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MINISTRY OF FINANCE
No. 59/2008/TT-BTC

Socialist Republic of Vietnam
Independence – Freedom - Happiness

Hanoi, July 4, 2008

CIRCULAR

Instruction regarding the management and use of income from settlements of violations involving smuggling, trade fraud and counterfeits

Based on Decree No. 60/2003/NĐ-CP which stipulates and instructs the implementation of the State Budget Law dated June 6, 2003 by the Government;

Based on Decree No. 77/2003/NĐ-CP which stipulates the functions, duties, powers and structure of the Ministry of Finance dated July 1, 2003 by the Government.

In order to implement the instructions given by the Prime Minister regarding Correspondence No. 138/VPCP-V.I on costs additionally allocated for functional forces in fighting against smuggling, trade fraud and counterfeits dated January 8, 2008 by the Government Office; upon reaching agreement with the Steering Committee 127TW, the Ministry of Finance issues the instruction on employing partial income from settling violation to load expense for anti-smuggling, trade fraud and counterfeit forces to invest in materials, equipments, tools and rewards as follows:

I. GENERAL REGULATION

1. This Circular pertains to the fight against smuggling, trade fraud and counterfeits carried out by anti-smuggling, trade fraud and counterfeit forces (hereinafter commonly called anti-smuggling, trade fraud and counterfeit agency) which includes police, border guards, marine soldiers, market management forces, competition management, FPD, investigators and the taxation, customs and other functional agencies (at central or local level) that are assigned to carry out inspection and settlement of violations involving anti-smuggling, trade fraud and counterfeits in accordance with the regulations of the law.

The management and utilization of the income resulting from settlement of administrative violations and criminal violations which do not come under the anti-smuggling, trade fraud and counterfeit sector regulated in this item must follow the regulations of the current law.

2. The proceeds, which are paid into the budget that are partially allocated to anti-smuggling, trade fraud and counterfeit agency as stipulated in this Circular consist of the income from settling administrative violations in accordance with the valid Decision (including administrative fines and the proceeds from selling confiscated evidence and vehicles involved in administrative violation), income from selling confiscated properties in compliance with decisions given by police or the court in for criminal cases involving smuggling, trade fraud and counterfeits confiscated and submitted to the state budget by these forces.

3. All the proceeds mentioned in item 2 of this Section must be paid into the temporarily-kept account opened in the State Treasury by and under the management of financial agencies. The proceeds collected by agencies at central and provincial level submitted into the temporary account opened in the State Treasury by the Department of Finance. Those of agencies at district or lower level is required to pay the proceeds into the account opened in the State Treasury by district financial agency.

The proceeds or money paid into the account mentioned above, after deducting the expendable amount and that used for costs stipulated in this Circular, must be submitted to the local budget for use in accordance with the State Budget Law.

II. SPECIFIC REGULATIONS

1. Reasonable and acceptable costs incurred during the settlement of administrative violations and criminal violations involving smuggling, trade fraud and counterfeits that can be taken from the proceeds or money paid into the temporary receipt or keeping account consist of:

a) The costs of the investigation, identification, seizure including communications fees for the officers involved in the settlement, petrol costs for the vehicles used in the inspection, arrest, escort, and protection of subjects and evidence, rental for vehicles and venues required for the investigation, repair fees for vehicles damaged during the chase and arrest of violators and costs for posting advertisement and notification of investigation to the shipment owner.

b) The costs for buying information (if any): the maximum amount for buying information in each case is 10% of the proceeds from settling administrative violations, and criminal violations of the case, not exceeding 50,000,000 VND. For cases in which the confiscated properties are counterfeits or of low value, the rate of buying information is not limited but can not exceed 30,000,000 VND.

Cases involving a payment for information must show sufficient documentation in accordance with the regulation. In the case that informants request to anonymity, the expense associated with buying information must be based on the payment order with signatures of the people who directly paid the informants including the cashier, accountant and the chief of the unit directly involved in the investigation and settlement of violation. The chief of the unit that is involving in the investigation and settlement of administrative and criminal violations must take responsibility for the accuracy and honesty in paying for information and ensuring the payment is made to the right people with efficiency.

c) Expenditure for the care and rescue of wildlife from the time the animals are temporarily seized until they are released into the wild or transferred to zoos, experimental centers, or other organizations in accordance with the decision given by functional level agency.

d) Expenditure for the distribution, receipt, unloading, transport and preservation of confiscated properties; payment for the assessment, identification of temporarily kept properties and compensation for loss caused by objective reasons (if any) from the time of temporary custody until the time a decision on settlement is approved by competent agency. In the case that the Government provides storehouse, personnel, means of transport serving the settlement of confiscated properties, the fees relating to the transport and preservation of those properties shall not be paid.

e) Expenditure for the transfer, receipt, unloading, transport and preservation of confiscated properties for submitting to the state fund, from the time of decision on settlement issued by authorized agency until the time of the completion of the settlement.

f) Expenses incurred during the sale of confiscated properties of administrative violations or criminal violations such as: the expenses of the initial assessment, fees for hiring identification experts, repairs of properties to be sold if repairs are required prior to their sale or if the increased value after repair is higher than the repair cost, payment for the loss of property resulting from justifiable reasons, auctioneer fees to or companies or agencies with functions to auction state properties or payment for auctions carried out by the auctioning committee.

