

THE MINISTRY OF FINANCE

Circular No. 93/2011/TT-BTC of June 29, 2011, amending and supplementing Circular No. 117/2004/TT-BTC of December 7, 2004, guiding the implementation of the Government's Decree No. 198/2004/ND-CP of December 3, 2004, on land use levy collection

Pursuant to the November 26, 2003 Land Law;

Pursuant to the Government's Decree No. 181/2004/ND-CP of October 29, 2004, on

implementation of the Land Law;

Pursuant to the Government's Decree No. 198/2004/ND-CP of December 3, 2004, on land use levy collection;

Pursuant to the Government's Decree No. 120/2010/ND-CP of December 30, 2010, amending and supplementing a number of articles of the Government's Decree No. 198/2004/ND-CP of December 3, 2004, on land use levy collection;

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;

The Finance Ministry amends and supplements Circular No. 117/2004/TT-BTC of December 7, 2004, guiding the implementation of the Government's Decree No. 198/2004/ND-CP of December 3, 2004, on land use levy collection (amended and supplemented under the Government's Decree No. 120/2010/ND-CP of December 30, 2010), as follows:

Article 1. To amend and supplement Section IV, Part A (guiding Clause 1, Article 2 of Decree No. 120/2010/ND-CP) as follows:

"1. Land prices used for land use levy calculation

1.1. In case business organizations, households or individuals are allocated land by the State with land use levy collection not through land use right auction, land prices used for land use levy collection are those based on land use purposes at the time of issuance of land allocation decisions of competent state agencies; in case the time of land hand-over does not coincide with the time of allocation

indicated in the land allocation decision, the land price used for land use levy calculation is that based on the land use purpose at the time of actual land hand-over.

The time of actual land hand-over shall be determined as follows:

a/ For cleared land, the time of actual land hand-over is the time of issuance of decision on land allocation of a competent state agency.

b/ For uncleared land, the time of actual land hand-over is the time of hand-over of land cleared according to the land hand-over schedule stated in the approved investment project; in case the time of completion of ground clearance does not keep to the land hand-over schedule indicated in the approved investment project, the time of actual land hand-over is that of hand-over of cleared land in the field.

For a project with a ground clearance period of two or more years which does not indicate a land hand-over schedule, the actual land hand-over shall be carried out annually according to the actual completion of land clearance in the field.

1.2. In case an economic organization is permitted by a competent state agency to change the land use purpose for carrying out a production and business project or housing project, the land price used for land use levy calculation is that based on the new land use purpose at the time of issuance of the decision of competent authorities permitting the land use purpose change.

1.3. In case a household or an individual has been granted by a competent state agency a certificate (written recognition) of the land use rights for the land currently in use or with a changed use purpose, the land price used for

land use levy calculation is that based on the land use purpose according to the land use right certificate or the new land use purpose at the time of submission of a complete and valid dossier of application for a land use right certificate or for permission to change the land use purpose as required by the natural resources and environment agency.

1.4. Land prices for land use levy calculation under Clause 1, Article 2 of Decree No. 120/2010/NĐ-CP are those prescribed by provincial-level People's Committees. In case land prices prescribed by provincial-level People's Committees fail to match actual market land use right transfer prices under normal circumstances, provincial-level People's Committees shall base on actual market prices to decide on specific land prices as appropriate. Particularly, in case a household or an individual has been granted a residential land use right certificate (written recognition) for a land area which is currently in use within the use (allocation) limit of residential land or is permitted for land use purpose change within the use (allocation) limit of residential land, the land price for land use levy calculation is that prescribed by the provincial-level People's Committee at the time of declaration and submission of a complete and valid dossier of application for a land use right certificate or for permission to change land use purpose to the natural resources and environment agency.

Land prices prescribed or decided by provincial-level People's Committees are specifically guided as follows:

a/ Land prices prescribed by provincial-level People's Committees are those in the land price tariffs promulgated and announced by provincial-level People's Committees on

January 1 every year;

b/ Land prices decided by provincial-level People's Committees are specific land prices of each land plot under the approved planning for land use levy calculation in case land prices in the land price tariffs promulgated by provincial-level People's Committees fail to match actual market land use right transfer prices under normal circumstances and must be re-determined to match actual prices.

