

MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIETNAM

Independent - Freedom – Happiness

No. 130/2016/TT-BTC

Hanoi, August 12, 2016

CIRCULAR

ON GUIDELINES FOR THE GOVERNMENT DECREE NO. 100/2016/ND-CP DATED 01 JULY 2016 ON THE IMPLEMENTATION OF THE LAW ON AMENDMENTS TO CERTAIN ARTICLES OF THE LAW ON VALUE ADDED TAX, THE LAW ON SPECIAL EXCISE TAX AND THE LAW ON TAX ADMINISTRATION AND TO CERTAIN ARTICLES OF TAX-RELATED CIRCULARS

Pursuant to the Law on tax administration n° 78/2006/QH11 and the Law No. 21/2012/QH13 on amendments to certain articles of the Tax Administration Law;

Pursuant to the Law on value added tax n° 13/2008/QH12 and the Law No. 31/2013/QH13 on amendments to certain articles of the Law on value added tax;

Pursuant to the Law No. 106/2016/QH13 on amendments to certain articles of the Law on value added tax, Law on special excise tax and Law on tax administration;

Pursuant to the Law on corporate income tax no 14/2008/QH12 dated June 03, 2008 and the Law No. 32/2013/QH13 dated June 19, 2013 on amendments to the Law on corporate income tax;

Pursuant to the Government's Decree No. 83/2013/ND-CP dated July 22, 2013 on the implementation of certain articles of the Law on tax administration and the Law on amendments to certain articles of the Law on tax administration;

Pursuant to the Government's Decree No. 218/2013/ND-CP dated December 26, 2013 on details and guidelines for the implementation of certain articles of the Law on corporate income tax;

Pursuant to the Government's Decree No. 100/2016/ND-CP dated July 01, 2016 on the implementation of the Law on amendments to certain articles of the Law on value added tax, Law on special excise tax and Law on tax administration;

Pursuant to the Government's Decree No. 215/2013/ND-CP dated December 23, 2013 on the functions, missions, authority and organizational structure of the Ministry of Finance;

At the request of the Head of General Department of Taxation,

Minister of Finance promulgates the Circular on the following guidelines for the implementation of the Government's Decree No. 100/2016/ND-CP dated 01 July 2016 on the implementation of

the Law on amendments to certain articles of the Law on value added tax, the Law on special excise tax and the Law on tax administration and to certain articles of tax-related circulars:

Article 1. Amendments to certain articles of the Circular No. 219/2013/TT-BTC dated December 31, 2013 by the Ministry of Finance on guidelines for the implementation of the Law on value added tax and the Government's Decree No. 209/2013/ND-CP dated December 18, 2013 on the details and guidelines for the implementation of certain articles of the Law on value added tax (as amended by the Circular No. 119/2014/TT-BTC dated August 25, 2014, the Circular No. 151/2014/TT-BTC dated October 10, 2014 and the Circular No. 26/2015/TT-BTC dated February 27, 2015 by the Ministry of Finance), as follows:

1. Article 4 is amended as follows:

a) Section 9 of Article 4 is amended as follows:

“9. Medical and veterinary services, including the examination, treatment and prevention of diseases for human and animals, birth control, convalescence and rehabilitation for patients, caring for the elderly and disabled, patient transportation, medical facilities’ sickbed and sickroom for rent; testing, radiography; blood and blood products for patients.

Caring for the elderly and disabled includes health care, nutrition care, cultural activities, sports, entertainment, physical therapy and rehabilitation for the elderly and disabled.

The revenue from medicines included in a service package (as per regulations of the Ministry of Health) is not subjected to VAT.”

b) Section 16 of Article 4 is amended as follows:

“16. Public passenger transport includes the transportation of passengers by bus and tram (and electric train) inside a province, on urban routes or adjacent outer routes of provinces as per the legal regulations on transportation.”

c) Section 23 of Article 4 is amended as follows:

“23. Natural resources and minerals exported without or after further processing into products whose prime cost is comprised of, by at least 51%, the total value of such natural resources and minerals plus the energy cost; exports derived from natural resources and minerals whose value and the energy cost make up at least 51% of the prime cost of such exports.

a) Natural resources and minerals derived from domestic sources: Metallic minerals and non-metallic minerals; crude oil; natural gas; coal gas.

b) The following formula determines the proportion of the value of natural resource(s) and mineral(s) plus the energy cost to the prime cost of the processed product:

$$\frac{\text{Proportion of the value of natural resource(s) and mineral(s) plus the energy cost to the prime cost of the processed product}}{\text{Value of natural resource(s) and mineral(s) + energy cost}} = \frac{\text{Total prime cost of the processed product}}{\text{Total prime cost of the processed product}} \times 100\%$$

Where:

The value of natural resource(s) and mineral(s) means the cost price of the processed natural resource(s) and mineral(s). In other word, the value of natural resource(s) and mineral(s) directly mined is direct and indirect mining expenses while the value of those purchased is the actual purchase price plus the expense for initiating the processing of such natural resource(s) and mineral(s).

