



2019

China Advance Pricing Arrangement Annual Report

State Taxation Administration
People's Republic of China

China Advance Pricing Arrangement Annual Report (2019)

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People's Republic of China**

Foreword

Year 2019 was the 70th anniversary of the founding of the People's Republic of China. It was also the crucial year for China to achieve the first of the “Two Centenary Goals” and secure a decisive victory in building a moderately prosperous society in all respects. Standing at this important juncture in history, the State Taxation Administration (STA), aiming to contribute to the nationwide resolution, was determined to fulfill its mandate through proactive taxpayer services and extensive international cooperation.

As a Chinese poem goes, “a sturdy pine standing tall and strong in the dimming twilight, remains undisturbed by the commotion created by the clouds coming and going.” The world has seen a rocky year in 2019 where unilateralism continued to fortify the high walls of anti-globalization and trades and investments were disrupted and countries were competing for taxing rights. In times like these, taxpayers were in a greater need of a fair and certain tax environment that could facilitate cross border investments. However, the STA was able to turn the challenges into new opportunities for deeper international tax cooperation with a view to build an economic growth conducive tax environment.

Firstly, the STA was able to deepen the Belt and Road Initiative (BRI) tax cooperation. In 2019, The STA successfully hosted the first conference of the BRITACOF^① which established the BRITACOM^②. During this forum, the “Wuzhen Statement” was issued for the building of BRITAC^③ consensus. Also, the “Wuzhen Action Plan” was released

① The Belt and Road Initiative Tax Administration Cooperation Forum

② The Belt and Road Initiative Tax Administration Cooperation Mechanism

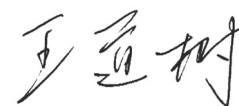
③ The Belt and Road Initiative Tax Administration Cooperation

to provide new momentum to the globalization.

Secondly, the STA has played an active role in the design of international tax rules. In particular, the STA was fully committed to the work on addressing the tax challenges arising from the digitalization of economy. Also, it continued to take an active part in the amending of the international guidance on transfer pricing on both the OECD and UN fora. Financial account information and CbCr were successfully exchanged. MAP Stage 1 peer review was completed where China was considered to meet most the elements of the Action 14 Minimum Standard.

Lastly, the STA was dedicated to implement China's opening-up policy. The STA has successfully eliminated (or avoided) double taxation of 3.1 billion RMB through bilateral dispute resolution process. To further facilitate Chinese MNEs with overseas investments, the STA has released and updated 78 Country (Region) Taxation Guidelines for Cross-Border Investments. In addition, the revised edition of "Taxation Guideline for Chinese Enterprises with outbound investments" which contains a series of updated tax policies, was also published in 2019.

As one of the measures taken by the STA to deepen the reform and improve the business environment, China's APA program, which was put in place to prevent double taxation and support cross-border investments and trades, has been running on a steady pace. This report continues to offer information on relevant tax policies, implementation procedures and development of China's APA program. Statistics on the program is also provided for analytical purposes. The STA expects the report to help cross-border taxpayers as well as the general public better understand China's taxation environment and APA program.



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Notes

This is the 11th Advance Pricing Arrangement (hereinafter referred to as APA) annual report released by the State Taxation Administration (hereinafter referred to as STA) to describe the latest 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) 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 January 1, 2005 and December 31, 2019.

By December 31, 2019, the cumulative total of APAs signed is 177, 101 unilateral and 76 bilateral.

In 2019, a total of 12 unilateral APAs and 9 bilateral APAs were signed. Of the 9 bilateral APAs signed in 2019, 6 were signed with Asian countries (regions), 2 were signed with North American countries and the remaining 1 was signed with European country. Most of the APAs signed in 2019 still involve manufacturing industry, which demonstrates the role of taxation on serving the real economy.

As the implementation programme of BEPS action plans, the *Public Notice*

of the State Taxation Administration on Issuing the Administrative Measures for Special Tax Adjustment and Investigation and Mutual Agreement Procedures (Public Notice of the State Taxation Administration (2017) No. 6, hereinafter referred to as Public Notice No. 6) and *Public Notice of the State Taxation Administration on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements* (Public Notice of the State Taxation Administration (2016) No. 64, hereinafter referred to as the Public Notice No. 64) jointly provide regulatory basis and process guidance for APA matters. In 2018, Public Notice No. 64 and Public Notice No. 6 were revised to align with the reformed organizational structure of the tax administrations at provincial level and below. The latest changes are reflected in the APA annual report (2019) .

Required by the BEPS Action 5 minimum standard, the unilateral APAs signed after April 1, 2016 are subject to the compulsory spontaneous exchange framework.

It is expected that the APA request will arise against the backdrop of concern about uncertainty drawn out by the universal implementation of BEPS projects and the increased transfer pricing scrutiny by tax administrations. The STA has therefore determined to prioritize certain APA requests, taking into account 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 bilateral APA (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 STA 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 STA's prioritized attention

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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 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.

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 *Rules for the Implementation of the Law of the People's Republic of China on the Administration of Tax Collection*^② (Decree No. 362 of the State Council), and APAs were elevated from an adjustment method to a program.

In 2004, the STA promulgated the *Implementation Rules on Advance Pricing Arrangements for Transactions between Related Parties (Trial)* (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

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.

contain statistics on APAs concluded during this period.

