

Vietnam Transfer Pricing Guide 2024

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1. Legal Basis

Is there a legal requirement to prepare TP documentation?

Yes.

Since when does a TP documentation requirement exist in your country?

2006.

Adoption of the OECD or UN legislation in your country?

OECD.

Is your country a member of the OECD, Inclusive Framework, or other OECD groups (e.g. BEPS)?

Yes.

Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?

Yes.

Which TP methods may be applied?

TP methods applied are based on the OECD TP methods and include: Comparable Uncontrolled Price ("**CUP**"); Resale Price method ("**RPM**"); Cost Plus method ("**CPM**") Transactional Net Margin Method ("**TNMM**"); and Profit Split ("**PS**") methods (Decree 132/2020/ND-CP, Article 13/14/15).

Is there a stated preference for any particular TP methods?

Selection is based on the most appropriate method approach to provide the most reliable result.

Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?

LF, MF and CbCR are implemented.

Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status

According to Decree No.132/2020/ND-CP which took effect from 20 December 2020:

- i. Declaration of Information on related parties and related party transactions: prepared by using the in the Appendix I to this Decree;
- ii. Local file (LF): prepared by using the in the Appendix II to this Decree;
- iii. Master file (MF): containing information relevant for global corporations, prepared by using the Form given in the Appendix III to this Decree; and
- iv. Country-by-Country report (CbCR) of an ultimate parent company: prepared by using the Form given in the Appendix IV to this Decree.

Is there any statute of limitation period?

The statute of limitations for tax audit/assessment is generally ten years, and five years for penalties related to underpayment of tax.

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Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general.

In addition, there are further articles of law, legislative regulations, administrative circulars and case law applicable to TP in general.

These include the following laws:

- › the Law on Government Organisation dated 19 June 2015;
- › the Law on Tax Administration dated 13 June 2019;
- › the Law on Corporate Income Tax dated 3 June 2008; the Law on Revision of certain articles of the Law on Corporate Income Tax dated 19 June 2013;
- › The Law on amending some Articles of tax laws dated 26 November 2014;
- › the Law on Enterprises dated 17 June 2020; and
- › the Law on Accounting dated 20 November 2015.

2. Master File (MF)

What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?

The MF preparation may be exempted if it falls under one of the following conditions:

- › The Taxpayer's annual revenue does not exceed VND 50 billion and the total value of the related party transactions does not exceed VND30 billion;
- › The Taxpayer having Advance Pricing Agreement ("**APA**") has submitted an annual APA report in accordance with the APA regulations. For those related party transactions which are not covered by the APA, Taxpayers are obliged to comply with the aforesaid TP documentation requirements; or
- › Threshold of profit margin for Taxpayers who perform routine functions and does not generate revenue or incur expense from exploitation and use of intangibles: the Taxpayer's annual revenue does not exceed VND 200 billion and the ratio of net operating profit before interest and

CIT to net sales revenue (i.e. operating margin) exceeds: 5% for distributors; 10% for manufacturers; and 15% for toll manufacturers.

Euro Equivalent

EUR 1,876,649.

From which year does this obligation exist?

From the year that the threshold is met.

When does the Master File need to be available?

The TP Documentation package must be prepared before the time of filing CIT returns each year, and must be stored and presented to meet the demand for information requested by tax authorities. When a tax authority carries out TP audit, the time limit for the provision of the TP Documentation package shall not exceed 15 working days from the date of receipt of a request from the provision of information.

When does it need to be submitted?

It shall be filed no longer than 30 working days upon written request by the tax authority, in the Consultation Procedure prior to the audit. Where a reasonable basis is provided, the submission deadline is extended only once to no longer than an additional 15 working days upon the expiry date.

Does the MF have to be prepared in the relevant local language?

Yes.

Is documentation in English permissible?

Yes, if the tax audit approves. But usually, the Taxpayer has to translate it into the local language.

What are the possible consequences of not having the MF available?

The Tax authority has the right to determine the price level, profit rate, profit allocation ratio, taxable income, or the amount of CIT payable

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for Taxpayers who fail to comply with regulations on declaration, identify related party transactions, or provide incomplete or insufficient information and data for determining the prices of related party transactions.

Penalties?

Yes.

Imprisonment?

No.

Shifting of the burden of proof?

Yes.

Other?

Yes.

To what extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart?

