

India Transfer Pricing Survey: You said it!

February 2015



A perspective

The advent of globalisation and the digital economy has changed our economic landscape. A product may be conceptualised in New York, designed in Italy, manufactured in China and ultimately marketed in India. Businesses truly pervade across economies more than ever before!

There is a clamour amongst nations to obtain a greater share of the economic pie. Each nation is wary of the tremendous power Multi National Enterprises (MNEs) wield to rule the waves as well as to waive the rules.

With the introduction of the Indian transfer pricing (TP) regime to monitor 'controlled transactions' undertaken by MNEs in 2001, you have witnessed the spiraling TP litigations in the last decade. We have shared your anguish as TP additions amounting to billions of rupees were made at the stroke of a pen and left us to stride through the long aisles of courtrooms in search of the light at the end of the tunnel.

Today, we enter an era where the TP regime in India will co-exist with the provisions under the Excise and Customs Regulations, the cost audit norms or the Companies Act, 2013 and the SEBI Guidelines which are all enacted to monitor fairness of so-called 'controlled transactions'. Though united in spirit, these regulations will manifest in different forms.

Yet, the light at the end of the tunnel has never been brighter than now. The dictums of Vodafone and Shell pronounced over the last few months have been examples of fine jurisprudence. The Executive has also exhibited unparalleled maturity and resolution—be it by declining to challenge these rulings, by signing its first bilateral advance pricing agreement or by resolving diplomatic freeze between the India-US competent authorities. India is indeed *walking the talk!*

As we all tread towards the light, leaving the shadows of the decade behind, we at PwC believe that there is no better time to be heard and create a difference. PwC is pleased to launch its survey, one of its first kinds on TP matters: *Transfer pricing in India: You said it!*

PwC's findings based on responses by companies surveyed are interesting. Not only do they include the views of senior executives on compliance, audit, litigation and alternate dispute resolution mechanisms, but also their expectations with respect to the changes in Indian TP Regulations (both under the Income-tax and the Companies Act), the need for a shift in principles for selecting the cases for TP audits, etc, based on interesting and valuable suggestions.

We at PwC are excited with the '*look back and look ahead*' aspect of the survey and are committed to play an important role of a 'catalyst of change, with a drive towards solutions'!

Our sincere thanks go to each of the respondents who willingly freed up their valuable time to make this survey as comprehensive and accurate as possible.

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Leader, Tax and Regulatory Services

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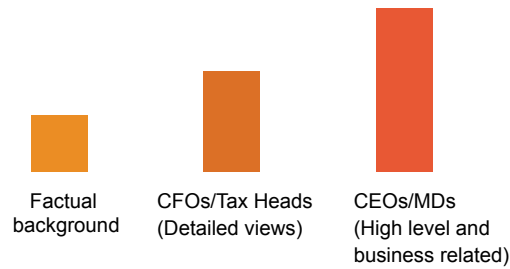
Making of the survey

Approach, spread, process and content

Methodology



Coverage



Questionnaire

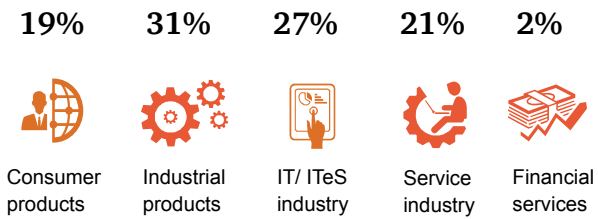
1. Overall opinion
2. Responsibility matrix
3. Risk mitigation and ADR
4. Compliances and policies
5. Audits and litigation
6. Consultants
7. Companies Act 2013
8. Convergence with Customs

Pan-India

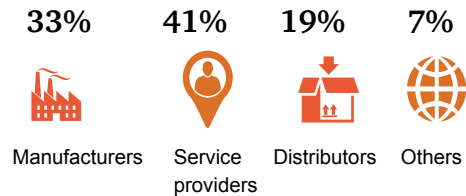


161 respondents across 8 major Indian cities

Industries represented



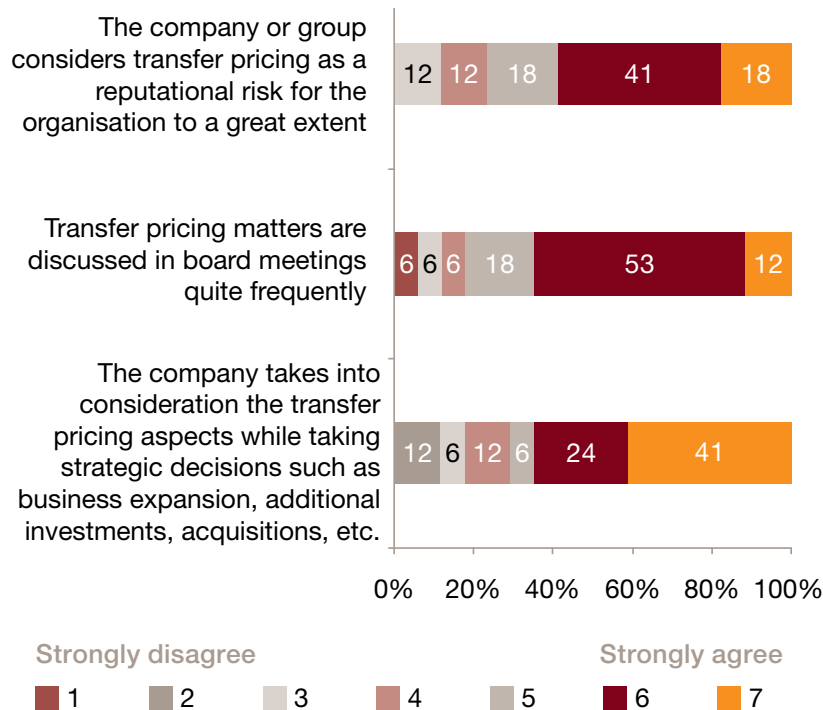
Nature of operations



You said it!

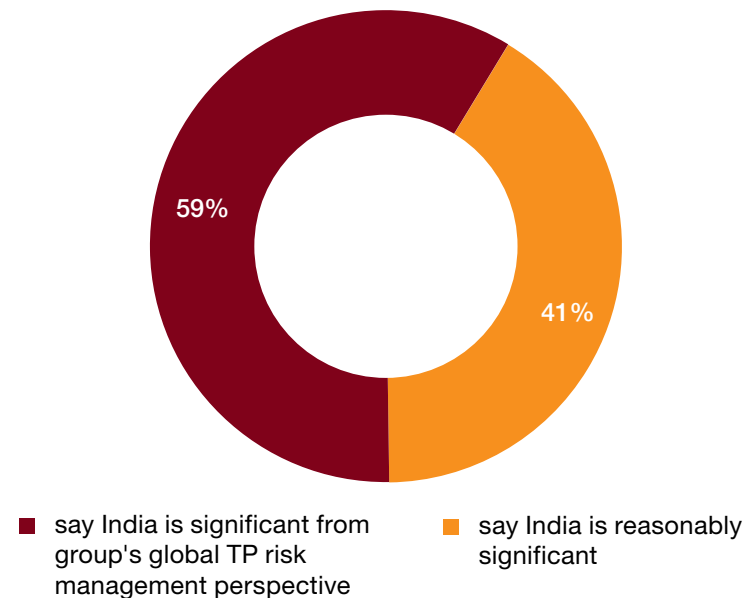
The world is on the same page. Global media on TP is heavily focused on the ambitious action plan to address Base Erosion and Profit Shifting (BEPS), being relentlessly worked on by the Organisation for Economic Cooperation and Development (OECD). As we rapidly move towards one global marketplace, tax is no more an ‘incidental’ aspect. It assumes an equal importance in strategic decision-making. This is no different in India, with **65%** of the CEO / MD participants admitting that **TP has entered the boardroom** (and is frequently discussed) and that TP aspects are taken into consideration for strategic business decisions. That’s not all. With increasing media coverage and focus on tax leverage of several Fortune 500 companies, **59%** of the CEO / MD participants consider **TP an integral aspect of managing reputational risk**.

CEOs / MDs on importance attached to TP risk



With the focus of the Indian revenue authorities on TP matters and the ever-increasing importance of TP from the governance perspective, we were curious to know the significance of India from the group’s global TP risk management perspective. Clearly, India has arrived on the global platform. **All participants believe India to be significant from the group’s global TP risk management perspective.**

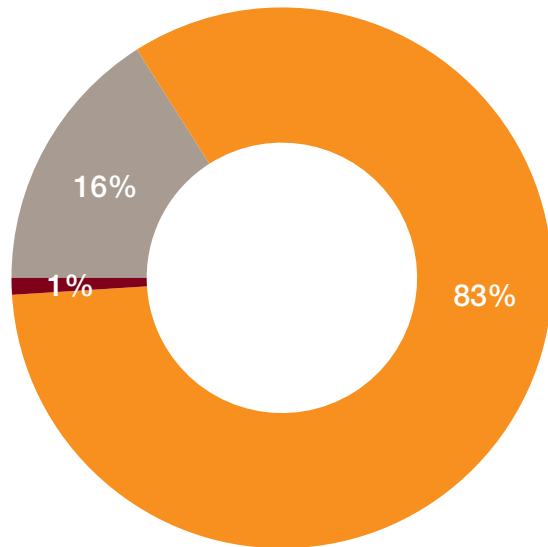
Significance of India from group’s global TP risk management perspective



While this emphasises the increase in the size of Indian operations of MNEs, there is another equally important factor contributing to the greater importance of TP in India at the global level--increased litigation related to TP matters.

