

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

WESTERN INDIA REGION
COUNCIL

BASICS OF TRANSFER PRICING

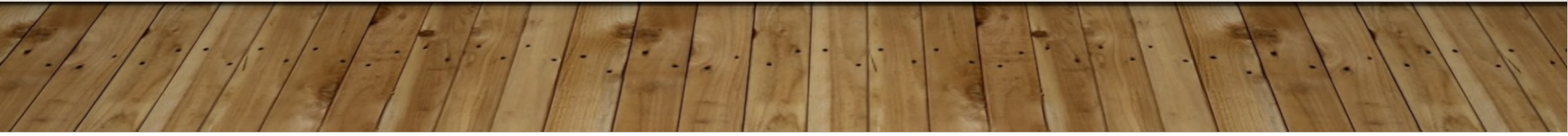
CA.VIRAV DEDHIA



INDEX

- What is transfer pricing & history
- Why is the Transfer Pricing Law in India needed
- Sections in Income Tax and its rules
- How Law has evolved in India over the years
- Latest developments – including safe harbor rules
- Audit Form 3CEB
- Guidance Note on TP by ICAI

WHAT IS TRANSFER PRICING



EXERCISE – I , A LAYMAN PERSPECTIVE



EXERCISE - I , A LAYMAN PERSPECTIVE



