

# International Taxation and Transfer Pricing: Controversies and Compliance

Presented at ICAI Thrissur

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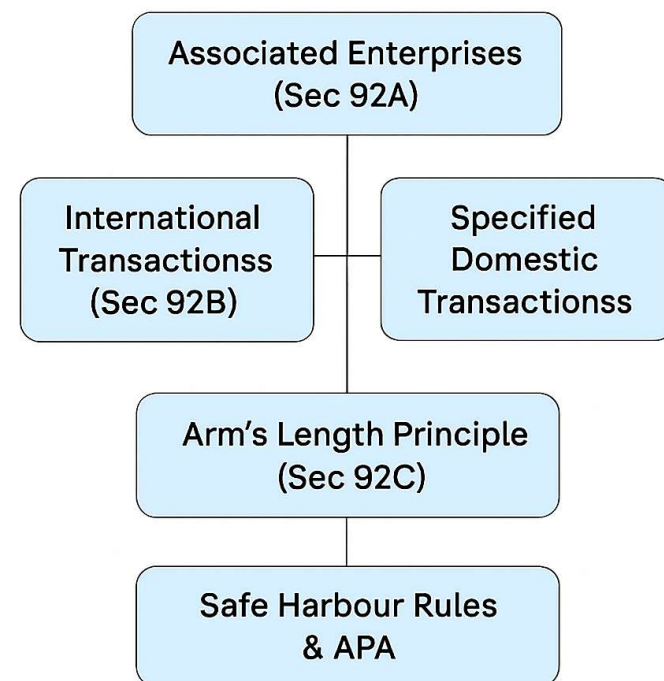


# Key Areas in Transfer Pricing

- Associated Enterprises (Sec 92A)
- International Transactions (Sec 92B)
- Specified Domestic Transactions (Sec 92BA)
- Arm's Length Principle (Sec 92C)
- ALP Methods (Rule 10B)
- Safe Harbour & APA

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## Key Areas in Transfer Pricing



# Global Challenges in International Taxation

- Complexities of cross-border tax regulations
- Disputes arising from differing national tax laws
- Impact of digital economy on tax frameworks
- Efforts for international tax harmonization
- Role of OECD and BEPS initiatives

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# Transfer Pricing Fundamentals and Disputes

- Definition and purpose of transfer pricing
- Common methods for setting transfer prices
- Sources of transfer pricing disputes
- Importance of arm's length principle
- Compliance challenges for multinational companies

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# How to Approach a TP Assignment

- Understand Business Model
- FAR Analysis
- Select ALP Method
- Benchmarking Study
- Risk Assessment

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# OECD Framework & Transfer Pricing Guidelines

- OECD's Role: Sets global standards for fair taxation of cross-border transactions
- TP Guidelines (2017 Update):
  - Arm's Length Principle
  - Comparability Analysis
  - Transfer Pricing Methods
  - Documentation Requirements

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# OECD Framework & Transfer Pricing Guidelines

India's Alignment:

- Largely follows OECD principles with local adaptations
- Recognizes OECD's five TP methods under Rule 10B

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# BEPS – Base Erosion and Profit Shifting

MNEs shifting profits to low/no-tax jurisdictions

- Aligning TP outcomes with value creation
- TP documentation (Master File, Local File, CbCR)

Tax challenges of the digital economy India's Response:

- Introduction of CbCR (Form 3CEAD)
- GAAR provisions

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# Compliance Strategies and Best Practices

- Maintaining thorough documentation
- Implementing robust internal controls
- Regular audits and risk assessments
- Engaging with tax authorities proactively
- Staying updated with regulatory changes

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# Documentation to be Planned

## Three-Tiered Structure:

- Local File (Rule 10D)
- Master File (Form 3CEAA)
- CbCR (Form 3CEAD)

Need to Keep in mind

- Form 3CEB
- Agreements, invoices, benchmarking

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Form 3CEAA has two parts—Part A and Part B—with different thresholds:

✓ Part A – Mandatory for:

- Every constituent entity of an international group that has entered any international transaction, regardless of value.

