DECEMBER 2018
VOL. 50-B PART 3
PAGES 156
PRICE: ₹100

BCAJ

THE BOMBAY CHARTERED ACCOUNTANT JOURNAL

BCAJ VOL. 50-B PART 3 | DECEMBER 2018

TRANSFER PRICING: WHAT HAS CHANGED IN OECD'S 2017 GUIDELINES? [PART 1]

VANDANA SHAH | GAURAV SHAH
Chartered Accountants

Transfer prices are significant for both taxpayers and tax administrations because they determine in large part the income and expense and therefore taxable profits of associated enterprises in different tax jurisdictions. With a view to minimise the risk of double taxation and achieve international consensus on determination of transfer prices on cross-border transactions, OECD[1] from time to time provides guidance in relation to various transfer pricing issues.

In 2015, the OECD came out with its Reports on the 15 Action items agreed as a part of the BEPS[2] agenda. These include Actions 8-10 (Aligning Transfer Pricing Outcomes with Value Creation), Action 13 (Transfer Pricing Documentation and Country by Country Reporting), and Action 14 (Making Dispute Resolution Mechanisms More Effective). With a view to reflect the clarifications and revisions agreed in 2015 BEPS Action Reports, the Transfer Pricing guidelines were substantially revised and new Guidelines were issued in 2017 (2017 Guidelines).

This Article summarises the key additions / modifications made in the 2017 Guidelines (600 plus Pages) as compared to the earlier Guidelines.

These additions / modifications provide important new guidance to practically look at different aspects of transfer pricing. From the perspective of the taxpayers as well as tax practitioners, it is important to understand and implement the new guidance to undertake, conceptually, a globally acceptable transfer pricing analysis.

The first part of the article deals with general guidance contained in Chapters 1 to 5 of the 2017 Guidelines. The second part of the article will deal with guidance relating to specific transactions – Intangibles, Intra-Group Services, Cost Contribution Agreements, and Business Restructuring.

This part of the article summarises the following key changes in the 2017 Guidelines vis-à-vis earlier guidelines:

1. Comparability Analysis
- Guidance on accurate delineation of transactions between associated enterprises
- Functional analysis (including, specifically, risk analysis) based on decision-making capabilities and performance of decision-making functions
- Recognition / de-recognition of accurately delineated transactions
- Additional comparability factors which may warrant comparability adjustments
2. Application of CUP Method for analysing transactions in commodities
3. New guidance on transfer pricing documentation (three-layered documentation)
4. Administrative approaches to avoiding and resolving transfer pricing disputes

Each of the above aspects have been discussed in detail in subsequent paragraphs.

1. Comparability Analysis

The OECD Transfer Pricing Guidelines advocate the arm's length principle to determine transfer prices between associated enterprises for tax purposes and consider "Comparability Analysis" at the heart of the application of arm's length principle. The 2017 Guidelines provide detailed guidance on certain aspects discussed below.

1.1 Accurate delineation of transactions as the starting point for comparability analysis

The 2017 Guidelines provide two key steps in comparability analysis:

- ◆ Identification of commercial or financial relations between associated enterprises and conditions and economically relevant circumstances attaching to those relations in order that the controlled transaction is accurately delineated;

1 *Organisation for Economic Cooperation and Development*

2 *Base Erosion and Profit Shifting*

- Comparison of the conditions and economically relevant circumstances of the controlled transaction as accurately delineated with the conditions and the economically relevant circumstances of comparable transactions between independent enterprises.

The 2017 Guidelines provide that the controlled transaction should be accurately delineated. Further, for the purpose of accurate delineation of the actual transaction(s) between associated enterprises, one needs to analyse the commercial or financial relations between the parties and economically relevant circumstances surrounding such relations. The process starts with a broad understanding of the industry in which the MNE group operates, derived by an understanding of the environment in which the MNE group operates and how it responds to the environment, along with a detailed factual and functional analysis of the MNE group. This information is likely to be documented in the Master File of the MNE group. The process then narrows to identify how each entity within the MNE group operates and provides analysis of what each entity does and its commercial or financial relations with its associated enterprises.

