

TRANSFER PRICING

SECTION 92: COMPUTATION OF INCOME FROM INTERNATIONAL TRANSACTION HAVING REGARD TO ARM'S LENGTH PRICE

- Transfer Pricing relates to determination of correct market price i.e. **arm's length price**.
- **Any income** from an international transaction shall be computed as per arm's length price.
- Even the **allowance for any expense** or **interest** arising from an international transaction shall be determined as per the arm's length price.
- If in an international transaction, two or more associated enterprises enter into an agreement for allocation of cost/ expense in connection with services provided, then the allocation of cost/ expense shall be on the basis of arm's length price of the service provided.
- Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the **specified domestic transaction** shall be computed having regard to the arm's length price.
- Provisions of transfer pricing **shall not apply** where:
 - (i) computation of income; or
 - (ii) determination of allowance for any expense or interest; or
 - (iii) determination of any cost or expense allocated or apportioned**has the effect of reducing the income chargeable to tax or increasing the loss of the assessee to whom transfer pricing is applied.**

SECTION 92A: MEANING OF ASSOCIATED ENTERPRISE

Two enterprises shall be deemed to be associated enterprises if, **at any time during the previous year:**

- (a) One enterprise holds, directly or indirectly, shares carrying not less than **26% of voting power in the other enterprise**.
- (b) Any person holds directly or indirectly, shares carrying not less than **26% of voting power of each of such enterprise**.

- (c) A loan advanced by one enterprise to the other enterprise constitutes **not less than 51% of the book value of the total assets** of the other enterprise.
- (d) One enterprise **guarantees** not less than **10% of the total borrowings** of the other enterprise.
- (e) **More than ½ of the Board of Directors or Members** of Governing Board or **1 or more Executive Director** or Executive Member of Governing Board of one enterprise **appointed** by other enterprise
- (f) **More than ½ of the Board of Directors or Members** of Governing Board or **1 or more Executive Director** or Executive Member of Governing Board of each of the two enterprise **appointed** by same person or persons
- (g) The business of one enterprise is wholly dependent on the use of **know-how, patent, technical know-how**, etc. of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights.
- (h) **90% or more of the raw material** and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, is **SUPPLIED** by the other enterprise.
- (i) The **goods or articles manufactured or processed** by one enterprise are **SOLD to the other enterprise** and the prices and other conditions are influenced by such other enterprise
- (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 his relative.
- (k) Where one enterprise is **controlled by a HUF**, the other enterprise is controlled by a member of such HUF or relative of such member or jointly by such member & his relative.
- (l) Where one enterprise is a **Firm, AOP or BOI**, and the other enterprise holds not less than **10% interest** in such Firm, AOP or BOI.

SECTION 92B: MEANING OF INTERNATIONAL TRANSACTION

- (1) **International Transaction:** The definition of international transaction includes transaction between associated enterprises in the nature of:
 - (i) purchase, sale, transfer, lease or use of tangible property; or
 - (ii) purchase, sale, transfer, lease or use of intangible property;
 - (iii) provision of services; or
 - (iv) **Capital financing including lending or borrowing or guarantee; or**
 - (v) **any other transaction having a bearing on the profits, income, losses or assets of such enterprises.**
 - (vi) **a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date.**

It shall also include a mutual agreement or arrangement between two or more associated enterprises for the allocation of any cost or expense incurred in connection with a benefit, service, facility provided to any one or more such enterprises.

Conditions: For a transaction to be an international transaction, it should satisfy the following 2 conditions cumulatively:

- (a) it must be a transaction **between two associated enterprises** and
- (b) at least **one of the two enterprises must be a non-resident**.

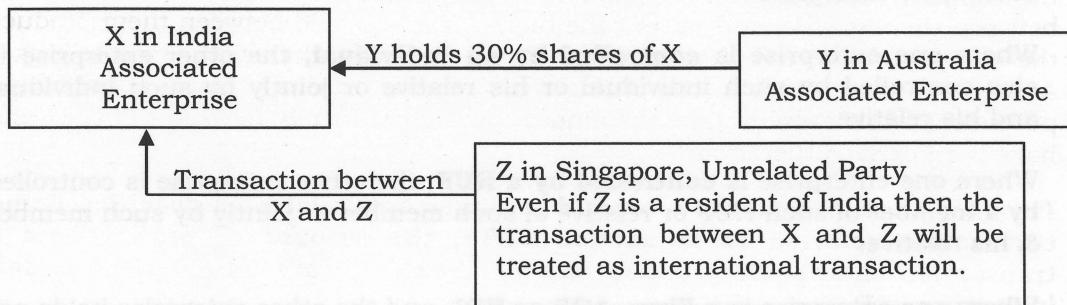
If both the associated enterprises are non-residents, then Transfer Pricing shall apply only if income of one of the non-residents is assessable under the Indian Income-tax Act.

