INTRA-GROUP SERVICES IN TRANSFER PRICING: PERSISTENT CONTROVERSIES AND THE POLICY IMPERATIVES FOR INDIA

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ABSTRACT

Due to growing multinational enterprise (MNE) operations, intricate centralised business structures, and changing international tax regulations, intra-group services (IGS) are a recurring topic of transfer-pricing (TP) issues in India. Even though the OECD Transfer Pricing Guidelines have made it clearer how IGS—especially low-value-adding services—are treated, India still has a high litigation rate because of conflicting interpretations of benefit tests, documentation requirements, cost allocation keys, AMP-IGS overlaps, and the lack of simplified regulations. The unresolved issues surrounding IGS have important ramifications for both taxpayers and policymakers as India undergoes significant tax reforms in line with BEPS (Base Erosion and Profit Shifting), Pillar Two, GST harmonisation, and digitalized tax administration. This expanded abstract examines reform alternatives that can lessen disputes and bring India's TP framework into line with the changing global tax architecture while also critically analysing the country's current problems and contrasting them with international practices. These changes will improve tax certainty for MNEs doing business in India, limit litigation, and update India's TP framework.

INTRODUCTION:

The organisation and delivery of business processes across countries have undergone a fundamental transformation due to the swift growth of multinational enterprise (MNE) operations. Centralised service models, in which one group entity provides managerial, administrative, technical, and support services to numerous affiliates, are becoming more and more common in modern corporate groups. These agreements, often known as intra-group services (IGS), are now an essential component of modern international corporate systems. However, IGS remains one of the most enduring and controversial areas of transfer pricing issues in India.

The Indian transfer pricing regime has seen persistent litigation in IGS instances notwithstanding the comprehensive advice offered under the OECD Transfer Pricing Guidelines, especially with regard to the nature of services, the benefit test, and the treatment of low-value-adding services. The allowability of IGS charges is regularly contested by Indian tax authorities for a variety of reasons, including perceived inadequacy of documentation, apparent duplication of services, lack of demonstrable value, and categorisation of services as shareholder or stewardship activity. These difficulties have led to frequent disallowances, frequently without contesting the actual provision of services, which has left administrators and taxpayers in the dark.

Although measures such as Advance Pricing Agreements (APAs), Mutual Agreement Procedures (MAPs), and Safe Harbour Rules have been introduced to reduce transfer pricing disputes, their effectiveness in resolving IGS-related conflicts remains limited. Most IGS disputes remain unresolved at the assessment stage because these procedures are frequently limited in scope, difficult in terms of procedure, or only available to a small percentage of taxpayers. In light of this, the main administrative and legal issues that intra-group services in India's transfer pricing system face are critically examined in this article. The article attempts to determine the structural causes of IGS litigation by assessing India's interpretation of the benefit test, documentation requirements, and service categorisation in light of judicial precedent and international standards.

Finally, the paper proposes a reform-oriented framework aimed at enhancing administrative clarity, reducing litigation, and aligning India’s approach to intra-group services with evolving global tax practices.

1.1 INTRA-GROUP SERVICES IN INDIAN TRANSFER PRICING

Intra-group services are defined by the OECD Transfer Pricing Guidelines as activities carried out by one or more members of a multinational enterprise group for the benefit of other group members, provided that the activities are of a kind that an independent enterprise would be willing to pay for or carry out for itself. These services often comprise managerial support, administrative help, information technology support, human resource services, accounting, legal compliance, and other routine operational duties. Conflicts over these standard services frequently occur in the Indian transfer pricing environment, especially when they are provided centrally by foreign affiliated businesses.

The intangible nature of intra-group services is one of its distinguishing features. In contrast to capital assets or goods, services do not provide instantly observable or quantifiable outputs, nor do they lead to the transfer of ownership. Instead of earning income, these services may provide indirect, long-term, preventive, or efficiency-enhancing benefits. As a result, traditional criteria used for tangible transactions cannot be used to evaluate the economic value of IGS. However, intra-group services are sometimes assessed by Indian tax authorities using criteria better suited to physical items, such as demanding concrete proof of output, quantifiable financial impact, or detectable incremental profits.

Judicial authorities have consistently highlighted this conceptual mismatch. The Tribunal said in Dresser-Rand India Pvt Ltd v ACIT that intra-group services are an essential component of multinational operations and that the lack of an immediate or quantifiable financial advantage does not indicate that no service was provided. Similar to this, the Tribunal stressed in Knorr-Bremse India Pvt Ltd v ACIT that the Indian corporation cannot be disallowed just because services are centrally provided or not individually contracted. The application of tangible-goods reasoning to intrinsically non-tangible service transactions, which leads to systemic misreading at the assessment level, is the fundamental flaw in India's approach to IGS, as these rulings highlight.

