

China Advance Pricing Arrangement Annual Report

(2015)




State Administration of Taxation
People's Republic of China

Foreword

2015 is a year of tax reform when countries led by the G20 came together to address international tax issues and bring about solutions through the Base Erosion and Profit Shifting (BEPS) project. 2015 is also a milestone year for China's international taxation. The SAT has taken the initiative to actively engage in the G20 tax reform and global cooperation on BEPS project. During the process, the SAT has voiced China's position, offered China's solution and contributed China's wisdom for international tax policy making.

China's 12th Five-Year Plan has ended on a high note for the SAT in 2015. The overall strategy with three pillar of tax reform, taxation by law, and open-up tax policies, has led the SAT one step closer to achieving updated international taxation within China. It is an integral part of SAT's agenda towards a modernized taxation system in China. First, the SAT has been able to draw on outcomes of international tax reform and improve the international tax regime in China. The release of Administrative Measures on the General Anti-Avoidance Rule(Trial) and Public Notice of the SAT Regarding Certain Enterprise Income Tax Matters on Indirect Transfer of Properties by Non-Tax Resident Enterprises and the translation of final reports of 15 BEPS action plans are just examples of China's involvement in the international tax governance and capacity building. Second, the SAT



has continued to show strong resolve to crack down on cross-border tax evasion and avoidance in order to protect national interest. The SAT was determined to forge a three-pronged tax avoidance prevention and control system with balanced approach for administration, service and investigation. By taking a zero-tolerance stance towards international tax avoidance that leads to profit not taxed in any country, the SAT has pledged to contribute to the building of a fair and modern international tax system. Last but not least, the SAT has endeavored to put in place a professional team by adding more facilities and manpower to international taxation with roles and responsibilities of tax authorities at different levels were further clarified. A cadre of talented tax officials have been selected and trained to be the future leaders of China taxation. Training in other forms has been delivered too.

China's APA program has been running on a steady pace against China's huge volume of foreign investment. With access to the APA program, taxpayers can rely on a more stable business environment and more manageable tax expectations especially in a time of uncertainty caused by the fragile world economy. APAs are arrangements that prevent and eliminate double taxation for taxpayers in order to relieve taxpayers from undue tax burden and foster cross-border trading. This report continues to provide information on relevant tax policies, implementation procedures and development of China's APA program. Statistics on the program was also provided for analytical purposes. The SAT expects the report to help cross-border taxpayers better understand China's investment environment and give them some pointers in how to access the APA program to obtain tax certainty. The general public hopefully can benefit from being more informed of transfer pricing in China too.

WANG Zinfeng

Deputy Commissioner

State Administration of Taxation

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Notes and Executive Summary

This is the seventh APA annual report released by the State Administration of Taxation (“SAT”) to describe the mechanisms, procedures, and implementation of the APA program in China. This report is intended to provide guidance to enterprises interested in entering into APAs with the Chinese tax authority, and to serve as a reference for competent authorities of other countries (regions)^① and the general public to better understand China’s APA program. It does not have legal validity, and therefore should not be regarded as a legal basis for enterprises or the Chinese tax authority to negotiate or conclude an APA.

This report contains data pertaining to period between 1 January 2005 and 31 December 2015.

By 31 December 2015, the cumulative total of APAs signed is 125, 76 unilateral and 49 bilateral.

In 2015, a total of 6 unilateral APAs and 6 bilateral APAs were signed. Most of the unilateral APAs were concluded within 2 years. Of the 6 bilateral APAs signed in 2015, 4 were signed with Korea and 2 were

^① For the purpose of this report, “countries (regions)” include countries and regions with independent tax jurisdiction.



signed with Japan. Most of the APAs signed in 2015 still involve manufacturing industry but we see a further diversification in the types of industries covered.

From 1 January 2005 through 31 December 2015, the Chinese tax authority has received 192 submitted intentions for bilateral APAs in total (of which 49 have been concluded) and 16 countries (regions) have been involved.

Having an accessible APA program in place, the SAT has focused its efforts in building a professional team dedicated to anti-avoidance and boosting work efficiency in 2015. Anti-Avoidance Division II was set up in the beginning of 2015. As the roles and responsibilities of the two anti-avoidance divisions were further clarified, the SAT has taken it up a notch to better serve the taxpayers. The SAT headquarters has 6 people working in areas related to transfer pricing and APA. The staff members are tasked with different responsibilities based on their professional qualifications and expertise. The Anti-Avoidance Division I is in charge of APA requests with related parties residing in Japan and Korea whereas the Anti-Avoidance Division II is handling the rest.

When prioritizing the APA requests, the tax authority normally will consider the following factors:

- a) Overall principle: first come, first served.
- b) The quality of the request submission, e.g. whether all required documents have been submitted, whether sufficient documentation clearly evidencing the transactions throughout the entire value chain or supply chain has been provided, whether the applied transfer pricing method is appropriate, and whether the calculation is correct. Applicant will be required to make additions or revisions to the submission when necessary.
- c) Whether the applicant is in a specific industry or located in a specific region that merits prioritized attention.
- d) For a BAPA request, whether the BAPA partner country (region) has the intention to accept the case and pursue the BAPA will also be an important factor for consideration. Among the four factors, the one the SAT values most is the quality of the submission. A submission that presents innovative application of TP methods or high quality quantitative analysis for intangibles, cost savings or market premiums will merit the SAT's prioritized attention.



I Introduction to China's APA Program

1. Definition

An APA refers to an arrangement whereby an enterprise applies in advance to negotiate and reach agreement with the tax authorities in respect of the transfer pricing methods and corresponding calculation methods to be applied to its related party transactions for future years in accordance with the arm's length principle. An APA covers related party transactions for three to five consecutive years starting from the year subsequent to the year during which the enterprise submits its formal written application.

2. Categorization


An APA may be categorized as unilateral, bilateral or multilateral based on the number of competent authorities involved in the APA.

In a unilateral APA, the enterprise enters into the APA with one country's tax authority. A unilateral APA can only provide certainty to the enterprise's pricing methodologies and calculation process with respect to its related party transactions within one country (region), but cannot ensure the effective avoidance of transfer pricing audits or adjustments from the tax authority of the overseas related party(ies) it transact with. Thus, a unilateral APA cannot prevent international double taxation.

In a bilateral or multilateral APA, the enterprise negotiates and enters into the APA with two or more countries' competent authorities. These authorities will need to reach an agreement with regard to the pricing methodologies and calculation process used in the cross-border related party transactions of the enterprise in question. Bilateral and multilateral APAs can be used to effectively avoid international double taxation and provide certainty regarding the transfer pricing policies of the enterprise.

3. Advantages

An APA is an effective approach to deal with transfer pricing issues and potential transfer pricing disputes



through the collaboration between tax authorities and an enterprise. An APA between the tax authority (ies) and the enterprise(s) is binding on all parties. The enterprise shall proactively conform to all the provisions and requirements of the arrangement, while tax authority(ies) shall monitor the implementation of the agreement.

An APA is a voluntary agreement conducted on the basis of equality and mutual trust. It serves as an effective mechanism to enhance understanding, strengthen collaboration, and mitigate disputes between enterprises and tax authorities. APAs have the following benefits:

- (1) Provide certainty for tax authorities and enterprises in regards to transfer pricing issues for future years, and hence will offer certainty with regard to taxpayers' operations and relevant tax obligations and provide tax authorities with an expectation of steady tax revenue inflows;
- (2) Reduce tax authorities' costs related to transfer pricing administration and audit as well as enterprises' tax compliance costs by mitigating the risk of a transfer pricing audit;
- (3) Improve the quality of tax compliance services provided by the tax authorities, facilitate the balanced development of administration and service, and assure taxpayers of the relevant rights and benefits.

Bilateral and multilateral APAs can also provide the following advantages:

- (1) Facilitate communication and collaboration among the competent tax authorities of different jurisdictions;
- (2) Help enterprises avoid transfer pricing adjustments as well as double taxation risks in two (for bilateral APA) or more (for multilateral APA) tax jurisdictions.

II Legislation and Practice Development of China's APA

1. History


China began using APAs on a trial basis in the late 1990s. In 1998, an APA was included as one of “other reasonable methods of transfer pricing adjustments” in Article 28 of “The Regulation on the Taxation of Transactions between Related Parties (Trial)”^① (Guo Shui Fa [1998] No. 59). In 1998, the first unilateral APA was reached between the tax authority and an enterprise.

In 2002, the APA program was formally introduced in Article 53 of “The Implementation Rules of the Tax Collection and Administration Law of the People’s Republic of China”^② (Guo Wu Yuan Ling No. 362), and APAs were elevated from an adjustment method to a program.

