



Advance Pricing
Agreement (APA)
Programme of India

-

Annual Report
(2017-18)

Central Board of Direct Taxes

August, 2018

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Foreword

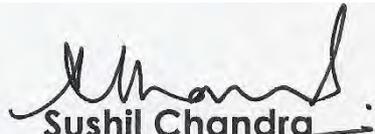
The Advance Pricing Agreement (APA) Programme in India is six years old now and has been heralded as a success. The CBDT is extremely proud of this Programme and its achievements. The Programme has been successful in winning the confidence of taxpayers by providing them with an alternate dispute resolution mechanism in respect of transfer pricing issues. At such a juncture, I am happy to commemorate the second Annual Report (2017-18) of the Indian APA Programme to all stakeholders.

The APA Programme is a major initiative of the Government towards fostering a non-adversarial tax regime. By concluding 219 Agreements till 31st March, 2018, we have shown our intent and commitment towards establishing such a regime. Let me assure all stakeholders that every possible step would be taken to strengthen the APA Programme.

I take this opportunity to congratulate the officers in the Foreign Tax & Tax Research Division of the CBDT and the officers in the APA teams under Principal CCIT (International Taxation) for their dedication and hard work, which has resulted in the success of the APA Programme.

I would also like to place on record our gratitude to the taxpayers for having reposed such faith in the APA Programme and for having contributed to its success.

As we release this Annual report, I invite all stakeholders to discuss and debate the information provided in it. The CBDT would be happy to receive feedback on this report.



Sushil Chandra

Chairman, Central Board of Direct Taxes

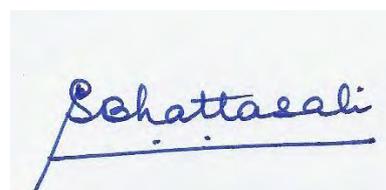
In the Words of Member (A & J), CBDT

The APA Programme exemplifies the Government's commitment to establish and nurture a non-adversarial approach to taxation. Agreements can take place only in an environment of trust, transparency and technical negotiations. Both taxpayers and my officers have successfully created such an environment. The good work done by the officers managing the APA Programme has won accolades from within and outside the country.

In 2017-18, more complex cases were handled and resolved under the APA Programme. Such cases threw up various new challenges, which the APA teams successfully resolved through innovative thinking. This has created the path for resolution of such complex cases in future also.

This second Annual Report (2017-18) on the Indian APA Programme is only indicative of the voluminous work undertaken by the APA teams during the year, which will result in the conclusion of Agreements in the succeeding year(s).

I am confident that the APA Programme will continue to provide certainty to taxpayers in transfer pricing issues and contribute to their ease of doing business.

A handwritten signature in blue ink that reads "Shabri Bhattasali". The signature is written in a cursive style and is underlined with a single horizontal line.

Shabri Bhattasali
Member (A&J), Central Board of Direct Taxes

ANNUAL REPORT ON INDIA'S ADVANCE PRICING AGREEMENT (APA) PROGRAMME – 2017-18

INTRODUCTION

Advance Pricing Agreement (APA) programmes are operational in a number of countries since long. 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 or, at least, before a dispute arises in respect of such cross-border transaction. 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 6 years, almost 1,000 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, 2018, 219 agreements have been entered into (199 unilateral and 20 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 four 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 examine and process the position papers. Joint Secretary, FT & TR-I and FT & TR-II review the examination done by the officers below and further process the position papers before sending 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 carries forward the CBDT's unique initiative of last year 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 Annual Report by the CBDT on one of its programmes underlines the importance that the APA programme holds in the Government's endeavour to promote and preserve a non-adversarial tax regime. The second Annual Report on the APA programme highlights the progress made in 2017-18. A total of 67 APAs were entered into during this year. This is a very impressive 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.

DATA AND QUALITATIVE ANALYSES

A. GENERAL ANALYSIS

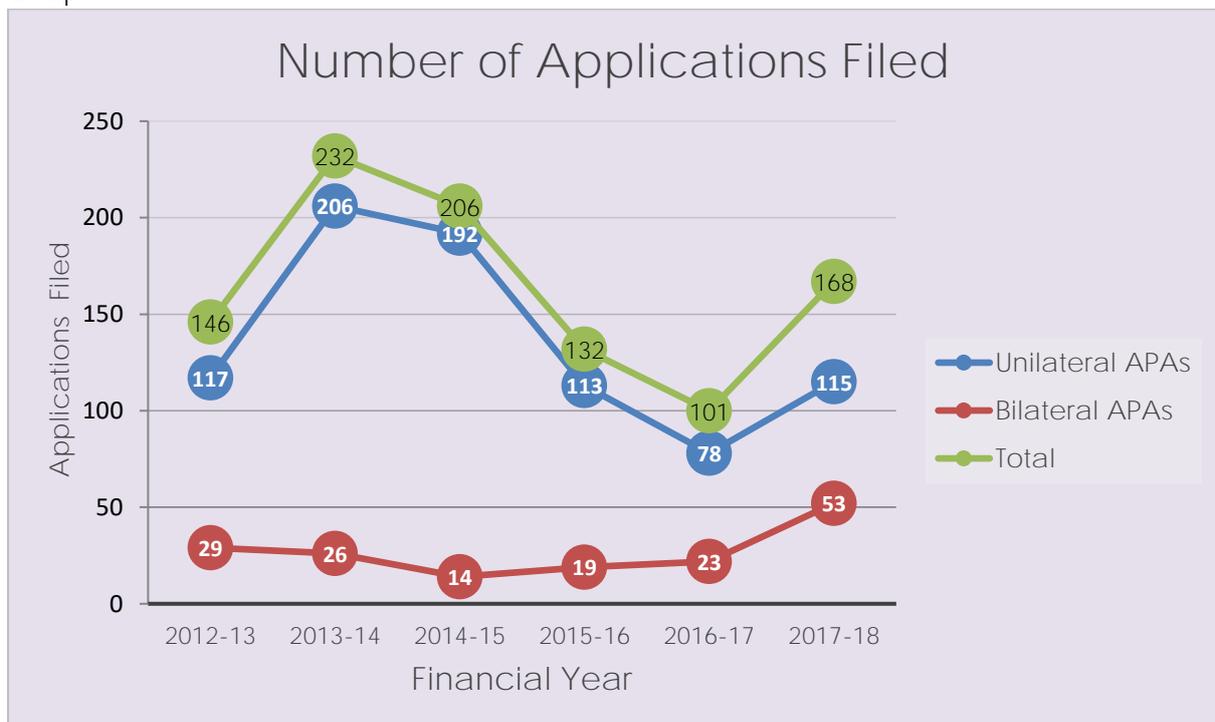
A.1. Number of Applications Filed

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

Table A.1

Financial Year (F.Y)	Unilateral APA Applications	Bilateral APA Applications	Total
2012-13	117	29	146
2013-14	206	26	232
2014-15	192	14	206
2015-16	113	19	132
2016-17	78	23	101
2017-18	115	53	168
Total	821	164	985

Graph A.1



The figures clearly show an overwhelming preference for unilateral APA applications in the first few years of the APA programme. However, it is also noteworthy that the filing of bilateral APA applications has more than doubled in 2017-18, as compared to its immediately preceding year. With the US Competent Authority opening up the bilateral APA programme between the two countries from February, 2016, and India now willing to accept bilateral APAs in respect of all treaty partners (even in the absence of Article 9(2) in the relevant treaty), the number of bilateral APA applications are bound to go up further in the coming years.

It is also pertinent to point out that the above graph only depicts the number of unilateral and bilateral applications, as filed originally. 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.

Over the last few years and as on 31st March, 2018, 35 unilateral applications filed in different years have been converted to bilateral applications. During the same period, 2 bilateral applications have been converted to unilateral applications. As a result, there has been a net increase of 33 bilateral applications over the original number of applications filed. More details regarding this would be found in subsequent sections.

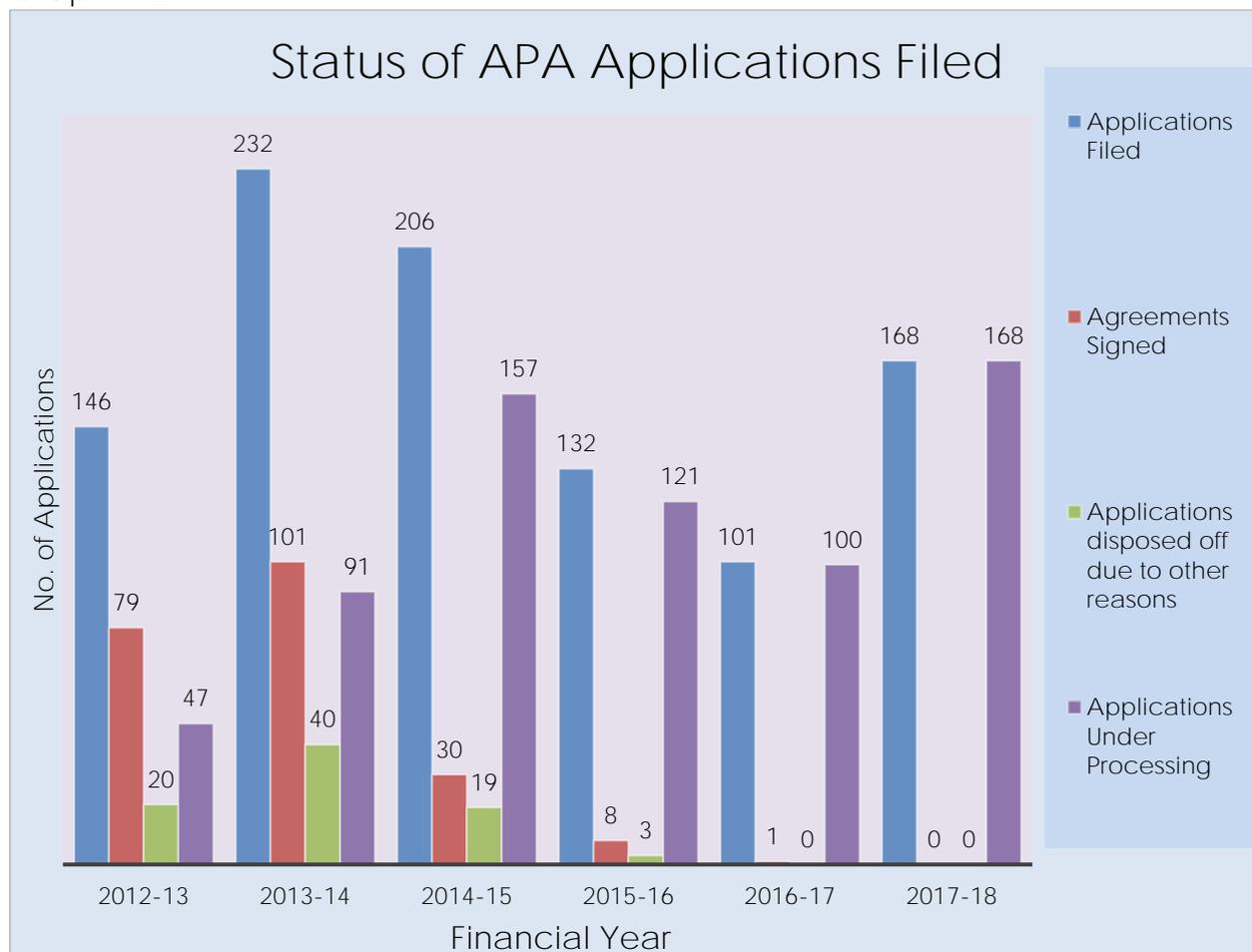
A.2. Status of Applications Filed

The table and the graph below depict the status of applications [as on 31st March, 2018] 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) [(A) - (B+C)]
2012-13	146	79	20	47
2013-14	232	101	40	91
2014-15	206	30	19	157
2015-16	132	8	3	121
2016-17	101	1	0	100
2017-18	168	0	0	168
Total	985	219	82	684

Graph A.2



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.