In order to standardize and ensure consistency of China's APA administration across the country, the STA has implemented rules for APA monitoring and administration since 2005 requiring the local tax authorities to submit the draft unilateral agreement to the STA 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. On April 19, 2005, China and Japan signed China's first bilateral APA. Subsequently, China reached the first bilateral APA with the United States and the Republic of Korea on April 20, 2007 and November 17, 2007 respectively. From 2005 to 2008, the Chinese tax authorities concluded 41 APAs, including 36 unilateral and 5 bilateral APAs.

At the beginning of 2009, the *Implementation Measures of Special Tax Adjustments (Trial)* (Guo Shui Fa〔2009〕No. 2, hereinafter referred to as the Measures) was promulgated to facilitate the implementation of the *Law of the People's Republic of China on Enterprise Income Tax* and its Implementation Regulations. Chapter Six of the Measures provides more detailed rules and implementation guidance on China's APA program. On October 26, 2009, China signed the first bilateral APA with the Kingdom of Denmark, marking the start of bilateral cooperation between China and European countries in the transfer pricing area. In 2009, China's bilateral APA program began to gain significant momentum with 12 APAs (including 5 unilateral and 7 bilateral) being signed in the year.

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. On December 29, China signed the first bilateral APA with the Republic of Singapore.

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. On December 5, China signed the first bilateral APA with the Swiss Confederation.

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

In 2016, the Chinese tax authorities signed 14 APAs in total, including 8 unilateral APAs and 6 bilateral

APAs. In October, The STA issued the Public Notice No. 64 aiming at implementing the achievements of BEPS project and streamlining the APA workflow.

In 2017, the Chinese tax authorities signed 8 APAs in total, including 3 unilateral APAs and 5 bilateral APAs. In March, in order to incorporate measures recommended by the BEPS Action 14 which requires participating jurisdictions to increase efficiency of resolving Mutual Agreement Procedure (hereinafter referred to as MAP) cases to eliminate double taxation, the STA issued the Public Notice No. 6.

In 2018, the Chinese tax authorities signed 9 APAs in total, including 2 unilateral APAs and 7 bilateral APAs.

In 2019, the Chinese tax authorities signed 21 APAs in total, including 12 unilateral APAs and 9 bilateral APAs.

2. Existing Legal and Regulatory Basis

The legal basis and relevant laws, regulations and regulatory documents governing APAs primarily include the following:

- (1) The relevant clauses in the treaties, agreements or arrangements for the avoidance of double taxation (hereinafter referred to as tax treaty,) between the government of China and the government of the corresponding country (region);
- (2) Article 42 of the *Law of the People's Republic of China on Enterprise Income Tax* ;
- (3) Article 113 of the *Regulations for the Implementation of the Law of the People's Republic of China on Enterprise Income Tax* ;
- (4) Article 53 of the *Rules for the Implementation of the Law of the People's Republic of China on the Administration of Tax Collection*;
- (5) *Public Notice of the State Taxation Administration on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements* (Public Notice of the State Taxation Administration (2016) No. 64).
- (6) *Public Notice of the State Taxation Administration on Issuing the Administrative Measures for Special Tax Adjustment and Investigation and Mutual Agreement Procedures* (Public Notice of the State Taxation Administration (2017) No.6).

III APA Procedures

1. Prerequisites to an APA Application

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.

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..

2. APA Process and Implementation

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 (see Chart 3-1).

