Executive summary

India’s Ministry of Finance (Ministry) recently released its Annual Report (Report) that provides an account of various activities undertaken by the Ministry and certain key statistics relating to taxation for the financial year (FY) 2014-15.

The highlights of the Report include the progress made by the Government of India (GOI) in the international and the transfer pricing (TP) arena during FY 2014-15. The Report provides information on TP audits undertaken in India as also statistics relating to the status of India’s Advance Pricing Agreement (APA) program during FY 2014-15. The Report indicates that the quantum of TP adjustments undertaken by the Indian Tax Authorities in FY 2014-15 declined by nearly 20% as compared to the previous year, even though there was a sharp increase in the number of cases that were audited. The Report also throws light on India’s engagement with the Organisation for Economic Co-operation and Development (OECD)/G20 countries on the Base Erosion and Profit Shifting (BEPS) initiative and various other aspects in relation to tax transparency and tax administration. The Report confirms that India is actively participating in the meetings of the Focus Groups and Working Parties in finalizing the BEPS deliverables. The Report also focuses on India’s expanding tax treaty network. This Tax Alert summarizes the key information and initiatives undertaken on international tax and TP matters by the Ministry’s Department of Revenue (DOR).
Detailed discussion

The summary of relevant international tax developments for FY 2014-15 is as below:

1. Key statistics relating to TP adjustments and tax collection

The Report reveals that the number of TP audits completed during FY 2014-15 was higher at 4290\(^{[1]}\), out of which, 2353 (around 55%) resulted in an adjustment of INR 464 billion. This adjustment figure is nevertheless lower when compared to the INR 596 billion adjustment made in FY 2013-14.

Furthermore, 1103 applications for objections were filed (as against 1015 cases filed during FY 2013-14) before the Dispute Resolution Panel (DRP) out of which, 1052 have been disposed of and the quantum involved is INR 1238 billion vis-à-vis an amount of INR 985 billion during FY 2013-14.

The Report captures the progress made by the GOI under the MAP and APA program.

2. Mutual Agreement Procedure (MAP) and APA program

The number of unilateral and bilateral applications received since the launch of the APA program is as follows:

<table>
<thead>
<tr>
<th>Sl No.</th>
<th>Financial Year</th>
<th>Unilateral APA Applications</th>
<th>Bilateral APA Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2012-13</td>
<td>117</td>
<td>29</td>
</tr>
<tr>
<td>2</td>
<td>2013-14</td>
<td>205</td>
<td>27</td>
</tr>
<tr>
<td>3</td>
<td>2014-15 (till 24 December 2014)</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>329</td>
<td>57</td>
</tr>
</tbody>
</table>

During the year 2014, meetings for resolving MAP and APA cases were held with several countries like the UK, Japan, Switzerland, Netherlands, China, Australia etc., with considerable progress. For example, meetings were held with:

- **Chinese Authorities in July 2014:** One MAP was resolved. Positions on other cases were exchanged.
- **Swiss Authorities at Bern in August 2014:** All MAP cases and Bilateral APA cases were discussed. Significant progress was achieved on one APA case.
- **Dutch Authorities at The Hague in August 2014:** Economic analyses done by India in respect of software companies was agreed to be shared. All pending MAP cases were also discussed.
- **The UK Authorities at Delhi in October 2014:** A number of MAP and Bilateral APA cases were discussed. A few MAP cases and one APA case was resolved.

[1] As compared to 3617 in FY 2013-14


Japanese Authorities (4 meetings): A number of cases involving TP disputes were resolved. Two bilateral APAs were finalized out of which one has been signed. This is India’s first bilateral APA to be signed.

3. Expanding India’s tax treaty network

The Double Taxation Avoidance Agreements (DTAAs) are entered into by India for twin purposes: (a) Allocation of taxation rights between the Contracting States with a view to avoid double taxation (b) Prevention of fiscal evasion through exchange of information (EOI), assistance in collection of taxes, etc.

As on 31 December 2014, 92 DTAAs are in force. The DTAAs with Croatia, Slovak Republic have been signed while negotiations for DTAAs with Azerbaijan, Chile, Hong Kong, Iran, Nigeria, Senegal and Venezuela are in progress.

