ภาคผนวก

ผนวก ก

DECREE No. 24/2007/ND-CP OF FEBRUARY 14, 2007, DETAILING THE IMPLEMENTATION OF THE LAW ON BUSINESS INCOME TAX

THE GOVERNMENT

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

Pursuant to the June 17, 2003 Law on Business Income Tax;

At the proposal of the Minister of Finance,

DECREES:

Chapter I

APPLICATION SCOPE OF BUSINESS INCOME TAX

Article 1.- Organizations and individuals engaged in goods production and trading or service provision (hereinafter referred collectively to as business establishments) with incomes shall pay business income tax according to the provisions in this Decree.

1. Organizations engaged in goods production and trading or service provision include: State enterprises; limited liability companies; joint-stock companies; partnerships; foreign-invested enterprises and foreign parties to business cooperation contracts under the Investment Law and the Enterprise Law; foreign companies and organizations doing business in Vietnam not under the Investment Law and the Enterprise Law; private enterprises; cooperatives and unions of cooperatives (hereinafter referred to as cooperatives for short); cooperation groups; economic organizations of political organizations, socio-political organizations, social organizations, socio-professional organizations or people's armed forces units; administrative agencies and non-business units engaged in goods production and trading or service provision.

2. Vietnamese individuals engaged in goods production and trading or service provision include:

a/ Business individuals and groups of business individuals;

b/ Individual business households;

c/ Independent professional practitioners: medical doctors, lawyers, accountants, auditors, painters, architects, musicians, and others;

d/ Individuals leasing such properties as houses, land, means of transport, machinery and equipment or other types of property;

3. Foreign individuals doing business and having incomes generated in Vietnam, regardless of whether their business activities are carried out in Vietnam or overseas.

4. Foreign companies doing business through their permanent establishments in Vietnam.

Permanent establishment means a fixed place of business through which foreign companies partly or wholly carry out their income-generating business in Vietnam. Foreign companies' permanent establishments mainly take the following forms:

a/ Branches, executive offices, factories, workshops, goods-forwarding warehouses, means of transport, mines, oil or gas fields or natural resource-exploring and -exploiting sites or equipment and facilities in service of natural resource exploration;

b/ Construction sites; construction, installation or assembly projects; activities of construction supervision as well as construction, installation or assembly projects;

c/ Establishments providing services, including consultancy services provided by their employees or other persons;

d/ Agents of foreign companies;

e/ Vietnam-based representatives in the following cases:

- They are authorized to sign contracts on behalf of foreign companies;

- They are not authorized to sign contracts on behalf of foreign companies but regularly perform the delivery of goods or the provision of services in Vietnam.

In case a double taxation avoidance agreement which the Socialist Republic in Vietnam has signed otherwise provides for permanent establishments, the provisions of that agreement prevail.

Article 2.- Non-payers of business income tax include households, individuals, cooperation groups and cooperatives engaged in agricultural production with incomes from cultivation, husbandry and aquaculture products; except for farmers and farmer households engaged in large-scale commodity production with high incomes.

The payment of business income tax applicable to farmers and farmer households engaged in large-scale commodity production with high incomes from cultivation, husbandry or aquaculture products shall be governed by separate regulations. The Ministry of Finance shall assume the prime responsibility for, and coordinate with the Ministry of Agriculture and Rural Development and the Ministry of Fisheries in, submitting to the Government for promulgation regulations on payment of business income tax to be applicable to these subjects.

Chapter II
TAX CALCULATION BASES AND TAX RATES

Article 3.- Tax calculation bases are taxable income in the tax period and tax rate.

Business income tax period is determined according to the calendar year or fiscal year.

Article 4.- Turnover for calculation of taxable income is determined as follows:

1. Turnover for calculation of taxable income is the total goods sales or service charge, including price subsidies, surcharges and additional amounts, earned by business establishments, regardless of whether or not such amounts have been collected.

For business establishments that pay value added tax (VAT) by the tax credit method, turnover for calculation of taxable income is VAT-exclusive turnover. For business establishments that pay VAT directly on added value, turnover for calculation of taxable income is VAT-inclusive turnover.

2. For goods sale and service provision activities, the time for determining turnover for calculation of taxable income is the time of transferring the ownership of goods, completing services or making out invoices on goods sale or service provision.

3. Turnover for calculation of taxable income in some cases is specified as follows:

a/ For goods sold on installment payment, turnover for calculation of taxable income is determined based on the sale price paid in lump sum, excluding interest on deferred payment;

b/ For goods or services used for barter, donation or internal consumption, turnover for calculation of taxable income is determined based on the sale price of goods or services of the same or similar category at the time of barter, donation or internal consumption;

c/ For goods-processing activities, turnover for calculation of taxable income is proceeds from the processing, including remuneration, costs of fuels, power, auxiliary materials and other costs in service of goods processing;

d/ For property leasing activities, turnover for calculation of taxable income is rent paid by the lessee for each term under the leasing contract. If the lessee pays rent in advance for several years, turnover for calculation of taxable income is divided by the number of years for which the rent has been paid in advance or determined based on the rent payable in lump sum.

The Ministry of Finance shall specifically guide the methods of determining turnover from the advance payment of rent for several years in order to determine taxable income suitable to each type of business establishment defined at this Point;

e/ For credit activities, turnover for calculation of taxable income is receivable loan interest arising in the tax period;

f/ In other cases, turnover for calculation of taxable income is specified by the Ministry of Finance.

Article 5.- Reasonable expenses to be deducted for calculation of taxable income include:

1. Depreciations of fixed assets used for goods production and trading or service provision activities. Fixed asset depreciation rate is determined based on the value of fixed assets and depreciation duration. Establishments producing and trading in goods or providing services with high economic efficiency may apply a higher depreciation rate which, however, must not exceed two times the prescribed depreciation rate, in order to quickly renew their technologies.

