

DECREE 132
REGULATING
TAX MANAGEMENT OF ENTERPRISES WITH RELATED TRANSACTIONS
[TRANSFER PRICING]

Dated 5 November 2020

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THE GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom – Happiness

No. 132/2020/NĐ-CP

Ha Noi, 5 November 2020

**DECREE
REGULATING
TAX MANAGEMENT OF ENTERPRISES WITH RELATED TRANSACTIONS
[TRANSFER PRICING]¹**

Pursuant to the *Law on Organization of the Government* dated 19 June 2015; and the *Law amending the Law on Organization of the Government and the Law on Organization of Local Authorities* dated 22 November 2019;

Pursuant to *Law 38 on Tax Management* dated 13 June 2019;

Pursuant to the *Law on Corporate Income Tax [CIT]* dated 3 June 2008 as amended by a Law dated 19 June 2013;

Pursuant to the *Law amending a number of articles of laws on taxation* dated 26 November 2014;

On the proposal of the Minister of Finance;

The Government hereby issues this Decree regulating tax management of enterprises with related transactions [Transfer Pricing].

CHAPTER 1

General Provisions

Article 1 Governing scope

1. This Decree regulates the principles, methods and sequence for determining the factors forming the price of a related transaction [transfer pricing]; the rights and obligations of taxpayers in determining the price of a related transaction and in conducting procedures to declare same; and the responsibilities of State agencies to manage tax of taxpayers which generate related transactions.
2. *Related transactions* within the governing scope of this Decree means transactions of buying, selling, exchanging, leasing, leasing out, borrowing, lending or transferring goods and providing services; borrowing, lending, providing financial services, financial guarantees/security and other financial instruments; buying, selling, exchanging, leasing, leasing out, borrowing, lending or transferring both tangible assets and intangible assets; and reaching agreement to buy, sell or use in common resources such as assets, capital, labour and cost sharing as between related parties, excluding business transactions regarding goods and services within the authority of the State to fix prices in accordance with the law on pricing.

¹ Allens footnote: Square brackets contain translator's comments only.

Article 2 *Applicable entities*

1. Organizations producing and trading goods and services (hereinafter abbreviated as *taxpayers*) subject to payment of corporate income tax [CIT] and generating transactions with related parties as prescribed in article 5 of this Decree.
2. Tax authorities comprising the Department General of Taxation, Tax Divisions and Tax Sub-Divisions.
3. State agencies and other organizations and individuals [entities] involved in application of the regulations on tax management of related transactions.

Article 3 *Principles to be applied*

1. Taxpayers with related transactions must exclude factors reducing their tax obligations resulting from the dominant, effective associated relationship in order to declare and fix the tax obligations on the related transaction the same as those on an independent transaction made on the same conditions.²
2. Tax authorities shall manage, check and inspect related transactions of taxpayers on the principle of the nature/substance of the activity or transaction decisive in determining the tax liability corresponding to the value created from the nature/substance of such transaction, production or business activity of the taxpayer, not recognizing related transactions which fail to follow the principle of independent transactions and which reduce the tax obligation of the enterprise to the State budget, and shall adjust the price of the related transaction in order to correctly fix tax obligations as prescribed in this Decree.

Article 4 *Definitions*

In addition to the definitions in *Law 38 on Tax Management* dated 13 June 2019, the following terms are construed as follows:

1. *Tax treaty* is an abbreviated term for an Agreement on avoidance of double taxation and prevention of tax evasion with respect to various types of tax imposed on income and assets, and signed between Vietnam and any nation or territory, and includes an Agreement or Protocol amending any Treaty currently effective for implementation in Vietnam.
2. *Multilateral Competent Authority Agreement [MCAA]* is an abbreviated term for an effective agreement between the competent authority of a country or territory which is a party to an international tax treaty which requests automatic exchange of information [AEOI] being country by country profit reports.
3. *International agreement on taxation and international treaty on taxation* mean both bilateral and multilateral international agreements and treaties in the tax sector.
4. *Partner tax agency* means the tax authority of a country or territory which has signed a tax treaty with Vietnam.
5. *Independent comparable object [comparable]* means an independent transaction between unrelated parties or enterprises conducting independent transactions selected on the basis of an analysis, comparison and identification of similar comparables in order to fix a price level, profit ratio or profit split ratio aimed at fixing the tax payable to the State budget by the taxpayer, ensuring compliance with the *Law 38 on Tax Management* and the *Law on CIT*.

² Allens footnote: In the OECD (Organization for Economic Cooperation and Development) transfer pricing guidelines, the related transaction is referred to as the *controlled transaction* and the comparable independent transactions as *uncontrolled transactions*.

6. *Material difference* means a difference in the factors forming the price with an important or significant effect on the price, profit ratio or profit split ratio of the transacting parties.
7. *Database of the tax authority* means information and data which tax offices collate, formulate and manage from various sources in accordance with the provisions of *Law 38 on Tax Management* including databases and information exchanged with tax management authorities and other competent authorities overseas.
8. *Range of independent transactions' value [arm's length range]* means a collection of values regarding price levels, profit ratios or profit split ratios of independent comparables selected by the tax authority and the taxpayer on the basis of the databases prescribed in article 17 of this Decree. These values [must] have a reliable level of comparability with each other. In necessary cases, the statistical probability method may be applied to identify a standard arm's length range and in-between/median values which are representative, universal or common aimed at increasing the reliability of the comparables collected.
9. *Standard arm's length range* means a set of values from the 35th percentile to the 75th percentile³; and the median of the standard arm's length range is the 50th percentile value in accordance with the statistical probability function.
10. *Representative organization for reporting* is the term used to refer to the organization appointed by the ultimate parent company of a Group to submit the Group's international profit report to the tax authority.

Article 5 Parties with an associated relationship [related parties]

1. Parties with an associated relationship (hereinafter abbreviated as *related parties*) means parties with one of the following relationships:
 - (a) One party participates directly or indirectly in the management of, control of, capital contribution to or investment in the other party;
 - (b) The parties are directly or indirectly subject to the management, control, capital contribution or investment of another party.
2. Related parties as prescribed in clause 1 above are specifically regulated as follows:
 - (a) One enterprise holds directly or indirectly at least 25% of the contributed capital of the owner [equity] of the other enterprise;
 - (b) A third party directly or indirectly holds at least 25% of the contributed capital of the owners [equity] of both enterprises;
 - (c) One enterprise is the biggest shareholder regarding contributed capital of the owner [equity] of the other enterprise, holding directly or indirectly at least 10% of the total shareholding of the other enterprise;
 - (d) One enterprise guarantees the other enterprise or provides it with loans in any form (including third party loans secured by financial sources of the related party and including financial transactions of a similar nature) on condition that such loans account for at least 25% of contributed capital of the owner [equity] of the borrowing enterprise and account for more than 50% of the total value of medium and long-term loans of the borrowing enterprise;
 - (dd) One enterprise appoints members of the executive board [managers] of the other enterprise or holds the controlling right over such second enterprise, on condition that the number of such members appointed by the first enterprise accounts for over 50% of the total number of

³ Allens footnote: The former Decree 20 stipulated from the 25th to the 75th, so in effect the minimum threshold is raised by 10%.

