

India's second APA Annual Report reflects growth, shift in focus

September 11, 2018

In brief

India's Central Board of Direct Taxes (CBDT) on August 31 released the Second Annual Report on the Indian Advance Pricing Agreement (APA) Programme (APA Report). The APA Report highlights the progress made in financial year (FY) 2017-18. The APA statistics continue to be encouraging, as the total number of concluded APAs has reached 219 (of which 67 were signed in FY 2017-18).

A noteworthy development is the shift in focus from Unilateral APAs (UAPA) to Bilateral APAs (BAPA). There was a slight increase in time taken to conclude APAs in FY 2017-18 over the average of prior periods.

In detail

The APA programme was introduced in 2012 with the goal of providing a non-adversarial approach to taxpayers. The first APA Annual Report was released in April 2017, detailing aspects of its efficacy for the five operational years. As a follow-up, the second APA Report focuses on performance and statistics related to FY 2017-18.

Statistics

Of the 168 applications filed during FY 2017-18 (101 during FY 2016-17), 53 applications were bilateral applications. Total APAs signed during FY 2017-18 were 67, with nine being BAPAs, as against 88 APAs in FY 2016-17.

In terms of years covered by the APAs signed during FY 2017-18, the CBDT has managed to

provide certainty for 415 years to taxpayers on a cumulative basis.

BAPAs

The filing of BAPAs has more than doubled in FY 2017-18 (53 BAPAs) compared to FY 2016-17 (23 BAPAs), with the United States opening its window and India now willing to accept applications from all treaty partners (as per clarification dated November 27, 2017 regarding India's position on the acceptance of MAP and BAPAs in cases of countries where Article 9(2) of the OECD Model Tax Commentary is absent), even in absence of the corresponding adjustment clause in the relevant treaty.

Post opening of the US BAPA program, applications for India-US BAPAs have taken the lead from Japan and the UK. While

India-US BAPA filings took the lead with new applications, 33 conversions of UAPAs into BAPAs shows that there is an increased intention to adopt the bilateral route. After these conversions, almost 75% of total BAPA applications are with three countries – the United States, the UK, and Japan.

The count for signed BAPAs has reached 20, of which nine were signed in FY 2017-18, mainly with the UK, the United States, and the Netherlands.

The service sector continues to dominate BAPAs concluded in FY 2017-18, with the Transactional Net Margin Method being a preferred method. The Other method is the second most preferred method.

The average time taken to conclude BAPAs in FY 2017-18 was 45.78 months.

UAPAs

During FY 2017-18, 115 UAPAs were filed, as against 78 in FY 2016-17.

Owing to the increased focus on BAPA, the total number of UAPAs signed in FY 2017-18 is 58, a dip from earlier years.

The service sector continues to lead the number of UAPAs signed (40 UAPAs in FY 2017-18), predominately from the IT, computer hardware, and banking/finance industries. This is consistent with the trend seen in the previous APA Report.

In 2017-18, applicants from 18 different industries have taken advantage of the APA programme, and transactions such as provision of IT-enabled support services and software development services feature predominantly therein.

As the APA programme leaves a global footprint, of the 134 countries where the associated enterprises of Indian applicants are located, the United States tops the list with 40 entities, followed by the UK, Singapore, and Germany.

The average time taken for UAPAs concluded in FY 2017-18 was 38.62 months.

The APA Report acknowledges that overall there is decline in the number of APAs signed this year. In addition, the APA Report mentions that the time taken for concluding APAs has increased slightly; however, it continues to be better than other countries. This has been attributed to the increasing complexity of cases and shortage of manpower in APA teams at lower levels of authority.

In addition, it is observed that applications disposed of due to

withdrawal/merger of applications have increased from 19 in FY 2016-17 to 82 during FY 2017-18.

Observations

The APA Report shows that the APA programme is gaining momentum, with about a 66% increase in the total number of applications filed during FY 2017-18 *vis-à-vis* FY 2016-17. These numbers indicate that APAs continue to be an attractive dispute resolution option for companies seeking to manage their tax risks and achieve certainty around their inter-company pricing issues.

The shift in focus from unilateral to bilateral, whether through conversions or increasing new filings, is a welcome change, as the APA programme attains maturity.

There still are concerns regarding the backlog of five years that require resolution. In addition, some cases are due for renewal in March 2019, upon the expiry of the five-year period. The same need to be addressed on priority to improve the overall efficacy of the programme.

The APA Report also mentions a positive externality of the programme that 219 signed APAs have resulted in additional income of about INR 100 billion (approximately USD 1.4 billion), translating to a tax payment of about INR 30 billion (approximately USD 420 million), without any litigation. This allows the government to divert resources engaged in audit and litigation to more productive work.

The takeaway

The statistics shown by the second APA report indicate that the Indian APA programme has grown. The overall experience with the APA programme has been positive.

The flexibility shown by the CBDT in accepting APA applications with all

treaty partners (despite the absence of the corresponding adjustment article) has demonstrated its willingness to ensure that the benefits of the APA programme reach a wider base of taxpayers.

The APA Report has recognized the increase in time taken for concluding APAs and a commitment has been expressed to provide adequate staff and physical resources to the APA programme.

As we move to renewals due by March 2019, taxpayers will look forward to concluding renewals at a much faster pace.

Let's talk

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