



**CBDT clarifies
India's position on
the acceptance of
transfer pricing
MAP and bi-lateral
APA, absent Article
9(2) in DTAA**

In a Press Release on 27 November 2017, the Central Board of Direct Taxes ('CBDT') has issued a clarification on India's position on the acceptance of Transfer Pricing Mutual Agreement Procedure ('MAP') cases and bi-lateral Advance pricing agreement ('APA') in cases of countries where Article 9(2) of OECD Model tax Commentary is absent.

The Multi-national Enterprises ('MNEs') had made representations to the Government on this issues where the Associated Enterprise ('AE') of the Indian entity is resident of a country with which India has entered into a Double Taxation Avoidance Agreement ('DTAA') but the Agreement does not contain Paragraph 2 of Article 9 (or its relevant equivalent Article) relating to 'Corresponding Adjustment'. The Government, on its part, after examining the matter has clarified that CBDT will accept Transfer Pricing MAP and bi-lateral APAs applications regardless of the presence or otherwise of Paragraph 2 of Article 9 (or its relevant equivalent Article) in the DTAA's.

Clarification of India's position on DTAA's where Article 9(2) was absent is certainly a welcome news and strengthens the Government's resolve of fostering a non-adversarial tax regime. This will open the gates for many bi-lateral APAs and transfer pricing MAP cases. Definitely, this sends out a positive signal and assures the Government's resolve to counter the pending litigations in an efficient manner.

NANGIA'S TAKE

In the past, the Government has made efforts to renegotiate the DTAA's with many countries and include Article 9(2) to allow MNEs to take recourse to bi-lateral APA and MAP to resolve their pending litigation on transfer pricing matters. A clarification of India's stand on the matter clearly spells out that the Government is seriously examining the concerns raised by the MNEs and taking steps to resolve the same. It also reinforce Governments' focus on improving India's ranking on ease of doing business index.

[A copy of the press release is attached for your ready reference.](#)



**OUR
OFFICES**

NOIDA

Nangia Tower, A - 109, Sector 136, Noida
Ph: +91-120-2598000, Fax: +91-120-
2598010

DELHI

B-27, Soami Nagar, New Delhi-110017, India

MUMBAI

11th Floor, B Wing, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai-400 013, India

DEHRADUN

First Floor, "IDA", 46 E. C. Road
Dehradun – 248001

SINGAPORE

24 Raffles Place, #25-04A
Clifford Centre
Singapore- 048621

www.nangia.com
nangia@nangia.com