(2) Transactions between unrelated persons Deemed as International Transaction:

A transaction between an enterprise and an **unrelated person** shall be deemed to be a transaction between associated enterprises if in relation to that transaction –

- (i) **there exists a prior agreement** between such other person and the associated enterprise; or
- (ii) **the terms of the transaction are determined** between such unrelated person and the associated enterprise.

Thus, the unrelated person can be resident or non-resident.



According to section 92B(2), a transaction between X India and Z Singapore shall be deemed to be a transaction between associated enterprises if in relation to that transaction –

- (i) **there exists a prior agreement between the Z Singapore and the Y Australia;** or
- (ii) **the terms of the relevant transaction are determined in substance** between Z Singapore and the Y Australia.

SECTION 92BA: MEANING OF SPECIFIED DOMESTIC TRANSACTION

"Specified domestic transaction" means the following transactions, provided the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of ₹20 crore.

- i. Where any **goods or services held for the purposes of the eligible business are transferred** to any other business carried on by the assessee, or where any **goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business**, and, in either case, the consideration for such transfer recorded in the accounts of the eligible business

does not correspond to the market value of such goods or services on the date of transfer, then, **for the purpose of deduction under this section, the profits and gains of such eligible business** shall be computed as if the transfer had been made at the **market value of such goods or services** as on that date.

- ii. Where it appears to the Assessing Officer that owing to **close connection between the assessee** carrying on the eligible business **and any other person**, or for any other reason, the **course of business transacted between them produces to the assessee more than the ordinary profits** which might be expected to arise in such business, the Assessing Officer shall in computing the profits and gains of such business **for the purpose of computing deduction under this section**, take the amount of profits as may be **reasonably deemed to have been derived therefrom**.

"Eligible Business" means Business referred to in sections 80-IA, 80-IAB, 80-IAC, 80-IE & 10AA.

- iii **any business transacted between the persons referred to in section 115BAB(6);**

SECTION 115BAB

Section 115BAB which provides a tax of 15% on newly incorporated companies, in subsection (6), provides as under:

Where it appears to the Assessing Officer that, owing to the close connection between the company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the company more than the ordinary profits which might be expected to arise, the Assessing Officer shall, in computing the profits and gains of such company for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in section 92F.

SECTION 92C: COMPUTATION OF ARM'S LENGTH PRICE

(1) Methods: [Rule 10B]

(a) COMPARABLE UNCONTROLLED PRICE (CUP) METHOD:

Step 1: Determine the **price charged or paid** for the property transferred or services provided **in a comparable uncontrolled transaction**.

Step 2: Such price is then **adjusted to account for the functional differences between international transaction & the comparable uncontrolled transaction**, which could materially effect the price in the open market.

Step 3: Such adjusted price is the arms length price.

(b) RESALE PRICE METHOD:

Step 1: The price at which the property purchased or services obtained by the enterprise from an associated enterprise **are sold to an unrelated enterprise is first determined**.

Step 2: Such resale price is reduced by normal gross profit margin accruing to the enterprise from the purchase and resale of similar goods in a comparable uncontrolled transaction. If there is no comparable uncontrolled transaction, then take the Gross profit of an unrelated person from purchase and resale of similar goods.

Step 3: Then **reduce the expenses incurred by the enterprise** in connection with purchase of property.

Step 4: The price so arrived at in step-3 is **adjusted to account for the functional differences in the international transaction & the comparable uncontrolled transaction** which could materially effect the Gross Profit margin in the open market.

Step 5: The adjusted price arrived at in step-4 is the arm's length price.

(c) COST PLUS METHOD:

Step 1: Determine the **direct and indirect costs of production** in respect of property transferred or services provided to an associated enterprise.

Step 2: Determine the **normal gross profit mark up to such costs**, which will arise from transfer of similar goods or services to an unrelated enterprise or in a comparable uncontrolled transaction.

Step 3: The normal **gross profit mark up** determined in Step 2 **should be adjusted to account for the functional differences** if any between the international transaction and comparable uncontrolled transaction, which could materially affect such profit, mark up in the open market.

