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THE SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Hanoi, November 05, 2020

DECREE

On prescribing tax administration of enterprises having transactions with related parties

Pursuant to the Law on Organization of the Government dated June 19, 2015; the Law Amending and Supplementing a Number of Articles of the Law on Organization of the Government and the Law on Organization of Local Administration dated November 22, 2019;

Pursuant to the Law on Tax Administration dated June 13, 2019;

Pursuant to the Law on Enterprise Income Tax dated June 03, 2008 and the Law Amending and Supplementing a Number of Articles of the Law on Enterprise Income Tax dated June 19, 2013;

Pursuant to the Law Amending and Supplementing a Number of Articles of the Tax Laws dated November 26, 2014;

At the proposal of the Minister of Finance;

The Government hereby promulgates the Decree on prescribing tax administration of enterprises having transactions with related parties.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

1. This Decree prescribes principles, methods, order for determining factors of prices of transactions with related parties; rights and obligations of taxpayers in the determination of prices of transactions with related parties and procedures for declaration; responsibilities of state agencies for tax administration of taxpayers having transactions with related parties.

2. Related-party transactions regulated by this Decree are transactions of purchase, sale, exchange, lease, rent, free-of-charge borrowing and lending,

delivery and transfer of goods and provision of services; borrowing, lending, financial service, financial security and other financial instruments; purchase, sale, exchange, lease and rent, free-of-charge borrowing and lending, delivery and transfer of tangible assets, intangible assets and agreement on purchase, sale or common use of resources such as assets, capital, employees and sharing of costs between related parties, except for business transactions involving goods and services whose prices are controlled by the Government in accordance with the price law.

Article 2. Subjects of application

1. Goods production and trading or service provision organizations (hereinafter collectively referred to as taxpayers) that are liable to pay enterprise income tax and have related-party transactions defined in Article 5 of this Decree.

2. Tax agencies, including the General Department of Taxation, provincial-level Tax Departments and Tax Branches.

3. State agencies, other organizations and individuals involved in the application of regulations on tax administration of related-party transactions.

Article 3. Principles of application

1. Taxpayers having related-party transactions shall eliminate factors causing reductions in tax obligations that are controlled or affected by relationships with related parties in order to declare and determine tax obligations for such transactions to be equivalent to those for arm's length transactions under same conditions.

2. Tax agencies shall manage, examine and inspect prices of taxpayers' related-party transactions on the arm's-length and substance-over-form principles corresponding to the value generated from the nature of taxpayers' transactions, business and production activities in order to reject related-party transactions that fail to comply with the arm's length principle and reduce tax obligations of enterprises to the state budget, and adjust prices of these transactions in order to correctly determine tax obligations in accordance with this Decree.

Article 4. Interpretation of terms

Apart from terms defined in the Law on Tax Administration No. 38/2019/QH14 dated June 13, 2019, the terms below are construed as follows:

1. "Tax agreement" is the shortened term of the agreement on avoidance of double taxation and prevention of tax evasion with regard to income or property taxes which is concluded between Vietnam and another country or territory, including its amending and supplementing Agreements and Protocols currently in force in Vietnam.

2. "Agreement among competent authorities" is the shortened term of the agreement in force among competent authorities of countries and territories

participating in Treaty on taxes and wishing to automatically exchange information with regard to the country-by-country profit report.

3. “International agreements on taxes”, “tax treaties” mean bilateral and multilateral agreements and treaties related to tax.

4. “Counterpart tax agency” means the tax agency of a country or territory which has concluded a tax agreement with Vietnam.

5. “Independent comparable” means an arm’s length transaction between unrelated parties or an enterprise performing arm’s length transactions that is selected on the basis of comparison, analysis and identification of comparables in order to determine levels of price, profit ratios and profit allocation rates with a view to assessing taxpayers’ tax obligations toward the state budget in compliance with the Law on Tax Administration and Law on Enterprise Income Tax.

6. “Material difference” means the difference in price forming factors that significantly or substantially affects prices, profit ratios and profit allocation rates of the parties to a transaction.

7. “Database of the tax agency” means information and data that are collected, developed and managed from different sources by a tax agency in accordance with the Law on Tax Administration No. 38/2019/QH14 dated June 13, 2019, including also databases and information exchanged with foreign tax and competent agencies.

8. “Range of arm’s length transaction values” means a collection of values being prices, profit ratios, or profit distribution rates of independent comparables that are selected by the tax agency and taxpayers on the basis of the database prescribed in Article 17 of this Decree. Values in this range have similar levels of reliability for comparison. In case of necessity, the statistical probability method may be used to identify the standard range of arm’s length transaction values and the median value of typical, universal and common nature in order to increase the reliability of a collection of independent comparables.

9. “Range of arm’s length transaction values” means a collection of values, from the 35th percentile to the 75th percentile; the median of the standard range of arm’s length transaction values is the 50th percentile value of the statistical probability function.

10. “Organization on behalf of submitting reports” is the term used to refer to an organization authorized by the ultimate parent company of a group to submit the group's country-by-country profit report to the tax agency.

Article 5. Related parties

1. Related parties are parties having relationships in any of the following cases:

a) A party participates directly or indirectly in the management, control, contribution of capital to or investment in the other;

b) The parties are directly or indirectly subject to the management or control by or have capital contributed by or investment from a third party.

2. Related parties defined in Clause 1 of this Article are specified as follows:

a) An enterprise directly or indirectly holds at least 25% of equity capital of the other enterprise;

b) Two enterprises have at least 25% of their equity capital directly or indirectly held by a third party;

c) An enterprise is the biggest shareholder of equity capital, holding directly or indirectly at least 10% of the latter's total shares;

d) An enterprise guarantees or grants another enterprise a loan in any form (even including third-party loans secured with financial sources of the related party and financial transactions of similar nature) which equals at least 25% of the borrowing enterprise's equity capital and accounts for over 50% of the total value of medium- and long-term debts of the borrowing enterprise;

dd) An enterprise appoints members of its leadership to manage or hold control of another enterprise who account for over 50% of total members of the leadership responsible for the management or control of the latter; or appoints a member who has the power to decide on financial policies or business activities of the latter;

e) Two enterprises have over 50% of members of their leaderships or have one member of their leaderships who have/has the power to decide on financial policies or business activities be appointed by a third party;

g) Two enterprises are managed or controlled in terms of their personnel, finance and business activities by individuals who have one of the following relationships with the other: wife, husband; natural or foster father, natural or foster mother, mother-in-law or father-in-law; natural or foster child, stepchild, daughter-in-law, son-in-law, natural sibling, brother or sister-in-law, maternal or paternal grandfather or grandmother, maternal or paternal grandchild, and maternal or paternal aunt, uncle or nephew or niece;

h) Two business establishments have the relationship of head office and resident establishment or are both resident establishments of a foreign organization or individual;

i) Enterprises are under the control of an individual who either contributes his/her capital to such enterprise\ or personally participates in managing such enterprises;

k) In other cases in which an enterprise is under the de facto management, control or decision of its production and business activities by the other enterprise;

l) The enterprise has transactions of transferring or receiving the transfer of capital contribution of at least 25% of the contributed capital of the owner of the enterprise in the tax period; borrowing or lending at least 10% of contributed capital of the owner at the time of arising transactions in the tax period with the operator or controller of an enterprise or with an individual who has one of the relationships as prescribed in Point g of this Clause.

