

# China Advance Pricing Arrangement Annual Report

(2011)



State Administration of Taxation  
People's Republic of China



# Foreword

The release of the “China Advance Pricing Arrangement Annual Report (2010)” has been well-received by the business community and the international tax community. The China State Administration of Taxation (“SAT”) hereby issues the 2011 Annual Report, prepared subsequent to the release of the relevant statistics.

As a major aspect of China’s anti-avoidance work, Advance Pricing Arrangement (APA) is an important tool for China to deal with cross-border tax issues and safeguard cross-border taxpayers’ legitimate rights. Cross-border tax administration in a globalized world economy requires a fair allocation of MNCs’ worldwide profits between the exporting countries and importing countries of capital and technology. Compared with developed countries, developing countries are usually capital and technology importing countries, and manufacturing countries and emerging markets as well. Traditional profit allocation rules often neglect to consider the significant contribution to MNCs’ worldwide profits arising from Location Specific Advantages (“LSAs”) and other factors which exist in the capital and technology importing countries. China, as a major capital and technology importing country, has been constantly exploring and developing profit allocation concepts which recognize and rightly reflect the contribution of capital and technology importing countries, and applying them in China’s transfer pricing and advance pricing arrangement practice. Concepts including LSAs, cost savings, market premium, marketing intangibles have been increasingly

acknowledged and accepted by the international tax community and business community.

APA is also an important effort by the SAT to improve services and provide certainty for taxpayers under the scientific development concept. Regularly releasing APA annual reports is a major initiative of SAT to enhance transparency of the APA program. This Report introduces China's APA mechanisms, procedures and practices, and provides statistics for 2005 through 2011 accompanied by an analysis of the statistics. An important addition worth noting in the 2011 report is a list of SAT contacts by province for APA requests, and a brief description of the APA program operation in 2011, which further demonstrates SAT's determination to enhance transparency and taxpayer service.

The SAT hopes this Report will provide useful guidance to taxpayers, particularly MNCs investing in China and Chinese companies "going global", and keep the general public, foreign tax administrations, and international organisations well informed of China's APA Program practice.

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# Content

<b>Notes</b>	<b>1</b>
<b>I Introduction to China's APA Program</b>	<b>3</b>
1. Definition	3
2. Categorization	3
3. Advantages	3
<b>II Legislation and Practice Development of China's APA</b>	<b>5</b>
1. History	5
2. Existing Legal Basis	6
<b>III APA Procedures</b>	<b>8</b>
1. Prerequisites to an APA Application	8
2. APA Process and Implementation	9
A. Pre-filing Meeting	10
B. Formal Application	11
C. Examination and Evaluation	12
D. Negotiation	13
E. Signing	14
F. Implementation and Monitoring	14
3. Rollback	15
4. Renewal	15
5. Termination or Cancellation	15

<b>IV Protection of Taxpayers' Rights</b>	<b>17</b>
1. Confidentiality of Taxpayers' Information	17
2. Taxpayers' Freedom of Contract	17
<b>V Statistics</b>	<b>18</b>
1. APAs Signed by Year	18
2. APAs by Phase	20
3. APAs by Transaction Type	22
4. Bilateral APAs by Region	23
5. APAs by Time Taken	24
6. APAs by Transfer Pricing Method	25
7. Industries Covered by signed APAs	26
<b>VI SAT Contacts (by Province) For APA Requests</b>	<b>27</b>
<b>Appendices - Forms and Schedules of the APA Program</b>	<b>31</b>
I APA Meeting Record	31
II Notice of Formal Meeting of the APA	33
III Notice of Rejection of Enterprise's Application for APA	34
IV Formal Application Letter for APA	35
V Application to Initiate Mutual Agreement Procedures	37
VI Application for Extension of Submitting the Formal Application for APA	39
VII Reply to Application for Extension of Submitting the Formal Application for APA	40
VIII Notice of Extension of Examination and Evaluation of APA	41
IX Advance Pricing Arrangement (Unilateral) (Text for Reference)	42
X Bilateral (Multilateral) APA Implementation Agreement (Text for Reference)	46
XI APA Renewal Application	47
XII Reply Letter on the APA Renewal Application	48

## Notes

This is the third APA annual report released by the State Administration of Taxation (“SAT”) to describe the mechanisms, procedures, and implementation of the APA program in China. This report is intended to provide guidelines to enterprises interested in entering into APAs with the Chinese tax authority, and to serve as a reference for competent authorities of other countries<sup>①</sup> 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 follows the framework of the 2009 and 2010 reports while updating the statistics through December 31, 2011. Other additions include statistics related to “APA renewals signed in 2011” and “industries covered by signed APAs”, revisions to Section 2 of Chapter 3, and the newly included Chapter 6 “SAT Contacts (by Province) for APA Requests” intended to support taxpayers in the submission of APA requests.

With an effort to enhance transparency of the APA program, SAT intends to briefly describe in each Annual Report the operation of the APA program during the year of report, beginning with this Report.

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① For the purpose of this report, “other countries” include regions with independent tax jurisdiction.

The operation of the APA program in 2011 is described below:

During 2011, there were 8 unilateral APAs signed and 4 bilateral APAs signed. By December 31, 2011, a total of 53 unilateral and 20 bilateral APAs have been signed and 15 unilateral and 79 bilateral APA requests (and submitted intentions) are pending.

In contrast to the large number of pending requests for APAs, the APA program in 2011 had only 6 persons on staff at the SAT Headquarters (who are also entrusted with TP auditing and TP-related MAP cases). As part of the effort to address the serious understaffing, SAT has a strong commitment for the training of local anti-avoidance<sup>①</sup> personnel and mobilizes local human capacity and expertise in case examination and analysis. Local personnel are engaged in the APA team for each BAPA case so as to ensure that each case merit sufficient input of human resources.

