

China Dispute Resolution Profile

(Last updated: 28 January 2019)

General Information

- **China tax treaties are available at:**

<http://www.chinatax.gov.cn/n810341/n810770/index.html>

- **MAP request should be made to:**

For non- TP MAP cases, Chinese resident (national) should make the MAP request to the relevant Provincial Tax Authority, and the Provincial Tax Authority will forward the file to State Taxation Administration (STA) after collecting all necessary information.

For TP MAP cases, the taxpayer should make the MAP request directly to the STA headquarters, with the “Application for Initiating Mutual Agreement Procedures Concerning Special Tax Adjustments” and relevant information related to the special tax adjustments within the time period specified in the tax treaty. The STA may also initiate mutual agreement procedures upon receiving the formal notification from the competent tax authority of the other tax treaty contracting party.

- **APA request should be made to:**

For a Unilateral APA, the taxpayer shall submit a written application for pre-filing meeting in the form of "APA Pre-filing Meeting Application Letter" to the in-charge tax administration(s).

For a Bilateral APA, the taxpayer shall submit a written application for pre-filing meeting in the form of "APA Pre-filing Meeting Application Letter" to both the STA Headquarters and the in-charge tax administration(s) at the same time.

The contact information is listed in APA annual report. The latest version is at:

<http://www.chinatax.gov.cn/n810214/n810606/c3936703/part/3936741.pdf>

China Dispute Resolution Profile – Preventing Disputes

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-------------------------------|---|----------|--|---|
| A. Preventing Disputes | | | | |
| 1. | Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published? | Yes | Where agreements reached by both competent authorities on interpretation of one article, or the understanding of one matter under the treaty, the STA will release the result in the form of Public Announcement. | - |
| 2. | Are bilateral APA programmes implemented? If yes: | Yes | - | http://www.chinatax.gov.cn/n810341/n810765/n1990035/n1990113/c2458312/content.html Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (STA Public Notice [2016] No. 64) The English version could be found at the bottom of the page. |
| a. | <ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? | Yes | Where the related party transactions in prior years are the same as or similar to those covered by the APA, per the enterprise's request, the tax administration(s) may apply the agreed pricing methodologies and calculation process specified in the APA to such related party transactions. The maximum rollback period is 10 years. | http://www.chinatax.gov.cn/n810341/n810765/n1990035/n1990113/c2458312/content.html Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (STA Public Notice [2016] No. 64) |

China Dispute Resolution Profile – Preventing Disputes

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|-----|--|----------|--|---|
| b. | <ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? | No | - | http://www.chinatax.gov.cn/n810341/n810765/n1990035/n1990113/c2458312/content.html Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (STA Public Notice [2016] No. 64) |
| c. | <ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer's request for bilateral APA assistance, publicly available? | Yes | - | http://www.chinatax.gov.cn/n810341/n810765/n1990035/n1990113/c2458312/content.html Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements (STA Public Notice [2016] No. 64) http://www.chinatax.gov.cn/n810214/n810606/c3936703/part/3936741.pdf China APA Annual Report (2017) |
| d. | <ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? | No | - | - |
| e. | <ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? | Yes | - | http://www.chinatax.gov.cn/n810214/n810606/c3936703/part/3936741.pdf China APA Annual Report (2017) |
| 3. | Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions | Yes | China provides annual training sessions to the local officials, including treaty, transfer pricing and MAP topics, etc. to ensure that any assessments made by them are in accordance with the provisions of the tax treaties. | - |

China Dispute Resolution Profile – Preventing Disputes

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|----------|----------------------|--|
| | of your tax treaties? | | | |
| 4. | Is other information available on preventing tax treaty-related disputes? | No | - | - |

Notes:

1. An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”)).

2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

China Dispute Resolution Profile – Availability and Access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|--|---|----------|---|---|
| B. Availability and Access to MAP | | | | |
| 5. | Are transfer pricing cases covered within the scope of MAP? | Yes | - | http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html Public Notice of the State Administration of Taxation on Issuing the "Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure" (STA Public Notice [2017] No. 6) The English version could be found at the bottom of the page. |
| 6. | Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP? | Yes | As long as the application of the treaty anti-abuse provision give rise to double taxation or taxation not in accordance with the provision of the treaty, nothing in the law specifically denies MAP access to anti-abuse cases. | - |
| 7. | Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP? | Yes | As long as the application of the treaty anti-abuse provision give rise to double taxation or taxation not in accordance with the provision of the treaty, nothing in the law specifically denies MAP access to anti-abuse cases. | - |
| 8. | Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP? | No | China does not have audit settlement mechanism. | - |

China Dispute Resolution Profile – Availability and Access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|--------------------------|---|--|
| 9. | Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP? | No | - | - |
| 10. | Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP? | No | - | - |
| 11. | Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction? | See detailed explanation | There is no provision in the law clearly specifying the relationship between MAP and domestic remedies. | - |
| 12. | Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction? | See detailed explanation | There is no provision in the law clearly specifying the relationship between MAP and domestic remedies. | - |
| 13. | Are rules, guidelines and procedures on how taxpayers can access and use MAP, | Yes | - | For non-TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/ |