The methods of determining land prices for land use levy calculation comply with the Government's regulations.

1.5. The determination of land prices to match actual market land use right transfer prices referred to at Point 1.4 of this Clause shall be carried out as follows:

1.5.1. For economic organizations:

a/ Based on dossiers as prescribed, provincial-level Finance Departments shall coordinate with related provincial-level Departments and agencies in determining land prices for land use levy calculation, and submit them to provincial-level People's Committees for decision in either of the following two forms:

- In case the land price prescribed by the provincial-level People's Committee matches market land use right transfer prices under normal circumstances, the provincial-level Finance Department shall propose the provincial-level People's Committee to decide on the application of such land price to land use levy calculation.

- In case the land price prescribed by the provincial-level People's Committee fails to match market land use right transfer prices under normal circumstances, the provincial-level Finance Department shall assume the

prime responsibility for, and coordinate with the provincial-level Natural Resources and Environment Department, Tax Department and related agencies in, re-determining specific land prices, and submit them to the provincial-level People's Committee for decision.

Based on the actual local situation, the provincial-level Finance Department shall hire a price appraisal organization to determine land prices, which shall be appraised by the provincial-level Finance Department in coordination with the provincial-level Natural Resources and Environment Department, Tax Department and related agencies, and submitted to the provincial-level People's Committee for decision and application on a case-by-case basis.

In case a locality is unable to hire a price appraisal organization or the land plot value is small (calculated according to the land price tariff promulgated by the provincial-level People's Committee): under VND 15 billion in centrally run cities; under VND 5 billion in mountainous and highland provinces; and under VND 10 billion in remaining provinces, the provincial-level Finance Department shall report it to the provincial-level People's Committee for permission for coordination with the provincial-level Natural Resources and Environment Department, Tax Department and related agencies in determining the land price and submitting it to the provincial-level People's Committee for decision.

The selection of price appraisal organizations complies with the price appraisal law.

Expenses in relation to the determination of land prices for land use levy calculation shall be covered by budget funds under the state budget law.

b/ Based on land prices decided by provincial-level People's Committees and cadastral information transferred by provincial-level Natural Resources and Environment Departments, provincial-level Tax Departments shall determine and notify payable land use levies to organizations with allocated land or permitted to change land use purpose, for payment according to regulations.

c/ Within 10 working days from the date of actual land hand over or decision to permit land use purpose change, economic organizations shall come to competent state agencies defined in provincial-level People's Committees' regulations on the process of coordination among local functional agencies in the transfer of dossiers and determination, collection and remittance of land-related financial obligations (at Point 1.3, Clause 1, Article 9 of this Circular) to declare their land use levy obligations. Past this time limit, if failing to make such declaration, they shall be penalized by tax agencies for late declaration under the tax administration law.

1.5.2. For households and individuals:

a/ In case of grant of residential land use right certificates (recognition of land use rights) for land currently in use, and change of non-residential land currently in use to residential land, based on dossiers of declaration for land use levy payment and cadastral information transfer slips for determination of land use levies of households or individuals, district-level Tax Departments shall determine payable land use levies on the following grounds:

- For land areas within the residential land use (allocation) limit, land prices prescribed by provincial-level People's Committees at the time of submission of complete and valid dossiers;

- For land areas in excess of the residential land use (allocation) limit, land prices prescribed by provincial-level People's Committees and land price adjustment co-efficients. In case of land use purpose change, the difference between land use levies based on the new and old purposes shall be also determined according to the corresponding adjustment co-efficient applicable to each category of land.

Land price adjustment co-efficients shall be determined by the provincial-level Finance Department in coordination with the provincial-level Natural Resources and Environment Department and Tax Department and related agencies and submitted to the provincial-level People's Committee for decision in case of collection of land use levies from households and individuals for land areas in excess of the prescribed limit in the same locality where exist different cases for which market land prices must be determined for land use levy calculation. Such co-efficient shall be determined based on the ratio between the (prevailing) actual market land transfer price under normal circumstances at the time of determination and the land price prescribed by the provincial-level People's Committee.

