

Hanoi, 23 November 2007

**CIRCULAR
PROVIDING
GUIDELINES FOR
IMPLEMENTATION OF DECREE 24-2007-ND-CP OF THE GOVERNMENT
DATED 14 FEBRUARY 2007 ON IMPLEMENTATION OF THE
LAW ON CORPORATE INCOME TAX**

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

Pursuant to Decree 24-2007-ND-CP of the Government dated 14 February 2007 making detailed provisions for implementation of the *Law on Corporate Income Tax*;

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

The Ministry of Finance hereby provides the following guidelines on corporate income tax:

**PART A
SCOPE OF APPLICATION OF CORPORATE INCOME TAX**

I. PAYERS OF CORPORATE INCOME TAX:

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

1. Organizations producing and trading goods and services, comprising:

- (a) Economic organizations established and registered for business pursuant to the *Law on Enterprises*; the *Law on State Owned Enterprises*; the *Law on Investment*; [and] the *Law on Co-Operatives*.
- (b) Federations of co-operatives and co-operatives (hereinafter both referred to as *co-operatives*); and co-operation groups except for the case in clause II.1 below.
- (c) Economic organizations of political organizations, and of socio-political organizations, social organizations, socio-professional organizations and units of the people's armed forces; administrative, professional and other organizations.

2. Domestic individuals producing and trading goods and services, comprising:

- (a) Business individuals and groups of business individuals;
- (b) Individual business households;



- (c) Independent professionals [or freelancers] (except for wage earners) irrespective of whether they have a fixed office or practising location namely medical practitioners, accountants, auditors, painters, architects, musicians and other freelancers.
- (d) Individuals leasing out assets such as houses, land, means of transportation, machinery, equipment, and other types of assets.

3. Companies overseas producing and trading goods and services via resident establishments in Vietnam.

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

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

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

4. Foreign companies, foreign organizations and foreigners conducting business in Vietnam other than pursuant to the *Law on Enterprises* and the *Law on Investment* or having income sourced in Vietnam shall pay CIT in accordance with separate regulations of the Ministry of Finance.

II. SUBJECTS NOT LIABLE TO PAY CORPORATE INCOME TAX:

The following subjects shall not be liable to pay CIT:

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

Pending regulations from the Government, CIT shall temporarily not be collected from rural family households and individuals engaged in agricultural production and earning high income from a large production from cultivation, husbandry and aquaculture.

PART B

BASES FOR TAX CALCULATION AND TAX RATES

The bases for calculation of CIT shall be taxable income in any one tax period and CIT rates.

I. TAXABLE INCOME:

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

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

When the initial tax period for a newly established business establishment [case A], and the final tax period for a business establishment [case B above] is less than three (3) months, it shall be added to the following tax period in case A, or added to the previous tax period in case B, to form the one tax period which must not however exceed fifteen months.

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

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

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

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

II. TURNOVER USED TO CALCULATE TAXABLE INCOME:

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

Turnover used to calculate taxable income shall be total sales revenue and fees for provision of services including price subsidies and additional charges earned by a business establishment, irrespective of whether or not the revenue is actually received.

- (a) If a business establishment pays value added tax ["VAT"] by the tax credit method, turnover used to calculate taxable income shall be turnover excluding value added tax.

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

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

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

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

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

2. The point of time for fixing turnover in order to calculate taxable income shall be:

- (a) In respect of goods, when ownership of the goods is transferred or when a sales invoice is issued.
- (b) In respect of services, when the services are completed or when a sales invoice is issued.

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

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

If payment under a contract for the purchase and sale by way of instalment payments or deferred payment extends over a number of tax periods, turnover shall be the amount payable by the purchaser in the tax period excluding any interest payable on instalments or interest on deferred payment prescribed in the contract.

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

- (c) With respect to goods or services produced and used by a business establishment for the purpose of exchange, donation, fit-out of employees or to reward employees, the turnover shall be calculated on the basis of the selling price of products, goods or services of the same or similar kind in the market at the time of such exchange, donation, fit-out of employees or reward paid to employees.
- (d) With respect to goods or services produced by a business establishment for its own use during the production process such as power, or products to be used as its own fixed assets or for capital construction, the turnover shall be the cost of producing such products.
- (e) With respect to processing of goods, the turnover shall be the turnover from processing including the processing fees and fuel, power, sub-materials and other expenses servicing the processing of goods.

- (g) With respect to a business establishment which either acts as an agent or accepts goods on consignment to sell at the price fixed by the principal, the turnover shall be the commission of such business establishment paid in accordance with the agency or consignment contract.
- (h) With respect to leasing out assets, including when a business establishment invests in construction of housing for employees to rent, the turnover shall be the amount of rent collected for each period under the contract of lease of assets or of housing.

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

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

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

If a business establishment entitled to a preferential tax rate selects the second method, namely turnover used to calculate taxable income as the whole of the rent received for a number of years, its taxable income entitled to exemption or reduction shall be equal to total taxable income for all the years for which the lessee pays rent in advance divided by the number of years for which the lessee pays rent in advance.

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

- (i) With respect to credit operations [or lending], turnover used to calculate taxable income shall be interest payable and arising in any one tax period on debts able to be collected (both principal and interest on the due date).
 - With regard to interest collectible on a loan accounted for [in advance] by a credit institution as income but not in fact paid by the client when it falls due, it shall be accounted for as business operational expenses but should be monitored and followed up via the external accounts and when collected accounted for as professional receipts income.
 - With regard to interest collectible on debts clients are unable to pay, the credit institution should monitor and follow it up via the external accounts, and if collected it shall be accounted for as professional receipts income.
 - With respect to interest on deposits, on investment in bonds and treasury bills and so forth, turnover used to calculate taxable income shall be interest received in any one tax period.
- (k) Turnover from air transportation shall be all sums to which an enterprise is entitled from passenger transportation and from luggage and cargo transportation, irrespective of whether payment is received. The date for determining turnover is the date on which transportation services have been completed.

- (l) Turnover from sale of electricity means the sum recorded in VAT invoices. The date for determining turnover is the date of the meter index reading and recorded in the invoice for electricity.
For example: An invoice is issued calculating electricity price on the meter index 5 December up to 5 January, turnover from this invoice shall be accounted for in January.
- (m) For other services, such as water supply and so forth, turnover shall be calculated on the same basis as for sale of electricity.
- (n) With respect to insurance and re-insurance operations, the turnover shall be the amount receivable for primary premiums, agents' fees (for loss assessment, claims settlement, third party recovery claims and 100% payment for goods); reinsurance premiums, commission for re-insurance, and all other items for insurance business after deduction of costs which reduce income such as refund of premiums, reductions of reinsurance premiums, and reductions or refund of commission for re-insurance.
- (o) With respect to activities being construction and installation and assembly works, turnover shall be the value of the items of works which have been tested and handed over.
- In the case of construction works or installation and assembly works for which the tender included raw materials, machinery and equipment, then turnover shall be the proceeds from the construction or installation and assembly activities including the value of such raw materials, machinery and equipment.
 - In the case of such construction works or installation and assembly works for which the tender did not include raw materials, machinery and equipment, then turnover shall be such proceeds excluding the value of the raw materials, machinery and equipment.
- (p) With respect to business activities in real property, turnover shall be the amount of money collectible from such real property business operation. The time for determining turnover is the time of transfer of the land use right, or of transfer of ownership to the project works or to the buildings on the land, or the time when the assignor assigns the real property to the assignee, or the time when the invoice is made out.
- (q) With respect to business activities in the form of a business co-operation contract ["BCC"]:
- If the parties to the BCC distribute their business results in the form of turnover, then turnover for the purposes of calculating income of an enterprise shall be the total amount of money from sales of goods and services which is shared out to each party under the BCC.
 - If the parties to the BCC distribute business results in the form of products, then turnover for the purposes of calculating CIT of each party shall be the amount of money from the sale of those products.
 - If the parties to the BCC distribute business results in the form of benefits, then turnover for the purposes of calculating CIT shall be the proceeds from the sale of goods and services by such BCC. The parties to a BCC shall elect one party to act as agent, to produce invoices, to acknowledge turnover and to declare and pay CIT on behalf of the other parties to the BCC.

III. ITEMS WHICH ARE NON-DEDUCTIBLE¹:

1. Principles for deciding non-deductible items:

- 1.1 Items unsupported by invoices and vouchers in accordance with regulations, or supported by unlawful invoices and vouchers.
- 1.2 Items unrelated to the creation of revenue and taxable income within any one tax period.
- 1.3 Expenses paid by some other funding source.

2. The following items shall be non-deductible:

- 2.1 Depreciation of fixed assets in any one of the following cases:
 - (a) Depreciation of fixed assets which are not in fact used for producing or trading goods and services:
In the case of fixed assets servicing the employees working at the business establishment, depreciation shall form a part of reasonable expenses in the case of accommodation for employees to rest during shifts, a restaurant providing mid-shift meals, changing rooms, toilet facilities, clean water drinking facilities, parking facilities, a health office or medical station, cars to collect employees to travel to work, education and training establishments, and housing for employees in which the business establishment invested in construction.
 - (b) Depreciation of fixed assets which do not have proper and complete invoices and vouchers proving ownership by the business establishment (except for finance leased fixed assets).
 - (c) Depreciation of fixed assets which are not managed, monitored and entered in the accounting books of the business establishment in accordance with current regulations on management accounting.
 - (d) That part of depreciation of fixed assets which exceeds the level of depreciation of fixed assets in current regulations of the Minister of Finance on management, use and depreciation of fixed assets. Business establishments which make a profit and which adopt the straight line method of depreciation shall be entitled to conduct accelerated depreciation at a maximum rate of twice the level of depreciation for the straight line method in order to renew technology.

