

Tax - Transfer Pricing in Vietnam

Introduction

In light of the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) program, the Vietnam tax authorities have been focusing on transfer pricing. This has been done by enforcing stricter local transfer pricing regulations/rules, imposing detailed compliance requirements and invoking ever-increasing scrutiny on related party transactions.

In the context of this focus on transfer pricing, it is important that companies assess their risks and document their transfer pricing policies with respect to their Vietnam operations.

Transfer pricing challenges in Vietnam

Transfer pricing disclosure forms

All enterprises in Vietnam with related-party transactions must submit Form 01 "Information about related-party relationships and transactions" to the tax authorities together with their annual tax returns. Therefore, they must disclose information about their related-party relationships and transaction, as well as transfer pricing methodologies used and the confirmation of the arm's length value of their transactions (or otherwise the making of voluntary adjustments).

Benchmarking studies

It is important that enterprises in Vietnam ensure that prior to entering into any related-party transactions, they will comply with the arm's length standards by benchmarking their prices and margins with similar transactions concluded by independent parties. A proactive approach is recommended

to avoid self-adjustments in the corporate income tax finalization. Still, enterprises in Vietnam are required to verify the compliance with the arm's length principle of prices and margins set in their related-party transactions, as they shall disclose detailed information in the Section IV of the aforementioned Form 01.

Transfer pricing documentation

Enterprises that do not fall into any of the exempted categories should prepare, retain and upon request of the tax authorities, submit contemporaneous documentation for each tax year. If an enterprise fails to provide contemporaneous documentation, the tax authorities have the right to impose penalties including fines and to deem its taxable income by assigning profits based on their own calculations.

Thin capitalization

The Vietnam tax authorities have yet to introduce provisions on thin capitalization, but have introduced limitations on deductibility of loan interest costs, which shall not exceed 20% of EBITDA. However, thin capitalization rules, which will further limit deductibility of interest costs to specific debt to equity ratios, are expected to be introduced during 2018. It is still unclear if loan interest costs at arm's length will be allowed to exceed equity ratios thresholds which will be prescribed by the future thin capitalization provisions.

Transfer pricing investigations

Authorities have the right to use non-public information and materials in transfer pricing investigations and adjustments. If enterprises fully comply with accounting, invoicing and evidencing documentation regulations, Vietnam tax authorities shall adhere to the comparability analysis principle, transfer pricing methods and databases used by enterprises in setting threshold of revenue, costs or taxable income for the purpose of determination of tax obligations.



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How we can help

Our transfer pricing professionals can provide transfer pricing advice and services in the following areas:

- **Disclosure forms:** Review and/or preparation of the annual reporting forms to manage non-compliance risks and avoid penalties or investigations resulting from overdue related party filings
- **TP documentation:** Review and/or prepare contemporaneous documentation in accordance with the tax authorities' requirements
- **Benchmarking study:** Preparation and update of economic analyses (comparability, benchmarking) aimed at verifying prices and margins set in related-party transactions by comparing them with comparable transactions concluded by third, independent parties
- **Thin capitalization:** We can assist in preparing contemporaneous documentation studies to demonstrate that your company's financing structure and applied interest rates are consistent with the arm's length principle
- **TP investigations:** We can assist in responding to transfer pricing investigations from the Vietnam tax authorities
- **Planning:** We can help you create a robust transfer pricing strategy that is practical to implement. This planning includes providing economic analysis to support changing the current transfer pricing policy while mitigating the influence of taxation
- **Risk assessment:** We can help you monitor and revise your intercompany transactions, and recommend modifications or adjustments to your transfer pricing policies and their implementation

The abovementioned services are intended to highlight the range of services we currently provide our clients. We would be pleased to have a conversation with you to hear about your particular needs and requirements. From there, we can prepare a precise scope of work and fee proposal taking these into account.

Why Dezan Shira & Associates

Dezan Shira & Associates' transfer pricing practice specifically focuses on advising foreign companies with respect to the transfer pricing aspects of their operations and investments in China, Vietnam and throughout the Asia Pacific region. We are experts in this field and have a strong working relationship with the Vietnamese as well as overseas tax authorities at all levels.

Dezan Shira & Associates is a pan-Asia, multi-disciplinary professional services firm, providing tax, legal, audit, accounting and payroll as well as operational advisory services. Dezan Shira & Associates is in its third decade of operations and has subsequently grown to support 28 offices (12 of which are in China) and over 300 staff in our operations throughout China, Hong Kong, India, Singapore, Indonesia, and Vietnam together with our alliance partners in Malaysia, the Philippines and Thailand.

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