

CIRCULAR

Guiding the tax obligations with respect of foreign entities, individuals doing business in Vietnam or deriving income in Vietnam

Chapter I

GENERAL PROVISIONS

Article 1. Applicable persons

The guidelines in this Circular apply to the following persons (except for cases as mentioned in Article 2, Chapter I):

1. Foreign business entities with or without a permanent establishment in Vietnam; foreign business individuals whether they are residents or non-residents of Vietnam (hereinafter referred to as Foreign contractors, Foreign sub-contractors) doing business in Vietnam or deriving income in Vietnam on the basis of contracts, agreements or commitments between Foreign contractors and Vietnamese entities, individuals, or between Foreign contractors and Foreign sub-contractors to perform part of work of a Contractor contract.

2. Foreign entities, individuals providing goods in Vietnam under the form of on-site export and deriving income on the basis of a Contract signed between foreign entities, individuals with enterprises located in Vietnam (except for the case of processing goods and the processed goods being exported to return to foreign entities, individuals later on) or distributing goods in Vietnam or providing goods in Vietnam under the international commercial terms – Incoterms, under which the sellers bear risks relating to goods transported to Vietnam's territory.

Example 1:

- Case 1: Foreign enterprise X signed a contract of purchasing materials from Vietnamese enterprise A; at the same time, it assigned the Vietnamese enterprise A to deliver such materials to Vietnamese enterprise B (under the form of on-site import, export in accordance with provisions of law). The foreign enterprise X derives income in Vietnam on the basis of the contract signed between it and the Vietnamese enterprise B (the former sold the materials to the latter).

In this case, the foreign enterprise X is an applicable person in accordance with provisions of this Circular, and the Vietnamese enterprise B is responsible for filing, withholding and paying taxes on behalf of the foreign enterprise X in accordance with provisions of this Circular.

- Case 2: Foreign enterprise Y signed a contract of processing materials with Vietnamese enterprise C; at the same time, it assigned the Vietnamese enterprise C to deliver the processed materials to Vietnamese enterprise D to continue to manufacture

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(under the form of on-site import, export in accordance with provisions of law). The foreign enterprise Y derives income in Vietnam on the basis of the contract signed between it and the Vietnamese enterprise D (the former sold the processed materials to the latter).

In this case, the foreign enterprise Y is an applicable person in accordance with provisions of this Circular, and the Vietnamese enterprise D is responsible for filing, withholding and paying taxes on behalf of the foreign enterprise Y in accordance with provisions of this Circular.

- Case 3: Foreign enterprise Z signed a contract of processing or purchasing materials with Vietnamese enterprise E (the former provides materials for the latter to process); at the same time, it assigned the Vietnamese enterprise E to deliver goods to Vietnamese enterprise G in order to continue processing, (under the form of on-site import, export in accordance with provisions of law). After processing, the Vietnamese enterprise G to return processed goods to the foreign enterprise Z; and the latter has to pay processing fees to the former in accordance with the processing contract.

In this case, the foreign enterprise Z is not an applicable person in accordance with provisions of this Circular.

3. Foreign entities, individuals carrying on partly or wholly business activities of goods distribution or service supply in Vietnam in which the foreign entities, individuals are still owners of goods which were delivered to Vietnamese entities or responsible for costs of distribution, advertisement, marketing or for quality of service, quality of goods which were delivered to Vietnamese entities or determine the selling price of goods or supplying price of service, including the case where the foreign entities, individuals authorize or hire some Vietnamese entities to perform part of distribution service, or other services relating to the selling goods in Vietnam.

Example 2:

Foreign enterprise A delivers goods or authorize the performing some related services (such as transport, distribution, marketing, advertisement,...) to Vietnamese enterprise B. Accordingly, the former is the owner of goods delivered to the latter or takes the responsibility for costs, for quality of service, quality of goods delivered to the latter, or the former determine the selling price of goods or the supplying price of service. In this case the former is an applicable person in accordance with provisions of this Circular.

4. Foreign entities, individuals through Vietnamese entities, individuals to negotiate and conclude contracts under the name of the foreign entities, individuals.

5. Foreign entities, individuals exercise the right to export, the right to import and distribution in Vietnam's market, the right to purchase goods to export, or sell to Vietnamese traders in accordance with commercial law.

Article 2. Inapplicable Persons

The guidelines in this Circular do not apply to:

1. Foreign entities, individuals doing business in Vietnam in accordance with provisions of Investment Law, Petroleum Law, Credit Institutions Law.

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2. Foreign entities, individuals supplying goods to Vietnamese entities, individuals not associated with service being performed in Vietnam under the following forms:

- Goods delivered at foreign bordergate: under which the seller bears all responsibilities, costs, risks relating to export and delivery of goods at foreign bordergate, the buyer bears all responsibilities, costs, risks relating to receive and transport of goods from foreign bordergate to Vietnam (including the case where goods are delivered at foreign bordergate under the term that the guarantee is the responsibility and task of the seller).

- Goods delivered at Vietnam's bordergate: under which the seller bears all responsibilities, costs, risks relating to export and delivery of goods to Vietnam's bordergate, the buyer bears all responsibilities, costs, risks relating to receive and transport of goods from Vietnam's bordergate (including the case where goods are delivered at Vietnam's bordergate under the term that the guarantee is the responsibility and task of the seller).

Example 3:

Vietnamese Company C signed a contract of importing a shipment of excavators and bulldozers with Foreign Company D, Goods are delivered at Vietnam's bordergate. The Foreign Company D bears all responsibilities, costs relating to the shipment of goods to the delivery place at Vietnam's bordergate; the Vietnamese Company C bears all responsibilities, costs relating to receive and transport of the shipment from Vietnam's bordergate. The contract includes a term that the shipment of goods is guaranteed by the Foreign Company D for one year; in addition, the Foreign Company D does not perform any service relating to the shipment of goods in Vietnam. In this case, the activity of supplying goods conducted by the Foreign Company D is not taxable in Vietnam in accordance with provisions of this Circular.

3. Foreign entities, individuals deriving income from services which are performed and consumed outside Vietnam.

Example 4:

Company H from Hong Kong provides cargo handling services at the Hong Kong port for a fleet of international ships belonging to Company A of Vietnam. The Company A pays Company H fee for cargo handling services at the Hong Kong port.

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

Example 5:

A foreign entity provides professional services of management and issuance of securities, legal consultation, depositary agent, organization of roadshow to Vietnamese Company A in the country where the Vietnamese Company A issues the GDR (Global Depositary Receipt) and international bonds. In this case, the services are performed by the foreign entity and accordingly not taxable in Vietnam in accordance with provisions of this Circular.

4. Foreign entities, individuals providing the following services to Vietnamese entities, individuals, provided that the services are performed overseas:

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- Repair of means of transport (aircraft, aircraft engine, aircraft spare parts and sea-going vessels), and machineries and equipments (including sea cables and transmission equipments) with or without replacement spare parts and equipments;

- Advertising and marketing services (except for advertising and marketing services on internet);

Example 6:

A Vietnamese enterprise signs a contract with a Singapore entity to provide advertising service for its products in Singapore market; the advertising service performed by the Singapore entity is not taxable in Vietnam in accordance with provisions of this Circular. In case where the Singapore entity performs the advertising service for selling the products in Vietnam market on internet, the income from such advertising service is taxable in Vietnam in accordance with provisions of this Circular.

