

CIRCULAR 103
ON
FOREIGN CONTRACTOR TAX

Dated 6 August 2014

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MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIETNAM

**CIRCULAR
ON
FOREIGN CONTRACTOR TAX¹**

Providing guidelines for performance of tax obligations applicable to foreign organizations and foreign individuals doing business or having income in Vietnam

Pursuant to the *Law on Value Added Tax* 13-2008-QH12 dated 3 June 2008, the *Law on Amendment of and Addition to a Number of Articles of the Law on Value Added Tax* 31-2013-QH13 dated 19 June 2013; and Decree 209-2013-ND-CP of the Government dated 18 December 2013 providing detailed regulations and guidelines for implementation of a number of articles of the *Law on Value Added Tax*;

Pursuant to the *Law on Corporate Income Tax* 14-2008-QH12 dated 3 June 2008, the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax* 32-2013-QH13 dated 19 June 2013; and Decree 218-2013-ND-CP of the Government dated 26 December 2013 providing detailed regulations and guidelines for implementation of a number of articles of the *Law on Corporate Income Tax*;

Pursuant to the *Law on Tax Management* 78-2006-QH11 dated 29 November 2006; and the *Law on Amendment of and Addition to a Number of Articles of the Law on Tax Management* 21-2012-QH13 dated 20 November 2012;

Pursuant to Decree 215-2013-ND-CP of the Government dated 23 December 2013 on functions, duties, powers and organizational structure of the Ministry of Finance;

Having considered the proposal of the General Director of the General Department of Taxation;

The Ministry of Finance hereby promulgates this Circular to provide the following guidelines for performance of tax obligations applicable to foreign organizations and foreign individuals doing business or having income in Vietnam:

CHAPTER 1

General Provisions

Article 1 *Applicable entities*

The guidelines in this Circular shall apply to the following entities (but not to those prescribed in article 2 of Chapter I):

1. Foreign business organizations with or without a permanent establishment in Vietnam, and foreign business individuals whether they are residents or non-residents of Vietnam (hereinafter all referred to as *foreign contractors and sub-contractors*) doing business in Vietnam or having income arising in Vietnam on the basis of a contract, agreement or undertaking between such foreign contractor and a

¹ Allens footnote: This description is not part of the text and is inserted for reference only.

Vietnamese organization or individual or between such foreign contractor and a foreign sub-contractor to perform part of the work of the former contractor's contract.

2. Foreign organizations and individuals supplying goods in Vietnam in the form of on-the-spot import and export and having income arising in Vietnam on the basis of a contract signed by such foreign organization or individual with an enterprise in Vietnam (except for the case of processing and exporting goods back to a foreign organization or individual) or carrying out distribution of goods in Vietnam or supply of goods on international commercial terms – Incoterms whereby the seller shall bear risks relating to goods entering into the territory of Vietnam.

Example 1:

- Case 1: Enterprise X overseas signs a contract for purchase of fabric with Vietnamese Enterprise A and at the same time, designates Enterprise A to deliver the goods to Vietnamese Enterprise B (in the form of on-the-spot import and export as stipulated by law). Enterprise X has income arising in Vietnam on the basis of the signed contract between it and Enterprise B (Enterprise X sells fabric to Enterprise B).

In this case, Enterprise X shall be subject to the provisions of this Circular and Enterprise B shall be responsible to declare, withhold and pay tax on behalf of Enterprise X in accordance with this Circular.

- Case 2: Enterprise Y overseas signs a contract for processing fabric with Vietnamese Enterprise C and at the same time, designates Enterprise C to deliver the goods to Vietnamese Enterprise D for further manufacture (in the form of on-the-spot import and export as stipulated by law). Enterprise Y has income arising in Vietnam on the basis of the signed contract between it and Enterprise D (Enterprise Y sells goods to Enterprise D).

In this case, Enterprise Y shall be subject to the provisions of this Circular and Enterprise D shall be responsible to declare, withhold and pay tax on behalf of Enterprise Y in accordance with this Circular.

- Case 3: Enterprise Z overseas signs a contract for processing or purchase of fabric with Vietnamese Enterprise E (Enterprise Z supplies raw materials to Enterprise E for processing) and designates Enterprise E to deliver the goods to Vietnamese Enterprise G for further processing (in the form of processing for on-the-spot import and export as stipulated by law). Upon completion of the processing, Enterprise G will export the goods back to Enterprise Z and Enterprise Z must pay remuneration for processing to Enterprise G under the processing contract.

In this case, Enterprise Z shall not be subject to the provisions of this Circular.

3. Foreign organizations and individuals conducting all or part of business or distribution activities for goods or provision of services in Vietnam when the foreign organization or individual remains the owner of the goods delivered to Vietnamese organizations and is responsible for costs of distribution, advertising, marketing, quality of services or quality of goods delivered to Vietnamese organizations or for fixing selling prices of goods or prices for provision of services; including the case in which a number of Vietnamese organizations are authorized or hired to carry out part of distribution services or other services relating to the sale of goods in Vietnam.

Example 2:

Where enterprise A overseas delivers goods to or authorizes Vietnamese Enterprise B to conduct a number of relevant services (such as transportation, distribution, marketing, advertising etc.) when Enterprise A remains the owner of the goods delivered to Enterprises B or Enterprise A is responsible for costs, quality of services or quality of goods delivered to Enterprise B or Enterprise A fixes the selling prices of goods or prices for provision of services, Enterprise A shall be subject to the provisions of this Circular.

4. Foreign organizations and individuals entering into negotiation and signing of contracts in their name via a Vietnamese organization or individual.
5. Foreign organizations and individuals exercising the export right, the import right or distribution right in the Vietnamese market, purchasing goods for export or selling goods to Vietnamese business entities in accordance with the commercial law.

Article 2 *Non-applicable entities*

The guidelines in this Circular shall not apply to the following:

1. Foreign organizations or individuals conducting business in Vietnam in accordance with the *Law on Investment*, the *Law on Petroleum* or the *Law on Credit Institutions*.
2. Foreign organizations or individuals supplying goods to Vietnamese organizations or individuals not associated with services provided in Vietnam, in the following forms:
 - Delivery of goods at a foreign bordergate when the seller bears all liability, costs and risks relating to export and delivery of the goods at the foreign bordergate; and the purchaser bears all liability, costs and risks relating to receipt and transportation of the goods from the foreign bordergate to Vietnam (including the case of delivery of the goods at the foreign bordergate associated with a term that warranty is the responsibility and obligation of the seller).
 - Delivery of goods at a Vietnamese bordergate when the seller bears all liability, costs and risks relating to the goods up to the place of delivery of the goods at the Vietnamese bordergate; and the purchaser bears all liability, costs and risks relating to receipt and transportation of the goods from the Vietnamese bordergate (including the case of delivery of the goods at the Vietnamese bordergate associated with a term that warranty is the responsibility and obligation of the seller).

Example 3:

Company C in Vietnam signs a contract for import of a consignment of excavators and bulldozers with Company D overseas and the delivery of goods is conducted at a Vietnamese bordergate. Company D shall bear all liability and costs relating to the consignment of goods up to the place of delivery of the goods at the Vietnamese bordergate; and Company C shall bear all liability and costs relating to the receipt and transportation of the goods from the Vietnamese bordergate. The contract contains an agreement that Company D shall conduct warranty for the above consignment of goods for one year, and other than that, Company D shall not perform any other services in Vietnam relating to the above consignment of goods. In this case, the supply of goods by Company D shall not be subject to the provisions of this Circular.

