

**THE MINISTRY OF
FINANCE**

No. 78/2014/TT-BTC

**THE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness**

Hanoi, June 18, 2014

CIRCULAR

GUIDING THE IMPLEMENTATION OF THE GOVERNMENT'S DECREE NO. 218/2013/ND-CP OF DECEMBER 26, 2013, DETAILING AND GUIDING THE IMPLEMENTATION OF THE LAW ON ENTERPRISE INCOME TAX

Pursuant to June 3, 2008 Law No. 14/2008/QH12 on Enterprise Income Tax and June 19, 2013 Law No. 32/2013/QH13 Amending and Supplementing a Number of Articles of the Law on Enterprise Income Tax;

Pursuant to the Government's Decree No. 218/2013/ND-CP of December 26, 2013, detailing a number of articles of the Law on Enterprise Income Tax and the Law Amending and Supplementing a Number of Articles of the Law on Enterprise Income Tax;

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

At the proposal of the Director General of Taxation, the Minister of Finance guides the implementation of enterprise income tax as follows:

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Circular guides the implementation of the Government's Decree No. 218/2013/ND-CP of December 26, 2013, detailing a number of articles of the Law on Enterprise Income Tax and the Law Amending and Supplementing a Number of Articles of the Law on Enterprise Income Tax.

Article 2. Taxpayers

1. Payers of enterprise income tax are organizations engaged in production and trading of goods or provision of services with taxable income (below referred to as enterprises), including:

a/ Enterprises established and operating under the Enterprise Law, the Investment Law, the Law on Credit Institutions, the Insurance Business Law, the Securities Law, the Petroleum Law, the Commercial Law or other legal documents in the forms of joint-stock company; limited liability company; partnership; private enterprise; lawyer office, private notary public office; party to

business cooperation contract; party to petroleum product-sharing contract, oil and gas joint-venture enterprise and joint operating company;

b/ Public or non-public non-business units engaged in production and trading of goods or provision of services with taxable income in all areas;

c/ Organizations established and operating under the Cooperative Law;

d/ Enterprises established under foreign law (below referred to as foreign enterprises) and having permanent establishments in Vietnam;

Permanent establishments of foreign enterprises are manufacturing and trading establishments through which foreign enterprises carry out some or all of their production and trading activities in Vietnam, including:

- Branches, executive offices, factories, workshops, means of transport, mines, oil and gas fields or other sites of exploitation of natural resources in Vietnam;

- Construction sites and construction, installation or assembly works;

- Establishments providing services, including also consultancy services through employees or other organizations or individuals;

- Agents for foreign enterprises;

- Representatives in Vietnam, for representatives authorized to sign contracts in the name of foreign enterprises or representatives not authorized to sign contracts in the name of foreign enterprises but regularly delivering goods or providing services in Vietnam;

In case a double taxation avoidance agreement which the Socialist Republic of Vietnam has signed has different provisions on permanent establishments, the provisions of that agreement prevail.

e/ Organizations other than those referred to at Points a, b, c and d, Clause 1 of this Article which are engaged in production and trading of goods or provision of services and have taxable income.

2. Foreign organizations engaged in production and business activities in Vietnam not under the Investment Law or the Enterprise Law or earning income in Vietnam shall pay enterprise income tax under separate guidance of the Ministry of Finance. These organizations, if having capital transfer activities, shall pay enterprise income tax under the guidance in Article 14, Chapter IV of this Circular.

Chapter II

METHOD AND BASES OF TAX CALCULATION

Article 3. Method of tax calculation

1. The payable enterprise income tax amount in a tax period is taxed income multiplied by tax rate.

The payable enterprise income tax shall be determined by the following formula:

$$\text{Payable enterprise income tax} = \left\{ \text{Taxed income} - \text{Deduction for setting up the science and technology fund- (if any)} \right\} \times \text{Enterprise income tax rate}$$

An enterprise that has paid enterprise income tax or a tax similar to enterprise income tax outside Vietnam may deduct the paid enterprise income tax amount not exceeding the payable enterprise income tax amount in a period under the Law on Enterprise Income Tax.

2. Tax period shall be determined according to calendar year. For enterprises that apply a fiscal year different from the calendar year, the tax period shall be determined according to the applied fiscal year. The first tax period for a newly established enterprise and the last tax period for an enterprise transforming its type, changing its form of ownership, merged, separated, split, dissolved or going bankrupt shall be determined in accordance with the accounting period prescribed by the accounting law.

3. If the tax period of the first year of a newly established enterprise counting from the time of receiving an enterprise registration certificate or investment certificate, or if the tax period of the last year for an enterprise transforming its type, changing its form of ownership, merged, separated, split, dissolved or going bankrupt, is shorter than 3 months, it may be added up to the tax period of the subsequent year (for a newly established enterprise) or to the tax period of the previous year (for an enterprise transforming its type, changing its form of ownership, merged, separated, split, dissolved or going bankrupt) to form an enterprise income tax period. The enterprise income tax period of the first year or the enterprise income tax period of the last year must not exceed 15 months.

4. In case an enterprise converts its enterprise income tax period (conversion from calendar year to fiscal year or vice versa), the enterprise income tax period of the conversion year must not exceed 12 months. If an enterprise currently enjoying enterprise income tax incentives converts its tax period, it may choose to enjoy incentives in the year of tax period conversion or pay tax at the common rate in the year of tax period conversion and enjoy tax incentives in the subsequent year.

Example 1: Enterprise A applies the tax period of 2013 being the calendar year. At the beginning of 2014, it converts it to the fiscal year starting from April 1 to March 31 of the following year. The tax period of the year of conversion (2014) shall be counted from January 1, 2014, through March 31, 2014 (3 months), while the tax period of the following year (fiscal year 2014) starts from April 1, 2014, through March 31, 2015.

Example 2: The same enterprise A enjoys enterprise income tax incentives (2 years' tax exemption and 50% tax reduction in the subsequent 4 years), with tax exemption starting in 2012. Then it may enjoy the tax incentives as follows: tax exemption in 2012 and 2013; and 50% tax reduction in 2014, 2015, 2016 and 2017.

If the enterprise chooses to enjoy 50% tax reduction in the tax period of the year of conversion 2014, it may enjoy such 50% tax reduction for three subsequent tax years, from the fiscal year 2014 (from April 1, 2014 to March 31, 2015) to the end of the fiscal year 2016.

If it does not choose to enjoy 50% reduction of enterprise income tax in the tax period of the year of conversion 2014 (it declares and pays the tax at the common rate in the year of conversion 2014), it may enjoy 50% reduction of enterprise income tax from the fiscal year 2014 (from April 1, 2014, to March 31, 2015) to the end of the fiscal year 2017.

5. For non-business units, other non-enterprise organizations established and operating under Vietnamese law, and enterprises paying value-added tax by the direct method which trade in goods or provide services liable to enterprise income tax and can determine the turnover from but cannot determine the costs of and incomes from these business activities, they shall declare and pay enterprise income tax at the following percentage of the turnover from the sale of goods or services, specifically as follows:

+ For services (including interests from deposits and loans): 5%; Particularly, education, health and art performance activities: 2%.

+ For goods trading: 1%;

+ For other activities: 2%.

Example 3: Non-business unit A leases a house and earns an annual turnover of VND 100 million. It cannot determine the cost of and income from this activity, so it chooses to declare and pay enterprise income tax at a percentage of the turnover from the sale of goods and services as follows:

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

6. Enterprises which have turnover, expenses and other incomes in foreign currency shall convert these amounts into Vietnam dong at the average interbank exchange rate announced by the State Bank of Vietnam at the time of arising of these amounts, unless otherwise provided by law. For a foreign currency without exchange rate with Vietnam dong, conversion shall be carried out via a foreign currency with an exchange rate with Vietnam dong.

Article 4. Determination of taxed income

1. The taxed income in a tax period shall be determined to be taxable income minus tax-exempted income and losses carried forward from previous years under regulations.

Taxed income shall be determined by the following formula:

$$\text{Taxed income} = \frac{\text{Taxable income}}{\text{income}} - \left\{ \begin{array}{l} \text{Tax-} \\ \text{exempted} \\ \text{income-} \end{array} \right. + \left. \begin{array}{l} \text{Losses carried} \\ \text{forward under} \\ \text{regulations} \end{array} \right\}$$

2. Taxable income

Taxable income in a tax period includes income from the production and trading of goods and provision of services and other incomes.

Taxable income in a tax period shall be determined as follows: Taxable income = { Turnover - Deductible expenses - } + Other incomes-

Income from the production and trading of goods and provision of services is the turnover from these activities minus deductible expenses for these activities. An enterprise that has different production and trading activities subject to different tax rates shall separately calculate the income from each activity and multiply it by the corresponding tax rate.

Income from the transfer of real estate or investment projects; income from the transfer of the right to participate in investment projects or the right to explore, exploit and process minerals as prescribed by law shall be separately accounted to declare and pay enterprise income tax at the rate of 22% (or 20% from January 1, 2016), and are ineligible for enterprise income tax incentives (except incomes of enterprises from implementing investment projects on construction of social houses for sale, lease or lease-purchase which enjoy the enterprise income tax rate of 10% under Point d, Clause 2, Article 20 of this Circular).

In a tax period, if an enterprise engaged in the transfer of real estate, investment projects or the right to participate in investment projects (excluding mineral exploration and exploitation projects) suffers a loss, it may offset this loss against the profit from its production and business activities (including also other incomes prescribed in Article 7 of this Circular).

For the losses from the transfer of real estate, transfer of investment projects or transfer of the right to participate in investment projects (excluding mineral exploration and exploitation projects) of 2013 and previous years which are still in the loss-carry forward duration, enterprises shall carry them forward to incomes from the transfer of real estate, investment projects or the right to participate in investment projects; if they cannot fully carry forward these losses, they may carry forward such losses to incomes from production and business activities (including also other incomes) of 2014 and subsequent years.

For an enterprise carrying out dissolution procedures, after obtaining the dissolution decision, if it transfers real estate being fixed assets, the income (profit) (if any) from this transfer may be used to offset the loss from its production and business activities (including also the losses carried forward from previous years under regulations) in the tax period when such real estate transfer is made.

Article 5. Turnover

1. Turnover for calculating taxable income shall be determined as follows:

The turnover for calculating taxable income is the total proceeds from the sale of goods, remuneration for processing and charges for provided services, including price subsidies, surcharges and extra fees that an enterprise may earn, regardless of whether or not these amounts have been collected.

a/ For enterprises paying value-added tax by the credit method, the turnover is exclusive of value-added tax.

Example 4: Company A is liable to pay value-added tax by the credit method. The added-value invoice contains the following items:

Selling price: VND 100,000. VAT (10%): VND 10,000. Payment price: VND 110,000.

The turnover for calculating taxable income is VND 100,000.

b/ For enterprises paying value-added tax by the method of calculation directly based on added value, the turnover is inclusive of value-added tax.

Example 5: Enterprise B is liable to pay value-added tax by the method of calculation directly based on added value. The sale invoice only indicates the selling price of VND 110,000 (VAT-inclusive price).

The turnover for calculating taxable income is VND 110,000.

c/ For enterprises providing services for which customers pay charges in advance for many years, the turnover for calculating taxable income shall be distributed to the number of years of advance payment or determined according to the lump-sum payment. If such enterprises are enjoying tax incentives, the tax incentives shall be determined based on the total payable enterprise income tax of the years of advance payment divided by the number of years of advance payment.

2. The time for determining turnover for calculating taxable income shall be determined as follows:

a/ For the sale of goods, it is the time of transfer of the right to own or use goods to the buyer;

b/ For the provision of services, it is the time of completion of the provision of services for the buyer or the time of making out the service provision invoice;

In case the time of invoicing precedes the time of service completion, the time for determining taxed turnover is the time of invoicing;

c/ For air carriage, it is the time of completion of the provision of carriage service for the buyer.

d/ Other cases as prescribed by law.

3. The turnover for calculating taxable income in a number of cases shall be determined as follows:

a/ For goods and services sold on installment or deferred payment, it is the lump-sum selling prices of goods or services, excluding installment or deferred payment interests;

b/ For goods and services used for exchange or internal consumption (excluding goods and services used for sustaining production and business activities of enterprises), it shall be determined based on the selling prices of products, goods or services of the same or similar categories on the market at the time of exchange or internal consumption;

c/ For goods processing activities, it is the proceeds from processing activities, including remuneration, expenses for fuel, power and auxiliary materials, and other expenses for the processing;

d/ For units selling their goods through agents or consignees and units operating as agents or consignees under agency or consignment contracts selling goods at set prices to enjoy commissions, the turnover shall be determined as follows:

- For enterprises selling their goods through agents or consignees (including multi-level sales agents), the turnover is the total amount of goods sales;

- For enterprises acting as agents or consignees for goods sale at prices set by enterprises delivering or consigning their goods, the turnover is the commission enjoyed under goods agency or consignment contracts.

e/ For asset lease, the turnover is the amount the lessee pays on a periodical basis under the lease contract. In case the lessee pays the rental in advance for many years, the turnover for calculating taxable income shall be distributed to the number of years of advance payment or is the turnover paid in a lump sum;

Enterprises may, based on the conditions for implementation of the accounting regime, actual invoices and documents and the determination of costs, select either of the following methods to determine turnover for calculating taxable income:

- The turnover is the annual rental which is the paid rental divided by (:) the number of years of advance payment;

- The turnover is the total rental of the number of years of advance payment;

In case an enterprise that is enjoying enterprise income tax incentives chooses the method of determining turnover for calculating taxable income which is the total rental paid in advance by

the lessee for many years, the determination of the income tax amounts exempted and reduced shall be based on the total enterprise income tax amount of the number of years of advance payment divided by (:) the number of years of advance payment of the rental by the lessee;

g/ For golf course business, the turnover is the proceeds from the sale of membership cards and golf playing tickets and other revenues in the tax period which shall be determined as follows:

- For the form of sale of daily golf tickets and cards, the turnover for determining taxed income is proceeds from the sale of tickets and cards and other revenues arising in the tax period.

- For the form of sale of tickets and membership cards paid in advance for many years, the turnover for determining taxed income of each year is the actually collected proceeds from the sale and other revenues divided by the number of years of card use or is the turnover paid in a lump sum.

h/ For credit activities of credit institutions and foreign bank branches, the turnover is interests from deposits and loans and turnover from financial leasing activities to be collected in the tax period which are accounted as turnover under current regulations on the financial mechanisms of credit institutions and foreign bank branches.

i/ For transportation activities, the turnover is the total turnover from passenger, cargo and luggage transportation arising in the tax period.

k/ For electricity and clean water supply, the turnover is the charge for supplied electricity or clean water recorded on added-value invoices. The time of determining the turnover for calculating taxable income is the date of certification of electricity or water meter readings recorded on electricity or clean water bills.

Example 6: On an electricity bill, the meter reading is recorded for the days from December 5 to January 5. The turnover recorded on this bill is calculated for January.

l/ For insurance business, the turnover for calculating taxable income is total proceeds from the provision of insurance services and other goods and services, including VAT-exclusive surcharges and extra fees that insurance enterprises earn, including:

- Turnover from insurance business:

For insurance and reinsurance business, the turnover includes collected original insurance premiums; reinsurance premiums, commissions of reinsurance cession; fees for insurance policy management; charges for agency services including loss assessment, consideration for compensation, request for a third party to pay indemnities and handling of 100% compensated goods (excluding authorized assessment among internal-accounting member enterprises in the same independent-accounting insurer) after deduction of all payables to reduce revenues such as refunded insurance premiums; reduced insurance premiums; refunded reinsurance premiums; reduced reinsurance premiums; refunded commissions for reinsurance cession; and reduced commissions for reinsurance cession.

For insurance enterprises participating in co-insurance, the turnover for calculating taxable income of each party is the collected original premiums distributed in proportion to their co-insurance to each party excluding value-added tax.

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

In case there are authorized collection operations between affiliated enterprises or between dependent-accounting enterprises and the head office of the insurance enterprise, the turnover for calculating taxable income excludes the turnover from these authorized collection operations.

- Turnover from insurance brokerage: Collected commissions for insurance brokerage after deducting insurance brokerage commissions, reduced and refunded insurance brokerage commissions.

m/ For construction and installation activities, the turnover is the value of constructions or construction items or the value of volume of constructions and installation already tested and accepted.

- In case of construction and installation involving contracted supply of materials, machinery and equipment, the turnover is the money amount from construction and installation activities, including the value of materials, machinery and equipment.

- In case of construction and installation without contracted supply of materials, machinery and equipment, the turnover is the money amount earned from construction and installation activities, excluding the value of materials, machinery and equipment.

n/ For business activities under business cooperation contracts:

- In case the parties to a business cooperation contract divide the business result being the turnover from the sale of goods and services, the taxed turnover is the turnover of each party divided under the contract.

- In case the parties to a business cooperation contract divide their business result being products, the taxed turnover is the turnover of products divided to each part under the contract.

- In case the parties to a business cooperation contract divide their business result being pre-enterprise income tax profit, the turnover for determining the pre-tax income is the proceeds from the sale of goods or provision of services under the contract. The parties to the business cooperation contracts shall appoint a party as a representative to produce invoices, record turnover and expenses and determine the pre-enterprise income tax profit divided to each party. Each party shall perform its enterprise income tax obligation under current regulations.

