

Preface

1. ***Author*** has felt when he ***qualified*** as Chartered Accountant (CA) in Year 1985 that ***legal provisions' interpretations*** are ***big challenge*** for legal professionals, govts' officials and public at large ***in India and outside India***.
2. ***Author*** has ***realized*** that ***something*** should ***be developed to resolve this challenge*** in India and outside India.
3. ***Author*** has ***started compiling*** Frequently Asked Questions (FAQs) on many subjects where his 100% ***answers are precisely based on Yes or No i.e. white or black nothing is grey***
4. ***Author*** has ***compiled approximately 150 +(plus) research papers / books with 25 thousand + (plus) pages*** on many prevailing subjects / acts in India and outside India.
5. ***Author's 1st paper book*** is now ***being published*** under head FAQs on Enforcement Directorate (ED) ***where 571 FAQs are replied*** based on Yes or No i.e. white or black nothing is grey
6. This ***book*** is also ***containing***
 - (i) Foreign Exchange Management Act (***FEMA***) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (***PMLA***) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (***FEOA***) 2018 and rules / regulations
7. This ***book*** is ***published with Sai Kripa and dedicated*** to my father (late) ***Mr. M.R. Agarwal***, Mother ***Mrs. R.D. Agarwal***, wife ***Mrs. Snigdha Agarwal***, daughter ***Ms. Soumya Agarwal***, daughter ***Ms. Sanya Agarwal*** and dedicated team headed by ***Rajat Kumar***
- I trust that you will be ***enriched by reading this book***

With best wishes,
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Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

https://taxguru.in/author/satishagarwal307_1957

Or

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Few out of abovementioned Research papers / books are as under:

- 1. Book on Enforcement Directorate (ED) in India- (Book with 617 pages)***
- 2. Director of Revenue Intelligence (DRI) in India***
- 3. Central Bureau of Investigation (CBI) in India***
- 4. National Investigation Agency (NIA) in India***
- 5. Serious Fraud Investigation Office (SFIO) in India***
- 6. Financial Intelligence Unit (FIU-IND) in India***
- 7. Central Vigilance Commission (CVC) in India***
- 8. Narcotics Control Bureau (NCB) in India***
- 9. Research & Analysis Wing (R&AW) in India***
- 10. Economic Offence Wing (EOW) in India***
- 11. Intelligence Bureau (IB) in India***
- 12. Director General of Income Tax Criminal Investigation (DGITCI) in India***
- 13. National Company Law Tribunal (NCLT) in India***
- 14. Security Exchange Board of India (SEBI) in India***
- 15. Prevention of Corruption (PC) Act, 1988 in India***

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
24. *Advance Pricing Agreements (APAs) in India*
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44. *Annual Information Statement (AIS) in India*
45. *Investments by Non-Residents (NRIs) in India*
46. *Guidance for Doing Business in United States of America (USA)*
47. *Corporate Tax (CT) Law in UAE*
48. *Acquisition & Transfer for Immovable Properties by Non-Residents (NRs) in India*
49. *Foreign Company's Registration in India*
50. *Auditor Checks and Reporting for Indian Companies in India*
51. *Companies Auditor Report Order (CARO) 2020 in India*
52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*



55 FAQs on Advance Pricing Agreement (APA) Approved by CBDT in India

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55 FAQs on Advance Pricing Agreement (APA) Approved by CBDT in India

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

1. Meaning for background for APA

- (i) Govt. of India (Govt.) observed that litigations (already) increased due to use of Transfer Pricing (TP) regulations based on Arm Length Price (ALP) introduced through Finance Act, 2001
- (ii) Govt. introduced APA through finance Act, 2012 inserting new provisions under section 92CC + 92CD of Income Tax Act (ITA) 1961 + also rules 10F + 10G + 44GA of Income Tax Rules (ITR) 1962 (all) for minimizing litigations between income tax (revenue) deptt. and taxpayer

2. Meaning for introduction for APA

- (i) APA (arrangement) permitted for determining Arm Length Price (ALP) in advance for controlled international transactions with Associate Entity (AE) + also for fixed period (both) simultaneously
- (ii) APA to be made between CBDT (on behalf of Govt. of India) and taxpayer for (international) transactions with AE
- (iii) APA not permitted for determining ALP for (domestic) transactions with AE
- (iv) APA permitted for 5 (future's) year's transactions with AE
+ (plus)
- (v) Also APA permitted for 4 (preceding) year's transactions with AE under roll-back provisions mechanism
+ (plus)



(vi) Also taxpayer + APA team (on behalf of CBDT) both mutually agreeing for Transfer Pricing Methodology (TPM) to be applied for maximum 5 year for controlled transactions with AE after fulfilment of critical assumptions.

