Related Party Transactions – An Overview

• A transaction which could be a business deal, a single or series of financial contracts, or an arrangement between two parties who are joined by a special relationship prior to the transaction would be a related party transaction.

• The related party transactions give rise to situations of conflicts of interest and are integrally related to the overall governance of a company and to board’s effectiveness, as the board has the responsibility of direction and control of the company.

Positive Consequences

• Effective asset utilization
• Reduction of transactional Costs
• Sharing of risks amongst related parties
• Reallocating of funds to affiliate parties where they are needed the most

Negative Consequences

• Reduce returns to outside Shareholders
• Raise doubts on the effectiveness of corporate governance
• Promoter group can capture a higher share of profits by self – dealing transactions.
• Hinders growth of the equity market.
Agenda

1. Related Party Provisions under Corporate Laws
2. Related Party Provisions under AS 18
Related Party Transactions under Corporate Laws
Related Party as per Companies Act, 2013 – Company Level

1. **Company Level**

   - **Holding**
     - Directly or indirectly Owns/'controls' >20% share capital
   - **Subsidiary**
   - **Fellow Subsidiary**
   - **Associate Company**
Related Party as per Companies Act, 2013 – Management Level

Management Level

- Restricted to company and its holding company only
- Key Management Personnel + Relative
- Director / Manager + Relatives
- Person influencing in non-professional capacity
- Several/Joint Direct/Indirect Influence

- Partner
- Director or member
- Director & owner >2% share capital
- Board, MD, Manager accustomed to act on directions of director or manager (excl relatives)

Firm
- Private Company
- Public Company
- Body Corporate
Related Party as per Companies Act, 2013 - Relatives

- Parents
- Members of HUF
- Siblings
- Spouse
- Children and Spouses
For the purpose of Clause 49(VII), an entity shall be considered as related to the company if

a) such entity is a related party under section 2(76) of the Companies Act, 2013;

b) such entity is a related party under the applicable accounting standards
### Related Party – Accounting Standard 18

<table>
<thead>
<tr>
<th>Accounting Standard (‘AS’) 18 – Related Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);</td>
</tr>
<tr>
<td>Associates and Joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture;</td>
</tr>
<tr>
<td>Individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;</td>
</tr>
<tr>
<td>Key Management Personnel and relatives of such personnel; and</td>
</tr>
<tr>
<td>Enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.</td>
</tr>
</tbody>
</table>
Related Party – Accounting Standard 18

The following are deemed not to be related parties:

Accounting Standard (‘AS’) 18 – Related Party

- two companies simply because they have a director in common, notwithstanding paragraph 3(d) or (e) above (unless the director is able to affect the policies of both companies in their mutual dealings);

- a single customer, supplier, franchiser, distributor or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence; and

- the parties listed below, in the course of their normal dealings with an enterprise by virtue only of those dealings (although they may circumscribe the freedom of action of the enterprise or participate in its decision-making process)
  (i) providers of finance;
  (ii) trade unions;
  (iii) public utilities;
  (iv) Government departments and Government agencies including Government sponsored bodies.

Para 10.9 Relative - in relation to an individual, means the spouse, son, daughter, brother, sister, father and mother who may be expected to influence, or be influenced by, that individual in his/her dealings with the reporting enterprise
# Comparative Analysis – Companies Act and Clause 49

<table>
<thead>
<tr>
<th>Related Party</th>
<th>Companies Act</th>
<th>Clause 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director or his relative*</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Key Managerial Personnel (Managing Director, CFO, Company Secretary) or his relative</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Firm in which Director/relative is partner</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Private company in which Director / relative is Member/Director</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Public company in which Director is a Director or his relatives holds &gt;2% capital</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Body corporate whose Board / MD is accustomed to act in accordance with instructions of a Director</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Holding Company of the Company</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Subsidiary of the Company</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Associate of the Company</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Fellow Subsidiary of the Company</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Key Managerial Personnel of the Holding company and also the close family member of such a person is included.</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Related party under the applicable Accounting Standard</td>
<td></td>
<td>√</td>
</tr>
</tbody>
</table>
### Comparative Analysis – Companies Act and Clause 49

