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Hanoi, December 31, 2013

## CIRCULAR

### GUIDANCE ON IMPLEMENTATION OF THE LAW ON VALUE-ADDED TAX AND THE GOVERNMENT'S DECREE NO. 209/2013/ND-CP DATED DECEMBER 18, 2013 PROVIDING GUIDANCE ON SOME ARTICLES OF THE LAW ON VALUE-ADDED TAX.

*Pursuant to the Law on Value-added tax No. 13/2008/QH12 dated June 03, 2008 and the Law No. 31/2013/QH13 dated June 19, 2013 on amendments to some Articles of the Law on Value-added tax;*

*Pursuant to the Law on Tax administration No. 78/2006/QH11 dated November 29, 2006 and the Law No. 21/2012/QH13 dated November 20, 2012 on the amendments to the Law on Tax administration;*

*Pursuant to the Government's Decree No. 209/2013/ND-CP dated December 18, 2013 providing guidance on some Articles of the Law on Value-added tax;*

*Pursuant to the Government's Decree No. 118/2008/ND-CP dated November 27, 2008, defining the functions, tasks, powers and organizational structure of the Ministry of Finance;*

*At the request of the Director of the General Department of Taxation,*

*The Minister of Finance provides guidance on implementation of the Law on Value-added tax:*

#### Chapter I

### GENERAL PROVISIONS

#### Article 1. Scope of regulation

This Circular provides guidance on the commodities and services that are subject to tax and not subject to tax, taxpayers, basis and methods for calculating, deducting, refunding tax, and the places to pay value-added tax (VAT).

#### Article 2. Taxable goods and services

Goods and services subject to VAT (hereinafter referred to as taxable goods and services) are those used for production, trading, and consumption in Vietnam (including those purchased from overseas organizations and individuals), except for the goods and services in Article 4 of this Circular.

#### Article 10. Taxpayers

Payers of VAT are the organizations and individuals that manufacture, trade in taxable goods and services in Vietnam regardless of their lines and forms of business (hereinafter referred to as business establishments), the organizations and individuals that import goods or purchase services from abroad (hereinafter referred to as importers), including:

1. The business organizations established and registered under the Law on Enterprises, the Law on State enterprises (now the Law on Enterprises), the Law on Cooperatives, and other business laws.
2. Business organizations of political organizations, socio-political organizations, social organizations, socio-professional organizations, the army, public service organizations, and other organizations;
3. Foreign-invested companies and the foreign participants under the Law on Foreign investment in Vietnam (now the Law on Investment); the foreign organizations and individuals (hereinafter referred to as foreign entities) that do business in Vietnam without establishing a legal entity in Vietnam;
4. Individuals, households, independent groups of businesspeople, and other entities that engage in manufacturing, trading, or importation;
5. Any business organization or businessperson in Vietnam that purchases services (including services attached to goods) from a foreign organization that does not have a permanent establishment in Vietnam, or from a foreigner that is not a resident in Vietnam, the business organization or businessperson that purchase services is the taxpayer, except for the cases in which VAT is exempt in Clause 2 Article 5 of this Circular.

Regulations on permanent establishments and residents are introduced in the laws on corporate income tax and personal income tax.

6. Branches of the export processing companies that are established to trade goods and do the tasks related to goods trading in Vietnam in accordance with the laws on industrial parks, export-processing zones, and economic zones.

Example 1: Sanko LLC. is an export processing company. Apart from manufacturing for exportation, Sanko LLC. is also licensed to import goods for sale or for exportation, and Sanko LLC. must establish a branch to do this task. This branch shall independently keep accounting records, declare and pay separate VAT on such task instead of including it in the VAT on manufacturing for exportation.

When importing goods for distribution (sale), the branch of Sanko LLC shall declare and pay VAT on the importation and on each sale (including exportation). Sanko LLC. shall use invoices, declare and pay VAT as prescribed.

#### **Article 4. Goods and services that are not subject to VAT**

1. Products from farming (including agroforestry products), breeding, and aquaculture that are produced, caught, sold, or imported and are not processed into other products (hereinafter referred to as unprocessed) or have only been preprocessed

Preprocessed products are those that have only been cleaned, dried, husked, grinded, milled, threshed, split, cut, salted, put in cold storage (cooled or frozen), preserved with sulfur dioxide, sulphur solution, or other solutions, and other common means of preservation.

Example 2: Company A signs a contract to raise pigs with company B, under which company A receives remuneration from company B or sells products to company B. The payment for pig raising paid by company B and the pigs sold to company B are not subject to VAT.

When company B sells the pigs or have them processed for sale, they are subject to VAT.

2. Breeds of livestock, plant varieties, including eggs, breeds, seeds, stems, tubers, semen, embryos, genetic materials that are raised, imported, and traded. The breeds of livestock and plant varieties that are not subject to VAT are the products of the importers and traders that have the certificates of registration of animal breed or plant variety trading issued by regulatory bodies. The animal breeds and plant varieties that apply quality standards of the state must satisfy the requirements imposed by the state.

3. Irrigation services, plowing services, dredging channels, dredging in-field trenches serving agricultural production; harvesting services.

4. Salt derived from seawater, rock salt, pure salt, refined salt, iodized salt composed primarily of sodium chloride (NaCl).

5. State-owned houses sold to tenants.

6. Transfer of right to use land (hereinafter referred to as land tenure).

7. Life insurance, health insurance, learner's insurance, other insurance services related to humans; insurance for livestock, plants and other agriculture insurance services; insurance for ships and instruments for fishing; reinsurance.

8. The finance, banking, and securities services below:

a) Credit extension includes:

- Loan;
- Discounted transfer of negotiable instruments and other valuable papers;
- Bank guarantee;
- Finance lease;
- Issuance of credit cards.

When a financial institution collects fees for issuance of credit cards, the fees collected from the clients are classified as revenues from credit extension, such as fee for early repayment, penalties for

late repayment, fee for debt restructuring, fee for loan management, and other fees classified as revenues from credit extension are not subject to VAT.

The fees related to card transactions are not classified as revenues from credit extension, such as fee for reissuance of PINs, fee for copies of invoices, claiming fee, fee for card replacement, fee for card destruction, fee for card conversion, and other fees are subject to VAT.

- Domestic and international factoring for the banks allow to process international payments;
- Revenue from liquidation of collateral by a credit institution or law enforcement authority in accordance with the laws on handling collateral.

If the owner of the collateral defaults on the debt and has to transfer the collateral to a credit institution, both parties must follow the prescribed procedure for transferring collateral.

Where both parties agree that the collateral owner may sell it to repay debt, VAT must be declared and paid if the owner is a VAT payer and the sold collateral is subject to VAT.

Where the credit institution takes the collateral to clear debt, credit institution shall record an increase in the value of business assets. When the credit institution sells the assets, VAT must be declared and paid if it is subject to VAT.

Example 3: In March 2014, company A, which pays VAT using credit-invoice method, pledges its machinery and equipment as collateral to take a loan at bank B, which is due in one year (the deadline is March 31, 2015). On March 31, 2015, company A defaults on the loan and has to transfer the collateral to bank B. Company A must follow the prescribed procedure for collateral transfer. When Bank B sells the collateral to recover the debt, the sold collateral is not subject to VAT.

- Information provision services provided by the units and organizations affiliated to the State bank for credit institutions to use for credit extension in accordance with the Law on the State bank.

Example 4: X is a unit of the State bank and is allowed by the State bank to provide credit information. In 2014, X signs contracts to provide information for some commercial banks to serve their credit extension and other activities. The revenue from provision of credit information serving credit extension is not subject to VAT; the revenue from provision of credit information serving other activities of the commercial banks beyond the Law on the State bank is subject to 10% VAT;

- Other forms of credit extension prescribed by law.

b) Separate loans that are not a business and irregularly given by taxpayers that are not credit institutions.

Example 5: Joint-stock company C has idle money and signs a contract to give a loan to company T, which is due after 06 months, and receives an interest. Such interest is not subject to VAT.

c) Securities services include: brokerage, proprietary trading, issuance guarantee, investment consultancy, depository, securities investment fund management, securities company management, securities investment portfolio management, market organization services of Stock Exchanges or Securities trading centers, services related to the securities registered and deposited at Vietnam Securities Depository, granting loans for margin trading, advance payment for securities and other types of securities trading prescribed by securities laws.

Information provision, auctions of shares of issuers, technical support for online transactions of Stock Exchanges.

d) Capital transfer includes the transfer of part of or the whole capital invested in another business organization (regardless of the creation of a new legal entity), securities transfer, transfer of the right to contribute capital, and other forms of capital transfer prescribed by law, including business acquisition in which the acquirer inherits all rights and obligations of the acquired company.

Example 6: In April 2014, company A contributes capital in the form of machinery and equipment to the creation of joint-stock company B. The company A's contribution is valued at 2.5 billion VND, which is equal to 25% of company B's total capital. In November 2014, company A sells this capital contribution to ABB Foundation for 4 billion VND. This amount of 4 billion VND is revenue from capital transfer and not subject to VAT.

dd) Selling debts;

e) Foreign currency trading;

g) Derivative financial services include: forward contracts, futures contracts, call option, put option, other derivative financial services prescribed by law;

h) Selling collateral put up by the organizations 100% charter capital of which is owned by the government to settle bad debts of Vietnamese credit institutions.

9. Medical services, veterinary services, including examination, treatment, and prevention of diseases for human and animals, birth control services, convalescence and rehabilitation services for patients, patient transport services, sickbed and sickroom rental services; testing, radiography services; blood and blood products for patients.

If medicines are included in the service package (according to regulations of the Ministry of Health), the revenue from medicines in the package is also not subject to VAT.

10. Public postal and telecommunications services, and public Internet services provided by the government, postal and telecommunications services from abroad (inbound).

11. Maintenance of zoos, flower gardens, parks, street greeneries, public lighting, funeral services. The services mentioned in this Clause do not depend on the source of payment. In particular:

a) Maintenance of zoos, flower gardens, parks, street greeneries, and state-owned forests include management, tree planting and cultivation, protection of animals in the parks, zoos, public areas, national forests and national parks;

b) Public lighting includes lighting on the streets, in alleys, neighborhoods, flower gardens, and parks. Revenue from public lighting is not taxable;

c) Funeral services provided by the business establishments licensed to provide funeral services include funeral parlor and car rental service, burial service, cremation service, grave move service, and grave care service.

12. Maintenance, repairs, and construction funded by the people (including contributions and sponsorships), humanitarian aid for cultural and artistic works, public works, infrastructure, and housing for beneficiaries of incentive policies.

When a source of funding other than people's contribution or humanitarian aid is used that does not exceed 50% of the total investment in the work, the value of the whole work is not subject to tax.

When a source of funding other than people's contribution or humanitarian aid is used that exceeds 50% of the total investment in the work, the value of the whole work is subject to VAT.

Beneficiaries of incentive policies include the contributors, beneficiaries of social protection that receive benefits from government budget; members of poor households, and other cases.

13. Education and vocational training as prescribed by law, including foreign language training, artistic training, sports training, nursing, children's nursing, and training of other professions in order to raise extend education, improve professional knowledge and skills.

The revenues from meal, student transport collected by educational institutions from preschool to high school are not subject to tax.

Revenues from boarding school services; revenues from training (including the examinations and issuance of qualifications are part of the training course) are not subject to VAT. If the training institution only organizes the examinations and issues qualifications that are part of the training course without running the course, the examinations and issuance of qualifications are also not subject to tax. The examinations and issuance of qualifications beyond the training course are subject to VAT.

Example 7: Training center X is appointed by a competent authority to provide training and issue qualifications in insurance agent. Center X appoints Y to provide the training while center X only holds the examinations and issues the qualification in insurance agent. The examinations and issuance of qualifications are not subject to VAT.

14. Audio and video broadcasting funded by government budget.

15. Publishing, importing newspapers, magazines, specialist newsletters, political books, textbooks, teaching materials, law books, scientific books, books using languages of ethnic minorities, propagation pictures, including those in the form of audio and video discs/tapes, electronic data; money and money printing.

Specialist magazines, specialist newsletters.

Political books are the books that propagate the political orientation of the Communist Party and the state to serve political objectives and anniversaries; the books that encourage good deeds; the books that contain speeches and researches of leaders of the Communist Party and the state.

Textbooks are those used for teaching and learning from preschool to high school (including books for reference that are conformable with school programs)

Teaching materials are the books used for teaching and learning in universities, colleges, junior colleges, and vocational schools.

Law books are the books that contain legislative documents.

Scientific books are those used for introducing scientific and technological knowledge related to manufacturing and branches of science.

The books using languages of ethnic minorities include bilingual books.

Propagation pictures and posters are those serving propagation, national flags, communist flags, etc.

16. Public transport by bus and tram within a province, a city or the routes adjacent to the city as prescribed by the Ministry of Transport.

17. Goods that cannot be manufactured in Vietnam and must be imported, including:

a) Imported machinery, equipment, parts, and supplies serving scientific research and technological development;

b) Imported machinery, equipment, parts, specialized vehicles and supplies serving petroleum exploration and extraction;

c) Airplanes (including engines), oil rigs, and ships that cannot be manufactured in Vietnam and are imported as fixed assets or leased from a foreign party to serve manufacturing, trading, or to sublease.

The importer must present the documents about customs procedure, customs supervision and inspection, export tax, import tax, and administration of tax on exported and imported goods prescribed by the Ministry of Finance to the customs.

The Ministry of Planning and Investment shall compile a list of machinery, equipment, parts, supplies serving scientific research and technology development that can be manufactured in Vietnam, a list of machinery, equipment, parts, and specialized vehicles serving petroleum exploration and extraction that can be manufactured in Vietnam, and a list of airplanes, oil rigs, and ships that can be manufactured in Vietnam as the basis for identifying those that cannot be manufactured in Vietnam and need importing.

18. Weapons and specialized vehicles serving national defense and security.

a) The weapons and specialized vehicles serving national defense and security enumerated in the list compiled by the Ministry of Finance in cooperation with the Ministry of National Defense and the Ministry of Public Security.

The weapons and specialized vehicles serving national defense and security that are not subject to VAT must be finished products, or parts, packages used for assembling finished products. If the weapons and specialized vehicles must be repaired, the repair services provided by the companies affiliated to the Ministry of National Defense and the Ministry of Public Security are not subject to VAT.

b) Imported weapons, and specialized vehicles (including supplies, machinery, equipment, parts) serving national defense and security that are exempt from import tax according to the Law on Export and import tax, or imported within annual quota imposed by the Prime Minister.

The procedure and documentation for imported weapons and vehicles are not subject to VAT during importation according to regulations of the Ministry of Finance on customs procedure, customs supervision and inspection, export tax, import tax, and administration of tax on exported and imported goods.

19. Imported goods, goods/services sold to other organizations and individuals as humanitarian aid or non-refundable aid in the following cases:

a) Goods imported as humanitarian aid or non-refundable aid must be certified by the Ministry of Finance or Services of Finance;

b) Gifts for regulatory bodies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations, and the army prescribed by the laws on gifts;

c) Gifts for individuals in Vietnam prescribed by the laws on gifts;

d) Belongings of foreign entities provided with diplomatic immunity prescribed by the laws on diplomatic immunity; belongings brought to Vietnam by Vietnamese people residing abroad;

dd) Belongings in luggage within tax-free allowance;

The limit on tax-free imported goods is specified in the Law on Export and import tax and its guiding documents.

Imported goods of the entities provided with diplomatic immunity are not subject to VAT. Any entity granted diplomatic immunity that purchases goods/services in Vietnam at VAT-inclusive prices may claim a refund according to Clause 7 Article 18 of this Circular.

Instructions on VAT refund for diplomatic missions, consular offices, and representative offices of international organizations in Vietnam are provided by the Ministry of Finance.

e) Goods and the goods/services sold to other organizations and individuals as humanitarian aid or non-refundable aid for Vietnam.

In order to be exempt from VAT, the international organization and or foreigner that buys goods/services in Vietnam as humanitarian aid and non-refundable aid must send a note to the seller, which specifies their name, the quantity or value of purchased goods, and bears certification of the aid by the Ministry of Finance and Services of Finance.

When selling goods, the seller must issue an invoice specifying that the goods are sold at VAT-exclusive prices to a foreign entity as non-refundable aid or humanitarian aid, keep the aforesaid note as an evidence when declaring tax. Any foreign entity or international organization that purchases goods/services in Vietnam as non-refundable aid or humanitarian aid at VAT-inclusive prices may claim a refund according to Clause 6 Article 18 of this Circular.

20. The goods forwarded through Vietnam's territory; goods temporarily imported or temporarily exported, raw materials imported for manufacturing or export processing under contracts with foreign partners

The goods and services traded between a foreign party and a free trade zone, or among free trade zones.

