

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom - Happiness

No. 146/2017/ND-CP

Ha Noi, December 15, 2017

DECREE

ON AMENDMENTS TO CERTAIN ARTICLES OF THE GOVERNMENT'S DECREE NO. 100/2016/ND-CP DATED JULY 01, 2016 AND DECREE NO.12/2015/ND-CP DATED FEBRUARY 12, 2015

Pursuant to Law on the Government's organization dated June 19, 2015;

Pursuant to Law on Value added tax dated June 03, 2008; Law on amendments to certain articles of Law on value added tax dated June 19, 2013; Law on amendments to certain articles of Law on value added, Law on excise taxes and Law on tax administration dated April 06, 2016;

Pursuant to Law on corporate income tax dated June 03, 2008 and Law on amendments to certain articles of Law on corporate income tax dated June 19, 2013;

Pursuant to Law on amendments to certain articles of tax laws dated November 26, 2014;

At the request of the Minister of Finance;

The Government promulgates the Decree on amendments to certain articles of the Government's Decree No. 100/2016/ND-CP dated July 01, 2016 and Decree No.12/2015/ND-CP dated February 12, 2015.

Article 1. Amendments to certain articles of the Government's Decree No. 209/2013/ND-CP dated December 18, 2013 providing guidelines for certain articles of Law on value added tax and is amended by the Government's Decree No. 100/2016/ND-CP dated July 01, 2016.

1. Clause 11 Article 3 is amended as follows:

“11. Exports that are extracted natural resources having not been processed into other products.

Exports that are products mainly derived from natural resources and/or minerals whose total value plus energy cost makes up at least 51% of the prime cost, except for:

- Exports that are produced from natural resources and minerals directly extracted and processed into other products which are then used for producing the exports by traders or other facilities hired by the traders (through self-contained processing or establishment of workshops and

processing plants in each stage) will be entitled to 0% VAT if the conditions prescribed in Point c Clause 2 Article 12 of Law on value added tax are satisfied.

- Exports that are produced from natural resources and minerals bought and processed into other products which are then used for producing the exports by traders or other facilities hired by the traders (through self-contained processing or establishment of workshops and processing plants in each stage) will be entitled to 0% VAT if the conditions prescribed in Point c Clause 2 Article 12 of Law on value added tax are satisfied.

- Exports that are produced from materials (other than natural resources and minerals that have been processed into other products) bought for processing by traders or other facilities hired by the traders will be entitled to 0% VAT if the conditions prescribed in Point c Clause 2 Article 12 of Law on value added tax are satisfied.

The natural resources and minerals prescribed in Clause 23 Article 5 of Law on value added tax are domestically obtained resources and minerals including metallic minerals, non-metallic minerals, crude oil, natural gas and coal gas.

Value of a processed natural resource or mineral means is determined as follows:

Value of a natural resources and mineral directly extracted is direct or indirect costs of extraction of such natural resource or mineral excluding costs of transport of such natural resource or mineral from place of extraction to place of processing. Value of a natural resource or mineral bought for processing is the actual purchase price excluding costs of transport of such natural resource or mineral from place of purchase to place of processing.

Energy costs include: Fuel, electrical energy and heat energy.

Value rate of a natural resource or mineral and energy cost calculated on the prime cost shall be determined according to the previous year's statement and be applied stably in the exporting year. In the first exporting year, value rate of a natural resource or mineral and energy cost calculated on the prime cost shall be determined according to the investment plan and be applied stably in the exporting year. If there is no investment plan, the abovementioned rate will be determined according to reality.

The Ministry of Finance shall take charge and cooperate with relevant authorities in providing guidelines for determining the extracted natural resources and minerals that have not been processed into other products prescribed in this Clause”

2. Clause 3 Article 10 is amended as follows:

"3. In a month (in case of monthly declaration) or quarter (in case of quarterly declaration), if the input VAT on exported goods/services (including goods that are imported and subsequently exported to non-tariff areas and the goods that are imported and subsequently exported to other countries) of a business entity remains at least VND 300 million after being offset against, it shall be refunded by month or quarter. If such input VAT is less than VND 300 million, it shall be offset against in the next month/quarter. In case a business establishment has both exported

goods/services and goods/services sold domestically and input VAT on exported goods/services that remains at least VND 300 million after being offset against tax payable, it shall be refunded. Input VAT on purchases used for manufacturing of exported goods/services shall be separately recorded. Otherwise, input VAT shall be determined according to the ratio of revenue from exported goods/services to total revenue from goods/services accrued from the tax period succeeding the period in which tax is refunded to the current period in which tax refund is claimed.

VAT will not be refunded if the goods are imported and then exported outside a customs controlled area in accordance with regulations of law on customs or the goods for are exported outside the customs control areas in accordance with regulations of law on customs.

Tax authorities shall grant a refund before inspection if the taxpayer who is a manufacturer of exports has not incurred any penalty for smuggling, illegal cross-border transport of goods, tax evasion, tax fraud, trade fraud for two consecutive years or the taxpayer does not pose a high risk according to the Law on Tax administration and its instructional documents.”

Article 2. Amendments to Point o Clause 2 Article 2 of the Government’s Decree No. 218/2013/ND-CP dated November 26, 2013 providing guidelines for Law on corporate income tax and amended by Clause 7 Article 1 of the Government’s Decree No. 12/2015/ND-CP dated February 12, 2015

“o) The amount in excess of VND 3 million/a month/a person which is paid to voluntary pension fund, purchase of voluntary pension insurance and life insurance for employees; the amount in excess of the limits prescribed by regulations of law on social insurance and health insurance which is paid to social insurance funds (social insurance, compulsory additional pension insurance), health insurance fund, and unemployment insurance fund for employees;

The amount paid to voluntary pension fund, social insurance funds, purchase of voluntary pension insurance and life insurance for employees which is included in deductible expenses shall not exceed the limits prescribed in this Clause and have it requirements and levels of benefits specified in one of the following documents: labor contracts; collective bargaining agreement, the financial regulations of the company, parent company, or corporation; the reward regulations issued by the Chairmen/Chairwomen of the Board of Directors, General Director, or Director in accordance with the financial regulation of the company or parent company;”

Article 3. Effect

This Decree comes into force from February 01, 2018.

Article 4. Implementation

1. The Ministry of Finance shall provide detailed guidelines for this Decree.

2. Ministers, heads of ministerial agencies and governmental agencies, Chairmen/Chairwomen of People Committees of provinces and relevant organizations and individuals are responsible for implementing this Decree.

**P.P GOVERNMENT
PRIME MINISTER**

Nguyen Xuan Phuc