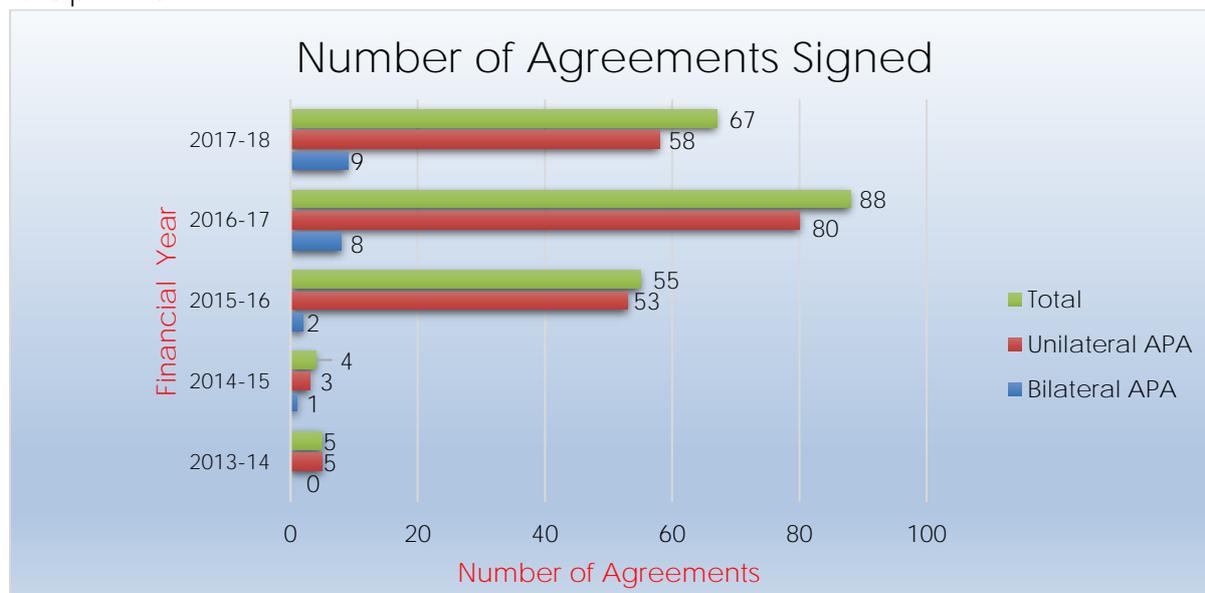
A.3 Agreements Signed: Year-wise

The table and the graph below depict the number of Agreements that have been entered into, year-wise, till 31st March, 2018.

Table A.3

F.Y	Unilateral	Bilateral	Total
2013-14	5	0	5
2014-15	3	1	4
2015-16	53	2	55
2016-17	80	8	88
2017-18	58	9	67
Total	199	20	219

Graph A.3



It can be clearly seen that with the attainment of maturity by the APA programme, the number of Agreements signed has gone up significantly. However, in 2017-18 the number of APAs entered into fell short of the number in 2016-17. There are a few reasons for this dip. Firstly, with the complexity of cases increasing, more time is needed to analyse the covered international transactions. Secondly, shortage of manpower at the level of Addl./Joint Commissioners and Deputy/Asst. Commissioners in the APA teams slowed down the processing of applications.

It is interesting to note that while India has entered into 219 APAs in 5 years, China has entered into 139 APAs in the 12 years between 2005 and 2016. In addition, China has renewed 20 Agreements during 2011 to 2016.

A.4 Total Covered Years in Agreements Signed

Particulars	APA Years	Rollback Years	Total Years
Agreements signed in F.Y 2017-18	317	98	415
Agreements signed till F.Y 2017-18	1050	378	1428

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. In the 219 APAs entered into till 31st March, 2018, CBDT has managed to provide tax certainty for 1428 years to these taxpayers. This includes 378 years covered under the Rollback period of the concluded APAs. In 2017-18 alone, tax certainty has been provided to 415 years, including 98 years under Rollback provisions. It is noteworthy that out of the 67

agreements signed in 2017-18, 30 had Rollback provisions. Similarly, out of the total 219 agreements signed so far, 108 had Rollback provisions.

B. UNILATERAL APAs

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

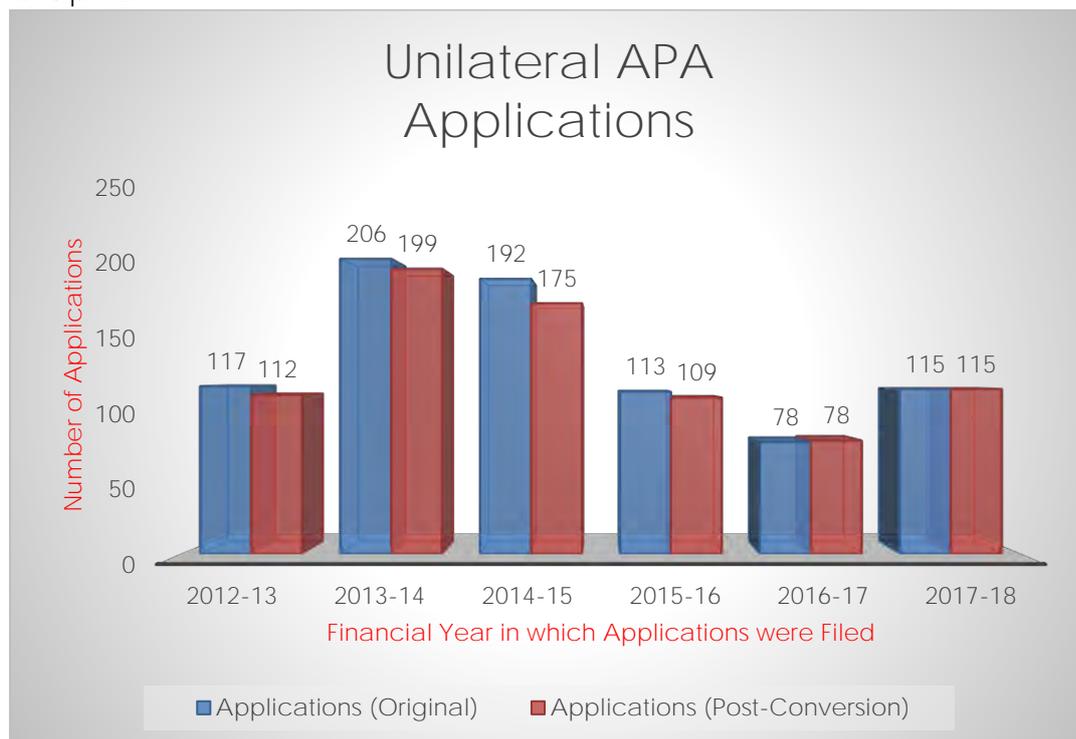
As mentioned earlier, unilateral applications have been favoured more by the taxpayers. As also mentioned earlier, this trend is slowly undergoing a change with the operationalisation of the India-USA bilateral APA programme. The table shows that while 821 unilateral applications were originally filed, conversion of some of them to bilateral APAs has reduced the number to 788. 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	112
2013-14	206	199
2014-15	192	175
2015-16	113	109
2016-17	78	78
2017-18	115	115
Total	821	788

As mentioned earlier in the report, there has been a net increase of 33 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.

Graph B.1



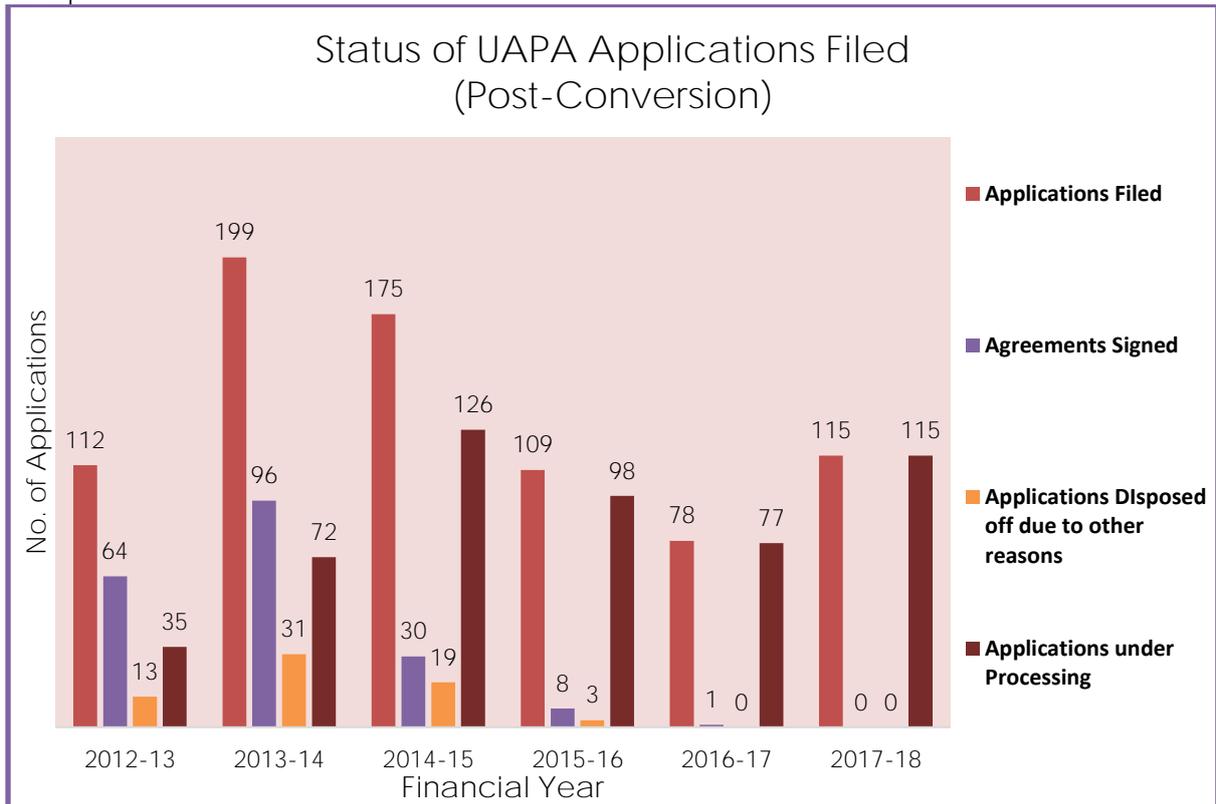
B.2 Status of Unilateral Applications Filed

