

**THE MINISTRY OF
FINANCE**

No. 41/2017/TT-BTC

**THE SOCIALIST REPUBLIC OF VIETNAM
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Hanoi, April 28, 2017

CIRCULAR

PROVIDING GUIDANCE ON IMPLEMENTATION OF CERTAIN ARTICLES OF THE GOVERNMENT'S DECREE NO. 20/2017/ND-CP DATED FEBRUARY 24, 2017 ON TAX ADMINISTRATION FOR ENTERPRISES ENGAGED IN TRANSFER PRICING

Pursuant to the Law on Tax Administration No. 78/2006/QH11 dated November 29, 2006; the Law on Revision of certain articles of the Law on Tax Administration No. 21/2012/QH13 dated November 20, 2012;

Pursuant to the Law on Corporate Income Tax No. 14/2008/QH12 dated June 3, 2008; the Law on Revision of certain articles of the Law on Corporate Income Tax No. 32/2013/QH13 dated June 19, 2013;

Pursuant to the Law on Revision of certain articles of the Law on Tax No. 71/2014/QH13 dated November 26, 2014;

Pursuant to the Government's Decree No. 12/2015/ND-CP dated February 12, 2015 specifying implementation of the Law on Revision of certain articles of the Law on Tax and revision of certain articles of Decrees on Tax;

Pursuant to the Government's Decree No. 20/2017/ND-CP dated February 24, 2017 prescribing the tax administration for enterprises engaged in transfer pricing;

Pursuant to the Government's Decree No. 215/2013/ND-CP dated December 23, 2013 defining the functions, tasks, powers and organizational structure of the Ministry of Finance;

Upon the request of the Director of the General Department of Taxation,

The Minister of Finance hereby provides guidance on implementation of certain articles of the Government's Decree No. 20/2017/ND-CP dated February 24, 2017 on tax administration for enterprises engaged in transfer pricing (hereinafter referred to as Decree No. 20/2017/ND-CP) as follows:

Article 1. Scope

This Circular helps instruct subjects of the Decree No. 20/2017/ND-CP to implement certain regulations on comparability analysis, selection of transfer pricing method, information

declaration, transfer pricing documentation and exemption from transfer pricing documentation requirements under the provisions of the Decree No. 20/2017/ND-CP.

Article 2. Comparability analysis, selection of independent comparables for comparison and transfer pricing purposes, prescribed by Article 6 of the Decree No. 20/2017/ND-CP

1. The nature of related-party transactions prescribed by legally binding agreements, documents or arrangements on transactions of related parties shall be determined and compared to the reality of execution of these transactions by such parties, as provided by Clause 1 Article 6 of the Decree No. 20/2017/ND-CP, under the following guidelines:

a) Collect information about, determine the nature of related party transactions, economic, commercial and financial relationships of the taxpayer that are specified in agreements (including the annexure and amended agreement hereto attached) or in documents or arrangements with the related party in order to determine obligations, interests and liabilities of contracting parties.

b) Analyze the reality of business operations and functions of the taxpayer; compare the reality of execution of such transactions by these parties during their production and business process with those prescribed by legally binding documents, arrangements or agreements; analyze documents, agreements, arrangements and reality of execution of these transactions by such parties by applying codes of conduct on business relationships between independent parties. Analyze comparability factors under the instructions given in Clause 3 of this Article.

In cases where the reality of execution of these transactions by such parties is different from the transactions prescribed by agreements, documents or arrangements, collected information about the reality of execution of these transactions by such parties shall be considered as the basis for conducting comparability analysis and selecting the transfer pricing method of the taxpayer.

Unless the reality of execution of these transactions by related parties conforms to the codes of business conduct between independent parties, the arm's-length and substance-over-form doctrine shall be used for re-determining related party transactions and business risks incurred by these parties. In cases where related party transactions and distributed risks do not reflect the nature of economic, financial and commercial relationships between unrelated parties, these transactions and risks shall be redetermined and redistributed in order for the taxpayer to carry out comparability analysis and select the transfer pricing method.

c) Data on and the reality of the related party transaction shall be used as the bases for comparison of the taxpayer's related party transactions prescribed by agreements, documents and arrangements and economic, commercial and financial relationships with business decisions that may be accepted by independent parties under the same or similar conditions. According to principles of comparison applied in the comparability analysis, the nature, practical reality of business and risks incurred by related parties shall be preferred to written arrangements.

