



VIETNAM

CIRCULAR 117 ON TRANSFER PRICING

The Ministry of Finance has issued a detailed transfer pricing regulation on 19 December 2005. Key points and our comments on the likely implications of the regulation are summarised as follows:

The Regulation

- The guidelines apply to a wide range of transactions between related parties, both domestically and internationally. There is a comprehensive definition of related parties. The ownership threshold is much lower than in many other countries and this therefore significantly increases the number of companies potentially subject to the transfer pricing rules in Vietnam. Importantly, the definition also extends to certain significant supplier, customer and funding relationships between otherwise unrelated parties.
- The methodologies generally follow the principles put forward in the revised Organisation for Economic Cooperation and Development (OECD) transfer pricing guidelines and the internationally accepted “arms length principle”, but with additional prescriptive requirements and local modifications.
- The acceptable methods of determining an arm's length price are comparable uncontrolled price, cost plus, resale minus, comparable profits, and profit split.

- There is no hierarchy of methods. The most appropriate method is the method which is most suitable to transaction conditions and has the most reliable data for analysis and comparison.
- There are currently no specific penalties provided for in the guidelines. Thus for now, the penalties fall back to the general tax rules.
- Contemporaneous documentation is required to be prepared and maintained. Thus, documentation must be prepared at the time the relevant transactions take place. Prescribed documentation is required to be presented to the tax authorities (in Vietnamese) within 30 days of receiving a written request.
- An annual declaration is required to be completed in a prescribed form and filed together with the corporate income tax return. The declaration requires details of associated transactions and the methodologies adopted.
- The new rules will clearly be burdensome to taxpayers. The lack of publicly available data will make it difficult for taxpayers to find comparable transactions against which to benchmark. This is likely to present challenges when developing a transfer pricing methodology and require the use of international comparables perhaps with adjustment for local parameters.
- It is mentioned in the guidelines that the tax authorities will develop their own comparables database, which they may use for their own benchmarking.
- There is currently no mention in the guidelines of the ability for taxpayers to obtain “Advance Pricing Agreements”.

Implications for Enterprises

With the regulations now effective, the issue for taxpayers is how they will be implemented by the tax authorities and the level of resources that should be allocated to transfer pricing.

The level of transfer pricing activity by the tax authorities will largely depend upon how quickly specialist expertise develops and resources are acquired. It will also depend on how significant an issue they see transfer pricing in terms of tax revenue. Specific industries will likely be targeted if there is a perception that profits are deliberately being understated.

While the attitude and approach of the tax authorities will only become apparent over time, it is possible to make some observations on the level of attention that should be given to transfer pricing by taxpayers in Vietnam, based on the requirements of Vietnam's regulations compared to other countries and overseas experience.

While Vietnam has come late to the table in terms of enacting transfer pricing regulations it has adopted the most recent approaches and, given the increasing focus on transfer pricing internationally, Vietnam's regulations are on the stricter end of the spectrum.

The requirement for contemporaneous documentation is a key factor indicating the need for a high level of attention by taxpayers. In addition, the requirement to file an annual declaration with the corporate income tax return providing details of related party transactions and in particular the methodologies adopted is a feature generally only adopted by the more stringent tax authorities.

It is likely that as well as the specific nuances of Vietnam's regulations, individual approaches will develop within the tax authorities at provincial and national levels and a taxpayer's analysis and documentation will need to be appropriate and suited to the Vietnamese context. For example, an economic analysis prepared overseas may not be appropriate or fully acceptable in Vietnam.

While it may take some time for sufficient resources and experience to develop within the tax authorities this should not necessarily lead to complacency as once this is achieved retrospective adjustments within the standard 5 year statute of limitations, may be sought.

At this early stage, the attention given to transfer pricing should be appropriate to a taxpayer's level of risk. Consideration should be given as a first step to performing a well documented risk assessment to determine the transfer pricing risks related to the most significant associated party transactions.

AMENDED LAWS AND GUIDING DECREE, CIRCULARS ON SPECIAL SALE TAX (SST) AND Value Added Tax (VAT)

Following the issuing of the Amending Law on VAT and SST, the Government issued Decree 156 dated 15 December on amending Decree 149 on SST and Decree 158 on VAT with changes as follows:

- Certain agricultural products imported are now exempt from VAT;
- Locally manufactured and imported beer, wine and spirits will be treated in the same manner. However, there are issues regarding cost of bottles and packaging for SST purposes that need to be carefully considered.
- The different SST rates that applied depending on the percentage of imported materials used for producing cigarettes have been removed.
- Incentives for automobiles locally manufactured or assembled have also been removed.
- SST rates under the new regulations are as follows:

Products / Services	Tax Rates (%)
Cigar / Cigarette	55 – 65
Spirit / Wine	20 – 65
Beer	30 – 75
Automobiles	15 – 50
Petrol	10
Air-conditioners	15
Playing cards	40
Votive paper	70
Discotheques, massage, karaoke	30
Casinos, jackpot games, entertainment with betting	25
Golf	10
Lottery	15