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The process of advanced pricing agreement (APA) in vietnam

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Advanced Pricing Agreement (APA)

APA is an agreement in writing between the taxpayer and the tax authority or between the taxpayers and one or more tax authorities from one or more jurisdictions with which Vietnam has signed the avoidance of Double Tax Agreements for a specified period of time. The agreement also requires specific basis to determine the tax liabilities, its pricing method or the arm's length price

In Vietnam, APA should be established prior to the submission of Corporate Income Tax ("CIT") finalization declaration

Below are the types of APA applicable in Vietnam:

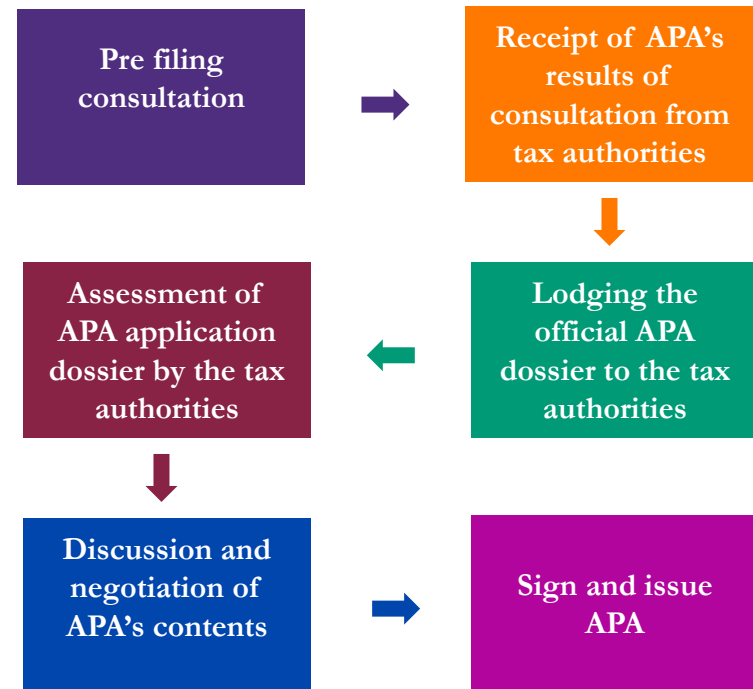
- Unilateral APA: the agreement negotiated and signed between the tax authority and the tax payer
- Bilateral/Multilateral APA: the agreement negotiated and signed between the taxpayer, the Vietnamese tax authorities and the tax authority of one or more jurisdictions associated with the agreement in question.

Effectiveness of APA: the APA is effective for the maximum period of 5 years

Transactions subject to the scope of APA:

APA can be applicable to transactions relating to sale, purchase, exchange, lease, transfer or assignment of goods and services during the course of business (hereinafter referred to as business transactions) between related parties. The above is exclusive of the business transactions relating to goods/services subject to stabilization of prices which are subject to price adjustment by the State, in accordance to regulation on prices.

As per the guidelines stipulated within Circular 201/2013/TT-BTC ("Circular 201") issued by Ministry of Finance on 20 December 2013, process of applying APA in Vietnam is as follows:



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In order to provide further guidance to the application of APA, the Ministry of Finance has issued the Decision No. 558/QD-CT on 23 March 2014 which details of the procedures and dossiers relating to APA are highlighted below:

- Consultation request for APA application
- Request for official APA application
- Bilateral Agreement
- Withdrawal of APA application and cessation of negotiation
- Amending the APA
- Cancellation of APA
- Annual and irregular APA report

Accordingly, the local tax department shall be responsible to receive the annual and irregular report while the remaining dossiers will be handled by the General Department of Taxation.

