



The first two Advance Pricing Arrangements (APAs) signed by the Lead Enterprise Administration Department (LEAD) in China

Regulation discussed in this issue:

- [Measures for Administration of Taxation on Large Enterprises \(Trial Implementation\)](#)

In brief

Under the leading effort of the LEAD, currently the two large enterprises selected by the China government have successfully signed unilateral APAs (UAPAs) with the State Administration of Taxation (SAT) in China. These are the first APAs signed with the selected large enterprises after the establishment of the LEAD. Such arrangements demonstrate that the LEAD is functioning to serve taxpayers in a way to allow group companies in different locations to enjoy consistent tax treatments.

Background

The SAT set up the LEAD in 2008, which is responsible for providing tax support services to large enterprises, including the supervising and controlling of tax resources, conducting anti-tax avoidance investigations, negotiation and signing unilateral APAs. The LEAD has assigned 45 enterprises (groups) as designated contacts including 10 foreign enterprises. In 2009, the LEAD issued the 'Measures for Administration of Taxation on Large Enterprises (Trial Implementation)', which reinforced tax monitoring and management on large enterprises. It is not uncommon that Multinational enterprises are exposed to the risk of double taxation during transfer pricing investigations on their related-party transactions. The conclusion of APAs is an important factor for the mitigation of such risk.

China current APA status

In October 2010, the first edition of the 'China APA Annual Report' was issued, which provides case background and relevant data on the APAs signed by the SAT between 2005 and 2009. The Report describes details the advantages to taxpayers and the SAT on the signing of APAs. Moreover, it reveals that the

SAT has been allocating more resources on liaising and conducting APA cases, which may imply a foreseeable growth in the level of activities related to UAPAs and bilateral APAs (BAPAs) in China.

Characteristics of the two APAs

These two APAs are signed by the SAT designated contact enterprises. Their related-party transaction amounts and tax payables are far more than the general taxpayers’.

KPMG Observation

During the negotiation of an APA, enterprises can discuss with tax authorities on tax treatments for some special transactions, which may happen in the future. Generally, the negotiations of UAPAs are handled by the local tax bureaus, which will subsequently pass the cases to the SAT for approval. Consider the case when two group entities located in different cities apply for APAs at the same time. Despite the fact that they may have similar transaction types and function and risk profiles, their respective tax authorities may not employ exactly the same methodologies, comparable sets, periods of financials and even arm’s length ranges to conclude the APAs. In such cases, the selected large enterprises may invite the LEAD to coordinate between local tax bureaus in order to align their practices.

Currently, most of the tax authorities encourage taxpayers to apply for APAs, and expect a higher level of compliance from taxpayers. Under this mechanism, taxpayers may achieve certainty on tax treatments for transactions with high risk or uncertainties through discussions with tax authorities. They are more likely to invest on a long-term basis and, as such, may help to stabilise the local business environment. In other words, the conclusion of an APA should be favourable to the taxpayers, tax authorities and local governments.

According to the unofficial statistics, the SAT is currently dealing with a number of accepted APA applications. With the improvement of services and administration for the large enterprises, there are indications that more APAs will be managed by the LEAD, which is an effective way for large enterprises to better manage their tax risks. This is echoed by the tax officials that were involved in the signing ceremony; they agreed that the conclusion of these two APAs ensures tax administration procedures to converge and, at the same time, results in reduced tax compliance costs. In view of the above, it is believed that the SAT will continue to develop the current tax administration for large enterprises, which will help open the lines of communication between the tax authorities and enterprises, and lead to better managed tax risks.

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