

THE MINISTRY OF FINANCE

Circular No. 103/2014/TT-BTC dated August 06, 2014 of the Ministry of Finance guiding the fulfillment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam

Pursuant to the Law on Value-added tax No. 13/2008/QH12 dated June 03, 2008; the Law No.31/2013/QH13 dated June 19, 2013 on amendments to the Law on Value-added tax; the Government's Decree No. 209/2013/ND-CP dated December 18, 2013 providing guidance on the implementation of the Law on Value-added tax;

Pursuant to the Law on Value-added tax No. 13/2008/QH12 dated June 03, 2008; the Law No. 31/2013/QH13 dated June 19, 2013 on amendments to the Law on Value-added tax; the Government's Decree No. 209/2013/ND-CP dated December 18, 2013 providing guidance on the implementation of the Law on Value-added tax;

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

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

At the request of the Director of the General Department of Taxation;

The Ministry of Finance promulgates a Circular on guidelines for fulfillment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam.

Chapter I

GENERAL REGULATIONS

Article 1. Subject of application

This Circular is applied to the entities below (except for the cases in Article 2 Chapter I):

1. Foreign business organizations having permanent establishments in Vietnam or not; foreign business individuals that are residents of Vietnam or not (hereinafter called foreign contractors and foreign sub-contractors) who do business in Vietnam or earn income in Vietnam under contracts, agreements, or commitments between the foreign contractor and a Vietnamese entity or between a foreign sub-contractor and a foreign sub-contractor to perform part of the main contract.

2. Foreign entities providing goods in Vietnam in the form of domestic export and earn income in Vietnam under contracts between them and Vietnamese companies (except for cases in which goods are processed and then returned to foreign entities) or distribute goods in Vietnam or provide goods under Incoterms rules that require the sellers to be responsible for goods that have been taken into Vietnam's territory.

Example 1:

- Case 1: Company X who is located overseas signs a contract to buy cloth from Vietnamese company A and requests company A to deliver the goods to Vietnamese company B (in the form of domestic export defined by law). Company X earns an income in Vietnam under a contract between company X and company B (company X sells cloth to company B).

In this case, company X is regulated by this Circular and thus, company B shall declare and pay tax on behalf of company X in accordance with this Circular.

- Case 2: Company Y who is located overseas signs a contract to process cloth with Vietnamese company C and requests company C to deliver the goods to Vietnamese company D for further processing (in the form of domestic export defined by law). Company Y earns an income in Vietnam under a contract between company Y and company D (company Y sells goods to company D).

In this case, company Y is regulated by this Circular and company D shall declare and pay tax on behalf of company Y in accordance with this Circular.

- Case 3: Company Z who is located overseas signs a contract to process or buy cloth with Vietnamese company E (company Z provides raw materials for company E) and requests company E to deliver the goods to Vietnamese company G for further processing (in the form of domestic export defined by law). After processing, company G returns the goods to company Z and company Z must pay company G for the processing under the contract.

In this case, company Z is not regulated by this Circular.

3. Any foreign entity that performs the whole or part of goods distribution or service provision in Vietnam, who is still the owner of goods that are delivered to Vietnamese organizations or take responsibility for the cost of distribution, advertising, marketing, quality of goods/services delivered to Vietnamese organizations, or impose prices (including the cases in which the foreign entity authorities or hires some Vietnamese organization to perform part of the distribution or service provision pertaining to goods sale in Vietnam).

Example 2:

Company A who is located overseas delivers goods to a Vietnamese company B or authorizes company B to perform some services (delivery, distribution, marketing, advertising) while company A is still the owner of goods delivered to company B or still take responsibility for the cost, quality of goods/services delivered to company B, or the one who impose prices for goods/services. In this case, company A is regulated by this Circular.

4. Any foreign entity that negotiates or concludes contracts via a Vietnamese entity.
5. Any foreign entity that exercises its right to export, import, distribute goods in Vietnam, buy goods to export, or sell goods to Vietnamese traders in accordance with trading laws.

Article 2. Subjects not it application

This Circular does not apply to:

1. Any foreign entity doing business in Vietnam under the Law on Investment, the Law on Petroleum, and the Law on credit institutions.
2. Any foreign entity that provides goods for Vietnamese entities without ancillary services in Vietnam in the form of:
 - Delivery at the foreign border checkpoint: the seller incurs all responsibility, costs, and risk to the transport and delivery of goods at the foreign checkpoint; the buyer incurs all the responsibility, cost and risk to the receipt and transport of goods from the foreign checkpoint to Vietnam (even if goods are delivered at a foreign border checkpoint under a contract which prescribes that the seller is responsible for warranty).
 - Delivery at a Vietnam's border checkpoint: the seller incurs all responsibility, costs, and risk until goods reaches the Vietnam's checkpoint; the buyer incurs all the responsibility, cost and risk to the receipt and transport of goods from the Vietnam's checkpoint (even if goods are delivered at a Vietnam's border checkpoint under a contract which prescribes that the seller is responsible for warranty).

Example 3:

Company C who is located in Vietnam signs a contract to import excavators and bulldozers with company D who is located overseas. Goods are delivered at a Vietnam's border checkpoint. Company D incurs all responsibility and costs related to the goods until they arrive at the Vietnam's border checkpoint; company C is incurs responsibility and costs related to the receipt and transport of goods from the Vietnam's checkpoint. The contracts prescribes that the goods come with a one-year warranty by company D. Other than that, company D does not provide any services related to

such goods in Vietnam. In this case, company D's provision of goods are not regulated by this Circular.

3. Any foreign entity that earns income from services provided and used outside Vietnam.

Example 4:

Company H of Hong Kong provides material handling services at a port in Hong Kong for company A in Vietnam. Company A pays company H for material handling services at the Hong Kong port.

In this case, material handling services at Hong Kong port are provided in Hong Kong, thus they are not taxable in Vietnam.

