

No: 123/2012/TT-BTC

*Ha Noi, July 27, 2012*

**CIRCULAR**

**GUIDANCE ON THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF LAW ON ENTERPRISE INCOME TAX NO.14/2008/QH12 AND GUIDELINES ON IMPLEMENTATION OF DECREE NO.124/2008/ND-CP DATED DECEMBER 11, 2008, DECREE NO.122/2011/ND-CP DATED DECEMBER 27, 2011 OF THE GOVERNMENT DETAILING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF LAW ON ENTERPRISE INCOME TAX**

*Pursuant to the Law on Enterprise Income Tax No. 14/2008/QH12 dated June 03, 2008;*

*Pursuant to the Tax Administration Law No. 78/2006/QH11 dated November 29, 2006;*

*Pursuant to Decree No. 124/2008/ND-CP dated December 11, 2008 of the Government detailing the implementation of a number of articles of the Law on Enterprise Income Tax;*

*Pursuant to Decree No. 122/2011/ND-CP dated December 27, 2011 of the Government amending and supplementing a number of articles of Decree No. 124/2008/ND-CP of the Government stipulating in detail and guiding the implementation of a number of articles of the Law on Enterprise Income Tax;*

*Pursuant to Decree No. 118/2008/ND-CP dated November 27, 2008 of the Government regulating the functions, duties, powers and organizational structure of Ministry of Finance;*

*At the proposal of the Director General of Taxation, the Minister of Finance makes guidance on the implementation of the Law on Enterprise Income Tax:*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope of adjustment**

This Circular shall detail and guide the implementation of a number of articles of the Law on Enterprise Income Tax No. 14/2008/QH12 dated June 03, 2008, Decree No. 124/2008/ND-CP dated December 11, 2008 of the Government detailing the

implementation of a number of articles of the Law on Enterprise Income Tax and Decree No. 122/2011/ND-CP dated December 27, 2011 amending and supplementing a number of articles of Decree No. 124 / 2008/ND-CP of the Government detailing and guiding the implementation of a number of articles of the Law on Enterprise Income Tax.

## **Article 2. Taxpayers**

**1.** The taxpayers of Enterprise Income Tax are the organizations of production and business of goods and services with taxable income (hereinafter referred to as enterprise), including:

a) Enterprises established and operating under the Enterprise Law, Investment Law, Law on Credit Institutions, Insurance Business Law, Securities Law, Petroleum Law, Commercial Law and other legal normative documents in the forms: Joint Stock Companies; Limited Liability Companies; Joint-Venture Companies; Private Enterprises; State Enterprises, Lawyer Offices, Private Notary Public Offices; The parties in the contracts of business cooperation; The parties in oil product sharing contract, Oil and Gas Joint Venture Enterprise and Joint Operating Companies.

b) Public non-business units, non-public non-business unit with production and business of goods and services having income in all areas.

c) Organizations established and operating under the Cooperative Law.

d) Enterprises established under foreign law (hereinafter referred to as foreign enterprises) have their permanent establishments in Vietnam.

The permanent establishments of foreign companies are manufacturing and business facilities and through these facilities, the foreign companies shall conduct a part or all of their production and business activities in Vietnam to earn income, mainly include:

- Branches, executive offices, factories, workshops, means of transportation, mining, oil and gas field or other sites of extraction of natural resources in Vietnam;
- Construction sites, works of construction, installation or assembly;
- Establishments providing services, including consultancy services through employees or an organization or individual;
- Agents for foreign enterprises;
- Representatives in Vietnam in the case of authorized representatives to sign contracts in the name of foreign enterprises or non- authorized representatives to sign contracts in the name of foreign enterprises but regularly delivering goods or providing services in Vietnam.

Where the agreement on avoidance of double taxation which the Socialist Republic of Vietnam has signed has different provisions on the permanent establishment, the provisions of that Agreement shall apply

e) Other organizations other than the organizations referred to at Points a, b, c and d, Clause 1 of this Article have the activities of business and production of goods and services with taxable income.

2. The foreign organizations manufacturing and carrying on business in Vietnam not under the Investment Law, Enterprise Law or having income arising in Vietnam and paying enterprise income tax under the separate guidance of the Ministry of Finance. These organizations if having activities of capital alienation, they shall pay enterprise income tax as guided in Article 14, Chapter IV of this Circular.

## Chapter II

### METHOD AND GROUND FOR TAX CALCULATION

#### Article 3. Method of tax calculation

1. The tax amount the enterprise must pay in the tax period by taxable income multiplied by the tax rate.

The payable enterprise income tax is determined by the following formula:

$$\text{Payable enterprise income tax amount} = \text{Taxable income} \times \text{Tax rate of enterprise income tax}$$

Where enterprise deducts the fund for scientific and technological development, the payable enterprise income tax shall be determined as follows:

$$\text{Payable enterprise income tax amount} = (\text{Taxable income} - \text{Deduction of science and technology fund}) \times \text{Tax rate of enterprise income tax}$$

Where the enterprise has paid the enterprise income tax or tax similar to the enterprise income tax outside Vietnam, this enterprise shall be deducted from the amount of tax the enterprise has been paid but not exceeding the maximum amount of payable enterprise income under the provisions of the Law on Enterprise Income Tax.

2. Tax period is determined by calendar year. Where enterprises apply the fiscal year different from the calendar year, the tax period shall be determined by the applicable fiscal year. The first tax period for newly established enterprises and the last tax period for enterprises transforming type of enterprise, form of ownership transformation, merger, separation, dissolution, bankruptcy is determined in accordance with the accounting period as prescribed by the law on accounting.

**3.** Where the tax period of the first year of newly established enterprise since being granted the certificate of enterprise registration or certificate of business registration or Permit of establishment or Certificate of investment and the tax period of the last year for enterprise transforming the type of enterprise, form of ownership, consolidation, merger, division, separation, dissolution, bankruptcy is shorter than 03 months, it shall be added to the tax period of year next (for newly established enterprises) or tax period the previous year (for enterprises transforming type of enterprise, form of ownership conversion, consolidation, merger, separation, dissolution and bankruptcy) to form a tax period of enterprise income. The tax period of enterprise income of the first year or the tax period of enterprise income of the last year shall not exceed 15 months.

**4.** Where enterprises carry out the change of tax period of enterprise income (including the change of tax period from calendar year to fiscal year or vice versa), the tax period of enterprise income must not exceed 12 months. Enterprises during the time enjoying the preferential enterprise income tax with the change of tax period shall have the right to choose: preference in the year of change of tax period or payment of tax at the ordinary rate of tax of the year of change of tax period and enjoying the tax preference to the following year.

Example 1: For enterprise A, the tax period of enterprise income in 2011 under the applicable calendar year, at the beginning of 2012 choosing to change to the fiscal year from April 01 this year to March 31 of the following year, the tax period of enterprise income tax of the changed year ( 2012) from the January 01, 2012 by the end of March 31, 2012 (3 months), the tax period of enterprise income of the following year shall be calculate from April 01, 2012 by the end of March 31, 2013.

Example 2: As the above case, but enterprise A enjoys the preferential enterprise income tax (tax exemption for 2 years, 50% reduction of enterprise income tax in the next 3 years), starting in 2009 for tax exemption, enterprise A shall enjoy the preferential tax as follows (tax exemption in 2009, 2010; 50% reduction of tax in 2011, 2012 and 2013).

Where enterprises choose 50% reduction of enterprise income tax in the tax period of the changed year 2012, the enterprises continue the implementing of 50% reduction of enterprise income tax of the changed year and the subsequent tax year (fiscal year 2012 from April 01, 2012 to March 31, 2013).

Where enterprises do not choose 50% reduction of enterprise income tax in the tax period of the changed year 2012 (the tax period of the changed year 2012 declaration and payment of tax by the ordinary rate of tax), the enterprise shall enjoy 50% reduction of enterprise income tax of the fiscal year 2012 (from April 01 to March 31, 2013) and the fiscal year 2013 (from April 01, 2013 to March 31, 2014).

**5.** Non-business units which have the activities of goods and services business subject to enterprise income tax but these units can account the revenue but can not account and determine the cost and income of the business operation shall declare and pay enterprise income tax by the rate% on the revenue of sales of goods and services, as follows:

+ For services: 5%

+ For goods business: 1%

+ For other activities (including activities of education, health, art performance): 2%

Example 3: Non-business unit A has the activity of house letting, the revenue from the house letting in one (01) year is 100 million dong, the unit does not account and determine the cost and income from the above house letting because the unit has chosen to declare and pay enterprise income tax at the rate% on the revenue of sales of goods and services as follows:

Payable enterprise income tax amount = 100,000,000 dong x 5% = 5,000,000 dong

**6.** Enterprises which have the revenues, expenses, taxable income and tax calculation income in foreign currency must convert the foreign currency into Vietnam dong at the average exchange rate on the inter-bank foreign exchange market announced by the State Bank of Vietnam the country at the time of the arising of turnover, expenses, taxable income and tax calculation income in foreign currency, unless otherwise provided by law. For the foreign currency without currency exchange rate with Vietnam dong must be converted via a foreign currency with the exchange rate with Vietnam dong.

#### **Article 4. Determination of tax calculation income**

**1.** The tax calculation income in tax period is determined by the taxable income minus tax exemption income and the losses carried forward from previous years as prescribed.

Tax calculation income is determined by the following formula:

$$\text{Tax calculation income} = \text{Taxable income} - \left| \begin{array}{l} \text{tax exemption} \\ \text{income} \end{array} \right| + \left| \begin{array}{l} \text{Losses carried} \\ \text{forward as prescribed} \end{array} \right|$$

#### **2. Taxable income**

Taxable income in tax period includes income from activities of production and business of goods and services and other incomes

Taxable income in tax period is determined as follows:

$$\text{Taxable income} = \left| \begin{array}{l} \text{Revenue} \\ \text{Deductible} \\ \text{expenses} \end{array} \right| - \left| \begin{array}{l} \text{Deductible} \\ \text{expenses} \end{array} \right| + \text{Other incomes}$$

Income from from activities of production and business of goods and services with the revenue of activities of production and business of goods and services minus deductible expenses of those activities of production and business of goods and services. Enterprise has a lot of activities of production and business and applies different tax rate, it has to separately calculate the income of each activity multiplied by the corresponding tax rate.

Income from the alienation of immovable assets and projects (not associated with the transfer of land use and land lease right), alienation of project implementation, alienation of exploration, exploitation and processing right of minerals under the provisions of law must be separately accounted for tax declaration and payment of enterprise income at a tax rate of 25%, without enjoying preferential enterprise income tax, or without offsetting by the income or loss of the other activities of production and business. Where enterprises are engaged in activities of alienation of immovable assets and projects (not associated with the transfer of land use and land lease right), alienation of project implementation, alienation of exploration, exploitation and processing right of minerals under the provisions of law shall be entitled to offset profits and losses of these activities together to declare and pay enterprise income tax.

## **Article 5. Revenue**

**1.** Revenue to calculate taxable income is determined as follows:

The revenue to calculate taxable income is the total proceeds from the sale of goods, processing amount, and services supply amount, including price subsidies, surcharges or extra that enterprises are entitled to enjoy regardless of collection or non-collection of money.

a) For enterprises making payment of value-added tax by the method of tax deduction is the revenue excluding value added tax.

Example 4: Company A is the taxpayer of value added tax by the method of tax deduction. The value-added invoice includes the criteria as follows:

Selling price: 100,000 dong

VAT (10%): 10,000 dong

Price paid: 110,000 dong

The revenue to calculate the taxable income is 100,000 dong

b) For enterprises making payment of value-added tax by direct method on a value added is the revenue including value added tax.

Example 5: Enterprise B is the tax payer of value added tax by the direct method on value added. The sales invoice only indicates the selling price is 110,000 dong (price including VAT).

The revenue to calculate the taxable income is 110,000 dong

**2.** The time for revenue determination to calculate taxable income is determined as follows:

a) For the sale of goods is the time of transfer of ownership or right to use goods to the buyer.

b) For the services supply is the time to complete the services supply to the buyer or the time of invoicing service supply.

In case the time of invoicing service supply occurs before the time of services completion, the time for determining the taxable revenue shall be calculated according to the time of invoicing service supply.

c) Other cases as prescribed by the law

**3.** The revenue to calculate the taxable income in a number of cases determined as follows :

a) For goods and services sold under the installment and deferment method is the proceeds of goods and services paid once, excluding the interest on installment payment of installment and interest on deferred payment.

b) For goods and services used for exchange; donations and offer and internal consumption (excluding goods and services used to continue the process of production and business of the enterprise) shall be defined by the selling price of products, goods and services of the same or similar kind on the market at the time of exchange; donations and offer and internal consumption.

c) For goods processing activities as proceeds from processing activities including wages, cost of fuel, power, auxiliary materials and other costs for the processing of goods.

d) For goods of the units delivering to the agents, consigning and receiving agent consigning under the agency contract, consigning for sale at the right price to enjoy commission shall be determined as follows:

- The enterprises deliver goods to the agents (including multi-level sales agents), and consign goods is the total amount of goods sales.

- Enterprises act as agents, consignees for goods sales at the fixed price of the enterprise delivering and consigning to the agents is the commission to be enjoyed under the contract of agency and consignment of goods.

e) For assets leasing activities is the amount the lessee pays each term under the contract. In case the lessee pays in advance for many years, the revenue for calculating taxable income is allocated to the number of year paid in advance or is determined by revenue of lump-sum payment.

The enterprises that shall base on the conditions of implementation of accounting regime, actual invoices and documents and the determination of cost, can select one of two methods of determining the revenue for calculating taxable income as follows:

- The rental of assets lease of each year is determined by (=) the amount paid in advance divided by (:) prepaid number of years.
- The entire rental of assets lease of the prepaid number of years.

Where enterprises that are enjoying their preferential enterprise income tax have chosen the method of determining the revenue for calculating taxable income which is the total rental the lessee has paid in advance for many years, the determination of the income tax which the enterprises are exempted from and reduced shall be based on the total enterprise income tax of the number of years prepaid divided by (:) the number of years prepaid by the lessee.

- g) For credit activities, finance leasing activity is the loan interest and revenue on receivable finance leasing arising in the tax period.
- h) For transport activities is the total revenue of passenger, cargo and luggage transportation arising in the tax period.
- i) For activity of power supply, water supply is the amount of electricity, clean water recorded on VAT invoice. The time to determine the revenue for calculating taxable income is the date of certification of electricity meter indicator recorded on the electricity and clean water bill.