3. Foreign organizations and individuals having income from services provided and consumed outside Vietnam.

Example 4:

Company H of Hong Kong provides cargo handling services at the Hong Kong port for a fleet of international ships belonging to Company A of Vietnam. Company A is obliged to pay Company H cargo handling service fees at the Hong Kong port.

In this case, the cargo handling services at the Hong Kong port are services which are provided and consumed in Hong Kong and accordingly are not taxable in Vietnam.

Example 5:

A foreign organization providing professional services of managing and issuing bonds, acting as the legal consultant or depository agent or organizing roadshows for Company A of Vietnam in countries in which Company A will issue GDR (Global Depository Receipts) and international bonds, such services provided by the foreign organization shall not be subject to this Circular.

4. Foreign organizations or individuals providing the following services for Vietnamese organizations or individuals when such services are performed overseas:

- Repair of transportation means (aircraft, aircraft engines, aircraft spare parts and sea-going vessels), and machinery and equipment (including sea cables and transmission equipment) with or without replacement spare parts and equipment;
- Advertising and marketing services (except for advertising and marketing on the internet);

Example 6:

Where a Vietnamese enterprise signs a contract with an organization in Singapore for the latter to provide advertising services of products in the Singapore market, the advertising services of such Singapore organization shall not be subject to this Circular. Where the organization in Singapore conducts advertising of products on the internet for sale in the Vietnamese market, any income from such advertising services shall be subject to this Circular.

- Investment and commercial promotion services;
- Brokerage services; sale of goods and provision of services overseas;

Example 7:

A Vietnamese enterprise signs a contract with an enterprise in Thailand in order to hire the latter to provide brokerage services for selling products of the Vietnamese enterprise in the Thailand market or in the international market, such brokerage services of the Thailand enterprise shall not be subject to this Circular; where the Vietnamese enterprise signs a contract with the enterprise in Thailand in order to hire the latter to provide brokerage services for assigning real estate of the Vietnamese enterprise in Vietnam, such brokerage services shall be subject to this Circular.

- Training services (except for on-line training);

Example 8:

Where Company A in Vietnam signs a contract with University B of Singapore for its Vietnamese staff to study in University B of Singapore, the training services provided by

University B shall not be subject to this Circular; where Company A in Vietnam signs a contract with University B of Singapore for the latter to teach its Vietnamese staff in Vietnam in the form of on-line study, the on-line training services provided by University B shall be subject to this Circular.

- Sharing charges paid for international telecommunications services as between the Vietnamese party and foreign parties where such services are performed outside Vietnam; and services of leasing transmission lines and satellite bands from overseas parties in accordance with the *Law on Telecommunications*; and sharing charges paid for international postal services as between the Vietnamese party and foreign parties in accordance with the *Law on Post* and international treaties of which the Socialist Republic of Vietnam is a signatory where such services are performed outside Vietnam.

5. Foreign organizations and individuals using customs bond warehouses or inland clearance depots as warehouses for goods to support international transportation, transit, transshipment or storing activities or for processing by other enterprises.

Article 3 *Definition of terms*

In this Circular, the following terms shall be construed as follows:

1. *Contractor's contract* means a contract, agreement or undertaking between a foreign contractor and a Vietnamese party.
2. *Sub-contractor's contract* means a contract, agreement or undertaking between a sub-contractor and a foreign contractor.

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

3. *Vietnamese territory* comprises the mainland, offshore islands, internal water, sea territory and airspace above such territory and the sea outside the sea territory, including seabed and under the seabed over which Vietnam exercises its sovereignty, sovereign rights and jurisdiction in compliance with the law of Vietnam and international law.

Article 4 *Taxpayers [shall comprise]*

1. Foreign contractors and sub-contractors satisfying the conditions stipulated in article 8 of Section 2 of Chapter II or article 14 of Section 4 of Chapter II, and doing business in Vietnam or having income in Vietnam. The business is conducted on the basis of a contractor's contract with a Vietnamese organization or individual or with another foreign organization or individual currently doing business in Vietnam on the basis of a sub-contractor's contract.

Whether a foreign contractor or sub-contractor has a permanent establishment in Vietnam or is a resident of Vietnam shall be determined in accordance with the *Law on Corporate Income Tax* and the *Law on Personal Income Tax* and their implementing guidelines.

If any double tax avoidance treaty to which the Socialist Republic of Vietnam is a signatory contains different provisions on permanent establishments and residents, then the provisions of such treaty shall apply.

2. Organizations established and operating pursuant to the law of Vietnam, organizations registered for operation pursuant to the law of Vietnam, other organizations and individuals conducting production or business or purchasing services including services associated with goods, paying income arising

in Vietnam on the basis of a contractor's contract or a sub-contractor's contract; purchasing goods in the form of on-the-spot import and export or on international commercial terms (Incoterms); or conducting distribution of goods or provision of services on behalf of a foreign organization or individual in Vietnam (hereinafter all referred to as a *Vietnamese Party*), and comprising:

- Business organizations established pursuant to the *Law on Enterprises*, the *Law on Investment*, and the *Law on Co-Operatives*;
- Economic organizations of political organizations, of socio-political organizations, of social organizations, of socio-occupational organizations, of units of the people's armed forces, of professional organizations and of other organizations;
- Petroleum contractors operating in accordance with the *Law on Petroleum*;
- Branches of foreign companies licensed to operate in Vietnam;
- Foreign organizations or their representatives licensed to operate in Vietnam;
- Ticket selling offices and agencies in Vietnam of foreign airlines with the right to transport to and from Vietnam, and conducting transport either directly or in partnership;
- Organizations and individuals conducting business being provision of sea transport services of foreign sea transport firms, and agencies in Vietnam of foreign freight forwarding firms and of foreign delivery firms;
- Securities companies, securities issuing organizations, fund management companies, and commercial banks where securities investment funds or foreign organizations have opened securities investment accounts;
- Other organizations in Vietnam;
- Individuals conducting production or business in Vietnam.

The taxpayers defined in article 4.2 of Charter I must withhold the amount of VAT and of CIT calculated in accordance with the guidelines in Section 3 of Chapter II, prior to paying foreign contractors and sub-contractors.

Article 5 *Applicable taxes*

1. Foreign contractors and sub-contractors being economic organizations shall perform value added tax ("VAT") and corporate income tax ("CIT") obligations in accordance with the guidelines in this Circular.
2. Foreign contractors and sub-contractors being foreign business individuals shall perform VAT obligations in accordance with this Circular, and personal income tax ("PIT") obligations in accordance with the *Law on Personal Income Tax*.
3. Foreign contractors and sub-contractors shall perform tax obligations being other taxes, fees and charges in accordance with the current legal instruments on such other taxes, fees and charges.

