



Advance Pricing Agreement (APA) Programme of India

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Annual Report (2016-17)

Central Board of Direct Taxes

April 2017

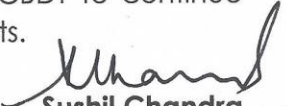
Foreword

It gives me immense pleasure that the first Annual Report on the Advance Pricing Agreement (APA) Programme in India is being released today. The Programme is almost 5 years old now and has been successful in providing an alternate dispute resolution mechanism to taxpayers in respect of transfer pricing issues.

The year 2016-17 has been a watershed year with the Central Board of Direct Taxes having entered into 88 Advance Pricing Agreements with taxpayers. The APA Programme is a major initiative of the Government towards fostering a non-adversarial tax regime. While the CBDT is happy with the progress of the Programme, we are aware of the challenges.

An important challenge facing the Programme is the availability of trained manpower to handle the complex nature of the work. Another challenge is how to expand and strengthen the Programme by providing human and physical resources. The CBDT has been working on both fronts. The first challenge is being continuously addressed by providing domestic and foreign training inputs to the Officers of the Department. As regards the second challenge, the CBDT has recently created two new posts of APA Commissioners at Mumbai and Bengaluru, which would speed up the processing of the pending applications.

At this critical juncture of the APA Programme, I urge the Officers handling the APA work in the field and in the FT & TR Divisions of CBDT to continue giving their best and achieving more such spectacular results.


Sushil Chandra

Chairman, Central Board of Direct Taxes

From the desk of Member (L&C), CBDT

I have been closely associated with the Indian APA Programme over the last two years. I am happy to see the manner in which the Programme has grown, which is reflected in the number of APAs that have been signed in 2015-16 and 2016-17.

The APA Programme has grown due to certain unique aspects of the Programme, which have never been observed in routine tax administration and taxpayer interactions. Some of these unique aspects of the Programme are the following:

- The sharing of a lot of information by the applicants to enable the APA teams to understand the business of the taxpayer;
- One to one discussions and negotiations by the APA authorities and the applicants with regard to the transfer pricing methods to be used and the Arm's Length Price (ALP) to be adopted;
- Use of e-mail and CDs to exchange information and to communicate without resorting to issuing of letters, notices, etc.;
- Site visits by the APA teams to the taxpayer's premises to understand the business and observe the functions being undertaken;
- The high degree of confidentiality maintained by the Department and also by the applicants with regard to the cases under the APA Programme; and
- The transparency and the positive approach of all the Officers handling the APA work.

I am sure that the Programme would go from strength to strength and continue to provide a Win-Win situation for both the Government of India and the taxpayers.


S.K.Sahai

Member (L&C), Central Board of Direct Taxes

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ANNUAL REPORT ON INDIA'S ADVANCE PRICING AGREEMENT (APA) PROGRAMME – 2016-17

INTRODUCTION

Advance Pricing Agreement (APA) programmes are operational in a number of countries since long. Many more countries are in the process of establishing such programmes. The primary goal of such programmes is to provide certainty to taxpayers in respect of the transfer price of the cross-border transactions undertaken by such taxpayers with their group entities. Rapid growth in international trade through an increasing number of Multi National Enterprises (MNEs) has given rise to numerous tax disputes on the issue of transfer pricing. An APA is a mechanism to resolve transfer pricing disputes in advance, i.e., before the cross-border related party transaction actually takes place. The transfer price of goods and services transacted between group entities is decided in advance by the tax authorities and the taxpayers, so as to prevent any dispute arising from such transfer pricing.

The Advance Pricing Agreement (APA) programme in India was launched in 2012 vide the Finance Act, 2012 through the insertion of Sections 92CC and 92CD in the Income-tax Act, 1961. These statutory provisions, effective from 1st July, 2012, lent the legal backing to the CBDT to enter into Advance Pricing Agreements (APAs) with taxpayers for a maximum period of 5 years in respect of international transactions between Associated Enterprises (AEs) to determine the Arm's Length Price (ALP) or to specify the manner in which the ALP is to be determined. It was stipulated that the detailed scheme of the APA would be separately notified by the CBDT.

Vide notification no. 36/2012 [F. No. 133/5/2012-SO(TPL)]/SO 2005 (E), dated 30th August, 2012, the APA Scheme [Rules 10F to 10T] was inserted in the Income-tax Rules to operationalize the APA programme. Thus, the Indian APA programme, which commenced from 1st July, 2012, actually became functional and operational from 30th August, 2012 with the notification of the rules. The rules lay down the detailed procedures for filing of pre-filing consultation application; pre-filing consultation; payments of fees; filing of APA application; processing of APA application; withdrawal of APA application; terms and conditions of APA; filing of Annual Compliance Report; Compliance Audit; revision, cancellation and renewal of APA; etc.

To provide clarity to taxpayers on a number of issues concerning the APA programme, the CBDT issued a booklet containing guidance on the APA programme and answers to Frequently Asked Questions (FAQs) as part of its Taxpayers' Information series.

Roll-back of APAs was announced by the Government on 10th July, 2014. The necessary legislative changes in this regard were carried out through the Finance (No. 2) Act, 2014. The Income-tax Rules for implementing the Roll-back provisions were notified on 14th March, 2015 and the existing APA Scheme got amended accordingly. The Rollback provisions are applicable for a maximum of four years prior to the first year of the APA period. Thus, a taxpayer would be able to have certainty in matters of transfer pricing for a maximum period of 9 years by applying for an APA with Rollback provisions. Circular No. 10 of 2015 was issued by the CBDT on 10th June, 2015 to provide clarity on Rollback issues in the form of answers to FAQs.

Under our APA programme, APAs can be multilateral or bilateral (involving CBDT and the tax authorities of one or more countries) or unilateral (involving the CBDT only). Over the last 5 years, more than 800 applications have been filed in India. Majority of these applications (about 85%) are for unilateral APAs between the Indian taxpayer and the CBDT. Till 31st March, 2017, 152 agreements have been entered into (141 unilateral and 11 bilateral).

The APA applications are processed and analysed by dedicated APA teams working under the overall supervision of Pr. CCIT (International Taxation & Transfer Pricing). Each APA team is headed by a Commissioner of Income-tax and the team also comprises Addl./Joint Commissioners of Income-tax and Deputy/Asst. Commissioners of Income-tax. Presently, there are two APA teams and the APA offices are located at Delhi, Mumbai and Bengaluru.

In respect of unilateral APAs, the position papers developed by the APA teams are approved by the Pr. CCIT (International Taxation & Transfer Pricing) and sent to the Central Board of Direct Taxes [CBDT] for approval. In the CBDT, officers working in the Foreign Tax & Tax Research (FT & TR-I and II) Divisions of the CBDT examine and process the position papers. Joint Secretary, FT & TR-I and FT & TR-II further process the position papers and send it for final approval of the designated Member of the CBDT. The Member approves the final negotiating position to be adopted by the APA teams. Once the negotiation is complete, a draft Agreement is sent to the CBDT for approval before the Agreement is entered into between the Board and the taxpayer. On behalf of the Board, the Agreements are entered into by either Joint Secretary, FT & TR-I or Joint Secretary, FT & TR-II.

In respect of bilateral APAs, once the position papers are sent to the FT & TR-I & II Divisions by the Pr. CCIT (International Taxation & Transfer Pricing), the Competent Authority of India (either Joint Secretary, FT & TR-I or Joint Secretary, FT & TR-II depending on the country with which the bilateral APA is to be negotiated under the Tax Treaty) has to initiate discussions with his/her

counterpart in the other country. The officers in the FT & TR-I & II Divisions of the CBDT working with the Competent Authority examine the position papers and prepare the position of the Indian Competent Authority. The same is shared with the Competent Authority of the other country. Once positions have been exchanged, the Competent Authorities of both the concerned countries discuss and negotiate the terms and conditions of the APA. If they reach an understanding, then a Mutual Agreement, containing the terms and conditions of the APA, is entered into by the Competent Authorities of both countries. Thereafter, each country has to enter into an Agreement with its own taxpayer. On the Indian side, a draft Agreement is prepared in consultation with the Indian taxpayer and the same is submitted for the approval of the designated Member in the CBDT. After approval, the APA is entered into by either Joint Secretary, FT & TR-I or Joint Secretary, FT & TR-II (the concerned Competent Authority of India) with the taxpayer on behalf of the CBDT.

This Annual Report is an initiative of the CBDT to bring into the public domain various statistical and qualitative aspects of India's APA programme, with a view to encouraging discussion and debate amongst taxpayers, policy makers, media, economists, etc. on the strengths and weaknesses of the programme. This is the first such Annual Report by CBDT on one of its programmes and that lends uniqueness to the report. The first Annual Report on the APA programme could not have been published for a year better than 2016-17, a year in which the CBDT managed to enter into 88 APAs. This is a phenomenal achievement by the CBDT and its officers working in the Foreign Tax & Tax Research Division and in the APA teams at the field level [comprising the Principal CCIT (IT & TP), APA Commissioners, Additional/Joint Commissioners and Deputy/Assistant Commissioners]. The CBDT acknowledges the cooperation and efforts of the applicants and their consultants in making the APA programme a success.

This Annual Report is also unique because it actually condenses the first five years of the programme (1st July, 2012 to 31st March, 2017) into one report. This was necessary to lend proper perspective to the programme and also to cover all the years in one document. It would be the CBDT's endeavour to come out with regular Annual Reports every year henceforth.

