THE MINISTRY OF FINANCE -------	SOCIALIST REPUBLIC OF VIET NAM Independence - Freedom - Happiness ----------
No. 66/2010/TT-BTC	Hanoi, April 22, 2010

CIRCULAR

GUIDING THE DETERMINATION OF MARKET PRICES IN BUSINESS TRANSACTIONS BETWEEN ASSOCIATED PARTIES

Pursuant to June 3, 200S Law No. 14/2008/ QH12 on Enterprise Income Tax;

Pursuant to November 29, 2006 Law No. 78/ 2006/QIIII on Tax Administration;

Pursuant to the Government's Decree No. 124/2008/ND-CP of December II, 2008, detailing the implementation of a number of articles of the Law on Enterprise Income Tax;

Pursuant to the Government's Decree No. 85/ 2007/ND-CP of June 7, 2007. detailing the implementation of a number of articles of the Law on Tax Administration;

Pursuant to the Government's Decree No. 118/2008/ND C P of November 2 7. 2008. defining the functions, tasks, powers and organizational structure of the Ministry of Finance,

The Ministry of Finance guides the implementation of provisions on the determination of market prices in business transactions between associated parties, serving as a basis for determining enterprise income tax liabilities of business establishments, as follows:

Part A

GENERAL PROVISIONS

Article 1. Subjects of application:

Organizations producing and/or trading in goods and/or providing services (below collectively referred to as enterprises) and having business transactions with associated parties are obliged to declare and determine their enterprise income tax liabilities in Vietnam.

Article 2. Scope of application

Transactions of purchasing, selling, exchanging, renting, leasing, delivering or transferring goods or services in the process of doing business (below collectively referred to as business transactions) between associated parties, excluding business transactions between Vietnam-based enterprises and associated parties which are related to products subject to price adjustment by the State, which comply with the price law.

Article 3. Interpretation of terms:

1. Market price means the price of products objectively agreed upon in a business transaction on the market between non-associated parties (also called independent parties).

2. Product collectively refers to goods or services that are objects of business transactions.

3. Buying price or selling price is used to collectively refer to the price in transactions of buying, selling, exchanging, renting, leasing, delivering or transferring products.

4. Parties shall be considered parties having associated relations (below collective!) referred to as associated parties) in any of the following cases:

4.1. One party directly or indirectly participates in the management or control of, contribution of capital to. or investment in any form, in the other party;

4.2 The parties are directly or indirectly subject to the management or control of, contribution of capital to. or investment in any form, by another party;

4.3 The parties directly or indirectly participate in the management or control of, contribution of capital to, or investment in any form in. another party.

Normally, two enterprises shall be considered associated in a tax period if during such period:

a/ One enterprise directly or indirectly holds at least 20% of investment capital of the owner of the other enterprise; or.

b/ A third party directly or indirectly holds at least 20% of investment capital of the owners of both enterprises; or.

c/ Both enterprises directly or indirectly hold at least 20% of investment capital of the owner of a third party: or.

d/ One enterprise is the biggest shareholder regarding investment capital of the owner of the other enterprise, directly or indirectly holding at least 10% of investment capital of the owner of the other enterprise; or.

e/ One enterprise guarantees or gives to the other enterprise loans in any form on the condition that such loans account for at least 20% of investment capital of the owner of the borrowing enterprise and account for over 50% of the total value of medium-term and long-term loans of the borrowing enterprise; or.

f/ More than 50% of total members of the board of executive directors or total members of the control board of one enterprise are appointed by the other enterprise or one executive director or one member of the control board of one enterprise who has power to decide on financial policies or business activities of the other enterprise is appointed by the other enterprise; or.

g/ More than 50% of members of the board of directors or a member of the board of directors who has power to decide on financial policies or business activities of each of the two enterprises are appointed by the same third party: or.

h/ The two enterprises are managed or controlled in personnel, financial and business affairs by individuals being members of a family who have relations between husband and wife, parent and child (regardless of natural, adopted children or children-in-law); siblings of the same parent (regardless of natural or adoptive parent); grandparent and grandchild of the same blood line; aunt or uncle and niece or nephew of the same blood line; or.

i/ The two enterprises have the relationship of head office and resident establishment or are resident establishments of the same foreign organization or individual; or,

j/ One enterprise manufactures or trades in products using intangible assets and/or intellectual property rights of the other enterprise for which it has to make a payment accounting for over 50% of the historical cost (or cost price) of such products; or.

k/ Over 50% of the total value of raw materials, materials, supplies or input products (exclusive of fixed asset depreciation expenses) used by one enterprise for manufacturing or trading in output products are supplied by the other enterprise; or.

l/ Over 50% of products (calculated for each kind of product) sold by one enterprise is directly or indirectly controlled by the other enterprise: or.

m/ The two enterprises have reached a business cooperation agreement on a contractual basis.

5. Associated transaction means a business dealing between associated parties.

6. Uncontrolled transaction means a business dealing between non-associated parties.

7. Material difference means the difference in information or data increasing or decreasing at least 1% of the product price of a transaction or at least 0.5% of the gross profit ratio or profitability ratio.

Example I: Enterprise V. an enterprise with 100% foreign capital located in province X, Vietnam, has 2 transactions:

(i) Selling 2.000 products lo independent enterprise A at the selling price which is the total cost (Z) plus (+) 6% Z on the condition that it delivers goods at enterprise V; and

(ii) Selling 2,000 products to its parent company at the CIF price of Z +6% Z on the condition that it delivers goods to country II and with the freight and insurance cost from province X to country H of 3%

Z. At the same time, the parent company agrees to guaranty a loan borrowed by enterprise V from bank N. In fact, the guarantee for this loan is a pledge of trust (no guarantee charge is required).

In the above-said transactions:

- The difference of the goods delivery condition related to the freight and insurance cost from province X to country H is considered material as it increases the selling price by over /%.

- The difference of guarantee is not considered material as the pledge of trust is free of charge.

8. Market price range means a combination of values of prices, gross profit ratios or profitability ratios of products, which are determined from uncontrolled transactions selected for comparison.

9. Databases of tax offices means information and data related to the determination of tax liabilities of enterprises which are collected, analyzed, stored, updated and managed by tax offices from various sources.

Part B

GUIDELINES ON THE DETERMINATION OF MARKET PRICES IN ASSOCIATED TRANSACTIONS

Product prices in associated transactions prescribed in this Circular shall be determined on the basis of market prices through comparing similarities between associated transactions and uncontrolled transactions (below referred to as comparability analysis) so as to select the most appropriate method for price determination.

Article 4. Comparability analysis 1. Principles

1.1. Comparison between an associated transaction and an uncontrolled transaction is understood as the comparison between an associated transaction and an uncontrolled transaction or between an enterprise conducting associated transactions and an enterprise conducting uncontrolled transactions. Comparison shall be made on the basis of selecting and analyzing reliable data, vouchers and documents related to uncontrolled and associated transactions conducted in the same period for use for tax declaration and calculation purposes under the accounting, statistics and taxation laws.

Example 2: Enterprise A, a subsidiary company of transnational company H, and enterprise B, an independent company, both retail HX-brand motorcycles in the year 2xxx. The comparison may be made in either of the following ways:

- Comparing the transaction of purchasing motorcycles for sale by enterprise A with the similar transaction of enterprise B.

- Comparing enterprise A with enterprise B in the retail of motorcycles.

1.2. Uncontrolled transactions selected for comparison are those selected from uncontrolled transactions which have transaction characteristics and circumstances (below collectively referred to as transaction conditions) similar to associated transactions. Then, product prices in uncontrolled transactions selected for comparison shall be used as a basis for determining product prices in associated transactions by price determination methods specified in Article 5. Part B of this Circular.

1.3. When comparing associated transactions with uncontrolled transactions, the transaction conditions of these associated and uncontrolled transactions are not necessarily identical but must be comparable and have no differences which materially affect product prices. If the transaction conditions of associated transactions and uncontrolled transactions have any material differences, enterprises shall reflect them in pecuniary value so that they can adjust and eliminate these material differences. The comparability determination in comparing associated transactions with uncontrolled ones and the elimination of differences comply with the provisions of Clause 2. Article 4, Part B of this Circular.

