

CTAC-EJ 越南转让定价新闻速递- 2020.11

[税务快讯]

1. 转让定价法规更新

2020年11月5日，越南政府发布了第132/2020/ND-CP号法令（“第132号法令”），制定了关于越南转让定价的新规则。第132号法令将于2020年12月20日起施行，并且适用于2020会计年度。

第132号法令将取代迄今实施约3年的第20/2017/ND-CP号法令（“第20号法令”），第 68/2020/N D-CP号法令（“第68号法令”）、第41/2017/TT-BTC号法令（“第41号法令”），主要修改事项如下：

第20/2017/ND-CP号法令 (现行第20号法令)	第132/2020/ND-CP号法令 (第132号法令)
1 扩大特殊关系范围	
<ul style="list-style-type: none"> 10种特殊关系形式略。 	<ul style="list-style-type: none"> 11种特殊关系形式 企业转让或获得企业出资资本25%以上的交易；与管理或控制企业的个人或与本条g项中列出的个人发生所有者权益10%以上金额的资金借贷交易
2 认可使用常用数据库	
<ul style="list-style-type: none"> 受限于信息事业机关IBR (Information Business Organizations) 提供的数据库 凡违反本法令规定的，适用税务局的数据库管理风险及设定转让定价 	<ul style="list-style-type: none"> 明确常用数据库概念的定义 经济分析中使用的财务及经济数据信息来源扩大至IBR提供的常用数据库 常用数据库来源于经过纳税人和税务局双方验证的比较资料 接受常用数据库作为开展经济分析的验证来源。尽管如此，如果纳税人被认定为没有完全遵守相关条件，税务局仍保留使用其内部数据库评估和实施转让定价调整的权利
3 变更利息的税前抵扣限额	
<ul style="list-style-type: none"> 可抵扣的利息费用限额 EBITDA (=税前利润+折旧费+利息费用) 的20%，超过限额的金额不得在以后征税期间的应纳税所得额中调成（抵扣）（永久性差异） 利息费用=总利息费用 	<ul style="list-style-type: none"> 可抵扣的总利息费用限额为EBITDA的30% 利息费用=净利息费用（总利息费用 - 利息收入）

第20/2017/ND-CP号法令 (现行第20号法令)	第132/2020/ND-CP号法令 (第132号法令)
<ul style="list-style-type: none"> ● 超过限额的金额在以后征税期间的应纳税所得额中不能被扣除（永久性差异） ● 无对应事项 	<ul style="list-style-type: none"> ● 未抵扣完的利息费用可以从第二年起5年内进行结转扣除 ● 追溯适用（2017年~2018年） ● 根据之前第20号法令计算的2017年及2018年的计入费用抵扣的利息费用，可以 ①按照EBITDA的30%作为利息费用限额；②适用于净利息费用部分可追溯调整 ● 因上述追溯需要更正申报企业所得税的公司应在2020年12月31日前完成更正申报 ● 该规定不适用于金融机构相关法律规定的金融机构借款、保险业相关法律规定的保险公司借款、国家机关的ODA借款.....以下略
4 变更独立交易区间（下四分位值）的计算方式	
<ul style="list-style-type: none"> ● 独立交易区间：从下四分位到上四分位（第25个百分点至第75个百分点范围内的四分位区间统计方法）。 	<ul style="list-style-type: none"> ● 独立交易区间：第35个百分点至第75个百分点
5 国别报告相关条款	
<ul style="list-style-type: none"> ● 纳税人为越南最终控股母公司（且在一个纳税年度全球合并收入超过18兆越南盾）时，国别报告要与本地文档一起再企业所得税申报期限内制定并准备 ● 无对应事项 ● 如果境外母公司在其本国被要求提交国别报告，则越南子公司也需要在越南提交国别报告 	<ul style="list-style-type: none"> ● 纳税人为越南最终控股母公司（且在一个纳税年度全球合并收入超过18兆越南盾）时，提交国别报告的提交期限为母公司最终会计年度结束后12个月。 ● 如果境外母公司的国别报告通过自动情报交换（AEOI）机制向越南税务机关提交，则越南子公司无需在当地提交国别报告。 ● 符合下列情况则需要从该会计年度终了后的12个月内在越南当地提交国别报告： <ol style="list-style-type: none"> ①. 境外母公司所在国与越南签署了国际税收协定，但尚未与越南就自动情报交换机制签署多边主管当局协议（MCAA） ②. 境外母公司所在国已与越南签署多边主管当局协议（MCAA），但已暂停自动情报交换机制或未自动向越南提供国别报告 ③. 如果同一境外集团在越南设立两个以上公司，则必须向税务当局通知代表境外母公司提交国别报告的公司

2. 主要修订内容解读

- **认可进行经济分析时使用常用数据库**

针对在税务调查阶段经常作为争议焦点提出的是否可以使用外部常用数据库问题，补充了明确认可使用外部常用数据库的条款。纳税人未完全满足法律规定的条件时税务局仍可以使用内部数据库进行征税的限制性条款仍有效，因此有必要使用具有公信力的全球常用数据库进行合理性较高的经济分析。

另一方面，目前尚无明确具体分析方式的细则，因此未来对于在调查过程中是否符合法律规定条件（例如，选择可比公司的流程、可比期间等）的分歧也可能发生。

- **修改独立交易区间范围（下四分位值）**

上调下四分位值，可以解释为税务局提高调查对象公司的预期利润水平的意图，并据此进行转让定价调查及征税。虽然这与全球标准略有差异，但首先为了确保符合现行新修订的内容，企业在制定转让定价报告书或应对转让定价调查时需要特别留意。