The property auctioning committee is paid in advance an amount not exceeding 5% of the value (based on the initial price) of the property to be auctioned. After the auction, the auctioning committee must clear all money earned from the auction including the advance in accordance with the current regulations.

g) Other expenses directly relating to the inspection, seizure and settlement of administrative and criminal violations involving smuggling, trade fraud and counterfeits.

Based on the revenue paid into the temporary account, the financial agencies at all levels are responsible to consider and make timely payment of reasonable or acceptable expenses in accordance with the regulations in this Circular. Agencies must open account book, organize accounting of these financial sources in accordance with the regulation and process the receipts and payments in compliance with the State Budget Law. In the event that the settlement of administrative or criminal violations result in no income or the income that is insufficient to cover all the expenses,

anti-smuggling agencies or units can request support from state budget in accordance with the current regulation if costs cannot be met within their agency budget.

2. After deducting the expenses mentioned in Item 1 of this Section, anti-smuggling agencies and units that lead the settlement of cases involving smuggling, trade fraud and counterfeits are permitted to use 30% of the proceeds raised and invest the rest to buy materials, equipments, tools and rewards for organizations and individuals participating in the investigation, seizure and settlement of violations in smuggling, trade fraud and counterfeits. This expense is deemed to be 100% and shall be used as follows:

a) 40% is used for:

- Rewards for organizations and individuals participating in the fight against violations involving smuggling, trade fraud and counterfeits. The reward rate is to be decided by the chief of the anti-smuggling agencies and the units based on the capital sources serving this purpose.
- Allowance for the treatment of officers from anti-smuggling agencies and units who are injured or killed during the investigation or whilst arresting criminals including hospital fees for those who are not granted with health insurance.
- Allowance for officers who work at night or overtime, who take multiple posts or participate in the fight against violations in smuggling, trade fraud and counterfeits. The specific expense is determined in accordance with the general regulations given by PC of the province in which the money is submitted to the budget.

For the cases in which the revenue is small but many forces have been involved in the settlement, the chief of the leading anti-smuggling agency or unit is permitted to use a maximum additional 10% of the total revenue (this 10% is taken from the expenses used as in point b below) to supplement the allowance, rewards granted to organizations and individuals with achievements in accordance with this point. If a case involves the participation of multiple forces, the chief of the leading anti-smuggling agency or unit is responsible, depending on the complexity of the case and the participation of each agency and unit, for determining the allowances and rewards in an open and democratic manner.

- Expenditure for propaganda, dissemination and education about laws regarding the prevention and fight against smuggling, trade fraud and counterfeits.
- Expenditure for professional training for officers and soldiers participating in the fight against smuggling, trade fraud and counterfeits;
- Expenditure for conferences, workshops, and surveys in relation to the fight against smuggling, trade fraud and counterfeits;
- Supporting allowance for the leading and directing functions carried out by senior agencies. Ministries in charge of the forces participating in the fight against smuggling, trade fraud and counterfeits are to give specific instructions regarding the expenditure rates (but the maximum amount must not exceed 10% of the cost expendable on these items regulated in this point)..

b) 60% is to be used to invest in materials, equipment and tools required for the fight against smuggling, trade fraud and counterfeits.

The investment in buying materials, equipment and, tools must follow the current regulations, standards, and norms. If the expense is not stipulated in the current regulations, standards or norms, the chief of the anti-smuggling agency or unit shall decide in regard to the payment and take responsibility for this decision.

If the additional revenue is not utilized by the end of the year, it may be carried over to the following year to be spent as per the items stipulated in this Circular.

3. Accounting, payment and clearing of the additional revenue:

Units allocated with operational finances taken from the proceeds of cases involving smuggling, trade fraud and counterfeits must have accounting systems in place and organize the disbursement of the income to ensure strict financial management in accordance with the current regulations. The accounting, payment and clearing of the receipts and expenditure from the state budget must be carried out in line with the current laws regarding the state budget and instructions mentioned in this Circular.

III IMPLEMENTATION

This Circular becomes valid after 15 days from the day it is posted in the Official Gazette and is applicable for anti-smuggling agencies and units involved in the fight against smuggling, trade fraud and counterfeits.

The management and disbursement of proceeds arising from handling administrative violations and criminal cases that do not belong to the anti-smuggling, trade fraud and counterfeits sector shall not be subject to following this Circular but should remain in compliance with the current regulations.

In the event of any difficulties occurring during the implementation of this Circular the Ministry of Finance must be notified to provide direction.

Receipts:

- Prime Minister and Deputy Prime Ministers
- The National Assembly Office, State Audit;
- Office of the State President;
- Central Party Office and Office of Party's committees
- Government Office;
- Ministries, ministerial agencies and agencies directly under the Government;
- Supreme People's Court; People's Supreme Procuracy;
- PCs, People's Councils of cities, provinces directly under the Government;
- Agencies under the Ministry of Finance;
- Document checking Bureau (Ministry of Justice);
- Official Gazette; the Government's Website;
- Website of Ministry of Finance;
- Archived

**ON BEHALF OF MINISTER
VICE MINISTER**

Do Hoang Anh Tuan