

Transfer Pricing

Country Experience

INDIA

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Structure ...

- Introduction
- Transfer Pricing Issues
- Dispute Resolution Panel
- Way forward

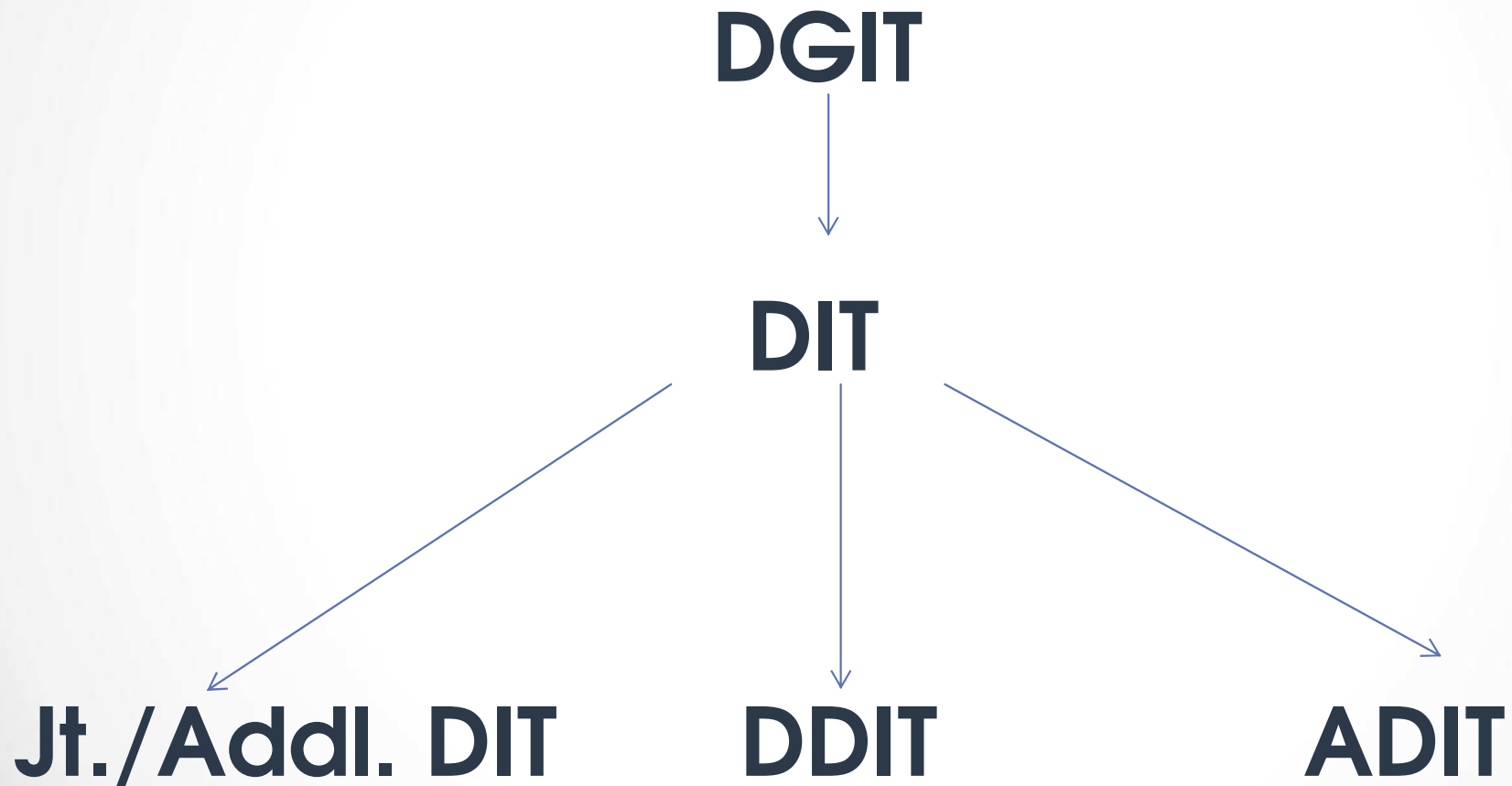
Transfer Pricing in India

- Legislation introduced by Finance Act 2001 w.e.f. 01.04.2002
- First Audit cycle for the AY 2002-03 was completed in FY 2004-05
- Last audit cycle in FY 2011-12 (AY 2008-09) was the seventh audit cycle