Example 6: The meter indicator on electricity bill recorded from day December 05 to January 01. The revenue of this bill is calculated in January.

- k) For golf course business is the proceeds from the sale of membership cards and golf playing tickets and other revenues in the tax period determined as follows:
  - For the form of daily golf ticket and card sales, the revenue of golf business as a basis for determining the enterprise income tax is the proceeds from ticket and card sales, card sales arising in the tax period.
  - For the form of ticket and membership card sales of the prepaid cards for several years, the revenues as a basis for determining the enterprise income tax each year is the actual proceeds from card selling divided by the number of years of card using.

l) For the area of insurance business, the revenue for calculating taxable income is the total proceeds from the provision of insurance services and goods and other services, including surcharges and extra fees that the insurance enterprises are entitled to enjoy without value added tax, including:



- Revenue from activities of insurance business:

For activities of insurance business and reinsurance is the amount of original insurance premiums to be collected; collection of reinsurance premium, commission of reinsurance retrocession; single management fee of insurance, fee on agency services including damage assessment, consideration for compensation, requiring the third party for compensation and handling 100% of the compensated goods (excluding permitted inspection among enterprise members that account internally in the same insurer with independent accounting) after deduction of payables to reduce revenue such as refunding of insurance premium, reduction of premium; refunding of reinsurance premium; reduction of reinsurance premium; refunding of commission of reinsurance retrocession; reduction of commission of reinsurance retrocession.

Where the insurance enterprises participating in co- insurance, the revenue to calculate the taxable income of each party is the proceeds of original premium allocated in proportion to co- insurance for each party excluding value added tax.

For insurance contracts with agreement of payment by each period, the revenue for calculating taxable income is the amount receivable arising in each period.

Where implementation of collection operations between affiliated enterprises or between enterprises with dependent accounting office of the insurer, the turnover for calculating taxable income excluding revenue of permitted collection.

- Revenue from insurance brokerage activities: Proceeds from insurance brokerage commissions after deducting the insurance brokerage commissions, reduction and refunding of insurance brokerage commissions.

m) For construction and installation activities is the value of works, works items or the value of volume of construction works, installation and acceptance.

- In case of construction and installation involving the contracting supply of raw materials, machinery and equipment is the amount from construction and installation activity including the value of materials, machinery and equipment.

- In case of construction and installation without contracting supply of raw materials, machinery and equipment is the amount from construction and installation activity excluding the value of materials, machinery and equipment.

n) For business activities in the form of business cooperation contracts:

- Where the parties involving in business cooperation contract divide business results by the revenue of the sales of goods and services, the revenue for calculating tax is the revenue of each party divided under the contract.

- Where the parties involving in business cooperation contract divide business results by product, the revenue for calculating tax is the revenue of the product divided to each party under the contract.

- Where the parties involving in business cooperation contract divide business results by the pre-tax profit of enterprise income tax, the revenue to determine the pre-tax income is the proceeds from the sales of goods or services under the contract. The parties involving in business cooperation contracts must appoint a party as a representative to produce invoices, record revenues, costs, and determine the pre-tax profit of enterprise income tax divided by the parties involving in business cooperation contracts. Each party involving in business cooperation contracts shall carry out its obligations of enterprise income tax under current regulations.

- Where the parties involving in business cooperation contract divide business results by post-tax profit of enterprise income tax, the revenue to determine the taxable income is the proceeds of sales of goods and services under the contract. The parties involving in business cooperation contracts must appoint a party as a representative to produce invoices, record revenues and costs and make declaration and payment of enterprise income tax on behalf of the remaining parties involving in business cooperation contract.

o) For activities of bonus games business (casino, electronic games with bonus, and entertainment business with bet) are the proceeds from these activities including special consumption tax minus the amount paid to customer for bonus.

p) For securities trading activities are the proceeds from brokerage services, securities dealing, securities underwriting, portfolio management, financial advisory and securities investment, investment fund management, issue of fund certificate, market organization services and other securities services under regulations of the law.

q) For derivative financial services are the proceeds from the provision of derivative financial services performed in the tax period.

## **Article 6. Deductible and nondeductible expenditures upon determination of taxable income**

**1.** Except for expenditures stated in clause 2 of this Article, enterprises shall be deducted all expenditures if satisfying the following conditions:

**a)** The actual expenditures arising related to production and business activities of the enterprises;

**b)** The expenditures with adequate legal invoices and documents under regulations of the law.

**2.** The nondeductible expenditures upon determination of taxable income include:

**2.1.** The expenditures do not fully meet the conditions specified in Clause 1 of this Article.

Where the enterprises have expenditures related to the value of loss caused by natural disaster, epidemic, fire and other unforeseen circumstances without any compensation, these expenditures are charged to expenses deducted in determining income taxable income, specifically as follows:

The enterprises must determine the total value of loss caused by natural disaster, epidemic, fire and other unforeseen circumstances under regulations of the law.

The value of losses caused by natural disaster, epidemic, fire and other unforeseen circumstances without any compensation shall be determined by the total value of loss minus the compensation to be paid the organizations and individuals under regulations of the law.

a) Dossier for assets and goods lost due to natural disaster, epidemic, and fire are included in deductible expenditures as follows:

- Documents of enterprises sent to tax agencies under direct management to give explanation of assets, goods lost due to natural disaster, epidemic and fire.

- Record of inventory of assets value of assets and goods lost shall be made by the enterprise.

Record of inventory of assets value, loss of goods must clearly identify the value of assets and goods lost, cause of loss, responsibilities of organizations and individuals for losses; type, quantity and recoverable value of assets and goods (if any), the stock movement summary of the lost goods certified by the signature of the legal representative who shall take responsibility before law.

- Written certification of the People's Committees of commune, ward, the management Board of industrial parks and export processing zones, economic zones where the disaster, epidemic, fire occur there are natural is that during occurrence of natural disasters, epidemics, fires during that time.

- Dossier of compensation for loss accepted by the insurance agency (if any)

- Dossier stipulating responsibilities of organizations and individuals that must make compensation (if any).

b) Goods damaged due to expiry and changes in natural biochemical process without compensation shall be included in deductible expenses when determining the taxable income.

Dossier for goods damaged due to expiry and changes in natural biochemical process without compensation shall be included in deductible expenses is as follows:

-Documents of enterprises sent to the tax agency under direct management to explain the goods damaged due to expiry and changes in natural biochemical process without compensation shall be included in deductible expenses.

- Record of inventory of goods value damaged shall be made by the enterprises.

The record of inventory of goods value damaged must clearly identify the value of goods damaged, cause of damage, type, quantity, recoverable value of goods (if any) attached to the stock movement summary of the damaged goods certified by the signature of the legal representative who shall take responsibility before law.

- Dossier of compensation for loss accepted by the insurance agency (if any)

- Dossier stipulating responsibilities of organizations and individuals that must make compensation (if any).

c) The enterprises shall send the tax agencies under direct management a written explanation of assets and goods lost due to natural disaster, epidemic, fire, goods damaged due to expiry, damaged due to change of natural biochemical process without any compensation when submitting dossier to declare the settlement of enterprise income tax as prescribed of the year of the occurrence of the lost and damaged goods. Other dossiers (including the Record of inventory of assets value of assets and goods lost and damaged; the written certification of the People's Committees of commune, ward, the management Board of industrial parks and export processing zones and economic zones; Dossier of compensation for loss accepted by the insurance agency (if any); Dossier stipulating responsibilities of organizations and individuals that must make compensation (if any) and other documents) are kept at the enterprises and produced to the tax agencies as required.

## **2.2. Depreciation expense of fixed assets in one of the following cases:**

a) Depreciation expense of fixed assets not used for activities of production and business of goods and services.

For fixed assets in service for employees working at enterprise such as mid-shift rest house and canteen, dressing place, toilet, medical office for medical care, and vocational and training facility and equipment, furniture qualified as fixed assets installed in the mid-shift rest house and canteen, dressing place, toilet, medical office for medical care, and vocational and training facility, clean water tanks, garages, commuter car, housing for workers built by the enterprise shall be depreciated and included in expense deducted in determining taxable income.

b) Depreciation expense of fixed assets without any papers of ownership of the enterprise (except for fixed assets from finance leasing).

c) Depreciation expense of fixed assets without management, monitoring and in accounting book of the enterprise under the current management regime of fixed asset and accounting record.

d) The depreciation exceeding the rate of current regulations of the Ministry of Finance on the regime of management, use and depreciation of fixed assets.

Enterprises shall notify the tax agencies under direct management of the method of depreciation of fixed assets that enterprises have chosen to apply before depreciation (for example, notifying choice of straight-line depreciation method...). Every year, enterprises shall decide the rate of depreciation of fixed assets according to the current regulations of the Ministry of Finance on the management, use and depreciation of fixed assets, including cases of accelerated depreciation (if meeting conditions).

Enterprises operating efficiently and economically shall be entitled to apply accelerated depreciation but not more than 2 times of the rate of depreciation determined under the straight-line method for rapid technological innovation. Upon conducting accelerated depreciation, enterprises must ensure the profitability.

Fixed assets contributed as capital, fixed assets transferred upon division, demerger, consolidation, merger, transformation of type with reevaluation as prescribed, the enterprise receiving these assets are depreciated on costs and deducted at cost of reevaluation. For other assets not qualified as fixed assets contributed as capital, transferred upon division, demerger, consolidation, merger, transformation of type

and these assets are revaluated as prescribed, the enterprises upon receiving these assets shall be included in deductible expenses by reevaluation.

For fixed assets made by themselves, the initial cost of the fixed asset depreciated shall be included in deductible expense that is the total of production cost to form those assets.

For assets as tools, instruments, circulating packaging, ... do not meet the conditions identified as fixed assets as prescribed, the expenses used to purchase the above assets are amortized to the cost of production & business in the period but not exceeding 2 years.

e) The depreciation corresponding to the original cost in excess of 1.6 billion / car for passenger cars of 9 seats or less with new use registration and accounting of depreciation of fixed assets from January 01, 2009 onwards (except automobiles specializing in passenger transport, traveling and hotel); the depreciation of fixed assets as civil airplanes and yachts not used for purposes of business of transportation of goods, passengers and tourists.

Passenger cars of 9 seats or less specialized in business of passenger transport, traveling and the hotel are the cars registered in the enterprises' names and these enterprises in the certificate of enterprise registration or certificate of business registration have registered one of the business lines: passenger transport, traveling, hotel business and have been licensed the business as prescribed in legal documents on transport business, passengers, traveling and hotel.

Civil airplanes and yachts not used for purposes of business of transportation of goods, passengers and tourists are the civil airplanes and yachts of the enterprises registering and accounting the depreciation of fixed assets but in certificate of business registration or certificate of enterprise registration of the enterprises which do not register the business line of passenger and goods transport and traveling.

g) Depreciation of fixed assets that have been depreciated in value.

h) Depreciation for works on land used for production and business and other purposes shall not be depreciated in deductible expenses for the works value on land corresponding to the area not used in the activities of production and business.

Where works on land as office buildings, workshops and business stores in service for the production and business activities are built on leased land, land borrowed from organizations, individuals and households (not direct lease of state land or in industrial parks), the enterprises are entitled to depreciate to be included in the deductible expenses at the proper rate of depreciation of fixed assets in accordance with current regulations of the Ministry of Finance for these works if it meeting the conditions as follows::

- There are contracts of land lease and land borrowing between enterprises and land-owning units and the enterprises' representatives must take responsibilities before law for the accuracy of the contracts.

- The invoice of payment of construction volume handed over together with construction contract, contract liquidation and settlement of construction works value bearing the name, address and tax identification number of the enterprise..

- Works on land shall be managed and monitored and accounted in accordance with the current regulations on management of fixed assets.

i) Where the fixed assets belonging to the ownership of the enterprises are used for the production and business but have to temporarily stop due to seasonal production with the period of less than 09 months, temporarily stopped for repairment or relocation, periodic maintenance, with the period of less than 12 months, then the fixed assets continue to be put into service for production and business activities. During that temporary suspension, the enterprises are depreciated and the depreciation expenses of fixed assets in the time of temporary suspension is included in deductible expenses when determining taxable income.

Enterprises must keep and provide complete dossiers and the reason of the temporary suspension of fixed assets upon requirements of the tax agency.

k) Long-term land use rights are not depreciated and allocated to the deductible expenses in determining taxable income; the term land use right if there are sufficient invoices and documents and proper compliance with the procedures prescribed by law, participation in business and production activities shall be amortized to deductible expenses by the time limit stated in the certificate of land use right.

Where enterprises purchase tangible fixed assets as buildings and structures associated with long-term land use rights, the value of land use rights must be separately identified and recognized as intangible assets; The tangible fixed assets as buildings and structures, the initial cost is the payable actual purchasing price plus (+) all expenses directly related to the introduction of tangible fixed assets into use. The land use right value shall be determined according to the contractual purchasing price of real estate (assets) in accordance with the market price but not lower than the price of land regulated by the People's Committees of central-run provinces and cities at the time of assets purchase. Where enterprises purchase the tangible fixed assets as buildings and structures associated with long-term land use rights but the value of land use right cannot be separately divided, then the value of use right shall be determined by the price regulated by the People's Committees of central-run provinces and cities at the time of assets purchase.

**2.3.** Expenses for raw materials, supplies, fuel, energy and goods in excess of reasonable consumption.

Enterprises build and manage the consumption norm of raw materials, supplies, fuel, energy, goods used in production and business. This norm is built from the beginning of the year or early product manufacturing period and kept at the enterprises and fully presented with the tax agencies upon their requirements.

Particularly the main norm of the principal products of the enterprises, they shall inform the tax authorities under direct management within the first 03 months of the year or 03 months after the start of production and business (for newly established enterprises or where the enterprises supplement the production of new products but these products are subject to notification of the norms but not being announced yet). The list of major norms of the principal products of enterprises shall be decided by the enterprises.