Example 5:

Professional services, bond management and issuance services, legal counseling, depository services, roadshow services provided by a foreign organization for company A in Vietnam at the countries where company A issues its GDRs (Global Depository Receipt) and international bonds are not regulated by this Circular.

4. Any foreign entity that provides any of the services below for Vietnamese entities, provided the services are provided overseas:

- Repair of means of transport (aircraft, aircraft engine, aircraft and ship parts), machinery and equipment (including undersea cables and transmission devices), with or without spare parts;
- Advertising and marketing (except for online advertising and online marketing);

Example 6:

A Vietnamese company signs a contract with a organization in Singapore to run advertisements for products in Singapore. This advertising service is not regulated by this Circular. A Vietnamese company signs a contract with an organization in Singapore to run advertisements on the Singapore's market. This advertising service is not regulated by this Circular.

- Trade promotion and investment encouragement;
- Brokering goods sale and services provision overseas;

Example 7:

A Vietnamese company signs a contract to hire a company in Thailand to broker the sale of its goods in Thailand or on the international market. This brokerage service is not regulated by this Circular. In

case the Vietnamese company hires a company in Thailand to broker a transfer of the Vietnamese company's real estate in Vietnam, then this brokerage service is regulated by this Circular.

- Training (except for online training);

Example 8:

Company A in Vietnam signs a contract with University B of Singapore for provision of training for Vietnamese employees at University B. The training services provided by University B are not regulated by this Circular. In case Company A in Vietnam signs a contract with University B which requires University B to provide training for Vietnamese employees in Vietnam in the form of online training, the online training services provided by University B are regulated by this Circular.

- Division of charges for international telecommunications services between Vietnam and foreign contractors, which are provided outside Vietnam, lease of transmission lines and satellite frequency bands overseas as prescribed by the Law on telecommunications; division of charge for international postal services between Vietnam and other countries as prescribed by the Law on Postal services and international agreements on postal services to which Vietnam is a signatory, provided such services are provided outside Vietnam.

5. Any foreign entity using a bonded warehouse or inland clearance depot (ICD) as a warehouse serving international transport, transit of goods, or storage of goods to be processed by other companies.

Article 3. Interpretation of terms

In this Circular, the terms below are construed as follows:

1. "Main contract" means a contract or agreement between a foreign contractor and a Vietnamese party.

2. "Subcontract" means a contract or agreement between a foreign contractor and a subcontractor.

Subcontractors include foreign sub-contractor and Vietnamese sub-contractors.

3. Vietnam's territory include Vietnam's territorial land, islands, inland waters, territorial sea and the sky above, the waters beyond territorial sea, including sea bed and the underground earth over which Vietnam exercises its full national sovereignty and jurisdiction.

Article 4. Taxpayers

1. Foreign contractors and foreign sub-contractors who meet the requirements in Article 8 Section 2 Chapter II or Article 14 Section 4 Chapter II, do business in Vietnam, or earn income in Vietnam.

The business is done under the main contract with a Vietnamese entity or another foreign entity doing business in Vietnam under the subcontract.

Foreign contractors and foreign sub-contractors that have permanent establishments in Vietnam or are residents of Vietnam shall be determined in accordance with the Law on Corporate income tax, the Law on Personal income tax, and guiding documents.

If permanent establishments and residents are defined otherwise by a Double Taxation Agreement to which Vietnam is a signatory, such Agreement shall apply.

2. Organizations established and operated under Vietnam's law or registers its operation under Vietnam law; business entities that purchase services, services attached to goods, or pay income in Vietnam under main contracts or subcontracts; purchase goods in the form of domestic import or under Incoterms; distribute goods or provide services on behalf of foreign entities in Vietnam (hereinafter called Vietnamese entities) include:

- Business organizations established under Company law, the Law on Investment, and the Law on Cooperatives;
- Business organizations of political organizations, socio-political organizations, social organizations, socio-professional organizations, armed force units, public service providers, and other organizations;
- Petroleum contractors defined in the Law on Petroleum;
- Branches of foreign companies permitted to operate in Vietnam;
- Foreign organizations or representatives of foreign organizations permitted to operate in Vietnam;
- Air ticket outlets or agents in Vietnam of foreign airlines that are entitled to enter and leave Vietnam to provide transport services directly or in cooperation;
- Organizations and individuals that provide sea transport services of foreign shipping companies; agents in Vietnam of foreign logistics companies;
- Securities companies, securities issuers, asset management companies, commercial banks where securities investment funds or foreign organizations open their securities investment accounts
- Other organizations in Vietnam;
- Businesspeople in Vietnam.

Taxpayers defined in Clause 2 Article 4 Chapter I are obliged to withhold VAT and corporate income tax as prescribed in Section 3 Chapter II before paying foreign contractors and foreign sub-contractors.

Article 5. Taxes

1. Taxpayers defined in Clause 2 Article 4 Chapter I are obliged to withhold VAT and corporate income tax as prescribed in Section 3 Chapter II before paying foreign contractors and foreign sub-contractors.

2. Foreign contractors and foreign sub-contractors are foreign businesspeople that pay VAT as prescribed in this Circular or pay personal income tax as prescribed by regulations of law on personal income tax.

3. Foreign contractors and foreign sub-contractors shall pay other taxes, fees and charges in accordance with applicable regulations of law on taxes, fees and charges.

Chapter II

BASIS AND METHODS FOR TAX CALCULATION

Section 1. Items subject to VAT and income subject to corporate income tax

Article 6. Items subject to VAT

1. Services or services attached to goods subject to VAT that are provided by foreign contractors and foreign sub-contractors under main contracts and subcontracts and used for manufacture, sale, and consumption in Vietnam (except for the case in Article 2 of Chapter I), including:

- Services or services attached to goods subject to VAT that are provided in Vietnam by foreign contractors and foreign sub-contractors and consumed in Vietnam;

- Services or services attached to goods subject to VAT that are provided outside Vietnam by foreign contractors and foreign sub-contractors and consumed in Vietnam.

