



# Advance Pricing Agreements

9 October 2012

# Advance Pricing Agreements ('APA')

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- ▶ APA is an agreement between a taxpayer and one or more national tax authorities covering future transactions with a view to agree upfront on the transfer pricing approach
- ▶ Prospectively sets transfer pricing methodology to be applied to certain related party transactions
  - ▶ No adjustments if taxpayer properly applies agreed transfer pricing methodology
- ▶ Types of APAs
  - ▶ Unilateral – Agreement between the taxpayer and the tax administration of the country where the taxpayer is subject to taxation
  - ▶ Bilateral/multilateral - Agreement between taxpayer and the tax administration where the taxpayer is subject to tax, and one or more foreign tax administrations
- ▶ In order to reduce the prolonged litigation on transfer pricing issues, APA regime has been introduced in India
- ▶ APA scheme already in place in some of the development countries

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# APA Rules – Basics and Applicability

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- ▶ Section 92CC and 92CD of the Act covers provisions related to APAs
- ▶ Rules for implementation of APA scheme are prescribed under Rule 10F to 10T and Rule 44GA (Notification dated 30 August 2012)
- ▶ APA mechanism is available to all 'persons', who undertake or are contemplating to undertake any international transaction
- ▶ All types of APA viz unilateral, bilateral and multilateral are allowed
  - ▶ For Unilateral APA, application to be filed before Director General (International Tax)
  - ▶ For bilateral or multilateral APAs, application to be filed before Competent Authority (CA)

# APA Rules – Pre-filing consultation and APA filing process

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- ▶ Anonymous pre-filing consultation allowable
  - ▶ The form states that no name of person or AE to be given in case of anonymous pre-filing
  - ▶ In such a case, details of representatives appearing for the applicant are to be given. Pre-filing consultations to discuss broad terms of the agreement
- ▶ APA filing fees – linked to the value of transaction:
  - ▶ Transaction upto Rs 100 cr – Rs 10 lakhs
  - ▶ Transaction between Rs 100 cr to Rs 200 cr – Rs 15 lakhs
  - ▶ Transaction exceeding Rs 200 cr – 20 lakhs
- ▶ APA application must be filed before start of the financial year in respect of ongoing transactions
  - ▶ In respect of new transactions, the application must be filed before undertaking the same
  - ▶ Roll back of the APA not permissible.

# APA Rules – Pre-filing consultation and APA filing process...(Contd.)

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- ▶ Applicant to propose number of years for which APA is required - No uniform period notified (subject to a maximum of 5 years)
- ▶ During APA process, meetings and site visits to applicant's premises are allowed
- ▶ APA shall be entered into by CBDT with the applicant, after its approval by the Central Government.
- ▶ An APA would cover the following:
  - ▶ The international transactions covered;
  - ▶ Agreed TP methodology including the determination of "most appropriate method" as specified under IT Act;
  - ▶ Determination of ALP;
  - ▶ Critical assumptions; and
  - ▶ Other conditions and assumptions relevant for the determination of ALP

# APA Rules – Applicability and post APA compliances

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- ▶ An APA shall be binding on both the taxpayer and the tax authority
  - ▶ Exceptions – change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into
  - ▶ “Critical assumptions” means the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed.
- ▶ Assessee to furnish Annual Compliance Report (in Form 3CEF) within 30 days of the due date of filing return or within 90 days of entering into an agreement, whichever is later
- ▶ TPO to carry out compliance audit for each year covered in the agreement
  - ▶ Time limit for completion of annual compliance audit is 6 months from the end of the month in which annual compliance report is filed
- ▶ Regular transfer pricing assessment not to be undertaken for transactions covered by APA
- ▶ Renewal of agreement allowed – New application needs to be filed using same procedures except pre-filing consultation

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# APA Rules – Withdrawal, Revision, Rejection of APA

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- ▶ Withdrawal of APA application allowable anytime before finalization of terms
  - ▶ No refund of fees will be granted
  - ▶ The Applicant can also file an application for amendment before finalization of terms of the agreement.
- ▶ Revision of APA allowed under following circumstances:
  - ▶ Change in critical assumptions; or
  - ▶ Change in law; or
  - ▶ Request from competent authority of other country in case of bilateral and multilateral agreements
- ▶ APA shall not be binding on CBDT or the assessee if there is a change in any of critical assumptions

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# APA Rules – Withdrawal, Revision, Rejection of APA...(Contd.)

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- ▶ APA can be cancelled by CBDT under following situations:
  - ▶ Failure of the applicant to comply with terms;
  - ▶ Failure to file annual compliance report;
  - ▶ Material error in annual compliance report;
  - ▶ Assessee does not agree for revision of APA
- ▶ No specific provisions for confidentiality ("firewall provisions")



# APA Rules – Bilateral/ Multilateral APAs

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- ▶ Rule 44GA deals with the procedure related to bilateral/ multilateral APAs
- ▶ For bilateral or multilateral APA, the associated entity must have initiated APA process in other country
  - ▶ Evidence of furnishing application in other country or tentative date of filing application to be provided at filing stage
- ▶ The applicant shall not be entitled to be part of discussion between CA in India and the CA in the other country or countries
- ▶ Indian Competent Authority shall consult and ascertain willingness of the competent authority in other country for initiation of negotiations.
- ▶ Applicant needs to communicate acceptance or otherwise to APA agreed between competent authorities within 30 days.



**Thank You**