



Advance Pricing Agreement (APA)

- Evaluation

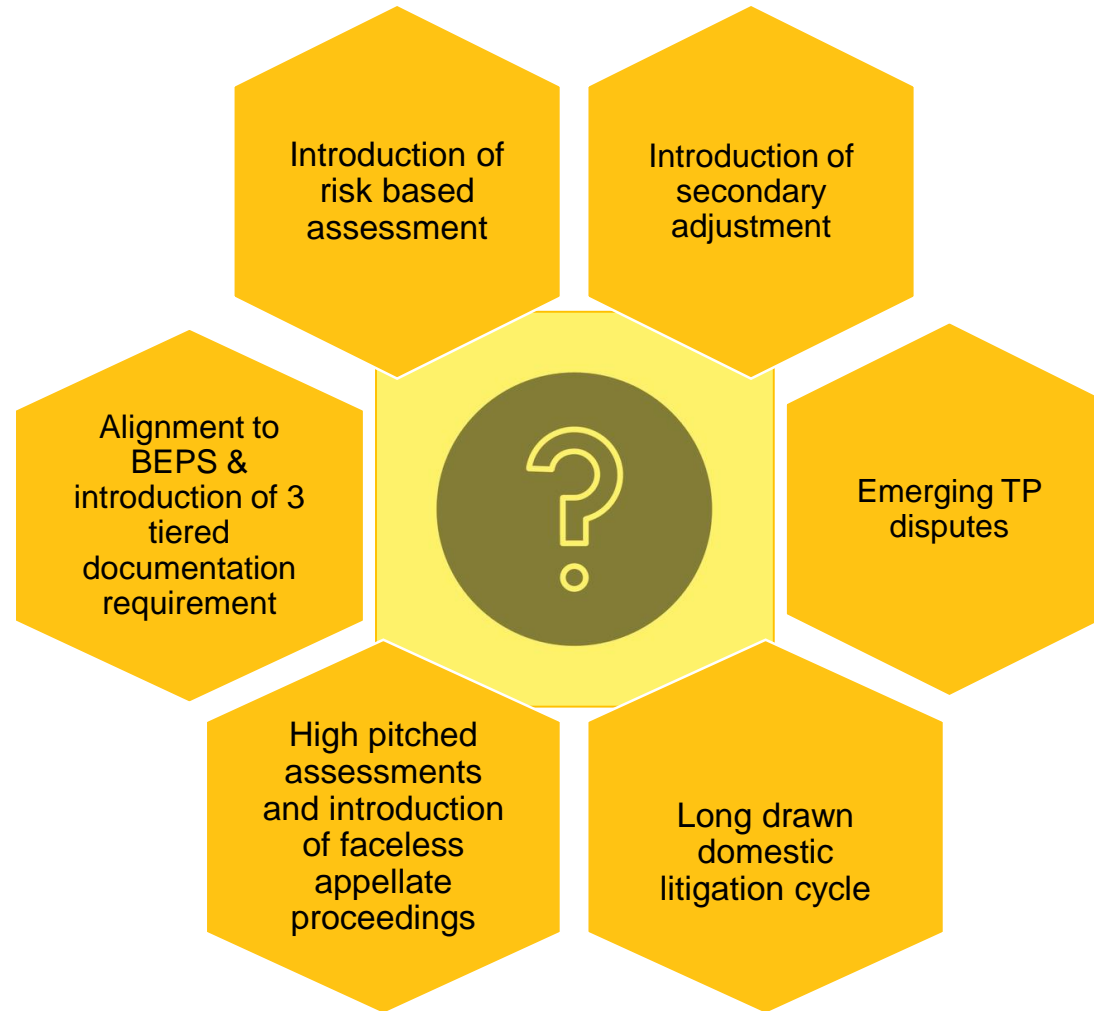
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- **SBC experience**



Advance Pricing Agreement

Why APA?

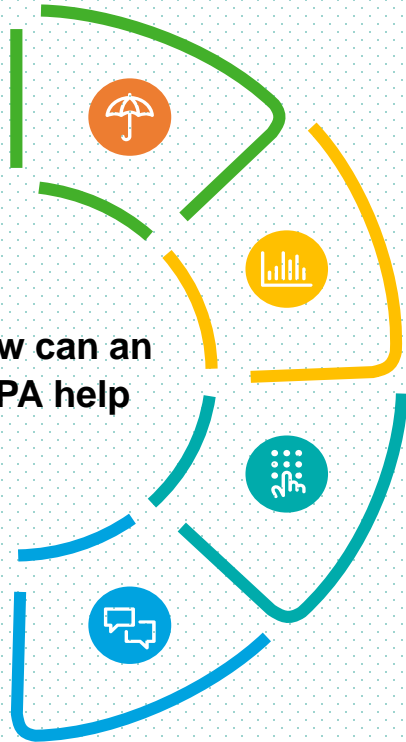




**APA – Key
Benefits**

Bilateral APA benefits

How can an APA help



Generic benefits:

- In-depth analysis of actual receipt and benefit.
- Avoidance of double taxation unlike Unilateral APA
- Negotiated method for determination of ALP

- Detailed FAR analysis can help in resolving potential TP disputes
- Once an arm's length mark-up is agreed between Competent Authorities ("CAs") there will be a reasonable basis for renewal

- Group TP policy gets traction.
- Commercial rationale for low/no system profit & profit allocation to various jurisdictions can be discussed.
- Overall industry challenges can be discussed in greater detail.

- Certainty on FAR through detailed discussions & site visit
- Relevant economic adjustment can be obtained (if required and supported by data).
- Comparability challenges can be mitigated through margin certainty.

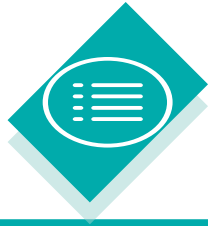


**Overview of
Advance
Pricing
Agreement
(APA)**

Digital Distribution & Sales
Analysis

+89%





Types of APA

Unilateral, bilateral or multilateral APA can be filed.



Optional pre-filing

An optional pre-filing consultation has been prescribed to get an understanding of the thoughts of the APA authorities for the international transactions for which APA is proposed to be filed – pre-consulting can be on a “no-name” basis also.