<table>
<thead>
<tr>
<th>Currently AS 18 on Related Party Disclosures issued by the ICAI and notified by the National Committee on Accounting Standards treats the following additional relationships as Related Parties:</th>
<th>Companies Act</th>
<th>Clause 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprises that directly or indirectly control the reporting entity</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Enterprises that directly or indirectly are controlled by the reporting entity</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Joint Venture of the Reporting entity</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Shareholder for whom the reporting entity is a joint venture or an associate</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Individuals owing directly or indirectly an interest in the voting power of the reporting entity that enables them to have control or significant influence over it. Relatives of such individuals are also covered</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Enterprises owned by Directors or major shareholder of the reporting entity</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Enterprises which have a common Key Management Personnel with the reporting entity</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Enterprises over which KMP / their relatives / Individuals with significant influence or control over the reporting entity / their relatives having significant influence</td>
<td></td>
<td>√</td>
</tr>
</tbody>
</table>
Sec 188 is a subset of all related party transactions

- Section 177 (Audit Committee provisions) covers all transactions with related parties, whether covered under Section 188 or not.
## Related Party Transactions

### Companies Act 2013 V/s RC 49 – An Overview

<table>
<thead>
<tr>
<th>Companies Act requirements</th>
<th>Clause 49 requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>All companies (both listed and unlisted)</td>
<td>Listed companies</td>
</tr>
<tr>
<td><strong>All transactions - Audit Committee approval</strong></td>
<td><strong>All transactions (even if no price charged) - prior Audit Committee approval</strong></td>
</tr>
<tr>
<td>Transactions under Sec 188 - Not in ordinary course of business / Not at arm’s length</td>
<td>Material transactions - (Exceeding 10% of annual consolidated turnover)</td>
</tr>
<tr>
<td>Board approval required, if material</td>
<td>Special resolution at general meeting required – voting by unrelated parties</td>
</tr>
<tr>
<td>Other transactions if certain thresholds met</td>
<td>Non material transactions</td>
</tr>
</tbody>
</table>

* Special Resolution at general meeting required – voting by members other than interested related party

* Transactions with wholly owned subsidiaries require approval of audit committee and not prior approval

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* The Companies (Amendment) Bill, 2014 as passed by Rajya Sabha on May 14, 2015

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Related Party Transactions
Companies Act 2013

Applicability
- Transactions in ordinary course of business on 'arm’s length' basis permissible
- Other cases (not at arm’s length) will need board approval
- Central Government approval not required (anymore)

Requirement
*Special resolution required for transaction not in ordinary course of business or not at arms-length in prescribed cases:
- Sale, purchase of goods > 10% of turnover or 100 crore*
- Sale, purchase of property > 10% of net worth or 100 crore*
- availing, rendering of services > 10% of turnover or 50 crore*
- Leasing of property > 10% of net worth or 10% of turnover or 100 crores*
- Appointment to any office or place of profit in company, subsidiary or associate for Remuneration >INR 2.5 lakh p.m.
- Underwriting subscription of securities or derivatives for remuneration > 1% of net worth

*Limits apply for transactions to be entered into either individually or taken together with the previous transactions during a F.Y

* The Companies (Amendment) Bill, 2014 as passed by Rajya Sabha on May 14, 2015

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Related Party Transactions
Revised Clause 49

Requirement of special resolution
- In addition to the requirements for the transactions meeting the thresholds, shareholders approval required for all "material" related party transactions except:
  - Transactions entered between two government companies
  - Transactions entered between holding company and its wholly owned subsidiary that is consolidated
- Materiality has been defined as 10% of the annual consolidated turnover of the company as per its last audited financial statements

Approval by audit committee
- Prior approval of the audit committee mandatory
- May grant omnibus approval subject to the conditions prescribed
- The omnibus approvals granted to be valid for a period not exceeding 1 year.
- In case the relevant details as provided are not available, omnibus approval may be granted if the value does not exceed INR 1 crore per transaction

