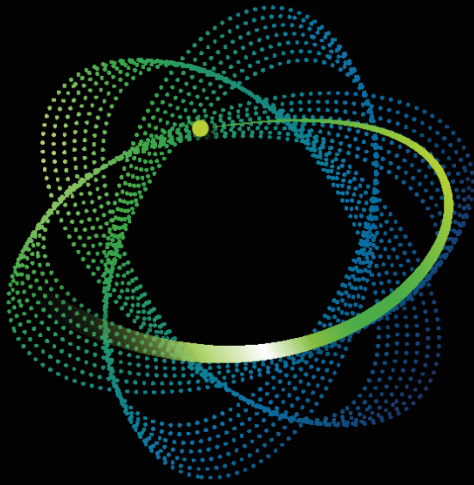


Alert on Circular No. 45/2021/TT-BTC guiding Advanced Pricing Agreement (APA) application

25 June 2021



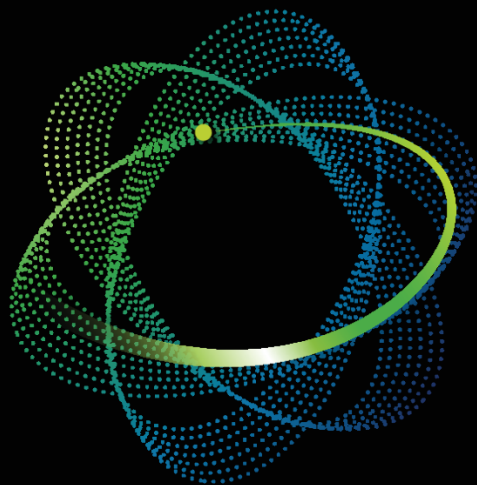
Background

On 18 June 2021, the Ministry of Finance issued Circular No. 45/2021/TT-BTC **guiding the application for the Advanced Pricing Agreement (“APA”) in tax administration for enterprises having related party transactions.**

Accordingly, the following points are provided:

1. Covered transactions;
2. Principles for APA application;
3. Information used for APA application;
4. APA appraisal, discussion and negotiation;
5. Rights, obligations and responsibilities of taxpayers;
6. Rights and responsibility of Tax authorities;
7. APA effectiveness;
8. Implementation.





Notable points

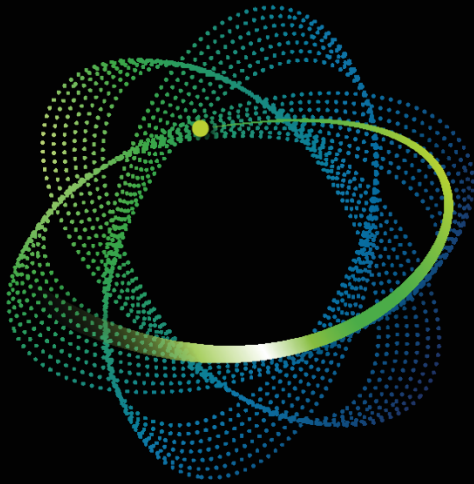
01 Covered transactions

1. Transactions to be covered by APA are related party transactions specified in Clause 2, Article 1, Decree No. 132/2020/ND-CP.
2. The covered transactions **must simultaneously satisfy the following conditions:**
 - a. Transactions that have already incurred in the taxpayer's business operation and will still incur during the APA's covered period.
 - b. Transactions of which the nature can be determined and benchmarked as guided in Article 6 and 7, Decree No. 132/2020/ND-CP on the basis of supporting documents and information in line with Point b, Clause 6, Article 42, the Law on Tax Administration.
 - c. Transactions that are not under tax disputes.
 - d. Transactions that are not arranged for the purpose of tax evasion, avoidance or abuse of the Tax treaty.



Alert on Circular No. 45/2021/TT-BTC guiding Advanced Pricing Agreement (APA) application

25 June 2021



Notable points (cont.)

02 Principles for APA application

APA shall be applied on the basis of cooperation, coordination, and negotiation between tax administration and taxpayers, or among relevant Tax authorities and their taxpayers on the basis of arm's length principle, the actual conducts and value contributions determining tax responsibilities.

Documents and information required for APA application is provided at Clause 3, Article 41, Decree No. 126/2020/ND-CP.

The comparability analysis the transfer pricing method applied must be in line with the guidance of Decree No. 132/2020/ND-CP.

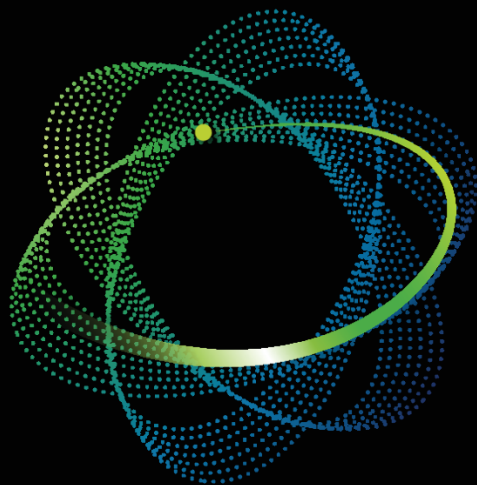
The application of the APA mechanism must comply with the principles specified at Clause 6, Article 42, the Law on Tax Administration.

