

TRANSFER PRICING SERVICES

KPMG in Vietnam

Introduction

The year 2017 has marked a critical turning point in the course of state of affairs related to transfer pricing in Vietnam. With more than a decade of transfer pricing regulations in effect since 2006 and a visible upcoming tax reform announced by the Government, as delegated to the Ministry of Finance (MOF), to introduce regulatory changes to challenge the Base Erosion Profit Shifting (BEPS) practices, the Government has issued Decree No. 20/2017/ND-CP on the management of transfer pricing (Quy định về quản lý thuế đối với doanh nghiệp có giao dịch liên kết) dated 24 February, 2017.

More than ever, multinationals investing in Vietnam and Vietnamese corporations investing outbound are required to be much more prudent about their transfer pricing arrangements and prepare for the reform that will aim to focus on where the economic activities are undertaken and values created, together with the introduction of compliance requirements of Master File, Local File and Country-by-Country reporting.

The Decree is applicable from 1 May 2017, meaning it will have an effect from the 2017 financial year.

I. New reporting and documentation requirements

Contemporaneous transfer pricing documentation revisited

The contemporaneous documentation requirement now includes the adoption and implementation of the documentation requirements under Organisation for Economic Co-operation and Development (OECD)'s BEPS recommendations under Action 13. It is therefore a lot more precise and stricter in comparison to the previous regulations under Circular 66. Specifically, the transfer pricing documentation package includes:

- i. a Master File containing standardized information relevant for all Multinational Enterprises (MNE) group members;
- ii. a Local File referring specifically to related party transactions of the local taxpayer; and
- iii. a Country-by-Country (CbC) Report containing certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group.

For taxpayers having overseas ultimate parent company, such taxpayers are required to submit a copy of their ultimate parent company's CbC Report where it is their ultimate parent company's obligation to submit such CbC Report to the respective overseas tax authority. Failure to do so, taxpayers are obligated to provide written explanation letter.

The CbC reporting is applicable for a Vietnamese Group having consolidated global revenue of VND18,000 billion and above in the respective tax period.

The transfer pricing documentation package is required to be in Vietnamese before the taxpayers lodge their annual corporate income tax (CIT) return, and retained and submitted upon request of tax authority. In the event of a specific transfer pricing audit, taxpayers are requested to submit transfer pricing documentation package no longer than 15 working days upon receipt of request from tax authorities.

During the Consultation Procedure prior to the audit, taxpayers are required to submit transfer pricing documentation package to the local tax authorities within no longer than 30 working days upon written request of the tax authority. Where reasonable reason is provided, the submission deadline is extended only once to no longer than additional 15 working days upon the expiration date.

Safe harbor for transfer pricing documentation

Certain thresholds are provided to exempt multinationals from the documentation requirements. Specifically:

- Threshold of revenue and value of related party transactions (“RPTs”): The taxpayer’s annual revenue does not exceed VND50 billion and the total value of the related-party transactions does not exceed VND30 billion;
- Taxpayer having Advance Pricing Agreement (APA) has submitted annual APA report in accordance with the APA regulations. For those related party transactions which are not covered by the APA, taxpayers are obliged to comply with the aforesaid transfer pricing documentation requirements.
- Threshold of profit margin for taxpayers who perform routine functions and does not generate revenue or incur expense from exploitation and use of intangibles: the taxpayer’s annual revenue does not exceed VND200 billion and the ratio of net operating profit before interest and CIT to net sales revenue (i.e. operating margin) exceeds:
 - 5% for distributors;
 - 10% for manufacturers; and
 - 15% for toll manufacturers.

Taxpayers are entitled to safe harbor for transfer pricing documentation are still required to comply with the mandatory disclosures noted below.

Mandatory disclosures - Form No. 01

Mandatory disclosure of related party transactions and transfer pricing information including: methods, values, type of transaction, country of residence of related parties, among other information is required within 90 (ninety) days of the end of a financial year. This information is to be filed on a specific Form No. 01 (together with the annual CIT return). The significant change in the New Form No. 01 is the requirement on voluntary transfer pricing adjustment regarding the operating results of taxpayers, with three (3) forms for (i) taxpayers in manufacturing, trading and services sectors; (ii) taxpayers in banking sector; and (iii) taxpayers being securities companies, fund management companies for securities investment.

