



Income Tax Bill 2025

Key Transfer Pricing changes

February 2025

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Transfer Pricing Experts

Overview

The Hon'ble Finance Minister tabled the Income-tax Bill, 2025 ("New Bill") on February 13, 2025 in the Lok Sabha. The New Bill has been built with an intent to make the Income Tax Act concise, lucid, easy to read and understand, with a conscious attempt to reduce the scope for tax disputes and thereby increase tax certainty. The New Bill comes into force from April 01, 2026.

Our alert focusses on the key changes brought out by the New Bill in relation to Transfer Pricing.

Key distinguishing features – Old Vs New

	Income Tax Act, 1961 (Current Act)	New bill
Sections	<ul style="list-style-type: none"> 819 effective sections 	<ul style="list-style-type: none"> 536
Others	<ul style="list-style-type: none"> Reference to Assessment year and Previous year 	<ul style="list-style-type: none"> Introduces "Tax Year" i.e. twelve months period of the financial year commencing on 1 April, by replacing Assessment year and Previous Year
Language	<ul style="list-style-type: none"> Intricate complex language, detailed provisions, heavy structure 	<ul style="list-style-type: none"> Simplified legal Language which is straightforward and clear for e.g. "shall not be less than" replaced with "at Least", use of more formulas, tables and structures and numeric to enhance quality Removal of redundant /obsolete provisions. Provisos (more than 1200) and Explanations (more than 900) have been removed, with their simplified content placed as sub-sections or clauses. Definitions at multiple places have been consolidated.



Transfer Pricing

New Section references

- In the current Act, the provisions governing the Transfer Pricing regulations were embodied in Sections 92 to 92F which have now been replaced with Section 161 to 174 in the New Bill.

Computation Vs Determination

- The deeming provision Section 92 of the current Act states that the income arising from international transaction shall be computed having regard to the arm's length price.
- Section 161 of the New Bill replaces the word "computation" with "determination".
- While the above change is only to align the intent of law, conscious effort has been made to replace the term "computation" with "determination" to mean that the arm's length price has to be determined as per the provision of the act by application of the most appropriate method and does not involve mere arithmetic computation.
- The term computation still finds references where only arithmetical computations are involved. For e.g. Section 165 (6) (erstwhile Section 92C(4)) where Assessing Officer computes the total income of the assessee having regard to the arm's length price determined by the Transfer Pricing Officer.

Definition of Associate Enterprise

- The ambiguity surrounding the interpretation of Sections 92A(1) and 92A(2) of the Current Act, in determining Associated Enterprises (AE), has always been a longstanding issue.
- Even though the Finance bill 2002 amended sub-section(2) of Section 92A to be read as "*For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,-*", to clarify that Section 92A(1) and 92A (2) will have to be read together. This subject has been an evergreen matter of tax dispute though certain supreme court decisions have held that both 92A(1) and (2) have to be read in conjunction.
- However, the New Bill has made both the clauses mutually exclusively and independent, intensifying the definition of Associated Enterprise (Section 162(1) and 162(2)) to mean that two enterprises will not only be regarded as AE's on the basis of control, capital or management criteria but also if one of the 13 clauses under Section 162(2) are fulfilled.
- Further the New Bill also brings clarity to the definition of AE in relation to Specified Domestic Transactions (SDT) by providing that the above definition (Section 162(1) and Section 162 (2)) shall also be applied for determination of AE in relation to SDT in addition to Section 162(3) which defines AE for SDT.
- With this change in the definition of AE under the New Bill, the various landmark Supreme Court decisions on the matter where the Courts had ruled that these Sections will have to be read together under the current Act will be nullified, for e.g.
 - Supreme Court Decision in the case of Principal Commissioner of Income Tax Vs Veer Gems [2018] 95 taxmann.com 16 (SC)/[2018] 256 Taxman 298 (SC)[05-01-2018

- Page Industries Ltd. v. Dy. CIT [2016] 71 taxmann.com 172/159 ITD 680 (Bang. - Trib.), [2021] 124 taxmann.com 605 (Karnataka)/[2021] 431 ITR 409 (Karnataka)[08-01- 2021]
- Orchid Pharma Ltd. v. Dy. CIT [2016] 76 taxmann.com 63/162 ITD 303 (Chennai - Trib.)
- In light of these changes in the New Bill, it is now imperative for companies to revisit the definition of AEs and ensure compliance from TP perspective with respect to the transactions with such entities.