The cost of energy includes fuel, electric power and heat.

The value of natural resource(s) and mineral(s) with the energy cost shall base on the data in the accounting book in line with the tabulation of products' prime cost.

The prime cost of a product includes direct material expense, direct labor expense and general manufacturing expense. Indirect expenses for sale, administration, finance and other affairs are not included in the prime cost of a product.

The value of natural resources and minerals, the energy cost and the prime cost of products shall be determined according to the previous year's finalized accounting statement. The finalized accounting report for the previous year, if recently founded enterprises have not such report, can be replaced by the investment scheme.

c) A enterprise producing by direct mining or purchase processing, natural resources and minerals whose total value plus the energy cost occupies at least 51% of the prime cost of products derived from natural resources and minerals, shall not incur VAT upon the exportation of the products.

If such enterprise does not export but sells the products to another enterprise that then exports such products, the enterprise purchasing then exporting the products shall declare VAT as levied on similar products exported directly by the manufacturing enterprise and shall pay the export tax as per regulations.”

2. Section 3 of Article 9 is amended as follows:

“3. The tax rate of 0% is not applicable to:

- Overseas reinsurance; technology transfer, overseas transfer of intellectual property; capital transfer, granting of credit, outward securities investment; financial derivatives services; outbound postal and telecommunications services (including those provided for the entities in

free trade zones; provision of sale of prepaid phone cards abroad or in free trade zones); exports that are or originate from natural resources and minerals as per Section 23, Article 4 of the Circular; tobacco and alcoholic beverages imported then re-exported; goods and services provided for individuals who have not registered any business in free trade zones, except circumstances that the Prime Minister defines;

Tobacco and alcoholic beverages imported then re-exported shall not incur the output VAT upon re-exportation though on which input VAT must not be deducted.

- Petroleum supplied domestically to motor vehicles of the businesses that operate in free trade zones;
- Motor vehicles sold to the entities that operate in free trade zones;
- Services that business organizations provide to the entities operating in free trade zones, such as: leasing of houses, conference rooms, offices, hotels, warehouses; transportation of workers; food and beverage (except the industrial catering service and food and beverage service rendered in free trade zones);
- The tax rate of 0% is not applicable to the following services provided in Vietnam to overseas entities:
 - + Sports competition, art performances, cultural events, entertainment, conference, hotel, education, advertisement and tourism;
 - + Online payment services;
 - + Services in connection with the sale, distribution and consumption of goods in Vietnam."

3. Article 18 is amended as follows:

"1. The monthly or quarterly amount of input VAT which has not been fully deducted from the VAT paid by a business taxpayer adopting the invoice credit method in the period shall be deducted from the VAT incurred in the subsequent period.

If a business taxpayer's VAT is not fully deducted before the tax period of July 2016 (for monthly declaration) or of the 3rd quarter of 2016 (for quarterly declaration) but that taxpayer is eligible for VAT refund as per Section 1, Article 18 of the Circular No. 219/2013/TT-BTC, tax authorities shall refund the tax as per the laws.

Example: Enterprise A declares VAT on quarterly basis. In the tax period of the 3rd quarter in 2016, its remaining deductible VAT is VND 80 million. It may be deducted from the VAT incurred in the 4th quarter of 2016. If the tax deductible is not fully deducted in the 4th quarter of 2016, the 1st quarter and the 2nd quarter of 2017, enterprise A may deduct it from the VAT incurred in the 3rd quarter of 2017 and in subsequent tax periods.

2. The refunding of VAT on annual goods and services used for investment activities, except circumstances defined in Point c, Section 3 of the Article, shall be applicable to a registered business which has recently been incorporated under an investment project and registered to pay VAT by invoice credit method, or an oil well exploration and development project undergoing the investment phase in at least 1 year and has yet progressed to operation. If the accumulated value added tax (VAT) on services and goods purchased for investment activities is VND 300 million or higher, the VAT shall be refundable.

3. Refund of VAT for investment projects

a) An active business taxpayer which pays VAT by the invoice credit method shall separately declare input VAT on its investment projects currently under the investment phase in the same province where it is based (except the circumstances defined in Point c, Section 3 of this Article and except investment projects that construct houses for sale or rent but without constituting any fixed assets) from the VAT on its ongoing business activities. The maximum deductible VAT from the investment projects is equal to the VAT payable on business activities in the period.

If the remaining deductible VAT is VND 300 million or higher, it shall be refunded.

If the remaining deductible VAT is smaller than VND 300 million, it shall be carried forward to the next tax period of the project.