Taxpayers that only carry out transactions with Vietnamese (domestic) related parties are exempted from filing the disclosure of Section III (*information on the determination of transfer prices for RPTs*) and Section IV (*business result after determining the transfer prices in related party transactions*) of Form No. 01 where both entities are subject to the same CIT rate and none of the entities receive any CIT incentives in the relevant tax period. However those taxpayers are required to declare the basis for exemption in Section I (*information on related parties*) and Section II (*cases that are entitled to exemption of the disclosure obligation, provision of transfer pricing documentation*) of Form No. 01.

Implications for non-compliance of the transfer pricing regulations

Transfer pricing tax reassessment

Non-arm’s length transfer pricing and failure to report transactions or provide transfer pricing documentation are subject to the tax authorities’ reassessment of transfer prices or profits for corporate income tax purposes under laws and practice.

Penalties

Penalties are in accordance with the Law on Tax Administration, underpayment penalties are from 10 or 20 percent of the shortfall amount depending on different tax periods, associated with late payment interest charges (0.05 to 0.07 percent per day on overdue (0.03 percent per day from 01 July 2016) or evasion penalties (from one to three times the tax liability amount) apply, depending on the nature of the offences and circumstances.

II. Advance Pricing Agreements

APAs are available in Vietnam under laws. Taxpayers and the Tax Authority can negotiate and agree an APA on an arm’s length transfer pricing method or prices of covered related party transactions. An APA can be unilateral, bilateral or multilateral.

The local tax authority will honor APAs with taxpayers, tax authorities in a foreign country or territory with which Vietnam has signed an agreement to avoid double taxation and prevent income tax evasion (DTA). Vietnam now has over 70 double tax treaties with most of its trading partners. DTA with the United States of America is pending ratification.

Having an APA will also decrease the reporting obligations of the taxpayers as the transfer pricing documentation (Master File and Local File) will be exempt in respect of the covered transactions if an APA is available for the covered tax period.

III. How KPMG can help

KPMG professionals in Integrated International Tax group advise multinational corporations investing inbound and Vietnamese corporations investing outbound on transfer pricing solutions to their value chain issues. Our team brings in a wealth of experiences working with the fiscal authorities on transfer pricing audits and dispute resolutions and policy makers on the BEPS regulatory changes with excellent client service, focused on clients’ issues, needs and outcome.

Impact Assessment and Readiness Preparation

The global campaign to address BEPS is dramatically changing the tax landscape. Companies must respond to BEPS related regulations in Vietnam by getting a complete understanding of what has changed and how this may impact their local business and group’s structure.

Forward-thinking companies recognize that effective Impact Assessment on tax reforms and regulatory changes must be addressed to turn their transfer pricing policies into strategic tools for business operation and supply chain decisions, as well as for global tax planning.

Our team of professionals is prepared to provide the Impact Assessment reports in line with your global transfer pricing strategy to enable clients to navigate through the complex and fast-changing transfer pricing environment resulting from these recent regulatory changes in Vietnam.

Disclosure

Our transfer pricing team can support you with preparation and submission of the mandatory disclosures Form 01. Positive disclosures in the declaration should help to reduce the risk of scrutiny by the tax authorities in relation to the Company’s transfer pricing policies.

Documentation

Our transfer pricing team can support you to prepare transfer pricing documentation under the Master File and Local File requirements. This will also enable the local companies to be in line with Group strategy and ensure consistency in major reporting requirements.

Meeting the mandatory requirements will help you manage risk within the current environment of detailed transfer pricing regulations, strict documentation requirements, sophisticated audit practices, and significant penalties for non-compliance. Pro-active preparation of a robust transfer pricing analysis is essential to negotiate with the tax authorities on suggested adjustments. Our compliance services will enable you to:

- establish an economically supportable line of defense against potential enquiries or tax audits;
- minimize the amount of time and resources required to address transfer pricing challenges; and
- ensure all new requirements regarding Master File and Local File are met.

Transfer Pricing Dispute Resolution and Controversy

Taxpayers experiencing a transfer pricing audit without a well-defined defense strategy may face aggressive and sometimes discretionary reassessments and penalties.