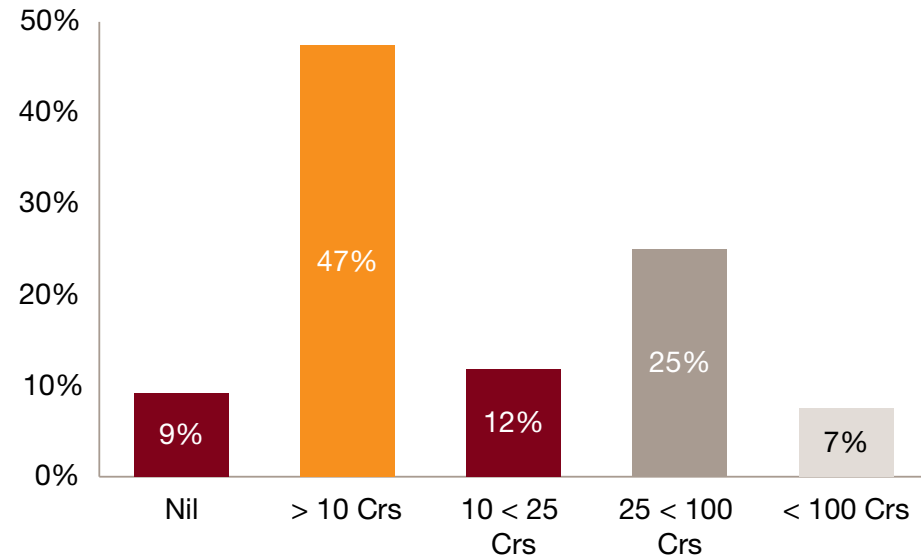
Eighty-three percent of our respondents say that the **company has undergone TP audit** and **91%** have **suffered TP adjustments** leading to litigation of varying intensity.

Has the company's case been referred to the TPO for detailed TP audit?



- Company's case been referred to the TPO for detailed TP audit
- AO performed TP audit
- Not referred

What is the range of average quantum of TP adjustment faced by the company during last three assessment years?



How would you describe the TP audit experience in a sentence?

“It’s a tough process but has mostly been fair so far.”

“It’s maturing year on year”

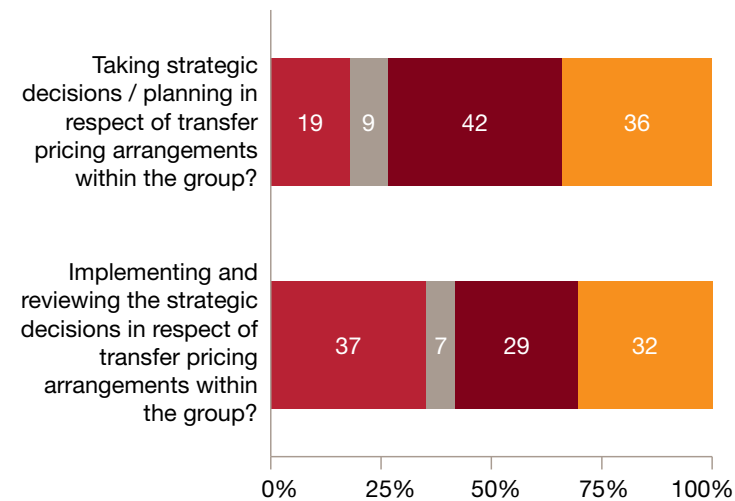
“Very supportive, smooth and value adding”

Transfer pricing risk mitigation and responsibility matrix

MNEs usually put in place a global TP framework and ensure its implementation in various group companies in order to mitigate global TP risk. TP is often referred to as a double-edged sword, as there are always (at least) two countries affected by cross-border intercompany transactions, in turn triggering a potential TP impact in those countries. This makes it important to have a consistent approach, to the extent possible, across the globe for MNEs while setting their TP policies. It comes as no surprise that even in the case of MNEs operating in India, **80%** of the respondents state that **strategic decision-making and TP planning functions reside at the global or regional headquarters**.

That said, **40%** respondents state that the **implementation responsibility rests at the India level**, reflecting the hands-on nature of work involved in implementing TP policies.

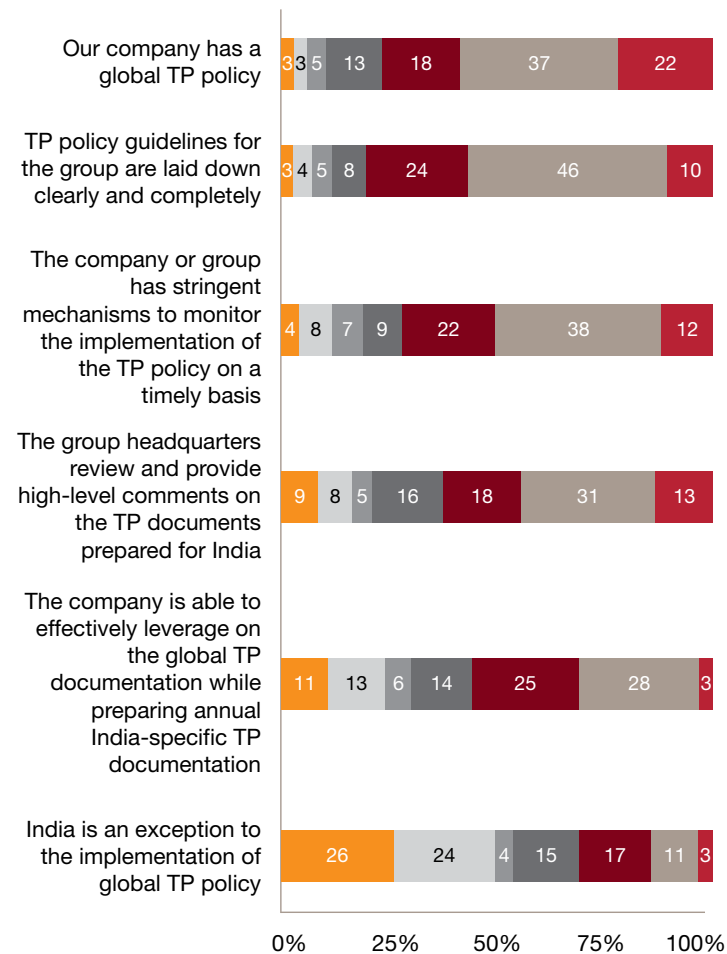
Responsibility matrix of transfer pricing activities within group (foreign multinationals)



■ Indian entity ■ Regional headquarters
■ Global headquarters ■ Regional and global headquarters

However, while most multinationals have clearly laid out a global TP policy, it is alarming to note that close to 40% of the respondents believe India to be an exception to the policy.

Opinion on the statement regarding TP policy framework

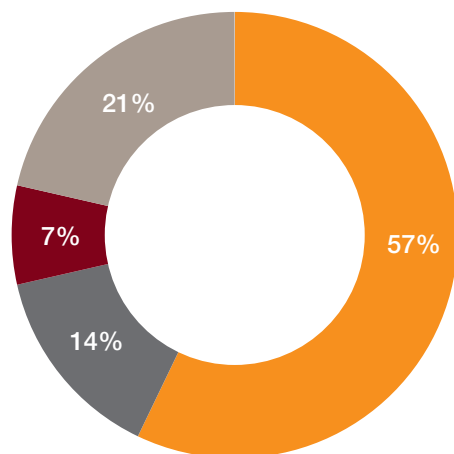


Strongly disagree Strongly agree

■ 1 ■ 2 ■ 3 ■ 4 ■ 5 ■ 6 ■ 7

The inconsistent application of the global TP policy is a major area of concern for Indian revenue authorities. Further, with the OECD releasing its BEPS Action Plan, an environment fostering a comprehensive and **consistent approach to TP at the global level is the need of the hour**. This has also been embraced by the Indian government which has clearly stated its support.

Challenges faced while implementing global TP policy / global structures in India



■ Acceptability by Indian revenue authorities
 ■ Indirect tax implications
 ■ Documentation requirement
 ■ Others

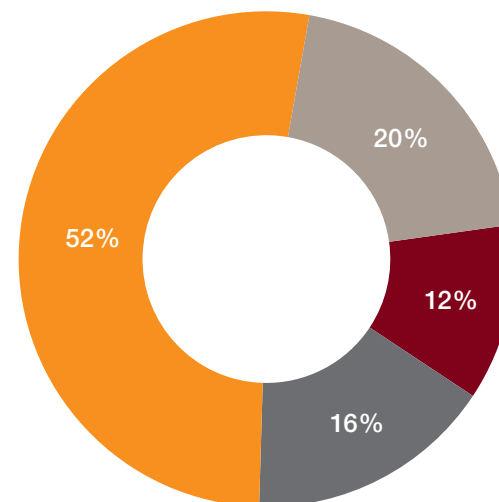
Immediate reaction when you hear transfer pricing in the Indian context

“Challenges in comparability analysis, issues related to risks, comparability adjustments.”

While acceptability by the Indian revenue authorities is one reason, which could be reflective of the lack of alignment between Indian regulations and global TP principles and regulations, two other factors are also important—First, the increasing need to consider the specific aspects of Indian operations as part of global TP policy; and Second, on an average, only in about **50%** cases, the CEOs / MDs agree that there is a dedicated local TP team.

The fall-out of not having specialised resources focussing on this niche area is clearly visible in an abysmally low level of connect with BEPS, which is the talk of the town and the focal point at every TP forum and publication today.

