

Files on Vietnam

- Resolutions of the Government and the National Assembly
- Periodical and overall reports of different branches
- Foreigner-related normative acts of the Government and ministries, which may be made good references for research



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PUBLISHER'S NOTE

As Vietnam proceeds with *doi moi* (renovation) and continues its open-door policy, there is an increasing need for current and relevant information about Vietnam in an easily accessible format. This new publication, *Files on Vietnam*, seeks to meet this need.

The number of foreigners who are interested in Vietnam as a promising land for doing business and as an attractive tourist destination is increasing daily. As Vietnam reaches out to befriend other nations for independent and peaceful co-existence and development, precise and accurate information will help to cement the bonds of friendship and cooperation between Vietnam and the rest of the world.

This bi-monthly series *Files on Vietnam* is meant by Thế Giới Publishers to furnish interested readers with open and up-to-date material about all aspects of this country. Each issue is in fact a collection of translations of overviews, reports, statistical data from various branches and industries, and legal documents relevant to foreign residents in Vietnam.

It is hoped that the *Files on Vietnam* will be a help to foreign policy makers, businessmen, researchers, tourists and students. Any comments or suggestions for improving the series will be highly appreciated.

Thế Giới Publishers

SOCIO-ECONOMIC SITUATION IN MARCH AND 1ST QUARTER OF 2001

*(Documents for Press Conference
held on 3rd April 2001
by the Office of the Government)*

In general, there was an upward trend in socio-economic development in the first quarter of 2001. Agricultural production developed in a positive way. Industrial production, State budget collection and foreign direct investment all grew in comparison with the same period of 2000. Some good results were seen in the effort to solve social problems, particularly hunger eradication and poverty reduction. Below are the key norms implemented in the first quarter of 2001 in comparison with the same periods of the two previous years:

	1 st Quarter (1999)	1 st Quarter (2000)	1 st Quarter (2001)
GDP growth rate (%)	4.1	5.6	7.2
Industrial production value growth rate (%)	10.3	13.4	14.4
Winter-spring rice output in Mekong River Delta (million tonne)	7.3	8.0	8.1
Export growth rate (%)	-9.9	41.6	14.2
Import growth rate (%)	-14.2	38.6	8.4
Social investment in comparison with GDP (%)	22.3	24.3	27.0
State budget collection/ estimated total (%)	20.1	22	25.9
State budget collection/GDP (%)	20.2	23.2	23.1
Inflation (%)	2.9	0.8	0.0

However, investment in capital construction was at a low level and showed no vigorous rise. Export rose but failed to reach the targeted rate. It is estimated that the target to realize the key norms set for 2001 can be achieved if drastic measures are taken to round off the set tasks within each month and each quarter, timely remove obstacles to agro-products consumption, push up the pace of capital construction and export, stimulate demand and investment, and prevent deflation.

SITUATIONS OF SOME KEY FIELDS ARE AS FOLLOWS:

1. Economy

Economic development reached a fairly high rate and could maintain a high growth rate in some fields. The GDP growth rate in the first quarter of 2001 was 7.2% (against 5.6% of the first quarter of 2000), of which agriculture-forestry-fishery rose by 3.8%, industry and construction by 9.9%, and services by 6.1% against 3.9%, 7.4%, and 4.6% in the first quarter of 2000 respectively.

a. Agricultural production saw a comprehensive development; the winter-spring crop is expected to be a bumper; animal husbandry, aquaculture and industrial crops growing moved on well; effective measures for consuming agro-produce were actively taken. However, farmers still meet numerous difficulties.

The whole country sowed nearly three million hectares of winter-spring paddy, i.e. the same area as last year's crop, of which over 1.1 million hectares are in the North and the rest in the South. Some rice-harming pests have appeared. Localities are figuring out effective preventive measures. Southern provinces harvested about 773 thousand hectares of early winter-spring paddy, with an average productivity of 0.5-0.6 quintal per hectare.

The area for sowing summer-autumn rice in the South was 132,000 hectares, a 76-per-cent rise against the same period last year.

The 2000-2001 coffee crop is estimated to produce a bumper harvest, about 700,000 tonnes; the rubber output in the first quarter is estimated to be 48,000 tonnes, achieving 17% of the year's target and a rise of 100% against the same period last year. Tea was to be harvested in mid-March, with an estimated production of 130-140 thousand tonnes, i.e. a rise of 10-20 thousand tonnes over the last year.

The output of aquatic products of the first quarter was nearly 500,000 tonnes, achieving

23% of the year's plan and a rise of 13% over the same period last year. Among this amount, sea-products accounted for over 320,000 tonnes. The first quarter's aquatic-product export reached US\$303 million (against US\$214 million of the first quarter of 2000).

Product consumption

Ministries, branches and localities are urgently preparing for purchasing one million tonnes of husked rice and 150,000 tonnes of coffee for temporary reserve according to the Prime Minister's decision. At present, coffee price has risen by 200-500 VND/kg. In An Giang, Đồng Tháp, Cần Thơ and other provinces, brown rice price used to fall continually, but now goes up by 10-20 VND/kg.

The consumption of sugar cane and sugar this year shows no fluctuation, with no sugar left unmarketed in stock at production establishments. However, a new question is the lack of material sugar cane for sugar refineries, especially at the end of the crop.

b. Industrial production was maintained at a high growth rate; some fields made good progress. Industrial products were consumed quickly.

The value of industrial production in March 2001 was estimated to rise by 3.4% against February 2001; and that of the first quarter of 2001 increased by 14.4% compared with the same period of 2000. Notably, the industrial production value of state enterprises rose by 10.4% (of central enterprises by 10.5% and local ones by 10.2%); that of non-state enterprises rose by 17% and foreign-invested ones by 17.5%. Particularly, the oil and gas sector grew by 24.2%.

Industry of some localities grew at a fairly high rate, for example that of Hải Phòng City grew by 25.3%, Thanh Hoá by 35.3%, Bình Dương 32.5%, Bà Rịa – Vũng Tàu 22.5%, Hồ Chí Minh City 15.4%, Phú Thọ 16.7%, Quảng Ninh 14.4% and Khánh Hoà 19.7%.

Production and consumption of some key industrial products rose fairly:

The generated electricity reached over 6.8 billion kWh, a rise of 12.6% compared with the same period last year, thus meeting the demand of production and daily livelihood. The exploitation of crude oil and gas brought forth 4.360 million tonnes and 442 million cubic meters respectively, a rise of 24.2% and 40% respectively compared with the same period last year. The amount of laminated steel came to over 400,000 tonnes, rising by 14.8%. This product was consumed well and the price upped slightly (VND4,400-4,600) compared with the same period last year. The output of cement was over 3.2 million tonnes, a rise of 14% and there was no cement in stock. Over 2.8 million tonnes of coal were exploited, rising by 11.5%. Domestic consumption and export of coal reached a high level; export of coal in the first quarter of 2001 alone reached 944,000 tonnes, a rise of 29% over the same period last year.

The mechanical branch developed both in production and product consumption. Electric engines increased by 9.3%; transformers by 6.1%; civil electric fans by 97.1%; TV sets by 47%; motorbikes by 19.5% and bicycles by seven times. Other consumer goods also rose at a fair level, for instance soap was upped by 25%, ready-made garments by 7.7%, knitwear by 15.6%, cover paper by 12.4% and canned milk by 42.3%.

Industry continued achieving a high growth rate thanks to the maintenance and expansion of the market for consuming key products inland and abroad; the quality of many products was improved; some products could be highly competitive against their imported counterparts; the production capability and technological standard were considerably raised. At the same time, stimulation of investment and consumption enabled the industrial sectors to bring into full play their production capacity. Moreover, the renovation

and reorganization of state-owned enterprises and development of non-state enterprises, though at the beginning steps, resulted in a motive force for developing.

c. The service sector gained a higher growth rate against the same period last year. The value of services went up by 6.1% (against 4.6% in the first quarter of 2000), contributing a great part to the growth of the whole economy. However, services in many fields were not fully exploited yet.

The domestic market continued to remain stable. The total retail of goods and services in March 2001 increased by 1.6% against February 2001 and by 8.1% against the same period last year. For the whole first quarter of 2001, the total goods retail and services increased by 7.3%. Meanwhile, the rural market developed slowly, characterized by a low level of purchasing power. The total retail of goods in the rural market increased by only 4% in the first quarter of 2001, much lower than the average 7.3% of the whole country and 10% of goods retail in the urban market.

Transport and post services witnessed a fair growth rate. The value of the sector's production and business rose by 6.1%, about 1% higher than that of the same period last year.

In the first quarter of 2001, tourism developed vigorously, attracting a considerable number of tourists, especially around the Tet holiday. The number of foreign tourists rose by 6% and domestic visitors by 3.5% over the same period last year. The total turnover of the tourist sector in the first quarter of 2001 leapt by 35% compared with the same period last year, of which foreign currency collection increased by 23%.

Services such as real estate business (accounting for nearly 12% of the total value of the service sector), financial and monetary, technological, medical care, cultural and community services were not fully exploited and great potential is yet to be tapped.

d. Export maintained its growth rate. The prices of some export commodities showed many advantages and the export market had many difficulties.

The export turnover of March 2001 rose by 15.5% compared with that of the previous month, and the turnover of the whole first quarter increased by 14.2% against that of the same period of 2000, reaching 21.2% of the year's plan.

Export of some products in the first quarter grew, such as coffee export grew by 43.8% in quantity but decreased by 24% in value, rice export increased by 78% in quantity and by 38.2% in value; vegetables and fruits export rose sharply by 120%, aquatic products export by 42%, crude oil export by 25.7% in quantity and by 18% in value, and coal export rose by 20%.

Export of some other goods reduced, such as footwear decreased by 1.3%, cashew nuts by 45%, rubber by 6%, handicraft wares by 3.5% in comparison with the same period last year.

The price of some of our key export commodities in the world market stood at a low level.

The import in March 2001 rose by 14.2% against that of February and that in the whole first quarter increased by 8.4% compared with the same period in 2000 (in the first quarter of 2000, import grew by 38.6%) and was equal to 20.4% of the year's plan. The import by foreign-invested enterprises rose by 21.3%.

Trade deficit of the first three months of 2001 was equal to 2.4% of the total export turnover and one third of that of the same period last year.

e. Capital sources for social investment, especially the private capital was well mobilized, which helped maintain the pace of building key projects and the constructions for flood prevention.

The capital for development investment in the first quarter of 2001 was 17.4% compared

with the year's estimated plan, a rise of over 2% against the same period of 2000 (15.5%).

In the first three months, ministries, branches and localities focused on realizing the supplemented investments in capital construction of the second phase of 2000, especially the constructions for preventing floods and natural calamities; realizing projects related to traffic and irrigational systems. Thanks to the early assignment of the plan set for 2001 and favourable weather, the volume of work done was greater than that of the same period of 2000.

