



**Transfer Pricing Documentation (Section 92D r.w.
rule 10D) and Global Documentation framework**

Agenda

- Rules & Regulations
- TP documentation flow
 - ✓ Executive Summary
 - ✓ Corporate/ Group Overview
 - ✓ Industry Background
 - ✓ Transfer pricing regulations & their applicability
 - ✓ FAR Analysis
 - ✓ Economic Analysis
- Points to be considered
- Practical Toolkit for TP Documentation
- Global Documentation



Rules & Regulations

TP Documentation – Regulations

Section 92D(1)

Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed in Rule 10D;

Provided that the person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed.

OECD TP Guidelines

The above description and steps very closely follow international guidance matter laid down in Chapter 5 of the OECD TP guidelines.

It also provides guidance to assist taxpayers in identifying documentation that would be most helpful in showing that their transactions satisfy the arm's length principle and hence in resolving transfer pricing issues and facilitating tax examinations.



TP Documentation requirement as per Rule 10D of the Indian Income Tax Rules, 1962

Rule 10D states that *“Every person who has entered into an international transaction or a specified domestic transaction shall keep and maintain the following information and documents, namely:”*

- ▶ Ownership Structure
- ▶ Profile of multinational group
- ▶ Business description/ Profile of industry

- ▶ Nature and terms (including price) of international transactions
- ▶ Description of functions performed, risk assumed and assets employed (functional analysis)
- ▶ Records of economic and market analysis (economic analysis)
- ▶ Record of budgets, forecasts, financial estimates
- ▶ Any other record of analysis (if, any) to evaluate comparability of international transaction with uncontrolled transaction(s)
- ▶ Description of method considered with reasons of rejection of other methods

- ▶ Details of transfer pricing adjustment(s) made (if, any)
- ▶ Any other information e.g. data, documents like invoices, agreements, price related correspondence, etc.

Entity Related

Price Related

Transaction Related

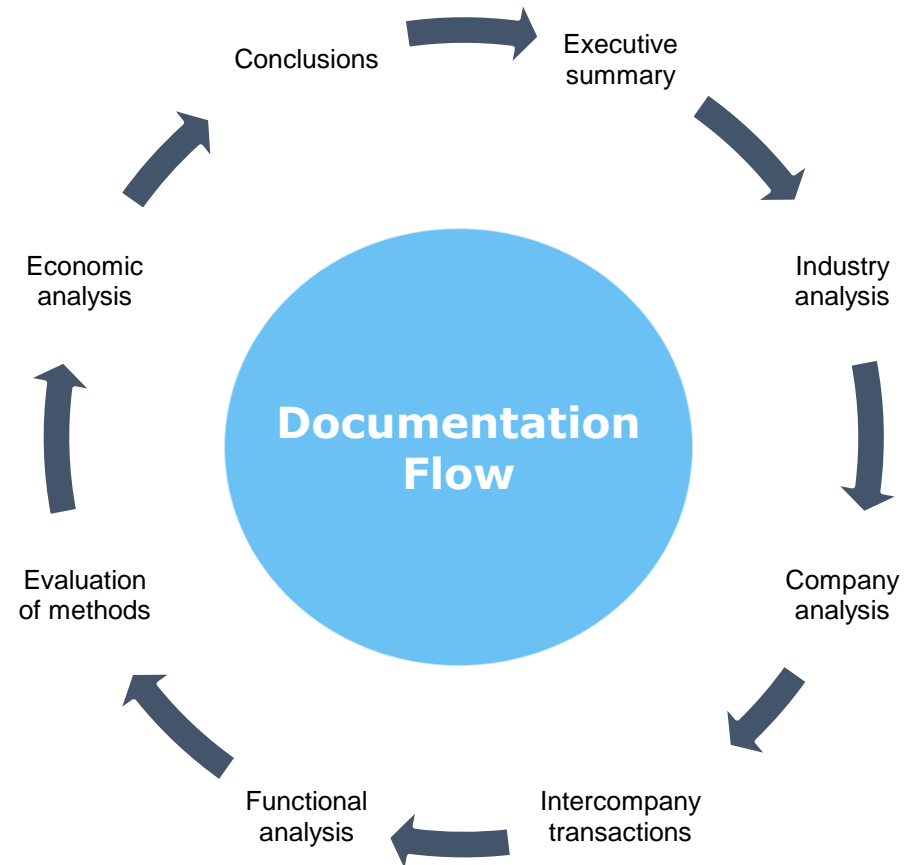
TP Documentation – why necessary

- ▶ Self review of intercompany transfer pricing
- ▶ Penalty protection
- ▶ Basis for the selecting method in Form 3CEB
- ▶ To be prepared for transfer pricing audit

Effective communication of TP policy is critical for tax authorities to appreciate and approve transfer pricing documentation

Transfer Pricing Documentation Flow

TP Documentation – Best practice



Executive Summary

Executive Summary

1. The objective of this transfer pricing analysis is to support the arm's length nature of international transactions and specified domestic transactions entered into by the assessee.
2. Flow is important and should capture all the major observations and findings of the document – it has to essentially be crisp and succinct!
3. Should clearly lay out the following:
 - ✓ the business of the group and the taxpayer indicating the relation between the group and the taxpayer,
 - ✓ the activity performed / services provided,
 - ✓ characterisation of the entities involved,
 - ✓ list of all international transactions (with value and the methodology applied)
 - ✓ result of the economic analysis; and
 - ✓ Conclusion
4. Also, a TP document needs to mention the fact that the results are pertinent to that financial year and the results may need to be updated based on latest financials result, change in FAR profile or the level of tangible/intangible asset owned (i.e. the need to review and update the transfer pricing policy/arrangement to reflect change in market conditions especially during assessments)

Executive Summary (cont..)

