

MINISTRY OF FINANCE
GENERAL DEPARTMENT
OF TAXATION

SOCIALIST REPUBLIC OF VIET NAM
Independence-Freedom-Happiness

No.: 2835/TCT-TTKT

Re: providing guidance on Decree No.
68/2020/ND-CP

Hanoi, July 14, 2020

To: Departments of Taxation of provinces and central-affiliated cities

On June 24, 2020, the Government has promulgated Decree No. 68/2020/ND-CP providing amendments to Clause 3 Article 8 of the Government's Decree No. 20/2017/ND-CP on tax administration of enterprises engaged in transfer pricing. The abovementioned Decree provides detailed regulations which may be immediately implemented without instructional Circular. During the implementation of this Decree, the General Department of Taxation has provided guidelines on certain contents concerning the application of effect of this Decree to the tax year 2019 and retrospective application for the tax years 2017 and 2018. To be specific:

1/ For the tax year 2019:

Decree No. 68/2020/ND-CP stipulates: *"1. This Decree comes into force from the date on which it is signed and applies from the corporate income tax period in 2019."*

- Thus, if an enterprise has carried out the tax declaration in 2019 for the tax period due by March 31, 2020, it shall make additional statements to its corporate income tax (CIT) statements in accordance with regulations of Decree No. 68/2020/ND-CP.

- Enterprises that have not yet carried the tax declaration in 2019 shall comply with regulations of Decree No. 68/2020/ND-CP.

2/ Retrospective application for CIT years 2017 and 2018:

a) Scope of application:

The retrospective treatment of controlled loan interest costs as prescribed in Clause 3 Article 8 of Decree No. 20/2017/ND-CP for the tax years 2017 and 2018 shall only apply to the provision in Point a Clause 3 Article 8 of Decree No. 20/2017/ND-CP as amended in Article 1 of Decree No. 68/2020/ND-CP. To be specific:

- The control level of loan interest costs is increased from 20% to 30%;

- The pure method of calculating loan interest costs shall be employed (loan interests (-) interests on deposits and loans given);

- The provisions in Point (b) (forwarding of costs) and (c) (exempted entities) of the Decree No. 68/2020/ND-CP shall not be retrospectively applied for the tax years 2017 and 2018.

b/ Offsetting of CIT amounts paid in 2017 and 2018:

In case of re-calculation of tax according to regulations of Decree No. 68/2020/ND-CP, if total amount of CIT payable is reduced, a corresponding amount of late payment interests shall be also reduced (if any). To be specific:

- *Where no inspection has been carried out:*

The taxpayer shall offset the difference in CIT amounts and corresponding late payment interests against the CIT amount payable in 2020. The amount remained after offsetting such difference against the CIT amount payable in 2020 shall be offset against the CIT amount payable in 05 years following the year 2020. After this period, the remaining CIT amount shall be no longer settled.

- *Where the inspection has been carried out with inspection conclusions or decision issued:*

The taxpayer shall request the Provincial Department of Taxation or its supervisory tax sub-department to re-determine the amount of CIT payable. Based on the taxpayer's request, relevant documents, including taxpayer's documents and documents, records issued by the inspection team, the taxpayer's supervisory tax authority shall re-determine the amount of CIT payable and corresponding late payment interests for offsetting the tax difference against the CIT payable in 2020.

+ Where necessary, the taxpayer's supervisory tax authority shall cooperate with inspection teams to review and determine the taxpayer's data at the office of the tax authority.

+ The tax difference shall be treated in the same manner as the case of no inspection carried out; if the difference is not yet fully offset against the CIT payable in 2020, the remaining amount shall be offset against the taxpayer's CIT payable in 05 years following the year 2020. After this period, the remaining CIT amount shall be no longer settled.

c/ Implementation location and form:

- Re-determination of the CIT amount payable shall be carried out at the office of the tax authority without carrying out a physical inspection at the taxpayer's premises and amending inspection conclusions/decisions issued in 2017 and 2018.

- If an administrative penalty against a violation in the tax field has been imposed or the case is being settled according to complaint settlement procedures, no adjustment of the fines imposed for administrative violations in the tax field is allowed.

The General Department of Taxation requests Provincial Departments of Taxation to comply with the Government's Decree No. 68/2020/ND-CP dated June 24, 2020 and report any

difficulties that arise during the implementation of this Decree to the General Department of Taxation (via the tax inspection and accounting department) for specific guidance./.

**PP. DIRECTOR GENERAL
DEPUTY DIRECTOR GENERAL**

Dang Ngoc Minh

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