

Decree 218

Dated 26 December 2013

ON CORPORATE INCOME TAX

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**DECREE
ON
CORPORATE INCOME TAX**

**Making detailed provisions for implementation of the
Law on Corporate Income Tax**

Pursuant to the *Law on Organization of the Government* dated 25 December 2001;

Pursuant to the *Law on Corporate Income Tax* dated 3 June 2008 and the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax* dated 19 June 2013;

Upon the proposal of the Minister of Finance;

The Government hereby issues a decree making detailed provisions and guidelines for implementation of the *Law on Corporate Income Tax*.

CHAPTER 1

General Provisions

Article 1 Applicable scope

This Decree provides detailed regulations and guidelines for implementation of a number of articles of the *Law on Corporate Income Tax* and the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax* in relation to taxpayers, taxable income, tax exempt income; determination of assessable income, determination of losses and carrying forward losses; turnover, deductible expenses and non-deductible expenses when determining taxable income; tax rates; tax assessment method; tax incentives and conditions for applicability of tax incentives.

Article 2 Corporate income taxpayers

Corporate income taxpayers shall be determined in accordance with article 2 of the *Law on Corporate Income Tax* and article 1 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax*.

1. Corporate income taxpayers as stipulated in article 2.1 of the *Law on Corporate Income Tax* comprise:

- (a) Enterprises established and operating in accordance with the *Law on Enterprises*, the *Law on Investment*, the *Law on Credit Institutions*, the *Law on Insurance Business*, the *Law on Securities*, the *Law on Petroleum*, the *Commercial Law* and other legal instruments in [the following] various forms: shareholding companies; limited liability companies; partnerships;

private enterprises; parties to business co-operation contracts; parties to petroleum production sharing contracts, petroleum joint venture enterprises and general operators.

- (b) Enterprises established pursuant to foreign law (hereinafter referred to as *foreign enterprises*) with or without a resident establishment in Vietnam.
 - (c) Public and non-public professional entities producing and trading goods and services and which have taxable income as stipulated in article 3 of this Decree.
 - (d) Organizations established and operating in accordance with the *Law on Co-operatives*.
 - (dd) Organizations other than those prescribed in sub-clauses (a), (b), (c) to (d) above which have a production or business operation and which have taxable income as stipulated in article 3 of this Decree.
2. Organizations established and operating (or registered for operation) in accordance with the law of Vietnam [and] business individuals who pay tax in accordance with the method of deducting [withholding] tax at the source where they purchase services (including services associated with goods supplied or distributed by way of on-the spot import or export or on international commercial terms) on the basis of a signed contract with the foreign enterprises stipulated in articles 2.2(c) and 2.2(d) of the *Law on Corporate Income Tax*.

The Ministry of Finance shall provide specific guidelines on deducting [withholding] tax in accordance with this clause.

Article 3 *Taxable income*

- 1. Taxable income comprises income earned from activities of production and business in goods and services and other income as stipulated in clause 2 of this article. The income of any enterprise registered for business and which has income as stipulated in clause 2 of this article shall be deemed to be income from the production or business operation of its establishment.
- 2. Other taxable income comprises:
 - (a) Income from capital transfers including income from transfers of part or all the capital amount invested in an enterprise and includes the sale of an enterprise, the transfer of securities, the transfer of the capital contribution right and other forms of capital transfers stipulated by law;
 - (b) Income from transfers of an investment project, income from transfers of the right to participate in an investment project; income from transfers of the exploration, mining or processing right as stipulated by law; and income from real property transfers as stipulated in articles 13 and 14 of this Decree;
 - (c) Income from the use rights or ownership of assets including income from intellectual property rights; and income from technology transfers as stipulated by law;
 - (d) Income from transfer, leasing out and liquidation of assets (except for real property), and including other types of valuable papers;
 - (dd) Interest income on deposits and loans, and income from sales of foreign currency including interest from deposits at credit institutions, interest on loans made in any form as stipulated by law, including interest on deferred payments, interest on instalments, fees for providing credit guarantees and other loan contract fees; income from sales of foreign currency; and any

exchange rate differences on revaluation of accounts payable sourced from foreign currency at the end of the financial year; exchange rate differences arising in the period (unless exchange rate differences arising during the process of investment in capital construction to form fixed assets of newly established enterprises but such fixed assets have not yet been commissioned shall be subject to guidelines of the Ministry of Finance). With respect to accounts receivable, or loans sourced from foreign currency arising in the period, the exchange rate difference resulting from such accounts receivable or loans is the difference between the exchange rate at the time of recovery of the debt and the exchange rate at the time of recognition of the accounts receivable or initial loan;

- (e) Items appropriated in advance for expenses but in fact not used or not fully used within the contributed period but the enterprise does not account them as a reduction of expenses;
- (g) Income from bad debts which were written off and which are now recoverable;
- (h) Income being debts payable to unidentifiable creditors;
- (i) Income from business in previous years which was omitted but is now identifiable;
- (k) The difference between income being receipt of fines and compensation paid [to the taxpayer] for breach of economic contracts, or bonuses for good performance of contractual undertakings (excluding fines and compensation recorded as a reduction of the value of a work during the investment phase) less any fines or compensation [payable by the taxpayer] in accordance with law for contractual breaches;
- (l) Aid funds in money or kind which are receivable;
- (m) Any difference on revaluation of assets in accordance with law in order to contribute capital or conduct a transfer on division, de-merger, merger, consolidation or conversion of enterprise form;

The enterprise which receives these assets shall account for them at their re-assessed value when fixing deductible expenses in accordance with article 9 this Decree;

- (n) Income receivable from production or business activities outside Vietnam;
- (o) Other items of income including tax exempt income as stipulated in articles 4.6 and 4.7 of this Decree.

3. Taxable income arising in Vietnam of the foreign enterprises stipulated in article 2.2(c) and 2.2(d) of the *Law on Corporate Income Tax* means income receivable and originating in Vietnam from activities of provision of services, supply and distribution of goods, providing loans, and royalties payable to Vietnamese or foreign organizations and individuals which are currently conducting business in Vietnam, irrespective of the location where they conduct business.

Taxable income prescribed in this clause does not include income from services implemented outside the territory of Vietnam such as repairs conducted overseas of transport vehicles, machinery and equipment; advertising, marketing, and investment and commercial promotion overseas; brokerage for the sale of goods or brokerage for sale of services overseas; training conducted overseas; and the share of charges for international post and telecom services distributed to the foreign party.

The Ministry of Finance shall provide specific guidelines on taxable income prescribed in this clause.

Article 4 Tax exempt income

Tax exempt income shall be determined in accordance with article 4 of the *Law on Corporate Income Tax* and article 1.3 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax*.

1. Income of co-operatives from cultivation, breeding, aquaculture or salt production; income of co-operatives operating in the agricultural, forestry, fisheries or salt production sector in localities with difficult socio-economic conditions or in localities with specially difficult socio-economic conditions; income of enterprises from cultivation, breeding or aquaculture in localities with specially difficult socio-economic conditions; and income from fisheries activities.

The tax exempt income of co-operatives and enterprises from cultivation, breeding or aquaculture as stipulated in this clause shall exclude income from processing or production of products from cultivation, breeding, or aquaculture. A co-operative or enterprise must account separately for the part of income from cultivation, breeding or aquaculture in the processing or other production stages in order to determine a corporate income tax exempt amount as stipulated in this clause. Where it is impossible to account separately, the tax exempt income shall be fixed at the ratio of expenses of the tax exempt activities over the total expenses of production and business of the establishment in the tax assessment period.

The tax exempt cultivation, breeding or aquaculture activities of co-operatives and enterprises in localities with specially difficult socio-economic conditions as stipulated in article 15.2(e) of this Decree shall be determined on the basis of the economic branch codes at level 1 for the agricultural, forestry and fisheries branches stipulated in the System of Economic Branches of Vietnam.

A co-operative operating in the agricultural, forestry, fisheries or salt production sector as stipulated in this clause and in article 15.2 of this Decree means a co-operative satisfying a ratio of supply of products and services to its member being individuals, households or legal entities engaged in agricultural, forestry, fisheries or salt production activities pursuant to the *Law on Co-operatives* and the implementing documents.

2. Income earned from performance of technical services directly serving agricultural production which is tax exempt comprises income from all the following services: irrigation; ploughing and harrowing land; dredging canals and ditches within arable fields; pest and disease control for crop growers and animal breeders; and harvesting agricultural products.
3. In the case of income from performance of contracts for scientific research and technological development, income from sale of products from test production, and income from products made from new technology applied for the first time in Vietnam, the maximum duration of exemption is one year from the date of commencement of earning of turnover from sale of products pursuant to such contract for scientific research and technological development, [or] from the date of commencement of test production or production pursuant to the new technology.

The Ministry of Finance shall provide specific guidelines on the provisions in this clause.

4. Income earned from activities of production or business in goods or services by enterprises which have an average number in the year of thirty (30) per cent or more employees who are disabled people, reformed addicts and/or people infected with HIV/AIDS.

