ICMAB's Workshop

on

Transfer Pricing

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ICMAB

THE INSTITUTE OF COST AND MANAGEMENT ACCOUNTANTS OF BANGLADESH

Transfer Pricing Concept: Bangladesh Perspective

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Transactions among Related Parties and the Concern of Tax Agencies

- Globally, about 60 percent of transactions are executed among members of group companies/ affiliated entities (known as related party or associated enterprise).

- When two affiliated entities within the same group enters into transactions, they have ample scope to fix transaction prices for their own tax benefits. Consequently, tax agencies lose revenue.

- This concern (and the incidents of tax avoidance) gives rise to the concept of transfer pricing.

Transfer Pricing Concept

Transfer pricing = **Transfer** + **Pricing**

Transfer = Selling goods, rendering services, granting right to use intangibles etc. (= Transaction)

Pricing = Determination of price (margin, profit)

Pricing = Assigning a value to the transaction (profit splitting, cost allocation, management expense)

Transfer Pricing Concept

To put simply: Transfer Pricing = Transaction Pricing

Not for all transactions. Only the Transactions between related parties/ associated enterprises.

The term ‘transfer pricing’ is used in respect of transactions between **Related Parties.**

Transfer pricing is:

“the determination of prices at which goods, services and intangible properties are transacted between **related parties”** (IRAS, 2006).

Transfer Pricing vs Mispricing

- When the **pricing of transaction** within associated enterprises is fair and rational (at Arm's Length), there is no problem.

- But when transactions are mispriced (i.e. lower or higher than fair market price), transfer mispricing happens.

- Transfer mispricing is a serious concern for tax agencies

Transfer Mispricing Mechanism

MNE: B&C Global

Cyprus		Bangladesh
B&C (Cyprus) Ltd	+	B&C (Bangladesh) Ltd
(Tax Rate: 10%)		(Tax Rate: 37.5%)

Regular Situation

B&C Global Chemicals

Cyprus	
B&C (Cyprus) Ltd	
Sales	300
Cost & Expenses	200
Profit	100
Tax @ 10%	10

Bangladesh	
B&C (BD) Ltd	
Sales	600
Purchase	300
Expenses	100
Profit	200
Tax @ 37.5%	75

Combined tax liability for **B&C**: 10 + 75 = **85**

Transfer Pricing Situation - 1

B&C Global Chemicals

Cyprus

B&C (Cyprus) Ltd

Sales	400
Cost & Expenses	200
Profit	200
Tax @ 10%	20

Bangladesh

B&C (BD) Ltd

Sales	600
Purchase	400
Expenses	100
Profit	100
Tax @ 37.5%	37.5

Combined tax liability for **B&C**: 20 + 37.5 = **57.5**

Tax effect

	Regular	Transfer Mispricing 1
Combined Tax Liability of B&C	85	**57.5**
Tax Revenue for Bangladesh	75	37.5
Tax Revenue for Cyprus	10	**20**

Transfer Pricing Situation - 2

B&C Global Chemicals

Cyprus	
B&C (Cyprus) Ltd	
Sales	400
Cost & Expenses	200-50 =150
Profit	250
Tax @ 10%	25

Bangladesh	
B&C (BD) Ltd	
Sales	600
Purchase	400
Expenses	100
Management Expense	50
Profit	50
Tax @ 37.5%	18.75

Combined tax liability for **B&C**: 25 + 18.75 = **43.75**

Tax effect

	Regular	Transfer Mispricing -2
Combined Tax Liability of B&C	85	**43.75**
Tax Revenue for Bangladesh	75	18.75
Tax Revenue for Cyprus	10	**25**

Popular Means of Transfer Mispricing

- Pricing Arrangement
- Management expense (HQ and intra-firm)
- Charge for Intellectual Property or Intangibles (royalty, fees, copyright, trademark, patent, brand name, franchise etc.)
- Sharing or allocation of common cost
- Interest expense

Conventional tax system fails to deal with Transfer Mispricing

- Under conventional tax law, tax agencies only check the **verifiability of vouchers** and the **accuracy of accounting treatment** of a transaction.

- For example, if an import price is supported by B/E, customs valuation and other documents, tax department cannot legally disregard them under conventional law.

- In case of transfer mispricing, import value are usually overstated. Therefore, customs authority finds no reason to object.

Transfer Pricing Regime

1. Legal Framework

- Law & Rules
- Administrative Guidelines

2. Administrative Setup and Business Process

3. Support Environment (Resources)

- HR
- Logistics and infrastructure

Transfer pricing legislation:

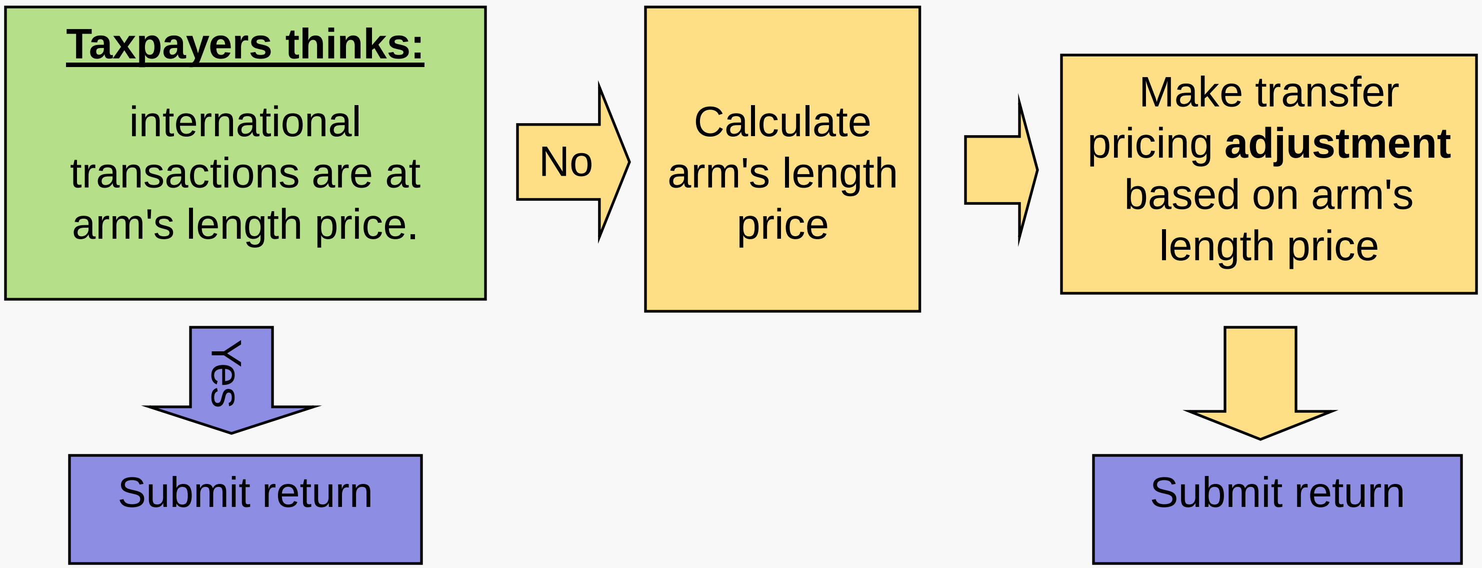
- Stipulates that the transaction pricing between related parties must be the fair market price (ALP).
- Requires taxpayers to justify the transaction price by providing comparables (similar examples)
- Requires taxpayers to justify economic benefits received from management expense
- Empowers tax officers to ask judge the rationality of transaction pricing, even if the transactions fulfill all verifiability conditions.
- Empowers tax officers to disregard the transaction pricing if it is not at arm's length, determine the arm's length transaction price for tax purpose, and compute taxable income accordingly.

