

CIRCULAR ON PERSONAL INCOME TAX

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Hanoi, 30 September 2008

**CIRCULAR
ON
PERSONAL INCOME TAX¹**

**Making detailed provisions for implementation of the
Law on Personal Income Tax and Decree 100-2008-ND-CP
of the Government dated 8 September 2008 on Personal Income Tax**

Pursuant to the *Law on Personal Income Tax* dated 21 November 2007;

Pursuant to the *Law on Tax Management* dated 29 November 2006;

Pursuant to Decree 100-2008-ND-CP of the Government dated 8 September 2008 implementing the *Law on Personal Income Tax* ("*Decree 100*");

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

The Ministry of Finance hereby provides the following guidelines for implementation of the *Law on Personal Income Tax* and Decree 100:

PART A

GENERAL PROVISIONS

Section I

Personal Income Taxpayers

Pursuant to article 2 of the *Law on Personal Income Tax* and article 2 of Decree 100, *personal income taxpayers* comprise both resident individuals and non-resident individuals with taxable income as defined in article 3 of the *Law on Personal Income Tax* and in article 3 of Decree 100. The scope of determination of taxable income of taxpayers shall be as follows:

Taxable income of a resident individual means income arising both within and outside the territory of Vietnam, irrespective of where the income is paid.

Taxable income of a non-resident individual means income arising in Vietnam, irrespective of where the income is paid.

¹ Allens Arthur Robinson footnote: In Official Letter 12697-BTC-VP of the Ministry of Finance dated 24 October 2008 and sent to ministries, the Ministry of Finance advised that the Vietnamese version of this Circular which was originally circulated (and which we translated) contains inadvertent errors, and that a replacement version should be used. We only became aware of that Letter on 17 November. This is a translation of the replacement version.

1. *Resident individual* means a person satisfying one of the following conditions:
 - 1.1 Being present in Vietnam for a period of one hundred and eighty-three (183) days or more within one western calendar year or for twelve (12) consecutive months from the first date on which such individual is in Vietnam, and the date of arrival and the date of departure shall be calculated as one day. Certification of the authority managing entry and exit in passports shall be the basis for determining dates of arrival and dates of departure of individuals coming and leaving Vietnam, and in a case where a person both enters and exits within the same day then such date shall be counted as one day of residence.

An individual who is in Vietnam as stipulated in this clause means the presence of such individual within the territory of Vietnam.

- 1.2 Having a regular residential location in Vietnam in one of the following cases:
 - 1.2.1 Having a residential location for which permanent residence has been registered pursuant to the law on residence:
 - (a) In the case of a Vietnamese citizen, residential location for which permanent residence has been registered means the specific place where such citizen lives and earns his or her living on a regular and stable basis and not only for a term, and for which such citizen has conducted registration pursuant to the *Law on Residence*.
 - (b) In the case of a foreigner, residential location for which permanent residence has been registered means the registered place recorded in the residence card or temporary residence card issued by the authority under the Ministry of Public Security.
 - 1.2.1 Having a leased residence to stay in Vietnam pursuant to the law on residential housing, where the lease contract has a term of ninety (90) days or more within the tax assessment year, and specifically as follows:
 - (a) An individual without a residential location for which permanent residence has been registered, or without either the permanent residence card or temporary residence card referred to above but who has a total number of leased days pursuant to a lease contract of ninety (90) days or more within the tax assessment year shall also be deemed to be a resident taxpayer, including a case where such person leases a number of residences.
 - (b) Leased residences to stay in Vietnam include hotels, boarding houses, rest houses, lodgings, working offices and office headquarters, irrespective of whether the individual concerned leases or the employer leases on behalf of the employee.

2. *Non-resident individual* means a person not satisfying the conditions stipulated in clause 2 above.

3. Taxpayers in a number of specific cases shall be determined as follows:

- 3.1 In respect of individuals having income from business (hereinafter referred to as *business individuals*):
 - 3.1.1 If only one person is named in the business registration, the taxpayer shall be such individual named in the business registration.

- 3.1.2 If a number of people are jointly named in the business registration (*group of business individuals*) and jointly participate in the business, then each member jointly named in the business registration shall be a taxpayer.
- 3.1.3 If a number of people within one family household jointly participate in the business but there is only one person named in the business registration, then such person named in the business registration shall be the taxpayer.
- 3.1.4 If an individual or family household is actually engaged in business but does not have business registration (or a practising licence), then the individual currently carrying out the business activities shall be the taxpayer.
- 3.1.5 In the case of leasing out a house or land surface without business registration, the taxpayer shall be the person in whose name the house is owned or the person named as the land use right holder. If a number of people jointly own the house or land use right, then each individual named in the certificate of ownership of the house or in the land use right certificate shall be a taxpayer.
- 3.2 In respect of individuals having other taxable income:
- 3.2.1 In the case of transfer of jointly owned real property, each co-owner shall be a taxpayer.
- 3.2.2 In the case of transfer of, or transfer of the right to use an object protected pursuant to the *Law on Intellectual Property* or the *Law on Technology Transfer* and the assignor is a co-owner or co-author, then each such individual owner or author shall be a taxpayer where such individual is entitled to income from such transfer.
- 3.2.3 In the case where a co-franchisor grants a franchise in accordance with the *Commercial Law* then each co-franchisor entitled to income from the grant of the franchise shall be a taxpayer.
4. Taxpayers according to the guidelines in clauses 1 and 2 above shall comprise:
- 4.1 Individuals with Vietnamese nationality, including individuals sent overseas on business trips, who work as employees overseas, or who study overseas and who have taxable income.
- 4.2 Individuals not having Vietnamese nationality but who have taxable income, comprising foreigners working in Vietnam; and foreigners without a presence in Vietnam but who have taxable income arising in Vietnam.

Section II

Taxable Income

In accordance with article 3 of the *Law on Personal Income Tax* and article 3 of Decree 100, income subject to personal income tax shall comprise:

1. Business Income

Business income means income derived from manufacturing and business activities in the following sectors:

- 1.1 Income from manufacture and business in goods and services in all sectors and business lines permitted by law such as manufacturing and business in goods; construction; transportation; food and beverage business; and business services including leasing out housing and land surfaces.

- 1.2 Income from independent practice by individuals in sectors and business lines for which licences or practising certificates are issued in accordance with law.
- 1.3 Income from manufacturing and business activities in agriculture, forestry, salt mining, aquaculture and fishing which do not satisfy all the conditions for tax exemption pursuant to clause 6 of Section III of Part A of this Circular.

2. Income being salary

2.1 Income being salary means income receivable by employees from employers in monetary or non-monetary forms, and comprising:

2.1.1 Salary and wages, and items in the nature of salary and wages.

2.1.2 Allowances and subsidies including living allowances receivable by employees, except for the allowances and subsidies stipulated in clause 2.2 below.

2.1.3 Remuneration receivable in all forms such as brokerage commission, payment for participation in a scientific or technological research project; payment for participation in a plan or project; royalties for writing books or newspaper articles or for translating documents; payment for participation in teaching activities; cultural and artistic performances, sports and games; and payment receivable from advertising and other services.

2.1.4. Payments receivable as a result of participation in professional and business associations, on corporate boards of management and inspection committees, on project management boards, on management and corporate councils and other organizations.

2.1.5 Other monetary or non-monetary benefits other than salary to which an employee is entitled and which are paid to or on behalf of an employee by the employer as follows:

- (a) Residential housing rent, and payments for power and water and associated services. If an individual stays in a working office, then taxable income shall be based on rent, or on depreciation expenses and payments for power and water and associated services allocated at a ratio between the area used by the individual over the total area of the working office.
- (b) Premiums for insurance for which the law does not require compulsory purchase by employers for employees.
- (c) Membership fees for individuals such as membership cards of golf clubs, tennis courts and cultural, artistic and sports clubs.
- (d) Other services for individuals in healthcare activities, entertainment, sports and aesthetics.
- (dd) Other benefits which an employer pays for employees consistent with law such as expenses for holidays including public holidays, expenses for use of consultancy services and tax declaration services; expenses for domestic workers such as drivers, cooks and people doing other domestic work pursuant to a contract, but excluding expenses for stationery and telephone, working expenses and uniforms.

2.1.6 Monetary or non-monetary bonuses such as monthly, quarterly, annual or one-off bonuses or thirteenth month Tet bonus (including bonuses in the form of securities) except for the bonuses stipulated in clause 2.3 below. Where employees are entitled to bonuses in the form of share

certificates, market value shall be determined as the amount of the bonus recorded in the books of account of the entity paying the bonus.

All the above-mentioned items of income to be used as the basis for determining taxable income mean income before personal income tax is deducted (before-tax income). If income actually received does not include personal income tax (after-tax income), then it must be converted to before-tax income in accordance with Appendix 1-PL-TNCN issued with this Circular.

2.2 Allowances and subsidies which are deductible from salary when determining taxable income shall comprise:

2.2.1 Allowances for people having contributed to the revolutionary cause in accordance with the law on preferential treatment for such people, including allowances and subsidies for war invalids, ill soldiers and relatives of war martyrs; allowances and subsidies for senior officials who took part in revolutionary activities; and allowances and subsidies for heroes of the armed forces, labour heroes, Heroic Vietnamese Mothers.

2.2.2 National defence and security allowances as stipulated by law.

2.2.3 Allowances as stipulated in the Labour Code, comprising:

- (a) Allowances for toxicity and danger applicable to trades, lines of business or jobs at workplaces involving toxic or dangerous elements.
- (b) Attraction allowances for new economic zones, economic establishments and remote islands with specially difficult living conditions.
- (c) Regional allowances as stipulated by law for people working in remote or unfrequented areas with an unfavourable climate.

2.2.4 Allowances as stipulated in the *Law on Social Insurance* and Labour Code:

- (a) Subsidies for one-off difficulties, subsidies for labour accidents and occupational diseases.
- (b) One-off subsidies on the birth or adoption of a child.
- (c) Subsidies due to reduction in ability to work.
- (d) One-off subsidy on retirement, monthly widow's subsidies.
- (dd) Retrenchment or loss of work subsidies, unemployment subsidies.
- (e) Other subsidies paid by the Social Insurance Fund.

2.2.5 Allowances to resolve social evils in accordance with law.

The types of allowances and subsidies and the amount of their deductibility when determining taxable income from salary as guided above shall be in accordance with written guidelines of competent State authorities and shall apply uniformly to all taxpayers in all economic sectors.

Where written guidelines on the types of allowances and subsidies and the amount of their deductibility apply to the State sector, then other economic sectors and other business units shall calculate their deductible amounts on the basis of such types of allowances and subsidies and the

amount of their deductibility which apply to the State sector. For payments higher than the above-mentioned stipulated amounts of allowances and subsidies, the payment in excess shall be included in taxable income.

2.3 Bonuses which shall be deductible upon calculating taxable income from salary:

2.3.1 Monetary awards attached to titles bestowed by the State such as monetary awards attached to emulative titles and all forms of commendations and rewards as prescribed in the law on rewards and commendations, in particular:

- (a) Monetary awards attached to emulative titles comprising national emulative employees; emulative employees at ministerial or industry level, at central organizations, provinces or cities under central authority; emulative employees at the grassroots level, advanced employees and advanced soldiers.
- (b) Monetary awards attached to forms of commendations and rewards such as all types of medals and decorations.
- (c) Monetary awards attached to State honorary titles comprising title of "Heroic Vietnamese Mother", titles of heroes of the people's armed forces, titles of heroes, titles of People's Teacher, Doctor, Artist and so forth.
- (d) Monetary awards attached to Ho Chi Minh Prizes and State prizes.
- (dd) Monetary awards attached to insignias and badges.
- (e) Monetary awards attached to certificates of merit and commendation letters.

The authority to issue decisions on commendation and the amount of monetary awards attached to the emulative titles and forms of commendations mentioned above must be in compliance with the provisions of the *Law on Rewards and Commendations*.

2.3.2 Monetary awards attached to national and international awards recognized by the State of Vietnam.

2.3.3 Monetary awards for technical improvements, inventions and innovations recognized by competent State authorities.

2.3.4 Monetary awards for detecting and reporting breaches of law to competent State authorities.

3. Income from capital investments

Income from capital investments means income receivable from activities of providing loans to business or manufacturing establishments, or buying shares or contributing capital for business or manufacture in the following forms:

3.1 Interest receivable from loans provided to organizations, enterprises, business households, groups of business individuals or individuals under a loan contract (except for interest receivable from deposits with banks and credit institutions).

3.2 Income and dividends receivable from share capital contribution.

- 3.3 Income receivable from capital contribution to liability limited companies, partnerships, co-operatives, joint ventures, business co-operation contracts and other forms of business as stipulated in the *Law on Enterprises* and the *Law on Co-Operatives*.
- 3.4 Increased portion of the value of the capital contribution share receivable upon dissolution of an enterprise, conversion of operational model, merger or consolidation of an enterprise or upon withdrawal of capital (but not including the original capital returned).
- 3.5 Income receivable from interest on bonds, debentures and other valuable papers issued by domestic organizations (including foreign organizations permitted to establish and operate in Vietnam) but excluding income from interest on bonds issued by the Government of Vietnam.
- 3.6 Income receivable from capital investments in other forms, including investment capital contribution in kind, by reputation, by land use right, or by an invention or discovery.
- 3.7 Income from shares paid in lieu of dividends.

4. Income from capital transfers

Income from capital transfers means the amount of profit receivable from the transfer of capital by individuals in the following cases:

- 4.1 Income from transfer of a capital contribution share in a limited liability company, partnership, shareholding company, business co-operation contract, co-operative or economic organization.
- 4.2 Income from transfer of securities comprising income from transfer of share certificates, bonds, fund certificates and other types of securities stipulated in the *Law on Securities*.
- 4.3 Income from transfer of capital in other forms.

5. Income from real property transfers

Income from real property transfers means income receivable from transfers of real property, comprising:

- 5.1 Income from transfer of a land use right.
- 5.2 Income from transfer of a land use right and assets attached to the land. Assets attached to the land comprise:
 - 5.2.1 A residential house;
 - 5.2.2 Infrastructure, buildings and engineering works attached to the land;
 - 5.2.3 Other assets attached to the land comprising assets being agricultural, forestry and fishery products (such as cultivated crops and reared animals).
- 5.3 Income from transfer of ownership of or use right to a residential house.
- 5.4 Income from transfer of a lease right to land or a water surface.
- 5.5 Other income receivable from a real property transfer.

6. Income being winnings or prizes²

Income being winnings or prizes means income in money or in kind receivable by an individual in the following forms:

- 6.1 Lottery winnings comprising winning lotteries issued by lottery companies.
- 6.2 Winning of all forms of promotional prizes when participating in the sale and purchase of goods or services.
- 6.3 Winnings from all forms of betting permitted by law.
- 6.4 Winnings from all forms of casino permitted by law.
- 6.5 Winnings from games and competitions with prizes and other forms of winnings organized by economic organizations, administrative or professional bodies, mass organizations and other entities³.

7. Income being royalties

Income being royalties means income receivable by an individual upon assignment or transfer of the right to use an intellectual property right object as stipulated in the *Law on Intellectual Property*; and income from technology transfers in accordance with the *Law on Technology Transfer*, in particular:

- 7.1 Intellectual property right objects implemented in accordance with article 3 of the *Law on Intellectual Property* and relevant guidelines, comprising
 - 7.1.1 Copyright objects comprising literary, artistic and scientific works; and copyright related rights objects comprising video recordings, broadcast programs and satellite signals carrying coded programmes.
 - 7.1.2 Industrial property right objects comprising inventions, industrial designs, designs of semi-conducting integrated circuit layouts, trade secrets, marks, trade names and geographical indications.
 - 7.1.3 Objects of rights to plant varieties comprising plant varieties and reproductive materials.
- 7.2 Technology transfer objects implemented in accordance with article 7 of the *Law on Technology Transfer*, comprising
 - 7.2.1 Transfer of technical know-how.
 - 7.2.2 Transfer of technical information about technology in the form of technological plans, technological processes, technical solutions, formulae, technical specifications, drawings, technical maps, computer programs and information files.
 - 7.2.3 Transfer of solutions for optimizing manufacture and renovating technology.

Income from assignment or transfer of intellectual property right objects and the technology transfer objects mentioned above shall also include [income from] re-assignment.

² Allens Arthur Robinson footnote: "Winnings or prizes" are commonly referred to as a "windfall".

³ Allens Arthur Robinson footnote: The literal translation is "other organizations and individuals" but in this context "other entities" is used throughout.

8. Income from franchises

Franchising means a commercial activity whereby a franchisor authorizes and requires a franchisee to conduct on its own behalf the purchase and sale of goods or provision of services in accordance with the conditions of the franchisor.

Income from franchises means income receivable by an individual from the franchise contracts mentioned above, including sub-franchising in accordance with the law on franchising.

