

Tax Alert

Vietnam

Deloitte Tohmatsu Tax Co.

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Decree No. 100/2016/ND-CP provides guidance on several articles of the Law amending and supplementing some articles of Value Added Tax Law, Tax Law, and Excise Tax Law and Tax Administration Law No. 106/2016/QH13

Basically, Decree No. 100/2016/ND-CP (“Decree 100”) supplements the changes of Law No. 106/2016/QH13 (“Law 106”) on prevailing decrees guiding the Law on Value Added Tax (“VAT”), Excise Tax, and Tax Administration. Apart from updates on the new provisions of Law 106, Decree 100 also provides detailed instructions on several notable items as follows:

(1) Guidelines on the case of mineral resource exports that are not subject to Value Added Tax

Compared to Law No. 106/2016/QH13, Decree 100 has provided more details regarding exports which are unprocessed mineral resources. Accordingly, only cases in which the exploited resources and minerals have not been processed into other products and the total value of the mineral resources and energy cost account for more than 51% of production cost, are not subject to VAT.

Decree 100 also provides detailed guidance on the determination of the value of the resource rate and energy costs; in which, the percentage value of the natural resources and minerals plus the cost of energy are used to determine which objects are not subject to VAT would be based on the finalization of the previous year or in the investment plan of new business that has not issued a finalization report;

(2) Guidelines on VAT refund regarding investment projects of enterprises operating in conditional businesses

Decree 100 further regulates cases not subject to non-refundable VAT in investment projects due to unqualified business conditions or lack of ability to maintain sufficient business conditions during the operation of the enterprise which operates in a conditional business including projects in which:

- Business license not granted or withdrawn in a conditional business;
- Qualification certificates not granted for conditional business;
- Investment certificates not granted or withdrawn from authorized State agency in a conditional business; or,
- Unable to meet the conditions or during operation to be qualified to operate in the conditional business;

In case the investment project could not maintain sufficient business conditions during operation, the time that VAT shall not be refundable thereon, will be calculated from the point the enterprise was withdrawn of one of the above documents, or discovered by the authorized State authorities that the enterprise does not meet the conditions.

(3) Other updates

Imported Cigarettes, alcohol, beer, then exports later are added in the case of not subject to apply of 0% VAT.

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