

THE MINISTRY OF FINANCE

Circular No. 105/2010/TT-BTC of July 23, 2010, guiding a number of articles of the Law on Royalties and guiding the Government's Decree No. 50/2010/ND-CP of May 14, 2010, which details and guides a number of articles of the Law on Royalties

Pursuant to November 25, 2009 Law No. 45/2009/QH12 on Royalties;

Pursuant to the 1993 Petroleum Law, Law No. 19/2000/QH10 Amending and Supplementing a Number of Articles of the

Petroleum Law, and Law No. 10/2008/QH12 Amending and Supplementing a Number of Articles of the Petroleum Law;

Pursuant to November 29, 2006 Law No. 78/2006/QH11 on Tax Administration and Government's decrees detailing the Law on Tax Administration;

Pursuant to the Government's Decree No. 50/2010/ND-CP of May 14, 2010, detailing and guiding a number of articles of the Law on Royalties;

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

The Ministry of Finance guides the Law on Royalties as follows:

Part I

GENERAL PROVISIONS

Article 1. Scope of application

This Circular provides guidance on royalty payers; royalty-liable objects; royalty bases; royalty exemption and reduction; and on the implementation of the Government's Decree No. 50/2010/ND-CP of May 14, 2010, detailing and guiding a number of articles of Law No. 45/2009/QH12 on Royalties; and a number of articles of Law No. 45/2009/QH12 on Royalties.

Activities of prospecting, exploring and exploiting crude oil and condensate (below collectively referred to as crude oil) and natural gas, associated gas and coal gas (below collectively referred to as natural gas) in Vietnam by organizations and individuals (below referred to as contractors) under the petroleum law involving the exploitation of natural resources are regulated by this Circular.

Article 2. Royalty-liable objects

Royalty-liable objects referred to in this Circular are natural resources in the mainland, islands, internal waters, territorial sea, exclusive economic zones and continental shelf under the sovereignty and jurisdiction of the Socialist Republic of Vietnam, including:

1. Metallic minerals;
2. Non-metallic minerals;
3. Crude oil as specified in Clause 2, Article 3 of the 1993 Petroleum Law;
4. Natural gas as specified in Clause 3, Article 3 of the 1993 Petroleum Law;
5. Coal gas as specified in Clause 3, Article 1 of the 2008 Law Amending and Supplementing a Number of Articles of the Petroleum Law;
6. Natural forest products, including plants of all kinds and other natural forest products, other than animals and anise, cinnamon, amomum and cardamom which are grown by royalty payers in natural forest areas allocated to them for zoning off and protection;
7. Natural marine products, including marine animals and plants;
8. Natural water, including surface water and groundwater;
9. Natural swallow's nests;
10. Other resources, which shall be proposed by the Ministry of Finance in coordination with concerned ministries and branches to the Government for submission to the National Assembly Standing Committee for consideration and decision.

Article 3. Royalty payers

1. Royalty payers are organizations and individuals exploiting natural resources being royalty-liable objects defined in Article 2 of this

Circular, including state companies, joint-stock companies, limited liability companies, partnerships, cooperatives, private enterprises, foreign-invested enterprises, foreign parties to business cooperation contracts, and other organizations, households and individuals, regardless of their sectors, trades, sizes or forms of operation, that exploit natural resources under Vietnam's law, that pay royalties under Article 3 of the Law on Royalties.

2. Royalty payers in some cases are specified as follows:

2.1. In case the enterprise exploiting natural resources is set up on a joint-venture basis, the joint-venture enterprise is the royalty payer;

2.2. In case the Vietnamese party and foreign party jointly perform a business cooperation contract on the exploitation of natural resources, the royalty payment liability of each party must be specified in the business cooperation contract; in case the business cooperation contract does not specify the royalty payer, all contractual parties shall declare and pay royalties or appoint a representative to pay royalties for the business cooperation contract.

2.3. In case an organization or individual that exploits natural resources on a small scale sells the exploited natural resources to another organization or individual that commits in writing to declare and pay royalties on behalf of the natural resource exploiter, the purchaser is the royalty payer.

The purchaser shall make a list of small-scale exploiters for whom royalties shall be declared and paid by the purchaser and submit this list, together with the royalty declaration dossier of the first month when natural resources are purchased, to the managing tax office for monitoring and administration in subsequent royalty periods. Upon the occurrence of any

changes in small-scale natural resource exploiters for whom royalties are declared and paid by the purchaser, the purchaser shall fill in a supplementary declaration form for submission together with the royalty declaration dossier of the month when these changes occur. When the on-behalf royalty payment terminates, the two parties shall make a record thereon which shall be sent by the royalty payer to the tax office in the month when the on-behalf royalty payment terminates.

2.4. In case an organization or individual that acts as a construction contractor without natural resource license, during the process of performing the construction contract, obtains and sells a volume of natural resources (for example, contractors dredging canals, ditches, lakes or lagoons obtained and sold a volume of sand, soil and mud or contractors exploiting stones sell them for processing into construction materials), shall declare and pay royalties thereon to local tax offices.

2.5. For organizations and individuals (below referred to as contractors) prospecting, exploring and exploiting crude oil and natural gas in Vietnam under the Petroleum Law, the royalty payer in each case is specified as follows:

a/ For a petroleum contract signed in the form of production-sharing contract, the royalty payer is the contract executive.

b/ For a petroleum contract signed in the form of joint-administration contract, the royalty payer is the joint-administration company.

c/ For a petroleum contract signed in the form of joint-venture contract, the royalty payer is the joint-venture enterprise.

d/ In case the Vietnam National Petroleum Group or its subsidiary corporations or companies prospect, explore or exploit crude oil or natural gas by themselves, royalty payers are

the Vietnam National Petroleum Group or its affiliate corporations and companies.

2.6. Organizations and individuals that use water from irrigations works built with non-state budget capital or partially with state budget capital for power generation shall pay royalties and water charge according to regulations.

