

DOMESTIC TRANSFER PRICING

(An Analysis of Domestic Transfer Pricing provisions introduced by
Finance Act, 2012)

Submitted To :-

4th K.R.Ramamani Memorial Taxation Moot Court Competition

School of Excellence in Law, "Poompozhi", No. 5,

Dr. D.G.Dhinakaran Salai, Chennai – 600028

Email_id's : mca.soel@gmail.com and info@saprlaw.com

Submitted By :-

Saurabh Srirup

Student [4th Year, B.A. (H.) L.L.B. (H.)]

National University of Study and Research in Law (N.U.S.R.L.), Ranchi

INDEX

1. INTRODCUTION.....	3-4
1.1. <u>Origin of Domestic Transfer Pricing law in India.....</u>	3
1.1.1. <i>CIT v. Glaxo Smithkline Asia (P.) Ltd. : [2010] 195 TAXMAN</i> 35 (SC).....	3
 2. INDIAN DOMESTIC TRANSFER PRICING REGIME – ANALYSIS OF THE STATUTORY PROVISIONS.....	5-14
2.1. <u>Transactions regarded as Specified Domestic Transactions.....</u>	5-10
2.1.1. <i>Expenditure in respect of payments to parties referred in section 40A(2)(b) [Section 92BA (i)].....</i>	5-7
I. Amendment to Section 40A(2) of the Income Tax Act, 1961	
II. Parties must be related	
III. Direct or Indirect Ownership	
IV. Substantial Interest threshold	
V. ‘Substantial Interest’ direct or indirect ?	
VI. Transactions being SDT’s under section 92BA(i)	
2.1.2. <i>Transfer of goods and services to or from eligible unit [Section 92BA (ii)].....</i>	7
2.1.3. <i>Transfers of goods and services referred to in Section 80-IA(8) [Section 92BA (iii)].....</i>	8
2.1.4. <i>Business transacted by assessee with any other person as referred to in sub-section (10) of section 80-IA [Section 92BA (iv)].....</i>	9
I. Interpretation of the expression “any other person”	
2.1.5. Transaction referred to in other section of chapter VI-A / section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable. [Section 92BA (v)].....	9
2.1.6. Any other prescribed transaction. [Section 92BA (vi)].....	10
2.2. <u>Other Requirements for SDTs.....</u>	10-13
2.2.1. <i>Not being an International Transaction.....</i>	10
2.2.2. \square 5 Crores Limit.....	10
2.2.3. <i>Arms Length Price Requirements.....</i>	11
2.2.4. <i>Assessing Officer’s power.....</i>	11
2.2.5. <i>Computation of ALP.....</i>	12
2.2.6. <i>TPO Limitation.....</i>	13
2.2.7. <i>Domestic Transfer Pricing Documentation.....</i>	13
2.2.8. <i>Filling of Audit Report.....</i>	13
2.3. <u>Penalty Over Non-Compliance.....</u>	14
 3. INTERNATIONAL RESPONSE TOWARDS DOMESTIC TRANSFER PRICING.....	14-16
3.1. <u>United States of America.....</u>	14
3.2. <u>Russia.....</u>	15

3.3.	<u>United Kingdom</u>	15
3.4.	<u>Egypt</u>	15
3.5.	<u>Singapore</u>	16
3.6.	<u>Peru</u>	16
3.7.	<u>Mexico</u>	16
3.8.	<u>Indonesia</u>	16
4.	MERITS AND DE-MERITS.....	16-18
4.1.	<u>Merits</u>	16-17
4.1.1.	<i>Discussion within Domestic Frontier</i>	16
4.1.2.	<i>Objectivity</i>	17
4.1.3.	<i>Impact on Litigation</i>	17
4.1.4.	<i>Accountability & Responsibility</i>	17
4.2.	<u>Demerits</u>	17-18
4.2.1.	<i>Compliance Burden on the Taxpayers</i>	17
4.2.2.	<i>Burdensome Documentation</i>	17
4.2.3.	<i>Administrative Burden on Revenue Department</i>	18
4.2.4.	<i>Advance Pricing Agreement not applicable</i>	18
4.2.5.	<i>Safe Harbour Rules</i>	18
5.	DTP CHALLENGES IN INDIA AND SUGGESTIONS.....	18-22
5.1.	<u>Challenges</u>	18-20
5.1.1.	<i>Meaning of Transaction – not applicable for SDT</i>	18
5.1.2.	<i>Expenditure – Capital or Revenue</i>	18
5.1.3.	<i>Benchmarking the remuneration of directors</i>	19
5.1.4.	<i>‘Close Connection’ not defined</i>	19
5.1.5.	<i>Indian Company having Domestic & International Transaction</i>	19
5.1.6.	<i>DTP include marketing intangibles, Corporate guarantee etc?</i>	20
5.1.7.	<i>Advance Pricing Agreement</i>	20
5.1.8.	<i>Safe Harbour Rules</i>	20
5.1.9.	<i>Alternative Dispute Resolution Mechanism</i>	20
5.1.10.	<i>Lending or Borrowing Money</i>	20
5.2.	<u>Suggestions</u>	20-22
5.2.1.	<i>Applicability of DTP – domestic and international – clarification needed ?</i>	21
5.2.2.	<i>‘Transaction’ meaning must be made inclusive</i>	21
5.2.3.	<i>Benchmarking the Remuneration of Directors</i>	21
5.2.4.	<i>Exhaustive Definition’s Required</i>	21
5.2.5.	<i>Safe Harbour Rules</i>	21
5.2.6.	<i>APA – should be made applicable to SDTs</i>	22
5.2.7.	<i>TPO should have power to take action suo-moto</i>	22
5.2.8.	<i>Alternative Dispute Resolution Mechanism for SDTs</i>	22
6.	CONCLUSION.....	22

1. INTRODCUTION

Indian Transfer Pricing¹ regulations got recognition in India in the year 2001 with specific amendments² to the Income Tax Act 1961. With the Transfer Pricing regulations at place, India stepped into the League of Nations³ with matured cross border tax policy. Over the years, India became the country having third largest number of transfer pricing cases.⁴ Transfer Pricing provisions has always been talked with respect to cross-border transactions. The Finance Act, 2012 ushered in a number of significant transfer pricing amendments⁵, most interesting among them is the extension of the transfer pricing provisions to ‘specified domestic transactions^{6, 7}

Domestic Transfer Pricing is at the nascent stage in India, there are many aspects which have been incorporated in case of International Transfer Pricing regime but are absent in case of domestic transfer pricing. Hence, it is important to have a comprehensive analysis of this new dimension of transfer pricing.

