Transfer Pricing Documentation Study

XYZ International, Inc.
XYZ Consulting Group, Inc.
XYZ Consulting India Private, Ltd.

Fiscal Year Ended March 31, 2012
Indian Revenue Service

FINAL

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Executive Summary

I. Overview

XYZ Consulting Group, Inc. (“XYZ US”) has prepared this study to document the arm’s length nature of the intercompany transactions between itself and its affiliate, XYZ Consulting India Private, Ltd. (“XYZ India”). XYZ International, Inc. (“XYZ International” or “the Company”) is the parent company of XYZ US and XYZ India. XYZ International provides management, technology, and policy consulting and implementation services to government, commercial and international clients.

II. Intercompany Transactions

The focus of this study pertains to the following intercompany transactions for the fiscal year ended March 31, 2012:

- XYZ India provides model maintenance, data analytics and information technology (“IT”) services for power, energy and environmental sector clients on behalf of XYZ US.

- XYZ India pays a product fee to XYZ US related to the distribution of software products owned by XYZ US.

III. Methodology

Functional analyses have been conducted to identify and characterize the relevant intercompany transaction covered by the analysis. The functions performed, assets employed and risks assumed by each entity in connection with the intercompany transaction has been identified.

The Transactional Net Margin Method (“TNMM”) has been selected as the most appropriate method based on the availability of reliable data and because comparable uncontrolled transactions with which to apply the transactional methods could not be identified reliably. XYZ India has been selected as the tested party on the basis that it provides high level IT/data analytics services, making its profitability dependent on the fees it receives for these services. Independent companies with similar functions to those of the tested party were reliably identified. The profitability of the tested party was then compared to that of the independent companies, effectively measuring the arm’s-length nature of the intercompany transaction.

Taxpayers that apply the TNMM use a Profit Level Indicator (“PLI”) that would provide the most reliable indication of the operating profitability that would have been achieved if the same transaction had taken place between unrelated parties. The analysis of high level IT/data analytics services uses the net cost plus ratios of the comparable companies to construct an arm’s length range of operating profitability, against which the tested party’s operating profitability can be compared. The net cost plus ratio is defined as the pre-tax, pre-interest, pre-extraordinary items operating profit divided by total costs. The net cost plus ratio evaluates operating profits based on a mark-up on all costs related to the provision of services. For service providers, it is more reliable to utilize a cost base to compare the profitability of the controlled taxpayer to uncontrolled taxpayers engaged in similar business activities.

XYZ US is compensated for allowing distribution of software products (the IP for which is owned by XYZ US) through two separate fees; a fee based on license revenue earned by XYZ India and a fee based on services revenue earned by XYZ India. The fee is split as such due to the fact that the entity signing a contract with a customer may not be the entity that is rendering services related to this contract, in which case a separate fee would be paid by each entity for its specific activity, either licensing or services, related to the customer contract. In this case, however, XYZ India is engaged in both licensing and service activities for third party contracts related to the intellectual property owned by XYZ US. Therefore, XYZ India pays a percentage of its revenue derived from service fees and a different percentage of its revenue derived from licensing fees to XYZ US. The combined amount paid by XYZ India to XYZ US is known as the product fee. For the purposes of this analysis, it is considered most reliable to document the arm's-length nature of the product fee by comparing the net product fee as a percentage of total revenues to rates for comparable third party software licensing contracts. Therefore, the Comparable Uncontrolled Price ("CUP") method was selected as the best method. A search was performed for comparable third party software licensing agreements in the telecommunications industry in order to determine a reliable arm's-length range with which to benchmark the intercompany product fee.

IV. Conclusion

For FYE 2012, the range of net cost plus ratios established by the comparable companies has a minimum of -XX percent, a lower quartile of XX percent, an upper quartile of XX percent and a maximum of XX percent, with a median of XX percent.

The range of rates for the set of comparable unrelated trademark licensing agreements is between XX percent and XX percent, with a median of XX percent. During the fiscal year 2012, XYZ India paid a net product fee of XX percent of its revenue to XYZ US. Therefore, it can be concluded that the product fee paid by XYZ India to XYZ US is in accordance with the arm's-length standard.

Regulatory Environment

Statutory Rules/Regulations/Circulars

The main transfer pricing provisions in India can be found in Sections 92 to 92F of the Income Tax Act of 1961 (“ITA”).They were introduced by the Finance Act[1] (“FA”) of 2001, and amended soon thereafter by the FA of 2002. Section 92 introduces the explicit rule that “Any income arising from an international transaction shall be computed having regard to the arm’s length price”. Interest arising from international transactions is specifically included in the arm’s length standard. The provisions also cover cost sharing and contribution agreements in an international transaction. The new rules became effective as of 1 April 2001. The Central Board of Direct Taxes (“CBDT”) is the main tax authority in India with regard to direct taxes and administers the transfer pricing rules.

The original legislative provision covering transfer pricing in India was Sec. 92 of the ITA. This was very similar to the original provision in Sec. 42(2) of the ITA of 1922, i.e. the predecessor act, introduced in the colonial period. The language of that provision was very broad, i.e. it covered situations where a non-resident carried on business with a resident, and the Assessing Officer (“AO”) considered that, by virtue of the close connection between them, the business was so arranged as to produce either no profits for the resident or less than the profit which might ordinarily have been expected. The AO could determine the amount of income which might reasonably be considered to have accrued to the resident. After the broad economic liberalization of the early 1990’s, the Indian government felt it necessary to implement a more comprehensive transfer pricing regime.

Section 92 of the ITA was supplemented by Rule 10 and Rule 11 of the Income Tax Rules (“IT Rules”) of 1961, which set out the various methods for computing the transfer pricing adjustment. Along with the new legislation, Rules 10A-10E of the IT Rules of 1962 were introduced, hereafter referred to as the Indian Transfer Pricing Regulations (“TPR”). These set out the manner and circumstances in which different methods of determination of the arm’s length price may be applied. These rules also set out the form of the transfer pricing reports to be provided, and the documents and information required to be maintained by taxpayers. In addition, Circular 12/2001 entitled “clarification on provisions governing transfer pricing in an international transaction” outlined some preliminary views of the tax authorities in application of the new regime.

The Direct Taxes Code Bill of 2009 is to introduce, when passed by the Lok Sabha, a new Direct Tax Code (“DTC”) that will replace the ITA. The DTC contains new international tax provisions including an extension of the transfer pricing rules to transactions between related entities in India and the introduction of detailed provisions for advance pricing agreements.

As the DTC is still under consideration, the Finance Bill (“FB”) 2012 has included provisions that will amend the ITA to allow for domestic transfer pricing rules and advance pricing agreements. The FB 2012 introduces section 92BA of ITA to extend the transfer pricing rules to apply to transactions between related resident parties covered by Secs. 40A, 80-1A, 10AA and 80A of the ITA (which are sections related to section 80-1A) or other transactions determined by the Board, where the aggregate amount of the transactions exceeds INR 50 million in a year. This provision takes effect from 1 April 2013. New Secs. 92CC and 92CD have been inserted into the ITA by the FB 2012 to introduce advance pricing agreements from 1 July 2012.

The TPR contain several concepts that are substantially similar to concepts of the Organization for Economic Co-operation and Development (”OECD”) Transfer Pricing Guidelines[2]. Although India is not a member of the OECD, the CBDT has nonetheless referred to the OECD Guidelines, consulted OECD member countries and studied their transfer pricing regulations while drafting India’s TPR. Further, the courts have referred to the OECD Guidelines when deciding on certain issues and have held them to be of persuasive value. The OECD has actively supported the CBDT's effort to administer and facilitate implementation of transfer pricing legislation in India.

Arm's Length Principle

Section 92F of the ITA defines the arm's length price as "a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions". The arm's length principle is based on the concept that market forces are the best way to allocate resources and profits of the enterprise and therefore all transactions between associated enterprises should be compared and benchmarked with transactions between independent parties.

Section 92C of the ITA provides several methods for determining the arm's length price and requires application of the most appropriate method; it also provides for the power of the authorities to prescribe the appropriate method, having regard to the nature of the transaction or of the type of associated persons or the functions performed by such persons. In cases where more than one result is determined, the arm's length price shall be the arithmetic mean, with a tolerance range not exceeding 5% above or below the price of the controlled transaction. The application of the arm's length standard is set aside in cases where such application would result in the reduction of income subject to tax; in other words, the arm's length standard can only increase the amount of taxable income.

Section 92A of the ITA defines the meaning of the expression "associated enterprise". Section 92A(1) of the ITA gives a general definition of associated enterprises, based on the concept of participation in management, control or capital; this provides that direct as well as indirect participation in the management, control or capital of another enterprise, or such participation by the same person in two enterprises, will cause the enterprises to be associated. The tax treaties concluded by India dealing with transactions with associated enterprises contain a similar definition, which reflects Article 9 of the OECD Model Tax Convention ("OECD Model"). Although the TPR give an elaborate definition of the term "associated enterprises", they do not clarify or elaborate on terms such as "participation in management", "control" and "capital".

Section 92A (2) of the ITA specifies circumstances under which two enterprises shall be deemed to be associated enterprises. This supplements the above basic definition by listing various situations under which two enterprises shall be deemed to be associated enterprises:

- equity holding of at least 26%;
- control of composition of the board of directors;
- advancing of loans (51% of assets) or providing of guarantees (10% of total borrowings);
- dependence on use of intangibles such as patents, licenses, business or commercial rights, etc.;
- franchisee;
- effective influence over supply of raw materials (one enterprise purchases 90% of its raw materials from another enterprise for the purpose of manufacture or processing of goods or articles and the price or other related conditions are influenced by the supplying enterprise);
- effective influence over sale of finished product, where an enterprise carrying on the business of manufacturing or processing of goods or articles sells the same to another enterprise, or to an enterprise specified by another enterprise, and the price and related conditions are influenced by such other enterprise;
- Appointment of more than half the governing board members by another enterprise and prescribed relationships of mutual interest.

The term "enterprise" is defined very widely and covers almost every type of business activity that an entity would normally engage in. Broadly, it includes business activities involving tangible assets, intangible assets, services, investments, loans and shares/securities. Further, an undertaking is considered to fall within the definition of an enterprise if it is or has been engaged, or is proposed to engage, in specified activities or business, whether such specified category of activity was carried on directly or through a subsidiary.[3] The term “enterprise” can apply to all categories of person; therefore, any enterprise that is a person as defined in Sec. 2(31) of the ITA would be an enterprise if it were engaged in specified categories of activity/business, whether directly or through a subsidiary.

Relevant Tax Law

As discussed above, Sec. 92 of the ITA constituted the main transfer pricing legislation in India until 2001. Given the nature of the Indian economy prior to its economic liberalization in 1991, there were very few instances when the original Sec. 92 of the ITA was sought to be applied. However, a case from that period establishes that the application of Sec. 92 of the ITA and Sec. 9(1)/Sec. 5 (the basic charging provisions in ITA) are mutually exclusive (*Subramania Chetty v CIT* 46 ITR 724). The impact of this would be that the operation of Sec. 92 of the ITA could create an independent liability to tax. There is an alternative view that as Sec. 5 of the ITA commences with the words “Subject to the provisions of this Act…” only income brought into the charge to tax by Sec. 5 would be covered by Sec. 92 (and subsequent amendments).

Sections 92A et. seq. of the ITA recognized that international transactions between associated enterprises may not be subject to the same market forces as transactions between independent parties. Transfer pricing principles brought in by those sections apply to “international transaction(s)”, defined to include a wide range of revenue and capital transactions between two or more associated enterprises, either or both of whom are non-residents.[4]

The TPR were introduced by substitution of the relevant rules 10A to 10E in the IT Rules. The TPR are quite comprehensive in the sense that they explicitly lay down the methodologies to be applied for determining the arm’s length price and the documentation to be maintained by taxpayers. The term “associated enterprises” is defined more broadly than in the OECD Guidelines. The following transactions are covered by the TPR:

- transactions relating to income (revenue);
- allowances for any expenses or interest; and
- cost-sharing arrangements.

The Finance Act of 2009 empowered the CBDT to make a safe harbor rule which was due to be elaborated with implementing regulations by FA 2010; this was however ignored in the FB of 2010 and 2011. Under the proposed safe harbor the burden imposed in applying the arm’s length principle can be relieved, by providing for circumstances in which a taxpayer could follow a set of rules to avoid transfer pricing adjustments.[5]

The DTC 2009 was released by the Finance Ministry on 12 August 2009 along with a discussion paper. The transfer pricing provisions addressed include: a) definition of associated enterprises, b) selection of cases for transfer pricing assessments, and c) introduction of APAs. In general, the provisions covering transfer pricing in the DTC are more comprehensive than the current regime as set out in the ITA and TPR.

The definition of an international transaction for transfer pricing purposes has been extended in the FB 2012 by inserting an Explanation to Section 92B of the ITA. This Explanation confirms that the definition covers a business restructuring or reorganization entered into by a taxpayer with a related party whether or not this restructuring has any influence on the profits, losses, income or assets of the entities. The definition was also confirmed to cover corporate guarantees and other financial transactions, market research and marketing development. The amended definition of an international transaction is to apply retrospectively from 1 April 2002.

The FB 2012 has introduced a number of new provisions in relation to international taxation and also introduces a general anti-avoidance rule (“GAAR”) which is to apply from 1 April 2013. The GAAR will apply to an arrangement one of whose purpose is to obtain a tax benefit and which satisfies one of four tests. These tests are that the arrangement creates rights or obligations that are not normally created by entities at arm's length; the arrangement results in the misuse or abuse of tax provisions; that it lacks commercial substance; or that the arrangement is carried out in a way that would not normally be employed in bona fide arrangement. The GAAR is also included in the DTC.

The following list covers the key transfer pricing rules and regulations in India:[6]

- Sec. 40A(2) of the ITA 1961
- Secs. 92-92F, 271, 271AA, 271BA, 271G of the ITA 1961
- Rule 10 to 10E of the IT Rules 1962 CBDT Circular No 12/2001
- CBDT Circular 12 of 2001
- CBDT Circular 14 of 2001, Paras. 55.1 - 55.23
- Instruction 3 of 2003, dated 20 May 2003

There has been significant litigation on the determination of arm's length prices. A review of tribunal decisions (the first level of judicial appeal, beyond the administrative appeal within the tax authority structures) shows an appreciation of the OECD Guidelines, and an attempt to apply them as considered suitable. It also shows that Indian tribunals have often ruled against the tax authorities where it was considered that a very formulary approach was being used which ignored past year's data or a narrow application of comparables was being made.[7] As the Indian courts examine the application of current law, more guidance will become available.

In *Honeywell Automation India Ltd*., it was held that comparable data for subsequent years (or for earlier years, unless material facts are revealed by such data) should not be used in a comparability analysis. This ruling provided useful guidance on the use of comparable data and on the type of data that may be used. *Skoda Auto India Private Limited* provided guidance on adjustment for high startup costs and the use of the comparable uncontrolled price ("CUP") method. In *Perot Systems TSI (India) Ltd.* an interest-free loan between two related parties was held to be a clear case of transfer of profit from India to its associated entity located in a tax haven where there was no corporate income tax. In *Morgan Stanley and Co.*, the Supreme Court found that a permanent establishment ("PE") had been remunerated at operating cost plus an arm's length markup determined using the transactional net margin method ("TNMM"), and it was determined that the transfer pricing analysis adequately reflected the functions performed and the risks assumed by the PE. It was however necessary to ensure that all operating costs were adequately captured in the cost base. *Mentor Graphics (Noida) Private Limited* illustrated the importance of carrying out a detailed transfer pricing analysis of the specific characteristics of the international transaction with an associated enterprise. The Supreme Court in the case of *GlaxoSmithKline Asia (P) Ltd* found that the application of the concept of fair market value to domestic transactions led to complications and therefore recommended that transfer pricing rules should be extended to apply to domestic transactions, a measure that was subsequently included in the DTC and the FB 2012.

Special Regimes/Rules

Small and Medium Enterprises

Taxpayers having in aggregate international transactions below a prescribed threshold (currently INR 10 million) are exempted from maintaining prescribed detailed documentation.

Permanent Establishments

A PE of a foreign enterprise is also considered to be an associated enterprise for transfer pricing purposes. Accordingly, transactions between a foreign enterprise and its Indian PE are within the ambit of the code. The term "permanent establishment" is defined in Sec. 92F (iii) (a) of the ITA as a fixed place of business through which the business of the enterprise is wholly or partly carried on. Accordingly, where for example a foreign company has a project office in India, the transactions of the project office with its head office, as well as other group companies of the head office, are subject to the transfer pricing regime. It is generally considered that the inclusion of PEs in the transfer pricing rules is a general one, and accordingly fixed PEs, service PEs, construction PEs and agency PEs are all included within the scope of the provisions.

Tax Administration

Corporate income tax is imposed on companies, which are defined as Indian companies, (companies formed and registered under Indian law and any institutions, bodies, etc. declared by the authorities to be companies) and corporate bodies incorporated outside India. A domestic company is an Indian company or any other company which has made prescribed arrangements for the declaration and payment of dividends in India out of income subject to tax in India. Companies incorporated outside India which do not make the prescribed arrangements are foreign companies.

Corporate taxation essentially operates on a self assessment system, where companies must pay advance tax of their own accord, based on their estimate of their current income, and submit a return at the specified dates. The corporate tax return must be accompanied by proof of payment of tax and interest. Currently, the specified dates are:

– 30 September following the financial year, in the case of companies and persons whose accounts are required to be audited under the provisions of the ITA or any other regulations;
– 31 July following the financial year, in other cases.

Section 139 of the ITA was amended by the FB 2012 to provide for compulsory filing of a tax return with effect from 1 April 2012 by any resident having an asset, or an interest in any entity, situated outside India, or the authority to sign in respect of any account outside India. The time limit for issuing a notice to reopen an assessment is extended to 16 years where income in relation to an asset or interest in an entity outside India has escaped assessment.

Taxpayers subject to the transfer pricing regime must obtain and furnish an Accountant's Certificate (Form 3CEB) regarding adequacy of documents maintained.[8] In general, companies are currently required to file such reports by 30 September, i.e. the same time as tax returns. However, the FA 2011 extended the date for filing the reports to 30 November. Form 3CEB requires disclosure under each category of transaction, including the transaction value, the arm's length price and the methodology applied to justify it. Particulars are given in the annex to Form 3CEB.

It is recognized that transfer pricing is a specialist area and therefore all administration in this area is delegated to specialists. Under the current system of transfer pricing assessments, in all cases where the value of international transactions exceeds a prescribed threshold (currently INR 50 million), the AO is required to make a reference under Sec. 92CA(1) of the ITA to the designated Transfer Pricing Officer ("TPO").[9] The rules originally allowed the TPO to only consider adjustments when referred by the AO; however from 2010 the TPO was authorized to make changes independently in appropriate circumstances, a power that was strengthened in 2011. A change in the FB 2012 would empower a TPO to determine the arm's length price for transactions independently, even if the transactions are not referred to the TPO, where international transactions are found that have not previously been disclosed by the taxpayer.

Tax administration in India is handled by a network of tax offices spread nationwide, and organized under regional Commissioners of Taxation. Specialist offices in the major metro cities usually handle the most complex cases. A transfer pricing cell at the central level is headed by the Director-General of Income Tax (International Taxation and Transfer Pricing) with Directors of Income Tax (Transfer Pricing) in major locations (including Mumbai, Delhi, Bangalore, Chennai, Kolkata and other key cities). The directorate is manned by Additional Directors of Income Tax, who are designated as TPOs. The 2011 budget also announced plans to strengthen the CBDT's foreign tax division to effectively handle the increase in tax information exchange and transfer pricing issues. The responsibility chart of officials is set out in a notification.[10]

Transfer Pricing Methods

The Indian legislation is broadly guided by the OECD Guidelines and the legislation prescribes the same five methods to determine an arm's length price. Tax authorities generally recognize the OECD Guidelines for local tax matters to the extent they are not inconsistent with Indian tax laws. The TPR prescribe standards for comparability of an international transaction with an uncontrolled transaction as follows:[11]

- the specific characteristics of the property transferred or services provided in either transaction;
- the functions performed, taking into account assets employed or to be employed and the risks assumed by the respective parties to the transactions;
- the contractual terms (whether or not such terms are formal or in writing) of the transactions that lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions; and
- the conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and government orders in force, costs of labor and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

The CBDT is given the authority to prescribe any other methods and adjustments necessary to determine the arm's length price. Section 92C of the ITA mentions the following specific methods:[12]

(a) CUP method;
(b) resale price method;
(c) cost plus method;
(d) profit split method;
(e) TNMM; and
(f) such other method as may be prescribed by the CBDT.

