
PUBLIC NOTICE ON MATTERS REGARDING ENHANCING THE ADMINISTRATION OF ADVANCE PRICING ARRANGEMENTS

Public Notice of the State Administration of Taxation [2016] No. 64

(1) In accordance with the “Announcement of the State Administration of Taxation on Amending Certain Tax Regulatory Documents” (Announcement of the State Administration of Taxation [2018] No. 31), effective from June 15, 2018, Item 4 of Article 10 is deleted; the phrase “or involving both the state and local tax bureaus” in Article 17 is deleted; the phrase “, and involving only the state or local tax bureau” in Article 18 is deleted; and the phrase “or involving both the state and local tax bureaus” in Article 9 of Annex 4 is deleted.



In order to further enhance the administration of advance pricing arrangements (APAs) and implement the agreements or arrangements for the avoidance of double taxation concluded by the Chinese government (hereinafter referred to as “tax treaties”), and in accordance with the relevant provisions of the “Enterprise Income Tax Law of the People’s Republic of China” (hereinafter referred to as the “Enterprise Income Tax Law”) and its implementation regulations, and the “Tax Collection and Administration Law of the People’s Republic of China” (hereinafter referred to as the “Tax Collection and Administration Law”) and its implementation rules, the following matters are hereby announced:

1. Enterprises may enter into advance pricing arrangements with tax authorities regarding the pricing principles and calculation methods for their future related-party transactions.
2. The negotiation and execution of advance pricing arrangements go through six stages: pre-filing meeting, expression of intent, analysis and evaluation, formal application, negotiation and signing, and monitoring implementation. Advance pricing arrangements include three types: unilateral, bilateral, and multilateral.
3. Advance pricing arrangements apply to related-party transactions for a period of 3 to 5 years starting from the tax year in which the competent tax authority serves the enterprise with the “Notice of Tax Matters” accepting its expression of intent.

If an enterprise’s related-party transactions in previous years are identical or similar to those in the years covered by the advance pricing arrangement, upon the enterprise’s application, the tax authority may apply the pricing principles and calculation methods determined in the advance pricing arrangement retrospectively to the assessment and adjustment of those related-party transactions in previous years. The retrospective period may not exceed 10 years.

The negotiation of an advance pricing arrangement does not affect the tax authority’s special tax investigation adjustments and monitoring management for years and related-party transactions not covered by the advance pricing arrangement.

1. Advance pricing arrangements generally apply to enterprises whose annual related-party

transaction amount in each of the 3 years preceding the tax year in which the competent tax authority serves the enterprise with the “Notice of Tax Matters” accepting its expression of intent exceeds 40 million Renminbi.

2. An enterprise that intends to negotiate an advance pricing arrangement shall submit a written application for a pre-filing meeting to the tax authority. The tax authority may conduct a pre-filing meeting with the enterprise.

(1) An enterprise applying for a unilateral advance pricing arrangement shall submit a written application for a pre-filing meeting to the competent tax authority, together with the “Application for Pre-filing Meeting of Advance Pricing Arrangement” (Annex 1). The competent tax authority shall organize and conduct the pre-filing meeting with the enterprise.

An enterprise applying for a bilateral or multilateral advance pricing arrangement shall submit a written application for a pre-filing meeting simultaneously to the State Administration of Taxation and the competent tax authority, together with the “Application for Pre-filing Meeting of Advance Pricing Arrangement”. The State Administration of Taxation shall uniformly organize and conduct the pre-filing meeting with the enterprise.

(2) During the pre-filing meeting, the enterprise shall provide a brief explanation of the following:

1. The years to be covered by the advance pricing arrangement;
2. The related parties and related-party transactions involved in the advance pricing arrangement;
3. The organizational structure and management framework of the enterprise and the enterprise group to which it belongs;
4. The enterprise’s production and operation situation, contemporaneous documentation, etc., for the most recent 3 to 5 years;
5. A description of the functions and risks of the related parties involved in the advance pricing arrangement, including the institutions, personnel, expenses, assets, etc., on which the division of functions and risks is based;
6. A description of market conditions, including industry trends and competitive environment, etc.;

7. Whether there are location-specific advantages such as cost savings or market premiums;
8. Whether the advance pricing arrangement is to be applied retrospectively to previous years;
9. Other matters requiring explanation.

For an enterprise applying for a bilateral or multilateral advance pricing arrangement, the explanation shall also include:

1. The situation regarding the application for an advance pricing arrangement submitted to the competent tax authority of the other tax treaty contracting party;
2. The production and operation situation and related-party transaction situation of the related parties involved in the advance pricing arrangement for the most recent 3 to 5 years;
3. Whether international double taxation is involved and an explanation thereof.

