

China's State Taxation Administration publishes its 2022 APA Annual Report

January 25, 2024

In brief

What happened?

China's State Taxation Administration (STA) on December 19, 2023, published the "China Advance Pricing Arrangement Annual Report (2022)" ([2022 Annual Report](#)). The 2022 Annual Report contains statistical data and analysis of the advance pricing arrangement (APA) cases from 2005 to 2022.

According to the 2022 Annual Report, the STA signed 19 unilateral APAs (including three renewals) and 15 bilateral APAs (including seven renewals). In total 34 APAs were signed during 2022, reaching a record high from 2005 to 2022. Similar to the previous years, the manufacturing industry accounted for the majority of APAs signed.

Why is it relevant?

The STA says it is committed to strengthening international tax exchanges and cooperation and providing greater support to enterprises in cross-border investment and trade. It is expected that with the support of China's tax authorities and the active application and tax compliance of taxpayers, the number of signed APAs will further increase in the future to support more inbound and outbound multinational enterprises (MNEs).

Action to consider:

In the context of the STA's willingness to support both inbound and outbound MNEs in achieving tax certainty, MNEs may consider evaluating the feasibility of the APA application approach and alternatives. This could involve selecting appropriate application types and procedures, fully preparing the necessary application materials for the APA in advance, collecting information on similar cases, assessing potential areas of focus for subsequent negotiations, and conducting necessary informal communication with the in-charge tax authorities.

In detail

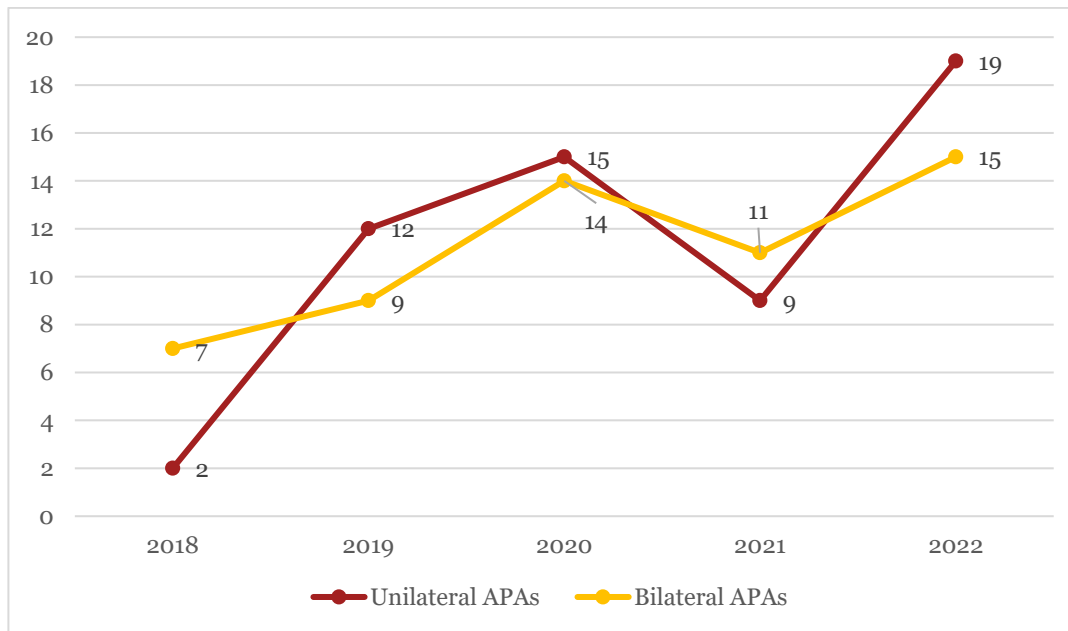
The STA has maintained the practice of releasing their APA Annual Report since 2009. The 2022 Annual Report is the fourteenth APA Annual Report released by the STA to describe the latest mechanisms, procedures, statistics, and implementation of the APA program in China.

APAs by number and by phase

During 2005 to 2022, China signed 144 unilateral APAs and 116 bilateral APAs with other jurisdictions, accounting for 55.4% and 44.6% of the total number of signed APAs in China, respectively.

In 2022, the number of unilateral and bilateral APAs both reached record highs, with a total of 34 APAs signed. Of the 34 cases, there were 19 unilateral APAs (including three renewals). The remaining 15 cases were bilateral APAs (including seven renewals).

Number of APAs signed (2018-2022)



Source: China Advance Pricing Arrangement Annual Report (2022)

The 2022 Annual Report summarizes the number of unilateral APAs and bilateral APAs by phase. Compared with 2021, as of the end of 2022, the number of APAs at the intent phase increased by 10 cases (all of which are bilateral APAs). The number of APAs at the application phase increased by 18 cases (including an increase of 20 unilateral APAs and a decrease of two bilateral APA cases) at the end of 2022. To some extent, the increase of unilateral APA applications reflects the broader use cases for unilateral APAs following the release of the “Public Notice on Matters Regarding the Application of Simplified Procedures of Unilateral Advance Pricing Arrangements” (STA (2021) Public Notice 24) in July 2021.

