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THE SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Hanoi, February 24, 2017

DECREE

PRESCRIBING TAX ADMINISTRATION FOR ENTERPRISES ENGAGED IN TRANSFER PRICING

Pursuant to the Law on Government Organization dated June 19, 2015;

Pursuant to the Law on Tax Administration dated November 29, 2006; the Law on Revision of certain articles of the Law on Tax Administration dated November 20, 2012;

Pursuant to the Law on Corporate Income Tax dated June 3, 2008; the Law on Revision of certain articles of the Law on Corporate Income Tax dated June 19, 2013;

Pursuant to the Law on Revision of certain articles of the Law on Tax dated November 26, 2014;

Pursuant to the Law on Investment dated November 26, 2014;

Pursuant to the Law on Enterprises dated November 26, 2014;

Pursuant to the Law on Accounting dated November 20, 2015;

After considering the request of the Minister of Finance;

The Government hereby introduces the Decree prescribing tax administration for enterprises engaged in transfer pricing.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

1. This Decree deals with principles, methods, processes and procedures for determining prices of related-party transactions; obligations of a taxpayer in declaration and determination of the price of a related-party transaction, and tax declaration and payment; responsibilities of regulatory authorities for tax compliance management, check and audit for a taxpayer engaged in the transfer pricing.

2. Related-party transactions covered by this Decree are those arising from business activities of taxpayers engaged in the transfer pricing stipulated by Article 5 hereof, except trades in commodities or services subject to the Government's price adjustment that must comply with the legislation on price.

Article 2. Subjects of application

1. Commodity or service production and business entities (hereinafter referred to as taxpayers) that are entities paying corporate income tax according to the declaration method and performing transactions with related parties under the provisions of Article 5 hereof.

2. Tax authorities including General Department of Taxation, Department of Taxation and Subdepartment of Taxation.

3. Other state regulatory authorities, entities or individuals involved in application of regulations on management of the prices of related-party transactions, including tax authorities of the countries or territories that are parties to tax treaties with Vietnam still in force.

Article 3. Principles of application

1. Taxpayers engaged in transfer pricing must make declaration of their related-party transactions; eliminate factors causing reduction in tax obligations that are controlled or affected by related-party relationships in order to define tax obligations imposed on related-party transactions which are comparable to independent transactions having the same requirements.

2. Tax authorities should manage, check and inspect prices of related-party transactions performed by taxpayers according to the arm's-length and substance-over-form principles in order to refuse to recognize related-party transactions reducing tax obligations of enterprises to the state budget and make adjustment to the prices of related-party transactions so as to correctly define tax obligations as prescribed by this Decree.

3. The arm's-length principle should be applied in the same manner as the principles applied to transactions between independent parties which do not have any related-party relationship in tax treaties in force in Vietnam.

Article 4. Definition

1. "Tax treaty" is the shortened term of the agreement on avoidance of double taxation and prevention of tax evasion with respect to income taxes which is signed between Vietnam and other states, and the agreement on revision of the agreements currently in force in Vietnam.

2. "Party tax authority" is tax authorities of states which are parties to tax treaties with Vietnam.

3. "Related-party transaction" is transactions arising between parties having related-party relationships during their production and business process, including purchase, sale, exchange, hire and rent with(out) rental fee for, transfer, and assignment, of machinery, equipment and

commodities, and providing services; borrowing, lending, financial service, financial guarantee and other financial instruments; purchase, sale, exchange, hire and rent with(out) rental fee for, transfer and assignment of tangible assets, intangible assets and agreement on joint use of resources such as synergies and cooperations in utilization of human resources; sharing of costs between related parties.

4. "Independent transaction" is a transaction between unrelated parties.

5. "Independent comparable" is independent transactions or enterprises performing independent transactions that are selected on the basis of comparability analysis or determination of comparables acting in the same or similar conditions to determine levels of prices, profit margins, profit allocation rates in order to assess taxpayers' tax amounts payable to the state budget and ensure compliance with provisions set forth in the Law on Tax Administration and the Law on Corporate Income Tax.

6. "Material difference" is differences in information or data that cause significant or substantial effects on levels of prices, profit margins and profit allocation rates of parties involved in transactions.

7. "Database of the Tax Authority" is information and/or data that are established and/or managed by the Tax Authority in accordance with the Law on Tax Administration, relate to determination of tax obligations of taxpayers, and are collected, analyzed, stored, updated, and managed by tax authorities, from various sources, even inclusive of the databases and information exchanged with tax authorities and regulatory authorities of overseas countries.

8. "Substance-over-form principle" is the principle used to analyze business activities of taxpayers in order to indicate the nature of related-party transactions as the basis for comparison with independent transactions performed in the same or similar conditions, ensure that related-party transactions duly representing the commercial, economic and financial nature are performed between unrelated parties, or if performed between parties having related-party relationships, that these related-party relationships would not adversely influence tax obligations to the state budget incurred by taxpayers. This principle is based on data about and practical reality of transactions between related parties to compare with independent transactions in the same or similar conditions, and without reliance on forms of transactions expressed in contracts or arrangements between related parties. Identification of the nature of economic, financial or commercial relationship existing in related-party transactions is based on comparison with independent transactions in the same or similar conditions.

9. "Arm's length range" is a range of values regarding levels of prices, profit margins, or profit allocation rates, of independent comparables that are selected by tax authorities and taxpayers with reference to the databases referred to in Article 9 hereof. Values in this range have the same or similar level of reliability comparability. Where necessary, the probability method would be used to identify the standard arm's length range and the range of values between transactions having the typical, general and common natures in order to increase the reliability of independent comparables.

10. “Ultimate parent company” is a term used to refer to a legal entity that holds both direct and indirect ownership interests in another legal entity of a multinational corporation and is not owned by any other legal entity. A consolidated account of an ultimate parent company of a corporation is not consolidated into any financial account of any other legal entity around the globe.

Chapter II

SPECIFIC PROVISIONS

Article 5. Related parties

1. Related parties are parties having relationships where:

- a) A party participates directly or indirectly in the management, control or equity of the other, or puts investment in the other;
- b) Parties participate directly or indirectly in the common management, control, or the capital of or put investment in, other parties.

2. Related parties referred to in Clause 1 of this Article shall be subject to the following specific provisions:

- a) An enterprise participates directly or indirectly in at least 25% of equity of the other enterprise;
- b) Both enterprises own at least 25% of equity in which a third party participates directly or indirectly;
- c) An enterprise is the shareholder who has the greatest ownership of equity of the other enterprise, or participates directly or indirectly in at least 10% of total share capital of the other enterprise;
- d) An enterprise guarantees or offers another enterprise a loan under any form (even including third-party loans guaranteed by financing sources of related parties and financial transactions of same or similar nature) to the extent that the loan amount equals at least 25% of equity of the borrowing enterprise and makes up for more than 50% of total medium and long term debts of the borrowing enterprise;
- dd) An enterprise appoints a member of the executive board responsible for the leadership or control of another enterprise provided the number of members appointed by the former accounts for more than 50% of total number of members of the executive board responsible for the leadership or control of the latter; or a member appointed by the former has the right to decide financial policies or business activities of the latter;

e) Both enterprises appoint more than 50% of membership of the executive board or have one member of the executive board authorized to decide financial policies or business activities who is appointed by a third party;

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;

h) Both business entities have transactions, either between their head offices and permanent establishments or between permanent establishments of overseas entities or individuals.

i) One or more enterprises is/are put under control of one individual through either his/her capital participation into that enterprise or his direct involvement in administration of that enterprise;

k) In other cases where an enterprise is in reality under management of, or control of decision on, business activities of the other enterprise.

