



# Transfer Pricing

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# Presentation Contents

- **Overview of Transfer Pricing Provisions**
- **Recent Amendments in Transfer Pricing**
- **Transfer Pricing Audit and Documentation**

# Transfer Pricing Provisions

## Brief Overview



# Relevant Regulations

Provision	Section	Rules
Computation of income having regard to ALP	92	
Meaning of Associated Enterprise	92A	
Meaning of International transaction	92B	
Meaning of specified domestic transactions	92BA	
Methods of computation of ALP *Rule 10AB – Any other method for determination of ALP	92C(1)/(2)	Rule 10B/10AB/ 10C/ <b>10CA</b>
Reference to Transfer Pricing Officer (TPO)	92CA	
Safe harbour rules	92CB	Rule 10TA to 10TF
Advance Pricing agreement	92CC	Rule 10F to 10T
Effect of advance pricing agreement	92CD	
<b>Secondary Adjustments</b>	<b>92CE</b>	<b>Rule 10CB</b>
Maintenance of information and documents by persons entering into an international transaction or specified domestic transaction (Amended to include requirement of CbCR & Master File)	92D	Rule 10D <b>Proposed 10DA &amp; 10DB</b>
Accountant's Report entering into an international transaction or specified domestic transaction	92E	Rule 10E (Form 3CEB)
Definitions: Accountant, ALP, Enterprise, PE, Specified date, Transaction	92F	Rule 10A

# Section 92

- ❑ 92(1)→Any income, expense or interest arising from an international transaction or specified domestic transaction shall be computed having regard to arm's length price.
- ❑ Includes -
  - ❑ 92(2)→Any cost or expense allocated or apportioned or contributed under a mutual agreement to be determined having regard to the ALP of the benefit, service or facility provided under such agreement
  - ❑ 92(2A)→Interest or any allowance for expenditure or allocation of cost or expense in income in relation to SDTs
- ❑ 92(3)→This **section not to apply** where it results in reduction of income chargeable to tax or increase in the loss.

# Associated Enterprise (Section 92A)





# Section 92F(iii) - Enterprise

- ❑ Defined in Sec. 92F(iii) to mean -
  - ❑ a person (including a permanent establishment of such person)
  - ❑ engaged in any specified activity, or in investment, or providing loan or in business of acquiring, holding, underwriting or dealing with securities
  - ❑ whether such activity or business is carried on, directly or through one or more of its units / divisions / subsidiaries, or
  - ❑ whether such unit / division / subsidiary is located at the same or at a different place or places
- ❑ Enterprise vis-à-vis person

# Associated Enterprise

## ❑ 92A(1) – General conditions

- Direct or indirect participation by an enterprise in management, control or capital of another enterprise.
- Direct or indirect participation by one or more persons in management, control or capital of two enterprises.
- Extent of participation required is not laid down

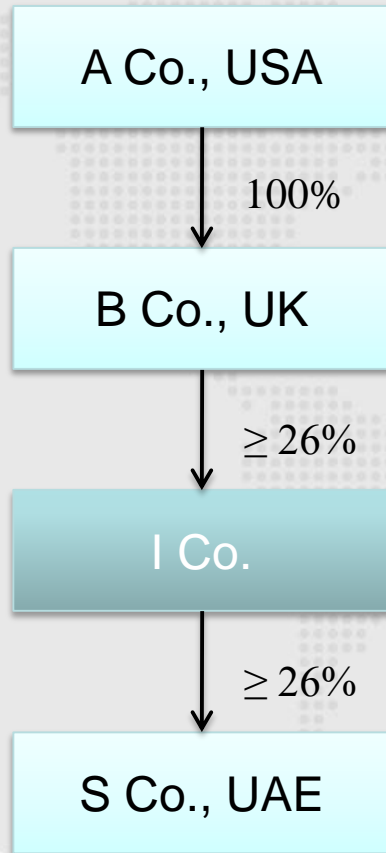
## ❑ 92A(2) – Specific conditions

- Deemed AE relationship based on conditions linked to shareholding, board of directors, loans, guarantees, etc.
- “At anytime during the year”

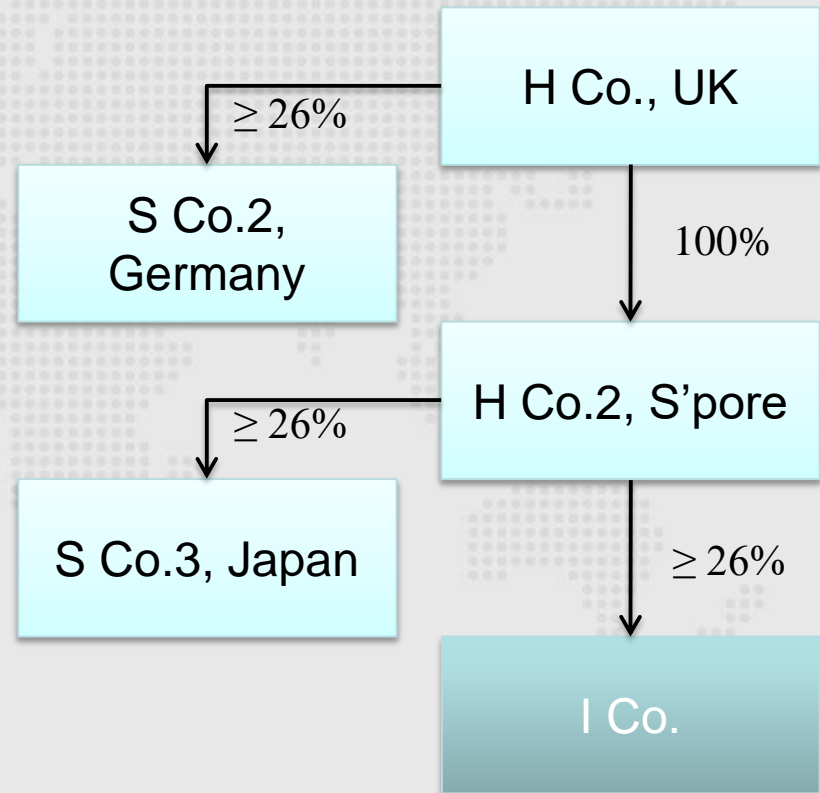


# Associated Enterprise

## 92A(2)(a)



## 92A(2)(b)



# Associated Enterprise

## 92A(2)(c)

A Co., UAE

Loan  $\geq$  51% of book value  
total assets of I Co.

I Co.

Loan  $\geq$  51% of book value  
of total assets of B Co.

B Co., USA

## 92A(2)(d)

X Co., UK

Guarantees  $\geq$  10% of  
total borrowings of I Co.

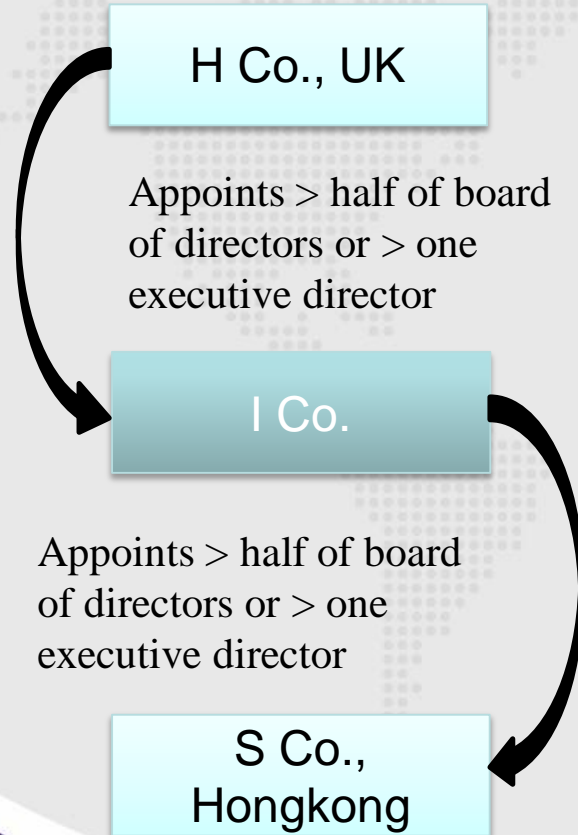
I Co.

Guarantees  $\geq$  10% of  
total borrowings of Y Co.