+ (plus)

(vii) Also APA being used (outside India) for determining TP for transactions with AE to avoid future's disputes with Income tax (revenue) deptt.

3. **Meaning for filing of application with DGIT or Competent Authority (any)**

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

Or

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

(iii) Taxpayer permitted to apply (in Form 3CED) in triplicate (with documents) for 5 (future's) year's international transactions with AE

4. **Meaning for timings of application with DGIT or Competent Authority (any)**

(i) APA's application be filled before undertaking international transactions with AE + also for non-recurring nature (both) simultaneously.

+ (plus)

(ii) Also APA's application be filled on 1st day of previous year before undertaking international transactions with AE + for recurring nature (both) simultaneously.

5. **Meaning for Pre-filing meeting with DGIT or Competent Authority**

(i) Taxpayer permitted to apply (in Form 3CEC) for pre-filing meeting (consultation) with DGIT -INTL and TP (DGIT) in triplicate (with documents) for determining scope of agreement + identifying TP issue involved + for discussing broad terms of agreement + also for determining suitability (all).

(ii) Taxpayer permitted to apply (in Form 3CEC) with DGIT for deciding to file or not to file (in Form 3CED) in triplicate (with documents) through consultation.



- (iii) (a) Taxpayer (*not*) binding for outcome against APA's application filed (*in Form 3CEC*) in triplicate (*with documents*)
+ (*plus*)
- (b) Also CBDT (*not*) binding to force taxpayer for filing APA's application (*in Form 3CED*) with DGIT after filing application (*in Form 3CEC*) when taxpayer not interested in filing application (*in Form 3CED*) in triplicate (*with documents*)

6. **Meaning for *filling of Application* with DGIT**

- Taxpayer permitted to apply (*in Form 3CED*) because pre-filing meeting (*consultation*) not mandatorily required with specified information's + also payment for filing fee (*both*) simultaneously

7. **Meaning for *Negotiation* with DGIT**

- (i) APA team (*constituted by CBDT on behalf of govt.*) required to hold meetings with taxpayer + also to undertake (*necessary*) inquiries for APA's application.
+ (*plus*)
- (ii) Also APA team required to prepare (*draft*) report for competent authority for bilateral APA + multilateral APA (*both*) simultaneously
+ (*plus*)
- (iii) Also APA team required to prepare (*draft*) report for CBDT for unilateral APA (*only*)
+ (*plus*)
- (iv) Also APA team permitted for site visit to verify + validate functional analysis (*specifically*) needed when complex manufacturing operations involved + heavy uses for fixed assets + intangible assets + also etc. (*all*).
- Site visit by APA team (*highly*) common practice in other countries (*outside India*).
- (v) Site visit helping APA team to verify for actual operations underlying for covered transactions + to have better understanding + also business's reality (*all*).



8. Meaning for *Finalisatin* with DGIT

- APA team required to exchange comments with taxpayer for (*draft*) APA + APA's finalisation + also assessing effect for (*initial*) year which covered under APA term (*period*) for completed years before APA's approval (*by CBDT*)

9. Meaning for *permission from Govt. of India* for approving of APA (*by CBDT*)

- CBDT required to obtain approval for APA from Govt. under section 92CC(1) of ITA 1961

10. Meaning for *filing fee* for APA with DGIT

S.No	Value of Transactions for APA application	Filling Fee
(i)	When value of Transactions <i>not exceeding</i> INR 100 Crore	INR 10 Lac
(ii)	When value of Transactions <i>not exceeding</i> INR 200 Crore	INR 15 Lac
(iii)	When value of Transactions <i>exceeding</i> INR 200 Crore	INR 20 Lac

11. Meaning for *withdrawing APA's appliction* before approval

- (i) Taxpayer permitted for withdrawing APA application before approval (*by CBDT*)
+ (*plus*)
- (ii) Also taxpayer (*not*) permitted for refund against filing fee already paid for APA's application when withdraw before approval (*both*) simultaneously

