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Vietnam

Formal APA regs released

The Ministry of Finance (MoF) recently released Circular 201/2013/TT-BTC (Circular 201) providing formal guidance on the APA programme, including the APA framework, governance, process, roles, responsibilities and mutual expectations for taxpayers and the Vietnamese authorities in applying for, negotiating and executing APAs.

Circular 201 becomes effective from February 5, 2014 and is materially unchanged from the initial draft Circular which was issued for taxpayer comment and feedback, summarised in an earlier article.¹

In detail

Vietnam's transfer pricing regulations have been developing with a view towards achieving alignment with the standards of international counterparts. Of notable absence in Vietnam's transfer pricing regulations was any mechanism enabling taxpayers to agree upfront the treatment of specific intercompany arrangements or transactions.

The APA Circular reflects, in part, global best practices, with the onus on the taxpayer to provide sufficient information and analysis in the consultation (pre-filing) phase, such that the Vietnamese authorities can make an informed decision as to whether to accept the APA into the programme. Our experiences with taxpayers piloting the APA programme indicate relatively onerous information disclosure requirements – which is to be expected from a tax authority still developing precedent and expertise in this area.

Through the APA consultation process to develop the Circular, the MoF and the General Department of Taxation (GDT) have placed an emphasis on establishing competency within their organisations to attempt to ensure that the individuals handling APA applications will have the skills necessary to facilitate the negotiation and execution of APAs. This has included consultation with various other tax authorities with well-established APA programmes, working with external consultants and training and support from organisations including the European Council, International Monetary Fund and the OECD, amongst others.

The finalisation and implementation of Circular 201 is a significant positive step in Vietnam's transfer pricing regulatory framework. While not all the proposed changes received from the public consultation process have been reflected in the final Circular, the MoF and GDT's commitment to the APA programme is welcome news. The lack of change from the draft represents, in part, a focus by the MoF and GDT on the procedural and practical aspects of implementing and administering an APA programme.

Key changes from the draft

- Circular 201 provides additional clarity on some minor administrative and compliance aspects of the APA application process, including:

- the requirement to submit formal letters requesting extensions where the taxpayer cannot meet a specified filing deadline;
 - clarification around the data sources that can be relied upon to determine an arm's length outcome or range.
 - Circular 201 imposes tighter timeframes than those originally outlined in the draft Circular. Specifically, the assessment period of the APA application by the General Department of Taxation (GDT) has been reduced from 180 days to 90 days, and the period that the GDT and taxpayer have to meet to discuss and agree a case plan for the APA has been reduced from 30 days to 15 days.
 - Circular 201 removes the APA filing fee (the amount and calculation of the proposed APA filing fee was not contemplated in the draft Circular). The removal of an APA filing fee may hamper the MoF's and GDT's ability to facilitate bilateral or multilateral discussions.
 - Circular 201 introduces an additional form to be completed as part of the APA application for bilateral or multilateral APAs (Form 4/APA-MAP). This is procedural only and does not impact any other information required to be provided as part of the APA application nor attempt to categorise APA applications.
- There are other changes from the draft Circular; however these changes do not materially impact the content of the clauses as set out in the draft Circular.

Conclusion

We are currently working with some multinational clients to pilot the APA programme. Being pioneers, these first APAs will help define the way the process as outlined in the Circular will work in practice. With the Vietnam Government committed to a successful APA programme, we continue to be encouraged by our experiences with their early and active engagement on the pilot cases.

Anyone contemplating an early move in seeking an APA in Vietnam should anticipate a more involved process as the framework evolves and the authorities continue to gain experience in assessing applications and negotiating and concluding APAs.

Taxpayers need to consider whether an APA is appropriate for their facts and circumstances and should consider how this fits into their overall transfer pricing governance framework.

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¹ See 'Vietnam: Draft APA circular', *Transfer Pricing International Journal*, Vol.14, No.9, September 2013.