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**Advance Pricing Agreement
(APA)
And Mutual Agreement
Procedure (MAP)**

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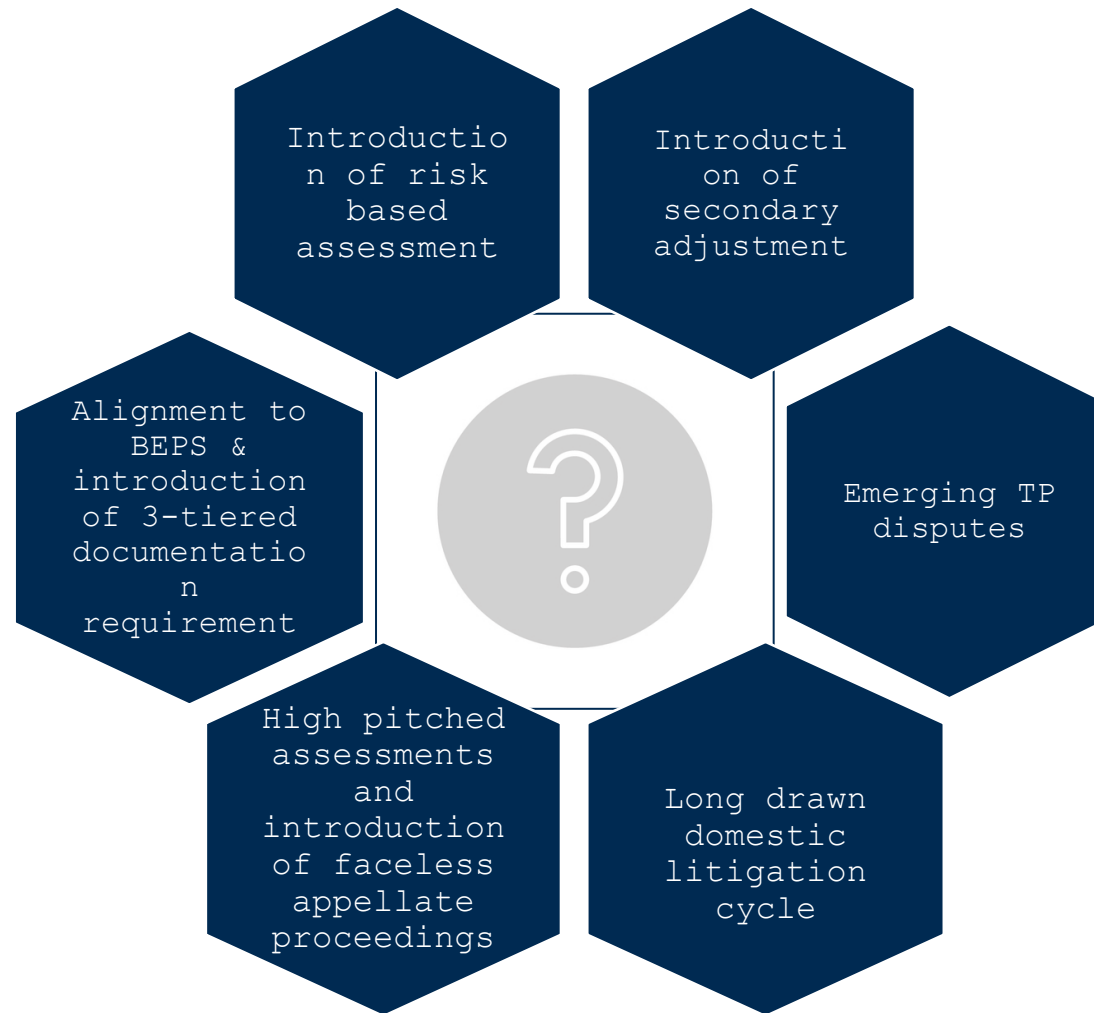
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- Mutual Agreement Procedure (MAP)

A business meeting in a modern office. A man in a suit and glasses stands in the center, looking towards the camera. To his left, another man in a suit is looking at a large screen displaying data. The screen shows various charts and graphs, including a bar chart with a '+89%' increase, a line graph for 'AR Consumption growth', and a line graph for 'Average user base'. The background is a blurred office environment with glass partitions and other people.