Notable points regarding the APA application dossier are summarized below for your reference:

1. Consultation request for APA application

Form No. 1/APA-TC is designed for the APA consultation request which outlines the requisite information such as :

- The type of APA to be applied and the effective time period for the APA to be applicable;
- Detailed information relating to related parties and the associated transactions within the scope of APA;
- The analysis relating to assets, functions, risks as well as the critical assumption associated with the conditions for APA applications;

- Summary of the tax audit minutes that have been conducted;
- Any information relating to the existing APA signed with an offshore parties and the perspectives of the tax authority in other jurisdictions (if available)

2. Request for official APA application

Form No. 2/APA-CT as attached to the Circular 201 is design for the request of official APA application. Within this request, the taxpayer is generally required to provide information relating to the related parties and associated transactions relative to the APA application and specific information as highlighted below:

- Description of business strategy that the taxpayer anticipates to undertake during the time frame as suggested in the APA application.
- Provide the economic and industry analysis.
- Analysis of the functions undertaken, assets used, and risks assumed by the taxpayer and its related parties during the time frame of the APA being in effect.
- Audited financial statements, annual report and the corporate income tax finalization declaration in 3 preceding years prior to the year in which the taxpayer requests the APA application
- Any documents relating to the pricing method to determine the arm's length price.

The APA application dossier should be submitted in Vietnamese; however, in instances of application relating to bilateral and multilateral APA, the dossier should be submitted in Vietnamese and a corresponding English translation.

Advanced Pricing Agreement (APA)

3. Bilateral APA

The bilateral APA is applicable for enterprises who wish to apply such agreement and require assistance of the tax authority in the communication, proceeding with the other corresponding tax authority in further discussion and negotiation. Such taxpayers are generally required to submit the request for bilateral APA application procedures, in accordance with the relative avoidance of Double Tax Agreements. The enterprises should prepare the application to proceed with the bilateral APA in accordance with Form No. 4/APA-MAP. Accordingly, the enterprise should also provide the underlying reasons for such request to apply the bilateral APA.

In addition, the enterprise should enclose any vouchers, documents that the corresponding tax authority have issued in relation to the bilateral APA (including but not limiting to the announcement or decision to collect/adjust any tax liabilities which can lead to double taxation in related party transactions).

4. Withdrawal of APA application, cessation of negotiation, amendment and cancellation of APA

Enterprises are generally required to send the request to cease all negotiations, amend or cancel the APA to the General Department of Taxation who will provide notification in writing regarding the results of such cancellation.

5. Annual and irregular APA report

The annual APA report should be constructed based on Form No. 3/APA-BC and attached together with the CIT finalization dossiers which are to be submitted to the local authority.

During the course of the APA implementation, if there are incidents occurred which can create a significant influence on the on-going APA implementation or affecting the business results, the taxpayer is responsible to report to the tax authority **within 30 days** from the date the incidents arise (irregular report).



Grant Thornton Vietnam's opinions

Observation and advice from Grant Thornton Vietnam relating to the APA application which is designed to minimize transfer pricing risks and ensure compliance with transfer pricing regulations.

- The application of APA is deemed an effective method in management of tax risks. APA has been utilized by many multinational enterprises domiciled in United States of America, Canada, Japan, China, Singapore, etc.
- One of the most important issues to be considered in applying for APA is the interrelation between the time and corresponding expenses to collect all the requisite information relating to the APA application. In addition, the APA application dossier also requires the enterprises to supply enormous amount of important and sensitive information relating to the enterprise's operations, such as the business strategy and financial information, etc.
- To date, we understand that the General Department of Taxation has yet to approved any APA application for any taxpayers and the application of APA is still within the experimental stage in Vietnam, thus, the process to prepare, submit and explain the application dossier would most likely require additional time to be completed.

Please contact with our professional consultants at Grant Thornton Vietnam shall you need further assistance in assessing the compliance status of your company's transfer pricing position, exposures to transfer pricing risks and any opportunities to apply APA for your company's operation.



Contacts

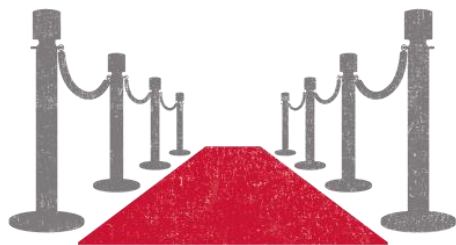
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Questions & feedback