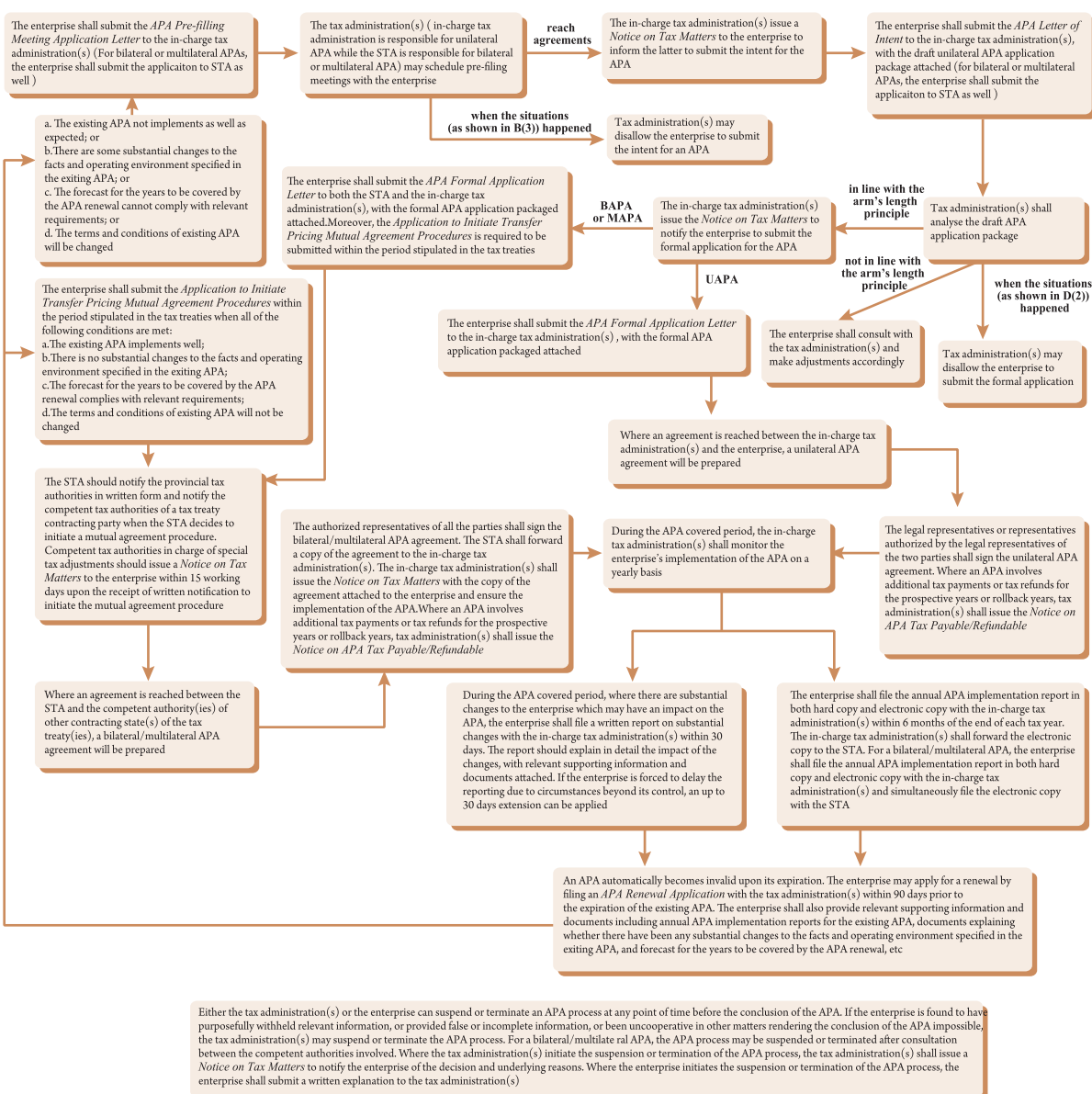


Chart 3-1 The APA Process

A. Pre-filing Meeting

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* 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* to both the STA and the in-charge tax administration(s). The STA 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).

B. Letter of Intent

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* 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 STA 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 by 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.

C. Analysis and Evaluation

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.

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.

D. Formal Application

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* 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 STA 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.

E. Negotiation and Signing

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.

For a bilateral/multilateral APA, where an agreement is reached between the STA 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 STA 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 STA 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*.

F. Implementation and Monitoring

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 STA. 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 STA.

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 analyze 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 Public Notice No. 64.

3. Rollback

Where the related party transactions in prior years are the same as or similar to those covered by the APA, per the enterprise's 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.

Enterprises which have reached agreement in the pre-filing meeting with the tax authorities and submitted the *APA letter of intent* and applied for retroactive application of the APA, or enterprises which have submitted the *APA Renewal Application*, can be temporarily exempted from special tax audit. This exemption does not apply to the period and the related transactions which are not covered under the APA.

4. Renewal

- (1) An APA automatically becomes invalid upon its expiration. The enterprise may apply for a renewal by filing an *APA Renewal Application* 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.
- (2) For an APA with a target price/profit within an interquartile range, if the enterprise's 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 STA in a timely manner.

5. Termination or Cancellation

- (1) 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).
- (2) 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 STA for mediation. Decisions made by the tax administration(s) at the higher level or the STA shall be enforced by the in-charge tax administration(s). The APA may be terminated if the enterprise still finds the decisions unacceptable.
- (3) 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.

6. Particular Situations Referred to Multiple Tax Authorities

- (1) Where an APA involves two or more provinces, autonomous regions, municipalities directly under the central government or cities specifically designated in the state plan, the APA process shall be organized and coordinated by the STA.

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

- (2) 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, 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.

IV Protection of Taxpayers' Rights

1. Confidentiality of Taxpayers' Information

- (1) 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.
- (2) The STA 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.

2. Taxpayers' Freedom of Contract

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.

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.

V APA 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 2019 calendar years.

Exhibit 5-1 **APAs Signed by Year (2005–2019)**

Year	Unilateral APAs	Bilateral APAs	Multilateral APAs	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)
2016	8	6	0	14
(Renewals in 2016)	(0)	(2)	(0)	(2)
2017	3	5	0	8
(Renewals in 2017)	(0)	(3)	(0)	(3)

(Continued)

Year	Unilateral APAs	Bilateral APAs	Multilateral APAs	Total
2018	2	7	0	9
(Renewals in 2018)	(1)	(1)	(0)	(2)
2019	12	9	0	21
(Renewals in 2019)	(1)	(1)	(0)	(2)
Total	101	76	0	177

The chart 5-1 compares the number of unilateral APAs and bilateral APAs signed from 2005 through 2019.

