Module 13 · Part 1 · AE, international transaction, SDT, arm's length price

P15 · topics 13.1, 13.2

SM pp. 515–531 + Rule 10B and illustrations pp. 559–597 (exercise 608–611). **Module 13 is the biggest after M1: 20–30 marks every paper** (expected 27). This part: **Q7(a) ALP sum** (5 of 6 papers) and **Q8(b) AE / transaction cases** (J25, D25, J26) + MCQ (x) method.

Paper	Long questions	MCQs
Jun'23	Q3(c) AE in three cases (6) · Q6(c) **CUP**: credit, discount, warranty (6)	which ALP methods
Dec'23	Q7(a) **cost plus** with discount, technical support, credit	–
Jun'24	Q7(a) **CUP** with credit period + primary / secondary adjustment	Berry ratio · PSM not transaction-based
Dec'24	–	TPO may take up other transactions · TPO order binds AO
Jun'25	Q7(a) **resale price**: three comparables 15 / 23 / 19% · Q8(b) TPO's ALP on non-AE transactions	–
Dec'25	Q7(a) **CUP** with warranty · Q8(b) **international / SDT / neither** (4 cases)	MAM for unique intangibles: PSM
Jun'26	Q7(a) **CUP** for software services: know-how, discount, credit · Q8(b) **seven AE cases** (= MQP Q7(a))	MAM for semi-finished goods to parent

HOW IT IS EXAMINED · DEC'26 PREDICTION

- **Q7(a) 7 marks, near-certain**: CUP with adjustments (FOB / CIF, warranty, quantity discount, credit, know-how) — or RPM / cost plus; name the MAM, compute ALP and the addition.
- **Q8(b) 7 marks, likely**: "state with reasons" — AE / deemed AE u/s 92A in 5–7 cases, or international transaction vs SDT vs neither.
- **MCQ (x)**: most appropriate method for a situation.

MAP OF THIS PART

1. Why TP; s.92; ALP; comparability ★★
2. International transaction, deemed, SDT ★★★
3. Associated enterprise s.92A ★★★ (problems box Q8(b))
4. Methods: CUP, RPM, CPM, PSM, TNMM, other ★★★
5. MAM, range, 3%, multi-year data, TPO ★★
6. Problems box Q7(a) (SM Illustration 8 worked) ★★★
7. Traps · SM exercise MCQs

A s.92 · arm's length price · comparability

- SM WORDS MNEs can manipulate prices of intra-group transactions so the resident makes **no or less than ordinary profit**, eroding Indian tax; Chapter X computes income from international transactions **having regard to the arm's length price**. [SM 515]
- **s.92**: income, expense / interest and **cost-sharing** arrangements are taken at ALP. SM: sale ₹5 lacs, ALP ₹9 lacs → income up ₹4 lacs; interest at 20% vs 12% on ₹20 lacs → income up ₹1,60,000. [SM 515–516]
- **Never reduces income**: no adjustment if ALP would lower income or raise the loss (sale ₹5 lacs, ALP ₹3 lacs → no impact). [SM 516]
- **ALP** s.92F(ii): price in a transaction between persons **other than AEs** in **uncontrolled conditions**; there may be more than one ALP. [SM 516]
- **Comparability factors**: characteristics of property / services; **FAR** (functions, assets, risks) analysis; contractual terms (sham?); market conditions (geography, location savings, government rules, market level); business strategies (market penetration). [SM 517–520]
- Then: transaction analysis (do not substitute transactions), separate vs combined ("package deals"), arm's length **range**, multiple-year data, losses, intentional set-offs, customs valuation. [SM 520–523]
- **Enterprise** s.92F(iii) includes a **PE** (fixed place of business). [SM 523–524]

B International transaction (s.92B) · specified domestic transaction (s.92BA)

