

## CIRCULAR

### Guiding the implementation of the Law on Value-Added Tax and the Government's Decree No. 209/2013/ND-CP of December 18, 2013, detailing and guiding a number of articles of the Law on Value-Added Tax<sup>1</sup>

*Pursuant to June 3, 2008 Law No. 13/2008/QH12 on Value-Added Tax, and June 19, 2013 Law No. 31/2013/QH13 Amending and Supplementing a Number of Articles of the Law on Value-Added Tax;*

*Pursuant to November 29, 2006 Law No. 78/2006/QH11 on Tax Administration, and November 20, 2012 Law No. 21/2012/QH13 Amending and Supplementing a Number of Articles of the Law on Tax Administration;*

*Pursuant to the Government's Decree No. 209/2013/ND-CP of December 18, 2013, detailing and guiding a number of articles of the Law on Value-Added Tax;*

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

*At the proposal of the General Director of Taxation,*

*The Minister of Finance guides the implementation of value-added tax as follows:*

## Chapter I

### GENERAL PROVISIONS

#### Article 1. Scope of regulation

This Circular guides taxable objects, non-taxable objects, taxpayers, tax bases and tax calculation methods, and credit, refund and places of payment of value-added tax.

#### Article 2. Taxable objects

<sup>1</sup> Công Bố số 237-238 (01/3/2014)  
www.vanbanluat.vn

Liable to value-added tax (VAT) are goods and services used for production, business and consumption in Vietnam (including goods and services purchased from overseas organizations and individuals), except those not liable to VAT guided in Article 4 of this Circular.

### **Article 3. Taxpayers**

VAT payers are organizations and individuals producing or trading in VAT-liable goods and services in Vietnam, regardless of their business lines, forms and organization (below referred to as business establishments) and organizations and individuals that import from abroad goods or purchase services liable to VAT (below referred to as importers), including:

1. Business organizations established and making business registration under the Enterprise Law, the Law on State Enterprises (now the Enterprise Law), the Law on Cooperatives or another specialized business law;
2. Economic organizations of political organizations, socio-political organizations, social organizations, socio-professional organizations, people's armed forces units, non-business organizations and other organizations;
3. Foreign-invested enterprises and foreign parties to business cooperation contracts under the Law on Foreign Investment in Vietnam (now the Investment Law); foreign organizations and individuals conducting business activities in Vietnam without establishing legal entities in Vietnam;
4. Individuals, households, groups of independent businesspersons and other entities engaged in production, business or import activities;
5. Vietnam-based production and business organizations and individuals that purchase services (including services associated with goods) from foreign organizations without permanent establishments in Vietnam, except those not required to make VAT declaration, calculation and payment guided in Clause 2, Article 5 of this Circular.

The provisions on permanent establishments and non-residents comply with the laws on enterprise income tax and personal income tax.

6. Branches of export processing enterprises established to purchase and sell goods and conduct activities directly related to the purchase and sale of goods in Vietnam in accordance with the law on industrial parks, export processing zones and economic zones.

Example 1: Limited Liability Company Sanko is an export processing enterprise. In addition to export production, it is also licensed to import goods for sale or export. It shall establish a branch to conduct this activity in accordance with law and the branch shall conduct accounting and make VAT declaration and payment for this activity separately from its export production.

When importing goods for distribution (sale), the branch shall make VAT declaration and payment at the stage of importation. When selling (including exporting) imported goods, the company shall use invoices and make VAT declaration and payment under regulations.

#### **Article 4. Objects not liable to VAT**

1. Products of cultivation (including products from planted forests) and husbandry, reared and fished aquatic and marine products which have not yet been processed into other products or have only been preliminarily processed by ordinary methods then sold by producing or fishing organizations or individuals themselves and at the stage of importation.

Products preliminarily processed by ordinary methods are those which have only been cleaned, sun-dried, heat-dried, peeled, ground, husked, pitted, stemmed, cut, salted, cold-preserved (frozen or chilled), preserved with sulfur dioxide, impregnated with preservative chemicals, soaked in sulfur solution or another preservative solution or otherwise ordinarily preserved.

Example 2: Company A enters into a contract on pig farming with Company B under which it receives remuneration from Company B or sells products to Company B. In this case the pig farming remuneration received from Company B and pork products sold to Company B will not be liable to VAT.

In case Company B sells or has such products processed for sale, products sold by Company B will be liable to VAT under regulations.

2. Products being animal breeds and plant varieties, including breeding eggs and animals, seedlings, seeds, seeding twigs and tubers, semen, embryos and genetic materials at the stages of rearing, importation and trading. Animal breeds and plant varieties not liable to VAT are those imported and traded by establishments possessing animal breed or plant variety business registration certificates granted by state management agencies. Animal breeds or plant varieties subject to quality standards promulgated by the State must satisfy the state-prescribed conditions.

3. Water irrigation and drainage; soil plowing and harrowing; intra-field canal and ditch dredging for agricultural production; services of harvesting farm produce.

4. Salt products made from seawater, natural rock salt, refined salt and iodized salt, the principal component of which is sodium chloride (NaCl).

5. State-owned houses sold by the State to their current tenants.

6. Transfer of land use rights.

7. Life insurance, health insurance, student insurance and other insurance services related to humans; livestock insurance, crop insurance and other agricultural insurance services; insurance for ships, boats and other equipment and gears necessary for fishing; reinsurance.

8. The following financial, banking and securities trading services:

a/ Credit extension services in the following forms:

- Loan provision;

- Discount and rediscount of negotiable instruments and other valuable papers;

- Bank guarantee;

- Financial leasing;

- Issuance of credit cards.

In case credit institutions collect charges related to the issuance of credit cards, charges collected from customers in the credit extension service process (card issuance charge) under credit institutions' regulations on lending to customers, such as charge for immature loan repayment, fine for late repayment, debt rescheduling, loan management and other charges in the process of credit extension are not liable to VAT.

Charges for ordinary card transactions not in the credit extension process, such as charge for re-grant of credit card PINs, charge for provision of copies of transaction invoices, charge for claiming refunds in the use of cards, charge for credit card loss notification, charge for credit card destruction, charge for credit card conversion and other charges are liable to VAT.

- Domestic factoring; international factoring, for banks licensed to provide international payment;

- Sale of loan security assets by credit institutions or judgment enforcement agencies in accordance with the law on handling of loan security assets.

Upon the expiration of the debt payment time limit, if the person having the loan security asset is still unable to pay the debt and has to hand over the asset to the credit institution for handling in accordance with law, the parties shall carry out procedures for handover of the security asset under regulations.

In case the parties agree that the person having the security asset may sell such asset to pay the debt, if this person is a VAT payer and the to-be-sold asset is liable to VAT, he/she shall declare and pay VAT under regulations.

In case the credit institution receives the security asset in lieu of performance of the debt payment obligation, it shall account an increase in the

value of the asset used for production or business under regulations. When the credit institution sells the asset liable to VAT to serve its business operation, it shall declare and pay VAT under regulations.

Example 3: In March 2014, Limited Liability Company A, which is a business establishment paying VAT by the credit method, mortgages a machinery and equipment chain to borrow from Bank B a loan of a 1-year term (the debt payment deadline is March 31, 2015). By March 31, 2015, as Company A is unable to pay its debt and has to hand over the asset to Bank B, Company A shall, upon handing over the asset, carry out procedures for asset handover in accordance with the law on handling of security assets. If Bank B sells the loan security asset to recover the debt, the sold asset is not liable to VAT.

- Credit information provision service provided by units or institutions of the State Bank to credit institutions for use in their credit extension activities in accordance with the Law on the State Bank.

Example 4: X is a unit of the State Bank and licensed by the State Bank to provide the credit information service. In 2014, X signs contracts on provision of credit information to a number of commercial banks to serve their credit extension activities and other activities. In this case the turnover from the provision of credit information to serve credit extension activities is not liable to VAT, while the turnover from the provision of credit information to serve other activities of these commercial banks not in accordance with the Law on the State Bank is liable to VAT at the rate of 10%.

- Other forms of credit extension provided by law.

b/ Provision of loans outside the regular business or supply operation of taxpayers other than credit institutions.

Example 5: Joint-Stock Company VC has temporarily idle money not yet used for its business operation and signs a contract to provide a loan to Company T for a term of 6 months and receives an interest. Such interest amount is not liable to VAT.

c/ Securities trading, covering securities brokerage, securities dealing, securities issuance underwriting, securities investment consultancy, securities depository, securities investment fund and securities investment company management, securities investment portfolio management, market organization services provided by stock exchanges or securities trading centers, services involving securities registered or deposited at Vietnam Securities Depository, provision of margin loans, advance payment for securities sale and other securities trading activities specified by the securities law.

Provision of information on, and organization of, auctions of shares of issuing organizations, and technical assistance for online securities trading by the Stock Exchanges.

d/ Capital transfer, covering the transfer of part or the whole of capital amounts invested in other economic organizations (regardless of whether a new legal entity is established), transfer of securities, transfer of the capital contribution right and other forms of capital transfer provided by law, including sale of enterprises to other enterprises for production and business in which the purchasers inherit all the rights and obligations of the sold enterprises in accordance with law.

Example 6: In April 2014, Limited Liability Company A makes capital contribution with machinery and equipment to establish Joint-Stock Company B. The value of the capital contribution of Company A is valued by the parties' capital contribution handover and receipt council at VND 2.5 billion, equal to 25% of the capital of Company B. In November 2014, Company A sells the capital contribution in Company B to Investment Fund ABB at the price of VND 4 billion. The amount of VND 4 billion earned by Company A is the capital transfer turnover not liable to VAT.

dd/ Debt sale;

e/ Foreign currency trading;

g/ Derivative financial services, including interest rate swap, forward contracts, future contracts, foreign exchange put and call options and other derivative financial services provided by law;

h/ Sale of security assets for debts of government-established organizations of which the State owns 100% charter capital for handling non-performing loans of Vietnamese credit institutions.

9. Healthcare and animal health services, including medical examination and treatment and disease prevention for humans and livestock, birth control, convalescence and functional rehabilitation for patients, transportation of patients, rent of patient rooms and beds at health establishments; test, screening, radiograph, blood and blood preparations for patients.

In case a medical treatment service package (as provided by the Ministry of Health) covers also medicines, the revenue from these medicines is also not liable to VAT.

10. Public-utility post and telecommunications services and universalized Internet services under the Government's programs; post and telecommunications services provided from abroad to Vietnam (incoming services).

11. Service of maintenance of zoos, flower gardens, parks and street greeneries and public lighting; and funeral service, regardless of their funding sources. Specifically:

a/ The service of maintenance of zoos, flower gardens, parks and street greeneries and protection of state-owned forests covers activities of managing, planting and tending trees and protecting birds and animals in parks, zoos, public places, national forests and national parks;

b/ Public lighting includes lighting of streets, lanes and alleys in residential areas, flower gardens and parks. Turnover not liable to VAT is that earned from public lighting activities;

c/ Funeral services provided by establishments with the function of providing funeral services cover renting of funeral homes, hearses and cars, burial, cremation, disinterment, grave removal and care.

12. Maintenance, repair and construction of cultural, art and public-utility works, infrastructure facilities and houses for social policy beneficiaries funded with people's contributions (including contributed and donated amounts) and humanitarian aid.

If the amount from funding sources other than people's contributions and humanitarian aid does not exceed 50% of the total funds used for a work, the whole value of the work is not liable to tax.

If the amount from funding sources other than people's contributions and humanitarian aid exceeds 50% of the total funds used for a work, the whole value of the work is liable to tax.

Social policy beneficiaries include people with meritorious services as specified by the law on people with meritorious services; social relief beneficiaries entitled to state budget allowances; members of households classified as poor or living just above the poverty line; and other cases prescribed by law.

13. Teaching and vocational training as provided by law, including also teaching of foreign languages and IT skills; dancing, singing, painting, music, drama, circus, physical training and sports; child nursing, and other job training activities aiming to train, retrain and raise educational levels or professional knowledge and skills.

For educational institutions from preschools to upper secondary schools that collect school meal and pupil transportation charges and have other revenues through authorized collection and spending, these charges and revenues are not liable to VAT.

Revenues earned from the provision of boarding services to pupils, students and learners and training activities (including also organization of exams and grant of certificates as part of the training process) of training institutions are not liable to VAT. For training institutions that do not directly organize the training but only organize exams and grant of certificates as part of the training process, their examination and grant of certificate are also not liable to VAT. The services of examination and grant of certificates not as part of the training process are liable to VAT.

Example 7: Training Center X is assigned by a competent authority to provide training and grant insurance agency practice certificates. If it assigns the training task to unit Y for performance but it organizes the examination and grant of insurance agency practice certificates, these activities of examination and grant of certificates are not liable to VAT.

14. Radio and television broadcasting funded with the state budget.

15. Publication, import and distribution of specialized newspapers, magazines and bulletins, political books, textbooks, teaching course books, law books, scientific and technical books, books printed in ethnic minority languages, and pictures, photos and posters for public communication and mass agitation purposes, including those recorded in audio-visual tapes and disks or electronic files; printing of banknotes.

Specialized newspapers, magazines and bulletins cover also transmission of their pages.

Political books are books disseminating the political line of the Party and the State, serving specific political themes or topics, serving anniversaries or traditional days of organizations, levels, sectors and localities; statistic books; books about good people and good deeds; and books of speeches, research and theoretical articles of Party and State leaders.

Textbooks are books used for teaching and learning at the levels from preschool to upper secondary school (including reference books for teachers and pupils relevant to contents of education curricula).

Teaching course books are books used for teaching and learning in universities, colleges, professional secondary and vocational training schools.

Law books are books of legal documents of the State.

Scientific and technical books are books introducing and guiding scientific and technical knowledge directly related to production and various scientific and technical branches.

Books printed in ethnic minority languages include also bilingual books in Vietnamese and an ethnic minority language.

Public communication and mass agitation pictures, photos and posters are pictures, photos, posters, leaflets and brochures used for public communication and mass agitation purposes, slogans, leaders' pictures, the Party's flag, the national flag, the Youth Union's flag, the Young Pioneers League's flag.

16. Mass transit by bus and tramcar means public transportation of passengers by bus or tramcar along specified routes within provinces, urban centers and in their vicinities under the Ministry of Transport's regulations.

17. Goods that cannot be produced at home and need to be imported in the following cases:

a/ Machinery, equipment and supplies imported to directly serve scientific research and technological development activities;

b/ Machinery, equipment, spare parts, special-use means of transport and supplies which need to be imported for prospecting, exploring and developing oil and gas fields;

c/ Aircraft (including aircraft engines), derricks and ships imported to create fixed assets of enterprises or hired from abroad for production and business, including subleasing.

In order to identify goods not liable to VAT at the stage of importation under this Point, importers shall produce to customs offices documents as guided in the Ministry of Finance's regulations on customs procedures; customs inspection and supervision; import and export duties and tax administration of imports and exports.

The Ministry of Planning and Investment shall promulgate the list of machinery, equipment and supplies which can be produced at home, identifying those which cannot be produced at home and need to be imported to directly serve scientific research and technological development; the list of machinery, equipment, spare parts, special-use means of transport and supplies which can be produced at home for identifying those which cannot be produced at home and need to be imported for prospecting, exploring and developing oil and gas fields; and the list of aircraft, derricks and ships which can be produced at home for identifying those which cannot be produced at home and need to be imported to create fixed assets of enterprises or hired from abroad for production, business or sublease.

18. Weapons and military equipment exclusively used for national defense and security purposes.

a/ Weapons and military equipment exclusively used for national defense and security purposes are specified in the lists of weapons and military equipment exclusively for defense and security purposes promulgated by the

Ministry of Finance after reaching agreement with the Ministry of National Defense and the Ministry of Public Security.

Weapons and military equipment exclusively used for national defense and security purposes not liable to VAT must be finished products in complete sets or parts, accessories and packages exclusively used for assembling and preserving finished products. The service of repairing these weapons and military equipment provided by enterprises of the Ministry of National Defense or the Ministry of Public Security is also not liable to VAT.

b/ Weapons and military equipment (including supplies, machinery, equipment and spare parts) exclusively used for national defense and security purposes which are exempt from import duty under the Law on Import Duty and Export Duty or imported within annual quotas approved by the Prime Minister.

Dossiers and procedures for weapons and military equipment not liable to VAT at the stage of importation must comply with the Ministry of Finance's regulations on customs procedures; customs inspection and supervision; import and export duties and tax administration of imports and exports.

19. Imported goods and goods and services sold to organizations and individuals for use as humanitarian or non-refundable aid as follows:

a/ Goods which are imported for use as humanitarian aid or non-refundable aid goods and certified by the Ministry of Finance or provincial-level Finance Departments;

b/ Gifts given to state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations or people's armed forces units under the law on gifts and donations;

c/ Gifts or donations given to individuals in Vietnam under the law on gifts and donations;

d/ Personal effects of foreign organizations and individuals within diplomatic immunity quotas under the law on diplomatic immunities; and personal effects brought along by overseas Vietnamese upon their return to the country;

dd/ Personal effects within duty-free luggage quotas;

The quotas of imported goods not liable to VAT at the stage of importation must comply with the import duty-free quotas prescribed in the Law on Import Duty and Export Duty and its guiding documents.

Goods imported by organizations and individuals entitled to diplomatic immunities under the law on diplomatic privileges and immunities are not liable

to VAT. If these organizations or individuals purchase goods and services in Vietnam and pay VAT thereon, they will be entitled to tax refund under Clause 7, Article 18 of this Circular.

Subjects, goods, procedures and dossiers for enjoying VAT exemption under this Article must comply with the Ministry of Finance's guidance on VAT refund for Vietnam-based diplomatic missions, consulates and representative agencies of international organizations.

e/ Goods and services sold to foreign organizations or individuals or international organizations for use as humanitarian aid or non-refundable aid to Vietnam.

To enjoy VAT exemption for goods and services purchased in Vietnam for use as humanitarian aid or non-refundable aid to Vietnam, an international organization or a foreigner shall send to the goods seller a document clearly stating its/his/her name and the quantity or value of the purchased goods and containing the Ministry of Finance's written certification of such aid.

When selling goods, the business establishment shall issue an invoice in accordance with the law on invoices, clearly stating that these goods are sold to a foreign organization or individual or an international organization for use as non-refundable aid or humanitarian aid, and not liable to VAT, and keep the document of the international organization or its Vietnamese representative agency as a basis for tax declaration. A foreign organization or individual or an international organization purchases goods or services in Vietnam for use as non-refundable aid or humanitarian aid and has paid VAT-inclusive prices will be eligible for tax refund under Clause 6, Article 18 of this Circular.

20. Goods transferred from or to a border gate under customs supervision or transited through the Vietnamese territory; goods temporarily imported for re-export, goods temporarily exported for re-import; raw materials imported for export production or processing under export production or processing contracts signed with foreign parties.

Goods and services that are sold and purchased between foreign countries and non-tariff zones and between non-tariff zones.

Non-tariff zones include export processing zones, export processing enterprises, tax-suspension warehouses, tax-suspension zones, bonded warehouses, special trade and economic zones, trade and industrial zones and other economic zones established and enjoying tax incentives like non-tariff zones under the Prime Minister's decisions. Goods purchase, sale and exchange relations between these zones and outside areas are import and export relations.

Dossiers and procedures for determining and deciding on non-collection of VAT in these cases must comply with the Ministry of Finance's regulations on customs procedures; customs inspection and supervision; import and export duties and tax administration of imports and exports.

