



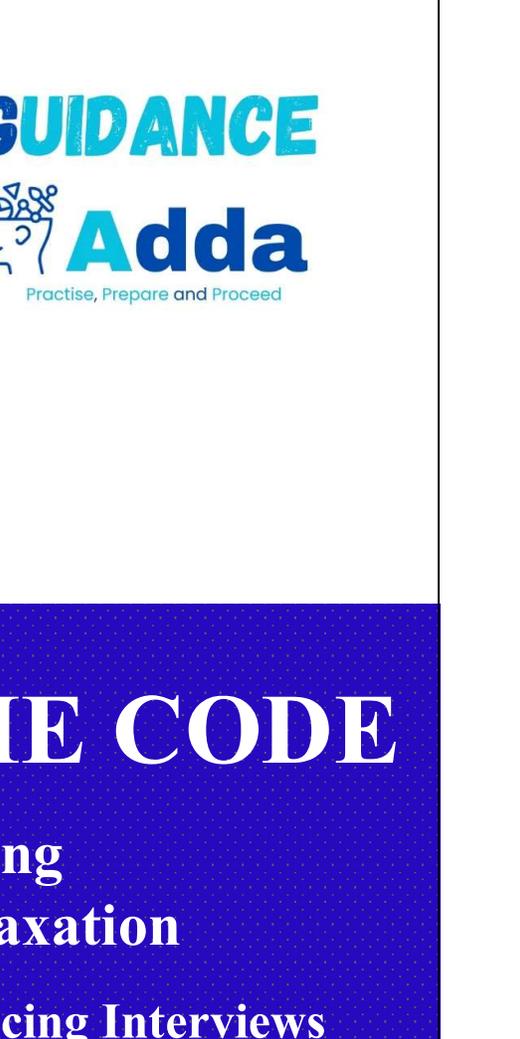
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# **CRACKING THE CODE**

**Transfer Pricing  
& International Taxation**

**Your Ultimate Playbook to Acing Interviews**



**By  
CA Kaushik Agarwal  
&  
CA Aman Bhageria**



Har Har Mahadev

Guidance Adda Presents  
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## **GUIDANCE ADDA || BANKING & TREASURY: CRACKING THE CODE**

**Title:** Transfer Pricing & International Taxation: Cracking the Code

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**Published by:** Guidance Adda

**Publisher's Address:** Flock, Gurgaon, India, 122015

**Publisher's Details:** Please email at [mockinterviewplanner@gmail.com](mailto:mockinterviewplanner@gmail.com)

**First Edition**

**Special Thanks to CA Nikita Chaurasia for doing research related to the book.**

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**Price: Rs. 999**



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## Break into Transfer Pricing: Basics

### **Q: What is Transfer Pricing?**

**A:** Transfer pricing refers to the pricing of goods, services, or intangible assets sold between related entities, such as subsidiaries or branches of a multinational company. It ensures that transactions between these entities are conducted at fair market prices, like what would occur between unrelated parties, to prevent profit shifting for tax advantages.

### **Q: What is an Associated Enterprise (AE)?**

**A:** Two enterprises shall be treated as AE's at any time during the P.Y:-  
a. One enterprise holds at least 26% share (voting power) of other enterprise.  
b. Any person holds at least 26% shares of each of such enterprise

### **Q: What is the Arm's Length Principle?**

**A:** The arm's length principle means that the price charged in a transaction between two related companies (like group companies) should be the same as if the transaction had happened between two unrelated (independent) companies in an open market.

### **Q: When does Transfer Pricing become relevant?**

**A:** Transfer Pricing becomes relevant when two or more companies that are part of the same group (i.e., associated enterprises) do business with each other across international borders (or in some cases, within India if one is tax-exempt).

For Ex: when an Indian company sells goods to its foreign subsidiary.  
when services or loans are provided between group companies.

### **Q: What happens when Transfer Pricing is incorrect?**

**A:** If Transfer Pricing is incorrect (i.e., not at arm's length), the tax authorities may:

- Make adjustments to the income (called TP adjustments)
- Impose interest and penalties
- Cause double taxation (same income taxed in two countries)
- Lead to disputes and litigation

### **Q: What is the purpose of Safe Harbour Rules in Indian TP regulation? What transactions are covered?**

**A:** Safe Harbour Rules provide predefined margins for certain transactions. If a taxpayer follows these rules, the income is accepted as arm's length by the tax department i.e. no questions asked. The purpose is to reduce disputes and provide certainty to taxpayers.