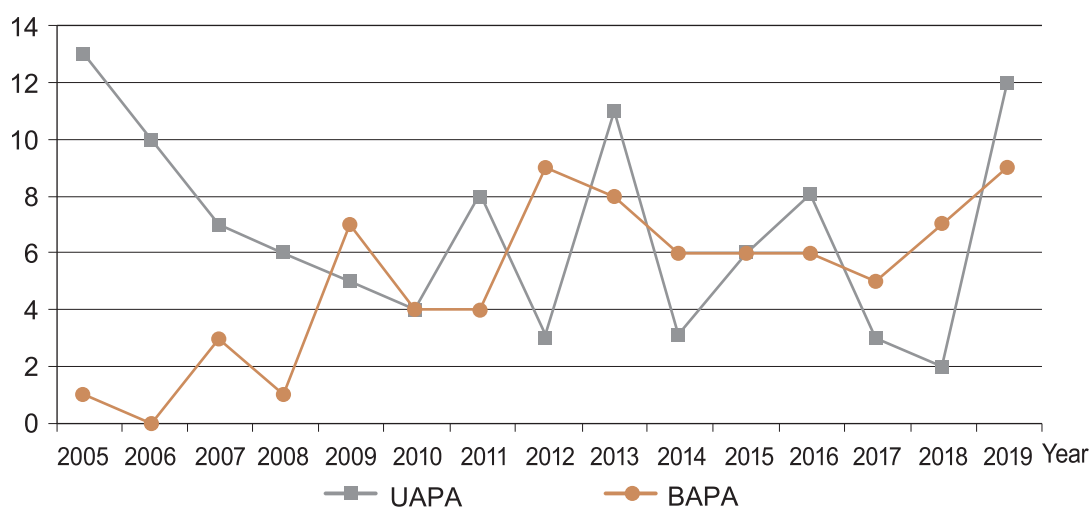


Chart 5-1 Number of APAs Signed (2005–2019)

As shown in the exhibit 5-1 and chart 5-1, China has signed 101 unilateral APAs and 76 bilateral APAs during this 15 year period, accounting for 57.06% and 42.94% of the total number of signed APAs in China respectively. So far China has not signed any multilateral APA. The number of APAs signed each year fluctuated from 2010 to 2019. Of the 9 bilateral APAs signed in 2019, 8 were signed for the first time and 1 was renewal. Of the 12 unilateral APAs signed in 2019, 11 was signed for the first time and another one was renewal. Altogether there were 21 APAs signed in 2019.

2. APAs by Phase

Exhibit 5-2 provides statistics of APAs by phase as of December 31, 2019.

Exhibit 5-2 **APAs by Phase (2005–2019)**

Phases	Unilateral	Bilateral	Total
Intent	8	69	77
Application	15	42	57
Signing	101	76	177

According to the *Public Notice of the State Taxation Administration on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements* (Public Notice of the State Taxation Administration (2016) No. 64), Exhibit 5-2 adjusts and divides APA program into three phases, which are intent, application and signing^①.

As can be seen clearly in Exhibit 5-2, there are more bilateral APAs than unilateral APAs in intent phase and application phase. 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 the workload of Chinese tax administration in dealing with bilateral APA issues will dramatically increase as the growth of APA applications.

^① The intent refers to the phase that the tax administrations accept the letter of intent of taxpayers; application refers to the phase that the tax administrations accept the formal application; signing refers the phase that the tax administrations are going to sign unilateral or bilateral APA with the taxpayers.

3. APAs by Transaction Type

Exhibit 5-3 below illustrates the types of transactions^① involved in the concluded APAs as of December 31, 2019.

Exhibit 5-3 Concluded APAs by Transaction Type (2005–2019)

Transaction Type	Number of APAs	Percentage
Transfer of the right to use or ownership of tangible assets	148	60.66%
Transfer of the right to use or ownership of intangibles	43	17.62%
Services	53	21.72%
Financing	0	0
Transfer of financial assets	0	0
Total	244	100%

As shown in Exhibit 5-3, transfer of the right to use or ownership of tangible assets accounts for the largest portion of transactions covered by China's APA program. Of the concluded APAs, 60.66% involve transfer of the right to use or ownership of tangible assets, 17.62% involve transfer of the right to use or ownership of intangibles, and 21.72% involve services. 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 of the right to use or ownership of intangibles, services, financing and transfer of financial assets.

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

4. Bilateral APAs by Region

From 2005 to 2019, China has signed 50 bilateral APAs with Asian countries(regions), 17 with European countries and 9 with North American countries. The following chart displays the percentage of bilateral APAs accounted for by each of these regions.

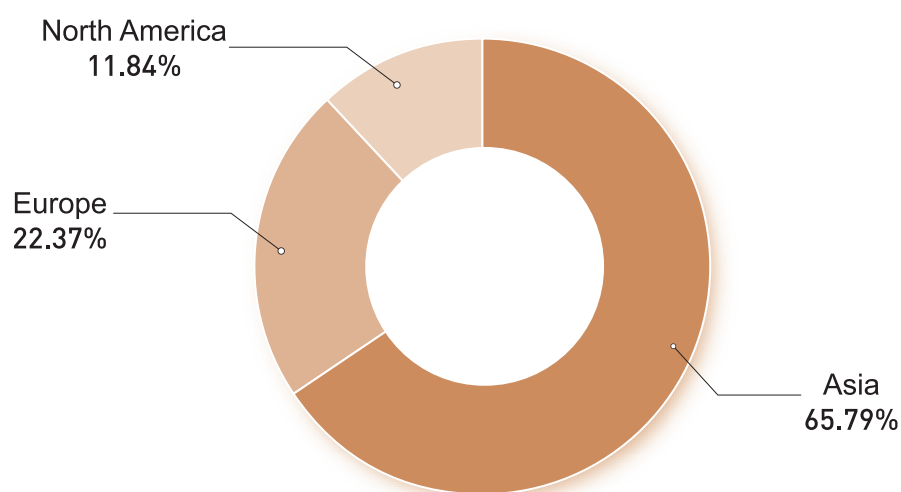


Chart 5-2 Bilateral APAs by Region (2005-2019)

5. APAs by Time Taken

Exhibit 5-4 illustrates the time taken to conclude unilateral and bilateral APAs signed by China in 2019.