Free trade zones include: export-processing zones, export processing companies, tax-suspension warehouses, bonded warehouses, special economic zones, commercial - industrial zones, and other economic zones established and provided with similar tax incentives as free trade zones according to Decisions of the Prime Minister. The transactions between a free trade zone and an external party are considered export/import.

The procedures and documents for considering VAT exemption must comply with instructions of the Ministry of Finance on customs procedure, customs supervision and inspection, export tax, and import tax.

21. Technology transfers according to the Law on Technology transfers; intellectual property right transfers according to the Law on Intellectual property. If a contract of technology transfer or intellectual property right transfer is associated with a transfer of machinery/equipment, only the value of transferred technology or intellectual property right is not subject to VAT. If such value cannot be separated, VAT shall be imposed on the total value of the transferred technology or intellectual property right and machinery/equipment.

Computer software including software products and software services as prescribed by law.

22. Imported gold in the form of bullions, pieces, and other forms that are not fashioned into jewelry or other items.

Gold in the form of bullions, pieces, and other forms of unfashioned gold shall be identified in accordance with the laws on gold trading.

23. Exported natural resources that are not processed into other products.

The natural resources that are not processed into other products include the minerals that have been filtered, grinded, refined, or the resources that have been cut.

Example 8: Taxpayer A exports natural stones in the form of blocks and slabs. The exported stones are not subject to VAT.

Example 9: Taxpayer B exports white limestone in the form of grains and powder. The exported white limestone grains and powder are not subject to VAT. If taxpayer B exports ultra-fine limestone powder (according to standards of competent authorities), or ultra-fine limestone powder coated with acid, they are considered processed into other products and thus taxable when being exported.

24. Prosthetic body parts, including those permanently implanted into the human body; crutches, wheelchairs, and other special instruments serving the disabled.

25. Goods/services provided by any business household or businessperson that earns an annual revenue of  $\leq 100$  million VND.

The tax liability of the business household or businessperson shall be determined in accordance with tax laws.

26. The goods and services below:

- a) Duty-free goods at duty-free shops prescribed by the Prime Minister.
- b) Goods in national reserve sold by national reserve authorities.
- c) Charged activities of the state according to the laws on fees and charged.
- d) Bomb and mine clearance carried out by the army at the constructions funded by government budget.

If the purposes of the goods that are not subject to VAT during importation are changed, VAT shall be declared and paid to the customs authority where the customs declaration is registered. The entities that sell goods to the domestic market must declare and pay VAT to their supervisory tax authorities.

#### **Article 5. Cases of exemption declaring and paying VAT**

1. An organization or individual receives a monetary compensation (including compensation for land and property on land that is withdrawn by a competent authority), bonus, allowance, or payment for transfer of emission permit, or other revenues.

Any taxpayer that receives a monetary compensation, bonus, allowance, payment for transfer of emission permits, or other revenues must make a receipt for such revenues. The taxpayer shall make receipts for spending according to the spending purposes.

If compensation is provided in the form of goods/services, the provider of compensation must issue an invoice, declare and pay VAT as if such goods/services are sold; the recipient of compensation shall declare and deduct tax as prescribed.

Any taxpayer that receives money from another entity to provide a service such as repair, warranty, sales promotion, or advertising must declare and pay tax as prescribed.

Example 10: Company P&C earns an interest from buying bonds and a dividend from buying shares of other companies. Company P&C is not required to declare and pay VAT on the interest buying bonds and the dividend.

Example 11: Company A receives a compensation of 50 million VND for contract termination from company B. Company A shall make a receipt and is not required to declare and pay VAT on such amount.

Example 12. Company X buys goods from company Y. Company X pays a deposit to company Y and is paid an interest on that deposit by company Y. Company X is not required to declare and pay VAT on such interest.

Example 13: Company X sells goods to company Z for totally 440 million VND. According to the contract, company Z shall pay in instalments for 03 months with an interest of 1% of the total payment per month. After 03 months, company X receives from company Z an amount that includes 440 million

VND in price and 13.2 million VND in interest (440 million VND x 1% x 3 months). Company X is not required to declare and pay VAT on that 13.2 million VND.

Example 14: Insurer A and company B signs an insurance contract. When insurance is claimed, insurer A pays a compensation in cash to company B. Company B is not required to declare and pay VAT on this compensation.

Example 15: ABC is a milk company that pays its distributors to do a sales promotion (in accordance with the laws on trade promotion), marketing, and product display. When receiving the payment, the distributors that use credit-invoice method shall issue VAT invoices and calculate VAT at 10%, the distributors that use direct methods shall only use sale invoices and pay direct VAT at the prescribed rate.

2. A business organization or businessperson in Vietnam purchases services from a foreign organization that does not have a permanent establishment in Vietnam, or from an overseas individual that is not a resident in Vietnam. These services include: repair of vehicles, machinery, equipment (including supplies and parts); advertising, marketing; trade promotion; brokering sale of goods and services to abroad; training, international postal and telecommunications services that are provided outside Vietnam, lease on foreign satellite transmission lines and frequency bands.

3. The non-business organizations and individuals shall not pay VAT on the sale of their assets.

Example 16: Mr. A, who is not a businessperson, sells a 4 seater car to Mr. B for 600 million VND. Mr. A is not required to declare and pay VAT on the payment for the car.

Example 17: Mr. E, who is not a businessperson, pledges a 5 seater car at bank VC to take out a loan. Mr. E defaults on the loan when the repayment is due, thus bank VC liquidates the pledged car to recover the debt. The money collected from liquidating the car is not subject to VAT.

4. The entities that transfer project of investment in manufacturing or trade of goods/services subject to VAT to other companies or cooperatives.

Example 18: Company P executes a project of investment in an industrial alcohol factory. In March 2014, 90% of the project is completed according to the design, and the investment is 26 billion VND. Due to a financial difficulty, company P transfers the incomplete project to company X for 28 billion VND. Company X receives and keeps executing this project. Company P is not required to declare and pay VAT on the value of the transferred project.

5. Any company or cooperative that pays VAT using credit-invoice method and sells unprocessed or preprocessed farming, breeding, aquacultural products to another company or cooperative for commercial purposes is exempt from declaring and paying VAT. The sale price on the VAT invoice is VAT-exclusive price, the line of tax rate must be left blank and crossed out.

Any company or cooperative that pays VAT using credit-invoice method and sells unprocessed or preprocessed farming, breeding, aquacultural products to other entities such as business households, businesspeople, other organizations, or other individuals is required to declare and pay 5% VAT according to Clause 5 Article 10 of this Circular.

Any business household, businessperson, company, cooperative, or business organization that pays VAT directly on value added using direct method and sells unprocessed or preprocessed farming, breeding, aquacultural products for commercial purposes shall declare and pay direct VAT at 1% of the revenue.

Example 19: Company B, which pays VAT using credit-invoice method, purchases rice directly from the farmers or farming companies. This direct purchase of rice from the farmers or farming companies is not subject to VAT.

When company B sells rice to exporter C, company B is not required to declare and pay VAT on the rice sold to exporter C.

When company B sells rice to company D, which is a noodle producer, company B is not required to declare and pay VAT on the rice sold to company D.

On the invoices issued to exporter C and company D, company B must specify that the sale price is VAT-exclusive. The line of tax rate must be left blank and crossed out.

When company B directly sells rice to consumers, 5% VAT shall be declared and paid in accordance with the instructions in Clause 5 Article 10 of this Circular.

Example 20: Company A, which is a business organization that pays tax using credit-invoice method, buys coffee beans from farmers, then sells them to business household H. 5% VAT shall be levied on the revenue from selling coffee beans to business household H.

Example 21: After purchasing tea leaves from a farmer, Mr. X's household sells them to Mr. Y's household. Mr. X's household must calculate and pay direct VAT at 1% of the revenue from selling tea leaves to Mr. Y's household.

If VAT on the invoices for the unprocessed products or preprocessed products that are sold to a company or cooperative has been declared, the seller and the buyer must adjust the invoices to be exempt from VAT.

6. When transferring depreciated in-use assets between a business establishment and its wholly-owned subsidiaries or among these subsidiaries to serve the manufacturing or trade of goods/services subject to VAT, invoices and VAT payment are not required. The taxpayer that transfers their assets must make a Decision on asset transfer enclosed with the documents about the asset origins.

When transferring a fixed asset, the value of which has been reassessed, or when transferring an asset to another business establishment that manufactures or trades in goods/services that are not subject to VAT, VAT shall be paid and VAT invoices must be made.

7. Other cases:

Taxpayers are not required to declare and pay tax in the following cases:

a) Assets are contributed to establish a new company. Contributed assets must have: contribution record, partnership or cooperation contract; asset valuation record (made by a valuation council or the contributor or an organization licensed for valuation), and documents about asset origins.

b) Assets are circulated among financially dependent subsidiaries of a company (hereinafter referred to as dependent units); assets are circulated when a company is divided, split, amalgamated, merged, or converted. When assets are so circulated, the taxpayer that has the circulated assets must make an asset circulation order enclosed with documents about the asset origins and is not required to issue invoices.

When assets are circulated among the financially independent subsidiaries or among the subsidiaries that have full legal status of the same taxpayer, the taxpayer that has the circulated assets must issue VAT invoice, declare and pay VAT as prescribed, except of the case in Clause 6 of this Article.

c) Compensation claimed from a third party under an insurance contract.

d) The delegated payments that are not related to the sale of goods/services of the taxpayer.

dd) The revenue from goods/services sold by agents, commissions paid to agents, including: postal and telecommunications services, lottery, air tickets, bus tickets, train tickets, ship tickets, international transport agents; air and maritime service agents entitled to 0% VAT; insurance agents.

e) Revenue and commissions on selling goods/services that are not subject to VAT.

## **Chapter II**

### **TAX BASIS AND TAX CALCULATION METHOD**

#### **Section 1. Tax basis**

##### **Article 6. Tax basis**

Tax basis is taxable prices and tax rates.

##### **Article 7. Taxable prices**

1. Taxable prices of goods and services sold by taxpayer are VAT-exclusive price. Taxable prices of goods and services subject to special excise tax are the prices inclusive of special excise tax and exclusive of VAT.

Taxable prices of goods and services subject to environmental protection tax are the prices inclusive of environmental protection tax and exclusive of VAT; taxable prices of goods and services subject to both special excise tax and environmental protection tax are the prices inclusive of special excise tax and environmental protection tax but exclusive of VAT.

2. Taxable prices of imported goods are the prices at the border checkpoint (hereinafter referred to as import price) plus (+) import tax (if any) plus (+) special excise tax (if any) plus (+) environmental protection tax (if any). Regulations on taxable prices of imported goods shall be applied to calculation of import prices.

If the goods are eligible for exemption or reduction of import duty, the taxable price is the import price plus (+) import tax payable after reduction or exemption.

3. Taxable prices of the goods and services (whether bought externally or not) used as gifts, donations, or substitute for wages are the taxable prices of the same kinds or equivalent goods and services at the same time.

Example 22: Unit A manufactures electric fans and exchange 50 fans with company B for steel. The sale price (tax-exclusive) is 400,000 VND/fan. Taxable price =  $50 \times 400,000 \text{ VND} = 20,000,000 \text{ VND}$ .

Taxable prices of the invitations (complimentary) to art performances, fashion shows, beauty pageants, and sports competitions permitted by competent authorities are zero (0). The organizer of the show or competition is responsible for the quantity of invitations and recipients before the show or competition takes place. If the organizer charges these invitations, the organizer shall incur penalties prescribed by tax laws.

Example 23. Company X is permitted by a competent authority to hold a beauty pageant. Apart from the tickets that are sold, company X also sends invitations to some VIPs. The list of recipients is printed on these invitations. When declaring VAT, taxable price of the invitation is zero (0). If tax authority finds that company X collect money on these invitations, company X shall incur penalties prescribed by tax laws.

4. Taxable prices of goods and services for internal use.

Taxable prices of the goods and services serving the business (internal use) are the taxable prices of the same kinds or equivalent goods and services at the same time when such goods and services are used. VAT on the goods and services serving the manufacture or trading taxable goods and services may be declared and deducted.

The goods circulated internally such as goods put into storage or semi-finished products during the manufacture process within a business establishment are not subject to VAT.

If the taxpayer manufactures their own fixed assets serving the manufacture or trading of taxable goods and services, invoices are not required when such assets are completed and put into use. Input VAT on the fixed assets may be declared and deducted as prescribed.

Taxable prices of the goods and services used for manufacturing or trading of goods and services that are not subject to VAT are the sale prices of the same kinds or equivalent goods and services at the same time.

Example 24: Unit A manufactures electric fans and install 50 fans in the its own workshops. The sale price (VAT-exclusive) is 1,000,000 VND/fan. VAT rate is 10%.

Taxable price =  $1,000,000 \text{ VND} \times 50 = 50,000,000 \text{ VND}$ .

Unit A shall issue an internal invoice specifying 50,000,000 VND in taxable price and 5,000,000 VND in VAT. Unit A may deduct tax in this invoice.

Example 25. Company Y manufactures bottled water. The VAT-exclusive price of a bottle on the market is 4,000 VND. When company Y uses 300 bottles in a trip of the company, VAT on these 300 bottles, which do not serve the manufacture or trading, shall be levied:  $4,000 \times 300 = 1,200,000$  (VND).

Example 26: Apparel company B has a threading workshop and a sewing workshop. When company B sends thread from the threading workshop to the sewing workshop to continue the process, VAT shall not be levied on such thread.

Example 27. Company AP purchases raw materials to manufacture animal feeds, and has deducted input VAT on the purchased raw materials. Part of the animal feeds manufactured is sold to the market, and the rest is used for internal animal breeding in the company. Company AP must issue a VAT invoice and pay VAT on the animal feeds used for animal breeding. VAT on the animal feeds used for animal breeding must not be deducted.

Example 28. Joint-stock company P builds a recreation room for workers within its premises. Company P does not appoint any unit to undertake this construction. When the recreation room is completed and put into use, company P is not required to issue an invoice. Input VAT on the recreation shall be declared and deducted as prescribed.

If a taxpayer uses goods/services for their business such as transport, aviation, rail transport, or post and telecommunications without calculating output VAT, the taxpayer must specify in writing the cases and the limits on the amount of goods and services used internally.

5. Taxable prices of goods and services used for sales promotion in accordance with trade laws are zero (0). In case they are not conformable with trade laws, tax shall be declared and paid as if they are used internally, given, or donated.

Some forms of sales promotion:

a) If goods or services are provided free of charge as samples or gifts, taxable prices are zero (0).

Example 29: Company P is a manufacturer of carbonated drinks. In 2014, company P does a sales promotion in the form of "buy 10 get 01 free" in May and December. The sales promotion in May 2014 is conformable with trade laws, thus taxable price of every product given free of charge in May 2014 is zero (0).

The sales promotion in December 2014 is not conformable with trade laws, thus company P must declare and pay VAT on the products given free of charge in December 2014.

b) If goods or services are provided at reduced prices, the taxable prices are the reduced prices during the sales promotion that has been registered or notified.

Example 30: N is a telecommunications company that sells prepaid cards. Company N registers a sale promotion in the form of price reduction from April 01, 2014 to the end of April 20, 2014, during which a prepaid card is sold for 90,000 VND instead of 100,000 VND.

The taxable price of a prepaid card during the sales promotion = 90,000 VND : (1+10%)

c) If vouchers are given when goods or services are sold, VAT on is not levied on the vouchers.

6. Taxable prices of asset rental such as housing, offices, workshops, warehouses, yards, vehicles, machinery, equipment are the VAT-exclusive rents.

If the rent is paid by instalments or prepaid for a period of time, the taxable price is the instalment or the prepaid amount exclusive of VAT.

The rent agreed by both parties is the rent written in the contract. If a rent bracket is prescribed by law, the rent must be charged within that bracket.

7. If a commodity is paid for by instalments, the taxable price is the original price exclusive of VAT and interest.

Example 31: Company X sells allows its customer to pay for a motorbike by instalments. The total price is 25.5 million VND, including 25 million VND in sale price and 0.5 million VND in interest, thus taxable price is 25 million VND.

8. Taxable prices for goods processing are the prices under the processing contracts exclusive of VAT, inclusive of wages, costs of fuel, machinery, raw materials, and other expenses serving the processing.

9. Taxable prices of construction and installation are the VAT-exclusive values of the completed constructions or works.

a) If the price is inclusive of building materials, the taxable price is the VAT-exclusive price inclusive of building materials.

Example 32: Company B is contracted to complete a construction. The VAT-exclusive payment 1,500 million VND including 1,000 million VND in the value of building materials, then taxable price is 1,500 million VND.

b) If the price is exclusive of building materials, machinery, or equipment, the taxable price is the VAT-exclusive construction price exclusive of building materials, machinery, or equipment.

Example 33: Company B is contracted to complete a construction. The total value of the construction is 1,500 million VND (VAT-exclusive); the value of building materials provided by investor A is 1,000 million VND, then taxable price is 1,500 million VND - 1,000 million VND = 500 million VND.

c) Taxable prices of completed and transferred works are their VAT-exclusive value.

