



# Decree 68 deductible interest expenses in related party transactions

On 24 June 2020, Government has issued Decree No. 68/2020/ND-CP ("Decree 68") amending and supplementing Clause 3, Article 8, Decree No. 20/2017/ND-CP on guiding tax administration for enterprises engaging in related party transactions. Decree 68 took effect from the date of signing and is applied for Corporate Income Tax ("CIT") year of 2019.

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Decree 68 amended the regulations on *determining the deductibility for interest expenses* for enterprises engaging in related party transactions since the CIT year 2019 and allowed enterprises to retrospectively apply **a part** of the amended regulations for CIT years of 2017 and 2018. In addition, Decree 68 introduced a new Form No. 01 replacing Form No. 01 under Decree 20/2017/ND-CP (“Decree 20”) for enterprises to declare in accordance with the amended regulations.

Below are notable changes and assessment of tax impacts for your reference:

Amended content	Decree 20	Decree 68	Applied timing and retrospective regulations
<b>Total interest expenses</b>	Total interest expenses in tax year	Total <b>net</b> interest expenses in tax period (The interest expenses after the netting interest income against the interest expense)	<ul style="list-style-type: none"> <li>Applied from the CIT year of 2019</li> <li>Retrospectively applied for the CIT years of 2017 and 2018</li> </ul>
<b>The ratio of total net interest expense/ earnings before interest, taxes, depreciation, and amortization (“EBITDA”)</b>	<b>20%</b>	<b>30%</b>	<ul style="list-style-type: none"> <li>Applied from the CIT period of 2019</li> <li>Retrospectively applied for the CIT years of 2017 and 2018</li> </ul>
<b>Carry forward of non-deductible interest</b>	Not mentioned	<b>Non-deductible interest expense</b> (exceeding 30% EBITDA) can be carried forward to following tax years but limited to 5 years	<ul style="list-style-type: none"> <li>Applied from the CIT year of 2019</li> <li><b>Not retrospectively applied</b></li> </ul>
<b>Non-applicable object</b>	Not mentioned	Not applicable for certain type of loans (*)	<ul style="list-style-type: none"> <li>Applied for the CIT year of 2019</li> <li><b>Not retrospectively applied</b></li> </ul>

(\*) Loans from taxpayers are under the Law on Credit Institutions and the Insurance Business Law, Official Development Assistance (“ODA”) loans, various preferential loans made by the Government, and loans made for implementing national programs and state social benefit policies.

To enjoy the favorable amendments, the enterprises subject to Decree 68 should pay attention to the following salient points:

- For the CIT years of 2017 and 2018, enterprises should amend CIT finalization returns for the retrospective regulations **before 01 January 2021**
- For the CIT year of 2019, the enterprises should amend the related party transactions disclosure return according to the new Form No.01 prescribed under Decree 68
- In case where the enterprises have been audited by Tax Authorities; and the audit minutes have been issued by the Tax Authorities, enterprises should request the Tax Authorities to re-determine tax payable, for the years of tax audit

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