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Clarification by Central Board of Direct Taxes on rollback provision in the revised India-Korea Double Taxation Avoidance Agreement

The Central Board of Direct Taxes (CBDT) has clarified that under the revised India-Korea Double Taxation Avoidance Agreement (DTAA), applications for bilateral Advance Pricing Agreement (APA) involving international transactions with Associated Enterprises in Korea for the APA period beginning Fiscal Year 2017-18 can be filed along with request for rollback provision in prescribed form. Such requests for rollback provision shall be processed in accordance with the provisions of Income Tax Act i.e. section 92CC(9A) of the Income Tax Act 1961, and the applicable Income Tax rules in this regard. Inclusion of rollback provision in such bilateral APAs would also be subject to the applicable regulations in Korea. The CBDT has issued the present clarification in response to the queries received from taxpayers regarding availability of rollback provision in respect of bilateral APA applications for APA period beginning F.Y 2017-18.

The existing DTAA between India and Korea was signed on 19th July, 1985 and was notified on 26th September 1986. A revised DTAA between India and Korea for the Avoidance of Double Taxation and the Prevention of Fiscal evasion with respect to taxes on income was signed on 18th May 2015 and entered into force on 12th September 2016. Amongst other changes, the revised DTAA incorporates para 2 in Article 9 (Associated Enterprises). Article 9(2) of the revised India-Korea DTAA provides recourse to the taxpayers of both countries to apply for Mutual Agreement Procedure (MAP) in transfer pricing disputes as well as apply for Bilateral APAs for APA period beginning F.Y. 2017-18.

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