In case the enterprises during the time of production and business make adjustment and supplement the consumption norms of the raw materials and have informed the tax agencies, they must also notify the tax agency under direct management. The deadline for reporting to tax authorities to adjust and supplement the consumption rate is the time limit for submission of the finalization declaration of enterprise income tax in accordance with regulations of the settlement year. In case some raw materials, supplies, fuel and goods the State has issued the consumption rate shall comply with the norms issued by the State. In case the enterprises fail to notify the tax agency within the time limit prescribed, the tax agency during the inspection and checking shall have the right to determine the cost of raw materials, supplies and goods. The determination of the cost of raw materials, supplies and goods shall be based on the law on tax administration.

**2.4.** The expenses of the enterprise to purchase goods and services without invoices are permitted to make a list of purchasing goods and services purchased (Form No. 01/TNDN enclosed with this Circular) but do not make lists attached to the payment vouchers for vendors, providing services in the cases of purchase of goods as agricultural products, forest products and aqua products of the producers and fish catchers directly selling, buying handicrafts made of jute, rush, bamboo, leaves, rattan, straw, coconut husk, coconut shell or raw materials from agricultural products of handicraft producers

selling without carrying on business, buying land, rocks, sand and gravel of people who extract and make direct sales; buying waste materials of people who directly collect; buying the furniture and property of the households and individuals that have used and directly sell and a number of purchasing services by individuals who do not carry on business.

List of purchasing goods or services that the legal representatives or authorized persons of enterprises shall sign and take responsibility before law for the accuracy and truthfulness. If the purchase price of goods and services on the list is higher than the market price at the time of goods purchase, the tax agencies shall base on market price at the time of purchase, or services of the same or similar type on the market to determine the rate of price to re-calculate the deductible expenses when determining taxable income.

**2.5. Payment of salaries, wages and bonuses to employees in one of the following cases:**

a) Payment of salaries, wages and other amounts payable to employees that the enterprises have accounted in business expenses in the period but have not made payment or without payment vouchers as prescribed by law.

b) The bonus, premium of life insurance for employees are not specified the conditions for entitlement and rate of entitlement in one of the following dossiers: Labor Contract; collective labor agreement; Regulation on finance of company, corporation, group; reward regulations regulated by the Chairman of the Board of Directors, General Director and Director under the financial regulation of the company and corporation.

- Where the labor contract of the enterprises signed with foreign laborers in which the expenditure of tuition for children of foreigners studying in Vietnam under the high school level paid by enterprise and having the nature of salary and wage, this expenditure is not contrary to the provisions of the law on salaries, wages and with adequate invoices and vouchers and shall be included in deductible expenses when determining taxable income industry.

- Where the labor contract of the enterprise signed with the laborers have been recorded the expenses of house rent paid by enterprises to employees, this payment has the nature of salaries and wages, not contrary to the provisions of law on salaries, wages with adequate invoices and vouchers, shall be included in deductible expenses when determining taxable income is business income.

c) Payment of salaries, wages and allowances to be paid to the laborers but the deadline for submission of annual tax finalization dossier without any actual expenditure except the case the enterprise has provident fund to supplement the salary fund of the subsequent year to ensure the uninterrupted payment and not used for other purposes. The annual level of provision shall be decided by the enterprise but not more than 17% of performance wage fund.

The performance salary fund is the total salary actually paid of that settlement year to the last deadline to submit dossier of settlement as prescribed (excluding the amounts set aside for salary provision fund of the previous year spent in tax settlement year).



The salary provision must ensure after setting up, the enterprises shall not suffer losses if the enterprises suffer losses, they are not permitted for fully deduction of 17%.

Where the previous year the enterprises set aside salary provision fund, but by December 31 of the following year, the enterprises have not used or not used up the salary provision fund, the enterprise must write off the cost of the following year.

Example 7: When submitting the 2011 tax settlement dossier, enterprise has set aside salary provision fund of 10 billion dong. By December 31, 2012, enterprise A spends the amount from the salary provision fund of the year 2011 including 7 billion dong. enterprise A must record reduction of salary expense of the next year (2012) including 3 billion dong (10 billion minus 3 billion). When preparing the settlement dossier of the year 2012, if enterprise A has a need of deduction, it shall continue to set aside deduction of salary provision fund as prescribed.

d) Salaries and wages of owners of private enterprises, limited liability company with a member (employed by an individual) remuneration paid to the founding members, members of the Board of members, Board of Directors who are not directly involved in directing the production and business.

**2.6.** The expenses of outfits in kind to the laborers without any invoices and vouchers; the expense of outfits in cash, in kind to the laborers exceed 05 (five) million dong / person / year.

Where enterprises have expenses of outfits both in cash and in kind to the laborers, the maximum expenditure level for calculating the deductible expenses when determining taxable income not exceeding 05 (five) million / person / year

For business lines with particular characteristics, this expense is done in conformity with specific regulations of the Ministry of Finance.

**2.7.** Expenses for bonus of initiatives and renovation but the enterprises do not have specific regulations on bonus of initiatives and renovation without the acceptance Council of the initiatives and improvements.

**2.8.** Expenses of allowances of traveling and vacations not in accordance with the provisions of the Labor Code; the expenses of allowances paid to employees going on business at home or abroad exceed 02 times of the level prescribed under the guidance of the Ministry of Finance for civil servants, State employees.

Traveling expenses and accommodation for laborers to go on business if there are adequate legal invoices and vouchers as prescribed shall be included in deductible expenses when determining taxable income. Where enterprises have expenses of traveling and accommodation for the laborers, these expenses shall be included in deductible expenses of the expense of traveling and accommodation in accordance with regulations of the Ministry of Finance for civil servants, State employees.

Where enterprises have purchased air tickets through e-commerce website for the laborers to go on business for service of production and business activities of enterprises, the documents as the basis for calculating the deductible expenses as electronic airfare, boarding pass and documents of payment of enterprises having individual participating in transport journey.

**2.9.** The following expenditures are not in accordance with subjects, purposes or exceed the specified level of expenditures.

a) Các khoản chi thêm cho lao động nữ được tính vào chi phí được trừ bao gồm:

The additional expenditures for female laborers are included in deductible expenses including:

- Expenses for vocational re-training for female laborers in case the old jobs are no longer suitable and must switch to other jobs in the development planning of enterprises.

This expenditure includes: tuition fees (if any) plus the difference in salary grades (guarantee of 100% salary to the trainees).

- Expenses of salaries and allowances (if any) for teachers in kindergarten nursery school organized and managed by the enterprises.

- Expenses of health examination in the year as professional, chronic or gynecological diseases for female laborers.

- Expenditure of bonus for female laborers after the first or second time birth.

- Overtime allowance for female laborers in case of objective reasons female laborers who do not leave after childbirth, leave for breast-feeding but stay to work for enterprise shall be paid under the current regulation; including case of payment by result female workers still work during non-leave period as prescribed.

b) The additional expenses for ethnic minorities shall be included in deductible expenses including school fees (if any) plus the difference in salary grades (guarantee of 100% salary to the trainees), allowance of housing, social insurance, health insurance for ethnic minorities in the case having not been supported by State regulations.

**2.10.** The deduction for payment of compulsory insurance funds for laborers exceeds the prescribed level; the deduction for payment of trade union for laborers exceeds the prescribed level.

**2.11.** The deduction for provision fund of unemployment allowance (except for the case enterprises not subject to mandatory participation of unemployment insurance as prescribed by law are allowed to set aside a provision fund of unemployment allowance),

the expenses of unemployment allowance paid to the laborers are not in compliance with current regulations.

**2.12.** Expenditure for contribution to form the source of management expense for superior.

Expenditure for contribution to the funds of the Association (these Associations are established under the provisions of law) is in excess of limits set by the Association.

**2.13.** Expense of electricity, water for water and electricity contracts by the owner leasing the production and business location directly sign with units providing electricity and water without adequate documents in one of the following cases :

a) Where enterprises leasing the production and business location directly make payment of electricity, water to the power and water supplier without any list (Form No. 02/TNDN issued with this Circular) together with the bills of electricity and water and the lease contract of production and business location.

b) Where enterprises leasing the production and business location make payment of electricity and water to the owner leasing the production and business location without any list (Form No. 02/TNDN issued with this Circular) enclosed with the bills of electricity and water paid to the lessor consistent with the amount of electricity and water consumption and the and lease contract of production and business location.

**2.14.** The expense of fixed assets leasing in excess of the rate allocated by the number of years that the lessee pays in advance.

Example 8: Enterprise A leases fixed assets in four years with the rent of 400 million dong and makes one-time payment. The expense of fixed assets leasing is accounted in the annual expense that is 100 million. If the expense of fixed assets leasing exceeds 100 million then the excess over 100 million dong shall not be included in reasonable expenses when determining taxable income.

For expense of repairment of the leased fixed assets, in the assets lease contract has defined that the lessee is responsible for the repairment of the assets during the leasing period, the expenses of repairment of the leased fixed assets shall be permitted to account in expense or amortize to the expense but the maximum time shall not exceed 03 years.

Where enterprises have expenses for assets other than those fixed assets: expenditure on the purchase and use of technical material, patents, technology transfer licenses, trademarks, business advantage ... such expenses shall be amortized into business expenses but not more than 03 years.

**2.15.** The expense of loan interest payment for production and business of the objects that are not credit institutions or economic organizations in excess of 150% of basic interest rate announced by the State Bank of Vietnam at the time of borrowing.

**2.16.** The payment of loan interest for capital contribution or payment of loan interest corresponding to the deficit of registered charter capital under the capital contribution progress stated in the charter of the enterprise even where the enterprises have come into operation and business.

**2.17.** Setting aside and use of provisions for decline in inventory, provision for losses in financial investment, provision for receivable bad debts and provision for warranty of products, goods, installation works not in accordance with to the guidelines of the Ministry of Finance on the provision.

**2.18.** Expenses accrued by term and cycle but to the end of the term or cycle, these expenses have not been spent or not spent all.

The accruals including accrual for overhaul of fixed assets by cycle, the amounts accrued for operations of which the revenue has been accounted but continues to perform the obligations under the contract (even in the case enterprises having operations of assets leasing for years but have collected the prepaid payment and have accounted all into the revenue of the collecting year) and other accruals.

Where enterprises having the production and business operations with the record of revenue for calculating the enterprise income tax without sufficient expenses arising shall be entitled to deduct the expenses as prescribed into the deductible expenses corresponding to the recorded revenues when determining income subject to enterprise income tax. Upon termination of the contract, the enterprise must calculate and determine the exact actual expense based on legal invoices and vouchers to adjust increase of expense (where the actual expense is greater than the amount deducted previously), or to adjust reduction costs (where the actual expense is less than the amount deducted previously) into the tax period for contract termination.

For fixed assets with periodical repairment, the enterprise shall be entitled to deduct in advance the expense of repairment in the estimates into the annual expense. If the actual expenditure for repairment is greater than the deducted amount in the estimate, the enterprise shall be entitled to additionally include in the deductible expenses of this difference.

**2.19.** Expenditures in excess of 10% of deductible expenses, including expense of advertising, marketing, promotion, brokerage commissions; receptions, ceremonies, conferences; marketing support, expense support, payment discount; donation and offer of newspaper of the press agency directly related to production and business activities. For the newly-established enterprises is the expenditure exceeding 15% of total deductible expenses in the first three years since its establishment. The total deductible expenses do not include expenditures controlled prescribed at this point for commercial activities, the total deductible expenses do not include the purchase price of goods sold;

The expenses of advertising, marketing, promotion, brokerage commissions are controlled as above mentioned excluding:

- Commissions of insurance brokerage in accordance with regulations of the law on insurance business; commissions paid to agents selling goods and services at proper price.

- Commissions paid to distributors of multi-level sales company. For organizations receiving the commission shall declare to include in the taxable income, for individuals receiving commissions must be deducted from personal income tax before paying incomes.

- Expenses incurred in the country or abroad (if any) such as expenses of market research: exploration, survey, interviews, collection, analysis and evaluation of information; expenses of development and support of market research, expenses of hiring consultants to conduct the research, development and market research support; expenses of display and introduction of products and organization of fairs, commercial exhibition: expense of opening room or booth, introduction of products, expenses for space lease for display and introduction of products, expenses of materials and support tools for the display and introduction of products, expenses of transportation of products for display and introduction.

- Expenses of donation and offer of newspaper to persons who have contributed to the revolution, war invalids, sick soldiers and soldiers in the islands and remote areas and special difficulty-stricken areas.

Limits of deductible expenses shall not exceed 15% in the first 3 years not applicable to newly-established enterprises by the consolidation, division, demerger, merger, transformation of form of enterprise and change of ownership.

**2.20.** Loss due to exchange rate differences due to revaluation of monetary items denominated in foreign currencies at the end of tax period (except for loss due to exchange rate differences due to revaluation of liabilities with foreign currency origin at the end of tax period).

Foreign exchange differences arising during the process of investment in capital construction to form the fixed assets implemented under the guidance in Circular of the Ministry of Finance on handling the differences in foreign exchange rates of enterprises.

**2.21.** Expenses for education funding not in accordance with subjects specified in Item a of this Point or there is no record to identify the funding mentioned in Item b below:

a) Funding for education including funding for public and private schools of the national education system in accordance with regulations of the law on education but this funding is not for contributing capital or purchasing shares in the schools; Financing facilities for teaching, learning and school activities; financing the regular activities of school; financing scholarships for pupils and students of the general education establishments, vocational education establishments and establishments of higher education defined in education Law directly to pupils and students or through other agencies and organizations with function to mobilize financing as prescribed by law; financing the contest on the subjects are taught in schools for subjects who are learners; financing for the

establishment of education promotion fund in accordance with regulation of the law on education and training.

b) Dossier for determination of the education financing includes: Record of financing certification signed by the representatives of the business establishments as sponsors, the representative of legal educational establishments as financed units, pupils and students, students (or agencies and organizations with function of fund raising) recipient (Form No. 03/TNDN issued with this Circular), together with invoices and vouchers of goods purchase (if in-kind funding) or spending documents (if financed with money).

**2.22.** Expenses for health funding not in accordance with subjects specified in Item a of this Point or there is no record to identify the funding mentioned in Item b below:

a) Funding for health care including funding for health facilities established under the laws of health but this funding is not for capital contribution, purchase of shares in those hospitals, health centers; funding for medical equipment, medical instruments and medicines; funding for regular activities of hospitals, health centers; financing in cash to person suffering from diseases through an agency, organization with function of fund raising as prescribed by law.

b) Dossier to identify health funding includes: Record of financing certification signed by the representatives of the business establishments as sponsors, the representative of financed units (or agencies and organizations with function of fund raising) under Form No. 04/TNDN issued with this Circular together with invoices and vouchers of goods purchase (if in-kind funding) or spending documents (if financed with money).