1.1. Origin Of Domestic Transfer Pricing⁸ Law In India :

The genesis of such significant amendment lies in the Supreme Court case of Glaxo Smithkline⁹ wherein an *obiter* remark was made by the apex court that the Government ought to examine whether transfer pricing provisions should be extended to domestic transactions as well. The Court felt that the two related domestic enterprises should manipulate *inter se* transfer prices if one of them was taxed at a lower rate of tax or enjoyed a tax holiday.¹⁰

1.1.1. *CIT v. Glaxo Smithkline Asia (P.) Ltd. : [2010] 195 TAXMAN 35 (SC)*

In the case of *CIT v. Glaxo Smithkline Asia* (popularly referred as *Glaxo Smithkline Case*), where an appeal was filled before Supreme Court on the issue of applicability of provisions

¹ Hereinafter, also referred as ‘TP’

² Amendment to Chapter X of the IT Act, 1961.

³ Organization for Economic Co-operation and Development Members like Australia, Germany, United States – having specific transfer pricing norms in their domestic legislations.

⁴ http://articles.economictimes.indiatimes.com/2012-08-20/news/33288009_1_transfer-prices-e-y-partner-inter-company-transactions (last visited on February 27, 2014)

⁵ Amendment to Section 92, 92C, 92D, 92F and Insertion of Section 92BA, 92CC, 92CD etc.

⁶ Hereinafter, also referred as ‘SDT’

⁷ Insertion of Section 92BA which defined SDTs, to which Domestic Transfer Pricing is applicable

⁸ Hereinafter, also referred as ‘DTP’

⁹ *CIT v. Glaxo Smithkline Asia (P.) Ltd. : [2010] 195 TAXMAN 35 (SC)*

¹⁰ Datar Arvind P, Kanga & Palkiwala, “The Law and Practice of Income Tax”, 10th Ed., LexisNexis Publications, 2014, P. 1747

of section 40(2) of the Act. The Court did not rule on the merits of section 40A(2) applicability. However, Supreme Court raised an issue whether the transfer pricing regulations should be extended to domestic transactions ?

Supreme Court observed that ordinarily domestic transaction would be revenue neutral, but complications could arise in cases of ‘tax arbitrage’ where one of the two domestic related parties would be subject to lesser or nil tax rate. The Court referred to two situations - an entry claiming tax holiday or incurring losses, where there could be an opportunity for arbitrage. In such situations, fair market value might be required to be assigned to the transactions between related parties in terms of section 40A(2). Court also observed that in many matters the Assessing officer was constrained in the absence of specific requirement for maintenance of documents or TP audit.

Supreme Court held that in order to reduce litigation, certain provisions like section 40A(2) and section 80IA(10) need to be amended to empower the AO to make adjustments to the income declared by the assessee, having regard to the fair market value of the transactions between related parties. The AO may thereafter apply any of the generally accepted methods of determining ALP, including the methods provided under TP regulations. The Court moreover noted that one of the suggestions which needs consideration is whether the law should be amended to make it compulsory for the taxpayer to maintain books of accounts and other documents as prescribed under Rule 10D in respect of such domestic transactions. It was also suggested that the taxpayers can be required to obtain an audit report from his Chartered Accountant so that the taxpayer maintains proper documents and requisites Books of Accounts reflecting the transactions between related entities as at arm’s length.

The Supreme Court specifically mentioned *“Though the Court normally does not make recommendations or suggestions, in order to reduce litigation occurring in complicated matters, the question of extending Transfer Pricing regulations to domestic transactions require expeditious consideration by the Ministry of Finance and the CBDT may also consider issuing appropriate instructions in that regard.”*

- These remarks of the Supreme Court laid down the base for Domestic Transfer Pricing law in India. The same has been acknowledged in the memorandum explaining the Finance Bill 2012.

2. INDIAN DOMESTIC TRANSFER PRICING REGIME – ANALYSIS OF THE STATUTORY PROVISIONS

2.1. Transactions regarded as Specified Domestic Transactions

- Section 92BA of the IT Act 1961, lays down the kinds of transactions which shall be regarded as ‘specified Domestic Transactions’, to which domestic transfer pricing has been based upon. Following is the comprehensive study of those transactions :-

2.1.1. Expenditure in respect of payments to parties referred in section 40A(2)(b) [Section 92BA (i)]

- Section 92BA(i) covers expenditure which are in respect of payments made by an assessee to the specified persons i.e. persons specified in section 40A(2)(b). The payments must be on the expenditure side.¹¹ Section 92BA(i) would not impact income in the hands of the recipients of such payments.¹² The ICAI Revised Guidance Note on Transfer Pricing¹³ gives an illustrative list of such expenditure transactions that would be covered by section 92BA(i), which are follows :
 - i. Expenditure on buying goods.
 - ii. Expenditure on procurement of services.
 - iii. Expenditure on interest payments
 - iv. Expenditure on salary, training services, marketing expenses
 - v. Expenditure on purchase of tangible and intangible property
 - vi. Directors remuneration, commission, sitting fees
 - vii. Group charges, reimbursement expenditure
 - viii. Guarantee fee expenditure.

I. *Amendment to Section 40A(2) of the Income Tax Act, 1961*

- After the Finance Act 2012, consequent amendment has been made to section 40A(2) wherein a proviso clause has been inserted.¹⁴ Under the respective clause disallowance

¹¹ ICAI’s Revised Guidance Note on Transfer Pricing ; <http://220.227.161.86/29526citax19183a.pdf> (last visited on February 26, 2014)

¹² <http://www.transferpricing-india.com/specified-domestic-transactions.htm> (last visited on February 25, 2014)

¹³ 4A.6, P. 35, Guidance Note on Report under Section 92E of the Income Tax Act 1961 (Transfer Pricing), ICAI, New Delhi, Third Ed., 2013

¹⁴ Proviso Clause under Section 40A(2)(a) of the IT Act 1961.

under section 40A(2) is attracted, if the Assessing Officer¹⁵ is of the opinion that expenditure is ‘excessive or unreasonable having regard to the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing there from’. Hence, AO must consider Arms Length Price¹⁶ before forming any opinion in this regard.

II. Parties must be related

- The transaction should be between “related resident parties”, since the explanatory memorandum express that ‘the transfer pricing regulations need to be extended to the transactions entered into by domestic related parties or by an undertaking with other undertakings of the same entity for the purposes of section 40A, Chapter VI-A and section 10AA.’¹⁷ However, relationship can exist any time during the year.¹⁸

III. Direct or Indirect Ownership

- The term ‘beneficial ownership’ includes direct as well as indirect shareholding is debatable. However, the judicial precedents¹⁹ held that the beneficial owner is the immediate shareholder. The ICAI Guidance Note on transfer pricing suggests that it may be appropriate to consider only direct shareholding and not indirect or derivative shareholding and emphasises the real owner of the shares rather than the nominal owner.
- PWC in their report emphasises that the responsible view is that the beneficial ownership only relates to the immediate shareholder, the conclusion depends on the specific facts and ‘substance’ surrounding intermediate holding companies.²⁰

IV. Substantial Interest threshold –

- For determining whether the enterprise are related or not, the threshold ‘substantial interest’ limit is minimum 20%.²¹ An interesting question arises , If a transaction is

¹⁵ Hereinafter, also referred as ‘AO’.

