



Transfer Pricing in India

Searching for stability in uncertain times



India

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Addressing your needs

Today multinationals are operating in an environment of unprecedented complexity. With the escalating volume and varied nature of intercompany transactions and transfer pricing regimes, it comes as no surprise that transfer pricing is perceived as the most significant issue being faced by global businesses. Tax authorities worldwide are attacking transfer pricing methodologies with increasing frequency. India, being no exception to this phenomenon, has in fact seen a surge of transfer pricing audits, both in terms of the percentage of cases suffering transfer pricing adjustments as well as the quantum of adjustments. As a critical issue, transfer pricing, therefore, requires an effective solution.

With a view to reduce the number of transfer pricing audits and to address the numerous cases in dispute, Advance Pricing Agreement (APA) provisions and safe harbor rules have been introduced in India. While this move by the Finance Ministry is very positive and is a significant step towards having a stable and non-adversarial tax regime, taxpayers are likely to encounter some additional burden with the application of transfer pricing provisions to certain specified domestic transactions (SDT) and recent focus of the tax authorities on issues pertaining to trade and marketing intangibles. Extension of transfer pricing provisions to SDT will require taxpayers to evaluate their domestic intra-group dealings (including business structures) to assess the impact of the arm's length standard on their existing pricing policies, evaluate the related implications and determine approaches to manage risks and ensure compliance. In addition, with the introduction of the arm's length concept for related party transactions in the Companies Act, 2013, companies will have to assess and evaluate the impact of these provisions on their compliance and reporting obligations under the provisions of company law.

At Deloitte, we have a team of tax/transfer pricing professionals who can provide tailored advice and assist you in navigating through the 'transfer pricing storm'.

Dispute resolution:

Advance Pricing Agreement (APA)

Transfer pricing presents many tax, legal and operational challenges. To many taxpayers the magnitude of uncertainties – including the potential commitment of management time to successfully defend a transfer pricing examination – is not an acceptable business risk. APAs allow taxpayers to proactively achieve greater certainty via advance agreements on their transfer pricing methods with one or more tax authorities.

Our field experience suggests that the tax authorities (APA team) are open to fair negotiations and the APA program represents a fundamental shift in the relationship between taxpayers and tax authorities in India. We believe that this change is likely to have a far reaching impact well beyond the narrow confines of individual APAs.

We can help develop appropriate strategies and assist companies in negotiating with the tax authorities. Our team consists of professionals having relevant international experience in assisting companies formulate and negotiate APAs. Along with our network offices, we have a proven track record of negotiating APAs in various jurisdictions. We closely work with the Revenue APA team in India and our experienced senior personnel (including ex-Revenue officials) constantly interact with the Government on strategic matters.

Dispute resolution

Safe harbour provisions

The subject of transfer pricing has always been a contentious issue since its introduction in the year 2001. Being a highly fact specific subject, there cannot be one answer to the primary question: “What is the arm’s length price?” For over a decade, this subjectivity has led to innumerable disputes consuming resources of both the taxpayers and tax administration, apart from impacting investors’ sentiments of the tax environment in India.

In this context, the introduction of safe harbour rules is a step in the right direction to reduce litigation and bring certainty for both the taxpayer and tax administration. The effective implementation of safe harbour rules should help tax administration in focusing their limited resources on risk based high value assessments, providing certainty to taxpayers and ensuring a steady flow of revenue to the Government. Consequently, the safe harbour rules should be used as an effective mechanism by designing the same in a manner that transfer pricing disputes are minimised, the confidence of investors is restored and India’s competitive advantage is maintained.

It is imperative for taxpayers to evaluate the impact of these rules on their inter-company pricing arrangements and consider appropriate options for transfer pricing risk management. Our team can assist you in developing efficient and accurate processes for evaluating and documenting the impact of safe harbour provisions and provide a best case recommendation to ensure statutory compliance with India’s income tax laws.

Dispute resolution

Update on mutual agreement procedure/ competent authority (MAP/CA) process

Missteps that affect the course or outcome of a transfer pricing audit often occur in responses to the initial tax authority enquiries and interviews. The most effective and efficient defenses include early involvement of an experienced global team that has successfully resolved examinations at all possible levels of the process, from proposed adjustments by first level officers, Advance Pricing Agreement, administrative appeals, litigation and the MAP/CA process.