**2.23.** Expenses of funding for remedy of natural disasters not in accordance with subjects specified in Item a of this Point or there is no record to identify the funding mentioned in Item b below:

a) Funding for natural disaster remedy includes funding in cash or in kind to overcome consequences of natural disasters directly to organizations established and operating under the provisions of the law and individuals affected by natural disasters through an agency or organization having function of fund raising as prescribed by law.

b) Dossier to identify the funding for natural disaster remedy includes: Record of financing certification signed by the representatives of the business establishments as sponsors, the representative of financed units (or agencies and organizations with function of fund raising) under Form No. 05/TNDN issued with this Circular together with invoices and vouchers of goods purchase (if in-kind funding) or spending documents (if financed with money).

**2.24.** Expense of financing for building houses of gratitude for the poor not in accordance with subjects specified in Item a of this Point or there is no record to identify the funding mentioned in Item b below:

a) Objects receiving financing are poor households as prescribed by the Prime Minister. Form of financing: financed with cash or in kind to build houses of gratitude for the poor households directly or through an agency or organization having function of fund raising as prescribed by law.

b) Dossier to determine the funding to build houses of gratitude for the poor includes Record of financing certification signed by the representatives of the business establishments as sponsors, the representative of financed units (or agencies and organizations with function of fund raising) under Form No. 06/TNDN issued with this Circular); written certification of the local authority together with invoices and vouchers of goods purchase (if in-kind funding) or spending documents (if financed with money).

**2.25.** The expenses of business management allocated by company abroad to permanent establishments in Vietnam in excess of the expenses calculated by the following formula:

$$\begin{array}{rcl}
 \text{Expenses of business} & & \text{Taxable revenue of permanent} \\
 \text{management} & & \text{establishment in Vietnam} \\
 \text{allocated by foreign} & & \hline
 \text{company to} & = & \text{Total revenue of foreign} \\
 \text{permanent} & & \text{company including revenues of} \\
 \text{establishment in} & & \text{permanent establishments in} \\
 \text{Vietnam in tax period} & & \text{other countries in tax period}
 \end{array}
 \quad \times \quad
 \begin{array}{l}
 \text{Total expenses of} \\
 \text{business} \\
 \text{management of} \\
 \text{foreign company} \\
 \text{in tax period}
 \end{array}$$

The expenses of business management of the foreign company allocated to permanent establishment in Vietnam are only calculated since the permanent establishment in Vietnam is established.

The ground to determine expenses and revenue of the foreign company is the financial statement of the company audited by an independent auditing firm in which clearly reflecting the company's revenue abroad, the management expenses of the foreign company, the management expenses of the foreign company allocated to the permanent establishment in Vietnam.

The permanent establishment of the foreign company in Vietnam having not implemented the accounting regulations, invoices and vouchers; nor made payment of tax by the method of declaration shall not be entitled to include in the reasonable expenses of the expense of business management allocated by foreign company.

**2.26.** The expenses are offset by other funding sources; the expenses are paid from the funds for scientific and technological development of enterprises.

**2.27.** Expenses not corresponding to taxable revenue.

Where enterprises have actual expense for the activities of HIV / AIDS prevention and fighting at the workplace under the guidance of the Ministry of Health including:  
Expenses of training official on HIV / AIDS prevention and fighting of the enterprise,

expenses of the media organization on in HIV / AIDS prevention and fighting for the enterprise's laborers, expenses of consulting, examination and testing for HIV, expenses of supporting people with HIV infected who are enterprise's laborers. These expenses shall be included in the deductible expenses in determining the taxable income.

**2.28.** The expenses of the activities of insurance business, lottery business, securities business and a number of specific business activities are not complied with guidelines of the Ministry of Finance.

**2.29.** Penalties due to administrative violations include: traffic violations, violations of regulations on business registration, violations of regulations on accounting and statistics, violations of the tax law and penalties for other administrative violations as prescribed by law.

**2.30.** Expenses for investment in capital construction in the investment phase to form the fixed assets; expenses in support of local authority, unions, social organizations, charity except for expense of funding on education, health, remedy of natural disaster and building houses of gratitude for the poor mentioned at point 2.21, 2:22, 2:23, 2:24 clause 2 of this article, the expenses of buying golf membership cards and golf playing.

Upon starting the business and production activities, the enterprise has not generated revenue but expenses regularly incurred to maintain the enterprise's business activities (other than the expenditures for construction to form the fixed assets). If such expenses meet the conditions as prescribed, they shall be included in the deductible expenses in determining taxable income.

**2.31.** Input value added tax has been deducted or refunded, the input value added of fixed assets are car with 9 seats or less in excess of the deductible rate specified in the legal documents on value added tax, enterprise income tax and personal income tax.

- Personal income tax not included in deductible expenses when determining taxable income is the amount of tax deducted by enterprises on the income of the taxpayers to pay into the state budget. Where enterprises sign the labor contracts stipulating the salary or wages paid to laborers does not include the personal income tax, the personal income tax the enterprises pay on behalf of is the expense of salary included in deductible expenses upon determining taxable income.

- Enterprise income tax paid on behalf of foreign contractors (contractor tax) is included in deductible expenses when determining taxable income in case agreed in the contract, foreign sub-contractors, revenues of contractors, foreign sub-contractors received does not include enterprise income tax (contractor tax).

## **Article 7. Other income**



Other income is taxable income in the tax period but this income is not under the lines and sectors of business stated in business registration of enterprises. Other income includes the following income:

- 1.** Income from alienation of capital and securities under the guidance in Chapter IV of this Circular.
- 2.** Income from alienation of immovable property under the guidance in Chapter V of this Circular.
- 3.** Income from transfer of project (not associated with the transfer of land use right, land lease) income from assignment of project implementation, assignment of the right of exploration, extraction and processing of mineral in accordance with the law.
- 4.** Income from ownership or use of assets, including proceeds from the copyright in any form of payment to the ownership, right to use property; intellectual property right, income from transfer of technology as prescribed by law. Property leasing in any form.

Income from intellectual property right, technology transfer determined by the total amount obtained minus (-) the prime cost or the cost to create the intellectual property rights and technology transferred, minus (-) the cost of maintaining, upgrading and developing intellectual property rights, technology transfer and other deductible expenses.

Income from property lease is determined by the revenue from leasing activities minus (-) expenses: depreciation, maintenance, repairment and maintenance of assets, the expense of property lease for re-lease (if any) and other deductible expenses related to property leasing.

**5.** Income from transfer of assets and liquidation of assets (excluding immovable property), and other valuable papers. This income is determined by (=) revenue generated by the transfer of assets and liquidation of assets minus (-) the remaining value of the asset transferred or liquidated recorded on accounting books at the time transfer or liquidation and deductible expenses related to the transfer or liquidation of assets.

**6.** Income from deposit interest, loan interest, credit guarantee fee and other fees in capital loan contract

- In case the income from interest on deposit and loan incurred higher than loan interest payments as prescribed, after offset, the remaining difference shall be included in other income when determining the taxable income.

- For incomes from interest on deposits and loans incurred lower than the loan interest payments as prescribed, after offset, the remaining difference shall be deducted from income of production and business when determining the taxable income.

**7.** Income from activities from the sale of foreign currency: the sum of the proceeds from the sale of foreign currency minus (-) total purchase price of the amount of foreign currency sold.

**8.** Income from exchange rate difference shall be defined as follows:

In tax year, the enterprise has exchange rate difference arising in the period and exchange rate differences from revaluation of payable liabilities denominated in foreign currencies at the end of the fiscal year, then:

- The exchange rate difference arising in the period directly related to revenue and expense of the main production and business activities of enterprises shall be included in the expenses or income of the main production and business activities of enterprises. The exchange rate differences arising in the period are not directly related to the revenue and expense of the main production and business activities of enterprises. If losses arise, the exchange rate difference shall be included in expense of the main production and business activities. If interest arising, the exchange rate difference shall be included in other income.

- Interest on exchange rate difference from revaluation of liabilities payable in foreign currencies at the end of the fiscal year are offset such losses on exchange rate differences due to revaluation of liabilities payable in foreign currencies at the end of the fiscal year. After offset, if there is interest on exchange rate difference, it shall be included in other income, if there is loss on exchange rate difference, it shall be included in expense of the main production and business activities when determining the taxable income.

The exchange rate differences above mentioned do not include the exchange rate differences from revaluation of the year-end balance as cash, deposits, and cash in transit, debts receivable denominated in foreign currencies.

**9.** Reversal of reserves (excluding reversal of provision for devaluation of stocks, provision for losses in financial investment, provision for bad debts, reversal of provision for warranty of products and goods set aside but the time for setting aside is over without use or not using up.

**10.** Bad debts written off now recovered.

**11.** Payables debt of unknown creditor.

**12.** Income from omitted business and production activities of previous years now discovered

**13.** Where the enterprises with revenues from fines and compensation from the breach of contract of partners incurred higher than the expenses of fines and compensation due to breach of contract (these fines are not under the fines on administrative violations in accordance with the law on handling of administrative violations), after clearing, the remaining difference shall be included in other income.

Where the enterprises with revenues from fines and compensation from the breach of contract of partners incurred lower than the expenses of fines and compensation due to breach of contract (these fines are not under the fines on administrative violations in accordance with the law on handling of administrative violations), after clearing, the remaining difference shall be included in other income. Where the unit does not generate other income, it shall be deducted to the income of production and business activities.

**14.** Increase difference from revaluation of assets as prescribed by law for capital contribution, transfer of assets upon division, separation, consolidation, merger, transformation of type of enterprises shall be defined as follows:

Increase difference from revaluation of assets (excluding land use right) is the difference between the value of re-valuation with the residual value of assets recorded on accounting books and shall be included in other income once in the tax period when determining the enterprise income tax at the enterprise with assets to be revaluated.

Increase difference from revaluation of land use right value for transfer upon division, separation, consolidation, merger, transformation of type of enterprises, for contribute capital to investment projects in construction of house and infrastructure to sell and include once in the other income in the tax period when determining enterprise income tax at the enterprise having the right to use land re-evaluated.

For increase differences from revaluation of land use right value to contribute capital to enterprises to carry out the production and business shall be gradually included into other income of enterprises having the right to use land re-evaluated in a maximum time than 10 years, starting from the year the land use right value is contributed as capital. The enterprise has to announce the number of years it has allocated to other income when submitting dossier of tax settlement declaration of enterprise income of the year starting the declaration of this income (year to re-evaluate the land use right value contributed capital). In case if the party contributing capital carries out the transfer of contributed capital prior to the 10 year period, the income from the activity of contributed capital transfer is equal to the land use right value to be included in the income of real estate business in the period.

Difference from revaluation of land use right value include: For long-term land use rights is the difference between value of revaluation and value of land use right recorded on the accounting books. For the term land use right is the difference between value of revaluation and unallocated remaining value of the land use rights.

Enterprise receives assets as capital and assets transferred upon division, separation, consolidation, merger, transformation of type of enterprise entitled to be depreciated or amortized into the expense of revaluation (except the land use right value is not depreciated or amortized into the expenses as prescribed).

**15.** Gifts, gifts in cash and in kind income received in cash or in kind from marketing assistance, cost assistance, payment discount, promotional bonus and other allowances.

**16.** The compensation for fixed assets on the land and relocation assistance money after deducting the related expenses such as relocation expenses (transportation and installation expenses), the residual value of fixed assets and other costs (if any). For compensation of fixed assets on the land and relocation assistance money of enterprise relocating as planned by the competent State authorities but the value of assistance and compensation after deducting related expenses (if any), the rest shall be used by the enterprise in accordance with relevant law..

**17.** The earnings related to the consumption of goods and services not included in revenue as quickly ship free bonus, bonus food service industry, hotel, after subtracting the costs to generate such income.

**18.** Income from consumption of waste materials and waste products after deducting the expenses of recovery and consumption shall be defined as follows:

- Where the enterprise has generated income arising from the sale of waste material and product formed during the production process of the products entitled to enjoy preferential enterprise income tax then this income shall enjoy the preferential enterprise income tax.

- Where the enterprise has generated income arising from the sale of waste material and product formed during the production process of the products entitled to enjoy preferential enterprise income tax then this income shall be included in the other income and not applied the preferential enterprise income tax.

**19.** Import and export tax refund of goods actually exported and imported arising in the settlement year of enterprise income tax shall be deducted. In case the import and export tax refund of goods actually exported and imported has arisen in previous settlement years of enterprise income tax, it shall be included in other income of the settlement year. If this income is directly related to the business and production sector entitled to enjoy the preferential enterprise income tax, then it shall be entitled to enjoy the preferential enterprise income tax. If this income is not directly related to the business and production sector entitled to enjoy the preferential enterprise income tax, then it shall not be applied the preferential enterprise income tax.

**20.** Incomes from capital contribution for joint stock, local economic joint venture and association divided from income before payment of corporate income tax.

**21.** Income earned from activities of production and business of goods and services abroad.

- Vietnamese enterprises investing abroad and having income from the business and production activities abroad, declaring and making payment of enterprise income tax under the provisions of the current Law on Enterprise Income Tax of Vietnam, including cases where enterprises are enjoying preferential reduction or exemption of income tax under the provisions of the country where enterprises are investing. The tax rate of

enterprise income tax for calculation and declaration of tax for incomes earned abroad is 25%, not applying the preferential tax rate (if any) that Vietnamese enterprises investing abroad are enjoying under the provisions of the current Law on Enterprise Income Tax.

The tax agency is entitled to determine taxable income from production and business activities abroad of Vietnamese enterprises investing abroad for cases of violations of regulations on declaration and payment of tax.

- Where the income from investment project abroad incurred enterprise income tax (or a tax similar in nature to enterprise income tax) abroad, upon calculation of the enterprise income tax, it must be paid in Vietnam, Vietnamese enterprises investing abroad shall be deducted the tax paid abroad or paid on their behalf by their partners of the country receiving investment have been partners receive payment in lieu of investment (including tax on dividends), but the tax deducted shall not exceed the income tax calculated under the provisions of the Law on Enterprise Income tax of Vietnam. The income tax Vietnamese enterprises invest abroad exempted or reduced for the profit earned from investment projects abroad under the laws of the country investment enterprises shall also be deducted when determining the income tax the enterprise must pay in Vietnam.