Chapter II

COMPARISON, ANALYSIS, SELECTION OF INDEPENDENT COMPARABLES AND METHODS TO DETERMINATION OF PRICES OF RELATED-PARTY TRANSACTIONS

Article 6. Principles of comparison and analysis

1. The comparison and analysis of a related-party transaction in order to determine the nature of a related-party transaction shall be carried out according to the substance over form principle:

a) The nature of transactions shall be determined by comparing legally binding contracts or documents or agreements on transactions between related parties to the reality of performance of these transactions by such parties. In case a taxpayer has a related-party transaction without a written agreement or with a written agreement incompliant with the arm's length principle, or which is performed in reality not in compliance with the principle of arm's length transactions between unrelated parties, such related-party transaction shall be determined based on the nature of business between independent parties. To be specific: The related party receiving revenues or profits from the related-party transaction with the taxpayer must have the rights to own and control business risks related to assets, goods, services and resources, and the right to create economic benefits and the rights to generate income from shares, stocks and other financial instruments, and the taxpayer incurring expenses from the transaction with the related party must receive direct economic benefits or values or contribute to generating revenues and added value for the taxpayer's production and business activities in conformity with the arm's length principle;

b) The nature of transactions shall be determined by the method of collecting information, evidence and data on transactions and risks posed to related parties in the reality of production and business activities.

2. Analysis and comparison of related-party transaction with arm's length

transaction:

a) Grounds for comparison off contracts, documents, agreements and economic, commercial and financial relationships in a related-party transaction of a taxpayer are data and the reality of performance of transactions among related parties in order to compare with business decisions that might be agreed in the similar conditions by independent parties. The comparison principle applied in the analysis and comparison attaches great importance to the nature and practice of business and risks incurred by the related parties rather than the written agreements;

b) Comparability analysis must ensure similarity between enterprises conducting arm's length transactions with enterprises having related-party transactions or enterprises having both arm's length transactions and related-party transactions, and must not allow any difference to materially affect the price, profit ratio or profit distribution rate between parties. In case there exists a different factor materially affecting the price, profit ratio or profit distribution rate, it is necessary to analyze, determine and eliminate that material different factor by comparing factors prescribed in Articles 7 and 10 of this Decree and in conformity with each method of determining prices of related-party transactions prescribed in Articles 13, 14 and 15 of this Decree.

Article 7. Selection of independent comparables

1. Selection of internal independent comparables means the selection of transactions between the taxpayer and unrelated parties, ensures similarity and no difference materially affecting the price, profit ratio or profit distribution rate between parties. If there is no similarly internal independent comparable, comparables shall be selected under Points b and c, Clause 3, Article 17 of this Decree. The comparison between related-party and arm's length transactions shall be made for each transaction involving each similar product. Where it is impossible to compare transactions by product, the aggregation of transactions must ensure conformity with the nature and reality of business activities, and the application of the method of determining prices of related-party transactions must comply with Articles 12, 13, 14 and 15 of this Decree.

2. Financial and business data of comparables must be reliable for use for tax declaration and calculation purposes, and conformable with regulations on accounting, statistics and taxation. The time of transactions of independent comparables must coincide with the time of related-party transactions or must be in the same financial year with that of the taxpayer, except for special cases where it is necessary to expand the period of comparison under Article 9 of this Decree. Data format must enable comparison and calculation of prices at the transaction time or in the same tax period; data used for comparison of profit ratios or profit distribution rates must be collected in at least three consecutive tax periods. Decimal values of relative ratios or rates shall be rounded up to the hundredth. If

relative values are derived from data released without accompanying absolute numbers and this rounding method is not used, these data may be used with their sources quoted.

3. The minimum number of selected independent comparables after completion of comparison, analysis and adjustment of material differences is as follows: 01 comparable in case the related-party transaction or the taxpayers performing the related-party transaction and independent comparables have no difference; 03 comparables in case independent comparables have differences but there are sufficient information and data for eliminating all material differences; and 05 or more comparables when there are information and data for eliminating most of the material differences of independent comparables.

Article 8. Adjustment of prices, profit ratios and profit distribution rates of taxpayers

1. In case there are independent comparables with the similarly reliable comparison and such comparables have no differences or the independent comparables are differences but there are sufficient data and information for eliminating most of the material differences:

a) If the price, profit ratio or profit distribution rate of the taxpayer is in the range of arm's length transaction values of similar independent comparables, the taxpayer does not have to adjust the price, profit ratio or profit distribution rate for determining the price of a related-party transaction;

b) If the price, profit ratio or profit distribution rate of the taxpayer does not fall within the range of arm's length transaction values of similar independent comparables, the taxpayer must determine the value in the range of arm's length transaction values which reflects the highest similarity with the related-party transaction in order to adjust the price, profit ratio or profit distribution rate of such related-party transaction without reducing taxable incomes and the taxpayer's tax obligations toward the state budget.

2. In case there only data information for eliminating most of the material differences of independent comparables, at least 05 independent comparables shall be selected and the standard range of arm's length transaction values as specified in Appendix V attached to this Decree shall be applied. The selection of a value in the standard range of arm's length transaction values in order to adjust and re-determine the price, profit ratio or profit distribution rate of the taxpayer is prescribed as follows:

a) If the price, profit ratio or profit distribution rate of the taxpayer is the value in the standard range of arm's length transaction values of similar independent comparables, the taxpayer does not have to adjust the price, profit ratio or profit distribution rate for determining the price of a related-party transaction;

b) If the price, profit ratio or profit distribution rate of the taxpayer does not fall within the standard range of arm's length transaction values of similar independent comparables, the taxpayer must determine the value in the standard range of arm's length transaction values which reflects the highest similarity with the related-party transaction in order to adjust the price, profit ratio or profit distribution rate of such related-party transaction and determine the taxable incomes and payable tax amounts without reducing taxable incomes and the tax obligations toward the state budget;

c) In case where the tax agency adjusts or decides a price, profit ratio and profit distribution rate of the taxpayer, the adjusting or deciding values shall be the median values of the standard range of arm's length transaction values.

3. On the basis of the method of determining prices of a related-party transaction and selected independent comparables, to adjust the price, profit ratio or profit distribution rate of the taxpayer in order to determine the enterprise income tax obligation of the taxpayer without reducing its tax obligations to the state budget.

Article 9. Expansion of the scope of comparison and analysis

1. In case it is impossible to find independent comparables for related-party transactions of particular or sole nature, the scope of comparison and analysis may be expanded in terms of the sector, geographical market and comparison time so as to find independent comparables. The expansion of the scope of comparison and analysis is carried out as follows:

a) Selection of independent comparables according to the statistical economic subsectors that are most similar to the subsectors in which the taxpayer is operating in the same local market and locality, in the country;

b) Expansion of the comparable areas to regional countries that have similar sectoral conditions and economic development levels.

2. In case of expansion of the scope of analysis and selection of comparables to the above-mentioned areas, it is necessary to analyze quantitative and qualitative similarities and material differences under Clause 6, Article 10 and Article 14 of this Decree; or to use figures or data of independent comparables in the previous year and adjust material differences resulting from the time-related factor (if any).

The extended time for collection of figures and data of independent comparables must not exceed one financial year in comparison with the financial year of the taxpayer if the method of determining price of a related-party transaction prescribed in Article 14 of this Decree is used.

Article 10. Items used in analysis, comparison and adjustment of material differences

1. Comparison and analysis shall be made by using the method of comparing, reviewing and adjusting material differences in comparable factors in order to select independent comparables, including product characteristics of a goods, service or assets (hereinafter referred to as product characteristics); operational functions and assets and production and business risks; contractual terms and business circumstances under which transaction occurs.

