

MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 128-2003-TT-BTC

Hanoi, 22 December 2003
(as amended 1 September 2004¹)

**CIRCULAR
ON
CORPORATE INCOME TAX**

**Providing guidelines for implementation of
Decree 164-2003-ND-CP of the Government dated
22 December 2003 making detailed provisions for
implementation of the Law on Corporate Income Tax**

Pursuant to the *Law on Corporate Income Tax* passed by Legislature XI of the National Assembly on 17 June 2003;

Pursuant to Decree 164-2003-ND-CP of the Government dated 22 December 2003 making detailed provisions for implementation of the *Law on Corporate Income Tax*;

Pursuant to Decree 77-2003-ND-CP of the Government dated 1 July 2003 on functions, duties, powers and organizational structure of the Ministry of Finance;

The Ministry of Finance hereby provides the following guidelines:

A. Scope of Application of Corporate Income Tax

I. *Payers of corporate income tax:*

The following organizations and individuals producing and trading goods and services (hereinafter collectively referred to as *business establishments*) and earning taxable income shall be liable to pay corporate income tax:

1. Organizations producing and trading goods and services:
 - 1.1 State owned enterprises established and operating pursuant to the *Law on State Owned Enterprises*;
 - 1.2 Enterprises established and operating pursuant to the *Law on Enterprises*;

1 As amended by Circular 88-2004-TT-BTC of the Ministry of Finance dated 1 September 2004.

- 1.3 Enterprises with foreign owned capital and foreign parties to business co-operation contracts under the *Law on Foreign Investment in Vietnam*;
 - 1.4 Companies overseas and foreign organizations conducting business activities in Vietnam beyond the scope of the *Law on Foreign Investment in Vietnam*;
 - 1.5 Economic organizations of political organizations, socio-political organizations, social organizations, socio-professional organizations and units of the people's armed forces; administrative and professional bodies engaged in production and trading of goods and services;
 - 1.6 Co-operatives; co-operation groups;
 - 1.7 Other organizations engaged in production and trading of goods and services.
2. Domestic individuals producing and trading goods and services:
 - 2.1 Business individuals and groups of business individuals;
 - 2.2 Individual households;
 - 2.3 Freelancers, irrespective of whether or not they have an office or fixed location for their practice, who fall into the business category (except persons who work for a wage) must register with the tax office to pay corporate income tax, namely: medical practitioners, lawyers, accountants, auditors, painters, architects, music composers and other freelancers;
 - 2.4 Individuals leasing out assets, such as houses, land, means of transportation, machinery, equipment, and other types of assets.
 3. Foreigners conducting business in Vietnam or having income sourced in Vietnam, irrespective of whether the business operation is conducted in Vietnam or overseas, such as leasing out assets, providing loans, transferring technology, providing consultancy, marketing, advertising, and so forth.

4. Companies overseas conducting business activities through resident establishments in Vietnam.

Resident establishment means a business establishment through which a company overseas conducts all or a part of its business activities in Vietnam which earn income. A resident establishment of a company overseas may take the following forms:

- 4.1 Branch, operational office, plant, workshop or warehouse for receipt and delivery of goods; means of transportation, mine, petroleum or gas field, and any location where natural resources are explored or exploited or where there are equipment and facilities serving the exploration of natural resources;
- 4.2 Construction site, construction works, or installation and assembly works; location of supervisory activities for construction, construction works, or installation or assembly works;
- 4.3 Establishment providing services including consultancy services provided through its employees or another entity;
- 4.4 Agent for a company overseas;
- 4.5 Representative in Vietnam in a case where it has authority to enter into contracts in the name of a company overseas; or a representative which is not competent to enter into contracts in the name of a foreign company but regularly delivers goods or provides services in Vietnam.

Where a treaty on avoidance of double taxation to which the Socialist Republic of Vietnam is a signatory contains different provisions relating to resident establishments, such treaty shall prevail.

II. *Subjects not liable to pay corporate income tax:*

The following subjects shall not be liable to pay corporate income tax:

1. Co-operatives and co-operation groups engaged in agricultural production and earning income from products of cultivation, husbandry and aquaculture.
2. Rural family households and individuals engaged in agricultural production and earning income from products of cultivation, husbandry and aquaculture, except where they produce large quantities of goods and earn high income from these activities.

Pending regulations from the Government, corporate income tax shall temporarily not be collected from rural family households and individuals

engaged in agricultural production and earning high income from a large production from cultivation, husbandry and aquaculture.

B. Bases for Tax Calculation and Tax Rates

The bases for calculation of corporate income tax shall be taxable income and tax rates.

I. Taxable income:

Taxable income in any one tax period shall comprise income earned from production, business and service activities and other taxable income, including income earned from production, trading and service activities conducted overseas.

A tax period for calculating corporate income tax shall be fixed in accordance with the Gregorian calendar year. Where any business establishment is permitted to apply a financial year other than the Gregorian year, such applicable financial year shall be its tax period for calculating corporate income tax. When tax is first calculated in the case of a new business establishment, and when the final tax payment is calculated in the case of a business establishment which converts its form of enterprise, converts its form of ownership, merges, divides, dissolves or is declared bankrupt, the tax period for calculating corporate income tax shall be fixed in accordance with the laws on accounting.

Taxable income in any one tax period shall be determined as follows:

Taxable income in the tax period shall equal (=) turnover used to calculate taxable income in the period less (-) reasonable expenses in the tax period plus (+) other taxable income in the tax period.

After using the above formula to determine taxable income, business establishments may deduct the amount of losses carried forward from previous tax periods in order to calculate the amount of corporate income tax payable pursuant to regulations.

Where a treaty on avoidance of double taxation to which the Socialist Republic of Vietnam is a signatory contains different provisions relating to the method of calculation of corporate income tax applicable to resident establishments, such treaty shall prevail.

II. Turnover used to calculate taxable income:

1. Turnover used to calculate taxable income shall be determined as follows:

Turnover used to calculate taxable income shall be total sales revenue, fees for provision of services, including price subsidies, additional charges

or additional excesses earned by a business establishment, irrespective of whether or not the revenue is actually received.

Turnover used to calculate taxable income shall be determined specifically in the case of business establishments paying value added tax by different methods as follows:

- 1.1 If a business establishment pays value added tax by the tax credit method, turnover used to calculate taxable income shall be turnover excluding value added tax.

For example: Establishment A pays value added tax by the tax credit method and its VAT sales invoice states:

- Selling price: 100,000 dong
- Value added tax (10%): 10,000 dong
- Payment price: 110,000 dong

Turnover earned by Enterprise A to calculate taxable income is 100,000 dong.

- 1.2 If a business establishment pays value added tax calculated directly on the basis of added value, turnover used to calculate taxable income shall include value added tax.

For example: Establishment B pays value added tax calculated directly on the basis of added value and its sales invoice states the selling price at 110,000 dong (including VAT). Turnover earned by Enterprise B to calculate taxable income is 110,000 dong.

2. Point of time for fixing turnover in order to calculate taxable income:

- 2.1 In respect of goods, when ownership of the goods is transferred or when a sales invoice is issued;
- 2.2 In respect of services, when the services are completed or when a sales invoice is issued.

3. Turnover used to calculate taxable income shall be determined in a number of specific industries as follows:

- 3.1 Where goods are sold by way of instalment payments, the turnover on goods sold shall be calculated on a lump sum payment price excluding any interest payable on instalments or interest on deferred payment.

If payment under a contract for the purchase and sale by way of instalment payments extends over a number of tax periods, turnover shall be the amount payable by the purchaser in the tax

period excluding any interest payable on instalments or interest on deferred payment prescribed in the contract.

Expenses for goods sold by way of instalment payments shall be determined on principles consistent with turnover.

- 3.2 With respect to goods or services produced and used by a business establishment for the purpose of exchange, donation, fit-out of employees or to reward employees, the turnover shall be calculated on the basis of the selling price of products, goods or services of the same or similar kind in the market at the time of exchange, donation, fit-out of employees or reward paid to employees.
- 3.3 With respect to goods or services produced by a business establishment for its own use during the production process, such as power, or products to be used as its own fixed assets or capital construction, the turnover shall be the cost of producing such products.
- 3.4 With respect to processing of goods, the turnover from processing, including fees, fuel, power, sub-materials and other expenses required for processing goods.
- 3.5 With respect to a business establishment which either acts as an agent or accepts goods on consignment to sell at the price fixed by the principal, the turnover shall be the commission of such business establishment.
- 3.6 With respect to leasing out assets, the amount of rent collected for each period under the lease contract.

If a lessee pays rent in advance for a number of years, the turnover used to calculate taxable income shall be determined in the same manner as determination of the expenses of the business establishment.

Depending on its conditions and determination of reasonable expenses, a business establishment may select one of two methods for determining turnover used to calculate taxable income as follows:

- The amount of rent shall be determined for each year as equal to pre-paid turnover divided by the number of years for which it is paid in advance;
- The amount of rent which is paid in advance for a number of years.

With respect to a business establishment or individual not implementing the regime on accounting and accounting source documents and conducting the business of leasing out assets where the lessee pays rent in advance for a number of years, the turnover used to calculate taxable income shall be the whole of the rent received.

If a business establishment selects the above method, namely turnover used to calculate taxable income is the whole of the rent received during a period, and if during that period the business establishment is entitled to a preferential tax rate, its taxable income entitled to exemption or reduction shall be equal to total taxable income divided by the number of years for which the lessee pays rent in advance multiplied by the number of years for which the business establishment is entitled to a tax exemption or reduction.

- 3.7 With respect to lending, interest on deposits and receipts from finance leasing products, turnover shall be the interest collectible in any one period, fixed on the following principles:
- Interest on overdue debts shall not be accounted for by a credit institution as income but should be monitored and followed up via the external accounts and when collected accounted for as professional receipts income;
 - Where collectible interest on current loans is accounted for as income but the customer does not pay it after ninety (90) days or the loan is confirmed as irrecoverable prior to expiry of ninety (90) days, the interest shall not be included in the turnover used to calculate taxable income. A credit institution should monitor this deducted item and follow it up via the external accounts and if collected the item should be accounted for as professional receipts income.
- 3.8 Turnover from air transportation means all sums that an enterprise is entitled to from passenger transportation and from luggage and cargo transportation, irrespective of whether payment is received or not. The date for determining turnover is the date on which transportation has been completed.
- 3.9 Turnover from sale of electricity means the sum recorded in VAT invoices. The date for determining turnover is the last date on the meter index in the invoice for electricity.

For example: An invoice is issued calculating electricity price on the meter index 5 December up to 5 January, turnover from this invoice shall be accounted for in January.

For other services, such as post office services, water supply, and so forth, turnover shall be calculated on the same basis.

