

**MINISTRY OF FINANCE**

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**SOCIALIST REPUBLIC OF VIETNAM**

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No. 156/2013/TT-BTC

*Hanoi, November 06, 2013.*

## **CIRCULAR**

**GUIDANCE ON SOME ARTICLES OF THE LAW ON TAX ADMINISTRATION, THE LAW ON THE AMENDMENTS TO THE LAW ON TAX ADMINISTRATION, AND THE GOVERNMENT'S DECREE No. 83/2013/ND-CP**

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

*Pursuant to the Law on the amendments to the Law on Tax administration No. 21/2012/QH12 dated November 20, 2012;*

*Pursuant to the Law on State budget No. 01/2002/QH11 dated December 16, 2002;*

*Pursuant to the Laws, Ordinances, Decrees on tax, fees, charges, and other revenues classified as government budget;*

*Pursuant to the Government's Decree No. 83/2013/ND-CP dated July 22, 2013 elaborating the implementation some of articles of the Law on Tax administration and the Law on the amendments to the Law on Tax administration;*

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

*At the request of the Director of the General Department of Taxation;*

*The Minister of Finance promulgates a Circular to provide guidance on some Articles of the Law on Tax administration, the Law on the amendments to the Law on Tax administration, and the Government's Decree No. 83/2013/ND-CP dated July 22, 2013 (hereinafter referred to as the Decree No. 83/2013/ND-CP):*

### **Chapter I**

#### **GENERAL REGULATIONS**

##### **Article 1. Scope of regulation**

This Circular applies to the administration of taxes prescribed in tax laws, fees and charges classified as government budget according to the laws on fees and charges, other revenues classified as government budget collected by domestic tax authorities (hereinafter referred to as taxes).

##### **Article 2. Subjects of application**

1. Taxpayers include:

- a) The organizations, households, and individuals that pay taxes, fees, or other amounts to government budget as prescribed by law;
- b) The organizations assigned to collect fees and charges classified as government budget;

- c) The organizations that provide taxation services;
- d) The organizations and individuals that deduct tax from incomes, including:
  - d.1) Any Vietnamese party that signs a contract with a foreign entity that does business in Vietnam or earns incomes in Vietnam, pays VAT using direct method, pays corporate income tax on revenue;
  - d.2) Any organization or individual that deduct tax from incomes of the persons whose incomes are subject to personal income tax;
- dd) Any organization or individual that engage in petroleum exploration or extraction, including:
  - The operator of the petroleum contract concluded in the form of a production sharing contract.
  - The joint operating companies to the petroleum contract concluded in the form of a joint operating contract.
  - The partners to the petroleum contract concluded in the form of a partnership contract or an intergovernmental agreement.
  - PetroVietnam, general companies and companies affiliated to PetroVietnam that engage in petroleum exploration or extraction themselves.
- 2. Tax authorities: the General Department of Taxation, Departments of Taxation, and Sub-departments of taxation;
- 3. Tax officials;
- 4. Other state agencies, organizations, and individuals related to the implementation of tax laws.

**Article 3. This Circular provides guidance on:**

- 1. Tax declaration and tax calculation;
- 2. Tax imposition;
- 3. Tax payment;
- 4. Delegation of tax collection;
- 5. Responsibility to fulfill tax liability;
- 6. Procedures for tax exemption and reduction; cancellation of outstanding tax and fines;
- 7. Procedure for tax refund and offsetting;
- 8. Tax inspection and risk management;
- 9. Settlement of complaints, denunciations, and lawsuits related to the implementation of tax laws.

**Article 4. Regulations not mentioned in this Circular:**

- 1. Regulations on tax administration on exported or imported goods.
- 2. Regulations on tax registration, enforcement of implementation of tax decisions and penalties for violations against tax laws.

**Article 5. Tax documents**

1. Tax documents include the documents enclosed with the tax declaration and other documents sent to tax authorities by taxpayers, delegated tax collectors, and other organizations and individuals. 01 copy of the mandatory documents shall be submitted to the tax authority.
2. The tax documents must be signed and issued *intra vires*; the format of the document, the signature and the seal on the document must comply with law.
3. The tax documents sent online must comply with the laws on electronic transactions.
4. The language of tax documents is Vietnamese. The documents in foreign languages must be translated into Vietnamese. The taxpayer shall add their signature and seal on the translation and is responsible for the accuracy of the translation. If the length of the document in foreign language exceeds 20 A4 pages, the taxpayer shall make a written request for permission to translate only the terms and conditions related to tax determination.

For the Notice of eligibility for tax exemption or reduction according to a Double taxation agreement, the taxpayer shall translate only the name of the contract, the names of articles, the contract period or the period during which the expert of the foreign contractor is present in Vietnam (if any), the responsibilities and commitments of every parties, the stipulations about confidentiality and product ownership (if any), the persons eligible to sign the contract, the information about tax determination (if any). A photocopy of the contract certified by the taxpayer shall be enclosed thereto.

Consular legalization of the documents issued by foreign authorities is only compulsory in the cases mentioned in Article 16, Article 20, Article 44, and Article 54 of this Circular.

5. If any tax document does not comply with the aforementioned requirements, the tax authority shall request the sender to rectify and resubmit it.
6. The time the tax authority receives the satisfactory document or translation is considered the receiving time of the document.

#### **Article 6. Transaction with tax authorities**

1. The legal representative of the taxpayer shall directly sign the tax documents or delegate their deputy to do so. The delegation must be prescribed in writing at the company.
2. Delegating transaction with tax authorities
  - The legal representative of the taxpayer may delegate their deputy to sign the tax documents.
  - The taxpayer that is an individual may delegate another organization or individual in writing (except for tax agents defined in Clause 3 of this Article) to make transaction with the tax authority in accordance with the Civil Code.
  - The written delegation must specify the delegation period and delegated tasks. The written delegation must be sent to the tax authority together with the first declaration during the same delegation period.
3. Where the taxpayer signs a taxation service contract with a tax agent, the legal representative of the tax agent shall add a signature and seal on every tax document. The tax declaration must contain the full name and license number of the employee of the tax agent. Only the delegated tasks in the taxation service contract shall be performed.

At least 05 days before the performing the contractual tasks for the first time, the taxpayer must send a written notification to the tax authority of the purposes of the taxation services together with a photocopy of the taxation service contract, which is certified by the taxpayer.

The rights and obligations of tax agents are specified in the documents on provision of taxation services issued by the Ministry of Finance.

If the tax authority needs to inform the issues related to the tax documents completed by the tax agent under the delegation of the taxpayer, the tax authority shall inform such issues to the tax agent, and the tax agent shall notify the taxpayer.

#### **Article 7. Receipt of tax dossiers at tax authorities**

1. If the tax dossier is directly submitted at the tax authority, the official that receives shall put a stamp on the dossier, record the receipt time and quantity of documents in the dossier.
2. If the dossier is sent by post, the tax official shall add a date stamp on the dossier and record it.
3. If the dossier is sent electronically, the tax authority shall receipt, check and accept it via the electronic data processing system.
4. If additional documents must be provided, the tax authority must notify the taxpayer or tax agent within the day if the dossier is submitted directly, within 03 working days if the dossier is sent by post or electronically.

#### **Article 8. Expressions of deadlines**

1. If the time limit is expressed as "days", it means continuous calendar days including days off.
2. Where the time limit is expressed as "working days", it means working days of state agencies, excluding days off.
3. If the deadline is a specific date, the expiration date is the day after the stated day.
4. If the deadline is a day off, the actual deadline shall be the day after the day off.
5. The submission date is the day on which the tax authority receives the sufficient and valid documents.

#### **Article 9. Adjustment of tax registration information**

If the taxpayer has been granted tax registration but has not informed the tax authority of their accounts at commercial banks or credit institutions before the Decree No. 83/2013/ND-CP takes effect, such information must be provided in the adjustment form (form 08-MST enclosed herewith) by December 31, 2013.

If the taxpayer's accounts at commercial banks or credit institutions are changed or added during the business, the taxpayer must send an adjustment form (form No. 08-MST enclosed herewith) to the supervisory tax authority must be informed within 10 days from the day on which such change occurs (do not use the form 08-MST enclosed with the Circular No. 80/2012/TT-BTC dated May 22, 2012).

### **Chapter II**

## **TAX DECLARATION AND TAX CALCULATION**

### **Article 10. General regulations on tax declaration and tax calculation**

## 1. Rules for tax declaration and tax calculation

a) The taxpayer must calculate the tax payable to government budget, except for the cases in which tax is imposed by tax authorities or the cases in Article 37 and Article 37 of the Law on Tax administration.

b) The taxpayer must provide truthful information in the tax form provided by the Ministry of Finance and submit the mandatory documents.

c) Where tax must be declared monthly, quarterly or annually but no tax is incurred during the period, or the taxpayer is eligible for tax incentives exemption or reduction, the tax declaration still have to be submitted on time, except for the cases in which the business is shut down or suspended as mentioned in Point dd Clause 1 of this Article, or submission of tax declaration is exempt as prescribed in Article 16, Article 17 and Article 18 of this Circular.

d) Where tax must be declared monthly or quarterly, the first tax period begins on the commencement date of the business and ends on the last day of the month or quarter. The last tax period begins on the first day of the month or quarter and ends on the ending date of the business. The tax year to calculate corporate income tax or of this Circular is the calendar year or the taxpayer's tax year. Tax year to calculate other taxes is calendar year.

dd) If the taxpayer's business is suspended and tax is not incurred, the tax declaration for the suspension period might not be submitted. If the taxpayer's business is not suspended the whole calendar year or tax year, the annual terminal declaration must be submitted.

At least 15 days before the suspension, the taxpayer must send a written notification to the supervisory tax authority. The notification shall specify:

- Name, address of the premises, tax code;
- Suspension period, beginning date and ending date of the suspension;
- Reasons for suspension;
- Full name, signature of the legal representative of the company, the representative of the business group, or the owner of the business household.

At the end of the suspension, the taxpayer must make a tax declaration as prescribed. Where the taxpayer resumes their business ahead of schedule, a written notification and a tax declaration must be sent to the supervisory tax authority.

e) The currency in the tax declaration is VND. When declaring taxes on extraction or sale or crude oil/natural gas, the currency shall be USD.

## 2. Tax declaration dossier:

A tax declaration dossier consists of a tax declaration and relevant documents used for calculating tax.

The taxpayer must use the tax declaration and appendices provided by the Ministry of Finance. Do not change the format, add, remove, or move any part of the tax declaration. The documents of which the forms are not provided by the Ministry of Finance must comply with relevant laws.

## 3. Deadlines for submitting tax declarations:

- a) The deadline for submitting a monthly tax declaration is the 20<sup>th</sup> of the month succeeding the month in which tax is incurred.
- b) The deadline for submitting a quarterly tax declaration or provisional quarterly tax declaration is the 30<sup>th</sup> of the quarter succeeding the quarter in which tax is incurred.
- c) The annual tax declaration must be submitted by the 30<sup>th</sup> of the first month of the calendar year.
- d) The unscheduled tax declaration (upon incurrance of tax) must be submitted within 10 days from the day on which tax is incurred.
- dd) The annual terminal declaration must be submitted within 90 days from the end of the calendar year or tax year.
- e) The deadline for submitting a terminal tax declaration when the company is divided, split, amalgamated, merged, transformed, dissolved, or shut down is the 45<sup>th</sup> day from the day on which a decision on such division, split, amalgamation, merger, transformation, dissolution, or shut down is made.
- g) The deadline for submitting a tax declaration related to land use under a single-window system is the deadline required by such system.

#### 4. Deadline extension:

- a) If the taxpayer fails to submit a tax declaration on schedule due to a natural disaster, conflagration, or accident, the head of the supervisory tax authority shall grant an extension of deadline.
- b) The extended period shall not exceed 30 days (for monthly, quarterly, annual, and unscheduled tax declarations) or 60 days (for terminal declarations) from the previous deadline.
- c) The taxpayer must send the tax authority a written request for deadline extension before the deadline, specifying the reasons for extension. Such reasons must be certified by the People's Committee or police department of the commune.
- d) Within 03 working days from the receipt of the written request of deadline extension, the tax authority shall inform the taxpayer in writing whether the extension is granted or not. If the tax authority does not make a written response, the taxpayer's request is considered rejected.

#### 5. Adjustment to declaration:

- a) The taxpayer that finds errors in the submitted tax declaration after the deadline shall be allowed to make an adjustment to the declaration.

Where terminal declarations are submitted annually: if the annual terminal declaration is not submitted, the taxpayer may make adjustments to the erroneous monthly or quarterly declarations, and provide the adjusted information in the terminal declaration. If the terminal declaration has been submitted, only adjustment to the terminal declaration is required. If the adjustment to the terminal declaration leads to a reduction of the tax payable, adjustments to monthly and quarterly declarations may be made and late payment interest shall be recalculated (if any).

The adjusted declaration may be submitted to the tax authority on any working days regardless of the next deadline, as long as it is submitted before the tax authority or a competent authority

announces a decision on tax inspection at the taxpayer's premises. When a decision on tax inspection has been issued:

- Adjustments may be made if the errors in the submitted declarations are not relevant to the inspected periods and operations, and late payment interest shall be paid.
- Adjustments may be made if the errors in the submitted declarations are relevant to the inspected periods but are not relevant to inspected operations, and late payment interest shall be paid.
- Adjustments may be made if the errors that are relevant to the inspected periods and operations lead to an increase in the amount of tax payable or a decrease in the amount of tax refunded or reduced, or a decrease in the amount of overpaid tax. The taxpayer shall incur the penalties as if such mistakes are discovered by the tax authority or competent authority.

If the tax authority or a competent authority has issued a decision to settle the increase or decrease in deductible VAT, the taxpayer shall adjust the tax declaration of the period during which the decision is received (no additional declaration is required).

b) An adjustment dossier consists of:

- The adjusted declaration;
- A written explanation (form no. 01/KHBS enclosed herewith) if the adjustment leads to a change in the amount of tax);
- Supporting documents.

c) Cases of adjustment:

c.1) If the adjustment to the tax declaration does not lead to a change in the amount of tax payable, deducted, or refunded, then only the adjusted tax declaration shall be sent together with an explanation (form No. 01/KHBS and supporting documents).

c.2) If the adjustment to the tax declaration leads to a change in the amount of tax payable, the taxpayer shall make an adjustment and calculate the late payment interest based on the increased amount of tax, the number of days behind schedule, and the rate of interest. If the taxpayer fails to calculate or incorrectly calculates the late payment interest, the tax authority shall inform the taxpayer of the late payment interest.

Example 1: In August 2014, company A makes an adjustment to the VAT tax declaration of January 2014, which leads to an increase of 100 million VND in VAT. Company A shall pay an additional tax of 100 million VND, calculate and pay the late payment interest to government budget.

Company A shall submit a dossier to the tax authority, which consists of:

- An adjusted VAT declaration that specifies the increase of 100 million VND in VAT payable in January 2014;
- A written explanation for the increase of 100 million VND in VAT payable (form 01/KHBS);
- Supporting documents (if any).

Example 2: In August 2014, company B makes an adjustment to the terminal declaration of corporate income tax of 2013, which leads to an increase of 100 million VND in corporate

income tax. In this case, company A shall pay an additional tax of 100 million VND, calculate and pay the late payment interest to government budget.

Company B shall submit a dossier to the tax authority, which consists of:

- An adjusted terminal declaration that reflects the increase of 100 million VND in corporate income tax payable in 2013;
- A written explanation for the increase of 100 million VND in corporate income tax (form 01/KHBS);
- Supporting documents (if any).

c.3) If the adjustment to the tax declaration leads to a decrease in the amount of tax payable, an adjusted declaration shall be made. If the subtrahend has been paid, it shall be offset against the tax payable in the next period, or refunded.

Example 3: In August 2014, company C makes an adjustment to the special excise tax declaration of January 2014, which leads to a decrease of 100 million VND in special excise tax. It will be considered overpaid tax and offset against the tax payable in the next period, or refunded.

Company C shall submit a dossier to the tax authority, which consists of:

- An adjusted special excise tax declaration that reflects the decrease of 100 million VND in special excise tax payable in January 2014;
- A written explanation for the decrease of 100 million VND in special excise tax of January 2014 (form 01/KHBS);
- Supporting documents (if any).

Example 4: In August 2014, company D makes an adjustment to the VAT declaration of January 2014, which leads to a decrease of 100 million VND in VAT payable. The subtrahend shall be offset against the tax payable in the next period, or refunded.

Company D shall submit a dossier to the tax authority, which consists of:

- An adjusted VAT declaration that reflects the decrease of 100 million VND in VAT payable in January 2014;
- A written explanation for the decrease of 100 million VND in VAT of January 2014;
- Supporting documents (if any).

Example 5: In August 2014, company E makes an adjustment to the terminal declaration of corporate income tax of 2013, which leads to a decrease of 100 million VND in corporate income tax (CIT) payable (CIT was initially 200 million VND). It will be considered overpaid tax and offset against the amount of CIT payable in the next period, or refunded.

Company E shall submit a dossier to the tax authority, which consists of:

- An adjusted terminal declaration that reflects the decrease of 100 million VND in corporate income tax payable in 2013;
- A written explanation for the decrease of 100 million VND in corporate income tax payable of the tax year 2013 (form 01/KHBS);



- Supporting documents (if any).

If the taxpayer has not paid the corporate income tax in the terminal declaration of 2013, the taxpayer may make an adjustment to every quarterly declaration of CIT in 2013 when submitting the adjusted terminal declaration in 2013 to recalculate the CIT payable and late payment interest in every quarter of 2013.

c.4) If the adjustment to the declaration only leads to an increase in VAT that remains after deduction, the increase shall be written in box “Increase in deductible VAT of previous periods” on the current VAT declaration.

Example 4: In August 2014, company G makes an adjustment to the VAT declaration of January 2014, which leads to an increase of 500 million VND in VAT that remains after deduction.

Company G shall submit a dossier to the tax authority, which consists of:

- The VAT declaration of January 2014 that reflects the increase of 100 million VND in VAT that remains after deduction;
- A written explanation for such increase in January 2014;
- Supporting documents (if any).

The increase of 500 million VND shall be written in box “Increase in deductible VAT of previous periods” on the current VAT declaration of July 2014 (if the deadline for declaring tax has not passed) or August 2014.

c.5) If the adjustment leads to a decrease in the VAT that remains after deduction, an adjustment shall be made:

- If the taxpayer does not stop deducting tax and has not claimed refund, the decrease in the period shall be written in box "Decrease in deductible VAT in previous periods" on the current VAT declaration.