APA years and rollback years

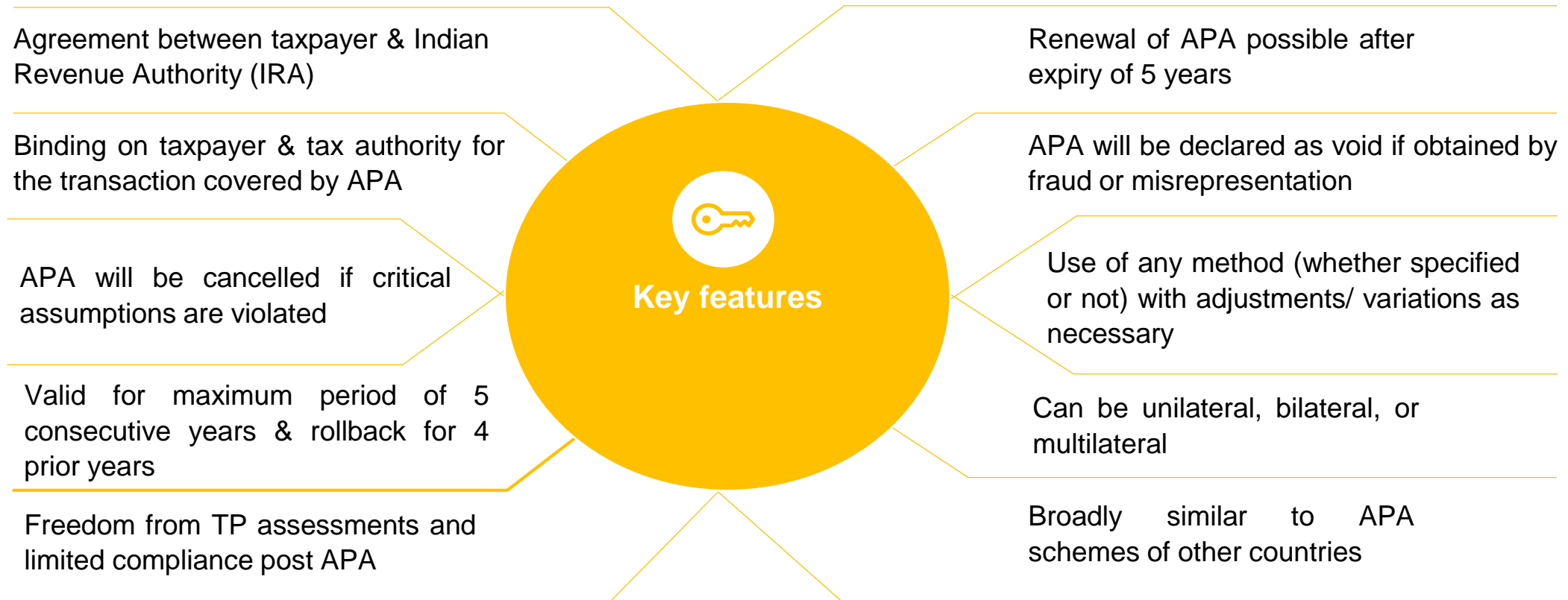
APA is allowed for a maximum period of 5 years (advance years) and a roll back of 4 years immediately preceding the APA years.



When to apply-in case of existing transactions

For continuing transactions, APA application is required to be filed before the first day of the financial year which is part of the advance years (i.e. if the APA years are from FY 2023-24 to 2027-28, application needs to be filed on or before March 31, 2023)

India APA program – salient features



Cost Benefit Analysis for opting for APA

Costs

- One time APA filing fees to be remitted to government
- One time costs to obtain APA
- Consultants fees to obtain APA
- Annual Compliance Audit costs after signing APA

Benefits

- Savings in Compliance cost
 - TP Compliance
- Savings in Litigation cost
 - TP Assessment
 - CIT(A)/DRP
 - ITAT
 - HC and SC
 - Remand back / Order giving effect
- Savings in Tax, Interest and Penalty outflow on account of TP adjustment

Benefits are tilted more favourably to go in for an APA as it would give relief from cost, time and efforts involved in domestic litigation.

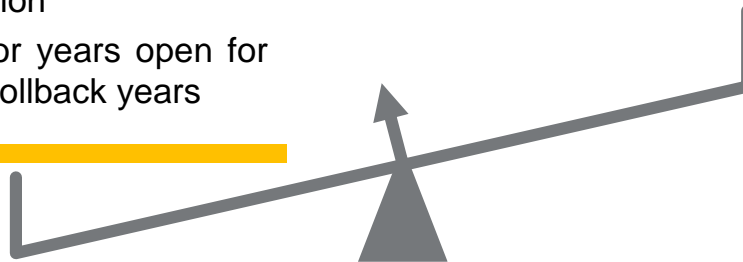
Pros and Cons for opting for APA

Pros

- Certainty for 5 future years and 4 roll back years
- Saves time and resources as it eliminates the long drawn litigation process
- Certainty can be obtained for related party transactions
- Flexibility in amendment / revision / withdrawal is available to the taxpayer
- Critical assumptions flexible to provide for future transactions
- Provides tax certainty with regard to determination of arm's length price of the international transactions
- Bilateral APA – alleviates double taxation – option to convert Unilateral APA to Bilateral APA prior to finalization
- Concluded APA will have persuasive value for years open for adjudication under domestic litigation prior to rollback years

Cons

- Discussions on potential emerging issues may take place during APA process
- APA will not be valid if there is any change in the business model or critical assumptions of the applicant
- Lack of formal firewall provisions
- Unilateral APA does not eliminate the risk of double taxation
- Requirement to provide exhaustive information on facts



