



APA & MAP Country Guide 2019 – India

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



India

APA Program

KEY FEATURES

Competent authority	Central Board of Direct Taxes (CBDT)
Relevant provisions	Section 92 of the Finance Act 2012; Circular No. 10 of 2015, dated June 10, 2015; and FAQ on APAs available on the Income Tax Department website.
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	Any Taxpayer who has entered into an international transaction or is contemplating to enter into an international transaction is eligible to apply for an APA.
Key timing requests, deadlines	Taxpayers must file the APA application before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring, or before undertaking the transaction in respect of remaining transactions. Compliance audits of the APA will also be carried out for each of the year covered.
APA term limits	There is a five-year maximum term for an APA.

PRE-FILING REQUIREMENTS

Overview

Pre-filing meetings with the CBDT is optional. To request a pre-filing meeting the Taxpayer must submit three copies of **Form No. 3 CEC** (available on the Income Tax Department's website) and include the following details:

- name, account number, address, location of business and contact number of the Taxpayer;
- details of the Taxpayer's representative (if applicable);
- organization structure of the Taxpayer's group and industry in which it operates;
- names of all associated entities relevant to the transaction to be covered;
- name of the jurisdiction(s) in which the associated entity is located;
- business model and operations in the previous three years;
- functional and risk profile of the applicant and associated entities;
- details of the transaction(s) proposed to be covered;
- value of such international transactions covered under transfer pricing audits in the previous three years;
- details of all other international transactions not proposed to be covered in the APA;
- type of APA proposed;
- number of years the APA will cover;
- proposed TP method to be used with supporting documentation;
- identification of third party comparables;
- details of arm's length price or profit level indicator;

(cont.)	<ul style="list-style-type: none"> • critical assumptions; • details of any issues, requests or settlements with the Central Board of Direct Taxes; and • history of transfer pricing audits, assessments and present status of appeals; <p>The meeting shall, among other things:</p> <ul style="list-style-type: none"> • determine the scope of the agreement; • identify transfer pricing issues; • determine the suitability of international transaction for the agreement; and • discuss broad terms of the agreement. <p>The pre-filing consultation shall not bind the Board or the person to enter into an agreement or initiate the agreement process, and shall not be deemed to mean that the person has applied for entering into an agreement.</p>
Anonymous pre-filing availability	Anonymous pre-filing is available.

APPLICATION REQUIREMENTS

Content of application

The Taxpayer must submit an APA application with Form No. 3 CED along with the requisite filing fee. The application must include:

- name, account number, address, location of business and contact number of the Taxpayer;
- details of the Taxpayer’s representative (if applicable);
- whether pre-filing discussions were sought and the details of the same;
- name(s) of the associated entities with whom the APA is requested;
- jurisdiction(s) in which the associated entities are located;
- type of APA sought;
- evidence of payment of the filing fee;
- period of APA proposed;
- details of the international transactions proposed to be covered in the APA;
- proposed TP method;
- proposed terms and conditions;
- critical assumptions;
- history and background of the Taxpayer and associated entities;
- general description of business and products/services;
- organizational structure;
- identification of all other transaction flows of the multinational enterprise that may have an impact on the pricing of the covered transactions;

(cont.)	<ul style="list-style-type: none"> • functional currency for each entity and currency used for the transactions to be covered; • accounting and costing system, policies, procedures, and practices, including any significant financial and tax accounting differences that may affect the transfer pricing method(s); • functional analysis of the Taxpayer and all relevant entities; • financial and operating information including corporate annual reports, and agreements; • industry and market analyses; • transfer pricing background; • transfer pricing method analysis; and • impact of proposed transfer pricing method.
Language	No specific guidance.
SME provisions	No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS

General	The CBDT follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
Monitoring & compliance	Taxpayers must furnish four copies of an annual compliance report to the Director General of Income Tax (International Taxation) for each year covered in the agreement. The report must be received the later of either 30 days prior to the due date of filing the income tax return for that year, or within 90 days of entering into an agreement.
Renewal procedure	An APA renewal application will go through the same stages as the initial APA application.

