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OTHER METHOD – A REVIEW IN LIGHT OF SELECT RULINGS

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BACKGROUND

1. Today, it is well known that Indian transfer pricing ('TP') law contained in sections 92-92F of the Income-tax Act, 1961 ('ITA') read with Rules 10A-10F of the Income-tax Rules, 1962 ('Rules') provides for the computation of the arm's length price by the 'most appropriate'[1] of the 6 methods. While 5 of these methods are the traditional methods in place since 2001[2] , the 6th method was notified vide Rule 10B in 2012. The 1995 OECD TP Guidelines ('TPG') had visualised 'other methods', as can be seen from this note in Para 1.68.

Moreover, MNE groups retain the freedom to apply methods not described in this Report to establish prices provided those prices satisfy the arm's length principle in accordance with these Guidelines. However, a taxpayer should maintain and be prepared to provide documentation regarding how its transfer prices were established.

2. The OECD has marginally refined this guidance in its subsequent editions of the TPG (refer para 2.9 of the 2022 OECD TPG). Comparable to Rule 10AB, US TP law contemplates 'unspecified methods' which 'should take into account the general principle that uncontrolled taxpayers evaluate the terms of a transaction by considering the realistic alternatives to that transaction, and only enter into a particular transaction if none of the alternatives is preferable to it'[3] .

The UN TP Guidelines 2021 contemplate the 'sixth method' or 'commodity rule' as being similar to the CUP method and oriented towards commodity transactions[4] – this is contrast to the broader scope of the OM in Rule 10AB which aligns itself to the OECD and US TP law.

1. Rule 10C of the Rules
2. And also extensively commented on in the Transfer Pricing Guidelines of the OECD.
3. § 1.482-3(e) of the IRC (ref. link here)
4. Para 4.7 of the 2021 UN TPG

RULE 10AB OF THE RULES

3. Rule 10AB addressed the long-felt need for a method to test / benchmark the arm's length price transactions that were not amenable under the 'traditional' 5 methods. The said method is also elegantly worded

Other method of determination of arm's length price
10AB. For the purposes of clause (f) of sub-section (1) of section 92C, the other method for determination of the arms' length price in relation to an international transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts."

4. To delineate the above, the 'other method' ('OM') should be:
a. Any method,
b. Which takes into account the price ***which has been charged or paid***, or
c. ***Would have been charged or paid***,
d. For the ***same or similar*** uncontrolled transaction, with or between non-associated enterprises,
e. Under ***similar circumstances***,
f. ***Considering all the relevant facts***

ICAI TP GUIDANCE NOTE

5. There is no administrative guidance on the meaning of the above emphasised phrases.

6. The ICAI Guidance Note (broadly been similar since the August 2013 edition the GN) states as follows:

The various data which may possibly be used for comparability purposes could be:
a. Third-party quotations/ invoices;
b. Valuation reports;
c. Tender/Bid documents;
d. Documents relating to the negotiations;
e. Standard rate cards;
f. Commercial & economic business models; etc.

It is relevant to note that the text of Rule 10AB does not describe any methodology but only provides an enabling provision to use any method that has been used or may be used to arrive at price of a transaction undertaken between non AEs. Hence, it provides flexibility to determine the price in complex transactions where third party comparable prices or transactions may not exist. The wide coverage of the Other Method would provide flexibility in establishing arm's length prices, particularly in cases where the application of the five specific methods

is not possible due to reasons such as difficulties in obtaining comparable data due to uniqueness of transactions such as intangibles or business transfers, transfer of unlisted shares, sale of fixed assets, revenue allocation/splitting, guarantees provided and received, etc.

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However, it would be necessary to justify and document reasons for rejection of all other five methods while selecting the 'Other Method' as the most appropriate method. The OECD Guidelines also permit the use of any other method and state that the taxpayer retain the freedom to apply methods not described in OECD Guidelines to establish prices, provided those prices satisfy the arm's length principle.

