

(a) at the Indian rate of tax or the rate of tax of the said country, whichever is the lower; or

(b) at the Indian rate of tax, if both the rates are equal.

(2) If any non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any tax year and such share includes any income accruing or arising outside India during that tax year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under section 159 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the income so included he shall be entitled to a deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income so included,—

(a) at the Indian rate of tax or the rate of tax of the said country, whichever is the lower; or

(b) at the Indian rate of tax, if both the rates are equal.

(3) In this section,—

(a) “income-tax” in relation to any country includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country;

(b) “Indian income-tax” means income-tax charged as per this Act;

(c) “Indian rate of tax” means the rate determined by dividing Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this section, by the total income; and

(d) “rate of tax of the said country” means income-tax and super-tax actually paid in the said country as per the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country.

CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

161. (1) Any income arising from an international transaction or a specified domestic transaction shall be determined having regard to the arm’s length price.

(2) Any allowance for any expense or interest arising from an international transaction or a specified domestic transaction shall also be determined having regard to the arm’s length price.

(3) If in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for—

(a) allocation or apportionment of any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises; or

(b) any contribution to any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises,

Computation of income from international transaction and specified domestic transaction having regard to arm’s length price.

the cost or expense allocated or apportioned to, or, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility.

- (4) The provisions of this section shall not apply if the determination under sub-section (1) or (2) or (3) has the effect of reducing the income chargeable to tax or increasing the loss, computed on the basis of entries made in the books of account in respect of the tax year in which the international transaction or specified domestic transaction was entered.

162. (1) In this Chapter, "associated enterprise", in relation to another enterprise, means an enterprise—

Meaning of associated enterprise.

(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

(2) Without affecting the generality of the provisions of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the tax year,—

(a) one enterprise holds, directly or indirectly, shares carrying at least 26% of the voting power in the other enterprise; or

(b) any person or enterprise holds, directly or indirectly, shares carrying at least 26% of the voting power in each of such enterprises; or

(c) a loan advanced by one enterprise to the other enterprise constitutes at least 51% of the book value of the total assets of the other enterprise; or

(d) one enterprise guarantees at least 10% of the total borrowings of the other enterprise; or

(e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or

(f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or

(g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

(h) 90% or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

(i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

(j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

(k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or

(l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds at least 10% interest in such firm, association of persons or body of individuals; or

(m) there exists between the two enterprises, any relationship of mutual interest, as prescribed.

(3) In relation to a specified domestic transaction entered into by an assessee, associated enterprise shall also include—

(a) other units or undertakings or businesses of such assessee in respect of a transaction referred to in section 122 or 140(9);

(b) any other person referred to in section 140(13) or 205(4) in respect of a transaction referred to therein; and

(c) other units, undertakings, enterprises or business of such assessee, or other person referred to in section 140(13) in respect of a transaction referred to in section 144 or the transactions referred to in Chapter VIII to which the provisions of section 140(9) or (13) are applicable.

Meaning of international transaction.

163. (1) In this Chapter, “international transaction” means a transaction between two or more associated enterprises, one of which is necessarily a non-resident, and includes—

(a) the purchase, sale, transfer, lease or use of tangible property, including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(c) capital financing, lending and borrowing of money, including,—

(i) any type of long-term or short-term borrowing, lending or guarantee; or

(ii) purchase or sale of marketable securities; or

(iii) any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

5 (e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has any bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

10 (f) a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises; and

15 (g) any other transaction having a bearing on the profits, income, losses or assets of such enterprises.

(2) A transaction entered into by an enterprise with a person other than an associated enterprise (“other person”) shall, for sub-section (1), be deemed to be an international transaction entered into between two associated enterprises, if—

20 (a) there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise; or

(b) the terms of the relevant transaction are determined, in substance, between such other person and the associated enterprise,

and the enterprise or the associated enterprise or both of them are non-residents, irrespective of whether the other person is a non-resident or not.