members of the executive board, or one of the members appointed by the first enterprise has the power to decide the financial policies or business operation of the second enterprise;

- (e) Two enterprises both have above 50% members on the executive board [management of each of the two enterprises] or both have a member with power to decide the financial policies or business operation [of each of the two enterprises] who are appointed by the same third party;
- (g) Two enterprises are executively managed or controlled regarding personnel, finance and business operation by individuals in the relationship of husband and wife, biological or adoptive parents, stepfather or stepmother, parents-in-law, natural or adopted children, stepchildren of a spouse, daughter or son-in-law; sibling or sibling-in-law, sibling of a brother or sister-in-law of one parent (same mother but different father or same father but different mother); grandparents; grandchildren; aunts and uncles or nephews and nieces;
- (h) Two business establishments have the relationship of head office and resident establishment, or a resident establishment of the same foreign entity;
- (i) The enterprises are under the control of one individual by his or her capital contribution to such enterprises or by his or her direct participation in executive management of the enterprises;
- (k) Other cases in which the enterprise is in reality subject to executive operation and decisive control of its production and business operation by the other enterprise;
- (l) An enterprise has transactions being the transfer or receipt of transfer of at least 25% of the contributed capital of the enterprise's owner within the tax assessment period; or borrows or lends at least 10% of the contributed capital of the owner at the time the transactions arise within the tax assessment period with an individual being an executive manager or controller of the enterprise or with an individual in a relationship prescribed in sub-clause (g) above.

CHAPTER 2

Analysis, Comparison and Selection of Independent Comparables and Methods for Fixing the Price of a Related Transaction

Article 6 Principles for analysis and comparison

1. An analysis and comparison of a related transaction is undertaken on the principle of the real nature of the operation or transaction [substance over form] in order to decide the tax obligation and to identify the substance of the related transaction:
 - (a) A comparison is made between the legal contract or transaction agreement or document of the related parties with the actual conduct by the parties. If a taxpayer has a related transaction but there are no written agreements or if any existing written agreement is inconsistent with the independent transaction principle [arms' length principle] or if the actual conduct of the transaction is inconsistent with the arms' length principle between unrelated parties, then the related party transaction must be determined in accordance with its true business nature as if between independent [non-related] parties as follows: a related party receiving income or profit from a related transaction with a taxpayer must have the ownership and business risk controlling right with respect to the assets, goods, services, resources or rights with economic interests attached and must have the right to create income from shareholding, share certificates and other financial instruments and the taxpayer incurring expenses as a result of the transaction with the related party must receive actual benefits and economic value or a contribution to the creation of turnover or added value to the production and business activities of such taxpayer in compliance with the arms' length principle;

- (b) The nature of the transaction is determined by the method of collating information, source vouchers and data about the transaction and the risks of the related parties during the actual conduct of production and business.
2. An analysis and comparison of the related transaction with independent transactions:
- (a) The bases for comparing contracts, documents and agreements, and the economic, commercial and financial relationship in a related transaction of the taxpayer are data and the actual conduct of the transaction between the related parties in order to make a comparison of same with business decisions which might be approved by independent parties in similar conditions. The principle on comparison which is applied during analysis and comparison attaches more importance to the actual substance and business practice and to the risks incurred by the related parties rather than to their written agreements;
 - (b) A comparability analysis must ensure that there is a similarity between the independent comparables and the related transaction, without material differences affecting the price level, profit ratio or profit split ratio between the parties. If there are such material differences affecting such items, then there must be a further analysis, determination and adjustment by eliminating the material differences from the comparables via a comparison of the factors prescribed in articles 7 and 10 of this Decree and in compliance with each method for fixing the price of a related transaction [transfer pricing method] stipulated in articles 13, 14 and 15 of this Decree.

Article 7 Selection of independent comparables

1. *Selection of internal independent comparables* means selection of transactions between the taxpayer and unrelated parties ensuring similarity and no material differences regarding price level, profit ratio or profit split ratio between the parties. If there are no such similar internal independent comparables, then comparables shall be chosen in accordance with sub-clauses (b) and (c) of article 17.3 of this Decree. A comparison between a related transaction [the controlled transaction] and an independent transaction [uncontrolled transaction] is conducted on the basis of comparing each transaction with each similar product. If transactions are not able to be compared based on products, then the agglomeration of transactions must ensure consistency regarding their nature/substance and actual business practice, and a transfer pricing method prescribed in articles 12, 13, 14 and 15 of this Decree must be applied.
2. Financial data of comparables must be reliable for use in declaring and assessing tax and must comply with the regulations on accounting, statistics and taxation. The time [period] when the comparable transactions were conducted must be the same as the time of the related transaction or their fiscal year must be the same as the fiscal year of the taxpayer, except in a special case when it is necessary to extend the comparison period as prescribed in article 9 of this Decree. Data formats must ensure that price levels are comparable and assessable as at the time of the transactions or within the same tax assessment period; and data comparing profit ratios or profit split ratios must be taken within at least three consecutive tax assessment periods. The taxpayer should round up value ratios and corresponding ratios to the second digit after the decimal point. If relative figures are taken from announced data which does not have absolute numbers attached and the relative figures have not been rounded up, then these figures should be taken from data which has been announced and which also cites its sources.
3. The minimum number of independent comparables to be selected after comparability analysis and adjustment of material differences is as follows: one comparable if there is no difference between the related transaction of the taxpayer conducting the related transaction and the independent comparable; three comparables if there are differences between the comparables but there is sufficient information and data for eliminating the material differences; and five comparables if there

is only information and data for eliminating most of the material differences between the independent comparables.

Article 8 *Adjusting price levels, profit ratios and profit split ratios of the taxpayer*

1. In a case of looking at independent comparables with equal reliability and with no differences, or with differences but with enough information and data to provide the basis for excluding important differences:
 - (a) If the price level, profit ratio or profit split ratio of the taxpayer is within the range of independent transactions' value (arms' length range) of the comparables, then the taxpayer is not required to adjust the price level, profit ratio or profit split ratio in order to fix the price of the related transaction;
 - (b) If the price level, profit ratio or profit split ratio of the taxpayer is not within the arms' length range of the comparables, then the taxpayer must determine a value/price within the arms' length range which reflects the highest degree of similarity to the related transaction in order to adjust the price level, profit ratio or profit split ratio of the related transaction but without reducing taxable income or the tax obligation owed by the taxpayer to the State budget.
2. If there is only data information providing the basis to eliminate most of the material differences of the independent comparables, then at least five independent comparables must be selected and the standard arm's length range shall be applied in accordance with the guidelines in Appendix 5⁴ issued with this Decree. The selection of a value/price within the standard arm's length range in order to adjust and re-determine the price level, profit ratio or profit split ratio of the taxpayer is made as following:
 - (a) If the price level, profit ratio or profit split ratio of the taxpayer is a value/price within the standard arm's length range of the similar independent comparables, then the taxpayer is not required to amend its price level, profit ratio or profit split ratio in order to fix the price of the related transaction;
 - (b) If the price level, profit ratio or profit split ratio of the taxpayer is a value/price not within the standard arm's length range of the similar independent comparables, then the taxpayer must determine a value within the standard arm's length range which reflects the highest degree of similarity with the related transaction in order to amend the price level, profit ratio or profit split ratio of the related transaction and to fix taxable income and the amount of tax payable without reducing such taxable income or tax obligation payable to the State budget;
 - (c) If the tax office amends or fixes the price level, profit ratio or profit split ratio of the taxpayer, then the adjusted or fixed price/value shall be the median value of the standard arm's length range.
3. Based on the transfer pricing method and the selected independent comparables, an amendment shall be made to the price level, profit ratio or profit split ratio of the taxpayer in order to fix the corporate income tax [CIT] obligation of the taxpayer without reducing the amount of the tax obligation owing to the State budget.

