Transfer Pricing

August 30, 2020

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A. TP documentation and drafting

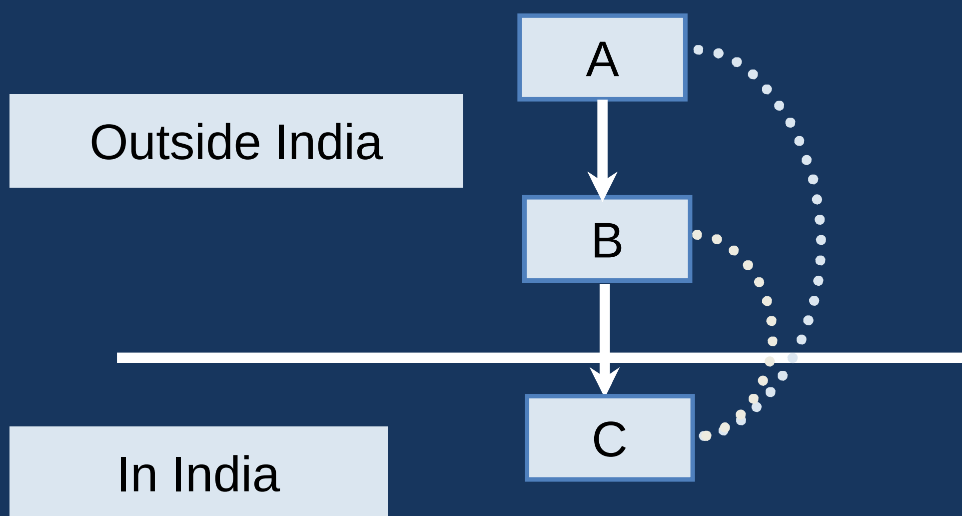
Transfer Pricing – the concept

Transfer pricing ('TP') refers to the pricing of cross-border transactions between two related entities (i.e. associated entities)

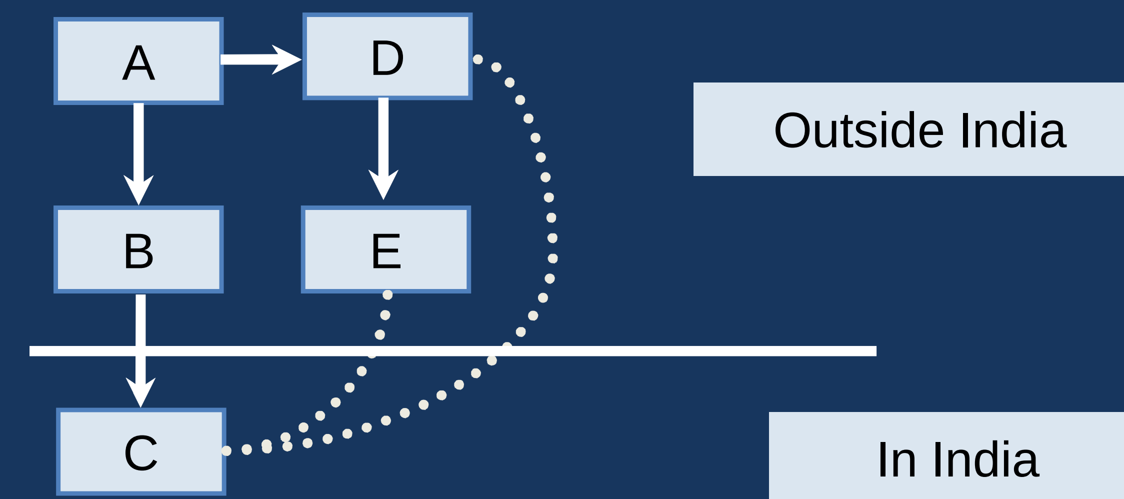
Due to the special relationship between related companies, the transfer price may be different than the price that would have been agreed between unrelated entities in uncontrolled conditions ('ALP').

The arm's length principle requires that compensation for any inter-company transaction conform to the level that would have applied had the transaction taken place between unrelated parties, all other factors remaining the same (i.e. comparability analysis)

Section 92A: Associated Enterprises



Direct or indirect participation **(through one or more intermediaries)** in management, control or capital – **Sec 92A(1)**



Both A and B are associated enterprises of C

D and E are also associated enterprises of C since they have a common ultimate parent (A)

The above section is further supplemented by 13 clauses which enlist various situations under which two enterprises shall be **deemed to be AEs** –
Sec 92A(2)

Section 92A: Associated Enterprises

Equity / Debt	Management	Activities	Control
1. >= 26% direct / indirect holding by enterprise OR 2. By same person in each enterprise 3. Loan >= 51% of Book value of Total Assets 4. Guarantees > = 10% of total borrowings 5. > 10% interest in Firm / AOP / BOI	6. Appointment > 50% of Directors / one or more Executive Director by an enterprise OR 7. Appointment by same person in each enterprise	8. 100% dependence on use of intangibles for manufacture / processing / business 9. Direct / indirect supply of >= 90% Raw Materials under influenced prices and conditions 10. Sale under influenced prices and conditions	11. One enterprise controlled by an individual and the other by himself or his relative or jointly 12. One enterprise controlled by HUF and the other by a member or his relative or jointly

Section 92B(1): Meaning of International Transaction

- **International transaction is**
  - Transaction between the Group companies : either or both of whom are non-residents
  - for purchase, sale, lease of : tangible property or intangible property
  - for provision of services or lending or borrowing money
  - other transactions having bearing on profits / income / losses or assets of an enterprise
  - also to include cost allocations/apportionments for benefits/ services or facility provided by one to other
- **Transaction includes arrangement, understanding or action in concert:**
  - whether formal or in writing
  - whether intended to be enforceable with legal proceedings or not