- 3.10 With respect to insurance and re-insurance operations, the turnover shall be the amount receivable for primary premiums, assessment fees as agent, reinsurance ceding, commission for re-insurance, and all other items.
- 3.11 With respect to sharing products pursuant to a business co-operation contract, turnover used to calculate taxable income shall be determined as follows:
- In the case of goods sold in the Vietnamese market, the selling price stated on the sales invoice;
 - In the case of export goods, the FOB price at export bordergates.

III. *Reasonable deductible expenses for purpose of calculation of taxable income:*

Reasonable expenses relating to taxable income in a tax period shall be determined as follows:

1. Depreciation of fixed assets used for producing or trading goods and services:
- 1.1 An item for depreciation of fixed assets may be included in reasonable expenses when calculating corporate income tax if the following conditions are satisfied:
- (a) The fixed assets are used for production, business and service activities;
 - (b) The fixed assets have proper and complete invoices and vouchers proving ownership by the business establishment;
 - (c) The fixed assets are managed, monitored and entered in the accounting books of the business establishment in accordance with the current regulations on management accounting.
- 1.2 The level of depreciation of fixed assets to be included in reasonable expenses shall comply with the decision of the Minister of Finance on management, use and depreciation of fixed assets.

Business establishments which adopt the straight line method of depreciation and which achieve high economic efficiency shall be entitled to conduct accelerated depreciation at a maximum rate not to exceed twice the level of depreciation pursuant to the straight

line method in order to renew quickly its technology. Fixed assets used for business activities which may be the subject of accelerated depreciation shall comprise machinery, equipment, measuring and testing devices, means of transportation, management tools, livestock, and perennial orchards. Any business establishment conducting accelerated depreciation must still ensure that it makes a profit.

- 1.3 Fixed assets may not be depreciated when they continue to be used for production or business after they have been depreciated to their full value.
2. Costs of raw materials, materials, fuel, power and goods used for production, business and service activities relating to the turnover and taxable income of the relevant period, calculated on the basis of reasonable consumption levels and actual ex-work prices.
 - 2.1 Directors or owners of business establishments shall establish and decide material consumption levels. In respect of enterprises with boards of management, the general director shall establish material consumption levels for submission to the board of management for approval. At the end of each year, business establishments shall conduct accounting finalization of material consumption and analysis of implementation of material consumption levels and shall report thereon to the tax office upon request.

If any materials or goods are lost or damaged, their value shall not be included in reasonable expenses.

2.2 Actual ex-work prices:

If a business establishment pays VAT by the tax credit method, actual ex-work prices shall be prices excluding VAT of materials and goods purchased from outside and of services relating to materials and goods purchased from outside. If a business establishment pays tax by the direct method, or if it produces or trades in goods and services not subject to VAT, actual ex-work prices shall include VAT of materials and goods purchased from outside and of services relating to materials and goods purchased from outside.

Actual ex-work prices shall include:

- (a) With respect to materials and goods purchased from outside:
 - Prices of domestic materials and goods shall include the price stated in the invoice of the seller plus costs of purchase, such as costs of transportation, loading and

unloading, preservation, insurance premiums, rental of warehouses, and fees for selection and reprocessing;

- In the case of imported materials and goods, they shall be accounted for in expenses at the price actually paid plus import duties, special sales tax and additional charges (if any) in accordance with State regulations, plus costs of transportation, loading and unloading, preservation, and rental of warehouses. The price actually paid for imported materials and goods shall be determined as follows:
 - If a business establishment declares a price to calculate import duty, namely the contract price, which is higher than the price actually paid, the price actually paid shall be used;
 - If a business establishment declares a price to calculate import duty, namely the contract price, which is lower than the price actually paid, the business establishment may only include in expenses the price it declared to calculate import duty.
- (b) In respect of self-produced materials, the actual ex-work price of materials plus the actual costs incurred during the self-production process.
- (c) In respect of materials processed outside, the actual ex-work price of materials to be processed plus the costs of processing and costs of transportation and loading and unloading.

The prices of purchased materials and goods, the costs of processing, and the fees for transportation, loading and unloading, and preservation must be supported by invoices and vouchers in accordance with regulations.

If a business establishment purchases any of the following products without the invoices and vouchers prescribed by the regulations, it shall prepare a List (on Form 04-GGT: List of products purchased without invoices issued with Circular 120-2003-TT-BTC of the Ministry of Finance dated 12 December 2003 providing guidelines for implementation of Decree 158-2003-ND-CP of the Government dated 10 December 2003) on the basis of the payment voucher to the seller of goods or supplier of services, namely: products made directly by farmers from rattan, bamboo, reed, coconut or grass; handcraft products made by non-business artisans; soil, stone, sand or gravel mined by a citizen himself; scrap sold by a person who collected it himself; and a number of other services provided by non-business individuals. Directors of business establishments

shall approve the costs on the List and shall be legally liable for the accuracy and truthfulness of the List.

3. Costs of salaries, wages, allowances and mid-shift meals in accordance with the provisions of the *Labour Code*:
 - 3.1 Costs of salaries of a business establishment shall include salaries, wages and allowances which must be paid to employees pursuant to the provisions of the *Labour Code*. Costs of salaries shall be determined depending on each type of enterprise as follows:
 - (a) In respect of State owned enterprises, the determination of costs of salaries which must be paid to employees shall be based on current guidelines on the regime for salaries, wages and allowances which is stipulated in the *Labour Code*.
 - (b) In respect of other business establishments, the determination of costs of salaries which must be paid to employees shall be based on labour contracts or collective labour agreements.

Every year, business establishments shall register with the tax office their total wages fund for the year based on their plan for drafting same as well as lodging their corporate income tax declarations (on Form 02A-TNDN attached to this Circular).
 - 3.2 Mid-shift meal allowances for employees shall be decided by the director or owner of a business enterprise in accordance with production and business efficiency, but ensuring that the monthly expenses for each employee do not exceed the minimum salary level stipulated by the State for State employees. In particular, guidelines on implementation of the *Labour Code* shall apply to mid-shift meal allowances payable to employees in a number of special trades.
4. Expenses for scientific and technological research (except where funds are provided by the State or a superior managing body); expenses being rewards for innovations and improvements which result in business efficiency; expenses for training employees pursuant to the stipulated regime; funding internal health care; expenses being assistance with funding for schools permitted by the State to be established, but lawful source documents pursuant to the stipulated regime shall be required for all of these expenses.
5. Costs of hired services:
 - 5.1 Costs of electricity, water, telephones, office stationery, auditing and legal services, insurance of assets and personal accident

insurance; hire of design, determination and protection of trademarks.

5.2 Costs of repairs of fixed assets:

In respect of special fixed assets which require periodical repair, enterprises may plan for costs for major repairs in production and business costs based on the estimated budget for major repairs of enterprises. Where the planned amount is lower than the amount actually paid for a repair, enterprises shall be permitted to add the excessive amount to their costs; where it is higher, the costs of the year shall be reduced accordingly.

5.3 Costs of purchase and charges for use of technical data, patents, technology transfer licences, trademarks, and so forth, not forming part of the fixed assets shall be allocated gradually to business costs.

5.4 Rent for fixed assets paid under a lease. If rent is paid once in advance for a number of years, it shall be allocated gradually to production and business expenses over the number of years of use of the fixed assets.

5.5 In respect of contractors, costs of hired services shall include payments to sub-contractors (if any).

5.6 Expenses of business trips shall include fares, hire of vehicles and accommodation expenses.

5.7 Travel allowances for staff on leave in accordance with the provisions of the *Labour Code*.

5.8 Costs of other external services, such as hire of services for the repair of any breakdown directly affecting production and trading of goods and services, must be supported by lawful source documents pursuant to the stipulated regime.

6. Other expenses:

6.1 Payments made to female employees shall include:

- (a) Expenses for retraining female employees where their previous jobs become redundant and the business establishment has a plan requiring conversion to new jobs.

These expenses shall include schooling fees (if any) plus the difference between salary rates for different grades of

employees (ensuring payment of one hundred (100) per cent salary to employees during the time they are in school).

- (b) Costs of salaries and allowances for teachers at kindergartens and primary schools run and managed by the business establishment. The number of teachers shall be determined in accordance with the regulations on educational systems.
- (c) Costs of one additional annual medical examination for female employees in respect of occupational illness, chronic illness or gynaecological examination.
- (d) Costs being child-care payments to female employees after the birth of their second or third child shall not exceed three hundred thousand (300,000) dong in the case of business establishments in cities and townships, and shall not exceed five hundred thousand (500,000) dong in the case of business establishments in regions with difficult or specially difficult socio-economic conditions as stipulated in the appendix to Decree 164-2003-ND-CP of the Government dated 22 December 2003, in order to assist female employees to overcome some of their hardships after giving birth to children.
- (dd) Costs of overtime allowances in accordance with current regulations paid to female employees when, for objective reasons, they do not have a rest break to return home to breastfeed their babies but remain working at the business establishment.

If a business establishment engaged in production, construction or transportation business employs many female employees and accounts separately for the above expenses actually paid, it may be entitled to a reduction of corporate income tax in accordance with the guidelines in clause 7.3 of Section II of Part E of this Circular.

6.2 Costs of protective clothing or uniforms for staff:

Costs of protective clothing for staff shall be expenses actually incurred. Costs of purchasing uniforms for staff to replace their protective clothing shall be expenses actually incurred but shall not exceed a maximum of five hundred thousand (500,000) dong per person per year.

6.3 Costs of security of business establishments.

- 6.4 Costs being contributions to social and medical insurance funds and trade union expenses; funding for activities of the Party and mass organizations at business establishments; contributions to management costs of the higher level and contributions to funds of professional associations pursuant to the stipulated regime.
7. Payment of interest on loans for production and trading of goods and services borrowed from banks, credit institutions and economic organizations at the actual interest rate pursuant to a loan contract, and on loans from other organizations at the actual interest rate in the signed loan contract but not more than one point two (1.2) times the interest rate at the same time of commercial banks which have a trading relationship with the business establishment.