4. Measures taken to facilitate legal basis for EOI

Effective investigation of tax evasion and avoidance, including unearthing of unaccounted money stashed abroad, is possible only if there is access to information from foreign countries. The Report highlights the need for having updated bilateral and multilateral legal instruments in place through which information can be efficiently obtained. The measures taken in this regard are as below:

- Re-negotiation of older bilateral DTAAs

DTAAs entered into before 2009 are being modified through an amending Protocol or by entering into new DTAAs so as to include a provision to exchange banking information, enable EOI for the enforcement of domestic laws, and enable the use of information received for non-tax purposes. Illustratively, DTAAs with Switzerland, Singapore, Australia, Sweden and the UK have been modified through the amending Protocol while DTAAs with Nepal, Romania, and Sri Lanka have been replaced with newer DTAAs.

- Bilateral Tax Information Exchange Agreements (TIEAs)

With countries/jurisdictions with which there may not be a need to enter into a DTAA, India enters into a TIEA to enable effective information exchange. As on 31 December 2014, 15 TIEAs are in force. Two more, i.e., with Saint Kitts & Nevis and San Marino have been signed while negotiations on a TIEA with the Democratic Republic of Congo have been concluded. New TIEAs are currently being negotiated with 28 jurisdictions.

- Multilateral instruments

India is a signatory to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAT) that is already in force in 46 out of the 84 countries/jurisdictions signed. The number keeps increasing and India has been playing an active role in encouraging more jurisdictions/countries to sign the MAAT. The MAAT provides a wide range of administrative assistance in tax matters, including EOI, assistance in collection of taxes, tax examinations abroad, joint audit etc.

South Asian Association for Regional Cooperation (SAARC) countries have signed a separate agreement for mutual administrative assistance in tax matters on 13 November 2005, that came into effect in India from 1 April 2011. This also provides a wide range of tax administrative assistance.

5. Automatic Exchange of Information (AEOI)

The use of offshore financial accounts for tax evasion and avoidance is a pressing concern for governments all around the world.

AEOI is a systematic and periodic transmission of "bulk" taxpayer information from the source country to the residence country, which is possible under most DTAAs, TIEAs and multilateral instruments such as the

[5] This came into force in India on 1 June 2012.
MAAT. The OECD, working with non-OECD G20 countries, including India, has developed a single uniform standard called the Common Reporting Standards (CRS) on AEOI.

India has taken the lead role in international fora to achieve this and build international consensus amongst major economies. India is also an "early adopter" along with 48 countries which have committed to exchange information automatically by the year 2017 as follows:

► First exchange in September, 2017 for new accounts (both individuals and entities) opened after 1 January 2016 and for pre-existing (as on 1 January 2016) individual high-value accounts (balance more than USD 1,000,000)

► Exchange in September, 2018 of pre-existing (as on 1 January 2016) individual low value accounts and pre-existing (as on 1 January 2016) entity accounts

Also, around 51 countries/jurisdictions have joined a Multilateral Competent Authority Agreement (MCAA) on 29 October 2014 which provides a framework for EOI on an automatic basis as per the new global standards, and have signed a declaration to comply with the provisions of the MCAA with an intended date for commencement of EOI on an automatic basis, which for most countries/jurisdictions is from 2017.

A draft Cabinet Note for India to join the MCAA for AEOI, which contain confidentiality provisions as per globally adopted/accepted international standards, is in the process of being finalized. Furthermore, necessary legislative changes have been made through Finance (No. 2) Act, 2014[7] to the existing provision, which creates an obligation to furnish statement of financial transactions, and necessary rules and guidelines are being formulated in consultation with financial institutions (FIs).

6. Inter-Governmental Agreement (IGA) with the US for purposes of Foreign Account Tax Compliance Act (FATCA)

In the year 2010, the US enacted the FATCA, with the objective of tackling tax evasion by obtaining information in respect of offshore financial accounts maintained by US residents and citizens.

Domestic laws of most of the countries (including India) do not permit sharing client confidential information of FIs directly with the US. To address this, the US enters into an IGA and a similar IGA is proposed with the GOI. Under this IGA, FIs would provide information to Indian Tax Authorities, which would be transmitted to the US automatically. Though the text of the IGA has been agreed, it has not yet been signed. A draft Cabinet Note proposing to sign the IGA with the US is in the process of being finalized.

The EOI between India and the US under the proposed IGA is, as of now, not fully reciprocal. Briefly, the US will also be receiving information also about non-USA entities, which have one or more US controlling persons as determined after due diligence procedures. India, however, will be receiving information only about a resident person having an account in the US. However, the US has committed to achieve equal levels of reciprocity at the earliest and has committed to hold consultations before 31 December 2016.

7. Initiatives to promote transparency

The Global Forum on Transparency and Exchange of Information for Tax Purposes' (Global Forum) established by the OECD to exchange information carries out an in-depth monitoring and peer review of the standards of transparency and EOI and developments through a Peer Review Group (PRG). India, as the Vice Chair of the PRG, plays an important role in identifying deficiencies in laws and administrative practices of various countries with suggestions to improve them.

