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CIRCULAR No. 118/2003/TT-BTC OF DECEMBER 8, 2003 GUIDING THE GOVERNMENT'S DECREE No. 60/2002/ND-CP OF JUNE 6, 2002 PRESCRIBING THE DETERMINATION OF TAX CALCULATION VALUES OF IMPORT GOODS ACCORDING TO THE PRINCIPLES OF THE AGREEMENT IMPLEMENTING ARTICLE 7 OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Pursuant to the Law on Export Tax and Import Tax;

Pursuant to the Government's Decree No. 60/2002/ND-CP of June 6, 2002 prescribing the determination of tax calculation values of import goods according to the principles of the Agreement implementing Article 7 of the General Agreement on Tariffs and Trade (hereinafter referred to as Decree No. 60/2002/ND-CP) for short;

The Ministry of Finance hereby guides the implementation of the Decree No. 60/2002/ND-CP as follows:

**Chapter I
GENERAL PROVISIONS**

I. OBJECTS OF APPLICATION

Import goods under trade contracts with their tax calculation values to be determined according to the guidance in this Circular shall include:

1. Import goods of enterprises and parties of joint-venture governed by the Law on Foreign Investment in Vietnam;
2. Import goods originating from countries, territories or alliances of nations, with which Vietnam has signed agreements on determination of tax calculation values according to the principles of the Agreement implementing Article 7 of the General Agreement on Tariffs and Trade (announced by the Ministry of Finance); and other import goods under the Prime Minister's decisions.

II. TAX CALCULATION VALUES OF IMPORT GOODS AND TIME OF DETERMINATION

1. Tax calculation values of import goods are values of goods used for calculating import tax, and determined upon their arrival at the first border-gate of import.
2. Time of determining tax calculation values of import goods is the date when customs declarers register their import customs declarations. Customs declarers shall be responsible to determine tax calculation values according to the set forms and submit them together with import goods declarations to the customs offices.
3. In cases where the customs offices determine tax calculation values, they shall have to notify the customs declarers of the results of the determination of tax calculation values within the time limit for carrying out the customs procedures according to provisions of law.

III. METHODS OF DETERMINING TAX CALCULATION VALUES AND ORDER OF APPLICATION

1. Methods of determining tax calculation values

- 1.1. Method based on transaction values of import goods.
- 1.2. Method based on transaction values of identical import goods.
- 1.3. Method based on transaction values of similar import goods.
- 1.4. Method based on deductible values.
- 1.5. Method based on calculation values.
- 1.6. Other methods.

The method based on deductible values of import goods sold not in the original state as when they are imported and the method based on calculation values shall temporarily not be applied. The Ministry of Finance shall announce these methods once they are applicable.

2. Order of application of methods of determining tax calculation values

Tax calculation values of import goods are determined by applying the methods of determining tax calculation values defined at Points 1.1 through 1.6 above one after another (except for methods which are temporarily not applied) and shall be stopped at the first effective method.

IV. CURRENCY AND EXCHANGE RATES FOR DETERMINING TAX CALCULATION VALUES

1. Tax calculation values shall be calculated in Vietnam dong.
2. Exchange rates used in the determination of tax calculation values of import goods are average transaction rates on the inter-bank foreign currency market, announced by the State Bank of Vietnam on the date of registering import goods declarations. In cases where the State Bank does not announce the exchange rate or information cannot reach the border-gate within the announcing day, the exchange rate of the preceding day shall be applied.

V. INTERPRETATION OF TERMS

The terms referred to in this Circular are construed as follows:

1. “*Trade contract*” means a written agreement on goods purchase and/or sale for import of goods into Vietnam, whereby the seller is obliged to deliver goods and transfer goods ownership right to the purchaser and receive money; the purchaser is obliged to pay money to the seller and receive goods as agreed upon by the two parties. Telegraph, telex, facsimile, electronic mail and other electronic communication forms, which are printed out, shall also considered written forms.

2. “*Special ties between the purchaser and the seller*” means the following relationships:

- 2.1. They are both members of another enterprise.
- 2.2. They are co-owners of an enterprise.
- 2.3. They are employer and employee.
- 2.4. The seller has the right to control the purchaser or vice versa.
- 2.5. They are both controlled by a third party.
- 2.6. They both control a third party.

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One person is considered having the right to control purchasing or selling activities of another person when he/she may act to restrain or instruct directly or indirectly the latter.

2.7. They are members of a family and bound together in the following relationships:

- Husband and wife.
- Parents and children.
- Blood siblings.
- Grandparents and grandchildren, by blood.
- Uncles, aunts and nieces, nephews, by blood.
- Parents-in-law and sons-in-law, parents-in-law and daughters-in-law.
- Brothers-in-law, sisters-in-law.

2.8. A third party who directly or indirectly owns controls or holds 5% or more of the voting shares of each involved party.

The parties, which associate with each other in business with one party being the sole agent, sole distributor or sole consignor of the other party, shall be considered having special ties if such ties conform with the provisions at this Point 2.

3. “*Goods purchase commission*” means an amount of money paid by the purchaser to the agent representing it overseas in providing the service of purchasing import goods.

4. “*Goods sale commission*” means a sum of money paid by the seller to its agent representing it in providing the service of selling export goods.

5. “*Brokerage charge*” means a sum of money paid by the purchaser or seller or both to the broker for the latter’s intermediary role in transactions of purchasing and/or selling import goods.

6. “*Copyright royalty and licensing fee*” means a sum of money directly or indirectly paid by the purchaser to the copyright holder or the licensor for use of products registered for intellectual property right. For example: royalty paid for invention, designing copyright, trademark, trademark license, copyright, production permit.

7. A value shall be considered “*approximate*” to another value if the difference between them is affected by the following objective factors:

- The nature of goods, characteristics of the goods-manufacturing branches.

For example: A VINA cell phone of model CA is sold at the beginning of a month at the price of USD 300, but another unit of the same model may fetch only at USD 250 at the end of the month due to some technological alterations. In this case, the above-said two prices, when being compared, are considered approximate.

- The seasonality of goods.

For example: One kilo of apple is sold at the price of USD 1 at the beginning of a season but only at USD 0.8 in the middle of the season. In this case, the above-said two prices, when being compared, are considered approximate.

- Negligible difference in the commercial aspect.

While reckoning the approximation of the two values, they must be put under the same trading conditions.

8. “*Identical import goods*” are those identical in all aspects, including:

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- Their material characteristics such as product surface, constituent materials, manufacturing methods, functions, use purposes; mechanical, physical and chemical properties, etc.

- Product quality.
- Prestige of product labels.
- They are made in the same country, by the same manufacturer or authorized manufacturer.

Import goods which basically meet the conditions of identical import goods but still have negligible difference in some aspects of their appearance such as color, size and design, which do not affect the value of goods, shall still be considered identical import goods.

Import goods shall not be considered identical if in the process of manufacturing one of them, engineering designs, working designs, artistic designs, blueprints, design drawings, plans or diagrams or similar service products made in Vietnam and supplied free of charge by the purchaser to the seller are used.

9. “*Similar import goods*” are those which, though being not identical in all aspects, have all the same basic features, including:

- They are made of equivalent raw materials and materials, and by the same manufacturing method.
- They have the same function and use purpose.
- They are qualitatively equal.
- They are interchangeable in commercial transactions, meaning that the purchaser accepts to substitute a certain goods for another.
- They are made in the same country, by the same manufacturer or another authorized manufacturer, and imported into Vietnam.

