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Hanoi, April 12, 2012

CIRCULAR

GUIDING THE EXECUTING OF TAX LIABILITY APPLICABLE TO FOREIGN ORGANIZATIONS, INDIVIDUALS DOING BUSINESS OR EARNING INCOMES IN VIETNAM

Pursuant to the Law on Value-added tax No. 13/2008/QH12 of June 03, 2008, the Government's Decree No. 123/2008/ND-CP of December 08, 2008 on detailing and guiding the implementation of a number of articles of the Law on Value-added tax; the Government's Decree No. 121/2011/ND-CP of December 27, 2011 on amending and supplementing a number of articles of the Government's Decree No. 123/2008/ND-CP of December 08, 2008 on detailing and guiding the implementation of a number of articles of the Law on Value-added tax;

Pursuant to the Law on Enterprise income tax No. 14/2008/QH12 of June 03, 2008; the Government's Decree No. 124/2008/ND-CP of December 11, 2008 on detailing and guiding the implementation of a number of articles of the Law on Enterprise income tax; the Government's Decree No. 122/2011/ND-CP of December 27, 2011 on amending and supplementing the Government's Decree No. 124/2008/ND-CP of December 11, 2008 on detailing and guiding the implementation of a number of articles of the Law on Enterprise income tax;

Pursuant to the Law on Tax administraten of 78/2006/QH11 of November 29, 2006;

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

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

The Ministry of Finance promulgates the Circular on guiding the executing of tax liability applicable to foreign organizations, individuals doing business or earning incomes in Vietnam as follows:

Chapter I

GENERAL PROVISION

Article 1. Subjects of application

This Circular is applicable to the following subjects (except for the subjects stated in Article 4 Chapter I of this Circular);

1. Foreign business organizations having or not having Vietnam-based permanent establishments; foreign business individuals being resident or non-resident objects in Vietnam (hereinafter referred to as foreign contractors, foreign sub-contractors) that do business in Vietnam or earn incomes in Vietnam on the basis of contracts, agreements or commitments between foreign contractors and Vietnamese organizations, individuals, or between foreign contractors and foreign sub-contractors to perform a part of the Contractor agreement.
2. Foreign organizations and individuals supplying goods in Vietnam by on-spot export/import and earning incomes in Vietnam on the basis of the contracts signed between foreign organizations, individuals and enterprises in Vietnam (except for the case of processing and re-exporting goods to foreign organizations, individuals), or providing goods under the DDP, DAT, DAP delivery conditions (incoterms)

Example 1:

- Case 1: The overseas enterprise X overseas signs the contract to purchase cloth from the Vietnamese enterprise A and request the Vietnamese enterprise A to deliver to the Vietnamese enterprise B (by on-spot export and import as prescribed by law). The enterprise X earns incomes in Vietnam on the basis on

the contract signed between the enterprise X and the enterprise B (the enterprise X sells cloths to the enterprise B).

In this case, the enterprise X is the subject of application as prescribed in this Circular. The enterprise B is responsible to declare, deduct and pay tax on behalf of the enterprise X as prescribed in this Circular.

- Case 2: The overseas enterprise Y signs the contract for cloth processing with the Vietnamese enterprise C and request the enterprise C to deliver to the Vietnamese enterprise D to continue producing (by on-spot export and import as prescribed by law). The enterprise Y earns income in Vietnam on the basis of the contract signed between the enterprise Y and the enterprise D (the enterprise Y sells goods to the enterprise D).

In this case, the enterprise Y is the subjects of application as prescribed in this Circular. The enterprise D is responsible to declare, deduct and pay tax on behalf of the enterprise Y as prescribed in this Circular.

- Case 3: the overseas enterprise Z signs the contract for processing or purchasing cloth with the Vietnamese enterprise E (the enterprise Z provides raw materials for the enterprise E for processing) and request the enterprise E to deliver to the enterprise G to continue processing (by on-spot export, import processing as prescribed by law). After having finished the processing, the enterprise G exports for returning the goods to the enterprise Z and the enterprise Z must pay the processing charge to the enterprise G under the processing contract.

In this case, the enterprise Z is not the subject of application as prescribed in this Circular.

Article 2. Taxpayers

1. Foreign contractors, foreign sub-contractors satisfying the conditions prescribed in Article 8 Section 2 Chapter II or Article 14 Section 4 Chapter II of this Circular that do business or earn incomes in Vietnam (including the territorial land, islands, internal waters, territorial sea and its airspace, the sea outside the territorial sea including the seabed and soil under the seabed that Vietnam exercises its sovereignty and jurisdiction in accordance with Vietnam's law and international law. The business is done on the basis of the contractor contracts with Vietnamese organizations and individuals or with other foreign organizations, individuals doing business in Vietnam on the basis of the sub-contractor contracts.

The determination of foreign contractors, foreign sub-contractors having Vietnam-based permanent establishments or being residents in Vietnam shall be made under the Law on Enterprise income tax, the Law on personal income tax and their guiding documents.

In case the Agreement on avoiding double taxation which the Socialist Republic of Vietnam having signed otherwise defines the permanent r establishments or residents, such provisions shall be applied and implemented.

2. Organizations being established, operate under Vietnam's law, organizations being registered to operate under Vietnam's law, other organizations, and individuals do production and business on purchase services, services attached with goods or earn incomes in Vietnam on the basis of contractor contracts or sub-contractor contracts (hereinafter referred to as the Vietnam party) include:

- Business organizations being established under the Law on Enterprise, the Law on State enterprises (now the Law on Enterprise), the Law on Foreign investment in Vietnam (now the Law on investment) and the Law on Cooperatives;
- The economic organizations of political organizations, socio-political organizations, social organizations, Socio-professional organizations, armed units, non-business organizations and other organizations;
- Petroleum contractors operating under the Law on petroleum
- Branches of foreign companies licensed to operate in Vietnam;
- Foreign organizations or representatives of foreign organizations licensed to operate in Vietnam;
- Vietnam-based ticket offices, agents of foreign airlines licensed for Vietnam-inbound and –outbound transportation on their own or in joint-venture;

- Organizations and individuals business maritime transport services of foreign maritime transport firms; Vietnam-based agents of foreign forwarding and warehousing and delivery firms;
- Securities companies, securities issuance organizations, fund management companies, commercial banks where the securities investment funds or foreign organizations open securities investment accounts;
- Other organizations in Vietnam;
- Individuals producing and business in Vietnam.

