

Widening of scope of Section 40A (2), Transfer Pricing regulations to apply to domestic transactions, (Applicable for the AY 2013-14) [Also referred to as Domestic Transfer Pricing]

Under Section 40A(2) of Income Tax Act, 1961 *in case of any transaction with a related party, the Assessing Officer can disallow the expenditure while computing income from business or profession which in his opinion is excessive or unreasonable having regard to the:*

- a. Fair market value of the goods,*
- b. Services or*
- c. Facilities*

for which expenditure has been incurred.

[There is **NO** mechanism to re-compute the income received from a related party, in case the Assessing Officer is of the opinion that such income is low considering the market value, since this section focuses on EXPENDITURE.]

In order to address this issue, the provisions of Transfer Pricing are being amended to extend the scope to '**Specified Domestic Transactions**' by amending Section 92 of the Act. Further specified domestic transactions have been defined in a new Section 92BA as following **transactions where the aggregate of such transactions entered into by the assessee in a year exceed Rs.5 crore:**

Section	Transaction covered
40A	Any payment made or to be made in respect of expenditure incurred to persons specified in section 40A (2) (b). i.e. related parties
In case of deductions in respect of certain tax holidays	
80A	Any transaction in relation to transfer of goods or services from eligible business (refer sec. 35AD) to non-eligible business, vice versa.
80IA(8)	Any business transaction in relation to transfer of any goods or services between units of the assessee i.e. inter units transfers.
80IA(10)	Any business transaction between the assessee (covered under 80IA) and his associated entities.
80-IB, 80-IC, 80ID, 80-IE AND 10AA	Any business transaction entered between the assessee who is eligible for 80-IB, 80-IC, 80ID & 10AA and associated entities or inter unit transfer between the eligible business of the assessee and his non- eligible business.
	Any other transactions as may be prescribed.

Because of the above tax holidays deductions, there could be transaction between the related party which is been carried out to eliminate/reduce tax liability by shifting profits to tax holiday entities.

It has been further provided by inserting a new subsection (2A) in Section 92 that any allowance or any expenditure or interest or allocation of any cost or expense or any income in relation to specified domestic transaction shall be computed having regards to arm's length price, meaning thereby the specified domestic transaction will be tested applying arm's length (ARM) principle.

Accordingly corresponding amendment is been made in the procedural laws of transfer pricing to cover domestic transactions i.e.

1. Section 92C for computation of arm's length price by the method prescribed,
2. Section 92D maintenance and keeping of information and document,
3. Section 92E obtaining report from Chartered Accountant in respect of specified domestic transactions,
4. Section 92CA being reference to the Transfer Pricing Officer,
5. Penal provisions of Section 271(1), Explanation 7 regarding concealment,
6. Section 271AA penalty for failure to keep and maintain information and
7. Section 271G penalty for failure to furnish information or document.

Further the section 40A(2)(b)(ii) scope of the related party is being expanded to cover cases of companies which have the same parent company by providing that "any other company carrying on business or profession in which the first mentioned company has substantial interests" shall be considered to be a related party.

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