In 2004, the SAT promulgated “Implementation Rules on Advance Pricing Arrangements for Transactions between Related Parties (Trial Version)” (Guo Shui Fa [2004] No. 118), which provides details of the APA program and specific procedures such as negotiation and conclusion procedures, requirements, follow-up execution and monitoring, as well as guidance on APA administration in China. Such a step further regulated the administration of China’s APA program. From 1998 to 2004, a number of local Chinese tax authorities have attempted to negotiate and conclude several unilateral APAs with taxpayers on a trial basis. However, due to the absence of nationwide standardized and clearly defined implementation guidance, overly-simplified APA articles, insufficient functional and risk analysis and inadequate comparability analysis were found to be prevalent in APAs concluded during the period. For this reason, this report does not contain statistics on APAs concluded during this period.

① Article 28: Transfer Pricing Adjustment Methods for Purchases and Sales of Tangible Assets: ... (IV) Other appropriate methods: If none of the first three methods are applicable, the tax authorities can choose other reasonable methods, such as “profit-comparison method” “profit-split method” and “net profit method”, among others. The enterprise can also adopt an “advance pricing arrangement” after applying for and obtaining approval from the tax bureau in charge...

② Article 53: The taxpayer may propose a pricing principle and calculation method to the in-charge tax authority concerning the transactions between them and associated enterprises. The in-charge tax authority shall examine, verify and decide whether to approve the proposal. If approval is given, an advance agreement shall be reached with the taxpayer concerning pricing related matters and the tax authority shall supervise the implementation.



In order to standardize and ensure consistency of China's APA administration across the country, the SAT has implemented rules for APA monitoring and administration since 2005 requiring the local tax authorities to submit the draft unilateral agreement to the SAT for review and approval before its conclusion. Meanwhile, local tax authorities are required to steadily promote APA programs and strictly conform to the relevant regulations to improve the administration of the APA program. The program has since entered into a well-regulated time. In April 2005, Japan and China concluded China's first bilateral APA. Subsequently, China reached bilateral APAs with the United States, the Republic of Korea, and other countries. From 2005 to 2008, the Chinese tax authorities concluded 41 APAs, including 36 unilateral and 5 bilateral APAs.

At the beginning of 2009, Guo Shui Fa [2009] No. 2 "Implementation Measures of Special Tax Adjustments (Trial Version)" ("the Measures") was promulgated to facilitate the implementation of the Corporate Income Tax Law of the People's Republic of China and its Implementation Regulations. Chapter Six of the Measures provides more detailed rules and implementation guidance on China's APA program.

In 2009, China's bilateral APA program started to experience rapid growth with 12 APAs (including 5 unilateral and 7 bilateral) being signed.


In 2010, the Chinese tax authorities signed 8 APAs in total, including 4 unilateral APAs and 4 bilateral APAs.

In 2011, the Chinese tax authorities signed 12 APAs in total, including 8 unilateral APAs and 4 bilateral APAs.

In 2012, the Chinese tax authorities signed 12 APAs in total, including 3 unilateral APAs and 9 bilateral APAs.

In 2013, the Chinese tax authorities signed 19 APAs in total, including 11 unilateral APAs and 8 bilateral APAs.

In 2014, the Chinese tax authorities signed 9 APAs in total, including 3 unilateral APAs and 6 bilateral APAs.



In 2015, the Chinese tax authorities signed 12 APAs in total, including 6 unilateral APAs and 6 bilateral APAs.

From 1 January 2005 to 31 December 2015, the Chinese tax authority has received 192 submitted intentions for bilateral APAs in total (of which 49 have been concluded). The countries (regions) involved added up to 16.

2. Existing Legal Basis

The legal basis and relevant laws, regulations and implementation rules governing APAs primarily include the following:

- (1) The relevant clauses in the agreements for the avoidance of double taxation (the “treaty”, “agreement” or “arrangement”) between the government of China and the government of the corresponding country (region);
- (2) Article 42 of the Corporate Income Tax Law of the People’s Republic of China;
- (3) Article 113 of the Implementation Regulations of the Corporate Income Tax Law of the People’s Republic of China;
- (4) Article 53 of the Implementation Regulations of the Administration of Tax Collection and Administration Law of the People’s Republic of China;
- (5) Chapter 6 and other related provisions of the Implementation Measures of Special Tax Adjustments (Trial Version) (Guo Shui Fa (2009) No. 2).

III APA Procedures

1. Prerequisites to an APA Application

In general, an enterprise that has met all three following criteria may apply for an APA:

(1) The annual amount of related party transactions exceeds RMB 40 million. The types of related party transactions include the following:

- Purchase, sale, transfer and use of tangible assets;
- Transfer or use of intangible assets;
- Financing transactions; and
- Provision of services.

(2) The enterprise has complied with the related party disclosure requirements according to the law.

The taxpayer should submit the “Annual Reporting Forms for Related-Party Dealings of Enterprises of the People’s Republic of China” with the annual Corporate Income Tax return to the tax authority within 5 months of the year following the year of related-party transactions.

(3) The enterprise has prepared, maintained and provided contemporaneous documentation in accordance with the requirements of Guo Shui Fa [2009] No. 2.

The taxpayer shall prepare, maintain, and, upon request by tax authorities, submit contemporaneous documentation regarding its related party transactions for each tax year. The contemporaneous documentation includes the enterprise’s organizational structure, business operations, related party transactions, comparability analysis and selection and application of the transfer pricing method.

The process of applying for and negotiating an APA requires substantial commitment of resources from both the tax authority and the enterprise. In order to use its limited resources more effectively and enhance efficiency, the Chinese tax authority in practice will give priority to APA applications made by the following



types of enterprises:

- (1) Enterprises which have provided sufficient and complete information, actively cooperate with the tax authority's examination and evaluation, and proactively submit a reasonable APA proposal;
- (2) Enterprises which have been investigated by the tax authorities for their transfer pricing policies.

In China, enterprises are not required to pay an application fee to the tax authority in order to apply for an APA.

2. APA Process and Implementation

The APA application and administration process involves the following six stages:

- (1) Pre-filing meeting
- (2) Formal application
- (3) Examination and evaluation
- (4) Negotiation
- (5) Signing
- (6) Implementation and monitoring

The following chart illustrates the process:

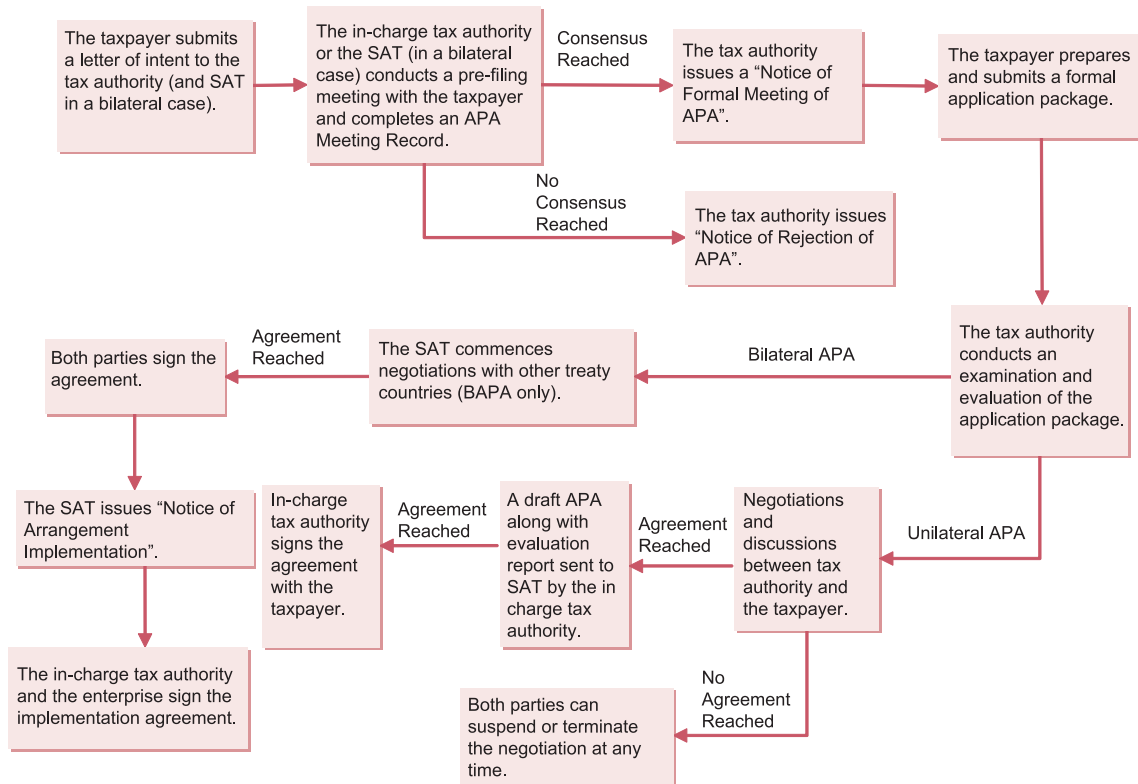


Chart 3-1 The APA Process

A. Pre-filing Meeting

Prior to the formal application for an APA, the enterprise should submit a letter of intent (“LOI”) to apply for an APA to the tax authority. When applying for a bilateral (or multilateral) APA, the enterprise must submit LOIs to both the SAT and the in-charge local tax authority.