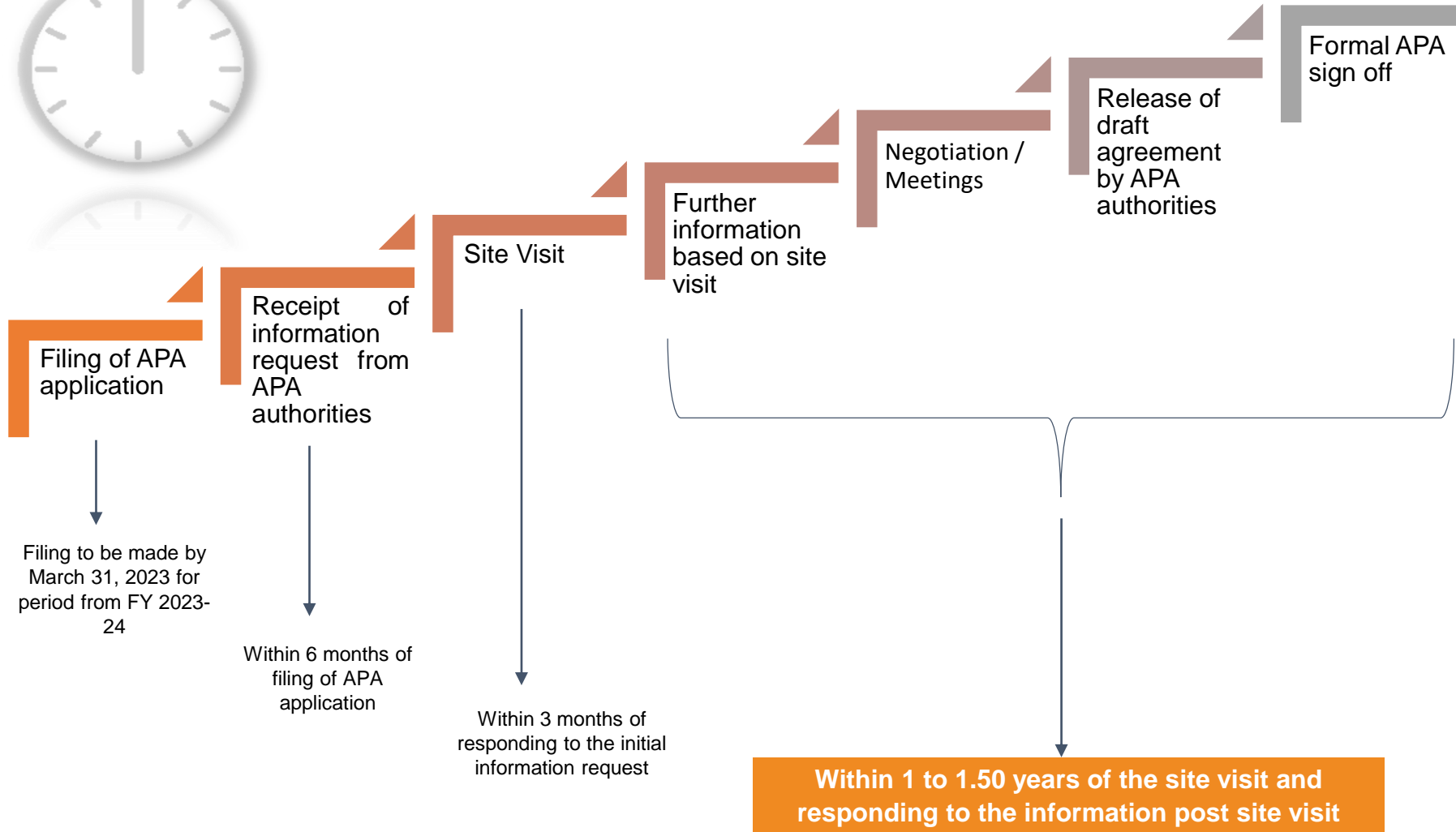
Pros are tilted more favourably to go in for an APA as it would achieve tax certainty and relief from the protracted litigation.

APA in India – Government Fees

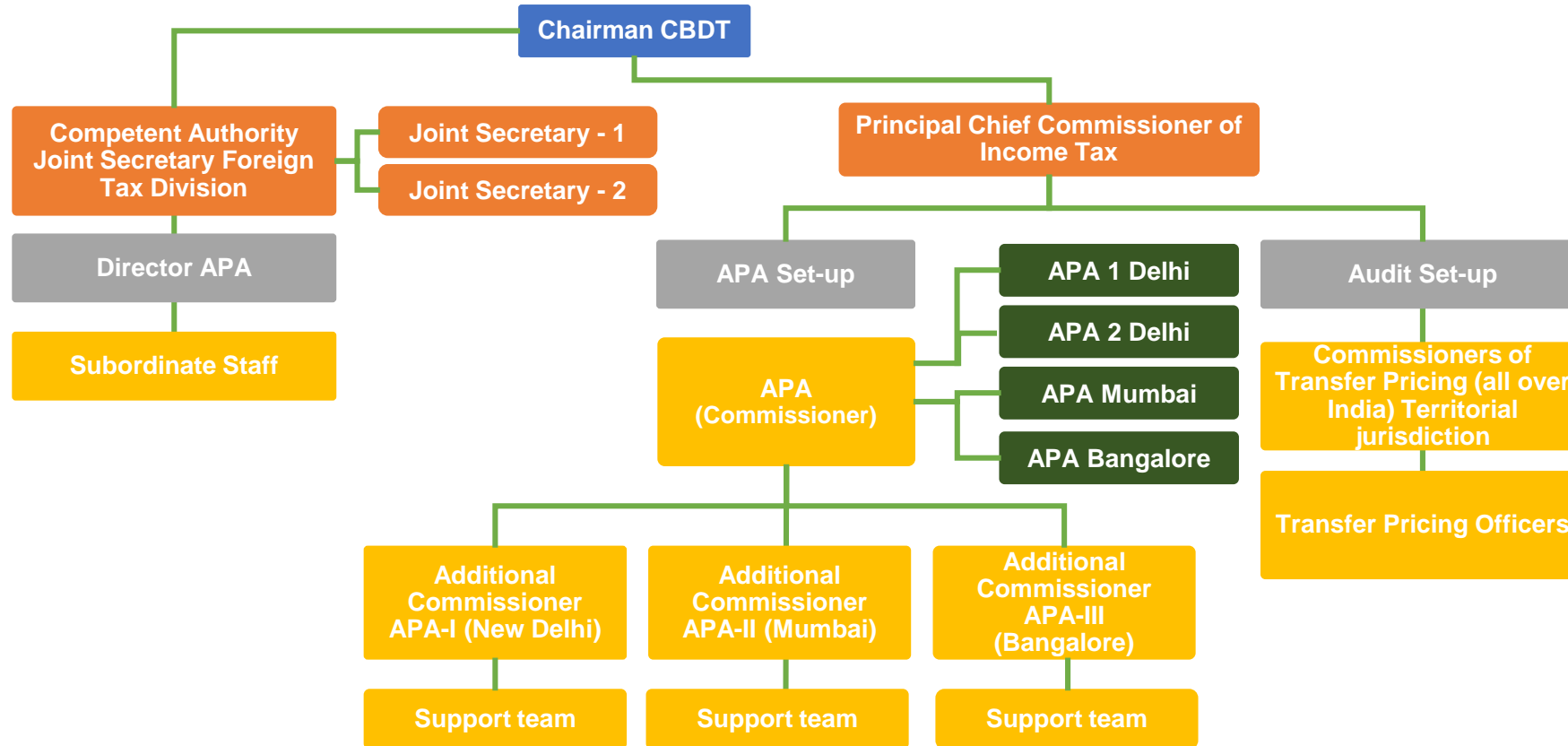
International transactions Value	APA filing fees (INR)
Less than or equal to INR 100 Crores	10,00,000
INR 100 Crores to 200 Crores	15,00,000
More than INR 200 Crores	20,00,000
Rollback (if opted)	5,00,000



