

FSIA E-circular dt. 3.9.2013

(E – Filing of Form 3CEB compulsory)

For **Domestic “Related Party Transactions** also >> **Else penalty in Rs Lakhs**

Faridabad Small Industries Association

The face of Modern Indian MSMEs

www.fsiaindia.com FSIA Park , Opp. Plot No.23, Sector-24, Faridabad- 121005, Haryana , India

&

Integrated Association of Micro, Small & Medium Enterprises of India

www.iamsmeofindia.co.in

E-mail: fsiaindia@gmail.com, info@iamsmeofindia.co.in +91-9711123111 (Executive Secretary);



Rajive Chawla
President, FSIA



Sangeet Kr Gupta
Hon. Consultant, FSIA

Dear FSIA Members,

Do you have Purchase / Sale from any Related companies ?

**If amount is more than limits, then be ready to disclose everything to Govt,
Else Pay Penalty of 2% of the Transaction**

**Transactions
Rs 10 Crore**

**Records not
kept**

**Penalty = Rs
20 Lakh**

Indian Background

For last 12 years, India had a law, of Transfer Pricing(TP). If you are an Exporter/ Importer from a Group company abroad, you have to justify to the Government, that the prices charged are “fair” and “reasonable”

International Background

This was similar to the law in USA, Japan and most countries of Europe, Australia, China, Korea and Japan . (most of the OECD countries follow it).

See yourself on : http://en.wikipedia.org/wiki/Transfer_pricing and <http://www.oecd.org/investment/mne/1922428.pdf>

Meaning ? Reason ?

In India Tax is say 33% on companies, and in Dubai FTZ, any company will enjoying 100% tax exemption. Then, some unscrupulous companies, try to “reduce” the group tax liability by diversion of profits to the country with least taxation.

This problem was being faced by all countries, like USA too, so, they started this rule for TP. Similar rules are being implemented in India, for foreign Transactions.

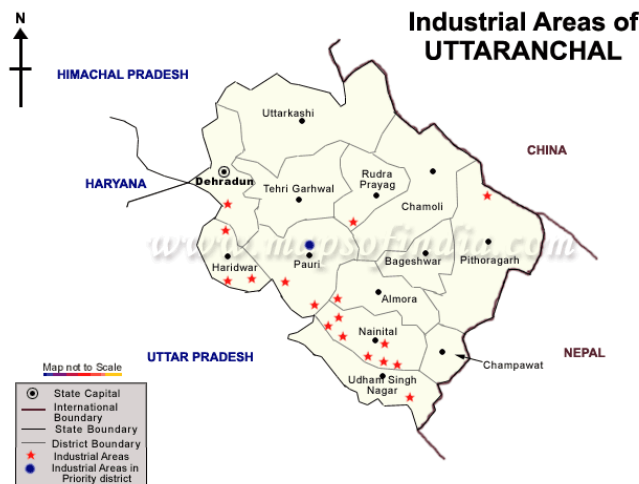


New Scenario = DOMESTIC also (Section 92BA)

The Government in India found that / thought that, People are doing that within India too. They sometimes divert “profits” to related parties, for their own motives.

own motives.

Example : Having a Unit in Uttarakhand / Himachal Pradesh / Daman / Sikkim / having a SEZ unit / unit as a EOU → basically, any unit with nil or lower income taxes



So,



The Finance Act 2012 has extended the scope of transfer pricing (TP) provisions to cover specified domestic transactions (SDT).

Source

Section 92[(2A) Any allowance for an expenditure or interest or allocation of **any cost or expense or any income** in relation to the specified domestic transaction shall be computed having regard to the arm's length price.]

Means >> Both your Expense and "income" are under scrutiny

Applicable to whom ? from when ?

The provisions apply from the financial year 2012–13 onwards if the aggregate value of the transactions exceeds Rs 5 Crores in the relevant financial year.

Section 92BA includes

- (i) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A;
- (ii) any transaction referred to in section 80A;
- (iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;
- (iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;
- (v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or
- (vi) any other transaction as may be prescribed,

Includes what ?

What's new? Extension of the "arm's length" principle to :

- Undertakings to which profit linked deductions are provided, covering :
 - **Inter-unit transfer** of goods and services; (example : One unit in Baddi, one in Faridabad) and
 - Transactions between entities **having close connection**.

Definition of "Close Connection"

- Expenditure incurred between domestic related parties, being payments interalia to :
 - a **company** (say Company Z) **having 20% or more voting power in the taxpayer**; (Ex:Holding company)
 - any company of which a **director has 20% or more voting power** in the taxpayer; (example : Mr A B Goel has one unit in Gurgaon and one in Tax free in Haridwar, and he owns 50% In each)

- a company in which the taxpayer has 20% or more voting power; (ex:Subsidiary)
- any company in which a director of the taxpayer has 20% or more voting power;
- any other company in which Company Z has 20% or more voting power;
- any director of the taxpayer or of Company Z, or to any relative of such director;
- any individual having 20% or more voting power in the taxpayer or any relative of such individual.