Step 4: The **cost** referred to in Step 1 shall be **increased by the adjusted profit mark up** arrived in Step 3.

Step 5: The sum so arrived at is the arm's length price.

(d) PROFIT SPLIT METHOD

This method is applicable mainly in international transactions involving transfer of unique intangibles or in **multiple international transactions** which are so interrelated that they **cannot be evaluated separately**. The **combined net profit of the group as a whole** from the various international transactions is **evaluated**. The **said profit is then allocated to various associate enterprises depending upon their contributions** in terms of functions performed, assets employed and risks assumed by each enterprise.

(e) TRANSACTIONAL NET MARGIN METHOD

Step 1: The **net profit margin realized** by the enterprise from an international transaction entered into with an associated enterprise is computed in **relation to costs incurred or sales effected or assets employed**.

Step 2: The **net profit margin** realized by the enterprise or by an **unrelated enterprise** from a comparable uncontrolled transaction is computed having regard to the same base.

Step 3: The **net profit margin referred to in Step 2** arising in comparable uncontrolled transaction is **adjusted to take into account the differences**, if any, between the international transaction and the comparable uncontrolled transaction, which could materially affect the amount of net profit margin in the open market.

Step 4: The net profit is determined by applying the adjusted net profit margin as determined in Step 3.

(f) OTHER METHOD PRESCRIBED UNDER RULE 10AB

The other method 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.

Illustration:

An associate enterprise X in India imports toys from its Chinese Associate Enterprise at ₹100 per toy. Company Y in India also imports similar toys from another Chinese manufacturer at ₹60 per toy. The Arm's length price of transaction should therefore be ₹60 per toy.

(2) Most appropriate method:

The most appropriate method referred to in 92C(1) shall be applied, for determination of arm's length price.

However, 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 1%** of the latter in respect of **wholesale trading** and **3% of latter in other cases**, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

Provided that **where more than one price is determined** by the most appropriate method, the **arm's length price** in relation to an international transaction or specified domestic transaction, **shall be computed as per Rule 10CA**.

(3) Determination Arm's length Price by Assessing officer:

When the AO, on the basis of material or information or document in his possession, of the opinion that:

- o price has not been determined with section 92C, or
 - o documents are not maintained by assessee in accordance with section 92D, or
 - o data used for computing arms length price is not reliable or not correct, or
 - o assessee has failed to furnish information within specified time required u/s 92D.
- **then AO can determine the arms length price on the basis of information in his possession after providing an opportunity of being heard to the assessee.**

(4) Total Income:

Where an arm's length price is determined by the Assessing Officer u/s 92C(3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined:

- Provided that no deduction under section 10AA or under Chapter VI-A shall be allowed on the increased income.
- Provided further that income of other enterprise shall not be recomputed for the purpose of Chapter of TDS i.e., other party cannot claim the refund of TDS.

RULE 10CA: WHERE MORE THAN ONE PRICE IS DETERMINED BY MOST APPROPRIATE METHOD

Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method results in **determination of more than one price, then the arm's length price shall be computed as under:**

- (a) A dataset shall be constructed by placing the prices in an ascending order.
- (b) Where the dataset constructed consists of **6 or more entries**, an arm's length range **beginning from the 35th percentile of the dataset and ending on the 65th percentile** of the dataset shall be constructed.
- (c) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is **within the range** referred to (b), then, **the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.**
- (d) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is **outside the arm's length range** referred to (b), **the arm's length price shall be taken to be the median of the dataset.**
- (e) In a case where data set consists of less than 6 entries, the arm's length price shall be the **arithmetical mean** of all the values included in the dataset:

Note 1: (i) "the 35th percentile" of a dataset, having values arranged in an ascending order, shall be:

Total entries in data set x 35/100 (See Note 2)

(ii) "the 65th percentile" of a dataset, having values arranged in an ascending order, shall be:

Total entries in data set x 65/100 (See Note 2)

(iii) "the median" of the dataset, having values arranged in an ascending order, shall be:

Total entries in data set x 50/100 (See Note 2)

Note 2: If this number is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the 35th percentile/65th percentile/median.

If this number is a whole number, then the arithmetical average of value in data set at this number and value in data set at next higher

number shall be the 35th percentile/65th percentile/median.