Some other projects of the transport branch are going to be initiated such as Thanh Trì and Cấn Thơ bridges and Highway No 9. The agreement on loans for building Bãi Cháy Bridge has been signed with partners.

For the project on Hồ Chí Minh Road, in 2000 only about 31% of the plan was completed due to slow preparation. However, in the first three months of 2001, 200km of road foundations were finished; 21 out of 31 bridges were set up, with the used investment capital equal to nearly 34% of the year's plan.

Big irrigational projects were under construction right at the beginning of the year, and a great workload was done, for instance, 15% of the restoration of the irrigational and flood-preventive system (ADB1) was accomplished within three months; the restoration of the irrigational system of the Red River Delta is being pushed up to be finished by the third quarter of 2001.

The ODA Fund collaborated with the Vietnam Social Insurance, Post Savings Fund and commercial banks in mobilizing adequate credit capital from domestic sources. At present, a plan has been set up to mobilize an amount equal to 35% of the estimated total. But the implementation of the investment projects using credit capital is at a snail's pace.

In the first three months, the investment capital mobilized from people was higher than

that in 2000, reaching nearly 20% of the estimated total. Regarding the private economic sector, over 4,000 enterprises were established with the registered capital of VND4,400 billion, a 1.5-time rise in the number of enterprises and a two-fold rise in the registered capital compared with the same period of 2000.

The ODA-funded projects showing a high-level disbursement included Highway No 1A: Hanoi-Vinh, Hồ Chí Minh-Cần Thơ, Vinh-Đồng Hà-Quảng Ngãi and Hanoi-Lang Son passages. The disbursement for water-supplying projects and agricultural projects was at a low level; they were rural infrastructural projects, projects on restoration of spate-preventing system and projects on supplying water to 6 towns.

Foreign direct investment put to use in the first three months rose by 17% in comparison with the same period last year. The attraction of FDI showed good signs. In the first quarter of 2001, 33 projects enjoyed an additional capital of US\$196 million, a rise of 10% in the number of projects and 149% in capital compared with the same period last year; 83 projects were licensed, with the total capital of US\$273 million, a rise of 20.3% in the number of projects and 78.8% in capital compared with the same period of 2000.

f. Financial and monetary issues and price

State budget collection rose fairly. In the first quarter of 2001, this collection achieved 25.9% of the year's plan, a rise of 4.4% compared with the same period of 2000 (equivalent to 23.1% of GDP). This quarter saw the highest level of collection ever recorded. The collection of taxes and fees reached 26.1% of the year's plan. The collection from joint-venture enterprises alone accounted for 33.4% and from the oil and gas sector for 35.9% thanks to price escalation of the price of exported crude oil.

The State budget's spending in this quarter was equivalent to 21% of the year's plan, of which the spending on development invest-

ment accounted for 19.9% of the year's plan, and that on capital construction accounted for 21% of the year's plan.

Regarding the monetary aspect, up to 31 March 2001, the total means of payment rose by 2.3% compared with that of February, and by 4.6% compared with late 2000, but decreased by 6% in comparison with the same period last year. The mobilized capital increased by 4.9%. Money deposited in banks in Vietnamese *dong* rose by 2% and that in foreign currencies by 9.4%. The debit balance of the whole economy rose by 2% (against 4% of the first quarter of 2000), of which loans in Vietnamese *dong* rose by 2.8% and those in foreign currencies decreased by nearly 1%.

Regarding interest rate, in the first half of March 2001, commercial banks continued cutting the rate of interest. This was the first fundamental cut since the application of the regulations on basic interest in August 2000.

The above situation shows that the norms on monetary and credit promotion were lower than those set for the same period last year. The total GDP of the first quarter of 2001 increased by 7.2% while the total means of payment rose only by 2.3% (against 5.6% and 6% respectively of the same period last year), and outstanding credit rose by 2%. Meanwhile, interests including the interest of mobilized capital, interest of rediscount and interest of commercial credit was maintained at the same level as that of late 2000. This is one of the main causes of the present stagnation of capital at commercial banks at present.

The price of goods and services was low, especially those of food, foodstuff, exerting influence on farmers' income.

The price index in March 2001 fell by 0.7% compared with that of February 2001. This was the lowest index ever known within the past 15 years. Food price fell by 1.3%; and foodstuff one by 1.6%. In the first quarter of 2001, the price did not rise compared with that

in December 1999 (that of the first quarter of 1998 rose by 2.9%, of 1999 by 2.9% and of 2000 by 0.8%), of which the price of food and foodstuff went down by 0.5% (that of food reduced by 1.8% and of foodstuff by 0.2%). The price of other consumer goods rose by 0.3-0.7%. The price of gold fell 0.7%, and the price of US dollar rose 0.4%.

The price of consumer goods in March 2001 fell 1.4% compared with that one year ago. The price of food fell most drastically, by 9.8%, that of foodstuff by 1.3% but US dollar rose by 3.7%.

The price of some agro-products tended to stop short and even went down, such as food and foodstuff, which exerted impact on farmers' income and the collection of the State budget. In comparison with December 1995, the price of food increased by 1.5%, of foodstuff by 20.3% and of industrial goods by 24%, increasing the gap between the prices of agricultural products and industrial ones.

g. Implementation of the Law on Enterprises

The Law on Enterprises continued to bring about positive impacts on mobilizing the sources for development from all walks of life. In the first three months of 2001, about 4,000 new enterprises were established with the registered capital of VND4,400 billion, a 1.5-time rise in the number of enterprises and twofold rise in the registered capital (against 2,626 enterprises and the registered capital of VND2,131 billion in the same period of 2000). In short, since 1 January 2000, about 19,000 enterprises have been registered in conformity with the Law on Enterprises.

The relevant ministries and sectors are actively making the groundwork for pushing up the implementation of the Law on Enterprises, such as issuing instructional documents, building a nationwide corporate information center, and raising the efficiency of corporate supervision after their registration. In Hồ Chí Minh City, information about issues

related to enterprise establishment in conformity with the Law on Enterprises has been publicized in the network. The time limit for consideration and issuance of the licence has been reduced. The Government has issued two decrees providing instructions on the conditions for business (Decree No 08/2001/ND-CP and Decree No 10/2001/ND-CP), which creates advantages for business registration of some special branches.

However, many necessary instructional documents are to be released, particularly the regulation on issuing professional certificates (in legal services, veterinary services and business of veterinary medicine), setting up and publicizing the list of conditioned trades and crafts.

2. Social field

In general, the political situation and social security has been ensured and the livelihood of the people has been improved. Activities in culture, education and training, health care, and physical training and sports have shown progress, contributing to stabilize society and develop the economy. Nonetheless, there are many pressing social issues, for example unemployment, social vices. Especially, complaints have been reported in some localities and some cases are requiring urgent resolution.

a. Science, technology and environment

Scientific and technological researches were continued in the first quarter of 2001. Environmental inspection and supervision were exercised more regularly than the previous year. Many projects violating the environmental standards were timely detected and dealt with.

The Ministry of Science, Technology and Environment cooperated with relevant ministries and branches in drafting projects on mechanisms and policies to submit to the Government, including the project on 2001-

2005 scientific and technological task, project on "Renovation of the mechanism on managing technological activities in 2001-2005, project on establishment of funds for supporting scientific research". The aim is to create a legal corridor for scientific and technological development and at the same time, to establish some software parks.

Nevertheless, rate of fulfillment of scientific and technological tasks is still slow. Up to now, the construction of the Hoà Lạc Hi-tech Zone has been lagging behind the plan set by the Prime Minister.

b. Education and training

According to the statistics in the middle of the school year 2000-2001 of provinces and cities, the number of pupils of all levels rose compared with that of the previous year. Primary education was consolidated and kept stable. The number of teachers of all levels increased, particularly in far-flung and deep areas: the number of nursery teachers increased by 5.6%, primary teachers by 1.3%, junior secondary teachers by 8.2% and senior secondary teachers by 12%.

The Ministry of Education and Training is renovating the general education curriculum; it has issued documents to stipulate and instruct the reduction of the contents of primary education, organized the Textbook Assessing Council, put the new junior secondary textbooks into pilot teaching. In the school year 2001-2002, it will provide instructions on the procedures for entrance exams into universities, colleges and professional high schools.

c. Health care

The medical sector has focused on effective prevention of diseases and care for the people. In the first quarter, there was no serious epidemic. Particularly, since the start of the National Target Program on preventing some social diseases and dangerous epidemics, medicines have been provided adequately for

expanded immunization in extremely difficult, high mountain, deep and far-flung areas. Vaccination reached all communes.

However, typhoid, malaria and dengue fever have occurred in some places. The development of malaria in Gia Lai, Đắk Lắk and Khánh Hoà provinces is rather worrisome, especially the mortality rate caused by this disease has risen last year. The mortality rate caused by dengue fever soared up against that of the same period last year, mainly in Mekong River Delta provinces.

Food poisoning still has occurred. So far, about 30,000 people have been infected with HIV; 4,965 have contracted AIDS (2,602 have died).

d. Cultural and information activities

Cultural activities were concentrated on celebrating the Tet (New Year) holiday and the 71st anniversary of the founding of the Party. Some aimed at diffusing the political tasks, national unity and socio-economic development of the country. Some were designed for guiding unions and the masses in discussions about the documents prepared for the 9th Party Congress.

The Ministry of Culture and Information has focused on instructing localities in regulating the business activities of cultural services in order to bring about a healthy social environment. Many tapes, CD-ROMs, books and magazines about pornography, violence and superstition have been confiscated. Illegitimate ad bands and billboards have been removed. Besides, the Cultural and Information Services of the localities where traditional festivals are held strengthened the work of examination and inspection to prevent vices and superstitious practices, for example, with regard to the Hương Pagoda Festival, Lim Festival and others.

e. People's livelihood

In general, people's livelihood has been kept stable and improved. The garden and farm

economy is on the rise. The number of households doing good business and gaining high income has grown both in rural and urban areas. Most of localities have implemented the regulations on minimum salary, raising from VND180,000 to VND210,000, allowance and living expenses. The work of "paying debts of gratitude" and giving social relief to those benefiting from the State preferential policy and the poor have been pushed up. Particularly, at Tet, these section of populations and poor families are visited and given presents by administrative authorities and organizations.

However, some parts of disaster-hit areas still meet with numerous difficulties, especially Northwestern, Northeastern, Northern Central and Western Highlands provinces. Famine-suffering provinces have given 2,400 tonnes of rice and over VND7 billion to the people to help them overcome difficulties and stabilize their livelihood and production.

f. Natural disasters

In the first quarter of 2001, numerous calamities occurred such as earthquake (in Lai Châu), landslide (in An Giang), hail (in Lào Cai, Hà Giang and Phú Thọ), high tide (Bà Rịa-Vũng Tàu) and fires (in Lai Châu, Bắc Cạn and An Giang). The total damage caused by natural disasters was estimated to be over VND 110 billion of which VND 105 billion fell on Lai Châu province where earthquake caused VND 17 billion of damage to corporate constructions, VND 20 billion to schools and VND 67 billion to the people's property.