Example 7: In August 2014, company H makes an adjustment to the VAT declaration of January 2014, which leads to a decrease in the amount of VAT that remains after deduction from 200 million VND to 100 million VND. In this case the taxpayer is not required to pay the 100 million VND in VAT as well as late payment interest. Instead, the taxpayer shall decrease the non-deductible VAT of January 2014, which is 100 million VND in the VAT declaration of July 2014 (if the deadline for declaring tax has not passed) or August 2014 or the month in which the adjustment is made (box “Decrease in deductible VAT of previous periods”).

Company H shall submit a dossier to the tax authority, which consists of:

- + A VAT declaration of January 2014 that reflects the decrease of 100 million VND in VAT that remains after deduction;
- + A written explanation for such decrease in the tax period January 2014 (form 01/KHBS);
- + Supporting documents (if any).
- If the taxpayer has stopped deducting tax and claims tax refund from the tax authority, the tax authority shall consider refunding according to the claim and the adjustment.

Example 8: According to the VAT declaration of January 2015, company H has stopped deducting tax and claims a refund of 900 million VND. In March 2015, company H makes an

adjustment to the VAT declaration of January 2015, which leads to a decrease in VAT from 900 million VND to 800 million VND because the difference of 100 million VND is not eligible for deduction. If the tax authority has not made a decision on VAT refund, the taxpayer is not required to pay the 100 million VND in VAT as well as late payment interest. According to the claim for refund of VAT of January 2015 and the adjustment, tax authority shall make a decision to refund 800 million VND after adjustment.

- If the taxpayer already received the tax refund before the claim for refund is made, the taxpayer must return the amount that is refunded incorrectly and pay late payment interest from the day on which the State Treasury signs the Order of refund to the day on which the taxpayer makes an adjustment. If the taxpayer has not return in full the amount that is incorrectly refunded, or incorrectly calculates the late payment interest, the tax authority shall calculate and notify the late payment interest to taxpayers.

Example 9: In August 2014, company H makes an adjustment to the VAT declaration of January 2014, which causes the amount of VAT that remains after deduction to decrease from 200 million VND to 100 million VND. The taxpayer has already made a claim for the refund of this amount and the tax authority made an Order of refund on April 25, 2014. In this case the taxpayer must return 100 million VND to government budget and calculate late payment interest from April 25, 2014 to the day on which the rectification is made.

c.6) If the taxpayer makes a mistake that leads to a decrease in the amount of VAT that remains after deduction and an increase in VAT payable in the period, an adjustment shall be made.

The taxpayer shall calculate late payment interest according to the increase in tax payable, the days of late payment, and interest rates. The decrease in deductible tax shall be written in box "Decrease in deductible VAT of previous periods" on the current VAT declaration.

Example 10: in August 2014, company I makes an adjustment to the VAT declaration in January 2014, which leads to a decrease of 200 million VND in VAT that remains after deduction, and an increase of 100 million VND in VAT payable. A decrease of 300 million VND in non-deductible VAT is made, which causes the VAT payable of January 2014 to increase by 100 million VND. In this case the taxpayer must pay the increase of 100 million VND in VAT and late payment interest; the non-deductible VAT of 200 million VND shall be written in the VAT declaration of July 2014 (if the deadline for declaring tax has not passed) or August 2014 (box "Decrease in deductible VAT of previous periods).

Company I shall submit a dossier to the tax authority, which consists of:

- When discovering the increase of 100 million VND in VAT payable in January 2014, company I shall make an adjustment to pay that 100 million VND and late payment interest. The adjustment submitted to the tax authority consists of:

+ A VAT declaration of January 2014 that reflects the increase of 100 million VND in VAT payable;

+ A written explanation for such increase in January 2014 (form 01/KHBS);

+ Supporting documents (if any).

- Company I shall write the decrease of 200 million VND in VAT that remains after deduction in January 2014 on the VAT declaration of July 2014 (if the deadline for declaring tax has not passed) or August 2014 (box "Decrease in deductible VAT of previous periods).

c.7) If the taxpayer makes a mistake that leads to an increase in the amount of VAT that remains after deduction and a decrease in the amount of VAT payable in the period, an adjustment shall be made.

The taxpayer shall write the increase in deductible tax in box “Increase in deductible VAT of previous periods” on the current VAT declaration. When VAT payable is decrease, the taxpayer shall make an adjustment similarly to the case in Point c.3 Clause 5 of this Article.

c.8) The taxpayer may decrease the amount of tax refund on the declaration of deductible VAT if the conditions for refund are not met and the claim for refund is not submitted. In this case the taxpayer shall make an adjustment specifying the amount of tax refund in box “Increase in deductible VAT of previous periods” on the current VAT declaration.

Example 11: Company K has claimed a VAT refund of 200 million VND in the VAT declaration of June 2014 but has not made an application for VAT refund. In August 2014, company K discovers that the claim is not justifiable, it decrease the amount of refund on the VAT declaration of June 2014 and increase the amount of deductible VAT of corresponding periods on the VAT declaration of July 2014 (if the deadline for declaring tax has not passed) or August 2014.

Company K shall submit a dossier to the tax authority, which consists of:

- A VAT declaration of June 2014 that reflects the decrease in VAT refund and increase of 200 million VND in deductible VAT;
- A written explanation form 01/KHBS.

## 6. Places for submitting tax declarations

The taxpayer shall submit the tax declarations, pay fees and other charges to the supervisory tax authority, in particular:

a) Declarations of personal income tax, non-agricultural land levies, agricultural land levies, land levies, land rents, registration fees, VAT on extraprovincial business, and declarations of flat tax shall be submitted in accordance with Article 11, Article 16, Article 18, Article 19 and Article 21 of this Circular.

b) Declarations of severance tax shall be submitted at the supervisory tax authority (Department of Taxation or Sub-department of taxation) if the taxpayer’s head office is in the same province as the extraction site. Otherwise, the Director of the Department of Taxation of the province where the extraction site is located shall decide where tax declarations must be submitted.

b) Declarations of corporate income tax on real estate transfer shall be submitted at the supervisory tax authority (Department of Taxation or Sub-department of taxation) if the taxpayer’s head office is in the same province as the property transferred. Otherwise, the Director of the Department of Taxation of the province where the property transferred is located shall decide where tax declarations must be submitted.

d) If the taxpayer has a facility that manufacture goods subject to special excise tax in another province than that of the head office, special excise tax declarations shall be submitted in the locality where the manufacturing facility is situated.

dd) If the regulatory bodies in the same locality adopt a single-window system to process tax declarations, the places to submit tax declarations are the places required by the system

## **Article 11. VAT declaration**

### 1. Responsibility to submit VAT declaration:

- a) The taxpayer shall submit the tax declaration to the supervisory tax authority.
- b) Where the taxpayer has an affiliate in the same province or central-affiliated city (hereinafter referred to as province) as the taxpayer's head office, the taxpayer shall file a joint VAT declaration.

If the affiliate has a seal, deposit account, directly sells goods or services, declares sufficient input and output VAT, and wishes to declare tax separately, it must apply for permission to declare tax separately and use separate invoices.

Directors of local Departments of Taxation shall decide the place where providers of restaurant, hotel, massage, and karaoke services declare their tax.

- c) Where the taxpayer has an affiliate in another province than the taxpayer's head office, the affiliate shall directly submit the VAT declaration to the supervisory tax authority. If the affiliate does not sell anything and thus does not earn any revenue, tax shall be declared at the taxpayer's head office.

Where the taxpayer plans to sell real estate in another province than that of the taxpayer's head office and establishes an affiliate (branch, management board, etc.), then the taxpayer must apply for tax registration and use credit-invoice method to pay the tax on real estate trading to the tax authority of the locality where real estate is sold.

Example 12: Real estate company A has a head office in Hanoi, and is the investor in a housing project in Da Nang city. When establishing a branch in Da Nang city to supervise the project, company A must apply for tax registration and pay tax using credit-invoice method in Da Nang city.

When the affiliates of a farming, forestry or fishery company that have registered and paid VAT using credit-invoice method buy farming, forestry or fishery products, then transfer or sell them to the head office, internal delivery notes shall be used instead of VAT invoices.

- d) Where a taxpayer that declares and pays tax using credit-invoice method has a manufacturing division (processing, assembling facility) situated in another province than that of the head office that does not directly sell goods and thus does not earn any revenue, then:

If the affiliated manufacturing division keeps accounting records, tax shall be registered and paid using credit-invoice method in the same locality, and VAT invoices shall be used when semi-finished products or finished products are transferred, including those transferred to the head office.

If the manufacturing division does not keep accounting records, the taxpayer shall declare tax at the head office and pay tax in the locality where the manufacturing division is situated. The VAT is 2% (if the goods incur 10% VAT) or 1% (if the goods incur 5% VAT) of the revenue at VAT-exclusive prices of sold products. The revenue of sold products is determined according to the prices of the same kind of products in the locality where the manufacturing division is situated.

Where the total VAT payable in the localities where the taxpayer's manufacturing divisions are situated is greater than the amount of VAT payable by the taxpayer at the head office, the taxpayer shall distribute the amount of tax payable among the manufacturing divisions as

follows: VAT payable at the locality where the manufacturing division is situated equals (=) VAT payable by the taxpayer at the head office multiplied by (x) the ratio of revenue at VAT-exclusive prices of the products created by the manufacturing division (or products of the same kind in the same locality) to the total revenue at VAT-exclusive prices of the products created by the whole company. If the taxpayer does not incur any tax at the head office, then the taxpayer does not have to pay tax at the localities of their manufacturing divisions.

The taxpayer shall make and send a “VAT distribution table” (form No. 01-6/GTGT) together with the tax declaration to the supervisory tax authority, and a copy of form 01-6/GTGT to the supervisory tax authorities of the manufacturing divisions.

According to the amount of VAT paid in the locality where the taxpayer’s head office is situated and the localities where manufacturing divisions are situated in the distribution table form 01-6/GTGT, the taxpayer shall make a notice of VAT payment in the locality where the head office is situated and in every locality where the manufacturing divisions are situated. The notice must specify that tax is paid to an account of a State Treasury at the same level as the tax authority

Example 13: Company A has its head office in Hanoi and 02 affiliated factories that do not keep accounting records and are situated in Hai Phong and Hung Yen. The products manufactured incur 10% VAT and are sold by the head office.

In August 2014: revenue at VAT-exclusive prices of the products manufactured by the factory in Hai Phong is 500 million VND, in Hung Yen is 600 million VND. The amount of VAT paid in the locality where the head office is situated (according to form 01/GTGT) in the period is 25 million VND.

The amount of VAT paid by company A in Hai Phong:

500 million VND x 2% = 10 million VND.

The amount of VAT paid by company A in Hung Yen:

600 million VND x 2% = 12 million VND.

The amount of VAT paid by company A in Hanoi:

25 million VND - 10 million VND - 12 million VND = 3 million VND.

Example 14: Company A has its head office in Hanoi and 03 affiliated factories that do not keep accounting records and are situated in Hanoi, Hai Phong and Hung Yen. The products manufactured are sold by the head office.

In September 2014: revenue at VAT-exclusive prices of the products manufactured by the factory in Hai Phong is 500 million VND, in Hung Yen is 600 million VND, in Hanoi is 200 million VND.

The amount of VAT paid in the locality where the head office is situated (according to form 01/GTGT) in the period is 20 million VND.

The amount of VAT paid by company A in Hai Phong and Hung Yen according to 2% rule (the goods incur 10% tax): 500 million VND x 2% + 600 million VND x 2% = 22 million VND. By this rule, the amount of VAT paid in the localities where the factories are situated is greater than that paid by the head office. Therefore, company shall distribute VAT as follows:

The amount of VAT paid by company A in Hai Phong:

$20 \text{ million VND} \times 500 \text{ million VND} / (500 \text{ million VND} + 600 \text{ million VND} + 200 \text{ million VND}) = 7.69 \text{ million VND}.$

The amount of VAT paid by company A in Hung Yen:

$20 \text{ million VND} \times 600 \text{ million VND} / (500 \text{ million VND} + 600 \text{ million VND} + 200 \text{ million VND}) = 9.23 \text{ million VND}.$

The amount of VAT paid by company A in Hanoi:

$20 \text{ million VND} - 7.69 \text{ million VND} - 9.23 \text{ million VND} = 3.08 \text{ million VND}.$

Example 15: Company A has its head office in Hanoi and 02 affiliated factories that do not keep accounting records and are situated in Hai Phong and Hung Yen. The products manufactured are sold by the head office.

In October 2014: revenue at VAT-exclusive prices of the products manufactured by the factory in Hai Phong is 400 million VND, in Hung Yen is 500 million VND. In October 2014, company A's head office does not incur any tax. Company A also does not have to pay VAT in Hai Phong and Hung Yen.

dd) Where the taxpayer engages in a extraprovincial construction, installation, or sale, or extraprovincial real estate transfer (except for the case in Point c Clause 1 of this Article) without establishing an affiliate in that province (hereinafter referred to as extraprovincial business), the taxpayer must submit a tax declaration to the tax authority of the locality where the extraprovincial business takes place.

Directors of local Departments of Taxation shall decide the place where tax on extraprovincial business is declared.

Example 16: Company A, which has its head office in Hai Phong, signs a contract to sell cement to company B, which has its head office in Hanoi. According to the contract, goods shall be delivered to the company B's construction site in Hanoi. This sale is not considered extraprovincial. Company A shall declare VAT in Hai Phong and is not required to declare the revenue from extraprovincial sale under this contract.

Example 17: Company B has a head office in Ho Chi Minh City. Its warehouses in Hai Phong and Nghe An are not meant to trade. When company B sells goods from the warehouse in Hai Phong to a company C in Hung Yen, company B is not required to declare tax on extraprovincial sale in the locality where the warehouse is situated (Hai Phong or Nghe An).

Example 18:

- Company A, which has its head office in Hanoi, signs a contract with company B for construction consultancy, survey, and design in Son La in which company B is an investor. This activity is not considered extraprovincial. Company A shall declare VAT on this contract in Hanoi where its head office is situated, not Son La.

- Company A, which has its head office in Hanoi, signs a contract with company C to execute the construction in Son La (including the consultancy, survey, and design) in which company C is an investor. Company A shall declare VAT on extraprovincial construction in Son La.

Example 19: Company B, which has its head office in Hanoi, sells air conditioners to their customers in Hoa Binh (including installation). Company B is not required to pay tax on extraprovincial business in Hoa Binh.

Example 20: Company A, which has its head office in Hanoi, buys 10 houses from company B in Ho Chi Minh City, then sells these houses and issue invoices to their customers. In this case company A must declare and pay tax on revenue from extraprovincial real estate transfer at a tax authority in Ho Chi Minh City.

e) Where the taxpayer has an extraprovincial construction project that relate to multiple localities such as roads, power line, water, oil, gas pipeline, etc. and thus is not able to determine the revenue earned from each district or province, VAT on revenue from the extraprovincial construction shall be declared in the locality where the taxpayer's head office is situated.

## 2. Declaring VAT

a) VAT declarations shall be declared monthly, except for the cases in Points b, c, and d of this Clause.

b) Quarterly declaration of VAT.

b.1) The taxpayers eligible to declare VAT quarterly:

The taxpayer earns a total revenue of 20 billion VND or less from the sale of goods and/or services in the preceding.

The taxpayer that has just begun his business shall declare VAT monthly. In the next calendar year after 12 months of business, VAT declarations shall be declared whether monthly or quarterly depending on the revenue from the sale of goods and/or services in the preceding calendar year (12 months)

Example 21:

- Company A begins its business from January 2014, thus VAT shall be declared monthly from January 2014 to December 2014. In 2015, tax shall be declared monthly or quarterly depending on the revenue in 2014 (12 months).

- Company B begins its business from August 2013, thus VAT shall be declared monthly from August 2013 to December 2014. In 2015, tax shall be declared monthly or quarterly depending on the revenue in 2014 (12 months).

Taxpayers shall determine their eligibility to declare tax quarterly themselves.

Any taxpayer eligible to declare VAT quarterly that wishes to declare tax monthly shall send a notification to the supervisory tax authority not later than the submission of the VAT declaration of the first month of the tax year in which VAT are declared monthly.

b.2) Period of quarterly declaration

VAT shall be declared monthly or quarterly throughout the calendar year and the 3-year cycle. The first stable cycle begins on July 01, 2013 and ends on December 31, 2016.

During the cycle of quarterly declaration, if the taxpayer or the tax authority discovers that the revenue earned in the year preceding the cycle is over 20 billion VND, and thus the taxpayer is not eligible to declare VAT quarterly, then the taxpayer shall declare VAT monthly from the year succeeding the year of discovery until the end of the cycle.

During the cycle of monthly declaration, if the taxpayer or the tax authority discovers that the revenue earned in the year preceding the cycle is 20 billion VND or less, and thus the taxpayer is eligible to declare VAT quarterly, then the taxpayer may choose whether to declare VAT monthly or quarterly from the year succeeding the year of discovery until the end of the cycle.

Example 22: In 2012, company C earns a total revenue 18 billion VND, thus it is eligible to declare VAT quarterly from July 01, 2013. If the revenue earned in 2013, 2014, 2015 or 2016 declared by the company (including adjustments), or determined by the inspector is 25 billion VND, company C shall keep declaring VAT quarterly until the end of 2016. The declaration cycle shall be redetermined from 2017 according to the revenue earned in 2016.

Example 23: in 2012, company D earns a revenue of 27 billion VND, thus it shall declare VAT monthly. In 2013, the revenue declared by the company or determined by the inspector is 18 billion VND. In this case company D still declares VAT monthly until the end of 2016. The declaration cycle shall be redetermined from 2017 according to the revenue earned in 2016.

Example 24: In 2012, company E states a revenue of 17 billion VND in the VAT declaration, which makes it eligible to declare VAT quarterly from July 01, 2013. In 2014, the inspector concludes that the taxable revenue earned in 2012 is actually 22 billion VND. Consequently, company E shall declare VAT monthly from 2015 to the end of 2016. From 2017, the declaration cycle shall be redetermined according to the revenue earned in 2016.

Example 24: In 2012, company G states a revenue of 17 billion VND in the VAT declaration, which makes it eligible to declare VAT quarterly from July 01, 2013. In 2014, company G makes an adjusted declaration specifying that the taxable revenue earned in 2012 is actually 22 billion VND. Consequently, company G shall declare VAT monthly from 2015 to the end of 2016. From 2017, the declaration cycle shall be redetermined according to the revenue earned in 2016.