The in-charge tax authority (or the SAT in the case of a bilateral or multilateral APA), may conduct a pre-filing meeting with the enterprise to discuss relevant matters and the feasibility of reaching an APA, and complete

an “APA Meeting Record” (see Appendix I). During the pre-filing meeting, the tax authority will discuss with the enterprise based on the type of the APA application.

(1) Topics for the pre-filing meeting

If the enterprise applies for a unilateral APA, the following topics will generally be discussed in the pre-filing meeting:

- a. Years to be covered under the arrangement;
- b. Related parties involved and related party transactions to be covered under the arrangement;
- c. Overview of the enterprise’s business operations in prior and future years;
- d. Functional and risk profiles of related parties involved in the APA application;
- e. Whether the methodology in the arrangement would be applied to resolve transfer pricing issues in prior years; and
- f. Any other situations requiring explanation.

If the enterprise applies for a bilateral APA or multilateral APA, the following areas shall be discussed in addition to the items above:

- a. Any request by the enterprise for a pre-filing meeting with relevant competent tax authority or authorities involved in the APA;
- b. Over view of business operations of related parties involved in the APA and their related party transactions in prior years; and
- c. The transfer pricing methodology and calculation method of the APA proposed to the relevant competent tax authority or authorities involved in the APA.

(2) Form of the pre-filing meeting and follow-up matters

The pre-filing meeting can be held anonymously.

If the two parties form a consensus after the pre-filing meeting, the tax authority will issue the “Notice of Formal Meeting of the APA” (see Appendix II) to the enterprise, and inform the enterprise to

submit the formal application. If the pre-filing meeting does not lead to a consensus, the tax authority will issue the “Notice of Rejection of Enterprise’s Application for APA” (see Appendix III) to the enterprise along with rejection reasons.

The tax authority will consider the following factors when making a decision as to whether to prioritize an APA requestor not:


- a. Overall principle: first come, first served;
- b. The quality of the request submission, e.g. whether all required documents have been submitted, whether the transfer pricing method applied is appropriate, and whether the calculation is correct. Applying taxpayers will be required to make additions or revisions to the submission when necessary;
- c. Whether the applying taxpayer is in a specific industry or located in a specific region that merits prioritized attention;
- d. For a BAPA request, whether the BAPA partner country has the intention to accept the case and pursue the BAPA will also be an important factor for consideration.

B. Formal Application

The enterprise shall submit the written application package to the tax authority within three months upon receipt of the “Notice of Formal Meeting of the APA” (see Appendix IV), and submit the “Formal Application Letter for APA” to the tax authority. For a bilateral or multilateral APA, the enterprise shall submit the “Formal Application Letter for APA” and the “Application to Initiate Mutual Agreement Procedures” (see Appendix V) to both the SAT and the in-charge local tax authority.

The written application package of an APA should include the following:

- (1) Descriptions of relevant group structure, internal organizational structure of the enterprise, related party(ies), and related party transactions;
- (2) Financial and accounting reports of the enterprise for the most recent three years, and information on product performance and assets (including intangible and tangible assets);

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- (3) Types of relevant related party transactions and tax years to be covered by the APA;
 - (4) Allocation of functions and risks among related parties, including the allocation criteria used such as entities involved, personnel, expenses, assets, etc.;
 - (5) Proposed transfer pricing methodology and calculation method in the APA, and the functional and risk analysis, comparability analysis and assumptions used for supporting such methodology and method;
 - (6) Description for market conditions, including industry development trends and competitive environment;
 - (7) Annual information on business scale, business performance forecasts and business plans for the period covered by the APA;
 - (8) Information regarding related party transactions in relevance, business arrangements and financial results such as profit levels, etc., involved in the arrangement;
 - (9) Whether there are double taxation issues; and
 - (10) Relevant issues in relation to domestic and international laws and tax treaties.

Enterprises may apply for an extension to tax authorities relating to the submission of the formal written application package and submit the “Application for Extension of Submitting the Formal Application for APA” (see Appendix VI) under the following exceptional circumstances:

- (1) Certain information requires special preparation;
- (2) Certain information requires technical processing, such as translation; and
- (3) Other non-subjective reasons.

The tax authority shall provide a written response to the enterprise and issue the “Reply to Application for Extension of Submitting the Formal Application for APA” (see Appendix VII) to the enterprise. If the tax authority fails to reply within the specified timeframe, it is deemed that the extension has been granted to the enterprise.

When the enterprise applies for a bilateral (or multilateral) APA, the reports it submit to the two (or the

respective) competent authorities should be consistent. If the application report is originally prepared in a foreign language, it should be fully translated into Chinese when submitted to the Chinese tax authorities with no deletions or abridgement. The relevant foreign-language contracts should also be translated into Chinese.

C. Examination and Evaluation

Upon receipt of the formal APA application package and other required documents, the tax authority will evaluate the documents and form a position within five months, and may request additional information from the enterprise during the evaluation process.

The scope of examination and evaluation conducted by the tax authority will mainly cover the following:

- (1) Overview of historical operations;
- (2) Functional and risk profiles;
- (3) Comparable information;
- (4) Critical assumptions;
- (5) Transfer pricing methodology and calculation method; and
- (6) Expected arm's length price or profit range.


If needed, the tax authority will conduct an on-site audit to evaluate the actual operation of the enterprise.

If the evaluations need to be extended due to special factors, the tax authorities should formally inform the enterprise, and issue the "Notice of Extension of Examination and Evaluation of APA" (see Appendix VIII).

The delay should not exceed three months.

D. Negotiation

For unilateral APAs, the tax authority will arrange negotiations and discussions with the enterprise after the tax authority reaches a position following its examination and evaluation process. If both parties can reach



an agreement, the draft APA along with an examination and evaluation report will be submitted to the SAT for review and approval.

For bilateral or multilateral APAs, the SAT will arrange negotiations and discussions with the relevant competent authorities after each competent authority has completed its own review and evaluation process. If all parties agree, a draft APA should be prepared according to the memorandum of negotiation.

A draft APA should include the following:

- (1) Basic information of related parties such as names and addresses;
- (2) Related party transactions and the years to be covered under the arrangement;
- (3) The selected comparable prices or transactions, transfer pricing methodology and calculation methods, and financial projections in the arrangement;
- (4) Definition of technical terms in relation to the transfer pricing applications and calculation basis;
- (5) Critical assumptions;
- (6) Obligations of the enterprise including annual reporting, record keeping, and notifying the tax authorities of changes to the assumptions, etc.;
- (7) Legal force of the arrangement, and confidentiality of documents and information;
- (8) Provisions on mutual responsibilities;
- (9) Revisions of the arrangement;
- (10) Methods and approaches of dispute resolutions;
- (11) Effective date; and
- (12) Appendices.

E. Signing

For a unilateral APA, the legal representatives or representatives authorized by the legal representatives of

both the tax authority and the enterprise officially sign the unilateral APA (see Appendix IX).

For a bilateral or multilateral APA, the representative authorized by the SAT and relevant competent tax authorities of the other tax treaty (agreement or arrangement) party(ies) officially sign the bilateral or multilateral APA, and then according to the signed bilateral or multilateral APA, the in-charge tax authority signs a “Bilateral (Multilateral) APA Implementation Agreement” (see Appendix X) with the legal representative or the representative authorized by the legal representative of the enterprise in accordance with the signed bilateral or multilateral APA.

F. Implementation and Monitoring

The enterprise shall maintain a complete record of relevant documents and information (including accounting records and other relevant records), and shall file an annual compliance report in relation to implementation of the APA to the tax authority within five months after the end of each year.

During the term of the APA, the tax authority shall regularly inspect the enterprise’s compliance. If actual operating results of the enterprise fall outside of the agreed range of prices or profits under the arrangement, the tax authority shall adjust the actual operating results to the agreed prices or profits in accordance with the APA. In the case of a bilateral or multilateral APA, such an adjustment shall be submitted to the SAT for approval.

During the term of the APA, if there are substantial changes that affect the implementation of the APA, the enterprise should report these changes to the tax authority in writing with a detailed explanation regarding the impact of these changes on the implementation of the APA within 30 days.

Based on the review of the enterprise’s operation, the tax authority will discuss with the enterprise and either revise the provisions and relevant conditions of the arrangement or terminate the arrangement, depending on the impact of the changes on the implementation of the APA.