¹⁶ Hereinafter, also referred as ‘ALP’.

¹⁷ Pg no. 24, Memorandum of Finance Bill 2012 ; <http://indiabudget.nic.in/ub2012-13/mem/mem1.pdf> (last visited on February 24, 2014)

¹⁸ Bombay Chartered Accountants Society, Domestic Transfer Pricing Provisions, CA.T.P.OSTWAL, TP Ostwal & Associated, 10th October, 2012 ; www.bcasonline.org/webadmin/res.../130-LMTPOstwal10Oct12.pdf (last visited on February 26, 2014)

¹⁹ *Amco Power Systems Ltd.* : (2008) 123 TTJ 238 ; *DCIT v. Select Holiday Resorts (P) Ltd.* : 2011- TIOL- 216 ITAT-DEL ; *CIT v. V.R.V. Breweries & Bottling Industries Ltd.* : ITA Nos. 594/2005 (Delhi HC) ; *M/s Tainwala Trading and Investments Co. Ltd.* : TS-385-ITAT-2012 (Mum) ; *Natwest Bank of U.K.* : 220 ITR 377

²⁰ PWC, Domestic Transfer Pricing, Navigating new challenges, Sept 2013 ; https://www.pwc.in/en_IN/in/assets/pdfs/publications/2013/domestic-transfer-pricing-navigating-new-challenges-booklet.pdf (last visited on February 25, 2014)

between the Indian company with overseas company in which it has a stake of 20% or more, but less than ‘26%’²², then whether such transaction will come under the ambit of SDT ? ICAI’s Revised Guidance Note on Transfer Pricing suggests that SDT will be applicable here.²³ But, the explanatory memorandum to the Finance Bill 2012 expresses that SDT has to be between the “related resident parties”.²⁴

V. ‘Substantial Interest’ direct or indirect ?

- Central Board of Direct Tax²⁵ Circular²⁶ which sets out the categories of the persons, payments to whom fall within the purview of section 40A(2) mentions that such persons in whose business or profession the taxpayer has a substantial interest directly or indirectly. Thus, even indirect substantial interest is sufficient to determine whether the parties are relative or not within the provision of section 40A(2) of the IT Act 1961.

VI. Transactions being SDT’s under section 92BA(i) –

- Directors Remuneration – In relation to Company being an Assessee, a Director is a related party²⁷. Therefore any payment to the director of the company including director’s remuneration is SDT.
- Interest or Remuneration paid to partners – In relation to a firm/LLP, a partner of that firm/LLP is a related party.²⁸ Therefore, any payment to a partner of the firm/LLP including remuneration or interest is SDT.
- Capital Expenditure (Purchase of tangible/intangible property) – The ICAI’s Revised Guidance Note on Transfer Pricing opines that payments of tangible/intangible properties made between ‘specified persons’²⁹ will attract Domestic TP provisions.

2.1.2. Transfer of goods and services to or from eligible unit [Section 92BA (ii)]

²¹ Explanation (b) of Section 40A(2) of IT Act 1961.

²² Under Section 92A(2){(a)and (b)} of the IT Act 1961 - 26 % is the threshold limit for deciding, the enterprises are associated enterprise or not.

²³ ICAI’s Revised Guidance Note on Transfer Pricing ; <http://220.227.161.86/29526citax19183a.pdf> (last visited on February 25, 2014)

²⁴ Pg. No. 24, <http://indiabudget.nic.in/ub2012-13/mem/mem1.pdf> (last visited on February 26, 2014)

²⁵ Hereinafter, also referred as ‘CBDT’.

²⁶ CBDT Circular No. 6-P, dated 6 July 1968.

²⁷ Section 40A(2)(b)(ii) of the IT Act 1961

²⁸ Section 40A(2)(b)(ii) of the IT Act 1961

²⁹ Specified Persons are the persons who are mentioned in Section 40A(2) of the IT Act against various Assessee.

- Section 92BA(ii) talks about the transactions referred under section 80A. The ICAI's Revised Guidance Note clarifies that reference to section 80A in section 92BA(ii) is in reference to sub-section (6) of section 80A and not to any other sub-section. Other sub-sections of section 80A merely regulates the quantum of deduction and do not involve fair pricing of any transaction. This view is also supported by the fact that the consequent amendment was made to section 80A(6) by the Finance Act, 2012 to amend the meaning of expression 'market value'³⁰, referred to in the respective sub-section.
- The provisions currently in force which grant profit linked tax holiday deductions and which are regulated by section 80A(6) and, consequently are subjected to Domestic Transfer Pricing are as follows³¹ :
 - i. S. 80-IA – Infrastructure development etc.
 - ii. S. 80-IAB – SEZ development.
 - iii. S. 80-IB – Industrial undertaking.
 - iv. S. 80-IC – Industrial undertaking or enterprises in special category states.
 - v. S. 80-ID – Hotels and convention centres in specified area.
 - vi. S. 80-IE – Undertakings in North Eastern states
 - vii. S. 80JJA – Collection and processing of bio-degradable waste
 - viii. S. 80JJAA – Employment of new workmen.
 - ix. S. 80LA – Offshore Banking units and International Financial Services Centre.
 - x. S. 80P – Co-operative societies
- Section 80A(6) refers to internal transactions between various units / undertakings of the assessee in respect of goods or services. This clause covers transactions of goods or services only and thus the transaction must be in relation to goods and services. The transactions, under this clause will be applicable to income as well as expenditure.³²

2.1.3. Transfers of goods and services referred to in Section 80-IA(8) [Section 92BA (iii)]

- Section 80IA-(8) deals with internal transactions with more than one units of the assessee, out of which one or more undertaking is enjoying the tax holiday. Normally units enjoying tax holiday, they charge more than the market value for goods or services used by non-

³⁰ Explanation to Section 80A(6) of the IT Act 1961.

³¹ 4A.18., Pg No. 40, Guidance Note on Report under Section 92E of the IT Act 1961, Delhi ICAI ; www.itatonline.org/info/?dl_id=1182 (last visited on February 24, 2014)

³² Bogi Bikash, Domestic Transfer Pricing, SBR & Co ; <http://documents.jdsupra.com/db3cd2a9-77a0-4275-9562-4fbcd339747f.pdf> (last visited on February 25, 2014)

eligible units. Due to this practise, there is no effect on the health of the tax holiday unit as there are no taxes at all and the non-eligible unit gets higher deduction from taxable income.³³ As per Section 80IA-(8), if the internal transfer of goods or services is not at market value, then profits or gains of transacting units shall be computed, as if, the transfer, in either case, had been made at market value of such goods or services. The onus is on the taxpayer to prove that the internal transfer is at ALP.³⁴

- Similar to section 80A(6), section 80-IA(8) also deals with only the internal transfers of goods or services i.e. transfers must be between the units of an assessee. But unlike section 80A(6), section 80-IA(8) would apply to inter-unit transfers between units eligible for deductions under other sections³⁵ relating to profit-linked incentives.