Import goods shall not be considered similar if in the process of manufacturing one of them, engineering designs, working designs, artistic designs, blueprints, design drawings, plans or diagrams or similar service products made in Vietnam and supplied free of charge by the purchaser to the seller are used.

10. “*Goods sold immediately after their import*” mean goods sold by the importers to the first-time purchasers on the domestic market after they are imported.

For example: After the importation, importer A sells goods to first-time domestic purchasers M, N and K at different trading levels, then M, N and K further sell the goods to purchasers E, F and G. In this case, the goods sold by A to M, N and K are considered goods sold immediately after their import.

11. “*Unit prices of goods sold in the biggest quantity after their import*” mean unit prices of goods sold immediately after their import in the biggest accumulative quantity on the import date of goods being subject to the tax calculation value determination, or on the import date of identical import goods or similar import goods or the earliest day after the import date of identical import goods or similar import goods but within 90 days after the import date of such goods, and within 90 days before the import date of the goods lot being subject to tax calculation value determination. In this case, the import date shall be the date of customs clearance of the goods lot.

The earliest day after the import date of goods being subject to the tax calculation value determination is the date on which goods are sold in a quantity adequate for the formation of the unit price (a minimum of 10% of the quantity of such goods item in the import goods lot).

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For example: Goods lot chosen for determination of deducted value was imported on January 28, 2002. Importer I sell import goods to many domestic purchasers at different prices and at different times as follows:

Unit prices	Quantity/sale time	Accumulated quantity	Sale time
VND 750/unit	500 units 300 units 500 units	1,300 units	April 30, 2002
VND 760/unit	200 units	200 units	January 28, 2002
VND 770/unit	350 units 350 units	700 units	February 28, 2002
VND 780/unit	300 units 500 units	800 units	March 29, 2002
VND 1,000/unit	300 units 300 units	600 units	April 27, 2002
VND 1,050/unit	100 units 300 units	400 units	April 20, 2002
Total	4,000 units	4,000 units	

The biggest sold quantity in the above example is 800 units, at the corresponding price of VND 780/unit. From the above example, we cannot choose the accumulated amount of 1,300 units with at unit price of VND 750 because the temporal condition is not met as the time goes beyond 90 days as from the import date.

12. “*Goods sold must be in the original state like when they are imported*” mean goods, after being imported, not affected by any factors which may change their shapes, properties, features or utility, or increase or reduce their values.

13. “*Import goods of the same quality grade or the same type*” mean goods categorized in the same group or sub-group of goods manufactured by the same particular branch or sector, including identical import goods and similar import goods.

For example: Construction steel products such as steel rods, twisted steel rods, steel sections (U, I, V.. shapes) manufactured by the steel industry, are goods of the same type.

- In the deduction method, “import goods of the same quality grade or the same type” are goods imported from all countries into Vietnam, regardless of their origins.

- In the calculation method, “import goods of the same quality grade or the same type” must be the import goods having the same origin with goods being subject to the tax calculation value determination.

14. “*Information already available at customs offices*” means information related to the tax calculation value determination which the customs offices shall have to gather, analyze, store, update and manage in service of the inspection of the tax calculation value determination, and are available at the customs units at the time of determining tax calculation values, including:

- Information from declarations of import goods already cleared from customs procedures at the customs units carrying out the import procedures.

- Information supplied from the price database in the customs service.

- Information updated from the sources prescribed by the General Customs Department.

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15. “*The same trading conditions*” mean the same conditions on trading levels, quantities, transport distances and modes, insurance.

16. “*Consultation*” means that customs offices and customs declarers exchange or supply information related to the tax calculation value determination, at requests of the customs offices.

Chapter II **METHODS OF DETERMINING** **TAX CALCULATION VALUES OF IMPORT GOODS**

I. METHOD BASED ON TRANSACTION VALUES

1. Tax calculation values of import goods must be first of all determined by the method based on transaction values, if the following conditions are fully met:

- 1.1. The purchaser has the full right to dispose and use goods after the importation. If there exist the following restrictions, this condition shall still be considered satisfied;
 - 1.1.1. The purchase, sale and use of goods comply with Vietnamese law provisions.
 - 1.1.2. The purchaser and the seller have agreed upon the place(s) for goods sale after the importation
 - 1.1.3. Other restrictions which do not affect the goods’ values

1.2. The goods sale or goods prices do not depend on several conditions that lead to the failure to determine values of goods whose tax calculation values should be determined.

For example: - The seller sets prices of import goods on the condition that the purchaser shall also purchase a certain quantity of other goods.

- Prices of import goods depend on prices of other goods which shall be sold by the importer to the exporter.

- Prices of import goods are formulated on the basis of a payment mode not directly related to such import goods, for example when import goods are semi-finished products supplied by the seller to the purchaser on the condition that the seller shall receive back a certain quantity of finished products made of such imported semi-finished products.

In cases where the goods purchase and sale or goods prices depend on one or several conditions, but the purchaser has objective and valid documents to ascertain the monetary effect of such dependence, this condition is still considered being met. When determining tax calculation values, the money amount reduced due to the effect of such dependence must be added to the transaction values.

For example:

- The purchasing price of goods A depends on prices of other goods sold by the importer to the exporter:

The exporter shall agree to reduce by 2% of the selling price of goods A for the importer if the importer puts goods A into the manufacture of product B and 50% of the manufactured quantity of product B shall be sold to the exporter at a price off by 1% as compared to other purchasers. In this case, the transaction value is acceptable, provided that the reduced value of 2% must be added to determine the tax calculation value of import goods A.

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1.3. After re-selling, transferring or using import goods, the purchaser shall not have to pay any additional sum of money from the proceeds from the disposal of import goods, excluding the amounts which must be added under the provision at Point 2.6, Section VII of this Chapter.

1.4. The purchaser and the seller have no special ties or these ties, if any, do not affect the transaction value. The identification of special ties' impacts on transaction values is prescribed at Point 3 of this Section.

2. Determination of tax calculation values

Tax calculation values of import goods are transaction values, i.e. the total sum of money already paid or to be paid directly or indirectly by the purchaser to the seller for the purchase of import goods, after adding or subtracting a number of adjusting amounts prescribed in Section VII of this Chapter.

The total sum of money already paid or to be paid directly or indirectly by the purchaser to the seller includes the following amounts:

2.1. Purchasing price inscribed in commercial invoices

Commercial invoices show the sum of money payable by the purchaser for purchase of import goods.

In cases where the purchasing price inscribed in commercial invoices includes price discount amounts for the import goods lot, such amounts shall be subtracted for determining the tax calculation values on the condition that the price discount is made in writing before goods are loaded onto transport means and there exist lawful and valid data and vouchers for separating such discount amounts from the invoiced prices and such vouchers must be submitted together with import goods declarations.

For example: The first goods lot was imported on July 1, 2002 with commercial invoices stating that the purchaser is entitled to a quantity discount of 3% and being submitted together with import goods declarations. In this case the discount of 3% shall be subtracted for determining the tax calculation value.

For example: Following the above example, on September 1, 2002 the second import goods lot enjoyed a quantity discount of 5% with invoices stating the additional discount of 2% for the first goods lot. In this case, the quantity discount of 5% for the second goods lot shall be subtracted for determining the tax calculation value, but the additional discount of 2% for the first goods lot shall neither be subtracted from the tax calculation value of the second goods lot nor used for determining the tax calculation value of the first goods lot.

Principal price discounts include:

(i) Price discount based on the commercial level of goods purchase and sale transactions (commercial discount).

