CBDT publishes first India APA Annual Report

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In brief

The Central Board of Direct Taxes (CBDT) on 01 May, 2017 published the first India Advance Pricing Agreement (APA) Annual Report\(^1\). The APA Report contains statistics and performance details of the Indian APA programme for the five years of its existence from financial year (FY) 2012-13 up to FY 2016-17. The overall APA conclusion is quite impressive, with 152 APAs concluded in four years and a total of 815 applications filed by 31 March, 2017. With FY 2016-17 witnessing the conclusion of a record 88 APAs, the taxpayers should be positive about the continuing efforts taken by the CBDT in concluding APAs. A recent development is the appointment of two new APA Commissioners in Mumbai and in Bengaluru, in addition to the two existing APA Commissioners, to reinforce the teams. Further, the opening of bilateral APAs with the U.S. and the possibility to file bilateral APAs with Singapore and Korea should attract more companies in converting current unilateral APAs and filing bilateral APAs with these countries.

In detail

Impressive Statistics

Total 815 APA applications have been filed in five years starting FY 2012-13, out of which, 109 are bilateral APA applications (around 13% of total APA applications).

Total of 152 APA applications (around 19% of total) were resolved over the last five years.

Of the total 152 APA applications that were resolved, around 94% were concluded in last two years which is reflective of accelerated efforts taken by CBDT in dedicating more resources to the APA teams and the proactive approach taken by the APA Commissioners and their teams.

The average time taken to process the concluded APAs is 29 months for unilateral cases and 39 months for bilateral cases.

Service sector cases dominated the APA conclusions with 72% of APA concluded relating to service sector transactions, predominantly transactions relating to provision of IT and ITeS services by the Indian entities (in case of unilateral APAs).

Other prominent industries featuring in concluded cases involved banking and finance, industrial/ commercial goods manufacture, pharmaceutical, oil and gas, engineering services and telecommunications.

Some of the other transactions covered in the concluded APAs are intra-group payments, sale and purchase of goods, provision of investment advisory services, interest payment, business and marketing support services.

More than 50% of the concluded APAs include rollback of the APA to prior years, providing tax certainty up to nine years.

\(^1\) APA Programme of India – Annual Report (2016-17) – April 2017
While Transactional Net Margin method (TNMM) is by far the preferred method in the concluded APAs, it is interesting to see that in the concluded APAs, a large number of taxpayers are using other method (most likely for reimbursement at cost) and the Comparable Uncontrolled Price Method (CUP).

Despite the fact that the U.S. opened the door to bilateral APAs only in February 2016, the U.S. is the top country for the filing of bilateral APAs, followed by the UK, Japan and Switzerland.

Bilateral APA filing statistics shows that, on an average, there is 50% increase in number of bilateral filings from FY 2014-15 to 2016-17.

With Singapore and Korea opening up bilateral APAs with India, it will be interesting to see how the conversion to bilateral cases span out with respect to Singapore and Korea and whether over the next fiscal years, both Singapore and Korea will make it to the top five list.

**Challenges to be addressed**

- Due to the high number of cases filed in first four years, there is a huge backlog of APA cases to be resolved i.e. around 77% of unilateral cases and 85% of bilateral cases that were filed, are yet to be concluded.

- The pace of conclusion of bilateral APAs with the U.S. (42 cases) will have significant impact on the conversion rate of U.S. unilateral cases to bilateral and new bilateral cases with the U.S.

- Considering the model used to resolve the MAP cases between India and the U.S. over the last two years, based on an agreed framework, it will have to be seen if similar strategy will be adopted in resolving some of the routine IT and ITeS cases.

- While around 72% of the cases that were resolved relate to service industry, out of which majority relates to IT, ITeS cases using TNMM, the backlog has more complex transactions. These complex cases are likely to need substantial time for negotiations.

- Although the current average processing time of the cases that have been concluded is better than some of the other countries, around 47 unilateral cases (filed in FY 2012-13) will be exceeding 48 months and around 134 unilateral cases (filed in FY 2013-14) will be exceeding 36 months of average processing time.

**The takeaways**

- It will be interesting to see how CBDT takes up the cases involving more complex transactions in the coming years e.g. royalty, management services, advertisement, marketing and promotion (AMP), guarantee transactions.

- CBDT’s endeavor to appoint additional APA commissioners in Mumbai and Bengaluru is hopeful of producing faster APA resolutions, as majority of the APA cases are from these regions. However, it has to be seen how the APA positions across APA jurisdictions are aligned by the CBDT, so that all taxpayers obtain a fair resolution.

- It is encouraging to see that, large number of taxpayers are availing the rollback year benefit and this shows the Indian Government’s will to provide tax certainty for a larger period ranging from five to nine years.

- More taxpayers are looking forward to the Indian Government’s efforts of opening up bilateral APA filings with more countries e.g., by addressing the Article 9(2) clause in treaties.

- The APA programme has matured over the past five years and the various statistics are the testimony that APAs are viewed as the solution to resolve transfer pricing issues rather than choosing the long litigation route in India.

**Let’s talk**

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.