

A photograph of two men in business suits shaking hands in a modern office hallway. The scene is silhouetted against a bright window, with a blurred background of a cityscape. The image is framed by a dark border.

Transfer Pricing Audit and Issuance of Form 3CEB

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10 October 2015

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A photograph of four business professionals in a meeting, overlaid with a large blue and red graphic. The graphic consists of several overlapping geometric shapes, including a large blue trapezoid on the right and a red trapezoid in the center. The text is centered within the red shape.

**Scheme of Transfer Pricing
Regulations in India**

Brief Overview of Transfer Pricing Regulations in India

Relevant Provisions under Section 92

Computation of Income from
International Transaction / Specified Domestic Transaction having regard to **Arm's Length Price**

With



Associated Enterprises

Section 92A

International Transaction

Section 92B

Specified Domestic Transaction

Section 92BA

Arm's Length Price

Section 92C + Rule 10B/ 10C

Documentation and Certificate

Section 92D and Section 92E

Scrutiny



Power of AO and TPO

Section 92CA

Dispute Resolution Panel

Section 144C

Penalties

Section 271 (1) (c), 271AA, 271BA, 271G

...Scheme of Transfer Pricing Regulations in India

Other relevant provisions

Advance Pricing Agreements

Section 92CC and CD+ Rules 10F to 10T

Safe Harbour

Section 92CB + Rules 10TA to 10TG

A photograph of four business professionals in a meeting. A man in a suit is speaking and gesturing with his hands, while three others (two women and one man) listen attentively. The scene is overlaid with a large blue and red graphic design. The text is centered in a dark red box.

**Section 92E of Income-tax Act, 1961
Accountants Report**

Section 92E of Income-tax Act, 1961 (the Act)

Traditionally Form No. 3CEB entailed covering of International transactions with Associated Enterprises

However Domestic Transfer Pricing was made applicable from assessment year 2013 -14 whereby the existing Form No. 3CEB was revised to include 'Part C' covering 'clauses 21 to 25' to capture data relating to specified domestic transactions (SDT)

With the advent of the same, the term 'related party' is also used along with the traditional term Associated Enterprise for addressing specified domestic transactions

Section 92E

- Every person
- who has entered into an international transaction or SDT during a previous year
- shall obtain a report from an accountant and furnish such report
- on or before the specified date in the prescribed form
- duly signed and verified in the prescribed manner by such accountant
- and setting forth such particulars as may be prescribed

Rule 10E

The report from an accountant required to be furnished under section 92E by every person who has entered into an international transaction or SDT during a previous year, shall be in Form No. 3CEB and shall be verified in the manner indicated therein

Accountants Report

Summary of Section 92E read with Rule 10E

- A person means every person as defined u/s 2(31) of the Act
- International Transaction – Section 92B & 92BA of the Act
- Report - Form No. 3CEB [Rule 10E]
- Accountant - Explanation to Section 288(2) of the Act
- Specified date - Section 92F(iv) - Explanation 2 to Section 139(1)
- Obtain a report and furnish – Penalty of Rs. 100,000 (Section 271BA)
- No monetary limit for furnishing the report

Form no. 3CEB consist of the following parts:

- Report
- Annexure to the Report
- Appendices to the Annexure (wherever required)

Accountants Report

- Obtained by every person entering into an international transaction and specified domestic transactions
- 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”**
- Different from concept of **“true and fair”** under audit
- Inputs:
 - Related party ledgers extracts
 - Related party Schedule under AS-18
 - Sample Invoices/ Vouchers / DN / CN
 - Relevant intra-group agreements
 - CUP/ Internal comparison info

Form No. 3CEB

[See rule 10E]

Report from an accountant to be furnished under section 92E relating to international transaction(s)

1. We have examined the accounts and records of ENTITY NAME AND POSTAL ADDRESS - PAN No. that have been made available to us relating to the international transactions and specified domestic transactions entered into by the assessee during the previous year ending on 31st March 2015.
2. In our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transaction (s) and specified domestic transaction (s) entered into so far as appears from our examination of the records of the assessee.
3. The particulars required to be furnished under section 92E are given in the Annexure to this Form. In our opinion and to the best of our information and according to the explanations given to us, the particulars given in the Annexure are true and correct.