**Transactions covered include** software development services, IT-enabled services (ITES), Contract R&D services, Intra-group loans, Corporate guarantees, Manufacturing and marketing support services (under certain conditions)

**Q: What is the procedure to opt for Safe Harbour Rules?**

**A:** The procedure to opt for Safe Harbour Rules is:

- File Form 3CEFA with the Income Tax Department before the due date of filing income tax return.
- Maintain prescribed documentation.
- Ensure transaction values and margins meet the limits given in the rules.
- Once accepted, the TPO shall pass an order accepting the application

**Q: What is Advance Pricing Agreement (APA)? What are the types of APAs under Indian TP rules?**

**A:** An APA is an agreement between a taxpayer and the tax authority that fixes the method of determining the arm's length price for future transactions. It gives long-term certainty and avoids future TP disputes.

**Types of APAs:**

1. Unilateral APA: Between taxpayer and Indian tax authority.
2. Bilateral APA: Involves Indian authority and foreign tax authority.
3. Multilateral APA: Involves three or more countries' tax authorities.

**Q: What is the risk of double taxation in TP?**

**A:** Double taxation happens when one country adds income due to TP adjustment and the other country does not give relief for this addition. This leads to the same income being taxed twice. APAs and Mutual Agreement Procedures (MAPs) help to reduce or eliminate such double taxation.

**Q: How important are intercompany agreements?**

**A:** Intercompany agreements are very important because they document the terms and conditions of the transaction. They support the taxpayer's TP position. They help during TP audits to prove the relationship and pricing were at arm's length. A well drafted agreements reduce the risk of adjustments and disputes.

**Q: What are the typical grounds for TP adjustments by the TPO in India?**

**A:** The Transfer Pricing Officer (TPO) in India may initiate adjustments based on the following grounds:

- **Arm's Length Principle Violation:** If the intercompany transactions deviate from the arm's length pricing standard, which is the price that would be charged between unrelated entities in similar circumstances.
- **Non-Compliance with Documentation Requirements:** Failure to maintain proper TP documentation or timely filing of **Form 3CEB** (Transfer Pricing Certificate) can trigger adjustments.
- **Inappropriate Comparable:** If the selected comparable are deemed unsuitable (e.g., they do not reflect similar functions, risks, or market conditions), the TPO may reject them and propose adjustments.
- **Methodology Concerns:** The TPO may challenge the transfer pricing method used if it is not considered the most appropriate for the transaction or group.

- **Inconsistent Financials:** Discrepancies in financial statements (e.g., misclassification of expenses or revenue) may lead to adjustments.
- **Profit Shifting Concerns:** The TPO may adjust prices if there is suspicion that transactions are structured to shift profits to low-tax jurisdictions, potentially eroding the tax base.

**Q: How do you prepare for a Transfer Pricing audit initiated by the Assessing Officer or TPO?**

A: Effective preparation for a TP audit involves the following steps:

- **Review TP Documentation:** Ensure that the **Master File**, **Local File**, and **Benchmarking Studies** are up-to-date, comprehensive, and in line with local regulations.
- **Validate Arm's Length Nature of Transactions:** Ensure all intercompany transactions are supported by appropriate documentation, demonstrating adherence to the arm's length principle.
- **Reassess Comparable:** Review your selection of comparable to confirm their relevance and compliance with TP regulations.
- **File Form 3CEB on Time:** Confirm that **Form 3CEB** has been filed accurately and within the prescribed timelines to avoid penalties.
- **Ensure Consistency with Financials:** Review financial records and intercompany agreements to ensure consistency with the TP documentation.
- **Seek Expert Advice:** Consult TP experts to identify potential risks or issues before the audit begins.

**Q: What documents should be furnished during a TP audit to minimize litigation risk?**

A: To minimize litigation risk, the following documents should be provided during the TP audit:

- **Form 3CEB (TP Certificate):** The certification from a Chartered Accountant confirming TP compliance.
- **TP Study/Report:** A detailed report that includes the functional analysis, transfer pricing method used, and the selected comparables.
- **Intercompany Agreements:** Contracts detailing terms, conditions, and pricing for intercompany transactions.
- **Financial Statements and Tax Returns:** Audited financials and tax returns for the relevant years, including details on intercompany transactions.
- **Benchmarking Analysis:** Data supporting the arm's length nature of transactions, including the selection of comparables and adjustments made.
- **Master File & Local File:** Documentation outlining the group's international policies and the specific transactions relevant to the Indian entity.
- **Correspondence with Tax Authorities:** Any prior communication with tax authorities regarding TP matters.

