PRESS RELEASES

Advance Pricing Agreements (APA) – Preventing Future Tax Controversies for Tax Payers

Dec 9, 2016, 6:28am EST

NEW DELHI, December 9, 2016 /PRNewswire/ --

In an environment where the government has been trying to attract multinational enterprises to 'Make in India', it is time to introduce initiatives or measures to signal a clear focus on making doing business in India easier. One such initiative has been the

clear focus on making doing business in India easier. One such initiative has been the
introduction of APA programme. Tax authorities in India have become increasingly proactive and vigilant while scrutinizing multinational company transfer pricing with Indian affiliates and correspondingly increasing the intensity of audits. The domestic appeal and dispute resolution process in India is slow and very time consuming. Therefore, the need for an alternative dispute resolution mechanism such as the Advance Pricing Agreement (APA) program, which provides a proactive opportunity for taxpayers to not only prevent future tax controversies but also to provide a rational basis for settling past disputes where an APA outcome may have a significant persuasive value, said Swati Aggarwal, Senior Manager (International Taxation) of Neeraj Bhagat & Co., a Chartered Accountancy firm based out of New Delhi.

The various aspects of rules/ guidelines governing APA and certain operational matters relating to APA are analyzed below:

What is an Advance Pricing Agreement (APA)?

An APA is an agreement between a tax payer and tax authority determining the transfer pricing methodology for pricing the tax payer's international transactions with its associated enterprises (AE's) for future years. The methodology is to be applied for a certain period of time based on the fulfillment of certain terms and conditions. These programmes are designed to help taxpayers voluntarily resolve actual or potential transfer pricing disputes in a proactive, cooperative manner, as an alternative to the traditional examination process.

An APA defines the arm's length price for a covered transaction. It is binding on the person in whose case the agreement has been entered into and on the Commissioner and the income-tax authorities subordinate to him [Direct Taxes Code (the 'DTC', Sec. 118(5)] unless there is a change in law or facts relating to the agreement.

At present, a parallel mechanism exists i.e. advance rulings from the Authority for Advance Rulings (AAR). AAR is empowered to examine a prospective contract of a resident taxpayer with a non-resident in order to determine the taxability thereof. The main difference is that under the APA scheme, the tax authorities may determine/quantify the value of the international transaction or profits, whereas the Authority for Advance Rulings does not have a power to do so. In India, the Board limits the term of an APA to five years (DTC, Sec. 118(4)), as in China (3-5 years; (Implementation Measures of Special Tax Adjustments (Trial Version)[the 'IMSTA'], Chapter 6, Article 49), rather than establish an expected minimum term, as in the United States (5 years; Revenue Procedure 2006-9 [the 'RP'], Sec. 4.07). Flexibility in the number of years may be a particularly important feature at the launch of an APA program, as APAs with long terms are sometimes necessary to accommodate a business cycle for a particular taxpayer, or for other reasons.

An APA can be unilateral, bilateral, or multilateral.

· **Unilateral APA**: An APA that involves only the tax payer and the tax authority of the country where the tax payer is located.

· **Bilateral APA (BAPA)**: An APA that involves the tax payer, associated enterprise (AE) of the tax payer in the foreign country, tax authority of the country where the tax payer is located, and the foreign tax authority.

· **Multilateral APA (MAPA)**: An APA that involves the tax payer, two or more AEs of the tax payer in different foreign countries, tax authority of the country where the tax payer is located, and the tax authorities of AEs.

What are the key benefits of APA?

An APA provides the following benefits:

· Certainty with respect to tax outcome of the tax payer's international transactions, by agreeing in advance the arm's length pricing or pricing methodology(ies) to be applied to the tax payer's international transactions covered by the APA

· Substantial reduction of compliance costs over the term of the APA

· For tax authorities, an APA reduces cost of administration and also frees scarce resources. Consequently, APAs provide a win-win situation for all the stakeholders involved

· Removal of an audit threat (minimize rigours of audit), and deliverance of a particular tax outcome based on the terms of the agreement

Rollback provision: The recently notified APA Rollback rules also provide an option to the taxpayer to roll back the APA for prior four years to the same international transaction, subject to certain conditions. Thus, based on the amendment, an APA could be made applicable for five prospective years as well as the immediately preceding four years, thereby providing certainty to the taxpayer for a maximum period of nine years Conditions applicable for availing rollback provisions, as notified by the CBDT, are:

(a) The international transaction must be the same as the one to which the APA is applicable;

(b) The return of income for the relevant rollback year has been filed;

(c) The report in respect of the international transaction has been furnished as required under Section 92E;

(d) The rollback is requested for all rollback years in which the international transaction has taken place; and

(e) The application has been made in the prescribed format of Form 3CEDA.

About the author:

Swati Aggarwal, Senior Manager (International Taxation) of Neeraj Bhagat & Co, an Indian Chartered Accountancy firm serving various MNC'S from across the globe. Neeraj Bhagat & Co. has its offices at New Delhi, Gurgaon and Mumbai. They are part of Allinial Global Accounting Association which is one of the World's Top 10 in accounting associations.

For more information please log on to: http://www.neerajbhagat.com or email at swati.aggarwal@neerajbhagat.com

SOURCE Neeraj Bhagat & Co