- Investment and commercial promotion services;

- Brokerage services for sale of goods, for providing services overseas;

Example 7:

A Vietnamese enterprise signs a contract to hire a Thailand enterprise to perform brokerage services for sale of its products in Thailand market or the world market, then the brokerage services performed by the Thailand enterprise are not taxable in Vietnam in accordance with provisions of this Circular; in case where the Vietnamese enterprise signs a contract to hire the Thailand enterprise to perform brokerage services for transferring its real properties located in Vietnam, the brokerage services performed by the Thailand enterprise are taxable in Vietnam in accordance with provisions of this Circular.

- Training services (except for one-line training service);

Example 8:

Vietnamese enterprise A signs a contract with Singapore University B to send its Vietnamese employees for studying in the Singapore University B, then the training service provided by the Singapore University B is not taxable in Vietnam in accordance with provisions of this Circular; in case where the Vietnamese enterprise A signs a contract with the Singapore University B to teach its Vietnamese employees who are still residing in Vietnam under the form of online training, then the online training service provided by the Singapore University B is taxable in Vietnam in accordance with provisions of this Circular.

- Sharing freight charges (payment freight charges) paid for international telecommunication services, which are performed outside Vietnam, between Vietnamese parties and foreign parties, services of leasing transmission lines and satellite bands from foreign parties in accordance with provisions of Law on Telecommunication. Sharing freight charges (payment freight charges) paid for international post services, which are performed outside Vietnam, between Vietnamese parties and foreign parties in accordance with provisions of Law on Post and International Conventions on Post signed or participated in by the Socialist Republic of Vietnam.

5. Foreign entities, individuals using bonded warehouses, inland container depot (ICD) as storage of goods to support for international transport, transition, border gate transition, to store goods or to store goods for processing by another enterprises.

Article 3. The interpretation of terms

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

1. “Contractor’s contract” means a contract, agreement or commitment between a Foreign contractor and a Vietnamese party.

2. “Sub-contractor’s contract” means a contract, agreement or commitment between a Sub-contractor and a Foreign contractor.

The Sub-contractor includes both Foreign and Vietnamese Sub-contractors.

3. The territory of Vietnam includes land territory, islands, internal water, territorial sea and air space above them, the maritime areas beyond territorial sea including seabed and subsoil thereof over which Vietnam exercises sovereignty, sovereign rights and jurisdiction in accordance with Vietnam legislation and international laws.

Article 4. Taxpayers

1. Foreign contractors, Foreign sub-contractors those ensure the conditions as provided for in Article 8, Section 2, Chapter II or Article 14, Section 4, Chapter II and carry out business in Vietnam or derive income in Vietnam. The business is carried out on the basic of contractor’s contract signed with Vietnamese entities, individuals or on the basic of sub-contractor’s contract signed with other foreign entities, individuals those are doing business in Vietnam.

The determining whether a Foreign contractor, a Foreign sub-contractors has a permanent establishment in Vietnam or is a resident of Vietnam is complied with provisions of Law on Business Income Tax, Law on Personal Income Tax and implementing documents.

In case where an Agreement on avoidance of double taxation signed by the Socialism Republic of Vietnam has different provisions on permanent establishment and resident, the provisions of that Agreement shall prevail.

2. Organizations established and operating in accordance with the laws of Vietnam, other organizations and individuals doing business and production and purchasing services, including services associated with goods, or paying income arising in Vietnam on the basic of contractor’s contract or sub-contractor’s contract, purchasing goods under the form on-site import, export or under the international commercial terms (Incoterms), distributing goods, providing service in Vietnam on behalf of foreign entities, individuals (hereinafter all referred to as Vietnamese party), and comprising:

- Business organizations established in accordance with Enterprise Law, Investment Law and Cooperative Law;

- Economic organizations of political organizations, socio-political organizations, social organizations, socio-professional organizations, of units of People’s armed forces, of bureaucratic organizations with financial autonomy and of other organizations;

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- Petroleum contractors operating in accordance with Petroleum Law;
- 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, 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, commercial banks where securities investment funds or foreign organizations have opened securities investment accounts;
- Other organizations in Vietnam;
- individuals conducting business and production in Vietnam.

The taxpayers defined in Paragraph 2, Article 4, Chapter I shall be responsible for withholding the amount of value added tax, business income tax in accordance with guidelines in Section 3, Chapter II, prior making payments to Foreign contractors, Foreign sub-contractors.

Article 5. Applicable taxes

1. Foreign contractors, Foreign sub-contractors those are business entities shall comply with value added tax (VAT), business income tax (BIT) obligations in accordance with guidelines in this Circular.

2. Foreign contractors, Foreign sub-contractors those are business individuals shall comply with VAT obligations in accordance with guidelines in this Circular, personal income tax (PIT) obligations in accordance with law on PIT.

3. Regarding other kinds of taxes, fees and charges, Foreign contractors, Foreign sub-contractors shall comply with obligations of taxes, fees and charges in accordance with the current legal documents.

Chapter II

BASES AND TAX CALCULATION METHOD

Section 1

OBJECTS SUBJECT TO VAT AND BIT

Article 6. Objects subject to VAT

1. Services or services associated with goods which are objects subject to VAT, provided by Foreign contractors, Foreign sub-contractors on the basis of a contractor's contract, a sub-contractor's contract and used for business, production and consumption in Vietnam (except for cases as provided for in Article 2, Chapter I), comprising:

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- Services or services associated with goods which are objects subject to VAT, and performed by Foreign contractors, Foreign sub-contractors in Vietnam and consumed in Vietnam;

- Services or services associated with goods which are objects subject to VAT, and performed by Foreign contractors, Foreign sub-contractors outside Vietnam and consumed in Vietnam.

2. In case where goods are supplied under a contract in the following forms: the receipt and delivery point of goods located within the territory of Vietnam (except for cases provided for in paragraph 5, Article 2, Chapter I); or the supply of goods associated with services which are performed in Vietnam such as installation, testing, guarantee, maintenance, replacement, and other services associated with the supply of goods (including services are provided on the basis of free of charge), regardless the value of provision of services mentioned above is covered in the value of contract of supply of goods or not, then the value of goods shall be subject to VAT at the import stage in accordance with the current provisions, the value of provision of services shall be subject to VAT in accordance with guidelines in this Circular. In case where the contract fails to separate the value of goods and value of associated services (including the associated services are provided on the basis of free of charge), the VAT shall be calculated on the total value of the contract.

Example 9:

Vietnamese enterprise A signs a contract to purchase a line of equipments and machineries for the Project on Cement Plant from foreign enterprise B. Total value of the contract is 100 million USD, in which the value of equipments and machineries is 80 million USD (among these equipments and machineries there are some categories subject to VAT at rate of 10%), and the value of services of guiding the installation, observation the installation, guarantee, maintenance is 20 million USD.

The determination of VAT obligation of the foreign enterprise B with respect to the value of contract signed with the Vietnam enterprise A as follows:

- The VAT shall be calculated on the value of services (20 million USD) but on the value of the line of equipments and machineries imported.

- If the Contract fails to separate the value of the line of equipments and machineries and the value of services, the VAT shall be calculated on the total value of the Contract (100 million USD).