1.4. The comparison between associated and uncontrolled transactions shall be made on the basis of each transaction in a specific kind of product. However, in case transactions cannot be separated or the separation of each transaction in each kind of product is not suitable to the practice of business, enterprises may aggregate many of the following transactions into a single transaction:

1.4.1. Transactions which are closely related and interdependent, such as transactions conducted on the basis of contracts of provision of goods and services under which services constitute an integral part of the contracts; continuous transactions such as the supply or licensing of the rights to use intangible assets associated with the supply of raw materials, materials and semi-finished products for the production or processing of finished products:

1.4.2. Transactions in products which have gone through the same production process and used the same principal raw materials and materials, or those of the same group or heading according to the criteria for grouping goods and services prescribed in the statistical list of goods and services promulgated by competent state agencies, when analyzing and comparing the criterion of functions performed by enterprises.

Example 3: Trading enterprise A imports 3 goods items X, Y and Z from an associated party based in a foreign country for distribution to domestic supermarkets. These three goods items belong to the group of thermal equipment for domestic use (according to Vietnam's statistical criteria).

In case the separation of transactions by goods item X, Y or Z is not suitable to the practice of business, enterprise A may aggregate the transaction values of these three goods items for the application of the most appropriate price determination method.

1.4.3. Small and separate business transactions which can be aggregated into a complete transaction;

1.4.4. Uncontrolled and associated transactions carried out by a particular enterprise to each of which revenue or related expenses cannot be reasonably apportioned. In this case, the aggregated transaction shall be treated as an associated one and the price of products in this aggregated transaction is the highest price of one of related products (for selling transactions) or the lowest price of one of related products (for buying transactions).

Example 4: Enterprise A has 2 contracts:

(i) Contract I: on the provision of the quality supervision service to an associated party being company B; and

(ii) Contract 2: on the provision of the quality supervision service and the licensing of a patent to independent company C. in which the revenue from the licensing of the patent is 5 times that from the provision of the quality supervision service, calculated on the basis of the unit price of products.

Assume that the quality supervision services under contract I and contract 2 meet all conditions for comparison.

- In case enterprise A does not separate revenues (or expenses) related to the performance of these two contracts (covering 3 separate transactions in 2 kinds of product), the total revenue of enterprise A shall be considered revenue from an associated transaction and, depending on the provisions on each market value determination method in this Circular, and the enterprise shall re-determine its revenue corresponding to the highest price of the product being copyright.

- In case enterprise A separates revenues (or expenses) related to the performance of these two contracts, its revenue from contract I shall correspond to the price of the service provided under contract 2.

1.5. When selecting uncontrolled transactions for comparison, enterprises shall give priority to their own uncontrolled transactions, provided that these uncontrolled transactions are not created or arranged from their associated transactions.

Example 5: Foreign-based company M has established manufacturing enterprise A in Vietnam. Enterprise A has two transactions:

(i) Selling 2,000 products to independent customer AI at the price of VND 10,000 per product under a contract negotiated and signed directly by enterprise A under its normal business conditions;

(ii) Selling 2.000 products to independent customer MI at the price of USD 0.4 per product under a contract negotiated and signed directly by parent company M with the customer under which enterprise A is designated to deliver the goods to the customer. The proceeds from the sale is directly paid by company M or by customer Ml to enterprise A.

Comparability analysis:

- Transaction (i) shall be regarded as an uncontrolled transaction of enterprise A;

- Transaction (ii) shall not be regarded as an uncontrolled transaction of enterprise A because, though products are delivered from enterprise A's warehouse and sent to custom Ml, and enterprise A and customer Ml are not associated parties, the contract negotiation and signing and payment was joined in and controlled by the parent company.

1.6. The minimum quantity of uncontrolled transactions selected for comparison after comparability analysis and adjustment of material differences are made is as follows:

1.6.1. One transaction - in case there is no difference between an uncontrolled transaction and an associated transaction; or

1.6.2 Three transactions - in case there are differences between an independent transaction and an associated transaction but enterprises have sufficient information and data for eliminating all material differences: or,

1.6.3. Four transactions - in case there are differences between an uncontrolled transaction and an associated transaction but enterprises only have information and data for eliminating most material differences. In this case, the further elimination of other differences must follow the guidance on the standard market price range at Point 1.2, Clause 1. Article 5, Part B of this Circular.

This provision is not compulsorily applicable to enterprises which apply the profit split method, the first method guided at Item 2.5.2.1. Point 2.5, Clause 2, Article 5, Part B of this Circular.

1.7. In case enterprises cannot select uncontrolled transactions for comparison on the principles specified at Points 1.1 thru 1.6. Clause 1, Article 5. Part B of this Circular due to the uniqueness and distinctiveness of associated transactions, they shall give the reasons therefore and follow the guidance in Article 6. Part B of this Circular.

2. Comparability analysis and elimination of differences

2.1. When comparing uncontrolled transactions selected for comparison with associated ones, enterprises shall analyze and assess affecting criteria and adjust material differences (if any) so as to clarify their similarities according to the following four criteria (below referred to as four affecting criteria):

2.1.1. Product characteristics: include characteristics substantially affecting the product price. Factors reflecting product characteristics mainly include:

a/ Kind of products (describing the characteristic of product, namely tangible goods, copyright, technological know-how or service, etc.) and physical characteristic of product (component materials, mechanical, physic, chemical characteristics, etc.);

b/ Quality and trademark of products:

c/ Nature of transfer of products (for example: conditional or unconditional purchase/sale, such as exclusive distribution, licensing, franchising, etc.).

Example 6: Enterprise A, an independent enterprise, produces assorted cotton towels (100 % cotton), including grade-A cotton towels of 120 cm x 60 cm size.

Company M, a Vietnam-based subsidiary company with 100% foreign capital, produces assorted cotton towels (100% cotton), including grade-A cotton towels of 121 cm x 60 cm size for sale (export) to its parent company based in a foreign country.

Assume that other factors reflecting the characteristics of these two products of companies A and M are comparable.

Comparability analysis:

Cotton products of enterprise A and company M are considered those with comparable product characteristics (the difference of 1 cm in length is considered immaterial).

2.1.2. Operational functions performed by enterprises, covering factors reflecting the profitability of activities carried out by enterprises and associated with the use of assets. capital and related expenses. When analyzing operational functions (below referred to as functions), enterprises shall reflect their principal functions in the relationship between the use of assets, capital, expenses as well as assumption of risks connected with the investment of such assets, capital and expenses and the profitability associated with the business transactions. The principal functions of enterprises mainly include:

a/ Research and development;

b/ Designing and development of product models:

c/ Production, manufacture, processing:

d/ Processing, assembly, installation of equipment;

e/ Distribution, circulation, marketing, advertisement;

f/ Management and provision of supplies:

g/ Transport, forwarding and warehousing services;

h/ Provision of occupational services such as brokerage, consultancy, training, accounting. audit, personnel management, labor supply and information collection.

Example 7(a): Company N, a Vietnam-based associated party of multinational X, has some information as follows:

- Company N manufactures drugs on a production line invested by itself and under a copyright granted by a company of multinational X;

- It sells (exports) drugs to multinational X under contracts signed at the beginning of the year;

- It does not research and develop any products.

When comparing the associated transaction (with multinational X) and an uncontrolled transaction, company N conducts comparability analysis of the functions with an independent enterprise which has a function similar to that of company N in order to eliminate differences. Because manufacture of drugs is normally connected with research and development of new products, if the selected independent enterprise has the R&D function, company N shall eliminate this difference.

Example 7 (b): Using the facts in example 7 (a) above, assume that company N, apart from producing and trading in drugs, also acts as an agent for import and distribution in Vietnam of pharmaceuticals for its parent multinational X.

This agency activity is an additional function performed by company N for which it incurs expenses and assumes risk. It is an associated transaction of company N. In this case, company N shall determine and calculate the commission it has received for the provision of the agency service on the basis of the market price determination methods specified in Clause 2, Article 5, Part B of this Circular.