For example: The exporter may apply the regime of commercial discount:

- Sale to ultimate consumers: No discount.
- Sale to retailer: 3% of unit price off.
- Sale to wholesale trader: 5% of unit price off.

(ii) Price discount based on the quantity of purchased or sold goods (quantity discount).

For example: The exporter may apply the following regime of quantity discount:

- Purchase of between 1 and 50 products: No discount.
- Purchase of between 51 and 500 products: 5% off
- Purchase of over 500 products: 8% off.

For example: The exporter may apply the following regime of quantity discount:

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- Purchase of a goods quantity valued at between USD 50,000 and 100,000: 10% off
- Purchase of a goods quantity valued at between USD 100,000 and 500,000: 15% off
- Purchase of a goods quantity valued at over USD 500,000: 23% off.

(iii) Price discount based on payment mode and time (payment discount)

For example: If the purchaser pays in cash, he/she may enjoy a discount of 0.3% of the invoiced price, or a discount of 0.5 % of the invoiced price if he/she pays right after the goods delivery.

(iv) The types of price discount other than the above-said price discounts, if conforming to the international commercial customs and practices, shall all be considered and accepted.

2.2. Amounts which must be paid by the purchaser but have not yet been included into the purchasing price inscribed in commercial invoices, including:

2.2.1. Prepaid amount, advanced amount, deposit for the production, purchase, sale, transport and/or insurance of goods.

2.2.2. Amounts indirectly paid to the seller, such as: Amount paid by the purchaser to the third party at request of the seller; amount paid by mode of clearing debts.

3. Determination of impacts of special ties on transaction values

If the purchaser and the seller have special ties, the transaction values shall not be immediately invalidated but it is necessary to consider whether such special ties actually affect the transaction values or not.

3.1. In cases where the purchaser and the seller have special ties, which do not affect the transaction values, the customs declarer shall have to report such and be allowed to use the method based on transaction values to determine the tax calculation values.

3.2. Based on information available at their offices, if the customs offices suspect that the special ties affect the transaction values, they shall notify such in writing to the customs declarers. In these cases, to obtain the customs offices' recognition of application of the method based on transaction values, the customs declarers shall have to prove that the special ties do not affect the transaction values.

3.2.1. To prove that special ties do not affect transaction values, the customs declarers may indicate a transaction value approximate to one of the following tax calculation values already accepted by the customs offices, provided that such tax calculation values have already been adjusted to be subject to the same conditions as for the goods lot being proved mentioned at Point 3.2.2. below:

3.2.1.1. Tax calculation values determined according to the method based on transaction values of identical import goods or similar import goods exported to Vietnam on the same day or within 30 days before or after the export date of the goods lot subject to tax calculation value determination, provided that the purchaser and the seller have no special ties, or;

3.2.1.2. Tax calculation values determined according to the method based on deductible values of identical import goods or similar import goods exported to Vietnam on the same day or within 30 days before or after the export date of the goods lot subject to tax calculation value determination, or;

3.2.1.3. Tax calculation values determined according to the method based on calculation values of identical import goods or similar import goods exported to Vietnam on the same day or within 30 days before or after the export date of the goods lot subject to tax calculation value determination.

3.2.2. Contents of adjustment of tax calculation values of identical import goods or similar import goods to the same conditions as for import goods being proved:

3.2.2.1. Adjustment to the same purchase and sale conditions:

The adjustment of tax calculation values of identical or similar import goods to the same purchase and sale conditions as for the goods lots being proved shall comply with the guidance at Point 2.2, Section III, Chapter II of this Circular.

3.2.2.2. Adjustment of amounts which must be added or subtracted according to the guidance in Section VII of this Chapter.

For example:

A goods lot being proved has no brokerage charge while the identical import goods lot has such a charge. In this case, the tax calculation value of the identical import goods lot must be adjusted to the condition of no brokerage charge.

4. For goods imported in excess of the volumes specified in commercial contracts, the tax calculation value of such excessive goods volume shall also be determined according to the tax calculation value of import goods within contracts.

5. In cases where import goods fail satisfy the specifications defined in commercial contracts, their tax calculation values must be determined according to the subsequent method of tax calculation value determination.

II. METHOD BASED ON TRANSACTION VALUES OF IDENTICAL IMPORT GOODS

Contents of the method based on transaction values of identical import goods are guided together with the method based on transaction values of similar import goods in Section III of this Chapter. The difference between these two methods is merely the distinction between two definitions of “identical import goods” and “similar import goods.”

III. METHOD BASED ON TRANSACTION VALUES OF SIMILAR IMPORT GOODS

1. Determination of tax calculation values

Tax calculation values of import goods are transaction values of similar import goods, provided that similar import goods have already been accepted by the customs offices to have their tax calculation values determined according to the method based on transaction values, and have the same purchase and sale conditions and conditions on export time as for import goods being under tax calculation value determination according to provisions at Point 2 below.

In cases where no similar import goods lot with the same purchase and sale conditions as for import goods lot being under tax calculation value determination is found, a similar import goods lot with different purchase and sale conditions shall be chosen. Then, the transaction values of similar import goods must be adjusted to the same purchase and sale condition.

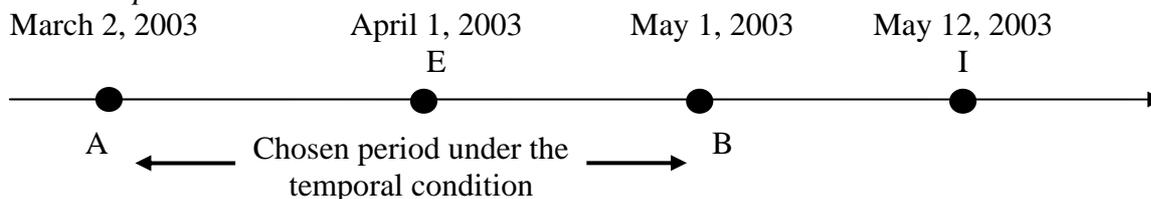
2. Conditions for choosing similar import goods lots

2.1. Condition on time of export

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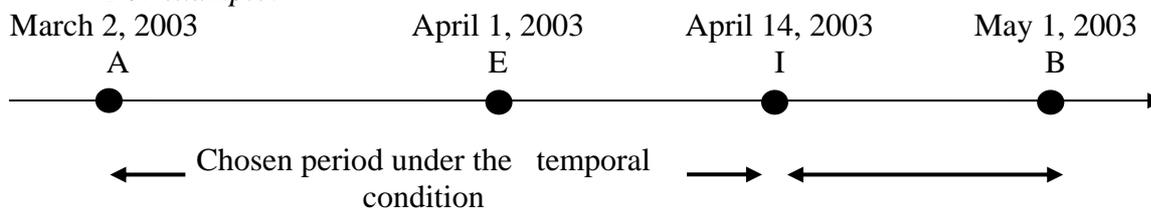
A similar import goods lot must be the one exported into Vietnam on or within 30 days before or after the export date (export date is the date the goods are loaded onto ships according to bills of lading) but no later than the date of registration of the declaration of import goods being subject to tax calculation value determination.

For example:



In this example, the export date of import goods being under tax calculation value determination is April 1, 2003 (marked with E) and the date of registration of import goods declarations is May 12, 2003 (marked with I), the time point 30 days before the export date of import goods being under tax calculation value determination is March 2, 2003 (marked with A), and the time point after the export date of import goods being under tax calculation value determination is May 1, 2003 (marked with B), the chosen similar import goods must have their export date within the A-B period (from March 2, 2003 to May 1, 2003).

