



Transfer Pricing Insight with information

APA has a persuasive value
for resolving disputes even
beyond the rollback years

Issue no: TP/3/2016

In this issue:

Executive Summary
Facts
Issues before the Tribunal
Observations & Ruling of the
Tribunal
Conclusion
Do you know about Dbriefs?
Contacts

Executive Summary

The Hon'ble Income Tax Appellate Tribunal (the Tribunal), Delhi bench has pronounced an important ruling on April 25, 2016 in the case of Ranbaxy Laboratories Limited (Ranbaxy India, company, taxpayer) stating that the Advance Pricing Agreement (APA) can have a strong persuasive value for resolving disputes of the years even prior to the roll back years if the nature of international transactions and FAR (Functions, assets and risk) of the taxpayer and the Associated enterprises (AEs) remains the same.

Specifically, the Tribunal held that:

“the concept and the methodology laid down in the APA can have the guidance value for the revenue authorities for the purpose of comparability analysis. The main intent of the APA is to protect the fair share of the revenue of the states in simple and efficient manner and to protect the tax base.Therefore, the agreement entered into by the CBDT with the assessee, which has considered all the aspects of the manner of termination of the ALP which are also similar for this year, should be given highest sanctity and therefore the mechanism suggested in that agreement should be necessarily followed in determining ALP of the transactions for this year.”

Facts

- The taxpayer is a manufacturer of pharmaceuticals for many decades, having manufacturing at several locations. It is engaged in other activities such as R&D, quality control processes, etc. For the multi-country operations, the taxpayer has set up a number of wholly-owned subsidiaries, joint ventures and representative offices in different parts of the world.
- The AEs of the company are mainly engaged in the distribution of pharmaceuticals to customers in overseas markets. Some of the AEs are also engaged in the conversion and sale of active pharmaceutical ingredients (APIs) into dosage forms, repacking and finishing activities. For the Transfer Pricing (TP) purposes, the taxpayer characterized

itself as normal risk bearing entity, bearing the risk of success or failure of the business. It also stated that the AEs were engaged only in the business of selling and distribution or secondary manufacturing activity, bearing minimum risk with least complex operations without owning any intangible or unique asset. Accordingly, it considered AEs as tested parties for determining the arm's length price.

- During assessment proceedings, the Transfer Pricing Officer (TPO) rejected the selection of foreign AE as tested party on the ground that there is a geographical difference between the AE and the comparables, and selected taxpayer as the tested party. TPO determined the arm's length nature of the international transactions of the taxpayer on the basis of a set of comparables selected by him, and made TP adjustment for the difference. The Dispute Resolution Panel (DRP) confirmed the TP adjustment made by the TPO.
- Consequently, the taxpayer filed an appeal before the Tribunal.

Issues before the Tribunal

- Whether overseas AEs can be considered as “tested party” if they are least complex entities?
- Though APA was signed for AY 2014-15, can it have any impact on the international transactions for the year under appeal?

Observations & Ruling of the Tribunal

- The taxpayer submitted that it entered into an APA on August 7, 2015 with the CBDT, Government of India for AY 2014-15. For the purpose of arriving at the advance pricing, the CBDT conducted detailed FAR analysis of the taxpayer and concluded that the taxpayer was an entrepreneur manufacturer and the AEs were functioning as distributors or secondary manufacturers.

- The taxpayer also contended that there was no change in the FAR of the AEs in the year under appeal vis-à-vis the year of APA. The mechanism for TP analysis as accepted in the APA may, therefore, be applied in the years under appeal also.
- The Departmental Representative (DR) contested that an APA was merely a negotiated agreement and was applicable only for the year for which it was entered into, and so it should not be applied retrospectively to the year under appeal which was not covered year even under the rollback period.
- The Tribunal observed that the CBDT agreed to accept AEs as the tested party in the APA with the taxpayer, and adopted TNMM as the most appropriate method. The CBDT also approved the concept of regional benchmarking for the purpose of determining arm's length price – this basically meant that to select the appropriate comparables, regional benchmarking can be applied in case country-by-country benchmarking is not feasible though the same shall be preferred over regional benchmarking. In fact, the CBDT agreed to benchmark South African, Ireland and Romania AEs as of Europe, and Nigeria, Malaysia and Morocco as of Asia. Further, European bench was accepted for the AEs in South Africa and Peru, and similarly Asian benchmark was accepted for the AEs in Egypt, Brazil and Thailand.
- Based on the above, the Tribunal held that even though the APA would be applicable for the year for which it has been entered into but the principles laid down in the APA for the comparability analysis would have a greater persuasive value for past years also if the nature of international transactions and the FAR of the AE and the taxpayer remained the same.
- The Tribunal also observed that if the CBDT agrees to apply the same terms and conditions to the roll back years, the methodology accepted in the APA can be applied in the year under appeal also, provided the international transactions and the FAR are the same for the year under appeal.

Conclusion

This is the first ruling of the Tribunal, after the introduction of APA regime in India, expounding on the persuasive value of the APA to the past years even beyond the roll back years, provided the international transactions and the FAR are the same for the year.

This verdict extends the benefit of rollback to the taxpayers to other past years under litigation, beyond the 4 rollback years.

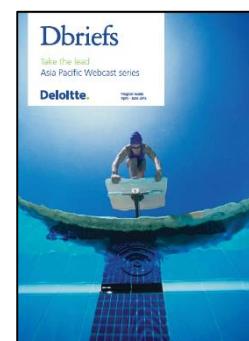
The verdict can go a long way in reducing the protracted past litigations, and would give a fillip to the emergence of the APAs as an effective dispute resolution mechanism, tax certainty to large number of taxpayers in India.

Source: M/s Ranbaxy Laboratories Limited,(ITA No. 196/Del/2013, AY 2008- 2009)

Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the [Dbriefs](#) page.

[Download report](#)



Contacts

Ahmedabad

Heritage, 3rd Floor,
Near Gujarat Vidyapith,
Off Ashram Road,
Ahmedabad – 380 014.
Tel: + 91 (079) 2758 2542
Fax: + 91 (079) 2758 2551

Coimbatore

Shanmuga Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Kolkata

Bengal Intelligent Park Building Alpha,
1st floor, Block EP and GP Sector V,
Salt Lake Electronics Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Bangalore

Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Delhi/Gurgaon

Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Mumbai

Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone (W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Chennai

No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Hyderabad

1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax:+91 (040) 6603 2714

Pune

106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites).

DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2016 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited

Registered office: 12, Dr. Annie Besant Road, Opp. Shiv Sagar Estate, Worli, Mumbai – 400 018, India. Deloitte Touche Tohmatsu India Private Limited (U74140MH1995PTC093339), a private company limited by shares, was converted into Deloitte Touche Tohmatsu India LLP (LLP Identification No. AAE-8458), a limited liability partnership, with effect from October 1, 2015.

[Home](#) | Add Deloitte as a safe sender

Follow us on:

