

TP Report Timeline Reduction in Budget - Implication

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Background

In the Budget 2023 speech, the Finance Minister highlighted that the Government is focusing on boosting ease of doing business in India, which is evident from reduction of more than 39,000 compliances and decimalization of over 34,000 legal provisions. The budget in an era of Amrit Kaal seeks to build on the foundation to provide stability and continuity to improve ease of doing business.

The Government is working towards shoring up of tax revenue through digitization, simpler and wider compliance net, with focused scrutiny and expeditious resolution of the pending tax disputes. One important amendment to achieve these objectives and of relevance for the Multinational Companies ('MNCs') is the reduced time limit to furnish the transfer pricing documentation.

Section 92D of the Income-tax, 1961, inter-alia, provides that every person who has entered into an international transaction or a specified domestic transaction, shall keep and maintain the information and documents as provided under rule 10D of the Income-tax Rules, 1962 ('the Rules'). The statute requires the taxpayer to prepare and maintain the transfer pricing ('TP') documentation contemporaneously on a year-on-year basis i.e., before filing the Accountant's Report in Form No. 3CEB.

In order to keep the house in order and comply with the TP provisions, it has been a general practice to engage external consultant to assist in compilation of the information and preparation of the documentation as specified under rule 10D of the Rules, which connotes as transfer pricing study report ('TP Report').

During the course of assessment proceedings, the tax authorities require the taxpayer to furnish the TP Report within a period of 30 days from the date of receipt of a notice. Whereby, for any reason, the person is unable to produce the required information or documents within the stipulated period of 30 days, the tax authorities may, on an application made by the same person can extend the period by an additional 30 days.

Budget Amendment

The Budget 2023 proposes to amend sub-section (3) of section 92D of the Act to provide that, the

Assessing Officer ('AO') or the Commissioner (Appeals) may, in the course of any proceeding under the Act, require any person who has entered into an international transaction or specified domestic transaction, to furnish any information or document within a period of 10 days from the date of receipt of a notice issued.

Accordingly, the amendment proposes to reduce the time limit to furnish the TP Report to 10 days as against earlier time limit of 30 days. However, if a person is unable to produce the information or documents within the stipulated period of 10 days, an extension of 30 days is still available to the person after making a requisite application.

The memorandum to Finance Bill 2023 clarifies that the intent of reduced time limit was to provide adequate time to the tax authorities to examine the documents already available with the taxpayer and complete the proceedings in a timely manner. The relevant extract of the memorandum to the Finance Bill is as under:

"...due to limited time available for TP proceedings it may not be practically possible to provide minimum 30 days for producing these information or documents which in any case is already in possession of the assessee. Accordingly, the time period allowed for submission of information or documents in respect of international transactions or a specified domestic transaction is required to be rationalised so as to provide the AOs a reasonable amount of time to examine the information/documents submitted and complete the pending proceedings"

The MNCs operating in India will now be expected to comply with the revised time limit to furnish the TP Report within 10 days from the receipt of notice. The amendment will take effect from 1st April 2023. The comparative analysis of the time limit under section 92D are as under:

Initial time limit to furnish TP report	30 days	10 days
Extension (on an application) to furnish TP report	30 days	30 days
Total number of days	60 days	40 days

It is pertinent to note that the budget amendment in section 92D(3) does not apply to the time limit for furnishing the information and documents in the Country-by-Country Report ('CbCR') u/s 286 of the Act.

Penalty - Consequences for failure to furnish TP report

If a person fails to furnish the information or documents within the prescribed time limit as specified under sub-section (3) of section 92D, a penalty under section 271G of the Act may be levied by the AO or Commissioner (Appeals).

The penalty of 2% of the value of the international transaction or specified domestic transaction may be levied on such person not adhering to the specified time limit. However, to cater to the needs of exigencies, the legislature has enacted section 273B which provides that no penalty under section 271G shall be imposed for contravention of section 92D(3) if reasonable cause for such contravention is shown.

Past Assessment Experience

As per past experience, often it is observed when the Transfer Pricing Officer receives a reference of the case from the office of the Assessing Officer, the TPO issues a notice u/s 92C(3) of the Act calling various information including TP Report. Generally, the taxpayers file partial details and seek time to furnish balance details. The TPO then takes up cases for detailed verification after a gap of few months and most of the taxpayers file balance details including TP report in response to the follow-on notice or file it proactively.

In case wherein TP Report are yet not filed by taxpayers, the TPO issues notice u/s 92D(3) of the Act to

seek TP Report. The taxpayer who missed to furnish the TP Report pursuant to an opportunity and lapse of prescribed time limit of 60 days are faced with the risk of penalty u/s 271G of the Act.

Generally, the TPO have been accommodative and don't levy penalty in all cases of delay in furnishing the TP Report, provided the delay is not intentional, too long, and good cooperation is extended by taxpayers during the audit proceedings.

