Refresher course on Transfer Pricing

Industry specific transfer pricing issues – Manufacturing & Service industry

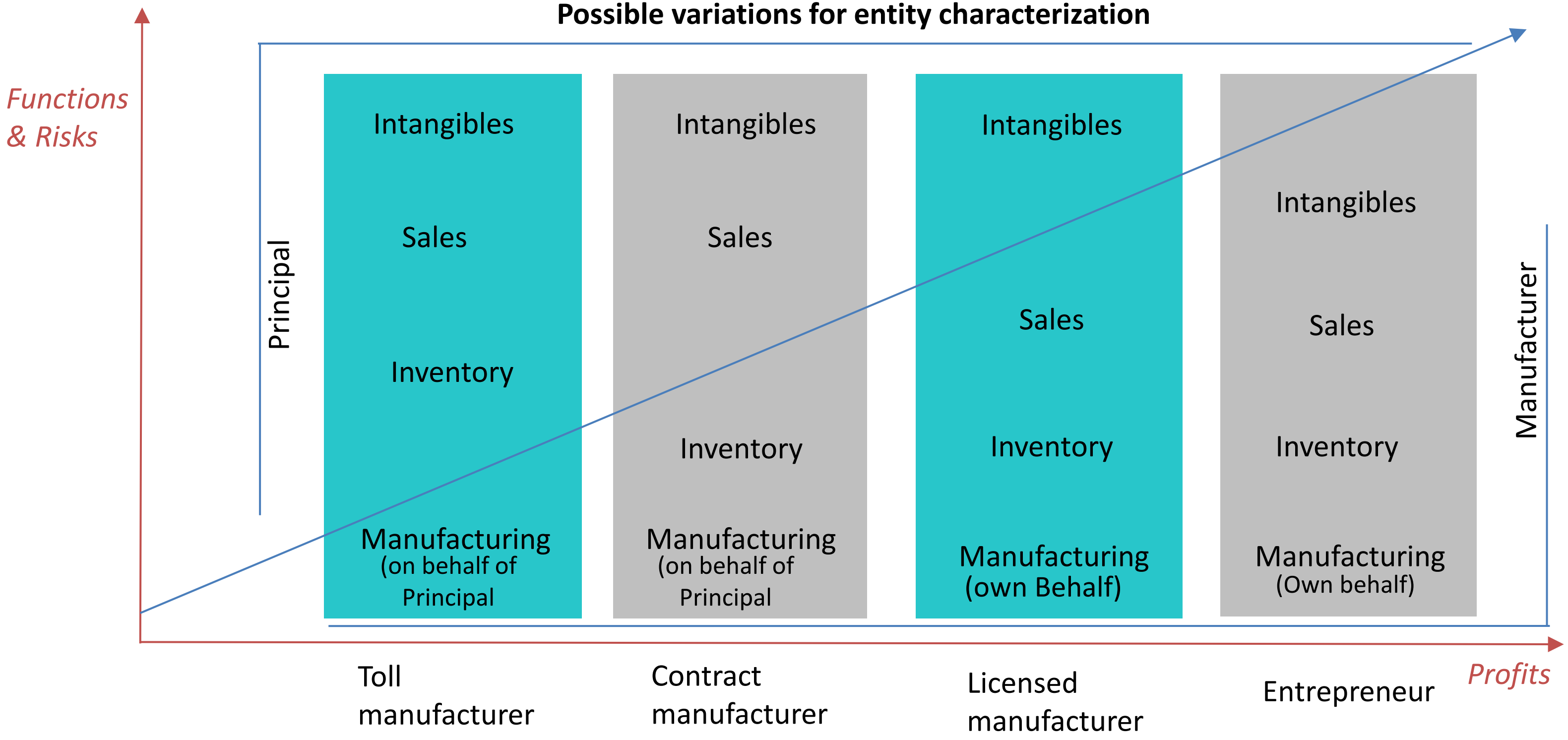
September 16, 2017

Karishma R Phatarphekar

CONTENTS

Manufacturing Industry - Overview

Manufacturing FAR – How it assists in characterization



FAR Analysis is useful in characterizing a manufacturing entity

Functions, Assets and Risk Analysis

FAR	Types of manufacturers			
	Full fledge	Licensed	Contract	Toll
Functions & Assets				
Owns non-routine technology i.e. IP (Research & Development)	Y	N	N	N
Owns material	Y	Y	Y	N
Manufactures for himself	Y	Y	N	N
Manufactures on behalf of others	N	N	Y	Y
Marketing	Y	Y	N	N
Sales & Distribution	Y	Y	N	N
Risks	**Normal**	**Less than normal**	**Limited**	**Minimal**
Market risk	Y	Y	N (Minimal)	N (Minimal)
Price risk	Y	Y	N	N
Inventory risk	Y	Y	Y	N
Capacity risk	Y	Y	Limited	N
Product Liability Risk	Y	Y	N	N
Warranty risk	Y	Y	Limited to rework	
Technology R&D Risk	Y	N	N	N