Illustration – The following prices have been determined as arm's length prices using comparable uncontrolled transactions method:

1. 90	5. 102	9. 112	13. 118	17. 124
2. 98	6. 104	10. 114	14. 119	18. 126
3. 100	7. 107	11. 116	15. 120	19. 128
4. 101	8. 110	12. 117	16. 122	20. 130

Answer:

Total entries in data set = 20

Thirty fifth percentile = $20*35/100 = 7$

Since this is a whole number, the arithmetical mean of value at 7 and 8 shall be the Thirty Fifth percentile = $107+110/2 = 108.50$

Sixty Fifth percentile = $20*65/100 = 13$

Since, this is a whole number, the arithmetical mean of value at 13 and 14 shall be the sixty fifth percentile = $118+119/2 = 118.50$

Median = $50/100*20 = 10$

Since this is a whole number, the arithmetical mean of value at 10 and 11 shall be the median

= $114+116/2 = 115$

If the assessee exports goods to associated enterprise in the range of 108.50 to 118.50, then the price at which goods are exported shall be the ALP. Let's say goods are exported to associated enterprise at ₹ 109, then the actual transaction price is the ALP and no adjustment is required. However, if goods are exported to associate enterprise at say ₹ 100 (10 lakh goods), then ALP shall be ₹ 115 and income of the annexure shall be increased by $15*10$ lakh goods = ₹150 lakh

SECTION 92CA: REFERENCE TO TRANSFER PRICING OFFICER [ARM'S LENGTH PRICE CALCULATED BY TRANSFER PRICING OFFICER]

- (1) Assessing Officer, with the prior approval of CIT, may refer the calculation of Arm's length price to Transfer Pricing Officer ('TPO').
- (2) The jurisdiction of the TPO shall extend to the determination of the ALP in respect of other international transactions, which are noticed by him subsequently, in the course of proceedings before him. These international transactions would be in addition to the international transactions referred to the TPO by the Assessing Officer.
- (3) TPO has power to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, and such international transaction was not reported by the taxpayer in the Transfer Pricing Report.

- (4) The **order** determining the Arm's Length Price by Transfer Pricing Officer, shall be made at any time **before 60 days prior to the date on which the period of limitation** referred to in section 153 or 153B **expires**.

As per Finance Act, 2022, Chief Commissioner/ Commissioner under section 263 has been given power to direct the Transfer Pricing Officer to pass a fresh order under section 92CA or modify his order under section 92CA. The time limit to comply with such direction has been given in Chapter of time-limits.

- (5) TPO can rectify any mistake apparent from record in his order, under section 154.

- (6) **The Assessing Officer is bound to follow the price determined by TPO.**

- (7) TPO for determining Arm's length price may exercise:

- Power to **summon under section 131**.
- Power to call **information under section 133**.
- Power of **survey under section 133A**.

SECTION 92D: MAINTENANCE, AND KEEPING OF INFORMATION AND DOCUMENT BY PERSONS ENTERING INTO INTERNATIONAL TRANSACTION

- (1) Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document, as may be prescribed.

However, this is not applicable in case **aggregate value of international transactions in a previous year does not exceed ₹ 1 crore as per books of account**.

- (2) Such information and document are **required to be kept for 8 years** from the end to relevant Assessment Year.

- (3) The Assessing Officer or the CIT(A) may require any assessee to furnish information and documents maintained under sub-section (1) **within 30 days from the date of receipt of a notice in this regard**. However, on an application by assessee, this period can be extended for a further period not **exceeding 30 days**.

- (4) **The Finance Act, 2019 has amended section 92D of the Act, in order to provide that the information and document to be kept and maintained by a constituent entity of an international group, and filing of MASTER FILE (PART A), shall be applicable even when there is no international transaction undertaken by such constituent entity.**

SECTION 92CB: POWER OF BOARD TO MAKE SAFE HARBOUR RULES

The determination of –

- (a) **income referred to in section 9(1)(i), i.e., determination of income of non-residents under section 9(1)(i) attributable to operations carried out in India or attributable to permanent Establishment located in India, or**

(b) arm's length price under section 92C or section 92CA

– shall be subject to safe harbour rules.

"Safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

SAFE HARBOUR RULES NOT TO APPLY IN CERTAIN CASES

Nothing contained in safe harbor rules shall apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 94A (NJA) or in a no tax or low tax country or territory.

Note: "No tax or low tax country or territory" means any country / territory where maximum rate of Income Tax is less than 15%.