The tax payers as prescribed in Clause 2 Article 2 Chapter I of this Circular are responsible to deduct the VAT amount, the enterprise income tax amount guided in Section 3, Chapter II of this Circular before making payment to foreign contractors, foreign sub-contractors.

Article 3. Applicable taxes

1. Foreign contractors, foreign sub-contractors being business organizations shall fulfill the VAT liability, enterprise income tax liability as guided in this Circular.
2. Foreign contractors, foreign sub-contractors being foreign business individuals shall fulfill the VAT liability as guided in this Circular, the personal income tax liability under the the Law on personal income tax.
3. For other kinds of tax, fees and charges, foreign contractors, foreign sub-contractors shall implement in accordant with the other current legal documents on tax, fees and charges.

Article 4. Non-applicable subjects

This Circular is not applicable to:

1. Foreign organizations, individuals doing business in Vietnam as prescribed by the Law on investment, the Law on petroleum and the Law on credit institutions
2. Foreign organizations, individuals providing goods for Vietnamese organizations and individuals without the attached services performed in Vietnam in the following forms:
 - Goods delivery at foreign border gates: the seller shall be liable for all responsibilities, cost and risks relating to the goods export and delivery at foreign border gates; the buyer shall be liable for all responsibilities, cost and risks relating to the goods receipt and transportation from foreign border gates to Vietnam.
 - Goods delivery at Vietnam's border gates: the seller shall be liable for all responsibilities, cost and risks relating to the goods until goods to the Vietnam's border gate; the buyer shall be liable for all responsibilities, cost and risks relating to the goods receipt and transportation from the Vietnam's border gate.
3. Foreign organizations, individuals earning incomes from services being provided and used outside Vietnam.

Example 2:

The company H in Hongkong provides the goods arrangement service at a Hongkong's port for an international transport fleet of the company A in Vietnam. The company A must pay the company H the charge for the goods arrangement service at the Hongkong's port.

In this case, the goods arrangement service at the Hongkong's port is the service being provided and used in Hongkong, so it is not the taxable subject in Vietnam.

Example 3:

A foreign organization provides professional services, bond management and issuance, legal consultancy, depository agents, roadshow organization (a trademark activation activity) for company A in Vietnam in countries where company A issue GDRs (Global Depositary Receipt) and international bonds. The services performed by the foreign organization are not the subjects of application in this Circular.

4. Foreign organizations, individuals providing overseas the following services for Vietnamese organizations and individuals:

- Repair of means of transport (airplanes, airplane engines, airplane spare parts, ships), machinery, equipment, (including sea cables, transmission devices), including or not including accompanying spare materials and equipments;
- Advertising and marketing (except for internet-based advertising and marketing);

Example 4:

A Vietnamese enterprise signs a contract with an organization in Singapore to perform advertising service for products in Singapore's market. This advertising service of the Singaporean organization is not a subject of application of this Circular. In case the Singaporean organization advertises the products for consumption in Vietnam on the internet, the income from this advertising service is the subject of application of this of this Circular.

- Trade and investment promotion;
- Brokerage: goods sale, service provision overseas

Example 5:

A Vietnamese enterprise signs a contract to hire an enterprise in Thailand to perform the brokerage service in order to sell the products of the Vietnamese enterprise in the Thailand market or in the world's market. This brokerage service of the Thai enterprise is not the subject of application of this Circular. In case the Vietnamese enterprise signs a contract to hire an enterprise in Thailand to perform the brokerage service in order to transfer real estate of the Vietnamese enterprise in Vietnam, this brokerage service in the subject of application of this Circular.

- Training (except for online training);

Example 6:

The company A in Vietnam signs a contract with the university B in Singapore for the Vietnamese employees to study at the university B in Singapore. The training service of the university B is not the subject of application of this Circular. In case the company A in Vietnam signs a contract with the university B for teaching the Vietnamese employees in Vietnam via online learning, the online training service of the university B is the subject of application of this Circular.

- Sharing charges (paid charges) for international postal and telecommunication services between Vietnam and other countries when such services are performed outside Vietnam; services of renting foreign transmission lines and satellite bands, shall comply with the Law on post and the Law on telecommunication

Article 5. Interpretation of terms

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

1. "Contractor contract" is the contract, agreement or commitment between a foreign contractor and a Vietnam party.
2. "Sub-contractor contract" is the contract, agreement or commitment between a sub-contractor and a foreign contractor.

Sub-contractors include foreign sub-contractors and Vietnamese sub-contractors

3. The Vietnam' territory includes territorial land, islands, internal waters, sea and its airspace, the sea outside the territorial sea including the seabed and soil under the seabed that Vietnam exercises its sovereignty and jurisdiction in accordance with Vietnam's law and international law

Chapter II

BASES AND METHODS OF TAX CALCULATION

Section 1. VAT-LIABLE OBJECTS AND EIT-LIABLE INCOMES

Article 6. VAT-liable Objects

1. Services or services attached to VAT-liable goods provided by foreign contractors, foreign sub-contractors on the basis of contractor contracts, sub-contractor contracts serving the production, business and consumption in Vietnam (except for the goods, services prescribed in Article 4 Chapter I of this Circular), including:

- Services or services attached to VAT-liable goods are provided in Vietnam by foreign contractors, foreign sub-contractors and used in Vietnam;
- Services or services attached to VAT-liable goods are provided outside Vietnam by foreign contractors, foreign sub-contractors and used in Vietnam;

2. For goods being provided contractually by mode of: the goods delivery place is located inside Vietnam's territory; or the goods are provided attaching to services performed in Vietnam such as installation, trial operation, warranty, maintenance, replacement and other services attached to the goods provision, regardless of whether such services are included in the value of the goods provision contract, the goods value is only subject to the VAT in the import stage as prescribed while the service value portion is subject to VAT as prescribed in this Circular. If the contract does not separate the value of goods from the attached services (including complimentary attached services), the VAT shall be calculated on the entire contract.

