

The Income Tax Ordinance, 1984

[CHAPTER-XIA Transfer Pricing]

CHAPTER XIA

Transfer Pricing

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107A. Definitions.-

1. In this Chapter, unless there is anything repugnant in the subject or context, -
2. (1) "arm's length price" means a price in a transaction, the conditions (e.g. price, margin or profit split) which do not differ from the conditions that would have prevailed in a comparable uncontrolled transactions between independent entities carried out under comparable circumstances;
3. (2) "associated enterprise", in relation to another enterprise, means an enterprise which, at any time during the income year, has the following relationship with the other enterprise-
 1. (a) one enterprise participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
 2. (b) the same person or persons participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital, of both enterprises; or
 3. (c) one enterprise holds, directly or indirectly, shares carrying more than twenty five percent of the voting power in the other enterprise; or
 4. (d) the same person or persons controls shares carrying more than twenty five percent of the voting power in both enterprises; or

5. (e) the cumulative amount of borrowings of one enterprise from the other enterprise constitutes more than fifty percent of the book value of the total assets of that other enterprise; or
 6. (f) the cumulative amount of guarantees provided by one enterprise in favour of the other enterprise constitutes more than ten percent of the book value of the total borrowings of the other enterprise; or
 7. (g) more than half of the board of directors or members of the governing board of one enterprise are appointed by the other enterprise; or
 8. (h) any executive director or executive member of the governing board of one enterprise is appointed by, or is in common with the other enterprise; or
 9. (i) the same person or persons appoint more than half of the board of directors or members in both enterprises; or
 10. (j) the same person or persons appoint any executive director or executive member in both enterprises; or
 11. (k) one enterprise has the practical ability to control the decision of the other enterprise; or
 12. (l) the two enterprises are bonded by such relationship of mutual interest as may be prescribed;
4. (3) “enterprise” means a person or a venture of any nature (including a permanent establishment of such person or venture);
 5. (4) “independent enterprise” means an enterprise that is not an associated enterprise;
 6. (5) “international transaction” means a transaction between associated enterprises, either or both of whom are non-residents, 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, assets, financial position or economic value of such enterprises, and includes-
 7. (a) a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises;
 8. (b) a transaction entered into by an enterprise with a person other than an associated enterprise, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise;
 9. (6) “permanent establishment” includes a place of management, a branch, an agency, an office, a warehouse, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a firm or plantation, or any other fixed place through which the business of the enterprise is wholly or partly carried on;
 10. (7) “property” includes goods, articles, things or items, patent, invention, formula, process, design, pattern, know-how, copyright, trademark, trade name, brand name, literary, musical, or artistic composition, franchise, license or contract, method, program, software, database, system, procedure, campaign, survey, study, forecast, estimate, customer list, technical data, any aspects of advertising and marketing, any item which has substantial value, or any other intangible property;
 11. (8) “record” includes electronically held information, documents and records;

12. (9) “Transfer Pricing Officer” means any income tax authority authorised by the Board to perform the function of a Transfer Pricing Officer;
13. (10) “transaction” includes an arrangement, understanding or action between two or more parties, whether or not such arrangement, understanding or action is formal or in writing; or whether or not it is intended to be enforceable by legal proceeding;
14. (11) “uncontrolled transaction” means a transaction undertaken between enterprises not being the associated enterprises.

107B. Determination of income from international transaction having regard to arm’s length price.-

1. Notwithstanding anything contained in Chapter XI of this Ordinance, the amount of any income, or expenditure, arising from an international transaction shall be determined having regard to the arm’s length price.

107C. Computation of arm’s length price.-

1. (1) The arm’s length price in relation to an international transaction shall be determined by applying the most appropriate method or methods selected from the following methods based on the nature of transaction, the availability of reliable information, functions performed, assets employed, risks assumed or such other factors as may be prescribed, namely:—
 1. (a) comparable uncontrolled price method;
 2. (b) resale price method;
 3. (c) cost plus method;
 4. (d) profit split method;
 5. (e) transactional net margin method;
 6. (f) any other method where it can be demonstrated that-
 1. (i) none of the methods mentioned in clause (a) to (e) can be reasonably applied to determine the arm’s length price for the international transaction; and
 2. (ii) such other method yields a result consistent with the arm’s length price.
2. (2) The most appropriate method referred to in sub-section (1) shall be applied for determination of arm’s length price in the manner as may be prescribed:
3. Provided that the arm’s length price determined under this section shall not result in total income lower than the total income that would have been resulted if the price at which international transaction has actually been undertaken were taken as the price charged or paid in the said international transaction.
4. (3) Where in the course of any assessment under Chapter IX of this Ordinance, the Deputy Commissioner of Taxes is of the opinion that—
 1. (a) the price charged or paid in an international transaction has not been determined by the assessee in accordance with sub-sections (1) and (2); or
 2. (b) the assessee has failed to maintain the information, documents or records in accordance with the provisions of section 107E; or

