

Transfer Pricing and MNCs: Safe Harbour Rules (SHR) and Advance Pricing Arrangement (APA) to Facilitate FDI and Reduce Litigation in India

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Abstract:

Overseas investors' confidence is an important factor that attracts FDI. The tax and regulatory policy in the respective countries can either be a major attraction or repulsion, as far as investor sentiment is concerned. In India, this issue has had many references in the literature. To bypass the laws, MNCs do resort to malpractices. However, the introduction of the Advance Pricing Arrangement (APA) and the Safe Harbour rules (SHR) are the right steps to control the abuse of international transfer pricing. There is always a tug of war between tax authorities and MNCs in this regard. Due to this, the confidence of overseas investors does decline.

Transfer pricing is between related parties/entities, and it measures what they charge each other in their cross-border transfers. In recent times, APA and SHR are emerging as the two most efficient ways of reducing litigation in the area of transfer pricing. The paper also attempts to highlight the salient features of Indian Safe Harbour Rules (SHR) announced recently, states differences between APA and SHR. Further, the implications of these rules in the Indian context are discussed. Finally, the paper provides suggestions on how these tax rules can be improved and the key issues may be resolved to contribute country's economic growth and development by attracting more FDI and reducing litigations.

Keywords: Foreign Direct Investment, Transfer Pricing, Investors' Confidence, International Taxation, Advance pricing arrangement, Rangachary Committee, Safe Harbour Rules, Transfer Pricing Abuse, MNCs