

Circular No. 94/2011/TT-BTC of June 29, 2011, amending and supplementing the Finance Ministry's Circular No. 120/2005/TT-BTC of December 30, 2005, guiding the Government's Decree No. 142/2005/ND-CP of November 14, 2005, on collection of land rents and water surface rents

Pursuant to the November 26, 2003 Land Law;

Pursuant to the Government's Decree No. 142/2005/ND-CP of November 14, 2005, on

centers, traffic hubs or populous areas, which can yield special profits or be used as ground for production, business, trade or service activities, provincial-level People's Committees shall, based on the local situation, decide on the percentage for calculating the land rent rate which must not exceed two (2) times the rate provided at Point 1.1 of this Clause.

1.3. For land in deep-lying, remote and mountainous areas, islands, and areas with socio-economic difficulties or exceptional socio-economic difficulties on the Government-promulgated list; land used for agricultural production, forestry, aquaculture or salt making; land used as ground for production or business activities, of projects in the sectors entitled to investment promotion or special investment promotion on the Government-promulgated list, provincial-level People's Committees shall, based on the local situation, decide on the percentage for calculating the land rent rate, which must be at least half of the rate provided at Point 1.1 of this Clause.

1.4. When using land, if a land lessee changes the land use purpose from that indicated in the land lease contract, he/she/it shall request the natural resources and environment agency to modify the land lease contract. Based on the modified contract, the tax agency shall re-determine the land rent corresponding to the use purpose of the rented land under regulations.

1.5. Land rent rates for construction of underground works are provided as follows:

a/ For construction of underground works not attached to terrestrial construction works (not using the surface area), the land rent rate must not exceed 30% of the land rent rate for the surface area used for the same purpose of

the underground works. Specific rent rates shall be decided by provincial-level People's Committees in conformity with their local situation;

b/ For construction of underground works attached to underground sections of terrestrial construction works with the area for underground works larger than the surface area with payable land use levy or land rent, the land rent rate for the excessive area shall be set under Item a of this Point.

1.6. In case the land price set by a provincial-level People's Committee at the time of land lease as the basis for calculating the land rent rates provided at Point 1.1, 1.2, 1.3, 1.4 or 1.5 of this Clause does not match the actual market price of land use right transfer under normal conditions, the provincial-level People's Committee shall, based on the actual market price, decide on a specific price as appropriate.

1.7. Provincial-level People's Committees shall prescribe use purposes of rented land and land prices. Land prices decided by provincial-level People's Committees under Points 1.1, 1.2, 1.3, 1.4 and 1.5 of this Clause are guided as follows:

a/ The use purpose of rented land is that indicated in the land lease decision. When such decision is unavailable or does not indicate the land use purpose, the use purpose of rented land is that indicated in the land lease contract;

b/ The land price prescribed by the provincial-level People's Committee is that provided in the land price bracket promulgated and announced by the provincial-level People's Committee on January 1 every year.

c/ The land price decided by the provincial-level People's Committee is the specific land price re-determined for each land plot under the

approved planning in case the land price provided in the provincial-level People's Committee's land price bracket does not match the actual market price of land use rights transfer under normal conditions.

Methods of determining the land price for calculating land rents comply with the Government's regulations.

2. Land rent rates for lump-sum payment for the whole rent duration:

For land rent to be paid in lump sum for the whole rent duration, the payable land rent amount is equal to the payable land use levy amount for land allocation with land use levy payment for the same use purpose and land use duration.

(Example 1 in the Appendix to this Circular, *not printed herein*).

3. Land rent rates for auction of rented land use rights:

3.1. For auction of rented land use rights with lump-sum payment for the whole rent duration, the land rent rate is the winning bid. The payable land rent amount is equal to the winning bid (price of land allocated at the winning bid) multiplied by (x) the rented land area (equal to the payable land use levy for auction for land allocation with land use levy payment).

