

Tax Hotline

August 23, 2001

NOTIFICATION OF APPLICABLE RULES FOR TRANSFER PRICING IN INDIA

The Indian Government has notified the rules in relation to transfer pricing *vide* notification No.S.O.808 (E) dated 21.8.2001, inserting new rules 10A to 10E in the Income tax Rules, 1962 ("Rules"). These Rules prescribe the manner in which an arm's length price in relation to an international transaction is to be determined by the "most appropriate method", the factors to be considered in selecting the most appropriate method, and the information and the documents required to be maintained and furnished by the taxpayer.

There have been some significant changes to the draft transfer pricing rules, such as:

- The taxpayers have been allowed the use of multiple year data pertaining to comparable transactions in determining the arm's length price.
- Taxpayers are free to select the most appropriate method as long as their selection is made taking into account the factors prescribed.
- Documentation requirements have been considerably scaled down to now require only such information as is relevant to the transactions entered into.
- Documentation requirements shall not be applicable in cases where the aggregate value of international transactions entered into during a year is upto Rs.10 million.

The Central Board of Direct Taxes also proposes to issue a circular shortly, clarifying the following:

- The tax authorities shall not make any adjustments to the arm's length price adopted by the taxpayer if such price is upto 5% less or 5% more than the price determined by the Assessing Officer.
- No adverse view shall be taken by the tax authorities in case documentation requirements are not fulfilled in respect of transactions entered during the period commencing April 1, 2001 to August 31, 2001.
- It is being made abundantly clear that the tax authorities can alter the pricing adopted by the taxpayer only in cases and circumstances specified in section 92C(3) of the Indian Income-tax Act, 1961, namely, where necessary documentation has not been maintained or furnished, or the methods prescribed for determining arm's length prices have not been followed, or the data used by the taxpayer is not reliable or correct.

Source: August 23, 2001, Press Information Bureau

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