

**Controversies on
International Transaction,
Deemed International Transaction
and
Specified Domestic Transactions**

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AGENDA

- International Transactions
- Deemed International Transactions
- Specified Domestic International Transactions
- Case studies

AGENDA

EMERGING AREAS OF CONTROVERSIES IN INTERNATIONAL TRANSACTIONS

International Transactions

International transaction (Sec 92B)

- Transactions between two or more associated enterprises
- Either or both of whom are non-residents
- Transaction relates to:
 - purchase, sale or lease of tangible or intangible property; or
 - provision of services; or
 - lending or borrowing money; or
 - any other transaction having a bearing on the profits, income, losses or assets of the enterprises; or
 - mutual agreements or arrangements for allocation or apportionment of, or any contribution to, any cost or expense incurred

International Transactions

International transaction (Sec 92B) - Explanation

- The expression 'International transaction' includes -
 - a) Purchase, sale, transfer, lease or use of tangible property
 - b) Purchase, sale, transfer, lease or use of intangible property
 - c) Capital financing, any type of borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payment or deferred payment or receivable or any other debt arising in the course of business
 - d) Provisions services
 - e) Transaction of business restructuring or reorganization entered irrespective of the fact that it has a bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date

Deemed International Transaction

Deemed International transaction (Sec 92B(2))

- Section 92B(2) of the Act creates a deeming fiction which extends the ambit of the term international transaction to include the transactions with Non-AEs (unrelated third parties) provided either of the two conditions mentioned below are fulfilled:
 - 1) There exists a prior agreement in relation to the subject transaction between the third party and the AE of the entity. (or)
 - 2) Terms of the relevant transaction are determined in substance between AE of India taxpayer and such third party

Note: The residential status of the 'third party' is not relevant to invoke the deeming fiction under clause (2) of section 92B of the Act. – (included by Finance Act 2014)

Specified Domestic Transactions

Specified Domestic transaction (Sec 92BA) ['SDT']

- Any of the specified transactions, not being any international transaction, namely
 - Expenditure in respect of which payment has been made is to made to person referred to in Section 40A(2)(b) ; - (Excluded in FA 2017)
 - Transaction referred to in Section 80A;
 - Transfer of goods or services referred to in sub-section(8) of Section 80-IA.
 - Any business transacted between the assessee and other persons as referred to in sub-section (10) of section 80-IA.
 - Any transaction, referred to in any other sections under Chapter VI-A or Section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable.
 - Any other transaction as may be prescribed.

Note: Provisions of SDT would be applicable if the aggregate value of the transaction exceeds INR 20 Crore

CONTROVERSIES IN CORPORATE GUARANTEE TRANSACTIONS

Corporate Guarantee- Is an international transaction?

- Generally corporate guarantees (“CG”) can be of following forms:
 - CG extended by Indian company on behalf of its foreign AE to **the foreign branch of an Indian bank**
 - Can it be considered as a transaction between two Indian entities?
 - CG is extended by Indian company on behalf of its foreign AE to **the foreign bank or foreign branch of foreign bank**
 - CG is extended by Indian company **to an Indian branch of Indian bank for issue of *Stand-By Letter of Credit* (‘SBLC’) or *Letter of Comfort* (‘LOC’) to its foreign branch** on behalf of its Indian company’s foreign AE.
- There is no transfer pricing regulations across the world which prescribes or defines a method for benchmarking guarantee fees

**CONTROVERSIES
IN
NOTIONAL INTEREST ON DELAYED RECEIVABLES**

Interest on delayed receivables

Specified Domestic transaction (Sec 92BA) ['SDT']

- Any of the specified transactions, not being any international transaction, namely
 - Expenditure in respect of which payment has been made is to be made to person referred to in Section 40A(2)(b) ; - (Excluded in FA 2017)
 - Transaction referred to in Section 80A;
 - Transfer of goods or services referred to in sub-section(8) of Section 80-IA.
 - Any business transacted between the assessee and other persons as referred to in sub-section (10) of section 80-IA.
 - Any transaction, referred to in any other sections under Chapter VI-A or Section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable.
 - Any other transaction as may be prescribed.