7. The Guidance Note proceeds to explain the OM with the following examples:

- Sale of patents where the purchase price is determined based on a valuation report.
- Buy-back of shares where the purchase price is determined based on a valuation report.
- Recharge of hotel and travel expenses by IndCo to FCo, being its AE.
- Recharge of employee cost by FCo, being AE of IndCo on deputation of the former's employees to the latter.
- Cost allocation arrangements where a taxpayer benefits from certain services provided by a central entity of the group and has to pay a portion of the total cost incurred by the service provider; costs are allocated on the basis of allocation keys.

POSITION PRIOR TO 2012

8. Prior to the enactment of Rule 10AB in 2012, it was always a concern as to benchmark transactions of the ones listed in para 7 above. The CUP method was considered and read broadly, as can be seen in the following select rulings pertaining to AYs prior to 2012:

a. The Bangalore Income-tax Appellate Tribunal ('ITAT') in Tally Solutions Private Limited [TS-576-ITAT-2011(Bang)-TP] held that the excess earnings method used to arrive at the CUP was an appropriate approach to value sale of IP by IndCo to its AE.

b. The Gujarat High Court ('HC') in Adani Wilmar Ltd. (363 ITR 413 : [TS-114-HC-2014(GUJ)-TP]) had affirmed the use of comparable price list of an independent international organization under the CUP method for benchmarking the price of palm oil sold.

c. The Hyderabad ITAT in Social Media India Ltd. [TS-6301-ITAT-2013(Hyderabad)-O] approved the CUP method based on the valuation report was adopted for a transaction of sale of IP rights.

d. The Mumbai ITAT in Aaradhana Realities [TS-899-ITAT-2022(Mum)-TP] adopted the CUP method based on the valuation report was adopted for a transaction of sale of equity shares.

e. It is unclear whether the Mumbai ITAT used the same approach for sale of registration rights in the case of Gharda Chemicals Ltd. [TS-201-ITAT-2016(Mum)-TP].

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9. These rulings however appear to not be perturbed by a strict reading of the CUP to only involve actual / consummated transactions (that is, 'price charged', vis-à-vis 'price to be charged'). In fact, the requirement of 'actual' transactions permeates through the 'traditional' 5 methods. This 'difficulty' was now resolved with the introduction of the OM. It is in fact interesting that the law until Rule 10AB explicitly did not contemplate 'quoted' prices and prices established by valuation experts (in fact, even the OECD TPG does not discuss this extensively, except in the context of intangibles, where, it is equivocal) as good comparable subject to conditions – this is especially when it was widely recognized that such prices form the basis of business decision making. Rule 10D(3) did and does contemplate official publications, reports etc., market research studies, price publications, but this is only an inclusive list of 'authentic documents' to 'support' the transfer pricing documentation.

10. Considering this, the introduction of Rule 10AB is welcome.

JUDICIAL APPROACH

11. A survey of some rulings, although in specific facts, will enable us to gauge the judicial mind on the application of the OM.

OM whether or not method of last resort

12. The question whether OM is or is not a method of last resort has been (and continues to be) a point of agitation. This emerges from the fact that the law does not contemplate a hierarchy of methods among the 6 methods but requires the choosing of a MAM[5]

13. In Star India Private Limited (ITA 7872/Mum/2019 : [TS-329-ITAT-2023(Mum)-TP]) Mumbai ITAT observed that the OM in Rule 10AB for determining the Arm's Length Price (ALP) is based on the price charged, paid, or likely to be charged for similar property, different from specific methods like Comparable Uncontrolled Price or Resale Price. The OM relies on a probable price rather than actual transacted prices, making it less accurate. While the statute does not prioritize any method, the 'other method' is considered a last resort due to its lower precision. In a clear finding, the ITAT held that 'if the CUP method is pitted against the OM, then there is no prize for guessing that it is the former which will prevail over the latter provided the comparable uncontrolled data required for it is available'.

14. In Toll Global Forwarding India Pvt Ltd TS-383-ITAT-2014(DEL)-TP], the Delhi ITAT held that:
a. The Other Method prescribed in Rule 10AB is not a residual method.
b. So, it is not necessary that first the five specified methods must fail and only then this method be applied.
c. This method is at par with all other methods of determining the ALP.