APA - Milestones



Snapshot of the Indian APA team



Digital Distribution & Sales
Analysis



APA - Phases

APA - Phases

APA - PHASES

PHASE 1
Pre-filing

PHASE 2
Main Application

PHASE 3
Fact-finding &
Negotiation

PHASE 4
Drafting &
Signing APA

PHASE 5
Post APA
Compliance

APA - TENURE

FY 23-24

FY 24-25

FY 25-26

FY 26-27

FY 27-28

PERIOD COVERED BY APA

* APA application to be filed by March 31, 2023

Rollback, if opted for – 4 years prior to FY 23-24 can be covered

Phase 1 - Pre-filing application

Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

- **Preparation of pre-filing application**
 - Collection & confirmation of basic information
 - Formulation of strategy
 - Economic analysis
 - Preparation of pre-filing application in Form 3CEC – Application for a pre-filing meeting
 - Finalization of Form 3CEC
- **Submission of pre-filing application**
 - Filing of Form 3CEC with DGIT
 - Pre-filing meeting with APA team
 - Furnishing additional information, if any required by APA team
 - Concluding the issues in consensus with APA Team
 - Review and analysis of written communication from APA team

Phase 2 - Main application including rollback



Preparation and filing of main APA application

- Strategy determination based on pre-filing
- Detailed functional analysis with each divisional personnel
- Collation and review of detailed information/ data in line with the strategy
- Analysis of any third party comparable prices available in India and / or outside India including application of Internal RPM / Internal TNMM for each of the division
- Detailed analysis of payment of management charges including cost pooling mechanism, cost sharing arrangement, allocation keys, documentary evidences etc.
- Preparation of draft APA filing in Form 3CED including rollback application
- Discussions to finalize the positions on all issues/points
- Finalization and filing of Form 3CED
- Analysis of implication of any open audit for any rollback year
- Implications of positions taken in TP documentation on the APA application

Phase 3 - Fact-finding & Negotiation



Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

Fact-finding & Negotiation discussion with APA team

- Assistance in preliminary processing of APA application and removal of defect, if any as per Rule 10K
- Negotiation meeting with the APA team
- Compilation, review and submission of additional information as requested by the APA team
- Preparing draft submission the queries of APA team
- Assistance during site visits and assisting the key personnel in preparing for the site visits
- Responding to the detailed enquiries as provided in Rule 10L(5)
- Additional rounds of negotiation meeting with the APA team
- Informal discussion with the APA team to discuss the arm's length positions

Phase 4 - Drafting & Signing of APA



Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

Drafting & Finalization of APA between Applicant and CBDT

- Preparation and review of the terms of APA agreement
- Facilitating meeting & discussions with the APA team
- Discussion on various clauses of APA agreement with Applicant's team and its implications
- Drafting and reviewing the critical assumptions
- Implications of APA terms on the rollback years and discussion on any impacts
- Discussion on the yearly compliances (minimum) post APA

Phase 5 – Post APA Compliance



Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

Post APA Compliance

- Assistance in preparation of Annual Compliance Report in Form 3CEF for each year covered under the APA under Rule 100
- Assistance and Representation before the Transfer Pricing Officer in relation to Compliance Audit of the agreement for each year covered under the APA under Rule 10P.
- Filing of modified return of income referred to in Section 92CD in respect of rollback and closed years
- Assistance before AO to issue assessment order in conjunction with modified return
- Withdrawal of appeals etc. before DRP/CIT(A)/ITAT, if any
- Computation of tax and interest in pursuance of APA



APA - Coverage

Coverage of APA

Prospective years covered by the APA application	5 prospective financial years can be covered
Rollback years covered by the APA application	Option to cover a block of 4 years preceding the APA years
Coverage of international transactions	a. Existing international transactions b. Option to cover proposed international transactions
Associated enterprises	<ul style="list-style-type: none">• Any AE in any jurisdiction can be covered
Type of APA	<ul style="list-style-type: none">• Unilateral APA (UAPA)• Bilateral APA (BAPA)• Option of conversion from UAPA to BAPA