Article 9 *Expanding the scope of analysis and comparison*

1. If a related transaction is unique or has special characteristics so that independent comparables are unable to be found in order to conduct a comparison, then the scope of the comparative analysis shall be expanded in terms of the industry, geographical markets and period of comparison in order to find independent comparables. Such expansion of the scope of the comparative analysis shall be carried out as follows:
 - (a) Selection of independent comparables in accordance with the statistical economic sub-sector with the highest similarity to the taxpayer's sub-sector of operation in the same local or domestic market;

⁴ Allens footnote: The Appendices have not been translated.

- (b) Expansion of the comparative geographical area to regional countries which have similar industry conditions and a similar level of economic development.
- 2. If there is an expansion of the scope of analysis and selection of independent comparables to the above-mentioned geographical areas, then there must be an analysis of the significant qualitative and quantitative differences in accordance with articles 10.6 and 14 of this Decree or use must be made of figures and data of the independent comparables in the previous year while making adjustments for the time factor difference (if any).

The extended time for selecting figures and data of independent comparables shall not exceed one fiscal year compared to the fiscal year of the taxpayer if using the transfer pricing method prescribed in article 14 of this Decree [transactional net margin method].

Article 10 Criteria for analysing, comparing and adjusting material differences.

- 1. An analysis and comparison applying the method of comparing, reviewing and adjusting material differences of the independent comparables comprises a consideration of the special characteristics of the goods, services or assets (hereinafter abbreviated as *product characteristics*); operational functions, assets, and production and business risks⁵; contractual conditions and the economic conditions in which the transaction took place.
- 2. Product characteristics means characteristics or properties which affect the price of a product comprising tangible characteristics such as physical properties, product quality, the brand or trade name of the product, its reliability, availability and volume/quantity offered; service characteristics such as nature/substance, complexity, expertise and scope of the services; intangible asset characteristics such as the form of transfer, type of asset/property, form of ownership, term [of ownership], degree of ownership protection, term of transfer, rights to be transferred and benefits obtained from using the intangible assets.
- (a) An analysis of intangible assets and distribution of profit to the related parties is based not only on legal ownership also on all activities of risk management and the financial capacity to manage risks during the entire process of development, enhancement, maintenance, protection and exploitation [DEMPE] of the intangible assets as between the related parties. This analysis and comparison are based on a number of characteristics of intangible assets such as any monopoly, the scope and term of legal protection of the assets; rights established pursuant to a protection title, licence or written transfer of rights in the intangible assets; the geographical scope/extent of the rights to the intangible assets, their life cycle, developmental stage; the right to increase their value, change and update such intangible assets; and the forecast profitability of the intangible assets;
- (b) An analysis of the special characteristics of intangible assets includes a determination of which assets are used or transferred during a transaction, and specific and material economic risks relevant to their DEMPE; an identification of agreements reached in contracts such as legal ownership of the intangible assets, the terms and conditions of such legal agreements; registration, agreements on licensing and related contracts and on risks attached; an identification of the party performing the function of exploitation and use of the assets and risk management regarding their DEMPE; an identification of contractual terms and conditions and the actual practice of the parties; an identification of the actual nature of the related transaction relevant to DEMPE of the intangible assets when considering their legal ownership and relationships, rights pursuant to relevant contracts, the actual conduct by the parties and a determination of the price/value of the transaction

⁵ Allens footnote: The OECD transfer pricing guidelines state that regard must be had to what the taxpayer obtained in return for the functions it performed, the assets it used, and the risks it assumed.

consistent with the parties' contribution, actual functions performed, assets used and risks actually assumed by the parties.

3. The following are analysed namely the operational function, assets, and production and business risks performed by each party and the assets, production and business risks in relation to opportunity costs, economic and industry conditions, operational sector and geographical location of the taxpayer, such items to be analysed in order to identify factors reflecting the taxpayer's ability to profit from the business operation and the actual business practice conducted by the taxpayer associated with functions and use of the relevant assets, capital and costs.

The results of an analysis reflect the main function in the relationship between the use of the various types of assets, capital and opportunity costs such as the risks associated with investment in such assets, capital and costs with the ability to take profit as performed by the taxpayer regarding the business transaction and in particular:

- (a) Some of the main functions of the enterprise are analysed throughout the entire value chain of the Group including research and development [R&D] such as providing R&D services pursuant to a contract or autonomous R&D; technical development and product design; production or manufacture including autonomous production, licensed production, processing pursuant to a contract or outsourcing, and installation of equipment; trading and managing raw materials and other trading activities; distribution including autonomous distribution, limited risk distribution, commission agency, wholesale or retail distribution; provision of support services such as legal, financial accounting, debt collection, personnel training, and maintenance; provision of transport or storage services; conducting brand development activities such as marketing, advertising, market research or exercising other functions throughout the industry value chain;
- (b) Some of the main assets of the enterprise comprise intangible assets such as technical know-how, copyright, business know-how, secret formulae, patents, and intangible assets relevant to commercial and marketing activities such as brand names, system building and brand identity; customer lists, data and relationships; tangible assets such as factories, machinery and equipment; and financial assets and economic interests and benefits derived from such assets during the course of their exploitation, use and transfer;
- (c) Some of the main risks while conducting business include strategic or market risks resulting from implementing business strategies such as market entry, market maintenance or market expansion; infrastructure or inventory/storage risks; financial risks such as credit risks, bad debts and exchange rate risks; transaction risks such as price factors and terms and conditions on payment during commercial transactions; product risks arising from developmental design and production up until quality control and after-sales service; business risks from capital investment, the volume of customers, and risks of force majeure events.

An analysis of the business risks of the taxpayer throughout the entire value chain of the Group is aimed at identifying major risks to the entire industry value chain, and the ability to control risks such as making risk management decisions and dealing with the risks when they actually occur comprising identification of key economic risks; an assessment of the level of risk allocation and settlement in the legal contracts or agreements of the taxpayer; an analysis of the function of risk control and risk mitigation stipulated in legal contracts or written agreements; and a check and review of the actual status of implementation and how the taxpayer's risks were actually allocated and borne. If there are differences between the risk allocation stipulated in legal contracts or written agreements as compared to the actual conduct of the parties, then based on the results of this risk analysis the tax office shall reallocate risks and adjust the tax payer's price level, profit ratio and/or profit split ratio.