The table and the graph below depict the status of unilateral applications [as on 31st March, 2018] 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	112	64	13	35
2013-14	199	96	31	72
2014-15	175	30	19	126
2015-16	109	8	3	98
2016-17	78	1	0	77
2017-18	115	0	0	115
Total	788	199	66	523

Graph B.2



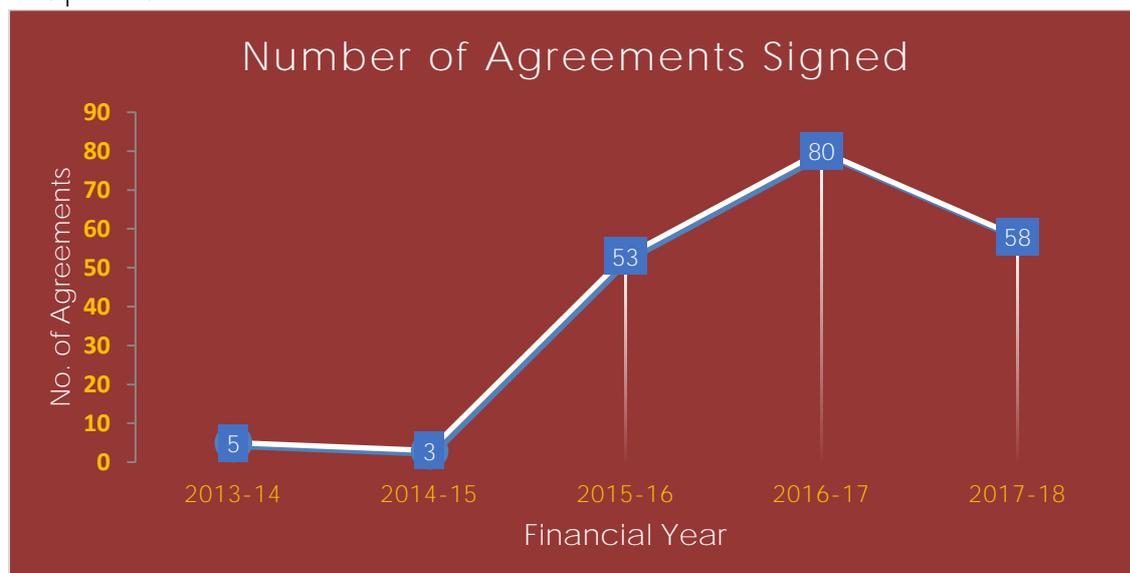
B.3 Agreements Signed: Year-wise

The table and the graph below show the number of unilateral APAs entered into in the last 5 years. There has been a 27.5% decrease in the number of Agreements signed in 2017-18, as compared to 2016-17. The reasons for this slowdown have been mentioned earlier in this report.

Table B.3

F.Y	Agreements Signed
2013-14	5
2014-15	3
2015-16	53
2016-17	80
2017-18	58
Total	199

Graph B.3



Through the 199 unilateral APAs entered into so far, CBDT has managed to provide tax certainty of 1284 years to these 199 taxpayers. The 1284 years include 332 years covered under the Rollback period of the concluded APAs. 91 Agreements – out of the 199 entered into so far - have Rollback provisions. In 2017-18, the 58 agreements entered into have provided tax certainty of 274 APA years and 79 Rollback years (353 years in total).

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. We have computed this by considering the time taken from the date of filing of the application to the date of signing of the agreement. Different countries have managed to achieve varying timelines to conclude APAs. For example, USA has had an average timeline of 40.4 months for unilateral APAs and 46.9 months for bilateral APAs in 2017. In 2016, it had closed unilateral APAs in 33.9 months on an average but had taken 50.5 months for bilateral APAs.

In 2017-18, the average time taken by the CBDT to conclude the 58 unilateral agreements was 38.62 months. This is more than the combined average time taken in the previous 4 years. As a result, the average time taken to conclude unilateral APAs in India has increased from about 29 months (as on 31st March, 2017) to 31.75 months (as on 31st March, 2018). This is better than what most countries have achieved. The detailed analysis of this is depicted in the tables and graphs below. The timelines for concluding bilateral APAs has been discussed later in this report.

Table B.4(1)

Duration	No. of Agreements signed in F.Y 2017-18
Within 12 Months	0
13-24 Months	6
25-36 Months	16
37-48 Months	29
49-60 Months	7
Total	58
Average Time Taken for each Agreement – 38.62 Months	

Graph B.4(1)

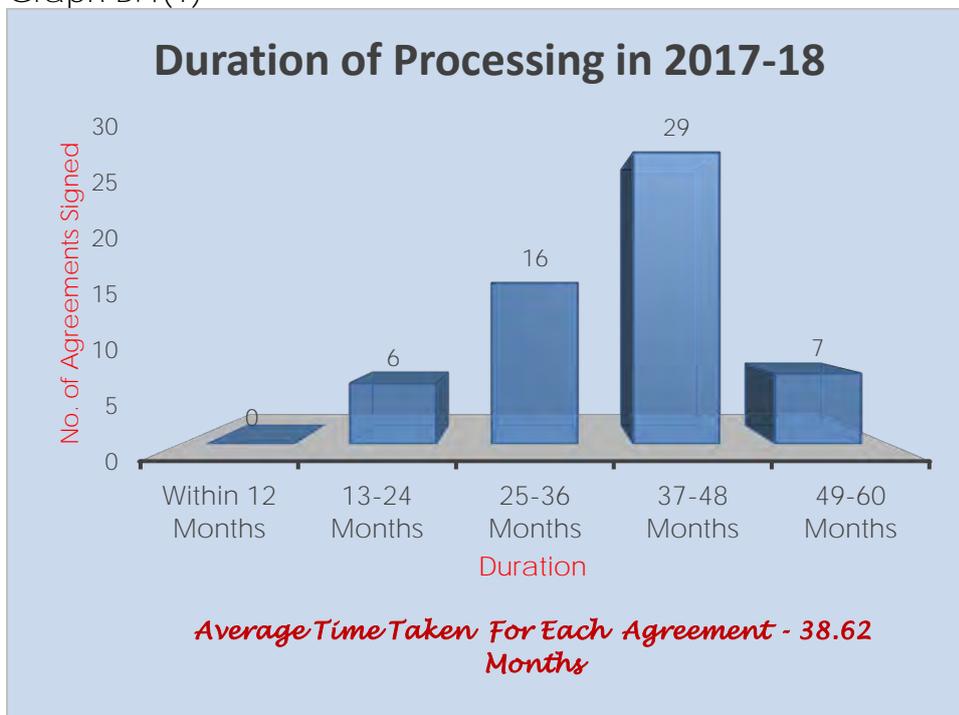
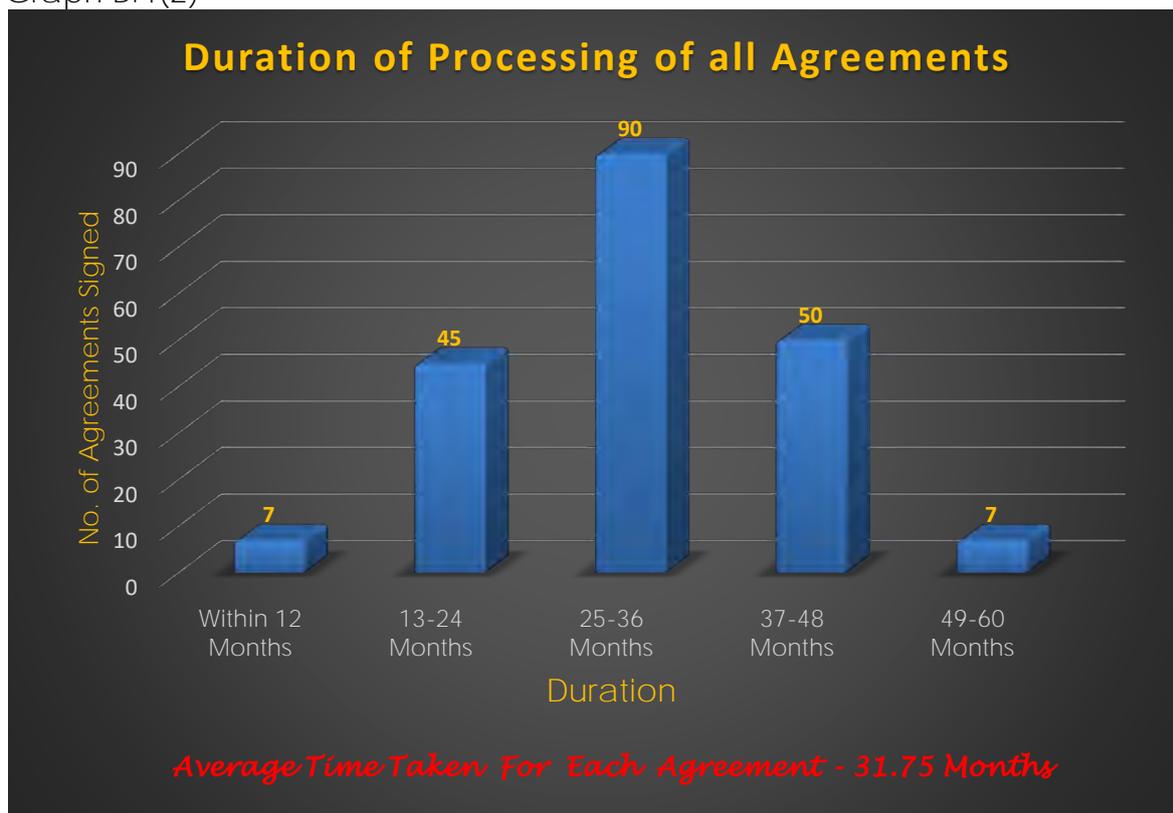


Table B.4(2)

Duration of Processing	Number of Agreements Signed till 31 st March, 2018
Within 12 Months	7
13-24 Months	45
25-36 Months	90
37-48 Months	50
49-60 Months	7
Total Agreements Signed	199
Average Time Taken For Each Agreement – 31.75 Months	

Graph B.4(2)



As can be seen from the cumulative data of 5 years, more than 70% of the unilateral APAs entered into have been concluded within 3 years of the filing of applications and more than 25% have been entered into within 2 years. This is a highly creditable achievement.