With an effort to enhance the quality of personnel, SAT devotes a large amount of resources to training activities on a regular basis. Training sessions in 2011 include: (1) 3 training sessions featuring experienced APA negotiators from the SAT HQ and local offices and experts from the intermediaries to provide lecturing to APA and TP personnel nationwide on selected topics, i.e., IP, transfer of equity, and application of the income method. (2) 3 training sessions featuring experts from the OECD and other international organizations to present global experiences and address current issues emerging from China's practical work. (3) 16 internal exchanges across regions aimed at sharing experiences on cases and reducing inconsistency in APA practice between regions. (4) 3 training sessions targeting senior management at local offices aimed at enhancing their awareness and understanding of the anti-avoidance and APA work.

<sup>①</sup> In china, anti-avoidance rules include rules for transfer pricing, advance pricing arrangements, cost sharing agreements, controlled foreign corporations, thin capitalization and general anti-avoidance rules.



## I Introduction to China's APA Program

### 1. Definition

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

### 2. Categorization

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

In a unilateral APA, the enterprise enters into the APA with one country's tax authority. A unilateral APA can only provide certainty to the enterprise's pricing policy and method with respect to its related party transactions within one country, but cannot ensure that the overseas related party(ies) will effectively avoid transfer pricing audits or adjustments with respect to its transfer pricing with the enterprise by the tax authority of the related party. 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 policies or methods 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 with the collaboration between tax authorities and an enterprise. An APA between the tax authority and the enterprise is binding on all parties. The enterprise shall proactively conform to all the



provisions and requirements of the arrangement, while tax authorities shall monitor the implementation of the agreement.

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

- a) Provide certainty for tax authorities and enterprises in regards to transfer pricing issues for future years, which will offer certainty with regard to taxpayers' operations and relevant tax obligations and provide tax authorities with an expectation of stable revenue;
- b) 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; and
- c) Improve the 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 additional advantages:

- a) Facilitate communication and collaboration among the competent tax authorities of different jurisdictions; and
- b) 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)”<sup>①</sup> (Guo Shui Fa [1998] No. 59). In 1998, the first unilateral APA was reached between a tax authority and an enterprise.

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

In 2004, the SAT promulgated “Implementation Rules on Advance Pricing Arrangements for Transactions between Related Parties (Trial Version)” (Guo Shui Fa [2004] No. 118), which provides details of the APA program and specific procedures such as negotiation and conclusion procedures, requirements, follow-up execution and monitoring, as well as guidance on APA administration in China. Such a step further regulated the administration of China’s APA program. From 1998 to 2004, a number of local Chinese tax authorities initiated trial programs and concluded unilateral APAs with enterprises. However, due to the absence during this period of implementation guidance that was specific, standardized and imposed nationwide, concluded APAs were usually found to be defective through over-simplified APA articles and insufficient function, risk and economic analysis. For this reason, this report does not contain statistics about APAs concluded during this period.

In order to standardize and ensure consistency of China’s APA administration across the country, the SAT has implemented rules for APA monitoring and administration since 2005 requiring the local

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- 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.

tax authorities to submit the draft unilateral agreement to the SAT for review and approval before its conclusion. Meanwhile, local tax authorities are required to steadily promote APA programs and strictly conform to the relevant regulations to improve the administrative soundness of the APA program. China's APA administration has since stepped into a new stage of well-founded regulation. In April 2005, Japan and China concluded the first bilateral APA in China's history. Subsequently, China reached bilateral APAs with the United States, the Republic of Korea, and other countries. From 2005 to 2008, the Chinese tax authorities concluded 41 APAs, including 36 unilateral and five bilateral APAs.

At the beginning of 2009, Guo Shui Fa [2009] No. 2 "Implementation Measures of Special Tax Adjustments (Trial Version)" ("the Measures") was promulgated to facilitate the implementation of the Corporate Income Tax Law of the People's Republic of China and its Implementation Regulations. Chapter Six of the Measures provides more detailed rules and implementation guidance on China's APA program. In 2009, China's bilateral APA program experienced rapid growth; the Chinese tax authorities signed 12 APAs, including five unilateral and seven bilateral APAs.

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.

From 1 January 2005 to 31 December 2011, the Chinese tax authorities received 99 submitted intentions or formal applications for bilateral APAs in total (of which 21 have been concluded). The countries involved amounted to 15.

In addition, the SAT has received numerous enquiries on bilateral APAs from enterprises. It is expected that the number of APA applications will continue to increase.

## 2. Existing Legal Basis

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

- a) The relevant clauses in the agreements for the avoidance of double taxation (the "Treaty" or "Arrangement") between the government of China and the government of the corresponding country (region);
- b) Article 42 of the Corporate Income Tax Law of the People's Republic of China;



- c) Article 113 of the Implementation Regulations of the Corporate Income Tax Law of the People's Republic of China;
- d) Article 53 of the Implementation Regulations of the Administration of Tax Collection and Administration Law of the People's Republic of China;
- e) Chapter 6 and other related provisions of the Implementation Measures of Special Tax Adjustments (Trial Version) (Guo Shui Fa [2009] No. 2).

### III APA Procedures

#### 1. Prerequisites to an APA Application

In general, an enterprise meeting all of the following three formal criteria may apply for an APA:

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

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

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

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

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

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

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

a) Enterprises which have provided sufficient and complete information, actively cooperate with the tax authority’s examination and evaluation, and proactively submit a reasonable APA proposal;

b) Enterprises which have been investigated by the tax authorities for their transfer pricing policies.