9. Income from inheritances

Income from an inheritance means income receivable by an individual under a will or in accordance with the law on inherited assets, in respect of the value of the following types of assets:

- 9.1 An inheritance being securities and comprising share certificates, bonds, debentures, fund certificates and other types of securities stipulated in the *Law on Securities*.
- 9.2 An inheritance being a capital share in an economic organization or business establishment comprising capital contributed to a limited liability company, shareholding company, co-operative, partnership or business co-operation contract; capital in a private enterprise or business establishment of individuals, capital contributed to associations and funds permitted to be established by law or the entire business establishment in the case of a private enterprise or business establishment of an individual.
- 9.3 An inheritance being real property such as a land use right, right to use land with assets attached to it, ownership right of a house or apartment, or right to lease a land or water surface.
- 9.4 An inheritance being other assets for which ownership or use rights must be registered with State administrative authorities such as cars, motorbikes, ships or boats.

10. Income from receipt of a gift

Income from receipt of a gift means income receivable by an individual from domestic or foreign individuals or organizations in respect of the value of the following types of assets:

- 10.1 A gift being securities comprising share certificates, bonds, debentures, fund certificates and other types of securities stipulated in the *Law on Securities*.
- 10.2 A gift being a capital share in an economic organization or business establishment, comprising capital in a limited liability company, shareholding company, co-operative, partnership or business co-operation contract, capital in a private enterprise or business establishment of individuals, capital in associations and funds permitted to be established by law, or the entire business establishment in the case of a private enterprise or business establishment of an individual.
- 10.3 A gift being real property such as a land use right, right to use land with assets attached to it, ownership right of a house or apartment, or right to lease a land or water surface.
- 10.4 A gift being other assets for which ownership or use rights must be registered with State administrative authorities such as cars, motorbikes, ships and boats.

Section III

Tax Exempt Income

Pursuant to article 4 of the *Law on Personal Income Tax* and article 4 of Decree 100, tax exempt income and application files serving as the basis for determining tax exempt income shall be regulated as follows:

1. Income from real property transfers as between husband and wife; as between parents and children including adoptive parents and adopted children; as between parents-in-law and children-in-law; as between grandparents and grandchildren; and as between siblings

Application files for determining income which is tax exempt shall comprise:

1.1 In respect of real property transfers as between husband and wife, a photocopy of the household registration or a photocopy of the marriage certificate or of the decision of the court on the divorce or remarriage (in a case where a house was divided due to divorce, or ownership was consolidated due to remarriage).

1.2 In respect of real property transfers as between parents and children, either a photocopy of the household registration (if it is a joint registration) or a photocopy of the birth certificate.

In the case of an illegitimate child, a photocopy of the decision on recognition of the parent and child relationship from a competent authority.

1.3 In respect of real property transfers as between adoptive parents and adopted children, either a photocopy of the household registration (if it is a joint registration) or a photocopy of the decision on recognition of the adoption of the child from a competent authority.

1.4 In respect of real property transfers between paternal grandparents and grandchildren, photocopies of the birth certificate of the grandchild and the birth certificate of the father, or a photocopy of the household registration which shows the relationship between the grandparents and the grandchild.

1.5 In respect of real property transfers between maternal grandparents and grandchildren, photocopies of the birth certificate of the grandchild and the birth certificate of the mother, or a photocopy of the household registration which shows the relationship between the grandparents and the grandchild.

1.6 In respect of real property transfers between siblings, a photocopy of the household registration or of the birth certificates of the transferor and the transferee which shows the relationship of having the same parents, father or mother or other documents evidencing the blood relationship.

1.7 In respect of real property transfers between parents-in-law and children-in-law, either a photocopy of the household registration specifying the relationship between the parents-in-law and children-in-law; or a photocopy of the marriage certificate and the birth certificate of the spouse to serve as the basis to determine the relationship between the transferors being parents-in-law and the son-in-law or daughter-in-law.

In the case of a real property transfer which belongs to one of the tax exempt categories above but the transferor does not have a birth certificate or household registration, then there must be certification from the commune people's committee of the relationship between the transferor and the transferee as the basis for determining tax exempt income.

2. Income from transfer of a residential house or right to use residential land and the assets attached to the land by an individual who has only one sole residential house [and/or] residential land use right in Vietnam

- 2.1 An individual having only one sole residential house [and/or] residential land means the transferring individual owns only one sole house or the right to use one sole block of land in Vietnam, whether or not a house has been built on such block of land.
- 2.2 In the case of transfer of a residential house the ownership of which or residential land the use right of which is shared, only the individual who does not yet have ownership of a residential house or the right to use residential land in another location shall be tax exempt. An individual sharing ownership of the house or land use right who also owns another house or who also has the right to use other residential land shall not be tax exempt.
- 2.3 Where a wife and husband are both named in a certificate of ownership of a residential house or of the right to use residential land which is the only shared [residential house or land] of both of them, but one of them has another residential house or residential land of his or her own, then only the spouse without his or her own house or residential land shall be tax exempt. The spouse with another residential house or residential land of his or her own, shall not be tax exempt.
- 2.4 Where an individual has or shares ownership of a sole house or right to use sole land and transfers part of [such house or land], such individual shall not be tax exempt in respect of the transferred part.
- 2.5 The basis for determining whether income from transfer of a sole residential house or residential land use right is tax exempt shall be the declaration made by the transferor, for which declaration such transferor shall be liable. If it is discovered that any declaration is incorrect, then the offender must pay tax arrears and shall be fined for tax fraud in accordance with the *Law on Tax Management*.

3. Income from the value of a land use right of an individual to whom the State allocated such land without payment of, or with reduced land use fees in accordance with law

- 3.1 Where an individual allocated with land without payment of, or with reduced land use fees, transfers the area of land the [fee for the] use right of which is exempted or reduced, the cost price of the transferred land shall be determined according to the prices stipulated by the provincial people's committee at the time the land was allocated.
- 3.2 The file serving as the basis for determining tax exemption shall comprise a photocopy of the land allocation decision of the competent authority specifying the amount of land use fee reduced or exempted.

4. Income being receipt of an inheritance or gift of real property as between husband and wife; as between parents and children including adoptive parents and adopted children; as between parents-in-law and children-in-law; as between grandparents and grandchildren; and as between siblings

The file serving as the basis for determining tax exemption shall be the same as that for real property transfers stipulated in clause 1 of section III of Part A of this Circular.

5. Income from conversion of agricultural land by a family household or individual to whom the State allocated such land for production

- 5.1 Income from conversion of agricultural land shall be tax exempt when a family household or individual directly engaged in agricultural production converts such land in order to rationalize production.
- 5.2 The file for tax exemption shall comprise the agreement on conversion between the parties as certified by the competent authority.

Copies of documents in the cases of transfer of real property referred to in clauses 1 to 5 inclusive of Section III above must be notarized or authenticated by the commune people's committee, otherwise the transferor must present the original of the document to the tax office for verification purposes.

In the cases stipulated in clauses 1 to 5 inclusive of Section III above, the transferor must conduct procedures for tax exemption in accordance with clause 2.5 of Section II of Part B of this Circular.

6. Income of a family household or individual directly engaged in agricultural production, forestry, salt mining, raising animals, cultivating crops, fishing or aquaculture where the produce has not yet been processed into other products or has only been preliminarily processed

The following conditions must be satisfied for income to be tax exempt in the case of family households and individuals directly engaged in agricultural production, forestry, salt mining, raising animals, cultivating crops, fishing or aquaculture where the produce has not yet been processed into other products or has only been preliminarily processed:

- 6.1 They have a legal use or lease right of the land or water surface for production and they directly participate as workers in the agricultural production, forestry, salt mining, raising animals, cultivating crops, fishing or aquaculture.

If they sub-lease the land or water service from another entity, then there must be a written lease of the land or water service as required by law.

Family households and individuals engaged in fishing or aquaculture must own or have the right to use a boat or fishing facility and must directly participate in the fishing or aquaculture.

- 6.2 They must in fact reside in the locality where such agricultural production, forestry, salt mining, raising animals, cultivating crops, fishing or aquaculture takes place.

The above locality means the district, township or provincial township (all referred to as the *district administrative unit*) or the district bordering on the place where such production takes place.

In the case of fishing or agriculture, the taxpayer concerned need not reside in the locality.

- 6.3 The expression "products of agriculture, forestry, salt mining, raising animals, cultivating crops, fishing or aquaculture" means

- 6.3.1 In the case of cultivated products, products which have only been sun-dried, dried, cleaned, preserved fresh by using chemicals, unshelled, classified and packed.

- 6.3.2 In the case of products of husbandry or aquaculture, products which have only been sun-dried, dried, cleaned, frozen or salted, classified and packed.

7. Income being interest on money deposited at a bank or credit institution, and income being interest from life insurance policies

7.1 Interest on money deposited which is tax exempt pursuant to these provisions only means interest which is receivable by an individual from depositing his or her money at a bank or credit institution; interest paid on deposits with an organization which is not a credit institution established and operating in accordance with the *Law on Credit Institutions* shall not be tax exempt.

7.2 Interest from life insurance policies means interest receivable by an individual pursuant to an insurance policy issued by an insurer.

7.3 The basis for determining tax exempt income in the above-mentioned cases shall be:

7.3.1 In a case of interest on money deposited, the savings deposit book or card of the individual.

7.3.2 In the case of interest from life insurance policies, the payment vouchers for interest on the life insurance contract.

8. Income being foreign currency remitted by overseas Vietnamese

8.1 Tax exempt income being foreign currency remitted by overseas Vietnamese means money receivable by an individual from a Vietnamese relation who either resides, works or studies overseas and remits money to such individual in Vietnam.

8.2 The basis for determining that income is foreign currency remitted by overseas Vietnamese shall be the source documents proving receipt of the money from overseas and the payment vouchers from the organization (if any) paying such income.

9. Income being that part of night shift or overtime salary payable which is higher than the day shift or normal working hours salary stipulated by the Labour Code

9.1 The higher portion of income for nightshift or overtime work shall be based on the actual salary paid for such nightshift or overtime less the amount of salary payable for a normal working day.

For example, an individual receives 20,000 dong per hour as the normal working day rate pursuant to the Labour Code.

- If the individual works overtime on a normal day and is paid 30,000 dong per hour, then the tax exempt income shall be:

30,000 dong per hour - 20,000 dong per hour = 10,000 dong per hour.

- If the individual works overtime on a holiday or public holiday and receives 40,000 dong per hour, then the tax exempt income shall be:

40,000 dong per hour - 20,000 dong per hour = 20,000 dong per hour.

9.2 Employers must prepare a list specifying hours worked for nightshift and overtime and also listing the additional salary paid for such hours to employees, and this list must be sent to the tax office together with the tax finalization declaration.

10. Income being pensions paid by the Social Insurance Fund pursuant to the *Law on Social Insurance*

Employees who participated in the retirement regime of social insurance and who receive income being pensions paid by the Vietnam social insurance, shall be tax exempt [in respect of such income].

Individuals living in Vietnam shall be exempt from tax on pensions paid by foreign organizations established in accordance with the law on social insurance of such foreign country.

11. Income being scholarships, comprising

11.1 A scholarship received from the State Budget including scholarships from the Ministry or Department of Education and Training, from public schools or from other State Budget funded sources.

11.2 A scholarship received from a domestic or foreign organization pursuant to its program to assist and promote study.

11.3 Organizations providing scholarships to individuals must retain their decisions issuing the scholarships and vouchers paying the scholarship fees.

Any individual receiving a scholarship directly from an overseas organization must retain the documents proving receipt of such scholarship from the overseas body.

12. Income being compensation payments from life and non-life insurance contracts, compensation for labour accidents, State compensation payments and other compensation payments payable pursuant to law shall be tax exempt income

12.1 *Income being compensation payments from life and non-life insurance contracts* means money receivable by an individual and which the life or non-life insurer pays to the insured pursuant to a signed insurance contract.

The basis for determining that income is life or non-life insurance indemnity or compensation shall be the official document or decision on such indemnity or compensation by the insurer or a court, together with the relevant payment vouchers.

12.2 *Income being compensation for labour accidents* means money receivable by an employee from his or her employer or from the social insurance fund as a result of an accident occurring during employment.

The basis for determining that income is compensation for a labour accident shall be the official document or decision on such compensation by the employer or a court, together with the relevant payment vouchers.

12.3 Income being State compensation payments and other compensation payments which are payable pursuant to law.

12.3.1 *Income being State compensation payments* means money receivable by an individual [as compensation] due to an incorrect decision imposing a penalty for an administrative breach by an authorized person or competent State body which caused harm to the interests of such individual; or income payable pursuant to a decision of a criminal proceedings body and being compensation for a wrongful conviction.

12.3.2 The basis for determining that income is a State compensation payment shall be the decision of the competent State body compulsory requiring the body or individual who made the wrongful decision to pay compensation, together with the relevant payment vouchers.

13. Income receivable from charitable funds which the State authorities permit to be established or which they recognize, and which are for charitable, humanitarian, or study encouragement purposes and not for profit-making purposes

Charitable funds means funds established and operating pursuant to Decree 148-2007-ND-CP of the Government dated 25 September 2007 on organization and operation of social and charitable funds.

The basis for determining that income is income receivable from a charitable fund and therefore tax exempt shall be the official document or decision allocating such income by the fund, together with the relevant payment vouchers in money or kind.

14. Income receivable from foreign aid sources for charitable or humanitarian purposes in both Government and non-Government forms and approved by State authorities

The basis for determining that income is income receivable from a foreign aid source and therefore tax exempt shall be the document from the competent State body approving receipt of the aid funds.

Section IV

Reduction of Tax

Taxpayers who meet difficulties due to a natural disaster, fire, accident, illness or disease which affects their ability to pay tax shall, pursuant to article 5 of Decree 100, be considered for a reduction of tax corresponding to the amount of their loss, but the reduction shall not exceed the amount of tax payable.

1. Determination of amount of tax to be reduced

1.1 A consideration of a reduction of tax shall be implemented within the western calendar year, and any taxpayer meeting difficulties within any one year due to the above-mentioned factors shall be considered for a reduction of tax payable for that same year.

1.2 The amount of tax payable as the basis for a consideration of reduction of tax, shall be the total amount of personal income tax which the taxpayer must pay in the tax assessment year, comprising:

1.2.1 Personal income tax already paid or already deducted on items of assessable income in accordance with the flat rate⁴ stipulated in article 23 of the *Law on Personal Income Tax*.

1.2.2 Personal income tax payable on income from business and on income being salary.

1.3 The basis for determining the amount of loss for which tax should be reduced shall be the total actual costs of overcoming the loss or remedying the damage, less any compensation receivable from an insurer (if any) or from the entity (if any) which caused the accident.

⁴ Allens Arthur Robinson footnote: The literal translation is "in accordance with the scale of entire tariff" and is applicable to "irregular: income, as opposed to the scale of progressive tax tariff which applies to "regular" income such as salary.

1.4 The reducible amount shall be determined as follows:

1.4.1 If the amount of tax payable in the tax assessment year is greater than the amount of loss or damage, then the amount reducible shall be equal to the amount of the loss.

1.4.2 If the amount of tax payable in the tax assessment year is less than the amount of loss or damage, then the amount of tax reducible shall equal the amount of tax payable.

2. Files and procedures for consideration of tax reduction

2.1 Applicable to a taxpayer who meets difficulties due to a natural disaster or fire

This taxpayer must send the tax office directly managing him or her, an application file for tax reduction comprising the following:

- Written request for tax reduction on Form 18-MGT-TNCN issued with this Circular.
- Minutes from the authorized body determining the amount of loss or damage to assets, or a document certifying loss and damage from the commune people's committee in the locality where the natural disaster or fire took place.
- Payment vouchers from the indemnifying insurer (if any) or agreement on compensation with the entity (if any) which caused the fire.
- Payment vouchers directly related to remedying the effects of the natural disaster or fire.
- Personal income tax finalization declaration (if the taxpayer is required to conduct tax finalization).

2.2 Applicable to a taxpayer who meets difficulties due to his or her involvement in an accident

This taxpayer must send the tax office directly managing him or her, an application file for tax reduction comprising the following:

- Written request for tax reduction on Form 18-MGT-TNCN issued with this Circular.
- Minutes or a document from the police office certifying that an accident occurred, or minutes or a document from the medical authority certifying the level of injury caused by the accident.
- Payment vouchers from the indemnifying insurer (if any) or agreement on compensation with the entity (if any) which caused the accident.
- Payment vouchers directly related to remedying the effects of the accident.
- Personal income tax finalization declaration (if the taxpayer is required to conduct tax finalization).

2.3 Applicable to a taxpayer who meets difficulties due to an illness or disease

2.3.1 A taxpayer who has been ill or has suffered from a disease means that if such person had not been treated pursuant to the advice of a medical office or doctor, such lack of treatment would have posed a direct danger to his or her life.