WHAT DETERMINES PRICING

Risk of breakdown

Impatience

Haggling costs

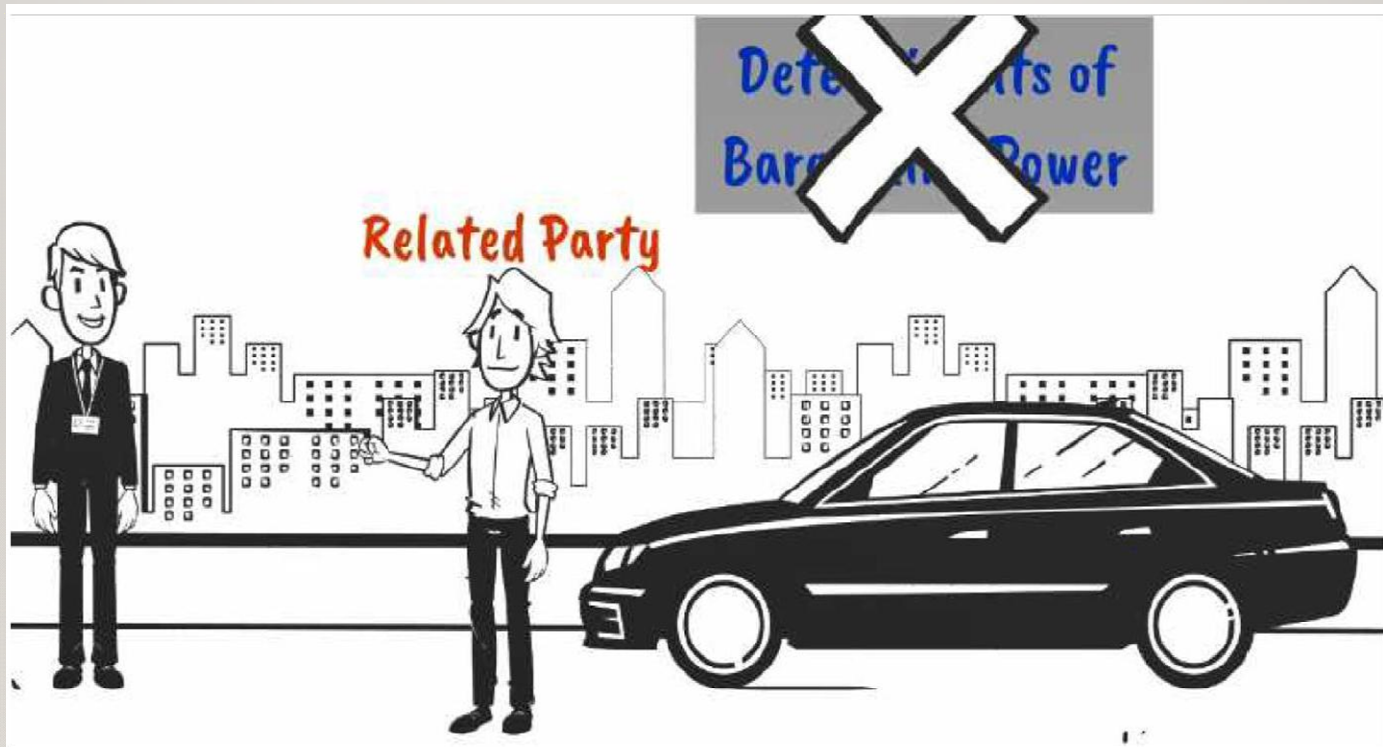
Degree of Information

Options available



Determinants of Bargaining power

WHAT DETERMINES PRICING

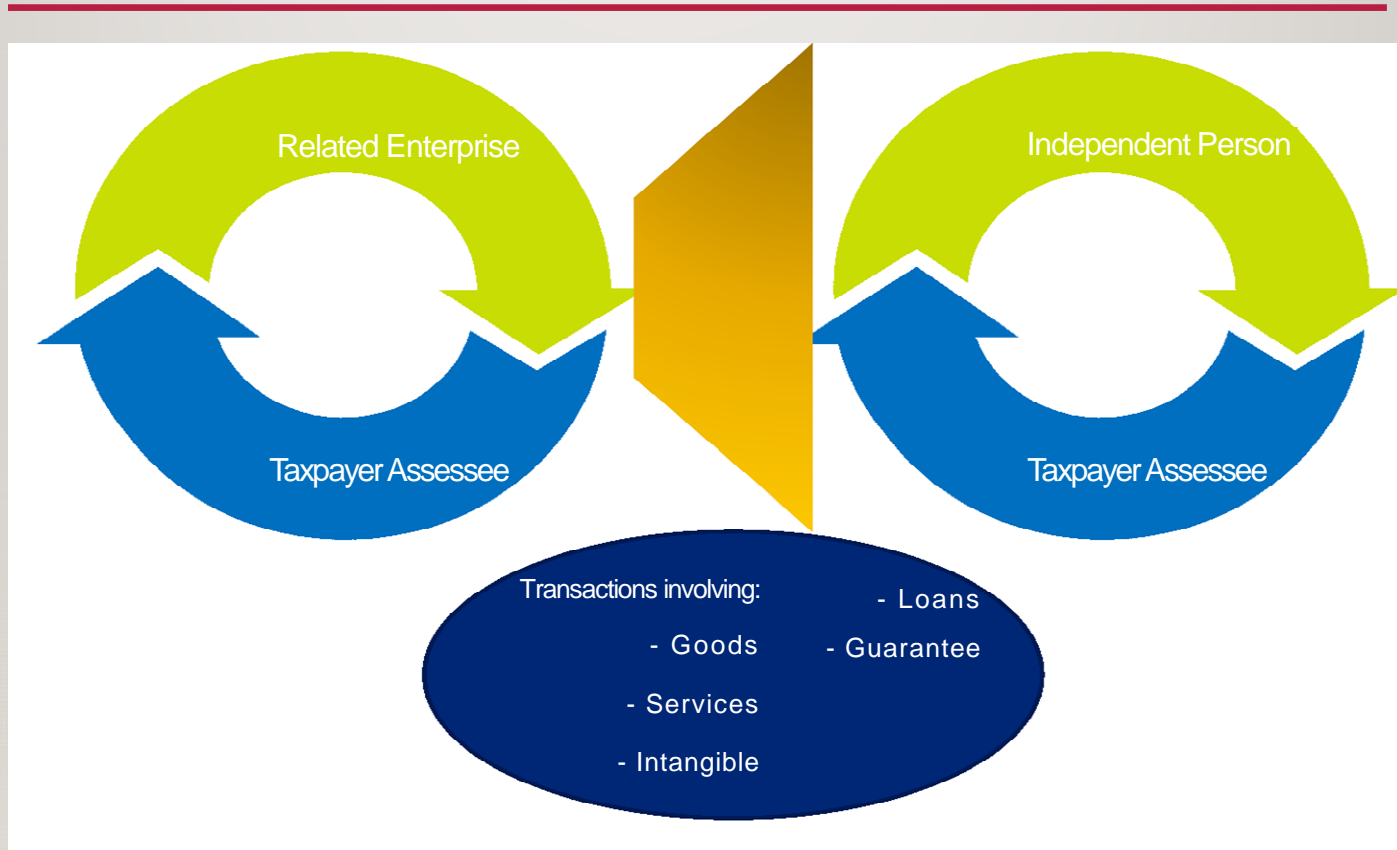


EXERCISE – 2, A CHARTERED ACCOUNTANT’S PERSPECTIVE

Scenario : 1			
Particulars	India	Singapore	Remarks
Selling Price of India / Singapore	1600	1300	Total
Purchase cost of goods	1300	1200	tax
Selling cost in India	100	-	amount
Profit	200	100	for the
Tax rate	30%	15%	Group
Tax amount	60	15	= 75

