

Transfer Pricing in Vietnam

1/ Introduction to Transfer Pricing

Transfer pricing is a crucial issue in Vietnam's legal system and it is essential for businesses to be aware of the regulations surrounding this practice. As in other jurisdictions, transfer pricing refers to the pricing of goods, services, and intangible assets between related parties, such as parent companies and subsidiaries or between companies with a common shareholder.

In Vietnam, the transfer pricing regulations are **outlined in Circular 200/2014/TT-BTC**, which was issued by the Ministry of Finance. The circular provides guidelines for determining the arm's length price, which is the price that would be paid between unrelated parties in a similar transaction.

The Vietnamese government has implemented stringent regulations to prevent transfer pricing abuse and ensure that companies pay taxes on their actual profits. One of the main laws governing transfer pricing in Vietnam is the **Law on Tax Administration**, which provides guidance on how transfer pricing should be handled. According to this law, businesses must have transfer pricing documentation to support their pricing decisions and must disclose any related-party transactions in their tax returns. The law also empowers tax authorities to adjust prices if they believe that the prices are not in line with market rates.

One of the most important things to note regarding transfer pricing in Vietnam is the documentation requirement. Companies are required to prepare and maintain transfer pricing documentation, which includes a master file, a local file, and a country-by-country report. This documentation must be submitted to the tax authorities upon request.

Another important piece of legislation is the Law on Corporate Income Tax, which imposes penalties on businesses that engage in transfer pricing activities. Companies must also comply with the provisions of the Law on Corporate Income Tax, which requires them to report their transfer pricing transactions in their annual tax returns. The law also provides for penalties for non-compliance, including fines and the adjustment of taxable income. The law provides for penalties of up to three times the tax shortfall, and businesses may also face criminal charges for tax evasion.

In addition to these laws, Vietnam has also issued several circulars and decrees that provide more specific guidance on transfer pricing. **Circular 200/2014/TT-BTC**, for example, provides guidelines for determining the arm's length price of related-party transactions. The circular also requires businesses to submit a transfer pricing declaration to the tax authorities if their related-party transactions exceed a certain threshold.

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To further strengthen the legal framework for transfer pricing, Vietnam has also signed several international agreements. These include the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines, which provide guidance on transfer pricing practices and techniques, and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, which aims to combat tax evasion by exchanging information between tax authorities.

In summary, transfer pricing is a complex issue that requires careful consideration and compliance with various legal regulations. Companies operating in Vietnam must ensure that they have adequate documentation and follow the prescribed procedures to avoid falling afoul of the law. With the government's commitment to combatting transfer pricing abuse, it is essential for businesses to stay up-to-date with the latest regulations and seek professional advice when needed.

2/ Related party definition

Related parties are parties having relationships where:

Group 1: Regulation about equity and loan

- An enterprise participates directly or indirectly in at least **25%** of the other enterprise's equity;
- Each of the two enterprises has at least **25%** of its equity held, whether directly or indirectly, by a third party;
- An enterprise is the shareholder having the greatest ownership interest in the other enterprise, or participates directly or indirectly in at least **10%** of total share capital of the other enterprise;
- An enterprise guarantees or offers another enterprise a loan under any form (even including third-party loans guaranteed by financing sources of related parties and financial transactions of same or similar nature) to the extent that the loan amount equals at least **25%** of equity of the borrowing enterprise and makes up for more than **50%** of total medium and long term debts of the borrowing enterprise;
- A related enterprise performs the disposition or acquisition transaction in at least **25%** of their equity within a tax period; the borrowing or lending transaction in at least **10%** of their equity performed at the transaction time falling within a tax period with a person holding the executive office or the controlling interest in the enterprise, or with a person in one of the relationships prescribed in point g of this clause.

Group 2: Regulation about control

- An enterprise appoints a member of the executive board responsible for the leadership or control of another enterprise provided the number of members appointed by the former accounts for more than **50%** of total number of members of the executive board responsible for the leadership or control of the latter; or a member appointed by the former has the right to decide financial policies or business activities of the latter;
- Both related enterprises appoint more than **50%** of membership of the executive board or have one member of the executive board authorized to decide financial policies or business activities who is appointed by a third party;
- Both enterprises are managed or controlled in terms of their personnel, financial and business activities by individuals, each of whom is in one of the following relationships with the others such as a wife, husband, natural/foster father, natural/foster child, natural/foster older/younger sibling, brother/sister-in-law, maternal/paternal grandfather/grandmother, maternal/paternal grandchild, and maternal/paternal aunt, uncle and nibling;
- Both business entities have transactions, either between their head offices and permanent establishments or between permanent establishments of overseas entities or individuals;
- Enterprises are put under control of one individual through either his/her capital participation into that enterprise or his direct involvement in the administration of that enterprise;
- In other cases where an enterprise has their business activities managed, controlled or decided de facto by the other enterprise;

3/ Declaration

The TP declaration forms must be submitted together with the annual CIT return.

Taxpayers engaged in related party transactions solely with domestic related parties could be exempt from the requirements to disclose information on such transactions in the TP declaration forms, where both parties have the same tax rate and neither party enjoys tax incentives.

Companies that have transactions with related parties must compile a TP documentation, including:

- National document
- Global document

- Country-by-country report

TP documentation has to be prepared before the submission date of the annual tax return.

4/ Exemption from preparing TP documentation

A company has revenue below VND 50 billion and total value of related party transactions below VND 30 billion in a tax period or;

Has revenue below VND 200 billion, performs simple functions and achieves at least the following ratios of earnings before interest and tax to revenue from the following businesses: distribution (5%), manufacturing (10%), processing (15%); or

Only has domestic related party transactions, and related parties have the same tax rate; and none of the parties enjoy tax incentives.

5/ Cap on total interest expenses

Total loan interest cost is deducted in case of determining the income subject to corporate income tax of the enterprise engaged in related-party transactions:

- Total loan interest cost arising after deducting deposit interests and lending interests within a specific taxable period which is deducted during the process of determination of income subject to the corporate income tax is not 30% more than the net profit generated from business activities within the taxable period plus loan interest costs arising after deducting deposit interests and lending interests arising within the taxable period plus depreciation/amortization expenses arising within that period of a taxpayer;
- The portion of loan interest cost which is non-deductible as prescribed in point a of this clause is carried forward to the next taxable period for the determination of total loan interest cost deductible if total loan interest cost deductible in the next taxable period is lower than the amount prescribed in point a of this clause. The loan interest costs may be carried forward for a maximum consecutive period of 05 years, counting from the year following the year in which non-deductible loan interest costs arise;