<table>
<thead>
<tr>
<th>KEY FEATURES</th>
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<tbody>
<tr>
<td><strong>Competent authority</strong></td>
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<td><strong>APA provisions/guidance</strong></td>
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<tr>
<td><strong>Types of APAs available</strong></td>
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</table>
| **APA acceptance criteria** | Taxpayers must have an annual inter-company transaction value of over RMB 40 million (approx. USD 5.8 million) for each of the last three years. The Tax authorities will prioritise Taxpayers also meeting one or some of the following criteria:  
  ■ the Taxpayer has fully complied with the China inter-company transaction disclosure and contemporaneous documentation requirements, and the information disclosed is reasonably satisfactory;  
  ■ the Taxpayer has an A-level tax credit rating;  
  ■ the Taxpayer has an existing APA it intends to renew, and the facts and operational environment in the existing APA have not and will not foreseeably change;  
  ■ the application materials, particularly the analysis on the value chain and location-specific advantages, are complete and thorough, and the pricing and calculation methods are reasonable; and  
  ■ the Taxpayer cooperates with the tax authorities for negotiation and conclusion of an APA. |
| **Key deadlines** | An APA will commence from the year during which the Tax authorities issue a ‘Notice of Tax Related Issues’ indicating the acceptance of the Taxpayer’s letter of intent. |
| **APA term limits** | There is a five year maximum term for an APA. |
| **Filing fee** | There is no filing fee. |
Rollback availability
Rollback is available. The retrospective period can extend to a maximum of ten prior years if the related party transactions are the same or similar to those covered by the APA.

Collateral issues
Administrative issues that are relevant to and may affect the outcome of an APA may be addressed and resolved at the pre-filing stage with the Tax authorities. Applications from Taxpayers under investigation by the tax authorities for tax issues will be refused.

PRE-FILING REQUIREMENTS

Overview
The Taxpayer must make a written request to the Tax authorities for a pre-filing meeting. The pre-filing meeting will require the following information and documentation:

- duration of the proposed APA;
- related parties involved and related party transaction to be covered;
- organisational and management structure of the enterprise and group it belongs to;
- business operations and transfer pricing documentation of the enterprise for the most recent three to five years;
- allocation of functions and risks among related parties covered under the APA, including the parties involved, personnel, expenses and assets;
- market conditions, including industry development trends and competitive environment;
- any location specific advantages including location savings and market premiums;
- whether the proposed APA is intended to be retroactive in application;
- in the case of a bilateral or multilateral APA applications, applications submitted for APAs with relevant foreign CA(s);
- in the case of bilateral or multilateral APA applications, business operations and inter-company transaction of the related party involved for the most recent three to five years; and
- any international double taxation issues and relevant explanations.
If an agreement is reached during the pre-filing meeting, the Taxpayer will be required to submit a ‘Letter of Intent for Negotiation and Signing of an Advance Pricing Arrangement’ to the Tax authorities and submit the APA application proposal including the above information and documentation, as well as:

- the proposed TP method and calculation method, functional and risk analysis, comparability analysis and assumptions used for supporting such methods;
- value chain or supply chain analysis;
- annual information on business scale, result forecasts and plans for the proposed term of APA; and
- relevant domestic or international laws and rules in the industry that have an impact on the APA.

<table>
<thead>
<tr>
<th>Anonymous pre-filing availability</th>
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<tr>
<td>Anonymous pre-filing is not available.</td>
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## APPLICATION REQUIREMENTS

<table>
<thead>
<tr>
<th>Content of APA application</th>
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<tr>
<td>If the tax authorities determine the APA application conforms to the arm’s length principle, a ‘Notice of Tax Related Issues’ consenting to the Taxpayer’s submission of a formal APA application will be issued. The Taxpayer must then submit a ‘Formal Application Letter for an Advance Pricing Arrangement.’</td>
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<th>Language</th>
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<tr>
<td>The documentation should be submitted in Chinese.</td>
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<tr>
<th>SME provisions</th>
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<td>No specific guidance.</td>
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### OTHER PROCEDURAL CONSIDERATIONS

**General**

Taxpayers are required to coordinate with the tax authorities and make any adjustments to the proposed TP method during the stage of analysis and evaluation. A formal application will not be accepted until an agreement has been reached. Taxpayers applying for a unilateral APA must submit the relevant documentation to their local tax authority. Taxpayers applying for bilateral or multilateral APAs must submit the relevant documentation to both the State Administration of Taxation as well as the relevant local tax authority. For APAs involving two or more provinces, autonomous regions, municipalities or cities with independent planning, the SAT shall be the designated CA.