The taxpayer is given an option to select any of the prescribed methods as the most appropriate method considering the facts and circumstances of the case and the relevant provisions of the TPR. The taxpayer is required to demonstrate the reasons for the selection of a particular method as the most appropriate method. However, to arrive at the most appropriate method, the taxpayer has to evaluate all the methods and document the reasons for rejection of all the methods other than the one selected as the most appropriate. It is to be noted that the TPR do not provide any hierarchy of methods.

Rule 10C (2) of the IT Rules of 1962 further identifies the following factors that have to be taken into account for selecting the "most appropriate method":

- the nature and class of the international transaction;
- the class or classes of associated enterprises entering into the transaction and the functions performed by them, taking into account assets employed or to be employed and risks assumed by such enterprises;
- the availability, coverage and reliability of data necessary for application of the method;
- the degree of comparability existing between the international transaction and the uncontrolled transaction and between the enterprises entering into such transactions;
- the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions; and
- the nature, extent and reliability of assumptions required to be made in application of a method.

The most appropriate method, as referred to in Sec. 92C (1) of the ITA, should be applied for determination of the arm's length price. The application of this may be prescribed by the CBDT; some flexibility was given in the law by allowing a +/-5% tolerance range of uncontrolled prices. This however created some dispute. Although the CBDT took the view that the benefit of the range only applied where the transaction price was within 5% of the mean arm's length price, taxpayers argued that the benefit should be allowed even when the transaction price falls outside this range, and in this, they were supported by some dispute resolution bodies. The law has been clarified retrospectively from 1 October 2009 so taxpayers are in no doubt that the 5% range is in relation to the transaction price (rather than the arithmetic mean) and is not a standard deduction.[13]

Comparable data is crucial in determining and defending transfer pricing positions in India and, therefore, taxpayers are required to maintain information on comparables as part of their transfer pricing documentation. The CBDT prefers that Indian comparables should be used to the extent possible. Use of foreign comparables is generally not acceptable, unless the tested party is located overseas. In some cases, TPOs have exercised their power to obtain private information from other taxpayers under their general powers and used the same comparables for the taxpayer under review.[14] In determining comparability, the key questions are about the property transferred, functions performed, contractual terms, risks assumed and economic and market circumstances, as well as business strategies.

Special Areas for Consideration

Intangible Assets

Intangible assets are defined to include know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of a similar nature.[15] Trademarks, brands, goodwill and technical know-how relating to the manufacture of goods would all qualify to be treated as capital assets within the meaning of the ITA. In general, only legal ownership is used to qualify ownerships and economic ownership has not yet been specifically recognized. However, the definition of related parties does cover economic relationships separately from legal relationships.

The definition of international transactions for transfer pricing purposes has been clarified by the addition of an Explanation to Sec. 92 of the ITA, inserted by the FB 2012. This list confirms that the definition of intangibles includes customer lists, franchises and commercial secrets in addition to those mentioned above. This definition applies retrospectively from 1 April 2002.

The rules do not provide for any specific methods for benchmarking the arm's length price in relation to transfer/use of intangibles, and the taxpayer is free to choose the most appropriate method. One of the key difficulties in this area is however the absence of third-party benchmarks to evaluate licensing of intangibles. A further challenge lies in the way the provisions have been implemented in the case of intangibles, where taxpayers may need to demonstrate the payment for the intangible as a separate transaction, and justify the need for the payment.

No specific comparability criteria are provided in respect of intangibles, and the normal standards for comparability of intercompany transactions apply.

Intra-group Services

Intra-group services are considered to be international transactions under the rules and should comply with the arm's length standard. The Indian legislation and TPR do not, however, provide any detailed guidance on this area; therefore the major source of such guidance is the OECD Guidelines. No specific rules have been determined such as a benefit test to benchmark the arm's length price for services provided.

Section 92B of the ITA has been amended by the FB 2012 to clarify that the definition of "international transactions" includes the provision of services including market research, marketing development, marketing management, administration, technical services, repairs, design, consultation, agency, scientific research and legal or accounting services.

In general, services can be divided into product-related, management-related, and general services. The practice is to ask for evidence that would substantiate delivery of services by group members and other foreign affiliates. Such evidence must be more than a simple invoice or service agreement; it is customary to inquire as to the tasks performed, their qualification to provide such services, and/or whether such services were actually needed by the taxpayer. CBDT officials will then enquire as to whether services have been appropriately compensated, and seek to determine the arm's length price. It is common to ask whether independent parties would normally pay for such services, and the level of compensation in such cases, to seek documentation of a functional analysis of the various group members and to ask to see evidence that cost-based charges have been computed fairly, e.g. by using direct costs plus a reasonable level of indirect costs.

Cost Contribution Arrangements

There are no special rules for cost contribution arrangements ("CCAs"). Where two or more associated enterprises enter into an arrangement for the allocation of costs, such services must be allocated at the arm's length price of such benefit, service or facility.[16] Allocations made by the taxpayer will be scrutinized by the CBDT to ensure that the costs attributed are adequate. There are no rulings or guidance on cost contribution arrangements in the case of development of intangible property.

A ruling in relation to a CCA for services was handed down by the Income Tax Appellate Tribunal ("ITAT") in September 2011. The ITAT ruled that in determining the arm's length price the TPO could not make any judgment about the commercial wisdom of the taxpayer and cannot merely compare the benefit received by the taxpayer to the cost incurred for the service. The correct measure is that the taxpayer's share of the costs should be consistent with the benefits expected to be received from the services. The allocation of costs to the taxpayer should be done on the basis of actual costs and should not include hypothetical costs.

Financial Services

The allowance for any expense or interest arising from an international transaction should also be determined having regard to the arm's length principle.[17] Beyond this; there is no direct guidance on treatment of financial services. Based on the general principles, intercompany lending and borrowing transactions need to be conducted by reference to the ordinary arm's length standard. Practice suggests that determination of an arm's length interest rate is based on the amount and duration of the credit, the borrower's credit rating, currency used, etc. Guidance is also available through the maximum interest rates provided under the Foreign Exchange Management Act ("FEMA"), which is the principal legislative instrument for managing exchange controls.

The FB 2012 has inserted an Explanation after Sec. 92B of the ITA to clarify that international transactions include capital financing, any type of long term or short term borrowing, lending or guarantee, purchase or sale of marketable securities, an advance, deferred payment, receivable or any other type of debt arising in the course of business.

The use of internationally accepted rates, e.g. LIBOR, is common in determining arm's length rates. There is no specific guidance on trade credits, guarantee fees or securities transactions, other than the general requirement that related-party transactions are conducted at arm's length.

Documentation

Any person entering into an international transaction is required to keep and maintain the information and documents as prescribed.[18] A taxpayer who has entered into an international transaction must keep and maintain information and contemporaneous documents, as may be prescribed.

Documentation would include all types of information, whether stored in physical or electronic form. A list of the documentation required is as follows:[19]

Taxpayer documentation:

- a description of the ownership structure, with details of shares or other ownership interests held in the taxpayer by the enterprises with whom the taxpayer has entered into an international transaction;
- a profile of the multinational group of which the taxpayer is a part, along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions have been entered into and ownership linkages with them; and
- a broad description of the business of the taxpayer and the industry in which it operates and of the business of the associated enterprises with whom it has transacted.

Transaction documentation:

- the nature and terms (including prices) of transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transactions;
- a description of the functions performed, risks assumed and assets employed or to be employed by the taxpayer and by the associated enterprises involved in the transactions;
- a record of the economic and market analysis, forecasts, budgets or any other financial estimates prepared by the taxpayer for the business as a whole and for each division or product separately, which may have a bearing on the international transactions entered into by the taxpayer;
- a record of uncontrolled transactions taken into account for analyzing their comparability with the transactions entered into by the taxpayer, including a record of the nature, terms and conditions relating to any uncontrolled transactions with third parties which may be of relevance to the pricing of the transactions;
- a record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant transaction;
- a description of the methods considered for determining the arm's length price in relation to each transaction or class of transaction, the method selected as the most appropriate method, along with explanations as to why the method was so selected, and how the method was applied in each case;
- a record of the actual work carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method and adjustments, if any, which were made to account for differences between the international transactions and the comparable uncontrolled transactions, or between the enterprises entering into such transactions;
- the assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price;
- details of the adjustments, if any, made to transfer prices to align them with the arm's length price determined under these rules and consequent adjustment made to the total income for tax purposes; and
- any other information, data or document, including information or data relating to the associated enterprise that may be relevant for determination of the arm's length price.

Optional documents:

- official publications, reports, studies and databases from the government of the country of residence of the associated enterprise, or of any other country;
- reports of market research studies carried out and technical publications brought out by institutions of national or international repute;
- price publications, including stock exchange and commodity market quotations;
- published accounts and financial statements relating to the business affairs of the associated enterprises;
- agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions;
- letters and other correspondence documenting any terms negotiated between the taxpayer and the associated enterprise; and

– documents normally issued in connection with various transactions under the accounting practices followed.

Documentation must be contemporaneous[20] and should be in place by the due date for filing the income tax return. As mentioned above, Sec. 92E of the ITA provides that the taxpayer has to obtain, from a chartered accountant or any other person qualified to be appointed as an auditor, a report relating to the international transactions entered into by the taxpayer in the prescribed Form 3CEB (Rule 10E). This report must be furnished by the taxpayer to the tax authorities on or before the due date for filing the annual tax return.

Where an international transaction continues to have effect over more than one tax year, no new documentation need be maintained separately in respect of each tax year, unless there is any significant change in the nature or terms of the international transaction, in the assumptions made, etc. The specified information and documents must be maintained by the taxpayer for a period of nine years from the end of the relevant tax year.

Although the documentation is to be prepared and maintained by the taxpayer, it need not be provided to the CBDT. Instead, the CBDT may request the documentation during the course of audit proceedings. The information and documents must be submitted to the tax authorities within 30 days of the receipt of notice (extendable by another 30 days). In-depth documentation and full disclosure of all the controlled transactions and a detailed analysis of functions, assets and risks is key in mitigating the risk of transfer pricing adjustments and penalties under the Indian transfer pricing rules.

Investigations, Audits and Adjustments

The selection process for the audit is based on the value of international transactions. The formal processes regarding audit selection have been outlined in a public notification.[21] A certain percentage of tax returns are selected for detailed audit; the selection process is thus procedural and does not deal with the qualitative aspects of the case. A notice is issued to the taxpayer within six months from the end of the financial year in which the return is made; this specifies the records and documents required.

The CBDT decided that in the initial years of implementation of the transfer pricing regime, and pending the development of an adequate database, only a small number of cases would be selected for audit. A threshold limit of INR 50 million of international transactions, in aggregate, was specified which was subsequently raised to INR 150 million from 2005-2006 by the CBDT. The limit refers to cases where a number of transactions between the same parties have an aggregate value equal to the threshold; the limit is under review and may be changed.[22]

The typical scenarios that are factors in audit selection are consistent losses of the taxpayer from intercompany transactions, major changes in the profitability of the taxpayer and its associated enterprises; unjustifiably large payment of royalties, technical services fees and management charges, etc.

Audits are carried out by the TPO after reference from the corporate tax AO in the course of general tax audit procedures. Initially such reference could only be made by the AO with the prior approval of the commissioner of income tax (regional head of the CBDT field office). However, with effect from 1 April 2010, the TPO may issue a notice directly, and the FB 2011 extends this power.[23] Also, the FB 2012 provides for the TPO to determine the arm’s length price without reference from the AO in cases where the taxpayer has not notified the tax authorities of international transactions as required. The notice for selecting a case must be issued within 6 months (12 months until 2006-2007) from the end of the financial year in which the return is submitted. TPOs must provide an opportunity for the taxpayer to submit evidence regarding the arm's length prices.[24] TPOs are expected to consider the appropriateness of the method selected and applied by the taxpayer, the reliability of data used and other facts and circumstances in determining the arm's length prices, and are expected to document them in their determination of the arm’s length price. If the TPO proposes to adjust the transaction price, he has to provide the taxpayer an opportunity to state reasons why an adjustment should not be made.

The CBDT has wide powers of assessment and information in cases where the return is not filed on time, or if advance tax has not been paid on time. Assessment can be made on agents and other representatives where the company is a non-resident. There are specific powers of information with regard to transfer pricing cases. TPOs have been empowered to request information from banks, and enjoy all the powers regarding discovery, production of evidence, etc. specified under Sec. 133(6)/Sec. 131/Sec. 133A[25] of the ITA. A TPO can require any person to furnish information in relation to such points or matters or to furnish statements of accounts and affairs as may be useful for or relevant to any proceedings under the ITA. These cover (a) discovery and inspection; (b) enforcing the attendance of any person, including any officer of banking company and examining him under oath; (c) compelling the production of books of account and other documents; and (d) issuing commissions.

The CBDT is also empowered to formulate safe harbor rules, i.e. to provide for the circumstances in which the tax authorities should accept the transfer price declared by the taxpayers.[26] These safe harbor rules have not however been formulated yet. An Explanation has also been inserted in the legislation to provide that "safe harbor" means circumstances in which the income tax authorities shall accept the transfer price declared by the taxpayers.

In transfer pricing audits, if the taxpayer is found to have failed to conduct its transactions on an arm's length basis, the tax authorities have the right to make a transfer pricing adjustment. One consequence of a transfer pricing adjustment is additional taxes being payable on the adjusted income, even if the income might already be subject to tax in another jurisdiction. If the tax adjustments result in additional taxes, penalties will be calculated based on the additional tax liability. To recover any potential tax that might have been paid in another jurisdiction on the adjusted income, the taxpayer may have to initiate a mutual agreement procedure ("MAP").

Indian regulations do not provide for a corresponding adjustment; however, most of the treaties signed by India have a related provision. The taxpayer may have to initiate competent authority proceedings under a MAP. Indian rules do not specifically authorize a secondary adjustment.

Tax assessments must be completed within three years and nine months of the end of the financial year (1 April to 31 March). However, if the revenue authority determines income evasion, an assessment may be reopened within seven years of the end of the financial year. The taxpayer may appeal to the appellate commissioner, within 30 days of the date of receipt of the scrutiny assessment order. The office of the appellate commissioner is a quasi-judicial one, and acts as the administrative appeal body. The decision of the appellate commissioner is reflected in an appellate order. This may be appealed to the ITAT, the first judicial tribunal, after which an appeal lies to the High Court bench with jurisdiction over the area. A final appeal lies to the Supreme Court.

From 2009, the law has been amended to accommodate an alternate dispute resolution ("ADR") mechanism which will allow a taxpayer to resolve transfer pricing issues without going through the court system and settle the claims with the CBDT.[27] There is no significant body of cases going through this ADR system. The Dispute Resolution Panel ("DRP") is empowered to confirm, reduce or enhance the variations proposed by the tax administration in a draft order. The taxpayer has the right to appeal against the order passed by the AO in carrying out the requirements of the DRP. The FB 2012 provides for the AO to file an appeal before the ITAT in the case of disagreement with an order made following the requirements of the DRP, with effect from 1 July 2012.

Penalties

There are penalties of 2% of the value of the international transaction for non-maintenance as well as for non-submission of documents by taxpayers.[28]

- for failure to keep and maintain information and documents on international transactions; or
- for failure to furnish information or documents under Sec. 92D of the ITA.

An additional penalty of INR 100,000 can be assessed for not filing the Accountant's Report on the requisite form within the due date. However, under the new DTC the penalties have been combined and the new ceiling has been the maximum of INR 200,000 for the non-compliance.[29]

Finally transfer pricing adjustments considered to relate to concealed income can be 100%-300% of the tax on adjustments made.[30]

Penalties may be avoided if taxpayers can demonstrate that in determining an arm's length price it exercised due diligence and good faith. Proper transfer pricing documentation and timely submission of documentation to CBDT is required during assessment proceedings.

Treaties

India has 84 double tax treaties in force for avoidance of double taxation of the same income internationally and to prevent tax evasion with the countries set out below. In general, the treaties cover, among other items, dividends, interest, and royalties. Treaties follow the UN Model in some aspects; in general, however, most Indian treaties follow, for the purposes of the associated enterprises article, the wording of Art. 9 of the OECD Model. A detailed technical explanation of Art. 9 of the US-India treaty are available within the agreed Technical Explanation that accompanied the treaty, which clarifies the applicability of the arms length standard in the treaty.

Treaty Country	OECD Art. 9(1) or Equivalent	OECD Art. 9(2) or Equivalent	Relief from Double Taxation	Competent Authority
Armenia	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Australia	Art. 9(1)	Art. 9(3)	Art. 24	Art. 3(1)(i)
Austria	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Azerbaijan	Art. 7(7)	None	Art. 22	Art. 3(1)(c)
Bangladesh	Art. 10(1)	None	Art. 25	Art. 3(1)(j)
Belarus	Art. 9(1)	None	Art. 24	Art. 3(1)(h)
Belgium	Art. 9(1)	None	Art. 23	Art. 3(1)(d)
Botswana	Art. 9(1)	Art. 9(2)	Art. 24	Art. 3(1)(i)
Brazil	Art. 9(1)	None	Art. 23	Art. 3(1)(h)
Bulgaria	Art. 10(1)	None	Art. 25	Art. 3(1)(h)
Canada	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(g)
China	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(j)
Cyprus	Art. 9(1)	Art. 9(3)	Art. 25	Art. 3(1)(e)
Czech Republic	Art. 9(1)	None	Art. 24	Art. 3(1)(g)
Denmark	Art. 10(1)	Art. 10(2)	Art. 23	Art. 3(1)(h)
Egypt	Art. 10(1)	None	Art. 24	Art. 3(1)(h)
Faroe Islands	Art. 10(1)	Art. 10(2)	Art. 23	Art. 3(1)(h)
Finland	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
France	Art. 10(1)	None	Art. 25	Art. 3(1)(g)
Georgia	Art. 7(7)	None	Art. 22	Art. 3(1)(c)
Germany	Art. 9(1)	None	Art. 23	Art. 3(1)(j)

Greece	Art. 4(1)	None	Art.19	Art. 2(1)(k)
Hungary	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(h)
Iceland	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Indonesia	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Ireland	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(g)
Israel	Art. 9(1)	Art. 9(2)	Art. 24	Art. 3(1)(h)
Italy	Art. 10(1)	None	Art. 24	Art. 3(1)(k)
Japan	Art. 9(1)	Art. 9(2)	None	Art. 3(1)(j)
Jordan	Art. 9(1)	Art. 9(2)	Art. 24	Art. 3(1)(g)
Kazakhstan	Art. 9(1)	None	Art. 24	Art. 3(1)(g)
Kenya	Art. 10(1)	Art. 10(2)	Art. 24	Art. 3(1)(i)
Korea (Rep.)	Art. 10(1)	None	Art. 24	Art. 3(1)(f)
Kuwait	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Kyrgyzstan	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(g)
Libya	Art. 8(1)	None	Art. 20	Art. 2(1)(e)
Malaysia	Art. 9(1)	None	Art. 23	Art. 3(1)(e)
Malta	Art. 9(1)	Art. 9(3)	Art. 24	Art. 3(1)(d)
Mauritius	Art. 9(1)	None	Art. 23	Art. 3(1)(h)
Mexico	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Moldova	Art. 7(7)	None	Art. 22	Art. 3(1)(c)
Mongolia	Art. 9(1)	None	Art. 24	Art. 3(1)(e)
Morocco	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(e)
Mozambique	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Myanmar	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(j)
Namibia	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Nepal	Art. 9(1)	None	Art. 22	Art. 3(1)(f)
Netherlands	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(j)
New Zealand	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Norway	Art. 10(1)	None	Art. 25	Art. 3(1)(h)
Oman	Art. 10(1)	None	Art. 25	Art. 3(1)(e)
Philippines	Art. 10(1)	Art. 10(2)	Art. 24	Art. 3(1)(h)
Poland	Art. 10(1)	None	Art. 24	Art. 3(1)(h)
Portugal	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Qatar	Art. 9(1)	Art. 9(2)	Art. 24	Art. 3(1)(g)
Romania	Art. 10(1)	None	Art. 25	Art. 3(1)(h)
Russia	Art. 9(1)	None	Art. 23	Art. 3(1)(k)
Saudi Arabia	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(h)
Serbia and Montenegro	Art. 9(1)	Art. 9(2)	Art. 25	Art. 3(1)(11)
Singapore	Art. 9(1)	None	Art. 25	Art. 3(1)(e)
Slovak Republic	Art. 9(1)	None	Art. 23	Art. 3(1)(h)
Slovenia	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(h)

South Africa	Art. 9(1)	Art. 9(2)	Art. 22	Art. 3(1)(e)
Spain	Art. 10(1)	None	Art. 25	Art. 3(1)(j)
Sri Lanka	Art. 9(1)	Art. 9(2)	Art. 24	Art. 3(1)(g)
Sudan	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Sweden	Art. 9(1)	None	Art. 24	Art. 3(1)(i)
Switzerland	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(g)
Syria	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(j)
Taiwan	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(g)
Tajikistan	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(i)
Tanzania	Art. 10(1)	None	Art. 25	Art. 3(1)(h)
Thailand	Art. 9(1)	None	Art. 23	Art. 3(1)(h)
Trinidad and Tobago	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(h)
Turkey	Art. 9(1)	Art. 9(2)	Art. 22	Art. 3(1)(i)
Turkmenistan	Art. 9(1)	Art. 9(2)	Art. 24	Art. 3(1)(g)
Uganda	Art. 9(1)	Art. 9(2)	Art. 23	Art. 3(1)(g)
Ukraine	Art. 9(1)	None	Art. 24	Art. 3(1)(h)
United Arab Emirates	Art. 9(1)	None	Art. 25	Art. 3(1)(j)
United Kingdom	Art. 10(1)	Art. 10(2)	Art. 24	Art. 3(1)(i)
United States	Art. 9(1)	Art. 9(2)	Art. 25	Art. 3(1)(h)
Uzbekistan	Art. 9(1)	None	Art. 25	Art. 3(1)(e)
Vietnam	Art. 9(1)	None	Art. 24	Art. 3 (e)
Zambia	Art. 9(1)	None	Art. 24	Art. 3(1)(f)

India's income tax treaties typically incorporate a dispute resolution mechanism, namely the MAP, for the amicable settlement of cross-border tax disputes. The MAP article contains provisions for the designated representatives from the Indian government and from the other country to interact with one another, with the intention of resolving international tax disputes. In India, "competent authority" means the central government in the Ministry of Finance (Department of Revenue), or their authorized representative. At present, Joint Secretary of the Foreign Tax Division of the CBDT in the Ministry of Finance is the competent authority.