Payment of interest on loans for contribution to legal capital or charter capital shall not be included in reasonable expenses for the purpose of determination of taxable income.
8. Contingency provisions for reduction of inventory prices, bad debts, reduction of securities prices, and for establishment of funds to pay allowances for loss of work as guided by the Ministry of Finance.
9. Retrenchment benefits paid to employees in accordance with applicable regulations.
10. Expenses relating to sales of goods and services, including costs of preservation, packaging, transportation, loading, unloading, rental of warehouses, and warranty of goods and products.
11. Expenses for advertising, marketing, promotion, receptions and formal occasions, expenses for transactions and external relations, expenses for broker commissions, expenses for meetings and other expenses must not exceed ten (10) per cent of the total reasonable expenses listed above in clauses 1 to 10 inclusive; in the case of commercial trading activities, reasonable expenses for the purpose of calculating this limit shall not include the purchase price of goods sold.
12. Taxes, fees, charges and land rent which are mandatory and related to production, business and service activities (except for corporate income tax), including:
 - 12.1 Export duties;
 - 12.2 Input value added tax on export goods and services which do not satisfy the conditions for payment of value added tax by the tax credit method or for a refund of value added tax. Input value added tax out of time shall be declared and deducted in accordance with regulations;

- 12.3 Special sales tax on domestic goods and services subject to special sales tax;
 - 12.4 Business registration fees;
 - 12.5 Royalties;
 - 12.6 Agricultural land use tax; land and housing tax;
 - 12.7 Land rent;
 - 12.8 Fees and charges paid to the State Budget in accordance with the laws on fees and charges.
13. Business management expenses allocated by foreign companies to their resident establishments in Vietnam in accordance with the ratio of the turnover earned in Vietnam by the resident establishment and the total overall turnover of the foreign company, including turnover of resident establishments in other countries. The formula for allocation shall be as follows:
- Business management expenses allocated by the foreign company to its resident establishment in Vietnam in the tax period = $(\text{Total turnover of resident establishment in Vietnam in the tax period} \div \text{Total turnover of foreign company, including turnover of resident establishments in other countries, in the tax period}) \times \text{Total business management expenses of the parent foreign company in the tax period}$.
- Resident establishments of foreign companies in Vietnam which do not implement the regime on accounting and accounting source documents and which pay tax by the declaration method shall not be permitted to include in their reasonable expenses any business management expenses allocated by foreign companies to them.
14. For business operations such as insurance, lotteries, securities and a number of other special business operations, the Ministry of Finance shall provide specific regulations on what constitute reasonable expenses when calculating corporate income tax taxable income.
- IV. *Items which shall not constitute reasonable deductible expenses for purpose of calculation of taxable income:*
1. Costs of salaries where a business establishment fails to implement correctly the regime on labour contracts in accordance with the laws on labour, except where seasonal workers are hired.

2. Salary and wages of owners of private enterprises, members of partnerships, heads of individual households and individual business persons; and remuneration paid to founding members and members of boards of management of limited liability companies and shareholding companies who are not directly involved in the management of production and trading of goods and services.
3. Amounts advanced for expenses but not actually expended in full, such as expenses for repairs of fixed assets; warranty fees for goods and products, for construction works; and other amounts advanced.
4. Expenses incurred without source documents as required by the regulations or with unlawful source documents.
5. Fines for breaches of traffic laws, breaches of business registration regulations, fines on overdue debts, fines for breaches of accounting-statistics regulations, fines for administrative offences in the field of taxation and other fines.
6. Expenses unrelated to turnover or taxable income, such as expenses of investment in capital construction, expenses for supporting mass organizations, social organizations and localities; charity expenses and other expenses unrelated to turnover or taxable income.
7. Expenses covered by other sources of capital:
 - 7.1 Professional expenses;
 - 7.2 Expenses for illness and maternity cases;
 - 7.3 Allowances for regular and irregular difficulties;
 - 7.4 Other expenses covered by other sources of capital.
8. Other unreasonable expenses.

V. *Other taxable income shall include:*

Other taxable income in any one tax period shall comprise:

1. Difference between purchase and sale of securities.
2. Income from activities relating to the ownership of intellectual property or copyright.
3. Other income from the ownership of or right to use assets.
4. Income from assignment or liquidation of assets, where the taxable income shall be the net income from assignment or liquidation of assets after

deducting the remaining value of assets and the expenses relating to the assignment or liquidation.

5. Income from assignment of land use rights or land lease rights, where the taxable income and tax payable shall be determined in accordance with the guidelines in Part C of this Circular.
6. Any interest on deposits, loans, or sales of goods with deferred payment.
7. Difference earned from the sale or exchange of foreign currency.
8. Closing balance of allocated funds which were not fully expended; closing balance of contingency reserves for reduction of inventory prices, of bad debts and of prices of securities in enterprises at the end of the year.
9. Income earned from bad debts which were written-off and are now repaid.
10. Income from accounts payable the creditors of which are unidentified.
11. Income from fines receivable for breaches of economic contracts after deduction of fines payable for breaches of contracts.
12. Income from production, business or services omitted in the previous years which has been newly discovered.
13. Income earned from production and trading of goods and services overseas.

The determination of income earned from production and trading of goods and services overseas which is subject to corporate income tax shall be based on the provisions of any treaty on avoidance of double taxation to which the Socialist Republic of Vietnam is a signatory.

Where the income arises in a country without such a treaty, the taxable income which is subject to corporate income tax shall be the income prior to payment of income tax in such country. After determination of the amount of tax payable under the *Law on Corporate Income Tax* of Vietnam, the amount of income tax paid in the foreign country shall be deducted provided that the deducted amount of tax shall not exceed the amount of tax payable under the *Law on Corporate Income Tax* of Vietnam.

Example 1: Enterprise A receives 800 million dong of income from overseas. This is the remaining income after having paid 200 million dong of income tax in accordance with the law of the foreign country. The amount of corporate income tax payable on the income received by Enterprise A from overseas in accordance with the *Law on Corporate Income Tax* of Vietnam shall be: (800 million dong + 200 million dong) x

28% = 280 million dong. Since Enterprise A has already paid 200 million dong of income tax overseas, the remaining amount payable shall be: 280 million dong - 200 million dong = 80 million dong.

Example 2: Enterprise B receives 798 million dong of income from overseas. This is the remaining income after having paid 342 million dong of income tax in accordance with the law of the foreign country. The amount of corporate income tax payable on the income received by Enterprise B from overseas in accordance with the *Law on Corporate Income Tax* of Vietnam shall be: (798 million dong + 342 million dong) x 28% = 319.2 million dong. Enterprise B shall only be allowed to deduct the amount of corporate income tax paid overseas which is equal to the amount of corporate income tax calculated in accordance with the *Law on Corporate Income Tax* of Vietnam, being 319.2 million dong. In other words, Enterprise B does not have to pay corporate income tax on the above income received from overseas.

14. Income relating to the sale of goods or provision of services which is not included in turnover, such as despatch money, service gratuities in catering and hotel services, and so forth, after all expenses for earning such income have been deducted.
15. Income earned from capital contribution to a domestic economic partnership, joint venture or shareholding company. Business establishments earning income being after-tax dividends distributed because they have made a capital contribution to a domestic economic partnership, joint venture or shareholding company shall not be required to pay corporate income tax.
16. Income from sales of waste materials and scrap after deduction of the costs for collection and sales.
17. Income being gifts or donations in kind or in cash.
18. Other income.

A business establishment with revenue, expenses and taxable income in foreign currency must convert it into Vietnamese dong at the average trading rate on the inter-bank foreign currency market as announced by the State Bank on the date when such revenue, expenses or taxable income arises, unless otherwise provided by law. Foreign currencies for which there is no exchange rate with Vietnamese dong must be converted via a foreign currency for which there is an exchange rate with Vietnamese dong.

VI. *Corporate income tax rates:*

Corporate income tax rates shall be as follows:

1. The rate of corporate income tax applicable to business establishments shall be twenty eight (28) per cent.

Lotteries businesses shall pay corporate income tax at the rate of twenty eight (28) per cent, and their residual income shall be paid into the State Budget after deducting amounts for establishment of or payment into funds in accordance with regulations of the Ministry of Finance.

2. The rate of corporate income tax applicable to business establishments conducting prospecting, exploration and exploitation of petroleum and gas and other rare and precious natural resources shall be from twenty eight (28) per cent to fifty (50) per cent, depending on each specific project and business establishment.

Any business establishment which has an investment project for conducting prospecting, exploration and exploitation of petroleum and gas and other rare and precious natural resources shall forward a file on the investment project to the Ministry of Finance which shall, after consultation with the relevant ministries and branches, make a submission to the Prime Minister of the Government on the specific rate of corporate income tax applicable to each project.

C. Determining Taxable Income and Corporate Income Tax Payable on Assignment of Land Use Rights and Land Lease Rights

Taxable income and corporate income tax payable on assignment of land use rights and land lease rights shall be determined as follows:

I. *Entities liable to pay corporate income tax:*

Economic organizations trading goods and services (hereinafter referred to as *economic organizations*) which earn income from the assignment of land use rights or land lease rights shall be liable to pay corporate income tax in the following circumstances:

1. Cases of assignment of land use rights:
 - 1.1 Assignment of land use rights without any infrastructure or buildings on the land;
 - 1.2 Assignment of land use rights together with the infrastructure on the land;

- 1.3 Assignment of land use rights together with the buildings on the land;
- 1.4 Assignment of land use rights together with the infrastructure and buildings on the land.
2. Cases of assignment of land lease rights:
 - 2.1 Assignment of land lease rights without any infrastructure or buildings on the land;
 - 2.2 Assignment of land lease rights together with the infrastructure on the land;
 - 2.3 Assignment of land lease rights together with the buildings on the land;
 - 2.4 Assignment of land lease rights together with the infrastructure and buildings on the land.
- II. *Cases of assignment of land use rights or land lease rights not liable to payment of corporate income tax:*
 1. A State body authorized to assign land or lease land to an economic organization pursuant to the *Law on Land*.
 2. An economic organization returns land to the State or the State recovers land pursuant to law.
 3. An economic organization sells a factory together with assignment of land use rights or land lease rights in order to transfer its location in accordance with zoning.
 4. An economic organization contributes capital in the form of land use rights in order to co-operate in production or business with domestic or foreign organizations and individuals in accordance with law.
 5. An economic organization assigns land use rights or land lease rights as a result of division, separation, merger or bankruptcy.
 6. The owner of a private enterprise assigns land use rights in a case of inheritance or divorce in accordance with law; assignment of land use rights as between husband and wife, parents and children, and grandparents and grandchildren, or as between siblings.
 7. An economic organization donates land use rights to the State or to an organization in order to construct cultural, health care or sports facilities;

or assigns land use rights for humanitarian purposes to those entitled to social policies.

III. *Tax payers:*

Tax payers shall be economic organizations which earn income from the assignment of land use rights or land lease rights.

Business family households and individuals earning income from the assignment of land use rights or land lease rights shall not be liable to pay corporate income tax on such assignment, but shall be liable to pay tax in accordance with provisions of the current *Law on Tax on Assignment of Land Use Rights*.

IV. *Taxable income:*

Taxable income shall be determined as the turnover used to calculate taxable income less expenses of the assignment of land use rights or land lease rights.

1. Turnover used to calculate taxable income from the assignment of land use rights or land lease rights shall be the actual price of assignment between the economic organization and the assignee at the time of the assignment.

1.1 The actual price of assignment shall be determined as follows:

(a) In accordance with the price stated on the invoice.

If the price stated on the invoice is less than the sum the assignor actually received, the actual price of assignment shall be the sum received by the assignor.

