

India Signs 5 Advance Pricing Agreements

by Amit Maheshwari

Full Text Published by taxanalysts®

India's Central Board of Direct Taxes (CBDT) on March 31 signed its first set of five unilateral advance pricing agreements, all completed in the first year of the new APA program.¹ Covering tax years 2014-2015 through 2018-2019, the agreements address a wide range of international transactions, including interest payments, corporate guarantees, investment advisory services, and contract manufacturing, as well as numerous business sectors. More than 200 multinational corporations filed APA applications with the tax department in fiscal 2013-2014.

The Revenue authorities' approach in the APA program has been very pragmatic. However, it remains to be seen how successfully India can close bilateral APAs, considering that Revenue's positions on various issues have been heatedly opposed in other countries.

Transfer pricing is one increasingly contentious area, with the tax authorities' most recent round of adjustments totaling around \$9.5 billion. India is the third highest jurisdiction for pending transfer pricing disputes, according to the EY Global Transfer Pricing Survey 2012.²

The Indian government introduced unilateral, bilateral, and multilateral APAs in 2012 to provide transfer pricing certainty to taxpayers. An APA is generally valid for up to five years and can be renewed, revised, or canceled under sine circumstances. According to the APA rules published by the Ministry of Finance in 2012, the fee for entering into an APA is approximately INR 1 million (about \$16,632) for international transactions valued at up to INR 1 billion (about \$16.6 million); INR 1.5 million (about \$24,948) for those up to INR 2 billion (about \$33.2 million), and INR 2 million (about \$33,264) for transactions above INR 2 billion.

The CBDT has received APA applications related to the following:

Intangibles: Intangibles have been a major source of litigation in the past, particularly regarding factors such as the legal versus economic ownership transfer or right to use intangibles, and advertising, marketing, and promotion expenditure.

Financial transactions: The pricing of intragroup financial transactions is subjective, so arm's-length pricing arrangements are complex and could depend on

¹ The APA program was approved as part of Finance Act 2012 but the deadline for submitting the first applications was March 31, 2013.

² Available, as of April 7, at [http://www.ey.com/Publication/vwLUAssets/2012-Global-TP-Tax-Authority-Survey/\\$FILE/2012-Global-TP-Tax-Authority-Survey.pdf](http://www.ey.com/Publication/vwLUAssets/2012-Global-TP-Tax-Authority-Survey/$FILE/2012-Global-TP-Tax-Authority-Survey.pdf).

various factors, including the nature of the loan or credit and the credit risk ratings of the enterprise. The selection of comparable data and its availability are also common matters of tax litigation.

Profit sharing agreements: When an Indian taxpayer is a party to a profit-sharing agreement, the determination of the arm's-length compensation becomes complex. An APA would be particularly helpful for taxpayers in the banking, insurance, and logistics industries, which generally resort to profit-split compensation because of their closely integrated operation models.

Royalties and other payments for intragroup services: This is another area of dispute in India because of the perceived lack of benefits derived from such payments. Because there is often not enough comparable data, the justification of the amount of payments or the tax rate applied to royalties and other payments for intragroup services has always been a source of controversy. Taxpayers often are asked to demonstrate their need for the services and the necessity of obtaining the services from associated enterprises, and to prove that the services are not shareholders activities.

Valuation of Shares: Lately, transfer pricing officers have been disputing the valuation of shares, and there have been major adjustments in several cases, most notably in the case of Shell India Markets Pvt Ltd., which was assessed almost \$3 billion. (Prior coverage [📄](#).) Shell and several other companies are fiercely contesting such demands. An APA is a good way to avoid future disputes.

Amit Maheshwari, Ashok Maheshwary & Associates