25 (3) The expression “intangible property” shall include the following,—

(a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;

30 (b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;

(c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;

35 (d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

(e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation;

40 (f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;

(g) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;

45 (h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;

(i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;

(j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value; 5

(k) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists or technical data; and

(l) any other similar item that derives its value from its intellectual content rather than its physical attributes.

Meaning of specified domestic transaction.

164. In this Chapter, “specified domestic transaction” in case of an assessee means any of the following transactions, not being an international transaction— 10

(a) any transaction referred to in section 122;

(b) any transfer of goods or services referred to in section 140(9);

(c) any business transacted between the assessee and other person as referred to in section 140(13); 15

(d) any transaction, referred to in any other section under Chapter VIII or section 144, to which provisions of section 140(9) or (13) are applicable;

(e) any business transacted between the persons referred to in section 205(4);

(f) any other transaction as prescribed, 20

and where the aggregate of such transactions entered into by the assessee in a tax year exceeds a sum of twenty crore rupees.

Determination of arm's length price.

165. (1) The arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the following methods, being the most appropriate method— 25

(a) comparable uncontrolled price method;

(b) resale price method;

(c) cost plus method;

(d) profit split method;

(e) transactional net margin method; 30

(f) such other method as prescribed by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be,—

(a) selected having regard to the nature of transaction or class of transaction or class of associated enterprise or functions performed by such enterprises or such other relevant factors as the Board may prescribe; 35

(b) applied for determination of arm's length price in such manner as prescribed.

(3) The arm's length price shall be—

(a) in case, only one price is determined by the most appropriate method,— 40

(i) the price determined by that method; or

(ii) the price at which the international transaction or specified domestic transaction has actually been undertaken, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding 3% of the latter, notified by the Central Government in this behalf; or

(b) in case, more than one price is determined by the most appropriate method, the price determined in such manner as prescribed.

(4) The Assessing Officer, during the course of any proceeding for the assessment of income, may proceed to determine the arm's length price in relation to an international transaction or specified domestic transaction as per sub-sections (1), (2) and (3) if, on the basis of material or information or document in his possession, he is of the opinion that—

(a) the price charged or paid in an international transaction or specified domestic transaction has not been determined as per sub-sections (1), (2) and (3); or

(b) any information and document relating to an international transaction or specified domestic transaction has not been kept and maintained by the assessee as per section 168(1); or

(c) the information or data used in determination of the arm's length price by the assessee is not reliable or correct; or

(d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under section 171(2).

(5) The Assessing Officer, before determining the arm's length price under sub-section (4), shall give a notice calling upon the assessee to show cause, on the date and time to be specified in the notice, why the arm's length price should not be determined on the basis of material or information or document in his possession.

(6) The Assessing Officer, on determination of arm's length price under sub-section (4), may compute the total income of the assessee having regard to the arm's length price so determined.

(7) No deduction shall be allowed under section 144 or under Chapter VIII in respect of income by which the total income of the assessee is enhanced after computation of income under sub-section (6).

(8) When the total income of an associated enterprise is computed under sub-section (6) on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XIX-B, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.

166. (1) Where,—

(a) the assessee has entered into an international transaction or specified domestic transaction in any tax year; and

(b) the Assessing Officer considers it necessary or expedient so to do, he may refer the determination of the arm's length price in relation to such transaction to the Transfer Pricing Officer, with the previous approval of the Principal Commissioner or Commissioner.

(2) No reference under sub-section (1) for computation of the arm's length price in relation to an international transaction or a specified domestic transaction shall be made, if the Transfer Pricing Officer has declared that option exercised by the assessee in sub-section (9) in relation to such transaction is valid for such tax year.

Reference to
Transfer Pricing
Officer.

(3) If any reference for an international transaction or a specified domestic transaction under sub-section (1), in respect of a tax year, for which the option is declared valid under sub-section (9) is made before or after such declaration by the Transfer Pricing Officer, the provisions of sub-section (1) shall have the effect as if no reference is made for such transaction.