The Ministry of Finance shall specify fixed asset standards, depreciation duration and rate and quick depreciation specified in this Clause.

2. Costs of raw materials, materials, fuel, energy and goods volume actually used for goods production and trading or service provision related to turnover and taxable income in a period, which are calculated according to a reasonable consumption norm and actual ex-warehousing prices, that enterprises shall determine by themselves and take responsibility therefore before law.

Business establishments that purchase products made of rattan, bamboo, rush, coconut fibers or palm leaves directly from their makers, handicraft and fine-art articles from non-business artisans; earth, stone, sand and gravel exploited by people themselves; scraps from scrap collectors and some services from non-business individuals without invoices and vouchers may make lists thereof according to the Finance Ministry's regulations on the basis of written payment requests of goods sellers or service providers. Directors of business establishments who approve payments according to those lists shall bear responsibility before law for the accuracy and truthfulness of the lists.

3. Wages, remuneration and allowances paid to laborers according to the Labor Code, expenses for mid-shift meals and food rations:

a/ Wages, remuneration and allowances paid to laborers in State enterprises which are accounted as reasonable expenses according to current regulations;

b/ Wages, remuneration and allowances paid to laborers in other business establishments which are accounted as reasonable expenses under labor contracts;

c/ Expenses for mid-shift meals for laborers which are accounted as reasonable expenses and may not exceed the minimum wage set by the State for state employees;

d/ Food rations for laborers working in some special sectors and doing some special jobs as prescribed by the State.

4. Expenses for scientific and technological research; innovations and modifications, healthcare; and training of laborers according to regulations; financial supports for education.

5. Charges for services purchased from outside: electricity, water, telephone, repair of fixed assets; rent of fixed assets; audit; legal services; designing, establishment and protection of trademarks; property insurance; payments for use of technical documents; invention patents; technological licenses not pertaining to fixed assets, technical services and other services purchased from outside.

6. Payments:

a/ Expenses for female laborers, including:

- Expenses for job re-training of female workers and employees whose current jobs are no longer appropriate in order to shift them to other jobs under business establishments' development plans.

These extra expenses cover training fees (if any) + wage level and grade-based difference (ensuring 100% of wages for trainees);

- Payment of wages and allowances (if any) to teachers in nurseries and kindergartens organized and managed by business establishments. The number of these teachers shall be determined according to the norm prescribed by education and training authorities;

- Expenses for organizing an additional health check in a year such as examination of occupational, chronic or gynecological diseases for female workers and employees;

- Payment of allowances for female laborers after childbirth. Pursuant to the provisions of labor law and based on actual price fluctuations in each period, the Ministry of Finance shall coordinate with the Ministry of Labor, War Invalids and Social Affairs in specifying the maximum allowance level for female laborers after childbirth;

- During the period of breast-feeding, if, for objective reasons, female laborers do not take breast-feeding breaks according to regulations but stay on to work for business establishments, they are entitled to overtime allowances according to regulations.

For business establishments employing large numbers of female laborers in production, construction or transportation activities, if they can separately account and keep track of actual payments for female laborers, they are entitled to business income tax reduction according to Article 41 of this Decree.

b/ Expenses for labor safety protection according to the Labor Code;

In business establishments where laborers are required to wear uniforms at workplaces, expenses for uniforms shall be accounted as reasonable expenses.

c/ Expenses for protection of business establishments; working mission allowances;

d/ Appropriations for social insurance and heath insurance funds under the responsibility of employing business establishments; trade union funding; support of Party cells and mass organizations' activities at business establishments; contributions to cover managerial costs at higher levels and associations' funds according to regulations.

7. Payment of interests on loans for production, business and services to credit institutions, financial institutions and other economic organizations at actual interest rates; payment of interests on loans borrowed from other entities at actual interest rates

which, however, must not exceed 1.2 times the lending interest rate applied commercial banks at the time of borrowing.

8. Appropriations for use as provisions according to regulations.

9. Severance allowances for laborers according to regulations.

10. Expenses for goods sale or service provision, including: expenses for preservation, packing, transportation, loading and unloading, renting of warehouses and storing yards and product warranty for goods or services.

11. Expenses for advertisement, marketing, sales promotion, reception, public relation expenses, payment of brokerage commissions, conference expenses and other expenses directly related to goods production and trading or service provision, which must not exceed 10% of the total of expenses listed in Clauses 1 thru 10 of this Article. For trading activities, total reasonable expenses used for determining the controlled level are exclusive of costs of goods sold.

12. Payable taxes, charges, fees and land rents related to goods production and trading or service provision (except business income tax), including:

a/ Export duty, import duty;

b/ Special consumption tax;

c/ VAT, for business establishments paying VAT directly on added value; VAT, for business establishments paying VAT by the tax credit method in case of purchase or import of goods or services for the production of goods or provision of services which are not liable to VAT; input VAT, in case of export of goods or services but the conditions for VAT credit and refund according to the provisions of VAT law are not satisfied; input VAT not credited due to late declaration as compared with the set time limit;

d/ Registration fees;

e/ Royalty;

f/ Agricultural land use tax;

g/ Housing and land tax;

h/ Charges and fees specified by law;

i/ Land rents.

13. Business administration expenses allocated by foreign companies to their permanent establishments in Vietnam based on the proportion of such permanent establishments' turnover to total turnover of such foreign companies, including turnover of permanent establishments in other countries.

