**KEY FEATURES**

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Inland Revenue Department (‘IRD’)</th>
</tr>
</thead>
<tbody>
<tr>
<td>APA provisions/guidance</td>
<td>Departmental Interpretation and Practice Notes No. 48.</td>
</tr>
<tr>
<td>Types of APAs available</td>
<td>Unilateral, bilateral, and multilateral APAs are available.</td>
</tr>
<tr>
<td>APA acceptance criteria</td>
<td>Any resident enterprise or non-resident enterprise with a PE in Hong Kong, chargeable to profits tax and having controlled transactions, may apply for an APA. For each year of the proposed APA, purchase and sales transactions must be greater than HKD 80 million (approx. USD 10.3 million); service transactions must be greater than HKD 40 million (approx. USD 5.15 million); and intangible transactions must be greater than HKD 20 million (approx. USD 2.6 million). Unilateral APAs will only be considered where: ■ the foreign CA(s) in a bilateral or multilateral APA process do not wish to participate; ■ the IRD is unable to reach agreement with the foreign CA(s); and ■ a country not signatory to a DTT with Hong Kong is prepared to give a unilateral APA regarding transactions integrally linked to the controlled transactions covered by the proposed APA.</td>
</tr>
<tr>
<td>Key deadlines</td>
<td>Pre-filing meetings must commence six months prior to the commencement date of the proposed APA.</td>
</tr>
<tr>
<td>APA term limits</td>
<td>An APA will apply for three to five years.</td>
</tr>
<tr>
<td>Filing fee</td>
<td>There is no filing fee.</td>
</tr>
<tr>
<td>Rollback availability</td>
<td>A decision on whether rollback is available for years prior to an APA depends on the TP risks involved. Taxpayers that seek rollbacks should consider the following: ■ the IRD will not give an undertaking that years prior to an APA will not be audited; ■ an APA does not have retroactive application; ■ there may be situations where the principles developed in concluding an APA might provide a basis for resolving issues for prior years;</td>
</tr>
</tbody>
</table>
prior year adjustments resulting from an APA request will be treated as though the enterprise has made a voluntary disclosure provided compliance activity has not commenced or been notified;

where an audit has not commenced or the Taxpayer has not been notified of an audit, any additional tax will be calculated on the basis of being a voluntary disclosure; and

where an audit has commenced, the normal penalty provisions will apply to any adjustments made to prior years under audit.

Collateral issues

Collateral issues such as legal, tax treaty, and tax avoidance issues should be disclosed at the pre-filing stage and will be addressed simultaneously with an APA and may have to be resolved using a separate advance ruling procedure.

PRE-FILING REQUIREMENTS

Overview

The pre-filing meeting typically involves:

- identification of the nature and scope of the APA process;
- identification of the specific matters to be agreed; and
- a detailed discussion of the APA process.

The Taxpayer is also required to submit a draft APA case plan and an APA proposal one month before the pre-filing meeting that describes the specific issues for which certainty is sought in relation to the controlled transactions and any collateral issues, together with supporting documentation outlining the scope of the APA and proposed TP methods.

Anonymous pre-filing availability

Pre-filing is available on an anonymous basis.

APPLICATION REQUIREMENTS

Content of APA application

The formal APA application must be submitted before the agreed deadline and include:

- a functional analysis and industry analysis;
- details of the proposed TP method;
- the terms and conditions governing the application of the TP method including critical assumptions;
■ data showing that the TP method will produce an arm’s length result; and
■ information and documentation as agreed in the pre-filing meeting.

**Language**
The documentation should be submitted in English or Chinese. All documents submitted in a language other than those two must be accompanied by an English translation.

**SME provisions**
No specific guidance.

### OTHER PROCEDURAL CONSIDERATIONS

<table>
<thead>
<tr>
<th>General</th>
<th>The IRD follows a standard pre-filing, application, and monitoring process. There are no unique procedural aspects.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitoring &amp; compliance</td>
<td>The Taxpayer is required to prepare and submit an Annual Compliance Report for each year of the APA, demonstrating compliance with the terms of the APA. The years covered in an APA will continue to be subject to an audit.</td>
</tr>
</tbody>
</table>
| Renewal procedure | Applications for the renewal of APAs are required to be lodged six months before expiry. An APA renewal request will go through the same stages as the initial APA request, unless the Taxpayer is eligible for an extension. An APA extension is available where:
   ■ the terms of the previous APA have been complied with;
   ■ there are no material changes relevant to the controlled transactions or terms of the existing APA;
   ■ it is unlikely there will be any material changes over the period of the extended APA;
   ■ it is clear the arm’s length benchmarks used remain valid over the period of the extension;
   ■ the covered controlled transactions are consistent with the previous APA;
   ■ there are no material changes to the functions, assets, or risks;
   ■ the TP method used in the previous APA remains the most appropriate; and
   ■ the critical assumptions are consistent with the previous APA. |
HONG KONG (cont’d)

COUNTRY EXPERIENCE

Statistics
The IRD has had an APA program since 2012.

MAP PROCEDURE

MAP provisions
Paragraph 78-84 and Appendix 7 of the DIPN No. 48.

DOUBLE TAXATION TREATY NETWORK

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

<table>
<thead>
<tr>
<th>Austria</th>
<th>Malaysia^{IV}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Malta^{IV}</td>
</tr>
<tr>
<td>Brunei</td>
<td>Mexico^{IV}</td>
</tr>
<tr>
<td>Canada^{I},^{IV}</td>
<td>Netherlands^{I}</td>
</tr>
<tr>
<td>China^{IV}</td>
<td>New Zealand</td>
</tr>
<tr>
<td>Czech Republic^{IV}</td>
<td>Portugal^{IV},^{VI}</td>
</tr>
<tr>
<td>France</td>
<td>Qatar^{IV}</td>
</tr>
<tr>
<td>Guernsey^{I},^{IV}</td>
<td>Romania^{IV}</td>
</tr>
<tr>
<td>Hungary</td>
<td>Russia^{IV}</td>
</tr>
<tr>
<td>Indonesia^{IV}</td>
<td>South Africa^{IV}</td>
</tr>
<tr>
<td>Ireland</td>
<td>Spain^{IV}</td>
</tr>
<tr>
<td>Italy^{I},^{IV}</td>
<td>Sweden</td>
</tr>
<tr>
<td>Japan^{I}</td>
<td>Switzerland^{I},^{IV}</td>
</tr>
<tr>
<td>Jersey^{I},^{IV}</td>
<td>Thailand</td>
</tr>
<tr>
<td>Korea (Republic of)^{IV}</td>
<td>United Arab Emirates^{IV}</td>
</tr>
<tr>
<td>Kuwait^{IV}</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>Liechtenstein^{I}</td>
<td>Vietnam</td>
</tr>
<tr>
<td>Luxembourg^{I}</td>
<td></td>
</tr>
</tbody>
</table>

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

Joel Cooper
Co-Head International
Transfer Pricing
T +44 207 796 6929
M +44 773 829 5470
joel.cooper@dlapiper.com

Randall Fox
Co-Head International
Transfer Pricing
T +44 207 796 6928
M +44 773 829 5935
randall.fox@dlapiper.com

HONG KONG

Todd Wang
Counsel
T +852 2103 0539
todd.wang@dlapiper.com