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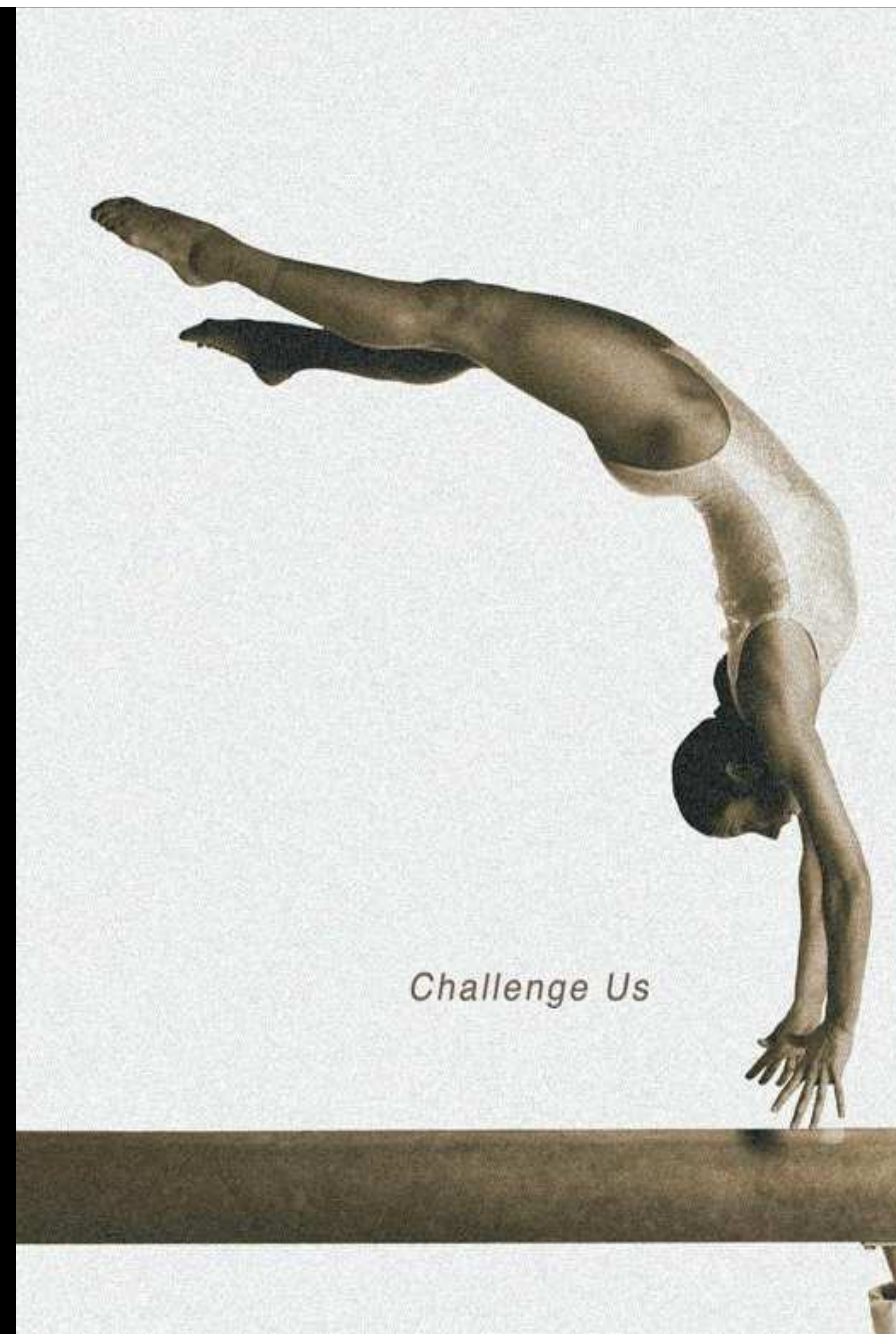
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PROPOSED DIRECT TAX CODE IN INDIA – AN UPDATE : TP ISSUES AND RESOLUTION



DTC PROPOSALS

➤ Advance Pricing Agreements

- India aligning itself with global best practices
- Aimed at providing certainty on TP issues
- Taxpayer to approach Revenue authorities for upfront determination of ALP
- Unilateral in nature - bilateral / multilateral APAs may be available through DTAA
- Can be entered for maximum period of 5 years - no provision for renewal or roll forward APA
- Binding on taxpayer and Revenue only for specific transactions
- Need for subject matter experts
- Lessons to be learned from DRP
- Independence to be the key parameter

DTC PROPOSALS (CONT)

- Definition of **Associated Enterprises** broadened
 - Where an enterprise influences terms and price at which **services** are rendered to another enterprise - existing provisions only talk about manufactured goods or articles
 - Where one of the enterprises is located in a specific or distinct location (CBDT to prescribe)
- Deemed international transaction - scope clarified
- Amendments to assessment provisions
 - No criteria for selection of TP cases - risk based criteria?

DTC PROPOSALS (CONT)

➤ Procedural amendments to **Penalty** provisions

Penalty Triggers	Current Provisions	Changes Proposed
Non-filing of Accountant's Report	INR 100,000	INR 50,000 to INR 200,000
Non-maintenance of documentation	2% of the value of international transaction	INR 50,000 to INR 200,000
Non-furnishing of documentation	2% of the value of international transaction	INR 5,000 to INR100,000

DTC PROPOSALS (CONT)

➤ **General Anti-Avoidance Rules (GAAR)**

- To be invoked where primary motive of arrangement is to obtain tax benefit and the arrangement lacks commercial substance
- Burden of proof on taxpayer - To establish tax benefit not the main purpose of arrangement
- Treaty override provisions
- Would TP issues be examined under GAAR?

WHAT DTC MISSED OUT?

- No regulation on intangibles an issue
- Industry specific guidance (financial services, pharma, etc)
- Clarity in rules for documentation
- Parameters for TP scrutiny
- Place for economists / industry experts in TP assessments
- Negotiated settlement for TP disputes
- Restricted powers of DRP

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