Advance Pricing Agreement

Why APA?



A circular graphic overlay is centered on a blurred background of a business meeting. The background shows several men in business attire looking at a large screen displaying data. The screen has a dark theme with white and light blue text and graphics. The text on the screen includes 'Digital Distribution & Sales Analysis', '+89%', 'AR Consumption growth', 'Average user base', 'Social Networks growth in marketing', and 'Content Consumption'. The circular overlay is semi-transparent white and contains the text 'APA - Key Benefits' in a bold, black, monospace-style font.


APA - Key Benefits

Bilateral APA benefits



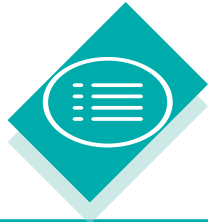
Generic benefits:

- In-depth analysis of actual receipt and benefit.
- Avoidance of double taxation unlike Unilateral APA
- Negotiated method for determination of ALP
- Detailed FAR analysis can help in resolving potential TP disputes
- Once an arm's length mark-up is agreed between Competent Authorities ("CAs") there will be a reasonable basis for renewal
- Group TP policy gets traction.
- Commercial rationale for low/no system profit & profit allocation to various jurisdictions can be discussed.
- Overall industry challenges can be discussed in greater detail.
- Certainty on FAR through detailed discussions & site visit
- Relevant economic adjustment can be obtained (if required and supported by data).
- Comparability challenges can be mitigated through margin certainty.

A background image showing a business meeting in a modern office. Several people in business attire are gathered around a table, looking at large digital screens displaying data and charts. The scene is dimly lit, with the primary light source being the screens. A large, semi-transparent white circle is overlaid on the center of the image, containing the title text.

Overview of Advance Pricing Agreement (APA)

APA - Introduction



Types of APA

Unilateral, bilateral or multilateral APA can be filed.



Optional pre-filing

An optional pre-filing consultation has been prescribed to get an understanding of the thoughts of the APA authorities for the international transactions for which APA is proposed to be filed - pre-consulting can be on a "no-name" basis also.



APA years and rollback years

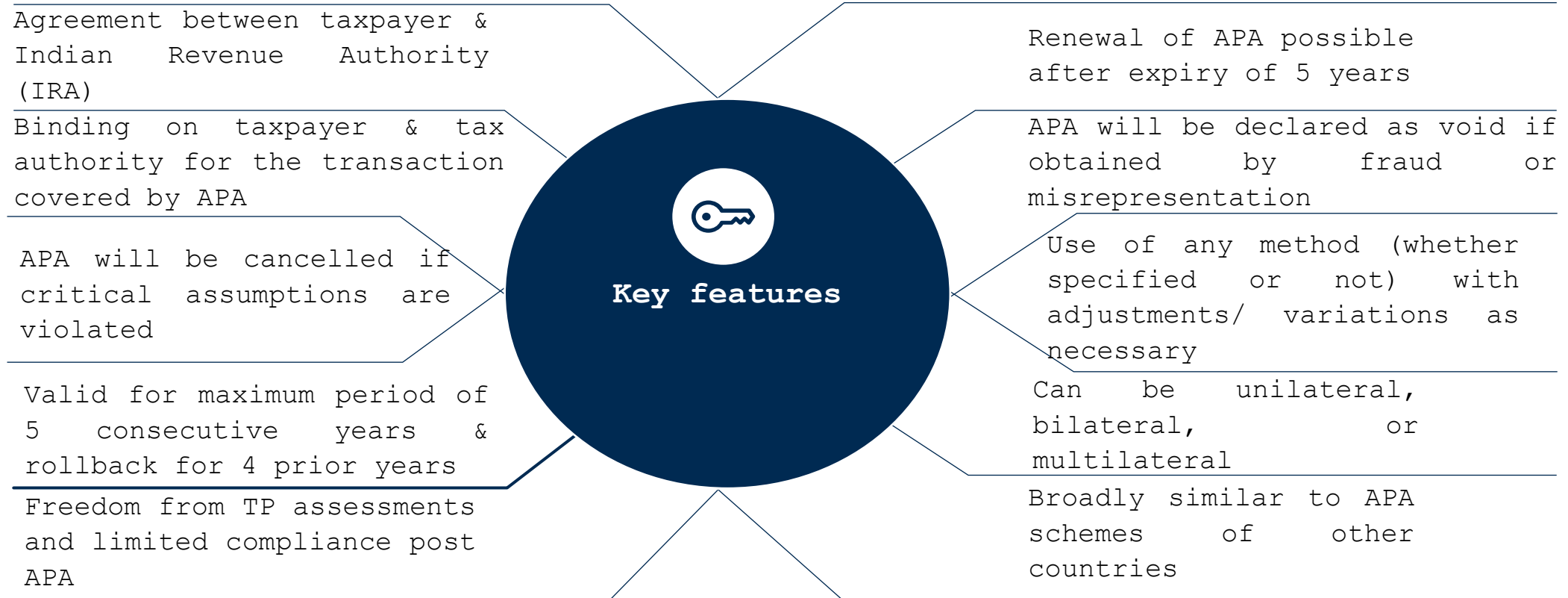
APA is allowed for a maximum period of 5 years (advance years) and a roll back of 4 years immediately preceding the APA years.