2.1.4. Business transacted by assessee with any other person as referred to in sub-section (10) of section 80-IA [Section 92BA (iv)]

- As per this clause, when there is ‘close connection’ between assessee and ‘any other person’ or for any other reason, the eligible business of the assessee produces ‘more than the ordinary profit’, then for the purpose of deduction under this section, profit of the eligible business shall be determined by taking appropriate ALP of the transaction. Section 80-IA(10) covers both income as well as expenditure.

I. Interpretation of the expression “any other person”

- The term ‘any other person’ has no where been defined under the IT Act 1961. But, it appears that the expression “any other person” in section 80-IA(10) has to be a resident because the explanatory memorandum of Finance Act provides that the TP provision is extended to transactions between ‘domestic related parties’ or ‘related resident parties’.

2.1.5. Transaction referred to in other section of chapter VI-A / section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable. [Section 92BA (v)]

³³ *Ibid*

³⁴ Domestic Transfer Pricing, Radisson Consulting ;
http://radissonindia.in/comp_images/5242Publication_on_DTP_-_Copy_pdf.pdf (last visited on February 26, 2014)

³⁵ Section 10A or 10AA or 10B or 10BA or 80-IA or 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE

- Section 92BA(v) will cover transfers between unit eligible for section 80-IA³⁶, 80-IB³⁷, 80-IAB³⁸, 80-IC³⁹, 80-ID⁴⁰, 80-IE⁴¹ or 10AA⁴² deduction and units eligible for other profit linked deduction.

2.1.6. Any other prescribed transaction. [Section 92BA (vi)]

- Transactions which may be notified by the Board (C.B.D.T) in future will come under this provision.

2.2. Other Requirements for SDTs

- Section 92BA starts with the words, ‘For the purpose of this section and sections 92, 92C, 92D and 92E’, which means that SDT as defined, are subjected to the requirements of sections 92, 92C, 92D and 92E. Therefore, other requirements for SDTs can be understood as follows :

2.2.1. Not being an International Transaction

- The first line of Section 92BA which defines ‘Specific Domestic Transaction’, mentions ‘not being an international transaction’, which means that SDT excludes International transactions.
- Meaning of International Transaction is mentioned in section 92B(i), which talks about transaction between associated enterprise, which is again defined in section 92A. One of the notable criteria, is that there must be a minimum of 26% of voting power in other enterprise.

2.2.2. □ 5 Crores Limit

- The threshold limit prescribed under the law of DTP in India is □ 5 Crores. The aggregate value must exceed the limit of □ 5 Crores. This is regardless of the fact that the value of the transactions under one of the limbs may be very small or nominal.⁴³
- If the threshold of □ 5 Crores is not crossed, the same will continue to be governed by the provisions of section 80A(6) or with other provision as the case may be, which stood prior

³⁶ Income from Infrastructure, Telecommunication, Industrial Park & Power sector etc.

³⁷ Income of an undertaking or enterprise engaged in development of SEZ

³⁸ Income from certain Industrial undertaking and Housing Projects etc.

³⁹ Income from certain Industrial undertaking set up in Sikkim, HP, etc.

⁴⁰ Income from Hotels etc in Delhi, Faridabad and other specified districts.

⁴¹ Income from eligible business undertaking in North Eastern States.

⁴² Special Provision in regard to newly established units of Special Economic Zone.

⁴³ Guidance Note on Report under Section 92E of the IT Act 1961, Delhi ICAI ; www.itatonline.org/info/?dl_id=1182 (last visited on February 25, 2014)

to amendment by Finance Act, 2012 and the Fair Market Value shall be computed on general principles.⁴⁴

2.2.3. *Arms Length Price Requirements*

- Section 92 necessitates the computation of income having regard to the arm's length price. Section 92F(ii) defines ALP as 'a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions'.
- The requirements of application of ALP for SDT's are as follows :

I. Applicability of ALP for determining any income in relation to SDT

- Section 92(2A) provides that any income in relation to SDT shall be determined having regard to arms length price. The term 'any income' does not cover any income which are not taxable under the Income Tax Act.⁴⁵ The words used in section 92(2A) are 'any income in relation to' and not 'any income arising from' as in case the section 92(1) dealing with international transactions, the term 'in relation to' is equivalent to 'concerning with' or 'pertaining to', the clear meaning is still not clear.

II. Applicability of ALP to allowance for an expenditure, interest or allocation of any cost or expense in relation to SDT

- Section 92(2A) provides that any allowance for an expenditure, interest or allocation of any cost or expense, in relation to the SDT shall be computed having in regard to the arm's length price. The provision does not provide criteria for allowance or disallowance of any expenditure or interest or allocation of any cost or expense. Any expenditure being excessive or unreasonable will not be disallowed for the purpose of SDT.

*III. Applicability of ALP to cost contribution agreements in relation to SDT.*⁴⁶

IV. ALP shall be applied in accordance with section 92(2A) to compute allowance in relation to a SDT only if the same is favourable to Revenue. Where application of ALP is favourable to assessee, the same will not be done in view of section 92(3).

⁴⁴ Taxmann's, Guide of Transfer Pricing, 2013, P. 120.

⁴⁵ *In re Aminiti International Holdin Ltd.* : [2010] 189 Taxman 149 ; *In re Dana Corporation* : [2010] 186 Taxmann 187 ; *In re Venenburg Group B.V.* : [2007] 159 Taxmann 219 ; *In re Deere & Co.* : [2011] 11 Taxmann 388

⁴⁶ Taxmann's , Guide of Transfer Pricing, 2013, P. 160.