Format

International Transactions	Transfer Pricing Method	XYZ India			Number of Comparable Companies	Result Comparability Analysis of 35th – 65th Percentile Arithmetic mean /
		PLI	Total Value of Transaction (Amount in INR)	Margin		
Purchase of IT Peripherals	Resale Method Price	Gross profit/Sales	1,007,671,321	28.13%	13	1.43%-7.00%
Rework activity income*			3,632,517			
Provision of services	Transactional Net Margin Method	Operating profit/ Operating Cost	70,200,271	12%	8	10.60%-15.01%
Reimbursement of expenses	Other method	NA	4,436,810	NA	NA	NA
Recovery of expenses			1,282,105			

- The aggregate of accounts receivable and payable outstanding as on 31 March 2019, amounts to Rs. 3,85,769 and 4,67,557 respectively from/to the AEs. Since the receivables/payables are arising out of the main transaction, there is no need to benchmark the same separately.
- *Since rework activity income forms part of the main transaction of purchase of IT peripherals, the same is aggregated with the main transaction.

Corporate/Group Overview

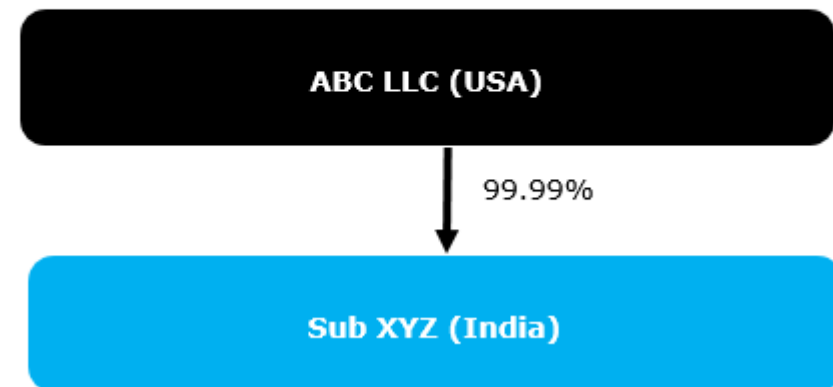
Corporate/Group Overview

- This section should provide an overview of the operational and legal structure of the Company and its Group and Group companies
- The section should contain a brief background (date of incorporation, employee base, global presence etc.), the operational/shareholding structure (preferably in a flow chart), short description of the business segments, activities performed/services offered under each segment and the product profile
- Company overview may mention the arrangement (from the agreement) with the group company
- Overview of financial performance of the entity for which the documentation is prepared may be provided
- Pictorial representation can add lot of value

Sr. No.	Co. XYZ	Business
1	Rubber Chemical	Indenting: Providing indenting services as a sales representative to its AEs
2	Advanced Interlayers	Trading: Importing finished products from its AEs and their resale in India; and Indenting: Providing indenting services as a sales representative to its AEs
3	Heat Transfer Fluids	Trading: Importing finished products from its AEs and their resale in India; and Indenting: Providing indenting services as a sales representative to its AEs
4	Texanol	Trading: Importing finished products from its AEs and their resale in India

Shareholding Pattern

As on 31 March 2019:



Industry Background

Industry Background

Industry Background consists of the following:

- Classification of the company in an industry - Overview of the Industry
- Current trends in the Industry
- Key value drivers
- Key challenges
- Key competitors
- SWOT analysis
- Regulatory Framework
- Domestic market of the Industry
- Global scenario of the Industry
- Future outlook



Group Overview and Industry Background – Key points

- Shareholding structure to provide list of all shareholders and should be confirmed with the client every year
- Financial overview should provide a brief of the financial performance (esp. if the company is listed), reveal numbers till PBT, mention statutory year ending
- Documenting a solid industry overview is extremely critical – should establish the link between the position of the taxpayer in that industry, the current market dynamics and the international transactions entered into by the taxpayer
- When a company provides auxiliary services to main product (e.g. marketing support services to IT products), then even the industry overview of the main product should be included in the report.
- Industry section should mostly be explained by graphs, charts and flow charts
- Source should be mentioned
- Consistency in presentation (e.g. dates, legal names of the entities etc.)
- Consistency in units (in amounts) – absolute numbers, thousands, millions, crores, etc.

Corporate and Industry Background – Impact of Current events

IT firms may grow faster in 2020 on rising client spend

...But, margins likely to take hit on higher rate of H1B rejection

Manufacturing growth down to 2-year low: PMI

SLEEK BAGS, HEAVY TAGS

BRAND NAME	PRICE (₹)
Chanel	65,000-3.8 lakh
Ralph Lauren	95,000-3.7 lakh
Bottega Veneta	45,000-2.9 lakh
Dior	15,000-2.9 lakh
Louis Vuitton	20,000-2.9 lakh (pre owned)
Gucci	15,000- 2 lakh
Jimmy Choo	10,000- 1.1 lakh
Burberry	10,000-1.1 lakh
Tory Burch	5,000-65,000
Coach	7,500-45,000

HK slumps into recession

US imposes \$7.5-bn tariffs on EU, targeting Airbus, wine, whiskey

Hub-and-spoke in food?