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

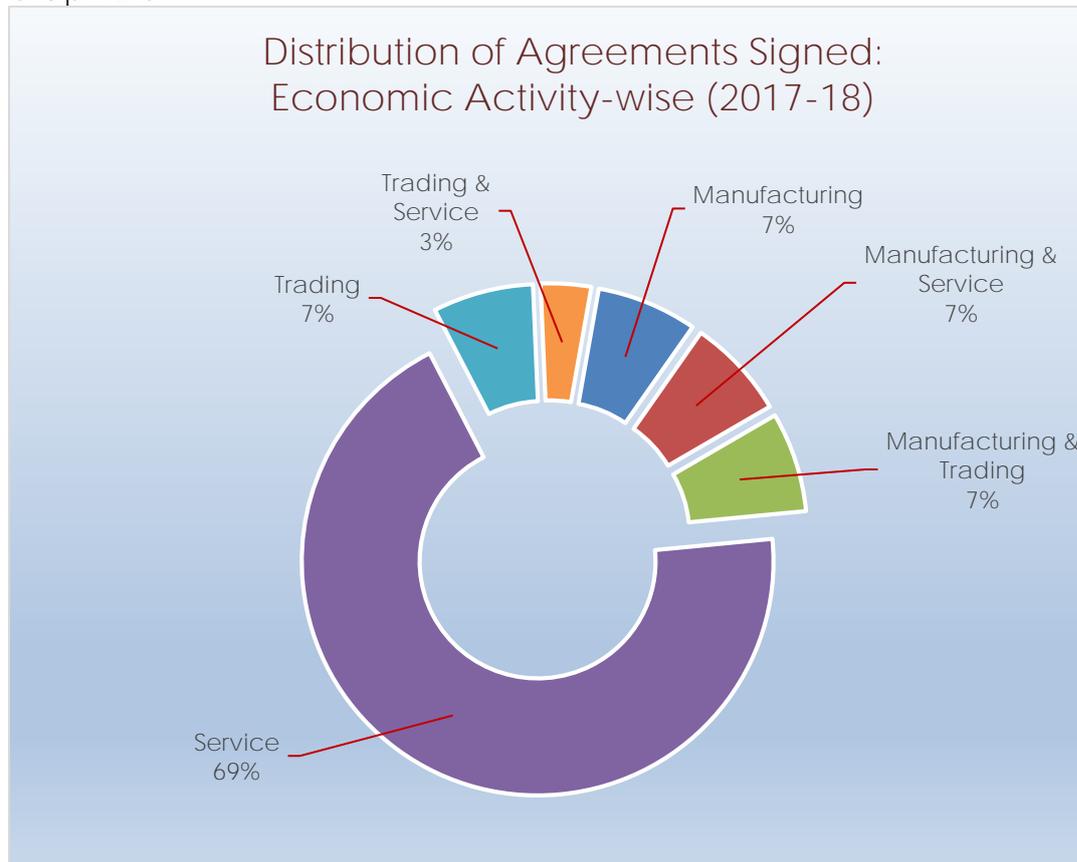
The table and graph below capture the data regarding the economic activity or the pre-dominant economic activity in each of the unilateral APAs entered into in F.Y 2017-18.

Table B.5

Sl. No.	Economic Activity	No. of Agreements Signed in F.Y 2017-18
1	Service	40
2	Manufacturing	4
3	Trading	4
4	Manufacturing & Trading	4
5	Manufacturing & Service	4
6	Trading & Service	2
	Total	58

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.

Graph B.5



B.6 Distribution of Agreements Signed – Industry-wise

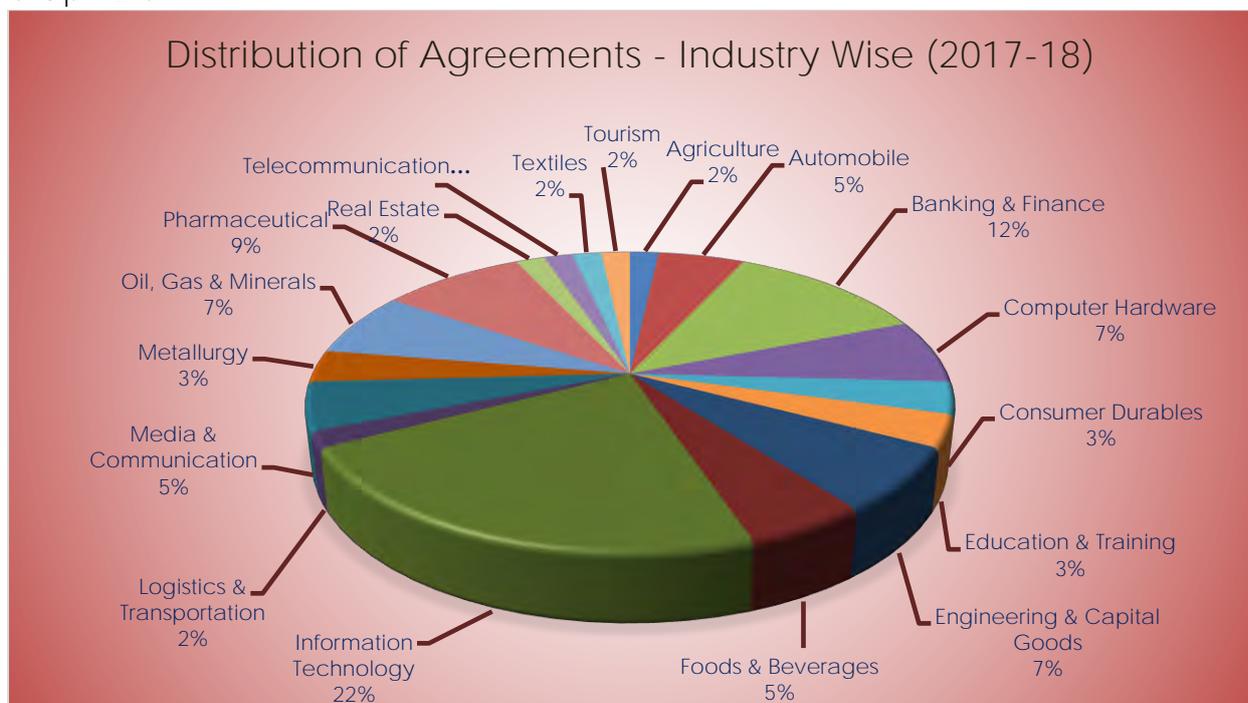
The table and graph below provide information regarding the various industries covered in each of the unilateral APAs entered into in F.Y 2017-18. Information Technology, Computer Hardware and Banking/Finance industries constitute almost 40% of the Agreements. This is consistent with the trend seen in our previous analysis of the economic activities 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 18 different types of industries that have availed the benefits of the Indian APA programme in 2017-18.

Table B.6

Sl. No.	Industry	No. of Agreements Signed
1	Agriculture	1
2	Automobile	3
3	Banking & Finance	7
4	Computer Hardware	4
5	Consumer Durables	2
6	Education & Training	2
7	Engineering & Capital Goods	4
8	Food & Beverages	3
9	Information Technology	13
10	Logistics & Transportation	1
11	Media & Communication	3
12	Metallurgy	2
13	Oil, Gas & Minerals	4
14	Pharmaceutical	5
15	Real Estate	1
16	Telecommunication	1
17	Textiles	1
18	Tourism	1
	Total	58

Graph B.6



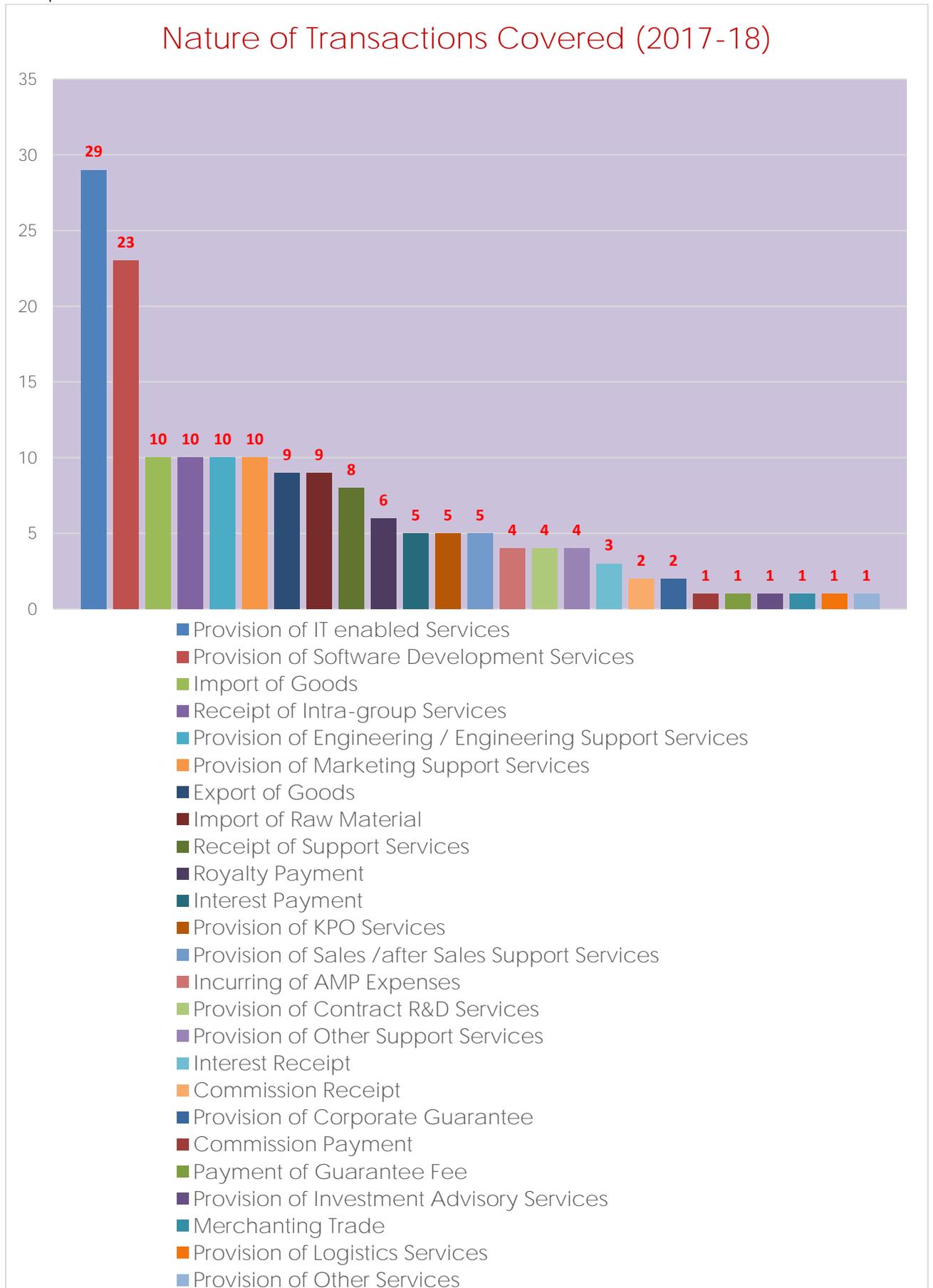
B.7 Nature of Transactions Covered

The table and graph below provide information about the nature of international transactions covered in the unilateral APAs entered into in 2017-18. It can be seen that there are as many as 25 types of international transactions that have been covered in the unilateral APAs. A total of 164 international transactions have been covered under the 58 APAs entered into in F.Y 2017-18. Provision of IT enabled Services (ITeS) and Software Development (SWD) Services feature predominantly in the APAs entered into. This is on expected lines because a majority of the APA applications have included such transactions as 'covered transactions'.