5. See the ruling of the Mumbai ITAT in Serdia Pharmaceuticals (India) (P.) Ltd. [TS-22-ITAT-2010(Mum)-TP].

d. The Other Method is a direct method like CUP, RPM and CPM. So, it has an inherent edge over indirect methods such as TNMM and PSM.
e. The Other Method may permit use of bona fide quotations.

15. The above ruling was affirmed by the Delhi HC in 381 ITR 38.

16. Again, in Sabic India Pvt Ltd (ITA 514/2024 : [TS-451-HC-2024(DEL)-TP]), Delhi HC held that before adopting the OM, the TPO was required to give reasons for discarding the other five methods as mentioned in the sub-rule. In this ruling, the facts were that the TNMM that the taxpayer had adopted was rejected by the TPO[6] , who adopted the OM without any basis for discarding the other methods. This was especially when the TNMM was consistently adopted in the earlier years. The Delhi HC also held that the OM could be resorted to if none of the other methods were considered as most appropriate[7] . Here, it is interesting to note that the TPO had adopted the OM for a transaction that was amenable for benchmarking under the TNMM.

17. To sum up, it can be considered that since the law does not explicitly contemplate a hierarchy of methods, but rather the MAM, the OM is 'on par' with the other methods. Having stated this, there should be cogent and documented basis for choosing the OM over the other methods.

OM can be rejected only when it has no cogent basis vis-à-vis the 'traditional' methods

18. In JSW Steel Ltd. (ITA 2116/Mum/2017 dated 04.05.2023 : [TS-269-ITAT-2023(Mum)-TP]), the taxpayer had used the 'interest saving approach' under the OM to compute the ALP for the international transaction of provision of corporate guarantee. This was not examined by the TPO. The Mumbai ITAT held that therefore, the TPO had wrongly adopted ALP as guarantee fee rates charged by banks to Indian customers.

19. In ASB International Pvt. Ltd. (ITA No. 6274/Mum/2018 : [TS-243-ITAT-2023(Mum)-TP]), the facts involved payment of royalty to the AE by IndCo. Here, the ITAT held that where good comparables are not identifiable in databases (such as Royalty STAT), given the uniqueness of the intangibles, the OM could be selected as most appropriate method.

20. In the context of a share sale transaction, the OM was affirmed by the Mumbai ITAT in TPG Growth (ITA No. 1387/MUM/2022: [TS-346-ITAT-2023(Mum)-TP]) as the most appropriate method and the TPO's approach of using actual financial results, instead of the projected financial cash flows was rejected. A similar approach was adopted in Tata Sons Pvt Ltd v. CIT (ITA NO.1093/MUM/2019 : [TS-131-ITAT-2024(Mum)-TP]), Star India Pvt. Ltd. v. ACIT (ITA. No.7872/MUM/2019 : [TS-329-ITAT-2023(Mum)-TP]) and TPG Growth II Markets Pte Ltd (supra).

6. The taxpayer had adopted the PLI of OP / VAC and GP / VAE to benchmark the international transaction of receipt of commission (as a percentage of revenue) for the marketing support services provided to the AEs. The TPO identified agreements purportedly comparable to the taxpayer's marketing support services agreements.

7. Interestingly, the Delhi HC went to hold that for provision of marketing support services, 'it is difficult to accept that a business model that entails providing marketing support on commission basis is not unique or one that would warrant rejecting the TNMM.' The Delhi HC also noted that some of the comparable agreements that the TPO had chosen are not similar to the services provided by the taxpayer.

21. The Delhi ITAT in Movefast Automobiles Pvt. Ltd. (ITA No.6183/Del/2019) has held that if the TPO rejects the valuation of the independent valuer on account of irregularities in the computation, then the lower authorities ought to have reworked the fair market value on their own using the same method.