Example 26: Company H is established in July 2013. The total revenue in the VAT declaration 2014 is below 20 billion VND. In this case company H may declare tax quarterly from 2015 to the end of 2016. From 2017, the declaration cycle shall be redetermined according to the revenue earned in 2016.

b.3) Method of determining revenue from sale of goods and services in the preceding year (to determine the eligibility to declare VAT quarterly).

- The revenue from sale of goods and services is the total of revenues in the VAT declarations in the year (including taxable and non-taxable revenues).

- Where the taxpayer declares tax at the head office on behalf of their affiliates, the revenue from sale of goods and services include the revenues earned by their affiliates.

c) VAT on revenues from extraprovincial business shall be declared upon incurrence of tax.

d) VAT on revenues of casual businesspeople shall be declared upon incurrence of tax using direct method.

3. Declaring VAT using credit-invoice method:

a) The taxpayers that pay VAT using credit-invoice method shall declare VAT by deduction

b) A declaration dossier consists of:



- The VAT declaration shall be made in accordance with form 01/GTGT enclosed herewith;
- The list of sold goods and services shall be made in accordance with form 01-1/GTGT enclosed herewith;
- The list of purchased goods and services shall be made in accordance with form 01-2/GTGT enclosed herewith;
- The list of goods and services eligible for 0% tax shall be made in accordance with form 01-3/GTGT enclosed herewith.
- The table of distribution of deductible input VAT in the month or quarter shall be made in accordance with form 01-4A/GTGT enclosed herewith (if the taxpayer distributes deductible VAT in the month or quarter according to the ratio of taxable revenue from sale of goods and services to total revenue from sale of goods and services in the month or quarter).
- The adjustment to distributed deductible input VAT shall be made in accordance with form 01-4B/GTGT enclosed herewith (if the taxpayer redistributes deductible VAT in the year according to the ratio of taxable revenue from sale of goods and services to total revenue from sale of goods and services in the year). Increase or decrease of distributed deductible input VAT shall be specified in the VAT declaration of December or Q4 of the year.
- The table of paid VAT on revenue from extraprovincial business shall be made in accordance with form 01-5/GTGT enclosed herewith.
- The table of VAT distribution between the head office and the affiliates that do not keep accounting records (if any) shall be made in accordance with form 01-6/GTGT enclosed herewith.
- The list of sold motorcycles shall be made in accordance with form 01-7/GTGT (applied to motorcycle sellers).

c) Where a taxpayer eligible to pay VAT using credit-invoice method is making investment in a project in the same province as the head office, a separate tax declaration for the project of investment shall be made. The VAT on purchased goods and services serving the project shall be offset against the VAT on the current business. After offsetting, VAT on purchased goods and services serving the project shall be refunded if it is not completely cleared.

If the taxpayer is making investment in a project in another province than that of the head office, which is not put into operation, has not applied for business registration and/or tax registration, the taxpayer shall make a separate tax declaration for the project and submit it at the supervisory tax authority of the head office. If VAT on purchased goods and services serving the project are not completely eliminated, VAT on the project shall be refunded.

If the taxpayer establishes project management boards or branches in the other province to manage one or multiple projects, such management boards or branches must submit separate tax declarations to the local tax authorities if they have the seal, keep accounting records, deposit accounts at banks, have applied for tax registration and issued with tax codes. When the project is complete as well and the procedure for business registration and tax registration, the investor in the project must provide the new company with information about the amounts of VAT that are new, refunded, and not refunded so that it can declare, pay tax, and claim tax refund.

Example 27: Company A has a head office in Hanoi and a project of investment in Hai Phong, establishes a branch in Hai Phong to monitor the project. The branch has a seal, keeps accounting records, deposit accounts at banks, has applied for tax registration and issued with tax a code. In this case the branch must submit separate tax declarations to the tax authority in Hai Phong.

Example 28. in 2014, company A, which has a head office in Hanoi, invests in a steel factory in Hai Phong (which consists of three complexes). The project is not inaugurated and not registered. Company A makes a separate tax declaration for the project and pay tax at the tax authority in Hanoi where their head office is situated. VAT on the project is refunded in Hanoi. In 2017, the steel factory in Hai Phong has applied for business registration and tax registration. One of the complexes has been put into operation and starts earning revenue. In this case the factory shall declare and pay VAT using credit-invoice method in Hai Phong. Meanwhile, the other complexes are still under construction. VAT shall be declared separately, offset against the VAT payable by the factory, and refunded in Hai Phong.

Example 29: Construction and real estate company A has a project of apartment building for sale, which is its primary business and thus not eligible for VAT refund.

The VAT declaration dossier consists of:

- The VAT declaration for the project of investment (form 02/GTGT) is enclosed herewith;
- A list of purchased goods and services (form 01-2/GTGT) enclosed herewith.

Where the taxpayer has a project of investment and offset VAT on purchased goods and services serving the project against VAT on the current business, then VAT on the project of investment shall be declared at the same time with the head office.

4. Declaring VAT on value added using direct method:

- a) The taxpayers that pay VAT on value added using direct method shall declare VAT on value added using direct method.
- b) The monthly/quarterly declaration of VAT on value added using direct method is form 03/GTGT enclosed herewith.

5. Declaring VAT on revenue using direct method:

- a) The taxpayers that pay VAT on revenue using direct method according to the laws on VAT shall declare VAT on revenue using direct method.
- b) The monthly/quarterly declaration of VAT on revenue using direct method is form 03/GTGT and the manifest of sold goods and services form 04-1/GTGT enclosed herewith.
- c) The unscheduled declaration of VAT on revenue using direct method is form 04/GTGT enclosed herewith.

6. VAT on extraprovincial business that does not fall into the cases mentioned in Clause 1 of this Article shall be declared as follows:

- a) The taxpayer that engages in extraprovincial business shall provisionally declare VAT at 2% if the goods/services incur 10% VAT, or at 1% if the goods/services incur 5% VAT and submit the provisional declaration to the tax authority in the locality where the business is located.
- b) The declaration of VAT on extraprovincial business shall be made using form 05/GTGT enclosed herewith.

c) The declaration of VAT on extraprovincial business shall be submitted whenever revenue is earned. If many tax declarations must be submitted in one month, the taxpayer may request the tax authority to permit monthly submission of tax declarations.

d) When declaring tax at the supervisory tax authority, the taxpayer must aggregate the revenues that are earned and the paid VAT on extraprovincial business in the tax declaration. The paid tax (according to the tax receipt) on extraprovincial business shall be deducted from the VAT payable according to the VAT declaration submitted in the locality where the head office is situated.

#### 7. Changing methods of VAT calculation

When a taxpayer that applies direct method is eligible to apply credit-invoice method according to the VAT laws, or when the taxpayer applying credit-invoice method switches to the direct method, a written notification must be sent to the supervisory tax authority (the form No. 06/GTGT enclosed herewith).

If the taxpayer is eligible to apply the credit-invoice method from January 01, 2014 according to the laws on VAT, a notification shall be sent to the supervisory tax authority (the form No. 06/GTGT enclosed herewith).

The taxpayer must send the notification of tax calculation method to the supervisory tax authority by December 20 of the year preceding the year in which credit-invoice method is applied.

8. Instructions on declaring VAT, enumerating invoices for sale and purchase invoices in some specific cases:

##### a) Declaring VAT on agent business

- Any taxpayer that is a agent that sells goods/services or purchases goods and earns commissions is not required to declare VAT on such goods and services, but must declare VAT on the commission earned. Input invoices and output invoices of such goods/services shall be listed in forms 01-1/GTGT and 01-2/GTGT. Data about goods/services on these forms must not be used to make VAT declarations.

- In other forms of agent business, the taxpayer must declare VAT on the goods/services sold or purchased by the agent, and the commission earned by the agent.

b) Any taxpayer that provides transport services shall submit declarations of VAT on transport services to the supervisory tax authority.

c) Any taxpayers applying credit-invoice method that trades in gold, silver and/or gemstones shall declare VAT as follows:

- Taxpayers shall follow the instructions in Clause 3 of this Article when declaring tax on taxable goods and services using the credit-invoice method.

Taxpayers shall follow the instructions in Clause 4 of this Article when declaring tax on the sales and purchases of gold, silver, and/or gemstones.

d) The taxpayer that provide finance lease services is not required to submit the declaration of VAT on finance lease services and only submits the list of sold goods and services (form 01-1/GTGT) and the list of purchased goods and services (form No. 01-2/GTGT). Only the VAT on

leased assets that is conformable with the VAT invoices in the period shall be written. The taxpayer must declare tax on the assets hire-purchased by other units.

dd) Declaring tax incurred by entrusted exporters and importers

Any taxpayer entrusted to export, import goods is not required to VAT on the entrusted exports and imports (if the entrustment contract does not delegate tax obligation to the entrusted party), and shall declare VAT on the payment for entrustment. Output and input invoices of entrusted exports and imports shall be enumerated on the form No. 01-1/GTGT and the form No.01-2/GTGT; data about entrusted exports and imports on such forms must not be used for making VAT declarations.

e) In some cases, the list of purchased and sold goods/services enclosed with the tax declaration shall be made as follows:

- The goods and services that are sold retail to consumers such as: electricity, water, gasoline, oil, postal and telecommunications services, hotel services, food and drink services, passenger transport, gold, silver, gemstones, other goods and services shall be declared as retail revenue instead of separately by invoice.
- Lists of goods and services purchased separately shall be made by group of goods/services at the same rate of tax instead of separately by invoice.
- Affiliates of a bank in the same locality shall make and send the lists of purchased and sold goods/services to the head office. The head office shall only aggregate the lists of purchased and sold goods/services sent by the affiliates.

9. Where the business establishment authorized a third party to make invoices for sold goods and services, the authorized party is not required to declare VAT on the revenue from sold goods and services for which invoices are made. The authorizing party shall declare VAT on the revenue from sold goods and services, the invoices for which are made by the authorized party.

10. Declarations of flat VAT shall be made in accordance with instructions in Article 21 of this Circular.

11. Declaring VAT on ODA projects, humanitarian aid, and diplomatic immunity:

- a) Owners of ODA projects, representative offices of sponsors for ODA projects, foreign organizations, foreigners, Vietnamese organizations that use humanitarian aid that is eligible for VAT refund, and the entities provided with diplomatic immunity are not required to declare VAT monthly.
- b) Owners of ODA projects that are not eligible for VAT refund shall declare VAT monthly (using form 01/GTGT enclosed herewith) to the tax authority in the locality where the project is located.
- c) Foreign contractors that execute ODA projects eligible for VAT refund shall declare VAT monthly (using form 01/GTGT enclosed herewith) to the tax authority in the locality where the project is located.

Where a project owner and a foreign contractor mentioned in Point b and Point c above execute an ODA project that is related to multiple provinces, the tax declaration shall be submitted to the Departments of Taxation in the locality where the head office of the project owner and foreign contractor is situated.

12. The VAT invoices are used for the activities that are not subject to VAT, shall be enumerated on form 01-1/GTGT instead of form 01/GTGT.

### **Article 12. Declaring corporate income tax (CIT)**

1. Responsibility to submit CIT declarations:

- a) The taxpayer shall submit CIT declarations to the supervisory tax authority.
- b) Where the taxpayer has an affiliate that keep accounting records independently, the affiliate shall submit its tax declarations to the supervisory tax authority.
- c) Where the taxpayer has an affiliate that does not keep accounting records independently, such affiliate is not required to submit tax declarations. The taxpayer must include the tax incurred by the affiliate in the CIT declaration.
- d) Where the taxpayer has a manufacturing facility that does not keep accounting records independently and is located in another province than that of the taxpayer's head office, the taxpayer must include the tax incurred by the manufacturing facility in the CIT declaration.
- dd) If an associate of a corporation or general company has determined their revenue, expense, and taxable income, it shall declare and pay CIT to the supervisory tax authority.
- e) If an associate engages in another business than the common business of the corporation or general company, and can separate the revenue from such business, the associate shall submit CIT declarations to the supervisory tax authority.

If another method of tax declaration must be applied, the corporation or general company must request the Ministry of Finance to provide instructions.

2. Provisional declarations of income tax shall be made every quarter; terminal declarations shall be made every year and when a decision on division, split, amalgamation, merger, conversion, dissolution, or shutdown of the company is made, except for the following cases:

- CIT on real estate transfer shall be declared whenever it is incurred by the taxpayer that is not a real estate company, or by the real estate company that wishes to do so.
- CIT shall be declared whenever it is incurred by any foreign organization that does business in Vietnam or earns income in Vietnam (hereinafter referred to as foreign contractor) from capital transfer without following the Law on Investment or the Law on Enterprises.
- Corporate income tax on revenue from selling goods/services shall be declared quarterly by the public service agencies, political organizations, socio-political organizations, and socio-professional organizations that sell goods/services subject to corporate income tax without being able to separate income from expense (except for the case in which provisional declarations of CIT are made by taxpayers according to the ratio of taxable income to revenue).

3. Provisional quarterly declaration of CIT:

Form 01A/TNDN enclosed herewith shall be used to made provisional quarterly declarations of CIT.

Where the taxpayer fails to declare the actual expense incurred in the period, form 01B/TNDN enclosed herewith shall be used. Tax basis in the quarter is the ratio of taxable income to revenue in the preceding year.

Where the ratio of taxable income to revenue declared by the taxpayer is different from that determined by the tax authority, the latter shall apply.

In the tax year, the company may only choose one of the two methods of provisional CIT declaration using form 01A/TNDN or 01B/TNDN. Where a company that is established in the preceding year suffers from a loss, provisional corporate income tax shall be declared using form 01A/TNDN.

#### 4. Terminal declaration of CIT:

a) Terminal declarations of CIT shall be made annually and when a decision on division, split, amalgamation, merger, conversion, dissolution, or shutdown of the company is made.

b) The terminal declaration dossier consists of:

b.1) A terminal declaration of CIT (form 03/TNDN enclosed herewith).

b.2) An annual financial statement or a financial statement up to the time a decision on division, split, amalgamation, merger, conversion, dissolution, or shutdown of the company is made.

b.3) Appendix(es) enclosed with the tax declaration (on a case-by-case basis):

- Business performance (form 03-1A/TNDN, 03-1B/TNDN, 03-1C/TNDN).

- Loss transfer (form 03-2/TNDN)

- Appendixes about CIT incentives:

+ Form 03-3A/TNDN: CIT incentives for new businesses that are established from a project of investment, for businesses that are moved, and for new projects of investment.

+ Form 03-3B/TNDN: CIT incentives for businesses that invest in new production line, expansion, technological innovation, environmental improvement, or productivity growth.

+ 03-3C/TNDN: CIT incentives for businesses that employ people from ethnic minorities, or manufacturing, construction, transport businesses that employ many female workers.

- CIT paid overseas that is deductible (form 03-4/TNDN.)

- CIT on real estate transfer (form 03-5/TNDN).

- Reports on the use of science and technology fund (if any - form 03-6/TNDN).

- Information about related transactions (if any - form 03-7/TNDN).

- Calculation of corporate income tax incurred by the company that has manufacturing facilities that do not keep accounting records independently and are located in other provinces than the head office (if any - form 03-8/TNDN).

- Where a company has a project of investment overseas, additional documents required by the Ministry of Finance must be included apart from the aforementioned documents.

#### 5. Declaring CIT on real estate transfer:

a) If a company makes a real estate transfer in the same province as the head office, the tax declaration shall be submitted at the supervisory tax authority (Department of Taxation or Sub-department of taxation). Where a company has its head office in one province but makes a real

estate transfer in another, the Director of the Department of Taxation where the real estate transfer takes place shall decide the place to submit the tax declaration.

b) The companies that do not regularly make real estate transfer shall submit a provisional CIT declaration whenever a real estate transfer is made. Such companies are the companies that are not licensed to trade in real estate.

CIT declaration for each real estate transfer is the declaration of tax on real estate transfer (form 02/TNDN enclosed herewith).

At the end of the year, the tax on real estate transfer must be separated when making the terminal CIT declaration at the head office. At the head office, CIT on real estate transfer shall be handled as follows: if the tax paid when applying for the land use right certificate is lower than the tax payable in the terminal declaration, the company must pay the outstanding tax to government budget. If the tax paid is higher than the tax payable in the terminal declaration, the overpaid tax shall be deducted from outstanding CIT on other business operations, or from the CIT payable in the next period, or refunded. If the real estate transfer leads to a loss, the company must offset such loss against the profit of other business operations (if any) from January 2014, and against the profit in the next years according to the laws on corporate income tax.

c) The companies regularly make real estate transfer shall submit a provisional CIT declaration every quarter. Such companies are the companies licensed to trade in real estate.

Form 02/TNDN enclosed herewith shall be used to make the quarterly declaration of CIT on real estate transfer. If a company enters into multiple real estate transfer contracts in the same quarter, it may make a list of real estate transferees using form 02-1/TNDN enclosed herewith.

If a company licensed to trade in real estate requests for permission to declare tax whenever a real estate transfer is made, it shall declare tax as if it is not licensed to trade in real estate and is not required to provisionally declare tax every quarter.

At the end of the tax year, the company shall make a terminal declaration of corporate income tax on all the real estate transfers stated in the provisional declarations of CIT.

At the head office, CIT on real estate transfer shall be handled as follows: if the tax paid during the year is lower than the amount payable in the terminal declaration, the company must pay the outstanding tax to government budget. If the tax paid is higher than the tax payable in the terminal declaration, the overpaid tax shall be deducted from outstanding CIT on other business operations or from the CIT payable in the next period, or be refunded. If the real estate transfer leads to a loss, the company must offset such loss against the profit of other business operations (if any) from January 2014, and against the profit in the next years according to corporate income tax laws.

d) Where a company is allocated with land by the Government to execute projects for infrastructure or housing for sale or for lease and collects advances from customers, in any shape or form:

- If the company has determined the expense, it shall make a provisional declaration and pay CIT according to the difference between revenue and expense.

- If the company is not able to determine the expense, it shall pay CIT at 1% of the revenue, and such revenue is not yet included to taxable revenue in the year.

Provisional CIT on advances paid by customers shall be written in Part 2 of form 02/TNDN enclosed herewith. When the property is transferred, the company must calculate write the official CIT on real estate transfer in part I of form 02/TNDN. If a company enters into multiple real estate transfer contracts in the same quarter (including the cases in which advances is paid by customers), it may make a list of real estate transferees using form 02-1/TNDN enclosed herewith.

CIT on advances paid by customers shall be declared when declaring provisional CIT on revenue from real estate transfer of a real estate company.