Article 6. Comparability analysis, selection of independent comparables for the purpose of comparing and determining prices of related-party transactions

1. Arm's-length and substance-over-form doctrines shall be used for identifying the nature of related-party transactions which is the same as that of independent comparables.

a) The nature of transactions prescribed by legally binding agreements, documents or arrangements on transactions of related parties is compared to the reality of execution of these transactions by such parties. Where taxpayers have related-party transactions arising without entering into any agreement in writing or with agreements incompliant with the arm's length principle, or do not adhere to that principle of arm's length transactions between unrelated parties when performing these transactions in reality, related-party transactions must be defined by the very nature of business transactions between independent parties, i.e. the business transaction where related parties receiving sales revenue or income from related-party transactions with taxpayers shall have the right to own, and control risks in trading, assets, commodities, services and resources, and the right to create economic benefits and generate income from shares, equities and other financial instruments, and taxpayers incurring expenses from transactions with related parties must either directly receive economic benefits or values, or contribute to creating sales revenue, value added to business activities of taxpayers in conformity with the arm's length principle;

b) The nature of transactions is defined by the method of collecting information, evidences and data on transactions or risks posed to related parties in the reality of business activities.

2. Comparability analysis must ensure comparability between independent comparables and related-party transactions, must not cause any difference materially affecting the level of price, profit margin or profit distribution rate between parties. In case where there exists any difference

materially affecting the level of price, profit margin or profit distribution rate, it is necessary to analyse, determine, correct and eliminate that material difference based on comparable factors, referred to in Clause 3 of this Article, and in conformity with specific transfer pricing methods, referred to in Article 7 hereof.

Comparability analysis serves the purpose of finding similar independent comparables:

a) Selection of internal independent comparables is a transaction between taxpayers and unrelated parties, ensures comparability and does not cause any difference materially affecting the level of price, profit margin or profit distribution rate. Where there is none of the internal independent comparables, selection of comparables shall be subject to Point b and c Clause 3 Article 9 hereof. Comparison between related-party and arm's length transactions shall be made on the basis that each transaction is compared with each comparable product. Where it is unlikely to make a comparison by specific products, aggregation of transactions must ensure conformity with the nature and reality of business activities, and application of the method of valuation of related-party transactions shall be subject to provisions laid down in Article 7 hereof;

b) Financial data of comparables must ensure reliability in order to be used for tax declaration and assessment purposes, and conformance to regulations on accounting, statistics and taxation. Time of transactions performed by independent comparables must coincide with time of related-party transactions or must be constituted by the financial year coinciding with the financial year of taxpayers, except for special cases in which it is necessary to expand the time frame of comparison under the provisions of Point d of this Clause. Data must be properly formatted as the basis for comparing or calculating levels of prices at the transaction time or within the same tax period; the comparability analysis data on profit margin or profit distribution rate must be collected in three consecutive tax periods. Taxpayers shall round decimal values of ratios or comparative rates up to the nearest hundredth at their fractional parts. Where relative values derived from data released without attached absolute numbers and this rounding method is not used, the data released shall be accepted on conditions that reference sources thereof must be cited;

c) The minimum number of independent comparables shall be selected after completion of comparability analysis and adjustment for material differences as follows: One comparable selected in case of related-party transactions performed or taxpayers performing related-party transactions and independent comparables without any difference; three comparables selected in the event that there are certain differences existing in independent comparables and there are not sufficient information or data provided as the bases for eliminating all of the material differences, and over five comparables selected only when there is any information or data used as the basis for eliminating most of the material differences existing in these independent comparables;

In cases where selected comparables are not equally reliable, the statistical probability method shall be applied to determine the standard arm's length range and the value standing in the midst of the range shall be selected to adjust and re-determine the level of price, profit margin or profit

distribution rate of taxpayers according to the transfer pricing methods prescribed by Article 7 hereof;

d) Where it is unlikely to find independent comparables with related-party transactions of particular or sole nature, the scope of comparability analysis in terms of the sector, geographical market and comparison time should be expanded so as to search for independent comparables. Expansion of the comparability analysis scope shall be carried out in the following manner: Selecting independent comparables by economic subsectors that are of high comparability with subsectors in which taxpayers are operating in the same geographical market; expanding the geographical market to regional countries that have similar sectoral conditions and economic development levels.

Where the scope of comparability analysis for selection of independent comparables is expanded to different geographical markets, it is necessary that quantitative and qualitative analysis of comparability and material differences must be made under the provisions of Point e of this Clause and Clause 2 Article 7 hereof; or figures or data obtained from independent comparables in the previous year should be used and adjustment for material differences resulting from the time-related factor (if any) should be made.

Time of expanding the scope of collection of figures or data from independent comparables shall be restricted to one financial year in comparison with the financial year defined by taxpayers if the pricing method stipulated by Clause 2 Article 7 hereof is used.

dd) On the basis of the pricing method and selected independent comparables, adjustment for level of price, profit margin or profit distribution rate of taxpayers shall be made in order to determine corporate income tax obligations of taxpayers without making any reduction in tax obligations to the state budget.

3. Comparability analysis shall be made by using the method of comparing, reviewing and correcting material differences in comparability factors in order to select independent comparables.

a) Comparability factors include specifications of commodities, services and assets (hereinafter referred to as product specification); functions and assets, business risks; contractual terms and economic conditions in case of transactions occurring;

b) Analysis of functions and assets, business risks is required to determine main functions associated with use of types of assets, capital and expense, including cooperation in utilization of human resources, sharing of costs between related parties and risks from investment in assets, capital as well as risks associated with profitability relating to business transactions. Functional analysis is considered as the basis for determining and re-distributing risks incurred from actual business activities performed by related parties;

c) Analysis of particular comparability factors of intangible assets is required to review and analyze rights to generate economic benefits stipulated in contracts or agreements, and non-contractual relationships that generate economic benefits to parties. Analysis of intangible assets

must be based on ownership of assets, potential profits earned from intangible assets, restrictions on the geographical coverage in use of the rights to intangible assets; life cycle of intangible assets; rights and relationships that generate economic benefits; assignment of the right to get involved in developing intangible assets and operating functions or capability of controlling actual business risks of each related party relating to the entire process of developing, increasing, maintaining, protecting and utilizing intangible assets;

d) Analysis of economic conditions under which transactions arise is required to cover cost advantages based on such factors as geographical positions, special functions; level of development of market and economic conditions of business industries or sectors in which taxpayers are operating;

dd) Comparability analysis for elimination of material differences is an analysis aimed at eliminating quantitative and qualitative differences that may exist in financial information or data materially influencing factors used as the benchmarks for determining prices of related-party transactions according to specific pricing methods referred to in Article 7 hereof. Determination of material differences is carried out on qualitative and quantitative basis, including the quantitative difference defined as the difference determined by absolute numbers in business cycle, number of years of establishment and operation of an enterprise or relative numbers representing differences in financial indicators according to particular investment sectors or operational functions, differences in current capital; the qualitative difference defined as information identified based on specific pricing methods.