2. Standard arm's length range, bases for making adjustment to prices, profit rate and profit distribution ratio of the taxpayer used for determining that taxpayer's corporate income tax

obligations, as provided by Point c and dd Clause 2 Article 6 of the Decree No. 20/2017/ND-CP, shall be defined as follows:

a) Probability method in which the quartile function is used for determining standard arm's length range and values selected as the basis for transfer pricing comparability and adjustment in the absence of either obtained information about evaluation of reliability of each independent comparable or data used as the basis for eliminating all material differences. The quartile function is used for determining the standard arm's length range as the basis for making relevant adjustment to prices, profit rate and profit distribution ratio of the taxpayer which does not result in any reduction in its tax obligations to the state budget. The quartile function divides data values, ranked in descending order, of prices, profit rate and profit distribution ratio of independent comparables into four parts containing an equal number of observations. The quartile function syntax, standard arm's length range and median value shall be subject to instructions given in Appendix 01 hereto attached.

The standard arm's length range determined by the quartile function is from the first quartile to the third quartile. The middle value falling within the standard arm's length range is defined as values between the first quartile and the third quartile. The second quartile is defined as the median value of the standard arm's length range.

b) Bases for making adjustment to prices, profit rate and profit distribution ratio of the taxpayer used for determining of the transfer price, taxable income and corporate income tax obligations shall be prescribed as follows:

b1) When successfully finding independent comparables that are of similar level of reliability, and, whether or not they contain differences, acquiring sufficient information and data used as the basis for eliminating all of material differences:

If prices, profit rate and profit distribution ratio of the taxpayer fall within the arm's length range of unrelated transactions performed by similar independent comparables, the taxpayer is not required to adjust its price, profit rate and profit distribution ratio to determine the transfer price.

Unless the price, profit rate and profit distribution ratio of the taxpayer fall within the arm's length range of unrelated transactions performed by similar independent comparables, the taxpayer is obliged to determine values falling within the arm's length range that reflect the highest level of similarity to a related party transaction in order to make adjustment to the price, profit rate and profit distribution ratio of the related party transaction in order to adjust the price, profit rate and profit distribution ratio of the related party transaction but avoid any reduction in taxable income and tax obligations to the state budget of the taxpayer.

b2) When obtaining only information or data used as the basis for eliminating most of the material differences of independent comparables, selecting at least five independent comparables as prescribed by Point c Clause 2 Article 6 of the Decree No. 20/2017/ND-CP and applying the standard arm's length range under the instructions given in Point a of this Clause.

If the price, profit rate or profit distribution ratio of the taxpayer is the middle value within the standard arm's length range of unrelated transactions performed by similar independent comparables, the taxpayer is not required to adjust its price, profit rate and profit distribution ratio in order to be able to determine the transfer price.

Unless the price, profit rate and profit distribution ratio of the taxpayer fall within the standard arm's length range of unrelated transactions performed by similar independent comparables, the taxpayer is obliged to determine middle values falling within the standard arm's length range that reflect the highest level of similarity to a related party transaction in order to make adjustment to the price, profit rate and profit distribution ratio of the related party transaction and determine taxable income and tax amount payable but avoid any reduction in the taxable income and tax obligations to the state budget.

Where the tax authority adjusts or fixes the price, profit rate or profit distribution ratio of the taxpayer, the adjusted or fixed value is the median falling within the standard arm's length range.

3. The comparability factors used for comparability analysis and selection independent comparables, prescribed by Point a and dd Clause 3 Article 6 of the Decree No. 20/2017/ND-CP, shall be specified as follows:

a) Characteristics of the property, good and service (hereinafter referred to as product) are defined as properties affecting the product price, e.g. in the case of tangible property, including physical features, type, quality, trademark of a product, reliability, availability and the volume of supply; in the case of services, including nature, complexity, expertise and extent of a service; in the case of intangible property, including form of the transaction, type and form of property, duration and degree of protection, transferring time, transferred rights, anticipated benefits from use of the property.