CHAPTER 2

Bases and Method of Tax Calculation

Section 1

Objects Subject to VAT and Income Subject to CIT

Article 6 *Objects subject to VAT*

1. VAT-taxable services or services associated with goods which are supplied by a foreign contractor or sub-contractor on the basis of a contractor's contract or sub-contractor's contract and which are used for production or business and which are consumed in Vietnam (except for the goods and services stipulated in article 2 of Chapter I), comprising:
 - VAT-taxable services or services associated with goods which the foreign contractor or sub-contractor supplies in Vietnam and which are consumed in Vietnam;
 - VAT-taxable services or services associated with goods which the foreign contractor or sub-contractor supplies outside Vietnam and which are consumed in Vietnam.
2. When goods are supplied pursuant to a contract in the following forms: the receipt and delivery point for the goods is located within the territory of Vietnam (except for the case prescribed in article 2.5 of Chapter I); or the supply of goods is accompanied by services performed in Vietnam such as installation, commissioning, warranty, maintenance, replacement or other services associated with the supply of goods (including the case of supply of goods together with free associated services), whether or not the provision of such services is included in the value of the contract for supply of goods, the value of the goods shall only be subject to VAT at the import stage in accordance with regulations, while the value of the services shall be subject to VAT in accordance with the guidelines in this Circular. If the contract does not separate out the value of the goods and the value of the associated services (including the case of free associated services), then VAT shall be calculated on the whole of the contract.

Example 9:

Enterprise A in Vietnam signs a contract with Enterprise B overseas to purchase a machinery and equipment production line for a Cement Plant project. The total contract value is USD100 million, comprising the value of the machinery and equipment at USD80 million (the equipment component is VAT-taxable at the rate of 10%), and the value of services being guiding installation and supervising installation, warranty and maintenance at USD20 million.

Enterprise B must perform VAT tax obligations on the value of the contract signed with Enterprise A as follows:

- VAT shall be calculated on the value of the services (USD20 million), but not on the value of the imported production line.
- If the contract did not separate out the value of the production line from the value of the services, then VAT shall be calculated on the total contract value of USD100 million.

Article 7 *Income subject to CIT*

1. CIT-taxable income of a foreign contractor or sub-contractor means income arising from the supply or distribution of goods; or provision of services including services associated with goods in Vietnam on the basis of a contractor's contract or a sub-contractor's contract (except for the case prescribed in article 2 of Chapter).
2. When goods are supplied in the following forms: the receipt and delivery point for the goods is located within the territory of Vietnam (except for the case prescribed in article 2.5 of Chapter I); or the supply of goods is accompanied by services performed in Vietnam such as advertising or marketing services, commercial promotion services, post-sale services, installation, commissioning, warranty, maintenance or replacement services or other services associated with the supply of goods (including free associated services), whether or not the provision of such services is included in the value of the contract for supply of goods, the total value of the goods and services shall be CIT-taxable income of the foreign contractor or sub-contractor.

Example 10:

Company A in Vietnam signs a contract with Company B overseas to purchase a machinery and equipment production line for a Cement Plant project. The total contract value is USD100 million (excluding VAT), comprising the value of the machinery and equipment at USD80 million, and the value of services of guiding installation and supervising installation, warranty and maintenance at USD20 million.

Company B must perform CIT tax obligations on the value of the contract as follows:

- CIT shall be calculated separately on the value of the imported production line (USD80 million), and on the value of the services (USD20 million) multiplied by the appropriate CIT rate.
 - If the contract does not separate out the value of the production line from the value of the services, then CIT shall be calculated on the total contract value (USD100 million) multiplied by the appropriate CIT rate.
3. Income arising in Vietnam of a foreign contractor or sub-contractor being all items of income receivable in any form on the basis of a contractor's contract or sub-contractor's contract (except for the case prescribed in article 2 of Chapter I), irrespective of the location of business operation of the foreign contractor or sub-contractor [shall be income subject to CIT]. Taxable income of foreign contractors and sub-contractors in some specific cases shall include the following:
 - Income from the transfer of ownership of or right to use assets; from the transfer of the right to participate in an economic contract/project in Vietnam; or from the transfer of property rights in Vietnam.
 - Income being royalties in any form paid for the use right or for the transfer of intellectual property rights, for technology transfer or for software copyright (including payments for the use right and for transfers of rights of an author and rights of the owner of a work; for transfers of industrial property rights; for technology transfer or for software copyright).

"Rights of an author and rights of the owner of a work", "industrial property rights" and "technology transfer" shall be as defined in the Civil Code, the Law on Intellectual Property, the Law on Technology Transfer and their implementing guidelines.

- Income from the assignment [and/or] liquidation of assets.
- Income being loan interest, namely income of lenders earned from loans in any form irrespective of whether such loans are secured by a mortgage or whether the lender is entitled to income or dividends of the borrower; income from interest on deposits (except for interest on deposits of foreign individuals and interest on deposits in deposit accounts which are to maintain operations in Vietnam of diplomatic representative offices, representative offices of international organizations or non-governmental organizations in Vietnam), including any bonuses accompanying interest on the deposits (if any); income from interest on late payments pursuant to contractual clauses; income from interest on bonds, discounts from bond prices (except for bonds in the category of tax-exempt) or treasury bills; and income from interest on certificates of deposit.

Loan interest shall include charges payable by the Vietnamese party in accordance with the agreement.

- Income from transfer of securities.
- Fines and damages receivable from another party for contractual breach.
- Other items of income as stipulated by law.

Section 2

Payment of VAT in accordance with the Tax Credit Method and Payment of CIT on the basis of a Declaration of Revenue and Expenses in order to Calculate Taxable Income (hereinafter referred to as the Declaration Method)

Article 8 *Applicable entities and conditions for application*

Any foreign contractor or sub-contractor shall pay tax in accordance with the guidelines in Section 2 of Chapter II if all of the following conditions are satisfied:

1. [The foreign contractor or sub-contractor] has a permanent establishment in Vietnam or is a resident of Vietnam;
2. The period of conducting business in Vietnam pursuant to the contractor's or sub-contractor's contract is one hundred and eighty three (183) days or more as from the effective date of such contract;
3. [The foreign contractor or sub-contractor] adopts the Vietnamese accounting system and makes tax registration and is issued with a tax code by the tax authority.

Article 9 *VAT*

VAT shall be implemented in accordance with the *Law on VAT* and its implementing guidelines.

Article 10 *CIT*

CIT shall be implemented in accordance with the *Law on CIT* and its implementing guidelines.

**Payment of VAT or Payment of CIT as a Percentage (%) of Turnover
(hereinafter referred to as the Rate Fixing Method)**

Article 11 *Applicable entities and conditions for application*

If a foreign contractor or sub-contractor does not satisfy any one of the conditions stipulated in article 8 of Section 2 of Chapter II, the Vietnamese party shall pay tax on behalf of such foreign contractor or sub-contractor in accordance with the guidelines in articles 12 and 13 of Section 3 of Chapter II.

Article 12 *VAT*

The bases for tax calculation shall be VAT-taxable turnover and a percentage (%) of turnover for calculation of VAT.

Amount of VAT payable = VA-taxable turnover x Percentage (%) of turnover for calculation of VAT

A foreign contractor or sub-contractor in the category of taxpayers paying VAT in accordance with the method of tax calculation directly on the basis of added value shall not be permitted to deduct VAT in respect of goods and services purchased for implementation of a contractor's contract or sub-contractor's contract.

1. VAT-taxable turnover

(a) VAT-taxable turnover:

VAT-taxable turnover shall be the total turnover from provision of services or services associated with goods subject to VAT receivable by the foreign contractor or sub-contractor, without any deduction of payable taxes, including expenses (if any) paid by the Vietnamese party on behalf of such foreign contractor or sub-contractor.