Example: Enterprise A's headquarter is based in Hanoi. In July 2016, it started an investment project in Hanoi which currently undergoes the investment phase. Enterprise A declares input VAT on such project separately. In August 2016, input VAT on the project is VND 500 million. VAT on the enterprise's ongoing business activities is VND 900 million. Enterprise A shall deduct the investment project's input VAT of VND 500 million from that on its business activities in progress (VND 900 million); thus, VAT payable by Enterprise A in the tax period of August 2016 is VND 400 million.

Example: Enterprise B's headquarter is based in Hai Phong. In July 2016, it commenced an investment project which currently undergoes the investment phase in Hai Phong. Enterprise B declares input VAT on such project separately. In August 2016, input VAT on the project is VND 500 million. VAT on the enterprise's ongoing business activities is VND 200 million. Enterprise B shall deduct the amount of VND 200 million from the investment project's input VAT from that on the business activities in progress (VND 200 million). Therefore, in the tax period of August 2016, input VAT. In this case, Enterprise B may claim a VAT refund.

Example: Enterprise C's headquarter is based in Ho Chi Minh city. In July 2016, it initiated an investment project in Ho Chi Minh city which currently undergoes the investment phase in Ho Chi Minh city. Enterprise C declares input VAT on such project separately. In August 2016, input VAT on the project is VND 500 million. VAT on the enterprise's ongoing business activities is VND 300 million. Enterprise C shall deduct VND 300 million from VAT on the business activities in progress (VND 300 million). Therefore, in the tax period of August 2016, remaining deductible input VAT on Enterprise C's investment project is VND 200 million. Enterprise C is not eligible for refund of VAT on its investment project. Enterprise shall carry

forward the said amount of VND 200 million from the investment project's input VAT to the tax period of September 2016.

Example: Enterprise D's headquarter is based in the city of Da Nang. In July 2016, it launched an investment project in Da Nang which currently undergoes the investment phase. Enterprise D declares input VAT on the project separately. In August 2016, input VAT on the project is VND 500 million. VAT on the enterprise's ongoing business activities that remains after deduction is VND 100 million. In the tax period of August 2016, therefore, input VAT on the investment project (VND 500 million) is eligible for a refund while VAT on the business activities in progress that remains after deduction (VND 100 million) shall be carried forward to the tax period of September 2016.

b) An active business taxpayer which pays VAT by the invoice credit method shall declare, by separate documentation, and offset input VAT on its new investment projects which are under investment and have not applied for neither business nor tax registration in a province different from the location of its head office (except the circumstances defined in Point c, Section 3 of this Article and except investment projects that construct houses for sale or rent without constitution of fixed assets) against the declared VAT on its ongoing business activities. The maximum VAT deductible from the investment projects is equal to the VAT payable on business activities in the period.

VAT on a new investment project shall be refunded if the remaining deductible input VAT on such project is VND 300 million or higher.

If the remaining deductible input VAT is less than VND 300 million, it shall be carried forward to the next period.

If the business taxpayer decides to establish project management boards or branches in provinces other than the province where its headquarter bases in to manage one or more projects on its behalf, such project management boards or branches shall submit their own tax declarations and refund claims to local tax authorities with which tax registration is applied provided they have their own legitimate official seals, maintain their own records according to accounting regulations, have bank accounts, have registered for tax and have obtained their own taxpayer identification numbers. When an investment project for the incorporation of an enterprise completes the formalities of registration for business and tax, the business that is the main investor of such project shall inform the new enterprise of the amounts of the project's VAT incurred, VAT refunded and pending VAT refund. The new enterprise shall declare and pay tax accordingly.

Investment projects eligible for VAT refund, as stated in Section 2 and Section 3 of this Article, are defined in the laws on investment.

Example: Enterprise A's headquarter is based in Hanoi. In July 2016, it commenced a new investment project in Hung Yen which currently undergoes the investment phase and is not applied for neither business nor tax registration. Enterprise A declares input VAT on such investment project separately in Hanoi by submitting VAT declarations intended for investment

projects. In August 2016, input VAT on the project is VND 500 million. VAT on the enterprise's ongoing business activities is VND 900 million. Enterprise A shall deduct VND 500 million from VAT on its business activities in progress (VND 900 million); thus, VAT payable by Enterprise A in the tax period of August 2016 is VND 400 million.

Example: Enterprise B's headquarter is based in Hai Phong. In July 2016, it started a new investment project in Thai Binh which currently undergoes the investment phase and is not applied for neither business nor tax registration. Enterprise B declares input VAT on such investment project separately in Hai Phong by submitting VAT declarations intended for investment projects. In August 2016, input VAT on the project is VND 500 million. VAT on the enterprise's ongoing business activities is VND 200 million. Enterprise B shall deduct VND 200 million from VAT on the business activities in progress (VND 200 million). Therefore, in the tax period of August 2016, remaining deductible VAT on Enterprise B's new investment project is VND 300 million. In this case, Enterprise B may claim a refund.

