



India

Regulatory snapshot

Overview
When did transfer pricing rules start?
1 April 2001
Level of TP
Developing regime
Return disclosure
Yes
Documentation
Compulsory with threshold
Methods
Best method approach
Audit risk
High
Penalties
High
Advance Pricing Agreements (APAs)
Available

Does your country have transfer pricing rules vs. ruling, laws and guidelines?

The 2001 finance act, introduced transfer pricing law in India through sections 92A to 92F of the Indian income tax Act, 1961) and rules 10A to 10E of the 1962 Indian income tax rules (the rules), which guides computation of the transfer price and suggests detailed documentation procedures. Transfer Pricing Regulations (TPRs) are applicable to all enterprises that enter into an ‘international transaction’ with an ‘associated enterprise’. Therefore, generally it applies to all cross border transactions entered into between related parties. ‘Related parties’ is exhaustively defined and does not only includes shareholdings of more than 26%, but also other criteria resulting in control and management, which are explicitly defined.

The 2012 finance act expanded the scope of TPRs by insertion of a new section 92BA in the 1961 Indian income tax act, to include specified domestic transactions (SDTs). SDTs would include, transactions entered into by domestic related parties, or by an undertaking with another undertaking of the same tax payer. However, the threshold for this to trigger is INR 50 million (approximately USD 1 million).

When examining transfer pricing issues, India follows the arm’s length principle in determining the price of transactions between related parties. OECD guidelines are used for guidance purposes only.

Effective date of commencement of transfer pricing regulations

In India, TPRs are effective for all accounting periods ending on or after 31 March 2002.



Rulings, laws and guidelines

The transfer pricing legislation contained in the 2001 finance act is found in section 92 of the Indian income tax act and rules 10A to 10E of the Indian income tax rules.

Is transfer pricing documentation required? If so, what information should be included?

The burden of demonstrating the arm's length nature of the international transactions rests with the taxpayer. Rule 10D of the 1962 Indian income tax act, prescribes thirteen mandatory documents in this regard and requires the taxpayer to maintain documentation contemporaneously. Some of the requirements are general in nature while others are more specific to the relevant international transactions. This includes:

Principal documentation

- business and group's overview (description of the ownership structure, business of the group etc.)
- description of international transactions
- functional asset and risk analysis
- selection and application of the most appropriate method
- benchmarking and identification of comparables
- other supporting details/documents which help in demonstrating the arm's length nature of transaction.

Supporting documentation – the information would need to be supported by authentic documentation

- official publications and databases from the government of the country of residence of the associated enterprise or any other country
- market research studies brought out by institutions of national and international repute
- price publications, including stock exchange and commodity market quotations
- published accounts and financial statements, agreements and contracts between the associated enterprises.

Information is required to be maintained by taxpayers who enter into international related party transactions that are valued at more than INR 10 million.

What are the deadlines for documentation preparation?

The information and documentation specified should, as far as possible, be contemporaneous and exist by the specified date of the filing of the income tax return, which is 30 November following the end of the financial year.

In which language should documentation be filed?

Transfer pricing documentation needs to be filed in English.

How long is it necessary to keep transfer pricing documentation?

Transfer pricing documentation should be kept and maintained for at least eight years from the end of the relevant assessment year.

Are intercompany agreements recommended?

It is recommended that taxpayers document their intercompany transactions through intercompany agreements.

Do you have to make disclosures about transfer pricing in the tax return? What statements or certifications are required?

The taxpayer is required to file an accountants report in 'form 3CEB' with the income tax department within the due date of filing the return of income which, presently, is 30 November following the end of the financial year, for taxpayers subject to transfer pricing. The report provides details on the international related party transactions and provides a confirmation of the accountant on whether the required documentation has been maintained by the taxpayer.

Which transfer pricing methods are acceptable?

The arm's length price in relation to an international transaction is required to be determined by any of the following methods: comparable uncontrolled price (CUP), resale price, cost plus, profit split, transactional net margin and the other specified method.

Recently, the Central Board of Direct Taxes (CBDT) clarified the other method by saying "for determination of the arms' length price in relation to an international transaction shall be 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". The other method or the sixth method is effective from 1 April 2012 i.e. from FY 11-12 onwards.

Is there a priority among the acceptable methods?

There is no priority among the acceptable methods as long as the result is at arm's length. The most appropriate method will be the method which is best suited to the facts and circumstances of each particular international transaction, and which provides the most reliable measure of an arm's length price in relation to an international transaction.

What is the statute of limitations on assessment of transfer pricing adjustments?

As per the 2012 finance act, effective 1 July 2012, the transfer pricing audit order is to be passed within three years from the end of the year in which the return is filed.

An appeal against the order of the transfer pricing audit lies with the appeals commissioner and further appeals lie with tribunal, high court and supreme court respectively. Effective from 1 October 2009, a dispute resolution panel (DRP) is constituted for speedy resolutions of disputes involving foreign companies or companies with transfer pricing dispute. The DRP is an alternate to the appeals commissioner and a direct route to reach the tribunal should the disputes continue.

What rates and conditions apply for transfer pricing penalties? And is there penalty relief?

Indian TPRs prescribes onerous penal consequences in the event of non-compliance with documentation and other obligations set out there under. The penal provisions are summarised below.

Default	Penalty	Section of TPRs
Failure in maintaining documentation	2% of the value of each international transaction	271AA
Failure to report any international transaction	2% of the value of each international transaction	271AA
Maintains or furnishes any incorrect information or documents	2% of the value of each international transaction	271AA
Failure in producing the relevant documents to the transfer pricing officer	2% of the value of each transaction for which documents cannot be furnished	271G
Failure to file accountant's report within the due date (form 3CEB)	INR 100,000	271BA
Concealment of income in the event of wilful manipulation of price	100% – 300% of amount of tax sought to be evaded	271(1)(c)(iii) read along with explanation 7

Are there exemptions to Transfer Pricing rules in your country?

No there are no exemptions to transfer pricing rules.

Are advance pricing agreement (APA) options available?

APA provisions are recently introduced by way of sections 92CC and 92CD in the 1962 income tax act. Following are the key highlights of the APA provisions:

- available to all taxpayers falling within the ambit of Indian TP legislation, no threshold limit is prescribed
- APAs to be entered by the CBDT with the approval of the central government
- the APA can be applied for a consecutive period of five previous years
- the APA has a binding force only on the taxpayer with whom it is signed and, with respect to the relevant international transaction, vis-à-vis the jurisdictional commissioner of income tax.

The detailed rules for APA are awaited which may clarify on various procedural aspects like the application, fees, threshold etc.

Tax audit areas

Transfer pricing is a high risk area. Transfer pricing is a key issue in any tax audit. The income tax authorities especially focus on the following areas: captive service providers earning low margins, intellectual property (IP) transactions (transfer of IP, royalties), management fees, loss making entities, share transfers, corporate guarantees and financing and reimbursements. The scrutiny is mandatory for all companies on a yearly basis with the special transfer pricing cell, wherein transaction value exceeds INR 150 million. Lower than this value is scrutinised by the regular assessing officer on a case by case basis.

Contact us

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