2.7. For royalty-liable natural resources banned from exploitation or illegally exploited which are seized or confiscated and permitted for sale, organizations and individuals that are assigned to sell these natural resources shall pay royalties before deducting seizure, auction or reward expenses according to regulations.

Part II

ROYALTY BASES

Article 4. Royalty bases

Royalty bases include the output of royalty-liable natural resources, royaltyable price of a unit of natural resource and royalty rate, in which the royaltyable price of a unit of natural resource shall be applied correspondingly to the kind of the royalty-liable natural resource in the royalty period.

The payable royalty amount shall be calculated as follows:

$$\begin{array}{ccccccc} \text{Royalty} & & \text{Output of} & & \text{Royaltyable} & & \\ \text{amount} & & \text{royalty-} & & \text{price of a} & & \\ \text{payable} & = & \text{liable} & \times & \text{unit of} & \times & \text{Royalty} \\ \text{in a} & & \text{natural} & & \text{natural} & & \text{rate} \\ \text{period} & & \text{resources} & & \text{resource} & & \end{array}$$

In case a state agency assesses a royalty amount payable on a unit of exploited natural resource, the payable royalty amount shall be determined as follows:

$$\begin{array}{ccccccc} \text{Royalty} & & \text{Output of} & & \text{Royalty amount} \\ \text{amount} & & \text{royalty-} & & \text{assessed on a} \\ \text{payable} & = & \text{liable} & \times & \text{unit of} \\ \text{in a} & & \text{natural} & & \text{exploited} \\ \text{period} & & \text{resources} & & \text{natural resource} \end{array}$$

Payable royalty amounts shall be assessed based on tax offices' database in conformity with regulations on tax assessment for enterprises that fail to properly comply with accounting regimes and regulations on invoices and vouchers, or with regulations on handling of tax-related violations, and on royaltyable prices provided by provincial-level People's Committees under Clause 4, Article 6 of this Circular.

Article 5. Natural resource output used for royalty calculation

The natural resource output used for royalty calculation is the output of actually exploited natural resources provided in Article 5 of the Law on Royalties, which shall be determined as follows:

1. In case the quantity, weight or volume of the actually exploited natural resources can be determined, the natural resource output used for royalty calculation is the quantity, weight or volume of natural resources actually exploited in the royalty period.

For exploited natural resources which can be classified into natural resource products of different grades, qualities or commercial values, the natural resource output used for royalty calculation shall be classified by their grade, quality or commercial value or converted into an unit of natural resource to serve the determination of the natural resource output used for calculation of royalties for the whole volume of exploited natural resources.

Example 1: In case the products obtained from the process of rock exploitation by the

blasting method are rubble stone and broken stone of different sizes, these stones will be classified by their grade and quality for determining the royalty-calculation output of each type of stone. In case a part of the exploited rubble stone is sold while the remaining volume of rubble stone and broken stone are crushed for cement production, the output of broken stone must be converted into rubble stone so as to determine the output of actually exploited rubble stone used for royalty calculation.

2. For natural resources of which the actually exploited quantity, weight or volume cannot be determined because they contain different substances and impurities, the output of natural resources in some specific cases shall be determined as follows:

a/ For exploited natural resource which must be sorted or classified before sale, the natural resource output used for royalty calculation shall be determined based on the quantity, weight or volume of each substance obtained after sorting or classification. Sorted or classified natural resources must be ores and have not yet been processed into other products. In case the soil, rock and waste obtained through the sorting and classification process are sold, their royalty-calculation output shall be determined corresponding to each substance.

Example 2: For coal exploited from a mine which contains impurities, soil and rock and must be sorted and classified before sale, the actually exploited output of coal used for royalty calculation is the amount of sorted and classified coal.

In case a large volume of soil and rock (the amount of which cannot be determined) must be sorted and sieved to obtain 2 kg of gold nugget and 100 tons of iron ore, royalty shall be calculated on this amount of gold nugget and iron ore. At the same time, the amount of other natural

resources exploited and used for mining activities, such as water exploited and used for sorting and sieving activities, must also be determined.

b/ For exploited natural resources which contain different substances but are not sorted and classified and the volume of each substance cannot be determined upon sale, the royalty-calculation output of each substance shall be determined based on the output of natural resources actually exploited and the proportion of each substance in these natural resources according to the results of assessment of sample ores.

Example 3: The volume of copper ore exploited in a month is 1,000 tons, which contains different substances. According to the natural resource exploitation license and exploitation design dossier approved by competent authorities and the assessed proportions of substances in the exploited copper ore are as follows: copper: 60%, silver: 0.2% and zinc: 0.5%.

The output of each substance used for royalty calculation shall be determined as follows:

- Copper ore: $1,000 \text{ tons} \times 60\% = 600 \text{ tons}$.
- Silver ore: $1,000 \text{ tons} \times 0.2\% = 2 \text{ tons}$.
- Zinc ore: $1,000 \text{ tons} \times 0.5\% = 5 \text{ tons}$.

The royaltyable price of each substance shall be determined based on the output of each substance in copper ore when calculating royalties under the guidance at Point 2.2, Clause 2, Article 6 of this Circular.

3. For exploited natural resources which are not sold but used for producing other products, if the quantity, weight or volume of the actually exploited natural resources cannot be determined, the natural resource output used for royalty calculation shall be determined based on the output of products produced in the royalty period and the norm of used natural resource per product

unit.

The norm of used natural resource must conform with the applied production and processing technology registered by royalty payers with tax offices in the first royalty declaration period. In case the amount of natural resource used for the production of a product unit is over 5% higher than the designed norm, the tax office shall coordinate with relevant agencies in appraising this amount for assessing the royalty-liable output of exploited natural resources.

Example 4: To produce 1,000 unbaked bricks, it is necessary to use 1 m³ of clay. In a month, if a clay-exploiting establishment produces 100,000 bricks, the output of exploited clay liable to royalty will be: 100,000 bricks divided by (:) 1,000 bricks = 100 m³.

