

Transfer Pricing (“TP”) developments in India

Summary of points discussed by Indian APA commissioner Ashish Kumar

Update on APA and MAP

The Indian Government has been working towards creating a non-adversarial tax regime and faster dispute resolution, as statistics on APA/ MAP indicate

- The Advance Pricing Agreement (“APA”) Programme which was introduced in 2012 with a view to provide a predictable and non-adversarial tax regime and to reduce the litigation in the Indian transfer pricing arena, has witnessed more than 700 applications so far. Of these, 141 Unilateral APAs and 11 Bilateral APAs have been signed, as on 31 March 2017.
- The Mutual Agreement Procedure (“MAP”), has served as an effective alternative dispute resolution mechanism for resolving tax disputes. A Framework Agreement has been signed with the United States under the MAP provision of the India-US Double Tax Avoidance Convention (“DTAC”). About 200 transfer pricing disputes between the two countries in Information Technology Services (“ITS”) and Information Technology enabled Services (“ITeS”) segments have been resolved under this Agreement.

Recent Transfer Pricing updates

Some of the steps taken by the Indian Government in recent years towards achieving the dual objective of rationalisation of taxation and reducing litigation burden on taxpayers are as follows:

- Introduction of a 'range' concept and the use of 'multiple year data' has aligned the Indian TP regulations with international best practices
- The selection criteria for transfer pricing cases has been replaced from the existing 'monetary threshold' based scrutiny case selection to 'risk based' parameters
- Reduction in TP adjustments, penalty rates and the time limits for completion of scrutiny assessments
- Introduction of the Direct Tax Dispute Resolution Scheme 2016 where taxpayers in certain cases have the option to settle pending claims by paying additional interest and penalty

Update on BEPS Action Plans

India, being one of the pioneers of the BEPS initiative, as part of the G20 countries, has already begun aligning its tax regulations with the OECD's BEPS reports.

- **Action Plan 1** - Introduction of Equalisation Levy of 6% in relation to specified services – currently only online advertisement services have been notified
- **Action Plan 4** - Interest Limitation rules of 30% of EBDITA in relation to borrowings from AE/related parties
- **Action Plan 6** - Renegotiation of tax treaties with Mauritius, Singapore and Cyprus
- **Action Plan 13** – An Indian constituent entity of an international group whose parent entity is filing CbCR in a country or territory outside India is required to notify the Indian authorities on the name of parent entity and country of filing. This would be applicable for Indian fiscal year beginning 1 April 2016. The rules for filing this notification, including due date, are awaited.