IFA News Letter
India Branch - Western Chapter

Volume No 1 / 4 - January - March 2013

Chairman Speaks

The statement of the Finance Minister accepting many of the recommendations of the Expert Committee and release of the Final Report of the Expert Committee on GAAR have come as a big relief though admittedly there is distance to be travelled still. In particular the deferral of implementation of GAAR by two years should help restoring investor sentiment & business confidence. This move will go a long way in reducing uncertainty & also give time to all stakeholders to more fully debate, better understand as well as appreciate the way forward before implementation. Also welcome are the recently released CBDT clarifications regarding the issues relating to export of computer software. It does seem clear that the Government is serious about improving the investment climate in the country and the some of the steps are indeed commendable.

In the midst of this, the attempt to reopen the Supreme Court decisions in Vodafone & Azadi Bachao seems difficult to reconcile & appreciate. Meanwhile preparations for the Mumbai Congress of IFA scheduled in October 2014 are in full steam. There seems no dearth of stimulating subjects to deal with and we eagerly look forward to this unparalleled event in our midst. We would welcome any suggestions you may have in this regard to make this an unforgettable event.

As we enter the dawn of a New Year, I take this opportunity to wish you all and your families a happy & fulfilling 2013!

Editor Speaks

Happy New Year 2013.

This is the first News Letter of 2013. I am sure many new things will come our way.

In this quarter International Fiscal Association (IFA) Netherlands completes 75 years. As you may be aware IFA was formed in 1938 just before the commencement of World War II. The completion of 75 years is being marked with a Special celebration in the Peace Palace at the Hague on 2nd February 2013. I will have more to tell you in the next News Letter.

Besides this Mega Event, we also look forward to the Union Budget. I am sure there will be a special take on International tax which will be of interest to all of us.

The second quarter will also take our members to a conference at Switzerland to discuss the Agreement for Avoidance of Double Taxation between India and Switzerland. Let me appeal to the members for a participation in large numbers. Please do obtain more information from the local office of IFA in advance.

Any Members wishing to associate themselves with the activities of IFA , please contact the present members of the committee. It could be for News Letter, any assistance for the day to day working or the special event when IFA India Branch hosts the Congress in 2014!

Cheers !.

Tara Rao
Editor

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Courts Speak

I. Indian Rulings

Anand Patel
Chartered Accountant

1. WNS North America Inc v ADIT (Mumbai[1])

Retrospective amendment under the domestic tax law does not automatically alter corresponding provisions under the tax treaty

The assessee, a tax resident of USA, had entered a marketing support services agreement with its subsidiary in India ('WNS India'). In connection with the same, the assessee incurred international telecom connectivity charges on behalf of WNS India. Later, this cost was reimbursed to the assessee by WNS India at cost.

The Revenue authorities treated the payments from WNS India for international telecom connectivity as royalty. Before the Appellate Tribunal ('Tribunal'), the Revenue authorities, *inter alia*, argued that these charges, being consideration for use of equipment, now be considered as "royalty" as per the retrospective amendment in the Income Tax Act, 1961 ("the Act"). Thus, earlier years' orders, though favourable to the assessee, cannot be followed. Also, retrospective amendment under the Act was relevant even for determining taxability under the tax treaty.

The Tribunal observed that if the retrospective amendment under the Act pertains to a provision for which there was no contrary provision in the tax treaty, then, such amendment will have effect even under the tax treaty and *vice-a-versa*. However, the retrospective amendment under the Act does not have the effect of automatically altering the parallel provisions of the tax treaty.

The Tribunal further observed that since the term "royalty" has been defined exhaustively in the treaty, amendment to the definition in the Act will not have any bearing on the interpretation of such term in the tax treaty.

Based on the facts, the Tribunal held that these reimbursements were not taxable as royalty under the Act nor under the India-USA tax treaty.

[1] TS-895-ITAT-2012 (Mum)

2. DCIT v J Ray McDerrmott Eastern Hemisphere Limited (Mumbai[2])

Individual contract duration relevant for 'Construction PE' instead of aggregation

The assessee, a tax resident of Mauritius, executed a few construction contracts in India. Since duration of the contracts exceeded 9 months, Revenue authorities considered the aggregate period of all the contracts. Accordingly, held that the assessee has a Construction Permanent Establishment ('Construction PE') in India under Article 5 of the India-Mauritius Treaty.

