

TAX CERTAINTY THROUGH APA & MAP-INDIAN EXPERIENCE

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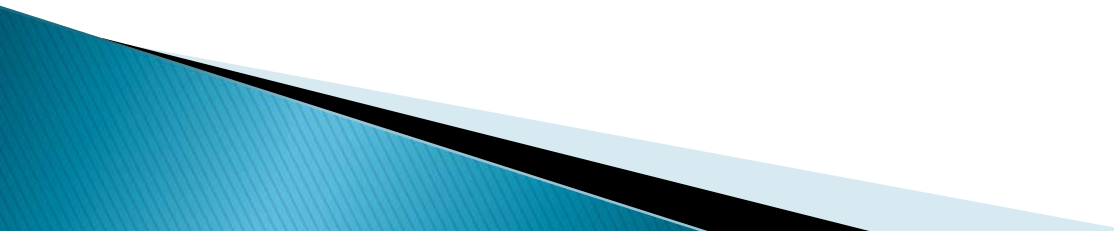
Department of Revenue

Ministry of Finance

Government of India

ADVANCED PRICING PROGRAMME

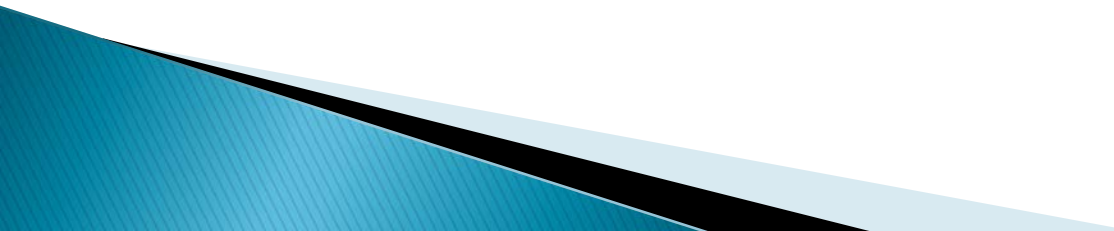
ADVANTAGES

- ▶ Provide tax certainty for determination of ALP of international transactions.
 - ▶ Reduce the risk of double taxation through bilateral or multilateral APA.
 - ▶ Reduce compliance cost by eliminating the risk of transfer pricing audit/litigation.
 - ▶ Reduce the burden of record keeping as the taxpayer knows in advance the documents to be kept.
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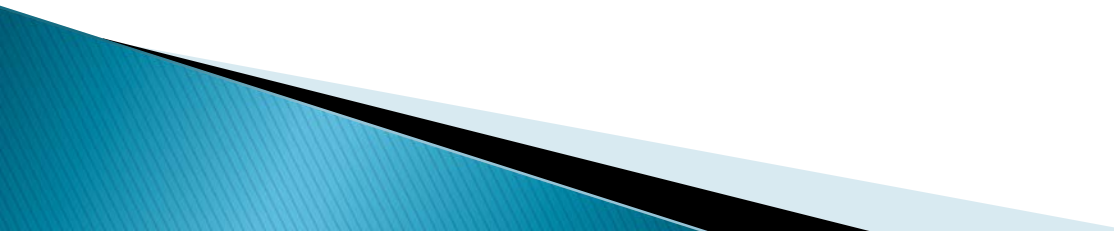
SALIENT FEATURES

- ▶ A framework for advance pricing agreement was introduced in 2012.
- ▶ Central Board of Direct Taxes (CBDT) may enter into APA with any person undertaking an international transaction.
- ▶ APA to be valid for at most 5 years from the first year as specified in the APA agreement.
- ▶ The APA can be unilateral or bilateral or multilateral.
- ▶ APAs can be entered into in respect of
 - determination of arm's length price (ALP) or
 - specify the method to be used to determine ALP.