- In case the parties to a business cooperation contract divide their business result being after-enterprise income tax profit, the turnover for calculating taxable income is the proceeds from the sale of goods or provision of services under the contract. The parties to the business cooperation

contract shall appoint a party as a representative to produce invoices, record turnover and expenses and declare and pay enterprise income tax on behalf of other parties.

o/ For prize-winning game business (casino, prize-winning electronic games, and betting entertainment business), the turnover is the proceeds from these activities including excise tax but minus the prizes paid to customers;

p/ For securities trading, its turnover is the proceeds from brokerage services, securities dealing, securities issuance underwriting, investment portfolio management, financial and securities investment consultancy, investment fund management, issuance of fund certificates, market organization services and other securities services as prescribed by law;

q/ For derivative financial services, their turnover is the proceeds from the provision of derivative financial services performed in the tax period.

Article 6. Deductible and non-deductible expenses for determining taxable income

1. Except expenses specified in Clause 2 of this Article, enterprises may deduct all expenses that fully satisfy the following conditions:

a/ Actual expenses arising in relation to production and business activities of enterprises;

b/ Expenses with adequate lawful invoices and documents as required by law;

c/ For expenses for purchase of goods or services with invoices valued at VND 20 million or more (VAT-inclusive prices) each, there must be non-cash payment documents;

Non-cash payment documents must comply with legal documents on value-added tax;

In case of purchase of goods or services with invoices valued at VND 20 million or more each but at the time of recording expenses, enterprises have not yet paid any money and have no non-cash payment documents, enterprises may account such expenses as deductible expenses for determination of taxable income. If enterprises have no non-cash payment documents for such payment, they shall declare and reduce expenses for the value of goods or services without non-cash payment documents in the tax period in which they make the cash payment (even when tax agencies and functional agencies have issued inspection or examination decisions regarding the tax period in which such payment is made).

For goods or service purchase invoices for which cash payment has been paid before the effective date of this Circular, no adjustment is required under this Point.

Example 7: In August 2014, enterprise A purchased goods with an invoice valued at VND 30 million for which it has not yet made any payment. In the tax period of 2014, enterprise A has included the expense for this purchase in deductible expenses for determination of taxable income. In 2015, enterprise A pays in cash for this purchase. So it shall declare and reduce

expenses for the value of such goods or services in the tax period in which it makes the cash payment (the tax period of 2015).

2. Non-deductible expenses for determining taxable income include:

2.1. Expenses failing to fully meet the conditions specified in Clause 1 of this Article.

In case an enterprise has expenses related to the value of uncompensated losses caused by natural disaster, epidemic, fire or other *force majeure* events, these expenses may be regarded as deductible expenses for determining taxable income, specifically as follows:

The enterprise shall determine by itself the total value of losses caused by natural disaster, epidemic, fire and other *force majeure* events as prescribed by law.

The value of uncompensated losses caused by natural disaster, epidemic, fire and other *force majeure* events shall be determined to be the total value of losses minus compensations to be paid by insurers or other organizations and individuals in accordance with law.

a/ For assets and goods lost due to natural disaster, epidemic or fire which are included in deductible expenses, a dossier must comprise:

- Document of the enterprise addressed to the direct managing tax agency explaining the loss of assets and goods due to natural disaster, epidemic or fire.
- The written record of inventory of the value of lost assets and goods made by the enterprise.

The written record of inventory of the value of lost assets and goods must specify the value of lost assets and goods, the cause of loss, responsibilities of organizations and individuals for losses; types, quantities and values of recoverable assets and goods (if any), stock movement statement of the lost goods certified with the signature of a legal representative of the enterprise who shall take responsibility before law for the statement.

- Written certification of the commune-level People's Committee or the management board of the industrial park, export processing zone or economic zone where the disaster, epidemic or fire occurred, that a natural disaster, epidemic or fire actually occurred during that time.
- The dossier of compensation accepted by the insurer (if any).
- The dossier identifying responsibilities of organizations and individuals obliged to pay compensation (if any).

b/ Goods damaged due to expiry or change of the natural biochemical process without compensation may be included in deductible expenses for determining taxable income.

Dossiers for goods damaged due to expiry or change of the natural biochemical process without compensation allowed to be included in deductible expenses include:

- Document of the enterprise addressed to the direct managing tax agency explaining the damage of goods due to expiry or change of the natural biochemical process.

- Written record of inventory of the value of damaged goods made by the enterprise.

The written record of inventory of the value of damaged goods must specify the value of damaged goods, causes of damage, types, quantities, value of recoverable goods (if any) enclosed with the stock movement statement of the damaged goods certified with the signature of a legal representative of the enterprise who shall take responsibility before law for the statement.

- The dossier of compensation accepted by the insurer (if any).

- The dossier identifying responsibilities of organizations and individuals obliged to pay compensation (if any).

c/ The enterprise shall send to the direct managing tax agency the document explaining the loss of assets and goods due to natural disaster, epidemic or fire, or the damage of goods due to expiry or change of the natural biochemical process without any compensation no later than the time it submits according to regulations a dossier for enterprise income tax declaration and finalization of the year of occurrence of the loss or damage of goods. Other dossiers (including the written record of inventory of the value of assets and goods lost or damaged; the written certification of the commune-level People's Committee, the management board of the industrial park, export processing zone or economic zone; dossier of compensation for losses accepted by the insurer (if any); dossier identifying responsibilities of organizations and individuals obliged to pay compensations (if any) and other documents), shall be kept at the enterprise for production to tax agencies upon request.

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

a/ Depreciation expense for fixed assets not used for the production and trading of goods and provision of services;

Particularly for fixed assets serving workers of enterprises such as mid- shift rest houses and canteens, locker rooms, toilets, infirmaries, and vocational and training facilities and equipment and furniture qualified as fixed assets installed in mid-shift rest houses and canteens, locker rooms, toilets, infirmaries, and vocational and training facilities, clean water tanks, garages, commute cars, and houses for workers, they may be depreciated and included in deductible expenses for determining taxable income;

b/ Depreciation expense of fixed assets without any papers proving that they are owned by enterprises (except fixed assets from financial lease- purchase);

c/ Depreciation expense of fixed assets that are not managed, monitored and accounted in accounting books of enterprises under the current regime of management of fixed assets and cost-accounting;

d/ The depreciated amount exceeding the rate prescribed in the Ministry of Finance's current regulations on the management, use and depreciation of fixed assets;

Before depreciation, enterprises shall notify the direct managing tax agencies of the method of depreciation of fixed assets that enterprises have chosen to apply (e.g., notifying their choice of straight-line depreciation method...). Every year, enterprises shall make depreciation of fixed assets according to the Ministry of Finance's current regulations on the management, use and depreciation of fixed assets, including accelerated depreciation (if meeting conditions);

Enterprises operating with high economic efficiency are entitled to apply accelerated depreciation not exceeding twice the rate of depreciation determined by the straight-line method for rapid technology renovation according to the Ministry of Finance's current regulations on the management, use and depreciation of fixed assets. When applying accelerated depreciation, enterprises shall ensure profitable business;

For fixed assets contributed as capital or fixed assets transferred upon division, split, separation, consolidation, merger or transformation with re-valuation as prescribed, enterprises receiving these assets may include their depreciation in deductible expenses based on their re-valued historical costs.

For other assets not qualified as fixed assets contributed as capital or transferred upon division, split, separation, consolidation, merger or transformation, which are re-valued as prescribed, enterprises receiving these assets may include their depreciation in deductible expenses based on their re-valued prices;

For fixed assets made by enterprises themselves, their historical costs that are allowed to be depreciated and included in deductible expenses are total production costs to create those assets;

For assets being tools, instruments, circulating packages, etc., which are not qualified as fixed assets as prescribed, the expenses for purchasing these assets may be amortized to production and business expenses in the period but for no more than 3 years;

e/ The depreciation corresponding to the historical cost in excess of VND 1.6 billion/car for passenger cars of 9 seats or under (except automobiles exclusively used for passenger transport, travel and hotel business); the depreciation of fixed assets being civil airplanes and yachts not used for cargo, passenger and tourist transport;

Passenger cars of 9 seats or under exclusively used for passenger transport, travel and hotel business are cars registered under the names of enterprises which, in their enterprise or business registration certificates, have registered one of these business lines: passenger transport, travel or hotel business, and have been licensed for doing business as prescribed in legal documents on transport, travel or hotel business.

Civil airplanes and yachts not used for cargo, passenger and tourist transport are those of enterprises having registered and accounted the depreciation of fixed assets but not registered the

passenger transport, travel or hotel business in their business or enterprise registration certificates.

In case enterprises transfer or liquidate cars of 9 seats or under, the residual value of such a car shall be determined to be the actual historical cost minus (-) the accumulated depreciation of the fixed asset already included in reasonable expenses according to accounting standards and regulations by the time of the car transfer or liquidation.

Example 8: Enterprise A buys a car of under 9 seats with a historical cost of VND 6 billion. It liquidates the car after making 1-year depreciation. The depreciation amount is VND 1 billion according to accounting standards and regulations (the depreciation period is 6 years according to documents on fixed asset depreciation). The depreciation amount to be included in deductible expenses under tax policy is VND 1.6 billion/6 years = VND 267 million. Enterprise A liquidates the car for VND 5 billion.

The income from the car liquidation = VND 5 billion - (VND 6 billion - VND 1 billion) = 0

g/ Depreciation of fixed assets that have been fully depreciated;

h/ Depreciation for constructions on land used for production and business and other purposes may not be included in deductible expenses with regard to the value of constructions on land corresponding to the area not used for production and business;

For constructions on land such as office buildings, workshops and business stores used for production and business activities of enterprises, enterprises may include their depreciation in deductible expenses for determining taxable income according to the rate of depreciation and the period of use of fixed assets under the Ministry of Finance's current regulations for these constructions if they meet the following conditions:

- Having a land use rights certificate bearing the name of the enterprise (if the land is owned by the enterprise) or a contract of land lease or land borrowing with the land owner, with the enterprise's representative taking responsibility before law for the accuracy of the contract (for land lease or borrowing).

- Having an invoice of payment for the handed-over construction volume enclosed with the construction contract, contract liquidation document and financial settlement of the construction value bearing the name, address and tax identification number of the enterprise.

- Being managed, monitored and cost-accounted according to current regulations on management of fixed assets.

i/ In case fixed assets owned by enterprises and used for production and business have to be temporarily left unused due to seasonal production for a period of less than 9 months, temporarily left unused for repair or relocation or periodic maintenance for a period of less than 12 months, before being further used for production and business activities, during that temporary non-operation, enterprises may depreciate these assets and include the depreciation

expenses during the time of temporary non-operation in deductible expenses for determining taxable income;

Enterprises shall keep complete dossiers and provide them and the reason for the temporary non-operation of fixed assets upon request of tax agencies;

k/ Long-term land use rights may not be depreciated and distributed to deductible expenses for determining taxable income; termed land use rights, if there are sufficient invoices and documents and the procedures prescribed by law are complied with and the land is used in business and production activities, may be amortized to deductible expenses during the land use term indicated in the land use right certificates (including the case of temporary non-operation for repair or new construction);

In case an enterprise purchases tangible fixed assets being houses or architectural objects associated with long-term land use rights, the value of land use rights must be separately calculated and recorded as intangible fixed assets. For tangible fixed assets being houses or architectural objects, their historical cost is the actual purchase price plus (+) expenses directly related to the putting of tangible fixed assets into use. The value of land use rights is determined to be the contractual purchase price of real estate matching the market price but not lower than the land price set by the provincial-level People's Committee at the time of asset purchase. In case an enterprise purchases tangible fixed assets being houses or architectural objects associated with long-term land use rights and the value of these land use rights cannot be separated, then the value of land use rights will be determined to be the price set by the provincial-level People's Committee at the time of asset purchase.

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

Enterprises shall themselves build and manage consumption norms of raw materials, materials, fuel, energy and goods used in production and business. These norms must be elaborated from the beginning of the year or the product manufacturing period and kept at the enterprises.

For a number of raw materials, materials, fuel and goods with consumption norms prescribed by the State, enterprises shall apply these norms.

2.4. For expenses for the purchase of goods and services without invoices, enterprises may make a list of purchased goods and services according to form No. 01/TNDN enclosed with this Circular, but they may not make a list attached with payment documents for goods sellers and service providers in the following cases:

- Purchase of agricultural products and aquatic products directly from their producers or catchers;

- Purchase of handicrafts made of jute, rush, bamboo, leaves, rattan, straw, coconut husk, coconut shell or raw materials from agricultural products directly from their manual producers who do not do business;

- Purchase of soil, rock, sand and gravel directly from households and individuals who exploit them;
- Purchase of scraps of people who directly collect them;
- Purchase of articles, assets and services directly from households and individuals that do not do business;
- Purchase of goods and services of business households or individuals (not including the above cases) that have a turnover below the value-added tax-liable turnover level (VND 100 million/year).

Lists of purchased goods and services shall be signed by legal representatives or authorized persons of enterprises, who shall take responsibility before law for the accuracy and truthfulness of these lists. Enterprises purchasing goods and services allowed for making such lists for inclusion in deductible expenses are not required to have non-cash payment documents. If the purchase prices of goods and services on a list are higher than the market prices at the time of goods purchase, tax agencies may base themselves on market prices at the time of purchase of goods or services of the same or similar type available on the market to re-determine the prices for re-calculating deductible expenses for determining taxable income.

2.5. Salaries, wages and bonuses payable to employees in one of the following cases:

- a/ Salaries, wages and other amounts payable to employees that enterprises have accounted as production and business expenses in the period but have not made such payments or have no payment documents as required by law;
- b/ Salaries and bonuses for employees for which the conditions for entitlement and rates of entitlement are not specified in one of the following dossiers: labor contract; collective labor agreement; financial regulations of the company, corporation or group; reward regulations issued by the chairman of the Board of Directors, general director or director under the financial regulations of the company or corporation;
 - In case the labor contract signed between an enterprise and a foreigner specifies a schooling expense for children of the foreigner to acquire general education in Vietnam to be paid by the enterprise, which is of salary or wage nature and not contrary to the law on salaries and wages and has adequate invoices and documents according to regulations, this expense will be included in deductible expenses for determining taxable income;
 - In case the labor contract signed between an enterprise and a laborer specifies a housing expense to be paid by the enterprise, which is of salary or wage nature and not contrary to the law on salaries and wages and has adequate invoices and documents according to regulations, this expense will be included in deductible expenses for determining taxable income;
- c/ Salaries, wages and allowances payable to laborers that enterprises have not yet paid by the deadline for submission of annual tax finalization dossiers, unless enterprises have a provision

fund to supplement the wage fund of the subsequent year. The annual level of provision is decided by enterprises but must not exceed 17% of the implemented wage fund;

The implemented wage fund is the total of actually paid wages of that finalization year to the deadline for submission of finalization dossiers as prescribed (excluding the amount deducted for the wage provision fund of the previous year spent in the tax finalization year);

The wage provision must ensure that enterprises do not suffer losses after making deductions for setting up it; if suffering losses, enterprises are not allowed to fully make deduction of 17% for this provision;

In case in a year an enterprise deducted a wage provision fund, but after 6 months from the last day of the fiscal year, it has not used or not used up this fund, the enterprise shall record a decrease in the following year's expenses;

Example 9: When submitting the 2014 tax finalization dossier, enterprise A deducted a wage provision fund of VND 10 billion. By June 30, 2015 (if the enterprise applies the tax period according to calendar year), it has just spent VND 7 billion of the wage provision fund of 2014. Enterprise A shall record a decrease of VND 3 billion (10 billion - 7 billion) in wage expense of the following year (2015). When preparing the tax finalization dossier of 2015, if enterprise A wishes to make deduction, it may continue to deduct the wage provision fund as prescribed;

d/ Salaries and wages of owners of private enterprises or single-member limited liability companies (owned by an individual); remuneration paid to the founding members, members of the Members' Council or Board of Directors who are not directly involved in directing production and business.

2.6. Expense for outfits in kind for laborers without any invoices and documents; expenses for outfits in cash and in kind to laborers which exceed 5 (five) VND million/person/year.

In case an enterprise pays an expense for outfits both in cash and in kind for laborers, the maximum level of this expense for calculating deductible expenses for determining taxable income must not exceed 5 (five) VND million/person/year.

For particular business lines, this expense must comply with specific regulations of the Ministry of Finance.

2.7. Expenses for rewarding innovations and improvements for which enterprises have no specific regulations on rewarding innovations and improvements and have no council for test and acceptance of innovations and improvements.

2.8. Travel allowances for annual leaves not in accordance with the Labor Code; amounts of allowances payable to employees going on business trips at home or abroad which exceed 2 times the level prescribed by the Ministry of Finance for state cadres, civil servants and public employees.

If having adequate lawful invoices and documents as prescribed, traveling and accommodation expenses for laborers going on business trips may be included in deductible expenses for determining taxable income. In case an enterprise has package traveling and accommodation expenses for laborers, these expenses may be included in deductible expenses in accordance with regulations of the Ministry of Finance applicable to state cadres, civil servants and public employees.

In case an enterprise has purchased air tickets through e-commerce websites for its employees to go on business trips to serve its production and business activities, documents used as the basis for calculating deductible expenses are electronic air tickets, boarding passes and non-cash payment documents of enterprises having individuals making the trips. If enterprises cannot recover boarding passes of employees, documents used as the basis for calculating deductible expenses are electronic air tickets, mission trip assignment papers and non-cash payment documents of enterprises having individuals making the trips.