The FB 2012 amends Sec. 90 of the ITA to require the submission of a Tax Residency Certificate by a taxpayer looking to use the provisions of a double tax treaty, with effect from 1 April 2013.

Advance Pricing Agreements

The proposed DTC Bill gave authority to the CBDT to introduce a mechanism for APAs in India. While the DTC is still not in force, new Secs, 92CC and 92CD of the ITA have been included in the FB 2012 to permit the negotiation of advance pricing agreements in respect of international transactions with effect from 1 July 2012.

The APA mechanism proposed in the FB2012 is similar to the provisions included in the DTC. The procedure is as follows:

– The taxpayer may approach the CBDT for determination of an arm's length price with respect to its international transactions;

- The arm's length price determined by the CBDT must be in accordance with transfer pricing provisions and if necessary the CBDT is empowered to make necessary adjustments to the arm's length price;
- The arm's length price determined under the APA is binding on both the taxpayer and the tax authority in respect to the international transaction covered under the APA; and
- The APA is valid for the period stipulated in the agreement with a maximum limit of five consecutive years and remains valid unless there are any material changes to the law governing the APA; and
- An APA can be declared by the Board to be void if it is concluded on the basis of fraud or misrepresentation of the facts.

The Board is empowered to set out the form and procedure for an application for an APA.

Language

Rule 10D of the IT Rules does not require documentation in a specific language; however, as English is the language of the courts and the preferred language for tax compliance, documentation can be prepared in English.

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[1] Many Commonwealth jurisdictions, including India and the UK, follow a system of annual Finance Acts, which incorporate amendments to the taxing Acts (usually the Income Tax Act, a VAT or GST Act, etc.).
[2] Organization for Economic Co-operation and Development's ("OECD") *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD, Paris, 1995)
[3] Sec. 92F (iii), ITA
[4] Sec. 92B (1), ITA 1961
[5] The Direct Tax Code Bill, 12 August 2009 (DTC), Ministry of Finance, India
[6] Income Tax Department, India (http://law.incometaxindia.gov.in/TaxmannDit/IntTax/tpcont.aspx)
[7] E.g. [2007] 18 SOT 76. *MentorGraphics (NOIDA) (P) Ltd.vs DCIT Circle 6(1) (New Delhi);* [2009] 30 SOT 486 *Customer Services India (P.) Ltd. vs. Assistant Commissioner of Income-tax, Circle-17(1), New Delhi*
[8] Under Rule 10E, IT Rules
[9] Sec. 92CA, ITA 1961
[10] S 994(E), dated 9 September 1994
[11] Rule 10B (2), IT Rules
[12] These methods are described in detail at Rule 10B, IT Rules 1962
[13] As proposed in Finance Bill 2012
[14] Sec. 133(6), ITA
[15] Sec. 2(11) (b), ITA
[16] Sec. 92(2), ITA
[17] Sec. 92(1) ITA, Explanation
[18] Sec. 92D, ITA
[19] Rule 10D, IT Rules
[20] Rule 10D (4), IT Rules
[21] Instruction 3 of 2003, dated 20 May 2003
[22] *Ibid*.
[23] Sec. 92CA (2)/2A as amended by FA 2010/Finance Bill 2011
[24] Sec. 92CA (3), ITA 1961
[25] From 1 April 2011
[26] New Sec. 92CB inserted by Finance (No. 2) Act, 2009
[27] India Finance Bill 2009, 7/27/09, Lower House of Parliament
[28] Secs. 271AA and 271G, ITA
[29] The Direct Tax Code Bill, 8/12/09 (DTC), Ministry of Finance, India
[30] 271(1) (c) (iii) ITA, read with Explanation 7

Corporate Overview

To conduct a transfer pricing analysis it is necessary to have an understanding of the entities involved in the controlled transaction(s) under review. To support the arm's length analysis, documentation has been collected for each legal entity that has a controlled transaction that will undergo an arm's length analysis. The information collected is general in nature and normally consists of a description of the legal entity's primary business, an overview of its corporate history, and information on the industry in which it operates. A description of the organizational structure covering all affiliates whose transactions may be relevant for an analysis under the arm's length principle should also be prepared. This includes foreign related parties which enter into transactions that directly or indirectly affect the controlled transaction under review.

Below is the applicable information for the legal entities that have engaged in the controlled transaction(s) under review.

Overview of XYZ Consulting India Private, Ltd

Corporate Overview

Principal Business Activity

XYZ Consulting India Private, Ltd. (“XYZ India”) started its operations in 2004 and performs three different functions: Information Technology (“IT”) services, data analytics and consulting services. Initially, XYZ India was set up as an outsourcing post to provide IT services to XYZ US with regard to the development of the Integrated Planning Model (“IPM”) as well as the US wholesale power team. The IPM is used extensively by XYZ entities around the globe.

Key Corporate Assets

XYZ India’s headquarters is located in New Delhi, India.

Key Employees

As of December 31, 2012, XYZ India employed XX people with almost half of the office working on the local/regional market and half working on US-based projects.

Overview of XYZ Consulting Group, Inc.

Corporate Overview

Principal Business Activity

XYZ Consulting Group Inc (“XYZ US”) provides consulting services primarily in energy, environment and climate change.

Key Corporate Assets

XYZ US’s principal executive office is located at XXXX.

Organizational Structure

To provide an overview of the legal entities, a description of the organizational structure covering all affiliates whose transactions may be relevant for an analysis under the arm's length principle has been prepared. This includes foreign related parties which enter into transactions that directly or indirectly affect these transactions.

Below is the corporate structure of the controlled group that may have an effect on the pricing of the controlled transaction(s) under review.

The XYZ International group consists of XYZ International and its wholly-owned subsidiary, XYZ Consulting Group, Inc ("XYZ US").

Controlled Transactions

In order to identify uncontrolled transactions that are comparable to the controlled transaction(s) under review, it is necessary to collect detailed information on each controlled transaction. Specifically, the following data should be taken into account when making this determination:

1. A detailed description of the property or service being transferred in each controlled transaction.

2. The economic conditions surrounding each controlled transaction. This typically includes information on the market conditions, the industry and a competitor analysis.

3. A detailed description of the contractual terms governing each controlled transaction.

4. An identification of the functions performed, risks assumed and intangibles held by each of the parties involved in each controlled transaction. This exercise is known as a functional analysis.

This section of the report contains the above information for each controlled transaction undergoing an arm's length analysis in this transfer pricing report.

Controlled Transaction for the Rendering of High level IT/data analytics services by XYZ India on behalf of XYZ US

Documentation

Renderer: XYZ Consulting India Private, Ltd

Recipient: XYZ Consulting Group, Inc.

Intercompany Transaction	Date	Amount (INR)
High level IT/data analytics services	31 March 2012	1

Transaction Description

Overview

XYZ India provides power and energy consulting services, model maintenance, data analytics, and IT services on behalf of XYZ US. These services are collectively herein referred to as "high level IT/data analytics services.

Functional Analysis Summary

Below is a summary of the functional analysis that was conducted for the controlled transaction above.

Functions	XYZ Consulting India Private, Ltd	XYZ Consulting Group, Inc.
Administrative/Executive	X	
Capacity Planning	X	X
Data analytics	X	
Energy and Climate Consulting	X	

Functions	XYZ Consulting India Private, Ltd	XYZ Consulting Group, Inc.
IT Services	X	
Management Information Systems		X
Sales	X	

Risks	XYZ Consulting India Private, Ltd	XYZ Consulting Group, Inc.
Foreign Exchange Risk		X
Market Risk	X	X

Assets Employed	XYZ Consulting India Private, Ltd	XYZ Consulting Group, Inc.
Technology		X

Functional Analysis Details

Functions

Administrative/Executive

Office management and maintenance is done in-house in the respective locations where the XYZ entities are located.

Capacity Planning

Resource & Business Management (Globally Managed): This unit is responsible for the direct management of all PS resources and will ensure optimal utilization and allocation of staff across the globe. This group also manages any external implementation partners that are needed to help supplement delivery capabilities.

Consulting Management Practice (Geographically Focused): These units are responsible for customer implementation (based on the agreed term sheet) and PS business development. Resource requirements are generally projected forwards, based on business forecasts and current activity, to ensure that XYZ has the right level and type available.

Data analytics

XYZ India provides data analytics for the US power market on behalf of XYZ US. XYZ India develops and updates the Integrated Energy Outlook that is sold in the US market as a subscription product. XYZ India delivers data analysis solutions by:

• Data collection;
• Data analysis; and
• Data visualization, reporting, and performance tracking

Energy and Climate Consulting

XYZ India provides energy and climate change consulting services to the Asian market. XYZ India helps clients analyze, implement, and evaluate the most appropriate programs and policies utilizing the following tools:

- Integrated Planning Model—IPM®
- PowerWorld®
- GE MAPS™
- Positive Sequence Load Flow—GE PSLF™

IT Services

XYZ India provides IT services for XYZ US. These services include, but are not limited to, updating and upgrading XYZ's proprietary models and technological platforms that the models are based upon. XYZ India also focuses on the conversion of technological platforms for the IPM, Beacon, and Comment Works.

Management Information Systems

XYZ consulting has a global financial system, based on SAP, which applies to all business operations, a well established budgeting and forecasting process, and adequate staff resources and experience to oversee the financial health of the business.

The Management Information System is primarily the responsibility of the group management accounting team based in XYZ US. Management Information is presented on a group and regional basis. All regional teams can access the management accounting system locally.

Sales

Foreign Exchange risk is borne by XYZ India. All product fee invoices are denominated in Indian local currency; It is the responsibility of XYZ India to remit the invoices and bears the foreign exchange gain / loss arising from changes in the foreign exchange rate.

Risks

Market Risk

Changes in local economic, market and regulatory conditions can adversely affect the availability of projects requiring XYZ US's expertise. A significant portion of XYZ US's revenues is derived from projects with federal and local governments around the globe.

Assets Employed

Technology

XYZ India relies on innovative analytics, climate change tools and models, and proprietary methods in order to perform environmental consulting services. All proprietary technology and processes that are utilized are owned by XYZ US.

Service Transaction Eligibility

Introduction

This section addresses whether intra-group services have been provided by one member of a multinational group to another. If such services have been rendered, the services must then meet the arm’s length standard. Nearly all multinational groups must arrange for a wide range of services to its member companies, including, but not limited to, administrative, technical, financial, and commercial services. Such services may include management, coordination, and control functions of the group. Intra-group arrangements for rendering services may also be linked to other intra-group transfers, including transfers of goods and intangible property.

Controlled Services Validation (Benefits Test)

The first issue that must be addressed in analyzing whether intra-group services have been rendered is whether such services have in fact been rendered. The OECD Guidelines set forth several elements that a transaction must meet in order to be considered an intra-group service.

First, the Guidelines ask whether an independent enterprise in comparable circumstances would have been willing to pay for the activity at issue if performed for it by an independent enterprise, or would have performed the activity in-house for itself.

The Guidelines also state that certain activities do not constitute intra-group services. One such set of activities are activities performed that relate to a membership in a corporate group even though the group member does not itself need the activity. Such activities would be those that a group member performs solely because of its ownership interest in one or more group members (i.e. in its capacity as a shareholder). The regulations list the following activities as examples of activities falling into this “shareholder activity” category:
- Costs of activities relating to the juridical structure of the parent company itself, such as meetings of the shareholders of the parent company, issuance of shares of the parent company, and costs of the supervisory board;

- Costs relating to reporting requirements of the parent company including consolidation of reports;

- Costs of raising funds for the acquisition of its participations.

The OECD Guidelines also state that activities that merely duplicate services already performed by other group members or by a third party should not be considered intra-group services.

Once an activity either meets or does not fall into the categories enumerated above, an activity may be considered an intra-group service; it is now subject to the arm's length standard applicable to both tangible and intangible intra-group transfers.

This section also documents how the intra-group services at issue are charged or allocated among multinational group members. While there may exist a variety of methods by which services may be charged intra-group, the regulations state explicitly that charges for services must be supported by an identifiable and reasonably foreseeable benefit. This report indicates whether the services have been charged or allocated on a direct basis, an indirect basis, or on some other basis.

Based on the above guidance, the services transaction analyzed in this report is considered to not provide a direct benefit to the recipient. Therefore, the service provider should not receive remuneration for its activities.

Controlled Transaction for the Licensing of Software Licensing from XYZ US to XYZ India

Documentation

Licensor: XYZ Consulting Group, Inc.

Licensee: XYZ Consulting India Private, Ltd

Intercompany Transaction	Date	Amount (INR)
Software Licensing	31 March 2012	1

Transaction Description

Overview

XYZ India pays a product fee to XYZ US for the licensing of software owned by XYZ US.

Property and Economic Conditions

Property Analysis

XYZ offers a variety of software products to its customers. The intellectual property associated with this software is owned in various locations around the world (please refer to the external structure for details of products owned by various entities in XYZ). When XYZ signs a license and services contract with a customer, the contract may be signed with the XYZ entity that owns the IP associated with the software or the contract may be signed by the XYZ entity located in the same jurisdiction or region as the customer. Alternatively, for various reasons, the customer contract may be signed by an XYZ entity that is neither the owner of the IP nor is located in the same region as the customer. Finally, the customer may sign a license contract with one XYZ entity and sign the services contract with a different XYZ entity.

Accordingly, there are many situations where the XYZ entity that signs the license and services agreement with the customer is not the owner of the IP associated with the software.

In this situation, the XYZ entity that owns the IP charges a product fee to the XYZ entity that signed the customer contract (and therefore is recognizing revenue from the customer contract). This product fee is appropriate because it is reasonable to expect that if an XYZ entity signed a customer contract to license and implement third party software that the third party owning that software would charge a fee to that XYZ entity.

Specific Transaction

XYZ India does not own any Intellectual property of any XYZ products. However, it signs contracts with customers in the European region licensing the InterconnecT product which is owned by XYZ Consulting Group. It also may perform professional services on these contracts.

XYZ India pays product fees to XYZ Consulting Group at XX of the license fees and XX of the services fees recognized from the customer contract as a compensation for distributing copies of the InterconnecT product. In 2010, the net product fee is XX percent of the service and licensing revenue.

Contractual Agreements

The contractual agreement relevant to this intercompany transaction is available as a separate document.

Functional Analysis Summary

Below is a summary of the functional analysis that was conducted for the controlled transaction above.

Functions	XYZ Consulting Group, Inc.	XYZ Consulting India Private, Ltd
Administration	X	X
Advertising		X
Billing & Collection		X
Capacity Planning	X	X
Commercialization	X	
Controllership	X	X
Customer Service		X
Distribution Network Management		X
Forecasting		X
Human Resources	X	X
Implementation	X	X
Installation and After Sales		X
Knowledge Management		X
Legal and Regulatory Affairs	X	X
Legal Protection	X	
Licensing	X	
Management Information Systems	X	
Marketing	X	X
Order Administration		X
Pricing		X
Project Management		X
Research and Development	X	
Sales		X
Testing	X	
Treasury	X	X

Risks	XYZ Consulting Group, Inc.	XYZ Consulting India Private, Ltd
Customer Credit Risk		X
Financial Performance Risk	X	X

Risks	XYZ Consulting Group, Inc.	XYZ Consulting India Private, Ltd
Foreign Exchange Risk	X	
International Risk	X	X
Market Risk	X	X
Product Liability	X	
Research and Development	X	

Assets Employed	XYZ Consulting Group, Inc.	XYZ Consulting India Private, Ltd
Customer Lists		X
Key Employees	X	X
Software	X	
Trade Name/Trademark	X	
Valuable Process/Method	X	X

Functional Analysis Details

Functions

Administration

Office management and maintenance is done in-house in the respective locations where the XYZ entities are located.

Capacity Planning

The OSS team based in XYZ India is responsible for implementation of OSS products. It consists of two critical functions:

- Resource & Business Management (Globally Managed): This unit is responsible for the direct management of all PS resources and will ensure optimal utilization and allocation of staff across the globe. This group also manages any external implementation partners that are needed to help supplement delivery capabilities.

- Consulting Management Practice (Geographically Focused): These units are responsible for customer implementation (based on the agreed term sheet) and PS business development.

Resource requirements are generally projected forwards, based on business forecasts and current activity, to ensure that XYZ has the right level and type available.

Commercialization

The regional finance groups are responsible for the management of day-to-day cash flows, accounts receivable and accounts payable. Operational managers have full access to budget and financial information to enable them to monitor the performance of the business units they control. All major operating units also have suitably qualified and experienced finance teams who report monthly to the executive team on the financial position.

XYZ US maintains healthy cash balances, does the vast majority of its trading in major currencies, and does not employ unusual or high-risk financial instruments.

Forecasting

The forecasting of demand is done on a periodic basis by the regional management accounting team in EMEA, APAC, NACA and CALA based on inputs received from the business.

Legal and Regulatory Affairs

The legal team is part of corporate services reporting to the Chief Financial Officer. There are legal teams in all four regions reporting to the group legal advisor based in XYZ US.

The legal team is responsible to provide legal advice and support:

- To all regional operations;
- For all corporate activities;
- Litigation and disputes;
- HR matters and disputes; and
- Brand, Trade Mark and IPR protection.

Legal Protection

XYZ's IPR is generally protected by copyright rather than patent law. In the event of any dispute, XYZ takes legal action only as a last resort, preferring to resolve issues by negotiation.

XYZ makes reasonable efforts to ensure that it does not breach the legal rights of others in developing or implementing products. XYZ safeguards its own Intellectual Property through oversight by its legal staff and external trademark and copyright agencies.

Management Information Systems

XYZ has a global financial system, based on SAP, which applies to all business operations, a well established budgeting and forecasting process, and adequate staff resources and experience to oversee the financial health of the business.

The Management Information System is primarily the responsibility of the group management accounting team based in XYZ US. Management Information is presented on a group and regional basis. All regional teams can access the management accounting system locally.

Marketing

XYZ has a proven and capable sales and marketing operation whose performance is regularly monitored by the Board. Marketing activities focus primarily on supporting profitable revenue generation through generating high quality sales leads, promoting the business in the most active markets, and communicating product and corporate strengths.

Marketing functions for XYZ are primarily performed by XYZ Consulting Group In addition to group marketing; there are regional marketing employees in Malaysia for the APAC region, US for North America and the CALA region, and in the UK for the EMEA region.

Order Administration

Office management and maintenance is done in-house in the respective locations where the XYZ entities are located.

Research and Development

XYZ US carries out most of the research and development for the InterconnecT product through its related companies in South Africa and Sweden.

XYZ’s IPR is generally protected by copyright rather than patent law.

There are no costs sharing arrangements in place in the XYZ group.

For research and development carried on by other XYZ group entities on InterconnecT product, XYZ US compensates them at cost plus mark-up of XX %.

Sales

Sales are primarily the responsibility of XYZ India's sales team. Prices are determined through a negotiation process involving sales, product development and commercial and senior management.