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

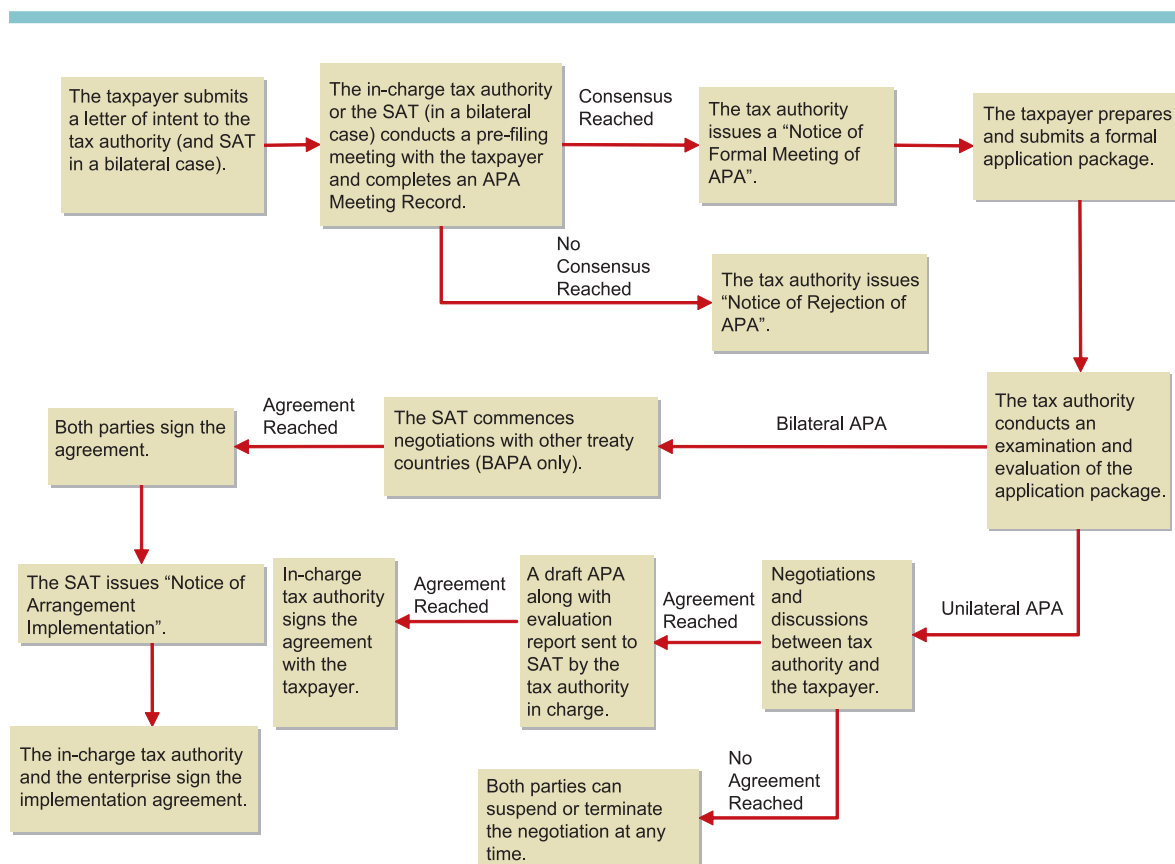
an APA.

## 2. APA Process and Implementation

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

- A. Pre-filing meeting
- B. Formal application
- C. Examination and evaluation
- D. Negotiation
- E. Signing
- F. Implementation and monitoring

The following chart illustrates the process:



### A. Pre-filing Meeting

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

The in-charge tax authority (or the SAT in the case of a bilateral or multilateral APA), may conduct a pre-filing meeting with the enterprise to discuss relevant matters and the feasibility of reaching an APA, and complete an “APA Meeting Record” (see Appendix I). During the pre-filing meeting, the tax authority will discuss with the enterprise based on the type of the APA application.

#### (1) Contents of the pre-filing meeting

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

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

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

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

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

The pre-filing meeting can be held anonymously.

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



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

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

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

## **B. Formal Application**

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

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

- (1) Descriptions of relevant group structure, internal organizational structure of the enterprise, related party relationships, and related party transactions;
- (2) Financial and accounting reports of the enterprise for the most recent three years, and information on product performance and assets (including intangible and tangible assets);
- (3) Types of related party transactions and tax years to be covered by the APA;
- (4) Allocation of functions and risks among related parties, including the allocation criteria used such as entities involved, personnel, expenses, assets, etc.;
- (5) Proposed transfer pricing methodology and calculation method in the APA, and the functional and risk analysis, comparability analysis and assumptions used for supporting such methodology and

method;

- (6) Description for market conditions, including industry development trends and competitive environment;
- (7) Annual information on business scale, business performance forecasts and business plans for the period covered by the APA;
- (8) Information regarding related party transactions in relevance, business arrangements and financial results such as profit levels, etc., involved in the arrangement ;
- (9) Whether there are double taxation issues; and
- (10) Relevant issues in relation to domestic and international laws and tax treaties.

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

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

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

When the enterprise applies for a bilateral (or multilateral) APA, the reports it submit to the two (or the respective) competent authorities should be consistent. If the application report is originally prepared in a foreign language, it should be fully translated into Chinese when submitted to the Chinese tax authorities with no deletions or abridgement. The relevant foreign-language contracts should also be translated into Chinese.

### **C. Examination and Evaluation**

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

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

- (1) Overview of historical operations;

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

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

If the evaluations need to be extended due to special factors, the tax authorities should formally inform the enterprise, and issue the "Notice of Extension of Examination and Evaluation of APA" (see Appendix VIII). The delay should not exceed three months.

#### **D. Negotiation**

For unilateral APAs, the tax authority will arrange negotiations and discussions with the enterprise after the tax authority reaches a position following its examination and evaluation process. If both parties can reach an agreement, the draft APA along with an examination and evaluation report will be submitted to the SAT for review and approval.

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

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

- (10) Methods and approaches of dispute resolutions;
- (11) Effective date; and
- (12) Appendices.

#### **E. Signing**

For a unilateral APA, the legal representatives or representatives authorized by the legal representatives of both the tax authority and the enterprise officially sign the unilateral APA (see Appendix IX).

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

#### **F. Implementation and Monitoring**

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

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

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

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

### 3. Rollback

Negotiation and signing of the APA does not affect transfer pricing audits conducted and adjustments made by tax authorities on the enterprise's related party transactions in the year during which the enterprise submits its formal written application or any prior year.

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

The rollback stipulation has the advantage of resolving many years of potential transfer pricing issues through the APA application process. The relevant regulations for transfer pricing investigations are applicable to the rollback period, as far back as 10 years.