2.2.4. Assessing Officer Power's

- Section 92C(3) empowers the AO to compute ALP in respect of International Transactions as well as Specific Domestic Transactions after the coming of Finance Act 2012.
- The AO can proceed to determine the ALP where he finds the existence of the circumstances mentioned in clauses (a) to (d) of section 92C(3) or where he considers it necessary or expedient to refer the determination of ALP to the TPO. However, AO must demonstrate the avoidance of tax before invoking powers under such provisions.⁴⁷

2.2.5. Computation of ALP

- The primary burden in regard to computation of ALP is upon the Assessee's shoulder, as the Assessee is required to compute by resorting to the most appropriate method amongst them mentioned in sub-clause (a) to sub-clause (f) of sub-section (1) of section 92C having regard to the nature of transactions or the class of transactions or even class of associated persons or functions performed by such persons or such other relevant factor as prescribed by the Board. The factors mentioned under Rule 10B can be considered in this regard.⁴⁸
- The ALP chosen must be among the methods prescribed under the Section 92C read with Rule 10AB/10B and it shall be the 'most appropriate method', having regard to the nature of transaction or any other appropriate method prescribed by the Board. Rule 10C⁴⁹ shall be complied with, for determining the Most appropriate Method.
- For intra-company transfer pricing, although a number of methods have been developed for the years, there is no final answer to the problem. There is no, and there cannot be "one

⁴⁷ *Aztec Software & Technology Services Ltd. v. Asstt. CIT* : [2007] 107 ITD 141

⁴⁸ *Moser Baer India v. Addl. CIT* : [2009] 176 Taxmann 473 (Delhi)

⁴⁹ As per Rule 10C of the Income Tax Rules, most appropriate method shall be the method which is best suited to the facts and circumstances of each particular transaction and provides the most reasonable measure of the transaction. Following factors should be taken into account while choosing the most appropriate method namely:

- i. the nature and class of the international transaction;
- ii. the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises;
- iii. the availability, coverage and reliability of data necessary for application of the method;
- iv. the degree of comparability existing between the international transaction and the uncontrolled transaction and between the enterprises entering into such transactions;
- v. the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions;
- vi. the nature, extent and reliability of assumptions required to be made in application of a method.

correct approach” to the issue. Policies tend to vary for different types of products and services within the same organization of all, the trading price based upon the external market conditions appears to be the most satisfactory method as it would considerably reduce the extent of possible manipulation and satisfy the test of objectivity.⁵⁰

2.2.6. TPO Limitation

- Sub-sections (2A) to (2C) [92CA] shall have no application to SDTs . In other words, TPO’s powers under section 92CA, as far as SDTs are concerned, are confined to SDT referred by AO to him and he cannot deal with any other SDT that comes to his notice during the course of proceedings before him.
- TPO’s power of summons (s. 131), survey (s. 133A) and collecting information u/s 133(6) applies even in domestic transactions.
- TPO must submit his observation to the AO after taking all relevant materials in consideration. [Section 92CA(3)]

2.2.7. Domestic Transfer Pricing Documentation

- Documentation as per section 92D read with Rule 10D has to be maintained for SDTs. The maintenance and keeping information and documents which are entry related⁵¹, price related⁵² and transaction related⁵³ must be carried out.

2.2.8. Filing of Audit Report

- Section 92E read with Rule 10E as amended by Finance Act 2012 provides that assessee who has entered into a specified domestic transaction during a previous year shall obtain a report from an accountant in the prescribed form and shall furnish such report on or before the specified date. The due date for filing return of income is 30th November of assessment year with effect from assessment year 2013-2014. Rule 10E prescribes Form No. 3CEB for accountants report under section 92E. Form No. 3CEB for SDT purposes got amended by CBDT (Central Board of Direct Taxes) notification No. 41/2013/F.No.142/42/2012 dated 10June, 2013.

⁵⁰ Kumar Ashok. “Transfer Pricing, Multinationals and Taxation”, New Century Publications, New Delhi, India, 2006, P. 62.

⁵¹ Profile of Industry, Profile of Group, Profile of Related Parties

⁵² Transaction related, FAR related, Economic Analysis(method selection, comparable benchmarking), Forecasts, Budgets and Estimates.

⁵³ Agreements , Invoices, Pricing related correspondence (letters, emails, fax. Etc.)

2.3. Penalty Over Non-Compliance

- The ‘consequential amendments by the Finance Act 2012⁵⁴’ made in the ‘respective penalty provisions’ has also subjected the deterrence of non-compliance in case of SDTs.
- The Penalty with respect to SDTs for various non-compliance can be understood as per the following table :

Sr. No.	Type of Penalty	Imposed Penalty	Section
1.	Adjustment to taxpayers income during assessment	100% to 300% of the tax on adjustment amount	271(1)(c)
2.	Failure to maintain prescribed information/documents	2% of value of the transaction	271AA
	Furnish Incorrect information		
3.	Failure to furnish report from an accountant as per section 92E	₹ 1,00,000	271BA
4.	Failure to furnish documents during assessment as per section 92D	2% of value of the transaction	271 G

3. INTERNATIONAL RESPONSE TOWARDS DOMESTIC TRANSFER PRICING

3.1. United States of America⁵⁵

- US transfer pricing norms does not include all the domestic transactions expressly as in case of India. But, US transfer pricing rules are applicable to the related party transactions under section 6038A⁵⁶. The definition of related party is very wide⁵⁷. Transfer pricing documentation is not required by law as such. However, in practice, it is recommended that taxpayers maintain contemporaneous documentation in order to avoid the penalty.

⁵⁴ Explanation 7 of Section 271 of the IT Act 1961.

⁵⁵ Hereinafter, also referred as ‘US’.

⁵⁶ U.S. Code: Title 26F, Chapter 61-A, Part III-A, Sec. 6038A. ; <http://www.ustransferpricing.com/S6038A.html> (last visited on February 25, 2014)

⁵⁷ http://www.ustransferpricing.com/related_party_transactions.html (last visited on February 26, 2014)

Related Parties are required to file appropriate forms⁵⁸ while filing returns. As per the new regulations issued in 2010, certain taxpayers must also disclose their Uncertain Tax Positions (UTPs) on Schedule UTP, and provide information such as the ranking of the positions by the sizes of their reserves, and concise descriptions of the tax positions. There is a phase-in period so that by 2014, the UTP disclosures will be required by corporations with assets of USD10 million or more.⁵⁹

3.2. Russia

- Russian Transfer Pricing law includes domestic transactions between related parties in excess of RUB 1 billion are also subject to TP control and documentation requirements (subject to transition rules for 2012 and 2013 during which the threshold will be RUB 3 billion in 2012 and RUB 2 Billion in 2013). The APA's covers domestic transactions with oil.⁶⁰ The new law allow correlative adjustments only between domestic Russian entities.⁶¹

3.3. United Kingdom

- UK transfer pricing rules apply to a wide range of transactions including those between two UK companies or between any person (including individuals and charities) and a company or partnership. In principle the rules cover almost everything from sales or purchases of goods and services, to intellectual property, debt or deemed transactions that are not reflected in any accounts.⁶²

3.4. Egypt

- Transfer pricing in Egypt is governed by Income Tax Law No. 91 of 2005, Article (30) and its Executive Regulations, Articles (38), (39), and (40), collectively (TP Law). The Law is applicable to international and domestic transactions between related parties. As such, the TP Law is applicable to transactions carried out with parties in foreign tax jurisdictions or regimes and to domestic transactions with Egyptian free zones or local related parties operating within Egypt.⁶³

⁵⁸ Taxpayers are required to file Forms 5471, 5472, and 8865 regarding transactions with related parties.

