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THE VALIDITY OF AMP EXPENDITURE AS AN INTERNATIONAL TRANSACTION: A CASE STUDY OF BEAM GLOBAL IN INDIA AND ITS IMPLICATIONS FOR INDONESIA

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Abstrak

Penelitian ini menelaah keabsahan biaya iklan, pemasaran, dan promosi sebagai transaksi internasional dalam sengketa transfer pricing melalui studi kasus Beam Global Spirits & Wine Pvt. Ltd. Dengan pendekatan yuridis normatif dan studi kasus, analisis difokuskan pada putusan pengadilan India, ketentuan Pasal 92B dan 92F Undang-Undang Pajak Penghasilan India, serta Pedoman OECD 2022. Temuan utama menunjukkan bahwa Bright Line Test tidak memiliki dasar hukum dan tidak mencerminkan substansi ekonomi transaksi. Pengadilan Tinggi Delhi menegaskan bahwa penyesuaian transfer pricing hanya sah jika terdapat transaksi internasional yang terbukti dan dianalisis menggunakan metode yang diakui hukum. Penelitian menyimpulkan bahwa Bright Line Test tidak selaras dengan hukum domestik maupun prinsip OECD, dan menegaskan pentingnya analisis fungsional. Bagi Indonesia, kasus ini menekankan perlunya reformasi regulasi, peningkatan dokumentasi, dan pendekatan berbasis bukti untuk menjamin keadilan serta kepastian hukum.

Kata Kunci: Transfer pricing, biaya AMP, Bright Line Test, Pedoman OECD, perpajakan internasional

Abstract

This study examines the legal validity of advertising, marketing, and promotion expenses as international transactions in transfer pricing disputes through the case of Beam Global Spirits & Wine Pvt. Ltd. Using a normative juridical approach and case study method, the analysis focuses on Indian court decisions, Sections 92B and 92F of the Indian Income Tax Act, and the 2022 OECD TPG. The key findings show that the Bright Line Test lacks legal basis and does not reflect the economic substance of the transactions. The Delhi High Court ruled that transfer pricing adjustments are valid only when an international transaction is proven and analyzed using legally recognized methods. The study concludes that the Bright Line Test is inconsistent with domestic law and OECD principles, emphasizing the importance of functional analysis. For Indonesia, this case highlights the need for regulatory reform, improved documentation, and evidence-based approaches to ensure fairness and legal certainty.

Keywords: *Transfer pricing, AMP expenses, Bright Line Test, OECD Guidelines, international taxation.*

A. Introduction

Expenditure on advertising, marketing, and promotion (AMP) is an important component of the business strategy of multinational companies. However, in the context of transfer pricing, AMP expenses often raise debate about whether they can be categorized as international transactions that require transfer price adjustments. The dispute between the

Indian tax authorities and Beam Global Spirits & Wine (India) Pvt. Ltd. became a prominent case study in assessing the validity of quantitative approaches such as the Bright Line Test and the importance of proving the substance of the transaction.

Previous research has shown that spending on AMP has long been a concern in transfer pricing studies, particularly related to the formation of marketing intangibles and profit allocation between jurisdictions.[1] emphasizing that AMP strategically contributes to creating brand value that cross-border affiliated entities can enjoy. In this context, AMP spending impacts the domestic market and can affect the distribution of global profits within multinational business groups. Nevertheless, quantitative approaches such as the Bright Line Test used to measure the fairness of AMP spending have drawn criticism.[2] considers that the Bright Line Test tends to ignore the parties' economic substance and actual behavior, so that it does not reflect the arm's length principle in its entirety. This critique reinforces the urgency to adopt a more contextual and substance-based approach.

In response to the limitations of the quantitative approach, the OECD Transfer Pricing Guidelines emphasize the importance of functional, asset, and risk analysis in determining appropriate transfer pricing. This view is supported by,[3] which emphasizes that transfer pricing assessments should consider the tangible contribution of each entity in creating economic value. Thus, previous research provides a strong conceptual basis for assessing the validity of AMP expenditures as international transactions, while highlighting the importance of a legal and economic substance-based approach in cross-jurisdictional transfer pricing practices.

In the Beam Global case, the Indian tax authorities stated that AMP's expenditure benefited Associated Enterprise and therefore should be compensated. However, the New Delhi High Court rejected the Bright Line Test approach and held that transfer price adjustments are only valid if there is an international transaction that can be substantiated by

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[1] Wagdy M. Abdallah, *Critical Concerns in Transfer Pricing and Practice*, *Critical Concerns in Transfer Pricing and Practice* (Seton Hall University, United States: Bloomsbury Publishing Plc., 2004); Klaus Dieter Zschorsch, "Catalytic Combustion," in *The John Zink Hamworthy Combustion Handbook, Second Edition: Volume 1 - Fundamentals*, ed. Wim Helwegen and Luca Escoffier (Foresight Valuation Group LLC, 260 Sheridan Ave., Palo Alto, 94306, CA, United States: Pan Stanford Publishing Pte. Ltd., 2012), 137–57, https://doi.org/10.1201/b11619; A. G. Slater, "International Transfer Pricing," *Management Decision* 15, no. 6 (June 1, 1977): 550–60, https://doi.org/10.1108/eb001146.

[2] Cut Sarah Dwindahany and Subagio Efendi, "Should Excessive Marketing Expenses Be Remunerated? Lessons From Indonesia'S Tax Court Decisions," *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 1 (July 9, 2024): 1–33, https://doi.org/10.18860/j.v15i1.26915.