### 4. Renewal

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


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

During the term of the APA, if the enterprise's overall profit level stays below the median most of the time, where an arm's length range is used, the tax authority may no longer accept an application for renewal of the APA.

### 5. Termination or Cancellation

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

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



mediation. The APA shall be terminated if the outcome of the consultation or determination of the tax authority at the next higher level or the SAT is not acceptable to the enterprise; or

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



## IV Protection of Taxpayers' Rights

### 1. Confidentiality of Taxpayers' Information

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

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

### 2. Taxpayers' Freedom of Contract

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

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

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

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

## V Statistics

### 1. APAs Signed by Year

Exhibit 5-1 summarizes the number of unilateral and bilateral APAs that the Chinese tax authorities signed during each of the 2005 to 2011 calendar years.

**Exhibit 5-1 Number of APAs Signed**

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)
<b>Total</b>	<b>53</b>	<b>20</b>	<b>0</b>	<b>73</b>

China has signed 53 unilateral APAs and 20 bilateral APAs during this 7 year period, accounting for 72% and 28% of the total number of APAs in China respectively. So far China has not signed any multilateral APA.





The chart below compares the number of unilateral APAs and bilateral APAs signed from 2005 through 2011.

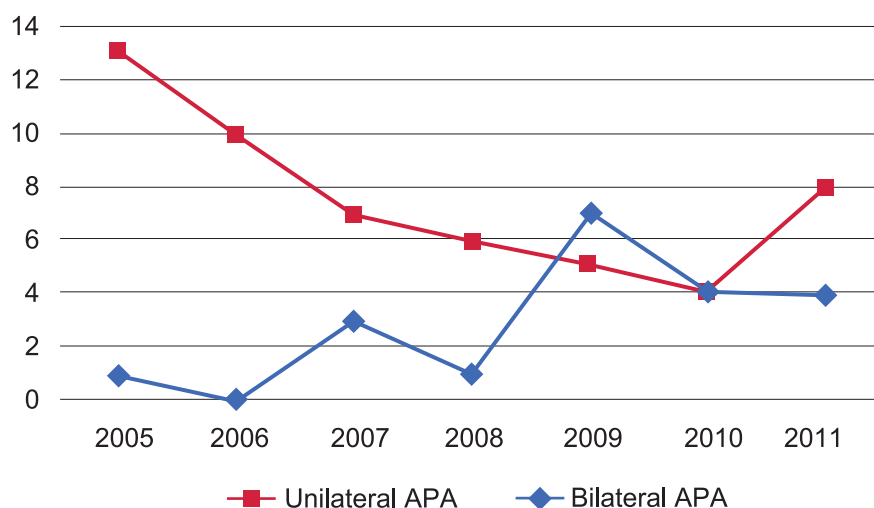


Chart 5-1 Number of APAs Signed 2005 – 2011

As shown in the chart above, the number of unilateral APAs is decreasing year by year, while the number of bilateral APAs is generally increasing. From 2005 to 2008, more unilateral than bilateral APAs were signed every year. However, the number of bilateral APAs exceeded that of unilateral APAs in 2009 for the first time, representing the APA program's principal component. In 2010, the number of bilateral APAs signed was equal to that of unilateral APAs. Of the 8 unilateral APAs signed in 2011, 4 are renewals, and 4 are signed for the first time, equalling the number of bilateral APAs signed for the first time in 2011. This indicates that taxpayers are attaching more importance to bilateral APAs and looking for ways to resolve bilateral international transfer pricing issues and avoid double taxation through the MAP process. It also reflects the SAT's intensified effort in promoting the MAP program.

## 2. APAs by Phase

Exhibit 5-2 provides statistics of APAs by phase as of 31 December 2011.

**Exhibit 5-2 APAs by Phase** ( as of 31 December 2011 )

	Phases	Unilateral	Bilateral	Total
Pre-Acceptance	Proposal / letter of intent	6	21	27
	Pre-filing meeting	1	30	31
	Subtotal	7	51	58
Accepted Applications	Examination and evaluation <sup>①</sup>	1	15	16
	Negotiation	3 <sup>②</sup>	12	15
	Subtotal	4	27	31
Concluded APAs	Agreed but not signed	4	1	5
	Executed and monitored	12	9	21
	Expired	41	11	52
	Subtotal	57	21	78
<b>Total</b>		<b>68</b>	<b>99</b>	<b>167</b>

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

② One of the cases in this category covers 26 legal entities.



The “Accepted Applications” category, as displayed in Exhibit 5-2, refers to APA applications which the tax authorities have accepted as submitted by the enterprises but where an agreement has not yet been achieved. Applications falling into this category are either under examination and evaluation or under negotiation. The other main category, “Concluded APAs”, includes APAs that have been agreed but not signed, APAs that are being executed and monitored, and APAs that have expired. China currently has 57 unilateral APAs in the “Concluded Applications” category, of which 4 are yet to be signed, 41 have expired and 12 are in effect. There are only 4 unilateral APAs under the “Accepted Applications” category, 1 in the pre-filing meeting phase and 6 in the proposal phase. Regarding bilateral APAs, 21 bilateral APAs have been concluded, of which 1 is yet to be signed, 11 have expired, and the remaining 9 are in effect. There are 27 bilateral accepted applications, including 15 under examination and evaluation and 12 under negotiation. 30 companies are having pre-filing meetings with the Chinese tax authority, and 21 other companies have submitted their intentions for a bilateral APA and are waiting in the line for their first pre-filing meeting with the tax authority to be arranged.

While far more unilateral APAs than bilateral APAs have been concluded, most concluded unilateral APAs were signed several years ago and have already expired, and a large part of the unilateral APAs in effect are renewals. In contrast, of the proposed and accepted APA applications, there are fewer unilateral than bilateral applications, suggesting that bilateral APAs are expected to increase significantly both in terms of number and workload in the coming years. As the Chinese tax authorities aim to steadily promote the APA program and to improve the quality of the APA examination work, we have devoted special effort to pre-filing examination. Therefore, many enterprises’ APA applications are still at the pre-acceptance stage.

