



My Dear Friend

I am presenting Thursday Article Advance Pricing Agreement (APA) for Taxpayer Approved by CBDT in India

- 1. Any kind of non-compliance is attracting financial penalty + prosecution (both)***

- 2. Any fully or partly (both) Non - compliance of TP regulations for international transaction with AE by resident of India is liable for financial penalty + prosecution (both)***

- 3. I trust that you will be enriched by reading this article***

● *With best wishes from CA Satish Agarwal* ●



Advance Pricing Agreement for Taxpayer approved by CBDT in India

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Advance Pricing Agreement for Taxpayer approved by CBDT in India

(A) Special Features of Advance Pricing Agreement (APA) in India

1. Reasons for Introducing APA in India

- (i) Govt. of India (Govt.) had observed that lot of litigations are arises due to Transfer Pricing (TP) based on Arm Length Price (ALP) regulations as introduced through Finance Act, 2001*
- (ii) Now Govt. has introduced through finance Act, 2012 the APA through inserting new provisions under section 92CC + 92CD (both) of Income Tax Act (ITA) 1961 + rule 10F + 10G + 44GA (all) of Income Tax Rules (ITR) 1962 for minimizing litigations between income tax deptt. (Govt. through CBDT) and taxpayer*

2. Meaning of APA in India

- (i) APA is arrangement to determine the ALP in advance against controlled transaction for fixed period between CBDT (on behalf of Govt. of India) and taxpayer for international transaction with Associate Entity (AE) (only)*
- (ii) Hence APA is arrangement between CBDT and taxpayer for determining the ALP against international transaction with AE (only)*
- (iii) Therefore APA is not permitted for determining the ALP against domestic transaction with AE*
- (iv) (a) APA is agreement between taxpayer and CBDT against pricing of future transaction with AE*
 - (b) APA is agreement between taxpayer and CBDT against pricing of 4 prior year's transaction with AE under roll-back provision of APA mechanism*
 - (c) Taxpayer + APA team (on behalf of CBDT) both are mutually agreeing on Transfer Pricing Methodology (TPM) to be applied as permitted for not exceeding the 5 year against controlled transaction with AE after fulfilment of critical assumptions.*

(d) *APA is effective tool being used outside India for determining the TP with AE to avoid potential disputes with tax (revenue) deptt. of govt. of outside India*

3. Filing of application by taxpayer with DGIT or Competent Authority

(i) *Taxpayer is required to apply in Form 3CED in triplicate (in 3 sets) with documents to Director General of Income Tax - International Taxation and Transfer Pricing (DGIT - INTL and TP) for unilateral APA under rule 10-I of ITR 1962*

Or

(ii) *Taxpayer is required to apply in Form 3CED in triplicate with documents to Competent Authority of India with joint Secretary FT & TR -I , New Delhi for bilateral APA + multilateral APA (both) under rule 10-I of ITR 1962*

+

(iii) *Taxpayer is permitted to apply in Form 3CED in triplicate with documents for already undertaken international transaction with AE + expected to undertake international transaction in future (both) with AE*

4. Timing for filing of appl. by Taxpayer with DGIT or Competent Authority

(i) *Application be filled before undertaking the international transaction with AE for non-recurring nature.*

(ii) *Application be filled on 1st day of previous year before undertaking the international transaction with AE for recurring nature.*

5. Pre-filing meetings (Consultation) for APA by taxpayer with DGIT in India

(i) *Taxpayer is permitted to avail an option to make a request in Form 3CEC in triplicate with documents to DGIT -INTL and TP (DGIT) for determining the scope of agreement + identifying TP issue + discussing broad terms of agreement + determining the suitability of international transaction with AE against APA.*

(ii) *Hence Taxpayer is permitted to avail an option through making a request in Form 3CEC in triplicate with documents to decide to file or not to file the Form 3CED in triplicate with documents an application for APA*

(iii) (a) *Taxpayer is not binding against outcome of request in Form 3CEC in triplicate with documents*

+

(b) *Also CBDT is not binding to force the taxpayer to file an application in Form 3CED in triplicate with documents for APA after filing a request in Form 3CEC*



in triplicate with documents by taxpayer where taxpayer is not interested in filing the Form 3CED in triplicate with documents

6. Filling of Application + Negotiation + Finalisation (all) with DGIT in India

(i) Filling of Application for APA in India

- *Taxpayer is permitted for filing of application for APA in Form 3CED (as pre-filing meeting is not mandatory) along with furnishing specified informations + payment of application filing fee (both)*

(ii) Negotiation of TPM for APA in India

(a) APA team is required to hold the meetings with taxpayer + to undertake necessary inquiries against application for APA already received by APA team

(b) APA team is required to prepare a draft report to be send to competent authority against bilateral APA or multilateral APA (both)

(c) APA team is required to prepare a draft report to be send to DGIT against unilateral APA

(d) APA team is permitted to visit the site to verify + validate the functional analysis as specifically is needed where involvement of complex manufacturing operations + heavy use of fixed assets + intangible assets + etc. (all). Visit the site by APA team is common practice in other countries Outside India.

(e) Site visit is enabling the APA team to feel of actual operation as underlying the covered transaction + to make easier to better understand + appreciate the business reality.