2. Product characteristics mean characteristics affecting to the price of a product, including: Characteristics of a tangible goods, such as physical characteristics, product types, quality and commercial trademark of a product, the reliability, availability and supplied quantity; service characteristics such as nature, complexity, expertise and scope of the service; characteristics of intangible assets such as form of transfer, type of property, form of ownership, ownership protection level and duration, transfer duration, rights to be transferred and benefits to be obtained from using intangible assets.

a) Analysis of intangible assets and the capacity of distributing profits for related parties is based not only on the legal ownership, but also on all risk control activities and financial capacity to manage risks for the whole process of developing, increasing, maintaining, protecting and exploiting intangible assets among related parties. The analysis and comparison shall base on a number of characteristics of intangible assets such as monopoly; scope and term of legal protection; rights established under the protection title, a license and written transfer of rights of intangible property; the geographical extent to the rights of intangible property; life cycle; development stage; the right to value enhancement, adjustment and updating of intangible assets; the expected profits of the intangible asset;

b) Analysis of intangible assets including contents identifying intangible assets used or transferred in transactions and specific and material economic risks related to the development, growth, and maintenance, protection and exploitation of intangible assets; defining contractual agreements such as legal ownership of intangible assets, terms and conditions of legal agreements, registration, license agreement and related contracts, attached risks; determination of parties performing the functions of asset exploitation and use, and management of risks related to the development, increase, maintenance, protection and exploitation of intangible assets; defining contractual terms and the reality of performances by the parties; defining actual related-party transactions related to the development, proliferation, maintenance, protection and exploitation of intangible assets when considering legal ownership of intangible assets and relationships, rights according to relevant contracts, the performance of parties and the determination of prices of the transaction in conformity with the parties' assumed contributions, performance, assets and risks.

3. Operational functions, assets and production and business risks

performed by each party of the contract and assets, production and business risks in relation to the taxpayer's opportunity costs, economic conditions, sectoral conditions, field of operation and geographical position that are analyzed to identify factors that reflect the ability to gain profits from business activities and practices performed by the taxpayer in association with the function and the use of assets, capital and related costs.

The analysis results reflect the main function in the relationship between the use of assets, capital and opportunity costs as well as the risks associated with the investment of assets, capital and such costs with the profitability that the taxpayer performs in relation to business transactions. To be specific:

a) Some of the main functions of an enterprise are analyzed in the entire value chain of the corporation, including research and development such as conducting research and development services under a contract, autonomous research and development, and development of technical technology and product design; production including autonomous production, licensed production, contractual production, outsourcing, and equipment assembly and installation; purchase, sale, management of raw materials and other trading activities; distribution including autonomous distribution, limited risk distribution, commission agency, wholesale and retail distribution; providing support services such as legal, financial and accounting, debt collection credit, training and managing human resources; providing transportation and storage services; performing brand development such as marketing, advertising, promoting, market research and other functions in the sectoral value chain.

b) Some of the main assets of an enterprise, including intangible assets such as technical know-how, copyright, business know-how, secret receipt, patents and intangible assets related to commercial and marketing activities, such as brand, system of construction and identification of a brand, list, data and relationship with customers; intangible assets such as factories, machinery, equipment; financial assets and economic rights and interests from such assets during the exploitation, use and transfer of such assets;

c) Some main risks in business including strategy risks or market risks due to the implementation of business strategies such as accessing, expanding or maintaining the market; risks related to infrastructure or inventories; financial risks such as credit risks and bad debt, exchange rate risks; risks related to transactions such as price factor and payment term in a commercial transactions; product risks from design and development, production to quality management and after-sales service; business risks from capital investments and the number of customers and force majeure risks.

Analysis of business risks of the taxpayer in the entire value chain of a corporation in order to determine material risks to the entire sectoral value chain, the capacity of risk control such as deciding the risk management and handling

when such risks occurs, including: Determining main risks related to economy; evaluating the distribution level; handling risks in legally binding contracts or documents, agreements of the taxpayer; analyzing the function of control and minimizing risks in legally binding contracts or documents, agreements; inspecting and reviewing the implementation and encounter and distribution of the taxpayer's risks in reality. In case there are differences in the distribution of risks in legally binding contracts or documents, agreements in comparison with reality, the tax agency shall, based on the risk analysis results, carry out risk re-distribution and adjustment of prices, profit ratios and profit distribution rates of taxpayers.

4. When conducting transactions, the contractual terms including a number of terms related to volume, conditions of transaction or product distribution; payment duration, conditions and methods; warranty, conditions for replacement, upgrade, modification or correction of products; conditions of business privileges and product distribution; a number of conditions affecting to the economy such as services of supporting, quality inspection consultancy, instruction, advertising support or promotion.

a) In case where the legally binding contract's or document's, agreement's terms fail to fully reflect the reality of performance of such terms by related parties, the analysis and comparison shall be carried out on the basis of reviewing actual events or financial data in order to determine economic characteristics and nature and business risks in reality of the parties;

b) In case where the related parties do not sign legally binding contracts or documents, agreements, fail to record revenue or costs such as technical support, synergy within a corporation, sharing business know-how or using seconded or part-time employees, the analysis shall be carried out to determine the transaction nature and value, and incomes generated from such transactions and contribution by each related party. According to such grounds, the comparison with business decisions may be approved by independent parties under similar conditions to re-determine related-party transactions of the taxpayer.

5. Economic circumstances of a transaction and market conditions at the time when such transaction occurs and affects the price, profit ratio and profit distribution rate of parties.

a) Some economic circumstances when the transaction occurs such as the scope and geographical position of the production and consumption market, the market level such as normal wholesale and retail, exclusive distribution; the level of competition of the product in the market and the corresponding competitive position of the seller and the buyer; availability of substitute goods; the level of supply and demand in the market and in each specific area; consumer purchasing power; economic factors affecting production and business costs incurred at the place of transactions such as tax incentives; market regulation policies of

governments; production costs, expenditures for land, labor and capital; business cycle and factors that have a positive impact on the taxpayer's price, profit ratio and profit distribution rate, such as location characteristics, advantages, and cost savings based on geographical factors, local markets, workforce, and concentration of synergy and specialization functions on the basis of the contributions of all related parties involved in value creation;

b) Where the taxpayer and comparables neither reside within the same country, territory nor supply goods and services for the same geographic market, the analysis of economic circumstances includes analysis of comparability of markets where the taxpayer and comparables are residing with respect to comparative advantages, location-specific advantages influencing competitive factors such as costs of labor, raw materials, transportation, land rentals, costs of training, allowances, financial and tax incentive policies, infrastructure costs, market growth levels and advantageous features of market such as the number of population and customer with increased spending capacity and other comparative advantage features.

6. Comparison and analysis for elimination of material different factors is an analysis aimed at eliminating quantitative and qualitative differences in financial information or data that materially affect the factors used as the basis for determining prices of related-party transactions by each specific pricing method of a related-party transaction prescribed in Articles 13, 14 and 15 of this Decree. Quantitative difference is the difference determined by absolute numbers indicating business cycles, number of years of establishment and operation of an enterprise or by relative numbers representing differences in financial indicators according to particular investment sectors or operation functions and differences in working capital. Qualitative difference is information identified based on each specific method of determining price of a related-party transaction specified in Articles 13, 14 and 15 of this Decree.

a) Factors regarded as material includes: The difference in product characteristics, contractual terms, functions, assets and risks and business line and economic circumstances of the taxpayer and independent comparables; differences in investment policies and environment and impacts of input production and business costs in local, domestic and foreign areas;

b) Quantitative and qualitative differences shall be reviewed and adjusted corresponding to comparability factors materially affecting the method of determining prices of related-party transactions prescribed in Articles 13, 14 and 15 of this Decree.