Article 7. BITable income

1. BITable income of a Foreign contractor, or Foreign sub-contractor is the income arising from the provision of services, distribution of goods, including services associated with goods in Vietnam on the basis of a contractor's contracts, sub-contractor's contract (except for the case provided for in Article 2, Chapter I).

2. In case where goods are supplied under the following forms: the receipt and delivery point of goods located within the territory of Vietnam (except for cases provided for in paragraph 5, Article 2, Chapter I); or the supply of goods associated with services which are performed in Vietnam such as advertising and marketing services, trade

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promotion activities, after-sale service, installation, testing, guaranty, maintenance, replacement, and other services associated with the supply of goods (including services are provided free of charge), regardless the value of provision of services mentioned above is covered in the value of contract of supply of goods or not, the BITable income of a Foreign contractor, or Foreign sub-contractor is total value of goods and services.

Example 10:

Vietnamese enterprise A signs a contract to purchase a line of equipments and machineries for the Project on Cement Plant from foreign enterprise B. Total value of the contract is 100 million USD (VAT exclusive), in which the value of equipments and machineries is 80 million USD, and the value of services of guiding the installation, observation the installation, guarantee, maintenance is 20 million USD.

The BIT obligation with respect to the value of the Contract of the foreign enterprise B is determined as follows:

- The BIT amount shall be separately calculated on the value of line of equipments and machineries imported (80 million USD) and the value of services (20 million USD) by each relevant percentage of BIT in accordance with provisions.

- In case where the Contract fails to specifically determine the value of line of equipments and machineries and the value of services, the BIT shall be calculated on the total value of contract (100 triệu USD) by a relevant percentage of BIT in accordance with provisions.

3. The income arising in Vietnam of a Foreign contractor, or Foreign sub-contractor is all items of income receivable under any form on the basis of a contractor's contracts, sub-contractor's contract (except for the case provided for in Article 2, Chapter I), regardless the place where the Foreign contractor, or Foreign sub-contractor carries out business activities. The BITable income of a Foreign contractor, or Foreign sub-contractor in some specific cases is determined as follows:

- The income from transferring the ownership, the use right to properties, from transferring the right to participate in economic contracts/projects in Vietnam, and from transferring the right to properties presented in Vietnam.

- The income being royalty is the income items under any form paid for the right to use, transferring the intellectual properties rights and transferring the technology, the copyright of software (including items paid for the right to use, transferring the rights of an author and rights of the owner of a work, transferring the intellectual properties rights, the copyright of software).

The terms of "Rights of an author and rights of the owner of a work", "Intellectual properties rights", and "Technology transfer" are provided in the Civil Law, Law on Intellectual Properties, and Law on Technology Transfer and implementing documents.

- The income from transferring and liquidating assets.

- The income being loan interest: it is the income of lenders earned from loans in any form irrespective of whether such loans are secured by a mortgage or the lender is entitled to income or dividends from the borrower; the income from interest on deposits (except for the interest on deposits of foreign individuals and the interest arising from

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deposit accounts which are to maintain operations in Vietnam of diplomatic representative offices, representative offices of international organizations, or non-government organizations in Vietnam), including any bonus accompanying the deposits (if any), the income from interest on late payments in accordance with provisions of contracts, the income from bonds, bond discount (except for bonds exempted from BIT), treasury bills, the income from deposit certificates.

The loan interest shall include all charges payable by Vietnamese party in accordance with the loan agreement.

- The income from securities transfer.
- Fines and compensations receivable from another party for contract breach.
- Other income as provided by law.

Section 2
VAT PAYMENT UNDER CREDIT METHOD, BIT PAYMENT ON THE BASIC
OF DECLARING TURNOVER AND EXPENSES TO DETERMINE BITABLE
INCOME
(Hereinafter referred to as declaration method)

Article 8. Applicable persons and conditions

Foreign contractors, Foreign sub-contractors shall be entitled to pay tax in accordance with guidelines in Section 2, Chapter II if they meet in full the following conditions:

1. Having a permanent establishment in Vietnam or being a resident of Vietnam;
2. The period of doing business in Vietnam pursuant to contractor's contract, sub-contractor's contract is 183 days or more as from the date on which the contractor's contract, sub-contractor's contract took effect;
3. The Foreign contractors, Foreign sub-contractors adopt Vietnamese accounting system and register for tax payment and obtain the tax identification number issued by tax authorities.

Article 9. Value added tax

The VAT shall be implemented in accordance with provisions of the Law on VAT and implementing documents.

Article 10. Business income tax

The BIT shall be implemented in accordance with provisions of the Law on BIT and implementing documents.

Section 3
VAT PAYMENT, BIT PAYMEN UNDER THE PERCENTAGE TO TURNOVER
METHOD
(Hereinafter referred to as direct method)

Article 11. Applicable persons and conditions

Regarding Foreign contractors, Foreign sub-contractors those do not meet one among conditions mentioned in Article 8, Section 2, Chapter II, the Vietnamese party shall pay taxes on behalf of them in accordance with guidelines in Article 12, Article 13, Section 2, Chapter II.

Article 12. Value added tax

Tax calculation base is value added tax calculation turnover and the percentage (%) used for calculating VAT to turnover

$$\text{VAT amount payable} = \frac{\text{Value added tax calculation turnover}}{\text{turnover}} \times \text{Percentage (\%) used for calculating VAT to turnover}$$

Foreign contractors, Foreign sub-contractors those pay VAT under the method under which the VAT is directly calculated on the value added shall not be entitled to a credit for VAT on goods and services purchased to implement the contractor's contract, sub-contractor's contract.

1. Value added tax calculation turnover

a) VAT calculation turnover:

The VAT calculation turnover is total turnover from providing services, including services associated with goods subject to VAT without any deduction of taxes payable, including charges paid by Vietnamese parties on behalf of Foreign contractors, Foreign sub-contractors (if any), which is receivable by Foreign contractors, Foreign sub-contractors.

b) Determining the VAT calculation turnover in some specific cases:

b.1) In case where in according with agreements in contractor's contracts, sub-contractor's contracts the turnover receivable by Foreign contractors, Foreign sub-contractors does not include VAT payable, then the VAT calculation turnover shall be converted into VAT inclusive turnover according to the following formula:

$$\text{VAT calculation turnover} = \frac{\text{VAT exclusive turnover}}{1 - \text{Percentage (\%) used to calculate VAT to turnover}}$$

Example 11:

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Foreign contractor A provides a Vietnamese party with services of supervising the construction volume of Cement Plant Z with the contract price of 300,000 USD, excluding VAT and including BIT. In addition, the Vietnamese party arranges accommodation and working place for managers of the Foreign contractor A with the VAT exclusive value of 40,000 USD. According to the Contract, the Vietnamese party shall be responsible for paying VAT on behalf of the Foreign contractor. The VAT calculation turnover of the Foreign contractor A is determined as follows:

Determining the VAT calculation turnover:

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

b.2) In case where a Foreign contractor signs a contract with either Vietnamese sub-contractors or Foreign sub-contractors paying taxes under the declaration method or the Foreign sub-contractor paying taxes under the hybrid method to subcontract part of work value or work items to the subcontractors provided in the Contract signed with the Vietnamese party; and a list of Vietnamese sub-contractors, Foreign sub-contractors those perform the part of relevant work value or work items is attached to the Contractor's contract, then the VAT calculation turnover of the Foreign contractor shall not include the value of works performed by the Vietnamese sub-contractors or Foreign sub-contractors.