Transfer Pricing: Global Survey

- At present, about 75 countries have adopted transfer pricing regime.
- All developed countries have robust transfer pricing system
- Most of the mid-income countries (MICs) have adopted transfer pricing regime.
- A great number of developing countries also adopted transfer pricing system. Many other countries are in the process.
- In South Asia, India (2001), Sri Lanka (2008) and Bangladesh (2012) have enacted transfer pricing regulation.

Transfer Pricing Business Procedure

Upto Submission of Return: Taxpayer's End



After the Submission of Return: Tax Department's End

DCT receives

tax returns & documents

<u>Assessment (audit) stage,</u>

DCT considers:

■International transactions are at arm's length price?

■ Appropriate Transfer Pricing Methods have been followed?

■ Information/data are correct and reliable?

Yes

No Transfer Pricing adjustment required

DCT completes audit and assessment considering non-TP issues.

No

Transfer Pricing Issue:

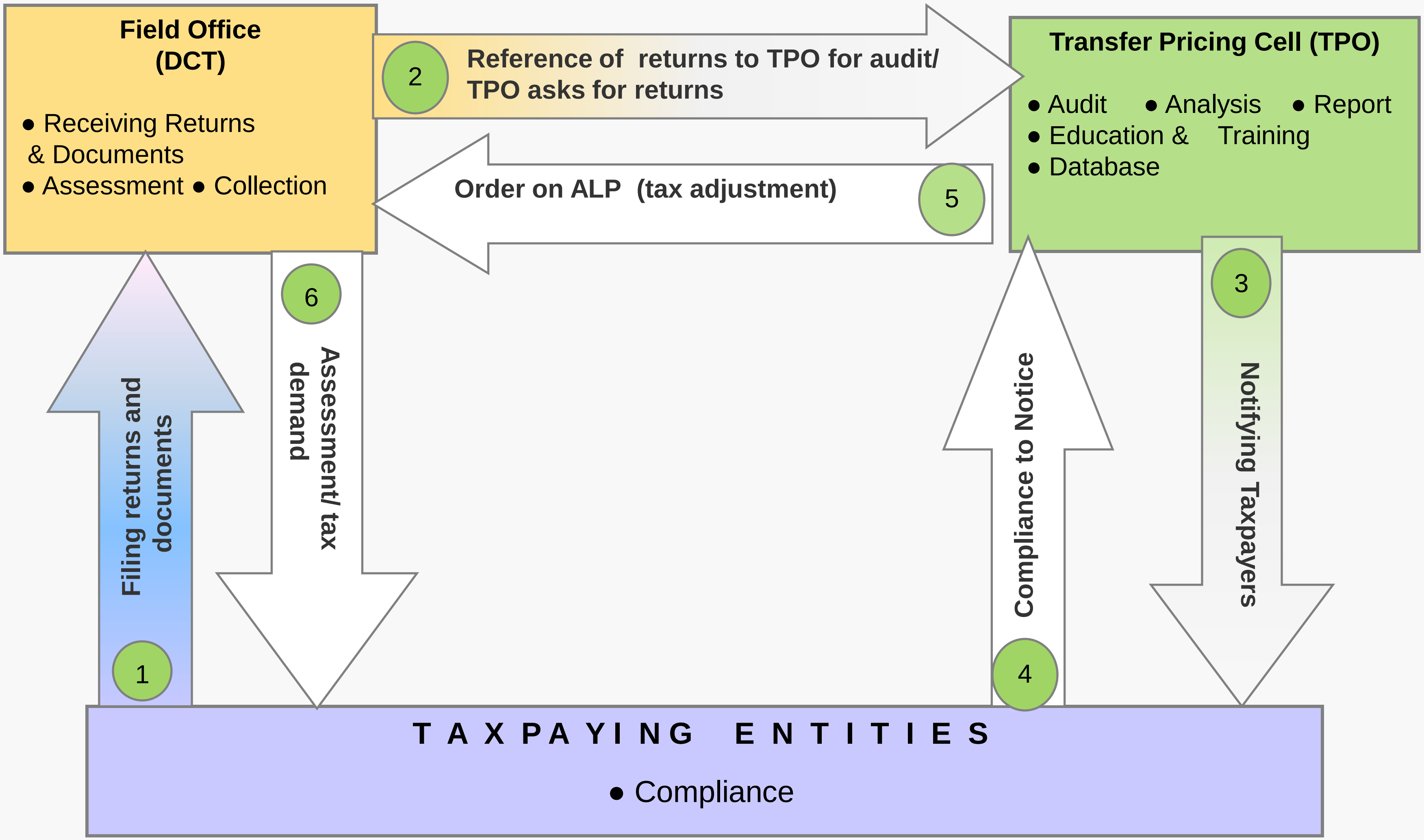
Before making assessment, DCT refers the return to Transfer Pricing Officer (working in Transfer Pricing Cell) to determine arm's length price.