3. Rollback

Negotiation and signing of the APA does not affect the tax authorities’ right to conduct transfer pricing audits and make adjustments on the enterprise’s related party transactions in the year during which the



enterprise submits its formal written application or any prior year.

If the related party transactions in the year of application or any prior year are the same as or similar to those covered in the APA, depending on the enterprise's application, the transfer pricing methodology and calculation method specified in the APA can be applied to the evaluation and adjustment of the related party transactions in the year of application or any prior year upon the tax authorities' approval.

The rollback stipulation has the advantage of resolving potential transfer pricing issues of many years through the APA application process. Subject to the relevant provisions for transfer pricing investigations, the longest rollback period for an APA is 10 years.

4. Renewal

If the enterprise wants the APA to be renewed when it expires, it can file an application for renewal 90 days prior to the expiration of the APA to the tax authority, by submitting the "APA Renewal Application" (see Appendix XI). This application should also include reliable supporting evidence to confirm that there have been no substantial changes to the facts and conditions in the existing APA and that the enterprise has been in full compliance with the provisions and requirements of the existing APA.


Upon receiving the application for renewal, the tax authority will issue a "Reply Letter on the APA Renewal Application" (see Appendix XII) to the enterprise. The tax authority will subsequently review and evaluate the application documents, and negotiate with the enterprise to draft the new APA and complete the renewal process.

During the term of the APA, if the enterprise's overall profit level stays below the median most of the time, where an interquartile range is applied, the tax authority may not accept an application for renewal of the APA.

5. Termination or Cancellation

An APA may be terminated or cancelled under any one of the following conditions:

- (1) In case of any dispute between the in-charge tax authority and the enterprise during the term of the APA, if the dispute cannot be resolved after negotiation and discussion, it can be reported to the tax authority at the next higher level (or the SAT when a bilateral or multilateral APA is concerned) for mediation. The APA shall be terminated if the outcome of the consultation or determination of the



tax authority at the next higher level or the SAT is not acceptable to the enterprise;

- (2) If there are substantial changes regarding the critical assumptions in the APA or the core business of the enterprise, the tax authorities may terminate the implementation of the APA , taking into consideration of the specific circumstances of the case.
- (3) During the term of the APA , if the tax authority discovers that the enterprise withholds truth or refuses to implement the APA, the APA shall be cancelled, i.e. be regarded as void ab initio.



IV Protection of Taxpayers' Rights

1. Confidentiality of Taxpayers' Information

The enterprise may conduct pre-filing meetings with the tax authority to discuss relevant matters and the possibility of reaching an APA on an anonymous basis.

Both tax authorities and the enterprise have the duty to keep confidential all information obtained during the whole process of the APA including pre-filing meeting, formal negotiation, examination and analysis, among others.

2. Taxpayers' Freedom of Contract

After formal negotiation and before signing of the APA, both the tax authority and the enterprise can suspend or terminate the negotiation.

In case where the tax authority and the enterprise fail to reach an agreement for an APA, the non-factual information of the enterprise such as various suggestions, inferences, ideas and conclusions obtained by the tax authority during discussions and negotiations shall not be used in future tax investigations of the transactions covered by the proposed APA.

In case of any disputes between the tax authority and the enterprise during the term of the APA, both parties shall try to resolve the dispute through negotiations and discussions. If the conclusion of the negotiation or mediation by the tax authority at the next higher level / the SAT is not acceptable to the enterprise, the APA shall be terminated.

If the enterprise wishes to renew the APA, it shall file an application for renewal to the tax authority 90 days prior to the expiration of the APA.

V Statistics

1. APAs Signed by Year

Exhibit 5-1 summarizes the number of unilateral and bilateral APAs that the Chinese tax authorities signed during each of the 2005 to 2015 calendar years.

Exhibit 5-1 APAs Signed by Year (as of 31 December 2015)				
Year	Unilateral	Bilateral	Multilateral	Total
2005	13	1	0	14
2006	10	0	0	10
2007	7	3	0	10
2008	6	1	0	7
2009	5	7	0	12
2010	4	4	0	8
2011	8	4	0	12
(Renewals in 2011)	(4)	(0)	(0)	(4)
2012	3	9	0	12
(Renewals in 2012)	(1)	(6)	(0)	(7)
2013	11	8	0	19
(Renewals in 2013)	(0)	(4)	(0)	(4)
2014	3	6	0	9
(Renewals in 2014)	(1)	(0)	(0)	(1)
2015	6	6	0	12
(Renewals in 2015)	(0)	(2)	(0)	(2)
Total	76	49	0	125

China has signed 76 unilateral APAs and 49 bilateral APAs during this 11 year period, accounting for 60.8% and 39.2% of the total number of APAs in China respectively. So far China has not signed any multilateral APA.

The chart below compares the number of unilateral APAs and bilateral APAs signed 2005 through 2015.

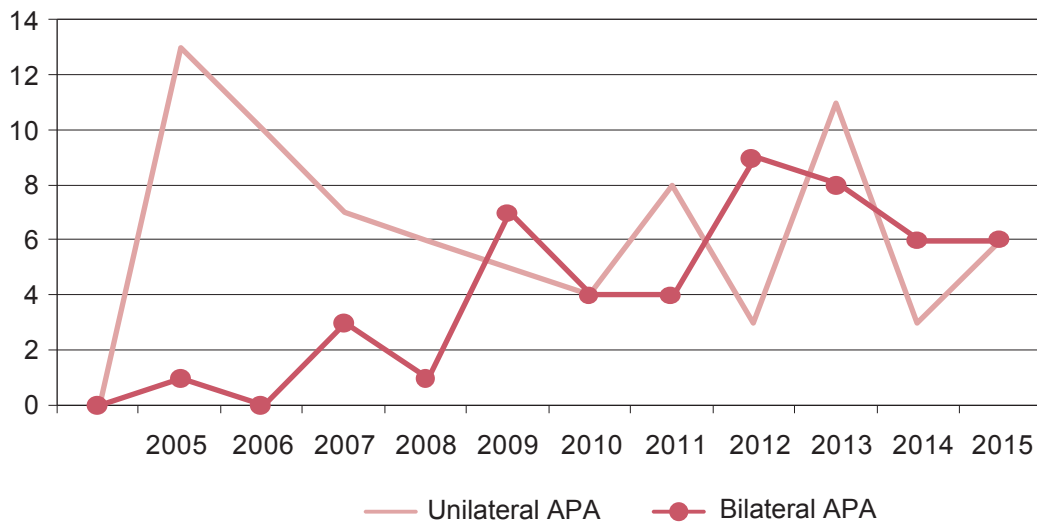


Chart 5-1 Number of APAs Signed 2005-2015


As shown in the chart above, the number of APAs signed each year has fluctuated from 2010 to 2015. Of the 6 bilateral APAs signed in 2015, 4 were signed for the first time and 2 was renewal whereas all 6 unilateral APAs were first-time signatures. Altogether there were 12 APAs signed in 2015.

2. APAs by Phase

Exhibit 5-2 provides statistics of APAs by phase as of 31 December 2015.

Exhibit 5-2		APAs by Phase (as of 31 December 2015)		
Phases		Unilateral	Bilateral	Total
Pre-Acceptance	Proposal / letter of intent	3	70	73
	Pre-filing meeting	1	31	32
	Subtotal	4	101	105
Accepted Applications	Examination and evaluation ^①	1	21	22
	Negotiation	3	19	22
	Subtotal	4	40	44
Concluded APAs	Agreed but not signed	1	2	3
	Executed and monitored	19	22	41
	Expired	57	27	84
	Subtotal	77	51	128
Total		85	192	277

① There is a “Formal Application” phase that is not listed in this table since the tax authority’s acceptance of the formal application should be regarded as the start of the examination and evaluation phase. The first meeting between the tax authority and enterprise in a unilateral APA or between the competent authorities in a bilateral or multilateral APA should be regarded as the start of the negotiation phase and the end of the examination and evaluation phase.



The “Accepted Applications” category, as displayed in Exhibit 5-2, refers to the submitted APA applications which the tax authorities have accepted but have not yet achieved an agreement with the taxpayer upon. Applications falling under this category are either in the phase of examination and evaluation or negotiation. The other main category, “Concluded APAs”, includes APAs which agreements have been achieved upon but have not been signed, APAs which are being executed and monitored, and APAs that have expired. China currently has 77 unilateral APAs in the “Concluded Applications” category, of which 1 are yet to be signed, 57 have expired and 19 are in effect. There are only 4 unilateral APAs in the “Accepted Applications” category, and 3 in the proposal phase. Regarding bilateral APAs, 51 have been concluded, of which 2 are yet to be signed, 27 have expired, and the remaining 22 are in effect. There are 40 accepted bilateral APA applications, including 21 under examination and evaluation and 19 under negotiation. In addition, 31 taxpayers have had their first pre-filing meetings with the Chinese tax authority, and 70 have submitted their intentions for a bilateral APA and are waiting in line for their first pre-filing meeting with the tax authority to be arranged.