(iii) Finalisation of APA in India

- *APA team is required to exchange the comments with taxpayer against draft APA + finalisation of APA + giving effect to initial year as covered under APA term but already completed years before signing by CBDT*

7. Obtaining of permission from Govt. of India for approving of APA by CBDT

- *CBDT is required to obtain an approval from Govt. to approve as valid APA under section 92CC (1) of ITA 1961*



8. Filing fee for applying of APA with DGIT in India

S.No	Value of Transaction for applying of APA	Filling Fee
(i)	Value of Transaction as not exceeding INR 100 Crore	INR 10 Lac
(ii)	Value of Transaction as not exceeding INR 200 Crore	INR 15 Lac
(iii)	Value of Transaction as exceeding INR 200 Crore	INR 20 Lac

9. Withdrawal of APA Application by taxpayer before Approval by CBDT

- (i) Taxpayer is permitted for withdrawing APA application before approving by CBDT
- (ii) However Taxpayer is not permitted for refund against filing fee already paid for applying of APA where taxpayer has withdrawn APA application before approving by CBDT

10. Validity Period of APA in India

- (i) Validity period of APA as written in APA as approved by CBDT
- (ii) However validity period of APA is not permitted as exceeding 5 consecutive previous year under section 92CC(4) of ITA 1961

11. Binding of APA on taxpayer + CBDT (both) in India

- (i) Binding of APA on taxpayer + CBDT (both)
 - APA is binding on Tax payer + CBDT (both) once approved by CBDT against international transaction with AE already undertaken or to be undertaken in future (both) under section 92CC (5) of ITA 1961
- (ii) Not Binding of APA on CBDT (only)
 - (a) Where any change in law or facts (both) effecting the APA
 - (b) Where APA is obtained by taxpayer from CBDT through fraud or misrepresentation of facts (both)
- (iii) Effect of announcement by CBDT that APA is not more binding on CBDT where APA is obtained by taxpayer through fraud or misrepresentation of facts (both)
 - (a) CBDT is empowered to declare any APA as void **ab initio** where taxpayer has obtained the APA through fraud or misrepresentation of facts (both) + advance approval is obtained from Govt.
 - (b) 100% normal TP regulations be applied where APA is cancelled by CBDT



- (c) *Period of limitation for assessment or reassessment (both) by Assessing Officer (AO) will be extended from date of starting of APA and ending to date of APA is declared as void ab initio by CBDT.*

12. Meaning of 3 type of APA's like Unilateral + Bilateral + Multilateral

(i) Meaning of Unilateral APA

- (a) *Unilateral APA is entered between taxpayer and CBDT where income is taxable in India.*
- (b) *Hence rule 10F + 10G + 44GA (all) of ITR 1962 are applicable against unilateral APA*

(ii) Meaning of Bilateral APA

- (a) *Bilateral APA is entered between taxpayer + CBDT + 1 foreign tax administrations (like CBDT in India) where income is taxable in India.*
- (b) *Hence rule 10F + 10G + 44GA (all) of ITR 1962 are applicable against Bilateral APA*

(iii) Meaning of Multilateral APA

- (a) *Multilateral APA is entered between taxpayer + CBDT + 2 or more foreign tax administrations (like CBDT in India) where income is taxable in India.*
- (b) *Hence rule 10F + 10G + 44GA (all) of ITR 1962 are applicable against Multilateral APA*

13. Advantages (benefits) of APA for taxpayer + Govt. (both) in India

- *APA is providing 100% certainty on TP + TPM to be adopted for transaction with AE (both). Moreover Bilateral APA + Multilateral APA (both) are eliminating the risk of potential double taxation against controlled transaction like:-*
- (i) *100% certainty against controlled transaction with AE during APA term*
- (ii) *Lower annual reporting cost where APA is kept as information for annual report*
- (iii) *Reduction in risk + cost for TP audit + cost for appeal before CIT + ITAT + High court + Supreme Court (all) during APA term*
- (iv) *Flexibility in developing the practical approach against complex TP matters*
- (v) *Renewal of APA is providing the leverage of time + saving of time in negotiating for fresh (original) APA.*



- (vi) *Taxpayer is permitted to convert the unilateral APA into bilateral APA + vice versa*
- (vii) *Taxpayer is permitted for 4 prior year roll back + withdrawing of APA application + revision of APA under APA mechanism*
- (viii) *Taxpayer is permitted for 100% international transactions having Permanent Establishment (PE) in India under APA mechanism like:-*
 - (a) *Transfer of tangible property*
 - (b) *Transfer of intangible property*
 - (c) *Determination of cost sharing ratio*
 - (d) *Determination of amount for service received.*
- (ix) (a) *Taxpayer is permitted for applying APA against few (specific) international transactions (only).*
 - (b) *Hence taxpayer is not mandatory required for applying APA against 100% international transactions where taxpayer is not interested for applying APA against 100% transactions*
- (x) (a) *Generally APA is most appropriate TPM for negotiating + finalizing the TPA between taxpayer and tax authority (on behalf of CBDT).*
 - (b) *However APA is appropriate for TP + outcome of TPM during APA term.*