Yes, a model perfected by the transport and freight industry is gaining popularity in the eat-in business

Medical device regulation set for overhaul

Two-year moratorium for textile debt on cards

Car ownership is a trap that can be prevented: Uber CEO

US, China 'close to finalising' part of a phase one trade deal

Airbnb sees India in its top three global markets

Corporate and Industry Background – Impact of Current events

"The fall [in production] is so large and so dramatic that it has affected every single product - two-wheelers, car, commercial vehicles," says ██████████,

"Innovation is an integral part of ██████████ success in R&D. This year we will spend around Rs 600 crore in R&D and efforts are directed towards accountable and implementable research- oriented projects," ██████████

"For most foreign investors, it has been like a bad dream... The Indian telecom market has developed in a very negative way for investors," ██████████.

"We are at Rs 4,200 crore now and we hope to be an Rs 5,000-crore company by December. We are looking at doubling this up over the next few years and have set an aggressive target of Rs 10,000 crore turnover by 2022," ██████████ joint managing director and chief marketing officer ██████████ told

Transfer Pricing Regulation and their Applicability

Transfer Pricing Regulations and their Applicability

A. International transaction

- Determine international transaction u/s 92B from Form 3CEB (Nature of Transaction, Name of AE and Value in currency)
- The section should list the identified international transactions – AEs and value wise
- A specified format for international transaction disclosure is in the table stated below:

International Transactions	Name of Associated Enterprise	Value (Rs.)
XYZ Advisors Pte. Ltd.	Provision of advisory services	XXX
XYZ Advisors Pte. Ltd.	Provision of other services	XXX

Transfer Pricing Regulations and their Applicability (cont...)

B. Associated Enterprises

Step 1

Determine AE as per section 92A from the related party disclosure in the financials.

Step 2

Define the nature of relationship between the assessee and the AE.

Step 3

Determine the brief description of the AE.

A specified format for Associated Enterprises is in the table stated below:

Name of Associated Enterprise	Nature of Relationship as referred to in section	Brief Description	Business
XYZ Advisors Pte. Ltd.	An enterprise which holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise – Section 92(A)(a)	Financial services - Fund Management activities	
ABC Company Ltd., U.K.	The ultimate holding company of the assessee owns directly or indirectly more than 26% of the voting power of the assessee and AE - Section 92A(2)(b)	BPO Services/Market Research	

FAR Analysis

FAR Analysis

Rule 10D - Documents to be maintained under section 92D

"(e) a description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction"

OECD TP Guidelines

"An analysis of the functions performed (taking into account assets used and risks assumed) by associated enterprises in controlled transactions and by independent enterprises in comparable uncontrolled transactions"



FAR Analysis (contd...)

What is FAR?

1. FAR analysis is an analysis of functions performed, assets employed and risk undertaken by an enterprise
2. FAR analysis – exercise to determine and document significant economic activities performed by the enterprise and its AEs in an international transaction.
3. The allocation of these activities between those entities involved in the transaction so each entity can be fully characterized.
4. FAR analysis should be performed for all the international transactions, including management charges and financial transactions (if any) – currently, this is not the case
5. Depending on the complexity of the transaction, the nature and scope of the functions performed and sometimes the value of the international transaction, separate chapters on the major international transactions encompassing the FAR and economic analysis could be considered
6. FAR analysis to be performed from the perspective of the international transaction in hand and not on the overall circumstances of the business of the taxpayer. Eg Pharma company having subsidiary in U.S. performing marketing functions

FAR Analysis (contd...)

Transitioning from FAR to FARM analysis

- India & many developing countries have traditionally been strong advocates of source based taxation.
- OECD's guidelines in terms of FAR Analysis have been practiced and reliance thereon is also upheld by the Indian Courts in many rulings.
- Developing countries like China or India have been advocating expanding the scope of profit attribution in source jurisdiction, based on not just FAR analysis but also considering the 'market' analysis, also referred to as FARM analysis.
- A renewed focus on 'value creation' post BEPS is accompanied by even stronger consideration of demand side factors in the TP analysis in some of the developing jurisdictions.
- Applicable mainly for taxing digitalized businesses such as eBay, Booking.com, Uber and Airbnb
- OECD secretariat's unified approach proposal (pillar 1) – New taxing right – a proportion of deemed residual profit to market jurisdictions using a formulaic approach
- Eg China - market access-related benefits, in the form of market premium or the contribution by the Chinese entity in promoting the products in China should be captured in the taxable profits

Economic Analysis

Economic analysis

1. Economic analysis is undertaken to analyse the arm's length nature of the intercompany transactions between a company and its AEs.
2. The analysis involves the following steps:
 - ✓ Selection of tested party;
 - ✓ Selection of the most appropriate method;
 - ✓ Selecting PLI;
 - ✓ Carrying out a search, using publicly available databases, for comparable uncontrolled enterprises;
 - ✓ Computing the arm's length range/price of the broadly comparable independent companies;
 - ✓ Carrying out adjustment for differences between enterprises, as may be required; and
 - ✓ Conclusion.

Economic analysis (cont..)

A. Selection of a tested party

- Participant in an international transaction with whose reference the international transaction is tested
- Selection of tested party influences the most appropriate method to be selected
- Entity performing the least complex function and not owning any valuable intangible is normally selected as the tested party.
- Normally least complex entity selected as the tested party as testing of margin of such entity would require least adjustment.
- Selection of comparable is based on economic characterization of the tested party



Economic analysis (cont..)