2.9. The following deductible expenses, if paid to wrong subjects, for improper purposes or in excess of prescribed levels:

a/ Additional expenses for female laborers which are allowed to be included in deductible expenses, including:

- Expenses for vocational retraining for female laborers in case their current jobs are no longer suitable and they need to switch to other jobs according to the development planning of enterprises.

These expenses include training fees (if any) + the difference in salary grade (guaranteeing 100% salary for trainees).

- Salaries and allowances (if any) for teachers in crèches and kindergartens organized and managed by enterprises.

- Expenses for extra medical check-up in the year, such as examination of occupational, chronic and gynecological diseases for female laborers.

- Allowances for female laborers after the first- or second-time birth.

- Overtime allowances for female laborers in the case for objective reasons these female laborers do not take leave after childbirth or have breaks for breastfeeding their babies but continue to work for enterprises, which are paid under current regulations, including the case of payment of product-based wages in which female workers still work without taking leave as prescribed.

b/ Additional expenses for ethnic minority laborers which are included in deductible expenses, including school fees (if any) plus the difference in salary grade (guaranteeing 100% salary for trainees), housing, social insurance and health insurance allowances for ethnic minority people in case they have not yet received any support from the State as prescribed.

2.10. Deductions for compulsory insurance funds for laborers in excess of the prescribed level; deductions for payment of trade union dues for laborers in excess of the prescribed level.

2.11. Deductions in excess of VND 1 million/month/person for the voluntary pension fund, fund of social security nature, purchase of voluntary pension insurance and life insurance for laborers.

Deductions for the voluntary pension fund, fund of social security nature, purchase of voluntary pension insurance and life insurance for laborers allowed to be included in deductible expenses, besides not exceeding the level prescribed at this Point, must satisfy the enjoyment conditions and levels written in one of the following dossiers: labor contract; collective labor agreement; financial regulation of company, corporation or group; reward regulation issued by the chairman of board of directors, director general or director according to financial regulation of company or corporation.

Enterprises shall fulfill all the obligations related to compulsory insurance amounts for laborers in accordance with law before including in deductible expenses voluntary insurance amounts if fully meeting the prescribed conditions. They may not include in expenses payments for the above voluntary programs if they fail to fulfill all the obligations related to compulsory insurance for laborers (even owing compulsory insurance premiums).

2.12. Expenses for payment of unemployment allowances for laborers not in accordance with current regulations.

2.13. Expenses for contribution to form management funds for superior levels.

2.14. Contributions to various funds of the associations (these associations are lawfully established) in excess of the limits set by the associations.

2.15. Electricity and water charges for electricity and water contracts which are directly signed by owners being households or individuals who lease out production and business locations with electricity and water suppliers without adequate documents in one of the following cases:

a/ Enterprises leasing production and business locations directly pay electricity and water charges to electricity and water suppliers without any list (made according to form No. 02/TNDN issued together with this Circular) enclosed with electricity and water bills and the lease contracts of production and business locations;

b/ Enterprises leasing production and business locations pay electricity and water charges to the owners who lease out production and business locations without any list (made according to form No. 02/TNDN issued together with this Circular) enclosed with electricity and water bills paid to the lessors consistent with the actually used volumes of electricity and water and the lease contracts of production and business locations.

2.16. Expense for fixed asset leasing in excess of the rate of allocation by the number of years that the lessee has paid in advance the rental.

Example 10: Enterprise A leases fixed assets for four years with the rental of VND 400 million and pays the rental in a lump sum. The expense for fixed asset leasing accounted in annual expenses is VND 100 million. If the expense for fixed asset leasing exceeds VND 100 million, the excess over VND 100 million may not be included in reasonable expenses for determining taxable income.

For expense for repair of leased fixed assets, if the asset lease contract specifies that the lessee is responsible for the repair of the assets during the leasing period, the expense for repair of leased fixed assets may be accounted in expenses or amortized to expenses for the maximum period of 3 years.

In case enterprises have paid for the procurement of assets other than fixed assets: expenses for the purchase and use of technical materials, patents, technology transfer licenses, trademarks, business advantages, brand use right, etc., such expenses may be amortized to business expenses for the maximum period of 3 years.

In case enterprises contribute as capital the value of business advantage or the brand use right, the value of business advantage or the brand use right contributed as capital may not be included as deductible expenses for determining taxable income.

2.17. Interests paid for production and business loans borrowed from subjects other than credit institutions or economic organizations in excess of 150% of the prime interest rate announced by the State Bank of Vietnam at the time of borrowing.

2.18. Interests paid for loans corresponding to the deficit of registered charter capital (or investment capital for private enterprises) according to the capital contribution schedule specified in the charter of the enterprise, even when the enterprise has commenced its production and business activities. Interests paid for loans shall be included in the value of assets or constructions invested.

2.19. Deduction and use of provisions for inventory price decrease, losses in financial investments, bad receivables and warranty of products, goods, construction and installation works and professional risk provisions of value appraisal enterprises and independent audit service enterprises not in accordance with the guidance of the Ministry of Finance on deduction of provisions.

2.20. Periodic or cyclic pre-deducted expenses that are not used or completely used at the end of the period or cycle.

Pre-deducted expenses include pre-deducted expenses for periodic overhaul of fixed assets, pre-deducted expenses for activities of which turnover has been accounted but the contractual obligation has not yet been fulfilled (even for enterprises leasing their assets or providing services for many years and collecting money in advance, and having recorded all of such money in the turnover of the collection year) and other pre-deducted expenses.

If the turnover for calculating enterprise income tax has been recorded but all expenses have not yet fully arisen, production and business enterprises may pre-deduct according to regulations from deductible expenses the expenses corresponding to the recorded turnover for determining taxable income. Upon completing the contract, enterprises shall calculate the exact actual expenses based on lawful invoices and documents to increase (if the actual expenses are higher than the pre-deducted expenses) or decrease (if the actual expenses are lower than the pre-deducted expenses) expenses in the tax period when the contract is completed.

For cyclic repair of fixed assets, enterprises may pre-deduct repair expenses according to estimation from annual expenses. If the actual repair expense is higher than the pre-deducted amount according to estimation, the enterprise may additionally include the difference in deductible expenses.

2.21. Expenses in excess of 15% of total deductible expenses, including expenses for advertising, marketing, sales promotion, brokerage commissions; guest reception, ceremonies and conferences; marketing support, expense support; free presentation or donation of goods or services for customers.

Total deductible expenses must not include controlled expenses mentioned at this Point; for commercial activities, total deductible expenses do not include the purchase price of goods sold. For imported goods, the purchase prices of goods sold include import duty, excise tax and environmental protection tax (if any). For particular businesses like lottery, prize-winning electronic games, betting and casino, total deductible expenses do not include paid prizes.

Controlled expenses for advertising, marketing, sales promotion and brokerage commissions mentioned above do not include:

- Insurance brokerage commissions in accordance with the insurance business law; commissions paid to agents selling goods and services at set prices.
- Commissions paid to distributors of multi-level marketing companies. Organizations receiving the commissions shall declare and include them in their taxable income; individuals receiving the commissions shall have personal income tax withheld from their incomes.
- Expenses incurred in the country or abroad (if any) such as expenses for market research: exploration, survey, interviews, collection, analysis and evaluation of information; expenses for market development and market research support; expenses for hiring consultants to conduct market research and development and support market research; expenses for display and introduction of products and organization of trade fairs and exhibitions: expenses for opening product showrooms or booths, expenses for hiring space for product display and introduction, expenses of materials and support tools for product display and introduction, expenses for transportation of products for display and introduction.

2.22. Losses due to exchange rate differences resulted from re-valuation of monetary items of foreign currency origin at the end of the tax period, including exchange rate differences due to re-valuation of year-end balance, include cash, deposits, money in transfer and receivables of

foreign currency origin (except losses due to exchange rate differences resulted from re-valuation of payables of foreign currency origin at the end of the tax period).

In the period of construction investment to form fixed assets of newly established enterprises which are not yet put into operation, exchange rate differences arising upon payment of monetary items of foreign currency origin for construction investment and exchange rate differences resulted from re-valuation of payables of foreign currency origin at the end of the fiscal year shall be reflected accumulatively and separately in the balance sheet. The fixed assets are completed and put into use, exchange rate differences arising in the period of construction investment (after clearing between positive and negative differences) shall be gradually distributed to the turnover from financial activities or expenses for no more than 5 years from the time construction works are put into operation.

In the period of production and business, including construction investment to form fixed assets of operating enterprises, exchange rate differences arising from foreign-currency transactions of monetary items of foreign currency origin shall be accounted in the turnover from financial activities or expenses in the fiscal year.

For receivables and loans of foreign currency origin arising in the period, exchange rate difference allowed to be included in deductible expenses is the difference between the exchange rate at the time of debt or loan recovery and the exchange rate at the time of recording the receivable or initial loan.

2.23. Expenses for education funding not for the subjects specified at Item a of this Point or without dossiers to identify the funding mentioned at Item b below:

a/ Funding for education includes funding for public, people-founded and private schools within the national education system in accordance with the education law, which is not for contributing capital to or purchasing shares in the schools; financing facilities for teaching, learning and school activities; financing regular school activities; financing scholarships for pupils and students of general education institutions, vocational education institutions and higher education institutions defined in the Education Law, which are directly granted to pupils and students or through other agencies and organizations with the fund raising function as prescribed by; financing contests on subjects taught in schools for contestants who are learners; financing the establishment of education promotion funds in accordance with the education and training law;

b/ Dossiers to identify education financing include written records of financing certification signed by representatives of sponsoring business establishments, representatives of lawful education institutions as financed units, pupils and students (or agencies and organizations with the fund raising function) who are recipients according to form No. 03/TNDN issued together with this Circular, enclosed with invoices and documents of goods purchase (for in-kind funding) or payment documents (for cash financing).

2.24. Expenses for health funding not for the subjects specified at Item a of this Point or without dossiers to identify the funding mentioned at Item b below:

a/ Funding for health care includes funding for health facilities established in accordance with the health law which is not for contributing capital to or purchasing shares of those hospitals or health centers; funding for medical equipment, medical instruments and medicines; funding for regular activities of hospitals and health centers; financing in cash for patients through agencies and organizations with the fund raising function as prescribed by law;

b/ Dossiers to identify health funding comprise written records of financing certification signed by representatives of sponsoring business establishments, representative of financed units (or agencies and organizations with the fund raising function) according to form No. 04/TNDN issued together with this Circular, enclosed with invoices and documents of goods purchase (for in-kind funding) or payment documents (for cash financing).

2.25. Expenses of funding for remedying consequences of natural disasters not for the subjects specified at Item a of this Point or without dossiers to identify the funding mentioned at Item b below:

a/ Funding for remedying consequences of natural disasters includes funding in cash or in kind to overcome consequences of natural disasters provided directly to organizations established and operating in accordance with law and individuals affected by natural disasters through agencies and organizations with the fund raising function as prescribed by law;

b/ Dossiers to identify funding for remedying consequences of natural disasters comprise written records of financing certification signed by representatives of sponsoring business establishments, representatives of financed units which are affected by natural disasters (or agencies and organizations with the fund raising function) according to form No. 05/TNDN issued with this Circular, enclosed with invoices and documents of goods purchase (for in-kind funding) or payment documents (for cash financing).

2.26. Expenses of financing for building houses for the poor not for the subjects specified at Item a of this Point; expenses of financing for building houses for the poor or houses of great solidarity in accordance with law without dossiers to identify the funding mentioned at Item b below:

a/ Recipients of financing are poor households as prescribed by the Prime Minister. Forms of financing include financing in cash or in kind to build houses of gratitude for poor households directly or through an agency or organization having the fund raising function as prescribed by law;

b/ A dossier for identifying financing for building houses for the poor comprises a written record of financing certification signed by a representative of the financing enterprise and beneficiary (or agency or organization with the fund raising function) according to form No. 06/TNDN issued together with this Circular); written certification of poor household issued by local administration (for financing for building houses for the poor); invoices and documents on goods purchase (for in-kind financing) or payment documents (for cash financing).

2.27. Expenses for financing scientific research not in accordance with regulations; expenses for financing not under the State’s program for localities in areas with extremely difficult socio-economic conditions.

The State’s program is a program which is implemented under regulations of the Government in areas with extremely difficult socio- economic conditions.

A dossier for identifying financing under the State’s program for localities in areas with extremely difficult socio-economic conditions comprises a written record of financing certification signed by a representative of the financing enterprise and beneficiary (or agency or organization with the fund raising function) according to form No. 07/TNDN issued together with this Circular); invoices and documents on goods purchase (for in-kind financing) or payment documents (for cash financing).

Scientific research and procedures and dossiers for financing scientific research must comply with the Law on Science and Technology and relevant guiding legal documents.

2.28. Business management expenses allocated by overseas companies to their permanent establishments in Vietnam in excess of the expense level calculated by the following formula:

$$\begin{array}{l}
 \text{Business} \\
 \text{management} \\
 \text{expenses allocated} \\
 \text{by overseas} \\
 \text{company to} \\
 \text{permanent} \\
 \text{establishment in} \\
 \text{Vietnam in the tax} \\
 \text{period}
 \end{array}
 = \frac{\text{Turnover for tax calculation of} \\
 \text{permanent establishment in Vietnam}}{\text{Total turnover of overseas company} \\
 \text{including turnover of permanent} \\
 \text{establishments in other countries in} \\
 \text{the tax period}}
 \times \begin{array}{l}
 \text{Total business} \\
 \text{management} \\
 \text{expenses of overseas} \\
 \text{company in the tax} \\
 \text{period}
 \end{array}$$

Business management expenses of the overseas company allocated to its permanent establishment in Vietnam shall be taken into account only from the time of setting up the permanent establishment in Vietnam.

The basis for determining expenses and turnover of the overseas company is the financial statement of the company audited by an independent auditing firm which specifies the overseas company’s turnover and management expenses and the management expenses allocated by the overseas company to its permanent establishment in Vietnam.

If the permanent establishment of an overseas company in Vietnam has neither implemented regulations on accounting, invoices and documents nor paid tax by the method of declaration, it may not include in reasonable expenses its business management expense allocated by the overseas company.

2.29. Expenses which are offset by other funding sources; expenses which have been paid from the science and technology development funds of enterprises; expenses for buying golf membership cards and for golf playing.

2.30. Expenses related to the hiring of management for the business of prize-winning electronic games or casino in excess of 4% of the turnover from such business.

2.31. Expenses not corresponding to turnover for tax calculation, excluding the following expenses:

- Expenses for HIV/AIDS prevention and control at the enterprises' workplace, including expenses for training HIV/AIDS prevention and control officers of enterprises, expenses for HIV/AIDS prevention and control communication among enterprises' laborers, expenses for counseling, examination and testing for HIV and expenses in support of enterprises' laborers who are HIV-infected.

- Actual expenses for the performance of national defense and security education tasks, training and activities of militia and self-defense forces and other national defense and security tasks as prescribed by law.

- Actual expenses in support of Party and socio-political organizations in enterprises.

- Other particular expenses suitable to each sector or field as guided by the Ministry of Finance.

2.32. Expenses for investment in capital construction in the stage of investment to form fixed assets.

Upon commencing business and production, enterprises that have not yet generated any turnover but have to regularly incur expenses to maintain their production and business activities (other than expenses for construction to form fixed assets) and meet the prescribed conditions may include these expenses in deductible expenses for determining taxable income.

If, in the stage of investment, enterprises incur expenses for payment of loans, they may include these expenses in the investment value. If, in the stage of investment, enterprises incur both expenses for payment of loans and revenues from interests on deposits, they may offset these expenses against these revenues and record the remaining difference as decrease in the investment value.

2.33. Expenses in support of localities, mass organizations and social organizations; expenses for charity (except expenses of funding for education, healthcare, remedy of consequences of natural disasters and building of houses for the poor and houses of great solidarity; financing of scientific research and financing under the State's program for localities in areas with particularly difficult socio-economic conditions mentioned at Points 2.23, 2.24, 2.25, 2.26 and 2.27, Clause 2 of this Article).

2.34. Expenses directly related to the issuance of stocks (excluding stocks being payable debts) and payment of dividends (excluding dividends of stocks being payable debts), and purchase and sale of treasury shares, and other expenses directly related to the increase and decrease of equity of enterprises.

2.35. Expenses for insurance business, lottery business, securities business and a number of other specific business activities which do not comply with separate written guidelines of the Ministry of Finance.

2.36. Fines paid for administrative violations, including traffic violations, violations of regulations on business registration, violations of regulations on accounting and statistics, violations of tax laws, including late tax payment interests in accordance with the Law on Tax Administration, and fines for other administrative violations as prescribed by law.

2.37. Input value-added tax which has been credited or refunded; input value-added tax on fixed assets which are cars with 9 seats or under in excess of the credit level specified in legal documents on value-added tax; enterprise income tax, except the cases in which enterprises pay enterprise income tax for foreign contractors as agreed in the contracts with foreign contractors or foreign subcontractors that revenues received by foreign contractors or foreign subcontractors are exclusive of enterprise income tax; personal income tax, except the case in which enterprises sign labor contracts which stipulate that salaries or wages payable to laborers are exclusive of personal income tax.

Article 7. Other incomes

Other incomes are taxable incomes in a tax period which arise not from the sectors and business lines indicated in enterprises' business registration certificates. Other incomes include:

1. Income from the transfer of capital or securities as guided in Chapter IV of this Circular.
2. Income from the transfer of real estate as guided in Chapter V of this Circular.
3. Income from the transfer of investment projects; transfer of the right to participate in investment projects; transfer of the right to explore, exploit and process minerals as prescribed by law.
4. Income from asset ownership or use rights, including also copyright royalties in any form paid for asset ownership or use rights; royalties from intellectual property rights; and income from technology transfer in accordance with law.

