

Circular 45/2021/TT-BTC guiding the application of Advanced Pricing Agreement in Tax Administration

The Ministry of Finance issued Circular No. 45/2021/TT-BTC ("**Circular 45**") to provide further guidance on the administration of the Advance Pricing Agreement ("APA") program in accordance with the Tax Administration Law and Decree 126/2020/ND-CP ("**Decree 126**") (effective from 5 December 2020).

Circular 45 replaces Circular 201/2013/TT-BTC ("**Circular 201**") and takes effect from 3rd August 2021.

Notable changes to the APA program, as introduced by Circular 45, are as follows:

1. Covered transactions

The related party transactions to be covered in the APA must meet all of the four following conditions:

- Transactions that have occurred during the course of business and will continue to occur during the proposed covered period
- Transactions that have basis to determine the tax liabilities and basis for analysis using benchmarking of comparable data
- Transactions that are not subject to / under tax dispute or tax appeal (such as MAP)
- Transactions that are carried out in a transparent manner and are not for the purpose of tax evasion, tax avoidance or tax treaty abuse.

2. Effective date

The effective date of the APA starts when the APA is signed between the respective Competent Authorities ("**CA**") (no longer the official APA application filing date as stipulated in the previous Circular 201). This implies that roll back is not applicable in Vietnam. However, for bilateral APAs, if both CAs agree on a different effective date, the MOF of Vietnam can propose such request for decision from the Government of Vietnam.

3. Covered period

The APA covered period is a maximum of three years instead of five years under the former Circular 201. For those outstanding APA applications that were admitted into the official APA program before 3 August 2021 (effective date of Circular 45) and the proposed covered period's end date is not before 3 August 2021, such APA applications can continue to be processed in accordance with the Law on Tax Administration, Decree 126 and this Circular 45.

4. Optional pre-filing dossiers / pre-filing meetings

It is now optional to submit a pre-filing consultation request to the General Department of Taxation ("**GDT**"). This is welcomed as it can significantly reduce the administrative burden on both tax authority and taxpayers.

The APA procedures include four steps:

- Formal application
- Evaluation
- Discussion and negotiations
- Conclusion, approval, and signing-off

There is no prescribed timeline for each of the above steps.

5. Revision / termination of unilateral APA

During the implementation of a unilateral APA and there is any double taxation or unfavorable transfer pricing adjustments made by the overseas tax jurisdiction, the taxpayer has the right to request the GDT to amend or terminate the APA. Such request will be subject to the GDT's consideration and approval.

KPMG's observations and recommendations

The relaunch of the APA program in Vietnam aims to expedite the review of APA applications and reduce the administrative burden on both tax authority and taxpayers. In the context of BEPS and the increasing scrutiny on transfer pricing worldwide, we anticipate an influx of new APA applications in the coming years.

Given the new structure of the APA program, APA applications will be processed on a first-come first-serve basis. Therefore, taxpayers interested in the APA program should lodge their APA applications as soon as possible to ensure their application will be prioritized for processing.

Should you require any further information or support, please contact our experts or your usual KPMG advisors.

Contact us

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