SALIENT FEATURES

- ▶ The APA shall be binding only on the taxpayer and the Commissioner in respect of the transaction for which APA has been entered.
 - ▶ The APA shall not be binding if there is any change in law or facts having bearing on such APA.
 - ▶ APA to be void ab initio if obtained by fraud or misrepresentation of facts.
 - ▶ Modified return to be filed within a period of three months of APA reflecting modification of income.
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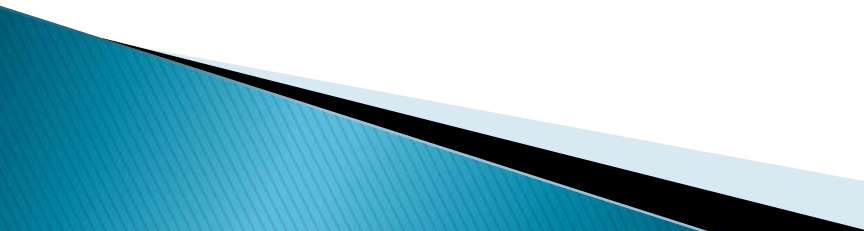
SALIENT FEATURES (Roll Back)

- ▶ The “roll back” provides applicability of the APA to the transactions already entered into in a period prior to the period covered under an APA.
 - ▶ In order to reduce pendency of transfer pricing disputes roll back of APA introduced in 2014.
 - ▶ roll back of APA allowed for at most up to a period of 4 years prior to the first year of APA.
 - ▶ Thus, certainty in the matter of transfer pricing for a period of 9 years have been provided.
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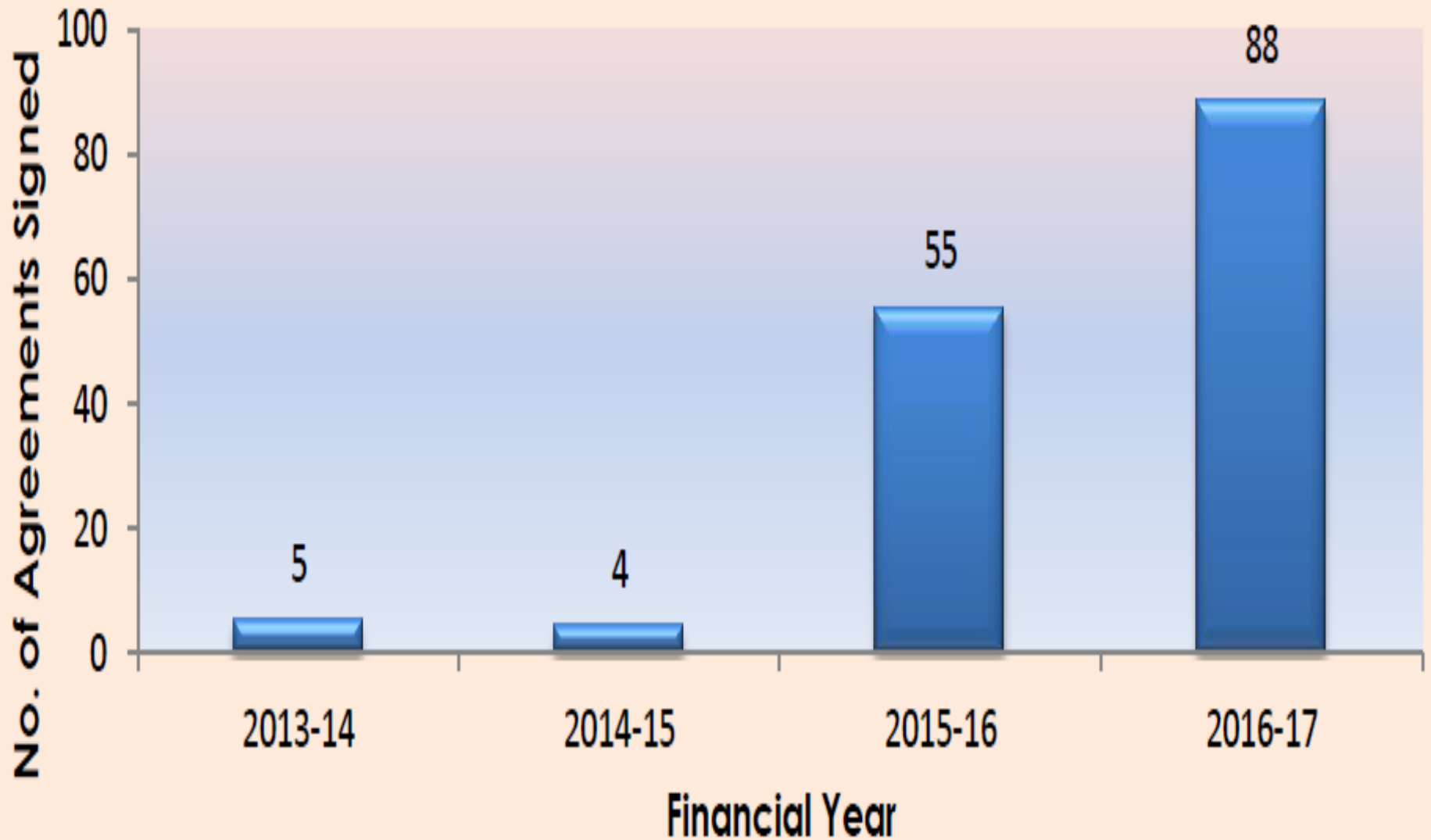
PROCEDURE – FEATURES

