

China's State Taxation Administration publishes its 2021 APA Annual Report

December 22, 2022

In brief

China's State Taxation Administration (STA) on November 21 published the "China Advance Pricing Arrangement Annual Report (2021)" ([2021 Annual Report](#)). The 2021 Annual Report contains statistical data and analysis of the advance pricing arrangement (APA) cases from 2005 to 2021.

In 2021, the STA continued to promote APA cases. During the year, China signed nine unilateral APAs (including one renewal) and 11 bilateral APAs (including three renewals). The manufacturing industry accounted for the majority of APAs signed, highlighting the role of taxation in serving the real economy.

In addition to promoting the negotiation and signing of APAs, tax authorities continually are enhancing the APA process. In July 2021, the STA issued the "Public Notice on Matters Regarding the Application of Simplified Procedures of Unilateral Advance Pricing Arrangements," or "STA Public Notice [2021] No.24" (Public Notice 24), which provides taxpayers with a channel to obtain tax certainty at a lesser time cost.

In addition, in 2022 the Shenzhen Customs and Shenzhen Tax Service, STA jointly issued a notice on "Implementation of the collaborative transfer pricing administration of related party importation" (the Notice). The release of the Notice introduces a scheme of collaborative administration within the framework of using existing advance rulings from Customs and APAs with tax authorities, which gives enterprises the opportunity to communicate and negotiate with both departments on the same basis when dealing with transfer pricing issues for related-party imports, and also provides a solution to resolve the past administration differences between the two departments.

Observation: It is expected that with the various innovative measures launched by China tax authorities, the number of APAs signed will further increase in the future, especially the number of unilateral APAs that qualify for the simplified procedures.

Takeaway: In 2021, the STA continued to promote APA cases. Although the number of signed APAs decreased slightly in comparison to the preceding year, it remained at a high level based on the historical data.

Tax authorities are exploring system innovations in APAs and transfer pricing administration to further enhance the performance of APAs, including the introduction of simplified procedures for unilateral APAs and the pilot of collaborative transfer pricing administration between Customs and Tax Authorities. With the implementation of the new initiatives, the overall number of APAs signed may increase steadily; furthermore, a broader scope of

application for unilateral APAs and simplified procedures should help multinational enterprises achieve the goal of managing their transfer pricing risks in China in a more efficient and effective manner.