21. Technology transfer in accordance with the Law on Technology Transfer; assignment of intellectual property rights in accordance with the Law on Intellectual Property. For technology transfer or intellectual property right assignment contracts accompanied with machinery and equipment transfer, only the value of transferred technology or assigned intellectual property rights is not liable to VAT. If the value of transferred technology or assigned intellectual property rights cannot be separated, VAT will be imposed on both the value of transferred technology or assigned intellectual property rights and that of machinery and equipment.

Computer software includes software products and software services as provided by law.

22. Gold imported in the form of bar or ingot and gold not yet fashioned into fine-art articles, jewelry or other products.

Gold in the form of bar or ingot and gold in an unfashioned state shall be determined in accordance with the law on gold management and trading.

23. Exported products that are unprocessed exploited natural resources and minerals.

Unprocessed exploited natural resources and minerals are those not yet processed into other products, including also minerals already screened, sorted, ground, crushed or treated for higher concentrations or other natural resources already cut or sawn.

Example 8: Business establishment A exports natural stone products in the forms of stone blocks and slabs. In this case, the exported natural stone products are not liable to VAT.

Example 9: Business establishment B exports white limestone in the forms of granule and powder. In this case, these export products are not liable to VAT. If business establishment B exports super-fine stone powder (according to criteria issued by competent agencies) and acid-coated super-fine stone powder, these products shall be determined as processed products and; therefore, are subject to VAT at the stage of exportation.

24. Artificial products used as substitutes for diseased people's organs, including also body parts for permanent implantation in human bodies; crutches, wheelchairs and other tools used exclusively for people with disabilities.

25. Goods and services of business households and individuals with an average annual income of VND 100 million or less.

The determination of whether business households and individuals are not subject to VAT must comply with the tax administration law.

26. The following goods and services:

a/ Goods for duty-free sale at duty-free shops under the Prime Minister's regulations.

b/ National reserve goods sold by the National Reserves.

c/ Activities for which charges or fees are collected by the State in accordance with the law on charges and fees.

d/ Sweeping of bombs, land mines and explosive objects performed by national defense units for state budget-funded projects.

Any change in the use purposes of goods not liable to VAT at the stage of importation must be declared for VAT payment at the stage of importation under regulations to customs offices with which customs declarations are registered. Organizations and individuals that sell goods on the domestic market shall declare and pay VAT under regulations to tax agencies directly managing them.

#### **Article 5. Cases not requiring VAT declaration and payment**

1. Organizations and individuals that receive revenues from compensation (including also compensation for land and land-attached assets upon land recovery under decisions of competent state agencies), bonus, support, transfer of the emission right, and other financial revenues.

When receiving compensation, bonus, support, transfer of the emission right or other financial revenues, business establishments shall make receipts under regulations. Paying business establishments shall make payment documents based on spending purposes.

An establishment that pays compensation in goods or services shall make an invoice and make VAT declaration, calculation and payment as for the sale of goods or services. The establishment that receives the compensation shall declare and credit VAT under regulations.

A business establishment that receives money from an organization or individual to provide to the latter the service of repair, warranty, sales promotion or advertising shall declare and pay VAT under regulations.

Example 10: Limited Liability Company P&C receives an interest on purchased bonds and dividends on purchased shares of other enterprises. In

this case, Limited Liability Company P&C does not have to declare and pay VAT on such interest and dividends.

Example 11: Enterprise A receives from enterprise B an amount of VND 50 million as compensation for contract cancellation. In this case, enterprise A shall make a receipt and does not have to declare and pay VAT on that amount.

Example 12: Enterprise X purchases goods from enterprise Y. It also advances a sum of money to enterprise Y and receives from enterprise Y an interest on that sum. In this case, enterprise X does not have to declare and pay VAT on the received interest.

Example 13: Enterprise X sells goods to enterprise Z at the total price of VND 440 million. Under the signed contract, enterprise Z is allowed to make deferred payment within 3 months at the monthly interest rate of 1% of the total contractual price. After 3 months, enterprise X receives from enterprise Z VND 440 million, which is the total contractual price, and VND 13.2 million, which is the deferred payment interest (VND 440 million x 1% x 3 months). In this case, enterprise X does not have to declare and pay VAT on the amount of VND 13.2 million.

Example 14: Insurance enterprise A and company B sign an insurance contract to provide monetary insurance. Upon the occurrence of an insurance risk, enterprise A shall pay to company B a monetary indemnity in accordance with the insurance law. In this case, company B does not have to declare and pay VAT on the received insurance indemnity amount.

Example 15: Milk joint-stock company ABC pays money to its distributors (business organizations and individuals) for sales promotion (in accordance with the law on sales promotion), marketing and display of products of the company (the distributors receive such money amount for providing these services). Upon receiving the money, distributors that pay VAT by the credit method shall make value-added invoices and calculate VAT at the rate of 10%. Distributors that pay VAT by the direct method shall use sale invoices and determine their payable tax amounts by a percentage (%) of their turnover under regulations.

2. Vietnam-based production and business organizations and individuals that purchase from foreign organizations without permanent establishments in Vietnam or overseas individuals not residing in Vietnam such services as repair of vehicles, machinery and equipment (including supplies and spare parts); advertising and marketing; investment and trade promotion; goods sale and service provision brokerage; training; and sharing of charges for international post or telecommunications services provided outside Vietnam between

Vietnamese and foreign partners, and lease of communication and transmission lines and foreign satellite frequency bands in accordance with law.

3. Non-business organizations and individuals that do not have to pay VAT when selling their assets.

Example 16: Mr. A, a non-business person, sells a 4-seat car to Mr. B at the price of VND 600 million. In this case, Mr. A does not have to declare and pay VAT on the amount received from the sale of the car.

Example 17. Mr. E, a non-business person, mortgages a 4-seat car to borrow money from bank VC. As he is unable to pay his debt to bank VC on the contractual due date, the mortgaged car is sold for debt recovery. In this case, VAT declaration and payment is not required for the amount collected from the sale of this car.

4. Organizations and individuals that transfer investment projects on production or trading of goods or services liable to VAT to enterprises and cooperatives.

Example 18: Joint-stock company P implements an investment project to build an alcohol factory. By March 2014, 90% of the investment project is completed as compared to the design plan and with an invested value of VND 26 billion. Due to financial difficulties, company P decides to transfer the whole investment project to joint-stock company X at the price of VND 28 billion. Company X receives the transferred investment project for continued production of industrial alcohol. Company P does not have to declare and pay VAT on the value of the transferred project.

5. Enterprises and cooperatives that pay VAT by the credit method and sell unprocessed or preliminarily processed cultivation, husbandry or aquatic products to other enterprises and cooperatives for commercial purposes do not have to declare, calculate and pay VAT. In value-added invoices, they shall write selling prices being VAT-exclusive prices and cross out the VAT rate and amount lines.

In case enterprises and cooperatives that pay VAT by the credit method and sell unprocessed or preliminarily processed cultivation, husbandry or aquatic products to other subjects such as business households and individuals and other organizations and individuals, they shall declare, calculate and pay VAT at the rate of 5% as guided in Clause 5, Article 10 of this Circular.

Business households and individuals, enterprises, cooperatives and other economic organizations that pay VAT by the direct method and sell unprocessed or preliminarily processed cultivation, husbandry or aquatic products for commercial purposes shall declare, calculate and pay VAT at the rate of 1% of turnover.

Example 19: Food company B that pays VAT by the credit method and purchases rice directly from rice farmers does not have to pay VAT for rice at the stage of purchase.

In case company B sells rice to import-export company C, company B does not have to declare, calculate and pay VAT to the rice amount sold to company C.

In case company B sells rice to limited liability company D (a producer of rice vermicelli and noodle), company B does not have to declare, calculate and pay VAT on the rice to company D.

In value-added invoices made and handed to companies C and D, company B shall write selling prices being VAT-exclusive prices and cross out the VAT rate and amount lines.

In case company B sells rice directly to consumers, it shall declare and pay VAT at the rate of 5% as guided in Clause 5, Article 10 of this Circular.

Example 20: Limited liability company A pays VAT by the credit method, purchases coffee beans from coffee farmers, and later sells such coffee beans to business household H. In this case, the turnover of company A from the sale of coffee beans to household H is subject to the VAT rate of 5%.

Example 21: Mr. X's household that sells tea purchased from tea farmers to Mr. Y's household shall calculate and pay VAT at the rate of 1% of the turnover from the sale of tea leaves to Mr. Y's household.

In case value-added invoices and VAT declaration and calculation have been made for unprocessed or preliminarily processed cultivation, husbandry or aquatic products sold to enterprises and cooperatives, the sellers and purchasers shall modify such invoices in order to be exempted from VAT declaration, calculation and payment as guided in this Clause.

6. In case a fixed asset currently in use for which depreciation has been made according to its book value is transferred between a business establishment and a member unit in which the business establishment owns 100% of capital or between member units wholly owned by a business establishment to serve the production or provision of VAT-liable products or services, value-added invoices and VAT declaration and payment are not required. The business establishment having such asset shall make an asset transfer decision or order, enclosed with a dossier on the origin of the asset.

In case an asset has been re-valuated before transfer or is transferred to an establishment producing or providing goods or services not liable to VAT, a value-added invoice must be issued and declare and pay VAT declaration and payment must be made according to regulations.

## 7. Other cases:

A business establishment is not required to declare and pay tax on:

a/ Assets contributed as capital to form an enterprise. Such assets must be accompanied with a written record of the contribution of capital for production and business; a joint-venture or association contract; an asset valuation record made by the contributed capital delivery and receipt council set up by capital contributors (or a valuation document issued by a functional organization according to law), enclosed with a dossier on the origin of such assets;

b/ Assets transferred between its dependent cost-accounting units; assets transferred upon its split, separation, consolidation, merger or transformation. When transferring an asset between its dependent cost-accounting units or transferring an asset upon its split, separation, consolidation, merger or transformation, the business establishment shall make an asset transfer order, enclosed with a set of dossier on the origin of such asset, but does not have to issue an invoice.

For an asset transferred between its independent cost-accounting units or member units having the legal person status, the business establishment shall issue a value-added invoice and declare and pay VAT under regulations, except for the cases guided in Clause 6 of this Article.

c/ Amounts claimed from third parties in insurance activities;

d/ Authorized collections not related to the sale of goods and services by the business establishment;

dd/ Turnover from goods and services for which the business establishment acts as a sale agent, and commissions for acting as a sale agent selling goods at prices fixed by principal establishments for such services as post, telecommunications, lottery tickets and air, car, train and boat tickets; international transport agents; for acting as agents for aviation and maritime services enjoying the VAT rate of 0%; for acting as insurance sale agents;

e/ Turnover from goods and services not liable to VAT and commissions for acting as a sale agent of goods and services not liable to VAT.

## Chapter II

### TAX BASES AND TAX CALCULATION METHODS

#### Section 1

#### TAX BASES

##### Article 6. Tax bases

The bases for VAT calculation are taxed price and tax rate.

## Article 7. Taxed price

1. For goods and services sold by production and business establishments, the taxed price is the selling price exclusive of VAT. For excise tax-liable goods and services, the taxed price is the selling price inclusive of excise tax but exclusive of VAT.

For environmental protection tax-liable goods, the taxed price is the selling price inclusive of environmental protection tax but exclusive of VAT; for goods and services liable to both excise tax and environmental protection tax, the taxed price is the selling price inclusive of excise tax and environmental protection tax but exclusive of VAT.

2. For imports, the taxed price is the import price at border gate plus (+) import duty (if any), plus (+) excise tax (if any) and plus (+) environmental protection tax (if any). The import price at border gate shall be determined under regulations on taxed prices of imports.

For goods eligible for import duty exemption or reduction, the taxed price is the import price plus (+) the import duty determined at the payable duty rate after subtracting the exempted or reduced amount.

3. For products, goods and services (including those purchased from outside or produced by business establishments themselves) which are used for barter, presentation as gifts, donation or payment of salaries, the taxed price is that of goods or services of the same or similar type at the time of carrying out such activity.

Example 22: Establishment A, an electric fan manufacturer, barters 50 fans with establishment B for iron and steel. The selling price (exclusive of VAT) of a fan is VND 400,000. In this case, the taxed price is  $50 \times \text{VND } 400,000 = \text{VND } 20,000,000$ .

Particularly for letters of invitation (specifying free admission) to art performances, fashion shows, beauty and model contests or sports competitions permitted by competent state agencies under law, the taxed price is zero (0). Before art performances or sports competitions take place, art performance organizers shall determine and take responsibility for the quantity of letters of invitation and the list of invited organizations and individuals. Establishments that fraudulently collect money for letters of invitation shall be handled in accordance with the law on tax administration.

Example 23: Joint-stock company X is licensed by a competent agency to organize the “Miss Vietnam 20xx” contest. In addition to the quantity of tickets printed for sale to the public, the company prints a certain quantity of letters of invitation for free presentation and has a list of invited guests. When declaring VAT, the taxed price of such letters of invitation is zero (0). If tax

agencies detect that company X collects money for such letters of invitation, company X shall be handled in accordance with the law on tax administration.

#### 4. Taxed prices of products, goods and services for internal consumption

For a product, goods or service delivered or provided by a business establishment for consumption to serve its business activities (internal consumption), the taxed price is that of the product, goods or service of the same or similar type at the time of consumption. The business establishment may declare and credit VAT amounts with regard to added-value invoices issued for products, goods or services delivered for internal consumption to serve the production or provision of VAT-liable goods or services.

For goods which are transferred within a production and business establishment such as goods transferred within the establishment's warehousing system or ex-warehoused as supplies or semi-finished products for further manufacture, VAT calculation and payment are not required.

In case a business establishment manufactures or builds its fixed assets by itself (self-made fixed assets) for the production or provision of VAT-liable goods or services, upon completion, takeover test and handover, the business establishment is not required to make invoices. The input VAT on the creation of the self-made fixed assets shall be declared and credited under regulations.

For products, goods and services delivered by a business establishment for the production or provision of goods or services not liable to VAT, the taxed price is the selling price of products, goods and services of the same or similar type at the time of consumption of such products, goods and services.

Example 24: Unit A, an electric fan manufacturer, installs 50 fans, which are its products, in its production workshops. The selling price (exclusive of VAT) of a fan of this kind is VND 1,000,000 and the applicable VAT rate is 10%.

The taxed price is  $VND 1,000,000 \times 50 = VND 50,000,000$ .

Unit A shall issue an added-value invoice indicating the taxed price of VND 50,000,000 and the VAT amount of VND 5,000,000. Unit A may declare and credit VAT for this invoice.

Example 25: Company Y, a bottled drinking water producer, sells a water bottle at the VAT-exclusive market price of VND 4,000. When Company Y delivers 300 water bottles for an excursion of its employees' relatives, it shall declare and calculate VAT for these 300 bottles delivered not for production and business activities at the taxed price of  $VND 4,000 \times 300 = VND 1,200,000$ .

Example 26: Garment producer B has a yarn workshop and a sewing workshop. If producer B transfers finished yarn from the yarn workshop to the sewing workshop for further use in the production process, it is not required to calculate and pay VAT for the quantity of yarn delivered to the sewing workshop.

Example 27: Joint-stock company AP purchases materials for the production of animal feed and has declared and credited input VAT upon such purchase. Part of the produced animal feed is sold to the market and the rest is used for animal-rearing activities of the company. When delivering feed for its animal-rearing activities, company AP shall make invoices and declare and pay VAT for the delivered quantity of feed and does not declare and credit input VAT with regard to added-value invoices indicating the quantity of feed delivered for animal-rearing activities.

Example 28: Joint-stock company P builds by itself houses for workers' mid-shift breaks within its production and business premises and has no attached unit, team or group carrying out such building. Upon completion and takeover of these houses, company P is not required to make invoices. The input VAT on the building of these houses shall be declared and credited under regulations.

Particularly, business establishments that use internally consumed goods and services for production and business activities for which output VAT calculation is not required, such as transportation, aviation, railway, post and telecommunications, shall issue a document to specify internally consumed goods and services and their consumption limits according to regulations.

5. For products, goods and services used for sales promotion in accordance with the commercial law, the taxed price is zero (0). For goods and services used for sales promotion in contravention with the commercial law, VAT declaration, calculation and payment are the same as those for goods and services used for internal consumption, presentation as gifts or donation.

Below are some specific forms of sales promotion:

a/ For sales promotion in the form of free provision of sample goods or services for customers' trial use, presentation of goods as gifts to customers or free provision of services, the taxed price of sample goods and services is zero (0).

Example 29: Limited liability company P is a soft drink producer. In 2014, the company offers two drives of sales promotion in May and December in the form of "buy 10 get 1 free". The sales promotion program in May is implemented according to the order and procedures prescribed in the

commercial law. Accordingly, for the products given free to buyers in May, the company may apply the taxed price of zero (0).

In case the sales promotion program in December is implemented at variance with the order and procedures prescribed in the commercial law, company P shall declare and pay VAT for the quantity of the products given free to buyers in December.

b/ For the form of sale of goods or provision of services at prices lower than the previous goods sale or service provision prices, the taxed price is the reduced price applied during the registered or notified period of sales promotion.

Example 30: Telecommunications company N sells prepaid cards for mobile phones. The company registers sales promotion in accordance with the commercial law in the form of selling cards at reduced prices from April 1, 2014, through April 20, 2014. Accordingly, a prepaid card with the face value of VND 100,000 (inclusive of VAT) is sold for VND 90,000 in the sales promotion period.

The taxed price of a prepaid card with the face value of VND 100,000 in the sales promotion period is:

VND 90,000

$\frac{1}{1+10\%}$

c/ For sales promotion in the form of sale of goods or provision of services accompanied with vouchers, VAT declaration and calculation are not required for these vouchers.

6. For lease of property such as houses, offices, workshops, warehouses, wharves, yards, means of transport, machinery or equipment, the taxed price is the VAT-exclusive rent amount.

In case the rent is paid in installments or prepaid for a lease term, the taxed price is the rent paid in installments or prepaid for the lease term, exclusive of VAT.

Applicable rent rates must be agreed upon by involved parties in their contracts. When a rent rate bracket is prescribed by law, rent rates must be within that bracket.

7. For goods sold on installment or deferred payment, the taxed price is the lump-sum VAT-exclusive selling price, excluding interests on installment or deferred payment.

Example 31: A motorbike trading company sells 100-cc motorbikes of X brand. The VAT-exclusive selling price of a motorbike is VND 25.5 million

(of which the selling price is VND 25 million and the installment interest is VND 0.5 million). In this case, the taxed price is VND 25 million.

8. For goods processing, the taxed price is the VAT-exclusive processing price under the processing contract, consisting of remuneration, costs of fuel, power, auxiliary materials and other expenses for the processing.

9. For construction and installation, the taxed price is the VAT-exclusive value of the completed and taken-over work, work item or job.

a/ For cases of construction and installation involving contracted supply of materials, the taxed price is the construction and installation price, inclusive of the VAT-exclusive value of materials.

Example 32: Construction company B enters into a work construction contract, covering the value of construction materials. The VAT-exclusive total payment value is VND 1.5 billion, of which the VAT-exclusive value of construction materials is VND 1 billion, then the taxed price is VND 1.5 billion.

b/ For cases of construction and installation without contracted supply of materials, machinery or equipment, the taxed price is the construction and installation value not including the VAT-exclusive value of materials, machinery or equipment.

Example 33: Construction company B enters into a construction contract not covering the value of construction materials. If the total VAT-exclusive value of the constructed work is VND 1.5 billion and the VAT-exclusive value of construction materials supplied by investor A is VND 1 billion, then the taxed price in this case is VND 0.5 billion (VND 1.5 billion - VND 1 billion).

c/ For cases of construction and installation with payments made based on each completed and taken-over work item or on the value of the completed and taken-over construction and installation volume, the taxed price is the VAT-exclusive value of the completed and taken-over work item or work volume.