- ▶ Pre-filing consultation (Voluntary)
- ▶ Furnishing of APA application
- ▶ Acceptance/rejection of APA application
- ▶ Assignment of APA application to APA team (CIT, Additional CIT & DCIT)
- ▶ Examination and analysis of an APA application
- ▶ Preparation of position paper
- ▶ Entering into unilateral APA
- ▶ Negotiation by Competent authority in bilateral/multilateral APA
- ▶ Entering into bilateral/multilateral APA
- ▶ Annual compliance Report by the taxpayer
- ▶ Compliance audit by the revenue authority

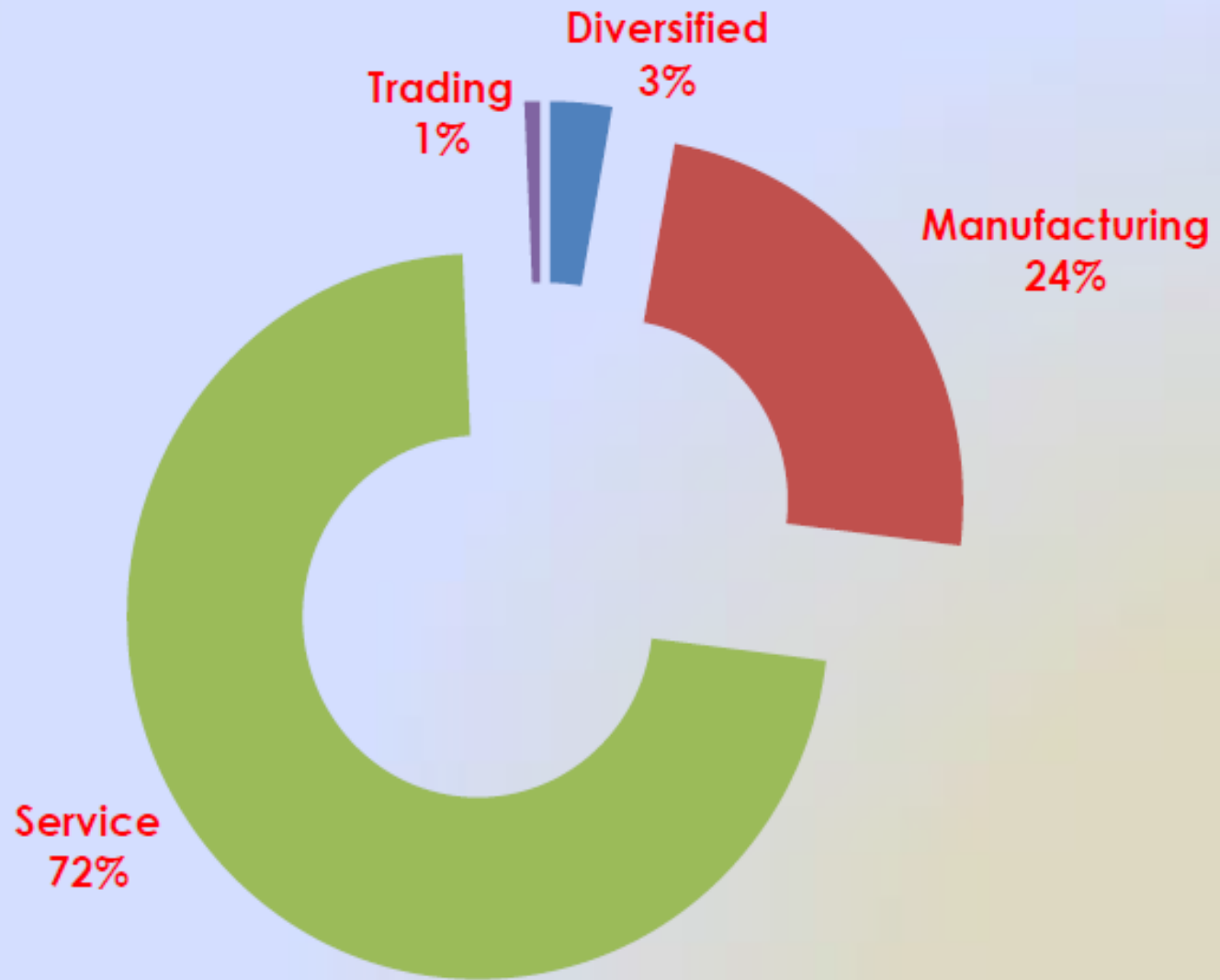
PROCEDURES –FEATURES