Example 34: Company X (party A) hires company Y (party B) to build a new workshop.

The total value (VAT-exclusive) of the construction is 200 billion VND, including:

- Construction value: 80 billion VND
- Value of equipment provided by party B: 120 billion VND
- 10% VAT: (80 billion VND + 120 billion VND) x 10% = 20 billion VND
- Total amount payable: 220 billion VND
- Party A shall:

+ Receive the completed workshop and record an increase of 200 billion VND in the value of fixed assets (VAT-exclusive)

+ 20 billion VND in VAT may be deducted from output VAT on sold products or refunded.

If party A agrees to pay 80 billion VND to party B for the completed and transferred works, the taxable price is 80 billion VND.

10. When transferring real estate, taxable price is the transferring price minus (-) deductible land value.

a) Deductible land value is calculated as follows:

a.1) If land is allocated by the state to build houses for sale, the deductible land value include land levy and compensation for land clearance as prescribed by law.

Example 35: In 2014, real estate company A is allocated with land by the state to build houses for sale. Land levy is 30 billion VND (before deducting compensation for land clearance and land levy reduction) Land levy is reduced by 20%. Compensation for land clearance is 15 billion VND.

Total deductible land value:

- 20% reduction in land levy: 30 billion VND x 20% = 6 billion VND;
- Land levy payable after reduction: 30 billion VND - 6 billion VND - 15 billion VND = 9 billion VND;
- Deductible land value, including land levy payable (after reduction) and compensation for land clearance: 9 billion VND + 15 billion VND = 24 billion VND. The deductible land value is divided by the business area.

a.2) When land tenure is put up for auction, the deductible land value is the successful bid.

a.3) If land is leased to invest in infrastructure for lease or to build houses for sale, the deductible land value is the land rent payable to government budget (exclusive of land rent reduction) and compensation for land clearance as prescribed by law. The Law on Land 2013 shall apply to the pieces of land leased to build houses for sale from July 01, 2014.

Example 36. VN-KR is a joint-stock company specialized in infrastructure for industry and services. VN-KR leases land from the state and pays a lump sum of land rent to build infrastructure of an industrial park; the lease period is 50 years. The land area is 300,000 m<sup>2</sup>, the rent is 82,000/m<sup>2</sup>. Accordingly, the total land rent is 24.6 billion VND. VN-KR is not granted land rent reduction or exemption. After infrastructure is finished, VN-KR leases out 16,500 m<sup>2</sup> to an investor with a lease period of 30 years; the rent is 650,000 VND/m<sup>2</sup>, inclusive of VAT.

Accordingly, the VAT-inclusive rent for the infrastructure for 30 years:

16,500 VND m<sup>2</sup> x [650,000 VND - (82,000 VND/m<sup>2</sup> : 50 years x 30 years)] = 9,9132 billion VND.

VAT-exclusive rent = 9.9132 billion VND : (1 + 10%) = 9.012 billion VND.

VAT = 9.012 billion VND x 10% = 0.9012 billion VND.

a.4) When a taxpayer receives land tenure from another entity, deductible land value is the land price when the transfer is made, inclusive of the value of infrastructure (if any); the taxpayer must not deduct input VAT on infrastructure value that has been included in the deductible land value.

If the deductible land value is exclusive of infrastructure value, the taxpayer may deduct input VAT on the infrastructure.

If the land price on the transferring date cannot be determined, deductible land value is the land price imposed by the People's Committee of the province when the transfer contract is signed.

Example 37: In August 2013, company A buys 200 m<sup>2</sup> of land from Mr. B in Binh An Residential Area in province X for 6 billion VND. Company A sign a land transfer contract, which is notarized in accordance with land laws, and has a receipt for the payment of 6 billion VND. Company does not build any thing on this piece of land. In October 2014, company A sells this piece of land for 9 billion VND. Company A must issue a VAT invoice and pay VAT. The land value deducted from the taxable price is 6 billion VND.

Example 38: In November 2013, company A buys 300 m<sup>2</sup> of land and infrastructure thereon from Mr. B for 10 billion VND without sufficient documents to determine the land price at that time. In April 2014, company A sells this piece of land together with the infrastructure thereon for 14 billion VND. Accordingly, the deductible land value is the land price imposed by the People's Committee of the province when company A buys the piece of land (November 2013).

Example 39:

In September 2013, company B buys 2,000 m<sup>2</sup> of land together with infrastructure thereon from real estate company A for totally 62 billion VND (including 40 billion VND in VAT-exclusive land price, meaning the unit price is 20 million VND/m<sup>2</sup>).

The invoice issued by company A indicates:

- VAT-exclusive sale price: 60 billion VND
- VAT-exclusive land price = 40 billion VND
- VAT on infrastructure: 2 billion VND
- Total amount payable: 62 billion VND

Company must declare VAT as follows:

VAT payable = output VAT - deductible input VAT

Assuming deductible input VAT is 1.5 billion VND, then VAT payable = 2 billion VND - 1.5 billion VND = 0.5 billion VND.

Company B keeps developing the infrastructure and 10 villas (200 m<sup>2</sup>/villa) for sale. Total input VAT on the villas is 3 billion VND.

On April 01, 2015, company B signs a contract to sell one villa to customer C for 10 billion VND. Deductible land value of the villa is calculated as follows:

- Land value (exclusive of infrastructure value) when the villa is sold by company A: 20 million VND x 200 m<sup>2</sup> = 4 billion VND.
- Infrastructure value of a villa:  
(20 billion VND : 2000 m<sup>2</sup>) x 200 m<sup>2</sup> = 2 billion VND
- Deductible land value of the villa (including infrastructure value) when it is sold by company A: 6 billion VND.

The invoice issued by company B indicates:

- Sale price of a villa: 10 billion VND
- Deductible land value: 6 billion VND
- VAT = [(10 billion VND - 6 billion VND) x 10% = 0.4 billion VND.
- Total amount payable: 10.4 billion VND

Assuming that company B sells out all 10 villas in the month. VAT payable by company B = output VAT - deductible input VAT = 0.4 billion VND x 10 villas - 3 billion VND = 1 billion VND.

2 billion VND in VAT on infrastructure written on the invoice when company A sells these 10 villas shall not be deducted.

If company B does not include infrastructure value in the land value, which is 4 billion VND, the invoice shall be made as follows:

- Sale price of a villa: 10 billion VND
- Deductible land value: 4 billion VND
- VAT = (10 billion VND - 4 billion VND) x 10% = 0.6 billion VND.
- Total amount payable: 10.6 billion VND

Assuming that company B sells out all 10 villas in the April 2015. VAT payable by company B = output VAT - deductible input VAT (including the input VAT on the construction of the villas and input VAT on the infrastructure) = 0.6 billion VND x 10 villas - 3 billion VND - 2 billion VND (input VAT on infrastructure) = 1 billion VND.

a.5) If real estate under a build-transfer (BT) contract is paid with land tenure, the deductible land value is the land price when the BT contract is signed. If the land price is unknown when the BT contract is signed, the deductible land value is the payment for the whole construction decided by the People's Committee of the province.

Example 40: Joint-stock company P signs a BT contract with the People's Committee of province A to build a bridge in exchange for land tenure. The amount payable by the People's Committee is 2,000 billion VND, and company P will be allocated with 500 hectares of land in district Y of the same province. When company P uses this land to build houses for sale, the deductible land value is 2,000 billion VND.

a.6) When a real estate company buys the right to use a piece of agricultural land from an individual seller under a contract, then a competent authority permits the conversion of that piece of land into residential land where houses or apartment buildings are built for sale, the deductible land value is the price of the piece of land paid to the seller and other expenses, including: land levy paid to government budget for land conversion, personal income tax paid on behalf of the seller (if agreed by both parties).

a.7) When a multistory apartment building is built for sale, deductible land value of every m<sup>2</sup> of housing equals (=) the deductible land value mentioned in Points a.1 to a.6 divided by (:) the area (m<sup>2</sup>) of floor area, exclusive of shared areas such as corridors, stairways, basement, and underground constructions.

b) When infrastructural works or houses are built for sale or for lease, taxable price equals (=) the amount of money collected during the progress of the project minus (-) the deductible land value, which is proportional to the ratio of collected money to the total value contract.

11. The VAT-exclusive remunerations or commissions for running an agent or brokering the sale of goods/services, export and import entrustment are taxable prices.

12. Taxable prices of the goods and services using special receipts on which the selling prices are VAT-inclusive, such as stamps, bus tickets, lottery tickets, etc.:

$$\text{VAT-exclusive price} = \frac{\text{Selling price (price of the ticket, stamp, etc.)}}{1 + \text{tax rate (\%)}}$$

13. Taxable prices of electricity generated by hydroelectric power plants affiliated to Vietnam Electricity (EVN), including electricity generated by the hydroelectric power plants affiliated to the electricity general companies affiliated to EVN, are 60% of the average sale price of commercial electricity in the previous year, exclusive of VAT. If the average sale price of commercial electricity in the previous year is unknown, the price provisionally imposed by EVN shall apply, provided such price is not lower than the average sale price of commercial electricity in the year preceding the previous year. When the average sale price of commercial electricity in the previous year is found, an adjustment shall be included in the declaration of the month in which the price is found. The average sale price of commercial electricity in the previous year must be found by March 31 of the next year.

14. Taxable prices of casino services and other prize games are the amount of money collected from such services (inclusive of VAT) minus special excise tax.

Taxable price is calculated as follows:

$$\text{Taxable price} = \frac{\text{Collected amount}}{1 + \text{tax rate}}$$

Example 41: In a tax period, a casino presents the following figures:

- Total amount collected from players at the exchange counter: 43 billion VND.
- Total amount returned to players: 10 billion VND.

Actual revenue: 43 billion VND - 10 billion VND = 33 billion VND

The revenue of 33 billion VND is inclusive of VAT and special excise tax.

Taxable price is calculated as follows:

$$\text{Taxable price} = \frac{33 \text{ billion VND}}{1 + 10\%} = 30 \text{ billion VND}$$

15. Taxable prices of transport and material handling services are the VAT-exclusive charges, whether the materials are handled by the taxpayer itself or by another service provider.

16. The price of an all-inclusive package of travel services (inclusive of meals, accommodation, and travel) is considered VAT-inclusive.

Taxable price is calculated as follows:

$$\text{Taxable price} = \frac{\text{Price of the package}}{1 + \text{tax rate}}$$

If the price is inclusive of the costs of return flights, meals, accommodation, and other expenses overseas (if valid receipts are presented), such costs may be deducted from the taxable price. Input VAT on the goods and services serving the all-inclusive tour shall be deducted in full.

Example 42: Tourism company H signs a contract to provide an all-inclusive package tour in Vietnam for 50 Thai tourists for 05 days. The total payment for the tour is 32,000 USD. Company H must pay for the air tickets, meals, accommodation, and sightseeing under the contract. The payment for return air tickets is 10,000 USD (1 USD = 20,000 VND).

The taxable price is calculated as follows:

+ Taxable revenue:

$$(32,000 \text{ USD} - 10,000 \text{ USD}) \times 20,000 \text{ VND} = 440,000,000 \text{ VND}$$

+ Taxable price:

$$\frac{440,000,000 \text{ VND}}{1 + 10\%} = 400,000,000 \text{ VND}$$

Company H may deduct the input VAT on the goods and services serving the tour.

Example 43: Tourism company N signs a contract to provide an all-inclusive tour in China for Vietnamese tourists for 05 days. The price is 400 USD/tourist. Company N must pay 300 USD/person to tourism company C in China. Accordingly, the taxable price is: 400 - 300 = 100 (USD/person).

17. The collectible from pawnbroking services, including the interest and other revenues from the sale of pawned articles, is VAT-inclusive.

Taxable price is calculated as follows:

$$\text{Taxable price} = \frac{\text{Collectible}}{1 + \text{tax rate}}$$

Example 44: A pawnshop earns 110 million VND in a tax period.

Taxable price is calculated as follows:

$$\frac{110 \text{ million VND}}{1 + 10\%} = 100 \text{ million VND}$$

18. The prices on the covers of the books subject to VAT according to the Law on Publishing are VAT-inclusive prices and shall be used to calculate VAT and revenues. If books are sold at prices other than the prices on the cover, VAT shall be imposed on the actual sale price.

19. Taxable prices of printing is the payment for printing. If the contractual price includes printing price and paper price, the taxable price is also inclusive of paper price.

20. VAT-exclusive remunerations or commissions on brokering assessment, brokering compensation examination, claiming compensation from a third person (including the costs) earned by the insurer are taxable prices.

21. In the case of service purchase in Clause 5 Article 3 of this Circular, taxable price is the VAT-exclusive price written in the service contract.

22. Taxable price of the goods and services mentioned in Clauses from 1 to 21 include the surcharges payable to the sellers.

If the seller offers a discount, the taxable price is the discounted price. If the discount is offered according to the sales, the discount shall be included in the invoice for the last sale or transferred to the next period. If the discount is offered after the sales promotion is over, an adjustment shall be made, specifying the numbers of the invoices that need adjusting and the adjustments to the payments and tax. According to the adjustment, the buyer and the seller shall adjust their revenues, input and output taxes.

Taxable price is expressed as VND. If a taxpayer earns revenue in a foreign currency, it must be converted into VND according to the average exchange rate on inter-bank foreign exchange market announced by the State bank during the time the revenue is earned.

#### **Article 8. Time for calculating VAT**

1. For goods sale, VAT shall be calculated when the ownership or the right to use goods is transferred to the buyer, whether the payment is made or not.

2. For service provision, VAT shall be calculated when service provision is completed or when the invoice for service provision is made, whether the payment is made or not.

For telecommunications services, VAT shall be calculated when comparing the data about telecommunications charge according to the contracts between telecommunications service providers, but not later than 2 months from the month in which the charge is incurred.

3. For electricity and water supply, VAT shall be calculated when the electricity or water consumption is recorded.

4. For real estate trading, construction of infrastructural works, houses for sale or for lease, VAT shall be calculated when money is collected according to the project schedule or the contract. The taxpayer shall declare output VAT incurred in the tax period according to collected amount.

5. For construction and installation, including shipbuilding, VAT shall be calculated when the construction or a work is completed and put into use, Whether the payment is made or not.

6. For imported goods, VAT shall be calculated when the customs declaration is registered.

#### **Article 9. Tax rate of 0%**

1. 0% VAT is applied to exported goods and services; construction and installation overseas and in free trade zones; international transport; exported goods and services that are not subject to VAT, except for the cases in Clause 3 of this Article, in which 0% VAT is not applied.

Exported goods and services are those that are sold to overseas organizations and individuals and are consumed outside Vietnam, sold to the entities in free trade zones, or sold to foreign customers as prescribed by law.

a) Exported goods include:

- The goods exported to other countries, including those under entrustment contracts;

- The goods sold to free trade zones as prescribed by the Prime Minister; the goods sold to duty-free shops;
- The goods that are delivered to the recipients outside Vietnam;
- Parts and supplies for repairing, maintaining vehicles, machinery, and equipment of foreign entities, and those that are used outside Vietnam;
- Cases of deemed exportation:
  - + Forwarded processed goods under trade laws on international goods trade and export processing.
  - + Exported goods delivered to a domestic recipient appointed by the importer (hereinafter referred to as domestic exports).
  - + The goods exported to be sold at overseas fairs or exhibitions.

b) Exported services include the services directly provided for overseas organizations and individuals and are consumed overseas; the services provided for the entities in free trade zones and consumed within the free trade zones.

Overseas individuals are the foreigners that do not reside in Vietnam, the Vietnamese people that reside overseas and are not present in Vietnam when the services are provided. The entities in free trade zones are the entities that have registered their business and other cases prescribed by the Prime Minister.

If services are provided both in Vietnam and overseas, but the service contract is signed between two taxpayers in Vietnam or two taxpayer that have permanent establishments in Vietnam, 0% tax is only applied to the services provided overseas, except for the case of insurance for imported goods, in which 0% tax is applied to the whole contract value. If the contract does not separate the services provided in Vietnam, taxable price shall be determined according to the ratio of expense incurred in Vietnam to the total expense.

The service provider that is a taxpayer in Vietnam must provide documents proving that the services are provided outside Vietnam.

Example 45: Company B signs a contract with company C to provide some services including consultancy, survey, and design for company C's project of investment in Cambodia (both company B and company C are Vietnamese companies). According to the contract, there are services that provided in Vietnam and services provided in Cambodia. 0% tax shall apply to the value of the services provided in Cambodia. Company B must pay VAT on the revenue from the services provided in Vietnam.

Example 46: Company D provides some services for company X, including consultancy, survey, and feasibility study on a project in Laos. Company D is paid 5 billion VND for this contract, inclusive of VAT on the services provided in Vietnam. The contract does not separate the revenue earned in Vietnam from the revenue earned in Laos. The expense incurred in Laos (cost of survey) is 1.5 billion VND and the expense incurred in Vietnam (cost of summarizing and reporting) is 2.5 billion VND.

