

THE MINISTRY OF FINANCE

Circular No. 159/2012/TT-BTC of September 28, 2012, amending and supplementing Circular No. 152/2011/TT-BTC of November 11, 2011, guiding the Government's Decree No. 67/2011/ND-CP of August 8, 2011, detailing and guiding a number of articles of the Law on Environmental Protection Tax

Pursuant to November 15, 2010 Law No. 57/2010/QH12 on Environmental Protection Tax;

Pursuant to November 29, 2006 Law No. 78/2006/QH11 on Tax Administration, and the government decrees detailing the implementation of the Law on Tax Administration;

Pursuant to the Government's Decree No. 67/2011/ND-CP of August 8, 2011, detailing and guiding a number of articles of the Law on Environmental Protection Tax;

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

At the proposal of the director of the Tax Policy Department;

The Minister of Finance issues the Circular to amend and supplement Circular No. 152/2011/TT-BTC of November 11, 2011, guiding the Government's Decree No. 67/2011/ND-CP (amended and supplemented by the Government's Decree No. 69/2012/DN-CP).

Article 1. To amend and supplement Clause 4, Article 1 as follows:

"4. Taxable plastic bags (plastic bags) are bags made of thin plastic and packages of bag shape (with an open top, a bottom and sides and capable of containing products) and made of high density polyethylene resin (HDPE), low density polyethylene (LDPE) or linear low density polyethylene resin (LLDPE), excluding packages of prepacked goods and plastic bags meeting the environment-friendly criterion as from the date they are granted by a competent agency a certificate of environment-friendly plastic bag under regulations of the Ministry of Natural Resources and Environment.

Packages of prepacked goods (whether or not in the bag shape) referred to in this Clause

are specified as follows:

a/ Packages of prepacked goods include:

a1/ Packages of imported prepacked goods.

a2/ Packages produced or imported by organizations, households and individuals for packaging products which they produce, process or purchase, or for providing packaging services.

Example 1: Enterprise A produces or imports 100 kg of packages (plastic bags) for packaging shoes which it produces, processes or purchases, or for providing packaging services. This quantity of packages is not liable to environmental protection tax.

For packages which producers or importers have committed or declared in the stage of importation to use for packaging products but are later used for exchange, internal consumption or donation, such producers or importers shall declare and pay environmental protection tax and be handled under the law on tax administration.

Example 2: Enterprise A produces or imports 100 kg of packages (plastic bags), which it has committed or declared in the stage of importation to use for packaging shoes which it produces, processes or purchases, or for providing packaging services. If it uses only 20 kg of packages for packaging shoes, 30 kg for exchange, 40 kg for internal consumption and 10 kg for donation, it shall declare and pay environmental protection tax for 80 kg of packages used for exchange, internal consumption and donation, and be handled

under the law on tax administration.

a3/ Packages purchased by organizations, households and individuals directly from package producers or importers for packaging products which they produce, process or purchase, or for providing packaging services.

Example 3: Enterprise B purchases directly from enterprise A (a package producer or importer) 200 kg of packages for packaging shirts (produced, processed or purchased by enterprise B) or for providing packaging services. This quantity of packages is not liable to environmental protection tax.

For packages not used by the purchaser for packaging products (despite its commitment to using purchased packages for this purpose) but used for exchange, internal consumption or sale to other organizations, households or individuals, the purchaser shall declare and pay environmental protection tax to its managing tax agency and be handled under the law on tax administration.

Example 4: Enterprise B purchases directly from enterprise A (a package producer or importer) 200 kg of packages for packaging shoes (according to its commitment to use purchased packages for packaging products) which it produces, processes or purchases, or for providing packaging services. If it uses only 50 kg of packages for packaging shoes, 20 kg for exchange, 30 kg for internal consumption, 40 kg for donation and sells 60 kg to enterprise C, it shall declare and pay environmental protection tax to its managing tax agency for 150 kg of packages used for exchange, internal

consumption, donation and sale, and be handled under the law on tax administration.

a4/ Packages of prepacked goods specified at Items a2 and a3 of this Point exclude shopping bags for containing sold goods.

Example 5: Supermarket A or shop B purchases directly from enterprise C (a producer or importer) 100 kg of plastic bags, including 50 kg for containing goods sold by supermarket A or shop B to customers and 50 kg of plastic bags for packaging products (produced, processed or purchased by supermarket A or shop B) or for providing packaging services. Then, 50 kg of plastic bags for containing goods sold in this case are not packages of prepacked goods.

b/ For produced or imported packages which are identified as packages of prepacked goods specified at Items a2 and a3, Point a of this Clause, the following papers are required:

b1/ For packages produced by organizations, households or individuals (collectively referred to as package producers):

- In case these packages are for packaging products produced or processed by package producers, upon the package production, package producers shall send to their managing tax agencies original written commitments bearing the signatures of their at-law representatives and their seals (if they are legal entities) on their self-production of packages for packaging products (specifying the quantity of packages to be produced, quantity of products to be produced or processed, quantity

of products which need to be packaged, and quantity of packages to be used for packaging products).

- In case these packages are for packaging products purchased by package producers or for package producers to provide packaging services, in addition to original written commitments bearing the signatures of package producers' at-law representatives and seals (in case they are legal entities) on their self-production of packages for packaging products (specifying the quantity of packages to be produced, quantity of products to be purchased or received for packaged, quantity of products which need to be packaged, and quantity of packages to be used for packaging products), package producers shall, upon package production, send to their directly managing tax agencies copies of product purchase and sale contracts (in case of purchase of products for packaging) or copies of product packaging contracts (in case of provision of packaging services) signed directly between them and organizations, households or individuals that sell products or have products to be packaged.

