

# **LEGAL & TAX UPDATES**

**DECREE NO. 132/2020/NĐ-CP  
PRESCRIBING TAX ADMINISTRATION  
FOR ENTERPRISES ENGAGED IN  
TRANSFER PRICING**

# OVERVIEW

On 05 November 2020, the Government issues the Decree No. 132/2020/ND-CP (**Decree No. 132**) on prescribing tax administration of enterprises engaged in transfer pricing.

The Decree shall take effect on 20 December 2020 and be applied from the 2020 CIT period. Also the Decree replaces Decree No. 20/2017 / ND-CP dated 24 February 2017 ("**Decree No. 20**") and Decree No. 68/2020 / ND-CP dated 24 June 2020.

Decree No. 132, including 04 chapters and 23 articles, inherits the contents specified in Decree No. 20 and Decree No. 68, as well as amends and supplements some contents for clarity and transparency purposes.

We hereby update some significant changes for legal compliance purposes.

# SOME SIGNIFICANT CHANGES

## 1. Change in the standard arm's length range

Specifically, **the standard arm's length range** is the set of values **from the 35th percentile to the 75th percentile** (unlike Decree No. 20, which is from the first quartile to the third quartile, equivalent to the 25th percentile to the 75th percentile). Thus, the lower threshold value is proposed to increase by 10%.

Thus, taxpayers need to reevaluate the transaction prices with associated parties from FY2020 to ensure that the profitability is according to the arm's length price within the new range.

### *According to Clause 9, Article 4*

*“The standard arm's length range” is the set of values from the 35th percentile to the 75th percentile; the median of the standard arm's length range is the 50th percentile value of the statistical probability function. ”*

# SOME SIGNIFICANT CHANGES

## 2. Supplement of cases identified as associated parties

- ❖ Supplement of the cases identified as associated parties, specifically:

An enterprise that has the following transactions with an individual operating or managing the enterprise or an individual in a relationship as prescribed at Point g, Clause 2, Article 5 of Decree No. 132:

- ✓ Transactions of transferring or receiving the transfer of capital contribution of at least 25% of the contributed capital of the owner of the enterprise in the tax period;
- ✓ Transactions of borrowing or lending at least 10% of contributed capital of the owner at the time of arising transactions in the tax period.

***According to point g, clause 2, Article 5***

*"...each of whom is in one of the following relationships with the others such as a wife, husband, natural/foster father, stepfather, stepmother, mother-in-law, parents-in-law; natural/foster child, stepchild of wife or husband, daughter-in-law, son-in-law; sibling, uterine half-siblings, sister-in-law, brother-in-law, younger brother-in-law, younger sister-in-law of uterine half-siblings; paternal grandparents, maternal grandparents; grandchildren; aunts, uncles and nephews;."*

# SOME SIGNIFICANT CHANGES

## 3. Clarifying the commercial databases for transfer pricing declaration, determination and management

The commercial databases are considered as verified and reliable database sources for analyzing and comparing purposes for both taxpayers and the Tax Authority, in particular: *“Commercial databases are financial and economic information and data collected, standardized, stored and updated by data business organizations via support software on access and management by pre-programmed tools and applications, in order for users to search, access and use financial and economic data of enterprises in Vietnam and overseas according to their business lines, geographical area or other on-demand search criteria for the purpose of comparing, identifying comparables in transfer pricing declaration and management;”*

# SOME SIGNIFICANT CHANGES

## 3. Clarifying the commercial databases for transfer pricing declaration, determination and management

Howbeit, the Tax Authority still has the right to use other databases as prescribed in Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019 to impose and make adjustments to transfer pricing if the taxpayer meets insufficient the relevant compliance requirements.