Scenario : 2			
Particulars	India	Singapore	Remarks
Selling Price of India / Singapore	1600	1400	Total
Purchase cost of goods	1400	1200	tax
Selling cost in India	100	-	amount
Profit	100	200	for the
Tax rate	30%	15%	Group
Tax amount	30	30	= 60

WHAT IS TRANSFER PRICING



EXERCISE – 3 , DEEMED TRANSACTION

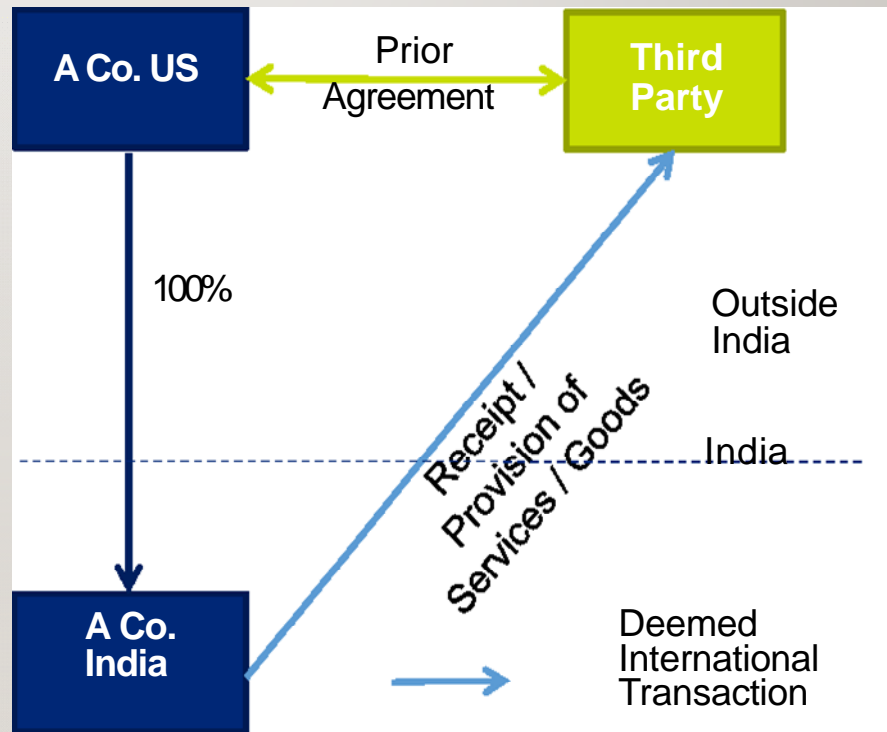
Provisions and Interpretation when third party outside India:

Transaction with a person **other than an AE** shall be deemed to be a transaction entered into between two AEs if

- A **prior agreement** exists between the AE and third party

Or

- Terms of the transaction are **determined** in substance **by the AE** and third party



EXERCISE – 3, DEEMED TRANSACTION

Provisions and Interpretation when third party anywhere – India or Globe:

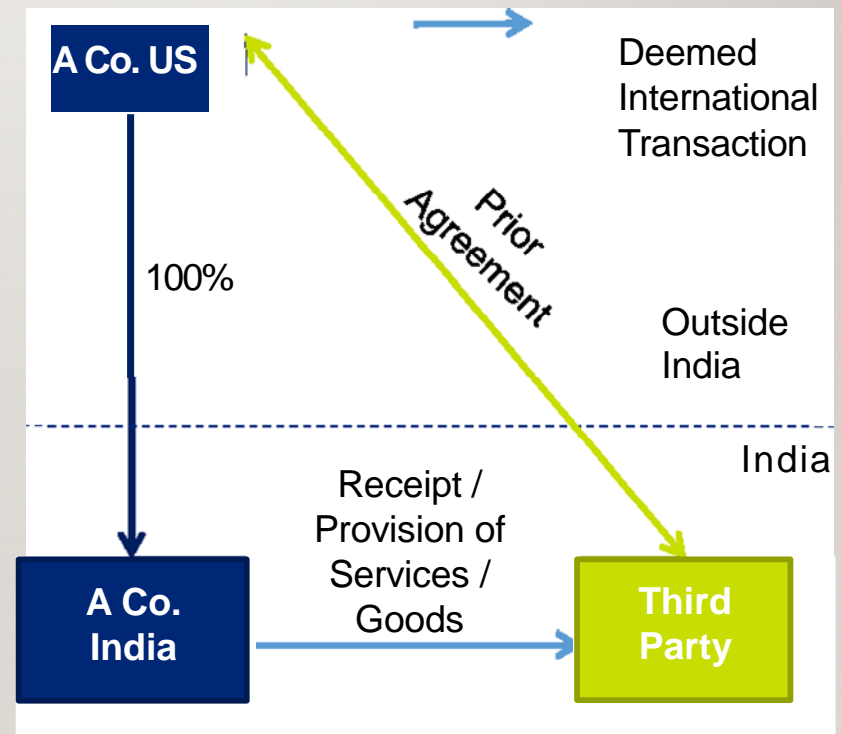
Transaction with a person other than an AE shall be deemed to be an international transaction entered into between two AEs if

- A prior agreement exists between the AE and third party

Or

- Terms of the transaction are determined in substance by the AE and third party

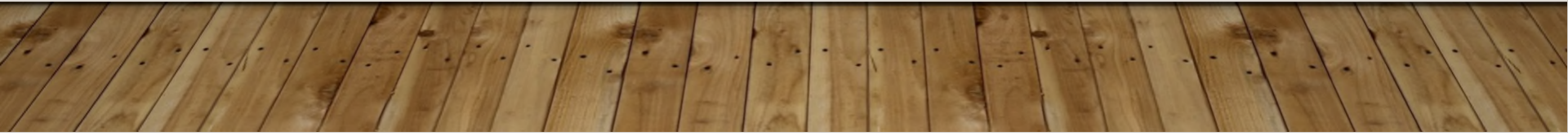
Irrespective of whether the third party is resident or not



WHAT IS TRANSFER PRICING

- Complex issue requiring knowledge of multiple disciplines:
 - Taxation
 - Accounting
 - Economic
 - Legal
 - Statistical

HISTORY OF TRANSFER PRICING



HISTORY OF TRANSFER PRICING

Transfer pricing provisions were introduced in India vide Finance Act 2001



2001-2005

2005-2008



TP audits commenced in India

High pitched TP scrutiny undertaken by tax authorities



2009-2012

2013-2016



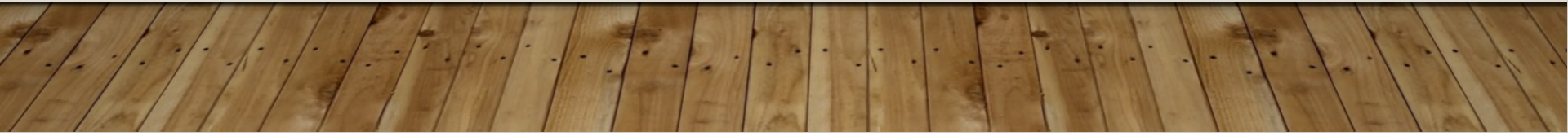
Tax payers resorted to several dispute resolution mechanism

Global tax revolution: BEPS Era!!



2017 onwards

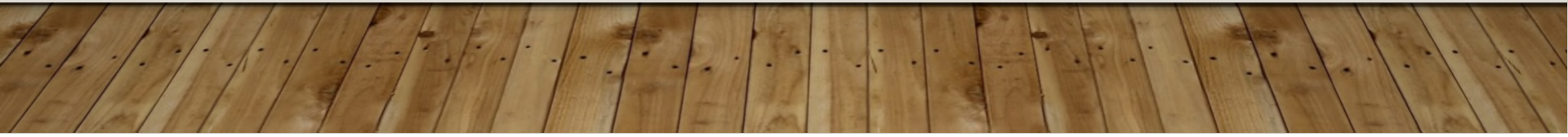
WHY IS TRANSFER PRICING LAW NEEDED IN INDIA



WHY IS TRANSFER PRICING LAW NEEDED IN INDIA

- 60% of international trade is carried on with AEs
- Prevent erosion of Government's tax base
- To counter the effect of transfer of profits, many developing and developed countries introduced Transfer Pricing Regulations
- Increase burden of proof on taxpayers
- Unwarranted transfer pricing adjustment by the Revenue while computing tax liability