Treasury

The treasury function is the joint responsibility of XYZ US and the regional finance team.

Risks

Customer Credit Risk

In the current transaction of intra group product fee, the credit risk is borne by XYZ India.

The credit terms to the customer are finalized by XYZ India and the cost of bad debts and decision on recognizing bad debts is done by XYZ India, the entity which signs the contract with the customer.

All product fees payable by XYZ India to XYZ US are settled on a monthly basis. The settlement of intercompany invoices is not dependant on receipt of sale consideration from the customer contract.

Financial Performance Risk

The OSS/BSS industry is characterized by lengthy sales cycles, which makes revenue and cash flow difficult to predict and manage. Obviously, XYZ's revenue and cash flow is affected by varying lengths of sales cycles. Information Technology acquisition generally and OSS/BSS in particular are associated with purchasing complexity and significant capital commitments. Such projects are subject to delays and re-budgeting exercises on a regular basis and XYZ is not immune from such conditions.

XYZ's financial results may fluctuate from quarter to quarter, dependent upon:

- The size and timing of significant customer projects and license and service fees;
- Delays or even cancellations of significant projects;
- Project dependent changes in operating expenses;
- Restructuring;
- FOREX fluctuations; and
- Other economic fluctuations and even political conditions.

Foreign Exchange Risk

Foreign Exchange risk is borne by XYZ US. All product fee invoices are denominated in XYZ India's local currency, Indian Rupee.

It is the responsibility of XYZ India to remit the invoices in Indian Rupees and XYZ US bears the foreign exchange gain / loss arising from changes in the foreign exchange rate.

International Risk

XYZ is a highly de-centralized business, with development centers in Australia, South Africa, USA and support centres in USA, Canada, Brazil, Malaysia, India, Ireland and UK. As such XYZ is affected by risks associated with conducting business internationally.

XYZ obtains a mix of revenue from customers in all regions and maintains offices and staff in many countries.

Conducting business on an international basis exposes XYZ to the following additional risks:

- Need to localize products add extra cost and risk to projects;

- Legal and cultural differences in the conduct of business;

- Difficulties in staffing and managing foreign operations;

- Fluctuations in payment cycles and difficulty in collecting accounts receivable and withholding taxes that limit the repatriation of earnings;

- Requirements to comply with varied legal and regulatory regimes across jurisdictions; and

- Immigration regulations that limit our ability to deploy our own staff as well as risks associated with political instability in certain countries.

Market Risk

XYZ is a globally active company, and as such XYZ is exposed to global economic and market conditions and associated risks, particularly where such risk specifically impacts the telecommunications industry. XYZ has already initiated steps to diversify its industry focus, although such initiatives are in an early stage of development.

Among other things that could have an adverse effect on XYZ’s business (and upon customers' business) are:

- Continuing consolidation among the Communications Service Provider (CSP) community, thus reducing the potential market opportunity for XYZ;

- Emergence of new competitors across all our product lines; and

- Changes in regulatory requirements for the provision of telecommunications services.

A conventional reaction among CSPs, during periods of market uncertainty, is to exert more strict control over operating expenses (OPEX) and capital investment (CAPEX) budgets resulting in a slowdown in customer purchasing decisions, as well as increasing price pressures, which may affect XYZ's revenue and margin.

Obviously adverse market conditions in the future could have a negative impact on XYZ's business by reducing the number of new contracts it can sign and the size of initial spending commitments, as well as decreasing the level of discretionary spending under contracts with existing customers. In addition, a reoccurrence of the slowdown in the buying decisions of communications providers could extend sales cycle period and limit its ability to forecast flow of new contracts.

If XYZ fails to adapt to changing market conditions and cannot compete successfully with existing or new competitors, its business could be harmed.

Product Liability

XYZ US customer projects. All products undergo rigorous testing before deployment, and are subject to a programme of continual improvement. Product quality metrics are a key Board measure.

Assets Employed

Customer Lists

XYZ India holds the customer list for customers in the APAC region.

Trade Name/Trademark

XYZ US is a product-based business. XYZ US uses sophisticated tools and technologies to ensure that its products offer high performance and robustness. XYZ US intellectual property rights ("IPR") are primarily protected by software copyright law, rather than patents.

XYZ US makes an effort to ensure that it does not breach the legal rights of others in developing or implementing products. XYZ US safeguards its own Intellectual Property through oversight by its legal staff and external trademark and copyright agencies.

XYZ US software products, integrated solutions and service methodology have been developed over many years. But XYZ US, as with many other vendors, is increasingly under pressure from potential IPR infringement threats and from less scrupulous competitors. As the industry consolidates, some of the 3rd party products may become the IPR of direct competitors, thus associating additional risk with such relationships.

Valuable Process/Method

XYZ, through its subsidiaries, owns the intellectual property for the following products:

- InterconnecT: Operations support software;
- IntermediatE (XYZ Mediation): Operations support software;
- Singl.eView (XYZ Convergent Billing): Business support software;
- Dynamic Charging Platform (DCP): Business support software; and
- EUR and others: Managed Services.

XYZ only uses technologies and products which are considered to be "industry standard", in the sense of being widely used and accepted within the industry, and appropriate in terms of quality and performance for the business critical applications it supports. XYZ has particular strengths in supplying products and services that address the global industry trend known as convergence. This can mean convergence of both networks and services, the net result is that customers are increasingly offered a wider range of more complex, higher-value products (such as broadband internet access, music and other content downloads, or mobile TV) through a range of different methods, including fixed lines, cable, cellular wireless and wireless LANs. XYZ has a product set which inherently addresses converged services with proven effectiveness and we are seeing increasing success in these markets.

Method Evaluation

The OECD Guidelines recommend a number of transfer pricing methods (the recommended methods) that, when applied correctly to a tangible, intangible or service transaction, result in an arm's length price or allocation. The taxing authorities will rely on these methods to determine if the terms and conditions of a taxpayer's cross-border transactions with non-arm's length parties are consistent with the arm's length principle.

These methods are divided into two groups, with the first being the traditional transactional methods (i.e. the comparable uncontrolled price (CUP) method; the resale price (RP) method; and the cost plus (CP) method). When one of these methodologies is employed, the arm’s length character of a controlled transaction under review is established by comparing the unit price, gross margin, or royalty realized in connection with the controlled transaction to the same financial measure associated with an uncontrolled transaction (that is comparable to the controlled transaction).

The second groups of methods discussed by the OECD Guidelines are the transactional profit methods (i.e., the transactional net margin method (TNMM), which is a variation of the popular comparable profits method (CPM) used in the United States, and the transactional profit split (PS) method). In general, when a profit based methodology is employed, the profitability of one of the parties to a controlled transaction is compared to the profitability of other similar, unrelated legal entities that have not engaged in related party transfers. If the profitability of the legal entity involved in the controlled transaction is similar to that of the unrelated legal entities, then the assumption can be made that the controlled transaction was conducted at arm’s length. If not, then this can be an indicator that the controlled transaction was priced incorrectly.

When determining which testing methodology is most reliable, the two most important factors taxpayers must consider are:

1) The degree of comparability between the controlled transaction (and taxpayer) and any uncontrolled transactions or comparables.

2) The completeness and accuracy of the underlying data used in the analysis, the reliability of the assumptions used in connection with the method, and the sensitivity of the results to deficiencies in the data used or the assumptions made (depending on the methodology employed).

In certain circumstances, one should also consider whether the results of an analysis using a particular method are consistent with the results of an analysis using another method.

The following transaction has been analyzed to determine whether the price charged for the transaction is equivalent to the price that would have been charged between unrelated parties. The paragraphs below summarize this transaction, the testing methodology selected as the most reliable measure of the arm's length result (best method), the testing methodologies not employed by the taxpayer in meeting the arm's length standard, which includes a listing of the methods not used and an explanation of why they were not selected as a testing methodology, and whether or not the documentation supports the contention that the transaction was conducted at arm’s length.

Method Evaluation for the Rendering of High level IT/data analytics services by XYZ India on behalf of XYZ US

Renderer: XYZ Consulting India Private, Ltd

Recipient: XYZ Consulting Group, Inc.

Intercompany Transaction	Date	Amount (INR)
High level IT/data analytics services	31 March 2012	1

Methods Applied

Most Appropriate Method

Transactional Net Margin Method

The Transactional Net Margin Method ("TNMM") has been selected as the most appropriate method based on the availability of reliable data and because comparable uncontrolled transactions with which to apply the transactional methods could not be identified reliably. XYZ-India has been selected as the tested party on the basis that it provides high level IT/data analytics services, making its profitability dependent on the fees it receives for these services. Independent companies with similar functions to those of the tested party were reliably identified. The profitability of the tested party was then compared to that of the independent companies, effectively measuring the arm's-length nature of the intercompany transaction.

Methods Not Applied

Comparable Uncontrolled Price

The Comparable Uncontrolled Price ("CUP") method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the amount charged in a comparable uncontrolled transaction. The CUP method is ordinarily used where the controlled transactions are either identical to or have a high degree of similarity to the uncontrolled transactions. Because of the nature and complexity of the high level IT/data analytics services provided by XYZ-India, it is not possible to identify independent service providers that would serve as comparables. The CUP method was not applied as the best method because comparable uncontrolled transactions involving the provision of very similar services under similar terms and circumstances could not be identified reliably.

Profit Split

The Profit Split ("PS") method is used in cases involving the co-development of a non-routine intangible asset, where the "residual" profits attributable to a non-routine intangible are split between two parties. As there is no co-development of any intangible asset between XYZ-India and XYZ-US, the PS method would not be the best method to analyze the intercompany transaction.

Method Evaluation for the Licensing of Software Licensing from XYZ US to XYZ India

Licensor: XYZ Consulting Group, Inc.

Licensee: XYZ Consulting India Private, Ltd

Intercompany Transaction	Date	Amount (INR)
Software Licensing	31 March 2012	1

Methods Applied

Most Appropriate Method

Comparable Uncontrolled Price

Based on the facts and circumstances and on the availability of reliable, comparable data, the CUP method was selected as the most appropriate method to establish arm's-length results with respect to the controlled transaction. XYZ India pays a product fee for software distribution to XYZ US. Several agreements between unrelated third parties were reviewed and deemed comparable to the controlled transaction in this analysis.

Methods Not Applied

Cost Plus

The Cost Plus ("CP") method is typically used as a transactional analysis in the comparison of controlled and uncontrolled transactions involving the manufacture, assembly and production of tangible goods within the same product category. The comparability of the uncontrolled transactions relies on the similarity of functions performed, risks assumed and intangibles held. The gross margin of the manufacturer involved in the controlled transaction is compared with the gross margins of manufacturers in the comparable uncontrolled transactions. The CP method can also be applied to analyze service transactions by comparing the gross margin of the service provider involved in the controlled transaction to the gross margin of the service providers in comparable uncontrolled transactions. Given the availability of CUTs, the CP method was not selected as the best method to test the transaction under the review.

Profit Split

The Profit Split ("PS") method determines the division of profits that independent enterprises would expect to realize under circumstances similar to the transaction under review. The PS method calculates the profit (either total or residual) from the controlled transactions and splits those profits based on the contribution of each entity and is therefore consistent with what would have occurred at arm’s length. The contribution of each entity is determined by performing a functional analysis and valued, if possible, by reference to reliable external market data. The PS method has not been applied because there was no co-development of intangibles between the entities.

Resale Price

The Resale Price ("RSP") method as a transaction based economic analysis evaluates whether the amount charged in a controlled transaction is arm's-length by references to the gross margin realized in comparable uncontrolled transactions. The RSP method was not applied as a transaction based analysis because the controlled transaction involved services as well as the transfer of products.

Transactional Net Margin Method

The Transactional Net Margin Method ("TNMM") was not applied because comparable uncontrolled trademark license and distribution agreements with which to apply a transactional method were identified reliably.

Economic Analysis for the Rendering of High level IT/data analytics services by XYZ India on behalf of XYZ US

Renderer: XYZ Consulting India Private, Ltd

Recipient: XYZ Consulting Group, Inc.

Intercompany Transaction	Date	Amount (INR)
High level IT/data analytics services	31 March 2012	1

Once all the information on the controlled transaction(s) has been collected, it is necessary to conduct the economic analysis that will determine whether it has been conducted at arm's length.

Profit Based Economic Analysis

This section of the report will detail the economic analysis undertaken in conjunction with any transactional profit based methodologies that were employed in the course of testing the arm's length character of the controlled transaction(s) under review.

There are two general approaches that can be used when employing a transactional profit based methodology. The most common approach is to compare the profitability of one of the controlled taxpayers, or one of its business segments, involved in the controlled transaction(s) to the profitability of comparable uncontrolled taxpayers. A more sophisticated approach, which should only be used in specific circumstances, is to split the profit associated with the controlled transaction among the parties that have engaged in the transaction using various allocation methods. This section will describe the traditional profit based approach (i.e. the TNMM) and then apply it where appropriate to the controlled transaction(s) under review in this report. If the second profit based approach (i.e. the RPS) was applied in connection with the transaction(s) under review, this analysis will be detailed in the section entitled "Profit Split Analysis."

Tested Party Identification (XYZ Consulting India Private, Ltd)

When applying the TNMM, the first step is to select the tested party. In general, the tested party is considered to be either one of the entities involved in the transaction or the most narrowly identified business activity in which one of the entities engages that includes the controlled transaction. The tested party should not hold any valuable, non-routine intangibles, and should be the least complex entity in the relationship. In addition, it should also be possible to construct financial statements that correspond directly to the controlled transaction(s) under review.

Based on these criteria the following tested party was identified:

XYZ Consulting India Private, Ltd

The analysis described below will be conducted for this tested party.

Tested Party Information

First, it is important to gather general information such as a description of its structure, an overall description of its business and a review of its competitors, customers, and the industry in which it operates. In addition, it is necessary to identify the major functions the tested party performs, the risks it assumes, and the specialized assets it holds. This information is detailed below.

An income statement and balance sheet that correspond directly to the activities of the current tested party have been constructed below. The relevant profit level indicators (PLIs) are applied to this data and compared to the corresponding profit level indicators applied to the corresponding data of the comparable companies from which the arm's-length range is derived.

XYZ Consulting India Private, Ltd

Income Statement

Description	2011	2010	2009	Average
Net Sales				
Cost of Goods Sold				
Gross Profit				
Operating Expenses				
Operating Income				
Interest Expense				
R and D Expense				
Advertising Expense				

Fiscal Year End: March 31, 2012 **Currency:** INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets				
Avg Operating Assets				
Avg Net Payables				
Avg Net Receivables				
Avg Net Inventory				
Avg Cash				
Avg Cash And Equivalent				
Avg Net PPE				
Avg Invested Capital				

Fiscal Year End: March 31, 2012 **Currency:** INR

Comparable Uncontrolled Taxpayer Identification

To determine the arm's length price of the current tested party's controlled transaction(s), it is necessary to compare the tested party's profitability to the profitability of comparable uncontrolled taxpayers. Based on an in-depth search and evaluation process, a group of companies has been identified as comparable to the tested party. The financial data associated with each of the taxpayers listed below will be used to construct the arm's length range. Below is an overview of the results of this search. For a detailed description of the identification and evaluation process, see the section of the report entitled "Appendix: Comparable Taxpayers."

Search of Thomson Reuters Fundamentals, published June 2013 by Thomson Reuters

Potentially Comparable Taxpayers Total: **248**

Criteria Set Potentially Comparable Taxpayers: **248**

Search Criteria	
Primary US SIC:	7371 - Serv: Computer Programming Services or 7374 - Serv: Data Processing & Preparation or 7379 - Serv: Computer Related Services, nec or 8111 - Serv: Legal Services or 8711 - Serv: Engineering Services or 8732 - Serv: Commercial Nonphysical Research or 8733 - Serv: Noncommercial Research Organizations or 8741 - Serv: Management Services or 8742 - Serv: Management Consulting Services or 8748 - Serv: Business Consulting, nec or 8999 - Serv: Services, nec
And	
Inclusion Criteria	
Domiciled in:	India

Criteria Set Potentially Comparable Taxpayers: **4**

Search Criteria	
Primary US SIC:	8741 - Serv: Management Services or 8742 - Serv: Management Consulting Services or 8748 - Serv: Business Consulting, nec
And	
Inclusion Criteria	
Domiciled in:	India
And	

Fiscal Year End Exclusion :	March 2012

Search of Thomson Reuters European Comparables, published June 2013 by OneSource (former InfoUSA)

Potentially Comparable Taxpayers Total: **0**

Total Pool of Potentially Comparable Taxpayers: **248**

Bulk Rejections Summary

Bulk Rejections Total: **134**

Qualitative Rejections	Count
Average operating income is less than or equal to 0 for the years of interest	18
Net Sales missing for 2 or more years	57
Total Qualitative Rejections	**75**

Quantitative Rejections	Count
Average Net Inventory/Total Net Sales is greater than or equal to 0.05	59
Total Quantitative Rejections	**59**

First Review Rejections Summary

First Review Rejections Total: **103**

First Review Rejection Reasons	Count
Primarily provides engineering services	18
Primarily provides financial services	19
Primarily provides maintenance services	1
Primarily provides security services	11
Primarily provides software development services	41
Primarily provides telecommunications services	13
Total First Review Rejections	**103**

Second Review Rejections Summary

Second Review Rejections Total: **3**

Blue Star Infotech Ltd.

Rejection Reason

Primarily provides software development services

Upon further research, Blue Star Infotech Limited's computer software development segment comprised of XX percent of FYE 2011 revenues.

Source: Blue Star Infotech Limited's FYE 2012 annual report.

Silverline Technologies Limited

Rejection Reason
Primarily provides software development services

Upon further research, direct costs of software development attributed to XX percent of Silverline Technologies Limited's FYE 2011 expenses.

Source: Silverline Technologies Limited's FYE 2012 annual report.

Tata Elxsi Limited

Rejection Reason
Is a controlled entity

Source: http://www.tataelxsi.com/company/about-us.html

A part of the $100 billion Tata group, Tata Elxsi addresses the communications, consumer products, defence, healthcare, media & entertainment, semiconductor and transportation sectors.

Comparable Taxpayers

Total Accepted After Search and Evaluation: **8**

Below is a list of the comparable taxpayers accepted upon final review. For a detailed description, refer to the section of the report entitled "Appendix: Comparable Taxpayers."

3i Infotech Ltd

Acropetal Technologies Ltd

Allied Digital Services Ltd.

ASM Technologies Ltd

GSS Infotech Ltd

Hexaware Technologies Limited

Info Drive Software Ltd

NIIT Technologies Ltd.

Perform the Arm’s Length Analysis

Once comparable uncontrolled taxpayers have been identified, it is necessary to compare their profitability to the current tested party’s profitability. This comparison analysis is conducted in three steps. First, it is necessary to select the measure of profitability that will be used in the comparison (the profit level indicators (PLIs)). A single PLI is often used in the application of the TNMM. However, multiple PLIs can be used, as each may provide a different evaluation. Furthermore, different methods may be employed to confirm and support the evaluation of others.

The decision to use a particular PLI depends on a number of factors, including: (1) the nature of the tested party’s activities; (2) the reliability of available data with respect to uncontrolled taxpayers; and (3) the extent to which the PLI is likely to produce a reliable measure of tested party income (assuming the controlled transaction(s) had been conducted at arm’s length). Below are the PLIs that have been applied to the financial data of the current tested party and each comparable uncontrolled taxpayer.

Arm’s Length Range

An arm’s length range is a set of values calculated using the selected Profit Level Indicator (“PLI”) and financial data of each comparable uncontrolled taxpayer. The results of the range calculation for this search are displayed below.

Unadjusted Arm’s Length Range

Profit Level Indicator (PLI): **Net Cost Plus**

Average Type: **Weighted Average**

Quartile Calculation Method: **Interquartile Range**

Comparable Taxpayer	2011	2010	2009	Average
3i Infotech Ltd	0.0893	0.2080	0.2087	0.1761
Acropetal Technologies Ltd	0.2284	0.3562	0.4293	0.3062
Allied Digital Services Ltd.	0.0402	0.1098	0.2203	0.1222
ASM Technologies Ltd	0.1244	0.0992	0.0807	0.1063
GSS Infotech Ltd	-0.0409	0.1862	0.1944	0.1245
Hexaware Technologies Limited	0.1951	0.0672	0.1964	0.1543

Info Drive Software Ltd	0.0077	0.0972	0.0747	0.0629
NIIT Technologies Ltd.	0.1839	0.2140	0.2121	0.2006

	2011	2010	2009	Average
Minimum:	-0.0409	0.0672	0.0747	0.0629
Lower Quartile:	0.0239	0.0982	0.1376	0.1142
Median:	0.1069	0.1480	0.2025	0.1394
Upper Quartile:	0.1895	0.2110	0.2162	0.1884
Maximum:	0.2284	0.3562	0.4293	0.3062

	2011	2010	2009	Average
Tested Party PLI/Ratio:				
Outcome (Full Range):	In	In	In	In
Outcome (Interquartile Range):	In	In	In	In

For FYE 2012, the range of net cost plus ratios established by the comparable companies has a minimum of XX percent, a lower quartile of XX percent, an upper quartile of XX percent and a maximum of XX percent, with a median of XX percent.