For example:



In this example, the export date of import goods under tax calculation value determination is April 1, 2003 (marked with E) and the date of registration of import goods declarations is April 14, 2003 (marked with I), the time point 30 days before the export date of import goods being subject to tax calculation value determination is March 2, 2003 (marked with A), and the time point after the export date of import goods being subject to tax calculation value determination is May 1, 2003 (marked with B), the chosen similar import goods must have their export date lying within the A-I period (from March 2, 2003 to April 14, 2003). Similar import goods with their import date within the I-B period shall not be chosen.

2.2. Purchase and sale conditions

2.2.1. Condition on commercial level and quantity

2.2.1.1. The similar import goods lot must have the same condition on commercial level and quantity as for the import goods lot being under tax calculation value determination.

2.2.1.2. If no import goods lot of the same commercial level and quantity is found, an import goods lot of the same commercial level but different quantity shall be chosen, then the transaction value of similar import goods shall be adjusted to the same quantity of the goods lot being under tax calculation value determination.

For example: An import goods lot being subject to tax calculation value determination, which is traded at the retail level with 300 products, shall enjoy the quantity discount with the unit price of VND 50/product but be ineligible for the application of the method based on transaction value.

The chosen similar import goods lot is of the same retail level with 700 products; such goods lot shall enjoy the quantity discount with the discount unit price of VND 49/product and such unit price has already been accepted for determining the tax calculation value.

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The regime of quantity discount applied by the seller to the purchaser in transactions of importing similar goods shall be as follows:

- Purchase of between 1 and 200 products – Selling price shall be equal to the posted up price (VND 70/product).
- Purchase of between 201 and 500 products – Selling price shall be equal to 90% of the posted up price.
- Purchase of between 501 and 1,000 products – Selling price shall be equal to 70% of the posted up price.
- Purchase of 1,001 products or more – Selling price shall be equal to 60% of the posted up price.

The import goods lot being under tax calculation value determination has the quantity of 300 products, the quantity discount shall, therefore, apply to similar goods in cases where the purchase quantity is 300 products and the to be-enjoyed quantity discount shall be 10% (100% - 90%) of the posted up price. As a result, the unit price of the similar import goods lot, after being adjusted to the same quantity, shall be VND 63/product (VND 70/product x 90%). So, the tax calculation value of import goods requiring tax calculation value determination shall be VND 63/product.

In the above example, if import goods being under tax calculation value determination are ineligible for the quantity discount, the unit purchasing price of similar import goods shall be 100% of the posted up price. The tax calculation value of import goods requiring tax calculation value determination shall therefore be VND 70/product.

2.2.1.3. If no import goods lot of the same commercial level and quantity or no import goods lot of the same commercial level but different quantity, an import goods lot of different commercial level but the same quantity shall be chosen, then the transaction value of such similar import goods lot shall be adjusted to the same commercial level of the goods lot being subject to tax calculation value determination.

For example: An import goods lot being subject to tax calculation value determination enjoys the commercial discount at the wholesale level at the price of VND 400/ton but is ineligible for the application of transaction value.

A similar import goods lot of the same quantity and at the retail level has its tax calculation value determined by the method based on transaction value with the unit price of VND 500/ton.

The regime of commercial discount applied by the seller to the purchaser in transactions of importing similar goods shall be as follows:

- Sale to wholesalers at a price equal to 90% of the posted up price;
- Sale to retailers at a price equal to 100% of the posted up price (VND 500/ton)

Because the import goods lot being subject to tax calculation value determination is at the commercial level of wholesale, the commercial discount shall be applied to the similar import goods lot under the trading condition of wholesale level. The wholesale unit price of the similar import goods lot shall be VND 450/ton (VND 500/ton x 90%). So, the tax calculation value of goods under tax calculation value determination shall be determined to be VND 450/ton.

In the above example, if no regime of commercial discount is applied to the wholesale level, the purchasing unit price shall be 100% of the posted up price (VND 500/ton) and the tax calculation value shall be determined at VND 500/ton.

2.2.1.4. If no import goods lot of the same commercial level and quantity, no goods lot of the same commercial level but different quantity or no goods lot of different commercial level but the same quantity is found, an import goods lot of different commercial level and different quantity shall be chosen, then the transaction value of such similar import goods lot shall be adjusted to the same commercial level and quantity of the goods lot being subject to tax calculation value determination.

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2.2.1.5. In cases where a similar import goods lot enjoys the commercial discount, quantity discount and/or payment discount while the import goods lot being under tax calculation value determination is does not, such discounts must not be subtracted from transaction value. In cases where the similar import goods lot is ineligible for the commercial discount and/or quantity discount while the import goods lot being subject to tax calculation value determination is eligible therefore, such discounts shall be subtracted from transaction value.

2.2.2. Condition on transport distance and mode and insurance

The similar import goods lot has the same transport distance and mode, or has already been adjusted to the same transport distance or mode of the goods lot being under value determination.

For example: An import goods lot being subject to tax calculation value determination is transported by air, while a similar import goods lot is transported by sea with the CIF price of USD 117.3/goods unit, of which the cargo cost C = USD 100, insurance charge I = USD 0.3 and freight F = USD 17.

In this case, the freight of the similar goods lot must be adjusted to the condition of air transport on the basis of transport contract of the goods lot being subject to the tax calculation value determination or freight table of the carrier. Assuming that the air freight is USD 23/goods unit, the transaction value of similar import goods, after being adjusted to the same transport mode by air shall be USD 123.3/goods unit (100 + 0.3 + 23).

If the exists a marked insurance charge difference, the similar import goods lot may be adjusted to the same insurance term as for the goods lot under tax calculation value determination.

2.3. When applying the method based on transaction value of similar import goods, if no similar import goods manufactured by the same manufacturer or the authorized manufacturer is found, goods manufactured by other manufacturers and of the same origin shall be taken into consideration.

2.4. When determining the tax calculation value by this method, if two or more transaction values of similar import goods are determined, the tax calculation value, after the similar import goods lot is adjusted to the same trading condition as for the lot being subject to the tax calculation value determination, shall be the lowest transaction value.

3. Documents and information used for determining the tax calculation values by the method based on transaction value of similar import goods.

3.1. When applying the method based on transaction value of similar import goods, the customs declarers must seek by themselves dossiers of similar import goods lots meeting the conditions mentioned at Point 2 above to serve as basis for the tax calculation value determination.

Documents to be submitted by the customs declarers to the customs offices include:

3.1.1. Import goods declaration and declaration of value of similar import goods (copy)

3.1.2. Transport contract or bill of lading of similar import goods (copy, if transport freight is adjusted);

3.1.3. Insurance policy or insurance bill of similar import goods (copy, if insurance charge is adjusted);

3.1.4. Trade contract (copy); commercial invoice of similar import goods (copy), export goods price advices of the manufacturer or foreign seller (copy, if the quantity or trading level is adjusted);

3.1.5. Other lawful and valid dossiers and vouchers necessary for and related to the tax calculation value determination (if any).

3.2. Customs offices, when applying the method based on transaction value of similar import goods, shall have to base themselves on the information available at the customs offices where the tax calculation values are determined as well as on documents and vouchers supplied by the customs declarers to determine tax calculation values.