[3] Wolfgang Schön, "Transfer Pricing – Business Incentives, International Taxation and Corporate Law," in *Fundamentals of International Transfer Pricing in Law and Economics* (Max Planck Institute for Tax Law and Public Finance, Department of Business and Tax Law, Munich, Germany: Springer Berlin Heidelberg, 2012), 47–67, https://doi.org/10.1007/978-3-642-25980-7_4; Iris Burgstaller, "ESG Transformation and Transfer Pricing Implications," *International Transfer Pricing Journal* 2022, no. 1 (2022): 3–12, https://doi.org/10.59403/sf1x26.

the provisions of Articles 92B and 92F of the Indian Income Tax Act. This research aims to juridically analyze AMP disputes in the context of Indian law, focusing on court decisions and the interpretation of relevant laws. In addition, the study also examines the principles in the OECD Transfer Pricing Guidelines 2022 and how they are confirmed or rejected in Indian legal practice. Furthermore, this paper identifies important lessons that Indonesia can draw from the Beam Global case, particularly in formulating transfer pricing policies that are fair, evidence-based, and in line with international practice. With a juridical-comparative approach and case studies, this paper integrates the analysis of court decisions, the interpretation of laws, and OECD principles, highlighting the normative and practical implications for the Indonesian tax system.

B. Research Method

This study uses a normative-juridical approach with a case study method to analyze the validity of expenditure for AMP as an international transaction within the tax law framework. Data was obtained from the New Delhi High Court's decision in ITA cases No. 155/2022 and 156/2022, the provisions of Indian domestic law such as Articles 92B and 92F of the Income Tax Act, and international documents such as the OECD Transfer Pricing Guidelines 2022. The analysis was carried out qualitatively using legal interpretation and normative comparison techniques, to identify the legal principles used by the Court in assessing the existence of international transactions and evaluating the suitability of the Bright approach Line Test with Arm's Length principles and international standards. This study also examines the implications of decisions on transfer pricing practices and cross-jurisdictional tax law enforcement.[4]

C. Result And Discussion

1. Implementation of the Bright Line Test by the Tax Authority

In a dispute between Beam Global Spirits & Wine (India) Pvt. Ltd. and the Indian tax authorities, the Transfer Pricing Officer applied a quantitative approach known as the Bright Line Test to assess whether expenditures for AMP could be categorized as international transactions involving Associated Enterprises. The Bright Line Test compares the ratio of AMP spend to total sales with the average AMP ratio of a comparable company in a similar industry. If a taxpayer's expense exceeds that threshold, the difference is considered a "non-routine"

[4] Irwansyah, *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel*, ed. Ahsan Yunus, Cet-4 (Yogyakarta: Mirra Buana Media, 2022).

expense that benefits the Associated Enterprise and must be compensated through a transfer price adjustment.

In the case of Beam Global, the Transfer Pricing Officer noted that the Company's AMP expense ratio reached 35.69% of total sales, a figure rated very high compared to comparable entities in the alcoholic beverage industry. The Transfer Pricing Officer concluded that the expenditure was not solely for the benefit of local businesses, but rather created marketing intangibles that directly benefited Associated Enterprise as the owner of the global trademark used by Beam Global India. The Transfer Pricing Officer also highlighted that AMP expenditures were not reported in Form 3CEB, a mandatory document for reporting international transactions in India, and were not explicitly analyzed in the transfer pricing study prepared by the taxpayer. Based on these findings, the Transfer Pricing Officer concluded that AMP's expenses should be categorized as international transactions subject to transfer price adjustment by Section 92 of the Indian Income Tax Act.

However, Beam Global India rejects all such claims. The Company declares that AMP's expenditures are part of a legitimate and independent local business strategy, without direction or arrangement from Associated Enterprise. There is no evidence of any agreement or compensation obligation from Associated Enterprise, so it cannot be categorized as an international transaction. Beam Global also rejected the application of the Bright Line Test because the method has no legal basis in the Indian tax system and has been rejected in various court rulings, including the Sony Ericsson and Maruti Suzuki cases. According to the Company, the Bright Line Test is inferential and speculative, not by the principle of economic substance that is the basis for the transfer pricing assessment.

The New Delhi High Court gave an important ruling that set a precedent in the practice of transfer pricing in India. The Court stated that the transfer price adjustment is only valid if an international transaction can be proven to be real and substantial. International transactions cannot be inferred solely from the magnitude of AMP's expenditures or the affiliation relationship between domestic entities and Associated Enterprises. The Court also expressly rejected the validity of the Bright Line Test as a method of assessing transfer prices. The Bright Line Test was declared to have no explicit legal basis in the Indian Income Tax Act and has been rejected in previous cases. The quantitative approach is considered too simplistic, ignores the principle of economic substance, and is inconsistent with the evidentiary principle in tax law because it concludes the involvement of Associated Enterprise without any concrete evidence or clear arrangements.

Instead, the Court affirmed that transfer price adjustments must be made through lawful methods as set out in Article 92C(1), such as the Comparable Uncontrolled Price, Resale Price Method, Cost Plus Method, and other internationally recognized methods (p. 13, para. 69). The assessment should be based on the identification of real transactions and accompanied by a thorough analysis of functions, assets, and risks. This ruling reinforces that the transfer pricing approach must be based on economic substance, concrete evidence, and legally valid methods, not on quantitative assumptions with no normative legitimacy.