DATA AND QUALITATIVE ANALYSES

A. GENERAL ANALYSIS

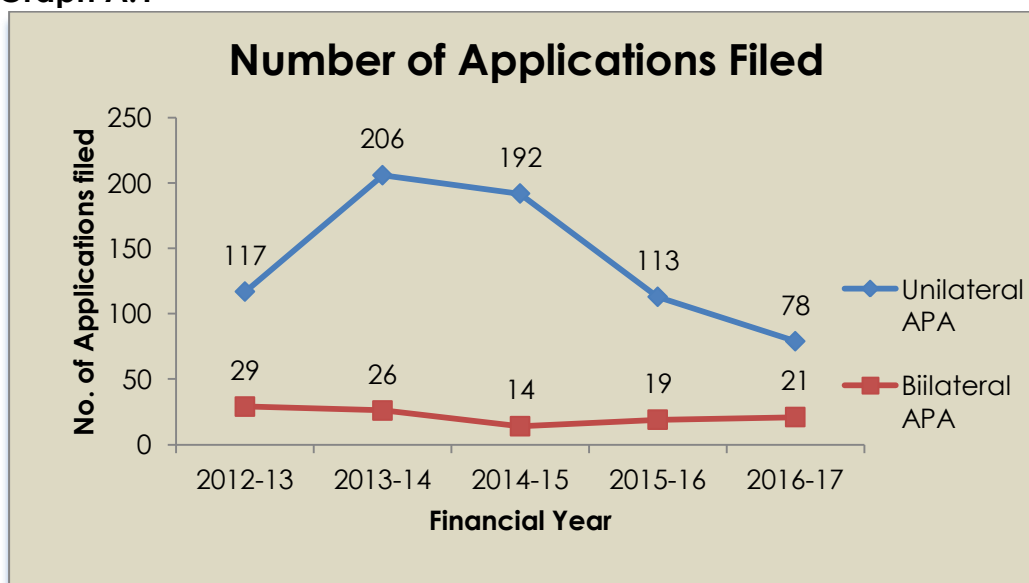
A.1. Number of Applications Filed

The table and the graph below depict the number of applications that have been filed so far.

Table A.1

Financial Year (F.Y)	UAPA	BAPA	Total
2012-13	117	29	146
2013-14	206	26	232
2014-15	192	14	206
2015-16	113	19	132
2016-17	78	21	99
Total	706	109	815

Graph A.1



The figures clearly show an overwhelming preference for unilateral APA applications. The primary reason for this is obvious. As the US Competent Authority was not admitting bilateral APA applications into its APA programme, Indian subsidiaries of US-based companies (who are present in large numbers in India) were forced to seek certainty on their international transactions through unilateral APAs. However, with the US Competent

Authority opening up the bilateral APA programme between the two countries from February, 2016, there has been an increase in the number of bilateral applications and also in the number of conversions of applications from unilateral to bilateral.

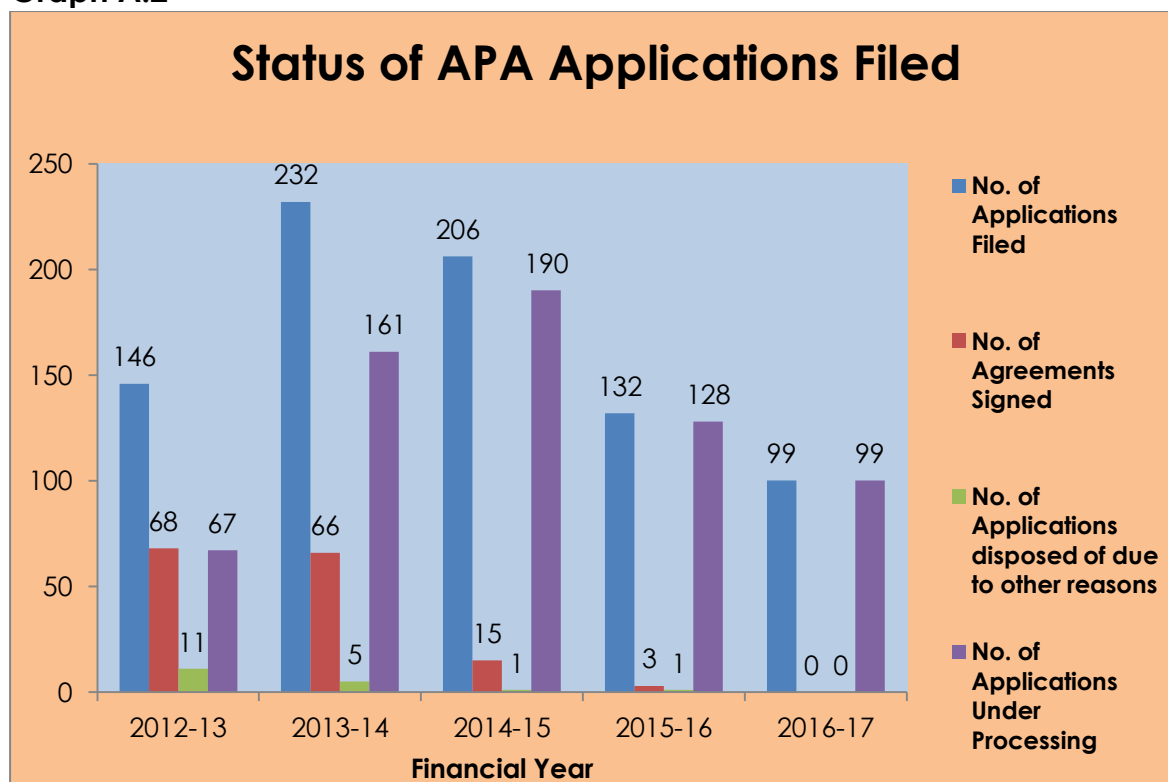
A.2. Status of Applications Filed

The table and the graph below depict the status of applications [as on 31st March, 2017] that have been filed so far.

Table A.2

F.Y	(A) No. of Applications Filed	(B) No. of Agreements Signed out of (A)	(C) No. of Applications disposed off out of (A) due to other reasons	(D) No. of Applications Under Processing out of (A)
2012-13	146	68	12	66
2013-14	232	66	5	161
2014-15	206	15	1	190
2015-16	132	3	1	128
2016-17	99	0	0	99
Total	815	152	19	644

Graph A.2



The statistics on nature of applications filed – unilateral or bilateral – is pretty dynamic because applicants come up with frequent requests for conversion from unilateral to bilateral. Requests for conversion of bilateral applications to unilateral have been rare and so far only one bilateral application filed in 2013-14 has been converted into a unilateral application.

Over the last few years and as on 31st March, 2017, 19 unilateral applications filed in different years have been converted to bilateral applications. During the same period, one bilateral application has been converted to a unilateral application. As a result, there has been a net increase of 18 bilateral applications over the original number of applications filed.

The reasons for disposal of applications, other than by signing, include withdrawal of applications by the applicants and merger of multiple applicants with each other resulting in signing of fewer Agreements than the number of applications filed.

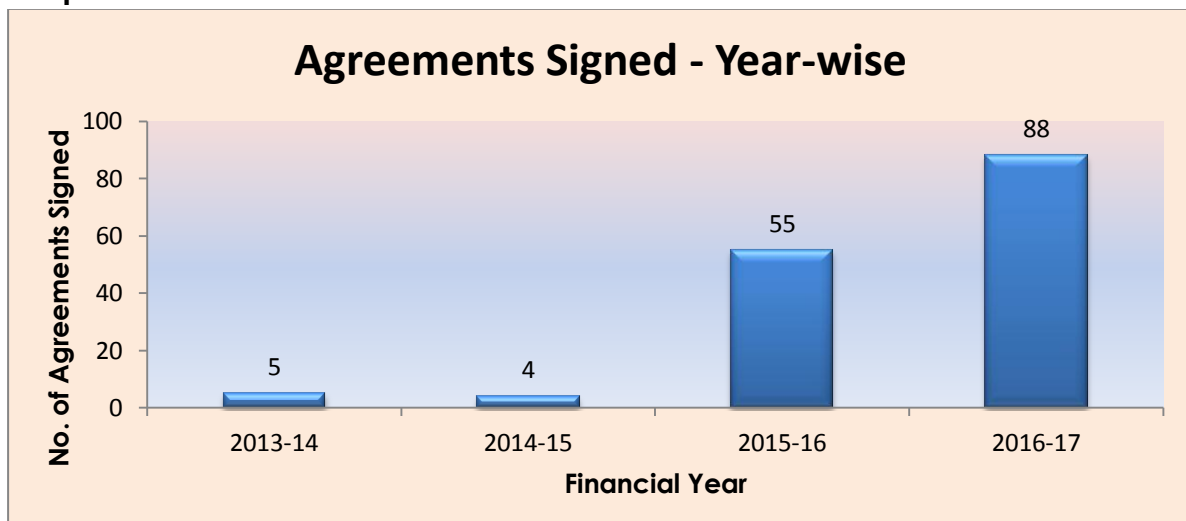
A.3 Agreements Signed: Year-wise

The table and the graph below depict the number of Agreements that have been entered into so far, year-wise.

Table A.3

F.Y	Agreements Signed
2013-14	5
2014-15	4
2015-16	55
2016-17	88
Total	152

Graph A.3



It can be clearly seen that, as the APA programme has attained maturity, the number of Agreements signed has gone up significantly. In 2016-17, 88 APAs were concluded, which is probably the highest number of APAs entered into by any jurisdiction world-wide in the same period.

It makes for an interesting comparison that while India has concluded 152 APAs in 4 years, China has entered into 113 APAs in the ten years between 2005 and 2014.

An interesting and important data relates to the number of years for which tax certainty on transfer pricing matters has been achieved by this programme. Through the 152 APAs entered into so far, CBDT has managed to provide cumulative tax certainty of 1010 years to these 152 taxpayers. These 1010 years include 277 years covered under the Rollback period of the concluded APAs. 78 Agreements – out of the 152 entered into so far - have Rollback provisions.

In the 152 Agreements entered into till date, 6 have been entered into with non-resident taxpayers while the remaining are with resident Indian taxpayers.

