



RHTLaw Vietnam
International Capabilities Delivered Locally

NEWSLETTER

**– CIRCULAR NO.45/2021/TT-BTC GUIDING THE APPLICATION FOR ADVANCED PRICING AGREEMENT IN TAX ADMINISTRATION –
AUGUST 2021**

The Government has recently issued Circular No. 45/2021/TT-BTC Guiding the Application for Advanced Pricing Agreement (the “**APA**”) in Tax Administration for Enterprises Having Related Party Transactions (“**Circular 45**”) as replacement for Circular No. 201/2013/TT-BTC dated 20 December 2013 (“**Circular 201**”).

This Newsletter sets out notable changes under Circular 45 which took effect from 03 August 2021.

1. Covered Transactions

The related party transactions to which the APA is recommended to apply must satisfy all of the four following conditions:

- i. transactions that have been conducted during the course of taxpayer’s business, and will continue to occur during the covered period of the APA;
- ii. transactions that have a basis for the purpose of determining tax obligations and selecting independent transaction for comparison;
- iii. transactions that are not subject to tax disputes or appeals;
- iv. transactions that are conducted in a transparent manner and not for the purpose of tax evasion, avoidance or abuse of the tax treaty.

Compared to Circular 201, Circular 45 provides for clearer conditions of transactions to which the APA would be applied.



2. Covered Period

The APA period is a maximum of three years instead of five years under the former Circular 201 but does not exceed the number of years of actual operation, declaration and

payment of corporate income tax by taxpayer in Vietnam.

For APA applications being submitted before 03 August 2021 (the effective date of Circular 45) and having the covered period which has yet ended before 03 August 2021, such APA applications are allowed to be processed in accordance with the Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019, Decree No. 126/2020/ND-CP dated 19 October 2020 of the Government detailing a number of articles of the Law on Tax Administration and Circular 45.



3. Procedure for APA Application

Under Circular 45, the registration procedure to obtain approval for APA shall follow four steps as set forth below. Unlike Circular 201, Circular 45 does not prescribe a specific timeline for each step of the procedure. Also, now it is non-compulsory to submit a pre-filing consultation request to the General Department of Taxation of Vietnam (the “**GDT**”).

i. Application Submission

APA application file must be in the Vietnamese language. In case of a bilateral or multilateral APA, the application documents shall be translated into English. The taxpayers who take responsibility for the translated contents must stamp on the translation.

ii. Application Appraisal

After receiving the APA application, the GDT shall conduct application appraisal to check the accuracy, legality, and validity of the information thereof. During the process of evaluation, the GDT may apply tax management measures and require the taxpayer to explain and clarify any of the information provided in the APA application file.

iii. Discussion and Negotiation

Discussion and negotiation will vary according to the types of APA. There are three types of APA, including:

- unilateral APA which is an agreement signed between the Vietnamese tax authority and taxpayer applying for the APA; or
- bilateral APA which is an agreement signed between the Vietnamese tax authority, taxpayer applying for the APA and a relevant foreign tax authority under the tax treaty; or
- multilateral APA which is an agreement signed between the Vietnamese tax authority, taxpayer applying for the APA and many relevant foreign tax authorities under the tax treaty.

The GDT shall discuss and negotiate the APA with the taxpayer (in case of unilateral APA) or with relevant foreign tax authority(ies) and the taxpayer (in case of bilateral or multilateral APA) to reach the final draft APA and submit such draft to the competent authority for approval.

In case of a bilateral or multilateral APA, taxpayers shall notify the relevant party(ies) to request the relevant foreign tax authority(ies) to contact and expedite the discussion and negotiation with the GDT.

iv. Approval

Prior to the execution, the Ministry of Finance of Vietnam shall approve the unilateral APA. With respect to the bilateral or multilateral APA, the authority granting approval for the APA will be determined according to the related international treaties and international agreements.



The regulations on the APA under Circular 45 aim at expediting the evaluation of APA applications, reducing the administrative burden on both tax authority and taxpayers, improving the effectiveness of tax administration, preventing double taxation and tax evasion, and minimizing disputes over price determination of related transactions.

Contributors



Benjamin Yap (Mr.)

Senior Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448
benjamin.yap@rhtlaw.com.vn



Le Thi Kim Quy (Ms.)

Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448
quy.le@rhtlaw.com.vn

Office details

>

RHTLaw Vietnam

Suite 1101, 11th Floor, Sofitel Central Plaza
17 Le Duan Boulevard, District 1, Ho Chi Minh City,
Vietnam

Tel: +84 28 38206 448

HCMC > Hanoi > Singapore > Phnom Penh

>

RHTLaw Vietnam – Hanoi Branch

Unit 1501B, 15th Floor, Charmvit Tower
117 Tran Duy Hung Street, Cau Giay District
Hanoi, Vietnam

Tel: + 84 24 3974 8881

HCMC > Hanoi > Singapore > Phnom Penh

Disclaimer: All materials have been prepared for general information purposes only. The information is not intended as, and should not be taken as, legal advice. Do not act or refrain from acting based upon information provided herein without first consulting our lawyers about your factual and legal circumstances.