China Dispute Resolution Profile – Availability and Access to MAP

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| | including the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance, publicly available? | | | <p>c3523242/content.html</p> <p>Implementation Measures of Mutual Agreement Procedure("MAP") for Tax Treaty Related Issues (STA Public Notice [2013] No. 56);</p> <p>For TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html</p> <p>Public Notice of the State Administration of Taxation on Issuing the "Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure" (STA Public Notice [2017] No. 6)</p> |
| 14. | Are there specific timeline for the filing of a MAP request? | No | For TP and non-TP MAP cases, timeline for the filing of a MAP request is as provided by the governing tax treaties. | <p>For non-TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html</p> <p>Implementation Measures of Mutual Agreement Procedure("MAP") for Tax Treaty Related Issues (STA Public Notice [2013] No. 56);</p> <p>For TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html</p> <p>Public Notice of the State Administration of Taxation on Issuing the "Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure" (STA Public Notice [2017] No. 6)</p> |

China Dispute Resolution Profile – Availability and Access to MAP

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|-----|--|----------|--|--|
| 15. | Are guidance on multilateral MAPs publicly available? | No | - | - |
| 16. | Are tax collection procedures suspended during the period a MAP case is pending? | No | There is no provision in the law that allows suspension of taxation during the process of MAP. | - |
| 17. | Are there any fees charged to taxpayers for a MAP request? | No | - | - |
| 18. | Is there any other information available on availability and access to MAP? | No | - | - |

China Dispute Resolution Profile – Resolution of MAP Cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----------------------------------|--|----------|----------------------|---|
| C. Resolution of MAP Cases | | | | |
| 19. | Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers? | Yes | | <p>For non-TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html</p> <p>Implementation Measures of Mutual Agreement Procedure("MAP") for Tax Treaty Related Issues (STA Public Notice [2013] No. 56)</p> <p>For TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html</p> <p>Public Notice of the State Administration of Taxation on Issuing the "Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure" (STA Public Notice [2017] No. 6)</p> |
| 20. | Are statistics relating to the time taken to resolve MAP cases publicly available? | Yes | - | Relevant statistics are submitted to the Secretariat and published on the website of OECD. |
| 21. | Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure? | No | | - |
| 22. | Are the roles and responsibility of the MAP office publicly | Yes | | http://www.chinatax.gov.cn/download/pdf/english2017.pdf |

China Dispute Resolution Profile – Resolution of MAP Cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|--|----------|---|--|
| | available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation? | | | State Taxation Administration Annual Report (2017) |
| 23. | Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties? If not: | No | - | - |
| a. | <ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? | No | - | - |
| b. | <ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? | No | Arbitration article is not included in the tax treaty model approved by the State Council of China. | - |
| 24. | Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes: | No | There is no provision in the law clearly specifying the relationship between MAP and domestic remedies. | - |
| a. | <ul style="list-style-type: none"> Does the guidance specifically address whether | - | - | - |

China Dispute Resolution Profile – Resolution of MAP Cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|----------|---|--|
| | <p>the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice?</p> | | | |
| 25. | <p>Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?</p> | Yes | - | <p>For non-TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html</p> <p>Implementation Measures of Mutual Agreement Procedure("MAP") for Tax Treaty Related Issues (STA Public Notice [2013] No. 56);</p> <p>For TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html</p> <p>Public Notice of the State Administration of Taxation on Issuing the "Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure" (STA Public Notice [2017] No. 6)</p> |
| 26. | <p>Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with</p> | No | <p>All China's tax treaties contain the provision of MAP, but some tax treaties do not contain corresponding adjustments paragraph.</p> | - |

China Dispute Resolution Profile – Resolution of MAP Cases

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|--|----------|----------------------|--|
| | respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)? | | | |
| 27. | Is there any other information available on resolution of MAP cases? | No | - | - |

China Dispute Resolution Profile – Implementation of MAP Agreements

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|--|--|----------|---|--|
| D. Implementation of MAP Agreements | | | | |
| 28. | Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid? | No | There has not been a case where the agreement reached by our CA through the MAP process has led to additional tax to be paid by the taxpayer. | - |
| 29. | Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid? | Yes | - | <p>For non-TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html</p> <p>Implementation Measures of Mutual Agreement Procedure("MAP") for Tax Treaty Related Issues (STA Public Notice [2013] No. 56)</p> <p>For TP cases, refer to http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html</p> <p>Public Notice of the State Administration of Taxation on Issuing the "Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure"</p> |

China Dispute Resolution Profile – Implementation of MAP Agreements

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
|-----|---|----------|----------------------|--|
| | | | | (STA Public Notice [2017] No. 6) |
| 30. | Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law? | Yes | - | - |
| 31. | Is there any other information available on the implementation of MAP agreements? | No | - | - |