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# Transfer Pricing

Compliances, Litigation  
and Alternative Dispute  
Resolution Mechanism



February 2026

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# Foreword

Over the past two decades, India's transfer pricing ('TP') regime has evolved from a procedural compliance requirement into a sophisticated framework that shapes how multinational groups structure global value chains, allocate profits, and manage tax risk.

As India has integrated more deeply into global supply chains, the scale and complexity of cross-border related-party transactions have increased significantly, leading to heightened scrutiny and positioning India among the most active jurisdictions for TP audits and litigation.

The Advance Pricing Agreements ('APA'), Mutual Agreement Procedure ('MAP'), Safe Harbour Rules ('SHR'), and the multi-year block assessment scheme reflects a shift toward structured dispute resolution.

These mechanisms provide a practical and collaborative alternative to prolonged litigation, which often strains cash flows, impacts financial reporting, and creates strategic uncertainty.

Amid rising geopolitical uncertainty and evolving global value chains, Union Budget 2026 marks a decisive shift in India's transfer pricing framework. The reforms include a comprehensive revamp of the SHR, a streamlined and time-bound APA regime, clearer assessment timelines, and enhanced disclosure requirements through a revised accountant's report. These measures are particularly significant for India's IT/ITES sector and expanding Global Capability Centres ('GCCs'), reinforcing tax certainty, transparency, and simplified compliance.



This publication provides a clear and practical overview of India's TP dispute resolution landscape and the developments shaping it. Designed as a business-focused guide rather than a technical manual, it aims to help organisations navigate the framework, anticipate areas of dispute, and manage controversy effectively.

Warm regards,

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# Introduction

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India's TP landscape is undergoing rapid regulatory change, marked by increased digitisation of assessments and a stronger reliance on data-driven risk selection. In this environment, multinational groups operating in India are expected to demonstrate a significantly higher level of transparency, robust documentation, and audit readiness than in the past.

TP continues to be one of the most litigated and contentious areas of Indian tax administration. The volume and complexity of disputes have largely been driven by divergent interpretations adopted by taxpayers and the tax authorities in applying the arm's length principle. While the statutory framework has remained broadly stable, the depth and granularity of TP examinations have resulted in a substantial body of jurisprudence across appellate forums. Consequently, TP issues frequently recur across assessment years and traverse multiple levels of appeal, remaining under litigation for extended periods.

Each chapter in this publication focuses on a distinct stage of the TP cycle. We begin by outlining the annual compliance obligations and the evolving risk-based selection approach adopted by the Indian tax administration. We then examine the litigation environment in detail, including audit selection thresholds, referral instructions, procedural safeguards, and the practical realities of TP assessments. Subsequent sections explain the hierarchy of dispute-resolution forums and compare the relative advantages of the Dispute Resolution Panel ('DRP'), the Commissioner

of Income Tax (Appeals) ['CIT(A)']/National Faceless Assessment Centre ('NFAC'), and the Income Tax Appellate Tribunal ('ITAT'). Finally, we discuss the alternative dispute resolution mechanisms such as APAs, MAPs, and SHR, and the strategic role they play in reducing prolonged, multi-year litigation.

Each section of this publication outlines the key impacts of Union Budget 2026, including the introduction of new SHR for the IT/ITeS sector, fast-tracking of unilateral APAs for the IT industry, and permitting associated enterprises covered under an APA to file modified returns. The retrospective clarifications on limitation periods and TPO timelines address long-standing procedural gaps and improve administrative consistency. These measures reflect the Government's commitment to greater stability and predictability in the tax regime. By using the Budget as a tool for tax simplification, the reforms aim to streamline TP administration, reduce bottlenecks, and enhance certainty for multinational groups.

Our objective is to help organisations anticipate challenges, prepare proactively, manage controversy efficiently, and make informed decisions aligned with their global TP strategy. As India continues to refine its TP enforcement framework, a clear understanding of the process, and not just the policy, has become essential for effective tax governance. This publication is intended to serve as a practical guide in navigating that journey.



Compliances as per Indian TP Regulations

India's TP framework was introduced in 2001 with the objective of ensuring that cross-border transactions between associated enterprises ('AE') reflect arm's length outcomes. Over the years, as India emerged as a global destination for manufacturing, technology, R&D, and GCCs, the nature and volume of controlled transactions expanded significantly. This growth has been matched by a corresponding evolution in compliance requirements, documentation standards, and enforcement intensity.

The regime today is built on a three-tiered documentation structure, covering the Local File, the Master File, and the Country-by-Country Report ('CbCR'), and places strong

emphasis on functional analysis, economic substance, and contemporaneous documentation. In addition to these documentation requirements, companies in India are also required to electronically file an accountant's report, certified by an Indian Chartered Accountant.

As a result, compliance discipline is essential, not only to meet statutory timelines but also to minimise litigation exposure in one of the world's most active TP jurisdictions. In this section, we have set out the various TP compliance requirements in India along with their due dates.

## Annual TP Compliance Schedule:

Compliances	Threshold / Applicability	Income Tax Forms	Due date
Maintaining TP documentation ('local file')	Value of international transaction > <b>INR 1 Crore</b> ; Value of Specified Domestic Transaction ('SDT') > <b>INR 20 Crore</b>	-	31st October following the end of the Financial Year ('FY')
Furnishing of Accountant's Report	Any International Transaction/ SDT, no minimum threshold	Form 3CEB [Form No. 48 applicable from Tax Year ('TY') <sup>1</sup> 2026-27, Refer note 1]	31st October following the end of the FY
Filing of intimation in India specifying which entity will submit the Master File on behalf of the group	Applicable when there are multiple constituent entities in India belonging to the same group.	Form 3CEAB [Form No. 57 applicable from TY 2026-27]	31st October following the end of the FY
Filing of Master File – Part A & B (as applicable)	<b>(Part A):</b> Every constituent entity irrespective of threshold	Form 3CEAA [Form No. 56 applicable from TY 2026-27]	30th November following the end of the FY

1. Tax year refers to 12 month period of the financial year commencing from 1st April to 31st March.

Compliances	Threshold / Applicability	Income Tax Forms	Due date
	<b>(Part B):</b> Value of international Transaction > <b>INR 50 Crore</b> as well as Group turnover > <b>INR 500 Crore</b>		30th November following the end of the FY
CbCR Intimation	Group revenue > INR 6400 crore <i>To be filed by all constituent entities in India</i>	Form 3CEAC <sup>2</sup> [Form No. 58 applicable from TY 2026-27]	2 months prior to the due date for furnishing of report.  The due date to furnish report is a period of 12 months from the end of the accounting year followed by the parent of the group.
CbCR Filing	Applicable only when parent entity is in India or alternate reporting entity is in India	Form 3CEAD [Form No. 59 applicable from TY 2026-27]	12 months from the end of the reporting accounting year
Safe Harbour Application for International Transactions <sup>3</sup>	Applicable to entities meeting eligible business activity criteria and specified thresholds	Form 3CEFA	By the due date of filing the return of income (typically 30th November)
Safe Harbour Application for SDT <sup>4</sup>	Applicable to entities meeting eligible business activity criteria and specified thresholds	Form 3CEFB	By the due date of filing the return of income (typically 30th November)
Annual Compliance Report (ACR)	Applicable to entities for the covered years who have entered into an APA/ BAPA/ MAPA	Form 3CEF [Form No. 52 applicable from TY 2026-27]	30 days from the due date of filing the return of income (30th December) or within 90 days of signing of APA agreement whichever is later.

2. Form 3CEAE to be filed in case of specified cases when there is no agreement for exchange of CbCR or systematic failure

3. [Refer to SHR Section of this publication for new Forms and Timelines for TY 2026-27](#)

4. [Refer to SHR Section of this publication for new Forms and Timelines for TY 2026-27](#)

Note 1: Central Board of Direct Taxes ('CBDT') has released the Draft Income-tax Rules, 2026<sup>5</sup>, along with new Form 48, which will replace Form 3CEB. The new Form 48 includes structured drop-down fields, auto-populated data, and significantly expanded disclosures which are as under:

- APA reporting details, including the value and nature of covered transactions for the relevant tax year
- Clear disclosure of transaction aggregation, specifying which international transactions are grouped together for benchmarking and the method applied
- Detailed benchmarking information, including the number of comparables, arm's length margins and any economic adjustments made
- Detailed break-up of cost base, separating operating and non-operating costs used in TP margin computation
- Asset-level disclosures, including ownership (Indian entity or AE), assets provided free of cost by AEs, capitalization treatment, and depreciation claimed
- Employee-related disclosures, including travel expenses, business purpose, allocation of personnel costs to AEs, and any expenses incurred by AEs for employees of the Taxpayer
- Disclosure of revenue earned in foreign currency, separately for AE and non-AE transactions
- Specific confirmation that TP documentation has been maintained
- Specific disclosures regarding stock compensation, software/tools/licenses/databases (whether provided by an AE or developed in-house), depreciation of assets, foreign exchange fluctuation income/loss, subsidies, or grants received, and confirmation that items recorded are considered in the ALP computation

Indian TP regulations prescribe stringent penalties/fess for various defaults which are summarized in **Annexure 1**.

For clarity and simplification, a comparative analysis of the old and new sections under the Act and Rules are provided in the below link.

Comparison of sections under Income-Tax Act 1961 vs. Income-Tax Act 2025	<a href="https://incometaxindia.gov.in/pages/income-tax-navigator-utility-2025.aspx">https://incometaxindia.gov.in/pages/income-tax-navigator-utility-2025.aspx</a>
Comparison of Income-Tax Rules 1962 vs. Income-Tax Rules 2026	<a href="https://incometaxindia.gov.in/news/draft-income-tax-rules-2026.htm">https://incometaxindia.gov.in/news/draft-income-tax-rules-2026.htm</a>
Income - tax Forms link	<a href="https://incometaxindia.gov.in/Documents/draft-income-tax-rules/navigator-Income-tax-Forms-2026.pdf">https://incometaxindia.gov.in/Documents/draft-income-tax-rules/navigator-Income-tax-Forms-2026.pdf</a>

5. Draft Rules and Forms have been placed in public domain for stakeholders consultation which was open till 22 February 2026.



