



TAXAND GLOBAL GUIDE TO APAs & CAs



As tax authorities worldwide seek to increase tax takes to beat the downturn, multinationals face further scrutiny. Whether planning a complex transaction or reassessing your transfer pricing position, understanding Advance Pricing Agreement programmes and Competent Authority procedures is essential. Taxand’s Global Guide to APAs and CAs – split by region – provides you with an at-a-glance view of the key legislation in place. Take a look to inform your risk management strategy. You can save time and money, plan against audits and prevent double taxation if you’re in the know.

	AUSTRALIA	CHINA	THAILAND	MALAYSIA	JAPAN	INDIA
	1) ADVANCE PRICING AGREEMENTS					
Advance Pricing Agreement programme (APA) in place	Yes	Yes	Yes	Yes	Yes	India does not have an APA procedure
Programme guidelines	NAT 2748-04.2005 Taxation Ruling 95/23	Circular Guoshuifa (2009)2: Implementation Measures of Special Tax Adjustments (Provisional), Chapter 6	No official guideline re APA directly but there is a general guideline, Revenue Department Instruction (Derective) No. Paw. 113/2545, which allows taxpayer to request an APA and demonstrate relevant documents.	Only draft rules available at the moment. Deemed to be effective from 1 January 2009.	Chapter 5 of Guidelines Concerning the Establishment of Instructions for the Administration of Transfer Pricing Matters (“TP Guidelines”) issued on June 1, 2001 and amended on June 25, 2007	
APA types	a) Unilateral b) Bilateral	a) Unilateral b) Bilateral / Multilateral	a) Unilateral b) Bilateral / Multilateral - preferable	a) Unilateral b) Bilateral / Multilateral	a) Unilateral b) Multilateral / Bilateral	

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	1) ADVANCE PRICING AGREEMENTS					
Issues covered	<ul style="list-style-type: none"> ❖ Transfer pricing under Division 13 of Part III to the Income Tax Assessment Act 1936 ❖ s136AD ❖ Taxation Ruling 97/20 ❖ Arm's length principles ❖ Specific issues depend on the case, holistic review of business applied ❖ Pre-lodgement meetings require general outline of transactions and arrangements involved, how arm's length principle is to be satisfied, and any potential conflicts in interpretation of legislation between jurisdictions 	<ul style="list-style-type: none"> ❖ Procedures of APA application ❖ Documentation requirement ❖ Administration on APA implementation ❖ Revision and renewal of APA 	<ul style="list-style-type: none"> Transfer pricing under Sec. 65 Bis and Sec. 65 Ter ❖ Transfer of asset ❖ Provision of service ❖ Lending of money 	<ul style="list-style-type: none"> ❖ Transfer pricing under S140A ❖ Applicable to cross border transactions only Documentation required for formal application includes: <ul style="list-style-type: none"> ❖ Details of entities / parties involved ❖ Details of ownership structure, organisation chart and operational aspects of the business ❖ General information regarding the nature of the applicant's business, industry environment and global organisation structure ❖ Nature and scope of the transaction to be covered ❖ Details of the proposed transfer pricing methodology and its rationale ❖ Information and analyses required to produce arm's length results for related party transactions ❖ Description of the critical assumptions under which the proposed transfer pricing methodology is applicable 	<ul style="list-style-type: none"> Transfer pricing under Special Taxation Measures Law ("STML"), § 66-4 including cost sharing 	
Length of APA term	Typically 3-5 years, with options to extend	3-5 years after the year when APA application is submitted	Not specified but in practice, it will be acceptable for not more than 3 years	Minimum of 3 and a maximum of 5 years	3 to 5 years in principle	
Rollbacks allowed	Prospective application only	Yes	No	Yes	Yes	