Transfer Pricing Officer (TPO) determines arm's length price and computes the amount of adjustment (if any).

TPO makes order regarding the determination of arm's length price and send the order to DCT.

DCT completes audit and assessment considering the order of TPO and also considering non-TP issues

Transfer Pricing Business Procedure



Transfer Pricing Timeline in Bangladesh

2012 July	Transfer pricing provisions incorporated in income tax laws. (to be effective lateron)
2014 February	Transfer Pricing Cell (TPC) established
2014 July	Transfer pricing provisions made effective
2015 April	Transfer Pricing Officer Appointed

Terms used in Transfer Pricing

Arm’s Length Price

Comparables

Comparability Analysis

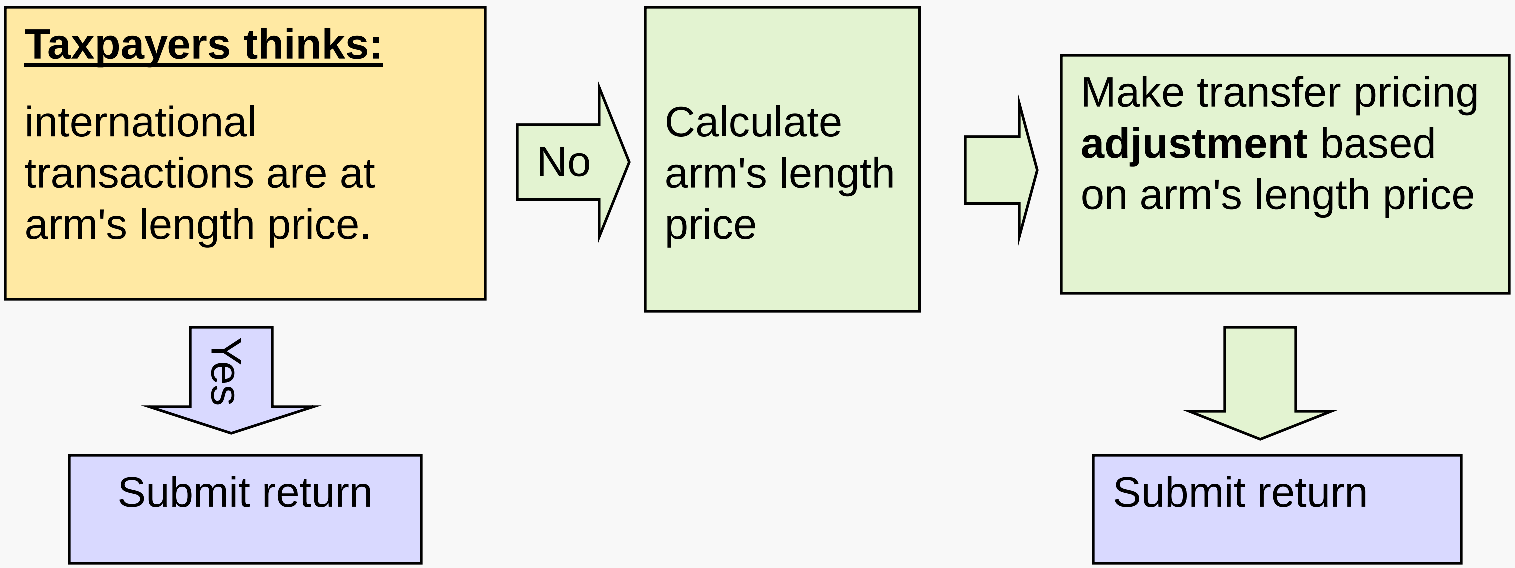
Transfer Pricing Audit

Transfer Pricing Methods

Transfer Pricing Adjustment

Transfer Pricing Business Procedure

Up to Submission of Return: Taxpayer's End



Transfer Pricing Business Procedure

After the Submission of Return: Tax Department’s End

DCT receives

tax returns & prescribed documents)

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DCT considers:

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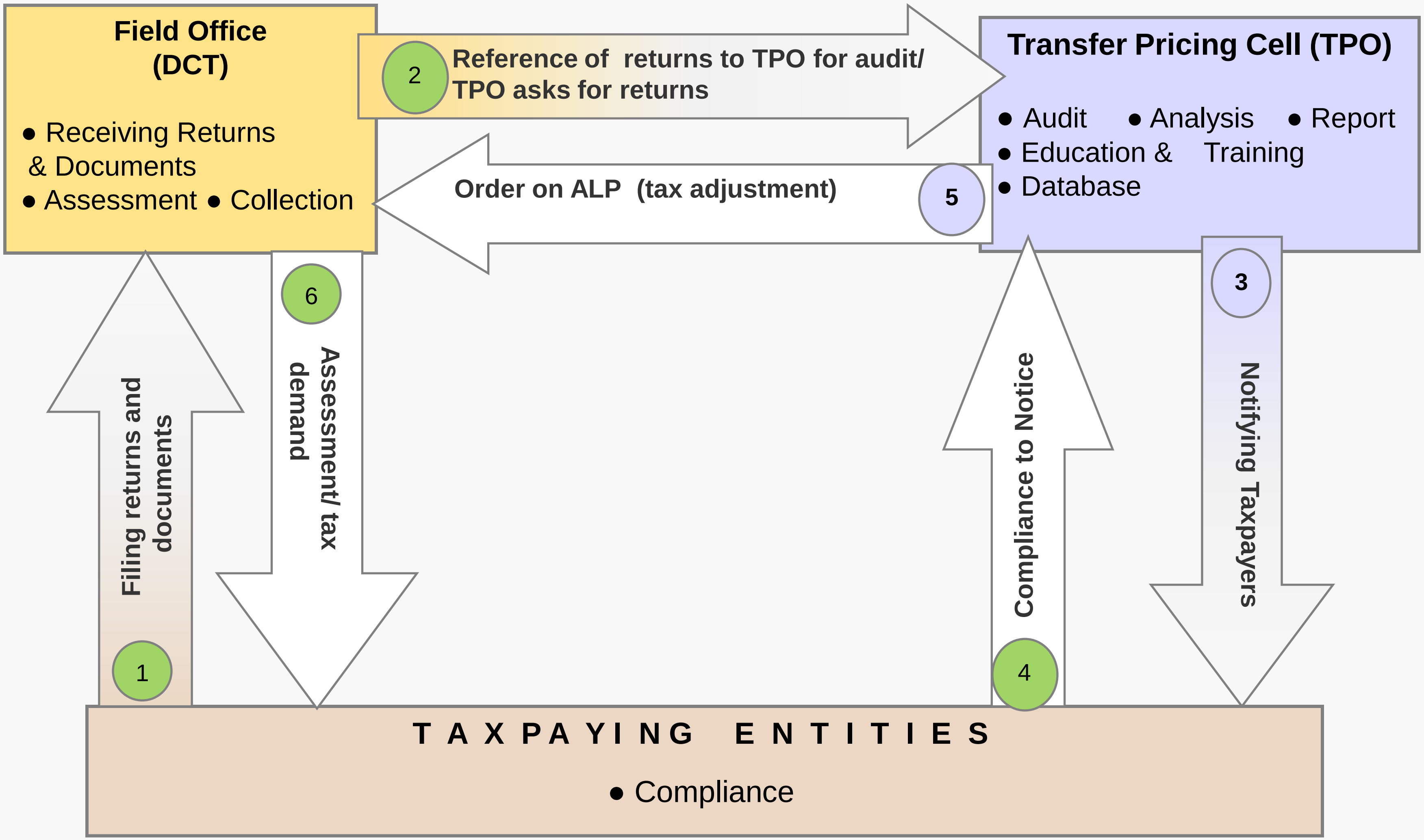
Transfer Pricing Business Procedure
After the Submission of Return: Tax Department's End



