

Measures for the Administration of Advance Pricing Arrangements for Related Party Transactions of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com
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Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Types and Eligibility Conditions	2
Chapter III — Application and Preliminary Review	2
Chapter IV — Negotiation and Agreement	3
Chapter V — Implementation and Monitoring	4
Chapter VI — Supplementary Provisions	4

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Types and Eligibility Conditions
- Chapter III — Application and Preliminary Review
- Chapter IV — Negotiation and Agreement
- Chapter V — Implementation and Monitoring
- Chapter VI — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Measures are formulated in accordance with the Enterprise Income Tax Law of the People's Republic of China, its Implementing Regulations, and the Tax Collection and Administration Law, for the purpose of further standardizing the administration of advance pricing arrangements for related party transactions, improving tax services, and enhancing tax certainty for enterprises.

Article 2 — For the purposes of these Measures, an "advance pricing arrangement" (APA) means an agreement entered into between a tax authority and an enterprise on the pricing principles and computation methods for the enterprise's related party transactions for a future period, for the purpose of determining the enterprise's taxable income or tax payable.

Article 3 — The tax authority and the enterprise shall negotiate the APA on the basis of the arm's length principle, in good faith, and in a voluntary manner. The tax authority shall respect the legitimate business needs and confidentiality of the enterprise, and the enterprise shall cooperate by providing complete, truthful, and timely information.

Article 4 — An APA may cover transfer pricing methods, comparable data, critical assumptions, and the terms and conditions applicable to specified related party transactions. The APA shall not preclude the tax authority from adjusting the enterprise's tax liability for matters not covered by the APA.

Chapter II — Types and Eligibility Conditions

Article 5 — Advance pricing arrangements shall be classified into the following types:

- (1) Unilateral APA: an APA entered into between an enterprise and the competent tax authority of China in relation to the enterprise's related party transactions;
- (2) Bilateral APA: an APA entered into between the competent tax authority of China and the tax authority of a treaty partner jurisdiction, with the participation of the enterprise, in accordance with the mutual agreement procedure under the applicable tax treaty;
- (3) Multilateral APA: an APA entered into between the competent tax authority of China and the tax authorities of two or more treaty partner jurisdictions, with the participation of the enterprise.

Article 6 — An enterprise applying for an APA shall meet the following conditions:

- (1) the enterprise's annual related party transaction volume exceeds RMB 40 million;
- (2) the enterprise has fulfilled its obligation to prepare and submit related party transaction contemporaneous documentation in accordance with the law;
- (3) the enterprise has filed its annual related party transaction reporting forms on time and in the prescribed manner;
- (4) the enterprise has not been found to have committed tax evasion or significant tax avoidance in the three years preceding the APA application, unless such finding has been resolved and the tax and penalties have been paid;
- (5) the enterprise has maintained complete and accurate books and records that allow verification of its related party transactions.

Article 7 — Bilateral and multilateral APAs shall be negotiated through the mutual agreement procedure under the applicable tax treaty. The competent tax authority of China shall consult with the tax authority of the other contracting state or states in accordance with the treaty provisions and the applicable domestic procedures.

Chapter III — Application and Preliminary Review

Article 8 — An enterprise intending to apply for an APA may first submit a letter of intent and hold a preliminary consultation meeting with the competent tax authority to discuss:

- (1) the scope and nature of the related party transactions to be covered;
- (2) the proposed transfer pricing method;
- (3) the proposed APA period;
- (4) the functional and risk analysis of the parties involved;
- (5) the feasibility and prospects of a successful APA negotiation.

Article 9 — Following the preliminary consultation, the enterprise may submit a formal APA application to the competent tax authority. The application shall include:

- (1) a formal APA application letter specifying the type of APA requested;
- (2) a detailed description of the enterprise's organizational structure, business operations, and related party relationships;
- (3) a functional and risk analysis of the enterprise and its related parties;
- (4) a detailed description of the related party transactions to be covered by the APA, including the products, services, or intangible property involved, and the historical transaction data for the preceding three years;
- (5) the proposed transfer pricing method and the rationale for its selection, including an analysis of comparable transactions and economic adjustments;
- (6) the critical assumptions underlying the proposed transfer pricing method;
- (7) the proposed APA period;
- (8) the financial projections and the projected tax effect of the APA;
- (9) any other relevant information requested by the tax authority.

Article 10 — The tax authority shall conduct a preliminary review of the APA application within 30 working days of receipt. Where the application meets the formal requirements, the tax authority shall issue a notice of acceptance. Where the application does not meet the formal requirements, the tax authority shall notify the enterprise of the deficiencies and request supplementary materials.