- ▶ One-to-One discussions between APA authorities and applicants to build a consensus on the transfer pricing methods to be used and the Arm's Length Price to be adopted.
 - ▶ Cutting through the bureaucratic maze – use of electronic means (email, CDs) to communicate and exchange information – facilitating quicker resolution.
 - ▶ Site visits by APA teams to understand and observe business processes.
 - ▶ Transparency and positive attitude shown by APA authorities and adhering to highest standards of confidentiality – building confidence among applicants.
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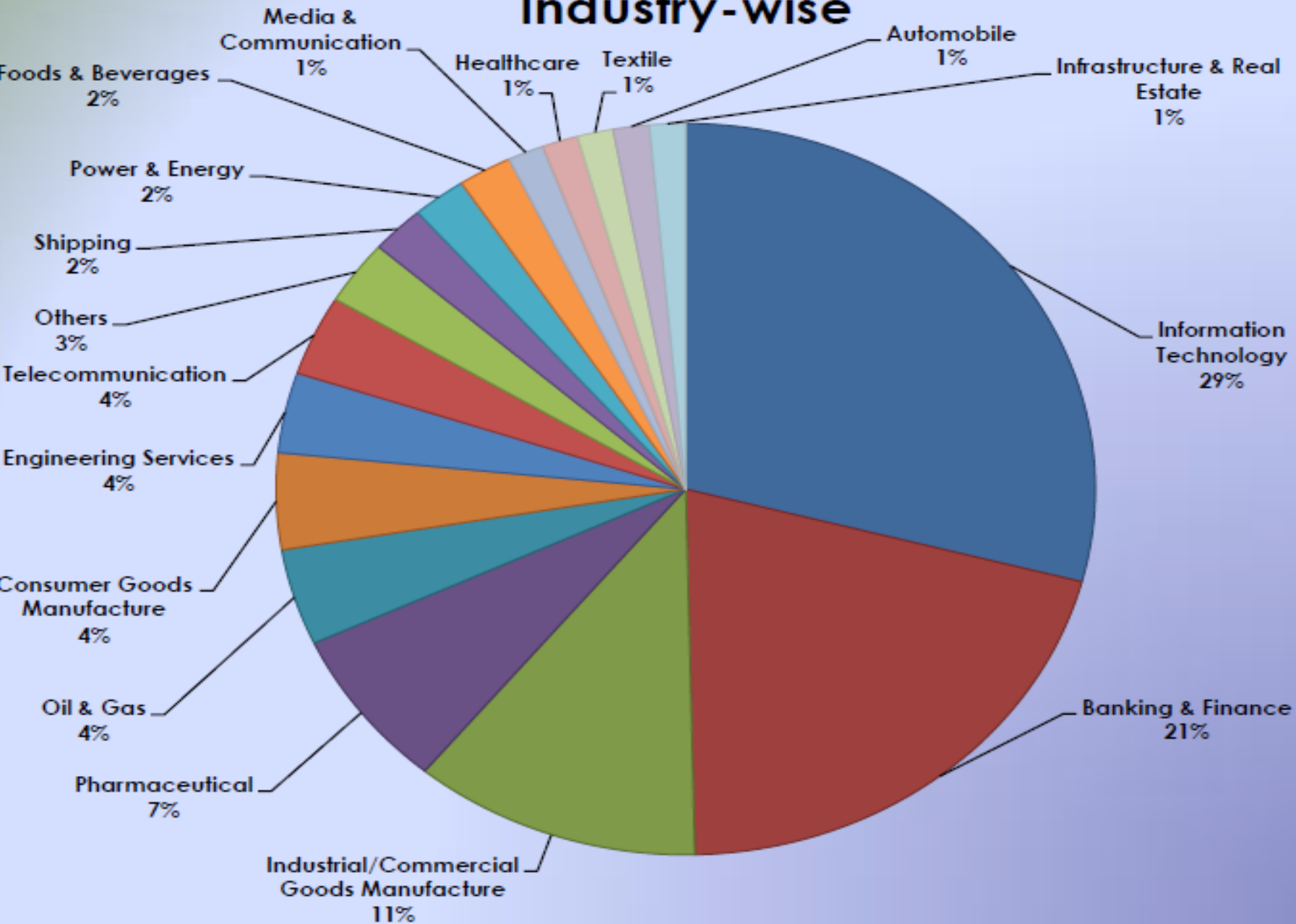
Agreements Signed - Year-wise