Vietnam-based permanent establishments of foreign companies that have not yet implemented the provisions on accounting, tax payment invoices and vouchers by mode of tax declaration are not allowed to account as reasonable expenses business administration expenses allocated by foreign companies according to this Clause.

Article 6.- The following expenses are not accounted as reasonable expenses:

1. Wages and remunerations paid by business establishments due to their failure to strictly observe the provisions of labor law on labor contracts, except when they employ laborers for piece work.

Wages and remunerations of owners of private enterprises, partners of partnerships, heads of individual business households and business individuals, remuneration paid to founding members and members of boards of directors of limited liability companies or joint-stock companies who do not directly participate in the administration of goods production and trading or service provision.

2. Amounts appropriated in advance as expenses but not actually spent, including: advance appropriations for overhaul of fixed assets, charges for warranty of goods and construction works or other advance appropriations.

3. Expenses without invoices or vouchers or with invalid invoices or vouchers.

4. Fines for administrative violations, such as violations of traffic law, violations of business registration regulations, violations of accounting and statistic regulations, violations of tax law, and other administrative violations.

5. Expenses not related to turnover and taxable income, such as expenses for capital construction investment; financial supports for localities, mass organizations and social organizations outside business establishments; expenses for charity purposes and other expenses not related to turnover and taxable income.

6. Expenses covered by other funding sources, such as non-business expenses, allowances for regular and unexpected difficulties.

Article 7.- Turnover, reasonable expenses and taxable income shall be determined in Vietnam dong. In case business establishments have turnover, reasonable expenses and taxable income in foreign currencies, they shall convert these foreign currency amounts into Vietnam dong at the exchange rates announced by Vietnam State Bank at the time the foreign currency turnover and expenses arise, unless otherwise provided for by law. For a foreign currency without any exchange rate with Vietnam dong, the conversion shall be effected through another foreign currency with an exchange rate with Vietnam dong.

Article 8.- Taxable incomes include income from goods production and trading or service provision activities and other incomes in the tax period, including those generated from goods production and trading or service provision activities overseas.

1. Taxable income from goods production and trading or service provision activities is turnover for calculation of taxable income minus (-) reasonable expenses related goods production and trading or service provision activities in the tax period.

In case a business establishment earns its income from its contributed share capital or joint-venture capital, for which business income tax has been paid by the business establishment receiving such contributed share capital or joint-venture capital, that income is not liable to business income tax.

2. Other taxable incomes in the tax period include:

a/ Securities purchase and sale margin;

b/ Income from activities related to industrial property rights and copyright;

c/ Other incomes from property ownership and use rights;

d/ Income from land use right or land rent right transfer;

e/ Gain from property transfer or liquidation;

f/ Interest on deposits, loans and goods sold on deferred payment;

g/ Margin from sale of foreign currencies or foreign exchange rate difference;

h/ Year-end balance of provisions according to regulations;

i/ Recovered bad debts which were written off from accounting books;

j/ Payable debts of unidentifiable creditors;

k/ Income amounts from goods production and trading or service provision activities in previous years which had been omitted but later discovered;

l/ Income amounts from goods production and trading or service provision activities overseas.

For an income for which income tax has been paid overseas, the business establishment shall determine the income amount prior to payment of income tax abroad so as to calculate business income tax. When determining income tax payable for the whole year, the income tax amount already paid overseas by the business establishment will be deducted, provided such deducted amount does not exceed the income tax on the received income calculated under the Law on Business Income Tax.

m/ Income amounts related to the sale of goods or provision of services which are not yet included into turnover, after deducting expenses for the generation of these income amounts under the Finance Ministry's regulations;

n/ Gain from capital transfer;

o/ Other income amounts not yet specified in this Article.

3. In case a double taxation agreement which the Socialist Republic of Vietnam has signed provides a method of determining taxable income for permanent establishments different from that provided in Clauses 1 and 2 of this Article, the provisions of that agreement prevail.

Article 9.- Business income tax rates applicable to business establishments are as follows:

1. The business income tax rate applicable to business establishments is 28%.

2. The business income tax rate applicable to business establishments conducting prospection, exploration and exploitation of oil and gas or other precious and rare natural resources is between 28% and 50%.

The Prime Minister shall decide, at the proposal of the Minister of Finance, on specific tax rates suitable to the production and business situation of each business

establishment conducting prospection, exploration and exploitation of oil and gas or other precious and rare natural resources.

3. The business income tax rate applicable to lottery activities is 28%. The Ministry of Finance shall specify the financial mechanism applicable to after-tax income from lottery activities.

Chapter III

DETERMINATION OF TAXABLE INCOME FROM AND INCOME TAX ON TRANSFER OF LAND USE RIGHTS AND LAND RENT RIGHT

Article 10.- Income from the following transfer of land use rights or land rent right is liable to income tax on transfer of land use rights or land rent right:

1. Cases of land use rights transfer:

a/ Transfer of rights to use land without infrastructure or architectural works built thereon;

b/ Transfer of rights to use land with infrastructure works built thereon;

c/ Transfer of rights to use land with architectural works built thereon;

d/ Transfer of rights to use land with infrastructure and architectural works built thereon.

2. Cases of land rent right transfer:

a/ Transfer of right to rent land without infrastructure or architectural works built thereon;

b/ Transfer of right to rent land with infrastructure works built thereon;

c/ Transfer of right to rent land with architectural works built thereon;

d/ Transfer of right to rent land with infrastructure and architectural works built thereon.

Article 11.- Cases of land use rights transfer or land rent right transfer not liable to income tax on income from land use rights or land rent right transfer

1. The State allocates or leases land to business establishments.

2. Goods production and trading or service provision organizations return land to the State or have their land recovered by the State in accordance with law.