In the earlier appeal before the Tribunal, it remanded the matter back to determine the duration of the contracts independently (and not on consolidated basis). It, further, directed to identify actual date of commencement and completion of the contracts, relying on the commentary on UN Model.

The Tribunal, on a specific finding produced before it that duration of construction of each of the contract was less than 9 months, held that the assessee did not constitute a Construction PE in India.

3. ACIT v. TexTech International (P.) Ltd (Chennai[3])

If the instructions could give technical expertise, which could be used even after expiry of contracts, and thereby giving enduring benefit, it would fall within the meaning of "fees for included services"

The assessee, engaged in e-publishing business, had entered into outsourcing contacts with its subsidiary in USA ('US Sub'). As the agreements, US Sub has to, *inter alia*, process customer materials, prepare instructions and prepare files for the assessee to carry out e-publishing services and also to upload these to the assessee ("outsourcing services").

The Revenue authorities contended that US Sub was providing technical knowledge to the assessee for performing the typesetting, preparing instructions and also for e-publishing of books. All the persons employed by US Subsidiary were technically qualified. Further, it was possible for the assessee to use such knowledge for other assignments and consequently, giving an enduring benefits to

[2] TS-766-ITAT-2012 (Mum)
[3] [2012] 27 taxmann.com 190 (Chennai)

the assessee. Thus, it was taxable under Article 12(4)(b) of the India-USA tax treaty as 'fees for included services'.

The Tribunal observed that, in case, the instructions provided by the US Sub is in the nature of technical knowledge which imbibed in the assessee any technical expertise, which in turn helped it in its e-publication business, such that an enduring benefit was received by it, then such services will be in nature of 'fees for included services' under Article 12(4)(b) of the India-US tax treaty. Accordingly, the Tribunal set aside the matter to be re-visited by the Revenue authorities.

II. Overseas Rulings

Pratikshit Misra
Chartered Accountant

1. Her Majesty the Queen v GlaxoSmithKline Inc (Canadian Supreme Court[4])

In its first transfer pricing ruling, the Canadian Supreme Court has held that "economically relevant characteristics" of closely linked transactions should be viewed cohesively in determining the arm's length price for a particular transaction

GlaxoSmithKline Inc ('Glaxo Canada') executed a License Agreement with the Glaxo Group whereby various rights and benefits relating to certain products including an anti ulcer drug were conferred upon it. The License Agreement required Glaxo Canada to purchase ranitidine being an active pharmaceutical ingredient for the anti ulcer drug from approved sources. Accordingly, Glaxo Canada executed a Supply Agreement with a Swiss based associated enterprise for the purchase of ranitidine. As a result of the Supply Agreement and License Agreement, Glaxo Canada could *inter alia* purchase ranitidine, put it in a delivery mechanism and market it under the trademark.

The Canadian Revenue Authority ('CRA') made downward adjustments to the purchase price paid by Glaxo Canada on the basis that the purchase price paid by Glaxo Canada was approximately five times higher than the purchase price paid by other generic pharmaceutical companies from unrelated sources for a generic anti ulcer drug.

At the third appellate stage, the Canadian Supreme Court observed that *prima facie* that it appeared that Glaxo Canada was paying for at least some of the rights and benefits under the Licence Agreement as part of the purchase prices for ranitidine under the Supply Agreement and hence the terms of the License Agreement should also be considered in arriving at the arm's length price for the purchase of ranitidine. The Supreme Court observed that a transaction by transaction approach for determining the arm's length price may not be appropriate in cases where separate transactions are so closely linked that they cannot be evaluated adequately on a separate basis. The objective is to determine what an arm's length purchaser would pay for the property and the rights and benefits together where the rights and benefits are linked to the price paid for the property. Accordingly, due consideration must be provided to other transactions (such as the licensing arrangement) which are relevant and could impact the determination of the arm's length price for purchase of ranitidine. Further, "economically relevant characteristics" of arm's length and non-arm's length circumstances are required to be evaluated to ensure that various transactions are "sufficiently comparable".