(3) During the pre-filing meeting, the enterprise shall supplement information as required by the tax authority.

1. If the tax authority and the enterprise reach a consensus during the pre-filing meeting, the competent tax authority shall serve the enterprise with a "Notice of Tax Matters" agreeing to its submission of an expression of intent. After receiving the "Notice of Tax Matters", the enterprise shall submit an expression of intent to the tax authority.

(1) An enterprise applying for a unilateral advance pricing arrangement shall submit the "Letter of Intent for Negotiation of Advance Pricing Arrangement" (Annex 2) to the competent tax authority, together with a draft application for a unilateral advance pricing arrangement.

An enterprise applying for a bilateral or multilateral advance pricing arrangement shall submit the "Letter of Intent for Negotiation of Advance Pricing Arrangement" simultaneously to the State Administration of Taxation and the competent tax authority, together with a draft application for a bilateral or multilateral advance pricing arrangement.

(2) The draft application for a unilateral advance pricing arrangement shall include the following:

1. The years to be covered by the advance pricing arrangement;
2. The related parties and related-party transactions involved in the advance pricing arrangement;

3. The organizational structure and management framework of the enterprise and the enterprise group to which it belongs;
4. The enterprise's production and operation situation, financial accounting reports, audit reports, contemporaneous documentation, etc., for the most recent 3 to 5 years;
5. A description of the functions and risks of the related parties involved in the advance pricing arrangement, including the institutions, personnel, expenses, assets, etc., on which the division of functions and risks is based;
6. The pricing principles and calculation methods to be used in the advance pricing arrangement, and the functional risk analysis, comparability analysis, and assumptions supporting these pricing principles and calculation methods;
7. Value chain or supply chain analysis, and consideration of location-specific advantages such as cost savings and market premiums;
8. A description of market conditions, including industry trends and competitive environment, etc.;
9. Forecasts of business scale, operating results, and business plans for the years covered by the advance pricing arrangement;
10. Whether the advance pricing arrangement is to be applied retrospectively to previous years;
11. Relevant domestic and foreign industry laws and regulations affecting the advance pricing arrangement;
12. A statement by the enterprise that none of the circumstances listed in item (3) of this paragraph exist;
13. Other matters requiring explanation.

The draft application for a bilateral or multilateral advance pricing arrangement shall also include:

1. The situation regarding the application for an advance pricing arrangement submitted to the competent tax authority of the other tax treaty contracting party;
2. The production and operation situation and related-party transaction situation of the related parties involved in the advance pricing arrangement for the most recent 3 to 5 years;
3. Whether international double taxation is involved and an explanation thereof.

(3) Under any of the following circumstances, the tax authority may refuse the enterprise's submission of an expression of intent:

1. The tax authority has initiated a special tax investigation or other tax-related case investigation against the enterprise and the case has not been concluded;
2. The enterprise has failed to file the annual report of related-party transactions in accordance with relevant provisions;
3. The enterprise has failed to prepare, maintain, and provide contemporaneous documentation in accordance with relevant provisions;
4. The tax authority and the enterprise cannot reach a consensus during the pre-filing meeting stage.
5. After the enterprise submits its expression of intent, the tax authority shall analyze the content of the draft advance pricing arrangement application and assess whether it conforms to the arm's length principle. Depending on the specific circumstances of the analysis and assessment, the tax authority may require the enterprise to supplement relevant information.

The tax authority may conduct analysis and assessment from the following aspects:

(1) Functional and risk profile. Analyze and assess the respective contributions made, functions performed, and risks undertaken in areas such as inventory, credit, foreign exchange, and market by the enterprise and its related parties in various stages such as supply, production, transportation, and sales, as well as in areas such as research and development of intangibles.

(2) Comparable transaction information. Analyze and assess the comparable transaction information provided by the enterprise, and adjust for material differences.

(3) Related-party transaction data. Analyze and assess whether the revenue, costs, expenses, and profits of the related-party transactions covered by the advance pricing arrangement are separately accounted for or allocated on a reasonable basis.

(4) Pricing principles and calculation methods. Analyze and assess the pricing principles and calculation methods adopted by the enterprise in the advance pricing arrangement. If retrospective application to previous years is requested, an explanation shall be provided.

(5) Value chain analysis and contribution analysis.