**Monitoring & compliance**

An Annual Compliance Report (‘ACR’) is required to be filed with the tax authorities within six months following each tax year end. The ACR must include:

- documentation of the relevant business operations and implementation of the APA;
- any need to amend or terminate the APA; and
- any unsettled or previously unforeseen issues.

The tax authorities will monitor the Taxpayer’s implementation of the APA on an annual basis, with major areas of monitoring to include compliance with the provisions and requirements of the APA, whether the information provided in the ACR reflects the actual operations of the Taxpayer, and whether the assumptions in the APA are still valid.

**Renewal procedure**

Applications for the renewal of APAs are required to be lodged within 90 days prior to the expiration of the existing APA. The Taxpayer must submit an ‘Advance Pricing Arrangement Renewal Application’; a report specifying the implementation status of the of the existing APA; an explanation of any substantial changes to the facts or operational environment in the existing APA; and a forecast for the years covered by the renewal.
CHINA (cont’d)

COUNTRY EXPERIENCE

Statistics
There were 149 active APA applications during tax year 2015 and 12 completed applications. China has been negotiating APAs since the mid-1990s, with the first unilateral and bilateral APAs signed in 1995 and 2005, respectively.

MAP PROCEDURE

MAP provisions
Chapter 11 of the Special Tax Adjustment Measures (2009); and Bulletin on Promulgating the Implementing Measures for Mutual Agreement Procedure, Bulletin [2013] No. 56, issued by the SAT.

DOUBLE TAXATION TREATY NETWORK

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

- Albania
- Algeria
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium (IV)
- Bosnia-Herzegovina
- Brazil
- Brunei
- Bulgaria
- Cambodia
- Canada
- Chile (IV)
- Croatia
- Cuba
- Cyprus
- Czech Republic
- Denmark (IV)
- Ecuador (IV)
- Egypt
- Estonia
- Ethiopia (IV)
- Finland
- France (IV)
- Georgia
- Germany
- Greece
- Hong Kong (IV)
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Kazakhstan
- Korea (Republic of)
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lithuania
- Luxembourg
- Macedonia
## DOUBLE TAXATION TREATY NETWORK (cont’d)

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<thead>
<tr>
<th>Malaysia</th>
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<td>Malta</td>
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<td>Mauritius</td>
<td>South Africa</td>
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<td>Mexico</td>
<td>Spain</td>
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<td>Moldova</td>
<td>Sri Lanka</td>
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<td>Mongolia</td>
<td>Sudan</td>
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<td>Montenegro</td>
<td>Sweden</td>
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<td>Morocco</td>
<td>Switzerland(^{(IV)})</td>
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<td>Nepal</td>
<td>Syria</td>
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<td>Netherlands</td>
<td>Tajikistan</td>
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<td>Portugal(^{(VI)})</td>
<td>United States</td>
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<td>Romania</td>
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<td>Russia(^{(IV)})</td>
<td>Vietnam</td>
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<td>Saudi Arabia</td>
<td>Zambia</td>
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<td>Serbia</td>
<td>Zimbabwe(^{(IV)})</td>
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<td>Seychelles</td>
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### NOTES

I denotes treaties with MAP arbitration provisions.

II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.

III denotes treaties between the countries’ representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.

IV denotes treaties that became effective within the last five years.

V denotes treaties that are awaiting ratification.

VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.

VII arbitration is to be conducted under the statutes of the ECJ.

VIII arbitration is to be conducted under the statutes of the ICJ.
DLA PIPER CONTACTS

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