03 Information used for APA application

APA application dossiers are provided at Clause 3, Article 41, Decree No. 126/2020/ND-CP.

APA application dossiers are in the **Vietnamese language**; in case of a bilateral or multilateral APA, the dossiers shall be translated into English. Taxpayers stamp for confirmation and are responsible for the content of the translation.

Information, data and databases used are as guided at Point b, Clause 6, Article 42, the Law on Tax Administration and Article 17, Decree No. 132/2020/ND-CP.



Notable points (cont.)

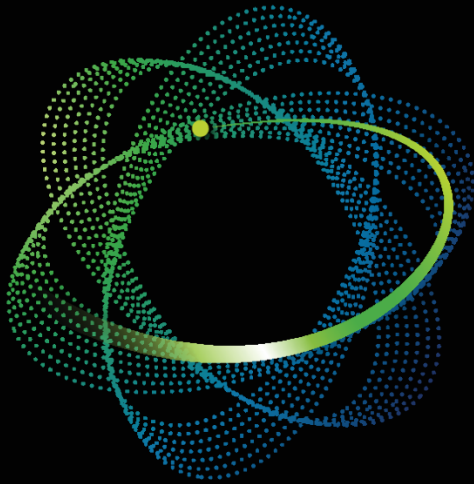
04 APA appraisal, discussion and negotiation

The General Department of Taxation shall appraise the APA application dossiers, discuss and negotiate with the taxpayer (in unilateral APA application) or with foreign Competent Authorities and their taxpayers (in bilateral or multilateral APA) to reach the final draft APA application before seeking approval of the higher level.

The discussion and negotiation aims to reach agreement with taxpayers and foreign tax administration on the expected contents of the final draft APA according to the provisions of Clause 6, Article 41, Decree No. 126/2020/ND-CP to submit to the competent authority for approval.

In case of a bilateral or multilateral APA, taxpayers shall notify the in-scope related part(ies) to request the relevant Competent Authorit(ies) to contact and expedite the discussion and negotiation with the General Department of Taxation.





Notable points (cont.)

05 Rights, obligations and responsibilities of taxpayers

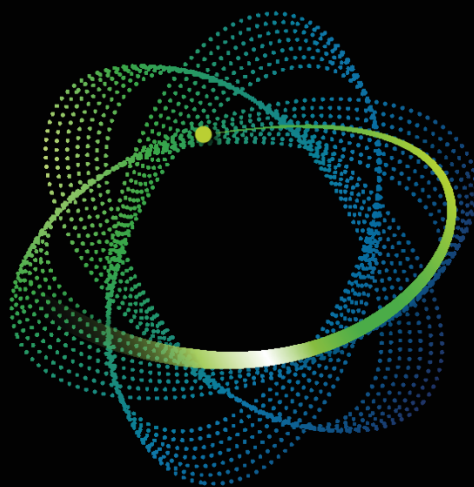
Rights:

- Taxpayers are allowed to withdraw the application or to cease the negotiation before the APA is signed.
- Taxpayers are allowed to engaged professional consultant to assist with the APA application but required to sign and confirm on records of the APA discussion and negotiation.
- During the appliance of a unilateral APA, in any case of any double taxation or tax disadvantages to taxpayers resulting from adjustments of foreign tax administration, taxpayers have the right to request the General Department of Taxation to amend or cancel APA as prescribed at Clause 9 and 10 of Article 41, Decree No. 126/2020/ND-CP.

Obligations & Responsibilities:

- Taxpayers shall provide sufficient, timely, truthful and accurate information and data to tax administration, and be responsible before the Law during the entire APA application, implementation, extension, and amendment period as prescribed in Article 97, the Law on Tax Administration.
- Taxpayers shall submit annual APA reports for each tax year and report unexpected factors (if any) during the effective period of the APA.





Notable points (cont.)

06 Rights and obligation of Tax authorities

Rights:

The Tax administration may cease negotiations and notify the relevant Competent authorities and their taxpayers in one of the following cases:

- The negotiation of APA does not meet the principles APA as prescribed in the Law on Tax Administration, Decree No. 126/2020/ND-CP and Article 5 of this Circular;
- The engaging parties failed to agree on the APA content when the APA proposing period ends;
- Taxpayers or foreign Tax authorities requesting to delay APA negotiations.

Responsibilities:

Tax agencies shall manage, examine and inspect the implementation of APA signed by taxpayers as prescribed in Clause 9, Article 20 of Decree No. 132/2020/ND-CP according to their assigned functions and tasks.

07 APA effectiveness

Effective period of a signed APA is **maximum of 3 tax years** but not exceeding the number of years taxpayer actually operates declares and pays corporate income tax in Vietnam.

08 Implementation

This Circular will be effective from 03 August 2021 and replace Circular No. 201/2013/TT-BTC.

For official APA application submitted but not concluded, and the covered period not ended before the implementation of this Circular shall continue to be resolved as per the Law on Tax Administration, Decree 126/2020/ND-CP, and this Circular.

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