Tax exempt enterprises as stipulated in this clause means enterprises which employ an average number of twenty (20) or more employees in the year, excluding enterprises engaged in the financial or real estate business sectors.

Tax exempt income as stipulated in this clause shall not include other income prescribed in article 19.2 of this Decree.

5. Income from occupational training activities specially reserved for ethnic minority people, disabled people, children living in particularly difficult conditions, reformed offenders, addicts being weaned and reformed addicts, and/or people infected with HIV/AIDS. If an occupational training establishment has other students, then the part of income exempt from tax shall be a ratio of the number of people in the categories described above over the total number of students of the establishment.
6. Income distributable from activities being capital contribution, purchase of shareholding, joint venture or economic association with a domestic enterprise after the party receiving such capital contribution, share issue, joint venture or association has already paid tax in accordance with the *Law on Corporate Income Tax*, including cases where such recipient is currently entitled to tax incentives stipulated in Chapter IV of this Decree, shall be tax exempt.
7. Aid funds receivable for use in educational, scientific research, cultural, artistic, charitable, humanitarian and other social activities in Vietnam, shall be tax exempt.

An aid recipient which fails to use the aid for the correct purpose must pay corporate income tax assessed on the amount of aid not used for the correct purpose in the tax assessment period in which the use of aid for the incorrect purpose arises.

An aid recipient as prescribed in this clause means any organization established and operating in accordance with law, and correctly implementing the law on accounting and statistics.

8. Income earned from transfers of Certified Emission Reductions (CERs) on the first occasion by enterprises which have been issued with such Certificates; the transfers on subsequent occasions shall be subject to corporate income tax in accordance with regulations.
9. Income from performance of the duties by Vietnam Development Bank as assigned by the State in relation to development and investment credit and export credit; income from credit for the poor and other objects entitled to the policies of Vietnam Bank for Social Policies; income of Vietnam Asset Management Company; income from revenue generating activities resulting from performance of the duties of State financial funds as assigned by the State; Vietnam Social Security Fund; Deposit Insurance of Vietnam; Health Insurance Fund; Support Fund for Occupational Training, Support Fund for Offshore Employment under the Ministry of Labour, War Invalids and Social Affairs, Support Fund for Farmers, Legal Assistance Fund of Vietnam, Public Telecommunications Fund, Investment and Development Funds of localities, Vietnam Environment Protection Fund, Credit Guarantee Fund for Medium and Small Enterprises; Support Fund for Development of Co-operatives, Support Fund for Poor Women; Protection Fund for Overseas Citizens and Legal Entities, Housing Development Fund, Fund for Development of Medium and Small Enterprises, National Science and Technology Development Fund and National Technology Reform Fund; income from performance of duties of Land Development Fund as assigned by the State and other funds of the State which operate not for profitable objectives and for which the Government or the Prime Minister of the Government makes a decision on establishment and operation in accordance with law.
10. Undistributed income of establishments conducting socialization in the education-training or medical health care sector and other socialization sectors (including judicial inspection offices) retained to

invest in development of such establishments in accordance with the specialized laws on education, training, or medial health care and in other socialization sectors; the undistributed part of income for formation of assets of co-operatives which are established and operate in accordance with the *Law on Co-operatives*.

11. Income from technology transfer in the sectors in which organizations and individuals in areas with specially difficult socio-economic conditions are given priority in transfer.

CHAPTER 2

Basis and Method of Tax Assessment

Article 5 Basis for tax assessment

The basis for tax assessment is assessable income within any one period and the tax rate.

The tax assessment period shall be implemented in accordance with article 5 of the *Law on Corporate Income Tax* and the law on tax management.

Enterprises may choose either the western calendar year or the financial year as their tax assessment period, but must notify same to the tax office prior to implementation.

Article 6 Determination of assessable income

1. Assessable income within any one tax assessment period shall be fixed as follows:

$$\text{Assessable income} = \text{Taxable income} - \left[\begin{array}{l} \text{Exempt income} \\ + \end{array} \right] \text{Losses carried forward in accordance with law.}$$

2. Taxable income shall be fixed as follows:

$$\text{Taxable income} = \left[\begin{array}{l} \text{Turnover} \\ - \end{array} \right] \text{Deductible expenses} + \text{Other items of income.}$$

In the case of an enterprise with a number of business operations, its taxable income from production and business activities shall be its total income from all its business operations. If the enterprise has a business operation which made a loss, then the loss may be deducted from the taxable income from a business operation with income as chosen by the enterprise itself. The tax rate applicable to the remaining business operations with income shall apply to the portion of income remaining after the loss has been deducted.

Income from real property transfers, from investment project transfers, from transfers of the right to participate in an investment project, from transfers of the mineral exploration, mining and processing right must be separately fixed in order to declare and pay tax. Where the transfer of the right to participate in an investment project or the investment project transfer (except for mineral exploration and mining projects) or real estate transfer suffers a loss, such loss may be deducted from profit from the production or business activities in the tax assessment period. Where an enterprise conducting procedures for liquidation sells real estate being fixed assets, income from the real estate transfer (if any) shall be deducted from income from the production and business activities of the enterprise.

3. Taxable income shall be fixed for a number of production and business activities as follows:

- (a) Income from capital transfers (except for income from transfers of securities as stipulated in paragraph (b) of this clause) shall be fixed as equal to the total proceeds received from the transfer contract less the purchase price of that part of the capital which was transferred, and less expenses directly related to the transfer;

Where an enterprise transfers capital for which the payment is not made in cash but in kind such as assets or other material benefits (shares or fund certificates) whereby it earns income, such income is subject to CIT;

- (b) Taxable income from a transfer of securities shall be fixed as equal to the selling price less the purchase price of the transferred securities, less expenses directly related to the transfer;

Where a shareholding company issues shares, any share premiums are not CIT assessable.

Where a shareholding company conducts a division, consolidation or merger and converts its shares at the time of such division, consolidation or merger thereby earning income, then such income is subject to CIT;

Where an enterprise transfers securities for which the payment is not made in cash but in kind such as assets or other material benefits (shares or fund certificates) whereby it earns income, such income is subject to CIT;

- (c) Taxable income from intellectual property copyright or from technology transfer shall be fixed as equal to the total proceeds receivable less prime cost or expenses for creating the intellectual property right or technology which was transferred, less expenses for maintaining, upgrading or developing such right or technology and less other deductible expenses;

- (d) Taxable income from leasing out assets shall be fixed as equal to turnover from the lease less deductions for basic wear and tear, expenses for maintaining and repairing the assets, expenses for leasing the assets [from some other party] if any in order to sub-lease them, and less other deductible expenses relating to the lease;

- (dd) Taxable income from transfer or liquidation of assets (excluding real property) shall be fixed as equal to the amount of money received from such transfer or liquidation less the residual value of the assets as recorded in the books of account at the time of the transfer or liquidation, and less deductible expenses relating to such sale or liquidation of assets;

- (e) Taxable income from sale of foreign currency shall equal the total proceeds from such sale less the prime cost of the amount of foreign currency sold;

- (g) A difference resulting from revaluation of assets which are transferred on division, demerger, consolidation, merger, dissolution, conversion of enterprise form, change of owner or capital contribution means the difference between such revaluation of the assets and the residual value of such assets as recorded in the books of account before revaluation of the assets.

A difference being an increase or reduction resulting from revaluation of fixed assets on capital contribution, of assets transferred on division, de-merger, merger, consolidation or conversion of enterprise form, or of assets being a land use right for capital contribution to an investment project for construction of housing or infrastructure for sale shall be included in other income or shall be deducted from other income in the tax assessment period; a difference resulting from revaluation of the value of a land use right for capital contribution for which the capital contribution recipient is not permitted to make depreciation shall be gradually included in other

income over a maximum ten years from the year in which such asset is used for capital contribution;

- (h) With respect to business co-operation contracts (BCC) with distribution of after-tax profit, income shall be fixed as equal to the total turnover under the BCC less the total expenses relating to the creation of turnover from the BCC.

The Ministry of Finance shall provide specific guidelines for determination of turnover and expenses of business co-operation contracts with distribution of after-tax profit.

- (i) Items of income receivable from activities of production and business overseas means total pre-tax income.

4. Income from activities being petroleum exploration and mining shall be fixed pursuant to each specific petroleum contract.

Article 7 *Determination of losses and carrying forward losses*

1. Losses arising in any tax assessment period means the negative amount of assessable income excluding losses carried forward from previous years which is calculated in accordance with the formula stipulated in article 6.1 of this Decree.
2. Enterprises which suffer a loss shall be entitled to carry forward the loss to the following year, and such loss shall be deductible from taxable income. Losses may be carried forward for a maximum period of five (5) consecutive years as from the year following the year in which the loss arose.
3. Any remaining loss from activities being real property transfers, investment project transfers or transfers of the right to participate in an investment project (except for mineral exploration or mining projects) after being deducted from taxable income from such activity or being deducted from profit in accordance with article 6.2 of this Decree and any loss of an enterprise from mineral exploration or mining right transfers may be carried forward to the following year for deduction from assessable income from such activity and the maximum period for carrying forward losses shall not exceed five (5) consecutive years as from the year following the year in which the loss arose.