A. Selection of a tested party

- When the tested party is a foreign AE, the foreign comparables are used for benchmarking
- No specific prohibition in the TP Regulations regarding use of foreign comparables
- However, the tax authorities during an audit are reluctant to accept foreign comparables
- Difference in Indian GAAP vis-à-vis accounting principles and practices of other countries – major reason why tax authorities reject foreign comparables
- However, Indian tax tribunals have held that if a taxpayer wishes to consider a foreign AE as the tested party, then relevant data for comparison should be available in the public domain or should be furnished to the tax administration. Some of the relevant rulings in this regard are:
 - Ahmedabad Tribunal, General Motors India Pvt Ltd v. DCIT (ITA Nos. 3096/Ahd/2010 and 3308/ Ahd/2011);
 - Kolkata Tribunal, Development Consultants Pvt Ltd v. DCIT, [2008] 23 SOT 455 (Kol.);
 - Delhi Tribunal, Ranbaxy Laboratories Ltd v. ACIT, [2008] 110 ITD 428 (Delhi);
 - Mumbai Tribunal, Tata Motors European Technical Centre Plc v. DCIT (ITA No. 907/MUM/2015); and
 - Chandigarh Tribunal, IDS Infotech Ltd v. DCIT (ITA 130/Chd./2016)

Economic analysis (cont..)

B. Evaluation of transfer pricing method

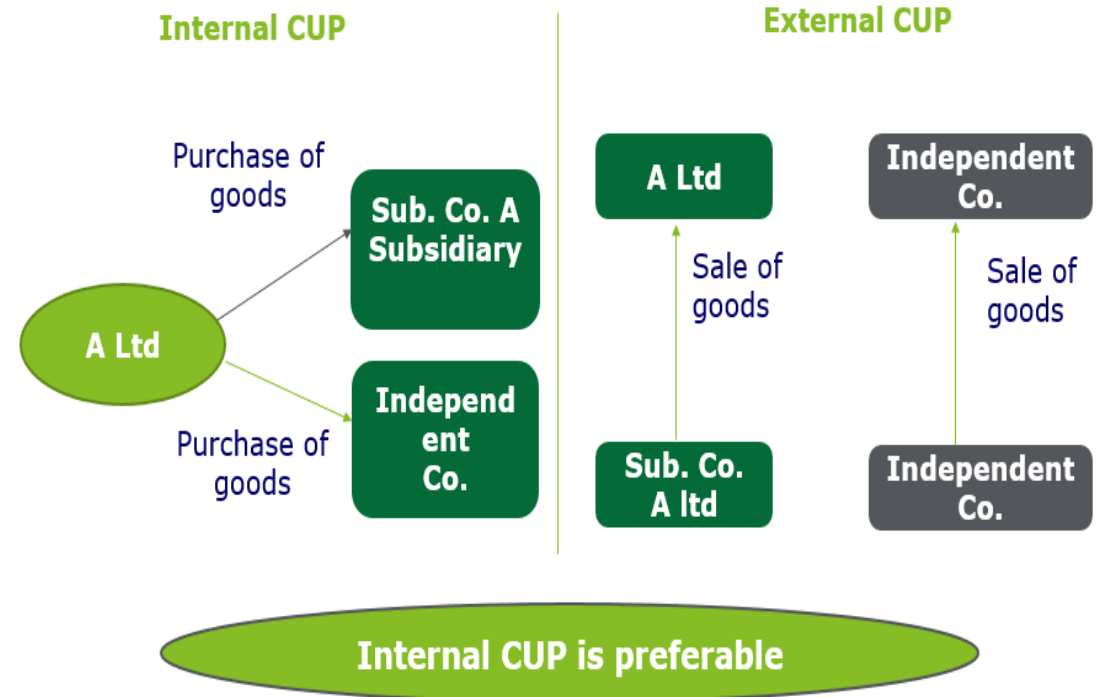
The Act stipulates that the arm's length price is to be determined by adopting any one of the prescribed methods u/s 92C. There should be a justification for selection of one method as the most appropriate method over other five methods.



Economic analysis (cont..)

Comparable Uncontrolled Price Method (CUP)

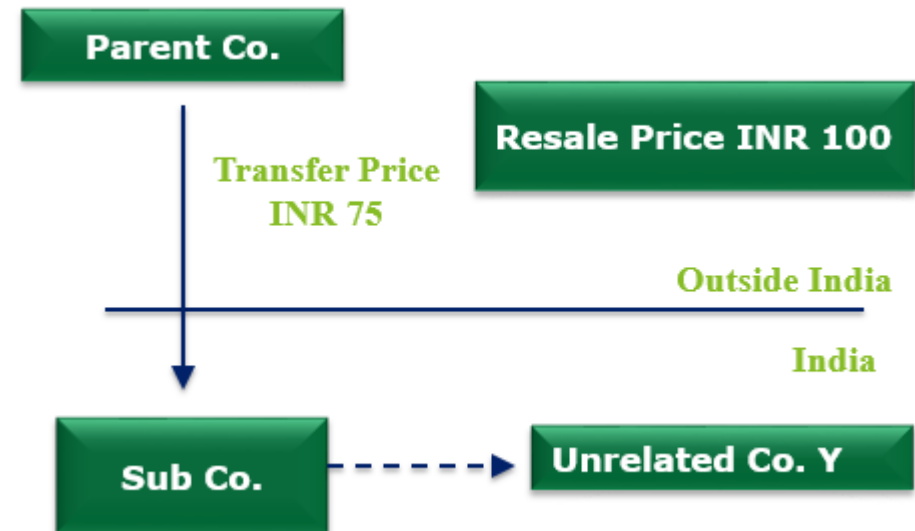
- Most Direct Method
- Prices are benchmarked without any reference to the profits
- Requires strict comparability in products, contractual terms, economic terms, etc.:
 - ✓ Strong similarity of products and services
 - ✓ Geography of markets
 - ✓ Functions and Risks
 - ✓ Business strategy
 - ✓ Contractual terms
 - ✓ Timing of the transaction
 - ✓ Volume
- Two types of CUPs available –Internal CUP & External CUP
- Typically Internal CUP is preferred over External CUP due to higher degree of comparability



Economic analysis (cont..)

