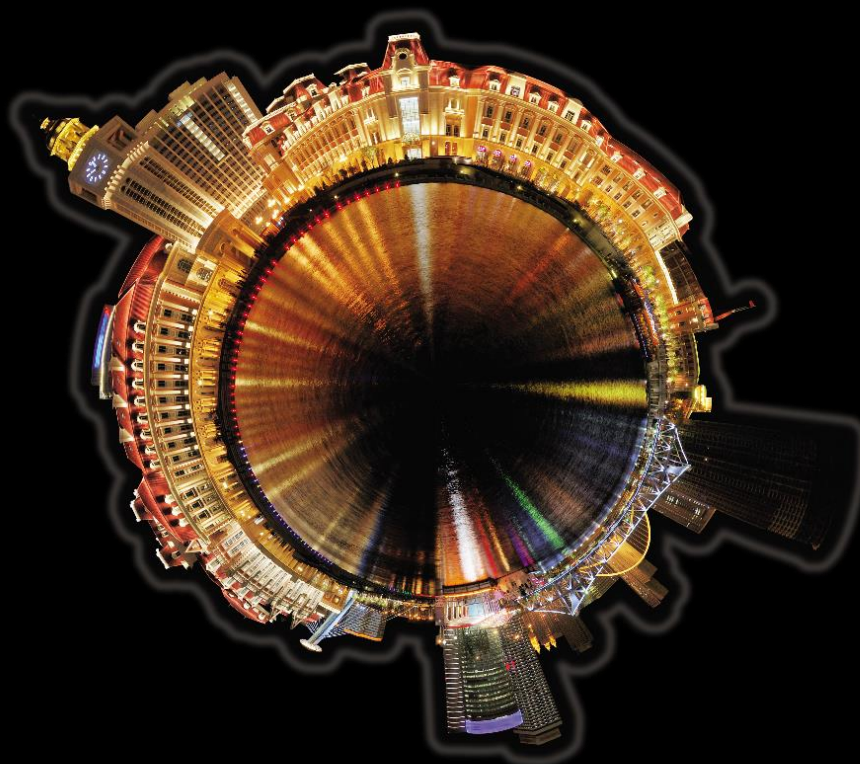


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## TAX ALERT

Draft Amendment of Decree  
No. 132/2020/ND-CP guiding tax  
compliance for enterprises having related  
party transactions

July 2024



MAKING AN  
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## Draft Amendment of Decree No. 132/2020/ND-CP guiding tax compliance for enterprises having related party transactions

The Ministry of Finance just publicize Draft Amendment of Decree No. 132/2020/ND-CP dated 05 November 2020 (“Decree 132”) issued by the Government of Vietnam guiding tax compliance for enterprises having related party transactions (hereby referred to as “Draft Amendment Decree”) to collect opinions before official issuance. Accordingly, Draft Amendment Decree revises the following

1. Supplement point a, b, Clause 2, Article 5, Decree 132 regarding ownership terms related to credit institution under relationship type a and b:
  - a) *An enterprise participates directly or indirectly in at least 25% of the other enterprise’s equity; an enterprise participates directly or indirectly in at least 20% of a credit institution’s charter capital.*
  - b) *Both related enterprises are directly or indirectly owned at least 25% of the equity by a third party; both an enterprise and a credit institution are directly or indirectly owned at least 20% of charter capital by a third party.*

### Deloitte’s initial comments

The above points introduce an additional related party category in the context of capital contribution relationships with credit institutions.

2. Supplement point d, Clause 2, Article 5, Decree 132 regarding relationship type d related to credit institution:
  - d) *An enterprise guarantees or lend another enterprise a loan under any form (even including third-party loans guaranteed by financing sources of related parties and financial transactions of same or similar nature) to the extent that the loan amount equals at least 25% of equity of the borrowing enterprise and account for more than 50% of total medium and long-term debts of the borrowing enterprise.*

**The provisions in point d of this Clause do not apply to the following cases:**

**d.1) Guarantors or lenders are economic organizations operating under the provisions of the Law on Credit Institutions that do not directly or indirectly participate in management, control of, contribution of capital to, or investment in borrowing or guaranteed enterprises according to the provisions of points a, c, dd, e, g, h, k, l and m of this Clause.**

**d.2) The guarantors or lenders are economic organizations operating under the provisions of the Law on Credit Institutions and the borrowing or guaranteed enterprises are not directly or indirectly subject to the same management, control of, capital contribution to, or investment of another party according to the provisions of points b, e and i of this Clause.**

### Deloitte’s initial comments

This amendment removes the classification of related parties in situations where enterprises receive substantial guarantees or loans from credit institutions without any capital contribution or management or control relationship.

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3. Supplement relationship type m – point m, Clause 2, Article 5, Decree 132 regarding credit institutions:

***m) Credit institutions with affiliated companies of credit institutions according to the provisions of the Law on Credit Institutions and other amendment, supplement or replacement documents (if applicable)***

### Deloitte's initial comments

The above point supplement regulation on related party upon Law on Credit Institution.

4. Supplement stipulation regarding non-deductible interest expenses:

***In case in Corporate Income Tax periods before 2024, the enterprise only has related party relationship when borrowing from economic organizations operating under the provisions of the Law on Credit Institutions according to the provisions under point d, Clause 2, Article 5, Decree 132, having related party transactions within the scope under Clause 2, Article 1, Decree 132 and having non-deductible loan interest expenses that are carried forward to the following taxable period according to Clause 3, Article 16, Decree 132, but from the 2024 taxable period if the enterprise does not have any related party relationship and does not incur related party transactions according to Decree 132 and this Decree, the non-deductible interest expenses of previous taxable periods shall not be carried forward to the next 05 years.***

### Deloitte's initial comments

The above amendment clarifies the regulations regarding non-deductible loan interest expenses carried forward from previous taxable periods when an enterprise has related party relationship with a credit institution, as specified in point d, Clause 2, Article 5, Decree 132. If an enterprise does not engage in related party transactions during the 2024 taxable period, non-deductible interest expenses from previous tax periods cannot be carried forward for the next five years.

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5. Supplement Clause 2, Article 21, Decree 132 stipulating the responsibilities of ministries, ministerial-level agencies and People's Committees of centrally-governed cities and provinces:

*Article 21. Responsibilities of ministries, ministerial-level agencies and People's Committees of centrally-governed cities and provinces*

...

*2. The State Bank of Vietnam shall, within their remit, have the following responsibilities:*

*Coordinate in provision of information and data on foreign loans and debt repayments of particular enterprise engaged in related party transactions by reference to the lists compiled by Tax authorities, including data on loan amounts, interest rates, periods of interest payment and principal repayment, actual fund withdrawal, debt (principal or interest) repayment and other related information (if any).*

***Coordinate in provision of information about related persons of credit institutions and affiliated companies of credit institutions if requested by the Tax authority."***

### Deloitte's initial comments

The above supplement clarifies the State Bank's responsibility in coordinating to provide relevant information for tax management purposes for enterprises having related party transactions.

6. Amendment to Appendix I - Information on related party relationships and related party transactions:

Appendix I - Information on related party relationships and related party transactions issued with the Amendment Decree replacing Appendix I - Information on related party relationships and related party transactions issued with Decree 132.

### Deloitte's initial comments

The revised Appendix I issued with the Amendment Decree reflect revised and updated points in accordance with the Amendment Decree for declaring purpose.

The Amendment Decree will apply from 2024 tax period.

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