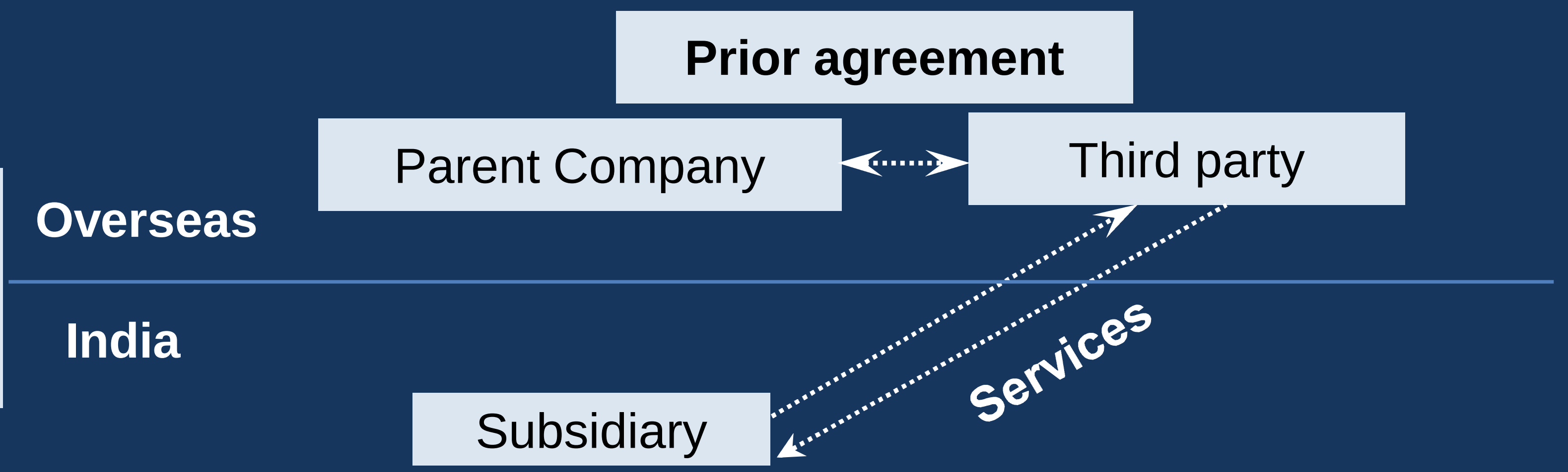
  [Section 92F (v)]
- **Transaction also includes number of closely linked transactions [Rule 10A (d)]**

Explanation by Finance Act 2012 to widen definition transactions in tangible and intangible property, capital financing, provision of services, business restructuring included !

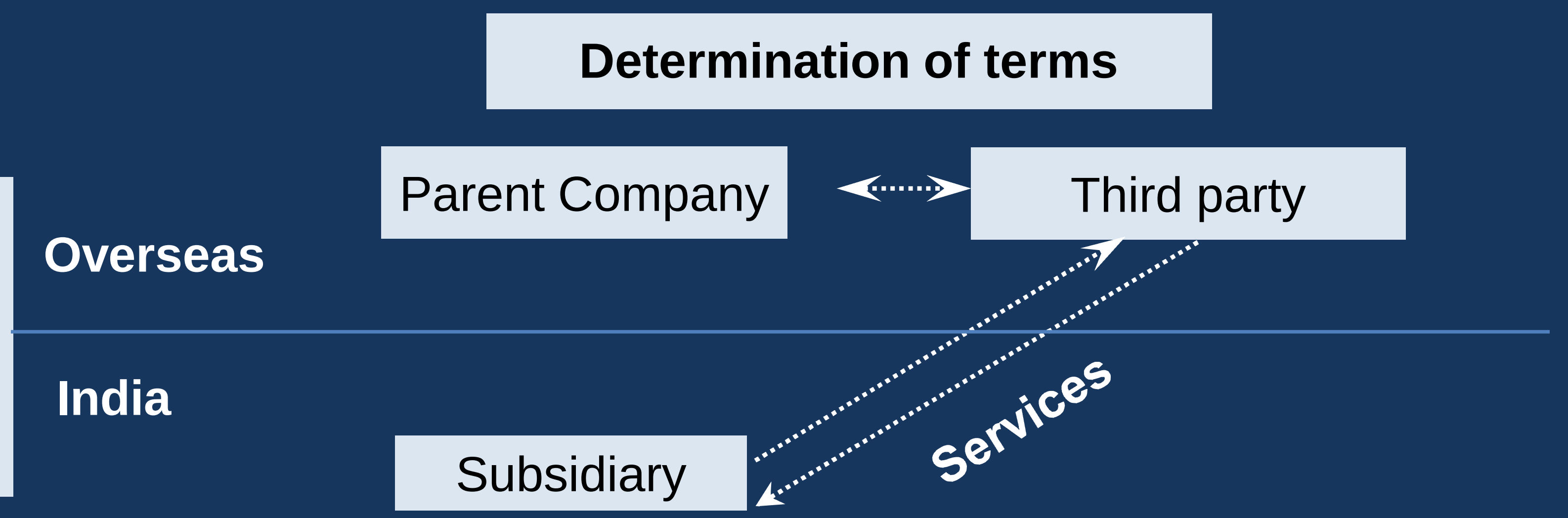
Deemed International Transaction: Section 92B(2)

Transaction between subsidiary & third party

Prior agreement exists between parent company and third party



Terms of transaction are determined in substance by parent company and third party



