

TRANSFER PRICING

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1. INTRODUCTION

2. INCOME TAX ACT, SECTION 92

3. FORM 3CEB

Introduction

- ▶ What is Transfer Pricing?
- ▶ What is the Importance of TP in Income Tax?

Transfer Pricing - Term

- ▶ Costing Terminology
- ▶ Transfer price means the price at which the Finished/Unfinised product is transferred to another Department for processing or selling.

An Example

Lets consider a company XYZ Ltd, which manufactures sugar from Sugar crane.

The Company management has divided the whole manufacturing process in to Three Departments.

The Company wants to evaluate individually the performance of the three departments.

Departments

Purchase Department

Purchases Sugar Cane Crop.
- Transfers it to the Next Dept.

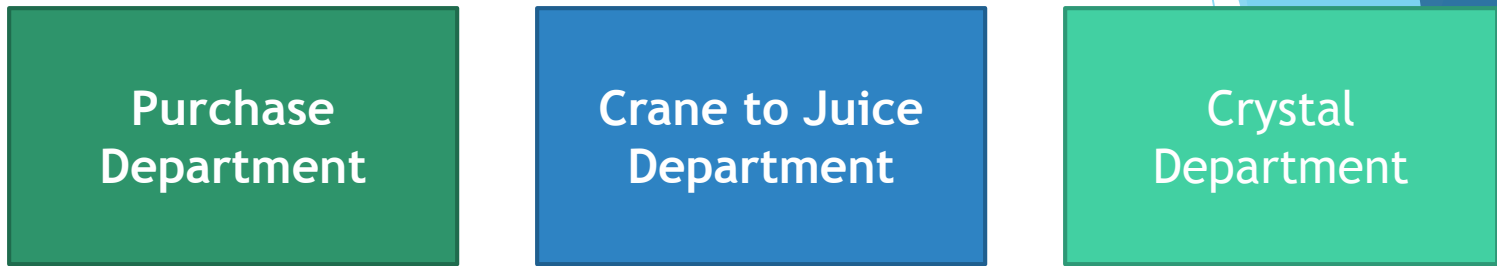
Crane to Juice Department

Converts Crop to Juice.
- Transfers it to the Next Dept.

Crystal Department

Crystallizes Sugar Cane juice to Sugar Crystals.
- Which sold in the market

Departments



Cost of the Centre

100 Rs/ plant

50 Rs/ Plant

70 Rs/ Plant

Transfer Price

150 Rs/ Plant

300 Rs/ Plant

440 Rs/ Plant

Profit

+50¹⁰⁰

+100⁵⁰

+70³⁷⁰



Question 2

What is the Importance of TP in Income Tax?

Ans:

No Importance, Income tax is not bothered about Transfer Pricing within an Organization

as long as all the departments are Residents & taxable in India.

**Purchase
Department**

**Crane to Juice
Department**

**Crystal
Department**

Profit

+50

+100

+70

Residential
Status

India

India

China

Tax
(30 & 20%)

15 Rs/Plant

30 Rs/Plant

14 Rs/Plant

Difference in Tax Rate:

10%

Tax Leverage - Shifts profits to China & save taxes upto 10%

Because of this Leverage Indian Govt is losing revenue in the form of taxes on cross-border transactions.

Special Provision relating to avoidance of tax - Section 92 was substituted by the Finance Act, 2001

Preamble of Section 92:

to Value & Control all the International transactions between Related parties (controlled by same group of people)

Section 92 (1) TO 92 (3)

SEC 92(1): ANY INCOME ARISING FROM AN INTERNATIONAL TRANSACTION SHALL BE COMPUTED HAVING REGARD TO THE ARMS LENGTH PRICE.

EXPLN : FOR REMOVAL OF DOUBT, IT IS CLARIFIED THAT THE ALLOWANCE FOR EXPENSE OR INTEREST ARISING FROM AN INTERNATIONAL TRANSACTION SHALL ALSO BE DETERMINED HAVING REGARD TO THE ARM'S LENGTH PRICE

SEC 92 (2) : WHEN RELATED PARTIES ENTER IN TO AGREEMENT OF COST ALLOCATION OR APPORTIONMENT IN CONNECTION WITH A BENEFIT, THEN SUCH COST SHOULD BE DETERMINED HAVING REGARD TO THE ALP OF SUCH BENEFIT.