Benchmarking Filters

FAR	Types of manufacturers			
	Full fledge	Licensed	Contract	Toll
Standard Filters				
Sales manufacturing/Sales > 50% to identify companies involved in manufacturing activities) (Sales manufacturing/Sales > 75% may be used to identify primary manufacturers)	Y	Y	Y	N (Other operating income/sales>50% filter may be used to include cases where toll manufacturing is viewed as a service)
Sales > 1 crore	Y	Y	Y	Y
Net worth > 0	Y	Y	Y	Y
Indicative Ratios				
R&D/ Sales	Y	N	N	N
Inventory/Sales	Y	Y	Y	N
Intangible assets/Total assets	Y	N	N	N
Royalty/Sales	N	Y	N	N
Raw material/Total Cost	Y	Y	Y	N
Advertising marketing expenses/ Sales	Y	Y	N	N
Plant and machinery/Gross fixed assets	Y	Y	Y	Y

Comparability Analysis

Approach	Full fledged	Licensed	Contract	Toll
Comparable set	*Manufacturing set*			*Services Set*
Parameters for selection of comparable companies	Broad product comparability		Keywords such as contract, custom, job work, processing, as per specifications/requirements, on behalf of	
			Absence of distribution facilities, sales personnel, marketing of products	No raw material content, only consumables (Notes to accounts is key)
Ratios to be analysed	Manufacturing /Sales	Manufacturing/Sales R&D/Sales	R&D/Sales, Advertisement & Marketing/Sales, Royalty expense	RM/TC
Compensation Model	Profit Split Method (PSM) to determine the contribution towards routine functions and towards intangibles	Routine Operations -Risk free assured return in line with industry benchmarks Routine + Significant marketing efforts - Receipt of compensation for marketing intangible in addition to the above	Full cost plus mark up (or) Return for value added services plus appropriate return on capital investments in material and finished goods inventory	
Adjustment for differences in risks between comparables and tested party necessary to be included in the TP Study Report				

Manufacturing Industry – Key issues

Key TP Issues for Indian Manufacturers

- Royalty payouts
- Marketing intangibles
- Location Savings
- Risk adjustments –capacity utilisation, working capital, depreciation and risk adjustments for captive entities
- Aggregation v/s Segregation
- Comparability analysis for contract manufacturers
- Manufacture (Use of CUP over TNMM – considerations for quality, shelf life etc.)

Royalty Payouts

Royalty Payouts: Background

- Charging a royalty or licensing fee within a MNE for the use of valuable know-how, technology processes, trade names, or other intangible property, have faced stringent tax scrutiny in pharma industry.
- Tax authorities are challenging the royalty rate, comparables and arm's length price as determined by the taxpayer.
- Historically India has been a technology importing country.
- With the advent of MNCs, royalties were increasingly viewed as cash repatriation tools – tax shield on royalty payments plus credit of withholding tax in receiving country.

Various Payment Models	
Normal Royalty streams	Percentage on sales or profit, per unit royalty, lump sum payment etc.
Package Pricing	Amount included in transfer price of goods, no separate royalty payment.
Industrial franchise arrangements	Franchise fee paid by licensee to licensor for entire business format including production process, marketing strategies, etc.
Others	Separate royalty fees for trademark / trade name and technology.

Royalty Payouts

Issues

- Satisfy ‘Benefits test’, justify royalty in a loss situation
- Need to establish direct correlation with sales/ profitability
- Whether royalty is embedded in price paid
- Approvals received by RBI not acceptable as external CUP
- Aggregation approach under TNMM – Challenged and general lack of availability of comparables.
- Transaction specific approach has been adopted by revenue – Outright rejection of rationale for payment. ALP held to be NIL.
- Non acceptance of foreign comparable / databases.

Documentary Suggestions

- Tangible/Strategic benefits received and quantification
- Demonstrate dependence of business on the intangibles
- License agreement, quotations of comparable independent recipient
- Uniqueness of intangible, market where it is used, rights of taxpayer to receive upgrades
- geographic restrictions - export based on the licensed technology.