Dossier attached upon declaration and payment of tax of Vietnamese enterprises investing abroad for the income from investment projects abroad including:

+ Document of business on the distribution of profits of investment projects abroad.

+ Financial statements of the enterprises certified by independent audit organizations

+ Declaration of enterprise income tax under investment projects abroad (copy certified by the authorized representative of the investment projects abroad);

+ Record of tax settlement of enterprise (if any);

+ Confirmation of tax paid abroad or documents evidencing the tax paid abroad.

- In case the investment projects abroad have not yet generated taxable income (or losses arising), upon declaring the annual settlement of enterprise income tax, Vietnamese enterprises investing abroad only pay the financial statements certified by independent auditing agency or competent authorities of the country where the enterprises are investing and the Declaration of income tax of the investment projects (copy certified by the authorized representative of the investment projects abroad and enterprise's seal); The loss generated from investment projects abroad are not deducted from the income generated of domestic enterprises upon calculating enterprise income tax.

- Income from investment projects abroad shall be declared in the settlement of enterprise income tax of the year following the fiscal year generating income abroad or declared in the settlement of enterprise income tax of the fiscal year together with the year generating

income abroad if the enterprises have sufficient grounds and documents to determine the income and income tax paid of investment projects abroad.

For income from business and production activities of the investment projects in countries which have signed agreements on avoidance of double taxation with Vietnam, the Vietnamese enterprises investing abroad shall declare and pay tax under the provisions of the Agreement.

**22.** Incomes received in cash or in kind from funding sources other than the funding mentioned in Clause 7 of Article 8.

**23.** Other income as prescribed by the law.

### **Article 8. Incomes eligible for tax exemption**

**1.** Incomes from farming, breeding, raising aquatic products of organizations established under the Law on Cooperatives.

**2.** Incomes from technical services provided for agriculture including: incomes from services of irrigation, plowing, raking soil, dredging canals, services of extermination of pest for plants and animals, services of harvesting.

**3.** Incomes from the performance of scientific research and technology development contracts; incomes from the sale of trial-manufactured products, incomes from the sale of products using technologies newly applied in Vietnam, including incomes from the transfer of Certified Emissions Reductions (CERs). The maximum tax exemption period is one (01) year as from the commencement date of the scientific research and technology development contracts, the commencement date of the trial-manufacture, the commencement date of the application of new technology in Vietnam to manufacture; the issuance date of the CERs.

a) Incomes from the performance of scientific research and technology development contracts are eligible for tax exemption if the following conditions are specified:

- Having scientific research registration certificates;
- Certified by agencies in charge of State management of science;

b) Incomes from the sale of products using technologies newly applied to Vietnam are eligible for tax exemption when the new technologies are certified by competent agencies in charge of State management of science.

c) Incomes from the transfer of CERs are eligible for tax exemption if the CERs being sold or transferred are certified by competent agencies in charge of environment.

**4.** Incomes from the production and business of enterprises that employ disabled, detoxified people, HIV sufferers accounting for at least 30% of the average number of workers in a year of the enterprise.

The incomes eligible for tax exemption specified in this Clause do not include other incomes specified in Article 7 of this Circular.

Enterprises eligible for tax exemption as prescribed in this Clause are enterprises of which the average number of workers in a year is 20 people or more, excluding enterprises engaged in financial or real estate business.

Enterprises earning incomes eligible for tax exemption as prescribed in this Clause must satisfy the following conditions:

- a) The enterprises employing disabled people (including war invalids) must obtain the certification from competent Health agencies on the number of disabled employees.
- b) The enterprises employing detoxified people must obtain the detoxification certificates from detoxification centers, or certification from relevant competent agencies.
- c) The enterprises employing HIV sufferers must obtain the certification from competent Health agencies on the number of HIV-positive employees.

**5.** Incomes from vocational training provided for ethnic minorities, the disabled, impoverished children, criminals, detoxifying people, detoxified people, HIV/AIDS sufferers. In case there are other subjects in the vocational training facility, the income eligible for tax exemption is calculated proportionally to the ratio of students being ethnic people, the disabled, impoverished children, criminals, detoxifying or detoxified people, HIV/AIDS sufferers to the total number of students.

The incomes eligible for tax exemption as prescribed in this Clause must satisfy the following conditions:

- The vocational training facility is established and operated under the legal documents on vocational training.
- Having the list of students being ethnic people, the disabled, impoverished children, criminals, detoxifying people, detoxified people, and HIV/AIDS sufferers.

**6.** The incomes from the contribution, share purchase, joint venture and economic cooperation with domestic enterprises after the contributed party, the share issuer, or one the joint venture party has paid the enterprise income tax as prescribed in the Law on Enterprise income tax, including the case when the contributed party, the share issuer, or the joint venture party is eligible for tax exemption and tax reduction.

Example 9: Enterprise B is contributed by enterprise A. The pre-tax incomes corresponding to the contribution from enterprise A to enterprise B is 100 million VND.

- In case enterprise B is not eligible for enterprise income tax incentives, and enterprise B has completely paid the enterprise income tax, including the incomes earned by enterprise A, then the incomes earned by enterprise A from the contribution is 75 million VND [(100 million – (100 million x 25%)]. Enterprise A is eligible for enterprise income tax exemption on this 75 million VND.

- In case enterprise B is eligible for 50% reduction in enterprise income tax amount payable, and enterprise B has completely paid the enterprise income tax, including the incomes earned by enterprise A according to the reduced income tax amount, then the incomes earned by enterprise A from the contribution is 87.5 million VND [(100 million – (100 million x 25% x 50%)]. Enterprise A is eligible for enterprise income tax exemption on this 87.5 million VND.

- In case enterprise B is eligible for enterprise income tax exemption, then the incomes earned by enterprise A from the contribution is 100 million VND. Enterprise A is eligible for enterprise income tax exemption on this 75 million VND.

**7.** The sponsorship received to be used for educational, scientific, cultural, artistic, charitable, humanitarian activities, and other social activities in Vietnam.

If the sponsorship is not properly used, the sponsorship receiver must calculate and pay enterprise income tax at the rate of 25% on the amount improperly used.

The sponsorship receiver prescribed in this Clause must be established and operated in compliance with laws, comply with law provisions on accounting and statistics.

## **Article 9. Loss determination and transfer.**

**1.** The loss arising in a tax period is the negative difference of taxable income.

**2.** The enterprise that suffers losses after the tax settlement must continuously transfer all the losses to the taxable income of the succeeding years. The continuous loss transfer period must not exceed 5 years as from the year succeeding the loss-making year.

The enterprise shall temporarily transfer the loss to the taxable income of the quarters after making the tentative tax declaration and officially transfer the loss to the succeeding year after making the annual tax settlement declaration.

Example 10: In 2011, the enterprise A makes a loss of 10 billion VND. In 2012, enterprise A earns a taxable income being 12 billion VND. All the loss of 10 billion in 2011 must be transferred to the taxable income in 2012.

Example 11: In 2011, the enterprise B make a loss of 20 billion VND. In 2012, enterprise B earns a taxable income being 15 billion VND, then:

+ Enterprise B must transfer all the loss of 15 billion VND to the taxable income in 2012;



- + The remaining loss of 5 billion, enterprise B must monitor and continuously transfer it to the succeeding years within 5 years as from the year succeeding the loss-making year.
- Enterprises making losses between the quarters in the same fiscal year are allowed to offset the loss of the previous year against the next quarter of that fiscal year. When making enterprise income tax settlement, the enterprise shall calculate and continuously transfer all the loss of the year to the taxable income of the succeeding years as prescribed.
- The enterprises shall independently calculate the loss deducted from taxable incomes according to the above principle. In case other losses keep arising while the previous loss is being transferred, the newly arising losses (excluding the loss transferred from the previous period) shall be completely transferred within 5 consecutive succeeding years.

In case the competent agency discovers that the loss transferred by the enterprise is different from the loss determined by the enterprise while carrying out enterprise income tax inspection, the loss shall be transferred under the conclusion from the inspection agencies, ensuring that the loss is completely and continuously transferred within 5 years as from the year succeeding the loss-making year as prescribed.

After 5 years as from the loss-making year, the loss not yet transferred shall not be transferred to the incomes in the succeeding years.

**3.** Enterprises converting the enterprise forms, ownership forms (including handing over or selling enterprises to the State), or divide, split, merge, consolidate, or dissolve their enterprises must carry out tax settlement with tax authorities when obtaining the decisions on converting the enterprise forms, ownership forms, declaring bankruptcy, dividing, separating, consolidating, or dissolving their enterprises from competent agencies. The loss of an enterprise arising before converting, merging, or consolidating must be closely monitored in the loss-making year, and shall be offset against the taxable income in the same year after converting, merging, or consolidating, or shall continue to be transferred to the taxable incomes of the succeeding years after converting, merging, or consolidating in order to ensure that the loss is not transferred for more than 5 consecutive years as from the year succeeding the loss-making year.

## **Article 10. Establishing scientific and technological development funds of enterprises**

**1.** Enterprises established and operated under Vietnam's laws are allowed to extract up to 10% of the annual tax-calculation income before calculating enterprise income tax to establish the Scientific and technological development fund of the enterprise. Enterprises shall determine the amount of the Scientific and technological development fund as prescribed before calculating enterprise income tax. Enterprises that establish scientific and technological development funds must make the Report on the establishment and use of scientific and technological development funds, and declare the rate of extraction in the enterprise income tax settlement declaration. The report on the use of scientific and technological development funds must be submitted together with the enterprise income tax settlement declaration.

2. Within 5 years after extracting, if the scientific and technological development fund is not used or improperly used, or less than 70% thereof is used, the enterprise must pay the enterprise income tax on the income used to establish the fund that is not used or improperly used, and the on profit generated from such enterprise income tax amount.

The money improperly used must not be included in the total amount used for scientific and technological development.

- The enterprise income tax rate for calculating the tax amount reclaimed is the tax rate applicable to the enterprise during the establishment of the fund.

- The interest rate for calculating the profit of the tax amount reclaimed from the unused part of the fund, is the interest rate of 1-year treasury bonds at the reclaiming time, and the period for interest calculating is two years.

3. The scientific and technological development funds of enterprises are only used for investment in scientific research and technology development of enterprises in Vietnam. The expenses from the scientific and technological development fund must have valid invoices and receipts as prescribed by law.

4. Enterprises must not include the expenses from Scientific and technological development fund of the enterprise in the production and business code when calculating taxable income in the tax period. The scientific and technological development funds of enterprises are only used for investment in scientific research and technology development of enterprises in Vietnam.

5. If an enterprise converts its form of ownership, or merges, consolidates, the enterprise newly established from such conversion, merger, or consolidation shall inherit and bear responsibility for the management and use of their scientific and technological development fund before converting, merging, or consolidating.

If the scientific and technological development fund of the merged or consolidated enterprise has not been incompletely use, the enterprise newly established from such merger or consolidation shall inherit and bear responsibility for the management and use of their scientific and technological development fund before merging, or consolidating. The distribution of scientific and technological development funds are decided by enterprises and registered at the tax authorities.

## **Article 11. Enterprise income tax rates**

1. The enterprise income tax rate is 25%, except for the case prescribed in Clause 2 of this Article and other cases to which the preferential tax rates apply.

2. The enterprise income tax rates on petroleum exploration and extraction in Vietnam is from 32% - 50%. Depending on the extraction positions, conditions and the petroleum reserves, the enterprises planning to carry out petroleum exploration and extraction shall

send the investment project dossier to the Ministry of Finance for submitting to the Prime Minister for decisions on the specific tax rate on each project and each enterprise.

The enterprise income tax rate on the exploration and extraction of rare and valuable resources (except for petroleum) is 50%; In case 70% or more of the rare and valuable resources mine lies in localities with extreme socio-economic difficulties on the list of localities enjoying enterprise income tax incentives promulgated together with the Government's Decree No. 124/2008/ND-CP on December 11, 2008, the tax rate of 40% shall apply.

The rare and valuable resources prescribed in this Clause include: platinum, gold, silver, tin, wolfram, antimony, rare earth.

### **Chapter III**

#### **TAX PAYMENT PLACES**

##### **Article 12. The determination principle**

Enterprises shall pay tax in the locality where their head offices are situated. In case an enterprise has dependent cost-accounting production facilities (including processing and assembling facilities) operating in other central-affiliated cities and provinces than that where the head office is situated, then the tax shall be paid in the locality where the head office and the production facilities are situated.

The distribution of the tax amount payable prescribed in this Clause is not applicable to the enterprises that have dependent cost-accounting constructions, construction items or construction facilities.

##### **Article 13. Calculating the tax amount payable**

The enterprise income tax amount payable in central-affiliated cities and provinces where the dependent cost-accounting production facilities are situated equals (=) the enterprise income tax amount payable in the period multiplied by (x) the quotient of the total cost of the dependent cost-accounting production facility divided by the total cost of the enterprise.

The cost ratio is calculated by the total cost of the dependent cost-accounting production facility divided by the total cost of the enterprise. The cost ratio is calculated as follows:

$$\text{The cost ratio of the dependent cost-accounting production facility} = \frac{\text{The total cost of the dependent cost-accounting production facility}}{\text{The total cost of the enterprise}}$$

The cost ratio is calculated based on the enterprise income tax settlement data of the year that precedes the tax-calculating year, determined by the enterprise themselves as the

basis for calculating the tax payable, and may be used to declare and pay enterprise income tax in the succeeding years.

In case an enterprise has dependent cost-accounting production facilities in various localities, the data for calculating the cost ratio of the head office and the dependent cost-accounting production facilities are determined by the enterprise themselves based on the enterprise income tax settlement data in 2008, and this ratio shall be used from 2009 and later.

Newly-established enterprises, or operating enterprises establishing more or reducing the dependent cost-accounting production facilities in other localities must calculate the cost ratio of the first tax period themselves. The cost ratios of the succeeding tax periods shall be calculated using the formula above.

The dependent cost-accounting units of overall sector accounting enterprises earning incomes from activities outside their business lines shall pay tax at central-affiliated cities and provinces where such activities are done.

## **Chapter IV**

### **INCOME FROM CAPITAL AND SECURITIES TRANSFER**

#### **Article 14. Income from capital transfer**

##### **1. Scope of application:**

Income from capital transfer of an enterprise is the income from the transfer of part or all of the capital that the enterprise has invested in one or multiple organizations and individuals (including selling the entire enterprise). The time of capital transfer is the time of transferring the capital ownership.