(b) Determining VAT-taxable turnover in some specific cases

(b).1 Where the turnover receivable by the foreign contractor or sub-contractor does not include payable VAT as agreed in the contractor's or sub-contractor's contract, then the VAT-taxable turnover shall be converted into turnover including VAT according to the following formula:

$$\text{VAT-taxable turnover} = \frac{\text{VAT-exclusive turnover}}{1 - \text{Percentage (\%) of turnover for calculation of VAT}}$$

Example 11:

Contractor A provides a Vietnamese party with services of supervising the construction volume of Cement Plant Z with a contract price excluding VAT (but including CIT) being USD300,000. In addition, the Vietnamese party arranges accommodation and a working place for managers of Contractor A valued at USD40,000 excluding VAT. Under the contract, the Vietnamese party is responsible to pay VAT on behalf of the Foreign Contractor. The VAT-taxable turnover of Contractor A shall be calculated as follows:

Calculation of taxable turnover:

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

- (b).2 Where a foreign contractor signs a contract with either a Vietnamese or foreign sub-contractor paying tax in accordance with the declaration method or a foreign sub-contractor paying tax in accordance with a mixed method in order to transfer part or item of the work of the former contractor's contract signed with the Vietnamese party to such sub-contractor and a list of Vietnamese sub-contractors and foreign sub-contractors implementing their respective parts or items of the work is attached to such contractor's contract, then VAT-taxable turnover of such foreign contractor shall not include the value of the work to be implemented by such Vietnamese or foreign sub-contractor.

Where a foreign contractor signs contracts with suppliers in Vietnam for the purchase of raw materials, machinery and equipment for performance of the foreign contractor's contract and goods and services for internal consumption or consumption of articles which are not for items of the work that the foreign contractor performs under the foreign contractor's contract, the value of such goods and services shall not be excluded upon calculation of VAT-taxable turnover of the foreign contractor.

Example 12:

Foreign Contractor A signs a contract with a Vietnamese party for the construction of Cement Plant Z with a total contract value (including VAT) of USD10 million. Pursuant to the contractor's contract, Foreign Contractor A will assign the value of construction and installation (set out in the contractor's contract signed with the Vietnamese party) to Vietnamese Sub-contractor B for a price of USD1 million (price excluding VAT); in addition, during construction of Cement Plant Z for performance of the contractor's contract, Foreign Contractor A purchases supplies and raw materials (bricks, cement, sand etc.) for construction and installation and goods and services such as hire of vehicles and of hotels for experts or office stationary etc. serving the performance of the contract.

In this case, the VAT-taxable turnover of Foreign Contractor A shall be calculated as follows:

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

The VAT-taxable turnover of Foreign Contractor A shall not exclude the supplies, raw materials, goods and services such as hire of vehicles and of hotels for experts or stationary etc..

- (b).3 Where a foreign contractor signs a contract with a foreign sub-contractor paying tax in accordance with the rate fixing method, then the Vietnamese party shall declare and pay VAT on behalf of the foreign contractor or the foreign sub-contractor at a percentage (%) of turnover for calculation of VAT applicable to the business line which such foreign contractor or foreign sub-contractor performs [the work] under the contractor's contract or the sub-contractor's contract. The foreign sub-contractor shall not be required to declare and pay VAT on the value of the work which it performs under the sub-contractor's contract signed with the foreign contractor and for which the Vietnamese party has declared and paid [tax] on behalf [of such sub-contractor].

- (b).4 In cases of lease of machinery, equipment and means of transportation, VAT-taxable turnover shall be the total rent. If turnover from the lease includes costs directly paid by the lessor such as insurance of means of transportation, maintenance, certification of registration of means and persons operating means of transportation or machinery, and costs of bringing such machinery and equipment into Vietnam from overseas, then VAT-taxable turnover shall exclude such costs if there are documents proving actual expenditure.
- (b).5 In the case of services being international freight forwarding services from Vietnam to overseas countries (regardless of whether the sender or recipient pays a service charge), VAT-taxable turnover shall be the whole turnover receivable by the foreign contractor but not including international transport charges payable to the aviation or sea transportation firm.
- (b).6 In the case of international delivery services from Vietnam to overseas countries (regardless of whether the sender or recipient pays a service charge), VAT-taxable turnover shall be the total turnover receivable by the foreign contractor.

Example 13:

Company A overseas provides postal parcel delivery services from overseas countries to Vietnam and vice versa. VAT-taxable turnover of Company A is determined as follows:

- + The delivery services from overseas countries to Vietnam (regardless of whether the sender abroad or the recipient in Vietnam pays the service charge) shall not be subject to VAT;
- + The VAT-taxable turnover from the delivery services from Vietnam to overseas countries (regardless of whether the sender in Vietnam or the recipient abroad pays the service charge) shall be the whole turnover receivable by Company A.

Example 14:

Company B (being a Vietnamese company) provides postal parcel delivery services from overseas countries to Vietnam and vice versa. To perform these services, Company B pays (shares [the service charges receivable] with) Company C overseas an amount of USD. VAT of Company C shall be determined as follows:

- + With respect to the delivery services from overseas countries to Vietnam (regardless of whether the sender abroad or the recipient in Vietnam pays the service charge), the amount of USD receivable by Company C shall not be included in VAT-taxable turnover.
- + With respect to the delivery services from Vietnam to overseas countries (regardless of whether the sender in Vietnam or the recipient abroad pays the service charge), the amount of USD receivable by Company C shall be included in VAT-taxable turnover; and on behalf [of Company C] Company B shall be responsible to declare, withhold and pay VAT on the amount of USD payable to Company C.

2. Percentage (%) of turnover for calculation of VAT:

- (a) Percentage (%) of turnover for calculation of VAT applicable to the following business lines:

No.	Business lines	Percentage (%) for calculation of VAT
1	Services, machinery and equipment leasing business, and insurance; construction and assembly and installation where the tender did not include supply of materials, machinery and equipment	5
2	Production, transportation, services attached to goods; construction and assembly and installation where the tender included supply of materials, machinery and equipment	3
3	Other business activities	2

- (b) Determining a percentage (%) of turnover for calculation of VAT in a number of other specific cases:

- (b).1 Where a contractor's or sub-contractor's contract comprises different business activities or where a part of the contract value is not subject to VAT, then application of a percentage of turnover for calculation of VAT when fixing the amount of VAT payable shall depend on the VAT taxable turnover from each business activity which the foreign contractor or sub-contractor performs in accordance with such contractor's or sub-contractor's contract. If the value of each activity cannot be separated, then the highest percentage of turnover for calculation of VAT applicable to a business line shall apply to the whole of the contract value.

With respect to construction or installation activities where the tender included supply of materials, machinery and equipment associated with the construction work, if the contractor's contract separates out the value of each business activity, the foreign contractor shall not be liable to pay VAT on the value of raw materials or machinery and equipment for which VAT is already paid at the import stage or which is not subject to VAT; and with respect to each part of the remaining value of contractual work, a percentage (%) of turnover for calculation of VAT applicable to such business activity shall apply. Where the contractor's contract does not separate out the value of each business activity, the applicable percentage of turnover for calculation of VAT shall be 3% of the total contract value (including the value of raw materials or machinery and equipment imported). Where a foreign contractor signs contracts with sub-contractors to transfer all value of the work or item including supply of raw materials or machinery and equipment while the foreign contractor only implements the value of the remaining services in accordance with the contractor's contract, the percentage for calculation of VAT applicable to the line of business of services shall be 5%.

