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Draft transfer pricing decree released for public comment

At a glance...

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On the website of the Ministry of Finance, a new draft transfer pricing decree has recently been released for public comment.

Upon official enactment, this draft TP Decree would replace the existing Decree No. 20/2017/ND-CP. The effective date could be as soon as next month.

The draft proposes changes to the cap on interest tax deductibility and to other transfer pricing related issues.

Some key proposed changes

The use of commercial databases for comparables

- Commercial databases are explicitly referred to as a verified source of comparables for both taxpayers and tax authorities.
- Accepting commercial databases as a verified source for conducting benchmarking studies, the draft TP Decree also aims to limit the use of internal databases (i.e. “secret” comparables) when the tax authorities assess and evaluate the arm’s length nature of taxpayer’s related party transactions. Nevertheless, the tax authorities retain the right and power to use their internal databases for assessing and imposing TP adjustments where a taxpayer is deemed not to have fully satisfied the relevant compliance requirements.

Increase and application of the deductibility cap on interest

- The cap on tax deductibility of interest increases from 20% to 30% of EBITDA. The cap applies to net interest expense (i.e. interest income is offset against interest expense before comparing with the cap).
- Non-deductible interest can be carried forward to subsequent tax years and deducted if the net interest expense/EBITDA ratio is below 30% in those years. The time limit for such carry forward is five years.
- Certain types of financing are now excluded from the cap, including official development assistance (“ODA”) loans, various preferential loans made by the government, and loans made for implementing national programs and state social benefit policies.

Revision of the arm’s length range

- The arm’s length range is proposed to be from the 35th percentile to the 75th percentile (as opposed to that under Decree 20 which is from the 1st quartile to the 3rd quartile, equivalent to the 25th to 75th percentile). As such, the lower boundary is proposed to be increased by 10%.
- Therefore, taxpayers will need to assess their transfer pricing position for upcoming years to ensure that their arm’s length margin falls within the new range.

New guidelines on the Country by country report (“CbCR”)

Some major changes are proposed for CbCR, including:

- For a Vietnamese Ultimate Parent Company (“UPC”) with worldwide consolidated revenue in a fiscal year from VND18,000 billion above, the CbCR is required to be filed with the Vietnamese tax authority within 12 months from the relevant fiscal year-end.

- For Vietnamese companies having overseas UPC, the CbCR is not required to be filed locally in case such CbCR is made available to the Vietnamese tax authorities through the automatic exchange of information (“AEOI”) procedure.

- A company is required to submit the CbCR locally within 12 months from the relevant fiscal year-end in the following circumstances:

  - Its overseas UPC is not obliged to file the CbCR in its respective jurisdiction.
  - The jurisdiction, where the UPC resides, has an international tax treaty with Vietnam but has not signed the Multilateral Competent Authority Agreement (“MCAA”) on the AEOI with Vietnam as at the CbCR submission deadline.
  - The jurisdiction, where the UPC resides, has signed the MCAA, but has suspended the AEOI mechanism or the CbCR has not been provided automatically to Vietnam.
  - In cases where there are more than one company of the same group in Vietnam, the UPC has to notify the Vietnamese tax authorities of the entity (i.e., Vietnamese local taxpayer) that is appointed to file the CbCR on behalf of the UPC. Such notification has to be submitted to the Vietnamese tax authority before or on the fiscal year end date of the UPC.

Importantly, information and data contained in CbCR are only used for the purpose of tax risk management and exchange of information amongst tax authorities only, however, are not allowed to use as a mean for tax adjustment purpose by the Vietnamese tax authorities.

Exemption from the three-tiered TP documentation requirements

The Draft TP Decree proposes extensions of the exemption from the three-tiered TP documentation requirement where:

- Taxpayer only incurs domestic transactions with related parties, and
- Taxpayer and related parties have the same tax rate; and
- None of the parties enjoy tax incentives.

This would provide a welcome reduction of the TP compliance burden for many companies.

Effective date of the draft TP Decree

The draft TP Decree is proposed to take effect from 1 July 2020.

Contact us

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

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