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## Transfer Pricing Alert

July 2025

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# New regulation related to Advance Pricing Agreements

On 11 June 2025, the Vietnam Government issued Decree 122/2025/ND-CP (Decree 122), which provides guidance on decentralization in tax administration, including relevant provisions on new regulation related to Advance Pricing Agreements (APAs). Decree 122 will take effect as of 1 July 2025 and expire on 1 March 2027.

This Tax Alert outlines the following:

- Key changes related to decentralization in tax administration concerning APAs
- Key features of the APA regime and process in Vietnam

## Key changes under Decree 122 on decentralization in tax administration of APAs

### ■ Approval Authority

Under Decree 122, the Minister of Finance (MoF) is granted the authority to approve and sign bilateral or multilateral APAs, as well as to determine the effective dates of the APA. This eliminates the previous requirement for an APA to be submitted to the Government and the Prime Minister for their opinion prior to forming a conclusion.

### ■ Implementation Process

The Tax Department is responsible for:

- Negotiating APAs with taxpayers and foreign tax authorities.
- Preparing a negotiation plan and submitting it to the MoF for approval prior to negotiations.
- Submitting the draft APA for the MoF's signature upon completion of the negotiation process.

Previously, the Ministry of Finance was required to consult with other ministries, such as the Ministry of Foreign Affairs and the Ministry of Justice, when handling bilateral and multilateral APAs, as stipulated in Decree 126<sup>1</sup>. However, Decree 122 does not include this requirement. Instead, it specifies that the Tax Department may consult with other ministries as necessary before submitting the negotiation plan to the MoF for approval.

### ■ Transitional Provisions

For bilateral and multilateral APA dossiers submitted to tax authorities before the effective date of this Decree and not yet reported to the Government and the Prime Minister, the authority to approve and sign these APAs will be governed by this Decree.

## Key features of the APA regime and process in Vietnam

Additionally, we would also like to take the opportunity to summarize the key features of the APA regime and process for reference and consideration:

- **APA definition:** An APA is a binding agreement between a taxpayer and the tax authority, or even between multiple related party taxpayers and multiple tax authorities that determines in advance the basis of tax calculation, transfer pricing (TP) methods and arm's length basis of the covered related party transactions for a specific period of time.
- **Legal basis:** The application of an APA must align with the regulations as prescribed in the Law on Tax Administration<sup>2</sup>, Decree 126 and Decree 132<sup>3</sup>, Circular 45<sup>4</sup> and this Decree.
- **Covered period:** The maximum covered period of an APA is three years, but must not exceed the actual number of years that the taxpayer has operated and filed its corporate income tax in Vietnam.
- **Types of APAs:** Unilateral APAs, bilateral APAs and multilateral APAs are all accepted.

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<sup>1</sup> Decree 126/2020/ND-CP dated 19 October 2020 detailing the implementation of the Law on Tax Administration

<sup>2</sup> Law No. 38/2019/QH14 on Tax Administration

<sup>3</sup> Decree 132/2020/ND-CP dated 5 November 2020 on tax administration for companies having transactions with related parties

<sup>4</sup> Circular 45/2021/TT-BTC on 18 June 2021, guiding the application of APAs on tax administration for companies having transactions with related parties

- **APA process:** APA application involves four formal steps including formal application, evaluation, negotiation, and conclusion. Under the current regulations, pre-filing consultation is not a mandatory step in the APA application process.
- **Flexibility:** Taxpayers are able to withdraw or terminate an APA before it is concluded. The amendment, extension and cancellation of APAs are also permitted.
- **Independent consultants:** Taxpayers are permitted to involve independent consultants in the APA process.
- **Compliance after APA sign-off:** Taxpayers must file follow-up annual reports on compliance with the agreed APA terms.

### Our observations and recommendations

APAs have been recognized as vital tools for both taxpayers and tax authorities in many jurisdictions around the world. Adopting an APA helps enhance tax administration efficiency, reduce compliance costs, prevent double taxation, and mitigate potential disputes through forward-looking agreements with tax authorities. Additionally, the APA program fosters consistency in TP policies across various jurisdictions, ensuring alignment with both local and international regulations and practices.

The decentralization introduced by Decree 122 is considered a positive movement in Vietnam's APA environment. This change, along with the recent restructuring of the Vietnamese Government aimed at streamlining bureaucracy and enhancing operational efficiency, is expected to facilitate the APA procedures. Consequently, this may present opportunities for taxpayers in Vietnam to engage in a more streamlined APA process.

In the context of increasing tax audits, potential TP adjustments and penalties in Vietnam, the APA may be considered a valid and proactive approach to mitigate these risks and related controversies. Accordingly, taxpayers considering APAs in Vietnam are advised to proactively develop a clear strategy and detailed roadmap for the APA application.



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Contacts

## Hanoi Office



**Long Ngoc Pham | Partner**  
EY Consulting Vietnam Joint Stock Company  
[long.ngoc.pham@vn.ey.com](mailto:long.ngoc.pham@vn.ey.com)

## Ho Chi Minh City Office



**Phat Tan Nguyen | Partner**  
EY Consulting Vietnam Joint Stock Company  
[phat.tan.nguyen@vn.ey.com](mailto:phat.tan.nguyen@vn.ey.com)

## Japanese Business Services (JBS)



**Takahisa Onose | EY Vietnam, Laos, Cambodia JBS Leader**  
Ernst & Young Vietnam Limited  
takahisa.onose@vn.ey.com



**Takaaki Nishikawa | Director**  
Ernst & Young Vietnam Limited  
takaaki.nishikawa@vn.ey.com



**Kota Takano | Associate Director**  
Ernst & Young Vietnam Limited  
kota.takano1@vn.ey.com

## Korean Business Services (KBS)



**Binh Thanh Phan | EY Vietnam, Laos, Cambodia KBS Leader**  
EY Consulting Vietnam Joint Stock Company  
binh.thanh.phan@vn.ey.com



**Kyung Hoon Han | Director**  
Ernst & Young Vietnam Limited  
kyung.hoon.han@vn.ey.com



**Dong Ho Park | Assistant Director**  
Ernst & Young Vietnam Limited  
dongho.park@vn.ey.com

## Chinese Business Services (CBS)



**Truong Duc Le | EY Vietnam, Laos, Cambodia CBS Leader**  
Ernst & Young Vietnam Limited  
truong.duc.le@vn.ey.com



**Owen Tsao | Director**  
Ernst & Young Vietnam Limited  
owen.tsao@vn.ey.com



**Trinh Kiet Luong | Assistant Director**  
Ernst & Young Vietnam Limited  
trinh.kiet.luong@vn.ey.com



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