3. Goods production and trading or service provision organizations sell their workshops and transfer their land use rights or land rent right before their relocation according to plan.

4. Goods production and trading or service provision organizations contribute capital in the form of land use rights for production and business cooperation with Vietnamese or foreign organizations or individuals in accordance with law provisions.

5. Goods production and trading or service provision organizations transfer their land use rights or land rent right due to their division, splitting, merger or bankruptcy.

6. Owners of private enterprises transfer their land use rights in case of inheritance or divorce according to law; transfer land use rights between spouses, between parents and children; between paternal or maternal grandparents and their grandchildren; or between siblings.

7. Goods production and trading or service provision organizations donate their land use rights or land rent right to the State or other organizations for construction of cultural, healthcare or physical training and sport works; transfer land use rights as charities to social policy beneficiaries.

Article 12.- Payers of income tax on income from land use rights or land rent right transfer are goods production and trading or service provision organizations with income from land use rights or land rent right transfer.

Business households or individuals engaged in goods trading or service provision and having income from land use rights or land rent right transfer do not have to pay income tax on land use rights and land rent right transfer under this Decree but pay tax according to the provisions of the Law on Land Use Right Transfer Tax.

Article 13.- Taxable income from land use rights or land rent right transfer is turnover for calculation of taxable income minus reasonable expenses related to the land use rights or land rent right transfer.

1. Turnover for calculation of taxable income is determined based on the actual price of transfer between a goods production and trading or service provision organization which transfers its land use rights or land rent right and the transferee at the time of transfer.

The actual transfer price is determined as follows:

- It is the price written in the invoice or the money amount actually paid by the land use rights or land rent right transferee to the transferor.

In case the actual transfer price is lower than that decided by the provincial/municipal People's Committee, turnover for calculation of income liable to land use rights or land rent right transfer tax shall be based on the price decided by the provincial/municipal People's Committee.

- It is the auction-wining price in case of auction of land use rights or land rent right.

In some cases, turnover for calculation of taxable income is determined as follows:

a/ In case of transfer of rights to use land or right to rent land with infrastructure works built thereon, turnover for calculation of taxable income includes the total of turnover from the transfer of ownership right over infrastructure works and turnover from the lease of those infrastructure works;

b/ In case of transfer of rights to use land or right to rent land with architectural works built thereon, turnover from the sale of such architectural works must be separated. If that turnover cannot be separated, turnover for calculation of taxable income includes also turnover from the sale of architectural works.

2. Expenses for land use rights or land rent right transfer:

a/ Expenses for obtaining land use rights or land rent right, include:

- Cost price of land in question, which is determined as follows:

+ For land allocated by the State with the collection of land use levy or land rent, the voucher on the collection of land use levy or land rent by the State is required;

+ For land of which land use rights are received from another organization or individual, the contract and valid payment voucher for the receipt of land use rights or land rent right are required;

+ In case a goods production and trading or service provision organization exchanges a work for the State's land, the cost price of the land is the value of the exchanged work.

+ Auction-winning price in case the transfer of land use rights or land rent right is auctioned.

+ In case a limited liability company or a joint-stock company transfers the rights to use or right to rent land which has been contributed as joint-venture capital, its cost price is determined according to the capital contribution written record made by the board of directors.

+ For land of a goods production and trading or service provision organization, which is inherited under the civil law, donated or presented, with unknown cost price, its cost price shall be determined according to the land price decided by the provincial/municipal People's Committee on the basis of the land price bracket set by the Government at the time of inheritance, donation or presentation.

When the land of a goods production and trading or service provision organization was inherited, donated or presented before 1994, its cost price shall be determined according to the land price decided in 1994 by the provincial/municipal People's Committee on the basis of the land price bracket set in the Government's Decree No. 87/CP of August 17, 1994.

- Compensation for land damage not yet deducted from land use levy or land rent;

- Compensation for crop damage;

- Support for relocation to new residential places;

- Support for removal of graves and tombs;

- Other supports for ground clearance.

- Assorted charges and fees related to the grant of land use rights as prescribed by law.

b/ Expenses for soil improvement and ground leveling;

c/ Expenses for construction of infrastructure and architectural works on land;

d/ Expenses specified in Article 5 of this Decree. In case a goods production and trading or service provision organization conducts different business lines, these expenses shall be allocated according to the proportion of turnover from land use rights or land rent right transfer to total turnover from goods production and trading or service provision activities.

e/ If turnover for calculation of taxable income covers the value of architectural works on land, these expenses include the value of those architectural works.

Article 14.- Rates of income tax on land use rights or land rent right transfer

1. The tax rate on income from land use rights or land rent right transfer is 28%.

2. After calculating income tax at the tax rate specified in Clause 1 of this Article, the remaining income is liable to additional income tax according to the following partially progressive tariff:

PARTIALLY PROGRESSIVE TABLE OF RATES

Grade	Ratio of the remaining income to expenses	Tax rate
1	Up to 15%	0%
2	Between over 15% and 30%	10%
3	Between over 30% and 45%	15%
4	Between over 45% and 60%	20%
5	Over 60%	25%

Article 15.- The preferential tax rates, tax exemption and reduction provided in Chapter V of this Decree do not apply to income earned from land use rights or land rent right transfer.

Article 16.- Goods production and trading or service provision organizations which transfer the ownership of architectural or infrastructure works on land shall carry

out procedures for the transfer of land use rights or land rent right associated with infrastructure or architectural works on land.