Table No. B.7

Sl. No.	Nature of Transactions	No. of Transactions
1	Provision of IT enabled Services	29
2	Provision of Software Development Services	23
3	Import of Goods	10
4	Receipt of Intra-group Services	10
5	Provision of Engineering / Engineering Support Services	10
6	Provision of Marketing Support Services	10
7	Export of Goods	9
8	Import of Raw Material	9
9	Receipt of Support Services	8
10	Royalty Payment	6
11	Interest Payment	5
12	Provision of KPO Services	5
13	Provision of Sales /after Sales Support Services	5
14	Incurring of AMP Expenses	4
15	Provision of Contract R&D Services	4
16	Provision of Other Support Services	4
17	Interest Receipt	3
18	Commission Receipt	2
19	Provision of Corporate Guarantee	2
20	Commission Payment	1
21	Payment of Guarantee Fee	1
22	Provision of Investment Advisory Services	1
23	Merchanting Trade	1
24	Provision of Logistics Services	1
25	Provision of Other Services	1
	Total	164

Graph B.7



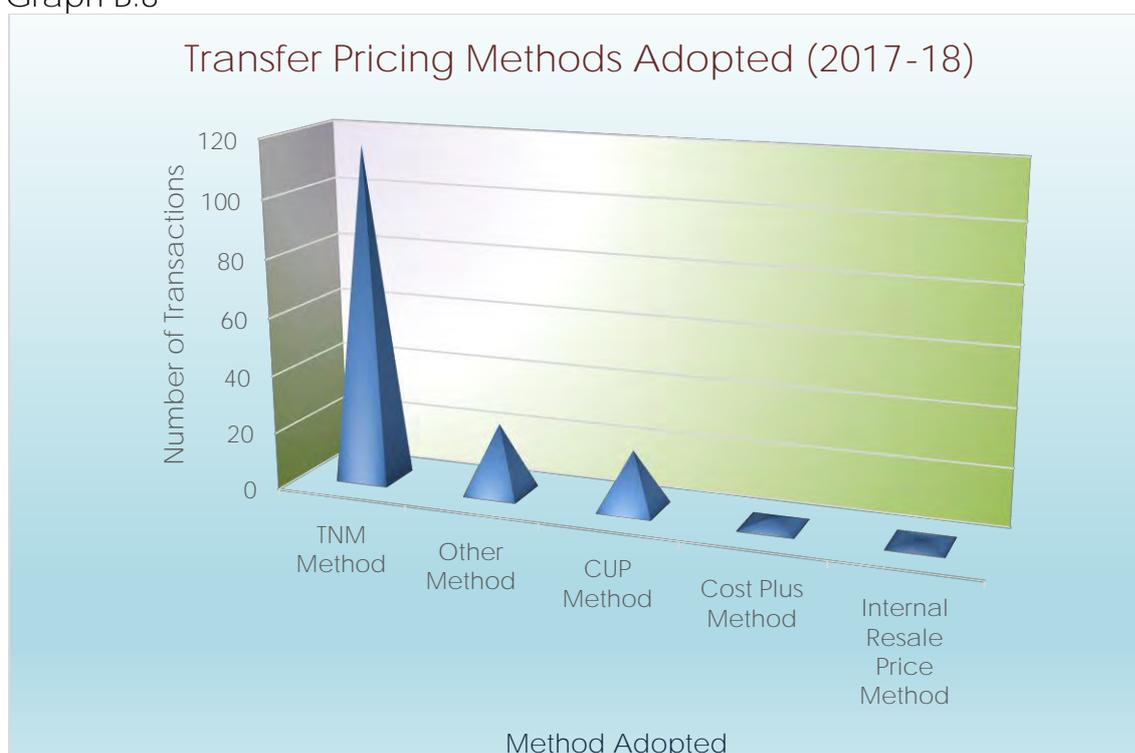
B.8 Transfer Pricing Methods Adopted

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 during F.Y 2017-18. The table and graph below throw light on that.

Table B.8

Sl. No.	Transfer Pricing Method	No. of Transactions
1	TNM Method	116
2	Other Method	24
3	CUP Method	20
4	Cost Plus Method	3
5	Internal Resale Price Method	1
	Total	164

Graph B.8



B.9 Location of Associated Enterprises (AEs)

The 58 unilateral APAs entered into in 2017-18 have left their footprints on 134 countries where the AEs of the Indian applicant companies 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 134 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 40 out of the 58 APAs concluded.

Table B.9

Sl. No.	Name of Countries	No. of Agreements
1	United States of America	40
2	United Kingdom	22
3	Singapore	19
4	Germany	15
5	Australia	13
6	Switzerland	12
7	United Arab Emirates	12
8	China	11
9	The Netherlands	11
10	France	10
11	Italy	10
12	Malaysia	10
13	South Korea	9
14	Thailand	9
15	Canada	8
16	Japan	8
17	Spain	8
18	Belgium	7
19	Sweden	7
20	Brazil	6
21	Mexico	6
22	Turkey	6
23	Austria	5
24	Hong Kong	5
25	Ireland	5
26	Philippines	5
27	Russia	5
28	Vietnam	5
29	Czech Republic	4
30	Indonesia	4
31	Luxembourg	4
32	Norway	4
33	South Africa	4
34	Taiwan	4
35	Bangladesh	3
36	Cayman Islands	3
37	Chile	3
38	Congo	3

Sl. No.	Name of Countries	No. of Agreements
39	Denmark	3
40	Egypt	3
41	Ghana	3
42	Israel	3
43	Jordan	3
44	Lebanon	3
45	New Zealand	3
46	Poland	3
47	Saudi Arabia	3
48	Slovakia	3
49	Angola	2
50	Argentina	2
51	Bahrain	2
52	Botswana	2
53	Bulgaria	2
54	Burkina Faso	2
55	Cameroon	2
56	Chad	2
57	Colombia	2
58	Cote d'ivoire	2
59	Croatia	2
60	Hungary	2
61	Kenya	2
62	Macedonia	2
63	Madagascar	2
64	Malta	2
65	Mauritius	2
66	Morocco	2
67	Mozambique	2
68	Nigeria	2
69	Oman	2
70	Panama	2
71	Portugal	2
72	Qatar	2
73	Senegal	2
74	Serbia	2
75	Sierra Leone	2
76	Slovenia	2
77	Sri Lanka	2
78	Tanzania	2

Sl. No.	Name of Countries	No. of Agreements
79	Uganda	2
80	Zambia	2
81	Zimbabwe	2
82	Afghanistan	1
83	Albania	1
84	Armenia	1
85	Bahamas	1
86	Barbados	1
87	Benin	1
88	British Virgin	1
89	Brunei	1
90	Cambodia	1
91	Costa Rica	1
92	Cyprus	1
93	Dominican	1
94	Ecuador	1
95	EL Salvador	1
96	Equatorial	1
97	Estonia	1
98	Falkland Islands	1
99	Finland	1
100	French Polynesia	1
101	Gabon	1
102	Gambia	1
103	Guatemala	1
104	Guernsey	1
105	Guinea	1
106	Haiti	1

Sl. No.	Name of Countries	No. of Agreements
107	Honduras	1
108	Iceland	1
109	India	1
110	Iraq	1
111	Jamaica	1
112	Jersey	1
113	Kuwait	1
114	Lithuania	1
115	Malawi	1
116	Mauritania	1
117	Moldova	1
118	Montenegro	1
119	Nepal	1
120	Nicaragua	1
121	Niger	1
122	Palestine	1
123	Paraguay	1
124	Peru	1
125	Puerto Rico	1
126	Romania	1
127	Rwanda	1
128	Surinam	1
129	Togo	1
130	Trinidad &	1
131	Tunisia	1
132	Uruguay	1
133	Venezuela	1
134	Yugoslavia	1

C. BILATERAL APAs

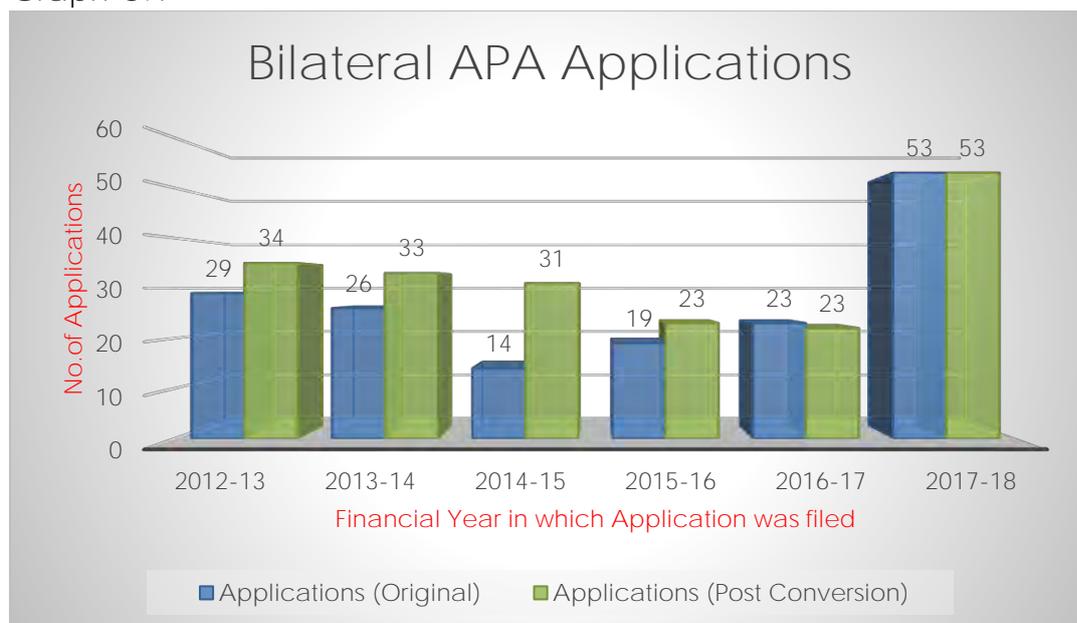
C.1 Applications Filed (Original and Post-Conversion)

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	34
2013-14	26	33
2014-15	14	31
2015-16	19	23
2016-17	23	23
2017-18	53	53
Total	164	197

Graph C.1



As can be seen from the above, almost one-third of original bilateral applications were filed in 2017-18. This is a very positive trend, as bilateral APAs have the merit of providing complete relief from double taxation.

