

Vietnam: Transfer pricing compliance deadline

May 2018

In brief

On 24 February 2017 the Vietnamese government released transfer pricing (“TP”) decree No. 20/2017/ND-CP (“Decree 20”), which took effect from 1 May 2017. Importantly, Decree 20 introduced many new TP reporting and documentation requirements. Taxpayers are required to file the new TP declaration forms and prepare TP documentation within 90 days after the fiscal year end. For many Vietnamese subsidiaries of Japanese companies with fiscal year ending on 31 March 2018, the deadline for TP compliance is quickly approaching, i.e., 30 June 2018.

In detail

1. Transfer pricing compliance requirements and due dates

Below is the summary of compliance requirements under Decree 20. These requirements represent a significant change from prior years.

Requirements	Statutory deadline	Remarks
TP declaration forms	By the tax return due date (i.e. within 90 days from fiscal year end)	<ul style="list-style-type: none"> ➤ Must be filed together with annual corporate tax returns ➤ Form No. 01 requires disclosure of detailed transactions, including TP methodology, segmented financials by related party and third party transactions, etc. ➤ Form No. 02 and Form No. 03 require positive declaration that the Master File and Local File have been prepared in accordance with Decree 20. ➤ Form No. 04 is only applicable for Vietnamese ultimate parent companies (i.e., not applicable for foreign subsidiaries).
Master File		<ul style="list-style-type: none"> ➤ Submission only upon request (i.e. within 15-30 working days) - the submitted document needs to be translated into Vietnamese. ➤ Required contents closely align with BEPS Action 13, with additional local requirements: <ul style="list-style-type: none"> (i) Information on centralised procurement, advertisement and marketing activities carried out by the group (ii) Applicable tax rates of entities that transact with the local entity.

Requirements	Statutory deadline	Remarks
Local File	By the tax return due date (i.e. within 90 days from fiscal year end)	<ul style="list-style-type: none"> ➤ Submission only upon request (i.e. within 15-30 working days) - the submitted document needs to be translated into Vietnamese. ➤ Required contents closely align with BEPS Action 13, with additional local requirements: <ul style="list-style-type: none"> (i) Information on business restructuring or capital transfer or assets transfer of the group which involve or impact the local entity. (ii) Payments and receipts of each controlled transaction involving the local entity which was adjusted by foreign tax authority. (iii) Reasons for incurring losses for 3 consecutive years and explanation for future business strategies/plans.
Country-by-country Report (CbCR)		<ul style="list-style-type: none"> ➤ A copy of the CbCR of the ultimate parent company shall be submitted to tax authority upon request.

2. Frequently asked questions (FAQ)

The following FAQ provides insights on common issues that taxpayers encounter in carrying out the compliance obligations of Decree 20. This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

[Question 1]

The ultimate parent company is not obligated to prepare Master File and CbCR in Japan because it satisfies certain conditions for such exemption (e.g., consolidated revenue of the Japanese parent is below JPY 100 billion). In this case, is the Vietnamese subsidiary still required to maintain Master File and CbCR for Vietnamese TP compliance purposes?

[Answer]

A copy of the ultimate parent's CbCR is required if the ultimate parent is legally required to submit the CbCR in its respective residence country. Thus, if the Japanese ultimate parent is exempt from preparing CbCR, then the Vietnamese subsidiary shall also be exempt according to Decree 20, provided that written explanation is given to the tax officials upon request.

For Master File, the Vietnamese subsidiary is required to maintain / prepare this document regardless if the ultimate parent company is not obligated to prepare Master File in its resident jurisdiction. However, the Vietnamese subsidiary can be exempt from preparing Master File (as well as Local File) if it satisfies one of the following conditions:

- (i) Total revenue below VND 50 billion (approximately JPY 240 million) and total value of related party transactions below VND 30 billion (approximately JPY 145 million);
- (ii) Concludes an APA;
- (iii) Revenue below VND 200 billion (approximately JPY 960 million), performs simple functions and achieves the following operating margins on its respective businesses: distribution (5%); manufacturing (10%); processing (15%).

[Question 2]

In Japan the statutory deadline for filing CbCR is within one year following the fiscal year end of the ultimate parent. In case the Vietnamese subsidiary is not able to obtain the current CbCR at the time of request from local tax authorities (because CbCR for that year has not yet been prepared by the ultimate parent), what should taxpayer do?

[Answer]

According to Decree 20, the Vietnamese taxpayer is allowed to explain the difference in the timing requirements under the Vietnamese and Japanese legislations related to CbCR. Please note that taxpayer may be required to provide CbCR for the preceding tax year (if available). It is currently unclear to apply the same treatment to the Master File.

[Question 3]

Vietnam subsidiary is a joint venture of multiple shareholders with each having more than 25% equity in the joint venture. Which constituent group's Master File and CbCR should the Vietnamese subsidiary maintain to be compliant with Decree 20?

[Answer]

According to Decree 20, Vietnamese subsidiary shall maintain the Master File and CbCR for each shareholder that consolidates the financial statements of the Vietnamese subsidiary.

[Question 4]

Does Vietnamese subsidiary need to complete Form 04 (CbCR template) of the TP declaration forms?

[Answer]

No, Form 4 is intended for Vietnamese ultimate parent companies to complete. Thus, Vietnamese subsidiaries are not required to complete Form 4; however, it is required to provide a copy of the ultimate parent's CbCR if requested by the local tax authorities.

[Question 5]

What are the penalties for failure to comply with requirements under Decree 20?

[Answer]

Decree 20 does not specify any monetary penalties for non-compliance (e.g. failure to submit the TP documentation upon request). However, the following consequences may occur:

- (i) Taxpayer could be subject to administrative penalties under the tax administration law;*
- (ii) Tax authorities can use internal databases (i.e. secret comparables) for TP assessment purposes. In case an assessment is imposed by tax authorities, a penalty on tax underpaid of 20% and interest on late payment of 0.03% (per day) will be applied.*

3. The takeaway

The deadline for submission of the transfer pricing declaration forms and preparation of transfer pricing documentation for Vietnamese subsidiaries with a 31 March 2018 year end is fast approaching (i.e., deadline is 30 June 2018).

Information contained in the TP declaration forms and TP documentation will be used by the tax authorities for the purpose of TP risk assessment (i.e. to identify potential TP audit cases). As a result, due care should be taken in both disclosure of information and fulfilling the compliance obligations of Decree 20.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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