**Q: How do you justify or defend the selection of comparable when challenged by the TPO?**

A: If the TPO challenges the comparable selected, the following steps can be taken:

- **Explain the Selection Process:** Provide a detailed explanation of how comparable were selected based on relevant criteria (e.g., similar functions, risks, and assets).
- **Provide Supporting Data:** Ensure you provide relevant financial and qualitative information about each comparable, including business model, size, market, and industry characteristics.
- **Adjust for Differences:** Show that any functional, economic, or size-related differences between the taxpayer and comparable were appropriately adjusted for.

- **Ensure Consistency:** Demonstrate that both your company and the comparable used similar financial data from credible databases (e.g., Capitaline, Bloomberg).
- **Cite Precedents:** Refer to judicial precedents where similar comparables were accepted to strengthen your position.

**Q: How do you deal with a situation where the TPO rejects your TP method?**

A: In case the TPO rejects the TP method used, take the following steps:

- **Request Clarification:** Ask the TPO to explain why the method was rejected. Often, understanding their reasoning can lead to a resolution.
- **Defend Your Methodology:** Provide a detailed justification for the chosen method, demonstrating how it aligns with your company's specific operations and the arm's length principle.
- **Propose Alternatives:** If necessary, suggest an alternative method that still complies with regulations and is more suitable for the transaction.
- **Refer to Precedents:** Cite relevant judicial decisions or past cases where the selected method was accepted.
- **Reassess the Methodology:** If the TPO's objections are valid, be willing to revisit the method, make adjustments, and recalculate prices where appropriate.

**Q: What is the impact of non-submission or late submission of Form 3CEB on the audit and litigation?**

A: Failure to submit or late submission of **Form 3CEB** can have serious consequences such as:

- **Penalties:** Non-submission or late filing can attract penalties under the Income Tax Act, with fines up to ₹1,00,000 or more.
- **Assumed Non-Compliance:** The TPO may assume that the company has not complied with TP provisions, leading to more intense scrutiny and possible adjustments.
- **Increased Audit Risk:** Late or missing Form 3CEB could increase the likelihood of a more detailed audit or investigation into TP practices, raising the risk of tax adjustments.
- **Difficulty in Defending Position:** Without Form 3CEB, defending the arm's length nature of intercompany transactions becomes more challenging, increasing the potential for litigation.
- **Loss of Relief Options:** Non-compliance with Form 3CEB can reduce the chances of obtaining favorable outcomes or relief during the audit or appeal process.

**Q: What is the process to file objections before the Dispute Resolution Panel (DRP)?**

- **Receive Draft Assessment Order (DAO)** from the Assessing Officer (AO) after TPO's transfer pricing adjustments.
- **File Notice of Intention** to approach DRP within **30 days** of receiving the DAO.
- **File Objections** with DRP within **30 days** from the DAO, detailing the reasons for contesting the adjustments.
- **DRP Review:** DRP reviews the objections, requests clarifications if needed, and issues directions within **9 months**.
- **Final Assessment:** The AO issues a final assessment order incorporating the DRP's directions.
- **Appeal to ITAT:** If unsatisfied, appeal to the Income Tax Appellate Tribunal (ITAT).

**Q: How do you choose between DRP and CIT(A) for a TP-related dispute?**

A: When facing a **transfer pricing dispute**, taxpayers have two primary forums for resolution: the **Dispute Resolution Panel (DRP)** and the **Commissioner of Income Tax (Appeals) [CIT(A)]**. The decision of which forum to approach depends on several factors:

*DRP (Dispute Resolution Panel)*

The **DRP** is a specialized panel that provides an expedited mechanism for resolving disputes related to transfer pricing adjustments. It is a quasi-judicial body that helps avoid prolonged litigation.