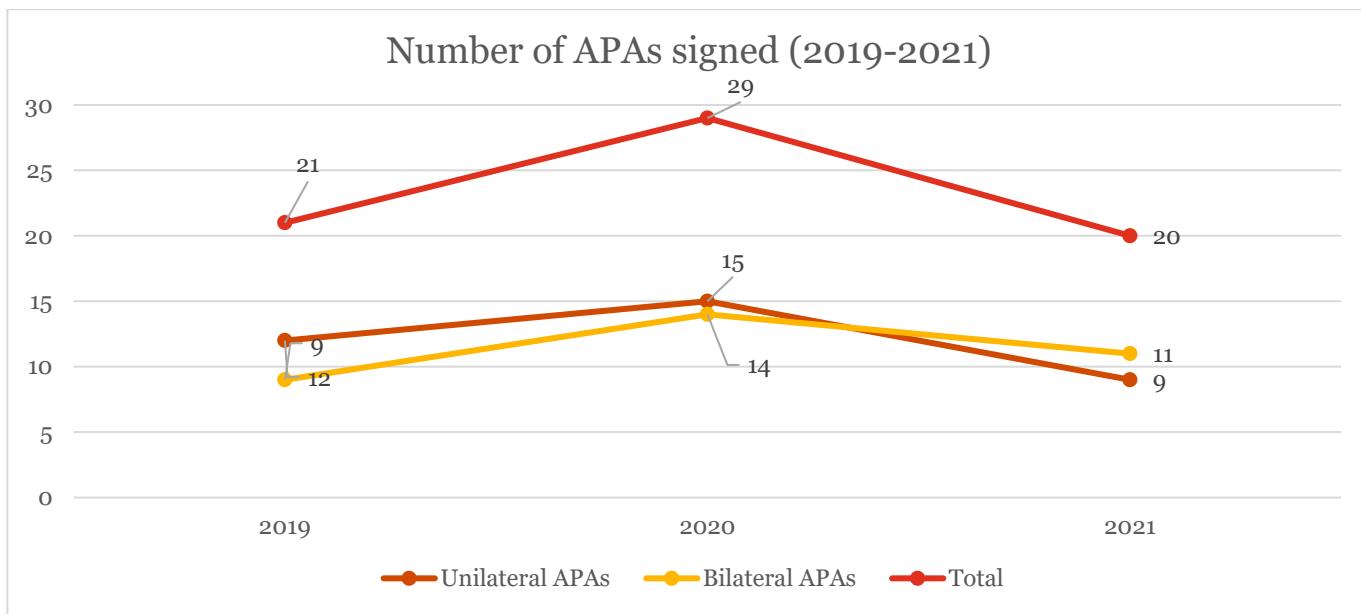
In detail

The STA has maintained the practice of releasing their APA Annual Report since 2009. The 2021 Annual Report is the 13th APA Annual Report released by the STA to describe the latest mechanisms, procedures, statistics, and implementation of the APA program in China.

APAs by number and by phase

During 2005 to 2021, China signed 125 unilateral APAs and 101 bilateral APAs with other jurisdictions, accounting for 55.31% and 44.69% of the total number of signed APAs in China, respectively.

In 2021, the number of unilateral and bilateral APAs signed declined slightly compared to the preceding year, but it remained at a high level based on the historical data, with a total of 20 APAs signed. Of the 20 cases, there were nine unilateral APAs (including one renewal). The remaining 11 cases were bilateral APAs (including three renewals).



Source: China Advance Pricing Arrangement Annual Report (2021)

The 2021 Annual Report summarizes the number of unilateral APAs and bilateral APAs by phase. Compared with 2020, the total number of unilateral and bilateral APAs at the intent and application phases increased by two cases and 22 cases respectively at the end of 2021. This shows that APAs, especially bilateral APAs, are still preferred by many multinational companies (MNCs) in light of the growing uncertainty of global trade. Although bilateral APAs need to be applied to both competent tax authorities at the same time — which may increase the difficulty and extend the timeline for application due to limited official resources and potential disagreement between the two competent tax authorities on certain issues — they can help MNCs achieve tax certainty and effectively avoid or eliminate international double taxation.

Observation: The release of Public Notice 24 broadens the application scenarios of unilateral APAs, and likely will increase the number of unilateral APA applications in the future.

APAs by time to conclusion

According to statistics from the 2021 Annual Report, 88% of unilateral APAs and 50.5% of bilateral APAs were concluded within two years.

Note: China's APA process has a special "pre-analysis" practice intended to ensure the quality of APA applications. Before the official acceptance of an APA application, the China tax authorities already would have reviewed and evaluated a draft application submitted by the taxpayer during the pre-filing meeting and application intention stage. After an initial assessment that the proposed transfer pricing method(s) in the application is in line with the arm's-length principle, the China tax authorities then will approve the taxpayer to submit the formal APA application. In addition, in the context of the COVID-19 pandemic, the approach and efficiency of negotiations between tax authorities and enterprises also will have impact on the timeline of APAs.

Other statistics on China APAs

The 2021 Annual Report summarizes other statistics related to APAs in China as of the end of 2021:

Transfer pricing method: The transactional net margin method (TNMM) was the most commonly used method for APAs signed by China, being used 225 times and accounting for 81.82% of all the applied transfer pricing methods during 2005 to 2021.

Country/region: Asia is still the region where China has signed the most bilateral APAs (67 cases), followed by Europe (20 cases), North America (13 cases), and Oceania (one case).

Transaction type covered: Transfer of ownership of tangible assets (buy-sell) and transfer of use rights of tangible goods (e.g., lease of assets) accounted for the largest portion of transactions covered by concluded China APAs. Of the concluded APAs, 56.59% involved this transaction type, followed by services (23.95%) and transfer of the right to use or ownership of intangibles (19.16%). With the growth of China's service industry, the proportion of transactions involving services and intangibles in APAs also increased year-on-year. In addition, in 2021, an APA relating to financing transactions was newly concluded for the first time.

