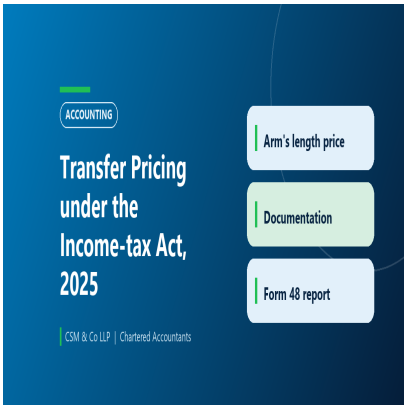


Transfer Pricing under the Income-tax Act, 2025: Arm's Length Price, Documentation, Form 48 Report and Fee (Tax Year 2026-27)

Description

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Quick summary

- Transfer pricing rules (sections 161 to 173 of the Income-tax Act, 2025, old sections 92 to 92F) require income, expense and interest from an international transaction or a specified domestic transaction to be worked out at the arm's length price.
- Associated enterprises are linked by shareholding of 26% or more of the voting power, a loan of 51% or more of total assets, guarantees of 10% or more of borrowings, control of the board, dependence on intangibles or raw materials, and similar tests (section 162).
- The method is chosen from comparable uncontrolled price, resale price, cost plus, profit split, transactional net margin or a prescribed method (section 165); a variation of up to 3% (as notified) from the arm's length price is tolerated when one price is determined.
- The accountant's report goes in Form 48 at least one month before the return due date (Rule 85); late filing now attracts a fee of ?50,000 (up to one month) or ?1,00,000 (section 428(d)), since the penalty in section 447 was omitted by Finance Act 2026, and a penalty of 2% of the transaction value applies for failing to keep documents (section 442).

When two related businesses deal with each other, the price they charge may not be the price independent parties would have agreed. **Transfer pricing** rules make sure the profit is not shifted out of India by such pricing. In the Income-tax Act, 2025 (from 01/04/2026) they are in **Chapter X, sections 161 to 173** (old sections 92 to 92F), and the Rules in **Rules 84 and 85**.

Section map

Old	New	Subject
92	161	Income and expense at arm's length price

Old	New	Subject
92A	162	Associated enterprise
92B	163	International transaction
92BA	164	Specified domestic transaction
92C	165	Determination of arm's length price
92CA	166	Reference to Transfer Pricing Officer
92CB	167	Safe harbour
92CC, 92CD	168, 169	Advance pricing agreement
92CE	170	Secondary adjustment
92D	171	Information and documents
92E	172	Accountant's report
92F	173	Definitions
3CEB	Form 48	Accountant's report

Who is an associated enterprise (section 162)

Two enterprises are associated if, for example:

- the same persons take part in the management, control or capital of both;
- one holds **26% or more of the voting power** of the other, or a person holds 26% or more in each;
- one has lent a loan that is **51% or more** of the book value of the other's total assets, or **guarantees 10% or more** of its total borrowings;
- one appoints more than half of the other's board or an executive director;
- one depends wholly on intangibles owned by the other, or **90% or more** of its raw materials come from the other on influenced terms, or its goods are sold to the other on influenced terms;
- common control by an individual or relatives, or a HUF and a member;
- one is a firm, association or body of individuals and the other holds 10% or more interest in it; or
- they have a prescribed relationship of mutual interest.

International and specified domestic transactions

An **international transaction** (section 163) is a transaction between associated enterprises, **one of which is necessarily a non-resident**, covering tangible and intangible property, capital financing (borrowing, lending, guarantee, marketable securities, advances), services (market research, management, technical, legal, accounting and others), business restructuring, cost-sharing arrangements and any other transaction having a

bearing on profits, income, losses or assets. A transaction with an outsider is deemed an international transaction if a prior agreement exists with an associated enterprise, or its terms are determined in substance between the outsider and the associated enterprise (section 163(2)).

A **specified domestic transaction** (section 164) includes certain transactions between the assessee and related persons (for example those covered by sections 122, 140(9), 140(13) and 205(4)) and prescribed ones, where the aggregate of such transactions in the tax year exceeds **?20 crore**.

Determining the arm's length price (section 165)

1. Choose the **most appropriate method** from: comparable uncontrolled price, resale price, cost plus, profit split, transactional net margin, or another method the Board prescribes (section 165(1) and (2)).
2. If one price results, it is the arm's length price; but the **price actually charged is accepted** if it differs by no more than a notified percentage, **not exceeding 3%** (section 165(3)(a)). If more than one price results, the price is determined as prescribed (section 165(3)(b)).
3. The Assessing Officer can determine the arm's length price if the price was not determined correctly, documents were not kept, the data used is unreliable or information was not furnished in time, after giving a **show-cause notice** (section 165(4) and (5)). No deduction under Chapter VIII is allowed on the income that is increased (section 165(7)).
4. Where the AO makes the adjustment on a payment from which tax was deducted, the other associated enterprise's income is not recomputed (section 165(8)).
5. The Assessing Officer can refer the case to the **Transfer Pricing Officer** (section 166), and a **secondary adjustment** can be required to align the books with the transfer price (section 170).

Safe harbour rules (section 167) and advance pricing agreements (sections 168 and 169) can give certainty in advance.