Analysis of intangible property, characteristics and possibility of distributing profit to parties must not depend solely on legal ownership but take into account all of risk control activities and financial capacity for controlling risks to the entire process of further development, enhancement, maintenance, protection and exploitation of intangible property that involves related parties. Certain characteristics of intangible property, e.g. exclusivity, extent and duration of legal protection, rights created by patents, licenses and assignments, geographical extent of intangible property rights, life cycle, growth phase, rights for promotion of value, improvement and update of intangible property, anticipated level of profit achieved from such intangible property.

Analysis of characteristics of intangible property aims to determine intangible property used or assigned during the transaction process and specific or material economic risks related to development, development, enhancement, maintenance, protection and exploitation of intangible property; contractual agreements on legal ownership of intangible property, terms and conditions of legally binding agreements, registration, agreements on license and other related contracts, associated risks; the party performing the function of operating and using intangible property, managing risks associated with development, enhancement, maintenance, protection and operation of intangible property; contractual terms and conditions and practical reality of

execution by contracting parties; the related party transactions actually connected with development, enhancement, maintenance, protection and operation of intangible property upon examination of the legal ownership of intangible property and other related contractual relationships or rights and process of execution of these transactions by the parties; and price of the transactions appropriate to contribution made and the functions performed, assets employed and risks assumed by the parties.

b) Functions performed by each party, operating assets and risks in relation to opportunity costs, economic conditions, and conditions of the whole industry or sector and geographical position of the taxpayer, are analyzed to determine indicators of capability of gaining profit from business operations and practices in which the taxpayer has been involved by performing its functions and using assets, capital and associated costs.

The analysis result reflecting main functions related to business transactions performed by the taxpayer in the relationship between, use of assets, capital and opportunity costs as well as risks associated with use of these assets, capital and opportunity costs for investment purposes, with the capability of gaining profit, shall be defined as follows:

b1) Certain main functions of the subsidiary in the entire value chain of the multinational group including the research and development function, e.g. contract research and development services, in-house research and development, technical and technological development and product design activities; the manufacturing function, e.g. in-house manufacturing, licensing manufacturing, contract manufacturing, toll manufacturing, assembling and installation of equipment; sale, purchase and management of raw materials and other activities; distribution, e.g. distribution on its own, limited risk distribution, commission agent, wholesale distribution, retail distribution; provision of support services, e.g. legal, accounting and finance, credit and collection, training and personnel management services; provision of transportation and warehousing services; brand development activities, e.g. marketing, advertising, publicity, market research and other functions within the value chain in the industry.

b2) Certain key financial assets of the subsidiary including intangible property, e.g. technical know-how, copyright, trade secrets, secret formulas, patents, intangible assets related to commercial and marketing activities, e.g. brands, brand building and identity systems, lists, figures and relationships with customers; tangible assets, e.g. plant, machinery and equipment; financial assets, rights and economic benefits created by these assets during the process of exploitation, use and transfer thereof.

b3) Certain major business risks including strategic risks or market risks arising from implementation of business strategies, e.g. market penetration, expansion or maintenance; risks associated with infrastructure or goods inventory; financial risks, e.g. credit risks, bad debt risks, foreign exchange risks; risks associated with transactions, e.g. risks arising from factors such as price and payment terms in commercial transactions; product risks arising from design, development and manufacturing of product, product quality management and after sales services; business risks associated with capital investments, the number of customers and force majeure risks.

Analysis of the taxpayer's business risks in the entire value chain of the multinational group aims to determine material risks to the entire value chain of the industry, capability of controlling risks such as capability of making decisions on risk management and dealing with risks likely to arise in the reality, e.g. identification of major economic risks, assessment of degree of allocation and arrangement of risks specified in legally binding agreements or documents or arrangements of the taxpayers; analysis of functions of controlling and minimizing risks in legally binding agreements or documents or arrangements; examination and review of performance of these functions, bearing and allocation of risks of the taxpayer in the reality. Where there is any difference between allocation of risks in legally binding agreements, documents or arrangements and that carried out in the reality, based on the results of risk analysis, the tax authority decides to re-allocate risks and adjust price, profit rate and profit distribution ratio of the taxpayer.

c) Contractual terms of transactions include certain terms regarding volumes and conditions of the transaction or product distribution; duration, conditions and methods of payment; terms and conditions of warranty, replacement, improvement, update, correction or adjustment of product; terms and conditions of exclusive rights to trade and distribute products; certain other terms and conditions having economic effects such as support and advisory services for quality control, user's instruction, advertising and promotional activities.