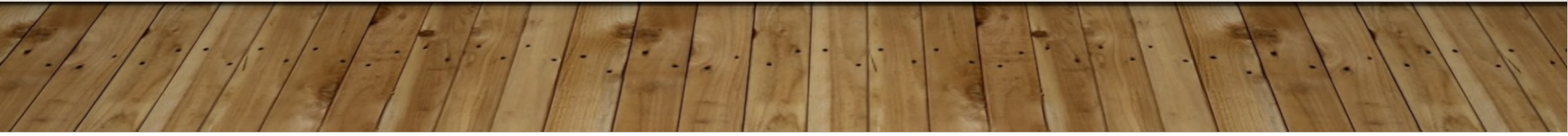
INDIAN PROVISIONS – ACT & RULES



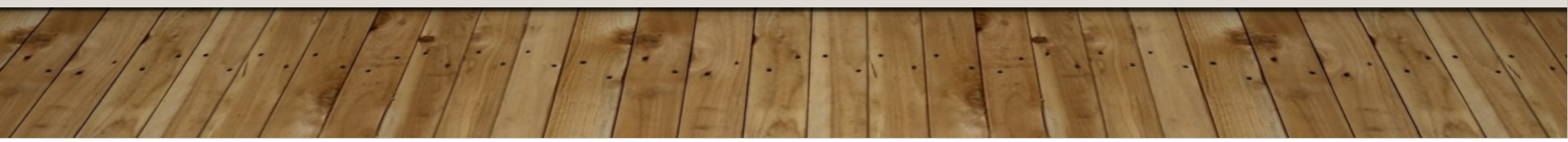
RELEVANT SECTIONS IN INCOME-TAX ACT

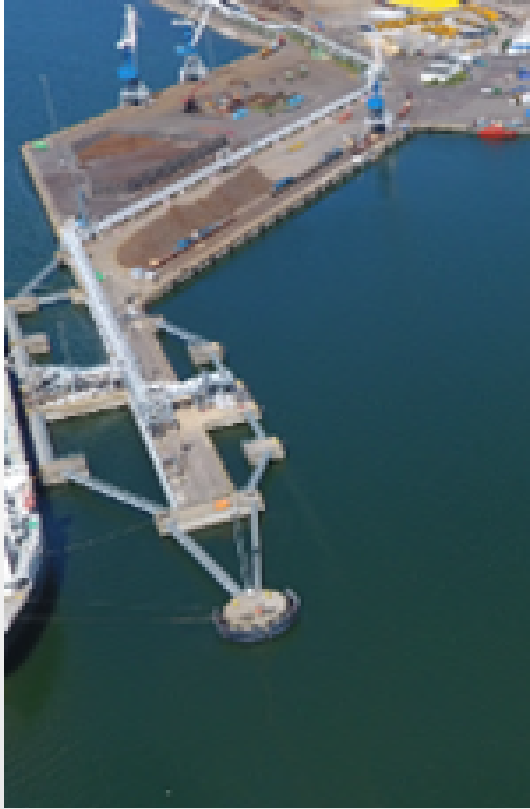
Section & Rules Provisions	
92	Computation of income having regard to ALP
92A	Meaning of Associated Enterprise
92B	Meaning of International transaction
92BA	Meaning of specified domestic transactions
92C (1) (Rule 10B, 10C)	Methods of computation of ALP *Rule 10AB – Any other method for determination of ALP
92CA	Reference to Transfer Pricing Officer (TPO)
92CB	Safe harbour rules
92CC	Advance Pricing agreement
92CD	Effect of advance pricing agreement
92D (Rule 10D)	Maintenance of information and documents by persons entering into an international transaction or specified domestic transaction
92E (Rule 10E, Form 3CEB)	Accountant's Report entering into an international transaction or specified domestic transaction
92F (Rule 10A)	Definitions: Accountant, ALP, Enterprise, PE, Specified date, Transaction *