7. The analysis and comparison results shall be used as a basis for selection of independent comparables in conformity with each method of determining prices of related-party transactions prescribed in Articles 13, 14 and 15 of this Decree. In case where taxpayer fails to adjust the price, profit ratio and profit

distribution rate according to independent comparables because the quantitative and qualitative differences cause materially effects, the taxpayer must search and re-select independent comparables in order to determine the standard range of arm's length transaction values with the most reliability and similarity and adjust the price of a related-party transaction in accordance with this Decree.

Article 11. Order of comparison and analysis

1. Identifying the nature of the related-party transaction before analyzing its similarity with independent comparables.

2. Analyzing, comparing, finding and selecting similar independent comparables on the basis of determining the comparison time, product characteristics and contractual terms; analyzing the sector, market and economic circumstances under which the transaction arises; analyzing the related-party transaction and the taxpayer performing the related-party transaction; database sources; method of determining the price of the related-party transaction, and adjusting material differences. To be specific:

a) Identifying the comparability extent, subject matters and factors, including comparison time, information used for analysis of the taxpayer with respect to comparability factors relating to functions, assets and risks; product characteristics; contractual terms; economic circumstances under which the transaction arises, analysis of the sector, market, context of business operations and transaction of goods, services and assets of parties, for the purpose of selecting the related party that needs to determine the price of a related-party transaction under this Decree;

b) Evaluating and searching comparables includes prioritizing examination of internal independent comparables on the basis of verification of the level of their reliability and independence in order to ensure that these transactions are not those arranged in breach of the arm's length principle; setting out criteria for searching and determining database that may be relied on, as referred to in Article 17 of this Decree, in order to search similar independent comparables. On the basis of information that has been analyzed and examination of availability of data of independent comparables, selecting the method of determining the price of a related-party transaction appropriate for the nature of business, commercial, financial operations and risks incurred by the related party that requires determination of the price;

c) Analyzing the level of similarity and reliability of independent comparables that have been selected on the basis of examination and screening of qualitative and quantitative criteria; analyzing information about the economy, industry and financial figures of selected comparables in order to verify the level of similarity; determining material differences and adjusting material differences. On the basis of selection of similar independent comparables, using financial data and figures of selected independent comparables to determine bases for

adjustment to the price, profit ratio and profit distribution rate of the taxpayer under Article 8 of this Decree.

3. Identifying the price, profit ratio or profit distribution rate based on results of analysis of independent comparables for use as the basis for comparison or application to determine the enterprise income tax obligation of the taxpayer without reducing its tax obligations to the state budget. The computing method shall be applied consistently in the production and business cycle or stage suitable to the business functions and model as prescribed in Articles 12, 13, 14 and 15 of this Decree.

Article 12. Selection of methods of determining prices of related-party transactions

Comparison methods to determine prices of related-party transactions (hereinafter referred to as methods of determining prices of related-party transactions) shall be applied in conformity with the arm's length principle, nature of transactions and functions of taxpayers on the basis of calculation and consistent application in the entire production or business cycle or stage and of financial data of independent comparables selected according to the comparison and analysis principles as prescribed in Articles 6, 7, 8, 9 and 10 of this Decree. The method of determining prices of related-party transactions shall be selected among the methods specified in Articles 13, 14 and 15 of this Decree, on the basis of characteristics of related-party transactions and available data information.

Article 13. Methods to compare related-party transactions' prices with arm's length transactions' prices

1. Cases applied the method of comparing the price of a related-party transaction with that of an arm's length transaction (below referred to as arm's length transaction price comparison method):

The taxpayer performs related-party transactions for each type of goods, tangible asset or service under trading and circulation conditions common on the market or with prices quoted on the domestic and international exchanges of commodities or services; pays royalties for use of intangible assets; or pays loan interest in lending and borrowing activities; or the taxpayer performs both arm's length and related-party transactions involving products that have similar characteristics and are subject to similar contractual terms.

2. Principles of application:

a) The arm's length transaction price comparison method may be applied on the principle that there is no difference in product characteristics and contractual terms upon comparison between prices of arm's length transactions and those of related-party transactions, which materially affects product prices. If there are differences materially affecting product prices, these differences shall be eliminated;

b) The factors of product characteristics and contractual terms which materially affect product prices include: Characteristics, quality, brands and trademarks of products, and transaction scale and volume; terms of contracts on supply and delivery of products: amount, time of delivery, time of payment and others terms; rights to distribute or sell 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 circumstances and operation functions of the taxpayer.

3. Method of determination:

a) The price of products in the related-party transaction shall be adjusted based on that in the arm's length transaction or the value in the standard range of arm's length transaction values of independent comparables as prescribed in this Decree;

b) In case the price of products is quoted on the domestic and international exchanges of commodities or services, the price of products in the related-party transaction shall be determined according to the price of products quoted at the same time and under similar conditions;

c) A taxpayer purchasing machinery or equipment from a foreign related party shall provide materials or documents proving that the purchase prices comply with the arm's length principle at the purchase time: For brand-new machinery or equipment, the price for comparison is the price on the invoice showing that the related party has purchased such machinery or equipment from an independent party. For used machinery or equipment, there must be the original invoices or documents issued at the time of purchase; in this case, the assets shall be re-valued under current regulations on management, use and depreciation of fixed assets.

4. The result achieved from the determination of the price of the related-party transaction shall be used as the taxable price for declaring and determining the payable enterprise income tax, which, however, must not reduce the taxpayer's tax obligations to the state budget.

Article 14. Method of comparing the profit ratio of taxpayers with that of independent comparables

1. Cases of application:

The taxpayer has no database and information for the application of the arm's length transaction price comparison method prescribed in Article 13 of this Decree or the taxpayer cannot compare product-based transactions on the basis of each transaction involving each similar product; the aggregation of transactions is carried out in order to ensure conformity with the business nature and reality, and selection of profit ratios of appropriate independent comparables; or the taxpayer fails to exercise autonomy over the entire production and business

chain or fails to participate in performing related-party transactions under Article 15 of this Decree. To be specific:

a) The method of comparing the ratio of gross profit to revenue (the resale price method) shall be applied when the taxpayer sells or distributes products purchased from its related party to independent customers and does not create intangible assets associated with sold products; does not participate in the process of development, enhancement, maintenance and protection of intangible assets under the ownership of its related parties associated with the sold products, or does not carry out processing, manufacturing or installation activities that may lead to any change in the nature and characteristics of these products, or attach trademarks to these products to increase their value. The resale price method shall not be applied to the taxpayer acting as the distributor that owns intra-group valuable intangible assets with respect to brand names, trademarks and other marketing-related intangible assets such as customer lists, distribution channels, logos, images and other brand identity elements for market research, marketing or trade promotion, or incurs expenses from establishment, design of distribution channels, brand identities or after-sale costs;

b) The method of comparing the ratios of gross profit to the cost (the cost plus profit method) shall be applied when the taxpayer that does not own intangible assets and incurs little business risk, performs its functions of manufacturing under contracts or orders, or processing, assembly, processing of products, installation of equipment; procurement and supply of products; supply of services or rendering of research and development services for the related party according to contracts. The cost plus profit method shall not be applied to the taxpayer that is an autonomy manufacturing enterprise, or performs its functions varying from product research and development to building and creation of product brands, trademarks, market strategies and product warranty and customer care services;

c) The net profit ratio comparison method: The net profit ratio comparison method shall be used in the cases where the taxpayer does not have information necessary for application of the arm's length price comparison method; does not have data and information about the accounting and bookkeeping method of independent comparables or, because of failure to search comparables with similar functions and products, does not have sufficient grounds for application of methods of comparing the ratios of gross profit to the cost or revenue; the taxpayer performing distribution or manufacturing functions does not own intangible assets or does not engage in development, enhancement, maintenance, protection and exploitation of intangible assets, or does not fall within the scope of application of the method of distribution of profits between related parties in accordance with Clause 1, Article 15 of this Decree.