Ministries, branches and localities together with the people nationwide accorded support to these disaster-hit areas, and thanks to the timely measures planned by local authorities to overcome consequences, the local people's livelihood and production were stabilized soon after.

g. National targets on hunger elimination, poverty reduction and job generation

Provinces and cities have focused on the targets concerning hunger elimination and poverty reduction, especially in poor communes, helping raise the spiritual and material living conditions of the people in many localities.

For the first three months, 150,000 laborers were provided with various jobs, of whom 30,000 were employed by newly-established enterprises, over 5,000 had jobs thanks to the loans from the National Fund for Employment. About 50,000 were employed for production expansion, product consumption, afforestation, road construction, and traffic infrastructural construction. About 4,000 laborers came abroad as guest-workers. However, employment is at present a pressing and salient question which needs to be resolved in the coming months.

h. Social order and security were maintained; social vices and traffic accidents were solved. However, there remain limitations in some aspects.

Social order and security were strengthened. Security for local Party Committee congresses was ensured; order at festivals was ensured; social disorder cases were timely dealt with. Complaints were step by step settled.

The Action Program on Drug Prevention deployed nationwide has obtained good results; but the situation remains complicated. Although many preventive measures have been taken, social vices have not been reduced.

Traffic accidents still constitute a headache and tend to rise. From the beginning of 2001 to the end of February 2001, there were 4,724 traffic accidents, 5,500 people were injured and 1,576 killed. ■

THE MINISTRY OF FINANCE

CIRCULAR No. 13/2001/TT-BTC OF MARCH 8, 2001 GUIDING THE IMPLEMENTATION OF TAX PROVISIONS FOR VARIOUS INVESTMENT FORMS UNDER THE LAW ON FOREIGN INVESTMENT IN VIETNAM

Pursuant to the Law on Foreign Investment in Vietnam, passed on November 12, 1996 by the National Assembly of the Socialist Republic of Vietnam; and the Law Amending and Supplementing a Number of Articles of the Law on Foreign Investment in Vietnam, passed on June 9, 2000 by the National Assembly of the Socialist Republic of Vietnam;

Pursuant to the current tax laws and ordinances of the Socialist Republic of Vietnam; as well as the Government's decrees detailing the implementation of tax laws and ordinances;

Pursuant to the Government's Decree No. 24/2000/ND-CP of July 31, 2000 detailing the implementation of the Law on Foreign Investment in Vietnam;

Pursuant to the Government's Decree No. 36/CP of April 24, 1997 promulgating the Regulation on industrial parks, export-processing zones and hi-tech parks;

Pursuant to the Government's Decree No. 62/CP of August 15, 1998 promulgating the Regulation on Build-Operate-Transfer (BOT) Contracts, Build-Transfer-Operate (BTO) Contracts and Build-Transfer (BT) Contracts applicable to foreign investment in Vietnam, and Decree No. 02/1999/ND-CP of January 27, 1999 amending and supplementing a number of Articles of Decree No. 62/CP;

The Finance Ministry hereby guides the implementation of tax provisions for various investment forms under the Law on Foreign Investment in Vietnam as follows:

Part I

GENERAL PROVISIONS

1. This Circular shall apply to the following subjects

- Joint-venture enterprises and enterprises with 100% foreign capital, which are established under the Law on Foreign Investment in Vietnam (hereinafter called foreign-invested enterprises for short).

- Joint venture banks between Vietnamese banks and foreign banks, which are licensed by the State bodies managing foreign investment under the Law on Foreign Investment in Vietnam.

- Foreign-investment insurance enterprises and insurance brokerage enterprises,

which are established and operating under the Law on Foreign Investment in Vietnam and the Law on Insurance Business.

- Joint-venture enterprises established on the basis of agreements concluded between the Government of the Socialist Republic of Vietnam and foreign governments. Where an agreement contains provisions on tax obligations of joint-venture enterprises, which are different from this Circular's guidance, such agreement's provisions shall apply.

- Foreign parties to business cooperation contracts (hereinafter referred to as foreign business cooperation parties) under the Law on Foreign Investment in Vietnam.

- BOT, BTO and BT enterprises established under the Law on Foreign Investment in Vietnam. In cases where operation regulations

of enterprises issued by the Government or the BOT, BTO or BT contracts already approved by the Government contain provisions on tax obligations other than this Circular's guidance, such provisions shall apply.

All the above-mentioned subjects shall, depending on the each specific context, be called enterprises for short.

Tax obligations of subjects conducting oil and gas prospection, exploration and exploitation in Vietnam under the Petroleum Law shall comply with separate guidance.

2. A number of definitions

- "Tax calculation year" is the calendar year starting on January 1st and ending on December 31st every year. In cases where enterprises are allowed by the Finance Ministry to apply a fiscal year other than the calendar year, the tax calculation year shall be that fiscal year.

- "The first year with profit in business" is the first fiscal year when an enterprise earns profit, without offsetting losses transferred from the previous year.

- "Market price-free transaction contracts" are the transaction or trading contracts affected by abnormal commercial relationships such as the relationships between associated enterprises, which are bound together by set or imposed conditions other than those set among independent enterprises.

Enterprises shall be considered associated enterprises when:

(i) One enterprise directly or indirectly takes part in the management or control of, or

contributes legal capital or stock capital to, another enterprise.

(ii) Two enterprises are subject to the direct or indirect management or control by another enterprise or both enterprises are contributed with capital by another enterprise.

Part II

GUIDANCE FOR THE IMPLEMENTATION OF TAX PROVISIONS

I. ENTERPRISE INCOME TAX

1. Taxable objects

All income amounts earned from any economic activity of enterprises shall be subject to enterprise income tax.

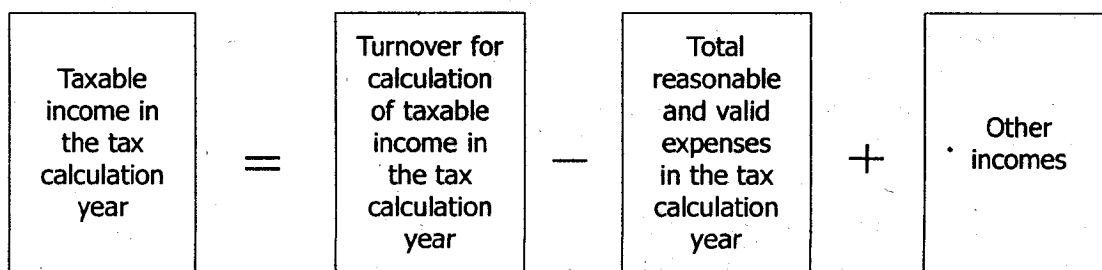
2. Taxpayers

Enterprises shall be the payers of enterprise income tax.

In cases where a foreign organization or individual simultaneously invests in different business cooperation contracts, the enterprise income tax shall be calculated separately for each business cooperation contract (including cases where foreign companies set up general executive offices in Vietnam).

3. Determination of taxable income

When determining taxable incomes, enterprises may offset losses of previous years as prescribed in Article 55 of the Government's Decree No. 24/2000/ND-CP of July 31, 2000 detailing the implementation of the Law on Foreign Investment in Vietnam.



As for foreign business cooperation parties, they may carry forward losses incurred in the fiscal year of 2000 to the subsequent year for each business cooperation contract. For foreign business cooperation parties that apply a fiscal year other than the calendar year, if their 1999-2000 fiscal year ends before July 1, 2000 while losses still arise, such losses of the 1999-2000 fiscal year shall not be carried forward to the subsequent years.

The carrying forward of losses shall be effected according to enterprises' plans. On the basis of its production and business plan, within 15 days after elaborating the final tax settlement report and determining the loss amount incurred in the fiscal year, an enterprise shall take initiative in registering with the tax authority plan for the carrying forward of loss of that fiscal year for deduction from taxable incomes in the subsequent years (within 5 years as from the year following the year when the loss arises) and strictly comply with the already registered loss transfer schedule.

Example: In 2000 enterprises A suffered from a loss of US\$ 500,000. It is expected that as from 2001, enterprise A starts to earn profit of US\$ 150,000, then US\$ 200,000 in 2002, US\$ 300,000 in 2003, US\$ 400,000 in 2004 and US\$ 550,000 in 2005. According to the provisions of its investment license, enterprise A shall be exempt from enterprise income tax for 2 years.

As a result, according to the provisions of Article 48, Decree No. 24/2000/ND-CP enterprise A shall be exempt from enterprise income tax for 2 years of 2001 and 2002 (2001 is the first year with profit in business). Enterprise A may opt for the transfer of its loss in the year 2000 to the years from 2003 to 2005 so as to enjoy the whole tax exemption for 2 years. The year to which its loss will be transferred shall be decided and registered by enterprise A itself (it may transfer the total loss amount of the year 2000 to the year 2005 or divide evenly such loss for the transfer thereof within 3 years from 2003 to 2005).

a. Turnover for calculation of taxable income in the tax calculation year:

The turnover for calculation of taxable income of an enterprise is the whole proceeds from the sale of goods and provision of services (without value added tax) and other revenues of the enterprise in the tax calculation year.

In a number of specific cases, the turnover for calculation of taxable income shall be determined as follows:

- * For goods sold by the mode of installment payment, it is the turnover of the sold goods calculated according to the lump-sum payment selling price, excluding the deferred payment interest.

- * For asset-leasing activities such as the lease of houses, offices or infrastructure, it is the rent amount to be collected in each period according to the leasing contract. In cases where the rent is collected in advance for many years, the turnover for calculation of taxable income in each year shall be determined as equal to the advance rent amount divided evenly to the number of years with advance collection.

- * For goods or services used for exchange, as donations or gifts, it is calculated according to the selling prices of products, goods or services of the same or equivalent type on the market at the time they are exchanged, donated or presented.

- * For products for internal use, it is the production costs of such products.

- * For goods-processing activities, it is the money earned from the processing, including remuneration, costs of fuels, power, auxiliary materials and other expenses in service of goods processing.

- * For credit activities, it is the loan interest amounts that must be collected in the tax calculation in the tax calculation year.

- * For insurance and reinsurance business activities, it is the collectible insurance

premium principals, expertise agency charge, reinsurance charge, reinsurance commissions and other revenues.

* For business cooperation contracts in form of product sharing, it is the proceeds from the sale of products, which shall be calculated as follows:

+ If the shared products are sold on the Vietnamese market, the turnover shall be determined according to the selling prices of such products on the Vietnamese market.