In other special cases, depreciation of fixed assets may be allowed pursuant to a [separate] decision of the Minister of Finance.
- (e) Depreciation of fixed assets after they have been depreciated to their full value.
- (g) Depreciation of buildings on land which are used for both business and production purposes [on the one hand] and also for other purposes shall not be included in reasonable expenses as to that part of the value of the buildings on the area or part not used for production and business activities.
- 2.2 Costs of raw materials, supplies, fuel, power and goods exceeding reasonable consumption levels; and materials or goods which were lost or damaged but their value was paid in compensation.

Business establishments shall establish and decide reasonable consumption levels for raw materials, supplies, fuel, power and goods used for production, business and service activities at the beginning

¹ Allens Arthur Robinson footnote: The literal translation is "Items which shall not constitute reasonable expenses when determining taxable income".

of a year or production cycle. In a case where the State has issued regulations on reasonable consumption levels for raw materials, supplies, fuel, power and goods, then such regulations must be complied with. If any business establishment fails to issue its own regulations on reasonable consumption levels, then depreciation of fixed assets shall be implemented in accordance with the consumption levels of other business establishments in the same business line, business sector, or on a similar business scale.

2.3 Costs of salaries and wages in any one of the following cases:

- (a) Costs of salaries, wages and allowances which must be paid to employees but which have not in fact been paid at the expiry of the time for lodging annual tax finalization.
- (b) Costs of salaries and wages paid to employees outside their labour contracts or the collective labour agreement. These salaries and wages shall be paid in accordance with regulations on labour, except in a case where a business establishment hires seasonal workers.
- (c) Bonuses to employees which are not in the nature of salary or wages and which are not recorded in the labour contract or in the collective labour agreement.
- (d) Costs of salaries and wages paid to the owner of a private enterprise, or to the family household or business individual. Remuneration paid to founding members and other members of a members' council or board of management which does not directly participate in production and business of goods and services.

2.4 Costs of a business establishment purchasing goods and services without an invoice and permitted to prepare a List of external purchases of goods and services (on Form 01-TNDN issued with this Circular) but failing to prepare such List and hand it to the seller of goods or supplier of services, namely: products made directly by farmers from rattan, bamboo, reed, coconut or grass; handcraft products made by non-business artisans; soil, stone, sand or gravel mined by citizens themselves; agricultural, forestry or aquaculture products purchased from the producer; scrap sold by persons who collected it themselves; second-hand domestic appliances sold directly by a family household or individual; and a number of other services provided by non-business individuals.

The List of external purchases of goods and services must be signed by the legal representative of the business establishment, who shall be legally liable for the accuracy and truthfulness of the List. If prices on the List are higher than market prices at the time of purchase, then the tax office may rely on the market price at the time of purchase of goods and services of the same or a similar type to re-fix prices for the purposes of determining reasonable expenses when calculating taxable income.

2.5 Costs being that part of mid-shift meal allowances for employees paid monthly which exceed the minimum salary level stipulated by the State for State employees.

2.6 Costs being that part of meal allowances payable to employees in a number of special trades which exceed the level stipulated by State regulations.

2.7 Expenses being rewards for innovations and improvements paid by business establishments without rules on payment of such rewards and without a council to test such innovations and improvements.

2.8 Costs of funding education or training for entities not within the category of sub-clause (a) below, and without the file confirming the funding costs as stipulated in sub-clause (b) below:

- (a) Funding for education including funding to open schools in any of the forms within the national educational system as set out in the *Law on Education*; funding for material facilities assisting

lecturing and studying and assisting school activities; funding for scholarships for pupils within the general educational system, specialized educational system and university educational system as stipulated in the *Law on Education*; and funding for examinations in all subjects within the school curriculum which students are required to sit.

- (b) The file confirming the funding for educational costs shall comprise minutes verifying the amounts paid, signed both by the representative of the business establishment which donated such funds and by the representative of the legal educational establishment which was the recipient of such funds (on Form 02 issued with this Circular).
- 2.9 That part of costs being compensation and assistance paid to any person involved in a labour accident or suffering from an occupational disease, which exceed the limit stipulated in the regulations. Costs of purchasing life insurance for employees.
- 2.10 Costs of electricity and water in a case where the contract for the electricity and water supply is signed directly by the lessor of the business and production location with the electricity or water supplier, and there are insufficient source documents in one of the following cases:
- (a) The business establishment which is the lessee pays the costs of such electricity or water directly to the supplier without a List (on the standard form in Appendix 3 issued with this Circular), without invoices for the electricity or water, and without the contract of lease of the business location.
 - (b) The business establishment which is the lessee pays the costs of such electricity or water to the owner of the business location [the lessor] without a List (on the standard form in Appendix 3), without invoices for payment of the appropriate proportion of electricity or water charges by the consumer [the lessee], and without the contract of lease of the business location.
- 2.11 That part of the costs of hiring fixed assets which exceed allocation according to the number of years of the lease and for which the lessee pays in advance.

For example: Enterprise A hires fixed assets for four years, the cost of the hire is 400 million dong and the enterprise makes a lump sum payment. The costs of hiring the fixed assets are accounted into expenses for each year at 100 million dong. Any costs of hiring fixed assets in a year which exceeds 100 million dong shall not be included in reasonable expenses for the purposes of determination of taxable income.

In the case of costs of repairing fixed assets which were leased and for which the lease contract stipulates that the lessee is responsible, such costs may be allocated gradually to reasonable expenses but the maximum permissible period for making the accounting allocation shall be three years.

Costs of having assets which are not fixed assets namely costs of purchasing and charges for using technical data, patents, technology transfer licences, trademarks, business advantages and so forth, may be allocated gradually to business costs for a maximum of three (3) years.

- 2.12 Travel allowances for staff on leave not in accordance with the provisions of the *Labour Code*; and that part of expenses of employees' business trips (excluding fares, hire of vehicles and accommodation expenses) which exceed twice the level stipulated by the Ministry of Finance for State employees.

- 2.13 Payments made to female employees if made to the incorrect or inappropriate person, and in excess of the following stipulated levels:
- (a) Expenses for retraining female employees where their previous jobs become redundant and the business establishment has a plan requiring conversion to new jobs. These expenses shall include schooling fees (if any) plus the difference between salary rates for different grades of employees (ensuring payment of 100% salary to employees during the time they are in school).
 - (b) Costs of salaries and allowances for teachers at kindergartens and primary schools run and managed by the business establishment. The number of teachers shall be determined in accordance with the regulations on educational systems.
 - (c) Costs of one additional annual medical examination for female employees in respect of occupational illness, chronic illness or gynaecological examination.
 - (d) Costs being child-care payments to female employees after the birth of their first or second child, not to exceed 1.5 times the minimum monthly salary level stipulated by the State, in order to assist female employees to overcome hardships after giving birth to children.
 - (dd) Costs of overtime allowances in accordance with current regulations paid to female employees when, for objective reasons, they do not have a rest break to return home but remain working at the business establishment.
- 2.14 Costs of uniform allowances paid in cash to staff which exceed one million dong per year.
- 2.15 That part of contributions to social and medical insurance funds and trade union expenses which exceed the stipulated level; that part of contributions to management costs of the higher level and contributions to funds of professional associations which exceed the stipulated level for business establishments and professional associations.
- 2.16 Payment of interest on loans for production and trading of goods and services borrowed from banks, credit institutions and economic organizations which exceed the actual interest rate pursuant to the loan contract, and on loans from other organizations which exceed the actual interest rate in the signed loan contract or which exceed one point two (1.2) times the interest rate at the same time of commercial banks which have a trading relationship with the business establishment.
- Payment of interest on loans for contribution to legal capital or charter capital shall not be included in reasonable expenses for the purpose of determination of taxable income, including when the business establishment has already commenced operation.
- 2.17 Costs of setting up and using a scientific and technological research fund of the enterprise not in accordance with the relevant regulations.
- 2.18 Costs of setting up and using contingency provisions for reduction of inventory prices, for losses on financial investments, for bad debts; and for contingency provisions for warranty of products, goods, and installation and assembly works not in accordance with relevant guidelines of the Ministry of Finance.
- 2.19 Costs of setting up and using contingency provisions for payment of allowances for loss of work and retrenchment benefits to employees, not in accordance with current regulations.
- 2.20 Costs allocated in advance but not actually spent, for example for major repairs to fixed assets and other costs allocated in advance.

In the case of repairs of a cyclical nature to special fixed assets, a business establishment which allocates budgeted expenses for repairs to these fixed assets shall be permitted to include them in the costs of its production and business. If the actual cost of the repairs is greater than the budgeted costs, then a business establishment shall be permitted to include the difference in its reasonable expenses; but if the actual costs are less than the budgeted costs, then the business establishment must account for them as a reduction of its costs.

- 2.21 Expenses for advertising, promotions, transactions and external relations (not including: costs of market research: investigation, survey, interviews, collating, analysing and assessing information; costs of developing and assisting market research; costs of hiring consultants to conduct market research and to develop and assist market research; costs of exhibiting and introducing products and of holding trade fairs and exhibitions; costs of opening an office to introduce products or of having a stall for exhibiting and introducing products; costs of hiring space for exhibiting and introducing products; costs of materials and apparatus assisting exhibitions and introduction of products, and costs of transporting the products to be exhibited and introduced). Expenses for receptions and formal occasions, expenses for broker commissions, and expenses for meetings; expenses for assisting marketing, and expenses being payment discounts (including monetary payments to agents and purchasers of bulk goods and services); and expenses being fees paid to press agencies which exceed 10% of the total reasonable expenses. In the case of commercial trading activities, reasonable expenses for the purpose of calculating this limit shall not include the purchase price of goods sold.
- 2.22 Expenses for business operations being insurance, lotteries, securities and a number of other special business operations, not in accordance with specific guidelines of the Ministry of Finance.
- 2.23 Exchange rate differences when money sourced from foreign currency is re-assessed at the end of the financial year. Exchange rate differences arising throughout the process of investment in capital construction (during the stage prior to commencing production and business operation).
- 2.24 Business management expenses allocated by foreign companies to their resident establishments in Vietnam in excess of expenses calculated in accordance with the following formula:

Business management expenses allocated by the foreign company to its resident establishment in Vietnam in the tax period = (Total turnover of resident establishment in Vietnam in the tax period ÷ Total turnover of foreign company, including turnover of resident establishments in other countries, in the tax period) x Total business management expenses of the parent foreign company in the tax period.