- **International transaction**: between **two or more AEs, either or both non-residents** (incl. NOR), of purchase / sale / lease of property, services, lending / borrowing, or anything bearing on profits, and **cost-sharing** arrangements. Both tests are cumulative. [SM 524–525]
- **Deemed** s.92B(2): a transaction with a **non-AE** is deemed between AEs if there is a **prior agreement** between that
- **SDT** (not an international transaction): transactions u/s 80A, 80-IA(8) transfers, 80-IA(10) close-connection business, same under other VI-A / 10AA, business between persons in 115BAB(4) and 115BAE(4), others prescribed — **where their aggregate in the year exceeds ₹20 crore**. [SM 526]

person and the AE, or the terms are **determined in substance** between them (C Co. – Z Plc. example). [SM 524–525]
- Includes tangible and **intangible** property (marketing, technology, customer, human-capital … intangibles), capital financing incl. **guarantees**, services, and **business restructuring**. "Transaction" includes informal arrangements. [SM 525–526]

- SM Example 1: Sultan Ltd paid ₹28,40,00,000 to a tax-holiday group company; ALP ₹17,00,00,000 → deduction limited to ALP. [SM 526]
- **Notified jurisdictional area** (s.94A): every party to a transaction with a person there is deemed an AE; TDS at the higher of **30%** or the rate in force. [SM 543–544]

C Associated enterprise · s.92A

WHAT IT IS Basic test s.92A(1): one enterprise participates (directly / indirectly) in the management, control or capital of the other, or the same persons participate in both. **Deemed AE** s.92A(2): any one of the conditions below at any time in the year. [SM 527]

Group	Two enterprises are deemed AEs if … [SM 527–528]
Holding	(a) one holds **not less than 26%** of the voting power of the other · (b) any person holds not less than 26% in **each**
Finance	(i) a **loan** by one is **not less than 51% of the book value of total assets** of the other · (j) one **guarantees** not less than **10%** of the other's total borrowings
Board	(k) more than **½ of the board** or **one or more executive directors** appointed by the other · (l) same persons appoint them in both — **power must be exercised**
Dependence	(c) manufacture / business **wholly** dependent on know-how, patents, trademarks, data … owned by the other · (d) **90% or more** of raw materials supplied by the other (or persons it specifies) at prices it influences · (e) goods sold to the other (or persons it specifies) at prices it influences
Control	(f) both controlled by an individual / his relative / jointly · (g) HUF and its member or relative · (h) one holds **not less than 10%** interest in a **firm, AOP or BOI** · (m) prescribed mutual interest

PROBLEMS BOX · Q8(b) "STATE WITH REASONS: AE / DEEMED AE?" OR "IT / SDT / NEITHER?" · 7 MARKS

1 · WHEN IT COMES

- J26 Q8(b) seven AE cases = **MQP Q7(a)** · J23 Q3(c) (voting fell to 23%, indirect holding, exclusive distributor) · D25 Q8(b) IT / SDT / neither (4 cases) · J25 Q8(b) (TPO's ALP applied to non-AE transactions) · PTP Q8(b) (meaning of SDT) · MCQ bank Q69–Q83.

2 · ANSWER FORMAT (ICMAI MQP STYLE)

1. Quote the condition of s.92A(2) that fits (one line).
2. Apply it to the figures (26%? 51% of **book** value? power **exercised**? **wholly** dependent?).
3. Conclude: "deemed AEs" / "not AEs". For IT vs SDT: both AEs? either non-resident? else SDT list and ₹20 crore?

5 · TRAPS

- Loan test uses **book value**, at **any time** in the year — later repayment does not matter (MQP: ₹65 crore of ₹120 crore).
- Power to appoint 5 of 9 but only 4 appointed → not AE.
- Partner with 12% in a foreign LLP → AE (10% test).
- A transaction with a person in a notified jurisdictional area → deemed AE (s.94A) even at 15% holding.
- Below 26% (e.g. 23%) → not AE on holding.