The enterprise transferring capital and receiving assets or other financial interests (shares, fund certificates...) in stead of cash, and earning income, is subject to enterprise income tax. The value of assets, shares, fund certificates... is calculated based on their market prices at the receiving time.

##### **2. Basis for tax calculation:**

a) The tax-calculation income from capital transfer is calculated as follows:

$$\begin{array}{r} \text{Tax-} \\ \text{calculation} \\ \text{income} \end{array} = \text{Transfer price} - \text{Purchase price of the} \\ \text{income} \qquad \qquad \qquad \text{capital transferred} - \text{Transfer cost}$$

Including:

- The transfer price is the total actual value collected by the transferring party under the transfer contract.

In case the capital transfer contract requires payment in installments or deferred payment, the revenue of the transfer contract shall not include the installment interest or deferred payment interest according to the contractual period.

If the transfer contract does not specify the transfer price, or the tax authorities have grounds to conclude that the price is not conformable with the market price, the tax authorities are entitled to inspect and fix the transfer price. When an enterprise transfers part of the contributed capital of which the transfer price is not conformable with the market price, tax authorities are entitled to set the entire value of the enterprise at the transferring time to recalculate the transfer price proportionally to the contributed capital transferred.

The transfer price is fixed based on the investigation documents of tax authorities, or on the capital transfer prices in other cases at the same time, of the same economic organization, or on the similar transfer contracts at the transferring time. If the transfer price fixed by the tax authorities is not conformable, it shall be calculated based on the valuation of competent professional valuation organizations at the transferring time as prescribed.

- The purchase price of the capital transferred is calculated in each particular case as follows:

+ If the contributed capital is transferred to establish new enterprises, the purchase price is the value of the contributed capital based on the accounting documents at the transferring time, and certified by the contributing parties or cooperation parties, or based on the audit results from an independent audit company regarding 100%-capitalized enterprises.

+ If the capital is repurchased, the purchase price is the capital value at the purchasing time. The purchase price is calculated based on the contributed capital purchase contract and the payment receipts.

For enterprises practicing accounting in foreign currency (approved by the Ministry of Finance) that transfer the contributed capital in foreign currency, the transfer price and the purchase price of the capital transferred is calculated in foreign currency; for enterprises practicing accounting in VND that transfer the contributed capital in foreign currency, the transfer price must be calculated in VND according to the average exchange rates of the inter-bank foreign currency market announced by the State bank of Vietnam at the transferring time.

- The transfer cost is the actual expenses on the transfer with valid receipts and invoices. The original receipts of transfer cost arising abroad must be certified by an independent audit company or notarization agency in the country in which the cost arises. The receipts must be translated into Vietnamese (certified by competent representatives).

The transfer cost includes: the expense on the legal procedures necessary for the transfer, the fees and charges payable when implementing the transfer procedures; the expenses on the transaction, negotiation and conclusion of the transfer contract, and other expenses proved in writing.

Example 12. Enterprise A contributes 400 billion VND, including 320 billion VND of the workshop value, and 80 billion VND in cash to establish a joint venture enterprise that produces toilet-paper. Then enterprise A transfers such contributed capital to enterprise B for 550 billion VND. The contributed capital of enterprise A at the transferring time in the accounting book is 400 billion, the expenses on the capital transfer is 70 billion VND. The tax-calculation income from the capital transfer in this case is 80 billion VND (550 - 400 - 70).

b) The income from capital transfer is consider other income and shall be included in the taxable income when calculating enterprise income tax.

c) The tax applicable to foreign organizations doing business in Vietnam, or earning income in Vietnam, not operating under the Law on investment, the Law on Enterprise (hereinafter referred to as foreign contractors) that transfer capital, shall be declared and paid as follows:

The organizations and individuals receiving the capital transfer are responsible for calculating, declaring, deducting and pay the enterprise income tax amount payable on behalf of the foreign organizations. If the capital transfer receiver is also a foreign organization not operating under the Law on investment, the Law on Enterprise, the enterprise established under the Vietnam's law invested by such foreign organizations are responsible for declaring and paying the enterprise income tax amount payable on their behalf.

The tax declaration and payment are done as prescribed in the legal documents on tax administration.

## **Article 15. Income from securities transfer**

### **1. Scope of application:**

Income from securities transfer of enterprises is the income from the transfer of shares, bonds, fund certificates and other kinds of securities as prescribed.

In case a joint-stock company issues more shares to mobilize capital, the difference between the issue price and the face value must not be included in the taxable income.

If a joint-stock company swaps their shares while dividing, separating, merging and consolidating, and earn income, such income is subject to enterprise income tax.

The enterprise transferring securities and receiving assets or other financial interests (shares, fund certificates...) in stead of cash, and earning income, is subject to enterprise

income tax. The value of assets, shares, fund certificates... is calculated based on their sale prices at the receiving time.

## 2. Basis for tax calculation:

Tax-calculation income from securities transfer in the period is equals (=) the securities sale price minus (-) the purchase price of the securities transferred, minus (-) the expenses on the transfer.

- The securities sale price is calculated as follows:

+ For listed securities and unlisted securities of public companies registered for trading at Securities trading centers, the securities sale price is the actual securities sale price (order matching price of agreed price) according to the announcement of the Stock Exchange or Securities trading center.

+ For securities of the companies outside the cases above, the securities sale price is the transfer price in the transfer contract.

- The securities purchase price is calculated as follows:

+ For listed securities and unlisted securities of public companies registered for trading at Securities trading centers, the securities purchase price is the actual securities purchase price (order matching price of agreed price) according to the announcement of the Stock Exchange or Securities trading center.

+ For securities purchased from auctions, the securities purchase price is the price on the announcement of the auction winner made by the organization holding the share auction, and on the payment bill.

+ For securities outside the cases above, the securities purchase price is the transfer price in the transfer contract.

- The transfer cost is the actual expenses on the transfer with valid receipts and invoices.

The transfer cost includes: the expense on the legal procedures necessary for the transfer, the fees and charges payable when implementing the transfer procedures; the expenses on securities depository as prescribed by the State Securities Commission and the receipts of the securities company; the expenses on the securities entrusting based on the receipts of the entrusted unit. the expenses on transaction, negotiation and conclusion of the transfer contract, and other expenses proved in writing.

The income from securities transfer is considered other income and shall be included in the taxable income when calculating enterprise income tax.

## Chapter V

## **INCOME FROM REAL ESTATE TRANSFER**

### **Article 16. Taxable objects**

**1.** Enterprises subject to tax on income from real estate transfer include: enterprises from all economic sectors and business lines earning income from real estate transfer, real estate companies earning income from land lease.

**2.** Income from real estate transfer includes: income from the transfer of the right to use or to rent land (including the transfer of the project attached to the transfer of the right to use, rent land as prescribed by law); income from the lease of land granted by real estate companies as prescribed by law provisions on land, regardless of the existence of the infrastructures or constructions attached to the land; income from the transfer of houses and constructions attached to the land, including the property attached to such houses or constructions if the value of the property is not separated when transferring, whether or not the right to use or to rent land is transferred; the income from the transfer of property attached to land, income from the transfer of the house tenancy or ownership.

Income from the lease of land granted by real estate companies, except for the case such enterprises only lease out the houses, infrastructures, or constructions on the land.

### **Article 17. Basis for tax calculation**

Basis for calculating the tax on income from real estate transfer is the tax-calculation income and the tax rate

The tax-calculation income equals (=) the taxable income minus (-) the loss during the real estate transfer in the previous years (if any).

#### **1. Taxable income.**

The taxable income from real estate transfer is calculated by the revenue from the real estate transfer minus the cost price of the real estate and the deductible expenses on the real estate transfer.

a) Revenue from real estate transfer.

a.1. The revenue from real estate transfer is calculated based on the actual prices of real estate transfer under the real estate sale or transfer contract in accordance with law (including the surcharges, if any).

If the price of transferring the right to use land under the real estate sale or transfer contract is lower than the land price set by People's Committees of central-affiliated cities and provinces (hereinafter referred to as provincial People's Committees) at the contract-signing time, the land price set by provincial People's Committees at the contract-signing time shall apply.



- The time for calculating the tax-calculation revenue is the time when the seller hands over the real estate to the buyer, whether or not the buyer has registered their property ownership, land tenancy at competent State agencies.

- For enterprises being allocated land by, or renting land from, the State to execute projects of investment in infrastructure or houses to transfer or to lease out, that receive deposits from their customers in all forms, the time for calculating the revenue for calculating tentative enterprise income tax is the time of collecting money from their customers. In particular:

+ If the enterprise takes deposits from their customers and can calculate the cost corresponding to the recorded revenue (including the predictive value of the unfinished construction item estimate proportional to the recorded income), the enterprise shall declare and pay tentative enterprise income tax according to the income without cost.

+ If the enterprise takes deposits from their customers and can calculate the cost corresponding to the revenue, the enterprise shall declare and pay enterprise income tax at 1% on the income collected, and such income must not be included in the income for calculating enterprise income tax in the year.

+ The enterprise shall recalculate the enterprise income tax amount payable when handing over the real estate. If the paid tentative enterprise income tax is lower than the enterprise income tax amount payable, the enterprise must pay the tax arrears to the State budget. If the paid tentative enterprise income tax is higher than the enterprise income tax amount payable, the enterprise may deduct the excessive tax amount from the enterprise income tax amount payable of the succeeding period, or get back the excessive tax amount.

a.2. The revenue for calculating taxable income in the following cases is calculated as follows:

- The taxable income of an enterprise that leases out land is the rent paid by the renter by installments according to the lease contract. If the renter pays in advance for many years, the revenue for calculating taxable income shall be distributed to the number of years being paid in advance, or calculated according to the revenue from lump-sum payment. The selection of revenue from lump-sum payment is only determined after the enterprise has fulfilled every financial responsibility with the State, ensuring the duties with the renter until the land lease period expires.

If an enterprise enjoying enterprise income tax incentives selects the method for determining revenue for calculating taxable income being the total rent paid in advance for many years by the renter, the enterprise income tax amount eligible for tax exemption or tax reduction shall be determined based on the total enterprise income tax amount of the years being paid in advance divided by (:) the number of years being paid in advance by the renter.

If before 2012, an enterprise leases out land (paid in advance for many years) and has determined the revenue for tax calculation by distributed to the number of years being

paid in advance, and the land lease period is still unexpired in 2012, such enterprise may determine the revenue for tax calculation distributed annually or the revenue from lump-sum payment for the remaining years in the land lease period.

- When a credit institutions receives the tenancy value put up as collateral for assuring the duty fulfillment, if the land tenancy put up as collateral is transferred, the revenue for calculating taxable income is the transfer price of the land tenancy agreed by the parties.

- When the land tenancy being property distrained for judgment enforcement is transferred, the revenue for calculating taxable income is the transfer price of the land tenancy agreed by the litigants, or determined by the Valuation council.

The revenue determination in the cases in Point a.2 must comply with the principles specified in Point a.1.

## b) Expenses on real estate transfer

### b.1. Principles of expense calculation:

- The expenses deducted for calculating the taxable income from real estate transfer in a tax period must be proportional to the revenue for calculating taxable income.

- If an investment project is completed and transferred in stages, the general expenses on the entire project, the expense of each completed stage distributed by the area (m<sup>2</sup>) of land transferred to calculate the taxable income from the land transferred, including: the expenses on internal traffic; tree area, investment in water supply and drainage; transformer station; compensation for property on land; compensation, support, and resettlement, expenses on the organization of land clearance and compensation approved by competent authorities not being deducted from the land levy and land rent according to the policy on the collection of land levy and land rent payable to the State budget, and other investment in land related to the transfer of the right to use or to rent land.

The distribution of the expenses above is calculated as follows:

$$\begin{array}{l} \text{The expense} \\ \text{distributed to} \\ \text{the land} \\ \text{transferred} \end{array} = \frac{\text{The total cost of infrastructure}}{\text{The total amount of land allocated to the} \\ \text{project (excluding the public land area as} \\ \text{prescribed by law provisions on land)}} \times \begin{array}{l} \text{The amount of} \\ \text{land} \\ \text{transferred} \end{array}$$

If part of the project area not being transferred is used for other business activities, the general expenses above are also distributed to such area for monitoring, accounting, declaring and paying enterprise income tax on other business activities.

In case an enterprise invests in infrastructural construction for many years and only calculate the value of the infrastructure after all the works is done, when calculating the expenses on real estate transfer regarding the land area transferred, the enterprise may

temporarily distribute the expenses on investment in infrastructure arising proportionally to the land area transferred using the formula above, and extract the expenses on infrastructure corresponding to the recorded revenue when calculating taxable income. After completing the construction investment, the enterprise shall calculate and adjust the expenses on infrastructure temporarily distributed and extracted for the area transferred consistently with the total value of infrastructure. If the paid tax is higher than the income tax on real estate transfer payable, the enterprise may deduct the excessive tax amount from the tax amount payable of the succeeding period, or get back the excessive tax amount; if the tax is not completely paid, the enterprise must pay the tax arrears as prescribed.

b.2. The deductible expenses on real estate transfer include:

- The cost price of the land transferred conformable to the land tenancy origin. In particular:
  - + For the land allocated by the State subject to land levy and land rent, the cost price is the land levy or land rent paid to the State budget;
  - + For the land tenancy transferred from other organizations and individuals, the cost price is based on the contract and valid payment receipts when receiving the right to use or to rent land; If the contract or valid payment receipts are not available, the cost price shall be calculated based on the price set by provincial People's Committees at the time of receiving real estate transfer.
  - + For land from capital contribution, the cost price is the value of the right to use or to rent land according to the property valuation record when contributing;
  - + When an enterprise swaps the construction for the State-owned land, the cost price is calculated based on the value of the construction swapped, except otherwise prescribed by competent State agencies.
  - + The cost price is the auction winning price if the right to use or to rent land is put up for auction;
  - + When the land of an enterprise is inherited under civil laws, or given, donated, of which the cost price is not able to be calculated, is shall be determined based on the prices of the kinds of land set by provincial People's Committees based on the Price bracket table of kinds of land made by the Government at the time of inheriting, giving, or donating.
  - + When the land of an enterprise is inherited, given, or donated before 1994, the cost price shall be determined based on the prices of the kinds of land set by provincial People's Committees in 1994 based on the Price bracket table of kinds of land in the Government's Decree No. 87/CP on August 17, 1994.