Example: Enterprise C bases its headquarter in Ho Chi Minh city. In July 2016, it launched a new investment project in Dong Nai which currently undergoes the investment phase and is not applied for neither business nor tax registration. Enterprise C declares input VAT on such investment project separately in the city of Ho Chi Minh by submitting VAT declarations intended for investment projects. In August 2016, input VAT on the project is VND 500 million. VAT on the enterprise's ongoing business activities is VND 300 million. Enterprise C shall deduct VND 300 million from VAT on the business activities in progress (VND 300 million). Therefore, in the tax period of August 2016, remaining deductible input VAT on Enterprise C's new investment project is VND 200 million. Enterprise C is not eligible for refund of VAT on its investment project. Enterprise C shall carry forward VND 200 million to the tax period of September 2016.

Example: Enterprise D's headquarter is based in Da Nang. In July 2016, it initiated a new investment project in Quang Nam which currently undergoes the investment phase and is not applied for neither business nor tax registration. Enterprise D declares input VAT on such investment project separately in Da Nang by submitting VAT declarations intended for investment projects. In August 2016, input VAT on the project is VND 500 million. Remaining deductible VAT on the enterprise's ongoing business activities is VND 100 million. In the tax period of August 2016, therefore, input VAT on the investment project (VND 500 million) is eligible for refund while the remaining deductible VAT on the business activities in progress (VND 100 million) shall be carried forward to the tax period of September 2016.

c) In the following events, a business shall not be eligible for a refund but can carry forward remaining deductible VAT on its investment project to the subsequent period:

c.1) The charter capital of the investment project of the business has not been fully contributed as registered as per the laws. The business has submitted claims for refund of tax on its investment project since July 01, 2016 but the project's registered charter capital was not fully contributed as per the laws on the date of application.

c.2) An investment project is carried out by a business that undertakes conditional trade(s) though not satisfying business conditions as per the Investment Law; in other words, such investment project is run by a business that engages in though not licensed to perform conditional trade(s); by a business that engages in though not certified qualified to perform conditional trade(s); by a business that engages in though not permitted by a competent authority to perform conditional trade(s); or by a business that engages in but does not meet conditions to perform conditional trade(s) though not required by the laws on investment to be permitted or certified thereof in writing.

c. 3) An investment project is carried out by a business that undertake conditional trade(s) but fails to sustain business conditions during its operations; in other words, such investment projects are run by a business that engages in conditional trade(s) but has its relevant license(s) revoked during its operations; by a business whose certificate(s) of eligibility for conditional trade(s) is (are) revoked; by a business that has the written permission revoked by a competent authority for conditional trade(s); or by a business that fails conditions to undertake conditional trade(s) as per the laws on investment. In this event, the business shall be ineligible for the refund of VAT upon the revocation of one of the said documents or upon being exposed by competent government authorities as having failed conditions for conditional trades.

c.4) The value of natural resources and/or minerals plus the energy cost of an investment project for extraction of natural resources and minerals which has been licensed since July 01, 2016 or an investment project for production of goods makes up 51% of its prime cost or above.

Natural resources and minerals, their value and valuation time, and the energy cost shall be determined according to Section 23, Article 4 of the Circular.

4. Refund of tax on exported goods and services

a) A business that has an amount of remaining deductible input VAT of at least VND 300 million on its exported goods and services in a month (if declaring the tax every month) or in a quarter (if declaring the tax every quarter) shall be given a refund of monthly or quarterly VAT; however, the remaining deductible input VAT of less than VND 300 million in a month or quarter shall be carried forward to the subsequent month or quarter.

A business that both exports and sells domestically its goods and services in a month or quarter shall record input VAT on its exported goods and services separately in accounting entries. The input VAT on the exported goods and services, if not feasibly recorded in separate accounting entries, shall be determined according to the proportion of the revenue of exported goods and services to the total revenue of goods and services through tax periods starting from the period that succeeds the latest tax period in which tax is refunded to the current period that tax refund is requested.

If the amount of input VAT on exported goods and services (the amount of input VAT separately recorded and the amount of input VAT determined through the said proportion) remains at least VND 300 million after having been deducted from VAT on goods and services sold domestically, the business shall receive a refund of VAT on exported goods and services. The

refunded amount of VAT on exported goods and services shall not exceed the revenue from such exported goods and services multiplied by 10%.