Resale Price Method (RPM)

- Preferred method for a distributor buying purely finished goods from a group company (if no CUP available)
- Measures the value of functions performed
- Ordinarily used in cases involving the purchase and resale of tangible property
- Reseller has not added substantial value
- Packaging, labeling, or minor assembly are acceptable
- Reseller does not apply intangible assets to add substantial value
- Difficult to apply where goods are further processed before resale
- Comparability is relatively less dependent on strict product comparability and additional emphasis is on similarity of functions performed & risks assumed

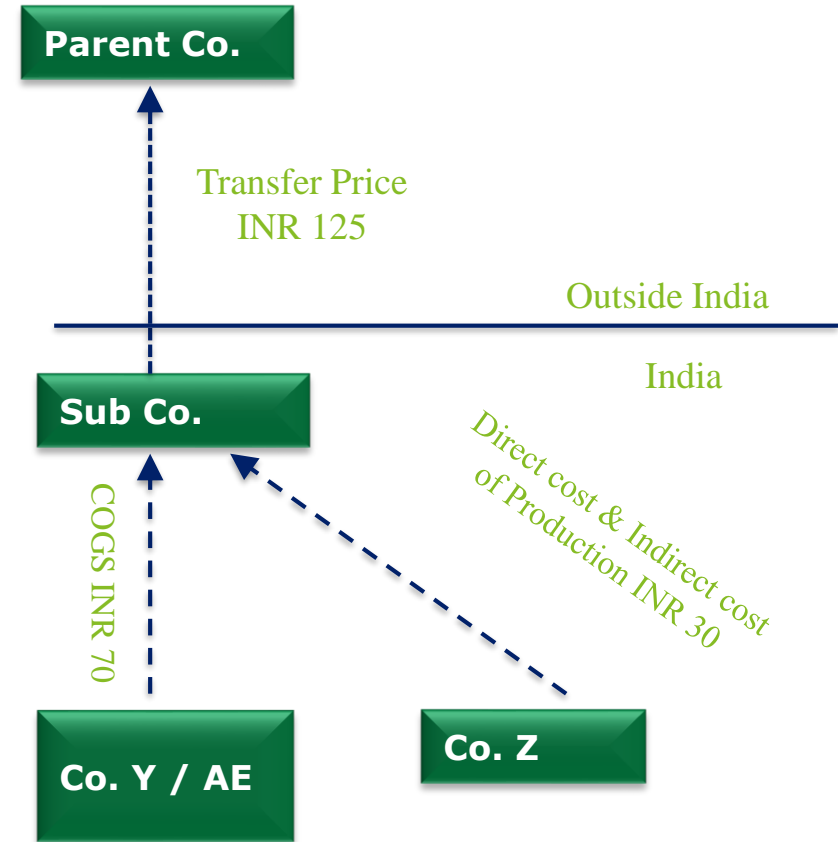


Price paid by Sub Co. to AE is at arm's length if the 25% resale margin earned by Sub Co. is more than margins earned by similar Indian distributors

Economic analysis (cont..)

Cost Plus Method (CPM)

- Compares and identifies markup earned on direct and indirect costs of production incurred with that of comparable independent companies
- Preferred method in case-
 - Semi-finished goods sold between related parties
 - Contract manufacturing agreement
 - Provisions of services on contract basis
- To be applied in cases involving manufacture, assembly or production of tangible products or services that are sold /provided to AEs
- Comparability under this method is relatively not as much dependent on close physical similarity between the products
- Larger emphasis on functional comparability

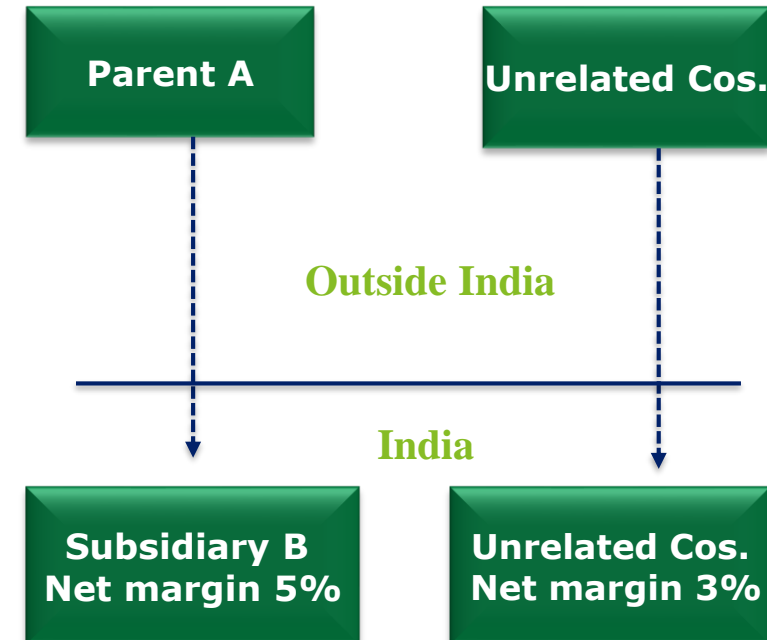


Price charged by Sub co to AE is at arm's length if the 25% mark up on cost is more than that of similar Indian assemblers

Economic analysis (cont..)