The reserve price for auction of rented land use rights is equal to the land allocation price with use levy payment for land in the same position, for the same use purpose and with the same land use duration and shall be decided by the provincial-level People's Committee at the proposal of the provincial-level Finance Department, which must not be lower than the land price prescribed by the provincial-level People's Committee.

(Example 2 in the Appendix to this Circular).

3.2. For auction of rented land use rights with annual rent payment, the land rent rate is the winning bid. The reserve price for auction is the land rent rate which is equal to the land price proposed by the provincial-level Finance Department for decision by the provincial-level People's Committee (which must not be lower than the land price provided in the land price bracket promulgated by the provincial-level People's Committee) multiplied by (x) the rate (%) provided at Point 1.1, 1.2 or 1.3, Clause 1 of this Article.

The land rent rate in this case shall be kept unchanged for 10 years. After this period, the land price for calculating the land rent rate shall be adjusted on the following principles:

a/ In case the land price prescribed and announced by the provincial-level People's Committee at the time of adjustment increases by less than 20% from the winning bid or the land price for calculating the land rent rate applicable to the preceding stabilization period, the land price bracket prescribed by the provincial-level People's Committee at the time of adjusting the land rent rate for determination of the land rent rate applicable to the subsequent stabilization period (10 years) will apply, provided that the land rent rate applicable to this period must not exceed 30% of the winning bid or the land rent rate applicable to the preceding stabilization period.

b/ In case the land price prescribed and announced by the provincial-level People's Committee at the time of adjustment increases by 20% or more from the winning bid or the land price for calculating the land rent rate applicable to the preceding stabilization period, the provincial-level Finance Department shall

assume the prime responsibility for determining the land price adjustment coefficient under Item b, Point 4.1 (4.1.2), Clause 4 of this Article and propose it to the provincial-level People's Committee for decision. This coefficient will serve as a basis for the provincial-level Finance Department (for land lessees being economic organizations, overseas Vietnamese and foreign organizations and individuals) or the district-level People's Committee (for land lessees being households and individuals) to adjust the land rent rate applicable to the subsequent stabilization period (10 years) which must not exceed 30% the land rent rate applicable to the preceding stabilization period.

(Example 3 in the Appendix to this Circular).

4. Determination of the specific land price for calculating the first land rent rate in case of land rent with annual rent payment:

4.1. For economic organizations, overseas Vietnamese and foreign organizations and individuals:

Based on land lease dossiers under regulations, the provincial-level Finance Department shall coordinate with concerned agencies in considering the conformity of the land price prescribed by the provincial-level People's Committee with the actual market price under normal conditions for determining the land price as a basis for calculating the land rent rate to be proposed to the provincial-level People's Committee for decision as follows:

4.1.1. In case the land price prescribed by the provincial-level People's Committee matches the actual market price of land use rights transfer under normal conditions at the time of determining the land rent rate, the land price prescribed and announced on January 1 every year by the provincial-level People's

Committee will apply for determining the land rent rate.

4.1.2. In case the land price prescribed by the provincial-level People's Committee does not match the actual market price of land use rights transfer under normal conditions at the time of determining the land rent rate, a land price conformable with the actual market price of land use rights transfer under normal conditions shall be determined for calculating the land rent rate; specifically as follows:

a/ For a land plot of high value (calculated at the price provided in the land price bracket promulgated by the provincial-level People's Committee): VND 15 billion or higher, for centrally run cities; VND 5 billion or higher, for mountainous and highland areas; VND 10 billion or higher, for remaining provinces. The provincial-level People's Committee shall decide on the land price for calculating the land rent rate applicable to each specific land plot.

The market land price for determining the land rent rate in this case shall be determined by a licensed price appraisal organization hired by the provincial-level Finance Department. The provincial-level Finance Department shall coordinate with the provincial-level Natural Resources and Environment Department and Tax Department, and concerned agencies in appraising the price determined by the price appraisal organization and propose the provincial-level People's Committee to decide on the land price for calculating the land rent rate on a case-by-case basis. In case the locality does not have the conditions to hire a price appraisal organization, the provincial-level Finance Department shall request the provincial-level People's Committee's permission for coordinating with the provincial-

level Natural Resources and Environment Department and Tax Department and concerned agencies in determining the price and propose it to the provincial-level People's Committee for decision.