When to apply-in case of existing transactions

For continuing transactions, APA application is required to be filed before the first day of the financial year which is part of the advance years (i.e. if the APA years are from FY 2023-24 to 2027-28, application needs to be filed on or before March 31, 2023)

India APA program – salient features



Cost Benefit Analysis for opting for APA

Costs

- One time APA filing fees to be remitted to government
- One time costs to obtain APA
- Consultants fees to obtain APA
- Annual Compliance Audit costs after signing APA

Benefits

- Savings in Compliance cost
 - TP Compliance
- Savings in Litigation cost
 - TP Assessment
 - CIT(A)/DRP
 - ITAT
 - HC and SC
 - Remand back / Order giving effect
- Savings in Tax, Interest and Penalty outflow on account of TP adjustment

Benefits are titled more favourably to go in for an APA as it would give relief from cost, time and efforts involved in domestic

Pros and Cons for opting for APA

Pros

- Certainty for 5 future years and 4 roll back years
- Saves time and resources as it eliminates the long drawn litigation process
- Certainty can be obtained for related party transactions
- Flexibility in amendment / revision / withdrawal is available to the taxpayer
- Critical assumptions flexible to provide for future transactions
- Provides tax certainty with regard to determination of arm's length price of the international transactions
- Bilateral APA - alleviates double taxation - ~~option to convert unilateral APA to bilateral APA prior to finalization~~
- Concluded APA will have persuasive value for