22. In Trimex Industries Pvt Ltd, the Chennai ITAT (IT(TP)A 62/Chny/2024 : [TS-277-ITAT-2025(CHNY)-TP]) was deciding on the ALP for the transaction of purchase of coking coal. The taxpayer had adopted the OM and for this, had undertaken a value chain analysis pursuant to which of the profits of the taxpayer's coking coal segment, it retained 10% of the profits, while the AE retained 90%. The Chennai ITAT affirmed this position and rejected the TPO's adoption of the CUP both for the robustness thereof and for the lack of any satisfactory reasoning from the TPO.

23. The OM was adopted as the MAM by the Chennai ITAT in RKM Powergen (IT(TP)A No.44/Chny/2023 : [TS-99-ITAT-2024(CHNY)-TP]) in facts where a taxpayer was importing machinery over the past few years and the same valuation and procedure was followed for the current year as well. In these facts, the Chennai ITAT held that the TPO is not allowed to depart from the method adopted in the earlier years. In this case, the taxpayer had obtained an independent valuation report from Chartered Engineer. The ITAT also acknowledged the fact that the purchase of equipment is for a power project, and the economics of a power plant and cost price and sale price of electricity supplied is overseen by the Central Electricity Regulation Commission (CERC), which had also been undertaken in this case.

24. In Unilever (ITA No.4301/Mum/2024 : [TS-276-ITAT-2025(Mum)-TP]), the Mumbai ITAT held that to question the method adopted by assessee, the TPO cannot perform an ad-hoc addition based on the OM without bringing on record about the comparable transaction to substantiate the determination of the arm's length price. This was especially when the taxpayer had elaborately explained the application of the CUP method to the transaction.

25. In an echo of the Guj HC ruling in Adani Wilmar (supra), for transactions involving purchase of publicly traded commodities, the OM based on the quoted price from third party brokerage houses / associations/ exchanges or market indices was held appropriate by the Delhi ITAT in Golden Agri Resources (ITA No.1943/Del/2022 : [TS-119-ITAT-2024(DEL)-TP]). The ITAT further held that if any third party rate is not considered for a particular date of contract due to non-availability of the data, this would not give a right to the TPO to reject the method that the taxpayer has adopted. Where the taxpayer has considered the rates based on the average of available third party market quotations and not specifically to any single broker rate, the OM would be the most appropriate method.

26. Thus, the view that can be taken is that unless the TPO has cogent material to dispute the quality or quantity of the data adopted by the taxpayer when applying the OM vis-à-vis the traditional methods, the OM should be accepted by the TPO.

OM being applying to 'traditional' transactions such as provision of ITES services and purchase of raw materials benchmarked against company-wide margins

27. In an interesting ruling in First Credit ITES P. Ltd. (ITA 1183/Mum/2021 : [TS-291-ITAT-2022(Mum)-TP]), the ITAT was adjudicating the ALP on provision of call centre and BPO services where services were provided at USD 10 per hour. The taxpayer had in its TP documentation submitted that it 'does not provide similar services to third parties and no other service transactions reveals the nature of terms and conditions of services provided, ALP data are not available. Before the DRP, the taxpayer submitted additional evidence in the form of some website excerpts, wherein similar services are offered and services charged per hour are in the range of $ 5 to $9. It also submitted quotes of three different parties where the quotes are given showing rates of $ 8.5 to $ 10 per login hour'. Considering this, the ITAT held that the OM, instead of the TNMM, should be applied. This is an interesting ruling for taxpayers in that they ought to actively pursue obtaining market / industry data (rather than 'set' a mark-up followed in 'similar' business models) to benchmark their billing methodologies. This ruling underlines that if strong documentation is kept for such an approach, the same would be accepted by courts.

28. In another ruling, the Pune ITAT was deciding on the ALP of the margin on purchase of raw materials. It held that if the taxpayer is working at a low capacity, the other direct costs are not fully recovered leading to low gross margin, it cannot be said that the purchase of raw material was not at ALP. In such a scenario, a TNMM with a capacity utilization adjustment should be undertaken. Where there is no comparable data on this aspect, the assessee can validly adopt the OM by considering the purchase price of raw material alone de hors other direct expenses vis-à-vis the sale price of finished goods for computing the resultant gross profit margin. This ruling is a precedent that tests the limits of applying the OM – so long as adjustments can be demonstrated as being an approach that would be adopted 'for the same or similar uncontrolled transaction, with or between non-AEs'.

