

Hong Kong, China Dispute Resolution Profile

(Last updated: 20 February 2019)

General Information

- **Hong Kong tax treaties are available at:**

http://www.ird.gov.hk/eng/tax/dta_inc.htm

http://www.ird.gov.hk/eng/tax/dta_tiea_agreement.htm

- **MAP request should be made to:**

The Hong Kong Competent Authority
36/F, Revenue Tower, 5 Gloucester Road,
Wan Chai, Hong Kong
[Attn: Chief Assessor (Tax Treaty)]
Tel: +852 2594 5402
Email: taxtt@ird.gov.hk

Also see: https://www.ird.gov.hk/eng/tax/dta_map.htm

- **APA request should be made to:**

36/F, Revenue Tower, 5 Gloucester Road,
Wan Chai, Hong Kong
Tel: +852 2594 5435
Email: taxtt@ird.gov.hk

Also see: https://www.ird.gov.hk/eng/tax/dta_apa.htm

Hong Kong Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
A. Preventing Disputes				
1.	Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published?	Yes	Results would be published regarding the interpretation or application of a tax treaty after reaching agreement with treaty partners if the matter is of general public importance.	For example, Departmental Interpretation and Practice Notes No. 44 – Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income provides detailed information on the agreed interpretation of the double taxation arrangement between the Mainland of China and Hong Kong, China (“Hong Kong”): https://www.ird.gov.hk/eng/pdf/e_dipn44.pdf
2.	Are bilateral APA programmes implemented? If yes:	Yes	The Inland Revenue Department (“IRD”) rolled out the bilateral APA programme in April 2012.	General information on APA: https://www.ird.gov.hk/eng/tax/dta_apa.htm <u>Division 4 of Part 8AA of and Schedule 17H to the Inland Revenue Ordinance (“IRO”):</u> https://www.elegislation.gov.hk/hk/cap112 Departmental Interpretation and Practice Notes No. 48 – Advance Pricing Arrangement (“DIPN 48”) provides detailed information on the bilateral APA programme: https://www.ird.gov.hk/eng/pdf/e_dipn48.pdf
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	Yes	The IRD may consider roll-back of an APA to prior years subject to the time limits for amending	<u>Section 50AAQ(4) of the IRO:</u> https://www.elegislation.gov.hk/hk/cap112

Hong Kong Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			tax assessment under the IRO or the relevant double taxation agreement (“DTA”), where the facts and circumstances in the prior years are the same as those for the APA.	Paragraphs 130 to 135 of DIPN 48: https://www.ird.gov.hk/eng/pdf/e_dipn48.pdf
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	Yes	<p>Pre-filing meetings for an APA should commence at least 6 months prior to the anticipated commencement date for the APA. The APA proposal should be submitted to the IRD no later than 1 month before the scheduled pre-filing meeting date.</p> <p>APA renewals should be sought at least six months before the existing APA expires.</p>	Paragraphs 27, 29, 30, 48 and 114 of DIPN 48: https://www.ird.gov.hk/eng/pdf/e_dipn48.pdf
c.	<ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer’s request for bilateral APA assistance, publicly available? 	Yes	<p>The information required for APA application is set out in section 2 of Schedule 17H to the IRO.</p> <p>Detailed guidance on how to apply for APA is provided in DIPN 48.</p>	<p><u>Section 2 of Schedule 17H to the IRO:</u> https://www.elegislation.gov.hk/hk/cap112</p> <p>Paragraphs 23 to 57 and 113 to 121 of DIPN 48: https://www.ird.gov.hk/eng/pdf/e_dipn48.pdf</p>
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	Yes	Fees will be charged for an APA application made on or after 13	Section 7 of Schedule 17H to the IRO: https://www.elegislation.gov.hk/hk/cap112

Hong Kong Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			July 2018 in accordance with section 7 of Schedule 17H to the IRO.	
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	No	Since the launch of the bilateral APA programme in 2012, two bilateral APAs have been concluded.	-
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties?	Yes	Online materials and in-class learning on tax treaties are provided to officers.	-
4.	Is other information available on preventing tax treaty-related disputes?	Yes	Official views on the application of tax treaty provisions to seriously contemplated transactions can be obtained through the advance ruling service. So far, no application has been received for such rulings.	-

1. An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”).

2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

Hong Kong Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	<p>Access to MAP is provided for transfer pricing cases as each Hong Kong's DTA contains the Associated Enterprises Article and the Business Profits Article which provide for transfer pricing and profit reallocation adjustments.</p> <p>Sections 50AAN and 50AAO of the IRO provide that where a person makes a MAP request under a DTA in relation to the arm's length profits of the person or the person's permanent establishment in Hong Kong, and a MAP solution is arrived at, the person's profits should be assessed to Hong Kong tax in a way that is consistent with the MAP solution.</p>	<p>Sections 50AAN and 50AAO of the IRO: https://www.elegislation.gov.hk/hk/cap112 Paragraph 7 of the Guidance on Mutual Agreement Procedure ("MAP Guidance"): https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf</p> <p>Paragraph 53 of Departmental Interpretation and Practice Notes No. 45 – Relief from Double Taxation Due To Transfer Pricing or Profit Reallocation Adjustments ("DIPN 45"): https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf</p>
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	-	<p>Paragraph 10 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf</p>
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of	See detailed explanation	Access to MAP is provided for cases concerning whether the	<p>Paragraph 10 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf</p>