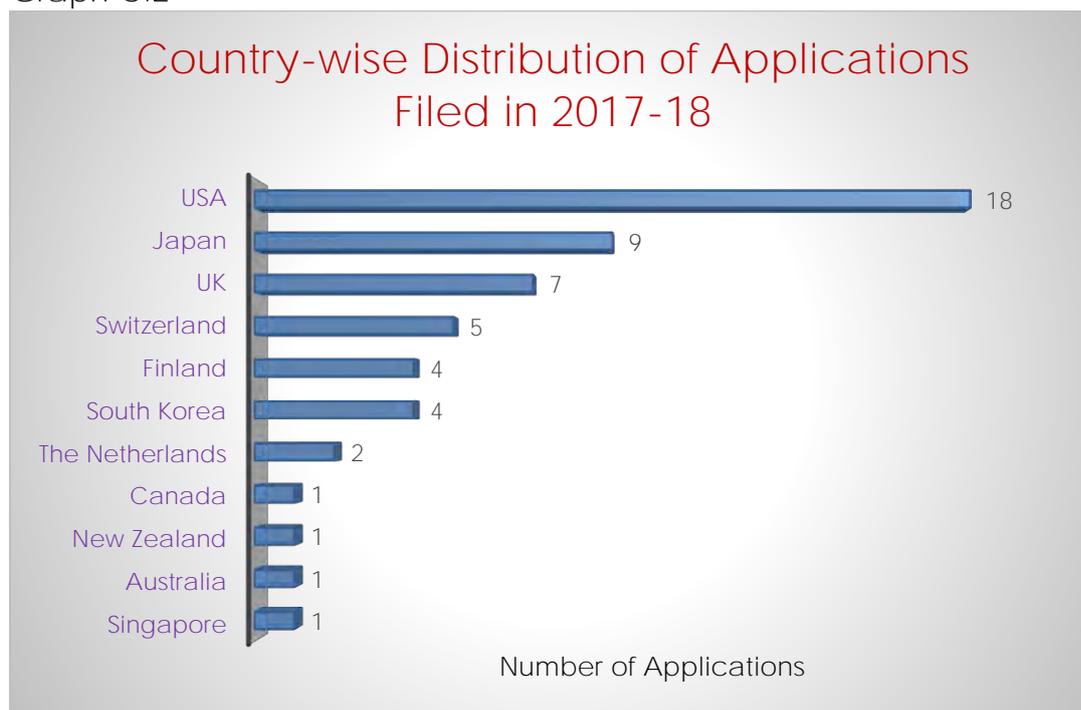
C.2 Applications – Country-wise Distribution

The tables and graphs below provide the country-wise distribution of bilateral APA applications filed in 2017-18, and cumulatively between 2012-13 and 2017-18. 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	Percentage of Total
1	USA	18	34%
2	Japan	9	17%
3	UK	7	13%
4	Switzerland	5	9.5%
5	South Korea	4	7.5%
6	Finland	4	7.5%
7	The Netherlands	2	3.75%
8	Singapore	1	2%
9	Canada	1	2%
10	Australia	1	2%
11	New Zealand	1	2%
	Total	53	100%

Graph C.2



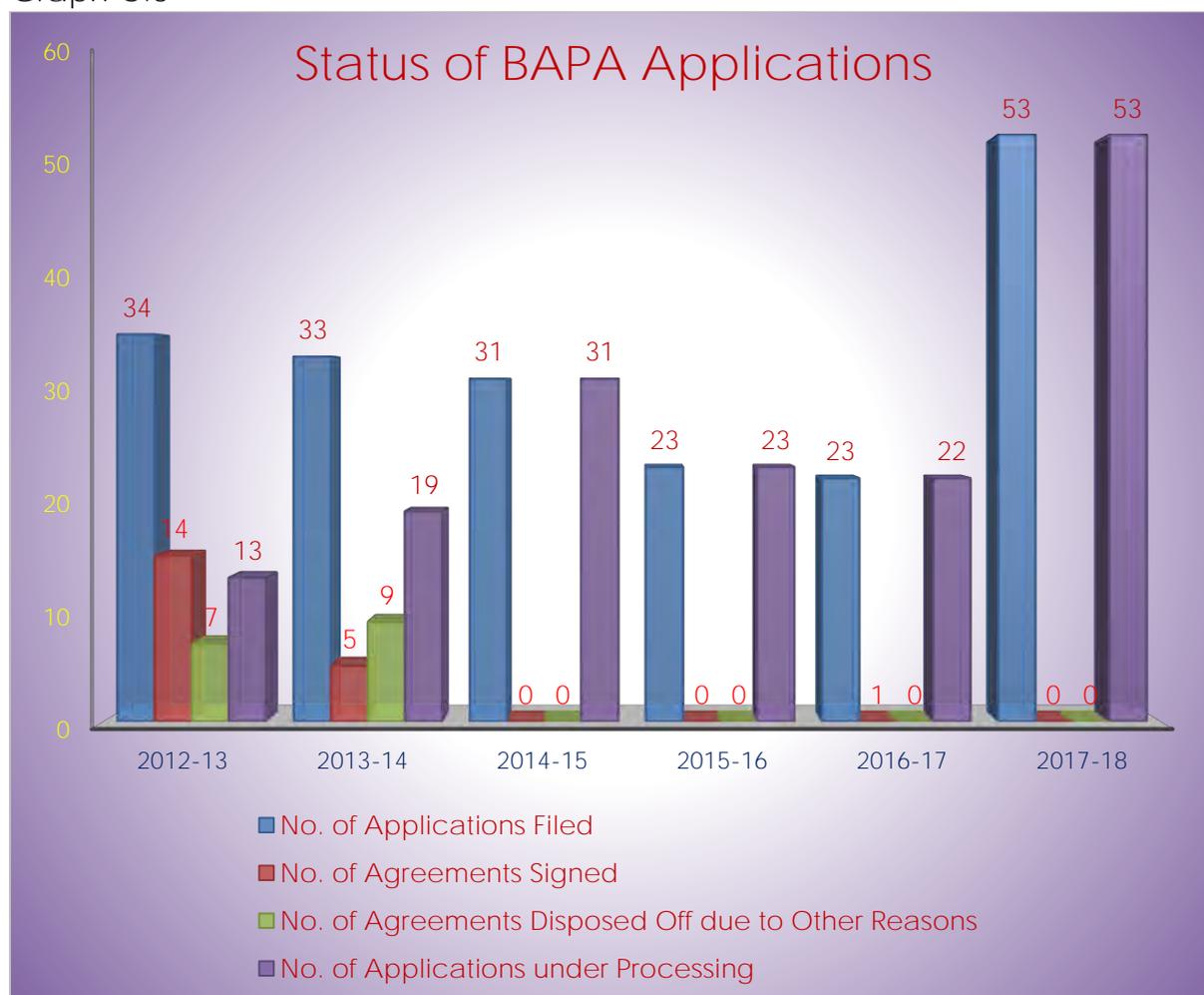
C.3 Status of Applications Filed (Post-Conversion)

The table and graph below show the status of the bilateral APA applications, filed and converted from unilateral applications, till 31st March, 2018.

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	34	14	7	13
2013-14	33	5	9	19
2014-15	31	0	0	31
2015-16	23	0	0	23
2016-17	23	1	0	22
2017-18	53	0	0	53
Total	197	20	16	161

Graph C.3



In the 20 bilateral APAs entered into so far, CBDT has managed to provide tax certainty of 144 years to these 20 taxpayers. These 144 years include 46 years covered under the Rollback period of the concluded APAs. 17 out of the 20 Agreements entered into so far have Rollback provisions. In 2017-18, the 9 APAs entered into have provided tax certainty of 62 years that includes 19 Rollback years (6 out of the 9 APAs have Rollback provisions).

C.4 Country-wise Status of Applications Filed (Post-Conversion)

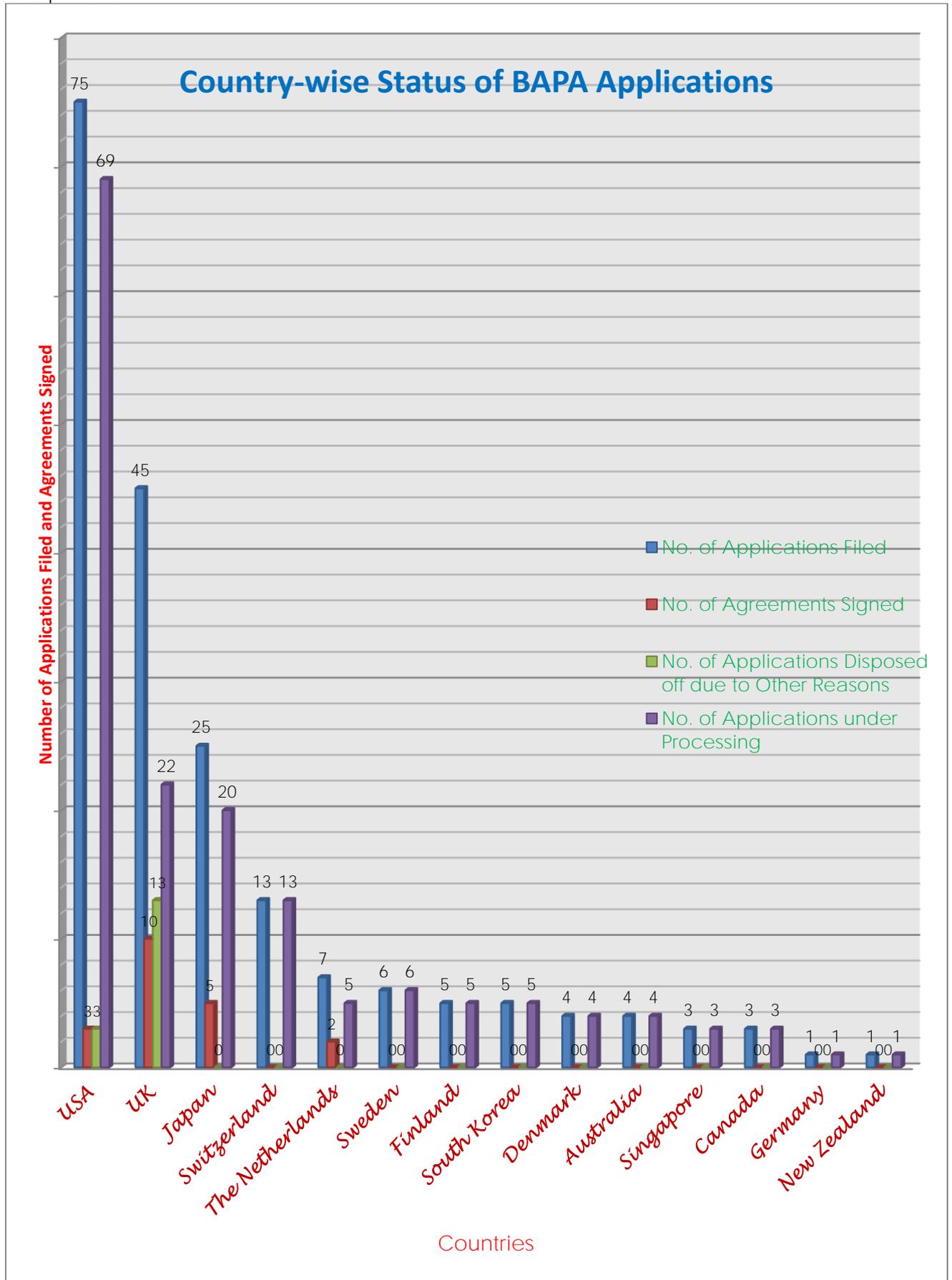
The country-wise status of applications filed and converted from unilateral till 31st March, 2018 has been shown in the table and graph below. It is clearly seen that almost 75% of the total BAPA applications are with only 3 countries – USA, UK and Japan.