+ If the shared products are exported to foreign countries, the turnover shall be determined according to the FOB prices at the Vietnamese border gates.

When determining tax obligations of foreign business cooperation parties, if the business cooperation parties fail to provide the products' selling prices or the sale of products fails to comply with the market price-based trading transaction principles, the turnover shall be determined according to the principles prescribed in Section IV, Part III of this Circular.

b. Reasonable expenses in the tax calculation year:

The expenses related to the generation of taxable income in the tax calculation year of an enterprise, regardless of the applicable accounting regime, shall be determined to include the following:

b1. Depreciation expense and expense for the repair of fixed assets used for production, business and/or provision of services. The fixed asset depreciation rate shall be determined on the basis of such assets' use duration registered by the enterprise itself with the tax authority directly managing it on the principle of straight-line depreciation in accordance with the provisions of the Finance Minister's Decision No. 166/1999/QĐ-BTC of December 3, 1999.

b2. Expenses for raw materials, materials, fuels, energy, labor tools and goods actually used in production or services provision related to the taxable turnover and income in the tax calculation year.

b3. Salaries, wages, remuneration and payments of salary and wage nature; mid-shift meal expenses and allowances as well as subsidies paid to Vietnamese and foreign laborers on the basis of labor contracts or collective labor agreements in compliance with the labor legislation applicable to enterprises, which are established and operating under the Law on Foreign Investment in Vietnam.

b4. Expenses for scientific and technological research; innovations; environmental protection; maintenance of storehouses, buildings, fire prevention and fight; education, training and health care, including expenses in outward support of health care and education, such as contributions to study promotion funds, assistance for schools of handicapped, homeless and supportless pupils.

b5. Expenses for services purchased from outside:

- Expenses for power, water, telephone, stationery, audit hiring, printing of documents.

- Liability or property insurance premiums according to insurance policies signed with Vietnamese insurance enterprises or other insurance enterprises licensed to lawfully operate in Vietnam.

- Expenses for hiring the overhaul of fixed assets in order to restore their capacity shall be accounted into production and business costs in the year. If an overhaul-expense amount is too large, the concerned enterprise may make a plan on the distribution thereof to the following years. For particular fixed assets requiring regular repair, the enterprise is entitled to make an advance deduction of the overhaul expense from the production and business costs on the basis of its overhaul

expense estimate. If the advance deduction is lower than the actual overhaul expense, the enterprise may additionally account the difference into its expenses; if the advance deduction is higher than the actual overhaul expense, the expenses shall be accounted with decrease in the year.

- The rentals of house and land for head offices or workshops. In cases where the house- and/or land-renting enterprises pay in advance the rentals for many years, these rentals shall be distributed to each year according to the number of years with the advance payment.

- The rentals of fixed assets (machinery, equipment and facilities), which shall be accounted into the production and/or business costs according to the amounts actually paid under renting contracts. In cases where the fixed asset rental is paid in lump-sum for many years, such rental shall be gradually accounted in to the production and/or business costs according to the number of years during which the fixed assets are used.

- Expenses for the procurement of or payment for, technical documents, services or techniques; expenses for copyright and technology transfer; expenses for the use of objects of industrial property such as patents or trademarks under the technology transfer contracts or license contracts already approved by the Ministry of Science, Technology and Environment or the competent agencies.

- Expenses for consultancy or hiring of management companies under the management hiring contracts already approved by the Ministry of Planning and Investment and expenses for hiring other services from outside.

b6. Payments for female laborers as prescribed by law; expenses for labor safety, safeguarding of business establishments; remittances to the funds for social and health insurance for laborers; which fall within the enterprises' obligations, or to the trade union opera-

tion fund according to the prescribed regime.

b7. Loan interests within the limit of the ceiling lending interest rate announced by the State Bank of Vietnam for domestic loans; banking fees and loan interest rates paid under credit contracts already approved by the State Bank for foreign loans. If a credit contract has not yet been approved by the State Bank, the interest rate and fee shall be determined according to the actual payments in accordance with the provisions of the credit contract but must not exceed the highest lending interest rate of the State commercial credit institutions.

For joint-venture banks, they are reasonable interest rates and discounts paid for deposits, loans or other financial instruments.

All expenses for interests on loans related to the contribution of legal capital or charter capital (for banking activities) shall not be accounted into the reasonable and valid expenses when determining the taxable profit.

b8. Reserves for the decrease of prices of unsold goods, bad debt or decrease of securities prices at enterprises shall comply with the guidance of the Finance Ministry.

b9. Severance allowance for laborers according to the current regime.

b10. Expenses related to the operation of the Managing Board (for example: expenses for meetings of the Managing Board) of a joint-venture enterprise in compliance with the joint venture's charter or resolution of the Managing Board.

b11. Expenses directly related to the circulation and sale of products or provision of services such as expenses for goods preservation and packing, loading and unloading, transportation, storehouse and store-yard rent, product or goods warranty.

b12. Expenses for advertisement, marketing, sale promotion, guest reception, festive occasions, transactions, external rela-

tions and conferences as well as other expenses, which must not exceed the restricted levels prescribed below:

- For production, construction or transportation enterprises which have newly been established and started operation, they must not exceed 7%, for the first 2 years, then 5%, for the subsequent years, of the total amount of expenses prescribed in Clauses b1 to b11 above.

- For trading, food and drink catering and service business activities, they must not exceed 7%, for the first 2 years after the enterprises' establishment, then 5%, for the subsequent years, of the total amount of expenses prescribed in Clauses of from b1 to b11 above (excluding the cost prices of the sold goods).

- For enterprises in such branches as production and trading of electricity, gas, oil refinement, petrol and oil trading, post and telecommunications as well as aviation, they must not exceed 5%, for the first 2 years after the enterprises' establishment, then 3%, for the subsequent years, of the total amount of expenses prescribed in Clauses of from b1 to b11 above (excluding the cost prices of the sold goods for trading activities).

In some particular cases where these expenses should be restricted to levels higher than the above-mentioned ones, they must be approved in writing by the Finance Ministry, but must not exceed 7% of the total amount of expenses prescribed in Clauses b1 to b11 above.

b13. Contributions to Vietnamese organizations for charity or humanitarian purposes such as contributions to overcoming consequences of natural calamities, accidents; contributions to the funds in support of heroic Vietnamese mothers, families of fallen combatants and people with meritorious services to the revolution, disabled people, homeless and supportless people and funds for social disease prevention and fight.

b14. Payable taxes, charges and fees of tax nature, which are related to production

activities, goods trading and/or services provision but do not include: value added tax (VAT), enterprise income tax and tax on income transferred abroad.

Particularly for enterprises engaged in the production and/or trading of goods not subject to VAT or enterprises paying VAT by the direct method, the expenses used for taxable income calculation shall cover also the VAT amount in the input goods and/or services buying prices.

All the above-mentioned expenses must be evidenced by valid vouchers; any expense amount without vouchers or with invalid vouchers must not be accounted into the expense when determining income liable to enterprises income tax. Enterprises must not account into their expense fines and expenses which are not related to their turnovers and taxable incomes, such as expenses for capital construction investment and expenses covered by other funding sources. Enterprises established and operating in Vietnam under the Law on Foreign Investment in Vietnam must not allocate the management expenses of their parent companies overseas.

c. Other incomes:

Other incomes of enterprises include:

c1. Bank deposit and loan interests (excluding enterprises engaged in credit business); interests on deferred payment for sold goods.

c2. Foreign currency purchase and sale difference, securities purchase and sale difference; exchange rate difference under the guidance of the Finance Ministry.

c3. Income earned from the right to own and use the enterprise's assets, including income from the asset assignment or liquidation. In cases where the enterprise's assets are lost or damaged due to subjective causes, those losses related to such assets must not be accounted into other incomes and the wrongdoers must be iden-

tified to make compensations for the losses according to the prescribed regime.

c4. Income earned from the recovery of bad debts which have already been written off from accounting books, or payable debts, of which the creditors can not be identified; incomes omitted then discovered from the production and/or business activities in the previous years.

c5. The year-end credit balance of the advance deductions for expenses, which have not been wholly spent in the year.

c6. Incomes earned from activities related to the joint-venture participation or stock investment of an enterprise in other enterprises.

Incomes earned from overseas business activities shall be accounted into other incomes to determine the taxable income.

In cases where the income tax on such income amounts has been paid overseas, an enterprise shall have to determine the pre-income tax income amount earned overseas in order to calculate income tax thereon according to the Law on Enterprise Income Tax in Vietnam. When determining the payable income tax amount, the enterprise may subtract the income tax amounts already paid overseas but the subtracted tax amount must not exceed the income tax amount calculated according to the Law on Enterprise Income Tax for such incomes.

All incomes earned after the payment of enterprise income tax from joint-venture or cooperation activities with domestic enterprises shall not be accounted into other incomes when determining taxable income.

c7. Other incomes related to business but not accounted into turnover, including the customers' bonuses, fines on the violation of contracts, incomes from the sale of discarded materials and faulty products (after deducting sale expenses), gifts in cash presented by organizations and/or individuals to enterprises.

d. *Method of calculating income subject to enterprise income tax in a number of special cases:*

For foreign parties to business cooperation, in cases where their business licenses stipulate that they shall pay tax in form of packages payment over the sale turnover, the determination of the taxable income as well as the declaration of tax payment shall be effected according to the provisions of such licenses.

In cases where a foreign party to business cooperation signs a business cooperation contract with a Vietnamese party by the profit-sharing mode and one party is responsible for the common cost-accounting or both parties jointly set up a coordination board for the common cost-accounting, the responsible business cooperation party or the coordination board shall have to declare and pay taxes arising in the business process, make cost-accounting, determine taxable income according to the above guidance and share taxable income according to the contract. Where loss is incurred under the contract, its annual loss amount shall also be shared among concerned parties and the foreign party may transfer its loss to the taxable incomes of the subsequent years for deduction. After receiving its income, the foreign party shall make self-declaration and pay enterprise income tax to the local tax authority.

4. Determination of payable tax amount

$$\begin{array}{|c|} \hline \text{Payable} \\ \text{enterprise} \\ \text{income tax} \\ \text{amount in} \\ \text{the tax} \\ \text{calculation} \\ \text{year} \\ \hline \end{array} = \begin{array}{|c|} \hline \text{Taxable} \\ \text{income} \\ \hline \end{array} \times \begin{array}{|c|} \hline \text{Enterprise} \\ \text{income tax} \\ \text{rate} \\ \hline \end{array}$$

Of which:

- The income subject to enterprise income tax shall be determined according to the provisions at Point 3 above.

- The enterprise income tax rate is specified in the investment license. Where the investment license does not specify the enterprise income tax, the enterprise income tax rate of 25% shall apply.