- **Eligibility:**
  - DRP is available for cases where the TPO makes a transfer pricing adjustment and the taxpayer receives a **Draft Assessment Order (DAO)** from the Assessing Officer (AO).
  - The DRP is mandatory if the taxpayer intends to dispute a TPO's adjustment to the **Draft Assessment Order (DAO)**.
- **Advantages:**
  - **Timely Resolution:** The DRP process is generally faster, with a decision expected within **9 months**.
  - **Expert Panel:** The DRP typically includes senior tax officers with experience in transfer pricing, offering expertise in resolving complex TP issues.
  - **Binding Decision:** The DRP's directions are binding on the AO, which can lead to a quicker resolution of the dispute.
  - **No Penalty during the DRP Process:** If objections are filed before the DRP, penalties under Section 271(1)(c) are not levied during the dispute resolution.
- **Disadvantages:**
  - **Limited Scope:** The DRP can only address issues raised in the Draft Assessment Order. If the dispute pertains to other aspects of the assessment, the DRP may not have jurisdiction.
  - **No Appeal Against DRP Directions:** While the DRP's directions are binding on the AO, there is **no direct appeal** against the DRP order. The final appeal goes to the **Income Tax Appellate Tribunal (ITAT)**.

## Transfer Pricing: Move into Advance

**Q: What are the transfer pricing methods?**

**A:** There are 6 methods under Indian TP law such as Comparable Uncontrolled Price (CUP) Method, Resale Price Method (RPM), Cost Plus Method, Transactional Net Margin Method (TNMM), Profit Split Method, Other Method

**Q: How do you determine the arm's length price?**

**A:** ALP is determined by comparing the price charged in a related party transaction with the price charged in similar transactions between unrelated parties using one of the accepted methods (e.g., TNMM, CUP). The method that provides the most reliable result is selected.

**Q: What is the concept of tested party in TP?**

**A:** The tested party is the entity (usually the simpler one) whose results are compared with third-party comparable. Usually, it is the party with less complex functions and risks.

**Example:** If an Indian company provides routine services to its foreign parent, the Indian company may be chosen as the tested party.

**Q: What is functional analysis?**

**A:** Functional analysis studies the Functions performed, Assets used, and Risks assumed (FAR) by both parties to a transaction. It helps in identifying comparable and understanding who does what in the transaction.

**Q: How to determine that the ALP is correct?**

**A:** ALP is considered correct if:

- The selected method is appropriate
- The comparable are reliable
- Adjustments (e.g., working capital) are applied properly
- The margin/price falls within the arm's length range

**Q: What is the difference between cost-plus and TNMM? Which is preferable and why?**

**A:** Cost Plus Method: Focuses on gross profit margin on cost (used for manufacturing/services).

TNMM: Focuses on net profit margin relative to cost/sales/assets. It is preferred when detailed gross margin data is not available.

**Q: What's the difference between TNMM and CUP methods? In which situation is TNMM not appropriate?**

**A:** CUP: Compares prices of identical/similar transactions. Best method if data is available.

TNMM: Compares net margins, used when CUP data is unavailable or products are not identical. It is more appropriate when products/services are unique and no exact comparable pricing is available, only financials of companies are available.

**Q: What is the profit split method in transfer pricing?**

**A:** This method splits total profit from intercompany transactions between group companies based on their relative contribution. Used when both parties contribute significantly to value creation (e.g., joint IP development). It avoids trying to price transactions separately.

**Q: Can you explain the Profit Level Indicators (PLIs) used in TNMM?**

**A:** PLIs are ratios used to compare profits of tested party and comparable. Choice depends on the nature of transaction and business model. Common PLIs are: Operating Profit/Total Cost (OP/TC), Operating Profit/Sales (OP/Sales), Return on Assets (ROA)

**Q: What is the concept of interquartile range (IQR) in TP benchmarking?**

**A:** IQR is the range between the 25th and 75th percentile of profit margins from comparable. If your tested party's margin falls within this range, it is considered to be at arm's length.

**Q: What are qualitative and quantitative filters for benchmarking?**

**A: Quantitative Filters:**

Sales > ₹1 crore

Export sales > 75%

Employee cost filter

Related party transactions < 25%

**Qualitative Filters:**

Business description

Functional similarity

Asset intensity

Extraordinary events (e.g., mergers, losses)

**Q: What is the difference between economic and functional comparability?**

**A:** Functional comparability is based on Functions, Assets, and Risks (FAR) whereas Economic comparability is based on size, profitability, market, cost structure. Both are used together to select best comparable.