- In case produced packages are sold directly to other organizations, households and individuals (collectively referred to as package purchasers) for packaging products, a package producer must have:

+ A copy of the package purchase and sale contract signed directly between the package producer and the package purchaser.

+ The original written commitment on purchase of packages for packaging products

bearing the signature of the at-law representative and seal of the package purchaser (in case the package purchaser is a legal entity) sent by the package purchaser to the package producer (specifying the quantity of products to be produced or processed in case packages are used to packaging products produced or processed by the package purchaser; the quantity of products to be purchased for packaging in case packages are used to packaging products purchased by the package purchaser; the quantity of products to be received for packaging in case the package purchaser provides packaging services; the quantity of products which need to be packaged or the quantity of packages to be used for packaging).

+ A list of package sale invoices, made according to a set form. When billing a package sale invoice, the package producer shall fill in all items prescribed for value-added invoices (or sale invoices used for establishments paying value-added tax by the direct method), and additionally fill in the line: sold under contract No..., dated..., not liable to environmental protection tax.

b2/ For imported packages, upon importation, package importers shall submit to customs offices custom dossiers of imported packages as prescribed. Importers shall make import declarations for packages for packaging products or for sale directly to package purchasers for packaging products, and take responsibility before law for the declared contents.

Upon sale of imported packages (for packaging products as declared to the customs office) directly to a package purchaser for packaging products, an importer must have:

+ A copy of the package purchase and sale contract signed directly between it and the package purchaser.

+ The original writing commitment on purchase of packages for packaging products bearing the signature of the at-law representative and seal of the package purchaser (if the package purchaser is a legal entity) sent by the package purchaser to the package importer, specifying the quantity of products to be produced or processed in case packages are purchased for packaging products produced or processed by the package purchaser; the quantity of products to be purchased for packaging in case packages are purchased for packaging products purchased by the package purchaser; the quantity of products to be received for packaging in case the package purchaser provides packaging services; and the quantity of products to be packaged and quantity of packages to be used for packaging products).

+ A list of package sale invoices, made according to a set form. When billing a package sale invoice, the package importer shall fill in all items prescribed for value-added invoices (or sale invoices used for establishments paying value-added tax by the direct method), and additionally fill in the line: sold under contract No..., dated..., not liable to environmental protection tax.

In case imported packages have been cleared from customs procedures under law, package importers are not required to make re-declaration for not being liable to environmental protection tax.”

Article 2. To amend and supplement Point 2.4, Clause 2, Article 2 as follows:

“2.4. For goods exported abroad (including also exports processed from imported materials and supplies) directly by producers (including processors) or by entrusted exporters, customs offices will not collect environmental protection tax on these exported goods and imported materials and supplies for export processing upon their importation.

For goods liable to environmental protection tax and purchased by organizations, households or individuals for export, goods producers shall declare and pay environmental protection tax upon goods sale.

Example 6: Enterprise A that imports 40 kg of plastic bags for label printing or for further processing into other products and then exports them is not required to declare and pay environmental protection tax for such 40 kg of imported plastic bags upon importation.

Example 7: Enterprise B that imports 100 kg of termiticide of a kind restricted from use for use as an export processing material is not required to declare and pay environmental protection tax for such 100 kg of imported termiticide upon importation.”

Article 3. To add the following Point 1.4 to

Clause 1, Article 5:

“1.4. For multi-layer plastic bags produced or processed from HDPE, LDPE, LLDPE or other plastic membranes (PP, PA, ...) or of other materials such as aluminum, paper, etc., environmental protection tax shall be determined by the percentage (%) of HDPE, LDPE or LLDPE amount in such multi-layer plastic bags. Based on the amount of HDPE, LDPE or LLDPE permitted for use in the production or processing of multi-layer plastic bags, multi-layer plastic bag producers or importers shall make declarations and take responsibility for their declarations.

Example 8: Enterprise A produces or imports 100 kg of multi-layer plastic bags, which contain 70% of HDPE, LDPE or LLDPE and 30% of other plastic membranes (PP, PA...).

So, the environmental protection tax amount payable by enterprise A for such 100 kg of multi-layer plastic bags is $100 \text{ kg} \times 70\% \times \text{VND } 40,000/\text{kg} = \text{VND } 2,800,000$.

Article 4. To add the following to the end of Point 2.2, Clause 2, Article 7:

“- For petrol, oil and lubricating grease imported for other purposes than sale; lubricating oil and grease imported in separate packages together with airplane parts and spare parts or with machinery and equipment, taxpayers shall declare and pay environmental protection tax to customs offices.

- For petrol and oil delivered and sold with

delivery bills and sale invoices, taxpayers shall declare and pay environmental protection tax according to the volumes indicated in such bills and invoices.”

Article 5. To add the following Point 2.4 to Clause 2, Article 7:

“2.4. For goods liable to environmental protection tax which are produced in inland Vietnam or in non-tariff zones and sold from inland Vietnam to non-tariff zones, within non-tariff zones, between non-tariff zones or imported or exported on the spot (in the Vietnamese territory) (except packages produced for packaging products as specified at Items a2 and a3, Point a, Article 1 of this Circular), goods producers shall declare and pay environmental protection tax.

The identification of exports and imports to be or not to be liable to environmental protection tax shall be carried out upon their exportation or importation across Vietnam’s border.”

Article 6. Effect

1. This Circular takes effect on November 15, 2012.

2. Any problems arising in the course of implementation should be promptly reported to the Ministry of Finance for study and settlement.-

For the Minister of Finance

Deputy Minister

VU THI MAI