

India eases bilateral transfer pricing norms

In a move that could further improve India's ease of doing business rankings, the Income Tax Department on Monday issued a clarification saying that it would allow mutual agreement procedures (MAPs) and advance pricing agreements (APAs) with all countries, abandoning a stance that disallowed such agreements with major trade partners like France, Germany, Italy, Singapore and South Korea.

India's previously held stance was, if treaties with a particular country did not contain a 'corresponding adjustment' clause, then the Indian revenue department would not enter into bilateral advance pricing agreements or mutual agreement procedures with those countries. In other words, any transfer pricing disputes would be settled through domestic litigation instead of bilateral arbitration.

It has now agreed to entertain such APAs and MAPs, regardless of whether that clause was in the agreement or not. APAs are meant to settle potential disputes in advance, while MAPs lay out the procedure to settle a dispute once it has happened.

The Central Board of Direct Taxes has decided to accept "transfer Pricing MAP and bilateral APA applications regardless of the presence or otherwise of Paragraph 2 of Article 9 (or its relevant equivalent Article) in the DTAAs [double taxation avoidance agreements]," the Finance Ministry said.

'Positive step'

"India had taken a position earlier that if a tax treaty did not have the corresponding adjustment clause, then India would not entertain a bilateral APA or MAP with that country," Rahul K. Mitra, partner and national head, Transfer Pricing & BEPS, KPMG India said.

So, important trade partners, "treaties with whom did not have this particular clause, such as France, Germany, Italy, Singapore and South Korea, did not get the benefit of bilateral APAs or MAPs. That has now been rectified. It is a very positive step."

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