Transactional Net Margin Method (TNMM)

- Most frequently used method, due to lack of availability of data for application of other methods
- Examines net operating profit from transactions as a percentage of a certain base (can use different bases i.e. costs, turnover, etc.)
- Both internal TNMM and external TNMM are possible
- Broad level of product comparability and high level of functional comparability
- Applicable for most categories of transaction and often used to supplement analysis under other methods
- Grouping of transaction - Relevant controlled transactions require to be aggregated to test whether the controlled transaction earn a reasonable margin as compared to uncontrolled transaction
- Usually regarded as an indirect and one-sided method, but is most widely adopted



Economic analysis (cont..)

Profit Split Method (PSM)

- To be applied in cases involving-
 - transfer of unique intangibles; or
 - in multiple international transactions that cannot be evaluated separately
- Calculates the combined operating profit resulting from an inter-company transaction based on the relative value of each AEs contribution to the operating profit
- Evaluates allocation of combined profit /loss in controlled integrated transactions
- The contribution made by each party is based upon a functional analysis and valued , If possible, using external comparable data
- The allocation of profit or loss under this method must be made in accordance with one of the following allocation methods:
 - Combined profit split method; and
 - Residual profit split method

Economic analysis (cont..)

Other Method

- CBDT has notified the "Other method" vide a Notification
- Applicable from FY 2011-12:
- Rule 10AB - *"any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts."*
- Effectively this implies that "quotations" rather than "actual prices" charged or paid can also be used
- To maintain proper documentation specifying the rejection reasons for non-application of other five methods and appropriateness of the "other method"
- Other Method can be used for following transactions:
 - Valuation of shares
 - Reimbursements

Economic analysis (cont..)

Application of the Methods

Method	Industry	Transactions
CUP	Banking Sector	1. Borrowing / Lending 2. Purchase / Sale of various instruments
CUP	All industries	Royalty
RPM	Distributors (Luxury goods, Pharma, Chemicals)	1. Trading of chemicals (purchased from AE and sold to third parties)
Cost Plus	Manufacturing industry	Manufacturing activities
TNMM	Automotive Sector	1. Import of Components (CKD) 2. Import of CBU 3. Export of vehicles
TNMM	Hotel Industry	Generally used method is TNMM at entity level, as other method not most appropriate
TNMM	Logistics Industry	2. Rate card (when this arrangement, TNMM is used for benchmarking)
TNMM	Pharma & Healthcare Industry	Import of API
TNMM	Pharma & Healthcare Industry	Clinical trial services
TNMM	Pharma & Healthcare Industry & IT/ITES	Contract R&D services
TNMM	IT / ITES	Provision of services (captive service provider)
PSM	Banking Sector	Investment advisory
PSM	Logistics Industry	50:50 revenue sharing
PSM	Social Network platform, video streaming platform, E-commerce	-

Economic analysis (cont..)

C. Selection of Profit level indicator (PLI)

- Selection of appropriate PLI depends upon:
 - ✓ Nature of the activities of the tested party,
 - ✓ The reliability of the available data with respect to comparable uncontrolled taxpayers, and
 - ✓ The extent to which a particular profit level indicator is likely to produce a reasonable determination of the income that the tested party would have earned had it dealt with the controlled taxpayer at arm's length
- Commonly used PLIs (also discussed in OECD Guidelines) are as follows:

PLI	Remarks
Gross Profit/ Sales	Appropriate for trading activity
Net Profit/ Operating Costs	Appropriate for indenting activity
Net Profit/ Operating Assets	Appropriate for capital intensive industry

Economic analysis (cont..)

C. Selection of Profit level indicator (PLI)

- Other PLIs can also be used based on facts and circumstances of the case as follows:

PLI	Remarks
Cash Profit Ratio	New Business with Heavy Investment
Return on Capital Employed	Capital Intensive Business
Return on Shareholders Funds	Highly Geared Companies
Revenue per Employee	Human Capital Based Business
Berry Ratio	Used in conjunction with other ratios for validations

- The choice of the PLI is important, considering the peculiarities of the industry and the transactions involved.
- During TP audits, very rarely, balance sheet ratios such as return on operating assets, were accepted and normally the analysis was carried out applying operating margin ratio as the PLI. In the case of *Schefenacker Motherson Ltd v. DCIT (123 TTJ 509)*, the Delhi Tribunal upheld the use of cash PLI (cash profit/sales or cost).

Economic analysis (cont..)

D. Search Process

Step 1: Identification of companies engaged in activities that are potentially comparable to the activities of tested party

Step 2: Quantitative analysis – application of filters

Below are some of the primary quantitative filters applied during the search process:

- Data availability filter
- Turnover filter
- Net worth filter
- Trading / Manufacturing / Service Income to total Income filter
- Related party transaction filter

Step 3: Qualitative analysis - analysis of the information contained in the databases and/or annual reports

Step 4: Final validation of the potential comparable companies through additional research and a close scrutiny of the other sources of publicly available information (e.g. through internet-based research).