The basis for determining the expenses and revenue of the overseas company shall be the independently audited financial statements of such overseas company which stipulate the revenue of such company, its management expenses, and that part of the management expenses of the company overseas which are allocated to the resident establishment in Vietnam.

Resident establishments of foreign companies in Vietnam which do not implement the regime on accounting and accounting source documents and which pay tax by the declaration method shall not be permitted to include in their reasonable expenses any business management expenses allocated by foreign companies to them.

- 2.25 Fines for administrative offences such as breaches of traffic laws, of business registration regulations, and of accounting-statistics regulations; fines for offences in the field of taxation and other fines for administrative offences.

2.26 Expenses of investment in capital construction; expenses for supporting mass organizations, social organizations and localities; charity expenses (except for items in clause 2.8 above); and expenses for purchasing golf club membership and playing golf.

2.27 Other taxes:

- (a) Value added tax of a business establishment which was paid in accordance with the tax credit method and which has been either deducted or refunded;
- (b) Corporate income tax;
- (c) Tax on assignment of land use rights;
- (d) Personal income tax.

2.28 Other expenses which are deemed not to be reasonable pursuant to law.

IV. OTHER TAXABLE INCOME:

Other taxable income in any one tax period shall comprise:

- 1. Income from securities business.
- 2. Income from activities relating to the ownership of intellectual property or copyright.
- 3. Other income from the ownership of or right to use assets.
- 4. Income from assignment or liquidation of assets, where the taxable income shall be the net income from assignment or liquidation of the assets after deducting their residual value in the accounting books and the expenses relating to the assignment or liquidation.
- 5. Income from interest on deposits and loans (including interest due to late payment), interest on goods sold on instalments or on deferred payment, interest collected because a purchaser pays out of time compared to the payment clause in the contract, and interest on bonds (except for interest which is tax exempt pursuant to regulations).
- 6. Income from foreign currency business.
- 7. Income from exchange rate differences arising during a period of production and business activities (except for the items specified in clause 2.23 above).
- 8. Closing balance of allocated funds which were not fully expended by the enterprise at the end of the year, namely of the contingency for reduction of inventory prices, for losses on financial investments, for bad debts, and for warranty of products, goods, and installation and assembly works.
- 9. Income earned from bad debts which were written-off and are now repaid.
- 10. Income from accounts payable, the creditors of which are unidentified.
- 11. Income from fines receivable for breaches of economic contracts.
- 12. Newly discovered income from production, business or services omitted in previous years.

13. Income earned from production and trading of goods and services overseas.

Any Vietnamese enterprise which makes an investment overseas and derives income from production and business activities overseas must declare and pay CIT in accordance with the current law on CIT of Vietnam, including a case where an enterprise is entitled to a tax reduction or exemption under the law of the foreign country. The rate of CIT shall be 28% without applying any incentive rate to which the Vietnamese enterprise which invests overseas may be entitled pursuant to the current law on CIT.

If a business establishment breaches the regulations on CIT declaration and payment, then the tax office shall have the right to fix the taxable income from production and business activities overseas of the Vietnamese enterprise conducting such investment.

If income from an investment project overseas has been subject to CIT (or any other type of tax which is basically similar to CIT) overseas, then when calculating the CIT payable in Vietnam, the Vietnamese enterprise shall be entitled to deduct the amount of tax paid overseas or paid on its behalf by the foreign party accepting such investment (including tax payable on interest on shareholding), but the amount of tax deductible must not exceed the amount of tax payable pursuant to the law of Vietnam on CIT. If the Vietnamese enterprise is entitled pursuant to the foreign law to a tax reduction or exemption on part of the profit earned from the investment project overseas, then the amount of such exemption or reduction shall also be deductible from the amount of CIT payable in Vietnam.

Example 1: Enterprise A receives 800 million dong income from an investment project overseas, being the residual income after having paid 200 million dong income tax in accordance with the law of the foreign country. 100 million dong was the tax payable after a reduction of 50% pursuant to the law of the foreign country.

The amount of CIT payable on the income received by Enterprise A from the investment project overseas in accordance with the law on CIT of Vietnam shall be $(800 \text{ million dong} + 200 \text{ million dong}) \times 28\% = 280 \text{ million dong}$. Since Enterprise A has already paid 200 million dong income tax overseas, the remaining amount payable shall be $280 \text{ million dong} - 200 \text{ million dong} = 80 \text{ million dong}$.

Example 2: Enterprise A receives 660 million dong income from an investment project overseas. This is the remaining income after having paid 340 million dong income tax in accordance with the law of the foreign country. The income which must be declared and on which CIT is payable in accordance with the law on CIT of Vietnam shall be $(660 \text{ million dong} + 340 \text{ million dong}) \times 28\% = 280 \text{ million dong}$. Enterprise A shall only be allowed to deduct the amount of CIT paid overseas which is equal to the amount of CIT calculated in accordance with the law on CIT of Vietnam, being 280 million dong. Tax paid in accordance with the law of the foreign country which exceeds tax payable in accordance with the law on CIT of Vietnam namely 60 million dong $(340 \text{ million dong} - 280 \text{ million dong})$ is not deductible from tax to be declared and paid in accordance with the law on CIT of Vietnam.

When a Vietnamese enterprise declares and pays tax in Vietnam on income derived from an investment project overseas, it must have the following file of documents:

- Decision of the enterprise on distribution of profit from the investment project overseas;
- Financial statements of the enterprise which have been certified by an independent auditor;

- Declaration of tax on income of the enterprise from the investment project overseas (a copy certified by the authorized representative of the investment project overseas);
- Minutes of tax finalization conducted by the enterprise (if any);
- Certification from the overseas tax authority on the amount of tax payable and the amount of tax already paid in the foreign country, on the amount of tax paid on behalf of the Vietnamese enterprise, and on the amount of tax which was reduced or exempt.

If no taxable income has arisen from the investment project overseas, or if the project is currently suffering losses, then when the Vietnamese enterprise conducts annual finalization of CIT in Vietnam, it need only file financial statements which are independently audited or which are certified by a competent authority of the foreign country, together with the declaration made in the foreign country of CIT on the investment project (a copy certified by the authorized representative of the investment project overseas). Any losses arising from the investment project overseas may be dealt with or carried forward in accordance with the law of the foreign country, but shall not be permitted to be deducted from the amount of income arising in Vietnam when the Vietnamese enterprise calculates its CIT.

Income from an investment project overseas shall be declared in the CIT finalization of the following year, or it may be declared and included in the finalization of the same financial year as the year in which the income arises if the Vietnamese enterprise has sufficient bases and evidence to fix the amount of income and the amount of tax already paid on the investment project overseas.

Example 3: Vietnamese Enterprise A has income from an investment project overseas in the financial year 2001. Therefore Enterprise A must declare this item of income in its declaration of CIT finalization for financial year 2002 in accordance with the law on CIT of Vietnam.

In a case of income derived from production and business activities of an investment project in a country which has a treaty on avoidance of double taxation to which Vietnam is a signatory, then the Vietnamese enterprise making the investment overseas shall declare and pay tax in accordance with the provisions of such treaty.

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

A business establishment with revenue, expenses and taxable income in foreign currency must convert it into Vietnamese dong at the average trading rate on the inter-bank foreign currency market as announced by the State Bank on the date when such revenue, expenses or taxable income

arises, unless otherwise provided by law. Foreign currencies for which there is no exchange rate with Vietnamese dong must be converted via a foreign currency for which there is an exchange rate with Vietnamese dong.

V. CORPORATE INCOME TAX RATES

1. The rate of CIT shall be twenty eight (28) per cent.

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

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

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

3. The rates of CIT stipulated in section III of Part E shall apply to investment projects within the categories entitled to CIT incentives.

PART C INCOME TAX ON ASSIGNMENT OF LAND USE RIGHTS AND LAND LEASE RIGHTS

I. ENTITIES LIABLE TO PAY CORPORATE INCOME TAX:

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

Non-business organizations, family households and individuals earning income from the business of assignment of land use or land lease rights shall not be liable to pay tax on such assignment pursuant to this Circular, but shall be liable to pay tax in accordance with the current law on tax on assignment of land use rights and its guidelines.

II. SCOPE OF APPLICATION OF INCOME TAX ON ASSIGNMENT OF LAND USE RIGHTS AND LAND LEASE RIGHTS:

1. Cases of assignment of land use rights subject to payment of income tax:

- (a) Assignment of land use rights without any infrastructure [and/or] buildings on the land.
- (b) Assignment of land use rights together with infrastructure [and/or] buildings on the land.

2. Cases of assignment of land lease rights subject to payment of income tax:

- (a) Assignment of land lease rights without any infrastructure [and/or] buildings on the land.
- (b) Assignment of land lease rights together with infrastructure [and/or] buildings on the land (including sale of assets attached to the land in the form of paying annual rent and the lessee must conduct procedures to lease land from the State pursuant to the *Law on Land*).