Exhibit 5-2 shows more bilateral APAs than unilateral APAs. Further analysis indicates that most of the unilateral APAs are either expired (67.1%) or in effect (22.4%), whereas most of the bilateral APAs are in the “Pre-Acceptance” phase (52.6%) with the rest being in either “Accepted Applications” (20.8%) or “Concluded APAs” (26.6%) category. The above figures suggest that more and more enterprises prefer to apply for bilateral APA to gain certainty and avoid double taxation. They also demonstrate that increasing scrutiny in accepting and concluding bilateral APA applications is expected as more requests have been turned in for acceptance. As the Chinese tax authority aims to improve the quality of the APA examination work by steadily developing the APA program, extra care has been devoted to pre-filing examination. Hence many APA applications will stay in the pre-acceptance stage pending thorough examination.

3. APAs by Transaction Type

Exhibit 5-3 below illustrates the types of transactions involved in the accepted and concluded APAs as of 31 December 2015.^①

Exhibit 5-3 APA by Transaction Type (as of 31 December 2015)				
Transaction Type	Accepted Applications		Concluded APAs	
	Number of APAs	Percentage	Number of APAs	Percentage
Purchase and sale of tangible assets	28	40.6%	110	65.9%
Transfer or use of intangible assets	24	34.8%	26	15.6%
Provision of services	17	24.6%	31	18.5%
Financing	0	0	0	0
Total	69	100%	167	100%

As shown in Exhibit 5-3, purchase and sale of tangible assets accounts for the largest portion of transactions covered by China's APA program. Of the concluded APAs, 65.9% involve purchase and sale of tangible assets, 15.6% involve transfer or use of intangible assets, and 18.5% involve provision of services. Of the accepted applications, 40.6% involve purchase and sale of tangible assets, still accounting for the largest proportion of accepted applications but lower than the proportion of concluded APAs accounted for by this type of transaction. The proportions of accepted APAs accounted for by transactions involving transfer or use of intangible assets and provision of services have both increased in recent years, with the combined

^① As some APAs involve multiple transaction types, the total number of related party transactions is greater than the number of APAs.

proportion reaching 59.4%. These statistics indicate that most of the enterprises applied for APAs are manufacturing companies which are mainly involved in intercompany purchase and sale of tangible assets. However, based on the number of accepted applications and concluded APAs, it is anticipated that the number of APAs involving other types of transactions will increase in the future. As China's tertiary industry develops, an increasing number of service companies may decide to apply for APAs. Thus, more APAs may involve transactions related to transfer or use of intangible assets, services and financing.

4. Bilateral APAs by Region

From 2005 to 2015, China has signed 34 bilateral APAs with Asian countries, 9 with European countries and 6 with North American countries. The following chart displays the percentage of bilateral APAs accounted for by each of these regions.

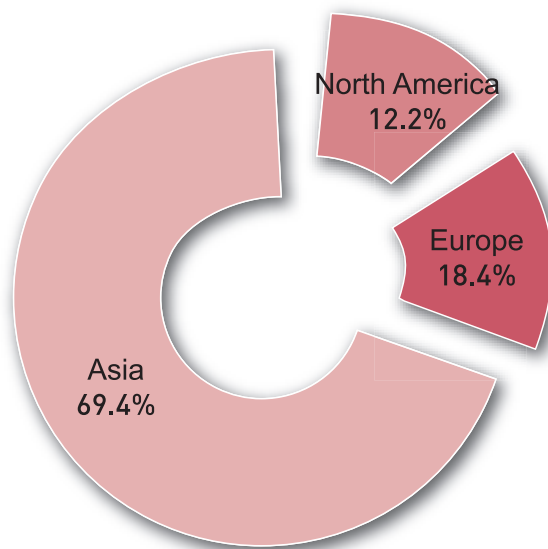


Chart 5-2 Bilateral APAs by Region (as of 31 December 2015)

5. APAs by Time Taken

Exhibit 5-4 illustrates the time taken to conclude unilateral and bilateral APAs signed by China in 2015.

Exhibit 5-4 APAs (2015) by Time Taken					
Type	from Application to Conclusion				Total
	< 1 year	1-2 years	2-3 years	> 3 years	
Unilateral	5	1	0	0	6
Bilateral	0	1	2	3	6

As shown in Exhibit 5-4, all unilateral APAs signed in 2015 were concluded within 2 years, whereas 50% of bilateral APAs signed in 2015 were concluded within 3 years.

Exhibit 5-5 illustrates the time taken for the unilateral and bilateral APAs to be signed by China from 2005 to 2015.

Exhibit 5-5 APAs (from 2005 to 2015) by Time Taken					
Type	from Application to Conclusion				Total
	< 1 year	1-2 years	2-3 years	> 3 years	
Unilateral	43	19	3	1	76
Bilateral	24	8	8	9	49

As shown in Exhibit 5-5, 56.6% of China's unilateral APAs were concluded within 1 year, 38.2% were concluded within 1 to 2 years while 5.2% took more than 2 years. While bilateral APAs generally took more time, 49% were concluded within 1 year, 16.3% took 1 to 2 years, 16.3% took 2 to 3 years, and the remaining 18.4% were concluded in more than 3 years.

The time required to complete the entire APA process depends on many factors including the type of APA requested (i.e. unilateral, bilateral, or multilateral), the complexity of transactions involved, the quality of the

documents provided by the taxpayer, the logistics of the review process performed by competent authorities.

The Chinese tax authorities generally aim to complete the review and negotiation process within 12 months for unilateral APAs and within 24 months for bilateral APAs. Bilateral APAs involve negotiations with relevant competent authorities through the MAP process and therefore more time is required to reach a consensus on them than that of unilateral APAs.

6. APAs by Transfer Pricing Method

The chart below shows the transfer pricing methods applied in the unilateral and bilateral APAs signed from 2005 to 2015.^①

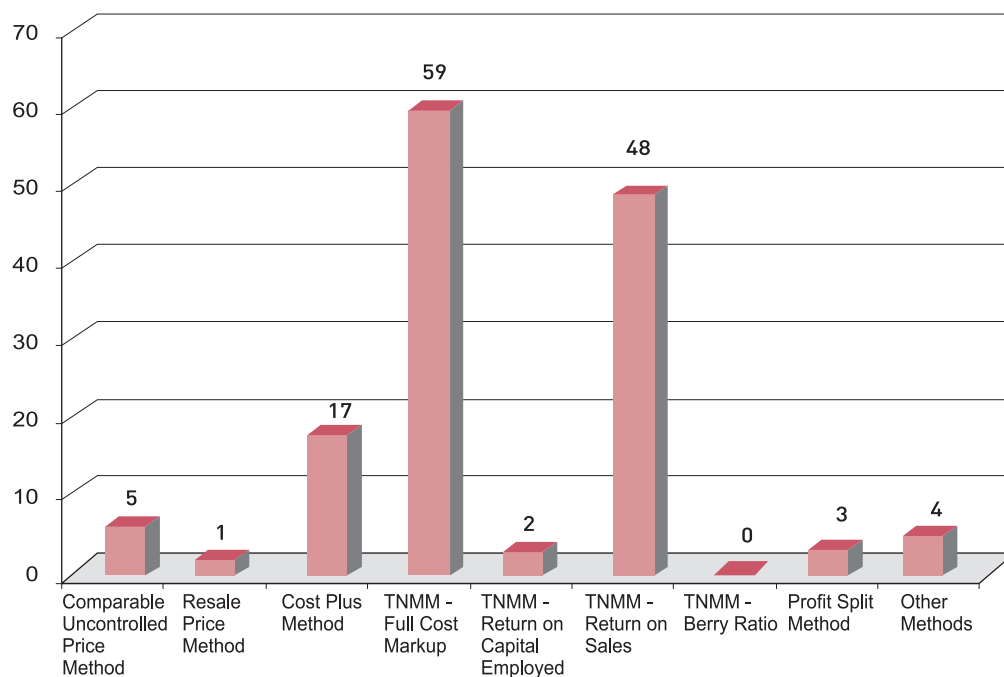


Chart 5-3 Transfer Pricing Methods Applied in APAs Signed from 2005 to 2015

^① Some APAs involve two or more types of transactions and multiple transfer pricing methods may be used.

The data indicates that the transactional net margin method (TNMM) is the most commonly used transfer pricing method, being used 109 times and accounting for 78.4% of all the applied transfer pricing methods. The most commonly used profit level indicators are the Return on Sales ratio (used in 48 APAs) and the Full Cost Mark-up ratio (used in 59 APAs). TNMM has been the most frequently used method for the past few years. Meanwhile, the SAT and local tax administrations have been exploring the use of other appropriate transfer pricing methods including profit split method especially in dealing with transactions where both transacted parties have made significant contributions to the value creation or location specific advantages such as market premium or cost savings have been present.