12. Meaning for *validity period* for APA

- (i) Validity period (*maximum period*) for APA be written in approved APA (*by CBDT*)
+ (*plus*)
- (ii) Also validity period for APA (*not*) permitted for exceeding 5 consecutive year specified under section 92CC(4) of ITA 1961 (*both*) simultaneously

13. Meaning for *APA's binding* on taxpayer + CBDT (*both*) simaltaneously

- APA binding on taxpayer + CBDT (*both*) once approved by CBDT for international transactions with AE which already undertaken or to be undertaken in future (*both*) simultaneously specified under section 92CC (5) of ITA 1961



14. Meaning for *APA's not binding on taxpayer + CBDT (both) simultaneously*

- (i) When any change in law + also facts (*both*) simultaneously with effect APA
+ (*plus*)
- (ii) Also when APA obtained by taxpayer from CBDT through fraud + misrepresentation of facts (*both*) simultaneously

15. Meaning for *effect of announcement for APA's not binding on CBDT*

- CBDT permitted for announcing that APA (*not*) binding on CBDT when APA obtained by taxpayer through frauds + also misrepresentation of facts (*both*) simultaneously.
- (i) CBDT permitted (*empowered*) to declare any APA as void ab initio when taxpayer obtained APA through frauds + misrepresentation of facts (*both*) simultaneously beside that CBDT already obtained approval from Govt. (*all*)
+ (*plus*)
- (ii) Also 100% normal TP regulations be applied when APA cancelled by CBDT
+ (*plus*)
- (iii) Also period of limitation for assessment + reassessment by Assessing Officer (*AO*) (*both*) simultaneously be extended from date for commencing APA + to date for cancelling APA when declared as void ab initio by CBDT.

16. Meaning for *Unilateral APA with taxpayer + CBDT (both) simultaneously*

- (i) To include APA which entered between taxpayer and CBDT + also incomes taxable (*in India*).
+ (*plus*)
- (ii) Also rules *10F + 10G + 44GA* (*all*) of ITR 1962 applicable for unilateral APA

17. Meaning for *Bilateral APA with taxpayer + CBDT + 1 FTA (all) simultaneously*

- (i) To include APA which entered between taxpayer + CBDT (*both*) simultaneously + 1 Foreign Tax Administration (*FTA*) (*like CBDT*) + also incomes taxable (*in India*).
+ (*plus*)
- (ii) Also rules *10F + 10G + 44GA* (*all*) of ITR 1962 applicable for Bilateral APA



18. Meaning for *Multilateral APA* with taxpayer + CBDT + 2 FTA (all)

(i) To include APA which entered between taxpayer + CBDT (both) simultaneously + 2 or more than 2 FTA (like CBDT) + also incomes taxable (in India).

+ (plus)

(ii) Also rules 10F + 10G + 44GA (all) of ITR 1962 applicable for Multilateral APA

19. Meaning for *advantages of APA* for taxpayer + Govt. (both)

● APA providing 100% certainty for TP + TPM (both) simultaneously for transactions with AE + for Bilateral APA + also for Multilateral APA (all) to eliminate risk for potential (double) taxation on controlled transactions like:-

(i) 100% certainty for controlled transactions with AE during APA period

(ii) 0 (zero) cost for reporting when APA having annual report's information's

(iii) 0 (zero) cost for TP audit + also for filing appeal before CIT + ITAT + High court + Supreme Court (all) during APA period

(iv) More flexibility for developing practical approaches for complex TP matters

(v) More savings through APA renewal like saving of time in negotiating for fresh (original) APA.

(vi) Taxpayer permitted to convert unilateral APA into bilateral APA & vice versa

(vii) Taxpayer permitted for 4 preceding year's roll back + withdrawal for APA application + also APA revision under APA mechanism

(viii) Taxpayer permitted for 100% international transactions having Permanent Establishment (PE in India) under APA mechanism like:-

(a) Transfer for tangible property to AE

(b) Transfer for intangible property to AE

(c) Determination for cost sharing ratio with AE

(d) Determination for amount for service received from AE



(ix) (a) Taxpayer *(also)* permitted for APA on few *(specific)* international transactions *(only)*.