The entities liable to pay income tax on an assignment of a land use or land lease right as stipulated in clauses 1 and 2 above must pay tax if income arises, irrespective of the form or procedures of the assignment such as a sub-lease of land from the State; a re-assignment of a capital contribution portion [being] a land use or land lease right; or an assignment in the form of the State issuing a decision to recover land followed by a handover of the land to an assignee.

III. CASES OF ASSIGNMENT OF LAND USE RIGHTS AND LAND LEASE RIGHTS NOT LIABLE TO PAY INCOME TAX:

- 1. An authorized State body assigns or leases land to an economic organization pursuant to the *Law on Land*.
- 2. An organization producing and trading goods and services returns land to the State or the State recovers land pursuant to law, but excluding a case where an economic organization assigns or leases land to another entity and thereafter conducts procedures for the State to recover the land and hand it over to the assignee.
- 3. A business organization sells a factory together with assignment of land use or land lease rights in order to transfer its location in accordance with zoning.
- 4. A business organization contributes capital in the form of a land use right in order to co-operate in production or business with domestic or foreign organizations and individuals pursuant to law.
- 5. A business organization assigns land use or land lease rights as a result of division, separation, merger, bankruptcy or conversion of form pursuant to the *Law on Enterprises* and the *Law on Bankruptcy*.
- 6. The owner of a private enterprise assigns land use rights in a case of inheritance or divorce in accordance with law; and assignment of land use rights as between husband and wife, parents and children, grandparents and grandchildren, or as between siblings.
- 7. A business organization donates a land use or land lease right to the State or to a charitable organization in order to construct cultural, health care or sports facilities for the public benefit; or assigns a land use right for humanitarian purposes to those entitled to social policies.
- 8. An assignment of a land use or land lease right by an establishment investing in the construction and commercial operation of infrastructure in an industrial zone, export processing zone, high-tech zone, economic zone or industrial group, and in the case of important projects as decided by the Prime Minister of the Government. An assignment of land use rights associated with the sale of apartments in a high-rise communal building [shall also not be liable to income tax].

IV. BASES FOR TAX CALCULATION

The bases for calculation of income tax on assignment of land use or land lease rights shall be taxable income and tax rates.

I. TAXABLE INCOME:

Taxable income from the activity of assignment of land use or land lease rights shall be turnover collectible from such activity less expenses of the assignment/s.

1.1 Turnover from an assignment of land use or land lease right:

- (a) Turnover collectible from an assignment of a land use or land lease right shall be the actual price (including any additional sums charged) of assignment between the economic organization and the assignee at the time of the assignment.

The point of time for fixing turnover in order to calculate tax shall be when the seller hands over the land use or land lease right, irrespective of when the purchaser registers ownership of assets or land use or land lease right with the State authority.

The actual price of assignment shall be determined as follows:

- The price stated on the invoice. If the price stated on the invoice is less than the sum the assignor actually received, the turnover in order to calculate tax shall be the sum received by the assignor. If the price stated on the invoice or the actual price of assignment is less than the [framework] prices stipulated by the provincial people's committee, then the turnover in order to calculate tax shall be the price stipulated by such people's committee at the time of assignment.
 - In accordance with the winning bid at an auction in the case of auction of a land use or land lease right.
- (b) Turnover used to calculate taxable income in a number of special cases shall be regulated as follows:
- In the case of assignment of a land use or land lease right together with infrastructure on the land, turnover shall be the whole sum the assignee agrees to pay including the sum for assigning [or] leasing the infrastructure on the land.
 - In the case of assignment of a land use or land lease right together with infrastructure and buildings on the land and the proceeds from sale of the buildings are accounted for separately, then the turnover used to calculate taxable income shall be the amount the assignee of the land use right agrees to pay excluding the price for purchase of the buildings; but otherwise [if proceeds from sale of the buildings are not accounted for separately] it shall be the amount the assignee of the land use or land lease right agrees to pay together with the sum for sale of the buildings.

The following regulations shall apply to writing an invoice for turnover on the sale of buildings and infrastructure on land accompanied by an assignment of the land use or land lease right, as the basis for declaration and payment of tax:

- * If the turnover from the sale of infrastructure and buildings is accounted for separately from the turnover from the assignment of the land use or land lease right, then the invoice should also record separate turnover for each activity, and there should be a declaration and payment of VAT and of income tax for each activity, and specifically as follows:

- The turnover from the sale of the infrastructure and buildings shall be the selling price without VAT and should be recorded on a separate line of the VAT invoice.
- The turnover from the assignment of the land use or lease right should be recorded separately as follows:
- + Total turnover from assignment of the land use or land lease right;
- + Land use fees, winning auction price of the land use right, and land rental already paid to the State budget;
- + Turnover subject to VAT (after deducting land use fees, the winning auction price of the land use right, and the land rental paid to the State budget).

Turnover from the sale of infrastructure and buildings on the land must comply with the market price. If the selling price recorded on the invoice is not the market price, then such price shall be refixed on the following principles: in the case of construction works, the value of the works and buildings must not be higher than the price in the accounting finalization value of the construction works plus the fixed interest rate on capital construction as stipulated in State regulations.

- * If there is not separate accounting for the turnover from the sale of infrastructure and buildings [on the one hand] and turnover from the assignment of the land use or lease right [on the other hand], then turnover for the purposes of calculating income shall be total turnover (comprising both turnover from the sale of the infrastructure and buildings and turnover from the assignment of the land use or lease right).
- In a case of sale of assets attached to leased land in the form of payment of annual rent, then turnover for calculating tax shall be the total amount which the assignee agrees to pay (comprising both the value of the assets on the land and any money paid as compensation or assistance).
- In a case of assignment of capital contribution by way of land use right or assignment of business capital by way of land lease right, then turnover for calculating tax shall be the total sum for assignment of the land use or land lease right as recorded in the contract of capital assignment.
- In a case where a credit institution receives the value of a land use right as loan security in lieu of discharge of the secured obligation, and if it assigns a land use right being a mortgaged asset as loan security, then turnover for the purposes of calculating tax shall be the price of such assignment as agreed by the parties.
- In the case of assignment of a land use right being assets attached in order to secure execution of a judgment, then turnover for the purposes of calculating taxable income shall be the price of such assignment as agreed by the parties or as fixed by the Valuation Council.

Determination of turnover in the cases stipulated in clause (b) above must comply with the principles stipulated in clause (a) above.

1.2 Expenses of an assignment of land use or land lease right:

(a) Principles for deciding which expenses are deductible:

- Items included in reasonable expenses for determining taxable income from the assignment of a land use or land lease right during any one tax period must correspond with the turnover for calculating the taxable income.

If turnover for calculating taxable income includes buildings and infrastructure on the land, then the expenses of the assignment of the land use or land lease right shall include the prime cost of such buildings and infrastructure on the land.

In the case of sale of assets attached to leased land, then expenses shall include the value of such assets recorded in the accounting books.

- In the case of an investment project which is completed in sections and there are gradually a number of assignments according to the completion schedule, then the general expenses of the project and the direct expenses for each completed section of the project shall be allocated in accordance with the square metre area of land assigned in order to determine taxable income of each land area assigned: these expenses shall include costs of the internal road system, of landscaping, of investing in construction of water supply and water discharge systems, of an electricity transmission station; costs being compensation paid for assets on the land; and costs being payment of compensation, assistance and relocation expenses including costs of organizing such payments which have not yet been deducted from land use fees or land rent payable to the State budget; the expenses shall also include land use fees payable to the State budget and other costs of land investment relevant to the assignment of the land use or land lease right. These expenses shall be allocated in accordance with the following formula:

Expenses allocated to each land area assigned shall equal (Total expenses of investment in infrastructure) divided by (Total land area allocated for the project less any area used for public purposes in accordance with the law on land), multiplied by Land area assigned.

If a part of the project land area which is not assigned is used for other business activities, then the above-mentioned general expenses shall still be allocated for such area of land in order to monitor, account for, declare and pay CIT on such other business activities.

If a business establishment invests in construction of infrastructure which extends for a period from one to five years and it only conducts finalization for the value of the infrastructure when the whole of the works are completed, then when collating expenses of assignment of the land use right for a land area assigned, the business establishment shall be permitted to provisionally allocate expenses actually arising at a ratio of the land area assigned in accordance with the above formula. After the total process of investment and construction has been completed, the business establishment may adjust the allocation of expenses for consistency with the total value of the infrastructure. If after such adjustment it transpires that the amount of tax paid was more than the amount payable on the assignment of the land use right, then the business establishment shall be permitted to deduct such excess from the amount payable in the next tax period or it shall be refunded such excess in accordance with current regulations; but if the amount of tax paid was less than the amount payable, it must pay the balance in accordance with regulations.

(b) Expenses on an assignment of land use or land lease right which shall be permitted to be included in reasonable expenses in order to calculate taxable income shall comprise:

- Prime cost of the land for which the right was assigned, to be determined as follows:
- + With respect to land assigned by the State with collection of land use fees or land rent, the prime cost shall be the amount of land use fees or land rent payable to the State budget.
- + With respect to land for which the land use or land lease right was received from another entity [other than the State], the prime cost shall be the amount the assignee agrees to pay.
- + With respect to the exchange of a building to receive land from the State, the prime cost shall be the value of the exchanged building.
- + With respect to an auction of a land use or land lease right, the prime cost shall be the winning bid.
- + With respect to land for which the origin was capital contribution to a business, the prime cost shall be as stated in the minutes on capital contribution as agreed by the parties at the time of the capital contribution.
- + With respect to land of an economic organization which received a land use right without lawful documentation; or inherited it in accordance with civil law; or received it by way of donation without a prime cost being fixed, the prime cost shall be fixed on the basis of the prices for various types of land stipulated by the provincial people's committee at the time of receipt of the land use right. If in these cases the time of receipt of the land use right was prior to the date on which the provincial people's committee issued the prices for all types of land applicable in its locality pursuant to Decree 87-CP of the Government dated 17 August 1994, then the prime cost shall be fixed on the basis of the prices stipulated by the provincial people's committee as applicable for the first time pursuant to Decree 87-CP.
- + With respect to land mortgaged as loan security or attached to secure execution of a judgment, the prime cost shall be fixed in each specific case on the basis of the above-mentioned guidelines.
- Costs being compensation and assistance to relocate to new housing and costs for organizing payment of such compensation and assistance in accordance with law, but not yet deducted from land use fees or land rental.
- Costs being compensation for loss of crops.

