At a glance...

On 24 Feb 2017, the Vietnamese government released transfer pricing (TP) decree No. 20/2017/ND-CP: “Providing tax administration applicable to enterprises having controlled transactions” (“Decree 20”), which will take effect from 1 May 2017.
In Detail

In line with Vietnam’s tax reform plans, as well as the changing global landscape on transparency and combatting tax avoidance (BEPS), the issuance of Decree 20 was placed high on the Vietnam Government’s tax reform agenda.

Decree 20 replaces the existing TP regulations (Circular 66/2010/TT-BTC). It provides new transfer pricing compliance requirements, including three-tiered TP documentation, new TP declaration forms, guidance on the deductibility of related party expenses and interest, all of which are substantial changes to the existing rules.

While it is based loosely on Circular 66, Decree 20 extends the interpretation of existing provisions and introduces additional concepts and principles from the OECD Transfer Pricing Guidelines and BEPS Action Plan. The preamble sets out the decree’s objective of administering transfer pricing in order to prevent the loss of tax revenue to the state budget. It also introduces the concept of ‘substance over form’ to be applied by tax officials in the administration, examination and audit of transfer pricing. This notion forms the basis of the subsequent articles and provisions in the decree.
Key changes

We summarise the salient points of the decree:

**Related party definition**

The ownership threshold is increased to 25% from the current 20%. In addition, two entities are no longer treated as related parties by virtue of having transactions between them accounting for more than 50% of sales or purchases. The new decree also provides some relief to small businesses which may enjoy exemptions from TP documentation under certain scenarios.

**TP documentation**

Decree 20 introduces a three-tiered TP documentation approach to collect more tax-related information on multinational companies’ (MNC) business operations. The new decree follows the approach set out in the BEPS Action Plan 13 (Guidance on TP documentation and Country-by-country Reporting). Specifically, a taxpayer is required to prepare and maintain a master file, a local file and Country-by-country Reporting.

The taxpayer is required to maintain Country-by-country Reporting if the ultimate parent company is also obliged to prepare and submit such document in its respective tax jurisdiction; or if taxpayer is a Vietnamese ultimate parent company with worldwide consolidated revenue in a fiscal year exceeding VND 18,000 billion. If a taxpayer cannot provide the Country-by-country Reporting, the taxpayer shall provide a written explanation for the reason, the legal basis and reference to specific provisions from the law of the counterparty jurisdiction that prohibits the taxpayer from providing a copy of the Country-by-country Reporting.

A taxpayer is exempt from preparing TP documentation (but not all other aspects of the TP Decree) if one of the following conditions is met:
- has revenue below VND 50 billion and the total value of related party transactions below VND 30 billion in a tax period;
- concludes APA and submits annual APA report(s);
- has revenue below VND 200 billion and performs simple functions and achieves at least the following ratios of earnings before interest and tax to revenue on its respective business: distribution (5%), manufacturing (10%), processing (15%).
Key changes (cont.)

The three-tiered TP documentation has to be prepared before the submission date of the annual tax return, which gives taxpayers just 90 days (from the fiscal year end date) to complete the year’s TP documentation.

Decree 20 introduces a new TP declaration form which requires disclosure of more detailed information, including segmentation of profit and loss by related party and third party transactions. Any gap between the margins earned on related and third party transactions may increase the taxpayer’s risk profile and trigger queries from tax authorities.

Taxpayer engaged in related party transactions solely with domestic related parties could be exempt from disclosing information on such transactions in the new TP declaration form, under the condition that both parties have the same tax rate and neither party enjoys tax incentives.

Deductibility of expenses

According to Decree 20, the tax deductibility of interest on loans is capped at 20% of EBITDA. While this provision is included in the TP Decree, it applies to both related party and third party loans. There are no carry forward or carry back provisions.

For intercompany services, various criteria for tax deductibility are set out, notably, a taxpayer needs to demonstrate that the services provide economic benefit and provide evidence (supporting documents) on the reasonableness of the service charge calculation method. A tax deduction will not be allowed for expenses where the direct benefit or additional value to the taxpayer cannot be determined, such as duplicated services, shareholder costs, etc. Further, the mark-up portion of third party expenses that are recharged to a Vietnam taxpayer are not deductible.
Key changes (cont.)