2. If a contract stipulate that goods shall be delivered to a location in Vietnam (except for the case in Clause 5 Article 2 Chapter I), or goods supply is attached to services provided in Vietnam such as installation, test run, warranty, maintenance, replacement, or other services (including complimentary services), the value of goods is only subject to VAT at importation, whether or not such services are part of the goods supply contract. The value of services is subject to VAT as prescribed in this Circular. If the contract does not separate the value of goods from that of attached services (including complimentary services), the whole contract is subject to VAT.

Example 9:

Company A in Vietnam signs a contract to buy a production line for a cement factory contract with company B overseas. The total contract value is USD 100 million, including USD 80 million of machinery and equipment (some of them are subject to 10% VAT) and USD 20 million of installation guide, supervision, warranty, and maintenance.

VAT payable by company B is determined as follows:

- VAT applies to value of services (USD 20 million), not value of imported machinery and equipment.
- If the value of services cannot be separated from the value of machinery and equipment, VAT shall apply to the whole contract value (USD 100 million).

Article 7. Income subject to corporate income tax

1. Income subject to corporate income tax of foreign contractors and foreign sub-contractors are income from provision of goods, services, and services attached to goods in Vietnam under main contracts and subcontracts (except for the case in Article 2 Chapter I).

2. If goods is delivered to a location in Vietnam (except for the case in Clause 5 Article 2 Chapter I), or goods provision is attached to some services provided in Vietnam such as marketing, sale promotion, installation, test run, warranty, maintenance, replacement, and other services (including complimentary services), whether or not such services are part of the goods supply contract, then income subject to corporate income tax of foreign contractors and foreign sub-contractors is the total value of goods/services.

Example 10:

Company A in Vietnam signs a contract to buy a production line for a cement factory project with company B overseas. The total contract value is USD 100 million (VAT-exclusive), including USD 80 million of machinery and equipment and USD 20 million of installation guide, supervision, warranty, and maintenance.

Corporate income tax payable by company B is determined as follows:

- Corporate income tax on the value of imported machinery and equipment (USD 80 million) and VAT on the value of services (USD 20 million) shall be calculated separately at specific rates.
- If the value of machinery and equipment cannot be separated from the value of services, corporate income tax shall apply to the total contract value (USD 100 million) at a specific rate.

3. Incomes earned in Vietnam by foreign contractors and foreign sub-contractors are any incomes they receive under main contracts or subcontracts (except for the case described in Article 2 Chapter I), regardless of their business locations. Taxable incomes of foreign contractors and foreign sub-contractors in some cases:

- Income from transfer of the right to ownership or the right to enjoyment of property, transfer of the right to participate in business contracts/projects in Vietnam, transfer of right to property in Vietnam.

- Income from copyright means any income paid for the right to use, transfer of intellectual property rights and technology transfer, software copyright (including payments for the right to use, transfer of copyright, transfer of industrial property rights, transfer of technologies and software copyright.

“Copyright”, “industrial property rights”, “technology transfer” are defined in the Civil Code, the Law on Intellectual property, the Law on Technology transfers, and their guiding documents.

- Income from transfer and liquidation of assets.

- Income from loan interest means income of the creditor from loans, whether or not such loans are secured, whether or not the creditor receive profits of the borrower; income from deposit interest (except for deposit interest of foreigners and interest derived from deposit accounts meant to sustain operation in Vietnam of diplomatic missions, representative offices of international organizations and non-governmental organizations in Vietnam), including associated bonuses (if any); income from interest on late payment under contracts; income from bond interest and bond discounts (except for tax-free bonds), treasury bills, income from certificates of deposit.

Loan interest includes the fees payable by the Vietnamese party under the contract.

- Income from securities transfer.

- Fines and damages paid by parties breaching contracts.

- Other incomes defined by law.

Section 2. PAYING VAT USING CREDIT-INVOICE METHOD, PAYING CORPORATE INCOME TAX ACCORDING TO DECARED REVENUE AND EXPENSE

(hereinafter called declaration method)

Article 8. Subjects and requirements of application

A foreign contractor or foreign sub-contractor shall pay tax in accordance with instructions in section 2 Chapter II if the requirements below are satisfied:

1. The contractor/subcontractor has a permanent establishment in Vietnam or the contractor/subcontractor is a resident of Vietnam;
2. The period of business operation on Vietnam under the main contract or subcontract is 183 days or longer from the effective date of the contract.
3. The contractor/subcontractor applies Vietnam's accounting practice, has applied for tax registration and issued with a taxpayer ID number (TIN) by a tax authority.

Article 9. VAT

The Law on Value-added tax and its guiding documents shall apply.

Article 10. Corporate income tax

The Law on Corporate income tax and its guiding documents shall apply.

Section 3. PAYING VAT AND CORPORATE INCOME TAX ACCORDING TO FIXED RATES

(hereinafter called direct method)

Article 11. Requirements and regulated entities

If the foreign contractor or foreign sub-contractor fails to meet any of the requirements mentioned in Article 8 Section 2 Chapter II, the Vietnamese party shall pay tax on their behalf in accordance with instructions in Article 12 and Article 13 Section 3 of Chapter II.

Article 12. VAT

The basis for tax calculation is the revenue subject to VAT and tax rate (%).

VAT payable = Revenue subject to VAT x VAT rate

Foreign contractors and foreign sub-contractors paying tax using direct method must not deduct VAT on goods/services purchased to execute main contracts and subcontracts.