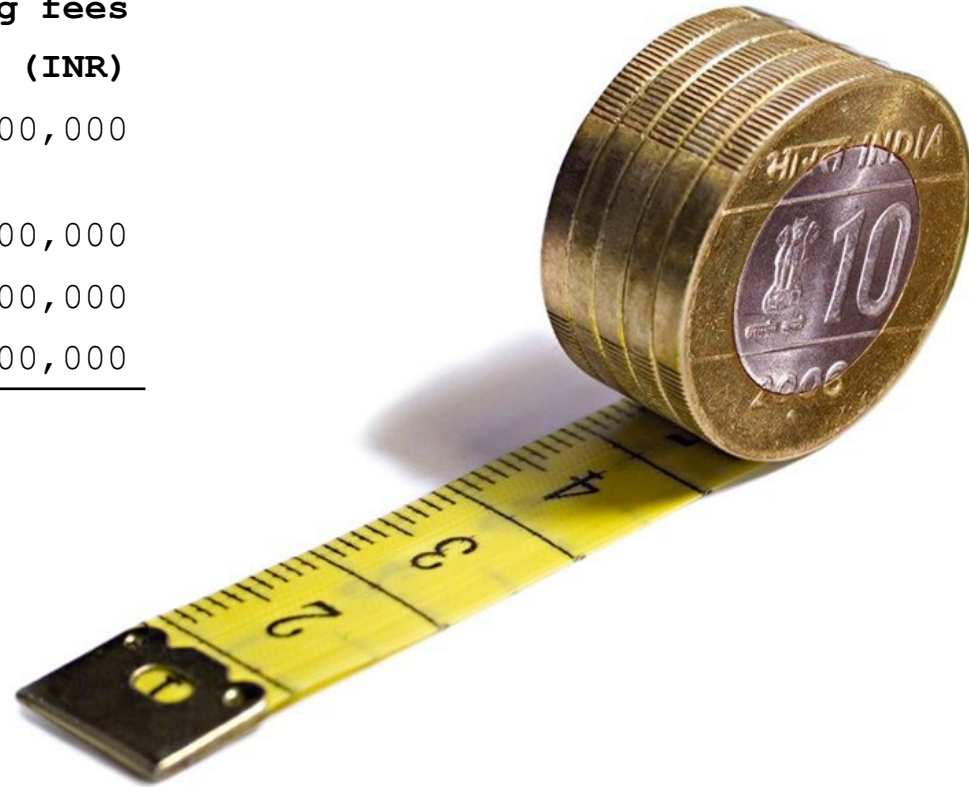
Cons

- Discussions on potential emerging issues may take place during APA process
- APA will not be valid if there is any change in the business model or critical assumptions of the applicant
- Lack of formal firewall provisions
- Unilateral APA does not eliminate the risk of double taxation
- ~~Requirement to provide exhaustive information on facts~~

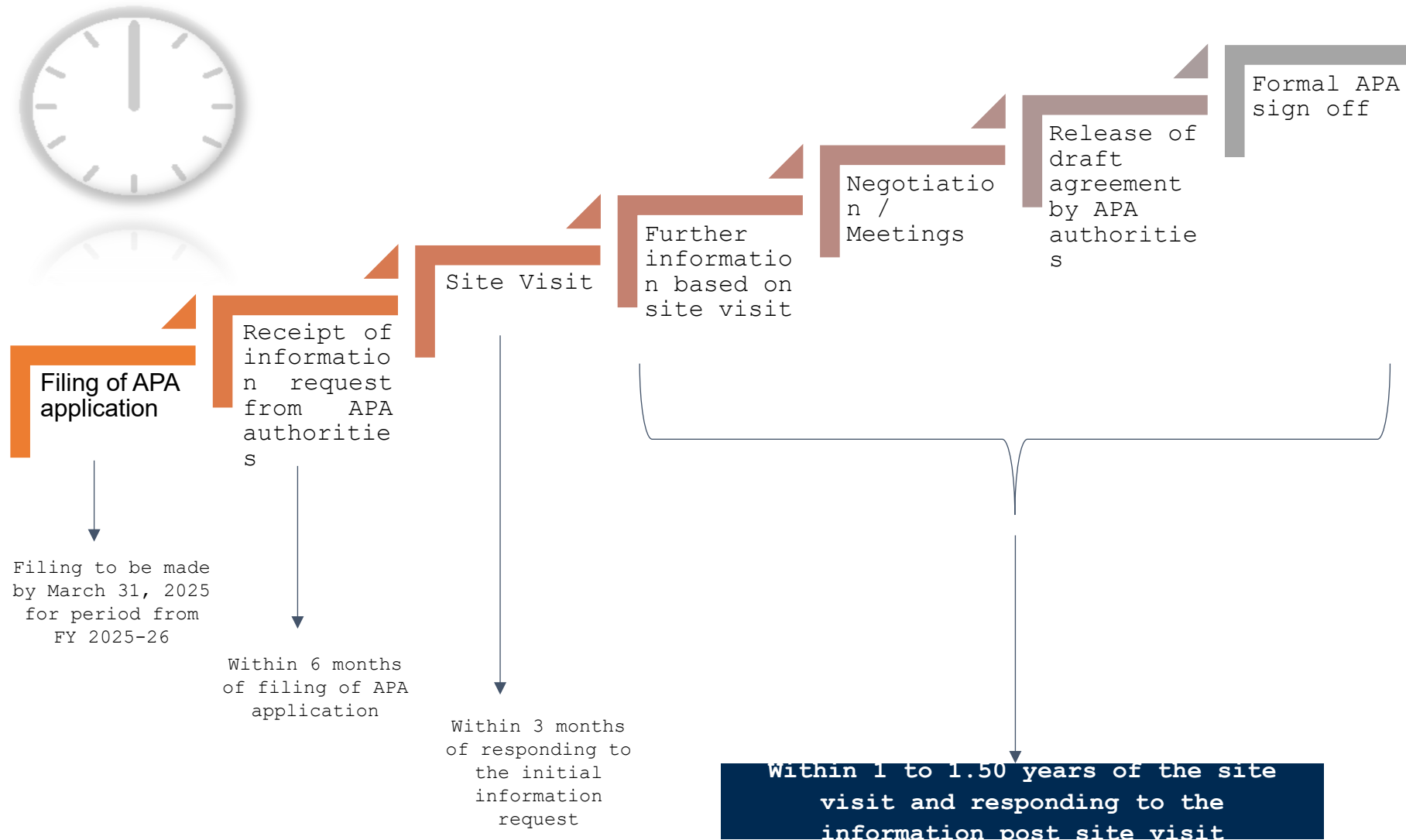
Pros are tilted more favourably to go in for an APA as it would achieve tax certainty and relief from the protracted litigation.