Administrative Structure

- ❑ **Office of The Director General, (DGIT, International Taxation) at New Delhi.**
- ❑ **Directorates of Transfer Pricing at New Delhi(2) Mumbai(2), Kolkata, Chennai, Bangalore, Ahmedabad, Hyderabad and Pune headed by Directors of Income Tax (DIT, Transfer Pricing).**
- ❑ **Transfer Pricing Officers (TPO) report to DIT.**

Organisational Hierarchy of TP Directorate



Transfer Pricing Adjustments

over the years

Assessment Year	Number of TP audits completed	Number of adjustment cases	% of adjustment cases	Amount of adjustment (INR in Million) [Provisional]
2002-03	1061	239	23	12200
2003-04	1501	337	22	22870
2004-05	1768	471	27	34320
2005-06	1945	754	39	77540
2006-07	1830	813	44	109080
2007-08	2301	1138	49	232370

Key Circulars /Instructions of CBDT

- ❑ **Circular No. 12/2001 clarifies the transfer pricing provisions in an international transaction**
- ❑ **Circular No. 14/2001 explains the provisions of transfer pricing**
- ❑ **Instruction No. 3/2003 dated 20.05.2003 lays down the guidelines for the AO/TPO.**
- ❑ **CBDT Action Plan 2011-12 provides below Rs. 150 Million aggregate transaction TP adjustment by AO.**
- ❑ **Circular No 5 of 2010 dt. 03.06.2010 on the functioning of the DRP**

Some Regular Issues in TP audits

- Reliable, Robust Documentation**
- Issues of comparability**
- Valuation of Intangibles**
- Royalty/Intra group services**
- Comparability adjustment**
- Accounting issues**
- Cost contribution agreements**
- Benchmarking of Interest/Corporate guarantee**

New Realities

- No specific reference required for TPO , change in law w.e.f. 01.06.2011.

- Guidance on intangibles and its administration

- Dealing with issue of market premium.

- Location saving /location rent.

- Non acceptance of Intellectual Property co-development possibilities, Challenge to IGS
 - cost allocations by TPO.

Understanding some future realities

- ❑ **Closer TP scrutiny as global tax base shrinks and need to garner revenues for the Govt.**
- ❑ **Economic analysis will undergo closer scrutiny as recession affects industries differently.**
- ❑ **Past TP policies firmed up in better economic times will be under scrutiny .**
- ❑ **Supply chain management, royalty, intellectual property, intra group services likely focus area.**

contd.

- Transfer Pricing and Business Restructuring.**
- Understanding changing business models in an intangible economy and their impact on TP audit.**
- Finding right comparables due to increasing complexity of transactions.**

Dispute Resolution Panel

- ❑ Number of Transfer Pricing and International Taxation issues have not yet crystallized, leading to rise in disputes.
- ❑ To resolve disputes, concept of DRP introduced by Finance Act 2009, w.e.f October 1, 2009.
- ❑ DRP to issue directions in cases of foreign companies & assessee's having cross border transactions with their A.Es.

Dispute Resolution Panel

- ❑ **Eight DRPs comprising a collegium of 3 CITs set up across the country.**
- ❑ **Total number of cases handled for the year ending 30.9.2010 was 1149**
and approximately the same figure
for year ending 30.9.2011

Suggested changes in Law

- The Form 3CEB that lists out the international transactions will be filed with the TPO**
- TPO will be empowered to levy penalty for non-reporting of international transactions.**
- Advance Pricing Agreements**
- Additional method prescribed by the Board**

Way Forward- APA

APA regime - Effort to provide a world class administrative set up incorporating global best practices

Key Question today :

APA in recessionary period ?

A close-up photograph showing a hand holding a lit matchstick. The matchstick is positioned over a small, bright blue flame that is burning on a dark, possibly black, surface. The background is blurred, showing warm, orange and yellow tones, suggesting an indoor setting with a lamp or fire. The overall scene is dimly lit, with the primary light source being the flame and the matchstick.

THANK YOU !!