

# India

## Transfer Pricing Country Profile

Updated February 2018

|                                   | SUMMARY   |   | REFERENCE  |
|-----------------------------------|---|---|--|
| <b>The Arm's Length Principle</b> |   |   |  |
| 1                                 | <p><b>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</b></p> <p><input checked="" type="checkbox"/> Yes<br/><input type="checkbox"/> No</p>   | <p>Indian legislation does not directly refer to the "arm's length principle". However, Indian legislation refers to determination of "arm's length price" which is determined on the basis of arm's length principle.</p>  | <p>S 92C of Income-tax Act, 1961<br/>For Indian Income-tax Act, 1961<br/><a href="http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx">http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx</a><br/>For Indian Income-tax Rules, 1962<br/><a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a></p> |
| 2                                 | <p><b>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</b></p>   | <p>OECD Transfer Pricing Guidelines are a useful reference for carrying out transfer pricing studies by taxpayers and audits by Indian transfer pricing officers (TPO). Indian law does not explicitly recognise the direct applicability of the OECD TPG. However, India has framed its own rules and guidance on transfer pricing, which are broadly in line with the OECD TPG as well as the UN TP Manual. The guidance flowing from what has been agreed to in the BEPS Final Reports on Actions 8, 9, 10 and 13 – except the guidance pertaining to low value adding intra-group services – would, nonetheless, be adhered to.</p>   |  |
| 3                                 | <p><b>Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.</b></p> | <p><input checked="" type="checkbox"/> Yes<br/><input type="checkbox"/> No</p> <p>Indian law contains a detailed and exhaustive definition of what constitute related parties. S 92A of the Income-tax Act 1961, defines an associated enterprise, in relation to another enterprise, as an enterprise which participates directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise. It also includes situations where two enterprises have common control, capital or management through another enterprise. Besides this, the definition envisages a number of other relationships which may result in making two parties related parties or "associated enterprises".</p> | <p>S 92A of Income-tax Act, 1961</p>   |

## Transfer Pricing Methods

| 4                                   | <p><b>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</b></p>                       | <p><input checked="" type="checkbox"/> <b>Yes</b><br/> <input type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Other Method is prescribed in rule 10AB of Income-tax Rules, 1962. The “Other Method” can 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 unrelated parties under similar circumstances, considering all the relevant facts.</p> | CUP                                       | Resale Price                        | Cost Plus                           | TNMM | Profit Split | Other (If so, please describe) | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <p>Rule 10B and 10AB of Income-tax Rules, 1962</p> |
|-------------------------------------|--|--|---|-------------------------------------|-------------------------------------|------|--------------|--------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--|
| CUP                                 | Resale Price   | Cost Plus  | TNMM                                      | Profit Split                        | Other (If so, please describe)      |      |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>       | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |      |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |  |
| 5                                   | <p><b>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</b></p>  | <p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods<br/> <input checked="" type="checkbox"/> Most appropriate method<br/> <input type="checkbox"/> Other (if so, please explain)</p> <p>India does not prescribe a hierarchy of methods. The transfer pricing method to be used is the “Most Appropriate Method” which is arrived at after considering the nature and class of international transaction, the FAR of the related parties that are parties to the transaction, the availability and reliability of comparable data, the extent to which reliable and accurate adjustments can be made to account for differences between the international transaction between related parties and uncontrolled comparable transactions, and the nature, extent and reliability of assumptions required to be made in the application of a method.</p>   | <p>Rule 10C of Income-tax Rules, 1962</p> |                                     |                                     |      |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |  |
| 6                                   | <p><b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b></p> | <p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.<br/> <input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain)<br/> <input type="checkbox"/> Other (if so, please explain)</p> <p>India’s domestic legislation does not contain specific guidance on pricing of commodity transactions for transfer pricing purposes.</p>  |   |                                     |                                     |      |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |  |

## Comparability Analysis

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| 7  | Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?                  | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br>India largely follows the said guidance in practice.   |   |
| 8  | Is there a preference in your jurisdiction for domestic comparables over foreign comparables?   | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No<br>India does not have an explicit preference for domestic comparables over foreign comparables written into the law. Depending upon the selection of the tested party, appropriate (domestic or foreign) comparables are selected.   |   |
| 9  | Does your tax administration use secret comparables for transfer pricing assessment purposes?   | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No<br>India typically relies on publicly available data and publicly available information in arriving at comparability data. However, India allows the transfer pricing officers to seek third party information on financials from certain companies whose financials may not be publicly available for a particular year. Wherever such information is used by the Indian tax administration, the taxpayer is given an opportunity to contest the choice of such comparables on merits. |   |
| 10 | Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration? | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br>India has introduced the range concept relatively recently in transfer pricing regulations. The arm's length range may be used when six or more comparables are available in the comparable dataset. Arm's length range would be 35 <sup>th</sup> to 65 <sup>th</sup> percentile. Detailed method for considering the arm's length range has been prescribed.  | Rule 10CA of Income-tax Rules, 1962   |
| 11 | Are comparability adjustments required under your domestic legislation or regulations?  | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br>India permits comparability adjustments. They may be carried out if such adjustments can be made reliably and accurately to the financials of the comparables. However, it is not compulsory to carry out comparability adjustments in every case.   | Rule 10B(1) (a) –(e), Rule 10B(3)<br>For Indian Income-tax Rules, 1962<br><a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a> |