### 3. APAs by Transaction Type

Exhibit 5-3 below illustrates the types of transactions involved in the accepted and concluded APAs as of 31 December 2011<sup>①</sup>.

**Exhibit 5-3 APA by Transaction Type** ( as of 31 December 2011 )

Accepted Applications			Concluded APAs		
Transaction Type	Number of APAs	Percentage	Transaction Type	Number of APAs	Percentage
Purchase and sale of tangible assets	22	45%	Purchase and sale of tangible assets	63	64%
Transfer or use of intangible assets	18	37%	Transfer or use of intangible assets	17	18%
Provision of services	9	18%	Provision of services	18	18%
Financing	0	0	Financing	0	0
<b>Total</b>	<b>49</b>	<b>100%</b>	<b>Total</b>	<b>98</b>	<b>100%</b>

As shown in Exhibit 5-3, purchase and sale of tangible assets accounts for the largest portion of transactions covered by China's APA program. Of the concluded APAs, 64% involve the purchase and sale of tangible assets, 18% involve the transfer of intangible assets, and 18% involve the provision of services. APAs involving the purchase and sale of tangible assets account for 45%, the largest proportion of accepted applications, although this is lower than the proportion of concluded APAs accounted for by this type of transaction. APAs involving the transfer or use of intangible assets and the provision of services account for 37% and 18% of accepted applications, respectively, which represents an increasing trend. These statistics

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

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

#### 4. Bilateral APAs by Region

From 2005 to 2011, China has signed 15 bilateral APAs with Asian countries, 4 with a European country and 1 with a North American country. The following chart displays the percentage of bilateral APAs accounted for by each of these regions.

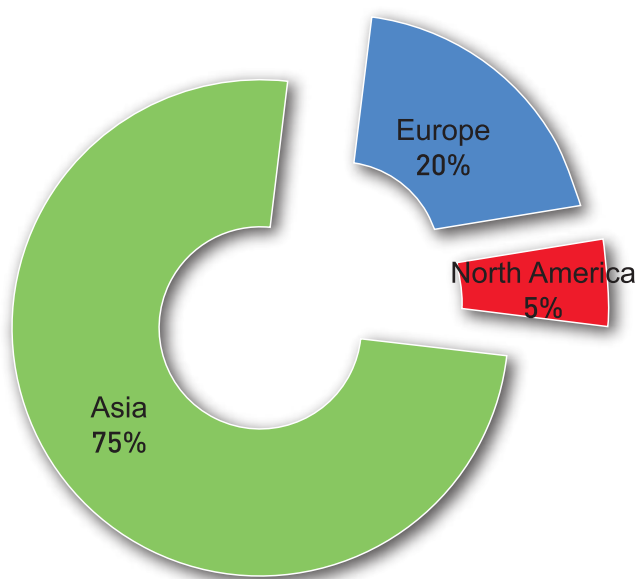


Chart 5-2 Bilateral APAs by Region ( 2005 to 2011 )

## 5. APAs by Time Taken

Exhibit 5-4 illustrates the time taken for unilateral and bilateral APAs signed by China in 2011.

**Exhibit 5-4 APAs (2011) by Time Taken**

Type	From Application to Signing				Total
	< 1 year	1-2 years	2-3 years	>3 years	
Unilateral	4	3	1	0	8
Bilateral	2	1	1	0	4

As shown in Exhibit 5-4, 87.5% of China's unilateral APAs and 75% of China's bilateral APAs signed in 2011 were completed in two years or less, while 50% of each are completed within 1 year.

Exhibit 5-5 illustrates the time taken for the unilateral and bilateral APAs signed by China from 2005 to 2011.

**Exhibit 5-5 APAs (from 2005 to 2011) by Time Taken**

Type	From Application to Signing				Total
	< 1 year	1-2 years	2-3 years	>3 years	
Unilateral	28	24	1	0	53
Bilateral	11	4	4	1	20

As shown in Exhibit 5-5, 53% of China's unilateral APAs were completed within one year, 45% were completed within one to two years while 2% took two to three years. While Bilateral APAs generally take more time, 55% were completed within one year, 20% took one to two years, 20% took two to three years, and the remaining 5% were completed in more than three years.

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

documents provided by the enterprises, the efficiency of the tax officers' review process, and the extent of the enterprise's cooperation (e.g. timely provision of information).

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

## 6. APAs by Transfer Pricing Method

The chart below shows the transfer pricing methods applied in the unilateral and bilateral APAs signed 2005 to 2011<sup>①</sup>.