Information is considered material, including the difference in product specifications, contractual terms, functions, assets and risks and business sectors or activities and economic conditions of taxpayers and independent comparables; the differences in investment policies, environment and impacts of input costs in different geographical markets.

Quantitative and qualitative differences need to be reviewed and adjusted in relation to comparability factors materially influencing the transfer pricing method referred to in Article 7 hereof.

e) The analytical result shall be considered the basis for selection of independent comparables in conformity with specific transfer pricing methods referred to Article 7 hereof.

4. Comparability analysis process is composed of the following steps:

a) Identifying the nature of related-party transactions before making analysis of comparability with independent comparables;

b) Comparably analyzing, finding and selecting independent comparables in the same or similar conditions on the basis of identifying comparison time, product specifications and contractual terms and conditions; analyzing the sector, market and economic conditions whenever transactions arise; analyzing related-party transactions and taxpayers performing related-party transactions; database sources; transfer pricing method and adjustment for any potential material difference;

c) Identifying the level of price, profit margin or profit distribution rate, based on the results of analysis of independent comparables, as the basis for comparison or application to determination of corporate income tax obligations of taxpayers and avoidance of any reduction in tax obligations to the state budget. Calculation method must be identically applied in the operating and business cycle or stage in agreement with functions and business models as prescribed by Article 7 hereof.

Article 7. Transfer pricing methods

Comparison method for determination of prices of related-party transactions (for the purpose of this Decree, shortly referred to as transfer pricing method) shall be applied according to the arm's length principle, transaction nature and functions of taxpayers to the extent that this method is assessed and applied in a consistent manner in the entire business cycle or stage; shall be applied with reference to financial data obtained from independent comparables selected according to comparability analysis principles referred to in Article 6 hereof. The transfer pricing method is selected amongst the following methods, based on features of related-party transactions, availability of information and data as well as the nature of the pricing method.

Transfer pricing methods shall be subject to the following provisions:

1. The method for comparing the price of related-party transaction with that of independent transaction (hereinafter referred to as arm's length price comparison method):

a) The arm's length price comparison method is applied in either cases where taxpayers perform transfer pricing of specifically classified products, tangible assets or specified services subject to trading conditions, commonly sold on the market or assigned prices quoted on the domestic and international exchanges of commodities or services; make payment of royalties on use of intangible assets; pay loan interest when performing lending and borrowing activities; or perform independent and related-party transactions in products that are of similar product specifications and subject to contractual terms and conditions;

b) The arm's length price comparison method is implemented according to the principle that there is none of differences in product specifications and contractual conditions upon comparison between prices of independent transactions and these of related-party transactions which materially influence product prices. Where there are material differences in product prices, these material differences must be eliminated.

Such factors as product specifications and contractual terms and conditions, which have material effects on product prices, encompass the followings: characteristics, quality, brands and trademarks of products, and transaction scale and volume; terms and conditions of agreements on supply and transfer of products, including amount, duration of transfer of products, payment deadline and others; rights to distribute or consume commodities, services or assets that affect the economic value and the market where such transaction occurs and other factors affecting product prices such as economic conditions and operational functions of taxpayers.

c) Method of calculating the transfer price: Price of products in related-party transactions is adjusted based on the arm's length price or the value point within the standard arm's length range of independent comparables as prescribed by this Decree.

Where the product price is quoted on the domestic and international exchange of commodities or services, the price of products in the transfer pricing shall be determined according to the price of product quoted at the comparable time and in the same or similar conditions.

Taxpayers purchasing machinery or equipment from foreign related parties must provide records or documents evidencing purchase prices thereof in accordance with the arm's length principle upon the purchase time. For new machinery or equipment, the price in the transfer pricing is the price on the invoice demonstrating that the related party has purchased such machinery or equipment from the independent party. For used machinery or equipment of which the invoice or original document evidencing purchase is issued on the purchase date, asset revaluation shall be subject to applicable legislation on guidance on management, use and setting-aside of fixed asset amortization.

d) The result achieved from the transfer pricing is the taxable price used for declaring and determining the corporate income tax amount payable but does not cause any reduction in taxpayers' tax obligations to the state budget.

2. Method for comparing the profit margin of taxpayers with that of independent comparables (hereinafter referred to as profit-comparison method):

a) The method for comparing the profit margin of taxpayers with that of independent comparables shall be applied in the cases where taxpayers do not have database and information in order to apply the arm's length price comparison method referred to in Clause 1 of this Article; taxpayers cannot compare product-based transactions on the basis of specific transactions in specific products in the same or similar conditions; aggregation of transactions is carried out in order to ensure conformity to the business nature and reality, and successful selection of profit margins of appropriate independent comparables; or taxpayers fail to either exercise autonomy over the entire business chain or participate in execution of general or specific related-party transactions under the provisions of Clause 3 of this Article;

b) Application principle: Profit-comparison method shall be applied according to the principle that there is none of differences in operational functions, assets and risks; economic conditions and accounting and bookkeeping methods taken into consideration in a comparison thereof between taxpayers and independent comparables have material effects on the profit margin. Where there are material differences in profit margins, then these material differences must be eliminated.

Such factors as business functions, assets and risks and economic conditions that have material effects on profit margins include factors relating to assets, capital and costs; right to control and make a decision in reality to serve the purpose of performing main functions of taxpayers; nature of business industry and market for production and consumption of products; accounting and

bookkeeping method and cost structure of products; economic conditions in which transactions occur.

Other factors determined based on the reality of execution of transactions performed by related parties include commercial or financial relationships of multinational corporations, technical assistance, disclosure of trade secrets, know-how, utilization of employees working under single or dual employment regime and economic conditions of a business industry or sector in which taxpayers are operating. Comparability factors other than those mentioned above include product specifications and contractual terms and conditions.

Where taxpayers doing business by performing their routine functions, without performing strategic decision-making functions and engaging in transactions of low added value comprise production or distribution enterprises which are not exposed to inventory risk or market risk and do not have sales revenue or costs arising from uses of intangible assets, they shall not have to incur operating losses arising from these risks;

c) Method of calculating the transfer price: The profit-comparison method shall help identify the relevant gross or net profit margins of taxpayers by using the gross or net profit margins of selected arm's length comparables for comparison. Deciding on which profit margin where the gross profit or net profit is relative to such bases as total sales, costs or assets is selected shall vary depending on the nature and economic conditions of transactions; functions of taxpayers and accounting or bookkeeping methods of related parties. The bases for determination of the profit margin including sales revenue, costs or assets are data included in accounting records of taxpayers which are not subject to control taken or decision on prices of related-party transactions made by related parties.

- The method for comparing the gross profit to sales (the resale price method):

The purchase price (cost) of a commodity, service or asset sold by a related party shall equal (=) the resale price (net sales) of that commodity, service or asset resold to an independent party minus (-) the gross profit divided by the selling price (net sales) of a taxpayer less (-) certain other costs charged for the purchase price, such as import duties, customs fees, insurance costs or international shipping costs (if any).

The gross profit relative to the selling price (net sales) of a taxpayer, which is determined by comparing it with that of independent comparables, shall equal (=) the selling price (net sales) of a taxpayer multiplied (x) by the gross profit relative to the selling price (net sales) of selected independent comparables.

The gross profit relative to the selling price (net sales) of independent comparables shall be calculated as the value falling within the standard arm's length range of the gross profit to the selling price (net sales) of independent comparables which are selected for adaptation to principles herein stipulated.