Note: Provisions of SDT would be applicable if the aggregate value of the transaction exceeds INR **20 Crore**

CONTROVERSIES IN MARKETING INTANGIBLES

AMP expenses

Specified Domestic transaction (Sec 92BA) ['SDT']

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 - Expenditure in respect of which payment has been made is to made to person referred to in Section 40A(2)(b) ; - (Excluded in FA 2017)
 - Transaction referred to in Section 80A;
 - Transfer of goods or services referred to in sub-section(8) of Section 80-IA.
 - Any business transacted between the assessee and other persons as referred to in sub-section (10) of section 80-IA.
 - Any transaction, referred to in any other sections under Chapter VI-A or Section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable.
 - Any other transaction as may be prescribed.

Note: Provisions of SDT would be applicable if the aggregate value of the transaction exceeds INR **20 Crore**

OTHER CONTROVERSIES IN INTERNATIONAL TRANSACTIONS

Share application money

Specified Domestic transaction (Sec 92BA) ['SDT']

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 - Expenditure in respect of which payment has been made is to made to person referred to in Section 40A(2)(b) ; - (Excluded in FA 2017)
 - Transaction referred to in Section 80A;
 - Transfer of goods or services referred to in sub-section(8) of Section 80-IA.
 - Any business transacted between the assessee and other persons as referred to in sub-section (10) of section 80-IA.
 - Any transaction, referred to in any other sections under Chapter VI-A or Section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable.
 - Any other transaction as may be prescribed.

Note: Provisions of SDT would be applicable if the aggregate value of the transaction exceeds INR **20 Crore**

Bad debts written off

Specified Domestic transaction (Sec 92BA) ['SDT']

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 - Expenditure in respect of which payment has been made is to be made to person referred to in Section 40A(2)(b) ; - (Excluded in FA 2017)
 - Transaction referred to in Section 80A;
 - Transfer of goods or services referred to in sub-section(8) of Section 80-IA.
 - Any business transacted between the assessee and other persons as referred to in sub-section (10) of section 80-IA.
 - Any transaction, referred to in any other sections under Chapter VI-A or Section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable.
 - Any other transaction as may be prescribed.

Note: Provisions of SDT would be applicable if the aggregate value of the transaction exceeds INR **20 Crore**

**CONTROVERSIES
IN
TRIANGULAR AND QUADRANGULAR ARRANGEMENTS**

Triangular and Quadrangular arrangements

Specified Domestic transaction (Sec 92BA) ['SDT']

- Any of the specified transactions, not being any international transaction, namely
 - Expenditure in respect of which payment has been made is to made to person referred to in Section 40A(2)(b) ; - (Excluded in FA 2017)
 - Transaction referred to in Section 80A;
 - Transfer of goods or services referred to in sub-section(8) of Section 80-IA.
 - Any business transacted between the assessee and other persons as referred to in sub-section (10) of section 80-IA.
 - Any transaction, referred to in any other sections under Chapter VI-A or Section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable.
 - Any other transaction as may be prescribed.

Note: Provisions of SDT would be applicable if the aggregate value of the transaction exceeds INR **20 Crore**

**CONTROVERSIES
IN
SPECIFIED DOMESTIC TRANSACTIONS**

Inter-unit Transfers - Benchmarking

Specified Domestic transaction (Sec 92BA) ['SDT']

- Any of the specified transactions, not being any international transaction, namely
 - Expenditure in respect of which payment has been made is to made to person referred to in Section 40A(2)(b) ; - (Excluded in FA 2017)
 - Transaction referred to in Section 80A;
 - Transfer of goods or services referred to in sub-section(8) of Section 80-IA.
 - Any business transacted between the assessee and other persons as referred to in sub-section (10) of section 80-IA.
 - Any transaction, referred to in any other sections under Chapter VI-A or Section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable.
 - Any other transaction as may be prescribed.

Note: Provisions of SDT would be applicable if the aggregate value of the transaction exceeds INR **20 Crore**

Inter-unit Transfers - Benchmarking

Specified Domestic transaction (Sec 92BA) ['SDT']

- Any of the specified transactions, not being any international transaction, namely
 - Expenditure in respect of which payment has been made is to be made to person referred to in Section 40A(2)(b) ; - (Excluded in FA 2017)
 - Transaction referred to in Section 80A;
 - Transfer of goods or services referred to in sub-section(8) of Section 80-IA.
 - Any business transacted between the assessee and other persons as referred to in sub-section (10) of section 80-IA.
 - Any transaction, referred to in any other sections under Chapter VI-A or Section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable.
 - Any other transaction as may be prescribed.

Note: Provisions of SDT would be applicable if the aggregate value of the transaction exceeds INR **20 Crore**