

CIRCULAR NO.12 OF 2001  
F.No.142/41/2001-TPL  
Government of India  
Department of Revenue  
Central Board of Direct Taxes

*New Delhi, the 23<sup>rd</sup> August 2001*

To

**All the Chief Commissioners/Directors General of  
Income-tax.**

*Subject: Provisions governing transfer price in an international  
transaction – reg.*

The Finance Act, 2001 has substituted the existing section 92 of the Income-tax Act by new sections 92 and 92A to 92F. These new provisions lay down that income arising from an international transaction between associated enterprises shall be computed having regard to the arm's length price. The term 'associated enterprise' has been defined in section 92A. Section 92B defines an 'international transaction' between two or more associated enterprises. The provisions contained in section 92C provide for methods to determine the arm's length price in relation to an international transaction, and the most appropriate method to be followed out of the specified methods. While the primary responsibility of determining and applying an arm's length price is on the assessee, sub-section (3) of section 92C empowers the Assessing Officer to determine the arm's length price and compute the total income of the assessee accordingly, subject to the conditions provided therein. Section 92D provides for certain information and documents required to be maintained by persons entering into international transactions, and section 92E provides for a report of an Accountant to be furnished along with the return of income.

The Board have prescribed rules 10A to 10E in the Income-tax Rules, 1962, giving the manner and the circumstances in which different methods would be applied in determining arm's length price and the factors governing the

selection of the most appropriate method. The form of the report of the Accountant and the documents and information required to be maintained by the assesseees have also been prescribed.

:02:

The aforesaid provisions have been enacted with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profit and tax in India so that the profits chargeable to tax in India do not get diverted elsewhere by altering the prices charged and paid in intra-group transactions leading to erosion of our tax revenues.

However, this is a new legislation. In the initial years of its implementation, there may be room for different interpretations leading to uncertainties with regard to determination of arm's length price of an international transaction. While it would be necessary to protect our tax base, there is a need to ensure that the taxpayers are not put to avoidable hardship in the implementation of these regulations.

In this background the Board have decided the following:-

- i) The Assessing Officer shall not make any adjustment to the arm's length price determined by the taxpayer, if such price is upto 5% less or upto 5% more than the price determined by the Assessing Officer. In such cases the price declared by the taxpayer may be accepted.
- ii) The provisions of section 92 and 92A to 92F come into force with effect from 1<sup>st</sup> April, 2002 and are accordingly applicable to assessment year 2002-03 and subsequent years. The law requires the associated enterprises to maintain such documents and information relating to international transactions as may be prescribed.

However, the necessary rules could be framed by the Board only after the Finance Bill received the assent of the President and have just been notified. Therefore, where an assessee has failed to maintain the prescribed information or documents in respect of transactions entered into during the period 1.4.2001 to 31.8.2001 the provisions of Section 92C(3) should not be invoked for such failure. Penalty proceedings under section 271AA or 271G should also not be initiated for such default.

- iii) It should be made clear to the concerned Assessing Officers that where an international transaction has been put to a scrutiny, the Assessing Officer can have recourse to sub-section (3) of section 92C only under the circumstances enumerated in clauses (a) to (d) of that sub-section and in the event of material information or document in his possession on the basis of which an

:03:

opinion can be formed that any such circumstance exists. In all other cases, the value of the international transaction should be accepted without further scrutiny.

This may be brought to the notice of all the officers working in your region.

Yours faithfully,

Sd/-

(Batsala Jha Yadav)

Under Secretary (TPL-IV)

Tel. 301 3212

Copy to :-

1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
2. The Comptroller & Auditor General of India (40 copies).
3. The CIT(RS&PR) for printing in the quarterly tax bulletin and for circulation as per his usual mailing list.
4. All Directorates of Income tax.

5. JS & Legal Advisor, Ministry of Law.
6. The DCIT (Inspection Div.), Mayur Bhawan, New Delhi.
7. All Chambers of Commerce.
8. Secretary, Settlement commission, CIT(WT), 3<sup>rd</sup> Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003.
9. ITCC Section, CBDT.