- The determination of land area within the prescribed limit for land use levy calculation referred to at this Point applies only to a single land plot. In case a household or an individual has more than one land plot, the land user may choose one of them for determining the area within the limit. The provincial-level Tax Department shall propose the provincial-level People's Committee to promulgate a regulation guiding households and individuals to make commitments and take responsibility before law for their declaration of land use levies in their

submitted dossiers of application for land use right certificates.

b/ In case of allocation of new residential land or grant of land use right certificates for non-agricultural production and business land areas and application for permission to convert agricultural land into non-agricultural production and business land, based on dossiers of declaration for land use levy payment and cadastral information transfer slips for determination of land use levies of households or individuals, district-level Tax Departments shall determine payable land use levies applicable to economic organizations under Point 1.5 (1.5.1) of this Clause.

c/ Based on land use levies determined under Item a and land prices for land use levy calculation decided by competent agencies under Item b, Point 1.5 (1.5.2) of this Clause, district-level Tax Departments shall notify or determine and notify land use levies payable by households and individuals according to regulations.

2. The allocation of land use levy for multi-story buildings attached to land which is allocated by the State to multiple users shall be carried out as follows:

2.1. For construction works being high rises, apartment buildings, houses with mixed use purposes (excluding the cases specified at Point 2.2 of this Clause), land use levy shall be allocated to each user according to the allocation co-efficient multiplied by the housing area of each user as follows:

a/ The allocation co-efficient shall be determined to be the ratio between house construction land area and total house area of users.

b/ For houses with basements, 50% of the

basement area shall be added to the total house area of users for calculating the allocation coefficient.

2.2. For the sale of houses under state ownership under the Government's Decree No. 61/CP of July 5, 1994, land use levy shall be allocated under this Decree."

Article 2. To add Section V to Part A (guiding Clause 2, Article 2 of Decree No. 120/2010/ND-CP) as follows:

"V. Subtraction of compensation and ground clearance money.

1. For cases with compensation and ground clearance plans approved by competent authorities:

In case organizations or individuals that are allocated land by the State and pay land use levies have paid advances for compensation, support, resettlement and organization of ground clearance compensation according to approved plans, they shall be refunded by the state budget in the form of subtraction of the whole advances paid under approved plans from payable land use levies.

If the advances paid for compensation, support, resettlement and organization of ground clearance compensation according to approved plans are higher than payable land use levies, only the amount equal to the payable land use levy may be subtracted. The remainder shall be included in project investment expenses, while the amount already subtracted from the payable land use levy is not allowed to be included in project investment expenses.

In case organizations or individuals that are allocated land and local administrations have otherwise agreed upon land allocation (for example, sparing part of land with infrastructure

to the locality for implementing social policies or meeting local needs), expenses arising from such agreement are not allowed to be subtracted from the payable land use levy.

(Example 1 in an appendix to this Circular, not printed herein)

2. For cases without compensation and ground clearance plans approved by competent authorities:

In case investors receive by themselves lawful land use rights transferred from organizations and individuals or reach agreement on compensation and ground clearance expenses, when they are permitted by competent authorities to change the land use purpose for implementing investment projects under approved plans, they are not allowed to subtract but must pay land use levies based on the difference between the land prices according to the new and old use purposes at the time of land use purpose change.

The above land prices according to new and old land use purposes used for calculating land use levy differences are those decided by provincial-level People's Committees. Land prices decided by provincial-level People's Committees (for the old purpose) are lower than land prices used for calculating compensation and support amounts upon land recovery by the State, and at the same time, land prices used for calculating compensation and support amounts shall be used."

Article 3. To amend and supplement Point 3, Section III, Part B (guiding Clause 3, Article 2 of Decree No. 120/2010/ND-CP) as follows:

"3. In case land users are permitted to shift from land lease to land allocation with land use levy collection and have paid land rents, they

are allowed to subtract land rent amounts already paid for the remaining duration (if any) from payable land use levies on the principle of preservation of paid sums of money as follows:

The unsubtracted sum of money (mentioned above) shall be converted into a percentage (%) of paid land use levy at the time a land user paid land rent to the State, which, however, must not exceed the payable land use levy. The land price used for land use levy calculation at the time a land user paid land rent to the State for conversion into a percentage (%) of paid land use levy must be determined according to the new use purpose under approved planning when permitted to shift from land lease to land allocation with land use levy collection.