The approach used by the Transfer Pricing Officer in the Beam Global case is contrary to the basic principles of the Arm's Length Principle in international tax law, which requires that transactions between affiliated entities be conducted as if they were independent parties [5]. According to the OECD Transfer Pricing Guidelines, transfer pricing assessments should be based on analyzing functions, assets, and risks to identify each party's tangible contribution.[6] Quantitative approaches, such as the Bright Line Test criticized for ignoring the economic substance and context of transactions and risking legal uncertainty.[7] In Indian tax law, the Bright Line Test is considered invalid because a clear evidentiary mechanism does not support it and has no legitimacy in domestic regulations. Criticism of the Bright Line Test was also delivered by academics and practitioners who emphasized the importance of a substance-based and evidence-based approach in assessing cross-jurisdictional transactions.[8]

The Bright Line Test approach cannot be used as a valid basis for concluding the existence of international transactions or for making transfer price adjustments. The Bright Line Test has no explicit legal basis in the Indian tax system and has been rejected by the courts as a legitimate method. Quantitative approaches that are inferential and not supported by concrete evidence should be rejected in fair and accountable transfer pricing practices. Transfer price adjustments can only be made if there is an international transaction that can be

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[5] Aitor Navarro, "Fundamentals of Transfer Pricing. A Practical Guide, M. Lang, G. Cottani, R. Petruzzi & A. Storck (Editors), Kluwer Law International, 2019.," *Intertax* 47, no. 12 (December 1, 2019): 1125–27, https://doi.org/10.54648/TAXI2019115.

[6] Veronika Solilová, "Revised OECD Transfer Pricing Guidelines and the Czech Tax Policy," *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* 59, no. 4 (2011): 301–8, https://doi.org/10.11118/actaun201159040301.

[7] Christian Plesner Rossing and Carsten Rohde, "Transfer Pricing: Aligning the Research Agenda to Organizational Reality," *Journal of Accounting and Organizational Change* 10, no. 3 (2014): 266–87, https://doi.org/10.1108/JAOC-03-2012-0017; Kunka Petkova and Stefan Greil, "Simplifying Transfer Pricing through a Risk-Based Approach: A Unilateral Proposal to Reduce Administrative and Compliance Costs," *Bulletin for International Taxation* 79, no. 1 (2025): 2–14, https://doi.org/10.59403/49dy9r.

[8] Ajay Kumar, "Making International Tax Law: Analysing Tax Jurisprudence in India," in *Locating India in the Contemporary International Legal Order* (University of Dubai, Dubai, United Arab Emirates: Springer India, 2018), 127–48, https://doi.org/10.1007/978-81-322-3580-4_7; Monica Singhania, "Analyzing Indian Transfer Pricing Regulations: A Case Study," *International Research Journal of Finance and Economics* 40 (2010): 203–14.

substantially proven, through a thorough analysis of each party involved in the transaction's functions, assets, and risks. The New Delhi High Court's ruling in the Beam Global case reinforces the principle that economic substance and factual evidence are the primary basis for enforcing international tax law. This ruling also affirms the importance of caution in using quantitative approaches that lack legal legitimacy and the need for transparent documentation and evidence in transfer pricing practices across jurisdictions.

2. Views and Findings of the Income Tax Appellate Tribunal

In the case between Beam Global Spirits & Wine (India) Pvt. Ltd. and the Indian tax authorities, the Income Tax Appellate Tribunal rejected the transfer price adjustment made by the Transfer Pricing Officer based on the Bright Line Test. The Tribunal held that the Bright Line Test had no explicit legal basis in the Indian Income Tax Act, and therefore, it was not legally used to infer the existence of an international transaction or to make an adjustment of the transfer price. The Income Tax Appellate Tribunal emphasized that before the transfer price analysis is carried out, the tax authorities must prove that there is an international transaction between the taxpayer and the Associated Enterprise. An affiliate relationship or an Associated Enterprise trademark cannot indicate intentional cooperation.

The Tribunal held that Beam Global India's expenditure on AMP was part of a legitimate local business strategy, not a service to Associated Enterprise. There was no evidence of any arrangement or direction from Associated Enterprise indicating active involvement in the expenditure. The Income Tax Appellate Tribunal also referred to the rulings of Maruti Suzuki and Sony Ericsson, which had rejected the Bright Line Test as a legitimate method of determining arm's length price. The Court affirmed that the existence of an international transaction cannot be inferred solely from the magnitude of AMP's expenditure or a quantitative comparison, but must be based on factual evidence showing an arrangement between the domestic entity and the Associated Enterprise. By referring to this jurisprudence, the Income Tax Appellate Tribunal strengthened its position that the Bright Line Test does not meet the standard of legal proof and cannot be used as a basis for legitimate transfer pricing practices. The comparison of the position of the Transfer Pricing Officer and the Income Tax Appellate Tribunal is shown in Table 1.