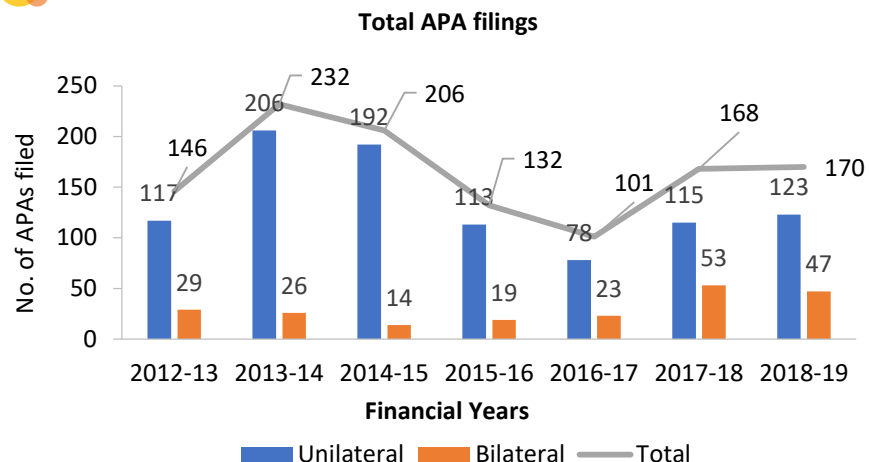


**Indian APA
Regime – Story
So Far**

India APA Scheme

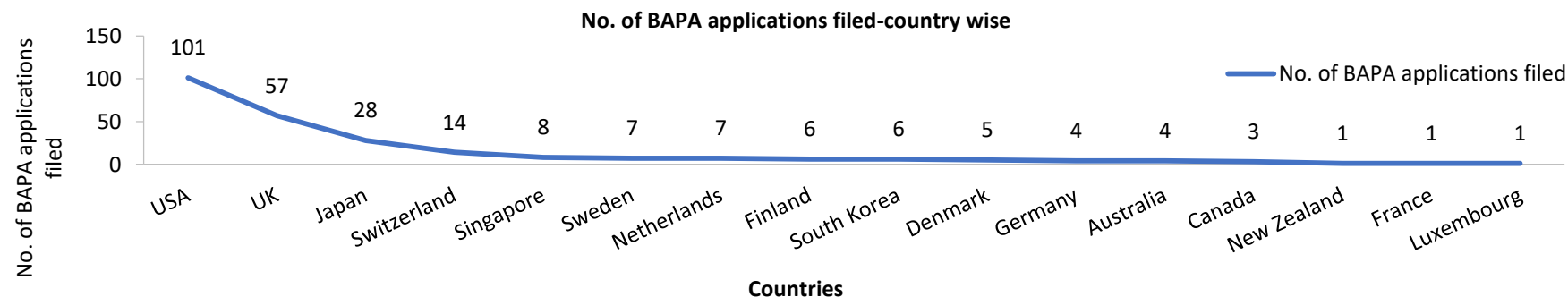
APA filings up to March - 2019

Total Applications Filed



- Total 1155 applications filed in six APA cycles.
- Close to 82% of the applications filed are unilateral.
- Shifting trend to bilateral APA. In last two years, one third applications are bilateral.
- Of the total bilateral applications, 80% applications are with US, UK, Japan and Switzerland.
- Over the period, 44 unilateral applications have been converted to bilateral
- Only two bilateral has been converted to unilateral.
- New jurisdictions like Finland, Germany, France are new jurisdictions which have opened up for bilateral APA after India's relaxation in position for article 9(2).

Bilateral applications filed country-wise*

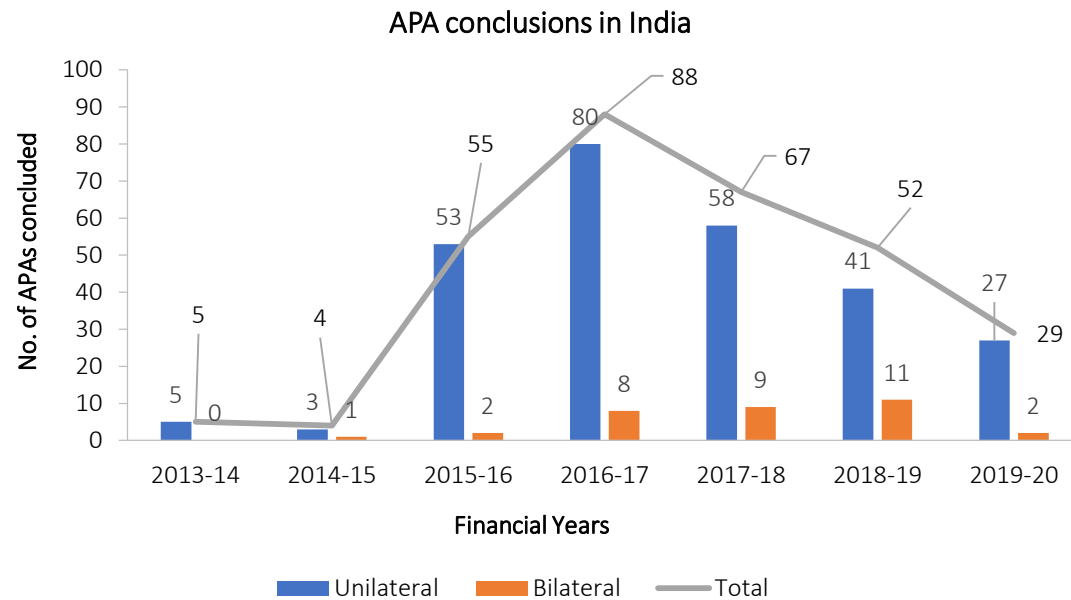


India APA Scheme (continued)

APA conclusion



Total 300 - 267 Unilateral and 33 Bilateral APA concluded upto Nov, 2019



- Significant momentum gained in 3rd year with 53 APAs signed in FY 2015 –16 and 80 in in the 4th year i.e in FY 2016-17. However, the number of conclusions dipped afterwards.
- The reason for fall in number of conclusions is rise in number of complex APAs and shortage of manpower in the APA teams.