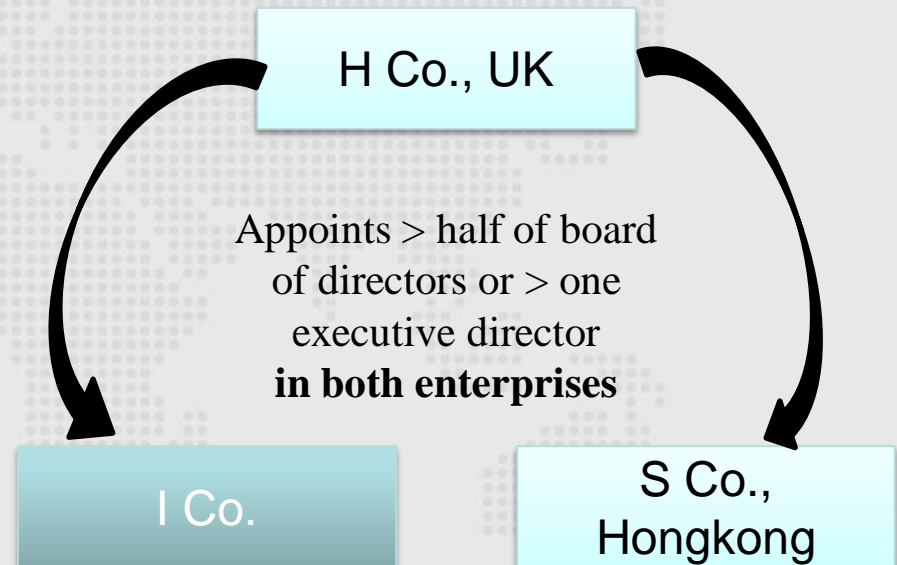
Y Co., China

# Associated Enterprise

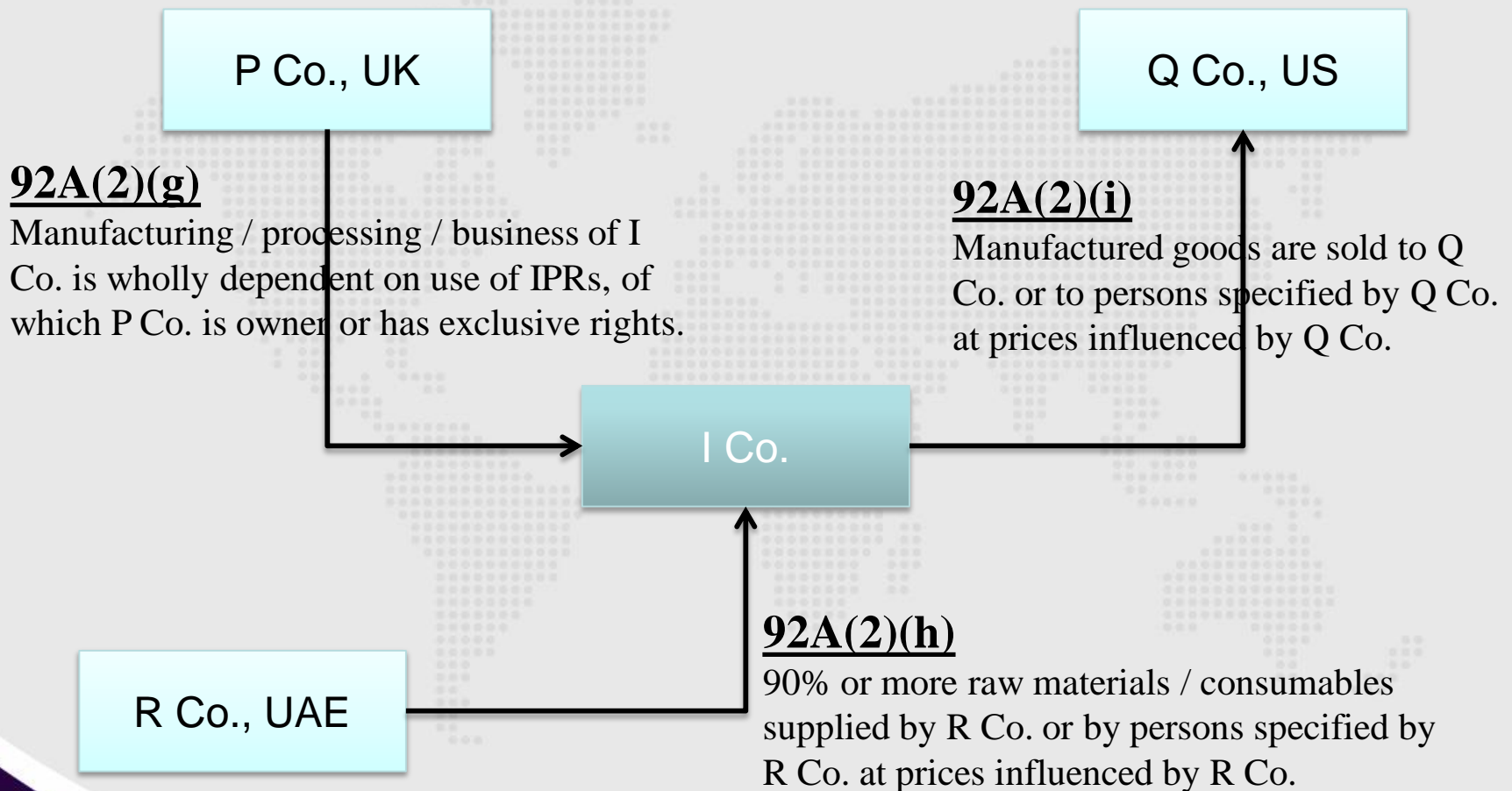
## 92A(2)(e)



## 92A(2)(f)



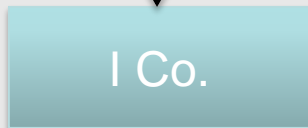
# Associated Enterprise



# Associated Enterprise

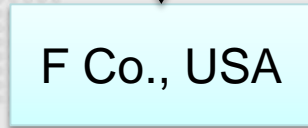
## 92A(2)(j) & 92A(2)(k)

Control by Mr.  
A / A(HUF)



Control by –

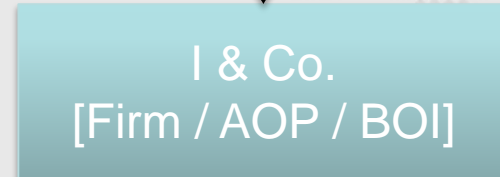
- Mr. A and/or his relative;
- Member of A(HUF) and/or his relative



## 92A(2)(l)

H Co., UK

≥ 10% interest



# International Transaction

(Section 92B)