+ (plus)

(b) Also taxpayer not *(mandatory)* required for APA on 100% international transactions when taxpayer not interested for APA on 100% transactions.

(x) (a) APA *(most)* appropriate TPM for negotiating + finalizing between taxpayer and APA team *(on behalf of CBDT)*.

+ (plus)

(b) Also APA appropriate for TP + outcome of TPM *(both)* during APA period.

20. Meaning for *disadvantages of APA for taxpayer + Govt. (both)*

- *Disadvantages of APA for taxpayer*

(i) APA team taking *(more)* time for APA approval like from 1 to 3 year when no time needed for determining ALP under TP regulations

+ (plus)

(ii) Also APA team charging *(more)* money for APA approval like from 10 to 20 lac + also *(additional)* 5 lac for APA revision when no fee needed for determining ALP under TP regulations

- *Disadvantages of APA for CBDT*

(i) Constitution for APA team involving *(high)* manpower + cost *(both)*

(ii) Taxpayer *(many time)* exploiting APA approval for tax manipulations

21. Meaning for *constitution of APA team for unilateral APA*

- DGIT *(himself)* + Commissioner of Income Tax *(APA)* for unilateral APA for 3 city *(only)* like Delhi + Mumbai + also Bangalore *(all)*

22. Meaning for *constitution of APA team for bilateral + multilateral (both) APA*

- Competent authority of India + Director APA for bilateral APA + also multilateral APA *(both)* for 3 city *(only)* like Delhi + Mumbai + Bangalore *(all)*



23. Meaning for *critical assumptions* for APA

- (i) To include facts + macro-economic criteria's (*both*) like industry + business + economic condition + also etc. (*all*) for APA.
+ (*plus*)
- (ii) Also critical assumptions needed (*important*) for conclusion of TPM for APA
+ (*plus*)
- (iii) Also substantial changes in critical assumptions to be liable for revision or cancellation (*both*) simultaneously for APA.

24. Meaning for *key informations* for filing + Negotiating of APA (*both*)

- (i) 100% (*relevant*) details needed for future's international transactions with AE
- (ii) 100% (*relevant*) disclosures for controlled transactions with AE
- (iii) 100% (*relevant*) details for TP background for international transactions with AE
- (iv) Audited Financial statements for (*latest*) 3 year + also future's projections (*both*)
- (v) 100% (*relevant*) analysis for Industry like core activities in (*specific*) industry
- (vi) 100% (*relevant*) business structures like main business arrangements within group's company (*in India*) + also outside India (*both*) simultaneously
- (vii) 100% (*relevant*) detailed Functional Analysis (*FA*) like functions performed for controlled transaction+ assets used to perform functions + related business risks + also commercial risks (*all*)
- (viii) 100% (*relevant*) Economic Analysis (*EA*) + also impact for proposed TPM
- Abovementioned documents + information's (*both*) simultaneously (*already*) available for TP documentations maintained (*by taxpayer*).

25. Meaning for *APA team's powers* for filing + Negotiating of APA (*both*)

- APA team permitted to ask for furnishing (*additional*) documents + also information's (*considered necessary*) to conclude TPM but required to give sufficient time to taxpayer.



26. Meaning for *revision for APA's application (Form 3CED)* with DGIT by taxpayer

- (i) Taxpayer permitted for revising application (*Form 3CED*) through requesting in writing at any stage before APA's finalisation (*by APA team*) + also approved by CBDT (*both*) simultaneously.
- (ii) Taxpayer required to disclose circumstances + also to submit supporting documents for justification (*both*) simultaneously.

27. Meaning for *DGIT or Competent authority powers* for APA's revision

- *DGIT (for unilateral APA) + competent authority (for bilateral APA or multilateral APA)* both permitted for allowing revision in APA application when revision not effecting (*basic*) nature which originally filed by taxpayer.

28. Meaning for *additional fee INR 5 lac* for revision of APA's application

- *DGIT or competent authority (any)* permitted for asking maximum (*additional*) fee INR 5 Lac to revise APA's application.

29. Meaning for *timeline* for APA's approval (*in India*)

- (i) *APA team (generally)* taking 1 to 2 year for finalizing unilateral APA + also taking 2 to 3 year for finalizing bilateral APA or multilateral APA (*any*).
+ (*plus*)
- (ii) Also *APA team (generally)* not providing any timeline to complete 100% process for approval + also for approval from CBDT (*both*) simultaneously.

