

Pending Mutual Agreement Procedure cases for IT-ITES sector to be resolved

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India's Competent Authority (CA) had a two day discussion with the Competent Authority from the United States of America (U.S.) last week. After intense discussions they have arrived at a broad agreement on a framework to be applied for resolving disputes pending under Mutual Agreement Procedure (MAP) cases in the Information Technology (IT) and Information Technology Enabled Services (ITeS) sector¹. The announcement by the Indian CA signals that going forward the U.S. could recognise India's Advance Pricing Agreement (APA) programme and begin accepting bilateral APA applications.

India was perceived as one among the top three aggressive jurisdictions when it came to transfer pricing adjustments. In the past, the U.S. CA had declared that they had been frustrated by the positions taken by the Indian counterparts. However, since July 2013, India has been optimistic on the outcome of the MAP applications. There have been deliberate efforts and consistent dialogue between the Indian CA and the U.S. CA, one of which we understand from news reports was concluded during the last week.

The main disputed issue about the pending MAP cases of the IT/ITeS sector has been the cost plus margin that should be earned by the Indian captive centres of the U.S. based companies. It has been reported that around 80 to 100 pending MAP cases for multiple years in the IT/ITeS sector would be resolved within a few weeks from now, based on the broad framework agreed upon by both the CAs. It is however known that the results of agreements would be different for each year. The relevant Revenue authorities will approach the taxpayers in the identified tax cases requesting for necessary data and the proceedings will be conducted on a first come first serve basis.

It is also possible that selective few MAP cases in the IT/ITES sector can be resolved by telephonic and email communications between the offices of both CAs, however any other cases relating to issues dealing with royalties, permanent establishment and compensation towards Advertisement, Marketing and Promotion (AMP) expenditure may not be taken up at this point since these issues could need further face-to-face meetings of the CAs. Based on the renewed traction between CAs it seems that a number of cases could be cleared post which it seems optimistic that the U.S. CA would start accepting applications of bilateral APAs.

¹ www.tptaxsutra.com

Informally we also understand that the U.S. IRS may soon make some public announcement to the above effect, as the multinationals in the U.S. also want to hear it from their side of the revenue authorities.

This is believed to be a major advancement in pending MAP cases of many taxpayers, which had been stalled due to the ties having broken between the CAs. The above development exhibits India's image as a business friendly jurisdiction and projects India to be on the right path of economic growth under the leadership of the new Prime Minister.



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