B. UNILATERAL APAs

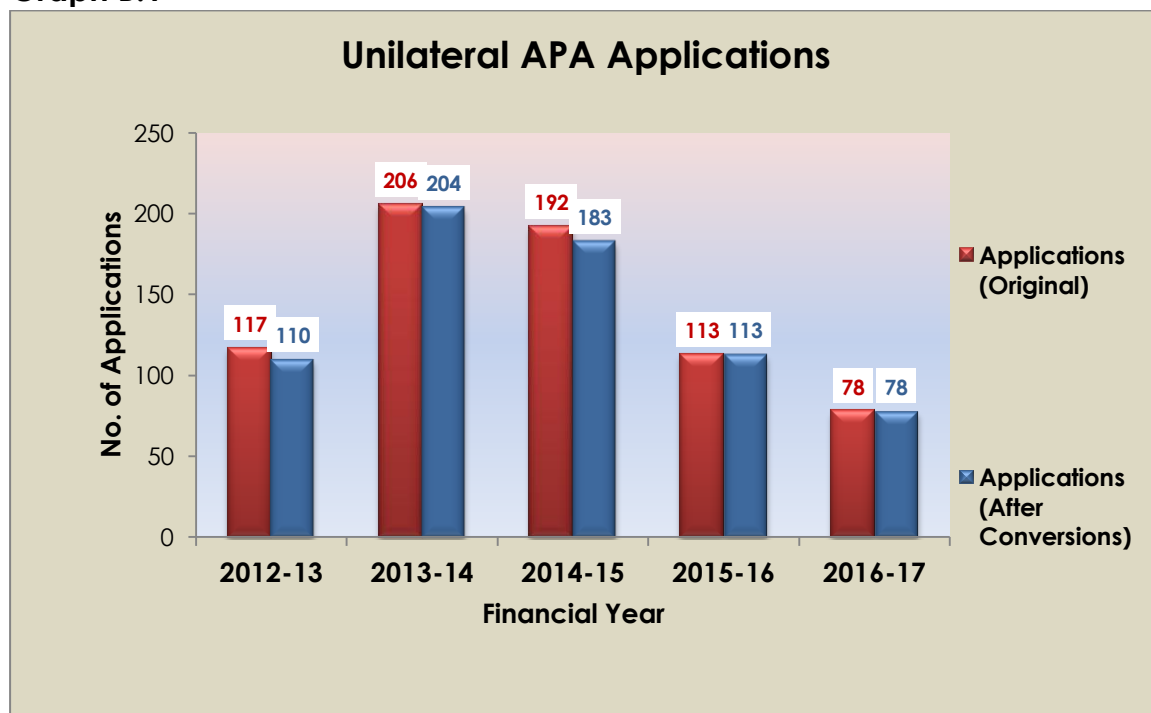
B.1 Applications Filed (Original and Post-Conversion)

As mentioned earlier, unilateral applications have been favoured more by the taxpayers. As also mentioned earlier, this trend is slowly undergoing a change with the operationalisation of the India-USA bilateral APA programme. As can be seen in the table below, 706 unilateral applications were originally filed. It needs to be clarified that where an application has requests for both unilateral and bilateral APAs, the application is counted as a bilateral application.

Table B.1

F.Y	Applications (Original)	Applications (Post-Conversion)
2012-13	117	110
2013-14	206	204
2014-15	192	183
2015-16	113	113
2016-17	78	78
Total	706	688

Graph B.1



As mentioned earlier in the report, there has been a net increase of 18 in the number of bilateral applications due to conversions from unilateral to bilateral. Correspondingly, the number of unilateral applications filed originally has also come down by the same number.

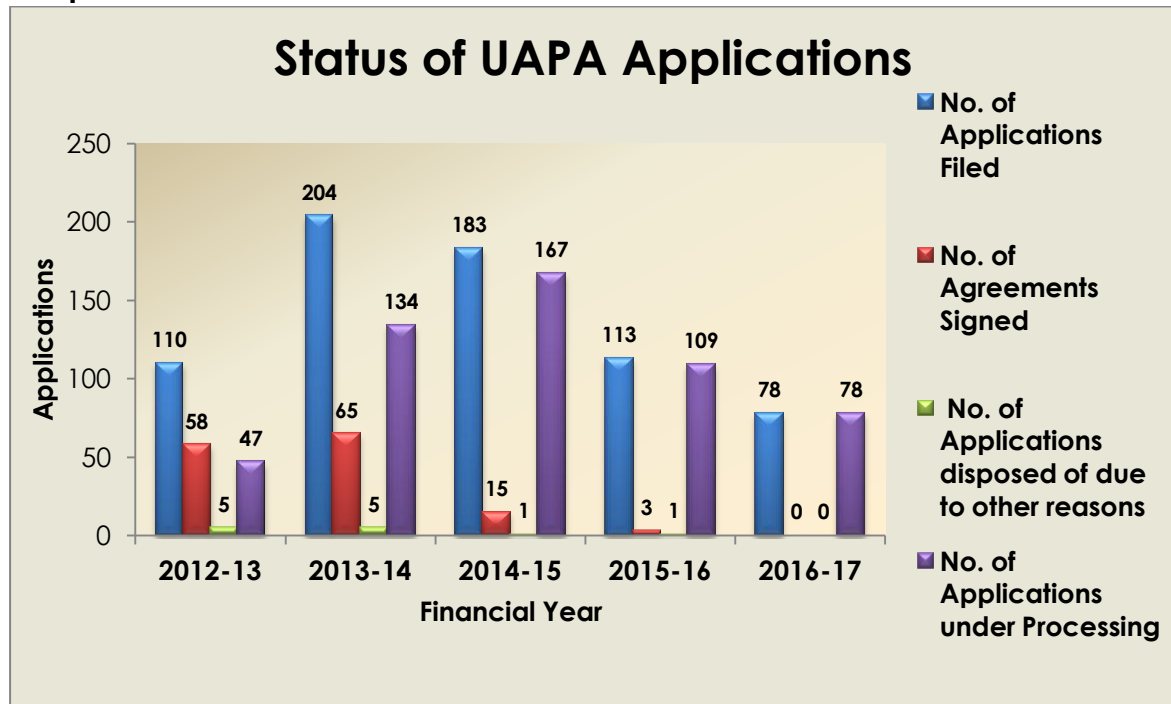
B.2 Status of Unilateral Applications Filed

The table and the graph below depict the status of unilateral applications [as on 31st March, 2017] that have been filed so far.

Table B.2

F.Y	(A) No. of Applications Filed (Post-Conversion)	(B) No. of Agreements Signed out of (A)	(C) No. of Applications Disposed off out of (A) due to other reasons	(D) No. of Applications under Processing out of (A)
2012-13	110	58	5	47
2013-14	204	65	5	134
2014-15	183	15	1	167
2015-16	113	3	1	109
2016-17	78	0	0	78
Total	688	141	12	535

Graph B.2



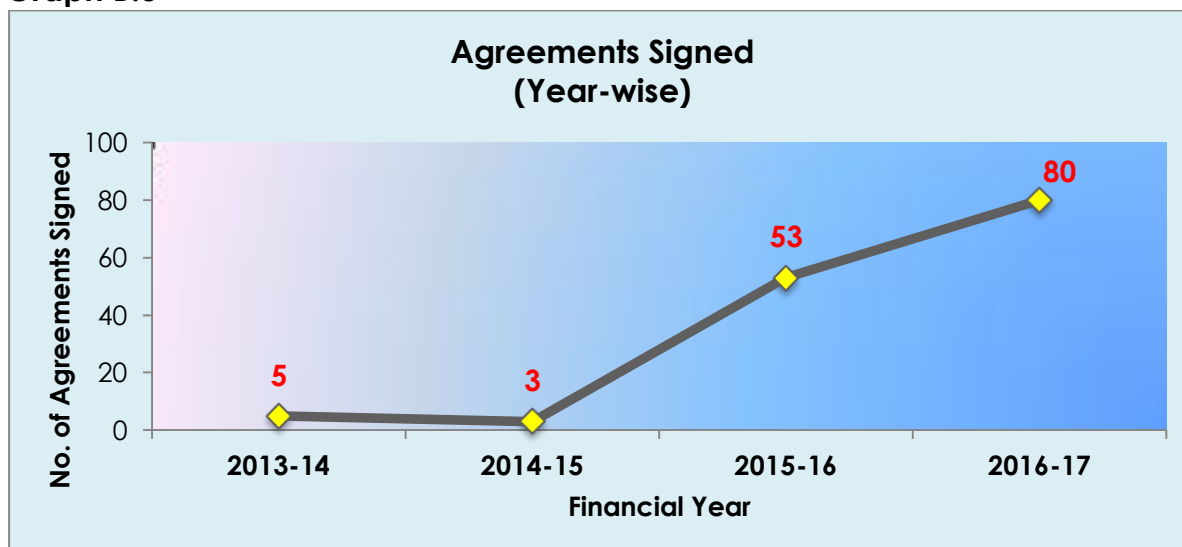
B.3 Agreements Signed: Year-wise

The table and the graph below show the number of unilateral APAs entered into in the last 4 years. The increase in the number of Agreements signed in 2016-17 is very significant.

Table B.3

F.Y	Agreements Signed
2013-14	5
2014-15	3
2015-16	53
2016-17	80
Total	141

Graph B.3



It is interesting to note that through the 141 unilateral APAs entered into so far, CBDT has managed to provide tax certainty of 931 years to these 141 taxpayers. These 931 years include 253 years covered under the Rollback period of the concluded APAs. 67 Agreements – out of the 141 entered into so far - have Rollback provisions.

B.4 Duration of Processing

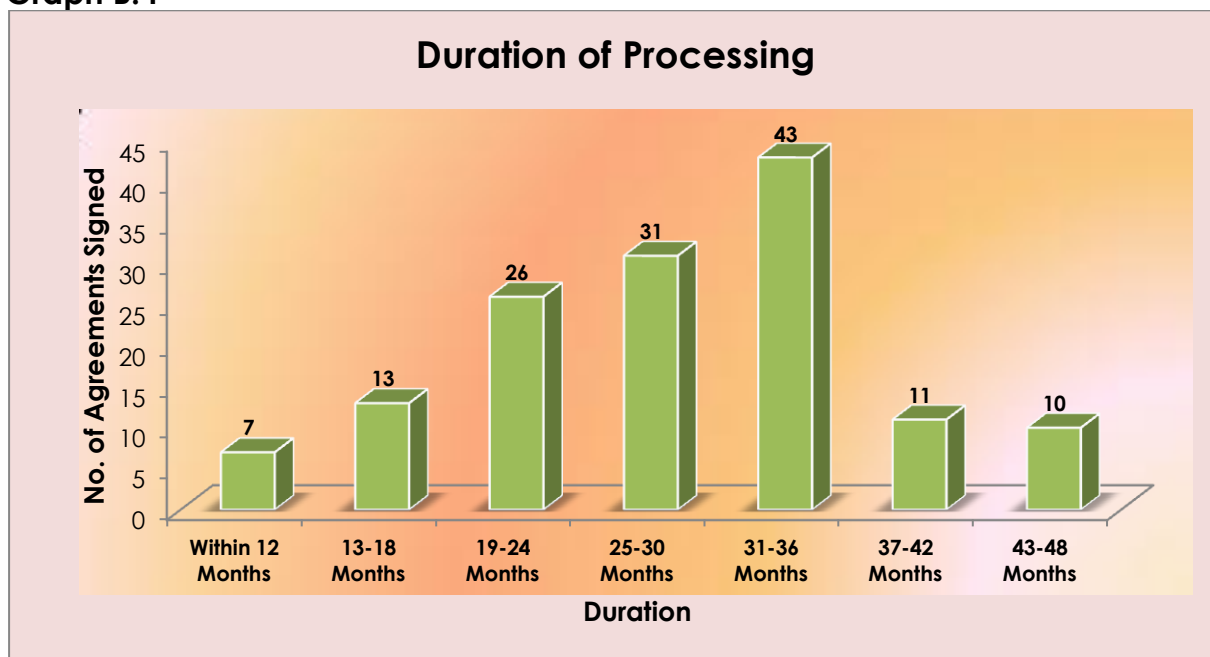
A very important aspect of any APA programme is the time taken to process an application and conclude an agreement. Different countries have managed to achieve varying timelines to conclude APAs. For example, USA has managed an average timeline of 34 months for unilateral APAs and 51 months for bilateral APAs in 2016.