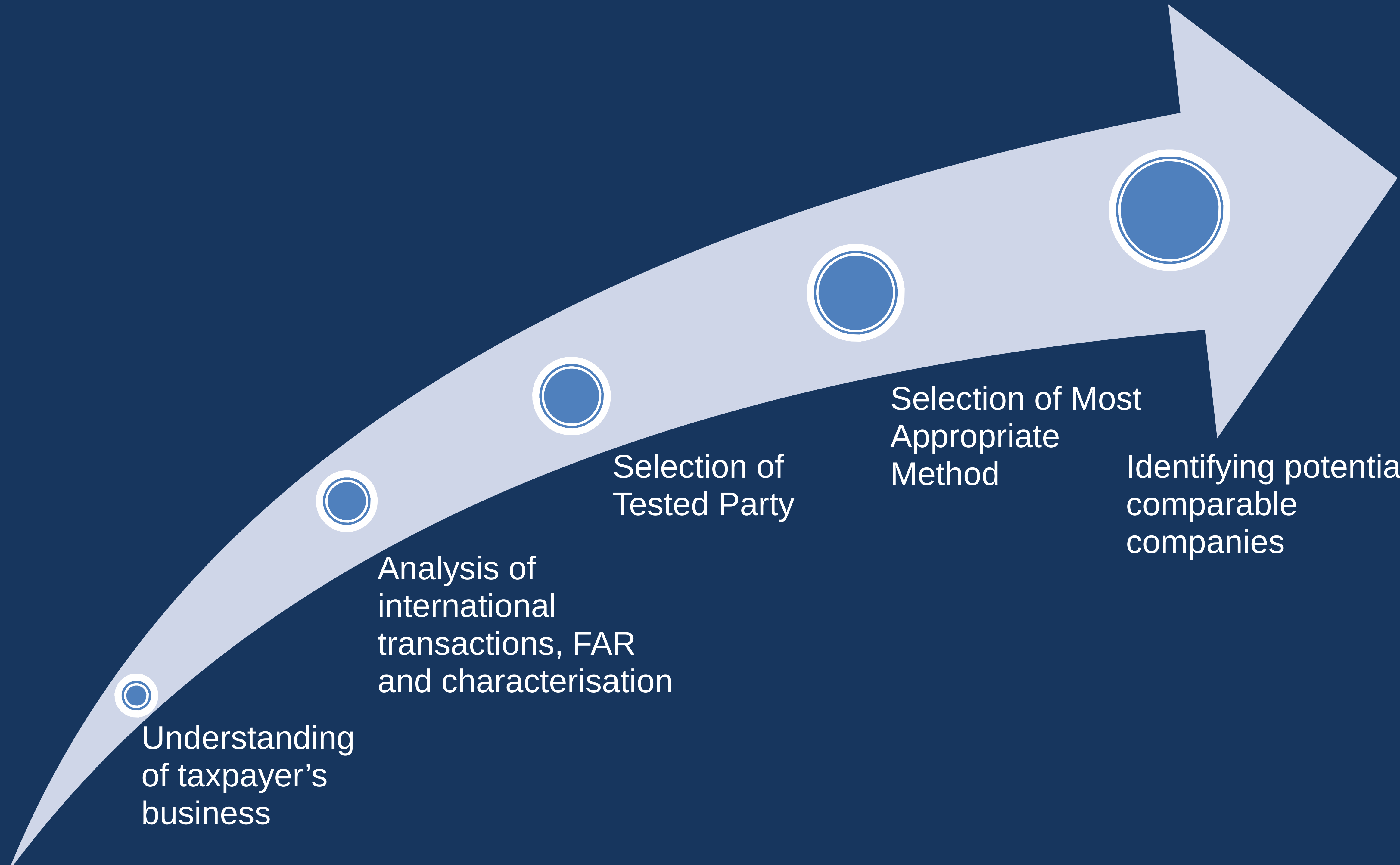
1. TP documentation : Legislative requirement

Basic requirement	**Section 92D** • Every person who has entered into an international transaction or specified domestic transaction (‘SDT’) shall keep and maintain such information and document in respect thereof, as may be prescribed. **Rule 10D** • Elaborate list of documentation to be maintained by the assessee to substantiate that the international transactions has been undertaken in accordance with arm’s length principles. • TP documentation may not be required to be maintained in case value of international transaction as recorded in the books of account does not exceed INR 1 crores.
Submitting TP documentation during assessment	**Section 92D** • TP documentation to be submitted within 30 days from date of receipt of notice issued. • 30 more days may be allowed on filing an application before Assessing Officer/ Commissioner (Appeals).

TP documentation : Legislative requirement

Rule 10D requirement	Section in Transfer Pricing Report
• Ownership structure of the assessee • Profile of multinational group and each of the associated enterprise (AEs) • Description of the business of the assessee and AEs	• Business Overview
• Description of the industry in which the assessee operates	• Industry Overview
• Details, quantum and the value of each transaction • Nature and terms of international transactions • Description of functions, assets and risks of the assessee and AEs	• Overview of international transactions • Functional Analysis
• Record of uncontrolled transactions • Record of economic and market analyses performed to evaluate comparability of uncontrolled transactions • Description of the methods considered for determining the arm's length price (ALP) – Selection of most appropriate method • Record of determination of the ALP - comparable data and financial information used in analysis • Critical assumptions, policies and price negotiations • Details of the adjustments made to transfer prices, if any	• Economic Analysis

2. TP documentation: Step by Step process



3. Structure of TP documentation

Particulars	Contents
Executive summary	• Provides broad overview of the key contents of the TP Study • Brief description of business profile of the entity and its group • Crux of the TP Study i.e. nature of international transactions, value of international transactions, selection of tested party, most appropriate method and the results of benchmarking analysis
Group overview	• Ownership structure • Profile of multinational group • Business overview
Functional Analysis	• Nature and terms of international / specified domestic transactions entered into with AEs • Description of functions performed, assets employed/to be employed by assessee and AE and Risks assumed
Overview of International transactions	• Description of the nature of international transactions • Linkage with supply chain of business

Structure of TP documentation

Particulars	Contents
Economic analysis	• Record of economic and market analyses, forecasts / budgets / financial estimates • Industry overview • Record of uncontrolled transactions for analysing comparability with international transactions / specified domestic transactions • Record of analysis to evaluate comparability • Description of methods considered for determining arm's length • Record of actual working carried out (including details of comparable data) • Assumptions, policies and price negotiations • Details of adjustment, and • Any other relevant information
Conclusion	• Captures transactions involved, most appropriate method, Profit level indicator used, results of the benchmarking analysis
Appendices	• Provides abbreviations, Indian TP regulations, details of international transactions, details of databases used, if any, business description of comparables, segmented financial information

4. Group Overview

What is Group Overview?

An analysis of the group's structure, industry and markets in which the group operates

Why do we need a Group Overview?

- To understand Group's and Company's business and it's geographical presence
- To identify and understand key business area of the Company
- To identify the details of the AEs with whom the international transaction have been entered into
- To determine the Company's products/ services
- Factual information such as turnover of the Group, head count of employees, shareholding structure of the Group
- Significant developments during the year, if any.

5. Industry Overview

What is an Industry Overview?

“An analysis of the conditions affecting the industry, the nature of competition experienced, economic and regulatory factors”

Why do we need an Industry Overview?

- Determine taxpayer’s position within the industry;
- Provide information about the market share of the client;
- Establish linkage of industry overview with functional and economic analysis;
- Highlight the key growth drivers of the industry;
- Determining threats/challenges and opportunities pertaining to the industry
- Provide information about past trends and future projections of the industry
- Helps in screening factors when undertaking a comparables search

6. Functional, Assets and Risk Analysis

What is a Functional Analysis?

The mapping of economically relevant facts and characteristics of inter-company transactions with regard to their Functions, Assets and Risks.

The allocation of activities between those entities involved in the transaction so each entity can be appropriately characterized with respect to the transaction in question.

Why do we need a Functional analysis?

To understand the functions undertaken, assets used and risks assumed (FAR) by the taxpayer with regard to the international / specified domestic transactions entered into with the related parties.

To analyze independent comparable transactions that have a comparable FAR and select final comparables.