Example 34: Textile company X (party A) hires construction company Y (party B) to perform construction and installation work to expand a production workshop.

The total VAT-exclusive value of the work is VND 200 billion, including:

- Construction and installation value: VND 80 billion
- Value of equipment supplied and installed by party B: VND 120 billion
- VAT amount at 10%: VND 20 billion  $\{ = (80 + 120) \times 10\% \}$

- Total amount payable by party A: VND 220 billion
- Party A shall:
  - + Take over the workshop, account it as an increase of VND 200 billion (VAT-exclusive value) in the value of its fixed assets for depreciation calculation.
  - + Declare and credit the VAT amount of VND 20 billion against the output VAT on goods sold, or request tax refund under regulations.

If party A tests and takes over the work and accepts to make payment to party B per work item (presuming that a VND 80 billion-construction and installation volume is tested, taken over and paid for first), then the taxed price is VND 80 billion.

10. For real estate transfer, the taxed price is the real estate transfer price minus (-) the land price to be subtracted upon VAT calculation.

a/ The land price to be subtracted upon VAT calculation is specified as follows:

a.1/ For land allocated by the State for building infrastructure or houses for sale, the land price to be subtracted upon VAT calculation includes the land use levy payable into the state budget (exclusive of the exempted or reduced land use levy amount) and expense for compensation and ground clearance as prescribed by law.

Example 35: In 2014, real estate company A is allocated land by the State to build infrastructure and houses for sale. The payable land use levy (exclusive of the exempted or reduced land use levy amount and expense for compensation and ground clearance under the approved plan) is VND 30 billion. The project is entitled to a 20% reduction of the payable land use levy amount. The expense for compensation and ground clearance under the approved plan is VND 15 billion.

The total subtracted value of land shall be determined as follows:

- Exempted or reduced land use levy amount: VND 30 billion x 20% = VND 6 billion;

- Land use levy amount payable into the state budget (exclusive of the exempted or reduced land use levy amount): VND 30 billion - 6 billion - 15 billion = 9 billion;

- Total land price to be subtracted upon VAT calculation, inclusive of the land use levy payable into the state budget (exclusive of the exempted or reduced land use levy amount) and the expense for compensation and ground clearance: VND 9 billion + 15 billion = 24 billion. The total land price to be

subtracted shall be allocated to the number of square meters of land allowed for trading.

a.2/ In case of auctioning land use rights, the land price to be subtracted upon VAT calculation is the successful bid;

a.3/ In case of renting land to build infrastructure for lease or to build houses for sale, the land price to be subtracted upon VAT calculation is the land rental payable into the state budget (exclusive of the exempted or reduced land rent amount) plus the expense for compensation and ground clearance as prescribed by law. From July 1, 2014, the rent of land to build houses for sale must comply with the 2013 Land Law.

Example 36: Joint-stock company VN-KR invests in building and commercially operating industrial production and service infrastructure facilities. The company is leased a land area of 300,000 m<sup>2</sup> for 50 years by the State with a lump-sum land rent for building industrial park infrastructure for project implementation. The lump-sum land rent rate for the whole lease duration is VND 82,000/m<sup>2</sup>. The total payable land rent amount is VND 24.6 billion. The company is not entitled to land rent exemption or reduction. After building infrastructure, the company signs a contract to sublease a land area of 16,500 m<sup>2</sup> to another investor for 30 years at the VAT-inclusive rent rate of VND 650,000/m<sup>2</sup> for the whole lease duration.

The VAT-inclusive price from the lease of infrastructure in the whole lease duration (30 years) by joint-stock company VN-KR to another investor is:

VND 16,500 m<sup>2</sup> x (650,000 - (VND 82,000/m<sup>2</sup> : 50 years x 30 years)) = VND 9.9132 billion.

The VAT-exclusive rent is:

$$\frac{9.9132}{1 + 10\%} = \text{VND } 9.012 \text{ billion.}$$

The VAT amount is: 9.012 x 10% = VND 0.9012 billion.

a.4/ In case a business establishment receives land use rights transferred from an organization or individual, the land price to be subtracted upon VAT calculation is the land price at the time of transfer, inclusive of the value of infrastructure (if any). The business establishment may not declare and credit input VAT of infrastructure already included in the non-taxable subtracted value of land use rights.

If the to-be-subtracted land price is exclusive of the value of infrastructure, the business establishment may declare and credit input VAT of infrastructure not yet included in the non-taxable subtracted value of land use rights.

If the land price at the time of transfer cannot be determined, the land price to be subtracted upon VAT calculation is the land price set by the provincial-level People's Committee at the time of signing the transfer contract.

Example 37: In August 2013, company A acquires (purchases) the right to use a land plot of 200 m<sup>2</sup> transferred from individual B in Binh An residential area in province X at the price of VND 6 billion. Company A has signed a land use right transfer contract and has it notarized in accordance with the land law and has sufficient documents proving the payment of VND 6 billion to individual B. Company A has built no work in this land plot. In October 2014, company A transfers (resells) the above land plot at the price of VND 9 billion, then it shall make an added-value invoice and declare and pay VAT; the land price to be subtracted in the taxed price is the land price at the time of transfer (VND 6 billion).

Example 38: In November 2013, limited-liability company A acquires the right to use a land plot of 300 m<sup>2</sup> with workshops already built on this land plot from individual B at the price of VND 10 billion without documents proving the land price at the time of transfer. In April 2014, company A transfers this land plot with workshops at the price of VND 14 billion, then the land price to be subtracted upon VAT calculation is the land price set by the provincial-level People's Committee at the time of transfer (November 2013).

Example 39:

In September 2013, company B purchases from real estate trading company A a 2,000-m<sup>2</sup> land plot with infrastructure at a total price of VND 62 billion (of which the land price not liable to VAT is VND 40 billion, at a price of VND 20 million/m<sup>2</sup>).

Company A shall write in the invoice:

- VAT-exclusive transfer price: VND 60 billion
- Land price not liable to VAT: VND 40 billion
- VAT on infrastructure: VND 2 billion
- Total price: VND 62 billion

Company A shall declare the payable VAT amount as follows:

Payable VAT amount = Output VAT amount - Creditable input VAT amount

Supposing that the VND 1.5 billion amount of input VAT on infrastructure construction is eligible for credit, then:

Payable VAT amount = VND 2 billion - VND 1.5 billion = VND 0.5 billion

Company B then builds infrastructure and 10 villas (each with a floor area of 200 m<sup>2</sup>) for sale. The total input VAT amount for construction of these villas is VND 3 billion.

On April 1, 2015, Company B signs a contract to sell one villa to customer C for VND 10 billion, exclusive of VAT. The land price to be subtracted when determining the taxed price of the sold villa is:

- The value of land use rights (exclusive of the value of infrastructure) for the villa at the time of acquiring land use rights from company A is: VND 20 million x 200 m<sup>2</sup> = VND 4 billion.

- The value of infrastructure allocated for a villa is:

(VND 20 billion : 2,000 m<sup>2</sup>) x 200 m<sup>2</sup> = VND 2 billion

- The value of land use rights (inclusive of the value of infrastructure) at the time of acquiring land use rights from company A to be subtracted when determining the taxed price of the sold villa is VND 6 billion.

Company B shall write in the invoice:

- Transfer price of one villa: VND 10 billion
- Land price not liable to VAT to be subtracted: VND 6 billion
- VAT amount: VND 0.4 billion [(VND 10 billion - VND 6 billion) x 10%]
- Total price: VND 10.4 billion

Supposing that company B sells out all 10 villas in the month. It shall declare and pay VAT as follows: The payable VAT amount = output VAT amount - creditable input VAT amount = VND 0.4 billion x 10 villas - VND 3 billion = VND 1 billion.

The VND 2 billion-VAT amount for the value of infrastructure written in the invoice on the acquisition of land use rights from company A is not allowed for declaration and credit.

In case company B determines that the value of land use rights exclusive of the value of infrastructure at the time of acquiring land use rights from company A to be subtracted when determining the taxed price of one villa sold is VND 4 billion, it shall write in the invoice:

- Transfer price of one villa: VND 10 billion
- Land price not liable to VAT to be subtracted: VND 4 billion

- VAT amount: VND 0.6 billion [(VND 10 billion - VND 4 billion) x 10%]

- Total price: VND 10.6 billion

Supposing that in April 2015, company B sells out all 10 villas. It shall declare and pay VAT as follows: Payable VAT amount = output VAT amount - creditable input VAT amount (including input VAT amount for villa construction and input VAT amount for the value of infrastructure) = VND 0.6 billion x 10 villas - VND 3 billion - VND 2 billion (input VAT amount for infrastructure) = VND 1 billion.

a.5/ In case real estate businesses apply the form of build-transfer (BT) and make payment with land use rights, the land price to be subtracted upon VAT calculation is the price set under law at the time of signing BT contracts. At the time of signing BT contracts, if the land price cannot be determined, the to-be-subtracted land price is the payment price of the constructed work as decided by the provincial-level People's Committee in accordance with law.

Example 40: Joint-stock company P signs a BT contract with the People's Committee of province A on the construction of a bridge in exchange for land. The work payment value determined by the People's Committee of province A at the time of contract signing is VND 2 trillion; in exchange, company P is allocated by the People's Committee of province A 500 ha of land for building houses for sale, then the land value to be subtracted upon VAT calculation is VND 2 trillion.

a.6/ In case real estate businesses acquire agricultural land use rights from people under transfer contracts, then they are allowed by competent state agencies to convert such land into residential land for building condominiums or houses for sale, the land value to be subtracted upon VAT calculation is the price of the transferred agricultural land and other expenses including land use levy paid into the state budget for land conversion and personal income tax paid on behalf of land transferors (if the parties agree that real estate businesses pay land use levy on behalf of land transferors).

a.7/ In case of building multi-story houses for many households or condominiums for sale, the to-be-subtracted land price per  $1m^2$  of housing equals the land price to be subtracted under Points a.1 thru a.6 above divided by (:) the number of square meters of the floor area, excluding the area under common use such as corridor, staircase, basement and underground construction works.

b/ In case of infrastructure construction and commercial operation, or construction of houses for sale, transfer or lease, the taxed price is the sum earned according to the project implementation schedule or payment schedule

indicated in the contract minus (-) the land price to be subtracted in proportion to the percentage of the collected amount to the total contractual value.

11. For goods and service sale and purchase agency and brokerage activities, and remunerated or commissioned import or export entrustment activities, the taxed price is VAT-exclusive remunerations or commissions earned from these activities.

12. For goods and services with payment documents showing VAT-inclusive payment prices, such as stamps, freight or fare tickets or lottery tickets, their VAT-exclusive prices shall be determined as follows:

$$\text{VAT-exclusive price} = \frac{\text{Payment price (ticket or stamp price)}}{1 + \text{VAT rate applicable to the goods or service (\%)}}$$

13. For electricity supplied by a hydropower plant being a dependent cost-accounting unit of Electricity of Vietnam, including electricity of dependent cost-accounting hydropower plants of power generation corporations under Electricity of Vietnam, the taxed price for determining the payable VAT amount in the locality where such plant is located equals 60% of the VAT-exclusive average commodity electricity sale price in the previous year. In case the average commodity electricity sale price in the previous year cannot be determined yet, a temporarily calculated price announced by the Group may apply but must not be lower than the price of the previous year. When the average commodity electricity sale price in the previous year can be determined, declaration for difference adjustment shall be made in the declaration period of the month when the official price is available. The average commodity electricity sale price in a year must be determined before March 31 of the following year.

14. For casino, prize-winning electronic game or betting game services, the taxed price is the excise tax-inclusive sums of money earned from these services minus prizes paid to customers.

The taxed price shall be calculated according to the following formula:

$$\text{Taxed price} = \frac{\text{Earned sum of money}}{1 + \text{tax rate}}$$

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

- Cash amount collected from customers for token exchange at counters before playing games: VND 43 billion.

- Cash amount paid to customers for tokens returned after playing games: VND 10 billion.

Cash amount actually collected by the casino: VND 43 billion - VND 10 billion = VND 33 billion.

The VND 33 billion-amount is the casino's turnover inclusive of VAT and excise tax.

The taxed price shall be calculated as follows:

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

15. For transportation, loading and unloading services, the taxed price is VAT-exclusive freight or loading and unloading charge rate, regardless of whether establishments directly provide transportation, loading and unloading services or outsource such services.

16. For tourist services in the form of tours under contracts signed with tourists at a package price (inclusive of meals, accommodation and transportation), this package price is regarded as the VAT-inclusive price.

The taxed price shall be determined according to the following formula:

$$\text{Taxed price} = \frac{\text{Package price}}{1 + \text{tax rate}}$$

In case the package price covers inbound and outbound air fares, expenses for meals, accommodation and sight-seeing and some other expenses incurred abroad (provided they are accompanied with lawful documents), the sum of money collected from tourists to cover these expenses may be subtracted from the taxed price (turnover). The input VAT for package tourist activities may be wholly declared and credited under regulations.

Example 42: Ho Chi Minh City Tourist Company performs a package tour contract with Thailand for 50 tourists for 5 days in Vietnam with a total payment of USD 32,000. The Vietnamese side has to pay for airfares, meals, accommodation, and sight-seeing tours under the agreed program, of which the airfares from Thailand to Vietnam and vice versa cost USD 10,000. The applicable exchange rate is USD 1 = VND 20,000.

The taxed price under this contract shall be determined as follows:

+ The VAT-liable turnover is:

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

+ The taxed price is:

$$\frac{\text{VND } 440,000,000}{1 + \text{tax rate}} = \text{VND } 400,000,000$$

---

$$1 + 10\%$$

The Company may wholly declare and credit the input VAT for VAT-liable tourist activities.

Example 43: Hanoi Tourist Company performs a contract for taking tourists from Vietnam to China on a five-day tour at the package price of USD 400/tourist. If it has to pay a Chinese tourist company USD 300/tourist, its taxed price (turnover) is USD 100/tourist (USD 400 - USD 300).

17. For pawning service, the amount receivable from this service, including the interest receivable from pawn loans and other proceeds from the sale of pawned articles (if any), shall be determined as the VAT-inclusive price.

The taxed price shall be determined according to the following formula:

$$\text{Taxed price} = \frac{\text{Receivable amount}}{1 + \text{tax rate}}$$

Example 44: A pawning company generates in a tax period a pawning turnover of VND 110 million.

The taxed price shall be determined as follows:

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

18. For a VAT-liable book sold at the distribution price (cover price) under the Publication Law, this sale price shall be determined as the VAT-inclusive price for calculating VAT and turnover of the seller. For a book sold at a price other than the cover price, VAT shall be calculated based on the actual sale price.

19. For printing activities, the taxed price is the printing cost. If a printing establishment performs printing contracts with payment prices covering printing and paper costs, the taxed price also includes the paper cost.

20. For the services of assessment agency, agency for indemnity consideration, agency for claiming compensations from third parties and agency for handling of wholly compensated goods for remuneration or commission, the taxed price is the earned VAT-exclusive remuneration or commission amount (with expenses not yet subtracted) collected by insurance enterprises.

21. For the cases of purchasing the services specified in Clause 5, Article 3 of this Circular, the taxed price is the VAT-exclusive payment price indicated in the service purchase contract.

22. The taxed price of goods and services specified in Clauses 1 thru 21 of this Article covers revenues and surcharges earned by business establishments in addition to goods and service prices.

In case a business establishment offers a commercial discount for customers (if any), the taxed price is the discounted price. In case the commercial discount is based on the quantity and sales of goods or services, the discounted amount of goods sold shall be adjusted on the goods and service sale invoice upon the last purchase or in the subsequent period. In case the discounted amount is recorded when the discount program (period) ends, the establishment may issue an adjustment invoice, enclosed with a list of serial numbers of invoices which need to be adjusted, the adjusted amounts and tax amounts. Based on the adjustment invoice, the seller and buyer shall declare adjustments to sale and purchase turnovers and input and output tax amounts.

Taxed prices must be calculated in Vietnam dong. In case a taxpayer has foreign-currency turnover, such turnover must be converted into Vietnam dong at the average inter-bank exchange rate announced by the State Bank of Vietnam at the time turnover is generated for taxed price determination.

#### **Article 8. Time of VAT determination**

1. For sale of goods, it is the time of transfer of the right to own or use goods to the purchaser, regardless of whether money has been collected.

2. For provision of services, it is the time of completing service provision or the time of making a service provision invoice, regardless of whether money has been collected.

For telecommunications services, it is the time of completing the checking of data on telecommunications connection service charges under economic contracts between telecommunications service provision establishments which, however, must not be later than 2 months from the month when telecommunications connection service charges arise.

3. For supply of electricity and clean water, it is the date of recording water or electricity meter readings for water or electricity billing.

4. For real estate trading, infrastructure construction or building of houses for sale, transfer or lease, it is the time of collecting money according to the project implementation or money collection schedule written in the contract. Based on the collected sum of money, the business establishment shall declare the output VAT amount arising in the period.

5. For construction and installation, including shipbuilding, it is the time of takeover test and handover of the completed work, work item or construction or installation volume, regardless of whether money has been collected.

6. For imported goods, it is the time of registering the customs declaration.

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

1. The 0% tax rate applies to exported goods and services; construction and installation of works overseas and in non-tariff zones; international transportation; and goods and services not liable to VAT upon exportation, except cases ineligible for the 0% tax rate under Clause 3 of this Article.

Exported goods and services are goods and services sold and provided to overseas organizations and individuals and consumed outside Vietnam; sold and provided to organizations and individuals in non-tariff zones; or provided to foreign customers in accordance with law.

a/ Exported goods include:

- Goods exported abroad, including those exported under entrustment contracts;

- Goods sold into non-tariff zones under the Prime Minister's regulations; goods sold to duty-free shops;

- Sold goods which are delivered and received outside Vietnam;

- Spare parts used for repair and maintenance of vehicles, machinery and equipment for foreign parties and consumed outside Vietnam;

- Cases regarded as exportation under law:

+ Intermediary processed goods under the commercial law regarding international goods trading and goods trading and processing agency with foreign parties.

+ On-spot exports as prescribed by law.

+ Goods exported for sale at overseas fairs and exhibitions.

b/ Exported services include services provided directly to overseas organizations and individuals and consumed outside Vietnam; or provided directly to organizations or individuals in non-tariff zones and consumed in non-tariff zones.

Overseas individuals are foreigners not residing in Vietnam and Vietnamese residing overseas and not present in Vietnam during the provision

of services. Organizations and individuals in non-tariff zones are those with business registration and other cases specified by the Prime Minister.

In case services are provided both inside and outside Vietnam while service contracts are signed between two taxpayers present in Vietnam or having resident establishments in Vietnam, the 0% tax rate applies only to the value of services provided outside Vietnam, except the case of provision of insurance services for imported goods in which the 0% tax rate applies to the whole contractual value. In case it is impossible to determine the value of services provided in Vietnam under the contract, the taxed price shall be determined based on the percentage (%) of expenses arising in Vietnam to total expenses.

Service providers being taxpayers in Vietnam must have documents proving that services are provided outside Vietnam.

Example 45: Company B signs a contract with company C on the provision of consultancy, survey and design services for company C's investment project in Cambodia (both companies are Vietnamese businesses). If the contract covers services provided in Vietnam and services provided in Cambodia, then the value of services provided in Cambodia is eligible for the 0% tax rate. Company B shall declare and calculate VAT under regulations for turnover from services provided in Vietnam.

