

Transfer Pricing Regulations (Part II)

Tri Nagar Keshav Puram Study Circle
Of
North India Regional Council

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Agenda

- ▶ Compliance Requirement
- ▶ Information/ Document
- ▶ Penalties

Compliance Requirement

- ▶ Information and documents as prescribed under Rule 10D of the Rules need to be kept and maintain for 9 years from the end of relevant financial year.
- ▶ If value of international transaction less than Rs. 1 cr., no requirement to keep and maintain information/ documents.
- ▶ Broadly, these information and documents may be classified into three types:
 - Enterprise wise documents
 - Transaction specific documents
 - Computation related documents
- ▶ Report from a Chartered Accountant's in Form 3CEB needs to be filed in the office of Assessing Officer before due date of filing of return on income.

Information/ Document...

- ▶ Enterprise wise documents
 - A description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises. [clause (a), Rule 10D(1)].
 - A profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions have been entered into by the assessee, and ownership linkages among them. [clause (b), Rule 10D(1)]
 - A broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted. [Clause (c), Rule 10D (1)].

..Information/ Document..

- ▶ Transaction specific documents
 - The nature and terms (including prices) of international transactions entered into with each associated enterprise, details of property transferred or services provided, and
 - the quantum and the value of each such transaction or class of such transaction. [clause (d), Rule 10D(1)].
 - 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. [clause (e), Rule 10D(1)].
 - A record of the economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transactions entered into by the assessee. [clause (f), Rule 10D(1)].

..Information/ Document..

- ▶ Transaction specific documents
 - A record of uncontrolled transactions taken into account for analysing their comparability with the international transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions. [clause (g), Rule 10D(1)].
 - A record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction. [clause (h), Rule 10D (1)].

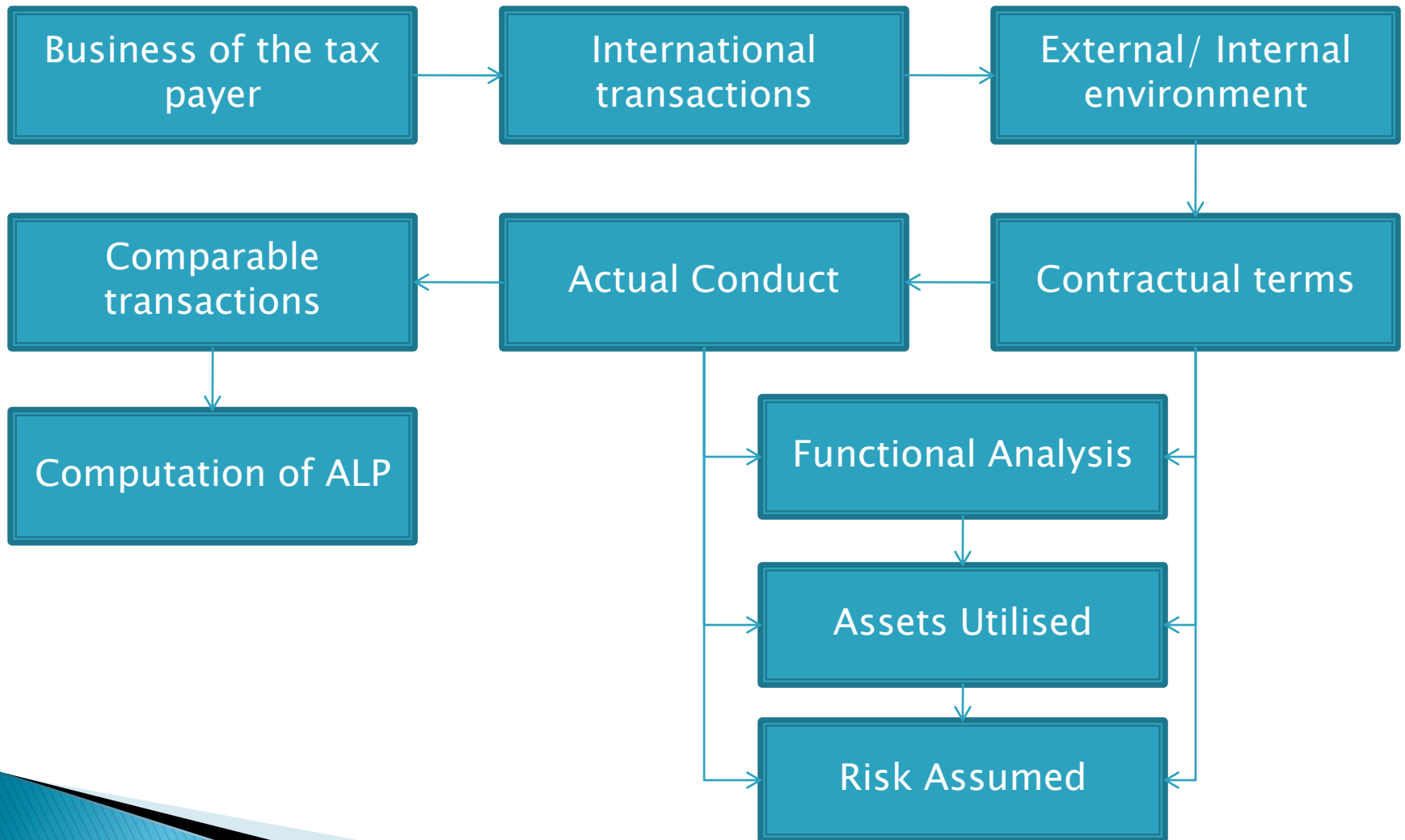
..Information/ Document..