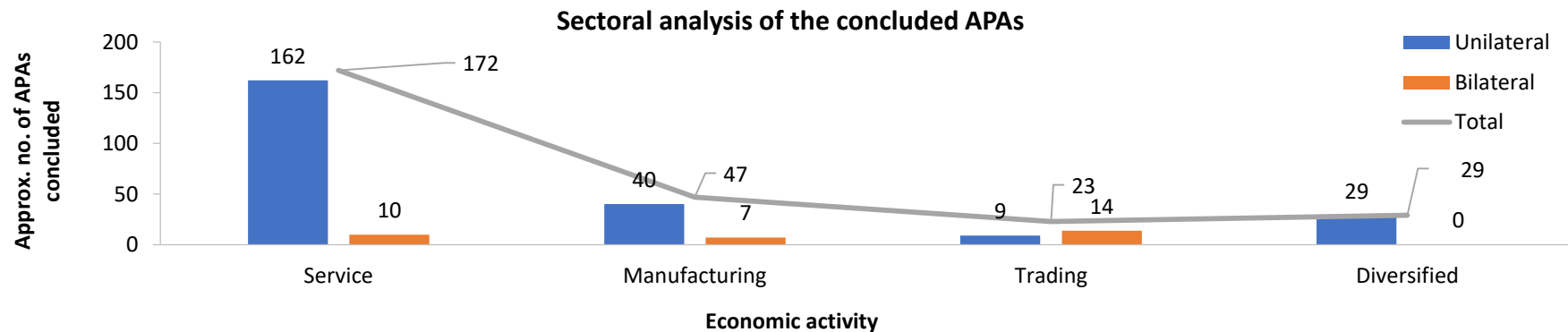
Total active inventory of cases pending with Indian government is 750 cases.

Source: Annual Report on the APA programme in India FY 2018-19 and press releases issues by the CBDT

Concluded APAs

Sectoral analysis upto March - 2019

Economic activity	Unilateral	Bilateral	Total
Service	162	10	172
Manufacturing	40	7	47
Trading	9	14	23
Diversified	29	0	29
Total	240	31	271

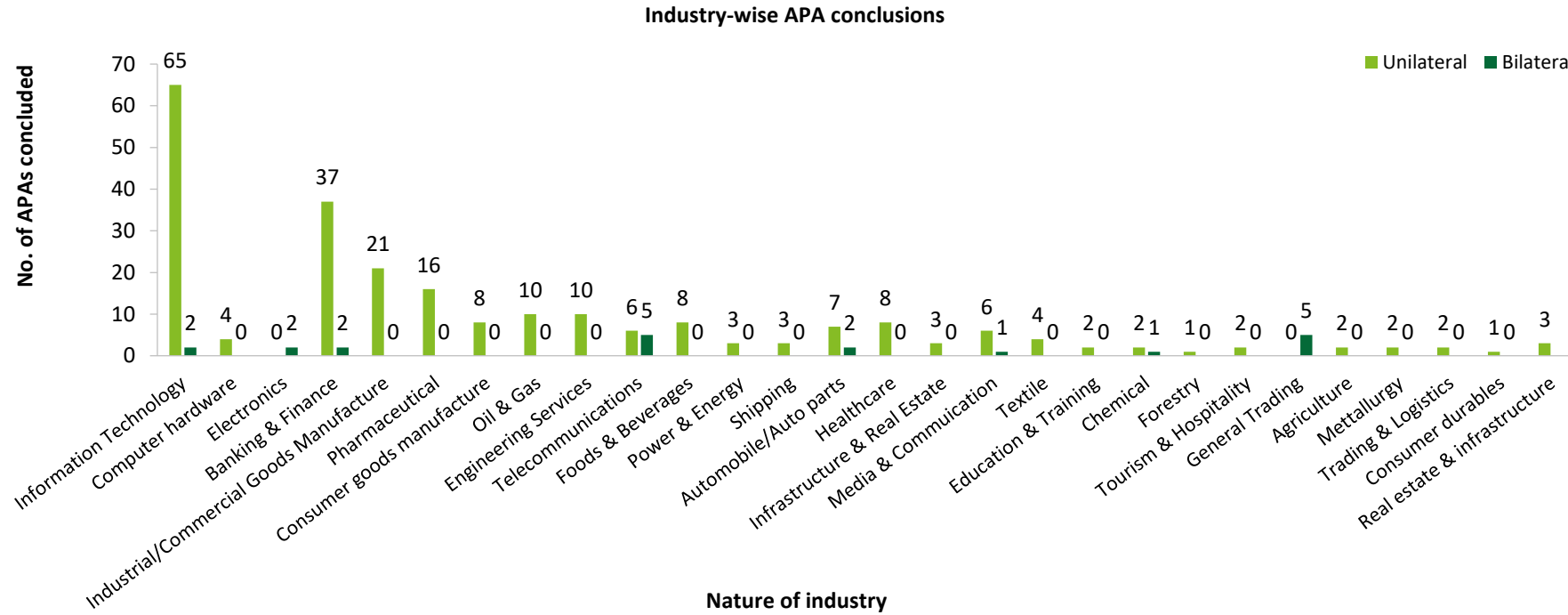


Service sector is the largest contributor to India's gross domestic product and is also at the forefront of India's international trade. Maximum number of APAs concluded for international transactions in service sector.