# Traditional TP Assessment and Appeals Process

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Recent changes to India's TP compliance framework, effective from tax year 2026 onwards, reflect a continued shift towards enhanced transparency and risk-based administration. Information provided in draft Form 48 that was historically sought during TP audits or APA questionnaires has now been integrated into routine annual compliance. Post filing of the Accountant's Report, cases will be selected for TP assessment under a risk-based scrutiny framework.

India's TP litigation framework operates through a structured statutory process that begins with scrutiny selection and can extend across various appellate levels. The landscape is shaped not only by the volume of TP adjustments but also by the formal procedures governing audit initiation (also referred to as 'TP audit' or 'TP assessment'). A clear understanding of this system is crucial, as TP disputes move through multiple layers of review and adjudication.

This section explains these processes in detail.

## Reference to TPO

Under India's TP regime, the AO refers the case to the TPO to determine the ALP of international transactions and specified domestic transactions ('SDTs'). Over the years, CBDT has significantly reshaped the reference mechanism through a series of instructions, moving from a mechanical, value-based approach to a sophisticated, risk-driven model integrated with data analytics and automated scrutiny systems.

Year	CBDT Instruction	Reference Basis	Key Change Introduced
2015	Instruction No. 15/2015 <sup>6</sup>	Risk-based parameters (threshold withdrawn)	Monetary threshold completely removed. Reference to TPO to be made only in cases exhibiting TP risk indicators, such as non-filing or incorrect filing of Form 3CEB, non-reporting of transactions, or qualifying remarks by the accountant.
2016 onwards	Instruction No. 3/2016 (currently applicable)	CASS and risk-based scrutiny	Replaced all earlier instructions. Integrated TP scrutiny with Computer Assisted Scrutiny Selection ('CASS'). Mandatory reference to TPO for cases selected on TP risk parameters. Clear demarcation of AO and TPO jurisdiction and express restriction on AO determining ALP where no reference is made.

From Tax Year 2026–27 onwards, TP scrutiny is expected to shift from a threshold-based approach to a disclosure-driven framework, with Form 48 requiring more granular and detailed reporting. The information reported in Form 48 will directly feed into CASS risk profiling, with automated analytics expected to flag inconsistencies, mismatches and risk indicators that could independently trigger a reference to the TPO.

Accordingly, taxpayers must ensure strong alignment between Form 48 disclosures, economic analysis, and financial reporting, supported by robust contemporaneous documentation, as these disclosures are likely to materially influence the scope and intensity of TP scrutiny for TY 2026-27 and onwards.

6. Prior to the said instruction the TPO reference was made where the threshold was INR 15 crore for FY 2013-14 and FY 2014-15 (which was earlier of INR 5 crore from FYs 2002-03 to 2011-12)

## Remedies Available with the Taxpayer - CIT(A) vs. DRP

Once the TPO issues the order determining the ALP, the AO incorporates the proposed adjustments into a Draft Assessment Order ('DAO'). At this stage, the taxpayer has two statutory options:

1. File objections before the DRP; or
2. Await the final assessment order and thereafter file an appeal before the CIT(A) / NFAC

Each route carries different implications in terms of timelines, cash flow, procedural requirements and strategic outcomes. The key distinctions are summarised below:

Particulars	CIT(A) / NFAC	DRP
<b>Time limit</b>	Appeal to be filed within 30 days of receipt of the final assessment order	Objections to be filed within 30 days of receipt of the DAO
<b>Payment of demand</b>	10% <sup>7</sup> of the disputed demand payable for stay <sup>8</sup> ; instalments may be sought in genuine hardship cases	Demand is not payable immediately and it crystallises only after the final order is passed pursuant to DRP directions
<b>Timeline for disposal</b>	Recommendatory time limit; matters often take longer	Fast-track disposal – DRP issues directions within 9 months from the date of DAO
<b>Constitution</b>	Single-member authority (CIT(A))	Collegium of three CIT-rank officers

In practice, taxpayers evaluate the DRP and CIT(A) routes based on strategic priorities rather than legal formality alone. The DRP route is favoured for its speed and its ability to defer cash outflow, enabling faster progression to the ITAT. However, DRP directions have historically been perceived as more closely aligned with the views of the tax authorities, partly due to the Panel's composition.

Conversely, the CIT(A) / NFAC route may offer a more balanced and detailed fact-based review, especially for complex TP issues. The trade-off lies in longer timelines and the potential requirement to pay a portion of the disputed tax upfront or seek a stay of demand.

Ultimately, the choice between DRP and CIT(A) depends on the nature of the issue, the taxpayer's cash flow position, litigation history, and long-term dispute management strategy.

7. 20% stay of demand has been reduced to 10% as announced in Union Budget, 2026

8. CBDT Office Memorandum dated 31st July 2017 with partial modification of instructions No.1914 dated 21.03.1996

## Time Limit for Completion of Assessments

Generally, the time limit for completion of an assessment for AYs commencing on or after April 1, 2022 is 12 months from the end of the relevant assessment year. If the AO makes a reference to the TPO, the time limit for completing the assessment is extended by 12 months.

The TPO is required to pass an order at least 60 days prior to the date on which the AO is required to complete the assessment. The below table provides an illustration on TP proceedings timelines as follows:

Assessment Years	Time limit for passing TPO order	Time limit for passing AO order	Time limit for DRP directions	Time limit to pass final AO order
AY 2023-24	31 January 2026	31 March 2026	9 months from the end of the month in which DAO shared with taxpayer	1 month from the end of the month in which the directions of DRP received by the AO
AY 2024-25	31 January 2027	31 March 2027		
AY 2025-26	31 January 2028	31 March 2028		

### Time limit for passing TP orders<sup>9</sup>

The Union Budget 2026 has clarified the manner of computing the 60-day time limit available to the TPO for passing its order. It is now expressly provided that the date of limitation for completion of assessment is to be included while computing the 60 days. This amendment

addresses judicial interpretations which had excluded the date of limitation, leading to annulment of several TP orders on technical grounds. Clarification provided for the method of computing the 60-day period for passing TP orders, is as below:

Due date for passing final assessment order	Due date for passing TP order as per the Income Tax Act 1961 (based on days)	Due date for passing TP order as per the Income Tax Act 2025 (based on month)
31 March (non-leap year)	30 January	31 January
31 March (leap year)	31 January	
31 December	1 November	31 October

In view of the above amendment, the findings laid down by the Hon'ble Madras High Court in case of Pfizer Healthcare India Pvt. Ltd.<sup>10</sup> with respect to the computation of the 60-day limitation period for the TPO order would no longer be applicable. The legislative

clarification, being retrospective in nature, settles the manner of computing the prescribed time limit and overrides the earlier view that excluded the date of limitation for completion of TP assessment.

9. As amended by Finance Bill 2026  
10. TS-766-HC-2020 (MAD)-TP

### Timelines for completion of assessment proceedings which is pending before the DRP

Recently, there was controversy before various courts with respect to time limits for completion of assessment in DRP cases. The issue was whether the limitation period<sup>11</sup> applied to the draft assessment order or to the final assessment order issued after DRP directions.

The Hon'ble Bombay High Court, following the Madras High Court's ruling in *Roca Bathroom*<sup>12</sup>, held that the time limit had to be computed with reference to the draft order, which was favourable to taxpayers. However, in *Shelf Drilling*<sup>13</sup>, the Hon'ble Supreme Court delivered a split verdict on whether the DRP timeline formed part of, or was in addition to, the overall assessment limitation period. These differing views created uncertainty for taxpayers as well as the tax authorities.

In order to remove the ambiguity arising from divergent judicial interpretations, the Finance Bill, 2026 made a retrospective amendment which clarified as under:

- Timelines prescribed for proceedings before the DRP are in addition to, and not included within, the overall time limit for completion of assessment.
- Therefore, the time-barring period of limitation applies only to the issuance of the draft assessment order, and not for passing the final assessment order post DRP proceedings.

### Timelines for completion of assessment proceedings in case of exchange of information

Where a reference is made to a foreign tax authority under a tax treaty for exchange of information, the Act provides specific guidance on how the assessment time limit is to be computed. The period from the date the reference is made to the date the information is received by the Indian Competent Authority ('the Indian CA') is to be excluded while computing the limitation period, subject to a maximum exclusion of one year. In practice, this requires confirmation of two dates: i) when the request was formally issued; and ii) when the response was received<sup>14</sup>.

Where, after excluding the exchange-of-information period, the remaining time is less than 60 days, the assessment timeline is automatically extended to provide the full 60 days, with the AO required to pass the final order within 60 days from the date of the TPO's order.



