

This is an unofficial English translation of Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (Public Notice of the State Administration of Taxation [2016] 64). In cases where the unofficial English translation conflicts with the content in the original Public Notice in Chinese, the Public Notice in Chinese shall prevail.

**Public Notice on Matters Regarding
Enhancing the Administration of Advance Pricing Arrangements**

Public Notice of the State Administration of Taxation [2016] 64

To enhance the administration of Advance Pricing Arrangements (hereafter referred to as the “ APAs”), and implement treaties, agreements or arrangements for the avoidance of double taxation signed by the People's Republic of China (PRC) Government (hereinafter referred to as the "Tax Treaties") with other jurisdictions, the Public Notice is hereby issued in accordance with the Enterprise Income Tax Law of the People’ s Republic of China” (hereinafter referred to as the “ Enterprise Income Tax Law”) and its implementation regulations, and “ The Tax Collection and Administration Law of the People’ s Republic of China” (hereinafter referred to as the “ Tax Collection and Administration Law”) and its implementation regulations.

1. Enterprises may enter into an APA with the tax administration(s) on the pricing methodologies and calculation process for its related party transactions in future years.
2. APA process involves the following six stages: pre-filing meeting, letter of intent, analysis and evaluation, formal application, negotiation and signing, and implementation and monitoring. APAs include the following three categories: unilateral APAs, bilateral APAs and multilateral APAs.

3. An APA applies to related party transactions over a period of 3 to 5 consecutive years starting from the year during which "Notice on Tax Matters" is issued by the in-charge tax administration(s) notifying the acceptance of enterprise' s intent for the APA.

Where the related party transactions in prior years are the same as or similar to those covered by the APA, per the enterprise' request, the tax administration(s) may apply the agreed pricing methodologies and calculation process specified in the APA to such related party transactions. The maximum rollback period is 10 years.

The conclusion of an APA does not preclude the enterprise from special tax adjustment investigation on related party transactions or years not covered by the APA.

4. Access to APA is available to enterprises with annual related party transaction amount exceeding RMB 40 million for the three years prior to the year in which the "Notice on Tax Matters" is issued by the in-charge tax administration(s) notifying the acceptance of enterprise' s intent for the APA.
5. An enterprise with the intention to apply for an APA should submit a written application for pre-filing meeting to the tax administration(s). The tax administration(s) may schedule one or several pre-filing meetings with the enterprise.

(1) For a unilateral APA, the enterprise shall submit a written application for pre-filing meeting in the form of "APA Pre-filing Meeting Application Letter" (Appendix 1) to the in-charge tax administration(s). The in-charge tax administration(s) may schedule one or several pre-filing meetings with the enterprise.

For a bilateral/multilateral APA, the enterprise shall submit a written application for pre-filing meeting in the form of "APA Pre-filing Meeting Application Letter" (Appendix 1) to both the State Administration of Taxation (SAT) and the in-charge

tax administration(s). The SAT may schedule one or several pre-filing meetings with the enterprise.

(2) During the pre-filing meeting stage, the enterprise shall provide brief information on the following aspects:

- i. Tax years to be covered by the APA;
- ii. Related parties and related party transactions to be covered by the APA;
- iii. Organizational and management structure of the enterprise and the group it belongs to;
- iv. Business operations and contemporaneous transfer pricing documentation of the enterprise for the most recent 3 to 5 years, etc.;
- v. Functions performed and risks assumed by the related parties covered by the APA, including the allocation keys based used to allocate the functions and risks, such as facilities, personnel, expenses, assets involved, etc.;
- vi. Market conditions, including industry developments and trends, competitive environment, etc.;
- vii. Location specific advantages such as cost savings and market premium (if any);
- viii. Proposed rollback years (if any);
- ix. Any other relevant information.

For a bilateral/multilateral APA, the enterprise should also provide information on the following aspects:

- i. Status of APA request to the competent tax authority(ies) of the other Contracting State(s) of the tax treaty(ies);
- ii. Business operations of the related parties covered by the APA and their related party transactions for the most recent 3 to 5 years;
- iii. Double taxation involved and relevant explanations (if any).

(3) During the pre-filing meeting stage, the enterprise shall submit additional information as requested by the tax administration(s).