The Supreme Court ultimately remanded the case back to the Tax Court of Canada to determine the arm's length price for the purchase transaction in light of its above findings and observations.

2. Commissioner of Taxation v Consolidated Media Holdings Limited (Australian High Court[5])

The Australian High Court has reviewed the accounting nomenclature for buyback of shares by an Australian company and ruled that the consideration for buyback can be characterized as dividend (which could be entitled to rebate) rather than capital gains

This ruling concerns the characterisation for income tax purposes of consideration received by Publishing and Broadcasting Ltd ('PBL'), for shares sold to Crown Melbourne Ltd ("Crown"). PBL owned all of the nearly three billion shares in Crown. On 28 June 2002, PBL and Crown entered into a share buy-back agreement for approximately 840 million shares of Crown for a price of $1 billion .

Crown had accounts in its general ledger which included a "Shareholders Equity Account" and an "Inter-company Loan (Payable) Account". On 28 June 2002, Crown debited $1 billion to a new account in its general ledger labelled a "Share Buy-Back Reserve Account". On the same day, Crown made a corresponding credit entry in its ledger to the Inter-company Loan

[4] 2012 SCC 52

[5] S 228 / 2012 {[2012] HCA 55}

(Payable) Account. No entry was made in the Shareholders Equity Account, which retained a constant credit balance throughout the year ended 30 June 2002 in excess of $2.4 billion. The share buy-back agreement was completed on 6 August 2002.

Under the Australian laws, the amounts a shareholder is entitled to receive in respect of a buyback are considered as the "purchase price". Buybacks other than in the ordinary course of trading on a stock exchange are considered as "off-market purchases". In off market purchases, the difference between the purchase price and the part of purchase price debited against amounts standing to the credit of the company's share capital account is characterised as dividend paid to the seller on the day the buyback occurs. The remainder of the purchase price (if any) is required to be considered in computing the capital gains / loss of the shareholder.

The Australian Tax Authorities took a view that the $1 billion received by PBL under the share buy-back agreement was taxable as capital gains in the hands of PBL. PBL however contended that the $1 billion should be characterised as dividend entitling it to a rebate of income tax.

The key issue before the Australian Court was whether the Share Buy-Back Reserve Account constituted a part of the Share Capital Account since the characterisation of the purchase price as dividend or sale consideration for capital gains would turn upon the same.

Ruling in favour of PBL, the Court held that the financial position of Crown in relation to its share capital as at 30 June 2002 could only be understood by subtracting the $1 billion debit balance in its Share Buy-Back Reserve Account from the credit balance of just over $2.4 billion in its Shareholders Equity Account. In light of the same, the purchase price should be characterised as dividend income for PBL.

3. Test Claimants in the FII Group Litigation (European Court of Justice[6])

The European Court of Justice ('ECJ') has provided a preliminary ruling that the difference in manner of taxation in United Kingdom ('UK') of dividends received from UK resident companies and companies of other countries is contrary to the EU law since it results in restriction on freedom of movement of capital.

Under the tax laws of UK prior to July 2009, dividends received by UK corporations from other UK domestic corporations was exempt from tax in UK. As regards dividends received by UK corporations from non-resident corporations, the same were taxable in UK. However, in certain cases, the shareholder would be entitled to claim tax credit in UK for the taxes paid (on the profits from which dividend is declared) by the non-resident corporations in the foreign jurisdictions.

The ECJ observed that the UK corporations declaring dividends would typically have an effective tax rate which is lower than the nominal tax rate under the UK tax laws. Despite such lower effective tax rate, the dividends from UK corporations would be exempt from tax in UK. Similarly, the non-resident corporations declaring dividends would also typically have an effective tax rate which is lower than the nominal tax rate under the domestic tax laws of the non-resident corporations. On account of the same, the UK shareholders could have to pay tax in UK since the foreign tax credit would be lower than the taxes payable on such dividend income at the nominal tax rate of UK. The ECJ thus ruled that since the UK tax legislation does not provide for an equivalent treatment of dividends received from UK and other EU nations, the same is contrary to the EU law.