Transfer Pricing Methods

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09 May 2015

Transfer Pricing Methods

■ Transfer pricing methods are applied to determine the arm's length price of a transaction.

■ OECD recommends for five methods:

A. Traditional transaction methods

1. Comparable Uncontrolled Price method ("CUP" method)
2. Resale Price method
3. Cost Plus method

B. Transactional profit methods

1. Transactional Net Margin method ("TNMM")
2. Transactional Profit Split method.

Transfer Pricing Methods: Bangladesh Legislation

Computation of arm’s length price (Section 107C)

(1) The **arm’s length price** in relation to an **international transaction** shall be determined by applying the **most appropriate method** or methods selected from the following methods based on the nature of transaction, the availability of reliable information, functions performed, assets employed, risks assumed or such other factors as may be prescribed…

Transfer Pricing Methods : Bangladesh Legislation

Methods (Section 107C)

(a) comparable uncontrolled price method;
(b) resale price method;
(c) cost plus method;
(d) profit split method;
(e) transactional net margin method;

(f) any other method where it can be demonstrated that-
   (i) none of the methods mentioned in clause (a) to (e) can be reasonably applied to determine the arm's length price for the international transaction; and
   (ii) such other method yields a result consistent with the arm's length price.

Comparable Uncontrolled Price (CUP) Method

■ The Comparable Uncontrolled Price (CUP) Method compares the price charged in a controlled transaction to the price in a comparable uncontrolled transaction.

(Controlled transaction means transaction between associated enterprises)

■ CUP is the most direct and reliable measure

■ Internal CUP offers greatest comparability

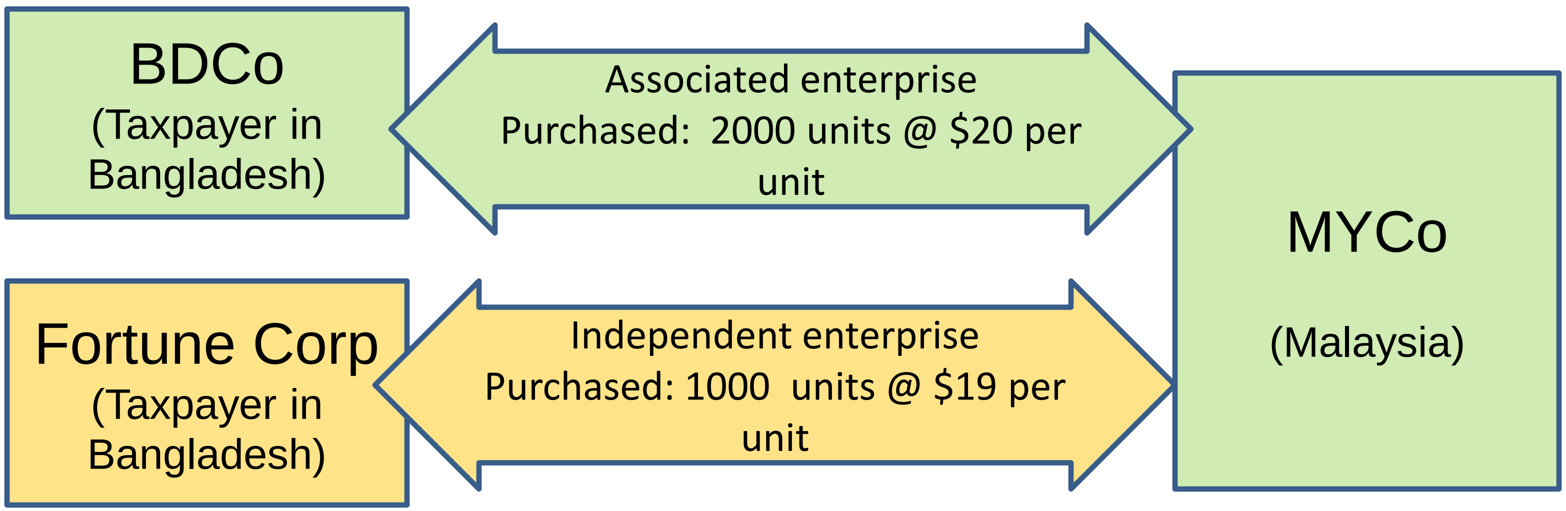
■ Applicable when products, economic conditions, contractual terms are same or similar

■ Differences that have effect on price need to be adjusted

Example: CUP

BDCo has purchased 2000 units of raw materials from its related party, MyCo (Malaysia) for $20 per unit.

Fortune Corporation of Bangladesh has purchased 1000 units of similar items from MyCo for $19 per unit. to sell the items through dealers.