It is a revelation that India has managed to conclude unilateral APAs in 29 months on an average. This is better than what most countries have achieved. The detailed analysis of this is depicted in the table and graph below. The timelines for concluding bilateral APAs has been discussed later in this report.

Table B.4

Duration of Processing	Number of Agreements Signed
Within 12 Months	7
13-18 Months	13
19-24 Months	26
25-30 Months	31
31-36 Months	43
37-42 Months	11
43-48 Months	10
Total Agreements Signed	141
Average Time Taken For Each Agreement – 28.93 Months	

Graph B.4



As can be seen from the above data, India has been very proactive in concluding unilateral APAs. In fact, more than 80% of the APAs entered into have been concluded within 3 years of the filing of applications and more than 30% have been entered into within 2 years.

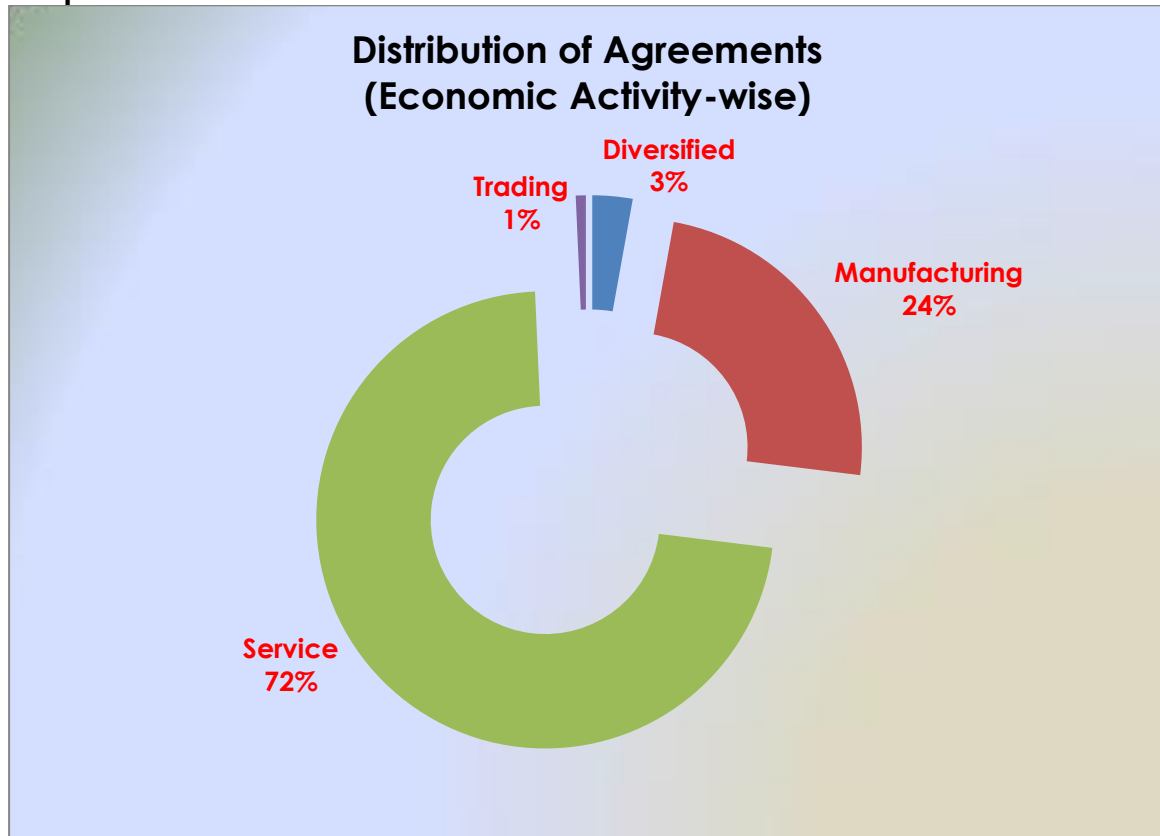
B.5 Distribution of Agreements Signed – Economic Activity-wise

The table and graph below capture the data regarding the economic activity or the pre-dominant economic activity in each of the unilateral APAs entered into.

Table B.5

Sl. No.	Economic Activity	No. of Agreements Signed
1	Service	102
2	Manufacturing	34
3	Trading	1
4	Diversified	4
	Total	141

Graph B.5



It is very clear from the above data that the service sector of the Indian economy has been overwhelmingly covered in the unilateral APAs. This is probably on expected lines because the service sector is the largest contributor to India's Gross Domestic Product and is also at the forefront of India's international trade, which in turn, raises a number of issues around the transfer pricing of such transactions.

B.6 Distribution of Agreements Signed – Industry-wise

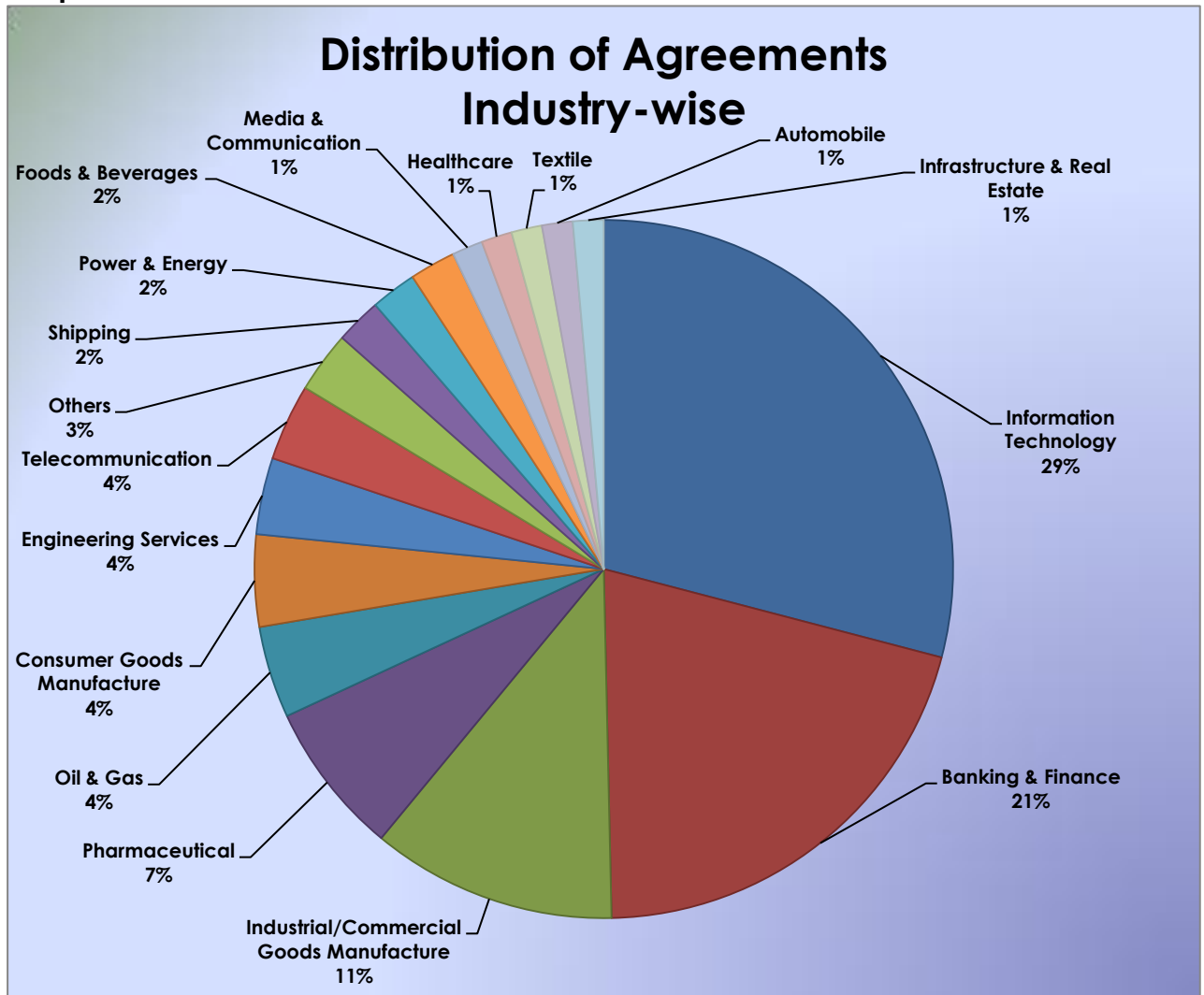
The table and graph below provide information regarding the various industries covered in each of the unilateral APAs entered into. It can be clearly seen that almost 50% (70 out of 141) of the total unilateral Agreements entered into are with the Information Technology and Banking/Finance industries. This is consistent with the trend seen in our previous analysis of the economic activity covered in the unilateral APAs.

It is also a positive sign that the APAs are not only about a few industries. As can be seen, there are 20 different types of industries that have availed the Indian APA programme.