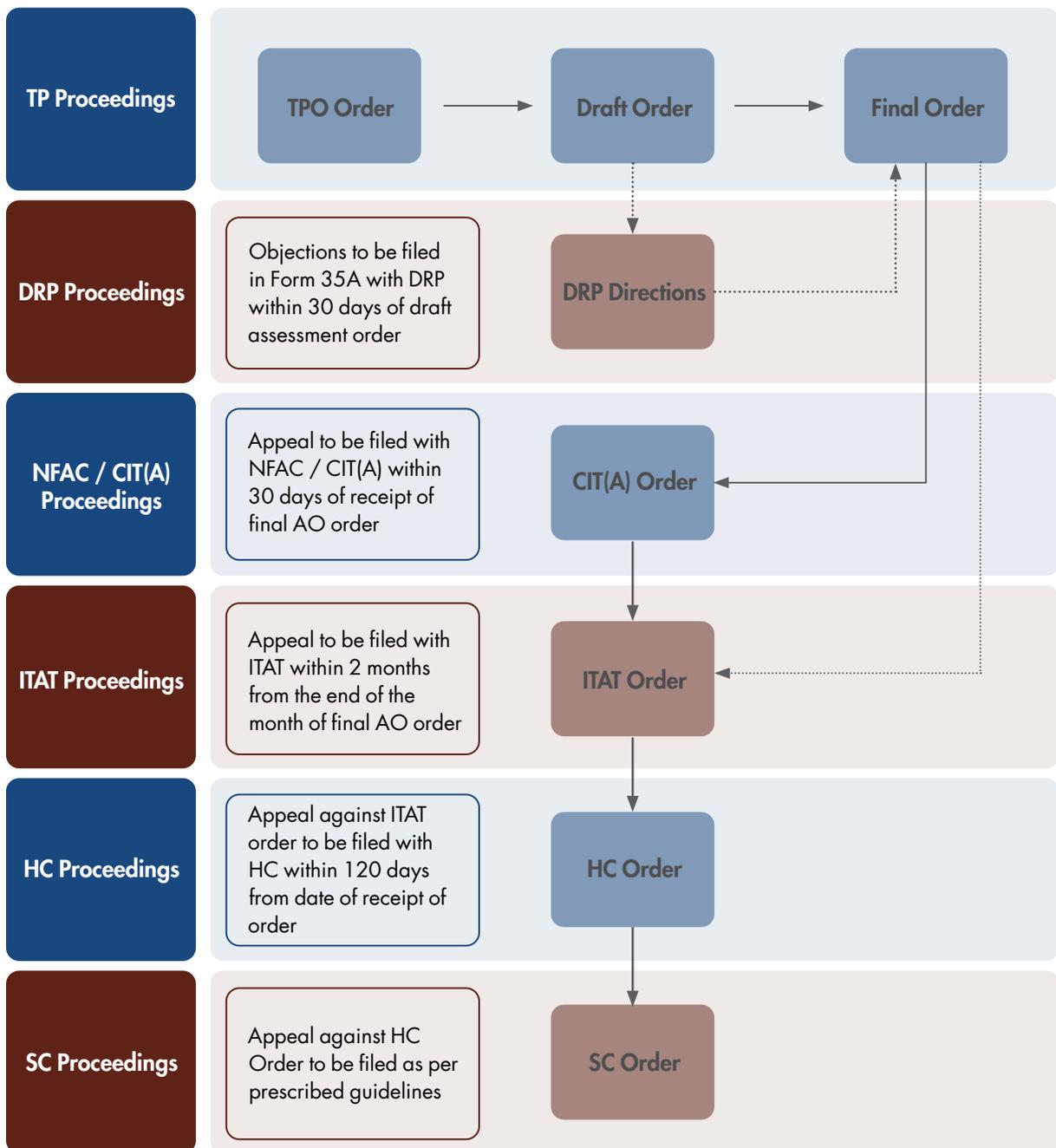
11. Under section 153 of the Income Tax Act, 1961

12. *Roca Bathroom Products (P) Ltd.* [2022] 445 ITR 537

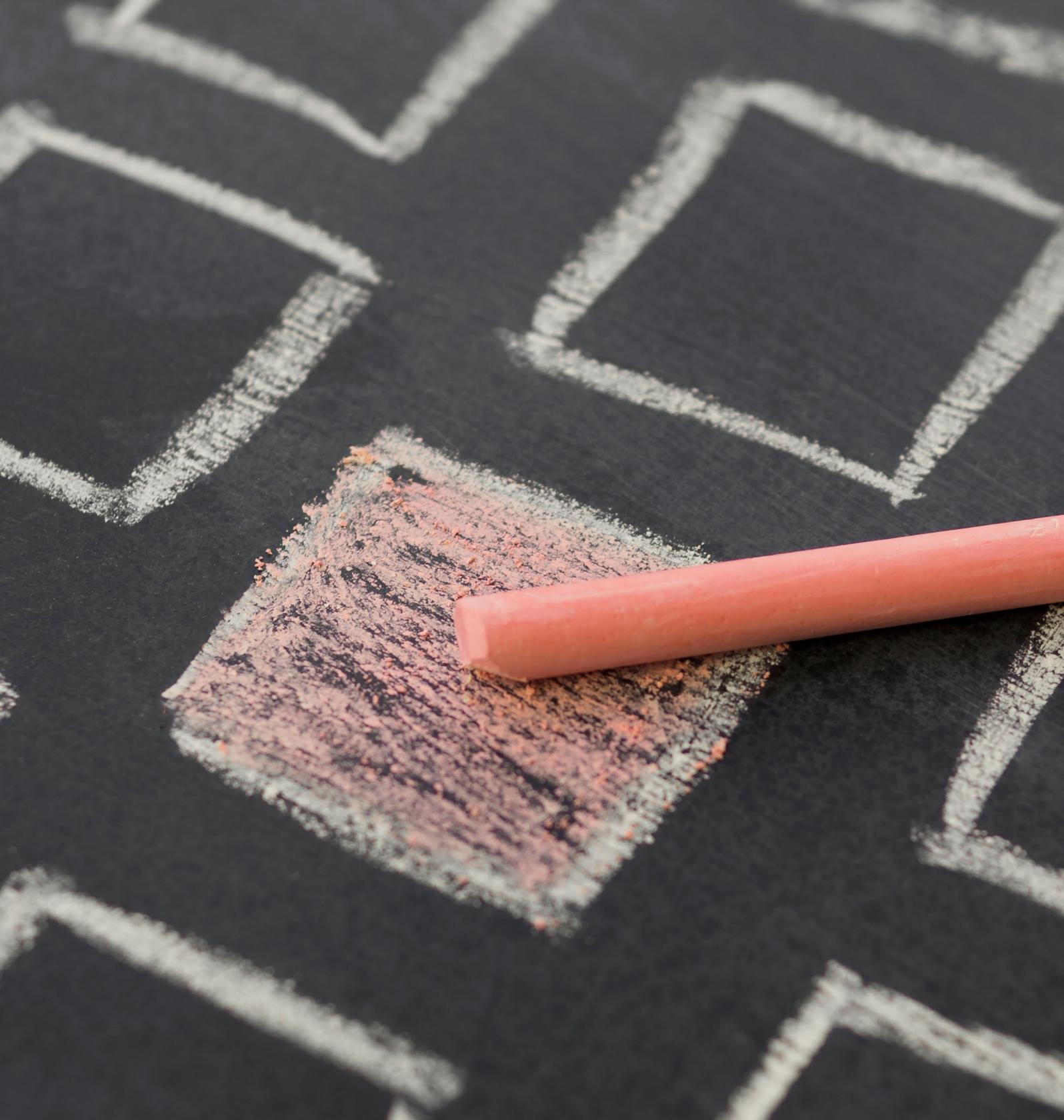
13. *ACIT (International Taxation) & Ors. v. Shelf Drilling Ron Tappmeyer Ltd.* (SLP (Civil) Nos. 20569–20572 of 2023)

14. Clause (x) of Explanation 1 to section 153 of the Income Tax Act, 1961

## TP Assessment and Appellate Process



**Note:** A writ petition can be filed by a taxpayer if any of their Fundamental Rights have been violated by the Income Tax department or the State, if there is no alternate remedy available with the taxpayer.



## Block Assessment Scheme

A new three-year block TP assessment mechanism has been introduced as a part of Draft Income-tax Rules, 2026<sup>15</sup> which will be applicable from 1 April 2026.

This framework is designed to reduce repetitive TP audits in situations where the nature of international transactions and business conditions remain broadly consistent over time. Under this scheme, the ALP would be determined for two consecutive tax year along with the base year for which TP reference is made subject to the taxpayer opting in and the TPO validating that the necessary conditions are satisfied.

The mechanism to opt for this scheme is as follows:

- Taxpayer may opt to cover two additional consecutive tax years following the year in which a reference is first made to the TPO, by filing Form 46 from end of the third tax year till 30th June of that financial year (i.e., from 01 April till 30 June of the year following the third tax year).
- The above Form shall be supported by an accountant's certificate in Form 47 which will certify that there is no change in the nature of international transactions and business conditions for the second and third tax years and that they will remain broadly same as the first tax year.
- Once the option is exercised, the TPO is required to decide within one month from the end of the month in which option is exercised, whether the option is valid, and the option will be accepted by the TPO only if the transactions and business conditions are broadly similar in all three years.
- If the TPO rejects the option, the taxpayer may appeal to the Commissioner within 15 days. The Commissioner will review the case after giving the taxpayer an opportunity to be heard.
- Where the option is rejected or cancelled, the TPO will proceed with normal TP assessment proceeding for ALP determination for first tax year.

## Key Features

- Applies from TY 2026–27
- Covers a three-year cycle (Base Year + two subsequent years)
- Taxpayer must opt in for the two subsequent years
- Transaction-specific applicability
- ALP from Base Year is intended to apply to similar transactions for Years 2 and 3
- TPO to incorporate Year 2 and Year 3 determination of ALP in the order of Year 1

## Key Practical Questions on Block Assessment

### Q1. Is the block assessment automatic for all taxpayers?

No. Taxpayers must opt in for the subsequent two years, and the TPO must validate the option.

### Q2. Does opting for Block Assessment mean the Base Year ALP is used for the next two years?

Broadly, yes. Once the option is validated, the ALP would be determined for two consecutive tax year along with the base year for which TP reference is made, provided there are no material changes in functions, assets, risks, or economic conditions. The TPO is not expected to undertake a complete fresh benchmarking exercise for those years, although a variation may be made if significant differences are identified and recorded.

Further, taxpayer to required exercise the option before attaining certainty in the first tax year.

### Q3. Can a taxpayer opt in for only one of the subsequent years?

No. The option applies jointly for both Years 2 and 3. However, if there is a change in circumstances, the taxpayer may opt for Year 2 and disclose the changes applicable to Year 3.

15. Rule 82 of Income-tax Rules, 2026

**Q4. What happens if the Base Year outcome is unfavourable?**

An unfavourable Base Year determination would extend to Years 2 and 3, creating multiyear exposure. Further, since the appellate route for these years is expected to be limited to the CIT(A), dispute timelines may become longer and cash flow implications may arise where part payment of demand or a stay application is required. However, relief granted for Year 1 by the appellate authorities will have a bearing on the demand enforcement for years 2 and 3.