6. Corporate income tax on revenue from selling goods/services shall be declared quarterly by the public service agencies, political organizations, socio-political organizations, and socio-professional organizations that sell goods/services subject to corporate income tax without being able to separate income from expense (except for the case in which provisional declarations of CIT are made by taxpayers according to the ratio of taxable income to revenue).

Public service agencies, political organizations, socio-political organizations, and socio-professional organizations shall declare CIT on revenue from selling goods/services using form 04/TNDN enclosed herewith.

The public service agencies, political organizations, socio-political organizations, and socio-professional organizations that regularly sell goods/services subject to corporate income tax may declare tax quarterly and are not required to submit terminal declarations annually.

The public service agencies, political organizations, socio-political organizations, and socio-professional organizations that do not regularly sell goods/services subject to corporate income tax shall declare tax whenever tax is incurred.

7. Any taxpayer that has a manufacturing facility that does not keep accounting records independently and is located in another province than that of the taxpayer's head office must include the tax incurred by the manufacturing facility in the CIT declaration made at the head office.

The amount of CIT paid in the province where the aforementioned manufacturing facility is situated is calculated by multiplying the amount of CIT payable in the period by the ratio of expense incurred by the manufacturing facility to the total expense incurred by the whole company.

The head office shall declare and pay CIT on the income earned by the head office and the manufacturing facility using form 01-1/TNDN (quarterly provisional declaration) and form 03-8/TNDN (annual terminal declaration) to the local tax authority, and send a copy to the supervisory tax authority of the manufacturing facility.

a) Circulation of documents between State Treasuries and tax authorities

According to the CIT paid in the localities where the head office and manufacturing facilities are situated in Appendix 01-1/TNDN (quarterly provisional declaration) and 03-8/TNDN (annual terminal declaration), the company shall send a CIT payment notice to the tax authority in every locality where the head office and manufacturing facilities are situated. The payment notice must specify that the payment is transferred to a government's account at a State Treasury at the same level with the tax authority of the locality where the head office is registered. The State Treasury



shall transfer money and the receipt to relevant State Treasury for recording the tax incurred by manufacturing facilities.

b) Terminal declaration:

The company shall submit the terminal declaration in the locality where its head office is situated. The outstanding CIT is the total CIT payable in the terminal declaration minus the provisional tax paid in the localities where the head office and manufacturing facilities are situated. The CIT that is refundable or payable must also be distributed according to the proportion paid in the localities where the head office and manufacturing facilities are situated.

8. Declaring CIT on capital transfer

a) The incomes from capital transfer may be considered another other incomes. Any company that earns incomes from capital transfer must determine and write the CIT on capital transfer in the quarterly provisional declarations and annual terminal declaration.

Where the company sells part of or the whole single-member limited liability company in the form of capital transfer, CIT shall be declared and paid quarterly at the tax authority where the transfer is made (form 02/TNDN - Declaration of CIT on real estate transfer); the annual declaration shall be submitted where the head office is situated.

b) Any foreign organization that does business in Vietnam or earns incomes in Vietnam (hereinafter referred to as foreign contractor) without following the Law on Investment and the Law on Enterprises, and make capital transfer, then CIT shall be declared whenever it is incurred.

The capital transferee shall determine, declare, deduct, and pay the CIT payable on behalf of the foreign organization. If the transferee is also a foreign organization that does not follow the Law on Investment and the Law on Enterprises, the company established under Vietnam's law in which capital is invested shall declare and pay the CIT payable on behalf of the foreign organizations.

The tax declaration must be submitted within 10 days from the day on which the competent authority approves the capital transfer or the transfer date agreed by all parties in the transfer contract (if the transfer is not subject to approval).

A declaration dossier consists of:

- A declaration of CIT on capital transfer (form 05/TNDN enclosed herewith);
- A photocopy of the transfer contract. If the transfer contract is written in a foreign language, it must be translated into organization, which contains at least the information about: the transferor, the transferee, time of transfer, transfer contents; rights and obligations of every party, contract value, deadline, method of payment and currency.
- A photocopy of the decision on approval for capital transfer made by a competent authority (if any);
- A certificate of capital contribution;
- Original documents of expenditures.

If additional documents must be provided, the tax authority must notify the transferee within the day when the dossier is received (if the dossier is submitted directly), or within 03 days from the day on which the dossier is received (if the dossier is sent by post or electronically).

Tax declarations shall be submitted to the tax authority where the foreign transferor applied for tax registration.

### **Article 13. Declaring special excise tax**

1. Responsibility to declare special excise tax:

a) Declarations of special excise tax (SET) shall be submitted to the supervisory tax authority by the taxpayers that produce, process, and/or sell goods/services subject to special excise tax, the exporters that buy goods at SET-exclusive prices for export and eventually sell them on the domestic market.

b) If the taxpayer manufactures goods subject to special excise tax and sells goods via its branches, stores, agents, etc., the taxpayer must declare special excise tax on all these goods. The aforementioned branches, stores, agents, etc. are not required to declare SET, but a copy of the sales statement, which is sent to the taxpayer, must be sent to the supervisory tax authority.

c) If the taxpayer has an affiliated facility that manufactures goods subject to SET in another province than the head office, SET shall be declared at the supervisory tax authority of the manufacturing facility.

2. SET declarations shall be submitted monthly; SET on the exports that are eventually sold domestically shall be declared whenever it is incurred.

3. A declaration dossier consists of:

- A SET declaration (form 01/TTDB enclosed herewith);
- A list of invoices for goods and services subject to SET (form 01-1/TTDB enclosed herewith);
- A list of deductible SET (if any - form 01-2/TTDB enclosed herewith).

4. Declarations of flat SET shall be made in accordance with instructions in Article 21 of this Circular.

### **Article 14. Declaring severance tax**

1. Responsibility to declare severance tax:

a) The organizations and individuals that extract natural resources (hereinafter referred to as miners) shall submit declarations of severance tax to their supervisory tax authorities according to Point b Clause 6 Article 10, Clause 3 Article 23, and Clause 3 Article 24 of this Circular.

b) The organizations and individuals that procure severance tax and pay severance tax on behalf of minor miners shall submit severance tax declarations to supervisory tax authorities.

c) The organizations assigned to sell confiscated natural resources shall submit a severance tax declaration to the local Department of Taxation or Sub-department of taxation whenever tax is incurred (decided by the Director of the local Department of Taxation).

2. Severance tax (except for tax on crude oil) shall be declared monthly and annually, or when a decision on division, split, amalgamation, merger, conversion, dissolution, or shutdown of the company is made.

3. A declaration dossier consists of (except for crude oil and natural gas)

a) A dossier of monthly declaration consists of:

A severance tax declaration (form 01/TAIN enclosed herewith).

b) A terminal declaration dossier consists of:

- A terminal declaration of severance tax (form 02/TAIN enclosed herewith).

- Documents related to exemption and/or reduction of severance tax (if any).

4. Declarations of flat severance tax shall be made in accordance with instructions in Article 21 of this Circular.

### **Article 15. Declaring of environmental protection tax**

1. Places to submit tax declarations

a) Declarations of environmental protection tax on goods manufactured in Vietnam (except for fossil coal for domestic use of Vinacomin, oil and gas of wholesalers) or packages of products that are not used for packaging shall be submitted to supervisory tax authorities.

If the taxpayer has a facility that manufactures or sells goods subject to environmental protection tax in another province than the head office, environmental protection tax declarations shall be submitted to the supervisory tax authority of the facility.

b) For imported goods (except for gas and oil imported by wholesalers), the taxpayer shall submit tax declarations to the customs authority where customs procedure is followed.

2. The declaration dossier consists of form 01/TBVMT enclosed herewith and the documents related to tax determination.

Sellers and manufacturers are responsible for the declared environmental protection tax. False statement, fraud and tax evasion shall incur penalties according to tax laws.

3. Declaring environmental protection tax

a) Environmental protection tax on goods (or packages of products that are not used for packaging) that are manufactured, traded, internally used, donated, given, or advertised shall be declared and paid monthly.

If environmental protection tax is not incurred in a month, the taxpayer is still required to make and submit a tax declaration to the tax authority.

b) The taxpayer shall declare and pay environmental protection tax on imported goods and entrusted imported goods whenever tax is incurred (except for gas and oil imported by wholesalers) in accordance with tax laws applicable to exports and imports.

4. Declaring and paying environmental protection tax in some cases:

a) Manufacturers of plastic bags and refrigerators that contain HCFC shall declare and pay environmental protection tax in accordance with quality standards and relevant documents.

b) Gas, oil and grease (hereinafter referred to as gas and oil)

b.1) Gas and oil wholesalers shall register, declare and pay environmental protection tax at the tax authorities where VAT is paid. In particular:

- The wholesalers that directly import, manufacture, or process gas and oil shall declare and pay tax on the amount of gas and oil they use internally, traded for other goods, or sold to external entities (including the companies of which less than 50% of shares are held by the wholesaler), except for the amount of oil and gas sold and imported under entrustment by another wholesaler.

- The affiliates that keep accounting records independently, the branches of the wholesaler, the joint-stock companies of which more than 50% of shares are held by the wholesaler, branches of associates, braches of the mentioned joint-stock companies (hereinafter referred to as associates) shall declare and pay tax on the amount of gas and oil they sold to external entities in the localities where their head offices are situated.

- Other organizations that directly import, manufacture, process gas and oil (gas and oil trading is mentioned in the Certificate of Business registration) shall declare and pay tax at the tax authorities of the localities where VAT on gas and oil is paid.

- When gas and oil are used for making biofuels without paying environmental protection tax, the seller of biofuels shall declare and pay environmental protection tax when biofuels are sold.

b.2) Where gas and oil are imported for other purposes besides trading (gas and oil trading is not mentioned in the Certificate of Business registration), where imported grease is packaged separately from aviation supplies, parts, or machinery, the taxpayer shall declare and pay environmental protection tax to the customs.

c) Where coal is produced and sold domestically:

c.1) Environmental protection tax on coal that is under the management of Vinacomin, produced, treated, and sold by its associates shall be declared and paid as follows:

c.1.1) Every month the distributors of Vinacomin must distribute the environmental protection tax payable to the localities where coal is produced in proportion to the amount of coal bought from local mining companies, and make a Table of environmental protection tax using form 01-1/TBVMT enclosed herewith.

The environmental protection tax shall be distributed according to the percentage (%) of domestic sale of coal to the total sale, the amount of coal produced locally, and the amount of coal sold to distributors of Vinacomin.

$$\text{Percentage (\%) of domestic sale of coal} = \frac{\text{Domestic sale}}{\text{Total sale}}$$

$$\text{Environmental protection tax payable in the locality where coal is produced} = \text{Percentage of domestic sale} \times \text{Amount of coal bought locally in the period} \times \text{Tax on 01 metric ton of coal sold}$$

c.1.2) Coal distributors shall declare and pay environmental protection tax on the coal produced and sold domestically (using form 01/TBVMT and appendix No. 01-1/TBVMT enclosed herewith) to their supervisory tax authorities, then send a copy of Appendix No. 01-1/TBVMT to the supervisory tax authority of the mining company.

c.1.3) According to the environmental protection tax paid locally in the Appendix No. 01-1/TBVMT, the distributor shall make receipts for payment of environmental protection tax in the locality where the head office is situated (if tax is incurred) and in the localities where coal is produced.

The tax receipts must specify the accounts at the State Treasuries at the same level as the tax authority where the distributor applies for tax registration and the local tax authorities where the coal mining companies are located.

The State Treasury where the distributor's head office is situated shall transfer money and receipt to the relevant State Treasuries.

c.2) The producers and mining companies (including internal use) shall declare and pay environmental protection tax at the tax authorities where coal is produced.

c.3) If the taxpayer is an organization, household or individual that procures coal from minor coal miners, environmental protection tax shall be declared at the supervisory tax authority of the taxpayer.

d) Imported coal: follow the regulations of Law on Tax administration on exported and imported goods. When importing coal that contains anthracite, the taxpayer must separate the amount of anthracite coal imported to pay environmental protection tax on anthracite coal. If the actual amount of imported anthracite coal is different from the declaration, the taxpayer must make an adjustment.

#### **Article 16. Declaring personal income tax (PIT)**

Payers of taxable income and earners of taxable incomes must declare and pay personal income tax in accordance with Article 17 of the Decree No. 83/2013/ND-CP, in particular:

1. Tax declaration and payment by payers of taxable incomes:

a) Rules for declaring tax:

a.1) The income payers that deduct personal income tax shall declare tax monthly or quarterly. The income payer is not required to declare tax if no personal income tax is deducted in the month or quarter.

a.2) The eligibility to declare tax quarterly shall be determined in the month in which tax is deducted, and kept unchanged throughout the year. In particular:

- If at least 50 million VND in personal income tax is incurred in the month, the income payer shall declare tax monthly, unless the taxpayer is eligible to declare tax quarterly.

- The income payers that do not fall into the case above shall declare tax quarterly.

Example 30: in 2014, company A is eligible to declare VAT quarterly, then it shall declare PIT quarterly whether the amount of PIT deducted in 2014 is above 50 million VND or not.

Example 31: In 2014, company A is required to declare VAT monthly. No PIT is deducted in January and February. Deducted PIT in March in the declaration No. 02/KK-TNCN is below 50 million VND, and  $\geq$  50 million VND in the declaration No. 03/KK-TNCN. From April to December, deducted PIT in the declaration No. 02/KK-TNCN and 03/KK-TNCN is below 50 million VND. In this case company A is not required to submit the tax declarations of January and February. From March, company A must declare tax monthly.

Example 32: In 2014, company A is required to declare VAT monthly. No PIT is deducted in January and February. PIT deducted in March in the declaration No. 02/KK-TNCN is below 50 million VND, and also below 50 million VND in the declaration No. 03/KK-TNCN. From April to December, deducted PIT in both the declarations No. 02/KK-TNCN and 03/KK-TNCN is  $\geq$  50 million VND. In this case company A is not required to submit the tax declarations of January and February. From March, company A is eligible to declare tax quarterly and shall start declaring tax quarterly from Q1 2014.

a.3) Payers of taxable incomes shall declare and pay personal income tax on behalf of the authorizing individuals, whether tax is deducted or not.

a.4) When the income payer makes a report on PIT deducted in the year, the following officials and civil servants are not required to be included in the list of taxable incomes (form 05-1/BK-TNCN):

The officials and civil servants listed in the payroll enclosed with the Decision No. 128/QD/TW dated December 14, 2004 of the Secretariat of Communist Party, the payroll enclosed with the Resolution No. 730/2004/NQ-UBTVQH11 dated September 30, 2004 of Standing Committee of the National Assembly, level 3 Table 1 of the payroll for senior experts, level 1 and level 2 of the military payroll enclosed with the Government's Decree No. 204/2004/ND-CT dated December 14, 2004.

b) Declaration dossier

b.1) Monthly and quarterly declaration:

- The income payer shall deduct tax from salaries and wages in accordance with form 02/KK-TNCN enclosed herewith.

- Income payers that deduct tax on incomes from capital investment, securities transfer, copyright, franchise, prizes earned by residents and non-residents; organizations and individuals that receive from non-residents shall declare tax using form 03/KK-TNCN enclosed herewith.

- Insurers that deduct PIT from incomes of insurance agents, incomes from life insurance accrued premium; pension fund management companies shall deduct PIT on accrued pension; multi-level marketing companies that deduct PIT from incomes of the individuals in the network shall declare tax using form 01/KK-BHDC enclosed herewith.

- Lottery companies that deduct PIT from incomes of lottery agents shall declare tax using form 01/KK-XS enclosed herewith.

b) Terminal declaration dossier:

b.2.1) Wage payers shall declare tax using the forms below, whether tax is deducted or not:

- Terminal declaration of PIT - form 05/KK-TNCN enclosed herewith.

- Form 05-1/BK-TNCN enclosed herewith.

- Form 05-2/BK-TNCN enclosed herewith.

- Form 05-3/BK-TNCN enclosed herewith.

b.2.2) Payers Income payers that deduct tax on incomes from capital investment, securities transfer, copyright, franchise, prizes earned by residents and non-residents; recipients of capital from non-residents shall declare tax using the forms below:

- Terminal declaration of PIT - form 06/KK-TNCN enclosed herewith.
- Form 06-1/BK-TNCN enclosed herewith (applicable to payers of incomes from securities transfer).

b.2.3) Insurers that deduct PIT from incomes of insurance agents, incomes from life insurance accrued premium; pension fund management companies that deduct PIT on accrued pension; multi-level marketing companies that deduct PIT from incomes of the individuals that join the network in accordance shall declare tax using the forms below, whether tax is deducted or not:

- Terminal declaration of PIT - form 02/KK-BHDC enclosed herewith.
- Form 02-1/BK-BH enclosed herewith.
- Form 02-2/BK-DC enclosed herewith.

b.2.4) Lottery companies that deduct PIT from incomes of lottery agents shall declare tax using the forms below, whether tax is deducted or not:

- Terminal declaration of PIT - form 02/KK-XS enclosed herewith.
- Form 02-1/BK-XS enclosed herewith.

c) Places to submit tax declarations

- Income payers that are businesses shall submit tax declarations at supervisory tax authorities.
- Income payers that are central agencies, agencies affiliated to Ministries or the People's Committees of provinces, and provincial agencies shall submit tax declarations at local Departments of Taxation.
- Income payers that are affiliated to the People's Committees of districts or district authorities shall submit tax declarations at local Sub-departments of Taxation.
- Income payers that are affiliated to the People's Committees of districts or district authorities shall submit tax declarations at local Sub-departments of Taxation.

d) Deadlines for submitting tax declarations

- The deadline for submitting a monthly tax declaration is the 20<sup>th</sup> of the month succeeding the month in which tax is incurred.
- The quarterly tax declaration must be submitted within the first 30 days of the quarter succeeding the quarter in which tax is incurred.
- The terminal tax declaration must be submitted within 90 day from the end of the calendar year or tax year.

dd) Deadline for paying tax

The deadline for paying tax is the deadline for submitting the monthly, quarterly, or terminal tax declaration.