For the remaining percentage (%) of land area permitted for shifting from lease to allocation with land use levy payment, land use levy shall be paid according to the policy and land price at the time of shifting under the guidance in Clause 1, Article 1 of this Circular.

(Example 2 in an appendix to this Circular, not printed herein)

Article 4. To add one content to the end of Section IV, Part B (guiding Clause 4, Article 2 of Decree No. 120/2010/ND-CP) as follows:

“The determination of residential land prices decided by provincial-level People’s Committees to match actual market land use right transfer prices at the time of grant of land use right certificates for areas in excess of the residential land allocation limit for land use levy calculation under Clauses 4 and 5, Article 8 of Decree No. 198/2004/ND-CP (supplemented under Clause 4, Article 2 of Decree No. 120/2010/ND-CP) shall be carried out according to

Point 1.5, Clause 1, Article 1 of this Circular.”

Article 5. To amend and supplement Point 4, Section I, Part C (guiding Clause 5, Article 11 of Decree No. 198/2004/ND-CP amended under Clause 5, Article 2 of Decree No. 120/2010/ND-CP) as follows:

“4. For land users who enjoy land use levy exemption or reduction under Clauses 1, 2, 3 and 4, Article 12; and Clauses 1 and 3, Article 13 of Decree No. 198/2004/ND-CP (amended and supplemented correspondingly in Clauses 2 and 3, Article 1 of Decree No. 44/2008/ND-CP) but then are permitted by competent authorities to transfer their projects, their financial obligations are as follows:

4.1. For transferors:

Transferors may not include exempted or reduced land use levy amounts in transfer prices.

4.2. For transferees:

a/ If the transferees continue to implement the projects, they will further enjoy land use levy exemption or reduction under the investment law for the remaining duration of the project;

b/ If the transferees cease to implement the projects, they shall pay land use levies under the land law for the projects after they are transferred;

c/ If the transferors have performed part of the land-related financial obligation, the transferees are allowed to take over the part of the obligation already paid by the transferors.”

Article 6. To add Point 5 to Section II, Part C (guiding Clause 6, Article 2 of Decree No. 120/2010/ND-CP) as follows:

“5. To exempt land use levy for land areas

allocated for use for hydropower reservoirs. In this case, the area of hydropower reservoir is the special-use water surface defined at Point i, Clause 2, Article 13 of the 2003 Land Law, as determined by the natural resources and environment agency.”

Article 7. To add Section IIa to Section II, Part D (guiding Clause 8, Article 2 of Decree No. 120/2010/ND-CP) as follows:

“IIa. Procedures for recording and payment of owed land use levy.

1. The recording of owed land use levy for cases specified in Clause 4, Article 15 of Decree No. 198/2004/ND-CP (supplemented under Clause 8, Article 2 of Decree No. 120/2010/ND-CP) shall be carried out as follows:

1.1. Households and individuals eligible to owe land use levy under Clause 8, Article 2 of Decree No. 120/2010/ND-CP shall file written requests for land use levy owing together with relevant documents with the land use right registration offices (or district-level Natural Resources and Environment Sections) of district-level People’s Committees of localities where their land areas are located.

1.2. Land use right registration offices (or district-level Natural Resources and Environment Sections) shall appraise such requests and propose district-level People’s Committees to grant land use right certificates in which the owed financial obligation (including land use levy) is recorded. Then they shall make cadastral information slips and transfer them together with a copied dossier set to the same-level tax agency for determining the land use levies to be paid by households or individuals under Item a, Point 1.5 (1.5.2), Clause 1, Article 1 of this Circular, and open a

register for monitoring the payment of owed land use levies. Such register contains details on land areas within and in excess of the prescribed limit.

