

# TRANSFER PRICING ALERT

January 2018

## 1. Mandatory disclosures for the 2017 fiscal year

### Important dates

Fiscal year end	Deadline for statutory disclosures and having transfer pricing documentation (90 days after the fiscal year end)
31 December 2017	31 March 2018
31 March 2018	29 June 2018
30 June 2018	28 September 2018

With fiscal year ended on 31 December 2017, taxpayers should be mindful of the deadline for submission for the various forms, together with the annual Corporate Income Tax ("CIT") finalisation return by 31 March 2018.

### Mandatory disclosures and reporting

Taxpayers engaging in related party transactions subject to the scope of Decree 20/ND-CP ("**Decree 20**") are required to submit **Form 01** – Information on related parties and related party transactions by 31 March 2018.

Please note that taxpayers that only carry out transactions with Vietnamese (domestic) related parties are exempt from filing the disclosure of Section III (information on the determination of) transfer prices for RPTs) and Section IV (business result after determining the transfer prices in related party transactions) of Form 01 where both entities are subject to the same CIT rate and none of the entities receives any CIT incentives in the relevant tax period. These taxpayers, however, are still required to prepare and maintain transfer pricing documentation and submit relevant Forms unless they are exempted from such obligations under Decree 20 (details are outlined below).

Also by 31 March 2018, taxpayers which are required to maintain transfer pricing documentation under Decree 20/ND-CP must submit the following forms:

- **Form 02** – List of information, documents required in Local File ("LF");
- **Form 03** – List of information, documents required in Master File ("MF"); and
- **Form 04** – Country-by-Country Report ("CbCR") (only in case the taxpayer is an ultimate parent company in Vietnam which has global consolidated revenue in the tax period of 18 thousand billion VND or more).

For the purpose of timely completion and submission of Form 02 and Form 03, taxpayers need to prepare LF and MF

if they have information to report in these forms and take an appropriate position in the annual CIT returns. Taxpayers which are not ultimate parent companies must maintain either a copy of CbCR submitted by their ultimate parent companies, if any, or a written explanation letter in case such CbCR is not required to be submitted in the ultimate parent company's country of residence. The CbCR documents are required to be submitted only when requested.

The above forms do not substitute full transfer pricing documentation, comprising a MF and a LF, which must be available before the annual CIT return filing in accordance with laws.

### Exemption of transfer pricing documentation

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

- The taxpayer's annual revenue does not exceed VND50 billion and the total value of the related-party transactions does not exceed VND30 billion;
- 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. For those related party transactions which are not covered by the APA, the taxpayer is obliged to comply with the aforementioned transfer pricing documentation requirements;
- Taxpayers which perform routine functions and do not generate revenue or incur expense from exploitation and use of intangibles: the taxpayer's annual revenue does not exceed VND200 billion and the ratio of net operating profit before interest and tax to net sales revenue (i.e. operating margin) exceeds:
  - 5% for distribution enterprises;
  - 10% for manufacturing enterprises; and
  - 15% for toll manufacturing enterprises.

On 17 November 2017, the General Department of Taxation issued Official Letter No. 5316/TCT-TTR providing clearer guidance on the definition of "**routine functions**" performed by taxpayers in those sectors, based on Point 2.c, Article 11, Decree 20. In particular, those which

- "..."
- do not have function of making strategic decisions;
  - conduct low value-added transactions;
  - do not bear inventory risk and market risk; and
  - neither generate revenue nor incur costs from exploiting valuable intangible assets from the group.
- "..."



## 2. Deductibility of Intra-group Service Charges and Royalties

Together with the “**substance over form**” principle introduced by Decree 20, recent tax and transfer pricing audits have focused on challenging the deductibility of intra-group service expenses and royalties in several cases. For example:

- Taxpayers failed to prove the arm’s length nature of their service fee despite the fact that the taxpayers achieved a high operating profit on a whole company basis;
- Royalty fees paid by a taxpayer being a contract manufacturer to the parent company or affiliates that were calculated based on a percentage of net sales, were rejected; and
- Taxpayers failed to prove that there was no duplication between technical assistance and technology transfer transactions.