**Q: How is working capital adjustment applied in TP?**

**A:** Working capital (WC) affects profits. A company with high receivable or low payables ties up more funds and earns lower profit. So, we adjust comparable margins to neutralize WC impact, making results more comparable.\

**Q: What are the mandatory documents to be maintained regardless of the transaction amount?**

**A:** If the transaction value exceeds the threshold (₹1 crore for international and ₹20 crore for specified domestic) you must maintain TP Study Report, Intercompany Agreements, Financials of comparable, Functional analysis (FAR). However, basic documentation (like invoices, contracts) is encouraged at all levels to defend the pricing.

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## **TP: Compliance and Documentation**

### **Q: What are the key contents of the TP report?**

A: The key contents are Company overview, Industry overview, Description of international transactions, FAR analysis, Selection of tested party, Method selection and benchmarking, Economic analysis and conclusion on ALP.

### **Q: How many parts does Form 3CEB contain?**

A: Form 3CEB contains two parts:

Part A: Basic details of assessee, auditor, etc.

Part B: Details of international and SDT transactions, along with method and ALP

### **Q: What are various forms to be filed for TP compliance?**

A: Form 3CEB: TP audit report

Form 3CEAA: Master File Part A & B

Form 3CEAB: Notification of international group

Form 3CEAC: Intimation for CbCR filing

Form 3CEAD: Actual CbCR Report

### **Q: What is the due date for Form 3CEAC and what are the penalties for non-compliance?**

A: Due date of form 3CEAC is to be filed at least 2 months before the due date of filing Form 3 CEAD and the penalty is ₹5,000/day for the first month; ₹15,000/day thereafter.

### **Q: What is the purpose of Form 3CEAD?**

A: Form 3CEAD is used to file the Country-by-Country Report (CbCR), which contains global financial and tax data of the group to assess profit shifting risks.

### **Q: What are the key contents of the three-tier documentation as per Indian TP laws?**

A: 1. Local File: Detailed info on the Indian entity's transactions

2. Master File: Group-wide info (structure, IP, value chain)

3. CbCR: Country-wise data on revenues, profits, taxes, employees, etc

### **Q: What is the significance of the Master File and Local File in TP documentation?**

A: Master File: Gives tax authorities a global view of the MNC's operations whereas Local File: Proves that Indian transactions are at arm's length. Together, they ensure transparency and help reduce litigation.

**Q: What is Country-by-Country Reporting (CbCR), and what are its benefits?**

A: CbCR provides global data on the income, taxes paid, and business activities of an MNE group in each country. It prevents base erosion and profit shifting (BEPS) and helps tax authorities identify red flags

**Q: What is the time limit for submitting Form 3CEB, Master File, and CbCR?**

A: Form 3CEB: Along with income tax return (usually 31st October)

Master File (3CEAA): Within due date of form 3CEB return

CbCR Notification (3CEAC): At least 2 months before CbCR due date

CbCR Report (3CEAD): Within 12 months from end of reporting accounting year

**Q: What are the primary documentation requirements for TP compliance?**

A: The documentation includes Details of transactions, Functional, industry, and economic analysis, Selection of method and comparable, Financials and benchmarking, Intercompany agreements, Supporting calculations and justification of ALP

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## AUDITS, ADJUSTMENTS AND LITIGATIONS

### **Q. What is a transfer pricing adjustment?**

A: An adjustment made by tax authorities when they believe the transaction price between group companies is not at arm's length, resulting in additional income being taxed.

### **Q: Explain secondary adjustments under Section 92CE and their implications.**

A: If a TP adjustment increases income, a secondary adjustment ensures that the extra income is actually repatriated in India. If not repatriated, it's treated as a deemed loan, and notional interest is taxed in India.

### **Q: Can you discuss your experience with transfer pricing audits?**

A: *(Answer based on your personal experience about your work, sample below)*

"I have supported TP audits by preparing documentation, responding to notices, providing FAR analysis, and coordinating with tax teams to justify ALP positions and avoid penalties."

### **Q: What are typical challenges in TP benchmarking?**

A: The typical challenges are: Finding comparable companies, limited financial data, functional differences, high RPT (Related Party Transaction) margins, constantly changing regulations.