The purchase price (cost) of such commodity, service or asset sold by a related party, which is adjusted for independent comparables shall be the price for taxation or declaration of costs and determination of corporate income tax obligations which must be paid by taxpayers.

- The method for comparing the gross profit to the cost (the cost plus method):

The selling price or net sales of a commodity, service or asset sold to a related party shall be calculated as the arm's length cost thereof plus (+) the gross profit relative to the cost of a taxpayer.

The gross profit relative to the cost of a taxpayer, which is determined by comparing it with that of independent comparables, shall equal (=) the cost paid by a taxpayer multiplied (x) by the ratio of gross profit to the cost paid by selected independent comparables.

The gross profit relative to the cost paid by selected independent comparables shall be calculated as the value falling within the standard arm's length range of the ratio of the gross profit to the cost paid by independent comparables which are selected for adaptation to principles herein stipulated.

The transfer selling price (or net sales) which is adjusted for independent comparables shall be the price for taxation, declaration of costs and determination of corporate income tax obligations which must be paid by a taxpayer.

- The net profit margin comparison method:

The margin ratio of net profit before interest and corporate income tax to sales revenue, costs or assets of a taxpayer engaged in the transfer pricing shall be adjusted for the margin ratio of net profit before interest to sales revenue, costs or assets of selected independent comparables, based on which tax obligations of the taxpayer is adjusted or determined.

Net profit excludes difference in sales revenue and costs of financial operations.

The net profit margin to be selected shall be the value falling within the standard arm's length range of the net profit margin of independent comparables which are selected for adjustment to or identification of taxable income and tax obligations of a taxpayer in conformity with the principles herein stipulated.

Margin indicators of the net profit before interest and corporate income tax shall be computed in accordance with provisions laid down in legislation on accounting, tax administration and corporate income tax.

3. Method for allocation of profits between related parties:

a) The method for allocation of profits between related parties shall be applied to either cases where a taxpayer engages in the transfer pricing which is of general, specific, sole or closed nature in a corporation, or develops new products, uses proprietary technologies, takes part in the

value chain exclusively transacted within a corporation or the process of developing, increasing, maintaining, protecting and utilizing proprietary intangible assets in the absence of bases for determination of prices of transactions between related parties or transactions closely connected or simultaneously performed, or complicated financial transactions that relate to multiple financial markets across the globe; or a taxpayer engages in the digital transfer pricing in the absence of bases for determination of prices of transactions between related parties or participates in creation of added value from synergies within a corporation, or performs its functions to exercise autonomy over the entire production and business process, and is not covered under the provisions of Clause 1 and 2 of this Article;

b) Application principles: This method is defined as the method for allocating total profit generated from related-party transactions in order to determine profit of a taxpayer. This method shall be applied to total actual and potential profit of related-party transactions referred to in Point a of this Clause which are calculated by using financial data obtained on the basis of proper and valid evidencing documents; value and profit in the transfer pricing must be determined by using the same accounting method in the full time length of application of this method;

c) Calculation method: Adjusted profit of a taxpayer shall be allocated based on total profit of related-party transactions, including actual or potential profits likely to be obtained by parties engaging in the transfer pricing.

Adjusted profit of a taxpayer is expressed as primary profit plus extra profit. The primary profit is calculated according to the profit-comparison method referred to in Clause 2 of this Article. The extra profit is calculated on pro rata basis relative to one or certain factors such as sales, costs, assets or employees of related parties engaging in the transfer pricing and in conformity with the arm's length principle.

Through lack of information or data for apportionment of the adjusted profit stipulated above, such apportionment can be based on one or certain factors such as sales, costs, assets or employees of related parties engaged in the transfer pricing and conform to the arm's length principle.

d) The adjusted profit of a taxpayer shall be considered as the basis for determining the taxable income and corporate income tax amount payable, but shall not reduce tax obligations to the state budget.

Article 8. Determination of costs for assessment of tax in certain specific cases for enterprises engaged in particular related-party transactions

1. Related-party transactions which neither agree with the arm's length nature of transactions nor contribute to creating operating sales revenue or income of a taxpayer shall not incur any cost qualified as allowable tax deductions within a specified tax period, including:

a) Payments to a related parties that does not perform any business operations relating to the industry or business activities in which a taxpayer is operating;

b) Payments to a related party that performs business operations, but have the scale of assets, number of employees and operating functions incommensurate with the transactional value that this related party has obtained from a taxpayer;

c) Payments to a related party that does not have any right or responsibility relating to assets, commodities or services rendered to a taxpayer;

d) Payments to a related party that is a resident entity within a country or territory that does not collect corporate income tax, and that does not contribute to creating sales revenue or added value from business activities of a taxpayer.

2. Transactions where services are rendered between related parties:

a) Except for payments referred to in Point b of this Clause, a taxpayer can claim deductions for its service costs from tax within a specified tax period when meeting the following requirements where its services rendered have commercial, financial and economic value and are directly used in business activities of a taxpayer; services rendered by related parties are confirmed as already supplied only in the same conditions under which independent parties pay for these services; the arm's length principle and transfer pricing method or the method of allocation of service costs between related parties must be consistently applied in the entire corporation to payment of costs of similar services of which a taxpayer must provide a contract, evidencing documents, invoices and information concerning the method of calculation, factors of allocation and policies on prices within the corporation.

Where there is a connection with centers performing specialized functions and synergies in creating the added value for the corporation, a taxpayer must determine total value created from these functions and identify the level of profit allocation proportionate to value of participation by related parties from which relevant costs of services paid to a related party to perform coordination or service supply functions in arm's length transactions of same or similar nature have been deducted.

b) Service costs that are not qualified as deductions from taxable incomes encompass costs arising from services rendered for the sole purpose of providing other related parties with benefits or values; services rendered to provide benefits for shareholders of related parties; services for which costs are repeatedly charged due to multiple related parties render the same services, or in which the added value offered to a taxpayer is unspecified; services which are, in nature, benefits obtained by a taxpayer as a member of a corporation and costs that a related party adds to third-party services rendered through a related intermediary without adding any value to these services.

3. Taxpayer's total loan interest cost arising within a specified tax period qualified as a deduction from income subject to corporate income tax shall not exceed 20% of total net profit generated from business activities plus loan interest costs and amortization costs arising within that period.

This regulation shall not apply to taxpayers who are subjects of application of the Law on Credit Institutions and the Law on Insurance Business.

Taxpayers shall declare proportion of loan interest cost arising within a specified tax period according to the Form No. 01 hereto appended.

Article 9. Database used in declaration, determination and management of transfer prices

1. Database used in declaration, determination and management of transfer prices includes:

- a) Database provided by information business organizations, including financial information and corporate data collected by these organizations from information sources which are publicly released, retained, updated, managed or used (hereinafter referred to as commercial database);
- b) Corporate information or data publicly released on stock exchanges;
- c) Information or data available on domestic and international commodity or service exchanges.
- d) Information made available to the public by ministries or sectoral departments, or other official information sources.

2. Database used in order for tax authorities to manage transfer prices includes:

- a) Database referred to in Clause 1 of this Article;
- b) Information or data exchanged with counterparty tax authorities;
- c) Information made available to tax authorities by ministries or sectoral departments;
- d) Database owned by tax authorities.

Database owned by tax authorities shall be used for managing risks and setting transfer prices in the event that there is any violation against provisions set forth in Clause 3 Article 12 hereof.