3 · WORKED PATTERN · MQP Q7(a) (ICMAI ANSWER) = J26 Q8(b) SHAPE

Case	Answer
(i) Sale to a company in a **notified jurisdictional area**, 15% holding	Deemed AE u/s 94A
(ii) Power to appoint 5 of 9 directors, appointed 4	Not AE: more than ½ not appointed
(iii) Loan ₹65 crore; book value of assets ₹120 crore (market ₹180 crore); ₹25 crore repaid	AE: ≥ 51% of **book** value at any time
(iv) Generators made wholly on a patented design of the German company	AE: wholly dependent on its patent
(v) Firm processing data 100% supplied by a US company	AE: wholly dependent on its data
(vi) Laptops marketed by a Belgian company, terms influenced by it (customers identified by RS Ltd)	ICMAI: AE ⚠
(vii) 12% share in a UK LLP	AE: not less than 10% in a firm

⚠ (vi): s.92A(2)(e) needs goods sold to the other enterprise or to persons **it specifies** at prices it influences; here RS Ltd identifies the customers, so "not AE" is arguable. Write the condition, then follow ICMAI's conclusion with that one-line caveat.

4 · PRACTISE THESE

J26 Q8(b) · MQP Q7(a) · D25 Q8(b) · J23 Q3(c) · J25 Q8(b) · PTP Q8(b) · SM M13 case 5 (SM 611) · MCQ bank Q69, Q70, Q75–Q81, Q83 · **ICMAI Practice Workbook: no problem on this topic**.

D Methods of ALP (s.92C, Rule 10B) · most appropriate method (Rule 10C)

Method	How (Rule 10B)	Use for
CUP	price in a comparable uncontrolled transaction, **adjusted** for differences that materially affect price (all adjustments made to the **uncontrolled** price); internal or external CUP [SM 560–562]	goods, services, intangibles, **interest on loans**; needs very close product similarity [SM 560–561]
Resale price (RPM)	resale price to an unrelated party − normal GP margin (on sales) − purchase expenses ± functional / accounting differences [SM 562–563]	only goods **bought from an AE and resold to unrelated parties** (distributor) [SM 564]
Cost plus (CPM)	direct + indirect cost of production + normal gross **mark-up on cost** (adjusted) [SM 567]	services, joint facilities, **semi-finished goods**, long-term buy-sell; only for **supply to** an AE [SM 567, SM 570]
Profit split (PSM)	combined net profit split by relative contribution (FAR); or **residual**: basic return first, residue by contribution [SM 570–572]	**unique intangibles**, integrated / inter-related transactions (D25 MCQ) [SM 570–571]
TNMM	net profit margin on cost / sales / assets compared with comparables on the same base [SM 574–575]	services, distribution where RPM fails, semi-finished goods where CPM fails, intangibles where PSM fails; the **most commonly used** [SM 575, SM 583]
Other (Rule 10AB)	any method using the price that has been or would be charged in the same / similar uncontrolled transaction [SM 582]	patent sale on a valuation report; buy-back of shares from an AE; group cost allocation [SM 581]

- CUP, RPM, CPM = **transaction-based**; PSM, TNMM = **profit-based** (J24 MCQ). [SM 529]
- **MAM (Rule 10C)**: best suited, most reliable — considering the nature of the transaction, FAR of the AEs, data availability, degree of comparability, accuracy of adjustments, assumptions. [SM 582–583]
- **Ratios**: cost cover = operating revenue ÷ operating expenses; return on assets = EBIT per rupee of assets; **Berry ratio = gross profit ÷ operating expenses** (J24 MCQ; limited-risk distributors, service providers). [SM 583]
- Comparability data: current year; for RPM / CPM / TNMM the preceding year may be used if current data is unavailable at return time. [SM 582]

- **More than one price**: arithmetic mean; if the actual price is within **3%** (or notified %) of it, it is accepted (second proviso to s.92C(2)); otherwise adjust from the mean. [SM 553, SM 599]
- **AO** may determine ALP (s.92C(3)) if the price was not per the rules, documents not kept, data unreliable or not furnished — after a show-cause notice. No 10AA / VI-A deduction on the enhancement; the other AE's income is not recomputed. [SM 529–530]
- **TPO** (s.92CA): reference with the Commissioner's approval; TPO's order **binds the AO** (D24 MCQ); TPO may take up **other transactions** that come to notice, incl. ones not reported in Form 3CEB (D24 MCQ); order up to **60 days** before the s.153 time limit; powers of ss. 131(1), 133(6), 133A. [SM 530–531]
- **Multi-year ALP** (Jun'26 supp, s.92CA(3B)): ALP of a year applies to similar transactions of the next **2** years on the assessee's option; TPO declares validity within **1 month**; AO recomputes u/s 155(21). [SM 530–531] [Supp J26 p.17–19]