1. Revenue subject to VAT

a) Revenue subject to VAT:

Revenue subject to VAT is total revenue from provision of services and services attached to goods subject to VAT received by the foreign contractor or foreign sub-contractor inclusive of subtracting taxes payable and any costs (if any) paid by the Vietnamese party instead of the foreign contractor or foreign sub-contractor.

b) Determination of revenue subject to VAT in some cases:

b.1) If the main contract or subcontract stipulates that revenue earned by the foreign contractor or foreign sub-contractor does not include VAT, the revenue subject to VAT must be converted into VAT-inclusive revenue and shall be calculated as follows:

$$\text{Revenue subject to VAT} = \frac{\text{VAT-exclusive revenue}}{1 - \text{VAT rate}}$$

Example 11:

Foreign contractor A signs a contract with a Vietnamese entity to supervise the construction of cement factory Z. The contract value is USD 300,000 exclusive of VAT (but inclusive of corporate income tax). Furthermore, the Vietnamese entity provides accommodations and workplaces for managers of foreign contractor A, which are valued at USD 40,000 exclusive of VAT. According to the contract, the Vietnamese party is responsible for paying VAT on behalf of the foreign contractor. The revenue subject to VAT earned by foreign contractor A is calculated as follows:

$$\text{Revenue subject to VAT} = \frac{300,000 + 40,000}{(1 - 5\%)} = 357,894.73 \text{ (USD)}$$

b.2) If a foreign contractor signs a contract with Vietnamese sub-contractors or foreign sub-contractors who pay tax using direct method or foreign sub-contractors who pay tax using mixed methods to do part of the works in the main contract signed with the Vietnamese entity, and a list of such Vietnamese sub-contractors and foreign sub-contractors is enclosed with the main contract, the revenue subject to VAT of the foreign contractor does not include the value of works carried out by Vietnamese sub-contractors or foreign sub-contractors.

In case the foreign contractor signs a contract with suppliers in Vietnam to buy raw materials, machinery and equipment to execute the main contract, buy goods/services serving internal use or the works other than those in the main contract, the values of such goods/services shall not be deductible when calculating revenue subject to VAT of the foreign contractor.

Example 12:

Foreign contractor A signs a contract to build cement factory Z with a Vietnamese entity. The total contract value is USD 10 million inclusive of VAT. According to the main contract, foreign contractor A shall delegate part of the construction (stipulated in the main contract signed with the Vietnamese entity) to Vietnamese sub-contractor B, which is valued at USD 01 million exclusive of VAT. Furthermore, during the construction process, foreign contractor A buys building materials (bricks, cement, sand, etc.), other goods and services such as stationery, car rental and hotel rooms for experts, etc. to serve the contract execution.

In this case, the revenue subject to VAT earned by foreign contractor A is calculated as follows:

Revenue subject to VAT = USD 10 million – USD 1 million = USD 9 million

Do not subtract the value of raw materials, goods and services such as car rental, hotel rooms, stationery, etc. from the revenue subject to VAT of foreign contractor A.

b.3) If the foreign sub-contractors that sign contracts with the foreign contractor pay tax using direct method, the Vietnamese entity shall declare and pay VAT on behalf of the foreign contractor and foreign sub-contractors at corresponding VAT rates under the main contract and subcontracts.

Foreign sub-contractors are not required to declare and pay VAT on the value of works they carry out under subcontracts signed with the foreign contractor, which has been paid by the Vietnamese entity.

b.4) Revenue subject to VAT from renting out vehicles, machinery and equipment is the total rent. If the revenue from renting out vehicles machinery and equipment includes the costs directly paid by the renters such as insurance, costs of maintenance, registration, operators, and shipment to Vietnam, the revenue subject to VAT does not include such costs if proving documents are presented.

b.5) With regard to outbound (from Vietnam to abroad) international logistics services (whether the service charge is paid by the consignor or the consignee), revenue subject to VAT is the whole revenue received by the foreign contractor exclusive of international transport charge payable to the shipping company.

b.6) With regard to outbound international delivery services (whether the service charge is paid by the consignor or the consignee), revenue subject to VAT is the whole revenue received by the foreign contractor.

Example 13:

Company A overseas provide postal services from abroad to Vietnam and vice versa. The revenue subject to VAT earned by company A is calculated as follows:

+ Revenue from inbound (from abroad to Vietnam) postal services is not subject to VAT (whether service charges are paid by the consignor or consignee);

+ The whole revenue earned by company A from outbound postal services is subject to VAT (whether service charges are paid by the consignor or consignee).

Example 14:

Vietnamese Company B provides postal services from abroad to Vietnam and vice versa. To provide these services, company B pays overseas company C an amount of x USD. VAT incurred by company C is calculated as follows:

+ With regard to inbound postal services (whether service charges are paid by the consignor or consignee) the amount of x USD received by company C is not subject to VAT;

+ With regard to outbound postal services (whether service charges are paid by the consignor or consignee) the amount of x USD received by company C is not subject to VAT; company B shall declare, withhold, and pay VAT on the x amount paid to company C.

2. VAT rate:

a) VAT rates applied to trade:

No.	Trade	VAT rate
1	Services, rental of machinery and equipment, insurance; construction, installation exclusive of raw materials, machinery and equipment.	5
2	Production, transportation, services attached to goods; construction, installation inclusive of raw materials, machinery and equipment.	3
3	Other trades	2

b) Determination of revenue VAT rates in some cases:

b.1) If the main contract or subcontract consists of various business activities or part of the contract value is not subject to VAT, VAT rates shall be applied separately on each business activity carried out by the foreign contractor or foreign sub-contractor. If the value of each business activity cannot be separated, the highest VAT rate shall apply to the whole contract value.

With regard to construction/installation inclusive of raw materials or machinery and equipment: if the value of each activity can be separated, the foreign contractor is not required to pay VAT on the value of raw materials or machinery and equipment, which has been paid during importation or is exempt from VAT; corresponding VAT rate shall apply to the remaining value. With regard to construction/installation inclusive of raw materials or machinery and equipment: if the value of each activity can be separated, the foreign contractor is not required to pay VAT on the value of raw materials or machinery and equipment, which has been paid during importation or is exempt from

VAT; corresponding VAT rate shall apply to the remaining value. Where the foreign contractor signs contracts with subcontractors to delegate the works inclusive of raw materials or machinery and equipment, and the foreign contractor only provide the other services under the main contract, 5% VAT on service provision shall apply.