## Intangible Property

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| 12 | <b>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</b>        | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No   |  |
|    |  | India does not have specific guidance on pricing of controlled transactions involving intangibles. Indian transfer pricing officers typically rely on generally accepted valuation methods as per academic literature, in this regard. |  |
| 13 | <b>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?</b> | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No   |  |
|    |  | India does not have such rules or special measures regarding HTVI. However, India is actively engaged in the post-BEPS discussions on measures to price HTVI under the aegis of Working Party 6 of OECD.                               |  |
| 14 | <b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b>         | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No   |  |

## Intra-group Services

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| 15 | <b>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</b>                        | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No   |   |
|    |   | India does not have specific guidance in this regard and stipulates the adoption of the Most Appropriate Method considering all relevant facts and circumstances of the case. Transfer Pricing Officers do adopt the benefits test and the taxpayer is expected to maintain documentation evidencing the same. |   |
| 16 | <b>Do you have any simplified approach for low value-adding intra-group services?</b>   | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No   | Rule 10 TC(x) and rule 10TD(2A)(11)<br>For Indian Income-tax Rules, 1962<br><a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a> |
|    |   | India has introduced a safe harbour rule for receipt of low-value adding intra-group service by an Indian taxpayer from its associated enterprise.   |   |
| 17 | <b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</b> | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No   |   |

## Cost Contribution Agreements

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| 18 | <b>Does your jurisdiction have legislation or regulations on cost contribution agreements?</b> | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No   |  |
|    |  | Cost contribution arrangements are evaluated based on the facts and circumstances of each case. Taxpayers are expected to maintain accurate records of costs to which contribution is being made together with the justification of appropriateness of cost allocation keys. |  |

## Transfer Pricing Documentation

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|----|---|--|--|
| 19 | <b>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</b> | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br>If affirmative, please check all that apply: <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</li> <li><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</li> <li><input checked="" type="checkbox"/> Other (specify): Audit report specific to transfer pricing is filed in Form No. 3CEB</li> </ul> | S 92D, S 92E and S 286 of Income-tax Act, 1961<br>Rules 10D, 10E, 10DA and 10DB of Income-tax Rules, 1962<br>For Indian Income-tax Act, 1961<br><a href="http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx">http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx</a><br>For Indian Income-tax Rules, 1962<br><a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a><br>Form 3CEB - <a href="https://www.incometaxindia.gov.in/forms/income-tax%20rules/10312000000009614.pdf">https://www.incometaxindia.gov.in/forms/income-tax%20rules/10312000000009614.pdf</a><br>Form 3CEAA - <a href="https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055972.pdf">https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055972.pdf</a><br>Form 3CEAB - <a href="https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055973.pdf">https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055973.pdf</a><br>Form 3CEAC - <a href="https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055974.pdf">https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055974.pdf</a><br>Form 3CEAD - <a href="https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055975.pdf">https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055975.pdf</a><br>Form 3CEAE - <a href="https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055976.pdf">https://www.incometaxindia.gov.in/forms/income-tax%20rules/103520000000055976.pdf</a> |
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| 20 | <p><b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b></p> | <p>Transfer pricing documentation as stipulated in S 92D read with rule 10D (for local file) and rule 10DA (for master file) must be maintained and filed by every taxpayer that has entered into an “international transaction” (as defined in S 92B) with an associated enterprise (as defined in S 92A) and meets the monetary thresholds prescribed under the respective rules. The transfer pricing documentation (local file and master file) is to be filed by the last date for filing the return of income, i.e. 30 November of the year following the completed financial year. As a one- time exception, for FY 2016-17, master file is to be filed by 31<sup>st</sup> March 2018.</p> <p>S286 read with rule 10DB provides for preparation and filing of CbC report. The CbC report for FY 2016-17 is required to be filed by 31.03.2018.</p>   | <p>S92D, S286</p> <p>For Indian Income-tax Act, 1961<br/> <a href="http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx">http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx</a></p> <p>Rule 10D, Rule 10DA, Rule 10DB</p> <p>For Indian Income-tax Rules, 1962<br/> <a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a></p> |
| 21 | <p><b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b></p>                      | <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No</p> <p>No compliance incentives exist. Penalties for non-compliance exist.</p> <p>For non-maintenance of documents under S92D (essentially local file) in relation to international transaction(s), a penalty equal to 2% of the value of each international transaction is applied.</p> <p>For non-maintenance of master file (where applicable), penalty of INR five hundred thousand is imposable.</p> <p>For non-furnishing of CbCR (where applicable), penalty of INR five thousand for each day of delay (up to one month) and of INR fifteen thousand per day for delay beyond one month, may be imposed. If the taxpayer fails to furnish the CbCR even after penalty has been imposed by way of an order, further penalty of INR fifty thousand per day for further delay may be imposed</p> <p>Further, for inaccurate information in CbCR, taxpayer may be liable to a penalty of INR five hundred thousand.</p> | <p>S 271 AA, S 271 BA, S 271 G, S 271 GB</p> <p>For Indian Income-tax Act, 1961<br/> <a href="http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx">http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx</a></p>  |
| 22 | <p><b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b></p>   | <p>Rule 10D of Income-tax Rules sets the threshold for maintenance of transfer pricing documentation. TP documentation (broadly corresponding to local file) need not be maintained if the aggregate value, as recorded in books of account, of international transactions entered into by the taxpayer does not exceed INR 1 crore.</p> <p>For maintenance of master file, rule 10DA provides a dual monetary threshold. Master file needs to be maintained in all cases where:</p> <p>a) the consolidated group revenue exceeds INR 500 crore (INR 5 billion), and;</p>   | <p>Rules 10D, 10DA and 10DB</p> <p>For Indian Income-tax Rules, 1962<br/> <a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a></p>   |

