



2024

# NEWSBRIEF

**TRANSFER PRICING - DRAFT DECREE  
AMENDING AND SUPPLEMENTING  
DECREE 132/2020/ND-CP**



# FOREWORD

Some shortcomings of tax management regulations for related-party transactions in Decree 132/2020/ND-CP are clearly demonstrated in 2022 and 2023 when the lending interest rate level in the market increased sharply, causing the interest expenses of many enterprises to exceed the permitted limit. In that situation, considering transactions between enterprises and banks as related-party transactions when qualified, thereby excluding interest expenses exceeding the permitted ceiling according to Article 5.2.d and Article 16.3.a of Decree 132 causes enterprises to suffer double difficulties, having to pay more interest to banks, but not being able to deduct tax for this expense. This issue strongly affects enterprises using a lot of capital in areas such as infrastructure, production, processing, manufacturing, etc. The interest rate of this loan corresponds to the average level of the market, and there is no sign of both parties intentionally increasing interest expenses to reduce tax obligations. In order to remove the above difficulties for enterprises with related-party transactions in the process of implementing Decree 132 in the past time. As well as ensuring consistency and conformity in the legal system on tax management and the legal system.

In addition, to further improve the regulations on tax management for enterprises with related-party transactions to ensure publicity, transparency, clarity, ease of understanding and implementation, creating an equal and healthy business environment among enterprises.

The Ministry of Finance is drafting a Decree amending and supplementing Clause 2, Article 5 of Decree 132/2020/ND-CP dated 5<sup>th</sup> November 2020 of the Government regulating tax management for enterprises with related-party transactions.



# Draft Decree amending Decree No. 132/2020/ND-CP regulating tax management for enterprises with related-party transactions

## Main contents of the draft Decree:

- Amending and supplementing regulations on determining affiliated parties consistent with regulations on controlling companies and affiliated companies stipulated in the Law on Credit Institutions, specifically adding the following conditions on credit institutions:
  - ✓ Enterprises directly or indirectly hold at least 20% of the charter capital of a credit institution;
  - ✓ Enterprises and credit institutions both have at least 20% of their charter capital held directly or indirectly by a third party;
- Amending and supplementing regulations on determining related parties: Current regulations on related parties and determining interest expenses for enterprises with related transactions:

The draft decree limits the treatment of third-party lenders or guarantors as related parties. Lenders, guarantors and credit institutions will not be considered related parties if they do not participate in the “management, control, capital contribution or investment” of the borrower. The amendment is intended to address concerns of taxpayers who merely borrow from commercial banks but were previously considered to have related-party transactions and subject to the provisions on the ratio of deductible interest expense to EBITDA.
- Applicable period: from the corporate income tax period 2024
- Regulations on transferring interest expenses in case the enterprise has related party transactions and the transfer is conditional on not exceeding the prescribed threshold of 30%. If regulations are made for enterprises to transfer interest expenses when the enterprise no longer has related party relationships and related party transactions, it shall be implemented in accordance with the provisions of the Law on Corporate Income Tax, accordingly, non-deductible interest expenses of previous tax periods (05 years from the tax period of 2019 to the tax period of 2023) shall be fully included in the deductible expenses of the tax period of 2024 (unlimited) and will affect the taxable income of the next tax period as well as the corporate income tax payable to the State budget.
- Amendments to the form of Appendix I - Information on related relationships and related transactions issued with Decree No. 132/2020/ND-CP.



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