Economic Analysis for the Licensing of Software Licensing from XYZ US to XYZ India

Licensor: XYZ Consulting Group, Inc.

Licensee: XYZ Consulting India Private, Ltd

Intercompany Transaction	Date	Amount (INR)
Software Licensing	31 March 2012	1

Once all the information on the controlled transaction(s) has been collected, it is necessary to conduct the economic analysis that will determine whether it has been conducted at arm’s length.

Transaction Based Economic Analysis

In the process of researching the facts of the controlled transaction(s) under review, a number of similar transactions between uncontrolled entities were identified. In order to determine whether any of these transactions can serve as benchmarks for the purposes of a transaction-based analysis, it was necessary to conduct a thorough comparison of these transactions’ facts and circumstances against those of the controlled transaction in question. This section of the report documents the comparison process as well as the final analysis.

The financial data associated with the uncontrolled transactions that meet the necessary comparability standards was used to construct the arm's length range. Depending on the methodology employed, the points of the range were derived from a single financial parameter that is an integral part of the transaction. Specifically, if a Comparable Uncontrolled Price (CUP) method was employed, the range is comprised of the unit price of each comparable uncontrolled transaction (e.g. product unit price, service hourly rate, royalty rate, interest rate, etc). If a Resale Price (RP) or a Cost Plus (CP) method is employed, the range is constructed using the gross margin or a cost plus markup associated with each comparable uncontrolled transaction. In all cases, if the financial metric for the controlled transaction under review falls within the constructed range, then the transaction is considered to be conducted at arm's length.

Comparable Uncontrolled Price Analysis

This section of the report will describe each of the major components of the selected transaction based analysis.

Controlled Transaction

Below is the controlled transaction to be analyzed as part of the current transaction based analysis.

Licensor: XYZ Consulting Group, Inc.

Licensee: XYZ Consulting India Private, Ltd

Intercompany Transaction	Amount Charged	Currency	Date	Rate
Software Licensing	1	INR	31 March 2012	1

Uncontrolled Transaction(s)

If a traditional transaction methodology has been applied to determine whether a controlled transaction has been conducted at arm's length, the controlled transaction(s) under review is compared against any potentially comparable uncontrolled transactions. This section of the report contains detailed information on each of these uncontrolled transactions.

Uncontrolled transactions that are potentially comparable to the controlled transaction(s) under review are either categorized as “internal” or “external” transactions. Internal transactions occur whenever one of the taxpayers involved in the controlled transaction, or a related affiliate, engage in a similar transaction with an unrelated entity. External transactions occur between two companies which are completely unrelated to either of the parties engaged in the controlled transaction or any of their affiliates. Internal transactions are preferable as opposed to external transactions since it is likely that the information regarding the internal transactions will be more reliable.

Once the uncontrolled transactions that are potentially comparable to the controlled transaction(s) under review are identified, it is necessary to collect detailed information on each one. Each uncontrolled transaction should be documented in the same manner as the controlled transaction(s), so they can be compared against one another. Specifically, the following information needs to be gathered:

1. The property or service to which the transaction relates.

2. The terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the persons or partnerships involved in the transaction.

3. The identity of the persons or partnerships involved in the transaction or arrangement and their relationship at the time the transaction or arrangement was entered into.

4. The functions performed, the property used or contributed, and the risks assumed by the persons or partnerships involved in the transaction. Paragraphs 1.20 through 1.27 of the OECD Guidelines describe the functional analysis process. In addition, Paragraphs 5.23 and 5.24 of the OECD Guidelines give an overview of the documentation required to support such an analysis.

5. The data and methods considered and the analysis performed to determine the transfer prices or the allocation of profits or losses or contributions to costs for the transaction. This includes a description of the comparable transactions considered and of those used in applying the pricing method, an assessment of the degree of comparability of such transactions with the taxpayer's transactions, and the description of any adjustments made to enhance the degree of comparability. Where the taxpayer considers more than one method, this also includes the analysis performed using the other methods as well as the analysis that led to the selection of the chosen method.

6. The assumptions, strategies, and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, for the transaction. This includes all the factors that materially affect the determination of the transfer prices, such as market penetration strategies or any economic assumptions that were relied on to determine the transfer prices.

Below are the uncontrolled transactions that have been identified as potentially comparable to the controlled transaction under review. The summary table is followed by the details of each of these transactions.

Accepted Uncontrolled Transactions Summary

Below is a table that identifies and summarizes the uncontrolled transactions that were deemed comparable to the controlled transaction in this analysis. For a matrix of rejected uncontrolled transactions, please refer to the Appendix of this report.

ID#	Licensor	Licensee	Property	Amount Charged	Currency	Rate	Transaction Date
1	Multi Soft Inc.	International Business Machines Corporation	Software	1.00	INR	XX %	31 March 2012
2	Network-1 Security Solutions Inc.	FalconStor Software Inc.	Software	1.00	INR	XX %	31 March 2012
3	Orchestral Corporation	IVP Technology Corporation	Software Product	1.00	INR	XX %	31 March 2012
4	NetIQ Corporation	Ixia	Software product	1.00	INR	XX %	31 March 2012
5	VidRev Technologies Inc.	TTA Technologies Limited	Software Products	1.00	INR	XX %	31 March 2012
6	Vertel Corporation	Prismtech Limited	Software Product	1.00	INR	XX %	31 March 2012
7	AltaVista Technology Inc.	Kuni Research International Corporation	Multimedia Email and Web Software	1.00	INR	XX %	31 March 2012
8	QueryObject Systems Corporation	Internet Query Object Corporation	Licensed Software	1.00	INR	XX %	31 March 2012
9	Lotus Development Corporation	NetObjects Inc.	Software Products	1.00	INR	XX %	31 March 2012

Accepted Uncontrolled Transactions Descriptions

ID#	Description
1	Multi Soft Inc licenses software to International Business Machines Corporation ("IBM").
2	Network-1 Security Solutions Inc. ("Network-1") licenses software to FalconStor Software Inc. ("FalconStor").
3	Orchestral Corporation licenses software to IVP Technology Corporation.
4	NetIQ Corporation licenses software to Ixia.
5	TTA Technologies Limited ("TTA") licenses software to VidRev Technologies Inc.
6	Vertel Corporation licenses software to Prismtech Limited.
7	AltaVista Technology Inc. ("AVT Inc.") licenses software to Kuni Research International Corporation.
8	QueryObject Systems Corporation ("QOS") licenses software to Internet Query Object Corporation ("IQO").
9	Lotus Development Corporation licenses software to NetObjects Inc.

Comparability Analysis

A three-step process was undertaken in order to assess the comparability between the controlled and each of the uncontrolled transactions.

First, the similarity of the property transferred or service rendered as well as of the economic conditions surrounding both controlled and uncontrolled transactions was evaluated. The purpose of this comparison is to identify any material differences and to determine whether adjustments are possible.

Second, where necessary, adjustments were made for the material differences identified in the previous step.

Finally, based on the information from the comparability analysis, it was determined whether the uncontrolled transaction is similar enough to serve as a comparable for the purposes of a transaction-based analysis.

Analysis for Uncontrolled Transactions

The first step in the comparability determination process is to compare the property and the economic conditions surrounding the uncontrolled transaction(s) to the controlled transaction(s). The comparison process has been documented below with any material differences between the transactions being highlighted. In addition, for each major area of comparison, the overall similarity of the two transactions has been rated.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
1	Multi Soft Inc.	International Business Machines Corporation	Software	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

Multi Soft Inc. entered into software license agreement, providing IBM with the right to market and distributes Multi Soft Inc.'s products. The company's products include tools for the development of client-server applications using the mainframe as the enterprise server. Multi Soft Inc. licenses software to IBM for a fee of up to 11 percent of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ US involves the distribution of telecommunication software. The uncontrolled license agreement between IBM and Multi Soft Inc. also involves the distribution of software. The distributing activities incorporate store processes, procedures and business systems established and licensed by Multi Soft Inc., which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: IBM

Licensee Business: Office, computing, and accounting machinery

Licensor: Multi Soft Inc.
Licensor Business: Prepackaged software

Definitions

Licensed Property

In October 1993, the Company entered into a software licensing agreement and other ancillary agreements with IBM providing IBM with certain exclusive marketing rights for the Company's flagship product, WCL (runtime version) with IBM IMS Extensions. This IBM extended version of Multi Soft's WCL is named IMS Client ServerTM for Windows. Specifically modified for use with IBM mainframe systems, IMS Client ServerTM for Windows provides remote presentation support for IMS. The Multi Soft product line consists of tools for the development of client-server applications using the mainframe as the Enterprise Server. There are four key elements to the real world development, delivery and production maintenance of these applications and all are supported by the Multi Soft product line. These include screen-based access to mainframe data and processes; message-based access to mainframe data and processes; integration of screen-based and message-based access to the mainframe in the same application; and control and distribution management.

Compensation Detail

IBM agrees to pay or accrue to Multi Soft a minimum fee for each copy of the Licensed Work for which IBM receives revenue of an amount equal to 22 percent of an amount equal to 50 percent of a Product's United States list price (i.e. 11 percent of such Product's U.S. list price). This minimum fee shall also apply in any cases where IBM packages a product with other IBM and/or non-IBM products and offers them at a single price to customers, where the portion of the single price attributable to the product is not readily ascertainable.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
2	Network-1 Security Solutions Inc.	FalconStor Software Inc.	Software	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

Network-1 grants license to FalconStor to market, distribute, resell, and sublicense its products. Network-1 licenses software to FalconStor for a fee of up to XX percent of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ US involves the distribution of telecommunication software. The uncontrolled license agreement between FalconStor and Network-1 also involves the distribution of software. The distributing activities incorporate procedures and business systems established and licensed by Network-1, which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: Falconstor Software Inc.
Licensee Business: Prepackaged software

Licensor: Network-1 Security Solutions Inc.
Licensor Business: Prepackaged software

Definitions

Licensed Property

This license and distribution agreement is made and entered into this 2nd day of October, 2001. The company hereby grants to the licensee a worldwide, non-exclusive license to: (i) market, distribute, resell, and sublicense the licensed product to resellers as a separate product or together with any FalconStor product under FalconStor trademark(s) or under the trademark(s) utilized for the licensed product by Network-1, expressly excluding OEM Transactions; (ii) use the licensed product for testing, demonstration, training, promotional and evaluation purposes by its personnel and resellers; (iii) market, distribute and sublicense the OEM Product under FalconStor trademark(s) or such other trademarks as FalconStor may authorize in OEM transactions, expressly excluding Network-1 trademark(s); (iv) reproduce the licensed product and OEM Product to give effect to the express terms and provisions hereof. The company presently owns six patents covering various telecommunications and data networking technologies. The company's patent portfolio consist of the following patents:

U.S. Patent No. 6,577,631: communication switching module for the transmission and control of audio, video, and computer data over a single network fabric; U.S. Patent No. 6,574,242: method for the transmission and control of audio, video, and computer data over a single network fabric; U.S. Patent No. 6,570,890: method for the transmission and control of audio, video, and computer data over a single network fabric using Ethernet packets; U.S. Patent. No. 6,539,011: method for initializing and allocating bandwidth in a permanent virtual connection for the transmission and control of audio, video, and computer data over a single network fabric; U.S. Patent No. 6,218,930: Apparatus and method for remotely powering access equipment over a 10/100 switched Ethernet network; and U.S. Patent No. 6,215,789: local area network for the transmission and control of audio, video, and computer data.

Compensation Detail

Upon execution of this agreement, FalconStor shall pay to Network-1 a non-refundable advance against fees of $500,000 (the non-refundable advance). FalconStor shall pay Network-1 a fee equal to: (i) 15 percent of Network-1's list price on all sales or licenses granted by FalconStor in and to the Licensed Product, excluding OEM Transactions; or (ii) 20 percent of its net receipts from any OEM Transaction.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
3	Orchestral Corporation	IVP Technology Corporation	Software Product	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

Orchestral Corporation grants the right to IVP Technology Corporation to distribute and market its Power Audit software product. The software provides a tool that allows personnel to collect a variety of different data, have that data verified when entered, and then transmit that data on a wireless basis via the internet to a central server where management will have immediate access to the data. Orchestral Corporation licenses software to IVP Technology Corporation for a fee of XX % of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ US involves the distribution of telecommunication software. The uncontrolled license agreement between IVP Technology Corporation and Orchestral Corporation also involves the distribution of software. The distributing activities incorporate procedures and business systems established and licensed by Orchestral Corporation, which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: IVP Technology Corporation
Licensee Business: Prepackaged software

Licensor: Orchestral Corporation

Definitions

Licensed Property

The licensee entered into a software distributing agreement with an unrelated company (1999) that was later amended (2000), granting it an exclusive right to distribute a software product known as "Power Audit" throughout the United States of America, the European Economic Community, and handheld personal computers that provides a platform for real-time, remote data capture and market survey purposes. PowerAudit is a field automation and enterprise integration tool that allows field personnel to collect a variety of different forms of data, have that data verified when entered, and then transmit that data on a wireless basis via the internet to a central server where management will have immediate access to the data. PowerAudit runs on handheld personal computers ("HPCs" or "handheld devices") employing Microsoft's Windows CE operating system that allows the software to interface with other Microsoft platforms, the most widely used operating systems in the world.

Compensation Detail

Payments of XX % on the first $500,000 of sales XX % percent on sales between XX % and $1,000,000 and five percent on sales over $1,000,000. This was changed in 2000 to the fee for sales over $1,000,000 from XX % to XX %.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
4	NetIQ Corporation	Ixia	Software product	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

NetIQ Corporation grants exclusive rights to Ixia to distribute Chariot software product. Chariot software product is designed to measure and predict end-to-end performance of networked applications. NetIQ licenses software to Ixia for a fee of XX % of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ USinvolves the distribution of telecommunication software. The uncontrolled license agreement between Ixia and NetIQ Corporation also involves the distribution of software. The distributing activities incorporate procedures and business systems established and licensed by NetIQ, which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: Ixia
Licensee Business: Instruments to measure electricity

Licensor: NetIQ Corporation
Licensor Business: Prepackaged software

Definitions

Licensed Property

In July 2003, licensee was granted exclusive distribution rights to Chariot products in the United States and Canada through December 31, 2004, as well as a perpetual license to the source code for the Chariot software products to develop and distribute derivative products. In addition to the license rights, licensee was granted an option to purchase assets associated with the Chariot products. Chariot software products are designed to measure and predict end-to-end performance of networked applications. The detailed performance data collected by Chariot enables users to optimize network performance, eliminate unnecessary upgrades and determine when network loads will necessitate new equipment. Using simulated real-world application loads, Chariot generates application traffic to evaluate the effect changes will have on existing applications. Both parties are U.S. corporations. Rights to use following trademarks or brand names included: "Chariot," "Qcheck", and "AppScanner."

Compensation Detail

Ixia shall pay to NetIQ a one-time fee in the amount of $17,500,000 (the "Source Asset License Fee") in cash on the Effective Date by wire transfer of immediately available funds to an account of NetIQ designated to Ixia. As payment in full for all copies of any distribution products and for the right to provide distribution product maintenance, Ixia shall pay to NetIQ fees as follows: (i) for each calendar quarter up through December 31, 2004, an amount equal to 50 percent of the first $1,000,000 of adjusted gross revenues of Ixia for such calendar quarter; (ii) an amount equal to 40 percent of the adjusted gross revenues of Ixia for such calendar quarter in excess of $1,000,000 up to $2,000,000; and (iii) an amount equal to XX % of the adjusted gross revenues of Ixia for such calendar quarter in excess of Two Million Dollars.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
5	VidRev Technologies Inc.	TTA Technologies Limited	Software Products	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

TTA grants an exclusive right to VidRev to further distribute software product. TTA is in the business of operating software used for video conferencing, video telephony, security and compression and transmission of electronic files. VidRev licenses software to TTA for a fee of 18 percent of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ US involves the distribution of telecommunication software. The uncontrolled license agreement between VidRev Technologies Limited and TTA also involves the distribution of software. The distributing activities incorporate store processes, procedures and business systems established and licensed by TTA, which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: VidRev Technologies Inc.
Licensor: TTA Technologies Limited

Definitions

Licensed Property

This agreement made and entered into on this 21st day of June, 2004. TTA hereby grants to VidRev the exclusive right to distribute and further sublicense the distribution and use of the licensed software to third party distributors and end users subject to the terms and conditions hereof, provided that, all promotion, marketing, distribution and use shall be limited geographically to the United States of America, excluding its territories or possessions. TTA is in the business of licensing and operating software used for video conferencing, video telephony, security and compression and transmission of electronic files, in connection with the World Wide Web, and has been authorized to distribute the products.

Compensation Detail

VidRev shall pay TTA an initial fee of $1,000 upon the execution of this agreement. For each sublicense granted by VidRev or Third Party Distributor(s) to an End User, VidRev shall pay a fee to

TTA of 18 percent of the license or use fee for each product sublicensed. Such payment must be paid in full no later than the 15th of the following calendar month.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
6	Vertel Corporation	Prismtech Limited	Software Product	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

Vertel Corporation licenses to Prismtech the right to sell software product. The software product is the proprietary software for developing telecom systems and applications for telecom hardware. Vertel Corporation licenses software to Prismtech for a fee of XX % of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ US involves the distribution of telecommunication software. The uncontrolled license agreement between Prismtech Limited and Vertel Corporation also involves the distribution of software. The distributing activities incorporate store processes, procedures and business systems established and licensed by Vertel Corporation, which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: Prismtech Limited
Licensor: Vertel Corporation

Licensor Business: Prepackaged software

Definitions

Licensed Property

This asset purchase agreement is made as of this 27th day of November, 2002. An English company is purchasing a software product referred to as e*ORB (embedded and real-time object request broker) from a US company. The agreement provides that the licensee (purchaser) shall pay fees on sales from all current contracts held by licensor. Sale is the licensor's CORBA business unit. e*ORB, which is proprietary software for developing telecom systems and applications for telecom hardware, based on an industry standard called Common Object Request Broker Architecture (CORBA). e*ORBis a carrier-grade embeddable CORBA ORB (C++, C, and Java) targeted at the telecom equipment market. Unlike other CORBA products on the market, e*ORB focuses on delivering high performance and high scalability, while requiring minimal memory. e*ORB supports a set of features applicable to targeted customers. e*ORB has application within high-end network elements such as optical switches and wireless base stations, as well as mobile devices such as a personal digital assistant (PDA) and wireless phones. Additionally, e*ORB is appropriate for and sold to a number of other embedded markets such as defense and transportation primarily for communication and management applications. e*ORB conforms to the minimum CORBA specification set by the Object Management Group (OMG) and supports product enhancements that make it more adaptable to the telecom market.

Compensation Detail

A fee in the amount of 50 percent of all software license sales for Product actually received by Purchaser under a Current Contract. A "Current Contract" is any customer contract for the product executed prior to the Closing Date including, without limitation, the customer agreement with General Dynamics. A fee in the amount of 10 percent of all software license sales for Product actually received by Purchaser under Other Contracts.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
7	AltaVista Technology Inc.	Kuni Research International Corporation	Multimedia Email and Web Software	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

AVT Inc. provides an exclusive right to Kuni Research International Corporation to distribute software. AVT Inc.'s software include ME-Mail engine (Multimedia E-mail) which allows any ME-Mail message to be sent directly to an end user or sent to the Magic Bit web server where it will instantly be converted into series of web pages and posted "live" on the internet. AVT Inc. licenses software to Kuni Research International Corporation for a fee of XX % of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ US involves the distribution of telecommunication software. The uncontrolled license agreement between Kuni Research International Corporation and AVT Inc. also involves the distribution of software. The distributing activities incorporate store processes, procedures and business systems established and licensed by AVT Inc., which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: Kuni Researh Internation Corporation
Licensor: AVT Inc.

Licensor Business: Prepackaged software

Definitions

Licensed Property

This distribution agreement is made and entered into in March, 1998. The company grants to a Japanese company an exclusive right to AVT multimedia email and web authoring software and services for the purposes of enabling Licensee to distribute the AVT Products. AVT's technological core is the ME-Mail engine (i.e., Multimedia E-mail) which allows any MEMail message to be sent directly to an end user or sent to the Magic Bit web server where it will instantly be converted into a series of web pages and posted "live" on the Internet. Magic Bit provides a multimedia email tool to send personalized Valentine cards complete with pictures, audio and text on-line throughout the World Wide Web.