The VAT-inclusive revenue from the services provided in Vietnam is calculated as follows:

$$5 \text{ billion VND} \times \frac{2.5 \text{ billion VND}}{2.5 \text{ billion VND} + 1.5 \text{ billion VND}} = 3.125 \text{ billion VND}$$

If company D presents documents proving that company D sent employees to Laos to carry out the survey, and the documents proving that company D purchased goods serving the survey in Laos, 0% tax shall be applied to the revenue from the services provided in Laos, which equals 1.875 billion VND (5 billion VND - 3.125 billion VND = 1.875 billion VND).

c) International transport includes passenger transport and freight transport along international routes from to other countries and vice versa, or from one foreign country to another, regardless of the availability of vehicles. If the international contract includes a domestic segment, the segment is also considered international transport.

Example 47: Company X in Vietnam uses their ships to transport goods from Singapore to Korea. The revenue from this transport is considered revenue from international transport.

d) Aviation services and maritime services directly provided to overseas organizations or via agents, including:

0% tax shall be applied to the following aviation services: catering, takeoff and landing, aircraft parking, aircraft security; security scanning; luggage conveyance at terminals; terrestrial technical services; aircraft protection; aircraft towing; aircraft guiding; passenger boarding bridges; air controlling; flight crew and passenger transport in the airport apron; freight handling and checking; passenger services on international flights from Vietnamese airports.

0% tax shall be applied to the following maritime services: ship towing; pilotage; sea rescue; wharves; freight handling; moorings; hatch control; hull cleaning; freight checking; registration,

dd) Other goods and services:

- Construction or installation overseas or in free trade zones;
- The goods and services that are not subject to VAT when being exported, except for the cases in Clause 3 of this Article, in which 0% tax is not applied;
- Repairs to foreign aircraft and ship vessels.

2. Condition for application of 0% tax:

a) The documents below are compulsory for exported goods:

- A sale contract, export processing contract, or export entrustment contract;
- Bank receipts for payment for exported goods and other documents prescribed by law;
- A customs declaration prescribed in Clause 2 Article 16 of this Circular.

If goods are delivered to a recipient outside Vietnam, the seller must provide documents proving the delivery of goods outside Vietnam such as: a contract to buy goods signed with an overseas buyer, a contract to sell goods signed with the buyer, documents proving that goods are received outside Vietnam such as commercial invoices, bills of lading, packaging notes, Certificates of Origin, etc.; bank receipt for the payment to the overseas seller by the taxpayer, bank receipt for the payment to the taxpayer by the buyer.

Example 48. Company A and company B signs a contract to buy grease (both of them are Vietnamese companies). Company A buys grease from several companies in Singapore, then sell it to company B at a port of Singapore. If company A has contracts to buy grease signed with the companies in Singapore, the contract to sell grease to company B, documents proving that goods have been delivered to company B at a port in Singapore, bank receipts for the payments to grease companies in Singapore, and a bank receipt for the payment to company A by company B, 0% tax may be applied to the revenue earned by company A from selling grease to company B.

b) The documents below are compulsory for exported services:

- A contract to provide services for an organization or individual in another country or in a free trade zone;
- Bank receipts for payment for exported services and other documents prescribed by law;

Apart from presenting the aforesaid documents, providers of repair services for foreign aircraft and sea vessels must follow the procedure for importing the aircraft or vessel to Vietnam, and follow the procedure for exporting them after they are repaired in order to be eligible for 0% tax.c) The documents below are compulsory for international transport:

- A international passenger transport or freight transport contract between the service provider and the service buyer. For passenger transport, the contract may be substituted with tickets. Providers of international transport services must comply with transport laws.
- Documents proving that payment is made by bank transfer or another method considered bank transfers. Receipts for direct payment are compulsory for passenger transport.

d) For aviation services and maritime services:

d.1) 0% tax shall be applied to the services provided within the international airports and cargo terminals, provided the following documents are presented:

- A service contract with an overseas organization or airline, or a written request for services by an overseas organization or airline;
- Receipts for bank transfers or other payments considered bank transfer. If services are provided for an overseas organization or airline on an irregular, unscheduled basis without any contract, a receipt for direct payment made by the overseas organization or airline is compulsory.

The aforesaid documents are not compulsory for passenger service charges.

d.2) 0% tax shall be applied to the maritime services provided within the port area, provided the following documents are presented:

- A service contract with an overseas organization or a shipping agent, or a written request for services by an overseas organization or shipping agent;
- Documents proving that the overseas organization or shipping agent makes payment to the service provider is made by bank transfer or another method considered bank transfer.

3. 0% tax is not applied to:

- Overseas reinsurance; technology transfer, transfer of intellectual property right to abroad; capital transfer, credit extension, overseas securities investment; derivative financial services; outbound postal and telecommunications services (including those provided for the entities in free trade zones; prepaid cards sold overseas or in free trade zones); exported natural resources that are not processed into other products; the goods and services provided for the individuals that do not register to do business in free trade zones, except for the cases defined by the Prime Minister;
- Oil and gas purchased from domestic market by a taxpayer and sold to automobiles in the free trade zone;
- The automobiles sold to the entities in free trade zones;
- Services provided for the entities in free trade zones include: leases on houses, meeting halls, offices, hotels, warehouses, yards; employee transport; food and drink services provided in the free trade zones by external providers (except for catering, food and drink services provided by those in the same free trade zone);
- 0% tax is not applied to the following services that are provided in Vietnam for overseas entities:
  - + Sports competitions, art performances, entertainments, conventions, hotel, training, advertising, traveling and tourism;
  - + Online payment services;
  - + Services attached to sale, distribution, consumption of goods in Vietnam.

**Article 10. Tax rate of 5%**

10% tax shall be levied on the goods and services below:

1. Clean water serving manufacture and everyday life, except for bottled water and other soft drinks subject to 10% tax.
2. Fertilizers; ores used for fertilizer manufacture; pesticides and Growth stimulants for plants and animals, including:
  - a) Organic and inorganic fertilizers such as phosphate fertilizers, nitrogenous fertilizer (urea), NPK fertilizer, mixed urea, potash; biofertilizers and other fertilizers;
  - b) Ores used for manufacture of fertilizers such as apatite ore, humus used for manufacture of biofertilizers;
  - c) Pesticides those in the List of pesticides compiled by the Ministry of Agriculture and Rural Development and other pesticides;
  - d) Growth stimulants for plants and animals.
3. Feeds for livestock, poultry, and other animals according to the laws on animal feeds, including processed and unprocessed feeds such as bran, press cakes, fish meal, bone meal, shrimp meal, and other feeds for livestock, poultry, and other animals.

4. Dredging channels, canals, ponds, and lakes serving agriculture; plant cultivation; preprocessing and preservation of agricultural products (except for dredging in-field trenches mentioned in Clause 3 Article 4 of this Circular).

Preprocessing and preservation of agricultural products include drying, husking, threshing, cutting, grinding, putting into cold storage, salting, and other usual means of preservation mentioned in Clause 1 Article 4 of this Circular.

5. The farming, breeding, aquaculture products that are unprocessed or preprocessed (defined in Clause 1 Article 4 of this Circular), except for the cases in Clause 5 Article 5 of this Circular.

The unprocessed farming products mentioned in this Clause include unhusked rice, husked rice, corn, potatoes, cassava, and wheat.

6. Mủ cao su sơ chế như mủ cờ rếp, mủ tờ, mủ bún, mủ cốm; nhựa thông sơ chế; lưới, dây giềng và sợi Dể Đan lưới Đánh cá bao gồm các loại lưới Đánh cá, các loại sợi, dây giềng loại chuyên dùng Dể Đan lưới Đánh cá không phân biệt nguyên liệu sản xuất.

7. Fresh foods for business, unprocessed forestry products for business, except for wood, bamboo sprouts, and the products enumerated in Clause 1 Article 4 of this Circular.

Fresh foods include the foods that have not been cooked or processed into other products, or have only been cleaned, unhusked, cut, frozen, or dried in a way that they are still fresh foods such as meat of livestock and poultry, shrimps, crabs, fish, and other aquacultural products. 10% tax shall be levied on seasoned foods.

Unprocessed forestry products include the products from natural forests such as rattan, bamboo, mushrooms, roots, leaves, flowers, herbs, resin, and other forestry products.

Example 49: Company A produces seasoned triggerfish under the following procedure: fresh triggerfish are caught and filleted, then seasoned with sugar, salt, solpitol, then packaged and frozen. The seasoned triggerfish is subject to 10% VAT.

8. Sugar; by-products during the sugar manufacture process including molasses, bagasse.

9. Products made of jute, rattan, bamboo, leaves, straws, coconut shells, hyacinth, and other handicrafts made of recycled materials from agriculture; preprocessed cotton; newspaper printing paper.

10. Agricultural machinery and equipment including tractors, transplanters, seeders, threshers, harvesters, combined harvester, and pesticide sprayers.

11. Medical equipment include radiographic equipment, equipment and instruments for surgery and treatment; ambulances; instruments for blood pressure measurement, cardiography, blood infusion, syringes; birth control equipment, and other medical equipment certified by the Ministry of Health.

Cotton wool, bandages, gauze pads, and medical tampons; medicines including finished medicines and raw materials, except for functional foods; vaccines; bioproducts, distilled water to mix with injectable medicines or intravenous fluids; chemicals used for testing and sterilization; caps, clothing, facemasks, gloves, boots, medical towels, breast implants and skin fillers (not including cosmetics).

12. Teaching aids include models, pictures, boards, chalks, rulers, compasses, other equipment and instruments for teaching, research, and scientific experimentation.

13. Artistic activities, exhibitions, sports; art performances; cinematography; importing, distributing, and showing films.

a) Revenues from activities, exhibitions, sports do not include the revenues from goods sale, lease on yards or exhibition booths.

b) Art performances and art performance organization services must be licensed by competent authorities.

c) Cinematography; importing, distributing, and showing films

14. Children's toys; books other than those that are not subject to VAT mentioned in Clause 15 Article 4 of this Circular.

15. Scientific and technological services, which mean the activities that serve or assist in scientific research and technology development; the activities related to intellectual property; transfer of

technologies, technical regulations and standards related to measurement, product quality, goods, nuclear and radiation safety, and atomic energy; consultancy, training, dissemination, and application of scientific and technological achievements to socio-economic fields under contracts for scientific and technological services defined in the Law on Science and technology, not including online games and Internet-based entertainments.

16. Sale, lease, and lease-option of social housing according to the Law on Housing. Social housing means the housing invested by the state or the organizations and individuals from various economic sectors, which satisfy the criteria for housing in terms of selling prices, rents, and eligible buyers according to housing laws.

#### **Article 11. Tax rate of 10%**

10% tax shall be levied on the goods and services that are not mentioned in Article 4, Article 9 and Article 10 of this Circular.

The rates of VAT mentioned in Article 10 and Article 11 shall be uniformly applied to the each type of goods and services, whether they are imported, manufactured, processed, or traded.

Example 50: 10% tax is levied on apparel. That means the tax rate is always 10% whether such apparel is imported manufactured, processed, or traded.

VAT on the products made of recycled wastes and scrap is the same as VAT on the wastes and scrap when they are sold.

If a taxpayer sells various goods and services that are subject to various rates of VAT, they must be sorted by VAT rates. Otherwise, the highest rate of VAT among which shall apply.

If the rate of VAT in the preferential import tariff schedule is found not conformable with this Circular, this Circular shall apply. If different rates of VAT are applied to the same kind of goods that are imported or manufactured in Vietnam, the local tax authority and customs authority must send a report to the Ministry of Finance for guidance.

### **Section 2. TAX CALCULATION**

#### **Article 12. Credit-invoice method**

1. Credit-invoice method is applied by the taxpayers that adhere to the accounting and invoicing practice according to accounting and invoicing laws, including:

- a) Any taxpayer that earns at least 1 billion VND in annual revenue from selling goods and services Credit-invoice, provided the taxpayer adheres to the accounting and invoicing practice according to accounting and invoicing laws, except for business households and businesspeople mentioned in Article 13 of this Circular;
- b) Any taxpayer that voluntarily applies credit-invoice method, except for the business households and individuals that pay tax using direct method mentioned in Article 13 of this Circular;
- c) Any foreign entity that provides goods and services serving petroleum exploration and extraction and authorizes a Vietnamese party to deduct tax.

2. The annual revenue mentioned in Point a Clause 1 of this Article is the revenue from selling taxable goods and services, which is calculated as follows:

- a) Annual revenue earned by a taxpayer is determined by the taxpayer itself according to "Total revenue from selling goods and services subject to VAT" on the VAT declarations from November of the previous month to the end of October of the current year, which precedes the year in which tax accounting method may be changed; or on the VAT declarations from Q4 of the previous year to the end of Q3 of the previous year, which precedes the year in which tax accounting method may be changed. The method shall be applied for two consecutive years.

Example 51: Company A is established in 2011 and still operating in 2013. To determine the tax accounting method applied in 2014, company A shall calculate its annual revenue by aggregating the revenue from selling goods and services subject to VAT on the monthly VAT declarations from November 2012 to the end of October 2013.

If the annual revenue calculated is 1 billion VND or above, company A may apply credit-invoice method for 02 years (2014 and 2015).

If the annual revenue calculated is below 1 billion VND, company A must apply direct method according to Article 13 of this Circular for 02 years (2014 and 2015), unless company A voluntarily applies credit-invoice method according to Clause 3 of this Article.

b) If the company has not operated for 12 months, the annual revenue shall be estimated by aggregating the revenue from selling goods and services subject to VAT on the monthly VAT declarations and dividing (:) it by the operational months, and then multiplying (x) it by 12 months. If the estimated annual revenue is 1 billion VND or above, the company may apply credit-invoice method. If the estimated annual revenue is below 1 billion VND, the company must apply direct method for 02 years, unless it voluntarily applies credit-invoice method.

Example 52: Company B is established and inaugurated from March 2013. To determine the tax accounting method applied in 2014 and 2015, company B estimates its annual revenue by aggregating the revenue from selling goods and services subject to VAT on the monthly VAT declarations of March, April, May, June, July, August, September, October, and November, dividing (:) it by 9 months, and then multiplying (x) it by 12 months.

If the estimated annual revenue is 1 billion VND or above, the company may apply credit-invoice method. If the estimated annual revenue is below 1 billion VND, company B must apply direct method for 02 years, unless it voluntarily applies credit-invoice method.

c) If the company starts declaring tax quarterly from July 2013, the annual revenue shall be calculated by aggregating the total revenue from selling goods and services subject to VAT on the monthly VAT declarations of October, November, and December in 2012, the first six months of 2013, and the VAT declaration of Q3 2013. If the annual revenue calculated is 1 billion VND or above, the company shall apply credit-invoice method. If the annual revenue is below 1 billion VND, the company must apply direct method for 02 years, unless it voluntarily applies credit-invoice method.

d) If the taxpayer suspends their business for the whole year, the annual revenue is the revenue of the year preceding the year over which the business is suspended.

d) If the taxpayer suspends their business for a certain period of time in the year, the revenue earned during the operational months and quarters according to Point b of this Clause shall be considered annual revenue.

If the business is not in operation for the full 12 months in the year preceding the year over which the business is suspended, the revenue earned during the operational months and quarters according to Point b of this Clause shall be considered annual revenue.

3. The taxpayers that voluntarily apply credit-invoice method include:

a) Any company or cooperative that earn less than billion VND in annual revenue from selling goods and services Credit-invoice, and adheres to the accounting and invoicing practice according to accounting and invoicing laws.

b) Any new company derived from a project of investment of a taxpayer that pays VAT using credit-invoice method.

c) Any new company or cooperative that invest at least 1 billion VND in fixed assets, machinery, and equipment according to the purchase invoices, including those purchased before the creation of such company or cooperative (not including passenger cars with fewer than 9 seats of the taxpayers that are not transport companies, tourism companies or hotels); foreign entities doing business in Vietnam under contracts.

d) The business organizations other than companies and cooperatives that are able to separate input VAT from output VAT.

The companies and cooperatives mentioned in Point a of this Clause must send notifications of the application of credit-invoice method to their supervisory tax authorities by December 20 every year.

The taxpayers mentioned in Point b and Point c of this Clause must send notifications of the applied tax accounting method to their supervisory tax authorities together with the applications for tax registration.

The taxpayers mentioned in Point d of this Clause must send notifications of the applied tax accounting method to their supervisory tax authorities by December 20 of the year preceding the year in which the method is changed.

Within 05 working days from the day on which the notification of the application of credit-invoice method, tax authority shall notify the taxpayer of their approval for or disapproval of the application of credit-invoice method.

