Module 13 · Part 2 · APA, safe harbour, s.94B, secondary adjustment

P15 · topics 13.3, 13.4

SM pp. 532–559 (exercise 608–611). **Q7(b) s.94B sum in all 6 papers since Dec'23**; a secondary-adjustment MCQ in 5 of 6; APA MCQ (xi) in D25 / J26 and APA long questions in D23, D24, J25.

Paper	Long questions	MCQs
Jun'23	Q4(b) 94B after an ALP adjustment of interest (6) · Q8(b) APA years, rollback, ROI duty (8)	repatriation of excess money
Dec'23	Q7(b) **94B** · Q8(b) APA validity, fee, binding nature	rollback years · 90 days · 20.9664%
Jun'24	Q7(a) CUP + primary / **secondary adjustment** · Q7(b) **94B** with an AE's matching deposit	additional tax on ₹300 lakh
Dec'24	Q6(a) **APA and rollback years** from ITR dates · Q7(a) secondary-adjustment **interest** (SBI MCLR / LIBOR) · Q7(b) **94B**	additional tax on ₹200 lakh
Jun'25	Q6(a) **APA / rollback years** by each year's status · Q7(b) **94B** (two AEs, carry forward)	20.9664%
Dec'25	Q7(b) **94B** (supplier-AE loan + bank loan guaranteed by an AE)	APA fee ₹150 crore · safe harbour meaning
Jun'26	Q7(b) **94B** (loan guaranteed by an AE via a common 30% holder)	APA years · tax on ₹210 lakh

HOW IT IS EXAMINED · DEC'26 PREDICTION

- **Q7(b) 7 marks, near-certain**: s.94B — who is an AE lender, EBITDA, 30%, disallowance, carry forward (8 AYs).
- **MCQ (xi)** APA years / fee · **MCQ (xii)** secondary adjustment or safe harbour.
- **Q6(a) / Q8(b) possible**: APA rollback situation (MQP Q8(b) unused), or secondary-adjustment sum (D24 Q7(a) type).

MAP OF THIS PART

1. APA s.92CC: validity, binding, rollback, fees ★★★
2. APA procedure (Rules 10F–10T), s.92CD modified return ★★
3. Documentation 92D / 92E, penalties ★★
4. Safe harbour ★★
5. s.94B thin capitalisation ★★★ (problems box)
6. s.92CE secondary adjustment, Rule 10CB ★★★
7. Revision sheet · M13 mind map

A Advance pricing agreement · s.92CC

WHAT IT IS A contract, usually for several years, between a taxpayer and at least one tax authority, to settle the transfer pricing of future transactions in advance. [SM 532]

- The **Board**, with Central Government approval, may agree with any person on the ALP (or its method) of an international transaction, or on the income of a **non-resident** u/s 9(1)(i) attributable to India. [SM 532]
- Valid for up to **5 consecutive previous years** (SM MCQ 5; J26 / MQP MCQ). Binds the person (for that transaction) and the Commissioner and subordinate authorities — not if the facts or law change. [SM 532, SM 608]
- **Void ab initio** if obtained by fraud / misrepresentation; that period is excluded from limitation, with at least **60 days** left. [SM 532–533]
- **Rollback**: may cover up to **four previous years** before the first APA year. An APA application makes the proceeding "pending". [SM 533–534]
- Types: **unilateral** (taxpayer + Indian authority), **bilateral** (+ one foreign authority), **multilateral** (+ more). [SM 534]

Step (Rule)	Form / time
Pre-filing consultation (10H) — not binding	Form 3CEC to DGIT (International Taxation) [SM 534–535]
Application (10-I)	Form 3CED **before the first day of the first year** (continuing transactions) or before the transaction [SM 535]
Fee by value of transactions	up to ₹100 crores: **₹10 lacs** · up to ₹200 crores: **₹15 lacs** · above: **₹20 lacs** [SM 535]
Rollback request (10MA)	Form 3CEDA + extra fee **₹5 lakh** [SM 538]
Withdrawal (10J)	Form 3CEE before terms are final; **fee not refunded** [SM 535]
Deficiency letter (10K)	within **1 month**; cure in **15 days** (max **30 days**); if rejected, fee refunded [SM 536]
Annual compliance report (10-O)	Form 3CEF within **30 days** of the return due date or **90 days** of the APA, later [SM 539]
Compliance audit (10P) by TPO	within **6 months** from the month the report is received [SM 539]
Bilateral terms (44GA)	applicant accepts within **thirty days** [SM 542]

ROLLBACK CONDITIONS (RULE 10MA)