TP subject: BDCo

Arm’s Length Price for purchase from MYCo: 2000 x 19 = 38,000

Transfer Pricing Adjustment: 2000 ($20 – $19) = $ 2000

Transfer Pricing Method: CUP

Example: CUP

TaiCo of Taiwan sold 500 units DVD player to its related party wholesaler BDCo, of Bangladesh for $20 each on c.i.f. basis. DVD players are sold with remote control, and connection cable. BDCo sells DVD player at its own brand name “Best Video”; brand name is labeled locally for $1 for 4 players (BDCo bear the cost of labeling). BDCo sold each DVD player for $25.

TaiCo also sold 600 units of the same DVD player to Dhaka Electronics, an independent importer @10 each on f.o.b. basis. A brand name “DE” was labeled by TaiCo. The price of DVD player does not include remote control and connection cable. Remote controls are procured locally for $1 each, and connection cable costs $2 for each dozen. Transportation cost from Taiwan to Chittagong port is $1 for each DVD player.

BDCo is a taxpayer in Bangladesh.

What is the arm’s length price? What will be transfer pricing adjustment?

Transfer Pricing Method: CUP

<u>Rule 70 (1)</u>

(a) comparable uncontrolled price method is applied in the following manner:—

(i) the price charged or paid for property transferred or services provided in an uncontrolled transaction or a number of transactions of comparable circumstances is identified;

(ii) if the price so identified differs from the price of the international transaction, the differential amount is calculated;

(iii) the price of international transaction is then adjusted by the said differential amount;

(iv) the adjusted price under sub-clause (iii) is taken to be the arm's length price of the property transferred or services rendered in the international transaction.

Resale Price Method (RPM)

■ The resale price method is most appropriate for a distributor purchasing items from the associated enterprise and reselling the items to an independent enterprise.

The resale price method analyzes the gross profit margins and determines the arm's length price (of COGS) by subtracting the appropriate gross profit from the applicable resale price.

At arm's length, a distributor looks for a price which earns ***a gross margin*** *sufficient to cover the operating costs and leaving a profit that compensates for functions performed, assets used and risks assumed.*

Resale Price Method

Example: RPM-1

	Singapore Manufacturer SgCo	Bangladesh Distributor **DhCo**
Sales	**1,850**	2,000
Cost of Goods Sold (AE)	1,200	**1,850**
Gross Profit	650	150
SGA	400	140
Net Profit	250	10

The appropriate gross profit margin for similar products is 10%.
What is the arm's length transfer price?

Resale Price Method

Arm's Length Price (COGS) = RSP x (1-GPM),

where:
RSP = the resale price to independent parties; and
GPM = the appropriate Gross Profit Margin

Sales (resale price)	2,000
(-) Gross Profit Margin @ 10% of resale price	200
Arm's Length Cost of Goods Sold	1,800

Transfer pricing adjustment: 1850 -1800 = 50

Resale Price Method

The adjustment figure:

	Original	TP Adjustment
Sales (resale price)	2,000	2,000
(-) GPM @ 10% of resale price		200
Cost of Goods Sold	1,850	1,800 (Arm's Length)
Gross Profit	150	200
SGA	140	140
Net Profit	10	60

Transfer pricing adjustment: 60 - 10 = 50

Transfer Pricing Method: RPM

<u>Rule 70 (1)</u>

(b) resale price method is applied in the following manner: —

(i) the price at which the said property or service is resold to an independent enterprise is identified;

(ii) the price, as identified in sub-clause (i), is reduced by a comparable normal gross margin;

(iii) the price so arrived at is then adjusted for **other unique costs** (such as customs duty) associated with the purchase of the property or services;

(iv) the price so arrived at is then adjusted to take into account **the material differences** (differences that could materially affect the gross margin in open market condition) such as functions performed, risks involved, assets employed, time gap between the original purchase and the resale and accounting practices between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions;

(v) the adjusted price under sub-clause (iv) shall be taken to be the arm's length price of the property purchased or the service obtained in the international transaction.

Resale Price Method

Example: RPM

DhCo, a distributor, is a Bangladesh subsidiary of HKCo (Hong Kong). DhCo distributed 500 units of DVD players manufactured by HKCo. The purchase price of DhCo is $19 per unit. DhCo resells DVD players to independent parties for $20. City Electronics of Bangladesh purchased 600 units of similar products from HKCo. The gross margin ratio of City Electronics is 10%.

DhCo gives 1 year warranty for the products. Warranty risk is borne by DhCo. City Electronics does not bear any warranty risk. Warranty cost is estimated at $1 for 5 units.

HKCo provides packing materials to City Electronics, while DhCo procures packing materials locally for $1 per unit.

1. What is the arm's length price of ?
2. What will be the transfer pricing adjustment?

Cost Plus Method (CPM)

■ In the Cost Plus Method, the arm's length supply price is determined by adding an appropriate cost plus mark-up to the cost base (COGS).

■ The CPM is most suitable useful in situations such as the supply of semi-finished goods and the performance of contract manufacturing for the associated enterprise.

■ RPM vs. CPM: profit over sale vs. profit over costs

at arm's length, an independent party looks for a transfer price which ensures a margin sufficient to compensate for the functions performed, assets used, and risks assumed.

Cost Plus Method

Example: CPM

	Bangladesh Contract Manufacturer BDCo	Japan Buyer/ Distributor JPCo
Sales (AE)	**2,000**	2,500
Cost of Goods Sold	1,800	**2,000**
Gross Margin	200	500
SGA	190	200
Net Profit	10	300

The appropriate cost plus mark-up in similar situation is 30%.

Cost Plus Method

Arm’s Length Price (supply) = COGS + (COGS x Cost plus mark-up)

Cost plus mark-up = Gross Profit/COGS

COGS	1,800
COGS x Cost plus mark-up @ 30%	540
Arm’s Length Supply price	2,340

Transfer pricing adjustment: 2,340- 2,000 = 340

Transfer Pricing Method: CPM

<u>Rule 70 (1)</u>

(c) cost plus method is applied in the following manner: —

(i) the direct and indirect costs incurred in the supply of property or the provision of services, hereinafter referred to as cost base, are determined;

(ii) a comparable profit mark-up (based on comparable accounting policies) is identified;

(iii) appropriate adjustment is then made to the comparable profit mark-up adjusted to take into account the material differences (differences that could materially affect the mark-up in open market condition) such as functions performed, risks involved, assets employed, contractual terms and market conditions between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions;

(iv) the adjusted profit mark-up under sub-clause (iii) is then added to the cost base;

(v) the sum so arrived at is taken to be the arm's length price of the property transferred or services provided in the international transaction.