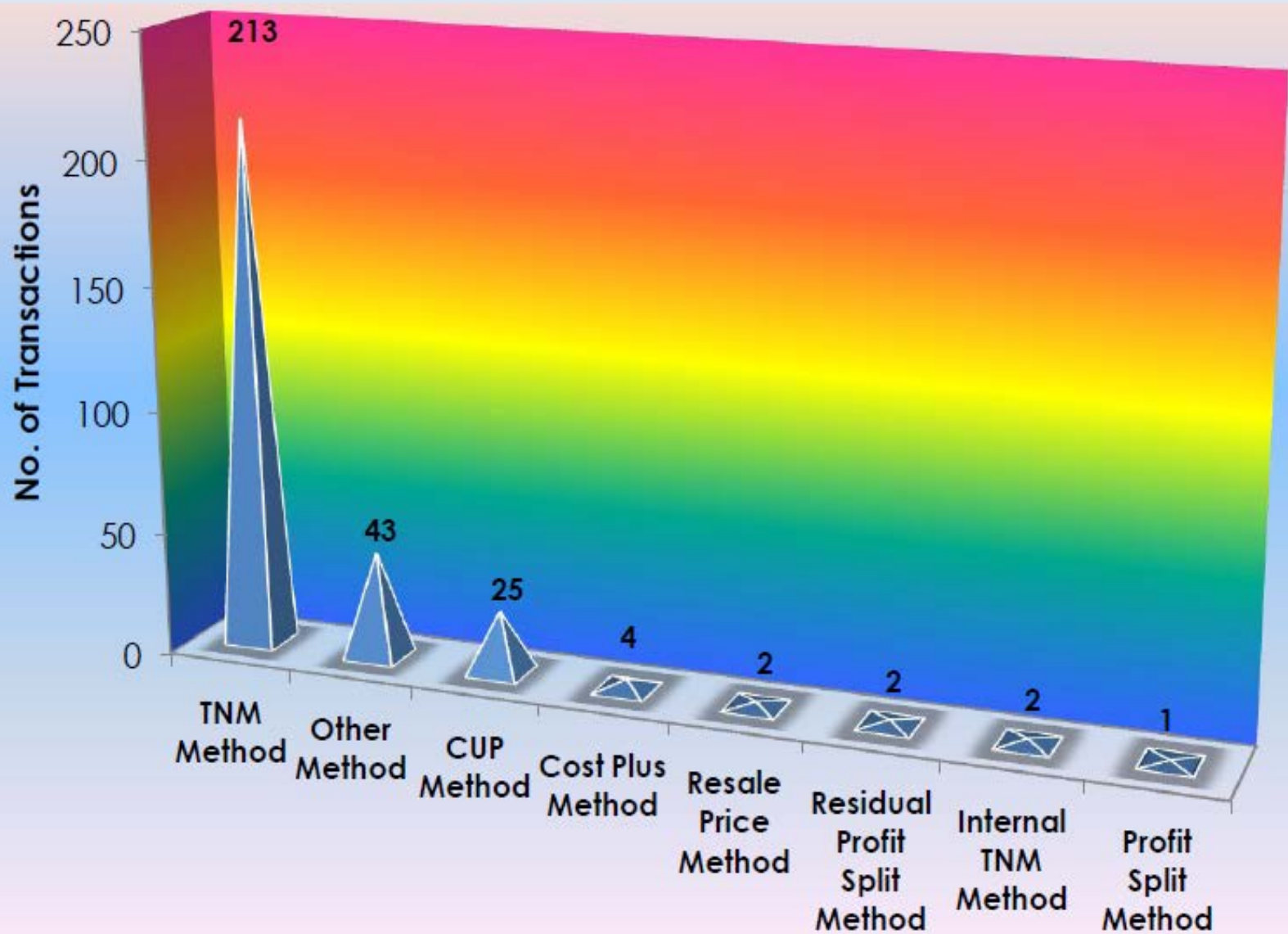
Distribution of Agreements (Economic Activity-wise)