Article 11 — The formal negotiation period for an APA shall be as follows:

- (1) Unilateral APA: the tax authority shall endeavor to complete the negotiation within 12 months from the date of acceptance;
- (2) Bilateral or multilateral APA: the tax authority shall endeavor to complete the negotiation within 24 months from the date of acceptance.

The negotiation period may be extended with the consent of the enterprise.

Chapter IV — Negotiation and Agreement

Article 12 — Upon acceptance of the APA application, the tax authority shall conduct a detailed analysis and evaluation of the enterprise's related party transactions, the proposed transfer pricing method, the comparability analysis, and the critical assumptions. The tax authority may commission an independent expert or advisor to assist in the evaluation.

Article 13 — During the negotiation, the tax authority may:

- (1) request the enterprise to provide additional information, documents, and explanations;
- (2) conduct on-site inspections of the enterprise's business premises;
- (3) conduct functional interviews with the enterprise's management and key personnel;
- (4) consult with industry experts or conduct market research.

Article 14 — For bilateral or multilateral APAs, the competent tax authority of China shall engage in negotiations with the tax authority or authorities of the other contracting state or states through the mutual agreement procedure. The enterprise shall cooperate by providing information to both sides and shall be kept informed of the progress of negotiations.

Article 15 — Where an agreement is reached between the tax authority and the enterprise (or between the tax authorities for bilateral or multilateral APAs), an APA agreement shall be signed. The APA agreement shall specify:

- (1) the parties to the APA;
- (2) the related party transactions covered and their scope;
- (3) the transfer pricing method and the manner of its application;
- (4) the critical assumptions;
- (5) the APA period;
- (6) the reporting and documentation requirements during the APA period;
- (7) the procedures for amendment, renewal, or early termination of the APA;
- (8) the rights and obligations of the parties.

Article 16 — The APA period shall generally be three to five fiscal years, commencing from the year in which the APA application is formally submitted or from a subsequent year, as agreed by the parties.

Chapter V — Implementation and Monitoring

Article 17 — During the APA period, the enterprise shall comply with the terms and conditions of the APA agreement and shall prepare an annual APA compliance report. The annual compliance report shall be submitted to the tax authority within six months after the end of each fiscal year covered by the APA, and shall include:

- (1) the enterprise's actual business operations and related party transactions during the reporting year;
- (2) an analysis demonstrating that the actual results are consistent with the transfer pricing method prescribed in the APA;
- (3) a statement confirming that the critical assumptions have been met and remain valid;
- (4) any changes in the enterprise's circumstances that may affect the APA.

Article 18 — The tax authority shall monitor the enterprise's compliance with the APA during the APA period and may request the enterprise to provide additional information or explanations as necessary. The tax authority shall not conduct a transfer pricing audit or investigation in respect of the related party transactions covered by the APA, provided the enterprise complies with the APA terms.

Article 19 — Where the critical assumptions have changed materially, either the enterprise or the tax authority may request an amendment to the APA. The amendment shall be negotiated and agreed upon by the parties before taking effect. Where agreement cannot be reached, the APA may be terminated.

Article 20 — Where the enterprise has failed to comply with the terms and conditions of the APA, or has provided false or misleading information during the APA negotiation, the tax authority may terminate the APA. Upon termination, the tax authority may conduct a transfer pricing audit for the periods covered by the APA and make adjustments in accordance with the law.

Article 21 — An enterprise that has complied with the APA may apply for renewal of the APA no later than 90 days before the expiration of the APA period. The renewal procedures shall be simplified compared to the initial application, provided the enterprise's circumstances and the critical assumptions remain substantially unchanged.

Chapter VI — Supplementary Provisions

Article 22 — The APA procedures set forth in these Measures shall also apply, mutatis mutandis, to an enterprise's application for an APA covering related party transactions for business tax, value-added tax, or other taxes, as determined by the State Administration of Taxation in consultation with the relevant authorities.

Article 23 — The tax authority shall maintain confidentiality with respect to all information, documents, and data provided by the enterprise in the APA process. Such information shall be used solely for the purpose of the APA and shall not be disclosed to any third party without the enterprise's consent, unless required by law or an applicable tax treaty.

Article 24 — These Measures shall take effect as of December 1, 2016. The Interim Measures for the Administration of Advance Pricing Arrangements for Related Party Transactions (Guoshuifa [2009] No. 2) shall be repealed simultaneously. Any APA entered into under the previous rules shall continue to be valid until its expiration.

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