KPMG has wide experience in assisting clients to respond to audit challenges. Our professionals offer a suite of pre-audit, in-audit, and post-audit services aimed at resolve disputes triggered by transfer pricing enquiries, including assistance with:

- preparing responses to regulatory challenges;
- formulating pro-active and reactive audit defence strategies;
- ex-ante reviews of transactions and structures;
- performing robust economic analyses to support existing prices;
- negotiating with regulatory authorities;
- advising on and assisting with administrative appeals and/or judicial process on transfer pricing;
- assisting with Mutual Agreement Procedures (MAPs)

Our professionals assist to resolve transfer pricing disputes, including assistance with competent authority application and negotiations, arbitration process, relief for double taxation, and litigation support.

Advance Pricing Agreements (APA)

Our professionals can assist you with the whole APA process including pre-filing strategy. We can support you in achieving certainty in your transfer pricing policies by assisting with regulatory filings, request, negotiations for and concluding APAs with the local Tax Authority.

Due Diligence

For companies seeking to go public through an IPO or undertake a merger or an acquisition, transfer pricing issues may impact the fair value of the group, the intended target or expected post-merger synergies.

We can help you identify the target's exposure by performing due diligence review of historical transfer pricing risks and explore structuring or planning opportunities to enhance your post-merger synergies.

This should be conducted at the pre-deal stage in order to formally identify any implications affecting the transaction structure.

Transfer pricing legal services

Based on our experience, we recognize that the intercompany agreements are many times poorly prepared. Reliance on generic template agreements obtained from outside Vietnam often result in the unclear and ineffective documentation of the taxpayer's intended tax position, and may include provisions that are inconsistent with Vietnamese law. Provisions that relate to a taxpayer's intended tax outcome should be explicit, complete and clear, lest tax authorities draw adverse inferences.

Our KPMG Vietnam's market leading transfer pricing professionals and legal team can provide a seamless integrated offering to ensure that absent or insufficient intercompany agreements do not adversely impact on a taxpayer's intended tax position. Our services can include but are not limited to the following:

- Drafting or reviewing intercompany agreements dealing with administrative and management fees, interest payments, license of intangibles, sale and purchase of goods, among others;
- Reviewing the adequacy and legality of your existing policies and other arrangements from Vietnam law perspective; and
- Reviewing and assisting with business restructuring, supply chain transfer pricing related legal matters.

Transfer Pricing Planning and Policy

Transfer pricing policies should be designed to strike a balance between compliance, operational, and tax-efficiency needs. In addition, transfer pricing and business strategies should be aligned across the value chain to deliver enhanced overall benefits.

KPMG can assist you in evaluating, developing and implementing economically supportable transfer pricing policies and in executing forward-looking tax planning aligned with your global business and operational goals.



Contact us

KPMG Tax and Advisory Limited

Warrick Cleine

Chairman & CEO
Vietnam & Cambodia
Tax Managing Partner
Global Leader of High Growth Markets, Tax

T: +84 8 3821 9266 (ext 8200)
M: +84 9 0394 1332
E: WarrickCleine@kpmg.com.vn

Hanoi

Hoang Thuy Duong

Partner, Head of Integrated
International Tax

T: +84 4 3946 1600 (ext 6406)
M: +84 9 0322 5962
E: dthoang@kpmg.com.vn

Tran Thi Thuy Ha

Director, Integrated International Tax

T: +84 4 3946 1600 (ext 6516)
M: +84 9 8883 5183/0123 466 8383
E: hatran@kpmg.com.vn

46th Floor, Keangnam Landmark 72
E6 Pham Hung Road, Me Tri Ward
South Tu Liem District, Hanoi

T: +84 4 3946 1600
F: +84 4 3946 1601
E: kpmghanoi@kpmg.com.vn

Ho Chi Minh City

Nhan Huynh

Partner, Integrated International Tax

T: +84 8 3821 9266 (ext 8909)
M: +84 9 0979 9920
E: nnhuynh@kpmg.com.vn

10th Floor, Sun Wah Tower
115 Nguyen Hue Street,
Ben Nghe Ward, District 1
Ho Chi Minh City, Vietnam

T: +84 8 3821 9266
F: +84 8 3821 9267
E: kpmghcmc@kpmg.com.vn

Danang City

Unit D3, 5th Floor Indochina
Riverside Tower, 74 Bach Dang Street, Hai
Chau 1 Ward, Hai Chau District

T: +84 236 351 9051

kpmg.com.vn

Follow us on:



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2017 KPMG Tax and Advisory Limited, a Vietnamese limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.