HOW HAS LAW EVOLVED IN INDIA



EVOLUTION OF LAW IN INDIA

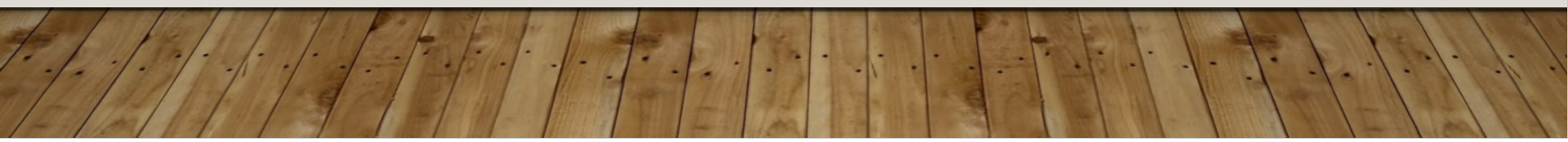
- **2001** – detailed framework for transfer pricing introduced in India
 - **2009** – formation of **Dispute Resolution Panel (DRP)**
 - **2012** – **APA program** introduced in India
 - **2013** – **Safe Harbour Rules (SHR)** announced
 - **2014** – definition of '**deemed international transaction**' amended to expressly include domestic third-party transactions
 - **2016** – revised internal circular for reference of cases for transfer pricing scrutiny
 - **2017** – **secondary adjustments** brought in to remove the imbalance between cash profit and actual profit as a result of transfer pricing adjustments
 - **2017** – revised safe harbor rates for **IT/ IT enabled Services (ITeS)** transactions and **SHR** introduced for Low value added Intra Group Services (IGS)
 - **2015** – computation of Arm's Length Price (ALP) streamlined:
 - Introduction of **range concept**
 - Use of **multiple year data**
 - **2017** - introduction of **Country-by-Country (CbC) reporting and Master File** requirements
 - **2017** – introduction of **interest deduction limitations**
- 



SAFE HARBOUR RULES

SAFE HARBOUR PROVISIONS

Benefits of safe harbour:

- Brings certainty
 - Advance information about the range of profits
 - Elimination of the possibility of litigation
 - Automatic approvals and self-assessment procedures
 - Ease in compliance
 - Reduction in compliance cost
- 

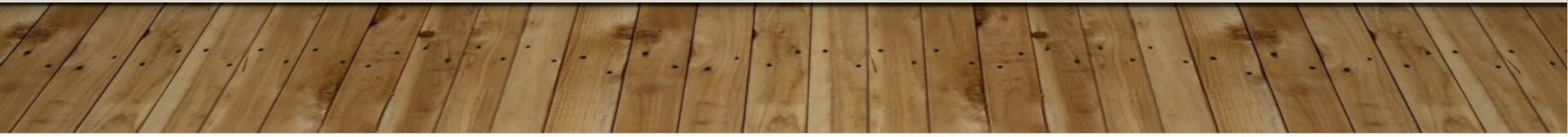
SAFE HARBOUR PROVISIONS

Major transactions covered*:

- Software development services
- Information technology enabled services
- Knowledge process outsourcing services
- Intra-group loans
- Corporate guarantee
- Contract research & development
- Core and non-core auto components

**Rule 10TD of Income-tax Rules, 1962*

ACCOUNTANT'S REPORT – FORM 3CEB



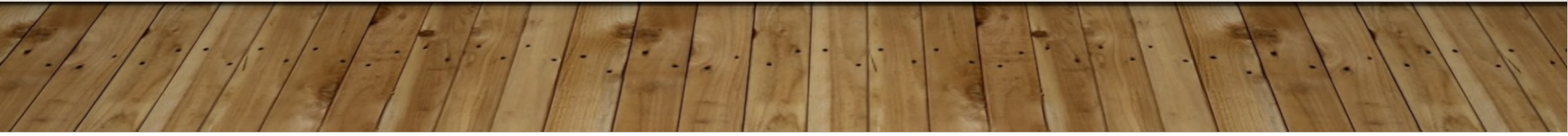
ACCOUNTANT'S REPORT IN FORM 3CEB

- To be obtained by every person entering into an international transaction and specified domestic transaction
- To be filed by the due date for filing return of income (e-filing mandatory)
- Opinion whether prescribed documents have been maintained the particulars in the report are “true and correct”
- Verification can involve:
 - Related party ledgers extracts
 - Related party Schedule under AS-18
 - Sample Invoices / Vouchers / Debit Notes / Credit Notes
 - Relevant intra-group agreements
 - Information on comparability