30. Meaning for *timeline* for APA's approval (*outside India*)

- *APA team (generally)* not providing any (*specific*) timeline but providing (*tentative*) timeline to complete 100% process for approval.

31. Meaning for *special factors for timeline* by APA team (*in India*)

- (i) Complexity for transactions (*already*) covered for APA
- (ii) Availability for workforce of examiners + officers (*both*) simultaneously for APA team



- (iii) Unilateral APA + bilateral APA + multilateral APA (all) taking different timeline for completion of APA process (by APA team)
- (iv) Treaty (DTAA) partner countries taking different timeline for reviewing requests for bilateral APA or multilateral APA (any)

32. Meaning for consequential effect before APA's approval

- Taxpayer required to obey for regular income tax's compliances like annual compliances for TP regulations specified under section 92 of ITA 1961 + also for annual filing of Income Tax Return (ITR) specified under section 139(1) of ITA 1961 during APA's process like negotiations + finalization until APA approved by APA team + also signed by CBDT (both) simultaneously

33. Meaning for filing APA's application during litigation before ITAT

- (i) Taxpayer permitted for APA's application during litigation (pending) before ITAT + (plus)
- (ii) Also permitted for filing APA's application during litigation (pending) before ITAT beside (same) matter (already) under litigation before ITAT

34. Meaning for sharing of documents by APA team with Income Tax Authorities

- (i) APA rules (in India) still silent for sharing (sensitive) documents + information's (both) simultaneously with Income tax authorities like AO + TPO + CIT (Appeals) + also etc. (all).
But
- (ii) Tax authorities permitted to secure (sensitive) documents + also information's (both) simultaneously during TP audit by TPO (in India)

35. Meaning for sensitive documents + informations for APA process (in India)

- (i) Taxpayer's future business projections
- (ii) Taxpayer's marketing strategy for future business
- (iii) AE's (outside India) audited financial statements
- (iv) Taxpayer's other (sensitive) documents + information's (both) simultaneously



36. Meaning for *sensitive documents + informations* for APA process (*outside India*)

- (i) APA rules (*outside India*) permitting for sharing some (*specific*) information's or facts
- But*
- (ii) Also (*not*) permitting for sharing some (*specific*) information's or facts

37. Meaning for *key amendments made through Finance Act 2020*

- Taxpayer (*now*) permitted through APA for determining business's connection + also specifying procedures (*both*) simultaneously for attributing incomes towards operations carried (*in India*) under section 9(1)(i) of ITA 1961.

38. Meaning for *publication of details in public domain (in India)*

- (i) (a) APA team (*not*) permitted for sharing taxpayer's data confidentiality which received for pre-filing meetings (*consultations*) + for APA's negotiations + also for APA's finalisation (*all*).
+ (plus)
- (b) Also APA team (*not*) permitted for sharing taxpayer's data confidentiality through publication in (*public*) domain
- (ii) (a) APA team (*not*) permitted for sharing (*specific*) private agreements made between taxpayer and FTA for 2 or more than 2 countries (*outside India*).
+ (plus)
- (b) Also information's + documents (*both*) simultaneously (*not*) permitted to publish in public domain like ruling pronounced by Authority for Advance Ruling (*AAR*) which permitted for publication in public domain.
+ (plus)
- (c) Also tax authorities required to guarantee for maintaining confidentiality of information's which received from taxpayer for non APA matters.
+ (plus)
- (d) Also Govt. required to guarantee for maintaining confidentiality of information's which received from taxpayer during APA process for not to publish in public domain.
- We suggest that govt. be permitted for publishing similar APA's statistics for future year's guidance.



39. Meaning for *publication of details in public domain (outside India)*

- (i) Tax authorities (*generally*) permitted for publishing annual report on APA's statistics to provide guidance (*to taxpayer*) for future's years.