- **Same** international transaction as the APA; return for the rollback year filed by the **due date u/s 139**; Form 3CEB filed; rollback asked for **all** rollback years of that transaction; Form 3CEDA. [SM 538]
- **Not allowed** for a year where the **ITAT has disposed of the appeal** on that ALP before the APA is signed, or where rollback would **reduce the returned income / raise the loss**. [SM 538]
- Effect (10RA): modified return with the tax; assessee withdraws its own appeals before filing it; the AO / Commissioner withdraws theirs within **3 months**; failure → APA cancelled. [SM 540–541]

AFTER SIGNING · s.92CD · REVISION / CANCELLATION

- **Modified return** within **3 months** from the end of the month of the APA for years already filed; completed assessments are modified; pending ones follow the APA; order within **1 year** from the end of the FY of the modified return; s.153 / 153B / 144C limits extended by **12 months**. [SM 542]
- Revision (10Q): change in critical assumptions / law, or the other country asks; cancellation (10R): failed compliance audit, late or wrong annual report, refused revision. Renewal = fresh application without pre-filing (10S). Filing an application does not stop Chapter X meanwhile (10T). [SM 539–541]

PROBLEMS BOX · APA "WHICH YEARS?" SITUATIONS (Q6(a) / Q8(b) / MCQ (xi))

STEPS

1. Find the **first APA year**: the year beginning after the application (application must be filed before its first day).
2. APA years = that year + up to 4 more (5 in all), as the agreement says.
3. Rollback years = the **4 years before** the first APA year.
4. Strike out rollback years where: return was late; ITAT already **disposed of** the TP appeal before signing; rollback would cut the returned income.
5. Pending reassessment / CIT(A) / HC on the issue → rollback still applies (appeal withdrawn).

PAST / PRACTICE

- J26 MCQ: applied 20.10.2025, signed 10.04.2026 → first year F.Y. 2026-27, so F.Y. 2026-27 to 2030-31 (option B; our reading of Rule 10-I).
- D25 MCQ: transactions ₹150 crores → fee **₹15 lakhs**.
- J25 Q6(a) (applied Feb 2024, signed May 2024, rollback Oct 2024; five AYs with different statuses) · D24 Q6(a) · J23 Q8(b) · D23 Q8(b) · MQP Q8(b) (unused) · PTP Q6(a) · SM short essay 1 · MCQ bank Q67, Q71, Q72, Q89–Q93, Q151 · **ICMAI Practice Workbook: no problem on this topic**.

B Documentation, accountant's report, penalties

Provision	Rule
s.92D records	keep prescribed information (Rule 10D) — contemporaneous, by the due date u/s 139(1); keep for **8 years** from the end of the AY (SM MCQ 9; postal MCQ); produce within **10 days** of a notice (extendable by up to **30 days**) [SM 543, SM 586]
s.92E report	Form **3CEB** from an accountant by the specified date (31st Oct, one month before the return due date) [SM 543]
s.271AA	not keeping / not reporting / wrong information: **2%** of each international transaction or SDT; constituent entity not furnishing master-file information: **₹5,00,000** [SM 543–545]
s.271BA	no Form 3CEB: **₹1,00,000** [SM 545]
s.271G	not furnishing documents u/s 92D(3): **2%** of the transaction, for each failure (J26 MCQ) [SM 545]

C Safe harbour · s.92CB (D25 MCQ)

- SM WORDS **Safe harbour** means circumstances in which the income-tax authorities shall **accept the transfer price** (or the income u/s 9(1)(i)) declared by the assessee. [SM 546]
- Rule 10TD lists eligible transactions with minimum margins, e.g. software development services: operating profit on cost not less than **17%** (value up to ₹100 crore) / **18%** (₹100–300 crore); also ITES, KPO, intra-group loans, corporate guarantees, contract R&D, auto components (90% OEM sales), low value-adding services. [SM 546–554]
- Option in **Form 3CEFA** by the return due date (return filed first); in force for the period stated or **3 years**, whichever is less; may opt out by declaration. [SM 554]
- Not for AEs in a notified jurisdictional area or a **no / low tax** country (maximum rate below **15%**); no **MAP** once accepted; no 3% comparability allowance; 92D / 92E still apply. [SM 553–554]
- SDT safe harbour (10THC): Government electricity companies (tariff fixed by the Commission) and milk co-operatives (price by fat / SNF); Form 3CEFB. [SM 554–555]

D s.94B · limitation on interest (thin capitalisation)

WHO Indian company or PE of a foreign company, the **borrower** [SM 556] → **DEBT** issued by a **non-resident AE** — or by any lender where an AE **guarantees** it or deposits matching funds [SM 556] → **THRESHOLD** interest (or similar) **exceeding ₹1 crore**, deductible under PGBP [SM 556] → **DISALLOW** lower of (total interest − **30% of EBITDA**) and interest to AEs [SM 556] → **CARRY FORWARD** up to **8 AYs**, within that year's 30% limit [SM 556–557]

