



## **CIRCULAR GUIDING THE APPLICATION OF ADVANCE PRICING AGREEMENTS IN TAX ADMINISTRATION**

On 18 June 2021, the Ministry of Finance issued Circular No. 45/2021/TT-BTC (“Circular 45/2021”) guiding the application of advance pricing agreements (“APA”) in tax administration for enterprises with related party transactions.

Circular 45/2021 takes effect from 3 August 2021 and replaces Circular 201/2013/TT-BTC dated 20 December 2013.

We would like to provide a summary of more salient points of Circular 45/2021 below.

### **Transactions covered by the APA**

Transactions covered by APA are related party transactions specified in Clause 2, Article 1, Decree 132/2020/ND-CP.

Application conditions:

- ▶ Transactions that have been already incurred in the taxpayer’s business operations and will continue to take place during the APA’s covered period.
- ▶ Transactions of which nature can be determined to verify tax liability and the basis for analysis, comparison and selection of independent comparable subjects could be obtained from information and data complied with Articles 6 and 7, Decree No. 132/2020/ND-CP, based on information and data complied with Point b, Clause 6, Article 42, Law on Tax Administration.
- ▶ Transactions that are not under tax disputes nor complaints.
- ▶ Transactions that are made transparently, not arranged for the purposes of tax evasion, tax avoidance or abuse of the Tax Agreements.

### **Principles for concluding APAs**

APA will be applied on the basis of cooperation, coordination and negotiation between the tax administration and the taxpayers (covered by the APA), or a Vietnamese tax administration, counterpart tax authorities and the taxpayers on the application of laws and regulations on CIT in relation to related party transactions within the scope of APA in accordance with the principle of independent transactions and substance over form in determining the tax liability.

During the implementation of the APA, taxpayers are responsible for:

- ▶ Complying with the conditions stated in the concluded APA and make adjustments to taxable income in accordance with the price or profit margin or profit split ratio prescribed in the APA in preparing tax declaration and payment in accordance with the laws and regulations.
- ▶ Prepare and submit annual APA reports for each tax year and ad hoc reports (if any) during the effective period of the signed APA according to Clause 7, Article 41, Decree No. 126/ 2020/ND-CP.

### **APA effectiveness**

Taxpayers committing any tax administrative violations during the implementation of the signed APA will be sanctioned for tax administrative violations according to regulations.

Effective period of a signed APA is up to 3 years instead of 5 years as previously regulated.

For APA applications submitted before the effective date of Circular 45/2021 but not been signed and the period for application of APA not yet ended by the effective date of Circular 45/2021 will continue to be dealt with according to the Law on Tax Administration, Decree No. 126/2020/ND-CP and this Circular.

If you need further information, do not hesitate to contact us.

## **CONTACTS**

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