In general, consistent with OECD requirements.

3. Local File (LF)

What is the threshold requirement for the obligation to prepare a LF?

LF preparation may be exempted if it falls under one of the following conditions:

- › The Taxpayer's annual revenue does not exceed VND 50 billion and the total value of the related party transactions does not exceed VND 30 billion;
- › Taxpayer having Advance Pricing Agreement ("**APA**") has submitted annual APA report in accordance with the APA regulations. For those related party transactions which are not covered by the APA, Taxpayers are obliged to comply with the aforesaid TP documentation requirements; or
- › Threshold of profit margin for Taxpayers who perform routine functions and does not generate revenue or incur expense from exploitation and use of intangibles:

the Taxpayer's annual revenue does not exceed VND200billion and the ratio of net operating profit before interest and CIT to net sales revenue (i.e. operating margin) exceeds:

- › + 5% for distributors;
- › + 10% for manufacturers; or
- › + 15% for toll manufacturers.

Euro Equivalent

EUR 1,876,649.

From which year does this obligation exist?

From the year that the threshold is met.

When does the LF need to be available?

The TP documentation package must be prepared before the time of filing CIT returns each year, and must be stored and presented to meet the demand for information requested by tax authorities. When a tax authority carries out TP audit, the time limit for provision of the TP documentation package shall not exceed 15 working days from the date of receipt of request from provision of information.

When does the LF need to be submitted?

Shall be submitted:

- No later than 15 working days upon receipt of a request from the tax authorities, in a tax audit; or
- No longer than 30 working days upon written request by the tax authority, in the Consultation Procedure prior to the audit. Where reasonable grounds are provided, the submission deadline is extended only once to no longer than an additional 15 working days upon the expiry date.

Does the LF have to be prepared in the relevant local language?

Yes.

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Or is documentation in English permissible?

Yes, only if the tax audit approves. But usually, the Taxpayer has to translate it to local language.

What are the possible consequences of not having the LF available?

The Tax authority has the right to determine the price level, profit rate, profit allocation ratio, taxable income, or the amount of CIT payable for Taxpayers who fail to comply with regulations on declaration, identify related party transactions, or provide incomplete or insufficient information and data for determining the prices of related party transactions.

Penalties?

Yes.

Imprisonment?

No.

Shifting of the burden of proof?

Yes.

Other?

Yes.

To what extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?

In general, consistent with OECD requirements.

4. Country-by-Country Reporting (CbCR)

What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?

The CbCR is applicable for a Vietnamese Group having consolidated global revenue of VND 18,000 trillion (i.e. EUR 675 million approx.) and above in the respective tax period.

From which year does this CbCR obligation exist?

From the year that the threshold is met.

Are Taxpayers required to notify of CbCR filing in your country? If yes, when and how do the tax authorities need to be notified?

For enterprises with a UPE in Vietnam and annual consolidated global revenue of VND18,000 trillion or more, there is an obligation to prepare and submit the Country-by-Country Report (CbCR) to the Vietnamese tax authority no later than 12 months from the end of the financial year.

- › For an enterprise with a foreign UPE, the submission of the CbCR to the Vietnamese tax authority is not mandatory if the Vietnamese tax authority can receive the CbCR through the Automatic Exchange of Information ("AEOI") mechanism.
- › However, Vietnamese Taxpayers are required to submit the CbCR to the Vietnamese tax authority within 12 months from the end of the financial year of the UPE in the following cases:
 - (i) The country where the UPE is a resident has an effective international tax agreement ("ITA") with Vietnam but has not signed the Multilateral Competent Authority Agreement ("MCAA") related to AEOI with Vietnam at the deadline for CbCR submission.
 - (ii) The country where the UPC is a resident has signed the MCAA with Vietnam but has suspended AEOI or does not automatically provide the CbCR to Vietnam.
 - (iii) If the group with more than one subsidiary in Vietnam, the UPE must notify the Vietnamese tax authority in writing about the subsidiary designated by the UPE to submit the CbCR to the Vietnamese tax authority.
- › A Vietnamese Taxpayer is not obligated to submit a CbCR to the Vietnamese tax authority if the UPE appoints an organisation to submit the CbCR to the tax authority of the host country on its

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behalf (appointed organisation) no later than 12 months from the financial year-end of the UPE, and the following conditions are met:

- (i) The jurisdiction of residence of the appointed organisation legally requires the submission of the CbCR.
 - (ii) Has an MCAA with Vietnam, and the jurisdiction is a signing party at the time of the CbCR submission deadline.
 - (iii) Does not suspend the AEOI and can provide a CbCR to the Vietnamese tax authorities.
 - (iv) The appointed organisation provides a written notification on the appointment to submit a CbCR to the jurisdiction of its residence no later than the financial year-end of the UPE.
 - (v) The Vietnamese Taxpayer submits the written notification to the Vietnamese tax authority.
- › For Vietnamese businesses with a foreign UPE, compliance with international tax agreements will be applicable if the host country's regulations do not mandate the submission of CbCR.

If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?

At the latest, within 12 months after the end of the UPE's fiscal year.

Are there any deviating submission deadlines for the secondary mechanism?

No.

Does your country have a requirement that the financial figures of the group need to be aligned with?

No.

Does your country have a requirement that the financial years of the group need to be aligned with?

No.

Where is the CbCR to be submitted?

The CbCR is to be submitted electronically to the Tax authorities Office.

How is the CbCR to be submitted, specifically, is there any prescribed standard?

Not required.

What are the possible consequences of not having the CbCR available?

Subject to administrative sanctions.

Penalties?

Yes.

Imprisonment?

No.

Shifting of the burden of proof?

Yes.

Other?

Yes.

To what extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?

In general, consistent with OECD requirements.

Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbCR ("CbCR MCAA")?

No.

Did your country enter into other information exchange agreements, such as on a bilateral basis?

No.

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Can a Taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?

Yes.

5. TP disclosure in tax return or TP specific returns

Is there a threshold for Related Party Transactions?

No.

Does a Taxpayer need to disclose information regarding TP documentation in his tax return?

No.

When a Taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect TP, what could be the legal consequences?

The Tax authorities shall have authority to set the level of price, profit margin or profit allocation rate which is used for tax assessment or setting thresholds for taxable revenue or corporate income tax amount payable with respect to Taxpayers engaged in the TP within a specified tax period, based on information, data and analysis of assessment of the tax authority.

What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?

The Tax authorities shall have authority to set the level of price, profit margin or profit allocation rate which is used for tax assessment or setting thresholds for taxable revenue or corporate income tax amount payable with respect to Taxpayers engaged in the TP within a specified tax period, based on information, data and analysis of assessment of the tax authority.

Does a Taxpayer need to file TP specific returns?

Yes.

Please state the filing form number and name.

Form "Information about interrelationships and related party transactions" issued under Appendix I of Decree 132/2020/ND-CP.

What would be the filing deadline?

The TP declaration form is submitted together with the annual CIT return, no later than the last day of the 3rd month from the end of the calendar year or fiscal year.

What would be the penalties for non-compliance?

Applicable penalties are:

- VND 16 million to VND 30 million (EUR 640 to EUR 1200) for failure to submit the TP specific returns; or
- 20% of the under declared tax amount or the tax amount that has been exempted, reduced, or refunded in case of incorrect declaration leading to a lack of tax payable or an increase in the tax amount to be exempted, reduced, or refunded for related party transactions.

6. Benchmarking

Is there any local guidance or requirement with regard to the preparation of a benchmark study?

No.

Is there any stated preference for local benchmarks?

No.

Are there any materiality thresholds that apply to the requirement to have a benchmark study available?

No.

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7. Year-end, secondary, and corresponding adjustments

Are year-end/ secondary/ corresponding adjustments permissible?

Yes, year-end adjustments are permissible.

However, year-end adjustments that reduce taxable income are not acceptable and may be subject to audit in practice.

Does the Taxpayer have to comply with any specific features or guidance?

Yes. Tax authorities will accept year-end adjustment if it is submitted before they issue a tax audit decision to Taxpayers.

8. TP Audit and Dispute Resolution Mechanisms

What are currently the main TP areas of scrutiny by the tax authorities in your country?

Businesses in finance and insurance, Textile and apparel manufacturing enterprises; Enterprises manufacturing automobile components; and Sewing processing.

Based on your experience, are joint or multilateral audits initiated and carried out?

Yes.

Does the Taxpayer have the option to apply for bilateral or multilateral APAs?

Yes.

Are there any restrictions?

Only according to the content of the APA and regulations requiring implementation and reporting.

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