What are the compliance requirements for you ?

You have to prepare the requisite proofs and evidences.

Proof that your cost is genuine, your Transfer Price is Genuine and reasonable.

What return is to be filed ?

You have to show your records to your Auditors / CA

And he has to certify in Form 3CEB that you did proper Transfer price

There was neither excess charged, nor deficit.

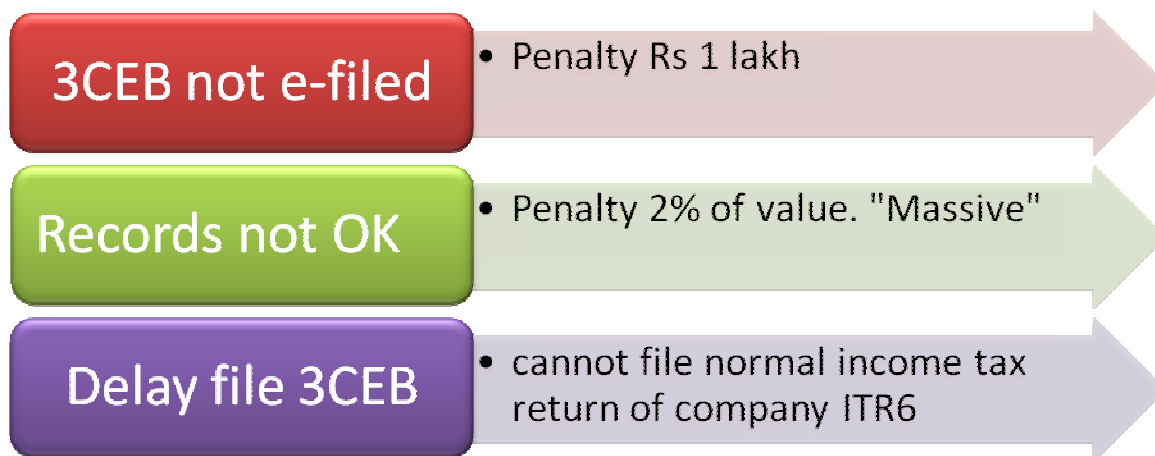
What's new ?

You have to File this Electronically

And digitally signed by your CA

And

If you don't do this, pay penalty, or face



What are the implications of non-compliance?

What are the implications of non-compliance?

- Penalty of 2 per cent of transaction value for failure to report the transaction.
- Penalty of 2 per cent of transaction value for failure to maintain documentation.
- Penalty of 2 per cent of transaction value for failure to furnish documentation.
- Adjustments will attract penalties of 100 to 300 percent of the additional tax payable.

What should you do ?

Contact your Auditors , or any capable CA Firm to help in the following :

- Facilitate building of a framework that helps identify and capture domestic related party transactions.
- Develop/ document a pricing policy for all types of related party transactions, with guidelines on “if this is the transaction.....then how to price”, along with case examples capturing different business scenarios.
- Collate prescribed documentation required to support/ substantiate the transfer price.
- Harmonize pricing approach for domestic as well as cross-border transactions.
- Undertake benchmarking analysis.
- Develop defence files for transfer pricing assessment.

Anything in Companies Act 2013 ?