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Renewals allowed	Yes	Yes	No	Yes, request to be made not later than nine months before the expiration of existing APA	Yes	
Annual compliance reports	Yes	Yes	No official directive but in practice, it may be requested	Yes	Yes	
Filing deadlines	None, although APAs are generally concluded after 12 months from the date of formal application, and apply to tax years beginning after the APAs are concluded. Formal applications are generally required to be lodged 3 months after the initial pre-lodgement meetings.	No	Not specified. However, taxpayer should file a request before the return filing date.	Request for APA must be made at least 12 months prior to the first fiscal year of the covered period	Request must be filed before the end of first proposed APA year	
User fees	No	No	No	No	No	
Withdrawal	Either taxpayer or ATO can withdraw at any time	During the negotiation process, both taxpayer and tax authority can withdraw; after APA is signed, if there are major changes in taxpayer's situation, taxpayer may apply for revision or termination of the agreement	A request for APA can be withdrawn	APA application may be withdrawn at any time before final agreement is reached	Either taxpayer or the tax authorities can withdraw at anytime	
Further information	APA procedure begins with application for pre-lodgement meetings, which are conducted <i>before</i> formal application for APA is made. The approval time from the date of <i>formal</i> application is generally 12 months. Documentation required for formal application usually determined at pre-lodgement meetings, but generally involves: ❖ Details of entities / parties involved ❖ Details of transactions involved and corresponding amounts (Cont. on pg 4)	APA can cover transactions related to goods, services and intangibles, etc. Most APAs up to now are unilateral APAs in China. Considering the costs and efforts for entering into an APA are high in China, APA is usually for those cases where the tax treatment involved in the related party transactions is not clear. s. Also, many companies enter into an APA after they... (Cont. on pg 4)				

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Further information (Cont.)	(Cont. from pg 3) <ul style="list-style-type: none"> ❖ Outlines of overall business structure ❖ Detailed financial reports and tax returns for the prior 3 years ❖ Details of current transfer pricing practices / arrangements ❖ Details of each relevant entity's business dealings within Australia ❖ Details of comparable competitors ❖ Economic justifications for entering into relevant international arrangements ❖ Transfer pricing methodologies considered and used ❖ Details of negotiations, pricing / profitability, market conditions and profit contributions considered ❖ Details of marketing & pricing strategies ❖ Cost sharing 	(Cont. from pg 3) ...are investigated for transfer pricing issues by tax authorities. Cost sharing is a new concept in China, there are very few precedent cases in this area. The new regulations (i.e. Guoshuifa (2009)2) allow cost sharing arrangements for both R&D costs for intangibles and service costs, for services cost sharing is only allowed for group sourcing and marketing services. However, in practice, the tax authorities will be very strict (and could be reluctant) in approving cost sharing arrangements, especially for service				
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	2) COMPETENT AUTHORITY PROCEDURES					
Programme guidelines	No	Circular Guoshuifa (2009)2: Implementation Measures of Special Tax Adjustments (Provisional), Chapter 11	No official guideline except Revenue Department Instruction (Derective) No. Paw. 113/2545. It will be treated on case by case basis.	No	Guidelines Concerning the Mutual Agreement Procedure ("MAP Guidelines") issued on June 25, 2001	
Filing deadlines	No	No	Varies by treaty partner	No	Within 3 years except for UK. In case of UK, within 3 years or within 6 years after the end of the proposed MAP year.	
Filing fees	No	No	No	No	No	

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2) COMPETENT AUTHORITY PROCEDURES

Further information

There is some reluctance to invoke the competent authority procedure

❖ If the matter is being litigated the authorities generally will not accept the matter for competent authority procedures until the litigation is concluded and also would not ordinarily consider the matter until it is finally determined by the relevant tax authorities in each country

It is not very common for companies in China to seek for competent authority procedures, as it could be complicated and time consuming



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Taxand's team of transfer pricing specialists combines leading advisors from nearly 50 countries working together to help you meet your obligations while achieving meaningful tax efficiencies. To discover how Taxand can deliver your global transfer pricing advantage, please contact your nearest Taxand advisor.

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