APA in India – Government Fees

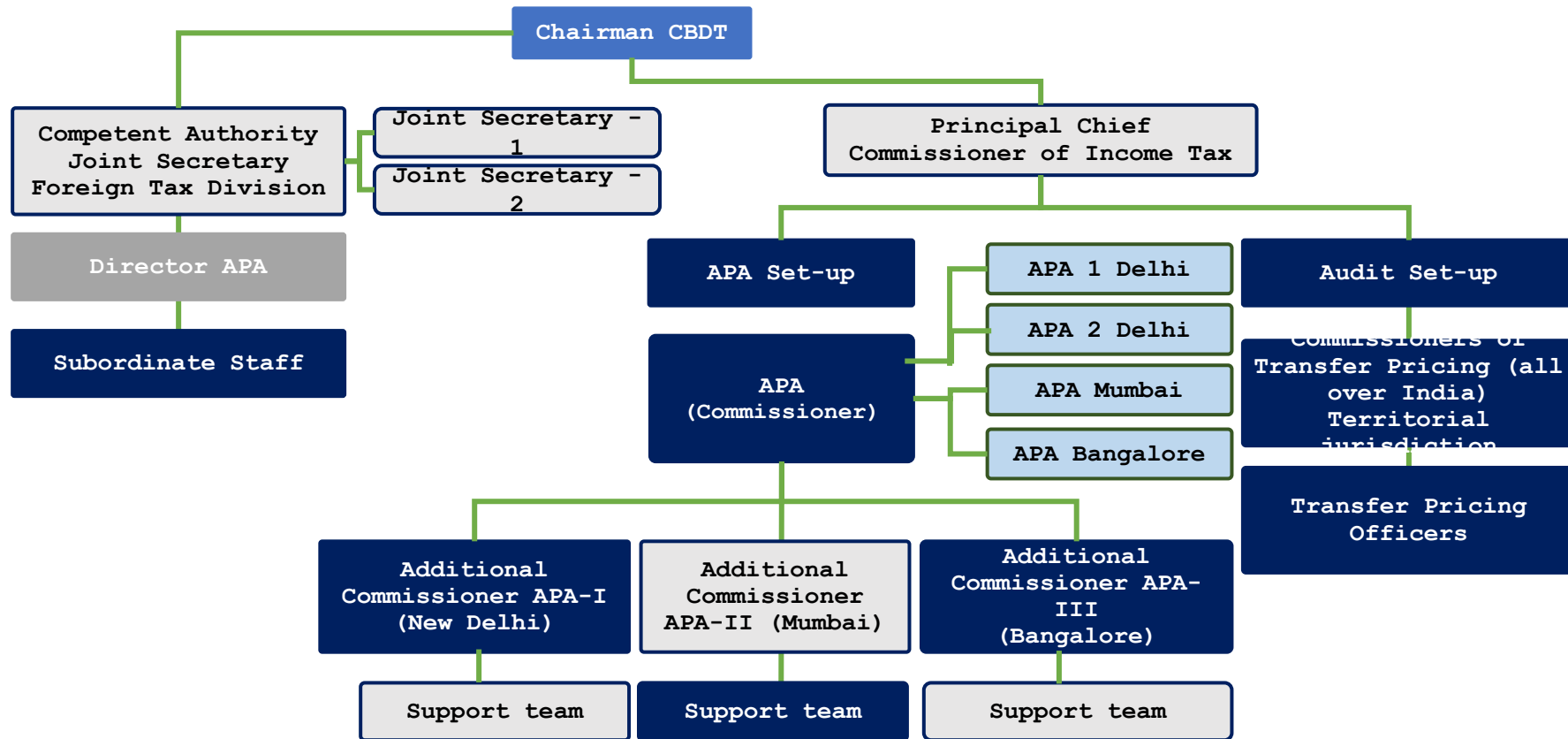
International transactions Value	APA filing fees (INR)
Less than or equal to INR 100 Crores	10,00,000
INR 100 Crores to 200 Crores	15,00,000
More than INR 200 Crores	20,00,000
Rollback (if opted)	5,00,000