In the course of operation, if a foreign-invested enterprise or a foreign party to business cooperation fails to meet criteria to enjoy preferential enterprise income tax rates and enterprise income tax exemption or reduction as prescribed in Articles 46 and 48 of the Government's Decree No. 24/2000/ND-CP of July 31, 2000, such enterprise shall not be entitled to the preferences. The tax authority directly managing tax collection from the enterprise shall base itself on the conditions for entitlement to enterprise income tax preferences which the enterprise actually meets every year to determine the preferential enterprise income tax rate and settle the enterprise income tax according to that rate, and at the same time report such to the Finance Ministry and the investment licensing body.

For enterprises granted investment licenses before August 1, 2000, if they meet the conditions for preferential enterprise income tax rate and enterprise income tax exemption or reduction prescribed in Articles 46 and 48 of the Government's Decree No. 24/2000/ND-CP of July 31, 2000, they may submit applications to the investment licensing bodies, requesting the adjustment of their investment licenses. Such enterprises shall enjoy preferences for the remaining period after their adjusted licenses take effect.

5. Procedures for registration, declaration and payment of enterprise income tax

a. Registration of enterprise income tax:

Enterprises shall have to register enterprise income tax at the time of VAT payment registration with the tax authorities directly managing them. Enterprises shall register the enterprise income tax payment at the tax

authorities of the localities where they are headquartered.

b. Declaration of enterprise income tax:

Not later than the 25th of the first month of each fiscal year at the latest, enterprises shall have to declare and submit declarations of tax amounts temporarily paid for the whole year to the tax authorities of the localities where they are headquartered. The basis for declaration shall be the enterprises' production and business results of the previous fiscal year and their business prospects in the following year.

After receiving the declarations, the tax authorities shall verify and determine the tax amounts temporarily paid for the whole year and notify the enterprises of the tax amounts to be temporarily paid in each quarter. In cases where the enterprises fail to declare or declare unclear basis for determination of the tax amounts to be temporarily paid for the whole year, the tax authorities shall have the right to fix such tax amounts.

Where in the year occur major changes in the taxable incomes, the tax authorities shall adjust the tax amounts to be temporarily paid. The adjustment shall be effected at the request of the enterprises after they make their financial reports for the first 6 months of the year.

c. Payment of enterprise income tax:

Enterprises shall temporarily pay enterprise income tax once every 3 months, starting from the first day of the tax calculation year. The temporary tax payment shall be made according to the tax payment notices of the tax authorities and by the last day of each quarter at the latest. At the end of the tax calculation year or upon the termination of the contracts, the settlement shall be made according to actual figures.

For business cooperation contracts with a term of under 1 year, the enterprise income tax shall be paid in 2 periods: the first payment

shall be temporarily made by the middle of the contractual term and the tax settlement shall be effected upon the expiry of the contracts according to actual figures.

d. Settlement of enterprise income tax:

The settlement of enterprise income tax shall be made annually according to the provisions in Part III of this Circular.

6. Reimbursement of enterprise income tax as the result of reinvestment

a. Foreign investors, who have fully made legal capital contributions under their investment licenses and used other lawful revenues from investment activities in Vietnam for reinvestment in the new or underway projects for 3 years or more, shall be refunded part or whole of the enterprise income tax amounts they have already paid for the reinvested incomes as prescribed in Articles 51 of the Government's Decree No. 24/2000/ND-CP of July 31, 2000.

Where foreign investors reinvest in projects licensed before November 23, 1996, the enterprise income tax reimbursement levels shall be as follows:

- 100%, if invested in projects subject to the enterprise income tax rate of up to 14%.

- 75%, if invested in projects subject to the enterprise income tax rate of from 15% to 25%.

- 50%, if invested in projects subject to the enterprise income tax rate of from 21% to under 25%.

b. *The enterprise income tax amount to be reimbursed for the reinvested profit shall be determined as follows:*

$$T = \frac{L}{100\% - S} \times S \times t$$

Of which:

T: is the income tax amount to be reimbursed.

L: is the after enterprise income tax profit amount used for reinvestment.

S: is the enterprise income tax rate already applied to the calculation of tax on the reinvested profit amount.

t: is the percentage of enterprise income tax to be reimbursed.

c. Procedures for reimbursement of enterprise income tax on reinvested profits:

In order to get the enterprise income tax amount that the enterprise has already paid for the reinvested profit, the concerned foreign investor or authorized person shall have to produce all the following documents to the provincial/municipal Tax Department of the locality where the enterprise with reinvested profit is headquartered:

- A written request or application for the reimbursement of enterprise income tax as the result of reinvestment, which clearly states the reasons for reinvestment and the foreign investor's commitment to use his/her profit for reinvestment for 3 years or more.

- The declaration for income tax reimbursement as the result of reinvestment.

- The investment license or readjusted investment license or written approval issued by the investment licensing body (the copy with certification stamp of the enterprise), which clearly stipulates that the investor is permitted to use his/her profit for reinvestment.

- A written certification of the foreign party's full legal capital contribution by the Managing Board, for joint-venture enterprises; of the foreign investor's commitment on the full contribution of legal capital or capital for the performance of the business cooperation contract (together with certification by an auditing organization), for enterprises with 100% foreign capital and foreign business cooperation parties.

- The vouchers (copies with the enterprise's certification stamp) evidencing tax pay-

ment by the enterprise and the State Treasury's certification of the tax amount already paid by the enterprise.

After fully receiving the above-mentioned documents, within 15 working days, the provincial/municipal Tax Department shall inspect and determine the enterprise income tax amount already paid by the enterprise and calculate the enterprise income tax amount to be reimbursed to the foreign investor, then send the dossier to the Finance Ministry (the General Department of Tax). Within 15 working days after fully receiving the dossier, the Finance Ministry shall consider and issue decision on tax reimbursement for the investor.

* Foreign investors that have transferred their profits abroad or used such profits for other investment or business purposes, which are now recovered for reinvestment, shall not be entitled to the enterprise income tax reimbursement as the result of reinvestment.

* In cases where the enterprise income tax has been reimbursed to foreign investors, who fail to make the reinvestment thereof, such foreign investors shall have to repay to the budget the reimbursed enterprise income tax amounts, including the interests thereon, which shall be calculated as from the time the foreign investors receive the reimbursed enterprise income tax amounts till the time they fully return such amounts to the budget (according to the bank deposit interest rates), and shall be handled according to law.

II. TAX ON PROFITS TRANSFERRED ABROAD

1. Taxable object

Profits earned by foreign economic organizations or individuals from capital investment in any forms prescribed in the Law on Foreign Investment in Vietnam (including the income tax amounts reimbursed for the reinvested income and income earned from the

capital transfer), when being transferred out of the Vietnamese territory or retained outside Vietnam, shall all be subject to this tax.

In cases where foreign parties use the shared profit to pay debts for the parent companies or to cover expenses of the Vietnam-based representative offices of their parent companies shall all be considered the transfer of profits abroad and such foreign parties shall have to pay tax thereon.

Foreign economic organizations or individuals having profits transferred abroad shall have to declare and pay tax on the profit transferred abroad.

2. Determination of the payable tax amount

The payable amount of tax on the transferred profits abroad shall be determined as equal to the profit amount transferred abroad or considered being transferred abroad, or the profit amount retained by the investor outside the Vietnamese territory, multiplied (x) by the profit transfer tax rate stipulated in the investment license. Where the granted investment license does not specify the tax rate for the profit transferred abroad, such tax rate shall comply with the provisions in Article 50 of the Government's Decree No. 24/2000/ND-CP of July 31, 2000.

For cases where investment licenses which had been granted before August 1, 2000, specify the tax rates for the profits transferred abroad higher than that stipulated in Article 50 of the Government's Decree No. 24/2000/ND-CP of July 31, 2000, the concerned investors or enterprises shall submit their applications to the investment licensing bodies for the readjustment of their investment licenses. Pending the official readjustment, if such investors transfer profit abroad they shall have to send applications to the provincial/municipal Tax Departments, clearly stating the conditions for entitlement to the new tax rate, and declare, pay tax at the new

tax rate. The new tax rate for the profits transferred abroad shall apply to profits transferred abroad by the investors as from July 1, 2000.

3. Tax payment procedures

- Tax on the profit transferred abroad shall be collected upon each transfer of profit abroad. Particularly for cases where investors retain their profit outside Vietnam, pay debts for their parent companies or cover expenses for the latter's offices in Vietnam, the tax declaration, payment and collection shall be made on the monthly basis.

- Before transferring profit abroad or no later than the 5th of the following month for cases where the profit is used for purposes deemed to be the transfer of profit abroad or the retention of profit outside the Vietnamese territory, the concerned foreign economic organizations or individuals shall have to make and submit tax declarations to the tax authorities directly managing the enterprises, where such economic organizations or individuals have interested capital in, and at the same time, pay the declared tax amount to the State Treasury.

- Within 5 working days after receiving the tax declarations, the tax authorities shall examine them and, if detecting any errors therein, issue notices on the payable tax amounts to the foreign investors. The foreign investors shall have to pay the outstanding tax amounts into the State Treasury according to the tax authorities' notices. In cases where an investor fails to submit the tax declaration within the prescribed time limit, the tax authority may fix the tax amount to be temporarily paid, issue a tax notice and impose a fine on the delayed tax declaration.

The State Treasury shall hand over to the taxpayer a copy of the profit transfer tax payment voucher so that the latter fills in the procedures for the transfer of profit abroad.

- Annually, within 90 days at most after the end of the fiscal year, foreign investors shall have to report to the tax authorities directly managing enterprises on their shared profits, the use thereof and the payment of tax on the profit transferred abroad in the previous years. Such reports shall be submitted to the tax authorities together with the annual tax settlement reports of enterprises.

- In cases where in the annual enterprise income tax declaration already submitted to the tax authority (according to the provisions at Point 5b, Section I, Part II of this Circular), it is expected that the enterprise will earn profit and the investors agree to share its profit quarterly or biannually (as decided in writing by the enterprise's Managing Board), the foreign investors may, periodically and right in the year, temporarily transfer abroad the shared profits arising in the fiscal year and have to declare the payment of tax on the profits transferred abroad for each time of profit transfer. The shared profit amount temporarily transferred abroad must not exceed 70% of the profit amount which may be shared to a foreign investor and shall be determined on the basis of the quarterly, biannual and annual financial reports of the enterprise.

The enterprise and foreign investor shall have to send (within 25 days after the end of the previous fiscal year) a document to the tax authority directly managing them, requesting the temporary transfer of profit, together with the declaration of the temporary payment of the annual enterprise income tax. The contents of the written request include:

i. The estimate of the profit amount to be earned in the fiscal year, specifically for each quarter and each half of the year;

ii. The estimate of the profit amount to be shared to investors;

iii. The estimate of the shared profit amount to be transferred periodically at the foreign investor's request (not exceeding 70% of the temporarily shared profit amount);

iv. The resolution of the enterprise's Managing Board on the plan to share profits to investors in the fiscal year (attached with the written request).

