

Union Budget: Ease of Doing Transfer Pricing

Feb 01, 2023



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It's January and everyone is ready with their Budget wish list!

India is marching towards becoming USD 5 trillion economy. To achieve this goal, it is expected that Union Budget 2023 will lay down a road map to accelerate its pace towards the USD 5 trillion goal. While the local demand is expected to be robust over a longer horizon, India is now focussed on tapping global demand by increasing exports. Among other laws, international trade between related parties requires compliance with transfer pricing regulations. A re look at some aspects of Indian transfer pricing law is required to provide an impetus to international trade.

The wish list from a transfer pricing perspective is as under:

1. Inter-quartile range:

The Indian transfer pricing law was amended a couple of years back by introducing the tolerance range band concept, Rule 10CA of the IT Rules permits the use of 35th to 65th percentile when the number of comparable datapoints are six or more. Databases over the years have become more robust and the number of data points now available has vastly increased.. Consequently, it is time to accept the inter-quartile range of 25th to 75th percentile in the Transfer Pricing regime and aligning it with the globally accepted tolerance range band.

2. Arithmetic Mean:

While the transfer pricing law have progressed to tolerance range band, the concept of arithmetic mean is still in use wherever the datapoints are less than 6. The flexibility available to the business is of +/- 1% & +/- 3% only. To offer some more flexibility to the businesses, the erstwhile tolerance range of +/- 5% could be restored,

3. Indian CBCR notification:

In case where the Country-by-Country Report ('CBCR') is filed by the Ultimate Parent Entity ('UPE') outside India, the Indian constituent entity ('CE') is required to file Form 3CEAC with the Indian Income tax authorities notifying the UPE filing the CBCR. Further, if the same CE is required to file tax audit

report in Form 3CD, clause 43 captures similar details.

Many countries have incorporated CBCR notification details in their return of income and no separate notifications are required to be filed. If we accept the same practice, it will reduce the number of data collection points (clause 43, Form 3CD) as well as the due dates to be monitored (filing of Form 3CEAC). It can be a small step towards ease of doing business.

4. Threshold for Master File:

In relation to CBCR, the threshold of consolidated group revenue has been revised upwards from INR 55,000 mn to INR 64,000 mn for an international group. However, there is no such upward revision of threshold for Master File ('MF') compliances, and it is frozen at consolidated group revenue of INR 5,000 mn. To reduce the compliance burden relating to MF on the businesses, the threshold of consolidated group revenue can be revised upward to INR 6,500 mn.

Threshold limit of INR 10 mn and TP:

Few TP compliance triggers are as under:

- Rule 10D(2) – Maintaining Transfer pricing documentation if the total transaction value is INR 10 mn or more;
- Section 92CE – Secondary adjustments, when primary adjustment is INR 10 mn or more; and
- Section 94B – Limitation on interest deduction, where interest expense exceeds INR 10 mn;

Considering the pace at which number of MNC's both Indian and Foreign have are finding a place in India, the threshold of INR 10 mn requires rationalisation. To assist the new businesses, the limit can be raised upwards to INR 50 mn for all the above provisions.

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