If the above-mentioned costs being compensation and assistance to relocate to new housing and costs for organizing payment of same are not supported by invoices, then they shall be enumerated in a List specifying the name and address of the recipient and the amount of money paid, and shall be signed by the recipient and verified by the ward or commune authorities in the locality of the citizens receiving such compensation or assistance in accordance with the law on compensation and assistance to relocate to new housing when the State recovers land.

- Costs being fees and charges in accordance with the law relating to issuance of land use rights.
- Costs being expenses of land improvement and of levelling a site.
- Costs being expenses of investment and construction of infrastructure such as roads, power, water supply and water discharge systems, posts and telecommunications.

- Costs being other expenses directly relating to the assignment of the land use or land lease right.

Where a business establishment conducts business in a number of industries, these expenses must be accounted for separately, otherwise they shall be allocated at the ratio being turnover from assignment of the land use or land lease right over total turnover of such business establishment.

Costs already paid by the State by some other funding source shall not be permitted to be included in expenses on an assignment of a land use or land lease right.

2. Income tax rates on assignment of land use and land lease rights:

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

Progressive Tax Tariff

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

For example: An enterprise calculates tax on an assignment of a land use right at 170 million dong, and total expenses on the assignment are 50 million dong. Taxable income shall equal 120 million dong (170 million dong - 50 million dong). CIT payable on the assignment of the land use right shall be determined as follows:

- CIT payable at the normal rate shall be 120 million dong x 28% = 33.6 million dong.
- Residual income of 86.4 million dong (120 million dong - 33.6 million dong) shall be subject to additional CIT in accordance with the progressive tariff.
- The ratio of residual income over total expenses is 172.8% (86.4 million divided by 50 million x 100 = 172.8%) and so additional CIT is payable as follows:

Unit: Million dong

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

Accordingly, the total CIT payable on the assignment of the land use right is 33.6 million dong + 17.475 million dong = 51.075 million dong.

3. The preferential CIT rates and the duration of tax exemptions and reductions prescribed in Part E of this Circular shall not apply to income from assignment of land use or land lease rights. If activities being assignment of land use or land lease rights result in losses, then such losses may not be deducted from income from production and business activities but the losses may be carried forward to taxable income from activities of assignment of land use or land lease rights in the following years in accordance with regulations.
4. In a case where a business organization is permitted to conduct the assignment of a land use or land lease right (including where an organization is legally authorized to do so on behalf of another entity) and does so together with a sale of assets attached to land leased in the form of payment of annual rent but the purchaser of such assets is required to conduct procedures to lease the land from the State in accordance with the *Law on Land*, then declaration and payment of tax on assignment of the land use or lease right shall be implemented in accordance with Circular 60-2007-TT-BTC dated 14 June 2007 providing guidelines on the *Law on Tax Management* and in accordance with Decree 85-2007-ND-CP of the Government dated 25 May 2007 providing regulations on the *Law on Tax Management*.
 - (a) In a case where a credit institution receives the value of a land use right as loan security in lieu of discharge of the secured obligation, then the credit institution must declare and pay income tax when it assigns such land use or land lease right.
 - (b) In the case of an auction of a land use or lease right being loan security assets, then the proceeds must be paid in accordance with regulations of the Government on loan security taken by credit institutions, and the credit institution must declare and pay tax in accordance with regulations. After payment as above, the residual proceeds shall be paid to the business organization which mortgaged the land use right in order to secure the loan money. The credit institution or the organization authorized to conduct the auction must complete a tax declaration and pay tax on the assignment into the State budget in its own name, address, tax code number and on its own invoice. The vouchers must record that tax is declared and paid regarding the sale of security assets.
 - (c) In a case where a business organization assigns a land use or land lease right being an asset seized to secure execution of a judgment, it must declare and pay tax on such assignment.
 - (d) In a case where a judgment execution office conducts an auction of a land use or lease right being an asset seized to secure execution of a judgment, then the proceeds shall be dealt with in accordance with article 27 of Decree 164-2004-ND-CP of the Government dated 14 September 2004 on seizure and auction of land use rights as security for execution of judgments. The organization authorized to conduct the auction shall declare and pay tax on the assignment in its own name, address, tax code number and on its own invoice. The vouchers must record that tax is declared and paid regarding the sale of assets used to secure execution of a judgment.

PART D

DETERMINATION OF TAXABLE INCOME AND CORPORATE INCOME TAX ON ASSIGNMENT OF INVESTMENT CAPITAL IN A BUSINESS ESTABLISHMENT

I. SCOPE OF APPLICATION:

1. *Assignment of investment capital in a business establishment* means that an individual or organization assigns a part of or its entire capital investment in a business establishment to one or a number of other organizations or individuals (including a case of sale of an entire enterprise). The

assignee of the investment capital has the same rights and obligations as the person who contributed the investment capital in the business establishment.

2. Any organization or individual with income from a capital assignment must pay CIT in accordance with the guidelines in this Part D. If there is an assignment of a land use or lease right associated with such capital assignment, then there must also be a declaration and payment of tax on income from the assignment of such land use or land lease right in accordance with Part C of this Circular.
3. Any organization or individual with income from an assignment of shareholding must declare and pay tax in accordance with separate guidelines of the Ministry of Finance.

II. BASIS FOR TAX ASSESSMENT:

1. Taxable income:

Taxable income from an assignment of investment capital in a business establishment shall be as follows: Taxable income shall equal Assigned value less Initial value of assigned capital portion less Assignment expenses, in which:

- + *Assigned value* means the total actual value at the market price which is receivable by the assignor in accordance with the assignment contract, including undistributed benefits plus other benefits or losses arising during the business process (if any).

If the assignment contract does not stipulate the payment price, or if the tax office has grounds for considering that the payment price is not the market price, then the tax office shall have the right to conduct a check and to fix a contractual payment price on the basis of the market price or the price for which a sale could be affected to a third party and on the basis of a survey of similar assignment contracts.

- + *Initial value of assigned capital portion* shall be determined on the basis of the accounting books and accounting vouchers for the investment capital in the business organization by the assignor at the time of such assignment and must be certified by the parties participating in the enterprise or business co-operation contract, or by an independent auditor in the case of an enterprise with 100% foreign owned capital.
- + *Assignment expenses* mean all actual costs directly relating to the assignment for which there are valid source documents and invoices. If the expenses arise overseas, then all original accounting source documents must be notarized by an authorized body or independent auditor of the foreign country and they must be translated into Vietnamese (with the translations certified by an authorized representative).
- + *Assignment expenses* shall comprise expenses in order to conduct the necessary legal procedures for the assignment; fees and charges which are payable on the assignment procedures, expenses for trading, negotiating and signing the contract, and other expenses for which there is proper evidence.

For example: Company A contributes 400 billion dong (made up of 320 billion dong being the value of a factory plus 80 billion cash) in order to establish a joint venture enterprise manufacturing sanitary paper. Afterwards, Company A assigns its capital investment to Company B at a price of 550 billion dong (including profits from year 2006 which it is proposed to distribute at 20 billion dong). The capital contribution of Company A at the time of the assignment on the basis of the books of account is 400 billion dong and the assignment expenses are 70 billion dong. Assessable income on the assignment in this case is 80 billion dong (550 - 400 - 70).

2. Corporate income tax rate:

The CIT rate applicable to income from an assignment of investment capital in a business establishment is 28%.

3. Determining the amount of corporate income tax payable:

The amount of CIT payable shall equal taxable income multiplied by the CIT rate.

The preferential CIT rates and the tax duration of exemptions and reductions prescribed in Part E of this Circular shall not apply to income from an assignment of investment capital in a business establishment. If an assignment result in losses, then such losses may not be deducted from income from production and business activities.

III. DECLARATION AND PAYMENT OF TAX:

1. Applicable to a foreign individual or organization assigning its investment capital in a business establishment:

The assignee shall be responsible to determine, declare and pay CIT on behalf of such foreign individual or organization.

The time-limit for lodging a file declaring tax shall be the 10th day after the authorized body ratifies the assignment, or as from the date on which the parties reach agreement in the assignment contract if it is not necessary to obtain ratification of the assignment.

The file on CIT declaration on an assignment of investment capital shall comprise:

- CIT declaration on the standard Form 04-TNDN issued with this Circular.
- A copy of the assignment contract. If the contract is written in a foreign language, the main items of the contract must be translated into Vietnamese namely the names of the assignor and assignee, the period for the assignment, its contents, rights and obligations of each party, the value of the contract, and the time, method and currency for payment.
- A copy of the decision ratifying the assignment from the authorized body (if ratification is necessary).
- A copy of the document certifying the original capital contribution, certified by the parties involved in the capital contribution.
- Original vouchers proving expenses.

If it is necessary to add to the documents in the file on CIT declaration, then the tax office must notify the assignee on the same day that the tax office directly receives such file, or within a time-limit of three working days in a case where the tax office receives the file via the post office or electronically. The location for lodging the file on CIT declaration shall be the tax office in the locality where the business establishment of the foreign assignor has registered to pay tax.