根据新法令计算独立交易区间范围的举例

	A	B	C	D
1				
2				
3				
4		Decree 20	Decree 132	
5	1.00%	계산공식		
6	1.25%	"= Quartile (A5:A17,3)"	"=Percentile(A5:A17,0.75)"	
7	1.25%	"= Quartile(A5:A17,2)"	"=Percentile(A5:A17,0.5)"	
8	1.50%	"=Quartile(A5:A17,1)"	"=Percentile(A5:A17,0.35)"	
9	1.50%			
10	1.75%	정상가격범위		
11	2.00%	2.25%	2.25%	
12	2.00%	2.00%	2.00%	
13	2.15%	1.50%	→	1.55%
14	2.25%			
15	2.50%			
16	2.75%			
17	3.00%			
18				

以上例子可以验证得出，随着独立交易区间范围的变更，下四分位值（第35个百分点）将会提高；独立交易区间计算结果对应的范围越大，修订后的下四分位值与现行相比，其上升幅度将更大。

CTAC-EJ以韩国、越南等各国的多种经验及事例为基础，提供专业的转让定价服务，如需咨询，请随时联系我们。

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[以下为附件]

附件. [Decree 132/2020/ND-CP dated 05th November 2020 - Regulations on tax administration for enterprises with related party transactions] 主要内容概要（英文）

Related parties: Add 1 more kind of related party:

Point 1/ The enterprise has transactions of transferring or receiving capital contribution of at least 25% of the contributed capital of the owner of the enterprise in the tax period; to borrow or lend at least 10% of the owner's equity at the time of the transactions in the tax period with individuals who is responsible for operating and managing the enterprise or with an individual in a relationship as prescribed in point g this clause.

(for ref.)

Point g/ Both enterprises are managed or controlled in terms of their personnel, financial and business activities by individuals, each of whom is in one of the following relationships with the others such as a wife, husband, natural/foster father, natural/foster child, natural/foster older/younger sibling, brother/sister-in-law, maternal/paternal grandfather/grandmother, maternal/paternal grandchild, and maternal/paternal aunt, uncle and nibling;

The use of commercial databases for comparables

- Commercial databases are explicitly referred to as a verified source of comparables for both taxpayers and tax authorities.
- **Accepting commercial databases as a verified source for conducting benchmarking studies.** Nevertheless, the **tax authorities retain the right and power to use their internal databases for assessing and imposing TP adjustments where a taxpayer is deemed not to have fully satisfied the relevant compliance requirements.**

Increase and application of the deductibility cap on interest （adjusted in Decree 68/2020 dated 24th June 2020）

- The **cap on tax deductibility of interest increases from 20% to 30% of EBITDA**. The cap applies to net interest expense （i.e. interest income is offset against interest expense before comparing with the cap）.
- Non-deductible interest can be carried forward to subsequent tax years and deducted if the net interest expense/EBITDA ratio is below 30% in those years. The **time limit for such carry forward is five years**.

Taxpayers shall make **additional statements to their CIT statements in 2017 and/or 2018 for determining loan interest costs and CIT amounts payable （if any） and submit them to their supervisory tax authorities before January 01, 2021**. Such supervisory tax authorities shall perform tax administration tasks and inspect received CIT statements in accordance with the Law on tax administration and its guiding documents.

- Certain types of financing are now excluded from the cap, including official development assistance

(“ODA”) loans, various preferential loans made by the government, and loans made for implementing national programs and state social benefit policies.

Revision of the arm’s length range

- The arm’s length range is proposed to be from the **35th percentile to the 75th percentile** (as opposed to that under Decree 20 which is from the 1st quartile to the 3rd quartile, equivalent to the 25th to 75th percentile) . As such, the lower boundary is proposed to be increased by 10%.

New guidelines on the Country by country report (“CbCR”)

Some major changes are proposed for CbCR, including:

- For a Vietnamese Ultimate Parent Company (“UPC”) with worldwide consolidated revenue in a fiscal year from VND18,000 billion above, the CbCR is required to be filed with the Vietnamese tax authority within 12 months from the relevant fiscal year-end.
- For Vietnamese companies having overseas UPC, the CbCR is not required to be filed locally in case such CbCR is made available to the Vietnamese tax authorities through the automatic exchange of information (“AEOI”) procedure.
- A company is required to submit the CbCR locally within 12 months from the relevant fiscal year-end in the following circumstances:
 - o Its overseas UPC is not obliged to file the CbCR in its respective jurisdiction.
 - o The jurisdiction, where the UPC resides, has an international tax treaty with Vietnam but has not signed the Multilateral Competent Authority Agreement (“MCAA”) on the AEOI with Vietnam as at the CbCR submission deadline.
 - o The jurisdiction, where the UPC resides, has signed the MCAA, but has suspended the AEOI mechanism or the CbCR has not been provided automatically to Vietnam.
 - o In cases where there are more than one company of the same group in Vietnam, the UPC has to notify the Vietnamese tax authorities of the entity (i.e., Vietnamese local taxpayer) that is appointed to file the CbCR on behalf of the UPC. Such notification has to be submitted to the Vietnamese tax authority before or on the fiscal year end date of the UPC.

Effective date

Decree 132/2020 takes effect from **December 20, 2020 and apply from fiscal year 2020.**

Decree 20/2017/ND-CP dated February 24, 2017 and Decree 68/2020 / ND-CP dated June 24, 2020 of the Government on tax administration applicable to enterprises with related party transactions will expires on the effective date of Decree 132.