

# Crowe Horwath Vietnam

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According to the current trend, regulations on transfer pricing have become stricter and given more power to tax authorities to set the level of price. In addition, Vietnamese tax authorities are likely to comprehensively cooperate with tax authorities of other countries to detect and prevent cross-border transfer price issues. In our opinion, it is likely that in the coming time tax authorities will conduct many inspections on transfer pricing issues at enterprises.

In order to help the company reducing the tax risk, the company should re-check the company's compliance with regulations related to transfer pricing by using the following checklist (based on Decree No. 20/2017/ND-CP and common practices applied by tax authorities).

*Note: The item 3 of the checklist should be checked for the year from 2006 to 2017 to minimize tax risks.*

No.	Contents	Reference
1./	<p><b>Is the company exempt from the transfer pricing declaration in Section III and IV of the Form 01? (if meet all of 3 conditions below):</b></p> <p><i>(- If "Yes", no need to continue section 2 &amp; 3</i></p> <p><i>- If "No", continue section 2)</i></p> <ul style="list-style-type: none"> <li>- Taxpayer is engaged in a related-party transaction with an entity that must pay corporate income tax within the territory of Vietnam;</li> <li>- Related-party is subject to the same corporate income tax rate as applied to the taxpayer; and</li> <li>- Neither of them is not offered the corporate income tax incentive within a specified tax period.</li> </ul>	Point 1, Article 11, Decree No. 20/2017/ND-CP
2./	<p><b>Is the company exempt from the transfer pricing documentation requirements? (if meet 1 of 3 conditions below):</b></p> <p><i>(- If "Yes", no need to continue section 3</i></p> <p><i>- If "No", continue section 3)</i></p>	Point 2, Article 11, Decree No. 20/2017/ND-CP
2.1	Taxpayer is engaged in a transfer pricing transaction but the total revenue arising within a specified tax period is less than VND 50 billion and total value of the related-party transactions arising within that specified tax period does not exceed VND 30 billion.	
2.2	- Taxpayer performing business activities by exercising routine functions, neither generates any revenue nor incurs any cost from operation or use of intangible assets	

No.	Contents	Reference
	<ul style="list-style-type: none"> <li>- Generate sales of less than VND 200 billion</li> <li>- Apply the ratio of net operating profit before loan interest and corporate income tax relative to sales revenue:               <ul style="list-style-type: none"> <li>(*) Distribution: At least 5%</li> <li>(*) Manufacturing: At least 10%</li> <li>(*) Toll manufacturing: At least 15%</li> </ul> </li> </ul>	
2.3	Taxpayer already entering into Advance Pricing Agreement has submitted the annual report in accordance with legislation on the Advance Pricing Agreement.	
<b>3./</b>	<b>Tax authorities tend to set the level of price cases</b>	
3.1	<p>“Pricing method” is not consistent between Declaration form and Transfer pricing documentation. Example: Pricing method in Declaration form is Method 3 but in Transfer pricing documentation is Method 5.</p>	Common practices applied by tax authority
3.2	<p>Transfer pricing documentation does not present the priority order in selecting comparison data as follow:</p> <ul style="list-style-type: none"> <li>- Firstly: National and international information is publicly available</li> </ul>	Common practices applied by tax authority

No.	Contents	Reference
	<ul style="list-style-type: none"> <li>• Information made available to the public by ministries or sectoral departments, or other official information sources such as General Statistics Office of Vietnam.</li> <li>• Corporate information or data publicly released on stock exchanges</li> <li>• Information or data available on domestic and international commodity or service exchanges</li> </ul> <p>- Secondly: Database provided by information business organizations, including financial information and corporate data collected by these organizations from information sources which are publicly released, retained, updated, managed or used (Example: BvD, Reuters...).</p>	
3.3	The explanation of database used in Transfer pricing documentation is not adequate enough, therefore tax authorities reject transfer pricing documentation.	Common practices applied by tax authority
3.4	Taxpayers do not provide or insufficiently provide information or do not submit the Form No.01 given in the Appendix to Decree No. 20/2017/ND-CP.	Point 3, Article 12, Decree No. 20/2017/ND-CP
3.5	Taxpayers provide insufficient information required in the transfer pricing documentation package referred to in the Form No. 02, 03 given in the Appendix to Decree No. 20/2017/ND-CP.	Point 3, Article 12, Decree No. 20/2017/ND-CP
3.6	Taxpayers do not present the transfer pricing documentation package and data, evidencing documents and materials used as the basis for comparability analysis and redetermination of prices in the transfer pricing documentation package at the tax authority's request within the permitted time limits referred to Decree No. 20/2017/ND-CP.	Point 3, Article 12, Decree No. 20/2017/ND-CP

No.	Contents	Reference
	<i>(The time limit for submission of the transfer pricing documentation package is no longer than 30 working days from the date of receipt of the tax authority's request. Where sound reasons are provided by taxpayers, the submission deadline shall be extended only once to no longer than 15 working days as from the expiry date).</i>	
3.7	Taxpayers use inaccurate or unreliable information about independent information to carry out comparability analysis, declare and determine the transfer price.	Point 3, Article 12, Decree No. 20/2017/ND-CP
3.8	Taxpayers rely on materials, data and evidencing documents which are illegitimate, invalid.	Point 3, Article 12, Decree No. 20/2017/ND-CP
3.9	Taxpayers are of unclear origin to determine the level of price, profit margin or profit allocation rate applicable to related-party transactions.	Point 3, Article 12, Decree No. 20/2017/ND-CP
3.10	Taxpayers commits any violation against transfer pricing regulations set out in Article 11 "Safe harbor for transfer pricing documentation".	Point 3, Article 12, Decree No. 20/2017/ND-CP

If you need further discussion the above checklist, please contact us via mail or phone.