The time-limit for paying tax shall be the same as the time-limit for lodging the file on CIT declaration.

2. Applicable to a Vietnamese individual or organization assigning its investment capital in a business establishment:

The Vietnamese entity which receives income from the assignment shall be responsible to determine, declare and pay CIT on the assignment at the same time as it declares and pays CIT on its production and business activities in the quarter after the quarter in which it receives income from the assignment. If there is no declaration and payment of tax in the following quarter, then the time limit for declaration and payment of CIT shall be the 10th day after the authorized body ratifies the assignment, or as from the date on which the parties reach agreement in the assignment contract if it is not necessary to obtain ratification of the assignment.

The file on CIT declaration on an assignment of investment capital shall comprise:

- CIT declaration on the standard Form 04-TNDN issued with this Circular.
- A copy of the assignment contract. If the contract is written in a foreign language, the main items of the contract must be translated into Vietnamese namely the names of the assignor and assignee, the period for the assignment, its contents, rights and obligations of each party, the value of the contract, and the time, method and currency for payment.
- A copy of the decision ratifying the assignment from the authorized body (if ratification is necessary).
- A copy of the document certifying the original capital contribution, certified by the parties involved in the capital contribution.
- Original vouchers proving expenses.

If it is necessary to add to the documents in the file on CIT declaration, then the tax office must notify the Vietnamese entity with income from the assignment on the same day that the tax office directly receives such file, or within a time-limit of three working days in a case where the tax office receives the file via the post office or electronically.

A Vietnamese individual or organization must account separately for income from an assignment of investment capital in order to pay tax in accordance with the guidelines in this Part D.

PART E

CORPORATE INCOME TAX INCENTIVES

I. CONDITIONS FOR APPLICATION OF CORPORATE INCOME TAX INCENTIVES:

[Investment projects which satisfy one of the following conditions shall be entitled to CIT incentives:]

1. Investment in an industry [and/or] sector on the list of investment incentive sectors promulgated by the Government in accordance with the *Law on Investment*.
2. Investment in an industry [and/or] sector on the list of special investment incentive sectors promulgated by the Government in accordance with the *Law on Investment*.
3. Investment in an area on the list of regions with difficult socio-economic conditions as promulgated by the Government in accordance with the *Law on Investment*.

4. Investment in an area on the list of regions with specially difficult socio-economic conditions as promulgated by the Government in accordance with the *Law on Investment*.

II. PRINCIPLES FOR IMPLEMENTING CORPORATE INCOME TAX INCENTIVES:

1. The CIT incentives provided for in Sections III and IV of Section E shall only be applicable to a business establishment which satisfies one of the conditions for incentives stipulated in Section I of Section E, and to a newly established business establishment; to a business establishment which relocates from an urban area in accordance with approved zoning; to a currently operating business establishment investing in the construction and installation of a new production line; and to a number of other cases.
2. The business establishment must have implemented the regime for accounting, invoices and vouchers; and it must have registered to pay CIT and have paid tax as declared.
3. Where a business establishment is entitled to CIT exemption or reduction pursuant to various different sets of circumstances, it may select the most favourable.
4. If a business establishment conducts a number of types of business operations during its period of entitlement to CIT exemption or reduction, it must conduct separate accounting for the business operations entitled to tax exemption or reduction. If it fails to do so, the part of its income entitled to tax exemption or reduction shall be fixed as equal to total taxable turnover multiplied by the percentage of revenue from business operations entitled to tax exemption or reduction over total aggregate turnover in the tax period.

If in the year in which a business establishment conducts tax finalization it has production and business activities in which some of the activities are profitable and some suffer losses (but excluding activities of assignment of land use or land lease rights, assignment of a capital investment, and offshore investment activities), then taxable income shall be determined as follows:

- If the profitable business and production activities are entitled to a tax reduction or exemption, then the business establishment may choose:
- + To account separately for the profit from incentive activities in order to take the benefit of the tax reduction or exemption in accordance with regulations, and to carry forward losses in respect of the activities suffering a loss in accordance with regulations;
- + To take the profit from the activities which it is currently conducting and which are entitled to incentives in order to offset losses of other activities, and then if there is any residual profit to be entitled to incentives on it, or if there are any residual losses then to carry forward such residual losses;
- If losses are suffered on the business activities subject to tax reduction and exemption, then the business establishment shall be entitled to offset these losses against profitable business activities.

After completing the above offsets, the CIT rate stipulated as applicable to business activities which generate income shall apply to any residual income.

5. Any business establishment which during its period of entitlement to CIT incentives re-structures (by division, demerger, merger or consolidation) or converts its form of ownership in accordance with law, the new business establishment shall still continue to enjoy its tax incentives for the remaining period if it satisfies the conditions for incentives.

6. The year of tax exemption or reduction shall conform with the tax calculation period. The duration of application of tax exemptions and reductions shall apply consecutively as from the first tax calculation period in which the business establishment has taxable income (excluding losses carried forward from a previous tax calculation period). If a business establishment has taxable income in its first tax calculation period but it produced and traded goods and services for a period of under twelve months in such first tax calculation period, it shall have the right to register with the tax office to enjoy such entitlement in that first tax calculation period or else to commence as from the following tax calculation period, and if it chooses the latter case it must also calculate tax payable for the first tax calculation period.

III. APPLICABLE PREFERENTIAL TAX RATES AND THEIR APPLICABLE DURATION:

1. The tax rate of twenty (20) per cent shall apply for ten (10) years as from the date of commencement of business operations as follows:
 - (a) To a co-operative established in an area not on the lists of regions with difficult socio-economic conditions and with specially difficult socio-economic conditions.
 - (b) To a business establishment newly established from an investment project in an industry [and/or] sector on the list of investment incentive sectors.
 - (c) To a business establishment newly established from an investment project implemented in an area on the list of regions with difficult socio-economic conditions.
2. The tax rate of fifteen (15) per cent shall apply for twelve (12) years as from the date of commencement of business operations as follows:
 - (a) To a co-operative established in an area on the lists of regions with difficult socio-economic conditions.
 - (b) To a business establishment newly established from an investment project in an industry [and/or] sector on the list of investment incentive sectors and which is implemented in an area on the list of regions with difficult socio-economic conditions.
3. The tax rate of ten (10) per cent shall apply for fifteen (15) years as from the date of commencement of business operations as follows:
 - (a) To a co-operative established in an area on the list of regions with specially difficult socio-economic conditions.
 - (b) To a business establishment newly established from an investment project in an industry [and/or] sector on the list of special investment incentive sectors.
 - (c) To a business establishment newly established from an investment project implemented in an area on the list of regions with specially difficult socio-economic conditions.

In the case of a business establishment newly established from an investment project in an industry [and/or] sector on the list of special investment incentive sectors and which has a major impact on the economy [and/or] society and needs greater encouragement, the tax rate of ten (10) per cent may apply for the whole duration of implementation of the project pursuant to a decision of the Prime Minister of the Government made after a submission from the Ministry of Finance.

4. The year of commencement of business operations shall be the first year the business establishment generates turnover.
5. Upon expiry of the duration stipulated in clauses 1, 2 and 3, any co-operative or business establishment newly established from an investment project must pay CIT at the rate of 28 per cent.

IV. LEVELS AND DURATION OF EXEMPTION FROM AND REDUCTION OF CORPORATE INCOME TAX:

1. Tax payable by business establishments newly established from investment projects, by newly established production establishments and by relocated business establishments shall be exempted and reduced as follows:
 - (a) Exemption from tax for two years from when taxable income arises and a fifty (50) per cent reduction of the amount of tax payable for two subsequent years, applicable to:
 - Newly established production establishments.
 - Business establishments which relocate from urban areas in accordance with approved zoning.
 - (b) Exemption from tax for two years from when taxable income arises and a fifty (50) per cent reduction of the amount of tax payable for three subsequent years, applicable to business establishments newly established from investment projects in an industry [and/or] sector on the list of investment incentive sectors.
 - (c) Exemption from tax for two years from when taxable income arises and a fifty (50) per cent reduction of the amount of tax payable for six subsequent years, applicable to:
 - Business establishments newly established from an investment project implemented in an area on the list of regions with specially difficult socio-economic conditions.
 - Business establishments which relocate to an area on the list of regions with difficult socio-economic conditions (but not where they relocate from an area with difficult or specially difficult socio-economic conditions).
 - (d) Exemption from tax for three years from when taxable income arises and a fifty (50) per cent reduction of the amount of tax payable for seven subsequent years, applicable:
 - Business establishments newly established from investment projects in an industry [and/or] sector on the list of investment incentive sectors and implemented in an area on the list of regions with difficult socio-economic conditions.
 - (e) Exemption from tax for four years from when taxable income arises and a fifty (50) per cent reduction of the amount of tax payable for nine subsequent years, applicable to:
 - Business establishments newly established from investment projects in an industry [and/or] sector on the list of special investment incentive sectors.
 - Business establishments newly established from investment projects implemented in an area on the list of regions with specially difficult socio-economic conditions.

- Business establishments which relocate to an area on the list of regions with specially difficult socio-economic conditions.

In the case of a business establishment newly established from an investment project but such project is implemented in an area other than the area of the main office of such establishment, then incentive tax rates and duration of exemption and reduction of tax shall only apply to the area where the project is implemented.