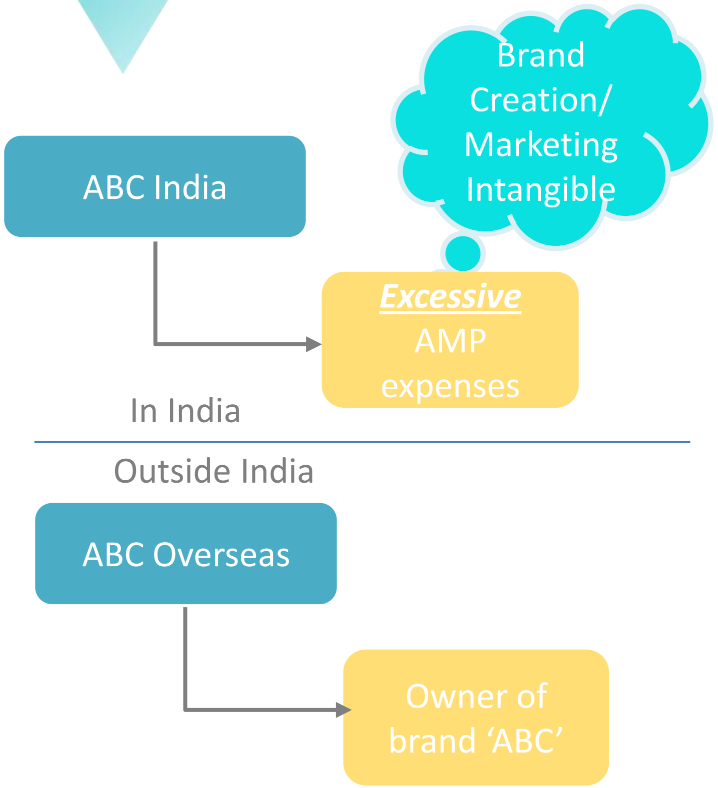
Royalty Payouts – Judicial Precedents

EKL Appliances Ltd. – Delhi High Court	▪ Whether or not to enter into the transaction is for the taxpayer to decide. Quantum of expenditure can be examined by the TPO but he has no authority to disallow the expenditure on the ground that the taxpayer has suffered continuous losses. ▪ High Court also relied on the OECD Guidelines - Tax administrations should not disregard and restructure the transactions as actually undertaken by the taxpayer
R.A.K. Ceramics India Pvt. Ltd. V/s DCIT – Hyderabad ITAT	▪ ITAT held that the TPO should consider the tangible benefits i.e. increased sales, no substantial production cost increase, minimal product recall and low after sales cost instead of only the quantum of royalty. ▪ Onus lies on the taxpayers to maintain proper documentation, demonstrating appropriate necessity for the technical assistance and the benefits derived thereon for considering the royalty payments.
Maruti Suzuki India Ltd. V/s ACIT – Delhi ITAT	▪ Primary intent of the license agreement was to transfer technology and not for trademark usage. ▪ As long as an item of expenditure has been incurred wholly and exclusively for the purpose of business of the company, whether or not such expenditure actually benefits them is an irrelevant consideration for the purpose of determination of ALP.

Marketing Intangibles

Marketing Intangibles

- Marketing intangibles are trademarks and trade names that aid in the commercial exploitation of a product or service, distribution channels, customer lists etc.
- Lately, it has become an important issue in global transfer pricing community
- Indian Revenue has been identifying excessive Advertising Marketing Promotion ('AMP') expenses by applying the bright line test i.e. Compare AMP to sales ratio of taxpayer vis-a-vis comparables
- AMP expense in excess of "bright-line" is considered as Transfer Pricing adjustment alleging contribution by taxpayer is towards strengthening associated enterprise owned brands
- Similar adjustments have been faced by many other taxpayers in India



Marketing Intangibles

Issues

- Determining the ALP
- More than 1 party contribute to the IP – what should be the arms length share of each party
- Advertisement, Marketing and Promotion expenses (AMP) construed as marketing intangible
- Indian distributor, even if not the "legal owner", held to be the local "developer" of trademark and hence should not pay royalty and / or recover the AMP
- TPO's adopt cost plus mark-up assuming more than normal AMP to be reimbursed at mark-up of 10-15%

Documentary Suggestions

- Well drafted agreements and documenting business strategy;
- Demonstrate the tangible benefits and economic substance;
- Demonstrate that marketing in India is routine and not towards promoting the brand;
- Policy to recover non routine expenditure as reimbursement