There would arise a situation wherein TPO would have issued a single order for all three years, however, the effect of such order would be given in assessment order/ intimation of the respective years.

**Q5. Does the block assessment reduce compliance obligations?**

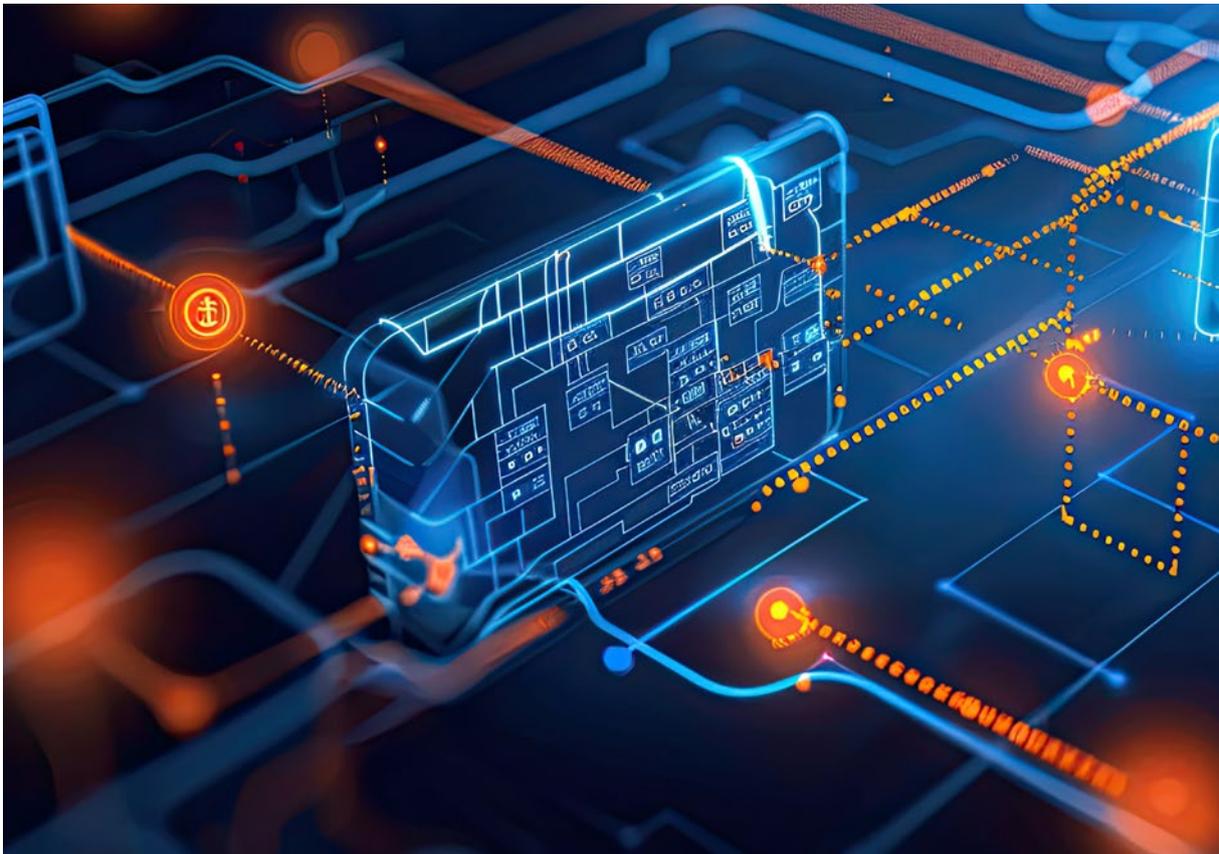
Not significantly. Taxpayers must continue to prepare annual TP documentation, maintain contemporaneous analysis, and file Form 48 for each year. The benefit lies primarily in reducing TP audit duplication.

**Q6. Can the TPO reject an opt in request?**

Yes. If the prescribed conditions are not met, or if the TPO observes material differences in subsequent years, the option may be rejected. The taxpayer may file its objections with the Commissioner to whom TPO is subordinate.

**Q7. Does the block assessment scheme apply to search cases?**

No. The scheme does not apply to search or requisition-based assessments. TP issues arising in such cases will continue to follow the regular TP assessment framework.





## Key TP Issues in India

India continues to see a high volume of TP disputes, driven by the increasing complexity of multinational business models, multi-level reporting by tax administrators, and evolving jurisprudence. While the

nature of issues varies across industries, the following represent the most common and practically significant areas of controversy encountered in TP assessments and litigation.

## Intra Group Services

### What is the issue?

Intra group services remain one of the most highly litigated TP issues in India. The core controversy is whether the taxpayer is able to demonstrate through documentation that it has actually received services from its AE, whether such services were commercially necessary (i.e. benefit test), and whether the charge reflects an arm's length value. Amongst the intra-group services payment for "Management fees" are the most controversial.

### Approach adopted by tax authorities

Tax authorities examine the commercial need for each service, evidence of actual receipt, the benefit derived, and whether any activity is duplicative or in the nature of a shareholder function. They often evaluate services at a granular, activity-level basis and resist aggregation under the Transactional Net Margin Method ('TNMM').

If there is no supporting evidence at the time, they often assume the service provided no benefit.

### Key jurisprudence trends

Courts<sup>16</sup> have consistently held that once a taxpayer demonstrates that services were received and there was a commercial benefit, the tax authorities cannot override the taxpayer's business decisions. Tribunals have also rejected blanket "no benefit" approaches and emphasised the importance of deliverables, communication trails, and contemporaneous allocation keys. Allocation methods reflecting real business practices are generally upheld.

### Practical guidance

Taxpayers should maintain a strong evidence trail through emails, deliverables, workpapers, access logs, and periodic benefit tracking. APA or MAP can help in providing certainty.

## Interest on Delayed AE Receivables

### What is the issue?

Delays in collecting payments from AEs are often treated by tax authorities as an implicit financing arrangement requiring imputation of a separate interest adjustment.

### Approach adopted by tax authorities

Tax authorities compare outstanding receivables (in days) from AEs with unrelated parties and, if AE receivables are longer or exceed industry norms, they

impute interest on such outstanding receivables with the view that the taxpayer has provided a loan to its AE. In many cases they also disregard working capital adjustments granted under TNMM and instead impute a separate interest adjustment.

### Key jurisprudence trends

Tribunals have held that if working capital adjustments are already included in the benchmarking analysis,

16. A T Kearney Limited [TS-305-HC-2024(DEL)-TP]

no separate interest adjustment is warranted. Courts<sup>17</sup> have emphasized that delays should be considered in the context of the overall transaction, including advances, payables, and commercial realities. Tax authorities must show that delays actually create a financing element. **ting real business practices are generally upheld.**

### Practical guidance

Taxpayers should monitor receivable ageing, align internal credit policies for AE and non AE customers where possible, document commercial reasons for delays, and ensure working capital adjustments are appropriately reflected in benchmarking.

## Corporate Guarantees

### What is the issue?

Corporate guarantees provided by an Indian entity to support borrowings of its AEs are regarded as international transactions and must be priced at arm's length. Disputes usually focus on the guarantee commission.

### Approach adopted by tax authorities

Tax authorities examine the credit enhancement arising from the guarantee, the borrower's independent credit rating, and the nature of support provided. They often benchmark commissions using external guarantee rates or credit spreads and may challenge taxpayer positions that rely solely on lower internal comparables.

### Key jurisprudence trends

Courts<sup>18</sup> have accepted guarantee fees in the range of 0.5% to 1% in appropriate fact patterns but have also made clear that there is no universal benchmark. The fee must reflect the actual economic benefit and financial risk undertaken. Courts have also rejected arguments that guarantees are automatically shareholder functions after the 2012 amendment that explicitly included guarantees within the definition of international transactions. **ting real business practices are generally upheld.**

### Practical guidance

Taxpayers should document borrower's standalone creditworthiness, provide credit spread analysis and maintain evidence of internal treasury practices or external bank quotes. Consistent methodology over years strengthens the position.



17. Phoenix Lamps Ltd [TS-379-HC-2024(ALL)-TP] and Kusum Health Care Private Limited (Delhi HC)(ITA765/2016)  
18. Dhunseri Ventures Limited [TS-487-HC-2025(CAL)-TP] and Everest Kento Cylinders [TS-200-HC-2015(BOM)-TP]

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## Recharacterization of Financial Instruments

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### What is the issue?

Tax authorities frequently question whether instruments like compulsorily convertible debentures ('CCDs') or other hybrid instruments are debt or equity, affecting interest deductibility.

### Approach adopted by tax authorities

Tax authorities attempt to treat debt instruments as equity based on conversion terms, economic intent, or thin capitalisation arguments. They may disallow interest deductions by recharacterizing funding arrangements.

### Key jurisprudence trends

Courts<sup>19</sup> have consistently held that CCDs and similar instruments are debt until conversion and that the tax authorities cannot disregard the legal character of the instrument without demonstrating a lack of commercial substance.

### Practical guidance

Taxpayers should ensure the commercial rationale, contractual terms, and economic substance are aligned with the intended treatment. Maintaining records of board approvals, funding needs, and conversion triggers supports the taxpayer's position.

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## Marketing Intangibles and Advertising, Marketing and Promotion ('AMP')

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### What is the issue?

The longstanding AMP dispute arises over whether advertising and marketing by Indian distributors create or enhance a foreign brand, requiring a mark-up.

### Approach adopted by tax authorities

Tax authorities frequently rely on AMP to sales ratios to infer brand building for the foreign AE and attempt to compute an adjustment using bright-line or similar methods, despite judicial rejection.

### Key jurisprudence trends

High Courts<sup>20</sup> have held that AMP cannot be treated as an international transaction in the absence of a clear agreement obligating the Indian entity to promote the foreign brand. The bright-line test has been explicitly rejected. The matter is currently pending before the Supreme Court, where final clarity is awaited.

### Practical guidance

Taxpayers should maintain clear documentation of marketing strategies, budgets, and decision-making processes to demonstrate that AMP expenditure is driven by local business needs. APA or MAP may provide certainty where AMP intensity is consistently high.