Certain cases of eligibility for tax refund upon exportation: The businesses that have goods exported through entrustment; the businesses that process exports for foreign principals on a contract basis; the businesses that have goods and materials exported for overseas construction works; and the businesses whose exports are delivered to other domestic entities as requested by the importers.

b) A business shall not be eligible for refund of tax on goods imported then re-exported or for exports that are not exported within a customs-controlled area as defined by the Customs Law, the Government's Decree No. 01/2015/ND-CP dated January 02, 2015 on the disposition of customs-controlled areas and responsibilities for joint prevention of smuggling and trafficking of goods across borders, and the guiding documents.

Example: Enterprise A imported 500 air conditioners from Japan and paid the VAT upon importation. Enterprise A then exported those 500 air conditioners to Cambodia and did not incur output VAT as VAT on the 500 air conditioners had been paid upon importation and input VAT on transportation and warehousing services was not refundable but deductible.

Example: Company B exported tapioca to China through trails and open borders outside customs-controlled areas; thus, it does not receive a refund of VAT on exported tapioca.

c) Tax authorities shall refund tax before inspection for manufacturers of exports which have not been penalized for smuggling or trafficking of goods across borders, evading tax or committing a tax or trade fraud in two consecutive years. The same policy of tax refund also applies to taxpayers that are not regarded highly risky according to the Law on tax administration and guiding documents.

Example: In September 2016, Enterprise C applied for the refunding of VAT on its goods exported to Hong Kong. In June 2015, Enterprise C was penalized for its violation of tax regulations with regard to tax evasion. Tax authorities shall carry out an inspection before refunding tax according to the tax refund claim by Enterprise C.

5. A business that pays the value added tax by the invoice credit method shall receive a refund of overpaid VAT or of remaining deductible input VAT upon its transfer, conversion, merger, consolidation, division, dissolution, bankruptcy or shutdown.

A business that goes bankrupt, dissolve or shut down before being put into operation and has not incurred any output VAT on its primary trades in line with the investment projects shall not be required to revise the amount of VAT declared, deducted or refunded. Such business must inform its supervisory tax authority of its dissolution, bankruptcy or shutdown as per regulations.

The refunded amount of VAT, upon a business's completion of formalities as per the laws on dissolution or bankruptcy, shall be settled as per the laws on dissolution, bankruptcy and tax administration while the un-refunded amount of VAT shall not be refundable.

If a business shuts down and incurs no output VAT on its main business activities, it shall return the tax refund to the state budget. If VAT-levied assets are sold, the relevant input VAT on such assets shall not be subjected to adjustment.

Example: In 2015, Enterprise A, being under investment, did not initiate any business operation. The input VAT of VND 700 million which was incurred during its investment phase was refunded by tax authorities in August 2015. Enterprise A, in February 2016, decided to dissolve due to hardship. It informed tax authorities of its intent to dissolve. Prior to Enterprise A's completion of legal formalities for dissolution, tax authorities did not reclaim the VAT refund. Enterprise A, in twenty days before its fulfillment of legal formalities for official dissolution in October 2016, sold one (01) asset. Input VAT on such asset which was refunded was not subjected to adjustment. Enterprise A shall make out a declaration of refund VAT on the unsold assets and return such refund.

6. Projects and programs financed by grant ODA, grant aids or humanitarian aids shall be eligible for VAT refund.

a) For the projects financed by grant ODA: Project owners or main contractors or organizations that foreign sponsors designate to manage the projects shall receive a refund of VAT paid on goods and services acquired in Vietnam to serve the projects.

b) VAT paid on goods and services shall be refunded to Vietnam-based organizations spending foreign entities' humanitarian aids on such goods and services for projects and programs that utilize grant aids and humanitarian aids.

Example: Red Cross was aided an amount of VND 200 million by an international organization to purchase humanitarian goods for the people in disaster-stricken provinces. The pre-tax worth of the goods was VND 200 million, plus an amount of VND 20 million in VAT. Red Cross shall receive a refund of VND 20 million as per regulations.

VAT paid on the projects and programs financed by grant ODA shall be refunded in accordance with the guidelines of the Ministry of Finance.

7. Entities granted diplomatic immunities and privileges as per relevant laws shall receive a refund of VAT paid, according to the VAT invoice or the receipt stating the VAT-included price, on the goods and services that they purchase in Vietnam for consumption.

8. Foreigners and Vietnamese expatriates holding passports or immigration papers issued by competent foreign authorities shall be receive refunds of tax on the goods that they purchase in Vietnam and carry upon departure. The refunding of VAT shall be subject to the guidelines of the Ministry of Finance on VAT refund for the goods that foreigners and Vietnamese expatriates purchase in Vietnam and carry upon departure.

9. Tax refund for the businesses shall be at the discretion of competent authorities as per the laws and according to the cases of value added tax refund as defined in international treaties that the Socialist Republic of Vietnam engages in.”