⁵⁹ [http://www.ey.com/Publication/vwLUAssets/Transfer_pricing_global_reference_guide_2013/\\$FILE/Transfer_pricing_global_reference_guide_2013.pdf](http://www.ey.com/Publication/vwLUAssets/Transfer_pricing_global_reference_guide_2013/$FILE/Transfer_pricing_global_reference_guide_2013.pdf) (last visited on February 25, 2014)

⁶⁰ <http://www.pwc.com/gx/en/international-transfer-pricing/assets/russia.pdf> (last visited on February 25, 2014)

⁶¹ <http://www.kpmg.de/docs/New-Russian-Transfer-Pricing-Rules-eng.pdf> (last visited on February 24, 2014)

⁶² <http://www.pwc.co.uk/tax/transfer-pricing.jhtml> (last visited on February 25, 2014)

⁶³ <http://www.pwc.com/gx/en/international-transfer-pricing/assets/egypt.pdf> (last visited on February 26, 2014)

3.5. Singapore

- The Singapore Transfer Pricing law also subject Domestic transactions between related parties within Singapore to documentation and computation at arm's length basis.⁶⁴

3.6. Peru

- In Peru, all domestic intercompany transactions are subject to transfer pricing rules.⁶⁵

3.7. Mexico

- In the case of domestic intercompany transactions, the MTA (Mexican Tax Authority) is empowered to modify the taxpayers profit and/or losses whenever such transactions are suspected to have been agreed at prices different from marker prices.⁶⁶

3.8. Indonesia

- In November 2011, DGT [Directorate general of taxation] amended the transfer pricing regulations (PER 32/PJ/2011) to provide clarity around the transfer pricing compliance burden with respect to domestic transactions between related parties. Earlier the documentation requirements were applied to all domestic related party transactions. However documentation requirements are now applicable for domestic transactions between related parties that are effectively not taxed on the same basis.⁶⁷

4. MERITS AND DEMERITS

4.1. Merits

4.1.1. Discussion within Domestic Frontier

- 'Transfer Pricing' is one of the scientific methods, applicable conventionally to international transactions, but with the coming of DTP provisions at place, the tool of transfer pricing has remained no more to international players, It will lead to discussions within domestic frontiers.

⁶⁴ <http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/global-transfer-pricing-review/Documents/singapore.pdf> (last visited on February 25, 2014)

⁶⁵ <http://www.wwtpr.com/pdf/latin%20america%20updates.pdf> (last visited on February 26, 2014)

⁶⁶ <http://www.internationaltaxreview.com/Article/3085532/Latin-American-transfer-pricing.html> (last visited on February 27, 2014)

⁶⁷ <http://www.internationaltaxreview.com/Article/3052208/Indonesia-Transfer-pricing-in-Indonesia-A-whole-new-ball-game.html> (last visited on February 26, 2014)

4.1.2. Objectivity

- The application and extension of the transfer pricing regulations to domestic transactions would provide objectivity in determination of income from transactions between domestic related parties.⁶⁸ The prime reason is the shift from Free Market Value (FMV) method to ALP method. Earlier the domestic transactions always required to pass the test of 'FMV' to avoid the misuse of law. However, in the absence of specific guidelines for computation of such FMV of goods and services, much was left to the tax departments, thus leading to disputes. After coming of ALP method, it has become more scientific.

4.1.3. Impact on Litigation

- One of the reasons behind having domestic transfer pricing legislation at place is to reduce litigation which was observed by the Apex Court of India. DTP provisions gave certainty to various transactions which was prior subjective oriented. This will reduce the number of litigation coming out of the specified transactions.

4.1.4. Accountability & Responsibility

- Parties have to maintain documentation under section 92D read with Rule 10D, this will increase the accountability & responsibility among the juristic persons entering into SDTs.

4.2. Demerits

4.2.1. Compliance Burden on the Taxpayers

- With the introduction of 'SDTs provisions', transfer pricing regulations is now applicable to all taxpayers including Individuals, Hindu Undivided Families (HUFs), Companies or Firms. Hence, this will lead to an increase in the administrative and compliance burden for the taxpayer's in respect of SDTs which was absent before 2012.

4.2.2. Burdensome Documentation

- DTP has created legally enforceable obligation on assessee to maintain proper documentation, compliance burden which may not be desirable. The selection of the most appropriate method and being subject to scrutiny by the tax department is again a difficult task. Assessee will also be subjected to stringent penal provisions as provided U/s 271AA,

⁶⁸ Taxmann's , Guide of Transfer Pricing, 2013, P. 102.

271G, 271BA and 271(1)(c). Thus, maintenance of DTP documentation becomes significant.

4.2.3. Administrative Burden on Revenue Department

- Indian revenue department, which is still grappling with developing adequate expertise to address international transaction, will now have to double up for domestic transaction as well.⁶⁹ However, with DTP provisions at place it will add on to the problems of the department.

4.2.4. Advance Pricing Agreement not applicable

- APA is applicable only with respect to International Transactions.⁷⁰ APA has its own benefits but unfortunately it is not applicable in case of SDTs.

4.2.5. Safe Harbour Rules

- Safe Harbour Rules are too not applicable in case of SDTs in India, but it is applicable to International Transactions.⁷¹

5. DTP CHALLENGES IN INDIA AND SUGGESTIONS

5.1. Challenges

5.1.1. Meaning Of Transaction – Not Applicable for SDT

- ‘International Transaction’ has to satisfy the definition of ‘transaction’ as defined in section 92F(v) while a “specified domestic transaction” need not satisfy the same definition. All items listed in clauses (i) to (vi) of section 92BA are deemed to be transactions and specified domestic transactions, being subject to DTP⁷²

5.1.2. Expenditure – Capital Or Revenue ?

- There are number of cases⁷³ which suggests that capital expenditure payments are eligible for depreciation and thus are not covered under Section 40A(2) of the Act. So, the

⁶⁹ <http://taxguru.in/income-tax/transfer-pricing-realm-evolution-part.html> (last visited on February 26, 2014)

⁷⁰ Section 92CC of the IT Act 1961.

⁷¹ Statement by CBDT on Safe Harbour Rules Under Section 92CB of the Act ; http://incometaxindia.gov.in/archive/BreakingNews_FinalStatement_14082013.pdf (last visited on February 26, 2014)

⁷² Taxmann’s , Guide of Transfer Pricing, 2013, P. 122.