Table 1 Comparison Matrix of Transfer Pricing Officer and Income Tax Appellate Tribunal Positions

Aspects	Transfer Pricing Officer Position	Position of Income Tax Appellate Tribunal
Customization Policy	AMP expenses are considered to create *intangible marketing* for the Associated Enterprise, so they must be compensated.	AMP spending is part of a local business strategy; there is no evidence that it is done for Associated Enterprise.
Methods Used	Bright Line Test: comparing AMP to the industry average, the difference is considered "non-routine".	The Bright Line Test was rejected as having no legal basis and was invalid under the Indian Income Tax Act.
Proof of International Transaction	There is no written agreement, but the benefits to Associated Enterprise are sufficient to conclude the transaction.	There must be tangible evidence of a joint arrangement, understanding, or action between the taxpayer and the Associated Enterprise.
Reporting and Documentation	AMP was not reported in Form 3CEB or analyzed in the transfer pricing study.	The absence of reporting is insufficient to conclude an international transaction without substantial evidence.
Approach to the Arm's Length Principle	Adjustments are made based on the quantitative difference of AMP to the comparator.	Transfer price adjustments are only valid if made through the method set out in Article 92C(1).
Jurisprudence Reference	It still maintains the Bright Line Test even though it has been rejected in the Sony Ericsson case.	Referring to and following the decision of Sony Ericsson and Maruti Suzuki, which explicitly rejected the Bright Line Test.
Conclusion	AMP is an international transaction that the Associated Enterprise must compensate for.	The transfer price adjustment is canceled if no international transactions can be legally proven.

Source: Research Results

The transfer pricing approach should be based on economic substance, not just a formal form. Changes in the global tax landscape through the OECD/G20 BEPS project have highlighted the issue of fairness and effectiveness in international tax law enforcement.[9] One of the main criticisms in transfer pricing practices is the allocation of AMP costs, especially related to intangible assets and affiliate relationships. AMP often strengthens Associated Enterprise's brand without a clear compensation arrangement, raising questions about profit

[9] Bastiaan van Ganzen, Dirk Broekhuijsen, and Henk Vording, "Contract Theory as a Guide to Fairness in Tax Treaties," in *Fairness in International Taxation* (Institute of Tax Law, Economics of Leiden University, Leiden, Netherlands: Bloomsbury Publishing Plc., 2025), 31–54, https://doi.org/10.5040/9781509968107.ch-002; Tamir Shanan and Doron Narotzki, "Taxation of Cross Border Migrations: Re-Evaluating the Allocation between Home Country and Host Country," in *Fairness in International Taxation* (Haim Striks Faculty of Law, College of Management Academic Studies, Israel: Bloomsbury Publishing Plc., 2025), 172–92, https://doi.org/10.5040/9781509968107.ch-008.

distribution and potential tax avoidance.[10] Transfer price adjustments should consider the actual behavior of the parties, not quantitative approaches such Bright Line Test that ignores the complexity of the transaction and the factual evidence. Bright Line Test risks producing inaccurate decisions and opening up space for tax avoidance and speculative interpretation.[11] In transfer pricing, the principle of substance over form must be prioritized, and requires strong proof of the existence of international transactions, including through the analysis of functions, assets, and risks carried out by each party.

Changes in the global tax policy landscape, including proposed taxation of the digital economy and the OECD/G20 BEPS framework, raise profound normative issues related to fairness in tax treaties, fair distribution of tax revenues, and the legitimacy of the international tax policy formulation process. An interdisciplinary analysis of transfer pricing also includes the allocation of resources in multinational companies, distortions between economic and fiscal objectives, and practical aspects related to handling intangible assets, capital, and risks. Although AMP spending is not explicitly discussed, criticism of transfer pricing practices in general can include concerns over the allocation and justification of such costs within various tax frameworks.

The Bright Line Test approach cannot be used as a valid legal basis in transfer pricing practices. The Tribunal has acted by legal principles and economic substance by rejecting the transfer price adjustment made based on the Bright Line Test, as the method has no legal legitimacy in the Indian tax system. Transfer price adjustments can only be made if international transactions can be proven in real and substantial terms. The affiliation relationship between the domestic entity and the Associated Enterprise and the unilateral benefits that the Associated Enterprise may receive are insufficient to infer the existence of an international transaction. There must be concrete evidence in the form of arrangements, understandings, or joint actions that show the active involvement of both parties in the transaction. Thus, inferential and unsupported by concrete evidence, quantitative approaches such as the Bright Line Test should be rejected in fair and accountable transfer pricing practices. The Income Tax Appellate Tribunal's decision in the Beam Global case reinforces the principle that economic substance and factual evidence are the primary foundation in the equitable enforcement of international tax law based on the principle of fairness.

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[10] J. Scott Wilkie, "Reflecting on the 'Arm's Length Principle': What Is the 'Principle'? Where Next?," in *Fundamentals of International Transfer Pricing in Law and Economics* (Berlin, Heidelberg: Springer Berlin Heidelberg, 2012), 137–56, https://doi.org/10.1007/978-3-642-25980-7_8.

[11] Ivan Ozai, "Policy Forum: Judicial Line Drawing and Implications for Tax Avoidance," *Canadian Tax Journal* 71, no. 4 (2023): 1053–68, https://doi.org/10.32721/ctj.2023.71.4.pf.ozai.

3. Juridical Analysis of the New Delhi High Court

The New Delhi High Court has expressly held that an analysis of the Arm's Length Principle as set out in Chapter X of the Indian Income Tax Act can only be done if a real and substantial proven international transaction exists. In this case, the Court rejected the inferential approach taken by the Transfer Pricing Officer, who concluded the existence of an international transaction solely because AMP's expenditure was considered "excessive" compared to the comparator entity.

The Court affirmed that the existence of an international transaction cannot be assumed solely based on affiliate relationships or the magnitude of AMP's expenses. Instead, the burden of proof is entirely on the part of the tax authority (Revenue) to show that there was indeed an international transaction involving the Associated Enterprise. In its ruling, the Court stated explicitly: "The very existence of an international transaction cannot be presumed... the burden is on the Revenue to first show the existence of an international transaction." Thus, the Court rejected an approach that inferred the existence of a transaction only from quantitative indicators, and affirmed that transfer pricing analysis can only be initiated if there is an adequate legal basis and factual evidence.