✓ Part B – Mandatory if BOTH conditions are met:

1. Consolidated group revenue exceeds ₹500 crore in the preceding accounting year.
2. Either:
  - International transactions exceed ₹50 crore in the current year, or
  - Intangible-related transactions exceed ₹10 crore.

If multiple entities in India qualify, one designated entity may file on behalf of the group.

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Form 3CEAD must be filed in India if:

1. The consolidated group revenue exceeds ₹5,500 crore in the preceding accounting year.
2. The parent entity, alternate reporting entity, or constituent entity is resident in India.
3. India does not have an agreement for exchange of CbCR with the parent entity's jurisdiction.
4. There is a systemic failure in the parent's jurisdiction (e.g., failure to exchange CbCR data).

In such cases, the Indian entity must file the CbCR locally—even if it's not the ultimate parent.

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# Methods for ALP

- Comparable Uncontrolled Price method (CUP method)
- Resale Price Method (RPM)
- Cost Plus Method (CPM)
- Profit Split Method (PSM)
- Transactional Net Margin Method (TNMM)
- Other Method (OM)

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# Type of information and documents

- Enterprise-wise documents
- Transaction-specific documents
- Computation related documents

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# Selection for ALP

- Nature and class of international transactions or specified domestic transactions;
- Class or classes of AEs entering the transaction and the functions performed by them considering the assets employed or to be employed and risks assumed by such enterprises;

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# Selection for ALP

- Availability, coverage and reliability of data necessary for application of the method. For instance, data relating to transactions entered by the enterprise itself would be more reliable than the data relating to transactions entered by third parties;
- The degree of comparability existing between the international transaction or specified domestic transaction and uncontrolled transaction and between enterprises entering such transactions

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# Selection for ALP

- The extent to which reliable and accurate adjustments can be made to account for the difference between the transactions.
- The nature, the extent and reliability of assumptions required to be made in application of a method
- Intangible – Valuation Market/Income/ Cost

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# Determination on ALP

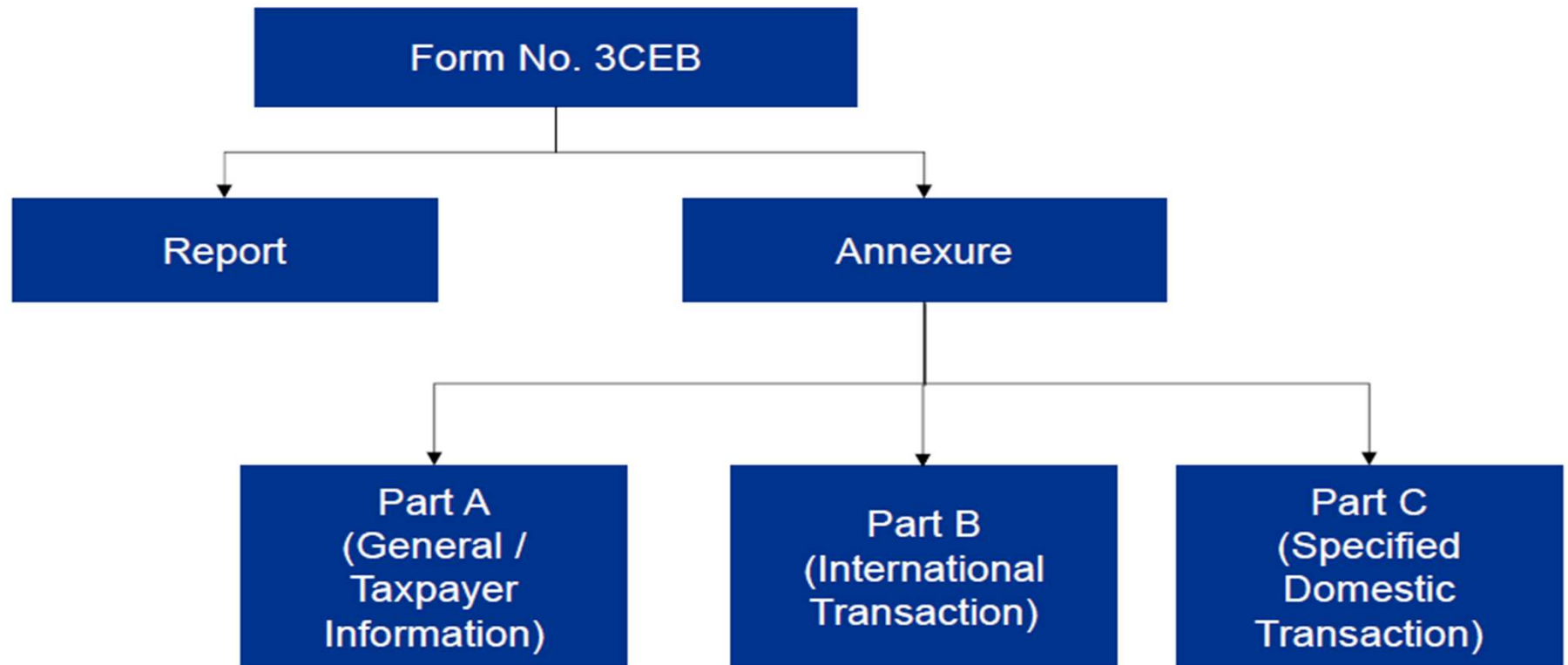
- Identify international transactions
- FAR analysis
- Characterization of the parties involved in the afore mentioned transactions and accordingly selecting the tested party
- Ascertaining the most appropriate method and determination of the arm's length price
- Multiple year data and the range concept – Not used for CUP, PSM or other methods