But

- (ii) Taxpayer's identity (*not*) permitted for revealing in annual report

40. Meaning for *preparation of best answers for appearing before APA team*

- Taxpayer required to prepare strategy + roadmap + alternative options + also etc. (*all*) for communicating with APA team (*in India*) like :-
 - (i) Preparation for appropriateness of TP policy
 - (ii) Alignment for TP policy with commercial substance over form.
 - (iii) Alignment for inter-company agreements with business substance + also TP policy (*both*) simultaneously
 - (iv) Obeying for TP policy with strong back up documentations
 - (v) Decisions for sharing information's + documentations (*both*) simultaneously among group companies.
 - (vi) Preparation for financial projections for future's years
 - (vii) Preparation for alternative plan when APA (*not*) approved by APA team



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

41. Meaning for *Annual Compliance Report (ACR)* by taxpayer (Rule *10-O* ITR 1962)

(i) Taxpayer required to file ACR (in *Form 3CEF*) in quadruplicate (in *4 sets*) + also to submit requisites documents (both) with DGIT in maximum *30* day from due date for filing of Income Tax Return (ITR) under section *139(1)* of ITA 1961

Or

(ii) In maximum *90* day from date for entering into APA (whichever later)

42. Meaning for *Annual Compliance Audit (ACA)* by APA team (Rule *10-P* ITR 1962)

(i) APA team (through *Transfer Pricing Officer (TPO)*) required to carry ACA after receiving ACR from taxpayer

+ (plus)

(ii) Also TPO required to complete ACA in maximum *6* month from end of month in which ACR received from taxpayer

43. Meaning for *APA's Revision* by DGIT or Competent authority (Rule *10-Q*)

● CBDT permitted to revise APA either Suomoto or after receiving request from taxpayer or DGIT or competent authority (any) after satisfying certain factors like:

(i) When change made (if any) in critical assumption or taxpayer failed to meet APA's terms or conditions (any)

(ii) When change made (if any) in law which become APA's non-binding on taxpayer or on CBDT (any).

(iii) When request received (if any) from competent authority (outside India) for bilateral APA or multilateral APA (any).

44. Meaning for *APA's Cancellation* by DGIT or Competent authority (Rule *10-Q*)

● CBDT permitted to cancel APA either Suomoto or after receiving request from DGIT or competent authority (any) after satisfying certain factors like:

(i) When taxpayer failed to comply APA's terms or conditions (any) ascertained by DGIT.



- (ii) When taxpayer failed to file ACR
- (iii) When ACR filed (by taxpayer) containing substantial errors.
- (iv) When taxpayer (not) agreeing for proposed APA's revision suggested by CBDT

45. Meaning for APA's Renewal by DGIT or Competent authority (Rule 10-Q)

- (i) CBDT permitted for renewing Unilateral APA + Bilateral APA + Multilateral APA (all) for maximum 5 year after expiry of original APA's period + also after receiving consent from 100% APA's parties like tax treaty partners for bilateral APA or multilateral APA (any).
- (ii) CBDT required to receive request from taxpayer for APA's renewal + also to apply 100% (same) procedures which (already) followed at time of original (initial) APA.
- (iii) Taxpayer required (suggested) to apply for renewal before date of expiry of original APA's period to enable CBDT to replace APA's renewal into original
- (iv) CBDT required to expedite APA's renewal when facts + circumstances (both) for APA's renewal (already) 100% (same) with original.

46. Meaning for APA's approval for 4 preceding's year (Section 92CC(9A) of ITA, 1961)

- (i) Taxpayer permitted to apply APA for 4 preceding's year (in Form 3CEDA + also with FORM 3CED).
- + (plus)
- (ii) Also taxpayer enable to reduce current (pending) litigations through roll back mechanism (both) simultaneously.

47. Meaning for APA's approval for 5 future's year

- (i) Taxpayer permitted to apply APA (in Form 3CEDA + also with FORM 3CED) in triplicate with requisites documents for 5 future's year
- + (plus)
- (ii) Also taxpayer required to pay (additional) filing fee INR 5 Lac
- Now taxpayer permitted for 4 preceding's year + also 5 future's year = 9 year



48. Meaning for applicability of roll back provisions + mandatory conditions (both)

(i) Roll back provisions permitted when ITR filed (before) due date specified under section 139(1) of ITA 1961.

+ (plus)

(ii) Roll back provisions (not) permitted when ITR filed (after) due date specified under section 139(1) of ITA 1961.

+ (plus)

(iii) Also audit report specified under section 92E filed for international transactions

49. Meaning for non-applicability of roll back provisions + mandatory conditions

(i) Roll back provisions (not) permitted when ALP (already) determined by AO + also appeal (pending) before ITAT (both) simultaneously

+ (plus)

(ii) Roll back provisions (not) permitted when decreases in incomes or increases in losses against (already) declared incomes or losses in ITRs for 4 preceding's year.