### **Q: How can you change the perspective of people that TP is beyond compliance?**

A: By explaining how TP impacts the Global tax planning, Cash flows and repatriation strategy, Risk allocation and business structuring, TP is not just for compliance but is a strategic business tool.

### **Q: What are the penalties for non-compliance under TP provisions in India?**

A: The penalties are ₹1 lakh for non-filing of Form 3CEB, 2% of transaction value for not maintaining documentation, ₹5,000 to ₹50,000 per day for CbCR non-compliance, 100%-300% of tax evaded if adjustment leads to concealment.

### **Q: What is re-characterization of transactions?**

A: When tax authorities disregard the form of a transaction and redefine it based on substance. Example: Treating a "loan" as an "equity contribution" if terms are not at arm's length.

**Q: What is the procedure to file an application for a MAP (Mutual Agreement Procedure) in India?**

- A:
1. File application to Indian Competent Authority (CA) under Article 25 of the tax treaty
  2. Submit TP order, facts, and details
  3. Indian CA negotiates with foreign CA
  4. If agreement is reached, relief is granted (e.g., rollback of adjustment)

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## Quick Bytes

**Q: Describe a challenging transfer pricing project you've worked on.**

A: A challenging project involved benchmarking and justifying the pricing of intangible assets transferred between related entities in a cross-border transaction. The complexity arose from limited comparable data and the need to apply the **Comparable Uncontrolled Price (CUP)** method, which required in-depth analysis of unique intellectual property. This necessitated extensive negotiations with tax authorities and a detailed defense of our data sources.

**Q: What databases are used for benchmarking in India?**

A: The common databases used for benchmarking in India include **Capitaline, Bloomberg, CMA Databases, Prowess, Compustat, ORBIS, Amadeus**. These platforms provide financial data for comparable companies to justify the arm's length pricing.

**Q: What is TNMM and why is it commonly used in India?**

A: **TNMM (Transactional Net Margin Method)** is a transfer pricing method that compares the net profit margin (e.g., operating profit) of a controlled transaction to the net margin earned by independent entities in comparable circumstances. It's commonly used in India due to its simplicity and the availability of benchmark data. It's preferred when reliable comparable data for gross margins or pricing is difficult to obtain.

**Q: How are royalty transactions treated under TP?**

A: Royalty transactions are treated as intangible assets under transfer pricing rules. The **arm's length** royalty rate is determined by considering factors such as the value of the intellectual property, Market conditions, Risks borne by the parties, Comparable transactions. Methods like **CUP, Profit Split, or TNMM** may be used, depending on the availability of data.

**Q: How is Transfer Pricing applied to services?**

A: For intercompany services, transfer pricing is applied based on the **benefit test** and the **cost-plus method**. The pricing must reflect the costs incurred and the mark-up for providing the service. If the services provided are duplicative or do not offer substantial benefit to the recipient, adjustments may be required. The **cost-plus method** is often applied to ensure that the service fee reflects the actual cost plus an appropriate profit margin.

**Q: How is Transfer Pricing relevant in indirect tax laws like GST?**

A: Under **GST**, transfer pricing issues arise when transactions between related entities occur. TP adjustments can impact the **value of supply** for GST purposes, as the GST is based on transaction value, which must be at arm's length. Ensuring that intercompany transactions are priced correctly is important to avoid disputes over GST liability and input tax credit.

**Q: What are specified domestic transactions (SDTs)?**

A: **Specified Domestic Transactions (SDTs)** refer to intercompany transactions that are subject to transfer pricing rules but occur within India, rather than across borders. These include transactions between related domestic entities, such a Transfer of goods or services and

payments for management fees or royalties. SDTs are regulated under Section 92BA of the Indian Income Tax Act and require compliance with the arm's length principle.