Example 8: Company M, a multinational based in a foreign country, has a transaction of wholesaling cell phones T which are up to international standards and have been registered in Vietnam to company A, an associated party, and company B, an independent company.

Company A distributes and retails cell phones T, grants warranty cards for each cell phone sold and directly provides the warranty service.

Company B distributes and retails cell phones T, grants warranty cards for each cell phone sold but not directly provides the warranty service. It has reached an agreement with company A that it will pay USD 5 for each cell phone repaired by company A during the warranty period.

In comparing the associated transaction (between A and M) and the independent transaction, company A shall conduct comparability analysis of the functions between company A and company B and eliminate differences:

- There is a difference between the operational functions performed by the two companies, namely the provision of the warranty service, in that company A performs more functions, uses more resources and has a higher profitability than company B.

- Company A shall adjust the product warranty function by eliminating its actual expenses and revenues connected with the provision of the warranty service.

- In case the "warranty" function is performed just several times with negligible (i.e. immaterial) expenses and revenues, it is not necessary to adjust this difference.

2.1.3. Contractual terms of transactions, covering provisions or binding agreements on the responsibilities and interests of the parties to business transactions. Contractual terms of transactions (below referred to as contractual terms) mainly cover:

a/ The quantity and delivery or distribution conditions of products:

b/ The time, conditions and mode of payment:

c/ Conditions of warranty, replacement, upgrading, repair or adjustment of products:

d/ Conditions of exclusive business rights, distribution of products:

e/ Other conditions of economic impact (e.g.. services of assistance and consultancy on quality control, use instructions, advertisement supports, sales promotion, etc.).

In all cases (with or without written contracts), the bases for identifying contractual terms are factual events or financial and economic data reflecting the character of transactions.

2.1.4. Economic conditions of transactions, including factors concerning economic conditions on the market at the time of performance of transactions, which affect product prices. Economic conditions of transactions (below referred to as economic conditions) mainly include:

a/ The size and geographical position of the product production or sale market:

b/ The time and character of transactions on the market (for example: normal transactions of wholesale and retail, exclusive distribution, market segmentation by product consumers):

c/ The competitiveness of products on the market;

d/ Economic factors affecting production and business costs incurred at the place of transactions (e.g.. taxes, charges, financial preferences):

e/ The State's market regulation policies.

2.2. The order of priority in conducting comparability analysis of the four affecting criteria stated at Items from 2.1.1 to 2.1.4. Point 2.1. Clause 2. Article 4. Part B of this Circular is prescribed for each method of price determination specified in Article 5, Part B of this Circular. In the course of analysis, detailed analysis is required for priority criteria; for complementary criteria, analysis may not be necessarily detailed but must fully reflect the basic characteristics of these criteria.

Example 9: Assume that Vietnamese company M (a subsidiary company of international, company M) deals in products X which are of class-1 quality and have been registered in Vietnam. In the year 200.x, the company managed to select uncontrolled transaction A (between Vietnamese company M and an independent party) as a basis for comparison with associated transaction B (between Vietnamese company M and international company M), and these two transactions had the same selling unit price of USD 3.

In this case, the four affecting criteria of transactions A and B will be analyzed as follows:

(i) Product characteristics: alike (because all products are produced by Vietnamese company M);

(ii) Operational functions: alike (functions of Vietnamese company M);

(Hi) Contractual terms: Assume that this criterion of two transactions is the same, with the exception that the delivery condition in transaction A is at company M !s warehouse while in transaction B it is at port X of country Y and the freight from Vietnam to country A is USD 0.5/product incurred by company M.

(iv) Economic conditions: Assume that this criterion does not affect the product price (for example: country Y has no policy to control the price of product X, the sale condition in the two transactions is wholesale, and the buyer will pay tax and cany out procedures for import of product X into country Y).

Thus, the price comparison shows that the price in transaction B is not similar to that in transaction A (there is a difference of USD 0.5/ product).

In this case, Vietnamese company M will select the most appropriate price of USD 3.5/ product for ensuring the declaration and calculation of tax on revenue from product X in transaction B (instead of the price of USD 3).

2.3. When conducting comparability analysis, enterprises shall identify material differences in the transaction conditions between associated and uncontrolled transactions. In case there exist no material difference, they shall not have to comply with the provisions of Point 2.4. Clause 2. Part B of this Circular.

2.4. In case there exist material differences, enterprises shall determine the pecuniary value of these differences so as to increase or reduce, on a case-by-case basis, the value to eliminate these differences.

In case there exists a material difference in the operational functions of enterprises, adjustment shall be made on the following principles:

a/ If expense or revenue items related to the difference arc separately accounted, adjustment shall be made on the basis of each of such revenue or expense items.

b/ If expense or revenue items related to the difference are not separately accounted, adjustment shall be made on the basis of apportionment to determine the portions of relevant expense or revenue related to such difference.

Example 10: Assume that there are two transactions of companies A and B which both perform the service of processing garment products. While company A processes products and delivers them at its warehouse, company B processes products and carries out procedures for export abroad.

Thus, when comparing the function of processing products of companies A and B, it is found that company B performs an additional function of "carrying out export procedures. " This difference will be separated by accounting or apportioning in proportion to total expenses or revenues arising from the carrying out of export procedures so as to ensure the comparison of business efficiency based on the comparable product-processing functions of company A and company B.

In case company B performed the function of "carrying out export procedures" just several times at the request of customers, involving negligible (immaterial) expense or revenue, it is not necessary to adjust this difference.

Article 5. Market price determination methods

The methods of determining market prices of products in associated transactions specified at Clause 2. Article 5, Part B of this Circular include:

- The comparable uncontrolled transaction price method;

- The resale price method;

- The cost plus method;

- The comparable profit method:

- The profit split method-

Depending on each of these methods, the market price of products may be used as a basis for directly calculating the unit price of products or indirectly through the gross profit ratio or profitability ratio of products. However, for the methods of indirect price calculation, it is not necessary to calculate specific unit prices when determining business results for enterprise income tax declaration and calculation purposes.

1. Principle of application of market price determination methods

1.1 The most appropriate price determination method is the method selected from the aforesaid five methods which is suitable to transaction conditions and has the most sufficient and reliable information, data and figures for comparability analysis.

1.2 Enterprises may select by themselves the most appropriate value among the values of the standard market price range as a basis for adjusting the corresponding value of associated transact tions. In case the product price in associated transactions is different from this most appropriate value but this does not reduce the income subject to enterprise income tax. enterprises are not required to make any adjustment.

1.2.1. The most appropriate value is the value reflecting the highest similarity of transaction conditions of uncontrolled transactions selected for comparison with associated transactions.

1.2.2. The standard market price range covers:

a/ The values computed from uncontrolled transactions selected for comparison stated at Items 1.6.1 and 1.6.2. Point 1.6. Clause 1. Article 4. Part B of this Circular:

b/ The values falling within the range from the first quartile to the third quartile of the quartile statistical probability operation or the values falling within the range of the 25"' percentile to the 75Ul percentile of the percentile statistical probability operation computed on the basis of the market price range of uncontrolled transactions selected for comparison stated at Item 1.6.3. Point 1.6. Clause 1, Article 4. Part B of this Circular (See Appendix 2-GCN/CC. not printed herein).

Example 11: Enterprise V in Vietnam has the following information:

- It is a subsidiary company producing and processing products for its parent company and it shall pay a royalty to another subsidiary company within the group an expense of N%/ year of net revenue in four periodical installments every year.

- Enterprise V selected 13 uncontrolled transactions for comparison with data on the royalty-net revenue ratios (7c) of these transactions, which are 1: 1.25; 1.25; 1.5; 1.5; 1.75; 2; 2; 2; 2.25; 2.5; 2.75; and 3.

- The comparability analysis shows that material differences have been reasonably adjusted and eliminated. Particularly, there is a difference in the payment time limit which may affect the value of the royalty but available information is insufficient for conversion of such difference into money for adjustment.

- The enterprise shall apply the quartile statistical function and select the first and third quartiles for determining the standard range of 1.5-2.25, with the standard range's median number (the median number of the second quartile) being 2.