[6] C-35/11

International Tax Updates - India and Global

Isha Sekhri, Pratikshit Misra
Chartered Accountants

I. India

1. Protocol amending the 1993 DTAA between India, UK and the Northern Ireland signed

A protocol amending the 1993 DTAA between the Government of India ('GOI') and of United Kingdom and Northern Ireland (UK) was signed on 30 October 2012. The significant aspects are insertion of Limitation of Benefits ('LOB') clause and special provisions to grant DTAA benefits to income earned by partnerships, estates or trusts. The protocol will be effective after the completion of the procedures in both the countries. Source:
http://pib.nic.in/newsite/erelease.aspx?relid=88776 dated 9 November, 2012

2. Protocol amending the 1993 DTAA between India and Spain signed

The GOI and the Government of the Kingdom of Spain have signed a Protocol on 26 October 2012 to amend the existing 1993 India-Spain DTAA and the protocol annexed to it. The amendment will facilitate effective exchange of information, assist in collection of taxes and prevent abuse of the DTAA and will come into force on completion of internal procedures in both the countries. Source:
http://pib.nic.in/newsite/erelease.aspx?relid=88776

3. Protocol amending the 1993 DTAA between India and Uzbekistan comes into force

The Protocol amending the India-Uzbekistan DTAA, signed on 11 April 2012, has come into force on 20 July 2012. The significant aspects are reduction of withholding tax rate in case of income in the nature of dividend, interest, royalty and fees for technical services to 10%, insertion of LOB article and a comprehensive exchange of information and collection of taxes article. The protocol will be effective from 1 April 2013 with regard to applicability of reduced withholding tax rate, and from 20 July 2012 with regard to other provisions.
Source: Notification 49/2012 dated 7 November 2012

4. India-Liberia Tax Information Exchange Agreements (TIEA) comes into force

The TIEA signed between India and the Government of the Republic of Liberia on 3 October 2011, is effective from 30 March 2012. The TIEA provides for sharing of information, including exchange of banking information.
Source: Notification No. 32/20012-FT&TR-II [F.NO. 503/02/2010-FT&TR-II]/SO 1877(E), dated 17 August 2012

5. Indian signs Social Security Agreement ('SSA') with Japan

The GOI has signed a SSA on 16 November 2012 with Japan, for facilitating the movement of employees and professionals, by eliminating double contribution and / or providing the benefits of exportability of social security benefits and totalistation of periods for determining the eligibility of pension benefits.
Source:
www.mofa.go.jp/mofaj/gaiko/treaty/shomei_75.html

6. India signs SSA with Sweden

The GOI has signed SSA with Sweden on 26 November 2012, which will increase cross national employment opportunities for nationals of India and Sweden, enhance cooperation on social security and strengthen the trade and investment relationship between both the countries.
Source:
http://www.pib.nic.in/newsite/erelease.aspx?relid=89465

7. CBDT Circular on approval of foreign currency borrowings to avail lower withholding tax rate

The Central Board of Direct Taxes ('CBDT') has issued a circular enlisting conditions, which need to be fulfilled for automatic route/general approval of the GOI for availing benefit of concessional rate of withholding under Section 194LC of the Income-tax Act, 1961.

Source:
http://finmin.nic.in/the_ministry/dept_revenue/loanAgr_LongTrInfra_RoI_ITAct1961.pdf

8. CBDT notifies format and procedure for obtaining a Tax Residency Certificate ('TRC')

The CBDT issued a Notification dated 17 September 2012 introducing the Rules prescribing the format of application and procedure to obtain TRC.

Source: Notification No. 39/F. No. 142 /13/2012 SO TPU dated 17 September 2012

9. Report of Expert Committee ('EC') on Retrospective Amendments relating to indirect transfer

The scope of the EC constituted by the Prime Minister to examine general anti-avoidance rules (GAAR) was expanded to include recent amendments on taxation of indirect transfers. The EC has submitted its final report on 1 October 2012, released to public on January 14, 2013, wherein it recognizes the need for adequate safeguards to avoid unintended consequences of the wide ambit of retrospective amendments carried out by FA 2012. Accompanying Finance Minister's statement indicates that some of major recommendations of the EC have been accepted including deferral of GAAR to tax year 2015-16 onwards.