2. Tax declaration by earners of incomes from wages or business:

a) Rules for declaring tax:

a.1) The individuals earning incomes from wages or business shall declare tax directly at tax authorities as follows:

- Earners of incomes from wages paid by international organizations, embassies, consulates in Vietnam that do not deduct tax shall declare tax quarterly;
- Residents that earn income from wages paid from abroad shall declare tax quarterly.

a.2) The individuals earning income from business shall declare tax directly at tax authorities as follows:

- The individuals and groups of individuals that pay tax under declarations are those that sufficiently keep accounting records and invoices, and are not able to separate expense from revenue shall declare tax quarterly.
- The individuals and groups of individuals that pay flat tax are those that fail to adhere to the laws on accounting and invoicing, and are not able to separate expense from revenue shall declare tax in accordance with Article 21 of this Circular.
- Traveling traders shall declare tax whenever tax is incurred.
- The individuals that do not do business but randomly sell goods/services and issue invoices to customers shall declare tax whenever tax is incurred.
- The individuals and groups of individuals that earn incomes from asset lease shall declare tax in accordance with Article 22 of this Circular.

a.3) The residents that earn incomes from wages or business shall submit a terminal declaration if additional tax is incurred or tax refund is claimed, or offset tax against tax in the next period, except for the following cases:

- The tax payable is smaller than paid tax without claim for refund or offsetting against tax in the next period.
- The businessperson or group of businesspeople that have only one source of income from business have paid tax at a flat rate.
- The individual or household that only earns income from leasing houses or land has paid tax locally.
- The wage earners that sign labor contracts for 03 months or longer, earn no more than 10 million VND in additional income from other places, and have had tax deducted from their incomes by the income payer are not required to declare tax on the additional income.
- The wage earners that sign labor contracts for 03 months or longer, earn no more than 20 million VND in additional income from other places, and have had tax deducted from their incomes by the income payer are not required to declare tax on the additional income.

a.4) A wage earner shall authorize the wage payer to pay tax on their behalf in the following case:

- The person only earns income from wage and signs a labor contract for at least 03 months with the wage payer, and is still working when authorizing the making of the terminal declaration, even when he has not worked for the full 12 months in the year.
- The person signs a labor contract for 03 months or longer, earns additional income from other places, income from leasing houses or land mentioned in Point a.3 of this Clause.



The wage payer only pays tax on the amount paid by the wage payer on behalf of the wage earner.

a.5) Some cases of terminal declarations:

- When a resident, who earns income from wages, is present in Vietnam for fewer than 183 days in the first calendar year, and for more than 183 days in 12 consecutive months from the first day he arrives in Vietnam.

+ In the first tax year, the terminal declaration shall be submitted within 90 days from the end of the 12-month period of presence in Vietnam.

+ In the second tax year, the terminal declaration shall be submitted within 90 days from the end of the calendar year.

- The resident that is a foreigner who finishes a labor contract in Vietnam shall make a terminal declaration before departure in accordance with instructions in Point b.2 of this Clause.

- The individual that earns income from an insurance agent, lottery agent, or multi-level marketing agent shall submit the terminal declaration to the tax authority if required.

- The resident that earns income and is eligible for tax reduction due to a natural disaster, conflagration, accident, or fatal disease shall follow the instructions in Clause 1 Article 46 of this Circular.

a.6) The businessperson or group of businesspeople that is not a resident and have a permanent business establishment in Vietnam shall declare as if they are a resident.

b) Declaration dossier

b.1) Declaring tax every quarter and upon incurrence of tax:

b.1.1) The resident that earn income from wages shall directly submit tax declarations (form 07/KK-TNCN enclosed herewith) to the tax authority.

b.1.2) The individuals and groups of individuals that earn income from business shall declare tax quarterly using one of the forms below:

- Individuals shall use form 08/KK-TNCN enclosed herewith.

- Groups of individuals shall use form 08A/KK-TNCN enclosed herewith.

b.1.3) The individuals and groups of individuals that earn income from business and pay flat tax shall follow instructions in Article 21 of this Circular.

b.1.4) The traveling traders that randomly sell goods/services and issue invoices to customers shall declare tax whenever tax is incurred (form 01A/KK-HD enclosed herewith).

b.1.5) The individuals and groups of individuals that earn incomes from asset lease shall declare tax in accordance with Article 22 of this Circular.

b.2) Terminal declaration dossier

b.2.1) The individuals earning income from wages, from insurance agents, lottery agents, or multi-level marketing that directly submit the terminal declarations shall use the forms below:

- Terminal declaration form 09/KK-TNCN enclosed herewith.

- Form 09-1/PL-TNCN enclosed herewith.
- Form 09-3/PL-TNCN enclosed herewith if deductions for dependants is claimed.
- Form 09-4/PL-TNCN enclosed herewith.

- Photocopies of documents proving the amount of tax deducted, paid in the year, or paid overseas (if any). The individual is company for the accuracy of such documents.

If the tax authority foreign does not verify paid tax according to their jurisdiction, the taxpayer may submit a photocopy of the Certificate of tax deduction (specifying the tax declaration number) issued by the income payer, or a photocopy of a banking notice of tax payment overseas, which is certified by the taxpayer.

- Photocopies of invoices proving the contributions to charitable funds, humanitarian funds, or scholarship funds (if any).

- If a individual receives income from a international organization, embassy, consulate, and receives income from abroad, it is required to have documents proving or certifying the amount of money paid by the foreign income payer, enclosed with a Certification of annual income (form 20/TXN-TNCN enclosed herewith).

b.2.2) The individuals only earn income from business that directly submit the terminal declaration shall use the forms below:

- Terminal declaration form 09/KK-TNCN enclosed herewith.
- Form 09-2/PL-TNCN enclosed herewith.
- Form 09-3/PL-TNCN enclosed herewith if deductions for dependants are claimed.

- Photocopies of documents proving the amount of tax deducted, paid in the year, or paid overseas (if any). The individual is company for the accuracy of such documents.

If the tax authority foreign does not verify paid tax according to their jurisdiction, the taxpayer may submit a photocopy of the Certificate of tax deduction (specifying the tax declaration number) issued by the income payer, or a photocopy of a banking notice of tax payment overseas, which is certified by the taxpayer.

- Photocopies of invoices proving the contributions to charitable funds, humanitarian funds, or scholarship funds (if any).

- - Form 08B/KK-TNCN if the individual join a business group.

b.2.3) The individuals earning income from wages, from insurance agents, lottery agents, or multi-level marketing, and from business that directly submit the terminal declaration shall use the forms below:

- Terminal declaration form 09/KK-TNCN enclosed herewith;
- Form 09-1/PL-TNCN enclosed herewith.
- Form 09-2/PL-TNCN enclosed herewith.
- Form 09-3/PL-TNCN enclosed herewith if deductions for dependants are claimed.
- Form 09-4/PL-TNCN enclosed herewith.

- Photocopies of documents proving the amount of tax deducted, paid in the year, or paid overseas (if any). The individual is company for the accuracy of such documents.

If the tax authority foreign does not verify paid tax according to their jurisdiction, the taxpayer may submit a photocopy of the Certificate of tax deduction (specifying the tax declaration number) issued by the income payer, or a photocopy of a banking notice of tax payment overseas, which is certified by the taxpayer.

- Photocopies of invoices proving the contributions to charitable funds, humanitarian funds, or scholarship funds (if any).

- Form 08B/KK-TNCN if the individual join a business group.

- If a individual receives income from a international organization, embassy, consulate, and receives income from abroad, it is required to have documents proving or certifying the amount of money paid by the foreign income payer, enclosed with a Certification of annual income (form 20/TXN-TNCN enclosed herewith).

b.2.4) Where the income earner authorizes the wage payer to declare tax on their behalf:

Form 04-2/TNCN enclosed herewith shall be used when the income earner authorizes the income payer to declare tax on their behalf, which is enclosed with photocopies of invoices and documents proving the contribution to charitable, humanitarian, or scholarship funds (if any).

b.2.5) Group of businesspeople:

A individual that represent the group shall use the form no. 08B/KK-TNCN enclosed herewith to determine the taxable income earned by the whole group and the every member.

Each individual of the group shall receive 01 terminal declaration form and follow the instructions in Point b.2.2, and b.2.3 of this Clause.

c) Places to submit tax declarations

c.1) Places to submit quarterly and unscheduled declarations:

- The individuals that earn income from wages shall submit tax declarations to local Departments of Taxation where the they work or where the work takes place (if they are not working in Vietnam).

- Businesspeople and groups of businesspeople (including traveling traders) shall submit tax declarations at local Sub-departments of taxation.

- The individuals that do not do business but randomly sell goods/services and issue invoices to customers shall submit tax declarations to local Sub-departments of taxation.

c.2) Places to submit terminal declarations

c.2.1) Wage earners:

- The individuals that earn income from wages and declare tax themselves shall submit the terminal declaration at the Departments of Taxation where tax declarations are submitted in the year.

- The individuals earning income from two wages payers and shall submit the terminal declaration as follows:

+ The terminal declaration shall be submitted to the supervisory tax authority of the income payer with whom deductions for the individual (the taxpayer) are registered. If the individual changes the workplace in the year and claims personal deductions, the terminal declaration shall be submitted to the supervisory tax authority of the latest income payer. If the individual changes the workplace in the year without claiming personal deductions, the terminal declaration shall be submitted to the Sub-department of taxation where the individual resides (whether temporarily or permanently).

If the individual has not claimed deductions, the terminal declaration shall be submitted to the Sub-department of taxation where the individual resides (whether temporarily or permanently).

- If the individual does not sign a labor contract, signs a labor contract for less than 03 months, or signs a service contracts with one or multiple entities, the terminal declaration shall be submitted to the Sub-department of taxation where the individual resides (whether temporarily or permanently).

- If the individual earns wages by multiple payers but does not work for any of them when declaring tax, the terminal declaration shall be submitted to the Sub-department of taxation where the individual resides (whether temporarily or permanently).

c.2.2) Individuals and groups of individuals that only earn income from business

- If the individual or group does business at the same location, tax shall be submitted to the local Sub-department of taxation. If the business location is changed in the year, the terminal declaration shall be submitted to the supervisory tax authority of the latest location.

- If the individual does business at multiple locations, the terminal declaration shall be submitted to the Sub-department of taxation that issued the first tax code to the individual.

- Any individual that runs a registered insurance agent, lottery agent, or multi-level marketing company shall submit the terminal declaration the local Sub-department of taxation where the business is located.

- Any individual that runs an unregistered insurance agent, lottery agent, or multi-level marketing company shall submit the terminal declaration to the local Sub-department of taxation where the individual resides.

c.2.3) The individuals that earn income from both business and wages shall submit the terminal declaration to the Sub-departments of taxation where the business is located. The place to submit the terminal declaration of tax on income from business shall be determined in accordance with Point c.2.2 Clause 2 of this Article.

d) Deadlines for submitting tax declarations

- The unscheduled tax declaration must be submitted within 10 days from the day on which tax is incurred.

- The quarterly tax declaration must be submitted within the first 30 days of the quarter succeeding the quarter in which tax is incurred.

- The terminal tax declaration shall be submitted within 90 days from the end of the calendar year or tax year.

dd) Deadline for paying tax

The deadline for paying tax is the deadline for submitting the unscheduled, quarterly, or terminal tax declaration.

### 3. Declaring tax on income from real estate transfer:

#### a) Rules for declaring tax:

a.1) Any individual that earns income from real estate transfer shall declare tax whenever tax is incurred, including the cases in which tax is exempted.

#### a.2) Declaring tax in some cases:

- Where an individual put up their rights to use land or house ownership as collateral for a loan or payment at a credit institution or branch of a foreign bank, and fails to repay the debt when it is due, then the credit institution or branch of a foreign bank shall liquidate such real estate and pay PIT on the individual's behalf before settling the debts owed by the individual.

- If the individual put up their rights to use land or house ownership as collateral for a loan or payment with another organization or individual, then transfer the whole or part of such real estate to repay debt, the individual that holds the rights to use land or house ownership shall pay personal income tax, or the organization/individual that follows the transfer procedure shall pay PIT on the individual's behalf before settling the debt.

- If real estate is transferred by an individual to another organization or individual under court decision, the transferor shall pay PIT, or the auction organizer shall pay PIT on the transferor's behalf. PIT shall not be paid when the individual's real estate that is confiscated and sold at auction by competent authorities.

- When the individuals exchange houses and land with each other (except for exchange or farming land of the entities eligible for PIT exemption according to Clause 6 Article 4 of the Law on Personal income tax), each of them must pay PIT.

- When an organization/individual declares tax on behalf of an individual that transfer real estate, the declarant shall write "PP" before "Tax payer or representative of tax payer" on the tax declaration, then add a signature, full name, and seal (if the declarant is an organization). The individual that earns income from real estate transfer must be expressed as the taxpayer in the tax receipts.

a.3) The real estate administration agency shall only carries out the procedure for transferring real estate ownership or rights to use after tax receipts are presented or the tax authority has certified the eligibility for tax exemption or tax delay of the income from real estate transfer.

#### b) Declaration dossier and application for tax exemption

##### b.1) A declaration dossier consists of:

- PIT declaration - form 11/KK-TNCN enclosed herewith.

- A photocopy, which bears the individual's signature, of the certificate of land use rights, ownership of house or other constructions on land. When transferring a contract to buy a future house or construction, a photocopy of the contract signed with the project owner shall be submitted.

- Real estate transfer contract When transferring a contract to buy a future house or construction, a notarized transfer contract/sale contract shall be submitted. When transferring the second

contract to buy a future house or construction, the previous contract must be presented. When the rights to the real estate are delegated, a delegation contract shall be submitted.

- If the individual states a 25% tax on income from real estate transfer, the documents about determination of cost and relevant expenses shall be submitted.

- When transferring real estate exempt from PIT, the documents proving eligibility for PIT exemption mentioned in Point b.2 of this Clause must be presented.

- When transferring real estate as capital contribution, which is eligible for tax delay, the documents proving the capital contribution must be presented.

- The tax authority shall send a notice of tax payable (form 11-1/TB-TNCN enclosed herewith) to the individual.

b.2) Application for exemption of tax on real estate transfer:

b.2.1) For real estate transfer (including future constructions) between a husband and wife, a parent and a child, an adoptive parent and an adopted child, a parent-in-law and a child-in-law, a grandparent and a grandchild, or between brothers and/or sisters:

- A copy of the family register, a marriage certificate, or a court decision on divorce or remarriage must be submitted if the transfer is between a husband and wife (when the house is divided when divorcing, or house ownership is merged when remarrying).

- A copy of the family register (if they are in the same family register) or a copy of the birth certificate must be submitted if the transfer is between a parent and a child.

A copy of the certification of adoption issued by a competent authority must be submitted if the child is illegitimate.

- A copy of the family register (if they are in the same family register) or a copy of the certification of adoption issued by a competent authority must be submitted if the transfer is between an adoptive parent and adopted child.

- A photocopy of the birth certificate of the grandchild's and the and the birth certificate of the grandchild's father or mother, or a copy of the family register showing the relation between the grandparent and the grandchild.

- A copy of the family register or copies of birth certificates of the transferor and transferee showing their sibling relationship, whether they are full or half brothers/sisters, or other papers showing their consanguinity if the transfer is between brothers and/or sisters.

- A copy of the family register showing the relationship between the parent-in-law and the child-in-law, or a copy of the marriage certificate which proves the relationship between the parent-in-law and the child-in-law if the transfer is between a parent-in-law and a child-in-law.

If the transferor does not have a birth certificate or family register when transferring real estate that is eligible for tax exemption, a certification issued by the People's Committee of the commune of the relationship between the transferor and the transferee must be submitted as the basis for determination of tax-free income.

b.2.2) If an individual is allocated with land and is not required to pay land levy, or is exempt from land levy, a copy of the decision on land location made by the competent authority,

specifying the exemption or reduction in land levy, must be submitted as an application for tax exemption.

b.2.3) When farming land allocated by the Government is transferred, the application for tax exemption is the written agreement on land transfer between the parties, which is certified by a competent authority.

b.2.4) The copies of papers mentioned in b.2.1, b.2.2, and b.2.3 of this Clause must be notarized or authenticated by People's Committees of communes. Otherwise, the original of such paper must be presented at the tax authority for comparison.

b.2.5) The transferor that has only one house or piece of land in Vietnam that is exempt from PIT shall follow instructions in Point b.1 of this Clause. The tax-free income shall be written on form 11/KK-TNCN. The individual is responsible for the statement that he has only one house or piece of land in Vietnam.

#### c) Places to submit tax declarations

The tax declaration and real estate transfer documents shall be submitted at the same authority. The documents may be submitted to the local land registry where transferred real estate is located if the single-window system is not adopted in the locality.

If the individual transfers a future construction, tax shall be declared and paid at the local Sub-department of taxation where such construction is located,

#### d) Deadline for submitting tax declarations

The individual that earns income from real estate transfer shall submit the tax declaration together with real estate transfer documents.

If the individual transfers a future construction, the tax declaration must be submitted before the procedure for transferring such construction is carried out.

#### dd) Deadline for paying tax

The deadline for paying tax is written on the tax notice of the tax authority.

### 4. Declaring tax on income from capital transfer (except for securities transfer).

#### a) Rules for declaring tax:

a.1) The residents that transfer capital shall declare tax whenever a transfer is made, whether income is earned or not.

a.2) The non-residents that earn income from capital transfer in Vietnam are not required to directly declare tax at tax authorities. Instead, the transferee shall deduct and declare tax in accordance with Clause 1 of this Article. If the transferee is an individual, tax shall be declared upon incurrance. Terminal declaration of deducted tax is not required.

a.3) When transferring capital, if a company changes the list of contributors without having documents proving the fulfillment of tax liability of the transferring individual, the company shall pay tax on the individual's behalf.

The company that pays tax on an individual's behalf shall also declare tax on that individual's behalf. The declarant shall write "PP" before "Tax payer or representative of tax payer" on the tax declaration, and then add his signature, full name, and the company's seal. The name of the

individual being the transferor (if the capital transferred is a resident's) or the transferee (if the capital transferred is a non-resident's) must be expressed as the taxpayer on the tax receipts.

b) Declaration dossier:

The resident that earns income from capital transfer shall submit the following documents:

- A PIT declaration for individuals earning income from capital transfer (form 12/KK-TNCN enclosed herewith).
- A photocopy of the capital transfer contract.
- Documents proving the value of capital contribution according to accounting records or the contract to buy capital contribution (if capital contribution is bought).
- A photocopy, which bears the individual's signature, of the documents proving the expenditures on determination of income from capital transfer.

The tax authority shall send a Tax notice (form 12-1/TB-TNCN enclosed herewith) to the individual (even when no tax is incurred).

c) Places to submit tax declaration

Tax declarations shall be submitted to the supervisory tax authority of the company holding the transferred capital.

d) Deadline for submitting tax declarations

The tax declaration shall be submitted within 10 days from the day on which the capital transfer contract comes into force.