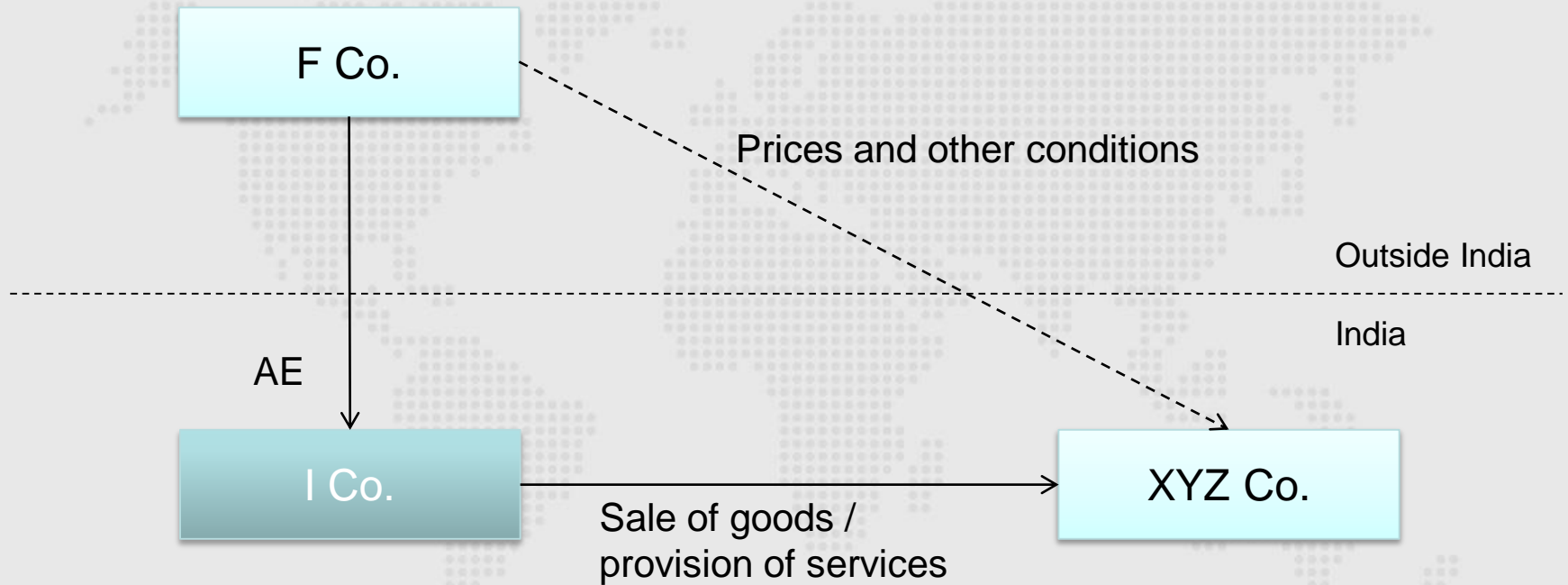
# International Transaction

- ❑ 92B(1) → International transaction means
  - A transaction between **two or more AEs**, **either or both of whom are non-residents**,
  - In the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises
  - Includes a cost allocation / apportionment / contribution arrangement
- ❑ “Transaction” defined in Sec. 92F(v) to include-
  - an arrangement, understanding or action in concert,
  - whether or not it is in writing,
  - whether or not it is intended to be enforceable by legal proceeding

# Deemed International Transaction

- ❑ 92B(2) → Transaction with a non-AE deemed to be a transaction between two AEs, if
  - there exists a prior agreement in relation to the relevant transaction between such other person and the AE, or
  - the terms of the relevant transaction are determined in substance between such other person and the AE
- ❑ S. 92B(2) deems international transaction without creating deemed AE relationship.
- ❑ Transaction between two residents, where –
  - third party is interposed between two resident AEs
  - third party is interposed between Indian assessee and non-resident AE
  - IJM (India) Infrastructure Ltd. v. ACIT 147 ITD 437 (Hyd. Trib.)

# Deemed International Transaction



Transaction between I Co. and XYZ Co. is  
deemed international transaction

# Explanation (i) to Section 92B

## □ Clarification on definition of International transaction

Tangible Property	Intangible Property	Capital Financing	Services	Business restructuring
<ul style="list-style-type: none"><li>• Purchase, sale, transfer, lease or use of tangible property</li><li>• Includes building, vehicle, machinery, equipment, plant, furniture, etc.</li></ul>	<ul style="list-style-type: none"><li>• Purchase, sale, transfer, lease or use of intangible property</li><li>• Includes transfer of ownership or the provision of use of rights</li></ul>	<ul style="list-style-type: none"><li>• Long-term or short-term borrowing or lending</li><li>• Guarantee</li><li>• Purchase or sale of marketable securities</li><li>• Advance, payments or deferred payment or receivable or any other debt</li></ul>	<ul style="list-style-type: none"><li>• Includes market research / development, marketing management</li><li>• Administration</li><li>• Technical service</li><li>• Repairs, design, consultation</li><li>• Agency</li><li>• Scientific research</li><li>• Legal or accounting</li></ul>	<ul style="list-style-type: none"><li>• Entered into by an enterprise with an AE</li><li>• <b>Irrespective</b> of whether it has bearing on the profit, income, losses or assets at the time of the transaction or at any future date</li></ul>

# Explanation (ii) to Section 92B

□ “Intangible property” to include:

Sr. No.	Intangible Assets	Examples
1	Marketing related	<ul style="list-style-type: none"><li>✓ Brand names</li><li>✓ Logos</li><li>✓ Trade names</li><li>✓ Trade marks</li></ul>
2	Technology related	<ul style="list-style-type: none"><li>✓ Patent applications</li><li>✓ Process patents</li><li>✓ Technical documentation such as laboratory notebooks</li><li>✓ Technical know-how</li></ul>
3	Artistic related	<ul style="list-style-type: none"><li>✓ Copyrights</li><li>✓ Engravings</li><li>✓ Literary works and copyrights</li><li>✓ Maps</li><li>✓ Musical compositions</li></ul>
4	Data Processing related	<ul style="list-style-type: none"><li>✓ Automated databases</li><li>✓ Integrated circuit masks and masters</li><li>✓ Proprietary computer software</li><li>✓ Software copyrights</li></ul>



# Explanation (ii) to Section 92B

Sr. No.	Intangible Assets	Examples
5	Engineering related	<ul style="list-style-type: none"><li>✓ Blue prints</li><li>✓ Engineering drawing and schematics</li><li>✓ Industrial design</li><li>✓ Product patents</li><li>✓ Proprietary documentation</li><li>✓ Trade secrets</li></ul>
6	Customer related	<ul style="list-style-type: none"><li>✓ Customer lists</li><li>✓ Customer contracts</li><li>✓ Customer relationship</li><li>✓ Open purchase orders</li></ul>
7	Human capital related	<ul style="list-style-type: none"><li>✓ Employment agreements</li><li>✓ Trained and organised work force</li><li>✓ Union contracts</li></ul>
8	Location related	<ul style="list-style-type: none"><li>✓ Air rights</li><li>✓ Easements</li><li>✓ Leasehold interest</li><li>✓ Mineral exploitation rights</li><li>✓ Water rights</li></ul>



# Explanation (ii) to Section 92B

Sr. No.	Intangible Assets	Examples
9	Goodwill related	<ul style="list-style-type: none"> <li>✓ Celebrity goodwill</li> <li>✓ General business going concern value</li> <li>✓ Institutional goodwill</li> <li>✓ Personal goodwill of professional</li> <li>✓ Professional practice goodwill</li> </ul>
10	Methods, systems , procedures, etc.	<ul style="list-style-type: none"> <li>✓ Campaigns</li> <li>✓ Customer lists</li> <li>✓ Estimates</li> <li>✓ Forecasts</li> <li>✓ Methods</li> <li>✓ Procedures</li> <li>✓ Programmes</li> <li>✓ Studies</li> <li>✓ Surveys</li> <li>✓ Systems</li> <li>✓ Technical data</li> </ul>
11	Other similar items	Any other similar items which derives its value from its intellectual content rather than its physical attributes

# Specified Domestic Transactions

## (Section 92BA)



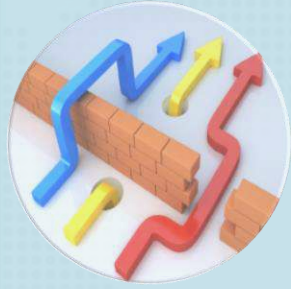
# Specified Domestic Transaction

- ❑ SDT means any of the following transactions, not being an international transaction, namely:
  - **any expenditure** in respect of which payment has been made or is to be made to a **person referred to in section 40A(2)(b)**; **Omitted by FA 2017**
  - any **transaction referred to in section 80A**;
  - any **transfer of goods or services** referred to in **sub-section (8) of section 80-IA**;
  - any **business transacted** between the assessee and other person as referred to in **section 80-IA (10)**;
  - any transaction, referred to in any other section under Chapter VIA or section 10AA, to which provisions of section 80-IA(8) or section 80-IA(10) are applicable; or
  - any other transaction as may be prescribed
- ❑ And **aggregate** of such transactions **exceeds a sum of Rs. 20 Crores**