The Court also explicitly rejected the Bright Line Test as a legitimate method in determining international transactions and adjusting transfer prices. This rejection is based on three main considerations: The Bright Line Test has no explicit legal basis in the Indian Income Tax Act. There is no provision governing or acknowledging the Bright Line Test as a valid method of determining the Arm's Length Principle. Second, the Bright Line Test has been rejected in previous rulings, including in the Sony Ericsson and Maruti Suzuki cases, which set an important precedent in transfer pricing jurisprudence in India. Third, the Bright Line Test concludes the existence of international transactions only from the quantitative differences in AMP expenditures, without considering whether there is an arrangement, understanding, or joint action between domestic entities and Associated Enterprises. The Court stated unequivocally: "The court has expressly negatived the Bright Line Test in Sony Ericsson... the existence of an international transaction will have to be established dehors the Bright Line Test."

Thus, the Bright Line Test is considered a speculative approach and cannot be used as a legal basis for legitimate transfer pricing practices. Further, the Court gave a juridical interpretation of Sections 92B and 92F of the Indian Income Tax Act. Article 92B(1) defines an "international transaction" as a transaction between two or more Associated Enterprises that affects profits, revenues, or assets, including joint arrangements for fees or services. Meanwhile, Article 92F(v) expands the definition of "transaction" to include a mutual arrangement or understanding, whether written or unwritten, even if it is not legally enforceable.

However, although the definition is broad, the Court affirmed that concrete evidence of such an arrangement or understanding is still required for an expenditure, such as AMP, to be categorized as an international transaction. In other words, there must be active involvement from both parties in the form of factually provable arrangements. The Court stated: "Even if the word 'transaction' is given its widest connotation... it is still incumbent on the Revenue to show the existence of an 'understanding' or an 'arrangement." This interpretation reinforces the principle that substance and factual evidence are absolute requirements in the analysis of transfer pricing and that an assumption or inference-based approach is not acceptable within the applicable legal framework.

In the international tax law literature, the Bright Line Test is criticized for failing to capture the complexity of cross-jurisdictional transactions involving actuality's economic, legal, and behavioral dimensions.[12] The Bright Line Test is considered too rigid and binary, and risks producing inaccurate decisions. The inconsistency between legal form and economic substance can undermine the purpose of tax regulation.[13] A legitimate approach should consider the economic substance, including each party's functions, assets, and risks. Transfer pricing judgments should not be based on assumptions or formal forms, but should reflect the actual economic realities and behaviors in the transaction.

Existing literature and Indian jurisprudence predominantly focus on rejecting the Bright Line Test and reiterating the requirement of factual proof under Sections 92B and 92F of the Income Tax Act, yet they do not provide an operational framework that integrates the legal evidentiary threshold for establishing an “international transaction” with the OECD-based functional analysis needed to determine whether AMP expenditure truly creates cross-border value. This paper fills that gap by proposing a two-step doctrinal test: an Existence Test, which identifies positive indicators of an arrangement, such as instructions, cost-sharing mechanisms, reimbursement patterns, shared Key Performance Indicators, or brand governance manuals, as the initial burden on the Revenue; and an Allocation Test, which allocates value using the

[12] Samantha M. Rollins, “Isn’t It Obvious? How Klein’s Definition of Analogous Prior Art Conflicts with the Supreme Court’s Vision for Obviousness,” *Iowa Law Review* 98, no. 3 (2013): 1377–97, https://doi.org/10.2139/ssrn.2033993; Todd Vare and Michael Wever, “A Divided Federal Circuit Resolves Divided Induced Infringement of Method Claims,” *Nanotechnology Law and Business* 9, no. 3 (2012): 309–11.

[13] Ozai, “Policy Forum: Judicial Line Drawing and Implications for Tax Avoidance.”

function, asset, and risk analysis through the legally recognized methods under Section 92C(1), without relying on the Bright Line Test. The novelty lies in offering a replicable, evidence-driven analytical structure that unifies legal proof and economic substance while also providing a transplantable framework for jurisdictions such as Indonesia that face similar AMP-related transfer pricing controversies.

The New Delhi High Court has set a strict and law-based standard in determining whether or not transfer price adjustments are valid. The Court emphasized that the transfer price adjustment can only be made if there is an international transaction that can be legally and factually proven. Inferential and quantitative approaches, such as the Bright Line Test, which have no explicit legal basis and are not supported by concrete evidence, cannot be used in international tax law enforcement. An interpretation of Articles 92B and 92F shows that although the definition of "transaction" is broad, it is still necessary to have a common arrangement or understanding that can be concretely proven. Thus, economic substance and factual evidence are absolute requirements in transfer pricing analysis. This ruling reinforces the principle that justice and legal certainty in international taxation can only be achieved through a fact-based and legal approach, not through unfounded assumptions or inferences. This approach is an important foundation for fair, transparent, and accountable transfer pricing practices in an increasingly complex global context.