TP policy change due to the recent focus by the OECD on the BEPS



■ Haven't heard about any plans
 ■ Not aware about BEPS
 ■ No
 ■ Yes

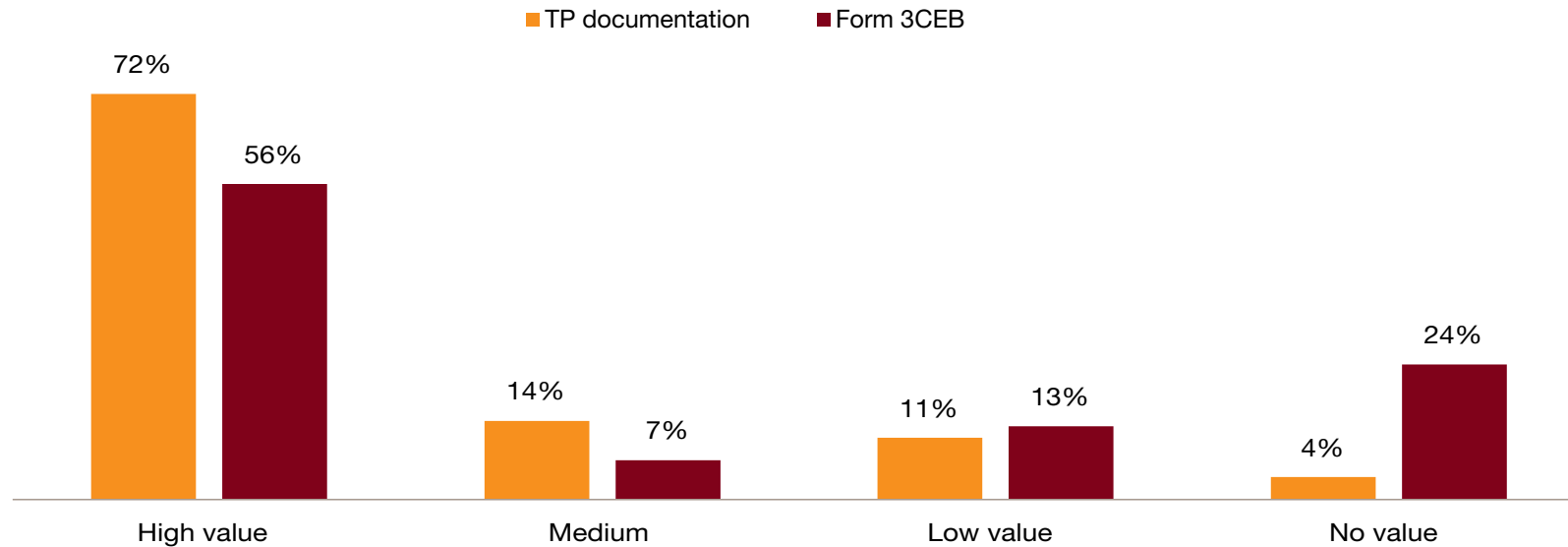
The factors here relate well to **best practices suggested by CEOs / MDs** that an organisation needs to implement:

- “Keeping sharp focus on industry trends and take corrective actions in consultation with TP domain experts”
- “Follow regulatory changes related to TP”
- “Put in place internal controls for TP documentation”
- “Include reasonable mark-up on services rendered to group companies”
- “Consider industry benchmark of gross margin for doing business in India”

Turning to local TP documentation, with **85%** of the respondents assigning importance to the maintenance of TP documentation, the above words of advice from the top chair seems to have been already put to action.

However, there are mixed responses when it comes to the annual requirement of the Accountant’s Report in Form 3CEB, as respondents feel that there is some level of duplication of information, which causes unnecessary burden on companies.

Feedback on level of efforts involved in the TP documentation and Form 3CEB certification exercise



How important is the annual TP documentation considered by the company?

“Important in case of significant change in nature of business or type of transactions”

“Very important to substantiate the FAR of the company and tested parties and get a self-assessment on the arm’s length pricing of the comparables for that year”

“Only important because it is required by law. From a business perspective, in its current frequency, it does not add any value”

What value does the company perceive for the level of efforts involved in the Form 3CEB certification exercise?

“They are never used or referenced during TP assessments.”

“The documentation is considered an important part of value addition. The efforts for Form 3CEB is appreciable but for the compliance point of view.”

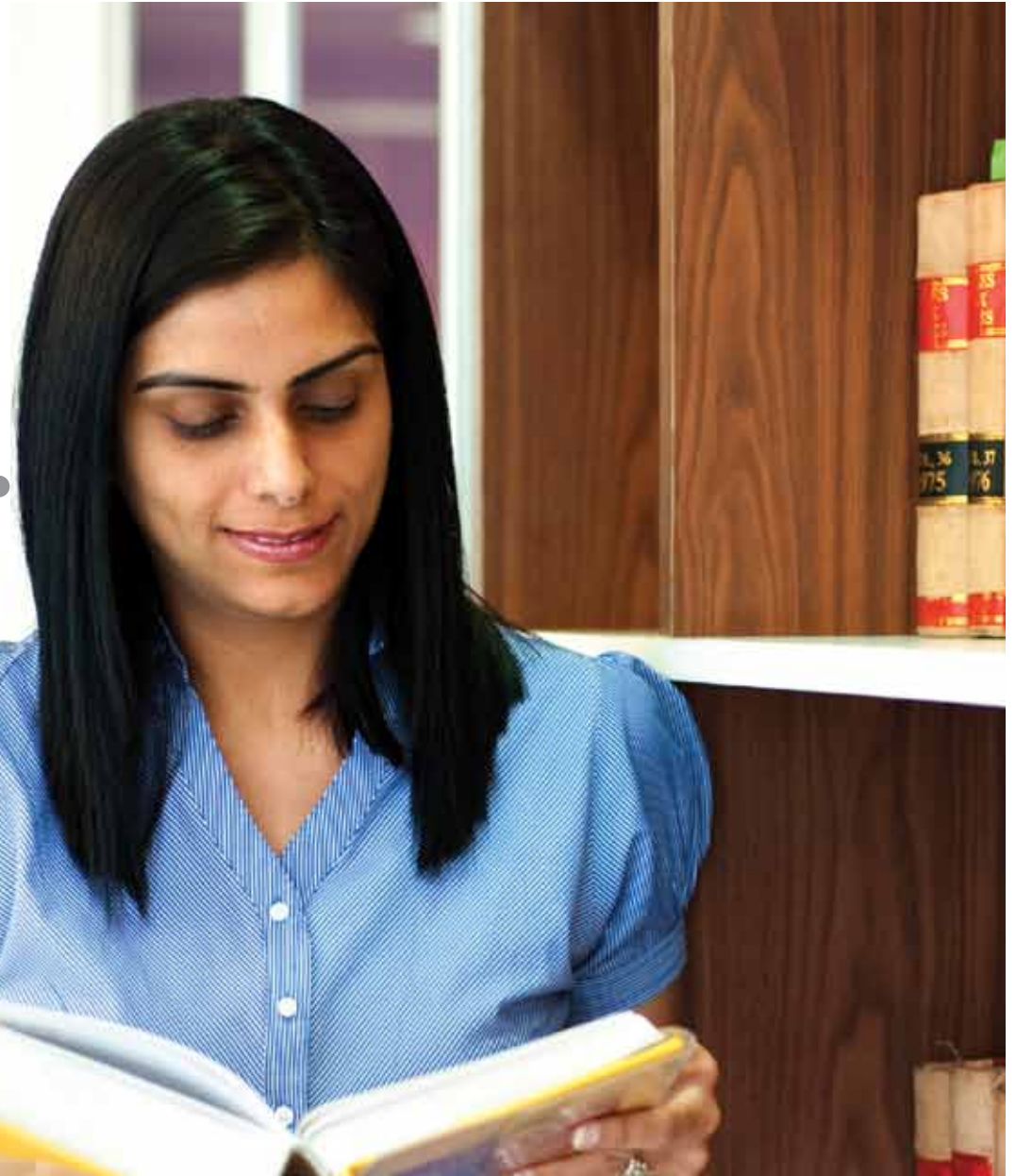
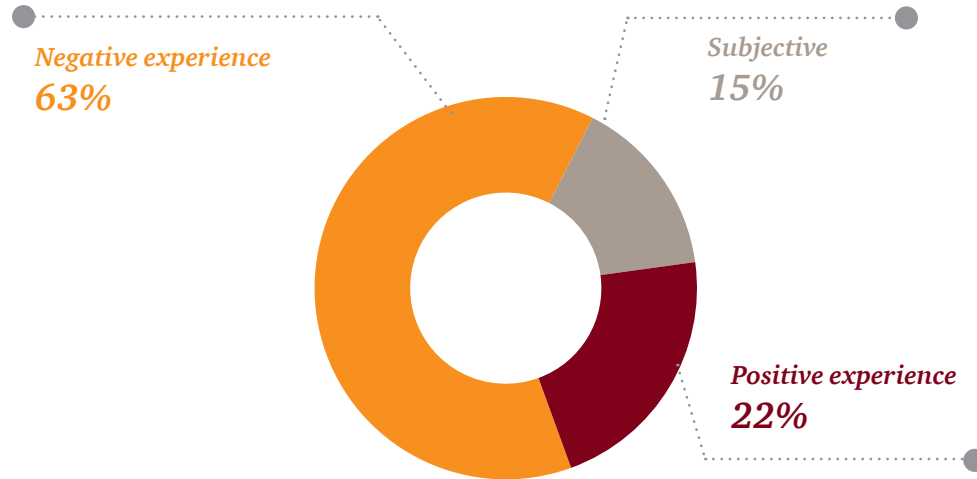
“Efforts involved in 3CEB certification are a bit cumbersome and duplicative.”

Transfer pricing audit

Coming back to the TP audit scenario in India, **83%** of the respondents say that the company has undergone TP audit. Further, **91%** of the respondents have suffered TP adjustment, leading to litigation of varying intensity.

