



## Comparative Study of Transfer Pricing and International Taxation Provisions in SAFA Countries

S.N.	Particulars	Countries				
		Nepal	India	Bangladesh	Pakistan	Sri Lanka
A.	"Typical" rights to tax non-residents in SAARC for different types of income or income of specified entities					
1.	How income is taxed for the following types of Income or other receipts.					
(a)	Income from Immovable Property					
1	Source country	Yes (Country of Location)	Yes (normally in the country of situation of property)	Yes	Yes	Yes
2	Resident country		No	No		No
(b)	Business Profits of a Permanent Establishment (PE)					
1	Source country	Yes	Yes	Yes	Yes	Yes under ("force of attraction rule") tax credit method:
2	Resident country		Yes (Though normally credit is given for the taxes paid in the source country)	Yes		Yes
(c)	Profits, etc. from Shipping and Inland Waterways					
1	Source country	Yes	Taxed on presumptive	Yes	Yes	May be taxed at a



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				basis under the domestic tax laws (DTAAs restrict the right to tax such income to country of residence only)			reduced rate (subject to conditions)
	2	Resident country	Yes	Yes	Yes		Yes
	(d)	Profits etc. from Transport & Air Transport					
	1	Source country	Yes	Taxed on presumptive basis under the domestic tax laws (DTAAs restrict the right to tax such income to country of residence only)	Yes	Yes	No.
	2	Resident country		Yes	Yes		Only in the resident country when a DTA is in operation
	(e)	Profits of Associated Enterprises					
	1	Source country	Yes	Yes (subject to existence of PE in source country for business income)	Yes (subject to existence of PE in source country for business income)	Yes	Yes
	2	Resident country		Yes	Yes	Yes	Yes
	(f)	Capital Gain, Dividend, Interest, Royalty income in source country					
	1	Source country	Yes	Yes (Generally taxed on gross basis at a concessional rate under the DTAA)	Yes		Taxed at a lower rate
	2	Resident country		Yes	Yes		Yes



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	(g)	Income of Non Resident in source country					
	1	Source country	Yes	Yes (Various concessions are available to specific class of taxpayers and specific nature of income)	Yes, subject to conditions	Yes	Yes. Subject to conditions.
	2	Resident country	Yes	Yes	Yes		Yes.
	(h)	As in some agreements income of non residents from Teaching, sports activities etc. is exempted in the source country. Illustrate the tax exempted incomes in your country	All Nepal sourced incomes are taxed in Nepal for non-residents. If non-resident natural person work in Nepal under an agreement entered into by Nepal Government with other international organization/foreign government tax exemption clause for the person, such income is exempted.	DTAA with Sri Lanka and Bangladesh provide for exemption of income of Professors, Teachers and Researchers if the period does not exceed 2 years	DTAA with India and Sri Lanka provide for exemption of income of Professors, Teachers and Researchers if the period does not exceed 2 years	In terms of SAARC Multilateral agreement Professors, Teachers, Research Scholars are exempt from tax in the source country if the period does not exceed 2 years.	In terms of SAARC Multilateral agreement, Professors, Teachers, Research scholars are exempt from tax in source country if the period does not exceed 2 years.
B.		Status of DTAA					
	1.	With which other SAARC country has your country entered into DTAA.					
	i.	India	Yes	NA	Yes	Yes	Yes
	ii.	Sri Lanka	Yes	Yes	Yes	Yes	.....
	iii.	Pakistan	Yes	Yes (Limited)	Yes		Yes
	iv.	Bangladesh	No	Yes	NA	Yes	Yes
	v.	Bhutan	No	No	No	Yes	No
	vi.	Nepal	NA	Yes	Yes	Yes	Yes
	vii.	Afghanistan	No	Yes (limited)	No	Yes	No
	2	Which model is the DTTA agreement based on.	OECD/ UN/ Both	Both	Majority is based on UN	OECD and UN models	Majority is based on UN model