Voting by related parties
- All the related parties should abstain from voting irrespective of whether the entity is a party to the particular transaction or not

Approval through special resolution mandatory for all material transactions irrespective of whether the transaction is in ordinary course of business and at an arm’s length price

Unlike Companies Act, ratification not possible. Omnibus approvals possible

Information to be provided for omnibus approval is:
- Name of the related party, nature of transaction, period of the transaction, maximum amount of the transaction that can be entered
- Indicative base price/current contracted price and the formula for variation of the price, if any
- Other conditions specified by the audit committee

Stringent condition and not in line with MCA's clarification of barring only the interested related parties from voting
Ordinary course of business

- ‘Ordinary course of business’ – No definition under the Companies Act, 2013
- Should be construed specifically in the light of the facts and circumstances of each case
- Some of the considerations laid down in Indian Judicial Precedents

<table>
<thead>
<tr>
<th>Loans</th>
<th>Other transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indicators for companies whose principal business is other than lending of funds:</strong></td>
<td><strong>• whether the transaction is covered under the object clause of the memorandum</strong></td>
</tr>
<tr>
<td>• whether the transaction is covered under the object clause of the memorandum</td>
<td>• transactions that are reasonable in context of the business</td>
</tr>
<tr>
<td>• are transactions normal and essential to the business of the lender</td>
<td>• transactions that are necessary, normal and incidental to business</td>
</tr>
<tr>
<td>• are transactions reasonable in the context of the business of the lender</td>
<td>• transactions that are customary, regular and happen with certain frequency, exclusion of solitary or infrequent transaction</td>
</tr>
<tr>
<td>• whether the company has provided such loans/given guarantees or securities to/for other third parties also (i.e. other than section 185) –though giving such loans etc. may not be the principal business of the company</td>
<td>• transactions that are part of standard industry practice even though the particular entity in the question might not have done it</td>
</tr>
<tr>
<td>• the nature, terms and conditions are not different from those on which a similar loan/guarantee/security is provided to/for loans taken by third parties</td>
<td>• even a transaction which is not part of the pre-dominant business of the company may be considered in the normal course of business if it is related to such pre-dominant business</td>
</tr>
</tbody>
</table>
Arm’s length price as per Companies Act and Auditing Standards

**Companies Act**

- No method / basis to determine the ‘arm’s length’ of a transaction has been prescribed under the Companies Act 2013

- The expression “arm’s length transaction” has been defined in section 188 as meaning a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

**Auditing Standards**

- According to ICAI’s SA 550, Related parties, arm’s length price can be determined by comparing the terms to:
  - Those of an identical or similar transaction with one or more unrelated parties;
  - Known market terms for identical or similar transactions; and

  Consideration should also be given to other terms and conditions, for example, credit terms, contingencies, specific charges, etc.

- Under CARO 2003, the auditor is also required to report whether certain RPTs have been made at prices which are reasonable having regard to prevailing market prices. While the requirement of CARO relates to reasonableness of price (as opposed to arm’s length), it is consistent with that of SA 550
## Compliances for Related Party Transactions in Ordinary Course and on ALP

<table>
<thead>
<tr>
<th>Compliance Activity</th>
<th>Companies Act</th>
<th>Clause 49</th>
<th>Action to be taken considering both statues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company to formulate a Policy for all RPTs and materiality of RPTs</td>
<td>X</td>
<td>√</td>
<td>Formulate a Policy</td>
</tr>
<tr>
<td>Consent of Board of Directors (Not by Circular Resolution) for non-prescribed and non-material RPTs</td>
<td>X</td>
<td>X</td>
<td>Nothing since both are negative</td>
</tr>
<tr>
<td>Audit Committee’s prior approval required for all RPTs, whether material or not and whether prescribed or not</td>
<td>Not required u/s. 188 but required u/s. 177 of the Act. However, it does not state whether the approval should be prior</td>
<td>√</td>
<td>Audit Committee’s approval required. Under Clause 49, the Audit Committee can grant on omnibus approval for RPTs subject to certain conditions.</td>
</tr>
<tr>
<td>Consent of Board of Directors (Not by Circular Resolution) + Special resolution required for all non-prescribed but Material RPTs</td>
<td>X</td>
<td>√ (required because RPT is material)</td>
<td>Board Consent + Special Resolution</td>
</tr>
<tr>
<td>Consent of Board of Directors (Not by Circular Resolution) + Special resolution required for all non-material but Prescribed RPTs</td>
<td>X</td>
<td>X</td>
<td>None since both are negative</td>
</tr>
<tr>
<td>Consent of Board of Directors (Not by Circular Resolution) + Special resolution required for prescribed as well as material RPTs by all Companies</td>
<td>X</td>
<td>√</td>
<td>Board Consent + Special Resolution</td>
</tr>
</tbody>
</table>