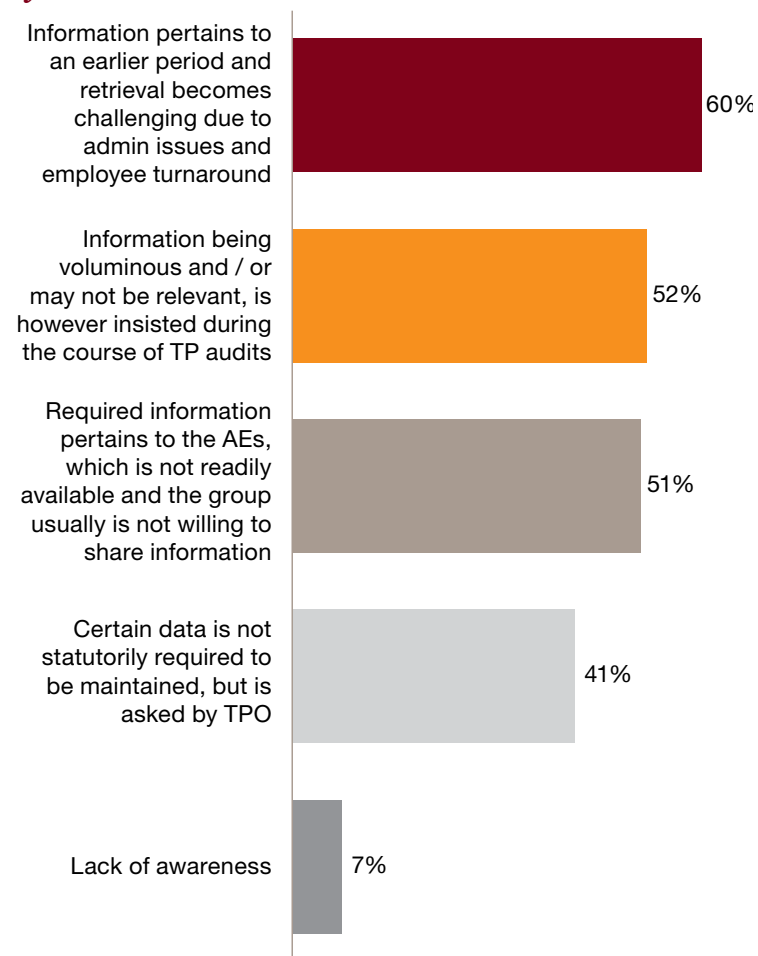
Unfortunately, with only about **one-fifth of the respondents** having a positive experience to the question on overall satisfaction with the TP audit procedure, a lot is left to be desired.

TP audit experience



That said, to be fair to the transfer pricing officers (TPOs), it is important to appreciate that as much as taxpayers are insisted to provide detailed documentation, there are challenges in providing the required information and most of it seldom gets to the TPOs. This can be attributed to the following reasons.

What are the hurdles you encountered while working on the information and details requisitioned by the TPOs during the course of TP audits?



There is no doubt that significant importance is given to maintaining TP documentation, but the above results reflect the gap in the understanding of what is required and what is maintained. Also, the lack of infrastructure in

terms of valuable skilled resources and the surrounding support system (as detailed in the United Nations Manual on TP) add to the negative experience.

Certainly, the TPOs have their share of woes especially in terms of limited resources (technically inexperienced staff). It is estimated that on an average, each TPO audits more than 100 cases every year as the selection of cases for TP audit has been historically based on the quantum of international transactions, which was set at a very low threshold (i.e., 150 million INR, approximately 2.5 million USD). This prevents them from having sufficient time to focus on every case, coupled with inadequate training. To add, there are frequent transfers between departments or locations.

As a result, the ‘feel factor’ around the TP procedure is not positive and most of the TP issues discussed are routine in nature, revolving around the selection of comparables and the use of multiple-year data.

However, interestingly, despite the aggressive TP audits in India, they have had low impact on investments into India, which comes as a breather. More than half of the CEOs / MDs confirm the low impact even on the business model of a company or group and the manner in which the business is carried out in India.

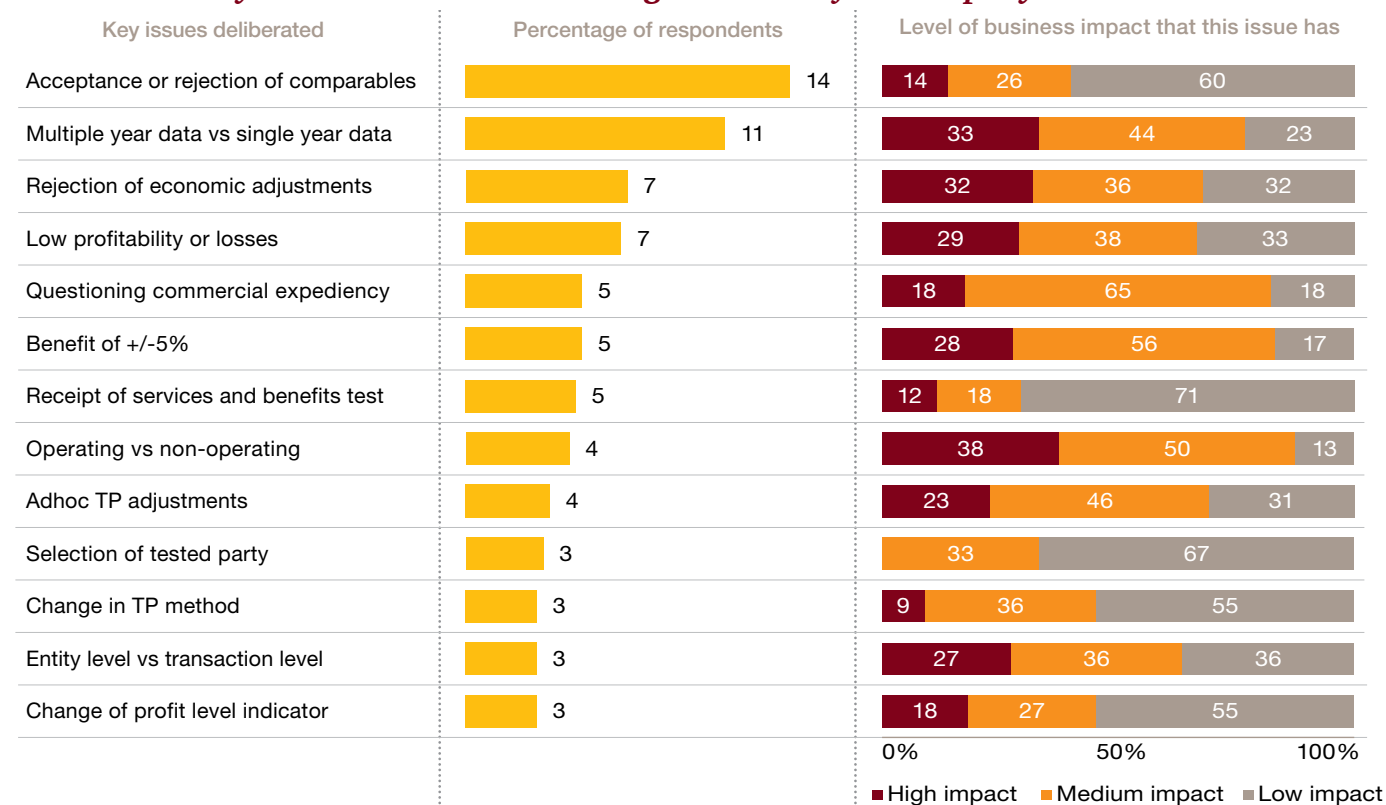
From the perspective of the ‘Make in India’ campaign launched recently, it is comforting to note the above, as well as the fact that a majority of the respondents state that companies are not deterring from taking sound commercial and business decisions purely on account of the uncertain and litigation-prone TP landscape in India.

How would you describe the TP audit experience in a sentence?

“It’s a mixed bag; in some jurisdictions, the TP officer is really high on content while in others, the officer tends to put off the assessment till it has to be done in a last minute rush”

“Documentation compiled at the time of audit does help in assessment.”

What are the key issues deliberated on during the course of the company's TP audit?

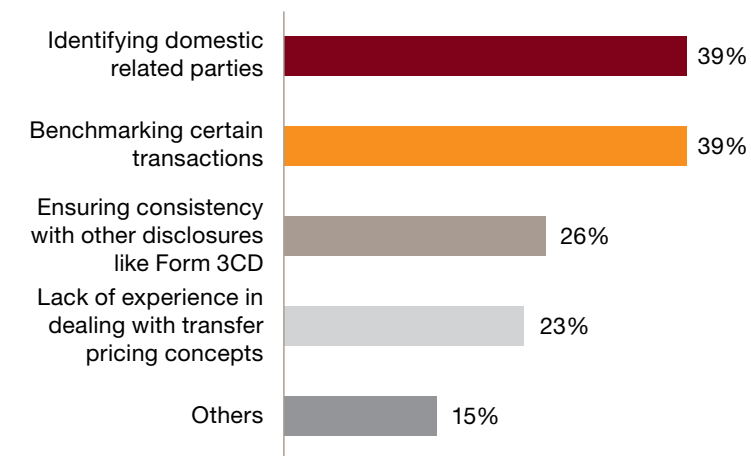


The selection of the most appropriate method and the tested party are integral aspects of TP analyses. When asked, **65%** respondents stated that they use a profit-based method. In doing so, about **35%** respondents have selected an overseas associated enterprise (AE) as the tested party.

In a clear majority of cases of high-pitched audits (adjustments > 100 crore INR), the company had selected overseas AEs as the tested party. This perhaps reflects a lower level of acceptability of such an approach. This could be for various reasons including TPOs' limited access to overseas databases such as Amadeus, Osiris, Orbis, Jade, etc; and / or non-furnishing of the required level of overseas data to support the analysis.

To add to all of this, the TP requirements were extended to cover certain specified domestic transactions as well, though without providing sufficient guidance. This has led to a set of fresh challenges for Indian taxpayers.

Major challenges faced in compliance with specified domestic transactions



How will you describe TP audit experience in a sentence?

“Unduly burdensome and aggressive, especially in the context of international norms”

“Lengthy and subjective and person driven rather than concept driven with a revenue oriented approach”

“Level of expertise and sense of understanding of business needs to increase.”