Benchmarking

The decree provides detailed guidance on comparability analysis, including the use of data sources, selection of TP methods, minimum number of comparable companies, and other adjustment factors (such as location specific advantages). Comparable data needs to correspond with the same financial year as the tested party/transactions. However, data of the preceding one year can be used if current information is not available in the database at the time when the benchmarking analysis is conducted.

The decree gives tax authorities the power to use internal databases for TP assessment purposes in cases where a taxpayer is deemed noncompliant with the requirements of the decree. This type of development could clearly give rise to increasingly lengthy disputes.

Others

- TP adjustments: the decree emphasises that the TP method applied must ensure that there is no loss of tax revenue to the state budget, which implies an asymmetry which could be inconsistent with the arm’s length principle (e.g. no downward adjustments allowed). In addition, there is no guidance on how adjustments (e.g. upward) should be done and the potential impact to other taxes (e.g. VAT, FCT, etc.)

- A taxpayer that performs routine functions, including manufacturers and distributors that bear no market and inventory risks and do not engage in strategic decision making activities, shall not incur losses. The interpretation of companies falling into the category of ‘routine’ functions could be highly subjective, and consequently give rise to disputes on losses and the characterisation of entity.
The takeaway

Decree 20 represents the most important development with respect to Vietnam’s TP regime in the last 10 years. It demonstrates Vietnam’s commitment to aligning with the global tax framework (BEPS) on transparency and anti-avoidance. While the new decree aims to enhance transfer pricing enforcement, it also increases the compliance burden on the taxpayer. Although compliance obligation of the decree will be effective 1 May 2017, taxpayers should take immediate action to assess the impact not only on local tax compliance, but also on the business, considering the new decree has potential implications beyond transfer pricing.

Upcoming seminars on the new TP decree

PwC will be hosting a series of seminars to share insights on the new decree across the major cities and provinces in Vietnam. If you would like to participate in the upcoming seminars, please register by completing the attached registration form.

Event calendar

For further insights on the newly issued Decree, we are pleased to invite you to attend our seminars to be organised in various cities and provinces as follows:

<table>
<thead>
<tr>
<th>Province</th>
<th>Date</th>
<th>Time</th>
<th>Venue</th>
<th>Language</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Hanoi</td>
<td>13 March 2017</td>
<td>14:00 – 16:00</td>
<td>Hilton</td>
<td>Vietnamese</td>
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<tr>
<td>Da Nang</td>
<td>13 March 2017</td>
<td>14:00 – 16:00</td>
<td>Novotel</td>
<td>Vietnamese</td>
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<tr>
<td>Hung Yen</td>
<td>14 March 2017</td>
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<td>TLIP II</td>
<td>Vietnamese</td>
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<td>Hai Phong</td>
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<td>14:00 – 16:00</td>
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<td>Vietnamese</td>
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<tr>
<td>Ho Chi Minh City</td>
<td>8 March 2017</td>
<td>14:00-16:00</td>
<td>PwC Office</td>
<td>English</td>
<td>Free of charge</td>
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<td></td>
<td>9 March 2017</td>
<td>9:00-11:00</td>
<td>Gala Royale</td>
<td>Vietnamese</td>
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<tr>
<td>Vung Tau</td>
<td>14 March 2017</td>
<td>9:00-11:00</td>
<td>Ba Ria Vung Tau Administrative Center</td>
<td>Vietnamese</td>
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<tr>
<td>Dong Nai</td>
<td>14 March 2017</td>
<td>14:00-16:00</td>
<td>Sonadezi, Bien Hoa</td>
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<tr>
<td>Binh Duong</td>
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<td>Becamex Binh Duong</td>
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Registration will be closed by 3 March 2017. Due to limited seating, please complete your registration form ASAP.
Registration Form
– Seminar on the new Transfer Pricing decree

✔️ I will be attending:

Seminar in [province] ____________________________
on [date] ____________________________

🧬 Name of attendant(s):

Company: ________________________________
Full name: ________________________________
Position: ________________________________
Email: ________________________________
Mobile: ________________________________

Company: ________________________________
Full name: ________________________________
Position: ________________________________
Email: ________________________________
Mobile: ________________________________

Completed registration form to be emailed to the below contacts no later than 3 March 2017:

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This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. For further information, please reach out to us.

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