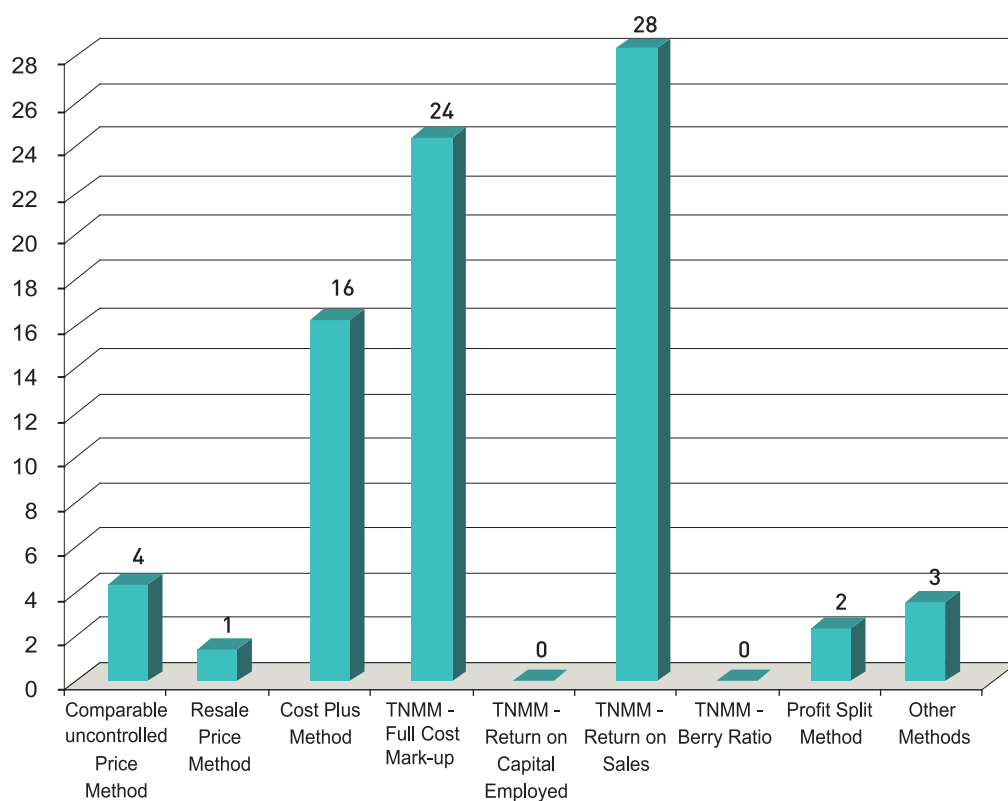


Chart 5-3 Transfer pricing methods applied in APAs signed between 2005 and 2011

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

The data indicates that the transactional net margin method (TNMM) is the most commonly used transfer pricing method, being used in 52, or 67%, of signed APAs. The most commonly used profit level indicators are the Return on Sales ratio (used in 28 APAs) and the Full Cost Mark-up ratio (used in 24 APAs). Recently, the Chinese tax authorities have frequently used public data, which explains why the TNMM is the most commonly used method in the signed APAs. Moreover, the TNMM is also used to determine the routine profit when applying a residual profit split method.

The second most popular transfer pricing method is the cost plus method, being used in 16 of the concluded APAs. The other transfer pricing methods are applied less frequently. The comparable uncontrolled price (CUP) method is used in 4 cases; the resale price method in 1 case; the profit split method in 2 cases; and other methods in the other 3 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 2011. 88% of the APAs signed 2005 to 2011 still involve the manufacturing industry while only 12% relate to other industries.

**Exhibit 5-6 Industries Covered** ( for APAs signed 2005~2011 )

Industry Involved	Number
Manufacturing	64
Commercial Services	3
Wholesale trade and retail	3
Transportation, warehousing, and postal services	1
Scientific and technical services	1
Electricity, thermo, gas and water generation and supply	1
<b>Total</b>	<b>73</b>



## VI SAT Contacts (by province) for APA Requests

SAT Contacts (by province) for APA Requests

	Name	Telephone	Address
SAT Headquarters	CAO Houle	010-63417922	No. 5 Yangfangdian Xilu, Haidian District, Beijing, 100038
Beijing Municipal Office, SAT	KONG Danyang	010-88376856	No.10 Chegongzhuang Street, Xicheng District, Beijing, 100044
Beijing Local Taxation Bureau	ZHANG Zhe	010-51693184	Room 403, No.8 Tiyyuguanxi Road, Dongcheng District, Beijing, 100027
Tianjin Municipal Office, SAT	PAN Ruqiang	022-24465653	No.16 Minzhu Street, Hebei District, Tianjin, 300010
Tianjin Local Taxation Bureau	WEI Wei	022-23303740-2515	No. 4 Qufu Street, Heping District, Tianjin, 300070
Hebei Provincial Office, SAT	WU Yongjian	0311-88625327	No.35 Pingannan Street, Shijiazhuang, Hebei, 050011
Hebei Local Taxation Bureau	ZHANG Lun	0311-88626607	No.32 Pingannan Street, Shijiazhuang, Hebei, 050000
Shanxi Provincial Office, SAT	REN Qiang	0351-2387452	No. 31 Shuiximen Street, Taiyuan, Shanxi, 030002
Shanxi Local Taxation Bureau	CAO Jian	0351-4052562-60604	Room 604, No.23 Shuiximen Street, Taiyuan, Shanxi, 030002
Inner Mongolia Autonomous Region Office, SAT	HAO Wei	0471-3309113	Taolidong Street, Jinqiao Development Zone, Huhehaote, Inner Mongolia, 010020
Inner Mongolia Autonomous Region Local Taxation Bureau	LIU Lihua	0471-4343146	Zhaowuda Road, Saihan District, Huhehaote, Inner Mongolia, 010020
Liaoning Provincial Office, SAT	SHEN Zhan	024-23185040	No.256 Qingnian Street, Shenhe District, Shenyang, Liaoning, 110016
Liaoning Local Taxation Bureau	SUN Jingang	024-23291045	No.162 Hepingbei Street, Heping District, Shenyang, Liaoning, 110001
Jilin Provincial Office, SAT	CHAI Jinsong	0431-88994708	No.358 Changchun Street, Changchun, Jilin, 130042
Jilin Local Taxation Bureau	XIE Junjun	0431-85225313	Room 904, No.1518 Nanhu Street, Changchun, Jilin, 130022
Heilongjiang Provincial Office, SAT	DENG Liming	0451-87527399	No.190 Dongdazhi Street, Nangang District, Haerbin, Heilongjiang, 150001

(Continued)