Transfer Pricing Method: CPM

Example: CPM-2

DhPower manufactures UPS for its related party in Taiwan, TaiPower. using designs supplied by TaiPower. Under the contract, DhPower earned a cost plus mark up of 12%. The Costs are defined as direct cost (direct materials and labour) plus actual indirect cost. Actual indirect cost is found to be 20% of direct cost. DhPower has manufactured 100 units of UPS under the contract. Direct cost for each unit was 800.

DhPower has also manufactured 100 units of UPS for an independent party in Taiwan using designs supplied by that party (materials used were slightly different, but production process was the same). Under the contract, DhPower also earned a cost plus mark up of 12%. The Costs are defined as direct cost (direct materials and labour) plus estimated indirect cost (indirect costs are estimated at 30% of the direct cost). Direct cost per for each unit was 1000.

1. What is the volume of related party transaction?
2. What is the arm's length price? What will be the transfer pricing adjustment?

Transactional profit methods/ Profit-based Methods

■ A shift from Gross Profit based to Net Profit based.

■ Operating expenses tell the story about what a business entity does. Functions of a business entity are reflected by operating expenses (SGA).

■ Therefore, gross margin may not tell the complete story about the functions performed, risk assumed or assets employed.

■ Without breaking down and considering operating expenses, comparability analysis remains incomplete.

■ However, finding good comparables for operating expenses is difficult.

Transactional profit methods

■ At arm's length, an independent entity looks for a price that covers its functional expenses (SGA) and provides a remainder to compensate for the functions performed and risks assumed by the entity.

■ **Net profit is that remainder**. The net profit figure makes a lot of senses.

■ Therefore, focusing on net profit is necessary for ALP.

Transactional Net Margin Method (TNMM)

The TNMM uses objective measures of profitability, called profit level indicators (PLI) to evaluates whether the price of a controlled transactions is at arm’s length.

At first, an appropriate PLI is determined. Then comparable operating profit is calculated by applying the PLI and the arm’s length transaction price is determined on the basis of comparable operating profit.

Measures of profitability is calculated as net profit on appropriate base such as sales, costs or assets.

At present, TNMM is widely applied method.

Transactional Net Margin Method (TNMM)

Example: TNMM

	Taxpayer	**Comparable(s)**
Sales	2,000	2,500
Cost of Goods Sold (AE)	1,600	2,000
Gross Profit	400	500
SGA	320	320
Net Profit	80	180
Net Profit on Sales	4%	7.2%

PLI is Net Profit on Sales

Comparable Net Profit : 7.2%

Transactional Net Margin Method (TNMM)

Sales	2,000
Cost of Goods Sold	?
Gross Profit	?
SGA	320
Net Profit	?

Sales	2,000
Cost of Goods Sold (Arm's Length)	**1,536**
Gross Profit	464
SGA	320
Net Profit (@ 7.2% of sales)	144

Transfer pricing adjustment: 64

Transfer Pricing Method: TNMM

Rule 70 (1)

(e) transactional net margin method is applied in the following manner: —

(i) the net profit margin earned by the associated enterprise from the international transaction with the associated enterprise is computed having regard to an appropriate base such as costs, sales or assets;

(ii) the net profit margin earned by an independent enterprise or enterprises from comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;

(iii) appropriate adjustment is then made to the net profit margin referred to in sub-clause (ii) to take into account the differences, that can materially affect the net profit margin, between the international transactions and the comparable uncontrolled transactions, or between the enterprises undertaking such transactions;

(iv) the adjusted net profit margin under sub-clause (iii) is then applied to the base as referred to in sub-clause (i) to arrive at the arm’s length price in relation to the international transaction.

Profit Split Method

The Profit Split Method is applied when both parties of the controlled transaction contribute non-routine (unique) intangibles.

Here, arm's length profit is determined.

Two approaches are followed:

a) contribution analysis approach
b) residual profit-split approach.

Profit Split Method

Contribution analysis approach

The combined profits from the controlled transactions are allocated between or among the parties based on their relative contributions to the whole.

Functions are examined and value (value added) of relative contribution is determined. Some factors: expenses incurred, labor, PPE.

A profit split percentage is then assigned.

Profit Split Method

Residual profit-split approach.

Two -step process:

Step 1:
Assign an arm's length return to parties in the controlled transaction for the routine functions performed on the respective sides, i.e., manufacturing, distributing, marketing, services, etc.

Step 2:
the balance (Residual) is then spilt between/among parties according to the respective intangibles.

Profit Split Method

Rule 70 (1)

(d) profit split method is applied in the following manner: —

(i) the combined profit, arising from international transaction or transactions and divisible among the associated enterprises, is identified;

(ii) the combined profit is then divided among the associated enterprises by using the following approaches:

(a) each of the associated enterprises is allocated a basic return based on the basic functions (manufacturing, distribution, service provision etc.) each enterprise performed and determined by reference to market returns earned by independent enterprise in similar transaction. This basic return does not usually account for the return that would be generated by any unique and valuable assets possessed by the associated enterprises. The residual profit (which may be attributable to such unique assets), calculated by deducting the sum of basic returns allocated to associated enterprises from the combined profit, is then apportioned to the associated enterprise based on their relative contribution and taking into consideration how independent enterprises in similar circumstances would have divided such residual profit; or

Profit Split Method

(b) basic return is not allocated to the associated enterprises; the combined profit is divided among the associated enterprises based on the relative contribution of each the associated enterprises to that profit;

(iii) the profit thus allocated to the assessee under sub-clause (ii) is taken to be the arm's length price.

