

Transfer Pricing

Legal framework

Circular 117 came into force in 2006 and was amended by Circular 66 on 6 June 2010. The Circular is applicable to both cross-border and in country related party transactions.

Key Transfer Pricing Developments

- Vietnam follows the arm's length principle;
- Contemporaneous documentation requirement; and
- The rules are modelled after the OECD Guidelines with local modifications.

Related Parties

Related parties can generally include:

- An enterprise holds at least 20% of owner equity of the other enterprise;
- Both enterprises have at least 20% of owner equity held by a third party;
- Both enterprises hold at least 20% of owner equity of a third party;
- The biggest shareholder who holds at least 10% of owner equity of a joint-stock company;
- An enterprise guarantees a loan or makes a loan to another enterprise where a loan account for at least equal to 20% of investment capital and more than 50% of the total account of mid-term and long-term liabilities of the enterprise;
- An enterprise appoints more than 50% of the total members of the executive board of the control board of the other enterprise or appoints a member of the other enterprise who has the right to make a decision on financial policies or operations of his enterprise;
- Both enterprises together have more than 50% of members in the executive

board or together have a member in the executive board who has the right to make a decision on financial policies or operations and is appointed by a third party;

- Both enterprises are administered or controlled in terms of personnel, finance and operations by members of a family;
- Both enterprises have the relation between the head office and the permanent establishment ("PE"), or are together permanent establishments of a foreign organization or individual;
- An enterprise provides intangible assets or/and intellectual property of another enterprise for more than 50% of the production cost;
- An enterprise provides more than 50% of the total value of raw materials, materials or input products that used for production or trade of another enterprise;
- An enterprise controls more than 50% of the output products sold by another enterprise; and
- Both enterprises agree to business co-operation on a contractual basis.

Transfer Pricing Compliance

Related party transactions are required to be reported on Form GCN-01/QLT and submitted annually with the CIT finalization. Specifically, the Company is required to declare:

- All related parties identified;
- Any transaction with related parties;
- The method of calculation of the market price;
- Contemporaneous documentation of such transactions; and

- The form must be filed within ninety (90) days from the end of the fiscal year.

Penalties and Interest

Although there are no transfer-pricing-specific penalties in Vietnam, under the general tax rules, tax avoidance can trigger penalties of up to three times the amount of the tax adjustment, in addition to interest.

Taxpayers most at risk are those with large swings in profitability, recurring losses, those reporting losses after tax holidays and those that have not complied with the transfer pricing reporting requirements.

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