6. Where the tax administrations and the enterprise reach an agreement during the pre-filing meeting stage, the in-charge tax administration(s) shall issue a “ Notice on Tax Matters” to the enterprise to inform the latter to submit the intent for the APA. The enterprise shall submit the intent for the APA to the tax administrations upon receipt of the “ Notice on Tax Matters” .

(1) For a unilateral APA, the enterprise shall submit the "APA Letter of Intent" (Appendix 2) to the in-charge tax administration(s), with the draft unilateral APA application package attached.

For a bilateral/multilateral APA, the enterprise shall submit the "APA Letter of Intent" to both the SAT and the in-charge tax administration(s), with the draft bilateral/multilateral APA application package attached.

(2) The draft unilateral APA application package should include information on the following aspects:

- i. Tax years to be covered by the APA;
- ii. Related parties and related party transactions to be covered by the APA;
- iii. Organizational and management structure of the enterprise and the group it belongs to;
- iv. Business operations, financial and accounting reports, audit reports, and contemporaneous transfer pricing documentation of the enterprise for the most recent 3 to 5 years, etc.;
- v. Functions performed, risks assumed the related parties covered by the APA, including the allocation keys used to allocate the functions, risks, such as facilities, personnel, expenses, assets involved, etc.;
- vi. Proposed pricing methodologies and calculation process in the APA, and the functional and risk analysis, comparability analysis and assumptions supporting the proposed pricing methodologies and calculation process;
- vii. Value chain analysis or supply chain analysis, taking into account of location specific advantages such as cost savings and market premium, etc.;
- viii. Market conditions, including industry developments and trends, and competitive environment, etc.;

- ix. Annual scale of operation, profit and loss forecasts and business plans for the years to be covered by the APA;
- x. Proposed rollback years (if any);
- xi. The relevant industry laws and regulations in and outside China that have implications for the APA;
- xii. Explanation that none of the circumstances listed in Clause (3) of this Article applies to the enterprise;
- xiii. Any other relevant information.

The draft bilateral/multilateral APA application package should also include information on the following aspects:

- i. Status of the APA request to the competent tax authority(ies) of the other Contracting State(s) of the tax treaty(ies);
- ii. Business operations of the related parties covered by the APA and their related party transactions for the most recent 3 to 5 years;
- iii. Double taxation involved and relevant explanations (if any).

(3) Tax administration(s) may disallow the enterprise to submit the intent for an APA if one or more of the following circumstances is present:

- i. The enterprise is under open special tax adjustment investigation or other tax investigations;

- ii. The enterprise fails to file the annual reporting forms for related party dealings of enterprises pursuant to the relevant regulations and requirements;
 - iii. The enterprise fails to prepare, keep and provide the contemporaneous transfer pricing documentation pursuant to the relevant regulations and requirements;
 - iv. No agreement is reached between the tax administration(s) and the enterprise during the pre-filing meeting stage.
7. After receiving the intent for an APA from the enterprise, tax administration(s) shall analyse the draft APA application package and evaluate whether the proposed pricing methodologies and calculation process are in line with the arm' s length principle. The tax administration(s) may request additional information based on the findings from their analysis and evaluation.

The analysis and evaluation may cover the following aspects:

- (1) Functional and risk profile. Tax administrations(s) will analyse and evaluate functions performed and contribution made with respect to supply, production, logistics, sales, and research and development of intangibles, etc., as well as risks such as inventory risk, credit risk, foreign exchange risk and market risk assumed by the enterprise and its related parties respectively.
- (2) Comparability analysis. Tax administration(s) will analyse and evaluate comparable information provided by the enterprise, and make adjustment for substantial comparability differences.

- (3) Related party transaction. Tax administration(s) will analyse and evaluate whether the revenue, cost, expenses and profits associated with the related party transactions cover by the APA are separately accounted for or determined based on reasonable allocation keys.
 - (4) Pricing methodologies and calculation process. Tax administration(s) will analyse and evaluate the proposed pricing methodologies and calculation process in the APA. Additional statement and explanation should be provided if an APA rollback is proposed.
 - (5) Value chain analysis and contribution analysis. Tax administration(s) will analyse and evaluate whether the value chain analysis or contribution analysis is complete and clear and whether due consideration is given to location specific advantages such as cost savings and market premium as well as to the contributions to the value creation made by the local enterprise.
 - (6) Transaction price or profit level. Tax administration(s) will determine the arm' s length transaction price or profit level based on the findings from the analysis and evaluation on the aforementioned aspects.
 - (7) Assumptions. Tax administration(s) will analyse and evaluate the factors influencing the enterprise' s profitability and business operation and the extent of the influence. Appropriate assumptions applied to the APA shall be established accordingly.
8. During the analysis and evaluation stage, tax administration(s) may discuss with the enterprise about the draft APA application package and conduct on-site functional interviews. Where the proposal in the draft APA application package is not in line with the arm' s length principle, the enterprise shall consult with the tax administration(s)