In case where a Foreign contractor signs a contract with Vietnamese suppliers to purchase materials, supplies, equipments, machineries to perform the Contractor's contract and goods and services used for internal consumption, for items beyond the work items which the Foreign contractor must perform in according with the Contractor's contract, then the value of such goods and services shall not be deducted upon calculating the VAT calculation turnover of the Foreign contractor.

Example 12:

Foreign contractor A signs a Contractor's contract of building a Cement Plant Z with a Vietnamese party with the VAT inclusive contract price of 10 million USD. According to the Contractor's contract, the Foreign contractor A will subcontract part of construction work (as provided for in the Contractor's contract signed with the Vietnamese party) to Vietnamese subcontractor B with the VAT exclusive sub-contract price of 1 million USD; in addition, in construction process of Cement Plant Z, the Foreign contractor A shall purchase materials and supplies in service of construction work (including bricks, cement and sand,...) as well as other goods and services such as car renting, hotel rooms for experts and stationary in service of performing the Contract.

In this case the VAT calculation turnover of Foreign contractor A is determined as follows:

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

Expenses incurred by the Foreign contractor A in purchasing materials, supplies, goods and services such as car renting, hotel rooms for experts and stationary,... shall be not deducted against its VAT calculation turnover.

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b.3) In case where a Foreign contractor signs a contract with Foreign sub-contractors paying taxes under the direct method, then the Vietnamese party shall be responsible for filing and paying VAT on behalf of the Foreign contractor and Foreign sub-contractors by the percentages (%) used to calculate the VAT to turnover which are relevant to business lines done by the Foreign contractor and Foreign sub-contractors in implementing the contractor's contract, sub-contractor's contracts. The Foreign sub-contractors are not subject to filing, paying VAT on the value of work done by them in accordance with provisions of the sub-contractor's contracts signed with the Foreign contractor, which is filed and paid by the Vietnamese party on behalf of them.

b.4) The VAT calculation turnover in case of leasing machineries, equipments, means of transport is the total leasing amount. In case where the turnover from leasing machineries, equipments, means of transport includes expenses directly paid by the lessor such as equipment insurance, maintenance, post-inspecting registration, user of equipment and machineries, costs for transporting equipment and machineries from overseas to Vietnam, then the VAT calculation turnover does not include such expenses provided that they are supported by authentic documents.

b.5) In the case of services being international freight forwarding services from Vietnam to foreign countries (regardless the sender or receiver pays the service charge), the VAT calculation turnover is total turnover receivable by Foreign contractors, excluding the international transport fee paid to transport firms (airlines, shipping companies).

b.6) In the case of services being international delivery services from Vietnam to foreign countries (regardless the sender or receiver pays the service charge), the VAT calculation turnover is total turnover receivable by Foreign contractors.

Example 13:

Foreign Company A provides service of postal package delivery from overseas to Vietnam and vice versa. The VAT calculation turnover of the Foreign Company A is determined as follows:

+ Regarding the service of postal package delivery from overseas to Vietnam, it is not subject to VAT (regardless the sender in foreign countries or the receiver in Vietnam pays the service charge);

+ Regarding the service of postal package delivery from Vietnam to overseas, the VAT calculation turnover is total turnover receivable by the Foreign Company A (regardless the sender in Vietnam or the receiver in foreign countries pays the service charge).

Example 14:

Company B (a Vietnamese company) provides services of delivery of postal packages from overseas to Vietnam and vice versa. To perform the services the Company B pays (shares charges) to foreign Company C an amount of x USD. The VAT of Company B shall be determined as follows:

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Regarding the service of postal package delivery from overseas to Vietnam, the amount of x USD not subject to VAT (regardless the sender in foreign countries or the receiver in Vietnam pays the service charge);

Regarding the service of postal package delivery from Vietnam to overseas, the amount of x USD receivable by the foreign Company C is the VAT calculation turnover (regardless the sender in Vietnam or the receiver in foreign countries pays the service charge); the Company B shall be responsible for filing, withholding and paying VAT on behalf of the foreign Company C on the amount of x USD paid to it.

2. Percentage (%) used to calculate VAT to turnover:

a) Percentage (%) used to calculate VAT to VAT turnover applicable to business lines and sectors as follows:

STT	Business lines	Percentage (%) used to calculate VAT
1	Services, equipment and machinery leasing business, insurance, construction, installation where the tender did not include materials, supplies, equipment and machinery	5
2	Production, transportation, services associated with goods, construction, installation where the tender included materials, supplies, equipment and machinery	3
3	Other business activities	2

b) Determining the percentage used to calculate the VAT to turnover in some specific cases:

b.1) In case where a Contractor's contract, or Sub-contractor's contract comprises various different business lines or part of the contract value not subject to VAT, the application of percentages (%) to calculate the VAT to turnover for purpose of determining the VAT amount payable shall be based on the VAT calculation turnover from each business line carried on by the Foreign contractor, Foreign sub-contractor in according with provisions of the Contractor's contract, or Sub-contractor's contract. In case the value of each business line cannot be separate, the highest percentage (%) used to calculate the VAT applicable to the business line among business lines under the contract shall be applied to the whole of contract value.

Regarding the contract of construction, installation where the tender included materials, supplies, equipment and machinery together with the construction or installation work: In case where the Contractor's contract can separate the value from each business activity, the Foreign contractor shall not subject to VAT on the value of materials, supplies, equipment and machinery either the subject to VAT at the import stage or being objects not subject to VAT; regarding each part of remaining work value in the contract, the relevant percentage (%) used to calculate the VAT to turnover to each business line shall apply. In case where the contractor cannot be separate the value of each business activity the percentage (%) used to calculate the VAT to turnover shall be 3% on the whole of contract value (including the value of materials, supplies or equipment and machinery imported). In case where the Foreign contractor subcontracts

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Sub-contractors the whole of work value or work items accompanying materials, supplies or equipment and machinery and the Foreign contractor performs part of the remaining service value in the Contractors' contract, the percentage (%) used to calculate the VAT applicable to service line (5%) shall apply.

Example 15:

Foreign contractor A signed a contract with a Vietnamese party to build a power plant X with the VAT inclusive price of 75 million USD.

Case 1: The Foreign contract separates the value of each activity as follows:

+ Value of machineries and equipments for the work: 50 million USD.

Of which, Value of machineries and equipments subject to VAT: 30 million USD.

Value of machineries and equipments not subject to VAT: 15 million USD.

Value of guarantee service associated with machineries and equipments: 5 million USD

+ Value of design service for technology line: 5 million USD.

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

+ Value of observation service and installing instruction service: 3 million USD.

+ Value of technical training, testing: 2 million USD.

Upon importing the VAT amount on machineries and equipments already paid was 30 million USD.

Value of machineries and equipments not subject to VAT is 15 million USD.

The VAT obligation of the Foreign contractor A relating to the value of contract signed with the Vietnamese party shall be calculated only on the basis of the value of services, the value of construction and installation. Accordingly, the value of services (including the guarantee service, design service, observation service, installing instruction service, services of technical training, and testing) is 15 million USD with the percentage (%) used to calculate the VAT to turnover applicable to service lines of 5%; and the value of construction and installation is 15 million USD with the percentage (%) used to calculate the VAT to turnover applicable to construction, installation of 3% (not calculating the VAT on the value of machineries and equipments imported).

