

## Computation of arm's length price.

**92C.** (1) The arm's length price in relation to an international transaction or specified domestic transaction<sup>1</sup> shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely :—

- (a) comparable uncontrolled price method;
- (b) resale price method;
- (c) cost plus method;
- (d) profit split method;
- (e) transactional net margin method;
- (f) such other method as may be prescribed by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed:

**Provided** that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices:

**Provided further** that if the variation between the arm's length price so determined and price at which the international transaction has actually been undertaken *does not exceed such percentage not exceeding three per cent. of the latter, as may be notified*<sup>2</sup>, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of the second proviso shall also be applicable to all assessment or reassessment proceedings pending before an Assessing Officer as on the 1st day of October, 2009<sup>3</sup>

“(2A) Where the first proviso to sub-section (2) as it stood before its amendment by the Finance (No. 2) Act, 2009, is applicable in respect of an international transaction for an assessment year and the variation between the arithmetical mean referred to in the said proviso and the price at which such transaction has actually been undertaken exceeds five per cent. of the arithmetical mean, then, the assessee shall not be entitled to exercise the option as referred to in the said proviso<sup>4</sup>

“(2B) Nothing contained in sub-section (2A) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154 for

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<sup>1</sup> Substituted with effect from the 1st day of April, 2013

<sup>2</sup> Substituted with effect from the 1st day of April, 2013

<sup>3</sup> Deemed to have been inserted with effect from the 1st day of October, 2009

<sup>4</sup> Deemed to have been inserted with effect from the 1st day of April, 2002

any assessment year the proceedings of which have been completed before the 1st day of October, 2009<sup>5</sup>

(3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that—

- (a) the price charged or paid in an international transaction or specified domestic transaction<sup>6</sup> has not been determined in accordance with sub-sections (1) and (2); or
- (b) any information and document relating to an international transaction or specified domestic transaction<sup>7</sup> have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or
- (c) the information or data used in computation of the arm's length price is not reliable or correct; or
- (d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D,

the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction or specified domestic transaction<sup>8</sup> in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

**Provided** that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined :

**Provided** that no deduction under section 10A or section 10AA or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section :

**Provided further** that where the total income of an associated enterprise is computed under this sub-section on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XVIIB, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.

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<sup>5</sup> Inserted with effect from the 1st day of July, 2012

<sup>6</sup> Substituted with effect from the 1st day of April, 2013

<sup>7</sup> Substituted with effect from the 1st day of April, 2013

<sup>8</sup> Substituted with effect from the 1st day of April, 2013