In cases where terms and conditions of a legally binding agreement, document or arrangement do not adequately reflect the reality of execution of such transactions between related parties, the comparability analysis is conducted on the basis of carrying out review of events occurring in the reality or financial data in order to identify economic characteristics, nature and risks associated with practical reality of business of these parties.

Unless related parties enter into a legally binding agreement, document or arrangement in order not to recognize sales or expenses derived from technical assistance, synergies in the multinational group, sharing of business know-how or utilization of seconded or dual-contract staff, the comparability analysis is carried out to determine the nature, value of transaction, income generated from these transactions and contribution made by each related party. This is used as the basis for comparison with business decisions that may be accepted by independent parties under the same or similar conditions.

d) Economic conditions of transactions and market conditions at the date and time of these transactions have an influence on the level of price, profit rate and profit distribution ratio of parties.

d) Economic conditions under which these transactions are carried out, e.g. scale and size, geographic locations of the product manufacturing and consumption market, levels of market such as ordinary wholesale and retail, exclusive distribution; extent of competition of products sold on the market and relative competitive position of the buyer and seller; availability of substitute goods; levels of general supply and demand or location-specific supply and demand; consumer purchasing power; economic factors that may influence costs of production arising at the location of transaction, e.g. tax incentive policies; government regulations of the market; cost of production, land, labour and capital; business cycle and factors having positive influence upon the price, profit rate and profit distribution ratio of the taxpayer, e.g. features of positions,

advantages and cost savings achieved depending on locations, local markets, labour forces and synergy and specialization functions centralized on the basis of contributions made by related parties involved in the creation of value.

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 conditions 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, rent, training, subsidies, financial, tax incentive policies, infrastructure costs, market growth levels and advantageous features of market such as the large population and customer base with increased spending capacity and other comparative advantage features.

dd) The comparability analysis that help eliminate material differences according to certain quantitative and qualitative criteria for searching and selecting independent comparables most relative to the taxpayer serves as the basis for determination of the level of price, profit ratio or profit distribution ratio of the taxpayer according to the arm's length principle.

Certain qualitative criteria, e.g. financial indicators relating to the volume of sales, assets, working capital, inventories, export proportion; indicators relating to intangibles such as intangible asset value, research and development costs, and other specific quantitative differences of the taxpayer, are determined on the basis of analysis of comparability factors specified in Clause 3 Article 6 of the Decree No. 20/2017/ND-CP, and Point a, b, c and d of this Clause.

Qualitative and quantitative differences are analyzed and proved to have a material effect on the price, profit rate and profit distribution ratio upon comparison between the taxpayer and independent comparables during the business period or cycle where appropriate to the economic and commercial nature of the industry and operational functions of the taxpayer. These differences are analyzed to search and select independent comparables that are similar to the taxpayer.

In the event that the taxpayer refuses to make any adjustment for the price, profit rate and profit distribution ratio based on independent comparables by reason of quantitative and qualitative differences causing a material effect, the taxpayer is obliged to search and reselect independent comparables in order to determine the standard arm's length range in order to ensure the high degree of reliability and similarity, and make an adjustment for the transfer price under the instructions of Clause 2 Article 2 hereof.

4. The steps in carrying out the comparability analysis, referred to in Clause 4 Article 6 of the Decree No. 20/2017/ND-CP, shall be defined as follows:

a) Determining the nature of related party transactions by acquiring information about the reality of execution of these transactions by the taxpayer.

b) Carrying out the comparability analysis, searching and selecting similar independent comparables according to the following procedures:

b1) Identifying the comparability extent, subject matters and factors, e.g. comparison time and date, information used for analysis of the taxpayer with respect to comparability factors relating to functions, assets and risks; product characteristics; contractual terms; economic conditions that exist when transactions occur, analysis of the industry, market, context of business and transaction of goods, services and assets of parties, for the purpose of selecting the related party that needs to determine the transfer price in accordance with Article 7 of the Decree No. 20/2017/ND-CP and Article 3 hereof.