Example 7:

The enterprises A in Vietnam signs the contract to buy the machinery and equipment for the Project on Cement factory with the enterprise B overseas. The total contract value is USD 100 million including USD 80 million worth of machinery and equipment (of which including the Vat-liable equipment with 10% tax rate), and USD 20 million worth of the services of installation instruction, supervision and maintenance.

When importing the machinery and equipment, the enterprise A being the importer shall pay the VAT in the import stage on the value of the VAT-liable equipment.

The company B's liability of VAT payment under the contract signed with enterprise A is determined as follows:

- The VAT shall be calculated on the service value (USD 20 million), not on the value of the imported machinery and equipment.
- In case the contract does not separate the value of machinery and equipment from that of services, the VAT shall be calculated on the value of the entire contract (USD 100 million).

Article 7. EIT-liable Incomes

1. Incomes of foreign contractors, foreign sub-contractors arising from the provision of services, services accompanying goods in Vietnam on the basis of contractor contracts, sub-contractor contracts (except for the goods, services prescribed in Article 4 Chapter I of this Circular).

2. In case the goods is provided in forms of: the goods receipt place is located inside Vietnam's territory; or the goods provision is attached to services performed in Vietnam such as installation, trial operation, warranty, maintenance, replacement and other services attached to the goods provision (including complimentary attached services), regardless of whether such services provision is included or not included in the value of the goods provision contract, EIT-liable incomes of foreign contractors or subcontractors are the total value of goods and services

Example 8:

The enterprises A in Vietnam signs the contract to buy the machinery and equipment for the Project on Cement factory with the enterprise B overseas. The total contract value is USD 100 million (excluding VAT) including USD 80 million worth of machinery and equipment (the equipment there of is subject to 10% VAT), USD 20 million worth of the services of installation instruction, supervision and maintenance.

The EIT liability of the company B under the contract signed with enterprise A is determined as follows:

- The enterprise income tax shall be calculated separately for the value of imported machinery and equipment (USD 80 million) and the service value (USD 20 million) together with the corresponding enterprise income tax rates as prescribed.

- In case the contract does not separate the value of machinery, equipment from the service, the enterprise income tax shall be calculated on the entire contract value (USD 100 million) together with the corresponding enterprise income tax rates as prescribed.

3. Incomes earned in Vietnam of foreign contractors, foreign sub-contractors are the incomes received in any form on the basis of contractor contracts, sub-contractor contracts (except for the provisions of goods, services prescribed in Article 4 Chapter I of this Circular), regardless of the business location of foreign contractors, foreign sub-contractors. The taxable incomes of foreign contractors, foreign sub-contractors in a number of particular cases are identified as follows:

- Incomes from ownership transfers, property use right transfers.

- Incomes from copyrights are incomes in any forms being paid for the use right, transfers of intellectual property rights and technology transfers (including the amounts paying for rights of use, transfer of author rights and work ownership; the transfer of industrial property rights; technology transfers).

“Author rights, work ownerships”, “Industrial property rights”, “Technology transfers” are prescribed in the Civil Code of the Socialist Republic of Vietnam, in the Law on Technology transfers and guiding documents.

- Incomes from transferring and liquidating assets.

- Incomes from loan interests: are the incomes of the lender from the loans in any form regardless of whether those loans are guaranteed with mortgage, or whether the lender benefits from the borrower’s interest; incomes from deposit interests (except for deposit interests of foreigners and deposit interests from deposit accounts to maintain the operation in Vietnam of diplomatic missions, representative agencies of international organizations, non-governmental organizations in Vietnam), including the bonuses attached to the deposit interest (if any); incomes from contractual deferred payment interest; incomes from bond interest, bond discount (except for bonds eligible for tax exemption); incomes from deposit certificates.

Loan interest includes the charges that the Vietnam party must pay under the contract.

- Incomes from securities transfers.

- Fines, compensations collected from the partner that breaches the contract.

- Other incomes as prescribed by law.

Section 2. PAYING VALUE-ADDED TAX UNDER THE DEDUCTION METHOD, PAYING ENTERPRISE INCOME TAX ON THE BASIS OF TURNOVER AND COST DECLARATION TO DETERMINE TAXABLE INCOMES

(hereinafter referred to as deduction and declaraten method)

Article 8. Subjects of and conditions for application

The foreign contractors, foreign sub-contractors paying tax as guided in Section 2 Chapter II of this Circular if satisfying the following conditions:

(i) Having permanent establishment in Vietnam or being resident in Vietnam;

(ii) The business term under the contractor contract, sub-contractor contract is 183 days or longer as from the effective date of the contractor contract, sub-contractor contract;

(iii) Applying the Vietnam Accounting regime.

Article 9. VAT

Implemented under the Law on Value-added tax and its guiding document.

Article 10. Enterprise income tax

Implemented under the Law on enterprise income tax and its guiding document.

Section 3. PAYING VAT UNDER DIRECT CALCULATION METHOD ON ADDED VALUE, PAYING ENTERPRISE INCOME TAX BY THE PERCENTAGE RATE CALCULATED ON TURNOVER

(hereinafter referred to as rate fixing method)

Article 11. Subjects of and conditions for application

The Vietnam party shall pay taxes on behalf of foreign contractors, foreign sub-contractors in case foreign contractor, foreign sub-contractors paying tax as guided in Article 12, Article 13, Section 3 Chapter II of this Circular if foreign contractor, foreign sub-contractors fail to satisfy one of the conditions prescribed in Article 8 Section 2 Chapter II of this Circular.

