



Budget 2014- Roll back provision in Advance Pricing Agreement Scheme

Jul
12
2014

Roll back provision in Advance Pricing Agreement Scheme

Section 92CC of the Act provides for Advance Pricing Agreement (APA). It empowers the Central Board of Direct Taxes, with the approval of the Central Government, to enter into an APA with any person for determining the Arm's Length Price (ALP) or specifying the manner in which ALP is to be determined in relation to an international transaction which is to be entered

into by the person. The agreement entered into is valid for a period, not exceeding 5 previous years, as may be mentioned in the agreement. Once the agreement is entered into, the ALP of the international transaction, which is subject matter of the APA, would be determined in accordance with such an APA.

In many countries the APA scheme provides for "roll back" mechanism for dealing with ALP issues relating to transactions entered into during the period prior to APA. The "roll back" provisions refers to the applicability of the methodology of determination of ALP, or the ALP, to be applied to the international transactions which had already been entered into in a period prior to the period covered under an APA. However, the "roll back" relief is provided on case to case basis subject to certain conditions. Providing of such a mechanism in Indian legislation would also lead to reduction in large scale litigation which is currently pending or may arise in future in respect of the transfer pricing matters.

Therefore, it is proposed to amend the Act to provide roll back mechanism in the APA scheme. The APA may, subject to such prescribed conditions, procedure and manner, provide for determining the arm's length price or for specifying the manner in which arm's length price is to be determined in relation to an international transaction entered into by a person during any period not exceeding four previous years preceding the first of the previous years for which the advance pricing agreement applies in respect of the international transaction to be undertaken in future.

This amendment will take effect from 1st October, 2014.

Dr. Suresh Surana, Founder, RSM Astute Consulting Group says that **"The opening up of Authority for Advance Ruling for resident tax payers and the formation of more AAR benches is a welcome move, which will enable businesses to bring in much desired clarity and certainty on taxation related matters"**.

Relevant Clause of Finance Act (No. 2) of 2014

Amendment of section 92CC.

32. In section 92CC of the Income-tax Act, after sub-section (9), the following sub-section shall be inserted with effect from the 1st day of October, 2014, namely:—

"(9A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm's length price of such international transaction shall be determined in accordance with the said agreement.