Article 8 *Turnover*

Turnover used to assess taxable income shall be determined in accordance with article 8 of the *Law on Corporate Income Tax*.

1. Turnover used to assess taxable income means total goods' sales revenue, processing fees and fees for providing services including price subsidies and additional charges and fees to which the enterprise is entitled, irrespective of whether or not money has been received.

If an enterprise pays value added tax by the tax credit method, turnover used to assess taxable income shall be turnover excluding value added tax. If an enterprise pays value added tax calculated directly on the basis of added value, turnover used to assess taxable income shall include value added tax.

2. The point of time for fixing turnover in order to assess taxable income in respect of goods sold shall be the time when ownership of the goods or the right to use the goods is transferred to the purchaser.

The point of time for fixing turnover in order to assess taxable income in respect of services shall be the time when the services provided to the purchaser are completed or when an invoice is issued for the provision of the services.

3. Turnover used to assess taxable income shall be fixed in a number of specific cases as follows:

- (a) Where goods are sold by way of instalment payments, turnover shall be the lump sum payment price excluding any interest on instalments or on deferred payment.
- (b) With respect to goods or services used for the purpose of exchange or internal use (excluding goods or services used to continue the production or business process of the enterprise), turnover shall be the selling price of products, goods or services of the same or equivalent kind at the time of such exchange or internal use.
- (c) With respect to processing of goods, turnover shall be the monetary proceeds from processing including wages; including expenses for fuel, power and sub-materials; and including other expenses serving processing of the goods.
- (d) With respect to leasing out assets, commercial operation of golf courses or other services business for which clients may make payment in advance for a number of years, turnover shall be the amount the asset lessee or service purchaser pays for each term under the contract. Where the asset lessee or service purchaser makes payment in advance for a number of years, the turnover for the purpose of assessing taxable income may be allocated over such number of years for which payment is made in advance or may be fixed as one-off turnover. If the enterprise currently is within the duration of entitlement to tax incentives, the tax amount subject to the incentives shall be fixed on the basis of the total CIT payable for the number of years for which payment was made in advance divided by the number of years for which payment is made in advance.
- (dd) With respect to credit operations and finance leasing, turnover shall be loan interest and turnover on the finance leasing collectible and arising within any one tax assessment period.
- (e) With respect to transportation operations, turnover shall be total turnover from fees and charges for transporting passengers, cargo and luggage arising within any one tax assessment period.
- (g) With respect to electricity and fresh water, turnover shall be the total amount recorded in value added invoices.
- (h) With respect to insurance and reinsurance operations, turnover shall be the amount receivable for primary premiums; for agency fees (including for loss assessment, claims settlement, third party recovery claims, and one hundred (100) per cent payment for goods); reinsurance premiums receivable, commission for reinsurance, and all other items for insurance business after deducting refunds or reduction of primary and reinsurance premiums and refunds or reduction of commission for ceding insurance.

With respect to co-insurance by a syndicate of insurers, turnover used to assess taxable income shall be the amount receivable for primary premiums allocated at the co-insured ratio excluding value added tax.

In the case of an insurance contract stipulating a premium payment during each period, turnover used to assess taxable income shall be the amount receivable and arising in each period.

- (i) With respect to activities of construction of works or installation and assembly, turnover shall be the value of the work or items of works or the volume of construction works or installed and assembled works which have been tested and accepted.

In the case of construction works or installed and assembled works for which the tender did not include raw materials, machinery and equipment, then turnover for assessing tax shall exclude the value of raw materials, machinery and equipment.

- (k) With respect to a business operation in the form of performance of a business co-operation contract ["BCC"] without establishment of a legal entity:

- If the parties to the BCC distribute the business results in the form of turnover from sale of goods and services, then turnover for the purposes of assessing tax shall be the turnover distributed to each party under such contract;
- If the parties to the BCC distribute business results in the form of after-tax profit, then turnover in order to fix taxable income shall be proceeds from sale of goods and services under such contract.

- (l) With respect to casino business, electronic games with prizes and other betting businesses, turnover shall be the proceeds from these operations including special sales tax, less sums paid as prizes to customers.

- (m) With respect to securities business, turnover shall be revenue from brokerage services, securities self-trading, underwriting of issues, securities investment consultancy, management of investment funds, issuance of fund certificates, market organization services and other securities services as stipulated by law.

- (o) With respect to activities of prospecting, exploring and mining petroleum, turnover shall be the total revenue from the sale of oil and gas pursuant to arms-length transaction contracts within any one tax assessment period.

- (p) With respect to derivative financial services, turnover shall be proceeds from the provision of such services as performed within any one tax assessment period.

The Ministry of Finance shall provide specific guidelines on this article as applicable to a number of other special cases.

Article 9 *Deductible expenses and non-deductible expenses when determining taxable income*

1. Except for expenses stipulated in clause 2 of this article, enterprises shall be permitted to deduct all expenses which satisfy the following conditions:
 - (a) The expenses actually arose and related to the activities of production and business of the enterprise including the following expenses:
 - Expenses for performance of the duty of education on national defence and security, for training and operation of militia forces and performance of other duties of national defence and security as stipulated by law; expenses for assisting activities of the organization of the Party and socio-political organizations in the enterprises;

- Actual expenses for HIV/AIDS prevention activities at working locations including expenses for training personnel engaged in HIV/AIDS prevention of the enterprise, expenses for communication on HIV/AIDS prevention to employees of the enterprise, expenses for consultancy and HIV testing, and expenses for care and support to people infected with HIV being employees of the enterprise.

- (b) The expenses are accompanied by complete invoices and source vouchers as required by law.

In all the following cases there must be vouchers proving payment of expenses to the seller and a detailed list of all the goods and services purchased, prepared and signed by the legal representative or authorized person of the business enterprise who shall be liable for such list: Purchase of agricultural, forestry and aquaculture products from the producers, and purchase of seafood products directly from fishermen or seafood producers; purchase of handcraft products made from rattan, bamboo, reed, leaves, grass or coconut, or of raw materials from agricultural products purchased directly from the seller being the handcraft producer; purchase of soil, stone, sand and gravel mined by a family household or individual themselves and sold directly; purchase of scrap sold by persons who collected it themselves, and purchase of domestic appliances and assets of a family household or individual who directly sells such items; and purchase of other services from non-business family households or individuals.

- (c) With respect to invoices for purchase of goods or services on each occasion for which the payment is twenty (20) million Dong or more, a receipt for payment without use of cash shall be required except for expenses incurred by the enterprise for performance of the duty of national defence and security, for HIV/AIDS prevention activities at working locations or for expenses for assisting activities of the organization of the Party and socio-political organizations in the enterprise as stipulated in clause 1(a) of this article; or for purchase of goods and services for which a list must be prepared as stipulated in clause 1(b) of this clause.

The Ministry of Finance shall provide specific guidelines for the cases of payment under a contract where the time of payment is different from the time of recognition of the expenses in accordance with regulations, and for expenses for which a receipt for payment without use of cash is not required.

2. Non-deductible expenses when determining taxable income shall be determined in accordance with article 9.2 of the *Law on Corporate Income Tax* and article 1.5 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax*, and the following provisions apply to a number of cases of non-deductible expenses:

- (a) Expenses which fail to satisfy all the conditions stipulated in clause 1 of this article, except for that part of the value of a loss due to a natural disaster, epidemic, fire or other event of force majeure for which compensation is not payable.

The above-mentioned part of the value of the loss due to the above-mentioned events for which compensation is not payable shall be fixed as equal to the total value of the loss less that part of the loss for which an insurer or some other organization or individual is obliged to pay compensation in accordance with law.

- (b) That part of business management expenses allocated by a foreign company to its resident establishment in Vietnam which exceeds the level calculated by the following formula:

| Business management expenses allocated by the overseas company to its resident establishment in Vietnam within the tax assessment period | Turnover for tax assessment of the resident establishment in Vietnam within the tax assessment period | Total business management expenses of the company overseas within the tax assessment period. | 11 |
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= _____ X

Total turnover of the overseas company including turnover of its resident establishments in other countries during the tax assessment period

- (c) That part of expenses which exceeds the level stipulated by law for establishment of contingency reserves.
- (d) Depreciation of fixed assets which is incorrect in terms of the regulations of the Ministry of Finance, comprising: depreciation on passenger vehicles with nine or less seats (except for vehicles used in business transportation of passengers and in the tourism and hotel sector) equivalent to that part of the prime cost above 1.6 billion dong per vehicle; and depreciation of civil aircraft and yachts not used for business transportation of cargo or passengers or in the tourism and hotel sector.
- (dd) Expenses allocated in advance which are in fact not used correctly as stipulated by law.