Marketing Intangibles – Judicial Precedents

Issue	Maruti Suzuki ruling (2015 Delhi HC)	Sony Ericsson ruling (2015 Delhi HC)	LG Special bench ruling (2013 Delhi ITAT Special Bench)
AMP expense constitutes an international transaction	AMP expense not an international transaction as application of Bright line test (BLT) is not permissible under transfer pricing regulations	AMP expense is an international transaction as marketing and distribution function performed towards related party	AMP expense is an international transaction
Application of bright line test/ Bifurcation of expense into routine versus non-routine	Relying on the Sony Ericsson ruling, application of BLT rejected	Application of BLT and concept of non-routine AMP expense rejected	Bright line expense is a tool to bifurcate AMP expenses into routine and non-routine
Transfer pricing approach	If payment of royalty and import of raw materials tested separately, no additional benefit flowing by way of AMP expense	AMP function is closely linked to and a part of overall distribution activity, can be aggregated for TP analysis	Purchase of goods and AMP expense are separate transaction and cannot be Aggregated
Set off permissible / aggregation of transactions	In consonance with Rule 10B, no adjustment warranted as the margins of the taxpayer is higher vis-à-vis comparables by application of the Transactional Net Margin Method ('TNMM')	Distribution of goods and marketing are closely linked transactions. Hence, no adjustment warranted if taxpayer remunerated adequately by higher margins on the distribution of goods	AMP function to be separately compensated even if higher profitability in the distribution function
Economic ownership on intangibles	Concept of economic ownership appreciated	Concept of economic ownership appreciated	Concept of economic ownership rejected

Location Savings

Location Savings

- Net 'Cost savings' realized by an MNC as a result of relocating manufacturing functions / production / operation sites from a 'high cost' to 'low cost' jurisdiction to obtain competitive advantage

- Typical cost savings include savings pertaining to - Labour costs; Raw material costs; Rent and property taxes; Training costs; Infrastructure costs and Incentives including tax exemptions

Issues

- Quantification and allocation of "location savings"
- Attribution i.e. who is the rightful owner of additional profits from location savings, the parent company or the overseas subsidiary ('AE') or both
- Existence and allocation of "location savings" depends upon the bargaining power of the parties
- Bargaining Power highly subjective - depends upon factors like economic or beneficial ownership, uniqueness and monopoly power
- Benchmark industry cost structure changes rapidly due to shift of manufacturing activity to low cost locations

Documentary Suggestions

- Approaches to allocation of location savings :
  - Facts and circumstances based approach
  - Indirect approach considering location dis-savings
- LS advantage passed onto end customers to survive stiff competition

Location Savings – Judicial Precedents

- **GAP International Sourcing (India) Pvt. Ltd. – Delhi Tribunal**
- Generally, the advantage of location savings is passed on to the end customer via a competitive sales strategy
- The arm’s length principle requires benchmarking to be done with comparables in the jurisdiction of the tested party and the location savings, if any would be reflected in the profitability earned by comparables.
- No separate/additional allocation is called for location savings

- **Watson Pharma – Mumbai Tribunal**
- The taxpayer as well as AEs operated in a perfectly competitive market, and the taxpayer did not have exclusive / unique access to factors leading to location-specific advantages and therefore there was no super profit arising
- Where local market comparables were available and used, specific adjustment for location savings was not required. Any benefit/ advantage to the AE was irrelevant if the profit level indicator of the taxpayer was within the range of comparables.
- The India chapter of the United Nations Transfer Pricing Manual (which, among other issues, also discusses location savings) represented a view of the Indian tax administration and was not binding on appellate authorities.

Capacity Utilisation

Capacity Adjustments

Purpose

- To account for differences in capacity utilization between the tested party and the comparable since low profitability of tested party may not always be attributable to pricing of international transaction
- One needs to consider effects of under-absorption of overheads due to underutilization of capacity

Scenarios where capacity utilization adjustments can be considered (provided they are documented):

  - Start-up pressures
  - Slow business growth
  - Obsolescence of product or service
  - Regulatory restrictions
  - Strike or lock-out at a factory

How to adjust for underutilization of capacity?

- Ascertain the capacity at which the tested party functions
- Ascertain the capacity at which comparable companies function
- Identify the fixed cost in respect of which adjustment is sought to be made
- Proportionately adjust the fixed cost and the cost base considered for the purpose of computing the PLI.

