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**CBDT notifies APA
rollback rules; APA
pre-filing made
optional**

Issue no: TP/3/2015

In this issue:

- Executive Summary
- Analysis of the Notification
- Conclusion
- Upcoming Dbriefs - Register
- Contacts

Executive Summary

Through Notification dated 14th March 2015, the Central Board of Direct Taxes (CBDT) has laid down rules for application of rollback provisions of APA for up to four years preceding the first year of APA covered period; and has made APA pre-filing process optional.

Analysis of the Notification

Pre-filing Optional

- Pre-filing process, including filing of Form 3CEC, pre-filing meeting and obtaining letter of understanding of pre-file meeting is now not mandatory before filing the main APA application in Form 3CED.
- Hence, for a taxpayer who would like to apply for an APA, to cover transactions for the period starting 1st April, 2015, but who has not initiated a pre-filing process, may apply for entering the APA scheme, by payment of fee as per Rule 10 I and filing of Form 3CED before 31st March 2015.

Rollback Provisions

- Eligibility for rollback provision:
 - Applicable for any covered transactions as mentioned in form 3CED.
 - Rollback years will include four years preceding the first year of the APA covered period.
- Conditions for applicability of rollback provision:
 - Return of income for the relevant rollback year has been furnished before the due date for filing as per section 139 of Indian Income Tax Act, 1961 (“ITA”).
 - Form 3CEB under section 92E of ITA, for the relevant rollback year has been filed.
 - Rollback application to be requested for all eligible four years in Form 3CEDA and filed before DGIT (International Taxation) for unilateral APA or before the Competent Authority in case of bilateral APA.
 - Fee amounting to Rs. 5 lakh (approx. USD 8,000) is paid and proof of payment furnished along with form 3CEDA. This rollback fee will be in addition to the Form 3CED filing fee.

- Rollback provision not available if:
 - The determination of arm's length price of the covered transaction for the rollback year was the subject matter of appeal with the Income Tax Appellate Tribunal (ITAT) and the ITAT has passed an order disposing off such an appeal at any time before signing the agreement
 - It has the effect of reducing the total income or increases losses as declared in return of income of the taxpayer.
- Manner of determination of arm's length price for the rollback years will be the same as that is agreed for the covered APA years.
- Due date for filing rollback application in form 3CEDA:
 - Form 3CED filed and agreement entered before 1st January, 2015 – due date will be 31st March, 2015.
 - Form 3CED filed before 1st January, 2015, but agreement not entered – due date will be 31st March, 2015 or the date of entering into agreement whichever is earlier.
 - In other cases, Form 3CEDA to be filed along with Form 3CED on the due date of filing the latter.
- Giving effect of rollback provision as per agreement:
 - Furnish modified return of income for the rollback year along with that of the first year of agreed APA.
 - Furnish proof of payment of any additional tax as a consequence of rollback agreement.
 - Any appeal filed by the taxpayer on the covered transaction for the rollback year before appellate authorities or the High Court to be withdrawn by the taxpayer before furnishing the modified return of income.
 - Any appeal filed by the tax authorities on the covered transaction for the rollback year before the appellate authorities or the High Court to be withdrawn within three months of filing the modified return of income.
 - The dispute resolution panel, appellate authorities and the High Court is informed of the fact of the APA agreement with respect to rollback years by the taxpayer and the tax authorities.
- The agreement with respect to rollback may be cancelled if there is failure on account of the taxpayer to comply with the rollback provisions

Conclusion

Through this notification the Indian APA scheme has been made in line with the international practices. However, it is generally advisable for a prospective APA applicant, particularly in bilateral cases, to request for pre-filing consultation before applying for APA in both jurisdictions. The rollback rules has provided the much needed clarity for settling the long drawn litigation for the APA applicants with respect years prior to APA covered period. The existing applicants, who would like to opt for rollback, will have a shorter timeline i.e. before 31st March, 2015 for payment of additional rollback fee and filing Form 3CEDA.

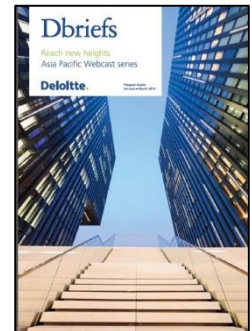
Source : Notification No. 23/2015/ F. No. 142/14/2014-TPL dated 14 March 2015

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Inbound Investment into India: BEPS Perspective

Thursday, 19 March, 11:30 AM – 12:30 PM IST

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