However, there have been few instances, wherein the tax authorities have strictly sought compliance with 60 days' time limit for furnishing TP report and not paid a heed to even genuine hardship faced by the taxpayers. Further, even in cases wherein the taxpayer's international transactions were found to be at arm's length after detailed verification of TP Report, the penalty u/s 271G was levied for a delay in filing TP report beyond prescribed time limit. Fortunately, in such instances the CIT(A) and the Income-tax Appellate Tribunals have been deleting penalty, but the taxpayers are subjected to protracted litigation and hardship for not being diligent and filing TP report in a timely manner. Various judicial precedents on the subject matter have interpreted over the time, we have summarised the outcome in the following paragraphs.

Judicial Precedents

In past, it has been witnessed that the Income-tax Appellate Tribunals have recognized the genuine hardship on the taxpayer, which could have been caused due to the reasonable cause. The term reasonable cause has not been defined under the Act. However, various Income-tax Appellate Tribunals / Courts have interpreted the same over a period of time which are summarised as under:

JSW Energy Ltd <i>[TS-572-ITAT-2022(Mum)-TP]</i>	The Appellate Tribunal deletes the penalty u/s 271G and points out following 3 reasons: <ul style="list-style-type: none"> i. Time period given to the assessee was less than 30 days; ii. Certain information impermissible u/s 92D(3); iii. Absence of Chief Financial Officer ('CFO') at the relevant point of time which is a reasonable cause for delay in furnishing requisitioned information.
Doshion Water Solution Pvt. Ltd. <i>[TS-756-ITAT-2022(Mum)-TP]</i>	The Appellate Tribunal placing reliance on Delhi HC rulings held that, the assessee has not defaulted in furnishing the details required by the TPO and also in giving reasonable cause for the delay in providing the said details which was due to the staff crunch and the financial difficulties faced by the assessee. Accordingly, penalty u/s 271G was deleted.
Techware Singapore Holdings Pte. Ltd. <i>[TS-704-ITAT-2022(Mum)-TP]</i>	The Appellate Tribunal held that, ALP that has been duly examined by the TPO, and no adjustment has been proposed. It would be too harsh to levy a penalty u/s 271G, whereas the notices were not sent to the registered address of the assessee. The Appellate Tribunal additionally held that there was a reasonable cause for non-compliance to the notice issued u/s 92D(3) and therefore in view of provision of section 273B, penalty cannot be imposed.
Kapu Gems <i>[TS-363-ITAT-2022 (Mum)-TP]</i>	The Appellate Tribunal placing reliance on Gujarat HC ruling in case of Navin Chandra Exports Pvt. Ltd. held that, the assessee's inability to furnish the information

	is due to the practical difficulties faced by the industry. Accordingly, penalty u/s 271G was deleted.
NTT Data Global Delivery Services Ltd. <i>[ITA NO. 6905 (Delhi) of 2014]</i>	The Appellate Tribunal held that no penalty was leviable u/s 271G in terms of 273B of the Act, whereby the assessee had communicated to the AO about shifting of its Head Office and made an application to transfer the jurisdiction. Accordingly, penalty u/s 271G was deleted.
SSL-TTK Ltd <i>[TS-358-HC-2021(MAD)-TP]</i>	The Madras HC noted that ALP of the transaction was accepted, and no TP adjustment was proposed by the TPO. The HC noted that reasonable information was provided by the taxpayer i.e., 12 out of 16 items. Accordingly, HC holds that Appellate Tribunal has rightly held in favour of the taxpayer to delete the penalty u/s 271G of the Act.

Conclusion

Considering the assessment proceedings are undertaken after a gap of 2 to 3 years from relevant year, the shortening of the timeline to furnish TP Report to 10 days from 30 days, may cause a hardship to the taxpayers, who are either new or not subjected to regular transfer pricing assessment proceedings. It is advisable that the taxpayers proactively engage with their tax consultants, work towards compiling necessary information and keep finalised transfer pricing report handy to ensure timely filing of the same during assessment proceedings.

Further, in case the taxpayer has missed to file TP report in the prescribed time limit, then the taxpayer should proactively take steps to file the same, extend full cooperation during proceedings and maintain evidence of difficulties, if any, faced by it during assessment e.g., shift of office, loss of records, change of management etc. which prevented the taxpayer to comply with the timely filing of the TP report.

Once the budget proposal is passed, it would be worthwhile to see how the tax authorities and taxpayers are dealing with reduced timeline. One hopes, as the requisite information will be available with the TPO in a timely manner, the same should help to avoid last minute rush and surprises which puts taxpayer to extreme hardship. Further, the taxpayer will get sufficient time to submit required information and tax authorities will analyse the same appropriately.

If we really want to experience ease of doing business in the Amrit Kaal, then both the taxpayers and tax authorities must work collectively and overcome cynicism. The taxpayers should demonstrate bonafide behaviour and timely compliance and tax authorities should adopt pragmatic approach, avoid surprises and usage of penalty provision sparingly and only in the extreme situation to create over all positive experience.