# Approach for Benchmarking ITs & SDTs



**Identification  
of Transaction**



**Function,  
assets and risk  
analysis**



**Selection of  
most  
appropriate  
method**



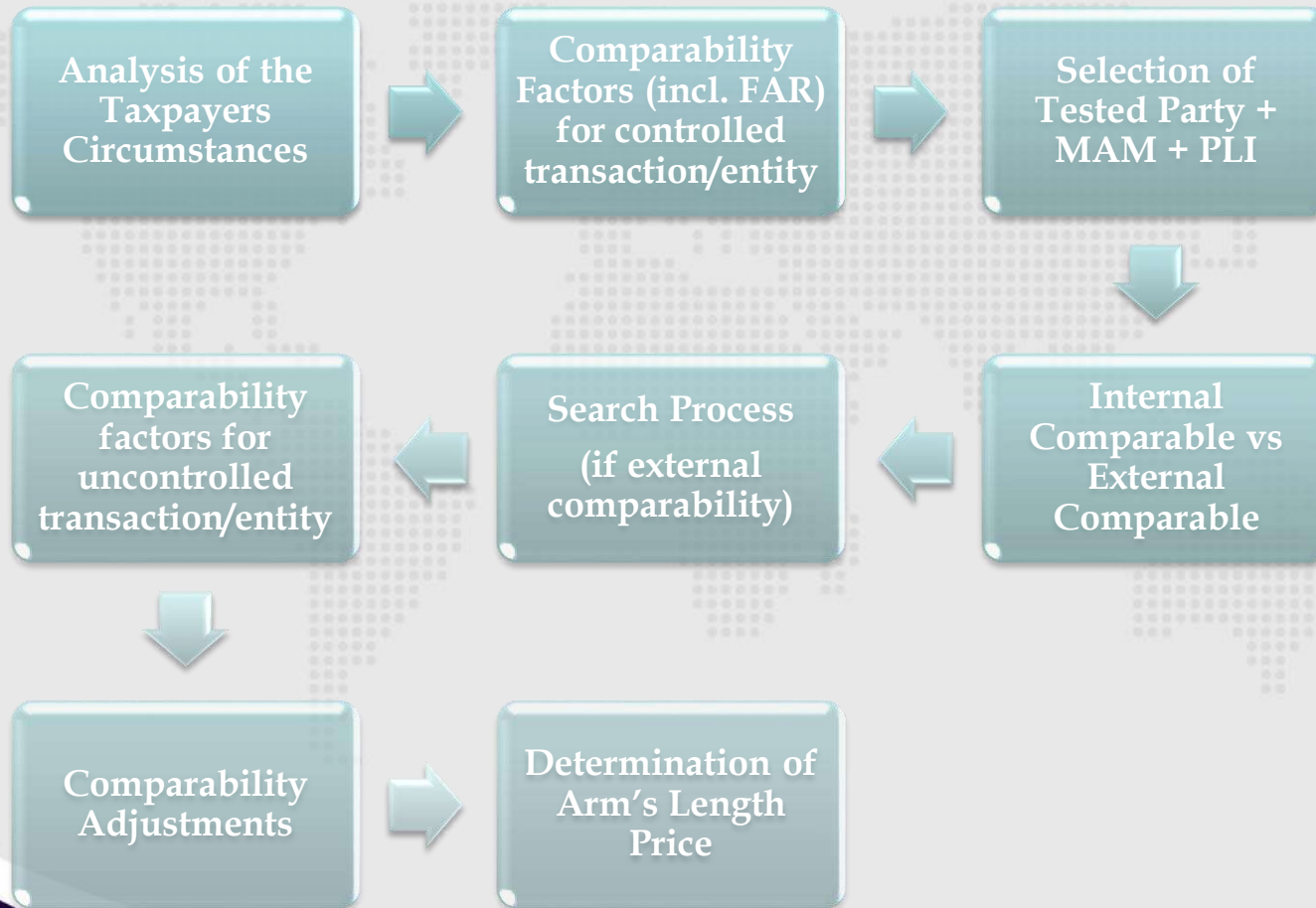
**Economic  
analysis**



**Determination  
of Arm's  
Length Price**



# Comparability Analysis (incl. Functional & Economic Analysis)



# Computation of ALP - Section 92C

❑ 92C(1)→ALP to be determined applying any of the following methods, being the most appropriate method:

- **Comparable uncontrolled price method;**
- **Resale price method;**
- **Cost plus method;**
- **Profit split method;**
- **Transactional net margin method;**
- **Other method of determination (Rule 10AB)**

Rule 10B of  
Income Tax  
Rules, 1962

❑ 92C(2)→Most appropriate method to be adopted as per Rule 10C.  
Factors to be considered:

- Nature and class of transaction
- Taking into account FAR analysis
- Availability + reliability of data & accurate adjustments
- Degree of comparability



# Computation of ALP - Prescribed Methods

Comparable Uncontrolled Price ('CUP')	The CUP method compares the <b>price</b> charged in a controlled transaction to the price charged in a comparable uncontrolled transaction in comparable circumstances.
Resale Price Method ('RPM')	The RPM evaluates whether the amount charged in a controlled transaction is arm's length by reference to the <b>gross profit margin</b> realized in comparable uncontrolled transactions.
Cost Plus Method ('CPM')	The CPM method evaluates a controlled transaction by reference to the <b>markup on cost</b> earned in comparable uncontrolled transactions.
Profit Split Method ('PSM')	The PSM <b>allocates operating profits or losses</b> from controlled transactions in proportion to the relative contributions made by each party in creating the combined profits or losses or in proportion to allocation of profits in arm's length transactions.
Transactional Net Margin Method ('TNMM')	The TNMM compares the <b>net profit margin</b> of the assessee arising from a non-arm's length transaction with the net profit margins realized by arm's length parties from similar transactions.
Other Method	Any method that takes in to account the price which has been charged or paid or would have been charged or paid for same or similar uncontrolled transaction with or between non - associated enterprises

# Multiple Year Data - Rule 10B(5)

- ❑ From FY 2014-15,
- ❑ If method applied:
  - Resale price method;
  - Cost plus method;
  - Transactional net margin method;
- ❑ Data for analysis to be used:
  - Data for current year; or
  - Data of FY immediately preceding CY, **if the data relating to CY is not available at the time of furnishing ROI**
- ❑ Proviso: where the data relating to CY is subsequently available at the time of determination of ALP **during the course of assessment proceeding**, such data shall be used for such determination irrespective of the fact that the data was not available at the time of furnishing the return of income of the relevant assessment year

# Range Concept – Rule 10CA

- ❑ From FY 2014-15
- ❑ If method applied:
  - Comparable Uncontrolled Price Method
  - Resale price method;
  - Cost plus method;
  - Transactional net margin method;
- ❑ More than 6 Comparables (data points)
- ❑ Margins between 35<sup>th</sup> & 65<sup>th</sup> Percentile – ALP satisfied;
- ❑ Arithmetic Mean to continue to apply:
  - PSM, OM
  - CUP, CPM, RPM, TNMM and < 6 comparables
  - Tolerance band: 3% or 1% available

# Documentation

## (Section 92D r.w. Rule 10D)



# Section 92D r.w. Rule 10D

- ❑ Mandatory documentation requirements in case where aggregate of **international transactions**, as recorded in the books, **exceeds Rs. 1 crore**.
- ❑ Even in cases where aggregate value of international transactions is below Rs. 1 crore, assessee is required to maintain adequate material to substantiate the arm's length nature of the transactions.
- ❑ Fresh documentation need not to be maintained separately in each previous year unless there is a significant change in nature and terms of international transaction.
- ❑ Documents to be **maintained for 8 years** from the end of the assessment year.
- ❑ **New 3 tiered approach suggested by OECD's BEPS Action Plan 13 – Master File + Local File + Country-by-Country Report**



# Documents and Information to be maintained

Rule 10D	Provision	Reference to TP Documentation
(a)	Description of ownership structure	Group Overview
(b)	Profile of multinational group	
(c)	Broad description of business and industry of the assessee and AE	Group Overview and Industry Overview
(d)	Nature and terms (incl. prices) of international transactions	Economic Analysis + respective documents
(e)	FAR analysis	FAR Analysis
(f)	Record of economic and market analyses, forecasts, budgets etc.	Respective documents in separate files
(g)	Record of uncontrolled transactions	Economic Analysis + relevant appendices
(h)	Evaluating comparability of uncontrolled transaction with relevant international or domestic transaction	
(i)	Description of methods considered and selection of most appropriate method	
(j)	Relevant working for determining arm's length price	
(k)	Factors affecting determination of arm's length price	
(l)	Details of adjustments	Respective documents in separate files (if any)
(m)	Any other relevant information for determination of arm's length price	

# Transfer Pricing Audit Report

## Form 3CEB (Section 92E)



**AUDIT REPORT**

**Audit satisfactory**  
– verifies compliance with requirements

Non-conformances found

Observations made

*Well done,  
team!*

# Form 3CEB

<On letterhead on CA>

## FORM NO. 3CEB

[See rule 10E]

Report from an accountant to be furnished u/s. 92E relating to international transaction (s)

1. We have examined the accounts and records of <XYZ Company>, having its office at <XYZ registered office address>, India and Permanent Account No. <AABCXXXXX>, relating to the international transactions and the specified domestic transactions entered into by the assessee during the previous year ending on 31<sup>st</sup> March, 2017.
2. In our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transactions and the specified domestic transactions entered into so far as appears from our examination of the records of the assessee. The information and documents required to be maintained under section 92D is the responsibility of the management of the assessee.
3. a) The particulars required to be furnished under section 92E are given in the Annexure to this Form. In our opinion and to the best of our information and according to the explanations given to us, the particulars given in the Annexure, having regard to matters stated in Para 4 below and read with the notes in the relevant clauses, are true and correct.  
b) The particulars given in the Annexure to this Form have been furnished by the assessee and in forming the above opinion; we have relied on the representations made to us by the assessee's personnel. In accordance with the Guidance Note on Report on International Transactions under section 92E of the Income-tax Act, 1961 (Transfer Pricing) issued by the Institute of Chartered Accountants of India, New Delhi, our examination has been carried out on a test basis to obtain reasonable assurance that the particulars as disclosed in the Annexure are free of material misstatement.
4. For the purposes of the above, we have used and relied on the following:
  - a) Financial information as is available from audited accounts dated DDMM/YYYY of the assessee for the year ended on 31<sup>st</sup> March, 2017, which has been audited by <name of statutory auditor>, the statutory auditor of the assessee appointed under the provisions of the Companies Act, 2013.
  - b) As regards the information relating to the details of associated enterprises furnished in Clause 10 under Part B of the above Annexure, we have relied upon the information provided by the assessee.

