



**WESTERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA**

Reference to and Proceedings before TPO, Valuation Officer and DRP

Presentation by:
Bhavesh Dedhia

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TP landscape in India

Indian Transfer Pricing Litigation Environment - Past

TP Adjustment scenario in past

Transfer pricing audit year	Assessment year	Amount of adjustment in income (₹ crore)
2005-06	2002-03	1,220
2006-07	2003-04	2,287
2007-08	2004-05	3,432
2008-09	2005-06	7,754
2009-10	2006-07	10,908
2010-11	2007-08	24,111
2011-12	2008-09	44,532
2012-13	2009-10	70,000
2013-14	2010-11	60,000
2014-15	2011-12	47,000

TP disputes in India accounted for 70% of the world's total by volume

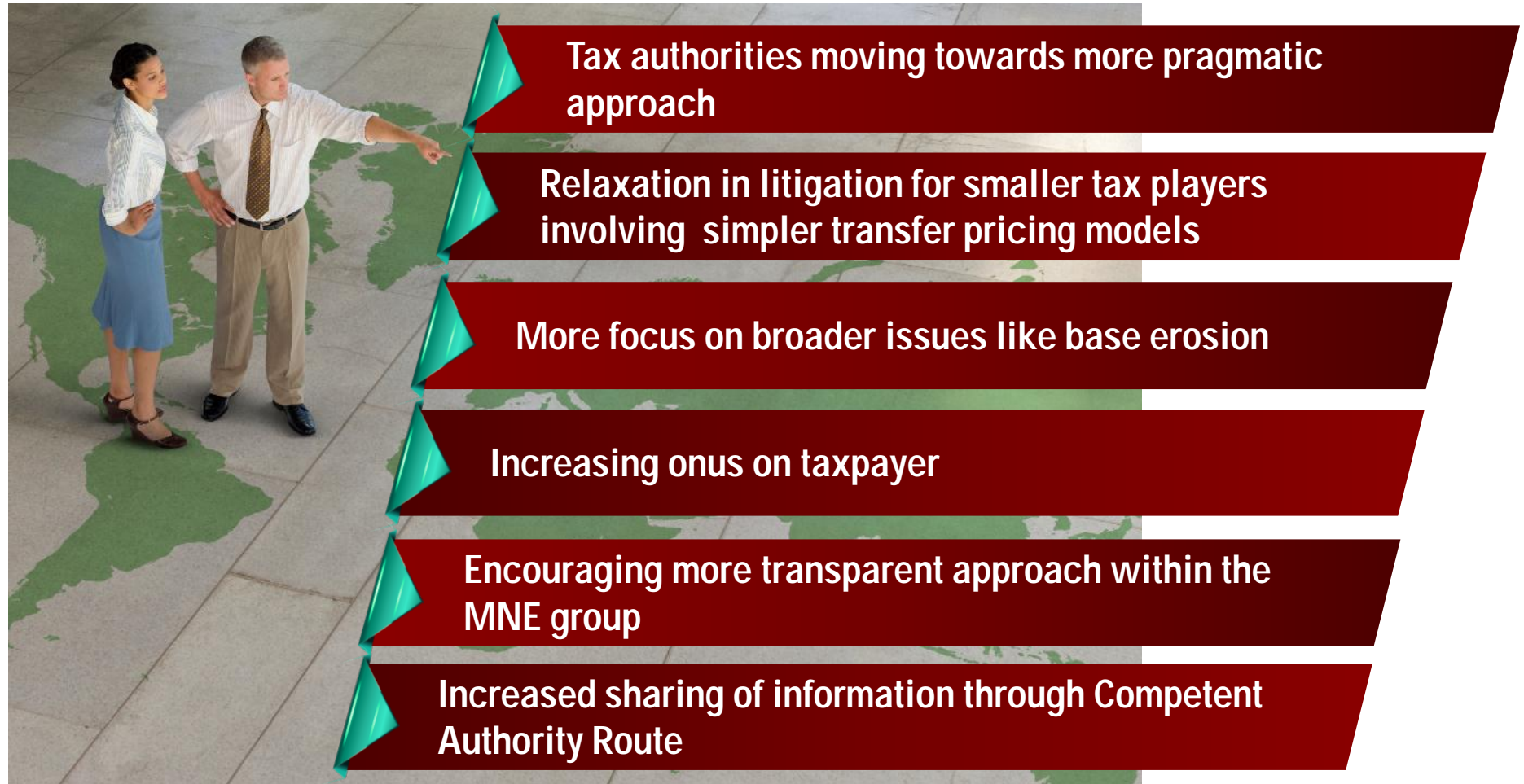
Financial Express 1 September 2012

The issue of TP has generated much heat in India involving MNCs operating here such as Vodafone, Shell, WNS and Nokia

Economic Times , 8 April, 2014

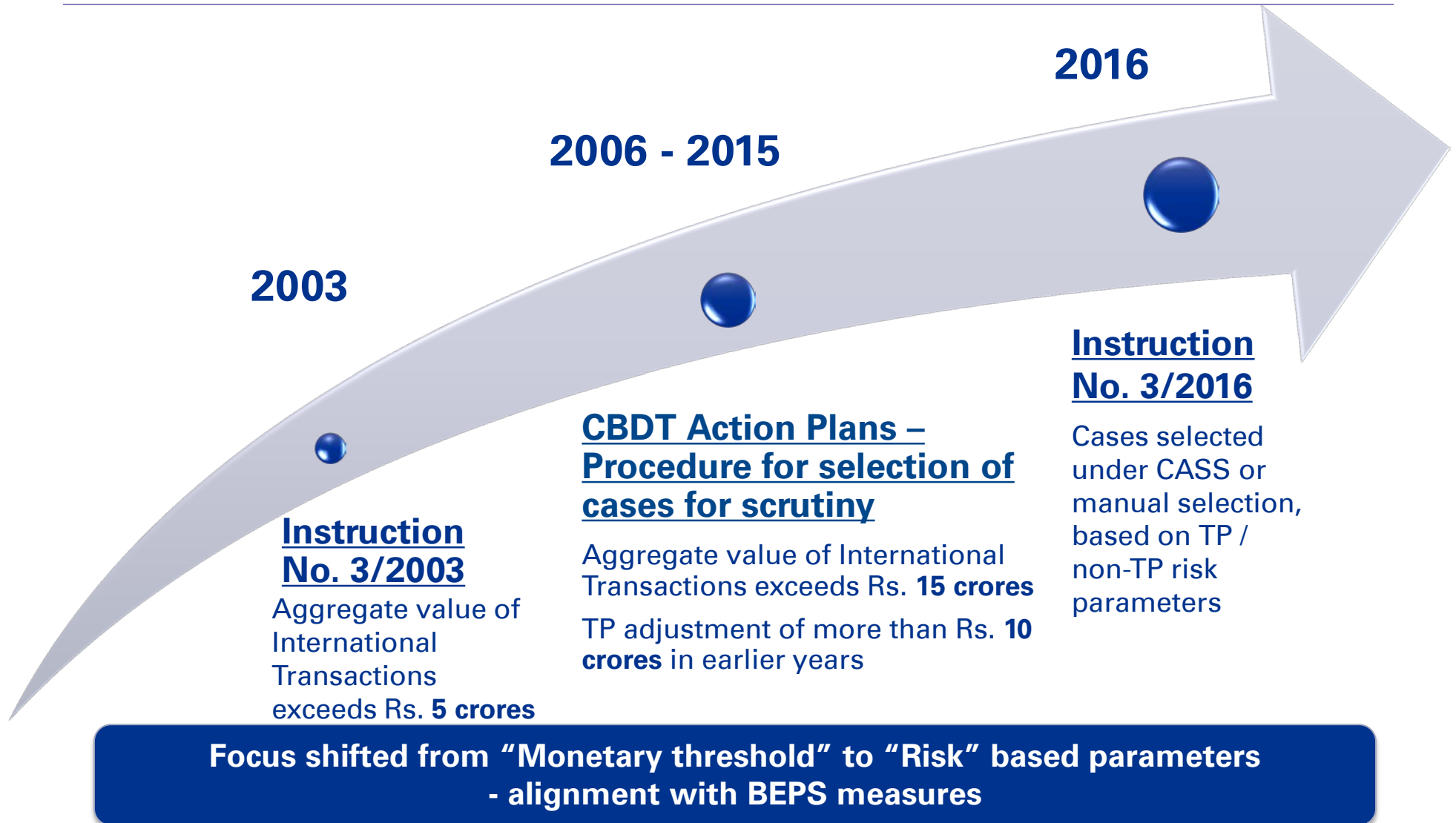
TP adjustments data from Financial Express Newspaper dated 25 March 2015