Place :

Date :

For A B C & Co. LLP

Chartered Accountants

Understanding the contents of Form No 3CEB

We have examined the accounts and records of ENTITY NAME AND POSTAL ADDRESS - PAN No. that have been made available to us **relating to the international transactions and specified domestic transactions** entered into by the assessee during the previous year ending on 31st March 2015

- Limits the scope of review to only “accounts & records” related to International Transactions and SDTs
- Therefore, no requirement on part of the Accountant to comment or certify on the “true and fair” view of the financial statements
- Onus placed on the taxpayer to maintain the list of accounts and records prescribed under law

In our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transaction (s) and specified domestic transaction (s) entered into so far as appears from our examination of the records of the assessee.

- Onus on accountant to examine whether the documents prescribed under Rule 10D have been maintained by the assessee
- A basic verification of the accounts, records and of the documentation maintained on a test check basis to verify whether “proper” records have been maintained and whether the information and documentation maintained is adequate and accurate needed

Understanding the contents of Form No 3CEB

The particulars required to be furnished under section 92E are given in the Annexure to this Form. In our opinion and to the best of our information and according to the explanations given to us, the particulars given in the Annexure are true and correct.

- Taxpayer to prepare the Annexure
- Accountant is supposed to verify the Annexure to ensure that particulars are **“true and correct”**
- Review restricted to information reported / certified in Form No. 3CEB
- “True and Correct” view – lays emphasis on the factual accuracy of the information provided
- Requirement is different from “True and Fair” view as required to be commented upon by a statutory auditor

***The Institute of Chartered Accountants of India has issued in August 2013 a Guidance Note on
‘Report under Section 92E of the Income-tax Act, 1961’***

Responsibility of the taxpayer

- Identify all international transactions and specified domestic transactions during the year with AEs
- Compute the ALP as per Section 92C, including:
 - *Selection of the most appropriate method to be used*
 - *Computation of the ALP*
- (A TP Study would cover the above)
- Collate, maintain information / documentation prescribed u/ sec 92D
- Furnish completed Annexure to Form No. 3CEB to Accountant