50. Meaning for consequential effect after APA's approval (for taxpayer)

(i) Taxpayer required to file (modify) ITR in maximum 3 month from end of month in which APA approved when ITR (already) filed before APA's approval by CBDT

Or

(ii) Taxpayer required to file (original) ITR before date for entering into APA when original ITR (not) filed before APA's approval

51. Meaning for consequential effect after APA's approval (for AO)

(i) AO required to modify (assessment) order in maximum 1 year from end of financial year in which taxpayer filed modified ITR.

(ii) (a) AO required to continue (ongoing assessment) proceedings when APA approved by CBDT during (assessment) proceedings even after receiving modified ITR from taxpayer

+ (plus)

(b) AO permitted to avail extension for maximum 12 month against period of limitation for completion of assessment or reassessment (any) proceedings



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

52. Meaning for *pre-filing's meeting* application (Form No. 3CEC)

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 Advance Pricing Agreement. In this regard I give below necessary particulars for a pre-filing meeting:

1. Particulars of applicant:

a. Full name of applicant:

b. Permanent account number:

c. Address of applicant:

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

e. Details of applicant authorized representative:

f. Address for communication:

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

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

3. Names of all 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) located:

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

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

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

9. Type of APA proposed:

a. Are you proposing a unilateral APA?

Yes

No



b. If yes reasons for same:

c. Are you proposing a Bilateral or Multilateral APA?

Yes

No

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

10. Number of years for which APA 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 applicant considers, may affect business or transfer pricing methodology:

15. The history of Competent Authority issues, requests and settlements:

16. History of transfer pricing audits, assessments and present status of appeals:

17. Names and designation of representatives who would be appearing before authorities for pre-filing discussions:

Any other relevant information:

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

Place:

Yours faithfully,

Date:

Applicant

Notes:

1. The application must be filed in triplicate.
2. If space provided for answering any item in application found insufficient, separate enclosures may be used for purpose. These enclosures should be signed by person authorised to sign application.
3. In case pre-filing meeting requested on anonymous basis, no names of applicant or associated enterprises to be given.
4. With regard to details of all international transactions proposed to be covered in APA, please furnish agreements with associated enterprises, if any, relating to international transactions long with reasons for covering these transactions in APA.
5. In case applicant applying for a Bilateral or Multilateral APA, applicant must state whether India has existing comprehensive DTAA with such country(ies). It may also be verified whether such country(ies) has APA program in place?
6. In case pre-filing request on anonymous basis, details of representatives of applicant who would be appearing before authorities for pre-filing discussions must be furnished.



53. *Meaning for APA's application (Form No. 3CED)*

FORM NO. 3CED

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

Application for Advance Pricing Agreement

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

Sir/Madam,

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

I. General

1. Particulars of applicant:

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

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

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

3. Name(s) of Associated Enterprises with whom APA requested for:

4. Name of country(ies) in which associated enterprises mentioned in (3) above located:

- | | |
|---|---------------------------------------|
| 5. a. Are you applying for a Unilateral, Bilateral or Multilateral APA: | <input type="checkbox"/> Unilateral |
| | <input type="checkbox"/> Bilateral |
| | <input type="checkbox"/> Multilateral |

- b. If you applying for a Bilateral or Multilateral APA, have Associated Enterprises applied for



APA with Competent Authority in country of its residence? Yes

No

c. If yes, enclose evidence of furnishing such application with other Competent Authority:

d. If no, by what date application proposed to be furnished to other Competent Authority:

e. If application for Unilateral APA and it involves international transactions with entity located in a jurisdiction with which India has agreement under section 90 or 90A of Act for avoidance of double taxation, kindly provide explanation for why request not for bilateral or multilateral APA.

6. Particulars of fee paid by applicant:

Amount in Rs.

