

## Introduction

The Advance Pricing Agreement ('APA') programme has been operational in a number of countries and was launched in India in the year 2012. The primary goal of such a programme is to provide certainty to taxpayers in respect of the cross-border transactions undertaken by such taxpayers with their group entities. APAs can be multilateral or bilateral i.e., involving the Central Board of Direct Taxes ('CBDT') and the tax authorities of one or more countries or unilateral i.e., involving the CBDT only. While an APA is a mechanism to resolve transfer pricing disputes in advance i.e., before the cross-border related party transaction has actually taken place, in 2016, roll-back provisions were also introduced, which allowed the taxpayer to roll-back the results of the signed APA.

The first ever annual report on the APA programme was published recently by the CBDT, Ministry of Finance, Government of India. This APA annual report is an initiative by the CBDT to bring into the public domain various statistical and qualitative aspects of India's APA programme.

## Key highlights

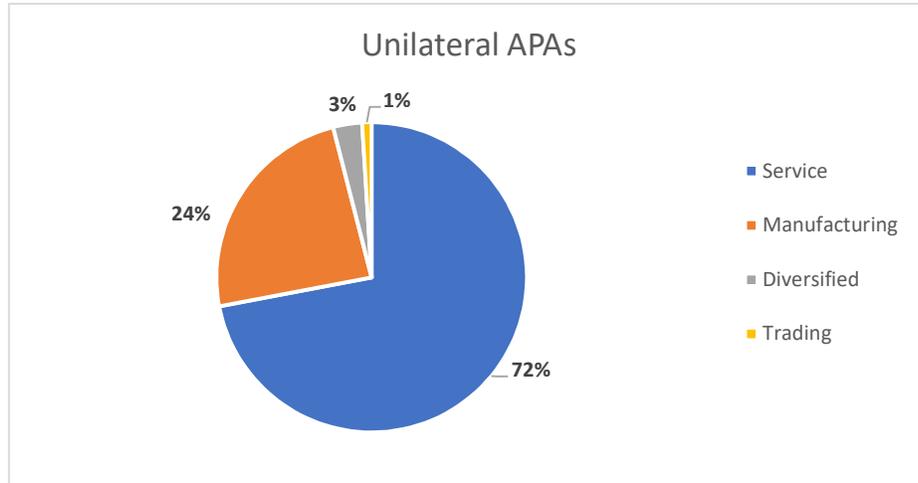
- A total of 815 applications have been filed until March 31, 2017, out of which 706 represent the Unilateral APAs ('UAPAs') and 109 represent Bilateral APAs ('BAPAs'). The table below gives the break-up of the number of applications filed each year since the inception of this programme.

Financial Year (F.Y.)	UAPA	BAPA	Total
2012-13	117	29	146
2013-14	206	26	232
2014-15	192	14	206
2015-16	113	19	132
2016-17	78	21	99
<b>Total</b>	<b>706</b>	<b>109</b>	<b>815</b>

- Till date, a total of 152 applications have been signed (141 UAPAs and 11 BAPAs). It is an interesting comparison to ponder upon, that while India has concluded 152 APAs in the past four years, China has entered into 113 APAs in ten years i.e., from 2005-2014.
- On an average, India has been successful in concluding the UAPAs in 29 months and the BAPAs in 39 months as compared to its US counterparts, which took an average of 34 months for UAPAs and 51 months for BAPAs.

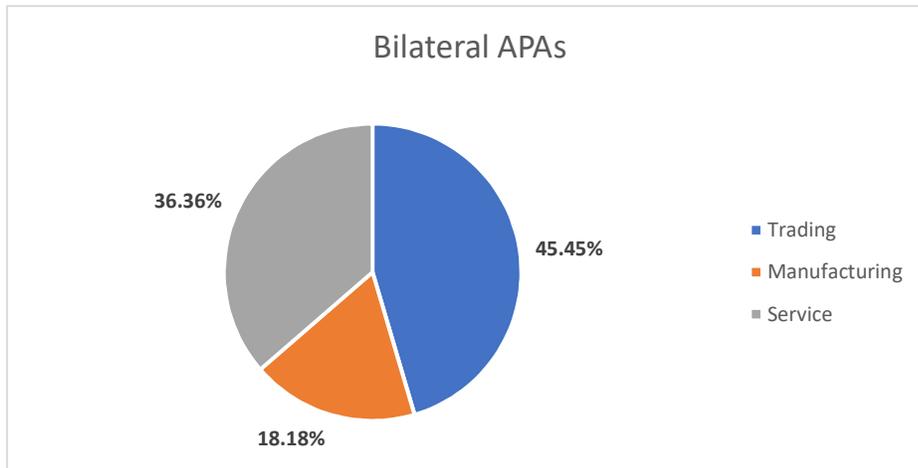
- Graph A below depicts the distribution of agreements signed (*economic activity-wise*) in case of UAPAs.

**Graph A**



- Graph B below depicts the distribution of agreements signed (*economic activity wise*) in case of BAPAs.

**Graph B**



- It is observed that out of the 141 signed UAPAs, 70 belong to the Information Technology and Banking/Finance sectors.
- The nature of transactions covered in UAPAs predominantly include provision of software development services, provision of IT enabled services, provision of investment advisory services, followed by intra-group payments and other transactions.
- While a major chunk of the signed UAPAs pertain to software development services, it is pertinent to note that till date, no BAPAs pertain to software development services.

- The most preferred transfer pricing method used is Transactional Net Margin Method (*TNMM*) both in case of UAPAs as well as BAPAs.
- Pursuant to the US opening its BAPA programme with India, there has been an increase in the number of BAPA applications and also in the number of conversions from UAPA to BAPA.

### **Conclusion**

The Indian APA programme has matured over the past five years and the number of agreements getting signed is a testimony to that. The programme is poised to move ahead quicker than it has done so far. The CBDT has also recognised the importance of some unique aspects that have contributed to the growth of APA programme i.e., the faith entrusted by the taxpayers in the APA team, use of electronic mode of communication, confidentiality maintained by APA team as well as taxpayers etc. All this augur well for both the taxpayers and the tax administration in India.