4. Interpretation of Sections 92B and 92F of the Indian Income Tax Act, 1961

In its ruling, the New Delhi High Court gave an in-depth juridical interpretation of two key articles in the Indian Income Tax Act, 1961: Article 92B(1) and Article 92F(v). Article 92B(1) defines an "international transaction" as a transaction between two or more Associated Enterprises that affects either party's profits, revenues, losses, or assets. This definition includes various transactions, including purchases, sales, provision of services, loans, and joint arrangements for fees or services. Meanwhile, Article 92F(v) expands the scope of the definition of "transaction" to include arrangements, understandings, or joint actions between the parties concerned, whether written or unwritten, even if such arrangements are not legally enforceable. Thus, textually, these two articles provide a wide scope of interpretation of what can be categorized as an international transaction.

Nevertheless, the Court affirmed that the broad definition does not remove the burden of proof. To categorize an expenditure, such as AMP, as an international transaction, concrete evidence is still needed for such arrangements or understandings. In this case, the Court stated explicitly: "Even if the word 'transaction' is given its widest connotation... it is still incumbent on the Revenue to show the existence of an 'understanding' or an 'arrangement'." The Court also rejected the inferential approach that inferred the existence of an international transaction simply because AMP's expenditure was considered "excessive" compared to the comparator entity. This kind of approach is considered legally invalid because it is not supported by the evidentiary mechanism regulated in the legislation.

Through the Finance Act 2012, the Government of India expanded the scope of Section 92B by adding an explanation covering several additional transaction types. This explanation states that the use of intangible property (such as trademarks, patents, and logos), business restructuring, and transactions that impact future profits or assets are included in the scope of "international transactions". This addition aims to clarify and strengthen the jurisdiction of tax authorities in supervising cross-border transactions.

However, the New Delhi High Court emphasized that the addition of the explanation was clarifying, not constitutive. This means that even if the scope of the definition is expanded, the burden of proof remains on the tax authorities. This explanation cannot be used to conclude the existence of international transactions without concrete evidence. The Court stated: "The insertion of the Explanation was merely aimed at lending clarity... the Revenue does not stand absolved of proving or establishing the existence of a transaction itself." Thus, expanding the definition through legislation cannot be used as a basis for automatically concluding the existence of international transactions. Proof remains a central element in the assessment of transfer pricing. The Court expressly rejected an approach based on assumptions or inferences in determining the existence of an international transaction. In the context of AMP issuance, the Court held that the unilateral benefits Associated Enterprise might have received were insufficient to conclude that an international transaction had occurred. There must be active involvement from both parties in the form of a joint arrangement or understanding that can be proven factually.

Further, the Court affirmed that the transfer price adjustment could not be made simply because the reported price is considered "unreasonable" or "excessive" based on a quantitative comparison. Adjustments are only valid if the transaction meets the legal definition and can be factually identified. In this case, the Court stated: "An 'assumed' price cannot form the reason for making an arm's length price adjustment." Thus, an assumption-based approach, such as the Bright Line Test, cannot be used as a valid legal basis in transfer pricing practices. The assessment must be based on economic substance, real evidence, and legally recognized methods, as affirmed in this judgment.

The interpretation of tax law in India is not only technical, but also considers policy aspects and their impact on Foreign Direct Investment.[14] In addition, Indian courts often refer to international models and commentaries, such as the OECD Transfer Pricing Guidelines and the United Nations Model Tax Convention, as references in interpreting the provisions of bilateral tax treaties.[15] This shows that the approach used by the courts is harmonious with international standards and does not rely solely on domestic legal texts.

In the context of the interpretation of Sections 92B and 92F of the Indian Income Tax Act, a legitimate approach in the assessment of transfer pricing should be based on the parties' economic substance and actual behaviour, not mere formal forms or statistical assumptions. An accurate valuation must reflect the economic realities of the transaction, including the functions performed, the assets used, and the risks incurred by each entity. Although both articles provide broad definitions of international transactions, it should be emphasized that the broadness of the definition does not remove the burden of proof. Before adjusting the transfer price, the tax authority must still show concrete evidence of an arrangement or understanding between the relevant parties. Quantitative approaches such as the Bright Line Test, which deduces the existence of international transactions only from numerical differences, are legally invalid because they ignore economic context and substance. An accountable interpretation of law must be based on verifiable facts, not mere inferences or affiliations. Thus, an evidence-based approach and economic substance are necessary to ensure justice and legal certainty in international tax practice.

5. Relevance and Confirmation of the OECD Transfer Pricing Guidelines 2022

The New Delhi High Court explicitly affirmed that the OECD Transfer Pricing Guidelines remain highly relevant in assessing whether expenditure on AMP can be categorised as an international transaction. However, the Court also cautioned that the application of OECD principles must be done cautiously, emphasizing evidence based on concrete facts and the economic substance of the transaction. In its consideration, the Court stated that AMP's expenditure could be considered an international transaction only if there is an arrangement or understanding, either explicit or implicit, between a domestic entity in India and an overseas Associated Enterprise. The existence of unilateral benefits that Associated Enterprise may receive from AMP expenditures is not sufficient to constitute a lawful

[14] Kumar, “Making International Tax Law: Analysing Tax Jurisprudence in India.”
[15] D. P. Sengupta, “India,” in *The Impact of the OECD and UN Model Conventions on Bilateral Tax Treaties* (Ministry of Finance, Competent Authority for India, India: Cambridge University Press, 2014), 549–97, https://doi.org/10.1017/CBO9781139095686.020.

international transaction under tax law. The Court stated: "AMP expenses constitute an international transaction if an arrangement or understanding exists between the Indian entity and the foreign Associated Enterprise."