2.3.2 This taxpayer must send the tax office directly managing him or her, an application file for tax reduction comprising the following:

- Written request for tax reduction on Form 18-MGT-TNCN issued with this Circular.
- Copy clinical records or medical consultation file.
- Payment vouchers for medical fees from the medical authority, or chemist bills accompanied by medical prescriptions.
- Personal income tax finalization declaration (if the taxpayer is required to conduct tax finalization).

3. Authority to issue a decision reducing tax

The head of the tax office directly managing the taxpayer shall be the person authorized to issue a decision reducing tax.

Section V

Conversion of Taxable Income into Vietnamese Dong

1. Taxable income must be calculated in Vietnamese dong. If taxable income is receivable in foreign currency, then it must be converted into Vietnamese dong at the average trading exchange rate on the inter-bank foreign currency market as at the date when the income arose.

Any type of foreign currency which does not have an exchange rate with Vietnamese dong must first be converted into a type of foreign currency with such an exchange rate.

2. Taxable income receivable other than in money must be converted into Vietnamese dong at the market price of such products or services, or of products and services of the same or similar type as at the time the income arose.

Section VI

Tax Assessment Period

1. Applicable to taxpayers being resident individuals

1.1 An annual tax assessment period shall apply to business income and income being salary.

The tax assessment year shall be the western calendar year in the case of an individual present in Vietnam from 183 days or more within one western calendar year.

If an individual is present in Vietnam for less than 183 days within any one western calendar year, but there are 183 days or more within a consecutive 12 month period from the first date on which such individual was in Vietnam, then the first tax assessment year shall be such 12 consecutive months from the first day when the individual was in Vietnam, and as from the second year the tax assessment year shall be the western calendar year.

For example, Mr. X who has Japanese nationality arrived in Vietnam on 15 May 2009. In year 2009, Mr. X was in Vietnam for a total of 140 days and in year 2010, calculated up until 14 May 2010, he was in Vietnam for more than 43 days. The first tax assessment year of Mr. X shall be from 15 May 2009 up until the end of 14 May 2010; and the second tax assessment year shall be from 1 January 2010 until the end of 31 December 2010.

- 1.2 The tax assessment period shall be [i.e. tax shall be assessed on] each occasion when income arises in the case of income from capital investments, income from capital assignments, income from transfers of real property, income being winnings or prizes, income being royalties, income from franchises, and income being receipt of an inheritance or gift.
- 1.3 The tax assessment period shall be each occasion of transfer or according to the year in the case of income from the transfer of securities, and an individual must register at the beginning of the year with the tax office in order to apply the [latter] annual tax assessment period.

2. Applicable to taxpayers being non-resident individuals

The tax assessment period shall be each occasion when income arises in the case of all items of taxable income of non-resident individuals.

In the case of a non-resident individual who has a fixed business location such as a store or counter, the same tax assessment period shall apply as applies to a resident individual with income from business.

PART B

BASIS OF TAX ASSESSMENT APPLICABLE TO RESIDENT INDIVIDUALS

Section I

Basis for Assessing Tax on Business Income and on Income being Salary

The two bases of assessing tax on business income and income being salary shall be taxable income and the tax rate.

Assessable income shall be taxable income less the following items:

- Insurance premiums for compulsory social insurance and medical insurance, and for professional indemnity insurance for those sectors and business lines for which such insurance is compulsory, and premiums for other insurance which is compulsory pursuant to law.
- Deductions for family circumstances.
- Deductions for contributions to charitable, humanitarian or study promotional funds [*"charitable funds"*].

Taxable income in the case of an individual who has both taxable business income and taxable income from salary shall be the total taxable business income plus taxable income from salary.

1. Taxable business income

Taxable business income shall be determined as equal to turnover less reasonable expenses directly related to creation of such taxable income within the tax assessment period.

An individual who has both business income and income from capital investments, from capital transfers, from real property transfers (except where the real property was fixed assets used for business purposes), then these income items shall not be included in business income but personal income tax shall be paid on each such item in accordance with the guidelines in this Circular.

Taxable business income in a number of specific cases shall be regulated as follows:

- 1.1 In the case of business individuals who do not implement the accounting regime on invoices and vouchers and pay tax on the basis of a fixed level of turnover, taxable income for personal income tax purposes shall be determined in accordance with the following formula:

$$\begin{array}{l} \text{Taxable income in} \\ \text{the tax assessment} \\ \text{period} \end{array} = \begin{array}{l} \text{Fixed level of turnover} \\ \text{within the tax} \\ \text{assessment period} \end{array} \times \begin{array}{l} \text{Fixed taxable} \\ \text{income ratio} \end{array}$$

Fixed level of turnover shall be based on the declaration of the business individual, the results of investigation by the tax office, and the opinion of the commune or ward level tax consultancy council.

- 1.2 In the case of a business individual who is only able to account for turnover from the sale of goods and services but not for expenses which are therefore indeterminable, taxable income for personal income tax purposes shall be determined in accordance with the following formula:

$$\begin{array}{l} \text{Taxable income} \\ \text{within the tax} \\ \text{assessment period} \end{array} = \begin{array}{l} \text{Turnover in order to} \\ \text{calculate taxable income} \\ \text{within the tax assessment} \\ \text{period} \end{array} \times \begin{array}{l} \text{Fixed taxable} \\ \text{income ratio} \end{array}$$

Turnover for the purposes of calculating taxable income shall be determined in accordance with the accounting books and appropriate invoices and vouchers corresponding to [the same as] turnover for the purposes of calculating value added tax.

The General Department of Taxation shall provide specific regulations on the ratio of fixed taxable income over turnover applicable to business individuals not conducting cost accounting or accounting for expenses.

- 1.3 In the case of a business individual who fully implements the accounting regime on invoices and vouchers, taxable income shall be determined in accordance with the following formula:

$$\begin{array}{l} \text{Taxable income} \\ \text{within the tax} \\ \text{assessment period} \end{array} = \begin{array}{l} \text{Turnover for the} \\ \text{purposes of calculating} \\ \text{taxable income within} \\ \text{the tax assessment} \\ \text{period} \end{array} - \begin{array}{l} \text{Reasonable expenses} \\ \text{related to creation of} \\ \text{the income within the} \\ \text{tax assessment period} \end{array} + \begin{array}{l} \text{Other taxable} \\ \text{income within} \\ \text{the tax} \\ \text{assessment} \\ \text{period} \end{array}$$

In which:

- Turnover and expenses shall be determined on the basis of the accounting books, invoices and vouchers. Turnover as the basis for determining taxable income must be consistent with

[the same as] turnover for calculating value added tax if the business individual is a value added taxpayer.

- Other business income means other income arising during the business process such as fines [received] for contractual breaches; fines [received] for late payment; bank interest [paid] during the payment process, interest [paid] as a result of late payment or payment by instalments, interest arising from the sale of fixed assets; and proceeds from the sale of scrap or sub-standard products.

1.3.1 Turnover for assessing taxable income

Turnover for assessing taxable business income means the entire monetary receipts from the sale of goods, from processing fees, from commissions and from providing services and arising within the tax assessment period, and shall include any subsidies or additional fees to which the business individual is entitled irrespective of whether or not money has actually been received.

(a) The time for fixing turnover for assessing taxable income shall be

- In respect of goods, the time when ownership of the goods was transferred or the time when the goods' sale invoice was formulated.
- In the case of services, the time when provision of the services was completed or the time when the invoice for provision of the services was formulated.

If the goods' invoice was formulated before ownership of the goods was transferred (or before provision of the services was completed), then the time for fixing turnover shall be the time of formulation of such invoice.

(b) Turnover for assessing taxable income in a number of specific cases

- Turnover on goods sold on instalments shall be the selling price of the goods as for a one-off payment [lump sum price], excluding interest on late payments.
- Turnover on goods sold on deferred payment shall be the selling price of the goods as for a one-off payment [lump sum price], excluding interest on deferred payments.

If payment is made pursuant to a contract for purchase and sale by the method of payment on instalments or by deferred payment over a number of tax assessment periods, then turnover shall be the amount of money payable by the purchaser within the tax assessment period excluding interest on late payment or deferred payment for the term stipulated in the contract.

When fixing taxable income on goods sold on instalments or by deferred payment, the expenses must be consistent with the turnover.

- In respect of goods or services which a business individual produces to use as exchange, as a gift, or to outfit employees or to reward employees, then the turnover shall be fixed as the market price of the same or similar goods or services at the time such exchange, donation, outfitting or reward was made.
- In respect of goods and services which a business individual produces for his or her own use during the manufacturing or business process of such individual, turnover shall be the costs of producing such product, goods or services.

- In respect of goods processing, turnover shall be the total fees receivable from such processing including charges for labour, fuel, power, subsidiary materials and other expenses of processing.
- In respect of accepting to act as agent or consignee to sell goods at the correct price stipulated by the principal or consignor for which commission is received, then turnover shall be the commission receivable pursuant to the agency or consignment contract.
- In respect of activities being leasing out assets, turnover shall be the amount paid by the lessee for each term specified in the lease contract.

If the lessee pays rent in advance for a number of years, then turnover for the purposes of assessing taxable income shall be allocated to the number of years for which rent was paid in advance or shall be fixed as turnover on a lump sum payment.

If the lessee pays rent in advance for a number of years but bears all the expenses arising during use of the assets, then turnover for the purposes of assessing taxable income shall be allocated over the number of years for which rent was paid in advance but a calculation must be made of the amount of tax payable for each year and payable for the entire period for which advance payment was accepted.

- In respect of construction and installation, turnover shall be the value of the works or items of work or the value of the entire project works which were tested, accepted and handed over. In the case of construction and installation in which the supply of raw materials, machinery and equipment is not included in the contract, then turnover for assessing tax shall be the total monies receivable from the construction and installation but excluding the price of such raw materials, machinery and equipment.
- In respect of transportation, turnover shall be the total monies receivable from transportation of passengers, luggage and cargo.

1.3.2 Deduction of reasonable expenses when assessing taxable income

Reasonable expenses which may be deducted means expenses actually arising and directly related to creation of the turnover and taxable income in the tax assessment period, and which have adequate invoices and vouchers as required by law.

Deductible reasonable expenses shall comprise:

- (a) Expenses being salaries and wages, allowances and subsidies, remuneration and other expenses paid to employees pursuant to labour contracts or pursuant to collective labour agreements as stipulated in the Labour Code.

Expenses being salaries and wages shall not include salaries and wages of an individual who is the head of a business household or is a member whose name is included in the business registration of a business group.

Money for uniforms paid to employees shall not exceed one million dong per year.

- (b) Cost of raw materials, supplies, fuel, power and goods actually used in manufacture and business in goods and services and related to creation of turnover and taxable income in any one period shall be calculated in accordance with reasonable levels of wear and tear and

actual ex-warehouse prices fixed by the business individual or business household itself, and for which such individual or household shall be liable.

In no case shall the value of the loss of supplies, assets, capital monies or goods be included in reasonable expenses unless such loss was due to a natural disaster, fire, epidemic or other event of force majeure for which compensation is not receivable.

If supplies and goods are used both for private consumption and for business purposes, only that part of the expenses representing the business use may be included.

(c) Depreciation of, and costs for maintaining and servicing fixed assets used in manufacture and business in goods and services

- Depreciation of fixed assets may only be included in reasonable expenses if the following conditions are satisfied:
- + The fixed assets are used in manufacturing and business.
- + There must be adequate invoices, vouchers and legal papers proving that the fixed assets are owned by the business individual.
- + The fixed assets must be managed, monitored and accounted for in the accounting books of the business individual in accordance with current regulations.
- The amount or level of depreciation of fixed assets to be included in reasonable expenses shall be as stipulated in the regulations on management, use and depreciation of fixed assets.
- Depreciation shall not be allowable if depreciation of the fixed assets in question has been conducted to their full value but the assets continue to be used in manufacturing and business.

If fixed assets are used both for business and other purposes, then the allowable expenses for their depreciation shall depend on the level of their use for business purposes and the level of their use for general purposes.

(d) Expenses being payment of interest on loans borrowed for manufacture and business directly related to creation of turnover and taxable income

Interest shall be the actual interest rate pursuant to the loan contract with the bank or credit institution. If the loan was obtained from an entity other than a bank or credit institution, then expenses being payment of interest on such loan shall also be based on the loan contract, but the maximum interest rate may not exceed 1.5 times the basic interest rate announced by the State Bank at the time of the loan.

These expenses being payment of interest on loans shall not include payment of interest on loans in order to contribute capital to establish the business premises of a business individual.

(dd) Management expenses

- Costs of electricity, water, telephone, purchase of stationery, hiring auditors and legal consultants, hiring design, purchasing asset insurance, and expenses for other technical services and external purchases.

- Expenses incurred in order not to have fixed assets such as costs for purchasing and using technical data, inventions, technology transfer licences or trade marks shall be allocated gradually to management expenses.
 - Expenses being rent paid to lease fixed assets to operate pursuant to the lease. If rent is paid in a lump sum for a number of years, then such rent shall be allocated gradually to expenses of manufacturing and business, depending on the number of years of use of such fixed assets.
 - Expenses for external purchase services and for hiring other people to directly service manufacturing and business activities in goods and services, where the taxpayer has invoices and vouchers required by law.
 - Expenses related to the sale of goods and services comprising costs of preservation, packing, transporting, loading and unloading, hiring warehouses, and warranting products and goods.
- (e) Taxes, fees and charges and land rent which are mandatory by law and which relate to the manufacturing, business or service activities, comprising
- Fees for licences, import and export duties, special sales tax, royalties tax, agricultural land use fees, fees for leasing housing and land, and land rent fees.
 - Value added tax which the law permits to be included in expenses.
 - Fees and charges which the business establishment actually pays to the State Budget in accordance with the law on fees and charges.
- (g) Allowances for employees' business trips (excluding travelling and residential allowances) at a maximum of twice the amount permitted pursuant to guidelines of the Ministry of Finance applicable to State officials and employees.
- (h) Other expenses directly related to creation of turnover and taxable income, and which have adequate invoices and vouchers as required by law.

2. Taxable income being salary

2.1 Taxable income being salary shall be fixed as the total amount of salary, remuneration and other income in the nature of salary receivable by the taxpayer in the tax assessment period as guided in clause 2 of Section II of Part A of this Circular.

2.2 Time for determining taxable income

The time for determining taxable income being salary shall be the time when the employer pays such salary to the employee.

3. Determining deductions

3.1 Deductions for family circumstances

Pursuant to article 19 of the *Law on Personal Income Tax* and article 12 of Decree 100, deductions for family circumstances may be made as follows:

3.1.1 *Deduction for family circumstances* means the amount deductible from taxable income prior to assessing tax payable on business income and income from salary of a resident individual.

If a resident individual has both business income and income from salary, then this deduction shall be made once from the aggregate total of both types of income.

3.1.2 Level of deduction

- (a) The level of deduction applicable to a taxpayer shall be four million (4,000,000) dong per month and forty eight million (48,000,000) dong per year. The level of 4 million dong per month is an average for the whole year, even if there are some months in the year without income or some months in which income is below 4 million dollars for the month.
- (b) The level of deduction for each dependant whom a taxpayer is responsible to rear or care for, shall be one point six million (1,600,000) dong per month as from the month when such responsibility arises.

3.1.3 Principles for assessing deductibility for a dependant

- A taxpayer may only claim this deduction if he or she has registered to pay tax and has been issued with a tax code number. [However] for year 2009, if a taxpayer has not yet registered for tax then this deduction may provisionally be made if the taxpayer conducts registration for this deduction and has adequate evidence that he or she has a dependant as required by clause 3.1.7 of Section I of Part B of this Circular.
- Each dependant may only be assessed for deduction once in respect of one taxpayer within the tax assessment year. If the responsibility of a taxpayer to rear or care for any one dependant arises in any one month, then a deduction may be made for such dependant within such month.
- If a taxpayer has a dependant in common with other taxpayers, then all such taxpayers must agree on registration of the dependant of only one taxpayer.
- A taxpayer shall be responsible to declare the number of his or her dependants, and shall be legally liable for the accuracy of the declaration.

3.1.4 Dependants shall comprise

- (a) Children, including adopted and illegitimate children:
 - Children under the age of 18 years (counting the full number of months).

For example, if A was born in July 1992, A may be a dependant until the end of June 2010.
 - A child over 18 years of age who is handicapped and unable to work.
 - A child currently studying at a university, college, specialized secondary school or vocational training establishment and who does not have income or who has income which does not exceed the threshold stipulated in clause 3.1.5 below.
- (b) A spouse of the taxpayer who is above the working age, or still of working age as stipulated by law but who is handicapped, unable to work, and does not have income or has income which does not exceed the threshold stipulated in clause 3.1.5 below.