14. Constitution of APA team by Govt. (through CBDT) in India

- *APA team in India to include the persons from income tax authority + experts from economic + statistic + law + other necessary field like:-*
 - (i) *DGIT (himself) + Commissioner of Income Tax (APA) for unilateral APA for 3 city like Delhi + Mumbai + Bangalore (all) to facilitate APA process*
 - (ii) *Competent authority of India + Director APA (both) for bilateral APA or multilateral APA (both) for 3 city like Delhi + Mumbai + Bangalore (all) to facilitate APA process*

15. Meaning of Critical Assumptions for APA in India

- (i) *Meaning of Critical assumptions are including the facts + macro-economic criteria's like industry + business + economic condition + etc. (all)*
- (ii) *Hence critical assumptions are important for conclusion of TPM under APA*



(iii) *Therefore substantial change in critical assumptions under APA are important + liable for revision or cancelation (both) of APA by CBDT.*

16. Meaning of key informations as required for filing + Negotiating of APA

- (i) *Details for proposed international transaction*
- (ii) *Disclosure for other controlled transaction*
- (iii) *Details for TP background*
- (iv) *Audited Financial statements for previous 3 year + future financial projections*
- (v) *Analysis of Industry like taxpayer's core activities in specific (relevant) industry*
- (vi) *Business structure like main business arrangements within group of companies in India + outside India (both)*
- (vii) *Detailed functional analysis like functions performed by taxpayer against controlled transactions + assets used to perform the functions + related business risks + commercial risks (all)*
- (viii) *Relevant economic analysis + impact of proposed TPM*
 - (a) *Abovementioned documents + informations (both) are available under TP documentation already maintained by taxpayer.*
 - (b) *However APA team is permitted to ask to furnish additional documents + information's considered necessary to conclude TPM through providing the sufficient time to taxpayer to provide documents + information's (both)*

17. Revision of Application (Form 3CED) for APA with DGIT by Taxpayer

- (i) *Taxpayer is permitted to revise the application (Form 3CED) for APA through request in writing for revision (amendment) in application at any stage before finalisation of terms of APA by APA team + approved by CBDT (both)*
- (ii) *Taxpayer is required to disclose the circumstances to revise + to submit the supporting documents for justification to revise.*
- (iii) (a) *DGIT (for unilateral APA) + competent authority in India (for bilateral APA or multilateral APA) both are permitted to allow the revision in application for APA where revision is not effecting basic nature of application for APA as originally filed by taxpayer.*



(b) *However taxpayer may require to pay additional fee INR 5 Lac to revise the APA application by APA team.*

18. Timeline for approving of APA by CBDT in India

(i) (a) *Generally in India the APA team is taking between 1 to 2 year in finalizing the unilateral APA + taking between 2 to 3 year in finalizing bilateral APA or multilateral APA (both).*

(b) *However APA team in India is not providing any timeline to complete entire process of approving by APA team + approving by CBDT (both)*

(c) *Although outside India APA teams are not providing any specific timeline but providing tentative target timeline for approving the APA.*

(ii) *Generally APA team in India is taking time due to certain factors like:-*

(a) *Complexity of transaction as covered under proposed APA*

(b) *Availability of workforce of examiners + officers (both) in APA team*

(c) *Unilateral APA + bilateral APA + multilateral APA (all) are taking different time in completion of APA process by APA team*

(d) *Treaty (DTAA) partners are taking different time to review the requests for bilateral APA + multilateral APA (both).*

19. Consequential effect before APA is approved by CBDT in India

- *Taxpayer is required to obey the regular income tax compliances like annual compliance for transfer pricing regulations under section 92 of ITA 1961 + annual filing for Income Tax Return (ITR) under section 139(1) of ITA 1961 (both) during APA is under process for negotiation + finalization (both) until the APA is finalized by APA team + signed by CBDT (both)*

20. Filing of Appl. For APA by Taxpayer during litigation before ITAT in India

(i) *Taxpayer is permitted for filing of application for APA during litigation before ITAT*

+

(ii) *Also permitted for filing of application for APA during litigation before ITAT beside same matter is under litigation before ITAT*



21. Sharing of documents by APA team with Income Tax Authorities in India

- (i) In India APA rules are silent for sharing of sensitive documents + information's (both) with Income tax authorities like AO + TPO + CIT (Appeals) + etc. (all)
- (ii) However in India tax authorities are permitted to secure the sensitive documents + informations (both) during TP audit by TPO
- (iii) Sensitive documents + informations (both) includes :-
 - (a) Future business projections
 - (b) Marketing strategy
 - (c) Audited financial statements of AE as located outside India
 - (d) Etc.
- (iv) (a) Outside India APA rules are providing for sharing specific informations or facts + for not sharing specific informations or facts (both)
 - (b) Hence it's suggested that Govt. should insert in APA rules for sharing specific informations or facts + for not sharing specific informations or facts (both) in India

22. Key amendment through Finance Act 2020 for APA in India

- Now taxpayer is permitted to apply for APA against determination of business connection + specifying the manner in which income is attributable to operations as carried out in India (both) under section 9(1)(i) of ITA 1961.

23. Publication of details of APA in public domain like detils of AAR in India

- (i) (a) APA team (authority) is not permitted to share strict confidentiality of taxpayer's data as received during pre-filing meetings + APA negotiations + APA finalisation (all).
 - (b) Hence APA team is not permitted to share strict confidentiality of taxpayer's data as received through publication in public domain
- (ii) (a) APA is taxpayer (client) specific private agreement between taxpayer and Govt's. of 2 or more countries for bilateral APA or multilateral APA (both) outside India.
 - (b) Hence informations + documents (both) should not be published in public domain like AAR where informations being published in public domain in India.



