



Hong Kong to introduce Advance Pricing Arrangement programme

On 3 January 2012, the Hong Kong Inland Revenue Department (IRD) announced that an advance pricing arrangement (APA) programme will be launched in April 2012.

Background

An APA enables a taxpayer to agree in advance with one or more taxing authorities the criteria for determining transfer pricing for cross-border transactions between related companies. Where the taxing authorities of two or more jurisdictions are parties to the APA (i.e. bilateral or multilateral), this can be one of the most effective methods to prevent double taxation and resolve potential transfer pricing issues with the relevant tax authorities in an upfront manner.

The new APA programme represents a significant step forward for transfer pricing in Hong Kong. The APA guidelines will be contained in a new DIPN which will be issued shortly.

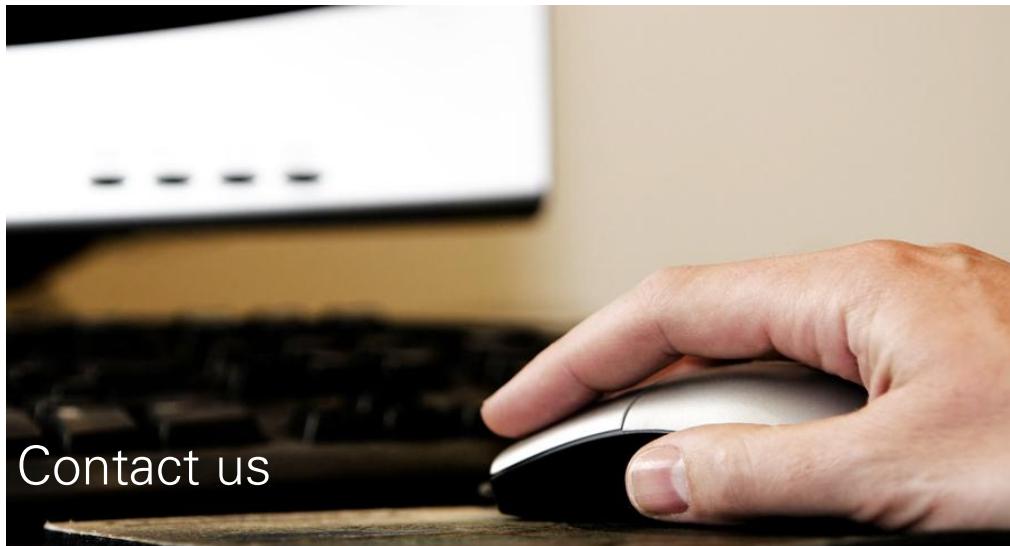
Comment

Against a background of the international trend of DTA partners to enter into APAs, the launch of the APA programme by the IRD is welcomed. Across the Asia-Pacific region, APAs are becoming increasingly common as Asian tax authorities become more effective and skilful at negotiating and concluding upfront agreements. In addition, multinational companies are increasingly relying on APAs as an effective tool to manage their transfer pricing exposures. Previously, no formal APA programme existed in Hong Kong although the IRD is understood to have entertained some requests akin to an APA under its advance ruling regime.

The IRD has actively been expanding the Hong Kong DTA network over the past two years and this provides a platform for the introduction of the APA programme in Hong Kong. It is expected that the APA programme will require an investment of significant resources from the IRD for the negotiation process.

Providing taxpayers in Hong Kong with the ability to enter into APAs will further secure Hong Kong's position as the preferred destination for multinational companies to locate their regional hub, sourcing, treasury or other important operations. Most importantly, it will enable taxpayers to obtain certainty about their tax position and effectively manage their transfer pricing exposure and compliance, both in Hong Kong and in relevant counterparty jurisdictions covered by the DTA network.

As the APA process will also involve a significant investment of resources by taxpayers over an extended period of time, it is important for taxpayers to carefully identify and assess situations where an APA will form an optimal transfer pricing solution for them. The increasing use of APAs regionally and internationally reflects the significant compliance concerns taxpayers are facing in the field of transfer pricing. Many developed transfer pricing jurisdictions are actively expanding and expediting their APAs programmes. In the course of time, we would expect the IRD to follow a similar path.



For more information, please contact:

Global Transfer Pricing Services, KPMG China

Kari Pahlman

Principal
Asia Pacific Leader, Global Transfer Pricing Services
Tel: +852 2143 8777
kari.pahlman@kpmg.com

John Kondos

Partner
Asia Pacific Leader, Financial Services Transfer Pricing
Tel: +852 2685 7457
john.kondos@kpmg.com

Cheng Chi

Partner-in-Charge
China & Hong Kong SAR, Global Transfer Pricing Services
Tel: +86 21 2212 3433
cheng.chi@kpmg.com

Corporate Tax, KPMG China

Khoon Ming Ho

Partner in Charge, Tax
China and Hong Kong SAR
Tel: +86 10 8508 7082
khoonming.ho@kpmg.com

Ayesha M. Lau

Partner in Charge, Tax
Hong Kong SAR
Tel: +852 2826 7165
ayesha.lau@kpmg.com

kpmg.com/cn

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