Income from intellectual property right royalties or technology transfer is the total collected sum of money minus (-) the cost price or expense for the creation of the transferred intellectual property rights or technology, minus (-) the expense for maintaining, upgrading or developing the transferred intellectual property rights or technology and other deductible expenses.

5. Income from asset lease in any form.

Income from asset lease is the turnover from the asset lease minus (-) expenses for asset depreciation, renovation, repair and maintenance, expense for the lease of assets for sublease (if any) and other deductible expenses related to the asset lease.

6. Income from transfer or liquidation of assets (excluding real estate) and other valuable papers.

This income equals (=) turnover from asset transfer or liquidation minus (-) the residual book value of the transferred or liquidated asset at the time of transfer or liquidation, and deductible expenses related to the asset transfer or liquidation.

7. Income from deposit or loan interests, including also interests on deferred and installment payments, credit guarantee charges and other charges under loan provision contracts.

- In case income from deposit or loan interests is higher than expenses for payment of loan interests as prescribed, the remainder after the income- expense clearing may be included in other incomes for determining taxable income.

- In case income from deposit or loan interests is lower than expenses for payment of loan interests as prescribed, the remainder after the income- expense clearing may be cleared against income from main production and business activities for determining taxable income.

8. Income from the sale of foreign currency, which equals total proceeds from the sale of foreign currency minus (-) total buying price of the sold foreign currency amount.

9. Income from exchange rate difference, which shall be determined specifically as follows:

In a year of enterprise income tax calculation, if an exchange rate difference arises in a period or from the re-valuation of payables of foreign currency origin at the end of the fiscal year, then:

- The exchange rate difference arising in a period and directly related to the turnover of and expenses for main production and business activities of enterprises shall be accounted as an expense for or income from these production and business activities. The exchange rate difference arising in a period not directly related to the turnover of and expenses for main production and business activities of enterprises shall be accounted as an expense for such production and business activities if it is a loss, or as other income if it is a profit.

- Exchange rate difference profits earned from the re-valuation of foreign-currency payables at the end of the fiscal year may be cleared against exchange rate difference losses resulting from such re-valuation. After the clearing, exchange rate difference profits or losses directly related to the turnover from or expenses for main production and business activities of enterprises shall be accounted as income from or expense for such production and business activities. Exchange rate difference profits or losses not directly related to the turnover from or expenses for main production and business activities of enterprises shall be accounted as other income or expense for main production and business activities for determining taxable income.

For receivables and provided loans of foreign currency origin arising in a period, the exchange rate difference which may be accounted as deductible expense or income is the difference between the exchange rates at the time of recovery of the receivable or provided loan and at the time of recognition of the receivable or initial loan.

The above-mentioned exchange rate differences exclude foreign exchange rate differences resulting from the re-valuation of the year-end balance in cash, deposit, in-transfer money and receivables of foreign currency origin.

10. Recovered bad debts which have been written off.

11. Payable debts of unidentifiable creditors.

12. Previous years' omitted incomes from production and business activities, which are now discovered.

13. If fines or compensations received by enterprises from their partners for contract breaches or rewards for good realization of commitments under contracts are higher than those paid by these enterprises for their contract breaches (these fines are other than those paid for administrative violations in accordance with the law on handling of administrative violations), the remainder after the clearing may be included in other income.

If fines or compensations received by enterprises from their partners for contract breaches or rewards for good realization of commitments under contracts are lower than those paid by these enterprises for their contract breaches (these fines are other than those paid for administrative violations in accordance with the law on handling of administrative violations), the remainder after the clearing may be deducted from other income. If there is no other income in a year, the remainder may be deducted from income from production and business activities.

Revenues from the above-said fines and compensations exclude fines and compensations already recorded as decrease in the construction value in the stage of investment.

14. Difference resulting from the re-valuation of assets in accordance with law for capital contribution or asset transfer upon enterprise split, separation, consolidation, merger or transformation shall be determined specifically as follows:

a/ Positive or negative difference resulting from the re-valuation of assets is the difference between the re-valuated value and the residual book value of assets and shall be included once in other income (for positive difference) or deducted from other income (for negative difference) in a tax period for determining taxable incomes of enterprises having their assets re- valuated;

b/ Positive or negative difference resulting from the re-valuation of land use rights for capital contribution (in which enterprises receiving the value of land use rights may gradually allocate this value to deductible expenses), transfer upon enterprise split, separation, consolidation, merger or transformation; or for capital contribution to investment projects to build houses and infrastructure facilities for sale shall be included once in other income (for positive difference) or

deducted from other income (for negative difference) in a tax period for determining taxable incomes of enterprises having their land use rights re-valuated;

Particularly, positive difference resulting from the re-valuation of land use rights for the creation of fixed assets used in production and business activities in which enterprises receiving the value of land use rights may neither depreciate nor gradually allocate this value to deductible expenses, may be gradually allocated to other income of enterprises having their land use rights re-valuated for no more than 10 years from the year the value of land use rights is contributed as capital. Enterprises shall notify the number of years they will allocate to other income when submitting dossiers of declaration for enterprise income tax finalization of the starting year of declaration of this income (the year when land use rights to be contributed as capital are re-valuated);

In case after capital contribution, enterprises continue to transfer the value of land use rights contributed as capital (including also the case of capital contribution ahead of the 10-year time limit), income from the transfer of the value of land use rights contributed as capital shall be calculated and declared for tax payment as income from real estate business;

The difference resulting from the re-valuation of land use rights includes the difference between the re-valuated value and book value of land use rights, for long-term land use rights, or the difference between the re-valuated value and unallocated residual value of land use rights, for definite-term land use rights.

c/ Enterprises that receive assets contributed as capital or assets transferred upon enterprise split, separation, consolidation, merger or transformation may make depreciation or amortization to expenses according to the re-valuation (unless the value of land use rights is ineligible for depreciation or amortization into expenses under regulations).

15. Donations and gifts in cash or in kind; income received in cash or in kind from financing sources; income received from marketing support, expense support, payment discount, promotional prizes and other supports. For incomes received in kind, the value of these incomes shall be determined according to the value of similar goods or services at the time of receipt.

16. Sums of money, property and material benefits received by enterprises from organizations and individuals as agreed or contracted in accordance with the civil law when enterprises had over their land areas for relocation of their production and business facilities, after subtracting related expenses, such as expenses for relocation (transportation and installation costs), the residual value of fixed assets and other expenses (if any).

Sums of money, property and material benefits received by enterprises under the State policy and approved by competent state agencies for relocation of their production facilities, shall be managed and used in accordance with relevant laws.

17. Amounts pre-deducted as expenses but left unused or not fully used in the deduction period which are not accounted by enterprises as decrease in expenses; refunded provisions for warranty of construction works.

18. Incomes related to goods sale or service provision which are not included in turnover, such as bonus for quick clearance of ships, tips for food and drink catering or hotel services, after subtracting expenses for generating such incomes.

19. Income from the sale of scraps and discarded products, after subtracting recovery and sale expenses, which shall be determined specifically as follows:

- In case enterprises generate the income from the sale of scraps and discarded products generated in the production of products eligible for enterprise income tax incentives, such income is eligible for enterprise income tax incentives.

- In case enterprises generate the income from the sale of scraps and discarded products generated in the production of products ineligible for enterprise income tax incentives, such income shall be accounted as other income.

20. Refunded import duty or export duty amounts on actually imported or exported goods right in the year of enterprise income tax finalization may be accounted as deductible expenses in that year. In case refunded import duty or export duty amounts on actually imported or exported goods are for previous years of enterprise income tax finalization, they shall be accounted as other incomes of these years. If such income is directly related to a production or business sector currently eligible for enterprise income tax incentives, it is eligible for such incentives. If such income is not directly related to the production or business sector currently eligible for enterprise income tax incentives, it shall be accounted as other income.

21. Incomes from the contribution of equity capital, contribution of capital to joint ventures or economic associations at home which are divided from pre-enterprise income tax incomes.

22. Income received from overseas goods production and trading or service provision.

- Offshore-investing Vietnamese enterprises earning incomes from overseas production and business activities shall declare and pay enterprise income tax under Vietnam's Law on Enterprise Income Tax currently in force, even when they are enjoying enterprise income tax exemption and reduction under the regulations of the host countries. The enterprise income tax rate used for calculating and declaring tax on incomes earned overseas is 22% (or 20% from January 1, 2016). The preferential tax rate (if any) enjoyed by offshore-investing Vietnamese enterprises under the current Law on Enterprise Income Tax is not applicable.

Tax agencies may assess taxable income from overseas production and business activities of offshore-investing Vietnamese enterprises that violate regulations on tax declaration and payment.

- When an income from an offshore investment project has been subjected to enterprise income tax (or a similar tax) overseas, when calculating enterprise income tax payable in Vietnam, the offshore-investing Vietnamese enterprise may subtract the tax amount already paid by itself overseas or paid on its behalf by its partner in the host country (including dividend tax), which must not exceed the income tax amount calculated under Vietnam's Law on Enterprise Income

Tax. The exempted or reduced income tax amount of the offshore-investing Vietnamese enterprise for the profit earned from its offshore investment project under the law of the host country may also be subtracted upon determination of its income tax amount payable in Vietnam.

The dossier to be submitted upon tax declaration and payment by an offshore-investing Vietnamese enterprise for the income from its offshore investment project must comprise:

- + The enterprise's document on the division of the offshore investment project's profit.
 - + The enterprise's financial statement certified by an independent audit organization.
 - + The enterprise's income tax return for the offshore investment project (copy certified by the project's competent representative);
 - + The enterprise's tax finalization written record (if any);
 - + Document certifying or proving the tax amount paid overseas.
- If the offshore investment project has not generated any taxable income (or is suffering losses), upon annual enterprise income tax declaration and finalization, the offshore-investing Vietnamese enterprise is only required to submit a financial statement certified by an independent audit organization or a competent agency of the host country and the project's income tax return (copy certified by the project's competent representative and bearing the enterprise's seal). Upon enterprise income tax calculation, any loss arising from the offshore investment project is not allowed to be cleared against the income earned by the enterprise in Vietnam.
- Income earned from the offshore investment project shall be declared in the enterprise income tax finalization of the year following the fiscal year when such income is earned or of the fiscal year coinciding with the year when such income is earned overseas if the enterprise has sufficient grounds and documents for determining the project's income and paid income tax amount.

For income from production and business activities of an investment project implemented in a country which has signed a double taxation avoidance agreement with Vietnam, Vietnamese enterprises investing in this country shall declare and pay tax in accordance with this agreement.

23. Other incomes as provided by law.

Article 8. Tax-exempt incomes

1. Incomes from cultivation, husbandry, aquaculture and salt production of cooperatives; incomes of cooperatives engaged in agriculture, forestry, fisheries and salt production in geographical areas with difficult socio- economic conditions or geographical areas with particularly difficult socio- economic conditions; incomes of enterprises from cultivation,

husbandry and aquaculture in geographical areas with particularly difficult socio-economic conditions; incomes from fishing activities.

a/ Tax-exempt incomes from cultivation (including also products from planted forests), husbandry and aquaculture of cooperatives and enterprises are incomes from products of cultivation, husbandry, aquaculture and fishing of enterprises and cooperatives which are not yet processed into other products or preliminarily processed (excluding those purchased by cooperatives and enterprises). Preliminarily processed products are guided in legal documents on value-added tax;

Enterprises and cooperatives shall separately account tax-exempt incomes specified in this Clause. In case they cannot separately account tax - exempt incomes from cultivation, husbandry and aquaculture, such incomes shall be allocated according to the ratio of their production expenses in the stages of cultivation, exploitation and preliminary processing of ordinary products to their total expenses (including also management and sale expenses) in a tax period;

Enterprises and cooperatives that plant rubber trees are exempt from tax for incomes from the planting of rubber trees and exploitation of rubber latex. If they cannot separately account incomes from the planting of rubber trees and exploitation of rubber latex, their tax-exempt incomes may be allocated according to the ratio of expenses for planting of rubber trees and exploitation of rubber latex to their total expenses.

Tax-exempt incomes specified in this Clause include also incomes from the liquidation of products of cultivation, husbandry and aquaculture (except liquidation of rubber plantations) and incomes from the sale of waste materials and scraps related to such products;

Cultivation, husbandry and aquaculture products of cooperatives and enterprises shall be identified based on the level-1 economic sector codes of agriculture, forestry and fisheries in Vietnam's system of economic sectors;

b/ Tax-exempt incomes of cooperatives engaged in agriculture, forestry, fisheries and salt production in geographical areas with difficult socio- economic conditions or geographical areas with particularly difficult socio- economic conditions are all incomes earned from production and business activities in geographical areas eligible for incentives, except the incomes specified at Points a, b and c, Clause 3, Article 18 of this Circular;

Cooperatives engaged in agriculture, forestry, fisheries and salt production as specified in this Clause and at Point f, Clause 3, Article 19 of this Circular are those satisfying the condition of ratio of products and services provided to their members being individuals, households and legal entities engaged in agriculture, forestry, fisheries and salt production in accordance with the Law on Cooperatives and the Government's Decree No. 193/2013/ND-CP of November 21, 2013, detailing a number of articles of the Law on Cooperatives.

2. Incomes from the provision of technical services directly for agriculture, including income from such services as irrigation and water drainage; soil plowing and harrowing, and dredging of

intra-field canals and ditches; prevention and control of crop and animal pests and diseases; and harvest of agricultural products.

3. For incomes from the performance of scientific research and technological development contracts; the sale of products turned out from trial production and production with technologies applied for the first time in Vietnam. The maximum tax exemption duration is one (1) year from the date of commencing the performance of the contracts or commencing trial production or production with technologies applied for the first time in Vietnam.

a/ Tax-exempt income from the performance of scientific research and technological development contracts must satisfy the following conditions:

- The scientific research activity registration is certified;
- Such scientific research and technological development contract is certified by a competent state management agency in charge of science.

b/ Income from the sale of products turned out with technologies applied for the first time in Vietnam is eligible for tax exemption when such technologies are certified by a competent state management agency in charge of science.

4. Income from goods production and trading or service provision activities of enterprises employing disabled, drug-detoxified and HIV- infected laborers, who account for at least 30% of the average number of laborers of these enterprises in a year.

Tax-exempt incomes specified in this Clause exclude other incomes referred to in Article 7 of this Circular.

Enterprises eligible for tax exemption specified in this Clause are those having an average number of laborers in a year of at least 20, excluding those engaged in finance and real estate business.

Enterprises having tax-exempt income specified at this Point must satisfy the following conditions:

a/ For enterprises employing disabled laborers (including war invalids and diseased soldiers), a competent health agency's certification of the number of disabled laborers is required.

b/ For enterprises employing drug-detoxified laborers, detoxification establishments' certification of the complete detoxification or a concerned competent agency's certification is required.

c/ For enterprises employing HIV-infected laborers, a competent health agency's certification of the number of HIV-infected laborers is required.

5. Income from job training exclusively provided for ethnic minority people, the disabled, extremely disadvantaged children and people involved in social evils, people undergoing detoxification, detoxified people and HIV/AIDS-infected people. If an establishment also provides job training for people of other categories, tax-exempt income must be determined based on the ratio of the number of ethnic minority people, the disabled, extremely disadvantaged children, people involved in social evils, detoxified people and HIV/AIDS-infected people to the total number of trainees.

Tax-exempt income from job training specified in this Clause must satisfy the following conditions:

- Job training establishments are set up and operate under regulations on job training.
- Having the lists of trainees being ethnic minority people, the disabled, extremely disadvantaged children, people involved in social evils, people undergoing detoxification, detoxified people and HIV/AIDS-infected people.

6. Incomes divided from capital contribution, share purchase, joint venture or economic association with domestic enterprises, after contributed capital recipients, share issuers or joint venture or association parties have paid enterprise income tax under the Law on Enterprise Income Tax, including those eligible for enterprise income tax incentives.

Example 11: Enterprise B receives contributed capital from enterprise A. Pre-tax income corresponding to enterprise A's contributed capital in enterprise B is VND 100 million.

- Case 1: Enterprise B is ineligible for enterprise income tax incentives and has fully paid enterprise income tax, including enterprise A's income, then the income enterprise A receives from capital contribution is VND 78 million $[(\text{VND } 100 \text{ million} - (\text{VND } 100 \text{ million} \times 22\%))]$, and enterprise A will be exempt from enterprise income tax on this amount.
- Case 2: Enterprise B is eligible for 50% reduction of the payable enterprise income tax amount and has fully paid enterprise income tax, including enterprise A's income according to the reduced enterprise income tax amount, then the income enterprise A receives from capital contribution is VND 89 million $[(\text{VND } 100 \text{ million} - (\text{VND } 100 \text{ million} \times 22\% \times 50\%))]$, and enterprise A will be exempt from enterprise income tax on this amount.
- Case 3: Enterprise B is eligible for enterprise income tax exemption, then the income enterprise A receives from capital contribution is VND 100 million, and enterprise A will be exempt from enterprise income tax on this amount.

7. Aid received for educational, scientific research, cultural, artistic, charitable, humanitarian and other social activities in Vietnam.