Case 2: The Foreign contractor's contract cannot separate the value of each activity but only provides that the contract value including the value of machineries, equipments, guarantee service, design service, observation service, installing instruction service, services of technical training, and testing. In this case, if it is insufficient evident to prove that the VAT on value of machineries, equipments was already paid at the import stage, the VAT obligation of the Foreign contractor A relating to the value of contract signed with the Vietnamese party shall be calculated on the basis of the whole of value of Contractor's contract of 75 million USD with the percentage (%) used to calculate the VAT of 3%.

Case 3: The Foreign contractor A subcontracts Sub-contractors the work items accompanying materials, and it performs only part of the service value (such as the observation service value, installing instruction service value), then such service value is subject to the percentage (%) used to calculate the VAT of 5%.

b.2) In case where the provision of machineries, equipments associated with services performed in Vietnam, if upon determining the VAT amount payable the value of machineries, equipments and value of services are separated, the relevant percentages (%) used to calculate the VAT on turnover of each part of contract value shall apply. If the contract cannot separate the value of machineries, equipments and value of services, the percentages (%) of 3% used to calculate the VAT to turnover shall apply.

Example 16:

Foreign contractor H from Korea that does comply with Vietnamese accounting system signs a contract of providing a line of machineries, equipments associated with services of installing, operating, testing with value of 10,000,000 USD with Vietnamese enterprises B. The contract does not separate the value of machineries, equipments and value of services of installing, operating, testing; therefore the percentages (%) of 3% used to calculate the VAT to turnover shall apply.

3. VAT applicable to Foreign contractors, Foreign sub-contractors supplying goods and services used for activities of searching, exploring, developing and exploiting oil and gas mines

a. In case where Foreign contractors, Foreign sub-contractors supplying goods and services used for activities of searching, exploring, developing and exploiting oil and gas mines do not meet one among conditions mentioned in Article 8, Section 2, Chapter II, then the Vietnamese party shall be responsible for withholding and paying VAT on behalf of Foreign contractors, Foreign sub-contractors prior making payments. The VAT amount paid on behalf is calculated by multiplying the VAT exclusive payment amount by VAT rate applicable to goods, services supplied by the Foreign contractors, Foreign sub-contractors.

b. In case where Foreign contractors, Foreign sub-contractors supplying goods and services used for activities of searching, exploring, developing and exploiting oil and gas mines do meet all three conditions mentioned in Article 8, Section 2, Chapter II, or meet two conditions mentioned in paragraph 1, paragraph 2, Article 8, Section 2, Chapter II and organize the accounting work in according with provisions of accounting law and guidelines from Ministry of Finance, then:

- If during the time when the Foreign contractors, Foreign sub-contractors have not yet been issued the tax registration certificate to be qualified for filing and paying VAT under the credit method, the Vietnamese party makes payments to them, the Vietnamese party shall be responsible for withholding and paying VAT on behalf of Foreign contractors, Foreign sub-contractors prior making payments. The VAT amount paid on behalf is calculated by multiplying the VAT exclusive payment amount by VAT rate applicable to goods, services supplied by the Foreign contractors, Foreign sub-contractors.

- Whenever the Foreign contractors, Foreign sub-contractors were issued the tax registration certificate by tax authorities, they will send invoices, documents incurred during the VAT filing period to the Vietnamese party so that the latter can file the crediting and paying VAT on behalf of the former.

The Foreign contractors, Foreign sub-contractors are not allowed crediting input

Unofficial translation

VAT incurred before being issued the tax registration certificate.

Example 17:

January 2015, Foreign contractor A signs a contract of providing petroleum services with contract value of one million USD. During the time when the Foreign contractor A is not issued the tax registration certificate, it incurs an amount 5,000 USD of input VAT on goods and services purchased to serve the implementation of the contract. On 15th March 2015, the Vietnamese party makes a payment of 100,000 USD (do not including the VAT and including the BIT), in this case, the Vietnamese party shall be responsible for filing and paying the VAT on behalf of the Foreign contractor A with the VAT amount determined as follows: $100,000 \text{ USD} \times 10\% = 10,000 \text{ USD}$.

On 1st May 2015, the Foreign contractor A registers for tax payment and as a result it is issued a tax registration certificate by the tax authority. In May 2015, the Vietnamese party makes a payment of 200,000 USD (do not including the VAT and including the BIT). Such, the output VAT of the Foreign contractor A incurred in May is 20,000 USD ($=200,000 \text{ USD} \times 10\%$).

The input VAT of Foreign contractor A incurred for the period from 1 May 2015 to 30 May 2015 is 2,000 USD (the VAT amount incurred during the period when the Foreign contractor A has had a tax identification number). The Foreign contractor A sends all invoices, documents incurred in May to the Vietnamese party so that the latter has a basic to file and pay VAT on behalf of the former.

The VAT amount payable by the Foreign contractor A for the VAT filing period of May 2015 is 18,000 USD ($= 20,000 \text{ USD} - 2,000 \text{ USD}$).

The Foreign contractor A is not allowed to credit the input VAT amount of 5,000 USD incurred before 1st May 2015.

Article 13. Business income tax

The BIT calculation base is the BIT calculation turnover and the percentage (%) of BIT calculated to BIT calculation turnover.

$$\begin{array}{r} \text{BIT} \\ \text{amount} \\ \text{payable} \end{array} = \begin{array}{r} \text{BIT calculation} \\ \text{turnover} \end{array} \times \begin{array}{r} \text{Percentage (\%)} \text{ of BIT} \\ \text{calculated to BIT calculation} \\ \text{turnover} \end{array}$$

1 BIT calculation turnover

a) BIT calculation turnover

The BIT calculation turnover shall be total VAT exclusive turnover receivable by Foreign contractors, Foreign sub-contractors without any deduction for taxes payable. The BIT calculation turnover shall include fees paid by Vietnamese parties on behalf of Foreign contractors, Foreign sub-contractors (if any).

b) Determining the BIT calculation turnover in some specific cases:

b.1) In case where in accordance with agreements in Contractor's contract, Sub-contractor's contract, the turnover receivable by Foreign contractors, Foreign sub-contractors does not include the BIT amount payable, then the BIT calculation turnover shall be determined according to the following formula:

$$\text{BIT calculation turnover} = \frac{\text{BIT exclusive turnover}}{1 - \text{Percentage (\%) of BIT calculated to BIT calculation turnover}}$$

Example 18:

Foreign contractor A supplies the observation service of construction volume of Cement Plant Z with contract value of 285,000 USD (not including VAT and BIT) for a Vietnamese party. In addition, the Vietnamese party arranges accommodation and working place for managers of Foreign contractor A valued at 38,000 USD (not including VAT and BIT). According to the Contract, the Vietnamese party shall be responsible for paying the VAT, BIT on behalf of Foreign contractor A. The determining BIT amount payable by the Foreign contractor A is as follows:

The determining the BIT calculation turnover:

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

b.2) In case where a Foreign contractor signs contracts with Vietnamese sub-contractors, or Foreign sub-contractors paying tax under the declaration method or Foreign sub-contractors paying tax under the hybrid method to subcontract part of work value or work items provided in the Contractor's contract signed with a Vietnam party; and a list of Vietnamese sub-contractors and Foreign sub-contractors those perform relevant work items is attached to the Contractor's contract, then the BIT calculation turnover of the Foreign contractor shall not include the value of works performed by the Vietnamese sub-contractors and Foreign sub-contractors.