Table B.6

Sl. No.	Industry	No. of Agreements Signed
1	Information Technology	41
2	Banking & Finance	29
3	Industrial/Commercial Goods Manufacture	16
4	Pharmaceutical	10
5	Consumer Goods Manufacture	6
6	Oil & Gas	6
7	Engineering Services	5
8	Telecommunication	5
9	Foods & Beverages	3
10	Power & Energy	3
11	Shipping	3
12	Automobile	2
13	Healthcare	2
14	Infrastructure & Real Estate	2
15	Media & Communication	2
16	Textile	2
17	Chemical	1
18	Forestry	1
19	Tourism & Hospitality	1
20	Trading & Logistics	1
	Total	141

Graph B.6



B.7 Nature of Transactions Covered

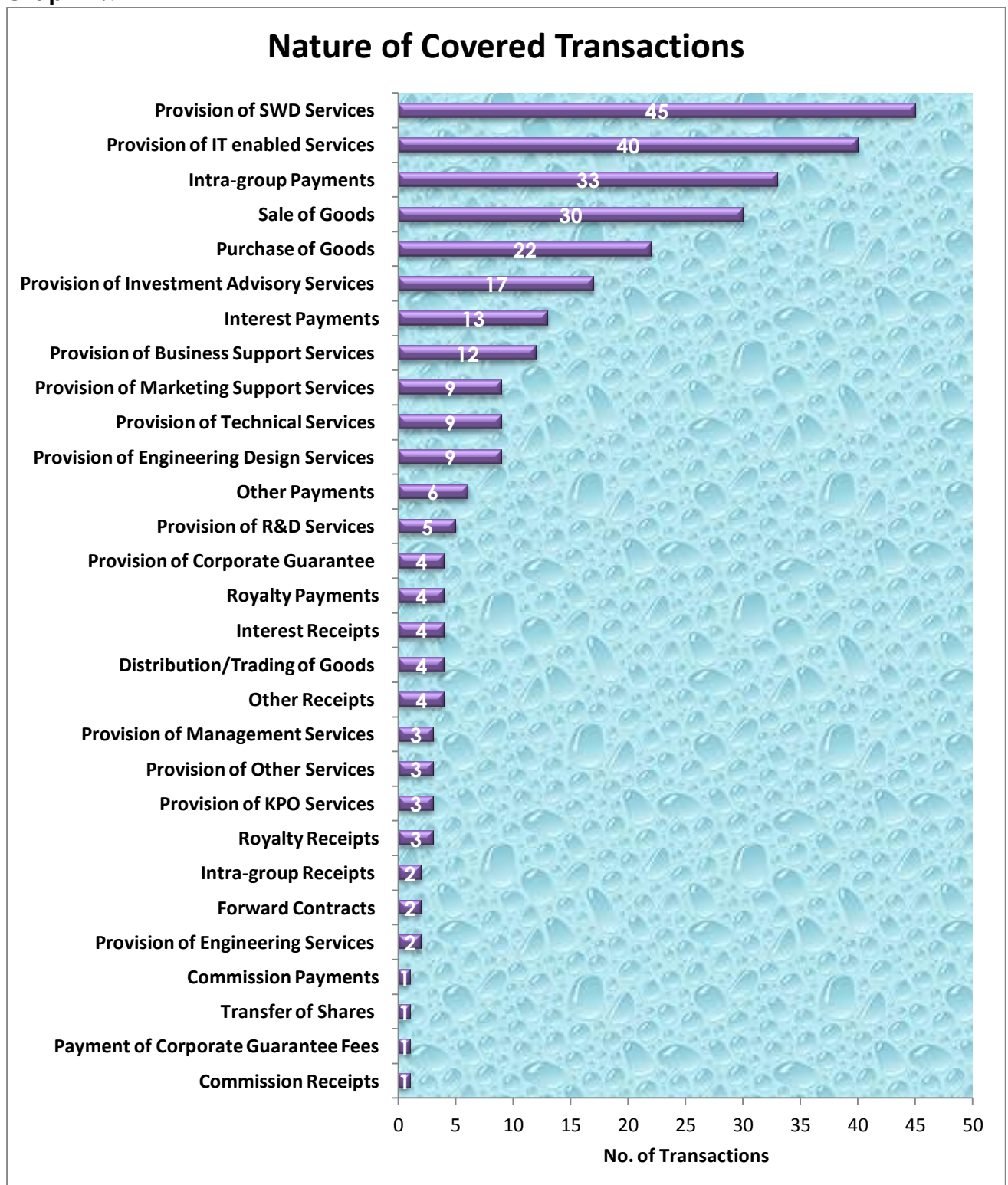
The table and graph below provide information about the nature of international transactions covered in the unilateral APAs entered into. It can be seen that there are as many as 29 types of international transactions that have been covered in the unilateral APAs. A total of 292 international transactions have been covered under these 141 APAs entered into so far.

Provision of Software Development (SWD) Services and provision of IT enabled Services (ITeS) feature predominantly in the APAs entered into. This is on expected lines because a majority of the APA applications have included such transactions to be covered under the Agreements.

Table No. B.7

Sl. No.	Nature of Transactions	No. of Transactions
1	Provision of SWD Services	45
2	Provision of IT enabled Services	40
3	Intra-group Payments	33
4	Sale of Goods	30
5	Purchase of Goods	22
6	Provision of Investment Advisory Services	17
7	Interest Payment	13
8	Provision of Business Support Services	12
9	Provision of Marketing Support Services	9
10	Provision of Engineering Design Services	9
11	Provision of Technical Services	9
12	Other Payments	6
13	Provision of R&D Services	5
14	Distribution/Trading of Goods	4
15	Interest Receipts	4
16	Other Receipts	4
17	Provision of Corporate Guarantee	4
18	Royalty Payments	4
19	Provision of KPO Services	3
20	Provision of Management Services	3
21	Provision of Other Services	3
22	Royalty Receipts	3
23	Forward Contracts	2
24	Intra-group Receipts	2
25	Provision of Engineering Services	2
26	Commission Payments	1
27	Commission Receipts	1
28	Payment of Corporate Guarantee Fees	1
29	Transfer of Shares	1
	Total	292

Graph B.7



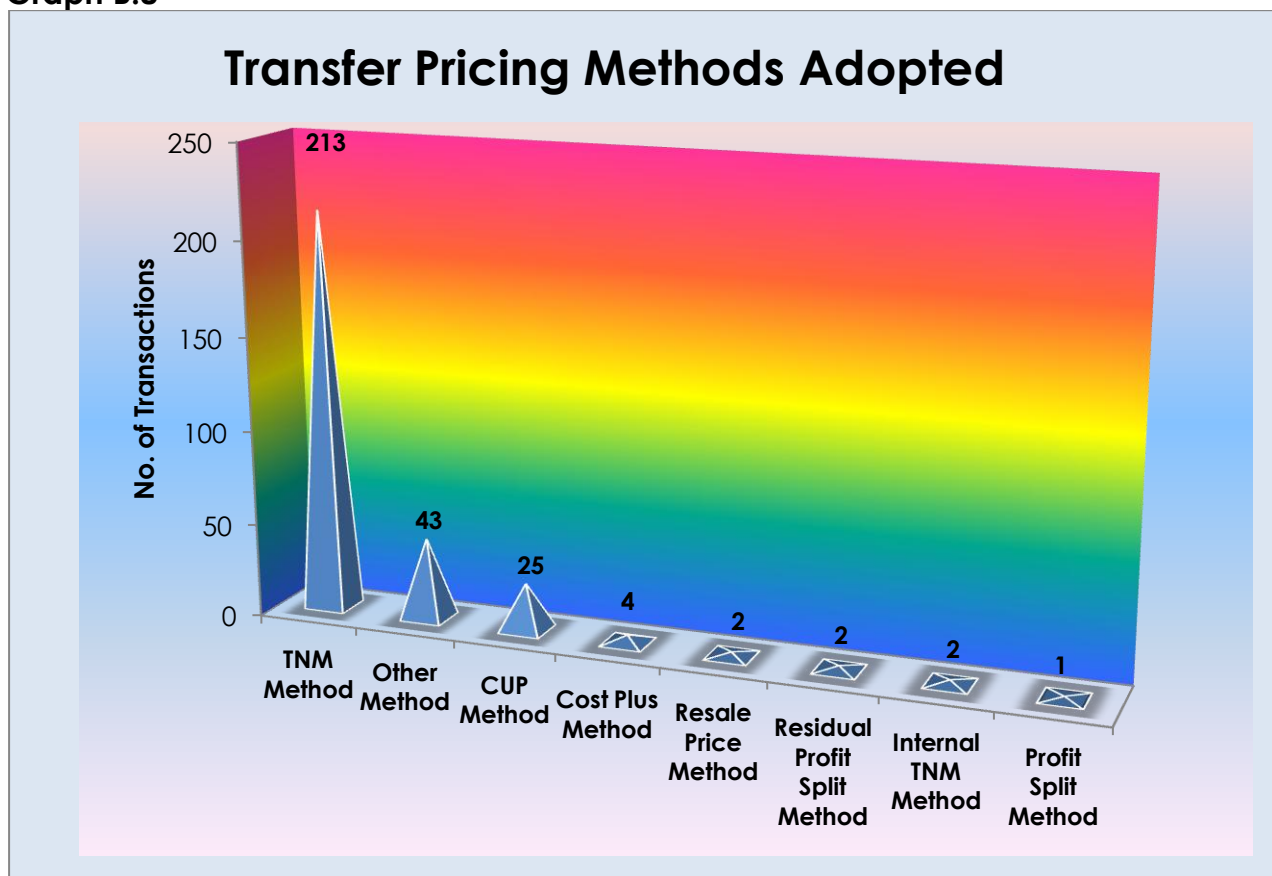
B.8 Transfer Pricing Methods Used

Taxpayers request tax authorities for an APA so that they can achieve certainty about the transfer pricing method and/or the Arm's Length Price (ALP) to be used to benchmark their international transactions. It is interesting to see which transfer pricing methods have been used more frequently in the unilateral APAs concluded so far. The table and graph below throw light on that.

Table B.8

Sl. No.	Transfer Pricing Method	No. of Transactions
1	TNM Method	213
2	Other Method	43
3	CUP Method	25
4	Cost Plus Method	4
5	Internal TNM Method	2
6	Residual Profit Split Method	2
7	Resale Price Method	2
8	Profit Split Method	1
	Total	292

Graph B.8



B.9 Location of Associated Enterprises (AEs)

The 141 APAs entered into so far have left their footprints on 118 countries where the AEs of the Indian applicant company are located. This is as widespread as one could possibly imagine and also reflects the truly global reach of Multi National Enterprises (MNEs).

The table below lists all the 118 countries and shows the number of APAs in which AEs located in these countries have been covered. Not surprisingly, USA tops the list and finds its entities in 93 APAs.