PROBLEMS BOX · Q7(a) ARM'S LENGTH PRICE SUM (CUP / RPM / CPM) · 7 MARKS · 5 OF 6 PAPERS

1 · WHEN IT COMES

- **CUP**: J23 Q6(c), J24 Q7(a), D25 Q7(a), J26 Q7(a) · PTP Q7(a) = postal Q6(b) (FOB / CIF, warranty, discount).
- **RPM**: J25 Q7(a) (three comparables). **Cost plus**: D23 Q7(a).

2 · FORMULA + STEPS

1. Name the AE link and the international transaction; choose the MAM with one reason.
2. **CUP**: start from the uncontrolled price; − freight + insurance if it is CIF and the AE deal is FOB; − warranty cost given only to the outsider; − quantity discount given only to the AE; + interest for credit given only to the AE.
3. **RPM**: resale price − normal GP% × resale price − purchase-cost differences ± discount differences.
4. **CPM**: cost × (1 + adjusted mark-up %).
5. Several comparables: **mean**; within **3%**? no adjustment.
6. Adjustment = (ALP − price) × units, only if it **raises** income (s.92(3)).

5 · TRAPS

- Price to another **AE** is never a comparable (SM: AE3).
- Purchase from an AE: ALP below the price paid raises income; above it — no change.
- RPM margin is on **sales**; "25% on cost" = 20% on sales (SM M13 case 1).
- ⚠ SM Illustration 6 grosses up cost by "cost ÷ (1 − 47.5%)" = ₹28,57,143; Rule 10B(1)(c) adds the mark-up to cost (₹15,00,000 × 1.475 = ₹22,12,500). Show the rule; note the SM figure.

3 · WORKED PATTERN · SM ILLUSTRATION 8 (CD LTD) — RE-WORKED BY SCRIPT

CD Ltd sells 2,50,000 phones to its AE (Korea) at ₹3,000 FOB, no warranty, quantity discount ₹200; and 35,000 to an unrelated buyer at ₹5,800 CIF (freight + insurance ₹700) with a 2-year warranty (cost ₹500).

Comparable uncontrolled price	5,800
− freight and insurance	700
− warranty cost	500
− quantity discount	200
ALP per phone	**4,400**
− actual price to the AE	3,000
Increase per unit	1,400
Increase in total income: 2,50,000 × ₹1,400	**₹35 Crores**

Credit add-on (SM Illustration 20): 23,500 + 1,200 + 700 − 2,000 + interest on 23,500 for 3 months @ 12% = **INR 24,105**. RPM (SM Illustration 12): 11,000 − 2,200 − 1,000 − 1,000 = **₹6,800**; income up ₹21,00,000. Cost plus (SM 568–570): mark-up 50% − 10% − 5% − 7.5% + 1.5% = **29.00%** → ₹2,25,750; income up ₹25,750.
[SM 588–589, SM 596, SM 568–570]

4 · PRACTISE THESE

J26 Q7(a) · D25 Q7(a) · J25 Q7(a) (RPM: mean of 15 / 23 / 19% = 19% → ALP ₹32,400 v ₹35,000, outside 3% → + ₹52,00,000) · J24 Q7(a) · D23 Q7(a) · PTP Q7(a) · postal Q6(b) · SM Illustrations 6–22, solved case (SM 607), cases 1, 2, 4 (SM 610–611; hints ₹13,800 / ₹120 lakhs; Euro 600 / ₹9 crore; ₹9,750 / ₹625 lakhs) · MCQ bank Q63–Q65, Q68 · **ICMAI workbook Ch 7 illustrations 1–5**.