Example 15:

Foreign Contractor A signs a contract with a Vietnamese party for construction of Power Plant X with the value of USD75 million (including VAT).

Case 1: The contractor's contract can separate out the value of each business activity as follows:

- + Value of machinery and equipment supplied to the work: USD50 million.

Of which:

The value of machinery and equipment subject to VAT: USD30 million.

The value of machinery and equipment which is not subject to VAT: USD15 million.

The value of warranty services associated with the machinery and equipment: USD5 million

- + Value of design of technological line and other designs: USD5 million.
- + Value of buildings and other support systems, construction and installation: USD15 million.
- + Value of services of supervising and guiding installation: USD3 million.
- + Value of services of technical training and commissioning: USD2 million.

Upon import, the value of machinery and equipment for which VAT has been paid at the import stage is USD30 million; and the value of machinery and equipment which is not subject to VAT is USD15 million.

The VAT obligation of Foreign Contractor A in respect of the value of the contract signed with the Vietnamese Party shall be calculated only on the value of services and the value of construction and installation. Thus, the value of services (warranty services, design services, services of supervising and guiding installation and services of technical training and commissioning) is USD15 million and is subject to the percentage of turnover for calculation of VAT applicable to the business line of services being 5%; and the value of construction and installation is USD15 million and is subject to the percentage (%) of turnover for calculation of VAT applicable to construction and installation activities being 3% (excluding VAT on the value of machinery and equipment imported).

Case 2: The contractor's contract does not separate out the value of each business activity and only provides the contract value comprising machinery, equipment, design services, services of supervising and guiding installation and services of technical training and commissioning. If there are insufficient source documents proving that VAT has been paid at the import stage for the value of machinery and equipment supplied to the works, the VAT obligation of Foreign Contractor A in respect of the value of the contract signed with the Vietnamese Party shall be calculated on the total value of the contractor's contract being USD75 million and is subject to the percentage (%) for calculation of VAT being 3%.

Case 3: Where Foreign Contractor A signs contracts with sub-contractors to transfer parts of the work including supply of raw materials while Foreign Contractor A only performs the value of services (such as services for supervising and guiding installation), the percentage (%) of turnover for calculation of VAT being 5% shall apply to the value of such services.

- (b).2 In the case of a contract for the supply of machinery and equipment accompanied by services performed in Vietnam, if it is possible to separate out the value of the

machinery and equipment from the value of the services when determining the amount of VAT payable, then a percentage of turnover for calculation of VAT shall apply to each part of the contract value. If the contract does not separate out the value of each of the two activities referred to above, the percentage (%) of turnover for calculation of VAT being 3% shall apply.

Example 16:

Foreign Contractor H of Korea, which has not adopted the Vietnamese accounting system, performs a contract signed with Enterprise B in Vietnam to supply a machinery and equipment production line accompanied by services being installation, operation and commissioning with a value of USD10 million. The contract does not separate the value of the machinery and equipment from the value of such services, and accordingly the percentage (%) for calculation of VAT being 3% shall apply.

3. VAT in respect of foreign contractor and foreign sub-contractors providing goods and services for the purpose of conducting operations being prospecting, exploration, development and exploitation of oil and gas fields:
 - (a) Where a foreign contractor or foreign sub-contractor providing goods and services for the purpose of conducting operations being prospecting, exploration, development and exploitation of oil and gas fields fails to satisfy any one of the conditions set out in article 8 of Section 2 of Chapter II, the Vietnamese party shall be responsible to withhold and pay VAT on behalf of [such foreign contractor or foreign sub-contractor] before making payment. The tax amount payable on behalf of [such foreign contractor or foreign sub-contractor] shall be the total amount of the payment excluding VAT multiplied by the appropriate VAT rate applicable to the goods and services provided by the foreign contractor.
 - (b) Where a foreign contractor or foreign sub-contractor providing goods and services for the purpose of conducting operations being prospecting, exploration, development and exploitation of oil and gas fields satisfies three conditions set out in article 8 of Section 2 of Chapter II or two conditions set out in clauses 1 and 2 of article 8 of Section 2 of Chapter II and conducts cost accounting in accordance with the law on accounting and guidelines of the Ministry of Finance:
 - Pending a tax registration certificate issued by the tax authority to the foreign contractor or foreign sub-contractor for declaration and payment of VAT in accordance with the tax credit method, if the Vietnamese party makes a payment to the foreign contractor or foreign sub-contractor, it shall be responsible to withhold and pay VAT on behalf of [such foreign contractor or foreign sub-contractor] before making the payment. The tax amount payable on behalf of [such foreign contractor or foreign sub-contractor] shall be the total amount of the payment excluding VAT multiplied by the appropriate VAT rate applicable to the goods and services provided by the foreign contractor.
 - When the foreign contractor or foreign sub-contractor is issued with a tax registration certificate by the tax authority, the foreign contractor or the foreign sub-contractor shall forward invoices and source documents arising in the VAT declaration period to the Vietnamese party for the latter to withhold and pay VAT on behalf of the foreign contractor or foreign sub-contractor.

The foreign contractor or foreign sub-contractor shall not be permitted to deduct input VAT arising before issuance of a tax registration certificate.

Example 17:

In January 2015 Foreign Contractor A signs a contract with a Vietnamese party for provision of petroleum services with the contract value of USD1 million. Pending a tax registration certificate issued by the tax authority to Foreign Contractor A, Foreign Contractor A generates an amount of input VAT in respect of goods and services purchased for implementation of the contract being USD5,000. On 15 March 2015, the Vietnamese Party makes a payment with a value of USD100,000 (excluding VAT and including CIT) to Foreign Contractor A. The Vietnamese Party is responsible to declare and pay VAT on behalf of Foreign Contractor A and the amount of VAT is calculated as follows: $\text{USD100,000} \times 10\% = \text{USD10,000}$.

On 1 May 2015, Foreign Contractor A registers with and is issued with a tax registration certificate by the tax authority. In May 2015 the Vietnamese Party makes a payment with a value of USD200,000 (excluding VAT and including CIT) to Foreign Contractor A. Thus, output VAT of Foreign Contractor A arising in May is USD20,000 ($\text{USD200,000} \times 10\%$).

The output VAT of Foreign Contractor A arising from 1 May 2015 to 30 May 2015 is USD2,000 (VAT arising in the period when Foreign Contractor A has a tax code). Foreign Contractor A will forward all invoices and source documents arising in May 2015 to the Vietnamese Party for the latter to declare and pay VAT on behalf of Foreign Contractor A.

The amount of VAT which Foreign Contractor A is liable to pay for the VAT declaration period for May 2015 is $\text{USD18,000} = (\text{USD20,000} - \text{USD2,000})$.

Foreign Contractor A shall not be permitted to deduct USD5,000 of input VAT arising before 1 May 2015.