4. For natural water used for hydropower generation, the output of natural resource used for royalty calculation is the output of electricity sold by the electricity producer to electricity buyers under electricity sale and purchase contracts or the output of transmitted electricity in case no electricity sale and purchase contract is made. This electricity output shall be determined by a metering system up to Vietnam's measurement and quality standards and certified by the seller and buyer or the deliverer and recipient.

5. For natural mineral water, natural thermal water and natural water used for industrial purposes, the natural resource output used for royalty calculation shall be determined in cubic meter (m³) or liter (l) according to the measuring system up to Vietnam's measurement and quality standards.

Royalty payers shall install devices to measure the output of exploited natural mineral water, natural thermal water and natural water

for use as grounds for royalty calculation. Installed devices must have inspection certificates of a Vietnamese agency in charge of measurement and quality and notified to tax offices, together with the royalty declaration dossier of the royalty period after they are installed.

If it is impossible for objective reasons to install devices for measuring the exploited and used output of water or to directly determine the output used for royalty calculation, a presumptive output of exploited natural resources may be determined in a royalty period. Tax offices shall coordinate with concerned local agencies in determining the presumptive output of exploited natural resources for royalty calculation under Clause 6 of this Article.

6. In case of manual, scattered or mobile, irregular exploitation, if the projected output of exploited natural resource in a year is valued at under VND 200 million, a presumptive output of exploited natural resource may be determined on a seasonal or regular basis. Tax offices shall coordinate with concerned local agencies in determining the presumptive output of exploited natural resources for royalty calculation.

The determination of presumptive royalty amounts must be based on the practical exploitation situation, technologies of exploiting natural resources and producing products according to design dossiers, branch technical standard norms or the output of natural resources exploited by other similar organizations or individuals.

Tax offices shall, basing themselves on royalty registration dossiers, technical design dossiers of natural resource exploitation technologies, royalty declaration dossiers and limitations of the royalty declaration, analyze and coordinate with relevant line management

agencies in determining the output and value of natural resources exploited in a year in order to determine cases in which a presumptive royalty-liable output of natural resources is applied.

7. In case an organization or individual signs a contract to purchase natural resources from organizations and individuals exploiting natural resources on a small scale and commits in writing to declare and pay royalties on behalf of the sellers, the output of natural resources used for royalty calculation is the output of natural resources actually purchased.

Article 6. Royalti-able prices

The royalty-able price is the exploiter's selling price of a unit of natural resource product, exclusive of value-added tax, as specified in Article 4 of Decree No. 50/2010/ND-CP, which is indicated in sale documents but must not be lower than the royalty-able price set by the provincial-level People's Committee. In case the selling price of an exploited natural resource is lower than the royalty-able price set by the provincial-level People's Committee, royalties shall be calculated based on the price set by the provincial-level People's Committee. The royalty-able price shall be determined specifically as follows:

1. In case the selling price of a unit of natural resource product can be determined:

1.1. For natural resources of the same grade and quality which are exploited in a month, regardless of whether part of which is transported elsewhere for sale or is put into production, processing, sorting or classification, the royalty-able price is the selling price of a unit of exploited natural resource product, exclusive of value-added tax (regardless of the place of consumption). The selling price of a unit of natural resource shall be calculated by dividing

the total turnover (exclusive of value-added tax) earned from the sold natural resource by the total output of the natural resource sold in the month.

In case organizations and individuals exploit a natural resource for a group, corporation or company for consumption under a contract between them, the royalty-able price of a unit of natural resource is the price set by the provincial-level People's Committee of the locality in which the natural resource is exploited as specified in Clause 4, Article 6 of this Circular.

1.2. If an output of natural resources is exploited in a month but no turnover is earned from the sale thereof, the royalty-able price of a unit of natural resource shall be determined to be the weighted average royalty-able price of a unit of natural resource in the preceding month. If this weighted average price is lower than the royalty-able price set by the provincial-level People's Committee under Clause 4, Article 6 of this Circular, the royalty-able price set by the provincial-level People's Committee shall be used.

2. In case the selling price of an exploited natural resource cannot be determined under Clause 1 of this Article, the royalty-able price shall be determined on any of the following grounds:

2.1. The regional market's selling price of a unit of natural resource product of the same grade or equivalent value which must not be lower than the royalty-able price set by the provincial-level People's Committee under Clause 4 of this Article.

2.2. In case the exploited natural resource contains different substances, the royalty-able price shall be determined based on the selling price of a unit and the content of each substance in the exploited natural resource which must not be lower than the royalty-able price set by the provincial-level People's Committee.

Example 5: The volume of copper ore exploited by a unit is 1,000 tons (following Example 3). According to the natural resource exploitation license, natural resource exploitation design dossier and appraisal dossier approved by competent authorities, the proportion of each substance in the exploited copper ore is as follows: copper: 60%; silver: 0.2%; and zinc: 0.5%. The royaltyable price of a unit of pure natural resource set by the provincial-level People's Committee is VND 8,000,000/ton of copper; VND 600,000,000/ton of silver; and VND 40,000,000/ton of zinc.

Based on the royaltyable price of a unit of pure natural resource set by the provincial-level People's Committee and the output of each substance, the royaltyable price of a unit of each substance shall be determined as follows:

- For copper ore: 600 tons x VND 8,000,000/ton = VND 4,800,000,000

- For silver ore: 2 tons x VND 600,000,000/ton = VND 1,200,000,000

- For zinc ore: 5 tons x VND 40,000,000/ton = VND 200,000,000

The royalty rate applicable to each element in copper ore shall be determined based on its royaltyable price.

In case the exploited natural resource is put into processing or production and after processing, an associated natural resource product is obtained, the royaltyable price shall be determined as appropriate in each specific case defined in this Article.

Example 6: If in the course of iron ore refinement, 0.05 ton of refined copper ore is obtained per ton of cast iron and sold at VND 8,500,000/ton, the royaltyable price of 0.05 ton of copper ore will be: 0.05 x VND 8,500,000 = VND 425,000. If such refined copper ore is not sold, the royaltyable price is the price set by the

provincial-level People's Committee.