IV. METHOD BASED ON DEDUCTIBLE VALUES

1. Determination of tax calculation values

Tax calculation values of import goods are determined by deductible values which are determined on the basis of unit selling prices of import goods on the domestic market of Vietnam after subtracting (-) reasonable expenses for and profits from the sale of import goods.

2. Conditions for choosing unit selling prices on the domestic market.

2.1. Unit selling prices on the domestic markets of Vietnam must be the unit selling prices of the goods being subject to the tax calculation value determination. In case of unavailability of the unit selling price of the import goods under tax calculation value determination, the unit selling price of the identical import goods shall be applied or the unit price of similar import goods sold on the domestic market if the unit selling price of the identical import goods is not available, provided that goods are sold in the original state as when they are imported.

2.2. Chosen unit selling prices are unit prices of goods sold in biggest quantity after being imported and sold to domestic purchasers having no special ties.

3. Amounts to be deducted from unit selling prices:

3.1. Principles of the deduction

The determination of deductible amounts must be based on the accounting data, lawful and valid available vouchers, and recorded and reflected according to the regulations on the Vietnamese accounting regime.

Deductible amounts must be those allowed to be accounted into cost prices.

3.2. Deductible amounts

3.2.1. Commissions or profits and general expenses of the import goods business.

3.2.1.1. In cases where the importer is the sale agent for foreign trader(s), the commission he/she/it is entitled to enjoy shall be deducted.

If the sale agents are authorized by foreign traders to conduct some activities related to the sale of goods after the importation in Vietnam outside the agency contracts, the expenses for such activities arising in Vietnam shall also be deducted within the expenses already agreed upon under the authorization contract.

If the commissions have already covered the expenses prescribed at Points 3.2.2 and 3.2.3 below, such amounts shall not be additionally deducted.

3.2.1.2. For import by mode of definite purchase and sale, the profits from and general expenses for the re-sale of import goods may be deducted.

General expenses include direct expenses and indirect expenses in service of the import and sale of goods on the domestic market, for instance: marketing expense, expense for storing and preserving goods before the sale, expenses for managerial activities in service of the import and sale, etc.

General expenses for and profits from the sale of goods after the importation, which are accepted for deduction must not exceed 20% of the turnover. For special commodity lines to

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which such deduction rate is inappropriate, the next method shall be applied to determine the tax calculation value.

3.2.2. Transport freight, insurance charges and expenses for other activities related to the transport of goods after the importation. These expenses include:

3.2.2.1. Transport freight, insurance charges and other expenses related to the goods transportation arising en route from the import border-gates to the warehouses of the importers or places of goods delivery inland Vietnam;

3.2.2.2. Transport freight, insurance charges and other expenses related to the goods transportation from the importers' warehouses to the places of goods sale, if such amounts are borne by the importers.

3.2.3. Taxes, charges and fees payable in Vietnam upon the import and sale of import goods on the domestic market of Vietnam.

4. The method based on deductible value is applicable to goods sold not in original state as when they are imported.

In cases where no goods sold in the original state as when they are imported is found, the deduction method may be applied to import goods having already been further processed in the country, and the expenses for the processing which adds value to the processed goods shall be subtracted.

After the processing, if the import goods are changed in their nature, characteristics or utility to the extent that they can no longer be recognized as the initial import goods, this method shall not apply.

5. Documents to be submitted

Upon the determination of tax calculation values by this method, the importer must submit the following documents (copies):

5.1. Sale invoices issued or permitted for use by the Finance Ministry.

5.2. Sale agency contract, if the importer is the sale agent for the exporter. This contract must specifically state the commission to be enjoyed by the agent and expenses to be paid by the agent.

5.3. Lawful and valid accounting vouchers and data (with enclosed explanations) on general managerial expenses, other expenses and sale profits.

5.4. Tax receipts or tax notices on tax amounts already paid or to be paid, list of charges and fees already paid or to be paid.

5.5. Import goods declaration of the goods lot chosen for the deduction.

5.6. Other necessary documents for the checking or determination of tax calculation value at requests of customs offices.

V. THE METHOD BASED ON CALCULATION VALUES

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1. Tax calculation values of import goods are determined by calculation values. Calculation value includes the following amounts:

1.1. Production costs.

1.2. General expenses and profits of the production and sale of export goods.

1.3. To be added amounts prescribed in Section VII of this Chapter (except for amounts already mentioned at Point 1.1 above).

2. The determination of calculation values must be based on data supplied by the manufacturers and conform to the accounting principles of the countries where import goods are made.

3. Documents to be submitted

When applying the method based on calculation values, the declarers must submit the following documents and vouchers:

3.1. List of production costs, general expenses and profits of the production and sale of export goods with certification of the manufacturers.

3.2. Vouchers on expenses mentioned at Point 1.3 above.

VI. OTHER METHODS

1. If tax calculation values cannot be determined by the methods prescribed in Sections I through V of this Chapter, they shall be determined by other methods, based on documents and objective data available at the time of determining tax calculation values and in compliance with the provisions of Decree No. 60/2002/ND-CP and the guidance in this Circular.

Customs offices, when applying this method, must base themselves on lawful and valid dossiers and vouchers supplied by the customs declarers or information available at the customs offices where tax calculation values are determined to determine the tax calculation values.

2. When determining the tax calculation values by this method, customs declarers and customs offices must not use the following values:

2.1. Domestic market selling prices of goods of the same types made in Vietnam.

2.2. Selling prices of goods on domestic markets of the exporting countries.

2.3. Selling prices of goods for export to another country.

2.4. Production costs of goods, except for those used in the calculation method.

2.5. Minimum tax calculation price.

2.6. Imposed or presumptive prices.

2.7. Higher transaction value(s) of identical import goods or similar import goods when two or more different values are determined.

3. Application of other methods to determine tax calculation values:

3.1. Application of method based on transaction values of identical import goods or similar import goods.

3.1.1. If no identical import goods or similar import goods is exported to Vietnam within 30 days before or after the export date of the import goods lot being under tax calculation value determination, identical import goods or similar import goods exported within longer periods may be chosen, provided that such periods must not exceed 60 days before or after the export date of the import goods lot being subject to tax calculation value determination.

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3.1.2. If no identical import goods or similar import goods of the same origin is found, import goods of different origins which still satisfy other conditions on identical or similar import goods may be chosen.

3.2. Application of the method based on deductible values by one of the following ways:

3.2.1. Within 90 days after the export date, if unit prices used for the deduction cannot be determined, the unit prices of goods sold in the biggest quantity within 120 days after the export date of the goods lot chosen for deduction shall be chosen.

3.2.2. If no unit price of the import goods or identical import goods or similar import goods sold to persons having no special ties with the importer is available, the unit price of goods sold to purchasers having special ties shall be chosen, provided that such special ties do not affect prices in purchase-sale transactions.

3.3. Tax calculation values of import goods shall be determined to be equal to tax calculation values of identical import goods already determined by the method based on deductible values or the method based on calculation values.

3.4. Tax calculation values of import goods shall be determined equal to tax calculation values of similar import goods already determined by the method based on deductible values or the method based on calculation values.

VII. ADJUSTING AMOUNTS

1. Adjusting principles

1.1. Amounts which must be added shall only be adjusted when the following conditions are met:

1.1.1. Such amounts are paid by the purchaser and not yet calculated into the total amount already paid or to be paid by the purchaser.

1.1.2. Such amounts are directly related to import goods.

1.1.3. In cases where the import goods lot involves such amounts but there exist no objective data for determination of tax calculation values, such values shall not be determined by method based on transaction values and must be subject to the subsequent methods.