If the price stated on the invoice or the sum actually received by the assignor is less than the price decided by the people's committee of the province or city under central authority, the actual price of assignment shall be the price decided by such people's committee.

(b) In accordance with the winning bid at an auction in the case of auction of land use rights or land lease rights.

1.2 Turnover used to calculate taxable income in a number of special cases shall be provided for as follows:

(a) In the case of assignment of land use rights or land lease rights together with the infrastructure on the land, turnover shall be the whole sum received including the sum received for leasing the infrastructure on the land.

- (b) In the case of assignment of land use rights or land lease rights together with the infrastructure and buildings on the land, turnover shall be the sum received excluding the sum received for assigning or selling buildings on the land. If an economic organization fails to separate out the proceeds from assignment or sale of buildings on the land, the turnover used to calculate taxable income shall also include such proceeds.

2. Expenses of assignment of land use rights or land lease right:

2.1 Expenses in order to have land use rights or land lease rights shall comprise:

- (a) Prime cost of the land for which the rights are assigned, which shall be determined as follows:
- With respect to land assigned by the State with collection of land use fees or land rent, the prime cost shall be the amount stated on the invoice of the State for collection of land use fees or land rent.
 - With respect to land for which land use rights or land lease rights are received from another organization or individual, the prime cost shall be the amount stated in the contract and legal voucher for payment on receipt of the land use rights.
 - With respect to an economic organization which exchanges building works to receive land from the State, the prime cost shall be the value of the exchanged building works.
 - With respect to an economic organization which has land use rights as the result of its winning bid at an auction, the prime cost shall be the winning bid.
 - With respect to land for which land use rights or land lease rights are assigned by a limited liability company or shareholding company and the origin of such land was capital contribution to a joint venture, the prime cost shall be as stated in the minutes on capital contribution of the board of management.
 - With respect to land of an economic organization which received land use rights without lawful documentation; or inherited them in accordance with the civil law; or received them by way of donation without a prime cost being fixed, the prime cost shall be fixed on the basis of

the prices for various types of land decided by the people's committee of the province or city under central authority based on the framework of prices for all types of land stipulated by the Government at the time of receipt of the land use rights.

Where an economic organization assigns land use rights which the organization received without lawful documentation or inherited in accordance with the civil law or received by way of donation prior to 1994, the prime cost shall be fixed on the basis of the prices for various types of land decided by the people's committee of the province or city under central authority based on the framework of prices for all types of land stipulated in Decree 87-CP of the Government dated 17 August 1994.

- (b) Costs being compensation for loss of land, irrespective of whether such costs are included in land use fees or land rental.
- (c) Costs being compensation for loss of crops.
- (d) Costs being assistance to relocate graves.
- (e) Costs being assistance to relocate to new housing.
- (g) Other costs being assistance to clear land.
- (h) Costs being fees and charges in accordance with the laws relating to issuance of land use rights.

If the expenses being compensation or assistance stipulated in clause 2.1 are not supported by invoices and vouchers, they shall be enumerated in a List specifying the name and address of the recipient and the amount of money paid, and shall be signed by the recipient and verified by the authorities in the locality of the citizens receiving the compensation or assistance.

- 2.2 Expenses of land improvement and of levelling a site.
- 2.3 Expenses of investment and construction of infrastructure, such as roads, power, water supply and water discharge systems, posts and telecommunications.
- 2.4 Other expenses relating to assignment of land use rights or land lease rights.
- 2.5 Expenses stipulated in Section III of Part B of this Circular (if any).

Where an economic organization conducts business in a number of industries, the general expenses referred to in clause 2.5 shall be allocated at the ratio being turnover from assignment of land use rights or land lease rights over total turnover of the economic organization.

Where turnover used to calculate taxable income includes buildings on the land, when determining expenses, such expenses shall also include the value of buildings on the land.

V. *Corporate income tax rates on assignment of land use rights or land lease rights:*

1. The rate of corporate income tax applicable to assignment of land use rights or land lease rights shall be twenty eight (28) per cent.
2. After calculation of corporate income tax at the rate of twenty eight (28) per cent, additional corporate income tax shall be payable on the residual income in accordance with the following progressive method tariff:

Progressive Method Tax Tariff

<i>Level</i>	<i>Rate of Residual Income over Expenses</i>	<i>Tax Rate</i>
1.	Up to 15%	0%
2.	From 15% up to 30%	10%
3.	From 30% up to 45%	15%
4.	From 45% up to 60%	20%
5.	From 60%	25%

For example: An enterprise calculates tax on an assignment of rights: 170 million dong; total expenses on the assignment of the land use rights are 50 million dong. Taxable income shall equal (=) 120 million dong (170 million dong - 50 million dong). Corporate income tax payable on the assignment of land use rights shall be determined as follows:

- Corporate income tax payable at the normal rate shall be 120 million dong x 28% = 33.6 million dong;
- Residual income of 86.4 million dong (120 million dong - 33.6 million dong) shall be subject to additional corporate income tax in accordance with the following progressive method tariff:

Unit: Million dong

<i>Level</i>	<i>Taxable amount</i>	<i>Tax rate</i>	<i>Amount of tax</i>
1.	50 x 15% = 7.5	0%	0
2.	(50 x 30%) - 7.5 = 7.5	10%	0.75
3.	(50 x 45%) - (50 x 30%) = 7.5	15%	1.125
4.	(50 x 60%) - (50 x 45%) = 7.5	20%	1.5
5.	86.4 - (50 x 60%) = 56.4	25%	14.1
		Total	17.475

Accordingly, the total corporate income tax payable on the assignment of land use rights shall be 33.6 million dong + 17.475 million dong = 51.075 million dong.

- VI. The preferential corporate income tax rates and the tax exemptions and reductions prescribed in Part E of this Circular shall not apply to income from assignment of land use rights or land lease rights.
- VII. *Procedures for declaration and payment of corporate income tax on assignment of land use rights or land lease rights:*
1. Any economic organization which assigns land use rights or land lease rights; which assigns ownership of buildings on land or of infrastructure on land shall carry out the procedures on assignment of land use rights or land lease rights together with buildings and infrastructure as stipulated in the laws on land.
 2. Procedures for declaration and payment of tax:
 - 2.1 Applicable to an economic organization which does not conduct regularly the business of assignment of land use rights and land lease rights:
 - (a) Within a time-limit of five working days from the date on which the tax office directly in charge receives cadastral data from the office for registration of land use rights, such tax office shall notify the economic organization which assigned the land use rights or land lease rights to declare turnover, expenses, taxable income and amount of tax payable on the assignment.
 - (b) Within a time-limit of fifteen (15) working days from the date on which the economic organization receives the notice from the tax office directly in charge of it, the economic organization shall lodge with such tax office a declaration of income tax on assignment of land use rights or land lease rights on Form 02D-TNDN attached to this Circular.
 - (c) Based on the data in the tax declaration, the tax office shall check, inspect and fix the tax obligation, and notify the economic organization of the amount of tax payable on the assignment or notify the economic organization if the assignment is not taxable. The time-limit for paying the tax stated in the notice shall be no later than fifteen (15) days from the date of issuance of the tax notice. The office for registration of land use rights shall only issue a certificate of land use rights after it receives an invoice proving payment of corporate income tax by an economic organization on the assignment of land use rights or land lease rights, or upon receipt of a certificate from the tax office verifying that the assignment is not taxable.

- (d) Economic organization must conduct separate tax finalization for the amount of corporate income tax payable on an assignment of land use rights or land lease rights. If, upon conducting procedures for issuance of a certificate of land use rights, the amount of corporate income tax paid is less than the amount payable pursuant to the declaration of tax finalization (Form 02DD-TNDN attached to this Circular), the economic organization must pay the shortfall into the State Budget within a time-limit of ten (10) days from the date on which the economic organization lodges its declaration of tax finalization. If the amount of corporate income tax paid is more than the amount payable pursuant to the declaration of tax finalization, the excessive amount shall be deducted from the shortfall of tax payable on other business operations of the economic organization or shall be deducted from the amount of corporate income tax payable in the next period. If an assignment of land use rights or land lease rights results in a loss, an economic organization may carry forward the loss to taxable income from operations of assignment of land use rights or land lease rights in the following years in accordance with regulations.

2.2 Applicable to organizations which specialize in the business of housing and land, infrastructure and buildings on land:

They shall declare and pay tax and conduct tax finalization in accordance with the guidelines in Part D of this Circular. If their business of assignment of land use rights and land lease rights results in a loss, they may carry forward the loss to taxable income from operations of assignment of land use rights or land lease rights in the following years.

Economic organizations must conduct procedures for assignment of land use rights or land lease rights after the tax office has checked their tax finalization.

After the tax office directly in charge of an organization which specializes in the business of housing and land, infrastructure and buildings on land receives cadastral data from the office for registration of land use rights, such tax office shall certify the area of land for which tax has been paid in order that the office for registration of land use rights may issue a certificate of land use rights.

D. Registration, Declaration, Payment and Finalization of Tax

I. Registration of corporate income tax:

Business establishments shall register for corporate income tax as follows:

1. Business establishments shall be responsible for registering for corporate income tax at the same time as registration for payment of value added tax.
2. Business establishments shall, upon tax registration, specify their affiliated units which practise independent cost accounting and affiliated units which practise dependent cost accounting. Affiliated units of business establishments shall, whether practising independent or dependent cost accounting, carry out tax registration at the tax office where such units are based.
3. Independent cost accounting units of business establishments shall have the obligation to declare, pay and finalize tax separately. Dependent cost accounting units of business establishments shall only carry out tax registration in their localities and shall not have the obligation of tax declaration and payment in their localities. Head business establishments shall have the obligation of tax declaration, payment and finalization in respect of their own business and the business of their affiliated units which practise dependent cost accounting.

II. Declaration of corporate income tax:

1. Annually, business establishments shall be responsible for declaration and submission of corporate income tax declarations (Form 02A-TNDN attached to this Circular) to the tax office directly in charge no later than the twenty fifth day of January, or in the case of a business establishment permitted to apply a financial year other than the Gregorian year, no later than the twenty fifth day of the month after the last month of such applicable financial year.

The basis for declaration shall be the results from production and trading in goods and services of the previous year and the business potential for the following year.

Newly established business establishments shall make a self-declaration of turnover, expenses, taxable income and amount of tax payable for the whole year and divided into each quarter and shall submit it to the tax office no later than the twenty fifth day of the month after the month of issuance of their business registration certificate.

2. Upon receipt of a tax declaration, the tax office shall inspect it and consider it. Where a business establishment fails to declare, or declare in detail, the basis for calculation of the amount of tax provisionally payable

for the whole year in its declaration form, the tax office shall have the right to request that the business establishment explain the basis for calculation of the amount of tax provisionally payable for the whole year. Where the business establishment fails to explain or to justify the basis stated in the declaration form at the request of the tax office, the tax office shall have the right to determine the amount of tax provisionally payable for the whole year and for each quarter and shall notify the business establishment for implementation.