#### 4. Other cases:

a) If the taxpayer engages in trading, fashioning gold, silver and gemstones, the revenue from such activities must be separated to directly calculate VAT on value added according to Article 13 of this Circular.

b) The new companies and cooperatives that are not fall into the cases in Clause 3 of this Article must apply direct method according to Article 13 of this Circular.

At the end of the first calendar year from the establishment, if the company or cooperative earns at least 1 billion VND in annual revenue and adheres to the accounting and invoicing practice according to accounting and invoicing laws, credit-invoice method may be applied. The tax accounting method shall be changed in accordance with tax laws.

If the company or cooperatives fails to earn at least 1 billion VND in revenue at the end of the first calendar year, the direct method is still applied.

Example 53: Company X is established and inaugurated from April 2014. Company X applies direct method in the tax periods in 2014. At the end of November 2014, company X estimates its annual revenue in the year by aggregating the revenue on the VAT declarations from April to November, dividing it by 8 months, and then multiplying it by 12 months.

If the estimated revenue is 1 billion VND or above, company X shall switch over to credit-invoice method from January 01, 2015 and throughout 2015 and 2016. If the estimated revenue is below 1 billion VND, company X must keep applying direct method throughout 2015 and 2016. The tax accounting method applied by company X in 2017 and 2018 depends on its performance in 2016.

#### 5. VAT payable:

$$\text{VAT payable} = \text{Output VAT} - \text{Deductible output VAT}$$

Where:

a) Output VAT equals the total VAT on sold goods and services written on the VAT invoices.

The VAT written on a VAT invoice equals (=) taxable prices of goods and services multiplied by (x) corresponding tax rates.

If the selling price is VAT-inclusive, output VAT equals (=) selling price minus (-) taxable price according to Clause 12 Article 7 of this Circular.

The taxpayer that is eligible to use credit-invoice method must calculate and pay VAT on goods and services when they are sold. When issuing a sale invoice, the taxpayer must clearly write the VAT-exclusive prices, VAT, and total amount payable by the buyer. If the invoice only has the selling price (where special invoices are allowed) without specifying the VAT-exclusive price and VAT, the VAT shall be levied on the selling price.

Example 54: A company sells F6 steels at VAT-exclusive price 11,000,000 VND/tonne; 10% VAT = 1,100,000 VND/tonne. However, the sale price written on some invoices is 12,100,000 VND/tonne. In this case, VAT will be 1,210,000 VND/tonne (12,100,000 VND/tonne x 10%) instead of 1,100,000 VND/tonne.

Taxpayers must adhere to accounting and invoicing practice in accordance with the laws on accounting and invoicing. In case the tax authority finds an incorrect VAT rate on an invoice for the sale of goods and services:

If the incorrect VAT rate is higher than that prescribed by VAT laws, the taxpayer must pay tax at the rate written on the invoice; if the incorrect VAT rate is lower than that prescribed by VAT laws, the taxpayer must pay tax at the rate prescribed by the VAT laws.

b) Input VAT equals (=) total VAT on invoice VAT for purchase of goods and services (including fixed assets) serving the manufacture or sale of taxable goods and services, VAT on receipts for payment of tax on imported goods or payment of VAT on behalf of a foreign organization, which does not have a legal status in Vietnam, or a foreigner doing business in Vietnam or earning income in Vietnam.

If special receipts, on which selling prices are VAT-inclusive, are permitted, the taxpayer may calculate VAT-exclusive prices and input VAT according to the VAT-inclusive prices and the instructions in Clause 12 Article 7 of this Circular.

Deductible input VAT shall be calculated in accordance with Article 14, Article 15, Article 16, and Article 17 of this Circular.

Example 55: In a tax period, company A pays 110 million VND inclusive of VAT for deductible input services that are subject to 10% tax (special receipts bearing VAT-inclusive prices are used for the services), then deductible input VAT is calculated as follows:

$$\frac{110 \text{ million VND}}{1 + 10\%} \times 10\% = 10 \text{ million VND}$$

VAT-exclusive price is 100 million VND; VAT is 10 million VND.

In case the tax authority finds an incorrect VAT rate on an invoice issued by the goods buyer:

If the VAT rate on the invoice is higher than that prescribed by tax laws, input VAT shall be deducted at the rate prescribed by tax laws. If it is proven that the seller declared and paid tax at the rate on the invoice, input VAT may be deducted at the rate written on the invoice as long as it is certified by the supervisory tax authority of the seller. If the VAT rate on the invoice is lower than that prescribed by tax laws, input VAT shall be deducted at the rate written on the invoice.

In case the tax authority finds an incorrect VAT rate on an invoice issued by the goods seller:

If VAT has been paid by the seller when goods are imported, and the VAT rate on the VAT invoice issued to consumer is equal to the VAT rate declared when goods are imported and when goods are sold, but this rate is lower than that prescribed by VAT laws and the taxpayer is not able to collect additional payment from the consumer, then the payment collected from the consumer under the VAT invoice is considered inclusive of VAT at the rate prescribed by VAT laws, which is used to calculate VAT payable and revenue subject to corporate income tax.

Example 56: In March 2014, taxpayer A, who is eligible to apply credit-invoice method), imports products named "CHAIR MM", and has paid 5% VAT during importation. In May 2014, taxpayer A sells 01 "CHAIR MM" to buyer B for 100 million VND exclusive of VAT. Because 5% VAT has been paid during importation, the VAT invoice issued by taxpayer A to buyer B indicates 100 million VND in taxable price, 5% VAT, 5 million VND in VAT, and 105 million VND in total amount. This amount has been paid off by buyer B.

In 2015, tax authority finds that the VAT rate applied by taxpayer A is incorrect (the correct rate is 10%). Because the transaction between taxpayer A and buyer B has finished, company A cannot collect any additional payment from buyer B (buyer B refuses to pay any additional tax). The VAT payable by taxpayer A and the taxable revenue are determined by the tax authority as follows:

The total payment made by buyer B, which is 105 million VND, is considered inclusive of 10% VAT. The correct VAT payable is:

$$\frac{105 \text{ million VND}}{1 + 10\%} \times 10\% = 9.545 \text{ million VND}$$

Additional VAT payable by taxpayer A:

9.545 million VND - 5 million VND = 4.545 million VND.

Taxable revenue from selling the "CHAIR MM" to buyer B:

105 million VND - 9.545 million VND = 95.455 million VND.

### **Article 13. Direct method**

1. The direct method is applied to trading, fashioning of gold, silver, and gemstones, according to which VAT equals (=) value added multiplied by (x) 10%.

Value added of gold, silver, and gemstones equals (=) their selling price minus (-) their cost price.

Selling prices of gold, silver, or gemstones are the actual selling prices written on the sale invoices, inclusive of fashioning price, VAT, and other surcharges to which the seller is entitled.

Cost prices of gold, silver, or gemstones are their VAT-inclusive values when they are purchased or imported for trading or fashioning.

If the value added of gold, silver, and gemstones in the tax period is negative ( $< 0$ ), it may be offset against the positive value added ( $> 0$ ). In case there is no positive value added or the positive value added is not sufficient to cancel out the negative value added, the negative value added shall be transferred to the next tax period of the year. At the end of the calendar year, any negative value added that remains must not be transferred to the next year.

2. Cases in which VAT is calculated by directly multiplying a rate (%) by the revenue (hereinafter referred to as direct VAT):

a) This method may be applied by the following entities:

- The operational companies and cooperatives that earn less than 1 billion VND in annual revenues, except for those that voluntarily apply credit-invoice method prescribed in Clause 3 Article 12 of this Circular;
- The new companies and cooperatives, except for those that voluntarily apply credit-invoice method prescribed in Clause 3 Article 12 of this Circular;
- Business households and businesspeople;
- The foreign entities doing business in Vietnam without following the Law on Investment; the organizations that fail to adhere to accounting and invoicing practice, except for those that provide goods and services serving petroleum exploration and extraction.
- The business organizations other than companies and cooperatives, except for those that voluntarily apply credit-invoice method.

b) Direct VAT rates applied to various business lines:

- From goods distribution or goods supply: 1%;
- From services or construction exclusive of building materials: 5%;
- Manufacturing, transport, services associated with goods, construction inclusive of building materials: 3%;
- Other lines of business: 2%.

c) The taxable revenue is the total revenue from selling goods and services, which is written on the sale invoice for taxable goods and services, inclusive of the surcharges to which the seller is entitled.

The rates above are not applied to the revenue from selling the goods and services that are not subject to VAT and revenue from exported goods and services.

Example 57: Company A is a company that declares and pays VAT using direct method. Company A earns revenue from selling computer software and consultancy on company establishment. Company A shall not pay direct VAT from selling computer software, which is not subject to VAT), and must pay direct VAT at 5% of the revenue from consultancy on company establishment.

If the taxpayer engages in various lines of business to which different rates are applied, they must be sorted by VAT rate. Otherwise, the highest rate among which shall apply.

3. The direct VAT payable by a business household or businessperson that pays VAT at a flat rate depends on the declaration made by the taxpayer, the data of the tax authority, the result of the investigation into the taxpayer's actual revenue, and opinions of the local Tax Advisory Council.

If the taxpayer that pays tax at a flat rate engages in multiple lines of business, the rate on the primary business line shall be applied.

4. The list of direct VAT rates mentioned in Clause 2 and Clause 3 is enclosed herewith.

### **Chapter III**

## **TAX DEDUCTION AND TAX REFUND**

### **Section 1. TAX DEDUCTION**

#### **Article 14. Rules for deducting input VAT**

1. Input VAT on goods and services serving the manufacture or sale of goods/services subject to VAT shall be deducted in full, including non-refundable input VAT on damaged goods.

Non-refundable input VAT on damage goods may be deducted in an event of natural disaster, blaze, damage that is not covered by insurance, degraded or expired goods that must be destroyed. The taxpayer must present sufficient documents to prove the damage not covered by insurance.

If goods diminish naturally during transport or pumping (such as oil, gasoline, etc.), input VAT on the lost amount of goods within the tolerance may be deducted. Input VAT on the lost amount beyond the tolerance must not be deducted.

Input VAT on goods and services forming fixed assets such as canteen, recreation room, locker room, parking lot, restroom, water tank serving workers at the workplace, housing and medical facility for workers in industrial parks shall be deducted in full.

VAT on the rents for the houses for workers in the industrial park paid by the taxpayer may be deducted if the houses are conformable with laws on houses for workers in industrial parks in terms of design standards and rents. If the taxpayer builds or purchases houses outside the industrial parks serving workers in the industrial park, VAT on these houses may be deducted in full if they are conformable with the design standards applied to houses for workers in industrial parks.

When a taxpayer pays foreign experts for their works in Vietnam or holding managerial positions in Vietnam under labor contracts signed, the rent for houses for such foreign experts must not be deducted.

If the foreign experts are still employees of an overseas company, receive wages and benefits from the overseas company over the period of work in Vietnam, and the overseas company and the taxpayer in Vietnam signs a contract specifying that the taxpayer in Vietnam must cover the costs of accommodation for the foreign experts while they are working in Vietnam, then the VAT on the accommodation costs paid by the taxpayer shall be deducted.

2. When goods and services (including fixed assets) are purchased to serve the manufacture or sale of both the goods/services that are subject to VAT and goods/services that are not subject to VAT, only VAT on the goods and services serving the manufacture or sale of the goods/services subject to VAT shall be deducted. The taxpayer must separate the deductible input VAT from non-deductible one. Otherwise, input VAT shall be deducted according to the ratio of taxable revenue to the total revenue from selling goods and services.

The taxpayer that sells both goods/services that are subject to VAT and goods/services that are not subject to VAT may temporarily deduct all of the VAT on purchased goods, services, and fixed assets every month. At the end of the year, the taxpayer shall determine the actual deductible input VAT in the year and adjust the amount of input VAT deducted in during the year.

3. In the following cases, input VAT on fixed assets, machinery, equipment, including input VAT on the lease on such fixed assets, machinery, equipment, and input VAT on related services such as warranty or repairs shall be aggregated with cost prices of fixed assets or deductible expenses (according to the Law on Corporate income tax and its guiding documents) instead of being deducted: fixed assets serving the manufacture of weapons and vehicles serving national defense and security; fixed assets, machinery and equipment of credit institutions, reinsurers, life insurers, securities companies, medical facilities, training institutions, commercial aircraft, and cruisers that are not used for cargo transport, passenger transport, tourism or hotel services.

If the value of a fixed asset that is a car smaller than 9-seater cars (except for those that are used for cargo transport, passenger transport, tourism or hotel services) exceeds 1.6 billion VND (VAT-exclusive), the VAT on the proportion beyond 1.6 billion VND must not be deducted.

4. Some cases of VAT deduction:

a) If the taxpayer has a closed production line where the products not subject to VAT are used for producing goods subject to VAT, input VAT shall be deducted in full.

Example 58: Company X invests in raw materials and a factory to fillet fish and produce frozen shrimps. Company X has a closed production line, including the breeding line, ponds, fences, irrigation system, boats, and other raw materials such as feeds, veterinary medicines, and the processing line. Company X may deduct input VAT on fixed assets and purchases that are not fixed assets during the manufacture and processing.

Example 59: Company Y invest in raw materials and a factory to produce dairy (sterilized milk, yogurt, cheese, etc.) Company Y has a closed production line, including the breeding line, farms, stables, fences, milking devices, sanitation system, raw materials such as feeds and veterinary medicine, and the processing line. Company Y may deduct input VAT on fixed assets and purchases that are not fixed assets during the manufacture and processing.

b) If the taxpayer has a project of investment that is divided into multiple stages, has a closed production line, and uses non-taxable products to manufacture taxable goods, but non-taxable goods and services are provided during infrastructural development stage, the input VAT incurred during the infrastructural development stage in fixed assets may be deducted in full. The taxpayer must separate the VAT on the assets other than those serving manufacture and trading of non-taxable goods and services to deduct tax according to the ratio of taxable revenue to total revenue from selling goods and services.

If the taxpayer makes a commitment to keep producing taxable products, VAT may be deducted during infrastructural development stage. If the input VAT incurred during the infrastructural development stage has been declared, deducted, and refund, but then found to be not eligible for deduction or refund, the taxpayer must make an adjustment and pay tax that has been deducted or refunded. If the taxpayer fails to make the adjustment, tax authority shall collect the tax arrears and impose penalties. The taxpayer is totally responsible for the report and explanation for the tax deduction and tax refund, which are submitted to tax authority.

If the taxpayer sells unprocessed or preprocessed agricultural, forestry, and aquaculture products that are not subject to VAT, the VAT on purchases may also be deducted according to the ratio of revenue from selling taxable goods and services to the total revenue.

Example 60: Company A has project of investment in a rubber plantation and incurs input VAT during infrastructural development stage. Company A does not have raw materials to manufacture taxable products (including the unprocessed products or processed products that are subject to VAT) but have a project to build a factory to treat rubber latex into products subject to VAT) and declares to keep using the farming products to manufacture taxable products. Company A may deduct the input VAT in full.

If company X sells all of the rubber latex, which is not subject to VAT, input tax shall not be deducted.

If company X uses part of the rubber latex for manufacturing taxable products, and sell the rest, input VAT shall be deducted as follows:

- Input VAT on fixed assets (rubber tree plantation, processing factory, etc.) may be deducted in full (including VAT incurred during infrastructural development stage).

- Input VAT on goods and services shall be deducted according to the ratio of revenue from selling taxable goods and services to the total revenue.

c) The taxpayers (including the new business establishments) that provide both goods and services subject to VAT and goods and services that are not subject to VAT may provisionally deduct input VAT on fixed assets incurred during infrastructural development stage according to the ratio of revenue from selling goods and services subject to VAT to the total revenue. The provisionally deducted VAT shall be adjusted to the ratio of revenue from selling goods and services subject to VAT to the total revenue over three years from the first year in which revenue is earned.

Example 61: Z is a new company derived from a project of investment in transport. According to the business plan, company Z is supposed to earn revenue from public passenger transport, advertising, vehicle maintenance and repair. The revenue from passenger transport by bus accounts for 30% of the total revenue. The infrastructural development stage lasts for 02 years (from June 2014 to May 2016), including buying vehicles, building bus stops and infrastructure. During this period, 70% of the input VAT on fixed assets and purchases serving the creation of the company is provisionally deducted and refunded (VAT on the vehicles used as public buses is not deducted). Company Z is inaugurated and starts earning revenue from June 2016. Three years later, at the end of May 2019, the revenue from public passenger transport by bus makes up 35% of total revenue from goods and services. Company Z shall reduces the deductible VAT by 5% (= 70% - 65%) and aggregate the arrears with the VAT payable in May 2019. Company shall not incur any fine or late payment interest.

5. Input VAT on the goods (whether purchased externally or produced by the taxpayer) used as gifts, used for sale promotions or advertising serving the manufacture or sale of taxable goods may be deducted.

6. The VAT paid under a decision on tax imposition made by a customs authority shall be deducted in full, unless penalties for tax avoidance are imposed by the customs authority.

