



# Transfer Pricing Regulations In India

**February 2025**

# Disclaimer



**This document has been developed to simply provide a quick overview in simple terms of the manners or models under which a company could setup an establishment in India; and the tax and regulatory frameworks that could preside over such an entity.**

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The materials contained in this publication were assembled in August 2023 and were based on the law enforceable and information available at that time.

# Abbreviations



<b>AD Bank-1</b>	Authorized Dealer Bank -1	<b>HO</b>	Head Office
<b>AE</b>	Associated Enterprises	<b>JV</b>	Joint Venture
<b>ALP</b>	Arm's Length Price	<b>LLP</b>	Limited Liability Partnership
<b>AMT</b>	Alternate Minimum tax	<b>LO</b>	Liaison Office
<b>APA</b>	Advance Pricing Agreements	<b>MAT</b>	Minimum Alternate Tax
<b>BEPS</b>	Base Erosion Profit Shifting	<b>MCAA</b>	Multilateral Competent Authority Agreement
<b>BO</b>	Branch Office	<b>MNC</b>	Multi-National Company
<b>BOD</b>	Board of Directors	<b>OECD</b>	Organization for Economic Co-operation and Development
<b>CBDT</b>	Central Board of Direct Taxes	<b>PE</b>	Permanent Establishment
<b>CFS</b>	Consolidated Financial Statements	<b>PO</b>	Project Office
<b>DDT</b>	Dividend Distribution Tax	<b>POEM</b>	Place of Effective Management
<b>DTAA</b>	Double Taxation Avoidance Agreement	<b>RBI</b>	Reserve Bank of India
<b>ECB</b>	External Commercial Borrowings	<b>ROC</b>	Registrar of Companies
<b>ED</b>	Executive Director	<b>ROI</b>	Return of Income
<b>FCCB</b>	Foreign Currency Convertible Bond	<b>R&amp;D</b>	Research & Development
<b>FDI</b>	Foreign Direct Investment	<b>SHR</b>	Safe Harbor Rules
<b>FTS</b>	Fee for Technical Services	<b>The Act</b>	Income Tax Act, 1961
<b>FY</b>	Financial Year	<b>TP</b>	Transfer Pricing
<b>GAAR</b>	General Anti Avoidance Rules	<b>TRC</b>	Tax Residency Certificate
<b>GDR</b>	Gross Depository Receipt	<b>WOS</b>	Wholly-Owned Subsidiary
<b>GOI</b>	Government of India		

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This document covers the six major aspects for doing business in India, which companies need to understand in order to successfully initiate and sustain operations in the Indian market. These aspects have been divided into a multitude of sub-topics which have been carefully evaluated and collated to provide an insight on maintaining a fruitful business presence in India.

The first two chapters cover the initial phase, where we discuss how to setup a business in India and how to structure the funding of that new business. The third chapter focuses on understanding corporate taxes in India which is followed by the fourth chapter, which emphasizes on transfer pricing regulations in India. The fifth chapter discusses the Goods and Services Tax implications in India, which is proving to be a ground-breaking tax regime and finally, the sixth chapter discusses the provisions of expatriate taxation in India.

The inherent demand of quality advisory and financial services in the mentioned topics, coupled with our expertise in these six critical touch-points makes this document an important tool to analyze, evaluate and ease the decision-making process of companies looking to do business in India.





# Transfer Pricing Regulations

# Transfer Pricing Regulations



With the increase in the size of the global markets, trade practices have seen significant increase in cross border transactions. In present times, MNCs have global presence and operate in more than one country by way of various forms. Resultingly, it is very common for MNCs to transfer goods or services by a company from one tax jurisdiction to a company in another tax jurisdiction.

It is an internationally accepted practice that such 'transfer pricing' (TP) should be governed by the Arm's Length Principle (ALP) and the transfer price should be the price applicable in case of an independent transaction. In other words, the transaction between associates should be priced in the same way as a transaction between independent enterprises.