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(4) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date specified therein, any evidence on which the assessee may rely in support of the determination made by him of the arm's length price in relation to such transaction.

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(5) Where,—

(a) any international transaction or specified domestic transaction, other than an international transaction or a specified domestic transaction referred under sub-section (1); or

(b) any international transaction or a specified domestic transaction that the assessee has not included in the report under section 172,

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comes to the notice of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply as if such transaction is a transaction referred to him under sub-section (1).

(6) On the date specified in the notice under sub-section (4), or as soon thereafter as may be,—

20

(a) after hearing such evidence as the assessee may produce, including any information or documents referred to in section 171(2);

(b) after considering such evidence as the Transfer Pricing Officer may require on any specified points; and

25

(c) after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction as per section 165(4) and send a copy of his order to the Assessing Officer and to the assessee.

30

(7) Where a reference was made under sub-section (1), an order under sub-section (6) may be made at any time before sixty days before the expiry of limitation period referred to in section 286, or 296, for making the order of assessment or reassessment or recomputation or fresh assessment.

(8) If the period of limitation available to the Transfer Pricing Officer for making an order under sub-section (6) is less than sixty days in the circumstances referred to in section 286(3)(b) or (i), such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly.

35

(9) The arm's length price, being determined in relation to the international transaction or the specified domestic transaction under sub-section (6) for any tax year shall apply to similar international transaction or specified domestic transaction for the two consecutive tax years immediately following such tax year, on fulfilment of the following conditions:—

40

(a) the assessee exercises an option or options to the above effect for the said two consecutive tax years;

45

(b) such option or options are exercised in such form, manner and within such period as prescribed; and,

(c) the Transfer Pricing Officer shall, within one month from the end of the month in which such option or options are exercised, by an order in writing, declare that such option or options are valid subject to the conditions, as prescribed.

5 (10) The provisions of sub-section (9) shall not apply to any proceedings under Chapter XVI-B.

(11) On receipt of the order under sub-section (6), the Assessing Officer shall compute the total income of the assessee under section 165(6) in conformity with the arm's length price as so determined by the Transfer Pricing Officer.

10 (12) Irrespective of anything contained in sub-section (11), where the Transfer Pricing Officer has declared an option exercised by the assessee as valid option under sub-section (9), he shall examine and determine the arm's length price in relation to such similar transaction for two consecutive tax years immediately following such tax year, in the order referred to in sub-section (4) and on receipt of
15 such order, the Assessing Officer shall proceed to recompute the total income of the assessee for the said two consecutive tax years as per the provisions of section 288.

(13) For rectifying any mistake apparent from the record, the Transfer Pricing Officer,—

20 (a) may amend any order passed by him under sub-section (6), and the provisions of section 287 shall, so far as may be, apply accordingly; and

(b) shall send a copy of such order to the Assessing Officer who shall thereafter amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

25 (14) The Transfer Pricing Officer may exercise all or any of the powers specified in section 246(1)(a) to (d) or 252(1)(a) or 253 for the purposes of determining the arm's length price under this section.

(15) If any difficulty arises in giving effect to the provisions of sub-sections (9) and (12), the Board may, with the prior approval of the Central Government, issue guidelines for the purpose of removing such difficulty.

30 (16) No guideline under sub-section (15) shall be issued after the expiration of two years from the 1st April, 2026.

(17) Every guideline issued by the Board under sub-section (15) shall be laid before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions,
35 and if, before the expiry of the session immediately following the session or the successive session aforesaid, both houses agree in making any modification in such guideline or both Houses agree that the guideline, should not be issued, the guideline shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without
40 prejudice to the validity of anything previously done under that guideline.

(18) In this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 165 and 171 in respect of any person or class of persons.

45 **167. (1)** The determination of—

(a) income referred to in section 9(2); or

(b) arm's length price under section 165 or 166,

shall be subject to safe harbour rules.

