



Transfer Pricing Country Summary

India

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1. Introduction

Section 92 of the Income-tax Act, 1961 (ITA) requires international transactions or specified domestic transactions to be arm's length in nature when occurring between associated enterprises. The provisions shall not apply for determination of allowance for any expense or interest expense allocated or apportioned, if it has the effect of reducing the income chargeable to tax or increasing the loss in respect of the previous year in which the international transaction was entered into. Specified Domestic Transactions would only be covered if the aggregate of such transactions entered into exceeds INR 200 million with effect from FY 2015-16; the said limit was INR 50 million for FY 2012-13 and FY 2013-14

2. Laws & Regulations

a) References to OECD/EU/Local Rules

- Section 92A of the Income tax Act 1961
- section 286 ITA
- Rule 10D of the Income Tax Rule, 1962
- Section 92C ITA
- Section 92 B ITA

b) Definition of Related Party

S 92A of the Income-tax Act 1961 stipulates the definition of related party. Accordingly, associated party means: an associated enterprise, in relation to another enterprise, as an enterprise that participates directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise. It also includes situations where two enterprises have common control, capital or management through another enterprise. Besides this, the definition envisages a number of other relationships which may result in making two parties related parties or "associated enterprises".

c) Nature of Transfer Pricing Documentation

The Indian TP regulations require every person who has entered into an international transaction to maintain prescribed information/documents for substantiating the arm's length price of its transactions with the related parties. A new section 286 has been inserted in ITA 1961 which will be applicable from FY 2016-17 onwards which provides for Master File and CbCR documentation. The TP documentation required under Indian legislation is: Master file, Local File and CbCR.. The accountant's report needs to be submitted together with the annual income tax return; the local file itself does not need to be submitted until requested during the transfer pricing audit.

d) Tax Havens & Blacklists

India does not currently have a tax haven list. Nonetheless, the government is considering to implement a new list that will include low tax jurisdictions, with the aim to make it difficult for Indian companies to conduct business with such countries.

e) Advance Pricing Agreement (APA)

APA Provisions were introduced in the Indian Union Budget of 2012; detailed rules in this regard were also notified in notification no. 36 of 2012 dated 30 August 2012. The option of entering into an APA is applicable only for international transactions and not for SDTs. APA is an advance price agreement between CBDT and any person determining the arm's length price in advance, in relation to an international transaction to be entered by that person for the period specified by the APA. APAs can be unilateral, bilateral or multilateral and taxpayers have the option to convert unilateral APA applications into bilateral before they are agreed or conclude. The APAs are valid for not more than 5 years. The provisions also contemplate the APA to provide for a roll back mechanism for a period up to 4 prior years from the first year of the APA. Therefore, the

combined impact of an APA with rollback provisions is tax certainty for 9 years. The taxpayer may first undertake pre-filing consultations, which may be done on an anonymous basis, prior to filing a formal APA application and it is also required to file an Annual Compliance Report (ACR) during the applicability of the APA. ACR may be subject to scrutiny by the Indian Revenue Authority.

f) Audit Practice

The Tax authorities may conduct audits to assess whether an MNE obliges with the TP Documentation requirements in India. Numerous factors are taken into consideration when the tax authorities decide to conduct an audit. Mainly,

3. Transfer Pricing Documentation

a) Level of Documentation

Local file: There is no specific amendment in relation to the Local File after BEPS Action 13. It is, therefore, presumed that the current filing requirements as set out in section 92D of the ITA 1961 will continue to apply. The documentation is required to be prepared and maintained by 30th November following the year in which the transactions are entered into. Rule 10D of the Income Tax Rule, 1962, provides in more detail the nature of the information that is required to be maintained by taxpayer.

Master file: To be filed on or before the due date for filing the income tax return which is

CbCR: Reporting requirements would apply to an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the preceding accounting year exceeds INR55 billion.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

India does not have a methodological hierarchy. The "Most Appropriate Method," is to be used and it is determined after taking into account the nature international transaction, the availability and reliability of comparable data, and the extent to which accurate adjustments can be made to justify the differences between the international transactions between related parties and uncontrolled comparable transactions.

f) Economic Analysis – Benchmark Study

The Indian Income Tax Department requires companies to conduct a Benchmark study. They has a strong preference for local comparables being used in benchmarking studies, although, international comparables may also be considered depending on the facts and circumstances.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

h) Financial Statements

Companies are required to disclose their financial statements when filling their TP documentation

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	Electronically	31 st of October	N/A	N/A	Yes (English)
Master File	Prepare	OECD Guidelines 2017	28 th of February	N/A	Yes – INR 500 crores	Yes (English)
Local File	Prepare	OECD Guidelines 2017	N/A	N/A	N/A	Yes (English)
CbCR	File	Form No. 3CEAD	31 January of each relevant accounting year	2 months prior to the due date for furnishing the CbC report	Yes – INR 6,400 crores (EUR 750 million)	Yes (English)

Form No. 3CEB	File	Available on the website of the tax authorities	15 th of January	N/A	Yes – INR 20 crores	Yes (English)
Annual Accounts	File	Local GAAP	30 th of June	N/A	N/A	Yes (English)
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* India has signed the MCAA agreement for the filing of CBCR.???						
* Country does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.???						

j) Mandatory Language

TP documentation must be written in English.

k) Notification Requirement

According to Rule 10DB(2), the intimation must be provided in Form No. 3CEAC at least two months prior to the due date for submitting the CbC report. Given that the deadline for submitting the CbC report is March 31, the deadline for submitting the intimation is January 31 of each relevant fiscal year.

l) Record Keeping

The relevant documentation should be maintained for 8 years from the end of the financial year in which the tax return is filed.

m) Penalties and Interest Charges

New section 257B added penalties for failure on furnishing a report or for furnishing an inaccurate report under section 286 of the Act. Accordingly:

- Non-furnishing the Country by Country report by Indian parent or the alternate reporting entity resident in India: INR 5,000 per day, or INR 5,000 per day, or INR 50,000 per day from the date of service of the penalty order
- Non-submission of information: INR 5,000 per day, INR 50,000 per day from the date of service of the penalty order
- Provision of inaccurate information in the Country by Country Report: INR 500,000
- Non-furnishing of prescribed information and document with the prescribed authority: NR 500,000
- Failure to furnish the Master File: INR 500,000