Today in India, transfer pricing is one of the most important matters considered by MNCs as they attempt to fairly distribute their profits amongst the companies within the group.

**TP provisions in India are generally in line with the TP guidelines for MNCs and tax administrators issued by the Organization for Economic Co-operation and Development (OECD) and United Nation (UN), though with certain noteworthy differences.**

# Transfer Pricing Regulations



## Meaning of associated enterprises

- According to Indian TP regulations, two enterprises are considered to be 'associated' if there is direct or indirect participation in the management, control or capital of an enterprise or by the same persons in both the enterprises.
- Furthermore, TP regulations suggest certain other deeming provisions that trigger an associated enterprise relationship, such as shareholding, giving more than 26% voting power, dependence on source of raw materials or customers, influences on price, depending on borrowings, and authority to appoint BOD or EDs beyond a certain threshold.

## Meaning of International transaction

The TP regulations define an international transaction as a transaction between two or more AEs, where either or both of which are non-residents and have a bearing on the profits, income, losses or assets of such enterprises.

A few examples of international transactions subject to TP are:

- Purchase, sale, lease of tangibles or intangibles;
- Capital financing such as loan, purchase/sale of equity;
- Provision/availing of services;
- Cost apportionments, allocations, contributions;
- Cost reimbursements;
- Transaction of business restructuring or re-organisation;
- Transactions having a bearing on profits, income, losses or assets; and
- Transactions with unrelated parties as a result of prior arrangements with related parties.

Further, a transaction with a non-AE may also be deemed as an international transaction if a prior agreement or arrangement pertaining to such transaction exists between the non-AE and the taxpayer's AE.

## Specified Domestic transactions

The Finance Act 2012 brought certain Specified Domestic Transactions ('SDT') under the umbrella of TP regulations in India. The transactions exceeding INR 200 million are covered under such provisions, which includes transactions with units eligible for tax holiday, and newly set up manufacturing companies covered u/s 115BAB.



# Transfer Pricing Regulations



## Introduction of Three-TIER documentation

- The Government, in line with OECD's BEPS Project (Action 13), has introduced a three-tier TP documentation process, keeping in mind India's commitment to implementing OECD/G20's BEPS recommendations.
- Taxpayers need to prepare a master file, a local file and a CbCR (Country-by-Country Report). The local file will have to be maintained in the same manner as earlier years.
- Indian TP regulations require taxpayers to maintain the prescribed TP documentation and information, and electronically furnish an accountant's report to the tax authorities containing the prescribed details about international transactions.
- The new regime is effective from FY 2016-17 onwards. In case of Indian subsidiaries with parent companies' resident outside India, CbCR will be filed by the parent company or designated entities in their home countries.
- Indian tax authorities will have access to CbCR-related information through mutual exchange of information agreements with such countries, failing which their Indian subsidiaries will have to provide the reports.
- India has signed the Multilateral Competent Authority Agreement (MCAA) to facilitate automatic exchange of CbCR. By doing so, it has agreed to bilaterally and automatically exchange CbCR with countries that are signatories of the MCAA.

## Local File:

- Refers to international transactions of the taxpayer
- Due date – 31<sup>st</sup> October
- Threshold for maintaining documentation – International transaction exceeding INR 10 million during the financial year and specified domestic transactions exceeding INR 200 million.
- Threshold for reporting a transaction – No minimum threshold for international transactions; INR 200 million threshold for specified domestic transactions.

## Master File:

- Intends to provide an overview of the MNC's business
- Due date – 30<sup>th</sup> November
- Documentation in line with OECD's Action Plan 13, with few key additional requirements
- Threshold – International transactions exceeding INR 100 million (intangibles-related) and INR 500 million (other than intangible-related) during the financial year and the consolidated group revenue exceeding INR 5 billion during the relevant financial year.