For TP Auditor  
(FRN:XXXXX)

CA Name  
(Proprietor/Partner)

M. No. XXXXX

Place:  
Dated:

Information to  
be filled up in  
all cases

# Annexure to Form 3CEB

Information to be filled up in all cases

## Annexure To Form No. 3CEB

Particulars Relating To International Transactions Required To Be Furnished Under Section 92E Of The Income-Tax Act, 1961

### PART A

1. Name of the Assessee	XYZ Limited
2. Address	Registered office: XYZ House, 24, Modern Street, Mumbai – 400001
3. Permanent Account Number	AABCDXXXXF
4. Nature of the business or activities of the assessee	<< Code for nature of business to be filled in as per instructions for filling Form ITR 6 >>
5. Status	Resident [Domestic Company]
6. Previous year ended	31 <sup>st</sup> March 2017
7. Assessment year	2017-2018
8. Aggregate value of international transactions as per books of accounts	INR _____
9. Aggregate value of international transactions as per books of accounts	INR_____



# CLAUSES TO FORM 3CEB



# Sub-Annexures to Form 3CEB

**Clause 10: List of associated enterprises with whom the assessee has entered into international transactions, with the following details:**

Sr. No.	Name of the Associated Enterprise	Address	Nature of relationship with the associated enterprise as referred to in section 92A(2)	Business Description
1	XYZ Private Limited	XYZ House, OPQ lane 20009, Republic of Maldives	Subsidiary [ Section 92A(2)(a)]	XXXX
2	ABC Inc	KBC building, LA lane ,USA.	Indirect Subsidiary [Section 92A(2)(a)]	XXXX

Note: Sections mentioned above refer to the sections of the Income Tax Act, 1961

# Sub-Annexures to Form 3CEB

Following all the Relevant clauses for furnishing particulars regarding international transactions :

Clause No	Nature of Transaction
Clause 11	Tangible Property
Clause 12	Intangible property
Clause 13	Services
Clause 14	Lending and borrowing money
Clause 15	Provision/ Receipt of Guarantee
Clause 16	Capital financing
Clause 17	Mutual Agreement/ arrangement
Clause 18	Business restructuring / reorganizations
Clause 19	Others
Clause 20	Deemed international transactions

# Sub-Annexures to Form 3CEB

Following all the Relevant clauses for furnishing particulars regarding international transactions :

Clause No	Nature of Transaction
Clause 22	Payment made to specified persons u/s 40A(2)(b)
Clause 23	Transfer of goods/services by unit/undertaking u/s 80A(6), 80IA(8). 10AA
Clause 24	Any transaction resulting into more than ordinary profits by unit/undertaking u/s 80IA(10)/10AA
Clause 25	Any other transactions

# Sub-Annexures to Form 3CEB

## Clause 11:

### SUB CLAUSE- A

Details and description of international transaction(s) in respect of purchase / sale of raw material, consumables or any other supplies for assembling or processing / manufacturing of goods or articles from / to associated enterprises:

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Description of Transaction	*Quantity purchased / sold (M.T.)	Total Amount paid / payable as per books of accounts	Total Amount paid / payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
					<b>Rs</b>	<b>Rs</b>	<b>Rs</b>	<b>Rs</b>	
1	XYZ Inc	XXXX	Purchase of raw material	xxx	xxx	xxx	NIL	NIL	Comparable Uncontrolled Price Method
2	XYZ Inc	XXXX	Sale of raw material	xxx	xxx	xxx	NIL	NIL	Comparable Uncontrolled Price Method

# Sub-Annexures to Form 3CEB

## Clause 11:

### SUB CLAUSE - B

Details and description of international transaction(s) in respect of purchase/sale of traded/finished goods

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Description of Transaction	*Quantity purchased / sold (M.T.)	Total Amount paid / payable as per books of accounts	Total Amount paid / payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
					<b>Rs</b>	<b>Rs</b>	<b>Rs</b>	<b>Rs</b>	
1	XYZ Inc	XXXX	Purchase of finished goods	xxx	xxx	xxx	NIL	NIL	Comparable Uncontrolled Price Method
2	XYZ Inc	XXXX	Sale of finished goods	xxx	xxx	xxx	NIL	NIL	Comparable Uncontrolled Price Method



# Sub-Annexures to Form 3CEB

## Clause 11:

### SUB CLAUSE - C

Details of international transaction(s) in respect of purchase, sale, transfer, lease or use of any other tangible property including transactions specified in Explanation (i)(a) below section 92B(2)

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Description of property and nature of transaction	(Number of units of each category of moveable/immovable property involved in the transaction)	Total Amount paid / payable as per books of accounts	Total Amount paid / payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
					Rs	Rs	Rs	Rs	
1	XYZ Inc	XXXX	Purchase of Fixed Assets	xxx	xxx	xxx	NIL	NIL	Comparable Uncontrolled Price Method
2	XYZ Inc	XXXX	Sale of Fixed Assets	xxx	xxx	xxx	NIL	NIL	Comparable Uncontrolled Price Method

# Sub-Annexures to Form 3CEB

## Clause 12:

Details and description of international transaction(s) in respect of purchase, sale, transfer, lease or use of intangible property including transactions specified in Explanation (i)(b) below section 92B(2)

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Description of the intangible property and nature of payment	Total Amount paid / payable/received/ receivable as per books of accounts	Total Amount paid / payable/received /receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
				<b>Rs</b>	<b>Rs</b>	
1	ABC Inc U.S.A	XXXX	Royalty paid for Copyrights/ Patents	XXX	XXX	Comparable Uncontrolled Price Method

# Sub-Annexures to Form 3CEB

## Clause 13:

Details and description of international transaction(s) in respect of services including transactions as specified in Explanation (i)(d) below section 92B(2)

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Description of services	Total Amount paid/payable as per books of accounts	Total Amount paid/payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
				<b>Rs</b>	<b>Rs</b>	<b>Rs</b>	<b>Rs</b>	
1	XYZ Private Limited	XXXX	Marketing and Branding services	NIL	NIL	XXX	XXX	Transaction Net Margin Method

# Sub-Annexures to Form 3CEB

## Clause 14:

Details and description of International transaction(s) in respect of lending or borrowing of money including any type of advance, payments, deferred payments, receivable, non-convertible preference shares / debentures or any other debt arising during the course of business as specified in Explanation (i)(c) below section 92B(2)

Sr. No	Name of the Associated Enterprise	Address of the Associated Enterprise	Nature of financing agreement	Currency of loan / advance	Interest Rate charged / paid
1	ABC Inc	XXXX	Short Term Loan	INR	12% p.a.