Example 15:

Foreign contractor A signs a contract to build power plant X with a Vietnamese entity. The contract value is USD 75 million (inclusive of VAT).

Case 1: Value of each business activity can be separated:

+ Value of machinery and equipment provided for the construction: USD 50 million.

Value of machinery and equipment subject to VAT: USD 30 million.

Value of machinery and equipment not subject to VAT: USD 15 million.

Value of warranty services attached thereto: USD 5 million.

+ Value of technological line design and other design services: USD 5 million.

+ Value of workshops, other auxiliary systems, construction, and installation: USD 15 million.

+ Value of supervision services and installation guide: USD 3 million.

+ Value of operation training and test run services: USD 2 million.

During importation, VAT on USD 30 million of machinery and equipment has been paid. Value of machinery and equipment not subject to VAT is USD 15 million.

Foreign contractor shall only pay VAT on the value of services and construction/installation in the contract signed with the Vietnamese entity. Value of services (warranty, design, supervision, installation guide, technical training, test run) is USD 15 million, which applies 5% VAT on revenue from service provision; value of construction and installation is USD 15 million, which applies 3% VAT on revenue from construction and installation (VAT is not imposed on value of imported machinery and equipment).

Case 2: The main contract does not separate value of each business activity and only specifies that the contract value include machinery, equipment, design services, supervision services, installation guide, technical training, and test run services. If there are not adequate documents proving the payment of VAT on machinery and equipment during importation, foreign contractor A shall pay 3% VAT on the whole contract value, which is USD 75 million.

Case 3: Where foreign contractor A signs contracts with subcontractors to delegate the works inclusive of raw materials and foreign contractor A only provide the other services (such as supervision service, installation guide) the value of such services shall apply 5% VAT.

b.2) With regard to contracts to provide machinery and equipment that include services performed in Vietnam, if value of machinery and equipment can be separated from value of services, corresponding VAT rates shall apply to corresponding parts of the contract. If the value of services cannot be separated from the value of machinery and equipment, 3% VAT shall apply.

Example 16:

Korean contractor H, who does not follow Vietnam's accounting practice, signs a contract with company B in Vietnam to provide machinery and equipment attached to installation and test run services for USD 10 million. The contract does not separate the value of machinery and equipment from the value of services, 3% VAT shall apply.

3. VAT incurred by foreign contractors and foreign sub-contractors that provide goods/services serving petroleum exploration and extraction

a. Any foreign contractor or foreign sub-contractor that provides goods/services serving petroleum exploration and extraction fails to satisfy one of the requirements in Article 8 Section 2 Chapter II, the Vietnamese entity shall withhold and pay VAT before paying the foreign contractor or foreign sub-contractor. The amount of tax paid on behalf of the foreign contractor or foreign sub-contractor equals (=) the total payment exclusive of VAT multiplied by (x) VAT rate applied to the goods/services provided by the foreign contractor.

b. In case the foreign contractor or foreign sub-contractor provides goods/services serving petroleum exploration and extraction satisfy all three requirements in Article 8 Section 2 Chapter II or two requirements in Clause 1, Clause 2 Article 8 Section 2 Chapter II, and adheres to regulations of law on accounting and instructions of the Ministry of Finance:

- If the Vietnam entity pays the foreign contractor or foreign sub-contractor before they obtain the tax registration certificate to declare and pay tax using credit-invoice method, the Vietnam entity shall withhold and pay VAT on their behalf before making the payment. The amount of tax paid on behalf of the foreign contractor equals (=) the total payment exclusive of VAT multiplied by (x) VAT rate applied to the goods/services provided by the foreign contractor.

- When the foreign contractor or foreign sub-contractor is issued with the tax registration certificate by the tax authority, they may transfer invoices and receipts made during the tax period to the Vietnamese entity in order for the Vietnamese entity to declare and pay VAT on their behalf.

Input VAT incurred by the foreign contractor or foreign sub-contractor before the tax registration certificate is issued must not be deducted.

Example 17:

In January 2015, foreign contractor A signs a contract with a Vietnamese entity to provide petroleum services for USD 01 million. Before obtaining the tax registration certificate, foreign contractor A incurs a VAT of USD 5,000 on purchased goods/services. On March 15, 2015, the Vietnamese entity pays USD 100,000 to foreign contractor A (exclusive of VAT and inclusive of corporate income tax). The Vietnamese entity shall pay VAT on behalf of foreign contractor A, which equals (=) $100,000 \times 10\% = 10,000$ (USD).

On May 01, 2015, foreign contractor A applies for a registration and is issued with a tax registration certificate by the tax authority. In May 2015, the Vietnamese entity pays USD 200,000 to foreign contractor A (exclusive of VAT and inclusive of corporate income tax). Thus, output VAT incurred by foreign contractor A in May is USD 20,000 (= $200,000 \times 10\%$).

Input VAT of foreign contractor A incurred during the period from May 01, 2015 to May 30, 2015 is USD 2,000 (foreign contractor A has a taxpayer ID number during this period). Foreign contractor A shall transfer all invoices and receipts made in May 2015 to the Vietnamese entity in order for the Vietnamese entity to declare and pay VAT on behalf of foreign contractor A.

VAT payable by foreign contractor A in the tax period May 2015 is 18,000 USD (= $20,000 \text{ USD} - 2,000 \text{ USD}$).

Foreign contractor A must not deduct USD 5,000 of input VAT incurred before May 01, 2015.