APA - Milestones



Snapshot of the Indian APA team

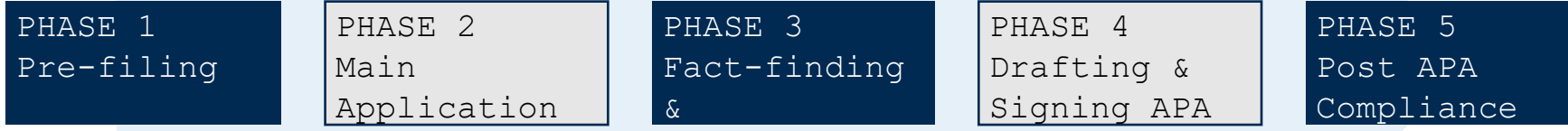




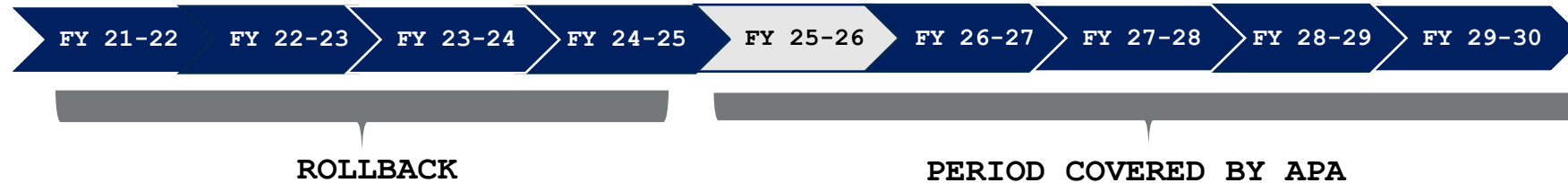
APA - Phases

APA - Phases

APA - PHASES



APA - TENURE



* APA application to be filed by March 31, 2025

Rollback, if opted for - 4 years prior to FY 25-26
can be covered

Phase 1 - Pre-filing application

Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

- **Preparation of pre-filing application**
 - Collection & confirmation of basic information
 - Formulation of strategy
 - Economic analysis
 - Preparation of pre-filing application in Form 3CEC - Application for a pre-filing meeting
 - Finalization of Form 3CEC
- **Submission of pre-filing application**
 - Filing of Form 3CEC with DGIT
 - Pre-filing meeting with APA team
 - Furnishing additional information, if any required by APA team
 - Concluding the issues in consensus with APA Team
 - Review and analysis of written communication from APA team