India today on Transfer Pricing Litigation - Present

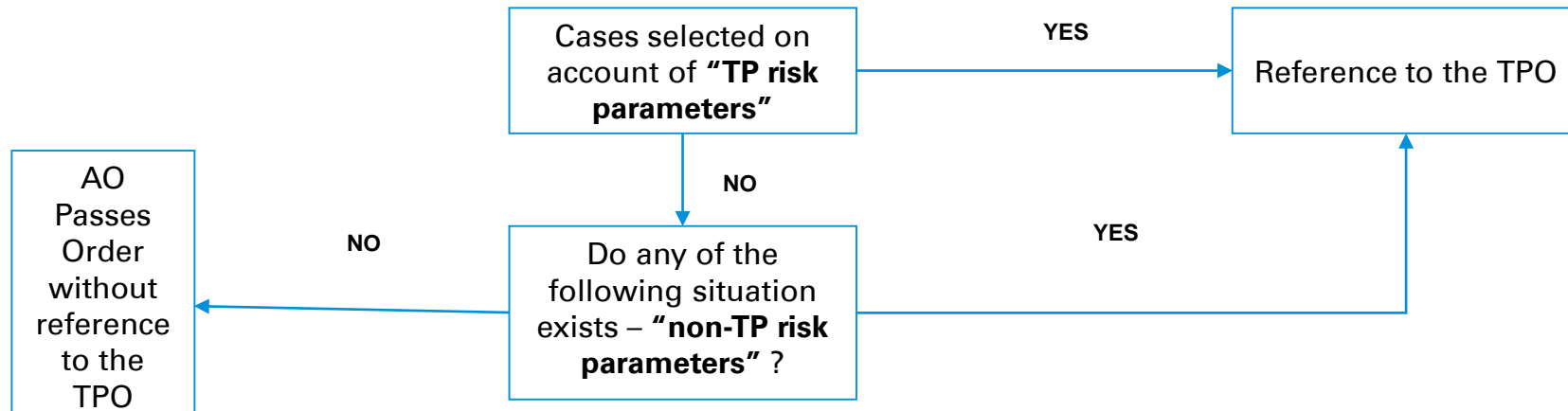


Reference and proceedings before the TPO and Valuation Officer

Reference to Transfer Pricing Officer - Journey till now



Reference to the TPO - CBDT Instruction No. 03/2016



*Taxpayer has **not filed Form 3CEB** at all or has not disclosed all transactions (including those that come to the notice of the AO)*

***TP adjustment of INR. 10 Crore or more** in an earlier AY and such adjustment has been upheld by the judicial authorities or is pending in appeal;*

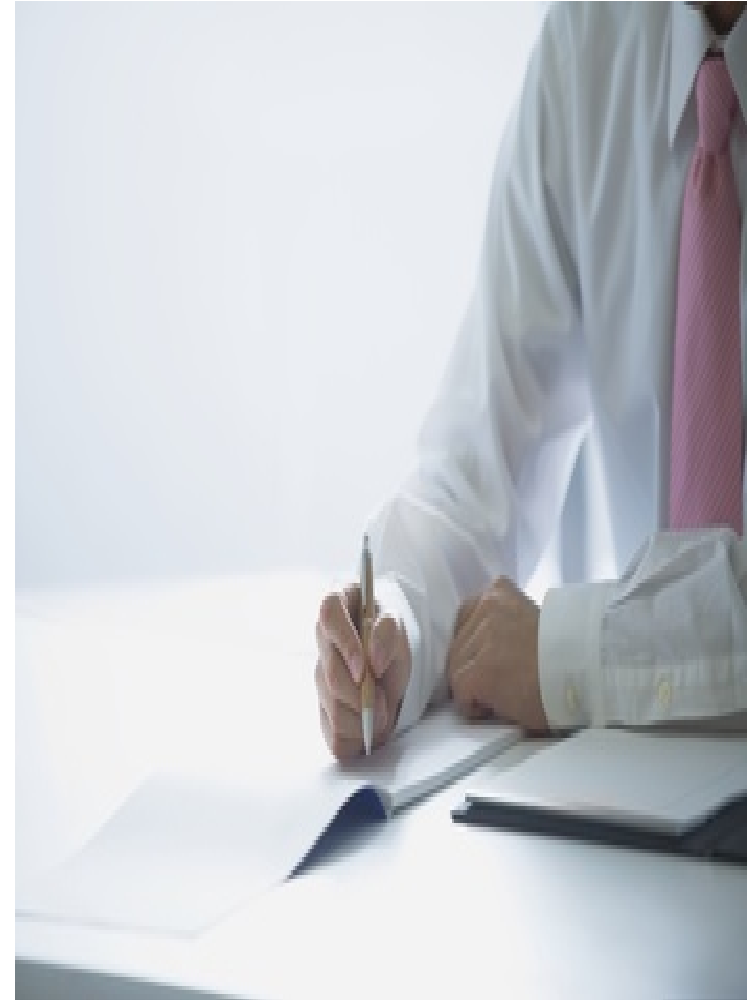
***Search and seizure or survey operations** have been carried out and findings regarding TP issues have been recorded by the Investigation Wing or the AO*

*Taxpayer has declared the international transactions or SDT in the Form 3CEB but has made certain **qualifying remarks** to the effect that the said transactions are not international transactions or SDT or they do not impact the income of the taxpayer.*

- AO must record his satisfaction that there is an income or a potential of an income arising
- AO must provide an opportunity of being heard to the taxpayer before recording his satisfaction or otherwise

Instruction No. 03/2016 - Operational guidance

- TPO empowered to examine any other international transactions (not refereed by the AO) that come to his notice during the proceedings;
- TPO's order should contain the following minimum details:
 - ✓ Comparable data used for the purpose of ALP computation
 - ✓ Application of most appropriate method
 - ✓ Reasons for arriving at a certain ALP
- TPO's - Additional/Joint CIT to be assigned limited number of important and complex cases, not more than 50
- Determination of ALP should not be carried out by the AO, if reference is not made to the TPO.



Reference to the TPO - Relevant provisions

- **S 92CA (1)** – If AO considers it necessary or expedient so to do, he may refer the computation of arm's length price to the TPO with the previous approval of the Commissioner – prima facie view
- **S. 92CA (2)** - TPO to serve notice on the Assessee requiring him to produce evidence in relation to arm's length price computed
- **S. 92CA(2A) and (2B)** – TPO can suo motto take cognizance of the transaction not reported by the Assessee or not referred by the AO
- **S 92CA(3)** - TPO after taking into account the material available with him shall, by an order in writing, determine the arm's length price in accordance with s 92C(3).
- **S 92CA(3A)** - Time limit for passing an order - 60 days prior to the date of limitation referred in S. 153.
- **S. 92CA(4)** - On receipt of the order of the TPO, the AO shall proceed to compute the total income of the assessee in conformity with the ALP as determined by the TPO.
- **S. 92CA(5) and (6)** refers to rectification for mistake apparent from record in TPO's Order
- **S. 92CA(7)** exercise of power specified under:-
 - 131(1) - Power regarding discovery, production of evidence, etc.
 - 133(6) - May require any person to furnish information or
 - 133A - Power of Survey

Reference to the TPO - Important case laws

Bombay High Court - Vodafone India Services (P) Limited [TS-621-HC-2015(BOM)-TP]

- Grant of personal hearing before referring the matter to the TPO has to be read into Section 92CA(1) in cases, where the very jurisdiction to tax under Chapter X is challenged by the assessee.

