and ownership linkages among them ;
- ✓ A broad description of the business of the assessee and the industry in which the assessee operates and of the business of the associated enterprises with whom the assessee has transacted;
- ✓ The nature and terms (including prices) of international transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction ;
- ✓ A description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction ;
- ✓ A record of the economic and market analysis, forecasts, budgets, or any other financial estimates

prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transactions entered by the tax payer ;

- ✓ A record of uncontrolled transactions taken into account for analyzing their comparability with the international transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions ;
- ✓ A record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction;
- ✓ A description of the methods considered for determining the arm's length price in relation to each international transaction or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case ;
- ✓ A record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions;
- ✓ The assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price ;
- ✓ Details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes ;

Any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

IS IT COMPULSORY TO MAINTAIN T.P. DOCUMENTATION

Yes. It is compulsory to maintain Transfer Pricing Documentation in the company itself. Otherwise, penalties will be imposed for non-compliance with regard to T.P. Regulations.

PENALTIES

Penalties for non-compliances of procedural requirements concerning the transfer pricing provisions can be imposed in regard to failing to :

1. Keep and maintain information and documents ;
2. Furnish in the course of any proceeding under the Act when required to be done, of any information or document in respect of the international transaction within the period of notice ;
3. Furnish a report after having obtained from an accountant on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by a Chartered Accountant as required under the Act.

For (1) and (2) above, the amount of penalty will be equal to two percent of the value of international transaction and for (3), one hundred thousand rupees.

COMPARABLE CONTEMPORANEOUS DATA

There are two major important Corporate public data bases available in India. The tax payers and the Revenue Authorities are depending on those data bases. The raw-data can be obtained from those data bases and after molding in to T.P. data, elimination process of analysis has to be done basing on the international transactions and the nature of industry and accordingly, a final list of independent unrelated similar comparable companies has to be generated from those data bases, so as to arrive at a correct Arm's Length Price. There are also international or overseas Corporate data bases to analyze the comparables, if the tested party is in abroad.

SELECTION OF MOST APPROPRIATE METHOD

The most appropriate method shall be the method which is best suited to the facts and circumstances of each particular international transaction, and which provides the most reliable measure of an arm's length price in relation to the international transaction. In selecting the most appropriate method, out of the methods prescribed (viz., (a) *Comparable Uncontrolled Price Method (CUP)* ; (b) *Resale price Method (RPM)* ; (c) *Cost Plus Method (CPM)* ; (d) *Profit Split method (PSM)* ; (e) *Transactional Net Margin Method (TNMM)* and (f) *any other method prescribed by the Board*), the following factors shall be taken into account, namely :-

- > The nature and class of the international transaction;
- > The class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises.

HOW TO APPLY THE MOST APPROPRIATE METHOD TO THE SPECIFIC COMPANY

The price charged for property or services transferred in a controlled transaction is compared to price charged in a comparable uncontrolled transaction. The sources of information for this could be (i) Internal company data (ii) company price list (iii) website information (iv) trade directories (v) Government publications ; (vi) to identify prices charged or paid in a comparable uncontrolled transaction ; (vii) to adjust such price to account for material difference which would affect the price in open market. Also keeping in view of (i) contractual terms ; (ii) the quantity of product ; (iii) level of market ; (iv) geographical markets scene ; (v) intangibles associated with the sales and (vi) alternatives available to buyers and sellers etc. Further, while examining the other methods like, Transactional Net margin method , the net profit margin that a tax payer realizes from a transaction with an associated enterprise. The net margin is calculated with reference to appropriate base viz., costs, sales and assets etc. The net margin of the tax payer from the controlled transaction is determined by reference to the margins earned in comparable uncontrolled transactions for establishing arm's length price, with reference to : -

- ✓ Specific characteristics of the property or services;
- ✓ Functions performed ;
- ✓ Contractual terms
- ✓ Market conditions etc.

In a case where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be :-

- ✓ The arithmetical mean of such prices, or
- ✓ At the option of the assessee,
- ✓ A price which may vary from the arithmetical mean,
- ✓ By an amount not exceeding five percent of such arithmetical mean.

DETERMINATION OF ARM'S LENGTH PRICE

The underlying principle in Arm's length dealing is to put controlled and uncontrolled enterprises at par to see whether the apportionment of income between related enterprises are economically reasonable. Under the Arm's Length Principle, controlled or associated tax payers are expected to realize from their controlled transactions, the results that would have been realized if uncontrolled tax payers had been engaged in the same transactions under the same circumstances. It covers instances of under or over invoicing of goods or services in trans-border or cross-border transactions between related parties. Arm's Length Price is the price applied (or proposed to be applied) when two unrelated persons enter into a transaction in uncontrolled conditions. Persons are said to be unrelated if they are not associated or deemed to be associated enterprises. Conditions which are not controlled or suppressed or moulded for achievement of a pre-determined results are said to be uncontrolled conditions. If a buyer is related to a seller, or where prices are governed by the Government Policy , then transaction is said to be taking place under controlled conditions.

In view of the above, by applying any of the prescribed methods, the Arm's Length Price has to be determined basing on the international transaction, size of the company, nature of business, functions, assets and risks of the business of the company, after giving certain allowable adjustments in the price, viz., Working capital adjustment, Risk adjustment, Infrastructure adjustment, depreciation adjustment, Idle bench cost adjustment, salary cost adjustment etc.

OUR OTHER SERVICES:

- ✓ International taxation ;
- ✓ Corporate taxation;
- ✓ Defending on appeal matters at various Appellate stages like, CIT(A), ITAT, High Court etc. or writ matters in respect of transfer pricing and other tax areas.
- ✓ Matter before MAP (Mutually Agreed Procedure) at the Board level;
- ✓ Other Tax advisory and consulting services .
- ✓ Legal Consulting services etc.



For enquiries and assistance,

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