Adjustment of declared data:

In case enterprise V has the royalty-net revenue ratio of 2.1%, then it is not required to readjust the declared data on the royalty which is deductible when calculating enterprise income tax.

In case enterprise V has the royalty-net revenue ratio of 4%. and at the same time, enterprise V finds that the transaction with the royalty ratio of 2% has transaction conditions closest to its transaction, it shall adjust the declared data on the royalty which is deductible when calculating enterprise income tax by a corresponding level of 2%.

1.3. In case enterprises have applied the market price determination methods specified in this Circular but a force majeure event, such as a natural calamity or fire, occurred in the year, affecting the production or business situation or the buying or selling price was affected by the State's policies or regulatory regimes, they may adjust the prices of products which were affected by the practical situation.

2. Market price determination methods

2.1. The comparable uncontrolled transaction price method

2.1.1. The comparable uncontrolled transaction price method is based on the unit price of products in an uncontrolled transaction for determining the unit price of products in an associated transaction when these transactions have comparable conditions.

2.1.2. The unit price of products in an associated transaction shall be compared with the most appropriate value falling within the standard range of market prices based on the unit price of products for making adjustments in compliance with the principles specified at Point 1.2. Clause 1, Article 5. Part B of this Circular.

2.1.3. For this method, when conducting comparability analysis of the four affecting criteria as guided in Article 4, Part B of this Circular, the priority criteria are product characteristics and contractual terms while the complementary factors are economic conditions and functions performed by the enterprise concerned.

2.1.4. The comparable uncontrolled transaction price method shall be applied on the conditions that:

a/ There is no difference in transaction conditions which materially affects the price of product, when comparing the uncontrolled transaction with the associated transaction; or

b/There are differences materially affecting the price of products but these differences have been eliminated under the guidance in Article 4. Part B of this Circular.

2.1.5. Factors materially affecting the price of products include:

a/ Physical characteristics, quality and trademark of products;

b/ Contractual terms on the provision and delivery of products, e.g., volume (if affecting the price level), time of delivery of products, time of payment;

c/ Product distribution and sale rights affecting the economic value;

d/The market in which the transaction takes place.

2.1.6. The comparable uncontrolled transaction price method shall normally apply to the following cases:

a/ Separate transactions in each kind of goods circulated on the market;

b/ Separate transactions in each form of service, copyright or loan contract;

c/ The enterprise conducts both uncontrolled and associated transactions in the same kind of goods.

Example 12: Company V, a Vietnam-based enterprise with 100% capital invested by foreign company S, is engaged in processing textile and garment products. In the year 200x, it had two transactions of processing trousers of cat. 347 as follows:

- Transaction 1: Processing for parent company S 1,000 dozens of trousers at the price of USD 60/dozen and delivering the goods at port X in Vietnam (S will he responsible for exporting them).

- Transaction 2: Processing for country N 's company M 1,000 dozens of trousers at the price of USD 100/dozen and delivering the goods in city Y of country N.

Assume that:

- Company M is not associated with company V and company S.

- These two transactions are comparable in transaction conditions, except a material difference which is the freight and insurance cost of USD 3/dozenfor the delivery of the goods from port X to city Yof country N.

Comparability analysis:.

- In comparing transaction I (associated transaction) with transaction 2 (uncontrolled transaction), it is found that transaction I did not accurately reflect the market price. Therefore, company V shall adjust the revenue from the transaction with company S as follows:

(USD WO - USD 3) x 1,000 = USD 97,000.

- Company V shall declare the processing charge received from company S being USD 97,000, instead of USD 60,000.

2.2. The resale price method

2.1.1. The resale price method is based on the resale price (or selling price) at which products are sold by an enterprise to an independent party for determining the price (cost) at which these products are bought from the associated party.

2.2.2. The price at which products are bought from an associated party is determined by subtracting (-) from the price at which products are sold in the uncontrolled transaction the gross profit and other expenses (if any) included in the price at which the products are bought (e.g., import tax. customs charge, international insurance and freight).

2.2.2.1. The gross profit is calculated according to the gross profit-selling price (net revenue) ratio and the selling price (net revenue), reflecting the value collected b\ the enterprise to offset business expenses and earn a reasonable profit margin.

The gross profit-selling price (net revenue) ratio is the value difference between the selling price (net revenue) and the cost of bought products divided by (:) the selling price (net revenue).

2.2.2.2. In case the enterprise performs the function of a distribution agent having no ownership over products and enjoying an agency commission expressed as a percentage (%) of the selling price of products, this percentage shall be regarded as the gross profit-selling price (net revenue) ratio. (See Appendix 2-GC'N/CC, not printed herein).

2.2.3. The gross profit-selling price (net revenue) ratio of the associated transaction shall be compared with the most appropriate value within the standard range of market prices based on the gross profit ratio for making adjustments in compliance with the principles provided for at Item 1.2. Clause 1. Article 5. Part B of this Circular.

2.2.4. For this method, in making comparability analysis of the four criteria as guided in Article 4. Part B of this Circular, the priority criterion is functions performed by enterprises and the complementary criteria are contractual terms, product characteristics and economic conditions.

2.2.5. The resale price method shall be applied on either of the following conditions:

a/ There is no difference in transaction conditions which materially affects the ratio of gross profit to resale price (net revenue), when comparing the uncontrolled transaction with the associated transaction: or

b/ There are differences materially affecting the gross profit- selling price (net revenue) ratio, which, however, have been eliminated under the guidance in Article 4. Part B of this Circular.

2.2.6. The factors which materially affect the gross profit-selling price (net revenue) ratio normally include:

a/ Expenses reflecting the functions performed by enterprises (e.g.. sole distribution agency, implementation of advertisement, sales promotion or warranty program, etc.):

b/ Kind, size, volume and turnover cycle of products bought for resale, and the operational characteristics of the transaction on the market (e.g.. wholesale, retail, etc.):

c/ Accounting methods (i.e.. ensuring that the components of gross profit and revenue of the associated and uncontrolled transactions are comparable or applied with the same accounting standards).

2.2.7. The resale price method is often applied to transactions in products at the stage of provision of simple services and commercial distribution with short turnover cycles from the time of purchase to the time of resale and less affected by seasonability. At the same time, before resale, products are not added with substantial value due to processing, assembly or alteration of characteristics or labeling.

Example 13: Enterprise V, a Vietnam-based associated party of foreign company H, deals in the distribution of watches supplied by company H has the following information:

- In the year 200.x, company H delivered to enterprise V 1,000 watches and requested enterprise V to pay an amount of USD 330,000 (inclusive of VIF price and tax: import tax was paid by company H).

- At the end of the year, the net revenue earned by enterprise V from the sale of all of these watches to consumers in Vietnam was USD 400,000.

- Enterprise T, an independent enterprise in Vietnam, also deals in the distribution of watches. Enterprise T's gross profit ratio for the year200x was 20%.

Assume that enterprise T is eligible for being selected for comparison of the gross profit ratio with enterprise V. Enterprise V shall declare deductible reasonable expenses for the purchase of watches from company H as follows:

[USD 400.000 - (USD 400,000 x 20%)] = USD 320,000

Enterprise V may only deduct reasonable expenses from the cost of goods of USD 320,000, instead of the payable amount of USD 330,000.

In case company 11 also provides the goods sale consultancy service and requests enterprise V to make a payment for this service (allowed to be accounted as sale expense), this transaction shall be separated and one of the transaction price determination methods stated in this Circular must be used to determine reasonable expenses deductible for this service.

2.3. The cost plus method

2.3.1. The cost plus method is based on the cost (or cost price) of products for determining the selling price at which such products are sold to an associated party.

2.3.2. The selling price at which products are sold to an associated party shall be the cost (or cost price) of products plus (+) the gross profit.

2.3.2.1. The gross profit shall be calculated on the basis of the gross profit-cost (cost price) ratio and the cost (or cost price), reflecting the reasonable profit corresponding lo the functions performed by enterprises and market conditions.

The gross profit-cost (cost price) ratio shall be the value difference between the net revenue and cost (cost price) of products divided (:) by the cost or (cost price). The cost (or cost price) of products includes direct and indirect production expenses but does not include financial activity expenses (e.g.. royalty and loan interest expenses, etc.).

