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## Transfer Pricing Expectations from Budget 2021

**AMIT AGARWAL**

Partner, Nangia &amp; Co. LLP

**ANCHAL KAPOOR**

Director, Nangia &amp; Co. LLP

The Union Budget 2021 is round the corner and the expectations of all sectors of the economy from the Government are high to see how the Government would help the economy steer through the COVID-19 global pandemic and revive growth in the Indian economy, which has been contracting for the last three quarters. The successive disruptions caused by the Pandemic such as declining growth rate, stagnating domestic demand, disrupted production and supply chain, job crisis and rising inflation have led to the current economic discourse and thus, the Indian economy is hoping for the Government to provide redressal to the ailing economy and rationalize the tax provisions.

In view of the above, this article seeks to highlight certain areas where changes and clarifications are expected in this budget with respect to the Transfer Pricing provisions. Some of our key expectations from a Transfer Pricing perspective are discussed below:

### 1. Relaxation in Master File compliances

The Indian master file compliance (Form 3CEAA) requires the taxpayers to maintain and furnish robust details regarding the international group, which are broadly in line with the OECD template. Further, it also requires certain additional details to be furnished by the taxpayer.

Since, the existing threshold for preparation of detailed Master File is considerably low and casts significant compliance burden on the mid-sized taxpayers, it is recommended that the monetary limits for preparation of Master File be revised upward, in line with global benchmarks.

### 2. Applicability of TP provisions on Non-residents

Currently the Indian transfer pricing regulations provide that every person who has entered into an international transaction is required to prepare and file form 3CEB and also maintain transfer pricing documentation, if its value of international transaction exceeds INR 1 Crore. In this connection, there are diverse views whether foreign companies are required to file Transfer Pricing report in Form 3CEB in India, even if income subject to an international transaction is not chargeable to tax in India or where the transaction entered with the foreign entity is already reported by the Indian entity in its Form 3CEB as per the provisions of the existing Indian transfer pricing law.

The issue of applicability of TP to non-residents came up before the Hon'ble Special Bench of the Kolkata ITAT in the case of ***Instrumentarium Corporation Limited [TS-467-ITAT-2016 (Kol)-TP*** which in effect ruled that the provisions of transfer pricing are applicable on the foreign company, irrespective of the fact that the applicability of transfer pricing provisions would not be revenue accretive.

Briefly explaining the facts of the matter, the taxpayer being a Foreign Company, had advanced an interest free loan to its wholly owned Indian subsidiary. The tax authorities imputed notional interest in the hands of the foreign company. The taxpayer argued that such non charging of interest by it was a beneficial approach from an Indian perspective since if interest was charged on the loan advanced by foreign company the same would have been claimed as an expense by the Indian subsidiary, thereby reducing the taxable income / increasing the loss incurred in the statement of total income – advocating the concept of base erosion from an Indian perspective.

However, the Hon'ble Special Bench rejected the arguments and ruled against the taxpayer by applying the TP provisions qua the taxpayer and not the international transaction.

This issue also recently came up before the Hon'ble Delhi ITAT in the case of ***Convergys Customer Management Group Inc. [TS-690-ITAT-2020(DEL)-TP ]*** wherein the Tribunal elucidated the importance of disclosing all international transactions **in Form 3CEB irrespective of whether the transactions are taxable in India or not**. The ruling also reiterated the importance of maintaining separate TP documentation by foreign entity and held that reliance on the documentation maintained by the Indian subsidiary is insufficient while complying with the transfer pricing requirements qua the foreign entity.