Distribution of Agreements Industry-wise



Transfer Pricing Methods Adopted



MUTUAL AGREEMENT PROCEDURE

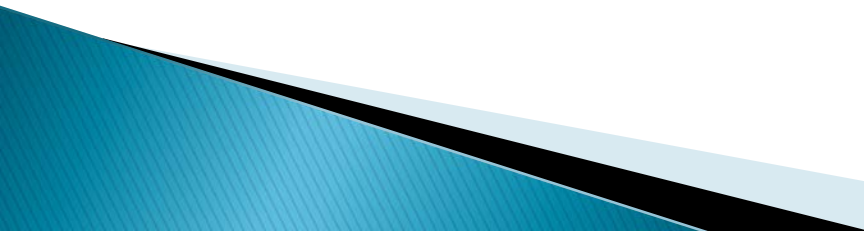
MUTUAL AGREEMENT PROCEDURE

- ▶ MAP is an effective and efficient alternative dispute resolution mechanism to resolve the issues of economic & juridical double taxation.
- ▶ Provisions of MAP has been incorporated in treaties signed by India.
- ▶ Mechanism of MAP has been specified in Income-tax Rules.
- ▶ MAP is to be initiated by a taxpayer with the Competent Authority of the country of his residence or nationality.
- ▶ Time limit for initiation of MAP is provided in DTAA. (Generally, 3 years from the first notification of action).

MUTUAL AGREEMENT PROCEDURE

- ▶ Taxpayer can simultaneously pursue domestic appeal during pendency MAP.
- ▶ Tax recovery proceedings can be undertaken during pendency of MAP.
- ▶ However, India has entered into an MoU with certain countries such as USA, UK, Denmark, Sweden for suspension of collection during pendency of MAP proceedings subject to bank guarantee.
- ▶ Generally, the time frame for MAP resolution is 2 years.

MUTUAL AGREEMENT PROCEDURE

- ▶ India has a wide network of DTAAAs and has been able to successfully resolve double taxation issues through MAP.
 - ▶ Largest number of disputes with USA. Others includes UK, Japan, China, Canada, etc.
 - ▶ During 2014–2018, About 550 tax disputes been resolved under MAP.
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CHALLENGES & THE WAY AHEAD

- ▶ Availability of trained manpower to handle the complex nature of work
 - undertaking knowledge upgradation training in domestic law at regular intervals
 - providing foreign training inputs to officers
- ▶ Providing human and physical resources to expand and strengthen the APA–MAP programme
 - two new APA teams, headed by Commissioners of Income–tax, created recently at Mumbai and Bengaluru
 - dedication of greater proportion of manpower to APA for quicker resolution

THANK YOU