Source:http://www.pib.nic.in/archieve/others/2012/oct/d2012100905.pdf

10. India includes comments in draft United Nations ('UN') Practical Manual on Transfer Pricing Issues for Developing Countries

The draft UN Practical Manual provides that the United Nations Tax Committee formed a subcommittee on Transfer Pricing at its fifth annual session in 2009 to meet the needs of developing countries in the area of transfer pricing, and the Subcommittee was mandated to prepare a practical manual for developing countries on transfer pricing. The Indian tax administration in the India Country specific chapter has provided its comments on a number of emerging transfer pricing issues from an Indian perspective, including issues pertaining to comparability analysis, allocation of risk, use of multiple year data, location savings, intra-group services and transactions involving transfer/ use of intangibles.

II. Global

1. Denmark:

Recharacterisation of capital gains as dividend income in specified cases

The Danish Parliament has approved a bill providing for recharacterisation of capital gains as dividend income in certain cases whereby a Foreign Corporation transfers shares of a Danish Company to another Danish Company and where (i) both Danish Companies are controlled by the Foreign Corporation; and (ii) the consideration received by the Foreign Corporation is not merely shares of the other Danish Company. The bill provides for certain exceptions where such recharacterisation may not take place. This amendment may possible result in a withholding of taxes in Denmark on account of characterization of income as divided.

Taxability basis place of registration

Taxpayers registered in Denmark could be liable to tax in Denmark (as tax residents) even if the place of effective management of such taxpayers lies outside Denmark (subject to the tie breaker rules prescribed in the applicable tax treaty)

2. Ireland: Budget 2013 presented in December 2012

The key measures / proposals in the 2013 Budget presented by the Irish Finance Minister *interalia* include conclusion of new Inter-Governmental Agreement with USA in relation to US FATCA.

3. Australia:

Exposure Draft Law to replace extant Transfer pricing rules released in November 2012

Some of the key proposals in the exposure draft law released are as under:

- Failure to prepare and maintain prescribed transfer pricing documentation before the filing of the income tax return may result in at least 25% penalty in respect of the transfer pricing adjustments carried out by the Commissioner;

- Identifying arm's length conditions would include all aspects relevant to the economic substance of the entities and their dealings;
- Due regard should be given to the economic substance rather than the legal form of the transactions;
- The authorities would have the power to unwind or disregard transactions in specified situations
- In determining the profits of a Permanent Establishment ('PE'), the single entity approach should be maintained but should operate using the separate entity analytical framework.

Draft Legislation and explanatory notes to proposed changes to existing GAAR provisions

The Draft Legislation and explanatory notes to proposed changes in existing GAAR provisions were released on 16 November 2012. It is proposed that the start date of the new rule be 16 November 2012. One of the key draft amendments provides for ignoring the potential tax costs under alternative ways in which the taxpayer could be expected to achieve the same non tax benefits as the executed arrangement. In light of the same, the tax authorities may choose to evaluate the 'tax benefit' to the taxpayer under the 'executed arrangement' vis-a-vis an alternative arrangement which provides for the worst possible tax outcome.

4. Germany: Implementation of OECD Approach in determining the taxable profits of a PE

In October 2012, the Annual Tax Act of 2013 was passed by the first chamber of German Parliament. The Act proposes to adopt the OECD approach for determining the taxable profits of a PE for German income tax purposes. Accordingly, the PE would be construed as a separate entity for tax purposes and consequently dealings between the PE and Head Office would need to meet the arm's length principle which may result in profit attribution to PE even in scenarios where there may be losses on an overall basis for the Head Office.

5. Argentina: Signing and ratification of Multilateral Convention

Argentina has ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which will enter into force in Argentina on 1st January 2013. The Argentine tax authorities will now have access to information with a host of countries with which it presently does not have bilateral tax treaties.

6. Hong Kong signs income tax treaty with Canada:

Hong Kong has signed an income tax treaty with Canada in November 2012 and is now pending ratification by both countries.

7. Russia-Argentina tax treaty enters into force

On account of completion of the ratification procedures, the tax treaty between Russia and Argentina has entered into force on 16 October 2012.