Assess whether the enterprise's analysis of the value chain or supply chain is complete and clear, whether it fully considers location-specific advantages such as cost savings and market premiums, and whether it fully considers the contribution of local enterprises to value creation, etc.

(6) Transaction price or profit level. Based on the results of the above analysis and assessment, determine the price or profit level that conforms to the arm's length principle.

(7) Assumptions. Analyze and assess the factors affecting industry profit levels and the enterprise's production and operation and their degree of influence, and reasonably determine the assumptions applicable to the advance pricing arrangement.

1. During the analysis and assessment stage, the tax authority may discuss the draft advance pricing arrangement application with the enterprise. The tax authority may conduct on-site functional and risk interviews. If the tax authority considers that the draft advance pricing arrangement application does not conform to the arm's length principle, the enterprise shall negotiate with the tax authority and make adjustments; if the tax authority considers that the draft advance pricing arrangement application conforms to the arm's length principle, the competent tax authority shall serve the enterprise with a "Notice of Tax Matters" agreeing to its submission of a formal application. After receiving the notice, the enterprise may submit the "Formal Application for Advance Pricing Arrangement" (Annex 3) to the tax authority, together with a formal application report for the advance pricing arrangement.

(1) An enterprise applying for a unilateral advance pricing arrangement shall submit the above materials to the competent tax authority. An enterprise applying for a bilateral or multilateral advance pricing arrangement shall submit the above materials simultaneously to the State Administration of Taxation and the competent tax authority, and shall submit an application to initiate mutual agreement procedures for special tax adjustments in accordance with relevant provisions.

(2) Under any of the following circumstances, the tax authority may refuse the enterprise's submission of a formal application:

1. The pricing principles and calculation methods

proposed in the draft advance pricing arrangement application are unreasonable, and the enterprise refuses to negotiate adjustments;

2. The enterprise refuses to provide relevant information or the information provided does not meet the requirements of the tax authority, and fails to supplement or correct it in a timely manner;
3. The enterprise refuses to cooperate with the tax authority in conducting on-site functional and risk interviews;
4. Other circumstances unsuitable for negotiating an advance pricing arrangement.
5. The tax authority shall, based on the analysis and assessment, formulate a negotiation plan and conduct negotiations accordingly.

(1) The competent tax authority conducts negotiations with the enterprise for a unilateral advance pricing arrangement. If an agreement is reached, a unilateral advance pricing arrangement text (refer to Annex 4 for a sample text) is drafted.

The State Administration of Taxation conducts negotiations with the competent tax authority of the other tax treaty contracting party for a bilateral or multilateral advance pricing arrangement. If an agreement is reached, a bilateral or multilateral advance pricing arrangement text is drafted.

(2) The advance pricing arrangement text may include the following:

1. Basic information such as the name and address of the enterprise and its related parties;
2. The related-party transactions covered by the advance pricing arrangement and the applicable years;
3. The pricing principles and calculation methods selected for the advance pricing arrangement, as well as comparable prices or comparable profit levels, etc.;
4. Definitions of terms related to the application of transfer pricing methods and calculation basis;
5. Assumptions and the obligation to notify changes in assumptions;
6. The enterprise's annual reporting obligation;
7. The validity of the advance pricing arrangement;
8. Renewal of the advance pricing arrangement;
9. Effectiveness, amendment, and termination of the advance pricing arrangement;
10. Dispute resolution;
11. Confidentiality obligations regarding informa-

- tion such as documents and materials;
12. Information exchange for unilateral advance pricing arrangements;
13. Supplementary provisions.

(3) After the competent tax authority and the enterprise reach an agreement on the unilateral advance pricing arrangement text, the legal representatives of both parties or their authorized representatives sign the unilateral advance pricing arrangement.

After the State Administration of Taxation and the competent tax authority of the other tax treaty contracting party reach an agreement on the bilateral or multilateral advance pricing arrangement text, the authorized representatives of both or all tax authorities sign the bilateral or multilateral advance pricing arrangement. The State Administration of Taxation shall forward the advance pricing arrangement to the competent tax authority. The competent tax authority shall serve the enterprise with a "Notice of Tax Matters", attaching the advance pricing arrangement, and carry out the implementation work.

(4) If the advance pricing arrangement involves additional tax payments or refunds for applicable or retrospective years, the tax authority shall calculate the tax to be additionally levied or refunded on an annual basis and serve the enterprise with the "Notice of Additional (Refund) Tax Payment under Advance Pricing Arrangement" (Annex 5).