2.3. Natural resource exploiters shall notify tax offices of the applied method of determining the royaltyable price of each exploited natural resource under Clause 2 of this Article. This notice shall be sent together with the royalty registration dossier or the royalty declaration dossier of the first month of natural resource exploitation. Any change in the method of determining the royaltyable price must be promptly notified to tax offices in the month in which such change occurs.

3. In some cases, the royaltyable price is specifically as follows:

3.1. For natural water used for hydropower generation, it is the average selling price of commodity electricity.

The average selling price of commodity electricity used for calculating royalties applicable to hydropower producers shall be announced by the Ministry of Finance.

3.2. For timber, it is the selling price at the place of delivery (warehouse or yard at the place of exploitation); if the selling price at the place of delivery cannot be determined yet, the royaltyable price is that set by the provincial-level People's Committee under Clause 4 of this Article.

3.3. For exploited natural resources which are exported, it is the export price (FOB price) of a unit of natural resource product. For exploited natural resources which are both domestically consumed and exported, the royaltyable price for the domestically sold natural resources is the selling price of a unit of natural resource product, exclusive of value-added tax, while that for the exported natural resource is the export price.

Natural resource exploiters shall separately declare outputs of domestically sold natural resources and exported natural resources in

monthly declarations of payable royalty amounts and royalty finalization declarations according to regulations.

3.4. For crude oil and natural gas, it is the selling price determined under Article 14 of this Circular.

3.5. For natural mineral water, natural thermal water and natural water used for production or service provision without a selling price, the royaltyable price shall be set by the provincial-level People's Committee on the principle guided in Clause 4 of this Article.

4. For exploiters that do not sell exploited natural resources or fail to fully observe regulations on accounting books and documents; payers of royalties according to the assessment method; or for cases in which the output of a natural resource can be determined at the stage of exploitation but grounds for determining the market selling price of such natural resource are insufficient because it has undergone many sorting and consumption stages, the royaltyable price is the selling price set by the provincial-level People's Committee in each period.

For exploited natural mineral water, natural thermal water and natural water lacking grounds for determining the royaltyable price of a unit of natural resource, the royaltyable price is that set by the provincial-level People's Committee under this Clause.

Based on local characteristics and requirements of formulating royaltyable prices, provincial-level People's Committees shall direct and assign provincial-level Finance Departments to assume the prime responsibility for, and coordinate with provincial-level Tax Departments and Natural Resources and Environment Departments in, drawing up royaltyable price plans for submission to provincial-level People's Committees for

decision.

The formulation of royaltyable prices must be based on the content, quality and output of natural resources, the rate of recovered natural resources, and market selling prices of natural resources in localities where natural resources are exploited, with reference to the selling prices of natural resources in surrounding areas.

When the selling price of a natural resource fluctuates by 20% or more, the royaltyable price must be adjusted accordingly. Provincial-level Finance Departments shall assume the prime responsibility for, and coordinate with provincial-level Tax Departments and Natural Resources and Environment Departments in, surveying local market prices of natural resources and make plans to adjust royaltyable prices, then submit them to provincial-level People's Committees for decision and reporting to the Ministry of Finance (the General Department of Taxation).

Tax offices directly managing royalty collection shall post up royaltyable prices of natural resources at their head offices.

Article 7. Royalty rates

The royalty rate used for calculating royalties for each exploited natural resource complies with the Royalty Tariff promulgated together with the National Assembly Standing Committee's Resolution No. 928/2010/UBTVQH12 of April 19, 2010.

Particularly, the application of royalty rates to mineral water, natural thermal water and natural water specified in Section V of the Royalty Tariff promulgated together with the National Assembly Standing Committee's Resolution No. 928/2010/UBTVQH12 in some cases is specified as follows:

- Mineral water, natural thermal water and refined natural water, bottled or canned

(including water in large containers which may be bottled or canned) are liable to the royalty rate applicable to bottled and canned water.

- In case natural water used for hydropower generation specified at Point 2, Section V and natural water used for production and business specified at Point 3, Section V also contains mineral water or natural thermal water, but the design dossier and the production or service provision process approved by competent authorities show that these production and service provision activities do not produce bottled or canned mineral water, natural thermal water or refined water, the applicable royalty rate will correspond to the use purpose.

Part III

ROYALTY REGISTRATION, DECLARATION, PAYMENT AND FINALIZATION

Article 8. Royalty registration, declaration, payment and finalization

1. The royalty registration, declaration, payment and finalization comply with the Law on Tax Administration and guiding documents.

2. Particularly, some cases of petroleum prospecting, exploration and exploitation are added as follows:

2.1. In case an organization or individual conducts petroleum survey, exploration and exploitation activities under different petroleum contracts, royalty provisions in this Circular shall be separately applied to each petroleum contract.

2.2. In case contractors to a petroleum contract in the form of production-sharing contract or joint-administration contract receive divided contractual shares in crude oil or natural gas and take responsibility to sell these divided shares, each party shall declare and pay royalties

according to its/his/her divided shares.

Part IV

ROYALTY EXEMPTION AND REDUCTION

Article 9. Royalty exemption and reduction

1. Cases of royalty reduction and exemption under Article 6 of Decree No. 60/2010/ND-CP include:

1.1. Royalty payers that suffer natural disasters, fires or accidents, causing losses of natural resources for which royalties have been declared or paid, may be considered for exemption from or reduction of the payable royalties for the lost volumes of natural resources. If royalties have been paid, the paid royalty amount will be refunded or cleared against the subsequent period's payable royalty amount.

1.2. Royalties are exempted for natural marine products.

1.3. Royalties are exempted for tree branches and tops, firewood and bamboo of all kinds which individuals are permitted to exploit for their daily needs.

1.4. Royalties are exempted for natural water used for hydropower generation by households and individuals for their daily needs.

1.5. Royalties are exempted for natural water used for agriculture, forestry, fishery or salt making; natural water exploited by households and individuals for their daily needs.