(2) For the purposes of sub-section (1), the Board may make rules for safe harbour.

50 (3) In this section, "safe harbour" means circumstances in which the income-tax authorities shall accept,—

Power of Board to make safe harbour rules.

(a) the transfer price; or

(b) the income, deemed to accrue or arise under section 9(2),

declared by the assessee.

Advance pricing
agreement.

168. (1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the—

(a) arm's length price or specifying the manner in which the arm's length price is to be determined, in relation to an international transaction to be entered into by that person;

(b) income referred to in section 9(2), or specifying the manner in which the said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident.

(2) The manner of determination of the arm's length price referred to in sub-section (1)(a) or (b) may include, respectively,—

(a) the methods referred to in section 165(1); or

(b) the methods provided by rules made under this Act,

with such adjustments or variations, as may be necessary or expedient so to do.

(3) Irrespective of anything contained in section 165 or 166 or the methods provided by rules made under this Act,—

(a) the arm's length price of any international transaction; or

(b) the income referred to in sub-section (1)(b),

in respect of which the advance pricing agreement has been entered into, shall be determined as per the advance pricing agreement so entered.

(4) The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive tax years as specified in the agreement.

(5) The advance pricing agreement entered into shall be binding—

(a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(b) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

(7) The Board may, with the approval of the Central Government, by an order, declare an agreement to be *void ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

(8) Upon declaring the agreement *void ab initio*,—

(a) all the provisions of the Act shall apply to the person as if such agreement had never been entered into;

(b) irrespective of anything contained in the Act, the period beginning with the date of such agreement and ending on the date of order under sub-section (7) shall be excluded for the purpose of computing any period of limitation under this Act; and

(c) if immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(9) For the purposes of this section, the Board may prescribe a scheme specifying therein the manner, form, procedure and any other matter in respect of the advance pricing agreement.

(10) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as prescribed, provide for determining the—

(a) arm's length price or specify the manner in which the arm's length price shall be determined in relation to the international transaction entered into by the person;

(b) income referred to in section 9(2), or specifying the manner in which the said income is to be determined, as is reasonably attributable to the operations, transactions and activities carried out in India by or on behalf of that non-resident person,

during any period not exceeding four tax years preceding the first of the tax years referred to in sub-section (4).

(11) Where an application is made by a person for entering into an agreement referred to in sub-section (1), the proceedings shall be deemed to be pending in the case of the person for the purposes of this Act till such agreement is entered into, or such proceedings are closed as per rules prescribed.

169. (1) If a return of income for any tax year covered by an advance pricing agreement has been furnished by any person, before the date of entering into the said agreement, he shall, irrespective of anything to the contrary contained in section 263, furnish a modified return, in accordance with and limited to the agreement, in respect of such tax years, within three months from the end of the month in which the agreement was entered into.

Effect to
advance pricing
agreement.

(2) Except as provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 263.

(3) Where a modified return is furnished under sub-section (1), and assessment or reassessment proceedings, in respect of a tax year to which the agreement applies, were initiated before the filing of such return then,—

(a) if such proceedings have been completed, the Assessing Officer shall pass an order modifying the total income of the relevant tax year; or

(b) if such proceedings are pending on the date of filing of modified return, the Assessing Officer shall proceed to complete them, as per the agreement after taking into consideration the modified return so furnished.

(4) Irrespective of anything contained in section 275 or 286 or 296,—

(a) the order in respect of a case falling under sub-section (3)(a) shall be passed within one year from the end of the financial year in which the modified return under sub-section (1) is furnished;

(b) in respect of a case falling under sub-section (3)(b), the period of limitation as provided in section 275 or 286 or section 296 for completion of pending assessment or reassessment proceedings shall be extended by twelve months.

(5) In this section,—

(a) "agreement" means an agreement referred to in section 168(1);

(b) the assessment or reassessment proceedings for a tax year shall be deemed to have been completed where—

(i) an assessment or reassessment order has been passed; or

(ii) no notice has been issued under section 270(8) till the expiry of the limitation period provided under the said section.