This accurate delineation is crucial since the application of the arm's length principle depends on determining the conditions that independent parties would have agreed in comparable transactions in comparable circumstances. For applying the arm's length principle, it is not only the nature of goods or services transacted or the consideration involved that is relevant; it is imperative for taxpayers and practitioners to accurately delineate the underlying characteristics of the relationship between the parties as expressed in the controlled transaction.

The economically relevant characteristics or comparability factors that need to be identified in order to accurately delineate the actual transaction can be broadly categorised as:

- Contractual terms
- Functional analysis
- Characteristics of property or services
- Economic circumstances,
- Business strategies.

Information about these economically relevant characteristics is expected to be documented in the local file of the taxpayer involved[3].

3 *Refer para 1.36 of 2017 Guidelines*

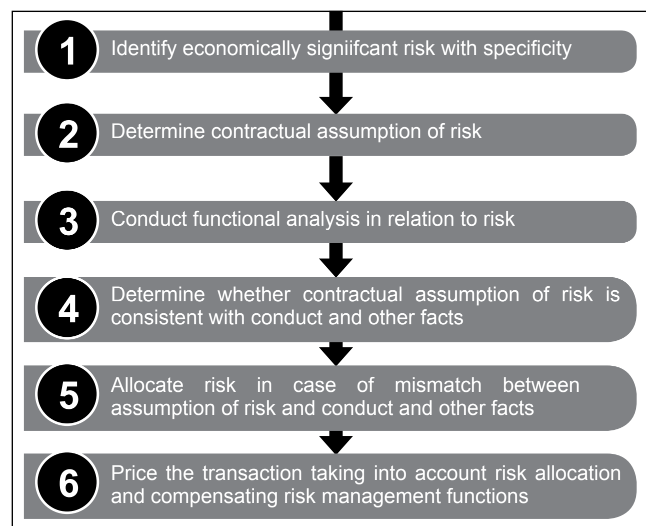
1.2 Functional Analysis (Primarily, Risk Analysis)

The 2017 Guidelines provide a detailed discussion on functional analysis, specifically on risk analysis, as compared to earlier guidelines.

The focus of the Guidelines with respect to functional analysis is on the actual conduct of the parties, and their capabilities – including decision making about business strategy and risks. The Guidelines also clarify that in a functional analysis, the economic significance of the functions are important rather than the mere number of functions performed by the parties to the transaction.

The 2017 Guidelines provide detailed guidance on risks analysis as a part of functional analysis. This is especially because the 2017 Guidelines have recognised the practical difficulties presented by risks – risks in a transaction tend to be harder to identify, and determination of the associated enterprise which bears the risk can require careful analysis.

The Guidelines stress on the need to identify risks relevant to a transfer pricing analysis with specificity. The Guidelines provide for a 6-step process for analysing risk in a controlled transaction, in order to accurately delineate the actual transaction in respect to that risk. The process is outlined below:[4]



It is expected that going forward, functional analysis in any transfer pricing evaluation will specifically focus on the above framework to analyse risks.

4 *Refer Para 1.60 of 2017 Guidelines*

A detailed understanding of the risk management functions is necessary for a risk analysis. Risk management comprises three elements:[5]

- he capability to make decisions to take on, lay off, or decline a risk bearing opportunity, together with the actual performance of that decision-making function
- The capability to make decisions on whether and how to respond to the risk associated with the opportunity, together with the actual performance of that decision-making function
- The capability to mitigate risk, that is the capability to take measures that affect risk outcomes, together with the actual performance of such risk mitigation

The 2017 Guidelines provide that the party assuming risk should exercise control over the risk and also have the financial capacity to assume the risk. Control over risk involves the first two elements of risk management relating to accepting or declining a risk bearing opportunity, and responding to the risk bearing opportunity. In a case where the third element, risk mitigation, is outsourced, control over the risk would require capability to determine the objectives of the outsourced activities, decision to hire risk mitigation service provider, assessment of whether mitigation objectives are adequately met, decision on adapting or terminating the services of the outsourced service provider etc. Financial capability to assume the risk refers to access to funding required with respect to the risk and to bear the consequences of the risk if the risk materialises. Access to funding also takes into account the available assets and the options realistically available to access additional liquidity, if needed.