**Q: What are the consequences of using multi-year data versus single-year data under Indian TP rules?**

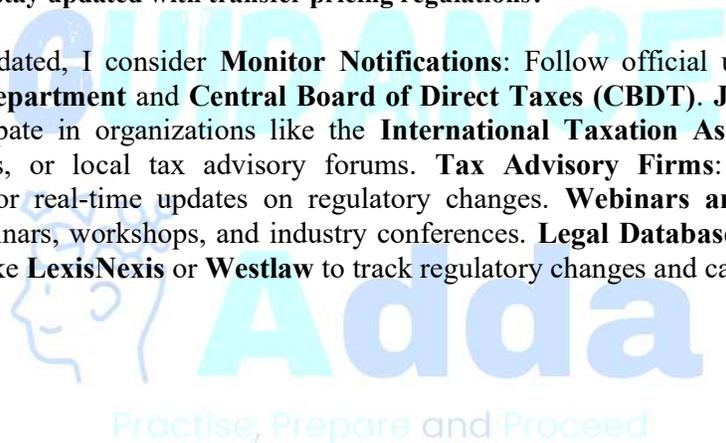
**A: Single-Year Data** is more reflective of the current market conditions and transactions, but can result in high volatility or fluctuations in results. **Multi-Year Data** is used to smooth out anomalies or variations in the data over several years, but could result in less current and less relevant comparable. In India, **multi-year data** can be used when justified, but the tax authorities may challenge it if it is not consistent with the arm's length principle.

**Q: How is Transfer Pricing important in M&A or restructuring?**

**A: In M&A (Mergers & Acquisitions) or corporate restructuring**, transfer pricing plays a critical role in valuing intercompany assets (like intangibles) and structuring the transaction. It ensures that the pricing of transferred assets, such as intellectual property or inventory, is in line with the arm's length principle. A thorough TP analysis helps mitigate tax risks, identify potential liabilities, and optimize post-transaction structures.

**Q: How do you stay updated with transfer pricing regulations?**

**A: To stay updated, I consider Monitor Notifications:** Follow official updates from the **Income Tax Department** and **Central Board of Direct Taxes (CBDT)**. **Join Professional Bodies:** Participate in organizations like the **International Taxation Association (ITA)**, **OECD** updates, or local tax advisory forums. **Tax Advisory Firms:** Work with tax consultancies for real-time updates on regulatory changes. **Webinars and Conferences:** Attend TP webinars, workshops, and industry conferences. **Legal Databases:** Use legal and tax databases like **LexisNexis** or **Westlaw** to track regulatory changes and case law



## INTERNATIONAL TAXATION

**Q: Who is considered a 'Resident' and 'Non-Resident' under the Indian Income Tax Act, 1961?**

**A: Resident** is an individual, Hindu Undivided Family (HUF), or a company is considered a **Resident** if they satisfy the following conditions:

- **Individual:** Stay in India for **182 days** or more during the financial year, or **60 days** in the financial year and **365 days** in the preceding four years.
- **Company:** If the company is incorporated in India or has its place of effective management (POEM) in India.
- **Non-Resident:** A person who does not meet the conditions to be a resident is considered a **Non-Resident**. For individuals, this typically means staying in India for less than 182 days during the financial year.

**Q: What is the scope of total income for Residents, RNORs, and Non-Residents in India?**

**A: Resident:** A resident's total income includes income from all sources, both **within India** and **outside India**.

- **Resident but Not Ordinarily Resident (RNOR):** A RNOR's income is taxable in India on income **earned or accrued in India** and income from foreign sources that is **received in India**.
- **Non-Resident:** A non-resident is taxed only on income **earned or accrued in India** and income **received in India**. Foreign income is not taxable.

**Q: What do you understand by 'Deemed to Accrue or Arise in India' under Section 9?**

**A:** Under **Section 9**, income is **deemed to accrue or arise in India** if the income is earned from **business or property** situated in India, or It is **from a source in India** (e.g., capital gains from the sale of assets in India, or income from salaries for work in India). This section ensures that certain income, even if received outside India, is still taxable in India because it has a nexus with India (e.g., income from Indian immovable property or business).

**Q: What is the difference between Section 90 and Section 91 of the Income Tax Act?**

**A: Section 90:** Provides for **Bilateral Relief** through Double Taxation Avoidance Agreements (DTAA). If India has a DTAA with a foreign country, the taxpayer can avail relief by reducing double taxation through either **tax exemption** or **tax credit** (based on the agreement).

**Section 91:** Provides for **Unilateral Relief** for residents of countries where India does not have a DTAA. In this case, the taxpayer can claim a **tax credit** for foreign taxes paid, but the relief is generally limited to the Indian tax on the same income.

**Q: What is the role of Form 10F and TRC (Tax Residency Certificate)? Why is it required?**

**A: Form 10F:** This is a certificate used to claim **benefits under a DTAA**. It provides information such as the taxpayer's residency status, country of residence, and other relevant details that confirm eligibility for DTAA benefits.