1.6. Royalties are exempted for soil exploited and used right in allocated and leased land areas; and soil exploited for ground leveling and construction of security and military works and dikes. Soil exploited and used on site which is exempted from royalty under this Point covers also sand, rock or gravel mixed in the exploited

soil, making it impossible to identify each substance, and used in crude forms for ground leveling or work construction, including cases in which soil dug within allocated or leased land areas must be removed. If soil is exchanged or sold, exploiters shall declare and pay royalties according to regulations.

1.7 The Ministry of Finance shall assume the prime responsibility for, and coordinate with relevant ministries and branches in, submitting other cases of royalty exemption or reduction to the Government for submission to the National Assembly Standing Committee for consideration and decision.

2. The order and procedures for royalty exemption or reduction and competence to decide on royalty exemption or reduction comply with the guidance in Section II, Part E of the Finance Ministry's Circular No. 60/2007/TT-BTC of July 14, 2007. In some specific cases mentioned below, exploiters are not required to declare the output of exploited natural resources and the exempted or reduced royalty amount. Specifically:

2.1. Exploiters of marine products eligible for royalty exemption are not required to fill in monthly royalty declaration forms and annual royalty finalization forms.

2.2. Exploiters of natural water for agriculture, forestry or fishery production and salt making, or for daily needs eligible for royalty exemption are not required to fill in monthly royalty declaration forms and annual royalty finalization forms.

2.3. Procedures for natural water used for hydropower generation by households and individuals for their daily needs: Exploiters shall send a written request for royalty exemption, enclosed with written explanations about equipment for hydropower generation to meet

daily needs and certified by the commune-level People's Committee. When these equipment is put into use, households shall make declarations with managing tax offices for enjoying royalty exemption.

2.4. Procedures for royalty exemption for soil exploited and used in allocated or leased land areas:

Soil exploiters (including contractors) shall send a written request for royalty exemption, enclosed with a certified copy of the decision on land allocation or land lease and the investor's relevant dossiers on the construction of a work in the locality approved by a competent agency, to the tax office of the locality in which the exploitation is carried out for royalty exemption monitoring.

Part V

ROYALTIES FOR CRUDE OIL AND NATURAL GAS

I. GENERAL PROVISIONS

Article 10. Places of royalty registration, declaration and payment

1. Places of royalty registration, declaration and payment (excluding import duty and export duty) are provincial-level Tax Departments of localities in which royalty payers' principal executive offices are located.

2. For petroleum contracts under which exploitation activities have been carried out before the effective date of this Circular, the places of royalty registration, declaration and payment comply with the guidance given before the effective date of this Circular.

Article 11. Royalty period

The royalty period is the calendar year.

- The first royalty period lasts from the first day of crude oil or natural gas exploitation till the last day of the calendar year.

- The last royalty period lasts from the first day of the calendar year till the day of termination of crude oil or natural gas exploitation.

Article 12. Currencies used for royalty payment

In case crude oil or natural gas is sold in US dollar or another freely convertible foreign currency, the currency used for royalty payment is the US dollar or that freely convertible foreign currency:

In case crude oil or natural gas is sold in Vietnam dong, the currency used for royalty payment is Vietnam dong.

In case crude oil or natural gas is sold in both the US dollar or another freely convertible foreign currency and Vietnam dong, the currency used for royalty payment is Vietnam dong.

The conversion of US dollar or other freely convertible foreign currencies into Vietnam dong for royalty payment shall be made at the average inter-bank foreign exchange rate announced by the State Bank of Vietnam at the time of royalty payment.

Particularly, exploited crude oil sold to domestic oil refinery units for which separate guidance of the Finance Ministry has been provided, such guidance shall be complied with.

**II. ROYALTY CALCULATION METHODS
AND ROYALTY DECLARATION AND
PAYMENT**

Article 13. Royaltiable output

1. The whole output of crude oil or natural gas exploited and retained from the areas under petroleum contracts and measured at the place of delivery (net crude oil or natural gas output)

is liable to royalties.

2. In case the Vietnamese Government uses the volume of associated gas which is not exchanged or sold or is burnt off by royalty payers, royalty payers are not obliged to pay royalties on this volume of associated gas.

3. In the process of crude oil or natural gas exploitation, if royalty payers are permitted to exploit other resources liable to royalties, they shall pay royalties in each specific case guided in this Circular.

Article 14. Royaltiable prices

1. The royaltiable price of crude oil or natural gas is the selling price at the place of delivery. The place of delivery is the place agreed in the petroleum contract in which the ownership over crude oil or natural gas is transferred between parties to the petroleum contract.

2. Determination of the royaltiable price of crude oil or natural gas in case crude oil or natural gas is not sold under arm's length trading contracts

In case crude oil or natural gas is not sold under arm's length trading contracts, tax administration authorities (tax offices and customs offices) shall determine the royaltiable price on the following principles:

- For crude oil: The royaltiable price is the arithmetic mean of the selling prices of crude oil of the same category on the international market in 3 weeks in a row: the week before, the week of and the week after the sale of crude oil. Royalty payers shall supply tax offices with information on the composition and quality of crude oil being exploited. When necessary, tax administration authorities shall refer to the selling prices on the WTI market (USA), Brent market (UK) and Platt's market (Singapore) or consult competent state management agencies to determine the price of crude oil being exploited by royalty payers.

- For natural gas: The royaltyable price is the selling price of natural gas of the same category on the market at the place of delivery, with other relevant factors taken into account. When necessary, tax administration authorities may consult competent state agencies to determine the price of natural gas being exploited by royalty payers.

Article 15. Determination of payable royalty amounts

1. Royalties on crude oil or natural gas shall be determined on the basis of the partially progressive amounts of the total net crude oil and natural gas output exploited in each royalty payment period which is calculated based on the daily average output of crude oil or natural gas exploited under the petroleum contract, the royalty rate and the number of days of exploitation in the royalty period.