Price appraisal organizations shall be selected under the law on price appraisal.

Funds for the determination of the land price for calculating the land rent rate will come from the state budget under the state budget law.

b/ For a land plot of low value (lower than the levels specified at Item a of this Point for each area), to simplify administrative procedures, the provincial-level Finance Department shall assume the prime responsibility for proposing the provincial-level People's Committee to consider and decide on the application of the land price coefficient for determination of the land price for calculating the land rent rate.

The provincial-level Finance Department shall assume the prime responsibility for, and coordinate with the provincial-level Natural Resources and Environment Department and Tax Department and concerned agencies in, determining the land price adjustment coefficient and propose it to the provincial-level People's Committee for decision. This coefficient is equal to the rate (%) of the (common) actual market price of land transfer under normal conditions to the land price prescribed by the provincial-level People's Committee under the land price bracket.

4.2. For households and individuals:

Based on land lease dossiers and fluctuations between the actual market land price and the land price prescribed by the provincial-level People's Committee, the district-level People's Committee shall:

a/ Apply the land price prescribed by the provincial-level People's Committee for determining the land rent rate applicable to households and individuals in the district in case the land price prescribed by the provincial-level People's Committee matches the actual market price of land use rights transfer under normal conditions at the time of determination of the land rent rate;

b/ In case the land price prescribed by the provincial-level People's Committee does not match the actual market price of land use rights transfer under normal conditions at the time of determination of the land rent rate, the district-level People's Committee shall request the provincial-level Finance Department to determine the land price for calculating the land rent rate applicable to households and individuals under Point 4.1 (4.1.2) of this Clause.

5. The specific land price for adjusting the land rent rate at the end of the stabilization period in case of land rent with annual rent payment shall be determined based on land rent dossiers, the prescribed time limit for adjustment of the land rent rate and principles of land rent rate adjustment provided in Article 4 of this Circular as follows:

5.1. In case of application of the land price prescribed by the provincial-level People's Committee for adjusting the land rent rate applicable to the subsequent stabilization period, the provincial-level Finance Department shall determine the land price for adjusting the land rent rate (applicable to economic organizations, overseas Vietnamese and foreign organizations and individuals) according to its competence provided at Point 2.1, Clause 2, Article 2 of this Circular; the district-level People's Committee shall determine the land price for adjusting the land rent rate (applicable

to households and individuals) according to its competence provided at Point 2.2, Clause 2, Article 2 of this Circular.

5.2. In case of determination of the market land price under normal conditions for adjusting the land rent rate applicable to the subsequent stabilization period, regardless of the value of the land plot, the land price adjustment coefficient provided at Item b, Point 4.1 (4.1.2), Clause 4 of this Article will apply for determination of the land price for adjusting the land rent rate."

Article 2. To amend Section III of Part B (guiding Clause 4, Article 2 of Decree No. 121/2010/ND-CP) as follows:

"1. The percentage for calculating the land rent rate with annual rent payment:

Based on the rented land use purpose, profitability, investment areas and sectors, the provincial-level People's Committee shall decide on the percentage for calculating the land rent rate under Article 5a of the Government's Decree No. 142/2005/ND-CP of November 14, 2005 (which was supplemented under Clause 3, Article 2 of Decree No. 121/2010/ND-CP) applicable to each category of land, urban center, commune, area and street and position.

2. Based on the land price for calculating the land rent rate and the percentage for calculating the land rent rate prescribed by the provincial-level People's Committee under Clause 1 of this Article:

2.1. The provincial-level Finance Department director shall decide on the land rent rate applicable to each specific project, for land lessees being economic organizations, overseas Vietnamese and foreign organizations and individuals.

2.2. The district-level People's Committee chairperson shall decide on the land rent rate on a case-by-case basis, for land lessees being households and individuals."