The above leads one to believe that the Indian revenue authorities need to make a leap frog shift in aligning the TP regulations and framework to the global standards. This may suggest that there is score of differences between Indian TP regulations and the globally followed standards. However, once you closely reflect, while difficult to fully relate to, Indian TP regulations have been very much in line with the global standards (OECD Guidelines in particular), but for two differences--the **use of the arithmetic mean** instead of range and use of **single-year data** for benchmarking purposes instead of multiple-year data).

Interestingly, alignment to global standards for these two aspects is what respondents also strongly asked for.

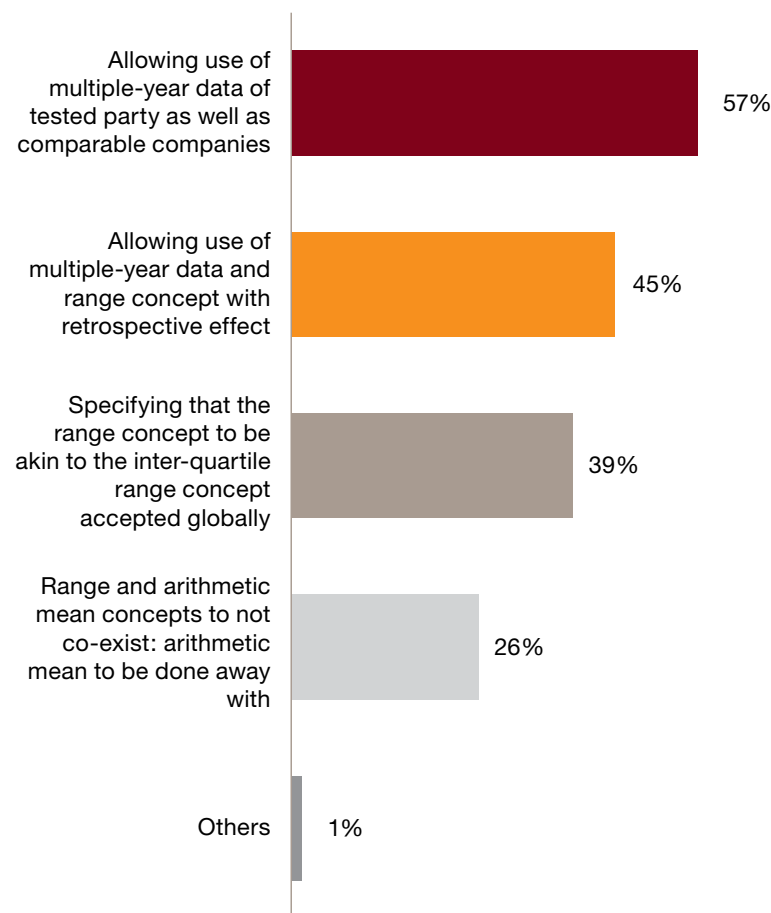
Fifty-seven per cent of the respondents expect that multiple-year data for **comparables as well as the tested party** should be allowed. **Forty-five per cent** of the respondents further say that multiple-year data and range concept need to be allowed with **retrospective effect**. In addition, they also expect that the range concept needs to be akin to the inter-quartile range concept accepted globally.

PwC has been working with the government and the Central Board of Direct Taxes (CBDT), and both these aspects have been recommended time and again in several representations made. And the good news is that the new government has listened--it took a big step forward by announcing the introduction of the range concept and the acceptance of multiple-year data in the July 2014 Budget speech; although detailed rules are still awaited.

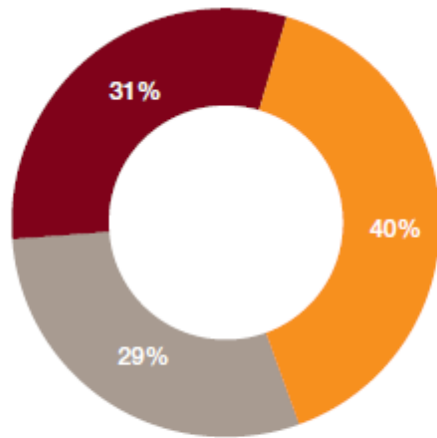
With these two issues almost sorted, which could be looked at as the epicentre of transfer pricing disputes in India, Indian TP regulations will be fully aligned with global standards.

Around **70%** of our respondents also say that these suggested changes in Indian TP regulations, if made, will have momentous impact on existing and future TP disputes in the country, and will significantly reduce TP litigation in India.

What are your expectations from the rules to be prescribed by the CBDT with respect to the use of multiple-year data and range concept?



How significantly will the change in regulations pertaining to the use of multiple-year data and use of range impact the level of existing and future TP disputes in India?



- If allowed with retrospective effect, could significantly reduce existing TP litigation
- Significantly reduce future TP litigation
- Allow for higher level of certainty in TP planning in India

Which first appellate forum, according to you, is a better option for the taxpayer?

“A company can expect some reasoned order before the [CIT (A)] whereas DRP is a forum to avoid tax demand for some time.”

“Depends on the issue being litigated and precedence on the matter.”

“TTAT is a better forum for dispute resolution.”

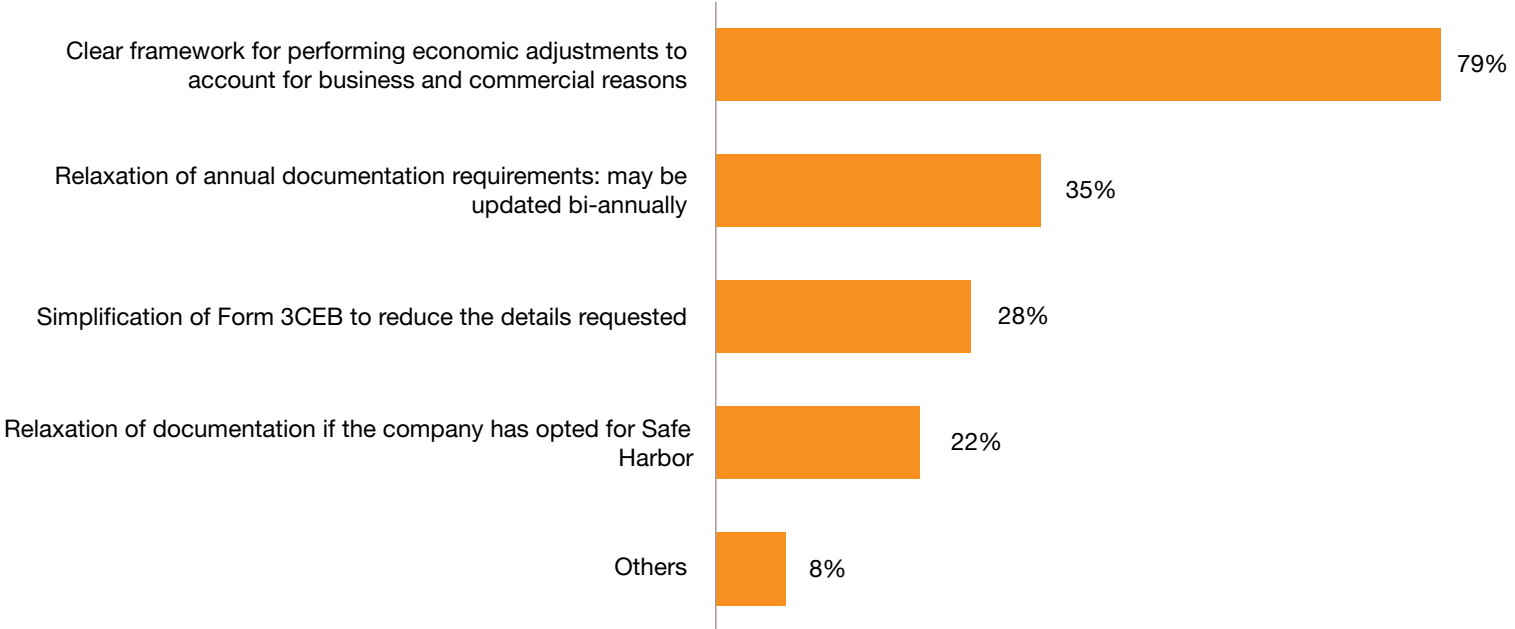
Continuing on with taxpayer’s expectations, the next big one--adopting risk-based assessment in selecting cases for audits is in the windscreen, with the two key issues discussed above in the rear-view mirror. More than **70%** of the respondents strongly feel that revenue authorities need to start following risk-based assessment in picking up cases..

This will significantly reduce the case load of the TPOs (like in other countries with matured TP regimes) and will allow them to focus on more complex issues; something which has also been part of PwC’s recommendations made to the Indian government. The Indian revenue authorities have already shown their inclination to move in this direction and it’s expected that risk-based assessment will see the light of the day soon.

Coming back to expected changes in the Indian TP regulations, the other area of need highlighted by our respondents is around documentation requirements. Almost **80%** of the respondents desire a clear framework for performing economic adjustments to account for commercial and business reasons. Also, there is a demand to reduce the level of documentation required as it poses a significant burden on taxpayers.



What would you like to change with respect to the legal provisions pertaining to compliances as per the existing Indian TP regulations?



Transfer pricing litigation

With harsh economic weather and the natural tendency of every country to protect its own tax base, taxpayers are faced with an uphill task. If one were to go by the collections made, the TP adjustments may not add up to a significant revenue base for Indian revenue authorities, as most of them are locked up in disputes at various levels. As a result, they substantially increase the litigation base in the country putting India at the top when it comes to TP litigation around the world; something that does not gel well with India's stated goal of encouraging global investments and the 'Make in India' campaign.

Considering the aggressive TP audit environment in India, and that TP matters have global impact for MNEs, most do not accept the TP adjustments on the face of it, instead opting to litigate. This was made obvious in the survey result--over **70%** of the respondents strongly agree that they always litigate transfer pricing adjustments in appellate forums.