Article 12. Value-added tax

The basis for tax calculation is the added value of services, services attached to VAT-liable goods and VAT rate.

$$\text{VAT amount payable} = \text{The added value} \times \text{VAT rate}$$

1. The added value

The added value of services, services attached to VAT-liable goods is calculated by the turnover for VAT calculation multiplied by the rate (%) of the added value to the turnover.

a) Turnover subject to calculate VAT:

The turnover subject to calculate VAT is the whole turnover from the provision of services, services attached to VAT-liable goods that foreign contractors, foreign sub-contractors receive including the taxes payable, the costs that the Vietnam party paid on behalf of foreign contractors, foreign sub-contractors (if any).

b) Determining turnover subject to calculate VAT in some certain cases:

- In case the turnover earned by foreign contractors, foreign sub-contractors does not include VAT under the contractor contracts, sub-contractor contracts, the turnover for VAT calculation must be converted into VAT-inclusive turnover and shall be calculated by the following formula:

$$\text{a) Turnover for VAT calculation:} = \frac{\text{VAT-exclusive turnover}}{1 - \text{The percentage rate of added value to turnover} \times \text{VAT rate}}$$

Example 9:

The foreign contractor A provides the Vietnam party with the service of supervising the construction of the cement plant Z. The contractual price excluding VAT (but including enterprise income tax) is USD 300,000. Besides, the Vietnam party arranges accommodations and workplaces valued for managers of the foreign contractor A at the cost of USD 40,000. Under the contract, the Vietnam party is liable to pay VAT for the foreign contractor. The turnover for VAT calculation of the foreign contractor A is determined as follows:

To determine the taxable turnover:

$$\text{a) Turnover for VAT calculation:} = \frac{300,000 + 40,000}{(1 - 50\% \times 10\%)} = 357,894.73 \text{ USD}$$

- In case foreign contractors that sign contracts with Vietnamese sub-contractors or foreign sub-contractors pay tax under the deduction, declaraten method, or foreign sub-contractors pay tax using the combined method to assign part of the work value or item value stipulated in the contractor contracts signed with the Vietnam party and the list of Vietnamese sub-contractors, the foreign sub-contractors

carry out the corresponding work or item enumerated under the contractor contracts, the turnover for VAT calculation of foreign contractors does not include the value of work done by Vietnamese sub-contractors or foreign sub-contractors.

In case foreign contractors sign contract with suppliers in Vietnam to buy raw material, materials, machinery and equipment to perform contractor contracts and goods, services to serve internal consumption, spending on the items not being the contractual works, items, the value of such goods, services shall not be deducted when determining VAT-liable turnover of foreign contractors.

Example 10:

The foreign contractor A signs a contract to build a cement plant Z with the Vietnam party of which the total contract value is USD 10 million (including VAT). Under the contractor contract, the foreign contractor A shall assign the installation (stipulated in the contractor contract signed with the Vietnam party) valued at USD 01 million (exclusive of VAT) to Vietnamese sub-contractors; besides, during the construction of the cement plant Z, the foreign contractor A buys raw material, materials (bricks, cement, sand...) for construction and instalation and buys goods, services such as stationery, hiring cars, hotels for experts... to serve for performance of contract.

The VAT-liable turnover of the foreign contractor A in this case is determined as follows:

$$\text{VAT-liable turnover} = \text{USD 10 million} - \text{USD 1 million} = \text{USD 9 million}$$

The VAT-liable turnover of the foreign contractor A must include the expenditures on materials, goods, services such as stationery, hiring car, hotels for experts...

- For sub-contractors being foreign sub-contractors paying tax under the rate fixing method, the VAT-liable turnover of the foreign contractor is the whole turnover earned by the foreign contractor under the contract signed with the Vietnam party. Foreign sub-contractors are not liable to pay VAT on the part of work that they perform under the sub-contractor contracts signed with foreign contractors.
- For international forwarding and warehousing services from Vietnam to abroad (regardless of whether the sender or the recipient pays the service charge), the VAT-liable turnover is the whole turnover earned by foreign contractors exluding international transport charges payable to transport firms (by air or sea)
- For international delivery services from Vietnam to abroad (regardless of whether the sender or the recipient pays the service charge), the VAT-liable turnover is the whole turnover earned by foreign contractors.

Example 11:

The ove seas company A provide the mail delivery service from abroad to Vietnam and vice versa. The VAT-liable turnover of the company A is determined as follows:

- + For delivery services from abroad to Vietnam (regardless of whether the overseas sender or the recipient in Vietnam pays the service charge) are not subject to VAT;
- + For delivery services from Vietnam to abroad (regardless of whether the overseas sender or the recipient in Vietnam pays the service charge), the VAT-liable turnover is the whole turnover earned by the company A.

2. Rate (%) of the added value to the taxable turnover:

a) Rate (%) of the added value to the taxable turnover regarding to the following business lines :

No.	Business line	Rate (%) of added value to taxable turnover
1	Services (except for petroleum drilling services), leasing machinery and equipment, insurance	50
2	Petroleum drilling services	70

3	a) Construction, installation including materials or machinery and equipment attached to the construction works	30
	b) Construction, installation excluding materials or machinery and equipment attached to the construction works	50
4	Transport, production and other business	30

b) Determining the rate (%) of the added value to turnover for VAT calculation in certain cases:

- For contractor contracts, sub-contractor contracts that consists of multiple business activities, or part of the contract value is not subject to VAT, the application of the rate of the added value to turnover for VAT calculation when determining the VAT amount payable shall depend on the turnover for VAT calculation from each business activity performed by foreign contractors, foreign sub-contractors under the contractor contracts, sub-contractor contracts. In case it is not able to separate the value of each business activity, the highest added value rate for business line and the highest tax rate for whole contract value shall be applied.

For constructions and installation including materials or machinery and equipment attached to the construction works, the rate of the added value to the taxable turnover is 30% over the whole contract value. In case the foreign contractor signs contracts with sub-contractors to assign the whole value of work or items that including materials or machinery and equipment, the foreign contractor shall only perform the part of remaining service value under the contractor contract, the rate (%) of the added value to the VAT-liable turnover shall be applicable to the service line (50%).

Example 12:

The foreign contractor A signs a contract to build a power plant X with the Vietnam party of which the value is USD 75 million (including VAT), the contract value includes:

- + The value of machinery and equipment provided for the construction: USD 50 million.
- + The value of technology line designs, other designs: USD 5 million.
- + The value of workshops, other ancillary systems, construction, installation: USD 15 million.
- + The value of supervision services, installation instructions: USD 3 million.
- + The value of technical training, trial operation: USD 2 million.