⁷³ *V Kay Translines (P) Ltd. v. ITO* : 2011-TIOL-318-ITAT-Mum ; *Calcutta Insurance Ltd. v. CIT* : [1952] 21 ITR 404 ; *Sumilon Industries Ltd. v ITO* : ITA Nos 3296 & 3297/Ahd/2008 ; *CIT v. Plasmac Machine Mfg. Co.*

question that whether 'expenditure' includes capital or revenue or includes both remains unanswered.

5.1.3. Benchmarking The Remuneration Of Directors

- In case of a company being the assessee, directors, key management personnel are included as relatives.⁷⁴ It is difficult task for the company to benchmark a particular remuneration. It was also found in the case⁷⁵ that when commission paid to the Managing Director/Director was in accordance with the provisions of the Companies Act 1956. The AO cannot make any disallowance on this account. The exact proposition is not clear, giving way to legal disputes in future.

5.1.4. 'Close Connection' Not Defined

- Section 80-IA(10) talks about 'close connection' between the assessee and the other person. However, the term has not been defined, which may lead to legal disputes. Transactions under section 80-IA(10) are included as SDT's.⁷⁶

5.1.5. Indian Company Having Domestic & International Transaction Both

- What happens when an Indian company is having both international transactions as well as domestic transactions? Whether the specified domestic transactions are required to be reported in the following scenarios :
 - a) When the value of aggregate of international transactions and specified domestic transactions is less than ₹ 5 crore.⁷⁷
 - b) When the value of aggregate of international transactions and specified domestic transactions is more than ₹ 5 crore, but value of specified domestic transactions is less than ₹ 5 crore.
 - c) What if, when the value of International transactions as well as value of Specified Domestic Transaction will be ₹ 3 crore each?
- Is the assessee required to report the same or to take an accountant's report for the same? As per plain language of the IT Act 1961, if the aggregate value of the Specified Domestic

Ltd. : [1993] 201 ITR 650 (Bom) ; *CIT v. Mahendra Mills* : [2000] 243 ITR 56 (SC) ; *Challapalli Sugars Ltd. v. CIT* : [1974] 98 ITR 167 (SC) ; *M/S Crescent Chemsol Pvt. Ltd. v. ACIT* : ITA No. 1497/Mum/2010 ; *SMS Demag (P) Ltd. v. DCIT* : [2010] 38 SOT 496 (Delhi) ; *Epicenter Technologies Ltd. v. ACIT* : ITA 8335/Mum/2004

⁷⁴ Section 40A(2)(b) of the IT Act 1961.

⁷⁵ Delhi High Court in the case of *CIT vs. India Thermit Corporation* – ITA/350/2011.

⁷⁶ Section 92BA (iii), (iv) and (v) of the IT Act 1961.

⁷⁷ <http://taxguru.in/income-tax/transfer-pricing-domestic-transaction-area-concern-domestic-companies.html> (last visited on February 26, 2014)

Transaction does not exceed ₹ 5 crore, then DTP law will not be applicable. A clarification may be required on this issue.

5.1.6. DTP include Marketing Intangibles, Corporate Guarantee etc ?

- Experts opine that unless a payment is made and these items actually appear in the books of accounts they shall not be covered by domestic TP.⁷⁸ The judgment in case of *LG Electronics*⁷⁹ highlights that the domestic enterprises now not only need to gear up to routine transfer pricing issues but also to sophisticated and ‘invisible’ transfer pricing issues like marketing intangibles.

5.1.7. Advance Pricing Agreement

- Advance Pricing Agreement is applicable for international taxation only⁸⁰. There is no provision for APA’s in respect of SDTs in India. However, APA must be made applicable for DTP as it has many advantages and it will be welcome move for the taxpayers.

5.1.8. Safe Harbour Rules

- Safe Harbour Rules are only applicable in the case of International Transaction⁸¹, not for SDTs

5.1.9. Alternative Dispute Resolution Mechanism

- Section 144C provides an alternative dispute resolution mechanism by constituting a DRP (Dispute Resolution Panel) to expeditiously resolve disputes on fast track basis transfer pricing issues. But, with the coming up of Domestic Transfer Pricing provisions, section 144C has not been yet extended to domestic transfer pricing cases involving SDTs.

5.1.10. Lending or Borrowing Money

- Lending or borrowing money between resident ‘specified persons’ or resident ‘associated enterprises’ is not SDT. Therefore, notional interest on money loaned by resident assessee

⁷⁸ <http://taxguru.in/income-tax/transfer-pricing-realm-evolution-part.html> (last visited on February 26, 2014)

⁷⁹ *M/s.L.G.Electronics India Private Limited* : ITA No.5140/Del/2011.
; www.itatonline.org/archives/?dl_id=938 (last visited on February 23, 2014)

⁸⁰ Section 92CC of the IT Act 1961.

⁸¹ Statement by CBDT on Safe Harbour Rules Under Section 92CB of the Act ;
http://incometaxindia.gov.in/archive/BreakingNews_FinalStatement_14082013.pdf

to resident 'specified person' or resident 'associated enterprise' is not taxable in terms of transfer pricing provisions.⁸²

5.2. Suggestions

5.2.1. Applicability of DTP – domestic and international – clarification needed ?

- DTP provisions are applied in case there is a SDT. If there is a case where a domestic company entered with foreign company, Will that be subjected to SDT ? The Explanatory memorandum to Finance Act 2012 specifies that DTP will be applicable only when transaction is between the 'related resident parties'.⁸³ ICAI Revised Guidance Note on Transfer Pricing has contrasting opinion.⁸⁴ Hence, a clarification is needed in this regard.

5.2.2. 'Transaction' meaning must be made inclusive

- The definition of 'transaction' under section 92F(v) should be amended so that it will include specified domestic transactions as well.

5.2.3. Benchmarking the Remuneration of Directors

- Appropriate method of ALP for remuneration of Directors is in dispute, CBDT must come with a circular laying down the exact procedure and the most appropriate method which will be applicable in case of remuneration being paid up to the directors or other managerial personnel of the company.

5.2.4. Exhaustive Definition's Required

- Term like 'expenditure' and 'close connection' have no where been defined under the Income Tax Act 1961, which makes it difficult to understand the exact meaning behind it. Therefore, there is an urgent need of an umbrella definition to avoid any arbitrary interpretation.

5.2.5. Safe Harbour Rules for DTP

- Safe Harbour Rules should not be limited to international transactions only, they must be extended to the domestic transactions as well.

⁸² Kumar Deepender, Domestic Transfer Pricing Provisions, Deepender Anil And Associates, www.icaijaipur.org/Domestic%20TP_26%2010%2013.pptx (last visited on February 25, 2014)

⁸³ Memorandum of Finance Bill 2012 ; <http://indiabudget.nic.in/ub2012-13/mem/mem1.pdf> (last visited on February 27, 2014)

⁸⁴ Guidance Note on Report under Section 92E of the Income Tax Act 1961 (Transfer Pricing)., ICAI, New Delhi, Third Ed., 2013.