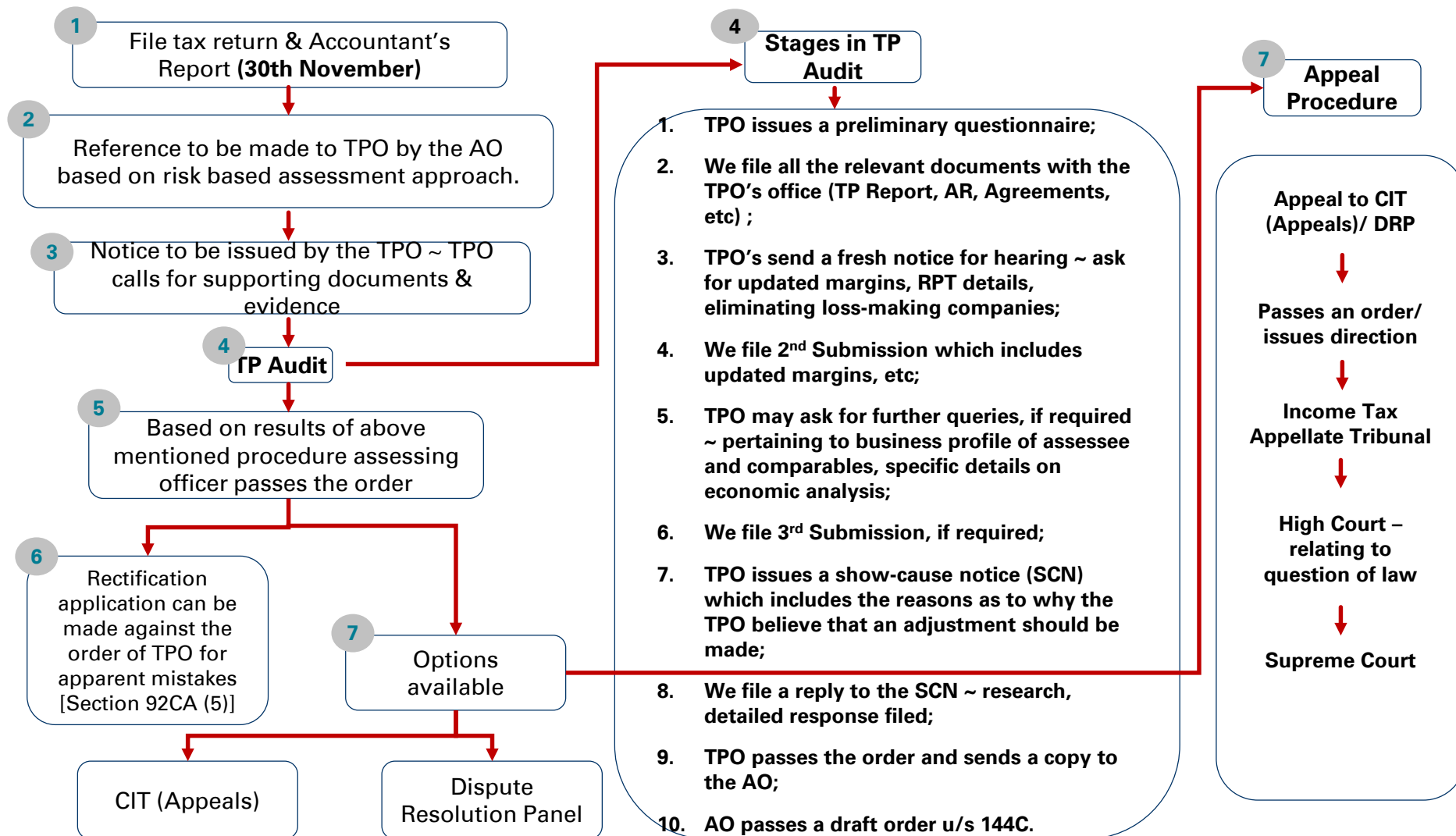
Delhi High Court - Indorama Synthetics India Ltd [TS-501-HC-2016(DEL)-TP]

- HC set aside the reference made by AO to the TPO since the same was made without affording the assessee an opportunity of being heard.
- HC also held that CBDT Instruction 3/2016 being a procedural aspect, the same can be made applicable retrospectively.

Mumbai ITAT - Tata Consultancy Services Ltd. [TS-521-ITAT-2015(Mum)-TP]

- Prima facie belief of AO / approval of CIT for the reference to the TPO on a proper application of mind to the relevant facts and circumstances is a condition precedent, mandatory and a statutory safeguard for assessee's right and cannot be performed in a mechanical manner.
- An order passed by the AO in conformity with the adjustment proposed by the TPO without such application of his/her mind cannot be upheld.

Audit Process



Time limit for completion of assessment proceedings

Assessment Year ('AY')	Time limit	Due Date for Completion	
		Cases not referred to TPO	Cases referred to TPO
Existing Time Limit			
2017-18	21 months from the end of relevant AY Plus 12 months in case of reference to TPO	AO order - 31 Dec. 2019	TPO order – 31 Oct. 2020; Draft AO order – 31 Dec. 2020
Proposed Time Limit as per Budget 2017			
2018-19	18 months from the end of relevant AY Plus 12 months in case of reference to TPO	AO order - 30 Sept. 2020	TPO order – 31 July 2021; Draft AO order - 30 Sept. 2021
2019-20 & subsequent AYs	12 months from the end of relevant AY Plus 12 months in case of reference to TPO	AO order - 31 Mar 2021	TPO order – 31 Jan. 2022; Draft AO order - 31 March 2022

Reference to Valuation Officer - Statutory provisions

- **Pursuant to the Supreme Court's direction in case of CIT, Delhi v. Bharti Cellular Ltd. [2010] 193 Taxman 97 (SC)**

"We are directing CBDT to issue directions to all its Officers, that in such cases, the Department need not proceed only by the contracts placed before the officers. With the emergence of our country as one of the BRIC countries and with the technological advancement matters such as present one will keep on recurring and hence time has come when Department should examine technical experts so that the matters could be disposed of expeditiously and further it would enable the appellate Forums, including this Court, to decide legal issues based on the factual foundation. We do not know the constraints of the Department but time has come when the Department should understand that when the case involves revenue running into crores, technical evidence would help the Tribunals and courts to decide matters expeditiously based on factual foundation."

- **CBDT issued Instruction No. 5/2011** - The AO/TPO should frame assessments only after taking opinion of technical/ valuation experts and bringing on record technical evidence in cases involving complex issues of technical nature and substantial revenue
- **S. 50C(2)** – AO may refer the valuation of the capital asset to a Valuation Officer, if the taxpayer claims that stamp duty valuation is higher than the fair market value (FMV) and such valuation has not been disputed
- **S. 55A** – With a view to ascertaining the FMV of a capital asset, the AO may refer the valuation of capital asset to a Valuation Officer, if AO is of opinion that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do

Reference to Valuation Officer - Statutory provisions

- **S 56(2)(x)** - AO may refer the valuation of immovable property received by the taxpayer to the Valuation Officer, if the difference between stamp duty value and actual consideration exceeds Rs. 50,000 and such stamp duty value is disputed by the assessee as per section 50C(2)
- **S. 142A(1) and (2)** – For the purposes of assessment or reassessment, AO may make a reference to a Valuation Officer to estimate the value, including FMV, of any asset, property or investment whether or not he is satisfied about the correctness or completeness of the accounts of the taxpayer
- **S. 132(9D)** – To estimate the FMV of the property attached during search or seizure proceedings, the AO may refer make a reference to a Valuation Officer
- **S 269L(1)** - For the purpose of initiating proceedings for the “acquisition of any immovable property” (by Central Government) under certain circumstances (tax evasion or concealment of income), the competent authority (Jt. Commissioner) may require a Valuation Officer to determine the FMV of such immovable property
- **S. 281B(4)** - During pendency of the assessment proceedings if any property is attached by the AO (for protecting the revenue’s interest), then AO may refer make a reference to a Valuation Officer to estimate the FMV of such property

Reference to Valuation Officer - Procedural aspects (section 16A of the Wealth Tax Act, 1957)

- VO may serve a notice on the taxpayer requiring him to furnish the accounts, records and other relevant documents for the purpose of valuation.
- If the VO is satisfied that the value declared by the taxpayer is correct, then he shall pass an order in writing and send a copy of his order to the AO and the taxpayer.
- If not, he shall serve a notice on the taxpayer intimating the value which he proposes to estimate and give an opportunity to state his objections. After hearing the taxpayer's contentions and other evidences as may be produced by him, the VO shall pass an order estimating the value of the asset and send a copy of his order to the AO and the taxpayer.
- On receipt of order from the VO, the AO shall proceed to complete the assessment (in relation to the valuation of the asset), in conformity with the order of the VO

Levy of Wealth Tax in India abolished and removed from 1 April 2015

Reference and proceedings before the DRP

DRP - Legislative Objectives

Extract of the speech made by the then Hon'ble Finance Minister, Mr. Pranab Mukherjee, while presenting the Union Budget for 2009-10, on 6 July 2009:

*"In order to further improve the **investment climate in the country**, we need to facilitate the **resolution of tax disputes faced by foreign companies with in a reasonable time frame**. This is particularly relevant for such companies in the Information Technology (IT) sector. I, therefore, propose to create an alternative dispute resolution mechanism within the Income Tax Department **for the resolution of transfer pricing disputes.**"*

**DRP – Very name suggests
"RESOLUTION"**

DRP Mechanism - Key Aspects

- Introduced by Finance (No.2) Act, 2009 w.e.f 1 April 2009 . Alternative dispute resolution mechanism for “Eligible Assessee”:
 - **Foreign company** - Transfer pricing adjustment not necessary
 - **Any other person** – If variation in pursuance to order issued by transfer pricing officer

- Objections to be filed against entire Draft Order – both transfer pricing as well as non transfer pricing (i.e. general tax issues)

- Additional evidence (not submitted to the AO) to be filed through a separate application stating the reasons for filing such additional evidence

- No payment of tax till AO issues the Final Order in pursuance of DRP directions

DRP - Powers and Duties

DRP has powers as are vested in a 'Court' under Code of Civil Procedure, 1908

DRP issues directions to confirm, reduce or enhance proposed variation

To issue directions within nine months from end of month in which draft order is forwarded to taxpayer

DRP cannot set aside proposed variation – Must give final directions to AO on the issue

DRP may not condone delay - No provisions in Sec144C / DRP rules to condone delay in filling of objections

DRP Powers - Important case laws

Chennai ITAT - Ford India Pvt Ltd [TS-509-ITAT-2017(CHNY)-TP]

- DRP has no power to remit the matter back to the file of the TPO and the DRP alone has to determine the quantum of addition or relief and issue direction to the Assessing Officer.