The Court also cited the OECD's view that distinguishes between two types of intangible assets: marketing intangibles and trade intangibles. Marketing intangibles include trademarks, logos, and distribution channels, while trade intangibles include know-how, trade secrets, and technology. In this context, AMP expenditures that exceed the regular level may create value for the brand owner (Associated Enterprise), but compensation for such expenditure is only valid if there is a factually provable arrangement or understanding.

The Court reaffirmed its rejection of the Bright Line Test as a legitimate method in determining international transactions and adjusting transfer prices. This rejection is not only based on the Bright Line Test's incompatibility with India's domestic law, but also because the approach is contrary in principle to OECD guidelines. The Bright Line Test concluded that the existence of international transactions was only based on AMP expenditures that were considered "non-routine" or exceeded the industry average. This approach ignores the parties' economic substance and actual behavior, and does not consider the underlying arrangements or understandings of such expenditures. The OECD Transfer Pricing Guidelines consistently emphasize the importance of fact-based, function, asset, and risk analysis in assessing the fairness of transactions between affiliated entities. The Court stated: "The Bright Line Test lacks legal foundation and contradicts the OECD's emphasis on functional analysis." Thus, the Bright Line Test is legally invalid and inconsistent with an international approach emphasizing substance over form.

The Court also referred to international practice, as in Annex I of the OECD Transfer Pricing Guidelines, to strengthen its argument. This Annex illustrates that AMP expenditure can be part of the typical distributor function in a supply chain. In many cases, distributors do conduct marketing activities as part of their commercial responsibilities in the local market. However, the Court emphasized that the distributor's AMP expenditures did not necessarily make the expenditure an international transaction subject to the transfer pricing provisions. To be categorized as an international transaction, there must be evidence that the expenditure was made based on a mutual arrangement or understanding between the domestic distributor and the overseas Associated Enterprise. The Court stated: "OECD examples show that AMP functions may be routine unless linked to a demonstrable agreement." Thus, the Court affirmed that not all AMP expenditures are cross-jurisdictional, and that context and factual evidence are decisive in classifying an expenditure as an international transaction.

OECD guidelines aim to ensure that the results of transfer pricing practices reflect the actual economic value creation within a multinational group of enterprises.[16] In this context, AMP expenditures can only be compensated if they create value for the Associated Enterprise and are carried out based on a legitimate arrangement. Furthermore, the Base Erosion and Profit Shifting project initiated by the OECD and the G20, including the Principal Purpose Test instrument, aims to prevent the practice of tax avoidance through transactions that have no economic substance.[17] This approach emphasizes that transactions between affiliated entities must have legitimate commercial purposes and reflect economic realities. Nevertheless, it is important to note that the OECD Guidelines are soft law, meaning their application depends on domestic implementation in each jurisdiction. This has led to variations in the application of OECD principles between countries.[18] Therefore, approaches such as the Bright Line Test, which is not supported by OECD principles and explicitly regulated in domestic law, cannot be used as a valid basis for making transfer price adjustments.

The OECD Transfer Pricing Guidelines principles remain relevant and important in assessing whether AMP expenditure can be categorised as an international transaction. However, applying these principles must be carried out carefully, prioritizing evidence based on concrete facts and economic substance. AMP expenditures can only be considered an international transaction if there is an explicit or implicit factually provable arrangement between the domestic entity and the Associated Enterprise. The one-sided benefits received by the Associated Enterprise are not sufficient to form legitimate international transactions. Quantitative approaches such as the Bright Line Test, which inferres the existence of transactions only from the magnitude of AMP expenditures, are contrary to OECD principles and cannot be used as a valid legal basis. In this case, the New Delhi High Court's ruling reinforces the importance of function, asset, and risk-based analysis in transfer pricing

[16] Felipe Thé Freire, "Economic Substance for Holding Companies in the Post-BEPS World and after Recent ECJ Case-Law: An Analysis of Developments in Europe," *Intertax* 51, no. 1 (2023): 33–50, https://doi.org/10.54648/taxi2023002; Alexander Georgievich Gurinovich and Alexey Alimovich Shakhmametiev, "Approaches to the Optimization of Fiscal Regulations in Cross-Border Transactions for the Provision of Electronic Services," *Juridicas CUC* 20, no. 1 (2023): 131–56, https://doi.org/10.17981/JURIDCUC.20.1.2024.05.

[17] Clara Gomes Moreira, "M. L. Gomes, The Principal Purpose Test in the Multilateral Instrument, Lumen Juris, 2021," *Intertax* 50, no. 4 (2022): 385–86.

[18] Irma Johanna Mosquera Valderrama, "BEPS Principal Purpose Test and Customary International Law," *Leiden Journal of International Law* 33, no. 3 (September 27, 2020): 745–66, https://doi.org/10.1017/S0922156520000278.

practices. This approach is more economically accurate, fairer, and more consistent with globally recognized principles of international tax law.

6. Implications for Transfer Pricing Practices and International Tax Law Enforcement

The New Delhi High Court's reasoning matters because it re-positions transfer pricing analysis on a strictly legal and evidentiary footing. Rather than treating high AMP intensity or mere affiliation as sufficient triggers for adjustments, the Court requires prior proof of an "international transaction" as a jurisdictional gateway to Chapter X. This moves the analysis from quantitative inference to demonstrable arrangements or understandings, thereby aligning legal thresholds with the statute's definition of "transaction" and curbing speculative enforcement. In short, the case establishes that substance over form is not a slogan but an admissibility rule: without concrete evidence of a cross-border arrangement, there is no basis to proceed to pricing.