and make adjustments accordingly. Where the proposal in the draft APA application package is in line with the arm's length principle, the in-charge tax administration(s) will issue the " Notice on Tax Matters" to notify the enterprise to submit the formal application for the APA. Upon receiving the notice, the enterprise shall submit the " APA Formal Application Letter" (Appendix 3) to the tax administration(s), with the formal APA application packaged attached.

(1) For a unilateral APA, the enterprise shall submit the aforementioned information and documents to the in-charge tax administration(s). For a bilateral/multilateral APA, the enterprise shall submit the aforementioned information and documents to both the SAT and the in-charge tax administration(s) and simultaneously apply for the Mutual Agreement Procedure (MAP) process pursuant to the relevant regulations and requirements.

(2) Tax administration(s) may disallow the enterprise to submit the formal application for an APA if one or more of the following circumstances is present:

- i. The proposed pricing methodologies and calculation process in the draft APA application package is found to be inappropriate and the enterprise refuses to consult with tax administration(s) and make adjustments;
- ii. The enterprise fails to provide relevant information or provide additional and/or correct information despite the information originally provided has not met the requirements of the tax administration(s);
- iii. The enterprise fails to cooperate with tax administration's request to conduct on-site functional interviews;
- iv. Any other circumstances warranting the discontinuance of the APA process.

9. Tax administration(s) will form position on an APA based on the findings from the analysis and evaluation and conduct negotiation accordingly.

(1) For a unilateral APA, where an agreement is reached between the in-charge tax administration(s) and the enterprise, a unilateral APA agreement will be prepared (Appendix 4).

For a bilateral/multilateral APA, where an agreement is reached between the SAT and the competent authority(ies) of other contracting state(s) of the tax treaty(ies), a bilateral/multilateral APA agreement will be prepared.

(2) An APA agreement may include the following elements:

- i. Basic information such as names and addresses of the enterprise and its related parties;
- ii. Related party transactions and years covered by the APA;
- iii. Selected pricing methodologies and calculation process, comparable prices or profit levels, etc.;
- iv. Terms and definitions related to applied transfer pricing methodologies and calculation basis;
- v. Assumptions and obligation to notify changes to the assumptions;
- vi. Obligation to submit annual APA implementation report;

vii. Binding effect of the APA;

viii. Renewal of the APA;

ix. Validity, amendment and termination of the APA;

x. Dispute resolution;

xi. Confidentiality of information and documents pertaining to the APA;

xii. Exchange of information on unilateral APAs;

xiii. Appendices.

- (3) Where a unilateral APA agreement is reached between the in-charge tax administration(s) and the enterprise, legal representatives or representatives authorized by the legal representatives of the two parties shall sign the unilateral APA agreement.

Where a bilateral/multilateral APA agreement is reached between the SAT and the competent authority(ies) of other contracting state(s) of the tax treaty(ies), authorized representatives of all the parties shall sign the bilateral/multilateral APA agreement. The SAT shall forward a copy of the agreement to the in-charge tax administration(s). The in-charge tax administration(s) shall issue the “ Notice on Tax Matters” with the copy of the agreement attached to the enterprise and ensure the implementation of the APA.

- (4) Where an APA involves additional tax payments or tax refunds for the prospective years or rollback years, tax administration(s) shall calculate the amount of tax

payable or tax refundable on a tax year-by-tax year basis and issue the “ Notice on APA Tax Payable/Refundable” (Appendix 5).

10. Tax administration(s) shall monitor the implementation of APA.

- (1) During the APA covered period, the enterprise shall keep the relevant information and documents (including accounting records and other relevant records) intact and shall not lose, destroy or remove such information and documents.