Key steps of Functional Analysis

Preparatory/ Planning	Functional Interviews	Follow up
• Identify relevant transactions and transacting entities • Industry, group background including products/services, market overview • Review available internal/external documents • Prepare Questionnaires and identify interview contacts	• Conduct Interviews • Prepare and summarize interview notes • Provide interview notes to client for validation	• Summarize findings in a report • Identify data gaps • Follow up with the Client

7. Economic Analysis

Steps for determining the ALP

- Selection of tested party
- Selection of Most Appropriate Method
- Benchmarking Analysis
- Choice of relevant Profit Level Indicator (PLI)
- Economic Adjustments to the ALP taking into consideration the intensity of FAR vis-à-vis the third party transactions
- Determination of arm’s length results

Selection of tested party

- The choice of the tested party should be consistent with the functional analysis of the transaction.
- Tested party means the entity whose profits/transfer prices are to be compared or benchmarked against the industry standards.
- Selection of tested party should be based on the following:
  - Least complex entity based on the FAR profile
  - Availability of Financial data
  - Availability of Comparables (can be separate for each segment)

Selection of Most Appropriate Method

1) Analyse each method per each transaction/class of transactions

2) Weigh the appropriateness of each method vis a vis the transaction
   a) Nature & class of international transaction
   b) Availability of reliable data for application of the method

3) Select the Most Appropriate Method based on the facts and circumstances of each case

4) Document why each of the other methods cannot be applied

Transfer Pricing Methods- Rule 10B

- Comparable Uncontrolled Price Method (CUP)
- Resale Price Method (RPM)
- Cost Plus Method (CPM)

Traditional transaction Method

- Profit Split Method (PSM)
- Transactional Net Margin Method (TNMM)

Transaction Profit Method

- Other Method - as notified by CBDT

Comparable Uncontrolled Price Method (‘CUP’)- Rule 10B(1)(a)

- Compares price charged for property/ service transferred in controlled transactions with price charged in comparable uncontrolled transactions
- Requires very high standard of comparability
- Most direct and reliable way to apply the arm’s length principle – but can be used in case of similarity of product and services

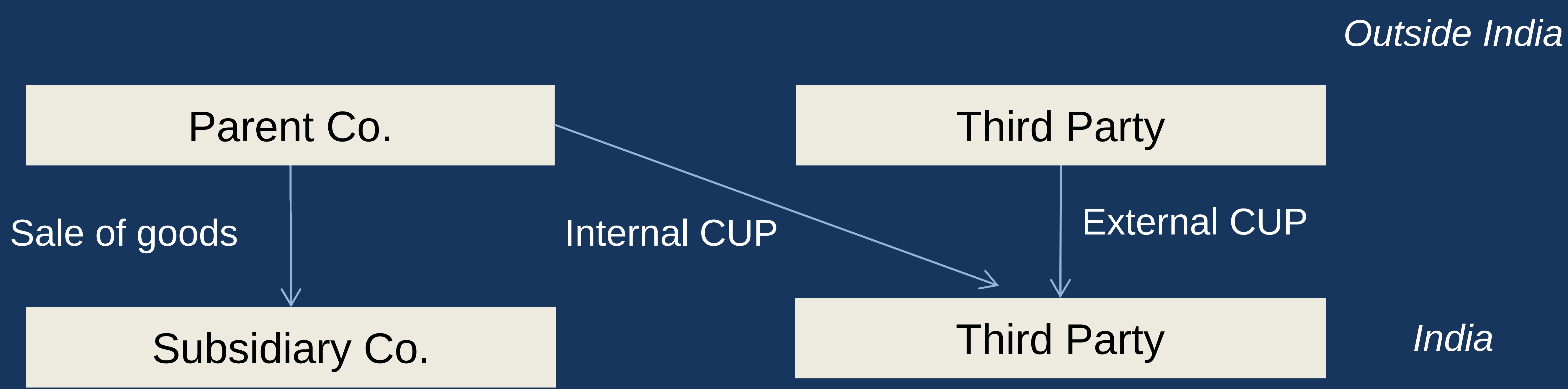
Conditions for use of CUP

- None of the differences between the transactions can materially affect price in the open market
- Reasonably accurate adjustments can be made to eliminate the material effects of such differences

Comparable Uncontrolled Price Method (‘CUP’)

Types of CUPs available

- **Internal CUP** - The price that the company has charged in a comparable uncontrolled transaction with an independent party
- **External CUP** - The price charged in a comparable uncontrolled transaction between third parties when compared to a price of controlled transactions



Resale Price Method ('RPM')- Rule 10B(1)(b)

- Method used in case of purchase of goods or services from related parties for resale to unrelated parties without substantial value addition
- The price is reduced by the normal gross margins earned by unrelated party for same or similar products or services
- Need for similarity of functions performed and risks undertaken
- Gross margins used as the profit level indicator
- Difficulties in proper application, particularly in determination of costs
- Categorization of expenses as operating expenses or cost of goods sold may be subject to manipulation

Cost Plus Method ('CPM')- Rule 10B(1)(c)

- Method using the costs incurred by the supplier of property (or services) in a controlled transaction for property or services provided to an associate purchaser.
- An appropriate cost plus mark-up is added to the above cost in light of the FAR
- ALP = Direct and Indirect Cost of Production ("DICOP")

  (+) gross profit mark-up of entity selling goods to AE

Governing conditions for use of CPM

- None of the differences between the transactions can materially affect cost plus margin in the open market
- reasonably accurate adjustments can be made to eliminate the material effects of such differences
- Focuses on gross profit margins, which are heavily influenced by the scope, intensity of functions performed and accounting methods

Profit Split Method ('PSM')- Rule 10B(1)(d)

PSM is applied, where:

- Both the entities have unique intangibles
- Operations of both the entities are so integrated that identifying the tested party is very difficult

Strengths:

- Helps share profits for unique intangibles contributed
- Less dependant on comparables
- Less likely to leave any party to the transaction with extreme profitability as both parties are evaluated

Weakness:

- Difficulty in application
- Necessitating application of similar accounting policies and standards
- Allocation of costs
- Reluctance of tax authorities to accept

Transactional Net Margin Method (‘TNMM’)- Rule 10B(1)(e)

- Comparison at operating margin level
- Comparison at transactional level, where possible
- Broad level of similarity of FAR
- Selection of the right comparables and PLI are critical factors
- Most preferred and practical method

Other Method- Rule 10B(1)(f)

Any method which takes into account:

- The price which has been charged or paid;
- Or would have been charged or paid
- For the samee or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts

Transfer Pricing Methods and Comparability

Methods	Comparability Requirements	Approach	Practical Applicability
CUP	Very High	Prices are benchmarked	Low
RPM	High	Gross margins are benchmarked	Low
CPM	High	Gross margins are benchmarked	Low
PSM	Medium	Operating margins are benchmarked	Medium
TNMM	Medium	Operating margins are benchmarked	High
Other	High	Prices charged / proposed to be charged	For selected transactions

Profit Level Indicators (PLIs)

- Each method, with the exception of the CUP method, examines a PLI relevant to the method of analysis
- Specified financial ratio of the tested party is compared to the results of independent, functionally comparable companies
- The process for determining whether a transaction meets the arm's length test therefore involves selecting a tested party
    - selecting the most appropriate method,
    - conducting a search for uncontrolled comparables based on the selection of the most appropriate method; and
    - selecting a measure of profitability (where appropriate)

8. Points to remember – Drafting TP documentation

- **Executive Summary**
  - give brief overview of the company and its group along with summary of economic analysis
  - must be in line with economic analysis
- **Group Overview**
  - give reference to source of information (eg. company website, annual report)
- **Functional Analysis**
  - preferably must be transaction wise
  - summarise interview notes
  - draft must be vetted by company personnel
- **Industry Overview**
  - must be specific, crisp, short as possible
  - always mention the source in the report
  - avoid using statements without backup
  - avoid using too many technical jargons and figures
  - avoid statements which can be contradictory

Points to remember – Drafting TP documentation

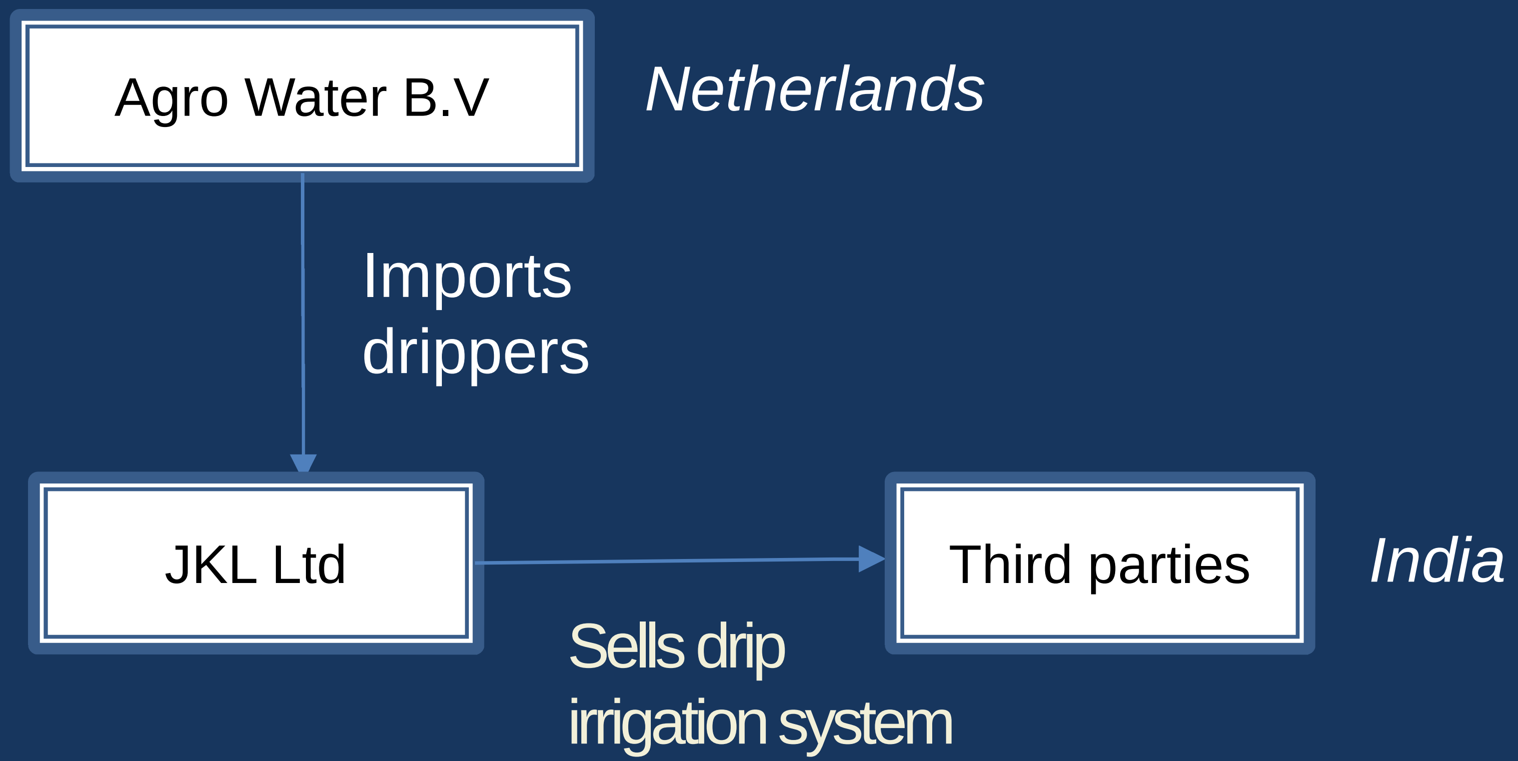
- **Economic / Benchmarking Analysis**
  - Give reasons for selection / rejection of method
  - Must contain reference to provision of law
  - Document process of application of MAM
  - Document each step of search conducted in form of appendix
- **General**
  - always share pdf version of report
  - do a spell check
  - header / footer
  - don’t miss abbreviations
  - scope limitation must be mentioned

9. Penalties for non compliance

Sr. No	Particulars	Penalty
1.	• Failure to maintain documents; • Failure to report a transaction in the accountant's report; or • Maintaining or furnishing incorrect information or documents	2% of the value of transaction
2.	Failure to furnish documents	2% of the value of transaction
3.	Failure to furnish Form 3CEB by the due date	100,000 INR
4.	In case of a transfer pricing adjustment, where - • There is under-reporting of income • Under-reporting of income is in consequence of any misreporting	50% of tax on the adjusted amount 200% of tax on the adjusted amount

B. Case Study (TP documentation)

Case Study-



- The Group Agro Water B.V., Netherlands is engaged in providing irrigation technology to agricultural companies across the globe.
- The Group has a subsidiary established in India – JKL Ltd. This company was established in 2014 to cater to India markets

Case Study-

- It was initially thought that JKL Ltd. will act as a distributor for selling Agro branded Drip Irrigation System in India market. However, a Drip Irrigation system is quite heavy and difficult to transport from one country to another country.