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19. Goldman Sachs (India) Finance Pvt. Ltd. [TS-488-ITAT-2025 (Mum)-TP]  
20. Wrigley India Pvt. Ltd. [TS-210-HC-2025(DEL)-TP]

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## Deemed International Transactions

### What is the issue?

A transaction with an unrelated party may be deemed an international transaction if its commercial terms are influenced by an AE.

### Approach adopted by tax authorities

Tax authorities examine global contracts, centralised procurement, referral arrangements, nominated vendors, and other situations where they believe that the AE has substantially determined the commercial terms. They may treat such transactions as international transactions even when the third party is resident in India.

### Key jurisprudence trends

The 2014 amendment clarified that residency of the third party is irrelevant, resolving earlier conflicting views. Courts<sup>21</sup> have emphasized that tax authorities must demonstrate actual involvement or influence by the AE; mere group association or centralised policies are not sufficient.

### Practical guidance

Taxpayers should assess whether the Indian entity has autonomy in negotiations. Review global arrangements, vendor nominations, and supply chain influence to determine if a deemed international transaction exists.

## Characterization of Entities

### What is the issue?

The characterisation involves determining the functional profile of the entity (e.g., limited-risk service provider, distributor, contract manufacturer) which impacts selection of comparables and expected returns.

### Approach adopted by tax authorities

Re-characterisation disputes commonly arise where the tax authorities, based on their evaluation of functions and risks, contend that the Indian entity in substance operates as an entrepreneur, despite inter-company agreements describing it as a limited-risk entity.

### Key jurisprudence trends

Courts and tribunals have consistently held that characterisation must be based on a holistic FAR

(Functions, Assets, Risks) analysis, with primacy given to actual conduct over form. Judicial authorities have cautioned against arbitrary re-characterisation without demonstrating assumption of real risks or control over economically significant decisions. Re-characterisation merely to enhance margins, without cogent evidence, has been repeatedly rejected.

### Practical guidance

Taxpayers should ensure alignment between contractual terms, functional reality, and economic outcomes. Documenting risk assumption, decision-making authority, and consistency in conduct over years is critical. Any evolution in business model should be contemporaneously captured and supported.

21. Vodafone India Services Pvt Ltd (262 CTR 133) (Bom HC)

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## Segmental Information

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### What is the issue?

Segmental information assumes critical importance where an entity carries on multiple activities, including both international transactions with AEs and third parties. Reliable segmental profitability becomes the key aspect for testing whether the transactions are at arm's length.

### Approach adopted by tax authorities

Tax authorities reject the reliability of taxpayer-prepared segmental data, particularly where the segmental results are not separately audited, and seek to recompute margins using alternative allocation keys or by applying external comparables at an entity level.

### Key jurisprudence trends

Judicial authorities have consistently held that segmental information need not necessarily be separately audited to be acceptable, provided it is reliable, consistently prepared, and reconcilable with the audited financial

statements. Tribunals have accepted segmental results derived from reasonable allocation methodologies where direct attribution is not feasible and have discouraged mechanical rejection of such data in the absence of demonstrated inaccuracies or defects. Importantly, where taxpayers have been able to furnish audited segmental accounts, judicial authorities have repeatedly held that such segmental results ought to be accepted, unless the tax authorities are able to point out specific infirmities therein.

### Practical guidance

Taxpayers should maintain robust and contemporaneous segmental workings supported by clear and rational allocation keys, internal consistency, and reconciliation with statutory financials. Where feasible, maintenance of audited segmental accounts or segment-wise reporting in management accounts significantly strengthens defensibility. Consistency in segmentation methodology across assessment years further enhances credibility and reduces the scope for dispute.





Alternative dispute resolution mechanism

As elaborated in previous sections, TP disputes in India often span several years, as the domestic litigation pathway requires matters to progress through multiple appellate levels. As a result, achieving final resolution for a single assessment year can extend well beyond a decade.

Recognising these timelines and the increasing complexity of cross border transactions, India has introduced a range of alternative dispute resolution mechanisms that operate alongside the traditional

appellate process. These include the APA programme, the Mutual Agreement Procedure under tax treaties, and the SHR. Each of these frameworks provides a structured route to reducing uncertainty, managing risk, and achieving efficiently. The Government with a clear focus on dispute resolution and reduction of prolonged TP litigation, has introduced new Safe Harbour provisions under the Income-tax Rules, 2026, particularly for the IT and IT-enabled services (IT/ITeS) sector.

## Advance Pricing Agreement

### Overview of APA

India introduced the APA scheme on 30 August 2012 to provide taxpayers with a mechanism for achieving certainty on the pricing of international transactions. An APA is a formal agreement between a taxpayer and one or more tax administrations to determine, in advance, the appropriate TP methodology or the ALP for specified transactions. APAs may cover transactions already undertaken or those proposed to be undertaken in the future. By offering multi-year certainty, the programme reduces litigation risk and provides a structured framework for resolving complex TP disputes.

### Type of APA

India's APA programme allows taxpayers to negotiate three categories of agreements:

- **Unilateral APAs** between the taxpayer and the Indian tax administration.
- **Bilateral APAs** involving the (1) Applicants (Taxpayer / AE) (2) Indian Tax Administration (3) Treaty Partner tax Administration.
- **Multilateral APAs** involving the (1) Applicants (Taxpayer / AE) (2) Indian Tax Administration (3) One or more Treaty Partner tax Administration.

### Roll Back provision in APA Scheme

The rollback mechanism, introduced from 1 October 2014, enables the application of an APA's terms to a period of up to four years prior to the APA period. Rollback applies the agreed methodology or the agreed ALP to international transactions undertaken before the APA term, provided the relevant conditions are satisfied. Rollback ensures that past disputes can also be aligned with the APA outcome, reducing legacy litigation.

### Eligibility for APA Application

Any person that has undertaken international transactions or is contemplating entering into international transactions may apply for an APA.

### APA Tenure

The tenure of an APA can be up to 5 years for onward determination of ALP. In the case of the roll back mechanism, the APA can be made applicable for a period not exceeding 4 years. Hence, the total tenure applicable for an APA can be up to 9 years.

### APA Filing fees

The Draft Income-tax Rules, 2026 have proposed a flat fee of INR 20 lakhs for all APA applications, irrespective of the value of the transactions, which will replace the existing provisions, which prescribed a graded fee structure based on the value of the transactions.

### APA Process

India's APA process follows a structured sequence involving pre-filing consultation, formal application, detailed review, negotiation, agreement drafting and final execution. The pre-filing stage is non-binding and allows the taxpayer and the tax authorities to discuss the feasibility and scope of the APA. Once the application is accepted, an APA team conducts functional analysis, economic review, site visits where required and begins negotiations. The CA leads negotiations in bilateral or multilateral cases. The process culminates in the signing of a binding agreement.

### Terms of an APA

An APA may specify:

- Covered international transactions
- Agreed TP method
- Agreed ALP (if any)
- Critical assumptions underlying the pricing arrangement
- If critical assumptions change or are violated, the APA may be revised or cancelled

### Post-APA Procedure

- **Filing of Modified Return:** A taxpayer and its AE (inserted by Finance Bill 2026) who enters into an APA must file a Modified Return of Income for the relevant years within 3 months from the end of the month in which the APA was signed. The modified return should reflect only the changes arising from APA terms.

The option provided to the AE to file a modified return pursuant to the amendment introduced in Union Budget 2026 is a welcome development. This amendment enables the AE to give effect to

corresponding adjustments arising from the APA, thereby avoiding double taxation for the same transaction.

- **Impact on assessments and appeals:** The AO must assess or reassess income in line with the APA. Appeals related to covered transactions must be withdrawn by both the taxpayer and the Income Tax Department. TP audits for covered transactions cannot continue. Non-covered transactions remain unaffected.
- **Annual Compliance Report ('ACR'):** A taxpayer is required to file the ACR within 90 days from the date of entering into the APA or within 30 days from the due date of filing the return of income, whichever is later. For the subsequent years covered under the APA, the ACR must be filed within 30 days from the due date of filing the return of income.

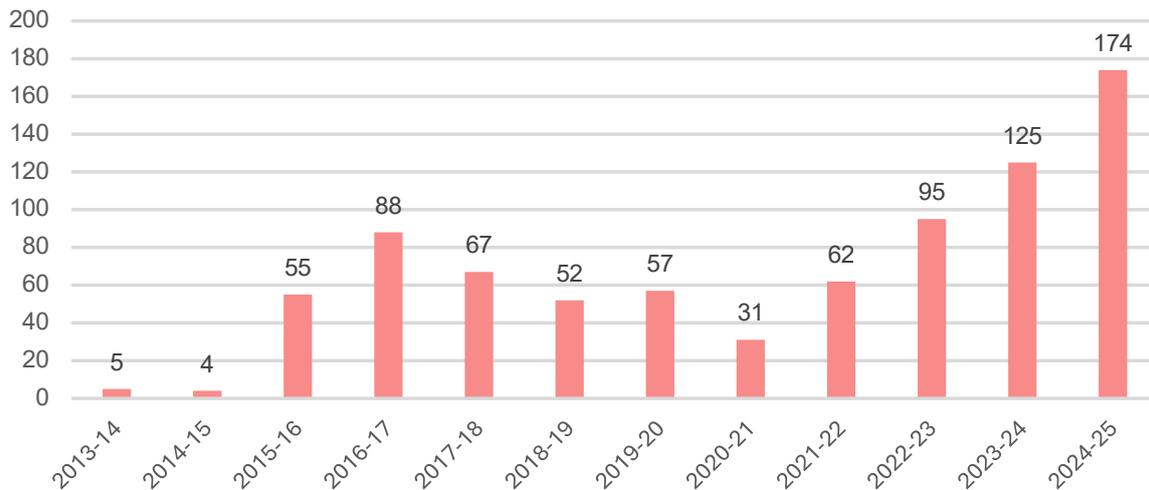
### Amendment to APA Applications

- For unilateral, bilateral or multilateral APAs, amendments are permitted before finalization of the APA resolution.
- Conversion from a unilateral APA request to a bilateral or multilateral request does not alter the nature or filing date of the original application.