Total Amount paid / payable as per books of accounts	Total Amount paid / payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
Rs	Rs	Rs	Rs	
NIL	NIL	XXX	XXX	Comparable Uncontrolled Price Method

# Sub-Annexures to Form 3CEB

## Clause 15:

Details and description of International transaction(s) in the nature of guarantee

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Nature of guarantee agreement	Currency in which the guarantee transaction was undertaken	Compensation / fees charged / paid in respect of the transaction		Method used for determining the arm's length price
					Type	Amount	
						Rs.	
1.	XYZ Inc	XXXX	Guarantee Fees	INR	Paid	XXX	Comparable Uncontrolled Price Method



# Sub-Annexures to Form 3CEB

## Clause 16:

Details and description of International transaction(s) in respect of purchase or sale of marketable securities or issue of equity shares including transactions specified in Explanation (i)(c) below section 92B(2)

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Nature of transaction	Currency	Compensation charged / paid in respect of the transaction	Method used for determining the arm's length price
					Rs	
1.	XYZ Inc	XXXX	Issue of shares	INR	XXX	Other Method

# Sub-Annexures to Form 3CEB

## Clause 17:

Details and description of International transaction with an associated enterprise or enterprises by way of a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Description of mutual agreement/ arrangement	Total Amount paid/ payable as per books of accounts	Total Amount paid/payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
				Rs	Rs	Rs	Rs	
1.	XYZ Inc	XXXX	Cost contribution arrangement	NIL	NIL	XXX	XXX	Other Method

# Sub-Annexures to Form 3CEB

## Clause 18:

Details and description of International transaction(s) arising out / being part of any business restructuring or reorganization entered into by it with the associated enterprise or enterprises as specified in Explanation (i)(e) below section 92B(2) and which has not been specifically referred to in any other clauses

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Nature of transaction	Agreement in relation to such business restructuring/reorganisations	Terms in relation to such business restructuring/reorganisations	Method used for determining the arm's length price
1.	XYZ Inc	XXXX	Business reorganization from Contract manufacturer to Toll Manufactured	XXX	XXX	Other Method

# Sub-Annexures to Form 3CEB

## Clause 19:

Details and description of any other international transaction(s) including a transaction having a bearing on the profits, income, losses or asset but not specifically referred to in any other clauses, with associated enterprises

Sr. No.	Name of the Associated Enterprise	Address of the Associated Enterprise	Description of the transaction	Total Amount paid/ payable as per books of accounts	Total Amount paid/payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
				Rs	Rs	Rs	Rs	
1.	XYZ Inc		Recovery of expenses	-	-	XXX	XXX	Other Method

# Sub-Annexures to Form 3CEB

## Clause 20:

Details and description of any transaction with a person other than an AE in pursuance of a prior agreement in relation to the relevant transaction between such other person and the associated enterprise

Sr. No.	Name of the Person	Address of the Person	Description of the transaction	Total Amount paid/ payable as per books of accounts	Total Amount paid/payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
				Rs	Rs	Rs	Rs	
1.	PQR Inc	XXXX				XXX	XXX	Other Method

# Sub-Annexures to Form 3CEB

## Clause 21:

List of associated enterprises with whom the assessee has entered into specified domestic transactions

Sr. No.	Name of the associated enterprise	Address of the associated enterprise	PAN of the associated enterprise	Nature of the relationship with the associated enterprise	Brief description of the business carried on by the said associated enterprise
1.	LMN Private Limited	XXXX, India	AAAPB0000F	Close connection with entity u/s 80IA(10)	XXXX



# Sub-Annexures to Form 3CEB

## Clause 22:

Details and Description of Specified domestic transaction(s) being any expenditure in respect of which payment has been made or is to be made to any person referred to in section 40A(2)(b)

Sr. No.	Name of the person	Description of the transaction	Quantity Purchased (if any)	Total Amount paid/ payable as per books of accounts	Total Amount paid/payable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
				Rs	Rs	
1.	Mr P	Payment of managerial remuneration	NA	XXX	XXX	Other Method

# Sub-Annexures to Form 3CEB

## Clause 23:

Particulars in respect of transactions in the nature of transfer of any goods or services by an eligible unit to any other business carried on by the assessee :

### SUB CLAUSE A - transfer of any goods or services to any other business carried on by the assessee

Sr. No.	Name and details of business to which goods or services have been transferred	Description of goods or services transferred	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
			Rs.	Rs.	
1	Manufacturing unit at _____	-----	XXXX	XXXX	Comparable Uncontrolled Price Method

# Sub-Annexures to Form 3CEB

## Clause 23:

Particulars in respect of transactions in the nature of acquisition of any goods or services by an eligible unit from any other business carried on by the assessee :

SUB CLAUSE B - acquisition of any goods or services from any other business carried on by the assessee

Sr. No.	Name and details of business to which goods or services have been acquired	Description of goods or services acquired	Total Amount paid / payable as per books of accounts	Total Amount paid / payable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
			Rs.	Rs.	
1	Manufacturing unit at _____	_____	XXX	XXX	Comparable Uncontrolled Price Method

# Sub-Annexures to Form 3CEB

## Clause 24:

Particulars in respect of any specified domestic transaction in the nature of any business transacted which the assessee has entered into with any associated enterprise which has resulted in more than ordinary profits to an eligible business to which section 80IA(10) or section 10AA applies

Sr. No.	Name of the person with whom the specified domestic transaction has been entered into	Description of the transaction	Quantity Purchased / Sold	Total Amount paid/ payable as per books of accounts	Total Amount paid / payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
				Rs.	Rs.	Rs.	Rs.	
1	XXXX		-----	XXX	XXX	XXX	XXX	Comparable Uncontrolled Price Method

# Sub-Annexures to Form 3CEB

## Clause 25:

Particulars in respect of any specified domestic the assessee has entered into with an associated enterprise not specifically referred any of the clauses

Sr. No.	Name of the person with whom the specified domestic transaction has been entered into	Description of the transaction	Total Amount paid/ payable as per books of accounts	Total Amount paid / payable as per Arm's Length Price (as computed by the assessee)	Total Amount received / receivable as per books of accounts	Total Amount received / receivable as per Arm's Length Price (as computed by the assessee)	Method used for determining the arm's length price
			Rs.	Rs.	Rs.	Rs.	
1	XXXX	-----	XXX	XXX	XXX	XXX	Comparable Uncontrolled Price Method

**FIXED RATE  
NO BARGAINING**

**Safe Harbour**

**(Section 92CB r.w. Rule 10TA to 10TF)**



# Safe Harbour – 92CB

- ❑ A “safe harbour” is defined as circumstances in which the tax authority shall accept the transfer price declared by the taxpayer
- ❑ CBDT issued the SH rules on 18 September 2013, applicable for five years beginning from financial year (FY) 2012-13 to FY 2016-17
- ❑ Recently, CBDT **vide notification 46/2017 dated 7 June 2017** amended the SH rules by extending the applicability to an additional category of international transaction as well as revising the applicable price/margins for almost all eligible international transactions that would be accepted as arm’s length
- ❑ The new SH provisions applicable from **FY 2016-17 to FY 2018-19**. Accordingly, for FY 2016-17 (i.e. the overlapping year), option to opt for more beneficial SH

New Safe Harbour Regime valid for a period of **3 years**

Vs

Old Safe Harbour Regime validity period of **5 years**

# Safe Harbour Rules

Sr. No.	Eligible International Transactions	Previous Safe Harbour Regime		New Safe Harbour Regime	
1.	Provision of SDS	International Transaction Value	Operating Profit / Operating Expense %	International Transaction Value	Operating Profit / Operating Expense %
		<= 500 Crores	>= 20%	<= 100 Crores	>= 17%
		> 500 Crores	>= 22%	> 100 but <= 200 Crores	>= 18%
2.	Provision of ITES	International Transaction Value	Operating Profit / Operating Expense %	International Transaction Value	Operating Profit / Operating Expense %
		<= 500 Crores	>= 20%	<= 100 Crores	>= 17%
		> 500 Crores	>= 22%	> 100 but <= 200 Crores	>= 18%

# Safe Harbour Rules

Sr. No.	Eligible International Transactions	Previous Safe Harbour Regime	New Safe Harbour Regime								
3.	Provision of KPO  (Definition of KPO in Rule 10TA(g))	Operating Profit Margin $\geq 25\%$	International Transaction Value should be $\leq 200$ Crores <table border="1" data-bbox="1207 486 1812 835"> <thead> <tr> <th data-bbox="1207 486 1522 634">Employee Cost / Operating Expense %</th> <th data-bbox="1522 486 1812 634">Operating Profit / Operating Expense %</th> </tr> </thead> <tbody> <tr> <td data-bbox="1207 634 1522 684"><math>\geq 60\%</math></td> <td data-bbox="1522 634 1812 684"><math>\geq 24\%</math></td> </tr> <tr> <td data-bbox="1207 684 1522 785"><math>\geq 40\%</math> but <math>&lt; 60\%</math></td> <td data-bbox="1522 684 1812 785"><math>\geq 21\%</math></td> </tr> <tr> <td data-bbox="1207 785 1522 835"><math>\leq 40\%</math></td> <td data-bbox="1522 785 1812 835"><math>\geq 18\%</math></td> </tr> </tbody> </table>	Employee Cost / Operating Expense %	Operating Profit / Operating Expense %	$\geq 60\%$	$\geq 24\%$	$\geq 40\%$ but $< 60\%$	$\geq 21\%$	$\leq 40\%$	$\geq 18\%$
Employee Cost / Operating Expense %	Operating Profit / Operating Expense %										
$\geq 60\%$	$\geq 24\%$										
$\geq 40\%$ but $< 60\%$	$\geq 21\%$										
$\leq 40\%$	$\geq 18\%$										