1. The tax authority shall monitor the implementation of the advance pricing arrangement.

(1) During the implementation period of the advance pricing arrangement, the enterprise shall completely preserve documents and materials related to the advance pricing arrangement, including account books and relevant records, and shall not lose, destroy, or transfer them.

Within 6 months after the end of each tax year, the enterprise shall submit a paper and electronic annual report on the implementation of the advance pricing arrangement to the competent tax authority. The competent tax authority shall submit the electronic annual report to the State Administration of Taxation; for bilateral or multilateral advance pricing arrangements, the enterprise shall submit a paper and electronic annual report on the implementation of the advance pricing arrangement to the competent tax authority, and simulta-

neously submit the electronic annual report to the State Administration of Taxation.

The annual report shall explain the enterprise's business situation during the reporting period and the implementation of the advance pricing arrangement. If there is a need to revise or terminate the advance pricing arrangement, or if there are pending issues or issues expected to arise, an explanation shall be provided.

(2) During the implementation period of the advance pricing arrangement, the competent tax authority shall monitor the enterprise's implementation of the advance pricing arrangement annually. The monitoring content mainly includes: whether the enterprise complies with the terms and requirements of the advance pricing arrangement; whether the annual report reflects the actual business situation of the enterprise; whether the assumptions described in the advance pricing arrangement remain valid, etc.

(3) During the implementation period of the advance pricing arrangement, if the enterprise undergoes material changes affecting the advance pricing arrangement, it shall report in writing to the competent tax authority within 30 days from the date of the change, explaining in detail the impact of the change on the implementation of the advance pricing arrangement and attaching relevant materials. If the report cannot be submitted on time due to non-subjective reasons, an extension may be granted, but the extension period shall not exceed 30 days.

After receiving the enterprise's written report, the tax authority shall analyze the material changes of the enterprise and, based on the degree of impact of the material changes on the advance pricing arrangement, revise or terminate the advance pricing arrangement. If a signed advance pricing arrangement is terminated, the tax authority and the enterprise may, in accordance with the procedures and requirements stipulated in this Announcement, renegotiate an advance pricing arrangement.

1. An advance pricing arrangement automatically expires upon completion of its term. An enterprise applying for renewal shall submit a renewal application to the tax authority within 90 days before the expiration of the current advance pricing arrangement, submitting the "Application for Renewal of Advance Pricing Arrangement" (Annex 6) and providing a report on the implementation of the current advance pricing arrangement,

materials explaining whether the facts and business environment described in the current advance pricing arrangement have undergone material changes, and relevant materials such as forecasts for the years of the renewed advance pricing arrangement.

2. If the interquartile range method is used to determine the price or profit level in an advance pricing arrangement, and during the implementation period, the enterprise's actual operating result for a given year falls outside the interquartile range, the tax authority may adjust the actual operating result to the median of the interquartile range. Upon expiration of the advance pricing arrangement, if the weighted average of the enterprise's operating results for each year is lower than the median of the range and has not been adjusted to the median, the tax authority will not accept renewal applications.

If the above problems exist during the implementation of a bilateral or multilateral advance pricing arrangement, the competent tax authority shall promptly report the situation level-by-level to the State Administration of Taxation.

1. During the implementation period of an advance pricing arrangement, if a disagreement arises between the competent tax authority and the enterprise, both parties shall negotiate. If the negotiation cannot resolve the issue, it may be reported to the tax authority at the next higher level for coordination; for bilateral or multilateral advance pricing arrangements, it must be reported level-by-level to the State Administration of Taxation for coordination. The tax authority at the lower level shall implement the decision of the tax authority at the next higher level or the State Administration of Taxation. If the enterprise still cannot accept it, the implementation of the advance pricing arrangement may be terminated.

2. Before the signing of an advance pricing arrangement, either the tax authority or the enterprise may suspend or terminate the advance pricing arrangement process. If the tax authority finds that the enterprise or its related party intentionally fails to provide necessary information related to the negotiation of the advance pricing arrangement, or provides false or incomplete information, or there are other circumstances of non-cooperation, making it

difficult to reach an agreement on the advance pricing arrangement, the tax authority may suspend or terminate the advance pricing arrangement process. For bilateral or multilateral advance pricing arrangements, upon consultation by the competent tax authorities of the tax treaty contracting parties, the advance pricing arrangement process may be suspended or terminated. If the tax authority suspends or terminates the advance pricing arrangement process, it shall serve the enterprise with a “Notice of Tax Matters” explaining the reason; if the enterprise suspends or terminates the advance pricing arrangement process, it shall submit a written explanation to the tax authority.