RPT in ordinary Course of business and not on ALP* basis

RPT at any prices
## Compliances for Related Party Transactions not in Ordinary Course and not on ALP

<table>
<thead>
<tr>
<th>Compliance Activity</th>
<th>Companies Act</th>
<th>Clause 49</th>
<th>Action to be taken considering both statues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company to formulate a Policy for all RPTs and materiality of RPTs</td>
<td>RPT not in ordinary Course of business and not on ALP* basis</td>
<td>RPT at any prices</td>
<td>Formulate a Policy</td>
</tr>
<tr>
<td>Consent of Board of Directors (Not by Circular Resolution) for non-prescribed and non-material RPTs</td>
<td>X</td>
<td>√</td>
<td>Consent of Board required</td>
</tr>
<tr>
<td>Audit Committee’s prior approval required for all RPTs, whether material or not and whether prescribed or not</td>
<td>Not required u/s 188 but required u/s. 177 of the Act. However, it does not state whether the approval should be prior</td>
<td>√</td>
<td>Audit Committee’s approval required. Under Clause 49, the Audit Committee can grant on omnibus approval for RPTs subject to certain conditions.</td>
</tr>
<tr>
<td>Consent of Board of Directors (Not by Circular Resolution) + Special resolution required for all non-prescribed but Material RPTs</td>
<td>X&lt;br&gt;(Only Board Consent)</td>
<td>√&lt;br&gt;(required because is material)</td>
<td>Board Consent + Special Resolution</td>
</tr>
<tr>
<td>Consent of Board of Directors (Not by Circular Resolution) + *Special resolution required for all non-material but Prescribed RPTs</td>
<td>*(No Special Resolution required, only board resolution required)</td>
<td>X</td>
<td>Board Consent</td>
</tr>
<tr>
<td>Consent of Board of Directors (Not by Circular Resolution) + Special resolution required for prescribed as well as material RPTs by all Companies</td>
<td>*(No Special Resolution required, only board resolution required)</td>
<td>√</td>
<td>Board Consent</td>
</tr>
</tbody>
</table>

* The Companies (Amendment) Bill, 2014 as passed by Rajya Sabha on May 14, 2015
## Disclosure of Related Party Transaction

<table>
<thead>
<tr>
<th>Section 188 of the Companies Act</th>
<th>Clause 49 of the Listing Agreement</th>
<th>Accounting Standard 18 on Related Party Disclosures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Every RPT (Other than one at ALP and in the ordinary course of business) must be referred to in the Board of Directors’ Report along with Justifications</td>
<td>Details of all materials RPTs shall be disclosed quarterly along with the compliance report on corporate governance</td>
<td>Accounting for transactions with those related parties as defined in AS 18 are to be given the Financial Statements</td>
</tr>
<tr>
<td>The Explanatory Statement to the Notice calling a General Meeting (if any) for passing a “Special Resolution must mention the prescribed particulars</td>
<td>The Related Party Policy should be disclosed on the company’s website and also in its Annual Report. The url to the web page should also be provided in the Annual Report</td>
<td>The nature and manner of transactions covered are also laid down in AS 18</td>
</tr>
<tr>
<td>A Register of contracts or Arrangements in which Directors are interested must be maintained in the prescribed form</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* The Companies (Amendment) Bill, 2014 as passed by Rajya Sabha on May 14, 2015*
Related Party Transactions - Implications