India has been rated “Compliant”\(^{(8)}\) by the Global Forum on all of the ten listed parameters, divided into three segments, viz. (a) Availability of information, (b) Access to information and (c) Exchanging information.

8. Relationship with the OECD

India has been associated with the taxation work of the OECD and since 2006 has been accorded the status of "Participant" (earlier known as "Observer") to the work of the Committee of Fiscal Affairs (CFA). Indian representatives have been participating in the meetings of its Working Parties and Task Force.

The Report highlights the numerous works undertaken by the OECD and India’s active participation and association with the OECD from time to time. Illustratively:

- **OECD Global Relations Training Programme**: Under this program, the OECD holds various trainings on international tax policy and administration topics which are attended by tax officials from around the world. During 2014, 44 Indian officers participated in 22 events abroad.

- **Tax Inspectors without Borders (TIWB)**: TIWB was launched with the objective of enabling transfer of tax audit knowledge and skills to tax administrations in developing countries through a real-time, "learning by doing" approach. Experts are deployed to work directly with tax officials on current audits and audit-related issues concerning international tax matters and to share general audit practices. Indian delegates attended a meeting for development of TIWB feasibility.

- **Forum on Tax Administration (FTA)**: FTA is a forum for co-operation between revenue bodies with participation from 45 countries, which aims to improve taxpayer services and tax compliance. India has taken the decision to participate in a new network called Joint International Tax Shelter Information and Collaboration (JITSIC), under FTA, which will be a global effort at coordinating tax administrations against tax avoidance by large companies and wealthy individuals, and BEPS by multinationals. The structure of this collaboration is currently being developed. India participated in the conference call of 18 December 2014 for this purpose.

- **Forum on Harmful Tax Practices (FHTP)**: Main work of the FHTP is to review preferential tax regimes of member countries and to make recommendations to remove features that create harmful effect or to abolish the regime. Under BEPS Action 5, the FHTP is required to deliver three outputs: (i) Finalization of review of member/associate country regimes; (ii) A strategy to expand participation to non-OECD member countries; (iii) Revision of existing criteria. As part of this project, some of India’s preferential tax regimes were reviewed by the FHTP during 2014, which, after examination, concluded that the regimes were not potentially harmful.

9. G20/OECD Project on BEPS

The recommendations under the BEPS Project have been made on the basis of consensus arrived at by the 34 OECD countries plus eight non-OECD G20 countries (including India) on an equal footing basis.

Additionally, the Committee on Fiscal Affairs (CFA) has constituted “Bureau Plus” comprising 12 OECD members and four non-OECD G20 economies to oversee the progress of the BEPS Project and to participate in the decision making process. India is also a member of the Bureau Plus.

Thus, Indian representatives have been continually participating in the meetings of the Focus Group, Working Parties in finalizing the deliverables.

10. India’s Association with Tax Issues in the United Nations (UN)

The UN has constituted a 25-member Committee of Experts on International Cooperation in Tax Matters. This Committee is actively engaged in the work relating to BEPS and its effect on developing countries. A Joint Secretary in the Central Board of Direct taxes has been
appointed as an expert member of this Committee with effect from 1 July 2013 for a period of four years. The Committee met in October 2014 at Geneva (attended by the Indian expert) to discuss issues related to the next update of the UN Model Convention (MC).

Senior officers of the CBDT have attended and contributed at the meeting of the UN Sub-Committee of Experts held in April 2014 for: (a) Revision of the Commentary on Article 9 of the UN MC; (b) Update and enhancement of the UN Practical Manual on TP for developing countries.

India is also a member of a Sub-committee on TP with a mandate to develop a Practical Manual on TP for Developing Countries and has been actively involved in drafting the TP Manual which was released in May 2013. Furthermore, Indian representatives have attended the Sub-committee's meeting which was held in September 2014 to review and redraft the UN Practical Manual on TP.

Comments

The Report captures the efforts and initiatives by the GOI to address various issues in the international tax arena, especially on tax transparency and EOI as also its endeavor to expand its tax treaty network. It also highlights the continued focus of the Indian Tax Authorities on the taxation of cross-border transactions and TP. The Report also outlines India’s active engagement with the OECD, the UN, its active participation on the BEPS initiative with a focus on developing countries and development of cooperation and consensus amongst various economies. The Report also highlights the significant and influencing role being played by India through various international fora in addressing fiscal evasion and shaping solutions on various TP and international tax issues.
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