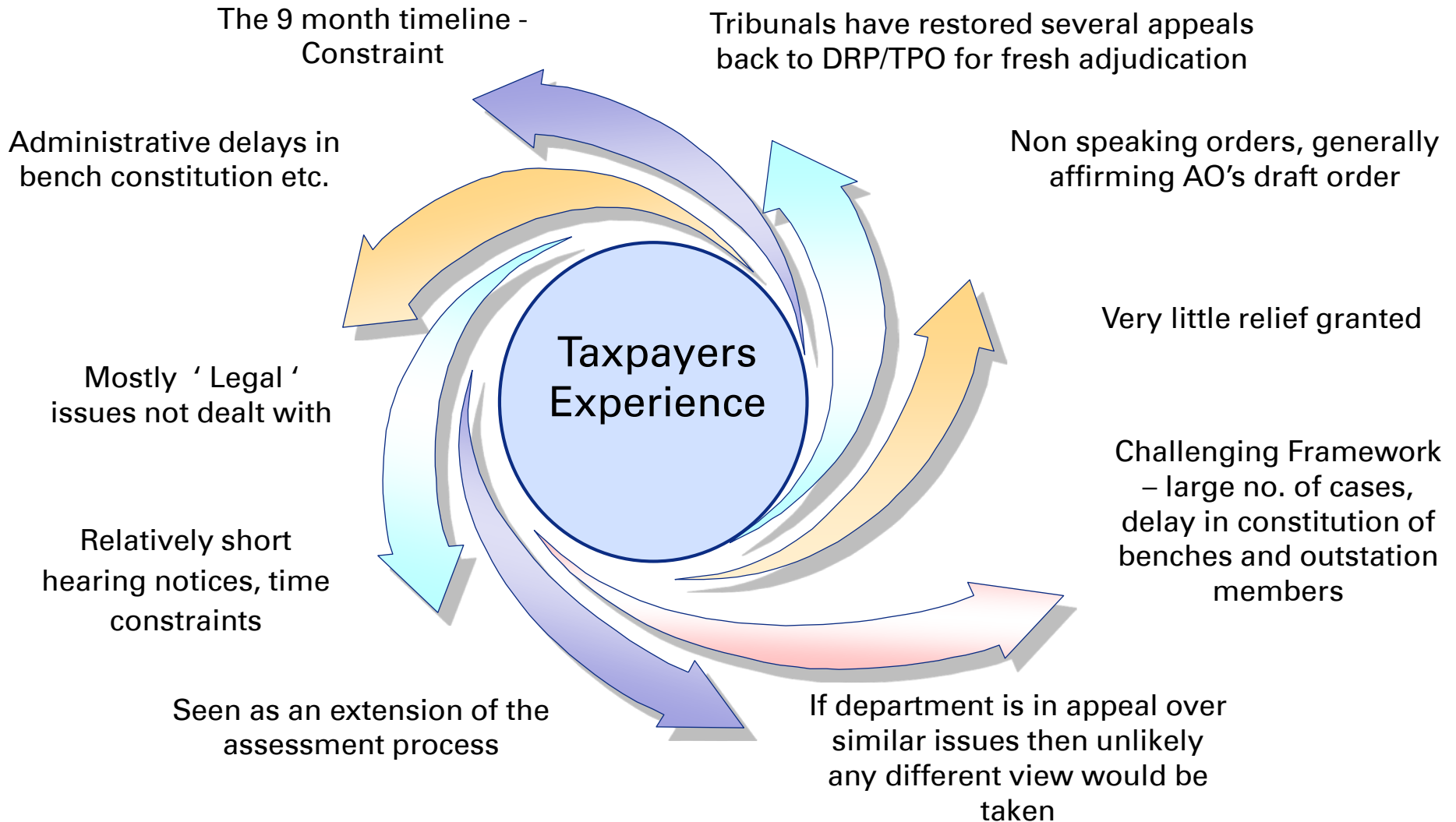
Chennai ITAT - Young Buhmwoo India Co Pvt Ltd [TS-465-ITAT-2017(CHNY)-TP]

- DRP is empowered to confirm or reduce or enhance the variations proposed in the draft order. But there is no power vested with the DRP to set-aside or issue direction under Sub-sec.5 for further enquiry.

Delhi ITAT - Bausch & Lomb India Pvt Ltd [TS-667-ITAT-2017(DEL)-TP]

- Power of the DRP is co-terminus with that of the AO/TPO and DRP can also do all such things, which the authorities could have done but omitted to do.
- "Enhance the variations" include not only increasing the amount of TP adjustment already proposed, but also making a new TP adjustment, which was omitted to be proposed/made by AO/TPO.

DRP - Taxpayers experience



DRP constitution

- CBDT revises Disputes Resolution Panel (DRP) rules w.e.f. 1 January 2015
- DRP to be set-up 3 headquarters at Delhi Mumbai and Bangalore
- Each DRP Headquarter to have jurisdiction over multiple states as follows:

Headquarters	Jurisdiction
2 Panel at Delhi	Delhi, Rajasthan, Himachal Pradesh, Jammu and Kashmir, Uttar Pradesh, West Bengal, Bihar, Odisha, North-east states, etc.
3 Panel at Mumbai	Maharashtra, Gujarat, Madhya Pradesh, Chhattisgarh, etc.
2 Panel at Bangalore	Karnataka, Tamil Nadu, Andhra Pradesh, Telangana, Kerala, Goa, etc.

- Rules also prescribed for transferring the case from one jurisdiction to another
- The Panel Members do not hold any additional charge and function throughout the year
- It now has its own infrastructure and staff