### APA Statistics

India's APA programme has continued to strengthen over the years and has become a central pillar of the country's TP framework. The latest APA Annual Report for 2024–25 highlights the growing confidence of multinational groups in the programme, with 174 APAs concluded in FY 2024–25 alone. Cumulatively, 815 APAs have been signed as of 31 March 2025, including India's first multilateral agreement. These agreements together provide certainty for more than four thousand four hundred assessment years, demonstrating both the depth and scale of coverage under the APA framework. The upward trend in annual closures, combined with a robust pipeline of bilateral cases, reflects a sustained commitment by the tax administration to reduce TP disputes through collaborative dispute resolution mechanisms.

## No. of APAs Signed



Another important statistic included in the CBDT's APA report is the "ageing analysis" of APAs, which analyses the time taken to sign an APA from the date on which the taxpayer filed the application.

In FY 2024–25, the average time to conclude UAPAs was 42.84 months and for renewals the average time taken was 35.76 months, a noticeable reduction compared to prior years, reflecting greater programme efficiency.

We have experienced that for cases of APAs with respect to captive service providers, the time taken now is significantly less than the overall average. Further, renewal of APAs, in few instances, has been concluded in less than 18 months.

Below is listing of type of transactions and the number of transactions entered during the year based on recent CBDT report for 2024-25:

Sr. No.	Type of Transaction
1	Provision of IT enabled services
2	Provision of back-office IT enabled services
3	Receipt of management / corporate support services
4	Provision of SWD (software development) services
6	Export of finished goods
7	Import / purchase of raw materials / consumables
8	Payment of royalty / license fee
9	Payment of interest on borrowings
10	Import of finished goods / spare parts
11	Provision of marketing support services
12	Provision of KPO services

## Key practical questions on APA

### Q1. Can a taxpayer request a Unilateral APA for specific transactions and a Bilateral APA for others?

Yes. Since APAs are transaction-specific, a taxpayer may seek a unilateral APA for certain international transactions and a bilateral APA for others. A combined APA application may also be filed, indicating which transactions are proposed for unilateral resolution and which for bilateral.

### Q2. Is the annual APA compliance audit equivalent to a regular TP audit?

No. The annual compliance audit is **limited and focused**, meant only to verify adherence to APA terms.

### Q3. Is TP documentation required after entering into an APA?

Yes. The taxpayer must maintain documentation necessary to demonstrate **compliance with APA terms**, resulting in significantly lower compliance burden than full documentation maintenance<sup>22</sup>.

### Q4. How are secondary adjustments applied when an APA results in a primary adjustment?

When an APA outcome leads to an increase in the taxpayer's income for rollback years or for APA years prior to signing, the additional income constitutes a primary adjustment. The taxpayer must ensure that the corresponding amount has been repatriated by the AE within 90 days from the date of the primary adjustment.

If not repatriated, the unrepatriated balance is treated as a secondary adjustment and may require notional interest computation or may be regularised through payment of one-time additional tax at 18% (plus applicable surcharge and cess) on the excess money not repatriated.

### Q5. The APA Rules provide for covering international transactions. Can the taxpayers consider APA for profit attribution to Permanent Establishments?

Yes. If taxpayers admits having permanent establishment ('PE'), the taxpayer can file APA Request for profit attribution to the PE.

### Q6. Can an applicant withdraw an APA application before the agreement terms are finalised, and if so, will the application fee be refunded?

Yes, the applicant may withdraw the APA application at any time before the terms of the agreement are finalised by informing the prescribed authority; however, the application fee once paid will not be refunded.

### Q7. What is timeline for conclusion of UAPAs for the IT Services?

The Union Budget 2026 proposes a fast-track mechanism for UAPAs in the IT/ITeS sector, aiming to complete them within **two years (24 months)**. This period can be extended by an additional **six months** at the taxpayer's request.

### Q8. What is the time limit for completing the UAPA for Non-IT transactions?

If no agreement is concluded within three years from the end of the financial year in which the application was filed, the application shall be treated to be closed where the applicant fails to furnish the required documents, information, or relevant material necessary for processing the application, or does not comply with directions issued by the authorities, including attending meetings, facilitating site visits, or cooperating with inquiries. This procedural amendment has been introduced in the Draft Income-Tax Rules, 2026.

22. Rule 10D of Income-tax Rules, 1962

## Mutual Agreement Procedure

### Overview

India's network of tax treaties contains a MAP article that enables the Competent Authorities of two treaty partners to consult and resolve cases of double taxation. MAP may address both juridical double taxation (the same income taxed twice in the hands of the same taxpayer) and economic double taxation (the same income taxed in the hands of AEs in different jurisdictions).

India's domestic Income-tax Act contains enabling provisions for implementing MAP outcomes, and the CBDT has issued detailed guidance on access, process steps, timelines and India's positions on common MAP issues. Together, these create a structured and treaty-aligned framework for resolving cross-border tax disputes outside the domestic litigation process.

### MAP Access

MAP may be invoked in a wide range of treaty-related disputes, including:

- Adjustment arising from TP assessment;
- Issues relating to the existence of a PE;
- Attribution of profits to PEs, whether admitted or not by the taxpayers;
- Characterisation or re-characterisation of an item of **expense or payment** [like Royalty or Fee for Technical Services ('FTS') or interest]; and
- Characterisation or re-characterisation of an item of **receipt as taxable income** (like Royalty or FTS or interest).

### Denial of Access to MAP:

- Access to MAP may be restricted in certain situations;
  - Application is filed beyond the time limit specified in the DTAA;

- Same issue is already resolved by tax authorities for instance;
  - Authority for Advance Rulings (AAR);
  - Unilateral APA has already been entered into for the same issue and year;
  - ITAT decides a matter on merits;
- MAP access will generally be denied for taxpayers opting for Safe Harbour provisions, except in situations where the Safe Harbour determined ALP is unchanged and the request is solely for correlative relief from the treaty partner.

### Time limit for filing MAP Application

The time limit for filing a MAP application is governed by the respective DTAA. In many treaties, including the (US, Australia, China), the timeframe is three years from the first notification of the action (which is generally final assessment order) giving rise to taxation not in accordance with the treaty.

### MAP Application Process

- An Indian taxpayer can make a MAP application to the Indian CA in the prescribed Form 34F.
- If an AE of an Indian taxpayer submits a MAP application before the CA of its country of residence (treaty partner) in respect of any order/action of the tax authorities of India, a copy of such MAP application must also be provided to the Indian CA.
- The CA of the treaty partner must communicate acceptance of MAP application to the Indian CA.
- Once the MAP application is accepted/rejected by Indian CA, it shall deliver the decision to the CA of the Treaty Partner through written communication.
- The decision of whether the application is accepted or rejected is communicated to Indian taxpayer by the Indian CA.

- The CA of the Treaty Partner would provide its position paper to the Indian CA. The Indian CA that has jurisdiction over the case would exchange views and come to a decision and present a negotiating position.
- Upon reaching a resolution, the CA of the Treaty Partner would communicate the terms and conditions of the resolution to the taxpayer.
- Where it is not possible to reach a resolution, the MAP would be closed and recorded as unresolved.
- The Indian CA will endeavour to resolve MAP cases within an average timeframe of 24 months.

### Implementation of MAP Outcomes

- The Indian CA is to communicate the MAP resolution to the taxpayer.
- The taxpayer must confirm acceptance or rejection (and withdraw appeals, if any) within 30 days of receipt of said Resolution.
- The AO is to implement the MAP outcome and inform the taxpayer on any tax demand / refund within one month from the end of the month in which the communication was received by the CA.
- The taxpayer shall pay taxes as due and furnish proof of payment to the AO. The AO shall withdraw the pending appeal filed by Indian tax authorities, if any.

### MAP Statistics

According to the OECD's recent MAP statistics for India, India remains an active user of MAPs.

### MAP Pending cases as on 31 December 2024<sup>23</sup>:

Metric	TP Cases
Opening Inventory	307
New Cases Started	77
Cases Closed	86 <sup>24</sup>
Closing Inventory	386

### Average Time to close MAP<sup>25</sup>

Metric	TP (Nos of months)	Other (Nos of months)
Average Time to Close (Pre-2015 Cases)	154.37	126.97
Average Time to Close (Post-2015 Cases)	45.73	48.07

India's MAP inventory remains sizeable, supported by a consistent inflow of cases and a healthy rate of closures in 2024. Although older (pre-2015) cases continue to exhibit prolonged resolution timelines, more recent cases show significantly improved processing times. The overall outcomes indicate that a substantial share of disputes is being resolved either fully or partially through MAP, with additional relief provided via domestic remedies and unilateral actions where appropriate.

23. <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-india.pdf>

24. Highest cases closed with USA, Switzerland, Japan, UK, Australia, Germany

25. <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-india.pdf>

After the resolution of the earlier India–US MAP deadlock around 2016–2017, the MAP process in India has gathered considerable momentum. The

Competent Authorities have adopted a more facilitative and solution-oriented approach on complex TP issues, leading to increased taxpayer participation.

## Key Practical Questions on MAP

### Q1. Can a MAP resolution be extended to transactions with other AEs that are not covered under the MAP application?

No. A MAP resolution is binding only for the specific AEs and transactions covered.

Historically, several decisions of the ITAT have accepted that a MAP outcome may have persuasive value for similar transactions undertaken with other AEs or for similar transactions for subsequent years, provided the taxpayer can demonstrate factual comparability. These rulings observed that where the functional profile, pricing model and economic circumstances are broadly aligned, the MAP-driven margin or methodology could serve as a reasonable reference point.

However, a recent judgment of the Delhi High Court<sup>26</sup> has taken a more restrictive view, holding that a MAP settlement is specific to the AE and the transactions formally covered under the MAP request, and need not apply to other group entities or unrelated transactions. The Court emphasised that a MAP outcome is a negotiated treaty-based resolution and does not constitute an arm's-length price determination capable of automatic extension.