Industrial classification: Most of the China APAs signed are for manufacturing companies, accounting for 78.76% of the total.

Observations

Demand for APAs remains strong

Although the number of unilateral and bilateral APAs signed in 2021 decreased slightly compared to the preceding year, the statistical data for APAs in the intent phase and application phase showed that an increasing number of enterprises still sought to obtain tax certainty through applying for APAs in 2021.

On the one hand, this also reflects the fact that enterprises are facing more challenges and uncertainties in the era of economic uncertainty, and effective management of transfer pricing risks has become an important issue for them. On the other hand, it also reflects that the tax authorities have made efforts in recent years to strengthen the improvement of government functions, build a steady and effective service mechanism, and promote a series of innovative service initiatives, including the simplified application procedures for unilateral APAs. These efforts have improved the efficiency of the taxation services, catalyzing the willingness of more enterprises to learn about and apply for APAs.

Although the COVID-19 pandemic has affected the work routine of tax authorities — including those relevant to the mutual agreement procedures (MAP) carried out by the STA and the competent tax authorities of other countries and regions — tax authorities at all levels are exploring various non-contact approaches to provide tax services, such as implementing online signing of APAs, in an effort to mitigate any impact of epidemic prevention and control measures on communication efficiency.

The implementation practice of simplified procedures for unilateral APAs

On July 26, 2021, the STA issued Public Notice 24, which was effective from September 1, 2021. Public Notice 24 represented an important measure from the STA under the 'Spring Breeze Actions,' aimed at "improving efficiency in providing tax certainty for taxpayers' cross-border investment and operations." See [PwC's Tax Insight](#) dated August 30, 2021.

From the perspective of implementation of Public Notice 24, several enterprises in Guangdong and Jiangsu have successively signed unilateral APAs with the tax authorities through the simplified procedures. A growing number of enterprises in several other provinces and cities also are in the process of applying for simplified procedure of unilateral APAs with the tax authorities. Since there is a clear timeframe for each phase under the simplified procedures, both tax authorities and enterprises appear more willing to actively carry out information exchange and technical discussions, and the efficiency of the negotiation and signing process has been improved.

On the other hand, in seeking to maintain the quality of APAs, the STA has been more rigorous in reviewing the APA applications submitted by local tax authorities, in particular the technical basis and the reasonableness of the transfer pricing method. Therefore, enterprises that are considering applying for APAs should conduct technical analysis on the proposed transfer pricing method and prepare the relevant supporting materials in seeking to achieve an efficient and timely APA application review and approval process.

Customs-Tax Authorities collaborative transfer pricing administration pilot program

In terms of system innovations, in addition to the above-mentioned simplified procedures for unilateral APAs, the tax authorities also are exploring inter-departmental collaboration mechanisms. On May 18, 2022, the Shenzhen Customs and Shenzhen Tax Service jointly issued a notice on "Implementation of the collaborative transfer pricing administration of related party importation," which pilots cross-department collaboration between customs and tax authorities in terms of transfer pricing administration and services. Under the program, tax authorities and customs jointly evaluate the pricing of taxpayers' related-party imports. After a consensus is reached, the departments will co-sign a memorandum on collaborative transfer pricing of related-party importation and arrange for customs' advance tax ruling and tax authorities' APA respectively. See [PwC's Tax Insight](#) dated June 21, 2022.

Prior to this program, enterprises faced challenges in seeking to obtain consistent opinions from both customs and tax authorities when dealing with transfer pricing of related-party imports due to the potentially different viewpoints of tax authorities and customs. The release of the Notice introduces a program of collaborative administration within the framework of using existing advance rulings from Customs and APAs with tax authorities, which gives enterprises the opportunity to communicate and negotiate with both departments on the same basis when dealing with transfer pricing issues for related-party imports, and also provides solutions to resolve past administration differences between the two departments.

Let's talk

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