The enterprise shall file the annual APA implementation report in both hard copy and electronic copy with the in-charge tax administration(s) within 6 months of the end of each tax year. The in-charge tax administration(s) shall forward the electronic copy to the SAT. For a bilateral/multilateral APA, the enterprise shall file the annual APA implementation report in both hard copy and electronic copy with the in-charge tax administration(s) and simultaneously file the electronic copy with the SAT.

The annual APA implementation report shall document the enterprise’ s business operations and implementation of the APA during the reporting period. The enterprise shall also explain in the annual APA implementation report if there is a need to amend or terminate the APA, or if there are any unsettled issues or foreseeable issues.

- (2) During the APA covered period, the in-charge tax administration(s) shall monitor the enterprise’ s implementation of the APA on a yearly basis. Major areas for monitoring include: whether the enterprise complies with the terms and conditions in the APA; whether the information provided in the annual APA implementation report reflects the actual operation results of the enterprise; whether the assumptions specified in the APA are still valid, etc.

(3) During the APA covered period, where there are substantial changes to the enterprise which may have an impact on the APA, the enterprise shall file a written report on substantial changes with the in-charge tax administration(s) within 30 days. The report should explain in detail the impact of the changes, with relevant supporting information and documents attached. If the enterprise is forced to delay the reporting due to circumstances beyond its control, an up to 30 days extension can be applied.

Upon receiving written report from the enterprise, tax administration(s) shall analyse to what extent the substantial changes have impacted the APA. Tax administration(s) may amend or terminate the APA depending on the extent of the impact. If the existing APA is terminated, tax administration(s) and the enterprise may start the APA process for the purpose of concluding a new APA pursuant to the relevant provisions and requirements of this Public Notice.

(4) Where an APA is jointly signed by the state tax bureau(s), the local tax bureau(s) and the enterprise, the enterprise shall file the annual APA implementation report and report on substantial changes with both the state tax bureau(s) and the local tax bureau(s). The state tax bureau(s) and the local tax bureau(s) shall monitor the implementation of the APA in a cooperative and collaborative manner.

11. An APA automatically becomes invalid upon its expiration. The enterprise may apply for a renewal by filing an "APA Renewal Application" (Appendix 6) with the tax administration(s) within 90 days prior to the expiration of the existing APA. The enterprise shall also provide relevant supporting information and documents including annual APA implementation reports for the existing APA, documents explaining whether there have been any substantial changes to the facts and operating environment specified in the exiting APA, and forecast for the years to be covered by the APA renewal, etc.

12. For an APA with a target price/profit within an interquartile range, if the enterprise' actual operating price/profit falls outside the interquartile range for any year during the APA covered period, tax administration(s) shall adjust the actual operating result to the median for the year. Upon expiration of the APA, if the calculated weighted average operating price/profit of the enterprise for the APA covered period falls below the median of the agreed range and is not adjusted to the median, tax administration(s) will not accept the enterprise' s APA renewal application.

Where a bilateral/multilateral APA is involved, the in-charge tax administration(s) shall report the aforementioned issues to the SAT in a timely manner.

13. In case any dispute arises during the implementation of an APA, the in-charge tax administration(s) and the enterprise shall endeavor to resolve the disputes through negotiations. Where the disputes remain unresolved after negotiations, the in-charge tax administration can report the disputes to the tax administration(s) at the higher level for mediation. Disputes that involve a bilateral/multilateral APA shall be reported to the SAT for mediation. Decisions made by the tax administration(s) at the higher level or the SAT shall be enforced by the in-charge tax administration(s). The APA may be terminated if the enterprise still finds the decisions unacceptable.

14. Either the tax administration(s) or the enterprise can suspend or terminate an APA process at any point of time before the conclusion of the APA. If the enterprise is found to have purposefully withheld relevant information, or provided false or incomplete information, or been uncooperative in other matters rendering the conclusion of the APA impossible, the tax administration(s) may suspend or terminate the APA process. For a bilateral/multilateral APA, the APA process may be suspended or terminated after consultation between the competent authorities involved. Where the tax administration(s) initiate the suspension or termination of the APA process, the tax administration(s) shall issue a " Notice on Tax Matters" to notify the enterprise of the decision and underlying reasons. Where the enterprise initiates the suspension or

termination of the APA process, the enterprise shall submit a written explanation to the tax administration(s).