Step 5: Selection of PLI

Step 6: Margin of the comparable – range/weighted average

Step 7: Margin of Comparable v/s tested party

Points to be considered

Typical situation which needs greater attention and detail while undertaking documentation – to build rationale for..

- Consistent losses made by the taxpayer attributable to inter-company transactions
- Significant changes/variability in the profitability of the taxpayer and its associated enterprises
- Large payment of management charges not passing the 'benefit test' - documentation to justify that the services are rendered and benefits accrue to the service recipient
- Losses incurred low margin earned by routine manufacturers and distributors
- Low markup for services
- Incurring huge advertising, marketing and promotional (AMP) expenses in promoting the parent's brands and products
- Payment of royalty / transfer of intangibles
- Investment in subsidiaries outside India and valuation supporting this
- Unutilized /idle capacity

Best Practice for TP documentation



Penalties

Section	Nature of Penalty	Quantum of Penalty
270A	Penalty for under-reporting of income as a consequence of failure to report international transactions, deemed international transactions or SDT	50% of the amount of tax payable in case of under-reporting and a penalty of 200% of the amount of tax payable in case of misreporting
271AA	Penalty for: failure to maintain documentation prescribed under Section 92D of the Act, failure to report a transaction, or maintaining or furnishing incorrect information/ document	2% of the value of international transaction or SDT
271G	Penalty for failure to furnish documentation prescribed under Section 92D(3) of the Act	2% of the value of international transaction or SDT
271BA	Penalty for failure to furnish Accountant's Report in Form 3CEB as required under Section 92E	INR 100,000

Penalties also prescribed for non compliance with CbCR and MF requirements

Practical Toolkit to Support the Successful Implementation by Developing Countries of Effective Transfer Pricing Documentation Requirements

Toolkit

- Is intended to assist low capacity countries in implementing efficient and effective transfer pricing documentation regimes
- Policy considerations and options relevant to designing a regime for transfer pricing documentation
- Suggestion for period of retention of documents and frequency of documentation updates
- Suggests consideration to rules that exempt small and medium sized enterprises (SMEs) from documentation requirements or that limit the extent of the documentation to be provided by such entities.
- Reduced documentation requirements for transactions covered by Advance Pricing Arrangements (APA) or safe harbours
- Suggestion of Language and mode of submission of the documentation
- Suggestion of other best practices pertaining to the documentation

Global Documentation

Centralisation approach

Evolving landscape

- Businesses are looking to minimize risks by increasing global consistency of their approach towards transfer pricing
- This is resulting into an emphasis on **process standardization**, seeking **technology-enabled** solutions, and shift towards global coordination and **building centralised control** in the way the transfer pricing is managed

Benefit to businesses

Cost efficient

Minimizing overall cost to the business through one stop shop approach for compliance & documentation

Consistency

Alignment and global consistency/standardization in facts & approach

Use of technology

Leverage on technology-enabled solutions & increased process automation

Specialized resources

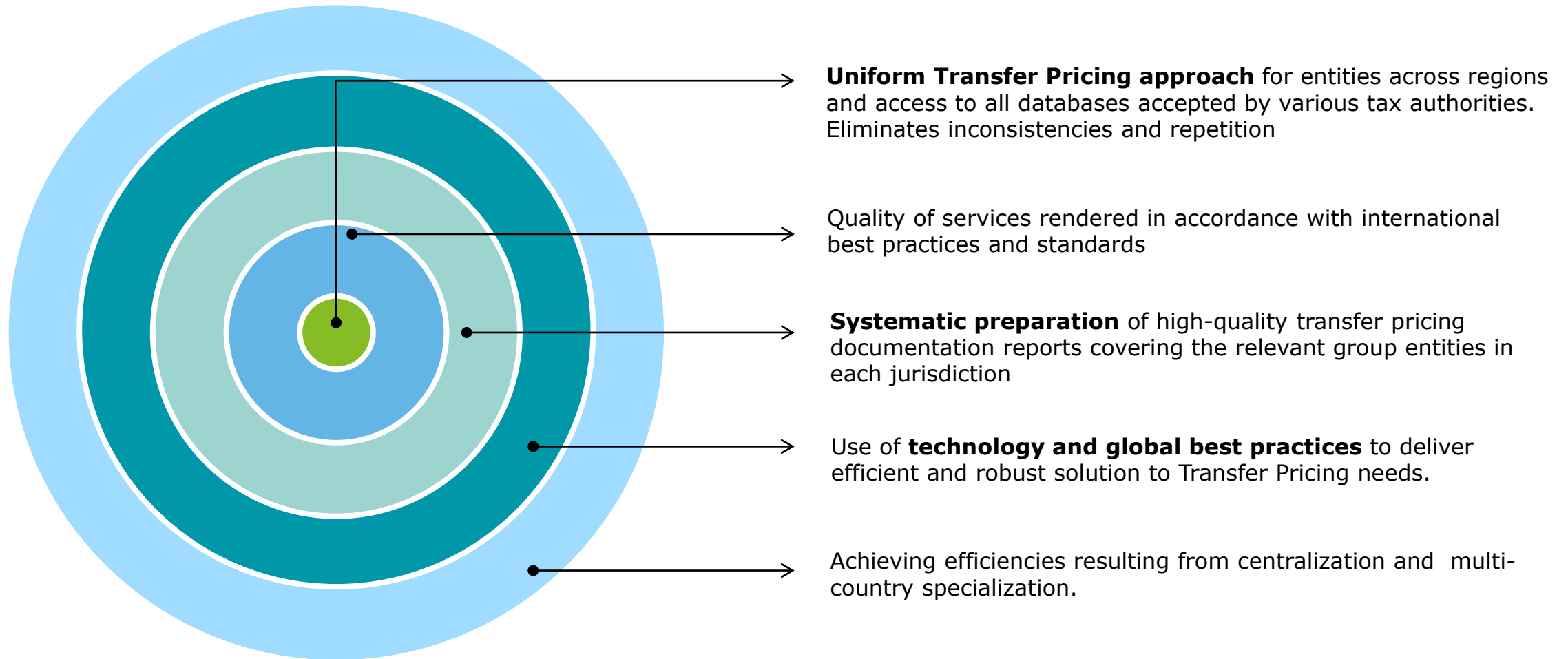
Services from specialists with wide expertise, skill & global reach in transfer pricing

