

Global Tax Update

Vietnam

Deloitte Tohmatsu Tax Co.

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Circular 130/2016/TT-BTC

Circular No. 130/2016/TT-BTC provides guidance on Decree No. 100/2016/NĐ-CP dated July 1, 2016 of the Government providing detailed guidance on the Law amending and supplementing some articles of the Law on Value Added Tax, Law on Excise Tax and Law on Tax Administration.

Generally, Circular No. 130/2016/TT-BTC ("Circular 130") supplements the changes in Decree No. 100/2016/ND-CP ("Decree 100") and the prevailing circulars guiding the Law on Value Added Tax ("VAT"), Excise Tax, and Tax Administration. Apart from updates on the new provision of Decree 100, Circular 130 also provides detailed instructions on several notable items as follows:

(1) VAT REFUND

1) VAT refund regarding business establishments using credit method for VAT declaration

As per the additional guidance under Circular 130, in case a business establishment incurred a VAT amount not yet been fully deducted before July 2016 (for VAT declaration on a monthly basis) or before Quarter III/2016 (for VAT declaration on a quarterly basis) which is eligible for VAT refund under the provision of Clause 1, Article 18, Circular No. 219/2013/TT-BTC, the tax authority shall proceed the claim for tax refund from such business establishment as prescribed by law.

2) VAT refund regarding investment projects

Compared to Decree 100, Circular 130 supplements cases of investment projects that are not eligible for VAT refund in which business establishments do not fulfil the contribution of registered charter capital as prescribed by law. Therefore, the business establishment which has submitted the tax refund dossiers for investment projects since July 1, 2016 but by the date of filing, has not yet fully contributed

the charter capital as registered, will not be eligible for VAT refund.

3) VAT refund regarding exported goods and services

Circular 130 provides more detailed guidance on VAT refund for business establishments having goods and services both for exporting and domestic sales. Accordingly, the business establishment must separately record the input VAT amount used for the production of exported goods/services. Otherwise, the input VAT amount of exported goods/services shall be determined by the ratio of total export revenue over total VATable revenue for the period from the last refund until the current period for which tax refund is claimed.

After being offset with VAT payable, the remaining input VAT amount on exported goods/services being VND300 million or above shall be refundable. The refundable VAT amount from exported goods/services shall not exceed 10% of the total revenue from exported goods/services.

In addition, the Circular also adds an example on the case of goods imported for export that are not eligible for VAT refund. Accordingly, in case an enterprise imports goods into Vietnam, then export the goods overseas (i.e. form of trading), then the imported VAT and input VAT relating to logistic services (i.e. transportation, warehouse) shall not be refunded but should be creditable.

4) Retrospective collection of refunded VAT amount in case of dissolution

Business establishments that terminate their operation and do not incur output VAT from main business activities shall have to return the refunded VAT amount to the State Budget. In case such business establishments sell assets subject to VAT, they shall not be required to adjust the corresponding input VAT of the sold assets.

(2) DETERMINATION OF INTEREST ON LATE TAX PAYMENT

Regarding the interest on late tax payment effective from July 1, 2016, supplementing the regulations in Decree 100, Circular 130 provides more specific guidance on how to determine the late payment interest with details as below:

- For outstanding tax payment arising after July 1, 2016: the late payment interest is calculated at the rate of 0.03%/day over the late payment amount.
- For outstanding tax payment arising before July 1, 2016 and not yet paid until July 1, 2016:
 - Period before January 1, 2015: 0.05%/day from the filing deadline date to the 90th day; 0.07%/day from the 91th day
 - From January 1, 2015 to June 30, 2016: 0.05%/day
 - From July 1, 2016: 0.03%/day

(3) DETERMINATION ON EXPANSION INVESTMENT PROJECTS

The guidance on determining the expansion investment projects as guided in a number of previous official rulings by the General Department Taxation was formalized in Circular 130. Specifically, for the period from 2009 to 2013, if during the operation, enterprises conduct regular investments on additional machines and equipment without increasing the production capacity as per their registered or approved investment plan in the following forms, the investments shall not be considered investment expansion:

- Using enterprises' depreciation fund;
- Using profit after tax for re-investment; or
- Using the investment capital as registered with competent State authorities

(4) SPECIAL CONSUMPTION TAX ("SCT")

Circular 130 amends and supplements the regulations on determining the taxable price for Special Consumption tax calculation in case goods are sold to affiliated trading establishments. Specifically:

- Affiliated trading establishments refer to the parent company - subsidiary company or subsidiaries of the same parent company which directly or indirectly holds at least 20% of the chartered capital of the other.
- The selling price used to determine the price taxable for special consumption shall not be lower than 7% of the monthly average price of goods directly purchased by the trading establishments from manufacturers or importers.

- In the case where a manufacturer or importer establishes several affiliated trading establishments, the selling price used to determine the price taxable for special consumption must not be lower than 7% of the monthly average price of goods sold by such trading establishments to other trading establishments that do not have an affiliated relationship with the manufacturer or importer.
- Especially for automobiles, the average price of the trading establishments used for comparison is the selling price excluding the price of customized parts as requested by customers.

The Circular takes effect from the effective date of Law 106/2016/QH13, which is July 1, 2016

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