Business establishments which were established in the following circumstances shall not be entitled to the preferential CIT rates applicable to the category of business establishments newly established from investment projects:

- Business establishments established as a result of division, demerger, merger or consolidation pursuant to law.
 - Business establishments established as a result of conversion of form of enterprise or of ownership (except for cases of assignment or sale pursuant to Decree 80-2005-ND-CP of the Government dated 22 June 2005).
 - Private enterprises newly established from an individual family household business with the same business line as before.
2. Currently operating business establishments investing in the construction of new production lines, expansion of their scale, technology renewal, improvement of the ecological environment [or] improvement of production capacity shall be entitled to exemption from and reduction of CIT in respect of the increased portion of income resulting from such investment as follows:
- (a) They shall be exempted for one year and entitled to a fifty (50) per cent reduction of the tax payable for two subsequent years in the case of an investment project for construction and installation of a new production line not in an investment encouraged sector [and/or] area on the lists of investment incentive sectors, of special investment incentive sectors, of regions with difficult or specially difficult socio-economic conditions.
 - (b) They shall be exempted for one year and entitled to a fifty (50) per cent reduction of the tax payable for four subsequent years in the case of an investment project in a sector on the list of investment incentive sectors or which is implemented in an area on the list of regions with difficult socio-economic conditions.
 - (c) They shall be exempted for two years and entitled to a fifty (50) per cent reduction of the tax payable for three subsequent years in the case of an investment project in a sector on the list of special investment incentive sectors or which is implemented in an area on the list of regions with specially difficult socio-economic conditions.
 - (d) They shall be exempted for three years and entitled to a fifty (50) per cent reduction of the tax payable for five subsequent years in the case of an investment project in a sector on the list of investment incentive sectors and which is implemented in an area on the list of regions with difficult socio-economic conditions.
 - (e) They shall be exempted for three years and entitled to a fifty (50) per cent reduction of the tax payable for seven subsequent years in the case of an investment project in a sector on the list of special investment incentive sectors and which is implemented in an area on the list of regions with difficult socio-economic conditions.

- (g) They shall be exempted for four years and entitled to a fifty (50) per cent reduction of the tax payable for seven subsequent years in the case of an investment project in a sector on the list of investment incentive sectors and which is implemented in an area on the list of regions with specially difficult socio-economic conditions; and also applicable to an investment project in a sector on the list of special investment incentive sectors and which is implemented in an area on the list of regions with specially difficult socio-economic conditions.

The duration of exemption and reduction of tax applicable to investment projects in the construction of new production lines, expansion of their scale, technology renewal, improvement of the ecological environment [or] improvement of production capacity shall commence from the year in which the investment project completes commencement of production or business [and] has income. With respect to investment projects with an extensive duration of implementation and which are divided up into a number of items of works, the business establishment may select the period for calculating exemption from and reduction of tax as the date on which each item of works is commissioned for production or business. The business establishment must register with the tax office the duration of exemption and reduction of tax applicable to its investment project based on the estimated duration for implementation of the project.

Business establishments must account separately for the increased portion of income from the investment in order to calculate the amount of exempted and reduced CIT, failing which the increased portion of income entitled to exemption and reduction of tax shall be calculated as follows: Portion of increased income entitled to exemption and reduction of tax shall be equal to (=) Portion of taxable income in a year multiplied by (x) (Value of fixed assets newly invested in and commissioned for production or trading ÷ Total original value of fixed assets actually used for production or trading). *Total original value of fixed assets actually used for production or trading* shall comprise the value of fixed assets newly invested in and handed over for production or trading and the original value of current fixed assets being used for production or trading in accordance with data for the end of the period in the annual balance sheet.

With respect to an investment project with a duration of implementation of over one year and which is divided up into a number of items of works, and where the business establishment has registered with the tax office the duration of exemption and reduction of CIT based on each item of works commissioned for production or trading, then the value of fixed assets newly invested in shall be determined in accordance with the accumulated value of each completed item of works which has been commissioned for production or trading as at the date of tax finalization for the year of exemption and reduction of CIT.

For example: At the end of year 2006, company A has a total original value of fixed assets actually used for production or trading at 30 billion dong. Company A has a long-term investment project; in 2007 it commissions one item of works valued at 10 billion dong and in 2008 it commissions another item of works valued at 15 billion dong. Company A does not account separately for the increased portion of income from implementation of each item of works. Its taxable income in 2007 is 12 billion dong and its taxable income in 2008 is 20 billion dong.

The increased portion of income arising from the investment and entitled to exemption and reduction of tax shall be calculated as follows:

- In year 2007: The increased portion of income entitled to exemption and reduction of tax shall be equal to 12 billion dong multiplied by 10 billion dong divided by (30 billion dong plus 10 billion dong), equalling 3 billion dong.

- In year 2008: The increased portion of income entitled to exemption and reduction of tax shall be equal to 20 billion dong multiplied by (10 plus 15 billion dong) divided by (40 plus 15 billion dong), equalling 9 billion dong².

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

3. Business establishments shall be entitled to exemption from CIT payable on a portion of income in the following circumstances:
 - (a) Portion of income earned from performance of contracts for scientific research and technological development or from information services regarding science and technology.
 - (b) Portion of income earned from the sale of products during their period of test production in accordance with the correct production process, but only for a maximum of six months from the date of commencement of the test production.
 - (c) Portion of income earned from the sale of products made from new technology applied for the first time in Vietnam, but only for a maximum of one year from the date of application of the new technology to produce the products.
 - (d) Portion of income earned from performance of technical service contracts directly serving agricultural production.
 - (e) Portion of income earned from vocational training specially reserved for ethnic minority people.
 - (g) Portion of income earned from production and trading of goods and services by business establishments specially reserved for employees being disabled people.

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

- The provincial people's committee must confirm that the business establishment is specially reserved for employees being disabled people.
- The business establishment must fully implement the regime on accounting and accounting source documents.
- The competent authority must have issued the business establishment with a business licence.
- The business establishment must employ ten (10) or more workers of whom fifty one (51) per cent are disabled people as certified by the competent health authority and the remainder are principally relatives of disabled people, shareholders, managers or professional or scientific-technical personnel.

² Allens Arthur Robinson footnote: This is the literal translation although the result of the equation is not 9 but 9.09 billion.

- The business establishment must have operational rules or an operational charter appropriate to employees being disabled people.
- (h) Portion of income earned from vocational training specially reserved for disabled people, for children living in particularly difficult conditions and for persons who were involved in social evils.

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

- The vocational training establishment must be established and operate pursuant to Decree 139-2006-ND-CP of the Government dated 20 November 2006 making detailed provisions for implementation of the *Labour Code* and the *Law on Education*, and other guidelines.
- Its operations must comply with the business line stipulated in its practising licence or registered with the competent labour authority.
- The business establishment must fully implement the regime on accounting and accounting source documents and must have registered to pay tax.

4. Co-operatives, business individuals and business households earning low income shall be granted a tax exemption and reduction as follows:

- (a) If each worker in a co-operative has an annual monthly income in a year below the minimum salary level stipulated by the State for State employees, the co-operative shall be exempted from tax.
- (b) If a business individual or each worker in a business household has an annual monthly income in a year below the minimum salary level stipulated by the State for State employees, the business individual or business household shall be exempted from tax.
- (c) Business individuals and business households not implementing the regime on accounting and accounting source documents and calculating and paying tax on a fixed level of turnover shall be considered for a fifty (50) per cent reduction of the amount of tax payable for any month during which they suspend business for fifteen (15) or more consecutive days; and for exemption from the amount of tax payable for any month in which they suspend business for the whole month.

5. Corporate income tax shall be exempted or reduced in the following circumstances:

- (a) Investors shall be granted exemption from CIT for income received from capital contribution in the form of patents, technical know-how, technological processes and technical services.
- (b) Where a business establishment operates in the production, construction or transportation sectors and employs ten (10) to one hundred (100) female employees, with the female employees of the enterprise accounting for fifty (50) or more per cent of the total regularly present employees of the enterprise; or where the enterprise employs over one hundred (100) female employees on a regular basis, with the female employees of the enterprise accounting for thirty (30) or more per cent of the total regularly present employees of the enterprise, then such enterprise shall be entitled to a reduction of the amount of tax payable equivalent to the amount that it actually pays to female employees as guided in clause 2.13 of Section III of Part B of this Circular if the enterprise conducts separate cost accounting.

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

6. If an authorized body conducting a check or inspection of the tax finalization of a business establishment discovers that during the duration of the period for which the establishment was entitled to CIT incentives it increased the amount of its tax in order to claim such incentives, then the business establishment shall not be entitled to incentives in respect of such increase, and it must pay tax on such increase at the current rate or at the incentive rate to which the establishment is entitled. If during the course of such an inspection it is discovered that the amount of tax subject to the reduction or exemption was in fact less than the amount of tax declared, then the business establishment shall only be entitled to the tax reduction or exemption in respect of the amount of tax which the checking or inspecting body concludes, and the business establishment shall also be subject to a penalty in accordance with the law on administrative breaches in the tax sector.

V. PROCEDURES FOR IMPLEMENTING CORPORATE INCOME TAX INCENTIVES

1. Business establishments shall self-determine their conditions for entitlement to tax incentives and their levels and duration of tax exemption and tax reduction, and the amount of losses deductible from taxable income.

The tax office shall check the conditions which a business establishment actually satisfies for entitlement to tax incentives and the levels and duration of tax exemption and tax reduction, and the amount of losses deductible from taxable income. If any business establishment in fact fails to satisfy the conditions for entitlement to tax incentives it must pay tax on amended figures and shall also be subject to a penalty in accordance with the law on administrative breaches in the tax sector.

2. With respect to cases of exemption or reduction of tax pursuant to clause 4 of Section IV of this Part, co-operatives, business individuals and heads of business households shall prepare an application requesting exemption from or reduction of tax, have the application certified by the ward or commune authorities, and forward it to the tax office. The tax office directly in charge shall, after the application is passed by the tax consultancy council at the same level, issue a tax notice granting exemption or reduction of tax or shall provide a written explanation of the reasons for refusing the application.

