



Tax alert: CBDT publishes APA annual report for FY 2023-24

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The Central Board of Direct Taxes has published its sixth annual report presenting numerical data and detailed analysis of the performance of the Advance pricing agreement programme in India.

In a nutshell



APA programme was introduced in 2012 with the intent of providing tax certainty and minimizing transfer pricing tax litigation arising out of international transactions between associated enterprises.



CBDT had published five annual reports on the APA programme covering the period 31st March 2013 to 31st March 2023. The first annual report covered a period of 5 years (till 31st March 2017) and the fourth annual report covered a period of 3 years (31st March 2020 to 31st March 2022)



CBDT has recently published its sixth annual report covering the period ended 31 March 2024.

With this report, readers can get a complete view of the performance of the Indian APA programme over the past 12-years.



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Key highlights from the reports:

APA applications

- Since the beginning of the Advance pricing agreement programme (APA) programme in 2012, the CBDT has received a total of 1,847 APA applications till 31st March 2024. This comprises 1,320 Unilateral APAs (UAPAs) and 527 Bilateral APAs (BAPAs).
- During 2023-24, CBDT received a total of 188 APA applications including 110 Unilateral applications and 78 Bilateral applications.
- Of the total applications received by India over the last 12 years, nearly 75% comprised Unilateral APAs. However, there has been a shifting trend towards Bilateral APAs over the last three years and the average proportion of Bilateral APA applications in these three years has been around 43%.
- Over the entire 12-year period of the APA programme, Bilateral APA applications have been received for a number of treaty partners (23 treaty partners till 31st March 2024). In recent years, India has received APA applications in respect of new treaty partners such as China, Belgium, Indonesia, etc. India also received its first Bilateral APA application with Austria in FY 2023-24.

APA conclusions

- Cumulatively, the CBDT has signed 641 APAs till 31st March 2024. This comprises 506 Unilateral APAs and 135 Bilateral APAs.
- During the financial year 2023-24, the CBDT signed a total of 125 APAs, the highest number in a single year and breaking its own records of the past years (95 in F.Y 2022-23 and 88 in F.Y 2016-17). This includes 86 Unilateral APAs and 39 Bilateral APAs.
- India has also been focusing on increasing conclusions of Bilateral APAs every year. In the last two years, the proportion of concluded BAPAs has exceeded 30% of the total conclusions in those years.
- India has been engaging and concluding Bilateral APAs with new treaty partners every year. In addition to the regular discussions and conclusions with treaty partners such as the USA, the UK and Japan, India has concluded bilateral APAs with Switzerland, Singapore, Finland, Australia, the Netherlands, Denmark, etc. in recent years. In FY 2023-24, India signed its first Bilateral APA with Canada.
- Of the total 1,847 APA applications received till 31st March 2024, the CBDT has successfully concluded and signed 641 APAs (including 125 APAs in FY 2023-24) and disposed off another 348 APAs (including 33 APAs in FY 2023-24) in ways other than by signing (no agreement cases, withdrawal cases, etc.). Thus, CBDT has cleared around 54% of its total APA inventory (approximately 35% by way of signed agreements and around 19% for other reasons). This leaves around 46% of the applications still pending in the APA inventory.

Other highlights of the report

- The 641 signed APAs cumulatively represent an estimated income of INR 250 billion (approx.) and a tax of about INR 75 billion (approx.).
- The number of APAs signed till date have cumulatively brought about certainty for more than 3400 assessment years. During the financial year 2023-24 itself, the APA programme has provided tax certainty to more than 700 assessment years and reduced the litigation burden for all stakeholders.
- It is seen that the average duration for concluding Unilateral APAs is approximately 46 months, whereas the same for Bilateral APAs is approximately 63 months. The average duration for concluding APAs in India has gone up, especially in case of Bilateral APAs. As per the report, one of the main reasons for longer duration of Bilateral APA conclusions is the time taken in signing of the Bilateral APA even after negotiation between the two competent authorities. Various reasons have been attributed for the time lag between negotiations

and signing of Bilateral APAs such as the desire of the applicants to conclude both the unilateral and bilateral legs of the application together, multiple approvals required by the applicant from its group, etc.

- Most of the APAs (around 65%) concluded so far are for provision of services from India to AEs outside India, followed by manufacturing and trading activities.
- Nearly 93% of all the transactions covered in the concluded APAs have been resolved using Transactional Net Margin Method (“TNMM”) and Other Method.

Conclusion

With India breaking its own record of concluding highest number of APAs in a single year and signing more than 100 APAs in a year for the first time ever, the CBDT needs to be complimented for the success of the APA program. The commitment of the Indian government to continue the momentum and use this program as the solution to reduce litigation and provide tax certainty to foreign investors, is commendable. The government may review procedural issues to reduce the average processing time for concluding APAs, which seems to be one of the highest across the globe. It is also a little disconcerting that about 35% of all disposed APA applications (348 out of 989) have ended without an agreement.



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