1.2. Deductible amounts shall only be adjusted when lawful and valid data and vouchers for separating them from selling prices are available at the time of tax calculation value determination.

2. Amounts which must be added include:

2.1. Goods sale commissions and brokerage charges. In cases where these amounts include taxes payable in Vietnam, such tax amounts must not be added into the tax calculation values of import goods.

2.2. Expenses for packages attached to import goods, including the following amounts:

2.2.1. Packages attached to goods are those which often go together with goods as one condition for preservation or use of goods and are classified together with goods according to the current goods classification principles and codes.

2.2.2. Expenses for packages attached to goods include the purchasing price of packages and other expenses related to the purchase, sale and transport of packages to the places of packing and preservation of goods.

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2.2.3. Containers, barrels, racks of various kinds used as a packing means in service of goods transport and used time and again shall not be considered packages attached to goods. Therefore, values of expenses for such kinds shall not be counted as to be-added expenses for packages attached to goods. They are among the to be-added amounts specified at Point 2.7 below.

2.3. Packing expenses, including the following amounts:

2.3.1. Expenses for packing materials, including prices of packing materials and other expenses related to the purchase, sale and transport of packing materials to the packing places.

2.3.2. Expenses for packing workers, including labor cost and expenses related to the employment of workers for packing goods under value determination.

In cases where the purchasers bear expenses for the accommodation, meals and travel of workers during the packing period, such expenses shall also belong to expenses for packing workers.

2.4. Values of goods and services supplied by the purchasers to the sellers free of charge or with price discounts for the production and sale of export goods to Vietnam (hereinafter called values of support amounts).

2.4.1. Conditions for adding values of support amounts to the transaction values.

2.4.1.1. Support goods and services supplied by purchasers free of charge or with discounts, delivered directly or indirectly to goods manufacturers or sellers.

2.4.1.2. Support goods and services must be used to manufacture goods being subject to the tax calculation value determination.

2.4.2. Support amounts include:

2.4.2.1. Raw materials, components, spare parts and similar products constituting import goods.

2.4.2.2. Materials, fuel and energy consumed in the manufacture of import goods.

2.4.2.3. Tools, instruments, molds, casts, models and similar products used in the manufacture of import goods.

2.4.2.4. Engineering designs, technical drawings, artistic designs, blueprints, working designs, model designs, plans or diagrams and/or similar service products made in foreign countries and used in the manufacture of import goods.

2.4.3. Determination of values of support amounts

2.4.3.1. Values of support amounts are determined as follows:

2.4.3.1.1. If support goods or services are purchased from persons having no special ties for supply to sellers, the values of such support amounts are the purchasing prices.

2.4.3.1.2. If support goods or services are produced by the importers or persons having special ties with the importers for supply to sellers, the values of such support amounts are production cost prices of such support goods or services.

2.4.3.1.3. If support goods or services are produced by the purchasers' production establishments based in foreign countries, but there exist no lawful and valid documents and vouchers for separate accounting of such support goods or services, the values of the support amounts shall be determined by distributing the total production cost in the same period of such establishments to the volume of produced support goods or services.

2.4.3.2. Determination of values of support amounts in special cases

2.4.3.2.1. Values of support amounts rented or borrowed by purchasers shall be equal to the rentals or borrowing charges.

2.4.3.2.2. Values of support amounts being used goods shall be equal to the remaining values of such goods.

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For example: The purchaser sends to the seller a material mixer for use in the manufacture of export products. Such machine is a used one with the purchasing price inscribed in the invoice being USD 1,000 and its remaining use value when it is sent to the manufacturer is 70%.

The value of this support amount is determined to be USD 700 (USD 1,000 x 70%).

2.4.3.2.3. For support goods processed by the purchasers before being transferred to the sellers for use in the manufacture of import goods, the value added due to the processing shall be added to the value of the support amount.

For example: In furtherance of the above example, before transferring such machine to the manufacturer, the purchaser has repaired and renovated it at an expense of USD 100.

The value of the support amount in this case is determined to be USD 800 (USD 700 + USD 100).

2.4.3.2.4. For support amounts sold on discount by the purchaser to the exporter, the discounted value must be added to the tax calculation value.

For example: If the purchasing price of a support amount is USD 500, but such support amount is sold by the importer to the foreign-based manufacturer at the price of USD 300 for use in the manufacture of import goods, the support amount which must be added to the tax calculation value shall be USD 200.

2.4.3.2.5. In cases where unused materials and discards are collected from support goods after the manufacture of import goods, the value of such unused materials and discards shall be subtracted from the value of the support amount.

Values of support amounts shall be determined to include the expenses related to their purchase, sale, transportation and insurance to the places of manufacturing import goods.

2.4.4. Distribution of values of support amounts to import goods

2.4.4.1. Principle for distributing values of support amounts

2.4.4.1.1. Values of support amounts must be fully distributed to import goods.

2.4.4.1.2. Lawful and valid documents and vouchers on the distribution must be made.

2.4.4.2. Method for distributing values of support amounts:

Customs declarers shall distribute by themselves support amounts to import goods by one of the following methods:

2.4.4.2.1. Method of equally distributing them to the total volume of import goods in the first import shipment.

For example: Support amount a valued at USD 1,000 is used for manufacturing 2,000 product units. By December 31, 2002, the date of the first import shipment, the manufacturer had manufactured 500 product units, and the customs declarer may fully distribute USD 1,000 to such 500 product units.

2.4.4.2.2. Method of equal distribution to the total volume of products manufactured under the purchase-sale agreement between the purchaser and the seller (or the manufacturer).

For example: Support amount a valued at USD 1,000 is used for manufacturing 2,000 product units under the agreement. The customs declarer shall equally distribute USD 1,000 to such 2,000 product units.

2.4.4.2.3. Method of full distribution to the first import goods lot

For example: Support amount a valued at USD 1,000 is used for manufacturing 2,000 product units. In the first delivery, the seller delivers to the purchaser 300 products. The customs declarer shall fully distribute USD 1,000 to such 300 product units.

2.4.4.2.4. Distribution on principle of gradual decrease or increase

For example: Value of a support amount which must be distributed is USD 6,000, and the total of products manufactured under the agreement between the purchaser and the seller is 3,000 product units.

The customs declarer chooses the following plan on gradual-decrease distribution: the first import goods lot contains 1,000 product units with the distributed value of USD 3,000; the second

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import goods lot contains 1,000 product units with the distributed value of USD 2,000; and the last import goods lot contains 1,000 product units with the distributed value of USD 1,000.

If the customs declarer chooses the plan on gradual-increase distribution plan: For the first import goods lot, the distributed value is USD 1,000; the second import goods lot, USD 2,000; and the last import goods lot, USD 3,000.

2.4.4.2.5. Apart from the above methods, customs declarers may use other methods of distribution, provided that they must comply with the above-prescribed distribution principles

2.5. Copyright royalties and licensing fees

2.5.1. Copyright royalties and licensing fees related to goods being under value determination must be added to the tax calculation values when the following conditions are fully met:

2.5.1.1. The payment of copyright royalties and licensing fees constitutes a condition for the purchase and sale of import goods.

The customs declarers must submit to the customs offices the certified true copies of the written agreements on payment of copyright royalties and licensing fees.

2.5.1.2. Copyright royalties and licensing fees must be paid directly or indirectly by the purchasers to the copyright holders or license granters.

The customs declarers must submit to the customs offices the certified true copies of the vouchers or documents evidencing the payment of copyright royalties or licensing fees as well as licensing documents issued by the copyright holders or licensing right holders.

