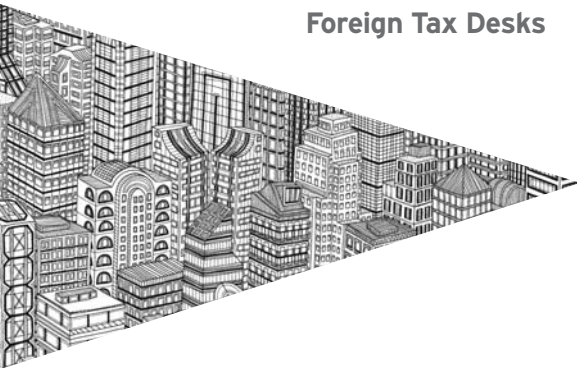


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Hong Kong plans to start accepting bilateral advance pricing arrangement requests

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Executive summary

On 3 January 2012, the Hong Kong Commissioner of the Inland Revenue announced during a seminar that the Inland Revenue Department (IRD) will launch an advance pricing arrangement (APA) program, with plans to start accepting applications from April 2012.

The introduction of an APA program is likely to be one of the most significant developments in Hong Kong's transfer pricing regime since the IRD's release of transfer pricing guidance in December 2009. While it provided taxpayers much needed clarity regarding the IRD's treatment of transfer pricing, the guidance lacked any mechanism similar to APA programs offered by many of Hong Kong's international trading counterparts.

Highlights

Salient points relating to the proposed APA program are as follows:

- ▶ The IRD plans to start accepting APA applications in April 2012;
- ▶ A Departmental Interpretation and Practice Note will be issued prior to the roll out of the APA program, following a public consultation process;
- ▶ APA applications are likely to be limited to bilateral APAs initially;
- ▶ In the event that an agreement cannot be reached on a bilateral basis, the IRD may consider proceeding with a unilateral APA.

Implications

An APA program should be welcome news for taxpayers, as it provides a mechanism for taxpayers and tax authorities to negotiate upfront the treatment of intercompany arrangements. This provides the benefit of certainty, and the

potential to minimize compliance costs associated with protracted and uncertain audits. Hong Kong currently has 22 concluded tax treaties, 12 other treaties under negotiation, and more expected in the future. Given the direction of the

current treaty trend, foreign-based multinational companies in treaty jurisdictions are encouraged to review their current transfer pricing positions with Hong Kong affiliates and consider if a bilateral APA may be beneficial.



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