# Safe Harbour Rules

Sr. No.	Eligible International Transactions	Previous Safe Harbour Regime	New Safe Harbour Regime																		
4.	Advancing of Intra-group Loans in INR	<table border="1"> <thead> <tr> <th data-bbox="581 394 836 439">Amount of loan</th> <th data-bbox="836 394 1124 439">Transfer Price</th> </tr> </thead> <tbody> <tr> <td data-bbox="581 439 836 575">&lt;= 50 Crores</td> <td data-bbox="836 439 1124 575">&gt; SBI Base Rate of 30<sup>th</sup> June + 1.5%</td> </tr> <tr> <td data-bbox="581 575 836 665">&gt; 50 Crores</td> <td data-bbox="836 575 1124 665">&gt; SBI Base Rate of 30<sup>th</sup> June + 3%</td> </tr> </tbody> </table>	Amount of loan	Transfer Price	<= 50 Crores	> SBI Base Rate of 30 <sup>th</sup> June + 1.5%	> 50 Crores	> SBI Base Rate of 30 <sup>th</sup> June + 3%	<p>Benchmark rate would be 1 year SBI MCLR as on 1st April</p> <table border="1"> <thead> <tr> <th data-bbox="1205 458 1476 529">Crisil Rating</th> <th data-bbox="1476 458 1785 529">Credit spread over benchmark rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="1205 529 1476 601">AAA to A or equivalent</td> <td data-bbox="1476 529 1785 601">1.75%</td> </tr> <tr> <td data-bbox="1205 601 1476 708">BBB-, BBB or BBB+ or its equivalent</td> <td data-bbox="1476 601 1785 708">3.25%</td> </tr> <tr> <td data-bbox="1205 708 1476 786">BB to B or equivalent</td> <td data-bbox="1476 708 1785 786">4.75%</td> </tr> <tr> <td data-bbox="1205 786 1476 858">C to D or equivalent</td> <td data-bbox="1476 786 1785 858">6.25%</td> </tr> <tr> <td data-bbox="1205 858 1476 1001">Not available and amount of loan to all AEs &lt;= 100 crores</td> <td data-bbox="1476 858 1785 1001">4.25%</td> </tr> </tbody> </table>	Crisil Rating	Credit spread over benchmark rate	AAA to A or equivalent	1.75%	BBB-, BBB or BBB+ or its equivalent	3.25%	BB to B or equivalent	4.75%	C to D or equivalent	6.25%	Not available and amount of loan to all AEs <= 100 crores	4.25%
Amount of loan	Transfer Price																				
<= 50 Crores	> SBI Base Rate of 30 <sup>th</sup> June + 1.5%																				
> 50 Crores	> SBI Base Rate of 30 <sup>th</sup> June + 3%																				
Crisil Rating	Credit spread over benchmark rate																				
AAA to A or equivalent	1.75%																				
BBB-, BBB or BBB+ or its equivalent	3.25%																				
BB to B or equivalent	4.75%																				
C to D or equivalent	6.25%																				
Not available and amount of loan to all AEs <= 100 crores	4.25%																				

# Safe Harbour Rules

Sr. No.	Eligible International Transactions	Previous Safe Harbour Regime	New Safe Harbour Regime																		
5.	Advancing of Intra-group Loans in Forex	<table border="1"> <thead> <tr> <th data-bbox="581 379 832 425">Amount of loan</th> <th data-bbox="832 379 1126 425">Transfer Price</th> </tr> </thead> <tbody> <tr> <td data-bbox="581 425 832 561">&lt;= 50 Crores</td> <td data-bbox="832 425 1126 561">&gt; SBI Base Rate of 30<sup>th</sup> June + 1.5%</td> </tr> <tr> <td data-bbox="581 561 832 651">&gt; 50 Crores</td> <td data-bbox="832 561 1126 651">&gt; SBI Base Rate of 30<sup>th</sup> June + 3%</td> </tr> </tbody> </table>	Amount of loan	Transfer Price	<= 50 Crores	> SBI Base Rate of 30 <sup>th</sup> June + 1.5%	> 50 Crores	> SBI Base Rate of 30 <sup>th</sup> June + 3%	<p data-bbox="1199 379 1818 468">Benchmark rate would be 6 month LIBOR as on 30th September</p> <table border="1"> <thead> <tr> <th data-bbox="1209 475 1479 548">Crisil Rating</th> <th data-bbox="1479 475 1785 548">Credit spread over benchmark rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="1209 548 1479 621">AAA to A or equivalent</td> <td data-bbox="1479 548 1785 621">1.50%</td> </tr> <tr> <td data-bbox="1209 621 1479 732">BBB-, BBB or BBB+ or its equivalent</td> <td data-bbox="1479 621 1785 732">3.00%</td> </tr> <tr> <td data-bbox="1209 732 1479 805">BB to B or equivalent</td> <td data-bbox="1479 732 1785 805">4.50%</td> </tr> <tr> <td data-bbox="1209 805 1479 878">C to D or equivalent</td> <td data-bbox="1479 805 1785 878">6.00%</td> </tr> <tr> <td data-bbox="1209 878 1479 1026">Not available and amount of loan to all AEs &lt;= 100 crores</td> <td data-bbox="1479 878 1785 1026">4.00%</td> </tr> </tbody> </table>	Crisil Rating	Credit spread over benchmark rate	AAA to A or equivalent	1.50%	BBB-, BBB or BBB+ or its equivalent	3.00%	BB to B or equivalent	4.50%	C to D or equivalent	6.00%	Not available and amount of loan to all AEs <= 100 crores	4.00%
Amount of loan	Transfer Price																				
<= 50 Crores	> SBI Base Rate of 30 <sup>th</sup> June + 1.5%																				
> 50 Crores	> SBI Base Rate of 30 <sup>th</sup> June + 3%																				
Crisil Rating	Credit spread over benchmark rate																				
AAA to A or equivalent	1.50%																				
BBB-, BBB or BBB+ or its equivalent	3.00%																				
BB to B or equivalent	4.50%																				
C to D or equivalent	6.00%																				
Not available and amount of loan to all AEs <= 100 crores	4.00%																				

# Safe Harbour Rules

Sr. No.	Eligible International Transactions	Previous Safe Harbour Regime	New Safe Harbour Regime						
6.	Providing Corporate Guarantee	<table border="1"> <thead> <tr> <th data-bbox="595 396 853 482">Amount guaranteed</th> <th data-bbox="853 396 1149 482">Transfer Price</th> </tr> </thead> <tbody> <tr> <td data-bbox="595 482 853 529">&lt;= 100 Crores</td> <td data-bbox="853 482 1149 529">&gt;= 2% p.a.</td> </tr> <tr> <td data-bbox="595 529 853 576">&gt; 100 Crores</td> <td data-bbox="853 529 1149 576">&gt;= 1.75% p.a.</td> </tr> </tbody> </table>	Amount guaranteed	Transfer Price	<= 100 Crores	>= 2% p.a.	> 100 Crores	>= 1.75% p.a.	Guarantee Commission or Fee >= 1% of amount guaranteed
Amount guaranteed	Transfer Price								
<= 100 Crores	>= 2% p.a.								
> 100 Crores	>= 1.75% p.a.								
7.	Provision of Contract R&D services wholly or partly relating to software development	Operating Profit Margin >= 30%	<table border="1"> <thead> <tr> <th data-bbox="1221 654 1516 796">International Transaction Value</th> <th data-bbox="1516 654 1812 796">Operating Profit / Operating Expense %</th> </tr> </thead> <tbody> <tr> <td data-bbox="1221 796 1516 843">&lt;= 200 Crores</td> <td data-bbox="1516 796 1812 843">&gt;= 24%</td> </tr> </tbody> </table>	International Transaction Value	Operating Profit / Operating Expense %	<= 200 Crores	>= 24%		
International Transaction Value	Operating Profit / Operating Expense %								
<= 200 Crores	>= 24%								