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3		State how a proper coordination mechanism can be developed between two different Tax Jurisdictions to facilitate flow of necessary information.	Nepal has "Exchange of Information" clause in DTAA that it has signed. The procedural aspects of such exchange of information and the units within tax department with such responsibilities should be defined.	Exchange of information through Competent authorities	Exchange of information through Competent authorities	Mutual Agreement	Negotiation and mutual agreement
4		State whether DTAA is effectively implemented between two contracting states. If not, what are the areas?	DTAA is being implemented, however, both tax department and practitioners lack international tax expertise.	Normally yes. It can be improved by more discussion.	Normally yes. Through discussion it can be improved	Yes	Yes
5		Is relief from DTAA time consuming. If yes, how?	No.	Major challenge is different interpretation on the same article and taking tax credit.	Yes. major challenge is different interpretation on same article and taking tax credit	Yes	Yes. Long procedure
C.		Relevant provisions in the respective DTAA, Tax laws and rules of the country.					
1		What is the provision for Transfer Pricing in your country's Tax laws and Rules?	Tax Law includes a provision that gives right to tax officers to determine appropriate transfer price in case of transaction between associated enterprises.	Transfer Pricing provisions are based on arm's length principle. Regulations and Rules, along with supporting circulars issued by the Tax Authorities govern the transfer pricing in India	Transfer Pricing provisions are based on arm's length principle. Regulations and Rules, along with supporting circulars issued by National Board of Revenue (NBR) govern the transfer pricing in Bangladesh	Transfer Pricing methodology is applicable based on Arm's Length principle.	Transfer Pricing Methodology is applicable based on arm's length principle.
2		Is there a separate rule for Transfer Pricing? If Yes, state key areas and provisions to control movement of profit from a source country to the resident country?	No.	Sections 92 to 92F of the Income-tax Act, 1961 along with Rules 10A to 10T Income-tax Rules, 1962	Yes, a new Chapter XIA comprising Section 107A to Section 107 has been inserted in to the Income Tax Ordinance 1984. In addition, six separate rules (Rule 70-75) regarding arm's length price determination, judging comparability, most appropriate method, maintenance of information and documents, certified reporting and prescribed for of such certifications have been inserted in the Income Tax Rules 1984.	Chapter – VI 'Transfer Pricing' under Income Tax Rules	Yes. Sec.104 of the Inland Revenue Act covers. Regulations have been published in a gazette notification separately
3		What is the definition of PE and	PE means a place where a person	PE has been inclusively	In our Law, the term "Permanent	PE in relation to a	PE – OECD Model



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		Associated Enterprise in your laws?	wholly or partly carries on a business, and includes:  (1) Agency PE (2) Service Fee- 90 days presence in 12 months. (3) Fixed Base (4) Construction PE Associated Persons means two or more persons or group of such persons where one may reasonably be expected to act in accordance with the intentions of the other. This includes: a. an individual and a relative of the individual or an individual and a partner of the individual; b. a foreign permanent establishment and its owner; and c. an entity and a person who, either alone or together with an associate or associates controls or may benefit from 50 percent or more of the rights to income, capital, or voting power of the entity, either directly or through one or more interposed entities.	defined to include a fixed place of business leaving scope for recognition of PE under other conditions specified under various DTAA  <u>AE</u> has been defined as controlling one entity directly or indirectly, through one or more intermediaries along with certain specific relationship which will be deemed to consider AEs	Establishment (PE)” means a fixed place of business through which the business of an enterprise is wholly or partly carried on, and normally includes a place of management, a branch, an office, a factory, a workshop and a place of extraction of natural resources, etc. Associated Enterprise (AE) has been defined as controlling one enterprise directly or indirectly, through one or more intermediaries along with certain specific relationship which will be deemed to consider AEs	person, means a fixed place of business through which the business of the person is wholly or partly carried on	<u>Associated Enterprise</u> – Controlling one undertaking directly or indirectly or through one or more intermediaries
4.		Is there a right to carry Transfer Pricing Audit in the country from where transfer pricing has taken place, while DTAA gives way to establish Taxable Income in the Contracting state?	No specific provision of transfer pricing audit.	Yes through MAP	Yes	No	Yes
5.		If there is DTAA, please answer the following questions					
5.1		Whether corresponding tax adjustments have been accepted in the DTAA with:					



