



भारत सरकार
GOVERNMENT OF INDIA
केन्द्रीय प्रत्यक्ष-कर बोर्ड
CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 18th April 2013

To
Investment Company Institute
National Foreign Trade Council
Securities Industry and Financial Markets Association
Software Finance and Tax Executives Council
United States Council for International Business
U.S. India Business Council

Dear Sir/Madam,

Subject: India US Bilateral Relationship

Kindly refer to letter dated 20th February 2013, to Mr Sanjay Kumar Mishra JS (FT&TR-I), Dr. Poonam Kishore Saxena Chairperson CBDT, Mr Sumit Bose, Revenue Secretary, India. In this regard, I am directed to say that Indian transfer pricing regulations are based on internationally accepted principles and provide for determination of arms' length price by following one of the methods that would be the most appropriate method, having regard to facts and circumstances of the case and other relevant factors. Indian law does not provide priority of one method over the other methods for a particular sector or business. However, Transfer Pricing Officers following above principles have made adjustments in certain cases depending on the facts and circumstances and some of these adjustments have been agitated before a higher appellate forum. Since Indian Income Tax Act provides robust dispute resolution procedure which include pre audit processes (Authority for Advance Ruling for International Taxation and Advance Pricing Agreement for Transfer Pricing cases) and post audit processes (Commissioner of Income Tax-Appeal, Tax Tribunal, High Court and Supreme Court, Mutual Agreement Procedure and Settlement Commission), subsidiaries of US companies in India should not have any grievance on this ground in their specific cases.

2. The cases of double taxation in transfer pricing have increased significantly worldwide after the economic crisis in the year 2009 due to following factors:

- Increased efforts by the tax administration of countries to increase tax revenue to meet developmental needs of each country,
- Transfer pricing administration in each country is governed by its domestic law unlike international taxation which is governed by DTAA in addition to domestic law.

- Resident countries are taking aggressive position on allocation of profits earned in source countries by applying principles which may not be in consonance with domestic law of source country and many a time this aggressive approach by resident country tilts the balance in favour of one country resulting in deadlock in bilateral negotiation.

In this context, putting blame of double taxation only on one country appears to be unfair and unacceptable. In this regard, paragraph 5 of letter may be referred to where it is suggested that profit attributed by India should not exceed any amount that US will not recognize. India believes that revenue sharing model between countries should be properly balanced and should be based on principled approach of transfer pricing and international taxation which does not include preset margin rate by one country.

3. CBDT is alive to the problem of double taxation and in last few years, the government has taken following steps to reduce the incidence of double taxation.

- All the draft assessment orders proposing adjustments on account of international taxation and transfer pricing by Transfer Pricing Officer/Assessing Officer are subject to prior review by three senior officers at the rank of Commissioners who work as Dispute Resolution Panel since year 2009.
- The Central Board of Direct Taxes, Department of Revenue has started issuing guidance notes on most common issues of dispute in international taxation and transfer pricing in order to provide certainty and fair application of taxing provisions by field officers.
- In order to reduce the transfer pricing litigation, Advance Pricing Agreement (APA) procedure has been put in place w.e.f 30.08.2012. Under this procedure, India is committed to resolve transfer pricing dispute in advance following principle based approach. The scheme has invoked huge response from the taxpayers. Now it is up to US taxpayer and US IRS to avail benefit of this procedure.

4. As far as resolution of cases under MAP is concerned in last 2 ½ years substantial number of cases have been resolved. Last meeting in September, 2012 resulted in resolution in number of cases between teams of India and US competent authority, however, these agreed cases have been reopened by US competent authority without any valid reason being intimated and US side did not confirm scheduled meeting in February, 2013. In this context, you may like to approach US competent authority to take early decision on these issues. Since taxpayers are using MAP process in addition to normal appeal channels, taxpayers should not have any grievance due to slowdown in MAP process caused by US CA.

5. India has recently launched APA programme to resolve transfer pricing dispute and to provide certainty to taxpayer before transfer pricing audit. Number of taxpayers have shown

keen interest to the new initiative. India is committed for early resolution of cases under APA by applying principled approach acceptable to countries involved in APA programme. Now, it is up to US taxpayers and US IRS to participate in the programme in order to provide certainty to US taxpayer.

With regards



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