Table B.9

Sl. No.	Countries	No. of Agreements	Sl. No.	Countries	No. of Agreements
1	USA	93	43	Argentina	6
2	UK	55	44	Chile	6
3	Singapore	44	45	Egypt	6
4	China	33	46	Hungary	6
5	The Netherlands	29	47	Peru	6
6	Japan	28	48	Ukraine	6
7	Australia	27	49	Bangladesh	5
8	Hong Kong	27	50	Bermuda	5
9	Canada	26	51	Nigeria	5
10	Germany	25	52	Romania	5
11	Malaysia	22	53	Saudi Arabia	5
12	France	21	54	Croatia	4
13	UAE	18	55	Estonia	4
14	Indonesia	17	56	Israel	4
15	Denmark	15	57	Kazakhstan	4
16	Belgium	14	58	Latvia	4
17	Brazil	14	59	Lithuania	4
18	Poland	14	60	Malta	4
19	Switzerland	14	61	Morocco	4
20	Ireland	13	62	Pakistan	4
21	Italy	13	63	Slovakia	4
22	Philippines	13	64	Algeria	3
23	Spain	13	65	Bahamas	3
24	India	12	66	Columbia	3
25	Norway	12	67	Costa Rica	3
26	Thailand	12	68	Ghana	3
27	Finland	11	69	Jersey Channel	3
28	Korea	11	70	Kenya	3
29	Mauritius	11	71	New Zealand	3
30	Sweden	11	72	Venezuela	3
31	Czech Republic	10	73	Bahrain	2
32	Mexico	10	74	Barbados	2
33	South Africa	10	75	British Virgin Islands	2
34	Vietnam	10	76	Bulgaria	2
35	Portugal	9	77	Colombia	2
36	Russia	9	78	Ecuador	2
37	Taiwan	9	79	Iceland	2
38	Luxembourg	8	80	Isle of Man	2
39	Sri Lanka	8	81	Ivory Coast	2
40	Austria	7	82	Lebanon	2
41	Greece	7	83	Panama	2
42	Turkey	7	84	Paraguay	2

Sl. No.	Countries	No. of Agreements
85	Qatar	2
86	Scotland	2
87	Senegal	2
88	Serbia	2
89	Trinidad and	2
90	Tunisia	2
91	Uganda	2
92	Uruguay	2
93	Angola	1
94	Belarus	1
95	Brunei	1
96	Cameroon	1
97	Cayman Islands	1
98	Congo	1
99	Cyprus	1
100	Ethiopia	1
101	Gabon	1

Sl. No.	Countries	No. of Agreements
102	Guatemala	1
103	Honduras	1
104	Jamaica	1
105	Kuwait	1
106	Madagascar	1
107	Malawi	1
108	Mozambique	1
109	North Africa	1
110	Oman	1
111	Puerto Rico	1
112	Scandinavia	1
113	Seychelles	1
114	Sierra Leone	1
115	Slovenia	1
116	Tanzania	1
117	Uzbekistan	1
118	Zambia	1

C. BILATERAL APAs

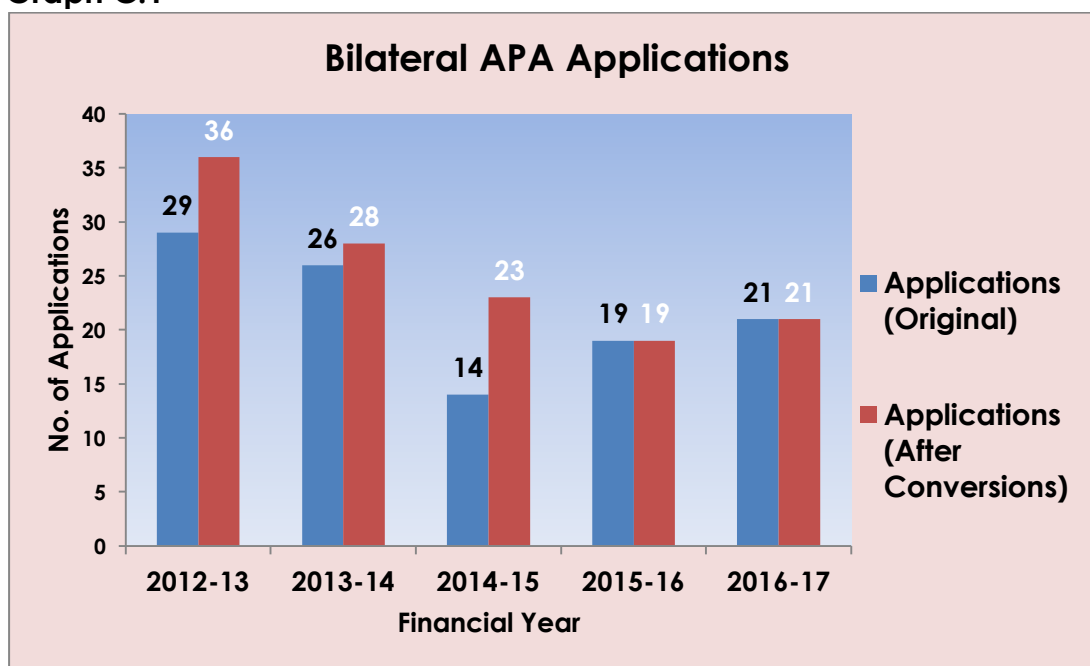
C.1 Applications Filed (Original and Post-Conversion)

The number of original and post-conversion bilateral APA applications filed is given in the table and graph below.

Table C.1

F.Y	Applications (Original)	Applications (Post-Conversion)
2012-13	29	36
2013-14	26	28
2014-15	14	23
2015-16	19	19
2016-17	21	21
Total	109	127

Graph C.1



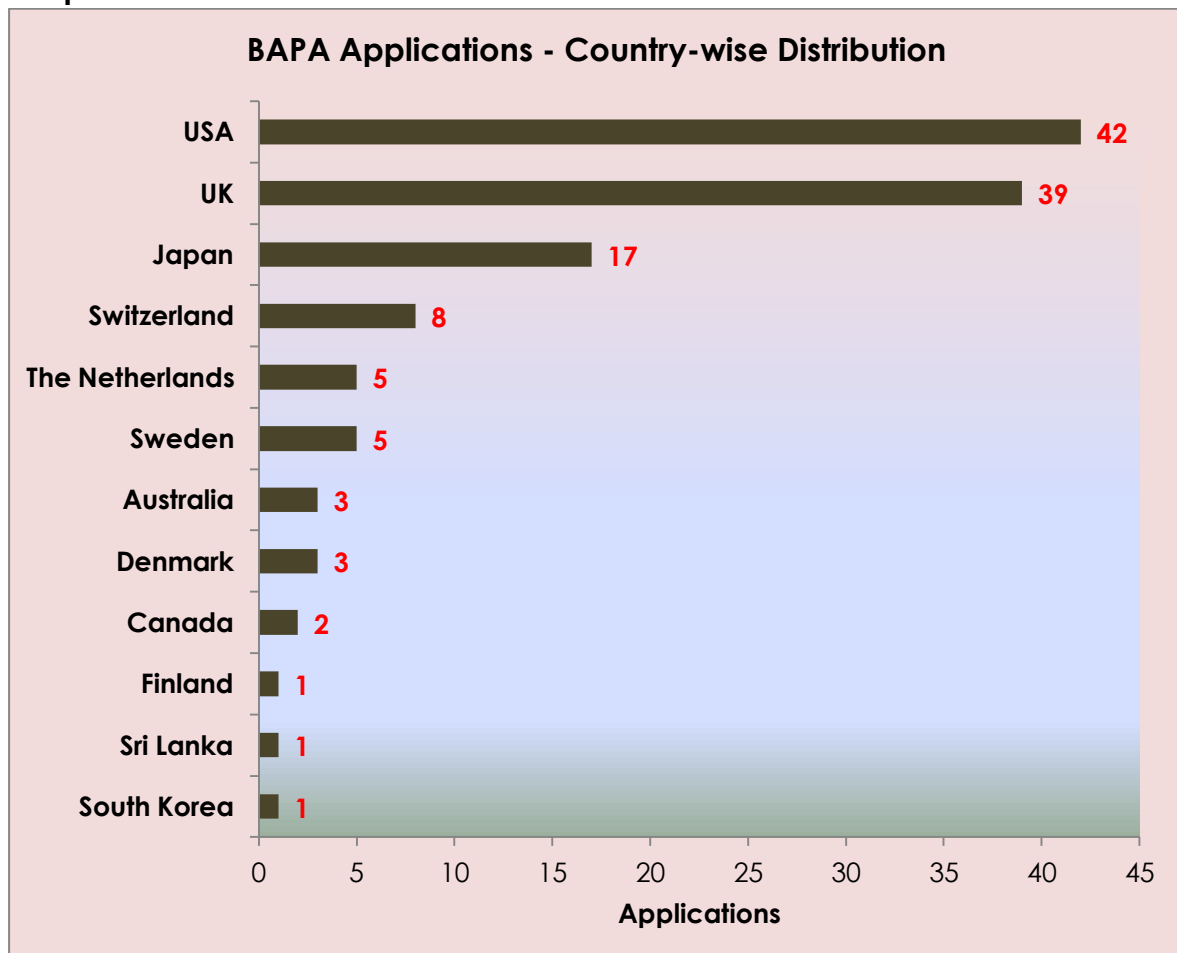
C.2 Applications – Country-wise Distribution

The table and graph below provide the distribution of bilateral APA applications according to the country with which the APA terms and conditions are to be negotiated and finalised. In the initial years of the APA programme, United Kingdom (UK) and Japan were leading the list because there was no bilateral APA programme available with the United States of America (USA). However, once the USA opened its bilateral APA programme with India in February, 2016, the applications for India-USA bilateral APAs have increased.