Article 2. Amendments to the Circular No. 195/2015/TT-BTC dated November 24, 2015 by the Ministry of Finance on guidelines for the Government's Decree No. 108/2015/ND-CP, as follows:

● **Section 1 and Section 2 of Article 5 are amended as follows:**

“The price of a product or service on which the special excise tax is determined (hereinafter referred to as “taxable price”) is the selling price of a business' product or service which is not inclusive of the special excise tax, environment protection tax (if applicable) and value added tax, as follows:

1. It is the selling price of goods produced domestically or imported imposed by the manufacturer or importer. If the selling price imposed by the manufacturer or importer does not correspond with the typical transaction price in the market, tax authorities shall impose tax according to the Law on tax administration. The taxable price shall be calculated as follows:

$$\text{Taxable price} = \frac{\text{Selling price, exclusive of VAT} - \text{Environment protection tax (if applicable)}}{1 + \text{Special excise tax rate}}$$

Where: The selling price exclusive of VAT and the environment protection tax are determined according to the laws on value added tax and on environment protection tax, respectively.

a) If the manufacturer or importer of the goods incurring the special excise tax sells such goods through independent accounting units, the price on which special excise tax is chargeable shall be the selling price that such independent accounting units impose. If the manufacturer or importer sells the goods through dealers that adopt the manufacturer's or importer's recommended selling price and gain only commission(s), the taxable price shall be the manufacturer's or importer's recommended price that include commission(s).

b) If the manufacturer or importer of the goods is superior, as a parent enterprise, or inferior, as a subsidiary enterprise, or equivalent, as a subsidiary enterprise under the same parent enterprise, to traders purchasing the former's goods on which special excise tax is chargeable, the taxable price shall not be lower, by over 7%, than the monthly average price at which the traders directly purchasing the manufacturer's or importer's goods sell such goods. The same ratio also applies if traders are associated with each other.

If the manufacturer or importer establishes various intermediary traders that are engaged in a parent - subsidiary relationship, are subsidiary enterprises under the same parent enterprise or are associated with each other, the taxable price shall not be lower, by over 7%, than the monthly average price at which such traders sell the goods to other traders that are not engaged in a parent - subsidiary relationship, subsidiary - subsidiary relationship or association with the manufacturer or importer of the goods. However, the traders' average selling price of automobiles, for comparison, shall be the selling price of such vehicles without any optional equipment or parts that such traders may install upon customers' request.

The manufacturer or importer is associated with a trader as stated in this Article when an enterprise directly or indirectly holds at least 20% of the owners' holding in the other enterprise.

If the manufacturer's or importer's taxable price is lower by over 7% than the trader's average selling price, tax authorities shall define the taxable price according to the laws on tax administration.

Example: B, a brewing corporation, owns the brand of beer B. It sells main ingredients to the manufacturers of beer B which are affiliated to B Brewing Corporation.

Such manufacturers sell beer B to B Brewing Single-member Co., Ltd which is subsidiary to B Brewing Corporation.

B Brewing Single-member Co., Ltd sells beer B to local trading joint-stock companies which are subsidiary to B Brewing Single-member Co., Ltd.

Local joint-stock companies sign contracts for selling beer B to 1st-level dealers (not engaged in a parent - subsidiary relationship with B Brewing Corporation, B Brewing Single-member Co., Ltd and local joint-stock companies). First-level dealers sell beer B to 2nd-level dealers, restaurants, consumers, etc.

Manufacturers shall calculate, declare and pay the special excise tax on the basis of their selling price which cannot be lower by over 7%, than the monthly average selling price of similar products that local joint-stock companies sell.

2. The price of imports which is taxable by special excise tax upon importation shall be calculated as follows:

Price taxable by special excise tax = Price taxable by import tax + Import tax.

The price taxable by import tax shall be determined as per the laws on import tax and export tax. If import tax is exempted or reduced, the taxable price shall not include the exempted or reduced amount of import tax.”

2. Section 4 and Section 5 of Article 5 are amended as follows:

“4. The taxable price of processed goods that processors sell or the selling price of similar or equivalent products sold concurrently shall be adopted without any VAT, environment protection tax (if applicable) and special excise tax.

If the processors sell the goods to traders, the price taxable by special excise tax shall be calculated according to Point b, Section 1 of this Article.

5. With regard to goods manufactured under business cooperation between the manufacturer and the user or owner of the trade name (brand name) of the goods or technologies, the price on which special excise tax is levied shall be the user's or owner's selling price that excludes VAT

and environment protection tax (if applicable). The taxable price of the goods manufactured under franchise and delivered to Vietnam-based branches or representative offices of a foreign enterprise which then sell the goods shall be the selling price that such branches and representative offices adopt in Vietnam.

If the goods are sold to traders, the taxable price shall be determined according to Point b, Section 1 of this Article.”