- Origin: OECD **BEPS Action Plan 4** (PTP MCQ). [SM 555]
- Not for **banking / insurance** companies, IFSC finance companies, notified NBFCs; nor for loans from an Indian **PE of a foreign bank**. [SM 556]
- **SM Example 2** (₹ crore, EBITDA 100, total interest 35): all to AE → 5 disallowed; all to non-AE → nil; 15 AE + 20 others → 5. [SM 557]
- **EBITDA** = net profit + interest (all) + depreciation + amortisation + tax provision (back to the profit before them).
- "AE" lender test = s.92A: e.g. a common holder with ≥ 26% in the borrower and the guarantor makes the guarantor an AE (J26 Q7(b), SM case 3).
- Proposed dividend is not an expense: do not add it.

PROBLEMS BOX · Q7(b) s.94B INTEREST DISALLOWANCE · 7 MARKS · ALL 6 PAPERS SINCE DEC'23

1 · WHEN IT COMES

- D23 · J24 (AE's matching deposit with the lender) · D24 (loan from the foreign holding company) · J25 (two AEs + unrelated lenders; carry forward) · D25 (supplier-AE loan + bank loan guaranteed by an AE) · J26 (loan from a UK company guaranteed by a US company; common 30% holder) · J23 Q4(b) (after an ALP adjustment of interest).

2 · ANSWER FORMAT

1. Is the borrower covered? Is the lender (or guarantor / depositor) an AE — which s.92A test?
2. Interest > ₹1 crore?
3. EBITDA table → 30%.
4. Excess = total interest − 30% of EBITDA; disallow lower of excess and AE interest.
5. Carry forward the disallowed amount (8 AYs); taxable income if asked.

5 · TRAPS

- Interest to **non-AEs** counts in the excess but is never itself disallowed beyond the AE interest.
- Where 30% of EBITDA exceeds total interest, nothing is disallowed (J26 Q7(b): EBITDA ₹40 crore, 30% = ₹12 crore v interest ₹9 crore → nil, on our working).
- J25 Q7(b) (our working): EBITDA 780 lakh; allowed 234; disallowed 206; carry forward 8 AYs.

3 · WORKED PATTERN · SM M13 CASE 3 (X LTD) — THE J26 Q7(b) SHAPE (SM HINTS RE-WORKED BY SCRIPT)

X Ltd borrowed ₹100 crores on 01-04-2025 from A Inc (USA) at 9%, guaranteed by B Inc (USA); K Inc holds 30% votes in both X Ltd and B Inc and has deposited ₹100 crores with A Inc. Net profit ₹10 crores after interest, depreciation ₹5 crores and income-tax ₹3.40 crores.

B Inc and X Ltd: K holds ≥ 26% in each → AEs; guarantee by an AE → debt deemed from an AE	covered
EBITDA = 10 + interest 9 + depreciation 5 + tax 3.40 (₹ crores)	27.40
30% of EBITDA	8.22
Interest paid (9% of ₹100 crores)	9.00
Disallowed u/s 94B (lower of 0.78 and 9.00)	**₹78 lakhs**
Taxable income = 1,000 + 340 (tax) + 78 (₹ lakhs)	**₹1,418 lakhs**

4 · PRACTISE THESE

J26 Q7(b) · D25 Q7(b) · J25 Q7(b) · D24 Q7(b) · J24 Q7(b) · D23 Q7(b) · J23 Q4(b) · MQP Q7(b) (with three TP adjustments) · SM Example 2 (SM 557) · SM M13 numerical problem (SM 610, answer printed "Nil") · SM short essay 2 · MCQ bank Q66, Q85–Q88, Q96 · **ICMAI workbook Ch 7 illustrations 6, 7**.

E Secondary adjustment · s.92CE · Rule 10CB

WHAT IT IS **Secondary adjustment** = an adjustment in the books of the assessee and its AE so that the actual allocation of profits matches the transfer price fixed by the **primary adjustment** — removing the gap between cash and profit. [SM 557]

- **When**: primary adjustment made suo motu in the return; made by the AO and **accepted**; by an APA signed on or after **01-04-2017**; under safe harbour; or by MAP. [SM 557]
- **Not if** the primary adjustment ≤ **₹1 crore**, or relates to an AY commencing on or before **01-04-2016**. [SM 557]
- **Excess money** (ALP − actual price) not repatriated in time → deemed an **advance to the AE**; interest imputed. May be repatriated from any non-resident AE. [SM 557–558]
- SM Example 3: sale ₹100 crores, ALP ₹150 crores → primary adjustment ₹50 crores; if not brought back, deemed loan of ₹50 crores to the AE with interest. [SM 558]
- **Option**: pay **additional income-tax @ 18%** + surcharge **12%** + cess on the excess money — final, no credit, no deduction; then no further secondary adjustment or interest. [SM 558]