SECTION 92CC: ADVANCE PRICING AGREEMENT

- (1) The Board, may enter into an advance pricing agreement ('APA') with any person, determining the
 - (a) arm's length price or specifying the manner in which 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(1)(i) or specifying the manner in which said income is to be determined as is reasonably attributable to the operations carried out in India by a non-resident or is attributable to the permanent establishment of non-resident located in India.
- (2) The manner of determination of arm's length price, may include the **methods referred to in section 92C or any other method**, with adjustments or variations.
- (3) The **arm's length price** of any international transaction, in respect of which the APA has been entered into, shall be determined **in accordance with the APA so entered**.
- (4) APA shall be **valid for such period not exceeding 5 consecutive previous years** as may be specified in the APA.
- (5) **The APA entered into shall be binding—**
 - (a) **on the person** in whose case, and in respect of the transaction in relation to which, the APA has been entered into; and
 - (b) **on the CIT, and Assessing Officers** under him, in respect of the said person and the said transaction.
- (6) The APA shall **not be binding** if there is a **change in law or facts** having bearing on the agreement so entered.
- (7) The Board may, by an order, declare an **APA to be void ab initio**, if it finds that the APA has been obtained by the person **by fraud or misrepresentation of facts**.

(8) Roll Back Provisions: The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm's length price of such international transaction shall be determined in accordance with the said agreement.

Therefore, if APA is entered into for the period 1-4-2022 to 31-3-2027, the assessee can opt for Roll Back for the period 1-4-2018 to 31-3-2022, i.e., the APA shall also apply for the preceding 4 previous years. CBDT has clarified that if assessee wants to have benefit of Roll Back, then he has to mandatorily apply for Roll Back for all the preceding 4 previous years. Assessee cannot say that he wants Roll Back only for one or two preceding previous years. He has to either opt for none or for all the 4 preceding previous years for Roll Back.

CLARIFICATIONS FROM CBDT

1. Roll back is possible only for those previous years whose return was filed by due date under section 139(1).
2. Assessee has to apply for roll back for all the four years or not apply at all. However, if there is a disqualification in a roll back year, then roll back will be for less than 4 years.
3. Roll back is not possible for a year for which order has been passed by ITAT.
4. Application of Roll back cannot result in reduction of income below returned income in the Roll back year. If returned Income is ₹ 100 lakhs and income adjusted by TPO is ₹ 120 lakhs and application of Roll back results in income of ₹ 90 lakhs, then ₹ 100 lakhs income shall be taken for Roll back year.
5. IF A, B merge with company C and C is the APA applicant, then the roll back agreement can only be entered into with C and only C would be eligible for the rollback provisions. A and B would not be eligible for the rollback provisions. To illustrate further, if A and B merge to form a new company C and C is the APA applicant, then nobody would be eligible for rollback provisions.
6. If A has applied for or entered into an APA and, subsequently, demerges into A and B, then only A will be eligible for rollback for international transactions covered under the APA. As B was not in existence in rollback years, availing or grant of rollback to B does not arise.

SECTION 92CD: EFFECT TO ADVANCE PRICING AGREEMENT

- (1) Where any person has entered into an APA and prior to the date of entering into the APA, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such APA applies, such person shall furnish, **within 3 months** from the end of the month in which the said APA was entered into, a modified return in accordance with and limited to the APA.

- (2) If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), proceed to assess or reassess or recompute the total income of the relevant assessment year PASS AN ORDER MODIFYING THE TOTAL INCOME OF THE RELEVANT ASSESSMENT YEAR DETERMINED IN SUCH ASSESSMENT OR REASSESSMENT, AS THE CASE MAY BE having regard to and in accordance with the agreement.

(Amendments by Finance Act, 2019)

Finance Act, 2019 clarifies that in cases where assessment or reassessment has already been completed and modified return of income has been filed by the tax payer under sub-section (1) of said section, the Assessing Officers shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA. The Assessing Officer shall not reassess the income again.

- (3) Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the APA applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the APA taking into consideration the modified return so furnished.
- (4) Notwithstanding anything contained in section 153 or section 144C
- (a) Order of assessment, reassessment or re-computation of total income under sub-section (2) shall be passed within 1 year from the end of the financial year in which the modified return is furnished;
 - (b) Period of limitation as provided in section 153 or section 144C for completion of pending assessment or reassessment proceedings referred to in sub-section (3) shall be extended by 12 months.

