



# Transfer pricing in Vietnam

# Transfer pricing regulations

Transfer pricing regulations have been in force in Vietnam since 2006. The Government released Decree 132/2020/ND-CP (“**Decree 132**”) dated 5 November 2020. Decree 132 takes effect from 20 December 2020 and is applicable for the tax year 2020 onwards.

## Compliance requirements

Decree 132 applies to taxpayers paying Corporate Income Tax (“**CIT**”) that have related party transactions (both domestic and cross-border) in a fiscal year. All related party transactions are required to be carried out at arm’s length. Annual reporting requirements under Decree 132 include the following:

### TP FORMS (APPENDICES)



**Appendix I** – Information on related parties and related party transactions

**Appendix II** – List of information and documents required in the Local File

**Appendix III** – List of information and documents required in the Master File

**Appendix IV** – Country-by-country (“**CbC**”) Report (*only Vietnamese ultimate parent*)



- **Appendices I, II and III** shall be filed together with the annual CIT finalization return before the statutory submission deadline.
- Vietnamese ultimate parent with worldwide consolidated revenue exceeding VND 18,000 billion in a fiscal year is required to file **Appendix IV** within 12 months from the end of that fiscal year.

### TP DOCUMENTATION PACKAGE



**Master File** Providing standardised information relevant for all multinational enterprises (“**MNE**”) group members such as the group’s global business structure and activities, and the group’s overall transfer pricing policies.

**Local File** Providing specific information on material related party transactions of the local taxpayer and an analyses of such transactions.

**CbC Report** Providing aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which the MNE operates.



- The **Master File and Local File** are required to be prepared before the annual CIT finalization return deadline. Taxpayers are required to submit the Master File and Local File upon request from the local tax authorities. These documents need to be in Vietnamese.
- Local filing of the **CbC Report** is required for Vietnamese ultimate parent companies with consolidated revenue exceeding VND 18,000 billion in a fiscal year (see discussion on Appendix IV above). For taxpayers with a foreign ultimate parent, local filing of the CbC Report may be required if the ultimate parent is obliged to submit the **CbC Report** in its respective jurisdiction.

**A taxpayer is exempt from preparation of the TP documentation package if any one of the following conditions is met:**



- ✓ Having annual revenue less than VND 50 billion and a total value of related party transactions of less than VND 30 billion;
- ✓ Concluded an Advance Pricing Agreement (“**APA**”) for the respective tax year;
- ✓ Is performing routine functions with annual revenue of less than VND 200 billion and achieving at minimum the following operating margins for the respective functions: 5% for distribution; 10% for manufacturing; and 15% for processing;
- ✓ Having only domestic related party transactions, all respective related parties are subject to the same CIT rate and none of the parties enjoys CIT incentives.

# Transfer pricing administration

## Transfer pricing administration and enforcement

### TRANSFER PRICING AUDIT



There has been a significant increase in the number of transfer pricing audits conducted by the tax authorities and other governing bodies (e.g., customs authorities, State Auditor), adopting sophisticated approaches around such matters as:

- Transfer pricing compliance;
- Transfer pricing of complex transactions such as intra-group services, royalty payment for intangibles and financial transactions;
- Validation of the comparable companies selected in the TP documentation; and
- Allocation of risks and accordingly profits for CIT purposes.

### TRANSFER PRICING ASSESSMENT AND PENALTIES



#### *Transfer pricing assessments*

Non-compliance with mandatory disclosures or contemporaneous transfer pricing documentation package, or non-arm's length transfer pricing may be subject to reassessment of transfer pricing or profits for CIT purposes.

#### *Penalties and late payment interest*

For discrepancies identified by the tax authorities during a transfer pricing audit, a 20% penalty will be imposed on the amount of CIT shortfall, plus late payment interest (at the rate of 0.03%/day). Note that other minor administrative penalties may also be applied.

#### *Statute of limitations*

The general statute of limitations for collecting tax and late payment interest is 10 years and for penalties is up to 5 years, except for cases such as fraud where the statute of limitation may not be applicable.

### TRANSFER PRICING DISPUTE RESOLUTIONS



Taxpayers may consider the following to resolve transfer pricing disputes or mitigate potential disputes in the future:

- ✓ Domestic remedies (i.e., appeal, litigation);
- ✓ Mutual agreement procedures (“**MAP**”) in accordance with the provisions of a double taxation treaty to which Vietnam is a signatory;
- ✓ APA which taxpayers can request for a unilateral, bilateral or multilateral APA.