2. Determination of the royalty amount payable in crude oil or natural gas:

$$\begin{array}{l} \text{Royalty} \\ \text{amount} \\ \text{payable} \\ \text{in crude} \\ \text{oil or} \\ \text{natural} \\ \text{gas} \end{array} = \begin{array}{l} \text{Daily} \\ \text{output of} \\ \text{crude oil} \\ \text{or natural} \\ \text{gas liable} \\ \text{to royalty} \\ \text{in royalty} \\ \text{period} \end{array} \times \begin{array}{l} \text{Royalty} \\ \text{rate} \end{array} \times \begin{array}{l} \text{Number} \\ \text{of days of} \\ \text{crude oil} \\ \text{or natural} \\ \text{gas} \\ \text{exploitation} \\ \text{in royalty} \\ \text{period} \end{array}$$

In which:

+ The daily average output of crude oil or natural gas liable to royalty in the royalty period is the total output of crude oil or natural gas liable to royalty exploited in the royalty period divided by the number of exploitation days in the royalty period.

+ The royalty rate is specified in Section 2 of the Royalty Tariff promulgated together with the

National Assembly Standing Committee's Resolution No. 928/2010/UBTVQH12 of April 19, 2010.

The identification of petroleum projects eligible for investment promotion to determine applicable royalty rates shall be based on the list of petroleum projects eligible for investment promotion decided by the Prime Minister.

+ The number of days of crude oil or natural gas exploitation in the royalty period is the number of days of carrying out the exploitation of crude oil or natural gas in the royalty period, excluding days on which production stops for any reasons.

Example 1: Determining royalties payable in crude oil in case of crude oil exploitation:

Presumably:

+ The total output of royalty-liable crude oil exploited in the royalty period is 72,000,000 barrels

+ The number of production days in the royalty period is 360 days

+ The daily average output of royalty-liable crude oil in the royalty period is 200,000 barrels (72,000,000 barrels: 360 days)

+ Crude oil is exploited under a contract outside the list of projects eligible for investment promotion (in case crude oil is exploited under a contract on the list of projects eligible for investment promotion, the payable royalty amount shall be calculated similarly at a royalty rate applicable to projects eligible for investment promotion)

The royalty amount payable in crude oil in the royalty period is:

$$\{(20,000 \times 10\%) + (30,000 \times 12\%) + (25,000 \times 14\%) + (25,000 \times 19\%) + (50,000 \times 24\%) + (50,000 \times 29\%)\} \times 360 \text{ days} = 14,526,000 \text{ barrels.}$$

Example 8: Determining royalties payable in natural gas in case of natural gas exploitation:

Presumably:

+ The total output of royalty-liable natural gas exploited in the royalty period: 3,960,000,000 m³

+ The number of days of production in the royalty period is 360

+ The daily average output of royalty-liable natural gas in the royalty period is 11,000,000 m³ (3,960,000,000 m³ : 360 days)

+ Natural gas is exploited under a contract outside the list of projects eligible for investment promotion (in case natural gas is exploited under a contract on the list of projects eligible for investment promotion, the payable royalty amount shall be calculated similarly at a royalty rate applicable to projects eligible for investment promotion).

The royalties payable in natural gas in the royalty period is:

$$\{(5,000,000 \times 2\%) + (5,000,000 \times 5\%) + (1,000,000 \times 10\%)\} \times 360 \text{ days} = 162,000,000 \text{ m}^3$$

Article 16. Declaration and payment of temporarily calculated royalties

I. Determination of the temporarily calculated royalty amount:

$$\begin{array}{l} \text{Temporarily} \\ \text{calculated} \\ \text{royalty} \\ \text{amount} \end{array} = \begin{array}{l} \text{Output} \\ \text{of crude} \\ \text{oil or} \\ \text{natural} \\ \text{gas} \\ \text{actually} \\ \text{sold} \end{array} \times \begin{array}{l} \text{Price for} \\ \text{temporary} \\ \text{royalty} \\ \text{calculation} \end{array} \times \begin{array}{l} \text{Temporarily} \\ \text{calculated} \\ \text{royalty} \\ \text{percentage} \end{array}$$

In which:

+ The output of crude oil or natural gas actually sold is the output of crude oil or natural

gas liable to royalty actually sold.

+ The price for temporary royalty calculation is the selling price of crude oil or natural gas at the place of delivery upon each sale under an arm's length trading contract, exclusive of value-added tax.

+ The temporarily calculated royalty percentage shall be determined as follows:

$$\begin{array}{l} \text{Temporarily} \\ \text{calculated} \\ \text{royalty} \\ \text{percentage} \end{array} = \frac{\begin{array}{l} \text{Royalty amount} \\ \text{to be paid in crude oil} \\ \text{or natural gas in the} \\ \text{royalty period} \end{array}}{\begin{array}{l} \text{Output of crude oil or} \\ \text{natural gas liable to} \\ \text{royalty to be exploited} \\ \text{in the royalty period} \end{array}} \times 100\%$$

+ The royalty amount to be paid in crude oil or natural gas in the royalty period is determined under the guidance in Article 15 of this Circular on the basis of the output of crude oil or natural gas liable to royalty projected to be exploited in the royalty period and the projected number of exploitation days in the royalty period;

+ The output of crude oil or royalty-liable natural gas projected to be exploited in the royalty period is the output of crude oil or royalty-liable natural gas to be exploited in the royalty period.

Based on the output of crude oil or natural gas liable to royalty projected to be exploited every year and the royalty tariff applicable to crude oil or natural gas, royalty payers shall determine the temporarily calculated royalty percentage of each year and notify it to local tax offices with which they make royalty registration not later than December 1 of the previous royalty period.

If there is any change in the projected crude oil or natural gas output and the projected number of days of petroleum exploitation in the last 6

months of the year, leading to an increase or a decrease by at least 15% of the temporarily calculated royalty percentage already notified to tax offices, royalty payers shall determine and notify the new temporarily calculated royalty percentage to tax offices before May 1 of this year.

Example 9: Determining the temporarily calculated royalty percentage:

- Determining the temporarily calculated royalty percentage for crude oil:

Presumably:

+ The total output of crude oil liable to royalty projected to be exploited in the royalty period is 72,000,000 barrels.