Article 13. Corporate income tax

The basis for tax calculation is the revenue subject to corporate income tax CIT and tax rate (%).

$$\text{CIT payable} = \text{Revenue subject to CIT} \times \text{CIT rate}$$

1. Revenue subject to CIT

a) Revenue subject to CIT

Revenue subject to CIT is the total revenue exclusive of VAT received by the foreign contractor or foreign sub-contractor, exclusive of taxes payable. Revenue subject to CIT includes the costs paid by the Vietnamese entity on behalf of the foreign contractor or foreign sub-contractor (if any).

b) Determination of revenue subject to CIT in some cases:

b.1) If the main contract or subcontract stipulates that revenue received by the foreign contractor or foreign sub-contractor is exclusive of CIT, the revenue subject to CIT shall be calculated as follows:

$$\text{Revenue subject to CIT} = \frac{\text{CIT-exclusive revenue}}{1 - \text{CIT rate}}$$

Example 18:

Foreign contractor A signs a contract with a Vietnamese entity to supervise the construction of cement factory Z. The contract value is USD 285,000 exclusive of VAT and CIT. Furthermore, the Vietnamese entity provides accommodations and workplaces for managers of foreign contractor A, which are valued as USD 38,000 exclusive of VAT and CIT. According to the contract, the Vietnamese entity is responsible for paying VAT and CIT on behalf of the foreign contractor. CIT payable by foreign contractor A is calculated as follows:

Revenue subject to CIT:

$$\text{Revenue subject to CIT} = \frac{285,000 + 38,000}{(1 - 5\%)} = 340,000 \text{ (USD)}$$

b.2) If a foreign contractor signs a contract with Vietnamese sub-contractors or foreign sub-contractors who pay tax using direct method or foreign sub-contractors who pay tax using mixed methods to do part of the works in the main contract signed with the Vietnamese entity, and a list of such Vietnamese sub-contractors and foreign sub-contractors is enclosed with the main contract, the revenue subject to CIT of the foreign contractor does not include the value of works carried out by Vietnamese sub-contractors or foreign sub-contractors.

In case the foreign contractor signs a contract with suppliers in Vietnam to buy raw materials, machinery and equipment to execute the main contract, buy goods/services serving internal use or the works other than those in the main contract, the values of such goods/services shall not be deductible when calculating revenue subject to CIT of the foreign contractor.

Example 19:

Foreign contractor A signs a contract to build cement factory Z with a Vietnamese entity. The total contract value is USD 9 million exclusive of VAT. According to the main contract, foreign contractor

A shall delegate part of the construction (stipulated in the main contract signed with the Vietnamese entity) to Vietnamese sub-contractor B, which is valued at USD 01 million exclusive of VAT.

Furthermore, during the construction process, foreign contractor A buys building materials (bricks, cement, sand, etc.), other goods and services such as stationery, car rental and hotel rooms for experts, etc. to serve the contract execution.

In this case, the revenue subject to CIT earned by foreign contractor A is calculated as follows:

Revenue subject to CIT = USD 9 million – USD 1 million = USD 8 million

Do not subtract the value of raw materials, goods and services such as car rental, hotel rooms, stationery, etc. from the revenue subject to CIT of foreign contractor A.

b.3) If the foreign sub-contractors that sign contracts with the foreign contractor pay tax using direct method, the Vietnamese entity shall declare and pay CIT on behalf of the foreign contractor and foreign sub-contractors at corresponding VAT rates under the main contract and subcontracts.

Foreign sub-contractors are not required to declare and pay CIT on the value of works they carry out under subcontracts signed with the foreign contractor, which has been paid by the Vietnamese entity on their behalf.

b.4) Revenue subject to CIT from lease of vehicles, machinery and equipment is the total rent. If the revenue from renting out vehicles machinery and equipment includes the costs directly paid by the renters such as insurance, costs of maintenance, registration, operators, and shipment to Vietnam, the revenue subject to CIT does not include such costs if proving documents are presented.

b.5) Revenue subject to CIT of a foreign airline is the revenue from selling tickets, airway bills, and other revenues (except for those collected on behalf of the State or other organizations as prescribed by Vietnam's law) in Vietnam from transport of passengers, cargo, and other objects by their own flights or flights in cooperation with other airlines.

Example 20:

In the 1st quarter of 2013, foreign airline A earns a revenue of USD 100,000, including USD 85,000 from passenger air tickets, USD 10,000 from airway bills, and USD 5,000 from miscellaneous charges orders (MCOs); USD 1,000 of airport fees is collected on behalf of the state; USD 2,000 is paid for returned tickets.

Revenue subject to CIT earned by foreign airline A in the 1st quarter of 2013 is calculated as follows:

Revenue subject to CIT = 100,000 – (1,000 + 2,000) = 97,000 (USD)

b.6) Revenue subject to CIT of a foreign marine shipping company is the total charge for transport of passengers, cargo, and other surcharges received by the shipping company from the loading port to the unloading port (including charge for the consignments transit through intermediate ports) and/or charge for transport of cargo between Vietnam's ports.

The charge being the basis for calculating CIT does not include the charge on which CIT has been paid at a Vietnam's port and the charge paid to a Vietnamese courier for transporting goods from a Vietnam's port to an intermediate port.

Example 21:

Company A acts as an agent of foreign marine shipping company X. According to the agent contract, company A, on behalf of company X, receives goods to be transported abroad, issues bills of lading, collects charges, etc.

Company B of Vietnam hires company X (via company A) to transport goods from Vietnam to America for USD 100,000.

Company A hires ships from Vietnamese or foreign companies to carry goods from Vietnam to Singapore for USD 20,000. From Singapore, goods shall be transported to the USA by ships of company X.

Revenue subject to CIT of company X is calculated as follows:

Revenue subject to CIT = 100,000 – 20,000 = 80,000 USD

b.7) Revenue subject to CIT from outbound logistics services (whether the service charge is paid by the consignor or consignee) is the whole revenue received by the foreign contractor exclusive of international transport charge payable to the courier (by air or by sea).

b.8) Revenue subject to CIT from outbound postal services (whether the service charge is paid by the consignor or consignee) is the whole revenue received by the foreign contractor.

Example 22:

Overseas company A provides postal services from Vietnam to abroad and vice versa. The revenue subject to CIT of company A is calculated as follows:

+ Revenue from inbound postal services is not subject to CIT (whether service charges are paid by the consignor or consignee);

+ The whole revenue earned by company A from outbound postal services is subject to CIT (whether service charges are paid by the consignor or consignee).

