

Vietnam - Plans for transfer pricing audits; more transfer pricing guidance is anticipated

A 2011 mid-year report from Vietnam's General Department of Taxation indicates that the amount of reported revenue loss has been reduced by VND 2 trillion (VND 2 trillion or "dong" is approximately US \$100 million) based, in part, on the tax authorities' audit of 107 foreign-invested companies for the tax years 2008-2010.

Following this development, the tax authorities indicated they will instruct the provincial tax offices to audit 870 foreign-invested companies that report consecutive tax losses for the 2008 to 2010 tax years, and to audit 100% of tax refund applications by those loss-making companies and companies that achieve less than 2% of profit-over-revenue.

Since the introduction of the transfer pricing regulations in April 2010 (Circular 66), the tax authorities have started requesting disclosure of related-party transactions, transfer pricing documentation, and explanations of a company's transfer pricing disclosures for years under audit.

In mid-2011, the tax authorities conducted a transfer pricing survey, aimed at obtaining information on the transfer pricing practices adopted by enterprises. The survey requested information on related-party transactions, transfer pricing methods, financial results, and companies' views on the implementation of safe harbor rules and a high-level outline of advance pricing agreement (APA) procedures. The information gathered by the survey is expected to be used in the development of future changes to tax and transfer pricing law and regulations in Vietnam.

Future guidance

The tax reform strategy for 2011-2020, approved by the Prime Minister's Decision 732/QD-TTg (dated 17 May 2011), includes plans for the introduction of regulations on a number of complex transactions including: business restructuring, asset valuation, thin capitalization, and advance pricing agreements.

KPMG observation

The current Vietnamese regulatory and tax environment requires companies to determine that their transfer pricing policies are compliant and sound. Prudent companies would prepare for transfer pricing queries from the tax authorities—especially for the 2008-2010 fiscal years, if not yet already subject to audit. Taxpayers also need to consider timely submissions of full annual disclosures of related-party transactions and maintain adequate contemporaneous transfer pricing documentation (in Vietnamese) so as to be able to sustain the company's tax position in a transfer pricing audit. Consideration of an APA may be an appropriate avenue, for managing transfer pricing issues for certain taxpayers.