Aid beneficiaries that improperly use the aid shall calculate and pay enterprise income tax on the improperly used aid amount in a tax period during which the aid is improperly used.

Aid beneficiaries defined in this Clause must be those lawfully established and operating and strictly observing the laws on accounting and statistics.

8. Incomes from the first-time transfer of certified emission reductions (CERs) of enterprises granted with emission reduction certificates. Subsequent transfers shall be liable to enterprise income tax under regulations.

Tax-exempt incomes from transfer of CERs must satisfy the condition that the sale or transfer of emission reduction certificates is certified by the competent agency in charge of environment.

9. Incomes from the performance of state-assigned tasks of the Vietnam Development Bank in development investment and export credit activities; incomes from the provision of loans to the poor and other policy beneficiaries by the Social Policy Bank; incomes of the single-member limited liability company managing assets of Vietnamese credit institutions; incomes from revenue-earning activities in the performance of state-assigned tasks of state-owned financial funds: Vietnam Social Security Fund, Deposit Insurance, Health Insurance Fund, Job Training Support Fund, Overseas Employment Support Fund of the Ministry of Labor, War Invalids and Social Affairs, Vietnam Legal Aid Fund, Public-Utility Telecommunications Fund, Local Development Investment Fund, Vietnam Environmental Protection Fund, Fund for Credit Guarantee for Small- and Medium-Sized Enterprises, Cooperative Development Support Fund, Poor Women Support Fund, Overseas Citizen and Legal Entity Protection Fund, Housing Development Fund, Small- and Medium-Sized Enterprise Development Fund, Land Development Fund, Farmer Support Fund, Fund for Capital Support for Self-Employed Workers and Poor Laborers, and other state funds operating for not-for-profit purposes in accordance with law. These funds are established and operate under mechanisms and policies prescribed by the Government or the Prime Minister.

Units that earn incomes other than those from revenue-earning activities in the performance of state-assigned tasks shall calculate and pay tax for such incomes under regulations.

10. Undivided incomes:

a/ Undivided incomes of establishments engaged in socialized education-training, health and other socialized activities (including judicial examination offices) may be retained by the establishments for investment in their development in accordance with specialized laws on education-training, health and other socialized fields. Tax-exempt undivided incomes of socialized establishments specified in this Clause exclude incomes retained for investment in other sectors and other business lines not in the fields of education-training, health and other socialized fields.

Establishments engaged in socialized activities include:

- Non-public establishments founded and satisfying the operation conditions prescribed by competent state agencies in charge of socialized fields.

- Enterprises established to operate in the socialized fields and satisfying the operation conditions prescribed by competent state agencies.

- Public non-business establishments that contribute capital, raise capital, enter into joint ventures or associations in accordance with law and establish independent accounting subsidiaries or enterprises to operate in the socialized fields under decisions of competent state agencies.

These establishments must satisfy the conditions on type, size and standards prescribed by the Prime Minister.

b/ Undivided incomes retained by cooperatives for creation of their assets;

c/ In case undivided incomes which are retained under this Clause are divided or used for improper purposes by units, these units shall be subject to retrospective collection of enterprise income tax at the tax rate at the time of division or improper use of undivided incomes and by sanctioned for tax- related violations under regulations.

11. Incomes from technology transfer in the prioritized fields of transfer of technology to organizations and individuals in geographical areas with particularly difficult socio-economic conditions.

The procedures for technology transfer must comply with the Law on Technology Transfer, the Government's Decree No. 133/2008/ND-CP of December 31, 2008, detailing and guiding the implementation of a number of articles of the Law on Technology Transfer, and legal documents guiding the Law on Technology Transfer.

The prioritized fields of technology transfer are those on the list of technologies encouraged for transfer (promulgated together with Decree No. 133/2008/ND-CP and legal documents amending and supplementing this Decree (if any)).

Article 9. Determination and carry-forward of losses

1. Loss arising in a tax period is the negative difference of taxable income exclusive of losses carried forward from previous years.

2. Enterprises that suffer a loss after making tax finalization may carry forward continuously the whole loss to subsequent years' taxable incomes (taxable incomes exclusive of tax-exempt incomes). The maximum duration for loss carry-forward is 5 consecutive years, counting from the year following the year the losses arise.

Enterprises may temporarily clear their losses of a year against taxable incomes of the quarters of the following year upon making quarterly declarations for temporary tax payment and officially carry forward these losses in the following year after making annual tax finalization declarations.

Example 12: In 2013, enterprise A suffers a loss of VND 10 billion. In 2014, it generates an income of VND 12 billion. So, it shall clear the whole loss in 2013 against its taxable income in 2014.

Example 13: In 2013, enterprise B suffers a loss of VND 20 billion. In 2014, it generates an income of VND 15 billion. It shall:

+ Clear the whole loss of VND 15 billion against the income in 2014;

+ Monitor and carry forward continuously the whole remaining loss amount of VND 5 billion of 2013 on the above principle of loss carry-forward to not more than consecutive 5 years, counting from the year following the year the loss arises.

- Enterprises that have a loss arising in a certain quarter of a fiscal year may carry forward such loss from this quarter to the following quarters of that fiscal year. When making enterprise income tax finalization, enterprises shall determine the loss of the whole year and continuously clear the whole loss against their taxable incomes of the years following the year when the loss arises in accordance with the above regulations.

- Enterprises shall determine by themselves losses to be cleared against taxable incomes on the above principle. In the loss carry-forward duration, newly arising losses (excluding losses carried forward from the previous period) may be fully carried forward for not more than 5 consecutive years, counting from the year following the year the losses arise.

When an agency competent to examine and inspect enterprise income tax finalization detects a loss amount which an enterprise is allowed to carry forward is different from the loss amount determined by the enterprise itself, the loss amount allowed to be carried forward shall be determined based on the competent agency's conclusion, and fully carried forward for not more than 5 consecutive years, counting from the year following the year the losses arise.

Past the 5-year time limit, arising losses not yet fully carried forward are not allowed to be cleared against the following years' incomes.

3. Enterprises undergoing transformation, merger, consolidation, separation, split, dissolution or bankruptcy shall finalize with tax agencies enterprise income tax amounts up to the time of issuance by competent agencies of decisions on transformation ownership conversion, merger, consolidation, separation, split, dissolution or bankruptcy. The old enterprises' losses must be monitored in detail by the years they arise and cleared against the new enterprises' taxable incomes in the same year or further cleared against the new enterprises' taxable incomes of following year, provided that they are carried forward for not more than 5 consecutive years, counting from the year following the year they arise.

Article 10. Deduction for setting up enterprises' scientific and technological development funds

1. Enterprises established and operating in accordance with Vietnamese law may deduct up to 10% of their annual taxed incomes before calculating enterprise income tax for setting up their

scientific and technological development funds. Before calculating enterprise income tax, enterprises may determine by themselves the level of deduction for setting up their scientific and technological development funds under regulations. Annually, enterprises which make deductions for setting up their scientific and technological development funds shall make reports on the setting up and use of these funds, and declare the level of deduction and deducted amounts in their declarations for enterprise income tax finalization. Reports on the use of scientific and technological development funds shall be submitted together with enterprise income tax finalization declarations.

In addition to making deductions for setting up their scientific and technological development funds under this Article, enterprises with more than 50% of charter capital held by the State shall ensure the minimum fund- setting deduction level prescribed in the Science and Technology Law.

2. Within 5 years after being set up, if a scientific and technological development fund is left unused or has been improperly used, or if only less than 70% of this fund has been used, the enterprise shall remit into the state budget the enterprise income tax amount on the deducted income which is left unused or has been improperly used and the interest accrued on such tax amount.

The improperly used sum of money shall not be included in the total sum of money used for scientific and technological development.

- The enterprise income tax rate for calculating the tax amount to be recovered is the tax rate applicable to an enterprise in the deduction duration.

- The interest rate used for calculating the interest on the recoverable tax amount imposed on the unused fund amount is the interest rate applicable to treasury bonds of a one-year term (or the interest rate of treasury bills of a one-year term) at the time of recovery, and the interest payment duration is two years.

3. Enterprises' scientific and technological development funds must be used only for scientific research and technology development investment of enterprises in Vietnam. These funds' expenses must have adequate lawful invoices and documents as provided by law.

4. Enterprises may not account expenses from their science and technology development funds as production or business expenses upon determination of their taxable incomes in a tax period. In case enterprises use these funds for scientific research and technology development but these funds are insufficient, they may account the difference between actual expenses and deducted amounts as their production or business expenses upon determination of their taxable incomes.

5. For an operating enterprise which undergoes ownership transformation, is consolidated or merged, the new enterprise established from such ownership transformation, consolidation or merger may take over the old enterprise's science and technology development fund and shall take responsibility for the management and use of this fund.

If an enterprise still has an unused science and technology development fund upon its separation or split, the new enterprise established from such separation or split may take over the old enterprise's science and technology development fund and shall take responsibility for the management and use of this fund. The enterprises shall decide on and register with the tax agency the distribution of the science and technology development fund.

6. In case a Government's Decree on investment and financial mechanism applicable to scientific and technological activities otherwise provides for deductions for setting up enterprises' science and technology development funds, the Ministry of Finance and the Ministry of Science and Technology shall issue a joint circular to additionally guide such provisions in compliance with legal documents on enterprise income tax and the decree on investment and financial mechanism applicable to scientific and technological activities.

Article 11. Enterprise income tax rates

1. From January 1, 2014, the enterprise income tax rate is 22%, except the cases specified in Clauses 2 and 3 of this Article and cases eligible for preferential tax rates.

For example: Enterprises apply the fiscal year from April 1, 2013, to March 31, 2014. When making enterprise income tax finalization, enterprises that are currently subject to the common tax rate and ineligible for preferential tax rates shall calculate and allocate payable enterprise income tax amounts as follows:

$$\text{Payable enterprise income tax} = \frac{\text{Taxable income in the tax period}}{12 \text{ months}} \times \frac{9}{\text{months}} \times 25\% + \frac{\text{Taxable income in the tax period}}{12 \text{ months}} \times \frac{3}{\text{months}} \times 22\%$$

From January 1, 2016, the cases subject to the tax rate of 22% shall shift to apply the tax rate of 20%.

2. Enterprises established in accordance with the Vietnamese law (including cooperatives and non-business units) engaged in goods production or service provision activities and having an annual total turnover not exceeding VND 20 billion may be subject to the tax rate of 20%.

The annual total turnover used as a basis for determining whether an enterprise is subject to the tax rate of 20% prescribed in this Clause is the total goods sales or service provision revenue of the preceding year determined based on the code indicators [01] and [08] in the Appendix on production and business results of the preceding year's tax period according to form No. 03-1A/TNDN attached to enterprise income tax return No. 03/TNDN promulgated together the Ministry of Finance's Circular No. 156/2013/TT-BTC of November 6, 2013, on tax administration.

Example 14: Company A that applies a tax period according to the fiscal year from April 1 of a year to the end of March 31 of the subsequent year, has turnover from goods sales and service

provision revenue coded [01] and turnover from financial operations under coded [08] in Appendix No. 03-1A/TNDN attached to enterprise income tax return No. 03/TNDN of the fiscal year of 2013 (from April 1, 2013, to the end of March 31, 2014) not exceeding VND 20 billion, from the fiscal year of 2014 (from April 1, 2014, to the end of March 31, 2015) may apply the enterprise income tax rate of 20% for the fiscal year of 2014. If its total turnover of the fiscal year of 2014 determined according to the above guidance is more than VND 20 billion, it may apply the enterprise income tax rate of 22% for the fiscal year of 2015 (from April 1, 2015, to the end of March 31, 2016).

If an enterprise's preceding year is not full 12 months, its annual total turnover used as a basis for determining whether it is eligible for the tax rate of 20% under this Clause is the total turnover from goods sales and service provision in the preceding year determined based on the code indicators [01] and [08] in the Appendix on production and business results of the preceding year's tax period according to form No. 03-1A/TNDN attached to enterprise income tax return No. 03/TNDN divided by the actual number of months of production and business operation in the year. If the average monthly turnover in the year does not exceed VND 1.67 billion, the enterprise may apply the enterprise income tax rate of 20% for the subsequent year.

Example 15: Company A that applies a tax period according to the calendar year, temporarily suspends its business operation for 3 months of the calendar year until April 1, 2014, then conducts its business operation until the end of December 31, 2014, and has turnover from goods sales and service provision revenue coded [01] and turnover from financial operations coded [08] in Appendix No. 03-1A/TNDN attached to enterprise income tax return No. 03/TNDN of 2014 of VND 18 billion and an average monthly turnover in 2014 of VND 2 billion (VND 18 billion divided by (:) 9 months) may not apply the enterprise income tax rate of 20% and shall be subject to the tax rate of 22%. If the average monthly turnover in 2014 does not exceed VND 1.67 billion, it may apply the enterprise income tax rate of 20% for the subsequent year.

An enterprise that has just been established for less than 12 months in a calendar year shall make declaration for temporary calculation of enterprise income tax at the rate of 22% (except the cases eligible for the tax incentives). At the end of the fiscal year, if its average monthly turnover in the year does not exceed VND 1.67 billion, it shall finalize the payable enterprise income tax amount of the fiscal year at the tax rate of 20% (except incomes specified in Clause 3, Article 18 of this Circular). Turnover shall be determined based on the indicator of total turnover from goods sales and service provision coded [01] and the indicator coded [08] in the Appendix on production and business operation results according to form No. 03-1A/TNDN attached to enterprise income tax return No. 03/TNDN promulgated together with the Ministry of Finance's Circular No. 156/2013/TT-BTC of November 6, 2013, on tax administration. If the average monthly turnover in the first year does not exceed VND 1.67 billion, the enterprise may apply the enterprise income tax rate of 20% for the subsequent year.

3. The enterprise income tax rate applicable to petroleum prospecting, exploration and exploitation in Vietnam is between 32% and 50%. Based on the exploitation locations and conditions and petroleum reserves, enterprises having investment projects on petroleum prospecting, exploration and exploitation shall send investment projects' dossiers to the Ministry

of Finance for further submission to the Prime Minister to decide on a specific tax rate applicable to each project or business establishment.

The enterprise income tax rate applicable to the prospecting, exploration and extraction of precious and rare natural resources (including platinum, gold, silver, tin, tungsten, antimony, gemstones and rare earth other than petroleum) is 50%. For mines of precious and rare natural resources with 70% or more of their allocated areas located in geographical areas with particularly difficult socio-economic conditions on the list of geographical areas eligible for enterprise income tax incentives promulgated together with the Government's Decree No. 218/2013/ND-CP, the applicable enterprise income tax rate is 40%.

Chapter III

PLACES FOR TAX PAYMENT

Article 12. Principles of determination

Enterprises shall pay tax in geographical areas where they are headquartered. For an enterprise that has dependent cost-accounting production establishments (including processing and assembly establishments) operating in provinces or centrally run cities other than the locality where it is headquartered, the tax must be calculated and paid in both the locality where the enterprise is headquartered and the geographical areas where its production establishments are based.

The distribution of payable tax amounts referred to in this Clause is not applicable to enterprises having works, work items or dependent cost-accounting construction establishments.

Article 13. Determination of payable tax amounts

An enterprise income tax amount calculated and paid in a province or centrally run city where a dependent cost-accounting production establishment is based is the payable enterprise income tax amount in a period multiplied by (x) the ratio between expenses incurred by such production establishment and total expenses incurred by the enterprise.

The ratio of expenses is that between total expenses incurred by the dependent cost-accounting production establishment and total expenses incurred by the enterprise. The ratio of expenses shall be determined as follows:

$$\text{Ratio of expenses incurred by the dependent cost-accounting production establishment} = \frac{\text{Total expenses incurred by the dependent cost-accounting production establishment}}{\text{Total expenses incurred by the enterprise}}$$

The ratio of expenses shall be determined based on the enterprise's income tax finalization data in the year preceding the tax year, which shall be determined by the enterprise itself as a basis for

determining the payable amount and used for the enterprise income tax declaration and payment for subsequent years.

An operating enterprise which has different dependent cost-accounting production establishments in different geographical areas shall determine by itself data used for determining the ratio of expenses incurred by the enterprise in the locality where it is headquartered and expenses incurred by its dependent cost-accounting production establishments, based on the 2008 enterprise income tax finalization data. This ratio will be used stably from 2009 onwards.

A newly established enterprise or an operating enterprise which increases or reduces its dependent cost-accounting production establishments in geographical areas shall determine by itself the ratio of expenses in the first tax period in this case. From the subsequent tax period, the ratio of expenses shall be determined on the above principle.

Dependent cost-accounting units of enterprises applying entire-sector accounting and earning incomes outside their main business lines shall pay tax in provinces or centrally run cities where such business activities are conducted.

Chapter IV

INCOMES FROM CAPITAL TRANSFER OR SECURITIES TRANSFER

Article 14. Incomes from capital transfer

1. Scope of application:

An enterprise's income from capital transfer is income earned from the transfer of part or the whole of the capital amount the enterprise has invested in one or many other organizations or individuals (including the sale of the whole enterprise). The time of capital transfer is the time of transfer of capital ownership.

In case an enterprise sells the whole single-number limited liability company which it owns in the form of capital transfer together with real estate, it shall declare and pay enterprise income tax for transfer of real estate and fill in the enterprise income tax return (form No. 08) promulgated together with this Circular.

In case an enterprise transfers capital and receives in return property or other material benefits (stocks, fund certificates, etc.) instead of cash and earns income from such transfer, such income is liable to enterprise income tax. The value of property, stocks or fund certificates shall be determined based on their selling prices on the market at the time of their receipt.

