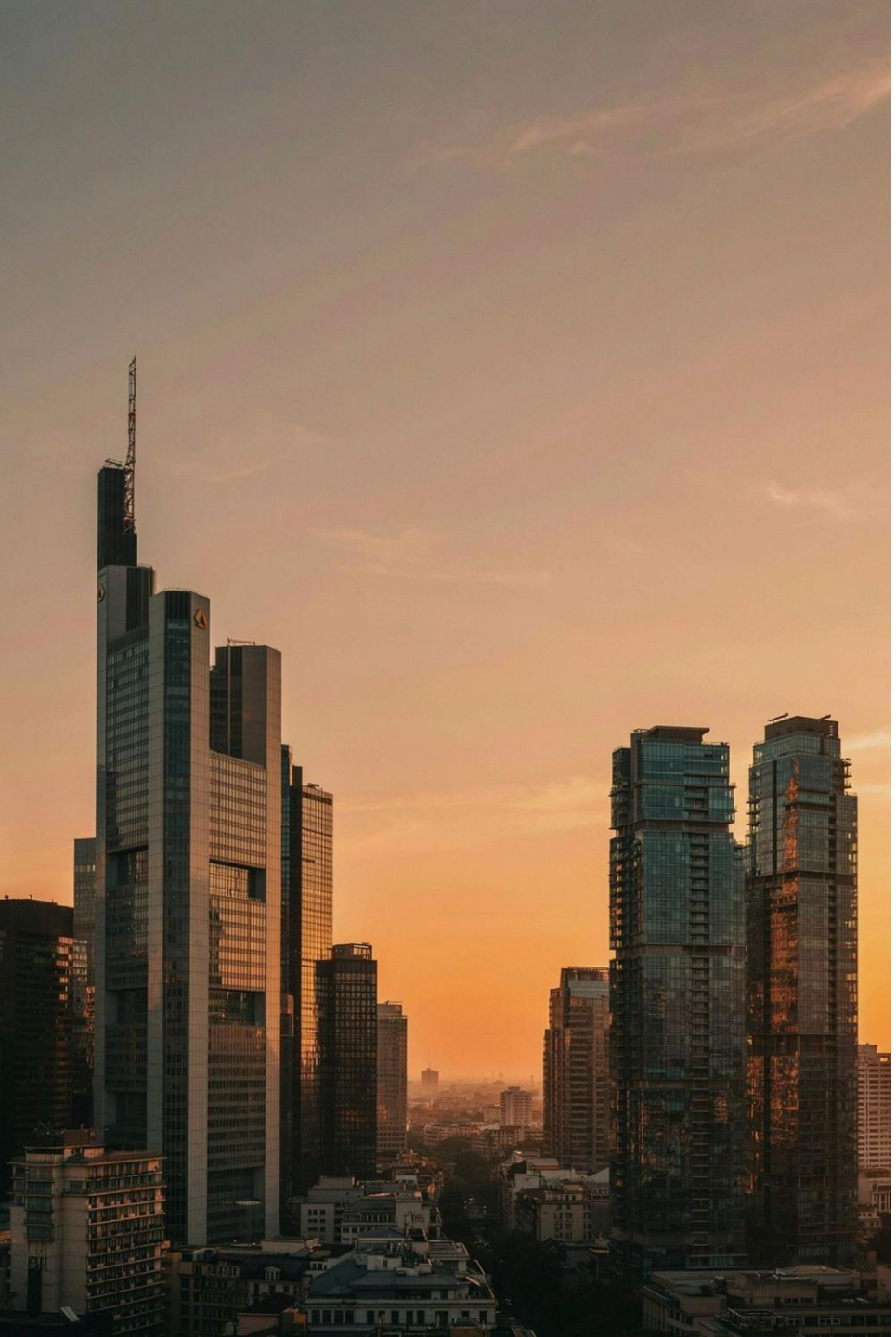


MAKHIJANI GERA & ASSOCIATES LLP

Transfer Pricing: Comparative overview of Germany vs India

Basic Overview

Germany

Transactions with related parties must follow the arm's-length principle. Companies are required to maintain appropriate transfer-pricing documentation to support their pricing and methodology. The documentation is generally not filed with the tax return but must be provided to the tax authorities upon request and may be reviewed during a tax audit.

India

Arm's-length principle applies to international transactions and specified domestic transactions with related parties. Companies are required to maintain transfer-pricing documentation and **file an annual accountant's report** (Form No. 48). The documentation may be reviewed by the tax authorities, including the Transfer Pricing Officer, during Transfer Pricing scrutiny assessment.

OECD Guidelines & Methods

Germany

OECD Guidelines are followed closely. The Law mirror the OECD Transfer Pricing Guidelines, including post-BEPS DEMPE.

Methods : CUP, Resale Price, Cost Plus, then TNMM and Profit Split. Standard methods preferred; TNMM widely accepted. **Transfer of functions to be carefully reviewed.**

India

OECD Guidelines persuasive, not binding. Authorities and the Tax Tribunal on few special cases (like AMP and intra-group services) may have contrary view. UN TP Manual views also considered.

Methods are mostly similar : CUP, RPM, CPM, TNMM, PSM, and Other Method (Rule 10AB). Most appropriate method — no hierarchy. TNMM is the most commonly used in practice.

Definition of Associated Enterprise / Related Party

Germany

Triggered by **25% or more** direct or indirect holding, controlling influence, or the ability to exercise influence over the other party.

India

26% or more voting power, plus deemed-AE tests: 51%+ of assets loan-financed, guarantee of 10%+ of borrowings, board control, or 90%+ raw material dependence.