In case an enterprise is unable to separately account the cost (or cost price), sale expenses and general management expenses, the cost (or cost price) of products used as a basis for calculating the gross profit shall include all of these expenses.

2.3.2.2. In case an enterprise performs the function of product purchase agency, having no ownership over products and enjoying agency commissions expressed as a percentage (%) of product purchase expenses, this percentage shall be considered the gross profit-cost ratio. (See Appendix 2- GCN/CC - not primed herein).

2.3.3. The gross profit-cost (cost price) ratio of the associated transaction shall be compared with the most appropriate value falling within the standard range of market prices based on the gross profit-cost (cost price) ratio for making adjustments in compliance with the principles prescribed at Point 1.2. Clause 1. Article 5, Part B of this Circular.

2.3.4. For this method, when conducting comparability analysis of the four affecting criteria as guided in Article 4, Part B of this Circular, the priority criterion is functions performed by enterprises and the complementary criteria are contractual terms, product characteristics and economic conditions.

2.3.5. The cost plus method shall apply on the condition that:

a/There is no difference between transaction conditions which materially affects the gross profit-cost (cost price) ratio, when comparing the uncontrolled transaction with the associated transaction: or

b/ There are differences materially affecting the gross profit-cost (cost price) ratio, which have, however, been eliminated under the guidance in Article 4. Part B of this Circular.

2.3.6. Factors materially affecting the gross profit-cost (cost price) ratio normally include:

a/ Expenses reflecting the functions performed by the enterprise (e.g.. production under contracts, research and development of new products, the proportion of added value to investment or business scope):

b/ Obligations lo perform the contract (e.g.. time of delivery of products, quality control and storage expenses, payment conditions):

c/ Accounting methods (ensuring that the components of the cost (or cost price) of the associated and uncontrolled transactions are similar or applied with the same accounting standards).

2.3.7. The cost plus method shall normally apply to the following cases:

a/ Transactions at the stage of production, assembly, manufacture or processing of products for sale to associated parties;

b/ Transactions between associated parties to perform partnership or business cooperation contracts to produce, assemble, manufacture or process products, or agreements on the supply of input elements for production and factoring of output products;

c/ Transactions of provision of services for associated parties.

Example 14: Vietnam-based enterprise A, a subsidiary company of parent company T (country Y), processes shoes for export according to the designs and models assigned In company T. The parent company is responsible for supplying input materials and auxiliary materials and quality inspectors, and paying for international transportation and insurance. Enterprise A shall be paid processing charges based on product units and bear all expenses incurred in the processing of products. In the year 20xx. information on enterprise A !v processing activities is as follows:

- Net revenue (processing charge): VND 15 billion

- Cost of goods sold: VND 13 billion

- Sale and enterprise management expense: VND 1.8 billion.

Assume that:

- There are some other independent enterprises also producing and processing shoes for foreign organizations and individuals and receiving a processing charge being the sum of total cost (= cost of goods sold + enterprise management expense + sale expense) and 7% of total cost.

- The independent transactions of these enterprises are eligible for being selected for comparison with transactions of enterprise A.

In this case, revenue from the processing of shoes shall be re-determined as follows: (13 billion + h.8 billion) + [7% x (13 billion + 1.8 billion)/ = VND 15.836 billion.

Thus, enterprise A shall declare its revenue of VND 15.836 billion, instead of the previous-figure of VND 15 billion.

2.3.8. The cost plus method may be applied to re-determining the cost (or cost price) involving elements of an associated transaction of an enterprise based on the price of goods sold already determined on the basis of the market price and the gross profit-cost (cost price) ratio.

Example 15: Vietnam-based enterprise V. a subsidiary company with 100% capital of multinational P. produces detergents for household use. Input materials (soap base and other cleansing chemicals) is supplied by Y, another subsidiary company of P. In the year 200x. enterprise V sold 100 tons of goods, including:

- Transaction 1: 60 tons, sold to another subsidiary company of group P at the FOB price of USD 650/nm.

- Transaction 2: 40 tons, sold to domestic supermarkets at the VAT-exclusive price of USD 700/ton.

The enterprise s accounting records reflect the following figures in the period:

- Net revenue: USD 67.000

- Total cost: USD 65,000

Assume that:

- Transactions 1 and 2 meet all conditions for enterprise V to apply the method of comparison of independent market prices.

- The gross profit-total cost ratio of independent enterprises engaged in producing household detergents is 15%.

Enterprise V shall declare its revenue and expenses for calculation of enterprise income tax as follows:

- Readjusting the selling price in the associated transaction according to the selling price in the uncontrolled transaction:

USD 700x 60 tons = USD 42.000

- Re-determining the net revenue:

USD 42.000 + USD 700 x 40 tons = USD 70.000

- Readjusting the total cost:

USD 70.000/(1 + 0.15) = USD 60.870

Thus, enterprise V shall declare and pay tax on the basis of the net revenue of USD 70.000 instead of the previous figure of USD 67.000. and total cost of USD 60.870 instead of the previous figure of USD 65.000.

2.4. The comparable profit method

2.4.1. The comparable profit method shall be based on the profitability ratio of products in an uncontrolled transaction selected for comparison, serving as a basis for determining the profitability ratio of products in an associated transaction when these transactions have similar transaction conditions.

2.4.2. The profitability ratios are calculated by dividing net pre-enterprise income tax profit (income) by net revenue, expenses or assets of production and business activities according to the regulations of the regime of accounting and financial statements. Net pre-enterprise income tax profit (income) may be added (+) with loan interests or fixed asset depreciations for determining the production and business efficiency before payment of these expenses. Profitability ratios often used include:

2.4.2.1. Ratio of net pre-enterprise income tax income to net revenue from production and business activities.

Example 16: Enterprise L operates in the domain of manufacture and assembly of 4-seat cars of marks N and S:

- Cars of mark N are sold to independent parties.

- Cars of mark S are all sold to enterprise LI, a company with 100% capital invested by enterprise L

- All purchasing transactions for the manufacture and assembly of cars of the aforesaid two marks are uncontrolled ones.

In the year 200x, enterprise L's accounting statistics were as follows:

+ Net revenue from the sale of cars of mark N was USD 18,000 (an uncontrolled transaction)

+ Net pre-tax profit from the sale of cars of mark N was USD 2,000

+ Net revenue from the sale of cars of mark S was USD 25,000 (an associated transaction)

+ Net pre-tax profit from the sale of cars of mark N was USD 1,800

+ Company LI provided company L with a loan with an interest of USD 100 at the market rate.

The ratio of net pre-enterprise income tax profit to net revenue for cars of mark N: 2,000/ 18,000 x 100%= 11.1%

The ratio of net pre-enterprise income tax profit to net revenue for cars of mark S: 1,800/ 25,000 x 100% = 7.2%

Assume that material differences between two transactions of selling cars of mark N and mark S have been adjusted so that the result of the transaction with company LI achieves the ratio of 11.1% of net profit before enterprise income tax and before payment of interest to net revenue. In this case, figures on the transaction of selling cars of mark S shall be re-determined as follows:

Total cost: USD 25,000 -1,800 - 100 = USD 23,100.

Net revenue: USD 23,100/(1- 0.111) = USD 25,984.

Net pre-tax and -interest profit: USD 25,984 - 23,100 = USD 2,884.

Net pre-tax profit: USD 2,884 - 100 = USD 2,784.

Company L shall declare the net pre-enterprise income tax profit of USD 2.784 from the transaction of selling cars of S mark, instead of the previous figure of USD 1.800 in the accounting book.

2.4.2.2. The ratio of net pre-enterprise income tax profit to total cost for production and business activities

The ratio of net pre-enterprise income tax profit to total cost may not be used in cases in which there are expenses arising from associated transactions because the figures on expenses from associated transactions fall within the scope of regulation to determine market prices.