8. Colombia: Finance Bill presented in October 2012, pending approval

The Colombian Finance Minister has presented the Finance Bill, *interalia* including introduction of concept of PE in the domestic tax laws and only Colombian sourced income of the PE should be subject to tax in Colombia having due regard to the domestic accounting records and transfer pricing compliance.

9. OECD: Update on PE Discussion Draft

The OECD released a revised discussion draft relating to the interpretation and application of the commentary to Article 5 of the OECD model tax treaty in October 2012 and has invited comments on the proposed changes by 31 January 2013.

10. OECD: Update on 'Beneficial Owner' Discussion Draft

The OECD released a revised discussion draft relating to the interpretation of the term 'Beneficial Owner' under Article 10, 11 and 12 of the Model Convention in October 2012 and had invited comments on the proposed changes by 15 December 2012.

Experts Speak

Advance Pricing Agreements - 'Beyond the Obvious' Benefits

Paresh Parekh, Senior Tax Professional
[Contributions from Isha Sekhri & Trupti Shanbhag, Senior Tax Professionals]

Background

The level and degree of increasing transfer pricing ('TP') adjustments in India can be easily understood from the fact that the TP adjustments from assessment year ('AY') 2002-03 to AY 2008-09 have increased from INR 1,220 crores [239 cases – 23% of completed audits] to INR 44,532 crores [1343 cases - 50.91% of completed audits], with total adjustments during this period towering to INR 94,244 crores [5164 cases – 39.38% of completed audits!]![7].

Fulfilling the need of the hour, and following international best practices, the Finance Act 2012 introduced the much awaited Advance Pricing Agreements ('APAs') program, inserting sections 92CC and 92CD in the Income-tax Act, 1961 ('Act') effective from 1.7.2012, and, Rules 10F to 10T of Income-tax Rules, 1962 ('Rules') vide Notification 36 dated 30.8.2012 announced on 31.8.2012.

Internationally, APAs are known to be an excellent controversy management tool. According to the *Ernst & Young Global Transfer Pricing Survey*, around 23% of parent respondents use APAs as a controversy-management tool – further the level of satisfaction of users with the APA process is high, 90% indicating that they will implement an APA in the future.

The APA regime in India currently enables an eligible tax-payer to file for a unilateral APA (between the Central Board of Direct Taxes ('CBDT') and the applicant), bilateral APA or multilateral APA (involving the Competent Authorities (CAs) of one or more countries). The scheme covers present as well as proposed international transactions.

The process of APA could be summarized as under:-

- Pre-filing;
- Application for APA;
- Evaluation and negotiation; and
- Executing and monitoring

Benefits of APAs program

The obvious benefit of having an APA for most taxpayers is certainty regarding TPs and avoiding litigation. Bilateral/ Multilateral APAs also address the inconsistent and evolving interpretation and enforcement of TP rules in other countries and the risk of double taxation.

'Beyond the Obvious' Benefits

However, there could be many more reasons for deciding to opt for an APA program. Many times, it is possible that these 'softer' / 'beyond the obvious' benefits of opting for APA program are not fully realized by tax payers, for eg:

1. 'Light touch' TP Audit

Even if there is no litigation as such, presently, significant time and money has been spent by tax payers during the TP assessments for providing repetitive details on facts / legal positions [sometimes due to the fact that there are changes in the TP officer due to transfers]. Once an APA is in place, there would not be any such detailed TP assessments for the entire period covered by APA.

2. 'Light' TP documentation

On the finalization of APA, it is expected that taxpayer may not be required to maintain onerous and detailed documentation [as is required presently without an APA] year on year.

[7] Rajya Sabha records dated 22.11.2012

3. Discussion at the 'right level'

APA team is consisting of senior tax officials, and could also have nominated experts like lawyers, economists, statisticians, etc. Hence it is expected that TP issues, which are generally complex, will be better appreciated by the APA team.

4. Anonymous Application

Anonymous pre-filing consultation could be an option to taxpayers to get a sense of expectation from the Revenue authorities, and to 'test the waters', without necessarily revealing the identity.