Compensation Detail

Kuni shall pay AVT a fee of XX % of its Net Revenue derived from its exercise of the license rights set forth.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
8	QueryObject Systems Corporation	Internet Query Object Corporation	Licensed Software	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

QOS grants an exclusive license to distribute copies of the software on the worldwide basis. QOS licenses software to IQO for a fee of XX % of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ US involves the distribution of telecommunication software. The uncontrolled license agreement between IQO and QOS also involves the distribution of software. The distributing activities incorporate store processes, procedures and business systems established and licensed by QOS, which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: Internet Query Object Corporation
Licensor: Query Object Systems Corporation

Licensor Business: Prepackaged software

Definitions

Licensed Property

This software license agreement was entered into on March 16, 2000. The company hereby grants to IQO: an exclusive license for the license term to distribute copies of software on a world-wide basis to organizations and or individuals whose primary purpose is electronic commerce over the internet, to electronic commerce branches, divisions or subsidiaries of companies with this primary purpose, and to software developers, manufacturers or systems integrators whose primary purpose is to provide management assistance to the electronic commerce industry, for use in or integration with applications related to the management and analysis of data derived from Internet commerce and internet management applications, and applications related to the publication and/or distribution and/or access of such analytical data over the Internet.

Compensation Detail

For calendar years 2000 and 2001, IQO shall pay to QOS a percentage fee as follows: 20 percent on the first 1,000,000 dollars of adjusted net sales, 18 percent on adjusted net sales between 1,000,001 dollars and 2,000,000 dollars, 15 percent on adjusted net sales between 2,000,001 dollars and 5,000,000 dollars, and 12 percent on adjusted net sales over 5,000,000 dollars. QOS and IQO will use their best efforts to renegotiate these rates for calendar years 2002 and beyond. IQO shall pay to QOS maintenance in an amount equal to 25 percent of all IQO maintenance revenue derived from the licenses granted herein.

Analysis for Uncontrolled Transaction

ID#	Source	Destination	Property	Rate
9	Lotus Development Corporation	NetObjects Inc.	Software Products	XX %

Comparability Results

Below is a summary of the comparability ratings that were derived from the comparison process. Based on these ratings, the uncontrolled transaction(s) has been accepted.

Characteristic	Comparability Index
Property/Service	Similar
Functional Analysis	Similar
Contractual Terms	Similar
Economic Conditions	Similar

Comparability Discussion

Property

Property Analysis

Lotus Development Corporation grants the right to NeObjects Inc. to distribute "Lotus Product" which is Lotus FastSite. Lotus FastSite provides a quick and easy way for non-technical users to contribute information to an internet, intranet, or extranet site. Lotus Development licenses software to NetObjects Inc. for a fee of 25 percent of net sales.

Identified Product Differences

The controlled transaction between XYZ India and XYZ US involves the distribution of telecommunication software. The uncontrolled license agreement between NetObjects Inc. and Lotus Development Corporation also involves the distribution of software. The distributing activities incorporate store processes, procedures and business systems established and licensed by Lotus Development Corporation, which are very similar to XYZ US operations of XYZ India. The similarities in the activities performed at the type of establishment make the two agreements comparable in nature.

Comparability Index for Property

In summary, the controlled and uncontrolled transactions were found to be similar.

Contractual Terms

General

Participants

Licensee: NetObjects Inc.
Licensee Business: Prepackaged software

Licensor: Lotus Development Corporation
Licensor Business: Prepackaged software

Definitions

Licensed Property

In this distribution agreement, dated April 21, 1999, the company grants a worldwide, nonexclusive, non-transferable right and license, subject to the terms and conditions hereof, to copy, modify, manufacture and distribute the Lotus Product; "Lotus Product" shall mean Lotus FastSite for NAS, version 2.0x (including the version branded as "NetObjects Authoring Server Connector for Business Documents, featuring Lotus FastSite"). Created with the end user, rather than the webmaster in mind, Lotus FastSite provides a quick and easy way for nontechnical users to contribute information to an Internet, intranet or extranet site. FastSite enables users to easily convert groups of files, of different file formats, into Web pages.

Compensation Detail

NetObjects will pay Lotus a fee for each copy of the Lotus Product distributed or sold by NetObjects, including maintenance releases and upgrades. Such fee will be equal to 25 percent of ASP for the first 5,000 units distributed, and 20 percent of ASP for units in excess of 5,000 distributed during each 12-month term of this agreement, provided that in no event shall the fee be less than 15 dollars per copy and that there will be no minimum fees for distributions by NetObjects of updates, upgrades and error correction copies of the Lotus Product made available free of charge only to those users who have previously purchased a licensed copy of the Lotus Product. For purposes of this Agreement, "ASP" or "Actual Selling Price" shall mean the total revenue collected directly or indirectly by NetObjects, net of actual returns (not to exceed XX % annually, as determined after the end of each one year period), for sales of the Lotus Product. FastSite then instantly builds a complete site with a consistent look, hyperlinks and navigation buttons.

Arm’s Length Range Construction

Once a pool of comparable uncontrolled transactions was established, which are, after any necessary adjustments, sufficiently comparable and reliable, it was necessary to construct an arm’s length range. An arm’s length range is a set of values that is derived from the unit prices, royalty rates, gross margins, or cost plus ratios of the comparable uncontrolled transactions. The same financial items associated with the controlled transaction(s) under review are compared against this set of values. If the controlled transaction value falls within the constructed range, then it is presumed to have been conducted at arm’s length. Finally, the regulations allow taxpayers to statistically adjust this range by adding and subtracting values to increase the reliability of the analysis.

Below are the uncontrolled transactions that have been accepted. The financial values associated with the accepted transactions were used to construct the arm's length range.

ID#	Licensor	Licensee	Property	Rate
1	Multi Soft Inc.	International Business Machines Corporation	Software	XX %
2	Network-1 Security Solutions Inc.	FalconStor Software Inc.	Software	XX %
3	Orchestral Corporation	IVP Technology Corporation	Software Product	XX %
4	NetIQ Corporation	Ixia	Software product	XX %
5	VidRev Technologies Inc.	TTA Technologies Limited	Software Products	XX %
6	Vertel Corporation	Prismtech Limited	Software Product	XX %

ID#	Licensor	Licensee	Property	Rate
7	AltaVista Technology Inc.	Kuni Research International Corporation	Multimedia Email and Web Software	XX %
8	QueryObject Systems Corporation	Internet Query Object Corporation	Licensed Software	XX %
9	Lotus Development Corporation	NetObjects Inc.	Software Products	XX %

	Rate
Minimum Uncontrolled Transfer Price	XX %
Median	XX %
Maximum Uncontrolled Transfer Price	XX %

Controlled Transaction	XX
Outcome (Full Range)	In Range

The range of rates for the set of comparable unrelated trademark licensing agreements is between XX percent and XX percent, with a median of XX percent. During the fiscal year 2012, XYZ India paid a net product fee of XX percent of its revenue to XYZ US. Therefore, it can be concluded that the product fee paid by XYZ India to XYZ US is in accordance with the arm's-length standard.

Appendices

Appendix: Legal Entity Financial Information

XYZ Consulting India Private, Ltd

Income Statement

Description	2011	2010	2009	Average
Net Sales				
Cost of Goods Sold				
Gross Profit				
Operating Expenses				
Operating Income				
Interest Expense				
R and D Expense				
Advertising Expense				

Fiscal Year End: March 31, 2012 **Currency:** INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets				
Avg Operating Assets				
Avg Net Payables				
Avg Net Receivables				
Avg Net Inventory				
Avg Cash				
Avg Cash And Equivalent				
Avg Net PPE				
Avg Invested Capital				

Fiscal Year End: March 31, 2012 **Currency:** INR

Appendix: Applicable Methods

The OECD Guidelines recommend a number of transfer pricing methods (the recommended methods) that, when applied correctly to a tangible, intangible or service transaction, result in an arm's length price or allocation. The taxing authorities will rely on these methods to determine if the terms and conditions of a taxpayer's cross-border transactions with non-arm's length parties are consistent with the arm's length principle.

These methods are divided into two groups, with the first being the traditional transactional methods (i.e. the comparable uncontrolled price (CUP) method; the resale price (RP) method; and the cost plus (CP) method). When one of these methodologies is employed, the arm’s length character of a controlled transaction under review is established by comparing the unit price, gross margin, or royalty realized in connection with the controlled transaction to the same financial measure associated with an uncontrolled transaction (that is comparable to the controlled transaction).

The second groups of methods discussed by the OECD Guidelines are the transactional profit methods (i.e., the transactional net margin method (TNMM), which is a variation of the popular comparable profits method (CPM) used in the United States, and the transactional profit split (PS) method). In general, when a profit based methodology is employed, the profitability of one of the parties to a controlled transaction is compared to the profitability of other similar, unrelated legal entities that have not engaged in related party transfers. If the profitability of the legal entity involved in the controlled transaction is similar to that of the unrelated legal entities, then the assumption can be made that the controlled transaction was conducted at arm’s length. If not, then this can be an indicator that the controlled transaction was priced incorrectly.

Specific Methodologies

The OECD Guidelines recommend a number of specific transfer pricing methods that can be used to evaluate whether transactions between or among members of the controlled group satisfy the arm’s length standard: the CUP method, the RP method, the CP method, the TNMM, and the PS method. Each method will be described in detail below.

Comparable Uncontrolled Price (CUP)

According to the OECD Guidelines, the comparable uncontrolled price (CUP) method provides the best evidence of an arm's length price. When employing a CUP, the unit price charged for the tangible property transferred in a controlled transaction is compared to the unit price charged for the same (or very similar) tangible property transferred in a comparable uncontrolled transaction.

There are two possible sources of a CUP. First, the taxpayer may sell the particular product in the same quantities, under the same terms, and in the same markets to parties with whom it deals at arm's length (an internal comparable). Second, other taxpayers may sell the same product in the same quantities, under the same terms, and in the same markets, to arm's length parties (an exact comparable uncontrolled price).

However, care must be taken in using an internal comparable as the basis for a transfer price between non-arm's length parties. For example, incidental sales of a product to third parties may not be indicative of an arm's length price for the product.

Transactions may serve as comparables despite the existence of differences between those transactions and non-arm's length transactions; provided the differences can be measured on a reasonable basis and an appropriate adjustment can be made to eliminate the effects of those differences.

When determining whether controlled and uncontrolled transactions are comparable, the OECD Guidelines state that regard should be had to the effect on price of broader business functions other than just product comparability. One should examine the property or services transferred, the functions performed, the contractual terms, the economic conditions, and the risks assumed. The Guidelines also state that every effort should be made to adjust the data so that it may be used appropriately in a CUP. The relative reliability of the CUP is affected by the degree of accuracy with which adjustments can be made to achieve comparability.

Resale Price Method (RP)

The resale price (RP) method is similar in concept to the cost plus (CP) method, in that it relies on comparisons of gross margins. Under the RP, the selling price to third parties is known, and an expected return for the functions performed by the seller is established by reference to third party sales by the seller, or by reference to the return earned by persons performing the same or similar functions and selling the same or similar goods as the seller, to arm's length parties.

In other words, the RP compares the gross profit margin realized by the distributor (in connection with the controlled transaction) to the gross margin realized by it or a similar distributor in a comparable uncontrolled transaction. The OECD Guidelines state that for purposes of the RP, an uncontrolled transaction is comparable to a controlled transaction if one of two conditions is met: (1) none of the differences (if any) between the transactions being compared or between the entities undertaking those transactions could materially affect the resale price margin in the open market; or (2) reasonably accurate adjustments can be made to eliminate the material effects of such differences. In making comparisons for purposes of the RP, fewer adjustments are normally needed to account for product differences than under the CUP, because minor product differences are less likely to have as material an effect on profit margins as they do on price.

Since a distributor’s gross profit provides compensation for the resale functions that it performs in relation to the product(s) under review, comparability under the RP is particularly dependent on the similarity of functions performed, the risks assumed, and the contractual terms of the controlled and comparable uncontrolled transactions (or adjustments must be made to account for the effects of any such differences).

Cost Plus Method (CP+)

Under the cost plus (CP) method, the costs incurred for supplying a product or services are known. An arm's length mark-up on the costs is determined either from the taxpayer's sales of the product or a similar product to third parties in comparable transactions, or from the mark-up realized by unrelated taxpayers in comparable transactions with third parties.

In other words, the CP compares the gross profit margin realized by the manufacturer in connection with the controlled transaction to the gross profit margins realized by similar uncontrolled manufacturers when they transfer similar property to similar uncontrolled distributors (in comparable uncontrolled transactions).

The OECD Guidelines state that an uncontrolled transaction is comparable to a controlled transaction for purposes of the CP analysis if one of two conditions is met: (1) none of the differences (if any) between the transactions being compared or between the entities undertaking those transactions materially affect the cost plus mark-up in the open market; or (2) reasonably accurate adjustments can be made to eliminate the material effects of such differences. In making comparisons for purposes of the CP, fewer adjustments are normally needed to account for product differences than under the CUP, because minor product differences are less likely to have as material an effect on profit margins as they do on price.

It is important to properly determine cost under the CP. The more comparable the products and/or functions, the more likely it is that the CP will produce an appropriate estimate of an arm's length result. The principles of this paragraph apply equally to the rendering of services. Where cost is not accurately determined, both the mark-up (which is a percentage of cost) and the transfer price (which is the total of the cost and the mark-up) will be misstated. Cost must be calculated in accordance with accounting principles that are generally accepted in the country at issue and that are appropriate to the industry, whether or not some other calculation of cost is used in the relevant foreign country.

It is also important to ensure that the cost base to which the mark-up is applied is comparable to the cost base of the third party transactions which serve as comparables. For example, as noted in Paragraph 2.37 of the OECD Guidelines, it may be necessary to make an adjustment to cost where one person leases its business assets while another owns its business assets.

Since a manufacturer's gross profit provides compensation for the production functions that it performs in relation to the product(s) under review, comparability under the CP is particularly dependent on the similarity of functions performed, the risks assumed, and the contractual terms of the controlled and comparable uncontrolled transactions (or adjustments must be made to account for the effects of any such differences).

Transactional Net Margin Method (TNMM)

The transactional net margin method (TNMM) can be used to test prices charged for tangible property, intangible property and as compensation for related party services. The TNMM compares the net profit margin of a taxpayer arising from a non-arm's length transaction with the net profit margins realized by arm's length parties from similar transactions.

Although the TNMM compares the profitability of controlled transactions to comparable uncontrolled transactions, in practice this rarely occurs since it is difficult to determine the profitability of the comparable uncontrolled transactions. Instead, practitioners compare the profitability of controlled taxpayers or one of its business units to the profitability of comparable uncontrolled taxpayers. The controlled transaction participant whose profitability is being evaluated is known as the "tested party." In most cases, the tested party will be the least complex of the controlled taxpayers, and will be the party whose profit attributable to the controlled transaction(s) can be verified using the most reliable data requiring the fewest adjustments and for which reliable data regarding uncontrolled comparables can be located. Where the profitability of the tested party falls within the arm’s length range established by the profitability of the comparable uncontrolled taxpayers, then all of the tested party’s controlled transactions are deemed to be at arm’s length.

As the TNMM relies on a comparison of net margins, a high standard of comparability must be met in order for the TNMM to produce a reasonable estimate of an arm's length result. It should be noted that several factors other than transfer prices may account for differences in net margins. Where differences between the taxpayer's situation and that of one or more comparable entities exists and can be ascertained, appropriate adjustments must be made in order to ensure a high standard of comparability. The failure to account for these differences or to make satisfactory adjustments may preclude the method from producing a reasonable estimate of an arm's length result.

In some cases, reliable adjustments can be made for differences between the situations of comparable persons and the taxpayer, such as differences in financing strategies or in the cost of financing. Other differences which directly affect net margins may not lend themselves to simple or reliable adjustments (e.g. differences in the age and productivity of plant and equipment, management abilities or philosophies, and the business experience of the respective entities). It should be noted that industry profit data drawn from broad sources rarely satisfies the standards of comparability required to implement the TNMM.

Since the TNMM does not take into account the actual controlled transaction(s) undertaken by the tested party, the product-specific data necessary to apply the CUP, RP, or CP methods is not required. Instead, the financial data associated with the tested party's controlled transactions are used. To determine profitability for the tested party and comparable uncontrolled taxpayers, one should employ profit level indicators (PLIs) or net profit margin indicators such as return on assets or operating income to sales. Where the tested party is concerned, the PLI employed should be applied solely to the financial data that corresponds to the controlled transaction(s) under review.

Comparability of the controlled and uncontrolled taxpayers is particularly dependent upon the resources employed and risks assumed. It is also important to consider the functions performed by the tested party and the comparable uncontrolled taxpayers. As such, it is important to perform a functional analysis of the controlled taxpayer and the comparable taxpayers.

Lastly, it should be noted that the TNMM is typically applied to only one of the members of a multinational group. Because the TNMM fails to consider the relative contributions of all the members to the profits of the group, it may produce absurd results. This could occur where attributing a level of profit to the one member leaves the other members of the group with unrealistic shares of the total profits of the group.

Profit Split Method (PS)

The profit split (PS) method may be applied where the operations of two or more non-arm's length parties are highly integrated, making it very difficult to evaluate their transactions on an individual basis and, therefore, precluding the application of the traditional transaction methods.

Under the PS, the first step is to determine the total profit earned by the parties from their integrated operations. It may, in some cases, be appropriate to split the gross profit. This profit is then split between the parties based on the relative value of their contributions to the non-arm's length transactions, considering the functions performed, the assets used, and the risks assumed by each related party.

The combined operating profit must be derived from the most narrowly identifiable business activity of the controlled taxpayers that includes the controlled transactions (for which data is available). The relative value of each related entity's contribution to the success of the venture must be determined in a manner that reflects the functions performed, the risks assumed, and the resources employed by each partner.

In all cases where the PS is applied, a detailed analysis of the functions performed by the parties to the transactions should be completed and well documented. It is not acceptable to merely provide each party with the same return on its respective assets.

Where the return on the functions performed by the parties can be established from comparable data, the residual PS is generally preferable over other types of PS analysis. The residual PS allocates the combined operating profit of the taxpayers involved in the controlled transaction(s) under review using a two-step process. A residual PS is performed in two stages following the determination of the total profit to be split. The first stage is the allocation of a return to each party for the readily identifiable functions (e.g. manufacturing or distribution), based on standard returns established from comparable data. The returns to these functions will, therefore, not account for the return attributable to intangible property used by the parties. In the second stage, the return attributable to the intangible property is established by allocating the residual profit (or loss) between the parties. This is based on an analysis of the facts and circumstances indicating how this residual would have been divided between arm's length parties.

Appendix: Comparable Taxpayers (High Level IT/Data Analytics Service)

To perform a transactional profit based analysis, it is necessary to identify potential comparable uncontrolled taxpayers. The profitability of these entities will be compared against the profitability of the legal entity (or a segment of a legal entity) that has engaged in the controlled transaction(s) under review. The selected legal entity or segment is known as the tested party. One of the biggest challenges in using a transactional profit method is to identify comparable taxpayers for which sufficient information is available to form a reliable comparability evaluation.

A search for comparable taxpayers is completed in four steps. In the first step, commercial or proprietary databases containing company information disclosed in public filings are searched for potentially comparable taxpayers. These queries often result in a sample containing hundreds of companies, which must be reduced to a manageable size before the companies can be evaluated individually. Therefore, the second step is to perform bulk rejections, through which clearly dissimilar taxpayers are removed from the sample by filtering. In the third step, information associated with each of the remaining comparable taxpayers is reviewed at a high-level, followed by another removal of dissimilar taxpayers from the sample. In the fourth and final step, the business activities of the remaining taxpayers in the sample are compared in detail to those of the business unit being benchmarked.

The search detailed below has been used to benchmark the tested party selected in the following controlled transaction(s).

- The Rendering of High level IT/data analytics services by XYZ India on behalf of XYZ US

Comparable Taxpayer Search and Evaluation

The following comparable data search and evaluation process has been conducted using the following database(s):

- Thomson Reuters Fundamentals, published June 2013 by Thomson Reuters

- Thomson Reuters European Comparables, published June 2013 by OneSource (former InfoUSA)

Step One: Commercial Database Search

In order to find companies to be included in a set of comparables, it is necessary to search commercial or proprietary databases that contain company information that has been disclosed in public filings. The tables below detail the search criteria that were employed and the number of potentially comparable companies that were identified.

Occasionally, specific comparable taxpayers can be identified using alternate data sources. The total number of comparable taxpayers from alternate data sources appears beneath the tables below.

