

Newsbrief

19 November 2020

Decree 132/2020/NĐ-CP

Guiding tax administration for enterprises with related party transactions (replacing Decree 20/2017/NĐ-CP)

Notable points in Decree 132/2020/NĐ-CP (“Decree 132”)

On 5 November 2020, Vietnamese Government issued Decree 132/2020/NĐ-CP, Guiding tax administration for enterprises with related party transactions, replacing Decree 20/2017/NĐ-CP and Decree 68/2020/NĐ-CP. This tax newsletter will summarize some notable points in Decree 132.



- 1. Changes in related party definition**
- 2. Adjustment to the arm’s length range**
- 3. Update regulations on interest expenses in accordance with Decree 68/2020/NĐ-CP**
- 4. New rules on country by country reports (“CbCR”)**
- 5. Revisions to the timeline to provide TP report during tax audit and the exemption case**
- 6. Effective date**

1. Changes in related party definition

	Decree 132/2020/NĐ-CP	Decree 20/2017/NĐ-CP
Extend the related party condition due to family relationships (G)	The two enterprises are run or controlled of personnel, finances, and business operations by individuals in one of the spousal relationships; biological parents, adoptive parents, stepfather, stepmother, mother-in-law, parents-in-law ; children, adopted children, stepchildren of husband or wife, daughter-in-law, son-in-law, siblings, half-sibling , brother-in-law, sister-in-law, of the sibling or half-sibling ; paternal grandparents, maternal grandparents; grandchildren, aunt, uncle, niece, nephew;	The two enterprises are run or controlled of personnel, finances, and business operations by individuals in one of the spousal relationships; biological parents, adoptive parents, children, adopted children, sibling, brother-in-law, sister-in-law, paternal grandparents, maternal grandparents, grandchildren, aunt, uncle niece, nephew;
Adjust the related party condition (I)	Enterprises are controlled by an individual through their capital contribution to that enterprise or directly participate in operating the business;	Enterprise or enterprises are controlled by an individual through their capital contribution to that enterprise or directly participate in operating the business;
New related party condition (L)	The enterprise has transactions to transfer or receive the contributed capital of at least 25% of the enterprise's equity in the tax year; borrowing, lending at least 10% of the enterprise's equity at the transactional time in the tax period to the individual who runs or controls the enterprise or with an individual with the relationship as prescribed in point g this clause.	Not specify

2. Adjustment to the arm’s length range

Narrowing the arm’s length range, the lower value is raised compared to before. Specifically:

*“The arm’s length range” is from the **35th percentile value** to the 75th percentile value; The median of arm’s length range is the 50th percentile value of the statistical probability function (tightened from the 25th to the 75th percentile range under Decree 20). As such, the minimum threshold is raised by 10%.*

- Taxpayers will need to re-assess their transfer pricing positions effective financial year 2020 to ensure that their margins fall within this tighter range.
- Given these new rules apply for all of calendar 2020, this may pose significant challenges to those companies which have already achieved margins year to date which fall below the 35th percentile.

For example, calculating the arm’s length range based on the net profit margins of comparable companies:

Profit margin	
C1	12,47%
C2	10,56%
C3	8,48%
C4	6,68%
C5	5,84%
C6	5,31%
C7	3,14%
C8	2,94%

Calculated – Decree 132 guiding	
=PERCENTILE(C1:C8;0,75)	9,00%
=PERCENTILE(C1:C8;0,5)	6,26%
=PERCENTILE(C1:C8;0,35)	5,55%

Calculated – Decree 20 guiding	
=PERCENTILE(C1:C8;0,75)	9,00%
=PERCENTILE(C1:C8;0,5)	6,26%
=PERCENTILE(C1:C8;0,25)	4,77%

3. Update regulations on interest expenses as under Decree 68

The regulations on interest expenses under Decree 68/2020/NĐ-CP have been updated in the content of Decree 132/2020/NĐ-CP.

	Decree 68/2020/NĐ-CP and Decree 132/2020/NĐ-CP	Decree 20/2017/NĐ-CP
Applicable interest expense	Total interest expense after deduction of interest income from deposit and loan Does not apply to taxpayers that are credit institutions, government subsidized loans, ODA loans, etc	Total interest expense Does not apply to taxpayers that are credit institutions.
Threshold for deductible expense	30% of the total operating profits in the period plus loan interest expenses (after deducting interest income from deposit and loan) incurred in the period plus depreciation expenses incurred in the period.	20% of the total operating profits in the period plus loan interest expenses incurred in the period plus depreciation expenses incurred in the period.
Carry forward of non-deductible expense	Allowed to be carried forward (no more than 5 years) in case the total deductible interest expenses of the next tax year is lower than the threshold under Decree 132.	Not specify

4. New rules on country by country reports (“CbCR”)

Some major changes include:

- For a Vietnamese Ultimate Parent Company with annual global consolidated revenues of at least VND18,000 billion, the CbCR is required to be filed with the tax authorities within 12 months from the fiscal year-end.
- For foreign owned companies here with an 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 however required to submit the CbCR locally within 12 months from the year-end in the following circumstances:
 - The jurisdiction, where the UPC resides, has a tax treaty in force with Vietnam but has not signed the Multilateral Competent Authority Agreement (“MCAA”) on the AEOI with Vietnam.
 - 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.
 - Where an overseas group has more than one subsidiary in Vietnam, the UPC has to notify the Vietnamese tax authorities of the subsidiary that is appointed to file the CbCR on behalf of the UPC.
 - If a company here has an overseas UPC that is not obliged to file a CbCR in its respective jurisdiction, Decree 132 states that international tax treaties shall apply. This intent here is unclear, and clarification is required.