4. The contractual terms and conditions when conducting the transaction comprise terms and conditions on volume, trading conditions or product distribution; time, conditions and method of

payment; conditions on warranty, replacement, upgrade, amendment or modification to products; conditions on exclusive rights to trade and distribute the products; and a number of other conditions which could have an economic affect such as support services, consultancy on quality control, use guidelines, and support for advertising and promotion.

- (a) If the terms and conditions of the legal contract or written agreement between the parties do not fully reflect their actual practice, then there must be an analysis and comparison of such actual conduct or of the financial data in order to determine the characteristics, economic substance and actual business risks incurred by the parties;
 - (b) If the related parties did not sign a legal contract or written agreement and do not recognize revenue and expenses such as technical assistance, assistance of the Group, sharing business know-how or secondment/part-time use of personnel, then an analysis must be conducted in order to determine the substance of the transaction, its value, the income generated from it and the contribution made by each of the related parties. On such basis, a comparison may be made with business decisions which would be acceptable by independent parties in similar conditions in order to redefine the related transaction of the taxpayer.
5. Economic conditions of the transaction and market conditions as at the time the transaction arose which could impact the price, profit ratio or profit split ratio.
- (a) A number of economic conditions existing when the transaction took place such as the size and geographical position of the production and consumption markets, and the market level such as whether it was wholesale, normal retail or exclusive distribution; the product's competitiveness in the market and the relative competitive positions of the seller and buyer; the availability of substitute goods; the level of supply and demand in the market generally and in each specific area, and the purchasing power of consumers; economic factors affecting the costs of production and business existing in the location where the transaction took place such as policies on tax incentives, and the market regulation policies of the Government; production costs, land costs, labour and capital costs; the business cycle and factors with a positive effect on the taxpayer's price level, profit ratio or profit split ratio such as characteristics regarding the location, advantages and cost savings based on geographical, market and local characteristics and also on the workforce, concentration of synergy functions and specialized or expert contribution made by the related parties in creating value;
 - (b) If the taxpayer and the comparables do not reside in the same country or territory, or do not provide goods and services in the same geographical market, then an analysis of the economic conditions shall comprise an analysis of the degree of similarity between the markets where the taxpayer on the one hand resides and such comparables on the other hand reside with respect to comparative advantages, and location affecting comparative factors such as the cost of labour, cost of raw materials, transport, land rent, expenses for training and assistance, any incentives regarding finance, tax and infrastructure costs, growth level of the markets and market advantages such as population numbers and numbers of customers with good spending power and any other comparable advantages.
6. A comparability analysis and elimination of material differences means an analysis and elimination of both qualitative and quantitative differences of information or financial figures which have a major impact on the factors used as the basis for determining the price of the related transaction in accordance with each of the pricing methods prescribed in articles 13, 14 and 15 of this Decree. Quantitative differences mean differences determined by absolute numbers regarding the business cycle, and the number of years for which the enterprise has been established and operating, or by relative numbers such as differences in financial indicators according to the characteristics of the investment industry or operational function, and differences regarding working capital; while qualitative differences mean information determined and based on each method for fixing the price of the related transaction as prescribed in articles 13, 14 and 15 of this Decree.

- (a) Information determined to be critical comprises differences regarding product characteristics, contractual conditions, functions, assets, risks, the business industry or trade, and economic conditions of the taxpayer and of the independent comparables; differences regarding policies and the investment environment, and the input costs of production and business in local, domestic and overseas areas;
 - (b) Quantitative and qualitative differences must be reviewed and adjusted as corresponding to the comparative factors with a critical impact on the transfer pricing methods stipulated in articles 13, 14 and 15 of this Decree.
7. The results of analysis provide the basis for selecting independent comparables appropriate for each transfer pricing method stipulated in articles 13, 14 and 15 of this Decree. If the taxpayer fails to adjust the price, profit rate or profit split ratio in accordance with the independent comparables for the reason that qualitative and quantitative differences cause a material impact, then the taxpayer must search and reselect independent comparables in order to determine a standard arms' length range ensuring reliability, uniformity and an adjustment of the price of the related transaction in accordance with the provisions of this Decree.

Article 11 Sequence for analysis and comparison

- 1. Identification of the substance/nature of the related transaction before conducting an analysis of its similarity with independent comparables.
- 2. Analysis, comparison, search and selection of similar independent comparables on the basis of determining the comparison time, the product characteristics and the contractual conditions; an analysis of the industry, market and economic conditions where and when the transaction arose; an analysis of the related transaction and of the taxpayer conducting it; an identification of the database source, of the transfer pricing method and adjustment of material differences, and in particular:
 - (a) A determination of the scope, contents and factors to be compared including the timing/period of comparison; analytical information about the taxpayer regarding comparative factors on functions, assets and risks; product characteristics; contractual conditions; economic conditions when the transaction arose, and an analysis of the industry, market, business operational context, trading of goods and provision of services and the assets of the parties all need to be conducted in order to fix the price of the related transaction in accordance with the provisions of this Decree;
 - (b) An assessment and search for comparables includes priority review of internal independent comparables on the basis of verifying the reliability and independence of these objects, ensuring that they do not involve transactions which fail to follow the principles on independent transactions; formulating criteria for searching and identifying reliable database sources which can be used in accordance with the provisions of article 17 to search for similar independent comparables. On the basis of the information which has been analysed and reviewed regarding the availability of independent comparable data, then a transfer pricing method should be selected depending on the nature of the business and commercial operations and the financial and risk factors of the related parties in order to fix the price of the transaction;
 - (c) An analysis of the level of similarity and reliability of the independent comparables which have been selected is conducted on the basis of a review and screening of the qualitative and quantitative criteria; an analysis of economic information, industry and financial data about the selected objects to verify their similarity; and an identification of material differences and an adjustment of same. After selection of similar independent comparables, the data and financial figures on such comparables is used to determine the bases for adjusting the price, profit ratio or profit split ratio of the taxpayer in accordance with article 8 above.

3. A determination of the price level, profit rate or profit split ratio is made based on the results of analysing the independent comparables to provide the basis for determining the CIT liability of the taxpayer without reducing the tax obligation payable to the State budget. The calculation method must be uniformly applied throughout the business and production cycle and phases in compliance with the business functions and models prescribed in articles 12, 13, 14 and 15 of this Decree.

Article 12 Selection of transfer pricing method

The methods of comparing and fixing the price of the related transaction (abbreviated to transfer pricing methods) must be applied in conformity with the principles of independent transactions, the nature of the transaction and the function of the taxpayer, and on the basis of uniform calculation and application throughout the entire business and production cycle and phases, and is based on the financial data of the independent comparables selected in accordance with the principles for comparability analysis stipulated in articles 6 to 10 inclusive of this Decree. The transfer pricing method to be selected shall be one of the methods prescribed in articles, 13, 14 and 15 of this Decree, based on the special characteristics of the related transaction, and on the available information and data.

Article 13 Method of comparing the price of the related transaction with the prices of independent transactions [comparable uncontrolled price method or CUP]

1. Cases when the CUP method is applied comprise:

The taxpayer conducted the related transaction for each type of goods, of tangible assets or of services with conditions regarding trading and common circulation on the market or at a price announced on domestic and international commodity and services markets; the transaction was payment of royalties when exploiting tangible assets; or it was the payment of loan interest during lending and borrowing activities; or the taxpayer also conducts independent transactions and conducted the related transaction for products with the same product characteristics and on the same contractual conditions.