Phase 2 - Main application including rollback

Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

Preparation and filing of main APA application

- Strategy determination based on pre-filing
- Detailed functional analysis with each divisional personnel
- Collation and review of detailed information/ data in line with the strategy
- Analysis of any third party comparable prices available in India and / or outside India including application of Internal RPM / Internal TNMM for each of the division
- Detailed analysis of payment of management charges including cost pooling mechanism, cost sharing arrangement, allocation keys, documentary evidences etc.
- Preparation of draft APA filing in Form 3CED including rollback application
- Discussions to finalize the positions on all issues/points
- Finalization and filing of Form 3CED
- Analysis of implication of any open audit for any rollback year
- Implications of positions taken in TP documentation on the APA application

Phase 3 - Fact-finding & Negotiation

Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

Fact- finding & Negotiation discussion with APA team

- Assistance in preliminary processing of APA application and removal of defect, if any as per Rule 10K
- Negotiation meeting with the APA team
- Compilation, review and submission of additional information as requested by the APA team
- Preparing draft submission the queries of APA team
- Assistance during site visits and assisting the key personnel in preparing for the site visits
- Responding to the detailed enquiries as provided in Rule 10L(5)
- Additional rounds of negotiation meeting with the APA team
- Informal discussion with the APA team to discuss the arm's length positions

Phase 4 – Drafting & Signing of APA

Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

Drafting & Finalization of APA between Applicant and CBDT

- Preparation and review of the terms of APA agreement
- Facilitating meeting & discussions with the APA team
- Discussion on various clauses of APA agreement with Applicant's team and its implications
- Drafting and reviewing the critical assumptions
- Implications of APA terms on the rollback years and discussion on any impacts
- Discussion on the yearly compliances (minimum) post APA

Phase 5 – Post APA Compliance

Phase 1

Phase 2

Phase 3

Phase 4

Phase 5

Post APA Compliance


- Assistance in preparation of Annual Compliance Report in Form 3CEF for each year covered under the APA under Rule 100
- Assistance and Representation before the Transfer Pricing Officer in relation to Compliance Audit of the agreement for each year covered under the APA under Rule 10P.
- Filing of modified return of income referred to in Section 92CD in respect of rollback and closed years
- Assistance before AO to issue assessment order in conjunction with modified return
- Withdrawal of appeals etc. before DRP/CIT(A)/ITAT, if any
- Computation of tax and interest in pursuance of APA



APA - Coverage

Coverage of APA

Prospective years covered by the APA application	5 prospective financial years can be covered
Rollback years covered by the APA application	Option to cover a block of 4 years preceding the APA years
Coverage of international transactions	a.Existing international transactions b.Option to cover proposed international transactions
Associated enterprises	<ul style="list-style-type: none">• Any AE in any jurisdiction can be covered
Type of APA	<ul style="list-style-type: none">• Unilateral APA (UAPA)• Bilateral APA (BAPA)• Option of conversion from UAPA to BAPA

A background image of a business meeting in a modern office. Several men in business attire are gathered around a table, looking at large digital screens displaying data. The screens show various charts and graphs, including a bar chart with a '+89%' increase and a line graph labeled 'AR Consumption growth'. The text 'Mutual Agreement Procedure (MAP)' is overlaid in a large, bold, black font on a white circular background in the center of the image.

Mutual Agreement Procedure (MAP)

Mutual Agreement Procedure (MAP)

- Mutual Agreement Procedure is given in Article 25 of the OECD Model Tax Convention.

What is MAP?

- MAP is the mechanism that Contracting States use to resolve any disputes or difficulties that arise in the course of implementing and applying the treaty.
- The MAP thereby ensures that these disputes will not frustrate the treaty's goal of preventing international double taxation.
- In order to achieve that goal, the competent authorities should make every effort to reach a timely agreement on each issue submitted to the MAP.

Article 25 of OECD Model Convention – sets out three different areas where MAP are used.