VI. CARRYING FORWARD LOSSES

1. Business establishments which suffer losses after tax finalization with the tax office shall be entitled to carry forward those losses to taxable income of the following years. Losses shall be carried forward for a maximum period of five years.

Business establishments shall self-determine losses to be carried forward for deduction from taxable income in accordance with the above mentioned principles. If during the period in which losses are carried forward there are further losses (i.e. excluding losses from previous periods carried forward) then these losses may also be carried forward but not in excess of five years from the period in which they arose.

If during the course of a check or inspection of tax finalization, an authorized body discovers that the losses in fact carried forward were greater than the losses which the business itself determined, then the authorized body shall make a decision on the amount of losses entitled to be carried forward which shall be for a period not to exceed five years from the period in which the losses arose.

If any business establishment has already registered its plan to carry forward losses prior to a CIT period of year 2007, then it shall be entitled to continue to carry forward the remaining losses in accordance with the registered plan or to carry forward those losses to the following tax period but on

condition that losses are not carried forward in excess of a period of five years from the year in which they arose. If at the expiry of five years from the year in which losses arose, such losses have not been completely offset, then a business establishment shall not be permitted to continue to offset the losses against income in the following years.

2. In the case of a business establishment which converts its form of enterprise or of ownership (including assignment or sale of a State owned enterprise), merges, divides, dissolves or is declared bankrupt, it must conduct tax finalization with the tax office up until the time of the decision on such conversion of form and so forth.
3. In the case of losses suffered by an enterprise prior to its conducting a merger, these losses must be monitored in detail following the year in which they arose in order to be transferred to the taxable income of the merged enterprise, ensuring the principle that losses may not be carried forward for a period in excess of five years from the year in which they arose.
4. If there is a decision on dissolution of a business enterprise being a joint venture between a number of different establishments, then losses must be allocated to each business establishment participating in the joint venture and such joint venture [participants] establishments must collate the losses which have been allocated and include them in their business results when they conduct tax finalization, ensuring the principle that losses may not be carried forward for a period in excess of five years from the year in which they arose.
5. Any business establishment which is the beneficiary of assets from an enterprise which has converted its form or converted its ownership shall be responsible to pay tax shortfalls and fines of the former business establishment.

PART H

ORGANIZATION OF IMPLEMENTATION

1. This Circular shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette and shall apply to tax periods as from year 2007.
2. Any business establishment newly established from an investment project which was issued with a business registration certificate or investment certificate as from the effective date (namely 25 October 2006) of Decree 108-2006-ND-CP of the Government dated 22 September 2006 implementing the *Law on Investment* shall be entitled to CIT incentives in accordance with this Circular.
3. Securities companies and securities investment fund management companies which were newly established and granted a certificate of business registration as from the effective date (namely 25 October 2006) of Decree 108 shall not be entitled to the CIT incentives applicable to entities which qualify for investment incentive business lines. Any securities company or securities investment fund management company which was established prior to the above date shall continue to enjoy its CIT incentives for the residual duration of entitlement.
4. Any shareholding company formed from equitization of a State owned enterprise and issued with a business registration certificate as from the effective date (namely 21 March 2007) of Decree 24-2007-ND-CP of the Government dated 14 February 2007 implementing the *Law on Corporate Income Tax* shall not be entitled to CIT incentives as a newly established business enterprise.

Any such shareholding company issued with a business registration certificate between the effective dates of Decree 108 and Decree 24 respectively [namely between 25 October 2006 and 21 March

2007] shall be entitled to apply the incentive conditions pursuant to Decree 108; and the level and duration of CIT incentives applicable to a newly established business establishment shall apply in accordance with this Circular.

Any such shareholding company issued with a business registration certificate prior to the effective date [25 October 2006] of Decree 108 shall continue to enjoy its CIT incentives for the residual duration of entitlement.

5. Any business establishment currently applying CIT incentive rates pursuant to Circular 128-2003-TT-BTC of the Ministry of Finance dated 22 December 2003, Circular 88-2004-TT-BTC of the Ministry of Finance dated 1 September 2004 [amending Circular 128], pursuant to an issued investment licence or issued investment certificate shall continue to enjoy such incentive rates for the residual duration of entitlement. If Circular 128, Circular 88, the investment licence or investment certificate stipulates a tax rate higher than the incentive rate entitlement pursuant to this Circular, then the rate pursuant to this Circular shall apply for the residual duration of entitlement for tax periods as from year 2007. If at the expiry of a year 2006 tax period the business establishment is also at the expiry of the duration of its entitlement to an incentive rate, then it may not apply the incentive rate for the residual duration of entitlement pursuant to this Circular.
6. Any business establishment currently enjoying CIT reduction or exemption pursuant to Circular 128, Circular 88, an issued investment licence or issued investment certificate shall continue to enjoy such CIT reduction or exemption for the residual duration of entitlement. If the duration of the tax reduction or exemption which the enterprise is currently enjoying is less than the duration of CIT reduction or exemption in accordance with this Circular, then the business establishment shall be entitled to the duration of tax reduction or exemption in accordance with this Circular for the residual duration of entitlement as from year 2007 tax periods.

The residual incentive period shall be equal to the number of years for which the business establishment is still entitled to reduction or exemption in accordance with this Circular less the number of years it has enjoyed such exemption or reduction pursuant to Circular 128, Circular 88, its issued investment licence or issued investment certificate up until the end of 2006. A determination of the residual incentive period as mentioned above must ensure the following principles:

- At the expiry of year 2006 tax periods, any business establishment currently within the duration of entitlement to CIT reduction or exemption shall continue to enjoy the remaining number of years of exemption and reduction in accordance with this Circular.
- At the expiry of year 2006 tax periods, any business establishment for which the duration of tax exemption pursuant to Circular 128, Circular 88, its issued investment licence or issued investment certificate has expired, shall not be entitled to any period of tax exemption but shall only be entitled to the total number of years of tax reduction in accordance with this Circular.
- At the expiry of year 2006 tax periods, any business establishment currently within the duration of entitlement to CIT reduction pursuant to Circular 128, Circular 88, its issued investment licence or issued investment certificate, shall have a total number of years of residual entitlement to tax reduction equal to the total number of years of tax reduction in accordance with this Circular less the number of years for which tax was already reduced up to the end of year 2006 tax periods.

In a case where duration of CIT exemption pursuant to Circular 128, Circular 88, an investment licence or investment certificate issued prior to 1 January 2007 is longer than pursuant to this Circular, or if the duration of tax reduction is shorter, then the business establishment may choose to apply the duration of reduction or exemption pursuant to Circular 128, Circular 88, its issued investment licence or issued investment certificate; or to apply such duration pursuant to this Circular.

7. Any previously established business establishment which did not fall within the category of entities entitled to investment incentives but which now satisfies such conditions pursuant to Decree 108 shall be entitled to CIT incentives in accordance with this Circular for the residual incentive period calculated as from year 2007 tax periods.
8. Enterprises with foreign owned capital and foreign parties to business co-operation contracts to which investment licences were issued before 1 January 2004 shall continue to be entitled to the preferential tax treatment stipulated in their investment licences if they satisfy the conditions stipulated in such licences. Upon expiry of the duration of preferential CIT rates as stipulated in their investment licences, the rate of 25% shall apply to them. If they are currently paying CIT at the rate of 25%, such rate shall continue to apply until expiry of their investment licences.
9. Any business establishment issued with an investment licence, business registration certificate or investment certificate prior to the date on which the Socialist Republic of Vietnam officially became a member of the World Trade Organization (namely 11 January 2007) and which has income from business activities (excluding textiles and knitwear) and is currently enjoying CIT incentives because it satisfies the conditions on export ratios set out in legal instruments on foreign investment in Vietnam, on promotion of domestic investment, on CIT and on [domestic] investment, it shall continue to enjoy CIT incentives in accordance with the above-mentioned legal instruments but the duration of entitlement shall not exceed year 2011.

The following shall be repealed: Guidelines on CIT incentives on satisfaction of conditions on use of domestic raw materials, and on satisfaction of conditions on export of textiles and knitwear stipulated in legal instruments of the Ministry of Finance and of other branches issued as from year 2007 tax periods.

Any business establishment operating in the textiles and knitwear sector which satisfies the conditions for CIT incentives (apart from conditions on export ratios) shall continue to enjoy CIT incentives corresponding to the conditions which such business establishment satisfies for the residual incentive period.

10. This Circular shall replace the following Circulars:
 - Circular 128-2003-TT-BTC of the Ministry of Finance dated 22 December 2003 providing guidelines for implementation of Decree 164-2003-ND-CP of the Government dated 22 December 2003 making detailed provisions for implementation of the *Law on Corporate Income Tax*;
 - Circular 88-2004-TT-BTC of the Ministry of Finance dated 1 September 2004 amending Circular 128 above.

Any other contents in guidelines on corporate income tax issued by the Ministry of Finance or by other branches which are inconsistent with this Circular are hereby repealed.

11. Resolution of any issues on tax, tax finalization, tax exemption and reduction, and administrative offences in the field of CIT which existed prior to year 2007 tax periods shall be implemented in accordance with the corresponding CIT guidelines issued prior to year 2007 tax periods.
12. In a case where Vietnam has acceded to an International Agreement or International Treaty which contains provisions on payment of CIT which are different from the guidelines in this Circular, then the provisions of such International Treaty or Agreement shall apply.

Any difficulties arising during implementation of this Circular should be promptly reported to the Ministry of Finance for additional guidelines.

For the Minister of Finance
Deputy Minister

TRUONG CHI TRUNG