



# APA & MAP COUNTRY GUIDE 2018 – VIETNAM

New paths ahead for international tax  
controversy





## VIETNAM

### APA PROGRAM

KEY FEATURES	
<b>Competent authority</b>	General Department of Taxation, The Minister of Finance or his authorised representative ('Tax authorities')
<b>Relevant provisions</b>	Circular No. 201/2013/TT-BTC
<b>Types of APAs available</b>	Unilateral, bilateral, and multilateral APAs are available.
<b>Acceptance criteria</b>	No specific guidance.
<b>Key timing requests, deadlines</b>	There is no specific guidance on timing requests or deadlines. The Taxpayer will negotiate a timeline for the APA application process during the pre-filing stage.
<b>APA term limits</b>	There is a five-year maximum term for an APA.
<b>Filing fee</b>	There is no filing fee.
<b>Rollback availability</b>	Rollback is not available to prior years.
<b>Collateral issues</b>	No specific guidance.



### PRE-FILING REQUIREMENTS

#### Overview

A consultation before the formal filing of an APA application is required with the Tax authorities to determine the suitability of an APA. Taxpayers must include the following with its request for consultation:

- 'Form I/APA-TV';
- the name and address of the Taxpayer, and names and addresses of parties to the related transaction(s);
- the type of APA sought;
- any relevant foreign jurisdiction(s) that will be party to the negotiations;
- a description of the related transaction(s) to be covered and not covered (if any) by the APA and an explanation for their inclusion, or exclusion;
- the value of the related transaction(s);
- the desired duration of the APA;
- an analysis of the functions, assets, and risks during the business of the Taxpayer and related parties to the transaction(s) covered;
- the proposed TP method including comparables, benchmarking, calculation methods, arm's length range, and adjustments of material differences (if any);
- critical assumptions;
- general information on enterprises, such as the business scope and size, the Taxpayer's controlled transactions, provision and exchange of information about and on operation of business groups (e.g., industry, capital, structure, business size) and its associated parties relevant to the controlled transaction(s) to be covered by the APA;



## VIETNAM (cont'd)

### PRE-FILING REQUIREMENTS (cont'd)

#### Overview (cont'd)

- organisational structure;
- a summary of any tax audits;
- disclosure of whether any APAs have been concluded with any other foreign jurisdiction(s) or similar covered APA transactions;
- positions of any relevant foreign tax authorities;
- a proposed timeline for the APA application process, and forms of communication; and
- any other information or documentation relevant to the APA application or as requested by the Tax authorities.

The Tax authorities will notify the Taxpayer within 30 working days from the last pre-filing meeting the outcome of the pre-filing consultation.

#### Anonymous pre-filing availability

Anonymous pre-filing is not available.



### APPLICATION REQUIREMENTS

#### **Content of application**

Taxpayers must submit a formal APA application to the Tax authorities within 120 days of receiving written approval after the pre-filing consultation (a 30-day extension is possible in certain circumstances).

The APA application must include the following:

- 'Form 2/APA-CT';
- information about the Taxpayer and parties to the related transaction(s) covered by the APA;
- the name and address of the Taxpayer, and names and addresses of parties to the related transaction(s), including any foreign tax authorities;
- tax codes of the Taxpayer and addresses of business locations;
- information about the primary lines of business of the Taxpayer and related parties;
- type of related transaction(s), scope and the covered period intended under the APA;
- the related transaction(s) covered and not covered (if any) under the APA and an explanation for their inclusion, or exclusion;
- value of the related transaction(s);
- the type of APA sought;
- general information about the Taxpayer and organisation including a brief history, business model, and organisational structure;
- a description of the group's value chain and the position of the related transaction(s) covered by the APA in that value chain;
- a detailed description of the transaction flow related to the transaction(s) covered by the APA and similar related transactions made in other jurisdictions (if any);



## VIETNAM (cont'd)

### APPLICATION REQUIREMENTS (cont'd)

#### **Content of application (cont'd)**

- the capital structure, associated relationship (including but not limited to direct or indirect investments, loans, and the ratio of investment among the partners);
- characteristics of business activities and main business areas of associated parties;
- a description of the business strategy of the corporation and any impact on the Taxpayer;
- a description of the business strategy intended to be employed by the Taxpayer during the covered period, including a business plan for the period of five years following the APA application, and performance over the previous three years;
- an analysis of the Taxpayer's industry and tendencies that might affect the business of the Taxpayer;
- detailed functions, risks and assets analysis of the Taxpayer and any associated party to the APA including allocation of resources and facilities if shared by associated parties (for assets including IP or intangibles, it is necessary to state clearly the ownership, usage, any protection status, IP registration date, and the value of intangibles in price settings of goods/ services covered by the APA);
- financial statements including any audits, annual reports and enterprise income statements from the three years prior to filing the APA application;
- proposed TP method, the source of data and information used for comparable analysis and, calculation method of product prices, gross profitable ratios, and profit level indicators related to the controlled transaction(s) covered by the APA;