5. Open TP litigations for past years

In India, although roll-back of APA is not formally enabled, the methodology as agreed in APA may have persuasive value in litigation for past open TP audit years.

6. **Going 'beyond' safe harbor margins**

Even as and when safe harbor rules are notified, APA program could still be relevant if tax payer believes it has a case due to its peculiar facts say, to justify a lower 'cost plus' margin than prescribed under safe harbor rules.

7. PE attribution

Entering into an APA could help in ensuring agreement on allocation of functions, assets and risks between the head office ('HO') and its Indian Permanent establishment ('PE'). Certainty on the PE attribution methodology and recognition and characterization of dealings between HO and PE and determination of arm's length return for such dealings could be achieved through APAs.

8. Indirect Tax – Custom Duty - Valuation

TP provisions and Special Valuation Branch ('SVB') proceedings are typically perceived to be driven by diametrically opposite objectives of valuation which could lead to a conflict. However it is expected that APAs could have persuasive value for SVB in customs. Circular No. 20/2007-Customs dated 8-5-2007 provides for cooperation and coordination between the Central Boards of direct tax and customs department on transfer pricing issue.

9. Corporate Governance perspective

The APA may be helpful in appropriate cases to justify/ support authentic charges such as royalty / technical fees from say promoter/ parent / related foreign company to say its Indian subsidiary/ related party having minority shareholders.

10. New Companies Bill, 2012 – related party dealings

Clause 188 of the Bill provides for compliance requirements for all related party transactions. The bill also provides for escape clause from such compliance for the related party transactions that are entered on arm's length basis. However, reference of every related party transaction (even if they are on arm's length) is required in the Director's report to shareholders, along with justification for entering into such transactions. APAs could be of persuasive value for this aspect as well.

Closing remarks

Given the rising number of TP disputes in India, clearly introduction of APA program is a positive development. Further, as seen above, in addition to 'certainty', there seems to be many more 'beyond the obvious' benefits of having an APA program depending on facts of each case. The Indian Government is keen to offer a better investment climate to multinationals and foreign players doing business in India, and to send the 'right signals'. Hence, there is likely to be 'early mover advantage' to tax payers approaching APA program earlier. Further, the work load with APA team could increase later on. Also, the 'pre-fling' consultation meetings [which could also be anonymous] seem to be a great feature of Indian APAs program, and this could help 'test the waters'. Thus, overall, introduction of APA program is step in the right direction, though off course, '*proof of the pudding is in the eating*'! Happy APA journey!

Save The Date and Quarter Gone By

Save The Date - Forthcoming Study Circle Meetings

Day and Date	Monday, 11 February 2013	Thursday, 14 February 2013
Topic	2011 update of the UN Model Double Tax Convention	Range of Entities Available around the World and Some Policing/Detection techniques used by New Zealand's IRD
Speaker	**Mr. T.P. Ostwal**	**Mr. Neville Dodd, Director, Trackers Ltd, New Zealand**
Venue	Walchand Hirachand Hall, IMC	Kilachand Conference Room, IMC Building
Time	6 pm - 7 pm	To be Announced

Quarter Gone By - Study Circle Meetings

Date	December 4, 2012	January 9, 2013
Topic	Use of Bilateral Investment Protection Treaties to arbitrate international tax disputes	Financial Opportunities - Luxembourg
Speaker	**Mr. Marcus Desax and Mr. Marc Veit, Partners at Walder Wyss, Switzerland**	**HE Mr. Stronck Gaston, Ambassador of Luxembourg to India**

The presentations of the speakers were exhaustive, encompassing and was well responded by the members as well as non-members attending the meeting.

About IFA

The International Fiscal Association (IFA), established in 1938 with its headquarters in the Netherlands, is the only non-governmental and non-sectoral international organisation dealing with fiscal matters. IFA has played an essential role both in the development of certain principles of international taxation and in providing possible solutions to problems arising in their practical implementation. The membership of IFA now stands at more than 12,000 from 106 countries. In 62 countries, including India, IFA members have established IFA Branches. For further information on IFA and its activities, please visit the website **www.ifaindia.in**. Your feedback / suggestions are welcome. Please write at **ifaindiabranch@gmail.com**