The second most popular transfer pricing method is the cost plus method, being used in 17 of the concluded APAs. The other transfer pricing methods are applied less frequently. The comparable uncontrolled price (CUP) method is used in 5 cases, the resale price method in 1 case, the profit split method in 3 cases and other methods in the other 4 signed APAs. As the CUP method requires a very high standard of comparability for application and the resale price method and profit split method require a heavy amount of information regarding the transaction and pricing, these methods tend to be applied less frequently in practice. The Chinese tax authorities hope that enterprises will better cooperate with tax officers during the APA review and evaluation phase and provide sufficient information regarding transactions and prices so that the resale price method and the profit split method may be more frequently applied in the APA program.

7. Industries covered by signed APAs

Exhibit 5-6 illustrates the industries covered by the unilateral and bilateral APAs signed by China from 2005 to 2015. There is a further diversification in the types of industries covered, yet 83.2% of the APAs signed from 2005 to 2015 still involve manufacturing industry.

Exhibit 5-6 Industries Covered (for APAs signed 2005-2015)	
Industry Involved	Number
Manufacturing	104
Commercial Services	5



(Continued)

Industry Involved	Number
Wholesale trade and retail	9
Transportation, warehousing, and postal services	2
Scientific and technical services	2
Information transmission, software and information technology services	2
Electricity, thermo, gas and water generation and supply	1
Total	125

VI SAT Contacts (by province) for APA Requests

SAT Contacts (by province) for APA Requests

	Name	Telephone	Address
SAT Headquarters	LI Hanli	010-63417926	No. 5 Yangfangdian Xilu, Haidian District, Beijing, 100038
Beijing Municipal Office, SAT	LI Ronghua	010-60907251	No.72(A) Tiantan Donglu, Dongcheng District, Beijing, 100036
Beijing Local Taxation Bureau	LI Xiang	010-68036577	No.8 Chengongzhuangxi Street, Xicheng District, Beijing, 100044
Tianjin Municipal Office, SAT	DU Huaying	022-24465656	No.16 Minzhu Street, Hebei District, Tianjin, 300010
Tianjin Local Taxation Bureau	GUO Zhiguo	022-23303740-2504	No. 4 Qufu Street, Heping District, Tianjin, 300070
Hebei Provincial Office, SAT	YIN Zhijun	0311-88625325	No.35 Pingannan Street, Shijiazhuang, Hebei, 050011
Hebei Local Taxation Bureau	ZHANG Lun	0311-88626607	No.32 Pingannan Street, Shijiazhuang, Hebei, 050000
Shanxi Provincial Office, SAT	ZHANG Jianhong	0351-2387454	No. 31 Shuiximen Street, Taiyuan, Shanxi, 030002
Shanxi Local Taxation Bureau	YANG Fan	0351-4052562	No.23 Shuiximen Street, Taiyuan, Shanxi, 030002
Inner Mongolia Autonomous Region Office, SAT	SUI Hongfeng	0471-3309386	Taolidong Street, Jinqiao Development Zone, Huhehaote, Inner Mongolia, 010020
Inner Mongolia Autonomous Region Local Taxation Bureau	LIU Lihua	0471-4343221	Zhaowuda Road, Saihan District, Huhehaote, Inner Mongolia, 010020
Liaoning Provincial Office, SAT	LIU Wei	024-23185040	No.256 Qingnian Street, Shenhe District, Shenyang, Liaoning, 110016
Liaoning Local Taxation Bureau	ZHANG Yang	024-23291135	No.162 Hepingbei Street, Heping District, Shenyang, Liaoning, 110001
Jilin Provincial Office, SAT	QIAN Jin	0431-88994709	No.358 Changchun Street, Changchun, Jilin, 130042

(Continued)

	Name	Telephone	Address
Jilin Local Taxation Bureau	XIE Jun	0431-85225313	No.1518 Nanhu Street, Changchun, Jilin, 130022
Heilongjiang Provincial Office, SAT	DENG Liming	0451-53611057	No.190 Dongdazhi Street, Nangang District, Haerbin, Heilongjiang, 150001
Heilongjiang Local Taxation Bureau	YANG Liwei	0451-53602443	No.19 Anshan Street, Nangang District, Haerbin, Heilongjiang, 150001
Shanghai Municipal Office, SAT; Shanghai Local Taxation Bureau	XIE Tian	021-54679568	No.800 Zhaojiabang Road, Shanghai, 200030
Jiangsu Provincial Office, SAT	YE Rong	0512-69829359	No.188 Yangyu Xiang, Suzhou, Jiangsu, 215000
Jiangsu Local Taxation Bureau	JIANG Hao	025-83633402	Room 2215, No.63 Beijingxi Road, Nanjing, Jiangsu, 210024
Zhejiang Provincial Office, SAT	WANG Zhen	0571-85270907	No.5 Huazhe Square, Hangzhou, Zhejiang, 310006
Zhejiang Local Taxation Bureau	GAO Yuan	0571-87668793	No.1 Tihuaner Road, Xihu District, Hangzhou, Zhejiang, 310009
Anhui Provincial Office, SAT	SHENG Hengbing	0551-62831797	No.11 Yonghong Road, Luyang District, Hefei, Anhui, 230061
Anhui Local Taxation Bureau	WU Haosu	0551-65100841	No.109 Mengcheng Road, Hefei, Anhui, 230061
Fujian Provincial Office, SAT	GUO Yifang	0596-2881721	No.47 Shuixian Street, Xiangcheng District, Zhangzhou, Fujian
Fujian Local Taxation Bureau	Li Xin	0591-87767300	No.62 Tongpan Road, Fuzhou, Fujian, 350003
Jiangxi Provincial Office, SAT	ZHOU Yingqiong	0791-86202700	No.399 Guangchangnan Road, Nanchang, Jiangxi, 330003
Jiangxi Local Taxation Bureau	XIONG Junwen	0791-86426702	No.159 Zhanqianxi Road, Nanchang, Jiangxi, 330002
Shandong Provincial Office, SAT	ZHOU Shenghai	0531-85656693	No.155 Yingxiongshan Road, Jinan, Shandong, 250002
Shandong Local Taxation Bureau	BING Jie	0531-82613922	No.5 Jida Road, Shizhong District, Jinan, Shandong, 250002
Henan Provincial Office, SAT	DU Zhonghua	0371-66767183	No.111 Fengchan Road, Zhengzhou, Henan, 450008

(Continued)

	Name	Telephone	Address
Henan Local Taxation Bureau	YANG Liyun	0371-65806369	No.3 Nongye Road East, Zhengzhou, Henan, 450008
Hubei Provincial Office, SAT	HUANG Haiyan	027-87322256	No.231 Yaojialing, Wuchang District, Wuhan, Hubei, 430071
Hubei Local Taxation Bureau	ZHANG Libin	027-87328896	No.101 Donghu Road, Wuchang District, Wuhan, Hubei, 430071
Hunan Provincial Office, SAT	ZHOU Zhiyong	0731-85525533	No.460 Laodongxi Road, Changsha, Hunan, 410007
Hunan Local Taxation Bureau	LEI Yangbing	0731-88183803	No.388 Youyi Road, Tianxin District, Changsha, Hunan, 410004
Guangdong Provincial Office, SAT	LIN Min	020-38351518	Room 1109, No.19 Huacheng Avenue, Tianhe District, Guangzhou, Guangdong, 510623
Guangdong Local Taxation Bureau	ZHU Guoqiang	020-85299343	No.600 Tianhebei Road, Tianhe District, Guangzhou, Guangdong, 510630
Guangxi Zhuang Autonomos Region Office, SAT	HU Yu	0771-5710262	No. 26 Yuanhunan Road, Nanning, Guangxi, 530022
Guangxi Zhuang Autonomos Region Local Taxation Bureau	WU Yongfeng	0771-5538092	No.105 Minzu Avenue, Nanning, Guangxi, 530021
Hainan Provincial Office, SAT	WEN Yikui	0898-66755235	No. 10 Longkunbei Road, Haikou, Hainan, 570136
Hainan Local Taxation Bureau	WU Yi	0898-66969507	Room 1003, No.18 Chengxi Road, Haikou, Hainan, 570206
Chongqing Municipal Office, SAT	ZENG Xianrong	023-67676745	No.63 Hongjin Avenue, Yubei District, Chongqing, 401147
Chongqing Local Taxation Bureau	LUO Zhaobing	023-67572622	No.9 Xihu Road, Yubei District, Chongqing, 401121
Sichuan Provincial Office, SAT	QIAN Yalin	028-86734313	No.266 Bingjiangdong Road, Chengdu, Sichuan, 610021
Sichuan Local Taxation Bureau	REN Huiyu	028-85455751	No.2 Linjiangdong Road, Wuhou District, Chengdu, Sichuan, 610021
Guizhou Provincial Office, SAT	CHEN Yu	0851-6906079	Room 1014, 7#, Provincial Government Compound, Zhonghuabei Road, Guiyang, Guizhou, 550004