7. Input VAT on goods and services serving the manufacture or sale of taxable goods and services mentioned in Article 4 of this Circular must not be deducted, except for the following cases:

a) VAT on purchased goods and services serving the provision of goods and services for the foreign entities that use them as humanitarian aid or non-refundable aid according to Clause 19 Article 4 of this Circular shall be deducted in full.

b) Input VAT on goods and services serving petroleum exploration shall be deducted in full until the first day of extraction.

8. VAT shall be declared and deducted in the period during which it is incurred, whether the products are used or still in storage.

If the taxpayer finds that the input VAT is incorrectly declared, an adjustment may be made before the tax authority or a competent authority announces the decision on tax inspection at the taxpayer's premises.

9. Input VAT that is not deductible shall be aggregated with costs to calculate corporate income tax, or aggregated with costs of fixed assets, except for the VAT on any purchase that costs 20 million VND or more without receipts for non-cash payments

10. The headquarters that do not directly run the business, the administrative units affiliated to hospitals, medical stations, sanitariums, institutes, schools, etc. that are not taxpayers must not deduct or claim refund of input VAT on the purchases serving their operation.

If such units sell taxable goods and services, VAT on these goods and services shall be separately declared and paid.

Example 62: Though the headquarter of company A does not directly run the business and is funded by its affiliates, it leases out part of its office building. In this case, the headquarter must separately declare and pay tax on the office lease. Input VAT on goods and services serving the operation of the headquarter shall not be deducted or refunded.

11. Input VAT of goods and services serving provision of goods and services that are not subject to VAT mentioned in Article 5 of this Circular (except for Clause 2 and Clause 3 of Article 5) may be deducted in full.

12. When the taxpayer authorizes another entity to make a purchase, the invoice for which bears the name of the authorized buyer, input VAT on such purchase may be deducted in the following cases:

a) An insurer authorizes the policyholder to have the policyholder's assets repaired (invoices for the repair cost and parts bear the name of the policyholder), then pays the policyholder for the invoices under the insurance contract. In this case the insurer may deduct VAT on such invoices. If the amount paid to the policyholder is 20 million VND or above, it must be made by bank transfer.

b) Before a company is established, its founders authorizes another entity in writing to pay on their behalf some amounts related to the establishment of the company and purchase some goods, the company may deduct input VAT according to the invoices bearing the name of the authorized entity. The invoices of which the value is 20 million VND or more must be paid by bank transfer.

13. When a non-business entity contributes assets to a limited liability company or a joint-stock company, the receipt for this contribution is the certificate of capital contribution and the asset transfer note. If the contributed assets are brand new, have legitimate invoices, and are accepted by the capital transfer council, the value of this contribution is the VAT-inclusive value written on the invoice. The recipient of the contribution may deduct the VAT on the invoice for the purchase of such assets from the contributor.

14. The taxpayer that switches over from direct method to credit-invoice method may start deducting VAT on purchases from the first tax period in which credit-invoice method is applied.

The taxpayer that switches over from credit-invoice method to direct method may aggregate the VAT on purchases that is not completely deducted before switching with deductible expenses when calculating the income subject to corporate income tax, except for the refundable VAT on the purchases that were made before switching according to Article 18 of this Circular and the legislative documents that were effective before this Circular comes into force.

Example 63: Company A is applying credit-invoice method in 2014 and 2015. From January 01, 2016, company A is no longer eligible to apply credit-invoice method. Company A sent a claim for tax refund the tax authority from November 2014 to the end of October 2015 (when revenue is calculated to decide the tax accounting method in 2016 and 2017). The claimed refund is 350 million VND and the input VAT that remains is 50 million VND according to the VAT declaration of November 2015. Company A shall receive the full refund of 350 million VND. The remaining input VAT of 50 million VND shall be transferred to the tax period of December 2015. If input VAT on the VAT declaration of December 2016 is not completely deducted, company A may aggregate it with deductible expenses when calculating the income subject to corporate income tax.

15. Input VAT must not be deducted in the following cases:

- The VAT invoice is not legitimate, such as VAT is not written (except for special invoices on which selling prices are VAT-inclusive);
- Hóa Đơn không ghi hoặc ghi không Đúng một trong các chỉ tiêu như tên, Địa chỉ, mã số thuế của người bán nên không xác Định Được người bán;
- The name, address, or tax code of the buyer on the invoice is incorrect (except for the case in Clause 12 of this Article);
- The VAT invoice or the receipt for VAT payment is fake; the invoice is changed or fictitious (made without actual sale);
- The invoice does not reflect the actual value of goods and services.

16. Other cases prescribed by the Ministry of Finance.

#### **Article 15. Compulsory documents for input VAT deduction**

1. Legitimate VAT invoices for purchases or receipts for payment of VAT on imported goods, or receipts for payment of VAT on behalf of foreign organizations that do not have Vietnamese legal status and the organizations and individuals, and the foreigners that do business or earn income in Vietnam.

2. Receipts for non-cash payments for the purchases (including imported goods) that cost 20 million VND or more inclusive of VAT, except for the purchases that cost below 20 million VND inclusive of VAT.

Receipts for non-cash payments include bank transfer receipts and other receipts for non-cash payments prescribed in Clause 3 and Clause 4 of this Article.

3. Bank transfer receipts are the documents proving the transfer of money from the buyer's account to the seller's account (these accounts must be registered or notified to tax authorities) opened at providers of payment services in legitimate forms such as checks, payment order, collection order, banking card, credit card, SIM card (digital wallet), and other methods of payment (even when the buyer transfer money from the buyer's account to the seller's account held by an owner of a private company, or when the buyer transfer money from the buyer's account held by an owner of a private company to the seller's account if such account has been registered with the tax authority).

a) Receipts for cash payment to the seller's account or the payment receipts that are not conformable with current law are not sufficient for refund or deduction of VAT on the purchases that cost 20 million VND or more shall not be deducted or refund if the.

b) VAT on any purchase that costs 20 million VND or more (VAT-inclusive) shall not be deducted if no bank transfer receipt is presented. The taxpayer shall classify these invoices as non-deductible in the list of invoices and receipts for purchases.

c) Pursuant to the sale contract, VAT invoices, and bank transfer receipt, the taxpayer shall declare and deduct input VAT on the purchases that cost 20 million VND or more are paid for under a deferred payment plan or instalment plan, and specify the payment deadline on the invoices and

receipts. If the bank transfer receipt is not available before the payment deadline (or before December 31 if the payment deadline is sooner than December 31), the taxpayer may deduct input VAT.

Input VAT must not be deducted if bank transfer receipts are not available when the payment is due according to the contract (or by December 31 if the payment deadline is sooner than December 31); the deduction of VAT on the goods without bank transfer receipts must be undone. If bank transfer receipts are obtained after the deduction is undone, the taxpayer may make an adjustment.

If the taxpayer does not make the reduction by the deadline for settling deferred payment or by December 31, and is able to present the bank transfer receipt before the tax authority or a competent authority announces the decision to carry out an inspection at the taxpayer's premises, the taxpayer shall face penalties for violations against tax law if the failure to make the reduction does not lead to an understatement of tax payable or overstatement of refundable tax. If the failure to make the reduction leads to an understatement of tax payable or overstatement of refundable tax, the taxpayer must pay the arrears and face penalties according to the Law on Tax administration.

In case the taxpayer obtains the bank transfer receipts after the tax authority announces the decision to carry out an inspection and makes a decision to refuse the deduction of tax on the invoices without bank transfer receipts:

- If reduction has been made before the tax authority carries out the inspection, the taxpayer may declare additional VAT.
- If reduction is not made before the tax authority carries out the inspection, the taxpayer may declare additional VAT.

Example 64:

In 2014, company ANB receives the following invoices for purchased goods under a deferred payment contracts:

- VAT invoice of March 2014, which is due on September 20, 2014.
- VAT invoice of April 2014, which is due on October 20, 2014.
- VAT invoice of May 2014, which is due on November 20, 2014.
- VAT invoice of June 2014, which is due on December 20, 2014.

Company ANB has deducted VAT when such VAT invoices are received. If company ANB has not obtained bank transfer receipts when the payments are due under the contracts, it may choose between making reduction in each invoice. If company ANB fails to obtain bank transfer receipts by December 31, 2014, it must make reduction in those four invoices in the tax period of December 2014 in accordance with tax laws.

Example 65:

In February and March 2014, company Super received VAT invoices that are due on October 31, 2014 under a deferred payment contract. Pursuant to the VAT invoices provided by the seller, company Super deducted VAT on the tax declarations of February and March 2014. Company Super fails to settle the payment when it is due (October 31, 2014) because of financial difficulties. In October 2014, company Super reduces the amount of deducted VAT and increases the costs accordingly.

In April 2015, tax authority makes a decision to carry out an inspection at company Super. The inspectorate recognizes a reduction in deductible tax, which is made by company Super, on the VAT invoices of February and March 2014 that are due on October 31, 2014.

In March 2015, tax authority makes a decision to collect tax arrears, which does not mention the VAT on the VAT invoices of February and March 2014 because the reduction has been recognized by the inspectorate.

In December 2015, company Super obtains bank transfer receipts for the VAT invoices of February and March 2014, which are due on October 31, 2014). In this case company Super may declare additional input VAT and reduce the corresponding costs.

Example 66:

In March and April 2014, company YKK receives VAT invoices that are due on September 30, 2014. According to the VAT invoices provided by the seller, company YKK deducted VAT on the tax declarations of March and April 2014. Company YKK fails to settle the payment when it is due (September 30, 2014) because of financial difficulty. On December 31, 2014, company YKK fails to reduce the amount of deducted VAT without bank transfer receipts.

In April 2015, the tax authority makes a Decision to carry out an inspection of the tax year 2014 at company YKK. During the inspection, company YKK fails to present bank transfer receipts for the VAT invoices that are due on September 30, 2014. The inspectorate does not permit company YKK to deduct VAT on the invoices without bank transfer receipt.

In May 2015, tax authority makes a decision collect tax arrears from company YKK.

In October 2015, company YKK obtains bank transfer receipts for the VAT invoices of March 2014, which are due in September 2014, company YKK may declare additional VAT because bank transfer receipts are obtained within 06 months from the day on which the tax authority makes the decision to collect tax arrears.

In December 2015, company YKK obtains bank transfer receipts for the VAT invoices of April 2014, which are due in September 30, 2014, company YKK may not declare additional VAT because the bank transfer receipts are obtained after 06 months from the day on which the tax authority makes the decision to collect tax arrears.

Example 67:

In September 2014, Department of Taxation of province B issues a decision to collect 460 million VND in refunded VAT, which was the VAT on the purchases that exceed 20 million VND that was deducted, because no bank transfer receipts for corresponding invoices are presented by the payment deadline according to the contract. Company PNG has paid this 46 million VND in full.

In October 2014, company PNG obtains bank transfer receipts for the 460 million VND that has been recollected by tax authority, then it may make an adjustment in October 2014.

4. Other cases in which non-cash payments are used for deducting input VAT:

a) If goods and services are purchased by offsetting their value against the value of sold goods and services, or by lending goods under contracts, a certification of this kind of transaction and data comparison record made by both parties is compulsory. If the payment is offset against third party's debt, a debt offsetting record made by all three parties is compulsory.

b) If the contract allows goods and services to be purchased on credit in the forms of loans or debt offsetting via a third party, it is required to have the loan contract and the receipts for transfer of money from the creditor's account to the debtor's account, even when the value of purchased goods and services is offset against the amount paid by the buyer on behalf of the seller or the amount provided for the buyer by the seller.

c) If a third party is authorized to receive the payment for purchases by bank transfer (including the case in which the seller requests the buyer to wire the payment to a third party appointed by the seller), this authorization must be agreed in the contract, and the third party must be a lawful legal person or a natural person.

After the payment is made this way, if the remaining value that is paid in cash is 20 million VND or more, tax shall only be deducted if bank transfer receipts are provided. When declaring input VAT invoices, the taxpayer must specify the method of payment stipulated in the contract on the list of invoices and receipts for purchases.

d) Payment for purchases is wired to a third party's account at a State Treasury, which is opened to enforce money collection, input VAT may be deducted.

Example 68:

Company A buys goods of company B and still owes money to company B. However, company B still owes tax to government budget. According to the Law on Tax administration, when the tax authority collects company B's money and assets that is held by company A to enforce tax decision, the money transferred by company A to the account at the State Treasury is considered bank transfer, and the corresponding VAT on purchased goods may be deducted.

Example 69:

Company C signs a business contract to provide goods with company D, and company D still owes company C for the goods.

A competent authority decides to collect the money owed to company C by company D and transfer it to an account at a State Treasury to resolve disputes over sale contracts between company C and its partners.

When company D transfers money the account at the State Treasury (this transfer is not stipulated in the contract between company C and company D), the transfer is also considered bank transfer and the corresponding VAT on purchased goods may be deducted.

5. When the total value of multiple purchases, each of which costs below 20 million VND, that are made in the same day is 20 million VND or more, tax shall only be deducted if bank transfer receipts are presented. The supplier is a taxpayer that has tax code and pay VAT directly.

#### **Article 16. Conditions for deducting and refunding input VAT on exported goods and services**

VAT on exported goods and services (except for the cases in Article 17 of this Circular) shall only be deducted and refunded when the documents mentioned in Clause 2 Article 9 and Clause 1 Article 15 of this Circular are presented. In particular:

1. The contract to sell, process goods, or provide services for a foreign entity. If the exported is entrusted, the compulsory documents are the entrustment contract and the note of entrustment contract finalization or a debt comparison note between the entrusting party and the entrusted party, specifying the quantity, categories, value of exported goods, the export contract number; the date and amount of money on the bank transfer receipt for the payment between the foreign party and the entrusted party, the date and amount of money on the receipt for payment to the entrusting party by the entrusted party, number and date of the customs declaration of exported goods made by the entrusted party.
2. If customs procedure has been completed in accordance with instructions of the Ministry of Finance: the customs declaration.

If the taxpayer exports software programs in the form of physical packages, the customs declaration must be made similarly to ordinary goods in order to deduct input VAT.

The customs declaration is not needed in the following cases:

- The software and export exported via electronic means. The taxpayer must follow the procedure for certifying that the buyer has received the exported services or software via electronic means in accordance with the laws on electronic commerce.
- The construction or installation executed overseas or in free trade zones.
- Supply of electricity, water, stationery, and goods serving every day life of export processing company, including food and consumables (including personal protective equipment).

3. Payment for exported goods and services must be made by bank transfer.

a) Bank transfer means the transfer of money from the importer's account to the exporter's account at banks in accordance with the contract and regulations of the banks. Payment receipts are credit notes of the exporter's bank regarding the amount transferred from the importer's account. If the payment is deferred, the agreement on deferred payment must be included in the export contract. When the payment is due, the taxpayer must obtain the bank transfer receipt. If the export is entrusted, it is required to have a bank transfer receipt issued by the foreign party to the entrusted party, and the entrusted party must pay by bank transfer for the exported goods to the entrusting party. If the foreign party directly pays the exporting party, the exporting party must have the bank transfer receipt and this payment must be stipulated in the contract.

b) The cases below are also considered bank transfer:

b.1) When the payment for exported goods and services is offset against a debt to a foreign entity, the following documents are compulsory:

- A loan contract (if the loan is due within 01 year); or certification of loan issued by the State bank of Vietnam (if the loan is due after 01 year).
- Receipt of bank transfer from abroad to Vietnam.

The export contract must allow the payment to be offset against the debt to a foreign entity.

- A certification of the debt offsetting made by the foreign entity.
- After offsetting, the remaining amount must be paid by bank transfer. The bank transfer receipts must be conformable with this Point.

b.2) When the payment for exported goods and services is offset against a debt to a foreign entity, the following documents are compulsory:

- Capital contribution contract.
- An export contract that allows payment for exported goods and services to be used as capital contribution to an overseas importer.
- If the capital contribution is smaller than the revenue from exported goods, the difference must be paid by bank transfer in accordance with this Point.

b.3) If the foreign party authorizes a third party, which is a foreign entity, to make the payment, such authorization must be agreed in the export contract (or the contract appendix or amendment).

b.4) It is considered a bank transfer if the foreign party requests a third party that is an organization in Vietnam to offset the payment against a debt to the foreign party by paying the amount payable to the exporter by bank transfer (provided the offsetting is agreed in the export contract, contract appendix or amendment); the bank of the exporter issues a credit note to certify the amount transferred from the third party's account; and the exporter presents a debt comparison certified by the foreign party and the third party.

b.5) If the foreign party (importer) authorizes an overseas entity (third party) to make the payment, then the third party requests an organization in Vietnam (fourth party) to offset the debt to the third party by paying the amount payable to the Vietnamese exporter by bank transfer, the following documents are compulsory:

- The export contract (contract appendix or amendment) that contains the agreement on debt offsetting.
- The credit note issued by the bank, which acts as a payment receipt for the amount received by the Vietnamese exporter from the fourth party's account.
- A debt comparison certified by relevant parties (between the exporter and importer, between the third party and the fourth party).

b.6) If the foreign party authorizes its representative office in Vietnam to transfer the payment to the exporter's account, such authorization is agreed in the export contract, contract appendix, or amendments (if any).

b.7) If the foreign party (not applied to individuals) transfers the payment from a deposit account opened by the foreign party at a credit institution in Vietnam, this method of payment must be agreed in the export contract, the contract appendix or its amendment. The payment receipt is the credit note issued by the exporter's bank about the amount received from the foreign buyer's account who signs the contract.

