

Tax Analysis

Unilateral Advance Pricing Arrangements Newly Added Simplified Procedures to Improve the Efficiency of Negotiation and Signing between Enterprises and Tax Authorities

On 30 July 2021, the State Taxation Administration (STA) announced the Bulletin of the State Taxation Administration on Matters Regarding Application of the Simplified Procedures for Unilateral Advance Pricing Arrangements (Bulletin [2021] No. 24, or Bulletin 24). Relying on the advance pricing arrangement (APA) framework set out in the Bulletin of the State Taxation Administration on Issues to Improve Administration of Advance Pricing Arrangements (Bulletin [2016] No. 64, or Bulletin 64), the STA has further simplified the procedures for unilateral APAs.

The simplified procedures in Bulletin 24 simplify the negotiation and signing process, and specify the time limit for application acceptance, negotiation and signing so as to further improve the efficiency of negotiation and signing for unilateral APAs. While Bulletin 64 provides general regulations for APA administration, Bulletin 24 provides special regulations for unilateral APA applications for enterprises that meet certain conditions. In doing so, Bulletin 24 simplifies and compresses the applicable procedures for unilateral APAs and stipulates specific time limits, but does not change the substance of APAs regulated by Bulletin 64.

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This article introduces the policy background of Bulletin 24, elaborates the key points of the policy, and provides recommendations for how taxpayers may utilize the simplified procedures for the negotiation and signing of unilateral APAs.

Background

In recent years, the Chinese government has been actively working on deepening reform to delegate power, streamline administration and improve the business environment. Tax administrators are also launching relevant implementing measures and have held its "Tax Convenience for the People" campaign for several years. The theme of this year's campaign is "improving tax administration services, doing practical work for the people". The campaign includes 30 action plans, of which the 28th item is "to simplify procedures" which includes the simplified procedures for unilateral APAs.

Since Bulletin 64 was announced, APAs has been an efficient tool to provide tax certainty. More and more enterprises express their intention for APA applications to in-charge tax authorities in consideration of the benefits of an APA for tax certainty. As such, the STA has been exploring ways of responding to APA applications more efficiently. Moreover, with increasing numbers of anti-tax avoidance specialists among tax authorities at all levels, Chinese tax officials have been enriching their practical experiences of APA negotiation and signing. This paves the way for introducing the simplified procedures for unilateral APAs.

In order to further study the feasibility of the simplified procedures for unilateral APAs, the STA trialled the simplified procedures in Shenzhen and other regions in Guangdong Province as a pilot program. These pilot practical experiences improved and facilitated the announcement of these simplified procedures.

Highlights of Bulletin 24

Simplify the Procedures and Set a Time Limit

Bulletin 64 regulates that the APA process consists of the following six phases: (i) pre-filing meeting, (ii) intention for an APA, (iii) analyses and evaluation, (iv) formal filing, (v) negotiations and signing, and (vi) monitor and execution (collectively referred as "general procedures"). The simplified procedures contain three phases, namely (i) evaluation of application, (ii) negotiation and signing, and (iii) monitor and execution. The pre-filing meeting and other phases are exempted.

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The simplified procedures set clear processing time limits for tax authorities on the acceptance of APA applications, and the negotiation and signing. Tax authorities must send a Notice on Tax Matters to the submitting enterprise within 90 days of receiving the APA application to inform the enterprise of whether or not the application has been accepted. The in-charge tax authorities must complete the negotiation within six months of issuing the Notice of Tax Matters to the enterprise accepting the application. During the negotiation, any time spent by the enterprise on preparation and submission of additional information required by the tax authorities is not included in the six month period. As such, if the related documents are fully-prepared in advance and submitted by the enterprise in time, a unilateral APA application could be concluded within six to nine months under the simplified procedures¹. The table below provides a summary of the three phases of the simplified procedures.

Figure 1: Three Phases of the Simplified Procedures for Unilateral APAs

Phases	Summary
Evaluation of application	<ul style="list-style-type: none"> The enterprise must submit the Application Form for the Simplified Procedures for Unilateral Advance Pricing Arrangements to the in-charge tax authorities, together with an application report. After receiving the enterprise's application, the in-charge tax authorities must conduct analysis and evaluation, and on-site functional and risk interviews. The tax authorities will send the Notice of Taxation Matters within 90 days after receiving the enterprise's application to inform the enterprise of accepting the application or not; and state the reasons for not accepting the application.
Negotiation and signing	<ul style="list-style-type: none"> After accepting an enterprise's application, the in-charge tax authorities must negotiate with the enterprise regarding whether its related-party transactions comply with the arm's length principle, and complete the negotiation within six months of issuing the Notice of Tax Matters to the enterprise for accepting the application. During the negotiation, the tax authorities may request additional information from the enterprise, and the time spent by the enterprise on preparation and submission of additional information is not considered in counting the six-month time period.
Monitor and execution	<ul style="list-style-type: none"> Tax authorities will effectively monitor the execution of the unilateral APA. During the execution of a unilateral APA, in the case of any substantial change which affects the unilateral APA and results in the terminating the unilateral APA, the enterprise may re-apply for a unilateral APA in accordance with Bulletin 24.