2. Tax bases:

a/ Taxed income from capital transfer shall be determined as follows: Taxed income = Transfer price - Purchasing price of the transferred capital - Transfer expenses

Of which:

- The transfer price is the total actual value earned by the transferor under the transfer contract.

If installment or deferred payment is made under the capital transfer contract, the contract's turnover excludes installment or deferred payment interests in the contractual term.

If the payment price is not stated in the transfer contract or when the tax agency has grounds to determine that the payment price does not match the market price, it may inspect and fix the transfer price. For an enterprise that transfers part of its contributed capital at a transfer price not matching the market price, the tax agency may re-valuate the whole enterprise at the time of transfer for re-determining the transfer price in proportion to the transferred contributed capital amount.

The transfer price shall be fixed on the basis of investigation documents of the tax agency or capital transfer prices in other cases at the same time, of the same economic organization or under similar transfer contracts at the time of transfer. In case the transfer price fixed by the tax agency is inappropriate, it shall be based on the valuation by a professional valuation organization competent to determine transfer prices at the time of transfer.

If an enterprise transfers capital to an organization or individual, the capital amount transferred under the transfer contract valued at VND 20 million must have non-cash payment documents. In case the capital transfer has no non-cash payment documents, the tax agency may fix the transfer price.

- The purchasing price of the transferred capital amount is determined on a case-by-case basis as follows:

+ In case of transfer of contributed capital for enterprise establishment, it is the value of the contributed capital amount recorded in accounting books, invoices and documents at the time of transfer and certified by parties investing in the enterprise or to the business cooperation contract, or shall be based on audit results provided by an independent audit company for wholly foreign-owned enterprises.

+ In case of capital redemption, it is the value of the capital amount at the time of redemption. The purchasing price shall be determined based on the contract on redemption of the contributed capital amount and payment documents.

If a capital amount contributed or redeemed by an enterprise originates partially from loans, the purchasing price of the transferred capital amount is inclusive of expenses for payment of loan interests.

If an enterprise conducting cost-accounting in a foreign currency (approved by the Ministry of Finance) transfers the contributed capital in such foreign currency, the transfer price and purchasing price of the transferred capital amount shall be determined in such foreign currency. If an enterprise conducting cost-accounting in Vietnam dong transfers the contributed capital in a

foreign currency, the transfer price shall be determined in Vietnam dong at the average exchange rate applicable on the inter-bank foreign currency market announced by the State Bank at the time of transfer.

- Transfer expenses are actual expenses directly related to the transfer with lawful documents and invoices. If transfer expenses are incurred overseas, their original documents shall be certified by a notary office or an independent audit organization of the country where such expenses are incurred, and translated into Vietnamese (with the certification of a competent representative).

Transfer expenses include expense for carrying out legal procedures necessary for the transfer; charges and fees paid for carrying out transfer procedures; expenses for transaction, negotiation and signing of the transfer contract; and other expenses with evidencing documents.

Example 16: Enterprise A contributes VND 400 billion, including VND 320 billion as the value of workshops and VND 80 billion in cash, for establishing a joint-venture enterprise to produce tissue papers. Then it transfers this contributed capital amount to enterprise B at the price of VND 550 billion. The book value of enterprise A's contributed capital at the time of transfer is VND 400 billion and the capital transfer-related expense is VND 70 billion. In this case, income used for calculating enterprise income tax on this capital transfer is VND 80 billion (550 - 400 - 70).

b/ Incomes from capital transfer shall be regarded as other incomes and included in taxable income upon calculation of enterprise income tax.

c/ Foreign organizations doing business in Vietnam or having incomes in Vietnam but not operating under the Investment Law or the Enterprise Law (collectively referred to as foreign contractors) and transferring capital shall declare and pay tax as follows:

Capital transferees shall determine, declare, withhold and pay payable enterprise income tax amounts on behalf of such foreign organizations. In case capital transferees are also foreign organizations not operating under the Investment Law or the Enterprise Law, enterprises established under Vietnamese law invested by these foreign organizations shall declare and pay payable enterprise income tax amounts of such foreign organizations on their behalf.

The tax declaration and payment must comply with legal documents on tax administration.

Article 15. Incomes from securities transfer

1. Scope of application:

An enterprise's income from securities transfer is income earned from the transfer of its stocks, bonds, fund certificates and securities of other kinds under regulations.

In case an enterprise issues additional stocks for raising capital, the difference between the issuance price and the par value of these stocks shall not be accounted as a taxable income for calculation of enterprise income tax.

In case an enterprise undergoes separation, split, consolidation or merger and, therefore, swaps its stocks at the time of separation, split, consolidation or merger, any income from the stock swap is liable to enterprise income tax.

In case an enterprise transfers securities and receives in return property or other material benefits (stocks, fund certificates, etc.) instead of cash and earns income from the transfer, such income is liable to enterprise income tax. The value of property, stocks or fund certificates shall be determined based on their market selling prices at the time of their receipt.

2. Tax bases:

Taxed income from securities transfer in a period is equal to the securities selling price minus (-) the purchasing price of the transferred capital minus (-) transfer expenses.

- The securities selling price shall be determined as follows:

+ For listed securities and public companies' unlisted securities registered for trading at a securities trading center, it is the actual securities selling price (order-matching price or agreed price) announced by the stock exchange or securities trading center.

+ For securities of companies other than those mentioned above, it is the transfer price indicated in the transfer contract.

- The securities purchasing price shall be determined as follows:

+ For listed securities and public companies' unlisted securities registered for trading at a securities trading center, it is the actual securities purchasing price (order-matching price or agreed price) announced by the stock exchange or securities trading center.

+ For securities purchased through auction, it is the price indicated in the notice of share auction-winning results issued by the share-auctioning organization, and in the money receipt.

+ For securities other than those mentioned above, it is the transfer price indicated in the transfer contract.

- Transfer expenses are actual expenses directly related to the transfer with lawful evidencing documents and invoices.

Transfer expenses include expense for carrying out legal procedures necessary for the transfer; charges and fees paid for carrying out transfer procedures; securities depository charge as prescribed by the State Securities Commission and indicated in receipts of the securities company; securities entrustment charge based on the trustee's receipts; expenses for transaction, negotiation and signing of the transfer contract; and other expenses with evidencing documents.

Incomes from securities transfer shall be regarded as other incomes and included in taxable incomes upon calculation of enterprise income tax.

Chapter V

INCOMES FROM REAL ESTATE TRANSFER

Article 16. Taxpayers

1. Liable to pay enterprise income tax on incomes from real estate transfer are enterprises of all economic sectors and business lines having incomes from real estate transfer; and real estate enterprises having incomes from land sublease.

2. Incomes from real estate transfer include income from the transfer of land use rights, or land lease right (including also the transfer of projects associated with the transfer of land use rights or land lease right in accordance with law); income from the sublease of land of real estate enterprises in accordance with the land law regardless of whether there is an infrastructure facility or architectural work attached to land; income from the transfer of houses or construction works attached to land, including their appurtenances, in case the value of such appurtenances is inseparable upon the transfer, regardless of whether land use rights or land lease right are/is transferred; and income from the transfer of house ownership or use right.

Real estate enterprises that have income from the sublease of land do not include those that only lease houses, infrastructure facilities or architectural works on land.

Article 17. Tax bases

Bases for calculating income tax on real estate transfer include taxed income and tax rate.

Taxed income equals (=) taxable income minus (-) previous years' losses from real estate transfer (if any).

1. Taxable income

Taxable income from real estate transfer is the turnover from real estate transfer minus the cost of the real estate and deductible expenses related to the real estate transfer.

a/ Turnover from real estate transfer

a.1/ Turnover from real estate transfer shall be determined based on the actual transfer price under the real estate transfer or purchase and sale contract in accordance with law (including surcharges and extra fees, if any).

If the transfer price of land use rights under the real estate transfer or purchase and sale contract is lower than the land price prescribed by the provincial-level People's Committee at the time of signing the contract, the price prescribed by the provincial-level People's Committee at the time of signing the contract shall be applied.

- The time of determining taxed turnover is the time the seller hands over the real estate to the purchaser, regardless of whether the purchaser has registered the property ownership or land use rights or has its land use rights established at a competent state agency.

- If an enterprise that is allocated or leased by the State land for implementing investment projects to build infrastructure facilities or houses for transfer or lease collects advanced money in any form by customers according to schedule, the time of determining turnover used for calculating the temporary enterprise income tax amount is the time of money collection, specifically as follows:

+ If the enterprise collecting money from customers can determine expenses corresponding to recorded turnover (including also pre-deducted expenses in the estimated costs of uncompleted work items corresponding to recorded turnover), it shall declare and temporarily pay an enterprise income tax amount based on turnover minus these expenses.

+ If the enterprise collecting money from customers cannot determine expenses corresponding to turnover, it shall declare and temporarily pay an enterprise income tax amount equal to 1% of the collected sum of money which is not required to be included in the turnover used for calculating enterprise income tax in the year.

When handing over real estate, the enterprise shall finalize enterprise income tax and re-finalize the payable enterprise income tax amount. If the temporarily paid enterprise income tax amount is smaller than the payable enterprise income tax amount, the enterprise shall fully remit the deficit into the state budget. If the temporarily paid enterprise income tax amount is higher than the payable enterprise income tax amount, the enterprise may either have the overpaid tax amount cleared against the subsequent period's payable enterprise income tax amount or have it refunded.

For a real estate enterprise that collects advanced money amounts from customers according to the schedule, declares and temporarily pays tax according to the percentage (%) of its turnover not yet accounted as turnover for calculating enterprise income tax in the year, and has expenses for advertising, marketing, sales promotion or brokerage commissions upon starting the offering in the year of money collection according to schedule, such expenses are not accounted in the year when expenses arise. Expenses for advertising, marketing, sales promotion or brokerage commissions may be accounted as deductible expenses at the limit level prescribed in the first year of handover of real estate and arising of turnover for calculating enterprise income tax.

a.2/ Turnover for calculating taxable income in some cases is determined as follows:

- For enterprises subleasing land, the turnover used for calculating taxable income is the rent paid periodically by the lesser under the lease contract. If the lesser pays in advance the rental for many years, the turnover for calculating taxable income shall be divided by the number of years for which the rental has been paid in advance or determined according to the turnover paid in a lump sum. The turnover paid in a lump sum is selected only when the enterprise has fulfilled all of its financial obligations toward the State and assured its obligations toward the lessees until the land sublease term expires.

If an enterprise enjoying enterprise income tax incentives selects the method of determining the turnover for calculating taxable income to be the whole rental paid in advance by the lessee for many years, the enterprise income tax amount to be exempted or reduced for each year will be the total enterprise income tax amount of the years for which the rental has been paid in advance divided by (:) the number of years for which the rental has been paid in advance.

- When a credit institution receiving the value of land use rights as the mortgaged loan security in substitution of the performance of the secured obligations transfers land use rights, the turnover for calculating its taxable income is the transfer price of land use rights agreed by the involved parties.

- In case of transfer of land use rights distrained to secure judgment enforcement, the turnover for calculating taxable income is the transfer price of land use rights agreed by the involved parties or the price determined by the valuation council.

The determination of turnover in the cases specified in Item a2 must adhere to the principles referred to in Item a1 of this Point.

b/ Real estate transfer expenses:

b.1/ Principles of determination of expenses:

- Deductible expenses for determining taxable income from real estate transfer in a tax period must correspond to turnover for calculating taxable income and satisfy the conditions for being accounted as deductible expenses or as non-deductible expenses prescribed in Article 6 of this Circular.

- If an investment project is partially completed and gradually transferred according to the completion progress, general expenses for the project and direct expenses for the completed part of the project may be distributed by square meter of the transferred land for determining taxable income from the transferred land area, including expenses for internal roads and tree planting; construction of water supply and drainage systems and transformer stations; compensations for assets on land; compensation, support and resettlement and organization of compensation and ground clearance work, which have been approved by competent authorities but not yet cleared against land use levies or rentals in accordance with regulations on collection of land use levies or rentals; land use levies or rentals remittable into the state budget and other investments in land which are related to the land use or lease right transfer.

The above expenses are allocated according to the following formula:

$$\text{Expense allocated to transferred land area} = \frac{\text{Total expenses for infrastructure investment}}{\text{Total land area allocated for the project (excluding land area used for public)}} \times \text{Transferred area land}$$

purposes in accordance with the land law)

When part of the project's non-transferred land area is used for other business activities, the above general expenses must also be allocated to this land area for monitoring, accounting, declaration and payment of enterprise income tax for other business activities.

When an enterprise invests in building an infrastructure facility over many years and can finalize the value of the infrastructure facility only when the whole work is completed, when summing up real estate transfer expenses for the transferred land area, the enterprise may temporarily allocate actual infrastructure investment expenses based on the ratio of the transferred land area according to the above formula and pre-deduct infrastructure investment expenses corresponding to the turnover recorded upon the determination of taxable income. After completing the construction investment, the enterprise may readjust infrastructure investment expenses temporarily allocated to and pre-deducted for the transferred land area to match the total value of the infrastructure facility. Upon the adjustment, if the paid tax amount is higher than the payable tax amount on the real estate transfer, the enterprise may have the overpaid amount cleared against the subsequent tax period's payable tax amount or have it refunded under current regulations; if the paid tax amount is insufficient, the enterprise shall fully pay the deficit under regulations.

b.2/ Deductible expenses for real estate transfer include:

- The cost of the transferred land, determined according to the land use right origin, specifically as follows:

+ For land allocated or leased by the State with collection of land use levy or land rental, its cost is the land use levy or land rental actually remitted into the state budget;

+ For land with use rights transferred from another organization or individual, its cost shall be determined based on the contract and lawful payment document upon receiving its lease right or use rights; if the contract and payment document are unavailable, such cost shall be calculated based on the price set by the provincial-level People's Committee at the time the enterprise receives the real estate transferred;

+ For land contributed as capital, its cost is the value of its lease right or use rights indicated in the asset valuation record upon capital contribution;

+ If the enterprise has exchanged a construction work for state land, the cost of such land is determined based on the value of the exchanged work, unless competent state agencies' separate regulations are applied;

+ The auction-winning price, in case of auction of land use or lease rights;

+ For land inherited under the civil law or donated land with unidentifiable cost, its cost shall be determined based on the land price decided by the provincial-level People's Committee on the basis of the land price bracket prescribed by the Government at the time of inheritance or donation.

For land inherited or donated before 1994, its cost shall be determined based on the land price decided by the provincial-level People's Committee in 1994 on the basis of the land price brackets for different land categories specified in the Government's Decree No. 87/CP of August 17, 1994.

+ For land mortgaged to secure loans or land distrained to secure judgment enforcement, its cost shall be determined on a case-by-case basis under the above guidance.

- Expense for land damage compensation.

- Expense for crop damage compensation.

- Compensation, support and resettlement expenses and expenses for organization of compensation, support and resettlement in accordance with law.

If the above compensation, support and resettlement expenses and expenses for organization of compensation, support and resettlement have no supporting invoice, a list shall be made, specifying the names and addresses of recipients; compensation or support amounts; signatures of recipients. This list shall be certified by the administrations of the wards or communes where are located land areas eligible for compensation or support in accordance with the law on compensation, support and resettlement when the State recovers land.

- Charges and fees related to the grant of land use rights as provided by law.

- Expense for soil improvement and ground leveling.

- Expense for the construction of infrastructure, such as roads, power lines, water supply and drainage systems, post and telecommunications facilities, etc.

- The value of infrastructure facilities and architectural works on land.

- Other expenses related to the transferred real estate.

An enterprise that conducts different business lines shall separately account expenses for each business line. If separate accounting cannot be conducted, general expenses shall be allocated based on the ratio of turnover from real estate transfer to the total turnover of the enterprise.

Expenses already paid by the State or from other capital sources must not be included in real estate transfer expenses.

2. The enterprise income tax rate for real estate transfer is 22% (or 20% from January 1, 2016).

3. Determination of payable enterprise income tax amounts:

The amount of enterprise income tax on real estate transfer in a tax period is the taxed income from real estate transfer multiplied by (x) the tax rate of 22%.

Income from real estate transfer shall be separately determined for tax payment declaration. The preferential tax rates and tax exemption and reduction duration guided in Chapter VI of this Circular are not applicable to income from real estate transfer.

Losses from real estate transfer, if any, shall be handled under the guidance in Clause 3, Article 9 of this Circular.

Dossiers for declaration and payment and documents of payment of enterprise income tax on incomes from real estate transfer in geographical areas where the transferred real estates are located serve as a basis for carrying out procedures for tax finalization in geographical areas where enterprises are headquartered.

4. Credit institutions that receive the value of real estate used as loan security in substitution of the performance of secured obligations shall, when transferring such real estate in accordance with law, declare and remit tax on the income from real estate transfer into the state budget. In case real estate mortgaged as loan security is put up for auction, the proceeds from such auction must be paid under the Government's regulations on securing credit institutions' loans, and tax shall be declared and paid under regulations. After paying these amounts, the remaining money shall be returned to business organizations that have mortgaged their real estate to secure loans.

If credit institutions that are allowed by law to transfer the mortgaged real estate for recovering capital cannot determine the cost of such real estate, such cost equals (=) payable loans under the real estate mortgage contract plus (+) unpaid loan interests at the time of public sale of the mortgaged real estate under the credit contract plus (+) expenses arising during the real estate transfer with lawful invoices or evidencing documents.