Expenses allocated in advance which are included in deductible expenses shall comprise expenses allocated in advance for major repairs to fixed assets conducted in cycles, expenses allocated in advance for activities for which turnover has already been accounted but it is necessary to discharge contractual obligations including leasing out assets where the lessee pays rent in advance for a number of years and the lessor accounts for the whole rent as one-off turnover in the year of receipt, and other expenses allocated in advance as stipulated in regulations of the Ministry of Finance.

- (e) Interest payments on loans corresponding to the unpaid portion of charter capital in accordance with the capital contribution schedule stipulated in the enterprise charter, interest payments on loans which have been included in the value of assets and interest payments on loans to commence performance of contracts for conducting prospecting, exploration and mining of petroleum.
- (g) That part of expenses for advertising, marketing, promotion and broker's commissions (excluding insurance commission as stipulated by the *Law on Insurance Business* and commission for agents who sell goods at the correct price stipulated by their principal; and commission paid to distributors of multi-level marketing companies); of expenses for receptions, formal occasions and conferences; of expenses for assisting marketing, of expenses for assisting costs directly related to production or business which exceeds fifteen (15) per cent of the total amount of deductible expenses.

Total amount of deductible expenses does not include the above-mentioned expenses stipulated in this clause; and in the case of commercial business activities, shall not include the purchase price of goods sold.

Expenses which are subject to a limit of expenses in this clause shall include expenses for donations or gifts for clients.

- (h) That part of expenses which are permitted to be recovered and which exceeds the ratio stipulated in an approved petroleum contract; if a petroleum contract does not stipulate the recoverable expenses ratio, then that part of the expenses exceeding thirty five (35) per cent

shall not be included in deductible expenses. Expenses which may not be included in recoverable expenses comprise:

- The items stipulated in article 9.2 of the *Law on Corporate Income Tax* and article 1.5.2 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax*;
 - Expenses arising prior to the effective date of a petroleum contract, unless such contract contains some other agreement or unless otherwise stipulated in a decision of the Prime Minister of the Government;
 - Various types of petroleum commission and other items not included in recoverable expenses as defined in the contract;
 - Interest payments on sums invested in prospecting, exploring and developing mines or fields and in mining petroleum;
 - Fines and compensation for loss and damage.
- (i) Input value added tax which has been credited, input value added tax on the part of the value of vehicles with nine or less seats exceeding 1.6 billion Dong not permitted to be credited, corporate income tax, other taxes, fees and charges and other receipts not permitted to be included in expenses pursuant to regulations of the Ministry of Finance.
- (k) Expenses which do not correspond to the equivalent turnover for assessing tax, except for some special cases as guided by the Ministry of Finance.
- (l) Exchange rate differences when money sourced from foreign currency is reassessed at the end of the tax assessment period, excluding any exchange rate difference resulting from revaluation of accounts payable sourced from foreign currency at the end of the tax assessment period; and exchange rate differences arising throughout the process of investment in capital construction in order to form fixed assets of a newly established enterprise but such fixed assets have not yet been commissioned which shall be subject to guidelines of the Ministry of Finance.
- With respect to accounts receivable or loans sourced from foreign currency arising in the period, an exchange rate difference which is included in deductible expenses means the difference between the exchange rate at the time of recovery of the debt or loan and the exchange rate at the time of recognition of the account receivable or of the initial loan;
- (m) Salaries or wages of owners of private enterprises; of owners of single member limited liability companies (for which a single individual acts as the owner); remuneration payable to founders of enterprises who do not engage in executive operation of production or business; salaries, wages and other expenses which are accounted as payment to employees but are not actually made or supported by an invoice or source document as stipulated by law; bonuses or payments being life insurance premiums for employees for which conditions for entitlement and amount of entitlement are not specified in one of the following documents: labour contract; collective labour agreement; finance rules of the company, corporation or group; or rules on bonuses set out by the chairman of the board of management, the general director or director in accordance with the finance rules of the company or corporation. Salaries, wages and allowances payable to employees and not actually paid before the deadline for submission of the annual tax finalization file expires, except where the enterprise has established a reserve in order to add to the salary fund for the following year in order to ensure uninterrupted

payment of salaries and does not use [such reserve] for any other purpose. The rate of annual reserve shall be determined by the enterprise but shall not exceed 17% of the realized salary fund (being the total actually paid salaries in the tax finalization year up until the deadline for submission of the finalization file in accordance with regulations, excluding any amount which was contributed to the reserve fund for salaries of the previous year but is paid in the tax assessment year). Where the enterprise established a reserve fund for salaries in the previous year but does not use or does not entirely use up the reserve fund for salaries within six months from the closing date of the fiscal year, the enterprise shall record a reduction of expenses of the following year;

- (n) Funding amounts, except for funding amounts for education, medical health care, scientific research, remedy of the consequence of a natural calamity, construction of charity houses or houses for the poor or subjects entitled to the policies as stipulated by law and funding amounts under the State programs for localities within areas with specially difficult socio-economic conditions.

The organization receiving a funding amount for scientific research stipulated in this sub-clause means a scientific and technological organization established and operating in accordance with the *Law on Science and Technology* in order to perform scientific and technological duties in accordance with the law on science and technology.

- (o) Part of expenses exceeding one million Dong per month per person for contribution to the voluntary pension fund or for purchase of voluntary pension insurance or life insurance for employees; the part of expenses exceeding the amount stipulated by the law on social security or health insurance to contribute to funds of a social security nature (compulsory social security or additional pension insurance), the health insurance fund and unemployment insurance fund for employees.

In the case of expenses for contribution to the voluntary pension fund or a fund of a social security nature or for purchase of voluntary pension insurance or life insurance for employees which are permitted to be included in deductible expenses, in addition to the fact that [such expenses] must not exceed the amount stipulated in this sub-clause, the conditions for entitlement and amount of entitlement must be specified in one of the following documents: labour contract; collective labour agreement; finance rules of the company, corporation or group; or rules on bonuses set out by the chairman of the board of management, the general director or director in accordance with the finance rules of the company or corporation.

- (p) Expenses of the following business activities: banking, insurance, lotteries or securities and a number of special business activities in accordance with regulations of the Ministry of Finance;
- (q) Late payments of taxes as stipulated by the *Law on Management of Tax*;
- (r) Expenses directly relating to an issue of shares (except for shares being a type of debt payable) and dividends on shares (except for dividends on shares being a type of debt payable), purchase and sale of treasury shares and other expenses directly relating to the increase or reduction of the equity of the enterprise.

The Ministry of Finance shall provide specific guidelines on deductible expenses and non-deductible expenses as prescribed in this article.

Article 10 Tax rates

Corporate income tax rates shall be determined in accordance with article 1.6 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax*.

1. The rate of CIT shall be twenty two (22) per cent, except for the cases of enterprises being in the category of objects to which the tax rate of twenty (20) per cent and a tax rate of thirty two (32) per cent to fifty (50) per cent as stipulated in clauses 2 and 3 of this article apply and which are entitled to a preferential tax rate stipulated in articles 15 and 16 of this Decree.

The entities which are subject to the tax rate of twenty two (22) per cent stipulated in this clause shall be subject to the tax rate of twenty (20) per cent as from 1 January 2016.

2. Enterprises established and operating in accordance with the law of Vietnam, including co-operatives and professional entities conducting production or business activities and having a total annual turnover of less than twenty (20) billion Dong per annum are subject to the tax rate of twenty (20) per cent.

The total annual turnover which provide a basis for determining whether or not an enterprise is in the category of entities subject to the tax rate of twenty (20) per cent means the total turnover from sale of goods and provision of services of the enterprises in the immediately previous year.

3. The rate of CIT applicable to activities of prospecting, exploring and mining petroleum and other rare and precious natural resources in Vietnam is from thirty two (32) per cent to fifty (50) per cent. With respect to activities of prospecting, exploring and mining petroleum, based on the location, conditions for mining and reserve of each field, the Prime Minister of the Government shall determine a specific and appropriate tax rate for each project or each business establishment upon the proposal of the Ministry of Finance. The tax rate applicable to mines of natural resources comprising platinum, gold, silver, tin, wolfram, antimony, precious stones and rare earth is 50%, but if 70% or more of the allocated area is located in an area with specially difficult socio-economic conditions included in the list of areas entitled to CIT incentives issued with this Decree then the CIT rate is 40%.