Table C.2

Sl. No.	Country	No. of Applications
1	United States of America	42
2	United Kingdom	39
3	Japan	17
4	Switzerland	8
5	Sweden	5
6	The Netherlands	5
7	Australia	3
8	Denmark	3
9	Canada	2
10	Finland	1
11	Sri Lanka	1
12	South Korea	1
	Total	127

Graph C.2



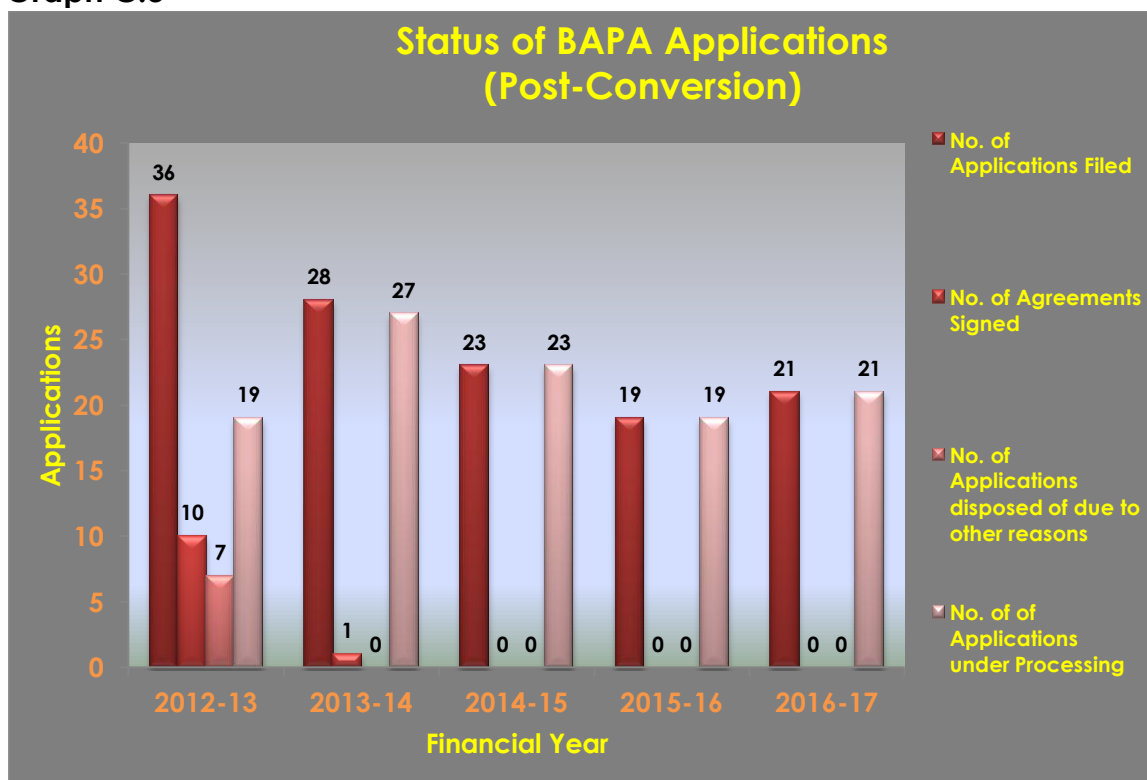
C.3 Status of Applications Filed (Post-Conversion)

The table and graph below show the status of the bilateral APA applications [as on 31st March, 2017] filed so far.

Table C.3

F.Y	(A) No. of Applications Filed	(B) No. of Agreements Signed out of (A)	(C) No. of Applications Disposed off out of (A) due to other reasons	(D) No. of Applications under Processing out of (A)
2012-13	36	10	7	19
2013-14	28	1	0	27
2014-15	23	0	0	23
2015-16	19	0	0	19
2016-17	21	0	0	21
Total	127	11	7	109

Graph C.3



It is interesting to note that through the 11 bilateral APAs entered into so far, CBDT has managed to provide tax certainty of 82 years to these 11 taxpayers. These 82 years include 27 years covered under the Rollback period of the concluded APAs.

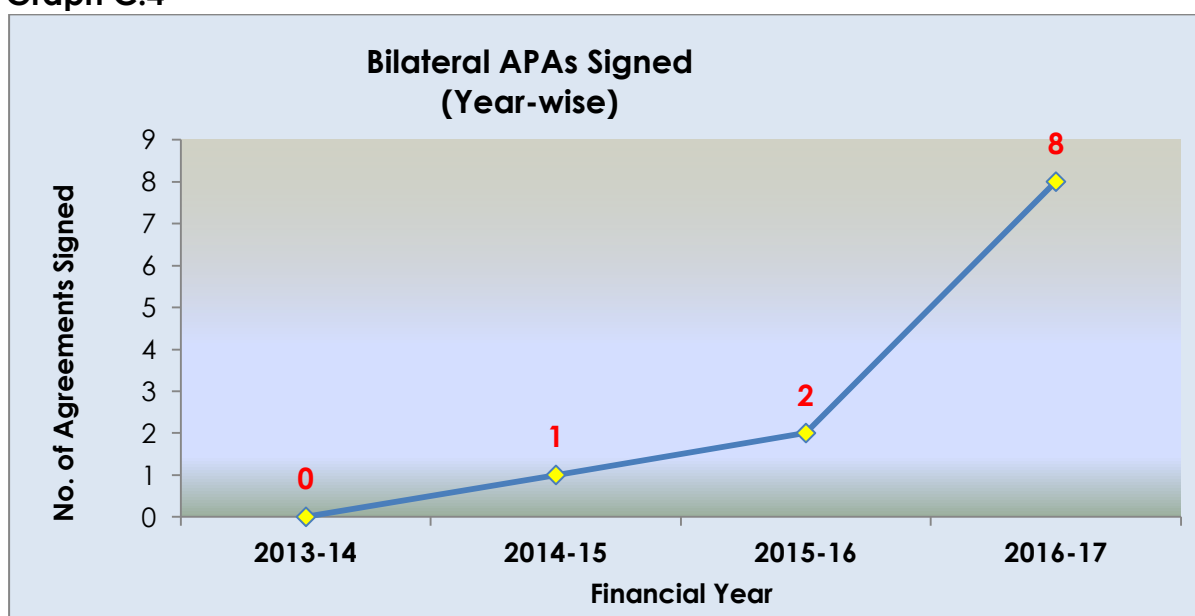
C.4 Agreements Signed – Year wise

The table and graph below show the year-wise details of Agreements entered into so far.

Table C.4

F.Y	Agreements Signed
2013-14	0
2014-15	1
2015-16	2
2016-17	8
Total	11

Graph C.4



Financial Year 2016-17 has seen a significant jump in the number of bilateral APAs signed with Indian taxpayers after conclusion of Mutual Agreements with the Competent Authority of the other country. Out of the 11 bilateral APAs signed so far, 6 pertain to UK and 5 to Japan. In 2016-17, the first bilateral APA between India and USA was resolved but the same could not be concluded by 31st March, 2017 due to some technical issues.

C.5 Duration of Processing

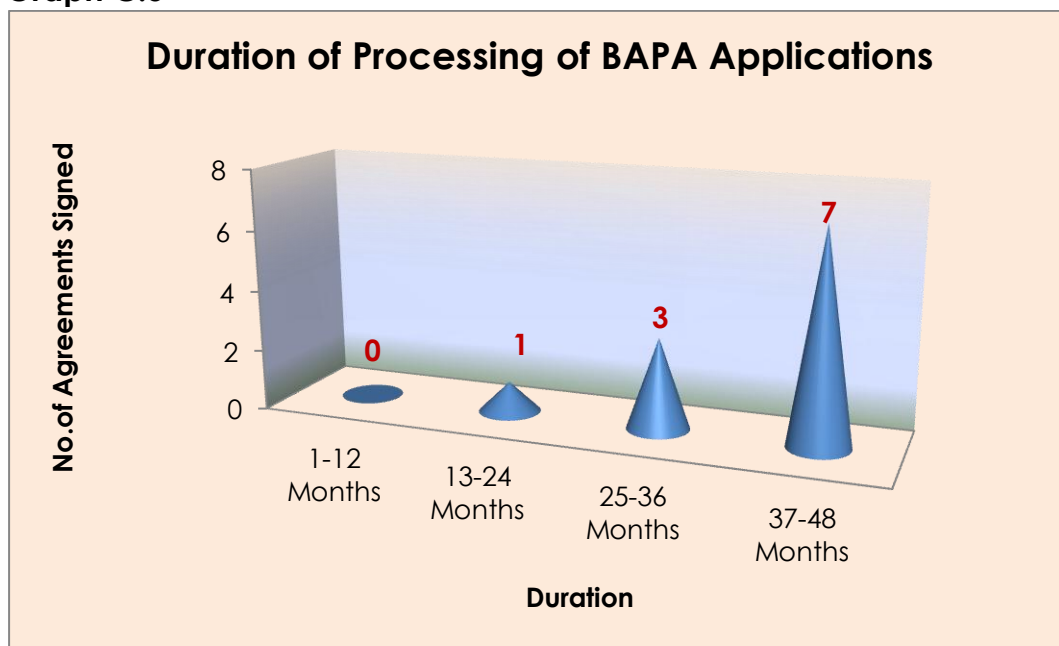
It is indeed praiseworthy that India has managed to conclude bilateral APAs in 39 months on an average. This is better than what many countries have managed to achieve. For example, the bilateral APAs concluded by USA in 2016 have taken 51 months on an average.

The detailed analysis of this is depicted in the table and graph below.

Table C.5

Duration of Processing	Number of Agreements Signed
Within 12 Months	0
13-24 Months	1
25-36 Months	3
37-48 Months	7
Total Agreements Signed	11
Average Time Taken For Each Agreement – 39.09 Months	

Graph C.5



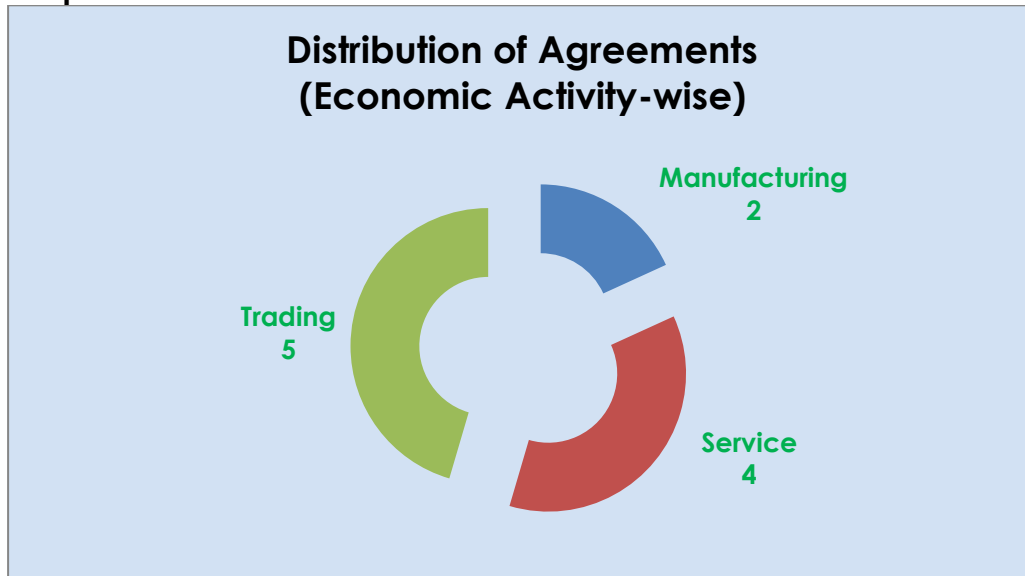
C.6 Distribution of Agreements – Economic Activity-wise

The table and graph below capture the data regarding the economic activity or the pre-dominant economic activity in each of the bilateral APAs entered into.