Local File (TP Study)

Germany

Required where related-party transactions exceed thresholds (**~€6 Mio goods, €600k other services**). Extraordinary transactions need contemporaneous documentation. Submit within **30 days** of audit request. Transaction matrix also required.

India

Required if international transactions exceed **INR 10 Mio (€ 92,500)**. Transfer Pricing Study to be submitted within 30 days of audit request. Form 48 to be filed by **31 October** for all reportable transactions **regardless of value**. Transfer Pricing Study to be submitted within 30 days of audit request.

Master File

Germany

Required for entities with a Local File obligation and prior-year revenue of **€100m or more**. Provided on request — not proactively filed.

India

Filed by every Indian constituent entity of an international group. **Part B** applies if group revenue exceeds **INR 5 billion** and Indian international transactions exceed **INR 500 Mio** (or intangibles above INR 100 Mio).

Specific form is used to notify CbCR obligations for Indian constituent entities of qualifying multinational groups.

FAR Analysis Requirements

Germany

Mandatory in the Local File. Strong focus on **functional substance**, who controls risk, and DEMPE functions. The routine vs. entrepreneur characterization important.

India

Critical in TP documentation as well as new replaced Form 48 (Transfer Pricing Audit).

Loss by Routine Entities

Germany

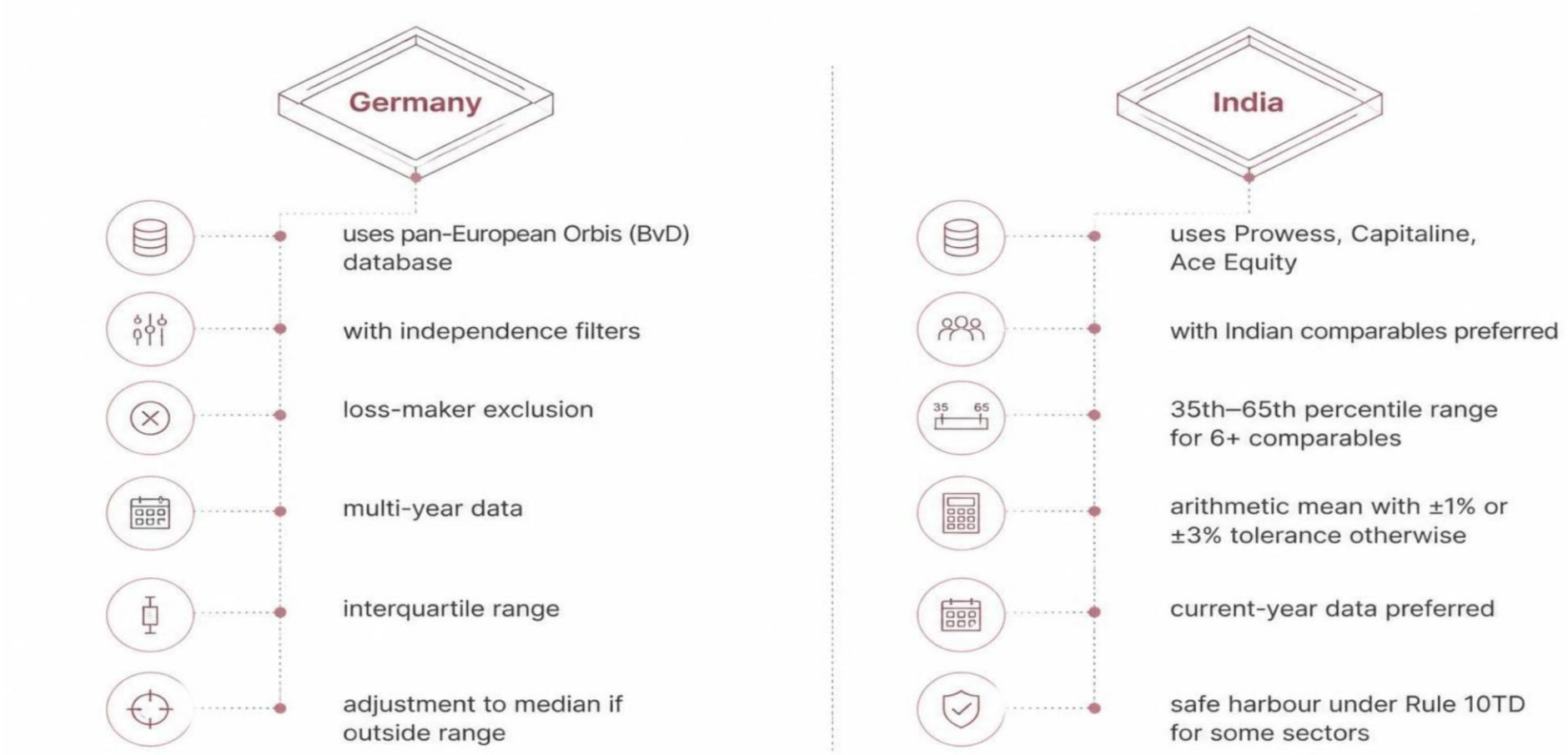
Contract manufacturers, limited-risk distributors, and service providers are not expected to sustain continuous losses. 5-year outer horizon in audit practice. Beyond that, losses are presumed non-arm's-length and adjusted to the median.

India

No formal year rule. Routine entities are expected to earn a positive return. A loss for a low-risk entity often triggers an adjustment. Persistent loss-makers (commonly **3 years**) are also excluded as comparables.



Comparability / Benchmarking



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