**SEC 92 (2A) – DOMESTIC TRANSFER PRICING – INSERTED BY
FINANCE ACT 2012**

**SECTION 92(3): THE PROVISIONS OF THIS SECTION DOES NOT
APPLY IN CASE**

**WHERE THE COMPUTATION OF INCOME AS PER ABOVE SUB
SECTIONS HAS THE EFFECT OF REDUCING**

**THE INCOME CHARGEABLE TO TAX COMPUTED ON THE BASIS OF
ENTRIES MADE IN THE BOOKS OF ACCOUNTS.**

DEFINITIONS – SECTION 92A TO 92BA

DEFINITION OF

1. ASSOCIATED ENTERPRISE - SECTION 92A
2. INTERNATIONAL TRANSACTION - SECTION 92B
3. SPECIFIED DOMESTIC TRANSACTION - SECTION 92BA

SECTION 92A – MEANING OF ASSOCIATED ENTERPRISES

A.E.

In relation to another enterprise means :

An Enterprise which participates in the Management or Control or Capital of the other Enterprise

A to A Relation (A:A)

In R/o which one or more persons who participates in the M/C/C,

Are also the same persons who participate in the M/C/C of the other Enterprise.

P to A,A Relation (P:AA)



SECTION 92B(1) : INTERNATIONAL TRANSACTION

BETWEEN TWO OR MORE AE'S, EITHER OR BOTH OF WHOM ARE NON RESIDENTS, IN NATURE OF:

PURCHASE, SALE OR LEASE OF TANGIBLE OR INTANGIBLE PROPERTY
(OR)

PROVISION OF SERVICES
(OR)

LENDING OR BORROWING MONEY
(OR)

ANY OTHER TRANSACTIONS HAVING A BEARING ON THE PROFITS, INCOME, LOSSES OR ASSETS
(OR)

ANY MUTUAL AGREEMENT FOR SHARING OF ANY ABOVE ITEMS

- INCLUDES TRANSACTION BETWEEN TWO AE'S OR THROUGH OTHER PERSON (UNDER AN AGREEMENT ENTERED WITH THAT PERSON) –
SEC 92B(2)

SECTION 92C
COMPUTATION OF ARM'S LENGTH PRICE

**THROUGH ANY OF THE FOLLOWING METHODS,
BEING THE MOST APPROPRIATE METHOD:**

- 1) COMPARABLE UNCONTROLLED PRICE METHOD**
- 2) RESALE PRICE METHOD**
- 3) COST PLUS METHOD**
- 4) PROFIT SPLIT METHOD**
- 5) TRANSACTIONAL NET MARGIN METHOD**

IF MORE THAN ONE METHOD IS APPROPRIATE, THEN A.M. IS TO BE TAKEN – 92C(2)
VARIATION SHOULD BE LESS THAN PRESCRIBED (NOT EXCEEDING 3%) – 92C(2)

POWER OF A.O. SECTION 92C(3)

DURING THE COURSE OF ANY PROCEEDINGS, ON THE BASIS OF MATERIAL OR INFORMATION, IF THE A.O. IS OF THE OPINION THAT -

THE PRICE CHARGED/PAID IN AN INT. TR. HAS NOT BEEN DETERMINED
(OR)

ANY PRESCRIBED INFO OR DOCS NOT MAINTAINED
(OR)

INFO USED IN DETERMINATION OF ALP IS NOT RELIABLE OR CORRECT
(OR)

FAILED TO FURNISH INFO OR DOC WITH IN TIME

THE A.O. MAY PROCEED TO DETERMINE ALP WITH THE DATA AVAILABLE TO HIM & PASS ORDER ACCORDINGLY – (AFTER GIVING AN OPPURTUNITY OF BEING HEARD)

REFERENCE TO T.P.O.
SECTION 92CA

Sub-Section	Particulars
(1)	<p>A.O with previous approval of Commissioner, may refer the case to TPO, to compute ALP Means TPO cannot suo motu open any case except through sub-sections (2A) & (2B)</p>
(2)	<p>TPO shall serve a notice to assessee requiring him to produce any evidence on which assessee may rely in support of the computation made by him of the ALP.</p>
(2A)	<p>Where any other Int. Transaction comes to the notice of TPO, during the course of the proceedings, The provisions of this (Section 92CA) chapter shall apply</p>
(2B)	<p>Where in respect of an Int. Transaction, the assessee has not furnished report under 92E, section 92CA shall apply. This section can not be used as a mechanism for assessment or reassessment whose proceedings have been completed before 1-7-12.</p>

REFERENCE TO T.P.O.
SECTION 92CA

Sub-Section	Particulars
(3)	After hearing & considering the evidence of the assessee, TPO shall compute ALP & order in writing, send a copy to A.O
(4)	In receipt of such order, the A.O. shall compute the Total Income in conformity with the ALP determined by TPO
(5)	Section 154 shall be applicable for TPO order, because of any apparent mistake & shall forward the same to A.O. - 92CA(6)
(7)	TPO shall have all the powers as per Sec 131(1) (a) to (d) or Sec 133(6) or Sec 133A

SECTION 92CB:

ACT GIVES POWER TO BOARD TO MAKE SAFE HARBOUR RULES

“SAFE HARBOUR” MEANS CIRCUMSTANCES IN WHICH THE INCOME TAX AUTHORITIES SHALL ACCEPT THE TRANSFER PRICE DECLARED BY THE ASSESSEE.