Capacity Utilization – Judicial Precedents

Assessee	Principle
Frigoglass India Pvt Limited	ITAT allowed capacity underutilization adjustment, in principle, for assessee (a subsidiary of Norcoolding ASA, Norway). ITAT noted that there were serious issues with respect to assessee's products and a fall in production by over 64% evidenced that there was substantial underutilization of capacity. ITAT held that TPO's stand that any fall in utilization of capacity should have been subsidized by the AE was devoid of any basis.
Tasty Bite Eatables Limited	ITAT allowed low capacity utilization adjustment to assessee (manufacturing ready-to-cook food products), observing that assessee's capacity utilization (Actual Production / Installed Capacity * 100) was only 15% against comparable company's capacity utilization of 53%. ITAT accepted assessee's argument that the difference in capacity utilization was significant and material to impact profit margin. ITAT held that since the ability to absorb fixed overheads was less when capacity utilization was low, it led to increased cost & lower profit.
Innodata Isogen India Pvt Limited	ITAT upheld order of CIT(A) deleting TP addition for the reason that assessee (Indian subsidiary engaged in content related services such as data conversion) was justified in reducing idle fixed expenses from operating expenses. ITAT observed that, owing to decline in revenues (as a consequence of global meltdown in US economy), excess capacities and idle fixed costs were incurred by assessee.

Aggregation v/s Segregation

Aggregation vs. Segregation

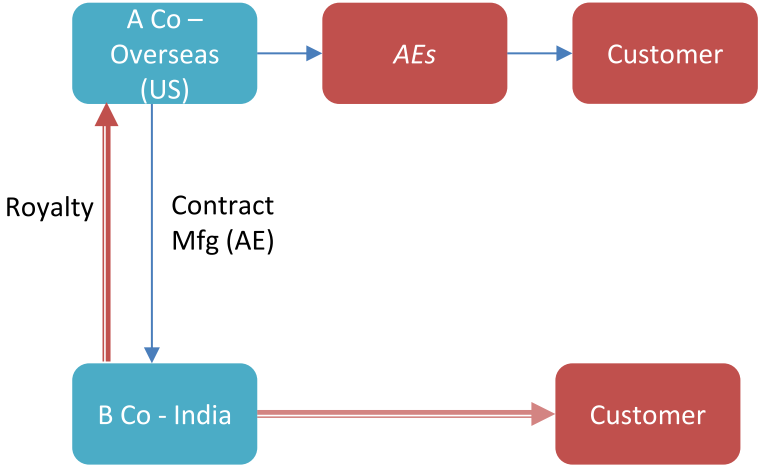
- Rule 10B(1)(e)(i) *" net profit margin realised by the enterprise from an international transaction entered into with an associated enterprise…."*
- Taxpayer to maintain segmental accounts separately for transactions with AE's and Non-AE's
- Expenses to be allocated between AE and Non-AE segment using appropriate basis / allocation keys:
  - Direct expense: on actual basis
  - Indirect expenses: Based on allocation keys such as turnover, employee headcount, time spent, area occupied, number of computers etc.

Real time audited segmental data preferred over unaudited segmental data by tax authorities during assessment

Comparability analysis of Contract Manufacturers

Comparability analysis of Contract Manufacturer

Case Study



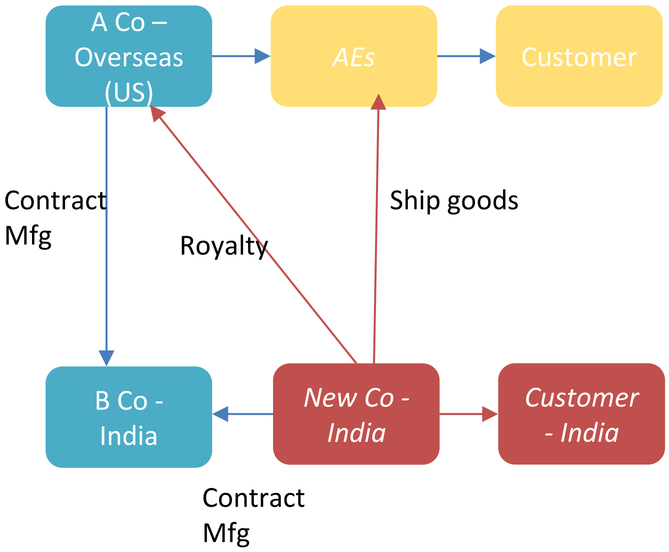
Facts of the case

- A Co. Overseas has appointed B Co. India for contract manufacturing of goods.
- A Co. sells this goods to AEs who then distribute the goods to customers. However the goods are stocked and shipped by B co directly to AEs
- B Co India is remunerated on Cost + (AE Segment)
- B Co also manufacturers similar goods and sells them to customers in India where it acts as a entrepreneur and assumes all the risks (Non-AE Segment)
- Where B Co acts as an entrepreneur, A Co gives B Co the license to manufacture goods and B Co pays royalty to A Co @ 10% of sales. The payment of royalty has been disallowed by the TPO for failing the benefit test

Comparability analysis of Contract Manufacturer

Case Study

Issue Involved: TPO compared the margin earned by B Co for the contract manufacturing segment (AE Segment) with the manufacturing segment where it acts as an entrepreneur (Non-AE segment) and made adjustment.