3. Analyzing and selecting independent comparables in order to analyse and determine the arm's length range shall be subject to the principle of comparability analysis and the transfer pricing methods referred to herein, which follows the priority order in selecting comparison data as listed hereunder:

- a) Internal comparables of taxpayers;
- b) Resident comparables residing within the taxpayer's country or territory;
- c) Comparables of other regional states in the same or similar sectoral conditions and economic growth levels.

With regard to foreign comparables operating in different geographical markets, it is necessary to analyse comparability and quantitative and qualitative material differences referred to in Point e Clause 3 Article 6 and Clause 2 Article 7 hereof.

Article 10. Rights and obligations of taxpayers in declaration and determination of transfer prices

1. Taxpayers engaged in the transfer pricing as covered by this Decree shall be accorded rights under the provisions of the Law on Tax Administration.
2. Taxpayers engaged in the transfer pricing as covered by this Decree shall be held responsible for declaring and determining transfer prices, and shall be exempted from taking on obligations to pay corporate income tax within the territory of Vietnam in accordance with this Decree.

Taxpayers shall assume responsibility for demonstrating their compliance with this Decree in selection of a pricing method at the request of regulatory authorities.

3. Taxpayers engaged in the transfer pricing as covered by this Decree shall be held responsible for declaring information about related-party relationships and transactions by using the Form No. 01 given in the Appendix to this Decree and submitting it together with the corporate income tax finalization return.
4. Taxpayers shall be responsible for retaining and providing the transfer pricing documentation package, including:
 - a) Local file prepared by using the Form No.02 given in the Appendix to this Decree;
 - b) Master file containing information relevant for global corporations, prepared by using the Form No.03 given in the Appendix to this Decree;
 - c) Country-by-Country report of an ultimate parent company prepared by using the Form No.04 given in the Appendix to this Decree.

If a taxpayer having an ultimate parent company operates within the territory of Vietnam and generates at least eighteen thousand billions of Vietnam dong in global consolidated revenue, then it takes responsibility for preparing a Country-by-Country report included in the transfer pricing documentation package prepared by using the Form No. 04 given in the Appendix to this Decree.

For a taxpayer having an overseas ultimate parent company, a taxpayer shall be responsible for submitting a copy of its ultimate parent company's Country-by-Country report where that ultimate parent company is required to submit this report to the host-country tax authority by using the declaration form given by that tax authority or the declaration form No. 04 given in the Appendix to this Decree. Where a taxpayer fails to provide a Country-by-Country report, that taxpayer is obligated to provide a written explanation letter in which reasons for such failure, legal bases, and references to specific legislative regulations of the counterparty country on prohibiting taxpayers from providing Country-by-Country reports, should be stated.

5. Transfer pricing documentation package must be prepared before the time of filing corporate income tax finalization 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 transfer pricing audit, the time limit for provision of the transfer pricing documentation package shall not exceed 15 working days from the date of receipt of request from provision of information.

5. The transfer pricing documentation package and information materials or evidencing documents provided by taxpayers to the tax authority shall be subject to laws and regulations on tax administration. Sources of data, evidencing documents and materials used as the bases for comparability analysis and determination of prices of related-party transactions must be clearly cited. Where data submitted by independent comparables are accounting figures, taxpayers shall be responsible for retaining and providing the tax authority with these data represented in a soft copy and in the spreadsheet format.

6. Taxpayers shall be responsible for providing, in a sufficient and accurate manner, and bearing legal responsibility for, information and documents included in the transfer pricing documentation package at the request of the tax authority during the consultation procedures prior to the audit as prescribed by Article 12 hereof. The time limit for submission of the transfer pricing documentation package is no longer than 30 working days from the date of receipt of the tax authority's request. Where sound reasons are provided by taxpayers, the submission deadline shall be extended only once to no longer than 15 working days as from the expiry date.

7. Independent external consultancy or audit companies or tax filing companies which act on behalf of taxpayers to file the transfer pricing documentation package shall be responsible for complying with legislation on tax administration for enterprises engaged in the transfer pricing referred to herein and assume legal responsibility in accordance with laws and regulations.

8. The Ministry of Finance shall provide specific guidance on information used for completing the Form No. 01, 02, 03 and 04 given in the Appendix hereto appended.

Article 11. Safe harbor for transfer pricing documentation

1. A taxpayer shall be exempted from the transfer pricing documentation requirements referred to in Section III and IV of the Form 01 given in the Appendix to this Decree only if it is engaged in a related-party transaction with an entity that must pay corporate income tax within the territory of Vietnam, is subject to the same corporate income tax rate as applied to the taxpayer, and where neither of them is not offered the corporate income tax incentive within a specified tax period, but shall be required to provide bases for such exemption in Section I, II included in the Form No.01 of the Appendix to this Decree.

2. The taxpayer shall be responsible for declaration of transfer pricing information according to the Form No.01 given in the Appendix to this Decree but shall be exempted from the transfer pricing documentation in the following circumstances:

a) Taxpayer is engaged in the transfer pricing but the total revenue arising within a specified tax period is less than VND 50 billion and the total value of the related-party transactions arising within a specified tax period does not exceed VND 30 billion;

b) Taxpayer already entering into Advance Pricing Agreement (APA) has submitted the annual report in accordance with legislation on Advance Pricing Agreement. For those related party transactions which are not covered by the APA, taxpayers are obliged to comply with the aforesaid transfer pricing documentation requirements referred to in Article 10 hereof;

c) Taxpayer performing business activities by exercising routine functions, neither generating any revenue nor incurring any cost from operation or use of intangible assets, generating sales of less than VND 200 billion, as well as applying the ratio of net operating profit before loan interest and corporate income tax relative to sales revenue, engages in related-party transactions in the following sectors:

- Distribution: At least 5%;

- Manufacturing: At least 10%;

- Toll manufacturing: At least 15%.

Where taxpayer does not comply with the profit margins stipulated in this point, the aforesaid transfer pricing documentation shall be required.

Article 12. Duties and powers of tax authorities in management of prices of related-party transactions

1. Apply risk management practices to tax administration for prices of related-party transactions in accordance with legislation on taxation.

2. Tax authorities shall consult the comparability analysis principle, transfer pricing principle and methods referred to herein as well as information about tax obligations of enterprises engaged in the transfer pricing in order to carry out tax imposition in the following cases:

a) If enterprises fully comply with accounting, invoicing and evidencing documentation regulations, setting thresholds of revenue, costs or taxable income for the purpose of determination of tax obligations shall adhere to the comparability analysis principle, transfer pricing methods and databases used in management of prices of related-party transactions as prescribed by this Decree;

b) If enterprises fall into other cases, imposition of tax shall be based on the tax authority's database in accordance with regulations on tax imposition applied to enterprises that have not fully complied with accounting, invoicing and evidencing document regulations or regulations on handling of tax violations.

3. 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 transfer pricing within a specified tax period, based on information, data and analysis of assessment of the tax authority in the cases where taxpayers commit violation against transfer pricing legislation as follows:

a) Taxpayers do not provide or insufficiently provide information or do not submit the Form No.01 given in the Appendix hereto appended;

b) Taxpayers provide insufficient information required in the transfer pricing documentation package referred to in the Form No. 02, 03 given in the Appendix to this Decree or do not present the transfer pricing documentation package and data, evidencing documents and materials used as the basis for comparability analysis and redetermination of prices in the transfer pricing documentation package at the tax authority's request within the permitted time limits referred to herein.

c) Taxpayers use inaccurate or unreliable information about independent information to carry out comparability analysis, declare and determine the transfer price, or rely on materials, data and evidencing documents which are illegitimate, invalid or are of unclear origin to determine the level of price, profit margin or profit allocation rate applicable to related-party transactions;

d) Taxpayers commits any violation against transfer pricing regulations set out in Article 11 hereof.

