



Transfer Pricing Insight with information

CBDT issues
clarifications on certain
rollback provisions of
APA scheme

Issue no: TP/7/2015

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Executive Summary

The Central Board of Direct Taxes (CBDT) has issued clarifications on rollback provisions of the Advance Pricing Agreement (APA) scheme in a question and answer format through a circular No.10/2015 dated 10th June, 2015. These clarifications are analyzed in the sections provided below.

Analysis of the Circular

Applicability of APA Rollback Provisions: Years of Revised Return and Belated Return

- Taxpayer is entitled to APA rollback for the years, for which revised return has been filed, provided both the revised return and the original return have been filed within the due date as specified in the Income Tax Act, 1961 (ITA).
- Benefit of APA rollback is not available to the years for which the return was filed late, i.e., after the due date to file the original return, but within due date of filing a belated return under the ITA.

International Transactions Entitled to APA Rollback

- The benefit of APA rollback may be allowed for the international transaction for which all the conditions mentioned below are satisfied:
 - Are of same nature and with the same associated enterprise (AE) as proposed in the APA for the future years.
 - An APA Agreement has been concluded for such international transaction.
 - Function, Asset, and Risk (FAR) analysis of rollback years are not materially different from the FAR analysis agreed as per the APA Agreement.

Taxpayer Cannot Pick and Choose the Rollback Year

- The benefit of APA rollback is available only if the taxpayer applies for all eligible four rollback years.
- An otherwise eligible APA rollback year may be excluded for applicability of rollback, only under any of the following scenarios:
 - Covered international transaction was not in existence during that year.
 - Taxpayer fails the rollback conditions for that year e.g. return of income was not filed

within specified due date, or if the Income Tax Appellate Tribunal (ITAT) had passed an order disposing off an appeal with respect to the covered international transaction, or if the application of rollback had the effect of reducing total income or increasing losses as declared in the return of income.

Set Aside of Order by ITAT – APA rollback entitlement valid

- CBDT has distinguished between passing of final order by the ITAT with respect to covered international transaction (as subject matter of appeal) and setting aside of the ITAT order for fresh consideration.
- Setting aside the ITAT order for fresh consideration would mean that, the matter did not reach its finality and hence, the particular year would be eligible for application of rollback provisions.

No Reduction in the Returned Income due to APA Rollback

- Declared income in the return of income cannot be reduced due to application of rollback.
- If the impact of application of APA rollback is: declared income being more than the computed rollback income, then declared income will be considered as the final income for that rollback year.

Cancellation of APA Rollback means Cancellation of Entire Agreement

- Entire Agreement can be cancelled if there is any non-compliance of the requirements or conditions under the rollback provisions of ITA, with respect to the APA rollback years.

Mutual Agreement Procedure (MAP) and APA Rollback

- APA rollback entitlement is available to the Taxpayer if a MAP request is pending, but the taxpayer will need to choose either the APA rollback route or the MAP route.
- If MAP has already been concluded for the covered international transaction, then APA rollback entitlement will not be available for that particular year (for which the MAP was concluded).

Merger and Demerger Cases

- To validate the eligibility of the APA rollback in situations of merger or demerger, the following principle will be followed:
 - APA rollback entitlement is only for the legal entity which is the original APA Applicant. For example,
 - If A & B merges to form a new company C and C is the APA Applicant, then A & B are not entitled to APA rollback.
 - If A, the original APA Applicant, demerges into B, then only international transactions of A would be entitled for APA rollback, and not that of B.

Other Clarifications

- Arm's length price (ALP) arrived for APA rollback years may be different from that arrived for the APA term, however the ALP methodology (including choice of method, comparability analysis and tested party) will be the same.
- Compliance audit for APA rollback years will be done to check if the modified return contains the price and methodology as agreed to in APA.
- Withdrawing an APA rollback application while maintaining the APA application for future years is allowed, but not vice versa. If APA rollback application is withdrawn, there will be no refund of fees.
- For concluded APAs, finalization of rollback application will involve revision of the concluded APAs.
- The time to file modified return for APA rollback years will start from the date of signing the revised APA incorporating the rollback provisions.

Conclusion

Through this circular, the CBDT has clarified some important queries of the taxpayers with respect to application of APA rollback provisions. Providing choice to the taxpayer between the MAP and the APA rollback route is a good initiative. This will enable the taxpayer to settle pending litigations faster.

Few questions, however, remain unanswered, including the taxpayer's concerns on (a) what happens to the refund of APA rollback application fees paid by applicants, who have already filed the APA rollback application, but will now be ineligible for entitlement of rollback due to conditions provided in the circular, (b) ineligibility of APA rollback if the associated enterprise of the rollback year is not the same as in the APA Application (even though the FAR and nature of international transactions are same), (c) applicant not entitled to APA rollback year if it is requested for less than four years, (d) the applicant's right to choose the international transaction for rollback, if the Agreement has more than one international transaction, (e) cancellation of entire Agreement if there is any procedural lapse with respect to APA rollback years, and (f) non-availability of rollback for the merged entities even though the nature of transactions and the FAR are same as that of the APA applicant.

Source : Circular No. 10/2015 dated 10th June 2015

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