In case where a Foreign contractor signs contracts with Vietnamese suppliers to purchase materials, supplies, machineries, equipments in service of implementing the Contractor's contract, or to purchase goods and services used for internal consumption, for items beyond the work items which the Foreign contractor must perform in accordance with the Contractor's contract, then the value of such goods and services shall not be deducted upon calculating the BIT calculation turnover of the Foreign contractor.

Example 19:

Foreign contractor A signs a Contractor's contract of building a Cement Plant Z with a Vietnamese party with the VAT exclusive contract price of 9 million USD. According to the Contractor's contract, the Foreign contractor A will subcontract part of construction work (as provided for in the Contractor's contract signed with the Vietnamese party) to Vietnamese subcontractor B with the VAT exclusive sub-contract price of 1 million USD; in addition, in construction process of Cement Plant Z, the Foreign contractor A shall purchase materials and supplies in service of construction work (including bricks, cement and sand,...) as well as other goods and services such as car renting, hotel rooms for experts and stationary in service of performing the Contract.

In this case the BIT calculation turnover of Foreign contractor A is determined as follows:

Unofficial translation

BIT calculation turnover = 9 million USD - 1 million USD = 8 million USD

Expenses incurred by the Foreign contractor A in purchasing materials, supplies, goods and services such as car renting, hotel rooms for experts and stationary,... shall be not deducted against its BIT calculation turnover.

b.3) In case where a Foreign contractor signs contracts with Foreign sub-contractors paying tax under the direct method, the Vietnamese party must pay BIT on behalf of the Foreign contractor, Foreign sub-contractors in accordance with the percentage (%) of BIT calculated to BIT calculation turnover relevant to business lines performed by the Foreign contractor, Foreign sub-contractors in accordance with Contractor's contract, Sub-contractor's contracts. The Foreign sub-contractors shall not be subject to pay BIT on the value of works performed by them in accordance with Sub-contractor's contracts signed with the Foreign contractor, which is filed and paid by the Vietnamese party on their behalf.

b.4) The BIT calculation turnover in case of leasing machineries, equipments, means of transport is the total leasing amount. In case where the turnover from leasing machineries, equipments, means of transport includes expenses directly paid by the lessor such as equipment insurance, maintenance, post-inspecting registration, persons operating of means of transport, equipment and machineries, costs for transporting equipment and machineries from overseas to Vietnam, then the BIT calculation turnover does not include such expenses provided that they are supported by authentic documents.

b.5) In the case of foreign airline carriers, the BIT calculation turnover shall be turnover from sale of passenger tickets, and air freight bills of lading and other incomes (excluding the incomes collected on behalf of the State or other organizations in accordance with law) in Vietnam for transportation of passengers, cargo and other objects on flights of such foreign airline carriers or in partnerships.

Example 20:

In the First quarter 2013, Foreign airline A produces the turnover of 100,000 USD, comprising turnover from sale of passenger tickets of 85,000 USD, turnover from air freight bills of lading of 10,000 USD and turnover from sale of MCO (miscellaneous charge order) of 5,000 USD; at the same time, it collects the airport charge of 1,000 USD on behalf of the State, and refunds 2,000 USD to customers who handed in their tickets.

The BIT calculation turnover of Foreign airline A in the First quarter 2013 shall be determined as follows:

The BIT calculation turnover = 100,000 – (1,000 + 2,000) = 97,000 USD

b.6) In the case of foreign sea transport firms, the BIT calculation turnover shall be the total amount of fees (including any additional fees) receivable from transporting passengers and cargo from loading, unloading port 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 transporting cargo between Vietnam's ports.

Transportation fees used as a basic for calculating the BIT shall not include fees on which BIT payable by the foreign ship owners has been assessed at Vietnam's ports,

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and fees payable to any Vietnamese transportation enterprises participating in transporting cargo from Vietnam's ports to an intermediate port.

Example 21:

Company A acts as an agent for foreign sea transportation Firm X. According to the contract of transportation agent, the Company A shall present the Firm X in receiving cargo for transportation to overseas, in issuing bills of lading, in collecting transportation fees,...

Vietnamese enterprise B hires the Firm X (through the Company A) to transport cargo from Vietnam to the United States of America with transportation fee of 100,000 USD.

The Company A charters a ship from Vietnamese enterprise or a foreign ship to transport cargo from Vietnam to Singapore with transportation fee of 20,000 USD and the cargo will then be transported from Singapore to the United States of America by a ship belonging to the Firm X.

The BIT calculation turnover of the foreign sea transportation Firm X shall be determined as follows:

$$\text{BIT calculation turnover} = 100,000 - 20,000 = 80,000 \text{ USD}$$

b.7) In the case of services being international freight forwarding services from Vietnam to foreign countries (regardless the sender or receiver pays the service charge), the BIT calculation turnover shall be total turnover receivable by Foreign contractors, excluding the international transport fee paid to transport firms (airlines, shipping companies).

b.8) In the case of services being international delivery services from Vietnam to foreign countries (regardless the sender or receiver pays the service charge), the BIT calculation turnover shall be total turnover receivable by Foreign contractors.

Example 22:

Foreign Company A provides service of postal package delivery from overseas to Vietnam and vice versa. The BIT calculation turnover of the Foreign Company A is determined as follows:

+ Regarding the service of postal package delivery from overseas to Vietnam, it shall not be subject to BIT (regardless the sender in foreign countries or the receiver in Vietnam pays the service charge);

+ Regarding the service of postal package delivery from Vietnam to overseas, the BIT calculation turnover shall be total turnover receivable by the Foreign Company A (regardless the sender in Vietnam or the receiver in foreign countries pays the service charge).

Example 23:

Company B (a Vietnamese company) provides services of delivery of postal packages from overseas to Vietnam and vice versa. To perform the services the Company B pays (shares charges) to foreign Company C an amount of x USD. The BIT of Company B shall be determined as follows:

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+ Regarding the service of postal package delivery from overseas to Vietnam, the amount of x USD shall not be subject to BIT (regardless the sender in foreign countries or the receiver in Vietnam pays the service charge);

+ Regarding the service of postal package delivery from Vietnam to overseas, the amount of x USD receivable by the foreign Company C shall be subject to BIT (regardless the sender in Vietnam or the receiver in foreign countries pays the service charge); the Company B shall be responsible for filing, withholding and paying BIT on behalf of the foreign Company C on the amount of x USD paid to it.

b.9) Regarding the ceding the re-insurance, the BIT calculation turnover shall be determined as follows:

- Regarding the ceding offshore re-insurance, the BIT calculation turnover shall be the premium for ceding the offshore re-insurance receivable by Foreign contractors (including the re-insurance fees and compensation fees for clients in accordance with agreement).