Exhibit 5-4 APAs by Time Taken (2019)

Type	from Application to Conclusion				Total
	1 year (including 1 year)	1-2 years (including 2 years)	2-3 years (including 3 years)	> 3 years	
Unilateral	2	4	3	3	12
Bilateral	5	2	0	2	9

As shown in Exhibit 5-4, of the 12 unilateral APAs signed in 2019, 2 were concluded within 1 year, 4 were concluded in 1-2 years, 3 were concluded in 2-3 years, and the remaining 3 took more than 3 years. Besides, of the 9 bilateral APAs signed in 2019, 5 were concluded within 1 year, 2 were concluded in 1-2 years while the remaining 2 took more than 3 years.

Exhibit 5-5 illustrates the time taken for the unilateral and bilateral APAs to be signed by China from 2005 to 2019.

Exhibit 5-5 **APAs by Time Taken (2005–2018)**

Type	from Application to Conclusion				Total
	1 year (including 1 year)	1–2 years (including 2 years)	2–3 years (including 3 years)	>3 years	
Unilateral	53	37	7	4	101
Bilateral	36	11	10	19	76

As shown in Exhibit 5-5, 52.48% of China's unilateral APAs were concluded within 1 year, 36.63% were concluded in 1 to 2 years while only 10.89% took more than 2 years. While bilateral APAs generally took more time, 47.37% were concluded within 1 year, 14.47% took 1 to 2 years, 13.16% took 2 to 3 years, and the remaining 25% 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. 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 5-3 shows the transfer pricing methods^① applied in the unilateral and bilateral APAs signed from 2005 to 2019.

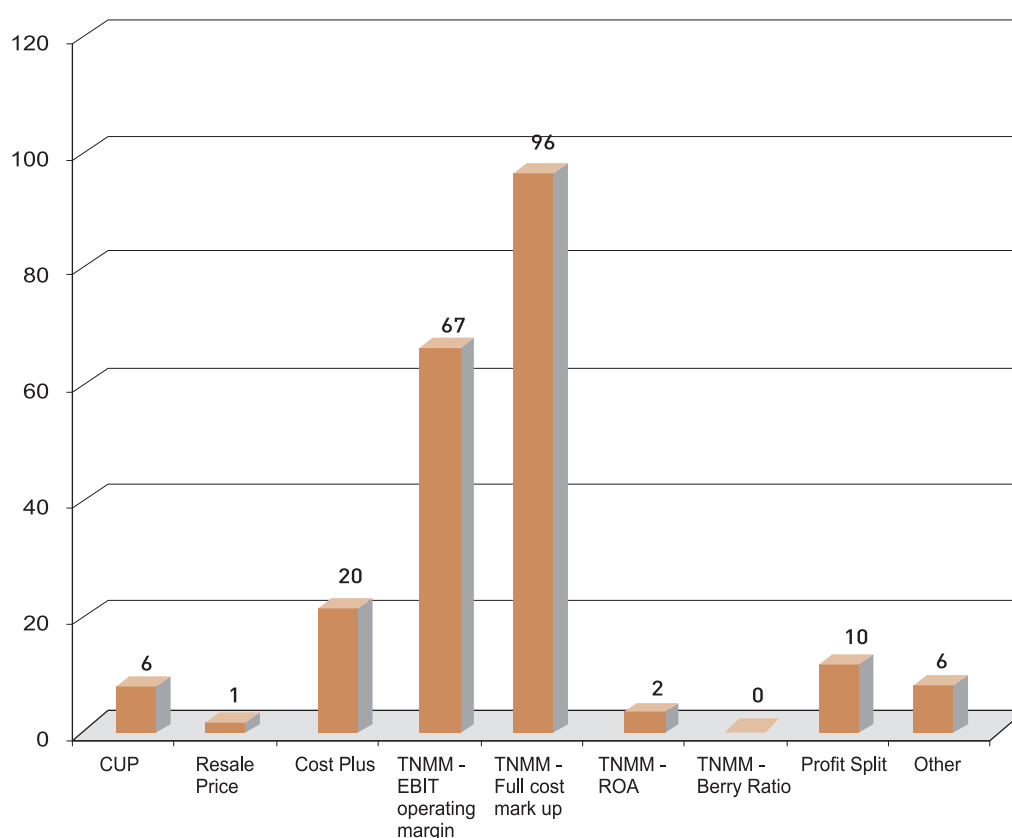


Chart 5-3 Transfer Pricing Methods Applied in APAs Signed (2005–2019)

The data indicates that the transactional net margin method (TNMM) is the most commonly used transfer pricing method, being used 165 times and accounting for 79.33% of all the applied transfer pricing methods. The most commonly used profit level indicators are the EBIT operating margin (used in 67 APAs) and the Full Cost Mark-up (used in 96 APAs). Meanwhile, the STA and local tax administrations have been exploring

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

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 20 of the concluded APAs. The other transfer pricing methods are applied less frequently. The comparable uncontrolled price (CUP) method is used in 6 cases, the resale price method in 1 case, the profit split method in 10 cases and other methods in the other 6 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 2019. 79.66% of the APAs signed from 2005 to 2019 still involve manufacturing industry.