- Hence, it was decided by the group that JKL Ltd. would import the critical component called ‘Dripper’ (which has the core technology of the product) and would fit them into the pipelines after precise holes are drilled into the pipelines – ‘extrusion process’.

- The process of fitting the drippers into the pipelines acts as mode of delivery of the key component i.e. the dripper. Thus, dripper becomes the most crucial component i.e. comprises approx. 90% of overall value of the whole system.

- In this process, JKL Ltd. is incurring normal expenditure as a distributor to sell the Drip Irrigation System.

Case Study-

- Information regarding selling price and cost is given below:

Sr. No.	Particulars	Amount (INR)
1	Sales	100
2	Cost of extrusion process (this activity is eligible for a mark-up of 15% on cost)	40
3	Other administrative cost	10

- Distribution activity is eligible for a mark-up of 4% on sales, as per the benchmark undertaken

1. Identify the characterisation, tested party and TP method of JKL Ltd;
2. Identify a pricing model for JKL Ltd. ensuring that Agro Water B.V. is appropriately rewarded for the unique technology

Case Study-

Solution:

1. The characterisation of JKL Ltd. could be a ‘Value Added Distributor’ as the company is engaged in importing and undertaking value addition activity before selling it to the ultimate customer. The most appropriate method could be TNMM for both the functions i.e. distribution and value addition with JKL Ltd. as the tested party.

2. Pricing policy- To provide return for both the activities viz. value addition function and distribution function of JKL Ltd.; Return for JKL Ltd.’s operations being a ‘normal distributor’ would be on sales; Return for value addition would be on cost incurred towards rendering such services;

   The balance amount would be remitted back to Agro Water B.V. as a return for the unique technology of dripper; and

Case Study-

- In view of the above, suggested workings to identify the purchase price of dripper would be as follows:

Particulars	Key	Amount (INR)	Amount (INR)
Sale	(A)		100
Cost of extrusion process	(B)	40	
Mark up on the extrusion process	(C) = 15% of (B)	6	46
Administrative and operating cost	(D)		10
Mark up for distribution	(E) = 4% of (A)		4
Dripper's cost	(F) = (A) – (B + C + D + E)		40
Total indicative profit of JKL Ltd.'s operations	(G) = (C) + (E)		10
Return as a percentage of total sales (%)	(H) = (G) /(A)		10%

C. Test your knowledge (TP documentation)

Test your knowledge

1. Which method/methods do not require computation of PLI?

(a) CUP

(b) TNMM

(c) RPM

(d) Other Method

Test your knowledge

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(a) CUP

(b) TNMM

(c) RPM

(d) Other Method

Test your knowledge

2. Which of the following is not a part of Rule 10D?

(a) Critical assumptions, policies and negotiations

(b) Description of industry in which the assesse operates

(c) Relevance of government policies and latest economic survey

(d) Record of economic and market analysis

Test your knowledge

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(a) Critical assumptions, policies and negotiations

(b) Description of industry in which the assesse operates

(c) Relevance of government policies and latest economic survey

(d) Record of economic and market analysis

Test your knowledge

3. Which of the following is not a common content of TP report?

(a) Group overview

(b) Details of past litigation

(c) Industry analysis

(d) Functional analysis

Test your knowledge

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D. BEPS Action Plan 13

1. BEPS Requirement- Action Plan 13

Trigger points for BEPS

- Tax planning strategies that exploit gaps and mismatches in tax rules to make profits ‘disappear'; or
- Shift profits to locations where there is little or no real activity but the taxes are low resulting in little or no overall corporate tax being paid leading to double non-taxation.

Ways to address BEPS

- No single country acting unilaterally can effectively address the issue – Need for a multilaterally agreed solution;
- Strong G20 support to address the issue collectively and in a comprehensive manner;
- Work being carried out by the Committeerd on Fiscal Affairs (‘CFA’) via its subsidiary bodies;
- OECD and non-OECD G20 Countries are Associates in the Project on an equal footing.

BEPS Requirement- Action Plan 13

Setting the context

- BEPS project of the OECD has brought countries to the threshold of a paradigm shift in the international taxation regime;
- G-20 countries (including India) have formally endorsed the BEPS actions;
- The OECD report on Action 13 of BEPS Action plan provides for revised standards for transfer pricing documentation and a template for country-by country reporting of income, earnings, taxes paid and certain measure of economic activity.

What does it aim to achieve?

- Transparency- Significant additional and granular disclosures by taxpayers to local tax authorities and to authorities across jurisdictions;
- Substance- Increased scrutiny of substance of business arrangements to evaluate value creation and income (tax) generation.

BEPS Requirement- Action Plan 13

Action Plan 13 mandate:

“*Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into account the compliance costs for business. The rules to be developed will include a requirement that MNEs provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template***.”**