2. Principles of application:

a) The profit ratio comparison method shall be applied on the principle that there is no difference in operation functions, assets and risks; economic circumstances and accounting and bookkeeping methods when making comparison between the taxpayer and independent comparables, which materially affects the profit ratio. If there are differences materially affecting profit ratios, these material differences shall be eliminated;

Factors materially affect profit ratios include: Factors related to assets, capital, costs; actual control rights and deciding rights in service of the performance of the taxpayer's main functions; the nature of business lines and production market, product consumption; accounting and bookkeeping methods and product cost structures; economic circumstances when the transaction occurs; commercial or financial relationship of a multinational corporation; technical support; sharing business know-how; use of seconded or part-time employees and economic circumstances of sector and business lines of the taxpayer; product characteristics and contractual terms.

b) In case of application of the resale price method: Differences that may have a material impact upon the ratio of gross profit to the sale price (net revenue) such as costs reflecting functions of the enterprise that is a sales agent, exclusive distributor or distributor performing marketing functions; increased growth levels of product consumption markets; functions performed by the taxpayer within the supply chain such as retail, wholesale supply and accounting and bookkeeping methods of parties;

c) In case of application of the cost plus profit method: Differences that may have a material impact upon the ratios of gross profit to the cost, including costs reflecting functions performed by the enterprise such as manufacturing according to the contract designated by the parent company, or providing intra-group service; obligations to perform contracts such as duration to deliver products, costs of quality control, warehousing, terms of payment, and methods for accounting and bookkeeping for components of costs of the taxpayer and independent comparables;

c) In case of application of the net profit ratio comparison method: Differences that may have a material impact upon the ratio of net profit such as differences in operation functions, assets, risks; economic circumstances; contractual terms and conditions and product characteristics as prescribed in Article 10 of this Decree.

For taxpayers conducting business with simple production and distribution functions, making no strategic decisions and engaged in transactions creating low added value, which do not bear inventory risk or market risk and generate no revenues or incur no costs arising from the operation of intangible assets, they do not have to incur losses arising from these risks.

3. Method of determination:

The profit ratio comparison method uses the gross or net profit ratios of selected independent comparables to determine the taxpayer's corresponding gross or net profit ratio. Whether to select the gross profit or net profit ratio to revenues, costs or assets depends on the nature and economic circumstances of transactions, functions of the taxpayer and accounting or bookkeeping methods of related parties. Grounds for determining profit ratios are accounting data of the taxpayer in term of revenues, costs or assets which are not controlled or decided by related parties.

a) The method of comparing the ratio of gross profit to revenue (the resale price method):

The purchase price (cost) of a commodity, a service or an asset sold by a related party equals (=) the sale price (net revenue) of that commodity, service or asset resold to an independent party less (-) the gross profit to the sale price (net revenue) of the taxpayer less (-) other costs included in the purchase price: Import duty; customs fee; insurance cost and international shipping cost (if any).

The gross profit to the sale price (net revenue) of the taxpayer, which is determined based on that of independent comparables, equals (=) the sale price (net revenue) of the taxpayer multiplied (x) by the ratio of gross profit to the sale price (net revenue) of selected independent comparables.

The ratio of gross profit to the sale price (net revenue) of selected independent comparables is the value within the standard range of arm's length transaction values of the ratios of gross profit to the sale price (net revenue) of independent comparables which are selected for adjustment in conformity with the principles prescribed in this Decree.

The purchase price (cost) of such commodity, service or asset sold by a related party, which has been adjusted based on independent comparables, is the price for taxation or declaration costs for determination of enterprise income tax obligations of the taxpayer.

b) The method of comparing the ratios of gross profit to the cost (the cost plus profit method):

The sale price (or net revenue) of a commodity, a service or an asset sold to a related party equals (=) the cost thereof sold by an independent party plus (+) the gross profit to the cost of the taxpayer.

The gross profit to the cost of the taxpayer, which is determined from that of independent comparables, equals (=) the cost paid by the taxpayer multiplied (x) by the ratio of gross profit to the cost of selected independent comparables.

The gross profit to the cost paid by selected independent comparables is the value within the standard range of arm's length transaction values of the ratios of the gross profit to the cost paid by independent comparables which are selected for adjustment in conformity with the principles prescribed in this Decree.

The sale price (or net revenue) applied to the related party, which has been adjusted based on independent comparables, is the price for taxation, declaration costs for determination of enterprise income tax obligations of the taxpayer.

c) The net profit ratio comparison method:

The ratio of net profit before loan interest and enterprise income tax to revenue, costs or assets of a taxpayer engaged in related-party transactions shall be adjusted according to the ratio of net profit before loan interest to revenue, costs or assets of selected independent comparables, based on which tax obligations of the taxpayer shall be adjusted and determined.

Net profit excludes differences in revenues and costs of financial activities.

The ratio of net profit to be selected is the value within the standard range of arm's length transaction values of the ratios of net profit of independent comparables which are selected for adjustment or determination of taxable income and tax obligations of the taxpayer in conformity with the principles prescribed in this Decree.

The ratio of net profit before loan interest and enterprise income tax shall be determined in accordance with the laws on accounting, tax administration and enterprise income tax.

4. The adjusted profit ratio determination results of the taxpayer shall be used as the basis for determining taxable incomes and payable enterprise income tax amounts, but must not reduce the taxpayer's tax obligations toward the state budget.

Article 15. Method of distribution of profits between related parties

1. Cases of application:

a) The taxpayer participates in a related-party transaction which is specific, integrated or closed within a corporation, or develops new products, uses proprietary technologies, takes part in the value chain of exclusive transactions 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 relating to multiple financial markets around the globe;

b) The taxpayer participates in a digital economic transaction in the absence of bases for determination of prices of transactions between related parties or participates in the creation of added value from synergy within a corporation;

c) The taxpayer exercises its autonomy over the entire production and business process, and is not regulated by Clause 1, Article 13 and Clause 1, Article 14 of this Decree.

2. Principles of application:

The method of distribution of profits means a method of distribution of collected total profits to determine profits of the taxpayer engaged in the transaction chain. This method shall be applied to total actual collected and potential profit which is calculated based on financial data from proper and valid documents; the value and profit of the transactions shall be determined by using the same accounting method in the whole period of application of this method.

3. Method of determination:

The adjusted profit of the taxpayer shall be distributed based on total collected profit, including actual and potential profits of parties engaged in the transaction chain.

The adjusted profit of the taxpayer is the total of basic profit and extra profit. The basic profit is calculated by the profit ratio comparison method prescribed in Article 14 of this Decree. The extra profit is calculated by the distribution rate based on one or some factors such as revenues, costs, assets or manpower of related parties to the related-party transaction and in conformity with the arm's length principle.

In case of lack of information and data for distribution of the adjusted profit under the above provision, such distribution may be based on one or some factors such as revenues, costs, assets or manpower of related parties to the related-party transaction and in conformity with the arm's length principle.

4. The adjusted profit determination results of the taxpayer shall be used as the basis for determining taxable incomes and payable enterprise income tax amounts, but must not reduce the taxpayer's tax obligations toward the state budget.

Chapter III

COSTS FOR TAX CALCULATION AND DECLARATION, DETERMINATION OF PRICES OF RELATED-PARTY TRANSACTIONS

Article 16. Determination of costs for tax calculation for enterprises having transactions with related parties

1. Costs of related-party transactions which neither accord with the nature of arm's length transactions nor contribute to creating revenues or incomes of production and business activities of a taxpayer shall not be deducted when determining incomes subject to enterprise income tax in a period, including:

a) Payments to a related party that does not perform any production or

business activity related to the production or business activities of the taxpayer; does not have the rights or responsibilities related to assets, goods or services provided to the taxpayer;

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

c) Payments to a related party that is a resident in a country or territory that does not collect enterprise income tax, and that does not contribute to creating revenues or added value for production or business activities of the taxpayer.