International Transaction

- International Transaction which was previously outlined in the Explanation to Section 92B, has been brought into the main provisions of the newly introduced Section 163.
- This revision ensures that the definition is clearly stated within the primary text of the law, rather than being limited to an explanatory note.
- Section 92B(1) of the current Act had a reference that the transaction should impact the company's profits, income, losses or assets. This had led to a confusion, especially for financial transactions like guarantees which had no immediate impact and then the explanation was inserted including guarantees. To simplify this, Section 163(1) now provides a clear list of international transactions and includes a broad category under Section 163(1)(g) for others affecting profits, income, losses, or assets. This makes it clear that only transactions which are in the residuary clause will need further assessment on impact on profits, income, assets, losses.

Determination of Arm's Length Price (ALP)

- **Use of +/- 3% Range**
 - Taxpayers rely on comparables to establish ALP, but disputes arose when tax authorities challenged the application of the +/- 3% range for cases with a single comparable, arguing that it was only meant for multiple comparables.
 - The new bill provides clarity by explicitly stating that the +/- 3% range benefit applies even in cases with only one comparable. This change is a significant relief for taxpayers.
 - Further since it states +/-3% for all tax payers, the 1% tolerance limit which was applicable for wholesalers may no longer apply and a wider band of 3% will apply.
- **Use of Arithmetic Mean**
 - The current Act provided that where the count of comparables were lesser than 6, the Arithmetic mean of the Comparables shall be regarded as the ALP.
 - However, the New Bill excludes the use of Arithmetic Mean (AM) and provides that where there are more than one comparable the ALP shall be determined in such manner as may be prescribed.
 - However, it's a wait and watch if CBDT would fall back to the existing methodology for determination of ALP (i.e. if less than 6 comparables- AM and 6 or more- 35th percentile to 65th Percentile) or align the determination methodology in line with global best practises (adoption of interquartile range)

Introduction of multi-year ALP determination

- To ease the burden of taxpayers and tax authorities, the TP audit is intended to be rationalized through the introduction of multi-year arm's length price ('ALP') determination. Taxpayers will be given an option to elect before the TPO to determine the ALP for multi-year period i.e., applying ALP for year under consideration for the two consecutive years.

For more details, please refer to our earlier post on [Budget Update 2025](#).

Advance Pricing Agreement (APA) Implications

- The Current Act as well as the New Bill provides that an APA shall not be binding if there is a change in law or facts having a bearing on the agreement.
- Thus the introduction of the New Bill may challenge the validity of the existing APA's in light of the changes proposed.
- For example, this clause assumes significant importance with respect to existing APA's where an agreement has been reached with regard to the AE definition as per the Current Act. Now with the New Bill deeming Section 162(1) and Section 162 (2) (erstwhile Sections 92A(1) and Section 92A (2)) to be mutually exclusive and independent, the validity of these APA's will need to be evaluated.
- Further, the New Bill clarifies under section 168(11) that APA proceedings shall be deemed pending until either the **APA is finalized** or the **proceedings are closed as per prescribed rules**, addressing the previous absence of a defined time limit.



Way forward

The New Bill is indeed a significant step towards streamlining the provision of the existing Income Tax Act and is built on three core principles namely:-

1. **Textual and structural simplification** for improved clarity and coherence.
2. **No major tax policy changes** to ensure continuity and certainty.
3. **No modifications of tax rates**, preserving predictability for taxpayers.

The New Bill reflects the Government's commitment to enhancing ease of doing business by providing a tax framework that is simple & clear, reducing the scope for ambiguity and promising tax certainty.

As next steps, it is expected that the New Bill after, addressing the anomalies which are being raised by stakeholders, would be referred to the Parliamentary committee, for its assent which will then become an Act. Further it is also expected that the CBDT would issue Rules and Regulations to ensure smooth transition from April 01, 2026.

Businesses, during this interim period, may need to evaluate their existing Transfer Pricing Policies to ensure they are aligned with the provision of the New Bill and be compliant ready.

About us



VSTN Consultancy Private Ltd is a boutique Transfer pricing firm with extensive expertise in the field of international taxation and transfer pricing. VSTN Consultancy has been awarded by International Tax Review (ITR) as Best Newcomer in Asia Pacific – 2024 and is recognised as one of the finest performing transfer pricing firms.

Our offering spans the end-to-end Transfer Pricing value chain, including design of intercompany policy and drafting of Interco agreement, ensuring effective implementation of the Transfer Pricing policy, year-end documentation and certification, Global Documentation, BEPS related compliances (including advisory, Masterfile, Country by Country report), safe harbour filing, audit defense before all forums and dispute prevention mechanisms such as Advance Pricing agreement.

We are structured as an inverse pyramid where leadership get involved in all client matters, enabling clients to receive the highest quality of service.

Being a specialized firm, we offer advice that is independent of an audit practice, and deliver it with an uncompromising integrity.

Our expert team bring in cumulative experience of over six decades in the transfer pricing space with Big4s spanning clients, industries and have cutting edge knowledge and capabilities in handling complex TP engagements.



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