As can be seen, the guidance gives weightage to decision-making capability and actual performance of decision-making functions. The Guidelines provide that decision makers should be competent and experienced in the area which needs a decision regarding risks. They should also understand the impact of their decisions on the business. Decision making needs to be in substance and not just form. For instance, mere formalising of the outcome of decision-making in the form of, say, minutes of board meetings and formal signatures on documents would not normally qualify as exercise of decision making function and would not be sufficient to demonstrate control over risks. It is pertinent that these aspects are considered in particular when undertaking a functional analysis – to identify the 'control' over decision making of a particular function, rather than going by mere contractual terms or other similar documents that evidence the 'performance' of the function.

The implication of this detailed new guidance on functional analysis is that a party which under these steps does not assume the risk, nor contributes to the control of the risk will not be entitled to unanticipated profits / losses arising from that risk.

The following example illustrates application of 6 step process outlined in the 2017 guidelines in the context of risk analysis:[6]

Company A seeks to pursue a development opportunity and hires a specialist company, Company B to perform part of the research on its behalf. Company A makes a number of relevant decisions about whether and how to take on the development risk. Company B has no capability to evaluate the development risk and does not make decisions about Company A's activities.

- Step 1– Development risk is identified as economically significant risk
- Step 2–Company A assumes contractual development risk
- Step 3–Functional analysis shows that Company A has capability and exercises authority in making decisions about the development risk. Company B reports back to Company A at pre-determined milestones and Company A assesses the progress of development and whether its ongoing objectives are being met. Company A has the financial capacity to assume the risk. Company B's risk is mainly to ensure it performs the research activities competently and it exercises its capability and authority to control that risk through decision-making about the specifics of the research undertaken – process, expertise, assets etc. However, this risk is distinct from the development risk in the hands of Company A as identified in Step 1.
- Step 4–Company A and B fulfil the obligations reflected in the contracts and exercise control over the respective risks that they assume in the transaction, supported by financial capacity.
- Step 5–Since the conditions specified in Step 4 are satisfied, Step 5 will not be applicable i.e. there is no requirement of re-allocation of risk.
- Step 6–Company A assumes and controls development risk and therefore should bear the financial

5 *Refer Para 1.61 of 2017 Guidelines*

6 *Refer Example 1 (Para 1.83) of the 2017 Guidelines*

consequences of failure and enjoy financial consequences of success of the development opportunity. Company B should be appropriately rewarded for the carrying out of its development services, incorporating the risk that it fails to do so competently.

1.3 **Recognition / De-recognition of accurately delineated transaction**

As discussed earlier, one needs to identify the substance of the commercial or financial relations between the parties and the actual transaction will have to be accurately delineated by analysing the economically relevant characteristics. For the purpose of this analysis, the 2017 Guidelines provide that in cases where the economically significant characteristics of the transaction are inconsistent with the written contract, the actual transaction will have to be delineated in accordance with the characteristics of the transaction reflected in the actual conduct of the parties.

The 2017 Guidelines also provide for circumstances in which the transaction between the parties as accurately delineated can be disregarded for transfer pricing purposes. Where the actual transaction possesses the commercial rationality of arrangements that would be agreed between unrelated parties under comparable economic circumstances, such transactions must be respected even where such transactions cannot be observed between independent parties. However, where the transaction is commercially irrational, the transaction may be de-recognised.

1.4 **Additional comparability factors which may warrant comparability adjustments**

While the Guidelines discuss about the impact of losses, use of custom valuation, effect of government policies in transfer pricing analysis, the 2017 Guidelines also provide for some additional comparability factors that may warrant comparability adjustments. In the past, in the absence of clear guidance by the OECD, some of these factors (such as location savings) have led to litigation, where the tax authorities have insisted on a separate compensation for the existence of these factors, whereas, taxpayers have claimed these to be merely comparability factors not necessitating any transfer pricing adjustments *per se*. These factors are:

- **Location Savings:** The Guidelines provide the following considerations for transfer pricing analysis of location savings: i) whether location savings exist; ii) the amount of location savings; iii) the extent to which location savings are retained by an MNE group member, or passed on to customers or suppliers; iv) manner in which independent parties would allocate retained location savings.
- **Other Local Market Features:** These factors refer to other market features such as characteristics of the market, purchasing power and product preferences of households in the market, whether the market is expanding or contracting, degree of competition in the market and other similar factors. These market factors may create advantages or disadvantages, and appropriate comparability adjustments should be made to account for these advantages or disadvantages.
- **Assembled workforce:** The existence of a uniquely qualified or experienced employee group may affect the arm's length price of services provided by the group of the efficiency with which services are provided or goods produced. In some other cases, assembled workforce may create liabilities. Existence of an assembled workforce may warrant comparability adjustments. Depending upon precise facts of the case, similar adjustments may be warranted in case of transfer of an assembled workforce from one associated enterprise to another.
- **MNE group synergies:** Group synergies may be positive or negative. Positive synergies may arise as a result of combined purchasing power or economies of scale, integrated computer or communication systems, integrated management, elimination of duplication, increased borrowing capacity, etc. Negative synergies may be a result of increased bureaucratic barriers, inefficient computer or networking systems etc. Where such synergies are not a result of deliberate concerted group actions, appropriate comparability adjustments may be warranted. However, when such synergies are a result of concerted actions, only comparability adjustments may not be adequate. In such situations, from a transfer pricing perspective, it is necessary to determine: i) the nature of advantage or disadvantage arising from the concerted action; ii) the amount of the benefit / detriment; iii) how should the benefit or detriment be divided amongst the group members (generally, in proportion to their contribution to the creation of the synergy under consideration).

2. Application of CUP Method for analysing transactions in commodities

The OECD Guidelines provide that the selection of a transfer pricing method should always aim at finding the most appropriate method for a particular case. The guidance provides description of traditional transaction

methods and transactional profit methods. The 2017 Guidelines provide additional guidance in the context of CUP method.

The 2017 Guidelines provide that that CUP method would generally be an appropriate transfer pricing method (subject to other factors) for establishing the arm's length price for the transfer of commodities between associated enterprises. The reference to "commodities" shall be understood to encompass physical products for which a quoted price is used as a reference by independent parties in the industry to set prices in uncontrolled transactions. The term "quoted price" refers to the price of the commodity in the relevant period obtained in an international or domestic commodity exchange market. Quoted price also includes prices obtained from recognised and transparent price reporting or statistical agencies or from government price setting agencies, where such indexes are used as a reference by unrelated parties to determine prices in transactions between them.

Such quoted price should be widely and routinely used in the ordinary course of business in the industry to negotiate prices for comparable uncontrolled transactions.

Further, the economically relevant characteristics of the transactions or arrangements represented by the quoted price should be comparable. These characteristics include physical features and quality of the commodity; as well as contractual terms of the transaction such as volumes traded, period of arrangements, timing and terms of delivery, transportation, insurance and currency terms. If such characteristics are different between the quoted price and the controlled transaction, reasonably accurate adjustments ought to be carried out to make these characteristics comparable.

The Guidelines also provide that the pricing date is an important element for making a reference to the quoted price. Depending on the commodity involved, the pricing date could refer to specific time, date or time period selected by parties to determine the price of the commodity transactions. The price agreed at the pricing date may be evidenced by relevant documents such as proposals and acceptances, contracts, or other relevant documents. The Guidelines place the onus on the taxpayer to maintain and provide reliable evidence of the pricing date agreed by the associated enterprises. If reliable evidence is provided and it is aligned with the conduct of the parties, the tax authorities should ordinarily base their examination with reference to the pricing date. Otherwise, the tax authorities may deem the pricing date based on documents available with them (say, date of shipment as evident from the bill of lading).

Illustration:
An illustration of how this guidance relating to the relevance of the pricing date is relevant, is provided below.

Assume the case of a commodity the price of which fluctuates on a daily basis. The commodity is available in the spot market. In some cases, the prices are also agreed for a future date / period for future deliveries. A taxpayer in India (ICo.) imports the commodity from its AEs, at prices agreed two months in advance. For the sake of this example, assume that the future prices of the commodity tend to be same / similar as the spot prices (with the possibility of a small future premium of up to 0.10% in some cases). ICo also imports certain quantities of the commodity on a spot basis from third parties – in order to take advantage of a potential favourable price movement.