If the company pays tax on the individual's behalf, the tax declaration shall be submitted before the list of contributors is changed.

dd) Deadline for paying tax

The deadline for paying tax is written on the tax notice of the tax authority.

5. Declaring tax on income from securities transfer

a) Rules for declaring tax

a.1) The individual that transfers securities of a public company at a Stock Exchange is not required to directly declare tax at the tax authority. The securities company, the commercial bank where the individual opens his depository account, the asset management company entrusted by the individual to manage the investment portfolio shall declare tax in accordance with Clause 1 of this Article.

a.2) When an individual transfers securities without using the transaction system of a Stock Exchange:

- The individual that transfers securities of a public company and has registered at a Vietnam Securities Depository is not required to submit the tax declaration to the tax authority. The securities company, commercial bank where the individual opens his depository account shall deduct and declare tax in accordance with Clause 1 of this Article.

- The individual that transfers securities of a joint-stock company, which is not yet a public company and is authorized by a securities issuer to manage the list of shareholders, is not



required to submit the tax declaration to the tax authority. The securities company authorized to manage the list of shareholders shall deduct and declare tax in accordance with Clause 1 of this Article.

a.3) The individuals transferring securities that do not fall into the cases in Point a.1 and Point a.2 of this Clause shall submit a tax declaration whenever tax is incurred.

a.4) When transferring capital, if a company changes the list of contributors without having documents proving the fulfillment of tax liability of the transferring individual, the company shall pay tax on the individual's behalf.

The company that pays tax on the individual's behalf shall also complete the tax declaration on the individual's behalf. The declarant shall write "PP" before "Tax payer or representative of tax payer" on the tax declaration, and then add his signature, full name, and the company's seal. The name of the individual that transfers securities must be expressed as the taxpayer on the tax receipts.

a.5) The individual may submit the terminal declaration directly to the tax authority if required.

#### b) Tax declaration

##### b.1) Unscheduled declaration:

The individual that transfers securities and directly declares tax at the tax authority according to Point a.3 of this Clause shall submit:

- Form 12/KK-TNCN enclosed herewith.
- A photocopy of the securities transfer contract.

The tax authority shall send a notice of tax payable (form 12-1/TB-TNCN enclosed herewith) to the individual.

##### b.2) Terminal declaration dossier

The individual that earns income from securities transfer shall submit a dossier that consists of:

- Terminal declaration form 13/KK-TNCN enclosed herewith.
- A detailed list of transferred securities in the year (form 13-1/BK-TNCN enclosed herewith).
- Photocopies, which bear the individual's signature, of the documents proving the cost of securities transfer.
- Photocopies, which bear the individual's signature, of documents proving the amount of tax deducted in the year.

#### c) Places to submit tax declarations

c.1) The individual that declares tax upon incurrence as mentioned in Point a.3 of this Clause shall submit tax declarations to the supervisory tax authority of the issuer of the securities they transfer.

##### c.2) When a taxpayer wishes to submit a terminal declaration:

- The individual that only transfers securities at a securities company shall submit the terminal declaration to the supervisory tax authority of such securities company.

- In other cases, the terminal declaration shall be submitted to the tax authority where the individual resides.

d) Deadline for submitting tax declarations

- The individual required to directly submit tax declarations to the tax authority must submit the tax declaration within 10 days from the day on which the securities transfer contract comes into force.

- The terminal declaration shall be submitted within 90 days from the end of the calendar year.

- If the company pays tax on the individual's behalf, the tax declaration must be submitted before the list of shareholders is changed.

dd) Deadline for paying tax

The deadline for paying tax is the deadline for submitting the tax declaration.

6. Tax on income from inheritance or gifts

a) Rules for declaring tax

a.1) Any individual that earns income inheritance or gift shall declare tax whenever tax is incurred, including the cases in which tax is exempt.

a.2) Competent authorities and relevant organizations only carries out the procedure for transferring the right to ownership or enjoyment of real estate, securities, capital contributions in other companies (hereinafter referred to as capital contributions), and other assets (to which the aforesaid rights must be registered) when the transferee presents tax receipts or a tax authority's certification of exemption of tax on the inheritance or gift.

b) Declaration dossier and application for tax exemption

b.1) Point b.1 Clause 3 of this Article shall apply if the inheritance or gift is real estate. The real estate transfer contract shall be replaced with a photocopy of a paper proving the right to the inheritance or gift, which bears the individual's signature.

b.2) Point b.1 Clause 3 of this Article shall apply if the inheritance or gift is future construction. The real estate transfer contract shall be replaced with a photocopy of a paper proving the right to the inheritance or gift, which bears the individual's signature.

b.3) If the inheritance or gift is an asset of which the ownership must be registered, tax documents include:

- The PIT declaration - form 14/KK-TNCN enclosed herewith.

- Photocopies of documents proving the rights to the inheritance or gift.

The tax authority shall send a notice of tax payable (form 14-1/TB-TNCN enclosed herewith) to the individual.

b.4) Point b.2 Clause 3 of this Article shall apply if inheritance or gift (including future constructions) is between a husband and a wife, a parent and a child, an adoptive parent and an adopted child, a parent-in-law and a child-in-law, a grandparent and a grandchild, brothers and/or sisters:

c) Places to submit tax declarations

- The recipient of inheritance of gift that is real estate (including future constructions) shall submit tax declarations in accordance with Point c Clause 3 of this Article.
- The recipient of inheritance or gift that is securities or capital contributions shall submit tax declarations to the supervisory tax authority of the securities issuer or the company to which capital is contributed.
- Recipients of inheritance and gifts that are other assets shall submit tax declarations to the tax authorities where declarations of registration fee are submitted.

d) Deadline for submitting tax declarations

- The recipient of inheritance of gift that is real estate (including future constructions) shall submit tax declarations by the deadline in Point d Clause 3 of this Article.
- The recipient of inheritance or gift that is securities or capital contributions shall submit tax declarations by the deadline in Point d Clause 4 and Point d Clause 5 of this Article.
- Recipients of inheritance and gifts that are other assets shall submit tax declarations before registration fees are declared.

dd) Deadline for paying tax

The deadline for paying tax is written on the tax notice of the tax authority.

7. Residents earning income overseas

a) Rules for declaring tax

The residents that earn income overseas shall declare tax whenever an income is earned. The residents that earn income from wages overseas shall declare tax quarterly.

b) Tax documents

- The residents that earn income from wages overseas shall declare tax using form 07/KK-TNCN enclosed herewith.
- The residents that earn income from business overseas shall declare tax using form 08/KK-TNCN enclosed herewith.
- The residents that earn income from real estate transferor or capital transfer (including securities transfer), inheritance, or gift from abroad shall declare tax in accordance with Clause 3, Clause 4, Clause 5 and Clause 6 of this Article.
- The residents that earn income from capital investment, copyright, franchise, prizes overseas shall declare tax using form 19/KK-TNCN enclosed herewith.
- When declaring tax on the incomes earned overseas, the individual must enclose the documents proving the income payment and tax payment overseas to determine the income earned and PIT paid overseas. If the tax authority foreign does not verify paid tax according to their jurisdiction, the taxpayer may submit a photocopy of the Certificate of tax deduction (specifying the tax declaration number) issued by the income payer, or a photocopy of a banking notice of tax payment overseas, which is certified by the taxpayer.

c) Places to submit tax declarations

- The individual that earns income from wages overseas shall submit tax declarations to the Department of Taxation where the individual works or resides (if the individual is not working in Vietnam).

- The individual that earns income overseas (not from wages) shall submit tax declarations to the Department of Taxation where the individual resides.

d) Deadlines for submitting tax declarations

The deadline for submitting a declaration is the 10<sup>th</sup> day from the day on which income is earned. If the individual is not in Vietnam when the income is earned, the tax declaration must be submitted within 10 days from the date of arrival in Vietnam.

dd) Deadline for paying tax

The deadline for paying tax is the deadline for submitting the tax declaration.

8. When a non-resident earns income in Vietnam but receives it overseas.

a) Rules for declaring tax

a.1) The non-resident that earns income in Vietnam but receives it overseas shall declare tax quarterly.

a.2) The residents that earn income from real estate transferor or capital transfer (including securities transfer) in Vietnam but receive it overseas shall declare tax whenever tax is incurred according to Clause 3, Clause 4 and Clause 5 of this Article.

b) Tax documents

- b.1.1) The non-residents that earn income from wages shall declare tax using form 07/KK-TNCN enclosed herewith.

- The non-residents that earn income from capital investment, copyright, franchise, prizes overseas shall declare tax using form 19/KK-TNCN enclosed herewith.

c) The tax declarations shall be submitted at:

- The Department of Taxation where the work takes place in Vietnam if the income is from wages.

- The supervisory Department of Taxation of the individual's business location if the income is from business.

- The Department of Taxation where income from capital investment, copyright, franchise, prizes is earned.

d) Deadline for submitting tax declarations

The deadline for submitting a tax declaration is the 10<sup>th</sup> day from the day on which income is earned. If the individual is not in Vietnam when the income is earned, the tax declaration must be submitted within 10 days from the date of arrival in Vietnam.

dd) Deadline for paying tax

The deadline for paying tax is the deadline for submitting the tax declaration.

9. Tax on income from capital investment when receiving dividend in the form of shares or reinvested profits

a) Rules for declaring tax

The individual that receives dividend in the form of shares or reinvested profits is not required to pay tax at that time. When capital is transferred or withdrawn, or when the company is dissolved, the individual shall pay PIT on the income from capital transfer and capital investment.

b) Tax documents:

Form 24/KK-TNCN enclosed herewith shall be used to declare PIT on income from capital investment.

c) Places to submit tax declarations

The tax declaration shall be submitted to the supervisory tax authority of the company holding the capital.

d) Deadline for submitting tax declarations

The tax declaration shall be submitted within 10 days from the date of capital transfer, shares transfer, capital withdrawal, or company dissolution.

dd) Deadline for paying tax

The deadline for paying tax is the deadline for submitting the tax declaration.

10. Tax on income from transfer of capital, securities, or real estate (in the form of capital contributions, shares, or real estate).

a) Rules for declaring tax

The individual that contributes capital in the form of capital contributions, shares, or real estate is not required to declare and pay tax at that time. When transferring or withdrawing capital, or when the company in to which capital is contributed is dissolved, the individual shall declare and pay tax on the income from the transfer of capital contribution, securities, or real estate upon capital contribution and transfer.

Declarations of tax on income from real estate transfer and capital transfer shall be made in accordance with Clause 3, Clause 4 and Clause 5 of this Article.

b) Tax documents:

Declarations of tax on income from capital transfer, securities transfer, and real estate transfer when making capital contribution:

b.1) Tax on income from capital transfer:

- A PIT declaration - form 12/KK-TNCN enclosed herewith.
- A photocopy of the capital contribution contract.
- Documents proving the value of capital contribution according to accounting records or the contract to buy capital contribution (if the capital contribution is bought).
- A photocopy, which bear the individual's signature, of the documents proving the expenditures on determination of income from capital transfer.

The tax authority shall send a notice of tax payable (form 12-1/TB-TNCN enclosed herewith) to the individual.

b.2) Tax on income from securities transfer

- A PIT declaration - form 12/KK-TNCN enclosed herewith.

- A photocopy of the capital contribution contract.

The tax authority shall send a notice of tax payable (form 12-1/TB-TNCN enclosed herewith) to the individual.

b.3) The declaration of tax on real estate transfer includes the documents listed in Point b Clause 3 of this Article, the real estate transfer contract among which is replaced with a capital transfer contract.

c) The tax declaration shall be submitted to:

- The supervisory tax authority of the contributing company if capital or securities are transferred.

d) Deadline for submitting tax declarations

The tax declaration shall be submitted within 10 days from the date of capital transfer, capital withdrawal, or company dissolution.

dd) Deadline for paying tax

The deadline for paying tax is the deadline for submitting the tax declaration.

11. Tax on income from bonus shares

a) Rules for declaring tax:

The employee is not required to pay tax on income at the time of receiving bonus shares from the employer. When shares of the same type are transferred, tax on the income from securities transfer and income bonus shares shall be declared.

Declarations of tax on income from securities transfer shall be made in accordance with Clause 5 of this Article.

b) Tax declaration:

Form 07/KK-TNCN enclosed herewith shall be used to declare PIT on income from wages in the form of bonus shares.

c) Places to submit tax declarations

Tax declarations shall be submitted to the supervisory tax authority of the income payer.

d) Deadline for submitting tax declarations

The tax declaration shall be submitted within 10 days from the date of transfer of shares of the same type.

dd) Deadline for paying tax

The deadline for paying tax is the deadline for submitting the tax declaration.

12. Form 16/DK-TNCN, 17/TNCN, 21a/XN-TNCN, and 23/CK-TNCN shall be respectively used when the individual claims deductions for a dependant, or when the income payer applies for PIT deduction receipts, or when the individual, who does not sign a labor contract or signs a labor contract for less than 03 months and declares that his income is not taxable, includes a dependant in the tax declaration. The tax authority shall inform the taxpayer of the dependant's number (form 16-1/TB-MST enclosed herewith) to the individual.

13. Where the foreigner that earns taxable income is eligible for tax exemption or reduction according to a Double taxation agreement between Vietnam and another country/territory:

a) If the individual is a resident of another country/territory, even when he is a resident of another country/territory and earns income as mentioned in Point b.1 Clause 1 (from self-employments and other sources), Clause 3, Point b Clause 4, Clause 5, Point b Clause 10, and Clause 9 of this Article:

15 days before performing the contract with the Vietnamese entity, the foreigner must send the Vietnamese party a dossier. The Vietnamese party shall submit it the supervisory tax authority together with the first declaration. The dossier consists of:

- The Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);
- The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the home country before the year in which the Notice of eligibility for tax exemption or reduction is issued;
- A photocopy of the labor contract with the overseas employer, which bear the individual's signature;
- A photocopy of the labor contract with employer in Vietnam (if the income is from wages or business), or photocopies of documents proving the origin of the income (other incomes), which bear the individual's signature;
- A photocopy of the passport showing the arrival in Vietnam, which bears the individual's signature;
- A photocopies of the business registration and/or practice certificate, tax registration certificate issued by the authority of the home country if the individual earns income from self-employment (physicians, lawyers, engineers, architects, dentists, accountants);
- A photocopies of the business registration and/or practice certificate issued by the Vietnamese authority to the individual that earns income from self-employment (physicians, lawyers, engineers, architects, dentists, accountants);
- A photocopy of the contract with the Vietnamese entity, which is certified by the taxpayer. In particular:
  - + Real estate transfer: a photocopy of the real estate transfer contract.
  - + Capital transfer: a photocopy of the capital transfer contract, a photocopy of the certificate of investment of the Vietnamese company to which the foreign investors contribute capital, which are certified by the taxpayer.
  - + Securities transfer: a photocopy of the securities transfer contract. If securities are traded without a contract, the taxpayer shall submit the certificate of depository account, which is

certified by the depository bank or the securities company (form 01/TNKDCK enclosed herewith).

- The Letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure.

If a notice of eligibility for tax exemption or reduction has been sent in the previous year, only the photocopies of labor contracts with new Vietnamese and foreign entities shall be submitted.

15 days before the expiration of the labor contract in Vietnam or the end of the tax year (whichever occurs first), the individual shall send a Certificate of residence in that tax year and a photocopy of the passport to the Vietnamese party that signs the contract or pays income. Within 03 working days from the receipt of the Certificate of residence, the Vietnamese party shall submit it to the tax authority.

If such certificate is not received by the deadline, the foreigner must make a commitment to send it right after the ending day of the tax year.

If the individual's home country, which has signed a Tax Agreement with Vietnam, does not issue the certificate of residence, the individual shall provide the photocopy of the passport instead of the certificate of residence.

if the individual is not identified as a residence of any country/territory, the individual must make a commitment to send a photocopy of the passport in Q1 of the next year.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

b) For the individuals being residents of Vietnam (including those mentioned in Point b Clause 2, Point b Clause 7, and Point b Clause 11 of this Article):

If the resident of Vietnam is eligible for exemption or reduction of tax on income from government service, students' income, teachers' and lecturers', and researchers' income:

15 days before performing the contract with the Vietnamese entity, the foreigner must send the Vietnamese party a dossier. The Vietnamese party shall submit it to its supervisory tax authority of the Vietnamese party together with the first declaration. The dossier consists of:

- The Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);
- The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the home country before the year in which the Notice of eligibility for tax exemption or reduction is issued;
- A certification issued by a Vietnamese authority of the activities eligible for tax exemption according to the Agreement.
- The Letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure.

If the individual's home country, which has signed a Tax Agreement with Vietnam, does not issue the certificate of residence, the individual shall provide the photocopy of the passport instead of the certificate of residence. The individual is responsible for the statement that no certificate of residence is issued in the home country.



if the individual is not identified as a residence of any country/territory, the individual must make a commitment to send a photocopy of the passport within the quarter after the end of the tax year.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

c) Athletes and artists that are residents of other countries and earn income from their performance in Vietnam (including those mentioned in Point b.1 Clause 1 of this Article)

15 days before performing the contract with the Vietnamese entity, the foreigner must send the Vietnamese party a dossier. The Vietnamese party shall submit it to its supervisory tax authority together with the first declaration. The dossier consists of:

- The Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);
- The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the home country before the year in which the Notice of eligibility for tax exemption or reduction is issued;
- A certification issued by a Vietnamese authority of the operations and incomes eligible for tax exemption according to the Agreement.
- The Letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure.

15 days before the expiration of the labor contract in Vietnam (or the end of the program) or the end of the tax year, whichever occurs first, the individual shall send a Certificate of residence in that tax year to the Vietnamese party that signs the contract or pays income. Within 03 working days from the receipt of the Certificate of residence, the Vietnamese party shall submit it to the tax authority.

If such certificate is not received by the deadline, the foreigner must make a commitment to send it right after the ending day of the tax year.

If no labor contract is signed with the employer overseas or in Vietnam, the taxpayer may submit a letter of designation or a paper that is equivalent to a labor contract.

