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INCOME-TAX ACT, 2025

Chapter X: SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Section 166 - Reference to Transfer Pricing Officer.

(1) Where,—

(a) the assessee has entered into an international transaction or specified domestic transaction in any tax year; and

(b) the Assessing Officer considers it necessary or expedient so to do,

he may refer the determination of the arm's length price in relation to such transaction to the Transfer Pricing Officer, with the previous approval of the Principal Commissioner or Commissioner.

(2) No reference under sub-section (1) for computation of the arm's length price in relation to an international transaction or a specified domestic transaction shall be made, if the Transfer Pricing Officer has declared that option exercised by the assessee in sub-section (9) in relation to such transaction is valid for such tax year.

(3) If any reference for an international transaction or a specified domestic transaction under sub-section (1), in respect of a tax year, for which the option is declared valid under sub-section (9) is made before or after such declaration by the Transfer Pricing Officer, the provisions of sub-section (1) shall have the effect as if no reference is made for such transaction.

(4) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date specified therein, any evidence on which the assessee may rely in support of the determination made by him of the arm's length price in relation to such transaction.

(5) Where,—

(a) any international transaction or specified domestic transaction, other than an international transaction or a specified domestic transaction referred under sub-section (1); or

(b) any international transaction or a specified domestic transaction that the assessee has not included in the report under section 172,

comes to the notice of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply as if such transaction is a transaction referred to him under sub-section (1).

(6) On the date specified in the notice under sub-section (4), or as soon thereafter as may be,––

(a) after hearing such evidence as the assessee may produce, including any information or documents referred to in section 171(2);

(b) after considering such evidence as the Transfer Pricing Officer may require on any specified points; and

(c) after taking into account all relevant materials which he has gathered,

the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction as per section 165(4) and send a copy of his order to the Assessing Officer and to the assessee.

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(7) Where a reference was made under sub-section (1), an order under sub-section (6) may be made at any time before one month prior to the month in which period of limitation referred to in section 286 or 296, for making the order of assessment or reassessment or recomputation or fresh assessment, expires and accordingly, where such period expires on––

(a) the 31st March of any year, the order under sub-section (6) shall be made on or before the 31st January of that year;

(b) the 31st December of any year, the order under sub-section (6) shall be made on or before the 31st October of that year. [1]

(8) If the period of limitation available to the Transfer Pricing Officer for making an order under sub-section (6) is less than sixty days in the circumstances referred to in section 286(3)(b) or (h),such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly.

(9) The arm's length price, being determined in relation to the international transaction or the specified domestic transaction under sub-section (6) for any tax year shall apply to similar international transaction or specified domestic transaction for the two consecutive tax years immediately following such tax year, on fulfilment of the following conditions namely:––

(a) the assessee exercises an option or options to the above effect for the said two consecutive tax years;

(b) such option or options are exercised in such form, manner and within such period as may be prescribed; and

(c) the Transfer Pricing Officer shall, within one month from the end of the month in which such option or options are exercised, by an order in writing, declare that such option or options are valid subject to the conditions, as may be prescribed.

(10) The provisions of sub-section (9) shall not apply to any proceedings under Chapter XVI-B.

(11) On receipt of the order under sub-section (6), the Assessing Officer shall compute the total income of the assessee under section 165(6) in conformity with the arm's length price as so determined by the Transfer Pricing Officer.

(12) Irrespective of anything contained in sub-section (11), where the Transfer Pricing Officer has declared an option exercised by the assessee as valid option under sub-section (9), he shall examine and determine the arm's length price in relation to such similar transaction for two consecutive tax years immediately following such tax year, in the order referred to in sub-section (6) and on receipt of such order, the Assessing Officer shall proceed to recompute the total income of the assessee for the said two consecutive tax years as per the provisions of section 288(2).

(13) For rectifying any mistake apparent from the record, the Transfer Pricing Officer,––

(a) may amend any order passed by him under sub-section (6), and the provisions of section 287 shall, so far as may be, apply accordingly; and

(b) shall send a copy of such order to the Assessing Officer who shall thereafter amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

(14) The Transfer Pricing Officer may exercise all or any of the powers specified in section 246(1)(a) to (d) or 252(1)(a) or 253 for the purposes of determining the arm's length price under this section.

(15) If any difficulty arises in giving effect to the provisions of sub-sections (9) and (12), the Board may, with the prior approval of the Central Government, issue guidelines for the purpose of removing such difficulty.

(16) Every guideline issued by the Board under sub-section (15) shall be laid before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the

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session or the successive sessions aforesaid, both houses agree in making any modification in such guideline or both Houses agree that the guideline, should not be issued, the guideline shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that guideline.

(17) For the purposes of this section, “Transfer Pricing Officer” means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 165 and 171 in respect of any person or class of persons.

1. Substituted by The Finance Act, 2026 for:

(7) Where a reference was made under sub-section (1), an order under sub-section (6) may be made at any time sixty days before the expiry of the limitation period referred to in section 286 or 296, for making the order of assessment or reassessment or recomputation or fresh assessment.

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