- **Time to repatriate**: **90 days** from — the return due date (suo motu, safe harbour, APA signed by the due date); the AO's / appellate order (accepted adjustment); end of the month of the APA (APA signed later); giving effect to MAP. [SM 558–559]
- **Interest rate**: INR transaction — one-year SBI **MCLR** on 1st April + **325** basis points; foreign-currency transaction — 6-month LIBOR on 30th September + **300** basis points (D24 Q7(a)). Runs from the same start dates. [SM 559]
- Exchange rate: TT buying rate on the last day of the year of the transaction. [SM 559]
- **MCQ sums** (rate 18% × 1.12 × 1.04 = **20.9664%**; D23, J25): ₹200 lakh → ₹41,93,280 (D24) · ₹210 lakh → **₹44,02,944** (J26, option D) · ₹300 lakh → ₹62,89,920 (J24).
- Practise: J24 Q7(a) · D24 Q7(a) · PTP Q7(b) · postal Q6(a) · MQP MCQ (xii) · SM short essay 3 · MCQ bank Q141, Q150, Q162 · **ICMAI Practice Workbook: no problem on this topic**.

Revision sheet · M13 Part 2 (glance page)

Item	Rule / number	Item	Rule / number
APA validity	up to 5 consecutive years; rollback up to 4 earlier years	APA fee	≤ ₹100 crores ₹10 lacs · ≤ ₹200 crores ₹15 lacs · above ₹20 lacs; rollback + ₹5 lakh
APA forms	3CEC pre-filing · 3CED application · 3CEDA rollback · 3CEE withdrawal · 3CEF annual report	Rollback barred	ITAT disposed of the appeal before signing; would reduce returned income; late return
Modified return 92CD	3 months from the month-end of the APA; order in 1 year; limits + 12 months	Annual report	30 days of due date or 90 days of APA (later); audit in 6 months
92D / 92E	keep 8 years; produce in 10 (+30) days; Form 3CEB by 31st Oct	Penalties	271AA 2% (₹5,00,000 master file) · 271BA ₹1,00,000 · 271G 2%
Safe harbour	declared price accepted; Form 3CEFA; ≤ 3 years; no MAP; not low-tax (< 15%)	Software SH margin	17% (≤ ₹100 crore), 18% (₹100–300 crore)
94B	borrower: Indian co. / PE; AE lender or AE guarantee / deposit; interest > ₹1 crore	94B limit	30% of EBITDA; disallow lower of excess and AE interest; carry forward 8 AYs
92CE triggers	suo motu, accepted AO order, APA (from 01-04-2017), safe harbour, MAP	92CE exceptions	≤ ₹1 crore; AY on or before 2016-17
Repatriate	within 90 days	Interest	SBI MCLR + 325 bp (INR) · LIBOR + 300 bp (FC)
Additional tax	18% + 12% SC + 4% cess = 20.9664%	BEPS	94B from Action Plan 4

MEMORY HOOKS

- APA: **"5 forward, 4 back, fee 10-15-20 (+5 for going back)"**.
- 94B: **"30 of EBITDA, 1 crore door, 8 years more"**.
- Secondary adjustment: **"90 days or 18 + 12 + 4"**.

Module 13 mind map · Transfer pricing

Who and what (13.1)

- s.92: at ALP; never reduces income
- IT: AEs, either non-resident; deemed IT
- SDT: > ₹20 crore
- 94A NJA: all deemed AEs

APA (13.3)

- 5 years forward; rollback 4 back
- Fee ₹10 / 15 / 20 lacs; +₹5 lakh
- Modified return in 3 months
- Rollback barred: ITAT disposed; lower income

AE s.92A (Q8(b))

- 26% voting · 51% loan / book assets
- 10% guarantee · 10% in a firm
- > ½ board appointed (exercised)
- wholly dependent · 90% raw materials

MODULE 13
~27 marks expected
Q7(a), Q7(b), Q8(b), MCQ x–xii

s.94B (Q7(b))

- AE lender / guarantee / deposit
- Interest > ₹1 crore
- 30% of EBITDA; lower of excess and AE interest
- Carry forward 8 AYs

ALP methods (Q7(a))

- CUP: adjust the outsider's price
- RPM: resale − GP% − costs
- CPM: cost × (1 + mark-up)
- PSM: unique intangibles · TNMM: most used
- mean; 3% tolerance; TPO binds AO

92CE · safe harbour · documents

- Repatriate in 90 days or pay 20.9664%
- Exceptions: ≤ ₹1 crore
- Safe harbour: price accepted; 3CEFA
- 92D 8 years; 3CEB; 271AA / 271BA / 271G