- (c) A parent or parent-in-law of the taxpayer who is above the working age, or still of working age as stipulated by law but who is handicapped, unable to work, and does not have income or has income which does not exceed the threshold stipulated in clause 3.1.5 below.
- (d) Any other person above the working age, or still of working age as stipulated by law but who is handicapped, unable to work, feeble, does not have income or has income which does not exceed the threshold stipulated in clause 3.1.5 below, and whom the taxpayer must directly rear or care for, comprising:
 - Brothers and sisters of the taxpayer.
 - Grandparents, brothers-in-law and sisters-in-law of the taxpayer.
 - Grandchildren, nephews and nieces of the taxpayer.
 - Other people required by law to be directly reared or cared for.

3.1.5 The amount of income which shall be the basis for determining deduction for a dependant shall be the average monthly income within the year from all sources of income, not to exceed five hundred thousand (500,000) dong.

3.1.6 A person who is handicapped and unable to work as mentioned in the above guidelines means a person who is an applicable entity of the law on disability, and specifically as follows:

A person who is handicapped and unable to work means a person who is partially or wholly disabled and is unable to directly participate in manufacturing or business, or who has physical or mental defects including congenital defects and who is unable to care for himself or herself and for whom the district or higher level medical authority has certified such condition or the person has himself or herself made a declaration regarding the level of the handicap and inability to work and such declaration has been certified by the commune people's committee.

3.1.7 File proving that a person is a dependant

- (a) Applicable to children:
 - For children under 18 years, there must be either a copy birth certificate or a copy of the household registration.
 - For children under 18 years who are handicapped and unable to work, there must be the following documents:
 - + Copy birth certificate or copy household registration.
 - + Copy certificate from the district or higher level medical authority, or declaration regarding the level of the handicap and inability to work certified by the commune people's committee.
 - For children currently studying at a university, college, specialized secondary school or vocational training establishment (including children currently studying overseas), there must be the following documents:
 - + Copy birth certificate or copy household registration.

- + Copy student card or copy of the student's declaration certified by the school or university or some other document proving that the student is currently studying at a university, college, specialized secondary school or vocational training establishment.

In the case of an adopted child or illegitimate child, then in addition to the birth certificate there must also be a copy of the decision recognizing the adoption, or a copy of the decision recognizing that the parents accept the child, issued by the competent State body.

(b) Applicable to spouses:

- For a husband or wife above the working age, there must be either a copy of the household registration or a copy of the marriage certificate.
- For a husband or wife still of working age, then in addition to the above-mentioned documents there must also be copy certificate from the district or higher level medical authority, or declaration regarding the level of the handicap and inability to work certified by the commune people's committee.

(c) Applicable to parents and siblings:

- For people above the working age, there must be a copy of the household registration or other relevant document certifying the relationship of the dependant to the taxpayer (namely a parent, brother or sister).
- In the case of a person still of working age, then in addition to the above-mentioned documents there must also be a copy certificate from the district or higher level medical authority, or declaration regarding the level of the handicap and inability to work as certified by the commune people's committee.

(d) In the case of grandparents, brothers-in-law and sisters-in-law, grandchildren and nephews and nieces, there must be a legal document certifying the relationship between the dependant and the taxpayer (specifying such relationship) and a self-declaration on the responsibility of the taxpayer to rear or care for such dependant, certified by the commune people's committee in the locality where the taxpayer resides.

Legal documents mentioned above mean any legal document at all which certifies the relationship between the dependant and the taxpayer such as a copy of the household registration (if the parties jointly reside in the one residence) or a copy birth certificate which expresses such relationship.

If the dependant is still of working age, then in addition to the above-mentioned documents there must also be a copy certificate from the district or higher level medical authority, or declaration regarding the level of the handicap and inability to work as certified by the commune people's committee.

(dd) If any of the above-mentioned documents in a file is a copy, then it must be notarized or authenticated by the commune people's committee otherwise the original of the document must be presented to the tax office for verification purposes.

(e) If any resident individual being a foreigner is unable to comply with any of the above requirements, then he or she must have the equivalent legal documents to prove dependency.

3.1.8 Declaration of dependency of a dependant

A taxpayer whose income from salary plus business income is 4 million dong per month or less shall not be required to declare dependents.

A taxpayer with income from salary plus business income above 4 million dong per month and who has dependant/s for whom the taxpayer is responsible to rear or care for, must declare the dependent/s as follows in order to be granted a deduction for family circumstances:

(a) Applicable to a taxpayer with income being salary

- At the beginning of a year and no later than 30 January, the taxpayer shall prepare two copies of a registration of dependents on standard Form 16-DK-TNCN issued with this Circular and send them to the income-paying entity. If there are any changes regarding the dependents throughout the year, then at the latest within thirty (30) days after such change, the taxpayer must prepare two copies of an amended registration on standard Form 16 and send them to the income-paying entity.

If a taxpayer signs a labour contract or is the subject of a recruitment decision after 30 January, then the time-limit for registering dependant/s shall be, at the latest, on the last day of the same month on which the labour contract was signed or the recruitment decision issued.

- Any taxpayer who registers deductions for a dependant must have adequate evidence of dependency as stipulated in clause 3.1.7 above, and must submit such evidence to the tax office directly managing the income-paying entity.
- Time-limits for submitting files proving that people are dependents shall be as follows:
 - + Where registration for deduction for dependents is conducted in the beginning of year 2009, the file with evidence proving dependency must be submitted no later than 30 June 2009.
 - + Where registration is conducted after 30 January 2009, then the file with evidence proving dependency must be submitted within three months from the date of initial registration.
 - + Where there is an increase or decrease in the number of dependents compared to the number as registered, then the time-limit for submitting the file shall be no later than three months after the date of registration of such change.

Any taxpayer who fails to submit the file with evidence proving dependency within the above-mentioned time-limits shall not be allowed any deduction for dependents and the amount of tax payable shall be adjusted.

- Income-paying entities shall be responsible:
 - + To receive registrations of dependents from taxpayers.
 - + Each month, to provisionally make a deduction for the number of dependants as set out in the registration of the taxpayer prior to assessing the amount of tax to be provisionally deducted.
 - + To transfer one copy of the registration of dependant/s made by the taxpayer to the tax office directly managing such income-paying entity, no later than 20 February of the relevant year, and in a case of registration of dependent/s after 30 January in the relevant year or registration of a change in the [number of] dependents, then this document must be sent to the relevant

tax office on the 20th day of the month following the month of receipt of the registration document.

(b) Applicable to a taxpayer with business income

- A taxpayer with business income shall declare deduction for dependents jointly with the declaration of provisional payment of tax, or jointly with the taxpayer's tax declaration in the case of a business individual paying tax on the basis of a fixed level of turnover.
- Any taxpayer declaring dependent/s as mentioned above at the beginning of year 2009 must also have sufficient evidence of dependency as required by clause 3.1.7 above, and must submit the latter to the Tax Division directly managing such business individual no later than 30 June 2009.
- Where there is an increase or decrease in the number of dependents or the taxpayer only recently started his or her business, then the time-limit for submitting the file with evidence proving dependency shall be no later than three months after the date of registration of dependents in the tax declaration.
- Any taxpayer who fails to submit the file with evidence proving dependency within the above-mentioned time-limits shall not be allowed any deduction for dependents and the amount of tax payable shall be adjusted. In the case of a business individual paying tax on a fixed level of turnover, then such level shall also be adjusted.

3.1.9 A taxpayer shall only be required to submit a file with evidence proving dependency of any one dependent on one occasion only throughout the entire time when this deduction is assessed, including a case of a taxpayer changing his or her working or business location.

In the case of a taxpayer who has both business income and income being salary, then provisional deduction for dependents may be made from either type of income as selected by the taxpayer and registered pursuant to the guidelines above. If the taxpayer has a number of dependents and a declaration for provisional deduction for the dependents does not use up one of the types of income, then the taxpayer shall be permitted to provisionally deduct from both types of income.

3.2 Deductions for contributions to charitable, humanitarian or study promotional funds

3.2.1 Contributions to charitable, humanitarian or study promotional funds [*charitable funds*] may be deducted from taxable income in the case of business income and/or income being salary prior to assessing tax payable by a resident individual as follows:

- (a) Contributions to organizations and establishments caring for and raising children from an especially difficulty background, and disabled people and old and feeble people. These organizations and establishments must have been established and must operate pursuant to Decree 68-2008-ND-CP of the Government dated 30 May 2008 on the conditions and procedures for establishment, organization and operation of social protection establishments. Evidence proving these contributions shall be the legal receipts provided by such organizations and establishments.
- (b) Contributions to charitable funds established and operating pursuant to Decree 148-2007-ND-CP of the Government dated 25 September 2007 on organization and operation of funds for charitable, humanitarian or study promotional purposes and for non-profit making purposes, and in accordance with other relevant legal instruments on management and use of aid funds.

Documents proving contributions to charitable funds shall be the legal receipts provided by central or provincial level organizations or funds.

- 3.2.2 Contributions to charitable funds arising in any one year shall be deductible from taxable income of that same year, and if not fully deducted within such year then they may not be carried forward to taxable income of the next tax assessment year. The maximum amount of deductions shall not exceed tax assessable income from business income and income being salary of the year in which such contributions were made.

4. Tax rates

Pursuant to article 22 of the *Law on Personal Income Tax*, the scale of progressive tax tariff on each portion of income shall apply to business income and income being salary as follows:

Tax Bracket	Portion of Annual Assessable Income (million dong)	Portion of Monthly Assessable Income (million dong)	Tax Rate (%)
1	Up to 60	Up to 5	5
2	Over 60 to 120	Over 5 to 10	10
3	Over 120 to 216	Over 10 to 18	15
4	Over 216 to 384	Over 18 to 32	20
5	Over 384 to 624	Over 32 to 52	25
6	Over 624 to 960	Over 52 to 80	30
7	Over 960	Over 80	35

The above scale shall apply to assessable income being income of resident individuals with taxable income from business and from salary after making deductions for dependents, for compulsory insurance premiums and for contributions to charitable funds.

5. Method of assessing tax

Personal income tax payable on business income and on income being salary shall be the total amount of tax assessed in accordance with each income bracket and the relevant tax rate in the progressive scale, in which the amount of tax assessed in accordance with each income bracket shall be the assessable income of that bracket multiplied by the appropriate tax rate.

Example: Mr. A is a resident individual with income being salary of 10 million dong per month. Mr. A has two children under 18, and within the month he pays compulsory insurance premiums of five (5) per cent of his salary for social insurance and one (1) per cent of his salary for medical insurance; and during the month he also makes contributions to charitable funds.

Personal income tax provisionally payable by Mr. A during the month shall be determined as follows:

- Mr. A has the following deductions from taxable income
 - + For relatives: 4 million
 - + For dependent children: 1.6 million x 2 = 3.2 million
 - + Social insurance and medical insurance : 10 million x by 6% = 0.6 million

Total deductions are: $4 + 3.2 + 0.6 = 7.8$ million

- Assessable income in accordance with the scale in order to assess the amount of tax payable is $10 \text{ million} - 7.8 \text{ million} = 2.2 \text{ million}$
- Accordingly, after making allowable deductions, tax assessable income of Mr. A in bracket 1 is $2.2 \text{ million} \times 5\% = 0.11 \text{ million}$

Total tax payable in the month is: 0.11 million.

Example: Mr. B has income being salary of 90 million dong per month (after deducting compulsory insurance premiums). Mr. B raises two children under 18, and during the month he did not make any contributions to charitable funds.

(a) Personal income tax provisionally payable by Mr. B during the month shall be determined as follows:

- Mr. B has the following deductions

- + For relatives: 4 million

- + For 2 dependent children: $1.6 \text{ million} \times 2 = 3.2 \text{ million}$

- Assessable income in accordance with the scale of progressive tax tariff in order to assess tax payable is:

$$90 \text{ million} - 4 - 3.2 \text{ million} = 82.8 \text{ million}$$

- Tax payable is calculated as follows:

- + Tax bracket 1 which is the portion of monthly assessable income up to five million dong and tax rate 5%:

$$5 \text{ million} \times 5\% = 0.25 \text{ million}$$

- + Tax bracket 2 which is the portion of monthly assessable income over 5 up to 10 million dong and tax rate 10%:

$$(10 \text{ million} - 5 \text{ million}) \times 10\% = 0.5 \text{ million}$$

- + Tax bracket 3 which is the portion of monthly assessable income over 10 up to 18 million dong and tax rate 15%:

$$(18 \text{ million} - 10 \text{ million}) \times 15\% = 1.2 \text{ million}$$

- + Tax bracket 4 which is the portion of monthly assessable income over 18 up to 32 million dong and tax rate 20%:

$$(32 \text{ million} - 18 \text{ million}) \times 20\% = 2.8 \text{ million}$$

- + Tax bracket 5 which is the portion of monthly assessable income over 32 up to 52 million dong and tax rate 25%:

$$(52 \text{ million} - 32 \text{ million}) \times 25\% = 5 \text{ million}$$

- + Tax bracket 6 which is the portion of monthly assessable income over 52 up to 80 million dong and tax rate 30%:

$$(80 \text{ million} - 52 \text{ million}) \times 30\% = 8.4 \text{ million}$$

- + Tax bracket 7 which is the portion of monthly assessable income over 80 up to 82.8 million dong and tax rate 35%:

$$(82.8 \text{ million} - 80 \text{ million}) \times 35\% = 0.98 \text{ million}$$

Accordingly, the total personal income tax provisionally payable during the month by Mr. B with his monthly income of 90 billion in accordance with the scale of progressive tax tariff is as follows:

$$(0.25 + 0.5 + 1.2 + 2.8 + 5 + 8.4 + 0.98) = 19.13 \text{ million}$$

For convenience when making calculations, the abbreviated method set out in Appendix 2-PL-TNCN to this Circular may be used.

6. In a case where a number of people are jointly named in the business registration, including a case of leasing out housing and land with co-owners named in the certificate of ownership or certificate of land use right (hereinafter referred to as *a group of business individuals*), then after determining taxable income from business in accordance with clause 1 of Section I of Part B of this Circular, the taxable income shall be allocated to each individual by one of the following methods:
 - (a) In accordance with the capital contribution ratio of each individual as recorded in the business registration; or
 - (b) Pursuant to an agreement between the individuals concerned; or
 - (c) If the capital contribution ratio is unable to be ascertained from the business registration or if there is no agreement between the individuals concerned on allocation of income between them, then in accordance with an average amount of income per person.

After the amount of taxable income of each individual jointly involved in the business has been determined on the basis of the above principles on allocation, then each individual shall deduct deductions for dependents, for charitable funds, and compulsory insurance premiums in order to fix assessable income and the amount of tax payable by each individual.

Example: Mr. A, Mr. B and Mr. C are all jointly named in the business registration and each participates in the business (group of business individuals).

- The business registration specifies the capital contribution ratio of each of these individuals as 50% for Mr. A, 30% for Mr. B and 20% for Mr. C; and suppose that the taxable income in year X is 300 million and each of these three individuals has two dependants and there were no contributions in the year to charitable funds. The amount of tax payable by each individual shall be determined as follows:

- Step 1: determining the taxable income of each individual:

$$\text{Mr. A} = 300 \times 50\% = 150 \text{ million}$$

$$\text{Mr. B} = 300 \times 30\% = 90 \text{ million}$$

$$\text{Mr. C} = 300 \times 20\% = 60 \text{ million}$$

- Step 2: Determining the assessable income of each individual:

$$\text{Mr. A} = 150 - \{(4 \text{ million} \times 12 \text{ months}) + (1.6 \text{ million} \times 2 \text{ people} \times 12 \text{ months})\} = 63.6 \text{ million}$$

$$\text{Mr. B} = 90 - [(4 \text{ million} \times 12 \text{ months}) + (1.6 \text{ million} \times 2 \text{ people} \times 12 \text{ months})] = 3.6 \text{ million}$$

$$\text{Mr. C} = 60 - [(4 \text{ million} \times 12 \text{ months}) + (1.6 \text{ million} \times 2 \text{ people} \times 12 \text{ months})] = -26.4 \text{ million}$$

Accordingly, Mr. C's income in year X is below the tax threshold.

- Step 3: Determining the amount of tax payable in the year of individuals with income at or beyond the tax threshold:

Relying on the scale of progressive tax tariff:

$$\text{Mr. A} = (60 \text{ million} \times 5\%) + (3.6 \text{ million} \times 10\%) = 3.6 \text{ million}$$

$$\text{Mr. B} = 3.6 \text{ million} \times 5\% = 180,000 \text{ dong}$$

Section II

Bases for Assessing Tax on Other Items of Income

1. Income from capital investments

The basis for assessing tax on income from capital investments shall be assessable income and the tax rate.

1.1 Assessable income

Assessable income from capital investments means taxable income receivable by the individual pursuant to guidelines in clause 3 of Section II of Part A of this Circular.

- 1.2 The tax rate applicable to income from capital investments in accordance with the flat rate tariff is 5%.

1.3 Time for fixing assessable income

The time for fixing assessable income on income from capital investments is the time when the income-paying entity pays the income to the taxpayer.