### Q2. How are secondary adjustments applied in cases where a MAP resolution results in a primary adjustment?

If the MAP resolution results in additional income and the taxpayer accepts the MAP outcome, this becomes a primary adjustment under Indian TP regulations. The amount must be repatriated from the AE within 90 days.

If not repatriated, the unrepatriated balance is treated as a secondary adjustment and may require notional interest computation or may be regularised through payment of one-time additional tax at 18% (plus applicable surcharge and cess) on the excess money not repatriated.

### Q3. Do penalties apply when income is increased pursuant to a MAP resolution?

MAP does not automatically waive penalties, because penalties arise under domestic law and MAP deals only with eliminating double taxation. However, tribunals have in many cases held that penalties for under-reporting should not be levied when income increases solely due to a MAP settlement, since the adjustment results from a bilateral negotiation and not from any concealment or misstatement by the taxpayer.

At the same time, there are rulings that take a stricter view and hold that MAP does not, by itself, prevent the application of penalty provisions<sup>27</sup>.

In practice, therefore, penalty exposure must be evaluated on the specific facts of the case. While MAP outcomes generally reduce the likelihood of penalty on substantive TP adjustments, penalties for procedural non-compliance may still apply.

### Q4. Is tax collection suspended during the MAP process?

Tax collection is suspended only in limited cases where India has MoUs with specific countries (e.g., the US, UK, Sweden), and the suspension is generally subject

26. Delhi High Court Ruling in case of AON Consulting Pvt. Ltd ITA 244/2024

27. Toyota Kirloskar Motor Private Limited [TS-657-HC-2019(KAR)-TP]

to furnishing a bank guarantee. In other cases, Indian domestic rules apply and taxes may need to be paid during the MAP process.

#### **Q6. Can taxpayer claim 10AA deduction pursuant to MAP?**

Yes. Judicial decisions, including the Bangalore ITAT ruling in Dell International Services India Pvt. Ltd<sup>28</sup>,

have held that income increased through a MAP settlement is eligible for deduction, provided export proceeds are realised and SEZ conditions are met. The bar applies only to unilateral TP adjustments, not to bilateral MAP outcomes.

## Safe Harbour Rules

### Overview

India introduced SHR to provide taxpayers with a simplified mechanism for achieving TP certainty without undergoing a full audit or detailed benchmarking.

Union Budget 2026 has introduced significant amendments to SHR. The CBDT has issued the draft Income-tax Rules, 2026 along with the proposed Forms under the Income-tax Act, 2025, which will come into effect from 1 April 2026.

The revised SHR have been made more attractive through several positive changes, particularly for the IT services sector. This sector represents one of the most common and heavily litigated categories of transactions.

A key change is the consolidation of software development, ITeS, KPO, and contract R&D into a single category of "IT services." This removes classification ambiguity and addresses long-standing disputes, especially in BPO and KPO cases. Further, the introduction of automated approval of Safe Harbour applications is expected to reduce approval timelines and minimise subjectivity in tax authority reviews.

Under the Safe Harbour regime, where a taxpayer satisfies the prescribed conditions and adopts the specified margin or pricing for eligible international transactions, the transfer price declared by the taxpayer is accepted as being at arm's length.

### Non- Applicability of SHR

SHR are not applicable in respect of eligible international transactions entered into with an AE located in any country or territory notified under Income-tax provisions or in no tax or low tax territory or territory.

### Process for opting for safe harbour

The Draft Income-tax Rules, 2026 introduced separate procedures under the SHR for non-IT transactions and IT / IT-enabled services, applicable from 1 April 2026. These new rules lay down distinct processes, timelines, and compliance requirements for each category. The key differences between the two frameworks are summarised below:

28. Dell International Services India Pvt. Ltd vs DCIT – IT(TP)A No. 879/Bang/2018

Particulars	Non-IT Services	IT Services
Type of transactions	International transactions other than IT / IT-enabled services	Provision of IT and IT - enabled services
Safe Harbour period	Applicable for block of 3 TYs. However, the application needs to be filed each year.	Applicable for block of 5 consecutive TYs
Form to be filed	Form 49	Form 49
Authority with whom Form is filed	AO	Director General of Income-tax (Systems)
Time limit to file Form 49	On or before the return filing due date	Any time on or before 30th June of the second TY of the Five year block period.
Verification of eligibility	Manual verification by AO	Electronic verification
Role of TPO	AO may refer to TPO if eligibility is doubtful	No routine TPO reference for eligible IT services
Opportunity to rectify defects	Not specifically provided	Taxpayer is allowed to remove defects before rejection
Communication of decision	Through formal order	Electronic intimation
Time limit for acceptance / rejection	Defined timelines for AO, TPO and Commissioner	Within 2 months from exercise of option
Right to appeal	Appeal to Commissioner within 15 days	Reasons provided electronically (no separate appeal mentioned)
Consequence of no action by tax authority	Safe Harbour option deemed valid	Not specifically provided
Filing of return of income	As per normal process	Mandatory filing under Safe Harbour for all 5 years
Withdrawal of option	Not specifically covered	Allowed, but re-entry is not permitted up to expiry of 5 consecutive tax years for which application was made.

Particulars	Non-IT Services	IT Services
Annual compliance during period	Not specified	Annual statement to be filed for next 4 years
Reference for non-eligible transactions	AO may refer such transactions to TPO	Same provision applies

### Safe Harbour rates proposed in Income-Tax Rules 2026

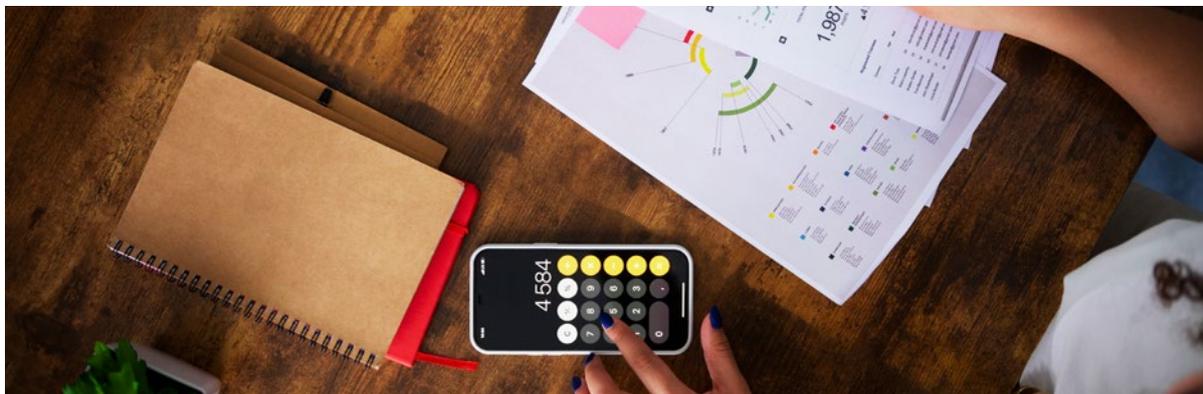
Sl. No.	Eligible International Transaction	Circumstances / Conditions
1	Provision of information technology services <sup>29</sup>	OP / OC $\geq$ <b>15.5%</b> where aggregate operating revenue from such transaction(s) during the tax year does not exceed <b>INR 2,000 crores</b>
2	Advancing of intra-group loans (denominated in INR)	Interest rate not less than <b>SBI one-year MCLR as on 1 April</b> of the relevant tax year <b>plus:</b> <ul style="list-style-type: none"> <li>i. <b>175 bps</b> – credit rating <b>AAA to A</b> or equivalent</li> <li>ii. <b>325 bps</b> – credit rating <b>BBB-, BBB, BBB+</b> or equivalent</li> <li>iii. <b>475 bps</b> – credit rating <b>BB to B</b> or equivalent</li> <li>iv. <b>625 bps</b> – credit rating <b>C to D</b> or equivalent</li> <li>v. <b>425 bps</b> – credit rating not available and aggregate INR loans <math>\leq</math> <b>INR 100 crores</b> as on 31 March</li> </ul>
3	Advancing of intra-group loans (denominated in foreign currency)	Interest rate not less than the <b>reference rate of relevant foreign currency as on 30 September</b> of the relevant tax year <b>plus:</b> <ul style="list-style-type: none"> <li>(a) <b>Aggregate loan amount <math>\leq</math> INR 250 crores:</b> <ul style="list-style-type: none"> <li>i. <b>150 bps</b> – credit rating <b>AAA to A-</b> or equivalent</li> <li>ii. <b>300 bps</b> – credit rating <b>BBB+, BBB, BBB-</b> or equivalent</li> <li>iii. <b>400 bps</b> – credit rating <b>BB+ to D</b> or rating not available</li> </ul> </li> <li>(b) <b>Aggregate loan amount <math>&gt;</math> INR 250 crores:</b> <ul style="list-style-type: none"> <li>i. <b>150 bps</b> – credit rating <b>AAA to A-</b> or equivalent</li> <li>ii. <b>300 bps</b> – credit rating <b>BBB+, BBB, BBB-</b> or equivalent</li> <li>iii. <b>450 bps</b> – credit rating <b>BB+ to B-</b> or equivalent</li> <li>iv. <b>600 bps</b> – credit rating <b>C+ to D</b> or rating not available</li> </ul> </li> </ul>

29. As per Union Budget 2026

Sl. No.	Eligible International Transaction	Circumstances / Conditions
4	Providing corporate guarantee	Commission or fee not less than <b>1% per annum</b> on the amount guaranteed
5	Provision of contract R&D services (generic pharmaceutical drugs)	OP / OC $\geq$ 24%, where aggregate operating revenue does not exceed <b>INR 300 crores</b>
6	Manufacture and export of <b>core auto components</b>	OP / OC $\geq$ 12%
7	Manufacture and export of <b>non-core auto components</b>	OP / OC $\geq$ 8.5%
8	Receipt of low value-adding intra-group services	Aggregate amount (including mark-up $\leq$ 5%) not exceeding <b>INR 10 crores</b> , and <b>certification by an accountant</b> regarding the cost pooling method, exclusion of shareholder and duplicate costs, and reasonableness of allocation keys
9	Provision of data centre services <sup>30 31</sup> (Note 1)	OP / OC $\geq$ 15%

*Note 1: As per Finance Bill 2026, any income arising in India to a foreign company solely from procuring data centre services from a specified data centre located in India is exempt from Indian income tax. The exemption is available up to the tax year ending 31 March 2047, subject to prescribed conditions such as use of a notified data centre and compliance with reporting requirements.*

*Note 2: The safe harbour rates for eligible transactions under Income-Tax Rules, 1962 are provided in **Annexure 2***



30. newly introduced in Union Budget 2026

31. "data centre services" means services provided by a data centre through the use of physical infrastructure, including land, buildings, leaseholds, power, servers, computers, networking and other equipment, cable landing stations, cables, connectivity, security, human resource, and other resources in India and shall not include 'data hosting services'



# Conclusion



India's TP framework offers taxpayers a range of robust mechanisms to achieve certainty, reduce disputes, and align cross-border operations with commercial realities. MAP provides a treaty-based, cooperative approach to resolving double taxation and cross-border disputes, delivering finality and predictability even amid ongoing litigation. When approached strategically, MAP allows taxpayers to maintain consistency across appeals, financial reporting, and tax computations, ensuring effective implementation of the agreed resolution.