2. The payment of owed land use levy shall be made as follows:

2.1. When paying the owed levy, the land user shall come to the tax agency to make payment declaration. The tax agency shall base itself on the register for monitoring owed land use levies to carry out procedures for households and individuals to pay owed levies.

If a household or an individual pays the owed levy after five years or cannot fully pay the owed levy within five years, the levy owed with respect to each type of land area, within or in excess of the prescribed limit, shall be converted into a percentage (%) of unfulfilled financial obligation (being the owed levy divided by total levy calculated according to the land price at the time of grant of the land use right certificate) multiplied by the levy re-determined according to the land price at the time of levy payment.

The land price used for land use levy calculation at the time of levy payment is that prescribed by the provincial-level People’s Committee (for land areas within the land allocation limit) or decided by the provincial-level People’s Committee (for land areas in excess of the limit).

2.2. After the land user fully pays the owed levy, the tax agency shall issue a notice or certificate to the land user for the latter to come to the land use right registration office (or district-level Natural Resources and Environment Section) to carry out procedures for having the owed levy deleted in the land use right certificate.

3. Before transferring their land areas, households or individuals permitted to owe land use levies shall fully pay the owed levies. If they are allowed to transfer part of a land plot, the natural resources and environment agency shall carry out procedures to split the land plot for the tax agency to determine the land use levy corresponding to the transferred part. In case of inheriting land use rights for which the estate leaver has not yet paid land use levy, the heir is obliged to pay the owed levy under the inheritance law.”

(Example 3 in an appendix to this Circular, not printed herein)

Article 8. Handling of problems in land use levy payment

1. In case a household or an individual has declared and submitted a complete and valid dossier of application for a land use right certificate for a land plot currently in use or for permission for conversion of a land plot currently in use for a non-residential purpose to residential purpose to a competent state agency before March 1, 2011, land use levy shall be collected under regulations applicable before the effective date of Decree No. 120/2010/ND-CP.

2. In case a household or an individual is permitted to owe land use levy under Clause 4, Article 5 of the Government's Decree No. 17/2006/ND-CP of January 27, 2006, it/he/she will be allowed to pay the owed levy according to the sum recorded in its/his/her certificate.

3. In case a household or an individual is permitted to owe land use levy under Clause 1, Article 5 of the Government's Decree No. 84/2007/ND-CP of May 25, 2007, it/he/she will be allowed to pay the owed levy under Clause

8, Article 2 of the Government's Decree No. 120/2010/ND-CP, specifically:

3.1. If, within five years from March 1, 2011 (effective date of Decree No. 120/2010/ND-CP), the household or individual comes to a tax agency for declaring and paying the owed levy, it/he/she will be allowed to pay it according to the land price at the time of grant of the land use right certificate. Land use levies for land areas within and in excess of the limit shall be determined under Item a, Point 1.5 (1.5.2), Clause 1, Article 1 of this Circular.

3.2. If the household or individual can only fully pay the owed levy after five years or cannot fully pay it within five years, it/he/she shall pay the owed levy under Point 2.1, Clause 2, Article 7 of this Circular.

Article 9. Organization of implementation.

1. Provincial-level People's Committee shall:

1.1. Direct finance and tax agencies and state treasuries to coordinate with related agencies in determining and collecting land use levies under the guidance in this Circular;

1.2. Examine and handle according to their competence violations and complaints and denunciations related to the determination and collection of land use levies.

1.3. Establish a process for coordination among local functional agencies in the transfer of dossiers and determination and collection of land-related financial obligations stipulated in Clause 1, Article 1 of this Circular and a process for recording and payment of owed levies stipulated in Article 7 of this Circular to suit the practical situation of their localities, clearly deterring time limits and responsibilities of each agency, unit and land user with respect to the

declaration, determination and performance of financial obligations.

2. This Circular takes effect on August 15, 2011.

Cases arising from March 1, 2011, shall be dealt with under Decree No. 120/2010/ND-CP of December 30, 2010, and the guidance in this Circular.

To annul the Ministry of Finance's Circular No. 70/2006/TT-BTC of August 2, 2006, amending and supplementing a number of contents of Circular No. 117/2004/TT-BTC of December 7, 2004.

If 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
NGUYEN HUU CHI