5. When a judgment enforcement agency auctions real estate used to secure judgment enforcement, the proceeds from such auction shall be used under the Government's Decree on distraint and auction of land use rights to secure judgment enforcement. Organizations authorized to auction real estate shall declare and deduct tax on income from real estate transfer and remit it into the state budget. Such documents must specify the tax declaration and payment for the auction of real estate for judgment enforcement.

In case the judgment enforcement agency that transfers real estate used as judgment enforcement security cannot determine the cost of such real estate, such cost equals (=) payable debts under the court ruling for judgment enforcement plus (+) expenses arising during the real estate transfer with lawful invoices or evidencing documents.

Chapter VI

ENTERPRISE INCOME TAX INCENTIVES

Article 18. Conditions for application of enterprise income tax incentives

1. Enterprise income tax incentives are applicable only to enterprises which observe accounting, invoice and document regulations and register and pay enterprise income tax as declared.

2. While enjoying enterprise income tax incentives, enterprises that carry out different production and business activities shall separately account income from production and business activities eligible for enterprise income tax incentives (including preferential tax rates or tax exemption or reduction) from income from those ineligible for enterprise income tax incentives for separate tax declaration and payment.

During a tax period, if an enterprise fails to separately account incomes from production and business activities eligible and ineligible for tax incentives, the income from production and business activities eligible for tax incentives equals (=) the total taxed income multiplied by (x) the ratio (%) of the turnover from or deductible expenses for production and business activities eligible for tax incentives to the total turnover or total deductible expenses of the enterprise in the tax period.

If an enterprise has an income or a deductible expense which cannot be separately accounted, such income or expense shall be determined according to the ratio of the turnover from or deductible expenses for production and business activities eligible for tax incentives to the total turnover or total deductible expenses of the enterprise.

3. Enterprise income tax incentives are not applied and the tax rate of 20% is applied to enterprises (including also enterprises subject to the tax rate of 20% under Clause 2, Article 11 of this Circular) that have the following incomes:

a/ Income from capital or capital contribution right transfer; income from real estate transfer (except income from investment and trading in social houses specified at Point d, Clause 3, Article 19 of this Circular); income from transfer of investment projects, right to participate in investment projects or right to explore and exploit minerals; income from production or business activities outside Vietnam;

b/ Income from the prospecting, exploration and exploitation of petroleum and other precious and rare natural resources and income from mining activities;

c/ Income from the provision of services liable to excise tax in accordance with the Excise Tax Law.

4. For enterprises having investment projects eligible for enterprise income tax incentives for being engaged in the fields eligible for investment incentives, incomes from these fields and incomes from the liquidation of waste materials and scraps of products in these fields, exchange rate differences directly related to turnover from and expenses for these fields, demand deposit interests and other directly related incomes are also eligible for enterprise income tax incentives.

For enterprises having investment projects eligible for enterprise income tax incentives for being located in geographical areas eligible for investment incentives (including also industrial parks, economic zones and hi-tech parks), incomes eligible for enterprise income tax incentives are all incomes from their production and business activities in such geographical areas, except those specified at Points a, b and c, Clause 3 of this Article.

Enterprises subject to the tax rate of 20% may apply the tax rate of 20% to all of their incomes, except those specified at Points a, b and c, Clause 3 of this Article.

5. New investment projects:

a/ New investment projects eligible for enterprise income tax incentives provided in Articles 15 and 16 of Decree No. 218/2013/ND-CP are:

- Projects which are granted first-time investment certificates from January 1, 2014, and generate turnover from the date of grant of such certificates.

- Domestic investment projects associated with the establishment of new enterprises which have investment capital of under VND 15 billion, are outside the list of conditional investment fields and are granted enterprise registration certificates from January 1, 2014.

- Investment projects which were granted investment licenses or investment certificates before January 1, 2014, are under construction, not yet commissioned, have generated no turnover and are granted certificates of modification of investment licenses or modified investment certificates from January 1, 2014.

- Investment projects independent from projects of operating enterprises (including also projects having investment capital of under VND 15 billion and outside the list of conditional investment fields) which obtain investment certificates from January 1, 2014, for implementation of these independent investment projects.

b/ For enterprises that modify or supplement investment licenses or investment certificates of their operating projects without changing conditions for enjoyment of incentives, incomes from modified or supplemented activities may continue to enjoy incentives given to these projects before the modification or supplementation for the remaining duration or enjoy incentives for expanded investment in case of satisfying the prescribed conditions for incentives.

c/ New investment projects eligible for enterprise income tax incentives do not include the following:

- Investment projects formed from the splitting, separation, merger or transformation of enterprises in accordance with law;

- Investment projects formed from ownership conversion (including also implementation of new investment projects with assets, business locations and lines of old enterprises for continued production and business activities, and acquisition of operating investment projects).

Enterprises established or having investment projects from transformation, ownership conversion, splitting, separation, merger or consolidation may continue enjoying enterprise income tax incentives given to enterprises or investment projects before the transformation, conversion, splitting, separation, merger or consolidation for the remaining duration if they still satisfy the conditions for enterprise income tax incentives.

d/ For enterprises enjoying enterprise income tax incentives as enterprises newly established from investment projects, only incomes from production and business activities satisfying the conditions for investment incentives stated in their first-time business registration certificates are eligible for such incentives. Enterprises currently engaged in production and business activities may continue enjoying tax incentives for the remaining duration if they have a change in their business registration certificates which does not affect the satisfaction of the prescribed conditions for tax incentives.

6. Incentives for expansion investment

a/ If satisfying one of the three conditions prescribed at this Point, enterprises having investment projects to develop operating investment projects such as expansion of production scale, increase of capacity and renewal of production technology (commonly referred to as expanded investment projects) in the fields or geographical areas eligible for enterprise income tax incentives under Decree No. 218/2013/ND-CP (including also economic zones, hi-tech parks, industrial parks other than those located in urban districts of special-grade cities, centrally run grade-I cities and grade-I provincial cities) may be chosen to enjoy enterprise income tax incentives for their operating projects for the remaining duration (if any) or to be entitled to a duration of tax exemption or reduction for additional incomes brought about by expansion investment (not eligible for preferential tax rates) equal to the tax exemption or reduction duration applicable to new investment projects in the same geographical area or field eligible for enterprise income tax incentives. If enterprises choose to enjoy enterprise income tax incentives for their operating projects for the remaining duration, expanded investment projects must be in the fields or geographical areas eligible for enterprise income tax incentives under Decree No. 218/2013/ND-CP and in the same field or geographical area with operating projects.

An expanded investment project mentioned at this Point must satisfy one of the following conditions:

- The historical cost of fixed assets added when the project is completed and commissioned is at least VND 20 billion, for expanded investment projects in the fields eligible for enterprise income tax incentives under Decree No. 218/2013/ND-CP, or VND 10 billion, for expanded investment projects in geographical areas with difficult or particularly difficult socio- economic conditions under Decree No. 218/2013/ND-CP.
- The historical cost of additional fixed assets accounts for at least 20% of the total historical cost of fixed assets before investment.
- The design capacity after expansion investment is at least 20% higher than the design capacity stated in the techno-economic study report prior to the initial investment.

In case enterprises choose to enjoy incentives for expansion investment, additional incomes brought about by expansion investment shall be separately accounted. In case enterprises cannot separately account additional incomes, such incomes shall be determined according to the ratio of historical cost of fixed assets newly invested for use for production and business activities to the total historical cost of fixed assets of enterprises.

The tax exemption or reduction duration mentioned in this Clause shall be counted from the year when the commissioned complete expanded investment project generates income. If no income is generated in the first three years from the first year of generating turnover from the expanded investment project, the tax exemption or reduction shall be counted from the fourth year of turnover generation.

In case operating enterprises invest in upgrading, replacement or renewal of technology of operating projects in the fields or geographical areas eligible for tax incentives under Decree No. 218/2013/ND-CP which fail to satisfy one of the three conditions prescribed at this Point, tax incentives shall be given to operating projects for the remaining duration (if any).

Tax incentives mentioned in this Clause are not applicable to cases of expanded investment due to splitting, separation, merger or ownership conversion (including also cases of implementation of new investment projects with assets and business locations and lines of old enterprises for continued production and business activities), acquisition of operating enterprises or investment projects.

Enterprises having investment projects formed from ownership conversion, splitting, separation, merger or consolidation may continue enjoying enterprise income tax incentives of enterprises or investment projects before such ownership conversion, splitting, separation, merger or consolidation for the remaining duration if they still satisfy the conditions for enterprise income tax incentives.

b/ Operating enterprises that enjoy tax incentives and invest in building new production lines, expanding production scale, adding production and business lines or raising productivity (commonly referred to as expanded investment) not in the fields or geographical areas eligible for tax incentives under Decree No. 218/2013/ND-CP, on enterprise income tax, are not entitled to enterprise income tax incentives for additional incomes brought about expanded investment.

If in a tax period, an enterprise cannot separately account additional incomes brought about by expanded investment, such additional incomes ineligible for enterprise income tax incentives may be determined by either of the following methods

Method 1:

$$\begin{array}{l}
 \text{Additional} \\
 \text{income from} \\
 \text{expanded} \\
 \text{investment} \\
 \text{ineligible for} \\
 \text{enterprise} \\
 \text{income tax} \\
 \text{incentives}
 \end{array}
 =
 \begin{array}{l}
 \text{Total taxable} \\
 \text{income in the} \\
 \text{year (excluding} \\
 \text{other income} \\
 \text{ineligible for} \\
 \text{incentives)}
 \end{array}
 \times
 \frac{\begin{array}{l} \text{Value of fixed assets formed from} \\ \text{expanded investment and used for} \\ \text{production and business} \end{array}}{\begin{array}{l} \text{Total historical cost of fixed assets actually} \\ \text{used for production and business} \end{array}}$$

The total historical cost of fixed assets actually used for production and business includes the value of fixed assets formed from expanded investment, completed and commissioned and the

historical cost of existing fixed assets used for production and business according to period-end figures in the annual accounting balance sheet.

Method 2:

$$\begin{array}{l} \text{Additional} \\ \text{income from} \\ \text{expanded} \\ \text{investment} \\ \text{ineligible for} \\ \text{enterprise} \\ \text{income tax} \\ \text{incentives} \end{array} = \begin{array}{l} \text{Total taxable} \\ \text{income in the} \\ \text{year (excluding} \\ \text{other income} \\ \text{ineligible for} \\ \text{incentives)} \end{array} \times \frac{\begin{array}{l} \text{Value of expanded investment in} \\ \text{production and business} \end{array}}{\begin{array}{l} \text{Total actual investment in} \\ \text{production and business} \end{array}}$$

The total actual investment in production and business is the total equity capital and loan capital invested by the enterprise in production and business according to period-end figures in the annual accounting balance sheet.

Enterprises may apply only one method of allocation of income from one expanded investment activity.

Example 16: Company A is an enterprise manufacturing plastic products in an industrial park in Ho Chi Minh City (a geographical area ineligible for incentives) and enjoying enterprise income tax incentives. The tax rate of 15% shall be applied for 12 years from the year of turnover generation, enterprise income tax exemption shall be given for 3 years from the year of generation of taxable income, and 50% enterprise income tax shall be given for 7 subsequent years. In 2014, it makes an expanded investment with a total value of machinery and equipment procured with new investment in the year being VND 5 billion. If the total value of fixed assets at the end of 2014 is VND 20 billion, total taxed income generated in 2014 is VND 1.2 billion, including other income of VND 200 million ineligible for incentives, then:

Income from expanded investment ineligible for incentives:

Additional income from expanded investment ineligible for enterprise income tax incentives = (VND 1.2 billion - VND 200 million) x VND 5 billion : VND 20 billion = VND 250 million.

Taxed income ineligible for enterprise income tax incentives in 2014: VND 200 million + VND 250 million = VND 450 million

Taxed income eligible for enterprise income tax incentives in 2014: VND 1.2 billion - VND 450 million = VND 750 million

7. In the same tax period, if having an income eligible for different preferential enterprise income tax rates and tax exemption and reduction durations, an enterprise may choose to apply the most beneficial incentive.

8. During the enterprise income tax incentive period, if an enterprise fails to satisfy any of the conditions for enjoying tax incentives in a tax year specified in Clauses 7, 8 and 12, Article 1 of the Law Amending and Supplementing a Number of Articles of the Law on Enterprise Income Tax and Article 19 of Decree No. 218/2013/ND-CP, it is not entitled to tax incentives in that tax year and shall pay enterprise income tax at the common rate and that year shall be counted in its incentive enjoyment period.

9. In the same tax period, if an enterprise's business activities eligible for tax incentives sustain losses, while business activities ineligible for tax incentives and other incomes from business activities (excluding income from real estate transfer and project transfer activities; income from transfer of the right to implement projects or the right to explore, exploit and process minerals in accordance with law) generate incomes (or vice versa), the enterprise may choose to clear such losses against its taxable incomes from income-generating business activities. The remaining income after clearing is subject to the enterprise income tax rate applicable to income-generating activities.

If an enterprise has been suffering losses from previous tax periods (the time limit for carrying forward losses has not expired), it may clear such losses against incomes from income-generating activities. If the enterprise cannot separately account loss from each activity, it may clear its losses against incomes from activities eligible for enterprise income tax incentives and, clear remaining losses, if any, against incomes from activities ineligible for enterprise income tax incentives (excluding income from real estate transfer and project transfer activities; income from the transfer of the right to implement projects or the right to explore, exploit and process minerals in accordance with law).

Example 17: In the tax period of 2014, enterprise A has:

- A loss of VND 1 billion from software production eligible for tax incentives.
- A profit of VND 1 billion from computer trading ineligible to tax incentives.
- A profit of VND 2 billion from securities transfer (another income from business activities).

In this case, enterprise A may choose to clear the loss from software production against the profit of computer trading or the profit from securities transfer. The remaining income is subject to enterprise income tax at the rate applicable to income-generating activities.

Specifically: After clearing the loss of VND 1 billion from software production against the profit of VND 1 billion from computer trading or securities transfer, the enterprise has a remaining profit of VND 2 billion and has to pay enterprise income tax at the tax rate of 22%: VND 2 billion x 22%.

Example 18: In the tax period of 2014, enterprise B has:

- A profit of VND 2 billion from software production eligible for tax incentives (this activity is currently subject to the enterprise income tax rate of 10%).

- A profit of VND 2 billion from computer trading ineligible to tax incentives.
- A loss of VND 1 billion from securities transfer (another income from business activities).

If in the tax period of 2013, enterprise B had a loss of VND 1 billion from computer trading, it shall carry forward such loss upon determining taxable income of 2014 as follows:

Specifically:

- Clearing the loss against profit of 2014: It may choose to clear the loss from securities trading against the profit from computer trading. The remaining profit from computer trading is (2 billion - 1 billion) = VND 1 billion.
- Carrying forward and clearing the loss from computer trading in 2013 against the profit from this activity in 2014: (1 billion - 1 billion) = VND 0 billion.
- Declaring, calculating and paying enterprise income tax on activities eligible for tax incentives: VND 2 billion x 10% = VND 200 million.

So, the payable enterprise income tax amount is VND 200 million. Example 19: In the tax period of 2014, enterprise C has:

- A profit of VND 2 billion from software production eligible for tax incentives (these activities are currently subject to the enterprise income tax rate of 10%).
- A profit of VND 2 billion from computer trading ineligible for tax incentives.
- A loss of VND 1 billion from securities transfer (another income from business activities).

In the tax period of 2013, enterprise C had a loss of VND 2 billion but it could not identify the activity which made such loss. As a result, it shall first of all clear such loss against the income from activities eligible for tax incentives (software production).

Specifically:

- Clearing the loss against profit of 2014: It may choose to clear the loss from securities trading against the profit from computer trading. The remaining profit from computer trading is (2 billion - 1 billion) = VND 1 billion.
- Carrying forward and clearing the loss of 2013 against the profit from software production in 2014: (2 billion - 2 billion) = VND 0 billion.
- Declaring and paying enterprise income tax at the tax rate of 22% on business activities ineligible for tax incentives: VND 1 billion x 22% = VND 220 million.

10. In the duration of enjoyment of enterprise income tax incentives under regulations, if a competent examination or inspection agency detects:

- A higher enterprise income tax amount eligible to tax incentives compared to that declared by the enterprise itself (including the case where the enterprise has not made declaration to enjoy tax incentives), the enterprise may enjoy provided enterprise income tax incentives for enterprise income tax amounts detected through examination or inspection (including the added enterprise income tax amount and the enterprise income tax amount eligible for tax incentives which has been declared without any specified tax incentive amount).

- A lower enterprise income tax amount eligible for tax incentives compared to that declared by the enterprise itself, the enterprise may only enjoy enterprise income tax incentives applicable to the enterprise income tax amount detected through examination or inspection.

- Depending on the severity of the enterprise's violations, the competent examination or inspection agency shall apply sanctions on tax-related violations under regulations.