5.2.6. APA – should be made applicable to SDTs

- It would be a welcome change if advance pricing agreements are made available for domestic transactions also. APA will provide certainty to the taxpayers, especially in case of choosing the most appropriate method for ALP computation.

5.2.7. TPO should have power to take action suo-moto

- TPO's power should not be limited to international transactions only.⁸⁵ It must be given powers during the time of computation, to take *suo-moto* action in case he find any other transaction, which need to be computed, in accordance with the domestic transfer pricing provisions.

5.2.8. Alternative Dispute Resolution Mechanism for SDTs

- Alternative Dispute Resolution Mechanism⁸⁶ should be made applicable in case of SDTs, which will help in resolving the disputes more quickly.

6. CONCLUSION

The shift of Transfer Pricing instrument to the domestic transactions is a good move by the Government, bringing more objectivity to the related party transactions and more accountability and responsibility among the taxpayers. Domestic Transfer Pricing is at budding stage in India. So, to comment anything over it may be undesirable. One can pray that the extension of transfer pricing provisions to Specified Domestic Transactions will not create the same level of havoc as prevalent in current Transfer Pricing assessments. There are many aspects which are still untouched in case of Domestic Transfer Pricing like Advance Pricing Agreement regime, which has been introduced with respect to international transactions, the same benefit has not been extended for domestic transactions. These untouched issues have potential for intense legal disputes. Thus, the Government must look upon these issues and should resolve the same by providing appropriate directions, within time, so that domestic transfer pricing provisions can achieve the purpose for which they were introduced.

⁸⁵ Section 92CA (2a) and (2b) of the IT Act is applicable in case of International Transactions only, it does not cover SDTs.

⁸⁶ Section 144C of the IT Act 1961

BIBLIOGRAPHY

[STATUES REFERRED]

1. The Finance Act, 2012
2. The Income Tax Act , 1961
3. The Income Tax Rules, 1962

[BOOKS REFERRED]

1. Chakravarty Arijit, Dalal Manoneet, Transfer Pricing Digest, Taxmann's 2013.
2. Datar Arvind P, Kanga & Palkiwala, The Law and Practice of Income Tax, , 10th Ed., Volume II, LexisNexis Publication, 2014.
3. Judicial Trends in Transfer Pricing – A Comprehensive Analysis, CCH, Wolters Kluwer (India) Pvt Ltd, 2013.
4. Kumar Ashok, 'Transfer Pricing, Multinationals and Taxation', New Century Publications, New Delhi, India, 2006
5. Singhanian Vinod K, Singhanian Kapil, Direct Taxes - Law And Practice, , 50th Ed., Taxmann's, 2013-2014
6. Taxmann's, Guide of Transfer Pricing, 2013.

[ARTICLES & REPORTS REFERRED]

1. An Insight of Domestic Transfer Pricing Provisions, July 2012, C. Shah & Co.
2. Bombay Chartered Accountants Society, Domestic Transfer Pricing Provisions, T. P. OSTWAL, TP OSTwal & Associated, 10th October, 2012
3. Ernst & Young, Specified Domestic Transactions, August 2012.
4. Guidance Note on Report under Section 92E of the Income Tax Act, 1961 (Transfer Pricing), ICAI, New Delhi, 2013, Third Ed.
5. KPMG, FICCI, Transfer Pricing Provisions – Specified Domestic Transactions, October 2012
6. KPMG, Global Domestic Transfer Pricing, 2013
7. OECD, Public Consultation, White Paper on Transfer Pricing Documentation, 30th July 2013.
8. UN – Practical Manual on Transfer Pricing for Developing Countries, 2013, Department of Economic & Social Affairs, ST/ESA/347

[CASES REFERRED]

1. Amco Power Systems Ltd. : (2008) 123 TTJ 238
2. Calcutta Insurance Ltd. v. CIT : [1952] 21 ITR 404
3. Challapalli Sugars Ltd. v. CIT : [1974] 98 ITR 167 (SC)
4. CIT v. Glaxo Smithkline Asia (P.) Ltd. : [2010] 195 TAXMAN 35 (SC)
5. CIT v. Mahendra Mills : [2000] 243 ITR 56 (SC)
6. CIT v. Plasmac Machine Mfg. Co. Ltd. : [1993] 201 ITR 650 (Bom)
7. CIT v. V.R.V. Breweries & Bottling Industries Ltd. : ITA Nos. 594/2005 (Delhi HC)
8. DCIT v. Select Holiday Resorts (P) Ltd. : 2011- TIOL- 216 ITAT-DEL
9. Delhi High Court in the case of CIT vs. India Thermit Corporation – ITA/350/2011.
10. Epicenter Technologies Ltd. v. ACIT : ITA 8335/Mum/2004
11. In re Aminiti International Holdin Ltd. : [2010] 189 Taxman 149
12. In re Aminiti International Holdin Ltd. : [2010] 189 Taxman 149
13. In re Dana Corporation : [2010] 186 Taxmann 187
14. In re Dana Corporation : [2010] 186 Taxmann 187
15. In re Deere & Co. : [2011] 11 Taxmann 388\
16. In re Venenburg Group B.V. : [2007] 159 Taxmann 219
17. In re Venenburg Group B.V. : [2007] 159 Taxmann 219 ; In re Deere & Co. : [2011] 11 Taxmann 388
18. M/S Crescent Chemsol Pvt. Ltd. v. ACIT : ITA No. 1497/Mum/2010
19. M/s Tainwala Trading and Investments Co. Ltd. : TS-385-ITAT-2012 (Mum)
20. M/s.L.G.Electronics India Private Limited : ITA No.5140/Del/2011
21. Natwest Bank of U.K. : 220 ITR 377
22. SMS Demag (P) Ltd. v. DCIT : [2010] 38 SOT 496 (Delhi)
23. Sumilon Industries Ltd. v ITO : ITA Nos 3296 &3297/Ahd/2008
24. V Kay Translines (P) Ltd. v. ITO : 2011-TIOL-318-ITAT-Mum

[WEBSITES REFERRED]

1. www.articles.economictimes.indiatimes.com
2. www.oecd.org
3. www.bcasonline.org
4. www.businessworld.in

5. www.documents.jdsupra.com
6. www.ey.com
7. www.icai.org
8. www.icaijaipur.org
9. www.incometaxindia.gov.in
10. www.indiabudget.nic.in
11. www.internationaltaxreview.com
12. www.itatonline.org
13. www.kpmg.com
14. www.kpmg.de
15. www.law.incometaxindia.gov.in
16. www.pwc.co.uk
17. www.pwc.com
18. www.pwc.in
19. www.radissonindia.in
20. www.taxguru.in
21. www.taxworld.co.uk
22. www.transferpricing-india.com
23. www.ustransferpricing.com
24. www.wwtpr.com