Example 23:

Vietnamese Company B provides postal services from Vietnam to abroad and vice versa. To provide these services, company B pays overseas company C an amount of x USD. CIT incurred by company C is calculated as follows:

- + The amount of x USD received by company C from inbound postal services is not subject to CIT (whether service charges are paid by the consignor or consignee) is not subject to CIT;
- + With regard to outbound postal services (whether service charges are paid by the consignor or consignee), the amount of x USD received by company C is not subject to CIT; company B shall declare, withhold, and pay CIT on the x amount paid to company C.

b.9) Revenue subject to CIT from reinsurance is calculated as follows:

- Revenue subject to CIT from ceding reinsurance abroad is the charge for ceding reinsurance abroad received by the foreign contractor (including reinsurance commission and indemnity paid to clients as agreed).
- Revenue subject to CIT from receipt of reinsurance from abroad is the reinsurance commission received by the foreign contractor.

b.10) Revenue subject to CIT from securities transfer is calculated as follows:

Revenue subject to CIT from transferring securities and certificates of deposit is the total revenue from selling securities and certificates of deposit at that time.

b.11) Revenue subject to CIT from interest rate swap (IRS) is the difference between the interest receivable and interest payable received by the foreign contractor within a calendar year. The determination of tax period according to calendar years is specified in the Law on Corporate income tax, the Law on Tax administration, and their guiding documents.

Example 24:

Bank A has a loan of USD 10 million with a monthly interest rate of 5.2%. The effective period of the contract is 03 years from February 01, 2012 to February 01, 2015. Payments shall be made every 06 months at the beginning of the period.

According to the loan contract, A negotiates with bank B overseas to execute the IRS contract, in particular:

- The effective period of the contract is 03 years from February 01, 2012 to February 01, 2015. Payments shall be made every 06 months at the beginning of the period.

- Floating interest payable to B is $\text{libor} + 0.25\%$ and B has to pay A a fixed interest rate of 5.2%. This means if $\text{libor} + 0.25\%$ is higher than the fixed interest rate in the IRS contract, B will receive a difference of interest from A, which equals $(=) (\text{libor} + 0.25\%) - \text{interest payable at } 5.2\%$. On the contrary, if $\text{libor} + 0.25\%$ is lower than the fixed interest rate in the IRS contract, A will receive a difference of interest from B, which equals $(=) 5.2\% - \text{interest received by A at an interest rate of } \text{libor} + 0.25\%$.

Payment time	Libor interest rate (%)	The rate payable to B by A (%)	The rate payable to A by B	The rate received by B or A after offsetting		Difference received by A or B in each period (USD 1,000)	
				A	B	A	B
1/2/2012-31/7/2012	4.80	5.05	5.20		0.15	-	15
1/8/2012 - 31/1/2013	5.00	5.25	5.20	0.05		5	
1/2/2013-31/7/2013	4.90	5.15	5.20		0.05	-	5
1/8/2013 - 31/1/2014	4.95	5.20	5.20	0.00		-	-
1/2/2014 - 31/7/2014	4.90	5.15	5.20		0.05		5
1/8/2014-30/1/2015	5.05	5.30	5.20	0.10		10	

Revenue subject to CIT received by B is calculated as follows:

- In 2012 (from January 01, 2012 to December 31, 2012): Total amount B receives from A: $(15,000 - 5,000) = 10,000$ (USD);
- In 2013 (from January 01, 2013 to December 31, 2013): Total amount B receives from A: $(5,000 - 0) = 5,000$ (USD);
- In 2014 (from January 01, 2014 to December 31, 2014): B has to pay A totally USD 5,000 (taxable revenue = 0)

- In 2015: The contract stipulates that payments are made at the beginning of the period, thus there is no transactions between A and B.

b.12) With regard to treasury bills:

Revenue subject to CIT from each type of treasury bills held by investors shall be determined on their maturity date.

Revenue subject to CIT received from treasury bills is calculated as follows:

$$\text{Revenue subject to CIT} = \left(\frac{\text{Face value of treasury bills}}{\text{Weighted mean of buying prices of treasury bills held by the investor on the maturity date}} \right) \times \text{Weighted mean of buying price of treasury bills held by the investor on the maturity date}$$

The weighted mean of buying price of treasury bills held by the investor on the maturity date shall be calculated following 03 steps:

Step 1: determine the amount of treasury bills held on the maturity date.

Step 2: Determine the amount, time, and corresponding buying prices of the treasury bills held on the maturity date (determined in Step 1) under First-in-first-out rules.

Step 3: Determine the weighted buying price using the formula:

$$= \frac{\sum (\text{amount of treasury bills held on the maturity date} \times \text{corresponding buying prices at on the buying date})}{\text{amount of treasury bills held on the maturity date}}$$

Example 25: On January 01, 2015, treasury bills with a face value of VND 100,000 and a term of 06 months are issued for VND 89,000 per treasury bill. After being issued, treasury bills are posted on HNX. Investor A makes the transactions below from January 02 to July 01, 2015 (maturity date):

Transaction date	Buy/Sell	Amount	Price
2/1/2015	Buy	100	90,000
1/2/2015	Buy	100	92,000
1/3/2015	Sell	70	93,000
1/4/2015	Buy	40	94,000
1/5/2015	Sell	20	95,000

Step 1: determine the amount of treasury bills held on the maturity date: $(100 + 100 + 40) - (70 + 20) = 150$

Step 2: Determine the amount, time, and corresponding buying prices of the treasury bills held on the maturity date after subtracting the amount of sold treasury bills according to First-in-first-out rules: 150 treasury bills are held on the maturity date, including:

+ 10 treasury bills at VND 90,000 bought on January 02, 2015

+ 100 treasury bills at VND 92,000 bought on February 02, 2015

+ 40 treasury bills at VND 94,000 bought on April 02, 2015

Step 3: Determine the weighted buying price using the formula:

Weighted mean of buying prices: $[(40 \times 94,000 + 100 \times 92,000 + 10 \times 90,000) / 150] = 92.400$ (VND)

Revenue subject to CIT from the treasury bills received by the investor on the maturity date: $(100,000 - 92,400) \times 150 = 1,140,000$ (VND).