# Transfer Pricing Regulations



## **CbCR:**

- Seeks information related to the global allocation of MNC's income and taxes paid in addition to the location of economic activity within MNC group
- Due Date – 31<sup>st</sup> December\*
- Details required in line with OECD's Action Plan 13 report.
- Threshold – Consolidated group revenue exceeding INR 64000 billion (equivalent to Euros 750 million)

\* due date may change depending upon parent entity's financial year.

# Transfer Pricing Calendar



FORM NAME	PARTICULARS	DUE DATE
Form 3CEB	Local File	31 <sup>st</sup> October
Form 3CEAA	Master File	30 <sup>th</sup> November
Form 3CEAB	Intimation by designated entity for filing of Master file	31 <sup>st</sup> October
Form 3CEAC	Intimation of CbCR being filed by parent entity or alternate reporting entity	31 <sup>st</sup> October
Form 3CEAD	CbCR	31 <sup>st</sup> December*

\* due date may change depending upon parent entity's financial year.



# Tax Certainty Mechanisms on TP issues in India

## SAFE HARBOR RULES

In order to reduce the number of TP audits and prolonged disputes, the Finance Act (No. 2) 2009 provided that the determination of ALP with respect to international transactions shall be subject to Safe Harbor Rules (SHR). Safe harbor indicates circumstances under which tax authorities accept a transfer price declared by a taxpayer. Safe harbor rules have been notified by the CBDT for various types of eligible transactions.

## ADVANCE PRICING AGREEMENTS (APA)

The Finance Act 2012 introduced an enabling provision which empowers the CBDT to enter into an APA with a taxpayer to determine ALP or to specify the manner in which an ALP is to be determined, in relation to an international transaction. APA is an effective tool in place in several countries with established transfer pricing regimes, to provide certainty and avoid potential disputes in a cooperative manner.

Some of the salient features of the APA provisions are as follows:

- APAs are applicable for a maximum prospective period of 5 consecutive years, with a provision for roll-back of up to 4 years;
- Types of APA – Unilateral, Bilateral and Multilateral;
- APA team includes revenue officials, experts in economics, statistics, law, etc.;
- APA filing fees ranges from INR 1 million to INR 2 million, depending upon inter-company transactions;
- Provides for simplified annual compliance report during APA term for covered transactions;
- Provides for annual compliance audit by transfer pricing officer;
- An APA is binding on income tax authorities and the taxpayer.

The CBDT entered a record 95 Advance Pricing Agreements (APAs) in FY 2022-23 with Indian taxpayers. This is the highest ever APA signings in any financial year since the board's launch of the APA programme.



# Thin Capitalisation and Secondary Adjustment

## THIN CAPITALISATION RULES

In line with recommendations from OECD's BEPS project, the Finance Act 2017 introduced the Thin Capitalisation Rules. These provisions do not allow deduction for payment of interest under certain circumstances.

There is a cap on interest payments made to AEs to the extent of 30% of EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) Excess interest disallowed in a year will be eligible for carry-forward up to 8 consecutive years.

## SECONDARY ADJUSTMENT

The Finance Act 2017 introduced a secondary adjustment mechanism vide Section 92CE of the IT Act. The primary adjustment results in addition to income or reduction in expense and creates an additional tax liability for taxpayers.

The secondary adjustment will be applicable for the following primary adjustments:

- Suo-moto adjustment offered by taxpayers;
- Adjustment made by Tax Officer (TO) and accepted by taxpayer;
- Adjustment determined by an Advance Pricing Agreement (APA);
- Adjustment made according to India's Safe Harbor Rules;
- Adjustment arising due to a Mutual Agreement Procedure (MAP) resolution.
- As per the existing provisions, the primary adjustment, if not repatriated to India within 90 days, shall be deemed to be an advance made by the taxpayer to such AE. Accordingly, the provision adopted the scheme of imputing interest on the amount of primary adjustment imposed upon the taxpayer till the said adjustment amount is repatriated in India.
- Further, an amendment was made vide Finance Act, 2019 which provided an alternative to the taxpayers to pay a "one-time" and final income tax at the rate of 18% plus surcharge of 12% and cess thereon, on the amount of primary adjustment. No repatriation will be required in the given case. The same was made applicable w.e.f. 1st September 2019.





