

MNCs seek advance ruling to avoid tax rows

When Anglo-Dutch energy major Shell BV infused additional capital into its Indian arm Shell India by way of equity, it did not expect Shell India to be hit by a Rs 5,000-crore demand from the Income-Tax Department in India.

Indian taxmen had argued that the Indian company had undervalued its share by as much as Rs 15,000 crore while issuing equity to its parent. The tax authorities said the difference in the valuation would be treated as a loan and the interest on that loan would be taxed.

That dispute is now in the courts. Similar wrangles over as much as Rs 70,000 crore of disputed transactions are pending at various levels before tax appellate authorities and courts.

Fear of protracted wrangling over such unexpected tax demands has driven a record number of multinational companies to seek shelter under a new programme that promises more tax certainty.

As many as 146 applications have been received by the I-T Department under its 'Advance Pricing Agreement' (APA) scheme, since it was introduced in July last. Most of the applications have come from Indian units of multinational companies, it is learnt.

This is probably a world record. The US, for instance, which has an APA programme of its own, got only 20 applications in the first year it made the scheme available.

An APA is an agreement between a taxpayer and tax authority determining the transfer pricing methodology for pricing the taxpayer's international transactions for future years.

"A lot of hope rests upon the APA", said M. S. Ray, Director of Income Tax (International Tax), at an Assocham event here on Friday.

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That is because of the increasingly tough view taken on transfer pricing issues by the tax authorities. For instance, of the 3,671 cases taken up for transfer pricing audits (relating to financial year 2008-09), the Income Tax Department has done transfer pricing adjustments in 1,686 cases (53 per cent) for about Rs 70,000 crore, according to S. P. Singh, Senior Director, Deloitte.

Battered by a spate of high-pitch assessments, primarily on account of transfer pricing adjustments, MNCs now see APA as a window of opportunity to avoid future disputes.

Multinational enterprises don't want to add to the existing inventory of disputes and would rather prefer an APA mechanism, say tax experts.

TAX EXPERTS' TAKE

The overwhelming response to Indian APA must be welcomed with caution, said Aseem Chawla, Partner, MPC Legal, a law firm.

“It is in all fairness on account of extreme constraint, which the taxpayers are facing, especially the multinational companies embroiled in tax litigation,” he said.

Commenting on APA, Amit Maheshwari, Partner, Ashok Maheshwary & Associates, said that only with time can one see how flexible the revenue’s approach will be towards this excellent controversy management tool so as to make it a success.

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