Example 46: Company D provides company X with consultancy, survey and feasibility report making services for an investment project in Laos. The contractual value received by company D is VND 5 billion inclusive of VAT for the services provided in Vietnam. Under this contract, it is impossible to determine turnover generated in Vietnam and turnover generated in Laos. Company D has calculated expenses arising in Laos (survey and exploration expenses) of VND 1.5 billion and expenses arising in Vietnam (summarization and reporting expenses) of VND 2.5 billion.

VAT-inclusive turnover from the services provided in Vietnam shall be determined as follows:

$$\frac{\text{VND } 5 \text{ billion} \times \text{VND } 2.5 \text{ billion}}{\text{VND } 2.5 \text{ billion} + \text{VND } 1.5 \text{ billion}} = \frac{\text{VND } 12.5 \text{ billion}}{\text{VND } 4 \text{ billion}} = \text{VND } 3.125 \text{ billion}$$

In case company D has documents proving that it has sent its officers to conduct survey and exploration and that it has purchased some types of goods for survey and exploration in Laos, turnover from the services provided in Laos is eligible for the 0% tax rate and equals VND 1.875 billion (VND 5 billion - VND 3.125 billion = VND 1.875 billion).

c/ International transportation referred to in this Clause covers transportation of passengers, luggage and cargo on international routes from

Vietnam to overseas or vice versa or from an overseas place to another, regardless of whether means of transport are available. In case an international transportation contract covers domestic routes, international transportation also covers such domestic routes.

Example 47: Transportation company X in Vietnam, which has ships for international transportation, transports cargo from Singapore to the Republic of Korea. Turnover from such transportation is turnover from international transportation.

d/ Aviation and maritime services provided directly to overseas organizations or through agents, including:

Aviation services eligible for the 0% tax rate: Provision of in-flight meals; takeoff and landing; apron; aircraft security and protection; security screening of passengers, luggage and cargo; luggage conveyors in airport terminals; ground technical and commercial services; aircraft protection; aircraft pushback and towing; aircraft piloting; aerobridge lease; flight operations; transportation of flight crews, stewards and passengers within aprons; cargo loading and tally; and passenger service for international flights from Vietnamese airports.

Maritime services eligible for the 0% tax rate: Seagoing ship towing; maritime piloting; maritime salvage; piers and floating wharves; loading and unloading; mooring and unmooring; opening and closing of hatch covers; cargo hold cleaning; tally and forwarding; and registration.

dd/ Other goods and services:

- Construction and installation of works overseas or in non-tariff zones;
- Goods and services not liable to VAT upon exportation, except the cases ineligible for the 0% tax rate provided in Clause 3 of this Article;
- Repair of aircraft and seagoing ships for foreign organizations and individuals.

2. Conditions on application of the 0% tax rate:

a/ For exported goods:

- Having a contract on sale or processing of exported goods; or contract on export entrustment;
- Having documents of via-bank payment for exported goods, and other documents prescribed by law;
- Having customs declarations under Clause 2, Article 16 of this Circular.

Particularly for sale of goods which are delivered and received outside Vietnam, the business establishment (the seller) must have documents proving such delivery and receipt, e.g., goods purchase contract signed with the overseas seller; goods sale contract signed with the purchaser; documents proving that goods are delivered and received outside Vietnam such as commercial invoice according to international practices, bill of lading, packing list, and certificate of origin, etc.; via-bank payment documents, including via-bank payment document of the business establishment for the overseas seller, and via-bank payment document of the purchaser for the business establishment.

Example 48: Companies A and B (which are both Vietnamese businesses) sign a contract on purchase and sale of lubricants. Company A purchases lubricants from companies in Singapore, then sells them to company B at a Singaporean seaport. If company A has lubricant purchase contracts signed with companies in Singapore, the sale contract between company A and company B, a document proving that goods have been delivered to company B at the Singaporean seaport and via-bank payment documents handed by company A to lubricant-selling companies in Singapore, and a via-bank payment document of company B for company A, then turnover of company A from the sale of lubricants to company B is eligible for the 0% tax rate.

b/ For exported services:

- Having a service provision contract with an organization or individual overseas or in a non-tariff zone;
- Having documents of via-bank payment for exported services and other documents prescribed by law;

Particularly for aircraft and seagoing ship repair services provided to foreign organizations and individuals, to be eligible for the 0% tax rate, aircraft and seagoing ships must, apart from meeting the above conditions on contract and payment documents, go through the import procedures upon their entry into Vietnam and export procedures upon completion of repair.

c/ For international transportation:

- Having a lawful contract on carriage of passengers, luggage and cargo between the carrier and carriage lessee along international routes from Vietnam to abroad or vice versa or from one to another overseas location. For carriage of passengers, the carriage contract is the ticket. International transportation businesses shall comply with regulations on transportation.
- Having documents on via-bank payment or other methods of payment regarded as via-bank payment. Having documents on direct payment, for carriage of individual passengers.

d/ For aviation and maritime services:

d.1/ The 0% tax rate applies to aviation services at international airports, airfields and international air cargo terminals which satisfy the following conditions:

- Having a service provision contract with, or a service provision request by, an overseas organization or a foreign airline;

- Having documents on via-bank payment or other modes of payment regarded as via-bank payment. For provision of services to a foreign organization or a foreign airline on an irregular, unscheduled and non-contractual basis, having documents on direct payment of such organization or airline.

The above conditions on contracts and payment documents do not apply to the provision of services to passengers on international flights departing from Vietnamese airports.

d.2/ The 0% tax rate applies to maritime services at seaports which satisfy the following conditions:

- Having a service provision contract with, or a service provision request by, an overseas organization or a shipping agent;

- Having documents of via-bank payment of an overseas organization or a shipping agent, or other methods of payment regarded as via-bank payment.

3. Cases ineligible for the 0% tax rate:

- Offshore reinsurance; offshore transfer of technologies or intellectual property rights; offshore capital transfer, credit extension or securities investment; derivative financial services; outbound post and telecommunications services (including post and telecommunications services provided to organizations and individuals in non-tariff zones; and provision of prepaid mobile phone cards with codes and par value overseas or in non-tariff zones); exported products being unprocessed natural resources or minerals; goods and services provided to individuals without business registration in non-tariff zones, except other cases provided by the Prime Minister;

- Petrol and oil sold to domestically purchased automobiles of businesses in non-tariff zones;

- Automobiles sold to organizations and individuals in non-tariff zones;

- Services provided to organizations and individuals in non-tariff zones, including lease of houses, halls, offices, hotels, warehouses and storage yards; transportation of employees; catering services (except the provision of industrial meals and catering services in non-tariff zones);

- The following services provided in Vietnam to overseas organizations and individuals are ineligible for the 0% tax rate:

+ Sports competitions, art, cultural and recreational performances, conferences, hotels, training, advertising and travel;

+ Online payment;

+ Services attached with the sale, distribution and consumption of products and goods in Vietnam.

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

1. Clean water for production and life, excluding bottled drinking water and other beverages subject to the tax rate of 10%.

2. Fertilizers; ores for fertilizer production; pesticides and plant and animal growth stimulants, including:

a/ Fertilizers which are organic and inorganic fertilizers such as phosphorus fertilizer, nitrate fertilizer (urea), NPK, mixed nitrate, phosphate, potassium; microbial fertilizers and other fertilizers;

b/ Ores for fertilizer production which are those used as materials for fertilizer production such as apatite for phosphorus fertilizer production, humus for microbial fertilizer production;

c/ Pesticides which include plant protection drugs on the list of plant protection drugs promulgated by the Ministry of Agriculture and Rural Development, and other pesticides;

d/ Animal and plant growth stimulants.

3. Feeds for cattle, poultry and other domestic animals under regulations on management of animal feeds, including processed and unprocessed products, such as bran, offal, assorted oil cakes, fish meal, bone meal, shrimp meal and other feeds for cattle, poultry and domestic animals.

4. Services of digging, embanking and dredging canals, ditches, ponds and lakes for agricultural production; cultivating and tending plants and preventing and controlling pests; and preliminarily processing and preserving agricultural products (except dredging intra-field canals and ditches specified in Clause 3, Article 4 of this Circular).

Services of preliminary processing and preservation of agricultural products, including sun-drying, heat-drying, peeling, pitting, slicing, grinding, freezing, salting and other ordinary methods of preservation as guided in Clause 1, Article 4 of this Circular.

5. Cultivation, husbandry, aquatic and marine products which are unprocessed or preliminarily processed and preserved (in the forms guided in

Clause 1, Article 4 of this Circular) at the stage of commercial business, except the cases guided in Clause 5, Article 5 of this Circular.

Unprocessed farm produce guided in this Clause includes paddy, rice, maize, potato, cassava and wheat.

6. Preliminarily processed latex in the forms of crepe, sheet, strip or granule; preliminarily processed pine resin; nets, net ropes and cords for weaving fishing nets, including fishing nets, assorted cords and ropes for exclusive use in weaving fishing nets, regardless of their production materials.

7. Fresh and raw foods at the stage of commercial business; unprocessed forest products at the stage of commercial trading, except timber, bamboo shoots and the products specified in Clause 1, Article 4 of this Circular.

Fresh and raw foods are those which have been neither cooked nor processed into other products, but have only been preliminarily processed by cleaning, peeling, slicing, freezing or sun-drying, and still remain fresh and raw, such as cattle and poultry meat, shrimps, crabs, fishes, and other aquatic and marine products. Seasoned food is subject to the 10% tax rate.

Unprocessed forest products are forest products exploited from natural forests and of the groups of bamboo and rattan of various kinds, mushrooms, Jew's ear fungus; roots, leaves, flowers, medicinal plants, plant resins, and other forest products.

Example 49: Limited liability company A produces seasoned fresh *bo* catfish (*pseudobagrus*) by the following process: catching live fish; slicing fish into fillets; seasoning fillets with sugar, salt and solpitol; packing and freezing. In this case, the seasoned fresh *bo* catfish is ineligible for the 5% tax rate, but is subject to the 10% tax rate.

8. Sugar and by-products in sugar production, including molasses, bagasse and dregs.

9. Products made of jute, rush, bamboo, rattan, leaves, straw, coir, coconut shells, water hyacinth, and other handicraft products made of raw materials from agricultural production are those made of or processed from jute, rush, bamboo, rattan and leaves as main raw materials, such as jute carpets, jute yarns, jute bags, coir carpets, jute or rush mats, brooms, ropes and strings made of bamboo or coir; curtains and blinds made of bamboo of various kinds, bamboo brooms, conical hats; bamboo chopsticks; preliminarily processed cotton; newsprint paper.

10. Special-use machinery and equipment for agricultural production, including plowing, harrowing, seedling-transplanting and seed-sowing machines, rice threshers, harvesters, combined harvester-threshers, farm ~~product~~ harvesters, pesticide sprayers or spraying machines.

11. Medical equipment and instruments, including special-use machinery and instruments for medical use, such as scanners and radiography machines of all kinds for medical examination and treatment; devices and instruments used exclusively in surgery and wound treatment; ambulances; blood-pressure, cardiac and vascular meters; blood transfusion instruments; syringes and needles; contraceptive devices and other special-use medical equipment as certified by the Ministry of Health;

Medical cotton, bandages, gauzes and medical hygienic bandages; preventive and curative medicaments, including finished medicaments, materials for manufacture of medicaments other than functional food; vaccines, medical biologicals, distilled water for preparation of injections and transfusion fluids; chemical supplies for testing and germicides for medical use; surgical caps, clothes, masks, cloths, gloves and boots, shoe covers and tissues and gloves for medical use, breast implants and dermal fillers (excluding cosmetics).

12. Teaching and learning aids, including models, drawings, writing boards, chalks, rulers, compasses and other equipment and devices used for teaching and scientific research and experiment.

13. Cultural, exhibition, physical training and sports activities; art performances; film production; film import, distribution and screening.

a/ Cultural, exhibition, physical training and sports activities, except revenues such as sales of goods, rentals of grounds and yards or booths at fairs or exhibitions;

b/ Art performance activities, such as *tuong* (classical drama), *cheo* (traditional operetta), *cai luong* (reformed drama), singing, dancing, music, drama, circus; other art performances and services of organizing art performances of theaters or *tuong*, *cheo*, *cai luong*, singing, dancing, music, drama or circus troupes licensed by competent state agencies;

c/ Film production; film import, distribution and screening, except the products specified in Clause 15, Article 4 of this Circular.

14. Children's toys; books of various kinds, excluding those not liable to VAT as guided in Clause 15, Article 4 of this Circular.

15. Science and technology services, which are activities serving or supporting scientific research and technological development; activities related to intellectual property; technology transfer, standards, technical regulations, metrology, product and goods quality, radiation and nuclear safety and atomic energy; services on information, consultancy, training, retraining, popularization and application of scientific and technological achievements in socio-economic fields under science and technology service contracts provided

in the Law on Science and Technology, excluding online games and entertainment services on the Internet.

16. Sale, lease or lease-purchase of social houses under the Housing Law. Social houses are houses built by the State or organizations or individuals of different economic sectors and satisfying the criteria on domicile, sale price, rent, rent-purchase price, eligible persons, and conditions for purchase, rent or rent-purchase of social houses under the housing law.

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

The 10% tax rate applies to goods and services not specified in Articles 4, 9 and 10 of this Circular.

The VAT rates specified in Articles 10 and 11 apply uniformly to each type of goods or services at the stages of importation, manufacture, processing and commercial business.

Example 50: If garments are subject to the 10% tax rate, they are subject to this tax rate at all the stages of importation, production, processing and commercial business.

Scraps and defective products recovered for recycling and reuse, when being sold, are subject to the VAT rate applicable to corresponding goods items.

An establishment that trades in different goods or provides different services subject to different VAT rates shall declare VAT at the rate applicable to each type of goods or services. If unable to do so, the establishment shall calculate and pay VAT at the highest rate applicable to the goods or services it produces, trades in or provides.

In the course of implementation, if there arises any case involving the application of a VAT rate according to the Preferential Import Tariff which is unconformable to this Circular, this Circular will apply. For cases involving the application of different VAT rates to the same type of imported and home-made goods, local tax offices and customs offices shall report them to the Ministry of Finance for timely guidance on uniform application.

## **Section 2**

### **TAX CALCULATION METHODS**

#### **Article 12. Tax credit method**

1. The tax credit method applies to businesses that fully observe accounting, invoice and document regimes in accordance with the law on accounting, invoices and documents, including:

- a/ Currently operating businesses that have an annual turnover of at least VND 1 billion from goods sale or service provision and fully observe the accounting, invoice and document regimes in accordance with the law on accounting, invoices and documents, except business households and individuals paying tax by the direct calculation method guided in Article 13 of this Circular;
- b/ Businesses that register for voluntary application of the tax credit method, except business households and individuals paying tax by the direct calculation method guided in Article 13 of this Circular;
- c/ Foreign organizations and individuals supplying goods or providing services serving oil and gas exploration, prospection, development and exploitation for whom tax is declared, credited and paid by their Vietnamese partners by the credit method.

2. The annual turnover of at least VND 1 billion used as a basis for determining a business's eligibility for paying VAT by the credit method specified at Point a, Clause 1 of this Article is the turnover from sale of VAT-liable goods or provision of VAT-liable services, and is determined as follows:

a/ The business shall itself determine its annual turnover by adding up the item "Total sales of VAT-liable goods and services" in the monthly VAT declarations of the tax periods from November of the preceding year to the end of October of the present year preceding the year for which the VAT calculation method is determined or in the quarterly VAT declarations of the tax periods from the fourth quarter of the preceding year to the end of the third quarter of the present year preceding the year for which the VAT calculation method is determined. The duration of stable application of the tax calculation method is 2 consecutive years.

Example 51: Enterprise A was established in 2011 and is now operating. In 2013, in order to determine the VAT calculation method to be applied in 2014 and 2015, enterprise A shall determine its turnover as follows:

To add up the item "Total sales of VAT-liable goods and services" in the monthly VAT declarations of 12 months (from November 2012 to the end of October 2013).

If the turnover determined as guided above is VND 1 billion or more, enterprise A shall apply the tax credit method in 2 years (2014 and 2015).

If the turnover determined as guided above is less than VND 1 billion, enterprise A shall apply the direct calculation method prescribed in Article 13 of this Circular in 2 years (2014 and 2015), unless it registers for voluntary application of the tax credit method according to Clause 3 of this Article.

b/ In case the business was just established in 2013 and has been operating for less than 12 months, it shall estimate its annual turnover as follows: To add up the item “Total sales of VAT-liable goods and services” in the VAT declarations of months of conducting production or business activities, divide (:) that figure by the number of months of conducting production or business activities, then multiply (x) the result by 12 months. In case the turnover estimated as guided above is VND 1 billion or more, the business shall apply the tax credit method. In case the turnover estimated as guided above is less than VND 1 billion, the business shall apply the direct calculation method in 2 years, unless it registers for voluntary application of the tax credit method.

Example 52: Enterprise B was established and started operating in March 2013. In order to determine the tax calculation method for 2014 and 2015, enterprise B shall estimate its turnover as follows: To add up the item “Total sales of VAT-liable goods and services” in the VAT declarations of March, April, May, June, July, August, September, October and November, divide (:) that figure by 9 months and then multiply (x) the result by 12 months.

If the turnover estimated as guided above is VND 1 billion or more, enterprise B shall apply the tax credit method. If the turnover estimated as guided above is less than VND 1 billion, enterprise B shall apply the direct calculation method in 2014 and 2015, unless it registers for voluntary application of the tax credit method.

c/ In case the business declares tax on a quarterly basis from July 2013, it shall determine its annual turnover as follows: To add up the item “Total sales of VAT-liable goods and services” in the VAT declarations of the tax periods of October, November and December of 2012 and the first 6 months of 2013 and in the VAT declaration of the third quarter of 2013. If its turnover determined as guided above is VND 1 billion or more, the business shall apply the tax credit method. If its turnover determined as guided above is less than VND 1 billion, the business shall apply the direct calculation method in 2 years, unless it registers for voluntary application of the tax credit method.

d/ In case the business suspends its business activities for a whole year, the tax calculation method shall be determined based on the turnover of the year preceding the year of suspension of business activities.

In case the business suspends its business activities for a certain period of time in a year, its turnover shall be determined based on the number of months or quarters of actually doing business as guided at Point b of this Clause.

If the business operated for less than 12 months in the year preceding the year of suspension of business activities, its turnover shall be determined based

on the number of months or quarters of actually doing business as guided at Point b of this Clause.

3. Businesses registering for voluntary application of the tax credit method include:

a/ Currently operating enterprises and cooperatives that have an annual turnover of less than VND 1 billion from sale of VAT-liable goods and provision of VAT-liable services and fully observe the accounting, invoice and document regimes in accordance with the law on accounting, invoices and documents;

b/ Enterprises newly established under investment projects of currently operating businesses that pay VAT by the credit method;

c/ Newly established enterprises and cooperatives that invest in or purchase fixed assets, machinery or equipment (excluding passenger cars of 9 seats or less of businesses not dealing in transport, tourism or hotel business) valued at VND 1 billion or more as indicated on the invoices on purchase of fixed assets, machinery or equipment, including invoices on purchase of fixed assets, machinery and equipment before such enterprises or cooperatives are established; foreign organizations and individuals doing business in Vietnam under contractor or subcontractor contracts;

d/ Economic organizations other than enterprises or cooperatives that can account input VAT and output VAT.

Enterprises and cooperatives guided at Point a of this Clause shall send a notice on the application of the tax credit method to their managing tax offices by December 20 every year.

Businesses guided at Points b and c of this Clause shall send a notice of the applicable tax calculation method to their managing tax offices together with tax registration dossiers.

