

PwC Vietnam NewsBrief

We released a NewsBrief on 4 August to update you on Decree 100/2016/ND-CP on value added tax, special sales tax and tax administration.

The Ministry of Finance has now issued Circular 130/2016/TT-BTC dated 12 August to provide guidance on Decree 100 and amend various tax Circulars. Circular 130's guidance is effective 1 July 2016, which is also the effective date of Law 106/2016/QH13 and Decree 100.

Some of the hoped-for clarifications of Decree 100 are not forthcoming in this new circular, which provides little extra in terms of guidance, especially on special sales tax. However, we set out below some highlights & comparisons of these regulations to give an overview of the current status.

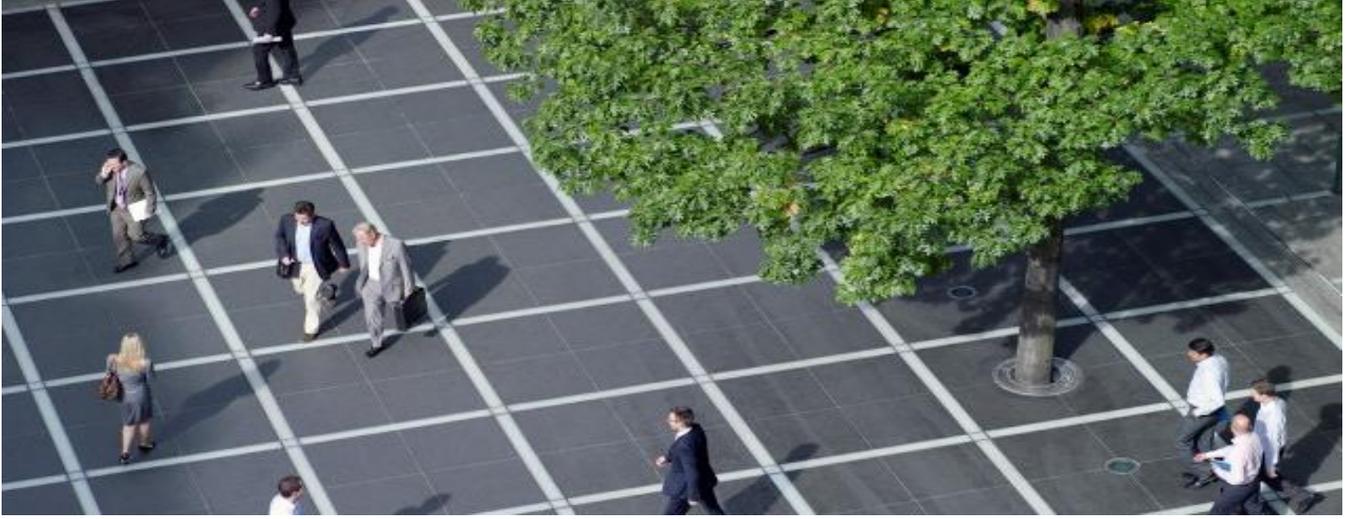
Please contact us if you need further details or wish to discuss the implications for your business.

Law 106	Decree 100 and OL 10315	Circular 130
Value added tax ("VAT")		
VAT refunds will no longer be allowed (except in certain cases like exporters). Taxpayers have to carry forward input VAT instead.	OL 10315 requires tax authorities to continue receiving and handling VAT refund applications for any creditable input VAT incurred prior to July 2016 (for monthly VAT declaration) and quarter 3/2016 (quarterly declaration).	Circular 130 reiterates the guidance of Decree 100 and OL 10315.
VAT refunds shall not be granted for conditional investment projects which do not satisfy the regulated conditions.	Decree 100 provides guidance to identify these projects, which include projects which have not been granted a license or certificate of fulfilment of the required conditions, or whose license/certificate has been withdrawn, or which have been investigated and deemed by the authorities as not having satisfied the applicable conditions.	Circular 130 reiterates Decree 100's guidance.
For exporters, VAT refunds continue to be available subject to the VND300 million threshold.	Decree 100 stipulates that companies having both domestic sales and exports must record input VAT for exports separately. If input VAT cannot be separately attributed, input VAT related to exports will be determined using the ratio of export revenue over total revenue.	Circular 130 introduces a new threshold for VAT refunds for exports. The amount of input VAT relating to export sales (meeting criteria for VAT refund) that can be refunded to a taxpayer must not exceed 10% of their export revenue. Circular 130 does not provide further guidance on this point but this seems to be a timing issue only.
VAT refunds are not granted to companies that import goods and then export.	Decree 100 does not provide further guidance on this matter.	Circular provides an example in which the company importing the goods exports the goods without further processing. In this case, both the import VAT and the input VAT related to the transportation & storage of the goods cannot be refunded, and can only be carried forward for offset.

