THE MINISTRY OF FINANCE

Circular No. 118/2011/TT-BTC of August 16, 2011, guiding import duty and value-added tax on imports of power projects

Pursuant to the June 14, 2005 Law on Import Duty and Export Duty;

Pursuant to the Government's Decree No. 87/2010/ND-CP of August 13, 2010, detailing a number of articles of the Law on Import Duty and Export Duty;

Pursuant to the June 3, 2008 Law on Value-Added Tax;

Pursuant the Government's Decree No. 123/2008/ND-CP of December 8, 2008, detailing and guiding a number of articles of the Law on Value-Added Tax;

In furtherance of the Government's Resolution No. 59/NQ-CP of December 17, 2010, on simplification of administrative procedures under the management of the Ministry of Industry and Trade;

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;

In furtherance of the Prime Minister's directing opinions in the Government Office's Official Letter No. 5375/VPCP-KTTH of August 4, 2010, and Official Letter No. 3126/VPCP-KTTH of May 17, 2011;

The Ministry of Finance guides import duty and value-added tax on imports of power projects as follows:

Article 1. Scope and subjects of application

This Circular applies to raw materials and supplies imported to create fixed assets of power projects.

Article 2. Import duty

1. For power projects which had been granted investment licenses and investment incentive certificates before October 1, 2010 (the effective date of the Government's Decree No. 87/2010/ND-CP of August 13, 2010, detailing a number of articles of the Law on Import Duty and Export Duty - below referred to as Decree No. 87/2010/ND-CP):

1.1. For raw materials and supplies imported before December 17, 2010 (the effective date of the Government's Resolution No. 59/NQ-CP of December 17, 2010, on simplification of administrative procedures under

www.LuatVietnam.vn

the management of the Ministry of Industry and Trade - below referred to as Resolution No. 59/NQ-CP):

a/ Raw materials and supplies imported for power projects approved by the Government or the Prime Minister and certified by the Ministry of Industry and Trade to be complete sets and undetachable from main machinery and equipment used to create fixed assets of these projects shall be considered raw materials and supplies used for manufacturing equipment and machinery included in technology chains for assembly or use with main equipment and machinery which are exempt from import duty under Point d, Clause 6, Article 16 of the Government's Decree No. 149/2005/ND-CP of December 8, 2005, detailing the Law on Import Duty and Export Duty (below referred to as Decree No. 149/2005/ND-CP).

b/ Raw materials and supplies imported to create fixed assets of power projects other than those specified at Point a of this Clause are exempt from import duty under Points d and e, Clause 6, Article 16 of Decree No. 149/2005/ND-CP.

c/ Duty exemption dossiers and procedures comply with the Ministry of Finance's Circular No. 59/2007/TT-BTC of June 14, 2007, guiding import duty, export duty and tax administration of imports and exports, or Circular No. 79/2009/TT-BTC of April 20, 2009, guiding customs procedures, inspection and supervision and import duty, export duty and tax administration of imports and exports (below referred to as Circular No. 79/2009/TT-BTC), depending on the time of registration of the list of duty-free imports of projects.

d/ For raw materials and supplies imported for power projects specified at Point a of this Clause, apart from complying with duty exemption dossiers and procedures specified at Point c of this Clause, when registering customs declarations for the first time after this Circular takes effect, registrants of the list of duty-free imports shall produce to customs offices a copy of the written approval of the Government or the Prime Minister and the original written certification of the Ministry of Industry and Trade, and supply the written explanations and/or descriptions of positions for assembly or use of such supplies or raw materials in technology diagrams.

1.2. For raw materials and supplies imported from December 17, 2010, onward:

a/ Raw materials and supplies imported for power projects approved by the Government or the Prime Minister are exempt from import duty under Point d, Clause 6, Article 16 of Decree No. 149/2005/ND-CP. Duty exemption dossiers and procedures comply with Points c and d, Clause 1.1,

www.LuatVietnam.vn

but the Ministry of Industry and Trade's written certification is not required.

b/ Raw materials and supplied imported to create fixed assets of power projects other than those specified at Point a of this Clause are exempt from import duty under Points d and e, Clause 6, Article 16 of Decree No. 149/2005/ND-CP. Duty exemption dossiers and procedures comply with Point c, Clause 1.1.

2. For power projects which are granted investment licenses or investment incentive certificates on October 1, 2010, onward:

2.1. Raw materials and supplies imported to create fixed assets of these projects are exempt from import duty under Points d and e, Clause 6, Article 16 of Decree No. 87/2010/ND-CP.

2.2. Duty exemption dossiers and procedures comply with the Ministry of Finance's Circular No. 79/2009/TT-BTC or Circular No. 194/2010/TT-BTC of December 6, 2010, guiding customs procedures, inspection and supervision and import duty, export duty and tax administration of imports and exports, depending on the time of registration of the list of duty-free imports of projects.

www.LuatVietnam.vn

Article 3. Value-added tax

1. For raw materials and supplies imported before January 1, 2009:

1.1. Raw materials and supplies imported for power projects approved by the Government or the Prime Minister (which are identified as raw materials or supplies used for manufacturing equipment and machinery included in technology chains for synchronous assembly or use with main equipment or machinery) are not liable to value-added tax under Clause 4, Article 4 of the Government's Decree No. 158/2003/ND-CP of December 10, 2003, detailing the Law on Value-Added Tax and the Law Amending and Supplementing a Number of Articles of the Law on Value-Added Tax (below referred to as Decree No. 158/2003/ND-CP).

1.2. Raw materials and supplies imported for power projects other than those specified in Clause 1.1 are liable to value-added tax under Decree No. 158/2003/ND-CP.

3. Raw materials and supplies imported from January 1, 2009, onward for power projects are liable to value-added tax under the June 3, 2008 Law on Value-Added Tax and its guiding documents.

Article 4. Organization of implementation

In case importers have paid tax and fines (if any) into the state budget for imports which are exempt from import duty under Point a, Clause 1.1 or

Point a, Clause 1.2, Article 2 and not liable to value-added tax under Point 1.1, Article 3 according to tax assessment (or tax retrospective collection) decisions, the paid amounts (including also fines, if any) shall be refunded or cleared against the payable tax amount of the subsequent tax period according to the law on tax administration.

Article 5. Effect

1. This Circular takes effect on September 30, 2011, repealing the Ministry of Finance's Official Letter No. 12609/BTC-CST of September 21, 2010, guiding import duty and value-added tax on supplies and equipment for construction of power facilities.

2. Any difficulties and problems arising in the course of implementation of this Circular should be reported to the Ministry of Finance for study and prompt guidance.-

For the Minister of Finance
Deputy Minister
DO HOANG ANH TUAN

www.LuatVietnam.vn