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i.	India	No	NA	No	No	No
ii.	Sri Lanka	No	No	No		.....
iii.	Pakistan	No	NA	No		No
iv.	Bangladesh	No DTAA	No	NA		No
v.	Bhutan	No DTAA	NA	NA		N/A
vi.	Nepal	-	No	No		No
vii.	Afghanistan	No DTAA	NA	NA		N/A
5.2	If the above 5.1 answer is yes, what is the procedure?					
i.	India	NA	NA	NA	N/A	N/A
ii.	Sri Lanka		NA	NA		.....
iii.	Pakistan		NA	NA		N/A
iv.	Bangladesh		NA	-----		N/A
v.	Bhutan		NA	NA		N/A
vi.	Nepal		NA	NA		N/A
vii.	Afghanistan		NA	NA		N/A
5.3	What provisions are incorporated for allowing collection of information of transfer pricing auditing between the contracting states?	No specific provision for sharing of information of transfer pricing auditing. Provisions relating to exchange of information and support in collection of tax incorporated in agreements.			SAARC Multilateral Agreement	
i.	India		NA	DTAA & SAARC Multilateral Ag.		DTAA+SAARC Multilateral Ag.
ii.	Sri Lanka		There is no such formal provisions	DTAA & SAARC Multilateral Ag.		.....
iii.	Pakistan		There is no such formal provisions	DTAA & SAARC Multilateral Ag.		DTAA+SAARC Multilateral Ag.
iv.	Bangladesh		There is no such formal provisions	-----		DTAA+SAARC Multilateral Ag.
v.	Bhutan		There is no such formal provisions	NA		SAARC Multilateral Ag.
vi.	Nepal		There is no such formal provisions	SAARC Multilateral Ag.		DTAA+SAARC Multilateral Ag.
vii.	Afghanistan		There is no such formal	NA		None.



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			provisions			
5.4	What provisions are incorporated for flow of information on related party transactions?	No specific provision for sharing of information of related party transaction. Provisions relating to exchange of information and support in collection of tax incorporated in agreements.			SAARC Multilateral Agreement	
i.	India		NA	DTAA & SAARC Multilateral Ag.		DTAA+SAARC Multilateral Ag.
ii.	Sri Lanka		There is no such formal provisions	DTAA & SAARC Multilateral Ag.		.....
iii.	Pakistan		There is no such formal provisions	DTAA & SAARC Multilateral Ag.		DTAA+SAARC Multilateral Ag.
iv.	Bangladesh		There is no such formal provisions	-----		DTAA+SAARC Multilateral Ag.
v.	Bhutan		There is no such formal provisions	NA		SAARC Multilateral Ag.
vi.	Nepal		There is no such formal provisions	DTAA & SAARC Multilateral Ag.		DTAA+SAARC Multilateral Ag.
vii.	Afghanistan		There is no such formal provisions	NA		None
5.5	What is the mechanism of settlement in case of dispute/disagreement between two tax jurisdictions/authorities to establish amicable understanding?				SAARC Multilateral Agreement	
i.	India	Mutual Agreement Procedures incorporated in DTAA.	NA	DTAA & SAARC Multilateral Ag.		DTAA+SAARC Multilateral Ag.
ii.	Sri Lanka	Mutual Agreement Procedures incorporated in DTAA.	MAP	DTAA & SAARC Multilateral Ag.		.....
iii.	Pakistan	Mutual Agreement Procedures incorporated in DTAA.	No	DTAA & SAARC Multilateral Ag.		DTAA+SAARC Multilateral Ag.
iv.	Bangladesh	NA	MAP	-----		DTAA+SAARC Multilateral Ag.
v.	Bhutan	NA	NA	NA		SAARC Multilateral Ag.
vi.	Nepal	-	MAP	DTAA & SAARC Multilateral Agreement		DTAA+SAARC Multilateral Ag.
vii.	Afghanistan	NA	No	NA		None