Example 17: Enterprise A, a subsidiary of company B. acts as a forwarding service agent for B. Enterprise C, an independent enterprise, exclusively providing forwarding services (for many independent customers). Figures on revenues and expenses of A and C are as follows:

Unit of calculation: USD 1,000

	A	C
Total cost	1.500	2.000
Total revenue	1.650	2.500

Assume that C meets all conditions for being selected for comparison with A in the net pre-tax income-total cost ratio.

- The net pre-enterprise income tax profit-total cost ratio of A = (1,650 - 1,500): 1,500 = 10%

- The net pre-enterprise income tax profit-total cost ratio of C = (2,500 - 2,000): 2,000 = 25%

Enterprise A shall declare its net pre-enterprise income tar profit from the associated transaction according to the net pre-enterprise income tax profit-total cost ratio corresponding to that of 25% of enterprise C.

2.4.2.3. The ratio of net pre-enterprise income tax income to assets of production and business assets.

This ratio is used only in case enterprises have fixed assets accounting for a significant proportion in total investment capital (e.g.. enterprises in the manufacturing or mining industries).

The value of assets is the median value of the balances at the beginning and the end of the period, including fixed and liquid assets but excluding assets used for investment and contribution of joint venture or cooperation capital (e.g.. purchase of public bonds or shares).

Example 18:

- N, a Vietnam-based subsidiary of group P, .is specialized in producing rice liquor. The parent company supplies most of input production elements and factors all output products. In the year 200x, enterprise N has a net pre-enterprise income tax profit-assets ratio of 3%.

- V an independent company, is specialized in producing assorted beverages. Some of its workshops produce rice liquor, beer and other aerated beverages. In the year 200x. company V had a pre-enterprise income tax profit-assets ratio of 7%; for the whole company while its workshops producing rue liquor have this ratio of 7.5%.

Assume that V meets all conditions for being selected for comparison with N in the net pre-enterprise profit tax pro fit-assets ratio. In this case, N shall adjust taxable income according to the net pre-enterprise income tax profit-assets ratio of 7.5%.

2.4.3. Enterprises shall select one of the above- mentioned profitability ratios for comparing the profitability ratios of the associated and uncontrolled transactions and may use one or more other profitability ratios prescribed by the regime of financial statements to verify the accuracy of the selected ratio. The selection of profitability ratios calculated on the basis of net revenue, cost or assets shall depend on the economic nature of transactions (see Appendix 2-GCN/CC. not printed herein).

Example 19:

- Assume that the enterprise has an associated transaction at the stage of sale of products, it may not use the profit-revenue ratio because the figure on revenue from the associated transaction falls within the scope of adjustment for determining the market price.

- Assume that the enterprise provides service, it may not use the net pre-enterprise income tax profit-assets ratio.

2.4.4. The profitability ratio of the associated transaction shall be compared with the most appropriate profitability ratio falling within the standard market price range for making adjustments in compliance with the principles stated at Point 1.2. Clause 1. Article 5. Part B of this Circular.

2.4.5. For this method, when conducting comparability analysis of the four affecting criteria as guided in Article 4. Part B of this Circular, the priority criterion is functions performed by enterprises and the complementary criteria are contractual terms, product characteristics and economic conditions.

2.4.6. The comparable profit method shall be applied on the condition that:

a/ There is no difference between transaction conditions which materially affects the profitability ratio, when comparing the uncontrolled transaction with the associated transaction; or

b/ There are differences materially affecting the profitability ratio, which have. however. been eliminated under the guidance in Article 4. Part B of this Circular.

2.4.7. Factors materially affecting the profitability ratio normally include:

a/ Assets, capital and expenses for the performance of main functions of enterprises (e.g.. producing and processing by machines invested by enterprises may bring about a higher profit than producing and processing by machines borrowed from other establishments);

b/ Characteristics of the operation, group of products and stage of production or sale (e.g.. finished products made from crude materials or raw materials or from semi-finished products);

c/ Accounting methods and structure of expenses of products (e.g.. products in the period of rapid depreciation compared to routine depreciation).

2.4.8. The comparable profit method is considered an extended version of the resale price method and the cost plus method. Therefore, the comparable profit method is widely applied in the cases cited at Items 2.2.7, Point 2.2 and Item 2.3.7. Clause 2, Article 5, Part B of this Circular.

2.5. The profit split method

2.5.1. The profit split method is based on the profit earned from a combined associated transaction conducted by many associated enterprises so as to determine an appropriate profit of each of such enterprises in such a way that the independent parties share profits in comparable uncontrolled transactions.

A combined associated transaction participated by many enterprises is a transaction of unique and distinctive character, consisting of many closely interrelated associated transaction in exclusive products or associated transactions conducted between related associated parties.

2.5.2. The profit split method involves two ways of calculation:

2.5.2.1. The first way of calculation: To allocate the profit to each associated party on the basis of contribution of capital (sharing of cost), by which the profit of each participating enterprise (or party) shall be determined on the basis of allocating the total profit earned from the combined associated transaction in proportion to the capital (cost) used in the associated transaction of such enterprises within the total investment capital to create end products (see Appendix 2-GCN/CC, not printed herein).

Example 20:

Vietnam-based enterprise A and foreign-based enterprise B have the following information:

- Both are member companies of group T engaged in producing electronic products.

- Both participate in producing a new product of LCD televisions.

- A is responsible for designing and manufacturing television cabinets and picture tubes and delivering them to B for assembly with other parts (circuits, electronic chips, etc.) invented and manufactured by B. Finished products will then be sold to C, an independent distributor, at the price of USD 550 per set.

- The total cost price per product delivered by A to B is USD 300 while the cost incurred by B for further manufacture is USD 150.

The profit allocated to A is calculated as follows:

[(550 - (300 + 150)):450]x300 = USD 66.66

2.5.2.2. The second way of calculation: To share the profit in the following two steps:

2.5.2.2.1. The first step: To share the basic profit: Each of enterprises (or parties) participating in the associated transaction shall receive a portion of basic profit corresponding to their functions. This portion reflects the value of profit of the combined associated transaction earned by each enterprise from the performance of their functions without taking into account unique and sole factors (e.g., exclusive ownership or use of intangible assets or intellectual property rights).

The portion of basic profit shall be calculated on the basis of the gross profit ratio or the profitability ratio corresponding to the most appropriate value within the standard range of market prices based on the gross profit ratio or profitability ratio as guided at Points 2.2.2.3 and 2.4, Clause 2. Article 5, Part B of this Circular.

2.5.2.2.2. The second step: To share the residual profit: Each of enterprises (or parties) participating in the associated transaction shall further receive a portion of residual profit corresponding to the percentage of sharing related to the total residual profit (i.e. the total earned profit minus (-) the total basic profit already shared at the first step) of the combined associated transaction. This portion of residual profit reflects the profit of the combined associated transaction earned by enterprises in addition to the portion of basic profit thanks to unique and sole factors.

The portion of residual profit earned by each enterprise shall be calculated by multiplying (x) the total residual profit earned from the combined associated transaction by each enterprise's percentage of sharing of the following expenses or assets:

a/ Expenses for product R&D: or

b/ Value (after subtracting depreciated amounts) of intangible assets or intellectual property rights used for producing or dealing in products.

Expenses for product R&D or the value of intangible assets or intellectual property rights must be determined on the basis of market prices (using the methods prescribed in this Circular) or actual expenses shared by each party in compliance with accounting principles applicable to such expenses or assets.

Example 21: Companies H and M belong to the same group manufacturing cell phones. H manufactures assemblies while M assembles and installs software into complete cell phones for sale to independent distributors. Accounting figures of enterprises H and M related to the associated transaction of manufacturing cell phones are as follows:

Unit of calculation: USD 1,000

Items	H	M
Net revenue	200	500
Cost of goods sold, including:		
- Cost of input materials	100	200
- Cost of production	50	150
R&D cost	30	50

Sale and general management cost	10	50
Profit	10	50

Way of calculating profits of H and M by the profit split method:

Step I: Share the basic profit

- Re-calculate figures on the combined business result:

Unit of calculation: USD 1.000

Items	Amount
Net revenue	500
Cost of goods sold	300
R&D cost	80
Sale and general management cost	60
Profit	60

- Assume that H 's and M 's gross profit-to-cost ratios have been determined according to market values to be 10% and 8% respectively under the guidance at Item 2.3, Article 5, Part li of this Circular.