2.5.1.3. Copyright royalties and licensing fees are not yet included in invoiced prices of goods being under tax calculation value determination.

2.5.2. Copyright royalties and licensing fees must not be added to the tax calculation values in the following cases:

2.5.2.1. Amounts which must be paid by purchasers for the right to reproduce import goods or copy art works in Vietnam.

2.5.2.2. Amounts which must be paid by purchasers for the right to distribute or resell import goods provided that such payment does not constitute one of conditions for the sale of import goods.

In cases where the amounts paid for the right to reproduce, the right to distribute or resell import goods have already been included in the selling prices, such amounts shall not be subtracted from tax calculation values of import goods.

2.5.2.3. In cases where copyright royalty and licensing fee are partially included in import goods and partially based on factors not related to import goods, so that it is impossible either to distinguish between these two elements or to sort out copyright royalty under a financial agreement between the purchaser and the seller, such copyright royalty and licensing fee must not be added to the tax calculation value.

2.5.3. Bases for determining copyright royalties and licensing fees

2.5.3.1. Bases for determining copyright royalties and licensing fees are vouchers on payment of copyright royalties and licensing fees or other lawful or valid documents stating the obligation to pay such amounts.

2.5.3.2. In cases where copyright royalties and licensing fees cannot be determined at the time of import for the reason that they depend on the post-import sale turnover or for other reasons, the transaction value shall still be accepted on the condition that the customs declarer must make a written commitment to additionally declare such expenses for the purposes of determining the full tax calculation value of the goods lot and performing the tax obligation. The customs offices shall open books to monitor and inspect these cases.

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2.6. Money amounts which must be paid by importers from the proceeds from the disposal or use of import goods, which are transferred in any forms to the sellers.

For example: The importer shall have to pay an amount at a certain percentage calculated on sale turnover or goods rent after the importation.

In cases where the customs declarer, upon registering the import goods declaration, has no data for specifically determining such payable amount, the tax calculation value must not be determined by the method based on transaction value but shall be determined by the subsequent method.

2.7. Transport freight, loading, unloading and forwarding charges directly related to the transport of import goods to the places of import. Values of these adjusted amounts are determined on the basis of transport contracts or vouchers or documents related to the transport of goods.

2.7.1. In cases where a goods lot contains different types of goods but bills of lading do not detail each kind of goods, the customs declarers shall distribute by themselves these expenses to each kind of goods by using the distribution methods in the following priority order:

(i) Distribution on the basis of freight table of the goods carrier.

(ii) Distribution according to weight or volume of goods.

(iii) Distribution according to the proportion of purchasing value of each kind of goods to the total value of the goods lot.

2.7.2 In cases where the purchasing price has not yet included transport freight but the purchaser has no voucher or has unlawful or invalid vouchers, the method based on transaction value shall not apply.

2.8. Insurance for goods transported to places of import

2.8.1. In cases where importers do not buy insurance for their goods, insurance expense must not be added to the tax calculation value.

2.8.2. Insurance premium bought for the whole goods lot containing different kinds of goods shall be distributed according to value of each kind of goods.

If the expenses specified at Points 2.7 and 2.8 above include the value added tax payable in Vietnam, such tax amount must not be added to the tax calculation value.

3. Deductible amounts

If the following amounts are already included in the transaction value and there exist objective data based on lawful and valid documents and vouchers available at the time of tax calculation value determination, they shall be deducted for determining the tax calculation value:

3.1. Expenses for activities arising after the goods importation, including expenses for construction, architecture, installation, maintenance or technical support, technical consultancy, supervision and similar expenses.

3.2. Transport freight and insurance within Vietnam's inland. In cases where such expenses are related to different kinds of goods, they shall be distributed to goods requiring the tax calculation value determination according to the principles prescribed at Points 2.7 and 2.8 above.

3.3. Taxes, charges and fees payable in Vietnam already included in the import goods purchasing prices. In cases where charge and fee amounts related to many different kinds of goods cannot be determined directly for each kind of goods, they shall be distributed according to the proportion of purchasing value of each kind of goods to the total value of the goods lot.

3.4. Payable interests related to the payment for import goods purchase, provided that payable interest rates are specified in purchase-sale contracts and conform to common credit interest rates applied by credit institutions of exporting countries at the time of signing contracts.

Chapter III

RIGHTS AND OBLIGATIONS OF CUSTOMS DECLARERS; RESPONSIBILITIES OF THE CUSTOMS OFFICES

I. RIGHTS OF CUSTOMS DECLARERS

1. To have commercial information they have already supplied to the customs offices kept secret, including information on purchasers, sellers, consigners, domestic purchasers, selling prices of goods on domestic market, production costs of import goods.

2. To request the customs offices to guide the tax calculation value determination and to be notified in writing of the methods and bases which have already been used by the customs offices for determining tax calculation values.

3. To prove the accuracy and truthfulness of the already declared values when the customs offices have doubts thereabout and so request.

4. To lodge complaints about the customs offices' decisions on tax calculation values.

5. To request in writing the change of the order for application of the method based on deductible values and the method based on calculation values.

II. OBLIGATIONS OF CUSTOMS DECLARERS

1. Customs declarers are obliged to base themselves on dossiers of import goods lots, the principles and methods for determining tax calculation values guided in this Circular to declare fully and accurately expenses related to the purchase and sale of import goods and determine by themselves the tax calculation values of import goods according to the tax calculation value declaration form prescribed by the customs offices.

2. To submit the tax calculation value declarations, copies of lawful and valid documents and vouchers already used for determining tax calculation values together with import goods declarations. To submit and produce documents to serve as basis for inspection and determination of tax calculation values at the requests of customs offices.

3. To be subject to the customs offices' inspection of tax calculation values, and coordinate with the customs offices in the verification of truthfulness and accuracy of the declared contents related to tax calculation values.

4. To be held responsible before law for truthfulness and accuracy of the already declared contents and results of the determination of tax calculation values of import goods.

5. To take self responsibility for non-reception of documents sent via mail by the customs offices to the right addresses they have registered with the customs offices in goods declarations.

III. RESPONSIBILITIES AND POWERS OF THE CUSTOMS OFFICES

1. To keep secret commercial information related to the declared values at the requests of the customs declarers, except for cases where such information must be supplied to the relevant agencies according to the provisions of law.

2. To explain and guide the customs declarers to comply with the provisions of Decree No. 60/2002/ND-CP and guidance in this Circular.

3. To notify in writing to the customs declarers the methods and bases they use to determine tax calculation values when the customs declarers so request in writing.

4. To supply tax calculation declaration forms to customs declarers and guide the declaration in compliance with each method of tax calculation value determination. To organize the printing, distribution and granting of tax calculation value declaration forms to customs declarers.

5. To request customs declarers to submit or produce documents and vouchers related to goods purchase, sale, and payment for, goods purchase for proving the accuracy and truthfulness of declared values. In case of doubts about related documents and vouchers, the customs offices shall have to compare them with their originals in order to ensure truthfulness.

6. To determine tax calculation values

6.1. In the following cases, tax calculation values shall be determined by the customs offices:

6.1.1. Customs declarers base themselves on unlawful or invalid documents and vouchers or they do not have enough vouchers for tax calculation value determination.

6.1.2. Customs declarers fail to declare or make declarations untruthful to the prices actually paid or to be paid, or adjusting amounts prescribed in Section VII, Chapter II of this Circular.

