



Press release

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Global trends driving local change: Vietnam releases new transfer pricing decree

On 24 February 2017, the Vietnamese government released transfer pricing (TP) decree No. 20/2017/ND-CP, “*Providing tax administration applicable to enterprises having controlled transactions*” (“Decree 20”), which will take effect from 1 May 2017.

Decree 20 expands on the TP framework contained in the existing regulations and introduces additional concepts and principles from the Organization for Economic Cooperation and Development (OECD) Guidelines, Base Erosion and Profit Shifting (BEPS) Framework and other sources.

It provides new transfer pricing compliance requirements in Vietnam, including three-tiered TP documentation, new TP declaration forms, guidance on the deductibility of related party expenses and interest deductibility, all of which are substantial changes to the existing rules.

Nguyen Huong Giang, Tax Partner of PwC Vietnam, says:

“Decree 20 represents the most important development of the transfer pricing regime in Vietnam for the last 10 years. It demonstrates Vietnam’s commitment to align with the global tax framework on transparency and anti-avoidance. It is clear that the Ministry of Finance is making concerted efforts to make the legislation clearer and align it with international standards.”

The key changes in the TP administration are as follows:

Related party definition

The ownership threshold is increased to 25% from the current 20%. In addition, two entities are no longer treated as related parties by virtue of having transactions between them accounting for more than 50% of sales or purchases. The new decree also provides some relief to small businesses which may enjoy exemptions from TP documentation under certain scenarios.

TP documentation

Decree 20 introduces a three-tiered TP documentation approach to collect more tax-related information on multinational companies’ (MNC) business operations. The new decree follows the approach set out in the BEPS Action Plan 13 (Guidance on TP documentation and Country-by-country Reporting). Specifically, a taxpayer is required to prepare and maintain a master file, a local file and a Country-by-country Report.

The taxpayer is required to maintain Country-by-country Reporting if the ultimate parent company is also obliged to prepare and submit such document in its respective tax jurisdiction; or if taxpayer is a Vietnamese ultimate parent company with worldwide consolidated revenue in a fiscal year exceeding



VND 18,000 billion. If a taxpayer cannot provide the Country-by-country Report, the taxpayer shall provide a written explanation for the reason, the legal basis and reference to specific provisions from the law of the counterparty jurisdiction that prohibits the taxpayer from providing a copy of the Country-by-country Report.

Decree 20 also introduces a new TP declaration form which requires disclosure of more detailed information, including segmentation of profit and loss by related party and third party transactions. Any gap between the margins earned on related and third party transactions may increase the taxpayer's risk profile and trigger queries from tax authorities.

Deductibility of expenses

According to Decree 20, the tax deductibility of interest on loans is capped at 20% of EBITDA (earnings before interest, tax, depreciation, and amortization). While this provision is included in the TP Decree, it applies to both related party and third party loans. There are no carry forward or carry back provisions.

For intercompany services, various criteria for tax deductibility are set out, notably, a taxpayer needs to demonstrate that the services provide economic benefit and provide evidence (supporting documents) on the reasonableness of the service charge calculation method. A tax deduction will not be allowed for expenses where the direct benefit or additional value to the taxpayer cannot be determined, such as duplicated services, shareholder costs, etc. Further, the mark-up portion of third party expenses that are recharged to a Vietnam taxpayer are not deductible.

Benchmarking

The decree provides detailed guidance on comparability analysis, including the use of data sources, selection of TP methods, minimum number of comparable companies, and other adjustment factors (such as location specific advantages). Comparable data needs to correspond with the same financial year as the tested party/transactions. However, data of the preceding one year can be used if current information is not available in the database at the time when the benchmarking analysis is conducted.

Nguyen Huong Giang concludes:

“Although the compliance obligation of Decree 20 will be effective starting 1 May 2017, taxpayers should take immediate action to assess the impact not only on local tax compliance, but also on the business, considering the new decree has potential implications beyond transfer pricing.”

Notes to editors:

The full decree is available in Vietnamese on the Government's website, accessible [here](#).

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