Search of Thomson Reuters Fundamentals, published June 2013 by Thomson Reuters

Potentially Comparable Taxpayers Total: **248**

Criteria Set Potentially Comparable Taxpayers: **248**

Search Criteria	
Primary US SIC:	7371 - Serv: Computer Programming Services or 7374 - Serv: Data Processing & Preparation or 7379 - Serv: Computer Related Services, nec or 8111 - Serv: Legal Services or 8711 - Serv: Engineering Services or 8732 - Serv: Commercial Nonphysical Research or 8733 - Serv: Noncommercial Research Organizations or 8741 - Serv: Management Services or 8742 - Serv: Management Consulting Services or 8748 - Serv: Business Consulting, nec or 8999 - Serv: Services, nec
And	
Inclusion Criteria	
Domiciled in:	India

Criteria Set Potentially Comparable Taxpayers: **4**

Search Criteria	
Primary US SIC:	8741 - Serv: Management Services or 8742 - Serv: Management Consulting Services or 8748 - Serv: Business Consulting, nec
And	
Inclusion Criteria	
Domiciled in:	India
And	
Fiscal Year End Exclusion :	March 2012

Search of Thomson Reuters European Comparables, published June 2013 by OneSource (former InfoUSA)

Potentially Comparable Taxpayers Total: **0**

Total Pool of Potentially Comparable Taxpayers: 248

Step Two: Bulk Rejection of Uncontrolled Taxpayers

The database search such as the one conducted in step one establishes a broad sample of companies that are potentially comparable. By performing bulk rejections, groups of taxpayers that do not meet minimum defined comparability criteria can be removed from this sample. Specifically, two types of bulk rejections can be applied. The first type, qualitative rejections, removes taxpayers for whom critical financial data is not available. The second type, quantitative rejections, removes taxpayers from the sample based upon filters such as gross sales, assets and number of employees.

Below is a summary of the bulk rejections that were applied to the sample of comparable taxpayer data established in step one. See the rejection matrix of this report titled “Potential Comparable Taxpayers Eliminated by Bulk Rejections” for a detailed listing of the taxpayers that were bulk rejected and their corresponding rejection reasons.

Bulk Rejections Summary

Bulk Rejections Total: **134**

Qualitative Rejections	Count
Average operating income is less than or equal to 0 for the years of interest	18
Net Sales missing for 2 or more years	57
Total Qualitative Rejections	**75**

Quantitative Rejections	Count
Average Net Inventory/Total Net Sales is greater than or equal to 0.05	59
Total Quantitative Rejections	**59**

Step Three: First Review Rejection of Uncontrolled Taxpayers

The purpose of the first review process is to eliminate taxpayers from the data set that are not engaged in business activities comparable to those being benchmarked. In order to remove these taxpayers from consideration, the available information about each potential comparable taxpayer must be reviewed.

Below is a summary of the reasons for which potential comparable taxpayers were rejected during the first review. The number rejected for each reason is also provided. Note that though it is possible for a taxpayer to meet multiple rejection criteria, a taxpayer can be rejected only once. See the rejection matrix of this report titled “Potential Comparable Taxpayers Eliminated in First Review” for a detailed listing of the taxpayers that were rejected and their corresponding rejection reasons.

First Review Rejections Summary

First Review Rejections Total: **103**

First Review Rejection Reasons	Count
Primarily provides engineering services	18
Primarily provides financial services	19

First Review Rejection Reasons	Count
Primarily provides maintenance services	1
Primarily provides security services	11
Primarily provides software development services	41
Primarily provides telecommunications services	13
Total First Review Rejections	**103**

Step Four: Second Review Rejection of Uncontrolled Taxpayers

The taxpayers that remain after bulk rejections and the first comparability review are most likely to be comparable. To make the final determination of each taxpayer's comparability, an in-depth evaluation of the taxpayer's activities must be conducted using detailed data from public filings, annual reports and industry analysis reports.

Below is a summary of the companies that were rejected as a result of this detailed evaluation and the rejection reason for each.

Second Review Rejections Summary

Second Review Rejections Total: **3**

Blue Star InfoTech Ltd.

Blue Star Infotech Limited (BSIL) is engaged in the development of computer software. The Company provides application services, product engineering package implementation, mobility computing, cloud computing and testing services. During the fiscal year ended March 31, 2012, the Company launched a number of solutions and accelerators, which include Business Intelligence solutions and tools built on statistical analysis software (SAS) and QlikView for the Pharma, Manufacturing, Travel & Hospitality, and Utilities industries; online booking engine and supplier connectivity frameworks for Travel & Hospitality; ERP for HR-intensive organisations on the Microsoft Dynamics AX product; mobility solutions for the Apple iOS and Google Android platforms; and barcoding solutions for inventory and warehouse management. On June 22, 2012, the Company's wholly owned subsidiary, Blue Star Infotech (Singapore) Pte. Ltd, acquired Infostack Solutions Pte Ltd.

Rejection Reason
Primarily provides software development services

Upon further research, Blue Star Infotech Limited's computer software development segment comprised of XX % percent of FYE 2012 revenues.

Source: Blue Star Infotech Limited's FYE 2012 annual report.

Silverline Technologies Limited

Silverline Technologies Limited (Silverline) is engaged in consulting and information technology (IT) services. The Company focuses on providing business consulting, systems integration application development and product engineering services. It has a development center at Seepz, Mumbai. The development center has a facility in Mumbai (SEEPZ) to deliver its software development services. This facility operates as an export unit within the SEEPZ premises at Mumbai. It offers a range of information technology services comprising software development, system solutions, application software system maintenance software to its customers across the industry. Its subsidiaries include Millennium Care Inc.and Innovative BPO Ltd.

Rejection Reason
Primarily provides software development services

Upon further research, direct costs of software development attributed to XX % percent of Silverline Technologies Limited's FYE 2012 expenses.

Source: Silverline Technologies Limited's FYE 2012 annual report.

Tata Elxsi Limited

Tata Elxsi Limited provides product design and engineering services to the consumer electronics, communications and transportation industries and systems integration and support services for enterprise customers. The Company operates in four divisions: embedded product design provides technology consulting, new product development, system integration, and testing services for product companies, service providers, and aspiring start-ups; industrial design division includes consumer insight, branding, product design, packaging design, transportation design, visual design, design engineering, and manufacturing support; visual computing labs offers animation, visual effects, and three dimensional stereoscopic content for feature films, episodic television and television, commercials, and the systems integration division implements and integrates complete systems and solutions for computing, broadcast, virtual reality, storage and disaster recovery.

Rejection Reason
Is a controlled entity

Source: http://www.tataelxsi.com/company/about-us.html

A part of the $100 billion Tata group, Tata Elxsi addresses the communications, consumer products, defence, healthcare, media & entertainment, semiconductor and transportation sectors.

Final Set of Comparable Taxpayers

Below are the uncontrolled taxpayers that have been deemed comparable after the second review. The financial data associated with these taxpayers was used to construct an arm's length range. See Appendix B for financial information about each comparable uncontrolled taxpayer. The arm's length range appears in the next section.

Comparable Taxpayers

Total Accepted After Search and Evaluation: **8**

3i Infotech Ltd

3i Infotech Limited is an India-based information technology company. The Company has a set of IP based software solutions, coupled with a range of information technology (IT) services to address the dynamic requirements of a range of industry verticals, including insurance, banking, capital markets, and asset and wealth management. It also provides solutions for other verticals, such as government, manufacturing, retail, distribution, telecom and healthcare. It provides IT solutions and transaction services for the banking, financial services and insurance industry. Through its IT offerings, it provides clients with software products covering banking, insurance and financial services, application development and maintenance and IT infrastructure services. As of March 3, 2012, it had 29 subsidiaries located in five geographies. During the year ended March 3, 2012, Fineng Solutions Private Limited and J&B Software India Private Limited, two of the subsidiaries of it were merged with it.

Source: http://www.3i-infotech.com/content/services/services.aspx

3i Infotech Limited, an information technology company, provides a range of IP based software solutions and IT services primarily in India. The company offers asset and wealth management solution accelerators and software products, which enable management of various asset classes across the investment lifecycle.

Acropetal Technologies Ltd

Acropetal Technologies Limited (ATL) is a Business Technology Solutions Company providing on-demand solutions in the verticals of Education; Healthcare; Manufacturing CPG and Retail; Government and Citizen Services; Energy and Environment, and Engineering and Infrastructure. The

Company provides services and offerings in four categories: Engineering Design Services, Healthcare, Enterprise Solutions and IT Infrastructure Solutions. Engineering Design Services include services, such as architectural, structural, electrical, plumbing, steel detailing and design engineering, Healthcare include services, such as Hospital Management System, electronic medical records and diagnostics. IT Infrastructure Solutions include services, such as information life cycle management, network security solution, IT infrastructure management services and cloud services. In July 2012, two of its subsidiaries, Acropetal Inc,. USA and Optech Consulting Inc,. USA were merged and named Acropetal Inc,. USA.

Source: http://www.acropetal.com/

Acropetal Technologies Limited operates as a business technology solutions company. It provides various solutions for various verticals, including education, healthcare, manufacturing CPG and retail, government and citizen services, energy and environment, and engineering and infrastructure.

Allied Digital Services Ltd.

Allied Digital Services Limited (ADSL) is an information technology (IT) infrastructure management and technical support services outsourcing company. The Company is a global IT transformation architect. ADSL has its operations pan India, the United States, Australia, Europe and Middle East Asia. The Company is engaged in designing, developing, deploying and delivering IT infrastructure services. It provides range of information technology and consultancy services, including infrastructure services, end user IT support, IT asset life cycle, enterprise applications and integrated solutions. ADSL operates in two segments: Enterprise Computing based Solutions and Infrastructure Management based Solutions. As of March 31, 2012, ADSL's geographic market included 132 locations across India and 52 locations in the United States.

Source: http://www.allieddigital.net/us/services.html

The company offers IT as a Service, including IT transformation consulting, datacenter hosting, migration and management, IT optimization and modernization, and disaster recovery hosting services; and infrastructure services comprising infrastructure management, information security surveillance, security assessment, advisory, and professional services, as well as Infrastructure-as-a-Service.

ASM Technologies Ltd

ASM Technologies Limited (ASM) is an information technology (IT) services company. The Company provides consulting services in business systems, engineering services, IT infrastructure services and technology solutions. Business Systems consists of enterprise resource planning (ERP) package services (SAP, Oracle, PeopleSoft and Microsoft Dynamics), implementation, rollout, upgrade, training, documentation, support and maintenance; ERP product development services and enterprise mobility. Engineering Services include services in process, manufacturing, systems and design and development activities in the areas of mechanical, electrical and electronics; product ideation, industrial design and concepts generation; detailed engineering; modeling and analysis; reverse engineering; sustenance engineering, and tooling and test fixtures. IT Infrastructure Services include Mobility Infrastructure and Network Security. Technology Solutions include Product Development and Product Testing.

Source: http://www.asmltd.com/html/enterprise_application.htm

ASM Technologies Limited provides consulting services in business systems, engineering services, IT infrastructure services, and technology solutions in India, Singapore, the United States, and the United Kingdom.

GSS Infotech Ltd

GSS Infotech Limited operates in software services. The Company offers cloud enablement services remote infrastructure and application management services. The Company provides a range of services, which includes infrastructure management services, application management services, testing services, cloud solutions, mobile solutions, health care solutions and consulting services. Infrastructure management services consist of remote server management and monitoring services, service desk, server management, storage management, platform hardening and systems integration. Application management services include Web applications, IPhone / iPad, Internet, client server, android devices, service enablement, standalone, blackberry phones, Web services and windows phone and reporting.

Source: http://www.gssinfotech.com/index.html#

It offers remote infrastructure management services, including server management and monitoring, service desk, storage management, platform hardening, systems integration, database administration, messaging and collaboration, managed desktop, application packaging and distribution, and Wintel server management and migration; and database management services, such as administration, monitoring, performance tuning, support, consulting, migration and upgrades, and projects.

Hexaware Technologies Limited

Hexaware Technologies Limited (Hexaware) is an India-based company engaged in information technology consulting, software development and business process outsourcing. The Company’s operating segments include travel transportation, hospitality and logistics; nbanking financial services; insurance and healthcare; manufacturing and services, and others. Hexaware provides multiple service offerings to its clients across various industries comprising travel, transportation, hospitality, logistics, banking, financial services, insurance, healthcare, manufacturing and services. The various service offerings comprise application development and management, enterprise package solutions, infrastructure management, business intelligence and analytics, business process, quality assurance and independent testing.

Source: http://hexaware.com/

The company offers enterprise application services in various applications, including PeopleSoft, Oracle, SAP, Microsoft Dynamics, customer relationship management, and enterprise content management solutions, as well as ERP shared application support and maintenance services.

Info Drive Software Ltd

Info-Drive Software Limited is and India-based engaged in information technology business. The Company is a multi-dimensional Information technology and business process outsourcing services company. The Company’s services portfolio consists of application implementation and maintenance, business intelligence, enterprise solutions, business process outsourcing and business consulting. InfoDrive has service delivery centers in India (Chennai and Bangalore), Dubai (UAE) supporting the business development centers in India, the United States (New York), and Singapore. Some of the key industry verticals serviced by the Company are banking and financial services, telecom, pension industry and healthcare. As of March 31, 2012, the Company had six subsidiaries, Info-Drive Software Inc., Info-Drive Systems Sdn.Bhd., Info-Drive Software LLC, Info-Drive Software Pte. Ltd., Info-Drive Software Limited, and InfoDrive Mauritius Limited.

Source: http://www.infodriveservices.com/the_company/about_infodrive/

The company provides niche Busines process outsourcing solution to the US Markets and also serves the high-growth Banking and telecom segments in the Middle East and Far East markets by providing turnkey systems integration solutions entailing custom software implementation, hardware optimization and data center maintenance.

NIIT Technologies Ltd.

NIIT Technologies Limited is an information technology (IT) solutions organization engaged in application development and maintenance, managed services, cloud computing and business process outsourcing to organizations in the financial services, insurance, travel, transportation and logistics, manufacturing and distribution and government sectors. The Company delivers services across continents directly and through its network of subsidiaries. It is servicing customers in North & South America, Europe, the Middle East, Asia and Australia. The Company's service offerings include application development and management, package implementation, managed services, platform based services, business process outsourcing and cloud computing. The Company's subsidiaries include NIIT GIS Ltd, India, NIIT SmartServe Ltd, India, NIIT Technologies Services Limited, India and NIIT Technologies GmbH, Germany. In August 2011, the Company acquired Proyecta Sistemas de Informacion S.A.

Source: http://www.niit-tech.com/services

The company provides application development services, including custom software development, business intelligence, migration, and modernization, as well as functional and regression testing, system testing, and full lifecycle testing of complex software applications; systems integration and package implementation services; cloud computing services; managed services; platform-based services; and business process outsourcing services, which enables clients to manage back office, middle office, and front office operations.

Potential Comparable Taxpayers Eliminated by Bulk Rejections

Potential Comparable Taxpayer	Bulk Rejection Reason
3i Infotech Ltd (Parent)	Average operating income is less than or equal to 0 for the years of interest
Aarey Drugs and Pharmaceuticals Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Accel Frontline Limited	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
ACI Infocom Ltd(NDA)	Net Sales missing for 2 or more years
Aditya Birla Minacs IT Services Ltd	Net Sales missing for 2 or more years
Allsec Technologies Limited (Parent)	Average operating income is less than or equal to 0 for the years of interest
Apollo Health Street Limited	Net Sales missing for 2 or more years
Apw President Systems Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Aricent	Net Sales missing for 2 or more years
Arms Paper Ltd	Net Sales missing for 2 or more years
Arora Fibres Ltd	Net Sales missing for 2 or more years
Artson Engineering Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Asahi Industries Ltd	Net Sales missing for 2 or more years
Ashoka Buildcon Ltd.	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
ATV Projects India Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Avance Technologies Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Aztecsoft Limited	Net Sales missing for 2 or more years
Aztecsoft Limited (Parent)	Net Sales missing for 2 or more years
Baid Leasing & Finance Co(NDA)	Net Sales missing for 2 or more years

Potential Comparable Taxpayer	Bulk Rejection Reason
Bambino Agro Industries Ltd(NDA)	Net Sales missing for 2 or more years
Benzo Petro International Ltd(NDA)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Bharatiya Global Infomedia Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Calcom Vision Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
California Software Company Ltd.	Average operating income is less than or equal to 0 for the years of interest
Charms Industries Ltd	Net Sales missing for 2 or more years
Clio Infotech Ltd(NDA)	Net Sales missing for 2 or more years
Computer Point Ltd	Average operating income is less than or equal to 0 for the years of interest
Consolidated Construction Consortium Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
CORE Education and Technologies Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Cressanda Solutions Ltd	Average operating income is less than or equal to 0 for the years of interest
Cura Technologies Ltd	Average operating income is less than or equal to 0 for the years of interest
Cybertech Systems and Software Ltd	Average operating income is less than or equal to 0 for the years of interest
Damodar Industries Ltd	Net Sales missing for 2 or more years
Danlaw Technologies India Limited	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Dhenu Buildcon Infra Ltd	Net Sales missing for 2 or more years
Digital GlobalSoft Limited	Net Sales missing for 2 or more years
Dion Global Solutions Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Dynacons Systems & Solutions Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Empower India Ltd	Net Sales missing for 2 or more years
Encore Software Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Engineers India Limited (Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Ennore Coke Ltd (Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Everlon Synthetics Ltd(NDA)	Net Sales missing for 2 or more years
Finaventure Capital Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Four Soft Ltd. (Parent)	Average operating income is less than or equal to 0 for the years of interest
Fusion Fittings India Limited	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
GKW Limited	Net Sales missing for 2 or more years
GKW Ltd (Parent)	Net Sales missing for 2 or more years
Goldstone Technologies Ltd.	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Goldstone Technologies Ltd.(Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Green Fire Agri Commodities Ltd	Average operating income is less than or equal to 0 for the years of interest
Hindustan Dorr Oliver Ltd.	Average Net Inventory/Total Net Sales is greater than or equal to 0.05

Potential Comparable Taxpayer	Bulk Rejection Reason
Hindustan Dorr Oliver Ltd. (Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
iGATE Global Solutions Ltd	Net Sales missing for 2 or more years
iGATE Global Solutions Ltd (P)	Net Sales missing for 2 or more years
Intellivate Capital Advisors ltd	Net Sales missing for 2 or more years
Intense Technologies Ltd.	Average operating income is less than or equal to 0 for the years of interest
Jain Infraprojects Limited	Net Sales missing for 2 or more years
Jauss Polymers Ltd(NDA)	Net Sales missing for 2 or more years
Kesar Petroproducts Ltd(NDA)	Net Sales missing for 2 or more years
KLG Systel Ltd.	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
KLG Systel Ltd.(Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
KMC Speciality Hospitals India Ltd	Net Sales missing for 2 or more years
Koa Tools India Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Konark Synthetic Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Linear Industries Ltd	Net Sales missing for 2 or more years
Link Pharma Chemicals Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Linkson International Ltd	Net Sales missing for 2 or more years
M P I L Corporation Ltd(NDA)	Net Sales missing for 2 or more years
Maars Software International Ltd	Average operating income is less than or equal to 0 for the years of interest
Madhucon Projects Ltd.	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Marg Ltd.	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Marg Ltd. (Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Mascon Global Ltd	Average operating income is less than or equal to 0 for the years of interest
Mastek Limited (Parent)	Average operating income is less than or equal to 0 for the years of interest
McNally Bharat Engineering Company Ltd.	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Micro Technologies (India) Limited	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Mobile Telecommunications Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
MOLD-TEK Technologies Limited	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Muller & Phipps (India) Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Nakshatra Infrastructure Limited	Average operating income is less than or equal to 0 for the years of interest
Net 4 India Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Nirmal Bot Ltd	Net Sales missing for 2 or more years
Niyati Industries Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Nova Iron and Steel Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Omnitech Infosolutions Limited	Average Net Inventory/Total Net Sales is greater than or equal to 0.05