- Related party definition becoming broader and onerous

- 'Arm’s length' in ordinary course of business may be too subjective to defend

- Company will have to maintain robust system of continuously monitoring records and list of 'related parties'

- Only interested member /shareholder classified as 'related party' debarred from voting on any 'related party transaction'

- Transaction with fellow subsidiaries and JV’s may pose practical challenge for want of non-independent parties
Related Party Provisions under Income Tax Act

Income-tax Act, 1961

- Domestic Sec. 40A(2)(b) r.w.s 2(41)
- International Sec. 92A

Related Parties

- Domestic Sec. 92BA
- International Sec. 92B

Related Party Transactions

Sec. 92C

Compliances
**Related Party – Sec. 40A(2)(b) r.w.s 2(41)**

**Sec. 2(41)**

“Relative”, in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

**Sec. 40A(2)(b)**

(i) where the assessee is an individual any relative of the assessee;

(ii) where the assessee is a company, any director of the firm, association of persons or company, partner of the Hindu undivided family firm, of member if the association or family, or family, or any relative of such director, partner or member;

(iii) any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession, a) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or b) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.
Related Party – Sec. 40A(2)(b)

- Relative of Individual
  - Holding > 20%
    - Company in which A is Director
    - AOP in which A is Member
    - Other Directors
    - Relative of Other Directors
    - Other Members
    - Relative of Other Members
    - Firm in which A is Partner
    - Other Partners
    - Relative of Other Partner
    - HUF in which A is member
    - Other Members
    - Relative of Other Members
    - Firm holding > 20%
    - AOP holding > 20%
    - HUF holding > 20%
    - Partner
    - Member
    - Relative of Partner
    - Relative of Member
    - Relative of Other Partner
    - Relative of Other Member
    - Company holding > 20% (HCo)
    - Director
    - Relative of Director
    - Taxpayer Company
      - Any entity in which relative holds > 20%
      - Any entity in which Director holds > 20%
      - Any entity in which Taxpayer holds > 20%
      - Company in which H. Co holds > 20%
“Associated enterprise”, in relation to another enterprise, means an enterprise—
(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Key Parameters Based on which Two Enterprises can be deemed to be ‘Associated Enterprises’

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;= 26% of holding of voting shares, directly/indirectly by one enterprise</td>
<td>by one enterprise in the other</td>
</tr>
<tr>
<td>A person or enterprise holding &gt; 26% of holding of voting shares,</td>
<td>directly/indirectly in each of such enterprise</td>
</tr>
<tr>
<td>Loan &gt; 51% of the book value of total assets</td>
<td></td>
</tr>
<tr>
<td>Guarantee &gt; 10% of the total borrowing</td>
<td></td>
</tr>
<tr>
<td>Appointment &gt; 50% of the board of directors or members of governing board</td>
<td></td>
</tr>
<tr>
<td>Appointing &gt; 1 Executive Director or member of the governing board by the</td>
<td>same person</td>
</tr>
<tr>
<td>Loan &gt; 51% of the book value of total assets</td>
<td></td>
</tr>
<tr>
<td>Guarantee &gt; 10% of the total borrowing</td>
<td></td>
</tr>
<tr>
<td>Direct/Indirect supply of &gt;= 90% raw material where prices and other</td>
<td>conditions are influenced</td>
</tr>
<tr>
<td>Sale under influenced prices &amp; conditions</td>
<td></td>
</tr>
<tr>
<td>Enterprises controlled by one individual/HUF or relative of such</td>
<td>individual/HUF</td>
</tr>
<tr>
<td>Enterprises controlled by one Firm/AOP/BOI holding &gt;= 10% interest in the</td>
<td>other Firm/AOP/BOI</td>
</tr>
<tr>
<td>Relationship of mutual interest, as may be prescribed</td>
<td></td>
</tr>
</tbody>
</table>
Related Party Transactions – Sec. 92BA

- From financial year ("FY") 2012-13, Indian transfer pricing regulations apply to certain specified domestic transactions ("SDTs"), as mentioned below:

  - Expenditure incurred between related parties defined in the law [Sec 40A(2)(b)]
  - Tax holiday undertakings covering:
    - inter-unit transfer of goods and services
    - transactions with entities having close connection
  - Any other transaction that may be specified

Aggregate transaction value exceeds INR 50 million in a FY (INR 200 million from FY 2015-16 onwards)
Related Party Transactions – Sec. 92B

- **International transaction** is defined as a transaction between two or more associated enterprises, either or both of whom are non-residents.