Data pertains to total 271 concluded APAs

Concluded APAs

Industry-wise



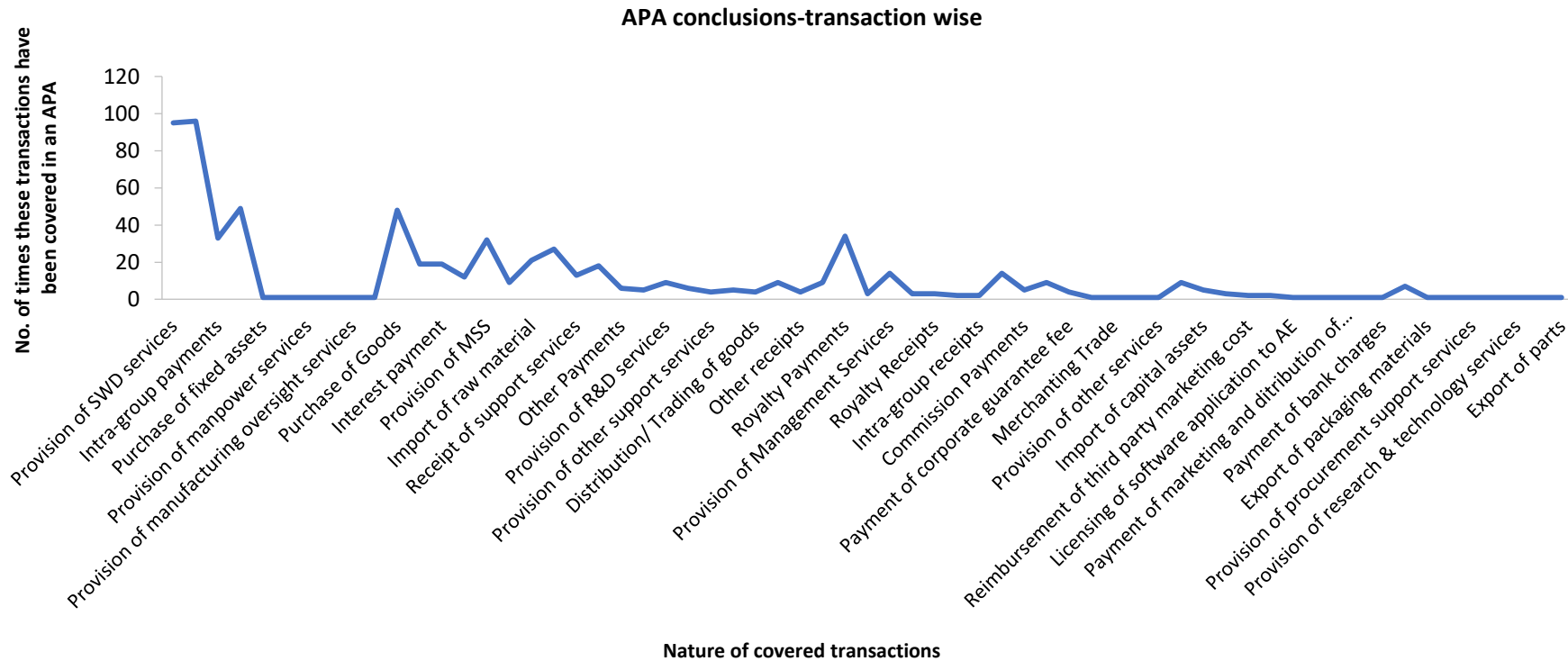
Close to 40% of the total unilateral APAs are concluded for information technology and health and hygiene industries.

There are 14 different types of industries that have availed the Indian APA programme.

Source: Annual Report on the APA programme in India FY 2018-19

Concluded APAs

Nature of covered transactions

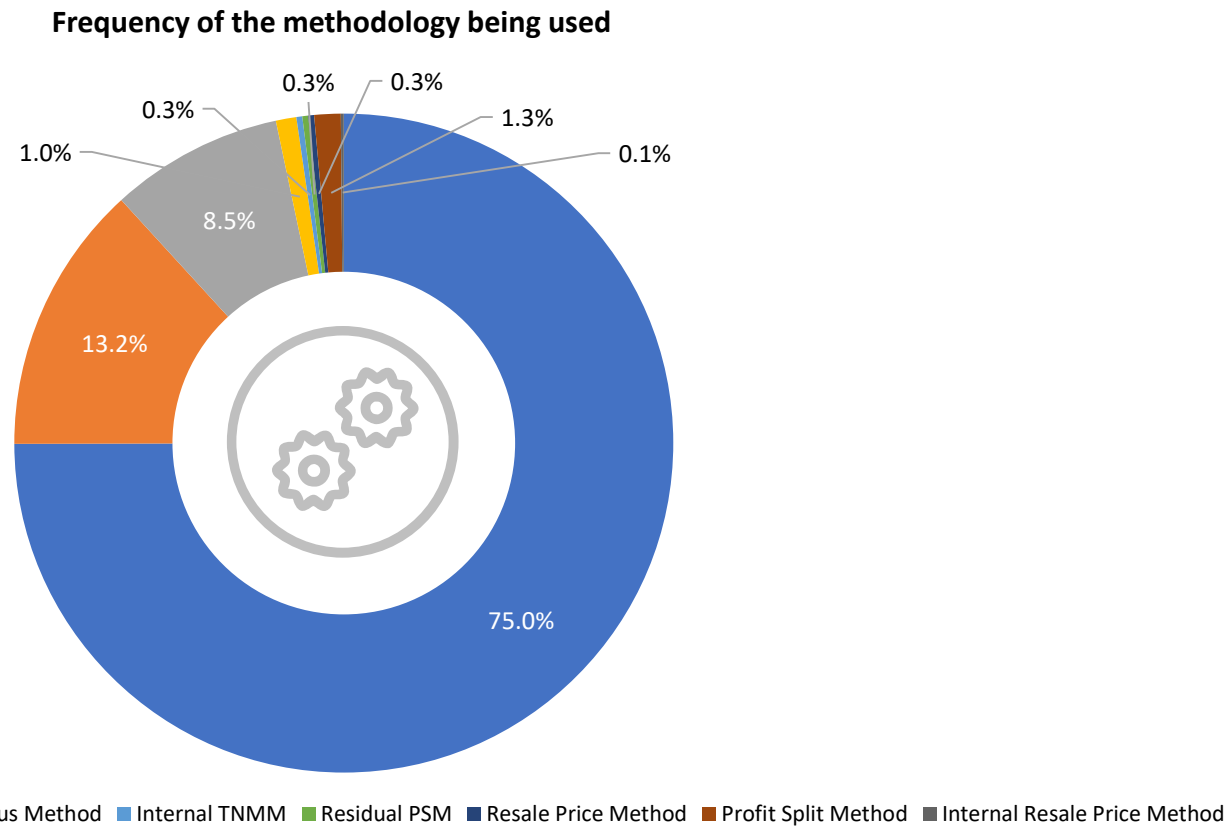


During FY 2018-19, maximum number of APAs concluded for payment of royalty and intra group services unlike earlier years when IT and ITeS topped the list.