Calculate H's and M's profits according to the following formula:

Profit = gross profit ratio x cost price

Cost price = cost of goods sold + R&D cost + sale and general management cost

+ H 's profit = 10% x (100 + 50 + 30 +10) = USD 19,000

+ M's profit = 8% x (300 + 80 + 60-190) = USD 20.000

After the sharing of the basic profit, the residual profit is 60-19-20= USD 21,000

Step 2: Share the residual profit on the basis of the percentage of sharing of R&D cost

- Calculate the proportion of sharing of R&D cost by each party:

+ 11 = 30/80 x 100% = 37.5%

+ M = 100% - 37.5% = 62.57c

- Calculate H's and M's portion oj residual profit:

+ H: 21 x 37.5% = USD S.870

+ M.21 -8.87= USD 12,130

Conclusion:

- H shall declare its profit earned from the associated transaction as follows: 19 + 8.87 = USD 27,870, in replacement of the previous figure of USD 10,000; and

- M shall declare its profit earned from the associated transaction as follows: 20 + 12.13 = USD 32.130. in replacement of the previous figure of USD 50.000.

2.5.3. For this method, the comparability analysis of the four affecting criteria as guided in Section I. Part B of this Circular and the application conditions shall comply with the provisions applicable to the resale price method, the cost plus method or the comparable profit method, on a case by-case basis, under the guidance at Item 2.5.2.2.1. Point 2.5. Clause 2. Article 5. Part B of this Circular.

2.5.4. The profit split method is normally applied to the cases in which the associated parties jointly participate in researching into and developing new products or developing products being exclusive intangible assets or in transactions within the process of transitional production and business among the associated parties from the stage of materials to that of end-products for circulation of products in association with the sole ownership or use of intellectual properly rights.

Article 6. Provisions on determination of market prices in some special cases:

In case, due to the unique or distinctive characteristics of associated transactions, enterprises are unable to select uncontrolled transactions for comparison under the guidance at Points 1.1 thru 1.6. Clause 1. Article 4. Part B of this Circular and on the basis of the market price determination methods stated in Article 5. Part B of this Circular, enterprises shall give the reasons (including information on their business activities) and apply one of the following measures:

1. Combined measures

1.1. To expand the scope of selection of uncontrolled transactions (or independent enterprises) to other sub-sectors of the national economy (according to the list of national economy sectors promulgated by a competent state agency) than the sub-sector in which the enterprises are operating for comparison with conditions of enterprises conducting such uncontrolled transactions which have functions similar to those performed by the former; analyze the four affecting criteria and eliminate material differences on the basis of economic criteria used in the sub-sector so as to objectively reflect investment and business efficiency, economic growth or added value of products. The number of uncontrolled transactions or independent enterprises to be selected for comparison must be 5 (five) at least;

1.2. To determine the market price range by the ways of calculation under the most appropriate price determination method stated in Section II, Part B of this Circular; use the quartile math-statistics function or the percentile math-statistics function for determining the appropriate standard market price range and median value (see Appendix 2-GCN/CC. not printed herein).

1.3. In case the price, gross profit ratio or profitability ratio of products in the associated transactions is not lower than the median value within the standard market price range or the purchasing price of products in the associated transactions is not higher than this median value, enterprises are not required to make adjustments for the associated transactions. In case the price, gross profit ratio or profitability ratio of products in the associated transactions is lower than this median value or the purchasing price of products in the associated transactions is higher than this median value, enterprises shall make adjustments according to the most appropriate value within the standard market price range, which, however, must not be lower than the median value reflecting the corresponding price, gross profit or profitability ratio or must not be higher than the median value reflecting the corresponding purchasing price.

1.4. On a case-by-case basis, enterprises may use a combination of price determination methods stated in Article 5. Part B of this Circular (see example 15) or simultaneously apply two price determination methods to additionally verify the accuracy and objectivity of the price, gross profit ratio or profitability ratio of products in the associated transactions.

1.5. Particularly for the profit split method. the second way of calculation and guidelines at Points from 1.1 to 1.3. Clause 1. Article 6. Part B of this Circular shall be considered grounds for making adjustments for the basic profit: enterprises may continue to share the residual profit as guided at Item 2.5.2.2.2. Point 2.5. Clause 2. Article 5. Part B of this Circular.

Example 22: Company X manufactures electronic integrated circuits and exports all products to its foreign-based parent company at the sale price (revenue) equal to 1.1 of total cost.

Assume that:

- In the domain of manufacture of electronic integrated circuits there is no uncontrolled transaction or independent enterprise for comparison.

- Company X selects 10 enterprises in the sub-sector of manufacture of electronic products for determining the standard market price range and the corresponding median value (under Article 5, Part B of this Circular). The result shows that the median value of the standard market price range of the net pie-enterprise income tax profit-net revenue ratio of the selected 10 enterprises is 30c/c.

- An analysis of economic criteria reflecting the investment efficiency of the sub-sector shows that the net pre-enterprise income tax profit-net revenue ratio of 30% is suitable to the actual operation of company X (namely, there is no material difference which must be adjusted).

Thus:

- Company X may examine it's price determination to ensure that the net pre- enterprise income tax profit-net revenue ratio of 30% is reached, or base itself on the net pre-enterprise income lax profit-net revenue ratio to re-calculate the net pre-enterprise income tax profit-total cost ratio for comparison and adjustment.

- The way of re-calculation may be as follows:

+ Net pre-enterprise income tax profit-net revenue ratio= (net revenue - cost)/net revenue = 0.3

+ Net revenue = 1.429 times of cost.

2. Method of application of figures between periods

Enterprises may apply comparable associated transactions conducted between periods (not exceeding 5 years, counting from the time of arising of the associated transaction), for which the market prices have been determined under the guidance of this Circular, compile dossiers for comparability analysis of the four affecting criteria among the transactions, make adjustments for material differences and use objective grounds for adjusting economic values in different periods of time (e.g., average price increase rate, interest rate, inflation rate, economic growth) for determining the suitable price of products, gross profit ratio or profitability ratio of the associated transaction arising in the period of declaration and payment of enterprise income tax.

Example 23: Enterprise A, a Vietnam-based enterprise with 100% foreign-invested capital, is the sole enterprise engaged in exploiting and processing metal X ore in Vietnam for export. It has the following information:

- In the year 2xx 1, it conducted both associated and uncontrolled transactions. For associated transactions, it applied the method of comparing the price of uncontrolled transactions and determined the unit price of USD 800 per ton of ore containing 35% of metal X.

- In the year 2xx2, enterprise A exported 100% of its products to its parent company (there was no uncontrolled transaction for comparison; the world market price of metal X in the year 2xx2 increased by 20% over 2xxl; other factors affecting the price of products (content of metal, delivery and payment terms, etc..) remained unchanged.

Thus, enterprise A would declare and calculate tax for the year 2xx2 based on the revenue from the sale of metal X ore at the unit price of not lower than USD 960/ton (= USD 800/ton x 120%).

Article 7. Storage and supply of data and vouchers on market price determination methods

1. Selection of data and vouchers 1.1. Data, vouchers and documents used as grounds for comparability analysis must be of clear sources so that they can be examined and verified by tax offices. Enterprises may use information and data from the following sources:

a/ Information and data publicized or supplied upon request by stale agencies, departments or branches, research institutes, associations and specialized international organizations recognized by the State:

b/ Information and data certified or publicized by licensed organizations and individuals operating in independent services or occupations (e.g.. independent audit organizations, register offices or quality registration offices, organizations engaged in classifying or ranking the credit of enterprises);

c/ Annual or periodical financial statements and investment reports of companies listed on the securities markets, which are publicized according to the regulations and operation rules of these securities markets:

d/ Data, vouchers and documents relating to business transactions for tax declaration and payment purposes, which enterprises supply and are responsible for.

Data, vouchers and documents originating from unofficial or unidentified sources shall be used for reference only.