In this case, the applicable rate % of added value to whole USD 75 million value contract is 30%, not separating each business activities performed by the foreign contractor A.

In case the foreign contractor A signs contract with sub-contractors to assign the portion of work that includes materials and the foreign contractor A only performs part of services (such as supervision, installation instruction), the applicable added value rate of such service value is 50%.

- For contracts to provide machinery and equipment attached to services of installation instructions, training, operation, trial operation, if it is able to separate the values of machinery, equipment and other service values, the rate of the added value to each contract value parts shall be applied when determining the VAT amount payable. In case the contract does not separate the value of machinery, equipment from the value of services, the applicable rate of the added value to the taxable turnover is 30%.

Example 13:

The foreign contractor H from Korea not employing the Vietnam accounting regime performs the contract signed with the enterprise B in Vietnam to provide machinery and equipment attached to services of installation, operation and tests of which the value is 10,000,000 USD. The contract does not separate the value of machinery, equipment from the value of installation, operation and test services, the applicable added value rate is 30%.

- The VAT-liable turnover in the case of lease of machinery, equipment and means of transport is the whole rent. In case the turnover of lease of machinery, equipment and means of transport includes the

costs paid by the lessor, such as insurance, maintenance, register certification, machinery and equipment operators and cost for transporting machinery, equipment from abroad to Vietnam, the turnover for VAT calculation does not include these costs if documents proving for the expenses are available.

3. VAT rates

The VAT rates of VAT-liable goods and services are the tax rates prescribed in the Law on Value-added tax and its guiding documents.

Foreign contractors, foreign sub-contractors liable to pay VAT under the method of direct calculation based on the added value are not entitled to deduct VAT from goods, services bought in order to perform contractor contracts, sub-contractor contracts (including VAT regarding sub-contractor contracts performed by Vietnamese sub-contractors).

Article 13. Enterprise income tax

The bases for tax calculation are turnover being liable to enterprise income tax and the enterprise income tax rate based on the taxable turnover.

$$\text{EIT amount payable} = \text{Turnover being liable to EIT} \times \text{EIT rate based on taxable turnover}$$

1. Turnover being liable to EIT

a) Turnover being liable to EIT

The turnover for EIT calculation is the whole turnover excluding VAT earned by foreign contractors, foreign sub-contractors not excluding the taxes payable. The turnover for EIT calculation includes the costs paid by the Vietnam party on behalf of foreign contractors, foreign sub-contractors (if any).

b) Determining turnover for EIT calculation in certain cases:

- In case the turnover earned by foreign contractors, foreign sub-contractors does not include enterprise income tax under agreements in contractor contract, sub-contractor contract, the turnover for EIT calculation shall be calculated by the following formula:

$$\text{Turnover for EIT calculation} = \frac{\text{Turnover excluding enterprise income tax}}{1 - \text{Enterprise income tax rate based on taxable income}}$$

Example 14:

The foreign contractor A provides the Vietnam party with the service of supervising construction of the cement plant Z. The contractual price excluding VAT and enterprise income tax is USD 285,000. Besides, the Vietnam party arrange accommodations and workplaces at the cost of USD 38,000 for managers of the foreign contractor A (excluding VAT, enterprise income tax). Under the contract, the Vietnam party is liable to pay VAT and enterprise income tax for the foreign contractor. The EIT payable of the foreign contractor is determined as follows:

Determination of the taxable turnover:

$$\text{Turnover for EIT calculation} = \frac{285,000 + 38,000}{(1 - 5\%)} = \text{USD } 340,000$$

- In case the foreign contractor that sign contract with a Vietnamese sub-contractor or a foreign sub-contractor, which pay tax under the deduction, declaraten method, or the foreign sub-contractor, which pay tax using the combined method to assign part of the work value or item value stipulated in the contractor contracts signed with the Vietnam party and the list of Vietnamese sub-contractors, the foreign sub-contractor carrying out the part of corresponding work or item enumerated together with the

contractor contracts, the turnover for EIT calculation of the foreign contractor does not include the value of work done by Vietnamese sub-contractors or foreign sub-contractors.

In case foreign contractors sign contract with suppliers in Vietnam to buy raw material, materials, machinery and equipment to perform contractor contracts and other goods, services to serve internal consumption, spending on the items not being the contractual works, such value of these goods, services shall not be deducted when determining turnover for EIT calculation of foreign contractors.

Example 15:

The foreign contractor A signs a contract to build a cement plant Z with the Vietnam party of which the total contract value is USD 9 million (excluding VAT). Under the contractor contract, the foreign contractor A shall assign the part of installation (stipulated in the contractor contract signed with the Vietnam party) at the value of USD 01 million (excluding VAT) to Vietnamese sub-contractors; besides, during construction of the cement plant Z, the foreign contractor A bought materials (bricks, cement, sand...) and goods, services such as stationery, hiring cars, renting hotels for experts... to perform the contract.

The turnover for EIT calculation of the foreign contractor A in this case is determined as follows:

Turnover for EIT calculation = USD 9 million – USD 1 million = USD 8 million

The turnover for EIT calculation of the foreign contractor A must include the expenditures on materials, goods, services such as stationery, hiring car, renting hotels...

- For sub-contractors being foreign sub-contractors paying tax under the rate fixing method, the turnover for EIT calculation of the foreign contractor is the whole income earned by the foreign contractor under the contract signed with the Vietnam party. Foreign sub-contractors are not liable to pay enterprise income tax for the part of work that they perform under the sub-contractor contract signed with foreign contractors.

- The turnover for EIT calculation from the lease of machinery, equipment and means of transport is the whole rents. In case the turnover from the lease of machinery, equipment and means of transport includes the costs paid by the lessor such as insurance, maintenance, register certificate, drivers, machinery and equipment operators and charges for transporting machinery, equipment from abroad to Vietnam, the turnover for EIT calculation does not include these costs if documents proving for the expenses are available.