SECTION 92CC:
ADVANCE PRICING AGREEMENTS

- 1) AGREEMENT BETWEEN BOARD & THE ASSESSEE
- 2) UNDER APPROVAL OF THE CENTRAL GOVT.
- 3) DETERMINING THE ALP OR SPECIFYING THE MANNER IN WHICH ALP IS TO BE DETERMINED.
- 4) IN RELATION TO ANY INT. TRANSACTIONS ENTERED BY THAT PERSON
 - A. MAY INCLUDE THE METHODS IN 92C OR ANY OTHER METHODS & ADJUSTMENTS – 92CC(2)
 - B. 92CC OVERRIDES 92C – AS PER 92CC(3)
 - C. AGREEMENT PERIOD \leq 5 YEARS – AS PER 92CC(4)
 - D. BINDING BOTH ON ASSESSEE & COMMISSIONER – AS PER 92CC(5) & SHALL NOT BIND IF THERE IS ANY CHANGE IN LAW HAVING BEARING ON THE AGREEMENT – SEC 92CC(6)
 - E. BOARD, WITH C.G. APPROVAL MAY DECLARE AGREEMENT VOID IF OBTAINED THROUGH FRAUD & MISREPRESENTATIONS – SEC 92CC(7)

SECTION 92D DOCUMENTATION

RULE 10D:

FOLLOWING DOCUMENTS TO BE MAINTAINED BY THE ASSESSEE

1. OWNERSHIP STRUCTURE OF THE ASSESSEE.
2. PROFILE OF THE MNC GROUP – NAME, ADD, STATUS & COUNTRY OF RESIDENCE.
3. DESCRIPTION OF BUSINESS OF ASSESSEE & THE AE'S
4. DESCRIPTION, NATURE, TERMS & CONDITIONS OF INT. TRANSACTIONS
5. FAR ANALYSIS OF GROUP & ASSESSEE
6. ECONOMIC & MARKET ANALYSIS, FORECAST & BUDGETS.
7. ALP – WORKINGS, COMPARABLES, ASSUMPTIONS, ADJUSTMENTS, METHODS & ANALYSIS

- SUPPORTED BY FOLLOWING AUTHENTIC DOCUMENTS:
MARKET RESEARCH, PRICE PUBLICATIONS, PUBLISHED ACCOUNTS, & CONTRACTS & OTHER
NORMAL SUPPORTING DOCUMENTS

SECTION 92E

REPORT FROM AN ACCOUNTANT

EVERY PERSON WHO HAS ENTERED INTO AN INT. TRANSACTION SHALL OBTAIN A REPORT FROM AN ACCOUNTANT (FORM 3CEB) & SHALL FURNISH BEFORE SPECIFIED DATE AS PRESCRIBED.

DETAILS IN FORM 3CEB:

1. PARTICULARS RELATING TO INT. TRANSACTION :- NATURE, DESCRIPTION, YEAR, AMOUNT...ETC
2. LIST OF AE'S WITH WHOM THE ASSESSEE HAS ENTERED IN TO INT. TRANSACTION.
3. PARTICULARS IN RESPECT OF DIFFERENT TYPES OF INT. TRANSACTIONS: SERVICES, TRANSFER OF ASSETS, BORROWINGS...ETC
4. DETAILS OF TRANSACTION VALUE AS PER BOOKS & ALP DETERMINED & MOST APPROPRIATE METHOD USED...ETC.

SECTION 92BA DEF: SPECIFIED DOMESTIC TRANSACTIONS

FOR THE PURPOSE OF SECTION 92, 92C, 92D, 92E – SDT MEANS:

1. ANY EXPENDITURE AS REFERRED TO IN SECTION 40A(2)
2. ANY TRANSACTION REFERRED TO IN SECTION 80A
3. ANY TRANSFER OF GOODS OR SERVICES REFERRED TO IN SECTION 80-IA(10)
4. CHAPTER VI-A OR SECTION 10AA TRANSACTIONS TO WHICH SECTION 80-IA(8) OR (10) APPLICABLE
5. ANY OTHER PRESCRIBED TRANSACTIONS

AND

AGGREGATE VALUE OF SUCH TRANSACTION ENTERED EXCEEDS 5 CRORES.