3. If an advance pricing arrangement is not signed in accordance with the prescribed authority and procedures, or if the tax authority finds that the enterprise has concealed facts, the advance pricing arrangement shall be deemed invalid ab initio, and the tax authority shall serve the enterprise with a “Notice of Tax Matters” explaining the reason; if the tax authority finds that the enterprise refuses to implement the advance pricing arrangement or there are other violations of the advance pricing arrangement, it may handle the matter accordingly, up to terminating the advance pricing arrangement.
4. Under any of the following circumstances, the tax authority may give priority to accepting the enterprise’s application:
 - (1) The enterprise’s related-party reporting and contemporaneous documentation are complete, reasonable, and fully disclosed;
 - (2) The enterprise’s tax credit rating is Grade A;
 - (3) The tax authority has conducted a special tax investigation adjustment on the enterprise and the case has been concluded;
 - (4) The signed advance pricing arrangement has expired, the enterprise applies for renewal, and the facts and business environment described in the advance pricing arrangement have not undergone material changes;
 - (5) The application materials submitted by the enterprise are complete, the value chain or supply chain analysis is complete and clear, fully considers location-specific factors such as cost savings and market premiums, and the proposed pricing principles and calculation methods are reasonable;
 - (6) The enterprise actively cooperates with the tax authority in the negotiation of the advance pricing

arrangement;

- (7) For bilateral or multilateral advance pricing arrangements, the competent tax authority of the other tax treaty contracting party involved has a strong willingness to negotiate and attaches high importance to the advance pricing arrangement;
- (8) Other factors conducive to the negotiation of the advance pricing arrangement.

1. If an advance pricing arrangement involves two or more provincial-level tax authorities (including autonomous regions, municipalities directly under the Central Government, and cities separately listed in the state plan), it shall be uniformly organized and coordinated by the State Administration of Taxation.

An enterprise applying for such a unilateral advance pricing arrangement shall simultaneously submit relevant applications for negotiating the advance pricing arrangement to the State Administration of Taxation and the tax authorities designated by it. The State Administration of Taxation may sign the unilateral advance pricing arrangement with the enterprise uniformly, or designate a tax authority to sign the unilateral advance pricing arrangement with the enterprise uniformly, or the respective competent tax authorities may sign unilateral advance pricing arrangements with the enterprise separately.

1. If a unilateral advance pricing arrangement involves two or more competent tax authorities within one province, autonomous region, municipality directly under the Central Government, or city separately listed in the state plan, it shall be uniformly organized and coordinated by the corresponding tax authority at the provincial level.
2. Both the tax authority and the enterprise have confidentiality obligations regarding all information obtained during the negotiation of the advance pricing arrangement. Except where information must be provided to relevant departments in accordance with the law, the tax authority shall not disclose any information related to the advance pricing arrangement in any way without the consent of the taxpayer.

If the tax authority and the enterprise cannot reach an advance pricing arrangement, non-factual information such as proposals, reasoning, concepts, and judgments concerning the enterprise obtained by the tax authority during the negotiation process shall not be used for special tax investigation

adjustments of the related-party transactions covered by that advance pricing arrangement.

1. Except for information involving state security, the State Administration of Taxation may, in accordance with relevant provisions such as international conventions, agreements, or arrangements concluded with foreign countries, implement information exchange with the competent tax authorities of other countries (regions) regarding the texts of unilateral advance pricing arrangements signed after April 1, 2016. When signing a unilateral advance pricing arrangement, the enterprise shall provide a list of the countries (regions) of its ultimate holding company, its immediate upper-level holding company, and the overseas related parties involved in the unilateral advance pricing arrangement.
2. The term “competent tax authority” in this Announcement refers to the tax authority responsible for special tax adjustment matters.
3. This Announcement shall take effect from December 1, 2016. Chapter 6 of the “Implementation Measures for Special Tax Adjustments (Trial)” (issued as document Guo Shui Fa [2009] No. 2) is simultaneously repealed. Advance pricing arrangements for which the tax authority had not accepted a formal application before the implementation of this Announcement shall be governed by the provisions of this Announcement.

This is hereby announced.

Attachments:

1. Application for Pre-filing Meeting of Advance Pricing Arrangement.doc
2. Letter of Intent for Negotiation of Advance Pricing Arrangement.doc
3. Formal Application for Advance Pricing Arrangement.doc
4. Unilateral Advance Pricing Arrangement (Sample Text).doc
5. Notice of Additional (Refund) Tax Payment under Advance Pricing Arrangement.doc
6. Application for Renewal of Advance Pricing Arrangement.doc

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