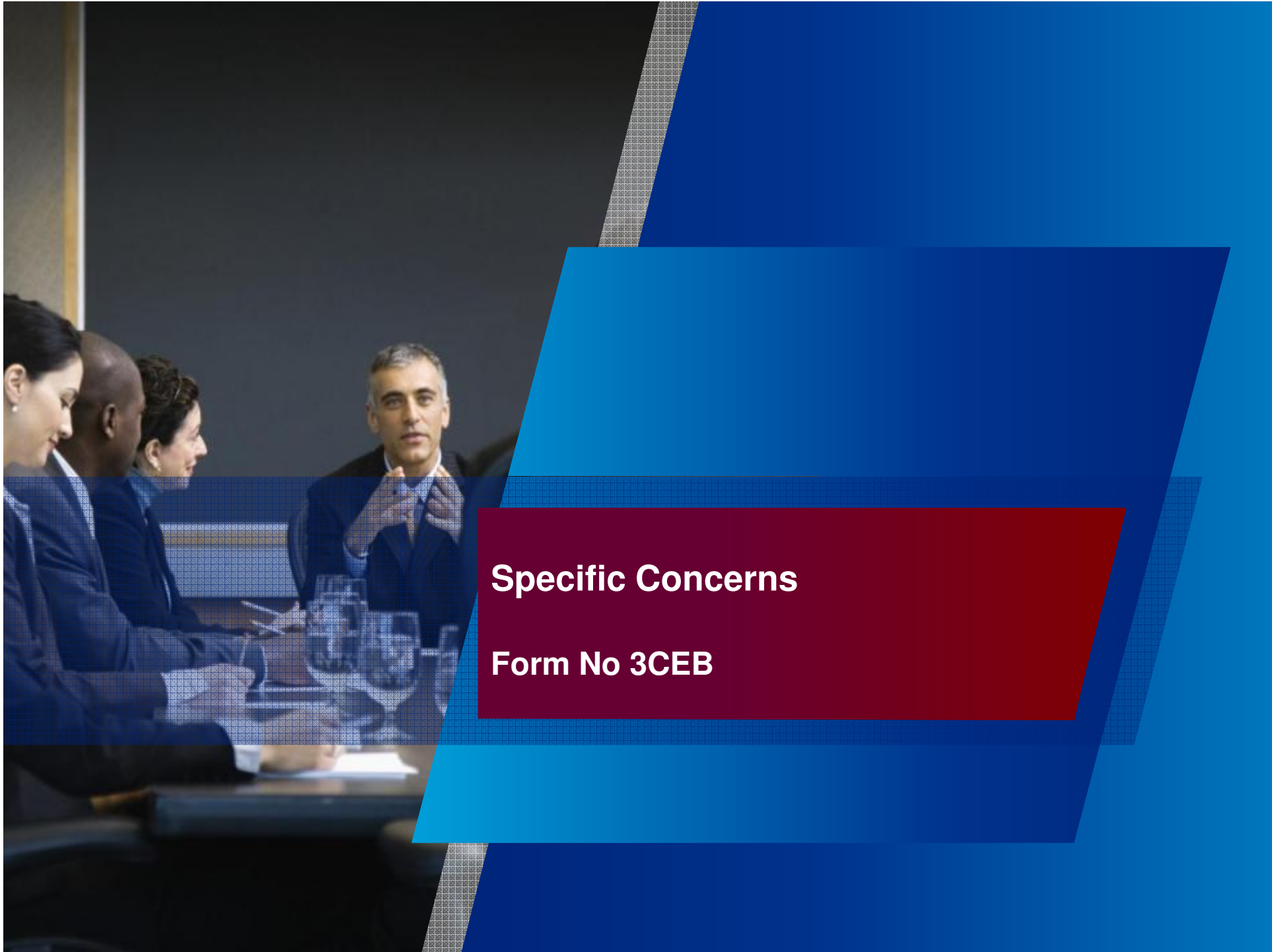
Responsibility of the Accountant

Review accuracy and completeness of information compiled by taxpayer

- Guide the taxpayer in identification of Aes, especially Deemed AEs
- Reconcile transactions in Form No.3CEB with audited accounts (related party disclosure, notes to account,)
- Test-check agreements, invoices, negotiations, correspondence, ledger accounts, etc.
- Collate documents – 100% CUP details, reimbursement / recovery details, documents evidencing the receipt of services and benefits, etc.
- Compare last year's Form 3CEB with current year's to ensure no regular international transactions is missed out
- 'Smell test' - to identify unreported transactions e.g. Guarantees given on behalf of subsidiaries, interest free loan, loan taken and repaid in the same year, etc.
- Interview client to check if 'Deemed International Transaction' exists

Certify information contained in Form 3CEB is 'true and correct'

- Different from concept of 'true and fair' under statutory audit



Specific Concerns

Form No 3CEB

Specific Concerns - Form No 3CEB

- Whether Form No 3CEB needs to be filed
 - By a Foreign entity
 - Where a person earns income not chargeable to tax under the provisions of the Act
 - Where a person earns income which is not taxable in India on account of provisions of the relevant Double Taxation Avoidance Agreement between India and the relevant country
 - Where a person enters into a transaction / arrangement wherein no income arises to such person
- Valuation of intangible assets and certification on the appropriateness of the same by the Accountant



Specific Concerns - Form No 3CEB

Corporate Guarantee

Where no guarantee fees charged, note needs to be provided in Form No 3CEB

Where self adjustment is made, no place in the online Form No 3CEB for such disclosure

Business Restructuring

No place in the Form No 3CEB for disclosure of value of restructuring

Significant terms of restructuring needs to be disclosed

Deemed International Transactions

Covers cases where independent third party interposed by two AEs to remain out of TP ambit