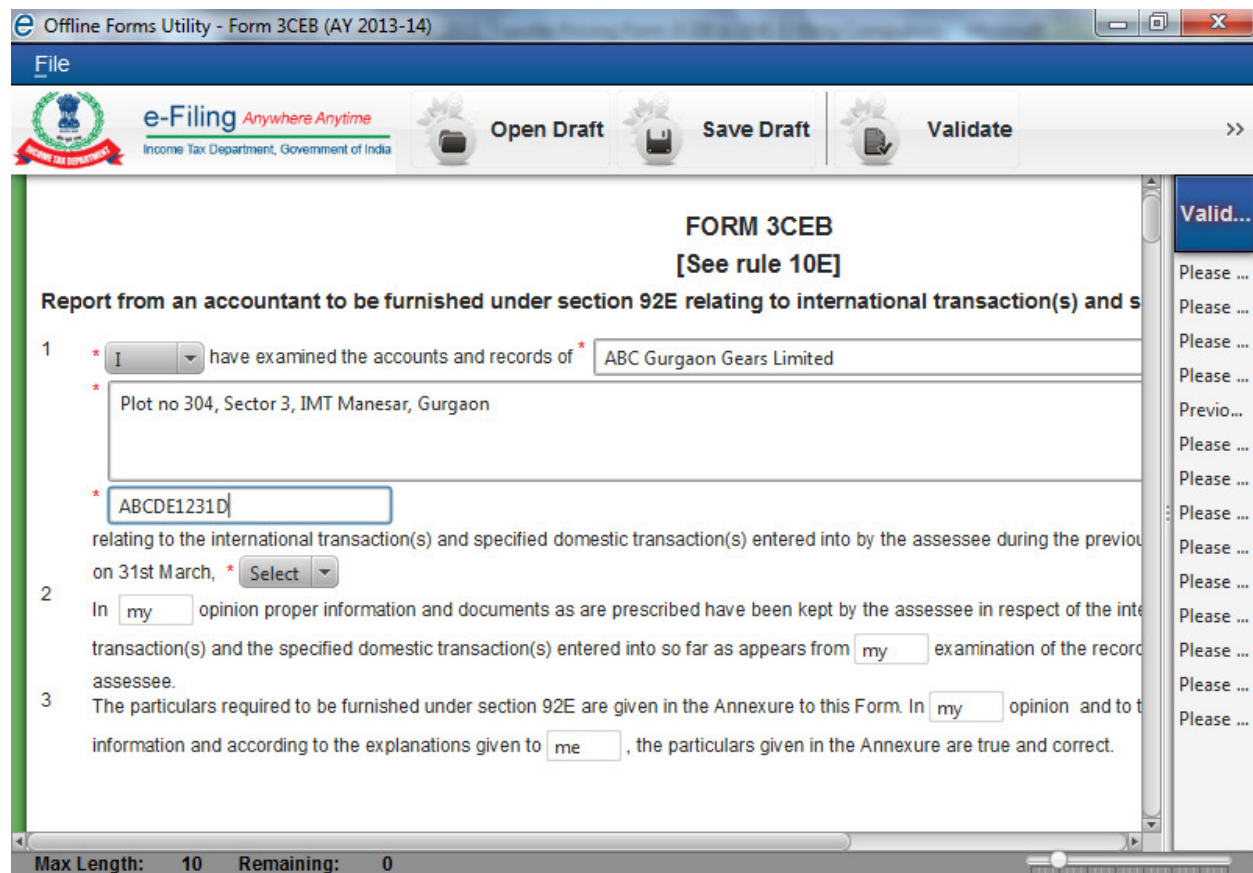
Yes, sure it is.

The Companies Act, 2013 requires that all Indian companies obtain Board of Director’s or, in some cases, shareholder’s consent (by special resolution), if related party transactions (as defined in the Bill), are not at arm’s length.

Note

E filing is compulsory

You may use the FREE Government of India Softwares available on the internet.



Offline Forms Utility - Form 3CEB (AY 2013-14)

File

e-Filing Anywhere Anytime
Income Tax Department, Government of India

Open Draft Save Draft Validate

Instructions Form - 3CEB Annexure PART A Annexure PART B (International Transactions) PART C (Specified domestic transaction) Valid...

PART C (Specified domestic transaction)

21. List of associated enterprises with whom the assessee has entered into specified domestic transactions, with the following

Name, address and PAN of the associated enterprise.			Nature of the relationship with the associated enterprise
Name	Address	PAN	
ABC Packagings P Ltd	Vill Sonapur, Nalagarh, HP	ABCDE1234D	Purchase
XYZ Duplex Cartons P Ltd	Industrial Area, Baddi HP	ABCAA5566D	Purchase

Add Row Copy Row Edit Row Delete Row

9:07 PM 01/09/2013

Help and professional Advice to members of FSIA

At FSIA, we have a team of CA's, ICWA/CMA's, Engineers, Tax and Transfer Pricing professionals who can provide their advice and assistance on these matters. We offer a diverse set of services to meet your transfer pricing needs.

For queries, suggestions and feedback , you can e-mail us

Sangeet Kumar Gupta, FCA, DISA, ACMA, PGDMM, B.Com(Hons), Honorary Consultant, Faridabad Small Industries Association 93126-08426, Camp Off : H No 63, Sector-15, Faridabad. FSIA Off : FSIA Park, Opp. Plot No.23, Sector- 24, Faridabad- 121005.

Subscription

Please send your details, and request e-mail to fsiaindia@gmail.com or rajivchawlaindia@yahoo.com , or skgupta@mlgassociates.org

for Discontinuation of this E-mail :

To discontinue receipt of e-mails from the author, please reply mentioning "Discontinue" in the Subject.

Notes & disclaimer

The contents of this circular are for Private circulation & intended for the addressee/s only. We do not warrant that this email is free of mistakes, errors or any other defect. Care has been taken to provide authentic information, but it is advisable to confirm/verify with qualified legal practitioners, professionals before implementing any suggestions. The views expressed are not necessarily those of the Association. We encourage readers, FSIA Members to write to us their opinions, suggestions, ideas, comments, thoughts and bring to our knowledge mistakes, omissions etc. which we'd be pleased to correct/implement.