On the basis of the enterprise's and foreign investor's above requests, the tax authority shall conduct inspection and guide foreign investor to effect the temporary transfer of profit abroad and collect tax thereon according to the current tax legislation and under the guidance in this Circular.

- Where the foreign investor has paid tax on the profit transferred abroad but has, in fact, not transferred profit abroad or has used the profit for purposes not being considered the transfer of profit abroad, such foreign investor shall be refunded with the already paid tax amount. A dossier of application for reimbursement of the already paid tax amount shall include:

i. A written request for the reimbursement of the already paid tax amount, which must clearly state the reasons for the tax reimbursement; the name, address and account number of the foreign investor requesting the reimbursement of the already paid tax amount.

ii. A list of the paid tax amount attached with vouchers (copies) on money payment to the treasury and the State Treasury's certification of the already paid tax amount (clearly stating the chapter, category, clause and grade to which the tax has been paid as provided for in the State budget's contents).

iii. The certification by the bank managing the foreign investor's deposit money of the non-transfer of profit amount which has already been declared for the payment of tax on the profit transferred abroad by the foreign investor.

The dossier of application for tax reimbursement shall be submitted to the local tax authority directly managing tax collection from the enterprise. The tax authority shall examine the dossier and, if deeming it complete and valid, send it to the Finance Ministry (the

General Department of Tax) so that the latter may consider and issue a decision to refund the tax to the foreign investor.

Within 15 days after receiving the complete and valid dossier, the Finance Ministry shall issue a decision on tax reimbursement for the foreign investor.

III. EXPORT TAX AND IMPORT TAX

All goods which foreign invested enterprises and business cooperation parties are permitted to export and/or import across the Vietnamese border, including goods from the Vietnamese market sold to enterprises in export processing zones and goods of enterprise in export processing zones sold into the Vietnamese market, shall be subject to export and/or import taxes, and the goods exporters and importers shall all have to pay taxes according to the provisions of the Law on Export Tax and Import Tax.

1. Export and/or import tax exemption or reduction

a. Export tax:

Goods being materials, raw materials, semi-finished products sold by foreign-invested enterprises and business cooperation parties to export-processing enterprises for the production and/or processing of export goods shall be exempt from export tax according to the provisions in Article 8 of the Prime Minister's Decision No. 53/1999/QĐ-TTg of March 26, 1999.

Enterprises, when selling goods to export-processing enterprises, shall only have to make and submit export goods declarations to the export processing zones' customs offices. The customs offices shall stamp the "duty-free goods" on the export goods declarations after goods inspection.

b. Import tax:

- In addition to the cases of tax exemption or reduction specified in the Law on Export Tax and Import Tax, foreign-invested enterprises and business cooperation parties shall also be entitled to the tax exemption or reduction according to Article 57 of the Government's Decree No. 24/2000/ND-CP of July 31, 2000.

Basing itself on the investment license, economic and technical exposition as well as technical design of each project and the list of the home-made construction materials issued by the Ministry of Planning and Investment, the Ministry of Trade or the authorized agency shall consider and approve the list of duty-free import goods for each enterprise.

Basing themselves on the approved lists of duty-free import goods, the Customs Departments of the provinces and centrally run cities shall monitor the goods import by enterprises. Quarterly, the provincial/municipal Customs Departments shall have to submit to the Finance Ministry and the General Department of Customs a sum-up report on the export and import turnover as well as the volumes of the major export and import goods items of foreign-invested enterprises.

Particularly, the procedures for import tax exemption for production raw materials of projects on the manufacture of mechanical, electrical and electronic components and spare parts, projects of investment in the geographical areas meeting with exceptional socio-economic difficulties and projects on the list of those particularly encouraged for investment, shall comply with the Finance Ministry's Circular No. 40/2000/TT-BTC of May 15, 2000 and Circular No. 117/2000/TT-BTC of December 21, 2000.

- Export goods-producing enterprises are allowed temporarily not to pay import tax on raw materials and materials imported for the production of export goods for 9 months

(rounded to 275 days according to the solar calendar) as from the date the enterprises receive the customs offices' official tax notices on the payable tax amounts. For a number of products, due to the production requirements or production cycles, the time for temporary non-payment of import tax may be longer than 9 months.

The conditions and procedures for the temporary non-payment of import tax as well as the determination of the 9 month-plus duration of temporary non-payment of import tax on raw materials and materials imported for the production of export goods shall comply with the Finance Ministry's Circular No. 172/1998/TT-BTC of December 22, 1998 guiding the implementation of the Law on Export Tax and Import Tax.

- Where enterprises sell their manufactured products to other enterprises for the direct production of export goods, they shall be exempt from import tax on the imported raw materials correspondingly to the volume of those goods as provided for in Article 58 of the Government's Decree No. 24/2000/ND-CP of July 31, 2000. The import tax exemption shall be effected as follows:

When importing materials and/or raw materials for the manufacture of products to be sold to other enterprises for the production of export goods, an enterprise shall have to fully pay import tax as prescribed. After the export goods-producing enterprises have already exported their products, the raw materials-importing enterprise shall fill in the procedures and submit a dossier to the Finance Ministry, requesting the reimbursement of import tax on the raw materials imported for manufacturing products sold to the export goods-producing enterprises. The dossier of application for tax reimbursement includes:

+ The enterprise's written request for tax reimbursement, with clear calculation and inscription of the amount of import tax on raw materials to be reimbursed;

+ The norms on the wasted materials and raw materials for manufacturing products;

+ The import customs declaration and receipt of the import tax payment for materials and raw materials used for the manufacture of products;

+ The contracts on the sale of the enterprise's products to other enterprises, which clearly state that the products shall be used for the manufacture of export goods;

+ The enterprise's invoices on goods sale to the export goods-producing enterprises;

+ The export goods customs declarations (notarized copies) of the export goods-producing enterprises with certification by border customs offices of the actually exported goods;

+ The export goods-producing enterprise's declarations on the volume and value of the enterprises' semi-finished products already used for the production of exported goods. The directors of the export goods-producing enterprises shall take responsibility for these declarations.

Basing itself on the above-mentioned documents, the Finance Ministry shall issue decisions to reimburse the import tax to the raw materials importing enterprise.

2. Declaration and retrospective collection of export tax and import tax arrears

- In cases where export processing enterprises purchase goods, materials and/or raw materials from the domestic market and export them to foreign countries instead of putting them into production and/or processing, they shall have to pay export tax according to the current Law on Export Tax and Import Tax.

- If the import goods of foreign-invested enterprises or business cooperation parties, which have been exempt from import tax as specified in the above-mentioned cases, are used for purposes other than those approved

for import tax exemption or sold on the Vietnamese market, the Trade Ministry's permission is required and the already exempted import tax amounts shall be retrospectively collected.

For goods subject to special consumption tax under the October 28, 1995 Law on Special Consumption Tax and May 28, 1998 Law No. 05/1998/QH10 on Special Consumption Tax, which had been imported duty-free before these laws took effect but were used for purposes other than the initial ones or sold on the Vietnamese market at the time the Law on Special Consumption Tax is already effective, the concerned foreign-invested enterprises or business cooperation parties shall, in addition to the payment of import tax arrears (according to the tax rates currently in force at the time of retrospective collection), have to pay special consumption tax the goods subject thereto.

- Within 2 working days from the date the import goods are used for purposes other than the purposes for which they are exempt from import tax, or for sale, the concerned foreign-invested enterprises or business cooperation parties shall have to declare with the Customs Departments of the provinces or cities where enterprises are headquartered or where the goods are sold or where the import goods declarations are registered. Past the above time limit, if the enterprises or business cooperation parties fail to make declaration, they shall be sanctioned for tax evasion according to the provisions of the Law on Export Tax and Import Tax as well as the Law on Special Consumption Tax.

- For enterprises manufacturing mechanical, electric or electronic components and spare parts, projects of investment in the geographical areas facing exceptional socio-economic difficulties and projects on the list of those specially encouraged for investment, the already exempted import tax on raw materials and materials in service of production must be declared and settled according to the Finance

Ministry's Circular No. 40/2000/TT-BTC of May 15, 2000.

Where enterprises which have enjoyed the special investment encouragement according to the criterion of exporting more than 80% of products, and the import tax exemption for imported raw materials for 5 years as prescribed in Article 57 of Decree No. 24/2000/ND-CP, manufacture products of different types, only those that really achieve the export percentage of over 80%, they shall be eligible for the above-mentioned import tax exemption. For products that the enterprises fail to achieve the export percentage of more than 80% shall only be exempt from import tax on the raw materials already used for the manufacture of the actually exported products and have to retrospectively pay the import tax temporarily exempted for products consumed in Vietnam.

Enterprises investing in geographical areas facing exceptional socio-economic difficulties but processing production establishments in localities outside the list of those facing exceptional socio-economic difficulties, shall be entitled to import tax exemption for raw materials under Article 57 of Decree No. 24/2000/ND-CP only for the volume of raw materials imported for the production at their production establishments located in the areas facing exceptional socio-economic difficulties.

- In the course of managing tax collection from enterprises, the tax offices managing the tax collection shall have to monitor the use of tax-free import and export goods; upon detection of any sale of such tax-free goods, the directors of the provincial/municipal Tax Departments shall, besides collecting value added tax according to the provisions of the Law on Value Added Tax, have the right to issue decisions on the retrospective collection of import tax arrears and impose sanctions according to the provisions of the Law on Export Tax and Import Tax.

IV. TAX ON INCOME FROM CAPITAL TRANSFER

Foreign investors that transfer their contributed capital shares in joint-venture enterprises, enterprises with 100% foreign capital or business cooperation contracts and earn incomes shall have to pay tax on the incomes from the capital transfer according to the provisions of this Circular.

1. Enterprise income tax

Income earned from capital transfer shall be subject to enterprise income tax under the Law on Foreign Investment in Vietnam.

Payable enterprise income tax	=	Taxable income	x	Enterprise income tax rate
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1.1. Taxable income:

Taxable income	=	Transfer price	-	Initial value of the trans- ferred capital amount	-	Transfer expenses
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Of which :

+ The transfer price shall be determined as the total actual value that the transferor receives under the transfer contract. In cases where the transfer contract does not specify the payment price or the tax authority has grounds to determine that the payment price has not been determined according to the market prices, the tax authority may examine and fix the payment value of the contract on the basis of reference to the market prices or prices for sale to the third party and similar transfer contracts.

+ The initial value of the transferred capital amount shall be determined on the basis of accounting books and vouchers on the

investor's contributed capital at the time of capital transfer, which has already been recognized by the joint-venture enterprise's managing board, for joint-venture enterprises, or the auditing results of the auditing organizations, for enterprises with 100% foreign capital, or recognized by business cooperation parties in accordance with the current Vietnamese laws.