+ For land put up as collateral, land being distrained property for judgment enforcement, the cost price of land is calculated depending on each specific case as guided above.

- The compensation for damage to land.

- The compensation for damage to crops.

- The compensation, support and resettlement and expenses on the organization of compensation, support and resettlement as prescribed by law.

If the expenses on compensation, support, resettlement, and the expenses on the organization of compensation, support, resettlement stated above have no invoice, then make a List specifying: the names, addresses of the receivers, the compensation and support amount, their signatures. The list must be certified by the local authorities where the land is given compensation and support in accordance with law provisions on compensation, support, and resettlement when the State withdrawing land.

- The fees and charges as prescribed by law provisions related to land tenancy grant.

- The expenses on land renovation and leveling

- The expenses on infrastructural construction such as traffic roads, electricity, water supply and drainage, post and telecommunications...

- The value of infrastructure and constructions on the land.

- Other expenses related to the real estate transferred.

If an enterprise carries on various business lines, the expenses must be separately calculated. If the expenses cannot be separately calculated, the general expense shall be distributed based on the ratio of revenue from real estate transfer to the total revenue of the enterprise.

The expenses paid by the State or other capital sources must not be included in the expenses on real estate transfer.

**2.** The enterprise income tax rate on real estate transfer is 25%.

**3.** Calculating the enterprise income tax amount payable:

The enterprise income tax in the tax period on the real estate transfer equals the tax-calculation income from real estate transfer multiplied by (x) 25%.

The income from real estate transfer must be separately determined to declare and pay tax. The preferential tax rate, the tax exemption or reduction period as prescribed in Chapter VI of this Circular do not apply to the income from real estate transfer.

If the real estate transfer makes a loss, such loss must not be offset against the income from other production and business activities, but shall be transferred to the taxable income from the real estate transfer in the succeeding years (if any). The loss transfer period must not be longer than 5 consecutive years as from the year succeeding the loss-making year.

The tax declaration and payment dossiers, the income tax payment receipts on the income from real estate transfer in the locality where the real estate is transferred are the basis for tax settlement procedures at the locality where the head office is situated.

**4.** When a credit institution receives the real estate value being collateral for assuring the duty fulfillment, the credit institution must declare and pay tax on the income from real estate transfer to the State budget when it is allowed to transfer real estate as prescribed by law. If real estate being collateral is up for auction, the money collected must be paid as prescribed by the Government's provision on collateral of credit institutions, then declare and pay tax as prescribed. After the amount above are paid, the remaining money shall be refunded to the organizations that put up their real estate as collateral.

When a credit institution is allowed to transfer real estate put up as collateral as prescribed by law to recover their capital, if the cost price of the real estate is not determined, it shall equal (=) the loan payable under the real estate collateral contract plus (+) the outstanding loan interest up to the time of real estate collateral liquidation under the credit contract plus (+) the expenses arising during the real estate transfer with valid receipts and invoices.

**5.** If real estate being collateral is up for auction by the judgment enforcement agency, the money collected must comply with the Government's Decree on distraining and putting up land tenancy for auction for judgment enforcement. The organization authorized to hold real estate auctions must declare and deduct the tax on income from real estate transfer paid to the State budget. Specify the tax declaration and payment for the collateral sale for judgment enforcement.

When the judgment enforcement agency transfers the real estate being judgment enforcement property, if its cost price is not determined, the cost price shall equal (=) the debt payable under the Court's judgment plus (+) the expenses arising during the real estate transfer with valid receipts and invoices.

## **Chapter VI**

### **ENTERPRISE INCOME TAX INCENTIVES**

#### **Article 18. Conditions and principles for applying enterprise income tax incentives**

**1.** The conditions for applying enterprise income tax incentives: the enterprise income tax incentives are only applicable to the enterprises following the policies on accounting and invoices as prescribed, and have registered and paid enterprise income tax as declared.

## 2. The principles for applying enterprise income tax incentives

a) While enjoying enterprise income tax incentives, if an enterprise engages in various production and business activities, it must separately calculate the income from the production and business activities eligible for enterprise income tax incentives (including the preferential tax rates, the level of tax exemption and reduction), and the income from business activities ineligible for tax incentives to separately declare and pay tax.

During the tax period, if an enterprise does not separately calculate the income from the production and business activities eligible for tax incentives and the income from production and business activities ineligible for tax incentives, the income from the production and business activities eligible for tax incentive equals (=) the total tax-calculation income (excluding other incomes) multiplied by (x) the ratio (%) of the revenue or deductible expenses of the production and business activities eligible for tax incentives to the total revenue or the total deductible expenses of the enterprise in the tax period.

b) Enterprises newly established from the investment projects eligible for enterprise income tax incentives are enterprises that apply for business registration for the first time, excluding the following cases:

b.1. Enterprises established from the division, separation, merger and consolidation as prescribed by law.

b.2. Enterprises established from the enterprise form conversion, ownership conversion (including the newly-established enterprises that inherit the property, places, business line... of the old enterprises to carry on the production and business activities).

b.3. Newly-established limited liability companies, private enterprises of which the owners are the former owners of the individual business households and the business lines are not changed.

b.4. Private enterprises, partnership companies, limited liability companies, joint-stock company or cooperatives newly established of which the legal representatives are the biggest contributors that have participated in the business activities as legal representatives, partners, or biggest contributors of the enterprises dissolved within less than 12 months ago as from the time of dissolving the old enterprises until the new enterprises are established.

c) Investment projects are the collections of long-term and mid-term capital provision proposals to carry out the investments as prescribed by law provisions on investment.

For enterprises newly established from domestic investment projects of which the capital is under fifteen (15) billion VND and not in the List of conditional investment industries, the investment project dossiers are the enterprise registration certificates.

For enterprises newly established from domestic investment projects of which the capital is from fifteen (15) to under three hundred (300) billion VND and not in the List of conditional investment industries, the investors shall implement the investment registration procedures using the form of the provincial investment management agencies.

**3.** The enterprise income tax incentives for enterprises newly established from investment projects are only applicable to the income from production and business activities that satisfy the conditions for investment incentives specified in the first Certificate of business registration of the enterprises. When an enterprise changes its Certificate of business registration without affecting the fulfillment of the conditions for tax incentives, such enterprise shall continue enjoying the tax incentives for the remaining time. If an enterprise adds more business lines or expand its business scale (such as installing new production lines...), the income from the additional business activities are not eligible for enterprise income tax incentives.

**4.** When an enterprise newly established from an investment project in the locality enjoying investment incentives, it is eligible for enterprise income tax incentives within the investment incentive locality. If its incomes are earned from production and business activities in both the investment incentive locality and a non-incentive locality, it must separately calculate the income earned within the investment incentive locality to enjoy enterprise income tax incentives.

**5.** In the same tax period, if an income is eligible for various preferential enterprise income tax rates, and various tax exemption or reduction periods, the enterprise may select the most beneficial enterprise income tax incentive.

**6.** During the enterprise income tax incentive period, if an enterprise fails to satisfy one of the conditions for tax incentives in a tax-calculation year specified in this Circular, it is not eligible for tax incentives in that tax-calculation year and must pay enterprise income tax at the rate of 25%.

**7.** In case in the same tax period, an enterprise engages in business activities eligible for tax incentives that make losses, business activities ineligible for tax incentives, or earns other incomes from business activities (excluding the incomes from real estate transfer, project transfer (not attached to the transfer of the right to use or to rent land); incomes from the transfer of the right to execute the project, the right to carry out mineral resources exploration, extraction and processing as prescribed by law), the enterprise shall offset them against the taxable income from the profitable activities selected by the enterprise.

If an enterprise is making losses in previous tax period (during the loss transfer period), it must transfer the loss proportionally to the profitable activities. If an enterprise fails to separate the loss of each activities, it shall first transfer the loss to the income from the activities eligible for enterprise income tax incentives, then transfer the remaining loss (if any) to the income from activities ineligible for enterprise income tax incentives

(excluding the incomes from real estate transfer, project transfer (not attached to the transfer of the right to use or to rent land); incomes from the transfer of the right to execute the project, the right to carry out mineral resources exploration, extraction and processing as prescribed by law). After transferring the loss on the above principles, if various business activities still generate profits or make losses (excluding the incomes from real estate transfer, project transfer (not attached to the transfer of the right to use or to rent land); incomes from the transfer of the right to execute the project, the right to carry out mineral resources exploration, extraction and processing as prescribed by law), the enterprise may offset them against the taxable income from the profitable activities. The remaining income after offsetting shall be subject to the enterprise income tax rate based on the tax rate on the profitable activities.

Example 13. In the tax period in 2012, enterprise A has made:

- A loss of 1 billion VND on the production of software eligible for tax incentives.
- A profit of 1 billion VND on the trading of computers ineligible for tax incentives.
- A profit of 2 billion VND on the securities transfer (other incomes from business activities).

In this case, enterprise A may offset the loss on software production against the profit on computer trading or the profit on securities transfer; the remaining income is subject to the enterprise income tax rate on the profitable portion.

In particular: offset the loss of 1 billion VND on software production against the profit of 1 billion VND on computer trading or on securities transfer.

→ The remaining income of the enterprise is 2 billion and subject to the enterprise income tax rate at 25% (2 billion VND x 25%).

Example 14. In the tax period in 2012, enterprise B has made:

- A profit of 2 billion VND on the production of software eligible for tax incentives (this activity is subject to the enterprise income tax rate at 10%).
- A profit of 2 billion VND on the trading of computers ineligible for tax incentives.
- A loss of 1 billion VND on the securities trading (other incomes from business activities).

In the tax period 2011, the enterprise B made a loss of 1 billion VND on the trading of computers, the enterprise B must transfer the loss when calculating the taxable income in 2012 as follows:

- Offsetting profits and losses made in 2012: the enterprise may choose to offset the loss on securities trading against the income from computer trading. The remaining profit on computer trading is: 2 billion VND – 1 billion VND = 1 billion VND.
- Transferring the loss on computer trading in 2011 to offset against the profit on computer trading in 2012: 1 billion VND – 1 billion VND = 0 billion VND
- Declaring, calculating and paying the enterprise income tax on the activities eligible for tax incentives:

2 billion VND x 10% = 200 million VND



→ The enterprise income tax amount payable: 200 million VND

Example 15. In the tax period in 2012, enterprise C has made:

- A profit of 2 billion VND on the production of software eligible for tax incentives (this activity is subject to the enterprise income tax rate at 10%).
- A profit of 2 billion VND on the trading of computers ineligible for tax incentives.
- A loss of 1 billion VND on the securities trading (other incomes from business activities).

In the tax period 2011, the enterprise C made a loss of 2 billion VND but it fails to determine the activity that made such loss. Enterprise C must offset the loss against the income from the preferential activity (software production).

In particular: Offsetting profits and losses made in 2012: the enterprise may choose to offset the loss on securities trading against the income from computer trading. The remaining profit on computer trading is: 2 billion VND – 1 billion VND = 1 billion VND

- Transferring the loss made in 2011 to offset against the profit on software production in 2012: 2 billion VND – 2 billion VND = 0 billion VND

Declaring, calculating and paying the enterprise income tax at the rate of 25% on the business activities ineligible for tax incentives: 1 billion VND x 25% = 250 million VND.

**8.** The enterprise income tax incentives are not applicable to:

- a) Other incomes prescribed in Article 7 of this Circular.
- b) Incomes from the exploration and extraction of petroleum and other rare and valuable natural resources.
- c) Incomes from the business of prized games or gambling as prescribed by law.
- d) Incomes from mineral extraction.
- e) Incomes from the services provision subject to special consumption tax as prescribed by the Law on special consumption tax.

**9.** Enterprises established from the conversion of enterprises form, ownership, division, separation, merger and consolidation are liable for the tax debt and fines related to enterprise income tax of the converted, divided, merged, or consolidated enterprises, and shall inherit the enterprise income tax incentives for the remaining period if the conditions for enterprise income tax incentives are satisfied.

**10.** During the period of enterprise income tax incentives as prescribed, if competent agencies discover that:

- The enterprise income tax eligible for tax incentives is increased compared to that declared by the enterprise (even when the enterprise has not declared to enjoy tax incentives), the enterprise shall enjoy the enterprise income tax incentives applicable to the enterprise income tax amount discovered during the inspection (including the

increased enterprise income tax amount and the enterprise income tax amount eligible for tax incentives declared without determining the preferential tax amount).

- The enterprise income tax eligible for tax incentives is decreased compared to that declared by the enterprise (even when the enterprise has not declared to enjoy tax incentives), the enterprise shall only enjoy the enterprise income tax incentives applicable to the enterprise income tax amount discovered during the inspection.

- Depending on the extent of violations, the competent agency shall impose the penalties for tax law violations as prescribed.

### **Article 19. Preferential tax rates**

**1.** The preferential tax rate of 10% for fifteen (15) years is applicable to:

a) Enterprises newly established from investment projects in localities with extreme socio-economic difficulties in the Annex promulgated together with the Government's Decree No. 124/2008/ND-CP on December 12, 2008.

b) Enterprises newly established from investment projects in economic zones, Hi-tech zones established under the Prime Minister's Decisions.

c) Enterprises newly established from investment projects belonging to the following industries:

- Hi-tech as prescribed by law; scientific research and technology development;

- Investment in water plants, power plants, water supply and drainage system; bridges, roads, railroads; airports, seaports, riverports, train station, and particularly important infrastructure decided by the Prime Minister;

- Software production.

**2.** Enterprises newly established from the investment projects belonging to the industries specified in Point c Clause 1 this Article that are large-scale, hi-tech projects, or new projects that need to attract investment, the period of 10% preferential tax rate may be extended but the total period of 10% tax rate must not exceed 30 years under the Prime Minister's decisions based on the proposals from the Minister of Finance.

**3.** The preferential tax rate of 10% during the entire operation is applicable to:

a) Part of the income from the educational, vocational training, health, cultural, sports and environmental activities (hereinafter referred to as socialization).

The specific list of socialization activities is made by the Prime Minister.

b) Part of the income from the publishing activities as prescribed by the Law on Publishing.

The publishing activities include: publishing, printing and issuing the publications as prescribed by the Law on Publishing.