1.2. When selecting transactions for comparability analysis and calculation of gross profit ratio or profitability ratios, enterprises shall reflect data in comparable forms within a period of at least 3 consecutive fiscal years. For enterprises which have existed for less than 3 fiscal years or carry out seasonal business activities which do not take place throughout the year, such period may be a month, a quarter or a season as appropriate.

1.3. When calculating relative figures (e.g.. ratios expressed in a percentage (%) of absolute figures, enterprises shall round such figures to the third digit following the decimal point. In case a relative figure is a publicized one with no accompanying absolute figures and complying with this principle on rounding, the publicized figure shall be used.

Example 24:

If using absolute figures for calculating the gross profit ratio, a value of 5.2856% is obtained, this relative figure shall be rounded to 2,286%.

If the publicized figure of economic growth is 7.8%. this figure must not be rounded.

If the publicized figure of interest rate is 4.9854%, this figure shall be rounded to 4,985%.

2. Requirements on storage and supply of information, documents and evidence

2.1. Enterprises having associated transactions shall have the obligation as well as responsibility to store and produce information, documents and evidence already used as grounds for the application of methods or determining the market price of products in such associated transactions at the request of tax offices when conducting examination or inspection. Information, documents and evidence related to production and business activities and methods of determining market prices of associated transactions must be established at the time of arising of associated transaction-., updated and supplemented throughout the time of performance of the transactions and preserved under the provisions of the accounting, statistics and tax laws regarding preservation of accounting vouchers and books.

2.2. When making settlement of enterprise income tax. enterprises shall be responsible for declaring their associated transactions according to form GCN-01/QLT provided in Appendix 1-GCN/CC to this Circular (not printed herein). The deadline for submission of this form is also the deadline for submission of the enterprise income tax finalization declaration.

2.3. Enterprises are obliged to compile and preserve records of information, documents and vouchers related to associated transactions as follows:

2.3.1. General information in enterprises and associated parties:

a/ Information on association relationships between associated parties and enterprises:

b/ Updated documents and reports on strategies for development, management and control among associated parties: policies on establishment of transaction prices of each group of products in line with general orientations set by associated parties and enterprises;

c/ Documents and reports on the process of development. business strategies, investment, production and business projects and plans: regulations and processes for enterprises and associated parties to make financial statements and conduct internal control:

d/ Documents describing the organization and functions of operation of enterprises and associated parties participating in transactions.

2.3.2. Information on transactions conducted by enterprises:

a/ Plans and descriptions of transactions, including information on transaction parties. order and procedures for payment and delivery of products, etc.:

b/ Documents describing characteristics and technical specifications of products: a detailed list of expenses (costs) per unit product, selling price of product, total quantities of products produced, traded in and sold in each period (by associated transaction and uncontrolled transaction (if any)); quantities of products:

c/ Information, documents and vouchers on the process of negotiation, signing, performance and liquidation of economic contracts/agreements related to transactions (normally including description of product, place of transaction, form of transaction, value of transaction, payment conditions and documents, time of implementation, work minutes or directives of management related to the process of negotiation, signing and performance of transactions):

d/ Information, documents and evidence related to economic circumstances of the market at the time of performance of associated transactions which affect the method of determining transaction prices (e.g.. changes in foreign exchange rates, government policies affecting transaction prices, financial preferences, etc.).

2.3.3. Information on methods of determining market prices

a/ Enterprises' policies on establishment of buying and selling prices or exchange of products, process of control and approval of prices, price tariffs of products on different sale markets;

b/ Information, documents and evidence used as grounds to prove the selection and application of methods of determining the most appropriate prices in associated transactions of enterprises. including information, data and vouchers used for comparability analysis and adjustment of material differences, the table of calculation of transaction prices based on the price determination method applied by enterprises and reasons for the application of such method:

c/ Other information, documents and evidence for reference which are related to the selection and application of methods of determining prices in associated transactions (if any).

2.4. Enterprises shall, at the request of tax offices, be obliged to supply information, documents and evidence within 30 working days after the date of receipt of written requests of tax offices. In case enterprises have plausible reasons, this time limit may be extended only once for 30 days, counting from the date of its expiration.

2.5. Information, documents and evidence supplied by enterprises to tax offices must be in the written form, originals or copies in compliance with the provisions of law on notarization and authentication. In case enterprises use e-evidence. the supply thereof shall comply with the Accounting Law and relevant guiding documents regarding e-vouchers.

Documents and vouchers in a foreign language must be translated into Vietnamese under the provisions of the Accounting Law and the accounting regime. Enterprises shall take responsibility for the contents of the translations.

Part C

RIGHTS AND OBLIGATIONS OF TAXPAYERS; RESPONSIBILITIES OF TAX OFFICES. AND OTHER PROVISIONS

Article 8. Rights and obligations of enterprises:

Apart from exercising the rights and performing the obligations under the provisions of legal documents on taxation and of this Circular, enterprises also have the following

rights and obligations:

1. To request tax offices to keep confidential information they have supplied to tax offices to serve the determination of market prices in business transactions among associated parties for taxation purposes:

2. To be obliged to fully produce necessary data, documents and evidence to prove the selection and application of methods of determining the most appropriate prices for associated transactions.

Article 9. Responsibilities and powers of tax offices

1. To keep confidential information supplied by enterprises in relation to the determination of market prices in business transactions among associated parties for taxation purposes defined in this Circular when such information does not come from publicized sources. The supply of confidential information by taxpayers to relevant state agencies must comply law.

2. To fix prices to be used for tax declaration and calculation, fix taxable incomes or payable income tax amounts for enterprises which conduct associated transactions in the following cases:

a/ Enterprises have based themselves on unlawful or invalid documents, data and evidence or fail to specify the sources of documents, data and vouchers they have used for determining prices, gross profit ratios or profitability ratios applied to associated transactions;

b/ Enterprises have forged uncontrolled transactions or arranged associated transactions into uncontrolled ones so as to select these transactions as uncontrolled transactions for comparison;

c/ Enterprises fail to declare or fully declare information in Appendix GCN-01/HTQT for associated transactions arising in the year of settlement of enterprise income tax; fail lo supply upon request within the time limit information, data and documents to prove the declaration and accounting market prices for associated transactions:

d/ Tax offices suspect that enterprises fail to apply or apply improperly in a deliberate manner the provisions of this Circular and enterprises fail to pro\e within 90 days after receiving notices of tax offices.

3. The General Department of Taxation shall base itself on information on tax liabilities declared by enterprises having associated transactions and databases of tax offices to guide the assessment of taxes on the following principles:

a/ In case enterprises have fully implemented the regime of accounting, invoices and evidence, the fixing of revenue, cost or taxable income for determining tax liabilities shall be effected under market price determination methods specified in Clause 2. Article 5 and Article 6. Part 13 of this Circular on the basis of prices, gross profit ratio or profitability ratios determined by tax offices suitable to each case or each business line;

b/ In other cases, the assessment of tax shall be effected on the basis of databases of tax offices under regulations on tax assessment applicable to enterprises which have not fully implemented the regime of accounting, invoices and evidence or under regulations on handling of tax-related violations;

c/ In case of tax assessment related to the standard market price range, the most appropriate value for determining prices, gross profit ratio or profitability ratios applicable to enterprises having associated transactions subject to tax assessment is a value not lower than the median value of the standard market price range determined by tax offices; the most appropriate value for determining the purchasing price applicable to enterprises having associated transactions subject to tax assessment is a value not higher than the median value of the standard market price range determined by tax offices.

4. The General Department of Taxation shall guide the examination and inspection of enterprises in their implementation of this Circular.

Part D

ORGANIZATION OF IMPLEMENTATION

Article 10. Effect

This Circular takes effect 45 days from the date of its signining for promulgation. To annul the Ministry of Finance's Circular No. 117/2005/ TT-BTC of December 19. 2005. guiding the determination of market prices in business transactions between associated parties, and the Minister of Finance's Decision No. 37/2006/QD-BTC of January 4. 2006. correcting the Ministry of Finance's Circular No. 117/2005AT-BTC of December 19. 2005. guiding the determination of market prices in business transactions between associated parties.

Any problems arising in the course of implementation of this Circular 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