Article 19. Preferential tax rates

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

a/ Incomes of enterprises from the implementation of new investment projects in geographical areas with particularly difficult socio-economic conditions specified in the Appendix to Decree No. 218/2013/ND-CP, economic zones and hi-tech zones, including information technology parks established under the Prime Minister's decisions.

b/ Incomes of enterprises from the implementation of new investment projects in the fields of scientific research and technological development; application of high technologies on the list of high technologies prioritized for development investment in accordance with the Law on High Technologies; nursery of high technologies and hi-tech enterprises; venture investment in development of high technologies on the list of high technologies prioritized for development in accordance with the Law on High Technologies; construction investment and commercial operation of establishments nursing high technologies and hi-tech enterprises; investment in development water plants, power plants, water supply and drainage systems; bridges, roads, railways; airports, seaports, river ports; air fields, stations and other particularly important infrastructure facilities decided by the Prime Minister; production of software products; manufacture of composite materials, light building materials, rare and precious materials; generation of renewable energies, clean energy and energy from the waste disposal; development of biotechnology;

c/ Incomes of enterprises from the implementation of new investment projects in the field of environmental protection, covering manufacture of equipment for treating environmental pollution, equipment for environmental observation and analysis; environmental pollution treatment and protection; collection and treatment of wastewater, exhaust and solid wastes; recycling and reuse of wastes;

d/ Hi-tech enterprises and agricultural enterprises applying high technologies defined in the Law on High Technologies;

Hi-tech enterprises and agricultural enterprises applying high technologies defined in the Law on High Technologies may enjoy preferential tax rates from the year of grant of certificates of hi-tech enterprises or agricultural enterprises applying high technologies.

Hi-tech enterprises and agricultural enterprises applying high technologies may enjoy enterprise income tax incentives calculated on their total incomes, except incomes specified at Points a, b and c, Clause 3, Article 18 of this Circular.

In case enterprises that are enjoying enterprise income tax incentives or have fully enjoyed enterprise income tax incentives provided in legal documents on enterprise income tax are granted certificates of hi-tech enterprises or agricultural enterprises applying high technologies, the incentive level for hi-tech enterprises and agricultural enterprises applying high technologies is equal to that applicable to hi-tech enterprises and agricultural enterprises applying high technologies defined in Clause 1, Article 15 and Clause 1, Article 16 of Decree No. 218/2013/ND-CP minus the enjoyed incentives (in terms of tax rates and tax exemption and reduction duration), for newly established enterprises and new investment projects.

dd/ Incomes of enterprises from the implementation of new investment projects in the fields of production (except projects producing goods items liable to excise tax and mineral mining projects) which satisfy either of the following conditions:

- A project has an initial registered investment capital of at least VND 6 (six) trillion, fully disburses the capital within 3 years after being granted an investment license, and has a total turnover of at least VND 10 (ten) trillion/year from the 4th year after the year when turnover is first generated.

- A project has an initial registered investment capital of at least VND 6 (six) trillion, fully disburses the capital within 3 years after being granted an investment license, and regularly employs an average of over 3,000 laborers/year from the 4th year after the year when turnover is first generated.

Laborers mentioned at this Point are employees having labor contracts to work on a full-time basis. Part-time employees and employees with labor contracts of short term of under 1 year shall not be included.

The annual average number of regular employees shall be determined under the guidance in the Ministry of Labor, War Invalids and Social Affairs' Circular No. 40/2009/TT-BLDTBXH of December 3, 2009.

In case their investment projects fail to satisfy the conditions prescribed at this Point (except those with behind-schedule progress due to objective reasons in the stages of ground clearance, completion of administrative procedures by state agencies, natural disasters, enemy sabotage or fire and consent of the investment-licensing agency which shall be reported to the Prime Minister

for approval) enterprises are not entitled to enterprise income tax incentives and shall declare and pay enterprise income tax amounts declared for enjoyment of incentives in the last year (if any) and a late tax payment interest as prescribed. However, they will not be sanctioned for false declaration in accordance with the law on tax administration.

2. For investment projects mentioned at Points b and c, Clause 1 of this Article which are of large size and furnished with high or new technologies which need special investment attraction, the duration of application of the tax rate of 10% may be longer but must not exceed 30 years under the Prime Minister's decisions based on the Minister of Finance's proposals.

3. The preferential tax rate of 10% is applicable throughout the operation duration to:

a/ Incomes of enterprises from socialized education and training, job training, health care, culture, sports and environmental protection activities (below referred to as socialized fields);

The list of types, sizes and standards of enterprises engaged in socialized fields is that promulgated by the Prime Minister;

b/ Incomes of publishing houses from publication activities in accordance with the Law on Publication;

Publication activities include publishing, printing and distribution of publications in accordance with the Law on Publication;

Publications are defined in Article 4 of the Law on Publication and Article 2 of the Government's Decree No. 111/2005/ND-CP of August 26, 2005. In case the provisions of the Law on Publication, Decree No. 111/2005/ND-CP and legal documents relevant to the field of publication are amended, amended provisions shall be complied with;

c/ Incomes of press agencies from printed newspapers (including advertisements on printed newspapers) in accordance with the Law on Publication;

d/ Incomes of enterprises from the implementation of projects on investment and trading in social houses for sale or lease to or hire-purchase by the subjects specified in Article 53 of the Housing Law;

Social houses mentioned at this Point are houses built by the State or organizations or individuals of all economic sectors and satisfying the housing criteria and conditions of sale prices, lease or hire-purchase prices, subjects eligible for purchase, rent or hire-purchase of social houses prescribed by the housing law. The determination of incomes subject to the tax rate of 10% under this Point does not depend on the time of signing the contracts on sale, lease or hire-purchase of social houses.

In case enterprises that invest and trade in social houses sign contracts on house transfer with advance payment from customers according to the construction progress before January 1, 2014, and continue collecting money from January 1, 2014 (enterprises have declared for temporary

payment of enterprise income tax on incomes or according to a percentage of generated turnover) and hand over houses from January 1, 2014 onward, incomes from house transfer is subject to the tax rate of 10%.

Incomes from social house investment and trading subject to the tax rate of 10% in this Clause are incomes from the sale, lease or hire-purchase generated from January 1, 2014 onward. In case enterprises cannot separately account incomes from the social house sale, lease or hire-purchase generated from January 1, 2014, incomes subject to the tax rate of 10% shall be determined according to the ratio of turnover from the social house sale, lease or hire-purchase to the total turnover in the same period.

e/ Incomes of enterprises from the forest planting, tending and protection; agricultural cultivation, planting of forest trees and aquaculture in geographical areas with difficult socio-economic conditions; production, propagation and hybridization of plant varieties and animal breeds; salt production, exploitation and refinery, except salt production mentioned in Clause 1, Article 4 of Decree No. 218/2013/ND-CP, investment in the preservation of post-harvest farm produce, aquatic products and foodstuffs;

f/ Incomes of cooperatives engaged in agriculture, forestry, fisheries or salt production and not located in geographical areas with difficult or particularly difficult socio-economic conditions.

4. The preferential tax rate of 20% for ten (10) years is applicable to:

a/ Incomes of enterprises from the implementation of new investment projects in geographical areas with difficult socio-economic conditions specified in the Appendix to the Government's Decree No. 218/2013/ND-CP;

b/ Incomes from enterprises from the implementation of new investment projects on production of hi-class steel, energy-conserving products, machinery and equipment for agriculture, forestry, fisheries and salt production, irrigation and drainage equipment, livestock and aquatic animal feed; and development of traditional crafts and trades (including building and development of traditional handicraft production, farm produce and food processing and production of cultural products);

Enterprises implementing new investment projects in the fields or geographical areas eligible for the tax incentives specified in this Clause will enjoy the tax rate of 17% from January 1, 2016.

5. The preferential tax rate of 20% (or 17% from January 1, 2016) is applicable throughout the operation duration to people's credit funds, cooperative banks and micro-finance institutions.

Upon the expiration of the duration of application of the tax rate of 10% specified at Point a, Clause 1 of this Article, people's credit funds, cooperative banks and micro-finance institutions newly established in geographical areas with particularly difficult socio-economic conditions specified in the Appendix to the Government's Decree No. 218/2013/ND-CP, may switch to apply the tax rate of 20%. From January 1, 2016, they may switch to the tax rate of 17%.

Micro-finance institutions mentioned in this Clause are those established and operating in accordance with the Law on Credit Institutions.

6. The duration of application of preferential tax rates specified in this Article shall be counted consecutively from the first year when enterprises generate turnover from new investment projects eligible for tax incentives. For hi-tech enterprises and agricultural enterprises applying high technologies, this duration shall be counted from the year when they are recognized as hi-tech enterprises or agricultural enterprises applying high technologies. For projects applying high technologies, this duration shall be counted from the year when they are granted certificates of projects applying high technologies.

Article 20. Tax exemption and reduction durations

1. Tax exemption for 4 years and 50% reduction of payable tax amounts for 9 subsequent years are applicable to:

a/ Incomes of enterprises from the implementation of new investment projects specified in Clause 1, Article 19 of this Circular;

b/ Incomes of enterprises from the implementation of new investment projects in the socialized fields in geographical areas with difficult or particularly difficult socio-economic conditions specified in the Appendix to Decree No. 218/2013/ND-CP.

2. Tax exemption for 4 years and 50% reduction of payable tax amounts for 5 subsequent years are applicable to incomes of enterprises from the implementation of new investment projects in the socialized fields in geographical areas outside the list of those with difficult or particularly difficult socio-economic conditions specified in the Appendix to Decree No. 218/2013/ND-CP.

3. Tax exemption for 2 years and 50% reduction of payable tax amounts for 4 subsequent years are applicable to incomes from the implementation of new investment projects specified in Clause 4, Article 19 of this Circular and incomes of enterprises from the implementation of new investment projects in industrial parks (except industrial parks in urban districts of special-grade or centrally run grade-I urban centers and those in provincial grade-I cities). For an industrial park located in both geographical area with favorable conditions and geographical area with difficult conditions, the determination of tax incentives to be given to the industrial park shall be based on the geographical area in which the larger part of the industrial park is located.

The determination of special-grade and grade-I urban centers mentioned in this Clause complies with the Government's Decree No. 42/2009/ND-CP of May 7, 2009, on classification of urban centers and legal documents amending this Decree (if any).

4. The tax exemption or reduction duration specified in this Article shall be counted consecutively from the first year an enterprise has taxable income from a new investment project eligible for tax incentives. If an enterprise has no taxable income for the first 3 years, counting from the first year it has turnover from a new investment project, the tax exemption or reduction duration shall be counted from the fourth year.

Example 20: In 2014, enterprise A has a new investment project on software production. If it earns in 2014 taxable income from such project, the tax exemption or reduction duration shall be counted consecutively from 2014. If such project generates turnover in 2014 but still has no taxable income in 2016, the tax exemption or reduction duration shall be counted consecutively from 2017.

5. The tax exemption or reduction year shall be determined according to the tax period. The tax exemption or reduction duration shall be counted consecutively from the first tax period an enterprise has taxable income (excluding losses carried forward from previous tax periods).

If an enterprise has taxable income in the first tax period but its new investment project has a production or business operation duration eligible for tax incentives of under 12 (twelve) months, the enterprise may choose to enjoy tax incentives for the new investment project right in that tax period or register with the tax agency a tax incentive duration counted from the subsequent tax period. If the enterprise registers a tax incentive duration in the subsequent tax period, the first tax period's payable tax amount shall be determined for remission into the state budget under regulations.

Article 21. Other cases of tax reduction

1. A production, construction or transportation enterprise that employs between 10 and 100 female laborers who account for more than 50% of its total regular employees or regularly employs over 100 female laborers who account for more than 30% of its total regular employees is entitled to a reduction of payable enterprise income tax equivalent to actual additional expenses for female laborers as guided in Item a, Point 2.9, Clause 2, Article 6 of this Circular if they can separately account such expenses.

Non-business units and offices of corporations not directly engaged in production and business operation are not entitled to tax reduction under this Point.

2. Enterprises that employ ethnic minority laborers are entitled to a reduction of payable enterprise income tax equivalent to actual additional expenses for ethnic minority laborers as guided in Item b, Point 2.9, Clause 2, Article 6 of this Circular if they can separately account such expenses.

3. Enterprises that transfer technologies in the prioritized fields to organizations and individuals in geographical areas with difficult socio- economic conditions are entitled to 50% reduction of payable enterprise income tax calculated on incomes from technology transfer.

Article 22. Procedures for application of enterprise income tax incentives

Enterprises shall determine by themselves conditions for enjoyment of tax incentives, preferential tax rates, the tax exemption or reduction duration, and losses allowed to be cleared against taxed incomes in order to declare and finalize tax with tax agencies.

When conducting examination and inspection at enterprises, tax agencies shall examine conditions actually satisfied by enterprises for enjoyment of tax incentives, enterprise income tax amounts eligible for exemption or reduction, and losses allowed to be cleared against taxable incomes. If enterprises fail to satisfy conditions for enjoyment of preferential tax rates and tax exemption or reduction duration, tax agencies shall retrospectively collect tax and sanction tax-related administrative violations under regulations.

Chapter VII

ORGANIZATION OF IMPLEMENTATION

Article 23. Effect

1. This Circular takes effect on August 2, 2014, and applies from the enterprise income tax period of 2014 on.
2. Enterprises that have investment projects which, by the end of the tax period of 2013, remain eligible for enterprise income tax incentives (including those having been enjoying and those having not yet enjoyed incentives) under previous legal documents on enterprise income tax may continue to enjoy these incentives for the remaining duration under such legal documents. If they satisfy the conditions for enjoyment of tax incentives under Decree No. 218/2013/ND-CP on enterprise income tax, they may choose to enjoy current incentives or incentives provided in Decree No. 218/2013/ND-CP which are applicable to new investment projects (including preferential tax rates and tax exemption and reduction duration) for the remaining duration if they are eligible for enterprise income tax incentives as enterprises newly established under investment projects or to expanded investment projects for the remaining duration if they are eligible for incentives as expanded investment projects. Expanded investment projects which may choose to enjoy other incentives mentioned in this Clause are those starting to be implemented on or before December 31, 2008, and those commissioned for production and business operation in or before 2009.

The remaining duration for enjoyment of tax incentives shall be counted consecutively from the time of implementation of the tax incentive provisions of the legal documents on foreign investment in Vietnam, domestic investment promotion and enterprise income tax issued before the effective date of this Circular.

The remaining duration for enjoyment of tax incentives is the number of years during which an enterprise is still entitled to tax incentives (preferential tax rates and tax exemption or reduction duration) guided in this Circular minus (-) the number of years during which the enterprise has enjoyed tax incentives (preferential tax rates and tax exemption or reduction duration) under previous legal documents on enterprise income tax. The determination of the remaining duration for enjoyment of tax incentives must adhere to the following principles:

- By the end of the tax period of 2013, upon the expiration of the duration of enjoying tax rate incentives under previous legal documents on enterprise income tax, an enterprise may not

switch to apply tax incentives (preferential tax rates and tax exemption and reduction duration) for the remaining duration guided in this Circular.

- By the end of the tax period of 2013, if still in the duration of enjoying tax incentives (preferential tax rates and tax exemption and reduction duration) under previous legal documents on enterprise income tax, an enterprise will continue to enjoy the preferential tax rate and tax exemption and reduction for the remaining duration as guided in this Circular.

- By the end of the tax period of 2013, if still entitled to a preferential tax rate but no longer entitled to tax exemption because the tax exemption duration under previous legal documents on enterprise income tax has just expired, an enterprise will not be entitled to tax exemption but only to tax reduction for the number of years guided in this Circular, and will apply the preferential tax rate for the remaining duration guided in this Circular.

- By the end of the tax period of 2013, if still entitled to a preferential tax rate and tax reduction under previous legal documents on enterprise income tax, an enterprise will have the remaining number of years eligible for tax reduction equal to the number of years eligible for tax reduction guided in this Circular minus (-) the number of years during which the enterprise has enjoyed tax reduction, counting to the end of the tax period of 2013, and will continue to apply the preferential tax rate for the remaining duration guided in this Circular.

- By the end of the tax period of 2013, when its tax exemption or reduction duration under previous legal documents on enterprise income tax expires, an enterprise will not be entitled to tax incentives (preferential tax rates and tax exemption or reduction duration) guided in this Circular.

3. Enterprises that started to implement their expanded investment projects in the fields or geographical areas eligible for enterprise income tax incentives under Decree No. 218/2013/ND-CP (including economic zones, hi-tech parks, industrial parks other than those located in urban districts of special-grade or centrally run grade-I cities and industrial parks in provincial grade-I cities) before January 1, 2014, and commissioned such projects for production and business operation and have generated turnover since January 1, 2014, are entitled to enterprise income tax incentives for their additional incomes brought about by expanded investment as guided in this Circular.

4. This Circular replaces the Ministry of Finance's Circular No. 123/2012/TT-BTC of July 27, 2012.

5. To annul all enterprise income tax guidelines provided by the Ministry of Finance and other sectors which are contrary to this Circular.

6. The settlement of problems in taxation, tax finalization, tax exemption or reduction and the handling of violations of the enterprise income tax law arising before the tax period of 2014 must comply with relevant regulations guiding enterprise income tax issued before the tax period of 2014.

7. In case the Socialist Republic of Vietnam signs a treaty or international agreement which provides for enterprise income tax payment differently from the guidance in this Circular, the provisions of that treaty or international agreement prevail.

Article 24. Implementation responsibility

1. Tax agencies at all levels shall disseminate this Circular to enterprises and guide them in complying with this Circular.

2. Enterprises subject to this Circular shall comply with the guidance provided in this Circular.

Any problems arising in the course of implementation should be promptly reported to the Ministry of Finance for study and settlement.-

**FOR THE MINISTER OF FINANCE
DEPUTY MINISTER**

Do Hoang Anh Tuan

(All appendices to this Circular are not translated)