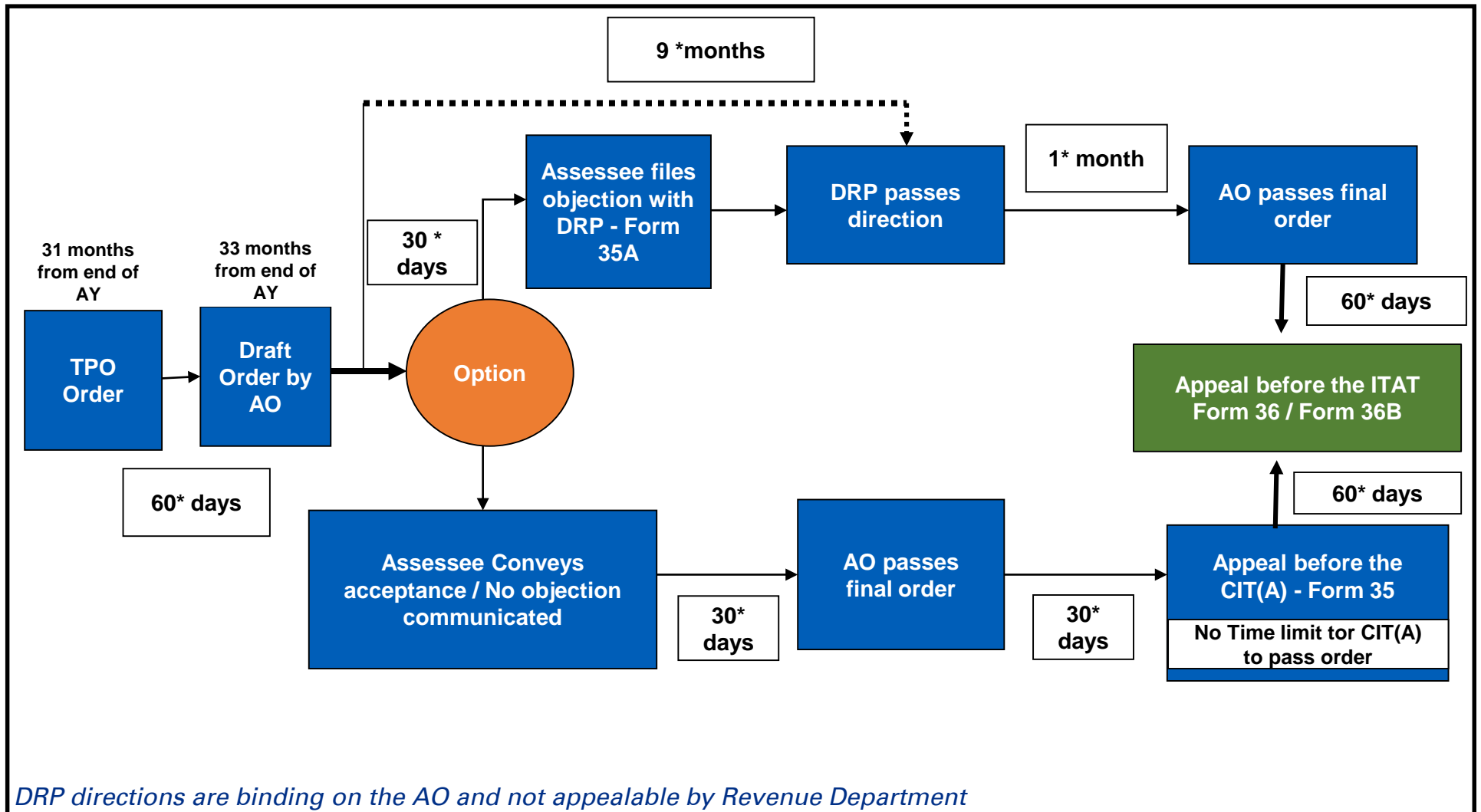
DRP vs CIT(A) - A Comparative

Key	DRP	CIT(A)
Constitution	Collegium of three officers of the CIT rank	Only one CIT
Application Process	If the taxpayer chooses this route, he is required to lodge objections within 1 month from receipt of Draft Order	Should file Appeal within 30 days from the receipt of Final AO Order
Time limit	Only 9 months from the date of Draft Order to examine the case, hold hearings and pass directions	No time limit
Demand	No demand till disposal of the matter	Significant portion of demand is required to be paid unless stayed
Pros	Fast track route to the ITAT	Detailed hearings may be granted to the Assessee to represent their case
Form	Form 35A – specific format to be followed for submission	Form 35
Further Appeal	Only taxpayer can appeal to ITAT	Both taxpayer as well as AO can appeal to ITAT

DRP vs CIT(A) -additional evidence

DRP	CIT(A)
<ul style="list-style-type: none">• Though there is a rule of additional evidence (Rule 13 of DRP rules), there is no specific conditions, restricting admission of additional evidence.• Only condition is that DRP would have to record reasons.• Hence, additional evidence, generally accepted.	<ul style="list-style-type: none">• One has to follow Rule 46A for filing additional evidence.• It has any of four conditions to be fulfilled:<ul style="list-style-type: none">➤ AO has refused to admit evidence which ought to have been admitted➤ Prevented by sufficient cause from producing the evidence called by AO➤ Prevented by sufficient cause from producing before the AO relevant evidence➤ Without giving sufficient opportunity