Some of the dates of transactions entered into by ICo, and the corresponding prices are provided in the table below, along with comparable uncontrolled prices for the exact same dates.

Transaction Date	Transaction Price in INR per unit	CUP Available in INR on Transaction Date
30th June 2017	10,000	10,450
30th September 2017	10,600	10,300
31st December 2017	10,200	10,650
31st March 2018	10,800	10,900

From a plain reading of this table, which represents the approach of comparing the prices as at the transaction date, it would appear that the import prices are at arm's length for the three purchases made in June 2017, December 2017 and March 2018. However, for the purchases made in September, 2017, there is a comparable transaction available with a lower price. Accordingly, it appears that a transfer pricing adjustment for the difference (INR 10,600 – INR 10,300 = INR 300 per unit) is warranted in the instant case. In fact, based on similar data, there could be a potential transfer pricing adjustment in the hands of the AE of ICo for the months of June 2017, December 2017 and March 2018[7]. Clearly, the above analysis does not represent the commercial reality of the transactions –

7 *For the purpose of this analysis, it is assumed that all relevant comparability criteria for application of CUP Method are satisfied.*

that the pricing of the transactions with the AE has been decided much before the transaction has been entered into, and under the CUP Method, the same cannot be compared with the spot prices paid for third party imports.

However, if ICo is able to provide evidence of the dates on which the prices have been agreed with its overseas AE, data pertaining to such dates may be considered even if there is no comparable uncontrolled transaction entered into by ICo during such dates. Now consider the additional evidence provided by ICo in the following table (see highlighted columns).

Transaction Date	Purchase Order (PO) Date	Transaction Price in INR per unit	Quoted Price in INR on PO date	CUP Available in INR on Transaction Date
30th June 2017	30th April 2017	10,000	10,010	10,450
30th September 2017	30th July 2017	10,600	10,600	10,300
31st December 2017	31st October 2017	10,200	10,205	10,650
31st March 2018	31st January 2018	10,800	10,810	10,900

As can be seen from the table above, the transaction prices appear more closely aligned with the quoted prices as at the PO date. These prices are, in fact, better indicators of the real market scenario – since in the real world, in case prices are determined in advance of the transaction taking place, the parties do not have the benefit of hindsight, and would consider the prevailing quoted prices to arrive at their transfer prices. ICo and the AE would yet need to demonstrate, in their respective jurisdictions, that the difference between the quoted price and the transaction price is representative of the arm's length future premium, however, this explanation should be a lot easier and involve far lesser tax risk than starting from a relatively inaccurate starting point –prices agreed at a different date.

It is important for the tax teams of MNEs to ensure that the procurement or sales teams (depending on the nature of the transaction) document the correct period at which the price was agreed (date or time, as the case may be – and depending on the volatility of the price of the quoted product), and maintain evidence of the quoted price of the commodity at the same period.

There appears to be a direct correlation between the frequency and quantum of fluctuations in the commodity prices, with the accuracy of the period of price setting that needs to be evidenced.

3. New guidance on transfer pricing documentation (three-tiered documentation)

The 2017 Guidelines outline transfer pricing documentation rules with an overarching consideration to balance the usefulness of the data to tax administration for transfer pricing risk assessment and other purposes with any increased compliance burdens placed on taxpayers. The purpose is also to ensure that transfer pricing compliance is more straightforward and more consistent amongst countries[8].

Briefly, the three fold objectives of transfer pricing documentation as outlined in 2017 Guidelines are (a) ensuring taxpayer's assessment of its compliance with the arm's length principle (b) effective risk identification (c) provision of useful information to tax administrations for thorough transfer pricing audit.

The 2017 Guidelines suggest a three-tiered approach to transfer pricing documentation and insist on countries adopting a standardised approach to transfer pricing documentation. The elements of the suggested three-tiered documentation structure are discussed below.