Mitigate TP Exposure

- In the new model, the A Co. Overseas and B Co. India contract manufacturing model remains the same.
- New Co - India is who will appoint B Co as Contract Manufacturer. New Co will sell the goods to Customers in India.
- For the license to manufacture goods, New Co will pay royalty to A Co in the following manner : brand royalty @ 2 % of sales; royalty for technical know-how@ 5% of sales

Further it will also pays the following charges to A Co:

- management fee@3%

- marketing support services@5%

Use of CUP over TNMM

Use of CUP over TNMM

Issues

- Comparability with generic API's;
- Secret Comparables using power u/s 133(6);
- CUP analysis for import of actives / formulations. (using CIMS data) – geographic differences, quality and grade of APIs ignored

Documentary Suggestions

- Selection of right comparables;
- Carry out analysis on Customs database;
- Exclusion of companies from different geographies;
- Difference in Selling Price, Pharmacopeia;
- Re-iteration of high profits under TNMM, if applicable;
- Analysis of the customs data / relevant industry publications

Use of CUP over TNMM

- **Analysis of situation where external CUP is not favourable**
- Whether the patents for the products have expired
- Independent reports on differentiation in quality
- Selling price and market share analysis
- Evaluate internal CUPs if any upfront
- Quantify other adjustments – R&D, quality and other support
- Comparison of the transfer price over the past 5 years – whether increased or decreased
- Understand the policy of the group to price the API's whether standard cost plus

- Whether the patents for the products have expired
- Independent reports on differentiation in quality
- Selling price and market share analysis
- Evaluate internal CUPs if any upfront
- Quantify other adjustments – R&D, quality and other support
- Comparison of the transfer price over the past 5 years – whether increased or decreased
- Understand the policy of the group to price the API's whether standard cost plus

Service Industry – Overview

Types of Service Providers - FAR

FAR	Types of Service Providers		
	Entrepreneur/ Normal risk service providers	**Low risk service providers**	**Captive service providers**
Functions			
R&D	Y	N	N
Significant People Functions	Y	N	N
Quality	Yes- Assume overall responsibility	Limited to the extent of services performed	Limited to the extent of services performed
Marketing	Y	Y	Y
Risks			
Manpower Recruitment/Attrition	Y	Y	Y
Service Liability	Y	To the extent of services performed	N
Capacity Utilisation Risk	Y	N	N
Regulatory	Y	Y	Y
Foreign Exchange	Y	Y	N
Credit Risk	Y	N	No advances

Types of Service Providers - Benchmarking Filters

FAR	Types of Service Providers		
	Entrepreneur/ Normal risk service providers	Low risk service providers	Captive service providers
Standard Filters			
Other Operating Income/Sales> 50% (To identify companies involved in service provision)	Y	Y	Y
Sales> 1 crore	Y	Y	Y
Net worth> 0	Y	Y	Y
Indicative Ratios			
Employee cost/Sales	High	High	High
Intangible assets/Total assets	Y	Y	N
R&D/Sales	Y	N	N

Service Industry – Key issues

Key TP Issues for Service Industry

- Issue of characterisation - KPO vs. BPO
- Management services
- Contract R&D
- Other TP issues

Issue of Characterisation
- KPO vs. BPO

BPO Vs. KPO

- Captive Service providers – a cost plus arrangement with mark-up between 10 to 20 percent
- Revenue authorities applying mark-up in the range of 25 percent to 35 percent
- In some case, low end back office support services (‘BPO’) characterized as High end Knowledge Process services (‘KPO’)
- High margin companies mainly providing KPO services are generally alleged as comparables (companies such as Accentia Technologies Limited; Infosys BPO Limited; eClerx Services Limited; etc.
- Economic adjustments for working capital considered only selectively and Risk adjustment normally not allowed
- Stringent Filters applied: 75 percent export turnover filter, different accounting year end, consistent loss making / diminishing revenue, turnover filter of 10 times, etc.