**Tax Residency Certificate (TRC):** Issued by the tax authority of the foreign country, the TRC confirms that the taxpayer is a **resident of that country** for tax purposes. It is required to claim relief under the **DTAA** provisions, ensuring that the taxpayer is eligible for reduced withholding tax rates on income such as royalties, interest, and dividends.

**Q: What is the difference between tax credit under unilateral relief (Section 91) vs bilateral relief (Section 90)?**

**A: Unilateral Relief (Section 91):** Available for residents of countries with **no DTAA** with India. Under this, a tax credit can be claimed for taxes paid in the foreign country, but it's limited to the **lower of the Indian tax payable or foreign tax paid**.

**Bilateral Relief (Section 90):** Available where India has a **DTAA** with the foreign country. Under this, taxpayers can claim either a **tax exemption or tax credit**, depending on the DTAA provisions. Generally, the relief is more comprehensive, and the tax rate benefits are predefined in the agreement.

**Q: What is the significance of the Double Taxation Avoidance Agreement (DTAA) in India?**

**A:** The **DTAA** is a treaty between two countries designed to avoid double taxation of income. Its significance includes:

- **Prevention of Double Taxation:** It ensures that income is not taxed in both the source country and the country of residence.
- **Reduced Tax Rates:** The DTAA often provides for **lower tax rates** on income such as dividends, royalties, and interest.
- **Conflict Resolution:** The DTAA provides mechanisms for resolving disputes related to tax residency or conflicting taxation claims.

**Tax Credit or Exemption:** Depending on the DTAA, the taxpayer can either be exempt from tax in one country or eligible for a tax credit to offset taxes paid in the other country.

**Q: Can you explain the concept of 'Permanent Establishment' (PE) in international taxation and give an example of a situation that may lead to a PE?**

A **Permanent Establishment (PE)** refers to a fixed place of business through which the business of an enterprise is wholly or partly carried on. Under international tax laws (like **OECD guidelines** and **DTAAs**), if a foreign entity has a PE in a country, it becomes subject to taxation in that country on income attributable to the PE.

Examples of PE are Fixed Place PE: A foreign company setting up a branch office in India would have a PE, as it has a fixed place of business. Construction PE: A foreign construction company operating a project in India for more than 6 months could create a PE. For example, if a foreign company sends its employees to India to work on a project for over 6 months, the project could be classified as a PE in India.

**Q: How do you determine the PE status of a liaison office in India?**

A: A **liaison office** typically represents a foreign company but does not carry on business directly or generate revenue. However, the determination of whether it constitutes a **PE** depends on its activities such as If a **liaison office** in India is only engaged in activities like marketing, advertising, and liaisoning between the parent company and Indian customers (without generating any income), it typically does **not** create a PE. However, if the liaison office is **involved in activities like signing contracts, concluding business arrangements, or negotiating deals** on behalf of the parent company, it may **qualify as a PE** under the Indian Income Tax Act and the relevant DTAA.

**Q: How do you distinguish between FTS (Fees for Technical Services) and royalty in cross-border arrangements?**

- **Fees for Technical Services (FTS):** These are payments for services that involve **technical, managerial, or consultancy services. FTS includes activities like Training and advice on operational matters and Technical assistance in connection with machinery or processes.** **Example:** A foreign company provides technical support to an Indian company for setting up a production line.
- **Royalty:** Royalties are payments for the use or right to use **intangible property** such as patents, trademarks, copyrights, or software. These are typically payments made for **Licensing intellectual property and use of industrial equipment or patents.** **Example:** An Indian company pays for the right to use a foreign company's patent on a new technology.

The main difference lies in whether the payment relates to **intangible property (royalty)** or **technical expertise and services (FTS).**

**Q: Can a company be resident in India without having any physical presence? Justify.**

A: Yes, a company can be considered a **resident** of India without having any physical presence, based on the concept of **Place of Effective Management (POEM)**. According to the **Indian Income Tax Act**, a company is a **resident** in India if its **POEM** is in India. **POEM** refers to the place where key management and commercial decisions of the company are made. Even if a foreign company does not have an office or physical presence in India, if its key management decisions are made in India (for example, through board meetings), it would be treated as a **resident** of India for tax purposes.