In the case of income from capital investments prescribed in clauses 3.4 and 3.7 of section II of Part A of this Circular, the time for fixing assessable income is the time when the individual actually receives the income being the increased portion of the value of the capital contribution share [in the case of clause 3.4] or the time of transfer of the securities [paid in lieu of dividends].

1.4 Method of assessing tax

$$\begin{array}{rcccl} \text{Amount of} & & \text{Assessable} & & \text{Tax rate of 5\%} \\ \text{personal income} & = & \text{income} & \times & \\ \text{tax payable} & & & & \end{array}$$

2. Income from transfer of a capital contribution portion

2.1 Applicable to income from transfer of a capital contribution portion

The basis for assessing tax on income from transfer of a capital contribution portion shall be assessable income and the tax rate.

2.1.1 Assessable income from a transfer of a capital contribution portion means taxable income which shall be fixed as equal to the price of the transfer less the purchase price of the capital contribution portion and less reasonable expenses related to creation of income from such transfer.

(a) Price of the transfer

Price of the transfer means the amount of money receivable by the individual pursuant to the transfer contract.

If the transfer contract does not stipulate the payment price or if it stipulates a payment price which is inconsistent with the market price, then the tax office shall have the right to fix the price of the transfer in accordance with the *Law on Tax Management* and its implementing guidelines.

(b) Purchase price

Purchase price of a capital contribution portion shall be determined in each case as follows:

It shall be the value of the capital portion at the time of contribution in the case of a transfer of a capital contribution portion towards establishment of an enterprise, which value shall be determined on the basis of the accounting books, invoices and vouchers.

The purchase price shall be the value of the capital portion at the time of redemption in the case of redemption of a capital contribution portion, which purchase price shall be fixed on the basis of the redemption contract.

(c) Reasonable expenses related to creation of income from transfer of a capital contribution portion may be deducted when they are expenses actually arising and which have legal source documents and an invoice, and specifically as follows:

- Costs of conducting the necessary legal procedures for the transfer.
- Fees and charges payable by the transferor to the State Budget in accordance with law.

- Other expenses directly related to the transfer and which have legal source documents and vouchers.

2.1.2 Tax rate

The tax rate applicable to income from a transfer of a capital contribution portion in accordance with the flat rate tariff is 20%.

2.1.3 Time for fixing assessable income

The time for fixing assessable income shall be the time when the transfer of the capital contribution portion was completed in accordance with law.

The time when the transfer is completed as stipulated above means the time when the parties to the transfer conduct procedures to declare and transfer ownership with the business registration office or with the enterprise managing the capital portion.

2.1.4 Method for assessing tax

$$\begin{array}{rcccl} \text{Personal income} & & & & \text{Tax rate} \\ \text{tax payable} & = & \text{Assessable tax} & \times & (20\%) \end{array}$$

2.2 Income from transfers of securities

The basis for assessing tax on transfers of securities shall be assessable income and the tax rate.

2.2.1 Assessable income from a transfer of securities shall be fixed as equal to the selling price of the securities less the purchase price and less expenses related to the transfer.

(a) The selling price of the securities shall be fixed as follows:

- The selling price of listed securities shall be the actual selling price on the securities market at the time of the sale. The market price at the time of the sale means the matched price announced by the Stock Exchange or Securities Trading Centre.
- The selling price of securities of an unlisted public company which has registered trading at a Securities Trading Centre shall be the actual selling price of such securities at the Securities Trading Centre.
- The selling price of securities by any entity not covered by the above provisions shall be the price recorded in the transfer contract or the price in the accounting books of the entity holding such securities at the time of the sale.

If there is no transfer price recorded in the transfer contract or if the transfer price recorded is inconsistent with the market price, then the tax office shall have the right to fix the price of the transfer in accordance with the *Law on Tax Management* and its implementing guidelines.

(b) Purchase price of the securities shall be fixed as follows:

- The purchase price of listed securities shall be the actual purchase price at the Stock Exchange or Securities Trading Centre.

- The purchase price of securities of an unlisted public company which has registered trading at a Securities Trading Centre shall be the actual purchase price at the Securities Trading Centre.
- The purchase price of securities purchased at an auction shall be the winning bid.
- The purchase price of securities of any entity not covered by the above provisions shall be the price recorded in the transfer contract or the price recorded in the accounting books of the entity holding such securities at the time of the purchase.

If there is no purchase price recorded in the contract or if the transfer price is higher than the price in the books of account of the entity holding such securities at the time of the purchase [and] is inconsistent with the market price, then the tax office shall have the right to fix the purchase price.

- (c) Valid expenses which are deductible when fixing taxable income on a transfer of securities shall be expenses actually arising from the transfer and which have an invoice and vouchers as required by the regulations, and shall comprise:
- Fees on conducting the necessary legal procedures for the transfer.
 - Fees and charges payable by the transferor to the State Budget when conducting transfer procedures.
 - Fees for depositing securities as stipulated by the regulations of the State Securities Commission and recorded in the receipt of the securities company.
 - Fees for entrusting the securities based on the receipt of the trustee.
 - Other expenses with valid vouchers.

2.2.2 Tax rate and method of assessing tax

- (a) If an individual transferor of securities registers to pay tax in accordance with the flat rate tariff, the tax rate shall be 20%.

An individual must satisfy the following conditions in order for the tax rate of 20% to apply:

- The individual registers this method to pay tax on standard Form 15-DK-TNCN with the tax office directly managing the securities company with which such individual registered to trade, or with the Tax Division in the place where the individual resides. The following shall be the time-limits for registration:
 - + Year 2009: individuals conducting securities business must register at the beginning of the year and no later than 31 March 2009.
 - + From year 2010 onwards, individuals conducting securities business must have registered no later than 31 December of the previous year.
- The individual must register for tax and have a tax code number.

- The individual must implement the accounting regime of invoices and vouchers, so that assessable income from the transfer of securities can be ascertained in accordance with regulations.
- The tax rate of 20% must apply to all classes of securities traded within the western calendar year.

Personal income tax payable shall be calculated as follows:

$$\text{Personal income tax payable} = \text{Assessable income} \times \text{Tax rate of 20\%}$$

Any individual who transfers securities and who has already registered to pay tax at the 20% rate must still provisionally pay tax at the rate of 0.1% on the transfer price on each occasion.

- (b) If an individual transfers securities and has not registered to pay tax in accordance with the flat rate tariff at the rate of 20%, then the tax rate of 0.1% on the price of the transfer shall apply on each occasion.

The method of assessing tax payable shall be as follows:

$$\text{Personal income tax payable} = \text{Price of transfer} \times \text{Tax rate of 0.1\%}$$

2.2.3 Time for fixing assessable income

The time for fixing assessable income on transfers of securities shall be

- (a) In the case of listed securities, the time when the Securities Trading Centre or Stock Exchange announces the implementing price.
- (b) In the case of unlisted securities for which trading has been registered at the Securities Trading Centre, the time when such Securities Trading Centre announces the implementing price.
- (c) In the case of securities not covered by the above provisions, the time when the transfer contract takes effect. If there is no transfer contract, then the time for fixing assessable income shall be the time of registration of change of name of the owner of the securities.

3. Income from transfers of real property

The basis for assessing tax on income from a transfer of real property shall be assessable income and the tax rate.

3.1 Assessable income from transfer of a land use right where the land does not have infrastructure or buildings [including engineering works] on the land

- 3.1.1 Assessable income shall be fixed as equal to the price of the transfer of the land use right less the prime cost and less relevant reasonable expenses.

3.1.2 Price of the transfer of the land use right shall be fixed as follows:

Price of the transfer of the land use right means the actual price recorded in the transfer contract at the time of the transfer.

If the actual price is indeterminable or if the price of the transfer recorded in the transfer contract is less than the land price stipulated in the List of land prices issued by the provincial people's committee at the time of the transfer, then the price of the transfer shall be such land price stipulated in the List issued by the provincial people's committee.

3.1.3 Prime cost in a transfer of a land use right shall be fixed in a number of specific cases as follows:

- (a) In the case of land originally allocated [or leased] by the State with collection of land use fees [or] rent, the basis shall be the vouchers collecting such land use fees or rent by the State.
- (b) In the case of land for which the land use right is received from an entity, the basis shall be the contract and legal source vouchers for payment of money on receipt of the land use right or land lease right (on purchase).

Legal source vouchers for payment of money means the receipt of the organization which sold the land, the voucher on remittance of money via a bank, or the receipt for payment as between individuals.

- (c) In the case of auction of a land use right, the prime cost shall be the amount of money payable in accordance with the winning auction bid.
- (d) If prime cost is indeterminable or is calculated incorrectly at the time of the purchase, then personal income tax shall be assessed at the rate of 2% of the price of the transfer.

3.1.4 Relevant expenses which are deductible when determining income from transfer of a land use right means actual expenses arising and related to the transfer which have legal source documents and an invoice as required by regulations, comprising:

- (a) Fees and charges as stipulated by law relating to issuance of the land use right and which the transferor paid to the State Budget.
- (b) Costs (if any) of upgrading and levelling the land surface.
- (c) Other expenses directly related to transfer of the land use right such as fees for conducting legal procedures for the transfer, and fees for hiring surveyors.

3.2 Assessable income from transfer of a land use right where the land has infrastructure or buildings [including engineering works] on the land

3.2.1 Assessable income shall be fixed as equal to the price of the transfer of the land use right less the prime cost of such real property and less relevant reasonable expenses.

3.2.2 Price of the transfer

Price of the transfer means the actual price recorded in the transfer contract at the time of the transfer.

If the actual price is indeterminable or if the price recorded in the transfer contract is less than the market price at the time of the transfer, then the price of the transfer shall be fixed as follows:

- (a) The value of the assigned land based on the List of land prices issued by the provincial people's committee at the time of the transfer.
- (b) The value of the house, infrastructure and buildings on the land shall be
 - Based on regulations of the Ministry of Construction on classification of house values.
 - Based on standards and fixed rates for capital construction issued by the Ministry of Construction.
 - Based on the actual residual value of the buildings [and engineering works] on the land.

If the provincial people's committee has issued a list of prices for calculating registration fees, then the value of the house and infrastructure on the land shall be calculated in accordance with such price list.

3.2.3 Prime cost

Prime cost shall be based on the sum recorded in the transfer contract at the time of the purchase.

If the prime cost of the land use right and the value of the house is indeterminable or if the price recorded in the purchase contract is higher than the actual price at the time of the purchase, then personal income tax shall be assessed at the rate of 2% of the price of the transfer.

3.2.4 Relevant expenses which are deductible when determining income from transfer of a land use right means actual expenses arising and related to the transfer which have legal source documents and an invoice as required by regulations, comprising:

- (a) Fees and charges as stipulated by law relating to issuance of the land use right and which the transferor paid to the State Budget.
- (b) Costs of upgrading and levelling the land surface.
- (c) Costs of building, upgrading, improving and repairing the infrastructure and buildings on the land.
- (d) Other expenses directly related to the transfer such as fees for conducting legal procedures for the assignment, and fees for hiring surveyors.

3.3 Assessable income from transfer of ownership of or use right to a residential house

3.3.1 Assessable income shall be fixed as equal to the selling price less the purchase price and less relevant reasonable expenses.

3.3.2. Selling price shall be the actual price of the transfer in accordance with the market price and recorded in the transfer contract.

If the selling price in the transfer contract is less than the market price at the time of the transfer, then the selling price of the residential house shall be fixed on the basis of regulations of the Ministry of

Construction on classification of houses or on the price for calculating registration fees as issued by the provincial people's committee.

3.3.3 Purchase price shall be the price recorded in the purchase contract.

If the purchase price is indeterminable or if the purchase price recorded in the contract is higher than the actual price at the time of purchase, then personal income tax shall be assessed at the rate of 2% of the price of the transfer.

3.3.4 Relevant expenses which are deductible when determining assessable income means expenses actually arising from the transfer and which have legal source vouchers and an invoice as required by law, comprising:

- (a) Fees and charges as stipulated by law relevant to issuance of the right to use the house which the transferor paid to the State Budget.
- (b) Costs of repairing, improving and upgrading the house.
- (c) Other expenses directly related to the transfer.

3.4 Assessable income from transfer of a lease right to land or a water surface

Assessable income from a transfer of a lease right to land or a water surface shall be fixed as equal to the price of the sub-lease less rent cost and less relevant expenses.

3.4.1 Price of the sub-lease

Price of the sub-lease shall be the actual price recorded in the contract at the time of the transfer of the lease right to the land or water surface.

If the unit price of the sub-lease recorded in the contract is less than the price stipulated by the provincial people's committee at the time of the sub-lease, then such price shall be based on the List of prices issued by the provincial people's committee.

3.4.2 Rent cost shall be based on the lease contract.

If rent cost is indeterminable or if the rent cost recorded in the contract is higher than the actual cost at the time of the lease, then personal income tax shall be assessed at the rate of 2% of the price of the transfer.

3.4.3 Relevant expenses which are deductible means expenses actually arising from the transfer of the lease right to the land or water surface and which have legal source vouchers and an invoice as required by law, comprising:

- (a) Fees and charges as stipulated by law relevant to issuance of the lease right to the land or water surface which the transferor paid to the State Budget.
- (b) Costs of upgrading the land or water surface.
- (c) Other expenses directly related to the transfer of the lease right to the land or water surface.

3.5 Tax rates and method of assessing tax

3.5.1 Tax rates

The tax rate applicable to income from a transfer of real property shall be twenty five per cent (25%) of assessable income.

If the prime cost and relevant expenses as the basis for determining assessable income are indeterminable, then the tax rate of two per cent (2%) of the price of the transfer shall apply.

3.5.2 Method of assessing tax

- (a) If assessable income is determinable, then personal income tax payable on transfer of real property shall be fixed as follows:

$$\begin{array}{rcccl} \text{Personal income} & & & & \\ \text{tax payable} & = & \text{Assessable} & \times & \text{Tax rate of 25\%} \\ & & \text{income} & & \end{array}$$

- (b) If the prime cost (purchase price) in a transfer of real property is indeterminable, and relevant expenses as the basis for assessing tax are also indeterminable, then personal income tax shall be fixed as follows:

$$\begin{array}{rcccl} \text{Personal income} & & & & \\ \text{tax payable} & = & \text{Price of transfer} & \times & \text{Tax rate of 2\%} \end{array}$$

3.6 Time for fixing assessable income

The time for fixing assessable income on a transfer of real property shall be the time when the contract of transfer takes effect in accordance with law.

- 3.7 If co-owners transfer real property, tax obligations shall be calculated in respect of each individual. Assessable income of each individual shall be the total income from the transfer and the ratio of distributing such income between the co-owners, which ratio shall be determined on the basis of legal data such as the initial capital contribution agreement, the will, or decision on distribution by a court and so forth, and in a case where there is no such legal data then the ratio of distribution of income shall be the average.

4. Income from copyright [or royalties]

The basis for assessing tax on income from copyright shall be assessable income and the tax rate.

4.1 Assessable income

Assessable income on income from copyright means that part of the income which exceeds ten million (10,000,000) dong pursuant to the transfer contract, irrespective of the number of times payment is actually made or received, and as receivable by the taxpayer on the transfer of, including transfer of use right to, the intellectual or industrial property right object.

If the one intellectual or industrial property right object is transferred but in a number of different contracts, then assessable income shall be the part of the income which exceeds ten million dong calculated on all of the contracts of assignment.

If there are co-owners of the one intellectual or industrial property right object, then assessable income shall be allocated between each individual owner, and the rate of allocation shall be based on the certificate of ownership or of use right issued by the competent State authority.

4.2 The tax rate applicable to income from copyright shall be in accordance with the flat rate tariff at the rate of five per cent (5%).

4.3 Time for fixing assessable income

The time for fixing assessable income on income from copyright shall be the time when royalties are paid.

4.4 Method of assessing tax

$$\text{Personal income tax payable} = \text{Assessable income} \times \text{Tax rate of 5\%}$$

5. Income from commercial franchises

The basis for assessing tax on income from a commercial franchise shall be assessable income and the tax rate.

5.1 Assessable income

Assessable income on income from a commercial franchise means that part of the income which exceeds ten million (10,000,000) dong pursuant to the franchise contract, irrespective of the number of times payment is actually made to, or received by the taxpayer.

If the one commercial franchise object is transferred but in a number of different contracts, then assessable income shall be the part of the income which exceeds ten million dong calculated on all of the commercial franchise contracts.

5.2 Tax rate

The tax rate applicable to income from a commercial franchise shall be in accordance with the flat rate tariff at the rate of five per cent (5%).

5.3 Time for fixing assessable income

The time for fixing assessable income on income from a commercial franchise shall be the time of payment of the money for the franchise between the franchisor and franchisee.

5.4 Method of assessing tax

$$\text{Personal income tax payable} = \text{Assessable income} \times \text{Tax rate of 5\%}$$

6. Income being winnings or prizes

6.1 Assessable income

Assessable income on winnings or prizes means that part of the value of the prize which exceeds ten million (10,000,000) dong as receivable by the taxpayer on each occasion of winning a prize, irrespective of the number of times payment is actually received.