- The turnover for EIT calculation of foreign airlines is the turnover from passenger ticket sale, aviation bill of lading and other incomes (except for amounts collected on behalf of the State or other organizations as prescribed by law) in Vietnam from the transport of passengers, goods and other subjects of transport by flights of their own airlines or joint-venture.

Example 16:

The foreign airline A gains turnover of USD 100,000 in Quarter I of 2013, including USD 85,000 from sale of passenger tickets, USD 10,000 from sale of bills of lading and USD 5,000 from sale of MCO (Miscellaneous charges order); and from the amount collected on behalf of the State (airport charge) worth USD 1,000, the refund of tickets returned by passengers is USD 2,000.

The turnover for EIT calculation in Quarter I of 2013 of the foreign airline A is determined as follows:

Turnover for EIT calculation = 100,000 – (1,000 + 2,000) = USD 97,000

- The turnover for EIT calculation of foreign shipping firms is the whole freights for transport of passengers and goods, and other surcharges earning from the port of loading in Vietnam to the final port of unloading goods (including the freights of the consignments being transshipped via intermediary ports) and/or the freights from transport of goods among Vietnamese ports.

The freights being the basis for calculating enterprise income tax does not include the freights already calculated for EIT at Vietnamese ports of foreign ship owners and freights paid to Vietnamese transport enterprises for their transport of goods from a Vietnamese port to an intermediary port.

Example 17:

The company A is the agent for the foreign shipping firm X. Under the transport agent contract, the company A receives and transports goods to abroad, issues bill of lading, collects freights on behalf of firm X.

The enterprise B in Vietnam hires firm X (via the company A) to transport goods from Vietnam to America of which the freight charge is USD 100,000.

The company A hired ships from Vietnamese enterprises or foreign ships to transport goods from Vietnam to Singapore of which the freight charge is USD 20,000. From Singapore, the goods will be transported to America using firm X's ships.

The EIT-liable turnover of foreign shipping firm X is determined as follows:

EIT-liable turnover = 100,000 – 20,000 = USD 80,000

- For international forwarding and warehousing services from Vietnam to abroad (regardless of whether the sender or the recipient pays the service charge), the turnover for EIT calculation is the whole turnover earned by foreign contractors excluding international freights payable to transport firms (by air or sea)
- For international delivery services from Vietnam to abroad (regardless of whether the sender or the recipient pays the service charge), the turnover for EIT calculation is the whole turnover earned by foreign contractors.

Example 18:

The overseas company A provide the mail delivery service from abroad to Vietnam and vice versa. The turnover for EIT calculation of the company A is determined as follows:

- + For delivery services from abroad to Vietnam (regardless of whether the overseas sender or the recipient in Vietnam pays the service charge) are not subject to enterprise income tax;
- + For delivery services from Vietnam to abroad (regardless of whether the overseas sender or the recipient in Vietnam pays the service charge), the turnover for EIT calculation is the whole turnover earned by the company A.
- For reinsurance, the turnover for EIT calculation is determined as follows:
 - + For the transfer of reinsurance to abroad, the turnover for EIT calculation is the charges from the transfer of reinsurance to abroad earned by foreign contractors (including reinsurance commission and indemnity expenditure to customer as agreed).
 - + For the reception of reinsurance from abroad, the turnover for EIT calculation is the reinsurance transfer commission earned by foreign contractors.

The specific provisions of the tax policy on insurance services shall be implemented under particularly guiding of the Ministry of Finance.

- For securities transfer, the turnover for EIT calculation is determined as follows:

For the transfers of securities, bonds (except for tax-exempt bonds), deposit certificates, the turnover for EIT calculation is the total turnover from the sale of securities, bonds and deposit certificates at the time of transfer.

The specific provisions of the tax policy on securities activities shall be implemented under particularly guiding of the Ministry of Finance.

- The turnover for EIT calculation from interest rate swap transactions is the difference between the interest receivable and the interest payable that foreign contractors receive within a calendar year. The determination of tax period by calendar year must comply with the Law on Enterprise income tax, the Law on Tax administration and their guiding documents.

Example 19:

Bank A (A) grant a loan worth at USD 10 million with the fixed interest rate of 5.2%/month. The contract term is 3 years from February 01, 2012 to February 01, 2015. The payment term is every 6 months. The payment is made at the beginning of the period.

Under the A's loan contract, A negotiates with bank B (B) abroad for performing the interest rate swap contract, in particular:

- The contract term is 3 years from February 01, 2012 to February 01, 2015. The payment term is 6 months one time. The payment is made at the beginning of the period.
- The floating interest rate that A must pay B is $\text{libor} + 0.25\%$. The fixed interest rate that B must pay A is 5.2%. That means if the interest rate $\text{libor} + 0.25\%$ is higher than the fixed interest rate in the swap contract, B shall receive the interest rate difference from A as follows: $(\text{libor} + 0.25\%) - \text{interest payable by } 5.2\%$. On the contrary, if the interest rate $\text{libor} + 0.25\%$ is lower than the fixed interest rate in the swap contract, A shall receive the interest rate difference from B calculated as: $5.2\% - \text{interest that A receive by } \text{libor} + 0.25\%$.

Time of payment	Libor interest rate (%)	A must pay B (%)	B must pay A (%)	Interest A or B receives after offsetting (%)		Difference that A or B receives each period (USD 1,000)	
				A	B	A	B
February 01 2012 – July 31, 2012	4.80	5.05	5.20		0.15	-	15
August 1, 2012 – January 31, 2013	5.00	5.25	5.20	0.05		5	
February 1, 2013 – July 31, 2013	4.90	5.15	5.20		0.05	-	5
August 1, 2013 – January 31, 2014	4.95	5.20	5.20	0.00		-	-
February 1, 2014 – July 31, 2014	4.90	5.15	5.20		0.05		5
August 11, 2014 – January 30, 2015	5.05	5.30	5.20	0.10		10	

The turnover for EIT calculation of B is determined as follows:

- In 2012 (from January 01, 2012 – December 31, 2012: the total amount that B receive from A is: $(15,000 - 5,000) = \text{USD } 10,000$

In 2013 (from January 01, 2013 – December 31, 2013: the total amount that B receive from A is: $(5,000 - 0) = \text{USD } 5,000$;

- In 2014 (from January 01, 2014 – December 31, 2014: B does not receive and must pay A 5,000 USD (taxable turnover = 0);

- In 2015: According to contract with agreement on making payment at the beginning of the period, there is not offsetting payment between A and B.