2. Principles of application:

(a) The comparable uncontrolled price method is applied on the principle that there are no differences in product characteristics and the contractual conditions when comparing the price of uncontrolled transactions and that of the related transaction which have a material affect on the price of the product. If there are material differences affecting product prices, then such differences must be eliminated;

(b) Product characteristics and contractual terms which have a material effect on product prices comprise: the characteristics, quality, brand or trade name of the product, and the size and volume of transactions; the contractual conditions for supply and deliver of the product namely the volume, delivery time and payment time and other contractual terms; the right to distribute and sell goods, services and assets affecting their economic value and the market where the transactions took place, and any other factors affecting product prices such as economic conditions and operational function of the taxpayer.

3. Determination method:

(c) The [unit] price of the product in a related transaction shall be adjusted to the product prices in the independent transactions or to a price within the standard arms' length range of the independent transactions in accordance with the provisions of this Decree;

(d) If the product price has been announced on domestic and international commodity and services trading floors, then the product price in the related transaction is determined as the product price announced at the same time and on the same trading conditions;

- (e) A taxpayer purchasing machinery and equipment from a related party overseas must have data and source vouchers proving the standard purchase price in accordance with the arms' length principle as at the time of purchase: in the case of new machinery and equipment, the comparable price is the price in the invoice for purchase by the related party from an independent party; and in the case of second-hand machinery and equipment, there must be an original invoice and/or source voucher as at the time of purchase when the asset price was redetermined in accordance with current provisions of law guiding management, use and depreciation of fixed assets.
4. The result of determining such price of the related transaction shall be the taxable price for the purposes of declaring and assessing the amount of CIT payable, which must not reduce the amount of tax payable by the taxpayer to the state budget.

Article 14 *Method of comparing the profit ratio of the taxpayer with profit ratios of independent comparables [transactional net margin method or TNNM]*

1. Cases when the TNNM method is applied comprise:

The taxpayer does not have a database and information in order to apply the CUP method stipulated in article 13; or the taxpayer is unable to compare product transactions on the basis of comparing each transaction with another similar transaction, because the agglomeration of transactions is aimed at compliance with the nature and actual conduct of business and accordingly a profit margin of independent comparables must be selected, or the taxpayer does not perform any independent function regarding the entire production and business chain, or does not participate in conduct of related transactions as prescribed in article 15 below, and in particular:

- (a) The method of comparing gross profit margin over turnover (the resale price method) applies if the taxpayer sells or redistributes products purchased from a related party to independent customers and does not create any intangible asset associated with the product sold, and the taxpayer does not participate in the process of DEMPE of an intangible asset owned by the related party by selling the products or it does not conduct any processing or assembly in order to change the nature and characteristics of the products or their brand name in order to increase value. The resale price method does not apply to a taxpayer who is a distributor owning a valuable intangible asset of the Group regarding brand name, trade mark or any other intangible asset relating to marketing such as lists of customers, distribution channels, logos, images and other brand identifiers for market research purposes or promotion activities, or does not incur costs for creating and designing such distribution channels, brand identifiers or does not incur other after-sales expenses;
- (b) The method of comparing the ratio of gross profit over cost price (the cost plus profit method) applies if the taxpayer does not own any intangible assets and incurs few business risks, and performs the manufacturing or production function pursuant to a contract or order placed for goods, or processes or assembles the products or installs equipment or purchases and supplies products; or the taxpayer provides services to or conducts R&D for the related party pursuant to a contract. This cost plus profit method does not apply to a taxpayer which is a self-reliant manufacturer or which exercises the function of product R&D in order to formulate brand names or trademarks of goods, or market strategies or to provide product warranties and customer care;
- (c) The method of comparing net profit ratios [comparable profit method] applies if the taxpayer does not have information in order to apply the method of comparing the price of independent transactions; or lacks data and information about the accounting methods of the independent comparables or is unable to find such comparables with similar functions and products and therefore is unable to apply the method of comparing the ratio of gross profit over cost price (the cost plus profit method); or the taxpayer performs distribution or production functions but without owning intangible assets or without participating in the development, enhancement, maintenance, protection and exploitation [DEMPE] of

intangible assets or does not fall within the cases for application of the method of profit split between the related parties as prescribed in article 15.1.

2. Principles for application:

- (a) The method of comparing profit ratios is applied on the principle that there is no difference regarding operational functions, assets and risks; that the economic conditions and cost accounting method when making the comparison between the taxpayer and independent comparables have a material impact on the profit rate/margin. If there are material differences affecting the profit rate, then such differences must be eliminated.

Factors which have a material impact on the profit rate comprise factors regarding assets, capital and costs; controlling and decision-making power in practice and serving implementation of the main functions of the taxpayer; the nature of the business line in which business is conducted and the nature of the production and consumption markets; the cost accounting method and cost structure of the product; the economic conditions in which the transaction took place; the commercial and financial relationships of the multi-national Group; technical assistance; the sharing of business know-how; the secondment of or part-time personal and the economic conditions of the taxpayer's business line or industry, and the special characteristics of the product and the contractual conditions;

- (b) The resale price method is applied when differences may materially affect the gross profit selling rate (net revenue) such as costs which reflect the function of the enterprise as a selling agent, exclusive distributor or distributor conducting marketing; the growth rate of the product consumption market; the function of the taxpayer in the supply chain such as retail or wholesale, and the cost accounting methods of the parties;
- (c) If the cost plus interest method is applied, then differences which may materially affect the gross profit-cost ratio comprise costs reflecting the business functions of the enterprise such as manufacturing pursuant to contracts appointed by the parent company or providing services internally within the Group; contractual obligations such as the deadline for product delivery; costs of quality control and of storage, payment conditions and cost accounting methods applicable to the constituent factors of the cost price of the taxpayer and those of independent comparables;
- (d) If the method of comparing net profit ratios is applied, then differences which may materially affect net profit margins are differences in operating functions, assets, and risks; economic conditions; contractual conditions and product characteristics as prescribed in article 10. If the taxpayer conducts business with simple production and distribution functions without the function of making strategic decisions or of developing transactions which add value, does not bear inventory risks or market risks and does not generate revenue or expenses from the exploitation of intangible assets, then the taxpayer should not bear losses from such risks arising during production and business activities.

3. Determination method:

The method of comparing rate of return using the gross margin or net profit rate of selected independent comparables is used to determine the corresponding gross margin or net profit margin of the taxpayer. Selection of the rate of return including gross margin or net profit margin on revenue, costs or assets depends on the substance/nature and economic conditions of the transaction and the functions of the taxpayer, and the cost accounting methods of the parties. The basis for determining the profit rates is the taxpayer's accounting data on revenue, expenses and assets which are not controlled or decided by the related parties:

- (a) The method of comparing gross profit margin over turnover (the resale price method):

The buy-in price of the goods, services or assets (cost price) from the related party equals (=) selling price (net turnover) of such goods, services or assets resold to an independent party less (-) gross profit over the

selling price (net turnover) of the taxpayer less (-) a number of other expenses included in the buy-in price namely import duty, customs fees, insurance costs and international freight (if any).