Transfer Pricing Legislation of Bangladesh

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Transfer Pricing Legislation

- Global standard, local realities

- Compatible to existing structure of tax laws

- Structural organization
  - Separate chapter or integration in different chapters
  - Definition: general or special, in the Ordinance or in rules
  - Level of detailing
  - Terminology
  - Binding: *non-obstante* clause (notwithstanding)

Transfer Pricing Legislation

- **Scope**
  - Types of transactions
  - Associated enterprise
    - if too narrow, many transactions may remain outside the purview of TP regulations
    - If too broad: high number of cases, global standard not meet, losing comparables
  - Deeming
  - Retain anti-avoidance provisions? (S. 104-106)

- Determination of ALP
  - Transfer pricing methods (5 or 5+1?)
  - Upward adjustment clause?
  - Arm’s length range

Transfer Pricing Legislation

- Safe harbor
  - Documentation safe harbor
  - Audit safe harbor
  - Reporting safe harbor

- Business process and content
  - Regular field audit or centralized audit?
  - Selection of case for audit
  - TPO order: bindings or non-binding
  - Period of limitation for audit
  - Comparability analysis, methods and others: comprehensive or brief?

Transfer Pricing Legislation

- Documentation requirement
  - Brief or comprehensive
  - Filing documents with return.
  - Documents verification
  - Involvement of Chartered Accountants

- Reporting requirement
  - TP return
  - Integrated return or separate schedule
  - Brief or comprehensive
  - Reporting safe harbor or not

Transfer Pricing Legislation

- Penalty regime
  - Stringent or lenient
  - Base of penalty
  - Scope of penalty
  - Penalty for adjustment or not
  - Discretion in penalty?

- Provisions yet to include:
  - Appeal procedure for penalty
  - Advanced Pricing Arrangement/Agreement (APA)

Bangladesh TP Legislation

Scope

Determination of income from international transaction having regard to arm’s length price.-

Notwithstanding anything contained in Chapter XI of this Ordinance, the amount of any income, or expenditure, arising from an international transaction shall be determined having regard to the arm’s length price. (S. 107B)

TP Provisions applied only to International Transactions.

International Transaction[S. 107A(5)]

"international transaction" means **a** **transaction** **between** **associated enterprises**, **either or both of whom are non-residents**, in the nature of 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, assets, financial position or economic value of such enterprises, and includes-

(a) a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises; ***(CCA/CSA)***

(b) a transaction entered into by an enterprise with a person other than an associated enterprise, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise; ***(deemed AE)***

International Transaction:

- Transaction with associated enterprise (or deemed associated enterprise)
- Either or both enterprises must be non-resident
- Includes Cost contribution/sharing arrangement

Associated Enterprise [S. 107A(2)]

“associated enterprise”, in relation to another enterprise, means an enterprise which, at any time during the income year, has the following relationship with the other enterprise-

(a) one enterprise participates, directly or indirectly, or through one or more intermediaries, in the **management** or **control** or **capita**l of the other enterprise; or

Associated Enterprise [S. 107A(2)]

(b) the same person or persons participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital, of both enterprises; or

(c) one enterprise holds, directly or indirectly, shares carrying more than twenty five percent of the voting power in the other enterprise; or

(d) the same person or persons controls shares carrying more than twenty five percent of the voting power in both enterprises; or

(e) the cumulative amount of borrowings of one enterprise from the other enterprise constitutes more than fifty percent of the book value of the total assets of that other enterprise; or

(f) the cumulative amount of guarantees provided by one enterprise in favour of the other enterprise constitutes more than ten percent of the book value of the total borrowings of the other enterprise; or

(g) more than half of the board of directors or members of the governing board of one enterprise are appointed by the other enterprise; or

Associated Enterprise [S. 107A(2)]

(h) any executive director or executive member of the governing board of one enterprise is appointed by, or is in common with the other enterprise; or

(i) the same person or persons appoint more than half of the board of directors or members in both enterprises; or

(j) the same person or persons appoint any executive director or executive member in both enterprises; or

(k) one enterprise has the practical ability to control the decision of the other enterprise; or

(l) the two enterprises are bonded by such relationship of mutual interest as may be prescribed;

Arm’s Length Price [S. 107A(1)]

"arm’s length price" means a price in a transaction, the conditions (e.g. price, margin or profit split) of which do not differ from the conditions that would have prevailed in a comparable uncontrolled transaction between independent entities carried out under comparable circumstances.

Definitions for Chapter XIA

(1) Arm’s length price
(2) Associated enterprise
(3) Enterprise
(4) Independent enterprise
(5) International transaction
(6) Permanent establishment
(7) Property
(8) Record
(9) Transfer Pricing Officer
(10)Transaction
(11) Uncontrolled transaction

Thank You

Transfer pricing regulations in Bangladesh

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Salient information to be preserved:

- Rule 73 prescribes the list of information, documents to be kept & maintained.
- Salient items of information are :

(a) **Ownership profile** of the group including the–

names,

locations,

legal status

country of tax residence of the enterprises in the group with whom the enterprise

have international transactions and

ownership linkages among them.

(b) **business profile** of the group including the-

line of business,

industry dynamics,

market and economic environment in which the group operates, and

the business model and strategies of past, present and future.

(c) **business relationship** of the group including-

purchase of goods ,

sells of goods,

provision of services,

use of assets

use of intangibles.;

(d) **consolidated financial statement** of the group;

(e) **profile of the enterprise and each of the associated enterprises operating in Bangladesh**, including –

TIN ,

BIN,

IRC numbers,

ERC numbers,

address, locations of activity centers.

(f) **business profile of the enterprise and each of the associated enterprises operating in Bangladesh** including the–

line of business,

industry dynamics,

market and economic environment in which the enterprise operates, and

the business model and strategies of past, present and future of the enterprise;

(g) **brief description** of the –

functions performed,

risks assumed and

assets employed or to be employed by the enterprise and by the associated enterprises involved in the international transaction;

(h) financial statements of the enterprise and each of the associated enterprises operating in Bangladesh;

(i) information on-

economic analysis,

market analysis,

forecasts,

budgets or

any other financial estimates prepared by the enterprise and each of the associated enterprises operating in Bangladesh either for whole business or for any segment or line of product;

(j) contracts,

terms and

agreements of the transactions with associated enterprises;

(k) the manner of choosing tested party including the rationale for the choice;

(l) details of comparables including the manner in which the comparables have been screened and the adjustment made to achieve comparability;

(m) the manner of choosing tested party including the rationale for choice;

(n) information on transfer pricing method chosen considered for determining the arm's length price including the justification stating why the method is considered most appropriate;

(o) records showing the calculations and workings regarding the determination of the arm's length price/margin including the explanation of any assumption;

(p) any assumption,

policy and

price negotiations

which may have an effect on the determination of the arm's length price;

(q) information on any adjustment made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes;

(r) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

Salient documents to be maintained:

(a) official publications,

reports,

studies and

data bases

from the Government of the country of residence of the associated enterprise, or of any other country.