If a number of people win [share] the one prize, then assessable income shall be allocated to each prize-winner who must present evidence of the win, and if there is no such evidence then income being the prize shall be calculated as for one individual. If an individual wins a number of prizes during the one game, then assessable income shall be calculated on the total value of the prizes.

Assessable income in a number of specific cases of games with prizes shall be regulated as follows:

- In the case of lottery winnings, it shall be the total value of the monetary prize exceeding ten million dong which is receivable in one round, without deducting any expenses.
- In the case of winning a promotional prize in kind, it shall be the value of the promotional product which exceeds ten million dong as converted into money in accordance with market value at the time the prize is receivable, without deducting any expenses.
- In the case of winnings in all forms of betting and casino it shall be the total value of the prize which exceeds ten million dong receivable by the participant, without deducting any expenses.
- In the case of winnings from games and competitions with prizes, income shall be assessed each time the taxpayer is entitled to receive such winnings, and the value of the winnings shall be equal to the total amount of money which exceeds ten million dong as receivable by the taxpayer, without deducting any expenses.

6.2 The tax rate applicable to income being winnings or prizes shall be in accordance with the flat rate tariff at the rate of ten per cent (10%).

6.3 Time for fixing assessable income

The time for fixing assessable income on winnings or prizes shall be the time when the entity pays the prize to the winner.

6.4 Method of assessing tax

$$\text{Personal income tax payable} = \text{Assessable income} \times \text{Tax rate of 10\%}$$

7. Income being receipt of an inheritance or gift

The basis for assessing tax on income from an inheritance or gift shall be assessable income and the tax rate.

7.1 Assessable income

Assessable income from an inheritance or gift means that part of the value of the inherited or donated assets which exceeds ten million (10,000,000) dong on each occasion of receipt. The value of inherited or donated assets in a number of specific cases shall be regulated as follows:

7.1.1 Where the inherited or donated object is real property, the value of the real property shall be fixed as follows:

- (a) In the case of a land use right, the value of the land use right based on the List of land prices issued by the provincial people's committee at the time when the heir or donee conducts produces for transfer of the land use right.
- (b) In the case of a house and buildings on the land, [the value of the house and buildings shall be] based on regulations of the competent State administrative authority on classification of house values; on standards and fixed rates for capital construction issued by the competent State administrative authority; and on the actual residual value of the house and buildings.

If the value is indeterminable on the basis of the above provisions, then it shall be based on the price for calculating registration fees as stipulated by the provincial people's committee.

7.1.2 In the case of an inheritance or gift of a motor vehicle, motorbike or boat, the value of such asset shall be based on the list of prices for calculating registration fees issued by the provincial people's committee at the time the asset is receivable by the taxpayer.

7.1.3 In the case of an inheritance or gift of a capital contribution portion in an economic organization or business establishment, the value of such inheritance or gift shall be the value of such portion determined on the basis of the accounting books, invoices and vouchers at the time of receipt of such inheritance or gift. If such accounting records are unavailable, then the value shall be based on market value at the time of receipt.

7.1.4 In the case of inheritance or receipt of a gift of securities, income in order to assess tax on the securities shall be the value of the securities at the time of transfer of ownership, specifically as follows:

- (a) The basis for listed securities shall be the reference price at the Stock Exchange or Securities Trading Centre on the date of receipt of the inheritance or gift or on the most recent date to the date of receipt.
- (b) The basis for securities of an unlisted public company which has registered trading at a Securities Trading Centre shall be the reference price at the Securities Trading Centre at the time of receipt of the inheritance or gift or on the most recent date to such time.
- (c) The basis for securities not covered by the above provisions shall be the value recorded in the books of account of the company issuing such class of securities on the date of receipt of the inherited or donated securities.

7.2 The tax rate applicable to income being an inheritance or gift shall be in accordance with the flat rate tariff applicable to regular income at the rate of ten per cent (10%).

7.3 Time for fixing assessable income

7.3.1 In the case of income being an inheritance, it shall be the time when the taxpayer receiving the inheritance conducts procedures for transfer of ownership or transfer of the right to use the asset.

7.3.2 In the case of income being receipt of a gift, it shall be the time when the donor donates the gift to the taxpayer, and if a gift is received from overseas then the time shall be when the gift is receivable by the taxpayer.

7.4 Method of assessing tax

$$\text{Personal income tax payable} = \text{Assessable income} \times \text{Tax rate of 10\%}$$

PART C

BASIS OF TAX ASSESSMENT APPLICABLE TO NON-RESIDENT INDIVIDUALS

Section I

Business Income

Pursuant to article 25 of the *Law on Personal Income Tax*, personal income tax on business income of non-resident individuals shall be fixed as follows:

1. Tax on business income of a non-resident individual shall equal turnover from manufacturing and business activities multiplied by the tax rate.
2. Turnover shall be the total monetary receipts arising from provision of goods and services including expenses which a purchaser pays on behalf of the non-resident individual and which are non-refundable.

Turnover from business activities of a non-resident individual shall be determined the same as for turnover as the basis for assessing tax on business activities of resident individuals as guided in clause 1 of Section I of Part B of this Circular.

3. Tax rate

The personal income tax rate applicable to business income of a non-resident individual shall depend on the particular sector and line of manufacture and business as follows:

- 3.1 1% applicable to business in goods;
- 3.2 5% applicable to business in services;
- 3.3 2% applicable to manufacturing, construction, transportation and other business activities.

If a non-resident individual has turnover from a number of sectors and lines of manufacture and business and is unable to separate turnover from each, then the highest tax rate applicable to any one of such sectors and lines in which the individual conducts activities shall apply to the entire turnover.

Section II

Income being Salary

1. Personal income tax on income being salary of a non-resident individual shall be fixed as equal to taxable income from such salary multiplied by the tax rate of 20%.

2. Taxable income from salary means the total sum of salary and other items of income in the nature of salary which are receivable by the non-resident individual in money or kind as a result of working in Vietnam, irrespective of the place where the income is paid.

Taxable income being salary of a non-resident individual shall be fixed the same as for taxable income being salary of a resident individual in accordance with the guidelines in clause 2 of Section I of Part B of this Circular.

Section III

Income from Capital Investments

Personal income tax on income from capital investments of a non-resident individual shall be fixed as equal to the total amount of money receivable by such individual from capital investments in entities in Vietnam multiplied by the tax rate of 5%.

Taxable income and the time for fixing taxable income from capital investments of a non-resident individual shall be determined the same as applicable to a resident individual in the guidelines in clause 1 of Section II of Part B of this Circular.

Section IV

Income from Capital Transfers

1. Personal income tax on income from capital transfers made by a non-resident individual shall be fixed as equal to the total amount of money receivable by such individual from capital transfers in Vietnamese entities multiplied by the tax rate of 0.1%, irrespective of whether the transfer was implemented in Vietnam or overseas.

The total amount of money receivable by a non-resident individual from transfer of a capital portion in a Vietnamese entity as referred to above means the total value of the transfer without deducting any expenses at all including the prime cost.

2. The total amount of money from transfers shall be regulated as follows in a number of specific cases:

- 2.1 In the case of transfer of a capital contribution portion, it shall be fixed on the value of the transfer recorded in the transfer contract.

If the transfer contract does not stipulate the payment price or if it stipulates a payment price inconsistent with the market price, then the tax office shall have the right to fix the price in accordance with the *Law on Tax Management* and its implementing guidelines.

- 2.2 In the case of a transfer of securities, the value of the securities shall be fixed as follows:

- 2.2.1 In the case of listed securities, it shall be the actual transfer price on the securities market at the time of the sale. The market price at the time of the sale means the matched price announced by the Stock Exchange or Securities Trading Centre.

- 2.2.2 In the case of unlisted securities registered for trading at a Securities Trading Centre, the selling price of the securities shall be the agreed trading price of such securities pursuant to the rules of the Securities Trading Centre on the day of the sale.

- 2.2.3 In the case of securities not covered by the above provisions, the selling price of the securities shall be the transfer price recorded in the transfer contract. If there is no price recorded in the transfer contract or if the price recorded is inconsistent with the market price, the tax office shall have the right to fix the transfer price.
3. The time for fixing assessable income on a transfer of securities by a non-resident individual shall be the time when the capital transfer contract takes effect or the time of completion of registration of change of name of the owner of the securities (in a case of transfer of a capital contribution portion, or of securities which are unlisted and not yet registered for trading) or the time when the Securities Trading Centre or Stock Exchange announces the implementing price (in the cases of listed securities, and securities not yet listed but registered for trading).

Section V

Income from Real Property Transfers

1. Personal income tax on income from a real property transfer in Vietnam by a non-resident individual shall be fixed as equal to the transfer price multiplied by the tax rate of 2%.
- The transfer price referred to above means the total value of real property transfers receivable by the non-resident individual, without deducting any expenses including the prime cost.
2. Price of the transfer of real property by a non-resident individual in specific cases shall be fixed the same as that for a resident individual in the guidelines in clause 3 of Section II of Part B of this Circular.

Section VI

Income from Royalties and Income from Franchises

1. Tax on income from royalties [or copyright]
- 1.1 Tax on income from royalties of a non-resident individual shall be equal to that part of the income which exceeds ten million dong on each contract of transfer, including transfer of use right to, an intellectual or industrial property right object in Vietnam multiplied by the tax rate of 5%.
- Income from royalties shall be fixed in accordance with the guidelines in clause 4 of Section II of Part B of this Circular.
- 1.2 The time for fixing income from royalties shall be the time when the entity pays the royalties to the taxpayer.
2. Tax on income from commercial franchises
- 2.1 Tax on income from a commercial franchise [receivable] by a non-resident individual shall be that part of the income which exceeds ten million dong pursuant to each franchise contract in Vietnam multiplied by the tax rate of 5%.

Income from a commercial franchise shall be fixed in accordance with the guidelines in clause 5 of Section II of Part B of this Circular.

- 2.2 The time for fixing income from a commercial franchise shall be the time when the income from such franchise is receivable by the non-resident individual.

Section VII

Income from Winnings or Prizes, and from Receipt of an Inheritance or Gift

1. Personal income tax on income from winnings or prizes, and from receipt of an inheritance or gift by a non-resident individual shall be fixed as equal to the taxable income as guided in clause 2 below multiplied by the tax rate of 10%.

2. Taxable income

- 2.1 Taxable income from a prize won by a non-resident individual means that part of the value of the prize exceeding ten million dong on each occasion of winning a prize in Vietnam.

Income from prizes won by non-resident individuals shall be determined in accordance with the guidelines in clause 6 of Section II of Part B of this Circular.

- 2.2 Taxable income from an inheritance or gift receivable by a non-resident individual means that part of the value of the inheritance or gift exceeding ten million dong on each occasion income arises in Vietnam.

Income from an inheritance or gift receivable by a non-resident individual shall be determined in accordance with the guidelines in clause 7 of Section II of Part B of this Circular.

3. Time for determining assessable income

- 3.1 In the case of income from a prize, the time the entity in Vietnam pays the price to the non-resident individual

- 3.2 In the case of income from an inheritance, the time the recipient conducts procedures to transfer ownership or use right to the asset.

- 3.3 In the case of income being a gift, the time the donee conducts procedures to transfer ownership or use right to the asset.

PART D

TAX REGISTRATION, TAX DEDUCTION, TAX DECLARATION, TAX FINALIZATION, AND TAX REFUND

Section I

Tax Registration

1. Taxpayers who must conduct tax registration

Pursuant to article 21 of the *Law on Tax Management* and articles 2 and 8 of the *Law on Personal Income Tax*, the following must conduct tax registration:

1.1 Income-paying entities comprising:

1.1.1 Economic organizations, business households and business individuals including branches and subsidiary entities must conduct tax registration pursuant to Circular 85-2007-TT-BTC of the Ministry of Finance dated 18 July 2007 guiding the *Law on Tax Management* on tax registration ["Circular 85"].

1.1.2 All level State administrative bodies.

1.1.3 Political organizations, socio-political organizations and socio-occupational organizations.

1.1.4 Professional units.

1.1.5 International and foreign organizations.

1.1.6 Project management boards, and representative offices of foreign organizations.

1.1.7 Other income-paying units.

In a case where an income-paying body has subsidiary entities with legal status and which conduct independent accounting, then these latter entities must also conduct tax registration.

1.2 Individuals with taxable income, comprising:

1.2.1 Individuals with income from manufacturing and business including independent practitioners, and individuals and family households conducting agricultural production who are not tax exempt. Individuals with income from manufacturing and business shall conduct personal income tax registration at the same time as they register for other types of taxes.

1.2.2 Individuals with income being salary.

1.2.3 Individuals with other taxable income (if it arises regularly).

If the taxpayers mentioned in clauses 1.1 and 1.2 above have already conducted tax registration and been issued with a tax code number, then they shall not be required to conduct new registration. The issued tax code number shall continue to be used in paying personal income tax, and individuals with a number of items of personal taxable income need only conduct tax registration on one occasion. The tax code number shall be used to declare tax on all types of income.

2. File for tax registration

- 2.1 The file for tax registration in the case of business organizations and business individuals shall be as stipulated in clause 2 of Section I of Part II of Circular 85.

Where a number of people jointly contribute capital or jointly participate in business (*group of business individuals*) then the representative of such group shall conduct tax registration in accordance with Circular 85 in order to be issued with his or her tax code number. The tax code number of such representative shall be used to declare and pay value added tax, special sales tax and licensing tax for the whole group as well as to declare personal income tax of the representative as an individual. Any individual contributing other capital must conduct tax registration in order to be issued with a separate tax code number the same as for a business individual.

- 2.2 The file for tax registration shall be as stipulated in clause 2.10 of Section I of Part II of Circular 85 for an income-paying entity other than a business organization.

- 2.3 The file for tax registration shall include the following documents, in the case of individuals with income being salary, income from capital investments, income from capital transfers (including transfers of securities) and in the case of individuals with other taxable income:

- Tax registration declaration on Form 1-DK-TNCN issued with this Circular.
- Copy people's identity card or passport.

3. Location for lodging file for tax registration

- 3.1 Circular 85 shall apply to the location for lodging the file for tax registration in the case of enterprises established and operating pursuant to the *Law on Enterprises* and to business individuals including independent practitioners.

- 3.2 In the case of administrative bodies, professional entities, mass organizations, and political, social and occupational organizations:

3.2.1 The Tax Department shall be the location for lodging files for tax registration in the case of central bodies, and bodies under ministries, branches and provincial people's committees, and provincial level bodies.

3.2.2 The Tax Division shall be the location for lodging files for tax registration in the case of bodies belonging to district level people's committees, and district level bodies.

3.2.3 The Tax Department in the place where they have their headquarters shall be the location for lodging files for tax registration in the case of diplomatic bodies, international organizations and representative offices of foreign organizations.

3.3 An individual with taxable income being salary shall lodge his or her file for tax registration with the income-paying entity or with the tax office directly managing such entity. After individuals have lodged such file with the income-paying entity, the latter shall be responsible to collate all the declarations from such individuals and lodge them with the tax office directly managing such entity.

3.4 Individuals with other taxable income items shall lodge their files for tax registration with the Tax Department where they reside.

- 3.5 Individuals with a number of income sources such as from business, salary and other taxable income items may select the place to lodge their files for tax registration either at the income-paying entity or body, or at the Tax Department in the locality where they conduct business.

Section II

Tax Deduction, Tax Declaration and Tax Finalization

1. **Tax deduction [deduction at the source]** means the income-paying entity calculates and deducts tax payable from the income of the taxpayer before paying such income.

1.1 Types of income from which deductions must be made

1.1.1 Income of non-resident individuals, including where they do not have a presence in Vietnam.

1.1.2 Income of resident individuals:

- (a) Income being salary;
- (b) Income from capital investments;
- (c) Income from capital transfers and from transfers of securities;
- (d) Income from all types of prizes;
- (dd) Income from copyright [royalties]; and
- (e) Income from franchising.

1.2 In a number of specific cases, tax deduction shall be regulated as follows:

1.2.1 Tax deduction in the case of income being salary of an individual with a labour contract and who was employed on a long term and stable basis:

In this case, tax shall be deducted on a monthly basis. The income-paying entity, on the basis of the amount of salary and other items in the nature of salary actually payable to the employee, shall conduct provisional deduction for family circumstances and registered dependents of the taxpayer, and then on the basis of the residual income and the scale of progressive tax tariff, such entity shall deduct the amount of tax calculated in order to pay it to the State budget.

Example: Mr. A is a resident individual working at company X with regular income being monthly salary of ten million dong, and Mr. A has two small children.

Each month, company X shall deduct tax on behalf of Mr. A as follows:

The family deductions for Mr. A are 7.2 million dong per month, comprised of:

- For Mr. A himself, 4 million dong per month.
- For his two children, 1.6 million x 2 = 3.2 million per month.