Data pertains to 271 concluded APAs concluded upto March - 2019

Transfer pricing methods used

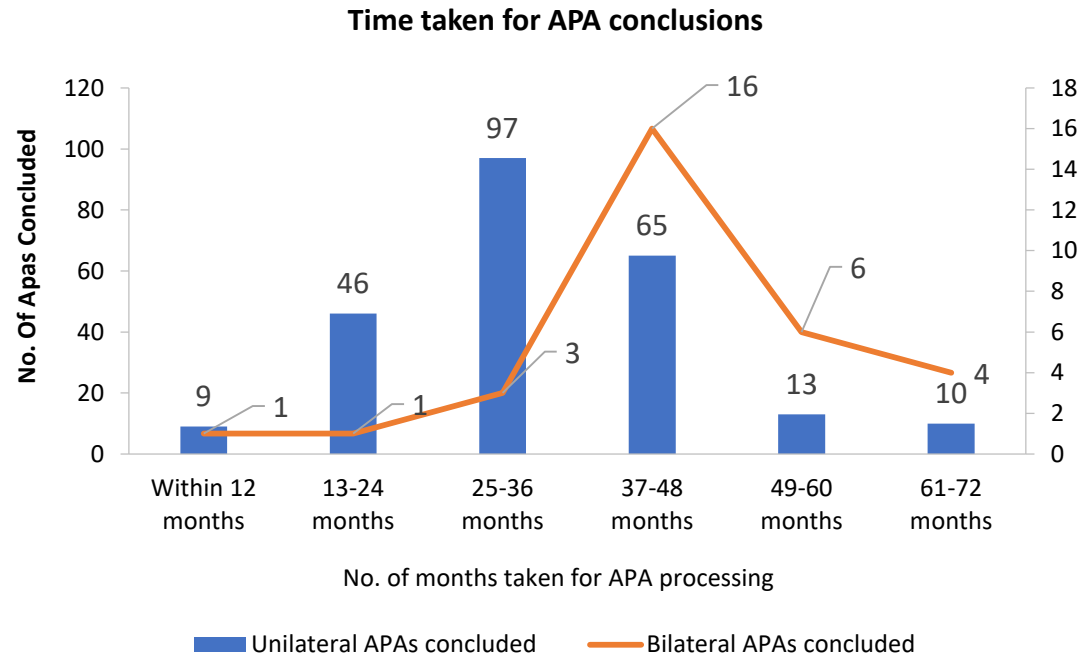
Transaction-wise



Source: Aggregate data based on APA Annual report for FY 2016-17, FY 2017-18 and FY 2018-19

Time taken for APA conclusions till date

Comparative timelines: Unilateral v Bilateral



- Average time taken by India to conclude unilateral APA is 32.5 months. A comparative with USA shows an average of 40.4 months.
- Average time taken by India to conclude bilateral APA is 44.32 months. A comparative with the USA is 46.9 months.

87 unilateral applications and 31 bilateral applications are still pending which have completed 5 years APA tenure.

Source: Annual Report on the APA programme in India FY 2018-19

Six rounds of APA's completed (conclusion cycles)



Our experience

- APA is a confidence building process – objective of the APA team is to settle down/conclude the APAs at a reasonably/mutually agreeable appropriate method (price/mark-up)
- Positive mindset/approach of the APA team during meetings/discussions/negotiations
- Past years transfer pricing adjustments normally not a criteria to begin the discussion process – APA team has sometimes even expressed concerns on the approach adopted by the tax officer (transfer pricing officer) during routine audit stage
- Site visit provides better understanding to the APA team of the functions, assets & risk of the taxpayer which assists them in taking a rationale and informed view in the case instead of using approach on conjectures and surmises.
- APA team is keen to resolve the dispute as opposed to finding faults in the approach adopted by the taxpayers
- The APA team has been expanded by the Government to expedite the conclusion of the cases.
- India has commenced negotiations with many countries including US, UK, Japan, China, Sweden, Netherlands, Australia etc.
- Joint site visits has been a new trend in bilateral APA which provide clarity on FAR to both the competent authorities for fair negotiations.

Aim of the APA team is to reach a “fair” solution within a reasonable timeframe.

Our credentials and experience in APA process



Extensive experience in the Indian APA program

- Core team is Big4 alumni and was involved in numbers of APA filings, negotiations and conclusions
- SBC team was involved in the APAs concluded in Electronic Industry

Significant interaction with Indian revenue authorities

- Developed key relationships with the APA authorities
- SBC's network comprises of former tax officers, ex-regulators, senior counsels who share their expert opinions & views for taking transfer pricing positions

Strong local and international presence

- Leverage from strong APA experience of SBC network firms in developed countries like the China, Japan, USA, Canada, and the UK.
- Extensive global network of PrimeGlobal—assistance in multilateral/bilateral APAs

Significant team experience

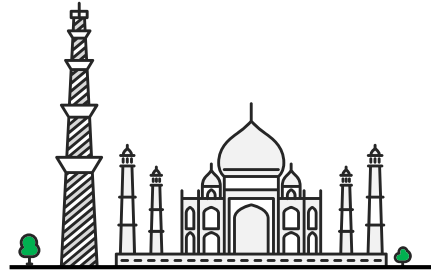
- Strong leadership team having cumulative experience of more than 12 years in negotiating tax treaties and tax representation
- Professionals drawn from Indian revenue department, lawyers, and economists, among others

Contact us



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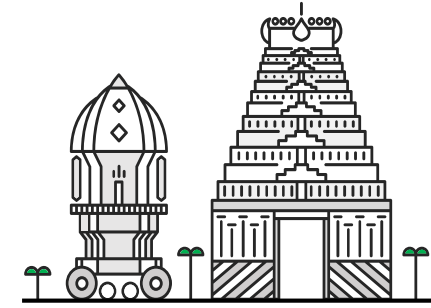
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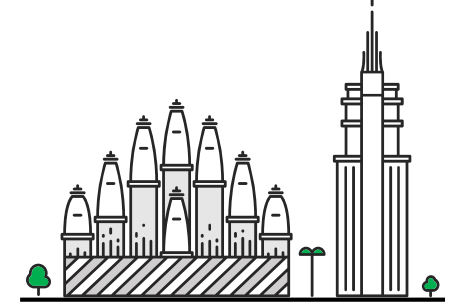
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Thank You



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