E Worked method examples from the SM (for theory and MCQs)

- **RPM (SM 564–566)**: resale ₹3,000 − normal GP 12% (actual 15% − 2% FOR − 1% discount) = 2,640 − freight 10 − customs 25 = 2,605 + 10 − 15 = **ALP ₹2,600** vs ₹2,900 → income up ₹30,000. [SM 564–566]
- **PSM (SM 572–574)**: combined profit US$ 22,000; total split 70 : 30 → AE1 ALP income US$ 35,400 (+5,400); residual split after basic returns 3,000 / 800 → US$ 35,740 (+5,740). [SM 573–574]
- **Residual PSM (Illustration 14)**: profit 200 − routine 10% on manufacturing (20 + 30) = residual 150 split by development cost 100 : 50 → Indco's transfer price **470**. [SM 590–591]
- **TNMM (SM 576–578)**: comparable operating margin on cost 51.52% → AE1's ALP revenue ₹143.94 crores vs ₹130 crores → +₹13.94 crores. [SM 577–578]
- **TNMM for purchases** (Illustrations 1–2): recast P&L at the comparable margin → AE purchases ₹460 v ₹500 (+₹40); raw material ₹445 v ₹500 (+₹55). [SM 578–580]
- **s.92(3)** (Illustrations 15–16): an ALP that would **reduce** income is ignored (Khazana: €1,30,000 comparable → no change; €60,000 → +₹20,00,000). [SM 592]
- **Illustration 18** (ABC India): RPM on laptops with computers / printers as comparables; normal GP 36%; ALP ₹5,860 > price ₹4,800 → at arm's length. [SM 593–595]

SM M13 EXERCISE MCQs (ANSWERS AS PRINTED) · MCQ FACTS

- SDT threshold: **₹20 crore**. [SM 608–609]
- SDT at ALP: **s.92**; methods: **s.92C**. [SM 608–609]
- ALP is found by the **resale price method** (not FMV / stamp duty). [SM 608–609]
- Uncontrolled transaction = between enterprises **other than AEs**. [SM 609]
- D25 MCQ: unique intangibles → PSM · J26 MCQ: semi-finished goods to the parent → cost plus (SM 567) · J24: Berry ratio = GP ÷ operating expenses.

Revision sheet · M13 Part 1 (glance page)

Item	Rule / number	Item	Rule / number
s.92	income / expense / cost-sharing at ALP; never reduces income	ALP	price between non-AEs in uncontrolled conditions
International transaction	between AEs; either or both non-resident	Deemed IT	non-AE with prior agreement / terms set by the AE
SDT	80A, 80-IA(8)/(10), 10AA, 115BAB(4), 115BAE(4); aggregate > ₹20 crore	94A NJA	all parties deemed AEs; TDS ≥ 30%
AE: holding	≥ 26% voting in the other, or by one person in each	AE: finance	loan ≥ 51% of book value of assets; guarantee ≥ 10% of borrowings
AE: board	> ½ of board or 1 executive director, actually appointed	AE: dependence	wholly on intangibles; ≥ 90% raw materials; sales at influenced prices
AE: control	individual / relative; HUF member; ≥ 10% in a firm / AOP / BOI	Methods	CUP, RPM, CPM (transaction) · PSM, TNMM (profit) · other
RPM	bought from AE, resold to outsiders; GP on sales	CPM	supply to AE; mark-up on cost; semi-finished goods, services
PSM	unique intangibles; integrated transactions; total or residual	TNMM	net margin on a base; most used
Range	arithmetic mean; within 3% accepted	Berry ratio	gross profit ÷ operating expenses
TPO	order binds AO; may take up other transactions; order 60 days before s.153 limit	Multi-year ALP	option: same ALP for next 2 years; TPO validates in 1 month

MEMORY HOOKS

- AE numbers: **"26 – 51 – 10 – 90 – ½"** (voting, loan / assets, guarantee and firm share, raw materials, board).
- CUP adjustments: **"Make the outsider's deal look like the AE's deal"** — strip what the outsider got extra (freight, warranty), add what the AE got extra (credit), remove what only the AE got (discount).
- Method by role: **distributor → RPM · manufacturer / service to AE → CPM · unique joint intangible → PSM · default → TNMM**.

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