Assessable income is 10 million – 7.2 = 2.8 million per month.

The amount of personal income tax to be deducted is 2.8 million x 5% equalling 0.14 million per month.

1.2.2 Tax deduction in the case of income from capital investments

Organizations shall be responsible, before each occasion on which they pay income or dividends to an individual for capital investments, deduct personal income tax, and the amount of such deduction shall be the amount of the income or dividend on each occasion multiplied by the tax rate of 5%.

1.2.3 Tax deduction in the case of income from transfer of securities

On each occasion of a transfer of securities, irrespective of whether tax is paid at the rate of 0.1% or 20%, tax deduction must be made prior to making payment to the transferor. The basis for determining the amount of the deduction is the transfer price without any deductions for expenses, multiplied by the tax rate of 0.1%.

The securities company or commercial bank where the investor has opened his or her account shall be responsible to deduct personal income tax. In the case where securities are not listed, traded on the Stock Exchange or a Securities Trading Centre and the securities issuing organization has not authorized the securities company to manage the list of shareholders, then the issuing organization shall be responsible to deduct tax⁵.

1.2.4 Tax deduction applicable to income from copyright and franchising

The income-paying entity which pays income being royalties or income from franchising shall be responsible to deduct personal income tax before paying such income, and the amount of the deduction shall equal that part of the income which exceeds ten million dong on each franchise contract multiplied by the tax rate of 5%. If the contract has a large payment sum for a number of occasions, then on the initial payment occasion the income paying-entity shall deduct ten million dong from such payment, and then multiply the residual sum by the tax rate of 5% in order to deduct tax. On later payment occasions, the tax to be deducted shall be calculated on the total payment sum on each occasion.

1.2.5 Tax deduction applicable to income from prizes

The organization paying the prize to the winning individual shall be responsible to deduct personal income tax prior to paying such prize, and the amount to be deducted shall be that part of the value which exceeds ten million dong multiplied by the tax rate of 10%.

1.2.6 Tax deduction applicable to a non-resident individual with taxable income

The income-paying entity shall be responsible to deduct personal income tax before paying the income, and the basis for making the deduction shall be the assessable income and the personal income tax rate applicable to each item of income and to each line of business.

⁵ Allens Arthur Robinson footnote: This is the literal translation so it is unclear that the meaning is "and the securities are not traded....".

1.2.7 Tax deduction in a number of other cases

An income-paying entity which pays salary, remuneration or other sums to an individual providing services without a labour contract such as royalties for writing books or newspapers or for translating documents, payment for teaching, or for sitting on a board of management, payment for scientific or technical services, for cultural or sporting activities, for construction design consultancy services or for legal consultancy services, where the total income to be paid is five hundred thousand dong or more on each occasion, then such income-paying entity must deduct personal income tax before paying such sums to the individual as follows:

- By deducting 10% of the income in the case of an individual who already has a tax code number.
- By deducting 20% of the income in the case of any individual who does not yet have a tax code number.

The income-paying entity must provide a certificate of deduction at the request of the individual concerned, and the tax office shall be responsible to provide income-paying entities with tax deduction certificates on request on standard Form 17-TNCN issued with this Circular.

2. Tax declaration

Both income-paying entities which pay income in the category of taxable income, and individuals with income in the category of taxable income must make tax declarations as follows:

2.1 Tax declaration in the case of income-paying entities which deduct tax

2.1.1 Monthly tax declaration

Income-paying entities which pay income which is taxable and which deduct tax in accordance with the guidelines in clause 1 of Section II of Part D above shall be responsible to make a tax declaration and to lodge it with the tax office on a monthly basis as follows:

- (a) If they deduct personal income tax from income being salaries, then they shall make the declaration on Form 2-KK-TNCN issued with this Circular and lodge such declaration.
- (b) If they deduct tax from income from capital investments, transfers of securities, copyright, franchising or winnings, then they shall make the tax declaration on Form 3-KK-TNCN issued with this Circular and lodge such declaration.
- (c) If they deduct tax on income payable to non-resident individuals with income being salary [and/or] business income, then they shall make the tax declaration on Form 4-KK-TNCN issued with this Circular and lodge such declaration.

2.1.2 The time-limit for lodging the monthly tax declaration shall be, at the latest, the 20th day of the following month.

If an income-paying entity has a total amount of tax which was deducted on all types of declarations lower than five million dong, then it shall make and lodge a quarterly declaration. The time-limit for lodging a quarterly declaration shall be, at the latest, the 30th day of the first month of the following quarter.

2.1.3 Declaration of tax finalization

All income-paying entities which pay income subject to deductions must provide a declaration of personal income tax finalization, irrespective of whether tax is actually deductible or not [in the particular circumstances], as follows:

- (a) The file of declaration of tax finalization shall comprise:
- Declaration of personal income tax finalization on Form 5-KK-TNCN issued with this Circular together with the following detailed lists:
 - + List of taxable income and tax deducted on salary of individuals with labour contracts, on Form 5A-BK-TNCN.
 - + List of taxable income and tax deducted on salary of individuals without labour contracts, on Form 5B-BK-TNCN.
 - If deductions are required to be made [before payment of] income from capital investments, from transfer of securities, royalties, income from a franchise or income being a prize, then there must be a declaration of tax finalization on Form 6-KK-TNCN together with the following detailed lists:
 - + Form 6A-BK-TNCN, Detailed List of assessable income and tax deducted on income from capital investments.
 - + Form 6B-BK-TNCN, Detailed List of value of transfers and tax deducted on income from transfers of securities.
 - + Form 6C-BK-TNCN, Detailed List of assessable income and tax deducted on income from royalties and from franchises.
 - + Form 6D-BK-TNCN, Detailed List of assessable income and tax deducted on income from winnings or prizes.
- (b) The time-limit for lodging the file on tax finalization shall be, at the latest, the 90th day after the end of the western calendar year.

2.1.4 Location for lodging files on monthly or quarterly tax declaration and files on tax finalization

- (a) Any income paying entity being a manufacturing or business organisation or individual shall lodge the file on tax declaration with the tax office directly managing such entity.
- (b) In other cases
- The Tax Department shall be the location for lodging files in the case of central bodies, and bodies under ministries, branches and provincial people's committees, and provincial level bodies.
 - The Tax Division shall be the location for lodging files in the case of bodies belonging to district level people's committees, and district level bodies.

- The Tax Department in the place where they have their headquarters shall be the location for lodging files in the case of diplomatic bodies, international organizations and representative offices of foreign organizations.

2.1.5 Time-limit for paying tax

The time-limit for paying the amount of tax deducted and the balance of tax owing on tax finalization shall be the last day of the time-limit for lodging the file with the monthly or quarterly tax declaration and the file with the annual tax finalization.

2.2 Tax declaration in the case of resident individuals with business income

2.2.1 In the case of a business individual who has complied with the accounting regime for invoices and source documents (and pays tax in accordance with his or her declaration):

(a) A business individual who has complied with the above-mentioned accounting regime in the quarter must provisionally fix taxable income and declare the amount of tax provisionally payable on Form 8-KK-TNCN and lodge such declaration with the Tax Division directly managing such individual.

- The time-limit for lodging the declaration shall be, at the latest, the 30th day of the first month of the following quarter.

- The basis for fixing the amount of tax provisionally payable shall be:

- + Provisionally taxable income in the quarter shall equal turnover in the quarter less expenses provisionally calculated for the quarter.

Turnover in the quarter shall equal turnover on sales of goods and services declared in the quarter, consistent with the turnover assessed and for which value added tax is paid.

Provisionally calculated expenses in the quarter shall be expenses actually arising and related to turnover in the quarter.

- + Provisionally assessable income in the quarter shall equal taxable income less family deductions for the whole quarter.

Family deductions shall include deductions for the business individual himself or herself and for his or her dependents, and the provisional number of such dependents shall be based on the declaration made by such business individual.

- + The amount of tax provisionally payable in a quarter shall be fixed in accordance with the following formula.

$$\begin{array}{l} \text{Amount of tax} \\ \text{provisionally payable} \\ \text{in the quarter} \end{array} = \left[\frac{\text{Provisionally assessable} \\ \text{income in the quarter}}{3} \times \text{Tax rate using the scale} \right. \\ \left. \text{of progressive tax tariff} \right] \times 3 \\ \text{on each part of the} \\ \text{monthly income}$$

(b) Tax finalization declaration

- Individuals with business income paying tax in accordance with their declaration must also make a tax finalization declaration.

- The tax finalization declaration file shall comprise:
 - + Form 9-KK-TNCN Declaration of tax finalization, with 2 appendices being Form 9B-PL-TNCN Details of business income and Form 9C-PL-TNCN Details of dependents.
 - + Evidence proving the amount of tax provisionally paid during the year.
 - The time-limit for lodging the tax finalization file shall be, at the latest, the 90th day after the end of the western calendar year.
 - The taxpayer must lodge the tax finalization file with the Tax Division directly managing the taxpayer.
- (c) The time-limit for paying tax shall be, at the latest, the last day of the period for lodging the tax declaration file.

2.2.2 In the case of a business individual who is only able to account for turnover but not for expenses, the tax declaration file, the basis for tax assessment and the time-limit for paying tax shall be the same as applicable to a business individual fully complying with the accounting regime on invoices and source documents, but business expenses shall be fixed on the basis of a fixed level as decided by the tax office.

2.2.3 Tax declaration by a business individual or group of business individuals who do not implement the accounting regime or do not properly implement it, and so pay tax on the basis of a fixed level of turnover.

(a) Tax declaration file

These taxpayers shall make an annual declaration of tax (only one declaration per year) on either Form 10-KK-TNCN or Form 10A-KK-TNCN.

(b) The time-limit for lodging the tax declaration file shall be, at the latest, 31 December of the previous year. If business is newly commenced, then this time-limit shall be within 10 days from the date of commencing business.

(c) Fixing the amount of tax payable

- Based on the business individual's declaration of turnover and of dependents, the tax office shall co-ordinate with the commune or ward level tax consultancy council to check and fix a level of turnover as the basis for determining taxable income and the amount of tax payable or not payable.
- The tax office shall publicly display a list of business individuals, the forecast amount of their taxable income, the basis for assessing tax and the amount of tax payable by each individual. If tax is actually payable, the tax office shall provide a notice of the amount payable for the year and the amount provisionally payable each quarter, at the latest on the last day of February on standard Form 10-1-TB-TNCN issued with this Circular.

A business individual who must actually pay tax shall lodge the file proving his or her dependents as stipulated in clause 3.1.7 of Section I of Part B of this Circular.

- If during the year there are any changes in the scale of business or business lines, or in the number of dependents of a business individual, then such business individual must make a declaration to the tax office in order for the latter to amend the fixed level of turnover on which tax is payable.
 - With regard to a group of business individuals, depending on the amount of taxable income fixed for the whole group and the ratio of allocation of income, and also depending on the declarations by each member of the group on their dependents, the tax office shall assess tax and notify each member of the group of the fixed level of turnover on which tax is payable for the whole year and provisionally payable for each quarter, no later than by the last day of February, on standard Form 10-1-TB-TNCN issued with this Circular.
- (d) The location for lodging the tax declaration file in the case of business individuals and groups of business individuals shall be the Tax Division in the locality where they conduct business.
- (dd) The time-limit for paying tax shall be no later than the last day of the quarter.
- (e) An individual who only has business income and pays personal income tax on a fixed level of turnover need not conduct tax finalization.

2.2.5 Tax declaration applicable to a case where a number of people jointly contribute capital and participate in business, are jointly named in the one business registration including leasing out co-owned housing or land surfaces (referred to as a *business group*) and who properly implement the accounting regime and pay tax on fixed income:

- (a) They shall make a quarterly tax declaration, and the representative of the group shall make a declaration of provisional payable quarterly tax on Form 8A-KK-TNCN issued with this Circular. A provisional assessment of turnover and expenses for the quarter shall be made the same as applicable to the case of business individuals who have correctly implemented the stipulated accounting regime.
- The representative of the business group shall provisionally allocate taxable income to each member of the group in accordance with the provisions in clause 6 of Section I of Part B of this Circular.
 - The amount of tax provisionally payable shall be calculated separately for each member of the business group on the basis of the above-mentioned allocation, on the basis of the dependents of each individual and on the basis of the tax tariff. The representative of the group shall pay tax to the State budget in accordance with separate vouchers reserved for each member of the group and on the basis of the amount of tax provisionally payable by each such member.
 - The time-limit for lodging the tax declaration file shall be, at the latest, the 30th day of the first month of the following quarterly.
- (b) Declaration of tax finalization
- In a case where one individual acts as representative for a business group, such individual shall prepare the declaration of tax finalization on Form 8B-KK-TNCN in order to determine taxable income generally for the group and taxable income for each individual in the group. Taxable income shall be allocated to each individual in accordance with clause 6 of Section I of Part D of this Circular.

- Each individual in the business group shall receive one original copy of the declaration of tax finalization of the group and shall then make a his or her own declaration.
 - The file on declaration of tax finalization of each individual in a business group shall comprise:
 - + Declaration of tax finalization for a group of business individuals on Form 8B-KK-TNCN.
 - + Tax declaration on Form 9-KK-TNCN and Form 9C-PL-TNCN with details of dependents.
 - + Vouchers proving payment of provisional tax throughout the year.
 - The location for lodging the file on declaration of tax finalization shall be the Tax Division in the locality where the group of business individuals conducts business.
- (c) The time-limit for paying tax by the group of business individuals and by each individual in the group shall be the last day of the time-limit for lodging the tax declaration file.

2.3 Tax declaration in the case of resident individuals with income being salary

2.3.1 Monthly tax declaration

- (a) Cases in which a monthly tax declaration must be made:
- An individual receiving income being salary paid by an entity from overseas.
 - A Vietnamese individual with income being salary paid by an international organization, embassy or consulate in Vietnam.
- Individuals with income from salary but not falling within the above-mentioned categories shall not be required to make monthly tax declarations.
- (b) The file on monthly tax declaration shall comprise the declaration on Form 7-KK-TNCN.
- (c) Location for lodging and time-limit for lodging monthly tax declaration.
- The declaration shall be lodged with the Tax Division in the locality where the individual resides.
 - The time-limit for lodging the declaration shall be, at the latest, the 20th day of the following month.
- (d) An individual shall lodge this declaration directly with the tax office if such individual has forecast average monthly income above four million dong and has deductions for dependents for which such taxpayer must file a registration of dependents at the same time as lodging his or her first monthly tax declaration for the tax assessment year. The time-limit for lodging the file proving dependents shall be the same as applicable to individuals with income being salary and stipulated in clause 3.1.8 (a) of Section I of Part B of this Circular.

The registration of dependents and the file proving that such people are dependents shall be lodged at the Tax Division where the individual lodges his or her monthly tax declaration.

2.3.2 Declaration of tax finalization

(a) An individual with income being salary must make a declaration of tax finalization in the following cases:

- The amount of tax payable in the year is greater than the amount already deducted or provisionally paid in the year, or tax obligations arise throughout the year for which deductions or provisional payments have not yet been made.
- The taxpayer requests a tax refund or an offset of tax in the following period.

A resident individual being a foreigner must conduct tax finalization on termination of his or her contract to work in Vietnam and before exiting Vietnam. In other cases, tax finalization shall not be required.

(b) The file on tax finalization declaration shall comprise:

- Form 9-KK-TNCN Declaration of tax finalization, with 2 appendices being Form 9A-PL-TNCN (details of business income) and Form 9C-PL-TNCN (details of dependents, if dependents were registered).
- Evidence proving the amount of tax deducted and provisionally paid during the year.
- In the case of receipt of income from an international organization, embassy or consulate and receipt of income from overseas, there must be evidence or confirmation of the amount paid by the income-paying entity overseas and also a letter confirming annual income on Form 20-TXN-TNCN issued with this Circular.

(c) Time-limit and location for lodging tax finalization file

- The time-limit for lodging the tax finalization file shall be, at the latest, the 90th day after the end of the western calendar year.
- The location for lodging the tax finalization file shall be the tax office directly managing the income-paying entity. If an individual with income being salary directly makes a monthly tax declaration, then he or she shall lodge the tax finalization file at the same place where such monthly tax declaration was lodged (Tax Division).

2.4 Tax declaration in the case of resident individuals with both business income and income being salary

2.4.1 Tax declaration

An individual with both business income and income being salary need only declare provisional tax on the business income in accordance with clause 2.2 above.

2.4.2 Tax finalization

(a) An individual with both business income and income being salary need only make a tax finalization declaration in the following cases:

- Having total average taxable income per month above four million dong.

- Having made a request for tax refund or offset of tax in the following period.

A resident individual being a foreigner must conduct tax finalization on termination of his or her contract to work in Vietnam and before exiting Vietnam. In other cases, tax finalization shall not be required.