APAs complement MAP by providing long-term clarity on arm's-length pricing, critical assumptions, and methodology for intercompany transactions. Through both prospective application and rollback provisions, APAs reduce the risk of protracted audits, mitigate historical disputes, and enable stable planning over multiple years. The consistent implementation of unilateral and bilateral APAs by authorities underscores their effectiveness as a strategic tool under the TP regime.

While the proposed block assessment scheme has the potential to streamline dispute resolution, its effectiveness ultimately depends on implementing a genuine single-order framework for the entire three-year period.

The rationalisation of Safe Harbour margins through expanded eligibility thresholds, automated approvals, and a strengthened APA programme goes beyond procedural reform and signals a meaningful shift toward a future-ready TP framework.

Together, MAP, APAs, and Safe Harbour form a cohesive alternative dispute resolution ecosystem that empowers taxpayers to proactively manage TP risks. By leveraging these mechanisms strategically, multinational enterprises can achieve greater predictability, minimize litigation exposure, and foster a stable, transparent, and business-friendly tax environment in India.

## Annexure 1: TP Penalties

Particulars	Quantum of Penalty
Failure to keep and maintain information and documents as required under Section 92D(1) and (2) and Fails to report such transaction which he is required to do so; or maintains or furnishes an incorrect information or document	2% of value of each international transaction / SDT
Fails to furnish the information and the documents as required under subsection (4) of Section 92D i.e. Master File	INR 5,00,000
Failure to furnish information or documents as required by section 92D(3)	2% of the value of international transaction / SDT for each such failure
Failure to furnish accountant's report as required by section 92E (i.e., Form No 3CEB) / Form No. 48	INR 1,00,000 As per Union Budget, 2026 penalty is replaced with a late filing fee of INR 50,000 for delay up to one month and INR 100,000 for delays beyond one month.
Furnishing of incorrect information in any report or certificate by an accountant or merchant banker or a registered valuer	INR 10,000 for each such report or certificate
Non-furnishing of the CbCR Report:	INR 5,000 per day
(a) Default not more than one month	
(b) Default more than one month	INR 15,000 per day for period exceeding 1 month
(c) Default even after service of order levying penalty under either (a) or (b) above	INR 50,000 per day Continuing default beyond the date of service of penalty order
Timely non-submission of information and documents before prescribed authority with respect to CbCR	INR 5,000 per day
(a) timely non-submission of information before prescribed authority when called for	
(b) Default even after service of order levying penalty under (a) above	INR 50,000 per day Continuing default beyond the date of service of penalty order
Providing Inaccurate information in the CbCR Report	INR 5,00,000
Under-reporting or misreporting of Income (Applicable from AY 2017-18)	Penalty for underreporting 50% of tax payable on the under reported income Penalty for misreporting 200% of the tax payable on the misreported income.

Annexure 2: Safe Harbour Rates for FY 2025-26<sup>32</sup>

Sr. No.	Nature of Transaction (Rule 10TC)	Threshold / Value limit (Rule 10TD)	Safe Harbour Requirement (Rule 10TD)
1	Provision of software development services (Rule 10TC – item (i)) / Provision of information technology enabled services (ITeS) (Rule 10TC – item (ii))	Value ≤ INR 100 crore	OP / OC ≥ 17%
		Value > INR 100 crore and ≤ INR 300 crore	OP / OC ≥ 18%
2	Provision of knowledge process outsourcing services (Rule 10TC – item (iii))	Value ≤ INR 300 crore	OP / OC ≥ 24%, where employee cost ≥ 60% of operating expense
			OP / OC ≥ 21%, where employee cost ≥ 40% but < 60%
			OP / OC ≥ 18%, where employee cost ≤ 40%
3	Advancing of intra-group loans denominated in INR (Rule 10TC – item (iv))	No specific value limit	Interest rate ≥ SBI 1-year MCLR (as on 1 April of relevant PY) + <ul style="list-style-type: none"> <li>• 175 bps (AAA to A)</li> <li>• 325 bps (BBB-, BBB, BBB+)</li> <li>• 475 bps (BB to B)</li> <li>• 625 bps (C to D)</li> <li>• 425 bps (No rating &amp; total INR loans ≤ INR 100 crore as on 31 March of relevant PY)</li> </ul>
4	Advancing of intra-group loans denominated in foreign currency (Rule 10TC – clause (iv))	Total loans ≤ INR 250 crore:	Interest rate ≥ Reference rate (as on 30 Sept of relevant PY) + <ul style="list-style-type: none"> <li>• 150 bps (AAA to A-)</li> <li>• 300 bps (BBB+, BBB, BBB-)</li> <li>• 400 bps (BB+ to D or no rating)</li> </ul>
		Total loans > INR 250 crore	Interest rate ≥ Reference rate (as on 30 Sept of relevant PY) + <ul style="list-style-type: none"> <li>• 150 bps (AAA to A-)</li> </ul>

32. Rule 10TD(2A) of the Income-tax Rules, 1962 - [Safe Harbour](#)

Sr. No.	Nature of Transaction (Rule 10TC)	Threshold / Value limit (Rule 10TD)	Safe Harbour Requirement (Rule 10TD)
			<ul style="list-style-type: none"> <li>• 300 bps (BBB+, BBB, BBB-)</li> <li>• 450 bps (BB+ to B-)</li> <li>• 600 bps (C+ to D or no rating)</li> </ul>
5	Providing corporate guarantee (Rule 10TC – item (v))	No value threshold	Commission/fee $\geq$ 1% per annum on amount guaranteed
6	Provision of contract R&D services relating to software development (Rule 10TC – item (vi))	Value $\leq$ INR 300 crore	OP / OC $\geq$ 24%
7	Provision of contract R&D services relating to generic pharmaceutical drugs (Rule 10TC – item (vii))	Value $\leq$ INR 300 crore	OP / OC $\geq$ 24%
8	Manufacture and export of core auto components (Rule 10TC – item (viii))	No value threshold	OP / OC $\geq$ 12%
9	Manufacture and export of non-core auto components (Rule 10TC – item (ix))	No value threshold	OP / OC $\geq$ 8.5%
10	Receipt of low value-adding intra-group services (Rule 10TC – item (x))	Aggregate value $\leq$ INR 10 crore	Cost base with mark-up $\leq$ 5%, subject to certified cost pooling and allocation keys

SHR are also applied to SDTs involving electricity-related activities<sup>33</sup>, milk procurement and raw diamond trading. Under the new Income-tax rules 2026, SHR has also been extended to the business activity of storage of components in a warehouse in a custom bonded area for sale to a contract manufacturer.

33. Notification 11/2015 dated 4 February 2015



## About Dhruva Advisors

Dhruva Advisors India Pvt. Ltd., a Ryan LLC affiliate, is a leading tax and regulatory advisory firm delivering high-impact solutions across India and key global markets. In a rapidly evolving tax environment, we help clients navigate complexity with clear, practical, and insight-driven guidance.

Founded in 2014, Dhruva has grown into one of India's most respected tax firms, operating from 12 offices across India and international locations in Dubai, Abu Dhabi, Saudi Arabia, and Singapore. Our leadership team includes 24 Partners, 8 Senior Advisors, 15 Associate Partners, and 50 Principals, supported by nearly 500 professionals with deep technical expertise and a strong commitment to client outcomes.

Dhruva Advisors has been consistently recognized by International Tax Review, earning the 'India Tax Firm of the Year' award for five consecutive years (2017–2021) and maintaining a 'Tier 1' ranking through 2026. These accolades reflect our focus on accountability, innovation, and a client-first mindset.

Our expertise spans tax disputes, global structuring, advisory, and regulatory strategy. We support clients across industries including Aerospace & Defense, Agro & Chemicals, Automotive, Conglomerates, Education, Energy & Resources, Financial Services, Healthcare, IT & ITeS, Manufacturing, Pharma & Life Sciences, Private Equity, Real Estate, Transportation, Telecom, and Media.

Wherever tax complexity exists, Dhruva delivers clarity.

### Our recognitions

Dhruva Advisors has consistently been ranked as 'Tier 1' firm in General Corporate Tax, Indirect Tax, and Transfer Pricing, maintaining top-tier rankings through 2026.

Awarded 'India Tax Firm of the Year' at the ITR Asia Tax Awards for five consecutive years (2017–2021).

Recognized as the 'India Disputes and Litigation Firm of the Year' at the ITR Asia Tax Awards in 2018 and 2020.

Dhruva Consultants achieved ITR World Tax Ranking 2026:

- Tier 1 – Indirect Tax
- Tier 2 – General Corporate Tax, Transfer Pricing, Transactional Tax
- Other Notable: Tax Controversy

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