Potential Comparable Taxpayer	Bulk Rejection Reason
Ontrack Systems Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Orient Information Technology Ltd.	Net Sales missing for 2 or more years
Oswal Agro Mills Ltd (Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Panchsheel Organics Ltd(NDA)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Paramount Cosmetics (India) Ltd(NDA)	Net Sales missing for 2 or more years
Parle Software Ltd	Net Sales missing for 2 or more years
Popular Estate Management Ltd	Average operating income is less than or equal to 0 for the years of interest
Prabhav Industries Ltd	Average operating income is less than or equal to 0 for the years of interest
Praj Industries Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Praj Industries Ltd (Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Prithvi Information Solutions Ltd.	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Radiant Info Systems Limited	Net Sales missing for 2 or more years
Rajath Finance Limited	Net Sales missing for 2 or more years
Religare Technova Global Sol. Ltd	Net Sales missing for 2 or more years
Rexnord Electronics & Controls(NDA)	Net Sales missing for 2 or more years
Rishiroop Rubber International Ltd(NDA)	Net Sales missing for 2 or more years
RITES Ltd.	Net Sales missing for 2 or more years
Ritesh International Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Saka Ltd	Net Sales missing for 2 or more years
Saraswati Commercial (india) Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Sarup Industries Ltd	Net Sales missing for 2 or more years
Satyam Computer (ADR)	Net Sales missing for 2 or more years
Scanpoint Geomatics Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Sify Technologies Limited	Net Sales missing for 2 or more years
Silverline Technologies (ADR)	Net Sales missing for 2 or more years
Simran Farms Ltd(NDA)	Net Sales missing for 2 or more years
Southern Ispat Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Starlite Components Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Sumeru Industries Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Super Syncotex India Ltd(NDA)	Net Sales missing for 2 or more years
TCS e-Serve Ltd	Net Sales missing for 2 or more years
Technvision Ventures Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Telesys Info-Infra I Ltd	Net Sales missing for 2 or more years
The KCP Ltd (Parent)	Average Net Inventory/Total Net Sales is greater than or equal to 0.05

Potential Comparable Taxpayer	Bulk Rejection Reason
Tokyo Plast International Ltd	Net Sales missing for 2 or more years
Triton Corp Ltd.	Average operating income is less than or equal to 0 for the years of interest
Triton Corp Ltd. (Parent)	Average operating income is less than or equal to 0 for the years of interest
Two-up Financial Services Ltd	Net Sales missing for 2 or more years
UB Engineering Limited	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Universal Office Automation Ltd	Net Sales missing for 2 or more years
Valuemart Info Technologies Ltd	Net Sales missing for 2 or more years
Vama Industries Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Visagar Financial Services Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
VisualSoft Technologies Limited	Net Sales missing for 2 or more years
VJIL Consulting Limited	Net Sales missing for 2 or more years
Wisec Global Ltd	Average Net Inventory/Total Net Sales is greater than or equal to 0.05
Ybrant Technologies Limited	Net Sales missing for 2 or more years
Yokogawa India Limited	Net Sales missing for 2 or more years

Potential Comparable Taxpayers Eliminated in First Review

Potential Comparable Taxpayer	Rejection Reason
ABM Knowledgeware Ltd	Primarily provides software development services
Accelya Kale Solutions Ltd	Primarily provides software development services
Accelya Kale Solutions Ltd (Parent)	Primarily provides software development services
Aftek Ltd.	Primarily provides software development services
Aftek Ltd. (Parent)	Primarily provides software development services
Allcargo Logistics Ltd	Primarily provides software development services
Allcargo Logistics Ltd (Parent)	Primarily provides software development services
Allsec Technologies Limited	Primarily provides software development services
Anand Projects Ltd	Primarily provides software development services
Aqua Logistics Limited	Primarily provides software development services
Artefact Projects Ltd	Primarily provides software development services
aurionPro Solutions Limited	Primarily provides software development services
aurionPro Solutions Limited (Parent)	Primarily provides software development services
Aurum Soft Systems Ltd	Primarily provides software development services
AXIS-IT&T Ltd	Primarily provides software development services
Birla Shloka Edutech Ltd	Primarily provides software development services
CMC Limited	Primarily provides software development services
CMC Limited (Parent)	Primarily provides software development services
Cni Research Ltd	Primarily provides software development services
Coral Hub Limited	Primarily provides software development services
CORE Education and Technologies Ltd (P)	Primarily provides software development services
Datamatics Global Services Ltd	Primarily provides software development services
Datamatics Global Services Ltd(Parent)	Primarily provides software development services
Diamond Infosystems Ltd	Primarily provides software development services
Dion Global Solutions Ltd (Parent)	Primarily provides software development services
eClerx Services Limited	Primarily provides software development services
Excel Infoways Limited	Primarily provides software development services
FCS Software Solutions Limited	Primarily provides software development services
Four Soft Ltd.	Primarily provides software development services
Genesys International Corp Ltd	Primarily provides software development services
Geodesic Limited	Primarily provides software development services
Geodesic Limited (P)	Primarily provides software development services
Glodyne Technoserve Limited	Primarily provides software development services

Potential Comparable Taxpayer	Rejection Reason
Glodyne Technoserve Limited (Parent)	Primarily provides software development services
Green Fire Agri Commodities Ltd (Parent)	Primarily provides software development services
HCL Technologies Limited	Primarily provides software development services
HCL Technologies Limited (Parent)	Primarily provides software development services
Hexaware Technologies Limited (Parent)	Primarily provides software development services
Hinduja Global Solutions Ltd	Primarily provides software development services
HOV Services Limited	Primarily provides software development services
HOV Services Limited (Parent)	Primarily provides software development services
I Power Solutions India Ltd	Primarily provides security services
iGate Computer Systems Ltd	Primarily provides security services
iGATE Computer Systems Ltd (Parent)	Primarily provides security services
Infinite Computer Solutions (In) Ltd	Primarily provides security services
Infosys Ltd	Primarily provides security services
Infosys Ltd (Parent)	Primarily provides security services
Infosys Ltd ADR	Primarily provides security services
InfoTech Enterprises Limited (Parent)	Primarily provides security services
Intec Capital Ltd	Primarily provides security services
Kaashyap Technologies Ltd	Primarily provides security services
KPIT Cummins Infosystems Limited	Primarily provides security services
KPIT Cummins Infosystems Ltd. (Parent)	Primarily provides engineering services
Mastek Limited	Primarily provides engineering services
McNally Bharat Eng. Co. Ltd. (Parent)	Primarily provides engineering services
Megasoft Ltd. (Parent)	Primarily provides maintenance services
Melstar Information Technologies Ltd	Primarily provides engineering services
Mindteck India Ltd	Primarily provides engineering services
NIIT Technologies Ltd. (Parent)	Primarily provides engineering services
Nucleus Software Exports Ltd.	Primarily provides engineering services
OnMobile Global Limited	Primarily provides engineering services
Oracle Financial Services Software Ltd.	Primarily provides engineering services
Oracle Financial Services SoftwareLtd(P)	Primarily provides engineering services
Persistent Systems Limited	Primarily provides engineering services
Polaris Financial Technology Ltd	Primarily provides engineering services
Polaris Financial Technology Ltd (P)	Primarily provides engineering services
Powersoft Global Solutions Ltd	Primarily provides engineering services
R Systems International Limited	Primarily provides engineering services

Potential Comparable Taxpayer	Rejection Reason
Ramco Systems Limited	Primarily provides engineering services
Ramco Systems Limited (Parent)	Primarily provides engineering services
Ranklin Solutions Limited	Primarily provides engineering services
Rolta India Limited	Primarily provides financial services
Rolta India Limited (Parent)	Primarily provides financial services
Saksoft Ltd.	Primarily provides financial services
Saksoft Ltd. (Parent)	Primarily provides financial services
Satyam Computer Services Limited	Primarily provides financial services
Satyam Computer Services Limited(Parent)	Primarily provides financial services
Secure Earth Technologies Ltd	Primarily provides financial services
Silverline Technologies Limited (Parent)	Primarily provides financial services
Softsol India Ltd	Primarily provides financial services
Sonata Software Limited	Primarily provides financial services
Sonata Software Limited (Parent)	Primarily provides financial services
Sparsh BPO Services Ltd	Primarily provides financial services
Spectacle Infotek Ltd	Primarily provides financial services
Subex Ltd.	Primarily provides financial services
Subex Ltd. (Parent)	Primarily provides financial services
Tata Consultancy Services Limited	Primarily provides financial services
Tata Consultancy Services Ltd (Parent)	Primarily provides financial services
Tech Mahindra Limited	Primarily provides financial services
Tech Mahindra Limited (Parent)	Primarily provides financial services
Thinksoft Global Services Limited	Primarily provides telecommunications services
Vaarad Ventures Ltd	Primarily provides telecommunications services
Vedvaag Systems Ltd	Primarily provides telecommunications services
Virinchi Technologies Ltd	Primarily provides telecommunications services
Visesh Infotecnis Ltd	Primarily provides telecommunications services
VKS Projects Ltd	Primarily provides telecommunications services
Wipro Limited	Primarily provides telecommunications services
Wipro Limited (ADR)	Primarily provides telecommunications services
Wipro Limited (Parent)	Primarily provides telecommunications services
Ybrant Digital Ltd	Primarily provides telecommunications services
Zensar Technologies Limited	Primarily provides telecommunications services
Zensar Technologies Limited (P)	Primarily provides telecommunications services
Zylog Systems Ltd.	Primarily provides telecommunications services

Appendix: Comparables’ Financials (High Level IT/Data Analytics Service)

3i Infotech Ltd

Income Statement

Description	2011	2010	2009	Average
Net Sales	16,810,200,000	25,697,500,000	24,485,400,000	22,331,033,333
Cost of Goods Sold	2,259,200,000	4,536,400,000	4,478,400,000	3,758,000,000
Gross Profit	14,551,000,000	21,161,100,000	20,007,000,000	18,573,033,333
Operating Expenses	13,172,400,000	16,735,700,000	15,779,900,000	15,229,333,333
Operating Income	1,378,600,000	4,425,400,000	4,227,100,000	3,343,700,000
Interest Expense				
R and D Expense				
Advertising Expense				

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets	41,581,300,000	40,561,300,000	38,810,400,000	40,317,666,667
Avg Operating Assets	35,176,850,000	35,282,350,000	35,867,850,000	35,442,350,000
Avg Net Payables	3,138,050,000	3,587,650,000	3,706,550,000	3,477,416,667
Avg Net Receivables	5,495,400,000	5,929,800,000	5,128,500,000	5,517,900,000
Avg Net PPE	2,668,600,000	2,044,600,000	3,681,250,000	2,798,150,000
Avg Net Inventory	32,300,000	43,700,000	74,700,000	50,233,333
Avg Cash	1,230,700,000	1,435,450,000	1,777,900,000	1,481,350,000
Avg Cash And Equivalent				
Avg LIFO Reserve				
Avg Invested Capital				

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Acropetal Technologies Ltd

Income Statement

Description	2011	2010	2009	Average
Net Sales	3,241,806,600	2,014,836,730	1,521,968,200	2,259,537,177

Cost of Goods Sold	594,628,660	-40,766,310	2,183,490	185,348,613
Gross Profit	2,647,177,940	2,055,603,040	1,519,784,710	2,074,188,563
Operating Expenses	2,044,374,950	1,526,459,640	1,062,634,720	1,544,489,770
Operating Income	602,802,990	529,143,400	457,149,990	529,698,793
Interest Expense				
R and D Expense			752,746,800	752,746,800
Advertising Expense	220,298,380	136,077,850	98,145,850	151,507,360

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets	5,181,677,505	3,133,176,310	1,818,395,460	3,377,749,758
Avg Operating Assets	3,272,372,950	1,983,774,525	1,691,485,620	2,315,877,698
Avg Net Payables	276,793,895	83,117,380	20,415,050	126,775,442
Avg Net Receivables	148,605,790	18,106,205	34,635,705	67,115,900
Avg Net PPE	484,542,310	802,681,460	1,036,925,165	774,716,312
Avg Net Inventory	1,209,145	0	18,647,000	6,618,715
Avg Cash	346,843,785	311,683,610	79,259,840	245,929,078
Avg Cash And Equivalent				
Avg LIFO Reserve				
Avg Invested Capital				

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Allied Digital Services Ltd.

Income Statement

Description	2011	2010	2009	Average
Net Sales	5,844,972,000	7,143,963,000	6,723,214,000	6,570,716,333
Cost of Goods Sold	4,238,575,000	4,816,117,000	4,097,063,000	4,383,918,333
Gross Profit	1,606,397,000	2,327,846,000	2,626,151,000	2,186,798,000
Operating Expenses	1,380,746,000	1,621,164,000	1,412,315,000	1,471,408,333
Operating Income	225,651,000	706,682,000	1,213,836,000	715,389,667
Interest Expense				
R and D Expense				
Advertising Expense	12,245,000	19,444,000	12,867,000	14,852,000

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets	8,682,592,000	8,306,165,000	6,331,745,500	7,773,500,833
Avg Operating Assets	7,909,481,500	7,843,937,000	6,167,568,000	7,306,995,500
Avg Net Payables	198,685,000	264,038,500	376,219,000	279,647,500
Avg Net Receivables	2,755,576,000	2,815,136,500	2,464,907,500	2,678,540,000
Avg Net PPE	2,529,132,500	1,782,322,000	974,297,000	1,761,917,167
Avg Net Inventory	332,202,000	194,605,500	118,471,000	215,092,833
Avg Cash	206,161,000	200,360,500	97,930,000	168,150,500
Avg Cash And Equivalent				
Avg LIFO Reserve				
Avg Invested Capital				

Latest Tax Year Available: Mar 31, 2013
Currency: INR

ASM Technologies Ltd

Income Statement

Description	2011	2010	2009	Average
Net Sales	1,455,700,160	1,116,464,500	689,332,320	1,087,165,660
Cost of Goods Sold	1,213,158,720	953,011,550	590,609,140	918,926,470
Gross Profit	242,541,440	163,452,950	98,723,180	168,239,190
Operating Expenses	81,473,650	62,649,380	47,233,030	63,785,353
Operating Income	161,067,790	100,803,570	51,490,150	104,453,837
Interest Expense				
R and D Expense				
Advertising Expense	1,619,550	2,426,960	950,120	1,665,543

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets	778,822,210	504,250,275	353,239,570	545,437,352
Avg Operating Assets	698,378,935	454,737,540	321,642,685	491,586,387
Avg Net Payables	55,698,150	38,264,530	39,227,510	44,396,730
Avg Net Receivables	71,300	489,650	4,251,150	1,604,033
Avg Net PPE	92,190,405	74,931,045	59,490,400	75,537,283
Avg Net Inventory				

Avg Cash	46,823,255	25,815,655	4,205,480	25,614,797
Avg Cash And Equivalent				
Avg LIFO Reserve				
Avg Invested Capital				

Latest Tax Year Available: Mar 31, 2013
Currency: INR

GSS Infotech Ltd

Income Statement

Description	2011	2010	2009	Average
Net Sales	2,914,693,250	4,846,713,570	4,282,830,070	4,014,745,630
Cost of Goods Sold	2,656,640,630	3,616,618,150	3,162,375,240	3,145,211,340
Gross Profit	258,052,620	1,230,095,420	1,120,454,830	869,534,290
Operating Expenses	382,475,020	469,302,390	423,275,080	425,017,497
Operating Income	-124,422,400	760,793,030	697,179,750	444,516,793
Interest Expense				
R and D Expense				
Advertising Expense	9,267,920	11,114,530	13,067,060	11,149,837

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets	5,029,886,560	5,450,755,640	4,382,250,430	4,954,297,543
Avg Operating Assets	4,796,386,360	4,578,224,270	3,357,827,920	4,244,146,183
Avg Net Payables	0	101,912,615	182,220,535	94,711,050
Avg Net Receivables	716,700,245	331,754,925	19,538,750	355,997,973
Avg Net PPE	202,613,485	370,515,820	373,249,095	315,459,467
Avg Net Inventory				
Avg Cash	147,517,770	817,297,120	926,619,920	630,478,270
Avg Cash And Equivalent				
Avg LIFO Reserve				
Avg Invested Capital				

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Hexaware Technologies Limited

Income Statement

Description	2011	2010	2009	Average
Net Sales	14,505,120,000	10,545,640,000	10,385,620,000	11,812,126,667
Cost of Goods Sold	2,240,770,000	1,634,540,000	1,197,360,000	1,690,890,000
Gross Profit	12,264,350,000	8,911,100,000	9,188,260,000	10,121,236,667
Operating Expenses	9,895,910,000	8,247,110,000	7,483,160,000	8,542,060,000
Operating Income	2,368,440,000	663,990,000	1,705,100,000	1,579,176,667
Interest Expense				
R and D Expense				
Advertising Expense	32,590,000	29,200,000	33,860,000	31,883,333

Latest Tax Year Available: Dec 31, 2012
Currency: INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets	13,544,630,000	11,971,715,000	10,955,260,000	12,157,201,667
Avg Operating Assets	9,246,415,000	8,218,260,000	8,007,585,000	8,490,753,333
Avg Net Payables	485,015,000	347,875,000	418,300,000	417,063,333
Avg Net Receivables	-1,805,000	-9,335,000	-9,885,000	-7,008,333
Avg Net PPE	3,114,810,000	3,002,225,000	3,159,990,000	3,092,341,667
Avg Net Inventory				
Avg Cash	333,605,000	361,880,000	623,145,000	439,543,333
Avg Cash And Equivalent	254,260,000			254,260,000
Avg LIFO Reserve				
Avg Invested Capital				

Latest Tax Year Available: Dec 31, 2012
Currency: INR

Info Drive Software Ltd

Income Statement

Description	2011	2010	2009	Average
Net Sales	1,154,072,000	1,281,954,000	2,133,679,000	1,523,235,000
Cost of Goods Sold	981,769,000	949,846,000	1,579,883,000	1,170,499,333
Gross Profit	172,303,000	332,108,000	553,796,000	352,735,667
Operating Expenses	163,469,000	218,579,000	405,579,000	262,542,333
Operating Income	8,834,000	113,529,000	148,217,000	90,193,333
Interest Expense				
R and D Expense			7,842,000	7,842,000

Advertising Expense	386,000	1,816,000	429,000	877,000

Latest Tax Year Available: Mar 31, 2012
Currency: INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets	2,040,965,000	1,946,271,000	1,696,085,000	1,894,440,333
Avg Operating Assets	1,532,720,000	1,516,022,500	1,455,465,000	1,501,402,500
Avg Net Payables	324,114,000	348,551,000	279,634,500	317,433,167
Avg Net Receivables	816,340,000	493,644,500	383,603,500	564,529,333
Avg Net PPE	76,566,000	84,971,000	104,269,500	88,602,167
Avg Net Inventory	4,291,500	22,833,000	43,315,000	23,479,833
Avg Cash	19,550,500	95,924,000	89,353,000	68,275,833
Avg Cash And Equivalent		18,364,000	18,718,000	18,541,000
Avg LIFO Reserve				
Avg Invested Capital				

Latest Tax Year Available: Mar 31, 2012
Currency: INR

NIIT Technologies Ltd.

Income Statement

Description	2011	2010	2009	Average
Net Sales	15,764,759,680	12,322,519,890	9,137,096,690	12,408,125,420
Cost of Goods Sold	539,461,460	1,391,500,970	721,627,250	884,196,560
Gross Profit	15,225,298,220	10,931,018,920	8,415,469,440	11,523,928,860
Operating Expenses	12,776,615,390	8,758,445,710	6,816,802,930	9,450,621,343
Operating Income	2,448,682,830	2,172,573,210	1,598,666,510	2,073,307,517
Interest Expense				
R and D Expense				
Advertising Expense	189,765,700	137,625,490	121,418,610	149,603,267

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Balance Sheet

Description	2011	2010	2009	Average
Avg Total Assets	11,700,291,885	9,191,320,790	8,234,362,830	9,708,658,502
Avg Operating Assets	9,190,779,505	7,485,514,150	6,477,035,250	7,717,776,302

Avg Net Payables	1,039,076,960	788,728,930	801,355,850	876,387,247
Avg Net Receivables	211,144,355	236,259,375	123,471,370	190,291,700
Avg Net PPE	2,589,997,790	2,268,490,430	2,185,749,345	2,348,079,188
Avg Net Inventory	6,497,365	5,318,600	7,985,755	6,600,573
Avg Cash	1,195,178,675	944,392,215	882,066,840	1,007,212,577
Avg Cash And Equivalent	111,881,025	46,792,170		79,336,598
Avg LIFO Reserve				
Avg Invested Capital				

Latest Tax Year Available: Mar 31, 2013
Currency: INR

Appendix: Details of Adjustment Calculations

Adjustment for Terms of Purchase (Payables)

Formula:

$$\text{AP Adjustment} = \left[\left(\frac{\text{Avg AP}_{\text{TP}}}{\text{Sales}_{\text{TP}}} * \text{Sales}_{\text{Comp}}\right) - \text{Avg AP}_{\text{Comp}}\right] * \left(\frac{\text{r}}{1+\text{r}}\right)$$

$$\text{Adjusted COGS}_{\text{Comp}} = \text{COGS}_{\text{Comp}} + \text{AP Adjustment}$$

Where:

AP = Accounts Payable
Comp = Comparable Taxpayer
TP = Tested Party
r = Interest Rate