Table C.6

Sl. No.	Economic Activity	No. of Agreements Signed
1	Trading	5
2	Manufacturing	2
3	Service	4
	Total	11

Graph C.6



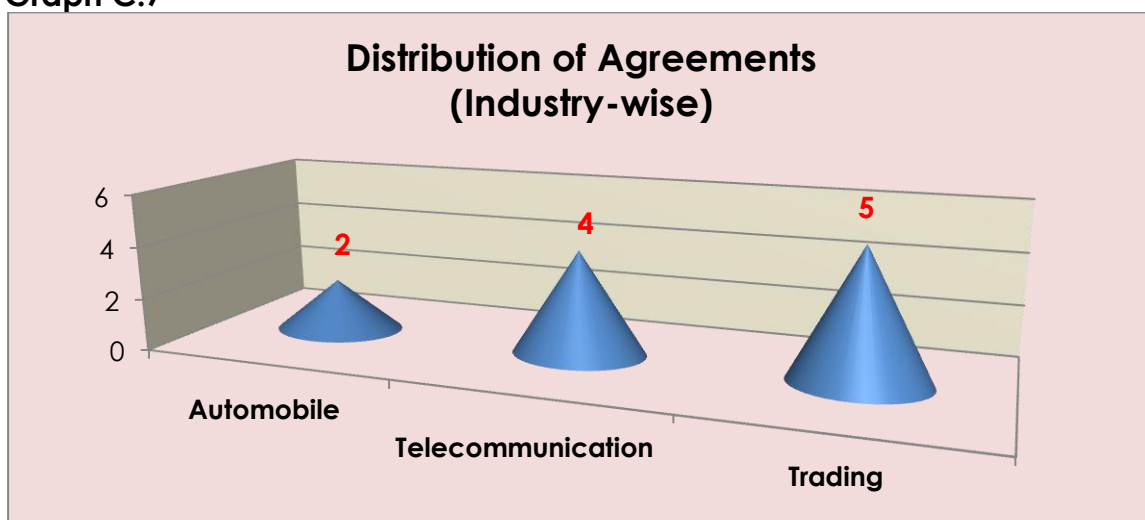
Unlike in unilateral APAs, where the service sector of the Indian economy has been overwhelmingly covered, in bilateral APAs it is the trading activity that has found marginally more coverage than the service sector.

C.7 Distribution of Agreements – Industry-wise

Table C.7

Sl. No.	Industry	No. of Taxpayers
1	General Trading	5
2	Automobile	2
3	Telecommunication	4
	Total	11

Graph C.7



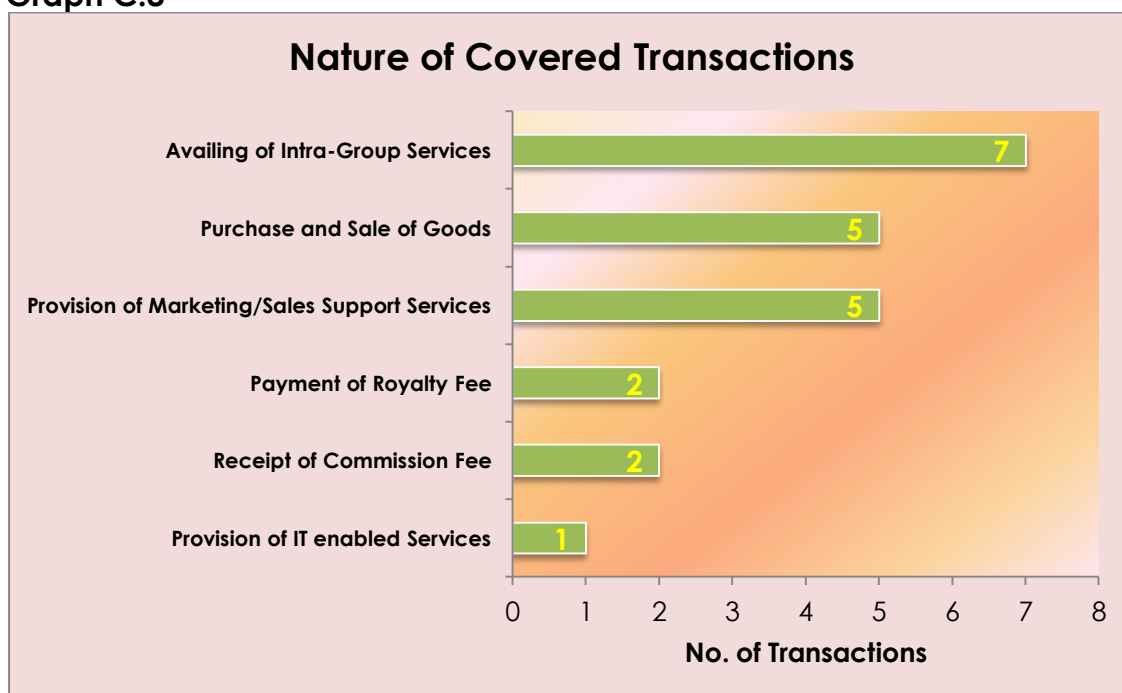
The table and the graph above reveal that only three broad industry categories have so far been covered under bilateral APAs. This is primarily due to the small number of bilateral APAs concluded till 31st March, 2017.

C.8 Nature of Covered Transactions

Table C.8

Sl. No.	Nature of the Transaction	No. of Transactions
1	Availing of Intra-Group Services	7
2	Purchase and Sale of Goods	5
3	Provision of Marketing/Sales Support Services	5
4	Receipt of Commission Fee	2
5	Payment of Royalty Fee	2
6	Provision of IT enabled Services	1
	Total	22

Graph C.8



It is interesting to note from the above table and graph that – unlike unilateral APAs entered into till 31st March, 2017 – provision of software development services does not figure at all as a covered transaction in the bilateral APAs concluded by the CBDT. Availing of intra-group services by the Indian applicants has been the most covered international transaction in the bilateral APAs.

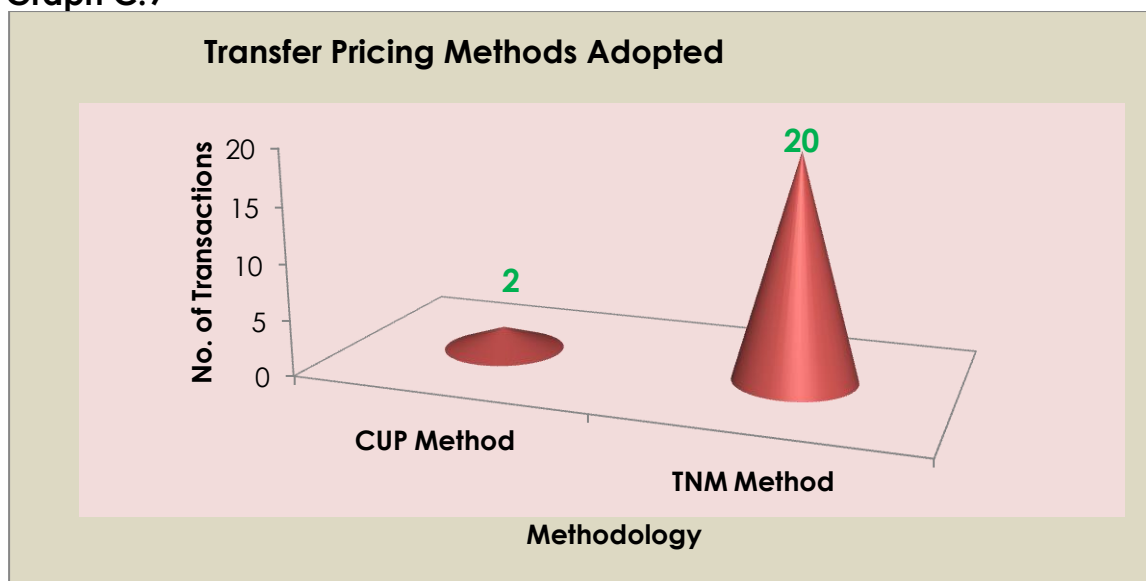
C.9 Transfer Pricing Methods Adopted

As can be seen from the data below, TNMM is the most preferred transfer pricing method to be adopted in the bilateral APAs entered into till 31st March, 2017. This is similar to the trend in unilateral APAs.

Table C.9

Sl. No.	Transfer Pricing Method	No. of Transactions
1	TNM Method	20
2	CUP Method	2
	Total	22

Graph C.9



CONCLUSION

The Indian APA programme has matured over the past five years and the number of agreements getting signed is testimony to that. Complex transfer pricing issues, which were prone to long drawn litigation, are being increasingly resolved through APAs. The resolutions have been to the satisfaction of both taxpayers and the Government. While taxpayers have managed to get certainty over transfer pricing issues for five or nine years (depending upon whether rollback provisions are applicable to an agreement), the Government has been able to divert resources away from the audit and litigation processes to more productive work. More importantly, APAs are also ensuring that the Government gets assured revenues from big taxpayers on the basis of the terms and conditions embedded in the Agreements. For example, in the case of a global IT behemoth, the Indian entity declared more than Rs. 5,000 Crore as additional income after entering into an APA with the CBDT recently. This translates to a tax payment of more than Rs. 1,500 Crore without getting into any litigation or there being any dispute.

The Indian APA programme is poised to move ahead quicker than it has done so far. The Government is aware of the benefits of the programme and how it is helping in creating a conducive environment for global corporate giants to do business in India. In view of this, the Government is committed to strengthen the programme by providing it with adequate human and physical resources. All this augurs well for both the taxpayers and the tax administration.