Exhibit 5-6 Industries Covered (for APAs signed 2005–2019)

Industry Involved	Number
Manufacturing	141
Leasing and Commercial Services	8
Wholesale trade and retail	18
Transportation, warehousing, and postal services	4
Scientific and technical services	2
Information transmission, software and information technology services	2
Electricity, thermo, gas and water generation and supply	1
Construction	1
Total	177

VI STA Contacts (by province) for APA Requests

Organization	Name	Telephone	Address
STA Headquarters	TIAN Chuan	010-63418985	No. 5 Yangfangdian Xilu, Haidian District, Beijing
Beijing Municipal Tax Service, STA	MA Xiaowen	010-60907182	No.72(A) Tiantan Donglu, Dongcheng District, Beijing
Tianjin Municipal Tax Service, STA	WANG Chundi	022-24465656	No.16 Minzhu Street, Hebei District, Tianjin
Hebei Provincial Tax Service, STA	MA Zhenyu	0311-88625325	No.35 Ping' annan Street, Shijiazhuang, Hebei
Shanxi Provincial Tax Service, STA	LV Wentao	0351-2387455	No. 31 Shuiximen Street, Taiyuan, Shanxi
Inner Mongolia Autonomous Region Tax Service, STA	SUI Hongfeng	0471-3309112	Houqiaobao Street, Jinqiao Development Zone, Huhehaote, Inner Mongolia
Liaoning Provincial Tax Service, STA	LIU Wei	024-23185436	No.256 Qingnian Street, Shenhe District, Shenyang, Liaoning
Jilin Provincial Tax Service, STA	CHAI Jinsong	0431-80500257	No.1518 Nanhu Street, Changchun, Jilin
Heilongjiang Provincial Tax Service, STA	DENG Liming	0451-53611059	No.116 Dacheng Street, Nangang District, Haerbin, Heilongjiang
Shanghai Municipal Tax Service, STA	LIANG Jialei	021-54679568	No.800 Zhaojiabang Road, Shanghai
Jiangsu Provincial Tax Service, STA	NI Gang	025-58528531	No.30 Pujiang Road, Gulou District, Nanjing, Jiangsu
Zhejiang Provincial Tax Service, STA	WANG Zhen	0571-85270907	No.256 Huanchengbei Road, Hangzhou, Zhejiang
Anhui Provincial Tax Service, STA	DING Jiajia	0551-62831710	No.3398 Zhongshan Road, Binhu District, Hefei, Anhui

(Continued)

Organization	Name	Telephone	Address
Fujian Provincial Tax Service, STA	ZHENG Jing	0591-87098209	No.36 Tongpan Road, Fuzhou, Fujian, 350003
Jiangxi Provincial Tax Service, STA	WANG Haifang	0791-86204349	No.456 Honggunan Road, Honggutan New District Nanchang, Jiangxi
Shandong Provincial Tax Service, STA	LI Zhendong	0531-85656421	No.155 Yingxiongshan Road, Jinan, Shandong
Henan Provincial Tax Service, STA	YANG Liyun	0371-66767708	No.111 Fengchan Road, Zhengzhou, Henan
Hubei Provincial Tax Service, STA	JIANG Yuan	027-87322128	No.231 Yaojialing Road, Wuchang District, Wuhan, Hubei
Hunan Provincial Tax Service, STA	ZHOU Zhiyong	0731-85525533	No.6 Huanbaoxi Road, Yuhua District Changsha, Hunan
Guangdong Provincial Tax Service, STA	HUANG Rui	020-38358303	No.19 Huacheng Avenue, Tianhe District, Guangzhou, Guangdong
Guangxi Zhuang Autonomos Region Tax Service, STA	HU Yu	0771-5562291	No.105 Minzu Avenue, Nanning, Guangxi
Hainan Provincial Tax Service, STA	WANG Kaixia	0898-66509357	No. 10 Longkunbei Road, Haikou, Hainan
Chongqing Municipal Tax Service, STA	DU Wenyuan	023-67572815	No.9 Xihu Road, Yubei District, Chongqing
Sichuan Provincial Tax Service, STA	REN Huiyu	028-85458860	No.2 Linjiangdong Road, Wuhou District, Chengdu, Sichuan
Guizhou Provincial Tax Service, STA	YAN Hongyu	0851-85215543	No.71 Zhongshanxi Road, Guiyang, Guizhou
Yunnan Provincial Tax Service, STA	LAN Le	0871-63129989	No.304 Baita Road, Panlong District Kunming, Yunnan
Tibet Autonomous Region Tax Service, STA	QIAO Haijun	0891-6834079	No.51 Beijingzhong Road, Lhasa, Tibet
Shaanxi Provincial Tax Service, STA	ZHAO Ting	029-87695187	No.39 Erhuannan Road, Xi' an, Shaanxi