2. CIT rate (%)

a) CIT rates (%) applied to trading:

No.	Trade	CIT rate
1	Trading: distribution, supply of goods, raw materials, supplies machinery and equipment; distribution of goods, raw materials, supplies, machinery and equipment attached to services in Vietnam (including those provided in the form of domestic exports, except for goods processed under processing contracts with foreign entities); supply of goods under Incoterms	1
2	Lease of machinery and equipment, insurance, lease of oilrig.	5
	- Restaurant, hotel, casino management services	10
	- Derivative financial services	2
3	Lease of aircraft, aircraft engines, parts of aircrafts and ships	2

4	Construction, installation, whether or not inclusive of raw materials, machinery and equipment	2
5	Other business activities, transport (including sea transport and air transport)	2
6	Transfer of securities, certificates of deposit, ceding reinsurance abroad, reinsurance commission	0.1
7	Loan interest	5
8	Income from copyright	10

b) CIT rates in some cases:

b.1) If a main contract or subcontract consists of various business activities, the application of CIT rates to each business activity carried out by the foreign contractor or foreign sub-contractor shall be specified in the contract. If the value of each business activity cannot be separated, the highest CIT rate shall apply to the whole contract value.

With regard to construction and installation services inclusive of raw materials or machinery and equipment: if the value of each business activity is separated in the main contract, corresponding CIT rate shall apply to each of them. If the value of each business activity cannot be separated, the 2% CIT shall apply to the whole contract value. Where the foreign contractor signs a contract with subcontractors to delegate the works inclusive of raw materials or machinery and equipment, and the foreign contractor only provide the other services under the main contract, 5% VAT on service provision shall apply.

Example 26:

Foreign contractor A signs a contract to build power plant X with a Vietnamese entity. The contract value is USD 75 million (exclusive of VAT and inclusive of CIT).

Case 1: Value of each business activity can be separated:

+ Value of machinery and equipment provided for the construction: USD 50 million.

Including:

Value of machinery and equipment: USD 45 million

Value of warranty services attached thereto: USD 5 million

+ Value of technological line design and other design services: USD 5 million

+ Value of workshops, other auxiliary systems, construction, and installation: USD 15 million.

+ Value of supervision and installation guide: USD 3 million.

+ Value of operation training and test run services: USD 2 million.

1% CIT shall apply to USD 45 million of machinery and equipment, 2% CIT shall apply to USD 15 million of construction and installation; 5% CIT shall apply to USD 15 million of other services (warranty, design, supervision, installation guide, technical training, and test run).

Case 2: If the value of each business activity cannot be separated, the 2% CIT shall apply to the whole contract value which is USD 75 million.

Case 3: Where foreign contractor A signs contracts with subcontractors to delegate the works inclusive of raw materials and foreign contractor A only provide the other services (such as supervision service, installation guide) the value of such services shall apply 5% VAT.

b.2) With regard to contracts to provide machinery and equipment that include services performed in Vietnam, if value of machinery and equipment can be separated from value of services, fixed CIT rates shall apply to corresponding parts of the contract. If the value of services cannot be separated from the value of machinery and equipment, 2% CIT shall apply.

Example 27:

Foreign contractor A signs a contract with a Vietnamese entity to provide a production line for USD 70 million, Including:

+ Value of machinery and equipment provided for the construction: USD 60 million.

+ Value of technological line design and other design services: USD 5 million

+ Value of supervision and installation guide: USD 3 million.

+ Value of operation training and test run services: USD 2 million.

If the value of machinery and equipment can be separated from value of services, the value of machinery and equipment shall apply CIT rate on trading; the value of design, supervision, installation, training, and test run services shall apply CIT rate on service provision.

Otherwise, 2% CIT shall apply to the whole contract value (USD 70 million).

3. CIT on compensation paid by the party that breaches the contract, which is higher than the damage and thus considered a taxable income:

Foreign contractor may pay CIT on the income from compensation at the rate of CIT on taxable revenue or according to the declaration of revenue and expense with the common tax rate.

Section 4. PAYING VAT USING CREDIT-INVOICE METHOD, PAYING CORPORATE INCOME TAX ACCORDING TO FIXED RATES

(hereinafter called mixed method)

Article 14. Requirements and regulated entities

Foreign contractors and foreign sub-contractor that meet the requirements in Clause 1 and Clause 2 Article 8 Section 2 Chapter II, and the organizations that adhere to regulations of law on accounting of the Ministry of Finance shall register with tax authority to pay VAT using credit-invoice method and pay CIT according to fixed rates.

Article 15. VAT

Article 9 Section 2 Chapter II shall apply.

Article 16. Corporate income tax

Article 13 Section 3 Chapter II shall apply.

Chapter III

IMPLEMENTATION ORGANIZATION

Article 17. Implementation effect

1. This Circular takes effect on October 01, 2014 and supersedes Circular No. 60/2012/TT-BTC dated April 12, 2012 providing guidelines for fulfillment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam.
2. VAT and CIT on the contracts and subcontracts concluded before this Circular takes effect shall be determined in accordance with corresponding legislative documents effective on the conclusion dates.
3. In case any international agreements to which Vietnam is a signatory contains regulations tax liabilities of foreign contractors and foreign sub-contractors that are at odds with instructions in this Circular, such international agreements shall apply.

Any difficulties that arise during the implementation of this Circular shall be reported to the Ministry of Finance for consideration./.

For the Minister

The Deputy Minister

Do Hoang Anh Tuan

** All appendices are not translated herein.*