In the month of September, there were quite a few meetings by Indian CA with counterparts in US, UK and Japan – resolutions were reached in few cases on TP disputes. There are also positive indications that the negotiations with US will also re-commence to clear off the backlog of about 200 MAP cases after the recent visit of high level US IRS officials to India.

Deloitte takes an integrated approach to resolving transfer pricing disputes in the MAP/CA process. Our team includes transfer pricing MAP/CA specialists from both countries teamed with professionals who specialize in local country requirements. At Deloitte, we provide a holistic approach directed towards finding a mutually acceptable methodology and thus achieve an appropriate resolution to the controversy.

Specified Domestic Transactions (SDTs)

Transfer pricing regulations introduced in India in 2001, till very recently covered only cross border related party transactions. The Finance Act, 2012 however, has extended the scope of transfer pricing to cover certain domestic transactions (payments to related parties and tax holiday) with related parties within India, defined as 'Specified Domestic Transactions'. This will principally have impact in two ways. To begin with, the pricing of domestic transactions would need to comply with the arm's length standard by application of one of the prescribed methods. In addition, there will be compliance and documentation obligations for such specified domestic transactions.

We can help companies in evaluating their domestic transactions and/or business structures to assess the impact of application of transfer pricing provisions on their existing intra-group dealings, assess the implications and determine approaches to manage risk and ensure compliance.

Managing intangibles

As business and commerce become more globalized and access to intangible assets becomes relatively easy, intra group transactions involving intangible assets are on the rise. A natural consequence of this trend is an ever stricter scrutiny by the tax authorities of such transactions – recent trends have shown that trade and marketing intangibles are now the focused area of tax audit. Further, the removal of regulatory caps in India on repatriation of license fees payable for use of intangible assets has also drawn the attention of tax authorities.

With the scope of “intangibles” getting significantly expanded under transfer pricing regulations and at the same time, in the absence of any specific guidance for determination of ownership of intangibles as well as approaches for valuation of intangibles, the issues pertaining to intangibles are likely to become a focus area of tax authorities. Further, the OECD’s revised discussion draft on the transfer pricing aspects of intangibles is more focused and contains guidance on certain critical aspects such as location savings, human capital etc. which are important from India’s perspective. In addition, intangibles is a specific action area listed in the OECD’s Base Erosion and Profit Shifting (BEPS) action plan wherein the focus will be on developing rules to prevent BEPS by moving intangibles amongst group entities. The above clearly indicates that transfer pricing of intangibles is high on the agendas of the tax authorities and that they will be looking for increased transparency from taxpayers.

Deloitte India’s experts with significant experience in the area of intangible studies can help you in delivering customized solutions. We help businesses to successfully measure and realize the value of their assets and liabilities in today’s ever changing business landscape and rigorous regulatory environment, by providing independent, reasoned and well-supported valuations.

Related party transactions and company law- Interplay

The Companies Act 2013 seeks to introduce the arm's length concept for related party transactions, similar to one embodied in the Indian transfer pricing regulations. With the introduction of this concept, companies need to assess whether their related party transactions comply with the arm's length concept and evaluate their compliance and reporting obligations under the Companies Act. As a consequence, related party transactions covered under the provisions of the Companies Act will now call for benchmarking and convergence with the India transfer pricing regulations.

We can assist companies in assessing whether their related party transactions comply with the Indian transfer pricing regulations along with the justification for entering into such transactions and ensuring compliance with the associated reporting obligations.

The Deloitte difference



Deloitte India
Transfer Pricing is
ranked as Tier 1 firm
in the World Transfer
Pricing 2014 rankings
by International
Tax Review.

We employ a highly experienced team that uses developed processes to deliver a robust and defensible product, at both an industry and a transaction level.

Our team consists of ex-Revenue officials, seasoned economists, tax professional and management graduates dedicated to delivering transfer pricing solutions to clients. Our resources have worked in various network offices across the globe and bring a wealth of experience in global best practices.

At Deloitte, innovation and creativity are our hallmarks, and we pride ourselves in providing the best transfer pricing services to our clients. With so much at stake, why settle for less than the best?

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