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Disclosure of Transfer Pricing Policies: An Internal Prespective

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The need for good governance is not some thing that is typical to our country or economy.Even in the countries where regulatory mechanisms are more demanding in there content and more vigilant in their implementation, flagrant violations under the veil of corporate impenetrability have generated a strident demand for better governance. The advent of the information age has created and awakened shareholder, vigilant public and almost predatory journalistic fervor. Depending upon the model of corporate disclosures followed by different legal frameworks, the right to information has forced corporate to divulge more than they ever did.

The concept of corporate governance is gaining momentum because of various factors as well as the changing business environment. The EEC, GATT&WTO regulations also contributed to the rising awareness and are compelling us to think in terms of adhering to the good corporate governance practices. Corporate governance by the very nature of the concept cannot be exactly defined. However, there can be no too opinions that "effective accountability to all stake holders is the essence of corporate governance". Corporate governance is not just corporate management; it is something much broader to include a fair, efficient and transparent administration to meet certain well-defined objectives. It is a system of structuring, operating and controlling a company with a view to achieve long term strategic goals to satisfy share holders, creditors, employees, customers and suppliers, complying with the legal and regulatory requirements, apartfrom meeting environmental and local community needs. When it is practiced under the well laid out system, it leads to the building of a legal, commercial and institutional framework and demarcates the boundaries with in which these functions are performed.

I. Corporate Disclosure And Transfer Pricing

The primary objective of corporate disclosure is to provide adequate, full and fair information to the present and prospective investors. Besides meeting the needs of a dominant group-& Prospective investors – it should also satisfy the information needs of other users of the corporate annual reporters.

International access and globalization have been inextricably linked today.

One sustains the other Transnational and multinational corporations have been there for over hundred years. But they are been spotted,interalia,now because of the speed with which they are been established & the earlier once making their presence felt in the hitherto unknown destinations. This trend has been given a flip by information technology(IT)& the convergence of IT, communications& broadcasting. In such a backdrop, transfer pricing is now one of the key issues in industrial management. When conglomerates with in the country multinational across the countries are a common phenomenon, sourcing with in an organization is a necessary concomitant. Then, as business continued globalization efforts & fiscal authorities become increasingly concerned with claiming their fair share of tax revenues. So transfer pricing has evolved from primarily countries concerned to a global one.

For computation of transfer price, the Arm's length price method has been prescribed. In arm's length transfer pricing different methods have been suggested. Any of them; been most appropriate, may be followed. For the choice of the method over the others & computation in accordance there with information & documents are necessary to support for there maintenance &keeping & their furnishing on demand by the assessing officer of the commissioner (appeals). Section92D imposes /obligations. Such an obligation has added significance in today's context of corporate disclosure and good governance. Though such a revolution has presented neither fundamentally new nor categorically different problems of transfer pricing, yet it has the potentiality of making more difficult transfer pricing problem more common. As a result of nearly instantaneous transmission of information & the effective removable of physical boundaries it may become more difficult for tax administration to identify, trace quantify cross-border transactions, particularly, which are knowledge based. Traditional approach taken to deal with non-arm's length transfer pricing is under pressure. The difficulty lies in the application of the transfer pricing method in respect of the international transactions carried on electronically. Earlier business transactions were recorded in writing on paper as a matter of record &communication. Traditional law requires paper to write down agreement transaction and signature to ensure authenticity, integrity and enforceability. The paper document are available for future reference and use, authenticated by signature and are in the form acceptable to public authorities and courts. In electronic business there is no "document", "writing "and "signature" as we understand. The place has been taken by "electronic

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document", "electronic writing"and "electronic signature". It is paper less regime. In the context of electronic commerce,it has become more difficult to identify the individual transaction and even more difficult to find out enough about the third party transactions to conclude that they are comparable.It has also rendered functional analysis more difficult not only in the account for differences.In a regime which does not required maintenance of documents,the law of transfer pricing so requires to ensure the correctness of the price in relation to international transactions between the associated enterprises.

II. Information And Document:Keeping And Maintaining.

Sec 92D requires that every person who has entered into an international shell keep and maintain such information &document in respect there of,as may be prescribed by rules to be made by the board in this behalf.The board may also prescribe the period for which it has to be done.The assessing officer or commissioner(appeals)may require any person who has under taken an international transaction to furnish any of the information and documents specified under the rules,with in a period of thirty days(which may be extended by a further period not exceeding thirty days)from the date of the receipt of the notice in this regard.The requirement of maintaining documents provides guidance to assist the taxpayer in identifying and showing that their controlled transaction satisfied the arm's length principle.