(Continued)

	Name	Telephone	Address
Guizhou Local Taxation Bureau	SONG Hongmei	0851-5215525	No.83 Zhongshanxi Road, Guiyang, Guizhou, 550002
Yunnan Provincial Office, SAT	YAN Bin	0871-3129141	No.304 Baita Road, Kunming, Yunnan, 650051
Yunnan Local Taxation Bureau	YANG Changrui	0871-63613382	No.156 Renminzhong Road, Kunming, Yunnan, 650031
Tibet Autonomous Region Office, SAT	QIAO Haijun	0891-6834170	No.51 Beijingzhong Road, Lasa, Tibet, 850001
Shaanxi Provincial Office, SAT	ZHAO Ting	029-87695187	No.39 West Erhuannan Road, Xi'an, Shaanxi 710068
Shaanxi Local Taxation Bureau	WANG Ya	029-87636313	No.28 Tianshuijing Street, Lianhu District, Xi'an, Shaanxi 710002
Gansu Provincial Office, SAT	SONG Weixia	0931-8533933	No.353 Jinchangnan Road, Chengguan District, Lanzhou, Gansu, 730030
Gansu Local Taxation Bureau	MING Zhiruo	0931-8871934	No.156 Jingning Road, Lanzhou, Gansu, 730030
Qinghai Provincial Office, SAT	QI Hongmin	0971-8223061	No.11 Wenhua Street, Xining, Qinghai, 810000
Qinghai Local Taxation Bureau	ZHAO Zhiwei	0971-6165841	No.9 Kunlun Road, Xining, Qinghai, 810001
Ningxia Hui Autonomous Region Office, SAT	WANG Li	0951-5045307	No.424 Jiefangxi Street, Xingqing District, Yinchuan, Ningxia, 750001
Ningxia Hui Autonomous Region Local Taxation Bureau	WANG Dali	0951-5695037	No.167 Beijingzhong Road, Jinfeng District, Yinchuan, Ningxia, 750000
Xinjiang Uygur Automomous Region Office, SAT	CAO Peihao	0991-2681362	No.397 Qingnian Road, Wulumuqi, Xinjiang, 830002
Xinjiang Uygur Automomous Region Local Taxation Bureau	LIAO Lei	0991-2838471	No.321 Renmin Road, Wulumuqi, Xinjiang, 830004
Dalian Municipal Office, SAT	MIN Yixuan	0411-84384105	No.330 Gaoerji Road, Shahekou District, Dalian, 116021
Dalian Local Taxation Bureau	GUAN Jing	0411-82332448	No.97 Yide Street, Zhongshan District, Dalian, 116001
Qingdao Municipal Office, SAT	JIAO Na	0532-83931089	No.236 Yanan Three Road, Qingdao, 266071
Qingdao Local Taxation Bureau	WANG Zhongyu	0532-83880685	No.18 Donghaixi Road, Qingdao, 266071
Xiamen Municipal Office, SAT	CHEN Gonghao	0592-5319162	Room 1602, No.70 Hubinbei Road, Xiamen, 361012

(Continued)

	Name	Telephone	Address
Xiamen Local Taxation Bureau	LI Ya	0592-2215755	Floor 4, No.152 Hubinnan Road, Xiamen, 361004
Ningbo Municipal Office, SAT	ZHANG Lutao	0574-87732367	No.8 Baizhang Road, Jiangdong District, Ningbo, 315040
Ningbo Local Taxation Bureau	CAI Jie	0574-87188406	Room 1402, No.19 Zhongshanxi Road, Ningbo, 315000
Shenzhen Municipal Office, SAT	HU Yanfeng	0755-83878770	Room 2005, No.38 Shazui Road, Futian District, Shenzhen, 518048
Shenzhen Local Taxation Bureau	CHEN Gege	0755-83773478	No.28 Futiannan Road, Futian District, Shenzhen, 518033

Appendices - Forms and Schedules of the APA Program

Appendix I

APA Meeting Record

Name of Enterprise		Name of the In-charge Tax Authority	
Taxpayer Identification Number			
Meeting Time		Meeting Venue	
Principal Negotiator of the Enterprise (Name, Title)		Principal Negotiator of the In-charge Tax Authority (Name, Title)	
Other Personnel of the Enterprise (Name)		Other Personnel of the In-charge Tax Authority (Name)	
Meeting Content:			
Signature of Principal Negotiator of the In-charge Tax Authority		Signature of Principal Negotiator of the Enterprise	
Signature of Recorder			



User Instructions

1. The “Advance Pricing Arrangement Meeting Record” is used when the in-charge tax authority and the taxpayer have meetings, negotiations or discussions (including pre-filing meeting and formal meetings) in relation to the Advance Pricing Arrangement.
2. The meeting record shall consist of the detailed content of the meeting, the number of copies and the number of pages in relation to the documents provided by both parties.
3. The meeting record shall be kept confidential.

Notice of Formal Meeting of the APA

_____ Shui Yu Yue { _____ } No.

_____:

In accordance with the “Corporate Income Tax Law of the People’s Republic of China” and its Implementation Regulations, the “Law of the People’s Republic of China on the Tax Collections and Administration” and its Implementation Regulations, and the relevant provisions in the tax treaty entered into by the government of the People’s Republic of China and the government of _____, and given that your Enterprise has indicated during the stage of pre-filing meeting that you could provide the necessary information for an Advance Pricing Arrangement, after careful consideration, we hereby agree to proceed to formal negotiation with your Enterprise in connection with the Advance Pricing Arrangement.

Notice is hereby given.

_____ Tax Authority (Official Stamp):

(Date)

Notice of Rejection of Enterprise's Application for APA

_____ Shui Ju Yue [] No.

_____:

In accordance with the "Corporate Income Tax Law of the People's Republic of China" and its Implementation Regulations, the "Law of the People's Republic of China on the Tax Collections and Administration" and its Implementation Regulations, and the relevant provisions in the tax treaty entered into by the government of the People's Republic of China and the government of _____, and due to the following reasons, after careful consideration, we decide not to proceed to the formal negotiation with your enterprise in connection with the Advance Pricing Arrangement, and hereby return all the information you provided during the pre-filing meeting back to you.

Rejection reason(s):

Notice is hereby given.

_____ Tax Authority (Official Stamp):

(Date)

Formal Application Letter for APA

_____ Tax Authority:

In accordance with the “Corporate Income Tax Law of the People’s Republic of China” and its Implementation Regulations, the “Law of the People’s Republic of China on the Tax Collections and Administration” and its Implementation Regulations, and the relevant provisions in the tax treaty entered into by the government of the People’s Republic of China and the government of _____, and in accordance with the requirements in the “Notice of Formal Meeting of the Advance Pricing Arrangement” (Shui Yu Yue [] No.) issued by your bureau on [Date], we hereby formally apply for an Advance Pricing Arrangement for the transaction(s) between our Enterprise and the following related party(ies): _____. Please sign and acknowledge receipt of this application.

Enclosures: Total ____ copies ____ pages

1. _____
2. _____
3. _____
- ⋮

Name of Enterprise (Official Stamp):

Taxpayer Identification Number:

Legal Representative (Official Stamp):

(Date)



User Instructions

This application letter should be supplemented with at least the following information:

1. Descriptions of relevant group structure, internal organizational structure of the enterprise, related-party relationships, and related party transactions;
2. Financial and accounting reports of the enterprise for the most recent 3 years, and information on product performance and assets (including intangible and tangible assets);
3. Types of related-party transactions and tax years to be covered by the advance pricing arrangement;
4. Allocation of functions and risks among related parties, including the allocation bases such as involved entities, personnel, expenses, assets, etc.;
5. Proposed transfer pricing methodology and calculation method in the Advance Pricing Arrangement, and the functional and risk analysis, comparability analysis and assumptions used for supporting such methodology and method;
6. Market conditions, including industry development trend and competitive environment;
7. Annual information on operation scale, business forecasts and business plans for the period covered by the Advance Pricing Arrangement;
8. Information regarding relevant related-party transactions, business arrangements and financial results such as profit levels, etc., involved in the arrangement;
9. Whether there are double taxation issues; and
10. Relevant issues in relation to domestic and international laws and tax treaties.