b2) Evaluating and searching comparables, e.g. 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 9 of the Decree No. 20/2017/ND-CP, in order to search similar independent comparables. On the basis of information that has been subject to the analysis and examination of availability of data of independent comparables, selecting the transfer pricing method appropriate for the nature of business, commercial, financial operations and risks incurred by the related party that requires determination of the transfer price.

b3) 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 (if any). 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 rate and profit distribution ratio of the taxpayer under the instructions of Point b Clause 2 of this Article.

c) Identifying the level of price, profit ratio or profit distribution ratio of the taxpayer based on the results of comparability analysis in order to calculate taxable income without making any reduction in the taxpayer's obligations to pay tax to the state budget.

Article 3. Transfer pricing methods provided in Article 7 of the Decree No. 20/2017/ND-CP

1. The method for comparing the profit rate of the taxpayer to that of independent comparables, stipulated by Clause 2 Article 7 of the Decree No. 20/2017/ND-CP, shall be specified as follows:

a) The method for comparison of the ratio of gross profit to sales (resale price method) shall be applied when the taxpayer sells or distributes products purchased from its related party to unrelated customers and does not create intangible property associated with products sold; does not participate in the process of development, enhancement, maintenance and protection of intangible property under the ownership of its related parties associated with the products sold, 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 product intangibles with respect to brand names, trademarks and other marketing-related intangibles 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 for comparing the ratio of gross profit to cost of goods sold (cost plus method) shall be applied when the taxpayer that does not own its product intangibles and incurs little risk performs its functions of contract manufacturing, make-to-order manufacturing or toll manufacturing, assembly, processing of products, installation of equipment; procurement and supply of products; supply of services or rendering of research and development services agreed upon with the related party. The cost plus method shall not be applied to the taxpayer that is an independent manufacturing company, or performs its functions varying from product research and development to building and creation of product brands, trade names, market strategies and product warranty and customer care services.

c) The method for comparing the net profit margin 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 method of independent comparables or, because of failure to search comparables with similar functions and products, does not have sufficient grounds for application of gross profit-comparison methods specified in Point a and b of this Clause; the taxpayer performing distribution or manufacturing functions does not own product intangibles or does not engage in development, enhancement, maintenance, protection and exploitation of product intangibles, or does not fall within the scope of application of the method for distribution of profit between related parties in accordance with Point a Clause 3 Article 7 of the Decree No. 20/2017/ND-CP.

2. Certain material differences existing upon selection of the method for comparison of profit margin, prescribed by Point b Clause 2 Article 7 of the Decree No. 20/2017/ND-CP, shall be specified as follows:

a) The resale price method is applied to certain differences that may have a substantial influence upon the ratio of gross profit to cost of goods sold (net sales) 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 methods of parties.

b) The cost plus method is applied to certain differences that may have a substantial influence upon the ratio of gross profit to cost of goods, including costs reflecting functions performed by the enterprise such as the one functioning as the contract manufacturer designated by the parent company or intra-group service supplier; obligations to carry out contracts such as duration to deliver products, costs of quality control, warehousing, terms of payment, and methods for accounting for components of costs of products sold, of the taxpayer and independent comparables.

c) The method for comparison of the net profit margin shall be applied to certain differences that may have a substantial influence upon the net profit margin, e.g. differences in functions, assets, risks; economic conditions; contractual terms and conditions and product characteristics referred to in Clause 3 Article 6, Clause 2 Article 7 of the Decree No. 20/2017/ND-CP and instructions given in Clause 3 Article 2 hereof.

3. The transfer pricing method, prescribed by Point c Clause 1, 2 and 3 Article 7 of the Decree No. 20/2017/ND-CP, shall be specified as follows:

a) The price, profit rate and profit distribution ratio must be adjusted to match the respective price, profit rate and profit distribution ratio of the independent comparables that are selected on the basis of the results of the comparability analysis according to instructions given in Point b Clause 2 Article 2 hereof.

b) The net profit margin comparison method shall be applied in cases:

b1) With respect to the taxpayer operating in the manufacturing, commercial and service industry, indicators relating to net profit margin calculated as per laws and regulations on accounting, tax administration and corporate income tax are the net profit margin from which loan interest costs and corporate income taxes on sales (or net sales), costs (or total cost), or assets (or total fixed assets), relative to the nature of business operations of the taxpayer, have not been subtracted.