- The transactions could be 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 or assets of such enterprises,
  - Any mutual agreement or arrangement on allocation or apportionment or any contribution of cost or expenses

- Recent amendments by Finance Act 2012 have enhanced the definition of international transaction to include transactions in the nature of capital financing, business restructuring, marketing intangibles, etc.
Related Party Transactions - Deemed International Transactions

- Certain cases where dealings between third parties covered under the ambit of related party transactions:
  - there is a prior agreement in relation to the transaction between the unrelated party and an associated entity of the Indian tax payer; or
  - the terms of the relevant transaction are determined “in substance” between the unrelated entity and the associated entity of the tax payer.

- Penalty implications in case of non-reporting and non-documentation – 2% of transactional value
### Compliances – Sec. 92C

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Compliances to be followed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing of the Audit Report in From 3CEB</td>
<td>Mandatory to file Form 3CEB before the due date of filing return of income if the value of SDT exceeds INR 20 crs or even if there is international transaction with Associated Enterprise of even a single Rupee</td>
</tr>
<tr>
<td>Reporting of each SDT and international transaction entered into with related party in Form 3CEB</td>
<td>Mandatory to report every transaction in Form 3CEB</td>
</tr>
<tr>
<td>Maintenance of Transfer Pricing Documentation</td>
<td>Mandatory to maintain robust documentation where transactions subject to Transfer Pricing exceed INR 1 cr in a financial year for international transaction &amp; INR 20 cr for SDT</td>
</tr>
</tbody>
</table>
## Compliances - Various Methods for Transfer Pricing

<table>
<thead>
<tr>
<th>Method</th>
<th>Applicability</th>
<th>PLI to be compared</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparable Uncontrolled Price (CUP)</td>
<td>CUP method can be applied where reliable data of similar uncontrolled transaction between two unrelated parties or between related party and third party is available</td>
<td>Prices</td>
</tr>
<tr>
<td>Resale Price Method (RPM)</td>
<td>Where an enterprise purchases goods or services from a related party and sells them to unrelated parties without adding any substantial value to the product or services</td>
<td>Gross Profit Margins</td>
</tr>
<tr>
<td>Cost Plus Method (CPM)</td>
<td>Where there is transfer of semi finished goods between related parties or in case of services</td>
<td>Gross Profit Margins/ Direct &amp; Indirect Cost of Production / service</td>
</tr>
<tr>
<td>Profit Split Method (PSM)</td>
<td>In case of transfer of unique intangibles or in multiple inter-related transactions which cannot be evaluated separately for determining the arm’s length price</td>
<td>Generally, operating Profit Margins</td>
</tr>
<tr>
<td>Transactional Net Margin Method (TNMM)</td>
<td>When all other methods for determining ALP fails and reliable comparable data with broad functional similarity is available</td>
<td>Generally, operating Profit Margins</td>
</tr>
<tr>
<td>Other Method as per Rule 10AB</td>
<td>Where the price which would be charged for similar transaction between unrelated parties is available (based on the valuation reports, genuine quotes available from independent parties, etc)</td>
<td>Such “would be Price”</td>
</tr>
</tbody>
</table>
Related Party Transactions - Conclusion

- Regulations relating to RPTs are found in the Companies Act 2013, the Indian Accounting Standard 18, the Income-tax Act, 1961 and Clause 49 of the Listing Agreement;

- RPT will now have to meet significant disclosure and compliance requirements which has lead to enhancement of accountability of key management and has increased the responsibilities of BOD and audit committees;

- It is important to formulate the policies and procedures of RPTs and it is also important to periodically evaluate the policies to test adherence to process
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Thank you

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