

Tax Hotline

May 21, 2003

GUIDELINES FOR SELECTION OF CASES FOR TRANSFER PRICING SCRUTINY ISSUED

The Finance Act, 2001 introduced the transfer pricing legislation in India and also laid down detailed guidelines on the computation of the arm's length price in respect of international transactions carried on with associated enterprises ("**AE**"). The Finance Act, 2002 introduced the role of Transfer Pricing Officers ("**TPOs**") to be appointed for verifying the arm's length computation of the cases selected for scrutiny.

The Finance Ministry has now issued the following administrative guidelines specifying the criteria for selection of transactions for scrutiny by Assessing Officers ("**AOs**") and the process of verification by the TPOs:

- A floor level of Rs. 5 crore has been set for picking up international transactions for transfer pricing scrutiny;
- Cases where the aggregate value of more than one transaction with the same AE or transactions with more than one AE, exceed Rs. 5 crore only can be selected for scrutiny and referred to the TPO;
- Before making a reference to the TPO, the AO is required to satisfy himself that the international transaction under consideration is with an AE. However, the AO will not have the authority to scrutinize the correctness or otherwise of the price at which the transaction has been entered into;
- The TPO is required to take into account all the relevant facts and data for determining the arm's length price and is also required to use the most appropriate method for the computation as stipulated under law;
- The TPO is then required to issue a detailed order showing the method of computation and details of data used and reasons thereto for arriving at the arm's length price;
- Before making any adjustments in the total income declared by the assessee in his tax return, it is mandatory to give the assessee a formal opportunity of being heard.

The CBDT has set a deadline of June 30, 2003 for the AOs to select cases for scrutiny for the first set of returns filed with transfer pricing disclosures for the financial year ended March 31, 2002.

Source: The Economic Times, May 21, 2003

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