- Regarding the offshore re-insuring, the BIT calculation turnover shall be commissions from the offshore re-insuring receivable by Foreign contractors.

b.10) Regarding the security transfer, the BIT calculation turnover shall be determined as follows:

Regarding the transfer of securities, deposit certificates', the BIT calculation turnover shall be total turnover receivable from selling securities, deposit certificates' at the time of transfer.

b.11) Regarding the interest swap, the BIT calculation turnover shall be the positive difference between the interest amount receivable and interest amount payable of Foreign contractors in a calendar year. The determining the BIT calculation period in a calendar year complies with provisions in BIT Law, Law on Tax Administration and implementing documents.

Example 24:

Bank A has a loan of 10 million USD with fixed interest rate of 5.2% per month. The contract term is 3 years from 1st February 2012 to 1st February 2015; and the interest payment period is at the beginning of every six months.

Based on its loan contract, the Bank A concluded an interest swap contract with Foreign Bank B as follows:

- The contract term is 3 years from 1st February 2012 to 1st February; and the interest payment period is at the beginning of every six months.

- The floating interest rate paid by the Bank A to Bank B is libor rate + 0.25%; and the latter pays to the former a fixed interest rate of 5.2% per month. It means that if the libor rate + 0.25% is higher than the fixed interest rate as provided in the interest swap contract, the Bank B will receive the difference in interest rates paid by the Bank A, which is equal to interest amount receivable at the rate (libor + 0,25%) – interest amount payable at the rate of 5.2%. Contrarily, if the libor rate + 0.25% is lower than the fixed interest rate as provided in the interest swap contract, the Bank A will receive the

Unofficial translation

difference in interest rates paid by the Bank B, which is equal to interest amount receivable at the rate of 5.2% - interest receivable by the Bank A at the rate of (libor + 0,25%).

Payment period	Libor (%)	A has to pay B (%)	B has to pay A (%)	Clearing the interest receivable by A or B (%)		The difference amounts receivable by A or B each period (1,000USD)	
				A	B	A	B
1/2/2012-31/7/2012	4.80	5.05	5.20		0.15	-	15
1/8/2012 - 31/1/2013	5.00	5.25	5.20	0.05		5	
1/2/2013-31/7/2013	4.90	5.15	5.20		0.05	-	5
1/8/2013 - 31/1/2014	4,95	5.20	5.20	0.00		-	-
1/2/2014 - 31/7/2014	4.90	5.15	5,20		0,05		5
1/8/2014-30/1/2015	5.05	5.30	5.20	0.10		10	

The BIT calculation turnover of the Bank B shall be determined as follows:

- Year 2012 (from 01/01/2012 to 31/12/2012): Total amount receivable by the Bank B from Bank A shall be: (15,000 – 5,000) = 10,000 USD;

- Year 2013 (from 01/01/2013 to 31/12/2013): Total amount receivable by the Bank B from Bank A shall be: (5,000 - 0) = 5,000 USD;

- Year 2014 (from 01/01/2014 to 31/12/2014: in stead of receiving money from the Bank A, the Bank B must pay to the Bank A an amount of 5,000 USD (BIT calculation turnover = 0);

- In 2015: Because the contract provides that the payment time is at the beginning of the payment period, the clearing between two Banks shall not incur.

b.12) Regarding the treasury bonds:

The BIT calculation turnover in respect of treasury bonds shall be determined by each type of treasury bonds held by investors at the mature time.

The BIT calculation turnover in respect of treasury bonds shall be determined as follows:

$$\text{BIT calculation turnover} = \left(\frac{\text{Nominal value of treasury bonds}}{\text{Weighted average purchasing price of number of treasury bonds held by investors at the mature time}} \right) \times \text{Number of treasury bonds held by investors at the mature time}$$

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The weighted average purchasing price of number of treasury bonds held by investors at the mature time shall be calculated through three steps:

Step 1: Determining the number of treasury bonds hold at the mature time.

Step 2: Determining the purchased number, purchasing time and purchasing price of each type of treasury bonds (which was determined in the Step 1) under the principle that the treasury bonds which was purchased firstly shall be deemed to be sold firstly (FIFO principle).

Step 3: Calculating the weighted average purchasing price under the following formula:

$$= \frac{\sum (\text{The number of treasury bonds held at the mature time presents at the purchasing time} \times \text{the relevant purchasing price at the purchasing times})}{\text{The number of treasury bonds held at the mature time.}}$$

Example 25: On 1st January 2015, the treasury bond X, which has the nominal issuing value of 100,000 dong with 6 month term, is issued at the price of 89,000 dong per bond. After very issuing, they are listed and traded at the HNX (Hanoi Stock Exchange). Investor A has performed the following transactions from 2nd January 2015 to 1st July 2015 (mature date):

Transaction date	Purchased/ Sold	Number of treasury bonds	Price
2/1/2015	Purchased	100	90,000
1/2/2015	Purchased	100	92,000
1/3/2015	Sold	70	93,000
1/4/2015	Purchased	40	94,000
1/5/2015	Sold	20	95,000

Step 1: Determining the number of treasury bonds held at the mature time: $(100 + 100 + 40) - (70 + 20) = 150$ treasury bonds.

Step 2: Determining the purchased number, purchasing time and purchasing price of each type of treasury bonds after deducting the number of treasury bonds at the sale transactions under the principle that the treasury bonds which was purchased firstly shall be deemed to be sold firstly (FIFO principle): 150 treasury bonds held at the mature time includes:

+ 10 treasury bonds at the price of 90,000 purchased on 2/1/2015.

+ 100 treasury bonds at the price of 92,000 purchased on 1/2/2015.

+ 40 treasury bonds at the price of 94,000 purchased on 1/4/2015.

Step 3: Calculating the weighted average purchasing price in accordance with the formula: $[(40 \times 94,000 + 100 \times 92,000 + 10 \times 90,000) / 150] = 92,400$ (dong)

The BIT calculation turnover of the number of treasury bonds receivable by the Investor A at the mature time: $(100.000 - 92,400) \times 150 = 1,140,000$ (dong).

2. Percentages (%) of BIT calculated to the BIT calculation turnover

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a) The percentages (%) of BIT calculated to the BIT calculation turnover applicable to some business lines and sectors are as follows:

Ordinal number	Business lines	Percentage (%) of BIT calculated to the BIT calculation turnover
1	Trading: distribution and supply of goods, materials, supplies, machineries, equipments; distribution and supply of goods, materials, supplies, machineries, equipments associated with services performed in Vietnam {including supply of goods under the form of on-site import export} (except for the case of processing for foreign entities and individuals); supply of goods in accordance with international commercial terms - Incoterms}	1
2	Services, lease of machineries, equipments, insurance, lease of oil rigs	5
	For: - Services of management of restaurants, hotels, casino;	10
	- Derivative financial services	2
3	lease of aircrafts, aircraft engines, aircraft spare parts, sea going vessels	2
4	Construction, installation with or without supplying materials, supplies, machineries, equipments	2
5	Other activities of business, production, transportation (including sea transportation and airline transportation)	2
6	Transfer of securities, deposit certificates, offshore re-insurance, commissions from ceding re-insurance	0,1
7	Interest	5
8	Royalties	10

b) The percentages (%) of BIT calculated to the BIT calculation turnover applicable to some specific cases:

b.1) In case where a Contractor's contract or Sub-contractor's contract comprises various different business lines the application of percentages (%) BIT calculated to turnover to determine the BIT amount payable shall be based on the BIT calculation turnover from each business line carried on by the Foreign contractor, Foreign sub-contractor in according with provisions of the Contractor's contract, or Sub-contractor's contract. In case the value of each business line cannot be separate, the highest

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percentage (%) of BIT applicable to the business line among business lines under the contract shall be applied to the whole of contract value.