For a long time, taxpayers had the Commissioner of Income-tax--Appeals [CIT(A)] as the first appellate forum. Five years ago, a new mechanism, the Dispute Resolution Panel (DRP) was introduced primarily to deal with transfer pricing disputes in a time bound manner with deferred tax payment.

The DRP comprised of three commissioners of income-tax or directors of international tax. There were two inherent limitations--appointment of revenue officers (with added responsibility), some of whom also had circle responsibilities including revenue collection; and revenue authorities did not have an option to appeal against DRP directions, giving those orders the same finality as that of a Supreme Court order. Unfortunately, the forum did not gain popularity in meeting its stated objective, which is also evident from the reactions of the respondents.

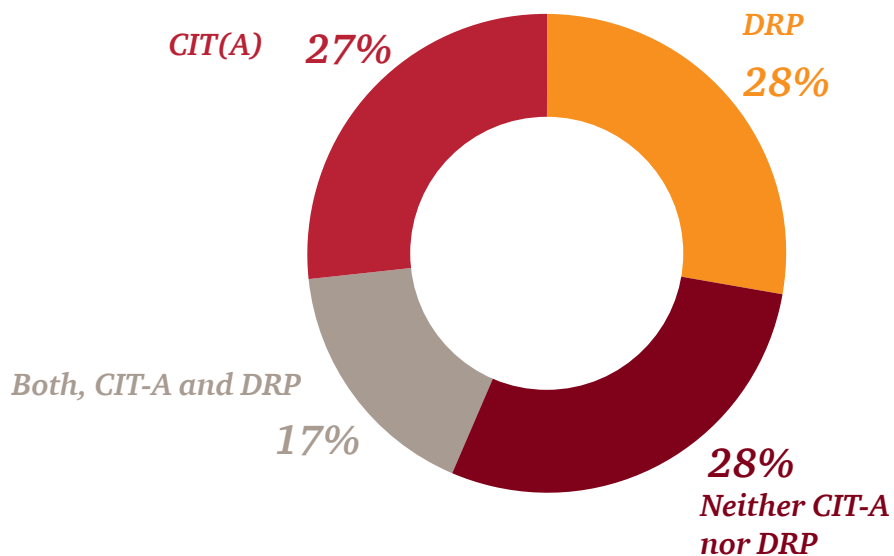
Which first appellate forum, according to you, is a better option for the taxpayer?

*“From a speedy disposal perspective, it is the **DRP** as it offers a fast-track route to reach **ITAT**; from the justice perspective, it is the **CIT(A)** as it has a reasonable experience.”*

Clearly, the experience of taxpayers at the first appellate forum has been discouraging as less than **10%** of the respondents have agreed that they are satisfied with their experience. Only about **one-fourth** says that they clearly prefer CIT(A) as the first appellate forum. The rest consider DRP only to defer tax demand, or for getting to Income-tax Appellate Tribunal (ITAT) on a fast-track basis.

When it comes to success for the taxpayers, only about **7%** of the respondents say that they have been granted complete relief.

Which first appellate forum, in your experience, is a better option for the taxpayer?



How will you describe your TP audit experience in a sentence?

“Some favourable rulings after long discussions at the CIT (A) stage have given hope that fair and reasonable transfer pricing that is adequately supported will prevail.”



Immediate reaction when you hear transfer pricing in the Indian context

“Transfer pricing has been a highly litigated matter for a long time now.”

“It is a complicated piece of legislation.”

“Added complexity in compliance for business men”

“We need to go to the depth of the cost and the margin shared by different entities in the chain. Whatever we do can be subjected to questioning from various viewpoints.”

Which first appellate forum, in your experience, is a better option for the taxpayer?

“Though the DRP has never provided any relief to the taxpayers in general, it has to be the first step to get to the ITAT.”

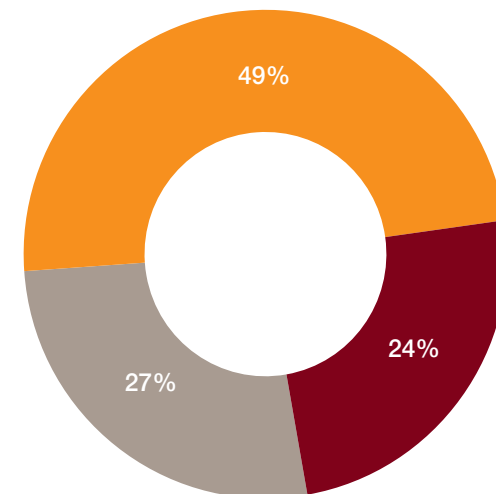
The recent move by the CBDT, to re-organise the DRP machinery and put in place a panel with full-time and exclusive responsibility of handling the DRP functioning, is a welcome change. The taxpayer community will hope that it contributes to making the DRP what it was always intended for—reducing transfer pricing litigation.

As of now, the transfer pricing disputes routinely travel from the DRP or CIT(A) to the ITAT. The experience at the ITAT level has been largely positive, as about **70%** of our respondents agree that the ITAT is able to fully appreciate TP fundamentals and also accept judicial precedents. This provides the much-needed respite to taxpayers.

Since the ITAT is a judicial authority, one may think that legal counsels would be the first preference. However, given the fact-intensive nature of TP disputes, only **9%** of the respondents have stated a preference towards appointing legal counsel; whereas the large majority prefers appointing TP experts to represent them at the ITAT.

Further, it is encouraging to note that in almost every four out of five TP cases, relief has been granted by the ITAT.

Reliefs granted by ITAT to companies on TP adjustment



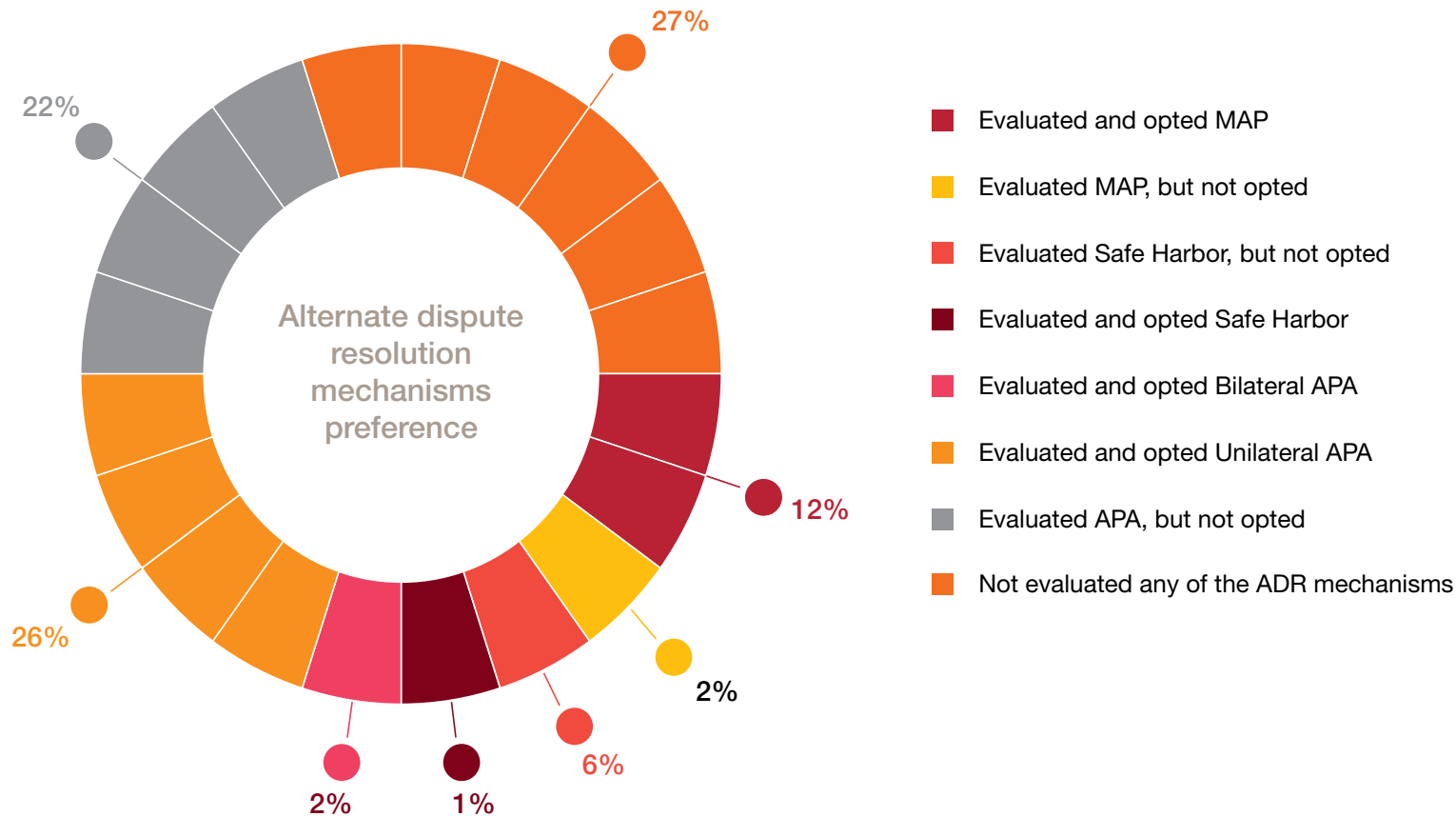
■ Yes, partial relief ■ No relief at all ■ Yes, complete relief

Alternative dispute resolution mechanisms

Besides the domestic litigation route, taxpayers also have certain other forums for TP dispute resolution, i.e., alternative dispute resolution (ADRs). These include mutual agreement procedures (MAP) under the double taxation avoidance agreements (DTAAs) between India and other countries. Further, a couple of newly introduced ADRs include 'Advance Pricing Agreements' (APA) and 'Safe Harbor Rules'.