# Annexures for compliance matters

# Company Law



## **Secretarial Compliance(s) With Respect To Meetings, Minutes And Other Related Registers And Records For Companies**

- Board Meeting – Quarterly or event-based
- Annual General Meeting – Annual
- Separate minute books for the board meeting and general meetings
- Extra-Ordinary General Meetings – Event-based
- Registers (Register of Members, Register of Director & Key Managerial Personnel & their Shareholding, Register of Contracts with Related Parties & Contracts in which Directors are interested) – Permanent

## **Annual Secretarial Compliance for Companies**

- Disclosure of interest by directors – Annual or event-based
- Disclosure of non-qualification – Annual or event-based
- Filing of financials with the Registrar of Companies (“ROC”) – Annual
- Filing of Annual Return with ROC – Annual
- Appointment of Auditor – Annual
- DPT – 3 – Annual
- MSME Returns – Half yearly
- DIR-3 KYC – Annual

## **Annual Compliance For LLPs**

- Filing of Annual Return
- Filing of statement of annual accounts

## **Annual FEMA Compliance for Companies and LLPs**

- Filing of Foreign Assets and Liabilities (‘FLA’) Return

## **Annual Compliance for BO/LO/PO**

- Filing of Annual Return
- Filing of statement of annual accounts
- Filing of annual activity certificate



# Direct Tax, Indirect Tax and Transfer Pricing

## Direct Tax

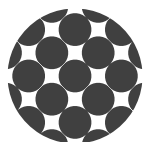
- Withholding Tax Computation & Deposit of tax withheld on Salaries and other payments – Monthly
- Withholding Tax Returns – Quarterly
- Advance Tax Payment – Quarterly
- Return Of Income Tax – Annual
- Tax Audit Report – Annual

## Transfer Pricing

- Transfer Pricing Report & Accountant's Report – Annual
- Accountant's Report - Annual
- TP Report – Annual
- Master File – Annual
- CbCR – Annual

## Indirect Tax

- GST Returns – Monthly
- GST Payment – Monthly
- GST Audit – Annual



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This helps us take on global mandates in transfer pricing, accounting, global audits etc., since this alliance helps us better understand cultural aspects of cross border businesses.



# Our Services



We’re a firm without silos and prefer to work cross functionally which ensures every client gets the best from the firm and not just one specific team.



Our service offerings are undertaken by dedicated service lines:

- **Transfer Pricing**
- **International Tax**
- **Advisory Services**
- **Corporate Secretarial**
- **Tax and Regulatory**
- **Corporate Finance**
- **Financial Accounting**

# Our Leadership



**Senior Manager**  
Financial Accounting



pankaj ghosal

**Manager**  
Tax Management



suman sapra

**Additional Director**  
Tax Management



shrey aggarwal

**Manager**  
Tax and Regulatory  
Services



vaansh sharma

**Manager**  
Financial Accounting



varun garg

# Partners



**Co-Founder and Partner**



mohit aggarwal

**Co-Founder and Partner**



nitin garg

**Partner**



amit pandey

**Co-Founder and Partner**



vikrant suri

# Data Security



**As a firm, we're acutely aware of our responsibilities to client and third-party data. Data protection protocols are in place for avoiding any potential threats.**

- DNS scan and verification
- Network Protection, including authentication protocols
- Data encryption across data storage devices
- CASB (Cloud Access Security Broker) safeguards to avoid data leakages, including protocols against potential attacks and breaches\*
- Automatic multiple back ups at remote site
- Routine trainings and acceptance of policy by employees
- Optional cloud-based data storage and access with select and limited privileges
- User access control with 2FA (two factor authentication) for secure login

\* under implementation



# Coinmen Consultants LLP



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