3. Section 1 of Article 6 is amended as follows:

“1. It is governed by the Section 4, Article 1 of the Law No. 70/2014/QH13 dated November 26, 2014 on amendments to certain articles of the Law on special excise tax, and the Section 2, Article 2 of the Law No. 106/2016/QH13 dated April 06, 2016 on amendments to certain articles of the Law on value added tax, Law on excise tax and Law on tax administration, and the Article 5 of the Government’s Decree No. 108/2015/ND-CP dated October 28, 2015.

If the businesses import automobile before July 01, 2016 then sell such vehicles since July 01, 2016, such businesses must declare and pay the special excise tax when selling vehicles at the rate of tax in the Law No. 106/2016/QH13 on amendments to certain articles of the Law on value added tax, Law on special excise tax and Law on tax administration.”

4. First paragraph, Section 2 of Article 8 is amended as follows:

“2. Payers of special excise tax on the goods on which special excise tax has been paid upon importation can set off such special excise tax paid against the special excise tax payable that they calculate for such goods when sold domestically. The special excise tax on the excise-taxed imports when sold shall be deducted to the maximum extent of the special excise tax that is determined upon domestic sale. If the special excise tax is not fully deducted due to objective reasons or force majeure, taxpayers can record the remaining deductible as cost for determining the corporate income tax.”

Article 3. Amendments to the Circular No. 156/2013/TT-BTC dated November 06, 2013 by the Ministry of Finance on guidelines for certain articles of the Law on tax administration, the Law on amendments to the Law on tax administration and the Government’s Decree No. 83/2013/ND-CP dated July 22, 2013 (as amended by the Circular No. 119/2014/TT-BTC dated August 25, 2014, Circular No. 151/2014/TT-BTC dated October 10, 2014 and Circular No. 26/2015/TT-BTC dated February 27, 2015 by the Ministry of Finance), as follows:

1. Point a, Section 2 of Article 32 is amended as follows:

“a) Taxpayers shall pay a late payment interest of 0.03% per day on the tax being paid by installments.”

2. Point b.2, Section 2 of Article 32 is amended as follows:

“b.2) Fulfill the tax paid by monthly installments and the late payment interest of 0.03% per day on behalf of the taxpayer failing to pay such tax punctually.” **3. Section 2 of Article 34 is amended as follows:**

“2. Calculation of late payment interest

a) Late payment interest for tax debts that ensue on and after July 01, 2016 shall add up at the daily rate of 0.03% of the deferred amount of tax.

b) For tax debts that ensued before and have not been settled after July 01, 2016, late payment interest, if determined before January 01, 2015, is subject to the Law on tax administration n° 78/2006/QH11, the Law No. 21/2012/QH13 on amendments to the Law on tax administration while late payment interest, on and after January 01, 2015, is governed by the Law No. 71/2014/QH13 on amendments to certain articles of tax laws. However, late payment interest, since July 01, 2016, is imposed at the daily rate of 0.03%.

Example: Taxpayer B owed VND 100 million in VAT that was declared (punctually in writing with tax authorities) in August 2014. The deadline for tax payment was September 22, 2014 (since the 20th and 21st of September 2014 were days off). On August 20, 2016, the taxpayer paid such amount of tax to the state budget. The duration that tax was delayed lasted from September 23, 2014 to August 20, 2016. The late payment interest is VND 34.08 million. To be specific:

- Late payment interest as calculated before January 01, 2015 is:

+ The duration of late payment, from September 23, 2014 to December 21, 2014, was 90 days:
 $\text{VND } 100 \text{ million} \times 0.05\% \times 90 \text{ days} = \text{VND } 4.5 \text{ million.}$

+ The duration of late payment, from December 22, 2014 to December 31, 2014, was 10 days:
 $\text{VND } 100 \text{ million} \times 0.07\% \times 10 \text{ days} = \text{VND } 0.7 \text{ million.}$

- The duration of late payment, from January 01, 2015 to June 30, 2016, was 547 days: $\text{VND } 100 \text{ million} \times 0.05\% \times 547 \text{ days} = \text{VND } 27.35 \text{ million.}$

- The duration of late payment, from July 01, 2016 to August 20, 2016, was 51 days: $\text{VND } 100 \text{ million} \times 0.03\% \times 51 \text{ days} = \text{VND } 1.53 \text{ million.}$

c) The duration of late tax payment (including regulated holidays and days' leave as per the laws) starts on the day immediately following the (extended) deadline for tax payment, as defined in tax laws, or of the tax payment deadline as stated in the tax authority's written notice or decision on actions against tax offences or in the competent government authority's decision. Such duration ends upon the taxpayer's payment of the tax to the state budget.

