

THE MINISTRY OF FINANCE

Circular No. 170/2011/TT-BTC of November 25, 2011, guiding the implementation of the Prime Minister's Decision No. 54/2011/QĐ-TTg of October 11, 2011, on prolonging 2011 enterprise income tax payment deadlines for labor-intensive enterprises in some sectors to help them overcome difficulties and boost their production and business

Pursuant to the Law on Enterprise Income Tax and guiding documents;

Pursuant to the Law on Tax Administration and guiding documents;

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;

Pursuant to the Prime Minister's Decision No. 54/2011/QĐ-TTg of October 11, 2011, on prolonging 2011 enterprise income tax payment deadlines for labor-intensive enterprises in some sectors to help them overcome difficulties and boost their production and business;

The Ministry of Finance guides the prolongation of enterprise income tax payment deadlines as follows:

Article 1. General provisions

1. The deadlines for payment of 2011 enterprise income tax as prescribed in the Tax Administration Law will be prolonged for one (1) year for labor-intensive enterprises or cooperatives (below collectively referred to as enterprises), specially:

a/ The 2011 payable enterprise income tax amounts calculated on incomes from production or processing of agricultural-forest-fishery products, textile and garment, leather and footwear and electronic components.

Activities of production or processing of agricultural-forest-fishery products, textile and garment, leather and footwear and electronic components specified in this Clause are based on the economic sector system of Vietnam promulgated together with the Prime Minister's Decision No. 10/2007/QĐ-TTg of January 23, 2007.

b/ The 2011 payable enterprise income tax amounts calculated on incomes from construction and installation of water or power plants, power transmission and distribution works, water supply and drainage systems,

roads, railways, airports, seaports, river ports, airfields, stations, car terminals, schools, hospitals, cultural houses, cinemas, art-performing establishments, sports facilities, wastewater and solid waste treatment works, information and communication works and irrigation works for agriculture, forestry and fisheries.

2. Labor-intensive enterprises specified in this Article are those employing more than 300 regular laborers in 2011. For enterprises organized after the parent company-subsubsidiary company model, the number of employees of the parent company does not include employees of the subsidiary companies.

The number of regular laborers annually employed shall be determined under the guidance in the Ministry of Labor, War Invalids and Social Affairs' Circular No. 40/2009/TT-BLDTBXH of December 3, 2009, guiding the calculation of the number of regular laborers specified in the Government's Decree No. 108/2006/ND-CP of September 22, 2006, detailing and guiding a number of articles of the Investment Law.

3. The tax payment deadline prolongation specified in this Article applies to enterprises which are established and operating under Vietnamese law, observe the law-established accounting, invoice and document regime, and pay taxes according to their declarations.

Article 2. Determination of enterprise income tax amounts eligible for payment deadline prolongation

1. The 2011 payable enterprise income tax amounts of enterprises eligible for tax payment deadline prolongation are those temporarily calculated on a quarterly basis and payable tax amounts according to the 2011 tax finalization.

2. Enterprises shall separately account incomes from activities eligible for tax payment deadline prolongation specified in Article 1 of this Circular. In case enterprise income tax amounts on activities eligible for tax payment deadline prolongation cannot be determined, incomes used for calculating tax amounts eligible for payment deadline prolongation shall be determined as the proportion (in percentage) of the turnover of activities eligible for tax payment deadline prolongation to the total turnover of enterprises. In case this proportion is not yet determined, enterprises shall determine a percentage temporarily calculated, notify it to tax offices at the time of temporary calculation and adjust it according to reality upon the 2011 tax finalization.

In case an enterprise meets different criteria for prolongation of 2011 enterprise income tax payment deadlines, it may choose to apply the highest tax incentive according to regulations.

Article 3. Period of enterprise income tax payment deadline prolongation

The deadlines for payment of 2011 enterprise income tax as prescribed in the Tax Administration Law will be prolonged for one year as follows:

1. For tax amounts temporarily calculated for quarter I of 2011, the tax payment deadline is prolonged to April 30, 2012.
2. For tax amounts temporarily calculated for quarter II of 2011, the tax payment deadline is prolonged to July 30, 2012.
3. For tax amounts temporarily calculated for quarter III of 2011, the tax payment deadline is prolonged to October 30, 2012.
4. For tax amounts temporarily calculated for quarter IV of 2011, and payable tax amounts according to the 2011 tax finalization, the tax payment deadline is prolonged to March 31, 2013.
5. In case a tax payment date specified in Clause 1, 2, 3 or 4 of this Article falls on a law-prescribed holiday, the period of tax payment deadline prolongation ends on the following working day.
6. For enterprises applying an enterprise income tax calculation period different from the calendar year, only temporarily-calculated tax amounts for payment in the quarters of the 2011 calendar year are eligible for tax payment deadline prolongation. In case incomes, expenses and payable incomes of the quarters of the calendar year cannot be determined separately, payable tax amounts eligible for payment deadline prolongation shall be determined as the monthly average tax amount of a fiscal year multiplies with the number of actual operating months in 2011.