3. (c) the information or data based on which the arm's length price was computed by the assessee is not reliable or correct;
5. the Deputy Commissioner of Taxes may determine the arm's length price in relation to the said international transaction in accordance with provisions of sub-sections (1) and (2) on the basis of to him.
6. (4) In determining the arm's length price under sub-section (3), the Deputy Commissioner of Taxes shall give an opportunity to the assessee by serving a notice calling upon him to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of information or documents or other evidence available to the Deputy Commissioner of Taxes.
7. (5) Where an arm's length price is determined under sub-section (3) of this section or under sub-section (4) of section 107D, the Deputy Commissioner of Taxes shall, by an order in writing, proceed to compute the total income of the assessee having regard to the arm's length price so determined.

107D. Reference to Transfer Pricing Officer.-

1. (1) Notwithstanding anything contained in section 107C of this Ordinance,-
 1. (a) the Deputy Commissioner of Taxes, with prior approval of the Board, may refer the determination of the arm's length price under section 107C to the Transfer Pricing Officer;
 2. (b) the Transfer Pricing Officer, with prior approval of the Board, may proceed to determine the arm's length price in relation to any international transaction.
2. (2) Where a reference is made or any proceedings have been initiated under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of his computation of the arm's length price in relation to the international transaction in question.
3. (3) The Transfer Pricing Officer shall, after considering the evidence produced before him or available to him including the evidence as he may require on any specified points from the assessee or from any other person, and after taking into account all relevant materials which he has gathered shall, by order in writing, determine the arm's length price in relation to the international transaction in accordance with section 107C of this Ordinance and send a copy of his order to the Deputy Commissioner of Taxes.
4. (4) The Deputy Commissioner of Taxes, upon receipt of the order under sub-section (3), shall proceed to compute the total income of the assessee in conformity with the arm's length price so determined by the Transfer Pricing Officer.
5. (5) The Transfer Pricing Officer may rectify any order passed by him under sub-section (3) so as to correct any mistake apparent from the record either of his own motion or on the mistake having been brought to his notice by the assessee or any other income tax authority, and the provisions of section 173 of this Ordinance shall, so far as may be, apply accordingly.
6. (6) Where any rectification is made under sub-section (5), the Transfer Pricing Officer shall send a copy of his order to the Deputy Commissioner of Taxes who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

107E. Maintenance and keeping of information, documents and records.-

1. (1) Every person who has entered into an international transaction shall keep and maintain such information, documents and records as may be prescribed.
2. (2) Without prejudice to the provisions of sub-section (1), the Board may prescribe the period for which the information, documents and records shall be kept and maintained.
3. (3) The Deputy Commissioner of Taxes may, by notice in writing, require any person to furnish any information, documents and records as prescribed under sub-section (1) within the period as may be specified in the notice.

[107EE. Statement of international transactions to be submitted.-

1. Every person who has entered into an international transaction shall furnish, along with the return of income, a statement of international transactions in the form and manner as may be prescribed.]^{Added F. A. 2014}

107F. Report from an accountant to be furnished.-

1. [The Deputy Commissioner of Taxes may, by notice in writing, require that a person who has entered into international transaction or transactions the aggregate value of which, as recorded in the books of accounts, exceeds three crore taka during an income year shall furnish within the period as may be specified in the notice and in the form and manner as may be prescribed, a report from a Chartered Accountant or a Cost and Management Accountant regarding all or of a part of the information, documents and records furnished under section 107E.]^{Subs F. A. 2015}

107G. Penalty for failure to keep, maintain or furnish information, documents or records to the Deputy Commissioner of Taxes.-

1. Where any person fails to keep, maintain or furnish any information or documents or records as required by section 107D of this Ordinance, without prejudice to the provisions of Chapter XV of this Ordinance, the Deputy Commissioner of Taxes may impose upon such person a penalty not exceeding one per cent of the value of each international transaction entered into by such person.

107H. Penalty for failure to comply with the notice or requisition under section 107C.-

1. Where any person fails to comply with the notice or requisition under section 107D of this Ordinance, the Deputy Commissioner of Taxes may impose upon such person a penalty not exceeding one per cent of the value of each international transaction entered into by such person.

107HH. Penalty for failure to comply with the provision of section 107EE.-

1. [Where any person fails to comply with the provision of section 107EE of this Ordinance, the Deputy Commissioner of Taxes may impose upon such person a penalty not exceeding two per cent (2%) of the value of each international transaction entered into by such person.]^{Added F. A. 2015}

107I. Penalty for failure to furnish report under section 107F.-

1. Where any person fails to furnish a report from a Chartered Accountant as required by section 107F of this Ordinance, the Deputy Commissioner of Taxes may impose upon such person a penalty of a sum not exceeding three lakh taka.

107J. Applicability of this Chapter.-

1. The provisions of this Chapter shall come into force from the date specified by the Board through notification in the official Gazette.]^{Added A}