15. Where the conclusion of an APA is found to be resulting from an APA process inconsistent with the relevant regulations and requirements or the fact that the enterprise has withheld information, the tax administration(s) will annul the APA and issue the “ Notice on Tax Matters” to notify the enterprise of the decision and the underlying reasons. Where the enterprise is found to fail to implement an APA or violate the terms and conditions of an APA in other manners, the tax administration(s) may, depending on the circumstances, take necessary measures including terminating the APA to address the incompliance.

16. The tax administration(s) may prioritize APA requests from the enterprise that meets one of the following conditions.

(1) The enterprise’ s annual reporting forms for related party dealings and contemporaneous transfer pricing documentation are well completed with adequate disclosures.

(2) The enterprise’ s tax compliance rating is "A".

(3) The enterprise was once under special tax adjustment investigation and the investigation was closed.

(4) The enterprise is applying for a renewal of an existing APA that is about to expire provided that there has been no substantial changes to the facts and operating environment specified in the existing APA.

- (5) For the APA request, the enterprise has provided complete and adequate information including but not limited to clear and thorough value chain/supply chain analysis taking into account of location specific advantages such as cost savings and market premium, and appropriate pricing methodologies and calculation process.
- (6) The enterprise has been cooperative with the tax administration(s) during the APA process.
- (7) For a bilateral/multilateral APA, the competent authority(ies) of the other contracting state(s) of treaty(ies) have displayed strong intention to move forward with the APA negotiation or attached a high importance to the APA.
- (8) Any other factors facilitating the APA process is present.
17. Where an APA involves two or more provinces, autonomous regions, municipalities directly under the central government or cities specifically designated in the state plan or both the state tax bureau(s) and local tax bureau(s), the APA process shall be organized and coordinated by the SAT.

The enterprise applying for a unilateral APA that falls under one of the aforementioned categories shall submit the application to both the SAT and the tax administration(s) designated by the SAT. The SAT may sign the unilateral APA with the enterprise by itself or authorize the designated tax administration(s) to sign the unilateral APA with the enterprise. Alternatively the SAT may arrange for each relevant in-charge tax administration to sign the unilateral APA with the enterprise respectively.

18. Where a unilateral APA involves two or more in-charge tax administrations within the same province, autonomous region, municipality directly under the central government

or city specifically designated in the state plan which are either state tax bureau(s) or local tax bureau(s), the APA process shall be organized and coordinated by the tax administration(s) at the level of the province, autonomous region, municipality directly under the central government or city specifically designated in the state plan.

19. Both the tax administration(s) and the enterprise are legally bound to keep the information and documents obtained through the APA process confidential. Except for situations where the tax administration(s) are required by laws and regulations to share the information and documents with the relevant government agencies, the tax administration(s) are prohibited from disclosing the information and documents in any way without the consent of the enterprise.

Where the tax administration(s) and the enterprise fail to conclude an APA, the tax administration(s) are refrained from using the nonfactual information such as proposals, inferences, views and positions obtained through the APA process in the special tax adjustment investigation on the related party transactions covered by the proposed APA.

20. The SAT may exchange information on unilateral APAs concluded after 1 April, 2016 with relevant competent authorities of other countries (regions) pursuant to the relevant international conventions, treaties, agreements between China and other countries (regions) unless the information concerns national security. The enterprise shall provide a list consisting of jurisdictions of its ultimate parent company, jurisdictions of its immediate parent company and jurisdictions of related party with whom it enters into a transaction covered by the APA to the tax administration(s) upon the conclusion of the APA.

21. The term “ in-charge tax administration(s)” specified in this Public Notice refers to the tax administration(s) that are responsible for tax matters related to special tax adjustment investigation.

22. This Public Notice shall become effective from 1 December 2016 and onward. Chapter 6 of the “ Implementation Measures of Special Tax Adjustments (Trial Version)” (Guo Shui Fa [2009] No.2) shall be annulled as of the same date. APAs of which formal applications have not been accepted by the tax administrations before the effective date of this Public Notice are subject to the stipulations specified in this Public Notice.

Appendices:

- (1) APA Pre-filling Meeting Application Letter
- (2) APA Letter of Intent
- (3) APA Formal Application Letter
- (4) Unilateral APA Agreement (for reference only)
- (5) Notice on APA Tax Payable/Refundable
- (6) APA Renewal Application

State Administration of Taxation

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