Businesses guided at Point d of this Clause shall send a notice of the applicable tax calculation method to their managing tax office by December 20 of the year preceding the year of applying the new tax calculation method.

Within 5 working days after receiving a notice on the application of the tax credit method, the tax office shall issue a written reply to the concerned enterprise, cooperative or business stating its approval or disapproval of the application of the tax credit method.

4. Other cases:

a/ Businesses engaged in gold, silver or gem sale, purchase and fashioning activities shall separately account these activities so as to pay tax

by the method of direct calculation on added value guided in Article 13 of this Circular;

b/ Newly established enterprises and cooperatives other than those specified in Clause 3 of this Article shall apply the direct calculation method guided in Article 13 of this Circular;

By the end of the first calendar year after its establishment, if an enterprise or a cooperative has a turnover of VND 1 billion or more determined by the method specified in Clause 2 of this Article and fully observes the accounting, invoice and document regimes in accordance with the law on accounting, invoices and documents, it shall apply the tax credit method. The procedures for changing the tax calculation method comply with the law on tax administration.

By the end of the first calendar year after its establishment, if the enterprise or cooperative fails to reach a turnover of at least VND 1 billion, it shall continue applying the direct calculation method.

Example 53: Trading and service limited liability company X was established and started operating in April 2014. The company applies the direct calculation method for VAT periods of 2014. By the end of the tax period of November 2014, the company determines its turnover as follows:

To add up the total sales item in the VAT declarations of tax periods from April through November 2014, divide that figure by 8 months, then multiply the result by 12 months.

If the estimated turnover is VND 1 billion or more, company X shall apply the tax credit method from January 1, 2015, for 2015 and 2016. In case the turnover estimated by the above method is less than VND 1 billion, company X shall further apply the direct calculation method in 2015 and 2016. The VAT calculation method to be applied by company X in 2017 and 2018 shall be determined based on its turnover in 2016.

##### 5. Determination of the payable VAT amount:

$$\begin{array}{lll} \text{Payable VAT} & = & \text{Output VAT} - \text{Creditable input VAT} \\ \text{amount} & & \text{amount} \end{array}$$

In which:

a/ The output VAT amount equals the total VAT amount of goods sold or services provided as indicated on an added-value invoice.

The VAT amount indicated on an added-value invoice equals the taxed price of the taxable goods or service sold multiplied by (x) the VAT rate applicable to such goods or service.

In case of using documents indicating a VAT-inclusive price, the output VAT amount shall be determined to be equal to this price minus (-) the taxed price specified in Clause 12, Article 7 of this Circular.

Businesses paying VAT calculated by the tax credit method shall, when selling goods or providing services, calculate and pay VAT on the goods sold or services provided. On invoices issued for the sale of goods or provision of services, businesses shall write VAT-exclusive sale prices, VAT amounts and total amounts payable by purchasers. If an invoice indicates only the payment price (except cases in which special-type documents may be used) but not the VAT-exclusive price and VAT amount, the VAT amount on the goods or services shall be calculated based on the price indicated on the invoice or document.

Example 54: An enterprise sells F6 iron rods at a VAT-exclusive price of VND 11,000,000/ton, the 10% VAT amount is VND 1,100,000/ton, but on some of its sale invoices, only the sale price of VND 12,100,000/ton is indicated, then the VAT amount calculated on the basis of sales shall be determined as follows:  $VND 12,100,000/ton \times 10\% = VND 1,210,000/ton$ , instead of being calculated based on the VAT-exclusive price of VND 11,000,000/ton.

Businesses shall observe the accounting, invoice and document regimes in accordance with the law on accounting, invoices and documents. Cases in which VAT rates are wrongly indicated on invoices and not yet adjusted by businesses themselves but detected through inspection by tax offices shall be handled as follows:

For businesses selling goods or providing services: If the VAT rate indicated on an invoice is higher than that prescribed in legal documents on VAT, VAT shall be declared and paid at the rate indicated on the invoice. If the VAT rate indicated on the invoice is lower than that prescribed in legal documents on VAT, VAT shall be declared and paid at the rate prescribed in legal documents on VAT.

b/ The input VAT amount equals (=) the total VAT amount indicated on the added-value invoice for purchased goods or services (including also fixed assets) used for the production of and trading in VAT-liable goods or services or the VAT amount indicated on the duty payment documents for imported goods or the documents of VAT payment for foreign parties under the Ministry of Finance's guidance applicable to foreign organizations without the Vietnamese legal entity status and foreigners doing business or earning incomes in Vietnam.

If purchased goods or services are those for which special-type documents indicating VAT-inclusive prices are used, businesses may base

themselves on these VAT-inclusive prices and the tax calculation method specified in Clause 12, Article 7 of this Circular to determine the VAT-exclusive price and input VAT amount.

The creditable input VAT amount shall be determined based on the VAT credit principles and conditions prescribed in Articles 14, 15, 16 and 17 of this Circular.

Example 55: In a tax period, company A made payment for input services of a special type eligible for tax credit:

The total price is VND 110 million (inclusive of VAT). This service is subject to the tax rate of 10%. The creditable input VAT amount shall be calculated as follows:

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

The VAT-exclusive price is VND 100 million and the VAT amount is VND 10 million.

Cases in which VAT rates are wrongly indicated on invoices and not yet adjusted by businesses themselves but detected through inspection by tax offices shall be handled as follows:

For businesses purchasing goods or services: If the VAT rate indicated on an invoice is higher than that prescribed in legal documents on VAT, the input VAT shall be credited at the rate prescribed in these legal documents. If it is possible to conclude that the seller has declared and paid tax at the rate indicated on the invoice, the input VAT may be credited at this rate but the written certification of the seller's managing tax office is required. If the VAT rate indicated on an invoice is lower than that prescribed in legal documents on VAT, the input VAT shall be credited at the rate indicated on the invoice.

For businesses selling goods or services: In case a business has declared and paid VAT at the stage of importation, when selling such goods to a consumer, it issues an added-value invoice indicating the VAT rate equaling the rate at which it has declared and paid tax at the stage of importation and which, however, is lower than that prescribed in legal documents on VAT and the business cannot collect extra money from the customer, the amount already collected from the customer according to the added-value invoice shall be determined as the VAT-inclusive price with the tax rate prescribed in legal documents on VAT to serve as a basis for determining the payable VAT amount and turnover for calculation of enterprise income tax.

Example 56: In March 2014, business A (that pays VAT by the credit method) imported products named "CHAIR MM" and declared and paid VAT

at the tax rate of 5% at the stage of importation. In May 2015, business A sold a “CHAIR MM” product to customer B at a VAT-exclusive price of VND 100 million. Due to the fact that the tax rate of 5% was applied upon importation, business A issued and handed over to customer B an added-value invoice indicating the taxed price of VND 100 million, the VAT rate of 5% and the VAT amount of VND 5 million, and the total VAT-inclusive price of VND 105 million. Customer B has fully paid VND 105 million.

In 2015, the tax office detects through inspection that the VAT rate applied by business A to the “CHAIR MM” product sold to customer B was wrong (the correct rate should be 10%). As the transaction between business A and customer B has completed, business A has no ground to collect extra money from customer B (customer B refuses to pay the increased tax amount). The tax office shall re-determine the VAT amount payable by business A and turnover for calculation of enterprise income tax as follows:

The total price of VND 105 million, which has been paid by customer B, shall be determined as the VAT-inclusive price with the tax rate of 10%. The payable VAT amount shall be determined as follows:

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

The VAT amount to be additionally paid by business A is:

$$\text{VND 9.545 million} - \text{VND 5 million} = \text{VND 4.545 million.}$$

The turnover from the “CHAIR MM” product sold to customer B, which is used for calculation of enterprise income tax, is:

$$\text{VND 105 million} - \text{VND 9.545 million} = \text{VND 95.455 million.}$$

### **Article 13. Method of VAT calculation directly based on added value**

1. For gold, silver or gem sale, purchase and fashioning, the payable VAT amount calculated by the method of direct calculation on added value equals the added value multiplied by the VAT rate of 10%.

The added value of gold, silver or gems equals the payment price of the sold gold, silver or gems minus (-) the payment price of the corresponding purchased gold, silver or gems.

The payment price of the sold gold, silver and gems is the actual sale price indicated on the sale invoice, which is inclusive of fashioning remuneration (if any), VAT, extra charges and surcharges enjoyed by the seller.

The payment price of purchased gold, silver and gems equals the VAT-inclusive value of the purchased or imported gold, silver or gems used for the purchase, sale or fashioning of the corresponding sold gold, silver or gems.

In case there arises in a tax period a negative (-) added value of gold, silver or gems, it may be cleared against the positive (+) added value of gold, silver or gems. When there arises no positive (+) added value or such value is not enough to offset the negative (-) added value, it may be carried forward for deduction from the added value of the next period in the year. By the end of the calendar year, the negative (-) added value may not be carried forward to the following year.

2. The method of calculating the payable VAT amount directly on the added value by multiplying turnover by a certain rate (%) is applied as follows:

a/ Subjects of application:

- Currently operating enterprises and cooperatives that have an annual turnover of less than VND 1 billion, except those registering for voluntary application of the tax credit method prescribed in Clause 3, Article 12 of this Circular;

- Newly established enterprises and cooperatives, except those registering for voluntary application of the tax credit method prescribed in Clause 3, Article 12 of this Circular;

- Business households and individuals;

- Foreign organizations and individuals that conduct business in Vietnam not under the Investment Law and other organizations that fail to observe or improperly observe the accounting, invoice and document regimes prescribed by law, except foreign organizations and individuals providing goods and services for oil and gas exploration, prospection, development and exploitation.

- Economic organizations other than enterprises and cooperatives, except those registering to pay tax by the credit method.

b/ The rate (%) used for calculating VAT on turnover is specified for each activity as follows:

- 1%, for goods distribution and supply;

- 5%, for services and construction without contracted supply of materials;

- 3%, for production, transportation and services associated with supply of goods, construction with contracted supply of materials;

- 2%, for other business activities.

c/ Turnover used for VAT calculation is the total sales of goods and services indicated on VAT-liable goods and service sale invoices, inclusive of extra charges and surcharges enjoyed by businesses.

These above rates do not apply to turnovers from sale of goods or provision of services not liable to VAT and turnovers from exported goods and services.

Example 57: Limited liability company A declares and pays VAT by the direct calculation method. It has turnover from sale of computer software and provision of business start-up consultancy services. Company A is not required to pay VAT at a rate (%) of turnover from sale of computer software (as computer software is not liable to VAT) and shall declare and pay VAT at the rate of 5% of turnover from provision of business start-up consultancy services.

A business engaged in different business lines which are subject to different rates shall declare VAT according to each group of business lines corresponding to each prescribed rate. In case the taxpayer cannot determine turnover from each group of business lines or a business contract covers activities subject to different rates which cannot be separated, the highest rate among those applied to the taxpayer's business lines shall apply.

3. For business households and individuals paying presumptive tax, tax offices shall determine turnover and payable VAT amounts based on the rate (%) of their turnover as guided in Clause 2 of this Article on the basis of tax data declared by these households or individuals, tax offices' database, actual turnover inspection results and opinions of commune-level tax consultancy councils.

For a household or an individual that is engaged in different business lines, tax offices shall determine the payable tax amount based on the rate applicable to its/his/her main business activity.

4. The list of business lines subject to calculation of VAT at a rate (%) of turnover under Clause 2, Article 3 of this Article is promulgated together with this Circular.

### Chapter III

### TAX CREDIT AND REFUND

#### Section 1

#### TAX CREDIT

##### **Article 14. Principles of input value-added tax credit**

1. Input VAT on goods or services used for the production of and trading in VAT-liable goods and services may be wholly credited, including also the uncompensated input value-added tax on lost VAT-liable goods.

Input VAT on uncompensated losses, including those caused by natural disasters and fires, and uninsured losses, and poor-quality and expired goods that must be destroyed, may be credited. Business establishments must have adequate dossiers and documents proving uncompensated losses for tax credit.

For goods exposed to natural loss in transportation and filling due to their physical and chemical properties such as petrol, oil, etc., the input VAT amount on the actual volume of goods lost naturally, which must not exceed the prescribed loss limit, may be declared and credited. The input VAT amount on the volume of naturally lost goods exceeding the prescribed limit may not be credited and refunded.

Input VAT on goods and services which form fixed assets like canteens providing shift meals, mid-shift rest rooms, locker rooms, parking lots, restrooms and water tanks for laborers within production or business premises, and houses and healthcare stations for workers in industrial parks, may be wholly credited.

For housing rented by business establishments for workers in industrial parks in accordance with regulations on design standards and rental for industrial park workers, VAT on such rental may be credited under regulations. For business establishments that build or purchase houses outside industrial parks for their workers working in industrial parks in compliance with regulations on housing design standards for industrial park workers, the VAT on these houses may be wholly credited.

Vietnam-based business establishments that employ foreign specialists to work as managers in Vietnam and pay them salaries in Vietnam under signed labor contracts may not credit the VAT amount on house rentals paid for these foreign specialists.

In case foreign specialists remain employees and under the management of overseas enterprises, and receive salaries and other benefits from overseas enterprises during their work in Vietnam under contracts between these overseas enterprises and Vietnam-based business establishments which state that Vietnam-based businesses shall pay housing expenses for foreign specialists during their work in Vietnam, the VAT amount on house rentals for foreign specialists paid by Vietnam-based business establishments may be credited.

2. For goods or services (including also fixed assets) used for the production of and trading in both goods or services liable and not liable to VAT, only the input VAT amount on goods or services used for the production of and trading in VAT-liable goods or services is creditable. Businesses shall separately account creditable and non-creditable VAT amounts. If it is impossible to do so, input VAT shall be credited based on the percentage (%)

of VAT-liable turnover to total turnover of sold goods or services that cannot be separately accounted.

Traders of goods or services liable and not liable to VAT shall every month temporarily allocate VAT amounts on purchased VAT-creditable goods, services or fixed assets. At the year end, they shall calculate the creditable VAT amount for the whole year for declaration to adjust input VAT amounts which have been temporarily credited every month.

3. Input VAT on fixed assets, machinery and equipment, including input VAT on lease, warranty and repair of these assets, machinery and equipment, in the following cases may not be credited but shall be included in the historical costs of these fixed assets or in deductible expenses under the Law on Enterprise Income Tax and guiding documents: fixed assets exclusively used for the manufacture of weapons and military equipment for national defense and security purposes; fixed assets, machinery and equipment of credit institutions and reinsurance, life insurance and securities businesses, health establishments and training institutions; civil aircraft and yachts not used for commercial transportation of cargo and passengers, tourist or hotel business.

For fixed assets being passenger automobiles of 9 seats or less (excluding automobiles used for cargo or passenger transportation or for tourist or hotel business) which are valued at more than VND 1.6 billion (exclusive of VAT), the input VAT amount for the value exceeding VND 1.6 billion may not be credited.

#### 4. VAT credit in some specific cases:

a/ For business establishments which organize closed production and centralized cost-accounting and use products not subject to VAT in different stages for the production of goods subject to VAT, the input VAT amount in all stages may be wholly credited.

Example 58: Enterprise X invests in building material zones and plants to produce and process frozen *tra* and *basa* fish fillets and shrimps for export. It organizes closed production from rearing, including also hiring breeders while investing in fry, ponds, lakes, fences, irrigation systems, boats and ships, and other input materials such as feeds, veterinary medicine and veterinary services, to shrimp and fish processing for export. The enterprise may credit all input VAT amounts on fixed assets and purchased goods and services not forming fixed assets in all stages of production and processing.

Example 59: Enterprise Y invests in building material zones and plants to produce and process products made from raw milk (pasteurized milk, yogurt, cheese, and etc). It organizes closed production from rearing, including also hiring breeders while investing in animal breeds (cows, goats), stables,

farms, fences, milking equipment, sanitation systems for breeding facilities and other input materials such as feeds, veterinary medicine and veterinary services, to processing dairy products. The enterprise may credit all input VAT amounts on fixed assets and purchased goods and services not forming fixed assets in all stages of production and processing.

b/ For business establishments, including newly established ones, which have investment projects implemented in different phases, have production and business plans, organize closed production and centralized cost-accounting, and use products not subject to VAT for the production of goods subject to VAT but provide goods and services not subject to VAT in the phase of capital construction investment, the input VAT amount in the investment phase to form fixed assets may be wholly credited. Business establishments shall separately account the declared and creditable input VAT amounts not for fixed assets used for the production of goods and provision of services not liable to VAT based on the percentage (%) of turnover subject to VAT to the total turnover of goods and services sold.

Business establishments that have investment projects for further production and processing or make a written commitment to further produce VAT-liable products may declare and credit VAT right from the stage of capital construction. For input VAT arising in the capital construction stage, enterprises which have declared and credited tax or had tax refunded, but are later determined as ineligible for tax credit or refund, shall declare, adjust and return the credited and refunded VAT amounts. For businesses that fail to make adjustments and are detected through tax inspection and examination, tax offices shall collect tax arrears and refunded tax amounts and impose fines under regulations. Businesses shall take full responsibility before law for tax credit and refund-related contents they have reported, committed and explained to tax offices.

For establishments selling unprocessed or preliminarily processed agricultural, forest, aquatic or marine products not liable to VAT, the VAT amount on purchased goods and services may be credited based on the percentage (%) of sales of VAT-liable goods or services to total sales of goods or services.

Example 60: Enterprise A investing in rubber farms has an input VAT amount on goods and services at the stage of capital construction. It has not yet had any products as materials for further production and processing of VAT-liable products (including also unprocessed exports or processed products liable to VAT), but has a project to build a rubber latex mill (liable to VAT) and commits that cultivated products will be further processed into VAT-liable products. In this case, the enterprise may credit all input VAT amounts.

If the enterprise sells all the project's rubber latex, which is not liable to VAT, it may not credit tax.

If the enterprise uses part of the project's exploited rubber latex for the production VAT-liable products while selling the rest, input VAT shall be credited as follows:

- Input VAT amount on fixed assets (rubber farm, processing mill, etc.): To be wholly credited (including also VAT amounts arising at the stage of capital construction).

- Input VAT amount on goods and services: To be credited based on the percentage (%) of sales of VAT-liable goods and services to total sales of goods and services.

c/ For business establishments, including newly-established ones, which have investment projects and invest in the production and trading of goods and services both liable and not liable to VAT, the input VAT amount for fixed assets in the capital construction investment phase may be temporarily credited at the percentage (%) of turnover of goods and services to the total turnover of goods and services sold under production and business plans of these business establishments. The temporarily credited tax amount shall be adjusted based on the percentage (%) of turnover of VAT-liable goods and services to the total turnover of goods and services sold within three years counting from the first year in which turnover is generated.

Example 61: Enterprise Z is newly established under a transport investment project. A business scheme under its investment project has turnover from public passenger transport by bus and not by bus, advertisements and vehicle repair and maintenance service, in which bus transport makes up 30% of total sales of goods and services. The capital construction investment phase including purchasing vehicles and building stations and workshops lasts two years from June 2014, to May 2016. During these two years, the input VAT amount for fixed assets in the capital construction investment phase and for goods and services purchased for the enterprise's establishment (business establishment expenses) may be temporarily credited at the rate of 70% and refunded under regulations (but the VAT amount on fixed assets that are automobiles registered to be used as buses may not be credited). It starts generating turnover in June 2016. The turnover from bus transport during the three years from June 2016 to the end of May 2019, makes up 35% of the total turnover of goods and services sold. In this case, the enterprise shall make declaration for reduction of the credited and refunded VAT amount on fixed assets at the rate of 5% (= 70% - 65%) and include such amount to the VAT amount of the declaration period of May 2019. It will not have to pay any fines

or interests for late payment of the credited VAT amount on fixed assets to be reduced.

