



## DECREE NO. 132/2020/ND-CP

On 05 November 2020, Government has issued Decree 132/2020/ND-CP providing guidance on tax management for enterprises engaging in related party transactions (hereinafter referred to as "Decree 132"). Decree 132 will take effect from 20 December 2020 and apply for Corporate Income Tax ("CIT") year of 2020.

From the effective date of Decree 132, Decree No. 20/2017/ND-CP dated 24 February 2017 and Decree 68/2020/ND-CP dated 24 June 2020 of Government regulating tax administration for enterprises engaging in related party transactions will be expired.

The table below indicates the critical changes and noteworthy points of Decree 132:

No.	Critical changes	Decree 20/2020/ND-CP	Decree 132/2020/ND-CP
1	<b>Definition of related parties</b>	Related parties relationship regulations are regulated in Clause 2, Article 2 of Decree 20/2020/ND-CP	<p><b>Supplementing the 11th related party relationships at point (l):</b></p> <p>"l) The enterprise engages in transactions of transferring on receiving at least 25% of the contributed capital of the enterprise in the tax period; borrowing, lending at least 10% of contributed capital of the tower at the time of transactions in the tax period with the individuals who are managing or controlling the enterprise or with the individual fall into the regulations as prescribed in point g of this clause."</p> <p><b>Expanding the family relationship in the related party relationship at point (g):</b></p> <p>"g) The two businesses are operated or controlled by human resources, finances, and business operations by individuals as follow: husband, wife; biological parents, adoptive parents, <b>stepfather, stepmother, wife, parents, parents in law</b>; biological children, <b>adopted children, stepchildren of a spouse, son or daughter-in-law, siblings, siblings in family, sibling have same dad but different mother, brother, sister-in-law, brother-in-law, sister-in-law, sister-in-law, sister-in-law of the same parent or of the same father, different mother, same mother of different father; paternal grandparents</b>, maternal grandparents; grandchildren, grandchildren; aunt, uncle and nephew "</p>
2	<b>The arm-length range</b>	The calculation formula about the arm-length range and the median value is determined in a <b>Quartile formula</b> in Microsoft Excel <b>The arm-length range:</b> From first quartile (equivalent to 25th Percentile) to third quartile (equivalent to 75th Percentile)	<p><b>The calculation formula about the arm-length range and the median value is determined in a Percentile formula in Microsoft Excel</b></p> <p><b>The arm-length range:</b> From 35th Percentile to 75th Percentile</p>
3	<b>Deadline for submitting Country by Country report of the Ultimate Parent Company in Vietnam</b>	Not regulating	The deadline for submitting Country by Country report to the tax authority is up to 12 months after the fiscal year ended



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4	<b>If the taxpayer in Vietnam has the Ultimate Parent Company that is subject to prepare the Country by Country report in accordance with regulations of the resident country</b>	For a taxpayer having overseas Ultimate Parent Company, taxpayer shall be responsible for submitting a copy of its Ultimate Parent Company's Country-by-Country report where that Ultimate Parent Company is required to submit this report to the host-country tax authority	<p>Tax authorities will exchange information automatically according to commitments in international tax agreements of Vietnam.</p> <p>Taxpayers in Vietnam shall submit Country by Country report to the tax authority in cases where the Ultimate Parent Company is a resident of country/ territories:</p> <ul style="list-style-type: none"> <li>• Having international tax agreement with Vietnam but not having Agreement of Foreign Authorities at the time of submission of Report</li> <li>• Having an international tax agreement between the Foreign Authorities with Vietnam but already suspended the automatic information exchange mechanism or is not automatically provided to Vietnam of the Country by Country report of Corporation is a resident residing in such foreign countries and territories</li> </ul>
5	<b>If taxpayers who have the Ultimate Parent Company is not required to submit Country by Country Report in the resident country</b>	Taxpayers shall provide a written explanation of the reasons, legal base, and cite the foreign laws and regulations specifically which are not able to submit Country by Country report	Complying with international tax treaties
6	<b>If a Multinational Corporation has more than 1 taxpayer in Vietnam</b>	Not regulating	The Ultimate Parent Company has a written notice appointing one of the taxpayers in Vietnam to submit the Country by Country Report, the designated taxpayer is obliged to submit the Country by Country Report to the tax authority
7	<b>Deadline for submitting the Transfer pricing Documentation when the tax authority conducts inspection</b>	No more than 15 working days after receiving the request for information	According to the Law on Inspection since the request for information is received
8	<b>Databases used for tax assessment comply with the Law on Tax Administration</b>	Not regulating	Databases used for tax assessment comply with the Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019

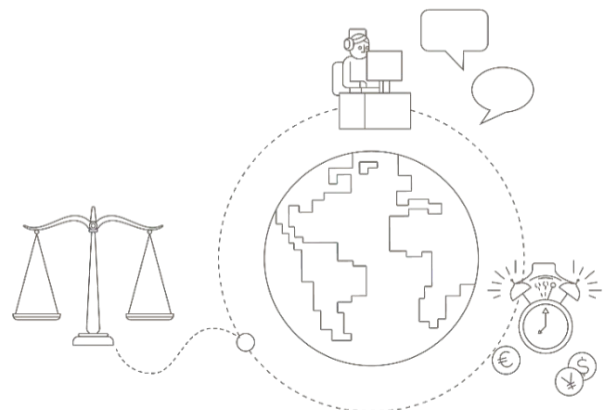


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9	<b>Commercial databases used in the declaration, determination of price in related party transactions of taxpayers</b>	Database provided by the data collection organization, including financial information and corporate data collected by these organizations from public information sources and kept, updated and managed for usage (hereinafter referred to as commercial databases)	Commercial database means information and economic data collected, collected, standardized, archived, updated, and provided by access support software by data business organizations, managing with pre-programmed tools and applications, providing convenient support for users to search, access and use financial and economic data of enterprises inside and outside Vietnam base on industrial lines, by geographical area or other on-demand search criteria for the purpose of comparing and determining comparable companies in declaration and management of transfer prices
10	<b>Database used in transfer pricing management of tax authorities</b>	Not regulating	Information and data exchanged with the foreign tax authorities as prescribed in Clause 7 Article 4 of Decree 132
11	<b>The cap on deductibility of loan interest expenses when determining taxable income of CIT</b>	To be replaced and applied under the provisions of Decree 68/2020/ND-CP. Applying to the fiscal year 2019 and applies retroactively for fiscal years from 2017 to 2018	Replacing Decree 68/2020/ND-CP and applying for fiscal year 2020
12	<b>The exemption for preparing a part of RPTs Disclose Returns</b>	<b>Not mentioning concurrently the exemption for preparing transfer pricing documentation</b>	Mentioning <b>concurrently the exemption for preparing transfer pricing documentation</b>

### With the critical changes in transfer pricing as above, RSM recommends the enterprises engaging in related party transactions need attention to:

- Reviewing related party relationships per supplementing and extending definitions in the tax period of 2020 according to Decree 132/2020/ND-CP
- Reviewing, evaluating and adjusting the current transfer pricing policies in the fiscal year 2020 in accordance with the new arm-length range under Decree 132/2020/ND-CP
- Reviewing the status of preparing Country by Country Report of Ultimate Parent Companies to determine the corresponding obligations in the fiscal year 2020 according to Decree 132/2020/ND-CP
- Reviewing the contexts of Local file/ Master file to ensure your enterprise not subject to one of imposing case when the tax authority conducts inspection
- Re-determining deductible interest expenses when determining taxable income in fiscal years from 2017 to 2019 according to Decree 68/2020/ND-CP





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