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in the publication, and, to the extent permitted by law, PwC does not accept or assume any liability, responsibility or duty or care for any consequences of you or anyone else acting or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

PwC Vietnam NewsBrief

Law 106	Decree 100 and OL 10315	Circular 130
Value added tax (“VAT”) - continued		
VAT refunds are not granted for investment projects of companies whose charter capital has not yet been completely contributed.	Decree 100 does not provide further guidance on this matter.	Circular 130 states that this rule is applied to VAT refund requests submitted from 1 July 2016. The status of charter capital contribution to consider a VAT refund request is determined as at the date the request is submitted.
For exporters, the “VAT refund first, tax audit later” scheme is not available for taxpayers which have violated any tax and customs regulations in recent years.	Decree 100 defines these violations: smuggling, tax evasion, fraud (the scope of violation appears to be narrower than that in the Law).	Circular 130 reiterates Decree 100’s guidance.
<p>The following goods are added to the VAT exempt list:</p> <ul style="list-style-type: none"> - exported natural resources which are unprocessed or processed with at least 51% of their costs being natural resources and energy. - elderly/disabled people care services. 	<p>Decree 100 defines these goods and services more closely:</p> <ul style="list-style-type: none"> - natural resources are those sourced domestically and include metallic and non-metallic minerals, crude oil, natural gas and coal gas. Energy costs include fuel, electricity and heat. - care services include medical and nutritional care, organization of cultural, physical and recreation activities, physical therapy, rehabilitation. 	<p>Circular 130 provides a formula to calculate the percentage of natural resources and energy in the total costs, as follows:</p> $\% \text{ of natural resources and energy costs} = \frac{\text{Costs of natural resources and energy as defined}}{\text{Total production costs}}$ <p>Costs of natural resources and energy are determined per accounting records.</p> <p>Total production costs include direct materials costs, direct labour costs and production overheads, and exclude selling, G&A, financial and other costs.</p> <p>The above elements are determined based on prior year records. For newly established companies, these are based on the investment plan.</p>



Law 106	Decree 100 and OL 10315	Circular 130
<p>Special Sales Tax (“SST”)</p>		
<p>Where manufactured or imported goods are subsequently sold by a trading entity which has the following relationship with the manufacturer or importer:</p> <ul style="list-style-type: none"> i) parent – subsidiary; ii) same parent; or iii) related party, <p>the SST taxable price must not be less than “a percentage” of the average selling price of trading entities purchasing goods directly from the manufacturer/importer.</p>	<p>Decree 100 provides the following guidance:</p> <ul style="list-style-type: none"> - “a percentage” is 7%. - Companies that are related (one holds directly or indirectly at least 20% of the other) are also subject to the 7% rule. - The price serving as the basis to calculate the 7% is the price charged by the dependent/related trading entity selling to independent/non-related trading entities or customers. This is applicable to both single level and multi-level dependent/related trading entities. In contrast, under Circular 195/2015, the price was the selling price of the independent trading entity. - The 105% rule applicable to imported cars previously stipulated in Circular 195/2015 is removed. 	<p>Circular 130 reiterates Decree 100’s guidance.</p>
<p>Tax administration</p>		
<p>Interest on late tax payment is decreased to 0.03%/day (approximately 11% per annum). For overdue tax, including overdue tax recaptured in tax audits, related to periods prior to 1 July 2016 but not yet settled as at 1 July 2016, the interest shall be calculated by applying the new rate from 1 July 2016 onwards only.</p>	<p>OL 10315 clarifies that this provision is applied for both overdue tax and under-declared tax liabilities (either self-assessed by tax payers or assessed by the tax authorities as a result of a tax audit). The 0.03% rate is only applied from 1 July 2016. 0.05% late payment interest (or other rate applicable to respective periods) is still applied from the date the tax liability was incurred up to 30 June 2016.</p>	<p>Circular 130 reiterates the guidance of OL 10315.</p>