1.2 EXCESSIVE DOCUMENTATION DEMANDS IN IGS CASES

The introduction of onerous and frequently unfeasible documentation requirements is another significant limitation of the Indian transfer pricing framework concerning intra-group services. Recognising that intra-group services, especially routine activities, may not

necessarily lend themselves to detailed contemporaneous records like time sheets or activity logs, the OECD Transfer Pricing Guidelines promote a reasonable and appropriate approach to documentation. However, in order to verify the receipt and benefit of services, transfer pricing officers in India frequently request specific evidence, such as internal emails, staff time sheets, call logs, comprehensive service reports, and consumption data. Even in cases when the presence of service agreements and payment records is undeniable, the failure to provide such proof often leads to the complete rejection of IGS charges.

Indian courts and tribunals have critiqued this strategy. The Tribunal ruled in Denso India Ltd. that legitimate intra-group services cannot be rejected on the basis of the lack of minute-to-minute records. The goal of equitable and effective tax administration is undermined by the requirement for thorough documentation, which not only goes above international standards but also turns IGS compliance into an evidential trap. Indian IGS jurisprudence's departure from OECD norms, particularly with regard to Low-Value-Adding Services

2.1 OECD STREAMLINED APPROACH FOR LOW-VALUE-ADDING SERVICES

The OECD Transfer Pricing Guidelines acknowledge that not every intra-group service is subject to the same degree of scrutiny or burden of compliance. The OECD implemented a streamlined strategy for low-value-adding services (LVAS) in order to address the excessive administrative and compliance costs related to routine services. These services are characterised as supportive activities that are not part of the multinational enterprise’s core profit-generating responsibilities, do not include the usage of distinctive or valuable intangibles, and do not entail major risks. Accounting, payroll processing, regular legal assistance, IT upkeep, and human resource management are typical examples.

The main issue in the Indian context is that this OECD streamlined framework has not been formally recognised or adopted. Low-value-adding intra-group services are not given any special carve-out or simplified treatment under Indian transfer pricing legislation. Routine support services are therefore scrutinised to the same extent as high-value or strategic services. Because transfer pricing officers continue to apply thorough benefit assessments and documentation requirements even in cases when the services' nature plainly fits inside the OECD's low-value-adding category, this regulatory gap has greatly increased litigation.

2.2 INDIAN TREATMENT OF ROUTINE IGS – ABSENCE OF RISK-BASED DIFFERENTIATION

The inability to distinguish between regular and strategic intra-group services is a major difference between Indian administrative practice and OECD norms. Indian tax authorities often assess all intra-group services using a standard lens, whereas the OECD framework takes a functional and risk-based approach, acknowledging that routine support services represent little danger of base erosion. This strategy ignores the economic fact that everyday services shouldn't be scrutinised more because they don't immediately contribute to value creation. In reality, ordinary services like accounting support, IT upkeep, and administrative help are regularly contested by Indian transfer pricing authorities on the same grounds as high-value management or strategic advice services.

Because of this lack of administrative differentiation, services that are basically facilitative are subject to extensive benefit analysis, benchmarking studies, and stringent documentation requirements. The necessity of this distinction has been emphasised by judicial authorities on several occasions. In Maersk Global Service Centre (India) Pvt, the Tribunal recognised that group businesses' regular services are an essential component of multinational operations and shouldn't be scrutinised too closely unless there is proof of base erosion. Similar to this, it was noted in Shell India Markets Pvt Ltd that the tax administration should avoid using a one-size-fits-all strategy and instead consider the functional nature of the services. These decisions underscore the systemic issue in India’s treatment of IGS: the failure to adopt a risk-based administrative framework in line with international best practices.

3.1 GST ON IMPORT OF SERVICES VERSUS TRANSFER PRICING DISALLOWANCE

The taxation of intra-group services has taken on a new dimension with the implementation of the Goods and Services Tax (GST) system in India. Even in the absence of consideration, services imported by an Indian business from its foreign connected enterprise are considered taxable supply under the GST framework and are liable to tax via the reverse charge mechanism. As a result, Indian taxpayers frequently recognise the existence and receipt of intra-group services for indirect tax purposes by discharging their GST responsibility on services including managerial support, technical assistance, and administrative services.

Examining the same transactions under the Income-tax Act's transfer pricing requirements, however, reveals a fundamental discrepancy. Transfer pricing officers sometimes reject IGS charges on the grounds that no benefit or service was provided to the Indian entity. This leads to a paradoxical scenario where the transaction is disallowed under transfer pricing as a non-existent or non-beneficial transaction and simultaneously recognised under GST as a taxed import of services. The inconsistency exposes taxpayers to uneven treatment by various branches of the tax administration and compromises legal certainty.