BPO Vs. KPO – Case Laws

Maersk Global Service Centres (India) Private Limited vs. Asst. Commissioner of Income Tax [2014] 43 taxmann.com 100 (Mumbai - Trib.) (SB))

- The principal functions / activities of the tested party should be identified.
- The range of services rendered by the ITeS sector is so wide that a classification of all services, either low end or high end may not always be possible.
- The comparability exercise can be split into two steps in order to attain a relatively equal degree of comparability:

  Step 1: Select the potential comparables at the ITeS - sector level by applying the broad functionality test;

  Step 2: From the broad ITeS set, eliminate comparables that undertake significantly different 'functions' as carried out by the taxpayer, for ensuring relatively equal degree of comparability.
- SB noted that companies primarily engaged in high end support services cannot be compared to the assessee mainly engaged in providing low end support services.

Rampgreen Solution Pvt. Ltd. ([2015] 60 taxmann.com 355 (Delhi))

- Largely reiterated above points with additional observation that where services rendered are clearly in nature of lower end ITeS such as Call Centre not involving domain knowledge then the inclusion of KPO service provider is not warranted at the threshold itself while conducting Transfer Pricing study.

Management Fee

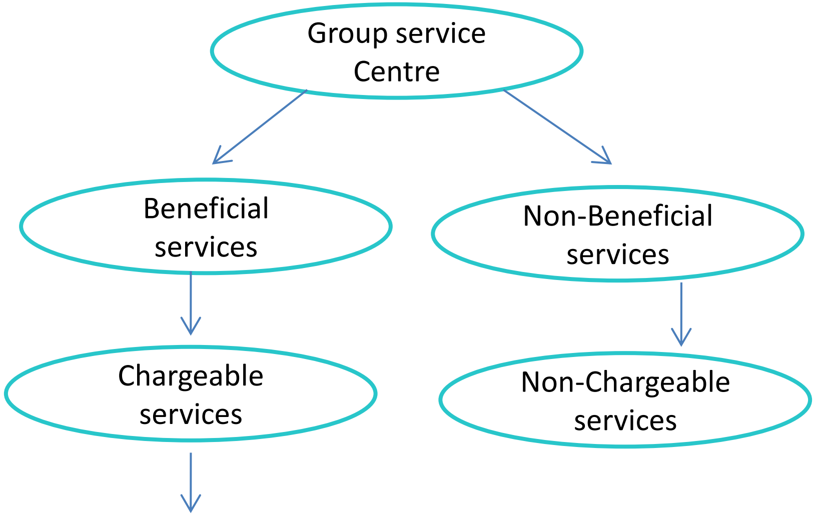
Management Fee

- Different type of intra-group services are provided within a group by various entities. However, the most common and litigated form of intra-group services in India are in the nature of management support services / cross charges

- Illustrative list of management support services are :
  - ✓ Finance, Accounting & Legal
  - ✓ HR
  - ✓ Information Technology
  - ✓ Internal Audit
  - ✓ Tax Planning and Management
  - ✓ Market Risk Management

- The Indian Revenue challenges the determination of arm's length price for such services and in most cases computes the price as 'Nil' by following the precedence in previous years

- Often the Indian Revenue challenges on the need and actual receipt of services, commensurate benefits derived by the Indian entity from such services, basis of cost allocation and the arm's length mark-up



<u>Arm's length price based on cost plus mark-up determined based on:</u>

- Functional and Economic analysis
- Availability of internal / external data

Management Fee

- Robust / exhaustive documentation requirement demanded to evidence :
  - ✓ Need Test;
  - ✓ Benefit Test;
  - ✓ Rendition Test;
  - ✓ Basis of allocation;
  - ✓ Not duplicative; and
  - ✓ Not a shareholder service

- Lately, many jurisprudence have been delivered on this issue, both in favour and against the taxpayer, but, majority of cases have been remanded back to the lower authorities for examination of the exhaustive back-up documentation submitted in support of such services

- Typical mindset of Revenue is that management charge are used for profit repatriation

Management Fee – Judicial Precedents

TNS India Pvt. Ltd. – Hyderabad Tribunal	▪ For the advise given by various group centers to the group companies in day-to-day manner is difficult to place on record by way of concrete evidence but the way business is conducted, one can perceive the same
McCann Erickson India Pvt. Ltd. – Mumbai Tribunal	▪ The legitimate business needs of the company must be judged from the perspective of the company. It is not for the AO to dictate what the business needs of the company should be
Dresser Rand India Pvt. Ltd. – Mumbai Tribunal	▪ When computing the ALP, the TPO/AO cannot question the commercial wisdom of the taxpayer. It is the taxpayer's prerogative to decide how to conduct its business
Verizon Communications India Pvt. Ltd.– Delhi Tribunal	▪ Documentary evidences are key to substantiate the genuineness of expenditure incurred on payment of management fee / intra group charges