5. Input VAT on goods (including also goods purchased from outside or goods manufactured by enterprises themselves) used by enterprises as donations or gifts or for sale promotion or advertising in various forms to serve the production of and trading in VAT-liable goods and services is creditable.

6. The VAT amounts already paid under customs offices' tax assessment decisions may be wholly credited, except cases of fraud and tax evasion sanctioned by customs offices.

7. Input VAT on goods and services used for the production of or trading in goods and services not liable to VAT under Article 4 of this Circular may not be credited, except the following cases:

a/ VAT on goods and services purchased by business establishments for the production of or trading in goods and provision of services to foreign organizations and individuals or international organizations for provision of humanitarian aid or non-refundable aid specified in Clause 19, Article 4 of this Circular, may be wholly credited;

b/ Input VAT on goods and services used in prospecting, exploring and developing oil and gas fields to the first day of exploitation or production may be wholly credited.

8. Input VAT arising in a period may be declared for credit immediately when the tax amount payable in that period is determined, regardless of whether relevant goods or services have been delivered for use or remain in stock.

Business establishments detecting errors in the declaration and credit of input VAT may make additional declaration and credit before tax offices or competent agencies announce decisions on tax examination and inspection at their offices.

9. Business establishments may either account non-creditable input VAT amounts as expenses for enterprise income tax calculation or include them in the historical costs of fixed assets, except VAT amounts on goods and services valued at VND 20 million or higher for each purchase without non-cash payment documents.

10. Corporations' or business groups' offices that are not directly engaged in business operations and subsidiary administrative and non-business units such as hospitals, clinics, sanatoriums, institutes, training establishments, etc., which are not VAT payers, are not entitled to input VAT credit or refund for goods and services purchased for their operations.

When these units also deal in VAT-liable goods and services, they shall separately register, declare and pay VAT for these operations.

Example 62: The office of Corporation A is not directly engaged in production and business activities and operates with funds contributed by subsidiary units. If it leases the unused space of its house (office building), it shall separately account, declare and pay VAT for the office lease. The input VAT on goods and services used for the operation of the Corporation's office is neither credited nor refunded.

11. Input VAT on goods and services used for the provision of goods and services not subject to VAT declaration and payment under Article 5 of this Circular (except Clauses 2 and 3, Article 5) may be wholly credited.

12. Business establishments may declare and credit VAT on goods and services purchased through authorization to other organizations or individuals and authorized organizations or individuals are named in the purchase invoices, including the following cases:

a/ Insurance businesses that authorize insured parties to repair assets and pay insured parties corresponding indemnities under insurance policies for the expenses for asset repair and supplies and spare parts with value-added invoices indicating the insured parties' names, may declare and credit VAT amounts corresponding to the indemnities paid according to the value-added invoices indicating the insured parties' names. For indemnities valued at VND 20 million or higher, insurance businesses shall pay them via bank to insured parties.

b/ Before establishing a business, its founders make a written authorization for an organization or a person to pay some expenses related to such establishment and for the purchase of goods and supplies. The business may declare and credit input VAT according to invoices indicating the name of the authorized organization or person and shall pay that organization or person via bank for invoices valued at VND 20 million or higher.

13. For non-business individuals and organizations contributing assets as capital to limited liability or joint-stock companies, documents for these contributed assets are written records of capital contribution and written records of asset delivery and receipt. If the contributed assets are brand-new, have not been used, and have lawful invoices accepted by the capital delivery and receipt council, the value of contributed capital is that indicated in the invoices inclusive of VAT. The capital recipient may declare and credit VAT amounts indicated in the invoices on purchase of the contributed assets.

14. Business establishments that pay VAT by tax calculation directly based on added value and then change to pay tax by the tax credit method may

credit VAT on purchased goods and services arising from the first declaration period of paying tax by the tax credit method.

Business establishments which pay VAT by the tax credit method and change to pay tax by the method of calculation of tax based directly on added value may include the VAT amount not fully credited for goods and services purchased in the period of tax payment by the tax credit method in deductible expenses when determining incomes subject to enterprise income tax, except the refundable VAT amount for goods and services purchased in the period of tax payment by the tax credit method under Article 18 of this Circular and legal documents effective before this Circular takes effect.

Example 63: Limited Liability Company A applies the tax credit method in 2014 and 2015 and is ineligible to apply the tax credit method from January 1, 2016. The company already made and sent its dossier of request for tax refund to the tax office from the tax period of November 2014 to the end of the tax period of October 2015 (the end of the time of determining turnover for determining the method of tax calculation for 2016 and 2017), indicating a refundable tax amount of VND 350 million and a non-credited input VAT amount of VND 50 million in the VAT declaration of the tax period of November 2015. Company A may be considered for tax refund under regulations for the dossier of request for tax refund already sent to the tax office (the refundable tax amount of VND 350 million). The non-credited input VAT amount of VND 50 million in the VAT declaration form of the tax period of November 2015 may be transferred to the tax period of December 2015. Company A may include the non-credited input VAT amount of the tax period of December 2015 in deductible expenses when determining enterprise income tax-liable income.

15. Business establishments are not entitled to input VAT credit when:

- Value-added invoices are used in contravention of law such as value-added invoices not indicating VAT amounts (except particular cases permitted for use of value-added invoices indicating VAT-inclusive payment prices);
- Invoices do not indicate or incorrectly indicate such information as name, address and tax identification number of the seller, making the seller unidentifiable;
- Invoices do not indicate or incorrectly indicate such information as name, address and tax identification number of the buyer, making the buyer unidentifiable (except the cases provided in Clause 12 of this Article);
- Invoices or VAT payment documents are false, invoices are erased or issued without actual provision of goods or services;

- Invoices indicate unreal values of the goods or services traded or exchanged.

16. Other specific cases must comply with separate guidance of the Ministry of Finance.

### **Article 15. Conditions for input VAT credit**

1. Having lawful value-added invoices of purchased goods or services or documents on VAT payment at the importation stage or documents on VAT payment for foreign parties under the Finance Ministry's guidance applicable to foreign organizations without Vietnamese legal entity status and foreigners conducting business or earning incomes in Vietnam.

2. Having non-cash payment documents for purchased goods and services (including also imported goods) valued at VND 20 million or higher, except cases in which the total invoiced value of purchased goods or services at a time is less than VND 20 million calculated at VAT-inclusive prices.

Non-cash payment documents comprise via-bank payment documents and other non-cash payment documents guided in Clauses 3 and 4 of this Article.

3. Via-bank payment document means a document proving the money transfer from the buyer's account to the seller's account (the buyer's and the seller's accounts must be accounts that have been registered or notified to tax offices) opened at payment service institutions by lawful methods of payment such as check, payment order, payment collection, bank card, phone card (e-wallet) and other methods of payment under regulations (including also the case in which the buyer makes payment from its account to the seller's account bearing the name of a private enterprise owner or from its account bearing the name of a private enterprise owner to the seller's account, provided such account has been registered with a tax office for transaction).

a/ Documents on the buyer's deposit of cash into the seller's account or documents on improper methods of payment under current law are ineligible for credit and refund of VAT on goods and services purchased at VND 20 million or higher.

b/ Without via-bank payment documents, input VAT on purchased goods or services with an invoiced value of VND 20 million or higher calculated at a VAT-inclusive price at a time is not creditable. Business establishments shall declare these invoices in the section of goods and services ineligible for tax credit in the list of invoices and documents of purchased goods and services.

c/ For goods or services valued at VND 20 million or higher purchased on deferred or installment payment, business establishments shall declare and

credit input VAT based on goods or service purchase contracts, value-added invoices and via-bank payment documents of these goods or services, and, at the same time, write the payment time limit in the note section of the list of invoices and documents of purchased goods and services. If via-bank payment documents are not available yet as the payment under contracts is not due or before December 31 every year in case the contractual payment time is earlier than December 31, business establishments may still declare and credit input VAT.

If via-bank payment documents are unavailable by the contractual payment time or by December 31 every year in case the contractual payment time is earlier than December 31, business establishments may not credit input VAT and shall declare and reduce input VAT amounts already credited for the value of goods without via-bank payment documents. If business establishments have documents proving via-bank payment after having reduced the input VAT amount credited for the value of goods or services purchased without via-bank payment documents, they may make additional declaration.

In case the deferred payment under contracts is overdue or by December 31 every year and business establishments fail to make reductions under regulations but then have adequate via-bank payment documents before tax offices or competent agencies announce decisions on inspection at their offices, business establishments shall be sanctioned for violation of tax procedures if their failure to make reductions does not result in a deficit in payable tax amounts or an increase in refundable tax amounts. If their failure to make reductions results in a deficit in payable tax amounts or an increase in refundable tax amounts, business establishments are subject to collection of tax arrears or refunded tax amounts and shall be sanctioned under the Tax Administration Law.

In case tax offices announce decisions on examination and inspection at the business establishments' offices and have decisions on disapproval of tax credit on value-added invoices without via-bank payment documents, and the business establishments have documents proving via-bank payment only after receiving the tax offices' decisions:

- They may make additional VAT declaration for value-added invoices for which they have made reductions before the tax inspection and examination is conducted.
- They may make additional declaration for value-added invoices that they fail to make reductions before the tax inspection and examination if they have via-bank payment documents within six months from the month they receive the tax office's handling decision.

In 2014, Limited Liability Company ANB has the following value-added invoices for goods purchase on deferred payment contracts:

- A value-added invoice for goods purchased in March 2014 and payment is due on September 20, 2014.
- A value-added invoice for goods purchased in April 2014 and payment is due on October 20, 2014.
- A value-added invoice for goods purchased in May 2014 and payment is due on November 20, 2014.
- A value-added invoice for goods purchased in June 2014 and payment is due on December 20, 2014.

Company ANB already declared VAT credit upon receiving value-added invoices for goods purchase. If Company ANB has no via-bank payment documents when payment under contracts is due, it shall select to declare reductions for each invoice, or if it has no via-bank payment documents on December 31, 2014, it shall declare reductions for the four above value-added invoices in the tax declaration period of December 2014 in accordance with the tax administration law.

Example 65:

Limited Liability Company Super has the following situation:

Company Super has value-added invoices for goods purchase in February and March 2014 under contracts on deferred payment that is due October 31, 2014. Based on the value-added invoices provided by the seller, company Super already declared VAT credit in the VAT declarations of February and March 2014. Due to financial difficulties, company Super fails to make payment according to the contractual deadline of October 31, 2014. In the tax declaration period of October 2014, company Super itself already declared reductions of credited input VAT amount under regulations and concurrently declared increases in expenses for calculation of enterprise income tax equivalent to the non-creditable input VAT amount.

In April 2015, the tax office issues a decision on VAT inspection at company Super. For value-added invoices on goods purchased in February and March 2014, under contracts on deferred payment which is due on October 31, 2014, the inspection team recognizes the tax amount that the company declared and credited under regulations.

In May 2015, the tax office issues a decision on VAT handling at company Super (the decision does not include the handling of VAT on the value-added invoices of goods purchased in February and March 2014 under

contracts on deferred payment which is due on October 31, 2014, as the inspection team already recognized reductions in accounting figures).

In December 2015, company Super has via-bank payment documents for the value-added invoices on goods purchased in February and March 2014 under contracts on deferred payment that is due on October 31, 2014, it may make additional VAT declaration and concurrently make corresponding reductions in expenses in calculating enterprise income tax.

Example 66:

Limited Liability Company YKK has the following situation:

Company YKK has value-added invoices for goods purchased in March and April 2014 under contracts on deferred payment that is due on September 30, 2014. Based on the value-added invoices provided by the seller, company YKK already declared VAT credit in the tax declaration papers of March and April 2014. When the payment is due on September 30, 2014, company YKK neither pays nor declares to make reductions. By December 31, 2014, company YKK fails to declare the reductions of credited value-added amount without via-bank payment documents.

In April 2015, the tax office issues a decision on VAT inspection at company YKK and the period under inspection is 2014. At the time of inspection, company YKK fails to produce via-bank payment documents for value-added invoices under contracts on deferred payment that is due on September 30, 2014. The inspection team disapproves company YKK's declaration for VAT credit for invoices without via-bank payment documents.

In May 2015, the tax office issues a decision on retrospective collection of VAT amounts at company YKK.

In case in October 2015, company YKK can produce via-bank payment documents for value-added invoices for goods purchased in March 2014 under contracts for deferred payment that is due in September 2014, the company may make additional VAT declaration because the time of producing via-bank payment documents is within six months since the tax office issues the decision on retrospective tax collection.

In case in December 2015, company YKK can produce via-bank payment documents for value-added invoices for goods purchased in April 2014 under contracts for deferred payment that is due on September 30, 2014, the company may not make additional VAT declaration because the time of producing via-bank payment documents is beyond six months since the tax office issues the decision on retrospective tax collection.

Example 67:



In September 2014, the Taxation Department of province B issues a decision on handling of tax and administrative violations committed by Joint-Stock Company PNG after inspecting the observance of tax laws. The decision stipulates retrospective collection of the refunded VAT amount of VND 460 million which is VAT on purchased goods and services worth VND 20 million or higher, and the via-bank payment documents of the dossier with refunded tax amounts for the period from August 2013 to August 2014 are unavailable at the time of inspection when the contractual payment time is overdue. Joint-Stock Company PNG has fully paid the tax amount to the state budget.

In October 2014, Joint-Stock Company PNG produces via-bank payment documents for invoices for goods purchased under contracts that payment is overdue with the VAT amount of VND 460 million already collected by the tax office in October 2014, the company may make additional declaration for adjustment under regulations.

#### 4. Other cases of non-cash payment for input VAT credit include:

a/ For goods and services purchased by clearing their value against that of sold goods and services or by goods borrowing, which is specified in the contract, there must be a written record of comparison of figures certified by the two parties of such clearing or borrowing. In case of debt clearing through a third party, there must be a written record of debt clearing by the three (3) parties as a basis for tax credit.

b/ For goods and services purchased by debt clearing such as money borrowing and lending or debt clearing through a third party, which is specified in the contract, there must be a borrowing and lending contract established in writing earlier and a document on money transfer from the lender's account to the borrower's, for a money loan, including also the case of clearing the value of purchased goods and services against the amount the seller supports the buyer or asks the buyer to make payment on its behalf.

c/ In case purchased goods and services are paid for via bank by an authorized third party (including also the case in which the seller requests the buyer to make via-bank payment to a third party designated by the seller), the payment to the third party authorized or designated by the seller must be specified in a written contract and the third party must be a legal person or entity currently operating in accordance with law.

In case after the above methods of payment are applied and the remaining value of VND 20 million or higher is paid in cash, tax may be credited only upon availability of via-bank payment documents. When declaring input value-added invoices, business establishments shall clearly write the methods of payment specified in the contracts in the note section of the list of invoices and documents of purchased goods and services.

d/ In case purchased goods and services are paid for via bank into the third party's account at the State Treasury to implement coercive measures of collecting money, input VAT may be credited for property being held by other organizations and individuals (under competent state agencies' decisions).

Example 68:

Company A buys goods from company B and company A still owes company B. However, company B still owes tax to the state budget. Based on the Tax Administration Law, the tax office enforces a decision on tax administration by collecting company B's money and property being held by company A. Company A's money transfer to the budget collection account is considered via-bank payment and the input VAT amount corresponding to the purchased goods turnover may be declared and credited.

Example 69:

Company C signs an economic contract on goods supply with company D and the latter owes money to company C.

The competent state agency's decision on the collection of the whole money amount that company D owes company C for transfer to an account of the competent state agency opened at the State Treasury aims to settle disputes over the goods purchase contract between company C and its partner.

Company D's money transfer to the competent state agency's account (this transfer is not specified in the purchase and sale contract between company C and company D) is also considered via-bank payment, and the input VAT amount corresponding to the goods purchase turnover may be declared and credited.

5. In case a goods or service valued at less than VND 20 million is purchased from a supplier several times on a day with a total purchase value of VND 20 million or higher, VAT may be credited only for via-bank payments with supporting documents. The supplier must be a VAT payer possessing a tax identification number and directly declaring and paying VAT.

**Article 16.** Conditions for input VAT credit and refund for exported goods and services

To be eligible for VAT credit and refund, exported goods and services (except those specified in Article 17 of this Circular) must satisfy all the conditions and procedures prescribed in Clause 2, Article 9 and Clause 1, Article 15 of this Circular, specifically as follows:

1. Contracts on sale of goods, processing of goods (for cases of goods processing), or provision of services to foreign organizations or individuals. For export consignment, export consignment contracts and written records of

liquidation of export consignment contracts (if contracts have terminated) or written records of periodical comparison of liabilities between the export consignor and consignee, clearly stating the quantity and category of products, the value of goods already exported under consignment; the serial number and date of the export contract signed between the export consignee and the foreign party; the serial number and date of, and the sum of money indicated in, the document of via-bank payment made by the export consignee to the foreign party; the serial number and date of, and the sum of money indicated in, the document of payment made by the export consignor to the export consignee; the serial number and date of the export consignee's customs declaration for the exported goods.

2. Customs declaration of exported goods for which customs procedures have been cleared under the Ministry of Finance's guidance on customs procedures; customs inspection and control; export duty and import duty and tax administration of exported and imported goods.

To enjoy input VAT credit and refund, business establishments exporting software products in the form of document, file or packaged database shall clear customs declaration procedures applicable to ordinary goods.

Particularly for the following cases, customs declarations are not required:

- Business establishments that export services or software electronically. However, these business establishments shall comply with all regulations on procedures for certification that the purchaser has received services or software exported electronically in accordance with the law on e-commerce.
- Construction and installation of works in foreign countries or non-tariff zones.

- Business establishments that supply electricity, water, stationery and goods for daily operations of export processing enterprises, including food, foodstuff, consumer goods (including also labor safety clothing: trousers, blouses, caps, shoes, boots and gloves).

### 3. Exported goods and services subject to via-bank payment

a/ Via-bank payment means the transfer of money from the importer's account to the account bearing the exporter's name opened at a bank according to the mode of payment agreed under the contract and the bank's regulations. Payment document means the credit note of the exporter's bank of the amount received from the importer's bank account. In case of deferred payment, the agreement thereon must be stated in the export contract, and when the payment is due, the business establishment must have a via-bank payment document. In

case of export consignment, there must be a document of via-bank payment made by the foreign party to the consignee and the export consignee shall make via-bank payment for exports to the consignor. In case direct payment is made by the foreign party to the export consignor, the export consignor must have a via-bank payment document and this mode of payment must be stated in the contract.

b/ The following cases of payment are also regarded as via-bank payment:

b.1/ Payments for exported goods or services are cleared against foreign loans and business establishments satisfy all the following conditions, procedures and dossiers:

- Loan contract (for financial loans of a term of under 1 year); or loan registration certificate of the State Bank of Vietnam (for loans of a term of over 1 year).

- Document on via-bank money transfer into Vietnam by the foreign party.

The mode of payment for exported goods or services by clearing against foreign loans must be stated in the export contract.

- The foreign party's written certification of the loan clearing.

- Any difference between the value of exported goods or services and the foreign loan must be paid via bank. Documents of such via-bank payment must comply with the guidance in this Point.

b.2/ The exporter uses payments for exported goods or services as capital contribution to an overseas importer and this business establishment satisfies all the following procedures and dossier requirements:

- It has a capital contribution contract.

- The use of payments for exported goods or services as capital contribution to an overseas importer is stated in the export contract.

