



**IC Advisors Transfer Pricing Newsletter
April 2017**

Vietnam Government releases new tax decree on transfer pricing

On February 24, Decree No.20/2017 was released with its effective date on May 1, 2017. This decree highlights a large number of rules pertaining to transfer pricing such as new compliance requirement, new declaration forms, guidance on the deductibility of related party expenses, and interest deductibility, all of which are substantial changes to existing rules since the last 10 years.

The four key changes in the TP administration are as follows:

Related party definition

Ownership threshold has been increased to 25% from the current 20%. Additionally, two entities are no longer treated as related parties by virtue of having transactions between the two accounting for more than 50% of sales or purchases. There is also some relief provided to smaller businesses that may enjoy exemptions from TP documentation under certain scenarios.

TP documentation

Decree No.20 introduces a three-tiered TP documentation approach that is similar to the one set out in the BEPS Action Plan 13. The taxpayer is required to maintain CbCR if the ultimate parent company is also obliged to prepare and submit such documents in its respective tax jurisdiction, or if the taxpayer is a Vietnamese parent company with worldwide consolidated revenue in a fiscal year exceeding VND18 trillion (i.e. US\$ 789 million or more).

Deductibility of expenses

The tax deductibility of interest on loans is capped at 20% of EBITDA. While this provision is included, it applies to both related party and third party loans. There is no carry forward or carry back provisions. For inter-company services, a taxpayer that needs to demonstrate that the services provide economic benefit and provide supporting evidence on the reasonableness of the calculation method. Expenses where direct value cannot be determined will not be allowed for tax deductions. The mark-up portion of third party expenses that are recharged to a Vietnam taxpayer are not deductible.

Benchmarking

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

Taxpayers should take immediate action to assess the impact not only on local tax compliance but also on the business.

Upcoming seminars:

Dr Sowmya Varadharajan will be presenting at the following full day seminars:

- a. **Transfer Pricing Compliance Strategy**, on 12th April 2017, organised by CCH Wolters Kluwer
- b. **Tax Considerations on Cross-Border Intercompany Services: Practical Insights from a Corporate Tax and Transfer Pricing Perspective**, 16th May 2017, organized by CCH Wolters Kluwer

If you would like to attend any of these seminars, please send an email to sowmya@icadvisorsasia.com.