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Transfer Pricing Alert

February 2025

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Decree 20/2025/ND-CP

This Alert outlines the following key points:

- Revisions to the definition of related parties
- Treatment of carryforward non-deductible interest expenses
- Responsibilities of the State Bank of Vietnam
- Amendments to Appendix I of the corporate income tax (CIT) finalization return
- A brief reminder of annual transfer pricing (TP) compliance obligations and recent developments in Country by Country Reporting (CbCR) obligations

On 10 February 2025, the Vietnam Government issued Decree 20/2025/ND-CP (Decree 20), which revises certain provisions of Decree 132/2020/ND-CP (Decree 132) on tax administration for companies having transactions with related parties. The amendments in Decree 20 are closely in line with the 3rd Draft Decree published by the Ministry of Finance earlier in November 2024.

Decree 20 takes effect from 27 March 2025 and applies for the CIT period 2024 onwards.

This Tax alert outlines the amendments stated in Decree 20. Additionally, we take the opportunity to remind taxpayers engaged in related party transactions of their annual TP compliance obligations and provide updates on recent developments in CbCR in Vietnam.

1. Decree 20 includes the following revisions:

1.1. Amendments to the definitions of related parties under Points d and k, and the addition of Point m of Clause 2, Article 5 of Decree 132:

- Modify the concept of a related party relationship that may arise from financing transactions (i.e., lending or guarantee in any form) under Point d as follows:
 - The *total outstanding loan balance* between a borrowing company and a lending or guaranteeing company must be at least 25% of the equity capital of the borrowing company's owner and over 50% of the *total outstanding balance* of all medium and long-term debts of the borrowing company for the entities to be considered related parties.
- This regulation does not apply to the two following cases:
 - Third-party lenders or guarantors [Credit Institutions: this term as used in this Alert refers to those entities operating in accordance with the Law on Credit Institutions No. 32/2024/QH15 (hereafter referred to as the Law on Credit Institutions)] that do not participate in the management, control, or capital investment of the enterprise or vice versa.
 - Both the enterprise and the Credit Institutions are not under the common management, control, or capital investment of another party.
- Include independent branches as related parties of an enterprise under Point k;
- Introduce a new type of related party relationship for TP purposes specific to credit institutions and their subsidiaries, controlling enterprises, and related party entities as defined in the Law on Credit Institutions. Specifically, Clauses 9, 10, and 11 of Article 4, the Law on Credit Institutions respectively provide that:
 - A "subsidiary" of a Credit Institution is a company that falls within any of the following cases:
 - The credit institution or the credit institution and its related persons owns over 50% of the charter capital, or over 50% of voting shares of that company.
 - The credit institution has the right to appoint a majority or all of members of the Board of Directors or the Board of Members or the Director General (Director) of the company.
 - The credit institution has the right to amend the Charter of the company.
 - The credit institution or the credit institution and its related persons directly or indirectly control the ratification of resolutions and decisions of the Board of Members, General Meeting of Shareholders, or the Board of Directors of the company.
 - A "controlling company" is a company that directly or indirectly owns more than 20% of the charter capital of a commercial bank, or has control over a commercial bank, or a commercial bank that has subsidiaries or related companies.
 - A "related company" of a credit institution is a company in which the credit institution or the credit institution and its related persons own over 11% of the charter capital, or over 11% of voting shares but it is not a subsidiary of that credit institution.

1.2. Responsibilities of the State Bank of Vietnam

- The State Bank of Vietnam has been given the responsibility to collate and furnish information on related persons of board members, supervisory board members, general directors, deputy general directors, and equivalent positions as defined in the credit institution's charter; related persons of shareholders holding 01% or more of the credit

institution's charter capital, and related companies of credit institutions, when requested by the tax authorities.

1.3. Treatment of carryforward of non-deductible interest expenses

Where an enterprise, during each CIT period from 2020 to 2023 only engaged in a related party transaction with a credit institution (as excluded from being related parties as mentioned above) and incurred interest expenses exceeding the loan interest expense deductibility cap, the carryforward non-deductible interest expenses will be treated as follows for the tax period of 2024 onwards:

- If the enterprise does not have any related party relationships and does not engage in related party transactions as defined by Decree 132 and Decree 20, the non-deductible interest expense (which was not utilized up until the end of the tax period of 2023) will be carried forward and evenly allocated to the remaining carry-forward periods

or

- If the enterprise has related party relationships and engages in related party transactions as defined by Decree 132 and Decree 20, the non-deductible interest expense (which have not been utilized) will continue to be subject to the regulations specified in Decree 132 (i.e. it can be carried forward up to five years and utilized if there is capacity taking into account the interest expense deductibility cap).

1.4. Amendments to Appendix I - Information on related parties and related party transactions to align with the updates and changes introduced by this Decree.

2. Annual TP compliance obligations in Vietnam

For taxpayers with related party transactions, it is essential to promptly review their annual TP compliance obligations to ensure timely adherence to the current regulations.

Specifically, taxpayers with related party transactions are required to prepare and submit the following TP Appendices together with their annual CIT finalization returns no later than the last day of the third month from the end of the fiscal year:

- Appendix I - Information on related parties and related party transactions (as per Decree 20)
- Appendix II - Checklist of information and documents required for Local file; and
- Appendix III - Checklist of information and documents required for Master file

Additionally, taxpayers with related party transactions must prepare and maintain a TP Documentation package, which includes:

- Local file; and
- Master file

The TP Documentation must be prepared before the submission of the annual CIT finalization return and submitted upon the tax authority's request in an audit.

3. Recent developments on CbCR in Vietnam

Taxpayers are also required to comply with the CbCR requirements as specified in Decree 132. On 29 July 2024, the General Department of Taxation (GDT) issued official letter 3279/TCT/CS, directing provincial tax departments to report on CbCR compliance of taxpayers for the tax

periods of 2020 to 2022. Specifically, the GDT requested that provincial tax departments provide a list of non-compliant taxpayers along with the reasons for non-submission.

It is important to note that on 3 January 2025, Vietnam signed the Multilateral Competent Authority Agreement on the exchange of CbCR (MCAA CbCR)¹. This Agreement enables Vietnam to establish a broad network for the automatic exchange of CbCR. However, signing the MCAA CbCR does not imply that Vietnam will automatically exchange CbCR with all signatories. Under the MCAA CbCR, signatories will exchange CbCR on a bilateral basis only if both parties mutually agree. As of 13 February 2025, 29 jurisdictions have activated their exchange relationship for CbCR with Vietnam, as reported by the Organization for Economic Cooperation and Development (OECD) website.²

In light of the above, it is also important for taxpayers to regularly monitor developments in the tax administration of the Vietnamese tax authorities regarding CbCR to ensure compliance.

Our observation and recommendations

The amendments in this Decree are designed to ensure regulatory consistency with the definitions of related parties under the Law on Credit Institutions. Furthermore, this Decree has addressed the concerns and challenges enterprises have faced when implementing the regulations under Decree 132, particularly for those solely engaged in loan transactions with credit institutions and subject to the loan interest expense deductibility cap.

In light of these developments, enterprises should proactively review their related party relationships and transactions to assess the potential impacts of these changes on their business operations. This approach could facilitate effective planning and mitigate potential exposures. Additionally, enterprises are advised to establish and adhere to an annual compliance plan to ensure timely compliance with the current regulations.

¹ OECD, "*Signatories of the multilateral competent authority agreement on the exchange of country-by-country reports (CbCR MCAA) and signing dates*," last updated 10 February 2025

² OECD, "*Activated exchange relationships for Country-by-Country reporting*," accessed on 20 February 2025



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APAC No. 16210201

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