1. taxation not in accordance with the provisions of convention
2. interpretation and application of convention
3. the elimination of double taxation in cases not otherwise provided for in the Convention

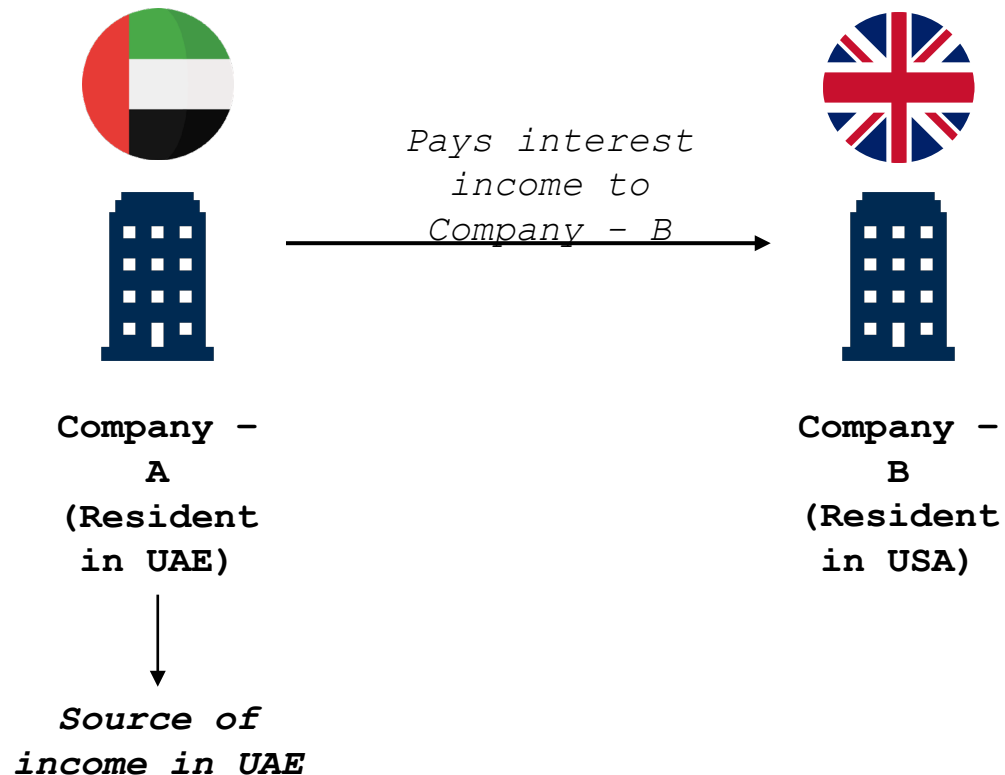
Article 25 makes clear that Article 25 is intended to be used by the competent authorities in resolving not only jurisdiction double taxation but also those of economic double taxation arising from transfer pricing arrangements.

Need for MAP:

- MAP provides relief in cases of economic double taxation.
- MAP also provides relief in cases where automatic relief, such as tax credits, tax exemption etc. are not available.

Mutual Agreement Procedure (MAP)

Example :



- The interest Article of a tax treaty may permit interest arising in one Contracting State and paid to, and beneficially owned by, a resident of the other Contracting State to be taxed in both these States, with the tax charged in the source State limited to an agreed-upon rate.
 - Double taxation is then eliminated by the relief from double taxation Article, under which the residence State will generally allow a deduction or credit against its tax for the tax paid to the source State, to the extent that the source State properly taxed the interest income under the treaty.
- Drawbacks of MAPs:**
- MAP may take too long to complete
 - Taxpayer participation may be limited
 - Time limit under domestic law may make corresponding adjustments unavailable if those limits are not waived in the relevant tax treaty.

Mutual Agreement Procedure (MAP)

Steps involved in MAP Application Process:

Step-1

Brief facts and background of the case must be summarized.

Step-2

Contention of the tax authority must be summarized in the application

Step-3

The net tax and interest impact only by virtue of transfer pricing adjustment us computed.

Step-4

Take note of the transactions only relating to one country (in one application), e.g., USA, UK etc.

Step-5

All documents including tax returns, TP study, notices, submissions, order etc. must be furnished.

Step-6

Relevant judicial precedence and their applicability to taxpayer's case must be demonstrated.

Thank You

For any queries feel free to contact:

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