If the individual's home country, which has signed a Tax Agreement with Vietnam, does not issue the certificate of residence, the individual shall provide the photocopy of the passport instead of the certificate of residence. The individual is responsible for the statement that certificate of residence is issued in the home country.

if the individual is not identified as a residence of any country/territory, the individual must make a commitment to send a photocopy of the passport in Q1 of the next year.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

d) For non-residents that earns income from wages, business, inheritance or gifts in Vietnam that is paid by an overseas entities (including non-residents mentioned in Clause 6 and Clause 8 of this Article):

When submitting the first tax declaration, the foreign resident shall directly submit or authorize another person in Vietnam to submit a dossier to the local Department of Taxation. The dossier consists of:

- The Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);
- The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the home country before the year in which the Notice of eligibility for tax exemption or reduction is issued;
- A photocopy of the labor contract or the paper proving the origin of income or the right to the inheritance or gifts with employer in Vietnam (if the income is from wages or business), or photocopies of business contracts with Vietnamese, which bear the individual's signature;
- A photocopy of the passport showing the arrival in Vietnam, which bears the individual's signature;
- A photocopies of the business registration and/or practice certificate, tax registration certificate issued by the authority of the home country if the individual earns income from self-employment (physicians, lawyers, engineers, architects, dentists, accountants);
- The Letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure.

If a notice of eligibility for tax exemption or reduction has been sent in the previous year, only the photocopies of labor contracts with new Vietnamese and foreign entities shall be submitted.

15 days before the expiration of the labor contract in Vietnam or the end of the tax year (whichever occurs first), the individual shall send a Certificate of residence in that tax year and a photocopy of the passport to the local Department of Taxation, or may authorize another person in Vietnam to do so.

If such certificate is not received by the deadline, the foreigner must make a commitment to send it right after the ending day of the tax year.

If the individual's home country, which has signed a Tax Agreement with Vietnam, does not issue the certificate of residence, the individual shall provide the photocopy of the passport instead of the certificate of residence.

if the individual is not identified as a residence of any country/territory, the individual must make a commitment to send a photocopy of the passport in Q1 of the next year.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

#### **Article 17. License tax**

1. Tax declarations shall be submitted to supervisory tax authorities.

If the taxpayer has an affiliate (branch, store, etc.) in the same province, the tax declarations of the affiliate may be submitted to the taxpayer's supervisory tax authority.

If the taxpayer has an affiliate (branch, store, etc.) in another province, the tax declarations of the affiliate may be submitted to the supervisory tax authority of the affiliate.

If the taxpayer does not have a permanent business location, tax declarations shall be submitted to the supervisory Sub-department of taxation of the business or where the taxpayer resides.

2. License tax is submitted annually and declared as follows:

- License tax shall be declared the first time when the taxpayer inaugurates his business. The deadline is the last day of the month in which the business is inaugurated.

If the business has not been inaugurated, license tax shall be declared within 30 days from the day on which the Certificate of business registration and tax registration or Certificate of company registration is issued.

If the taxpayer has declared and paid license tax, he is not required to submit license tax declarations in the next year if the amount of license tax payable is not changed.

- If the taxpayer amount of license tax payable in the next year is changed, a tax declaration shall be submitted by December 31 of the year.

3. Form 01/MBAI enclosed herewith shall be used to declare license tax.

### **Article 18. Declaring tax and government revenues related to land**

1. Tax on non-agricultural land

a) Tax dossier

a.1) When declaring tax on non-agricultural land, the dossier consists of:

- A declaration of tax on non-agricultural land - form 01/TK-SDDPNN (used by households and individuals) or 02/TK-SDDPNN (used by organizations) enclosed herewith.

- Photocopies of the papers related to the taxable piece of land such as: land use right certificate, decision on land allocation, land lease contract, or decision on permission to repurpose land;

- Photocopies of the papers proving the eligibility for tax exemption or reduction (if any).

a.2) When declaring tax on non-agricultural land, the dossier consists of:

- Form 03/TKTH-SDDPNN enclosed herewith.

b) Rules for declaring tax

b.1) The taxpayer shall provide accurate information about the taxpayer such as name, ID number, tax code, address, and information about the taxable piece of land such as area, purpose in the tax declaration. If the piece of land already has a Certificate, information about the Certificate must be provided such as its number, date of issue, land area, limit (if any).

The People's Committee shall provide information on the tax declaration and send it to the Sub-department of taxation.

If information in the declaration submitted by an organization must be verified at the request of the tax authority, the local Land and Resources Authority shall verify it and notify the tax authority.

b.2) The taxpayer is not required to make a tax declaration every year if the taxpayer and the amount of tax payable are not changed.

If the taxpayer is changed, the new taxpayer must make and submit a tax declaration in accordance with this Circular within 30 days from the day on which such change occurs. If the amount of tax payable is changed (except for changes in land prices), the taxpayer must make and submit a tax declaration within 30 days from the day on which such change occurs.

b.3) Levy on non-agricultural land shall only be declared if the land is residential and issued with a land use right certificate.

If the taxpayer must make an aggregated declaration as prescribed in this Circular, the aggregated declaration shall be submitted to the Sub-department of taxation where the taxpayer applies for registration.

c) Declaring tax in some cases:

c.1) Organizations: taxpayers shall complete and submit tax declarations to the Sub-departments of taxation where taxable land is located. Taxpayers shall calculate, declare and pay tax on non-agricultural land in accordance with Point dd.2 of this Clause.

c.2) Households and individuals:

c.2.1) Residential land

c.2.1.1) If the taxpayer has the rights to use one or multiple pieces of land in the same district, but the total taxable area of land does not exceed the limit, the taxpayer shall make a separate tax declaration for each piece of land. An aggregated tax declaration is not required.

c.2.1.2) If the taxpayer has the rights to use multiple pieces of land in the various districts, none of them exceeds the area limit, and the total taxable area of land does not exceed the limit, then the taxpayer shall make a separate tax declaration for each piece of land. An aggregated tax declaration is not required.

c.2.1.3) If the taxpayer has the rights to use multiple pieces of land in different districts, none of them exceeds the limit but the total taxable area of land exceeds the limit, then the taxpayer shall make a separate tax declaration for each piece of land, which shall be submitted to the People's Committees of the communes where such land is located, and a aggregated tax declaration that is submitted to a Sub-department of taxation at the taxpayer's choice.

c.2.1.4) If the taxpayer has the rights to use multiple pieces of land in different districts but only one of them exceeds the limit, then the taxpayer shall make a separate tax declaration for each piece of land, which shall be submitted to the People's Committees of the communes where such land is located, and a aggregated tax declaration that is submitted to the Sub-department of taxation where the taxable piece of land is located.

c.2.1.5) If the taxpayer has the rights to use multiple pieces of land in various districts, the area of which exceed the area limit, the taxpayer must make separate tax declaration for each piece of land and submit it to the People's Committee of the commune, then select a Sub-department of taxation where one of the pieces of land is located to submit the aggregated declaration.

c.2.1.6) Not later than March 31 of the next calendar year, the taxpayer shall make an aggregated tax declaration using form 03/TKTH-SDDPNN and send it to the Sub-department of taxation, then determine the difference between the actual tax payable and tax declared in the declarations that are submitted to the Sub-departments of taxation where taxable land is located.

c.2.2) For taxable non-agricultural land:

The taxpayer shall submit tax declarations to the Sub-departments of taxation where taxable land is located or to the tax collectors authorized by tax authorities.

d) Adjustment to tax declarations

d.1) If a change occurs and leads to an increase or decrease in the amount of tax payable, the taxpayer shall make an adjustment using form 01/TK-SDDPNN or 02/TK-SDDPNN within 30 days from the occurrence of such change.

d.2) If an error in a submitted tax declaration is found, which leads to a change in the amount of tax payable, the taxpayer may make an adjustment.

If the error is found after March 31 of the next year, the taxpayer may make an adjustment (to both the annual declaration and aggregated declaration). The adjustment shall be made in accordance with Clause 5 Article 10 of this Circular.

dd) Deadline for sending notices and deadline for paying tax on non-agricultural land:

dd.1) Tax authorities shall send notices of tax on non-agricultural land to households and individuals by April 30 using form 01/TB-SDDPNN enclosed herewith.

dd.2) Deadline for paying tax:

- Tax on non-agricultural land shall be paid twice a year. The first payment shall be made by May 31, the second October 31.

The taxpayer may choose to make one or two payments in a year. If the taxpayer wishes to pay once for the whole year, the payment must be made by May 31.

- The deadline for paying the difference according to the aggregated declaration is March 31 of the next year.

- If the taxpayer wishes to pay once for many years in a 5-year period, the deadline is December 31 of the year in which the request is made.

2. Tax on agricultural land

a) The taxpayer that uses agricultural land shall submit tax declarations to the Sub-department of taxation where taxable agricultural land is located (or the People's Committee of the commune where tax is registered).

b) Deadlines for submitting tax declarations:

- Organizations shall submit tax declarations by January 30 every year.

- Households and individuals that use taxable land and have their names in the tax register of tax authorities in the previous year are not required to submit tax declarations for the next year.

- The declaration of tax on agricultural land used for planting monocarpic perennial plants shall be paid within 10 days from the harvest.

- If the area of taxable land increases or decreases during the year, the tax declaration must be submitted within 10 days from the occurrence of the increase or decrease.

- If tax on agricultural land is exempt or reduced, the taxpayer still has to submit the tax declaration together with the papers proving the tax exemption or reduction of the first year and the year succeeding the expiration of the tax exemption or reduction.

c) The declaration of tax on agricultural land is one of the forms below:

- Form 01/SDNN enclosed herewith shall be used by organizations;
- Form 02/SDNN shall be used by households and individuals;
- Form 03/SDNN enclosed herewith shall be used for declaring tax on land for monocarpic perennial plants.

d) Calculation of tax payable:

- If the taxpayer that is an organization shall calculate tax payable in the tax declaration itself.
- According to the tax records of the previous year or the tax declaration submitted in the year, the Sub-department of taxation shall calculate tax and send a notice of tax on agricultural land using form 04/SDNN to the taxpayers that are households and individuals.
- If agricultural land is for planting monocarpic perennial plants, taxpayers shall calculate tax on agricultural land themselves. If the taxpayer is not able to calculate tax payable, the tax authority shall impose tax and notify the taxpayer.

dd) Deadline for sending notices and deadline for paying tax on agricultural land:

- The first tax notice in the year shall be sent by April 30, and tax shall be paid by May 31.
- The second tax notice in the year shall be sent by September 30, and tax shall be paid by October 31.
- If an adjustment is made after the tax notice is sent, the tax authority shall send another tax notice according to the adjustment within 10 days from the day on which the adjustment is received.

If the harvest does not coincide with the aforementioned deadline, the Sub-department of taxation may delay the deadline for not more than 60 days. If the taxpayer wishes to pay a lump sum for the whole year, the payment shall be made by May 31.

3. Declaring of rent for land or water surface (hereinafter referred to as rent declaration); notice of rent for land and water surface

a) The tenant shall make a rent declaration using form 01/TMDN enclosed herewith, then submit it together with lease documents to the local Land Registry or Land and Resources Authority or a state agency competent to determine land lease prices. If the single-window system has not been adopted locally, the declarations of land rent shall be submitted to the tax authority of the locality where the land or water surface is located.

The rent declaration shall be submitted within 30 days from the day on which the financial liability is incurred.

The day on which financial liability is incurred is the effective date of the decision on land lease or water surface lease, which is made by a competent authority. The day on which land or water surface is handed over shall be considered the day on which financial liability is incurred if it is not consistent with that in the decision.

If the tenant has submitted the rent declaration to the tax authority, or has been paying rent according to the notice sent by the tax authority, then rent declaration might not be submitted.

If the area or location of leased land or water surface is changed during the year, which causes a change in the amount of rent, another declaration shall be made and submitted to the tax authority within 30 days from the day on which a competent authority recognizes such change in writing.

#### b) Notice of rent

b.1) When a new area of land or water surface is rented: the local Land Registry or Land and Resources Authority shall send the rent declaration to the supervisory tax authority of the taxpayer. Within 05 working days from the day on which the valid rent declaration, the tax authority shall determine the rent payable and send a notice of rent using form 02/TMDN enclosed herewith to the tenant via the local Land Registry or Land and Resources Authority.

b.2) If land rent is paid annually, the tax authority shall send a notice of rent to the tenant from the second year, in particular:

- The first rent notice in the year shall be sent by April 30, and rent shall be paid by May 31.

- The second rent notice in the year shall be sent by September 30, and rent shall be paid by October 31.

When the competent authority changes the price list, the tax authority must redetermine the amount of rent payable and notify it to the taxpayer.

If the taxpayer wishes to pay a lump sum for the whole year, the payment shall be made by May 31.

When a lump sum is paid for the whole lease period, the deadline for making the payment is the deadline written on the notice sent by the tax authority.

#### 4. Land levy declaration

##### a) Business organizations

The land levy declaration shall be submitted within 10 days from the day on which financial liability is incurred.

If a business organization is allocated levied land, which can be repurposed, by the Government via an auction, the day on which financial liability is incurred is the effective date of the decision on land allocation made by a competent authority. The day on which land is handed over shall be considered the day on which financial liability is incurred if it is not consistent with that in the decision on land allocation.

The business organization shall make the land levy declaration using form 01/TSDD enclosed herewith, and then submit it together with the papers related to the determination of financial liability to a competent authority.

Within 10 days from the receipt of the decision on approval for land levies sent by a competent authority, the tax authority shall determine the amount of land levy payable and send a notice of land levy (form 02/TSDD) to the business organization.

##### b) Households and individuals:

The land levy declaration shall be paid within 10 days from the receipt of the notice from a competent authority.

The land user shall complete form 01/TSDDD enclosed herewith, and submit it together with the papers related to the determination of financial liability to the local Land Registry or Land and Resources Authority. If the single-window system has not been adopted locally, the declarations of land levy shall be submitted to the tax authority of the locality where the land is located.

The local Land Registry or Land and Resources Authority shall send the land levy declaration submitted by the taxpayer to the tax authority where the land is located.

Within 03 days from the receipt of the land levy declaration, the tax authority shall determine the amount of land levy payable and send a notice of land levy (form 02/TSDDD) to the land user directly or via the local Land Registry or Land and Resources Authority.

c) If rights to use land are put up for auction, the taxpayer shall pay land levy in accordance with auction laws.

d) The deadline for paying land levy is the deadline written on the notice sent by the tax authority.

### **Article 19. Fees and charges**

#### 1. Registration fee

##### a) Places to submit declarations of registration fee

Owners of assets subject to registration fees shall submit declarations to tax authorities when registering their ownership or rights to use.

- The declarations shall be submitted to local Land Registries or land authorities where the property is located. If the single-window system has not been adopted locally, the declarations of registration fee shall be submitted to Sub-department of taxation of the locality where the property is located.

- Declarations of registration fees for other assets such as vehicles, guns, etc. shall be submitted at local Sub-departments of taxation where the ownership or rights to use are registered.

##### b) For real estate, a declaration dossier consists of:

- The declaration form 01/LPTB enclosed herewith.

- Papers proving legitimate origins of property;

- Documents about the asset transfer between the transferor and the transferee.

- Papers proving the eligibility of the assets or asset owner for exemption from registration fee (if any).

c) For other assets (except for fishing ships, inland waterway ships, ships without origin documents or built in Vietnam as mentioned in Point e Clause 1 of this Article), the declaration dossier consists of:

- A declaration of registration fee (form 02/LPTB enclosed herewith).

- Sale invoices (if the transferor is a business organization or businessperson) or invoices for sale of confiscated goods (if confiscated goods are bought), decision on asset transfer or liquidation (if goods are transferred by a political organization, socio-political organization, social organization, or socio-professional organization that does not do business to other organizations



and individuals), or documents about asset transfer certified by competent authorities (if assets are transferred between non-business entities);

- Old owner's Certificate of registration of ownership or rights to use of assets (if assets are registered in Vietnam for the second time or more);

- Papers proving the eligibility of the assets or asset owner for exemption from registration fee (if any).

d) The papers proving the eligibility of the assets or asset owner for exemption from registration fee must be original or certified true copies. In particular:

d.1) If land is allocated by the Government and used for farming, forestry, fishery, or salt production, the "Notice of cadastral information serving fulfillment of financial liability" must be certified by Land Registry, stating that the piece of land is eligible for the Certificate of right to use land.

d.2) The religious religion that is recognized or licensed by the Government, and use land for public purposes shall submit:

- The papers proving they are permitted to operate by the Government;

- The Decision on land allocation or issuance of Certificate of rights to use land.

d.3) Special assets and property, assets serving national defense and security: a photocopy (stamped) of the approval by the competent authorities for transfer or acquisition of assets, or certification of a police or military agency of the assets serving national defense and security.

d.4) Compensable property:

- A decision made by a competent authority on withdrawal of the old property and transfer of new property.

- A certificate of rights to use land or house ownership of the owner of the property withdrawn by the Government, on which financial liability is not written.

If the property owner has paid registration fee but the certificate of property ownership is lost or is not issued, the owner shall present the receipts for registration fee payment or the decision on registration fee exemption made by a competent authority.

- An invoice or a property sale/transfer contract, enclosed with documents about the receipt of compensation/support in cash).

After the tax authority has decided not to collect registration fee for the compensatory house or land, or the property bought with compensatory payment, the tax authority shall write "No registration fee", add a signature and a seal on the certificate of compensatory payment.

d.5) When the certificate of property ownership is reissued, the papers proving the ownership or rights to use such property must be presented.

d.6) When a company is converted into a joint-stock company, the following documents must be submitted to the tax authority:

- A photocopy (bearing the company's seal) of the decision made by a competent authority on the conversion into the joint-stock company.

- A list of assets transferred to the joint-stock company from the old company, specifying the assets that incur registration fee. If only part of the company is converted into a joint-stock company, a decision on asset transfer must be provided).

d.7) If registration fees for the contributed or distributed assets have been paid, the following documents must be submitted:

- The papers proving that the owners of the assets are members of the organization (Decision on establishment or Charter of the organization bearing the names of the members that contribute assets, or papers proving the asset contribution; or Certificate of Business registration bearing their names and the papers proving the asset contribution).

- The decision on dissolution, division, split, amalgamation, merger or the organization, and distribution of assets among capital contributors.

- Documents about the payment of registration fee (if incurred), or the declaration of registration fee saying “No registration fee” (if registration fee is not incurred), or the certificate of ownership or rights to use assets owned by asset contributors (for the organization that receive contributed capital); or the certificate of ownership or rights to use assets owned by the dissolved organization (for the members that receive such assets).

- The business cooperation contract (when contributing capital) or the decision on asset distribution (when assets are circulated internally).

d.8) For humanitarian houses: documents about transfer of property ownership between the donor and the recipient.

d.9) Financial lease assets:

- A finance lease contract between the lessor and the lessee that comply with laws on finance lease.

- A notice of contract finalization between the lessor and the lessee.

- Certificates of ownership of the finance lease company.

d.10) Shells, frames, engine components that must be re-registered during warranty period:

- The warranty certificate.