In cases where the subsequent investors further transfer their contributed shares, the initial value of the transferred capital amount in each subsequent transfer shall be determined equal to the value of the preceding transfer contract plus the actual value of any additionally contributed capital (if any) determined on the basis of the principle mentioned in this Clause.

+ Transfer expenses mean the actual expenses directly related to the transfer, according to the original vouchers recognized by the tax authorities. Where the transfer expenses arise overseas, such original vouchers must be verified by a public notary or an independent auditing organization of the country where the expenses arise.

Transfer expenses include expenses for the completion of legal procedures necessary for the transfer; charges and fees payable at the time of filling in the transfer procedures; expenses for transactions, negotiations and conclusion of transfer contracts and other expenses, which are evidenced by valid vouchers.

1.2. Enterprise income tax rate:

The rate of enterprise income tax on income from capital transfer shall be 25%.

2. Tax on profits transferred abroad

Foreign investors who earn profit from capital transfer, after paying tax on income from capital transfer under the guidance at Point 1 above, when transferring profit abroad or retaining it overseas, shall have to pay tax

on the transfer of profit abroad. The rates of the tax on the transfer of profit abroad shall comply with the provisions of the investment licenses.

In cases where foreign investors have neither fully contributed legal capital according to their licenses nor continued their investment but transfer their capital and earn profits therefrom, and transfer abroad the profits earned from their capital transfer, the rate of tax on the profits transferred abroad must be determined according to the actual level of the contributed legal capital at the time of transfer in compliance with the provisions of Article 50 of Decree No. 24/2000/ND-CP.

3. Tax declaration and payment

3.1. Declaration for enterprise income tax payment for income from capital transfer:

The capital transferee shall have to deduct the transferor's payable tax amount and remit it to the State budget.

Within 05 working days after the competent agency approves the capital transfer, the capital transferee shall have to make and send a tax declaration on capital transfer to the local tax authority managing the enterprise, which shall be enclosed with the transfer contract, the decision approving the capital transfer issued by the competent agency, the certification of the contributed capital and the original vouchers of expenses; and at the same time, fully pay the payable tax amount to the State Treasury then send a copy of the tax payment receipt to the body approving the capital transfer.

Upon detection of any inaccurate declaration or calculation of the payable tax amount, within 05 working days after receiving the declaration, the tax authority shall have to notify the taxpayer of the payable tax amount or request the latter to supply necessary documents in order to determine the accurate payable tax amount.

3.2. Declaration of the payment of tax on the profit transferred abroad: shall comply with the guidance at Point 3, Section II of this Part.

V. OTHER TAXES AND FINANCIAL OBLIGATIONS

Other taxes and financial obligations such as value added tax, special consumption tax, excise tax, natural resources tax, as well as land, water surface and sea surface rentals ... applicable to foreign-invested enterprises and foreign business cooperation parties shall comply with the provisions of the current legal documents.

Part III

TAX SETTLEMENT AND INSPECTION OF TAX PAYMENT AT ENTERPRISES

I. ANNUAL TAX SETTLEMENT

At the end of every fiscal year, enterprises shall have to make and send tax settlement reports to the tax authorities. The annual tax settlement shall be carried out according to the contents prescribed below:

1. Within 90 days from the end of the fiscal year, enterprises shall have to submit reports on their production and business situation, accounting reports already audited by an independent auditing organization licensed to operate in Vietnam, declarations of enterprise income tax settlement and reports on the settlement of taxes payable in the year to the tax authorities of the localities where they are headquartered

Within 10 working days from the date prescribed for the submission of the above-said tax settlement reports, enterprises shall have to pay the outstanding tax amounts

according to their settlement reports to the State budget. Past that time limit, if the enterprises fail to make the payment, they, apart from having to full pay the outstanding tax amounts, shall also have to pay fines for the delayed payment as prescribed.

Enterprises are not allowed to clear the overpayment of one tax against the underpayment of another tax when making their annual tax settlements.

2. On the basis of the enterprises' business and production reports as well as financial settlement reports, the Tax Departments of the provinces and centrally-run cities shall recalculate the amount of each tax payable by enterprises in the fiscal year, and at the same time, compare these amounts with those stated in the tax declarations periodically submitted during the year in order to determine the accuracy of these declarations and tax settlement reports. Where the enterprises' tax settlement reports are inaccurate, the Tax Departments shall organize the inspection of tax payment by enterprises.

II. INSPECTION OF TAX PAYMENT AT ENTERPRISES

In the course of managing tax payment by enterprises, the provincial/municipal Tax Departments shall have to organize regular or irregular tax inspections at enterprises when necessary. They shall, at least once a year, inspect the tax payment by the following subjects:

- Enterprises, which have operated not for long but suffered losses for 3 or more years in a row.

- Enterprises, which are considered key points for tax collection

- Enterprises whose tax settlement reports are inaccurate or unclear, or are not fully inscribed with indexes for the tax calculation.

- Enterprises, which fail to submit their tax settlement reports or have submitted them not on time.

- Enterprises, which see major fluctuation in their financial situation in the tax calculation year as compared to the previous years.

Before inspecting a foreign-invested enterprise or foreign business cooperation party, the tax authority shall have to issue inspection decision, clearly stating the contents and duration of inspection. The inspection decision shall be sent to the concerned foreign-invested enterprise or representative of the foreign business cooperation party at least 3 working days before the inspection begins. Where it is necessary to inspect contents other than those stated in the inspection decision or to prolong the inspection time, the tax authority shall have to issue an additional inspection decision.

Upon the completion of inspection, the tax authority shall have to make and send the enterprise an inspection record, which must be signed by the tax official being the head of the inspection team. The inspection record must also be sent by the tax authority to the Finance Ministry (the General Department of Tax) together with the enterprise's financial report (copy).

The competent representative of the enterprise shall have to sign the inspection record. If the enterprise disagrees with the tax authority's conclusions on a number of contents, it may reserve its opinions and inscribe them in the inspection record so as to complain with the tax authority directly managing the tax collection or further complain with the General Department of Tax and the Finance Ministry. Pending the settlement of its complaint, the enterprise or foreign business cooperation party shall still have to strictly comply with the conclusions of the tax authority.

III. TAX SETTLEMENT UPON THE EXPIRY OF OPERATION DURATION OR DISSOLUTION OF ENTERPRISES

Upon the termination of a business cooperation contract by the parties thereto or the expiry of the operating duration or dissolution of a foreign-invested enterprise under the Law on Foreign Investment in Vietnam, within 45 days after the investment licensing body issues the dissolution decision, the concerned foreign-invested enterprise shall have to submit its tax settlement report to the tax authority. The tax authority shall have to immediately proceed with the following jobs:

1. Inspection of the tax settlement report.

2. Determination of interests and responsibilities of each party to the foreign-invested enterprise or business cooperation contract. The major contents of this job include:

- Determination of investors' investment capital amounts currently on the enterprise's account(s), including capital in cash, fixed assets, materials and goods. Certification of the investment capital amounts, which the foreign investors may transfer abroad.

- In cases where a foreign party commits to transfer without any refund of its assets to the State of Vietnam upon the expiry of its operating duration but has to terminate operation ahead of time due to *force majeure* incidents, if such foreign party fails to transfer assets according to its commitment, it must refund the preferences it has enjoyed thanks to the non-refund transfer. The provincial/municipal Tax Departments shall, on the basis of the actual situation of enterprises as well as the provisions at Articles 46, 47, 48 and 49 of Decree No. 24/2000/ND-CP, determine the tax amounts payable by enterprises and send tax notices to the enterprise liquidation boards and the investment licensing bodies.

- Determination of profits or losses as well as the rights and responsibilities of the investors, which are relate to such profits or

losses. Certification of the income amounts, earned by the foreign investors, which may be transferred abroad. The amount of tax on the transfer of incomes abroad shall be immediately remitted to the State budget, except for cases where the concerned foreign investors produce vouchers evidencing that such income is not transferred abroad due to one of the following reasons:

- + It is used for reinvestment in Vietnam under decision of the investment licensing body.
- + It is used for personal spending needs in Vietnam, in addition to other incomes already declared.
- + It is used for other purposes in Vietnam.

IV. MEASURES TO DETERMINE MARKET PRICES IN THE TRANSACTIONS BETWEEN ASSOCIATED ENTERPRISES

To ensure the correct determination of tax payment obligations of enterprises, during the regular inspection or examination of tax settlement reports of enterprises, if any price or income ratio irrationality is detected in the transactions between associated enterprises, the tax authorities shall apply the following measures to determine the enterprises' taxable incomes:

1. Method of comparing market prices:

The tax authorities may use the market prices of products, goods and/or services to fix the prices of products, goods and/or services exchanged or traded internally between associated enterprises. The conditions for the application of the method of comparing market prices are:

- i. There is no difference between the two compared business operations, which affect the transaction prices such as goods quality, trademarks, conditions for goods delivery and payment relations.

- ii. In case of difference between the two compared business operations, calculation methods may be used to preclude factors, which affect the transaction prices.

Example:

A foreign lubricant company sells to Vietnam-based joint-venture enterprise A (a joint-venture between such foreign company and a company in Vietnam) 1,200 liters of lubricant for US\$ 1,500, to be paid after 6 months. At the same time, the foreign lubricant company sells to enterprise B, an independent enterprise in Vietnam, 1,000 liters of lubricant for US\$ 1,000, to be paid immediately. Supposing that the 6-month commercial credit interest rate on the market is 5%, when determining income of joint-venture enterprise A, the Vietnamese tax authority may re-determine the contract lubricant price, based on the comparison with the contract with company B as follows:

Unit price of 1 liter of lubricant with payment made after 6 months:

$$\frac{\text{US\$ 1,000} + \text{US\$ 1,000} \times 5\%}{1,000 \text{ liters of lubricant}} = \text{US\$ 1.05/liter}$$

The price determined for the contract between joint-venture company A and foreign lubricant company B shall be:

$$1,200 \text{ liters of lubricant} \times \text{US\$ 1.05/liter} = \text{US\$ 1,260}$$

2. Method of using the selling price to determine the buying price:

In cases where a trade unit buys goods from an overseas associated enterprise and it is impossible to determine the actual buying price of those goods on the free market, the tax authority may use the selling price of the trade unit to determine the buying price according to the following formula:

The average gross profit margin of the trade service may be determined on the basis of the gross profit margin of other goods purchased

The buying price	=	The selling price of goods sold to independent enterprises (excluding import tax, if any)	-	The selling price of goods sold to independent enterprises (excluding import tax, if any)	x	The average gross profit margin of the trade service
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by that unit from independent trade units. The gross profit margin shall be determined according to the following formula:

The gross profit margin	=	$\frac{\text{The net turnover} - \text{The cost price of goods}}{\text{The net turnover}}$	x 100%
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(The data shall be based on the enterprises' reports on business results)

The method of using the selling price to determine the buying price shall not apply to the following cases where:

- The goods and products, before being sold, have already been processed, assembled, transformed or added with more use value;
- The goods and products, before being sold, have been affixed with trademarks, trade names of high value on the market.
- The period between the goods purchase and goods sale lasts for more than 1 year during which the market witnesses a great price fluctuation.