170. (1) An assessee shall make a secondary adjustment in every case where primary adjustment of one crore rupees or more to transfer price—

Secondary
adjustment in
certain cases.

(a) has been made on his own in his return of income;

(b) made by the Assessing Officer has been accepted by him;

(c) is determined by an advance pricing agreement entered into by him under section 168;

(d) is made as per the safe harbour rules made under section 167; or

(e) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 159 for avoidance of double taxation.

(2) The excess money or part thereof available with its associated enterprise shall be deemed to be an advance made by the assessee to such associated enterprise if—

(a) as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee; and

(b) such excess money or part thereof is not repatriated to India within the time as prescribed.

(3) The excess money or part thereof referred to in sub-section (2) may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.

(4) The interest on advance as referred to in sub-section (2) shall be computed in such manner as prescribed.

(5) Without prejudice to the provisions of sub-section (2), where the excess money or part thereof has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax at the rate of 18% on such excess money or part thereof, as the case may be.

(6) The tax on the excess money or part thereof so paid by the assessee under sub-section (5) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit thereof shall be claimed by the assessee or by any other person in respect of tax so paid.

(7) Deduction under any other provision of this Act shall not be allowed to the assessee in respect of the amount on which tax has been paid as per sub-section (5).

(8) In a case where the additional income-tax referred to in sub-section (5) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (4) from the date of payment of such tax.

(9) In this section,—

(a) “arm’s length price” shall have the meaning assigned to it in section 173(a);

(b) “excess money” means the difference between the arm’s length price determined in primary adjustment and the price at which the international transaction has actually been undertaken;

(c) “primary adjustment” to a transfer price, means the determination of transfer price as per the arm’s length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

(d) “secondary adjustment” means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

171. (1) Every person,—

(a) who has entered into an international transaction or specified domestic transaction; or

(b) is a constituent entity of an international group,

shall keep and maintain such information and document in respect thereof and for such period and in such manner, as prescribed.

(2) The Assessing Officer or the Commissioner (Appeals) may, during any proceeding under this Act, require any person referred to in sub-section (1)(a) to
5 furnish any information or document referred therein within ten days from the date of receipt of a notice issued in this regard.

(3) The Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of ten days by a further period not exceeding thirty days.

10 (4) Every person referred to in sub-section (1)(b) shall furnish the information and document referred to in sub-section (1) to the authority prescribed under section 511(1), in such manner, on or before such date, as prescribed.

(5) In this section,—

15 (a) “constituent entity” shall have the meaning assigned to it in section 511 (10)(d);

(b) “international group” shall have the meaning assigned to it in section 511 (10)(g).

172. Every person who has entered into an international transaction or specified domestic transaction during a tax year shall obtain a report from an
20 accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the manner as prescribed by such accountant and setting forth such particulars as prescribed.

Report from an accountant to be furnished by persons entering into international transaction or specified domestic transaction.

173 In this section and sections 161, 162, 163, 165, 171 and 172, unless the context otherwise requires,—

25 (a) “arm’s length price” means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;

Definitions of certain terms relevant to determination of arm’s length price, etc.

(b) “enterprise” means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be, engaged in any activity relating to—

30 (i) the production, storage, supply, distribution, acquisition or control of articles or goods; or

(ii) know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature; or

35 (iii) any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

(iv) provision of services of any kind; or

(v) carrying out any work in pursuance of a contract; or

40 (vi) investment or providing loan; or

(vii) business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate,

45 whether such activity or business is carried on, directly or through one or more of its units or divisions or subsidiaries, or whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or places;

(c) “permanent establishment”, referred to in clause (b), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;

(d) “specified date” means the date one month before the due date for furnishing the return of income under section 263 (1) for the relevant tax year;

(e) “transaction” includes an arrangement, understanding or action in concert,—

(i) whether or not such arrangement, understanding or action is formal or in writing; or

(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.

