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# TRANSFER PRICING

## Summarized

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The following are the topics discussed in this document.

## Objective:

The intent of this document is to offer a bird's-eye overview of Transfer Pricing regulations in India. It is not a white paper but offers a first-hand overview of everything one needs to know initially.

## Introduction:

Transfer Pricing (abbreviated as TP) Regulations were introduced in India in 2001. In India, domestic as well as international transactions are subject to transfer pricing regulations.

## Threshold:

There are different thresholds involved for different purposes. The critical ones are given below:

i. For domestic transactions between associated entities, TP documentation is mandatory only if the aggregate value exceeds INR 200 million.
ii. For international transactions between associated entities, TP documentation is mandatory only if the aggregate value exceeds INR 10 million.

**It is important to note that irrespective of the threshold, a report must be obtained from an independent chartered accountant in Form No. 3CEB.**

## Methods:

The Indian TP Regulations have prescribed 6 methods for the determination of an arm's length price:

1. Comparable uncontrolled price method
2. Resale price method
3. Cost-plus method
4. Profit split method
5. Transactional net margin method
6. Other method

The law does not prescribe one method over the other, and to that extent, neither is superior to the other. It is the circumstances and facts that a Chartered Accountant has to consider when selecting one.

## Penalties:

- Failure to maintain specified documents, failure to report transactions in Form no. 3CEB – 2% of the value of the international/domestic transaction.
- Failure for filing of Form no. 3CEB – INR 0.1 million
- Underreporting of income – 50% of tax amount
- Misreporting of income - 200% of tax amount
- Concealment or furnishing inadequate particulars - 100% to 300% of the tax evaded
- Failure to furnish master file – INR 0.5 million

## Self-declaration:

The Indian TP regulations do not permit any entity to conduct a *suo moto* assessment. Every business involved in dealing with related parties (associated entities) must appoint an independent chartered accountant who will issue a certificate - Form 3CEB. Before issuing this certificate, the chartered accountant shall have to peruse the books of accounts, understand the nature of transactions, and determine if they are conducted at arm's length by using one or more of the prescribed methods.

*Closing comments from the Author:* The first step to verify is to identify the relationship between the two involved entities. Once the entities are established as "associated," then check the quantum. In many cases, the aggregate value of transactions involved is below the threshold, in which case the requirement to conduct exhaustive TP documentation is not mandatory; Form No. 3CEB by itself can do the job. For foreign companies having subsidiaries in India or vice-versa, it is advisable to introspect on the transfer pricing regulations before initiating transactions. Sufficient brainstorming must be done on the current and likely future affairs of the company so that appropriate stands can be taken from day one and the said could be documented as well.

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