# Safe Harbour Rules

Sr. No.	Eligible International Transactions	Previous Safe Harbour Regime	New Safe Harbour Regime				
8.	Provision of Contract R&D services wholly or partly relating to generic pharmaceutical drugs	Operating Profit Margin $\geq$ 29%	<table border="1"> <thead> <tr> <th>International Transaction Value</th> <th>Operating Profit / Operating Expense %</th> </tr> </thead> <tbody> <tr> <td><math>\leq</math> 200 Crores</td> <td><math>\geq</math> 24%</td> </tr> </tbody> </table>	International Transaction Value	Operating Profit / Operating Expense %	$\leq$ 200 Crores	$\geq$ 24%
International Transaction Value	Operating Profit / Operating Expense %						
$\leq$ 200 Crores	$\geq$ 24%						
9.	Manufacture and export of core auto components	Operating Profit Margin $\geq$ 12%	Operating Profit Margin $\geq$ 12%				
10.	Manufacture and export of non-core auto components	Operating Profit Margin $\geq$ 8.5%	Operating Profit Margin $\geq$ 8.5%				

# Safe Harbour Rules

Sr. No.	Eligible International Transactions	Previous Safe Harbour Regime	New Safe Harbour Regime
11.	Receipt of Low - Value Added Services	—	<ul style="list-style-type: none"> <li>▪ Value of international transaction (including mark-up of <math>\leq 5\%</math>) <math>\leq 10</math> Crores</li> <li>▪ Documentation and calculations showing determination of cost pooling, selection and application of allocation keys is certified by an Indian chartered accountant or a specified foreign accountant</li> </ul>

# Secondary Adjustments (Section 92CE)



# Secondary Adjustments

## What

Section 92CE(1) read with 92CE(3)(v) requires secondary adjustment in the books of the taxpayer, in whose hands the primary adjustment is made, to reflect actual allocation consistent with transfer price which led to primary adjustment

## When

Secondary adjustment is to be done if the primary adjustment results in **increase in total income or reduction in loss of the Assessee** either on account of :

- Suo moto adjustment in ROI
- Addition by AO accepted by taxpayer
- Determination by APA
- Determination pursuant to safe harbour rules
- Resolution under MAP methodology

## How

- **“Excess money”** available with AE to be actually repatriated to India
- If not repatriated within prescribed time limit, such “excess money” shall be deemed to be an advance by the Assessee to its AE
- Interest on such advance shall be computed in the manner as may be prescribed

## Applicability

Section 92CE shall apply if:  
Amount of primary adjustment in any previous year exceeds INR 1 crore;  
**and**  
Primary adjustment pertains to AY 17-18 and onwards

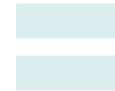
# Secondary Adjustments

## Excess money

Arms'  
Length  
Price in  
primary  
adjustment



Actual value  
of  
international  
transaction



Excess  
Money

## Primary Adjustment

- Transfer price
- Determined in accordance with Arms Length Principle
- Resulting in an increase in the total income of Assessee or
- Resulting in a reduction in the losses of Assessee

## Secondary Adjustment

- Adjustment in books of accounts of Assessee and its AEs to reflect that the actual allocation of profits between the assessee and its AE are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of Assessee

# Secondary Adjustments

- Notification No. 52/2017 dated 15 June 2017: rules for implementing secondary TP adjustment prescribing time limit for repatriation and manner of computing interest on deemed advance amount.

Type of primary adjustment	Time limit for repatriation	Applicable interest rate for delayed receipts	
		Transaction in Indian Rupee	Transaction in Foreign Currency
Adjustment made by Indian Tax Authority and accepted by the taxpayer	On or before 90 days from the date of relevant order	1-Year Marginal Cost of fund Lending Rate (MCLR) of SBI as on 1st April of relevant Financial Year (FY) (+) 325 basis points	6-Month London Interbank Offered Rate (LIBOR) as on 30th September of relevant FY (+) 300 basis points
Suo-moto adjustment by the taxpayer	On or before 90 days from due date of filing return of income		
Adjustment pursuant to APA, Safe Harbour or MAP			



# Master File & CbCR



# Action Plan 13

- ❑ Action 13 focuses on TP documentation suggesting a 3 tiered approach

## Master file

High-level information about the MNEs business, transfer pricing policies and agreements with tax authorities in a single document available to all tax authorities where the MNE has operations

## Local file

Detailed information about the local business, including related-party payments and receipts for products, services, interest, etc.

## CbC report

CbC reporting applies to all MNEs with aggregate annual revenue in excess of €750m

High-level information about the jurisdictional allocation of profits, revenues, employees and assets

# Constituent entity & Parent entity

- ❑ Finance Act 2016 inserted section 286 relating to filing of CbCR
- ❑ **Parent entity** means a constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group such that –
  - ❑ It is required to prepare a **consolidated financial statement** under any law for the time being in force or the accounting standards of the country or territory in which the entity is resident; or
  - ❑ It would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange
- ❑ **Constituent entity** means –
  - ❑ Any separate entity of an international group that is included in the consolidated financial statement of the said group.
  - ❑ Any such entity that is excluded from the consolidated financial statement solely on the basis of size or materiality.
  - ❑ Any permanent establishment of any separate business entity.

# Master File and Country-by-Country Reporting

- ❑ Who is to file:
  - Indian resident which is parent entity of group (with consolidated revenue above Euro 750 million);
  - Alternate designated reporting entity;
  - Indian constituent entities of foreign MNCs;
    - If no exchange of information agreement exists between India and foreign parent entity's country; or
    - If overseas jurisdiction fails in furnishing report
- ❑ India has become a signatory to the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CBC Report with the other signatories of the Agreement on 12 May 2016 and notified on 28 July 2017

# Master File – Proposed Rule 10DA

- ❑ Constituent Entity to file if:
  - Consolidated Revenue of the International Group in Preceding accounting year > INR 500 crores
- AND**
- Aggregate value of International Transaction in Reporting Year As per Books of Accounts > INR 50 crores **OR** Aggregate value of International Transaction in Reporting Year in relation to Intangible property > INR 10 crores
- ❑ Form 3CEBA:
  - Part A – Every constituent entity
  - Part B – Constituent entity satisfying above thresholds
- ❑ Due Date:
  - On or before due date of filing ROI
  - For FY 2016-17 – due date extended to 31<sup>st</sup> March 2018

# CbCR – Proposed Rule 10DB

- ❑ CbC report applicable to an international group having total consolidated group revenue of more than INR 5,500 crore (approx. \$750mn) in the accounting year preceding the FY 2016-17
- ❑ Indian Parent or Alternate Reporting Entity (ARE):
  - Due date: On or before due date of filing ROI
  - Form 3CEBC
- ❑ Draft Notification silent on due date of CbCR of FY 2016-17
- ❑ Non-Indian Parent Cos to notify if it is ARE or details of its parent along with country,
  - 60 days prior to due date of filing ROI (1<sup>st</sup> October)
  - Form 3CEBD





# Penalties

# Penalties

Type of penalty	Section	Penalty quantified
a) Failure to maintain prescribed information / documents	271AA	2% of transaction value
(b) Failure to report any such transaction or		
(c) Furnish incorrect information		
Failure to furnish information / documents during assessment u/s 92D	271G	2% of transaction value
Adjustment to taxpayer's income during assessment	270A	50% - in case of under reporting 200% - in case of misreporting
Failure to furnish accountant's report u/s 92E	271BA	INR 100,000

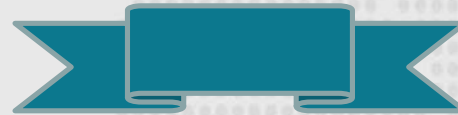
# Sub-Annexures to Form 3CEB

## Penalty for failure to furnish CbCR documentation

Type of penalty	Penalty quantified
Failure to furnish master file by the prescribed date	INR 500,000
Furnishing inaccurate particulars in the CbCR (subject to certain conditions)	INR 500,000
<b>Failure to submit CbCR by the reporting entity</b>	
a) Where period of failure $\leq$ 1 month	INR 5,000 per day
b) Where the period of failure $>$ 1 month	INR 15,000 per day
c) Where period of failure is beyond the date of service of penalty order	INR 50,000 per day
<b>Not furnishing the information called for by the Tax authority within the given time limit</b>	
a) Where period of failure is upto service of penalty order	INR 5,000 per day
b) Where period of failure is beyond the date of service of penalty order	INR 50,000 per day



# Thank you



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