

## LEGAL UPDATE (July 2021)

In this issue, we would like to bring to your attention to the following:

- How to apply the advance price agreement (“APA”) mechanism to enterprises with related-party transactions;
- Some fees and charges will be reduced from 1<sup>st</sup> July 2021, due to difficulties caused by the Covid-19 epidemic.

### 1. How to apply the APA mechanism to enterprises with related-party transactions

Circular 45/2021/TT-BCT guiding how to apply the APA mechanism in tax administration to enterprises with related-party transaction takes effect on 3<sup>rd</sup> August 2021.

Accordingly, transactions proposed to apply APA include:

- Transaction activities as purchase, sale, bartering, renting, leasing out, borrowing, lending, transfer or disposal of commodities, provision of services;
- Financial borrowing, lending, financial services, financial guarantee and other financial instruments;
- Purchase, sale, bartering, renting, leasing out, borrowing, lending, transfer or disposition of tangible assets, intangible assets and agreement on purchase, sale and sharing of resources such as assets, capital, labor and sharing of costs between related parties, except business transactions in goods and services subject to price adjustments that the State makes under laws on prices.

The application of the APA is based on the following principles:

- APA is applied on the principle that tax authorities and taxpayers or Vietnamese tax authorities and tax authorities partner and taxpayers cooperate, discuss and negotiate on the application of legal regulations on the performance of corporate income tax obligations for related-party transactions within the scope of APA in accordance with the principles of independent transactions and the principle that the nature of operations and transactions determine tax obligations.
- The application of APA aims to improve the efficiency of tax administration, reduce the cost of tax compliance, determine the price of related-party transactions of taxpayers in accordance with the principles of analysis and comparison with other transactions. Independent translation and principles of the nature of operations, transactions determine tax

obligations to determine the nature of related-party transactions, payable corporate income tax obligations of taxpayers as in the terms of transactions between parties are independent and prevent double taxation and tax evasion, and reduce disputes over price determination of related-party transactions.

- The taxpayer's application for APA shall be settled on the basis of a dossier with necessary documents and information as prescribed in Clause 3, Article 41 of Decree No. 126/2020/ND-CP provided by the taxpayer completely, accurately, honestly, timely.
- The analysis, comparison and selection of independent comparables and methods used to compare and determine the price of related-party transactions within the scope of application of APA shall comply with the provisions of Decree No. Decree No. 132/2020/ND-CP.
- The application of the APA mechanism must comply the principles specified in Clause 6, Article 42 of the Law on Tax Administration.

## **2. A number of fees and charges will be reduced from 1<sup>st</sup> July 2021, due to difficulties caused by the Covid-19 epidemic**

Circular 47/2021/TT-BTC stipulating fees and charges to support enterprises facing difficulties due to the impact of the Covid-19 epidemic takes effect from 1<sup>st</sup> July 2021.

Accordingly, a number of fees and charges will be reduced from 1<sup>st</sup> July to 31<sup>th</sup> December 2021, including:

- Fee for appraisal and approval of fire prevention and fighting design, is 50% of the charge rate calculated according to the provisions of Article 5 and the attached rate schedule for appraisal and approval of fire prevention and fighting design Circular No. 258/2016/TT-BTC;
- Charge for granting protection titles, granting certificates of registration of industrial property rights transfer contracts, is to 50% of the charge specified at Point 1, Section I, Schedule of fees and charges in the field of crop and seed production forest trees promulgated together with Circular No. 207/2016/TT-BTC;
- Charge for filing an application for protection of intellectual property rights, is 50% of the charge specified at Point 2, Section I, in the Schedule of fees and charges in the field of cultivation and forestry tree varieties promulgated together with this Circular. No. 207/2016/TT-BTC;
- Fee for appraisal of business conditions in technical inspection of occupational safety; occupational safety and health training, is 80% of the toll rates specified at Points a, b and d, Section 1, Fee schedule in Article 4 of Circular No. 202/2016/TT-BTC;
- Customs fee, is 90% of fees and charges specified in Clause 2, Article 4 of Circular No. 194/2016/TT-BTC;

- Fee for registration (confirmation) of using foreign barcodes, is 50% of the fee rates specified in Clause 2, Article 4 of Circular No. 232/2016/TT-BTC;
- Fee for appraisal of construction investment projects, is 50% of the fee rates specified in Section 1 of the Schedule of fees for appraisal of construction investment projects, fees for appraisal of basic designs promulgated together with Circular No. 209 2016/TT-BTC.

We hope this Weekly Newsletter would bring you useful information.

Best regards.

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