Article 11 Tax assessment method

1. The amount of CIT payable in any one tax assessment period shall equal assessable income multiplied by the tax rate; and if an enterprise has already paid income tax on income arising overseas, it may deduct such amount but the maximum deduction shall not exceed the amount of corporate income tax payable pursuant to the *Law on Corporate Income Tax*.
2. The amount of CIT payable on a real property transfer shall equal income from such transfer multiplied by the tax rate of twenty two (22) per cent and such tax rate as from 1 January 2016 shall be twenty (20) per cent.
3. The amount of CIT payable by the enterprises stipulated in articles 2.2(c) and (d) of the *Law on Corporate Income Tax* shall be assessed as a ratio of turnover from the sale of goods and services in Vietnam, and specifically as follows:
 - (a) Services: Five (5) per cent, but ten (10) per cent applicable to management services for restaurants, hotels or casinos, and in the case of supply of services associated with goods then the goods shall be assessed at a ratio of one (1) per cent; or two (2) per cent in the case where it is impossible to separate the value of goods from the value of services;
 - (b) Provision and distribution of goods in Vietnam by way of on-the spot import and export or on international commercial terms (Incoterms): One (1) per cent;

- (c) Royalties: Ten (10) per cent;
 - (d) Aircraft lease (including lease of aircraft engines and accessories), and ship leases: Two (2) per cent;
 - (dd) Lease of drilling platforms, machinery and equipment and transport facilities (except for the case prescribed in sub-clause (d) above): Five (5) per cent;
 - (e) Interest on loan monies: Five (5) per cent;
 - (g) Transfers of securities and reinsurance abroad: Zero point one (0.1) per cent;
 - (h) Derivative financial services: Two (2) per cent.
 - (i) Construction, transportation and other activities: Two (2) per cent.
4. In the case of petroleum mining operations where the contract stipulates accounting for turnover and expenses in foreign currency, then assessable income and the amount of tax payable shall be fixed in foreign currency.
5. Where a professional entity or another organization not being an enterprise established and operating in accordance with the law of Vietnam conducts business in goods and services and has taxable income and can account for turnover but cannot fix expenses and income from the business activities, it shall declare and pay CIT at a rate (%) of turnover from sale of goods and services, specifically as follows:
- (a) With respect to services (including interest on deposits or loan interest): Five (5) per cent. Education, medical health care or art performance activities shall be subject to the tax rate stipulated in sub-clause (c) of this clause;
 - (b) With respect to business in goods: One (1) per cent.
 - (c) With respect to other activities: Two (2) per cent.

Article 12 Place of tax payment

1. An enterprise shall pay tax in the locality where it has its main head office. If an enterprise has a dependently accounting production establishment in a province or city under central authority other than the locality where it [such enterprise] has its main head office, then an amount of corporate income tax shall be assessed and payable where the enterprise has its main head office and where the enterprise has its production establishment.

The amount of corporate income tax assessable and payable in the province or city where there is a dependently accounting production establishment shall equal the amount of corporate income tax payable by the enterprise in the period multiplied by the ratio of expenses incurred by such production establishment over total expenses of the enterprise.

Tax payment as stipulated in this clause shall not apply to dependently accounting project works, items of project works or construction establishments.

Delegation of authority to manage, and management and use of collected taxes shall be implemented in accordance with the *Law on State Budget*.

2. Dependently accounting units of enterprises which conduct accounting on an industry wide basis and which have income in addition to income from their main business operation shall pay tax in the province or city under central authority where they conduct such business operation.
3. The Ministry of Finance shall provide guidelines on tax payment pursuant to this article.

CHAPTER 3

Income from Real Property Transfers

Article 13

Income from real property transfers shall comprise income from transfer of a right to use or lease land, and income from sub-leasing out land by enterprises conducting real property business as stipulated in the law on land, irrespective of whether or not the land has infrastructure, buildings or engineering works on it; income from transfer of a house or building work attached to land, including assets attached to such house or construction work regardless of whether or not the right to use or lease the land is transferred; and income from transfers of other assets attached to the land.

Article 14

Taxable income from real property transfers shall equal turnover from the real property transfer operation less the prime cost of properties and less deductible expenses related to such operation.

1. Turnover for the purposes of assessing taxable income shall be determined in accordance with the actual price of a property transfer pursuant to the real property purchase and sale contract in conformity with law.

If the price of a land use right transfer pursuant to the real property purchase and sale contract is less than the land price stipulated by the provincial people's committee as at the time of signing such contract, then it shall be calculated in accordance with the price so stipulated by the provincial people's committee.

2. The time for fixing turnover in order to assess taxable income shall be the time of handover of the real property.

If money is paid in advance pursuant to the schedule, then the time for fixing turnover to assess the amount of corporate income tax provisionally payable shall be the time of receipt of such money. The Ministry of Finance shall provide guidelines on provisional payment of tax as prescribed in this clause.

3. Deductible expenses of a real property transfer:

- (a) The prime cost of land for which the [use or lease] right is transferred shall be fixed in conformity with the origin of the land use right and specifically as follows:

- In the case of land allocated by the State with collection of land use fees or land rent, the prime cost shall be the amount of such fees or rent actually paid to the State budget.
- In a case where the land use right was received from another organization or individual then the basis for fixing the prime cost shall be the contract and legal vouchers for payment of money on receipt of the land use or lease right; if there is no contract or if

there are no legal payment vouchers, then the prime cost shall be calculated in accordance with the price stipulated by the provincial people's committee at the time when the enterprise received the assignment of the property.

- In the case of land received as a capital contribution, the prime cost shall be the price agreed when the capital contribution was made.
- In the case of land received as an inheritance or gift for which the prime cost is indeterminable, the prime cost shall be the price for that particular type of land as stipulated by the provincial people's committee at the time of receipt of the inheritance or gift.

If land was received as an inheritance or gift prior to 1994, then the prime cost of the land shall be fixed in accordance with the price of such particular type of land as stipulated by the provincial people's committee in 1994 based on the framework of land prices stipulated in Decree 87-CP of the Government dated 17 August 1994.

- (b) Expenses being compensation and funding when the State resumed the land.
- (c) Fees and charges stipulated by law and related to issuance of the land use right.
- (d) Expenses of improving and upgrading the land and levelling the surface.
- (dd) Value of the infrastructure and buildings on the land.
- (e) Other expenses related to the property which was transferred.

CHAPTER 4

Corporate Income Tax Incentives

Article 15 Preferential tax rates

1. The tax rate of ten (10) per cent shall apply for fifteen (15) years to:

- (a) Income of enterprises from implementation of new investment projects in areas with specially difficult socio-economic conditions as listed in the Appendix issued with this Decree, and in economic zones and high-tech zones, including concentrated information technology zones, established pursuant to a decision of the Prime Minister of the Government;
- (b) Income of enterprises from implementation of new investment projects in the sectors of scientific research and technological development; application of high-tech on the list of high-tech which have priority for investment in development in accordance with the *Law on High-tech*; high-tech incubation, high-tech enterprise incubation; venture investment in development of high tech on the list of high-tech which have priority for investment in development in accordance with the law on high-tech; investment in construction and commercial operation of high-tech incubation or high-tech enterprise incubation facilities; investment in development of water plants, power plants and water supply systems; in bridges, roads and railways; in airports, seaports and river-ports; in air fields, stations and other specially important infrastructure works as decided by the Prime Minister of the Government; production of software products; production of composite materials, types of light construction materials;

precious and rare materials; production of renewable energy, clean energy or energy from destruction of waste; and development of biotechnology.

An investment project for production of software products stipulated in this clause means an investment project for production of software products which are included on the list of software products and satisfy the process of production of software products stipulated by law;

- (c) Income of enterprises from implementation of new investment projects in the environmental protection sector, including production of equipment for treatment of environmental pollution, equipment for environmental observation and analysis; for treatment of pollution and environmental protection; for collection and treatment of sewage, exhaust or solid waste; recycling or reuse of waste.
- (d) High-tech enterprises and high-tech applying agricultural enterprises.

Where an enterprise is currently entitled to the corporate income tax incentives or no longer is entitled to the corporate income tax incentives in accordance with the legal instruments on corporate income tax but it is issued with a high-tech enterprise certificate or high-tech applying agricultural enterprise certificate, then the incentives applicable to high-tech enterprises or high-tech applying agricultural enterprises shall be fixed as equal to the incentives applicable to high-tech enterprises or high-tech applying agricultural enterprises prescribed in article 15.1 and 16.1 of this Decree less the period in which it has been entitled to the incentives (in terms of the tax rate and period of exemption and reduction, if any);

- (dd) Income of enterprises from implementation of new investment projects in a production sector (except for production projects for items subject to special sales tax and mineral mining projects) satisfying either of the following criteria:
 - A project having a minimum amount of investment capital being six thousand (6,000) billion Dong which is disbursed within three years or less from the date of issuance of an investment licence and reaching the total turnover of at least ten thousand (10,000) billion Dong per annum not later than three years from the year in which it has turnover.
 - A project having a minimum amount of investment capital being six thousand (6,000) billion Dong which is disbursed within three years or less from the date of issuance of an investment licence and employing more than 3,000 employees no later than three years from the year in which it has turnover.

The number of employees stipulated in this clause means the number of employees signing a labour contract for full-time employment excluding the number of part-time employees and employees singing a labour contract with a short term of less than one year.

2. The tax rate of ten (10) per cent shall apply to the following income:

- (a) The part of income of any enterprise conducting socialization activities in the sectors of education and training, occupational or vocational training, medical health care, culture, sport and the environment.