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5.6	Is there any set of rules for recording transactions between related parties in two jurisdictions to protect penalties and fines?					
i.	India	No	NA	No	SAARC Multilateral Agreement	N/Available
ii.	Sri Lanka	No	NO	No		No specific provision: but general penalty rule is applicable for domestic transactions.
iii.	Pakistan	No	NO	No		N/Available
iv.	Bangladesh	NA	NO	Yes, in transfer pricing provisions		N/Available
v.	Bhutan	NA	NO	No		N/Available
vi.	Nepal	-	NO	No		N/Available
vii.	Afghanistan	NA	NO	No		N/Available
6	Does the DTAA allow the following:					
i.	Free employment	Teacher/Professor exempt from tax for two years.	No	No	No	No
ii.	Free establishment of PE	No	No	Yes (Subject to conditions)	Yes	Yes (Subject to conditions)
iii.	Free flow of Capital	No	Yes (subject certain restrictions with certain countries)	Yes	Yes	Yes
7	What mechanism exists to facilitate the recovery of tax of one jurisdiction from another jurisdiction?	Provisions available relating to Assistance in the Collection of Taxes.		DTAA & International Law	DTAA	DTAA & International Law.
D.	Issues and concerns relating to Transfer pricing and International Taxation					
1	Are transfers pricing regulations enacted in your country?	Income Tax Law incorporates a provision relating to transfer pricing. But regulations are not available and so the provision is not practically implemented.	Yes	Yes	Yes	Yes
2	If not, are there any other regulations to cope with any related party tax evasions?			NA	N/A	N/A





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i.		Income Tax Law incorporates a provision relating to transfer pricing. But regulations are not available and so the provision is not practically implemented.					
3		If Transfer Pricing Regulations have already been enacted; Please answer the following questions.				Yes	
	3.1	When is the law enacted?			2012		In 2008
	3.1.1	How is the policy makers' response towards the implementation of T/P regulations?	Good/Bad	Aggressive posturing resulting in high pitched adjustments in certain cases	Good	Good	Good
	3.1.1.1	Do they think that there are tax evasions through T/P ?	Yes/ No	Yes (in some cases)	Yes	Yes	Yes
	3.1.1.2	If they think that there is tax evasion, to what extent?	High/ Medium/ Low	Low	Depends on circumstances	Medium	Depends with circumstances
	3.2	Resources available	NA				
	3.2.1	Do you have skilled staff to handle T/P laws?	No	No (Tax officers are in learning mode and appreciating of commercial and economic rationale for transactions view by tax officers needs to be instilled)	Not much more	Yes	Not much
	3.2.2	If not, what action has been taken to train them?					
	3.2.2.1	Local Training	Yes/ No	Yes	Yes	Yes	Yes
	3.2.2.2	Foreign Training	Yes/ No	Yes	Yes	No	Yes
	3.2.2.3	If Foreign Training is provided, what are the institutions and countries selected?		Mainly OECD training team provides training to Tax officers		N/A	
		<i>Country &amp; Institution</i>			Malaysia -Inland Revenue of		Malaysia -Inland



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					Malaysia		Revenue of Malaysia
i.					Singapore -Inland Revenue Authority of Singapore		Singapore -Inland Revenue Authority of Singapore
ii.					JAPAN -Japan National Tax Academy		JAPAN -Japan National Tax Academy
iii.					U.K.-Commonwealth Association of Tax Administrators (CATA)		U.K.-Commonwealth Association of Tax Administrators (CATA)
iv.					Netherland -International Bureau of Fiscal Documentation (IBFD), Amsterdam		Netherland - International Bureau of Fiscal Documentation (IBFD), Amsterdam
3.2.3	Are other required resources available?	Yes/ No	Yes (However quality of information for comparability analysis is very poor and it requires to improve)	Yes, Technical Support from IFC and IMF	International Best Practice	No	
3.2.3.1	If not what action has to be taken to obtain required resources?			N/A	N/A		
	i.			Request by the Govt.		Request by the government.	
	ii.			Assistance from donor countries		Re-allocate available resources	
	iii.					Assistance from donor countries	
3.2.4	What action is expected from the SAFA to up- grade the condition if the country is not in a position to tackle the T/P issues?						
	i.			Assistance to Develop local training base.		Assistance to Develop local training base.	