- (c) *Moreover ITA, 1961 is guarantying for maintaining the confidentiality of informations as received from taxpayer in non APA matters.*
- (d) *Therefore same guarantying for maintaining the confidentiality of informations be given by Govt. against informations as received from taxpayer during APA process through not publishing in public domain*
- (iii) (a) *Generally tax authorities outside India are publishing annual report on APA statistics to provide the guidance to taxpayer for coming years in future.*
- (b) *However identity of taxpayers is not being revealed in annual report outside India*
- (c) *Hence it's suggested that APA authority in India be published similar statistics after APA programme is established for coming years in future.*

24. Best Preparation of Answers for appearing before APA team in India

- *Taxpayer is required to prepare the strategy + roadmap + alternative options as available + etc. (all) to deal before APA team in India like :-*
 - (i) *Preparation of appropriateness for transfer pricing policy*
 - (ii) *Alignment of transfer pricing policy with commercial substance*
 - (iii) *Alignment of intercompany agreements with business substance + transfer pricing policy (both)*
 - (iv) *Obey the transfer pricing policy with strong back up documentation*
 - (v) *Decision on information's + documentations (both) be shared among group companies.*
 - (vi) *Preparation of financial projections for coming years in future*
 - (vii) *Preparation of alternative plan where APA is not approved by APA team*



(B) Annual Compliances during Continuation of APA term in India

1. Annual Compliance Report (ACR) + Annual Compliance Audit (ACA) both

(i) ACR by taxpayer under Rule 10-O of ITR 1962

Taxpayer is required to file the ACR in Form 3CEF in quadruplicate (in 4 sets) with documents to DGIT as not exceeding the 30 days from due date of filing of income tax return under section 139(1) of ITA 1961 or not exceeding the 90 days from date of entering into APA whichever is later

(ii) ACA by AO under Rule 10-P of ITR 1962

(a) APA team through Transfer Pricing Officer (TPO) is required to carry out ACA against ACR already filed by taxpayer

(b) APA team through TPO is required to complete the ACA as not exceeding the 6 month from end of month in which ACR is filed by taxpayer

2. Revision + Cancellation + Renewal of APA by DGIT (on behalf of CBDT)

(i) Revision of APA

● CBDT is permitted to revise the APA either Suomoto or on request of taxpayer or DGIT or competent authority under rule 10-Q of ITR 1962:-

(a) Where any change in critical assumption or taxpayer is failed to meet any term and condition of APA

(b) Where any change in law as become non-binding of APA on taxpayer or CBDT (both).

(c) Where any request is received from competent authority Outside India for bilateral APA or multilateral APA (both).

(ii) Cancellation of APA in India

● CBDT is permitted to cancel the APA under rule 10-Q of ITR 1962:-

(a) Where taxpayer is failed to comply with term and conditions of APA as ascertained by DGIT through compliance audit report.

(b) Where taxpayer is failed to file the ACR

(c) Where ACR already filed by taxpayer is containing substantial errors.

(d) Where taxpayer is not agreeing for proposed revision in APA as suggested by CBDT under rule 10-Q of ITR 1962



(iii) Renewal of APA in India

- *CBDT is permitted to renew the APA under ITR 1962:-*
- (a) CBDT is permitted to renew the Unilateral APA + Bilateral APA + Multilateral APA (all) for not exceeding the 5 year after expiry of original term of APA under ITR 1962 with consent of 100% parties of APA like tax treaty partners of bilateral APA or multilateral APA (both) located outside India.*
- (b) CBDT is required to receive a request from taxpayer for renewal of APA + 100% same procedure to be applied as followed at time of original (initial) APA.*
- (c) Taxpayer is suggested to apply for renewal before date of expiry of original term of APA to enable the CBDT to replace the renewal of APA into original APA*
- (d) CBDT is required to expedite the renewal of APA where facts + circumstances (both) of renewal of APA are 100% same with original APA*

3. Approving of APA for 4 Preceding previous year by CBDT in India

- (i) Now taxpayer is permitted to apply for APA against 4 prior year in Form 3CEDA + with FORM 3CED (both) in triplicate with documents under section 92CC (9A) of ITA 1961.*
- (ii) Hence taxpayer is permitted to apply for APA against 4 prior year to reduce current pending litigations through roll back mechanism under APA concept.*
- (iii) Now CBDT is permitting to apply for APA against 4 prior year + 5 future year = 9 year through filing of Form 3CEDA in triplicate with documents for 4 prior year + 3CED for 5 future year by taxpayer*
- *However taxpayer is required to pay (additional) filing fee INR 5 Lac with Form 3CEDA in triplicate with documents for 4 prior year*
- (iv) Applicability of Roll back provision + mandatory conditions :*
 - (a) Where Income tax return (ITR) for roll back years are already filed before due date under section 139(1) of ITA 1961. Hence applying for Roll back provision is not permitted where ITR is filed after due date under section 139(1) of ITA 1961.*



+

(b) *Where Audit report under section 92E is already filed for international transactions by taxpayer*