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# Form No. 3CEB - Contents

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# Checks & Balances for Signing Form 3CEB

- Verify disclosures
- Justify ALP method
- Maintain independence
- Clause-by-clause review



# Form No. 3CEB – Key Points

- No exemption from filing Form No. 3CEB – Even if International Transactions of INR 1
- Applies to both Residents and Non- Residents (Foreign Companies, Branches, PEs)
- Can be issued by Statutory Auditors or any other Chartered Accountant in practice satisfying independence requirements
- Audit acceptance – NOC to be obtained in case of new client
- ICAI Guidance Note (GN) on report on international transactions under Section 92E of the Act (latest version issued in October 2022)

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# Compliance with Income Tax Laws

## Key Sections:

- Sec 92 to 92F, Rule 10A–10E

## Due Dates & Penalties:

- Form 3CEB: 31<sup>st</sup> October
- Penalties: Sec 271AA, 271BA, 271G

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## Penalty provisions in relation to local transfer pricing compliances and documentation:

| Nature of default                                                                                                                                                                                                                                          | Penalty prescribed                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Failure to furnish Accountant's Report (i.e. a form prescribed for reporting of international transactions) (Section 271BA)                                                                                                                                | INR 100,000                                                                    |
| <ul style="list-style-type: none"><li>• Failure to report an international transaction</li><li>• Failure to maintain prescribed information / documents</li><li>• Maintenance or furnishing of incorrect information / documents (Section 271AA)</li></ul> | 2% of value of international transactions as determined by the tax authorities |
| Failure to furnish information / documents during transfer pricing scrutiny assessment (Section 271G)                                                                                                                                                      | 2% of value of international transaction as determined by the tax authorities  |

# Common Queries

- What if AE only for a part of the year?
- Deemed International Transaction under Section 92B(2)?
- F Co having branch in India Vs I Co Having Branch in Foreign
- Lack of availability of quantitative details
- Fixed asset has been purchased by the Assessee and has not been capitalized during the year – Capital Work in Progress?
- Can we have Different Methods in One Year?
- Tested Party Selection?

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# Common Queries

- Free of cost transfer of goods or services
- Free of cost Guarantee?
- Letter of Comfort?
- Issue/ allotment of equity shares
- Dividend paid / Received ?

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# Documents needed

- Appointment Letter for 92E
  - Engagement Letter
  - NOC from Previous Auditor
  - Certificates Issued by the Client
  - MRL
  - Annexure to 3CEB duly filled and signed by client
- For Working Paper
- examination programme-reveal the extent of checking undertaken
  - Work Done – Reconciliation with RPT
  - Explanations and Information needed for examination
  - Decisions and judicial pronouncements relied upon

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Thank You

G Rengarajan  
Senior Partner

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