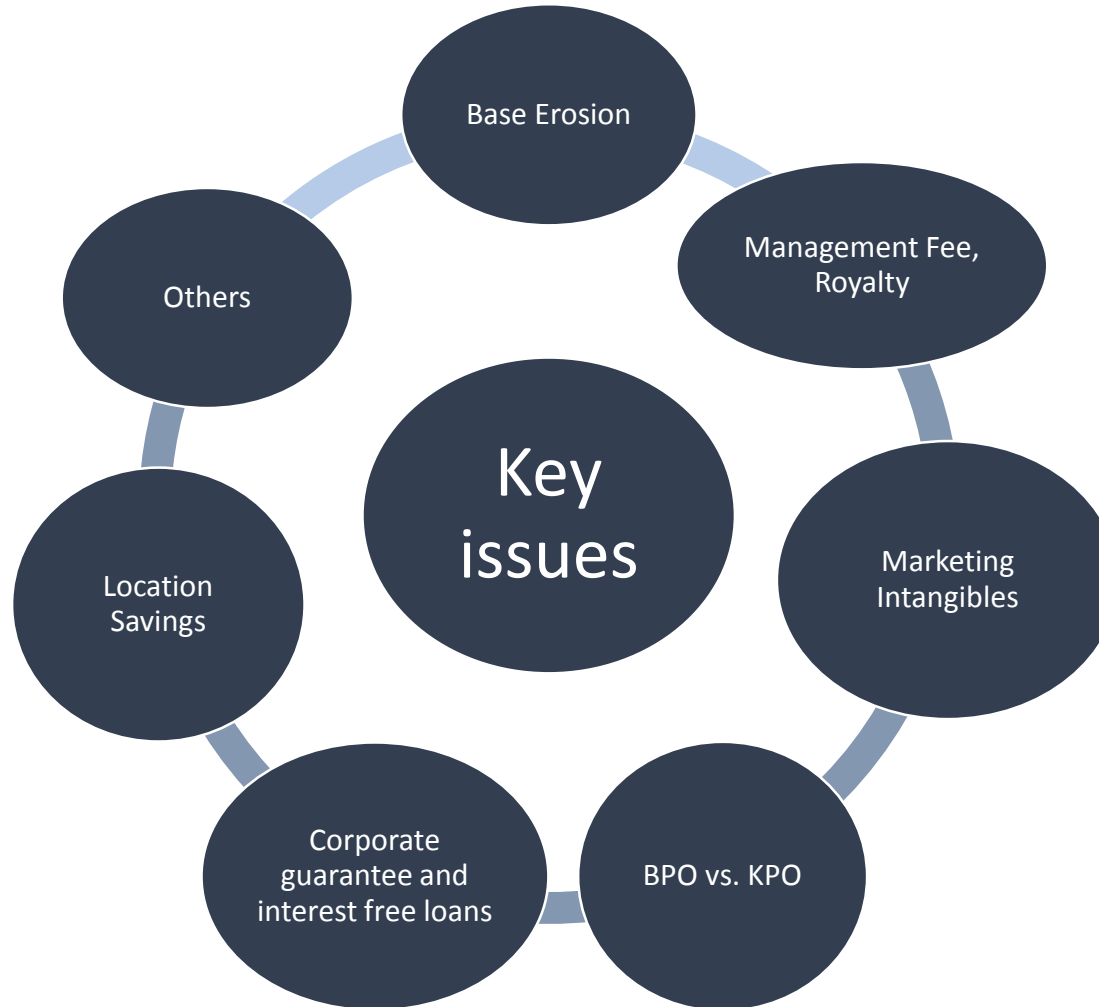
DRP & CIT(A) Process



* Maximum time line available

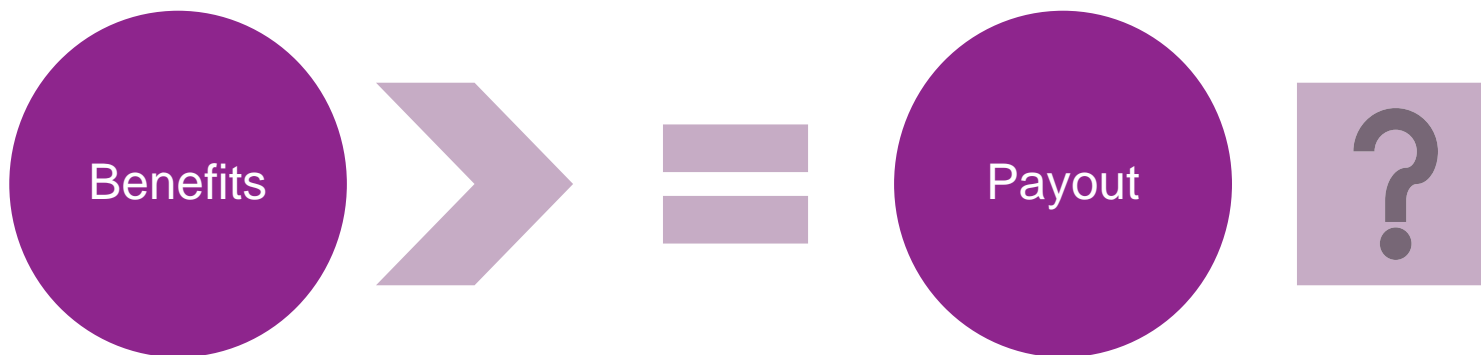
Key TP Controversies and Issues

Transfer Pricing - Key Issues/Controversies



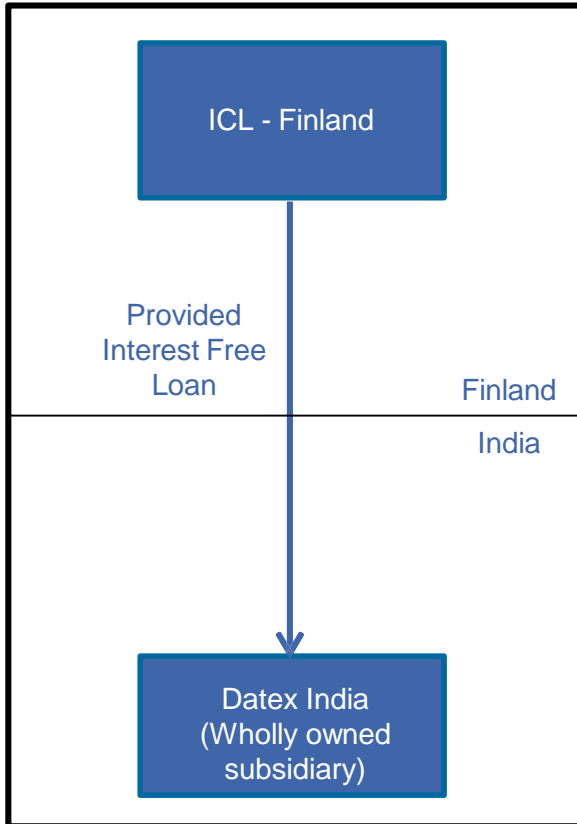
Payment for Management Fees, Royalty, etc.

- Management fee charge-outs by AEs are investigated in great detail by the Revenue department
- Robust / exhaustive documentation requirement demanded to evidence
 - appropriateness of fee charged
 - receipt of services
 - benefits received
- Complete / partial disallowance of fee charged , if all of the above is not provided
- Revenue also enquires into whether a similar charge is levied on other group entities and rates thereof are also called for and examined
- Typical mindset of the Revenue is that management charge are used for profit repatriation.



Base Erosion and TP - Case Law

Instrumentarium Corporation - Kolkatta ITAT (Special Bench) - 2016



Special Bench ruling

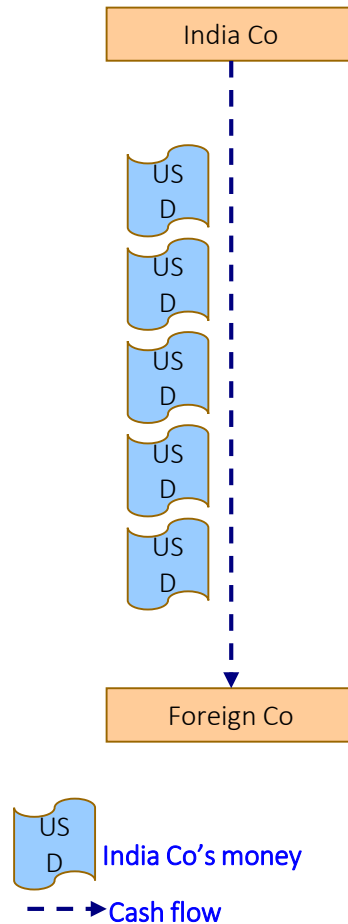
- Sec 92(3) requires independent computation in ALP in the hands of each taxpayer and not a holistic view considering the taxpayer and its AE
- Sec 92(3) considers each year on a standalone basis
- If an ALP adjustment is made in the hands of the foreign taxpayer – the Indian AE shall not be entitled to get a corresponding adjustment in respect of the same
- CBDT circular no. 14 of 2001 is not an ‘order, instruction or direction’ (as referred in section 119) which binds the field officers, but is in the nature of an explanatory note providing guidance during the introduction of TP provisions in India
- ‘Intent of legislature’ at best comes into play only when there is ambiguity in the words of the status sought to be interpreted – which was not so in the instant case – hence no need to resort to the above Circular

Base Erosion theory’ – rejected in principle - could have repercussions not only on financial transactions (i.e. loans and guarantees), but also to wider classes of transactions!!!

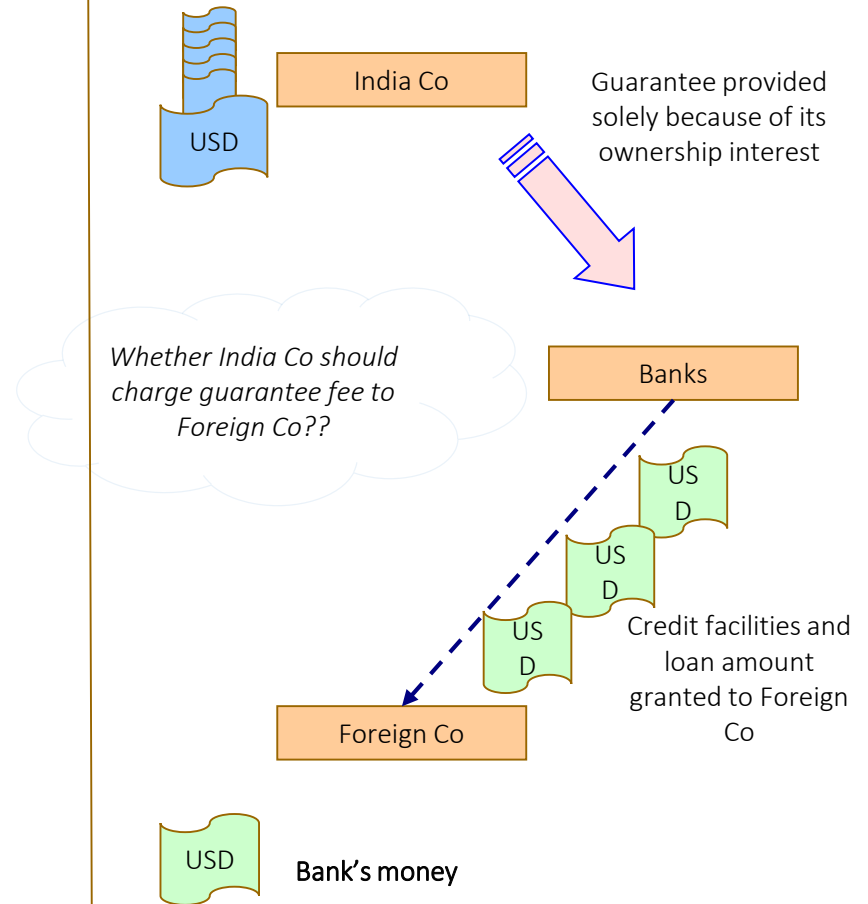
Corporate guarantee and interest free loans

- Corporate Guarantee is a legally binding agreement under which the guarantor agrees to pay any or all of the amount due on a loan instrument in the event of non payment by the borrower
- Generally, no charge for guarantee fee on the ground that there is no cost of guarantee
- At times, Comfort Letters are also viewed as Guarantee
- Granting of interest free loans has historically led to tax controversies with the Revenue authorities.

Option I – To infuse capital



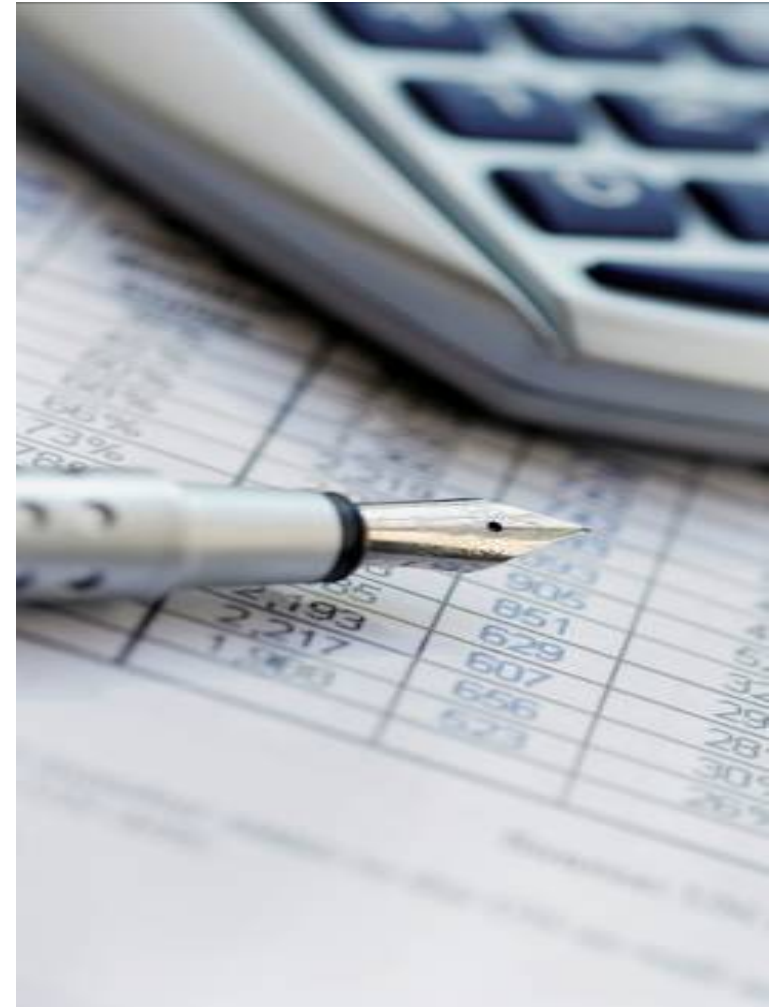
Option II – To maximize cash utilization