Centralisation post BEPS

However, organizations can no longer stop at just getting their compliance right and a more proactive approach is needed to prepare for what will come next. Keeping this in mind, tax heads and chief financial officers are taking stock centrally and rethinking the way indirect tax and transfer pricing was dealt with over the last 15 years. To bring in efficiency, accuracy and consistency, organizations are adopting different operating models for tax compliance and reporting. From complete outsourcing of the tax function to third parties to the setting up of in-house tax centres of excellence or leveraging existing centres to the adoption of a hybrid model, various approaches are being evaluated and implemented based on the ethos of the organization, with increased reliance on technology tools to manage the pace of disruption, achieve economies of scale and manage risks.

(Source: Livemint)

Why Global Documentation



Global documentation - Future

- No longer can TP documentation be tailored to satisfy the requirements of just one or a few of the taxing authorities in the world. Rather, documentation must tell a consistent 'story' in each country
- Consistency in TP documentation required on account of ICAP (International Compliance Assurance Programme), coordinated audits: simultaneous tax examinations and joint audits
- TP documentation must convincingly state the principles of profit allocation that apply to every jurisdiction of the group's operation, such as whether a particular subsidiary is entitled to a fixed rate of profit or a share of the residual profit of the group, and why
- Tax authorities, particularly those in emerging or net-importing countries, will have incentives to challenge any TP documentation that does not disclose the information on the amount and the allocation of the non-routine profits of the group and impose significant TP adjustments and penalties
- Indian MNEs viz in Pharma and IT/ITES sector should be well versed with TP documentation rules of their overseas operations as final risk of non compliance lies with the HQ country

Documentation – OECD vis-à-vis Additional Local requirements

Jurisdiction	Additional Requirement
France	<ul style="list-style-type: none"> • a description of the management structure of the local entity (including a distinction of the company’s management bodies and operational structures, with information on their respective roles and responsibilities and human resources), which can take the form of a graphic or a diagram, and a local organization chart • a copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions with the local entity • a detailed description of the business and business strategy pursued by the local entity (which corresponds to a description of the objectives pursued, the choices made on the allocation of resources and the funding mobilized and the risks assumed to achieve these objectives), including an indication of whether the local entity has been involved in or affected by business restructurings
Germany	<ul style="list-style-type: none"> • A description of the value chain and the value contributions by the taxpayer. • Information on price adjustments, including those that are corresponding adjustments based on transfer pricing adjustments originally occurred at the level of a related party or advance commitments of foreign tax authorities. • Information on reasons for losses and intended actions to resolve the loss situation, if a intercompany transaction leads to ongoing losses (more than 3 subsequent years). • names of persons who actually take major decisions which are relevant for the business relations (decision-making power)
Japan	<ul style="list-style-type: none"> • A market analysis that describes the effects of the specific characteristics of the market on the pricing and profits and losses of the foreign related party transactions • An explanation of the reasons for performing a multi-year analysis (if conducted), including a logical reason for the number of years analysed. (The OECD BEPS Action 13 Final Report recommends including this item “if relevant.” What makes it relevant in Japan is that under Japanese transfer pricing rules, the starting point is a single-year analysis) • Profit and loss data of the foreign related party, segmented for its transactions with the Japanese taxpayer. (Normally taxpayers do not have such information available from their financial systems, so each taxpayer needs to decide whether to try to produce it for the Japanese documentation on a case-by-case basis.)
US	<ul style="list-style-type: none"> • The required documentation under the regulations is divided into two categories, principal documents and background documents • A description of alternate transfer pricing methods that were considered and an explanation of why they were not selected • An index of the principal and background documents and a description of the recordkeeping system utilized for cataloguing and accessing those documents

Documentation – OECD vis-à-vis Additional Local requirements

Jurisdiction	Additional Requirement
China	<ul style="list-style-type: none">• the organizational structure, including the set-up, scope of responsibility and number of employees of each functional department of the enterprise• information on changes in any related-party relationship of the enterprise during the fiscal year concerned• key factors affecting the pricing of related-party transactions, including intangibles involved in the transactions and their impact on pricing, as well as location-specific factors such as cost savings, market premiums, etc. Analysis of location-specific factors shall focus on aspects such as labour costs, environmental costs, market size, degree of market competition, consumer purchasing power, substitutability of goods or services, regulatory controls;• an overview of outbound investment projects, including the shareholding structure and organizational structure of the investment projects, the employment of senior management involved in the investment projects, the decision-making process and the parties with final decision-making authority about the investment projects

Thank You