Determination of the amount of tax provisionally payable shall be implemented as follows:

- By fixing taxable income for the whole year based on estimated turnover for the year and the ratio of taxable income over turnover of the previous year;
- By fixing taxable income for the whole year based on taxable income of business establishments in the same industry which have a similar business scale.

In the particular case of resident establishments in Vietnam of companies overseas, in addition to the methods of determining tax stipulated above, the tax office may use the following method:

Taxable income of a resident establishment in Vietnam in a tax period = (Total turnover of resident establishment in Vietnam in the tax period) ÷ (Total turnover of company overseas in the tax period) x Total turnover of company overseas in the tax period.

The company overseas shall be responsible to provide to the tax office the accounting books and accounting reports of the company audited by an independent auditing organization and to provide the grounds for determining taxable income of the resident establishment in Vietnam of the company.

If a business establishment disagrees with a determination of taxable income, it shall be entitled to lodge a complaint with the directly superior tax office or institute court proceedings in accordance with law. Pending resolution of complaints, business establishments must still pay tax at the level which has been fixed.

3. If there are major changes to the production and business situation during the first six months of the year which may result in an increase or reduction of more than twenty (20) per cent compared to the amount provisionally payable as declared with the tax office, a business establishment shall prepare a complete file requesting adjustment of the amount of tax provisionally payable for the whole year and for the last two quarters of the year and shall submit it to the tax office directly managing it no later than 30 July.

A file requesting adjustment of the amount of tax provisionally payable for the whole year and for each quarter shall comprise:

- Request for adjustment to provisional tax payable for the whole year specifying reasons, amount paid for the first six months of the year, and amount payable in the second six months;
- Financial statements for the first six months of the year, including balance sheets, profit and loss statements, and explanatory statements of financial accounts on the forms stipulated in the laws on accounting.

After consideration of the above reports, the tax office directly managing the business establishment shall notify it by 25 August at the latest of the provisional tax payable for the whole year (adjusted) and the amounts payable in the two final quarters or, in a case of disapproval, the tax office shall notify the business establishment of the reasons therefor.

4. Where a business establishment fails to declare corporate income tax, the tax office shall send the business establishment a reminder to do so. If the business establishment still fails to lodge its declaration by 25 March, the tax office shall fix the amount of tax provisionally payable for the whole year and for each quarter pursuant to clause 2 above and shall notify the business establishment for implementation.
5. In the case of business establishments which do not yet maintain books of account, receipts and other source documents in accordance with applicable regulations; which do not declare monthly or annual tax; or which fail to declare corporate income tax in the same year as declaration of value added tax: Declaration of the amount of tax payable shall be based on the rate of taxable income over turnover and tax rates as follows:
 - 5.1 Business establishments which do not yet comply fully and strictly with the accounting regulations but which have sold goods and provided services with invoices and vouchers shall declare turnover and calculate monthly tax in accordance with the following formula:

$$\text{Corporate income tax} = \text{Turnover} \times \text{Percentage (\%)} \text{ of taxable income over turnover} \times \text{Tax rate.}$$
 - 5.2 Business households and individuals not yet complying with the regulations on accounting, invoices and vouchers shall declare tax based on the turnover after the tax office has fixed the amount of tax payable in accordance with the formula in clause 5.1 above.
 - 5.3 Business households and individuals not yet complying with the regulations on accounting, invoices and vouchers and acting as commission agents selling products at fixed prices (such as

insurance agents and sellers of mobile phone cards) shall pay corporate income tax on their agent commission. The amount payable shall be fixed at five per cent of the commission (the commission shall include items received being assistance from the principal) to which business households and individuals are entitled. Principals being business establishments shall be responsible to deduct corporate income tax from the amount of commission payable to business households and individuals and to pay it into the State Budget.

The determination of turnover for the purpose of calculation of taxable income must be ensured to be carried out publicly and democratically in accordance with applicable procedures.

The General Department of Taxation shall guide Taxation Departments to determine the appropriate percentage (%) of taxable income over turnover as the basis for calculation of income tax for each line of business, ensuring consistency between all localities in the country.

6. In respect of foreign business organizations and individuals having no resident establishments in Vietnam but having income sourced in Vietnam, the organizations and individuals in Vietnam paying income to such foreign organizations and individuals shall be responsible for declaring and deducting corporate income tax prior to paying income at the ratio of such total income as regulated by the Ministry of Finance as applicable to each industry.
7. Business establishments shall be responsible to purchase, sell and exchange goods and services and to account for them at market prices during the process of production and business.

III. *Payment of corporate income tax:*

1. Business establishments shall pay in full and in a timely manner the amounts of tax provisionally payable for each quarter into the State Budget in accordance with their declaration of corporate income tax or in accordance with the amount fixed by the tax office. The time-limit for tax payment for each quarter shall be no later than the last day of the quarter.

The date on which a business establishment shall be deemed to have paid tax shall be determined as follows:

- Where a business establishment pays tax by bank remittance or by remittance via another credit institution, the date on which such bank or credit institution signs receipt on the document for payment to the State Budget;
- Where a business establishment pays tax by cash, the date on which the Treasury office receives such cash or the date on which the tax office issues a tax receipt.

2. Business establishments which do not yet comply fully with the regulations on accounting, invoices and vouchers shall pay tax in accordance with the notice issued by the tax office and at the same as value added tax is paid.
3. Organizations and individuals in Vietnam paying income to foreign business organizations and individuals having no resident establishments in Vietnam shall be responsible for withholding corporate income tax and paying it into the State Budget. The time-limit for payment shall be as regulated by the Ministry of Finance for each business industry, but shall not exceed fifteen (15) days from the date of making payments to such foreign organizations and individuals. If a Vietnamese organization or individual fails to deduct corporate income tax, it shall be liable to pay such amount on behalf of the foreign party as well as being subject to a fine pursuant to current regulations on administrative offences.
4. Business establishments trading in lots must declare and pay tax in respect of each lot of goods to the local tax office where the goods are purchased prior to the goods being taken away.
5. Corporate income tax shall be paid in Vietnamese dong.

IV. *Corporate income tax finalization:*

Corporate income tax finalization shall be conducted annually as follows:

1. At the end of each tax period, business establishments shall finalize tax with the tax office in accordance with Form 02DD-TNDN attached to this Circular (except in cases where the tax office fixes a ratio of taxable income over turnover).
 - 1.1 Business establishments shall be responsible to complete all items on the declaration form for tax finalization.
 - 1.2 A year for the purpose of corporate income tax finalization shall be the Gregorian year, commencing on 1 January and ending on 31 December of the same year.

Where a business establishment is permitted to apply a financial year other than the Gregorian year, tax finalization shall be conducted in accordance with such financial year.

In case of conversion of form of enterprise, conversion of form of ownership (including assignment, sale, contractual management or lease of a State owned enterprise), merger, consolidation, division, dissolution or bankruptcy, the business establishment must finalize tax as at the date on which the competent authority issues the decision on any of the above changes.

In the case of dissolution or bankruptcy of an enterprise which is a joint venture between a number of business establishments, its losses must be allocated to each business establishment and the total losses reported in general business results when the business establishment conducts corporate income tax finalization.

2. Business establishments shall be liable for the truthfulness and accuracy of declarations of corporate income tax finalization. Where, upon examination, the tax office discovers incorrect information in a tax finalization declaration which reduces the amount of tax payable, tax shall be paid in full and the business establishment shall be subject to an administrative tax penalty.

Any business establishment which takes over the assets of a former business establishment upon conversion of form of enterprise, conversion of form of ownership (including assignment, sale, contractual management or lease of a State owned enterprise), merger, consolidation, division, dissolution or bankruptcy, such business establishment shall be responsible for paying to the State Budget in full any tax shortfall and fines payable by the former business establishment.

3. Business establishments shall submit tax finalization declarations to the tax office directly in charge within ninety (90) days from the last date of the Gregorian year or financial year.

In cases of conversion of form of enterprise, conversion of form of ownership (including assignment, sale, contractual management or lease of a State owned enterprise), merger, consolidation, division, dissolution or bankruptcy, the time-limit for submission of tax finalization declarations shall be forty five (45) days after issuance of the decision on any of the above changes by the competent authority.

4. Business establishments shall pay any outstanding amount of tax within ten (10) days from the stipulated date for submission of tax finalization declarations. In cases of failure to do so, in addition to the full amount of the shortfall, a fine for late payment shall be paid.
5. If business establishments discover errors after lodging their declaration of corporate income tax finalization with the tax office, they may amend data and it shall be dealt with as follows:
 - 5.1 If it is still within the time-limit for lodging declarations of corporate income tax finalization, the business establishment shall lodge an amended declaration of corporate income tax finalization to replace the initially lodged declaration.
 - 5.2 If it is outside the time-limit for lodging declarations of corporate income tax finalization but within the time-limit of ten (10) days

for paying a shortfall of tax pursuant to a declaration of corporate income tax finalization, the business establishment shall lodge an amended declaration of corporate income tax finalization to replace the initially lodged declaration and shall pay tax in accordance with the amended declaration and shall also pay a penalty for late lodgement of declaration of corporate income tax finalization.

5.3 If the amended declaration of corporate income tax is lodged outside the time-limit of ten (10) days for paying shortfall of tax pursuant to a declaration of corporate income tax finalization, in addition to paying shortfall of tax pursuant to the amended declaration of corporate income tax finalization, the business establishment shall also pay fines for late lodgement of declaration and for late payment of tax.

6. Examination of declarations of corporate income tax finalization shall be decided by the head of the tax office directly in charge or the head of the superior tax office.

Where sale prices, purchase prices, business expenses, taxable income or other elements of business establishments are discovered to be incorrect in terms of market prices or expenses actually incurred, the tax office shall have the right to re-determine purchase and selling prices at domestic and foreign market prices, and also to re-determine expenses, taxable income and other elements in order to ensure collection of the correct and full amount of corporate income tax.

The determination of purchase and selling prices at domestic and foreign market prices, and the determination of expenses, taxable income and other elements in order to ensure collection of the correct and full amount of corporate income tax shall be implemented in accordance with separate guidelines of the Ministry of Finance.

Business establishments shall be responsible for complying with the examination minutes of an authorized tax office.

7. Business establishments which do not lodge declarations of corporate income tax shall pay tax at the amount fixed by the authorized tax office.

DD. Duties, Powers and Responsibilities of Tax Offices

Tax offices shall have the following duties, powers and responsibilities:

1. To guide business establishments to fulfil the regime for registration, declaration and payment of tax correctly in accordance with applicable provisions.