The above trends indicate, on the one hand, that enterprises tend towards flexibility in choosing more suitable APAs to obtain tax certainty and to avoid or eliminate international double taxation; and, on the other hand, that there has been marked progress in processing existing bilateral APA applications in the context of a heavier bilateral APA application and negotiation workload.

Observation: Energy issues, international inflationary factors, and anti-inflation policies adopted by some countries and regions, as well as the ensuing supply chain disruptions, have created more volatility in the current global macroeconomic environment. APAs, especially bilateral APAs, are still preferred by many MNEs in light of the uncertainties in 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 MNEs achieve tax certainty and effectively avoid or eliminate international double taxation.

APAs by time to conclusion

According to statistics from the 2022 Annual Report, all unilateral APAs signed in 2022 were concluded within 24 months. The key driver was the fact that more eligible taxpayers were able to obtain tax certainty through application of the simplified procedures for unilateral APAs introduced in Public Notice 24. In addition, two thirds of the bilateral APAs (including renewals) signed in 2022 were concluded within 24 months.

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. Thus, the efficiency of negotiations between tax authorities and enterprises also has an impact on the timeline of APAs.

Other statistics on China APAs

The 2022 Annual Report summarizes other statistics related to APAs in China as of the end of 2022:

Transfer pricing method: The transactional net margin method (TNMM) was the most commonly used method for APAs signed. This method was used 258 times, accounting for 83.5% of all the applied transfer pricing methods, which was an increase, proportionally, compared to 2021 (81.8%).

Country/region: Asia is still the region with which China has signed the most bilateral APAs (77 cases), followed by Europe (23 cases), North America (15 cases), and Oceania (one case, with New Zealand). Ten out of 15 newly signed bilateral APAs in 2022 were signed with Asian jurisdictions.

Transaction type covered: Transfer of the right to use or ownership of tangible assets accounted for the largest portion of transactions covered by concluded China APAs. Of the concluded APAs, 55.5% (2021: 56.6%) involved this transaction type, followed by services (24.0%, same as 2021) and transfer of the right to use or ownership of intangibles (19.5%, 2021:19.2%). In addition, in 2022, three APAs relating to financing transactions were newly concluded (2021: one case).

Industrial classification: Most of the China APAs signed continued to be for manufacturing companies, accounting for 78.1% of the total. Notably, for the first time there were two new APAs for the financial industry in 2022.

Following the publication of the guidance on Transfer Pricing Aspects of Financial Transactions by the OECD and the increased volatility in international interest rate markets in recent years, more MNEs are striving to obtain certainty in their financial transactions through APAs.

Observations

Concluded APAs reached a record high

To improve the tax business environment, the STA says it is committed to providing more tax certainty for MNEs to avoid and eliminate international double taxation, and increase stimulus to business vitality. APA cases in 2022 reached a record high, which is the result of the STA's strengthening of international tax exchanges and cooperation. In addition to APAs, the STA has bolstered its efforts in cross-border tax-related dispute cases. As a result, the STA has successfully signed 31 mutual agreement procedures (MAP) with treaty partners, eliminating around RMB 2 billion in double taxation for taxpayers.

As of 2022, China has not yet signed any multilateral APAs. In February 2023, the OECD released the Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements, which provides guidance on multilateral MAP and APA procedures from both legal and procedural perspectives.

Observation: With the release of this Manual, taxpayers and tax authorities likely will start to consider and conduct multilateral MAPs and APAs, as a more efficient approach towards helping MNEs resolve international double taxation issues.

Demand for APAs remains strong

In addition to the record high number of APAs signed, there also was significant growth in the number of taxpayers applying for new APAs in 2022, reflecting that more enterprises are looking to obtain tax certainty by applying for APAs.

Although APAs require considerable effort from both enterprises and tax authorities, they can help avoid or eliminate double taxation issues, increase tax certainty, and, in turn, facilitate stability in taxpayers' business operations. APAs also can help to stabilize cross-border trade, technology, and financial flows. APAs are expected to continue being an important option for taxpayers to resolve cross-border tax-related disputes in future years.

The takeaway

In 2022, the STA has actively promoted and achieved positive results in the negotiation of APAs. In recent years, tax authorities have continued exploring and strengthening procedural innovations in APAs and transfer pricing administration. In addition to APA applications under traditional methods, initiatives such as the simplified procedure for unilateral APAs and the collaborative management mechanism between custom authorities and tax authorities in Shenzhen have provided more alternatives for taxpayers.

Observation: PwC expects that, with the STA's initiatives to deepen international tax cooperation to support more inbound and outbound MNEs, the number of signed APAs will continue to rise in the coming years.

Let's talk

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