Table C.4

Sl. No.	Country	(A) No. of Applications Filed	(B) No. of Agreements Signed out of (A)	(C) No. of Applications disposed of out of (A) due to other reasons	(D) No. of Applications under Processing out of (A)
1	USA	75	3	3	69
2	UK	45	10	13	22
3	Japan	25	5	0	20
4	Switzerland	13	0	0	13
5	The Netherlands	7	2	0	5
6	Sweden	6	0	0	6
7	Finland	5	0	0	5
8	South Korea	5	0	0	5
9	Denmark	4	0	0	4
10	Australia	4	0	0	4
11	Singapore	3	0	0	3
12	Canada	3	0	0	3
13	Germany	1	0	0	1
14	New Zealand	1	0	0	1
	Total	197	20	16	161

The maximum number of Agreements signed so far has been 10 with the United Kingdom. Japan is next at 5.

Graph C.4



C.5 Agreements Signed: Year-wise

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

Table C.5

F.Y	Agreements Signed
2013-14	0
2014-15	1
2015-16	2
2016-17	8
2017-18	9
Total	20

Graph C.5



Financial Years 2016-17 and 2017-18 have seen a marked increase in the number of bilateral APAs signed with Indian taxpayers after conclusion of Mutual Agreements with the Competent Authorities of Treaty partners. This trend is likely to continue as a number of bilateral APAs have been resolved with the Competent Authorities of Treaty partners but the Agreements with Indian taxpayers could not be signed by 31st March, 2018 due to the time required to draft and finalise Mutual Agreements with Treaty partners.

In 2017-18, out of the 9 Agreements signed with Indian taxpayers, 4 pertained to UK, 3 to USA and 2 to The Netherlands.

C.6 Duration of Processing

In 2017-18, the average time taken to conclude bilateral APAs has gone up to 45.78 months. The detailed analysis of this is depicted in the table and graph below. This has increased the average time taken for all bilateral APAs concluded till 31st March, 2018 from 39.09 months (as on 31st March, 2017) to 42.10 months.

Table C.6(1)

Duration of Processing	Number of Agreements Signed
Within 12 Months	1
13-24 Months	0
25-36 Months	0
37-48 Months	3
49-60 Months	5
Total Agreements Signed	9
Average Time Taken For Each Agreement – 45.78 Months	

Graph C.6(1)

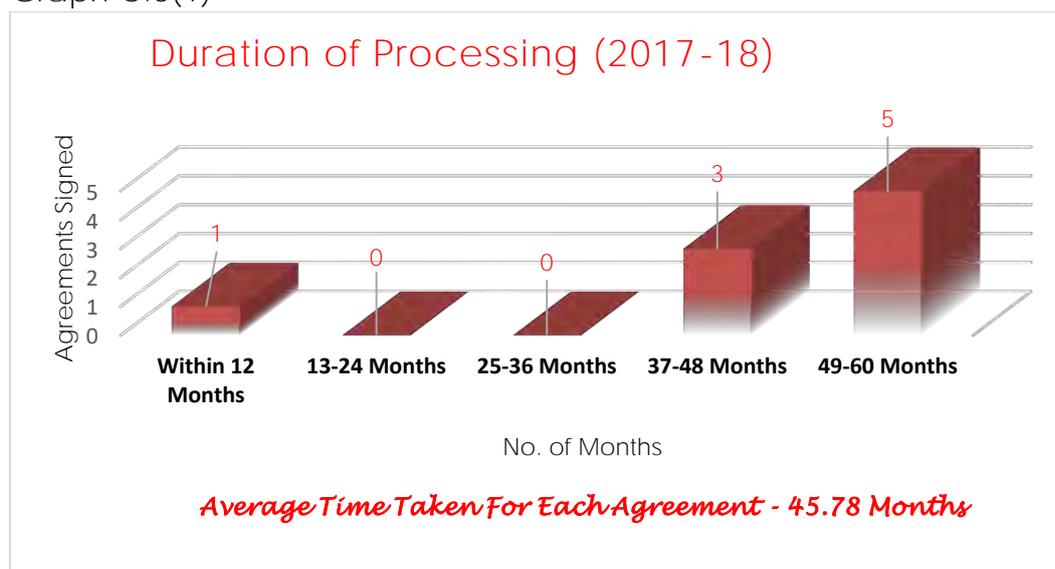
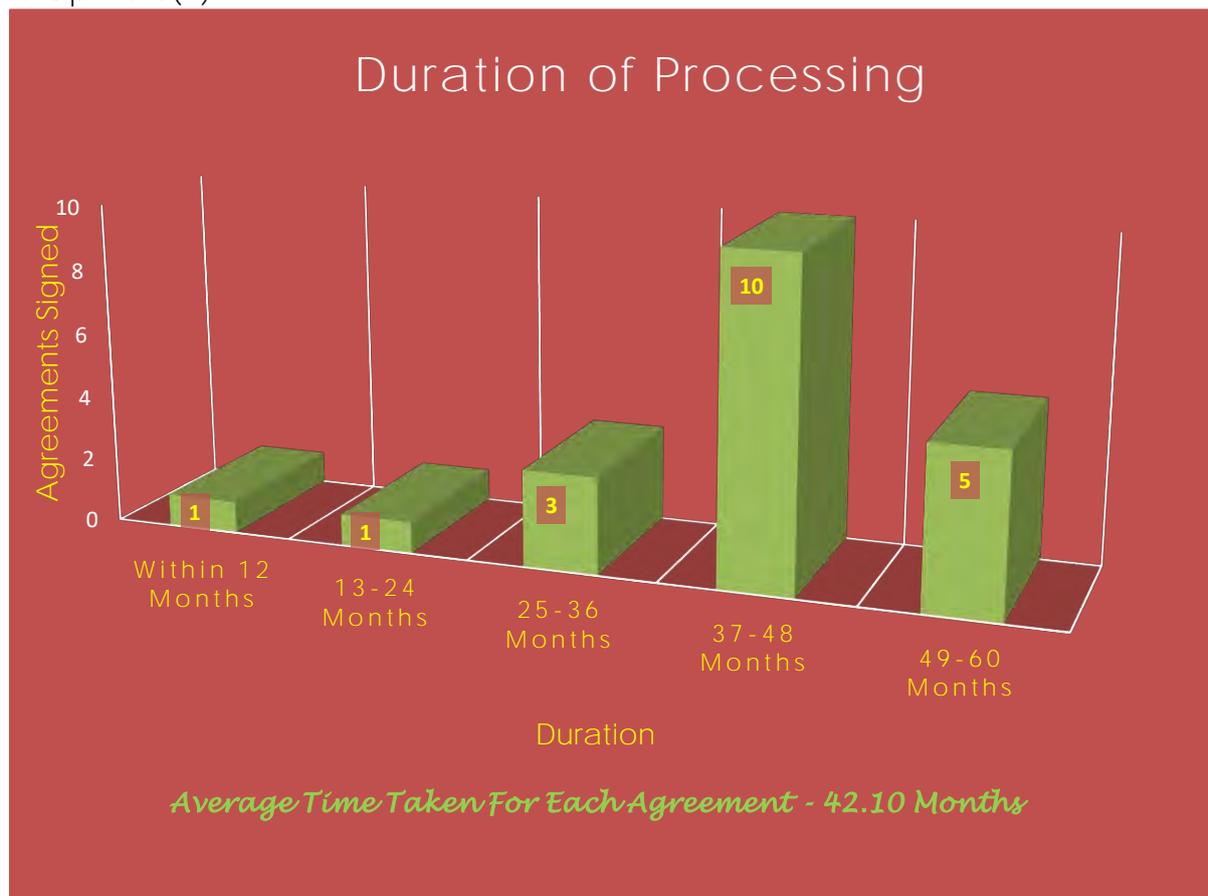


Table C.6(2)

Duration of Processing	Number of Agreements Signed
Within 12 Months	1
13-24 Months	1
25-36 Months	3
37-48 Months	10
49-60 Months	5
Total Agreements Signed	20
Average Time Taken For Each Agreement – 42.10 Months	

Graph C.6(2)



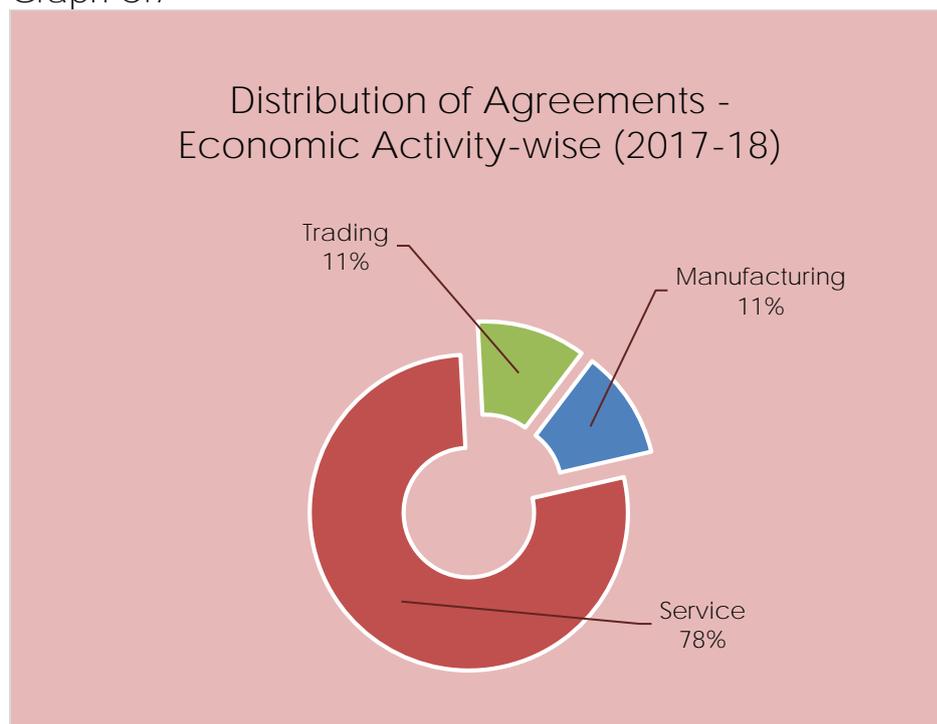
C.7 Distribution of Agreements – Economic Activity-wise

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 during F.Y 2017-18.

