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# Global Transfer Pricing Review

Vietnam

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TAX



# Vietnam



## KPMG observation

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 since late 2013. Until now, the transfer pricing audits, which have generally included two to three tax years for a specific audit cycle, have focused primarily on transactions pertaining to the export and import of tangible goods (e.g. raw materials, semi-finished and finished goods). In the future it is expected that the focus of transfer pricing audits will shift to royalties for manufacturing and trademark intangibles, expatriate payments, management fees, and financial payments.

With the introduction of official regulations on the application of Mutual Agreement Procedures (MAP) and Advance Pricing Agreements (APAs), the Vietnamese transfer pricing regime has now become comprehensive. The Vietnamese tax authorities have taken several serious steps to build capacity and expertise in transfer pricing enforcement, such as consulting experts at the Organisation for Economic Co-operation and Development (OECD). Despite these advances though, additional measures are still needed in order for Vietnam to evolve into a mature transfer pricing regime.

Vietnamese policy makers are closely monitoring progress on the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan, but are waiting for developments in other countries before amending local regulations.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements	●	●
Protection from penalties	●	●
Reduce risk of adjustment	●	●
Shifts burden of proof	●	●

## 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/ND-CP dated 22 July 2013 of the Government (effective 15 September 2013)
- Law No 71/2014/QH13 dated 26 November 2014 on amendments and supplementation of a number of tax laws



- Decree 91/2014/ND-CP of the Government dated 1 October 2014
- Decree 12/2015/ND-CP dated 12 February 2015
- 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

Since 27 January 2006.

### 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 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. Form 03-7/TNDN should be filed within 90 days from the end of the financial year.

### 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 submit disclosures?

Failure to make disclosures 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

### Can documentation be filed in a language other than the local language? If yes, which ones?

No.

### When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

No. Technically required for all transactions, although no specific mention has been stated in the regulations. Having said that the tax authorities or the taxpayer may eventually refer to the OECD Guidelines for any guidance.

### 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

### Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

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

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

### When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

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, what dispute resolution options are available?

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 (applicable from 1 January 2015) 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 defenses are available with respect to penalties?

Documentation. Further appeal to tax authorities providing and explaining genuine business case for non-levy of penalty in the case of the taxpayer.

### What trends are being observed currently?

Transfer pricing audits will be stepped up in accordance with the Action Plan. Controversies are mainly around ability of the tax authorities to make transfer pricing assessment or adjustments, 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.

Intangibles royalty payments, interest and secondment charges are a few of the recent inter-company transactions which have been challenged in recent audits.

### 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 for supporting the comparability along with regional comparables, if any.

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

No.

#### Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

#### Does the tax authority have other preferences in benchmarking? If so, please describe.

No specific guidance.

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

Low but increasing.

#### Are there limitations on deductibility of management fees beyond the arm's length principle?

No.

#### Are management fees subject to withholding?

Yes.

#### Are there limitations on the deductibility of royalties beyond the arm's length principle?

No.

#### Are royalties subject to withholding?

Yes.

#### Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. Per Form 03-7/TNDN, taxpayers can offer self-adjustment for transfer pricing.

#### Other unique attributes?

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

### 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 decision on adjustment by the tax authority in relation to the tax treatment which the taxpayers consider not to be in accordance with a double tax treaty.

#### 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, multilateral.

#### 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.

#### Are there any difficulties or limitations on the availability or effectiveness of APAs?

No APAs has been concluded yet. APA regulations are yet to be tested.

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