5. Revisions to the timeline to provide TP report during tax audit and the exemption case

- Regarding the time to provide transfer pricing documentation report during the tax inspection:
- When the taxpayers are exempt from preparation of TP annual declaration forms and TP Report:

Decree 132/2020/NĐ-CP removes the **15-working-day period** specified in Decree 20/2017/NĐ-CP and references to the regulation under the Law on Inspection

Taxpayers will have to timely provide the Transfer Pricing Documentation Report to tax authorities during the tax inspection.

SATISFY ALL of the following conditions:

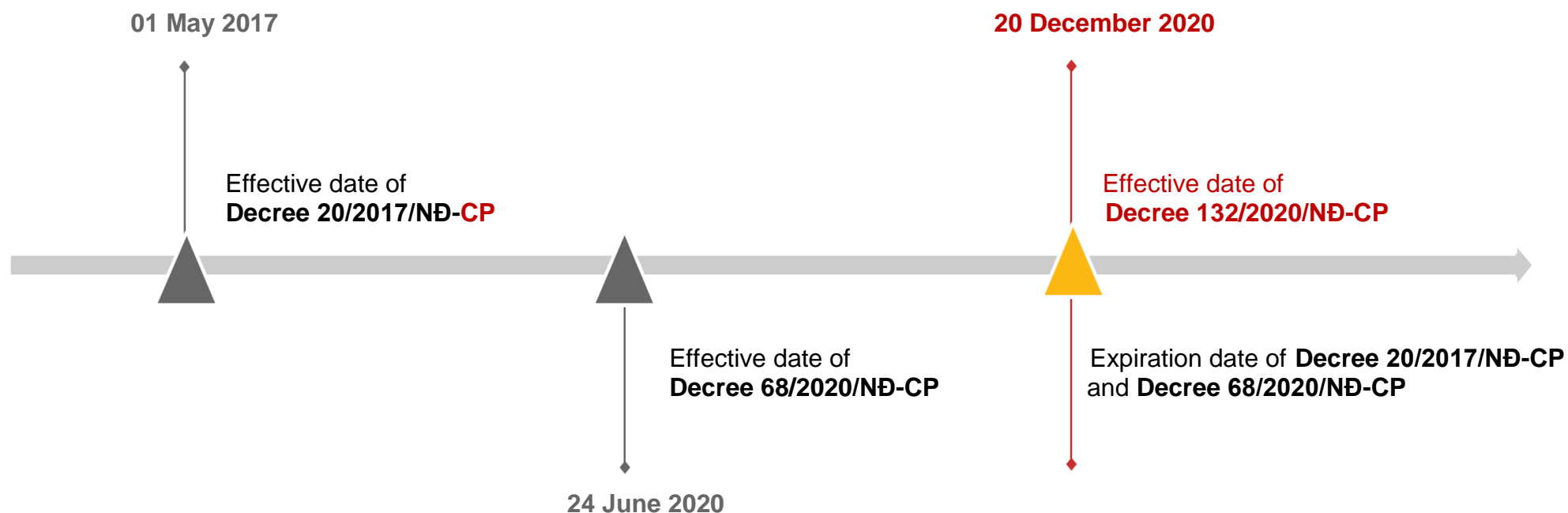
- Only record transactions with **related parties that are liable to pay corporate income tax in Vietnam; and**
 - Apply **the same corporate income tax rate** as the taxpayer; **and**
 - **Neither party is entitled to corporate income tax incentives** in the tax period.
- ⇒ **Exemption from declaration of Section III, section IV of Form 01 and TP Report**, but exemption form declaration must be made in section I, II in form 01.

This provides a welcome reduction of the TP compliance burden for many companies.

Decree 132/2020/NĐ-CP also states that in all cases where taxpayers are exempt from preparation of TP Forms and/or TP Report, **the threshold on deductible interest expenses is still applied** to the taxpayer.

6. Effective date

Decree 132 takes effect from 20 December 2020, but applies for the whole of financial year 2020. So it will apply retrospectively to 1 January for companies with a financial year ending 31 December 2020. However, it is unclear whether and how it may apply to companies with a financial year ending earlier in 2020.



Decree 132 reiterates that taxpayers who have not resubmitted their corporate income tax returns for the 2017 and 2018 (i.e. to claim increased deductions for interest where applicable) in accordance with Decree 68 (if applicable) are still allowed to do that before 01 January 2021.

Contact us

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