	Name	Telephone	Address
Heilongjiang Local Taxation Bureau	YANG Liwei	0451-53602443	No.19 Anshan Street, Nangang District, Haerbin, Heilongjiang, 150001
Shanghai Municipal Office, SAT; Shanghai Local Taxation Bureau	ZHU Jie	021-54679568	Room 711, No.800 Zhaojiabang Road, Shanghai 200030
Jiangsu Provincial Office, SAT	SHENG Daxin	025-83101719	No.55 Zhongshanbei Road, Nanjing, Jiangsu, 210008
Jiangsu Local Taxation Bureau	JIANG Hao	025-83633402	Room 2215, No.63 Beijingxi Road, Nanjing, Jiangsu, 210024
Zhejiang Provincial Office, SAT	CHEN Zhan	0571-85270852	No.5 Huazhe Square, Hangzhou, Zhejiang, 310006
Zhejiang Local Taxation Bureau	GAO Yuan	0571-87668793	No.1 Tihuaner Road, Xihu District, Hangzhou, Zhejiang, 310009
Anhui Provincial Office, SAT	YIN Jun	0551-2831797	No.11 Yonghong Road, Luyang District, Hefei, Anhui, 230061
Anhui Local Taxation Bureau	ZHOU Yuan	0551-5100745	No.109 Mengcheng Road, Hefei, Anhui, 230061
Fujian Provincial Office, SAT	Li Meng Jun	0591-87098213	No.36 Tongpan Road, Gulou District, Fuzhou, Fujian, 350003
Fujian Local Taxation Bureau	HUANG Ying	0591-87980185	No.62 Tongpan Road, Fuzhou, Fujian, 350003
Jiangxi Provincial Office, SAT	WAN Haifang	0791-86204349	No.399 Guangchangnan Road, Nanchang, Jiangxi, 330003
Jiangxi Local Taxation Bureau	SUN Shigang	0791-86426702	No.159 Zhanqianxi Road, Nanchang, Jiangxi, 330002
Shandong Provincial Office, SAT	ZHOU Shenghai	0531-85656693	No.155 Yingxiongshan Road, Jinan, Shandong, 250002
Shandong Local Taxation Bureau	BING Jie	0531-82613922	No.5 Jida Road, Shizhong District, Jinan, Shandong, 250002
Henan Provincial Office, SAT	DU Zhonghua	0371-66767183	No.111 Fengchan Road, Zhengzhou, Henan, 450008
Henan Local Taxation Bureau	YANG Liyun	0371-65806369	No.3 Nongye Road East, Zhengzhou, Henan, 450008
Hubei Provincial Office, SAT	GUAN Lian	027-87322256	No.231 Yaojialing, Wuchang District, Wuhan, Hubei, 430071
Hubei Local Taxation Bureau	ZHANG Libin	027-87328743	No.101 Donghu Road, Wuchang District, Wuhan, Hubei, 430071
Hunan Provincial Office, SAT	DING Nana	0731-85522901	No.460 Laodongxi Road, Changsha, Hunan, 410007

(Continued)

	Name	Telephone	Address
Hunan Local Taxation Bureau	LEI Yangbing	0731-88188880	No.388 Youyi Road, Tianxin District, Changsha, Hunan, 410004
Guangdong Provincial Office, SAT	LIN Min	020-38351518	Room 1109, No.19 Huacheng Avenue, Tianhe District, Guangzhou, Guangdong, 510623
Guangdong Local Taxation Bureau	ZHU Guoqiang	020-85299343	No.600 Tianhebei Road, Tianhe District, Guangzhou, Guangdong, 510630
Guangxi Zhuang Autonomos Region Office, SAT	WEI Wei	0771-5710264	No. 26 Yuanhunan Road, Nanning, Guangxi, 530022
Guangxi Zhuang Autonomos Region Local Taxation Bureau	WU Yongfeng	0771-5538092	No.105 Minzu Avenue, Nanning, Guangxi, 530021
Hainan Provincial Office, SAT	WEN Yikui	0898-66503651	No. 10 Longkunbei Road, Haikou, Hainan, 570100
Hainan Local Taxation Bureau	LIU Jinghui	0898-66969184	Room 1002, No.18 Chengxi Road, Haikou, Hainan, 570206
Chongqing Municipal Office, SAT	ZENG Xianrong	023-67676745	No.63 Hongjin Avenue, Yubei District, Chongqing, 401147
Chongqing Local Taxation Bureau	HU Lei	023-67572621	No.9 Xihu Road, Yubei District, Chongqing, 401121
Sichuan Provincial Office, SAT	LI Xunjia	028-86734314	Room 1314, No.266 Binjiangdong Road, Chengdu, Sichuan, 610021
Sichuan Local Taxation Bureau	REN Huiyu	028-85455751	No.2 Linjiangdong Road, Wuhou District, Chengdu, Sichuan, 610021
Guizhou Provincial Office, SAT	CHEN Yu	0851-6906079	Room 1014, 7#, Provincial Government Compound, Zhonghuabei Road, Guiyang, Guizhou, 550004
Guizhou Local Taxation Bureau	SONG Hongmei	0851-5215525	No.83 Zhongshanxi Road, Guiyang, Guizhou, 550002
Yunnan Provincial Office, SAT	XING Zhiwei	0871-3129141	No.304 Baita Road, Kunming, Yunnan, 650051
Yunnan Local Taxation Bureau	MA Huiyun	0871-3649359	No.156 Renminzhong Road, Kunming, Yunnan, 650031
Tibet Autonomous Region Office, SAT	QIAO Haijun	0891-6834170	No.51 Beijingzhong Road, Lasa, Tibet, 850001
Shaanxi Provincial Office, SAT	LI Yanhai	029-87695187	No.39 West Erhuannan Road, Xi'an, Shaanxi 710068
Shaanxi Local Taxation Bureau	SUO Miao	029-87636313	No.28 Tianshuijing Street, Lianhu District, Xi'an, Shaanxi 710002

(Continued)