29. The above rulings are instances where on 'traditional' transactions, the OM was adopted and the same was substantiated. The rulings also test the flexibility that the OM offers, so long as the methodology adopted is cogent.

Expert valuation as a basis for the OM in transactions involving share transfers and intangible assets

30. In the case of Tata Sons (supra), the Mumbai ITAT predictably held that valuation of shares by an independent valuer falls in the category of the 'Other Method'. However, the ITAT noted that the valuation report had adopted a hybrid of two valuation methods, Comparable Company Method (CCM) and Discounted Cash Flow (DCF) Method. On facts, the ITAT noted that there were flaws in valuation of shares under CCM approach, and rejected the valuation report to that extent. Since the valuer has also used DCF method giving it 50% weightage, the DCF method is applied by the TPO giving 100% weightage. This was held to be appropriate.

31. What sets the above ruling apart is that the TPO had examined closely the appropriateness of the blending of the two methods. Since the taxpayer could not demonstrate why one of the methods is tenable, the ITAT rejected the application of one of the methods. This ruling is an important reminder to taxpayers that a valuation undertaken by a specialised valuer should not be accepted unexamined[8].

32. In Paraxel (ITA 129/Chd/2021), for sale of intangible assets, the OM was considered as the MAM. The TPO's approach was to adopt the cost-plus method. This was rejected by the ITAT both on its applicability, and without prejudice, to the TPO's choice of comparables when applying the cost-plus method.

8. This is particularly important given the time lag between the valuation report, the filing of the return and its selection for scrutiny by the TPO. Going back to the valuer after a gap of time would be both inefficient and result in uncertainty for the taxpayer.

33. The taxpayer's choice of the method of valuation whether DCF or NAV cannot be questioned by the TPO as the valuation report has been undertaken by an Independent Valuer. If the third party involved in the transaction follows the valuation report for the transaction, then the said valuation cannot discard just because the transaction is between the related party. The said position is affirmed in the case of CapitalG International LLC (ITA No.1632/Mum/2023 : [TS-300-ITAT-2024(Mum)-TP]).

34. In summary, a balanced view would be that reliance on a third party report is appropriate for applying the OM so long as the report is prepared with evidences and context for each of the data used being documented and assumptions of the valuation being rigorously tested before acceptance.

CONCLUSION

35. In conclusion, from a survey of the above rulings, we can discern the following:

- The OM is a method that can be adopted so long as the underlying methodology is robust and the 'traditional' methods cannot be appropriately applied.

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- The OM offers considerable flexibility for the taxpayer so long as taxpayers can demonstrate that the said method is applied 'for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances.
- For share and IP valuation transactions, the OM is appropriate and helpful, so long as the underlying assumptions are robust and reasonable.
- Where the taxpayer wishes to undertake 'significant' modification of the 'traditional' methods, the resultant methodology would be appropriate so long as it falls within the ambit of Rule 10AB.

The views expressed are those of the authors and are personal.
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About the Firm:
Singhvi Dev & Unni LLP (SDU) is a Bengaluru-headquartered professional services firm. It was established in 1981 by Sri FR Singhvi, Sri D Devaraj and Sri Unni Rajagopal. Today we are one of the leading advisory and assurance institutions in the region, with 10 partners and a team of 225+ professionals. Our integrated service portfolio spans statutory audits, risk & assurance engagements, internal audits, tax and regulatory advisory, and business consulting – delivered with a focus on transparency, expertise, and timeliness. Trusted by some of India's most respected companies and leaders, we are known for combining deep local insights with a global outlook to deliver lasting value to our clients.

The tax practice comprises both direct and indirect tax, with 5 partners. The areas of specialisation span advisory, representation and compliance. The partners are active in representation before the revenue and appellate authorities, up to the Tribunal. In all, the 5 partners cumulatively bring in >100 years of experience in these areas.

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