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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Vietnam

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TAX



Vietnam



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In line with the Action Plan on transfer pricing management for the 2012-2015 period (Action Plan) announced by the Ministry of Finance (MOF) in 2012, transfer pricing audits have been initiated by provincial tax departments under the General Department of Taxation (GDT)'s instruction across a number of provinces in late 2013. The audits were carried out in the context of reduced tax revenue collection due to weaker economic growth. With the introduction of official regulations on application of Mutual Agreement Procedures (MAP) and Advance Pricing Agreements (APAs) in late 2013, the Vietnamese transfer pricing regime has now become comprehensive.

Vietnamese tax authorities have taken several serious steps to build capacity (with support from the Organisation for Economic Co-operation and Development (OECD) experts) and conducted the first real transfer pricing audits. Still, some important initiatives are needed towards a mature system of transfer pricing management. Given the OECD discussion draft on transfer pricing and country-by-country reporting and a number of actions to counter base erosion and profit shifting (BEPS), it is likely that the Vietnamese policy makers will watch out for international developments before amending the local regulations.

Basic information

Tax authority name

Ministry of Finance (MOF), General Department of Taxation (GDT).

Citation for transfer pricing rules

- Tax Administration Law No 78/2006/QH11.
- Amended Tax Administration Law No 21/ 2012/QH13 (effective from 1 July 2013).
- Decree 83/2013/NĐ-CP dated 22 July 2013 of the Government (effective 15 September 2013).
- Circular 66/2010/TT-BTC dated 22 April 2010 (which replaces Circular 117/2005/TT-BTC dated 19 December 2005).
- Circular 201/2013/TT-BTC dated 20 December 2013 of the MOF providing detailed guidance on APA (effective 5 February 2014).

- Circular 205/2013/TT-BTC dated 24 December 2013 of the MOF providing guidance on application of double tax treaties, effective from 6 February 2014.

Effective date of transfer pricing rules

27 January 2006 (Circular 117).

What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of 20 percent or more: control and management, family relationship, and others.

What is the statute of limitations on assessment of transfer pricing adjustments?

Ten years. However, the tax recovery can be indefinite if the entity failed to register itself as a taxpayer.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes, Form GCN-01/QLT (applicable from 2010 to 2013) and Form 03-7/TNDN (applicable from tax year commencing 1 January 2014 onwards) is to be completed and filed with the annual corporate income tax return.

What types of transfer pricing information must be disclosed?

Under Form GCN-01/QLT, related party transactions (detailed by transacting related parties), value of related party transactions, transfer pricing method for each of the categories of related party transactions disclosed, transacting related parties, and criterion defining the related party relationship.

Under Form 03-7/TNDN, in addition to the above, transfer pricing adjustments as self-assessed by taxpayers are also required.

What are the consequences of failure to prepare or submit disclosures?

Failure to disclose in Form GCN-01/QLT or Form 03-7/TNDN implies an exposure to the reassessment of transfer prices or profits for tax purposes, which can be accompanied by penalties and interest charges. Administrative penalties for failure to submit a tax return may also be applied.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Penalty protection, shifting of burden of proof to local tax authority, and mitigation of the risk of the tax authority making adjustments using secret comparables.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Contemporaneous transfer pricing documentation is required. However, there is no prescribed period when the transfer pricing study must be prepared but it is advisable to have in place such a study, prior to submitting tax returns which have related party transactions.

Transfer pricing documentation must be submitted within 30 working days upon the date of receipt of the tax authority's written request. Extension of another 30 days will be provided in the event of good reasons.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes, technically required for all transactions.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes, with comparable profit method (CPM) being used in place of transactional net margin method (TNMM).

Is there a priority among the acceptable methods?

None. However, the local regulations acknowledge the preference of using internal comparable transactions.

If there is no priority of methods, is there a "best method" rule?

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The taxpayer has 30 working days from the date of receipt of the tax authority's written request (with a one-time extension allowed for up to 30 days where good reasons can be provided).

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

In country, appeals to the tax authority and the administrative tribunal are possible.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Underpayment penalties being 20 percent of the shortfall amount, associated with late payment interest charges of 0.05 percent per day on overdue tax of up to 90 days and 0.07 percent per day on overdue tax of over 90 days or evasion penalties (from one to three times the tax liability amount) apply, depending on the nature of the offences and circumstances. Late payment of tax will be subject to late payment interest charge only, if voluntarily corrected by the taxpayers prior to the tax audit/ inspection notice by local tax authorities.

To what extent are transfer pricing penalties enforced?

Administrative penalties apply in case of transfer pricing adjustments.

What defences are available with respect to penalties?

Documentation.

What trends are being observed currently?

Transfer pricing audits will be stepped up in accordance with the Action Plan. Controversies will be mainly around comparables and use of secret company data, and accordingly range of profit levels, share of profits and tax. MAP and APAs may be used to resolve such controversies.

Special considerations

Are secret comparables used by tax authorities?

Yes. Under certain circumstances, the tax authority is empowered to make a presumptive assessment of tax based on its internal data.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, local companies are preferred as comparables. However, the transfer pricing regulations also provide that information and data extracted from certified and verifiable sources may be used.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

Low but improving.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

Yes.

Are year-end transfer pricing adjustments permitted?

Yes, although not explicitly provided for under the current tax and transfer pricing regulations. Due to the lack of guidance, year-end adjustments may entail a number of complex tax and customs consequences.

Other unique attributes?

Royalties are subject to specific rules, besides the transfer pricing rules.

Other recent developments

The MOF issued Circular 201/2013/TT-BTC dated 20 December 2013, effective from 5 February 2014 providing detailed guidance on the APA regime, including principles, duration, procedures, rights and obligations of tax authorities and taxpayers and other guidance for implementation. A number of pilot APAs have been discussed with the GDT (no formal APA applications have been submitted yet) whilst the tax administrators are active in preparing resources including capacity building and acquisition of databases (including the possibility of using external databases).

Further, Circular 205/2013/TT-BTC effective from 6 February 2014 providing guidance on application of double tax treaties was released by the MOF in late 2013. For the first time, Circular 205 provides for two (2) separate MAP scenarios for taxpayers being tax residents of the treaty counter party country, and tax residents of Vietnam in the event taxpayers believe that their tax liabilities were not assessed by the Vietnamese tax authority (with respect to the former) or foreign tax authority (with respect to the latter) in accordance with the provisions of the relevant double tax treaty.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience.

When may a taxpayer submit an adjustment to competent authority?

Apply for MAP within three years from the date of first notification by the tax authority in relation to the tax treatment which the taxpayers consider not to be in accordance with a DTA.

May a taxpayer go to competent authority before paying tax?

No. To be eligible for applying MAP, taxpayers are required to fulfil all obligations which have been stated in an official decision on tax collection before and during the appeal process, except for the circumstance where a government competent authority decides to suspend the implementation of such a decision on tax amounts or tax impositions.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral or multilateral. During APA negotiation process, depending on specific facts and circumstances, taxpayers and tax authority may change a unilateral APA into bilateral or multilateral, or vice versa.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

No APAs has been concluded yet. APA regulations (just introduced) are yet to be tested.

Language

In which language or languages can documentation be filed?

Vietnamese.

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