(b) The tax finalization file shall comprise:

- Form 9-KK-TNCN Declaration of tax finalization.
- Appendix being Form 9A-PL-TNCN.
- Appendix being Form 9B-PL-TNCN.
- Appendix being Form 9C-PL-TNCN (if dependents were registered).

(c) The tax finalization file shall be lodged with the Tax Department in the locality where the individual conducts business.

2.5 Tax declaration in the case of income from a transfer of real property

2.5.1 Time-limit for making tax declaration: any individual with income from a transfer of real property, irrespective of whether such individual is subject to payment of tax or is tax exempt, must prepare a tax declaration and lodge it together with the file on transfer of ownership or use right to the real property.

2.5.2 The tax declaration file shall comprise:

- Form 11-KK-TNCN Tax Declaration applicable to a taxpayer with income from a real property transfer.
- Copy land use right certificate, or document proving ownership of the house or buildings on the land.
- Contract of transfer of real property.

An individual requesting tax assessment at the rate of 25% of the income from the transfer, must also present additional valid documents as follows, proving expenses being:

- + Prime cost of the real property.
- + Expenses of constructing or upgrading the house or buildings on the land.
- + Fees and charges already paid.
- + Other expenses directly related to the transfer of the real property.
- If a transferor of real property claims to be within the category of tax exempt, he or she must provide evidence of tax exemption pursuant to the guidelines in clauses 1 to 5 inclusive of Section III of Part A of this Circular.

2.5.3 Location for lodging tax declaration file: the taxpayer shall lodge this file together with the file on transfer of the real property with the administrative office for real property. In the case of a locality

which has not yet implemented the "one door" policy, the tax file shall be lodged directly with the Tax Department in the locality where the real property is located.

Based on the tax declaration file lodged by the transferor, the tax office shall fix the amount of tax payable and send a notice to the tax payer on Form 11-1-TB-TNCN within three business days from the date of receipt of a complete file from the taxpayer. The tax notice shall be sent directly to the taxpayer or to the real property administrative office, and if the transferor is tax exempt then the tax office shall confirm this on the declaration and send it to the real property administrative office.

The real property office shall only conduct procedures to transfer ownership or use right after it has the voucher proving payment of personal income tax or confirmation from the tax office that the transfer was tax exempt.

2.5.4 The time-limit for paying tax shall be the time-limit as stipulated in the tax notice.

2.6 Tax declaration in the case of income from a capital transfer

Any individual with income from a capital transfer (excluding a transfer of securities) shall declare and pay tax as follows:

2.6.1 An individual with income from a capital transfer must declare personal income tax at the same time as conducting procedures for transfer of the capital portion to another entity in accordance with law.

2.6.2 The tax declaration file shall comprise:

- Form 12-KK-TNCN tax declaration.
- Copy contract of transfer.
- Evidence proving expenses related to determination of income from the capital transfer.

2.6.3 The file shall be lodged with the tax office directly managing the business establishment at which the capital transfer arose, or at the Tax Department where the transferor (seller) resides.

2.6.4 Tax must be paid by the date stipulated in the tax notice on income from the capital transfer issued by the tax office on Form 12-1-TB-TNCN.

2.6.5 The competent State administrative office or the enterprise in which the capital transfer was made shall only be permitted to conduct procedures to transfer ownership of the capital to the transferee on receipt of vouchers proving payment of personal income tax on the transfer.

2.7 Tax declaration in the case of individuals with income from a transfer of securities

2.7.1 An individual who has already registered with the tax office shall pay tax at the flat rate of 20% on this income and must conduct tax finalization in the following cases:

- (a) Tax payable at the rate of 20% is greater than tax already deducted at the rate of 0.1% per annum.
- (b) There is a request for a tax refund or an offset of tax in the following year.

2.7.2 The tax finalization file shall comprise:

- Form 13-KK-TNCN declaration of tax finalization.
- Form 13A-BK-TNCN with detailed list of securities transferred within the year.
- Data proving the expenses related to the transfers or transfers.
- Data proving the amount of tax already deducted during the year.

2.7.3 The file shall be lodged with the tax office directly managing the securities company at which the individual has registered to trade, or the Tax Department in the locality where the individual resides.

2.7.4 The time-limit for lodging the tax finalization file shall be, at the latest, 90 days after the end of the western calendar year.

2.8 Tax declaration in the case of income from an inheritance or gift

Tax must be declared on each occasion of income from an inheritance or gift, and where such inheritance or gift is real property then the declaration must be made in accordance with clause 2.5 of Section II of Part D of this Circular.

2.8.1 The tax declaration file shall comprise:

- Form 14-KK-TNCN tax declaration.
- Copy legal document proving the right to receive the inheritance or gift.

2.8.2 The file shall be lodged with the Tax Department where the recipient of the inheritance or gift resides.

The tax office shall check the declaration and assess tax payable in the case of an inheritance or gift of over ten million dong.

Competent State administrative bodies and other organizations concerned shall only be permitted to conduct procedures to transfer ownership of securities, capital contribution portion or other assets for which registration must be conducted, in a case where there are vouchers proving that the recipient of the inheritance or gift has already paid tax on the income.

2.8.3 Time-limit for lodging the tax declaration file

Any individual with income from an inheritance or gift shall lodge his or her tax declaration file at the same time as conducting procedures for transfer of ownership or use right to the inherited or donated assets.

2.8.4 The time-limit for paying tax shall be the time stipulated in the tax notice provided on Form 14-1-TB-TNCN.

2.9 Tax declaration in the case of resident individuals with income arising overseas

2.9.1 Resident individuals with taxable income arising overseas must declare and pay tax in accordance with the *Law on Personal Income Tax*.

In a case where tax has already been calculated and paid on income arising overseas in accordance with the law on personal income tax of the foreign country, then such amount shall be deductible in Vietnam. The amount of tax thereby deductible may not exceed the amount payable in accordance with the Vietnamese scale, assessed and allocated to that part of the income arising overseas. The ratio of allocation shall be determined as equal to the ratio between the amount of income overseas and the total amount of taxable income.

2.9.2 Tax shall be declared on each item of income as follows:

(a) Tax declaration on income being salary and business income.

A resident individual in Vietnam with income being salary and business income overseas must declare tax in accordance with clause 2 of Section II of Part D of this Circular.

(b) Tax declaration applicable to other taxable income items (income from capital investment, capital transfers, transfers of real property, copyright, franchising, winnings, inheritance and gifts).

- The time-limit for declaring tax shall be, at the latest, ten days after the date when the income arose or was receivable. In the case of an individual currently overseas who receives income overseas, the time limit for the tax declaration shall be, at the latest, ten days after the date of entry back into Vietnam.

- The tax declaration file shall comprise:

+ Form 19-KK-TNCN being tax declaration of income from capital investments, royalties, a franchise or winnings or prizes arising overseas.

+ The same Form as that applicable to income arising in Vietnam from a transfer of real property, a transfer of securities, receipt of an inheritance or gift.

The declarant must provide evidence of both payment of income and payment of tax overseas.

- The file shall be lodged in accordance with the provisions applicable to income arising in Vietnam.

2.10 Tax declaration in the case of resident individuals with both business income and income being salary and who were present in Vietnam for less than 183 days within the western calendar year, but there are 183 days or more within a consecutive 12 month period from the first date on which such individual was in Vietnam

- In the first tax assessment year, the tax finalization file must be lodged, at the latest, by the 90th day after the end of the consecutive 12 month period.

- In the second tax assessment year, the tax finalization file must be lodged, at the latest, by the 90th day after the end of the western calendar year.

The amount of tax payable in the second year shall allow a deduction for the amount of tax paid in the period of the first year which overlaps with the second year.

The overlapping period as above shall be determined as follows:

$$\begin{array}{rcccl} \text{Amount of tax to be} & & \text{Amount of tax} & & \\ \text{deducted for} & = & \text{payable in the first} & \times & \text{The number of} \\ \text{overlapping period} & & \text{tax assessment year} & & \text{months within the} \\ & & \hline & & 12 & & \text{overlapping period} \end{array}$$

Example: Mr. A came to Vietnam to work on 1 May 2009 (the date stamped in his passport) and has taxable income arising in Vietnam.

Suppose that from 1 May to 31 December 2009 Mr. A is in Vietnam for 160 days, and that from 1 January to 30 April 2010 he is in Vietnam for 30 days. He was therefore in Vietnam during 2009 for sufficient time to identify him as a resident individual, but on the basis of the period of 12 consecutive months (from 1 May 2009 to 30 April 2010) he was in Vietnam for a total of 190 days, and therefore he is still identified as a resident individual.

As the first tax assessment year of Mr. A is from 1 May 2009 to 30 April 2010, he must lodge a tax finalization file no later than 90 days after 30 April 2010.

The second tax assessment year of Mr. A is from 1 January 2010 until 31 December 2008, and therefore Mr A must lodge a tax finalization file no later than 90 days after 31 December 2010.

The amount of tax payable in year two by Mr. A shall be reduced by the amount of tax paid in the first year and overlapping with the second tax year, namely the four months from January to April.

Tax overlapping in year 2009 which shall be deducted when assessing tax for year 2010 shall be as follows:

$$\begin{array}{rcccl} \text{Amount of} & & \text{Amount of tax} & & \\ \text{overlapping tax} & = & \text{payable in year} & \times & \text{4 months} \\ \text{to be deducted} & & \text{2009} & & \\ & & \hline & & 12 & & \end{array}$$

3. Tax Refund

3.1 Individuals shall be entitled to a tax refund in the following cases:

3.1.1 The amount of tax paid is greater than the amount of tax payable within the tax assessment period.

3.1.2 An individual has paid tax but his or her assessable income is below the tax threshold.

3.1.3 In other cases pursuant to a decision of a competent State body.

Tax refunds shall only be available to individuals who have already registered and who have received a tax code number.

3.2 The file for a tax refund shall comprise:

- Letter requesting a tax refund on Form 1-HTBT issued with Circular 60-2007-TT-BTC of the Ministry of Finance dated 14 June 2007.
- Copy people's identity card or passport.
- Tax finalization declaration.
- Vouchers proving deduction of tax plus tax receipts.
- Document (if any) confirming that a working period has finished such as a decision on retirement or retrenchment, a copy of the liquidated labour contract, or a list proving the number of days of residence.
- Power of attorney if the claim for tax refund is made by a proxy.

3.3 Location for lodging tax refund application file

- At the tax office directly managing the income-paying entity, in the case of income being salary or income from a transfer of securities.
- At the Tax Department in the locality where the individual conducts business, in the case of business income.
- At the Tax Department where the individual conducts business, in the case of an individual with both income being salary and business income.

3.4 Resolution of application for tax refund

Application files shall be received and resolved in accordance with the guidelines in Section II of Part G of Circular 60 referred to above.

3.5 Procedures for tax refund

The tax office shall, after confirming that an application file is valid, issue a decision on tax refund and send it to the same level State Treasury and to the applicant.

The State Treasury, on receipt of a decision on tax refund from the tax office, shall be responsible to pay the refund to the applicant.

PART DD

IMPLEMENTING PROVISIONS

1. This Circular shall be of full force and effect after 15 days from the date it is published in the Official Gazette and shall apply from 1 January 2009.

The following guidelines are hereby repealed: Guidelines on income tax of high income earners, on corporate income tax applicable to family households and business individuals, and guidelines on land use right transfer tax applicable to individuals transferring land use rights.

2. Other matters regarding tax management which are not guided in this Circular shall continue to be implemented in accordance with the *Law on Tax Management* and its implementing guidelines.
3. Resolution of existing issues and difficulties regarding income tax of high income earners, corporate income tax applicable to family households and business individuals, and land use right transfer tax arising prior to 1 January 2009 shall continue to be implemented in accordance with the laws and ordinances on tax and implementing guidelines of the Government and of the Ministry of Finance which were effective at such time.
4. Individuals currently entitled to personal income tax incentives (income tax applicable to high income earners) which were recorded in investment incentive certificates, investment licences or regulations of the Government or of the Prime Minister of the Government prior to the date on which the *Law on Personal Income Tax* took effect, shall continue to be entitled to such incentives for the residual period as recorded in the investment licence, investment incentive certificate or regulations of the Government or Prime Minister of the Government.
5. If the Socialist Republic of Vietnam is a signatory to any international treaty with provisions on personal income tax which are different from the contents of the guidelines in this Circular, then the provisions of such international treaty shall apply.

If any difficulties arise during implementation, they should be promptly reported to the Ministry of Finance (General Department of Taxation) for resolution.

LIST OF APPENDICES ISSUED WITH CIRCULAR 84

(Not translated)

No.	Code	Description	To Be Completed by:
1.	2-KK-TNCN	Declaration of deduction of PIT before paying salary to a resident individual.	Income-paying entity.
2.	3-KK-TNCN	Declaration of deduction of PIT before paying income from capital investments, from transfer of securities, from royalties, from a franchise or from winnings or a prize to a resident individual.	Income-paying entity.
3.	4-KK-TNCN	Declaration of deduction of PIT before paying salary and business income to a non-resident individual.	Income-paying entity.
4.	5-KK-TNCN	Declaration of tax finalization on payment of salary to a resident individual.	Income-paying entity.
5.	5A-BK-TNCN	List of taxable income and tax deducted on salary of individuals with labour contracts.	Income-paying entity.
6.	5B-BK-TNCN	List of taxable income and tax deducted on salary of individuals without labour contracts.	Income-paying entity.
7.	6-KK-TNCN	Declaration of tax finalization on payment of income from capital investments, transfer of securities, from royalties, from a franchise or from winnings or a prize to a resident individual.	Income-paying entity.
8.	6A-BK-TNCN	List of assessable income and tax deducted on income from capital investments.	Income-paying entity.
9.	6B-BK-TNCN	List of value of transfers and tax deducted on income from transfers of securities.	Income-paying entity.
10.	6C-BK-TNCN	List of assessable income and tax deducted on income from royalties or from franchises.	Income-paying entity.
11.	6D-BK-TNCN	List of assessable income and tax deducted on income from winnings or prizes.	Income-paying entity.
12.	7-KK-TNCN	Declaration of PIT on salary.	Taxpayer who directly declares tax with the tax office.
13.	8-KK-TNCN	Declaration of PIT on business income.	Business individual who pays tax in accordance with a declaration.
14.	8A-KK-TNCN	Declaration of provisional payment of PIT.	Group of business individuals which pays tax in accordance with a declaration.
15.	8B-KK-TNCN	Declaration of tax finalization.	Group of business individuals.
16.	9-KK-TNCN	Declaration of tax finalization, with 3 appendices as follows:	Taxpayers with salary, and taxpayers with business income.
17.	9A-PL-TNCN	Details of salary (Appendix to tax finalization Form 9-KK-TNCN above).	Taxpayer.
18.	9B-PL-TNCN	Details of business income (Appendix to tax finalization Form 9-KK-TNCN above).	Taxpayer.
19.	9C-PL-TNCN	Details of dependents (Appendix to tax finalization Form 9-KK-TNCN above).	Taxpayer.
20.	10-KK-TNCN	Declaration of tax finalization.	Business individuals paying tax on a fixed level of turnover.

21.	10A-KK-TNCN	Declaration of tax finalization.	Group of business individuals paying tax on a fixed level of turnover.
22.	10-1-TB-TNCN	Tax notice (regarding business income).	Tax office.
23.	11-KK-TNCN	Tax declaration.	Taxpayer with income from a real property transfer, or receipt of an inheritance or gift which is real property.
24.	11-1-TB-TNCN	Tax notice (regarding real property).	Tax office.
25.	12-KK-TNCN	Tax declaration.	Taxpayer with income from a capital transfer.
26.	12-1-TB-TNCN	Tax notice (regarding a capital transfer).	Tax office.
27.	13-KK-TNCN	Declaration of tax finalization.	Taxpayer with income from transfers of securities.
28.	13A-BK-TNCN	Detailed list of securities transferred within the year.	Taxpayer with income from transfers of securities.
29.	14-KK-TNCN	Tax declaration.	Taxpayer with income from an inheritance or gift.
30.	14-1-TB-TNCN	Tax notice (regarding an inheritance or gift).	Tax office.
31.	15-DK-TNCN	Registration to pay 20% tax on transfers of securities.	Taxpayer.
32.	16-DK-TNCN	Registration of family dependent/s.	Taxpayer.
33.	17-TNCN	Request for issuance of certificate to enable the entity to deduct PIT.	Income-paying entity.
34.	18-TNCN	Request for reduction of PIT.	Taxpayer [undergoing hardship].
35.	19-KK-TNCN	Tax declaration of income from capital investments, royalties, a franchise or winnings or prizes overseas.	Resident taxpayer.
36.	20-TXN-TNCN	Letter certifying income of an individual (both in Vietnam and overseas) in the year.	Income-paying entity.
37.	1-PL-TNCN	Letter converting after-tax income to before-tax income.	
38.	2-PL-TNCN	Abbreviated method of making calculations when using the scale of progressive tax tariff on each portion of income.	