Article 13 CIT

The bases for tax calculation shall be CIT-taxable income and CIT rates as a percentage (%) of taxable turnover.

$$\begin{array}{lcl} \text{Amount of} & = & \text{CIT-taxable turnover} \times \text{CIT rate as a percentage (\%)} \\ \text{CIT payable} & & \text{of taxable turnover.} \end{array}$$

1. CIT-taxable turnover

(a) CIT-taxable turnover

CIT-taxable turnover shall be total turnover excluding VAT, receivable by the foreign contractor or sub-contractor without deduction of any taxes payable. CIT-taxable turnover shall include costs (if any) which the Vietnamese party has paid on behalf of such contractor or foreign sub-contractor.

(b) Determining CIT-taxable turnover in some specific cases

(b).1 Where pursuant to the contractor's or sub-contractor's contract, turnover receivable by the foreign contractor or sub-contractor excludes payable CIT, then the CIT-taxable turnover shall be calculated according to the following formula:

$$\text{CIT-taxable turnover} = \frac{\text{Turnover excluding CIT}}{1 - \text{CIT rate as percentage of taxable turnover}}$$

Example 18:

Foreign contractor A provides a Vietnamese party with the service of supervising the construction volume of Cement Plant Z with the contract price excluding VAT and CIT of USD285,000. In addition, the Vietnamese party arranges accommodation and a working place for managers of the foreign contractor valued at USD38,000 (excluding VAT and CIT). Pursuant to the contract, the Vietnamese party is responsible to pay CIT and VAT on behalf of the foreign contractor. The amount of CIT payable by the foreign contractor shall be calculated as follows:

Calculation of taxable turnover:

$$\begin{array}{lcl} \text{CIT-taxable} & = & \frac{285,000 + 38,000}{(1 - 5\%)} = \text{USD340,000} \\ \text{turnover} & & \end{array}$$

- (b).2 If a foreign contractor signs a contract with either a Vietnamese or foreign sub-contractor paying tax in accordance with the declaration method or a foreign sub-contractor paying tax in accordance with a mixed method in order to transfer part of the work or items of the work of the contractor's contract signed with the Vietnamese party and a list of Vietnamese sub-contractors and foreign sub-contractors implementing their respective parts or items of the work is attached to such contractor's contract, then CIT-taxable turnover of such foreign contractor shall not include the value of the work to be implemented by such Vietnamese or foreign sub-contractor.

Where a foreign contractor signs contracts with suppliers in Vietnam for the purchase of supplies, raw materials, machinery and equipment for implementation of the contractor's contract and goods and services for internal consumption or consumption of articles which are not for items of the work that the foreign contractor performs under the contractor's contract, the value of such goods and services shall not be excluded upon calculation of CIT-taxable turnover of the foreign contractor.

Example 19:

Foreign Contractor A signs a contract with a Vietnamese party for the construction of Cement Plant Z with a total contract value (excluding VAT) of USD9 million. Pursuant to the contractor's contract, Foreign Contractor A will assign part of the value of construction and installation (set out in the contractor's contract signed with the Vietnamese party) to Vietnamese Sub-contractor B for a price of USD1 million (excluding VAT); in addition, during construction of Cement Plant Z for performance of the contractor's contract, Foreign Contractor A purchases supplies and raw materials (bricks, cement, sand etc.) for construction and installation and goods and services such as hire of vehicles and of hotels for experts or office stationary serving the performance of the contract.

CIT-taxable turnover of foreign contractor A shall be determined as follows:

$$\text{CIT-taxable turnover} = \text{USD9 million} - \text{USD1 million} = \text{USD8 million.}$$

The CIT-taxable turnover of Foreign Contractor A shall not exclude the supplies, raw

materials, goods and services such as hire of vehicles and of hotels for experts or purchase of office stationary.

- (b).3 Where a foreign contractor signs a contract with a foreign sub-contractor paying tax in accordance with the rate fixing method, then the Vietnamese party shall pay CIT on behalf of the foreign contractor or the foreign sub-contractor at an appropriate CIT rate as a percentage (%) of taxable turnover applicable to the business line conducted by such foreign contractor or foreign sub-contractor under the contractor's contract or the sub-contractor's contract. The foreign sub-contractor shall not be required to pay CIT on the value of the work which it performs in accordance with the provisions in the sub-contractor's contract signed with the foreign contractor and for which the Vietnamese party has declared and paid [tax] of behalf of [such foreign sub-contractor].
- (b).4 With respect to lease of machinery, equipment and means of transportation, CIT-taxable turnover shall be the total rent. If turnover from the lease of machinery, equipment and means of transportation includes costs directly paid by the lessor such as insurance of means of transportation, maintenance, certification of registration of means and persons operating means of transportation or machinery, and costs of bringing such machinery and equipment into Vietnam from overseas, then CIT-taxable turnover shall exclude such costs if there are documents proving actual expenditure.
- (b).5 With respect to foreign airline carriers, CIT-taxable turnover shall be turnover from sale of passenger tickets and air freight bills of lading and other income (excluding income collected on behalf of the State or other organizations pursuant to law) in Vietnam for transportation of passengers, cargo and other objects on flights of such foreign airline carrier conducted directly or in partnership.

Example 20:

In the first quarter of year 2013, foreign airline A generates turnover of USD100,000, comprising turnover from sales of passenger tickets at USD85,000, air freight bills of lading of USD10,000, and sales of MCO² tickets of USD5,000; at the same time it collects USD1,000 being airport charges on behalf of the State, and refunds USD2,000 to customers who handed in their tickets.

CIT-taxable turnover of foreign airline A for the first quarter of 2013 shall be determined as follows:

$$\text{CIT-taxable turnover} = 100,000 - (1,000 + 2,000) = \text{USD97,000.}$$

- (b).6 With respect to foreign sea transport firms, CIT-taxable turnover shall be the total amount of fees (including any additional fees) receivable for transporting passengers and cargo from loading ports in Vietnam to the final port of discharge or disembarkation (including fees for transferring consignments of goods between intermediate ports) and/or fees receivable for transferring cargo between Vietnamese ports.

Transportation fees as the basis for calculating CIT shall not include fees on which CIT payable by the foreign ship owner has been assessed at Vietnamese ports, and fees payable to any Vietnamese transportation enterprises participating in transferring cargo from a Vietnamese port to an intermediate port.

² Allens footnote: "MCO" is the abbreviation for "miscellaneous charge order".

Example 21:

Company A acts as agent for foreign sea transport carrier X, and the contract stipulates that Company A shall represent firm X in receiving cargo for transportation to overseas, in issuing bills of lading, in collecting transportation fees and so forth.

Enterprise B of Vietnam hires firm X (via Company A) to forward freight from Vietnam to the US with total freight fees of USD100,000.

Company A charters the ship of a Vietnamese enterprise or a foreign ship to transfer the cargo from Vietnam to Singapore with transportation fees of USD20,000, and the cargo will then be transported from Singapore to the US by a ship belonging to firm X.

CIT-taxable turnover of foreign sea transport firm X shall be determined as follows:

$$\text{CIT-taxable turnover} = 100,000 - 20,000 = \text{USD}80,000.$$

- (b).7 In the case of international freight forwarding services from Vietnam to overseas countries (regardless of whether the sender or the recipient pays the service charge), CIT-taxable turnover shall be the whole turnover receivable by the foreign contractor excluding international transport fees payable to the aviation or sea transportation firm.
- (b).8 In the case of international delivery services from Vietnam to overseas countries (regardless of whether the sender or the recipient pays the service charge), CIT-taxable turnover shall be the total turnover receivable by the foreign contractor.

