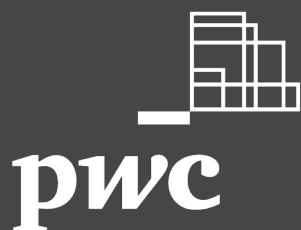


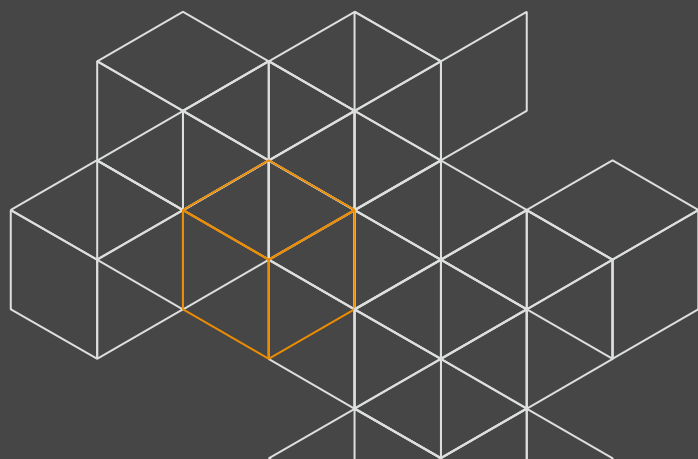


PwC Vietnam NewsBrief

**OECD releases Vietnam's second MAP
peer review report**



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At a glance..

OECD releases Vietnam's second MAP peer review report

On 13th September, the OECD published “Making Dispute Resolution More Effective – MAP Peer Review Report, Vietnam (Stage 2)”.

The Report details what actions Vietnam has taken and will take to improve its mutual agreement procedure (“MAP”) so that it meets the requirements of Action 14 of the OECD’s Base Erosion and Profit Shifting (“BEPS”) initiative.

In this NewsBrief we summarise the findings of the Report and what this may entail for Vietnam’s tax treaties.

Background

Action 14

The aim of Action 14 Mutual Agreement Procedure of the OECD's BEPS initiative is to make tax-related dispute resolution between jurisdictions more timely, effective and efficient.

Action 14 is one of the BEPS Minimum Standards that, as a member of the BEPS Inclusive Framework, Vietnam must conform to. In addition, on 9th February 2022, Vietnam signed the Multilateral Instrument ("MLI") and is expected to ratify it later this year. The MLI allows Vietnam to adopt, where necessary, modifications to its tax treaties in order to fulfil its requirements under Action 14.

Peer review and monitoring

By being a member of the Inclusive Framework, Vietnam has committed to having its compliance with Action 14 reviewed and monitored by its peers through a peer review process. The stage 1 peer review report identified the strengths and shortcomings in relation to Vietnam's implementing of Action 14 and provided recommendations regarding improvements. The stage 2 report focuses on steps taken to address the shortcomings and additional actions required.

By way of background, Vietnam has tax treaties with 78 jurisdictions (76 of which are in force) and has an established MAP programme. As at 31 December 2020, Vietnam had 11 ongoing MAP cases. Relatively few cases are submitted each year.

Findings of the Report

Key points

- All of Vietnam's tax treaties contain a provision relating to MAP which broadly follows Art 25 of the OECD Model Tax Convention. Certain exceptions to note are set out below.
 1. Approximately 17% of the tax treaties do not include a provision for the two jurisdictions to, "endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation of the tax treaty" (Art 25(3)).
 2. Approximately 15% have no provision stating that mutual agreement shall be implemented notwithstanding any time limits in domestic law (Art 25(2)).
 3. Approximately 10% do not contain a clause stating that competent authorities may consult together for the elimination of double taxation in cases not provided for in the treaty (Art25(3)).
- Vietnam does not meet Action 14's standard on preventing disputes by using APAs. There is a bilateral APA programme, but it does not allow for APAs to be rolled back.
- Vietnam has met some of the requirements in relation to availability and access to MAP. However, it does not have a process for managing situations in which its competent authority considers the objection raised by a taxpayer in a MAP request to be unjustified.

Findings of the Report

Next steps

Vietnam must now take steps to address these and other issues which have been identified during the stage 2 peer monitoring process.

Vietnam will amend the tax treaties in question, either through bilateral negotiations with counterparties, of which no details are currently available, or via the MLI. The MLI and any changes to treaties it brings in can only come into effect when Vietnam ratifies the MLI, which is expected to happen later in 2022.

Contact us

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. For further information or if you require our official advice or assistance, please reach out to us.



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