4. The tax authority shall be responsible for securing information provided by taxpayers relating to the transfer pricing in accordance with provisions laid down herein. Provision of information to other entities or organizations shall be subject to Clause 5 of this Article.

5. Where there is any issue relating to policies or regulations concerning industries and specialized sectors after the transfer pricing audit, the tax authority shall ask for advice from entities, organizations or individuals involved, specifically including:

a) Sectoral regulatory authorities, sectoral organizations or associations shall be advised;

b) The tax authority shall be responsible for providing dossiers, information and documents relating to the transfer pricing for sectoral entities or organizations giving advice. Entities giving advice shall be responsible for securing information in accordance with laws and regulations.

6. The tax authority shall exchange information with taxpayers and counterparty tax authorities according to the consultation procedures implemented prior to, during and after the transfer pricing audit as follows:

a) Where, through application of risk management measures to tax administration of prices of related-party transactions, the tax authority finds it necessary to exchange information with taxpayers about the Form No.01 given in the Appendix to this Decree and the transfer pricing documentation package of taxpayers, the tax authority shall send a request for consultation with taxpayers in order to exchange and provide in advance information about the transfer pricing documentation package of taxpayers in accordance with provisions set forth in this Decree;

b) Where the tax authority needs to contact or discuss with the tax authority about the Country-by-Country report and other relevant information under the provisions on bilateral agreement and information exchange formalities in the relevant tax treaties. Where necessary, the tax authority

shall notify taxpayers in writing of temporary suspension of the transfer pricing audit in order to exchange information with the counterparty tax authority in accordance with legislation on taxation;

c) The tax authority shall be responsible for facilitating taxpayer's demonstration of and explanation for figures or data of independent comparables used in the transfer pricing documentation package.

7. Where the tax authority signs the APA with taxpayers, the tax authority shall assume the following responsibilities:

a) Manage and audit related-party transactions which are not covered by the APA according to the risk management principle.

b) Manage and audit compliance of taxpayers with the APA in accordance with laws and regulations.

Article 13. Responsibilities of ministries, sectoral departments and People's Committees of centrally-affiliated cities and provinces

1. The Ministry of Finance:

a) Assume responsibility for state management of prices of related-party transactions in accordance with provisions laid down herein;

b) Undertake and collaborate with the Ministry of Information and Communications in communicating or disseminating state management of prices of related-party transactions;

c) Audit implementation of transfer pricing regulations set out herein.

2. The State Bank

Cooperate in provision of information or data on foreign loans and debt repayments of particular enterprises engaged in the transfer pricing with reference to the list requested by the tax authority, including data on loan turnover, interest rate, periods of interest and principal payment, actual fund withdrawal, debt (principal or interest) payment and other related information (if any).

3. The Ministry of Planning and Investment

Cooperate in provision of data for registration of business industry of enterprises; database concerning investment fund structure at the licensing time and time of adjustment and amendment to the investment certificate or the business registration certificate and relevant information on investment projects when the tax authority conducting the transfer pricing audit demonstrates that there is a sign of transfer pricing for tax evasion or avoidance purposes at the tax authority's request.

4. The Ministry of Science and Technology and the Ministry of Agriculture and Rural Development shall, within their jurisdiction, have the following responsibilities and powers

Cooperate in provision of the database relating to technology transfer agreement; industrial property right assignment agreement; transfer of plant variety rights; application documents for intellectual property rights after industrial property rights, plant variety rights are established, and provide information when being consulted for the tax authority in order to carry out tax administration for related-party transactions.

5. The Ministry of Information and Communications

Cooperate in provision of the database of enterprises licensed to do business in the fields within its jurisdiction and information about related-party transactions in the digital economy at the Ministry of Finance's request.

6. The Ministry of Industry and Trade

Cooperate in provision of the database of transfer prices of commodities available for transactions on domestic commodity exchanges and information within its scope of management or information required for management of transfer prices by the tax authority.

7. People's Committees of centrally-affiliated cities and provinces

Direct the Departments of Planning and Investment, Departments of Finance and departments, subdepartments or divisions to establish the database within the scope of their sectoral management which is used for transfer pricing management.

Chapter III

IMPLEMENTATION PROVISIONS

Article 14. Entry into force

This Decree shall enter into force from May 1, 2017.

Article 15. Implementation responsibility

1. The Ministry of Finance shall provide specific guidance on Article 6, 7 and 8 Article 10, Point c Clause 2 Article 11; undertake and collaborate with relevant ministries and sectoral authorities and People's Committees of centrally-affiliated cities and provinces in implementation of this Decree.

2. Ministers, Heads of Ministry-level agencies, Heads of Governmental bodies, Presidents of People's Committees of centrally-affiliated cities and provinces, and entities or individuals concerned, shall be responsible for implementing this Decree./.

**PP. THE GOVERNMENT
THE PRIME MINISTER**

Nguyen Xuan Phuc

APPENDIX

(Attached to the Government's Decree No. 20/2017/NĐ-CP dated February 24, 2017)

Form No.01	Information about related-party relationships and transactions
Form No.02	List of required information and documents in the Local File
Form No.03	List of required information and documents in the Global Master File
Form No.04	Declaration of information in the Country-by-Country report

Form No.01

INFORMATION ABOUT RELATED-PARTY RELATIONSHIPS AND TRANSACTIONS

(Attached to the Corporate Income Tax Finalization Declaration Form No. 03/TNDN)

Tax period: fromto.....

[01] Taxpayer's name

[02] Tax
identification
number

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[03] Address:

[04] Urban/rural district: [05]
Province/city:.....

[06] Telephone:..... [07] Fax: [08] Email:

[09] Tax agent's name (if any):

[10] Tax identification number

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SECTION I. INFORMATION ABOUT RELATED PARTIES

No.	Related party's name	Country	Tax identification number	Form of related-party relationship ¹										
				(5)										
(1)	(2)	(3)	(4)	A	B	C	D	Đ	E	G	H	I	K	
1														
2														
3														
...														

SECTION II. SAFE HARBOR FOR TRANSFER PRICING DECLARATION AND DOCUMENTATION

No.	Description of exemption or mitigation	Define whether or not exemption or mitigation is applied ²
(1)	(2)	(3)
1	Exemption of transfer pricing declaration as specified hereunder in Section III and IV	
	Taxpayer is engaged in a related-party transaction with an entity that must pay corporate income tax within the territory of Vietnam, is subject to the same corporate income tax rate as applied to the taxpayer, and where neither of them is not offered the corporate income tax incentive within a specified tax period.	
2	Exemption from transfer pricing documentation requirements	
a	Taxpayer is engaged in a transfer pricing transaction but the total revenue arising within a specified tax period is less than VND 50 billion and total	

	party B											
	...											
2. 4. 2	Loan interest											
A	Related party A											
B	Related party B											
	...											
2. 5	Other services											
A	Related party A											
B	Related party B											
	...											