(b) reports of market research studies carried out and technical publications

brought out by institutions of national or international repute.

(c)price publications including –

stock exchange and

commodity market quotations.

(d) published accounts and financial statements relating to the business affairs of the associated enterprises;

(e) agreements and contracts entered into

with associated enterprises or

with unrelated enterprises

in respect of transactions similar to the international transactions.

Reporting obligation-1:

- According to section 107EE, every person, having international transaction is required to furnish information regarding international transaction in prescribed form.
- Such form is prescribed in rule 75A.This information in prescribed form is to accompany annual tax return.
- The form prescribed in rule 75A is as follows :

STATEMENT OF INTERNATIONAL TRANSACTIONS

(Section 107EE of the Income Tax Ordinance, 1984 and Rule 75A of the Income Tax Rules, 1984)

A. Particulars of the Assessee:

1. Name of the Assessee: ....
2. TIN:
3. (a) Circle: .... (b) Taxes Zone: ....
4. Assessment Year: ....
5. Income Year: From ……………………….... to ....…

B. Particulars of International Transactions [see section 107A(5)]

*Refer to the **instructions** before completing the following section*

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PART-I

Tangible property of revenue and capital nature transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Stock in trade/ raw materials						
*Other (specify)						

**Use extra sheet, if necessary*

Rent, royalties and intangible property related transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Rent						
Royalties (for the use of patents, trademark etc.)						
License of franchise fees						
Intangible property or rights (acquired or disposed of)						

Services related transaction

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%
Treasury related services						
Management and administrative services						
Sales and marketing services						
Research and development						
Software and ICT services						
Technical and engineering services						
Commissions						
Logistics						
Asset management						
*Other services (specify)						

**Use extra sheet, if necessary*

Financial transaction

Item	Expense	TPM	%	Revenue	TPM	%

	(Thousand Tk.)	Code		(Thousand Tk.)	Code	
Interest						
Sale of financial assets (including factoring, securitization and securities)						
Lease payments						
Securities lending (fees and compensation payment)						
Insurance and reinsurance						
Guarantees						
*Other services (specify)						

**Use extra sheet, if necessary*

Any other international transaction of revenue nature not reported above:

Item	Expense (Thousand Tk.)	TPM Code	%	Revenue (Thousand Tk.)	TPM Code	%

Total of PART-I

PART-II
Interest bearing loans, advances and investments (figures in thousand taka)

Item	Opening Balance	Increase	Decrease	Closing Balance
Amounts owed by the assessee				
Amounts owed to the assessee				

Current accounts and similar items (figures in thousand taka)

Item	Opening Balance	Increase	Decrease	Closing Balance
Amounts of accounts payable				
Amounts of accounts				

receivable				

I
....Designation……………………………..........of…………………………
……………….. solemnly declare that to the best of my knowledge and belief the information given in this Form is correct and complete.

Place: ....
Date : ....
Signature
(Name in block letters)
Designation and Seal

Instructions

1. Enter the total value of international transaction for each item in the appropriate column.
2. Enter the appropriate Transfer Pricing Method Code(s) (TPM Code) in PART-I from the list given below (see section 107C).

Transfer Pricing Method (TPM)	**Code**
Comparable Uncontrolled Price	1
Cost Plus	2
Resale Price	3
Profit Split	4
Transactional Net Margin Method	5
Other	6

The '%' column for each item in PART-I represents the total value of international transactions of that item as the percentage (up to two decimal places) of the total value of all transactions under the item.

Reporting obligation-2:

- According to section 107F ,every person who has entered into international transaction with one or more persons total value of which in an income year exceeds taka 30 million is required to furnish a report from a chartered accountant.
- This report, in prescribed form, is to accompany his annual tax return.
- The prescribed form as per rule 75 is as follows:

"1. The accounts and records of -- (name and address of the assessee with TIN) relating to the international transactions entered into by the assessee during the income year ending on , _______________ has been examined by me.

2. It appears from our examination of the accounts and records that proper information and documents, as are required by the Income Tax Ordinance, 1984, have been kept by the in respect of the international transaction(s) entered into by the assessee.

3. The particulars required to be furnished under section 107F are given in the Annexure to this Form.

4. In my opinion and to the best of my information and according to the explanations given to me, the particulars given in the Annexure to this form are true and correct.

Signature

Name :

Address :

Membership No. :

Place : _____________

Date : _____________”

Methods of determination of transfer pricing:

- . Section 107B states international transaction is to be determined on the basis of “arm’s length price” .

- Section 107C deals with computation of “arm’s length price”. The following methods are to be applied for computation of “arm’s length price” :
  (a) comparable uncontrolled price method;
  (b) resale price method;
  (c) cost plus method;
  (d) profit split method;
  (e) transaction net margin method;
  (f) any other method.

Assessment of transfer pricing:

The chronology of processing of international transaction by tax authority is stated in section 107D .According to section 107D:

(a) Deputy Commissioner of Taxes with prior approval of NBR, refer a case to Transfer Pricing Officer for determination of arm’s length price.

(b) Transfer Pricing Officer will then on approval of NBR proceed to determine arm's length price in relation to international transaction. He will then serve notice to taxpayer to produce evidences in support international transaction.

(c) Transfer Pricing Officer will then determine arm's length price in relation to international transaction considering evidences produced and all other related information he will send his report to the Deputy Commissioner of Taxes.

(d) Deputy Commissioner of Taxes will then assess total income & taxes payable on the basis of report of Transfer Pricing Officer and all other relevant matter.

Penalties in transfer pricing regulation:

- According to section 107G income tax authority may impose a penalty up to 1% of international transaction for failing to furnish information or not maintaining records.
- According to section 107H income tax authority may impose a penalty up to 1% of international transaction for failing to comply with requisition of a notice..
- According to section 107I income tax authority may impose a penalty up to BDT 3 million for failing to furnish report of chartered accountant as per section 107F.

Resolution of dispute:

Disputes arising out of transfer pricing may be resolved by-

- Regular appeal procedure (multiple layers of appeal, Tribunal ,reference to HCD);

- ADR