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		ii.			Assistance to develop regional training base.		Assistance to develop regional training base.
		iii.			Develop required Database.		Develop required Data Base.
		iv.			Encourage from SAFA to start dialog in the region to develop the law in the region.		Strengthen the dialog in the region to develop the law in the region.
	3.3	Which transactions have been covered by T/P Laws?	No law.				
	3.3.1	Only International transactions	Yes/ No	Yes	No	No	No
	3.3.2	Only Domestic transactions	Yes/ No	Yes	No	No	No
	3.3.3	Both International and Domestic transactions	Yes/ No	Yes	Yes	Yes	Yes
	4	If transfer pricings regulations have been formulated, Please answer the following questions regarding international transactions.	No regulations.				
	4.1	Have your country established a separate Transfer Pricing Unit at the tax authority?	Yes/ No		Yes, a separate Transfer Pricing Cell has been established in National Board of Revenue (NBR) recently	No	Yes. Inland Revenue Department
	4.1.1	If you have a separate unit, what is the structure?		Pyramid structure with separate TP officers from senior to Junior level	NA		Commissioner -1 Deputy Com. - 1 Transfer Pricing Officers- 5
	4.1.2	If there is no separate unit how does your country tackle the T/P issues?		NA	NA		N/A
	4.2	Are you following OECD model T/P?	Yes/ No	Limited. Reference is made to OECD TP Model & Commentary for interpretation in cases of disputes	Yes	Yes	Yes
	4.3	If answer for the above 4.2 is 'No', what is the model you follow?			NA	N/A	N/A
	4.4	What are the Transfer Pricing					



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		Methodologies accepted?					
		i. Comparable uncontrolled price method	Yes/ No	Yes	Yes	Yes	Yes
		ii. Resale price method	Yes/ No	Yes	Yes	Yes	Yes
		iii. Cost plus method	Yes/ No	Yes	Yes	Yes	Yes
		iv. Profit split method	Yes/ No	Yes	Yes	Yes	Yes
		v. Transactional net margin method	Yes/ No	Yes	Yes	Yes	Yes
		vi. Any other a. .... b. ....	Yes/ No	Yes (Market Quotation Based)	NBR may use any other method that any other method where it can be demonstrated that- (i) none of the five methods mentioned can be reasonably applied to determine the arm's length price for the international transaction; and (ii) such other method yields a result consistent with the arm's length price.	Yes- <i>Rule 23 (6) Where the arm's length result cannot be reliably determined under one of the methods in sub-rule (3), the Commissioner may use any method provided it is consistent with the arm's length standard.</i>	N/A
4.5		What options have been given for the selection of most appropriate methods?			In selecting the most appropriate method as specified in sub-rule (1), the following factors shall be considered, namely:—		
		i.		Yes	the nature and class of the international transaction, and of enterprises entering into the international transaction;		Best suit to the facts and circumstances
		ii.			the comparability factors (industry, functions, risks, contractual terms, market level) that are materially significant in determining the price or margin in relation to the international transaction;		
		iii.			the quality (availability, coverage, validity and reliability) of relevant data;		



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		iv.			the reliability of assumptions in the method;		
		v.			the sensitivity of results in the deficiency in data and assumptions;		
		vi.			the extent to which the reliable and accurate adjustments can be made to eliminate the differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions. the extent to which the reliable and accurate adjustments can be made to eliminate the differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions		
4.6		What are the deemed associated parties you have proposed to cover by T/P law?			Two parties would be deemed to be associated if they are bounded by common interest in defined area.		
		i.					Loans given more than 50% of total assets
		ii.					Guarantees more than 25% of total borrowings
		iii.					Manufacturing process wholly depend on one or more related parties.
		iv.					More than 90% materials purchases from related parties.
		v.					Relatives control jointly two or more undertakings.