Gross profit over selling price (net turnover) of the taxpayer is determined from independent comparables and equals (=) selling price (net turnover) of the taxpayer multiplied by (x) gross profit rate over the selling price (net turnover) of the selected independent comparables.

The ratio of gross profit (net turnover) of the selected independent comparables is a price within the standard arms' length range of such gross profit ratios over selling price (net turnover) of the selected independent comparables, used to adjust [the taxpayer's price] for consistency with the principles stipulated in this Decree.

The buy-in price from the related party (or cost price) as adjusted in accordance with the independent comparables is the price for assessing tax, for declaring expenses and for determining the amount of CIT payable by the taxpayer.

(b) The method of comparing the ratio of gross profit over cost price (the cost price plus profit method):

The selling price or net turnover of the goods, services or assets sold to the related party is determined as equal to (=) cost price of the goods, services or assets purchased from an independent party plus (+) profit over cost price of the taxpayer.

Gross profit over cost price of the taxpayer is determined from independent comparables as equal to (=) cost price of the taxpayer multiplied by (x) ratio of profit over cost price of the selected independent comparables.

The ratios of gross profit over cost price of the selected independent comparables is a value within the standard arms' length range of the ratios of gross profit over cost price of the selected independent comparables used to make the appropriate adjustment in compliance with the principles stipulated in this Decree.

The selling price to the related party (or net turnover) adjusted in accordance with the independent comparables shall be the price for tax assessment purposes, for declaration of expenses and for fixing the amount of CIT payable by the taxpayer.

(c) The method of comparing net profit ratios:

The net profit ratio pre-loan interest fees and pre-CIT on revenue, expenses or assets of the taxpayer conducting the related transaction is adjusted in accordance with the net profit ratios pre-loan interest fees on revenue, expenses or assets of the selected independent comparables, as the basis for adjusting and fixing the tax obligations of the taxpayer.

Net profit does not include the difference between turnover and expenses of financial activities.

The net profit ratios selected are a value within the standard arms' length range of the net profit ratios of the selected independent comparables in order to adjust and determine taxable income and the amount of tax payable by the taxpayer in compliance with the principles stipulated in this Decree.

Criteria on pre-loan interest fees and pre-CIT net profit ratios are determined in accordance with the provisions of the law on accounting and the law on management of tax and CIT.

4. The result of determining the amended net profit ratio of the taxpayer is the basis for determining the amount of taxable income and the amount of CIT payable without reducing the tax obligation of the taxpayer owed to the State budget.

Article 15 The method of profit split between the related parties

1. Cases when this method is applied comprise:

- (a) The taxpayer participates in conducting a combined related transaction of a special, unique and secret (closed) nature within the Group, in activities being development of new products, using exclusive technology for participating in a value chain of monopoly [exclusive] transactions of the Group or in the development, enhancement, maintenance, protection and exploitation [DEMP E] of monopoly [exclusive] intangible assets, without any basis for determining the price as between the related parties, or simultaneously conducts complex financial transactions related to multiple world financial markets;
- (b) The taxpayer participates in digital economy related transactions without any basis for determining the price as between the related parties;
- (c) The taxpayer implements its own sovereign [autonomous] function throughout the entire production and business process and is not an applicable entity as prescribed in articles 13.1 or 14.1.

2. Principles of application:

The profit split method means allocation of total profit of the related transactions to determine the profit of the taxpayer participating in the transaction chain. This method is applicable to the total actual profit plus potential profit determined from financial figures provided from valid and appropriate source vouchers; and the value and profit of the related transactions must be determined by the same accounting method throughout the entire period of applying the profit split method.

3. Determination method:

The adjusted profit of the taxpayer is allocated from the total profit from the related transactions comprising actual profit and potential profit collectable by the parties participating in such transaction chain.

The adjusted profit of the taxpayer includes total basic profit plus extra profit. Basic profit is determined in accordance with the method of comparing profit ratios prescribed in article 14. Extra profit is determined as a ratio allocated on one or more factors such as revenue, expenses, assets or manpower of the related parties to the transaction and in compliance with the arms' length principle.

If there is insufficient information and databases to make an adjusted allocation of profit as prescribed above, then allocation may be based on one or more factors such as revenue, expenses, assets or manpower of the related parties to the transactions and in compliance with the arms' length principle.

4. The adjusted profit of the taxpayer is the basis for determining taxable income and the amount of CIT payable without reducing the amount of the tax payable by the taxpayer to the State budget.

CHAPTER 3

Expenses for Tax Assessment Purposes, and Declaration and Determination of the Price/Value of the Related Transaction

Article 16 Determining expenses for tax assessment purposes of an enterprise with a related transaction

- 1. Expenses of a related transaction which are inconsistent with the nature of independent transactions or which do not contribute to the creation of turnover or income for the production and business activities of the taxpayer are non-deductible expenses for purposes of assessing CIT within the period, such non-deductible expenses comprising:
 - (a) Payments made to related parties which do not have any production or business activities related to the industry and trade of the taxpayer or to the production and business activities of the taxpayer;
 - (b) Payments made to related parties with production and business activities but their assets size, staff numbers and production and business functions are disproportionate to the transaction value received by such related parties from the taxpayer;

- (c) Payments made to related parties which are residents of a country or territory which does not collect CIT, and/or do not contribute to the creation of turnover or added value for the business and production activities of the taxpayer.
2. **Provision of services as between related parties [intra-Group services]:**
- (a) Except for the expenses prescribed in sub-clause (b) below, a taxpayer may deduct the service charge when assessing tax in any one period if all the following conditions are satisfied: the services provided are **of commercial, financial and economic value** to, and directly served the production and business activities of the taxpayer; intra-Group services shall only be determined as having been provided when independent parties in similar circumstances would have paid for these services; the service fees were paid on the arms' length principle and on the basis of calculating the price of related transactions, **or intra-Group allocation of the service fees must be uniformly applied throughout the Group with respect to the equivalent type of services and the taxpayer must provide a contract, source vouchers, invoices and information about the calculation method, the allocation factors, and the Group's pricing policy on the services provided.**
- If intra-Group services relate to centres implementing specialized functions and combining efforts to create added value for the Group [synergies], then the taxpayer must determine the total value created from such functions and determine a level of profit allocation appropriate for the value of the contribution made by the related parties after subtracting (-) the corresponding amount of service fees for the related party performing the function of coordinating and providing the services in an independent transaction of a similar nature.**
- (b) Service fees which are non-deductible when determining taxable income comprise: expenses arising from services provided only for the purpose of serving the interests of or creating value for other related parties; services serving the interests of shareholders of related parties; services with multiple charges which a number of related parties provide with respect to the one type of services, and for which added value for the taxpayer is unable to be determined; and services in the nature of services for which the benefit received by the taxpayer is due to it being a member of the Group and the fees are fees which a related party added to the services provided by a third party in the related party's capacity as an intermediary without contributing additional value to such services.
3. Total loan interest expenses which are deductible when determining CIT of enterprises with related transactions:
- (a) Total loan expenses (after deducting interest income on deposits and lending) incurred in the period and which are deductible when determining taxable income for CIT purposes of the enterprise shall not exceed 30%⁶ of total net profit from business activities in the period plus interest expenses (after deducting interest income on deposits and lending) arising in the period and depreciation expenses in the period;
 - (b) That part of loan interest which is non-deductible pursuant to sub-clause (a) above shall be carried forward to the next tax period to determine deductible loan interest expenses if the total loan interest expenses to be deducted in the subsequent tax period are below the cap prescribed in sub-clause (a) above. The time for carrying forward loan interest expenses is a maximum five (5) consecutive years from the year following the year in which non-deductible loan interest expenses were incurred;
 - (c) The provisions in sub-clause (a) above do not apply to loans of taxpayers being credit institutions in accordance with the *Law on Credit Institutions* or insurance business organizations pursuant to the *Law on Insurance Business*; or to ODA loans, or preferential loans of a Government where the Government permits enterprises to reborrow its foreign loans; or to loans to implement national target programs (new rural programs and sustainable poverty reduction programs); or to loans for investing