Avoidance of
income-tax by
transactions
resulting in
transfer of
income to
non-residents.

174. (1) Where there is a transfer of assets before and after the commencement of this Act, and by virtue or in consequence of it,—

(a) either alone; or

(b) in conjunction with associated operations,

any income becomes payable to a non-resident, the provisions of this section shall apply.

(2) If any person (“first mentioned person”), by means of any transfer referred to in sub-section (1), either alone or in conjunction with associated operations, acquires any rights,—

(a) by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a non-resident; and

(b) such income would have been chargeable to income-tax if it were such first mentioned person’s income,

then, that income shall, whether or not it would have been chargeable to income-tax under any other provisions of this Act, be deemed to be the income of such first mentioned person for all the purposes of this Act.

(3) If any such first mentioned person receives or is entitled to receive any capital sum,—

(a) the payment of which is in any way connected with the transfer or any associated operations; and

(b) whether before or after any such transfer,

then any income, which has become the income of a non-resident by virtue or in consequence of such transfer, either alone or in conjunction with associated operations, shall be deemed to be the income of such first mentioned person for all the purposes of this Act, whether or not it would have been chargeable to income-tax under any other provisions of this Act.

(4) Where any person has been charged to income-tax on any income deemed to be his under the provisions of this section and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

(5) The provisions of this section shall not apply if the first mentioned person in sub-section (2) or (3) shows to the satisfaction of the Assessing Officer that—

(a) neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or

(b) the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(6) In this section,—

(a) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(b) any body corporate incorporated outside India shall be treated as if it were a non-resident;

(c) a person shall be deemed to have power to enjoy the income of a non-resident if—

5 (i) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to ensure for the benefit of the first mentioned person in sub-section (2) or (3); or

(ii) the receipt or accrual of the income operates to increase the value to such first mentioned person of any assets held by him or for his benefit; or

10 (iii) such first mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or shall be available for the purpose by reason of the effect or successive effects of the associated operations on that income and assets which represent that income; or

15 (iv) such first mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income; or

20 (v) such first mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income;

(d) in determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken
25 into account irrespective of the nature or form of the benefits.

(7) In this section,—

(a) “assets” includes property or rights of any kind and “transfer” in relation to rights includes the creation of those rights;

30 (b) “associated operation” in relation to any transfer, means an operation of any kind effected by any person in relation to—

(i) any of the assets transferred; or

(ii) any assets representing, whether directly or indirectly, any of the assets transferred; or

35 (iii) the income arising from any such assets; or

(iv) any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets;

(c) “benefit” includes a payment of any kind;

(d) “capital sum” means—

40 (i) any sum paid or payable by way of a loan or repayment of a loan; and

(ii) any other sum paid or payable otherwise than as income, being a sum, which is not paid or payable for full consideration in money or money’s worth.

45 **175** (1) Where the owner of any securities (hereinafter referred to as “the owner”) sells or transfers such securities and buys back or reacquires them or buys or acquires any similar securities, any interest that becomes payable in respect of such securities,—

(a) is receivable by a person other than the owner, shall be deemed, for all purposes of this Act, to be the income of the owner; and

Avoidance of tax by certain transactions in securities.

(b) shall not be the income of the other person,
irrespective of whether it would have been chargeable to income-tax under any other provision of this Act.

(2) Where similar securities as referred to in sub-section (1) are bought or acquired, the owner shall not be under greater liability to income-tax than he would 5
if the original securities had been bought back or reacquired.