Amendment in Section 92B(2) of the Act by Finance Bill 2014

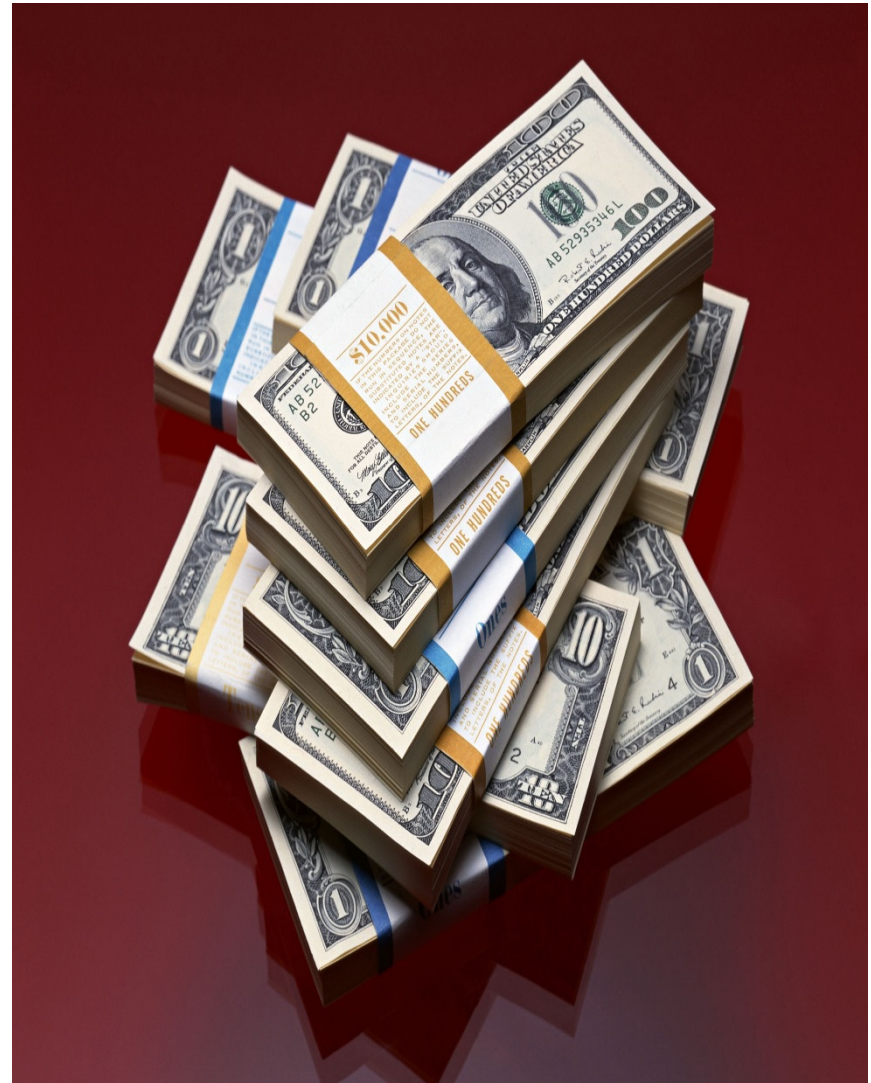
A photograph of four business professionals in a meeting, overlaid with a blue and red geometric graphic. The text 'Penalty leviabile' is centered in a white box on the red part of the graphic.

Penalty leviabile

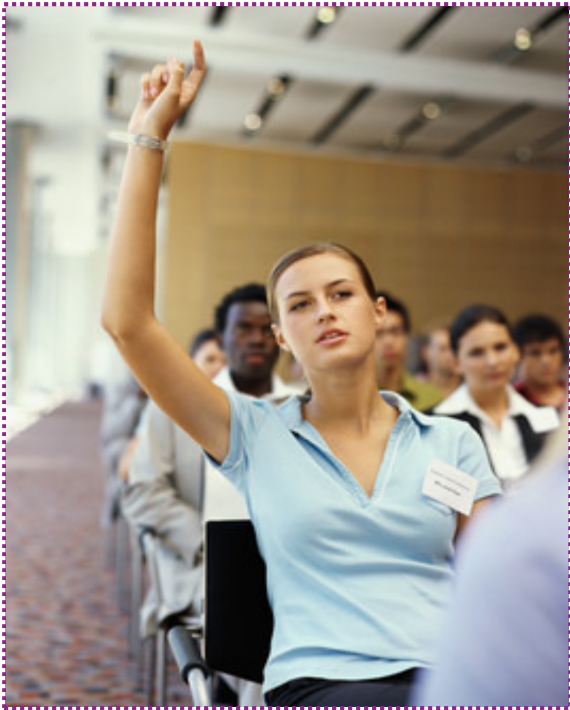
Penalties: Section 271AA of the Act

Section 271AA of the Act
'any person' fails to keep and maintain any
such
information and document as required by
section 92D (1) and (2) or fails to
report any international transaction or
maintains or furnishes any incorrect
information or documents

- Stringent penal provisions in force
- Imperative for taxpayers to disclose all international / specified domestic transactions
- Form No 3CEB required to be filed even if international transactions do not exceed INR 1 crore



Q&A



Questions

&

Answers



Thank You

Presenter Details:

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Director

Global Transfer Pricing
Services
BSR & Co. LLP