Article 17.- Tax declaration and payment procedures applicable to goods production and trading or service provision organizations which do not regularly carry out land use rights or land rent right transfer are as follows:

Basing themselves on dossiers and documents on land use rights or land rent right transfer sent by land management agencies, the tax offices shall request goods production and trading or service provision organizations to declare turnover, expenses, taxable income and payable tax amounts according to a form set by the Ministry of Finance and submit their declarations to the tax offices directly managing them within 10 days after receiving the tax offices' requests. Basing themselves on invoices and vouchers in the business establishments' accounting books, the tax offices shall check and verify the accuracy of tax declarations and issue notices on tax amounts on land use rights or land rent right transfer and the payment time limit. The tax payment time limit indicated in a tax notice is 15 days after that tax notice is issued. Transferees of land use rights or land rent right will be granted land use rights or land rent right certificates only after they produce receipts or vouchers on payment of land use rights or land rent right transfer tax for transferred land areas

Article 18.- Goods production and trading or service provision organizations which are specialized in dealing in land and houses, infrastructure and architectural works on land shall pay and finalize business income tax according to Chapter IV of this Decree, but shall make separate finalization of income tax on land use rights or land rent right transfer. If the temporarily paid tax amount is smaller than the payable tax amount as stated in the tax finalization reports, goods production and trading or service provision organization shall fully pay the deficit within 10 days after the date of submission of the tax finalization reports. If the temporarily paid tax amount is larger than the payable tax amount as stated in tax finalization report, the goods production and trading or service provision organization may account the surplus into the outstanding business income tax amount for other business activities or into the business income tax

amount payable for land use rights or land rent right transfer in the subsequent period. If suffering from a loss in the land use rights or land rent right transfer, the goods production and trading or service provision organization may carry forward such loss into taxable income from land use rights or land rent right transfer in subsequent years for a duration specified in Article 42 of this Decree.

Article 19.- Tax offices may impose tax-related administrative sanctions on business establishments that submit late their tax declarations and finalization reports of income tax on land use rights or land rent right transfer; and impose fines for their late tax payment according to law. In the course of examination of declaration and finalization of income tax on land use rights or land rent right transfer, if tax offices detect that transfer prices, expenses and income liable to land use rights or land rent right transfer tax reported by business establishments are inaccurate, they may re-determine these transfer prices according to actual market prices, as well as reasonable expenses and incomes in order to ensure accurate and full collection of income tax on land use rights or land rent right transfer; and at the same time, shall sanction business establishments for their false tax declaration or tax evasion according to law.

Chapter IV

TAX REGISTRATION, DECLARATION, PAYMENT AND FINALISATION

Article 20.- Business establishments shall make business income tax registration together with VAT payment registration. Tax registration procedures shall be carried out under the provisions of Article 11 of the Government's Decree No. 158/2003/ND-CP of December 10, 2003, detailing the implementation of the VAT Law and the Law Amending and Supplementing a Number of Articles of the VAT Law.

Article 21.- Business establishments shall declare their turnovers, expenses, taxable incomes and payable tax amounts for the whole year, which are divided by every three months according to a form set by tax offices, and shall submit those declarations to the tax offices directly managing them no later than the 25th of January

every year or the 25th of the month subsequent to the last month of the fiscal year, for business establishments with fiscal year other than calendar year. The Ministry of Finance shall set forms of business income tax declaration.

In case tax offices detect, through inspection, that the tax declaration by business establishments is incompatible with the actual goods production and trading or service provision, they will base themselves on the proportion of business establishments' taxable incomes to their turnovers in the preceding year or taxable incomes of other business establishments engaged in the same sector or business line on a similar equivalent business scale to assess tax amounts to be temporarily paid for the whole year and each quarter and notify business establishments thereof for payment.

Article 22.- In case of a change in the production, business or service provision situation, a business establishment shall report that change to the tax office directly managing it for adjustment of the tax amounts to be temporarily paid for the whole year and each quarter. When receiving the business establishment's request for adjustment of the tax amounts to be temporarily paid for each quarter and the whole year, the tax office shall consider and notify the business establishment of the adjusted tax amounts or the reason for refusal.

Article 23.- The Ministry of Finance shall guide the determination of turnover and the proportion of taxable income to turnover for business establishments that have not yet implemented the provisions on accounting, invoices and vouchers in Clause 2, Article 12 of the Business income tax Law, suitably to each business line and location.

Article 24.- The business income tax payment is specified as follows:

1. Business establishments shall temporarily pay fully and on time into the state budget quarterly tax amounts declared by themselves or assessed by tax offices. The deadline for tax payment is the last day of the quarter.

2. Business establishments that have not yet implemented the provisions on the accounting, invoices and vouchers in Clause 2, Article 12 of the Business income tax

Law shall pay tax on a monthly basis according to tax offices' notices. The deadline for the monthly tax payment stated in the notices is the 25th of the subsequent month.

3. Business establishments engaged in shipment trading shall declare and pay tax for each shipment to tax offices of localities where they purchase goods before transporting such goods away.

4. For foreign business organizations or individuals doing business without permanent establishments in Vietnam but having incomes generated in the country, organizations or individuals in Vietnam that pay those incomes shall withhold tax amounts at the rates specified by the Finance Ministry from total amounts to be paid to foreign organizations or individuals.

Article 25.- Business income tax shall be calculated and paid in Vietnam dong.

Article 26.- Business establishments shall make annual tax finalization with tax offices according to a form set by the Ministry of Finance.

The year for tax finalization is the calendar year. In case business establishments are permitted to apply a fiscal year other than the calendar year, they may make tax finalization according to that fiscal year.

A tax finalization report must accurately and fully reflect turnover; reasonable expenses; taxable income; payable income tax amount; income tax amount to be exempted or reduced; income tax amount temporarily paid in the year; income tax amount already paid abroad for income received abroad; underpaid or overpaid income tax amount.