Hong Kong Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	MAP?		application of the domestic anti-avoidance provisions may conflict with the provisions of the DTA.	dance.pdf
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	-	Paragraph 8 of MAP Guidance. https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	-	Paragraph 9 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No	-	-
11.	Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	MAP provides an avenue for review in addition to the domestic remedial process under the IRO. A taxpayer may pursue both remedies at the same time.	Paragraphs 39 and 40 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Paragraphs 77 and 78 of DIPN45: https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf
12.	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	Access to MAP will not be denied even though a decision of the Board of Review or an order of the court has been made in respect of the issue in dispute. However, in such	Paragraph 45 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Paragraph 86 of DIPN 45:

Hong Kong Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			circumstances, the competent authority of Hong Kong will abide by the decision or order in its subsequent endeavours under MAP.	https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf
13.	Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance, publicly available?	Yes	-	MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Paragraphs 52 to 91 of DIPN 45: https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf
14.	Are there specific timeline for the filing of a MAP request?	Yes	All except one of the Hong Kong's DTAs allow MAP requests to be made within 3 years.	Paragraph 5 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Hong Kong's DTAs are available at: https://www.ird.gov.hk/eng/tax/dta_inc.htm
15.	Are guidance on multilateral MAPs publicly available?	Yes	-	Paragraph 50 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf
16.	Are tax collection procedures suspended during the period a MAP case is pending?	See detailed explanation	Tax payment may be held over under domestic procedure upon application. Each request to hold over the payment of tax will be decided on its merits.	Paragraph 52 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Paragraph 91 of DIPN 45:

Hong Kong Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
				https://www.ird.gov.hk/eng/tax/dta_inc.htm
17.	Are there any fees charged to taxpayers for a MAP request?	No	The IRD does not impose any fee for MAP request.	Paragraph 3 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Section 50AAB(3) of the IRO: https://www.elegislation.gov.hk/hk/cap112
18.	Is there any other information available on availability and access to MAP?	No	-	-

Hong Kong Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
C. Resolution of MAP Cases				
19.	Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers?	See detailed explanation	Hong Kong aims to resolve a MAP case within 24 months from the date of receipt of the complete request.	Paragraph 36 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	No	-	-
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	See detailed explanation	<p>Interest or penalties would not be imposed unless the undercharge of Hong Kong tax is the result of any wrongdoing committed wilfully or without reasonable excuse.</p> <p>Section 50AAB(7) provides that if the Commissioner considers appropriate, he or she may adjust any additional tax (which is an administrative penalty directly connected to tax liability) imposed under Part 14 of the IRO having regard to the MAP solution. However, such adjustment does not apply to any criminal penalties or any</p>	<p><u>Section 50AAB(7) of the IRO:</u> https://www.elegislation.gov.hk/hk/cap112</p> <p>Paragraph 53 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf</p>

Hong Kong Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			assessment of additional tax which has been decided by the Board of Review or the court.	
22.	Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation?	Yes	The IRD's mission statement applies to the MAP office.	IRD's mission statement: https://www.ird.gov.hk/eng/abo/mis.htm
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties? If not:	Yes	A number of Hong Kong's DTAs have arbitration provisions in their MAP Articles.	Hong Kong's DTAs are available at: https://www.ird.gov.hk/eng/tax/dta_inc.htm
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? 	-	-	-
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	-	-	-
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes:	Yes	-	Paragraph 39 to 49 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf
a.	<ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court 	Yes	See the detailed explanation in s/n 12 above.	Paragraph 45 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Paragraph 86 of DIPN 45:

Hong Kong Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	decision as a matter of administrative policy or practice?			https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	-	Paragraph 51 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf
26.	Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)?	Yes	-	-
27.	Is there any other information available on resolution of MAP cases?	No	-	-

Hong Kong Dispute Resolution Profile – Implementation of MAP Agreements

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
D. Implementation of MAP Agreements				
28.	Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?	Yes	The IRD's normal practice is to require tax payment to be made within about 6 weeks after the date of issue of the assessment.	Paragraph 38 of MAP Guidance https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf
29.	Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid?	Yes	Refund is pledged to be made within 10 working days after the date of issue of notification to revise the assessment.	Paragraph 38 of MAP Guidance https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Point 10 at page 5 of IRD's performance pledge: https://www.ird.gov.hk/eng/pdf/2018/pam32.pdf
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	All except two of Hong Kong's DTAs include provisions in the MAP Article which state that any agreement reached via MAP or for implementation of arbitration decision shall be implemented notwithstanding any time limits in the domestic laws of Hong Kong and the other DTA jurisdiction.	Section 50AAB(6) of the IRO: https://www.elegislation.gov.hk/hk/cap112 Paragraph 37 of MAP Guidance: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf Paragraph 76 of DIPN 45: https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf

Hong Kong Dispute Resolution Profile – Implementation of MAP Agreements

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			Section 50AAB(6) of the IRO also provides that any solution, agreement or decision for MAP or arbitration shall be implemented notwithstanding any time limits under the IRO.	
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-