Corporate Guarantees - Case Law

Bharti Airtel Limited (I.T.A. No.: 5816/Del/2012) - Tribunal Ruling

- Corporate guarantee issued for AE's benefit, which does not involve any costs to the taxpayer, does not have any bearing on profits, income, losses or assets of enterprise, thus it will be outside ambit of expression 'international transaction'
- It is undisputed position that corporate guarantee issued by the taxpayer to the lender bank did not even have any impact on profits, income, losses or assets because no borrowings were resorted to by the AE from this bank
- Impact has to be on real basis, even if in present or in future, and not on contingent or hypothetical basis
- Tribunal rejected tax authorities reliance on GE Capital Canada as the domestic laws in Canada are quite at variance with the Indian TP regulations



Key points for success in Transfer Pricing audits

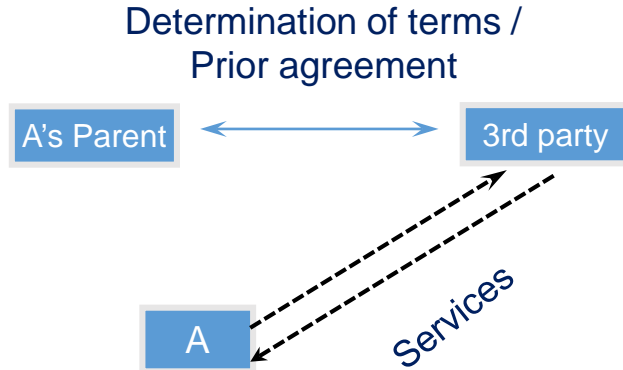
- Detailed Functions-Assets-Risks analysis
- Proactive Planning
- Price setting mechanisms to be documented
- Substantiate business, economic and commercial rationale
- Maintain detailed cost-benefit analysis with respect to cross charges (intra-group services)
- Strategizing and providing appropriate information during the audit
- Involve operational teams in tax and TP planning and documentation process
- Harmonize TP documentation with other regulatory requirements



Recent Transfer Pricing updates in India

Deemed International Transaction - Section 92B(2)

Earlier Provisions – Before Finance Act 2014-15

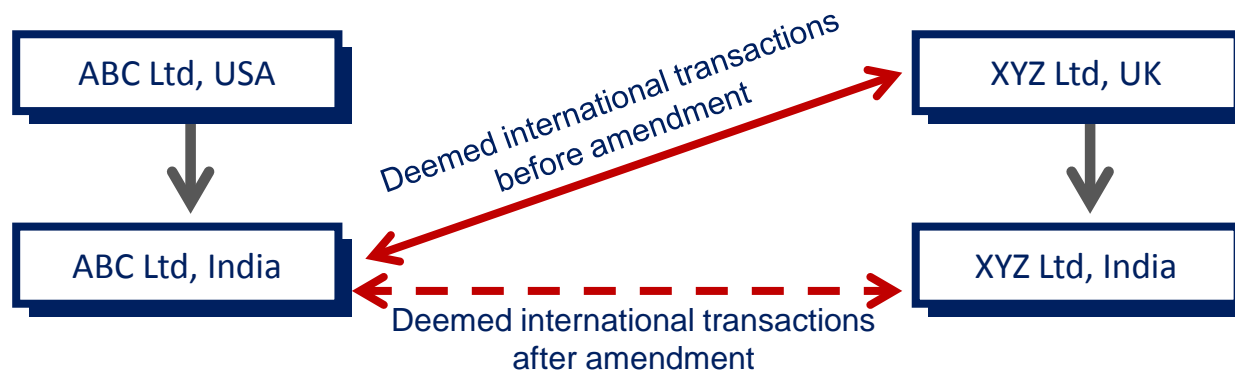


Transaction between A and Third party also subject to transfer pricing norms, if:

- a prior agreement exists between A's parent and Third party; or
- terms of transaction are determined in substance between A's parent and Third party

Earlier provisions could be interpreted to exist only if the independent person was a non-resident

Current Provisions after Finance Act 2014-15



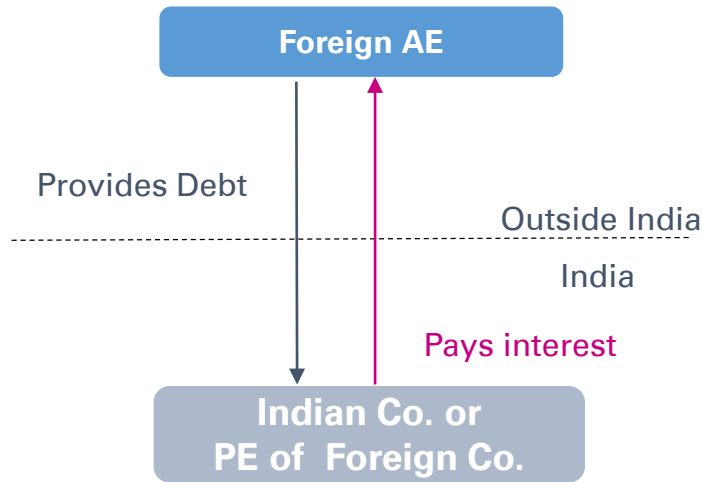
Applies to transactions between an enterprise & an independent person irrespective of whether such independent person is non-resident or not

Secondary Adjustment - Section 92CE

- The Finance Act, 2017 has introduced provisions relating to **Secondary adjustment, w.e.f. 1 April 2018** in case of various situations wherein a primary adjustment is undertaken
- Primary adjustment results in excess money with the AE – If not repatriated to India within prescribed time, shall be **deemed to be an advance from taxpayer to the AE and liable to a charge for interest**, as may be prescribed
- The above provisions are not applicable if:
 - ✓ The primary adjustment is **less than INR 1 crore**; and
 - ✓ Such adjustment **relates to FY 2015-16 or prior years**
- Recently, CBDT has notified the following:
 - ✓ Time limit for repatriation of excess money
 - ✓ Rate for imputation of interest on excess money not repatriated within time limit

Limitation on Interest Deduction - Section 94B

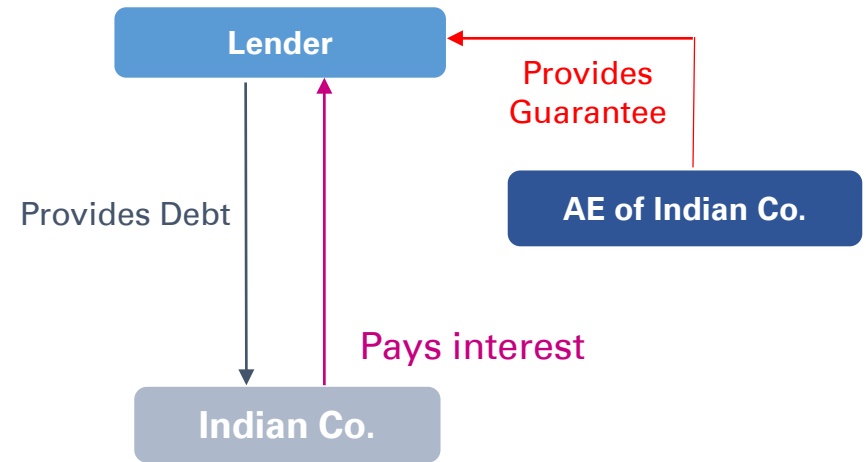
Situation 1



- Foreign AE provides debt to an Indian Co. or PE of a Foreign Co.
- Indian Co. or PE of Foreign Co. pays interest exceeding INR 10 mn in respect of such debt

OR

Situation 2



- Lender provides debt to an Indian Co.
- AE of Indian Co. provides guarantee or deposits sum of equivalent amount with lender
- Indian Co. pays interest exceeding INR 10 mn in respect of such debt or guarantee