(3) If any person has had a beneficial interest in any securities at any time during a tax year, and the result of any transaction relating to such securities or the income from it is that, in respect of such securities within such year,—

(a) either no income is received by him; or 10

(b) the income received by him is less than what would have been if the income from such securities had accrued from day to day and been apportioned accordingly,

the income from such securities for such year shall be deemed to be the income of such person. 15

(4) The provisions of sub-sections (1), (2) and (3) shall not apply if the owner, or the person who has had a beneficial interest in the securities, proves to the satisfaction of the Assessing Officer that—

(a) there has been no avoidance of income-tax; or

(b) the avoidance of income-tax was exceptional and not systematic and 20
also that in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-sections (1), (2) or (3) was not there in his case.

(5) If a person carrying on a business which consists wholly or partly in dealing in securities, buys or acquires any securities and sells back or retransfers the securities, then, if the result of the transaction is that interest in respect of the securities receivable by him is not deemed to be his income by reason of the provisions contained in sub-section (1), no account shall be taken of the transaction in computing the profits arising from or loss sustained in the business for any of the purposes of this Act. 30

(6) The provisions of sub-section (5) shall have effect, subject to any necessary modifications, as if references to selling back or retransferring the securities included references to selling or transferring similar securities.

(7) The Assessing Officer may, by notice in writing, require any person to provide within specified time, which shall not be less than twenty-eight days, details 35
in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities. 40

(8) If—

(a) any person buys or acquires any securities or unit within three months before the record date;

(b) such person sells or transfers—

(i) such securities within three months after such date; or

(ii) such unit within nine months after such date; 45

(c) the dividend or income on such securities or unit received or receivable by such person is exempt,

then, the loss, if any, arising to him on account of such purchase and sale of securities or unit, to the extent such loss does not exceed dividend or income received or receivable on such securities or unit, shall be ignored for the purposes 50
of computing his income chargeable to tax.

(9) If—

(a) any person buys or acquires any securities or unit within three months before the record date;

5 (b) such person is allotted additional securities or unit without any payment on the basis of holding of such securities or unit on such date;

(c) such person sells or transfers all or any of the securities or unit referred to in clause (a) within nine months after such date, while continuing to hold all or any of the additional securities or unit referred to in clause (b),
 10 then, the loss, if any, arising to him on account of such purchase and sale of all or any of such securities or unit shall be ignored for the purposes of computing his income chargeable to tax.

(10) Irrespective of any other provision of this Act, loss ignored as per sub-section (9) shall be deemed to be the cost of purchase or acquisition of such additional securities or unit referred to in sub-section (9)(b) as are held by him on
 15 the date of such sale or transfer.

(11) In this section,—

(a) “interest” includes a dividend;

(b) “record date” means such date as may be fixed by—

(i) a company;

20 (ii) a Mutual Fund or the Administrator of the specified undertaking or the specified company referred to in the *Explanation* to section 10(35) of the Income-tax Act, 1961; or

43 of 1961.

(iii) a business trust defined in section 2(21); or

25 (iv) an Alternative Investment Fund defined in regulation 2(1)(b) of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992,

15 of 1992.

for the purposes of entitlement of the holder of the securities or unit to receive dividend, income, or additional securities or unit without any consideration;

30 (c) “securities” includes stocks and shares;

(d) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, irrespective of any difference in the total nominal amounts of the respective securities or in the form in which
 35 they are held or in the manner in which they can be transferred;

(e) “unit” shall mean,—

(i) a unit of a business trust defined in section 2(21);

(ii) a unit defined in section 208(3)(c); or

40 (iii) beneficial interest of an investor in an Alternative Investment Fund, referred to in clause (b)(iv), and shall include shares or partnership interests.

176. (1) The Central Government may, by notification specify any country or territory outside India, as a notified jurisdictional area, having regard to the lack of effective exchange of information with such jurisdiction.

45 (2) Irrespective of anything contrary in this Act, if an assessee enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area, then,—

(a) all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 162;

Special measures in respect of transactions with persons located in notified jurisdictional area.

(b) any transaction of the nature described in section 163(I) and (2) shall be deemed to be an international transaction within the meaning of section 163,

and the provisions of sections 161, 162, 163, 165 except the benefit of variation specified in sections 165(3)(a)(ii), 166, 167, 171, 172 and 173 shall apply accordingly.