The list of forms, criteria on scale and standards of enterprises conducting socialization stipulated in this clause shall be provided by the Prime Minister of the Government.

- (b) The part of income from publication activities of publishing houses in accordance with the *Law on Publication*;
- (c) The part of income from printing newspaper activities (including advertising on printing newspapers) of press agency in accordance with the *Law on the Press*;
- (d) The part of income of enterprises from implementation of investment-business projects for social residential houses for sale, lease or purchase-lease in respect of objects stipulated in article 53 of the *Law on Residential Housing*.

The social residential house prescribed in this clause means the residential houses in which the State or organisations and individuals in all economic sectors invest in construction and which satisfy the criteria in relation to residential housing, selling prices of houses, rent, purchase-lease prices and purchasers or lessees and conditions for purchase, lease or purchase-lease of social residential houses in accordance with the law on residential housing, and the determination of income for application of the tax rate of ten (10) per cent stipulated in this clause shall not be subject to the time of signing of a social residential house sale, lease or purchase-lease contract;

- (dd) Income of enterprises from planting, care and protection of forests; cultivation and husbandry of agricultural, forestry or aquatic products in areas with difficult socio-economic conditions; production, multiplication or creation of animal breed and plant varieties; production, mining and refining of salt except for salt production stipulated in article 4.1 of this Decree; investment in after-harvest preservation of agricultural products or preservation of agricultural or aquatic products and foodstuffs;
- (e) The part of income of co-operatives operating in the agricultural, forestry, fisheries or salt production sector in areas other than areas with difficult socio-economic conditions and specially difficult socio-economic conditions, except for income of co-operations prescribed in article 4.1 of this Decree.

3. The preferential tax rate of twenty (20) per cent shall apply for ten (10) years to

- (a) Income of enterprises from implementation of new investment projects in areas with difficult socio-economic conditions as listed in the Appendix to this Decree.
- (b) Income of enterprises from implementation of new investment projects for production of premium steel; production of energy-saving products; production of machinery and equipment serving agricultural or forestry production, fisheries or salt production; production of irrigation equipment; production and refining of feed for cattle, poultry or aquatic products; development of traditional trades.

As from 1 January 2016, the tax rate of 17% shall apply to enterprises implementing new investment projects in the sector or areas entitled to tax incentives stipulated in sub-clause (a) and (b) of this clause.

4. The tax rate of twenty (20) per cent shall apply to people's credit funds and micro-financial institutions, which shall be subject to the tax rate of seventeen (17) per cent as from 1 January 2016.

After expiration of the duration of applicability of the ten (10) per cent tax rate stipulated in clause 1 of this article to people's credit funds and micro-financial institutions, the tax rate of twenty (20) per cent (and as from 1 January 2016, the tax rate of seventeen (17) per cent) shall apply to people's credit

funds and micro-financial institutions. Micro-financial institutions prescribed in this clause means institutions established and operating pursuant to the *Law on Credit Institutions*.

5. In the case of projects which are in the category of objects entitled to the tax incentives prescribed in clauses 1(b) and 1(c) of this article, which are on a large scale, with high-tech or new tech and which specially require to attract investment, the duration of applicability of the preferential tax rate may be extended but the total duration of applicability of the tax rate of ten (10) per cent shall not exceed thirty (30) years. The Prime Minister of the Government shall make decisions on extension of the duration of applicability of the preferential tax rate of ten (10) per cent prescribed in this clause on the proposal of the Minister of Finance.
6. The duration of applicability of the preferential tax rates prescribed in this article shall be calculated consecutively from the first year in which the enterprise has turnover from the new investment project; in the case of a high-tech enterprise or high-tech applying agricultural enterprise, from the date it is recognized as a high-tech enterprise or high-tech applying agricultural enterprise; and in the case of high-tech application project, from the date of issuance of a high-tech application project certificate.

Article 16 Tax exemption and reduction

1. The tax exemption for a period of four (4) years and a fifty (50) per cent reduction of the amount of tax payable for a period of nine (9) subsequent years shall apply to:
 - (a) Income of the enterprises from implementation of new investment projects prescribed in article 15.1 of this Decree.
 - (b) Income of the enterprises from implementation of new investment projects in the socialization sector operating in areas with difficult or specially difficult socio-economic conditions as listed in the Appendix to this Decree.
2. The tax exemption for a period of four (4) years and a fifty (50) per cent reduction of the amount of tax payable for a period of five (5) subsequent years shall apply to income of the enterprises from implementation of new investment projects in the socialization sector operating in areas other than areas with difficult or specially difficult socio-economic conditions as listed in the Appendix to this Decree.
3. The tax exemption for a period of four (4) years and a fifty (50) per cent reduction of the amount of tax payable for a period of four (4) subsequent years shall apply to income from implementation of new investment projects prescribed in article 15.3 of this Decree and income of the enterprises from implementation of new investment projects in industrial zones (except for industrial zones located in areas with favourable socio-economic conditions).

The area with favourable socio-economic conditions prescribed in this clause means inner districts of urban areas of the special class, of urban areas of class I under central authority and of urban areas of class I under provincial authority; where an industrial zone is located in both the area with favourable conditions and the area with unfavourable conditions, the tax incentives applicable to the industrial zone shall be determined on the basis of the area in which the part of the area of the industrial zone is larger. Urban areas of the special class or urban areas of class I prescribed in this clause shall be determined in accordance with the regulations of the Government on classification of urban areas.

4. The duration of tax exemption and reduction stipulated in this article shall be calculated consecutively from the first year in which [the enterprise] has taxable income from a new investment project entitled to the tax incentives; if it does not have taxable income in the first three years as from the first year in

which it has turnover from the new investment project, then the duration of tax exemption and reduction shall be calculated from the fourth year. The duration of tax exemption and reduction in respect of a high-tech enterprise or high-tech applying agricultural enterprise prescribed in clause 1 of this article shall be calculated from the time when it is recognized as a high-tech enterprise or high-tech applying agricultural enterprise.

Where in the first tax assessment period, the production or business activities of a new investment project of the enterprise entitled to tax exemption or reduction have been conducted for a period of less than 12 months, the enterprise may select to immediately commence its entitlement to tax exemption or reduction in respect of the new investment project in such tax assessment period or it may register with the tax office a time for commencement of entitlement to tax exemption or reduction as from the following tax assessment period.

5. Enterprises having an investment project for development of the investment project which currently operates in a sector or area entitled to the corporate income tax incentives as stipulated in this Decree in order to expand the scale of production, to increase the capacity or reform production technology and satisfying any one of three criteria stipulated in this clause may select to be entitled to the tax incentives of the currently implementing project for the residual duration (if any) or to be entitled to tax exemption and reduction in respect of the increased portion of income derived from the investment in expansion. The duration of tax exemption and reduction in respect of the increased portion of income derived from the investment in expansion prescribed in this clause shall equal the duration of tax exemption and reduction applicable to new investment projects in the same locality or sector entitled to the corporate income tax incentives.

The investment projects for expansion prescribed in this clause must satisfy any one of the following criteria:

- When the investment project is completed and commissioned, the original price of fixed assets shall be increased by at least twenty (20) billion Dong or more in respect of investment projects for expansion in the sectors entitled to the corporate income tax incentives stipulated in this Decree or by ten (10) billion Dong or more in respect of investment projects for expansion implemented in areas with difficult or specially difficult socio-economic conditions in accordance with the law on corporate income tax.
- The [aggregate] original prices of fixed assets must be increased by at least twenty (20) per cent in comparison with the total original prices of the fixed assets before investment.
- The designed capacity must be increased by at least twenty (20) per cent in comparison with the designed capacity before investment.

Where an enterprise currently operates and carries out the investment in order to upgrade, to replace or reform technology of the currently implementing project in a sector or area entitled to the tax incentives as stipulated in this Decree but fails to satisfy any one of the three criteria prescribed in this clause, the tax incentives shall apply to the currently implementing project for the residual duration (if any).

Where an enterprise selects its entitlement to the tax incentives for the investment for expansion, the increased portion of income derived from the investment for expansion shall be accounted separately; where it is impossible to account separately, income from the investment activity for expansion shall be fixed as a ratio of the original prices of fixed assets which are formed by the new investment and commissioned, over the total original prices of fixed assets of the enterprise.

The duration of tax exemption and reduction stipulated in this clause shall be calculated from the year in which the investment project for expansion is completed and commissioned and generates income; if it does not have taxable income in the first three years as from the first year in which it has turnover from the investment project for expansion, then the duration of tax exemption and reduction shall be calculated from the fourth year.

The tax incentives stipulated in this clause shall not apply to the cases of investment for expansion due to merger or acquisition of a current enterprise or investment project.