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		vi.					
4.7		Have you recommended any Data base?	No	Yes	N/A	No	Yes
4.7.1		If the answer for the above 4.7 is 'Yes', then what are those?				N/A	
		i.		Prowess	Bureau van Dijk – Singapore		Bureau van Dijk– Singapore
		ii.		Capitaline	Prowess		Capital Market – India
		iii.		ACE TP	Capitaline		CMIE – India
		iv.		Royalty Stat	Capital Market - India		
		v.					
4.7.2		If the answer for the above 4.7 is 'No', what methods do you use to collect information for comparables?				Market Price	N/A
		i.					
		ii.					
		iii.					
		iv.					
		v.					
4.8		What are the compulsory documents to be maintained by a related party coming under T/P regulations?				N/A	
		i.		TP document on yearly basis containing minimum such information as is specified in Rule 10D	Ownership profile of the multinational group, business profile of the group, brief business profiles of each of the member of the group, consolidated financial statement of the group, information of the business relationship among the members		Thirteen items of documents have been identified by regulations.



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				of the Income-tax Rules, 1962	of the group, profile of the assessee enterprise group etc.		
		ii.		Certificate from CA for determining ALP	The above document shall be kept and maintained for a period of 8 years from the end of the relevant assessment year is specified in Rule 73 of the Income Tax Rules, 1984		
		iii.					
		iv.					
		v.					
		vi.					
4.9		If any concessions are given for the purpose of maintaining the documentation as above 4.8 what are they?				N/A	No concessions given
		i.		For Aggregate International Transactions below Rs.1 Crore (INR)	For aggregate International Transactions does not exceed 3 crore taka.		
		ii.					
		iii.					
		iv.					
		v.					
		vi.					
4.10		Penalty procedure:	No Law.				
4.10.1		Has any penalty procedure been implemented?	Yes/ No	Yes	Yes	Yes	No
4.10.2		If not, what is the present penalty procedure			NA	N/A	
		i.					
		ii.					
4.10.3		If 'Yes';					



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4.10.4	Penalty charged for not maintaining documents and information	Yes/ No	Yes	Yes	No	No
4.10.4.1	If 'Yes', penalty rates?		2% of transaction value	Penalty not exceeding 1% of the value of each international transaction entered under section 107G of ITO, 1984		N/A
4.10.5	Is penalty charged for not providing information and documents required by the department?	Yes/ No	Yes	Yes	No	No
4.10.5.1	If 'Yes', penalty rates?			Same as 4.10.4.1		N/A
4.10.6	Is penalty charged for additional tax charge on non arm's length price calculation?	Yes/ No	No	No	No	Yes
4.10.6.1	If 'Yes', penalty rates?		1 to 3 times the amount of tax impact	NA		Normal rate under IT Law
5	State some of the major issues in Transfer Pricing Audit and disputes	No such transfer pricing audit taken place.	Selection of comparables in TNMM, Financing Transactions, Capital Contribution, Marketing Intangibles, Guarantees etc.	Calculations of arms' length price. Identifying Comparable data.	Calculation of Arm's Length Price and availability of data for comparison	Define deemed associate undertakings. Calculations of arms' length price. Identifying comparable data.
6	State some of the major issues in Transfer Pricing Audit and settlements	No such transfer pricing audit taken place.	More aggressive Revenue oriented approach and aggressive tax planning by MNC	Not commenced yet	N/A	Not commenced yet
7	State some of the areas which should be incorporated in DTAA smooth Transfer Pricing Transactions.		Automatic tax adjustments to avoid economic double taxation and safe harbor rules for majority transactions	Corresponding adjustment and sharing information	Sharing information	Corresponding adjustment and sharing information
8	What are the kinds of transactions where most transfer pricing cases are observed in your country?	There can transfer pricing issues in case Multi-National manufacturing entities operating in Nepal, royalty, software etc.	Same as 5	Transfer of interest & Royalty -Profit of PE on construction	Royalty, Management fees and Profit on Debt	Transfer of interest & Royalty -Profit of PE on construction
9	Have your country entered into any Advance Pricing Agreement	No.	APA provisions have been recently	No.	No	No. But facilities available w.e.f.





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		(APA)		introduced. The first APA orders are expected to be out soon.			01.04.2013
E.		Any other information necessary for the survey	IRD is in process of preparing transfer pricing regulation.				
	1	Besides SAFA countries, how do other countries have DTAA with your country?	Seven Countries. Austria, China, South Korea, Qatar Mauritius, Norway, & Thailand.	India has DTAA with more than 95 countries.	Bangladesh has DTAA with 60 countries	More than 45 DTAA have been signed	More than 40 DTAA have been entered