

CBDT publishes APA Guidance with FAQs

The Advance Pricing Agreement (APA) provisions were introduced in India with effect from 1 July 2012 by the Finance Minister in the Union Budget 2012. The Central Board of Direct Taxes (CBDT), by notification in the official gazette dated 31 August 2012, had introduced detailed rules providing the necessary forms for application of a Unilateral, Bilateral / Multi lateral APA.

The CBDT has now published a comprehensive Guidance Note and Frequently Asked Questions (the Note) detailing the procedural aspects concerned with the Unilateral, Bilateral or Multilateral APA applications. The Note also addresses some of the commonly asked questions of the applicants. Throughout the Note, the CBDT has demonstrated a positive and open minded approach in defining the procedural and practical aspects of the APA process.

The Note would serve as a very handy guide to potential APA applicants, providing practical insights to the approach, process and the expectations of the APA office.

Based on the first round of discussions with the APA office, PwC's experience on the procedural aspects have been in line with the ones covered in the Note.

Some of the key points addressed in the Note are worth highlighting; these are:

- Unilateral APA application can be converted into bilateral APA before finalisation of the APA.
- In case Bilateral / Multilateral negotiations fail, the taxpayer has an option to opt for Unilateral APA or even Multilateral APA not involving the country with which agreement could not be reached.
- APA authorities would look at the evidence and information submitted by the taxpayers with an open mind despite past litigation.
- Tax administration has no particular preference for bilateral APAs over unilateral APAs. The decision lies with the taxpayer.
- Since APA is transaction-specific, taxpayer can request for unilateral APAs for some transactions, and bilateral APAs for others.
- Taxpayer can file APA request for profit attribution to PE.
- A request for pre-filing consultation cannot be refused by the APA office.
- While it is the taxpayer's decision to cover certain transactions *vs.* others, if one transaction is intrinsically linked with another or several others in a manner that it cannot be benchmarked independently, then both/ all transactions may need to be covered.

The Note can be accessed from the following link:

[http://www.incometaxindiapr.gov.in/incometaxindiacr/contents/tpi/Advance-Pricing-Agreement-Guidance-with-FAQs-\(TPI-43\).pdf](http://www.incometaxindiapr.gov.in/incometaxindiacr/contents/tpi/Advance-Pricing-Agreement-Guidance-with-FAQs-(TPI-43).pdf)

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