- In case the contributed capital amount is smaller than the revenues from exported goods, the difference must be paid via bank under the guidance of this Point.

b.3/ The foreign party authorizes a third party that is a foreign-based organization or individual to make payment and the authorized payment is stated in the export contract (or a contract annex or contract modification note, if any).

b.4/ The foreign party requests a third party being a Vietnam-based organization to clear liabilities with the foreign party by making via-bank

payment of the amount payable by the foreign party to the exporter, and such request is stated in the export contract (or a contract annex or contract modification note, if any) and there is a payment document being the credit note of the exporter's bank of the amount received from the third party's account, at the same time, the exporter produces the written record of comparison of liabilities certified by the foreign party and the third party.

b.5/ The foreign party (the importer) authorizes a third party being a foreign-based organization or individual to make payment; the third party requests a Vietnam-based organization (the fourth party) to clear liabilities with the third party by making via-bank payment of the amount payable by the importer to the Vietnamese exporter; and the exporter satisfies all the conditions and dossier requirements as follows:

- The export contract (or a contract annex or contract modification note, if any) provides the authorized payment and clearing of liabilities between parties.

- The payment document is the bank's credit note of the amount received from the fourth party's account by the Vietnamese exporter.

- The note of comparison of liabilities certified by involved parties (between the exporter and importer and between the foreign-based third party and Vietnam-based fourth party).

b.6/ The foreign party authorizes its Vietnam-based representative office to make payment to the exporter's account and this authorized payment is provided in the export contract (or a contract annex or contract modification note, if any).

b.7/ The foreign party (except foreign individual) makes payment from its current deposit account opened at a credit institution in Vietnam and this payment is stated in the export contract (or a contract annex or contract modification note, if any). The payment document is the credit note of the exporter's bank of the amount received from the current account of the foreign purchaser that has signed the contract.

Also regarded as via-bank payment is the case in which goods are exported to a foreign purchaser being a private enterprise, the payment is made through the private enterprise owner's current account opened a Vietnam-based credit institution and such payment is stated in the export contract (or a contract annex or contract modification note, if any).

When inspecting VAT credit and refund for exported goods paid through the current account, the tax office shall coordinate with the credit institution at which the foreign purchaser opens its account to ensure proper and lawful payment and money transfer.

b.8/ In case the foreign party makes via-bank payment but the paid amount indicated in the payment document does not match the amount payable under the contract or contract annex:

- If the paid amount indicated in the via-bank payment document is smaller than the amount payable under the contract or contract annex, the business establishment shall clearly state the reason such as bank transfer charges, discount as a result of goods' poor quality or deficient quantity (in this case, a written agreement on discount is required), etc.;

- If the paid amount indicated in the via-bank payment document is larger than the amount payable under the contract or contract annex, the business establishment shall clearly state the reason such as lump-sum payment for many contracts, payment advances, etc.

The business establishment shall undertake to take responsibility before law for the reasons given to the tax office and modification documents (if any).

b.9/ In case the foreign party makes via-bank payment, but the via-bank payment document does not bear the name of the bank of payment stated in the contract, if the payment document indicates the names of the payer and payee, the export contract serial number and the payment value matching the signed export contract, such document is regarded as valid.

b.10/ In case the business establishment exports goods or services to a foreign party (the second party) and concurrently imports goods or services from another foreign party or purchases goods or services from a Vietnam-based organization or individual (the third party); if the business establishment reaches agreement with the second party and the third party on the second party's via-bank payment to the third party of the amount payable by the business establishment to the third party, the clearing of liabilities between the parties must be stated in the export, import or purchase contract (or contract annex or modification note, if any) and the business establishment must produce the note of comparison of liabilities certified by the involved parties (between the business establishment and the second party, and the business establishment and the third party).

b.11/ In case goods exported to a country are rejected by the foreign purchaser for objective reasons and the exporter finds another purchaser in the same country, the tax refund dossier comprises the entire export dossier related to the export contract signed with the original purchaser (contract, customs declaration of exported goods, invoice), the exporter's written explanation about the discrepancy in the purchaser name (covering its commitment to taking responsibility for the truthfulness of information without any frauds), the entire export dossier related to the export contract signed with the new

purchaser (contract, sale invoice, via-bank payment document in accordance with law and other documents, if any).

c/ Other cases of payment for exported goods and services as prescribed by the Government:

c.1/ For business establishments sending guest workers abroad which collect money directly from these workers, receipts of cash amounts paid by these workers are required.

c.2/ For business establishments exporting goods for sale at overseas fairs or exhibitions which collect and transfer home cash in currencies of the countries where these trade fairs or exhibitions are organized, customs declarations of foreign-currency amounts from the goods sale transferred home and documents on remittance into banks in Vietnam are required.

c.3/ In case of exporting goods or services to repay the Government's foreign debts, the foreign trade bank's certification that the exported goods shipment has been accepted by the foreign country for debt clearing or that the document set has been forwarded to the foreign country for debt clearing is required. Payment documents in this case must comply with the Finance Ministry's guidance.

c.4/ Payment for exported goods or services in kind means the case in which goods (including goods processed for export) or services are exported to a foreign organization or individual (referred to as the foreign party) but the payment between the Vietnamese enterprise and foreign party is made by clearing the value of exported goods or services or exported goods-processing charges against the value of goods or services purchased from foreign parties.

Exported goods or services paid in kind must satisfy additional dossier requirements as follows:

- The mode of payment for exported goods in kind is stated in the export contract.

- The foreign party's goods or service purchase contract.

- The customs declaration of imported goods paid for exported goods or services.

- The foreign party's written certification of the clearing payment between the exported goods or services and the goods or services imported from the foreign party.

- When a difference arises from the clearing of the value of exported goods or services against that of imported goods or services, such difference must be paid via bank. Documents of such via-bank payment must comply with this Clause.

c.5/ The export of goods to a bordering country under the Prime Minister's regulations on management of border trade with bordering countries must comply with the guidance of the Ministry of Finance and the State Bank.

c.6/ Some cases involving other modes of payment for exported goods and services are in accordance with relevant laws.

d/ Cases of export without via-bank payment entitled to tax credit and refund:

d.1/ In case of insolvency of the foreign party, the exporter shall make a written explanation and may use one of the following papers as the substitute for the via-bank payment document:

- The customs declaration of imports from Vietnam registered with a customs office of the country of importation (1 copy); or

- A lawsuit petition filed with a court or competent authority of the country in which the purchaser resides, together with such authority's notice or written certification of acceptance of the lawsuit petition (1 copy); or

- A foreign court's ruling on the exporter's winning of the lawsuit (1 copy); or

- A foreign competent authority's written certification (or notice) of the purchaser's bankruptcy or insolvency (1 copy).

d.2/ For inferior-quality exports subject to destruction, the exporter shall make a written explanation and may use the record of destruction (or a written certification of destruction) of goods overseas made by the agency conducting the destruction (1 copy), together with the document of via-bank payment for destruction expenses payable by the exporter or a paper proving the purchaser's or third party's responsibility for paying such expenses (1 copy).

When the importer has to carry out procedures for destruction overseas, the destruction record (or written certification of destruction) must indicate the importer's name.

d.3/ For lost exports, the goods exporter shall make a written explanation and may use one of the following papers to replace the via-bank payment document:

- Written certification of the loss outside Vietnam by a relevant authority (1 copy);

- Written record of the loss of goods during transportation outside Vietnam, clearly stating the cause (1 copy);

A goods exporter that has received indemnities for exports lost outside Vietnam shall send the via-bank payment document of the received amount (1 copy).

Copies of the papers specified at Points d.1, d.2 and d.3 of this Clause are copies bearing the true-copy certification by goods exporters. In case the language used in a third party's documents or written certifications to replace via-bank payment documents is other than English or there is no English version, a notarized translation is required. If involved parties issue, use and store documents electronically, hard copies of those documents are required.

Goods exporters shall take full responsibility for the accuracy of papers replacing via-bank payment documents in the above cases.

4. Value-added invoices for sale of goods or provision of services, or export invoices, or invoices of payment for processing of goods.

**Article 17.** Conditions for input VAT credit and refund in some cases in which goods are regarded as exports:

1. Intermediary processed goods as prescribed in the commercial law regarding international goods purchase and sale and goods purchase, sale and processing agency with foreign countries:

a/ Export processing contract and its annexes (if any) signed with the foreign party, clearly stating the goods recipient in Vietnam;

b/ Value-added invoice clearly stating the processing charge and the quantity of processed goods delivered to the foreign party (at the price stated in the contract signed with the foreign party) and the name of the goods recipient designated by the foreign party;

c/ Bill of delivery of intermediary processed products (referred to as delivery bill for short) with certifications of the deliverer and the recipient of intermediary processed products and certifications of the customs offices managing the processing contract of the deliverer and recipient;

d/ Payment for goods processed for foreign parties must be made via bank under Article 16 of this Circular.

The procedures for delivery and receipt of intermediary processed goods and delivery bills are as guided by the General Department of Customs.

Example 70: Company A signs with a foreign party a contract to process 200,000 pairs of shoe soles for export. The processing charge is VND 800 million. The contract clearly states that the shoe soles will be delivered to company B in Vietnam for production of finished shoes.

In this case, company A is regarded as undertaking the intermediary processing of products for export. On the document of delivery of shoe soles to company B, company A shall clearly write the quantity, category and specifications of products delivered. The whole turnover of VND 800 million from the processing of shoe soles is subject to the VAT rate of 0%.

2. Processed goods for on-spot export in accordance with law:

a/ Goods purchase and sale contract or processing contract designating goods delivery in Vietnam;

b/ Customs declaration of on-spot exports or imports for which customs procedures have been cleared;

c/ Value-added invoice or export invoice, clearly stating the names of the foreign purchaser and goods recipient and the place of delivery in Vietnam;

d/ Payment for goods sold to foreign traders but delivered in Vietnam shall be made via bank in a freely convertible foreign currency. Via-bank payment documents comply with Clause 3, Article 16 of this Circular. When the on-spot importer is authorized by the foreign party to make payment to the on-spot exporter, the currency of payment complies with the foreign exchange law;

dd/ On-spot exports of foreign-invested enterprises must comply with their investment licenses.

3. For goods and supplies exported by Vietnamese enterprises to implement overseas construction projects, procedures and dossiers for these Vietnamese enterprises to enjoy input VAT credit or refund must satisfy the following requirements:

a/ There is a customs declaration under Clause 2, Article 16 of this Circular;

b/ Exported goods and supplies conform with the list of goods exported for the implementation of an overseas construction project approved by the director of the Vietnamese enterprise implementing that project;

c/ There is an export consignment contract (for export consignment).

4. For goods and supplies sold by domestic businesses to Vietnamese enterprises for the implementation of overseas construction projects and delivered overseas under signed contracts, procedures and dossiers for domestic sellers to enjoy input VAT credit or refund for exported goods must satisfy the following requirements:

a/ There is a customs declaration under Clause 2, Article 16 of this Circular;

b/ Exported goods and supplies conform with the list of goods exported for the implementation of an overseas construction project approved by the director of the Vietnamese enterprise implementing that project;

c/ There is a purchase and sale contract signed between the domestic business and the Vietnamese enterprise implementing the overseas construction project, clearly stating delivery conditions and quantity, category and value of goods;

d/ There is a consignment contract (in case of export consignment);

dd/ There is a via-bank payment document;

e/ There is a value-added invoice on goods sale.

Business establishments that have exported goods or goods regarded as exports mentioned in Articles 16 and 17 of this Circular and have obtained customs certifications (for exported goods) but still lack other formalities and documents as required for each particular case are neither required to calculate output VAT nor entitled to input VAT credit. Particularly for cases involving intermediary processed goods and on-spot exported goods, business establishments that lack one of the required formalities or documents shall calculate and pay VAT as for domestically sold goods. Business establishments providing export services that fail to satisfy the condition on via-bank payment or the condition for being regarded as via-bank payment may enjoy neither the VAT rate of 0% nor VAT credit, but are not required to calculate output VAT.

## Section 2

### TAX REFUND

#### Article 18. Beneficiaries and cases of VAT refund

1. Business establishments that pay tax by the credit method and have input VAT amounts not fully credited in a month (for monthly declaration) or in a quarter (for quarterly declaration) may have those amounts credited in the subsequent period. If they have accumulated input VAT amounts not fully credited for at least 12 months from the first month or at least 4 quarters from the first quarter in which those amounts arise, they are entitled to tax refund.

Example 71: Enterprise A declares on a monthly basis input and output VAT amounts as follows:

Unit of calculation: VND million

<b>Tax period</b>	<b>Previous period's input tax to be credited</b>	<b>Input tax creditable in the period</b>	<b>Output tax on goods and services sold in the period</b>	<b>VAT amount arising in the period</b>	<b>VAT amount to be paid (or not fully credited in this period and to be credited in the subsequent period) in the period</b>
(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

In the above example, enterprise A has an accumulated input tax amount for 12 months from the first month it has an input VAT amount not fully credited (May 2014) to April 2015 when it still has an input VAT amount not fully credited. Enterprise A is entitled to a VAT refund not exceeding VND 190 million.

Example 72: Enterprise B declares on a monthly basis input and output VAT amounts as follows:

Unit of calculation: VND million

<b>Tax period</b>	<b>Previous period's input tax to be credited</b>	<b>Input tax creditable in the period</b>	<b>Output tax on goods and services sold in the period</b>	<b>VAT amount arising in the period</b>	<b>VAT amount to be paid (or to be credited in the subsequent period) in the period</b>
(1)	(2)	(3)	(4)	(5)=(4)-(3)	(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

In the above example, in January, February and March 2014, enterprise B has input VAT amounts not fully credited to be carried forward to April 2014 for credit. In April 2014, enterprise B has a payable tax amount of VND 10 million. In May 2015, it again has an input VAT amount not fully credited. For 12 months from May 2014 to April 2015, enterprise B still has an accumulated input VAT amount not fully credited so it is entitled to a VAT refund not exceeding VND 180 million.

Example 73. Enterprise C declares on a quarterly basis input and output VAT amounts as follows:

Unit of calculation: VND million

Tax period	Previous period's input tax to be credited	Input tax creditable in the period	Output tax on goods and services sold in the period	VAT amount arising in the period	VAT amount to be paid (or not fully credited in this period and to be credited in the subsequent period) in the period
(1)	(2)	(3)	(4)	(5)=(4)-(3)	(6)=(5)-(2)
1 <sup>st</sup> quarter of 2014	0	70	72	2	2
2 <sup>nd</sup> quarter of 2014	0	100	20	-80	- 80
3 <sup>rd</sup> quarter	80	60	70	10	- 70

of 2014					
4 <sup>th</sup> quarter of 2014	70	50	52	2	- 68
1 <sup>st</sup> quarter of 2015	68	62	60	-2	- 70

In the above example, enterprise C still has an accumulated input VAT amount not fully credited for 4 quarters, counting from the first quarter it has an input VAT amount not fully credited (2<sup>nd</sup> quarter) to the 1<sup>st</sup> quarter of 2015. Enterprise C is entitled to a VAT refund not exceeding VND 70 million.

2. Business establishments newly established under investment projects that have made business registration and registered to pay VAT by the credit method, or under oil and gas exploration, prospection and development projects still at the investment stage and not yet commissioned are entitled to VAT refund for goods and services used for investment in each year if their investment duration is one year (12 months) or longer.

If the accumulated VAT amount for goods and services purchased for investment reaches VND 300 million or more, VAT will be refunded.

### 3. VAT refund for new investment projects

a/ Operating business establishments paying VAT by the credit method that have new investment projects still at the investment stage (other than commercial housing investment projects) in the same province or city where they are headquartered shall make separate declarations for those projects and carry forward input VAT amounts of these projects for clearing against declared VAT amounts for their ongoing production and business activities. The VAT amount carried forward from investment projects must not exceed the business establishment's payable VAT amount for production and business activities in the period.

After clearing, if a new investment project's input VAT amount not fully credited is VND 300 million or more, the project is entitled to VAT refund.

After clearing, if a new investment project's input VAT amount not fully credited is less than VND 300 million, this amount may be carried forward to the investment project's input VAT amount of the subsequent declaration period.

In a declaration period, a business establishment that has an input VAT amount for production and business activities not fully credited and an input VAT amount for its new investment project is entitled to VAT refund under Clauses 1 and 3 of this Article.

Example 74: Company A is headquartered in Hanoi. In March 2014, it has a new investment project in Hanoi, which is at the investment stage. Company A makes separate declaration of input VAT amounts for this project. In April 2014, the project's input VAT amount is VND 500 million; the payable VAT amount for the company's ongoing production and business activities is VND 900 million. Company A shall clear its investment project's input VAT amount of VND 500 million against the payable amount for its ongoing production and business activities (VND 900 million), so the company's payable VAT amount in the tax period of April 2014 is VND 400 million.

Example 75: Company B is headquartered in Hai Phong. In March 2014, it has a new investment project in Hai Phong, which is at the investment stage. Company B makes separate declaration of input VAT amounts for this project. In April 2014, the investment project's input VAT amount is VND 500 million; the payable VAT amount for the company's ongoing production and business activities is VND 200 million. Company B shall clear VND 200 million from its investment project's input VAT amount against the payable amount for its ongoing production and business activities (VND 200 million), so in the tax period of April 2014, the company's input VAT amount for its new investment project not fully credited is VND 300 million and the company may be considered for VAT refund for its investment project.

Example 76: Company C is headquartered in Ho Chi Minh City. In March 2014, it has a new investment project in Ho Chi Minh City, which is at the investment stage. Company C makes separate declaration of input VAT amounts for this project. In April 2014, the investment project's input VAT amount is VND 500 million; the payable VAT amount for the company's ongoing production and business activities is VND 300 million. Company C shall clear VND 300 million from its investment project's input VAT amount against the payable amount for its ongoing production and business activities (VND 300 million), so in the tax period of April 2014, the company's input VAT amount for its new investment project not fully credited is VND 200 million. Company C is not entitled to VAT refund for its investment project and may carry forward VND 200 million to the investment project's input VAT amount in the declaration period of May 2014.

Example 77: Company D is headquartered in Da Nang city. In March 2014, it has a new investment project in Da Nang city, which is at the investment stage. Company D makes separate declaration of input VAT amounts for this project. In April 2014, the investment project's input VAT amount is VND 500 million; the VAT amount for the company's ongoing production and business activities not fully credited is VND 100 million. So, in the tax period of April 2014, the input VAT amount for the new investment

project (VND 500 million) is entitled to VAT refund, the VAT amount for the company's ongoing production and business activities not fully credited (VND 100 million) may be considered for VAT refund under Clause 1 of this Article.

b/ Operating business establishments paying VAT by the credit method that have new investment projects (other than commercial housing investment projects) in provinces or centrally run cities other than those in which they are headquartered and these projects are still at the investment stage, have neither commenced operation nor made business and tax registration shall make separate tax declaration dossiers for these investment projects and clear input VAT amounts for those investment projects against declared VAT amounts for their ongoing production and business activities. The cleared VAT amount of investment projects must not exceed the payable VAT amount for the business's production and business activities in the period.

After clearing, if a new investment project's input VAT amount not fully credited is VND 300 million or more, the investment project is entitled to VAT refund.

After clearing, if a new investment project's input VAT amount not fully credited is less than VND 300 million, this amount may be carried forward to the investment project's input VAT amount of the subsequent declaration period.

In a declaration period, a business establishment that has an input VAT amount for production and business activities not fully credited and an input VAT amount for its new investment project is entitled to VAT refund under Clause 1 and Clause 3 of this Article.

Particularly, national important projects whose investment and criteria are decided by the National Assembly will not have tax amounts carried forward and must comply with the Ministry of Finance's specific guidance.