2. Service costs between related parties:

a) Except for the payments specified at Point b of this Clause, a taxpayer may deduct its service costs for tax calculation purposes within a period when all the following conditions are met: The provided services have commercial, financial and economic value and directly serve production and business activities of the taxpayer; services provided by related parties are confirmed as having been already provided under the same conditions under which independent parties pay for these services; the service charges which are paid on the basis of the arm's length principle and related-party transaction method or the method of distribution of service charges between related parties are applied consistently in the entire corporation to similar services, and the taxpayer shall provide a contract, documents, invoices and information concerning the method of calculation, factors of distribution and policies on prices applied to the provided services in the corporation.

For cases related to centers performing specialized functions and synergies in creating added value for the corporation, the taxpayer shall determine total value created from these functions and determine the level of profit distribution proportionate to the value of contribution by related parties after deducting (-) relevant service charges paid for the related party to perform coordination or service provision functions in arm's length transactions of similar nature.

b) Service costs that are not deducted from taxable incomes include: Costs arising from services provided for the sole purpose of providing benefits or creating values for other related parties; services to provide benefits for shareholders of related parties; services which are repeatedly charged because multiple related parties provide the same services, or in which the added value offered to a taxpayer cannot be determined; services which are in nature benefits obtained by the taxpayer as a result of being a member of a corporation and costs that a related party adds to third-party services provided through a related intermediary do not add any value to these services.

3. Total loan interest costs that are deducted when determining incomes

subject to enterprise income tax for an enterprise having transactions with related parties:

The taxpayer's total loan interest costs after deducting deposit interests and loan interests arising in the period to be deducted from income subject to enterprise income tax must not exceed 30% of total net profit generated from business activities in a period plus loan interest cost after deducting deposit interests and loan interests arising in a period, plus depreciation cost arising in that period;

b) Loan interest costs that are not deducted according to Point a of this Clause shall be transferred to the next tax period when determining the total loan interest costs to be deducted in case where total generated loan interest costs to be deducted in the next tax period are lower than the prescribed level specified at Point a of this Clause. The time limit for the transferring loan interest cost shall not exceed 05 consecutive years, from the subsequent year of the year when the non-deducted loan interest cost arises;

c) Provisions specified at Point a of this Clause shall not be applied to loans of the taxpayers being credit institutions under the Law on Credit Institutions; insurance business organizations under the Law on Insurance Business; official development assistance loans (ODA), concessional loans of the Government that are implemented according to the method that the Government borrows from foreign countries and enterprises re-borrow such loans; loans for implementing national target programs (new rural development and sustainable poverty reduction programs); loans for program investment, social welfare projects of the State (such as houses for resettlement, labors, students, social houses and other public social welfare projects);

d) The taxpayer shall declare the rate of loan interest cost arising in a period according to Appendix I attached to this Decree.

Article 17. Database used in declaration, determination and management of related-party transaction prices

1. Database used in the declaration and determination of related-party transaction prices of taxpayers includes:

a) Commercial database includes financial and economic information and data collected, gathered, standardized, stored, updated and provided by database business organizations via software supporting access and management with pre-programmed tools and applications, providing convenient support for users to search, access and use financial and economic data of Vietnamese and foreign enterprises classified according to production and business lines, geographical areas or other required search criteria for the purpose of comparing and identifying similar objects in declaration and management of related-party transaction prices;

- b) Information and data of enterprises publicized on the stock exchanges;
- c) Information and data publicized on domestic and international commodity and service exchanges;
- d) Information publicized by ministries and sectors or other official information sources.

2. Database used in the management of related-transaction prices by tax agencies includes:

- a) The database specified in Clause 1 of this Article;
- b) Information and data exchanged with counterpart tax agencies in accordance with Clause 7, Article 4 of this Decree;
- c) Information provided to tax agencies by ministries and sectors;
- d) Database of tax agencies used for managing risks.

3. Analyzing and selecting independent comparables in order to analyze and determine the arm's length transaction range must comply with the principle of analysis, comparison and the methods of determining related-party transaction prices as prescribed in this Decree according to the following priority order in selecting comparison data:

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

With regard to foreign comparables in different geographical markets, it is necessary to analyze similarities and quantitative and qualitative material differences under Article 9 and Article 10 of this Decree.

Article 18. Rights and obligations of taxpayers in declaration and determination of related-party transaction prices

1. Taxpayers having related-party transactions regulated by this Decree have the rights prescribed in the Law No. 38/2019/QH14 dated on June 13, 2019 on Tax Administration.

2. Taxpayers having related-party transactions regulated by this Decree shall declare and determine related-party transaction prices without reducing their enterprise income tax obligations in Vietnam in accordance with this Decree

Taxpayers shall prove their compliance with this Decree in the analysis, comparison of methods, and selection of a method for related-party transaction price determination at the request of competent agencies.

3. Taxpayers having related-party transactions regulated by this Decree shall declare information about related-party relationships and transactions

according to the Appendices I, II and III to this Decree and submit the completed forms together with the enterprise income tax finalization return.

4. Taxpayers shall preserve and provide related-party transaction price determination dossiers being information, materials, data and documents, including:

a) Information about related-party relationships and transactions according to the Appendix I to this Decree;

b) Local file containing information about related-party transactions, policy and methods of determining prices of related-party transactions that are prepared and stored at the taxpayer's office according to the list of information and materials prescribed in the Appendix II to this Decree;

c) Master file containing information about business operations of the multinational group, its policy and methods of determining prices of related-party transactions applied all over the world and its policies on allocation of income, activities and functions in the intra-group value chain according to the list of information and materials prescribed in the Appendix III to this Decree;

d) Country-by-country profit report of an ultimate parent company, prepared according Clause 5 of this Article and the Appendix IV to this Decree.

5. Taxpayers with obligations related to country-by-country profit report:

a) If a taxpayer is an ultimate parent company operating in Vietnam and generating at least eighteen trillion of Vietnam dongs in global consolidated revenue, it shall prepare a country-by-country profit report in the related-party transaction price determination dossier according to the Appendix IV to this Decree. The time limit for submission of the report to the tax agency is 12 months after the end of a fiscal year of the ultimate parent company.

b) If a taxpayer in Vietnam has an overseas ultimate parent company, and its ultimate parent company is required to prepare its country-by-country profit report according to regulations of the home country, it shall submit it to the tax agency in the following cases:

- The home country or territory of an ultimate parent company that has the international tax agreements with Vietnam but no agreement among competent authorities at the deadline for submission of a report as prescribed at Point a of this Clause.

- The overseas home country or territory of an ultimate parent company that has an agreement among competent authorities and Vietnam but its automatic information exchange mechanism has been suspended or a country-by-country profit report of a group resident in such overseas country or territory cannot be provided automatically to Vietnam.

- In case a multinational group has more than 01 taxpayer in Vietnam and

its overseas ultimate parent company have a written notice of assignment of one of taxpayers in Vietnam to submission of its country-by-country profit report, the assigned taxpayer shall submit it to the tax agency. The taxpayer shall submit such written assignment notice to the tax agency before or at the end of the fiscal year of the taxpayer's ultimate parent company.

c) Point b of this Clause shall not be applied if the ultimate parent company of a taxpayer in Vietnam has assigned an organization to submit its country-by-country profit report to tax agency of the home country before or on the date prescribed at Point a of this Clause and the following requirements are met:

- The home country or territory of an organization assigned to submit its report requires the submission of country-by-country profit report.