2. To send tax payment notices to business establishments in the following cases:
 - 2.1 Failure to lodge tax declarations or declarations of corporate income tax finalization within the stipulated time-limit;
 - 2.2 Failure to pay tax or failure to pay shortfall of tax;

The tax notice shall specify the amount of tax a business establishment has failed to pay and the amount of the fine for late payment;
 - 2.3 Failure to implement the regime on accounting and accounting source documents, failure to pay tax pursuant to a tax payment notice. Tax payment notices must be sent to business establishments at least three days prior to the date on which tax payment is to be made. Where a business establishment fails to pay tax after the time-limit stated in the notice, the tax office shall issue a second notice. The second notice shall state the amount of tax and fines payable for delayed payment.
3. To examine and inspect the declaration, payment and finalization of tax by business establishments in order to ensure strict compliance with law.

Tax offices shall consider and classify declarations of corporate income tax finalization in order to organize checks and inspections.

The General Department of Taxation shall promulgate guidelines on the criteria for classification of declarations of corporate income tax finalization in order to conduct checks and inspections and shall issue regulations on procedures for checks and inspections of business establishments.
4. To impose administrative tax penalties and deal with tax complaints.
5. To require business establishments to provide books of account, receipts, source documents and other documents relating to calculation and payment of tax; and to require credit organizations, banks and other relevant organizations and individuals to provide documents relating to calculation and payment of tax by business establishments.
6. To maintain and use data and documents provided by business establishments and others in accordance with applicable regulations.
7. To fix taxable income for the purpose of calculation of the amounts of tax payable by business establishments in the following cases:
 - 7.1 Failure to maintain, or maintain adequately, books of account, receipts and source documents as required by the regulations;

- 7.2 Failure to declare, or declare accurately, the bases for tax calculation or failure to substantiate the contents of declaration forms as required by the tax office;
- 7.3 Refusal to provide books of account, receipts, source documents and other necessary documents relating to calculation of corporate income tax;
- 7.4 Discovery of business activities conducted without business registration.

E. Exemption from and Reduction of Corporate Income Tax

I. Conditions for application of corporate income tax incentives:

Investment projects with the following conditions shall be entitled to corporate income tax incentives:

1. Investment in the industries and sectors prescribed in List A of the appendix issued with Decree 164-2003-ND-CP of the Government dated 22 December 2003 making detailed provisions for implementation of the *Law on Corporate Income Tax* (hereinafter referred to as *group A industries and sectors*).
2. Investment in industries and sectors not prohibited by law and which employ at least the following average number of employees in a year (hereinafter referred to as *large employer industries and sectors*):
 - In class 1 and special urban areas, 100 employees;
 - In regions in which investment is encouraged as prescribed in Lists B and C issued with Decree 164-2003-ND-CP of the Government dated 22 December 2003 making detailed provisions for implementation of the *Law on Corporate Income Tax*: 20 employees;
 - In other areas: 50 employees.
3. Regions in which investment is encouraged shall be entitled to corporate income tax incentives, comprising:
 - 3.1 Regions with difficult socio-economic conditions as stipulated in List B issued with Decree 164-2003-ND-CP of the Government dated 22 December 2003 making detailed provisions for implementation of the *Law on Corporate Income Tax* (hereinafter referred to as *List B regions*);

- 3.2 Regions with specially difficult socio-economic conditions as stipulated in List C issued with Decree 164-2003-ND-CP of the Government dated 22 December 2003 making detailed provisions for implementation of the *Law on Corporate Income Tax* (hereinafter referred to as *List C regions*).

II. *Corporate income tax incentives and duration of application:*

1. Preferential corporate income tax rates:

- 1.1 The tax rate of twenty (20) per cent shall apply to co-operatives established in regions other than List B and List C regions; and to business establishments newly established from investment projects in group A industries and sectors;
- 1.2 The tax rate of twenty (20) per cent shall apply to business establishments newly established from investment projects in List B regions; and to services establishments newly established from investment projects implemented in industrial zones;
- 1.3 The tax rate of fifteen (15) per cent shall apply to co-operatives established in List B regions; and to business establishments newly established from investment projects in group A industries and sectors which are implemented in List B regions;
- 1.4 The tax rate of fifteen (15) per cent shall apply to business establishments newly established from investment projects in List C regions; to services establishments newly established from investment projects implemented in export processing zones; and to production establishments newly established from investment projects implemented in industrial zones;
- 1.5 The tax rate of ten (10) per cent shall apply to co-operatives established in List C regions; to business establishments newly established from investment projects in group A industries and sectors which are implemented in List C regions; to infrastructure development business establishments which are newly established from investment projects for the development of infrastructure for industrial zones or export processing zones; to processing establishments newly established in the manufacturing sector irrespective of whether they are in or outside industrial zones; to business establishments newly established from specially encouraged investment projects; and to medical diagnostic and treatment establishments and educational, training and scientific research establishments with foreign owned capital which are newly established.

With respect to currently operating business establishments with an investment project for construction of new production lines, expansion of scale, renovation of technology, improvement of ecological environment or increase of production capacity, the tax rate applicable to additional income resulting from such investment shall be as follows:

- Where the investment project is in the same industry or sector or the same geographical area as the head office of the business establishment, the tax rate applicable to additional income resulting from such investment shall be the rate currently applicable to such business establishment;
 - Where the investment project is in a different industry or sector or a different geographical area than the head office of the business establishment, and such industry, sector or geographical is in the category of encouraged investment, the incentive tax rate applicable to additional income resulting from such investment shall be whichever incentive rate applies to the conditions satisfied by the particular investment project;
 - Where the investment project is in a different industry or sector or a different geographical area than the head office of the business establishment, but such industry, sector or geographical is not in the category of encouraged investment, the tax rate applicable to additional income resulting from such investment shall be twenty eight (28) per cent.
2. The duration of application of preferential corporate income tax rates shall be provided for as follows:
- 2.1 The tax rate of ten (10) per cent shall apply for fifteen (15) years as from the date of commencement of business operations by the co-operative or the business establishment newly established from an investment project; if a higher level of special encouragement is required, the Ministry of Finance shall make a submission to the Prime Minister of the Government to make a decision on duration of application of the ten (10) per cent rate for the whole duration of implementation of the project;
 - 2.2 The tax rate of fifteen (15) per cent shall apply for twelve (12) years as from the date of commencement of business operations by the co-operative or the business establishment newly established from an investment project;
 - 2.3 The tax rate of twenty (20) per cent shall apply for ten (10) years as from the date of commencement of business operations by the co-operative or the business establishment newly established from an investment project.

Upon expiry of the duration stipulated in this clause, any co-operative or business establishment newly established from an investment project must pay tax at the rate of twenty eight (28) per cent.

III. *Levels and duration of exemption from and reduction of corporate income tax:*

1. Corporate income tax payable by business establishments newly established from investment projects and relocated business establishments shall be exempted or reduced as follows:
 - 1.1 Production establishments newly established from investment projects and business establishments which relocate from urban areas in accordance with approved planning shall be exempted from corporate income tax for the first two years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for two subsequent years.
 - 1.2 Business establishments newly established from investment projects in group A industries and sectors shall be exempted from corporate income tax for the first two years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for three subsequent years.
 - 1.3 Business establishments newly established from investment projects in group A industries and sectors which employ large numbers of employees shall be exempted from corporate income tax for the first two years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for five subsequent years.
 - 1.4 Business establishments newly established from investment projects implemented in List B regions and business establishments which relocate to List B regions shall be exempted from corporate income tax for the first two years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for six subsequent years.
 - 1.5 Business establishments newly established from investment projects implemented in List C regions and business establishments which relocate to List C regions shall be exempted from corporate income tax for the first two years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for eight subsequent years.

- 1.6 Business establishments newly established from investment projects in group A industries and sectors which are implemented in List B regions shall be exempted from corporate income tax for the first three years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for seven subsequent years.
- 1.7 Business establishments newly established from investment projects in group A industries and sectors which are implemented in List B regions and employ large numbers of employees shall be exempted from corporate income tax for the first three years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for eight subsequent years.
- 1.8 Business establishments newly established from investment projects in group A industries and sectors which are implemented in List B regions and employ large numbers of employees, with more than thirty (30) per cent of the annual number of employees being ethnic minority people, shall be exempted from corporate income tax for the first three years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for nine subsequent years.
- 1.9 Business establishments newly established from investment projects in group A industries and sectors which are implemented in List C regions shall be exempted from corporate income tax for the first four years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for seven subsequent years.
- 1.10 Business establishments newly established from investment projects in group A industries and sectors which are implemented in List C regions and employ large numbers of employees shall be exempted from corporate income tax for the first four years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for eight subsequent years.
- 1.11 Business establishments newly established from investment projects in group A industries and sectors which are implemented in List C regions and employ large numbers of employees, with more than thirty (30) per cent of the annual number of employees being ethnic minority people, shall be exempted from corporate income tax for the first four years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for nine subsequent years.

- 1.12 Business establishments newly established from investment projects in the form of build-operate-transfer (BOT), build-transfer-operate (BTO) or build-transfer (BT) shall be exempted from corporate income tax for the first four years from when taxable income arises and shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable for nine subsequent years.
- 1.13. Business establishments newly established from investment projects in industrial zones and export processing zones shall be entitled to the following tax exemption and reduction:
- (a) Services establishments newly established from investment projects implemented in industrial zones shall be entitled to exemption from tax for two years from when taxable income arises and a fifty (50) per cent reduction of the amount of tax payable for six subsequent years;
 - (b) Services establishments newly established from investment projects implemented in export processing zones and production establishments newly established from investment projects implemented in industrial zones shall be entitled to exemption from tax for three years from when taxable income arises and a fifty (50) per cent reduction of the amount of corporate income tax payable for seven subsequent years;
 - (c) Infrastructure development business establishments which are newly established from investment projects for the development of infrastructure for industrial zones or export processing zones and processing establishments in the manufacturing sector irrespective of whether they are in or outside industrial zones shall be entitled to exemption from tax for four years from when taxable income arises and a fifty (50) per cent reduction of the amount of corporate income tax payable for seven subsequent years.

Business establishments which have been established in the following circumstances shall not be entitled to the preferential corporate income tax rates applicable to the category of business establishments newly established from investment projects:

- Business establishments established as a result of division, demerger, merger or consolidation pursuant to law;
- Business establishments established as a result of conversion of form of enterprise or form of ownership (except for cases of equitization and assignment, sale, contractual man-agreement or lease pursuant to Decrees of the Government 64-2002-ND-CP

dated 19 June 2002 and 103-1999-ND-CP dated 10 September 1999 and their amending Decrees;

- Private enterprises newly established from an individual family household business with the same business line and same office address as previously;
 - Newly established private enterprises, partnerships, limited liability companies or co-operatives where the legal representative or largest capital contributor previously participated in the business operations as the owner of the private enterprise, as a partner in the partnership, or as the legal representative or largest capital contributor in the currently operating business establishment or dissolved business establishment and where twelve months has not yet expired as from the date of dissolution of the former business establishment to the date of establishment of the new business establishment.
2. The Prime Minister of the Government shall make decisions on duration of exemption from and reduction of tax applicable to business establishments with operations in economic zones, but the maximum shall be exemption for four years from when taxable income arises and reduction of fifty (50) per cent of the amount of tax payable for nine subsequent years.