## 3. Interest Cost Deduction Cap

In relation to the regulations under Point 3, Article 8, Decree 20 which states that “Total interest expenses incurred in the tax period, which are deductible when determining taxpayer’s taxable income shall not exceed 20% of taxpayer’s total net operating profit before interest, depreciation and amortisation expenses” (of note, total net operating profit is **exclusive of other income and other expenses**), on 12 December 2017, Binh Duong Tax Department issued Official Letter No. 21065/CT-TT&HTN providing guidance on the application of this tax deduction cap in cases where taxpayers have no loan(s) from related parties and where taxpayers have loan(s) from both related and unrelated parties. In particular:

- For taxpayers engaging in related party transactions but having no loan(s) from related parties, the 20% threshold cap on total interest expenses regulated in Point 3, Article 8, Decree 20 will **not be applied**; and
- For taxpayers having loan(s) from both related and unrelated party transactions, the 20% threshold cap on total interest expenses regulated in Point 3, Article 8, Decree 20 will **be applied to total interest expenses from both related and unrelated parties**.

## 4. Base Erosion and Profit Shifting (“BEPS”) Action 13 – Country Implementation

BEPS Action 13 has been widely applied or regulated in more and more countries and regions around the world. Up to 05 January 2018, 62 countries have implemented CbCR and 31 countries have implemented the MF and LF requirement. Many additional countries have the intention to implement these standards in the near future.

Most of Vietnam’s major trading partners across the continents have fully or partially adopted Action 13 on transfer pricing documentation. In particular,

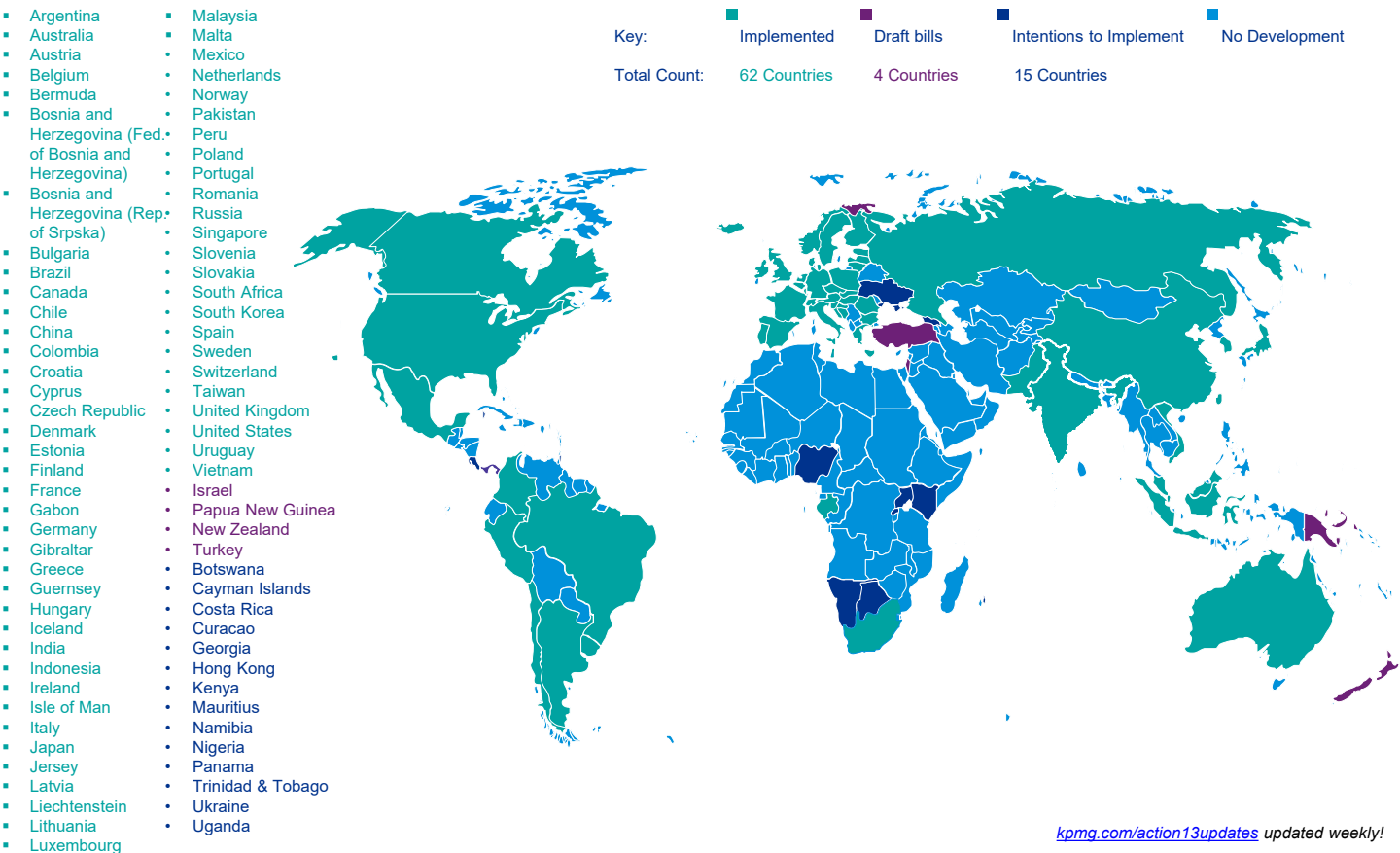
- Similar to Vietnam, countries such as South Korea, Japan, Taiwan, China, Australia, Germany, and Russia - to name a few - have implemented the full transfer pricing documentation requirement including CbCR, MF and LF while some others, e.g. Singapore, the United States, Canada, Bermuda, France, and Italy have officially adopted CbCR.
- Malaysia implemented CbCR and LF and has the intention to implement MF (adoption is anticipated for years beginning on or after 1 January 2017). The United Kingdom implemented CbCR and has the intention to implement MF and LF requirement.