# About KPMG

KPMG firms operate in 146 countries and territories and in FY20 collectively employed close to 227,000 people, serving the needs of business, governments, public-sector agencies, not-for-profits and through KPMG firms' audit and assurance practices, the capital markets.

KPMG is committed to quality and service excellence in all that we do, bringing our best to clients and earning the public's trust through our actions and behaviours both professionally and personally.

## **KPMG in Vietnam**

KPMG was established in Vietnam in 1994 at a time when Vietnam was opening its doors to foreign investment.

KPMG is the largest professional services firm in Vietnam with offices in Hanoi, Ho Chi Minh City and Da Nang, with more than 1,700 professionals.

## **KPMG's Global Transfer Pricing Services**

Globally KPMG Global Transfer Pricing Services has access to more than 2,300 transfer pricing experts in all relevant countries of the world. We work together with specialists in all tax areas and are integrated in the strong global KPMG network of Audit, Tax and Advisory experts.

## **KPMG's Transfer Pricing Dispute Resolution Services**

KPMG's Transfer Pricing Dispute Resolution Services can help clients resolve disputes and respond to challenges that come with transfer pricing controversy, whether domestically or globally. Our professionals, carefully chosen to handle your particular needs, can assist you in determining which dispute resolution approach to use, providing robust economic analysis in support of existing transfer pricing, helping prepare strong responses to detailed inquiries and supporting negotiations with the revenue authority.



# How can KPMG help



## ***Transfer pricing planning***

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 with evaluating, designing and implementing commercially viable transfer pricing strategies that are aligned with your global business and operational goals.



## ***Advance pricing agreements***

We can assist you in achieving certainty in your transfer pricing outcomes by assisting with applications for APA and facilitate discussion / negotiation with relevant competent authorities.



## ***Transfer pricing compliance support***

Our transfer pricing compliance services (including preparation or review of disclosure forms and transfer pricing documentation) can help manage risks and ease the overall compliance burden in a cost-effective manner.



## ***Transfer pricing controversy and dispute resolution***

Companies that are audited by the tax authorities without a well-defined defense strategy may face aggressive and sometimes discretionary adjustments and penalties.

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

- review your existing transfer pricing policies to identify potential transfer pricing challenges and risks;
- assist with preparation of the disclosure forms and transfer pricing documentation, as well as other information and documents requested by the tax authorities;
- formulate audit defense strategies; provide robust economic analysis in support of existing transfer pricing; prepare responses to detailed inquiries; and support negotiations with the tax authorities during the audit; and
- advise and assist with administrative appeals, judicial process on transfer pricing, or MAP.



## ***Transfer pricing due diligence***

When companies seek to go public through an IPO or undertake a merger or 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 referring to 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.

# Contact us



**Warrick Cleine**  
**Chairman & CEO**  
KPMG in Vietnam and Cambodia  
**Tax Managing Partner**



**Hoang Thuy Duong**  
**Partner**  
Head of Tax



**Huynh Nhan**  
**Partner**  
Head of Integrated International Tax



**Joseph Vu**  
**Partner**  
Integrated International Tax



**Tran Thi Thuy Ha**  
**Partner**  
Integrated International Tax



**Ca Nguyen Thuy Nhung**  
**Director**  
Integrated International Tax



**Nguyen Trung Thang**  
**Director**  
Integrated International Tax



**Ngo Minh Tri**  
**Director**  
Integrated International Tax



**Giang Thi Kha Tu**  
**Director**  
Integrated International Tax

## Hanoi

46<sup>th</sup> Floor, Keangnam Landmark 72 ,  
E6 Pham Hung, Me Tri, Nam Tu Liem  
T: +84 (24) 3946 1600

## Ho Chi Minh City

10<sup>th</sup> Floor, Sun Wah Tower,  
115 Nguyen Hue, Ben Nghe, District 1  
T: +84 (28) 3821 9266

## Da Nang

D3, 5<sup>th</sup> Floor, Indochina Riverside Towers,  
74 Bach Dang, Hai Chau I, Hai Chau  
T: +84 (236) 351 9051

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