In the case of business establishments newly established from projects in which investment is specially encouraged; and medical diagnostic and treatment establishments and educational, training and scientific research establishments with foreign owned capital which are newly established, they shall be entitled to exemption from tax for four years from when taxable income arises and a reduction of fifty (50) per cent of the amount of corporate income tax payable for nine subsequent years.

3. Business establishments investing in the construction of new production lines, expansion of their scale, technology renewal, improvement of ecological environment or improvement of production capacity shall be entitled to exemption from and reduction of corporate income tax in respect of the increased portion of income as follows:
- 3.1 In respect of investment projects for installation of a new production line not in group A industries and sectors and not implemented in List B or List C regions, they shall be exempted from tax for one year and entitled to a fifty (50) per cent reduction of the tax payable for two subsequent years;
- 3.2 In respect of investment projects for installation of a new production line in group A industries and sectors, they shall be

exempted from tax for one year and entitled to a fifty (50) per cent reduction of the tax payable for four subsequent years;

- 3.3 In respect of investment projects for installation of a new production line in group A industries and sectors which are implemented in List B regions, they shall be exempted from tax for three years and entitled to a fifty (50) per cent reduction of the tax payable for five subsequent years;
- 3.4 In respect of investment projects for installation of a new production line in group A industries and sectors which are implemented in List C regions, they shall be exempted from tax for four years and entitled to a fifty (50) per cent reduction of the tax payable for seven subsequent years.

The duration of exemption and reduction of corporate income tax pursuant to this clause shall commence from the date on which an investment project commences production or business operations. With respect to investment projects with an extensive duration of implementation and which are divided up into a number of items of works, the business establishment may select the period for calculating exemption from and reduction of corporate income tax as the date on which each item of works is commissioned, and the business establishment shall register with the tax office the duration of exemption and reduction of corporate income tax applicable to an investment project based on the estimated duration for implementation of the project.

Business establishments must account separately for the increased portion of income from the investment in order to calculate the amount of exempted and reduced corporate income tax, failing which the increased portion of income entitled to exemption and reduction of tax shall be calculated as follows:

Portion of increased income entitled to exemption and reduction of tax shall be equal to (=) Portion of taxable income in a year multiplied by (x) (Value of fixed assets newly invested in and commissioned for production or trading ÷ Total original value of fixed assets actually used for production or trading).

Total original value of fixed assets actually used for production or trading shall comprise the value of fixed assets newly invested in and handed over for production or trading and the original value of current fixed assets being used for production or trading in accordance with data for the end of the quarter in the annual balance sheet.

With respect to an investment project with a duration of implementation of over one year and which is divided up into a number of items of works, where the business establishment has registered with the tax office the

duration of exemption and reduction of corporate income tax based on each item of works commissioned for production or trading, the value of fixed assets newly invested in shall be determined in accordance with the accumulated value of each completed item of works which has been commissioned for production or trading as at the date of tax finalization for the year of exemption and reduction of corporate income tax.

For example: At the end of 2004, company A has a total original value of fixed assets actually used for production or trading at 30 billion dong. Company A has a long-term investment project; in 2005, it commissions one item of works valued at 10 billion dong and, in 2006, it commissions another item of works valued at 15 billion dong. Company A does not account separately for the increased portion of income from implementation of each item of works. Its taxable income in 2005 is 12 billion dong and its taxable income in 2006 is 20 billion dong. The increased portion of income arising from the investment and entitled to exemption and reduction of tax shall be calculated as follows:

- In year 2005: The increased portion of income entitled to exemption and reduction of tax shall be equal to 12 billion dong multiplied by (10 billion dong) divided by (30 billion dong plus 10 billion dong);
- In year 2006: The increased portion of income entitled to exemption and reduction of tax shall be equal to 20 billion dong multiplied by (10 billion dong plus 15 billion dong) divided by (40 billion dong plus 15 billion dong).

With respect to an investment project in which each item of works has been completed but not yet commissioned for production or trading in order to increase output and business effectiveness in the year, the value of such items of works shall not be included in the value of fixed assets newly invested in for the purpose of calculating increased portion of income entitled to exemption and reduction.

4. With respect to establishments which produce and trade goods for export in the industries and sectors stipulated in Section III of List A, they shall be entitled to the following corporate income tax incentives in addition to the exemptions and reductions stipulated in clauses 1, 2 and 3 of this Section:
 - 4.1 It shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable on the portion of income from the following operations:
 - (a) Export in the first year of direct export;
 - (b) Export of a new line of goods with eco-technical or use characteristics different from those of the lines of goods which the enterprise previously exported;

- (c) Export to the market of a country or territory which is different from the market to which the enterprise previously exported its goods;
- 4.2 With respect to an investor with turnover from export in any one year higher than its turnover from export of the previous year, it shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax payable on such increased portion of income in the financial year;
- 4.3 It shall be entitled to a twenty (20) per cent reduction of the amount of corporate income tax payable on turnover from export in a financial year in the following circumstances:
 - (a) Its turnover from export is more than fifty (50) per cent of its total turnover. A consideration of reduction of tax on this ground shall be made on a year to year basis;
 - (b) It has maintained a stable export market for the three previous consecutive years in terms of quantity or value of exported goods;
- 4.4 With respect to investors within the categories prescribed in clauses 4.1, 4.2 and 4.3 above which operate in List B regions, they shall be entitled to an additional twenty five (25) per cent reduction of the amount of corporate income tax payable on turnover earned from export in the financial year;
- 4.5 With respect to investors within the categories prescribed in clauses 4.1, 4.2 and 4.3 above which operate in List C regions, they shall be entitled to total exemption from corporate income tax payable on turnover earned from export in the financial year.
- 5. Business establishments shall be entitled to exemption from corporate income tax payable on a portion of income in the following circumstances:
 - 5.1 Income earned from performance of contracts for scientific research and technological development or from information services regarding science and technology;
 - 5.2 Income earned from the sale of products during their period of test production in accordance with the correct production process, but only for a maximum of six months from the date of commencement of the test production;
 - 5.3 Income earned from the sale of products made from new technology applied for the first time in Vietnam, but only for a

maximum of one year from the date of application of the new technology to produce the products;

- 5.4 Income earned from performance of technical service contracts directly serving agricultural production;
- 5.5 Income earned from vocational training specially reserved for ethnic minority people;
- 5.6 Income earned from production and trading of goods and services by business establishments specially reserved for employees being disabled people;

A business establishment must satisfy all of the following conditions in order to be deemed a business establishment specially reserved for employees being disabled people (including war invalids and ill soldiers):

- The people's committee of the province or city under central authority must confirm that the business establishment is specially reserved for employees being disabled people;
 - The business establishment must fully implement the regime on accounting and accounting source documents;
 - The competent authority must have issued the business establishment with a business licence;
 - The business establishment must employ ten (10) or more workers of whom fifty one (51) per cent are disabled people as certified by the competent health authority and the remainder are principally relatives of disabled people, shareholders, and management, professional or scientific-technical personnel;
 - The business establishment must have operational rules or an operational charter appropriate to employees being disabled people;
- 5.7 Income earned from vocational training specially reserved for disabled people, for children living in particularly difficult conditions and for persons involved in social evils;

Vocational training operations must satisfy all of the following conditions in order to be entitled to exemption from tax in accordance with this clause:

- The vocational training establishment must be established and operate pursuant to Decree 02-2001-ND-CP of the

Government dated 9 January 2001 making detailed provisions for implementation of the *Labour Code* and the *Law on Education*, and other guidelines;

- Its operations must comply with the business line stipulated in its practising licence or with the business line as registered with the competent labour authority;
 - The business establishment must implement fully the regime on accounting and accounting source documents and must have registered to pay tax.
6. Co-operatives, business individuals and business households earning low income shall be considered for tax exemption and reduction as follows:
- 6.1 If each worker in a co-operative has an annual monthly income in a year below the minimum salary level stipulated by the State for State employees, the co-operative shall be exempted from tax;
- 6.2 If a business individual or each worker in a business household has an annual monthly income in a year below the minimum salary level stipulated by the State for State employees, the business individual or business household shall be exempted from tax;
- 6.3 Business individuals and business households not implementing the regime on accounting and accounting source documents and calculating and paying tax on a fixed level of turnover shall be considered for a fifty (50) per cent reduction of the amount of tax payable for any month during which they suspend business for fifteen (15) or more consecutive days and for exemption from the amount of tax payable for any month in which they suspend business for the whole month.
7. Corporate income tax shall be exempted or reduced in the following circumstances:
- 7.1 Investors shall be granted exemption from corporate income tax for capital contribution in the form of patents, technical know-how, technological processes and technical services;
- 7.2 Foreign investors shall be granted a fifty (50) per cent reduction of the amount of corporate income tax payable in respect of income earned from assignment of their capital contribution to Vietnamese enterprises established pursuant to the law of Vietnam;
- 7.3 Where an enterprise conducts production, construction or transportation activities and employs ten (10) to one hundred (100) female employees, with the female employees of the enterprise

accounting for fifty (50) or more per cent of the total regularly present employees of the enterprise; or where an enterprise employs over one hundred (100) female employees on a regular basis, with the female employees of the enterprise accounting for thirty (30) or more per cent of the total regularly present employees of the enterprise; such enterprise shall be entitled to a reduction of the amount of tax payable equivalent to the amount that it actually pays to female employees as guided in clause 6.1 of Section III of Part B of this Circular if the enterprise conducts separate cost accounting.

Administrative units and offices of State corporations which satisfy the above conditions but which are not directly involved in business shall not be entitled to tax reduction in accordance with this clause.

8. Business establishments which suffer losses after tax finalization with the tax office shall be entitled to carry forward those losses to the following year and such losses shall be deductible from taxable income. Losses shall be carried forward for a maximum period of five years calculated from the year after the year in which the losses arose.

Any business establishment which suffers losses must prepare a plan for carrying forward losses and shall register the plan with the tax office. A business establishment shall not be permitted to carry forward losses unless it registers its plan with the tax office, and it shall not be permitted to carry forward losses other than pursuant to the provisions in the registered plan.