III. Report From The Accountants-Furnishing

Sec 92E requires that every person who has entered into an international transaction shall obtain a report from an accountant (a Chartered Accountant)and furnish such report on before 31st oct (in case of a company)and 31stJuly (in case of other) in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth particulars as may be prescribed (sec92E).Form for the report has been now been prescribed which has to be verified in the manner indicated therein.

IV. Accounting Standard 17-Segment Reporting

Public disclosure of financial information on a "less than total enterprise"basis is global practice although nature and degree of such disclosure very from country to country. Diversified corporate activities with multiple product lines spreading across the boundary of industry and geographic boundary of a country necessitate the designing of corporate reporting by segment by business. Information about different type of product and services of an enterprise and its operations in different geographical area is relevant to assess the risk and returns of a diversified of multi-locational enterprise that may not be determinable from the aggregated data. Therefore, reporting of segment information is widely regarded as necessary for meeting the needs of users of financial statements .The institute of chartered accountants of India has issued AS -17 on segment reporting which has come into effect in respect of accounting periods commencing on or after 1stApril 2001.This standard is applicable to:

1. Enterprises whose debt or equity securities are listed on a stock exchange in India, and enterprises that are in the process of issuing equity or debt securities that will be listed on a recognized stock exchange in India, as evidenced by the board of director's resolution in this regard; and
2. all other commercial , industrial and business reporting enterprise whose turn over for the accounting period exceeds Rs.50 crores.

AS -17 establishes principles for reporting financial information about the different types of products and services an enterprise produces and the different geographical areas in which it operates. As per the standards, for reporting the financial information,business and geographical segment are required to be identified. An enterprise should comply with the requirements of this standard fully and not selectively.

V. Accounting Standard 18-Related Party Disclosures

Transactions between related parties commonly occur in the normal course of business. To or more enterprises may operate under the common ownership or management without entering into transactions among themselves in such a manner that it is possible to control the volume of business one enterprise for the benefit of other. There is a general presumption that transaction reflected in financial statements is consummated on an arm's length basis between independent parties. However, that presumption may not be valid when related party relationship exit because related party may enter into transaction, which unrelated parties would not enter into. Also, transactions between related parties might not be affected on the same terms and conditions as between unrelated parties.In view of the aforesaid,the resulting accounting measures may not represent what they usually would be expected to represent. Thus, a related party relationship could have an effect on the financial position and operating results of the reporting enterprise.

Related party disclosure is an essential requirement of good corporate governance. The existing requirement in relation to related party disclosures are very few and scattered across various items under schedule VI of the companies Act. These disclosures requirement are primarily concerned with transaction of directors with the company and transaction of the company with other entities in which directors are interested. Accounting Standard 18 on related party disclosures provides a comprehensive framework for disclosure of related party transaction in the financial statement. Disclosure of related party relationship and transactions with them is necessary in financial statements so as to help the users of the financial statements in evaluating the performance of an enterprise and its financial position as reflected in the financial statements.

AS 18 seeks to extend both the definition and the resultant disclosure of information on “related parties”and tackles certain other wider issues, such as “control”, “common control”, and “significant influence”.Incidentally, it brings the practices in India broadly in line the International Standards. In doing so, it has focused on the need of “users” to receive information for financial decision making, rather than merely information on the stewardship management.

This standard is applied in reporting related party relationships and transactions between a reporting enterprise and its related parties. This standard requires that the name of the related party and the nature of the related relationships where control exists should be disclosed irrespective of whether or not there have been transactions between the related parties. The standard requires that where control does not exit, certain disclosures have to be made by the reporting enterprise if there have been transactions between related parties , during the existence of a related party relationship.

VI. Conclusion

The increase in cross border business activities across the world over the last few year has brought into focus the concept of Transfer Pricing especially in relation to the transactions carried out by multination. The concept of transfer pricing is an extremely complex subject. It basically refers to a price for which tangible or intangible properties are sold ,or service provided to associated companies. To meet the requirement of corporate governance and financial reporting Finance Act 2001 has inserted new Transfer Pricing Legislations. Sec 92D and 92E have been introduced to meet this requirement. Also, AS-17 on Segment Reporting and AS-18 on Related Party Transaction have been introduced by ICAI that are applicable from 1-4-2001. These two accounting standard are essential requirement for good corporate governance.