Article 3. To add Section IVa below Section III of Part B (guiding Clause 5, Article 2 of Decree No. 121/2010/ND-CP) as follows:

"Section IVa. Deduction of compensation and ground clearance expenses

A domestic organization or individual; an overseas Vietnamese; or a foreign organization or individual renting land from the State that advances funds for compensation, support, resettlement and organization of compensation and ground clearance under an approved plan may have the whole advanced amount refunded with the state budget by having this amount cleared against the payable land rent.

In case the amount advanced for compensation, support, resettlement and organization of compensation and ground clearance under the approved plan exceeds the payable land rent, the cleared amount is equal to the payable land rent amount. The remaining amount may be accounted as investment expenses of the project. The cleared amount may not be accounted as investment expenses of the project.

In case of land rent with annual rent payment, the amount advanced (if any) for compensation, support, resettlement and organization of compensation and ground clearance under the approved plan may be cleared against the payable land rent converted into the corresponding land rent payment time at the rate applicable at the time of determining the first payable land rent amount which is determined as the time of completing the annual land rent."

(Examples 4 and 5 in the Appendix to this Circular).

Article 4. To add Section IVb above Section V of Part B (guiding Clause 6, Article 2 of Decree No. 121/2010/ND-CP) as follows:

“Section IVb. Principles of land rent rate adjustment

The land rent rate applicable to each project shall be kept unchanged for 5 years. At the end of this stabilization period, if the land price prescribed by the provincial-level People's Committee increases by less than 20% from the land price for calculating the land rent rate at the time of determining the land rent rate applicable to the preceding period, the land price bracket prescribed by the provincial-level People's Committee at the time of adjustment of the land rent rate will apply for calculating the land rent rate applicable to the subsequent stabilization period (5 years) which must not be lower than the land rent rate applicable to the preceding stabilization period.

If the land price prescribed by the provincial-level People's Committee increases 20% or more from the land price for calculating the land rent rate at the time of determining the land rent rate applicable to the preceding period, the provincial-level Finance Department shall assume the prime responsibility for determining the land price adjustment coefficient under Item b, Point 4.1 (4.1.2), Clause 4, Article 1 of this Circular and propose it to the provincial-level People's Committee for decision. This coefficient serves as a basis for the provincial-level Finance Department (for land lessees being economic organizations, overseas Vietnamese and foreign organizations and individuals) or the district-level People's Committee (for land lessees being households

and individuals) to adjust the land rent rate applicable to the subsequent stabilization period (5 years).

At the end of the stabilization period (5 years), if the land rent rate has not been adjusted due to objective reasons, the land rent rate applicable to the preceding stabilization period will apply for temporary payment of land rents for the subsequent period. When a competent authority adjusts the land rent rate for each adjustment, the policy on and the land price for collection of the land rent corresponding to such adjustment will apply and the payable land rent deficit amount (if any) shall be retrospectively collected.”

Article 5. To add Points 1a and 1b to Section V of Part B (guiding Clause 7, Article 2 of Decree No. 121/2010/ND-CP) as follows:

“1.a. For a project renting land or water surface before January 1, 2006, with annual rent payment, for which the land rent rate has not been adjusted under Clause 2, Article 9 of Decree No. 142/2005/ND-CP, the land rent rate shall be re-determined as follows:

1.1. For a project which has the land lease decision, received land for use before January 1, 2006, and pays the land rent annually, the principles of land rent rate adjustment stated in the investment license, the land lease decision granted by a competent state agency to the investor or the land lease contract signed between a competent state agency and the land lessee will apply as follows:

An investment project whose investment certificate (investment license) or land lease decision or land lease contract granted (signed) under the Foreign Investment Law, the Domestic Investment Law and relevant laws provides the land or water surface rent rate and

principles of rent rate adjustment under the Ministry of Finance's regulations on land and water surface rent rates (Decision No. 210A-TC/VP of April 1, 1990, Decision No. 1417TC/TCDN of December 30, 1994, Decision No. 179/1998/QĐ-BTC of February 24, 1998, Decision No. 189/2000/QĐ-BTC of November 24, 2000, and Decision No. 1357TC/QĐ-TCT of December 30, 1995) may:

a/ Continue applying the land or water surface rent rate provided in its investment certificate (investment license) or land lease decision or contract if the 5-year stabilization period has not ended yet. At the end of this period, it is subject to rent rate adjustment on the principles of rent rate adjustment provided in the investment certificate (investment license); or land lease decision or contract;

b/ The order and procedures for adjusting the land or water surface rent rate comply with Clause 2, Article 17 of Decree No. 142/2005/ND-CP, and Point 2, Section I, Part D of Circular No. 120/2005/TT-BTC.

1.2. Cases other than that provided at Point 1.1 above include projects which are annually paying land or water surface rents and whose investment certificates (investment licenses) or land lease decisions or contracts granted (signed) do not provide the rent rate and principles of land rent rate adjustment. If these projects are in the land rent rate stabilization period, they are not required for rent adjustment. At the end of the stabilization period, they are subject to adjustment of the water surface rent under Article 5 of Decree No. 142/2005/ND-CP, or the land rent rate under Article 5a of Decree No. 142/2005/ND-CP (which was amended under Clause 3, Article 2 of Decree No. 121/2010/ND-CP) and Articles 1 and 4 of this Circular.

1b. In case of having made adjustment under Clause 2, Article 9 of Decree No. 142/2005/ND-CP, to continue applying the adjusted rate till the end of the stabilization period. At the end of this period, to make adjustment under Decree No. 121/2010/ND-CP and this Circular."

Article 6. To amend Item 1.4, Point 1, Section IV of Part C (which was supplemented under Section IX of the Finance Ministry's Circular No. 141/2007/TT-BTC of December 30, 2007) as follows:

"1.4 The investment license or business registration certificate (applicable to the cases provided in Clauses 1, 2, 3, 4, 5, 6 and 8, Article 14, and Clauses 1, 2, 3 and 5, Article 15, of Decree No. 142/2005/ND-CP)."

Article 7. Handling of existing problems

1. For projects renting land with annual rent payment which are deducting expenses for compensation and ground clearance under approved plans under the Government's Decree No. 142/2005/ND-CP of November 14, 2005, to continue such deduction under Decree No. 142/2005/ND-CP (to allocate deductible expenses to the annual payable land rent).

2. For projects renting land through auction of rented land use rights under the Government's Decree No. 142/2005/ND-CP of November 14, 2005, with annual rent payment and a 5-year land rent rate stabilization period, at the end of this period at the time the Government's Decree No. 121/2010/ND-CP of December 30, 2010 takes effect, to continue implementation under the principles provided in Decree No. 142/2005/ND-CP (with a 5-year land rent rate stabilization period).

Article 8. Organization of implementation

1. Provincial-level People's Committees shall:

1.1. Direct finance and tax agencies and state treasuries in coordinating with concerned agencies in their localities in determining, collecting and remitting land rents under this Circular.

1.2. Inspect and handle violations or settle complaints and denunciations according to their vested powers.

1.3. Provide the process of coordination among local functional agencies in transferring dossiers, determining financial obligations for collecting land and water surface rents under this Circular in accordance with relevant documents and local situations; clearly specify the time limit and responsibilities of each agency, unit and land users for declaration, determination and collection of land and water surface rents.

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

Cases arising from March 1, 2011 onward comply with the Government's Decree No. 121/2010/ND-CP of December 30, 2010 and this Circular.

To annul Point 3 of Section II and Section III of the Finance Ministry's Circular No. 141/2007/TT-BTC of December 30, 2007.

Provincial-level People's Committees, organizations and individuals shall promptly report on any problems arising in the course of implementation to the Ministry of Finance for study and settlement.-

For the Minister of Finance
Deputy Minister
NGUYEN HUU CHI