India – USA competent authorities resolve more than 100 cases under MAP and agree on terms and conditions of first Indo-US Bilateral APA

A press release by the Central Board of Direct Taxes (CBDT) dated 17 November 2016 stated that more than 100 cases under the Mutual Agreement Procedure (MAP) between India and the United States of America (USA) have been agreed to be resolved. Further, terms and conditions of the first ever Bilateral Advance Pricing Agreement (APA) involving India and USA have also been agreed upon.

This development is a result of the Framework Agreement signed by India and USA in January 2015, which sought to resolve about 200 past transfer pricing disputes between India and USA in the Information Technology (IT) Services and Information Technology enabled Services (ITeS) segments. Further, in a press release dated 28 January 2016, the Government of India stated that more than 100 cases had been resolved and some more were expected to be resolved soon.

Key highlights of the press release

• Bilateral Competent Authority meeting between India and USA was held in Washington DC, USA during the last week of October 2016 during which 66 MAP cases relating to Transfer Pricing issues and 42 MAP cases relating to treaty interpretation issues were agreed to be resolved successfully.

• The total amount locked up in dispute in these cases is approximately INR5,000 crore and these cases relate to Assessment Years (AYs) ranging from AY 1999-2000 to AY 2011-12.

• The resolved cases pertain to various transfer pricing and international tax issues like:
  - Adjustments made to the international transactions in the nature of payment of royalty, payment of management fees, cost contribution arrangements, engineering design services, contract research and development (R&D) services, investment advisory services, marketing support services, software development services, ITES (both BPO and KPO services), etc. and
  - Treaty interpretative issues in the nature of presence of permanent establishment (PE) in India and profit attribution to such PEs, disputes pertaining to royalty income v/s business income of foreign companies, etc.

• An agreement has been reached on the terms and conditions of the first ever Bilateral APA involving India and USA within a short span of eight months, after USA started its bilateral process with India in February 2016 by starting to accept applications from US taxpayers.
Our comments

The speedy resolution of several MAP cases and the first Bilateral APA with USA is indicative of the Government's proactive efforts towards promoting MAPs and APAs as effective means of dispute resolution. This development would also help in creating a conducive atmosphere for business between India and USA and further improve the investment environment in India. It will also prompt many other taxpayers to now opt for the MAP and Bilateral APA route for speedy and effective dispute resolution.

To read the press release... click here