MAP Program

KEY FEATURES

Competent authority	Central Board of Direct Taxes (CBDT)
Relevant provisions	Rules 44G and 44H of guidance issued by the Indian government on February 6, 2003.
Acceptance criteria	Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which India is signatory.
Key timing requests, deadlines	Most of India's DTTs permit Taxpayers to present a case to the CBDT within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

APPLICATION REQUIREMENTS

Content of application	<p>Taxpayers must file a MAP request by submitting Form 34F, which must include the following:</p> <ul style="list-style-type: none"> • name of the relevant foreign country to which the request relates; • relevant DTT and article that in the Taxpayer's opinion has been contravened; • name, account number, office address and telephone number, and status of the Taxpayer; • name of the tax authority in the relevant foreign country; • date of the notice or order giving rise to the request;
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(cont.)	<ul style="list-style-type: none"> • statement articulating how the notice or order is not in accordance with the relevant DTT; • a copy of the notice or order giving rise to the request; • any other relevant documentation; and • the tax assessment year(s) to which the request relates.
Language	No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS

Interaction with domestic proceedings	Taxpayers may pursue domestic administrative or judicial proceedings separately from MAP.
Arbitration	No specific guidance.

STATISTICS

APA	<p>There were 99 active APA applications during income year 2016-2017 and 88 completed applications (as of March 31, 2017). The average completion time was 29 months. The Central Board of Direct Taxes has had an APA program since 2012. There have been a total of 220 APAs signed as of May 3, 2018, out of which 200 were unilateral and 20 were bilateral APAs.</p> <p>A total of 815 APA applications were made in the five years starting from 2012 to 2017. Out of the 815 APA applications, 109 were bilateral.</p>
MAP	India had a total of 725 active MAP applications as of December 31, 2017. The average time needed to close MAP cases is 43 months for transfer pricing cases, and 80 months for other cases.

Double Taxation Treaty Network

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Albania ^(IV)	Finland	Macedonia ^(IV)
Armenia	France	Malaysia ^(IV)
Australia	Georgia ^(IV)	Malta ^(IV)
Austria	Germany	Mauritius
Bangladesh	Greece	Mexico
Belarus	Hungary	Mongolia
Belgium	Iceland	Montenegro
Bhutan ^(IV)	Indonesia ^(IV)	Morocco
Botswana	Ireland	Mozambique
Brazil	Israel	Myanmar
Bulgaria	Italy	Namibia
Canada	Japan ^(IV)	Nepal ^(IV)
China	Jordan	Netherlands
Colombia ^(IV)	Kazakhstan	New Zealand
Croatia ^(IV)	Kenya	Norway ^(IV)
Cyprus ^(IV)	Korea (Republic of) ^(IV)	Oman
Czech Republic	Kuwait	Philippines
Denmark	Kyrgyzstan	Poland
Egypt	Latvia ^(IV)	Portugal
Estonia ^(IV)	Libya	Qatar
Ethiopia ^(IV)	Lithuania ^(IV)	Romania ^(IV)
Fiji ^(IV)	Luxembourg	Russia

Saudi Arabia	Switzerland	United Arab Emirates
Serbia	Syria	United Kingdom
Singapore	Tajikistan	United States
Slovak Republic ^(IV)	Tanzania ^(IV)	Uruguay ^(IV)
Slovenia	Thailand ^(IV)	Uzbekistan
South Africa	Trinidad & Tobago	Vietnam
Spain	Turkey	Zambia
Sri Lanka ^(IV)	Turkmenistan	
Sudan	Uganda	
Sweden	Ukraine	

NOTES

- I denotes treaties with MAP arbitration provisions.
- II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- III denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- IV denotes treaties that became effective within the last five years.
- V denotes treaties that are awaiting ratification.
- VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- VII arbitration is to be conducted under the statutes of the ECJ.
- VIII arbitration is to be conducted under the statutes of the ICJ.

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