Net profit excludes the difference between revenue and expenses for financial activities that is used for determining the net profit margin based on data and figures about sales, expenses and assets that are not controlled by related parties, or related party transactions constituting revenue and expenses of the taxpayer which have been entered into accounting records in conformity with the arm's length principle.

In the event of using financial indicators in the balance sheet for comparability analysis, quantitative screening and determination of the net profit margin, value used is the geometric mean of the opening value and the closing value of used indicators of the accounting year specified in the balance sheet.

b2) With respect to the taxpayer operating within the banking and credit industry, net profit margin indicators are computed in accordance with the provisions laid down in legislation on accounting, tax administration, corporate income tax and management of credit institution's operations where appropriate for the taxpayer's business type.

b3) With respect to the taxpayer that is a securities company or securities fund management company, net profit margin indicators are computed in accordance with the provisions laid down in legislation on accounting, tax administration, corporate income tax and management of securities operations where appropriate for the taxpayer's business type.

c) The result of adjustment for the price, profit rate or profit distribution ratio of the taxpayer is the price used for calculating taxes, declaring expenses and revenue for determination of taxable

income, and does not lead to any reduction in the taxpayer's corporate income tax obligations to the state budget.

Where the taxpayer's failure to adjust the transfer price as prescribed by the Decree No. 20/2017/ND-CP and this Circular leads to a deficiency in the amount of tax payable, that taxpayer shall incur penalties stipulated by legislation on tax.

Article 4. Declaration of information about related party relationships, related party transactions and transfer pricing documentation, prescribed by Clause 8 Article 10 of the Decree No. 20/2017/ND-CP

1. The taxpayer that is one of the subjects of application specified in the Decree No. 20/2017/ND-CP is required to complete the forms referred to in the Decree No. 20/2017/ND-CP instead of the Form No. 03-7/TNDN appended to the Circular No. 156/2013/TT-BTC dated November 6, 2013 of the Ministry of Finance, and submit the completed forms as an attachment to the Corporate Income Tax Finalization Declaration Form No. 03/TNDN, including:

- a) The Form No.01 – Information about related party relationships and related party transactions, subject to instructions given in the Appendix 02 hereto attached.
- b) The Form No.02 – List of required information and documents in the Local File and the Form No.03 – List of information and documents in the Global Master File. The taxpayer must give marks onto appropriate rows containing information and documents that have been created in the transfer pricing documentation.
- c) The Form No.04 – Declaration of information in the country-by-country report by the ultimate parent company in Vietnam that has the global consolidated report on sales of VND 18 thousand billion or more, and is operating in different countries or territories, subject to specific instructions given in the Appendix 03 hereto attached.

Where the taxpayer makes additional declaration or detects any defects in information declared to the Tax Authority by completing the Form No. 01, 02, 03 and 04 referred to in Point a, b and c of this Clause, modification and supplementation of existing declaration must be carried out in accordance with the Law on Tax Administration and other documents providing guidance on implementation thereof.

2. Transfer pricing documentation of the taxpayer shall include:

- a) The country-specific local file containing information about related party transactions, transfer pricing policies and methods that is created and stored at the taxpayer's office according to the list of subject matters of information and documents stated in the Form No. 02 appended to the Decree No. 20/2017/ND-CP.
- b) The global master file containing information about business operations of the multinational group, its transfer pricing policies and methods 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 subject matters of information and documents referred to in the Form No. 03 appended to the Decree No. 20/2017/ND-CP.

The taxpayer prepares and provides the global master file of the multinational group containing the consolidated financial report of the taxpayer in Vietnam in accordance with applicable laws and regulations on the accounting regime. If the taxpayer is the subsidiary company of parent companies of different multinational groups and its financial report is part of the consolidated financial reports of different groups, it shall be required to provide the global master files of all of these groups.

c) The duplicate copy of the taxpayer's country-by-country report of the ultimate parent company in a foreign country which is made by the taxpayer in accordance with the host country.