The specific provisions of tax policy on derivative financial services shall be implemented under particularly guiding of the Ministry of Finance.

2. Enterprise income tax rate (%) based on taxable turnover

a) Rate (%) of the EIT based on the taxable turnover for business lines:

No.	Business line	Enterprise income tax rate (%) based on taxable turnover
1	Trade: Distributing, providing goods, raw materials, machinery and equipment attached to services in Vietnam {including supply of on-spot export and import (except for processing goods for foreign organizations, individuals); supply of goods under the DDP, DAT, DAP conditions (- Incoterms) }	1
2	Services, insurance, leasing machinery and equipment, leasing drilling rigs	5
3	Restaurant, hotel, casino management services	10
4	Leasing airplanes, airplane engines, spare parts of airplane, ships	2
5	Construction, installation including or excluding materials or machinery and equipment attached to the construction	2
6	Other production and business, transport (by sea, by air)	2
7	Transferring securities, reinsurance to abroad, reinsurance transfer commision	0.1
8	Derivative financial services	2
9	Loan interest	5
10	Copyright income	10

b) Enterprise income tax rate (%) based on taxable turnover in certain cases:

- For contractor contracts, sub-contractor contracts covering multiple business activities, the application of the enterprise income tax rates based on the taxable turnover when determining the enterprise income tax amount payable shall depend on the EIT-liable turnover from each business activity performed by foreign contractors, foreign sub-contractors under contracts. In case it is not able to separate the value of each business activity, the highest enterprise income tax rate for the business line shall be applied to the whole contract value.

For constructions and installation including materials or machinery and equipment attached to the constructions, enterprise income tax rate based on the taxable turnover is 2% over the whole contract value. In case the foreign contractor signs contracts with sub-contractors to assign the whole value of work or item that including materials or machinery and equipment and the foreign contractor only

performs the remaining services under the contractor contract, the enterprise income tax rate based on the EIT-liable turnover shall be applied to the service industry (5%).

Example 20:

The foreign contractor A signs a contract to build a power plant X with the Vietnam party of which the value is USD 75 million (excluding VAT but including enterprise income tax), the contract value includes:

- + The value of machinery and equipment provided for the construction: USD 50 million.
- + The value of technology line designs, other designs: USD 5 million.
- + The value of workshops, other ancillary systems, construction, installation USD 15 million.
- + The value of supervision services, installation instructions: USD 3 million.
- + The value of technical training, trial operation: USD 2 million.

In this case, enterprise income tax rate (%) applicable the whole USD 75 million contract value is 2%, not separating the business activities performed by the foreign contractor A.

In case the foreign contractor A signs contract with sub-contractors to assign the portion of work that includes materials, the foreign contractor A only performs the portion of service value (such as supervision, installation instruction), the enterprise income tax rate (%) on such service value is 5%.

- For contracts to provide machinery and equipment attached to services of installation instructions, training, operation, trial running if it is able to separate the values of machinery, equipment from service value, the tax shall be calculated by separate tax rate on each part of the contract value. In case the contract does not separate the value of machinery, equipment from the value of services, shall apply 2% for the enterprise income tax rate on the taxable income.

Example 21:

The foreign contractor A signs a contract with the Vietnam party to provide a line of machinery and equipment valued at USD 70 million. The contract value includes:

- + The value of machinery and equipment provided for the construction: USD 60 million
- + The value of technology line designs, other designs: USD 5 million
- + The value of supervision services, installation instructions: USD 3 million
- + The value of technical training, trial operation: USD 2 million.

If it is able to separate the value of machinery and equipment from the value of such services, the enterprise income tax rate shall be applied as follows: Applying the rate on trade line to the value of machinery and equipment; applying the rate on the service line to the value of the designs, installation supervision, training, trial operation.

In case it is not able to separate, shall apply 2% for the enterprise income tax rate based on whole contract value (USD 70 million).

Section 4. PAYING VAT UNDER THE DEDUCTION METHOD, PAYING ENTERPRISE INCOME TAX BY THE RATES % CALCULATED ON TURNOVER

(hereinafter referred to as combined method)

Article 14. Subjects and conditions of application

Foreign contractors, foreign sub-contractors satisfying the conditions (i) and (ii) prescribed in Article 8 Section 2 Chapter II of this Circular and practice accounting under the law on accounting and the guidance from the Ministry of Finance shall register with tax agencies to pay VAT under deduction method and pay enterprise income tax under the rate % calculated on taxable turnover.

Article 15. VAT

Implemented as guided in Article 9 Section 2 Chapter II of this Circular.

Article 16. Enterprise income tax

Implemented as guided in Article 13 Section 3 Chapter II of this Circular.

Section 5. PROVISIONS ON TAX DECLARATION AND PAYMENT

Article 17. Declaring and paying tax in cases

1. Foreign contractors, foreign sub-contractors fulfilling the tax liability under one of the three methods guided in Chapter II of this Circular must continue to declare and pay tax under the method being implemented until ending contract.
2. Foreign contractors, foreign sub-contractors fulfilling the tax liability under one of the three methods guided in Chapter II of this Circular, that continue to sign new contractor contracts or sub-contractor contracts in Vietnam while the old contractor contracts or sub-contractor contracts have not been finished, they must declare and pay tax for the new contractor contracts, sub-contractor contracts under the method being applied to the old contractor contracts or sub-contractor contracts.
3. In case the new contractor contracts or sub-contractor contracts are signed, performed when the old contractor contracts or sub-contractor contracts have finished, foreign contractors, foreign sub-contractors are allow to reregister tax payment method for the new contract under one of the three methods as guided in Chapter II this Circular.
4. In case the foreign contractor, foreign sub-contractor performs many contracts at the same time, if there is a contract that eligible as prescribed and the foreign contractor, foreign sub-contractor registers to pay tax under the deduction method, declaration method or combined method, the other contracts (including the ineligible contracts) must pay tax under the method registered by the foreign contractor, foreign sub-contractor.
5. In case the foreign contractor, foreign sub-contractors providing goods, services to explore, develop and exploit oilfields and gas fields pay VAT under the method of direct calculation on added values, the Vietnam party is responsible to deduct and pay VAT on their behalf under prescribed rate.

