

The prevailing Vietnamese transfer pricing regulations (Circular 66/2010/TT-BTC) require that enterprises submit a transfer pricing declaration form together with the annual corporate income tax return, within 90 days from the end of the financial year.

The format of the transfer pricing declaration form has been changed twice since it was first introduced in 2006. These forms are:

- Form GCN-01/HTQT attached as an appendix to Circular 117/2005/TT-BTC, effective for the financial years 2006 to 2009;
- Form GCN-01/QLT attached as an appendix to Circular 66/2010/TT-BTC, effective for the financial years 2010 to 2014; and
- Form 03-7/TNDN attached as an appendix to Circular 156/2013/TT-BTC, effective for the financial year 2014 onwards.

The required disclosures in the transfer pricing declaration form include the types and values of transactions, transfer pricing method/s, name/s of related party/ies, nationality/ies, tax code (if applicable) and their addresses. In the latest form effective 1 January 2014 (Form 03-7/TNDN), self-assessed adjustments are required. While the information in the forms is rather straightforward the documentation required to support the information disclosed in the form may be complicated.

### **Getting started**

The following steps are common practices which enterprises normally perform to prepare their annual transfer pricing declaration form:

1. Review transfer pricing declaration form guidance provided in the prevailing transfer pricing regulations (i.e., Circular 66/2010/TT-BTC) to understand the principles in preparing the declaration form.
2. Review the disclosures on related party transactions in the audited financial statements and ensure that the breakdown/details of such disclosures are available and verified;
3. Review accounting records and legal agreements to identify any additional related party transactions

occurring during the financial year but not yet disclosed in the audited financial statements.

4. Prepare the transfer pricing declaration form using the relevant form for the covered period (i.e. Form 03-7/TNDN for FY 2014 onwards).
5. Review supporting documents (transfer pricing documentation or benchmarking analysis, legal agreements etc.) to identify appropriate transfer pricing methods to declare for each transaction.
6. Input the information in the transfer pricing declaration form into HTKK tax declaration system to generate an electronic copy of the transfer pricing declaration form and submit it to the required bar codes, together with the annual corporate income tax form to the tax authorities within the deadline.

### **What and how to disclose**

#### **1. Disclosure of related parties and relation**

##### Related party

In principle, companies that have business transactions during the year with associated enterprises are obliged to declare those transactions and those associated enterprises in the annual transfer pricing declaration form.

In some cases, a transaction may involve several parties with different functions/roles, such as the seller, buyer, guarantor, payer, shipper, intermediary procurement centre, quality checker, and so. Thus, it can be challenging to determine whether the various parties a company is transacting with are considered “related parties” under Vietnamese regulations and whether one or several legs of a transaction are “related party transactions that need to be disclosed in the declaration form.

From a practical point of view, enterprises, thus need to carefully review their legal contracts, invoices and other accounting documents to determine which parties they transact with during the year are considered “related parties” within the purview of the Vietnamese transfer pricing regulations.

##### Relation

Under prevailing Vietnamese transfer pricing regulations, the definition of “related party” does not only include parties with equity relationship (either direct or indirect) but also companies which have management relationship “(e.g. companies which have the same directors or whose directors are family members, among others.) as well as economic relationships (e.g., one entity

controls more than 50% of the total value of raw materials, supplies or inputs used for production or trading of output of the other entity; or controls more than 50% of turnover of any product type of the other entity; or two entities have agreed to conduct business co-operation on the basis of a contract).

The relationships specified in the annual transfer pricing declaration form follow the 13 types of related party relationships under the Vietnamese transfer pricing regulations or paragraphs (a) to (m) in section 4.3, Article 3 of Circular 66. Based on such an enumeration of the type of relations, the enterprise will indicate the relationship type per related party by checking the corresponding column in Part A of Form 03-7/TNDN. There is no official guidance on how many relationship types an enterprise can mark for each related party although the electronic form in the updated HTKK software accepts one or more relationship type selections for each related party declared.

#### **2. Disclosure of related party transactions and values**

Enterprises are required to declare related party transactions under the section, “Goods or Services” and their corresponding values under “Income or Expenses.”

It is noted that Circular 66 requires enterprises to declare the values of the disclosed transactions relating to **income and expense as recorded in the profit and loss account** during the financial year. Considering that these values may vary depending on the applicable accounting standards, enterprises should ensure that the declared values are in accordance with the applicable transfer pricing regulations and verifiable.

The declared transactions are also categorized based on their nature. Thus, enterprises should ensure that the nature indicated in the transfer pricing disclosure form is consistent with what is stated in the contracts, invoices, correspondence and other supporting documents pertaining to the same transaction.