Challan No. :

Dated:

7. Period of APA proposed along with date from which APA sought to be applicable:

8. Details of international transactions proposed to be covered in APA (Description of property or services to which proposed APA relates):

9. Proposed Transfer Pricing Method(s):

10. Proposed terms and conditions, and critical assumptions, for APA:

11. History and background of applicant and associated enterprise:

12. General description of business and products/services:

13. Multinational structure, organizational arrangement, operational set-up, including major transactions flows:

14. Identify all other transactions flows of multinational enterprise (volumes, directions and amounts) that may have impact on pricing of covered transactions:

15. Functional currency for each entity and currency which used for proposed transactions to be covered under APA:

16. Accounting and costing system, policies, procedures, and practices, including any significant financial and tax accounting differences that may affect TPMs:

II. Functional analysis

17. Detailed functional analysis of applicant and all relevant entities with respect to 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 prior five years, or most recent business cycle as appropriate (Also provide interim statements for most recent period prior to date of submission):

b. Income-tax returns and related supporting schedules for prior three years including Form 3CEB:

c. Operating data (gross and net) segmented by product line, division, unit, and geographic region for prior five years, or 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 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 foreign country

25. Discussion of transfer pricing methodologies, policies, and practices used by applicant and associated enterprises for covered transactions during 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 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 appropriateness of a proposed TPM, in accordance with transfer pricing regulations as contained in 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 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 proposed TPMs to covered transactions for three prior years' operations or most recent business cycle, and discuss results:

34. Application of proposed TPMs to time period applicant wants APA to cover and discuss results:

35. Discussion and quantification of variance, if any, from methodology applied in section IV:

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

Place:

Yours faithfully,

Date:

Applicant

Notes:

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



54. Meaning for *APA's rollback* application (Form No. *3CEDA*)

Form No. 3 CEDA
(See sub-rule (5) of rule 10 MA)
Application for rollback of Advance Pricing Agreement

To,
The Competent Authority of India or
Director General of Income Tax (International Taxation) New
Delhi
Sir/Madam,

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

1. Particulars of applicant:

(a) Full name of applicant:

(b) Permanent Account Number:

(c) Address of applicant:

(d) Address for communication:

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

(f) E mail id and contact numbers of person
with whom correspondence required to be made:

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

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

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

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

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



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

5. Whether international transaction(s)
the same as that in respect of which APA request
being made in Form 3CED by applicant:

6. Particulars of additional Fee paid by applicant:

7. The details of previous years for which rollback being sought:

8. Has same international transactions been
undertaken in any other year for which rollback
is permissible but same not being requested for.
If yes, reasons for same be provided:

9. Period of APA proposed along with date from
which APA sought to be made applicable
in application in Form 3CED:

10. Whether return of income for all previous
years mentioned in 7 above have been furnished
on or before 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 international transactions referred to in 4 above
for all previous years mentioned in 7 above have been
furnished on or before due date: Yes/No

13. If yes, provide details including date of furnishing etc.

14. Details of pending proceedings including appeals for



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 transactions mentioned in 4 above for any of years mentioned in 7 above? if yes, then details may be provided:

.....

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

Yours faithfully,

Place:

Date:

Applicant

Notes:

1. The Form shall be filed along with application in Form 3CED for entering into APA.

If space provided for answering any item in application found insufficient, separate enclosures may be used for purpose. These enclosures should be signed by person authorised to sign application in Form 3CED

3. Form shall be accompanied with proof of having paid fee of five lakh rupees. This fee in addition to any fee payable along with Form 3CED.

4. The application shall be accompanied by all relevant documents.



55. **Meaning for Annual Compliance Report (ACR) on APA (Form No. 3CEF)**

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

1. Particulars of taxpayer:

a. Full name of Taxpayer:

b. Permanent Account Number:

c. Address of Taxpayer:

d. Address for communication:

e. E-mail Id and contact numbers of 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 names of country(ies) with which APA has been entered into.

3. Name(s) of associated enterprise(s) with which international transaction have been undertaken during 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 adjustment if any reflected in income-tax return:



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

a. Immediately preceding year:

b. Year immediately preceding to first year to which APA applicable:

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

a. Immediately preceding year:

b. Year immediately preceding to first year to which APA applicable:

7. Transfer pricing methodology:

a. Agreed upon in APA:

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

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

d. Reasons for variations:

8. Critical assumptions:

a. Agreed upon in APA:

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

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

9. Are there any changes in organisational structure of 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 critical assumptions agreed upon in APA:

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

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

Place:

Yours faithfully,

Date:

(Name of Taxpayer)

Notes:

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



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