♦ ANALYSIS TO SECTION 92CD ♦

1. The assessee Hindustan Lever makes an application to CBDT for entering into Advance Pricing Agreement (APA) on 10th July, 2021 for determining arm's length price of royalty it pays to Unilever U.K. The application is made to determine ALP for Previous Year 31.3.2021 to Previous Year 31.3.2025. The agreement cannot be for more than 5 consecutive Previous Years as specified in the agreement.
2. It may be noted that Advance Pricing Agreement cannot be entered for Specified Domestic Transactions. It can be entered only for International Transactions.
3. The CBDT signs the agreement on 1.9.2022 for Previous Year 31.3.2021 to 31.3.2025. The agreement determines the manner of determination of ALP as per:
 - (i) 6 methods given in section 92C with some adjustments and variations; or
 - (ii) CBDT determines its own method and that is not as per section 92C.
4. Now Section 92C gets overruled and Assessing Officer cannot use the methods given in section 92C to determine the ALP of royalty. He has to follow the method given in Advance Pricing Agreement in the 5 Previous Years.

5. Now section 92CA gets overruled and Assessing Officer cannot refer the case to TPO under section 92CA to determine the ALP of royalty in the 5 Previous Years. He has to follow the method given in Advance Pricing Agreement in 5 Previous Years.
6. The Advance Pricing Agreement shall be binding on assessee, Commissioner of Income-tax and Assessing Officer. Therefore, Assessing Officer will follow the Advance Pricing Agreement and there is no question of filing appeal to Commissioner of Income-tax (Appeals). The Commissioner of Income-tax also cannot reopen case under section 263 since he is also bound by Advance Pricing Agreement. Later on Assessing Officer cannot reopen the case under section 147 since he is bound by Advance Pricing Agreement.
7. Suppose for Previous Year 31.3.2021, assessee filed a return on 30.11.2021 which is not as per Advance Pricing Agreement. Now, assessee shall file a modified return within 3 month from the end of the month in which Advance Pricing Agreement was entered into. Now, assessee will file modified return for Previous Year 31.3.2021 as per Advance Pricing Agreement on or before 31.12.2022.
8. If suppose for Previous Year 31.3.2021, assessment under section 143(3) was completed on 30th November, 2022, without applying Advance Pricing Agreement, the Assessing Officer shall modify the assessment under section 143(3) for Previous Year 31.3.2021 in accordance with Advance Pricing Agreement.

Let's say that modified return is filed on 31.12.2022. The Assessing Officer shall complete the assessment within 1 year from the end of the financial year in which modified return is filed i.e. 31.3.2024.

9. If assessee files modified return on 31.12.2022 and assessment under section 143(3) is pending on that date, then Assessing Officer shall complete the assessment under section 143(3) as per Advance Pricing Agreement. The period of assessment for Assessment Year 2021-22 shall be increased from 31.12.2022 to 31.12.2023.
10. The Advance Pricing Agreement shall not be binding if there is a change in law or facts of the agreement.
11. Suppose, CBDT finds that the Advance Pricing Agreement has been obtained by fraud or misrepresentation of facts. CBDT can declare the Advance Pricing Agreement void, let's say CBDT declares Advance Pricing Agreement to be void on 31.8.2023.
12. If Advance Pricing Agreement is declared void then:
 - (i) all provisions of Act will apply as if Advance Pricing Agreement was never entered into.
 - (ii) the time periods of the Act shall be increased from 1.9.2022 to 31.8.2023 i.e., one year.

Therefore, time limits for issue of notice under section 149(1) shall get increased by 1 year. The time limits for assessments shall also get increased by one year.

SECTION 92E: REPORT FROM AN ACCOUNTANT TO BE FURNISHED BY PERSONS ENTERING INTO INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION

Every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from a chartered accountant and furnish such report one month prior to due date of filing of return of income i.e., the 30th November of Assessment Year in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.

PENALTIES

Section 271AA(1)

Default	Penalty
Penalty for:	2% of the value of each international transaction or specified domestic transaction entered
(i) failure to keep and maintain information and documents.	
(ii) failure to report such transaction which he is required to do so in Transfer Pricing Report; or	
(iii) maintaining or furnishing any incorrect information or documents.	

Section 271AA(2)

Penalty of Failure to furnish the Master File as required under section 92D(4).	₹ 5 lakh
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Section 271BA

Penalty for failure to furnish report from the chartered accountant.	₹ 1 lakh THIS IS IN ADDITION TO Penalty of 2% of the value of international transactions or specified domestic transactions which were to be given in audit report
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Section 271G

Penalty for failure to furnish information or document under section 92D(3)	2% of the value of each international transaction or specific domestic transaction entered
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