- ▶ Computation related documents
 - A description of the methods considered for determining the arm's length price in relation to each international transaction or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case. [clause (i), Rule 10D(1)].
 - A record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions. [clause (j), Rule 10D (1)].

..Information/ Document..

- ▶ Computation related documents
 - The assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price. [clause (k), Rule 10D (1)].
 - Details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes. [clause (l), Rule 10D(1)].
 - Any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price. [clause (m), Rule 10D (1)].

..Information/ Document..



..Information/ Document..

- ▶ Typical Functions
 - Design, Research and Development
 - Procuring raw materials and consumables
 - Controlling stocks of raw materials and finished goods
 - Corporate policies
 - Manufacturing
 - Quality control
 - Sales and Marketing
 - HR
 - Finance
 - Administration

..Information/ Document..

- ▶ Typical Assets – Tangible
 - Plant and Machinery
 - Warehouse
 - Furniture and Fixtures
 - Transport
 - Hardware and Software

- ▶ Typical Assets – Intangible
 - Patent
 - Trade-name
 - Copyrights
 - Customer list
 - HR

...Information/ Document

- ▶ Typical Risk
 - Market risk
 - Inventory risk
 - Product risk
 - Foreign exchange risk
 - Credit risk

Penalties

Section	Default	Penalty
271 AA	Penalty for failure to keep and maintain information and documents in respect of international transaction	2% of the value of international transactions
271 BA	Penalty for failure to furnish report under section 92E	Rs.100,000
271 G	Penalty for failure to furnish information or document under section 92D	2% of the value of international transactions
Explanation 7, section 271 (1)(c)	Penalty for concealment of income or furnishing inaccurate particulars thereof	100%–300% of tax sought to be evaded

Dispute Resolution Panel

- ▶ Section 144C of the Act
- ▶ Effective October 1, 2009, AO will issue a draft order to the Assessee and to the Panel if any transfer pricing addition
- ▶ With in 30 days of the receipt of the draft order, the Assessee shall either file his;
 - Acceptance of the addition to the AO, or
 - Objections to the Panel and to the AO
- ▶ The AO would pass the order within 1 month from the date of receipt of acceptance or 1 month from the expiry of the date if no acceptance is filed by the Assessee

Dispute Resolution Panel

- ▶ With in 9 months from the date on which draft Order is forwarded to the Assessee, Panel should issue guidance to the AO, after considering;
 - Draft order
 - Objections filed by the Assessee
 - Evidenced furnished by the Assessee
 - Report, if any, of the AO, Valuation Officer or TPO
 - Records relating to the draft order
 - Evidence collected or caused to be collected by, it, and
 - Result of any enquiry made by, or caused to be made by, it.
- ▶ The guidance issued by the Panel would be binding on the AO, however the Assessee can still appeal to ITAT against order of the AO

Dispute Resolution

- ▶ Advance Pricing Agreement
 - Applicable from April 1, 2011 as per Direct Taxes Code Bill, 2009
 - An Advance Pricing Agreement is an arrangement between a tax authority and a tax payer that determines arm's length price in advance in relation to international transaction(s)
 - Agreement would be valid maximum for 5 years
- ▶ Normal Litigation
- ▶ Mutual Agreement Procedure

Thank You



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