If the importer is a foreign private company and the payment via the account of the private company owner that is opened at a credit institution in Vietnam is agreed in the export contract (or contract appendix, amendment), this payment is considered bank transfer.

When checking the deduction and refund of tax on exported goods that are paid for via the bank account, the tax authority must cooperate with the credit institution where the account is opened to ensure that the payment and transfer is made properly and in accordance with law.

b.8) In case the foreign party makes the payment by bank transfer but the amount on the receipt does not match the amount payable under the contract:

- If the amount on the bank transfer receipt is smaller than the amount payable under the contract, the taxpayer must provide explanation such as transferring fee, price reduction due to insufficient quality or quantity (a written agreement between the buyer and the seller must be made in this case), etc.;
- If the amount on the bank transfer receipt is larger than the amount payable under the contract, the taxpayer must provide explanation such as payment for multiple contracts, advance payment, etc.

The taxpayer is responsible for the explanation provided and the amendments (if any).

b.9) In case the foreign party makes the payment by bank transfer but name of the bank on the bank transfer receipt does not match that in the contract, it shall be considered legitimate if its contents indicate the names of the payer, the recipient, the number of the export contract, the amount payable that are consist with the concluded export contract.

b.10) The taxpayer exports goods and services to a foreign party (second party), imports goods and services from another foreign party or buys goods from an entity in Vietnam (third party). If the taxpayer reaches an agreement with the second party and third party that the second party will pay the third party by bank transfer the amount the taxpayer is supposed to pay to the third party, this agreement must be specified in the export contract, import contract, or sale contract (or its appendix or amendment). The taxpayer must present the debt comparison certified by relevant parties (between the taxpayer and the second party, between the taxpayer and the third party).

b.11) In case the foreign party refuses the exported goods for legitimate reasons, and the taxpayer finds another buyer in the same country, the application for tax refund consists of every export document related to the export contract with the initial buyer (contract, customs declaration, invoices), a written explanation for the difference in the buyer's name, and every export document related to the new buyer (contract, invoices, bank transfer receipt, and other necessary documents).

c) Other cases of payment for exported goods and services prescribed by the government:

c.1) If the labor export company directly collects money from the workers, it is required to have receipts for such payments.

c.2) When goods are exported to be sold at a fair or exhibition overseas, and the revenue is remitted to Vietnam in foreign currency, the taxpayer must declares the revenue in foreign currency collected from selling goods overseas and the receipts for remittance to a bank in Vietnam.

c.3) When goods or services are exported to repay government debt, it is required to have a certification by Vietcombank that the exported goods has been accepted by the foreign party as repayment, or that the dossier has been sent to the foreign party. Payment receipts must comply with instructions of the Ministry of Finance.

c.4) Exported goods/services shall be paid in kind when the export is paid by offsetting the value of exported goods/services or payment for processing against the value of goods/services purchased from the foreign party.

In this case, the following documents are compulsory:

- A export contract that contains the agreement on payment in kind.
- A contract to buy goods/services from the foreign party.
- A customs declaration of imported goods being offset against exported goods/services.
- A certification of the value of exported goods/services being offset against the value of imported goods/services.
- After offsetting, the difference must be paid by bank transfer. Bank transfer receipts must comply with this Clause.

c.5) The export of goods to bordering countries under the Prime Minister's regulations on administration of border trading must comply with the instructions of the Ministry of Finance and the State bank.

c.6) Some cases of goods and services using other methods of payments prescribed by relevant laws.

d) In the following cases, tax shall be deducted and refunded without bank transfer receipts:

d.1) If the foreign party defaults on the payment, the exporter must make a written explanation and use one of the following documents as a substitute for the bank transfer receipt:

- A customs declaration of goods imported from Vietnam, which have been registered with the customs authority of the importing country (01 copy); or

- A petition sent to a court or competent authority of the buyer's home country enclosed with a notification or certification of the receipt of this petition by the court or the competent authority (01 copy); or

- A court's ruling that the taxpayer wins the case (01 copy); or

- Papers of foreign competent authorities certifying or notifying that the foreign party has gone bankrupt or insolvent (01 copy).

d.2) If exported goods must be destroyed due to their inferior quality, the exporter must submit a written explanation and may use the destruction record (or a paper certifying the destruction) issued by the agency in charge of the destruction (01 copy) enclosed with a bank transfer receipt for the destruction cost payable by the exporter, or enclosed with the paper proving that the destruction cost is covered by the buyer or a third party (01 copy).

If the importer follows the procedure for goods destruction overseas, the destruction record (or a paper certifying the destruction) shall bear the importer's name.

d.3) If the exported goods is damaged, the exporter must make a written explanation and use one of the following documents as a substitute for the wire transfer receipt:

- A certification by a competent authority that the damage is incurred beyond Vietnam's boundary (01 copy); or

- A record certifying that goods is damage in transit beyond Vietnam's boundary (01 copy).

If the exporter has received a compensation for the damaged goods, a bank transfer receipt for the compensation must be enclosed (01 copy).

Copies of the papers mentioned in Points d.1, d.2 and d.3 of this Clause must be authenticated by the exporter. 01 notarized English translation must be enclosed if the language of the substitute for the bank transfer receipt is not English. The electronic documents must be printed.

The exporter is responsible for the accuracy of the substitutes for the wire transfer receipt mentioned above.

4. VAT invoices or export invoices or invoices for processing payment.

#### **Article 17. Conditions for deduction and refund of input VAT in some cases of deemed export**

1. Compulsory documents for forwarded processed goods defined by the laws on international trade and export processing:

a) Export processing contract and its appendices (if any), specifying the recipient of goods in Vietnam.

b) VAT invoices specifying the processing price and the quantity of processed goods (under the contract signed with the foreign party), and name of the recipient appointed by the foreign party.

c) A forwarding note certified by the sender, the recipient, and the customs authority that monitors the processing contract.

d) Payment for processed goods must be made by bank transfer in accordance with Article 16 of this Circular.

The procedure for forwarding processed products and forwarding note must comply with instructions of the General Department of Customs.

Example 70: Company A signs a contract to process 200,000 pairs of soles. The payment for processing is 800 million VND. The contract specifies that soles will be sent to company B in Vietnam to produce complete shoes.

When sending the soles to company B, company A must specify the quantity, category, and specifications of the products. The 800 million VND in revenue from processing the soles is eligible for 0% VAT.

2. Compulsory documents for domestic exports:

a) A sale contract or a processing contract requiring goods to be delivered to a recipient in Vietnam;

b) A customs declaration of domestic exports has gone through customs procedure;

- c) A VAT invoice or export invoice specifying the buyer's name, recipient, and delivery address in Vietnam.
- d) The goods sold to foreign traders and delivered to a location in Vietnam must be paid with convertible foreign currencies by bank transfer. Wire transfer receipts must comply with this Clause 3 Article 16 of this Circular. If the appointed recipient is authorized by the foreign party to pay the exporter, the currency used for payment must comply with the laws on foreign currencies
- dd) The domestic exports of a foreign-invested company must be conformable with the investment license.
3. When goods and supplies are exported by a Vietnamese company to execute a construction overseas, the Vietnamese company must provide the following documents to deduct or receive VAT refund:
- a) The customs declaration in accordance with Clause 2 Article 16 of this Circular.
- b) The exported goods must be consistent with the manifest of exported goods serving the execution of overseas construction, which is approved by the Director of the Vietnamese company.
- c) An export entrustment contract (if the export is entrusted).
4. When goods and supplies are sold by one Vietnamese company to another to execute a construction overseas and are received overseas, the Vietnamese company must provide the following documents to deduct or receive refund of VAT on exported goods:
- a) The customs declaration in accordance with Clause 2 Article 16 of this Circular.
- b) The exported goods must be consistent with the manifest of exported goods serving the execution of overseas construction, which is approved by the Director of the Vietnamese company.
- c) A sale contract between two Vietnamese companies specifying the delivery terms, the quantity, category and value of goods.
- d) An export entrustment contract (if the export is entrusted).
- dd) Bank transfer receipts.
- e) VAT invoices for the goods.

If the holder of exported goods or goods deemed exports according to Article 16 and Article 17 of this Circular has obtained a certification from the customs authority but does not have one of the other documents, output VAT shall not be incurred but input VAT shall not be deducted. If any of the compulsory documents for forwarded processed goods and domestic exports is missing, VAT shall be paid as if they are sold domestically. If the regulations on bank transfer are not complied with or the payments are not considered bank transfer, the taxpayer shall not be eligible for 0% VAT, shall not incur output VAT, but must not deduct input VAT.

## Section 2. TAX REFUND

### Article 18. Cases of VAT refund

1. If input VAT is not completely deducted in the month (if tax is declared monthly) or in the quarter (if tax is declared quarterly), the taxpayer that pays VAT using credit-invoice method may deduct it from the tax incurred in the next period. If input VAT is not completely deducted after 12 months or 4 quarters from the first month or quarter input VAT is incurred, the taxpayer shall receive a refund.

Example 71: Company A declares VAT monthly as follows:

Unit: million VND

Tax period	Remaining input VAT transferred from previous period	Deductible VAT in the period	Output VAT on goods and services sold in the period	VAT incurred in the period	VAT payable or transferred to the next period
(1)	(2)	(3)	(4)	(5)=(4)-(3)	(6)=(5)-(2)

April 2014	0	350	360	10	10
May 2014	0	500	100	-400	- 400
June 2014	400	300	350	50	- 350
July 2014	350	250	260	10	- 340
August 2014	340	310	300	-10	- 350
September 2014	350	300	350	50	-300
October 2014	300	250	330	80	-220
November 2014	220	300	350	50	-170
December 2014	170	290	350	60	-110
January 2015	110	360	350	-10	-120
February 2015	120	350	310	-40	-160
March 2015	160	270	320	50	-110
April 2015	110	400	320	-80	-190

Accordingly, company A has not completely deduct input VAT after 12 months (from May 2014 to April 2015) Company A shall receive up to 190 million VND in VAT refund.

Example 72: Company B declares VAT monthly as follows:

Unit: million VND

Tax period (1)	Remaining input VAT transferred from previous period (2)	Deductible VAT in the period (3)	Output VAT on goods and services sold in the period (4)	VAT incurred in the period (5) (5) = (4) - (3)	VAT payable or transferred to the next period (6) (6) = (5) - (2)
January 2014	0	300	280	-20	-20
February 2014	20	320	310	-10	-30
March 2014	30	280	260	-20	-50
April 2014	50	350	410	60	10
May 2014	0	500	100	-400	- 400
June 2014	400	300	350	50	- 350
July 2014	350	250	260	10	- 340
August 2014	340	310	300	-10	- 350
September 2014	350	300	350	50	-300
October 2014	300	250	330	80	-220
November 2014	220	300	350	50	-170
December 2014	170	290	350	60	-110
January 2015	110	360	350	-10	-120

February 2015	120	350	310	-40	-160
March 2015	160	270	320	50	-110
April 2015	110	390	320	-70	-180

Accordingly, input VAT is not completely deducted in January 2014, February 2014, and March 2014. The remaining VAT shall be transferred to April 2014. In April 2014, Company B incurs 10 million VND in tax payable. VAT is not completely deducted in May 2015. Input VAT incurred by company B is not completely After 12 months from May 2014 to April 2015, thus company B shall receive up to 180 million VND in VAT refund.

Example 73: Company C declares VAT quarterly as follows:

Unit: million VND

Tax period (1)	Remaining input VAT transferred from previous period (2)	Deductible VAT in the period (3)	Output VAT on goods and services sold in the period (4)	VAT incurred in the period (5) (5) = (4) - (3)	VAT payable or transferred to the next period (6) (6) = (5) - (2)
Q1 2014	0	70	72	2	2
Q2 2014	0	100	20	-80	- 80
Q3 2014	80	60	70	10	- 70
Q4 2014	70	50	52	2	- 68
Q1 2015	68	62	60	-2	- 70

Accordingly, company C has not completely deduct input VAT after 04 quarters from the first quarter VAT is incurred (from Q2 2014 to Q1 2015). Company C shall receive up to 70 million VND in VAT refund.

2. The new business establishment that is derived from a registered project of investment and pays VAT using credit-invoice method, or a petroleum exploration project has not been in operation, VAT on goods and services used as investment shall be refunded year by year if the investment period is 01 year (12 months) or longer.

VAT shall be refunded if the accrued VAT on goods and services purchased as investment is 300 million VND or more.

3. Refund of VAT on new projects of investment

a) When a taxpayer using credit-invoice method has a new project (except for housing for sale) in the same province, which has not been in operation, the taxpayer shall declare tax on this project separately and deduct the input VAT on the project from the VAT on the taxpayer's current business. The maximum VAT on the project that may be deducted is equal to the VAT payable on the taxpayer's current business in the same current period.

If the remaining input VAT of the new project after deduction is 300 million VND or more, it shall be refunded.

After deduction, if the remaining VAT on the project is below 300 million VND, it shall be aggregated with the input VAT on the project in the next period.

During the period, if input VAT on the taxpayer's business is not completely deducted and the taxpayer incurs input VAT on the new project, the taxpayer shall receive a refund in accordance with Clause 1 and Clause 3 of this Article.

Example 74: Company A has a head office in Hanoi. In March 2014, company A has a new project in Hanoi which has not been in operation. Thus, company A must declare input VAT on this project separately. In April 2014, input VAT on the project of investment is 500 million VND; VAT on company A's current business is 900 million VND. Company A shall deduct 500 million VND in input VAT on the

project of investment from the VAT on company A's current business (900 million VND). Thus, the remaining VAT payable by company A in April 2014 is 400 million VND.

Example 74: Company B has a head office in Hai Phong. In March 2014, company B has a new project in Hai Phong, which has not been in operation. Thus, company B must declare input VAT on this project separately. In April 2014, input VAT on the project of investment is 500 million VND; VAT on company B's current business is 200 million VND. Company B shall deduct 200 million VND in input VAT on the project of investment from the VAT on company B's current business (200 million VND). Accordingly, 300 million VND in input VAT on the new project still remains in April 2014 after deduction. Company B may claim a refund of this amount.

Example 76: Company C has a head office in Ho Chi Minh City. In March 2014, company C has a new project in Ho Chi Minh City, which has not been in operation. Thus, company C must declare input VAT on this project separately. In April 2014, input VAT on the project of investment is 500 million VND; VAT on company C's current business is 300 million VND. Company C shall deduct 300 million VND in input VAT on the project of investment from the VAT on company B's current business (300 million VND). Accordingly, 200 million VND in input VAT on the new project still remains in April 2014 after deduction. In this case, this amount of VAT shall not be refund. Instead, company C shall aggregate 200 million VND with the input VAT on the project in May 2014.

Example 77: Company D has a head office in Da Nang City. In March 2014, company C has a new project in Da Nang City, which has not been in operation. Thus, company D must declare input VAT on this project separately. In April 2014, input VAT on the project is 500 million VND; 100 million VND in input VAT on the company D's current business still remains after deduction. Thus, in April 2014, input VAT on the project (500 million VND) may be refunded. The input VAT on the company D's current business that still remains after deduction (100 million VND) may be refunded in accordance with Clause 1 of this Article.

b) When a taxpayer using credit-invoice method has a new project (except for housing for sale) in another province that has not been in operation. This project has not been inaugurated and registered. The taxpayer shall make a separate declaration of tax on the project, and deduct input VAT on the project from the VAT on the taxpayer's current business. The maximum VAT on the project that may be deducted is equal to the VAT payable on the taxpayer's current business in the same current period.

After deduction, if the remaining VAT on the project is 300 million VND or more, it shall be refunded.

After deduction, if the remaining VAT on the project is below 300 million VND, it shall be aggregated with the input VAT on the project in the next period.

During the period, if input VAT on the taxpayer's business is not completely deducted and the taxpayer incurs input VAT on the new project, the taxpayer shall receive a refund in accordance with Clause 1 and Clause 3 of this Article.

If the project is of national importance, the investment policies and standards of which are decided by the National Assembly, the taxpayer must follow instructions of the Ministry of Finance instead of transferring to the next period.