Applicable Conditions

The left column of the following table shows the two applicable conditions, both of which must be met for using the simplified procedures. Condition 1 is not a new condition but is an existing requirement for APA application in Bulletin 64; Condition 2 sets out three further applicable conditions, any of which may be satisfied. The targets of the simplified procedures appear to be those enterprises whose related-party transactions, business environment, and functional risk profile are known by the tax authorities to some extent, and already comply with transfer pricing contemporaneous documentation requirements.

¹ The time to completion is expected to be significantly shorter under the new regulations. According to the 2019 China Advance Pricing Arrangement Annual Report published in October 2020, the STA signed 101 unilateral APAs between 1 January 2015 and 31 December 2019, most of which were completed within two years, with 52.48% completed within one year, 36.63% within one to two years, and 10.89% over two years.

The right column of the table below also shows the circumstances under which the tax authorities may reject an application and when the simplified procedures are temporarily not applicable. As such, the tax authorities encourage enterprises to prepare tax compliance documents as part of routine tax management, such as contemporaneous documentation and the "Annual Related Party Transactions Disclosure Forms".

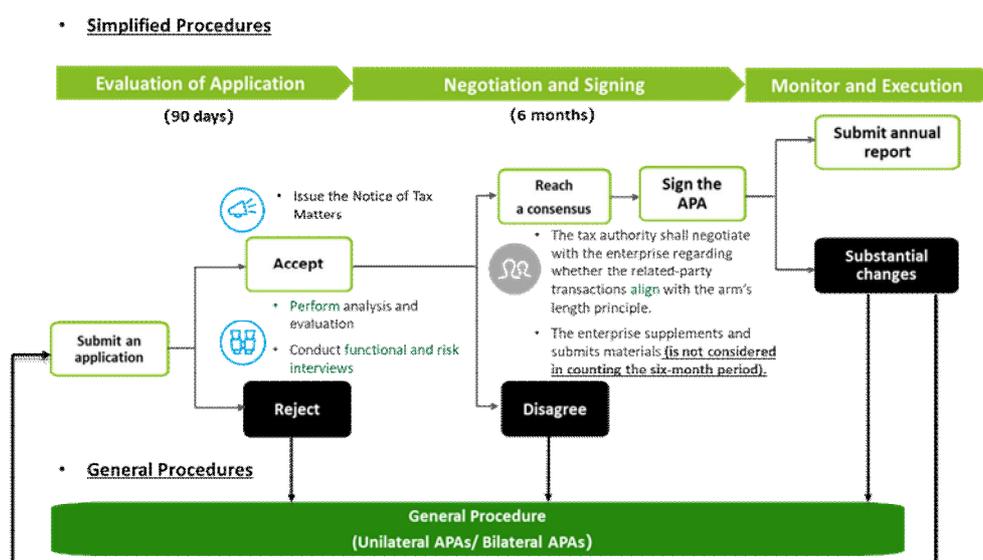
Figure 2: Application Conditions and Rejection Circumstances of the Simplified Procedures for Unilateral APAs

Applicable Conditions	Rejection Circumstances
<p>Condition 1: The annual sum of related party transactions exceeds CNY 40 million in each of the three years prior to the year in which the in-charge tax authorities issue the Notice of Tax Matters to the enterprise for accepting its application.</p>	<p>Under any of the following circumstances, the in-charge tax authorities may reject an application filed by an enterprise:</p> <ul style="list-style-type: none"> • The tax authorities have already initiated a special tax adjustment investigation or other tax investigation on the enterprise; and the relevant tax investigation has not been closed; • The enterprise fails to submit the "Annual Related Party Transactions Disclosure Forms" according to relevant regulations or to correct the error in the "Annual Related Party Transactions Disclosure Forms" completed and submitted by it; • The enterprise fails to prepare, maintain or provide transfer pricing contemporaneous documentation according to relevant regulations; • The enterprise fails to provide relevant information required by Bulletin 24, or fails to provide additional and/or corrected information if the information originally provided does not meet the requirements of the tax authorities; • The enterprise refuses to cooperate with tax authorities in respect of on-site functional and risk interviews.
<p>Condition 2: The enterprise must meet any of the following three conditions:</p> <ul style="list-style-type: none"> • It has provided the in-charge tax authorities with the contemporaneous documentation for the recent three tax years before applying the simplified procedures and such documentation complies with the requirements set out in the Bulletin of the State Taxation Administration on Issues to Improve Reporting of Related-party Transactions and Administration of Contemporaneous Documentation (Bulletin [2016] No. 42, or Bulletin 42) ; • It has once executed APAs in the recent ten tax years before applying the simplified procedures, and in compliance with the requirements of the APAs; or • It was audited by tax authorities for special tax adjustments in the recent ten tax years before applying the simplified procedures, and the case was already concluded by tax authorities. 	
	Temporarily Not Applicable
	<p>A unilateral APA involves tax authorities in two or more different provinces, autonomous regions, municipalities or cities specifically designated in a State plan.</p>