SECTION IV. OPERATING RESULTS DEFINED AFTER THE TRANSFER PRICING

1. This field intended for taxpayers operating in the production, trading and service industry

Taxpayer who has already signed the Advance Pricing Agreement (APA)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Unit: Vietnamese dong

No.	Indicator	Value of related-party transaction		Value of transactions with unrelated parties	Total value of transactions arising from business activities within a specified tax period
		Value defined based on transfer pricing documentation	Value defined based on the APA price		
(1)	(2)	(3)	(4)	(5)	(6)=(3)+(4)+(5)
1	Sales of goods and services				

	Including sales of exported goods and services				
2	Deductions				
3	Net sales of goods and services				
4	Costs of goods sold				
5	Gross profits of goods sold and services rendered				
6	Selling expenses				
7	Business overheads				
8	Revenue generated by financial operations				
8.1	Including revenue generated from loan interest				
9	Financial expenses				
9.1	Including loan interest expenses				
10	Amortization costs				
11	Net operating profits				
12	Net profit from which loan interest costs and corporate income taxed have not been deducted yet				
13	Net operating profits plus loan interest expenses and amortization costs (13=11+9.1+10)				
14	Ratio of loan interest expenses to net operating profits plus loan interest expenses and amortization costs				
15	Profit margin used for transfer pricing				
a	Margin of.....				
b	Margin of.....				
c				

2. This field intended for taxpayers operating in the banking and credit industry

Taxpayer who has already signed the Advance Pricing Agreement	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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(APA)		
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Unit: Vietnamese dong

No.	Indicator	Value of related-party transaction		Value of transactions with unrelated parties	Total value of transactions arising from business activities within a specified tax period
		Value defined based on transfer pricing documentation	Value defined based on the APA price		
(1)	(2)	(3)	(4)	(5)	(6)=(3)+(4)+(5)
1	Interest income and other similar income				
2	Interest payments and other similar expenses				
3	Net interest income				
4	Income generated from service operations				
5	Expenses incurred from service operations				
6	Profit/loss from service operations				
7	Profit/loss from foreign exchange business operations				
8	Net profit/loss from sale and purchase of trading securities				
9	Net profit/loss from sale and purchase of investment securities				
10	Income generated from other operations				
11	Expenses incurred from other operations				
12	Net profit/loss from other operations				
13	Income generated from capital contributions and share purchases				
14	Operating expenses				
15	Expenses incurred from credit risk provisions				
16	Gross profit before tax				
17	Net operating profit (17=16-12)				

18	Profit margin used for transfer pricing				
a	Margin of.....				
b	Margin of.....				
c				

3. This field intended for taxpayers that are securities companies, securities investment fund management companies

Taxpayer who has already signed the Advance Pricing Agreement (APA)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Unit: Vietnamese dong

No.	Indicator	Value of related-party transaction		Value of transactions with unrelated parties	Total value of transactions arising from business activities within a specified tax period
		Value defined based on transfer pricing documentation	Value defined based on the APA price		
(1)	(2)	(3)	(4)	(5)	(6)=(3)+(4)+(5)
1	Receipts from fees for provision of services to customers and sole proprietorship activities				
a	Receipts from fees for securities brokerage services				
b	Receipts from fees for portfolio management services				
c	Receipts from fees for underwriting and issuing agent services				
d	Receipts from fees for financial consultancy and securities investment services				
d	Receipts from fees for securities investment fund management and bonuses awarded to fund management				

	companies				
e	Receipts from fees for fund certificate issuance services				
g	Remunerations paid to management boards for their participation in other companies' management boards				
h	Difference in securities selling and buying prices defined within a specified tax period, receipts from interest on bonds in sole proprietorship activities of securities companies, financial investment activities of fund management companies				
i	Other receipts prescribed by laws on provision of services to customers and sole proprietorship activities				
2	Expenses for provision of services to customers and expenses for sole proprietorship activities				
a	Payments of fees for membership of securities trading centers (if the declaring company is a member of a securities trading company)				
b	Expenses for securities depository services, fees for trades in securities carried out at securities trading centers				
c	Fees for listing and registration of securities (if the declaring company is a company issuing securities listed at a securities trading center)				
d	Expenses associated with management of investment fund or portfolio management services				
đ	Costs of mobilization of capital for investment funds				
e	Loan interest payments				
g	Remunerations paid to the management boards				
h	Payments of taxes, fees, charges payable associated with business operations				

i	Payments for management and official duty activities, employee costs				
k	Payments for amortization of fixed assets, other asset-related payments				
k.1	Payments for amortization of fixed assets				
k.2	Other asset-related payments				
l	Amounts set aside for provisions for proprietary-trading securities				
m	Other payments prescribed by laws on provision of services to customers and sole proprietorship activities				
3	Profit (loss) derived from provision of services to customers and sole proprietorship activities				
4	Other income generated from activities other than provision of services to customers and sole proprietorship activities				
5	Other expenses for provision of services to customers and sole proprietorship activities				
6	Profit (loss) from activities other than provision of services to customers and sole proprietorship activities				
7	Total profit recorded in accounting books before corporate income tax				
8	Net operating profit (9)=(7)-(6)				
9	Net profit from which loan interest costs and corporate income taxed have not been deducted yet				
10	Net operating profits plus loan interest expenses and amortization costs (10)=(8)+(2e)+(2k1)				
11	Ratio of loan interest expenses to net operating profits plus loan interest expenses and amortization costs				
12	Profit margin used for transfer pricing				

a	Margin of.....				
b	Margin of.....				
c				

I herein undertake that data shown above are true and assume legal liability for these data./.

.....,date (dd/mm/yyyy)

TAX AGENT’S OFFICER

TAXPAYER or TAXPAYER’S LEGAL REPRESENTATIVE

Full name:.....

(Sign and write full name; specify title and stamp (if any))

Practicing certificate No.....

Form No.02

LIST OF REQUIRED INFORMATION AND DOCUMENTS IN THE LOCAL FILE

(Attached to the Corporate Income Tax Finalization Declaration Form No. 03/TNDN)

Tax period: fromto.....

[01] Taxpayer’s name:

[02] Tax identification number

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[03] Address:

[04] Urban/rural district: [05] Province/city:.....

[06] Telephone:..... [07] Fax: [08] Email:

[09] Tax agent’s name (if any):

[10]
identification
number

Tax

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The company reports information or documents already prepared and filed according to the Form No.02 as follows:

No.	Description	Created and filed	Remark
1	Taxpayer's information		
1.1	Information about the management mechanism and organization structure, including organizational diagram, list and brief description of managerial position holders in the corporation to which the taxpayer is accountable, and their office or headquarter address		
1.2	Information about business operations or strategies of the taxpayer, including information about the taxpayer's involvement in or influence on the processes for, decisions on restructuring or transfer of capital or assets of the corporation in the defined fiscal year		
1.3	Information about enterprises that provide similar products or services in the domestic and international market (i.e. major competitors):		
2	Related-party transactions: in a certain type/class of material related-party transactions in which the taxpayer involves, the following information are required:		
2.1	Description of material related-party transactions (e.g. provision of production service, purchase of goods, offer of services, loans and performance bonds and financial security, intangible asset concessions, etc.) and the context where these transactions occur		
2.2	Value and invoices of amounts which have paid and have received within the corporation in respective transactions relating to a subsidiary company (e.g. amounts that have paid and received during the process of transaction in products, services, copyrights and loan interest, etc.) that are subject to adjustments made by foreign tax authorities		
2.3	Determination of related parties involved in related-party transactions and their relationship		
2.4	Duplicate copies of related-party transaction contracts or agreements		
2.5	Detailed function and comparability analysis of taxpayer and related parties involved in respective related-party transactions, including any change made in comparison with the prior year		

