

Global Transfer Pricing

**Contacts:**

**Kerwin Chung**  
kechung@deloitte.com

**Shanto Ghosh**  
shghosh@deloitte.com

**Darrin Litsky**  
dlitsky@deloitte.com

**Kirsti Longley**  
kilongley@deloitte.com

**Sora Han**  
sohan@deloitte.com

## Progress on Competent Authority Cases Results in IRS Acceptance of APA Prefiling Conferences for Bilateral U.S.-India APAs



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The IRS on March 11 announced on its website that the Advance Pricing and Mutual Agreement program will begin accepting requests for prefiling conferences for bilateral APAs between India and the United States. This announcement is the direct result of substantial progress made by the U.S. and India on competent authority negotiations following the January 2015 agreement on a framework to resolve information technology-enabled services (ITeS) and software development cases.

The timing of the announcement allows taxpayers that are planning to file unilateral India APA requests before the March 31, 2015, deadline to begin the process of converting their requests into bilateral APA requests.

The IRS specified that it is accepting only applications for prefiling conferences, rather than for bilateral APAs.

The announcement confirms a statement made to reporters on March 6 by David Varley, acting director of the IRS's Transfer Pricing Operations, that the IRS was ready to begin discussions with taxpayers interested in U.S.-India bilateral APAs. Both Bloomberg/BNA and Tax Analysts reported Varley's announcement that, even though the IRS was not yet accepting actual applications for bilateral APAs, it would begin accepting requests for prefiling conferences, and that conferences may take place as early as the week of March 23. Varley said that enough progress has been made in resolving the backlog of double tax cases with India that "we believed that the time was right to start the process for the bilateral APAs, and of course the first step in that process will be these prefiling conferences."

To request a prefiling conference, taxpayers must fill out a questionnaire provided on the IRS website. In addition to answering all questions in the application for a prefiling conference, taxpayers will be expected to provide the following additional information:

- For taxpayers that have already filed a unilateral APA application with India and who may now be seeking to convert that application to a U.S.-India bilateral APA application, taxpayers should (i) in advance of the meeting, provide APMA with a disk containing a .pdf electronic copy of their unilateral APA application and any materials submitted to India in relation to the unilateral APA request; and (ii) be prepared to discuss the content of their unilateral request and the status of their request and discussions with the Indian APA office;
- For taxpayers proposing an APA with covered transaction(s) involving an Indian-resident affiliate performing ITeS or software development services, in

particular, taxpayers should, in advance of the meeting, provide APMA with a disk containing (i) a .pdf electronic copy of the Indian affiliate's organization chart, broken down by functional and administrative departments; and (ii) an Excel file with the financial information that has either been provided in relation to a pending Indian unilateral APA application or financial statements that have the following elements, as appropriate to the transactions proposed to be covered:

- Segmentation of each tested service provider's income statement between ITeS services, SWD services, and/or any other services or activities that are performed by each tested service provider;
- Historical charges that may have been incurred for "outsourced" services (third-party service providers) in relation to the proposed covered transactions and the circumstances under such services are procured, i.e., on a temporary, or overflow basis or on a more extended basis;
- The manner in which the taxpayer has computed total operating costs for the proposed covered transactions, either historically or as proposed in a unilateral APA application;
- A discussion of representative projects or tasks performed by the Indian affiliate;
- A discussion of metrics or other information available to the taxpayer that it may have used to measure the complexity of services provided by the Indian affiliate, such as wage levels and educational or experience levels relative to industry or trade-group benchmarks for its region of operation, etc.

The IRS announcement may be found [here](#).

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