The publications must comply with Article 4 of the Law on Publishing and Article 2 of the Government's Decree No. 111/2005/ND-CP on August 26, 2005. In case the provisions of the Law on Publishing or the Decree No. 111/2005/ND-CP and the legal documents related to publishing are changed, the new provisions shall apply.

**4.** The preferential tax rate of 20% for ten (10) years is applicable to enterprises newly established from investment projects in localities with socio-economic difficulties specified in the Annex promulgated together with the Government's Decree No. 124/2008/ND-CP on December 12, 2008.

**5.** The preferential tax rate of 20% during the entire operation is applicable to Agricultural services cooperatives, People's credit funds, and Micro financial institutions.

After the expiry of the period of preferential tax rate of 10% as prescribed in Point 1 this Article applicable to the agricultural services cooperatives, People's credit funds, and Micro financial institutions newly established in localities with extreme socio-economic difficulties specified in the Annex promulgated together with the Government's Decree No. 124/2008/ND-CP on December 12, 2008, the tax rate of 20% shall apply.

Micro financial institutions prescribed in this Clause are organizations established and operated under the Law on credit institutions.

**6.** The application period of preferential tax rates specified in this Article starts from the first year in which the enterprise starts to earn income from the activities eligible for tax incentives.

**7.** After the application period of the preferential tax rates specified in Clause 1, Clause 2, Clause 4 this Article expires, the tax rate of 25% shall apply.

## **Article 20. Preferential tax exemption and reduction period**

**1.** 4 years of tax exemption, 50% reduction in the tax amount payable for 9 succeeding years for:

a) Enterprises newly established from investment projects in localities with extreme socio-economic difficulties in the Annex promulgated together with the Government's Decree No. 124/2008/ND-CP on December 12, 2008.

b) Enterprises newly established from investment projects in economic zones, Hi-tech zones established under the Prime Minister's Decisions.

c) Enterprises newly established from investment projects belonging to the following industries:

- Hi-tech as prescribed by law; scientific research and technology development;
- Investment in water plants, power plants, water supply and drainage system; bridges, roads, railroads; airports, seaports, riverports, train station, and particularly important infrastructure decided by the Prime Minister;

For enterprises newly established from the projects of investment in water plants, power plants, water supply and drainage system; bridges, roads, railroads; airports, seaports, riverports, train station, and particularly important infrastructures decided by the Prime Minister, the enterprise must earn incomes and revenues from the operations of such projects to enjoy enterprise income tax incentives. If the enterprise engages in the execution of these constructions, the income from the execution is not eligible for enterprise income tax incentives.

- Software production.

d) Newly-established enterprises engaged in socialization in localities with socio-economic difficulties or extreme socio-economic difficulties in the Annex promulgated together with the Government's Decree No. 124/2008/ND-CP on December 12, 2008.

**2.** 4 years of tax exemption, 50% reduction in the tax amount payable for 5 succeeding years for enterprises newly established engaged in socialization in localities not in the list of localities with socio-economic difficulties or with extreme socio-economic difficulties in the Annex promulgated together with the Government's Decree No. 124/2008/ND-CP on December 12, 2008.

**3.** 2 years of tax exemption, 50% reduction in the tax amount payable for 4 succeeding years for enterprises newly established from investment project localities with socio-economic difficulties in the Annex promulgated together with the Government's Decree No. 124/2008/ND-CP on December 12, 2008.

**4.** The period of tax exemption and reduction specified in this Article starts from the first year in which the enterprise earns taxable income from the investment project enjoying tax incentives. If the enterprise does not earn taxable income in the first 3 years as from the first year in which it earns revenues, the period of tax exemption and reduction starts from the fourth year.

Example 16: In 2009, enterprise A newly established from a software production investment project. If enterprise A earns taxable income from the software production project in 2009, the tax exemption and reduction period shall start from 2009. If enterprise A has earned revenues from 2009 but does not earn any taxable income until 2012, the tax exemption and reduction period shall start from 2012.

**5.** The tax exemption and reduction year must be consistent with the tax period. In the beginning of the tax exemption and reduction period as from the first tax period in which the enterprise starts to earn taxable income (including the losses transferred from the

previous tax period). In case the enterprise earns taxable income in the first tax period but the duration of the production or business is under 12 months, it may register at the tax authorities to commence the tax exemption and reduction period right in that first tax period, or in the succeeding tax period. If the enterprise registers to commence the tax exemption and reduction period in the succeeding tax period, it must calculate and pay the tax amount payable in the first tax period to the State budget as prescribed. The tax exemption and reduction specified in this Clause is not applicable to the tax period guided in Clause 3 Article 3.

#### **Article 21. Other cases of tax reduction**

1. Enterprises engaged in production, construction, and transportation activities are eligible for a reduction in the enterprise income tax amount payable proportional to the actual expenses on female labor guided in Point 2.9.a Clause 2 Article 6 of this Circular if such expenses can be separately calculated.

The non-business units, the offices affiliated to the general companies that do not directly carry out production and business are not eligible for the tax reduction in this Point.

2. Enterprises employing ethnic people are eligible for a reduction in the enterprise income tax amount payable proportional to the actual expenses on ethnic employees guided in Point 2.9.b Clause 2 Article 6 of this Circular if such expenses can be separately calculated.

#### **Article 22. Procedures for enterprise income tax incentives**

The enterprise shall determine the conditions for tax incentives, the preferential tax rate, the tax exemption and reduction period, the amount of loss deducted from the tax-calculation income in order to declare and settle tax with tax authorities.

During the inspection, tax authorities must inspect the conditions for tax incentives, the amount of enterprise income tax eligible for tax exemption and reduction, the amount of loss deducted from the taxable income, that the enterprise can possibly satisfy. If the enterprise is not eligible for the preferential tax rate and the tax exemption and reduction period, tax authorities shall collect the tax arrears and impose penalties for administrative violations of tax as prescribed.

### **Chapter VII**

#### **ORGANIZING THE IMPLEMENTATION**

#### **Article 23. Effects**

1. This Circular takes effect on September 10, 2012 and applies to the enterprise income tax period in 2012 and later.

2. Enterprises enjoying enterprise income tax incentives (including the preferential tax rate and the tax exemption and reduction period) as prescribed in the previous legal documents on enterprise income tax, or under the issued Investment license, or Investment incentive certificate, shall continue enjoying such incentives for the remaining time. If the level of enterprise income tax incentives, including the preferential tax rate and tax exemption and reduction period, is lower than the level of incentives specified in this Circular, the tax incentives in this Circular shall apply to the remaining time starting from the tax period 2009.

The remaining time for enjoying tax incentives starts when the provisions on incentives in the previous legal documents on enterprise income tax, or in the issued Investment license, or Investment incentive certificate, are implemented.

The remaining time for enjoying incentives equals the number of years in which the enterprise may enjoys tax incentives (preferential tax rate, tax exemption and reduction period) as guided in this Circular minus (-) the number of years in which the enterprise had enjoyed tax incentives (preferential tax rate, tax exemption and reduction period) as guided in previous legal documents on enterprise income tax or in the issued Investment license, or Investment incentive certificate after the end of 2008. The determination of the remaining time stated above must ensure that:

- At the end of the tax period 2008, when the period for enjoying tax incentives, under the previous legal documents on enterprise income tax or under the issued Investment license, or Investment incentive certificate, expires, then the tax incentives (the preferential tax rate and the tax exemption and reduction period) shall not apply to the remaining time guided in this Circular.

- At the end of the tax period 2008, an enterprise enjoying tax incentives (preferential tax rate and the tax exemption and reduction period) under the previous legal documents on enterprise income tax or under the issued Investment license, or Investment incentive certificate, shall continues enjoying the years in which it is eligible for enjoying the preferential tax rate and the tax exemption and reduction period for the remaining time as guided in this Circular.

- At the end of the tax period 2008, an enterprise is enjoying preferential tax rates, but the tax exemption period under the previous legal documents on enterprise income tax or under the issued Investment license, or Investment incentive certificate, has just expired, then it shall be no longer eligible for the tax exemption period and only enjoy the years in which the tax is exempted, and the years to which the preferential tax rate apply as guided in this Circular.

- At the end of the tax period 2008, an enterprise enjoying preferential tax rates and the tax reduction period under the previous legal documents on enterprise income tax or under the issued Investment license, or Investment incentive certificate, the number of the remaining years for enjoying tax reduction equals the number of years for enjoying tax reduction as guided in this Circular minus (-) the number of years in which the enterprise

has enjoyed tax reduction until the end of 2008, and the enterprise shall continue enjoying the preferential tax rate for the remaining years as guided in this Circular.

- At the end of the tax period 2008, when the period for enjoying tax exemption and reduction, under the previous legal documents on enterprise income tax or under the issued Investment license, or Investment incentive certificate, expires, then the enterprise is no longer eligible for tax incentives (including the preferential tax rate and the tax exemption and reduction period) as guided in this Circular.

**3.** After the end of the tax period 2008, if an enterprise eligible for tax exemption and reduction period under the previous legal documents on enterprise income tax or under the issued Investment license, or Investment incentive certificate:

a) does not earn revenue, then the tax exemption and reduction period shall start from the first year in which it earns taxable income; if it fails to earn taxable income within the first 3 years as from the first year in which the revenue is earned, the tax exemption and reduction period shall start from the forth year.

a) earns revenue within less than 3 years as from the first revenue is earned, then the tax exemption and reduction period shall start from the first year in which it earns taxable income; if it fails to earn taxable income within the first 3 years as from the first year in which the revenue is earned, the tax exemption and reduction period shall start from the forth year. In particular:

If the first tax period of the enterprise commences in 2007 or later, and the enterprise has earned revenue, then the tax exemption and reduction period shall start from the first year in which the taxable income is earned. If it fails to earn taxable income after 2009, the tax exemption and reduction period shall start from 2010.

c) It has earned revenues for 3 years or more, then the tax exemption and reduction period shall start from the tax-calculation year 2009. In particular:

If the first tax period of the enterprise commences before 2007, and the enterprise has earned revenue without any taxable income and the tax exemption and reduction period has not begun, then the tax exemption and reduction period shall start from the tax period 2009.

**4.** For enterprises engaged in various lines earning income from educational, vocational training, health, cultural, sports, and environmental activities (hereinafter referred to as socialization), if the requirements in the List of forms, scale criteria, and socialization standards prescribed by the Prime Minister are satisfied, the enterprise income tax rate at 10% shall apply during the entire operation to the income from the socialization activities from January 01, 2009.

Enterprises engaged in socialization before January 01, 2009 and satisfy the requirements in the List of forms, scale criteria, and socialization standards prescribed by the Prime

Minister applying the tax rate over 10% on the income from socialization activities are entitled to apply the tax rate at 10% on the income from socialization activities from January 01, 2009.

**5.** For enterprises having been operated from 2009 that have projects of investment in the new production line, expanding the scale, innovating the technology, improving the ecology, enhancing the productivity, the income from such projects are not eligible for enterprise income tax incentives. The investment project before 2009 enjoying enterprise income tax incentives (belonging to expansion investment incentives) shall continue to enjoy such incentives for the remaining time, and the additional income from the expansion investment projects taxed at 28% shall be eligible for the tax rate of 25%.

Enterprises having unfinished production expansion investment projects until December 31, 2008 that finish and come into operation in 2009 shall continue to enjoy the enterprise income tax exemption and reduction period applicable to the additional income from the expansion investment projects under the Circular No. 134/2007/TT-BTC on November 23, 2007 of the Ministry of Finance; the additional income from such projects is taxed at 25%, and eligible for the enterprise income tax exemption and reduction period applicable to the additional income from 2009 when the projects come into operation. Enterprises must notify the tax authorities of their unfinished production expansion projects when submitting the enterprise income tax settlement declaration of the tax period 2008.

For enterprises investing in production expansion projects before December 31, 2008, that are finished and come into operation from 2010, such enterprises are not eligible for enterprise income tax incentives for the additional income from the expansion investment project.

**6.** From January 01, 2009, agricultural services cooperatives earning income from agricultural services, and People's credit funds are eligible for the tax rate of 20%, including ones established before January 01, 2009 that have not enjoyed preferential enterprise income tax rates, or the period for enjoying preferential enterprise income tax rates has expired (except of the agricultural services cooperatives and People's credit funds enjoying the tax rate of 10%).

**7.** The enterprise income tax incentives are not applicable to the income from the mineral extraction of enterprises established and licensed to engage in mineral extraction from January 01, 2009. The mineral extraction enterprises that have operated before January 01, 2009 and are enjoying enterprise income tax incentives as prescribed in the previous legal documents on enterprise income tax, or the issued Investment licenses, or Investment incentives certificates, shall continue to enjoy such incentives for the remaining time.

**8.** Enterprises earning income from publishing activities as prescribed in the Law on Publishing are eligible for the enterprise income tax rate of 10% during their entire operation as from the tax period 2012. The enterprise applying the tax rates higher than 10% on the income from publishing activities as prescribed by the Law on Publishing



shall switch to applying the tax rate of 10% on the income from publishing activities from the tax period 2012.

**9.** This Circular supersedes the Circular No. 130/2008/TT-BTC on December 26, 2008, the Circular No. 177/2009/TT-BTC on September 10, 2009, the Circular No. 40/2010/TT-BTC on March 23, 2010, the Circular No. 18/2011/TT-BTC on February 10, 2011 of the Ministry of Finance.

**10.** The contents guiding the enterprise income tax promulgated by the Ministry of Finance and the Departments at variance with the guidance in this Circular are annulled.

**11.** The tax arrears, tax settlement, tax exemption, tax reduction and the handling of violations of law provisions on enterprise income tax before the tax period 2012 must comply with the corresponding provisions on enterprise income tax promulgated before 2012.

**12.** In case the Socialist Republic of Vietnam is a signatory to International Agreements of which the provisions on enterprise income tax payment are different from the guidance in this Circular, the provisions of such International Agreements shall apply.

**Article 25. Implementation responsibility**

**1.** The tax authorities at all level responsible for disseminating and guiding enterprises to implementation this Circular.

**2.** Enterprises being the subject of application of this Circular must follow its guidance.

The organizations and individuals are recommended to send feedbacks on the difficulties arising during the course of implementation to the Ministry of Finance for consideration and settlement./.

**FOR THE MINISTER  
DEPUTY MINISTER**

**Do Hoang Anh Tuan**