ACCOUNTANT'S REPORT IN FORM 3CEB

- **Reconcile transactions** in Form No. 3CEB with audited accounts (related party disclosure, notes to accounts)
- Identify transactions with **deemed associated enterprises**
- Transaction not having effect on profits, income, losses and assets should it be reported by way of note or disclosed as an international transaction
- To identify **unreported transactions** e.g. Guarantees given on behalf of subsidiaries, interest free loan, loan taken and repaid in the same year, etc.
- **Reimbursement** of expenses – Kindy check whether any **markup** element is involved
- **Interest on receivables** – Kindly analyze the company's policy. Receivables outstanding beyond a stipulated period of time can be regarded as loan advanced to the AE
- **Management Representation Letter** and Appendices thereto
- Business restructuring disclosure
- DSC of client needs to be registered

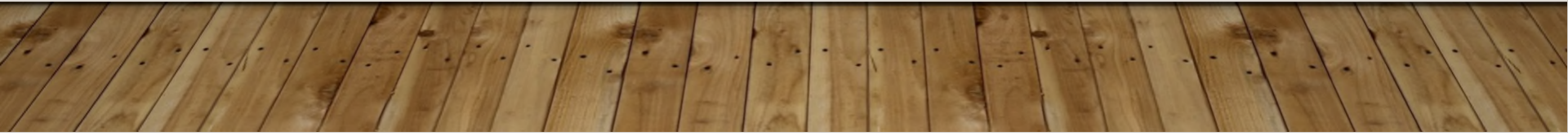
GUIDANCE NOTE BY ICAI



GUIDANCE NOTE BY ICAI

- Updated on regular basis, last update October 2022
- Details of peculiar and usual transactions
- Methods to be used, benchmarking exercise to be conducted, arm's length price determination
- Sample Notes that can be used while reporting transaction in Form 3CEB
- Guidance on Form 3CEB by Foreign Entities – Flip side

PENALTIES



PENALTIES

Sr. No	Section	Nature	Penalty
TP report			
1	271(1) (c)	Penalty for concealing particulars of income or furnishing inaccurate particulars of income	100% to 300% of tax sought to be evaded on account of transfer pricing adjustments made
	271AA	Penalty for failure to maintain documentation prescribed under Section 92D of the Act, failure to report a transaction, or maintaining or furnishing incorrect information/ document	2% of the value of international transaction or SDT
	271BA	Penalty for failure to furnish Accountant's Report in Form 3CEB as required under Section 92E	INR 100,000
	271G	Penalty for failure to furnish documentation prescribed under Section 92D of the Act	2% of the value of AE transaction

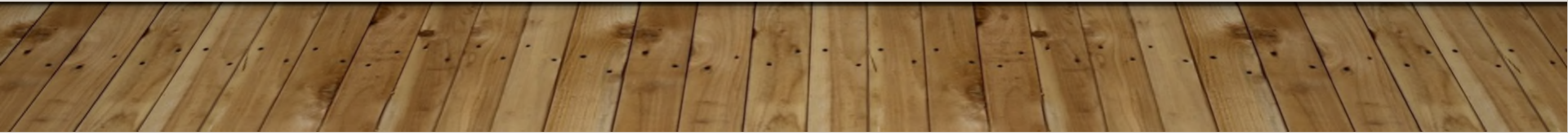
PENALTIES

Sr. No	Particulars	Default	Penalty
CbC report			
2	Non-furnishing of CbC report by Indian parent or the alternate reporting entity resident in India	Each day up to a month from due date	INR 5,000 per day
		Beyond a month from due date	INR 15,000 per day for period exceeding a month
		Continuing default beyond service of penalty order	INR 50,000 per day from date of service of penalty order
		Beyond expiry of the period for furnishing information	INR 5,000 per day
	Non-submission of information	Continuing default beyond service of penalty order	INR 50,000 per day from date of service of penalty order

PENALTIES

Sr. No	Particulars	Default	Penalty
CbC report			
3.	Provision of inaccurate information in CbC report	Knowledge of inaccuracy at time of furnishing the report but fails to inform the prescribed authority	INR 500,000
		Inaccuracy discovered after filing and fails to inform and furnish correct report within fifteen days of such discovery	
		Furnishing of inaccurate information or document in response to notice issued	
Master File			
1.	Non-furnishing of information and documentation	Failure to furnish the information and document to the prescribed authority	INR 500,000

QUESTIONS



THANK YOU