Article 4. Order of and procedures for tax payment deadline prolongation

1. For enterprise income tax amounts generated from activities eligible for 2011 tax payment deadline prolongation, eligible enterprises shall make and submit declarations of enterprise income tax temporarily calculated on a quarterly basis and declarations of 2011 enterprise income tax finalization under the Tax Administration Law and relevant guiding documents. Enterprises shall additionally fill the following norms above the guarantee line in the temporarily-calculated enterprise income tax declaration and the enterprise income tax finalization declaration:

- Enterprise income tax amount eligible for tax payment deadline prolongation specified in Decision No. 54/2011/QĐ-TTg;
- Payable enterprise income tax amount in the current period;

- Enterprise income tax amount proposed for clearing against enterprise income tax amounts of activities ineligible for payment deadline prolongation or payable tax amounts of the subsequent tax period (if any);

- Paid enterprise income tax amount proposed for refund by tax offices (if any).

2. If enterprises eligible for enterprise income tax payment deadline prolongation have declared and remitted into the state budget tax amounts eligible for payment deadline prolongation of quarters I, II and III of 2011 under the Tax Administration Law, the paid tax amounts eligible for payment deadline prolongation shall be cleared against payable enterprise income tax amounts on activities ineligible for payment deadline prolongation or payable enterprise tax amounts of the subsequent tax period. Enterprises shall fill in the declaration form of payment deadline prolongation of state budget-remitted enterprise income tax of quarters I, II and III of 2011 promulgated together with this Circular (*not printed herein*). When filling in the declaration form, enterprises having to-be-refunded enterprise income tax amounts shall make a written request for refund of state budget remittance amounts according to Form No. 01/DNHT promulgated together with the Ministry of Finance's Circular No. 28/2011/TT-BTC of February 28, 2011, guiding a number of articles of the Tax Administration Law, and the Government's Decrees No. 85/2007/ND-CP of May 25, 2007 and No. 106/2010/ND-CP of October 28, 2010, for refund of remitted tax amounts. The tax payment deadline prolongation declaration form and the written request for refund (if any) shall be submitted to tax offices on January 31, 2012, at the latest. Procedures for tax refund in this Clause comply with Circular No. 28/2011/TT-BTC.

3. During the period of tax payment deadline prolongation, enterprises are not regarded as having delayed tax payment and will not be administratively sanctioned for delayed tax payment with respect to tax amounts eligible for payment deadline prolongation. In case enterprises have paid fines for delayed payment of payable tax amounts stated in the temporarily-calculated enterprise income tax declarations of the quarters of 2011 under the Tax Administration Law, the refunded tax amounts specified in Clause 2 of this Article will include paid fines (if any).

In case, at the time of submission of the 2011 enterprise income tax finalization declarations, to-be-prolonged tax amounts are smaller than those declared and temporarily paid for the four (4) quarters, enterprises will be eligible for tax payment deadline prolongation according to finalized amounts. Enterprises may additionally fill in tax declaration dossiers on any working day, not depending on the tax declaration dossier submission

deadline of the subsequent tax period, but before the time when tax offices or competent agencies notify decisions on tax examination and inspection at taxpayers' working offices.

During the period of tax payment deadline prolongation, enterprises that enjoy tax payment deadline prolongation but fail to declare for deadline prolongation, will be eligible for deadline prolongation according to this Circular. Enterprises may additionally fill in tax declaration dossiers on any working day, not depending on the tax declaration dossier submission deadline of the subsequent tax period, but before the time when tax offices or competent agencies notify decisions on tax examination and inspection at taxpayers' working offices.

During the period of tax payment deadline prolongation, if enterprises eligible for tax payment deadline prolongation are detected though examination or inspection as having failed to declare for prolongation, they will be eligible for tax payment deadline prolongation according to this Circular. Depending on faults of enterprises, agencies competent to conduct examination and inspection shall apply fine levels for tax violations according to law.

During the period of tax payment deadline prolongation, in case agencies competent to conduct examination or inspection detect that enterprises eligible for tax payment deadline prolongation have prolonged payment of tax amounts smaller or larger than declared ones, these enterprises will be eligible for payment deadline prolongation of enterprise income tax amounts according to ones detected though examination and inspection. Depending on the faults of enterprises, agencies competent to conduct examination and inspection shall apply fine levels for tax violations according to law.

Article 5. Organization of implementation and effect

1. This Circular takes effect on January 9, 2012, and applies to the prolongation of 2011 enterprise income tax payment deadlines under Decision No. 54/2011/QĐ-TTg.
2. Any problems arising in the course of implementation should be reported by organizations and individuals to the Ministry of Finance for timely guidance on settlement.-

For the Minister of Finance
Deputy Minister
VU THI MAI