Article 27.- Business establishments shall submit their tax finalization reports to tax offices within 90 days after the end of a calendar year or fiscal year. If tax amounts temporarily paid in the year are smaller than payable tax amounts stated in their tax finalization reports, business establishments shall fully pay the deficit within 10 days after submitting the finalization reports. If tax amounts temporarily paid in the year are larger than payable tax amounts stated in their tax finalization reports, business establishments are allowed to credit the surplus into the payable tax amount of the subsequent period.

Article 28.- In case of transformation, ownership conversion, merger, consolidation, division, splitting, dissolution or bankruptcy, business establishments shall make tax finalization with tax offices and send their tax finalization reports within 45 days after the date of issuance of decisions on their transformation, ownership conversion, merger, consolidation, division, splitting, dissolution or bankruptcy.

Article 29.- After receiving business establishments' tax finalization reports, tax offices shall consider and classify them for examination and inspection.

The Ministry of Finance shall guide the methods of classifying tax finalization reports and the procedures for examination and inspection mentioned in this Article.

Article 30.- In the course of examining and inspecting tax declarations, payment and finalization by business establishments, if detecting that the purchase prices, sale prices, business expenses, taxable incomes and other factors determined by business establishments are unreasonable, tax offices have the right to re-determine these purchase prices and sale prices according to domestic and foreign market prices, as well as expenses, taxable incomes and other factors so as to ensure accurate and full collection of business income tax.

The Ministry of Finance shall guide the methods of determining purchase prices and sale prices of goods and services according to market prices mentioned in this Article.

Article 31.- Tax offices have the following tasks, powers and responsibilities:

1. To guide business establishments in declaring and paying tax in strict accordance with the Business income tax Law.

2. To notify business establishments which have not yet implemented the provisions on accounting, invoices and vouchers, of monthly payable tax amounts and tax payment deadline as specified in Clause 2, Article 24 and the assessed tax amounts as specified in Articles 30 and 32 of this Decree.

3. To notify business establishments of their late submission of declaration forms, late tax payment and the tax offices' decisions on sanctioning of tax-related

violations; if business establishments still fail to fully pay tax and fine amounts stated in tax notices, to apply or request competent agencies to apply handling measures specified in Clause 4, Article 23 of the Business income tax Law to ensure full collection of tax and fine amounts. In case the handling measures have been applied but business establishments still fail to fully pay tax and fine amounts, to transfer their dossiers to competent state agencies for handling according to law.

4. To inspect and examine the tax declaration, payment and finalization by business establishments.

5. To handle tax-related administrative violations and settle tax-related complaints.

6. To request business establishments to provide accounting books, invoices, vouchers and other documents related to tax calculation and payment; to request credit institutions, banks and other organizations or individuals to provide documents related to tax calculation and payment.

7. To keep and use data and documents provided by business establishments and other entities according to regulations.

Article 32.- Tax offices may assess taxable incomes of business establishments when the latter:

1. Fail to observe or improperly observe the provisions on accounting, invoices and vouchers.

2. Fail to declare or improperly declare tax calculation bases or are unable to prove the bases stated in their declarations upon request.

3. Refuse to produce accounting books, invoices, vouchers and necessary documents related to tax calculation.

4. Carry out business activities without business registration.

Tax offices shall base themselves on investigation documents on the business situation of business establishments or on taxable incomes of business establishments engaged in the same business line on a similar business scale to assess taxable incomes.

If a business establishment disagrees with the assessed taxable income, it may lodge a complaint with the immediate superior tax office or initiate a lawsuit at court according to law. Pending the settlement, the business establishment shall still fully pay tax at the assessed level.

Chapter V
BUSINESS INCOME TAX EXEMPTION AND REDUCTION

Article 33.- Conditions for business income tax relief

Investment projects that meet one of the following conditions are entitled to business income tax relief:

1. Investing in branches, business lines or sectors on the List of sectors entitled to investment preferences promulgated by the Government under the Investment Law.

2. Investing in branches, business lines or sectors on the List of sectors entitled to special investment preferences promulgated by the Government under the Investment Law.

3. Investing in geographical areas on the List of geographical areas with difficult socio-economic conditions promulgated by the Government under the Investment Law.

4. Investing in geographical areas on the List of geographical areas with exceptionally difficult socio-economic conditions promulgated by the Government under the Investment Law.

Article 34.- Preferential business income tax rates and durations of application

1. The tax rate of 20% applies to the following entities for 10 years since the commencement of their business operation:

a/ Cooperatives established in geographical areas not on the List of geographical areas with difficult socio-economic conditions and the List of geographical areas with exceptionally difficult socio-economic conditions.

b/ Business establishments newly founded under investment projects in branches, business lines or sectors on the List of sectors entitled to investment preferences.

c/ Business establishments newly founded under investment projects executed in geographical areas on the List of geographical areas with difficult socio-economic conditions.

2. The tax rate of 15% applies to the following entities for 12 years since the commencement of their business operation:

a/ Cooperatives established in geographical areas in the List of geographical areas with difficult socio-economic conditions.

b/ Business establishments newly founded under investment projects in branches, lines or sectors on the List of sectors entitled to investment preferences and executed in geographical areas on the List of geographical areas with difficult socio-economic conditions.

3. The tax rate of 10% applies to the following entities for 15 years since the commencement of their business operation:

a/ Cooperatives and business establishments newly founded under investment projects executed in geographical areas on the List of geographical areas with exceptionally difficult socio-economic conditions.

b/ Business establishments newly founded under investment projects in branches, lines or sectors on the List of sectors entitled to special investment preferences.