6.1.3. Customs declarers fail to comply with the provisions on tax calculation value determination in Decree No. 60/2002/ND-CP and the guidance in this Circular.

6.1.4. They have grounds to doubt the accuracy and truthfulness of the declared values, and documents and vouchers already used for determining tax calculation values and have notified such to the customs declarers so that the latter can prove in writing or proceed with consultancy and:

6.1.4.1. Customs declarers fail to prove the contents requested by the customs offices or fail to send proving documents within 30 days counting from the date the post office announces the delivery of written notices of the customs offices until the date the customs declarers send their proving documents, based on the postal stamps; or

6.1.4.2. Customs declarers fail to take part in consultancy and fail to explain the contents at the requests of customs offices.

6.1.5. Customs offices doubt the special ties have affected transaction values but customs declarers fail to prove or fail to send proving documents within 30 days counting from the date the

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post offices announce the delivery of written notices of the customs offices until the date the customs declarers send their proving documents, based on the postal stamps.

6.1.6. Purchasers and sellers have special ties which are not declared by customs declarers.

6.2. Bases and method for determining tax calculation values

The customs offices must base themselves on dossiers of import goods lots and information available at customs offices and the methods for determining tax calculation values prescribed in Decree No. 60/2002/ND-CP and the guidance in this Circular to determine tax calculation values.

6.3. Delayed determination of tax calculation values

In cases where the customs offices do not have enough information for determining tax calculation values within the time limit for carrying out the customs procedures, they shall temporarily accept tax calculation values declared by customs declarers and notify the customs declarers of such temporary acceptance. Within 15 days after the date of registration of import goods declarations, the customs offices shall have to determine the official tax calculation values of the goods lots and notify such in writing to the customs declarers for performance of the obligation to pay tax arrears or to get overpaid tax amounts reimbursed according to the provisions of law.

7. To inspect the contents declared by customs declarers for tax calculation value determination

7.1. Contents and procedures for inspecting and determining tax calculation values are specified by the General Department of Customs for the customs offices of all levels.

7.2. After inspecting the tax calculation value determination's compliance with the provisions of this Circular, the tax calculation values shall be accepted for tax calculation.

7.3. For cases where remains any suspicion after the inspection but there are not enough grounds to conclude on any frauds in the declaration and determination of tax calculation values, they shall consult the customs declarers according to the provisions in Section IV of this Chapter.

IV. CONSULTANCY

1. Cases subject to consultancy

Import goods lots for which the customs offices have doubts about the truthfulness and accuracy of one of vouchers or declared contents related to the determination of tax calculation values but they do not have enough grounds to conclude thereon.

2. Time for conducting consultancy

The consultancy shall be conducted after the goods lots are cleared from customs producers at least 15 days counting from the date the customs offices send written notices to the customs declarers, based on the postal stamps.

When it is necessary to change the time for conducting consultancy, the parties should exchange their opinions and reach agreements, and the final decision on time of consultancy rests with the customs offices.

3. Consultancy procedures

3.1. Preparations for consultancy: the customs offices shall prepare contents, documents and vouchers related to the consultancy. The directors of the customs sub-departments and the equivalent or higher level can decide on the consultancy.

3.2. Notification of consultancy

The customs offices shall notify in writing the customs declarers of reasons for consultancy, contents subject to the consultancy, time and place of conducting consultancy, so that the latter can prepare relevant documents.

3.3. Conducting of consultancy

3.3.1. The customs offices and the customs declarers shall exchange ideas on contents subject to consultancy.

3.3.2. The customs declarers shall supply information, documents and vouchers according to the already notified contents.

3.3.3. Recording of already consulted contents.

3.4. Conclusion of consultancy: The parties taking part in the consultancy shall have to sign consultancy written records.

All contents subject to consultancy must be recorded in writing according to the consultancy form promulgated together with this Circular (not printed herein).

3.5. Processing of consultancy results

Within 5 (five) days after the conclusion of the consultancy, the customs offices shall have to process the consultancy results and notify them to the customs declarers.

3.5.1. If the consultancy is not conducted according to the notices of the customs offices due to absence of the customs declarers without any reasons notified to the customs offices, the customs offices shall re-determine the tax calculation values and notify the customs declarers thereof for implementation.

3.5.2. In cases where the customs declarers have already clarified the truthfulness and objectivity of the contents requested for consultancy, the declared values shall be accepted.

3.5.3. In cases where the customs declarers fail to prove the accuracy and truthfulness of the declared contents, the customs offices shall determine tax calculation values and notify the customs declarers thereof.

3.5.4. In cases where the customs offices still have doubts about the truthfulness of the declared values but they do not have enough grounds to reject them, the declared values shall still be accepted. Dossiers of goods lots shall be transferred to relevant sections for inspection and clarification.

3.5.5. All consultancy dossiers shall be kept together with customs dossier sets.

4. Apart from consulting with the customs declarers, in order to ensure the truthfulness and objectivity of the process of inspecting and determining tax calculation values, the customs offices may gather consulting opinions of the concerned units and agencies.

Chapter IV COMPLAINTS AND HANDLING OF VIOLATIONS

I. COMPLAINTS AND SETTLEMENT THEREOF

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1. Customs declarers may lodge complaints about decisions on determination of tax calculation values of the competent State agencies according to the provisions of law. Written complaints must clearly state grounds and reasons for complaining. Pending the settlement of complaints, the customs declarers shall still have to abide by the customs offices' decisions on tax calculation values.

2. The authorities from the lower to higher levels to settle complaints about tax calculation values include:

2.1. The directors of the customs sub-departments which have issued decisions on tax calculation values.

2.2. The directors of the customs departments of the provinces, cities or inter-provinces.

2.3. The general director of the General Department of Customs.

2.4. The Minister of Finance.

3. The complaint-settling agencies of all levels may reject cases of complaints without any reasons or with unclear reasons, complaints lodged to levels superior to the competent settling level, and notify such to the complainants.

4. In cases where complaints are rejected, the complaint-settling agencies shall have to clearly state and notify in writing the reasons for the rejection to the complainants within the time limit prescribed by law.

5. The time limit and procedures for lodging and settling complaints and the competence to settle complaints shall comply with law provisions on complaints and other relevant provisions of law.

6. The customs declarers may initiate lawsuits at courts according to the law provisions against the customs offices decisions related to the determination of tax calculation values.

II. HANDLING OF VIOLATIONS

1. Organizations and individuals that violate the provisions of Decree No. 60/2002/ND-CP and the guidance in this Circular shall, depending on the nature and seriousness of their violations, be handled according to the provisions of law.

2. Customs officers and employees and other individuals who show irresponsibility or violate the provisions of Decree No. 60/2002/ND-CP and the guidance in this Circular, thus causing damage to tax payers or causing tax losses, shall have to pay compensations therefore according to the provisions of law and, depending on the nature and seriousness of their violations, be disciplined or examined for penal liability according to the provisions of law.

Chapter V ORGANIZATION OF IMPLEMENTATION

1. The General Department of Customs organizes the price information system in service of the inspection and determination of tax calculation values in the customs service.

Un official translation

The customs departments of the provinces, cities and inter-provinces shall have to organize the gathering, processing, reporting and use of price information according to the regulations of the General Department of Customs.

2. This Circular takes effect 15 days after its publication in the Official Gazette.

3. Any problems arising in the course of implementation of this Circular should be reported by the concerned agencies, enterprises and individuals to the Finance Ministry for study and solution.

For the Minister of Finance
Vice Minister
TRUONG CHI TRUNG