If the taxpayer decides to establish project management boards or branches in the other provinces to manage the projects on behalf of the taxpayer, the project management boards or branches must submit separate tax declarations and applications for tax refund to their local tax authority, provided they have their own seals, keep their own records according to accounting laws, and have open accounts at banks, have applied for tax registration and obtained tax codes. When the project, from which the new company derives, is completed and the procedure for business registration and tax registration is completed, the taxpayer who is the investor must aggregate the VAT incurred, the VAT refunded and not refunded, then request the new company to declare tax, pay tax, and claim refund with its supervisory tax authority.

The project to which VAT is refunded according to Clause 2 and Clause 3 of this Article is a project approved by a competent authority in accordance with investment laws. If the project is not approved according to investment laws, it is required to have an investment plan approved by a competent person.

Example 78: Company A has a head office in Hanoi. In March 2014, company A has a new project in Hung Yen, which has not been in operation and registered. Company A declares input VAT on this

project in Hanoi using the VAT declaration form for projects of investment. In April 2014, input VAT on the project is 500 million VND; VAT payable on company A's current business is 900 million VND. Company A shall deduct 500 million VND in VAT on the project from the VAT on company A's current business (900 million VND). Thus, the remaining VAT payable by company A in April 2014 is 400 million VND.

Example 79: Company B has a head office in Hanoi. In March 2014, company B has a new project in Thai Binh, which has not been in operation and registered. Company B declares input VAT on this project in Hai Phong using the VAT declaration form for projects of investment. In April 2014, input VAT on the project is 500 million VND; VAT payable on company B's current business is 200 million VND. Company B shall deduct 200 million VND in input VAT on the project from the VAT payable on the current business (200 million VND). Accordingly, in April 2014, 300 million VND in input VAT on the new project still remains after deduction. Company B may claim a refund of this amount.

Example 80: Company C has a head office in Ho Chi Minh City. In March 2014, company C has a new project in Dong Nai, which has not been in operation and registered. Company C declares input VAT on this project in Ho Chi Minh City using the VAT declaration form for projects of investment. In April 2014, input VAT on the project is 500 million VND; VAT payable on company C's current business is 300 million VND. Company C shall deduct 300 million VND in input VAT on the project from the VAT on the current business (300 million VND). Accordingly, in April 2014, 200 million VND in input VAT on the new project still remains after deduction. In this case, this amount of VAT shall not be refund. Instead, company C shall aggregate this 200 million VND with the input VAT on the project in May 2014.

Example 81: Company D has a head office in Da Nang City. In March 2014, company D has a new project in Quang Nam, which has not been in operation and registered. Company D declares input VAT on this project in Da Nang City using the VAT declaration form for projects of investment. In April 2014, input VAT on the project is 500 million VND; 100 million VND in VAT on the company D's current business still remains after deduction. Thus, in April 2014, input VAT on the project (500 million VND) may be refunded. The input VAT on the company D's current business that still remains after deduction (100 million VND) may be refunded in accordance with Clause 1 of this Article.

4. In the month (if tax is declared monthly) or in the quarter (if tax is declared quarterly), if input VAT on exported goods and services that remains after deduction is 300 million VND or above, VAT shall be refunded; if the input VAT is below 300 million VND, it shall be aggregated with that in the next month or quarter.

In the month or quarter, the taxpayer may receive a refund of VAT on exported goods/services if the input VAT that remains after being offset against VAT on goods/services sold domestically is 300 million VND or above.

Refundable VAT is calculated as follows:

$$\text{Input VAT that remains after deduction in the tax period} = \text{Output VAT on goods and services sold domestically} - \text{Total input VAT deducted in the tax period (including input VAT incurred in the tax period and the input VAT transferred from the previous tax period).}$$

$$\text{Input VAT on exported goods/services} = \text{Input VAT that remains after deduction in the tax period} \times \frac{\text{Total revenue from export in the tax period}}{\text{Total revenue from selling goods/services in the period (including revenue from export)}} \times 100\%$$

If the taxpayer purchases goods to export, refundable input VAT on exported goods is calculated as follows:

$$\text{Input VAT on exported goods/services} = \text{Input VAT that remains after deduction in the tax} - \text{Input VAT on unsold goods in the tax period} \times \frac{\text{Total revenue from export in the tax period}}{\text{Total revenue from selling}} \times 100\%$$

period

goods/services in  
the period (including  
revenue from  
export)

If input VAT on exported goods/services that remains after deduction is below 300 million VND, the taxpayer must transfer it to the next tax period instead of claiming a refund. If input VAT on exported goods/services that remains after deduction is 300 million VND or above, the taxpayer may claim a refund.

Example 82:

In March 2014, Company X declares its VAT as follows:

- VAT transferred from the previous period: 0.15 billion VND.
- Input VAT (on goods and services serving export and domestic business) incurred in the month: 4.8 billion VND.
- Total revenue is 21.6 billion VND, including 13.2 billion VND in revenue from export, and 8.4 billion VND in revenue from domestic sale.

Ratio of revenue from export to total revenue =  $13.2/21.6 \times 100\% = 61\%$

- Output VAT on goods and services sold domestically IS 0.84 billion VND.

Refundable VAT on exported goods is calculated as follows:

$$\begin{aligned} \text{Input VAT that} \\ \text{remains after} \\ \text{deduction in the tax} \\ \text{period} &= 0.84 \text{ billion VND} - (0.15 + 4.8) \text{ billion VND} \\ &= - 4.11 \text{ tỷ Đồng.} \end{aligned}$$

Thus, input VAT that remains in the month after deduction is 4.11 billion VND.

- Input VAT on exported goods:

$$\begin{aligned} \text{Input VAT on} \\ \text{exported goods} &= 4.11 \text{ tỷ Đồng} \times 61\% \\ &= 2.507 \text{ billion VND} \end{aligned}$$

Input VAT on exported goods that remains after deduction is 2.507 billion VND, which is larger than 300 million VND. Thus, the taxpayer may claim 2.507 billion VND in refund of VAT. 1.603 billion VND in input VAT on goods and services sold domestically (4.11 billion VND - 2.507 billion VND) shall be transferred to the next period instead of being refunded.

Example 83:

In March 2014, company X declares its VAT as follows:

- VAT transferred from the previous period: 200 million VND.
- Input VAT (on goods and services serving export and domestic business) incurred in the month: 4.8 billion VND.
- The total revenue is 21.6 billion VND, including 13.2 billion VND in revenue from export, and 8.4 billion VND in revenue from domestic sale.

Ratio of revenue from export to total revenue =  $13.2/21.6 \times 100\% = 61\%$

- Output VAT on goods and services sold domestically is 840 million VND.
- The value of unsold goods subject to VAT in March 2014 is 10 billion VND; the corresponding input VAT deducted is 1 billion VND (10% VAT)

Refundable VAT on exported goods is calculated as follows:

$$\begin{aligned} \text{Input VAT that} \\ \text{remains after} \\ \text{deduction in the} \end{aligned} = 840 \text{ million VND} - (200 \text{ million VND} + 4,800 \text{ million VND})$$

month

= - 4,160 million VND

Deductible input VAT after removing input VAT on unsold goods:

4,160 million VND – 1,000 million VND = 3,160 million VND

- Input VAT on exported goods:

Input VAT on  
exported goods = 3,160 million VND x 61%

= 1,927.6 million VND

Input VAT on exported goods that remains after deduction is 1,927.6 million VND, which is larger than 300 million VND. Thus, the taxpayer may claim 2.507 billion VND in refund of VAT. 2,232.4 million VND in input VAT on goods and services sold domestically and unsold goods (4,160 million VND - 1,927.6 million VND) shall be transferred to the next period instead of being refunded.

The recipient of refund in some cases: If the export is entrusted, the business establishment having the goods exported under entrustment is the recipient of refund; If processed goods is forwarded, the business establishment that signs the export processing contract with the foreign party is the recipient of refund; If goods are export to execute an overseas construction, the exporter is the recipient of refund; The establishment that has the domestic exports is the recipient of refund.

5. When a company is transferred, converted, merged, amalgamated, divided, split, dissolved, bankrupt, or shut down, it will receive a refund of paid VAT or input VAT remains after deduction.

If the business establishment that has not been in operation is dissolved and does not incur output VAT on the primary business according to the project of investment, no VAT refund shall be made. If the business establishment has received such refund, it must be returned to government budget.

6. Refund of VAT for projects funded by non-refundable ODA, non-refundable aid, or humanitarian aid:

a) If the project is funded by non-refundable ODA: the project owner, main contractor, or an organization appointed by the foreign sponsor to manage the project shall receive the refund of paid VAT on goods and services purchased in Vietnam to serve the project.

b) When an organization in Vietnam uses humanitarian money from a foreign entity to buy goods and services serving a project funded by non-refundable aid or humanitarian aid in Vietnam, it shall receive a refund of VAT on such goods and services.

Example 84: Vietnam Red Cross is given 200 million VND by an international organization to provide humanitarian aid for the people suffering from natural disasters. Tax-exclusive value of the aid is 200 million VND, VAT is 20 million VND. Vietnam Red Cross shall receive 20 million VND in tax refund.

VAT for programs/projects funded by non-refundable ODA shall be refunded in accordance with instructions of the Ministry of Finance.

7. When a person provided with diplomatic immunity purchases goods and services in Vietnam for personal use will receive a refund of the VAT written on the VAT invoice or the receipt on which the amount payable is inclusive of VAT.

8. Foreigners and Vietnamese people residing abroad shall be refunded the tax on goods purchased in Vietnam and brought along upon departure if they present their passports or entry documents. VAT shall be refunded in accordance with instructions of the Ministry of Finance on refunding VAT on goods brought along upon departure by foreigners and Vietnamese people residing abroad

9. VAT shall be refunded when the taxpayer receives a decision on tax refund issued by a competent authority, and in other cases of VAT refund according to the International Agreements to which the Socialist Republic of Vietnam is a signatory

#### **Article 19. Conditions and procedure for VAT refund**

1. To be eligible for tax refund according to Points 1, 2, 3, 4, 5 Article 18 of this Circular, the taxpayer must pay tax using credit-invoice method, be issued with a Certificate of Business registration or investment license or practice certificate, or a decision on establishment issued by a competent

authority, have a legal seal, keep accounting records in accordance with accounting laws, and have deposit accounts at banks according to the taxpayer's tax code.

2. Input VAT that has been claimed on the VAT declaration must not be aggregated with the deductible tax of the next month.

3. VAT shall be refunded in accordance with the procedures in the Law on Tax administration and its guiding documents.

#### **Article 20. Places to pay tax**

1. Taxpayer shall declare and pay VAT in the locality where the business is situated.

2. If the taxpayer that pays VAT using credit-invoice method has a financially dependent manufacturing facility in a province other than the province where the head office is situated, VAT shall be paid in both provinces.

3. If a company or cooperative that uses direct method has a manufacturing facility in a province other than that where the head office is situated, or engages in extraprovincial sale, the company or cooperative shall pay direct VAT on the revenue earned from extraprovincial sale in the province where the sale is made. The company or cooperative is not required to pay direct VAT on such revenue, which has been declared at paid, at the head office

4. When a provider of telecommunications services provides postpaid telecommunications services in a province other than the province where their head office is situated, and establish a financially dependent branch that pays VAT using credit-invoice method and also provides postpaid telecommunications services in that same province, the provider of telecommunications services shall declare and pay VAT on postpaid telecommunications services as follows:

- VAT on the total revenue from provision of postpaid telecommunications services of the provide shall be declared at the supervisory tax authority of the head office.

- VAT shall be paid in the provinces where the head office and the branch are situated.

Direct VAT shall be paid at 2% of the revenue from telecommunications services provided in the province where the branch is situated (postpaid telecommunications services are subject to 10% tax)

5. VAT shall be declared and paid in accordance with the Law on Tax administration and its guiding documents.

#### **Chapter IV**

### **IMPLEMENTATION**

#### **Article 21. Effect**

1. This Circular takes effect on January 01, 2014 and supersedes the Circular No. 06/2012/TT-BTC dated January 11, 2012 and the Circular No. 65/2013/TT-BTC dated May 17, 2013 of the Ministry of Finance.

2. Any taxpayer that declares VAT quarterly from July 01, 2013 shall receive VAT refund before the tax period of January 2014 (if tax is declared monthly) or before the first quarter of 2014 (if tax is declared quarterly) if input VAT is not completely deducted after 03 consecutive tax periods.

Example 85: Company A declares tax monthly in May and June 2013, and starts declaring tax quarterly from Q3 2013. If input VAT incurred in May 2013, June 2013, and Q3 2013 is not completely deducted, company A will receive a refund of VAT at the end of Q3 2013.

Example 86: Company B declares tax monthly in June 2013 and starts declaring tax quarterly from Q3 2013. If input VAT incurred in June 2013, and Q3 2013 and Q4 2013 is not completely deducted, company B will receive a refund of VAT at the end of Q4 2013.

3. Before January 2014 (if tax is declared monthly) or before Q1 2014 (if tax is declared quarterly), any taxpayer that is eligible for tax refund according to the Circular No. 06/2012/TT-BTC dated January 11, 2012 and the Circular No. 65/2013/TT-BTC dated May 2013 of the Ministry of Finance shall receive a VAT refund.

At the end of December 2013 (if tax is declared monthly) or Q4 2013 (if tax is declared quarterly), the input VAT that is not completely deducted after less than 03 consecutive tax periods in 2013 shall be transferred to 2014 to deduct and claim refund according to Clause 1 Article 18 of this Circular.

Example 87: VAT incurred by company A is not completely deducted in October, November and December 2013. Thus, company A shall receive a VAT refund according to Clause 1 Article 18 of the Circular No. 06/2012/TT-BTC dated January 11, 2012 of the Ministry of Finance.

Example 88: Company B incurs VAT in October 2013. Input VAT is not completely deducted in only November 2013 and December 2013. At the end of December 2013, company B is not eligible for tax refund according to the Circular No. 06/2012/TT-BTC. This remaining input VAT shall be transferred to 2014, during which tax refund will be considered, according to Clause 1 Article 18 of this Circular.

Article 89: Company C incurs VAT in Q3 2013. The input VAT that is not completely deducted in Q4 2013 shall be transferred to 2014, during which tax refund will be considered, according to Clause 1 Article 18 of this Circular.

4. Every taxpayer shall deduct input VAT on fixed assets incurred before January 01, 2014 in accordance with the Circular No. 06/2012/TT-BTC dated January 11, 2012 and the Circular No. 65/2013/TT-BTC dated May 17, 2013 of the Ministry of Finance; the input VAT on fixed assets incurred from January 01, 2014 onwards shall be deducted in accordance with this Circular.

5. The input VAT on unprocessed or preprocessed farming, breeding, fishery products incurred before January 01, 2014 must be enumerated in the manifest of purchases on the VAT declaration of December 2013 or Q4 2013.

#### **Article 22. VAT collection**

1. Tax authorities shall organize the collection of VAT and refund of VAT incurred by business establishments.

2. Customs authorities shall organize the collection of VAT on imported goods.

The difficulties that arise during the implementation of this Circular should be reported to the Ministry of Finance for timely settlement./.

**PP THE MINISTER  
DEPUTY MINISTER**

**Do Hoang Anh Tuan**

### **APPENDIX**

**RATES OF DIRECT VAT APPLIED TO VARIOUS BUSINESS LINES**  
*(Promulgated together with the Circular No. 219/2013/TT-BTC dated December 31, 2013 of the Ministry of Finance)*

#### **1) Goods supply and distribution: 1%**

- Wholesaling and retailing goods (except for goods sold by agents that earn commissions).

#### **2) Services, construction exclusive of building materials: 5%**

- Accommodation, hotel, motel services;

- Leases on houses, land, stores, workshops, assets, and other personal chattels;

- Leases on yards, machinery, vehicles; material handling, and other services related to transport such as parking, ticket selling;

- Postal services and mailing;

- Commissions for running agents, auction and brokerage services;

- Legal counseling, audit, accounting, and financial counseling; tax brokerage and customs brokerage;

- Data processing services, lease on information portals, IT and telecommunications equipment;

- Office assistance services and other business assistance services;
- Steambath, massage, karaoke, nightclub, billiards, Internet, and video game services;
- Tailoring, laundry services; hairdressing services;
- Other repair services including: computer repairs and domestic appliance repairs;
- Infrastructural development consultancy, design, and supervision services;
- Other services;
- Construction and installation exclusive of building materials (including installation of industrial machinery and equipment).

**3) Manufacturing, transport, services attached to goods, construction inclusive of building materials: 3%**

- Manufacturing, processing goods;
- Mineral extraction and processing;
- Cargo and passenger transport;
- Services attached to goods such as training, maintenance, technology transfers attached to goods sale;
- Food and drink services;
- Repairs and maintenance of machinery, equipment, means of transport, other motor vehicles;
- Construction and installation inclusive of building materials (including installation of industrial machinery and equipment).

**4) Other lines of business: 2%**

- Production of products subject to 5% VAT under credit-invoice method;
- Provision of services subject to 5% VAT under credit-invoice method;
- Other lines of business not mentioned above.