For business establishments that establish project management units or branches in provinces or centrally run cities other than those in which they are headquartered in order to manage, on behalf of taxpayers, one or more than one investment project in different localities and these project management units or branches have their lawful seals, keep books and documents in accordance with the accounting law, have bank accounts and have made tax registration and obtained tax identification numbers, the project management units or branches shall make separate tax declaration and refund dossiers at local tax agencies with which they have made tax registration. When an investment project to establish a new business is completed and has completed procedures for business registration and tax payment registration, the business establishment being the project owner shall summarize the project's arising VAT amounts, refunded VAT amounts and VAT amounts not yet refunded for

transfer to the new business establishment which shall declare and pay, or request refund of, VAT to the directly managing tax agency under regulations.

An investment project entitled to VAT refund under Clause 2 or 3 of this Article is the one approved by a competent authority in accordance with the investment law. If the investment project is not subject to approval in accordance with the investment law, it must have an investment plan approved by a person with investment deciding competence.

Example 78: Company A is headquartered in Hanoi. In March 2014, it has a new investment project in Hung Yen, which is at the investment stage and has neither commenced operation nor made business and tax registration. Company A separately declares input VAT amounts for this project in Hanoi in the VAT declaration form for investment project. In April 2014, the investment project's input VAT amount is VND 500 million; the payable VAT amount for the company's ongoing production and business activities is VND 900 million. Company A shall clear the investment project's input VAT amount of VND 500 million against the payable VAT amount for ongoing production and business activities (VND 900 million). So, its payable tax amount in the tax period of April 2014 is VND 400 million.

Example 79: Company B is headquartered in Hai Phong. In March 2014, it has a new investment project in Thai Binh, which is at the investment stage and has neither commenced operation nor made business and tax registration. Company B separately declares input VAT amounts for this project in Hai Phong in the VAT declaration form for investment project. In April 2014, the investment project's input VAT amount is VND 500 million; the payable VAT amount for the company's ongoing production and business activities is VND 200 million. Company B shall clear VND 200 million from the investment project's input VAT amount against the payable VAT amount for ongoing production and business activities (VND 200 million). So, in the tax period of April 2014, the company's input VAT amount for the new investment project not fully credited is VND 300 million. Company B may be considered for VAT refund for the investment project.

Example 80: Company C is headquartered in Ho Chi Minh City. In March 2014, it has a new investment project in Dong Nai, which is at the investment stage and has neither commenced operation nor made business and tax registration. Company C separately declares input VAT amounts for this project in Ho Chi Minh City in the VAT declaration form for investment project. In April 2014, the investment project's input VAT amount is VND 500 million; the payable VAT amount for the company's ongoing production and business activities is VND 300 million. Company B shall clear VND 300 million from the investment project's input VAT amount against the payable

VAT amount for ongoing production and business activities (VND 300 million). So, in the tax period of April 2014, the company's input VAT amount for the new investment project not fully credited is VND 200 million. Company C is not entitled to VAT refund for the investment project and shall carry forward VND 200 million to the investment project's input VAT amount of the declaration period of May 2014.

Example 81: Company D is headquartered in Da Nang city. In March 2014, it has a new investment project in Quang Nam, which is at the investment stage and has neither commenced operation nor made business and tax registration. Company D makes separate declaration of input VAT amounts for this project in Da Nang on the VAT declaration form for investment project. In April 2014, the investment project's input VAT amount is VND 500 million; the VAT amount for the company's ongoing production and business activities not fully credited is VND 100 million. So, in the tax period of April 2014, the input VAT amount for the new investment project (VND 500 million) is entitled to VAT refund, and the VAT amount for the company's ongoing production and business activities not fully credited (VND 100 million) may be considered for VAT refund under Clause 1 of this Article.

4. If in a month (for monthly declaration) or a quarter (for quarterly declaration), a business establishment exports goods or services and the input VAT amount for exported goods or services not yet credited is VND 300 million or more, the business establishment is entitled to VAT refund on a monthly or quarterly basis. If the input VAT amount for exported goods or services in the month or quarter is less than VND 300 million, this input VAT amount may be credited in the subsequent month or quarter.

If in a month or a quarter, a business establishment both exports and domestically sells goods or services, it is entitled to VAT refund for the exported goods or services if the input VAT amount for the exported goods or services not fully credited is VND 300 million or more.

The refundable input VAT amount for exported goods or services shall be determined as follows:

VAT amount not fully credited of the month/quarter	=	Output VAT amount for domestically sold goods or services	-	Total creditable input VAT amount in the month/quarter (including input VAT amount for export activities and taxable domestic business activities in the month/quarter and VAT amount not fully credited from the previous month/quarter)
---	---	---	---	--

$$\text{Input VAT amount for exported goods or services} = \frac{\text{VAT amount not fully credited of the month/quarter}}{\text{Total turnover from taxable goods or services sold in the period (including export turnover)}} \times \frac{\text{Total export turnover in the period}}{\text{Total turnover from taxable goods or services sold in the period (including export turnover)}} \times 100\%$$

Particularly for commercial business establishments that purchase goods for export, the refundable input VAT amount for exported goods shall be determined as follows:

$$\text{Input VAT amount for exported goods or services} = \frac{\text{VAT amount not fully credited of the month/quarter}}{\text{VAT amount of the month/quarter}} \times \frac{\text{Input VAT amount for goods inventory at the end of the month/quarter}}{\text{Input VAT amount for goods inventory at the end of the month/quarter}} \times \frac{\text{Total export turnover in the period}}{\text{Total turnover from taxable goods or services sold in the period (including export turnover)}} \times 100\%$$

If the input VAT amount for exported goods or services calculated as above and not yet credited is less than VND 300 million, a business establishment may not be considered for VAT refund on a monthly/quarterly basis but shall carry forward it to the subsequent tax period; if this amount is VND 300 million or more, the business is entitled to VAT refund on a monthly/quarterly basis.

### Example 82:

In March 2014, the VAT declaration form of enterprise X has the following statistics:

- VAT amount carried forward from the previous period: VND 0.15 billion.
- Input VAT amount for export and taxable domestic business activities arising in the month: VND 4.8 billion.
- Total turnover is VND 21.6 billion, including VND 13.2 billion in export turnover and VND 8.4 billion in taxable domestic turnover.

Percentage of export turnover/total turnover =  $13.2/21.6 \times 100\% = 61\%$

- Output VAT amount for goods and services sold domestically is VND 0.84 billion.

The monthly refundable VAT amount for exported goods shall be determined as follows:

VAT amount not fully

VND 0.84 billion - VND  $(0.15 + 4.8)$  billion

$$\begin{aligned}
 \text{credited of the month} &= \\
 &= - \text{VND } 4.11 \text{ billion}
 \end{aligned}$$

So, the VAT amount not fully credited of the month is VND 4.11 billion.

- Determination of the input VAT amount for exported goods

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

The input VAT amount for exported goods (after being cleared and distributed) not fully credited is VND 2.507 billion, which is larger than (>) VND 300 million, so the business establishment is entitled to a VAT refund of VND 2.507 billion for the month/quarter. The input VAT amount for domestically sold goods and services, which is not entitled to refund on a monthly basis, is VND 1.603 billion (VND 1.603 billion = VND 4.11 billion - VND 2.507 billion) and will be carried forward to the subsequent period for credit.

Example 83:

In March 2014, the VAT declaration of commercial import-export enterprise X has the following statistics:

- VAT amount carried forward from the previous period: VND 200 million.

- Input VAT amount for export and taxable domestic business activities arising in the month: VND 4.8 billion.

- Total turnover is VND 21.6 billion, including VND 13.2 billion in export turnover and VND 8.4 billion in taxable domestic turnover.

Percentage of export turnover/total turnover =  $13.2/21.6 \times 100\% = 61\%$

- Output VAT amount for domestically sold goods and services is VND 840 million.

- Value of input VAT-inclusive goods inventories at the end of March 2014 is VND 10 billion, equivalent to the declared and credited input VAT amount of VND 1 billion (tax rate of 10%)

The monthly refundable VAT amount for exported goods shall be determined as follows:

$$\begin{aligned}
 \text{VAT amount not} &= \text{VND } 840 \text{ million} - (\text{VND } 200 \text{ million} + \text{VND } \\
 \text{fully credited of the} &= 4,800 \text{ million}) \\
 \text{month} &= - \text{VND } 4.160 \text{ million}
 \end{aligned}$$

The input VAT amount to be credited after deducting the input VAT amount for goods and material inventories is:

$$\text{VND } 4,160 \text{ million} - \text{VND } 1,000 \text{ million} = \text{VND } 3,160 \text{ million}$$

- Determination of the input VAT amount for exported goods

$$\begin{aligned}\text{Input VAT amount for exported goods} &= \text{VND } 3,160 \text{ million} \times 61\% \\ &= \text{VND } 1,927.6 \text{ million}\end{aligned}$$

The input VAT amount for exported goods (after being cleared and distributed) not fully credited is VND 1,927.6 million, which is larger than (>) than VND 300 million, so the business is entitled to a VAT refund of VND 1,927.6 million for the month/quarter. The input VAT amount for domestically sold goods and services and inventories which is not entitled to refund on a monthly basis, is VND 2,232.4 million (VND 2,232.4 million = VND 4,160 million - VND 1,927.6 million) and will be carried forward to the subsequent period for credit.

The following business establishments are entitled to tax refund in some cases of export: For export entrustment, establishments having goods exported under entrustment; for transit processing, establishments signing export processing contracts with foreign parties; for goods exported for the construction of works overseas, enterprises having exported goods and supplies for such construction; for goods exported on the spot, enterprises having such goods.

5. Business establishments paying VAT by the credit method are entitled to VAT refund upon their ownership transformation, enterprise transformation, merger, consolidation, division, split, dissolution, bankruptcy or operation termination if they have overpaid VAT amounts or input VAT amounts not fully credited.

A business establishment still at the investment stage without having commenced any production and business activities that is dissolved without any arising output VAT amounts for its main business line under the investment project is not entitled to VAT refund. If that business establishment has received a refunded amount for its investment project, such amount must be returned to the state budget.

6. VAT refund for programs and projects funded with non-refundable official development assistance (ODA) or non-refundable or humanitarian aid:

a/ For projects funded with non-refundable ODA: Program or project owners or principal contractors or organizations designated by foreign donors to manage programs or projects are entitled to refund of VAT amounts paid for goods and services purchased in Vietnam for these programs or projects.

b/ Vietnam-based organizations that use humanitarian aid money of foreign organizations or individuals to purchase goods and services for programs or projects funded with non-refundable or humanitarian aid in Vietnam are entitled to refund of VAT amounts paid for these goods and services.

Example 84: The Red Cross Society receives from international organizations an aid amount of VND 200 million to purchase humanitarian relief goods for inhabitants in provinces hit by natural disasters. The VAT-exclusive value of purchased goods is VND 200 million and the VAT amount is VND 20 million. The Red Cross Society will be refunded an amount of VND 20 million.

The refund of paid VAT amounts for programs and projects funded with non-refundable ODA must comply with the Finance Ministry's guidance.

7. Persons entitled to diplomatic privileges and immunities in accordance with the law on diplomatic privileges and immunities who purchase goods or services in Vietnam for use are entitled to refund of the paid VAT amounts indicated in added-value invoices or payment documents indicating VAT-inclusive prices.

8. Foreigners and overseas Vietnamese holding passports or entry papers issued by competent foreign agencies are entitled to tax refund for goods which they purchase in Vietnam and carry abroad upon their exit. The VAT refund must comply with the Ministry of Finance's guidance on VAT refund for goods which foreigners and overseas Vietnamese purchase in Vietnam and carry abroad upon their exit.

9. Business establishments having tax refund decisions of competent authorities in accordance with law and cases of VAT refund under treaties to which the Socialist Republic of Vietnam is a contracting party.

### **Article 19. VAT refund conditions and procedures**

1. Business establishments and organizations entitled to VAT refund as guided at Points 1, 2, 3, 4 and 5, Article 18 of this Circular must be business establishments that pay tax by the credit method, possess an enterprise registration certificate or investment license (professional practice license) or establishment decision of a competent agency, have a lawful seal; open and keep accounting books and documents in accordance with the accounting law; and have a bank deposit account according to their tax identification numbers.

2. Business establishments that have made tax refund declaration in the VAT declaration form may not carry forward the input tax amount already requested for refund to the creditable tax amount of the subsequent month.

3. VAT refund procedures are prescribed in the Law on Tax Administration and its guiding documents.

#### **Article 20. Places of tax payment**

1. Taxpayers shall make VAT declaration and payment in localities in which they carry out production or business activities.

2. Taxpayers that declare and pay VAT by the credit method and have dependent cost-accounting production establishments based in provinces or centrally run cities other than where they are headquartered shall pay VAT both in localities in which their production establishments are based and localities in which they are headquartered.

3. Enterprises and cooperatives that pay tax by the direct method and have production establishments or irregular sale activities in provinces or cities other than where they are headquartered shall declare and pay VAT in localities in which they have production establishment or irregular sale activities based on the percentage of turnovers earned in those localities. Enterprises and cooperatives shall not pay VAT for the turnovers earned in other provinces for which tax has been declared and paid based on the percentage against the turnover earned in localities in which they are headquartered.

4. Telecommunications service business establishments that provide post-paid telecommunications services in provinces or centrally run cities other than where they are headquartered and establish dependent cost-accounting branches paying VAT by the credit method for providing post-paid telecommunications services in those provinces or cities shall make VAT declaration and payment for post-paid telecommunication services as follows:

- Declaring VAT for their turnover from post-paid telecommunications services with tax agencies managing their head offices.

- Paying VAT in localities in which they are headquartered and in which their dependent cost-accounting branches are based.

The VAT amount payable in localities in which dependent cost-accounting branches are based equals 2% (for post-paid telecommunications services subject to the VAT rate of 10%) of the turnover (VAT exclusive) in localities in which dependent cost-accounting branches are based.

5. VAT declaration and payment comply with the Law on Tax Administration and its guiding documents.

### **Chapter IV**

#### **ORGANIZATION OF IMPLEMENTATION**

## Article 21. Effect

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

2. Before the tax period of January 2014 (for monthly declaration) or the tax period of the first quarter of 2014 (for quarterly declaration), business establishments making quarterly VAT declaration from July 1, 2013, are entitled to VAT refund if they have input VAT amounts not fully credited for 3 consecutive tax periods.

Example 85: Enterprise A made monthly tax declaration in May and June 2013. In the third quarter of 2013, it made quarterly tax declaration. If it had input VAT amounts not fully credited in May, June and the third quarter of 2013, it is entitled to VAT refund at the end of the third quarter of 2013.

Example 86: Enterprise B made monthly tax declaration in June 2013. In the third quarter of 2013, it made quarterly tax declaration. If it had input VAT amounts not fully credited in June and the third and fourth quarters of 2013, it is entitled to VAT refund at the end of the fourth quarter of 2013.

3. Before the tax period of January 2014 (for monthly declaration) or the tax period of the first quarter of 2014 (for quarterly declaration), business establishments eligible for tax refund under the Finance Ministry's Circular No. 06/2012/TT-BTC of January 11, 2012, and Circular No. 65/2013/TT-BTC of May 17, 2013, are entitled to VAT refund under Circular No. 06/2012/TT-BTC and Circular No. 65/2013/TT-BTC above.

By the end of the tax period of December 2013 (for monthly declaration) or the tax period of the fourth quarter of 2013 (for quarterly declaration), business establishments that do not have input VAT amounts not fully credited for 3 consecutive tax periods may have the input VAT amounts not fully credited ineligible for refund in 2013 carried forward to 2014 for declaration for credit and refund under Clause 1, Article 18 of this Circular.

Example 87: Enterprise A had input VAT amounts not fully credited in 3 consecutive months (October, November and December 2013), so it is entitled to VAT refund under Clause 1, Article 18 of the Finance Ministry's Circular No. 06/2012/TT-BTC of January 11, 2012.

Example 88: Enterprise B had a payable VAT amount in October 2013 and had input VAT amounts not fully credited in November and December 2013. By the end of the tax period of December 2013, enterprise B is ineligible for VAT refund under Circular No. 06/2012/TT-BTC and the VAT amounts of November and December 2013 not fully credited will be carried forward to

2014 for consideration of VAT refund under Clause 1, Article 18 of this Circular.

Example 89: Enterprise C had a payable VAT amount in the third quarter of 2013 and had an input VAT amount not fully credited in the fourth quarter of 2013. The VAT amount of the fourth quarter of 2014 will be carried forward to 2014 for consideration of VAT refund under Clause 1, Article 18 of this Circular.

4. For added-value invoices for purchase of fixed assets arising before January 1, 2014, business establishments shall credit tax in accordance with the Finance Ministry's Circular No. 06/2012/TT-BTC of January 11, 2012, and Circular No. 65/2013/TT-BTC of May 17, 2013; for added-value invoices for purchase of fixed assets arising from January 1, 2014, business establishments shall credit tax in accordance with this Circular.

5. For added-value invoices for purchase of unprocessed or preliminarily processed products of cultivation, husbandry and fisheries arising before January 1, 2014, provincial-level Tax Departments shall request business establishments to declare lists of purchased goods and services in the VAT declaration form of the tax period of December 2013 or the fourth quarter of 2013 for submission to tax agencies within the prescribed time limit.

## **Article 22. Collection of VAT**

1. Tax agencies shall organize and manage the collection and refund of VAT for business establishments.

2. Customs offices shall organize and administer the collection of VAT for imports.

Any problems arising in the course of implementation should be promptly reported to the Ministry of Finance for timely settlement.

*For the Minister of Finance*

Deputy Minister

DO HOANG ANH TUAN

## **Appendix**

## **LIST OF BUSINESS LINES SUBJECT TO VAT CALCULATION BASED ON PERCENTAGE ON TURNOVER**

*(To the Finance Ministry's Circular No. 219/2013/TT-BTC of  
December 31, 2013)*

### 1. Goods distribution and supply: 1%

- Wholesale and retail of all types of goods (except values of goods sold at fixed prices by commission-receiving agents).

### 2. Services and construction without material supply: 5%

- Lodging, hotel, guest house and inn services;

- Housing, land, shop, workshop, asset and personal article lease services;

- Warehouse, storage yard, machinery and vehicle lease services; cargo loading and unloading and other transport supporting services such as station and yard business, ticket sale and vehicle keeping;

- Post and mail and parcel delivery services;

- Brokerage, auction and agency commission services;

- Legal and financial consultancy, accounting and audit services; tax and customs procedure clearance services;

- Data processing and web portal and information technology and telecommunication equipment lease services;

- Office support and other business support services;

- Sauna, massage, karaoke bar, dancing hall, billiard, internet and game services;

- Tailoring, laundry, haircut, hair styling and hair washing services;

- Other repair services, including computer fixing and domestic utensil repair;

- Capital construction consultancy, design and construction supervision services;

- Other services;

- Construction and installation without material supply (including installation of industrial machinery and equipment).

### 3. Manufacture, transportation, goods-attached services, construction with material supply: 3%

- Production, subcontracted production and processing of goods and products;

- Mineral mining and processing;
- Transportation of cargo and passengers;
- Services attached to goods such as training, maintenance, technology transfer attached to product sale;
- Catering services;
- Machinery, equipment, vehicle, automobile, motorcycle, motorbike and other motor vehicle repair and maintenance services;
- Construction and installation with material supply (including installation of industrial machinery and equipment).

4. Other business activities: 2%

- Manufacture of products subject to VAT calculation by the credit method with the VAT rate of 5%;
- Provision of services subject to VAT calculation by the credit method with the VAT rate of 5%;
- Activities other than those specified in groups 1, 2 and 3 above.-

THE END