***Pursuant to Clause 2, Article 50 of Law on tax administration:***

*“2. Bases for tax liability imposition:*

*a) The database of the tax authorities and commercial database;*

*b) Comparison between the tax payable by providers of the same goods or services on the same scale in the same area (or in another area if such similar providers are not available in the same area).*

*c) Unexpired inspection results and documents;*

*d) The ratio of tax on revenue in the corresponding field according to tax laws.”*

# SOME SIGNIFICANT CHANGES

## 4. Supplement of responsibility of the Tax Authority for facilitating taxpayers on giving an explanation for transfer pricing documentation

Specifically, in Clause 2, Article 20 of Decree No. 132, *“The Tax Authority is responsible for facilitating taxpayers on proving and giving explanation data of independent comparables used in the transfer pricing documentation.”*

With the strengthening of taxpayers' rights under the Law on Tax Administration, the Tax Authority is responsible for supporting and guiding the taxpayers about the implementation of tax payment; providing information and documents to taxpayers for tax obligation and benefits purposes, thereby enhancing taxpayers' role in explaining documentation as well as limiting cases that taxpayers provide insufficient documentation leading to the risk of being imposed tax by the Tax Authority.

# SOME SIGNIFICANT CHANGES

## 5. Supplement of the powers and responsibilities of the Tax Authority in implementing Automatic Exchange Of Information (AEOI) according to Vietnam's international commitments and adjustment under the bilateral agreement

Specifically, the Tax Authority implements the automatic information exchange mechanism according to Vietnam's international commitments in tax treaties. Accordingly, the Tax Authority annually announces the list of foreign tax authorities who are allowed to apply the AEOI on Country-by-Country Report ("CbCR") of taxpayers on the Web Portal of the General Department of Taxation.

Besides, the Tax Authority adjusts the transfer pricing determination according to the bilateral agreement specified in the relevant tax agreements.



# SOME SIGNIFICANT CHANGES

## 6. Supplement of cases of exemption from transfer pricing documentation

A taxpayer shall be exempted from the transfer pricing documentation if:

- ✓ It is engaged in a related-party transaction with an entity that must pay CIT within the territory of Vietnam; and
- ✓ It is subject to the same CIT rate as applied to associated parties; and
- ✓ Neither of them is offered the CIT incentive within a specified tax period.

Previously, according to Decree No. 20, the taxpayer is only exempted from the transfer pricing declaration in Section III, IV of Form No. 01 (now Appendix I), but it has not yet stated whether the taxpayer is exempted from preparing transfer pricing documentation or not.

# SOME SIGNIFICANT CHANGES

## 7. New guidance on the CbCR provision

Accordingly, the regulation on submitting CbCR to ensure taxpayers' convenience and Vietnam's commitment to participate in the OECD's BEPS forum, in line with Vietnam's context. Specifically:

- ✓ If enterprises have the Ultimate Parent Company in Vietnam, and annual global consolidated revenue of VND 18,000 billion, they are responsible for preparing the CbCR and submitting it to the Vietnamese Tax Authority **within 12 months from the fiscal year-end date.**
- ✓ If enterprises have the overseas Parent Company, the CbCR will not be required to submit to the Vietnamese Tax Authority in case the Vietnamese Tax Authority could receive such CbCR through the AEOI.

# SOME SIGNIFICANT CHANGES

## 7. New guidance on the CbCR provision

- ✓ However, taxpayers in Vietnam must submit the CbCR to the Vietnamese Tax Authority within 12 months from the fiscal year-end date of the Ultimate Parent Company in the following cases:
  - The nation or territory where the Ultimate Parent Company resides having an international tax agreement with Vietnam but there is no Multilateral Competent Authority Agreement (MCAA) at the time of submission of the CbCR;
  - The foreign country or territory where the Ultimate Parent Company resides having MCAA with Vietnam but has suspended the AEOI or does not automatically provide Vietnam with Group's CbCR;
  - If a multinational corporation has more than 01 taxpayer in Vietnam and the overseas Ultimate Parent Company sends a written notice appointing one of the taxpayers in Vietnam to submit the CbCR, the authorized taxpayer might submit the CbCR to the Tax Authority.
- ✓ If the taxpayer whose the Ultimate Parent Company is not required to submit the CbCR in line with the regulations of the host country, the international tax treaty will be applied.

## CONTACT INFORMATION

This document gives the general information on interested matters that is not considered as professional consultancy. For more information, please contact:



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