Transfer Pricing in Vietnam

The needs for coherence, substance and transparency

Transfer pricing in Vietnam is currently regulated under the Government's Decree 20/2017/ND-CP ("**Decree 20**") dated 24 February 2017, and the Ministry of Finance's Circular 41/2017/TT-BTC ("**Circular 41**") dated 28 April 2017. Both Decree 20 and Circular 41 took effect from 1 May 2017.

Requirements for taxpayers

All related party transactions are required to be carried out at arm's length for both foreign and local corporations.

Contemporaneous transfer pricing documentation package

Vietnamese taxpayers with related party transactions subject to the scope of Decree 20 and Circular 41 are obligated to prepare and maintain the followings:

- a **Local File** referring specifically to related party transactions of the Vietnamese taxpayer, highlighting material related party transactions, transaction value, and the Taxpayer's analysis of the transfer pricing calculations and support with regard to those transactions;
- a **Master File** which contains standardized information of the ultimate parent company and other group members of the taxpayer, including information regarding the global business operations of the Group, key value drivers, supply chain analysis, functional analysis describing the principal contributions to value creation by individual entities within the Group and their transfer pricing policies; and
- where applicable, a **Country-by-Country ("CbC") Report** which reports annual income earned and taxes paid in each tax jurisdiction in which the Group conducts businesses, including the disclosure of the amount of revenue, profit before income tax, and income tax paid and accrued. (Local File, Master File and CbC Report are hereinafter collectively referred to as the **"Transfer Pricing Documentation Package"**).

  The CbC Report is required in the following cases:
  - Vietnamese taxpayer is the ultimate parent company of a Group in Vietnam which has global consolidated revenue in the tax period of 18 (eighteen) thousand billion Vietnamese Dong (approximately 750 million Euro) or more; or
  - where the overseas ultimate parent company of the taxpayer in Vietnam is required to submit a CbC Report in its country of residence, the Vietnamese taxpayer is required to maintain a copy of such CbC Report. In case such CbC Report is not required to be submitted in the ultimate parent company's home country, the Vietnamese taxpayer is required to submit a written explanation to the local tax authorities.

The Transfer Pricing Documentation Package should be prepared and maintained by the deadline set for submission of the Corporate Income Tax ("**CIT**") finalisation return. Lodgement is required within 15 (fifteen) working days of the receipt of a written request from the tax authority in the event of a tax/transfer pricing audit, or 30 (thirty) working days of the receipt of a written request from the tax authority in the Consultation Procedure prior to the tax/transfer pricing audit. One-time extension of additional 15 (fifteen) working days is allowed in the case of sound reasons, under Consultation Procedure.

Mandatory disclosures

Mandatory lodgement of the informative disclosure forms is required within 90 (ninety) days of the end of a financial year along with the annual CIT return. Such forms are listed below:

- **Form 01** – Information on related parties and related party transactions.
- **Form 02** – List of information and documents required in the Local File.
- **Form 03** – List of information and documents required in the Master File.
- **Form 04** – CbC Report.

Exemption of transfer pricing documentation

The following taxpayers are exempt from the transfer pricing documentation requirements:

- The taxpayer's annual revenue does not exceed 50 (fifty) billion Vietnamese Dong and the total value of the related-party transactions does not exceed 30(thirty) billion Vietnamese Dong;
- A taxpayer which has an Advance Pricing Agreement ("**APA**") with the competent authority and has submitted the annual APA report in accordance with the APA regulations;
- Taxpayer which performs routine functions and does not generate revenue or incurs expense from exploitation and use of intangibles, having annual revenue not exceeding 200 billion Vietnamese Dong and the ratio of net operating profit before interest and tax to net sales revenue (i.e. operating margin) exceeding:
  - 5% for distribution enterprises;
  - 10% for manufacturing enterprises; and
  - 15% for toll manufacturing enterprises

Tax authority's transfer pricing management

Transfer pricing audits

Following the regulatory changes, there has been an increase in transfer pricing scrutiny by the tax authorities and other governing bodies (e.g. customs authorities, State Auditor, Ministry of Finance). Challenges in transfer pricing audits can be around such matters as:

- Transfer pricing documentation and disclosure forms;
- Transfer pricing of such complex transactions as Intra-group services, Royalty payment for intangibles, and Financial transactions;
- Best method selection and comparable data; and
- Allocation of risks and accordingly profits for CIT purposes

Transfer pricing assessments

Non-arm's length transfer pricing may be subject to potential reassessment of transfer prices or profits for CIT purposes. These assessments may also apply in the event of a failure to submit mandatory disclosures or provide the contemporaneous transfer pricing documentation package.

Penalties

Effective from 1 July 2013, underpayment penalties are 20 percent of the shortfall amount, associated with late payment interest charges or evasion penalties (from one to three times the tax liability amount), depending on the nature of the offences and circumstances.

Advance Pricing Agreements

Taxpayers and tax authority can negotiate and agree an advance pricing arrangement on an arm's length transfer pricing method or price of related party transactions. An APA can be unilateral, bilateral or multilateral. Regulations on APA are available.

The local tax authority will honour APAs with taxpayers, tax authorities in a foreign country or territory with which Vietnam has signed an agreement to avoid double taxation and prevent income tax evasion.

About KPMG

KPMG is a global network of professional firms providing Audit, Tax, and Advisory services. We operate in 154 countries and have more than 200,000 professionals working in member firms around the world.

Our purpose is to turn knowledge into value for the benefit of our clients, our people, and the capital markets. Our member firms aim to provide clients with a globally consistent set of multidisciplinary financial and accounting services, based on deep industry knowledge.

KPMG in Vietnam

KPMG in Vietnam was established in 1994. KPMG is one of the largest professional services firms, with nearly 1500 staff working from our offices in Hanoi, Ho Chi Minh City and Danang. We work with our colleagues across Asia Pacific and around the world to provide a comprehensive range of services.

KPMG's Global Transfer Pricing Services

KPMG's Transfer Pricing Services (GTPS) network comprises over 1500 professionals from KPMG member firms around the world who work together to provide local knowledge, experience, and global analysis to assist multinational companies in addressing their transfer pricing responsibilities.

KPMG's GTPS practice includes economists, tax practitioners, and financial analysts. We use knowledge of local rules and how they interact to help member firm clients source tax efficient pricing.

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 your clients in determining which dispute resolution approach to use, providing robust economic analysis in support of existing transfer prices, helping prepare strong responses to detailed inquiries, and supporting negotiations with the revenue authority.

How KPMG can help

KPMG's Global Transfer Pricing Services in Vietnam can assist you with each step of your transfer pricing strategy.

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 are able to assist you in achieving certainty in your transfer pricing strategies by assisting with reaching advance pricing agreements with the local tax authorities.

Compliance and documentation

Our transfer pricing compliance and documentation assistance (disclosure forms, transfer pricing documentation) can help manage risks and ease the overall compliance burden in a cost effective manner by helping you:

- establish a credible line of defence against potential enquiries or tax audits
- therefore minimise the amount of time and effort required to address transfer pricing enquiries.

Transfer Pricing Controversy and Dispute Resolution

Companies that are audited by the tax authorities without a well-defined defence 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 (where needed); as well as other information and documents requested by the tax authorities;
- formulate audit defence strategies; provide robust economic analysis in support of existing transfer prices; 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 Mutual Agreement Procedures ("**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.

140,8245
124,6581
123,3951
79,8216
29,049
Finance
Air transport
Chemical production
Industrials
Nuclear energy industry
Securities

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