- Interest paid above 30% of EBITDA not to be allowed as a tax deduction
 - Excess interest paid allowed to be carried forward for 8 years

New Safe Harbour Rules (from FY 2016-17 to 2018-19)

International Transaction	Value of International Transaction (in INR) / Criteria	Safe Harbour
IT / ITES	<ul style="list-style-type: none"> Upto 100 crore Exceeds 100 crore upto 200 crore 	<ul style="list-style-type: none"> Not less than 17% Not less than 18%
Knowledge processes outsourcing services	Upto 200 crore & employee cost ratio of: <ul style="list-style-type: none"> 60% and above 40-60% Upto 40% 	<ul style="list-style-type: none"> Not less than 24% Not less than 21% Not less than 18%
Contract research and development services wholly or partly relating to: <ul style="list-style-type: none"> Software development Generic pharmaceutical drugs 	Upto 200 crore	<ul style="list-style-type: none"> Not less than 24%
Providing corporate guarantee	None	<ul style="list-style-type: none"> Commission - not less than 1% p.a. on guaranteed amount
Manufacture and export of: <ul style="list-style-type: none"> core auto components non-core auto components 	No monetary limit	<ul style="list-style-type: none"> Not less than 12% Not less than 8.5%
Receipt of low value-adding intra-group services	Upto 10 crore	<ul style="list-style-type: none"> Not exceeding 5%

New Safe Harbour Rules (from FY 2016-17 to 2018-19)

International Transaction	Value of International Transaction (in INR) / Criteria	Safe Harbour
Advancing of INR denominated intra-group loan	CRISIL credit rating of AE: <ul style="list-style-type: none"> • Between AAA to A or its equivalent • BBB-, BBB or BBB+ or its equivalent • Between BB to B or its equivalent • Between C to D or its equivalent • Not available and total amount of loan to AEs does not exceed 100 crores 	Not less than one-year marginal cost of funds lending rate of SBI, plus <ul style="list-style-type: none"> • 175 bps • 325 bps • 475 bps • 625 bps • 425 bps
Advancing of foreign currency denominated intra-group loan	CRISIL credit rating of AE: <ul style="list-style-type: none"> • Between AAA to A or its equivalent • BBB-, BBB or BBB+ or its equivalent • Between BB to B or its equivalent • Between C to D or its equivalent • Not available and total amount of loan to AEs does not exceed 100 crores 	Not less than six month LIBOR, plus <ul style="list-style-type: none"> • 150 bps • 300 bps • 450 bps • 600 bps • 400 bps

*SBI – State Bank of India

Penalties

Penalty provisions for cases involving under-reporting / misreporting of income (Section 270A):

Nature of default / failure	Penalty prescribed	Sample instances related to Transfer Pricing
Under-reporting of income	50% of the tax payable on under-reported income	<ul style="list-style-type: none"> • Non-maintenance of prescribed information and documents • Non-declaration of international transactions • Non-disclosure of all material facts relating to the transaction
Misreporting of income	200% of the tax payable on misreported income	<ul style="list-style-type: none"> • Misrepresentation or suppression of facts • Failure to report any international transaction / deemed international transaction / specified domestic transaction

Penalty provisions in relation to local transfer pricing compliances and documentation:

Nature of default	Penalty prescribed
Failure to furnish Accountant's Report (i.e. a form prescribed for reporting of international transactions)	INR 100,000
<ul style="list-style-type: none"> • Failure to report an international transaction • Failure to maintain prescribed information / documents • Maintenance or furnishing of incorrect information / documents 	2% of value of international transactions as determined by the tax authorities
Failure to furnish information / documents during transfer pricing scrutiny assessment	2% of value of international transaction as determined by the tax authorities

Alignment of TP Regulations with BEPS Measures

Three Tiered Documentation - Objective & Approach

OECD BEPS Action 13 recognises that enhancing transparency for tax administrations by providing them with adequate information to conduct transfer pricing risk assessments and examinations is an essential part of tackling the BEPS problem.

The Country-by-Country Report (CbCR) contains information not previously provided to tax authorities.

The Local File is closely aligned with what companies already prepare.



The Master File contains some new information not previously provided to tax authorities.


BEPS Action Plan 13: Indian outlook

- India has been highly proactive on BEPS initiatives around TP documentation
- Indian Government has been actively participating in two-way sharing of information with Tax Authorities of other countries
- Indian Transfer pricing documentation and reporting aligned to OECD BEPS AP 13



- Introduction of provisions relating to CbCR & Master File into the Indian TP regulations
 - Issuance of draft rules in respect of CbCR and Master File, for public comments and suggestions
 - Issuance of final rules in respect of CbCR and Master File
-
- CbCR & Master File documentation requirement introduced with effect from Indian Financial year 2016-17, i.e. from 1 April 2016 onwards
 - CbCR template is consistent with the OECD provisions
 - Master File requirements have certain additional requirements over and above AP 13 recommendations
 - Local File regulations already existing in India have not been modified

CbCR Filing – Applicability in India

Applicability	Particulars	Value during the accounting year
	Consolidated group revenue for the accounting year <u>preceding</u> the reporting year exceeds	INR 5,500 Crore (in line with Action 13 threshold of EURO 750 million)

Description of applicable Forms and timelines for filing

Form No	Description	FY 2016-17	FY 2017-18 onwards
3CEAC	Intimation by Indian CE of foreign parented entity	30 January 2018	Two months prior to due date of filing CbCR
3CEAD	CbCR	31 March 2018	Within 12 months from end of reporting accounting year
3CEAE	Intimation by Indian reporting CE filing under certain circumstances	Due date has not yet been prescribed	

All documents to be e-filed with the Director General of Income-tax (Risk Assessment)

CbCR - Detailed analysis

Sr. No.	Form No.	Requirement
1	3CEAC	<ul style="list-style-type: none">• Intimation to be filed by <u>every CE resident in India, of a foreign parented group</u>• Providing details of parent entity / alternate reporting entity, residence country/territory of such entity
2	3CEAD - CbCR	<ul style="list-style-type: none">• CbCR to be filed by parent entity or alternate reporting entity, resident in India
3	3CEAE - Intimation	<ul style="list-style-type: none">• CbCR to be filed by CE resident in India, of foreign parented group, in case:<ul style="list-style-type: none">• no agreement for exchange of CbCR exists between India and foreign parent's jurisdiction, or• systemic failure by parent's jurisdiction• In case there are more than one such CEs resident in India, one CE may be designated and file intimation and undertake CbCR filing

Use of term "resident in India" - CbCR filing and intimation for CbCR not applicable to non-resident entity operating in India only through a Permanent Establishment?

Master file - Applicability in India

Applicability



Particulars	Value during the accounting year
Consolidated group revenue for the reporting accounting year exceeds	INR 500 Crore (USD 75 million)
And	
Aggregate value of international transactions:	
a. overall as per books exceeds	INR 50 Crore (USD 7.5 million)
OR	
b. of intangible transactions as per books exceeds	INR10 Crore (USD 1.5 million)

Time Lines



Financial Year (FY)	Time Line
FY 2016-17	31 March 2018
FY 2017-18 and onwards	30 Nov following fiscal year end in March

**All documents to be filed with the Director General of Income-tax (Risk Assessment)
E-filing procedures to be provided**

Indian Regulations – Master File

✓ Form 3CEAA: Master File – Consists of two parts

Part A –

- required to be filed by every Constituent Entity (CE) of an international group whether or not it satisfies the cumulative thresholds mentioned in the table
- only requires disclosure of basic details such as name of the group, number of CEs in India, their names, addresses and PAN etc.

Part B –

- Detailed Form - required to be filed only by those CEs which satisfy the cumulative thresholds mentioned in the table

✓ Form 3CEAB : Intimation for Master File where there are more than one CEs resident in India :

- The international group may opt to designate any one CE,
- Form 3CEAB to be filed only by the designated CE,
- 30 days prior to the due date of filing the Form 3CEAA.



Stringent penalties prescribed

Failure to furnish master file by the due date will attract penalty of be INR 500,000 (approx. USD 7,500).

Penalty for CbCR :	Delay upto one month	Delay beyond one month	Further delay - after receipt of penalty order
Failure to furnish CbCR by the due date of filing of return of income	INR 5,000 (USD75) per day	INR 150000 + INR 15,000 (USD230) per day	INR 50,000 (USD 750) per day
Failure to furnish additional information and documents sought by the Revenue authorities	INR 5,000 (USD 75) per day from the day on which the period for furnishing the information and document expires		INR 50,000 (USD 750) per day
Inaccurate information filed under the CbCR <i>(Penalty to be levied based on certain conditions)</i>	INR 500,000 (USD 7500)		

Questions?



Thank You