Example 22:

Company A abroad provides postal parcel delivery services from overseas countries to Vietnam and vice versa. CIT-taxable turnover of Company A is determined as follows:

- + The delivery services from overseas countries to Vietnam (regardless of whether the sender abroad or the recipient in Vietnam pays the service charge) shall not be subject to CIT;
- + The CIT-taxable turnover from the delivery services from Vietnam to overseas countries (regardless of whether the sender in Vietnam or the recipient abroad pays the service charge) shall be the whole turnover receivable by Company A.

Example 23:

Company B (being a Vietnamese company) provides postal parcel delivery services from overseas countries to Vietnam and vice versa. To perform these services, Company B pays (shares) Company C overseas an amount of USD. CIT of Company C shall be determined as follows:

- + With respect to the delivery services from overseas countries to Vietnam (regardless of whether the sender abroad or the recipient in Vietnam pays the service charge), the amount of USD receivable by Company C shall not be included in CIT-taxable income.

- + With respect to the delivery services from Vietnam to overseas countries (regardless of whether the sender in Vietnam or the recipient abroad pays the service charge), the amount of USD receivable by Company C shall be included in CIT-taxable income; and Company B shall be responsible to declare, withhold and pay CIT on behalf [of Company C] on the amount of USD payable to Company C.

(b).9 In the case of reinsurance, CIT-taxable turnover shall be determined as follows:

- In the case of ceding offshore reinsurance, CIT- taxable turnover shall be premiums for ceding offshore reinsurance receivable by the foreign contractor (comprising premiums for ceding and indemnity to clients under the agreement).
- In the case of ceding reinsurance from abroad, CIT-taxable turnover shall be commissions for ceding reinsurance receivable by the foreign contractor.

(b).10 In the case of transfers of securities, CIT-taxable income shall be determined as follows:

In a case of transfers of securities and certificates of deposit, CIT-taxable turnover shall be total turnover from the sale of securities and/or certificates of deposit at the time of the transfer.

(b).11 In the case of interest rate swaps, CIT-taxable turnover shall be the difference between interest receivable and interest payable by the foreign contractor in a single Gregorian year. The tax period on the basis of the Gregorian year shall be determined in accordance with the *Law on CIT*, the *Law on Tax Management* and their implementing guidelines.

Example 24:

Bank A (A) provides a loan of USD10 million at a fixed rate of interest being 5.2% per annum. The term of the [loan] agreement is three years from 1 February 2012 to 1 February 2015. Payments will be made once every six months at the beginning of each period of six months.

Based on the loan agreement of A, A enters into negotiation with Bank B (B) abroad in order to implement an interest rate swap contract, specifically:

- The term of the [loan] agreement is three years from 1 February 2012 to 1 February 2015. Payments will be made once every six months at the beginning of each period of six months.
- The floating rate of interest payable by A to B is LIBOR plus 0.25% and B must pay A at the fixed rate of interest being 5.2%. This means that if LIBOR plus 0.25% is higher than the fixed rate of interest under the swap contract, B will receive a difference between interest (at the LIBOR plus 0.25%) and interest payable at the rate of interest being 5.2% from A. Otherwise, if LIBOR plus 0.25% is lower than the fixed rate of interest under the swap contract, A will receive a difference between interest at the rate of 5.2% and interest receivable by A at LIBOR plus 0.25%.

Period of payment	LIBOR (%)	Payable by A to B (%)	Payable by B to A (%)	After offsetting against interest receivable by A or B (%)		Difference receivable by A or B in each period (USD1,000)	
				A	B	A	B
1 February 2012 to 31 July 2012	4.80	5.05	5.20		0.15	-	15
1 August 2012 to 31 January 2013	5.00	5.25	5.20	0.05		5	
1 February 2012 to 31 July 2013	4.90	5.15	5.20		0.05	-	5
1 August 2012 to 31 January 2014	4.95	5.20	5.20	0.00		-	-
1 February 2012 to 31 July 2014	4.90	5.15	5.20		0.05		5
1 August 2012 to 30 January 2015	5.05	5.30	5.20	0.10		10	

CIT-taxable turnover in respect of B shall be determined as follows:

- Year 2012 (from 1 January 2012 to 31 December 2012): Total amount receivable by B from A: (15,000 - 5,000) = USD10,000;
- Year 2013 (from 1 January 2013 to 31 December 2013): Total amount receivable by B from A: (5,000 - 0) = USD5,000;
- Year 2014 (from 1 January 2014 to 31 December 2014): A receives no money but it must pay USD5,000 to B (taxable turnover is zero);
- Year 2015: Because payments are made at the beginning of each period of payment, no offset between A and B arises.

(b).12 In the case of treasury bills:

CIT-taxable turnover in respect of treasury bills shall be determined for each type of treasury bills held by investors at the due date of such treasury bills.

CIT-taxable turnover in respect of treasury bills shall be determined as follows:

$$\text{CIT-taxable turnover} = \left(\frac{\text{Face value of treasury bills}}{\text{Weighted average purchase price of the number of treasury bills held by the investor at the due date}} - \right) \times \text{Quantity of treasury bills held by the investor at the due date}$$

The weighted average purchase price of the number of treasury bills held by the investor at the due date shall be calculated in accordance with the following three steps:

Step 1: Determining the quantity of treasury bills held at the due date.

Step 2: Determining the quantity, date of purchase and respective purchase prices of treasury bills held at the due date (which are determined in Step 1) on the principle that the first treasury bills purchased are the first ones sold (FIFO principle).

Step 3: Calculating the weighted average purchase price in accordance with the following formula:

$$= \frac{\sum (\text{quantity of treasury bills held at the due date at the dates of purchase (x) multiplied by their respective purchase price at the dates of purchase})}{\text{quantity of treasury bills held at the due date}}$$

Example 25:

On 1 January 2015, treasury bills X with a face value of 100,000 dong and a term of six months are issued at the price of 89,000 dong per treasury bill. Immediately after issue, the treasury bills are listed and traded on HNX. Investor A conducts a number of transactions from 2 January to 1 July 2015 (due date):

Date of trading	Purchase/ Sale	Volume	Price
2 January 2015	Purchase	100	90,000
1 February 2015	Purchase	100	92,000
1 March 2015	Sale	70	93,000
1 April 2015	Purchase	40	94,000
1 May 2015	Sale	20	95,000

Step 1: Determining the quantity of treasury bills held at the due date: $(100 + 100 + 40) - (70 + 20) = 150$ treasury bills

Step 2: Determining the quantity, date of purchase and respective purchase prices of treasury bills held at the due date after deduction of the quantity of treasury bills sold on occasions, on the principle that the first treasury bills purchased are the first ones sold (FIFO principle) comprising: 150 treasury bills held at the due date comprising:

- + 10 treasury bills purchased at the price of 90,000 on 2 January 2015.
- + 100 treasury bills purchased at the price of 92,000 on 1 February 2015.
- + 40 treasury bills purchased at the price of 94,000 on 1 April 2015.