⁶ Allens footnote: The former Decree 20 stipulated 20%.

in programs and projects implementing the State's social welfare policies (namely resettlement housing, workers' housing, student housing and other public welfare projects);

- (d) Taxpayers shall declare their loan interest expenses ratio in a tax period on standard form 1 in the Appendix issued with this Decree.

Article 17 *Databases used during declaration, determination and management of related transactions [transfer pricing]*

1. Databases to be used during declaring and fixing prices of related transactions of a taxpayer comprise:
 - (a) Commercial databases being financial and economic information and data which business organizations collect, collate, standardize and store by access support software with management applications and pre-programmed tools and support facilities for users who are then able to search, access and use financial and economic data of enterprises both inside and outside Vietnam in accordance with their business lines, in accordance with their geographical area or other on-demand search criteria for the purposes of comparing and identifying comparables when declaring and managing the price of related transactions;
 - (b) Information and data about enterprises publicly announced on the securities market;
 - (c) Information and data announced on both domestic and international commodity exchanges;
 - (d) Information which domestic agencies and line ministries publicly announce, and information obtained from other official sources.
2. Databases used by tax authorities during management of transfer pricing comprise:
 - (a) The databases prescribed in clause 1 above;
 - (b) Information and data exchanged with the tax authorities defined in article 4.7 above;
 - (c) Information which Vietnamese agencies and line ministries provide to tax authorities;
 - (d) Databases of the tax authorities themselves used during risk management.
3. The analysis and selection of comparables for analysing and arriving at an arm's length range must comply with the principles on comparability analysis and with the transfer pricing methods prescribed in this Decree, in accordance with the following priority order when selecting comparative data:
 - (a) Internal comparables of the taxpayer;
 - (b) Comparables resident in the same country or territory as the taxpayer;
 - (c) Comparables in countries in the region with similar industry conditions and economic developmental status.

If foreign comparables in other geographical markets are selected, there must be an analysis of their resemblance and of both their quantitative and qualitative material differences in accordance with articles 9 and 10 of this Decree.

Article 18 *Rights and obligations of taxpayers during declaration and fixing the price of related transactions*

1. Taxpayers with related transactions within the governing scope of this Decree have the rights prescribed in Law 38 on Tax Management dated 13 June 2019.
2. Taxpayers with related transactions within the governing scope of this Decree must declare and fix the price of any such transaction without reducing the amount of CIT payable in Vietnam in accordance with this Decree.

Taxpayers are responsible, when requested by the tax authorities, to prove that they have conducted a comparative analysis and have selected a transfer pricing method prescribed in this Decree.

3. Taxpayers with related transactions within the governing scope of this Decree must declare information about their relationships with associated/affiliated parties and about their related transactions on Appendices 1, 2 and 3 issued with this Decree and lodge same together with their declaration on accounting finalization of CIT.
4. Taxpayers are responsible to archive and provide files on transfer pricing with information, data, figures and source vouchers as follows:
 - (a) Information on their relationships with affiliated/associated parties and about their related transactions as set out in Appendix 1;
 - (b) A national file being information about related transactions, and about the policies and methods for pricing related transactions established and kept at the headquarters of the taxpayer in accordance with the list of items, information and data prescribed in Appendix 2;
 - (c) A global file being information about the multi-national Group's business activities, its global transfer pricing policy and methods, and its policies on allocating income and allocating activities and functions within the value chain of such Group in accordance with the list of items, information and data prescribed in Appendix 3;
 - (d) Country by country report of the ultimate parent company as prescribed in clause 5 below and on Appendix 4 within this Decree.
5. A taxpayer has the following obligations regarding the country by country report:
 - (a) A taxpayer being an ultimate parent company [UPC] in Vietnam with global consolidated turnover during the tax assessment period of 18,000 billion VND or more is responsible to prepare a country by country report within its file fixing the price of a related transaction on Appendix 4. The deadline for lodging such report with the tax office is 12 months after the end of the financial year of such UPC;
 - (b) A taxpayer in Vietnam having its ultimate parent company overseas where such UPC must file a country by country report with the tax authority in its home country, must lodge [such report] with the Vietnamese tax authority in the following cases:
 - The country or territory where the ultimate parent company resides has an international tax treaty with Vietnam but has not signed a Multilateral Competent Authority Agreement [MCAA]⁷ as at the deadline for lodging the report as prescribed in sub-clause (a) above;
 - The country or overseas territory where the ultimate parent company resides has signed an MCAA but has suspended automatic exchange of information [AEOI] or the country by country report has not been automatically provided to Vietnam;
 - If a multi-national Group has more than one taxpayer in Vietnam and the ultimate parent company [UPC] oversees sends a written appointment to one of such taxpayers in Vietnam to submit the inter-country profit report then such nominated taxpayer must submit the report to the Vietnamese tax authorities. The taxpayer is also obliged to submit such written notice from the UPC to the tax authorities either before or on the last day of the financial year of the UPC of the taxpayer.
 - (c) The provision in sub-clause (b) above does not apply if the UPC of the taxpayer in Vietnam appoints a representative organization for reporting⁸ to lodge its country by country report to the local tax authorities before or on the date specified in sub-clause (a) above and all the following conditions are satisfied:

⁷ Allens footnote: See definition in article 4.2.

⁸ Allens footnote: See definition in article 4.10.