Documentation (section 171, Rule 84)

Every person who has entered into an international or specified domestic transaction, and every constituent entity of an international group, must **keep and maintain information and documents** as prescribed. Rule 84(1) lists them: ownership structure, group profile, business description, terms of each transaction, functional analysis (functions, risks, assets), forecasts, comparability analysis, methods considered, the reasons for the method chosen, and the computation of the arm's length price.

- **Exemption:** the list does not apply to international transactions whose aggregate value in the books for the year does not exceed **?1 crore**, but the assessee must substantiate that the income from them was computed at arm's length (Rule 84(2) and (3)).
- **Retention:** nine years from the end of the relevant tax year (Rule 84(8)).
- **On request:** documents must be furnished within **ten days** of a notice, extendable by up to thirty days on application (section 171(2) and (3)).

The accountant's report: Form 48 (section 172, Rule 85)

Every person who entered into an international or specified domestic transaction in the tax year must obtain a report from an accountant and furnish it in **Form 48**, **at least one month before the due date of the return** (Rule 85). "Specified date" is one month before the due date for the return under section 263(1) (section 173(d)). For a company or an audited assessee with a return due date of 31 October, that is 30 September (and one month before 30 November where the return is due on 30 November).

Consequences of default

Default	Consequence	Section
Report not furnished by the specified date	Fee of ?50,000 (up to one month) or ?1,00,000 thereafter	428(d)
Failure to keep documents, to report a transaction or incorrect information	Penalty of 2% of the value of each transaction	442(1)
Failure to furnish information required for an international group	Penalty of ?5,00,000	442(2)
Adjustment of income	Assessed after notice and the AO's determination	165(4) to (6)

The old penalty of ?1,00,000 for not furnishing the report (section 447) was omitted by Finance Act 2026 from 01/04/2026 and replaced by the fee under section 428(d).

Practical points

1. Build the transfer pricing file during the year, not at filing time.
2. Check whether the 26%, 51% or 10% tests apply to every group company, since a small shareholding can still make two companies associated.
3. Treat management fees, royalties, loans to subsidiaries and guarantees as international transactions.
4. Keep the Form 48 date in the compliance calendar, one month before the return.

How CSM & Co LLP can help

We prepare transfer pricing documentation, benchmarking studies and the accountant's report in Form 48 for businesses with related party dealings. Please reach out to our team and we will be happy to assist.

Frequently asked questions

Which sections of the 2025 Act deal with transfer pricing?

Sections 161 to 173 in Chapter X: section 161 (income at arm's length price), 162 (associated enterprise), 163 (international transaction), 164 (specified domestic transaction), 165 (determination of arm's length price), 166 (reference to the Transfer Pricing Officer), 167 (safe harbour), 168 and 169 (advance pricing agreements), 170 (secondary adjustment), 171 (information and documents), 172 (accountant's report) and 173 (definitions).

Who is an associated enterprise?

An enterprise that participates in the management, control or capital of the other, or in which the same persons do; or one holding 26% or more of the voting power of the other (or a person holding 26% in both); or one that has lent 51% or more of the other's total assets (book value); or guarantees 10% or more of its borrowings; or appoints more than half its board; or the business of which depends wholly on the other's intangibles or on 90% or more of raw materials supplied by the other; and certain cases of common control by an individual or HUF (section 162).

What is an international transaction?

A transaction between two or more associated enterprises, one of which is necessarily a non-resident, covering the purchase, sale or use of tangible or intangible property, lending and borrowing, provision of services, business restructuring, cost sharing and any other transaction affecting profits, income, losses or assets (section 163). A transaction with an outsider can be deemed an international transaction if there is a prior agreement with an associated enterprise, or its terms are in substance determined with it (section 163(2)).

Is there a minimum value for documentation?

Rule 84(2) says the detailed documentation list does not apply to an international transaction where the aggregate value recorded in the books for the tax year does not exceed ?1 crore, but the assessee must substantiate that income from them was computed at arm's length. Specified domestic transactions count only where the aggregate in the year exceeds ?20 crore (section 164). Documents are kept for nine years from the end of the tax year (Rule 84(8)).

What is the tolerance for the arm's length price?

Where one price is determined by the most appropriate method, the price actually charged is accepted if the difference from that price is not more than a percentage, not exceeding 3%, notified by the Central Government (section 165(3)(a)(ii)).

What if the accountant's report is late?

A fee of ?50,000 for a delay up to one month and ?1,00,000 thereafter (section 428(d)). The separate penalty of ?1,00,000 in section 447 was omitted by Finance Act 2026 from 01/04/2026. A penalty of 2% of the value of each transaction applies for failure to keep and maintain documents, to report a transaction, or for incorrect information (section 442(1)).

Official sources

- Income Tax Department: Income-tax Act, 2025 (sections 161 to 173, 428, 442, 447)
- Income Tax Department: Income-tax Rules, 2026 (Rules 84 and 85, Form 48)

Related reading

- What is Income Tax? Meaning, Rules, Tax Slabs, Types and Tax Guide for Tax Year 2026-27
- Books of Account and Tax Audit: Sections 62 and 63, Form 26 and the New Fee (Tax Year 2026-27)
- Who Must File an Income Tax Return and Due Dates (Tax Year 2026-27)

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Date
24/11/2026
Date Created
31/07/2026
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