What this means for day-to-day practice is twofold. First, the initial burden lies with the Revenue to establish the existence of an arrangement or understanding, evidenced, for instance, by instructions, cost-sharing mechanisms, reimbursement patterns, shared Key Performance Indicators, or brand governance manuals, before any price determination can begin. Second, once that existence is shown, the allocation of value must follow the OECD-consistent function, asset, and risk analysis and one of the legally recognized methods under Section 92C(1), without recourse to the Bright Line Test. The Court's rejection of BLT is not merely methodological; it is normative, repudiating a numbers-first approach that bypasses statutory authorization and evidentiary rigor.

These holdings crystallize into a replicable legal reasoning sequence. The first stage is an existence test: Do the facts reveal a concrete cross-border arrangement concerning AMP activities? If the answer is no, AMP remains part of the local distributor's commercial function and no transfer pricing adjustment is permitted. If yes, the analysis advances to an allocation test: What arm's length compensation, if any, reflects the functions performed, assets used, and risks assumed by each party, measured through a method recognized in Section 92C(1)? By structuring doctrine this way, the Court unifies the evidentiary threshold with economic substance, ensuring that enforcement decisions rest on proof and not on inferential thresholds such as Bright Line Test.

The institutional implications follow naturally. For tax authorities, the case redirects resources from blanket quantitative screens to evidence collection: contemporaneous correspondence, brand policy documents, incentive schemes, and process records that reveal whether cross-border control or coordination existed. For taxpayers, the decision underscores the need to articulate the local business rationale for AMP, document decision-making autonomy, and map functions, assets, and risks to show that marketing activities are domestic in substance unless an arrangement proves otherwise. For courts, the two-stage sequence, existence before allocation, serves as a filter against assumption-driven disputes, promoting fairness and legal certainty.

Transposed to Indonesia, this framework provides a disciplined path for resolving AMP controversies. The burden to prove the cross-border transaction should precede any pricing debate; documentation must be reorganized around function, asset, and risk rather than percentage thresholds; and methods enumerated in domestic law should be the exclusive tools for allocation. Rejecting quantitative proxies that lack normative grounding will reduce litigation premised on conjecture, while alignment with internationally recognized substance-based analysis will enhance certainty, prevent double taxation, and support investment competitiveness. Thus, the lesson is not only doctrinal but operational: evidence first, substance always, method by law.

7. Important Lessons for Indonesia

The New Delhi High Court's decision in the case of Beam Global Spirits & Wine (India) Pvt. Ltd. provides several important lessons relevant to Indonesia in strengthening the transfer pricing system and enforcing international tax laws. These lessons reflect the importance of regulatory reform, substance-based approaches, and institutional capacity building. First, Indonesia needs to emphasize that transfer price adjustments are only valid if international transactions can be proven in real terms. The principle of economic substance and the actual behavior of the parties should be the main basis for the transfer pricing analysis. Second, quantitative approaches such as the Bright Line Test, which rely solely on comparison of numbers without an explicit legal basis, should be avoided because they risk creating legal uncertainty and injustice. Third, transfer pricing documentation must be prepared transparently and comprehensively, reflecting each party's functions, assets, and risks, including an explanation of AMP's expenses and their relationship with foreign affiliated entities. Fourth, Indonesia must strengthen its regulatory framework by drawing on international best practices, including OECD principles and jurisprudence from other countries, to improve legal certainty and investment competitiveness.

Fifth, tax officials and judges need to be equipped with an in-depth understanding of the principles of economic substance, transfer pricing assessment methods, and the importance of legal evidence in transfer pricing disputes. Sixth, by avoiding an assumed approach and strengthening fact-based analysis, Indonesia can reduce the risk of protracted tax disputes and increase legal certainty for taxpayers and foreign investors. Thus, the Beam Global ruling not only sets an important precedent in the Indian context but also serves as a reflective mirror for Indonesia to build a fairer, more accurate, and law-based transfer pricing system. Going forward, this lesson must be internalized in national tax policies, regulations, and practices.

D. Conclusion

This study aims to answer the question of whether expenditure on advertising, marketing, and promotion can be categorized as a legitimate international transaction in the context of transfer pricing, with a case study on a dispute between Beam Global Spirits & Wine (India) Pvt. Ltd. and the Indian tax authorities. The results show that quantitative approaches such as the Bright Line Test (BLT), which Transfer Pricing Officers use to conclude the existence of international transactions, have no legal basis and fail to reflect the parties' economic substance and actual behavior.

The New Delhi High Court ruling affirms that transfer price adjustments can only be made if a real and substantial proven international transaction is carried out through legally recognized methods. Assumptions and quantitati ve indicator-based approaches, such as BLT, are speculative and cannot be used as a valid legal basis. Theoretically, these findings align with the principles in the OECD Transfer Pricing Guidelines, which emphasize the importance of function, asset, and risk analysis (FAR analysis) in determining the fairness of transfer pricing. The rejection of the Bright Line Test reinforces the position that transfer pricing assessments should be based on economic substance and factual evidence, not on formal forms or statistical inferences.

The implications of these findings are very relevant for Indonesia. Developing countries such as Indonesia must avoid quantitative approaches lacking legal legitimacy, strengthen transparent and substance-based transfer pricing documentation, and align domestic regulations with international standards. Thus, the national transfer pricing system can be built more fairly, accurately, and accountable, guaranteeing legal certainty and preventing protracted tax disputes.

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