For business establishments newly founded under investment projects in branches, lines or sectors on the List of sectors entitled to special investment preferences and having great socio-economic impacts, which need higher incentives,

the Ministry of Finance shall propose the Prime Minister to decide on application of the preferential tax rate of 10% throughout the execution of the projects.

4. After the duration of application of the preferential tax rates specified in Clauses 1, 2 and 3 of this Article, cooperatives and business establishments newly founded under investment projects shall pay business income tax at the rate of 28%.

Article 35.- Business establishments newly founded under investment projects and relocated business establishments enjoy tax exemption and reduction as follows:

1. Production establishments newly founded under investment projects and business establishments relocated out of urban centers under a planning approved by competent authorities enjoy tax exemption for 2 years after their taxable incomes are generated and a 50% reduction of their payable tax amounts for 2 subsequent years.

2. Business establishments newly founded under investment projects in branches, business lines or sectors on the List of sectors entitled to investment preferences enjoy tax exemption for 2 years after their taxable incomes are generated and a 50% reduction of their payable tax amounts for 3 subsequent years.

3. Business establishments newly founded under investment projects in geographical areas on the List of geographical areas with difficult socio-economic conditions and business establishments relocated to those geographical areas enjoy tax exemption for 2 years after their taxable incomes are generated and a 50% reduction of their payable tax amounts for 6 subsequent years.

4. Business establishments newly founded under investment projects in branches, business lines or sectors on the List of sectors entitled to investment preferences and executed in geographical areas on the List of geographical areas with difficult socio-economic conditions enjoy tax exemption for 3 years after their taxable incomes are generated and a 50% reduction of their payable tax amounts for 7 subsequent years;

5. Business establishments newly founded under investment projects in branches, business lines or sectors on the List of sectors entitled to special investment preferences or executed in geographical areas on the List of geographical areas with

exceptionally difficult socio-economic conditions enjoy tax exemption for 4 years after their taxable incomes are generated and a 50% reduction of their payable tax amounts for 9 subsequent years.

6. The preferential tax rates specified in Clauses 1, 2 and 3, Article 34 of this Decree and the tax exemption and reduction provided in this Article apply only to newly founded business establishments that conduct independent cost-accounting and register to pay business income tax according to their declarations.

Business establishments newly founded under investment projects which enjoy tax exemption and reduction and are engaged in many business activities shall separately keep track of and account incomes from business activities entitled to tax exemption and reduction. If they are unable to do so, their tax exemption and reduction shall be determined based on the proportion of turnover from business activities entitled to tax exemption and reduction to total turnover.

Article 36.- Operating business establishments that invest in building new production chains, expand their production scale, renew technologies, improve the ecological environment and raise their production capacity enjoy tax exemption and reduction for increased income portions brought about by such investment as follows:

1. Investment projects on installation of new production chains which do not belong to branches, business lines, sectors or are not located in geographical areas eligible for investment preferences on the List of sectors entitled to investment preferences, the List of sectors entitled to special investment preferences, the List of geographical areas with difficult socio-economic conditions and the List of geographical areas with exceptionally difficult socio-economic conditions enjoy tax exemption for 1 year and a 50% reduction of the payable tax amount for 2 subsequent years.

2. Investment projects in branches, business lines or sectors on the List of sectors entitled to investment preferences or executed in geographical areas on the List of geographical areas with difficult socio-economic conditions enjoy tax exemption for 1 year and a 50% reduction of the payable tax amount for 4 subsequent years.

3. Investment projects in branches, business lines or sectors on the List of sectors entitled to special investment preferences or executed in geographical areas on the List of geographical areas with exceptionally difficult socio-economic conditions enjoy tax exemption for 2 years and a 50% reduction of the payable tax amount for 3 subsequent years.

4. Investment projects in branches, business lines or sectors on the List of sectors entitled to investment preferences and executed in geographical areas on the List of geographical areas with difficult socio-economic conditions enjoy tax exemption for 3 years and a 50% reduction of the payable tax amount for 5 subsequent years.

5. Investment projects in branches, business lines or sectors on the List of sectors entitled to special investment preferences and executed in geographical areas on the List of geographical areas with difficult socio-economic conditions enjoy tax exemption for 3 years and a 50% reduction of the payable tax amount for 7 subsequent years.

6. Investment projects in branches, business lines or sectors on the List of sectors entitled to investment preferences and executed in geographical areas on the List of geographical areas with exceptionally difficult socio-economic conditions and investment projects in branches, business lines or sectors on the List of sectors entitled to special investment preferences and executed in geographical areas on the List of geographical areas with exceptionally difficult socio-economic conditions enjoy tax exemption for 4 years and a 50% reduction of the payable tax amount for 7 subsequent years.

The Ministry of Finance shall guide the methods of determining increased income portions brought about by investment which are entitled to tax exemption and reduction provided in this Article.

Article 37.- Business establishments are exempt from business income tax for incomes earned in the following cases:

1. Income from the performance of contracts on scientific research and technological development; provision of scientific and technological information services.

2. Income from the sale of products during the period of trial production in strict accordance with the production process, but for no more than 6 months since the commencement of the trial production.

3. Income from the sale of products turned out by new technologies applied for the first time in Vietnam, but for no more than 1 year since the application of these new technologies to the production.

4. Income from the performance of technical service contracts in direct service of agriculture.

5. Income from job training exclusively for ethnic minority people.

6. Income from goods production and trading or service provision activities carried out by disabled people only.

7. Income from job training exclusively for disabled people, children in exceptionally difficult circumstances, and social evil victims.

Article 38.- Business income tax is exempt for cooperatives with annual average income per laborer lower than the minimum wage level set by the State for state employees.