Article 17 Other cases of tax reduction

1. Enterprises engaged in production, construction or transportation and employing [a number of] ten (10) to one hundred (100) female employees which accounts for more than fifty (50) per cent of the total number of their full-time employees or regularly employing [a number of] more than one hundred (100) female employees which accounts for more than thirty (30) per cent of the total number of their full-time employees shall be entitled to a reduction of corporate income tax equal to the additional amount of expenses incurred for female employees, comprising:
 - (a) Expenses for occupational or vocational retraining.
 - (b) Expenses being the salary and allowances (if any) for teachers at a pre-school or child care centre arranged and managed by the enterprise.
 - (c) Expenses of additional medical health examinations during the year.
 - (d) Expenses for post-maternity care of female employees. The Ministry of Finance shall coordinate with the Ministry of Labour, War Invalids and Social Affairs to regulate the specific amount of expenses prescribed in his clause, based on the law on labour.
 - (dd) Salary and allowances paid for post-maternity leave for female employees in accordance with the stipulated regime, while such employees continue part-time work.
2. Enterprises employing ethnic minority people shall be entitled to a reduction of corporate income tax equal to the additional amount of expenses incurred for ethnic minority employees, comprising expenses for occupational or vocational training, monetary assistance for residential housing, social insurance and medical health insurance for ethnic minority employees in cases where such assistance is not yet provided by the State pursuant to the stipulated regime.
3. Enterprises conducting a technology transfer in the sector in which technology is prioritized to transfer to organizations and individuals in areas with difficult socio-economic conditions shall be entitled to a fifty (50) per cent reduction of the amount of corporate income tax levied on the part of income from the technology transfer.

Article 18 Establishment of Science and Technology Development Fund of an enterprise

Establishment of the Science and Technology Development Fund of an enterprise shall be implemented in accordance with article 17 of the *Law on Corporate Income Tax* and article 1.11 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax*.

1. Enterprises established and operating pursuant to the law of Vietnam are entitled to appropriate a maximum of ten (10) per cent of their annual assessable income in order to establish the R&D Fund of the enterprise. In the case of enterprises in which the State holds more than fifty (50) per cent of the charter capital, in addition to appropriation for the R&D Fund in accordance with this law, they

must ensure a minimum rate of appropriation for the fund prescribed in the *Law on Science and Technology*.

Each year, the enterprise shall make its own decision on the amount to be appropriated to set up the R&D Fund, and shall submit a report on such amount appropriated and on use of the Fund of the enterprise together with its corporate income tax finalization declaration.

The Ministry of Finance shall stipulate the sample form for appropriating a sum for establishment of and for use of the R&D Fund of an enterprise.

2. If a currently operating enterprise changes its form of ownership or is consolidated with or merged into another enterprise, the newly established enterprise resulting from such change or consolidation or the enterprise receiving the merger shall inherit and be responsible for management and use of the R&D Fund of the [former] enterprise prior to such conversion, consolidation or merger.

If the [funds of the] R&D Fund of an enterprise which conducts a division or de-merger have not been entirely used up, the newly established enterprise resulting from such division or de-merger shall inherit and be responsible for management and use of the R&D Fund of the [former] enterprise prior to the division or de-merger. Allocation of funds from the R&D Fund shall be decided by the enterprise and registered with the tax office.

Article 19 Conditions for applicability of tax incentives

Conditions for applicability of corporate income tax incentives shall be implemented in accordance with article 1.12 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax*.

1. Enterprises must account separately for income from activities of production or business entitled to corporate income tax incentive rates (also including tax exemption and reduction); and if an enterprise has turnover or deductible expenses for which it is unable to conduct separate accounting, then such item of turnover or deductible expense shall be determined as a ratio of the deductible expenses or turnover from production or business activities entitled to the incentive rates over the total deductible expenses or total turnover respectively of the enterprise.
2. The tax incentives prescribed in articles 4.1, 4.4, 15 and 16 of this Decree and the tax rate of twenty (20) per cent stipulated in article 10.2 of this Decree shall not apply to the following items of income
 - (a) Income from a capital transfer or transfer of the capital contribution right; income from a real estate transfer, except for income from investment and business in social residential housing prescribed in article 15.2(d) of this Decree; income from an investment project transfer or transfer of the right to participate in an investment project or transfer of the mineral exploration or mining right; and income from production and business activities outside Vietnam;
 - (b) Income from activities of prospecting, exploring and mining petroleum or other rare and precious resources and income from mineral mining operations;
 - (c) Income from business in services subject to special sales tax ["SST"] in accordance with the Law on SST;
 - (d) Other income prescribed in article 3.2 of this Decree which does not relate to the activities of production and business entitled to the tax incentives (in respect of the cases satisfying the conditions for incentives for the sectors and trades prescribed in articles 15 and 16 of this Decree).

3. If any one enterprise is entitled to different preferential tax rates at the same time for the one item of income, then the enterprise may choose to apply the most beneficial preferential tax rate.
4. If during the duration of applicability of a preferential tax rate and within any one tax assessment year the enterprise fails to satisfy one of the conditions stipulated in articles 1.7, 1.8 and 1.12 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax* and in this Decree, then the enterprise shall not in fact enjoy the preferential tax rate in such tax assessment year but must pay corporate income tax at the twenty two (22) per cent rate and enterprises with a total annual turnover of less than twenty (20) billion Dong as prescribed in article 10.2 of this Decree shall pay at the tax rate of twenty (20) per cent. As from 1 January 2016, the general tax rate shall be twenty (20) per cent.

With respect to the investment projects prescribed in article 15.1(dd) of this Decree, where an investment project of the enterprise fails to satisfy the conditions set out in article 15.1(dd) within three (3) years from the date of issuance of an investment licence (excluding any delay of the schedule due to an objective cause from site clearance or performance of administrative procedures by the State agency or due to natural calamity or fire and such delay is approved by the agency issuing investment certificates or reported to the Prime Minister of the Government for approval) or the fourth year from the year in which [the enterprise] has income, [the enterprise] shall not be entitled to the corporate income tax incentives and at the same time must declare and pay the amount of corporate income tax which was declared for entitlement to the incentives in the previous years (if any) in accordance with law and shall not be considered as making an incorrect declaration prescribed by the law on management of tax. During the duration of entitlement to the corporate income tax incentives, if within any one tax assessment year the enterprise fails to fully satisfy one of the conditions for the tax incentives stipulated in article 15.1(dd) of this Decree, then the enterprise shall not in fact enjoy the corporate income tax incentives in such year.

5. A new investment project entitled to the tax incentives stipulated in articles 15.1, 15.3, 16.1, 16.2 and 16.3 of this Decree means an investment project which is implemented on the first occasion or an investment which is independent of a currently implementing project, except for the following cases:
 - (a) An investment project formed as a result of division, de-merger, merger, consolidation or conversion of the enterprise form in accordance with law.
 - (b) An investment project formed as a result of conversion of owner (including the case of implementation of a new investment project which inherits the assets, business location and lines of business of the former enterprise in order to continue the activities of production and business).

A new investment project entitled to the tax incentives stipulated in articles 15 and 16 of this Decree must be issued with an investment licence or investment certificate by the competent State agency. Where a domestic investment project has investment capital of less than fifteen (15) billion Vietnamese Dong and is not included in the list of sectors in which investment is conditional but is attached to establishment of a new enterprise, the file for determining an investment project shall be an enterprise registration certificate.

CHAPTER 5

Implementing Provisions

Article 20 Effectiveness

1. This Decree is of full force and effect as from 15 February 2014 and shall apply to the tax assessment period for 2014 onwards.

Decree 124-2008-ND-CP dated 11 December 2008 and Decree 122-2011-ND-CP dated 27 December 2011 of the Government providing detailed regulations and guidelines for implementation of a number of articles of the *Law on Corporate Income Tax* and articles 2 and 3 of Decree 92-2013-ND-CP of the Government dated 13 August 2013 providing detailed regulations for implementation of a number of articles which became effective from 1 July 2013 of the *Law on Amendment of and Addition to a Number of Articles of the Law on Corporate Income Tax* are hereby repealed.

2. Where at the end of the tax assessment period for 2013 an enterprise with an investment project still is within the duration of entitlement to corporate income tax incentives, including the cases of investment projects for which an investment licence, investment certificate or enterprise registration certificate is issued (in respect of domestic investment projects attached to establishment of a new enterprise with investment capital of less than 15 billion Dong and not included on the list of sectors in which investment is conditional) but has not yet enjoyed the incentives pursuant to the legal instruments on corporate income tax before the effective date of this Decree, it shall continue to be entitled to the incentives for the residual period pursuant to the above-mentioned legal instruments; or in the case of satisfaction of the conditions for tax incentives pursuant to this Decree, may select either the incentives it currently is entitled to or the incentives prescribed in this Decree (also including rate and duration of tax exemption and reduction) as the incentives in respect of new investments for the residual period if it currently is entitled to them as an enterprise newly established from an investment project or as incentives in respect of investment projects for expansion for the residual period if it currently is entitled to them as an investment for expansion.

Where at the end of the tax assessment period for 2015, an enterprise with an investment project is entitled to the incentive tax rate of twenty (20) per cent stipulated in article 15.3 of this Decree, it shall be entitled to the tax rate of seventy (17) per cent for the residual period.

