

# TP DEVELOPMENTS IN INDIA



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# LATEST DEVELOPMENTS

- ◉ There have been two key developments during recent times; which are part of Finance Minister's policy of implementing non adversarial tax regime: Safe Harbour Rules and Advance Pricing Agreement (APA)

# SAFE HARBOUR

Indian provision concerning safe harbour are significant for two reasons

- (i) Out of about 11 countries that have provisions of safe harbour implemented, Indian provisions are more broad based. All other countries provide safe harbour only for low value added intra group service or loan transactions.
- (ii) Indian Government has followed a completely participative process before notifying the rules. Stakeholders have been consulted at various stages.
- (iii) Valid for five years, time bound actions

This is a great opportunity for taxpayers to make use of safe harbour and achieve tax certainty.

# SAFE HARBOUR PROVISIONS AT A GLANCE

| Eligible international transaction                                     | Safe harbour ratio  |
|--|---|
| IT/ITES with insignificant risks                                       | 20% (upto Rs 5 billion) and 22% (for more than Rs 5 billion)                                    |
| KPO with insignificant risks   | 25%   |
| Intra group loan to WOS (wholly owned subsidiary)                      | SBI base rate plus 150 basis pts (upto Rs 500 million) and plus 300 pts (more than 500 million) |
| Explicit corporate guarantee to WOS (min adequate safety rating)       | 2% (upto Rs 1 billion) and 1.75% (more than Rs 1 billion)                                       |
| Contract R&D with insignificant risks                                  | SWD- 30%<br>Generic Pharma drugs- 29%   |
| Manufacture and export of auto components (at least 90% sales to OEMs) | Core auto components 12%<br>Non core auto components 8.5%                                       |

# APA- GOVERNMENT APPROACH

Indian approach for implementing APA has also been significant for the following reasons:

- ⦿ Fast tracked APA legislation
- ⦿ APA team in place before notification of Rules
- ⦿ APA Rules framed after intensive analysis of other countries provisions... match international standards
- ⦿ APA rules included provisions to help build in trust and confidence between taxpayer and tax administration: Like dedicated APA team, anonymous and non binding pre-filing, cancellation only at CBDT level, etc.

# APA RULES AT A GLANCE

- ⦿ No restriction, anyone can file.
- ⦿ Mandatory pre-filing, could be anonymous, no fee for pre-filing
- ⦿ Not mandatory to file application after pre-filing
- ⦿ Application has to be filed before the start of the first year of APA term. In case of new transactions it has to be filed before the start of the transaction.
- ⦿ Application has to be accompanied by a fee of Rs 1 million or 1.5 million or 2 million depending on the value of international transactions

# APA RULES AT A GLANCE

- ◉ There are unilateral team and bilateral team. Unilateral application is to be filed with DG and bilateral with Indian CA.
- ◉ All applications processed by unilateral APA team headed by CIT (APA)
- ◉ Negotiation in unilateral case done by unilateral team and in bilateral case by bilateral team.
- ◉ Final approval by FM in all cases
- ◉ No time line for completion of APA process.
- ◉ Provision for compliance audit only to verify terms and conditions are satisfied
- ◉ Cancellation/revision only by CBDT

## **APA- TEAM APPROACH**

**APA team has also taken steps which would help resolve cases. These are:**

- ⦿ Build trust and confidence**
- ⦿ Treat them all as equals**
- ⦿ Work with honesty, sincerity and dedication**
- ⦿ Special emphasis on site visit**
- ⦿ Encourage taxpayers to furnish all the requested documents which will help in understanding their profile and resolve cases.**
- ⦿ Involve taxpayer during economic analysis**

# CHALLENGES

- ◉ In the very first year, 146 applications have been received. This is many times more than what was expected. All other countries received less than 10 applications in the first year, except USA which received 14 applications.
- ◉ All other countries have APA teams of much larger size than Indian APA team.
- ◉ India has to deal with the issue of change management and value changes as negotiation has never been part of income tax administration.
- ◉ Taxpayers have to be encouraged to file complete information and discouraged them from taking chances

# OPPORTUNITIES

- ⦿ Tax certainty suits both taxpayer and tax administration as it makes every one's job simpler.
- ⦿ If India is able to make a headway and start resolving cases early, it can project itself as a major investment destination.
- ⦿ Experience gain in APA could be useful in other areas of tax administration.

# ROAD AHEAD

- ⦿ **When is the first APA? Remember it is first year..... Every country has taken time to roll out first APA.**
- ⦿ **Safe harbour and APA are complementary to each other and needs to be seen in that way. Success of both is equally important. Success of safe harbour would ensure that APA is not overburdened.**
- ⦿ **India has already raised the bar at policy level by introducing safe harbour and APA. It is endeavoring to replicate the same at implementation level.**

**THANK  
YOU**