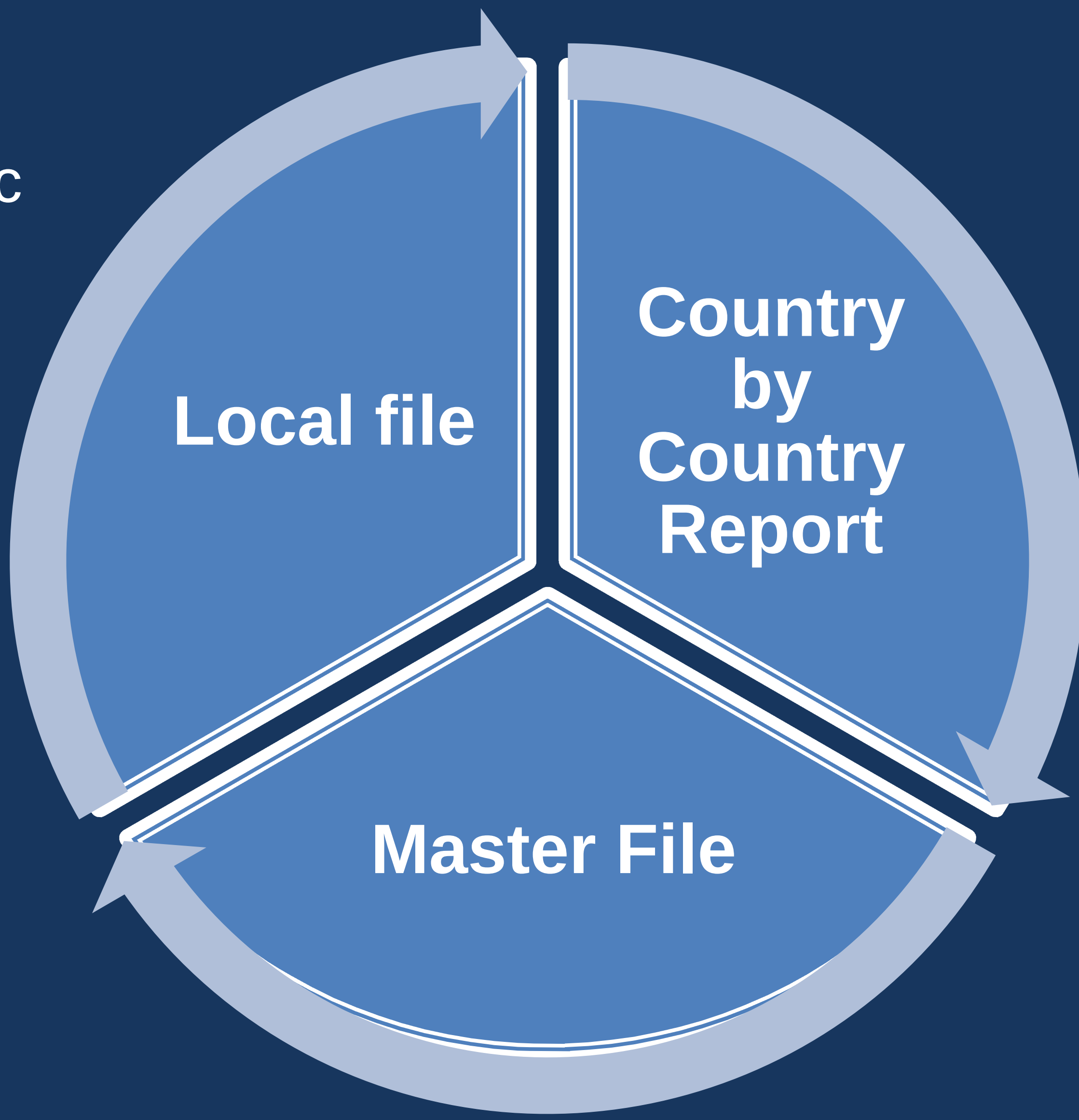
Compliance

Risk Assessment

Audit

2. Action Plan 13- Three-tiered Standardized Approach

Provides more detailed information relating to specific intercompany transactions to assure compliance with the arm's length principal in material transfer pricing positions impacting a specific jurisdiction



Provides aggregated financial and tax data by tax jurisdiction to facilitate risk assessments

Provides a *"blueprint"* of the MNE's global operations, including an analysis of profit drivers, supply chains, intangibles, and financing

3. Country by Country Reporting- Section 286 and Rule 10DB

Applicability

- Applicable on an annual basis with effect from the FY 2016-17 (AY 2017-18) and subsequent assessment years;
- CbCR is applicable to taxpayers having an annual consolidated group turnover of over INR 5,500 crore (750 million EUR as suggested in Action Plan 13) in the immediately preceding financial year;
- CbCR is to be filed with the ultimate parent's (or nominated entity's) home tax authority

  (to be shared via the automatic information exchange mechanism);
- Notification to be filed by constituent entities in form 3CEAC within 10 months from the end of the reporting accounting year;
- Notification to be filed to Director General of Income-tax (Risk Assessment) electronically.

Country by Country Report- Section 286 and Rule 10DB

- Every constituent entity in India, of an international group having parent entity that is not resident in India, shall provide information regarding the country or territory of residence of the parent of the international group to which it belongs. This information shall be furnished to the prescribed authority on or before the prescribed date;
- an entity in India belonging to an international group shall be required to furnish CbC report to the prescribed authority if the parent entity of the group is resident:

a) in a country with which India does not have an arrangement for exchange of the CbC report; or

b) such country is not exchanging information with India even though there is an agreement; and

c) this fact has been intimated to the entity by the prescribed authority.

Form 3CEAD- CbCR template

Tax jurisdiction	Revenues			Profit (loss) before income tax	Income tax paid (on cash basis)	Income taxes accrued – current year	Stated capital	Accumulated earnings	Number of full time employees	Tangible Assets (other than cash and cash equivalents)
	Unrelated party	Related party	Total							

Footnotes:

1. Revenues: Should exclude payments received from other constituent entities that are treated as dividends in the payer's country.
2. Income tax paid (on cash basis): Should also include withholding taxes paid by other entities (related and unrelated) with respect to payments made to the constituent entity(ies).
3. Income tax accrued - current year: Tax accrual should only reflect operations in the current year and should not include deferred taxes or provisions for UTPs.
4. Full time employees: This is seeking 'full time equivalents' and may include independent contractors.
5. This may be reported on any (non-tax) basis, as long as it is consistent across countries.
6. PE data should be reported by reference to the tax jurisdiction in which it is situated, provided it prepares separate statements for other purposes.
7. Assets should be allocated to PE.

Form 3CEAD- CbCR template (Continued…)

Tax jurisdiction	Constituent entities resident in the tax jurisdiction	Tax jurisdiction of organization or incorporation, if different from tax jurisdiction of residence	Main business activity(ies)												
			Research and Development	Holding or Managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other

Appropriate use of CbCR- Instruction No. 2/2018

- Emphasis and commitment by CBDT on appropriate use and confidentiality of information, both for inbound and outbound cases. Confidentiality given an utmost priority, strict adherence to guidelines contained in Exchange of Information Manual

- CbCR information to be accessed primarily by Competent Authority of India. TPOs can also get access to CbCR information of relevant taxpayers during TP assessment, for which standard operating procedures will be formulated

- CbCR information to be used only for:

  - High level TP risk assessment, which can form a basis of further detailed examination during assessment
  - Assessment of other BEPS related risks, which can form basis of further enquiries
  - Other economic and statistical analysis to evaluate the efficacy of CbCR reporting systems, benefits and risks.

- Use of CbCR information during TP assessment will be closely monitored by jurisdictional CIT (TP) with quarterly report (highlighting inappropriate usage, if any) to be submitted to CBDT by Principal CCIT (through Competent Authority)

4. Master File Applicability- Rule 10DA

Applicability:

Group entities where:

1) Revenue threshold – Consolidated Group revenue > than INR 500 Crores; **and**
2) Transaction threshold:
   a) International transactions > INR 50 crores

      OR

   b) Intangibles related transactions > INR 10 Crores

Filing procedures:

- To be filed in Form No. 3CEAA;
- Due date of tax return;
- For multiple group entities, one entity to be designated and notified 30 days before the due date of filing the MF (Form 3CEAB);
- Constituent entities not fulfilling the thresholds to file certain general information – Form 3CEAA (Part A)

BEPS Requirement- Master File

Org. structure	Description of MNE's business	MNE's intangibles	MNE's financial activities	MNE's financial & tax positions
• Chart showing legal & ownership structure & geo. location of operating entities * List of all the entities of the international group with addresses	• Important drivers of business profit * FAR analysis of the constituent entities > 10% of the revenues **or** assets **or** profits of the group	• Overall strategy: development, over-sight, & exploitation, including location of R&D facilities & management. • List of all entities engaged in development of intangibles and in management of intangibles with address	• Description of how the MNE is financed, including arrangements with third-party lenders * Details of the financing arrangements including names and addresses of the top ten unrelated lender	• Annual consolidated financial statement for FY
	• Description of supply chain for material products & services	• List of IP & entities that own IP	• Financial transfer pricing policies	• List & description of unilateral APAs & other tax rulings relating to allocation of income
	• List & description of service arrangements among MNE members other than R&D, including policies	• Agreements related to IP, including CSAs	• ID central financial function, country of org. & manage-ment of entity providing function	
	• Main geographic markets for products and services	• IP and R&D transfer pricing policies		
	• Functional analysis describing contributions to value creations by individual entity	• Material transfers of IP among MNE members during FY, including details		
	• Business restructurings, acq-uisitions, divestitures in FY			

*Additional India Master file requirements

5.Timelines for FY 2019-20 (relevant for inbound companies)

Who	What	By When
Master File		
Any Constituent Entity (‘CE’) - irrespective of whether threshold is applicable or not)	General information - Part A of Form 3CEAA	Due date of filing of return of income
CE passing the thresholds	Master file Part B of Form 3CEAA	Due date of filing of return of income
Designated entity, in case of multiple CEs, resident in India	Part A and Part B of Form 3CEAA Notification - Form 3CEAB	Due date of filing of return of income 30 days before the due date of filing of return of income
CbCR		
CE resident in India, whose parent is a non resident	Notification Form 3CEAC	10 months from the end of the reporting accounting year

6. Penalties for non compliance

Sr. No	Particulars	Default	Penalty
1.	Non-furnishing of CbC report by Indian parent or the alternate reporting entity resident in India	Less than a month from due date	₹ 5,000 per day
		Beyond a month from due date	₹ 15,000 per day for period exceeding a month
		Continuing default beyond service of penalty order	₹ 50,000 per day from date of service of penalty order
2.	Non-submission of information	Before initial request date	INR 5,000 per day
		Continuing default beyond service of penalty order	INR 50,000 per day from date of service of penalty order
3.	Provision of inaccurate information in CbC report	Knowledge of inaccuracy at time of furnishing the report but fails to inform the prescribed authority	INR 500,000
		Inaccuracy discovered after filing and fails to inform and furnish correct report within fifteen days of such discovery	
		Furnishing of inaccurate information or document in response to notice issued	
4.	Failure to furnish the Master File		INR 500,000

E. Test your knowledge (CbCR and Master File)

Test your knowledge

1. What is the threshold for application of CbCR

(a) INR 7500 Crores

(b) INR 5500 Crores

(c) INR equivalent of Euro 750 million in the immediately preceding financial year

(d) INR 6500 Crores

Test your knowledge

1. What is the threshold for application of CbCR

(a) INR 7500 Crores

(b) INR 5500 Crores

(c) INR equivalent of Euro 750 million in the immediately preceding financial year

(d) INR 6500 Crores

Test your knowledge

2. The prime responsibility of maintaining and filing of CbCR is of

(a) Indian Entity

(b) Parent entity of Multi-national Group

(c) Alternate reporting entity of International Group

(d) All of the above

Test your knowledge

2. **The prime responsibility of maintaining and filing of CbCR is of**

(a) Indian Entity

(b) Parent entity of Multi-national Group

(c) Alternate reporting entity of International Group

(d) All of the above

Test your knowledge

3. Who needs to file Part A and Part B of Form No. 3CEAA

(a) Resident constituent entity

(b) Non resident constituent entity

(c) Both resident and Non resident constituent entity

(d) None of the above

Test your knowledge

3. **Who needs to file Part A and Part B of Form No. 3CEAA**

(a) Resident constituent entity

(b) Non resident constituent entity

(c) Both resident and Non resident constituent entity

(d) None of the above

Test your knowledge

4. Rule 10DA requires the Master File to provide "a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent of the revenues or assets or profits of such group". What should 'profits' include in such a case?

(a) Profits

(b) Both profit and losses

(c) Losses

(d) None of the above

Test your knowledge

4. **Rule 10DA requires the Master File to provide “a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent of the revenues or assets or profits of such group”. What should ‘profits’ include in such a case?**

(a) Profits

(b) Both profit and losses

(c) Losses

(d) None of the above

Test your knowledge

5. Is there any penalty for non-filing of notification/intimation under 286(1) of the Act?

(a) Yes, INR 5,00,000

(b) No

(c) Yes, INR 1,00,000

(d) None of the above

Test your knowledge

5. **Is there any penalty for non-filing of notification/intimation under 286(1) of the Act?**

(a) Yes, INR 5,00,000

(b) No

(c) Yes, INR 1,00,000

(d) None of the above

Test your knowledge

6. What is the due date of filing notification/intimation under section 286(1) of the Act:

(a) 10 months from the end of RAY

(b) 12 months from the end of RAY

(c) 9 months from the end of RAY

(d) None of the above

Test your knowledge

6. **What is the due date of filing notification/intimation under section 286(1) of the Act:**

(a) 10 months from the end of RAY

(b) 12 months from the end of RAY

(c) 9 months from the end of RAY

(d) None of the above

Useful reference materials

- **ICAI Guidance Note on Report under section 92E of Income-tax Act, 1961**, Chapter 7 – Documentation and verification must be referred to before preparing TP documentation

- Further, general guidance may be undertaken from:

  - **OECD Transfer Pricing Guidelines** for Multinational Enterprises and Tax Administrations – Chapter 5 Documentation

  - **United Nations Practical Manual** on Transfer Pricing for Developing Countries - Chapter 7 Documentation

- **International guidance** – US' IRS 482 regulations, UK's HMRC International Manual and Australia's ATO manuals, provide useful guidance on application of arm's length principle

- **OECD/G20 BEPS Action Plan 13** – Transfer Pricing Documentation and Country-by-Country Reporting


Thank you