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|--|--|--|--|
|  |  | <p>b) the aggregate value of international transactions, as per books of account, during an accounting year</p> <ol style="list-style-type: none"> <li>i. exceeds INR 50 crore (INR 500 million),</li> <li>or;</li> <li>ii. in respect of purchase, sale, transfer, lease or use of intangible property, such aggregate value exceeds INR 10 crore (INR 100 million)</li> </ol> <p>For CbCR, the threshold has been laid down in Rule 10DB. CbCR would be required to be filed where the group revenue is in excess of INR 5500 crores (INR 55 billion).</p> |  |
|--|--|--|--|

### Administrative Approaches to Avoiding and Resolving Disputes

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| 23 | <b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b> | <p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input checked="" type="checkbox"/> Other (<i>please specify</i>): Dispute Resolution Mechanism</p> | <p>S92CC, S 92CD, S 144C of Income-tax Act, 1961</p> <p>Rules 10F to 10T in relation to Advance Pricing Agreements</p> <p>Rule 44G, 44GA and 44 H in relation to Mutual Agreement Procedure</p> <p>For Indian Income-tax Rules, 1962<br/> <a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a></p> |
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### Safe Harbours and Other Simplification Measures

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|----|---|---|--|
| 24 | <b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b>         | <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>                                   | <p>S92CB of Income-tax Act, 1961</p> <p>Rules 10TA to 10TG in relation to Safe Harbour rules</p> <p>For Indian Income-tax Rules, 1962<br/> <a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a></p> |
|    |   | <p>Indian safe harbour rules apply for specified international transactions in relation to specified taxpayers.</p> |  |
| 25 | <b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b> | No.   |  |

### Other Legislative Aspects or Administrative Procedures

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| 26 | <b>Does your jurisdiction allow/require taxpayers to make year-end adjustments?</b> | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b>   |   |
|    |   | <p>Taxpayers are free to make year-end adjustments to bring the value of international transactions in line with arm's length results. These adjustments (together with the international transactions in relation to which they have been made) may be examined if the case is taken up for transfer pricing audit.</p> |   |
| 27 | <b>Does your jurisdiction make secondary adjustments?</b>                           | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b>   | <p>S92CE of Income-tax Act, 1961<br/>                     Rule 10CB of Income-tax Rules, 1962</p> <p>Income-tax Act<br/> <a href="http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx">http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx</a></p> <p>Income-tax Rules<br/> <a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a></p> |
|    |   | <p>India has enacted legislation for secondary adjustment and the same is applicable from FY 2016-17 onwards.</p>  |   |

### Other Relevant Information

|    |   |  |   |
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| 28 | <b>Other legislative aspects or administrative procedures regarding transfer pricing</b>  | <p>Indian legislation has the provision of a Dispute Resolution Panel. Any taxpayer that faces a transfer pricing adjustment has the option of approaching a 3 member panel (DRP) of senior tax officials before the finalisation of tax demand pertaining to the transfer pricing adjustment.</p> | <p>S144C of Income-tax Act, 1961</p>  |
| 29 | <b>Other relevant information</b> (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i> ) | <p>All the relevant sections and rules mentioned in this profile can be accessed at the websites mentioned in the "References" column.</p>   | <p>Income-tax Act<br/> <a href="http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx">http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx</a></p> <p>Income-tax Rules<br/> <a href="http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx">http://www.incometaxindia.gov.in/pages/rules/income-tax-rules-1962.aspx</a></p> |