## VIETNAM (cont'd)

### APPLICATION REQUIREMENTS (cont'd)

#### **Content of application (cont'd)**

- critical assumptions;
- information on the settlement of corporate income tax in any relevant foreign jurisdiction(s) and the relationship between the domestic laws and relevant DTT provisions;
- copies of any existing APAs with foreign tax authorities for similar covered APA transaction(s);
- copies of any contracts or other legal agreements between the Taxpayer and related parties that affect the transaction(s) covered by the APA, including agreement on ownership, rights of usage, sale, distribution of services, and development studies; and
- any other information or documentation relevant to the APA application or as requested by the Tax authorities.

Three copies of the APA application must be submitted to the Tax authorities. The Tax authorities shall notify the Taxpayer of the outcome within 90 days of receiving the formal APA application. The tax authorities may extend the evaluation stage by no more than 60 days and notify the Taxpayer in writing if such an extension is required. The Tax authorities may request to carry out a site-visit of the Taxpayer's premises during the evaluation of the APA application.

#### **Language**

The documentation for unilateral APAs should be submitted in Vietnamese. For bilateral and multilateral APA applications, documentation should be submitted in Vietnamese with English translations.

#### **SME provisions**

No specific guidance.



## VIETNAM (cont'd)

### OTHER PROCEDURAL CONSIDERATIONS

<b>General</b>	The Tax authorities follow a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
<b>Monitoring &amp; compliance</b>	Taxpayers are required to submit an APA annual report together with their annually final statement of corporate income tax. Taxpayers with an APA will be subject to an APA compliance audit, but will be exempted from a transfer pricing audit.
<b>Renewal procedure</b>	Taxpayers may extend an existing APA for up to five additional years. An application for extension must be submitted at least six months before expiry of the existing APA.





## VIETNAM (cont'd)

### MAP PROGRAM

KEY FEATURES	
<b>Competent authority</b>	General Department of Taxation, The Minister of Finance or the Minister's authorised representative ('Tax authorities')
<b>Relevant provisions</b>	Circular 205/2013/TT-BTC
<b>Acceptance criteria</b>	Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which Vietnam is signatory.
<b>Key timing requests, deadlines</b>	Most of Vietnam's DTTs permit Taxpayers to present a case to the Tax authorities within two or three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.
APPLICATION REQUIREMENTS	
<b>Content of application</b>	No specific guidance.
<b>Language</b>	No specific guidance.
OTHER PROCEDURAL CONSIDERATIONS	
<b>Interaction with domestic proceedings</b>	Taxpayers may initiate domestic proceedings; however, a MAP request will not be accepted if the domestic proceedings have commenced, or a decision has been made in relation to the matter by a domestic court.
<b>Arbitration</b>	No specific guidance.
STATISTICS	
<b>APA</b>	Statistics on APAs are not publicly available. The Tax authorities have had an APA program since 2014.
<b>MAP</b>	Statistics on MAP cases are not publicly available.



## VIETNAM (cont'd)

### DOUBLE TAXATION TREATY NETWORK

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Australia	Hong Kong	Luxembourg <sup>(VI)</sup>	Russia
Belgium	Hungary	Malta <sup>(IV)</sup>	San Marino <sup>(IV)</sup>
Bulgaria	Iceland	Mongolia	Singapore
Canada <sup>(IV)</sup>	India	Netherlands	Spain
China	Indonesia	New Zealand <sup>(IV)</sup>	Sweden
Czech Republic	Iran <sup>(IV)</sup>	Norway	Switzerland
Denmark	Ireland	Philippines	Thailand
Estonia <sup>(IV)</sup>	Italy	Panama <sup>(IV)</sup>	Turkey <sup>(IV)</sup>
France	Japan <sup>(VI)</sup>	Poland	Ukraine
Finland	Kazakhstan <sup>(IV)</sup>	Portugal <sup>(VI)</sup>	United Kingdom
Germany	Korea (Republic of)	Romania	Uruguay

#### NOTES

- I denotes treaties with MAP arbitration provisions.
- II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- III denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- IV denotes treaties that became effective within the last five years.
- V denotes treaties that are awaiting ratification.
- VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- VII arbitration is to be conducted under the statutes of the ECJ.
- VIII arbitration is to be conducted under the statutes of the ICJ.

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