

Vietnam

KPMG Observation

The Vietnamese Tax Authority has been expressly concerned about foreign-invested companies' prolonged loss-making positions as declared in their corporate income tax returns for the last two years, and indicated that the companies' transfer pricing policies were one of the potential reasons for the loss-making position. Particular questions have been raised regarding transfer pricing of transactions involving tangible goods.

The new transfer pricing regulations (Circular 66/2010/TT-BTC dated 22 April 2010) introduced a number of significant technical amendments, including "material differences" thresholds and use of median value of the range for benchmarking purposes.

Basic Information

Tax authority name

Ministry of Finance, General Department of Taxation.

Citation for transfer pricing rules

Tax Administration Law and Circular 66/2010/TT-BTC dated 22 April 2010.

Effective date of transfer pricing rules

6 June 2010.

What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of 20 percent or more, control and management; family relationship; and others.

What is the statute of limitations on assessment of transfer pricing adjustments?

Technically unlimited under the Tax Administration Law.

Transfer Pricing Disclosure Overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes, Form GCN-01/QLT is to be completed and filed with the annual corporate income tax return.

What types of transfer pricing information must be disclosed?

Related-party transactions (detailed by transacting related parties), value of related-party transactions, transfer pricing method for each of the categories of related-party transactions disclosed, transacting related parties and criterion defining the related-party relationship.

Transfer Pricing Study Overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Penalty protection, shifting of burden of proof to the tax authority, requirement in practice/expectation of authorities, mitigate the risk of the tax authority making adjustments and using secret comparables.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Must be prepared contemporaneously (created at the time of transactions and updated regularly), and submitted within 30 working days of the tax authority's written request.

What are the major elements required or recommended to be included in a transfer pricing study?

Company overview, functional analysis, description of transfer pricing policy and transaction process, industry analysis, selection and application of method.

Transfer Pricing Methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price; resale price; cost plus. Profit-based methods: profit split; comparable profits method.

Is there a priority among the acceptable methods?

None.

If there is no priority of methods, is there a "best method" rule?

Yes.

Transfer Pricing Audit and Penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Thirty working days from the date of the tax authority's written request (with a one-time extension allowed for up to 30 days where good reasons can be provided).

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

In country, appeals to the tax authority and the administrative tribunal are possible.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Underpayment penalties (associated with late payment interest charges) or evasion penalties apply, depending on the nature of the offences and circumstances.

To what extent are transfer pricing penalties enforced?

Administrative penalties apply as usual in case of transfer pricing adjustments.

Can transfer pricing penalties be reduced or removed for reasons other than documentation?

No.

Special Considerations

Are secret comparables used by tax authorities?

Yes. Under certain circumstances, the tax authority is empowered to make a presumptive assessment of tax based on its internal data.

What level of interaction do tax authorities have with customs authorities?

Low.

Are management fees deductible?

Tax deductibility of management fees is restrictive.

Are management fees subject to withholding?

Yes.

Other unique attributes?

Royalties are subject to specific rules, besides the transfer pricing rules.

Other Recent Developments

Large Enterprise Department already established under the General Department of Taxation, functions of which include transfer pricing audit.

Tax Treaty/Double Tax Resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience.

When may a taxpayer submit an adjustment to competent authority?

No formal local rules, but double tax treaties may theoretically be relied on.

May a taxpayer go to competent authority before paying tax?

No formal rules, but double tax treaties may theoretically be relied on. Payment of tax adjustments must be made following a tax audit, despite separate appeals.

Advance Pricing Agreements

What advance pricing agreement (APA) options are available, if any?

Advance rulings and probably unilateral or bilateral agreement based on double tax treaties.

Is there a filing fee for APAs?

Not applicable.

Language

In which language or languages can documentation be filed?

Vietnamese.

KPMG in Vietnam

Hanoi

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