In case the foreign contractor, foreign sub-contractors providing goods, services to explore, develop and exploit oilfields and gas fields pay VAT under the deduction method: While the foreign contractor, foreign sub-contractor is not issued with the certificate of tax registration by tax agencies to declare and pay VAT under the deduction method, if the Vietnam party make payment to the foreign contractor, foreign sub-contractor, the Vietnam party is liable to deduct and pay VAT on their behalf under the prescribed rate. While the foreign contractor, foreign sub-contractor has been issued with the certificate of tax registration by tax agencies, they are liable to declare and pay tax under the deduction method for the turnover arising as from being issued with the tax registration certificate. The VAT amount paid by the Vietnam party on behalf of foreign contractors, foreign sub-contractors under the rate is not clearing for the VAT amount payable of foreign contractors, foreign sub-contractors, and the foreign contractor, foreign sub-contractors are not allowed to deduct the input VAT arising before being issued with the tax registration certificate.

Example 22:

In January 2013, the foreign contractor A signs a contract with the Vietnam party to provide the oil drilling service valued at USD 1 million. While the foreign contractor A is not issued with the tax registration certificate by tax agencies to pay VAT under the deduction method, the foreign contractor A arises the input VAT on goods, services bought to perform the contract is USD 5,000. To payment limit time, when the Vietnam party pays USD 100,000 to the foreign contractor A (including VAT, excluding enterprise income tax), the Vietnam party is responsible to deduct the VAT under the rate of the added value based on the taxable turnover being 70% for oil drilling services and the tax rate is 10%. Therefore, the tax that the Vietnam party pays on behalf of the foreign contractor A is USD 7,000.

Until May 01, 2013, the foreign contractor A register and be issued with the tax registration certificate by tax agencies and they declare and pay the VAT under the deduction method themselves. Until May 15, 2013, the Vietnam party continues to pay the foreign contractor A USD 200,000, the foreign contractor A issue the VAT invoice to the Vietnam party with USD 20,000 of VAT (USD 200,000 x 10%). The arising VAT from May 01, 2013 until May 15, 2013 is USD 2,000. The VAT amount that the foreign contractor A

paid is USD 18,000 (USD 20,000 - USD 2,000). The foreign contractor A is not allowed to deduct USD 5,000 of the input VAT having arisen before May 01, 2013.

Chapter III

ORGANIZING THE IMPLEMENTATION

Article 18. Effects

1. This Circular takes effect after 45 days as from its signing and supersedes the Circular No. 134/2008/TT-BTC of December 31, 2008 of the Ministry of Finance on guiding the performance of tax liability applicable to foreign organizations, individuals doing business or earning incomes in Vietnam, the Circular No. 197/2009/TT-BTC of October 09, 2009 of the Ministry of Finance on supplementing the Circular No. 134/2008/TT-BTC, the Circular No. 64/2010/TT-BTC of April 22, 2010 of the Ministry of Finance on amending and supplementing the Circular No.134/2008/TT-BTC.

2. For the contracts, sub-contractor contracts signed before this Circular takes effect, the determination of VAT liability, enterprise income tax liability shall be implemented as guided in the corresponding legal documents at the time of contract signing, except for the following cases:

- For goods, services not subject to VAT as prescribed by the law provisions on VAT having taken effect before January 01, 2009 that are supplied by foreign contractors, foreign sub-contractors, which become subjects of VAT from January 01, 2009 and later, the determination of VAT-liable turnover of foreign contractors, foreign sub-contractors shall be implemented as guided in this Circular.

Example 23:

In 2008, the enterprise A in Vietnam signs a contract to buy machinery and equipment for the cement plant project with the enterprise B overseas. The total contract value is USD 100 million including the value of machinery and equipment (that cannot be produced at home) being USD 80 million, the value of services of installation instruction, installation supervision, maintenance being USD 20 million.

According to the law provisions on VAT having taken effect before January 01, 2009, the machinery and equipment not being able to be produced at home to constitute the fixed assets of enterprises are not subject to VAT. In 2009, the enterprise A imports machinery and equipment under the contract signed with the enterprise B and has paid the VAT in the import stage. In this case, the turnover for VAT calculation of the foreign contractor (the enterprise B) is determined as prescribed in Article 6 Section 1 Chapter II of this Circular.

- For the incomes of foreign contractors, foreign sub-contractors being business individuals earned from January 01, 2009, the income tax liability shall be fulfilled under the law provisions on personal income tax.

- For contractor contracts, sub-contractor contracts to provide services not subject to VAT and enterprise income tax, or the loan contracts not subject to enterprise income tax to loan interest as prescribed in the Circular No. 169/1998/TT-BTC of December 22, 1998 of the Ministry of Finance that become subject to VAT, enterprise income tax now as prescribed in this Circular, the provisions in this Circular shall apply as from March 01, 2012.

- For contractor contracts, sub-contractor contracts applying rates (%) of EIT based on taxable turnover under provisions in previous circulars that are higher than rates in this Circular, the rates in this Circular shall apply as from March 01, 2012.

- The rates (%) of EIT based on taxable turnover from contracts of restaurant, hotel, casino management services shall apply this Circular as from March 01, 2012.

3. In case the international treaties that the Socialist Republic of Vietnam signs or participates in prescribed the tax payment of foreign contractors, foreign sub-contractors differently from that in this Circular, the provisions of the international treaties shall apply.

During the course of implementation, the units and business establishments are recommended to send feedbacks on the difficulties to the Ministry of Finance for prompt settlement./.

**FOR THE MINISTER
DEPUTY MINISTER**

Do Hoang Anh Tuan