If the taxpayer is the subsidiary company of parent companies of different multinational groups and its financial report is used for preparation of the consolidated financial reports of these groups, it shall be required to deposit duplicate copies of the country-by-country reports of all ultimate parent companies.

If the taxpayer fails to provide the country-by-country report of the ultimate parent company prepared within the tax period relative to the tax finalization period of the taxpayer, it is obliged to provide the country-by-country report of the ultimate parent company prepared in the financial year preceding the tax period of the taxpayer instead, and submit a written explanation for such failure and provision of a substitute one which is attached to the taxpayer's transfer pricing documentation.

If the taxpayer fails to provide the country-by-country report of the ultimate parent company, it is obliged to submit a written explanation for such failure which is attached to the taxpayer's transfer pricing documentation.

d) Information included in the transfer pricing documentation that is proved material if such information has an influence on the result of analysis for selection of similar independent comparables, the transfer pricing method or the result of adjustment for the price, profit rate and profit distribution ratio of the taxpayer.

Article 5. Exemption from transfer pricing documentation requirements, prescribed by Point c Clause 2 Article 11 of the Decree No. 20/2017/ND-CP

1. The taxpayer shall be exempted from transfer pricing documentation requirements under the provisions of Point c Clause 2 Article 11 of the Decree No. 20/2017/ND-CP if its net profit margin from which loan interest costs and corporate income taxes have not been subtracted yet in the specified tax period is the net profit from which loan interest costs and corporate income taxes (exclusive of the difference between revenue generated and expenses incurred by financial operations) on net sales have not been subtracted yet.

Net sales determined as per regulations of the tax policy and accounting regime is sales of goods sold and services supplied minus (-) sales deductions reported within the tax period of the taxpayer.

2. Where the taxpayer performs simple functions in more than one sector as prescribed by Point c Clause 2 Article 11 of the Decree No. 20/2017/ND-CP, the net profit margin from which loan interest costs and corporate income taxes on net sales have not been subtracted yet shall be specified as follows:

a) Where the taxpayer keeps separate accounting records of revenue and expenses in each sector, the net profit margin from which loan interest costs and corporate income taxes on net sales in specific respective sectors have not been subtracted yet shall be used.

b) Where the taxpayer manages to keep a separate accounting record of revenue but fails to do so with respect to expenses arising in the manufacturing and business sector, it is required to allocate expenses in proportion to sales generated in each sector to apply the net profit margin from which loan interest costs and corporate income taxes on net sales in specific respective sectors have not been subtracted yet.

c) Where the taxpayer fails to keep separate accounting records of revenue and expenses in specific manufacturing and business sectors for the purpose of determination of the net profit margin from which loan interest costs and corporate income taxes on net sales in specific respective sectors, it is required to apply the net profit margin from which loan interest costs and corporate income taxes on net sales generated in the sector where the highest level of net profit margin is generated have not been subtracted yet.

3. The taxpayer instructed by Clause 1 of this Article is required to complete the Form No.01 in the Appendix to the Decree No. 20/2017/ND-CP in accordance with instructions given in the Appendix 02 hereto attached.

Where the taxpayer chooses not to comply with regulations laid down in Clause 1 of this Article, it is obliged to prepare transfer pricing documentation and determine the transfer price in accordance with Article 10 of the Decree No. 20/2017/ND-CP and Clause 1 Article 4 hereof.

Article 6. Entry into force

1. This Decree shall enter into force from the date of entry into force of the Decree No. 20/2017/ND-CP. The Circular No. 66/2010/TT-BTC dated April 22, 2010 of the Ministry of Finance providing guidance on determination of the market price for business transactions between related parties and the Form No. 03-7/TNDN appended to the Circular No. 156/2013/TT-BTC dated November 6, 2013 of the Ministry of Finance shall be repealed.

2. In the course of implementation, if there is any difficulty that may arise, authorities, entities and persons concerned should send timely feedbacks to the Ministry of Finance for its further study and instructions./.

**PP. THE MINISTER
THE DEPUTY MINISTER**

Do Hoang Anh Tuan

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