The determination of the residual period of entitlement shall be made consecutively as from the time of implementation of provisions on tax incentives in legal instruments on foreign investment in Vietnam, on encouragement of domestic investment and on corporate income tax issued prior to the date on which this Decree takes effect.

3. Enterprises established on, or enterprises with an investment project from conversion of enterprise form, conversion of owner, division, de-merger, merger or consolidation shall be responsible to pay corporate income tax (including any fines) and shall at the same time inherit corporate income tax incentives (including losses not yet carried forward) of the enterprise or investment project prior to such conversion, division, de-merger, merger or consolidation, if the new enterprise continues to satisfy the conditions for corporate income tax incentives and/or the conditions for carrying forward losses as stipulated by law.
4. Resolution of any tax issues, tax finalization, tax exemption and tax reduction prior to the effective date of this Decree shall be implemented in accordance with the legal instruments on corporate income tax, the law on foreign investment in Vietnam, the law on encouragement of domestic investment and other legal instruments issued prior to the date on which this Decree takes effect.

Article 21 Responsibility for implementation

1. The Ministry of Finance shall provide guidelines for implementation of this Decree.

2. Ministers, heads of ministerial equivalent and Government agencies, chairmen of people's committees of provinces and cities under central authority, and organizations and individuals involved shall be responsible for implementation of this Decree.

For the Government
Prime Minister
NGUYEN TAN DUNG

Appendix

LIST OF GEOGRAPHICAL AREAS ENTITLED TO CORPORATE INCOME TAX INCENTIVES
(Issued with Decree 124-2008-ND-CP of the Government dated 11 December 2008 on implementation of the Law on Corporate Income Tax)

| No | Province | Areas with specially difficult socio-economic conditions | Areas with difficult socio-economic conditions |
|----|-------------|---|--|
| 1 | Bac Kan | All districts and towns | |
| 2 | Cao Bang | All districts and towns | |
| 3 | Ha Giang | All districts and towns | |
| 4 | Lai Chau | All districts and towns | |
| 5 | Son La | All districts and towns | |
| 6 | Dien Bien | All districts and Dien Bien City | |
| 7 | Lao Cai | All districts | Lao Cai City |
| 8 | Tuyen Quang | Na Hang, Chiem Hoa and Lam Binh Districts | Ham Yen, Son Duong, and Yen Son Districts and Tuyen Quang City |
| 9 | Bac Giang | Son Dong District | Luc Ngan, Luc Nam, Yen The and Hiep Hoa Districts |
| 10 | Hoa Binh | Da Bac and Mai Chau Districts | Kim Boi, Ky Son, Luong Son, Lac Thuy, Tan Lac, Cao Phong, Lac Son and Yen Thuy Districts |
| 11 | Lang Son | Binh Gia, Dinh Lap, Cao Loc, Loc Binh, Trang Dinh, Van Lang and Van Quan Districts | Bac Son, Chi Lang and Huu Lung Districts |
| 12 | Phu Tho | Thanh Son and Yen Lap Districts | Doan Hung, Ha Hoa, Phu Ninh, Song Thao, Thanh Ba, Tam Nong, and Thanh Thuy Districts |
| 13 | Thai Nguyen | Vo Nhai, and Dinh Hoa Districts | Dai Tu, Pho Yen, Phu Luong, Phu Binh and Dong Hy Districts |
| 14 | Yen Bai | Luc Yen, Mu Cang Chai, and Tram Tau Districts | Tran Yen, Van Chan, Van Yen, and Yen Binh Districts and Nghia Lo Towns |
| 15 | Quang Ninh | Ba Che, Binh Lieu Districts and Co To Island Districts and islands and isles and islands of Quang Ninh Province. | Van Don District |
| 16 | Hai Phong | Bach Long Vy and Cat Hai Island Districts | |
| 17 | Ha Nam | | Ly Nhan and Thanh Liem Districts |
| 18 | Nam Dinh | | Giao Thuy, Xuan Truong, Hai Hau, and Nghia Hung Districts |
| 19 | Thai Binh | | Thai Thuy and Tien Hai Districts |
| 20 | Ninh Binh | | Nho Quan, Gia Vien, Kim Son, Tam Diep and Yen Mo Districts |

| No | Province | Areas with specially difficult socio-economic conditions | Areas with difficult socio-economic conditions |
|----|-------------------|---|--|
| 21 | Thanh Hoa | Muong Lat, Quan Hoa, Quan Son, Ba Thuoc, Lang Chanh, Thuong Xuan, Cam Thuy, Ngoc Lac, Nhu Thanh, and Nhu Xuan Districts | Thach Thanh and Nong Con Districts |
| 22 | Nghe An | Ky Son, Tuong Duong, Con Cuong, Que Phong, Quy Hop, Quy Chau and Anh Son Districts | Tan Ky, Nghia Dan, and Thanh Chuong Districts |
| 23 | Ha Tinh | Huong Khe, Huong Son, and Vu Quang Districts | Duc Tho, Ky Anh, Nghi Xuan, Thach Ha, Cam Xuyen and Can Loc Districts |
| 24 | Quang Binh | Tuyen Hoa, Minh Hoa, and Bo Trach Districts | Remaining districts |
| 25 | Quang Tri | Huong Hoa, and Dac Krong Districts | Remaining districts |
| 26 | Thua Thien Hue | A Luoi, and Nam Dong Districts | Phong Dien, Quang Dien, Huong Tra, Phu Loc, and Phu Vang Districts |
| 27 | Danang | Hoang Sa Island District | |
| 28 | Quang Nam | Dong Giang, Tay Giang, Nam Giang, Phuoc Son, Bac Tra My, Nam Tra My, Hiep Duc, Tien Phuoc, and Nui Thanh Districts and Cu Lao Cham Island | Dai Loc, and Duy Xuyen Districts |
| 29 | Quang Ngai | Ba To, Tra Bong, Son Tay, Son Ha, Minh Long, Binh Son, Tay Tra Districts and Ly Son Island District | Nghia Hanh, and Son Tinh Districts |
| 30 | Binh Dinh | An Lao, Vinh Thanh, Van Canh, Phu Cat and Tay Son Districts | Hoai An, and Phu My Districts |
| 31 | Phu Yen | Song Hin, Dong Xuan, Son Hoa, and Phu Hoa Districts | Song Cau Town, Tuy Hoa and Tuy An Districts |
| 32 | Khanh Hoa | Khanh Vinh, and Khanh Son Districts, Truong Sa Island District and islands of Khanh Hoa Province | Van Ninh, Dien Khanh, and Ninh Hoa Districts and Cam Ranh Town |
| 33 | Ninh Thuan | All districts | |
| 34 | Binh Thuan | Phu Quy Island District | Bac Binh, Tuy Phong, Duc Linh, Tanh Linh, Ham Thuan Bac, and Ham Thuan Nam Districts |
| 35 | Daklak | All districts | |
| 36 | Gia Lai | All districts and towns | |
| 37 | Kom Tum | All districts and towns | |
| 38 | Dak Nong | All districts | |
| 39 | Lam Dong | All districts | Bao Loc City |
| 40 | Ba Ria - Vung Tau | Con Dao Island District | Tan Thanh District |
| 41 | Tay Ninh | Tan Bien, Tan Chau, Chau Thanh, and Ben Cau Districts | Other districts |
| 42 | Binh Phuoc | Loc Ninh, Bu Dang, and Bu Dop | Dong Phu, Binh Long, Phuoc Long, |

| No | Province | Areas with specially difficult socio-economic conditions | Areas with difficult socio-economic conditions |
|----|------------|---|---|
| | | Districts | and Chon Thanh Districts |
| 43 | Long An | | Kien Tuong Town, Duc Hue, Moc Hoa, Tan Thanh, Duc Hoa, Vinh Hung, and Tan Hung Districts. |
| 44 | Tien Giang | Tan Phuoc District | Go Cong Dong, and Go Cong Tay Districts |
| 45 | Ben Tre | Thanh Phu, Ba Chi, and Binh Dai Districts | Other districts |
| 46 | Tra Vinh | Chau Thanh, and Tra Cu Districts | Cau Ngang, Cau Ke, and Tieu Can Districts |
| 47 | Dong Thap | Hong Ngu, Tan Hong, Tam Nong, and Thap Muoi Districts | Other districts |
| 48 | Vinh Long | | Tra On District |
| 49 | Soc Trang | All districts and Vinh Chau Town | Soc Trang City |
| 50 | Hau Giang | All districts and Nga Bay Town | Vi Thanh City |
| 51 | An Giang | An Phu, Tri Ton, Thoai Son, Tan Chau, and Tinh Bien Districts | Remaining districts |
| 52 | Bac Lieu | All districts | Bac Lieu City |
| 53 | Ca Mau | All districts | Ca Mau City |
| 54 | Kien Giang | All districts and isles, and islands of Kien Giang Province | Ha Tien Town, and Rach Gia City |