



**Roll Back Provisions on Advance Pricing Agreements**  
Clarification

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# Roll Back Provisions on Advance Pricing Agreements – Clarification

## Introduction

The provisions relating to Advance Pricing Agreements (APA) were introduced in 2012 through insertion of Section 92CC and 92CD in the Income Tax Act, 1961(Act). Subsequently, the Advance Pricing Agreement Scheme was notified. These provisions were applicable with effect from 1st July 2012. This section 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. In simple terms, an APA is an agreement between a taxpayer and the tax department on a transfer pricing procedure in relation to an international transaction. This agreement is valid for a period, not exceeding 5 previous years, as may be specified in the Agreement. The section did not provide a "Roll Back" option to the tax payers. Roll Back provision relates to the applicability of the methodology of determination of 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.

The rollback mechanism was brought into the Act vide Finance Act 2014 with effect from 1st October 2014. Thereafter, in March 2015, the Central Board of Direct Taxes (CBDT) announced detailed rules explaining the rollback provisions and the procedure for giving effect to the Rules.

## Applicability

- The rollback provisions shall be applicable for the international transactions which the Applicant proposes to cover as part of the APA.
- Applicant should have filed the return of income and Transfer Pricing Accountant's Report in accordance with the provisions of the Act for the relevant years for which roll back is proposed to be sought.
- The arm's length price as agreed under the APA agreement shall be applicable for the international transactions covered under the rollback year.
- The rollback provisions are not applicable in case the international transaction has been a subject matter of an appeal and the Income tax Appellate Tribunal (ITAT) has passed an order disposing of such appeal before signing of the agreement.
- Rollback provision is not applicable if the application of the rollback has the effect of reducing the total income or increasing the loss, as the case may be, of the Applicant as declared in the return of income of the said year.

## Clarifications

Subsequent to the Rules being notified, the CBDT received several requests for clarifications regarding certain matters. Accordingly, CBDT has issued a circular dated 10th June 2015 in question answer format. For brevity, the key clarifications have been listed in this article.

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## *Revised and Belated Return*

Rollback provisions will be available in case of revised return filed under section 139(5) of the Act. However, the rollback provision will not be available for return filed under section 139(4) of the Act, because it is not filed within the specified due date.

## *“Same” International Transaction*

Rules specify that rollback provision applies to the “same” international transaction to which the APA applies. It is clarified that the term “same” implies same nature of transaction and same associated enterprises. Also, the functions, assets and risks should not be materially different. There should not be a material change in the underlying facts and circumstances which could have resulted in different terms and conditions in the APA.

## *Application for number of years*

The applicant does not have the option to choose the years for which it wants to apply for rollback. The applicant has to either apply for all the four years or not apply at all. However, the following exceptions may be permitted.

Details	Remarks
International Transaction did not exist in a rollback year	Can apply for rollback for less than 4 years
There is some disqualification in a rollback year	Can apply for rollback for less than 4 years
International Transaction did not exist during any of the rollback years	Can apply for rollback for remaining years
the applicant fails the test of the rollback conditions contained in various provisions,	Benefit of rollback would be denied for that rollback year. For other rollback years, applicant can still apply for rollback

## *Subject matter of an Appeal*

The rollback provisions are not applicable in case the international transaction has been a subject matter of an appeal and the ITAT has passed an order disposing of such appeal before signing of the agreement. The reason for not allowing rollback is that the ITAT is the final fact finding authority and hence, on factual issues, the matter has already reached finality in that year. However, if the ITAT has not decided the matter and has only set aside the order for fresh consideration of the matter by the lower authorities with full discretion at their disposal, the matter shall not be treated as one having reached finality and hence, benefit of rollback can still be given.

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## *Effect of Rollback on Income*

Rollback provision is not applicable if the application of the rollback has the effect of reducing the total income or increasing the loss, as the case may be, of the Applicant as declared in the return of income of the said year. The rollback benefit would be limited to the extent of declared income.

For example:

- Returned income - INR 100
- Income after Transfer pricing adjustments - INR 120
- Impact of Income after rollback application - INR 90

The rollback for the year would be determined in a manner that the declared income INR 100 would be treated as the final income for that year.

## *Rollback provisions not given effect*

The procedure for giving effect to a rollback provision is laid down in Rule 10RA. Sub-rules (2), (3), (4) and (6) of the Rule specify the actions to be taken by the applicant in order that effect may be given to the rollback provision. If the applicant does not carry out such actions for any of the rollback years, the entire agreement shall be cancelled. In simple terms, if rollback provisions are not given effect to in accordance with the prescribed rules, then the entire APA agreement would stand cancelled.

## *Mutual Agreement Procedures*

If the Mutual Agreement Procedure (MAP) is concluded for any rollback year for a particular international transaction, then rollback provision will not be available for that particular international transaction in that particular year. However, if the MAP is pending, for any rollback year, then, at the option of the applicant, either MAP or rollback application can be made for that year.

## *Arm's length price every year*

The ALP could be different for different years. However, the manner of determination of ALP including choice of Method, comparability analysis and Tested Party would be same.

## *Compliance Audit*

Since rollback provisions are for past years, ALP for the rollback years would be agreed after full examination of all the facts, including validation of critical assumptions. Hence, compliance audit for the rollback years would primarily be to check if the agreed price or methodology has been applied in the modified return of income.

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## *Withdrawal of Rollback application*

An applicant can withdraw its rollback application and still maintain the APA application for future years. However, it is not possible to accept the rollback results without accepting the APA for the future years. On withdrawal, the fee for filing rollback application shall not be refunded.

## *Revision of Concluded APA*

Concluded APA's finalized before March 2014 may be revised to include rollback provisions.

## *Modified return for Concluded APA*

For concluded APA's, the time to file modified return for rollback years will start from the date of signing the revised APA incorporating the rollback provisions.

## *Merger and Demerger Cases*

The APA is between a person and the Department. The principle to be followed in case of merger and demerger cases is that the person (company) who makes the APA application would ONLY be entitled to enter into the agreement and be entitled for the rollback provisions in respect of international transactions undertaken by it in rollback years. Other companies who have merged will not be eligible for the Rollback provision. For example:

- If A, B and C merge to form C and C is the APA applicant, then only C would be eligible for rollback provisions. A & B will not be eligible.
- If A and B merge to form new company C, and C files an APA application, then neither A nor B would be eligible for rollback provisions.
- If A has applied for or entered into an APA and, subsequently, demerges into A and B, then only A will be eligible for rollback for international transactions covered under the APA.

## **Conclusion**

The Tax payers needs have been appropriately assessed in a timely manner. The release of the FAQ within the deadline for filing the rollback application. Adequate clarity has been provided through this circular. Litigations are expected to reduce considerably. The efforts of the Board are creditable as the Rules and the consequent clarification are in line with the international practices.

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