

# DESAI SAKSENA & ASSOCIATES

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## **Friday Tax Alert**

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## **Amendments made in the Transfer Pricing provisions by the Budget 2025**

### ➤ **AMENDMENTS IN SECTION 92CA AND SECTION 155:**

Section 92CA of the Income Tax Act, 1961 (“the Act”) outlines the process for **referring the computation of arm’s length prices in international or specified domestic transactions to the Transfer Pricing Officer (TPO)**. The section empowers the Assessing Officer (AO) to refer such transactions to the TPO, subject to approval from the Principal Commissioner or Commissioner. Amendments to Section 92CA introduce a provision where **no reference will be made if the option exercised under Section 92C(3B) by the assessee is declared valid by the TPO for a given year**.

These amendments will take effect from the 1st day of April, 2026 and shall accordingly apply in relation to the **Assessment Year 2026-27 and subsequent assessment years**.

#### **A. Conditions for Applying ALP to the Next Two Years**

**Sub-section (3B)** outlines **specific conditions** under which the **ALP determined for the first year can be applied for the subsequent two years**. These conditions are outlined as follows:

##### **a) The Assessee exercises an Option or Options**

- i. **Exercising the Option:** The provision grants the assessee the right to exercise an **option to apply the ALP determined for a particular year to “similar transactions” in the subsequent two years**. This gives the assessee flexibility in choosing to benefit from the consistency in pricing over the next few years.
- ii. **Similar Transactions:** The provision is only applicable if the transactions in the subsequent years are **substantially similar** to the transaction for which the ALP was determined in the first year. The **onus is on the assessee** to determine whether the transactions in the following years meet this criterion.

##### **b) Form, Manner and Period for Exercising the Option**

- i. **Regulatory Requirements:** The exercise of the option must be done in the **form, manner and period as prescribed** by the tax authorities. This ensures that the process is standardized and follows specific procedures that facilitate easier implementation and compliance.
- ii. **Timing:** The period within which the option must be exercised would typically be **specified in the regulations or notified through circulars, ensuring the assessee has adequate time** to make the decision and file the necessary paperwork.

##### **c) Order from the TPO**

- i. **TPO’s Order:** After the assessee exercises the option to apply to the ALP for the next two years, the **TPO must issue an order in writing, confirming the**

# DESAI SAKSENA & ASSOCIATES

**validity of the exercised option.** This serves as an **official acknowledgment that the assessee's application** for the ALP for the next two years is valid.

- ii. **Timeline for TPO's Action:** The TPO must issue this order **within one month** from the end of the month in which the assessee exercised the option.
- iii. **Conditions to be met:** The TPO's approval will be **subject to conditions as prescribed.** These conditions may involve ensuring that the transactions in the consecutive years continue to be "**similar**" and that no significant changes occur in the transaction structure that would invalidate the **carry-forward of the ALP.**

**B. Further, the TPO must determine whether the option exercised by the assessee is valid under sub-section (3B).** If the TPO considers the option valid, this enables the following:

- a) **Arm's Length Price Determination:** The TPO is then required to examine and set the arm's length price (ALP).
- b) **Focus on Similar Transactions:** The TPO must focus on similar transactions to determine whether the prices applied by the assessee are within the arm's length range.
- c) **Two Consecutive Previous Years:** The TPO must assess transactions for **two consecutive years immediately following the year for which the option is exercised.** This is important because transfer pricing adjustments can have a multi-year impact.

The provisions of the exercise option mentioned above and consequent proceedings shall **not apply to any proceedings under Chapter XIV-B (Block Assessment).**

If any difficulty arises in giving effect to the provisions of sub-section (3B) and sub-section (4A) of section 92CA, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty and every guideline issued by the Board shall be laid before each House of Parliament and shall be binding on the income-tax authorities and the assessee.

**C. Re-computation of income under section 155:**

Additionally, **new sub-section (21) has been inserted in section 155** so that where the ALP determined for an international transaction or a specified domestic transaction for any previous year and the TPO has declared an option exercised by the assessee as valid option in respect of such transaction for two consecutive previous years immediately following such previous year, then:

1. The **AO shall recompute the total income** of the assessee for such consecutive previous years, by **amending the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, -**

# DESAI SAKSENA & ASSOCIATES

- **in conformity with the ALP** so determined by the TPO under sub-section (4A) of section 92CA in respect of such transaction.
  - **taking into account the directions issued under sub-section (5) of section 144C**, if any, for such a previous year.
2. Such re-computation shall be done **within three months** from the end of the month in which the assessment is completed in the case of the assessee for the previous year.
  3. The **first and second proviso to sub-section (4) of section 92C shall apply to such re-computation.**
  4. Such re-computation shall be made **within three months from the end of the month in which order of assessment or any intimation or deemed intimation is made**, in case that is not made before the period of three months as mentioned above.

## ➤ INTRODUCTION OF SAFE HARBOR RULES FOR NON-RESIDENTS STORING COMPONENTS:

A safe harbour provision will be introduced in the Act for **non-residents storing components for supply to specified electronics manufacturing units**, ensuring tax certainty and operational ease.