IV. *Principles and procedures to effect tax exemptions and reductions:*

1. Principles for effecting tax exemptions and reductions:
 - 1.1 The tax incentives provided for in Sections II and III of this Section shall only be applicable to business establishments which satisfy the conditions for incentives; which have implemented the regime for accounting, invoices and vouchers; and which have registered to pay tax and have paid tax as declared.
 - 1.2 Where business establishments are entitled to corporate income tax exemption or reduction pursuant to various different sets of circumstances, they shall select the most favourable and notify the tax office of their selection.
 - 1.3 If a business establishment conducts a number of types of business operations during its period of entitlement to corporate income tax exemption or reduction, it must conduct separate accounting for the business operations entitled to tax exemption or reduction. If it fails to do so, the part of its income entitled to tax exemption or

reduction shall be fixed as equal to total taxable turnover multiplied by the percentage of revenue from business operations entitled to tax exemption or reduction over total aggregate turnover in the tax period.

- 1.4 Any business establishment which during its period of entitlement to corporate income tax exemption or reduction converts its form of enterprise or form of ownership, or if another business establishment merges into it, in accordance with law the former business establishment shall still continue to enjoy its tax incentive for the remaining period if it satisfies the conditions for incentives.
- 1.5 The year of tax exemption or reduction shall conform with the tax calculation period. The duration of application of tax exemptions and reductions shall apply consecutively as from the first tax calculation period in which the business establishment has taxable income (excluding losses carried forward from a previous tax calculation period). If a business establishment has taxable income in its first tax calculation period but it produced and traded goods and services for a period of under twelve months in such first tax calculation period, it shall have the right to register with the tax office to enjoy such entitlement in that first tax calculation period or else to commence as from the following tax calculation period.

2. Procedures for effecting tax exemptions and reductions:

- 2.1 Business establishments shall self-determine their conditions for entitlement to tax incentives and their levels of tax exemption, tax reduction and carry-forward of losses and shall conduct tax finalization in accordance with the guidelines in Section IV of Part D of this Circular.

Tax offices shall conduct the task of checking the conditions for entitlement to tax incentives, determine the tax amount for which any one business establishment will be granted exemption or reduction and the amount of losses carried forward which may be deducted from taxable income, correctly in accordance with the conditions which such business establishment actually satisfies.

- 2.2 With respect to cases of exemption or reduction of tax pursuant to clause 6 of Section III of this Part, co-operatives, business individuals and heads of business households shall prepare an application requesting exemption from or reduction of tax, have the application certified by the ward or commune authorities, and forward it to the tax office. The tax office directly in charge shall, after having the application passed by the tax consultancy council at the same level, issue a tax notice granting exemption or

reduction of tax, or shall provide a written explanation of the reasons for refusing the application.

G. Dealing with Breaches

I. *Dealing with taxation offences:*

Business establishments in breach of the *Law on Corporate Income Tax* shall be dealt with as follows:

1. Where they fail to comply strictly with regulations on accounting systems, maintaining accounting records, and declaration, payment and finalization of tax, they shall, depending on the nature and seriousness of the breach, be subject to a warning or fine.
2. Where taxes or fines are paid after the time-limit stipulated in a tax notice, tax payment order or penalty decision, they shall be liable to pay, in addition to the full amount of taxes and fines, one tenth of one (0.1) per cent of the late amount for each day of delay.
3. Where they declare falsely or evade tax, they shall be liable to pay, in addition to the full amount of tax as stipulated by the *Law on Corporate Income Tax*, a fine equal to between one and five times the amount evaded. Where taxpayers evade large amounts of tax, commit tax offences after being subject to an administrative tax penalty, or commit other serious breaches, they shall be prosecuted for criminal liability in accordance with law.
4. Where business establishments fail to pay taxes or fines in accordance with a notice or tax decision, the following action may be taken:
 - 4.1 Appropriation of deposits of taxpayers at banks, Treasury or credit institutions for the purpose of payment of taxes or fines;

Banks, Treasury and credit institutions shall be responsible for appropriation of funds from deposit accounts of business establishments for the purpose of payment of taxes and fines into the State Budget pursuant to a tax decision of a tax office or another authorized body prior to collection of the debt;
 - 4.2 Temporary seizure of goods and material evidence in order to recover the full amount of taxes or fines payable;
 - 4.3 Confiscation of assets in accordance with law for the purpose of recovery of any outstanding amount of taxes and fines.

The procedures and order for dealing with offences pursuant to clause 4 shall be carried out in accordance with applicable current legislation.

II. *Authority to deal with taxation offences:*

Tax offices at all levels shall, upon discovery of business establishments in breach of the *Law on Corporate Income Tax*, examine and determine the breaches and prepare files as stipulated. Based on the regulations on administrative penalties for taxation offences, tax offices shall have authority to issue a penalty decision or make recommendations to the superior tax body or a judicial body for resolution in accordance with their delegated powers. The following guidelines are hereby provided on authority to deal with taxation offences:

1. The heads of tax offices directly in charge of tax collection may take action in respect of the following tax offences:
 - 1.1 They may deal with business establishments in breach of articles 23.1 and 23.2 of the *Law on Corporate Income Tax* and of clause 1 of Section I of Part G of this Circular;
 - 1.2 They may impose fines equal to between one and five times the amount evaded as prescribed in article 23.3 of the *Law on Corporate Income Tax* and in clause 3 of Section I of Part G of this Circular.
2. The heads of Taxation Departments and tax divisions directly in charge of tax collection may take action in respect of the following tax offences:
 - 2.1 They may apply the measures prescribed in article 23.4 of the *Law on Corporate Income Tax* and in clause 4 of Section I of Part G of this Circular;
 - 2.2 They may forward documents to an authorized body for resolution in accordance with law as prescribed in article 23.3 of the *Law on Corporate Income Tax* and in clause 3 of Section I of Part G of this Circular.

H. Complaints and Limitation Periods

1. Rights and obligations of business establishments with respect to tax complaints:

Pursuant to article 26 of the *Law on Corporate Income Tax*, business establishments shall be entitled to lodge complaints against tax offices or tax officers incorrectly implementing the *Law on Corporate Income Tax*. Complaints shall be lodged at the tax office issuing the tax notice, payment order or tax decision within thirty (30) days from the date of

receipt of the tax notice, payment order or tax decision. Pending resolution of complaints, taxpayers must still pay the tax and fines stated in the notice in full and in a timely manner.

Where a business establishment is not satisfied with the resolution of the complaint by the tax office or where the complaint is not resolved within thirty (30) days from the date of submission of the complaint, the complainant may complain to the superior tax office or institute court proceedings in accordance with law.

Business establishments must comply with the procedures and order for complaints and court proceedings in accordance with applicable current provisions of the law.

2. Responsibilities and powers of tax offices with respect to resolution of tax complaints:

Pursuant to article 27 of the *Law on Corporate Income Tax*, tax offices at all levels must resolve tax complaints of taxpayers within fifteen (15) days from the date of receipt. This time-limit may be extended for complicated matters which require time-consuming investigation and verification but shall not exceed thirty (30) days and the complainant must be notified of the extension. Where a tax office receives a complaint which is beyond its authority, it must forward the documents and report to the authorized body for resolution and shall notify the complainant thereof within ten (10) days from the date of receipt of the complaint.

Where a false tax declaration, tax evasion or tax error is discovered, tax offices shall be responsible for recovering taxes or fines or for refunding taxes in respect of five years prior to the date of discovery of the false tax declaration, tax evasion or tax error. Where a business establishment does not register, declare and pay tax, taxes and fines may be recovered retrospectively from the date when the business establishment commenced its operations.

I. Organization of Implementation

1. This Circular shall be of full force and effect after fifteen (15) days from the date of publication in the Official Gazette and shall apply to tax periods as from year 2004.
2. The following guidelines on corporate income tax are hereby repealed:
 - Circular 13-2001-TT-BTC of the Ministry of Finance dated 8 March 2001 providing guidelines for implementation of provisions on taxation in respect of forms of investment under the *Law on Foreign Investment in Vietnam*;

- Circular 18-2002-TT-BTC of the Ministry of Finance dated 20 February 2002 providing guidelines for implementation of Decrees of the Government 26-2001-ND-CP dated 4 June 2001 and 30-1998-ND-CP dated 13 August 1998 providing guidelines for implementation of the *Law on Corporate Income Tax*, as from the date of effectiveness of this Circular;
 - Any other contents in guidelines on corporate income tax in Circulars of the Ministry of Finance or of other branches which are inconsistent with this Circular;
 - Any other contents in guidelines on tax on assignment of land use rights by economic organizations in legal instruments of the Ministry of Finance or of other branches which are inconsistent with this Circular.
3. Enterprises with foreign owned capital and foreign parties to business co-operation contracts to which investment licences have been issued, and domestic enterprises to which certificates of investment incentives have been issued, shall continue to be entitled to the preferential tax treatment stipulated in the investment licences and certificates of investment incentives. If the provisions in an investment licence or certificate of investment incentives stipulate lower preferential tax treatment than that stipulated in this Circular, the incentive rate stipulated in this Circular shall apply for the remaining incentive period (namely the duration of preferential tax treatment stipulated in such licence or certificate less the period for which preferential tax treatment has been enjoyed up until 1 January 2004).

Domestic business establishments which were previously established and which satisfied the conditions for investment incentives pursuant to previous legal instruments but which have not yet been issued with certificates of investment incentives shall be entitled to the preferential tax treatment on the previous conditions for investment incentives for the remaining incentive period calculated from 1 January 2004.

Domestic business establishments which were previously established and which were not in the category of entitlement to investment incentives but which now satisfy the conditions for investment incentives in accordance with this Circular shall be entitled to preferential tax treatment pursuant to this Circular for the remaining incentive period calculated from 1 January 2004.

Business establishments currently enjoying tax exemption or reduction pursuant to the 1997 *Law on Corporate Income Tax* and which have a remaining period of such entitlement shall continue to enjoy such entitlement for the remaining period.

Upon expiry of the duration of preferential corporate income tax rates for enterprises with foreign owned capital and foreign parties to business co-operation contracts as stipulated in their investment licences, the rate of twenty five (25) per cent shall apply to them. If they are currently paying corporate income tax at the rate of twenty five (25) per cent, such rate shall continue to apply until expiry of their investment licences. Upon expiry of the duration of preferential corporate income tax rates for domestic business establishments, the rate of twenty eight (28) per cent shall apply. Domestic business establishments to which the corporate income tax rate of thirty two (32) per cent currently applies shall transfer to the rate of twenty eight (28) per cent as from the date of effectiveness of this Circular.

4. Resolution of any issues on tax, tax finalization, tax exemption and reduction, and administrative offences in the field of corporate income tax which existed prior to 1 January 2004 shall be implemented in accordance with the corresponding guidelines on corporate income tax issued prior to 1 January 2004.

For the Minister of Finance
Deputy Minister

TRUONG CHI TRUNG