Article 39.- Business income tax is exempt for private households engaged in goods production and trading or service provision with monthly average income per laborer lower than the minimum wage level set by the State for state employees.

Article 40.- Business income tax is exempt for investors contributing capital in the form of patents, technical know-hows, technological processes or technical services.

Article 41.- Business establishments engaged in production, construction or transport activities and employing between 10 and 100 female laborers who account for more than 50% of total number of their regular laborers or regularly employing more than 100 female laborers who account for more than 30% of total number of their regular

laborers enjoy business income tax reduction corresponding to the level of expenses for female laborers.

Article 42.- If business establishments, after making tax finalization with tax offices, suffer from losses, they are entitled to carry forwards such losses to, and offset them against, their taxable incomes of subsequent years. The loss carrying-forward duration must not exceed 5 years.

Article 43.- The preferential tax rates, tax exemption, tax reduction and loss carrying-forward provided for in Articles 34, 35, 36, 37, 38, 40, 41 and 42 of this Decree apply only to business establishments that have strictly observed the provisions on accounting, invoices and vouchers and registered and paid tax according to their declarations. Business establishments shall determine by themselves the conditions for enjoying tax relief, the level of tax exemption and reduction and loss amounts to be offset against taxable incomes and notify them in writing to the tax offices upon submitting annual business income tax declarations.

The tax exemption and reduction durations provided for in this Decree shall be counted from the first fiscal year when business establishments earn taxable incomes before deducting the loss amounts allowed to be carried forward as specified in Article 42 of this Decree. In case the duration of goods production and trading or service provision activities in the first fiscal year eligible for tax exemption and reduction is less than 12 (twelve) months, business establishments may enjoy tax exemption and reduction right from that year or register with tax offices the time to start enjoying tax exemption and reduction from the subsequent fiscal year. The tax exemption or reduction duration shall be continuously counted from the first fiscal year when business establishments earn taxable incomes before deducting the loss amounts allowed to be carried forward.

In the same period, if a business establishment earns an income eligible for tax exemption or reduction which falls into different cases, it may select by itself the most beneficial tax exemption or reduction case and notify the tax office thereof.

Chapter VI
COMMENDATION AND HANDLING OF VIOLATIONS

Article 44.- Tax offices and tax officers that well fulfill their assigned tasks; business establishments and other organizations and individuals that record achievements in the implementation of the Business income tax Law will be commended and rewarded according to general state regulations on commendation and rewards.

Article 45.- Business establishments, tax officers and other individuals that violate the Business income tax Law shall, depending on their violation acts and severity, be handled according to Articles 23 and 25 of the Business income tax Law and legal documents on handling of administrative violations in the domain of taxation.

Chapter VII
IMPLEMENTATION PROVISIONS

Article 46.- This Decree takes effect 15 days after its publication in "CONG BAO" and applies to the tax period as from 2007.

This Decree replaces the Government's Decree No. 164/2003/ND-CP of December 22, 2003, detailing the implementation of the Business Income Tax Law and Decree No. 152/2004/ND-CP of August 6, 2004, amending and supplementing a number of articles of Decree No. 164/2003/ND-CP.

1. Business establishments newly founded under investment projects and getting business registration certificates or investment certificates as from the effective date of the Government's Decree No. 108/2006/ND-CP of September 22, 2006, detailing and guiding the implementation of a number of articles of the Investment Law, shall pay business income tax under this Decree.

2. To annul the provisions on business income tax relief of Clause 1, Article 36 of the Government's Decree No. 187/2004/ND-CP of November 16, 2004, on

transformation of state companies into joint-stock companies. Joint-stock companies founded from equitized state enterprises before the effective date of this Decree continue enjoying business income tax relief according to the provisions of Clause 1, Article 36 of the Government's Decree No. 187/2004/ND-CP for the remaining relief duration.

From the taxation year of 2007, to abolish business income tax relief for satisfaction of the condition on use of domestic materials or for satisfaction of the condition on export percentage of textile and garment activities specified in legal documents on foreign investment in Vietnam, domestic investment promotion or business income tax, and legal documents on investment.

3. Business establishments currently enjoying business income tax relief under the Government's Decree No. 164/2003/ND-CP of December 22, 2003, and Decree No. 152/2004/ND-CP of August 6, 2004, and the Prime Minister's decisions issued before the effective date of this Decree continue enjoying the relief till the end of the relief duration. If the preferential enterprises income tax rates and durations of tax exemption or reduction they are enjoying are lower than the preferential tax rates or shorter than tax exemption or reduction durations provided in this Decree, business establishments will enjoy the preferences provided in this Decree for the remaining relief duration.

4. Business establishments that are granted investment licenses or business registration certificates before the date of official accession of the Socialist Republic of Vietnam to the World Trade Organization (January 11, 2007), which have incomes from business activities (except for textile and garment activities mentioned in Clause 2 of this Article) and are currently enjoying business income tax relief for satisfaction of the condition on export percentage specified in the legal documents on foreign investment in Vietnam, domestic investment promotion or business income tax, and legal documents on investment, will continue enjoying business income tax relief according to these legal documents until the end of 2011.

5. The settlement of tax-related problems, tax finalization, exemption and reduction, and handling of administrative violations related to business income tax

arising before the effective date of this Decree shall comply with relevant provisions of legal documents on business income tax, foreign investment in Vietnam, domestic investment promotion and other legal documents issued before the effective date of this Decree.

Article 47.- The Ministry of Finance shall guide the implementation of this Decree.

Ministers, heads of ministerial-level agencies, heads of the government-attached agencies, presidents of provincial/municipal People's Committees and concerned organizations and individuals shall implement this Decree.

On behalf of the Government

Prime Minister

NGUYEN TAN DUNG