- The home country or territory of an organization assigned to submit its report has an agreement among competent authorities and Vietnam is a party at the deadline for submission of the report as prescribed at Point a of this Clause.

- The home country or territory of the organization assigned to submit its report has an agreement among competent authorities and Vietnam, its automatic information exchange mechanism has not been suspended and a country-by-country profit report of a group resident in such overseas country or territory can be provided automatically to Vietnam.

- The organization assigned to submit its report sends its written notice of assignment to submission of the country-by-country profit report to the tax agency of the home country before or at the end of the fiscal year of the group's ultimate parent company.

- The taxpayer in Vietnam submits the written notice of assignment an organization to submission of the report to Vietnam's tax agency according to Point b of this Clause.

- The taxpayer in Vietnam submits the written notice of name, tax identification number and the home country of its ultimate parent company or of the organization assigned to submit the report before or at the last day of the fiscal year of the group.

d) In case the taxpayer's overseas ultimate parent company must submit the country-by-country profit report according to regulations of its home country, the tax agency shall implement the automatic information exchange according to commitments in the international agreements on taxes.

dd) In case the taxpayer's ultimate parent company is not required to submit the country-by-country profit report according to regulations of its home country, to comply with tax treaties.

6. Related-party transaction price determination dossiers shall be prepared before the time of filing in enterprise income tax finalization returns each year,

and shall be preserved and presented to meet the tax agencies' request for information. When a tax agency carries out an inspection or examination of the taxpayer, the time limit for provision of the related-party transaction price determination dossier shall comply with the Law on Inspection, counting from the date of receipt of a request for information.

The related-party transaction price determination dossier and information, materials and documents provided by taxpayers to the tax agency must comply with the law on tax administration. Data, documents and materials used as the bases for comparability analysis, comparison and determination of related-party transaction prices must have their sources clearly indicated. For data of independent comparables being accounting figures, taxpayers shall preserve them in the spreadsheet format files for provision to the tax agency.

7. Taxpayers shall provide in a sufficient and accurate manner and bear responsibility before law for information and materials included in the related-party transaction price determination dossiers at the request of the tax agencies in the course of consultation prior to an inspection or examination prescribed in Article 20 of this Decree. The time limit for submission of the related-party transaction price determination dossier is 30 working days counting from the date of receipt of the tax agency's request. In case a taxpayer has a plausible reason, the dossier submission deadline may be extended only once for no more than 15 working days.

8. Independent external consultancy or audit companies or tax clearance service companies which act on behalf of taxpayers to prepare related-party transaction price determination dossiers shall comply with the provisions of the law on tax administration applicable to enterprises having related-party transactions prescribed in this Decree and take responsibility before law in accordance with regulations.

Article 19. Cases of exemption from declaration and preparation of dossiers for determination of related-party transaction prices

1. A taxpayer shall be exempted from making declaration for determination of related-party transaction prices referred to in Sections III and IV in the Appendix I to this Decree, and from preparing dossiers for determination of related-party transaction prices only if it has transactions with related parties that are liable to pay enterprise income tax in Vietnam, subject to the same enterprise income tax rate as applied to the taxpayer, and neither of them is entitled to enterprise income tax incentives in a tax period, but shall provide bases for such exemption in Sections I and II in the Appendix I to this Decree.

2. A taxpayer shall make declaration for determination of related-party transaction prices according to the Appendix I to this Decree but shall be exempted from preparing a dossier for determination of related-party transaction prices in the following cases:

a) The taxpayer has related-party transactions but the total revenue arising in a tax period is less than VND 50 billion and the total value of the related-party transactions arising in the tax period is less than VND 30 billion;

b) The taxpayer has entered into an advance pricing agreement (APA) and submitted the annual report in accordance with the law on advance pricing agreement. For related-party transactions which are not covered by the APA, the taxpayer shall make declaration for determination of the prices of these transactions in accordance with Article 18 of this Decree;

c) The taxpayer does business with simple functions, generating no revenue and incurring no cost from the operation or use of intangible assets, generating revenues of under VND 200 billion, and applies a ratio of net profit before deduction of loan interest cost and enterprise income tax (excluding difference of revenue and expenses of financial activities) to net revenue, including the following fields:

- Distribution: At least 5%;
- Manufacturing: At least 10%;
- Toll processing: At least 15%.

In case the taxpayer keeps separate accounting records of revenue and expenses in each sector, to apply the net profit ratio before deduction of loan interest cost and enterprise income tax to net revenue in specific respective sectors.

In case the taxpayer manages to keep a separate bookkeeping record of revenue but fails to do so with respect to expenses arising in each manufacturing and business sector, it is required to allocate expenses in proportion to revenue generated in each sector to apply the net profit ratio before deduction of loan interest cost and enterprise income tax to net revenue in specific respective sectors.

In case the taxpayer fails to manage to keep separate bookkeeping record of revenue and expenses in each manufacturing and business sector for the purpose of determination of the net profit ratio before deduction of loan interest cost and enterprise income tax in each specific respective sector, it is required to apply the net profit ratio before deduction of loan interest cost and enterprise income tax to net revenue in the sector having the highest level of such ratio.

A taxpayer that does not apply a ratio of net profit as prescribed at this Point shall prepare a dossier for determination of related-party transaction prices as required.

3. The taxpayer exempt from declaring or formulating dossiers of determining prices of related-party transactions specified in Clauses 1 and 2 of this Article, the determination of total loan interest costs to be deducted from

income subject to enterprise income tax of an enterprise having transactions with related parties shall comply with Clause 3, Article 16 of this Decree.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 20. Responsibilities and powers of tax agencies in management of prices of related-party transactions

1. To apply risk management measures in tax administration for prices of related-party transactions in accordance with the tax law.

a) To manage and use information of taxpayers having related-party transactions for risk management;

b) To apply risk management measures in preparing the plan of inspection, examination for enterprises having related-party transactions and related-party transactions;

c) to Manage and use the taxpayers' country-by-country profit reports for risk management and information exchange in accordance with regulations and Vietnam's commitments in international agreements on taxes, not for tax assessment.

2. In pursuance to the comparison and analysis principle, principle and methods for determining related-party transaction prices prescribed in this Decree and on the basis of information about tax obligations declared by enterprises having related-party transactions, to assess tax in the following cases:

a) If the taxpayer commits a tax violation but fully complies with accounting, invoicing and documentation regulations, the tax agency shall assess revenues, costs or taxable incomes for the purpose of determination of tax obligations by the comparison and analysis principle, method of determining related-party transaction prices and databases used in the management of prices of related-party transactions as prescribed by this Decree;

b) For other cases, the tax agency shall comply with Clause 2, Article 50 of the Law No. 38/2019/QH14 on Tax Administration dated June 13, 2019;

c) The tax agency shall create conditions for the taxpayer to prove and explain figures and data of independent comparables used in the related-party transaction pricing dossier.

3. To set the price; profit ratio; profit allocation rate; taxable income or enterprise income tax amount to be paid by taxpayers, in case taxpayers don't abide by regulations on declaration and determination of related-party transaction prices; don't provide or don't fully provide information and data declared for

related-party transaction price determination as follows:

a) Taxpayers fail to provide or sufficiently provide information or to submit Appendix I to this Decree;

b) Taxpayers provide insufficient information required in the related-party transaction price determination dossier according to Appendices II and III to this Decree or fail to present such dossier together with data, documents and materials used as the basis for analysis, comparison and determination of prices in the dossier at the tax agency's request within the time limit prescribed in this Decree. Information included in the related-party transaction pricing dossier that is proved material if such information has an influence on the result of analysis for selection of similar independent comparables, method of determining the related-party transaction prices or the result of adjustment for the price, profit rate and profit distribution ratio of the taxpayer;

c) Taxpayers use inaccurate or untruthful information about independent transactions to analyze, compare, declare and determine prices of related-party transactions, or rely on materials, data and evidencing documents which are unlawful, invalid or are of unclear origin to determine the price, profit ratio or profit distribution rate for related-party transactions;

d) Taxpayers violate the provisions on pricing of related-party transactions in Article 19 of this Decree;

dd) Database used for tax assessment shall comply with the Law No. 38/2019/QH14 on Tax Administration of June 13, 2019.