(v) *Non-Applicability of Roll Back provision :*

(a) *Application for Roll back provision is not permitted where ALP is already determined by AO + appeal is pending before ITAT against determination of ALP by AO*

+

(b) *Application for roll back provision is not permitted where decrease in income or increase in loss against already declared income or loss in ITRs in 4 prior year due to roll back provision.*

4. Consequential effect after APA is approved by CBDT in India

(i) (a) *Taxpayer is required to file the modify ITR as not exceeding the 3 month from end of month in which APA is approved by CBDT where ITR is already filed before APA is approved by CBDT*

Or

(b) *Taxpayer is required to file the original ITR before date of entering into APA where original ITR is not already filed before APA is approved by CBDT*

(ii) *AO is required to modify the assessment order as not exceeding the 1 year from end of financial year in which modify ITR is filed.*

(iii) (a) *AO is required to continue the ongoing assessment proceedings where APA is entered during continuity of assessment proceedings even after receiving the modified ITR from taxpayer*

+

(b) *AO is permitted to avail extension as not exceeding the 12 month against period of limitation for completion of assessment or reassessment (both) proceedings*



(C) Forms for application + Report (both) by taxpayer

1. Application for Pre-filing meeting – Form No. 3CEC (Rule 10H(2) of ITR, 1962)

FORM NO. 3CEC

[See sub-rule (2) of rule 10H]

Application for a pre-filing meeting

To,

The Director General of Income-tax (International Taxation)

New Delhi

Sir/Madam,

I propose to apply for an Advance Pricing Agreement. In this regard I give below the necessary particulars for a pre-filing meeting:

1. Particulars of the applicant:

a. Full name of the applicant:

b. Permanent Account Number or Aadhaar Number:

c. Address of the applicant:

d. Location(s) of the business enterprises in India:

e. Details of applicant authorized representative:

f. Address for communication:

g. E-mail Id and the contact numbers of the person with whom correspondence is required to be made:

2. The global structure of the applicant's group and the industry in which it operates:

3. Names of all the associated enterprises (AE's) with which international transactions have been either undertaken or proposed to be undertaken:

4. Name of country(s) in which (AE's) is located:



5. Business model and overview of the applicant's business operations in prior 3 years:

6. Functional and Risk Profile of the applicant and associated enterprises:

7. a. Details of all the international transactions proposed to be covered in the APA:

b. Value of such international transactions covered under Transfer Pricing audit in prior 3 years:

8. Details of all other international transactions not proposed to be covered in the APA:

9. Type of APA proposed:

a. Are you proposing a unilateral APA?
Yes

No

b. If yes the reasons for the same:

c. Are you proposing a Bilateral or Multilateral APA?
Yes

No

d. If yes, provide the names of the country(ies) in which the associated enterprises are located:



- 10. Number of years for which APA is proposed to be applied:
- 11. Proposed transfer pricing methodology to be used with supporting documentation:
- 12. Identification of third party comparable:
- 13. Details of arm's length price or profit level indicator:
- 14. Details of critical assumptions, that the applicant considers, may affect the business or the transfer pricing methodology:
- 15. The history of the Competent Authority issues, requests and settlements:
- 16. History of transfer pricing audits, assessments and present status of appeals:
- 17. Names and designation of the representatives who would be appearing before the authorities for pre-filing discussions:

Any other relevant information:

I declare that to the best of my knowledge and belief, the information furnished in the application is correct and truly stated.

Place:

Yours faithfully,

Date:

Applicant

Notes:

- 1. The application must be filed in triplicate.
- 2. If the space provided for answering any item in the application is found insufficient, separate enclosures may be used for the purpose. These enclosures should be signed by the person authorised to sign the application.



3. In case the pre-filing meeting is requested on an anonymous basis, no names of the applicant or associated enterprises are to be given.
4. With regard to details of all the international transactions proposed to be covered in the APA, please furnish agreements with associated enterprises, if any, relating to the international transactions along with the reasons for covering these transactions in APA.
5. In case the applicant is applying for a Bilateral or Multilateral APA, the applicant must state whether India has an existing comprehensive DTAA with such country(ies). It may also be verified whether such country(ies) has APA program in place?
6. In case the pre-filing request is on anonymous basis, details of the representatives of the applicant who would be appearing before the authorities for pre-filing discussions must be furnished.



2. Application for APA - Form No. 3CED (Rule 10-I(1) of ITR, 1962)

FORM NO. 3CED

[See sub-rule (1) of rule 10-I]

Application for an Advance Pricing Agreement

To,
The Competent Authority of India
or
Director General of Income-tax (International Taxation)
New Delhi

Sir/Madam,

This is to state that (Name of the Applicant)..... wishes to negotiate an APA with the Central Board of Direct Taxes. I am submitting herewith the necessary particulars hereunder:

I. General

1. Particulars of the applicant:

- a. Full name of the applicant:
- b. *Permanent Account Number or Aadhaar Number*
- c. Address of the applicant:
- d. Address for communication:
- e. Location(s) of the business enterprises in India:
- f. E-mail Id and the contact numbers of the person with whom correspondence is required to be made:
- g. Names and designation of the authorised representatives who would be appearing before the authorities for negotiations of the APA:

2. Whether pre-filing discussions were sought by the applicant? If yes, please furnish:

- a. Date of application for pre-filing meeting:
- b. Date of pre-filing meeting(s) with the APA Team:

3. Particular(s) of the Associated Enterprises with whom the APA is requested for:

- a. Name(s) of the Associated Enterprise(s):
- b. Name(s) of the country(ies) in which the associated enterprises mentioned in clause (a) are located:
- c. Taxpayer Registration Number/Taxpayer Identification Number/Functional equivalent/Any unique number used for identification of the Associated Enterprise by the Government of that country/specified territory in which the Associated Enterprise claims to be located:]



4. Particulars of the Parent Company(ies) of the applicant:
- Name of Immediate parent company of applicant:
 - Address of Immediate parent company of applicant:
 - Country of residence of Immediate parent company of applicant:
 - Taxpayer Registration Number/Taxpayer Identification Number/Functional equivalent/Any unique number used for identification of the Immediate parent company by the Government of that country/specified territory of which it claims to be a resident:
 - Name of Ultimate parent company of applicant:
 - Address of Ultimate parent company of applicant:
 - Country of residence of Ultimate parent company of applicant:
 - Taxpayer Registration Number/Taxpayer Identification Number/Functional equivalent/Any unique number used for identification of the Ultimate parent company by the Government of that country/specified territory of which it claims to be a resident:]
5. *a.* Are you applying for a Unilateral, Bilateral or Multilateral APA: Unilateral/Bilateral/Multilateral
- b.* If you are applying for a Bilateral or Multilateral
 APA, have the Associated Enterprises applied for APA with the Competent Authority in the country of its residence? Yes/No
- c.* If yes, enclose evidence of furnishing such application with the other Competent Authority:
- d.* If no, by what date the application is proposed to be furnished to the other Competent Authority:
- e.* If the application is for Unilateral APA and it involves international transactions with an entity located in a jurisdiction with which India has an agreement under section 90 or 90A of the Act for avoidance of double taxation, kindly provide explanation for why the request is not for bilateral or multilateral APA :
- f.* Whether any rollback request is being made : Yes/No
- g.* If yes, enclose copy of relevant Form No. 3CEDA.
6. Particulars of fee paid by the applicant: Amount in Rs.



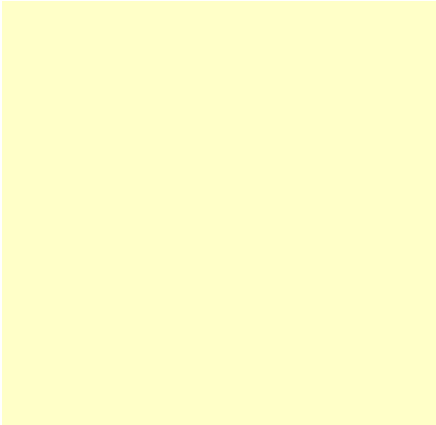
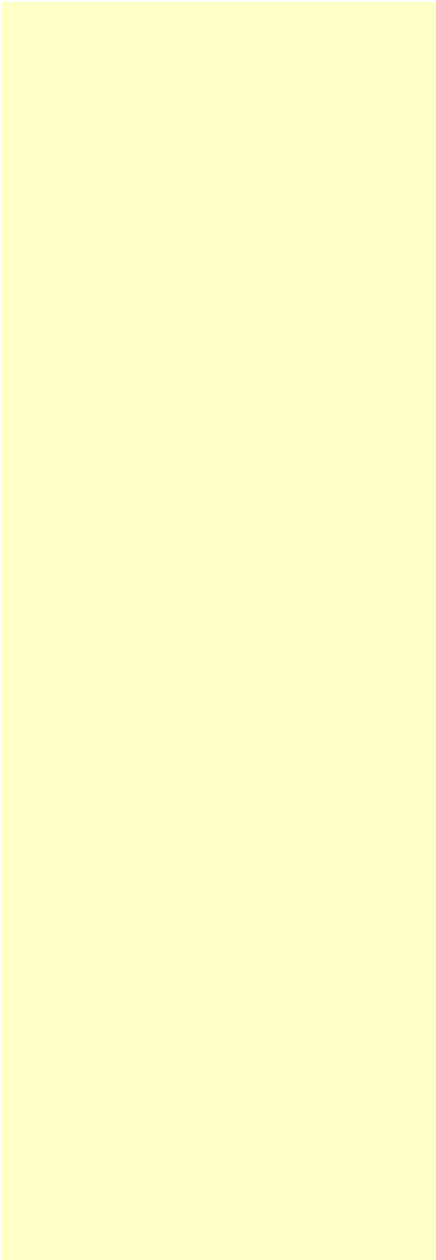
Challan No. :

Dated:

7. Period of APA proposed along with the date from which APA is sought to be applicable:
8. Details of the international transactions proposed to be covered in the APA (Description of the property or services to which the proposed APA relates):
9. Proposed Transfer Pricing Method(s):
10. Proposed terms and conditions, and critical assumptions, for the APA:
11. History and background of the applicant and the associated enterprise:
12. General description of business and products/services:
13. Multinational structure, organizational arrangement, operational set-up, including major transaction flows:
14. Identify all other transaction flows of the multinational enterprise (volumes, directions and amounts) that may have an impact on the pricing of the covered transactions:
15. Functional currency for each entity and the currency which is used for the proposed transactions to be covered under the APA:
16. Accounting and costing system, policies, procedures, and practices, including any significant financial and tax accounting differences that may affect the TPMs:

II. Functional analysis

17. Detailed functional analysis of the applicant and all relevant entities with respect to the covered transactions:
18. *Business strategies* - current and future Budget statements, projections and business plans for future period covered by proposed APA, general business and industry trends, future direction/business strategy including R&D, production and marketing:
19. Financial and operating information, including corporate annual reports: (Please enclose copies)
 - a. Financial statements on a consolidated and unconsolidated basis for the prior five years, or the most recent business cycle as appropriate (Also provide interim statements for the most recent period prior to the date of the submission):
 - b. Income-tax returns and related supporting schedules for the prior three years including Form 3CEB:
 - c. Operating data (gross and net) segmented by pro-duct line, division, unit, and geographic region for the prior five years, or the most



recent business cycle as appropriate:

20. Relevant marketing and financial studies: (Please enclose copies)
21. Copies of all relevant inter-company agreements (pricing, cost sharing, licensing, distributorship etc.): (Please enclose copies)

III. Industry and market analyses

22. Detailed industry analysis:
 - a. Comprehensive description of industry as well as generally accepted industrial and commercial practices:
 - b. Identification and general profile of competitors, including respective market shares:
 - c. Industry and general business statistics, financial ratios, and analyses/studies:
 - d. Critical success factors:
23. Detailed analysis of the markets for all countries involved:

IV. Transfer pricing background

24. Discussion of relevant legal considerations and requirements as per:
 - a. Indian law
 - b. Foreign law
 - c. Income-tax treaty between India and the foreign country
25. Discussion of transfer pricing methodologies, policies, and practices used by the applicant and associated enterprises for the covered transactions during the past three years, or business cycle as appropriate:
26. Discussion of relevant rulings, APAs/BAPAs/MAPAs, and other similar arrangements entered into with foreign tax administrations, for transfer pricing or other valuation bases, or other taxation matters entered into by the applicant (or its associated enterprises) and Indian or foreign tax administrations:
27. Discussion of relevant Indian income-tax audit, appeals, judicial and competent authority history:
28. Discussion of relevant foreign income-tax audit, appeals, judicial and competent authority history:
29. Discussion of un-assessed taxation years (Indian and foreign) and related outstanding tax, legal and other pertinent issues:

V. Transfer Pricing Methodology analysis

30. Provide all information, including detailed analyses



and explanations needed to establish the appropriateness of a proposed TPM, in accordance with transfer pricing regulations as contained in the Indian Income-tax law:

31. Discussion and analysis of each transfer pricing method, applied or rejected, for each covered transaction. In particular provide details on accepted or rejected internal comparables. (Indicate assumptions, strategies and policies that may have influenced the acceptance or rejection of each TPM):
32. Summary of selected TPMs and secondary TPMs, if used as a sanity check:

VI. Impact of proposed TPMs

33. Application of the proposed TPMs to the covered transactions for the three prior years' operations or the most recent business cycle, and discuss results:
34. Application of the proposed TPMs to the time period applicant wants the APA to cover and discuss results:
35. Discussion and quantification of the variance, if any, from the methodology applied in section IV:

I declare that to the best of my knowledge and belief, the information furnished in the application is correct and truly stated.

Place: 

Yours faithfully,

Date: 

Applicant

Notes:

1. Bilateral or multilateral APA application shall be filed with the Competent Authority *i.e.* the Joint Secretary FT&TR-I, New Delhi in triplicate.
2. Unilateral APA application shall be filed with the Director General of Income-tax (International Taxation), New Delhi in triplicate.
3. If the space provided for answering any item in the application is found insufficient, separate enclosures may be used for the purpose. These enclosures should be signed by the person authorised to sign the application.
4. The fee shall be computed in accordance with the sub-rule (5) of rule 10-I.
5. The application shall accompany with all the relevant documents.



3. Application for rollback of APA- Form No. 3CEDA (Rule 10MA (5) of ITR, 1962)

Form No. 3 CEDA

[See sub-rule (5) of rule 10 MA]

Application for rollback of an Advance Pricing Agreement

To,

The Competent Authority of India

or

Director General of Income Tax (International Taxation)

New Delhi

Sir/Madam,

This is to state that (Name of the Applicant)... wishes to negotiate an APA with the Central Board of Direct Taxes containing rollback provision. I am submitting herewith the necessary particulars hereunder:

1. Particulars of the applicant:

(a) Full name of the applicant:

(b) Permanent Account Number or Aadhaar Number:

(c) Address of the applicant:

(d) Address for communication:

(e) Location(s) of the business enterprises in India:

(f) Email id and the contact numbers of the person with whom correspondence is required to be made:

(g) Names and designation of the authorised representatives who would be appearing before the authorities for negotiations of the APA:

2. Whether pre-filing discussions in respect of rollback were sought by the applicant? If yes, please furnish:

(a) Date of application for pre-filing meeting:

(b) Date of pre-filing meeting(s) with the APA Team:

3. Whether application in Form 3CED is being filed simultaneously:

4. Details of international transaction(s) including Name(s) of the Associated Enterprises in respect of which rollback is requested for:



- 5. Whether the international transaction(s) is the same as that in respect of which APA request is being made in Form 3CED by the applicant:
.....
- 6. Particulars of additional Fee paid by the applicant: Amount in Rs.....
Challan No:
Dated:
- 7. The details of previous years for which rollback is being sought:
- 8. Has the same international transaction been undertaken in any other year for which rollback is permissible but the same is not being requested for. If yes, the reasons for the same be provided:
.....
.....
- 9. Period of APA proposed along with the date from which APA is sought to be made applicable in the application in Form 3CED:
.....
- 10. Whether return of income for all the previous years mentioned in 7 above have been furnished on or before the due date: Yes/No
- 11. If yes, provide details including acknowledgement No., date of furnishing etc.
- 12. Whether audit report under section 92 E in respect of the international transaction referred to in 4 above for all the previous years mentioned in 7 above have been furnished on or before the due date: Yes/No
- 13. If yes, provide details including date of furnishing etc.
- 14. Details of pending proceedings including appeals for the years mentioned in 7 above in respect of international transaction(s) mentioned in 4 above :
.....
.....
- 15. Whether Appellate Tribunal has disposed of any appeal in respect of international transaction mentioned in 4 above for any of the years mentioned in 7 above? if yes, then details may be provided:
.....
.....



I declare that the information furnished in the application is correct and truly stated.

.....

Yours faithfully,

Place:

Date:

.....

Applicant

Notes:

1. The Form shall be filed along with an application in Form 3CED for entering into an APA.
2. If the space provided for answering any item in the application is found insufficient, separate enclosures may be used for the purpose. These enclosures should be signed by the person authorised to sign the application in Form 3CED.
3. The Form shall be accompanied with proof of having paid fee of five lakh rupees. This fee is in addition to any fee payable along with Form 3CED.
4. The application shall be accompanied by all the relevant documents."



FORM NO. 3CEF

[See sub-rule (2) of rule 10-O]

Annual Compliance Report on Advance Pricing Agreement

To,

The Director General of Income-tax (International Taxation)

New Delhi

Sir/Madam,

I am submitting herewith Annual Compliance Report for the period beginning from dd/mm/yyyy to dd/mm/yyyy for Advance Pricing Agreement entered into between (Name of the taxpayer) and the Central Board of Direct Taxes, *vide* APA Reference No. dated In this regard I give below the necessary information:

1. Particulars of the taxpayer:

a. Full name of the Taxpayer:

b. Permanent Account Number:

c. Address of the Taxpayer:

d. Address for communication:

e. E-mail Id and the contact numbers of the person for correspondence:

2. Type of APA entered into:

a. Have you entered into a unilateral APA or Bilateral APA or Multilateral APA?

Unilateral

Bilateral

Multilateral

b. If you have entered into a Bilateral APA or Multilateral APA, provide the names of the country(ies) with which the APA has been entered into.

3. Name(s) of the associated enterprise(s) with which international transactions have been undertaken during the year.



4. Details of Covered Transactions:

- a. Nature of Covered Transaction:
- b. Amount of Covered Transaction:
- c. Country(ies) involved:
- d. Agreed transfer pricing method:
- e. Agreed profit level indicator:
- f. Actual result achieved:
- g. Adjustment required:
- h. How the adjustment if any is reflected in the income-tax return:

5. Are there any changes in the **business model** of the taxpayer in the current financial year as compared to:

- a. Immediately preceding year:
- b. Year immediately preceding to the first year to which APA is applicable:

6. Are there any changes in the **Functional and Risk Profile** of the taxpayer and the associated enterprises in the current financial year as compared to:

- a. Immediately preceding year:
- b. Year immediately preceding to the first year to which APA is applicable:

7. Transfer pricing methodology:

- a. Agreed upon in the APA:



b. Followed during the year to justify the arm's length price of the international transactions covered by APA:

--

c. Variations between (a) and (b) above, if any:

--

d. Reasons for variations:

--

8. Critical assumptions:

a. Agreed upon in the APA:

--

b. Whether the critical assumptions have been met during the year or there has been a change in critical assumptions:

--

c. Reasons for not meeting the critical assumptions or change in critical assumptions:

--

9. Are there any changes in the organisational structure of the taxpayer group by way of amalgamation, acquisition, merger, demerger or sale of business or by any other methods? If yes, please furnish complete details thereof and show its impact on the critical assumptions agreed upon in the APA:

--

10. Specify all other terms and conditions agreed upon in the APA and show whether they have been complied with. In case of non-compliance, furnish the reasons thereof:

--

I declare that I have examined the information contained in this APA Annual Compliance Report, including the accompanying documents, and to the best of my knowledge and belief, the facts presented within this report and accompanying documents are true, comprehensive and accurate.

Place:

Date:

Yours faithfully,

(Name of the Taxpayer)



Notes:

1. The Annual Compliance Report shall be filed quadruplicate.
2. The Annual Compliance Report shall be filed for every year covered in the APA Separate report shall be filed for each year.
3. The information relating to “Covered Transaction” in item No. 4 above is required to be furnished for each covered transaction separately.
4. Please attach all documents as agreed upon in the APA to justify the transfer pricing methodology and computation of arm’s length price.



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October -2022