+ The projected number of exploitation days in the royalty period is 360.

+ The daily output of crude oil liable to royalty in the royalty period is 200,000 barrels/day (72,000,000 barrels: 360 days).

+ The royalty amount projected to be paid in the royalty period (determined under the guidance in Article 16 of this Circular) is 14,526,000 barrels.

The temporarily calculated royalty percentage for crude oil exploitation is:

$$\frac{14,526,000}{72,000,000} \times 100\% = 20.18\%$$

- Determining the temporarily calculated royalty percentage for natural gas:

- Presumably:

+ The total output of natural gas liable to royalty exploited in the royalty payment period is 3,960,000,000 m³.

+ The number of production days in the royalty payment period is 360.

+ The daily output of natural gas liable to royalty in the royalty payment period is

11,000,000 m³/day (3,960,000,000 m³: 360 days).

+ The royalty amount projected to be paid in the royalty period (determined under the guidance in Article 16 of this Circular) is 162,000,000 m³.

The temporarily calculated royalty percentage for natural gas exploitation is:

$$\frac{162,000,000}{3,960,000,000} \times 100\% = 4.09\%$$

2. Declaration and payment of temporarily calculated royalties:

2.1. For crude oil exploitation:

2.1.1. The royalty declaration dossier is the temporarily calculated royalty return, made according to form No. 01/TAIN-DK issued together with this Circular (*not printed herein*).

2.1.2. The deadline for submission of the temporarily calculated royalty declaration dossier is the 35th day counting from the date of sale (for crude oil sold on the domestic market) or the day the customs office gives certification of the exported crude oil. In case the 35th day falls on a Saturday, Sunday, holiday or new year day (collectively referred to as holiday), the deadline for submission of the royalty calculation dossier is the day following that holiday.

2.1.3. The deadline for payment of temporarily calculated royalties is the deadline for submission of the temporarily calculated royalty declaration dossier.

2.2. For natural gas exploitation

2.2.1. The royalty declaration dossier is the temporarily calculated royalty return, made according form No. 01/TAIN-DK issued together with this Circular (*not printed herein*).

2.2.2. The deadline for submission of temporarily calculated royalty declaration

dossiers is the 20th every month. In case the 20th day falls on a holiday, the deadline for submission of royalty declaration dossiers is the day following that holiday.

2.2.3. The deadline for payment of temporarily calculated royalties is the deadline for submission of temporarily calculated royalty declaration dossiers.

Article 17. Royalty finalization

1. For crude oil exploitation:

1.1. Determination of the payable royalty amount:

1.1.1. Determination of royalties to be paid in crude oil in the royalty period:

$$\text{Royalties to be paid in crude oil in the royalty period} = \frac{\text{Daily output of crude oil royalties in the royalty period}}{\text{Royalty rate}} \times \text{Number of days of crude oil exploitation in the royalty period}$$

1.1.2. Determination of the percentage of royalty in crude oil of the exploitation output in the royalty period:

$$\text{Percentage of royalties in crude oil paid in the royalty period} = \frac{\text{Royalties in crude oil to be paid in the royalty period}}{\text{Exploited output of crude oil in the royalty period}} \times 100\%$$

1.1.3. Determination of royalties in crude oil sold in the royalty period:

$$\text{Royalties in crude oil sold in the royalty period} = \frac{\text{Volume of sold crude oil} \times \text{Volume of sold crude oil}}{\text{Percentage of royalties in crude oil in the royalty period}}$$

1.1.4. Determination of the payable amount from the sale of royalties in crude oil in the royalty period:

$$\text{Payable amount from the sale of royalties in crude oil in the royalty period} = \text{Royalties in crude oil sold in the royalty period} \times \text{Price for calculation of royalties on crude oil}$$

In which:

+ Royalties in crude oil sold in the royalty period shall be determined under the guidance at Point 1.1.3, Clause 1 of this Article;

+ The price for calculation of royalties on crude oil is the weighted average price of crude oil sold at places of delivery under arm's length trading contracts in the royalty period, exclusive of value-added tax.

1.1.5. Determination of royalties payable in crude oil not yet sold in the royalty period for use as a basis for finalization of royalties in crude oil to be paid in the subsequent royalty period:

$$\text{Royalties in crude oil not yet sold in the royalty period} = \text{Royalties in crude oil not yet sold in the previous royalty period} + \text{Royalties in crude oil to be paid in the royalty period} - \text{Royalties in crude oil sold in the royalty period}$$

In case crude oil is not sold under arm's length trading contracts, the royaltyable price shall be determined under Clause 2, Article 14 of this Circular.

Example 10: Determining the royaltyable price:

Presumably: The crude oil output in the royalty period (4,000,000 barrels) is sold out in three lots: lot 1 of 2,000,000 barrels at the price of USD 65/barrel; lot 2 of 1,000,000 barrels at

the price of USD 68/barrel; lot 3 of 1,000,000 barrels at the price of USD 70/barrel.

$$\begin{array}{l} \text{Price for} \\ \text{calculation} \\ \text{of royalties} \\ \text{on crude} \\ \text{oil} \end{array} - \frac{\begin{array}{l} (2,000,000 \times 65) + \\ (1,000,000 \times 68) + \\ (1,000,000 \times 70) \end{array}}{4,000,000} = \text{USD 67/barrel}$$

1.1.6. Determination of the deficient (surplus) amount from the sale of royalties in crude oil in the royalty period:

Deficient (surplus) amount from the sale of royalties in crude oil in the royalty period	=	Payable amount from the sale of royalties in crude oil to be paid in the royalty period	x	Temporarily calculated royalty amount already paid in the royalty period
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In which:

+ The payable amount from the sale of royalties in crude oil in the royalty period shall be determined under Point 1.1.4, Clause 1 of this Article.

+ The temporarily calculated royalty amount already paid in the royalty period is the total temporarily calculated royalty amount already paid according to the submitted list of temporarily calculated royalties (made according to form No. 02-2/TAIN-DK issued together with this Circular - *not printed herein*).