Table C.7

Sl. No.	Economic Activity	No. of Agreements Signed
1	Trading	7
2	Manufacturing	1
3	Service	1
	Total	9

Graph C.7



As in unilateral APAs, the service sector of the Indian economy has been overwhelmingly covered in bilateral APAs also.

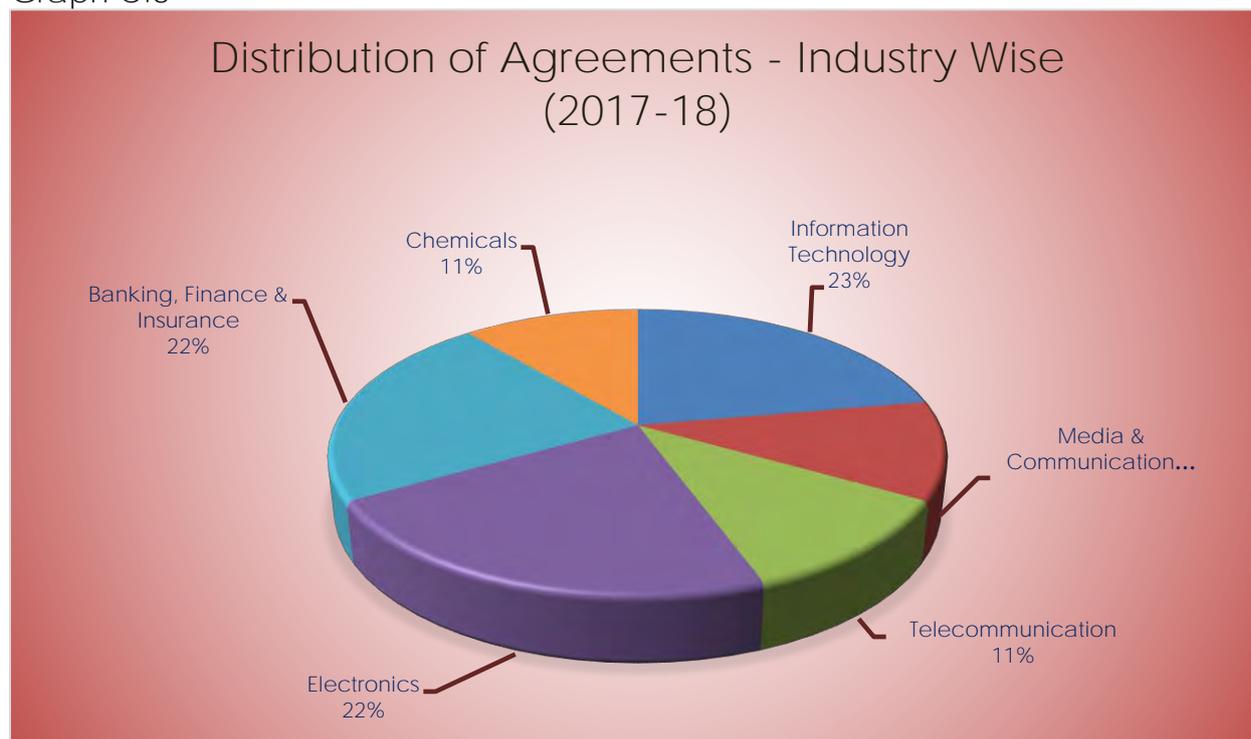
C.8 Distribution of Agreements – Industry-wise

The table and the graph below reveal that there are six broad industry categories that have been covered under bilateral APAs concluded in F.Y 2017-18.

Table C.8

Sl. No.	Industry	No. of Agreements Signed
1	Electronics	2
2	Banking, Finance & Insurance	2
3	Information Technology	2
4	Chemicals	1
5	Media & Communication	1
6	Telecommunication	1
Total		9

Graph C.8



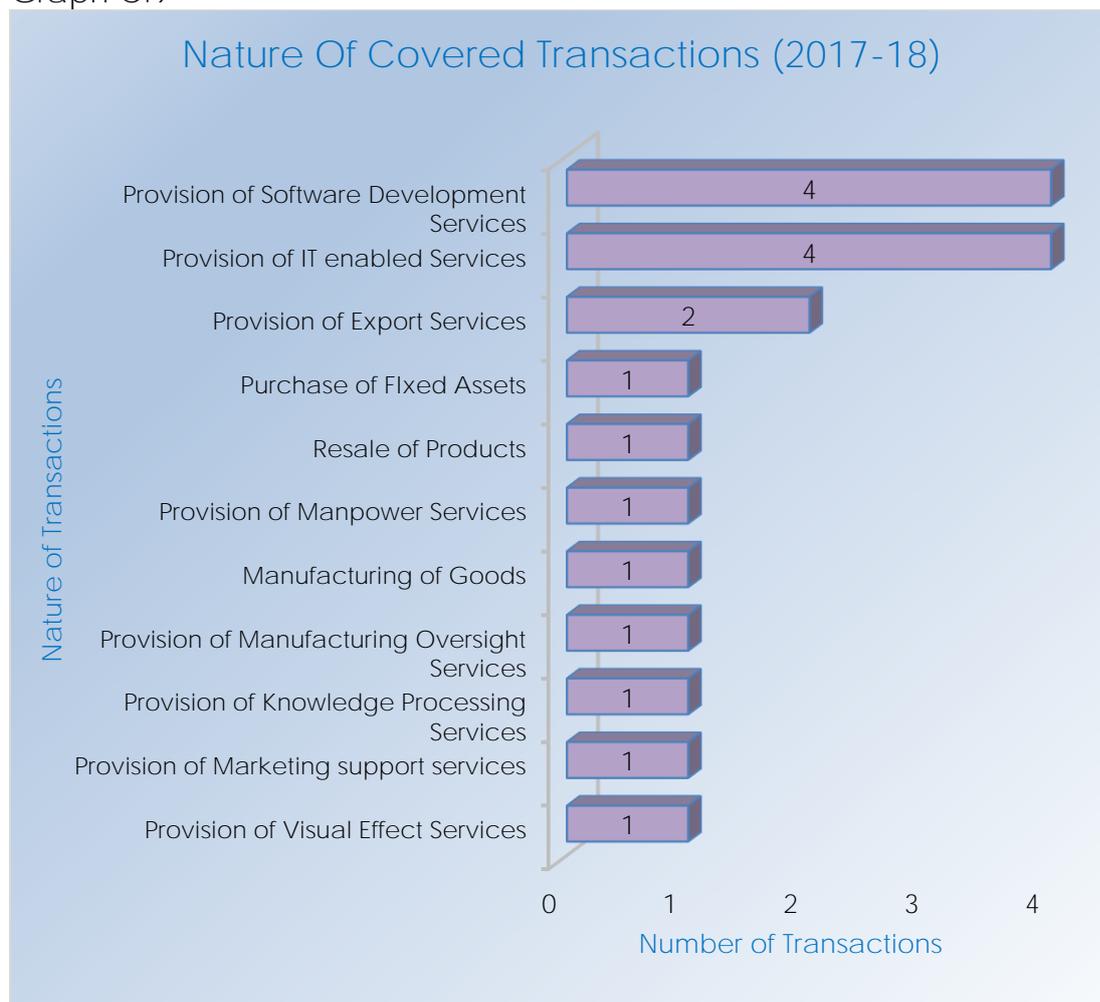
C.9 Nature of Covered Transactions

During F.Y 2017-18, the 9 BAPAs entered into had the following covered international transactions. As can be seen, service transactions have an overwhelming dominance in the transaction mix.

Table C.9

Sl. No.	Nature of the Transaction	No. of Transactions
1	Provision of Software Development Services	4
2	Provision of IT enabled Services	4
3	Provision of Export Services	2
4	Purchase of Fixed Assets	1
5	Resale of Products	1
6	Provision of Manpower Services	1
7	Manufacturing of Goods	1
8	Provision of Manufacturing Oversight Services	1
9	Provision of Knowledge Processing Services	1
10	Provision of Marketing Support Services	1
11	Provision of Visual Effect Services	1
	Total	18

Graph C.9



C.10 Transfer Pricing Methods Adopted

As can be seen from the data below, TNMM has been adopted as the most appropriate TP method in 17 out of the 18 international transactions covered in the 9 bilateral APAs entered into in F.Y 2017-18.

Table C.10

Sl. No.	Transfer Pricing Method	No. of Transactions
1	TNM Method	17
2	CUP Method	1
	Total	18

Graph C.10



CONCLUSION

The Indian APA programme has matured and strengthened over the past six years since its commencement in July, 2012. The number of applications getting filed and 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. In addition, 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. Though this is not the primary objective of the Indian APA programme, it is a positive externality flowing out of from the programme that provides additional and assured revenues to the Government of India, which are being used to fund our developmental goals. It is conservatively estimated that the 219 signed APAs have resulted in additional income of about Rs. 10,000 Crore. This translates to a tax payment of about Rs. 3,000 Crore without getting into any litigation or there being any dispute.

The Indian APA programme is moving ahead at a fair clip even though the number of Agreements entered into in F.Y 2017-18 fell short of what had been achieved in F.Y 2016-17. The reasons for the same have been discussed in the report. 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. The Government is committed to strengthen the programme by providing it with adequate human and physical resources.