4. To keep confidential information provided by taxpayers relating to the pricing of related-party transactions in accordance with this Decree. The provision of information to other agencies and organizations must comply with Clause 5 of this Article.

5. If finding any issues relating to mechanisms and policies concerning specialized fields or sectors through inspections and examinations of the pricing of related-party transaction, to consult related agencies, organizations or persons as follows:

a) Specialized management agencies, specialized organizations and associations;

b) The tax agency shall provide dossiers, information and materials relating to the pricing of related-party transactions specialized agencies or organizations consulted, which shall keep confidential information in accordance with law.

6. To exchange information with taxpayers and counterpart tax agencies according to the consultation procedures implemented prior to, during and after the inspection or examination of prices of related-party transactions as follows:

a) In case, through application of risk management measures in tax

administration of prices of related-party transactions, the tax agency finds it necessary to exchange information with the taxpayer about the Appendix I to this Decree and the related-party transaction pricing dossier of the taxpayer, the tax agency shall send a written request for consultation with the taxpayer in order to exchange and provide in advance information about the dossier in accordance with this Decree;

b) In case the tax agency needs to contact and discuss with the counterpart tax agency about the country-by-country profit report and other relevant information under the provisions on bilateral agreement and information exchange formalities in a relevant tax agreement. When necessary, the tax agency shall notify the taxpayer in writing of suspension of the inspection or examination in order to exchange information with the counterpart tax agency in accordance with tax law.

7. To perform the automatic information exchange in accordance with Vietnam's commitments in tax treaties. The tax agency shall announce periodically and annually the list of foreign tax agencies that perform the automatic information exchange of taxpayers' country-by-country profit reports in the portal of tax field.

8. Tax authorities shall modify determination of related-party transaction prices under bilateral agreements specified in relevant tax agreements.

9. In case a tax agency has signed an APA with a taxpayer, the tax agency shall:

a) Manage, examine and inspect related-party transactions which are not covered by the APA by the risk management-based pricing method;

b) Manage, examine and inspect the taxpayer's compliance with the APA in accordance with regulations.

Article 21. Responsibilities of ministries, ministerial-level agencies and People's Committees of provinces and central affiliated cities

1. The Ministry of Finance, within the ambit of its tasks and powers, shall:

a) Perform the state management of tax applicable to enterprises having related-party transactions and related-party transactions in accordance with this Decree;

b) Assume the prime responsibility for, and coordinate with the Ministry of Information and Communications in, communicating and disseminating information about state management of tax applicable to enterprises having related-party transactions;

c) Examine and inspect the implementation of the provisions of this Decree on tax applicable to enterprises having related-party transactions.

2. The State Bank, within the ambit of its tasks and powers, shall:

Coordinate in the provision of information and data on borrowing of foreign loans and repayment of foreign debts of specific enterprises having related-party transactions on the basis of the list requested by the tax agencies, including data on loan amounts, interest rate, periods of interest and principal payment, actual fund withdrawal, loan (principal and interest) repayment and other relevant information (if any).

3. The Ministry of Planning and Investment, within the ambit of its tasks and powers, shall:

Coordinate in the provision of data on registration of business lines of enterprises; database on investment capital structures at the licensing time and time of modification of investment registration certificates or enterprise registration certificates and relevant information on investment projects when the tax agency conducts examinations and inspection of enterprises having related-party transactions.

4. The Ministry of Science and Technology and the Ministry of Agriculture and Rural Development, within the ambit of their tasks and powers, shall:

Coordinate in the provision of database relating to technology transfer contracts; industrial property rights transfer contracts; transfer of plant variety rights; dossiers of registration of intellectual property rights after establishment of industrial property rights or plant variety rights, and provide information when being consulted for the tax agency to perform tax administration of enterprises having related-party transactions.

5. The Ministry of Information and Communications, within the ambit of its tasks and powers, shall:

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

6. The Ministry of Industry and Trade, within the ambit of its tasks and powers, shall:

Coordinate in the provision of database on prices of commodities on domestic commodity exchanges and information within its scope of management as required for tax administration for enterprises having related-party transactions by the tax agency.

7. The Committee for Management of State Capital at Enterprises, within the ambit of its tasks and powers, shall:

Coordinate in urging groups, corporations, groups of associated enterprises within its scope of management to provide information according to regulations of the tax agency.

8. People's Committees of provinces and central affiliated cities, within the ambit of their tasks and powers, shall:

Direct their Departments of Planning and Investment, Departments of Finance and related departments and sectors to build up databases under their specialized management to serve tax administration for enterprises having related-party transactions.

9. Ministries, branches shall, within the ambit of their tasks and powers, coordinate with the Ministry of Finance in implementing this Decree.

Article 22. Effect

1. This Decree takes effect on December 20, 2020, and applies from the 2020 enterprise income tax period.

2. The Government's Decree No. 20/2017/ND-CP dated February 24, 2017 and Decree No. 68/2020/ND-CP dated June 24, 2020, prescribing tax administration for enterprises having transactions with related parties shall expire from the effective date of this Decree.

3. Declaration and finalization of enterprise income tax of 2017 and 2018:

a) The taxpayers that are cases of making additional declarations of tax finalization declaration dossiers of 2017 and 2018 according to Clause 2, Article 2 of the Government's Decree No. 68/2020/ND-CP dated June 24, 2020 but have not made such additional declarations shall continue the implementation before January 01, 2021;

b) In case a tax agency or competent state agency has carried out inspection and examination and issued an inspection or examination conclusion or a handling decision for the 2017 or 2018 tax period for a taxpayer, and the taxpayer is subject to re-determination of payable tax amounts according to Point c, Clause 2, Article 2 of the Government's Decree No. 68/2020/ND-CP dated June 24, 2020 but until the effective date of this Decree, has not sent a request to the tax agency, such taxpayer may request the direct managing tax agency to re-determine payable tax amounts;

c) In case the taxpayer's enterprise income tax or late-payment interest paid to the state budget in 2017 or 2018 is higher than the re-determined enterprise income tax amount or late-payment interest, the difference may be cleared against the payable enterprise income tax amount from 2020 to the end of 2024. Past this time limit, the remaining difference that has not yet been offset shall not be settled.

4. For cases of loan interest cost eligible to be carried forward to the following tax period upon 2019 enterprise income tax finalization according to the Decree No. 68/2020/ND-CP, the maximum period for a non-deductible interest cost amount to be carried forward is 05 consecutive years counting from

the 2020 enterprise income tax period. Past this time limit, the remaining loan interest cost shall not be carried forward to the following tax periods.

Article 23. Implementation responsibility

1. The Ministry of Finance shall assume the prime responsibility for, and coordinate with relevant ministries, branches and People's Committees of provinces and central affiliated cities, in implementing this Decree.

2. Ministers, Heads of ministerial-level agencies, Heads of government-attached agencies and Chairpersons of People's Committees of provinces and central affiliated cities and related organizations, individuals shall take responsibilities for the implementation of this Decree./.

**FOR THE GOVERNMENT
THE PRIME MINISTER**

Nguyen Xuan Phuc

** All Appendices are not translated herein.*