



# HONG KONG TAX ALERT

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## Streamlined Advance Pricing Arrangement Procedures in Hong Kong

### Summary

On 15 July 2020, the Inland Revenue Department (IRD) released the revised Departmental Interpretation and Practice Notes No. 48 containing updates to the advance pricing arrangement (APA) program in Hong Kong.

On 15 July 2020, the Inland Revenue Department (IRD) released the revised Departmental Interpretation and Practice Notes No. 48 (Revised DIPN 48). The revision (click [here](#)) mainly serves to: (a) reflect the legislative changes made by the Inland Revenue (Amendment) (No. 6) Ordinance 2018 in relation to the statutory advance pricing arrangement (APA) regime in Hong Kong; and (b) explain the streamlined APA process.

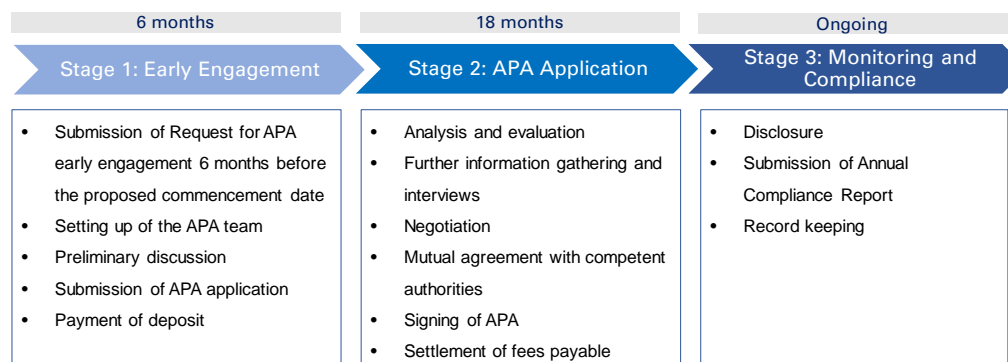
### **DIPN 48**

Key revisions in DIPN 48 include the following:

- **Unilateral APA:** Unilateral APA applications are now accepted – this is to provide certainty for related party transactions with jurisdictions which Hong Kong has no double tax agreement (DTA).
- **APA Rollback:** Requests for rollback of transfer pricing methodology under bilateral and multilateral APAs can be considered. This provides a means of resolving collateral issues and reduces the overall time needed for the APA process. The rollback option also helps to manage historical risk in that tax audits / TP inquiries from prior years may be resolved with less penalty pressure.
- **Streamlined APA Process:** The APA process has been streamlined from the original 5-stage process to a 3-stage process, namely: (i) Stage 1: Early engagement; (ii) Stage 2: APA application; and (iii) Stage 3: Monitoring and compliance. The level of documentation required at the early stage has also been reduced. These overall revisions aim to improve the timeliness and efficiency of processing APA applications.
- **Application to Permanent Establishments and Other Transactions:** The coverage of APAs has been extended to include the attribution of profit to a permanent establishment in Hong Kong (with a threshold of HK\$20 million business profits per annum) as well as transactions other than the sale or purchase of goods, provision of services and use of intangible properties (with a threshold of HK\$20 million per annum).
- **APA Fees:** Further guidance is provided regarding the fee payable for an APA application, including the provision of a fee estimate by any independent expert from whom the IRD would like to seek assistance. This enables taxpayers to better quantify the potential costs involved and accordingly decide whether the APA application should be proceeded with or not.

- **Other Considerations:** Considerations as to when a taxpayer should enter an APA and when the IRD will prioritize an APA application are also provided.

**Summary of the 3-stage APA process**



**KPMG Observations**

The Revised DIPN 48 reflects the IRD’s commitment to further developing the APA program in Hong Kong. This is a welcome act given the significant increase in transfer pricing controversies internationally as well as locally since the OECD’s action plan against Base Erosion and Profit Shifting (BEPS) was introduced. The indicators provided in the Revised DIPN 48 with respect to suitability of concluding APAs allow taxpayers to better evaluate the feasibility of a potential APA before initiating the process.

With these updates to the APA program, the Revised DIPN 48 offers taxpayers an improved avenue to lock in their transfer pricing positions in Hong Kong and counterparty jurisdictions and can thereby help to resolve any existing controversies with which they are dealing.

Where required, taxpayers should seek professional advice during this process to ensure an all-rounded assessment is conducted.

# Contact us:



**Lewis Y. Lu**  
National Head of Tax  
Tel: +86 21 2212 3421  
[lewis.lu@kpmg.com](mailto:lewis.lu@kpmg.com)



**John Timpany**  
Head of Tax, Hong Kong  
Tel: +852 2143 8790  
[john.timpany@kpmg.com](mailto:john.timpany@kpmg.com)

## Corporate Tax Advisory



**Matthew Fenwick**  
Partner  
Tel: +852 2143 8761  
[matthew.fenwick@kpmg.com](mailto:matthew.fenwick@kpmg.com)



**Stanley Ho**  
Partner  
Tel: +852 2826 7296  
[stanley.ho@kpmg.com](mailto:stanley.ho@kpmg.com)



**Alice Leung**  
Partner  
Tel: +852 2143 8711  
[alice.leung@kpmg.com](mailto:alice.leung@kpmg.com)



**Ivor Morris**  
Partner  
Tel: +852 2847 5092  
[ivor.morris@kpmg.com](mailto:ivor.morris@kpmg.com)



**Christopher Xing**  
Partner  
Tel: +852 2140 2275  
[christopher.xing@kpmg.com](mailto:christopher.xing@kpmg.com)



**Eva Chow**  
Director  
Tel: +852 2685 7454  
[eva.chow@kpmg.com](mailto:eva.chow@kpmg.com)



**Elizabeth de la Cruz**  
Director  
Tel: +852 2826 8071  
[elizabeth.delacruz@kpmg.com](mailto:elizabeth.delacruz@kpmg.com)