- The country or territory in which the representative organization for reporting lodges the report is a resident, has regulations requiring lodging of country by country profit reports;
 - The country or territory where such representative organization lodging the report is a resident, has an agreement between its competent authority in Vietnam and signs such agreement within the deadline for submission of the report as prescribed in sub-clause (a) above;
 - The country or territory where the representative organization lodging the report is a resident, has an agreement between the competent authority in Vietnam and does not suspend the mechanism of automatic exchange of information [AEOI] and provides country by country profit reports of Groups being residents of such foreign country or territory;
 - The representative organization lodging reports has written notification of its appointment to lodge country by country profit reports to tax authorities of the country of residence before or on the last day of the financial year of the UPC of the Group;
 - The written notice of appointment referred to in the last paragraph is provided by the taxpayer in Vietnam to the Vietnamese tax authorities in accordance with sub-clause (a) above.
 - The taxpayer in Vietnam provides a written notice to the Vietnamese tax authorities regarding the name, tax code and country of residence of the UPC or of the representative organization for reporting, prior to or on the last day of the financial year of the Group.
- (d) If the taxpayer has its UPC in a foreign country which requires a country by country profit report to be lodged pursuant to the regulations of such parent company's country of residence, then the tax authority shall automatically exchange information as committed in international tax treaties of Vietnam;
- (dd) If the UPC of the taxpayer is not required to lodge country by country profit reports in accordance with the regulations of the country where such UPC resides, then the provisions in international tax treaties shall apply.
6. A file fixing the price of any related transaction must be prepared prior to the time of annual declaration for finalization of CIT, and such file must be retained and presented on request by the tax authority. When the tax authority conducts a check or inspection of the taxpayer, the deadline for providing a file fixing the price of a related transaction shall accord with the provisions in the *Law on Inspections*.
- Files fixing prices of related transactions and other information, data and source vouchers of the taxpayer shall be provided to the tax authorities in accordance with the provisions of the law on tax management. Data and source vouchers used as the bases for comparability analyses and for transfer pricing must specify their origin. If data in comparables is accounting figures then the taxpayer is responsible to store it and provide it to the tax office in soft copy, spreadsheet format.
7. Taxpayers are responsible to provide complete and accurate information and data from their transfer pricing files on request by the tax authorities, and shall be legally liable for same; and such data must be provided prior to the conduct of a check or inspection as prescribed in article 20 below. The deadline for providing any file fixing the price of a related transaction is thirty (30) business days after receipt of a written request from the tax authority. If a taxpayer provides a reasonable explanation then this time-limit may be extended once but for no more than fifteen (15) business days.
8. Independent consultants, accountants or tax agents representing taxpayers and preparing transfer pricing files must comply with the law on tax management applicable to enterprises with related transactions as prescribed in this Decree, and shall be liable for such files in accordance with law.

Article 19 *Cases in which taxpayers are exempt from providing declarations and exempt from preparing transfer pricing files [safe harbour provision]*

1. A taxpayer is exempt from making a declaration of the price fixed for a related transaction as prescribed in sections 3 and 4 of Appendix 1 issued with this Decree, and is exempt from preparing a file on fixing of such price in accordance with the provisions of this Decree if the transaction was only with a related party which also pays CIT in Vietnam, is subject to the same CIT rate as the taxpayer, and neither party was entitled to CIT preferences during the tax assessment period; but such taxpayer must declare the basis for exemption in sections 1 and 2 of Appendix 1 issued with this Decree.
2. A taxpayer must declare the price fixed of a related transaction on Appendix 1 but is exempt from preparing a transfer pricing file in the following cases:
 - (a) The taxpayer has related transactions but its total turnover generated in the tax assessment period is less than fifty (50) billion VND and the total value of all related transactions generated in the tax assessment period is below thirty (30) billion VND;
 - (b) The taxpayer has signed an advanced pricing agreement [APA], in which case it must lodge an annual report in accordance with the provisions of the law on advanced agreements on pricing methods.⁹ In the case of any related transactions not within the scope of applicability of such APA, the taxpayer must declare the prices fixed in accordance with article 18 of this Decree;
 - (c) The taxpayer conducts a business with simple functions without generating turnover, with expenses from activities being exploitation and use of intangibles, with revenue of less than two hundred (200) billion VND, and applies the following pre-loan interest and pre-CIT net profit ratios over turnover in the following sectors:
 - Distribution: from five (5) per cent or more;
 - Production: from ten (10) per cent or more;
 - Processing: from fifteen (15) per cent or more.

If a taxpayer monitors and conducts cost accounting separately for revenue and expenses for each sector, then the corresponding net profit margin without loan interest expenses and CIT on net revenue corresponding to each sector shall apply.

If the taxpayer monitors and conducts separate cost accounting for revenue but not for the costs incurred in each sector during its production and business operation, then it must allocate the expenses in accordance with the turnover ratio of each sector in order to apply the net profit margin without interest expenses and CIT on net turnover corresponding to each sector.

If the taxpayer fails to monitor and conduct separate cost accounting for revenue and expenses of each sector of its production and business operation in order to determine the net profit margin without loan interest expenses and the CIT corresponding to each sector, then it must apply the net profit margin without interest expenses and CIT on net turnover of the sector with the highest such rates.

If a taxpayer does not apply the profit margin level regulated in this clause then it must prepare a file fixing the price of related transactions in accordance with regulations.

3. In the case of taxpayers exempt from declaration and exempt from preparation of files prescribed in clauses 1 and 2 above, the provisions in article 16.3 of this Decree apply to calculation of total loan interest expenses which are deductible when determining CIT of such enterprise.

⁹ Allens footnote: See Circular 201 of the Ministry of Finance dated 20 December 2013 guiding the application of advance pricing agreements during tax management.

CHAPTER 4

Implementing Provisions

[THE FOLLOWING ARTICLES 20 AND 21 HAVE NOT BEEN TRANSLATED]

Article 20 *Responsibilities and powers of tax authorities in managing transfer pricing*

Article 21 *Responsibilities of ministries, line ministries and provincial people's committees*

Article 22 *Effectiveness*

1. This Decree is of full force and effect as from 20 December 2020 and applies to the corporate income tax assessment period year being 2020.
2. As from the effective date of this Decree, Decrees 20/2017/NĐ-CP dated 24 February 2017 and 68/2020/NĐ-CP dated 24 June 2020 regulating transfer pricing shall no longer be effective.
3. CIT declaration and accounting finalization of CIT for years 2017 and 2018:
 - (a) Taxpayers who were permitted to make an additional tax declaration file for CIT finalization of years 2017 and 2018 by article 2.2 of Decree 68 [in order to determine loan interest expenses and their corresponding amount of CIT] but who have not yet done so, are permitted to lodge same prior to 1 January 2021;
 - (b) If the tax office or another competent State agency has conducted a check or inspection and issued a conclusion dealing with tax but the taxpayer as at the effective date of this Decree has not yet requested the tax office to redetermine the amount of tax payable as referred to in Article 2.2(c) of Decree 68 referred to above, then such taxpayer may still request the tax office directly managing it to redetermine the amount of tax payable;
 - (c) If non-deductible loan interest expenses were carried forward when conducting CIT finalization for year 2019 in accordance with the provisions of Decree 68, then the term for carrying forward such expenses being a maximum five consecutive years shall be calculated from the CIT tax assessment period being year 2020. If after five years such amount of loan interest has not been fully carried forward, then it is not permissible to carry it forward to the next tax period.

Article 23 *Responsibility for implementation*

1. The Ministry of Finance shall preside of co-ordination with other relevant ministries and provincial people's committees to arrange implementation of this Decree.
2. Ministers, heads of ministerial equivalent and Government agencies, chairpersons of provincial people's committees, and entities involved are responsible to implement this Decree.

On behalf of the Government

Prime Minister

NGUYEN XUAN PHUC