1.2. Royalty declaration and payment according to royalty finalization dossiers:

1.2.1. A dossier of royalty finalization comprises:

- A royalty finalization return, made according to form No. 02/TAIN-DK issued together with this Circular (*not printed herein*);

- A list of outputs and sales of crude oil or natural gas exploited in the royalty period, made according to form No. 02-1/TAIN-DK issued together with this Circular (*not printed herein*);

- A list of temporarily calculated royalty amounts in the royalty period, made according to form No. 02-2/TAIN-DK issued together with this Circular.

1.2.2. Time limits for submission of royalty finalization dossiers:

- 90 days from the last day of the calendar year.

- 45 days from the date of termination of the petroleum contract.

In case the 90th or 45th day falls on a holiday, the deadline for submission of royalty tax finalization filing dossiers is the day following that holiday.

1.2.3. Royalty payment according to royalty finalization dossiers:

Based on royalty finalization dossiers:

- If the temporarily calculated royalty amount in the royalty period is larger than the payable royalty amount, the surplus amount shall be cleared against the payable royalty amount in the next payment of temporarily calculated royalties or royalty payers shall carry out procedures for the refund of the surplus royalty amount under current regulations on tax administration, if there is no subsequent royalty payment period.

- If the temporarily calculated royalty amount in the royalty period is smaller than the payable royalty amount, royalty payers shall pay the deficient amount to state treasuries within the time limit for submission of royalty finalization dossiers.

2. For natural gas exploitation:

2.1. Determination of the payable royalty

amount:

2.1.1. Determination of royalties to be paid in natural gas in the royalty period:

Royalties in natural gas to be paid in the royalty period	=	Daily average output of natural gas liable to royalty in the royalty period	x	Royalty rate	x	Number of days of natural gas exploitation in the royalty period
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2.1.2. Determination of payable amounts from the sale of royalties in natural gas in the royalty period:

Payable amount from the sale of royalties in natural gas to be paid in the royalty period	=	Royalties in natural gas to be paid in the royalty period	x	Price for calculation of royalties on natural gas
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In which:

+ Royalties in natural gas to be paid in the royalty period shall be determined under Point 2.1.1, Clause 2 of this Circular.

+ The price for calculation of royalties on natural gas is the selling price under an arm's length trading contract at the place of delivery in the royalty period, exclusive of value-added tax.

In case natural gas is not sold under an arm's length trading contract, the royaltyable price shall be determined under Clause 2, Article 14 of this Circular.

2.1.3. Determination of the deficient (or surplus) amount from the sale of royalties in natural gas to be paid in the royalty period:

Deficient (or surplus) amount from the sale of royalties in natural gas to be paid in the royalty period	=	Payable amount from the sale of royalties in natural gas to be paid in the royalty period	x	Temporarily calculated royalty amount already paid in the royalty period
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In which:

+ The payable amount from the sale of royalties in natural gas to be paid in the royalty period shall be determined under Point 2.1.3, Clause 2 of this Article.

+ The temporarily calculated royalty amount already paid in the royalty period is the total temporarily calculated royalty amount already paid according to the submitted list of temporarily calculated royalty amounts (made according to form No. 02-2/TAIN-DK issued together with this Circular - *not printed herein*).

2.2. Royalty declaration and payment according to royalty finalization dossiers:

2.2.1. A dossier of royalty finalization comprises:

- A royalty finalization return, made according to form No. 02/TAIN-DK issued together with this Circular (*not printed herein*);

- A list of outputs and sales of crude oil or natural gas exploited in the royalty period, made according to form No. 02-1/TAIN-DK issued together with this Circular (*not printed herein*);

- A list of temporarily calculated royalty amounts already paid in the royalty period, made according to form No. 02-2/TAIN-DK issued together with this Circular (*not printed herein*).

2.2.2. Time limits for submission of royalty finalization dossiers:

- 90 days from the last day of the calendar year.

- 45 days after the date of termination of the

petroleum contract.

In case the 90th or 45th day falls on a holiday, the deadline for submission of royalty finalization dossiers is the day following that holiday.

2.2.3. Royalty payment according to royalty finalization dossiers:

Based on royalty finalization dossiers:

- If the temporarily calculated royalty amount in the royalty period is larger than the payable amount, the surplus amount may be cleared against the payable amount in the next payment of temporarily calculated royalties or royalty payers shall carry out procedures for the refund of the surplus amount under current regulations on tax administration, if there is no subsequent royalty payment period.

- If the temporarily calculated royalty amount in the royalty period is smaller than the payable amount, royalty payers shall pay the deficient amount to state treasuries within the time limit for submission of royalty finalization dossiers.

Part V

ORGANIZATION OF IMPLEMENTATION

Article 18. Effect

1. This Circular applies from the royalty declaration period starting from July 2010 and replaces the Finance Ministry's Circular No. 124/2009/TT-BTC of June 17, 2009, guiding the Government's Decree No. 05/2009/ND-CP of January 19, 2009, detailing the Ordinance on Royalties and the Ordinance Amending and Supplementing Article 6 of the Ordinance on Royalties. Provisions on royalties in the Finance Ministry's Circular No. 32/2009/TT-BTC of February 19, 2009, guiding the implementation of tax provisions applicable to organizations and individuals conducting petroleum prospecting, exploration and exploitation activities under the

Law on Petroleum, are annulled.

For natural resource outputs which are exploited before July 1, 2010, but not yet consumed or put into subsequent production or processing processes, royalties shall be declared under legal documents on royalties which are effective prior to July 1, 2010.

3. For investment projects or petroleum contracts signed prior to July 1, 2010, with royalties specified in their investment licenses, investment certificates or petroleum, the provisions of these investment licenses, investment certificates or petroleum contracts apply. In case royalty incentives indicated in investment licenses, investment certificates or petroleum contracts are lower than those provided in this Law, the royalty incentives provided in this Law will apply for the remaining duration of the projects or contracts.

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

For the Minister of Finance
Deputy Minister
DO HOANG ANH TUAN