- **Master File** - Master File is intended to provide a high level overview to place MNE group's transfer pricing practices in their global economic, legal, financial and tax context. The information required in the Master File provides a blueprint of MNE group and contains relevant information that can be grouped in 5 categories (a) MNE group's organisational structure (b) a description of MNE's business or businesses (c) MNE's intangibles (d) MNE's intercompany financial activities and (e) MNE's financial and tax positions[9]. The Guidelines are not rigid in prescribing the level of details which need to be provided as a part of the Master File, and require that taxpayers should use prudent business judgment in determining the appropriate level of detail for the information supplied, keeping in mind the objective of the Master File to provide a high level overview of the MNE's global operations and policies.

8 *The earlier guidelines emphasised on the greater level of co-operation between tax administrations and taxpayers in addressing documentation issues. Those guidelines did not provide for a list of documents to be included in transfer pricing documentation package nor did they provide clear guidance with respect to link between process for documenting transfer pricing, the administration of penalties and the burden of proof.*

9 *Refer Para 5.19 of 2017 Guidelines*

◆ **Local File** - Local file provides more detailed information relating to specific inter-company transaction. The information required in local file supplements the master file and helps to meet the objective of assuring that the taxpayer has complied with the arm's length principle in its material transfer pricing positions affecting a specific jurisdiction. Information in the local file would include financial information regarding transactions with associated enterprises, a comparability analysis, and selection and application of the most appropriate method.

◆ **Country by Country Reporting (CbCR)** - The CbCR requires aggregate tax jurisdiction wide information relating to the global allocation of the income, the taxes paid and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates[10]. The Guidelines provide that CbCR will be helpful for high level transfer pricing risk assessment purposes, for evaluating other BEPS related risk (non-transfer pricing risks), and where appropriate, for economic and statistical analysis[11]. The Guidelines provide that the CbCR should not be used as a substitute for a detailed transfer pricing analysis based on a full functional analysis and comparability analysis; and should also not be used by tax authorities to propose transfer pricing adjustments based on a global formulary apportionment of income.

The Guidelines provide (as agreed by countries participating in the BEPS Project) for the following conditions underpinning the obtaining and the use of the CbCR:[12]

- Legal protection of the confidentiality of the reported information
- Consistency with the template agreed under the BEPS Project and provided as part of the Guidelines
- Appropriate use of the reported information – for purposes highlighted above

Further, the 2017 Guidelines provide for ultimate parent entity of an MNE group to file CbCR in its jurisdiction of residence and implementing arrangements by countries for the automatic exchange of CbCR. The participating jurisdictions of the BEPS project are encouraged to expand the coverage of their international agreements for exchange of information.

10 *The 2017 Guidelines recommend an exemption for CbCR filing for MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of less than EUR 750 million or a near equivalent amount in domestic currency as of January 2015. Refer Para 5.52.*

11 *Refer Para 5.25 of 2017 Guidelines*

12 *Refer Paras 5.56 to 5.59 of 2017 Guidelines*

Practically, this three – tiered documentation is one of the most important transfer pricing exercise which taxpayers and tax practitioners have been engaged in, over the past more than a year– in aligning the three sets of documents, and ensuring they provide consistent information.

Detailed discussion and analysis of the contents of Master File, Local File and CbCR have been kept outside the purview of this Article. One may refer to Annex 1, Annex II and Annex III to Chapter V of the 2017 Guidelines for the details of contents of the Master File, Local file and CbCR respectively.

4. Administrative approaches to avoiding and resolving transfer pricing disputes

The 2017 Guidelines have provided administrative approaches to resolving transfer pricing disputes caused by transfer pricing adjustments and for avoiding double taxation. Differences in guidance as compared to the earlier guidance have been discussed in this section.

◆ **MAP and Corresponding Adjustments**

The 2017 Guidelines provide that procedure of Article 25 dealing with Mutual Agreement Procedure (MAP) may be used to consider corresponding adjustments arising out of transfer pricing adjustments.

The 2017 Guidelines specifically discusses regarding the concern of taxpayers in relation to denial of access to MAP in transfer pricing cases. The Guidelines make a reference to the minimum standard agreed as a result of the BEPS Action 14 on 'Making Dispute Resolution Mechanisms More Effective' and re-emphasise the commitment on the part of countries to provide access to the MAP in transfer pricing cases. The Guidelines also provide detailed guidance relating to time limits, duration, taxpayer participation, publication of MAP programme guidance, suspension of collection procedures during pendency of MAP etc. Overall, the idea appears to be to make the MAP program more effective and meaningful for taxpayers, and to enhance accountability of the tax administration in MAP cases.

