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# Transfer Pricing Alert

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## India Budget attempts to resolve Transfer Pricing disputes - Safe Harbour and Alternate Dispute Resolution Mechanism introduced.

The recent transfer pricing audits have resulted in significant tax demands and long drawn time consuming litigation and uncertainty. The proposed measures in the Budget 2009 attempt to reduce the hardship of going through the present appellate process and reduce litigation cost, administrative burden and bring in certainty for tax matters as under:

### Safe Harbour

Determination of the arm's length price shall now be subject to the “safe harbour rules”. The Board of Direct Taxes (“Board”) is empowered to formulate safe harbour rules i.e. to provide the circumstances in which the revenue authorities shall accept the transfer price declared by the tax payer.

Safe harbor rules will help achieve the objectives of compliance relief; administrative simplicity; and certainty for tax payers and tax administrators.

While the scope & parameters for safe harbour will be notified by the Board within few months, it is expected that the safe harbour will be initially applied to information technology sectors benefitting the outsourcing units at India.

This proposal will take effect from 1 April 2009.

### Alternate Dispute Resolution Mechanism

With a view to facilitate expeditious resolution of disputes on a fast track basis and to bring in certainty, it is proposed to introduce an alternate dispute resolution mechanism.

The salient features of this mechanism are as under:

- Eligible taxpayers
  - Any taxpayer aggrieved with the proposed transfer pricing adjustment; and
  - Any foreign company (for all cases, including transfer pricing disputes)

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- The taxpayer can file objections on the proposed adjustment before a Dispute Resolution Panel (collegium of three Commissioners of Income Tax) within 30 days.
- The Panel shall issue the directions for confirming, reducing or enhancing the adjustment proposed by the revenue authorities within nine months.
- The directions of the Panel are binding on the revenue authorities.
- The taxpayer has a further option to appeal before tax tribunal in case of adverse direction of the Panel.

This proposal will be applicable to all orders passed on or after 1 October 2009.

### **Application of +/- 5% range to Arithmetic Mean**

The existing process for determination of arm's length price is to compute arithmetic mean of comparable prices and apply a narrow band of (+/-) 5 per cent to such arithmetic mean. There were disputes on application of this 5 per cent band during the course of transfer pricing audits.

It is now proposed to provide that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetic mean of such price. However, if the arithmetical mean so determined, is within 5 per cent of the transfer price, then the transfer price shall be treated as the arm's length price and no adjustment will be made.

The proposal aims to confirm the position of the revenue authorities of considering arithmetic mean as the arm's length price and not 5 per cent variation of the arithmetic mean.

This amendment is proposed to take effect from 1 October 2009.

Source: Finance (No.2) Bill, 2009

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