The lack of a consistent framework for transactional recognition across tax statutes is the main issue here. While GST authorities accept the supply of services based on contractual arrangements and statutory deeming clauses, transfer pricing authorities typically dismiss the same evidence and apply a more subjective benefit analysis. Economic double taxation results from this gap when taxpayers pay GST on services that are later prohibited for income-tax purposes without receiving any relief or adjustment.

3.2 ABSENCE OF COORDINATION BETWEEN CBDT AND CBIC

The lack of cooperation between India's direct and indirect tax administrations, specifically the Central Board of Direct Taxes (CBDT) and the Central Board of Indirect Taxes and Customs (CBIC), exacerbates the inconsistent treatment of intra-group services. When analysing the same transaction, these authorities employ different interpretive criteria, pursue different policy goals, and operate under different statutory frameworks. This institutional division has produced fragmented and frequently contradictory results in the context of intra-group services.

To synchronise the assessment of intra-group services for GST and transfer pricing purposes, there are currently no interdepartmental protocols or harmonised norms. Because of this, a service transaction may be rejected under transfer pricing for lacking business substance or advantage while being recognised as legitimate and taxed under GST. Taxpayers are unfairly burdened by this lack of administrative coherence because they must adhere to conflicting evidentiary standards and endure protracted litigation in several forums.

The formation of economic double taxation without legal basis is the main issue brought on by this lack of coordination. The core tenets of successful tax policy—certainty and predictability—are taken away from taxpayers. Furthermore, the larger goal of tax

harmonisation and administrative efficiency in India's changing tax architecture is compromised by the failure to integrate direct and indirect tax techniques. Intra-group services will continue to be a source of ongoing disputes in the absence of coordinated guidance or mutual recognition of factual findings, negating the intended benefits of tax reform initiatives. Efficiency of Current Dispute Resolution Processes in Handling Transfer Pricing Conflicts Associated with IGS.

5.1 RATIONALISATION OF DOCUMENTATION REQUIREMENTS

The requirements for documentation in IGS cases are another crucial reform area. The granular and operationally impractical proof required by current administrative practice sometimes surpasses both international norms and statutory requirements. Instead of using documentation for verification, this method turns it into a tool for rejection. Without requiring comprehensive operational records, a balanced documentation framework should concentrate on proving the presence of services, their business purpose, and the foundation for cost allocation. In order to minimise subjective evaluations and guarantee consistency across evaluations, the CBDT may publish guidelines outlining acceptable documentation formats for certain intra-group service categories. Without jeopardising revenue interests, such rationalisation would improve compliance efficiency.

5.2 HARMONISATION OF TRANSFER PRICING AND GST TREATMENT OF INTRA-GROUP SERVICES

Coordinated reform is required due to the ongoing disparity between transfer pricing and the GST treatment of intra-group services. The integrity of the tax system is compromised and economic double taxation occurs when services that are identified and taxed under GST are denied under transfer pricing on the grounds of non-existence or lack of benefit. To guarantee uniform recognition of intra-group services across tax regimes, a coordinated approach between the CBDT and the CBIC is necessary. Contradictory results would be greatly reduced by joint administrative guidance that acknowledges factual findings under GST for transfer pricing reasons, at least with regard to the existence of services. In addition to lowering disputes and bringing India's tax administration into compliance with integrated international principles, such cooperation will increase assurance.

CONCLUSION

Due to variable administrative interpretation and implementation rather than a lack of legislative principles, intra-group services have become one of the most enduring and contentious challenges within India's transfer pricing structure. This study shows that the misuse of the benefit test, excessive documentation requirements, over-expansion of shareholder and stewardship concepts, and the inability to distinguish between routine and strategic services are the main causes of disputes pertaining to intra-group services in India. Despite well recognised OECD norms and explicit judicial direction, these problems nonetheless exist.

The data also shows that Indian administrative methods differ significantly from international best practices, especially when it comes to low-value-adding services. Transfer pricing assessments continue to rely on outcome-based evaluations, despite courts and tribunals continuously upholding the notion that tax authorities cannot question commercial expediency or insist on quantifiable outcomes. The issue is made worse by the GST and transfer pricing regimes' lack of coordination, which results in uneven tax treatment and economic double taxation. Overall, the study comes to the conclusion that intra-group service disputes in India are systemic in character and cannot be settled by post-dispute procedures or litigation alone. Intra-group services will continue to account for a disproportionate amount of transfer pricing litigation in the absence of focused administrative reform and simplification, endangering tax certainty and raising compliance costs for both taxpayers and the tax administration.