(Continued)

Organization	Name	Telephone	Address
Gansu Provincial Tax Service, STA	SONG Weixia	0931-8837625	No.156 Jingning Road, Chengguan District, Lanzhou, Gansu
Qinghai Provincial Tax Service, STA	MA Manxin	0971-8220441	No.11 Wenhua Street, Xining, Qinghai
Ningxia Hui Autonomous Region Tax Service, STA	WANG Li	0951-5065733	No.161 Beijingzhong Road, Jinfeng District, Yinchuan, Ningxia
Xinjiang Uygur Autonomous Region Tax Service, STA	CAO Peihao	0991-2681362	No.397 Qingnian Road, Tianshan District, Urumchi, Xinjiang
Dalian Tax Service, STA	MA Yuanyuan	0411-84384036	No.330 Gaoerji Road, Shahekou District, Dalian, Liaoning
Qingdao Tax Service, STA	JIAO Na	0532-83931089	No.236 Yanansan Road, Qingdao, Shandong
Xiamen Tax Service, STA	CHEN Gonghao	0592-2021901	No.318 Lujiang Road, Xiamen, Fujian
Ningbo Tax Service, STA	WU Miner	0574-87732286	No.8 Baizhang Road, Yinzhou District, Ningbo, Zhejiang
Shenzhen Tax Service, STA	LI Jianhui	0755-25843313	No.613 Baguaer Road, Futian District, Shenzhen, Guangdong

Appendices: Forms and Schedules of the APA Program

Appendix 1

APA Pre-filing Meeting Application Letter

_____:

In accordance with:

- ☐ *The Law of the People's Republic of China on Enterprise Income Tax* and its Implementation Regulations;
- ☐ *The Law of the People's Republic of China on the Administration of Tax Collection* and its Implementation Rules;
- ☐ The relevant provisions in the tax treaty entered into by the government of the People's Republic of China and the government of _____

for the transaction(s) between our Enterprise and our related party(ies), we apply for:

- ☐ Pre-filing Meeting (unilateral APA);
- ☐ Pre-filing Meeting (bilateral APA);
- ☐ Pre-filing Meeting (multilateral APA);

Contact person: _____ Contact telephone number _____.

Enclosures: Total ____ copies ____ pages

1. _____

2. _____

3. _____

...

Name of Enterprise (Official Stamp):

Taxpayer Identification Number:

Legal Representative (Official Stamp):

(Date):

Appendix 2

APA Letter of Intent

_____:

In accordance with:

- ☐ The *Law of the People's Republic of China on Enterprise Income Tax* and its Implementation Regulations;
- ☐ The *Law of the People's Republic of China on the Administration of Tax Collection* and its Implementation Rules;
- ☐ 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 on Tax Matters* (_____ Shui Yi Xiang [] No.) issued by your bureau on _____ (Date), we apply for:

- ☐ Intention for unilateral APA;
- ☐ Intention for bilateral APA;
- ☐ Intention for multilateral APA;

for the transaction(s) between our Enterprise and _____ (name of the related party). 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):

Appendix 3

APA Formal Application Letter

_____:

In accordance with:

- ☐ The *Law of the People's Republic of China on Enterprise Income Tax* and its Implementation Regulations;
- ☐ The *Law of the People's Republic of China on the Administration of Tax Collection* and its Implementation Rules;
- ☐ 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 on Tax Matters* (_____ Shui Yu Yue [] No.) issued by your bureau on _____ (Date), we apply for:

- ☐ Formal application for unilateral APA;
- ☐ Formal application for bilateral APA;
- ☐ Formal application for multilateral APA;

for the transaction(s) between our Enterprise and the _____ (name of the related party). 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):

Appendix 4

Advance Pricing Arrangement (Unilateral)

(Text for Reference)

Pursuant to the Law of the People's Republic of China on Enterprise Income Tax and its Implementation Regulations as well as the Law of the People's Republic of China on the Administration of Tax Collection and its Implementation Rules, upon formal application of _____ (company name) and the confirmation 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 Tax Bureau of _____ (tax office name).

The term "taxpayer" refers to _____ (company name); Taxpayer Identification Number: _____; Address: _____.

Article 2 Scope of Application

Type of tax(es) covered: This APA is applicable to enterprise 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 3 Applicable Term

This APA is applicable for _____ year to _____ year, totally _____ (number) tax years. Each taxable year is from _____ (month) _____ (day) to _____ (month) _____ (day).

Article 4 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 5 Transfer Pricing Method

The transfer pricing principle and calculation method used in this APA for the _____ transactions between _____ (company name) and its related party(ies) is _____ (Each related transaction should be separately listed).

Article 6 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 6 months after the end of the taxable year, together with the following documents:

Article 7 Legal Binding Force of this APA

During the covered period of this APA, both of the tax authority and the taxpayer should comply with all the articles and requirements set out in this APA. 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 8 Renewal of this APA

This APA cannot be the basis to renew. The taxpayer should comply with relevant regulations to apply for renewal of APA.