Step 3: Calculating the weighted average purchase price in accordance with the following formula:

Weighted average purchase price of treasury bills: $[(40 \times 94,000 + 100 \times 92,000 + 10 \times 90,000) / 150] = 92,400$ (dong)

CIT-taxable turnover in respect of the quantity of treasury bills receivable by the investor at the due date: $(100,000 - 92,400) \times 150 = 1,140,000$ (dong).

2. CIT rates as a percentage (%) of taxable turnover

- (a) CIT rates as a percentage (%) of taxable turnover in respect of business lines

No.	Business lines	CIT rates as a percentage (%) of taxable turnover
1	Trading: distribution and supply of goods, raw materials, supplies, machinery and equipment; distribution and supply of goods, raw materials, supplies, machinery and equipment associated with services in Vietnam (including supply of goods in the form of on-the-spot import and export) (except for processing of goods for foreign organizations and individuals); supply of goods on delivery terms (international commercial terms – Incoterms)	1
2	Services, lease of machinery and equipment, insurance, lease of drilling platforms	5
	Except for:	
	Services of managing restaurants, hotels and casinos	10
	Derivative financial services	2
3	Lease of aircraft, aircraft engines, aircraft spare parts and sea going vessels	2
4	Construction and installation where the tender includes or excludes supply of raw materials or machinery and equipment	2
5.	Other production or business activities and transportation (including sea and air transportation)	2
6	Assignments [transfer] of securities, certificates of deposit, offshore reinsurance and commission for ceding reinsurance	0.1
7	Loan interest	5
8	Income from royalties	10

(b) CIT rates as a percentage (%) of taxable turnover in some specific cases

- (b).1 For the purpose of calculating the amount of CIT payable on a contractor's or sub-contractor's contract for a number of different business activities, CIT rates shall be applied on the basis of the CIT-taxable turnover from each business activity performed by the foreign contractor or sub-contractor under the contract. Where the value of each business activity is not able to be calculated separately, the CIT rate for the line of business which is subject to the highest tax rate shall apply to the total value of the contract.

With respect to construction or installation activities with supply of raw materials or machinery and equipment associated with the construction work, if the contractor's contract can separate out the value of each business activity, each part of the value of the work under the contract shall be subject to the CIT rate as a percentage (%) of the turnover applicable to such business activity. If the contractor's contract does not separate out the value of each business activity, the CIT rate as a percentage of the taxable turnover shall be 2% of the total contract value. Where a foreign contractor signs contracts with sub-contractors to transfer all value of the work or items of the work with supply of raw materials or machinery and equipment while the foreign contractor only implements the value of the remaining services in accordance with the contractor's contract, then the CIT rate as a percentage of the CIT-taxable turnover applicable to the line of business of services shall be 5%.

Example 26:

Foreign Contractor A signs a contract with a Vietnamese party for construction of Power Plant X with the value of USD75 million (including VAT, but including CIT). The contract value comprises:

Case 1: The contractor's contract can separate each business activity as follows:

- + Value of machinery and equipment supplied to the work: USD50 million.

Of which:

The value of machinery and equipment: USD45 million

The value of warranty services associated with the machinery and equipment: USD5 million

- + Value of design of technological line and other designs: USD5 million.
- + Value of buildings and other support systems, construction and installation: USD15 million.
- + Value of services of supervising and guiding installation: USD3 million.
- + Value of services of technical training and commissioning: USD2 million.

Thus, the applicable CIT rates as a percentage are as follows: 1% for the value of machinery and equipment of USD45 million, 2% for the value of construction and installation of USD15 million; and 5% for the value of other services (services of warranty, design, supervising and guiding installation and services of technical training and commission) of USD15 million.

Case 2: The contractor's contract does not separate each business activity. Thus, the applicable CIT rate as a percentage of the whole contract value of USD75 million is 2%.

Case 3: Where Foreign Contractor A signs contracts with sub-contractors to transfer parts of the work including supply of raw materials while Foreign Contractor A only performs the value of services (such as services for supervising and guiding installation), the value of such services shall be subject to the CIT rate of 5%.

- (b).2 In the case of contracts for supply of machinery and equipment associated with services performed in Vietnam, where the value of the machinery and equipment is separable from the value of the services, then tax shall be assessed as the percentage applicable to each activity. If the contract does not separate the value of the machinery and equipment from the value of the services, then the CIT rate of 2% shall apply to the taxable turnover.

Example 27:

Foreign Contractor A signs a contract with a Vietnamese party to supply a machinery and equipment line with the contract value of USD70 million, comprising:

- + Value of machinery and equipment supplied to the project: USD60 million;
- + Value of design of technological line and other designs: USD5 million;
- + Value of services of supervising and instructing installation: USD3 million;
- + Value of services of technical training and commissioning: USD2 million.

If the value of the machinery and equipment is separable from the value of the services, then CIT rates shall be applied as follows: the tax rate for the commercial sector shall apply to the value of machinery and equipment; and the tax rate for the service sector shall apply to the value of services of design, supervision of installation, training and commissioning.

If the value of the machinery and equipment is not separable from the value of the services, then the CIT rate of 2% shall apply to the total contract value of USD70 million.

3. CIT in respect of damages receivable from the party in breach of a contract in the case where there is taxable income due to such damages being larger than the value of the loss:

With respect to the income from damages received, the foreign contractor may select to declare and pay CIT at a CIT rate as a percentage of taxable turnover or on the basis of declaration of turnover and costs for a tax rate being the common tax rate.

Section 4

Payment of VAT in accordance with the Tax Credit Method and Payment of CIT as a Percentage of Taxable Turnover³ (hereinafter referred to as the mixed method)

Article 14 *Entities and conditions for application*

Foreign contractors and sub-contractors satisfying both conditions stipulated in clauses 1 and 2 of article 8 of Section 2 of Chapter II of this Circular and conducting cost accounting in accordance with the laws on accounting and guidelines of the Ministry of Finance, may register with the tax authority to pay VAT in accordance with the tax credit method and to pay CIT as a percentage of taxable turnover.

Article 15 *Value added tax*

[Value added tax] shall be implemented in accordance with the guidelines in article 9 of Section 2 of Chapter II.

Article 16 *Corporate Income Tax*

[Corporate income tax] shall be implemented in accordance with the guidelines in article 13 of Section 3 of Chapter II.

³ Allens footnote: This addition, commonly referred to as the "hybrid method", was made by Circular 197-2009-TT-BTC dated 9 October 2009.

CHAPTER 3

Organization of Implementation

Article 17 *Effectiveness*

1. This Circular shall be of full force and effect from 1 October 2014 and shall replace Circular 60-2012-TT-BTC of the Ministry of Finance providing guidelines for performance of tax obligations applicable to foreign organizations and individuals conducting business in Vietnam or having income earned in Vietnam.
2. With respect to contracts and sub-contracts which have been signed before the effective date of this Circular, VAT and CIT tax obligations shall continue to be calculated in accordance with the guidelines in the relevant legal instruments effective on the date of signing of such contracts.
3. Where an international treaty which the Socialist Republic of Vietnam has signed or acceded to contains provisions on tax payment by foreign contractors and sub-contractors which are different from the guidelines in this Circular, the provisions of such international treaty shall prevail

Entities and business establishment are requested to report any problems arising during implementation to the Ministry of Finance for resolution in a timely manner.

For the Minister of Finance
Deputy Minister

DO HOANG ANH TUAN