Contract R&D

Contract R&D

- **Concept**
- To minimize costs, companies located in developed countries are either shifting R&D work wholly or partially to developing countries
- Such R&D activity is carried under a contract, which generally stipulates that the principal (foreign AE) and not the service provider (Indian taxpayer) would be the legal owner of any intangible arising out of such R&D activities
- In India, mostly Indian taxpayers render routine services and claim to earn routine mark-up on its costs whereas the foreign AE is entitled to return on intangible including location savings, if any

- **Issue**
- Revenue's Allegations in select cases
  - Majority of Valuable & Unique IP generating work undertaken in India
  - India R&D Centre becomes Economic Owner of IP - IP transferred without adequate compensation
  - Functional characterization of 'risk insulated service provider' challenged
  - Arm's Length Compensation = Global Profits of MNE allocated to India on ratios such as R&D Head Count, etc
- Prone to high litigation due to lack of clarity – prone to subjective interpretation;
- Primary onus on tax payer to maintain detailed documentation and substantiate its functions
- Circulars recently issued by CBDT provide guidance on characterization of R&D services (The CBDT issued new circular no. 6 of 2013 dated 29th June,2013 amending circular no. 3 of 2013 dated 26th March, 2013)
- Circular 6 recognizes R&D centres set up by foreign cos in India can be classified into 3 broad categories Based on functions, assets and risk assumed by them.
  - Centres which are entrepreneurial in nature – Performing significant Functions and assumes substantial risk
  - Centres which undertake contract R&D – Performing minimal functions, assets and risk: and
  - Centres which are based on cost sharing arrangements – these entities would fall between the entrepreneurial model and the contract R&D model.

Contract R&D

Contract Research Services

R&D Activities in India

Guidelines for identifying the characterization of R&D Centre

Parameters	Foreign Entity	Indian Entity
Functions	Performs Economically Significant Functions *Economically significant functions' to include critical functions such as conceptualization and design of the product and providing strategic direction and framework*	Performs work assigned by foreign entity
Funding/ Assets	Provides funds/ capital Significant assets & intangibles	Receives remuneration for the services performed
Supervision & Control	Strategic decisions for Core Functions & Monitoring on regular basis	Operates under direct supervision and actual control
Risk Profile	Economically Significant Risks	No Economically Significant realised Risks
Outcome of Research	Legal & economic owner of resultant IP	No ownership of resultant IP

Favourable Analysis

Contract R&D

Unfavourable Analysis

Entrepreneurial R&D

Cost Sharing Arrangements of R&D

Note: In the case of a foreign principal being located in a country/ territory widely perceived as a low or no tax jurisdiction, it will be presumed that the foreign principal is not controlling the risk. However, the Indian Development Centre may rebut this presumption to the satisfaction of the revenue authorities.

Contract R&D – Judicial Precedent

➢ GE India Technology Centre Pvt. Ltd. – Bangalore ITAT

- The ITAT held that the notion that risk can be controlled remotely by the parent company and that the Indian subsidiary is engaged in core functions, such as carrying out R&D activities or providing services as risk free entities, is something which needs to be demonstrated

- The ability of the parent company to exercise control over the risk - remotely and from a place where core functions of R&D and services are not located - is very limited

- In summary, the extent of risk associated with the Indian entity is matter of facts to be established with evidences

Other TP issues

Other TP issues

- Selection of Foreign Tested Party
- Internal vs. External comparables
- Exact Vs. Functional Comparability
- Domestic Vs. Export sales
- Allocation of Profit & Losses
- Position of taxpayer in value chain
- Terms as per inter-company agreement – Scope of work *(does not speak the actual scope of work but an elaborated version of that)*

Glossary

GLOSSARY

Acronym	Full Form
OECD	Organisation for Economic Co-operation and Development
AMP	Advertising Marketing and Promotion
AE	Associated Enterprises
CBDT	Central Board of Direct Taxes
ITAT	Income-tax Appellate Tribunal
HC	High Court
TPR	Transfer Pricing Regulations
R&D	Research & Development
CUP	Comparable Uncontrolled Price
TNMM	Transactional Net Margin Method

Acronym	Full Form
UN	United Nations
SC	Supreme Court
LS	Location Savings
IT	Information Technology
ITes	Information Technology enabled services
BPO	Business Process Outsourcing
KPO	Knowledge Process Outsourcing
BEPS	Base Erosion and Profit Shifting
FAR	Functions, Assets and Risk
ALP	Arm’s Length Price

Thank You

Karishma Phatarphekar