Example: Enterprise A in Vietnam is an enterprise with 100% foreign capital invested by foreign company B which produces liquor. Enterprise A is the sole outlet for company B's products on the Vietnamese market. In 1999, enterprise A imported from company B 10,000 liters of liquor, paid US\$ 75,000 for import tax and special consumption tax set by the customs office and sold the whole liquor volume for US\$ 185,000 as converted turnover in the year. By the end of 1999, the tax authority determined the buying price of the liquor of enterprise A as follows:

The net turnover = The sale turnover - The import tax = US\$ 185,000 - US\$ 75,000 = US\$ 110,000

The selling price (excluding import tax)	=	$\frac{\text{US\$ 110,000}}{10,000 \text{ liters}}$	= US\$ 11/liter
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Supposing that the average gross profit margin of liquor is 10%

The buying price = US\$ 11/liter - (US\$ 11/liter x 10%) = US\$ 9.9/liter

3. Method of using the total production cost to determine the taxable income

In cases where an unit produces and/or processes semi-finished products and delivers all to an associated enterprise, without prod-

The determined income	=	The total production cost of all products	x	The average net income rate of the production branch		
The total production cost of all products delivered in the period	=	The cost price of goods delivered in the period	+	The goods delivery expenses in the period	+	The general management expenses in the period

(The data shall be based on the enterprises' business results)

ucts being sold on the market to determine the comparative price, the tax authority may base itself on the accounting books and records of the unit's expenses to determine the income of that unit according to the following formula:

The average net income rate of the production branch may be determined on the basis of the data on the net income rates of other independent production enterprises.

The net income rate shall be determined according to the following formula:

The net income rate	= The pre-enterprise income tax net		
	The cost price of the sold goods	+	The goods sale expenses
		+	The general management expenses

Example: Garment enterprise A in Vietnam is a joint venture between foreign company b and a Vietnamese company. Garment enterprise A produces apparel articles under processing contracts and delivers them all to company B in the foreign country. Presuming that in 1999, enterprise A delivered to company B 10,000 suits at a set price of US\$ 10/suit. Enterprise A's 1999 accounting books contain the following data:

The cost price of sold goods: US\$ 80,000

The goods delivery expenses: US\$ 6,000

The general management expenses: US\$ 12,000

The total production cost: US\$ 98,000

As enterprise A and company B overseas are the two associated enterprises, the tax authority may fix the taxable income as follows:

Presuming that the tax authority determines the average net income rate of the garment industry to be 10%.

The determined income = US\$ 98,000 x 10%

In cases where price irrationalities are discovered but there exist no conditions for the application of the above-mentioned methods, the tax authority should notify such to enterprises so that the latter may produce the relevant vouchers, and request the enterprises to make written attestations on the legality of the produced vouchers.

Part IV

TAX PAYMENT CURRENCY AND OTHER GUIDANCES

I. TAX PAYMENT CURRENCY

Foreign-invested enterprises and joint-venture business cooperation parties shall pay taxes in Vietnam dong

Enterprises which are permitted by the Finance Ministry to use foreign currency(ies) in their cost-accounting and book-keeping activities when making tax declaration, shall have to convert such foreign currency(ies) into Vietnam dong at the time of declaration.

The conversion of a foreign currency into Vietnam dong or vice versa shall be effected at the actual average purchasing and selling rates on the inter-bank foreign currency market as announced by the State Bank of Vietnam on the Nhan Dan Daily. For certain days on which the Nhan Dan Daily is not published or published without announcement of the exchange rate, the exchange rate applicable to the conversion shall be the preceding day's exchange rate.

All budget revenues from foreign-invested enterprises shall be accounted into the budget index according to current regulations.

II. RESPONSIBILITIES OF ENTERPRISES

1. Foreign-invested enterprises shall have to strictly comply with the procedures of regis-

tration for the granting of tax codes and make tax registration with the tax authorities directly managing them in accordance with current regulations.

2. Within 5 days after changing their goods lines for business or relocating their headquarters, enterprises, their business affiliates or foreign business cooperation parties shall have to fill in the procedures for tax registration with the tax authorities of the provinces or cities where they are headquartered.

3. To strictly with all regulations on tax declaration in the course of business and production activities.

4. To produce all accounting books, vouchers and necessary documents related to the tax calculation and settlement at the tax authority's request.

5. To pay taxes in full and on time as prescribed.

6. To notify the tax authority of the decision on dissolution or expiry of the project's operating duration, and submit the final settlement report on time.

III. RESPONSIBILITIES AND POWERS OF TAX AUTHORITIES

1. To guide taxpayers to make tax registration and declaration in strict compliance with the prescribed regime.

2. To examine tax declarations, accounting books and vouchers as well as documents necessary for tax calculation, and request taxpayers to explain unclear matters related to the tax calculation.

3. To calculate taxes and notify the taxpayers of the payable tax amounts. To have the right to fix the payable tax amounts in cases where the taxpayers deliberately fail to make tax declaration within the prescribed time limit or make incomplete or inaccurate

tax declaration or fail to provide adequate and accurate information related to the tax calculation, or where the revenues are affected by abnormal financial and commercial relations between the associated enterprises.

4. To record writing and handle tax violations according to their competence prescribed by law.

5. To strictly enforce the tax legislation, ensuring its truthfulness, accuracy and objectivity.

6. To inspect the registration of accounting regimes by enterprises as well as the implementation of the registered accounting regimes.

7. To certify tax amounts already paid by foreign investors at the latter's request.

IV. HANDLING OF VIOLATIONS AND SETTLEMENT OF COMPLAINTS

1. Violations of tax legislation shall be sanctioned as follows:

- Failure to strictly comply with the provisions on tax registration at Point 1, Section II, Part IV of this Circular shall be sanctioned according to the provisions of the Government's Decree No. 22/CP of April 17, 1996 on sanctioning administrative violations in the field of tax.

- Failure to comply with the provisions on declaration for tax payment shall be fined according to the provisions of the Ordinance on the Handling of Administrative Violations, the Government's Decree No. 22/CP of April 17, 1996 and the current guiding documents.

- False declaration or evasion of taxes shall be fined up to 5 times the falsely declared or evaded tax amount.

- Delayed tax payment shall be subject to a fine of 0.1% (one thousandth) of the delayed tax amount for each day of delayed payment.

2. Competence to handle violations and complaints:

- Violations of the tax regulations shall be handled by the tax authorities directly managing tax collection.

- All taxpayers' complaints about taxes shall be considered and settled by the tax authorities directly collecting taxes. Where a taxpayer disagree with the conclusions for settlement of his/her complaint, he/she shall be entitled to further lodge the complaint to the higher-level tax authority and the Finance Ministry or initiate a lawsuit according to the provisions of law.

In cases where a complaint is lodged to the higher-level tax authority and the Finance Ministry, the Finance Minister's handling decision shall be final one. Pending the settlement of his/her complaint by the higher-level tax authority or the Finance Ministry, the complainant shall still have to strictly comply with the settlement conclusions of the lower-level tax authority or the General Department of Tax.

V. ORGANIZATION OF IMPLEMENTATION

The provincial/municipal Tax Departments shall have to popularize the provisions of this Circular to foreign-invested enterprises as well as foreign business cooperation parties and guide them in the implementation thereof.

The provincial/municipal Tax Departments shall have to arrange sections comprising full-time personnel to manage the collection of taxes from foreign-invested enterprises and foreign business cooperation parties. These specialized managerial sections shall have to submit monthly, quarterly and annual reports to the Finance Ministry (the General Department of Tax) on the tax collection situation as well as other reports in service of the general management requirements for foreign-invested enterprises and foreign business cooperation parties operating in their respective localities.

This Circular takes effect 15 days after its signing and replaces the Finance Ministry's Circular No. 63/1998/TT-BTC of May 13, 1998 and Circular No. 89/1999/TT-BTC of July 16, 1999.

FOR AND ON BEHALF OF THE
FINANCE MINISTER

Vice Minister

VŨ VĂN NINH

CHRONOLOGY OF APRIL 2001

7-10 April: The 12th Plenum of the Party Central Committee (8th Tenure) is convened in Hanoi to finalize the Central Committee's documents to be submitted to the 9th Party Congress, and to continue preparing the personnel for the Congress to elect into the 9th Central Committee.

19-22 April: The 9th National Congress of the Communist Party of Vietnam takes place in Hanoi. The Congress discusses and passes the important documents: Political Report; Strategy for Socio-economic Development in 2000-2001; Orientation and Tasks for 2001-2005 Socio-economic Development, Statutes of the Party (supplemented and amended). Mr. Nông Đức Mạnh is elected General Secretary of the Party Central Committee.

25-26 April: Thai Prime Minister Thaksin Shinawatra pays an official visit to Vietnam. He has talks with PM Phan Văn Khải and pays a courtesy visit to General Secretary Nông Đức Mạnh and President Trần Đức Lương.

CHRONOLOGY OF MAY 2001

27 April-3 May: Vice-President Nguyễn Thị Bình pays an official visit to Cuba. She has talks with Vice-President of the Cuban State Council Carlos Lahe, meets with Vice-President of the Cuban State Council Juan Anmayda Bosque and is received by President Phidel Castro. She visits some educational and economic establishments in La Habana.

3-5 May: Head of the Executive Body of the Republic of Pakistan, General Pervez Musharraf pays an official visit to Vietnam. He pays a courtesy call to President Trần Đức Lương, has talks with PM Phan Văn Khải and visits some cultural and economic establishments in Hanoi. The two sides sign the Pakistan-Vietnam Trade Agreement.

4-9 May: Vice-President Nguyễn Thị Bình pays an official visit to the Republic of France. She meets with President Jacques Chirac, has talks with Chairman of Senate C. Ponssele and visits some historical relics and cultural works of France.

24-25 May: The 3rd Asian-European Meeting of Foreign Ministers (ASEM FM-3) takes place in Beijing with the participation of 25 foreign ministers of the member nations and representatives of the EU. Foreign Minister Nguyễn Dy Niên heads the Vietnamese delegation and delivers a speech. During his stay, he has working meetings with the foreign ministers of China, Singapore, Austria, Denmark, Spain, France and the Republic of Korea and with the State Secretary of the Foreign Ministry of the United Kingdom.

In tại Nhà xuất bản Thế Giới.

Giấy chấp nhận đăng ký kế hoạch xuất bản số 2-86/XB-QLXB, cấp ngày 16/1/2001.

In xong và nộp lưu chiểu tháng 6-2001.

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