	Name	Telephone	Address
Gansu Provincial Office, SAT	SONG Weixia	0931-8533933	No.353 Jinchangnan Road, Chengguan District, Lanzhou, Gansu, 730030
Gansu Local Taxation Bureau	MOU Jing	0931-8871934	No.156 Jingning Road, Lanzhou, Gansu, 730030
Qinghai Provincial Office, SAT	LI Guangsheng	0971-8211391	No.11 Wenhua Street, Xining, Qinghai, 810000
Qinghai Local Taxation Bureau	ZHAO Zhiwei	0971-6165841	No.9 Kunlun Road, Xining, Qinghai, 810001
Ningxia Hui Autonomous Region Office, SAT	WANG Li	0951-5045307	No.424 Jiefangxi Street, Xingqing District, Yinchuan, Ningxia, 750001
Ningxia Hui Autonomous Region Local Taxation Bureau	BAI Zhencheng	0951-5695037	No.167 Beijingzhong Road, Jinfeng District, Yinchuan, Ningxia, 750000
Xinjiang Uygur Automomous Region Office, SAT	CAO Peihao	0991-2681362	No.397 Qingnian Road, Wulumuqi, Xinjiang, 830002
Xinjiang Uygur Automomous Region Local Taxation Bureau	LIAO Lei	0991-2838471	No.321 Renmin Road, Wulumuqi, Xinjiang, 830004
Dalian Municipal Office, SAT	MIN Yixuan	0411-84384105	No.330 Gaoerji Road, Shahekou District, Dalian, 116021
Dalian Local Taxation Bureau	YANG Xin	0411-82332102	No.97 Yide Street, Zhongshan District, Dalian, 116001
Qingdao Municipal Office, SAT	WANG Yingzheng	0532-83931725	No.236 Yanan Three Road, Qingdao, 266071
Qingdao Local Taxation Bureau	WANG Zhongyu	0532-83870259	No.18 Donghaixi Road, Qingdao, 266071
Xiamen Municipal Office, SAT	HONG Jingyang	0592-5315108	Room 1602, No.70 Hubinbei Road, Xiamen, 361012
Xiamen Local Taxation Bureau	LI Ya	0592-2215755	Floor 4 No.152 Hubinnan Road, Xiamen, 361004
Ningbo Municipal Office SAT	MAO Jie	0574-87732261	No.8 Baizhang Road, Jiangdong District, Ningbo, 315040
Ningbo Local Taxation Bureau	CAI Jie	0574-87188406	Room 1402, No.19 Zhongshanxi Road, Ningbo, 315000
Shenzhen Municipal Office, SAT	HU Yanfeng	0755-83878770	Room 2005, No.38 Shazui Road, Futian District, Shenzhen, 518048
Shenzhen Local Taxation Bureau	DENG Changping	0755-83773478	No.28 Futiannan Road, Futian District, Shenzhen, 518033

## Appendices - Forms and Schedules of the APA Program

### Appendix I

#### APA Meeting Record

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



## User Instructions

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

## Notice of Formal Meeting of the APA

\_\_\_\_\_ Shui Yu Yue [     ] No.

\_\_\_\_\_:

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

Notice is hereby given.

\_\_\_\_\_ Tax Authority (Official Stamp):

(Date)

## Notice of Rejection of Enterprise's Application for APA

\_\_\_\_\_ Shui Ju Yue [     ] No.

\_\_\_\_\_:

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

Rejection reason(s):

Notice is hereby given.

\_\_\_\_\_ Tax Authority (Official Stamp):

(Date)



## Formal Application Letter for APA

\_\_\_\_\_Tax Authority:

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

Enclosures: Total \_\_\_\_\_copies\_\_\_\_\_pages

- 1.
- 2.
- 3.
- ⋮

Name of Enterprise (Official Stamp):

Taxpayer Identification Number:

Legal Representative (Official Stamp):

(Date)



## User Instructions

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

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

## Application to Initiate Mutual Agreement Procedures

No.:

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



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

## Application for Extension of Submitting the Formal Application for APA

Name of Enterprise		Legal Representative	
Taxpayer Identification Number	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	Financial Person in-charge and Contact Telephone Number	
Reason(s) and Time Limit for Extension of Submitting the Formal Application	<div style="text-align: right; margin-top: 20px;"> Name of Enterprise (Official Stamp):   Legal Representative (Official Stamp):   (Date) </div>		

Appendix VII

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

\_\_\_\_\_ Shui Da Fu [     ] No.

\_\_\_\_\_:

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

\_\_\_\_\_ Tax Authority (Official Stamp):

(Date)

## Notice of Extension of Examination and Evaluation of APA

\_\_\_\_\_ Shui Yu Shen Yan [ ] No.

\_\_\_\_\_:

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

- 1.
- 2.
- 3.
- ⋮

Notice is hereby given.

\_\_\_\_\_ Tax Authority (Official Stamp):

(Date)

## Advance Pricing Arrangement (Unilateral)

(Text for Reference)

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

### Article 1 General Definitions

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

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

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

### Article 2 Type of APA

This APA is a unilateral Advance Pricing Arrangement.

### Article 3 Scope of Application

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

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

### Article 4 Applicable Term

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





being \_\_\_\_\_.

## Article 5 Critical Assumptions

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

\_\_\_\_\_

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

## Article 6 Transfer Pricing Principle and Calculation Method

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

## Article 7 Annual Compliance Report

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

\_\_\_\_\_

## Article 8 Tax Inspection

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

## Article 9 Legal Binding Force of this APA

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

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

## **Article 10**    Renewal of this APA

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

## **Article 11**    Dispute Resolution

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

## **Article 12**    Confidentiality and Responsibility

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

## **Article 13**    Effectiveness, Amendment and Termination

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



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

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

## Article 14 Avoidance of Double Taxation

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

## Article 15 Supplementary Provisions

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

\_\_\_\_\_ Tax Authority

\_\_\_\_\_ (Enterprise)

Signature:

Date:

Signature:

Date:

Title:

Stamp:

Title:

Stamp:

## Bilateral (Multilateral) APA Implementation Agreement

(Text for Reference)

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

Enclosure: <Bilateral (Multilateral) Advance Pricing Arrangement>

\_\_\_\_\_ Tax Authority

\_\_\_\_\_ (Enterprise)

Signature:

Date:

Signature:

Date:

Title:

Stamp:

Title:

Stamp:

## APA Renewal Application

\_\_\_\_\_ Tax Authority:

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

Enterprise Name (Official Stamp):

Taxpayer Identification Number:

Date:

### Attachments:

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

## Reply Letter on the APA Renewal Application

\_\_\_\_\_ Shui Da Fu [     ] No.

\_\_\_\_\_:

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

- 1.
- 2.
- 3.
- ⋮

\_\_\_\_\_ Tax Authority (Official Stamp):

(Date)