- Many other countries now have the intention to adopt a single document or the entire transfer pricing package. For example:
  - On 29 December 2017, the Inland Revenue (Amendment) (No. 6) Bill 2017 (BEPS bill) was gazetted, thereby introducing a mandatory transfer pricing regime and anti-BEPS changes to Hong Kong. The introduction of the mandatory documentation requirements is based on the three-tiered approach of CbCR, MF and LF measures;
  - The Cayman Islands Tax Information Authority has publicly stated the adoption of CbCR for years ending on 31 December 2017 although the draft regulations have not been issued yet;
  - Draft legislation on CbCR is available, the New Zealand government is expected to formally legislate CbCR in early 2018; and
  - Under a joint induction program for implementation of the international standards on exchange of information and of the BEPS measures, Thailand will aim to implement new international tax standards with a focus on CbCR. In addition, the Cabinet of Thailand on 3 January 2018 approved a draft transfer pricing law which applies for accounting periods beginning on or after 01 January 2017.



The following exhibits present the implementation summary by country around the world as of 05 January 2018:

# Country-by-Country Reporting: Country implementation summary



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# Contact us

## KPMG Tax and Advisory Limited

### Warrick Cleine

Chairman & CEO  
Vietnam & Cambodia  
Tax Managing Partner  
Global Leader of High Growth Markets, Tax

**T:** +84 (28) 3821 9266 (ext 8200)

**M:** +84 9 0394 1332

**E:** WarrickCleine@kpmg.com.vn

### Hanoi

#### Hoang Thuy Duong

Partner, Head of Integrated  
International Tax

**T:** +84 (24) 3946 1600 (ext 6406)

**M:** +84 9 0322 5962

**E:** dthoang@kpmg.com.vn

#### Tran Thi Thuy Ha

Director, Integrated International Tax

**T:** +84 (24) 3946 1600 (ext 6516)

**M:** +84 9 8883 5183/0123 466 8383

**E:** hatran@kpmg.com.vn

46<sup>th</sup> Floor, Keangnam Landmark 72  
E6 Pham Hung Road, Me Tri Ward  
South Tu Liem District, Hanoi

**T:** +84 (24) 3946 1600

**F:** +84 (24) 3946 1601

**E:** kpmghanoi@kpmg.com.vn

### Ho Chi Minh City

#### Nhan Huynh

Partner, Integrated International Tax

**T:** +84 (28) 3821 9266 (ext 8909)

**M:** +84 9 0979 9920

**E:** nnhuynh@kpmg.com.vn

10<sup>th</sup> Floor, Sun Wah Tower  
115 Nguyen Hue Street,  
Ben Nghe Ward, District 1  
Ho Chi Minh City, Vietnam

**T:** +84 (28) 3821 9266

**F:** +84 (28) 3821 9267

**E:** kpmghcmc@kpmg.com.vn

### Danang City

Unit D3, 5<sup>th</sup> Floor Indochina  
Riverside Tower, 74 Bach Dang Street,  
Hai Chau 1 Ward, Hai Chau District

**T:** +84 (236) 351 9051

**kpmg.com.vn**