(3) Irrespective of anything to the contrary in this Act, no deduction shall be allowed—

(a) for any payment made to any financial institution located in a notified jurisdictional area, unless the assessee furnishes an authorisation in the prescribed form authorising the Board or any other income-tax authority acting on its behalf to seek relevant information from the said financial institution on behalf of such assessee; and

(b) for any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area, unless the assessee maintains such other documents and furnishes such information as prescribed, in this behalf.

(4) Irrespective of anything to the contrary in this Act, if, in any tax year, the assessee has received or credited any sum from any person located in a notified jurisdictional area and—

(a) the assessee does not provide any explanation about the source of the said sum in the hands of such person or in the hands of the beneficial owner (if such person is not the beneficial owner of the said sum); or

(b) the explanation provided by the assessee, in the opinion of the Assessing Officer, is not satisfactory,

then such sum shall be deemed to be the income of the assessee for that tax year.

(5) Irrespective of anything to the contrary in this Act, if any person located in a notified jurisdictional area is entitled to receive any sum or income or amount on which tax is deductible under Chapter XIX-B, the tax shall be deducted at the highest of the following rates—

(a) at the rate or rates in force;

(b) at the rate specified in the relevant provisions of this Act;

(c) at the rate of 30%.

(6) In this section,—

(a) “person located in a notified jurisdictional area” shall include,—

(i) a person who is resident of the notified jurisdictional area;

(ii) a person, not being an individual, which is established in the notified jurisdictional area; or

(iii) a permanent establishment of a person not falling in sub-clause (i) or (ii), in the notified jurisdictional area;

(b) “permanent establishment” shall have the meaning assigned to it in section 173(c);

(c) “transaction” shall have meaning assigned to it in section 173(e).

Limitation on
interest
deduction in
certain cases.

177. (1) Irrespective of anything contrary in this Act, any expenditure by way of interest or similar payment in respect of excess interest, as specified in sub-section (4), shall not be deductible in computation of income chargeable under the head “Profits and gains of business or profession”, if,—

(a) it is paid or payable by an Indian company or a permanent establishment of a foreign company in India, in respect of any debt issued by an associated enterprise which is a non-resident; and

(b) the sum of such expenditure in a tax year exceeds one crore rupees.

5 (2) Where a lender, not being an associated enterprise, has issued a debt referred to in sub-section (1), such debt shall be deemed to have been issued by an associated enterprise if an associated enterprise has—

(a) provided an implicit or explicit guarantee to the lender in respect of such debt; or

10 (b) deposited a corresponding and matching funds with such lender.

(3) The provisions of this section shall not apply to—

(a) interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident engaged in the business of banking;

15 (b) an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance or a Finance Company located in any International Financial Services Centre, or such class of non-banking financial companies as notified by the Central Government in this behalf.

(4) In sub-section (1), the “excess interest” means—

20 (a) In total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortisation of the borrower in the tax year; or

(b) interest paid or payable to associated enterprises for that tax year,

whichever is less.

25 (5) Interest expenditure not wholly deducted against income under the head “Profits and gains of business or profession” for any tax year shall be—

(a) carried forward to the following tax year or years; and

(b) allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for such tax year, to the extent of maximum allowable interest expenditure as per sub-section (4).

30 (6) The interest expenditure referred to in sub-section (5) shall not be carried forward for more than eight tax years immediately succeeding the tax year for which the excess interest expenditure was first computed.

(7) In this section,—

35 (a) “debt” means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head “Profits and gains of business or profession”;

40 (b) “Finance Company” means a finance company as defined in regulation 2(1)(e) of the International Financial Services Centres Authority (Finance Company) Regulations, 2021 made under the International Financial Services Centres Authority Act, 2019 and which satisfies such conditions and carries on such activities, as prescribed;

(c) “permanent establishment” shall have the meaning assigned to it in section 173(c).