



CBDT releases first APA Annual Report

Background

The Advance Pricing Agreement (APA) programme in India was launched in July 2012 with the objective of providing certainty to taxpayers in respect of the transfer price of the cross-border transactions undertaken by a taxpayer with their group entities. This programme, now almost five years old, has been successful in providing an alternate dispute resolution mechanism to taxpayers in respect of transfer pricing issues.

The first annual report on APA programme was recently released by the Central Board of Direct Taxes (CBDT), Ministry of Finance, Government of India. This APA annual report provides insights into the progress of APA programme in India that was introduced in 2012.

Key considerations

- Total of 815 APAs were filed in India till 31 March 2017 including 688 Unilateral APAs (UAPAs) and 127 Bilateral APAs (BAPAs). Out of the total APAs filed, 152 APAs have been signed so far which includes 141 UAPAs and 11 BAPAs.
- 78 APAs out of 152 signed so far have Rollback provisions.
- Of the 11 BAPAs signed, six of them are with the U.K. and five with Japan.
- The U.S. effectively opened its BAPA programme with India in February, 2016; and since then there has been an increase in the number of BAPA applications and also in the number of conversions from UAPA to BAPA applications.
- The U.S. related transactions account for approximately one-third of total BAPAs filed in India ~ 33 per cent, closely followed by U.K. ~ 30 per cent and then Japan ~ 13 per cent.
- The APAs signed in FY2015-16 (55) and FY2016-17 (88) demonstrate India's strong attempt to reduce litigation and provide tax certainty. The current momentum in the APA conclusions represents the maturity of APA programme and the focused approach of CBDT in making APA programme a determinative success while providing tax friendly regime.
- Comparative analysis of India's APA programme with China and the U.K. shows that India has concluded more APAs within the first five years of its APA programme (152 between FY2012-13 to FY2016-17) as against China (113 in ten years 2005 - 2014) and the U.K.¹ (143 in five years 2009 to 2014)
- Indian APA authorities have performed better (average duration of processing UAPA in India has been 29 months and BAPA has been 39 months) than their U.S. counterparts (average duration 34 months and 51 months for UAPA and BAPA respectively) in terms of concluding APAs

¹ Transfer Pricing statistics: 2013 to 2014 dated 6 March 2015 – published by HM Revenue & Customs

- Of the total UAPAs entered into in India, service sector dominates with 72 per cent of the total UAPAs signed. Further, Information Technology and Banking/Finance industries lead with almost 50 per cent (70 out of 141) of the total UAPAs. It is pertinent to note that APAs have been concluded with respect to about 20 different industries
- The nature of transactions covered in UAPAs predominantly include Provision of Software Development Services and provision of IT enabled Services followed by intra-group payments and other transactions.
- Though software development services appear to be the top-ranking 'covered transaction' in the successfully concluded UAPAs, no BAPAs pertain to software development services.
- With regard to BAPAs, the covered transactions predominantly include availing of intra-group services followed by purchase and sale of goods transaction and provision of marketing/sales support services
- The most preferred transfer pricing method used is Transactional Net Margin Method, both in case of UAPAs as well as BAPAs. This is a common phenomenon with China² and U.S.³ APA programme too.

Our comments

While taking pride in the success of APA programme, CBDT has acknowledged that there are challenges in terms of availability of skilled manpower to handle complex issues as well as allocation of human and physical resources to expand and strengthen APA programme. The CBDT has also recognised the importance of some unique aspects that have contributed to the growth of APA programme viz. faith entrusted by the taxpayers in APA team while sharing of information, use of electronic mode of communication (e-mail/CDs), confidentiality maintained by APA team as well as the taxpayers and the rational approach adopted by APA team.

India is at the fore-front in inviting global multinational enterprises to invest in India. While doing so, it is aware that it needs to walk the talk and demonstrate its will to provide a non-adversarial tax regime. The success of APA programme does just that along with CBDT keeping a close eye to ensure that India gets its fair share of taxes.



² China's Annual Report 2014

³ U.S.'s APMA Announcement dated 27 March 2017

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