**William Ngai**  
Director  
Tel: +852 2685 7553  
[william.ngai@kpmg.com](mailto:william.ngai@kpmg.com)



**Johnson Tee**  
Director  
Tel: +852 2143 8827  
[johnson.tee@kpmg.com](mailto:johnson.tee@kpmg.com)



**Natalie To**  
Director  
Tel: +852 2143 8509  
[natalie.to@kpmg.com](mailto:natalie.to@kpmg.com)



**Eugene Yeung**  
Director  
Tel: +852 2143 8575  
[eugene.yeung@kpmg.com](mailto:eugene.yeung@kpmg.com)

## Deal Advisory, M&A



**Darren Bowdern**  
Head of Financial Services Tax,  
Hong Kong  
Tel: +852 2826 7166  
[darren.bowdern@kpmg.com](mailto:darren.bowdern@kpmg.com)



**Sandy Fung**  
Partner  
Tel: +852 2143 8821  
[sandy.fung@kpmg.com](mailto:sandy.fung@kpmg.com)



**Nigel Hobler**  
Partner  
Tel: +852 2978 8266  
[nigel.hobler@kpmg.com](mailto:nigel.hobler@kpmg.com)



**Kasheen Grewal**  
Director  
Tel: +852 3927 4661  
[kasheen.grewal@kpmg.com](mailto:kasheen.grewal@kpmg.com)



**Anthony Pak**  
Director  
Tel: +852 2847 5088  
[anthony.pak@kpmg.com](mailto:anthony.pak@kpmg.com)

## China Tax



**Daniel Hui**  
Partner  
Tel: +852 2685 7154  
[daniel.hui@kpmg.com](mailto:daniel.hui@kpmg.com)



**Adam Zhong**  
Partner  
Tel: +852 2685 7559  
[adam.zhong@kpmg.com](mailto:adam.zhong@kpmg.com)



**Travis Lee**  
Director  
Tel: +852 2143 8524  
[travis.lee@kpmg.com](mailto:travis.lee@kpmg.com)



**Anlio Shi**  
Director  
Tel: +852 2685 7583  
[anlio.shi@kpmg.com](mailto:anlio.shi@kpmg.com)



**Wade Wagatsuma**  
Head of US Corporate Tax,  
Hong Kong  
Tel: +852 2685 7806  
[wade.wagatsuma@kpmg.com](mailto:wade.wagatsuma@kpmg.com)



**Vivian Tu**  
Director  
Tel: +852 2913 2578  
[vivian.tu@kpmg.com](mailto:vivian.tu@kpmg.com)



**Becky Wong**  
Director  
Tel: +852 2978 8271  
[becky.wong@kpmg.com](mailto:becky.wong@kpmg.com)

## US Tax

## Global Transfer Pricing Services



**Xiaoyue Wang**  
Head of Global Transfer Pricing  
Services, China  
Tel: +86 10 8508 7090  
[xiaoyue.wang@kpmg.com](mailto:xiaoyue.wang@kpmg.com)



**Karmen Yeung**  
Head of Tax, Southern China/  
Global Transfer Pricing Services,  
Hong Kong  
Tel: +852 2143 8753  
[karmen.yeung@kpmg.com](mailto:karmen.yeung@kpmg.com)



**Patrick Cheung**  
Head of Global Transfer Pricing,  
Hong Kong  
Tel: +852 3927 4602  
[patrick.p.cheung@kpmg.com](mailto:patrick.p.cheung@kpmg.com)



**Irene Lee**  
Partner  
Tel: +852 2685 7372  
[irene.lee@kpmg.com](mailto:irene.lee@kpmg.com)



**Michelle Sun**  
Partner  
Tel: +852 3927 5625  
[michelle.sun@kpmg.com](mailto:michelle.sun@kpmg.com)

## People Services



**Murray Sarelius**  
National Head of People Services  
Tel: +852 3927 5671  
[murray.sarelius@kpmg.com](mailto:murray.sarelius@kpmg.com)



**David Siew**  
Partner  
Tel: +852 2143 8785  
[david.siew@kpmg.com](mailto:david.siew@kpmg.com)



**Gabriel Ho**  
Director  
Tel: +852 3927 5570  
[Gabriel.ho@kpmg.com](mailto:Gabriel.ho@kpmg.com)



**Kate Lai**  
Director  
Tel: +852 2978 8942  
[kate.lai@kpmg.com](mailto:kate.lai@kpmg.com)



**Lachlan Wolfers**  
Global Head of Indirect Taxes  
Tel: +852 2685 7791  
[lachlan.wolfers@kpmg.com](mailto:lachlan.wolfers@kpmg.com)



**Michael Li**  
National Head of Tax Technology  
Tel: +86 21 2212 3463  
[michael.y.li@kpmg.com](mailto:michael.y.li@kpmg.com)

## Indirect Tax

## Tax Technology

## [kpmg.com/cn](http://kpmg.com/cn)

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