For unilateral APAs, the general procedures and simplified procedures are different and may co-exist. As shown in the chart below, in the case of the application under simplified procedures being rejected or failure to reach a consensus with tax authorities through negotiation within six months, the enterprise can start over and apply for a unilateral or bilateral APA in accordance with Bulletin 64. There is no need to re-submit the information that has already been submitted before.

If the enterprise signs a unilateral APA successfully through the simplified procedures, and during the execution there is substantial change which affects the unilateral APA and results in the termination of the unilateral APA, the enterprise can still re-apply for a unilateral APA through simplified procedures.

Figure 3: Flow of Application of the Simplified Procedures of Unilateral APAs



Observations and Recommendations

APAs are arrangements reached between enterprises and tax authorities, or between two tax authorities, with respect to the pricing principles and calculation methods for related-party transactions. It is an important tool for enterprises to obtain transfer pricing and tax certainty for cross-border business operations, and it plays an important role in reducing multinational enterprises' transfer pricing compliance costs and in promoting enterprises' cross-border investments and operations.

Bulletin 24 announces simplified procedures for unilateral APAs, improving the efficiency of APA negotiation and signing by simplifying the phases of the application and specifying time limits. We recommend that taxpayers with cross-border related-party transactions should actively understand the simplified procedures for unilateral APAs, one of the most critical measures of improving the business environment in the field of taxation, and should communicate and discuss internally. Enterprises may leverage this new policy to gain tax certainty in a more time-efficient and cost-effective way.

Based on our practical experience, we consider that internal communications should focus on the following aspects:

- **Time limits** – This is the first time that APA regulations have specified timeline requirements for tax authorities, where decisions on whether or not to accept the APA application must be made within 90 days and negotiation and signing must be completed within six months. This will help enterprises and tax authorities complete the entire unilateral APA negotiation and signing process within a shorter period. We believe that such time limits requirement may reduce enterprises' concerns on the relatively time-consuming process of APA negotiation and signing.
- **Applicable conditions** — When evaluating whether an enterprise meets the applicable conditions for the simplified procedures, the enterprise may proactively plan to meet the requirements. For example, an enterprise that is exempt from preparing the contemptuous transfer pricing documentation may consider obtaining the application by preparing and submitting the contemporaneous transfer pricing documentation for the latest three tax years to tax authorities.

- Applicable to unilateral APAs — While there are advantages, the simplified procedures do not change the effect of unilateral APAs. If both parties in the cross-border related-party transaction want to obtain tax certainty and reduce double taxation risks more effectively, we recommend applying for bilateral APAs in accordance with the general procedures under Bulletin 64.

When using the simplified procedures in practice, enterprises need to make sufficient preparation before submitting the application formally, and maintain smooth communication with the tax authorities before the acceptance of the APA application and throughout the negotiation process. In the event of limited internal resources being available to the internal tax team, or lack of experience in APA applications, enterprises can consider an APA application with the help of external tax experts to support the successful application and help the enterprise and the tax authorities reach consensus. Below is a summary of how external tax experts may support enterprises at each phase and key points for enterprises to pay attention to:

- Before submitting the application formally – assist enterprises in evaluating the feasibility of the APA application approach and alternatives; selecting appropriate application types and procedures; fully preparing the application materials for APA in advance; collecting information of similar cases; assessing potential focuses in subsequent negotiations; and conducting necessary informal communication with in-charge tax authorities.
- After submission and before acceptance of the application – assist enterprises in actively responding to analyses and evaluation as well as functional and risk interviews conducted by tax authorities; keeping smooth communication with tax authorities; and assisting with the interpretation of advice received from the authorities.
- After acceptance and during negotiation – assist enterprises in actively negotiating with tax authorities on key technical points; understanding the requirements of tax authorities on supplementary materials; preparing supplementary materials; and following up with feedback and advice from tax authorities.

In the constantly changing international and domestic tax environment, obtaining greater tax certainty remains one of the key tax issues for enterprises. The introduction of the simplified procedures for unilateral APAs provides new thoughts and options for taxpayers to obtain tax certainty, which is worth in-depth study and active implementation taking their own situations into account. We will continue to pay close attention to the practical operation of the simplified procedures and share new developments as they arise.

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