Care should be made to ensure that any discrepancy between the nature and values of the transactions declared in the transfer pricing declaration form and those stated in the accounting and legal documents is minimized or removed to avoid the risk of being challenged during a tax audit.

#### **3. Disclosure of transfer pricing methods**

Circular 66 provides that enterprises can declare one of the six transfer pricing methods for each of the declared transactions. In the event that the enterprise has transactions that are inter-related, they may be aggregated under a common transfer pricing

method. The six methods include Comparable Uncontrolled Price (CUP) Method, Resale Price Method, Cost Plus Method, Comparable Profits Method, Profit Split Method and Other Methods which are codified in the form as “PP1” to “PP6,” respectively.

Which TP Method should be declared will depend on the most suitable method in determining the arm’s length price considering the circumstances of the transaction. In practice, the most appropriate TP method may be different from the method at which the price is initially set. In all cases, it is recommended that the selection of the TP method should be based on a reliable transfer pricing analysis and is backed up by sufficient supporting documents to justify its selection.

The below case provide samples of common issues which enterprise encounter in declaring the TP method.

**Case 1:** An enterprise declares PP1- CUP Method for a purchase transaction because it keeps the quotation of the same products from independent suppliers and/or purchase prices from dependent transactions which could be used to compare with the tested transaction. A detailed analysis should be prepared for presentation during a tax audit. A mere assumption or general description of the transaction without any supporting evidence should not be used as a basis to declare PP1.

**Case 2:** An enterprise declares PP3- Cost Plus Method as the TP method for its selling transaction to a related party. Tax auditors may require the enterprise to provide the following: detailed calculation sheet of the price, standard/ actual costs incurred and a benchmarking study for the profit margin applied. If the enterprise fails to provide these documents, it may be a basis of further challenge and possible TP adjustment.

**Case 3:** An enterprise declares its purchase and sales transactions to a related party using PP4- Comparable Profits Method in the TP form. This is because it has a detailed report in which a benchmarking study has been conducted to prove that its overall profit margin is within the market range.

In order to properly substantiate information disclosed in the transfer pricing declaration form and mitigate/remove challenges to it by the Vietnam tax authorities, enterprises are highly recommended to cover its related party transactions with a transfer pricing documentation report. Such will provide a basis for key information disclosed in the form such as nature and value of related party transactions, the selection of the most appropriate TP Method and the application of the most appropriate method. Thus, the method/s presented in the

transfer pricing documentation is/are normally disclosed in the transfer pricing declaration form. At the very least, a benchmarking study should be available to support the information disclosed in any submitted transfer pricing declaration Form.

#### 4. Disclosure of reassessed value

The latest transfer pricing declaration Form (i.e. Form 03-7/TNDN) requires that for each declared transaction value, enterprises need to assess the price using the declared TP method and provide the reassessed value if any. Any additional net income arising from these assessments will be declared in Item 1.5 – “Taxable income Increase adjustment due to market price reassessment” of Form 03/TNDN.

In the event an enterprise chooses to declare a reassessed adjustment (e.g. year-end profit adjustment), the adjustment should be substantiated with a technical analysis but there is no guarantee that there would be no transfer pricing adjustment at a later stage.

In the HTKK software, enterprises are required to declare the reassessed value if it is the same as the original value instead of leaving the reassessed value blank if there is no declared adjustment.

#### Submission and deadlines

Enterprises are required to submit the annual transfer pricing disclosure form within the same timeline as that of the annual corporate income tax return, which is 90 days from the financial year end.

In fact, several enterprises have failed to comply with this and may not be aware that this requirement has been effective since 2006 (the effective year of the Circular 117/2005/TT-BTC). In several instances, completed tax audit cases for previous years were revisited for transfer pricing purpose due to transfer pricing was not covered in the previous audit or the transfer pricing issue was mentioned in the audit minute without any conclusion. In these cases, failure of some companies in compliance with the annual declaration form was the basis of transfer pricing adjustments. Thus, enterprises are recommended to prepare and submit transfer pricing disclosure forms for prior years starting from 2006, if they have not done so. This should be done as soon as possible given that submission of any transfer pricing disclosure form after receipt of audit notification may be denied.

#### Our recommendations

It is recommended that enterprises ensure compliance with rules on transfer pricing disclosure forms under applicable Vietnam transfer pricing regulations. At a minimum, enterprises should ensure the following:

- The lodgment of transfer pricing disclosure forms must be done in a timely manner (i.e., within 90 days from end of financial year and as soon as it could be for the years from 2006 to 2014).
- Detailed breakdown of the declared values and sufficient supporting documentation for the declared transactions must be prepared for submission during a tax audit.
- Preparation of a transfer pricing documentation to support the disclosures made in the form; or at the very least, a benchmarking study using the transfer pricing method/s declared in the form must be conducted and ready for submission upon request.

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