Article 9 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 for mediation; Where an APA involves two or more provinces, autonomous regions, municipalities directly under the central government or cities specifically designated in the state plan, both parties may petition the State Taxation Administration for mediation. If the taxpayer cannot accept the mediation resolution, it should consider revising or terminating this APA.

Article 10 Confidentiality and Responsibility

Both the in-charge tax administration(s) and the taxpayers are legally bound to keep the information and documents obtained through the APA process confidential.

The STA may exchange information on unilateral APAs 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.

Article 11 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 12 Supplementary Provisions

This APA should be prepared in Chinese, in _____ (number) copies, one for the in-charge tax authority and the other for the taxpayer.

_____ Tax Authority

_____ (Enterprise)

Signature:

Date:

Signature:

Date:

Title:

Stamp:

Title:

Stamp:

Appendix 5

_____ Tax Authority

Notice on APA Tax Payable (Refundable)

_____ Shui Yu Tiao [] No. _____

_____ (name of taxpayer):

In accordance with

☐ The _____ (name of unilateral APA) signed on _____ (date-month-year) between our office and your company;

☐ The _____ (name of bilateral or multilateral APA) signed on _____ (date-month-year) between Tax authority of China and _____ (name of the competent authority of the tax treaty contracting party),

the taxable year from _____ to _____ will be adjusted:

1. Make a upward (downward) adjustment to the taxable income for _____ RMB, correspondingly paying (refunding) enterprise income tax for _____ RMB and surcharging interest as stipulated.
2. Make a upward (downward) adjustment to the assessable income for _____ RMB, correspondingly paying (refunding) _____ (tax category) for _____ RMB.
- ...

If additional tax payments were required, you have to pay the tax and interest to _____ (tax authority) within _____ days after receiving this notice. The late payment will be punished in accordance with the *Law of People's Republic of China on the Administration of Tax Collection*.

Hereby notified.

Attachments: 1. Enterprise Income Tax Adjustment Items

2. Other Tax(es) Adjustment Items

3. The Schedule of tax Payable(refundable)

Tax Authority (Stamp)

(Date)

Appendix 6

APA Renewal Application

_____ Tax Authority:

- ☐ The _____ (name of unilateral APA) signed on _____ (date-month-year) between your office and our company _____
- ☐ The _____ (name of bilateral APA) signed on _____ (date-month-year) between Tax authority of China and _____ (name of the competent authority(ies) of the tax treaty contracting party) will expire on _____ (date-month-year). After expiration, our company plans to apply for APA renewal of related party transactions in the future years (from _____ to _____).

Name of Enterprise (Official Stamp):

Taxpayer Identification Number:

Legal Representative (Official Stamp):

(Date):

Attachments: 1. The annual APA implementation reports for the existing APA (provided by taxpayers).

2. The documents explaining whether there have been any substantial changes to the facts and operating environment specified in the existing APA, and forecast for the year to be covered by the APA renewal (provided by taxpayers).

Appendix 7

Application to Initiate Transfer Pricing Mutual Agreement Procedures

Basic information of the applicant	The party in China	Name (Chinese and English)			
		Detailed address (Chinese and English)		Postcode	
		Taxpayer identification number			
		Contact Person (Chinese and English)			
		Contact information (telephone number, fax, email)			
		Name and address of the tax authority in charge (Chinese and English)		Postcode	
		Contact Person of the tax authority in charge			
		Contact information (telephone number, fax, email) of the tax authority in charge			
		Whether to apply other domestic remedy or not? (e.g. Administrative Reconsideration, Administrative Proceeding) If so, please provide the submission date, the date that the application is accepted, and the progress of domestic remedy.			
Basic information of the related party(ies) of the applicant	The party in the other treaty partner	Name (Chinese and English)			
		Detailed address (Chinese and English)		Postcode	
		Taxpayer identification number			
		Contact Person (Chinese and English)			
		Contact information(telephone number, fax, email) of the tax authority in charge			
		Name of the treaty partner (Chinese and English)			
		Detailed address of the tax authority in charge (Chinese and English)			
		Contact Person of the tax authority in charge (Chinese and English)			
		Contact information (telephone number, fax, email) of the tax authority in charge			
		Whether to submit the MAP application or not? If so, please provide the submission date and the date that the application is accepted by the treaty partner.			
		Whether to apply other domestic remedy or not? (e.g. Administrative Reconsideration, Administrative Proceeding) If so, please provide the date to submit application, the date that the application is accepted and the progress of domestic remedy.			

Summary of the issue to negotiate	Facts:	
	Issues:	
	The applicant's opinion on the issue and the relevant basis thereof	he 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):		
<p>Declaration: I hereby declare that all the application and the attachment provided are truthful, complete and accurate. All the data I provided can be shown to the treaty partner except for those which are listed in the special announcement. I will support and cooperate both contracting parties to carry out mutual agreement procedure, and provide required information in time. I understand and agree that the mutual agreement procedure is only operated between the representatives of competent authorities of both contracting parties. Accordingly, Our company would take part in only when we are invited.</p> <p style="text-align: right;">Signature of declarant:</p> <p style="text-align: right;">Date(Day-Month-Year):</p> <p>(Tips: For individual applicants, please sign your name; For corporate entities and other organizations, please appoint you legal representative or person in charge to sign and stamp)</p>		