TRANSFER PRICING NEWS

GDT's Oficial Letter No 271 highlighting Decree 132/2020's changes

On 27 January 2021, the General Department of Taxation (GDT) issued Official Letter No. 271 / TCT-TTKT ("OL 271") highlighting new contents of Decree No. 132/2020/ ND-CP ("Decree 132/2020) and requesting tax departments to disseminate and notify tax offices and taxpayers under their respective management.

OL 271 highlights the following key notes:

- Because Decree 132/2020 specifies tax administration for taxpayers with transfer pricing principles, procedures, rights and obligations of taxpayers etc, the Ministry of Finance will not issue a circular guiding the implementation of Decree 132/2020.
- Decree 132/2020 amending and supplementing regulations on tax authorities' database (Clause 7, Article 4), raising arm's length range (Clause 9, Article 4).
- Applying deductible interest expense cap provided in Decree 68/2020.
- Amending regulations on CbCr, according to which report submission deadline is at least 12 months after the end of fiscal year of Ultimate Parent Company.
- Supplementing the responsibilities and rights of the tax authorities in managing transfer pricing. It is worth noting that the tax authorities do not use the CbCr for tax reassessment and imposition.

Official Letter 271 also reintroduces the transitional provisions on the implementation of Decree 132/2020, specifically:

- Taxpayers who have been tax audited and obtained tax audit conclusions for 2017 & 2018 but falls into the case where the payable tax amount is re-determined according to Point c, Clause 2, Article 2 of Decree 68 / 2020 have the right to request the tax authority to re-determine the payable tax amount if the request has not been submitted to the tax authority at the effective date of this Decree.
- Decree 132/2020 takes effect from 20 December 2020 and applies from 2020 CIT period onwards. Accordingly, Decree 20/2017 expires from 20 December 2020.
- In case the taxpayers paid 2017 and 2018 CIT which is more than CIT amount and late payment interest re-determined, the difference will be offset against the CIT amount in 2020 to 2024. The outstanding balance will be forfeited if not fully utilized by 2024.
- As for carry forward of interest expenses to the next tax period when finalizing 2019 CIT as prescribed in Decree 68/2020, the time for carry forward of interest expenses is continuous and not exceeding 5 years from the period of 2020 CIT calculations. If the interest is not fully carried forward after 5 years, the remaining interest expense balance will not be carried forwarded to the next tax period.

Because Decree 132/2020 introduces important changes that affect the CIT period from 2020 onwards, taxpayers need to consider the effects of the new regulations in its transfer pricing risk management to minimize the impacts of cashflow and reputation when the tax authority conducts a transfer pricing audit later.

In case you wish to further discuss the ramifications of Decree 132/2020 on your transfer pricing position and tax risk management measures, please feel free to contact any of us at any time.

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