Example: Taxpayer C owed VND 50 million in VAT. The payment deadline was August 20, 2013. The taxpayer paid the said amount of tax to the state budget on August 26, 2013. The duration of late payment, from the 21st to 26th of August 2013, was 06 days.

Example: A tax authority decided to extend the deadline on May 20, 2014, on which taxpayer D was required to pay VND 50 million in VAT. The extended deadline was from May 21, 2014 to November 20, 2014. On November 21, 2014, the taxpayer paid the amount of VND 50 million to the state budget. The duration of late payment was 01 day (November 21, 2014).

Example: A tax authority carried out a tax inspection over taxpayer E. On April 15, 2014, the tax authority decided in writing to impose a penalty of VND 500 million for the breach of tax laws. The deadline for tax payment was May 14, 2014. On May 30, 2014, the taxpayer paid the amount of VND 500 million to the state budget. The duration of late payment, from the 15th to 30th of May 2014, was 16 days.

d) If a tax authority take a coercive action by seizing and auctioning property to reclaim tax debt(s), the concerned taxpayer shall incur a late payment interest from the day immediately succeeding the (extended) tax payment deadline, as defined in tax laws, or of the tax payment deadline as stated in the tax authority's or a competent authority's written notice or decision on such action to the date that the tax authority makes the written record of property seizure.

If the functional agency authorized to hold auctions does not hand over the amount of tax reclaimed to the state budget after transfer of the ownership of the property auctioned to a buyer, such agency shall incur the late payment interest from the day immediately following the date of property transfer to the date that the tax is paid to the state budget.

The duration of late payment shall exclude the time of auction procedures as per the laws.

e) If a taxpayer declares tax inadequately for a tax period before July 01, 2016 though such incident is exposed by a competent government authority through inspection or is voluntarily detected and announced by the taxpayer after July 01, 2016, late payment interest shall be imposed at the rate of 0.05% per day (or another rate defined in legislative documents from time to time) from the payment deadline as defined in the laws to the 30th of June 2016 inclusive. However, the daily rate of late payment interest, from July 01, 2016 to the date that the taxpayer pays the tax to the state budget, is 0.03% of the insufficient amount of tax."

Article 4. Addition of Section 10 to Article 10 of the Circular No. 153/2011/TT-BTC dated November 11, 2011 by the Ministry of Finance on guidelines for the tax on the use of non-agricultural land, as follows:

"10. A household or individual shall be exempted from the annual tax on non-agricultural land use if the tax payable, after reduced owing to any tax exemption or deduction as per the Law on taxation of non-agricultural land use and guiding documents, is fifty thousand Vietnam dong or less. If such household or individual has several land parcels in a province, the exemption of the tax on non-agricultural land use, according to this Article, shall be based on the total tax payable on all land parcels. The procedure for exemption of non-agricultural land use tax, according to this Article, is governed by the Circular No. 153/2011/TT-BTC.

A household or individual who has paid the tax on non-agricultural land use to the state budget though being eligible for exemption of such tax as per this Circular, shall receive a refund of the tax from tax authorities according to the Law on tax administration and guiding documents."

Article 5. Addition of Point a1 to Point a, Section 6, Article 18 of the Circular No. 78/2014/TT-BTC dated June 18, 2014 by the Ministry of Finance on guidelines for the Government's Decree No. 218/2013/ND-CP dated December 26, 2013 on guidelines for the Law on corporate income tax (as amended by Section 4, Article 10 of the Circular No. 96/2015/TT-BTC dated June 22, 2015 by the Ministry of Finance), as follows:

"a1) Expansion investment is not mandatory for the enterprises that, during their business activities, invested finances from their fixed asset depreciation fund, net profit for reinvestment or investment capital registered with competent state management authorities into additional machines and equipment on regular basis, from 2009 to 2013, but did not increased the capacity of production and business according to the registered or approved business plan."

Article 6. Effect

1. This Circular comes into force, save Section 2 of this Article, upon the effect of the Law No. 106/2016/QH13 on amendments to certain articles of the Law on value added tax, Law on special excise tax and Law on tax administration and the Government's Decree No. 100/2016/ND-CP dated July 01, 2016 on the implementation of the Law on amendments to certain articles of the Law on value added tax, Law on special excise tax and Law on tax administration.

2. Article 4 of this Circular takes effect from the tax period of 2016.

Article 7. Implementation

1. Provincial People's Committees shall direct functional agencies to implement the Government's regulations and the Ministry of Finance's guidelines.

2. Tax authorities shall be responsible for informing and guiding organizations and individuals to adhere to this Circular.

3. Entities to which this Circular applies shall abide by the guidelines in this Circular.

Difficulties that arise during the implementation of this Circular shall be reported to the Ministry of Finance for consideration and settlement./.

**p.p. MINISTER
DEPUTY MINISTER**

Do Hoang Anh Tuan