It does not come as a surprise that *every three of four* taxpayers have evaluated at least one of the ADR mechanisms, given the failure of the first appellate forum and the time taken to get closure on a TP dispute.

Alternate dispute resolution mechanisms preference



Unilateral APA is seen as the most preferred ADR mechanism, despite the fact that the Indian APA programme is only in its third year. Following the recent breakthrough in the longstanding deadlock between the Indian and the US competent authorities (CA), the MAP cases have started moving quickly and the US has also expressed willingness to accept bilateral APA applications with India. This should lead to additional APA applications rolling in for bilateral case.

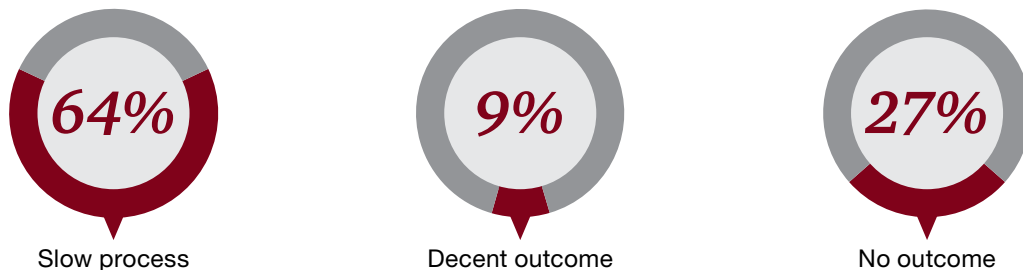
On the APA experience, more than half of our respondents have mentioned that it is still in a nascent stage and there is a long way to go. That said, more than one-third have provided encouraging feedback on the APA programme and feel that it is promising and result-oriented, which clearly makes it the preferred ADR choice.

APA experience



It is also observed that the MAP, a well-established forum through which tax administrations consult to resolve disputes regarding the application of double tax conventions, has been considerably underexplored given the stalemate mentioned above which made the process even slower.

MAP experience



However, with India and US CAs having met and resolved their stalemate last month, and with increased activity between different CAs, the MAP option is expected to gain popularity. The **MAP process is highly effective** as it eliminates double taxation and does not burden the taxpayer from being on their toes through the journey. This is evident from the fact that close to **15% of the respondents** also evaluated MAP, and only **3%** did not proceed further,

suggesting acceptability for the MAP route once evaluated.

Unfortunately, the Safe Harbor is not perceived to be safe enough as evident from the fact that only 7% of the respondents have evaluated this option, and only 1% opted for it.

Immediate reaction when you hear transfer pricing in the Indian context

“Too subjective, not supported by a robust law, discretion at the hands of officers to raise the demands arbitrarily”

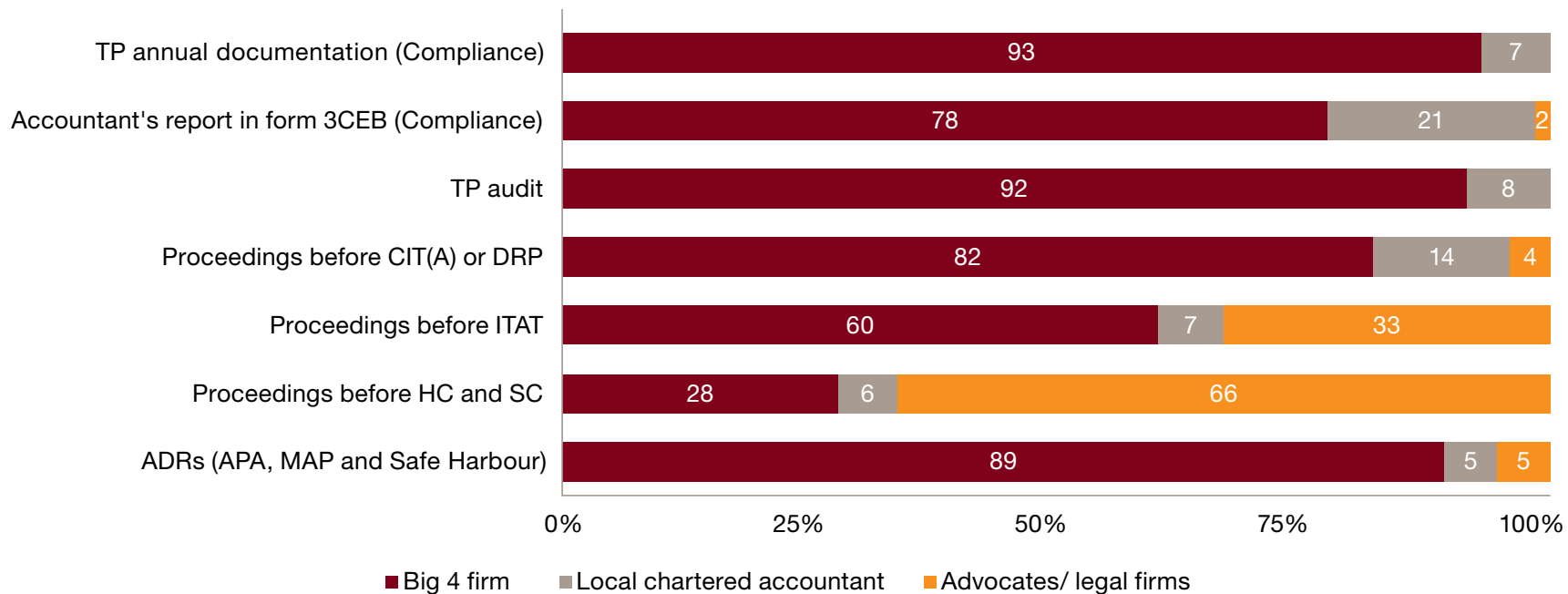
“Started with the good intention of keeping a check on profit shifting but has become a revenue generating centre”

Transfer pricing consultants

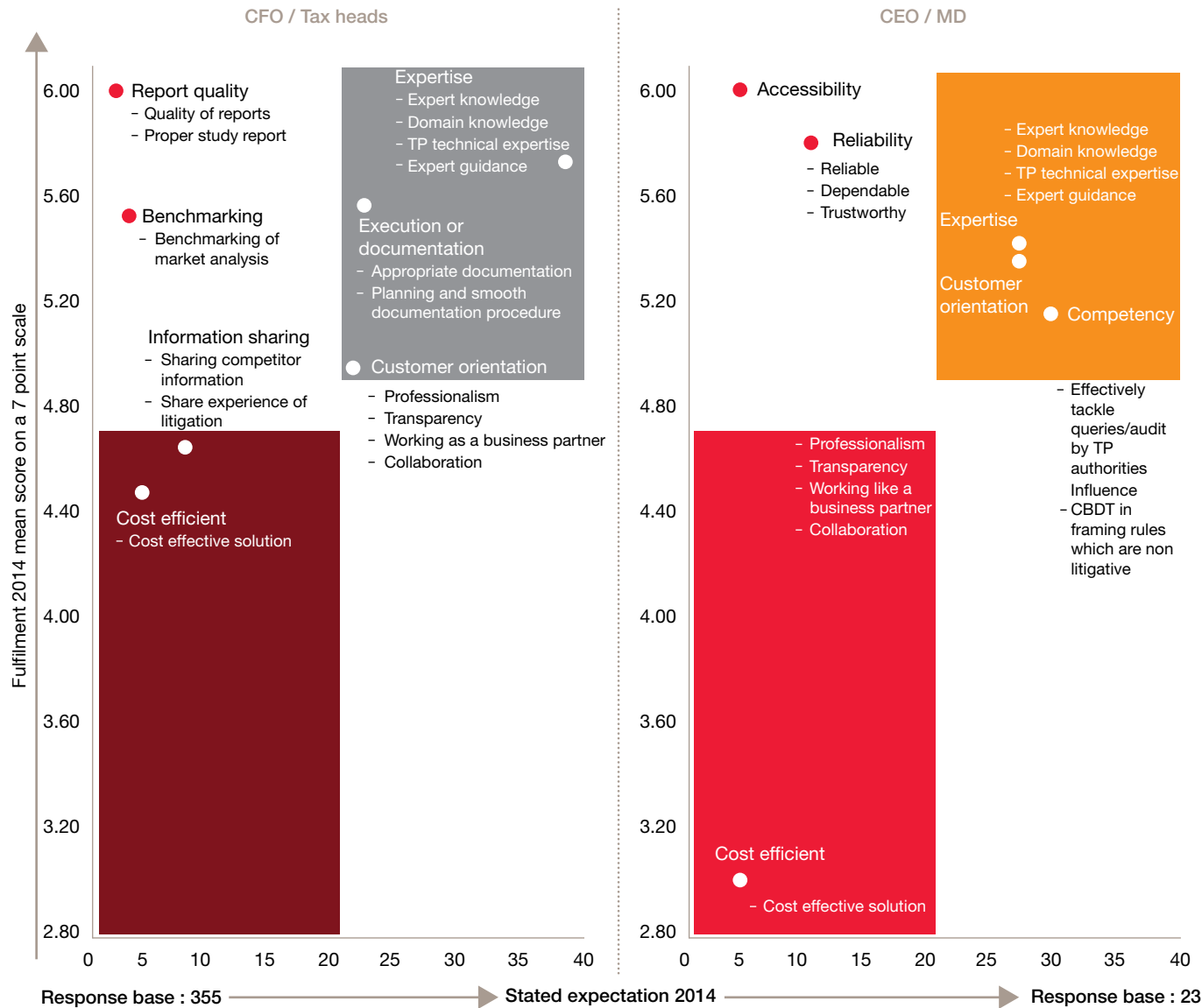
Recognising the fact that TP is an area of specialisation demanding effective risk management, the role of adequate expertise for addressing various requirements becomes pertinent. Big 4 accounting firms are the first choice for many since they benefit from their global network, infrastructure and technical expertise. Only 2% of the respondents prefer to opt for non-Big 4 consultants for their TP requirements.