2.6	Interpretation of the most appropriate pricing method classes of related-party transactions and reasons for selection of the recommended pricing method		
2.7	Definition of the related party selected for transfer pricing and explanation for such selection		
2.8	Summary of material presumptions upon application of the recommended pricing method		
2.9	Explanation for analysis of multiple year data (if any)		
2.10	List and description of (internal and external) independent comparables and financial information and indicators necessary for analysis of transfer prices, including description of the method for searching comparison data and sources of information as references for such searching activity.		
2.11	Description of comparability adjustments that have already been made, reasons and materials related to adjustment results		
2.12	Description of reasons and interpretation showing that application of the recommended pricing method has observed the arm's length principle		
2.13	Summary of information about quantitative financial indices, indicators and criteria, reasons and interpretation showing that these indicators are used during the process of application of the recommended pricing method		
2.14	Copy of the unilateral, bilateral and multilateral APA and other tax agreements related to related-party transactions of the taxpayer to which the Vietnam's tax authority is not a participating party or signatory.		
3	Financial information:		
3.1	Taxpayer's financial report prepared in the declaration year		
3.2	Information about and plan of distribution and method of use of financial data in the process of application of the recommended pricing method		
3.3	Brief description of related financial data used in the process of comparability analysis and data sources		
3.4	Summary of reasons and explanation for causes, business and investment plan and development strategy of enterprises whose income statements show they have incurred operating losses for at least 3 years.		

The company herein undertake that all information provided in this form and attached documents are true and assume legal liability for such information./.

number

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The company reports information or documents already prepared and filed according to the Form No.03 as follows:

No.	Description	Created and filed	Remark
1	Organizational structure:		
1.1	Chart illustrating the ownership structure, legal structure of the corporation and geographic locations of its active subsidiaries.		
2	Information about business operations carried out by the corporation, including:		
2.1	Key elements and major distribution channels generating business profits		
2.2	Description of the supply chain of 5 major products and/or services of the corporation defined based on their sales and any products and/or services accounting for more than 5% of total sales of the corporation, including information about important geographic markets of these products and services. Description may take the form of a chart or diagram.		
2.3	List and brief description of agreements on material services between the corporation's members that excludes research and development (R&D) services and includes competency of head or main offices at a global and regional level that provide important services and transfer pricing policies with the aim of distribution of service costs and determination of the prices for the corporation's internal services. Summary of main reasons and explanation for the circumstance where the corporation carries out purchase, advertising and marketing activities through centralized commercial and marketing centers.		
2.4	Description of main geographic markets of the corporation's products, referred to in subparagraph 2.2		
2.5	Documented description of analysis of the head or main office's functions of giving contributions to values created by the corporation's local business establishments, e.g. material functions performed, material risks assumed and material assets used.		
2.6	Description of material business restructuring transactions, acquisitions or mergers arising within the specified fiscal year		
3	Information about the corporation's intangible assets:		
3.1	General description of the overall strategy of a MNE for development, ownership and use of intangible assets, including		

	locations of establishments carrying out R&D of head or main offices and locations where R&D activities are managed		
3.2	List of intangible assets or group of intangible assets in the corporation that have material impacts on transfer pricing policies and are legally owned by subsidiary companies		
3.3	List of important agreements between related parties on intangible assets, cost contribution arrangements, arrangements on provision of research service for head or main office and other licensing or concession arrangements		
3.4	General description of transfer pricing policies applied by the corporation to R&D and intangible asset operations		
3.5	General description of transfers of important interests involving intangible assets between related parties in the related fiscal year, including information about subsidiaries and countries participating in such transfers and other relevant payments		
4	The corporation's inter-company financial operations:		
4.1	General description of financial distribution mechanism of the corporation, including financial and financing arrangements with independent lenders		
4.2	Information used for defining any member of the corporation that provides financial functions and centralized funds for the corporation, including countries where its subsidiaries are established and actual head offices of these subsidiaries		
4.3	General description of transfer pricing policies applied by the corporation to financial and financing arrangements between related parties		
5	Operating results and tax obligations of the corporation:		
5.1	Consolidated financial statements of the declaration year of the corporation and reports, financial, internal management mechanisms for tax assessment purposes of the corporation; applicable tax rates for determination of tax obligations relative to profits obtained from business operations carried out by related parties involved in related-party transactions with the taxpayer		
5.2	List providing brief description of unilateral APAs and other tax policies relating to income distribution between countries		

The company herein undertake that all information provided in this form and attached documents are true and assume legal liability for such information./.

.....,date (dd/mm/yyyy)

TAX AGENT'S OFFICER

Full name:.....

TAXPAYER or TAXPAYER'S LEGAL REPRESENTATIVE

Practicing certificate No..... (Sign and write full name; specify title and stamp (if any))

Note:

- Keep blank in columns where no information is provided.

Form No.04

DECLARATION OF INFORMATION IN THE COUNTRY-BY-COUNTRY REPORT

(Attached to the Corporate Income Tax Finalization Declaration Form No. 03/TNDN)

Tax period: fromto.....

Taxpayer's name:

Tax identification number												
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Tax agent's name (if any):

Tax identification number												
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SECTION I. OVERVIEW OF INCOME DISTRIBUTION, TAX AND BUSINESS OPERATIONS CLASSIFIED BY COUNTRIES OF RESIDENCE

Country	Total sales			Profit before tax	Total corporate income tax payable	Income tax amount paid	Registered capital	Cumulative profit	Total employees	Tangible assets, except cash and cash equivalents
	Arm's length party	Related party	Total							

SECTION II. LIST OF INTER-CORPORATION SUBSIDIARIES CLASSIFIED BY COUNTRIES OF RESIDENCE

Name of the multinational group:														
Country	Subsidiary companies that are residents in host states or territories of tax residence	Countries or territories of business registration, in case other countries or territories of tax residence	Business operations											
			Research and development	Holding or management of intellectual property	Purchase of products	Manufacturing or production	Sale, marketing or distribution of products	Operation, management and other auxiliary services	Renting of services to unrelated parties	Inter-group financial activities	Prescribed financial services	Insurance	Holding of shares or other capital instruments	Inactive companies
	1.													
	2.													
	3.													
													

I herein undertake that data shown above are true and assume legal liability for such data./.

.....,date (dd/mm/yyyy)

TAX AGENT'S OFFICER

Full name:.....

TAXPAYER or TAXPAYER'S LEGAL REPRESENTATIVE

Practicing certificate No..... (signature, stamp (write full name and title))

Note: Keep blank in columns where no information is provided.

1 Taxpayer marks “x” in the column “form of related-party relationship” as referred to in Clause 2 Article 5 hereof. Where a related party involves in more than one form of related-party relationship, taxpayer is required to mark “x” in the appropriate cells.

2 Taxpayer marks “x” in the appropriate rows.

3 For the purpose of distribution to subsidiary residents, defining whether sales or costs are distributed is required.

4 Taxpayer marks “x” if a transaction is covered by APA and “no” if a transaction is not covered by APA.

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