Application to Initiate Mutual Agreement Procedures

No.:

Basic information of the applicant	The party in the other treaty country/region partner	Name (Chinese and English)			
		Detailed address (Chinese and English)			
		Taxpayer registration number or identification number		Postcode	
		Contact Person (Chinese and English)		Contact telephone number	
		Name and address of the tax authority in charge (Chinese and English)			
The party in China	Name				
	Detailed address		Postcode		
	Contact person		Contact telephone Number		
	Tax authority in charge				
The other treaty partner: country or region or special administrative region (Chinese and English)					
Summary of the issue to negotiate	Facts:				
	Issues:				
	The applicant's opinion on the issue and the relevant basis thereof.		The opinion of the tax authority in charge in the other treaty country/region partner on the issue and the relevant basis thereof.		
Attachment list (Total items):					

Declaration: I hereby declare that all the application and the attachment provided are truthful, complete and accurate.						
Signature of declarant: D M Y						
Application processing information (filled by tax authority)						
Accepted date		File No.		Security classification		Signature or seal by accepting authority
Responsible person		Contact number		Degree of urgency		
Date of feedback from State Administration of Taxation		Date of delivery of result to applicant				
Summary of negotiation results:						

Application for Extension of Submitting the Formal Application for APA

Name of Enterprise		Legal Representative	
Taxpayer Identification Code		Financial Person in-charge and Contact Telephone Number	
Reason(s) and Time Limit for Extension of Submitting the Formal Application	<p style="text-align: right;">Name of Enterprise (Official Stamp):</p> <p style="text-align: right;">Legal Representative (Official Stamp):</p> <p style="text-align: right;">(Date)</p>		

Reply to Application for Extension of Submitting the Formal Application for APA

_____ Shui Da Fu { } No.

_____:

We hereby acknowledge receipt of the “Application for Time Extension for Submitting the Formal Application for Advance Pricing Arrangement” submitted by your Enterprise on [Date]. Below is our reply after careful consideration:

_____ Tax Authority (Official Stamp):

(Date)

Notice of Extension of Examination and Evaluation of APA

_____ Shui Yu Shen Yan () No.

_____:

Referring to your enterprise's formal application for Advance Pricing Arrangement on [date], the evaluation period has been extended to [date], due to the special circumstances stated below:

1. _____
 2. _____
 3. _____
- ⋮

Notice is hereby given.

_____ Tax Authority (Official Stamp):

(Date)

Advance Pricing Arrangement (Unilateral)

(Text for Reference)

Pursuant to the “Corporate Income Tax Law of the People’s Republic of China” and its Implementation Regulations as well as the “Law of the People’s Republic of China on the Tax Collections and Administration” and its Implementation Regulations, upon formal application of _____ (company name) and the approval of the Tax Bureau of _____ (tax office name), both parties would like to conclude this Advance Pricing Arrangement (hereinafter referred to as this “APA”).

Article 1 General Definitions

For the purposes of this APA, unless otherwise defined elsewhere:

The term “in-charge tax authority” refers to the State Tax Bureau of _____ (tax office name);

The term “taxpayer” refers to _____ (company name).

Article 2 Type of APA

This APA is a unilateral Advance Pricing Arrangement.

Article 3 Scope of Application

Type of tax(es) covered: This APA is applicable to corporate income tax and other tax types.

Type of related party transaction(s) covered: This APA is applicable to _____ (description of the transaction type) transactions between the taxpayer and _____ (company name), which is its related party.

Article 4 Applicable Term

This APA is applicable for _____ (number) tax years, with each taxable year covered

being _____.

Article 5 Critical Assumptions

The transfer pricing methodology and calculation method used in this APA are based on the following assumptions:

During the covered period, in case any of the above critical assumptions should change, the taxpayer should report to the in-charge tax authority within 30 days after the change takes place. Depending on the circumstances, the in-charge tax authority and the taxpayer may amend or terminate this APA.

Article 6 Transfer Pricing Principle and Calculation Method

The transfer pricing principle and calculation method used in this APA for the transactions between _____ (company name) and its related party(ies) should comply with the arm's length principle. The specific transfer pricing principle and calculation method are based on _____.

Article 7 Annual Compliance Report

During the covered period of the APA, the taxpayer should file annual compliance reports in relation to the implementation situation of the APA within 5 months after the end of the taxable year, together with the following documents:

Article 8 Tax Inspection

This APA should list the content and requirements of the in-charge tax authority's review and evaluation on the taxpayer's implementation of the APA.

Article 9 Legal Binding Force of this APA

During the covered period of this APA, as long as the taxpayer complies with all the articles and

requirements set out in this APA, the in-charge tax authority should acknowledge the relevant pricing issues as agreed with the taxpayer. If the taxpayer fails to comply with this APA, the in-charge tax authority may take actions according to the specific circumstances, or unilaterally terminate this APA.

Article 10 Renewal of this APA

This APA can be renewed consecutively but not automatically. If a renewal is required, the taxpayer should, within _____ months (days) before the expiration of this APA, submit a written application of renewal, together with reliable supporting documents to illustrate that the facts and the relevant environment remain substantially the same as described in this APA. Upon receipt of the application of renewal from the taxpayer, the in-charge tax authority should review and determine whether the renewal application should be accepted. If the renewal application is accepted, the in-charge tax authority will further discuss the renewal with the taxpayer to complete the renewal of the APA.

Article 11 Dispute Resolution

In the event of disputes over the implementation and interpretation of this APA, the in-charge tax authority and the taxpayer should first negotiate to resolve such issues. If the disputes cannot be resolved through negotiation, both parties may petition the upper level tax authority or the State Administration of Taxation (“SAT”) for mediation. If the taxpayer cannot accept the mediation resolution, it should consider revising or terminating this APA.

Article 12 Confidentiality and Responsibility

In relation to the information obtained by the in-charge tax authority and the taxpayer during the negotiation and implementation process of this APA, both parties have the obligation to maintain confidentiality, and are protected and restricted by the relevant tax regulations and confidentiality law.

Article 13 Effectiveness, Amendment and Termination

This APA will come into effect once signed and stamped by the legal or authorized representatives of both parties.



This APA is signed by the legal or authorized representatives of the in-charge tax authority and the taxpayer in (city), (province) on (day-month-year).

If the in-charge tax authority or the taxpayer amends or terminates this APA, the party should notify the other party. The notification should include the time of and the reason for the amendment or termination in written form.

Article 14 Avoidance of Double Taxation

The APA should list the method and content of the avoidance of double taxation.

Article 15 Supplementary Provisions

This APA should be prepared in Chinese, in two copies, one for the in-charge tax authority and the other for the taxpayer, each of which should have full authenticity. In case one party translates the APA into a foreign language and disputes arise in the interpretation of the APA, the Chinese version should prevail.

_____ Tax Authority

_____ (Enterprise)

Signature:

Date:

Signature:

Date:

Title:

Stamp:

Title:

Stamp:

Bilateral (Multilateral) APA Implementation Agreement

(Text for Reference)

Pursuant to the “Corporate Income Tax Law of the People’s Republic of China” and its Implementation Regulations as well as the “Law of the People’s Republic of China on the Tax Collections and Administration” and its Implementation Regulations, both parties, i.e., (enterprise) and the Tax Bureau of _____, would like to conclude this implementation agreement. From (date-month-year) to (date-month-year), both parties should implement the bilateral (multilateral) advance pricing arrangement entered into by the State Administration of Taxation of the People’s Republic of China and the competent tax authority of (country or region) on (date-month-year).

Enclosure: <Bilateral (Multilateral) Advance Pricing Arrangement>

_____ Tax Authority

_____ (Enterprise)

Signature:

Date:

Signature:

Date:

Title:

Stamp:

Title:

Stamp:

APA Renewal Application

_____ Tax Authority:

The Advance Pricing Arrangement signed on (date-month-year) between our company and your office will expire on (date-month-year). After expiration, the facts and the relevant setting in relation to the related party transactions in the future years (i.e. from <year> to <year>) will be the same as or similar to those under the existing Advance Pricing Arrangement, without material changes. Therefore, we submit this application for a renewal of the Advance Pricing Arrangement for your review and approval.

Enterprise Name (Official Stamp):

Taxpayer Identification Number:

(Date)

Attachments:

1. The existing Advance Pricing Arrangement (photocopy)
2. The annual compliance reports in relevant years regarding implementation of the Advance Pricing Arrangement
3. Supporting documents to prove that the facts and the relevant setting under the existing Advance Pricing Arrangement have not materially changed, and projections for future tax years to be covered by the renewal

Reply Letter on the APA Renewal Application

_____ Shui Da Fu [] No.

_____:

We hereby acknowledge receipt on (date-month-year) of the “APA Renewal Application” and its attachments submitted by your company on (date-month-year). After examination, we hereby reply to your renewal application, as follows:

1. _____
 2. _____
 3. _____
- :

_____ Tax Authority (Official Stamp):

(Date)