While TP in India is considered to be important and finds place in the media ever so often, the awareness of most companies of any advancement is coming up short. This is evident from the fact that only 12% of the respondents admit that they are acquainted to BEPS while a meagre 9% are considering a change in their pricing model akin to BEPS. That said, with compliance being the focal point of attention, it is the consultants' role to introduce the companies to various ambits of emerging trends and the evolving subject. Most tax heads and CFOs require that their consultants bring technical expertise to the table while the CEO / MD participants look for competency and cost effective solutions.

Preference of external party



Top three expectations from TP consultants



Top three expectations from transfer pricing consultants

“Guidance, expertise and cost-effective solution”

“Working like a business partner”

“Fit for purpose and not an intellectual toy”

Top three best practices

“Speedy disposal of TP cases”

“Consideration of industry benchmark of gross margin for doing business in India”

“Keeping sharp focus on industry trends and taking corrective action in discussions with TP domain experts”

Others

Related party transactions under Companies Act 2013 and clause 49

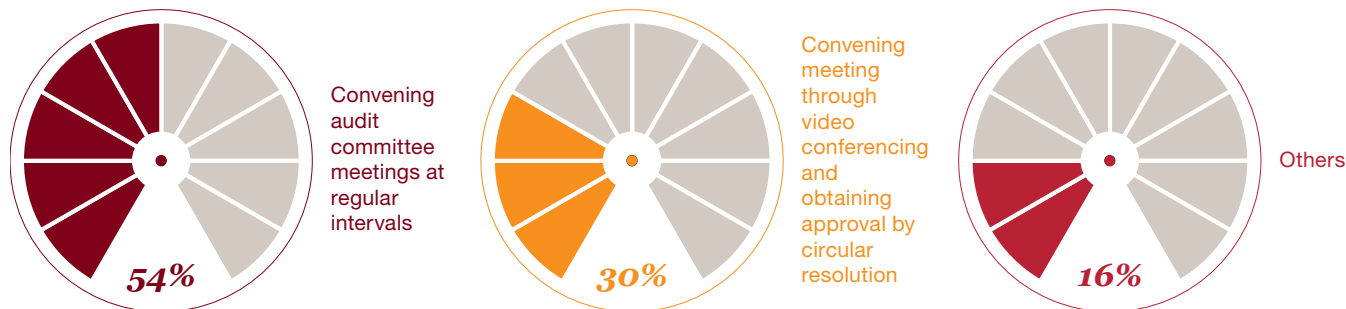
A new era in the Indian corporate governance and compliance is unveiled in relation to related party transactions (RPTs) with the recent Companies Act, 2013 (the Cos Act) and Clause 49 of the Equity Listing Agreement Guidelines issued by SEBI. While these regulations place more reliance on disclosure norms than on regulatory approvals, and aligns dealings between related parties with the 'arm's length principle', only **20%** of companies are clear with

the requirements of these amendments.

With these new regulations in place, it becomes pertinent to ensure that ease of compliance is adhered to. **Eight per cent** tax heads and CFOs are of the opinion that a clearly laid down and simple methodology is the need of the hour.

Though **40%** of the companies are positive on better corporate governance, they are facing tremendous challenges in implementation, such as obtaining prior approval of the audit committee and awareness of the exact definition for 'related parties'.

Plans for obtaining prior approval of the audit committee with respect to related party transactions

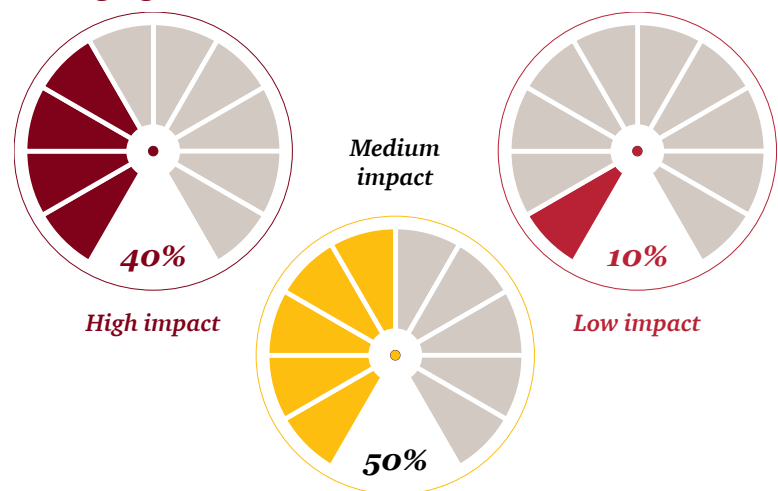


More than half of the CEOs / MDs are distressed with the increased accountability and personal liability put on the directors with **90%** of the respondents believing that the new provisions will have a medium to high level impact on their business operations. We understand that the relevant company personnel require adequate education on the applicable provisions to ensure compliance. It is also noticed that **42%** of the respondents are strengthening their internal control systems or seeking assistance from consultants to address these new requirements.

Immediate reaction when you hear transfer pricing in the Indian context

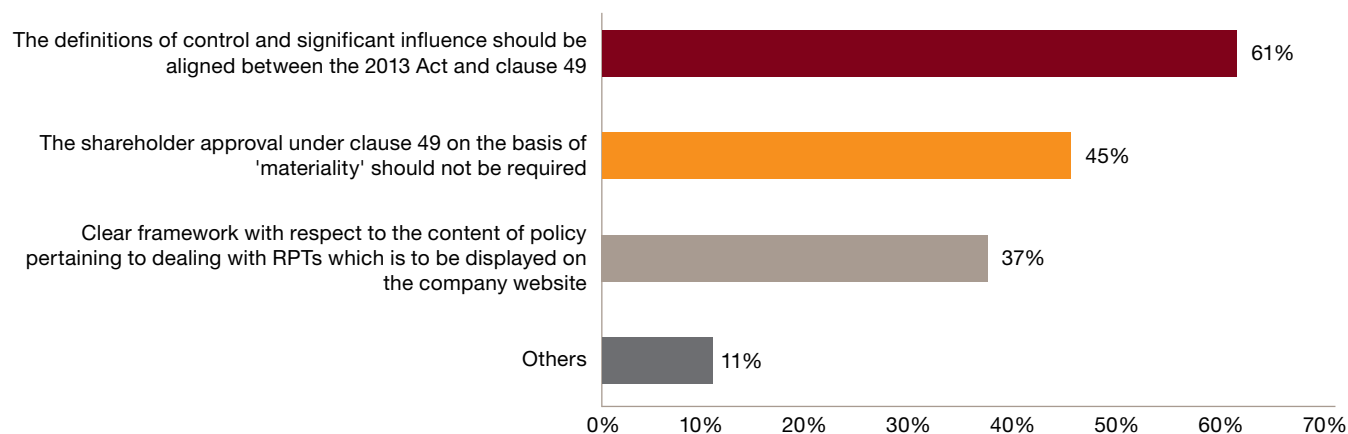
“The present law under the Companies Act 2013 lacks clarity and without any clarification and guideline, becomes stringent and industry unfriendly. It is a hindrance in backward or forward integration in a competitive environment. Compliance with the law in the true sense, is quite difficult to adhere to and a big risk for managers.”

Business impact of Companies Act, 2013 and Clause 49 of Equity Listing Agreement



The respondents have asked for the following changes:

Preferred changes in the provisions prescribed with respect to RTPs



The most preferred change will be aligning the definitions of significant influence and control under Companies Act with those prescribed under clause 49 of the Equity Listing Agreement Guidelines.



TP and Customs convergence

While TP has its own set of guidelines, lack of concurrence with other domains causes friction in complying with certain other regulations. An example of this is valuation for the purposes of Customs where lack of proper guidance coupled with conflicting interest of both departments cause undue hardship for setting arm's length standards under these regulations. It would be helpful for MNEs if tax authorities work in sync and harmonise compliance requirements.

Conclusion

'Look back'

- TP has become one of the biggest tax and reputational risk for MNEs to manage.
- TP matters are being discussed in board meetings frequently.
- Only one-fifth of the respondents have had a positive experience with the Indian TP audit procedure.

With the renewed focus of the centre on ease of doing business in India, the 'Make in India' campaign, etc, the light at the end of the tunnel is already beaming. Fixing the only two lacunae in the Indian TP regulations by allowing use of the range concept and multiple-year data for comparability purposes, the direction is firmly set. With the bilateral relations (for tax purposes) with the US opening up (where several MAP applications are expected to be resolved shortly), and India signing its first bilateral APA with Japan, the confidence quotient is certainly on the rise.

The government is already walking the talk; as we expect further positive action from that end, it is also onerous on the MNEs to bridge the gap. With BEPS around the corner, which, among other things, focusses on the transparency of information related to the global value chain of MNEs, the work is clearly cut out for everyone!

'Look ahead'

- Respondents have indicated a strong need to introduce risk-based assessment by TP officers to select TP cases for audit. Further, interestingly, the Tax Administration and Reform Commission suggests that Indian revenue authorities should move towards multi-year audits from the current single-year audits and the frequency of audits should be determined by risk assessment and compliance behaviour of the taxpayers and the availability of resources for audit.
- Respondents expect the government to introduce detailed rules on multiple-year data, inter-quartile range, economic adjustments, etc to reduce the extent of TP litigation in India. Further, it is suggested that Indian revenue authorities need to issue standard positions on pay-outs (such as management fees, royalties) and marketing intangibles as guidance to TPO would ease uncertainty and litigation for taxpayers.
- Respondents also expect the government to ease the TP compliance and regulatory requirements from the Companies Act and converge TP and Customs laws to the extent possible.



We sincerely thank all the respondents who willingly freed up their valuable time to make this survey as comprehensive and accurate as possible.

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