◆ **Safe Harbours**

The 2017 Guidelines highlight the following benefits of safe harbours:[13]

- Simplifying compliance
- Providing certainty to taxpayers

13 *Refer Para 4.105 of 2017 Guidelines*

- Better utilisation of resources available to tax administration

The Guidelines also highlight the following concerns relating to safe harbours:[14]

- Potential divergence from the arm's length principle
- Risk of double taxation or double non taxation
- Potential opening of avenues for inappropriate tax planning
- Issues of equity and uniformity

The 2017 Guidelines provide that in cases involving small taxpayers or less complex transactions, the benefits of safe harbours may outweigh the problems / concerns raised in relation to safe harbours. The appropriateness of safe harbours can be expected to be most apparent when they are directed at taxpayers and / or transactions which involve low transfer pricing risks and when they are adopted on a bilateral or multilateral basis. The Guidelines however provide that for more complex and higher risk transfer pricing matters, it is unlikely that safe harbours will provide a workable alternative to rigorous case by case application of the arm's length principle.

14 *Refer Para 4.110 of 2017 Guidelines*

Concluding Remarks

The 2017 Guidelines reflect the clarifications and revisions agreed in reports on BEPS Actions 8-10 (Aligning Transfer Pricing Outcomes with Value Creation), Action 13 (Transfer Pricing Documentation and Country by Country Reporting), and Action 14 (Making Dispute Resolution Mechanisms More Effective).

Evidently, the focus areas of the 2017 Guidelines are substance, transparency and certainty. Several practices and recommendations of the Indian tax administration do find place in the BEPS Actions, and consequently, in the 2017 Guidelines also. India is largely aligned with the 2017 Guidelines.

Even at the grass root level, taxpayers and professionals are already experiencing the evolution of transfer pricing analysis from a contractual terms based analysis to a more deep rooted factual analysis considering several facts and circumstances surrounding the transaction. Further, the way this analysis is documented is also being transformed – from a jurisdiction specific documentation, to a globally consistent, three-tiered documentation.

From the perspective of the tax authorities, they now have the 'big picture' available to them. This should enable them to undertake a comprehensive and more business-like analysis of the MNE's transfer pricing approaches. ■

BCAS CLINICS

TOPICS	DAY, DATE & TIME	ADVISORY PANEL	CLINIC COORDINATOR
Accounts & Audit Clinic	Saturday , 5th January 2019.	CA. Sanjeev Pandit, CA. Himanshu Kishnadwala, CA. Jayesh M. Gandhi.	Ms. Navina Vishwanathan, 6137 7627
Charitable Trust Clinic	Friday, 4th January 2019.	CA. Gautam N. Shah, CA. Tushar K. Doctor	Ms. Navina Vishwanathan, 6137 7627
Right to Information Clinic	Saturday 8th, 15th, 22nd & 29th December 2018 and 5th January,2019.	Hema D. Sampat	Ms. Navina Vishwanathan, 6137 7627

VENUE FOR ALL 3 CLINICS: BCAS, JOLLY BHAVAN NO. 2, NEW MARINE LINES, MUMBAI 400 020

For any queries, email to journal@bcasonline.org

BCA JOURNAL

50th Year of Monthly Publication

- BCA Journal is driven by analysis that is independent and balanced
- Receive in-depth but to the point coverage of developments in Direct Tax, Indirect Taxes, GST, International Tax, Auditing, Accounting, Business, Commercial, Economy, Practice Management, Information Technology, Right to Information, and more
- Articles curated by specialists
- Features covering the most relevant themes
- Series of monthly features dedicated to topics – practice management, GST, ICDS, Ind-AS, Transfer Pricing…
- Contributions from experienced professionals
- Access E-journal, repository of 16 years of Journals in a searchable format
- Special issues - covers the full spectrum of a subject such as GST
- 50th year special features: Interviews, view and counterview, musings, and more …

BCA Journal is printed in both paper format and an electronic version.

For subscription and access to past issues, visit: **www.bcajonline.org**