Regarding the contract of construction, installation where the tender included materials, supplies, equipment and machinery together with the construction or installation work: In case where the Contractor's contract can separate the value from each business activity, the percentages (%) of BIT calculated to turnover shall be the percentages (%) of BIT calculated to turnover applied relevantly to each business line. In case where the contractor's contract cannot be separate the value of each business activity, the percentage (%) of BIT calculated to BIT calculation turnover shall be 2% of the whole of contract value. In case where the Foreign contractor subcontracts Sub-contractors the whole of work value or work items accompanying materials, supplies or equipment and machinery and the Foreign contractor performs part of the remaining service value in the Contractors' contract, the percentage (%) of BIT calculated to BIT calculation turnover applicable to the service line (5%) shall apply.

Example 26:

Foreign contractor A signed a contract with a Vietnamese party to build a power plant X with the price of 75 million USD (not including the VAT and including BIT).

Case 1: The Foreign contract separates the value of each activity as follows:

+ Value of machineries and equipments for the work: 50 million USD.

Of which,

Value of machineries and equipments: 45 million USD.

Value of guarantee service associated with machineries and equipments: 5 million USD

+ Value of design service for technology line and other design services: 5 million USD.

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

+ Value of observation service and installing instruction service: 3 million USD.

+ Value of technical training, testing: 2 million USD.

The percentages (%) of BIT shall apply as follows: regarding the value of machineries and equipments of 45 million USD: 1%; regarding the activities of construction and installation of 15 million USD: 2%; and regarding the value of remaining services (guarantee, designs, observation, installing instruction, technical training, testing) of 15 million USD: 5%.

Case 2: The Foreign contractor's contract cannot separate the value of each activity, then the percentage of 2% of BIT shall apply to the whole contract value of 75 million USD.

Case 3: The Foreign contractor A subcontracts Sub-contractors the work items accompanying materials, and it performs only part of the services' value (such as the value of observation service, the value of installing instruction service), then such services' value is subject to the percentage (%) of BIT of 5%.

Unofficial translation

b.2) In case where the provision of machineries, equipments associated with services performed in Vietnam, if the value of machineries, equipments and the value of services are separated, the BIT shall be calculated by each percentage (%) of BIT relevant to each part of contract value. If the contract cannot separate the value of machineries, equipments and the value of services, the percentage of 2% of BIT calculated to BIT calculation turnover shall apply.

Example 27:

Foreign contractor A signs a contract with a Vietnamese party to provide a line of equipments and machineries with contract value of 70 million USD. The contract value comprises:

- + Value of machineries and equipments for the work: 60 million USD
- + Value of design service for technology line and other design service: 5 million USD
- + Value of observation service and installing instruction service: 3 million USD
- + Value of technical training, testing: 2 million USD.

In case where the value of machineries, equipments and the value of services are separated, the application of percentages of BIT shall be as follows: regarding the value of machineries and equipments, the percentage applicable to trading shall apply; regarding the value of services of design, observation, installing instruction, technical training, testing, the percentage applicable to service line shall apply.

In case where the value of machineries, equipments and the value of services cannot be separated, the percentage of 2% of BIT shall apply to the whole contract value (70 million USD).

3. BIT applicable to the compensation amount receivable from partners due to violating the contract in case where the compensation amount receivable larger than the damaged value; and therefore, there is BITable income:

Regarding the compensation amount receivable, Foreign contractors shall be entitled to select to pay BIT either by the percentage of BIT to BIT calculation turnover or on the basic of declaring turnover, expenses to apply the standard BIT rate.

Section 4

PAYING VAT UNDER THE CREDIT METHOD AND PAYING BIT BY PERCENTAGE (%) TO TURNOVER (Hereinafter all referred to hybrid method)

Article 14. Applicable persons and conditions

Foreign contractors, Sub-foreign contractors those meet in full two conditions mentioned in paragraph 1 and paragraph 2, Article 8, Section 2, Chapter II and maintain the accounting work in accordance with provisions of law and guidelines from Ministry of Finance shall be entitled to register to pay VAT under the credit method and BIT by the percentage (%) to BIT calculation turnover.

Article 15. Value added tax

Unofficial translation

To comply with guidelines in Article 9, Section 2, Chapter II.

Article 16. Business income tax

To comply with guidelines in Article 13, Section 3, Chapter II.

**Chapter III
ORGANIZATION OF IMPLEMENTATION**

Article 17. Entry into force

1. This Circular takes effect from the 1st October 2014 to replace the Circular No 60/2012/TT-BTC dated 12 April 2012 of Ministry of Finance Guiding the tax obligations applicable to foreign entities, individuals doing business in Vietnam or deriving income in Vietnam.

2. Regarding Contracts, Sub-contractor contracts signed before the effect date of this Circular, the determination of VAT, BIT obligations shall be applied in accordance with guidelines in relevant legal documents at the time of signing of the Contracts, Sub-contractor contracts.

3. In case where International Conventions signed or participated in by the Socialism Republic of Vietnam have provisions on paying taxes by Foreign contractors, Sub-foreign contractors which are different from contents guided in this Circular, the provisions of those International Conventions shall prevail.

It requests that entities, individuals timely reflect any obstacles and problems arisen in the process of implementation to Ministry of Finance for studying and handling./.

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom – Happiness
FOREIGN CONTRACTOR TAX RETURN

(Used for case where Vietnamese Party withholds and pay taxes on behalf of foreign contractors)

[01] Tax calculation period: Month year or Incurring time: Date.....month.....year.....

[02] First time [03] Which additional time

[04] Vietnamese Party withholding and paying taxes on behalf :

[05] Tax identification number of Vietnamese Party:

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[06] Address: [07] District: [08] Province/City:

[09] Telephone number: [10] Fax: [11] E-mail:

[12] Name of tax agent (if any):

[13] Tax identification number :

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[14] Address: [15] District: [16] Province/City:

[17] Telephone number: [18] Fax: [19] E-mail:

[20] Tax agent contract: No.....date.....

Monetary unit: Vietnamese dong

Content	Tax identification number	Contract No Date, month, year	VAT exclusive turnover	Date of payment	Value added tax (VAT)			Business income tax (BIT)				Total tax amount payable to state budget
					VAT calculation turnover	Percentage % of VAT to turnover	VAT amount payable	BIT calculation turnover	Percentage % of BIT	BIT amount exempted or reduced in accordance with DTA	Business income tax amount payable	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8=6x7)	(09)	(10)	(11)	[12=(09x10)-(11)]	(13)=(9)+(12)
1 Foreign contractor A (*)												
2. Foreign contractor B (*)												
3. Foreign contractor C (*)												
.....												
Total:												

Total VAT and BIT amount payable in the period *(in writing)*:

We confirm that the above filed data are exact and shall be legally responsible for them./.

Unofficial translation

....., Datemonthyear

TAX AGENT'S EMPLOYEE

Full name:.....

Professional practicing certificate No:.....

**TAXPAYER or
LEGAL REPRESENTATIVE OF THE TAXPAYER**

Signature and stamp (*Full name and position*)

Note: (*) *If there are various business lines in the tax calculation period, please inscribe in detail by each business line*