- The delivery note of substitute products, enclosed with a notice of product withdrawal issued by the seller to the buyer.

d.11) The following papers shall be used to prove family relationship: family register, marriage certificate, birth certificate, decision on recognition of child adoption, or certificate of relationship between the giver and the recipient issued by the People’s Committee of the commune.

dd) The fishing ships, inland waterway ships, ships without origin documents or built in Vietnam must have:

- The declaration of registration fee (form 02/LPTB enclosed herewith).

- A certification issued by a competent authority that the ownership of the ship may be registered (to ensure the benefits of the registration fee payer in case registration fee has been paid without being issued with a certificate of ownership registration)

e) The Sub-department of taxation shall issue a notice of registration fee within 03 working days (for real estate) or 01 working day (for ships, cars, motorcycles, hunting guns, sport guns) from the receipt of sufficient documents. If the documents are not valid, they shall be returned to the local Land Registry or Land and Resources Authority (for real estate) or the asset owner (for other assets) by the deadline mentioned in this Point.

The notice of registration fee for real estate (form 01-1/LPTB enclosed herewith); the notice of registration fee for other assets shall be written right on the declaration of registration fee.

g) The deadline for paying registration fee is written on the notice of registration fee.

## 2. Declaring environment protection fees upon mineral extraction:

a) The organizations and individuals engaged in mineral extraction (hereinafter referred to as miner) shall pay environment protection fees to the supervisory tax authority where severance tax is paid. If resources are bought in batch, the buyer shall pay it on behalf of the miner and submit the declaration of environment protection fee to the supervisory tax authority of the buying station.

b) Environment protection fees shall be declared monthly and annually.

Terminal declarations of environment protection fees shall be made annually and when a decision on division, split, amalgamation, merger, conversion, dissolution, or shutdown of the company is made.

c) Form 01/BVMT enclosed herewith shall be used to declare environment protection fees for mineral extraction.

d) Form 02/BVMT enclosed herewith shall be used to make the terminal declaration of environment protection fees.

## 3. Other fees and charges classified as government revenues

a) The organizations assigned to collect fees and charge shall submit declarations to supervisory tax authority.

b) Fees and charges classified as government revenues shall be declared monthly and annually.

c) Form 01/PHLP enclosed herewith shall be used to make monthly declarations of fees and charges.

d) Form 02/PHLP enclosed herewith shall be used to make annual terminal declarations of fees and charges.

## **Article 20. Declaring VAT and CIT incurred by foreign contractors and foreign sub-contractors**

1. Foreign contractors and foreign sub-contractors that are organizations shall declare VAT and CIT in accordance with this Article.

Foreign contractors and foreign sub-contractors that are shall declare VAT in accordance with this Article, and declare personal income tax in accordance with Article 16 of this Circular.

2. Declaring VAT when applying credit-invoice method, paying CIT according to revenue and expense.

a) The Vietnamese party that signs a contract with a foreign contractor, or the foreign contractor that signs a contract with a foreign sub-contractor shall notify the tax authority that the foreign contractor or foreign sub-contractor applies credit-invoice method to pay VAT, or pay CIT according to revenue and expense within 20 days from the conclusion of the contract.

When the tax authority issues a tax registration certificate to the foreign contractor or foreign sub-contractor, the foreign contractor or the foreign sub-contractor shall send 01 photocopy of the tax registration certificate to the Vietnamese party or the foreign contractor respectively. If payment to the foreign contractor must be made before the Vietnamese party receives the photocopy, the Vietnamese party shall declare and pay VAT or CIT on behalf of the foreign contractor as guided in Clause 3 of this Article.

The foreign contractor or foreign sub-contractor that has been issued with a tax registration certificate must declare and pay VAT (using credit-invoice method) on the revenue earned after the issuance of the tax registration certificate. The VAT paid by the Vietnamese party on behalf of the foreign contractor or foreign sub-contractor shall not be deducted from the amount of VAT payable by the foreign contractor or foreign sub-contractor. The foreign contractor or foreign sub-contractor must not deduct input VAT incurred before the issuance of the tax registration certificate.

b) VAT declaration:

Foreign contractors shall declare VAT in accordance with Article 11 of this Circular.

c) CIT declaration:

Foreign contractors shall declare CIT in accordance with Article 12 of this Circular.

d) Notice of eligibility for tax exemption or reduction according to Agreements

Where the foreign contractor is eligible for tax exemption or reduction according to a Double taxation agreement between Vietnam and another country/territory, the following procedure shall be followed:

When calculating provisional CIT, the taxpayer shall send a dossier to the tax authority together with the quarterly declaration of CIT (form 01A/TNDN or 01B/TNDN enclosed herewith). The dossier consists of:

- The Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);
- The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the home country before the year in which the Notice of eligibility for tax exemption or reduction is issued;
- A photocopy of the contract with the Vietnamese entity, which is certified by the taxpayer.
- The Letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure for applying the Agreement.

If a notice of eligibility for tax exemption or reduction has been sent in the previous year, only the photocopies of labor contracts with new Vietnamese and foreign entities shall be submitted.

When making the terminal declaration of CIT, the taxpayer shall send the Certificate, which has been consularly legalized, and a certification of performance of contracts with the parties, together with the terminal declaration of CIT (form 03/TNDN enclosed herewith).

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

### 3. Declaring VAT on value added or CIT on revenue:

a) Declarations of VAT on value added or CIT on revenue shall be made whenever a payment is made to the foreign contractor. A terminal declaration shall be made when the contract is finished.

When the Vietnamese party makes multiple payments to a foreign contractor in a month, the taxpayer may request for permission to declare tax monthly instead of whenever a payment is made.

- The Vietnamese party that signs the contract with the foreign contractor shall pay tax on behalf of the foreign contractor, and submit tax declarations to the supervisory tax authority of the Vietnamese party.

When a construction or installation contract is signed, declarations of tax shall be submitted to the Department of Taxation or local Sub-department of taxation, depending on the decision of the Director of the local Department of Taxation where the contract is performed.

- The Vietnamese party shall apply for tax registration with the supervisory tax authority to pay tax on behalf of the foreign contractor or foreign sub-contractor within 20 working days from the day on which the contract is signed.

### b) Declaring tax on other kinds of business and incomes

#### b.1) A declaration dossier consists of:

- The declaration of tax (form 01/NTNN enclosed herewith);
- A photocopy of the contract, which is certified by the taxpayer (when declaring tax for the first time);
- A photocopy of the Business license or practice certificate, which is certified by the taxpayer.

#### b.2) Notice of eligibility for tax exemption or reduction according to Agreements:

If the foreign contractor is eligible for tax exemption or reduction according to a Double taxation agreement between Vietnam and another country/territory, the following procedure shall be followed:

15 days before the deadline for declaring tax, the Vietnamese party, which signs the contract or makes payment to the foreign contractor, shall send the supervisory tax authority of the Vietnamese party a dossier that consists of:

- The Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);
- The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the home country before the year in which the Notice of eligibility for tax exemption or reduction is issued;
- A photocopy of the contract with the Vietnamese entity, which is certified by the taxpayer.

+ If securities are traded without a contract, the taxpayer shall submit the certificate of depository account, which is certified by the depository bank or the securities company (form 01/TNKDCK enclosed herewith).

+ For income from capital transfer: the taxpayer shall submit a photocopy of the capital transfer contract, a photocopy of the certificate of investment of the Vietnamese company to which the foreign investors contribute capital, which are certified by the taxpayer.

+ When a foreign government agency earns tax-free income according to the clauses on loan interests of the Agreement: the taxpayer shall submit a photocopy of the loan contract between the foreign government agency and the Vietnamese entity, which is certified by the taxpayer.

- The Letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure for applying the Agreement.

If a notice of eligibility tax exemption or reduction has been sent in the previous year, only the photocopies of labor contracts with new Vietnamese and foreign entities shall be submitted.

15 days before the expiration of the labor contract in Vietnam or the end of the tax year (whichever occurs first), the foreign contractor shall send the original or a certified true copy of the Certificate of residence, which has been consularly legalized in the tax year, to the Vietnamese party that signs the contract or pays income. Within 03 working days from the receipt of the Certificate of residence, the Vietnamese party shall submit it (the original or a certified true copy) to the tax authority.

If no Certificate of residence is available at that time, the foreign contractor shall make a commitment to send the Certificate of residence, which has been consularly legalized, within the quarter after the ending day of the tax year.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

#### c) Declaring tax incurred by foreign airlines

Ticket agencies in Vietnam of foreign airlines shall declare and pay CIT on behalf of the foreign airlines.

Declarations of tax shall be submitted to supervisory tax authorities.

CIT incurred by foreign airlines shall be declared monthly.

##### c.1) A declaration dossier consists of:

- The declaration of tax incurred by foreign airline (form 01/HKNN enclosed herewith).
- A photocopy of the contract, which is certified by the taxpayer (when declaring tax for the first time);
- A photocopy of the Business license or practice certificate, which is certified by the taxpayer.

##### c.2) Notice of eligibility for tax exemption or reduction according to Agreements:

If the foreign airline is eligible for tax exemption or reduction according to a Double taxation agreement between Vietnam and another country/territory, the following procedure shall be followed:

15 days before a the commencement or the first tax period of the year (whichever comes first), the office in Vietnam of the foreign airline shall submit a dossier to the tax authority, which consists of:

- + The Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);

+ The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the home country before the year in which the Notice of tax exemption or reduction is issued;

+ A photocopy, which is certified by the taxpayer, of the license to operate in Vietnam of issued by Civil Aviation Administration of Vietnam in accordance with the Law on Civil aviation.

- A Letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure for applying the Agreement.

If a notice of eligibility tax exemption or reduction has been sent in the previous year, only the photocopies of the license to operate in Vietnam issued by Civil Aviation Administration of Vietnam, which are certified by the taxpayer, shall be submitted.

15 days before the expiration of the contract in Vietnam, or the end of the tax year (whichever comes first), the office in Vietnam of the foreign airline shall send the Certificate of residence that has been consularly legalized in that tax year, a declaration of income from international transport (form 01-1/HKNN if tickets are sold in Vietnam, form 01-2/HKNN if seats are swapped or shared) in the tax year to the tax authority as the basis for exemption or reduction of CIT on international transport services of the foreign airline.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

d) Declaring tax incurred by foreign transport companies:

The shipping agencies or forwarding agents of foreign transport companies (hereinafter referred to as agents of transport companies) shall pay tax on behalf of the foreign transport companies

Declarations of tax incurred by a foreign transport company shall be submitted to the supervisory tax authority of its agent.

Tax incurred by foreign transport companies shall be declared every quarter:

d.1) A declaration dossier consists of:

- The declaration of tax incurred by foreign transport company (form 01/VTNN enclosed herewith);

- A declaration of income from international transport (form 01-1/VTNN for shipping companies, 01-2/VTNN if seats are swapped or shared), a declaration of income from storage of container (form 01-3/VTNN enclosed herewith).

d.2) Notice of eligibility for tax exemption or reduction according to Agreements:

If the foreign transport company is eligible for tax exemption or reduction according to a Double taxation agreement between Vietnam and another country/territory, the additional procedure below shall be followed:

The foreign transport company or its agent shall send the tax authority, together with the tax declaration of the first tax period of the year, a dossier that consists of:

- The Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);

- The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the country/territory, where the foreign shipping company is situated, for the year preceding the year in which the Notice of tax exemption or reduction is issued;

- Documents proving the operation of the foreign transport company. In particular:

(i) If the foreign transport company owns the ships:

+ Certificates of ship registration;

+ Contracts to transport goods by sea; and

+ Transport documents (one of those in Article 73 of Maritime Code 2005).

(ii) If the foreign transport company leases the ships:

+ Ship lease contracts;

+ Contracts to transport goods by sea; and

+ Transport documents (one of those in Article 73 of Maritime Code 2005).

(iii) If the foreign transport company swaps the seats:

+ Swapping contracts (specifying the names of the ships);

+ Contracts to transport goods by sea; and

+ Transport documents (one of those in Article 73 of Maritime Code 2005).

The aforementioned documents are photocopies certified by the taxpayer. Such documents may be kept at the agent or representative office in Vietnam of the foreign transport company, and shall be presented to the tax authority on request. If the foreign transport company or its agent authorizes a legal representative to apply the Agreement, the original Letter of attorney must be submitted.

If the foreign transport company or its agent fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

At the end of the tax year, the foreign transport company or its agent shall send the tax authority a certificate of residence that has been consularly legalized in that year.

If a notice of eligibility tax exemption or reduction has been sent in the previous year, the foreign transport company or its agent is only required to notify the changes to the business in the next years, such as changed in business registration, method of ship operation, etc., and provide corresponding documents.

If the foreign transport company has multiple agents in different provinces of Vietnam, or the agent has multiple branches or representative offices (hereinafter referred to as branches) in different provinces of Vietnam, the foreign transport company or its agent shall submit the original (or certified true copy) of the Certificate of residence that has been consularly legalized, the certificate tax registration (or certificate of business registration) to the local Department of Taxation where the agent of the foreign transport company is situated, and photocopies of these papers to the Departments of Taxation of the provinces where the branches are situated, specifying the place where the original (or certified true copy) is submitted in the Notification of eligibility for tax exemption or reduction.



dd) Declaring tax on foreign reinsurance

The Vietnam party shall declare and pay tax on behalf of foreign reinsurer.

Declarations of tax shall be submitted to the supervisory tax authority of the Vietnamese party.

Tax on foreign reinsurance shall be declared every quarter.

dd.1) A declaration dossier consists of:

- The declaration of tax incurred by foreign reinsurer (form 01/TBH enclosed herewith);
- A list of reinsurance contracts (form 02-1/TBH-TB enclosed herewith). Only one photocopy of the type of contract, which is certified by the taxpayer, shall be sent as a sample. The taxpayer is responsible for the accuracy of the list;
- A photocopy of the Business license or practice certificate, which is certified by the taxpayer.

dd.2) Notice of eligibility for tax exemption or reduction:

Foreign reinsurers shall directly submit the Notice of eligibility for tax exemption or reduction for every reinsurance contract it signs or intends to sign in the year. The foreign reinsurer may authorize its tax agents or representative offices in Vietnam of a Vietnamese insurer to submit it. In this case, the foreign reinsurer shall submit a provisional notice and an official notice to the tax authority. In particular:

dd.2.1) Provisional notice:

- The provisional notice shall be submitted at least 05 days before concluding the contract or 05 days after performing the contract, or 05 days before making payment, whichever occurs first.
- Places to submit the notice of eligibility for tax exemption or reduction:
  - + If the foreign reinsurer has a representative office in Vietnam, the notice shall be submitted to the building work of the province where the representative office is situated.
  - + If the foreign reinsurer does not have any representative office in Vietnam:

The foreign reinsurer may directly submit the notice to the Department of Taxation of the province where the first Vietnamese reinsurer with which the foreign reinsurer plans to sign the contract is situated;

The foreign reinsurer may also authorize a legal representative in Vietnam to submit the dossier to the Department of Taxation of the province where the representative applies for tax registration. Example: the tax agents, audit companies, Vietnamese reinsurers, etc.

- A dossier consists of:

- + A provisional notice (form 01/TBH-TB enclosed herewith).
- + The original or certified true copy of the Certificate of residence issued by the tax authority of the home country, which has been consularly legalized in the year preceding the year in which the provisional notice is submitted.
- + A list of reinsurance contracts that are signed or planned to be signed (form 01-1/TBH-TB enclosed herewith).

+ A letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure for applying the Agreement.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in the provisional notice mentioned above.

dd.2.2) Official notice:

- The foreign reinsurer shall submit the official notice together with relevant documents to the tax authority in Q1 of the next year.

- The provisional notice and official notice shall be submitted at the same place.

- Documents submitted to the tax authority:

+ The official notice (form 02/TBH-TB enclosed herewith).

+ The original or certified true copy of the Certificate of residence issued by the tax authority of the home country, which has been consularly legalized in the tax year.

+ Photocopies (certified by the taxpayer) of the reinsurance contracts performed in the year that are not sent to the tax authority (including both the contracts listed and not listed in the plan sent to the tax authority).

+ A list of contracts (form 02-1/TBH-TB enclosed herewith). When submitting the official notice, the taxpayer shall classify the contracts and send a list of contracts. Only one photocopy (certified by the taxpayer) of the type of contract shall be sent as a sample. The taxpayer must take responsibility for such statistics.

+ A letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure for applying the Agreement.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in the official notice mentioned above.

dd.2.3) Procedure for applying the Agreement:

- After the foreign reinsurers submit provisional notices, the tax authority shall issue a Certificate of sufficient documents within 15 days from the day on which sufficient documents are received. When signing a contract with a Vietnamese reinsurer, the foreign reinsurer may send the Vietnamese reinsurer a photocopy of this Certificate, which is authenticated by a competent authority, to be eligible for tax exemption or reduction according to the Agreement. The provisional notice shall be made into 02 copies, one of which is kept by the applicant for application of the Agreement, and the other is kept at the Department of Taxation.

- The tax authority shall check the documents after the notice is submitted by the foreign reinsurer. If the documents are found inaccurate, insufficient, or invalid, the tax authority shall notify the applicant or request a tax payment if the taxpayer fails to meet the conditions for applying the Agreement.

e) Terminal declaration dossier:

- A terminal declaration of tax incurred by contractors (form 02/NTNN enclosed herewith);

- A list of foreign contractors and Vietnamese sub-contractors that participate in contract performance (form 02-1/NTNN and 02-2/NTNN enclosed herewith);

- A list of tax payment receipts;
- A notice of contract finalization (if any).

#### 4. Declaration of VAT using credit-invoice method; declaration of CIT on revenue.

a) The foreign contractor or foreign sub-contractor that directly declares VAT using credit-invoice method or declares CIT on revenue shall submit declarations of tax to the supervisory tax authority of the Vietnamese party.

When a construction or installation contract is signed, declarations of tax shall be submitted to the Department of Taxation or local Sub-department of taxation, depending on the decision of the Director of the local Department of Taxation where the contract is performed.

Within 20 days from the conclusion of the contract, the Vietnamese party that signs a contract with a foreign contractor, or the foreign contractor that signs a contract with a foreign sub-contractor shall notify the local tax authority that the foreign contractor or foreign sub-contractor pays VAT using credit-invoice method, or pay CIT on taxable revenue.

When the tax authority issues a tax registration certificate to the foreign contractor or foreign sub-contractor, the foreign contractor or the foreign sub-contractor shall send 01 photocopy of the tax registration certificate to the Vietnamese party or the foreign contractor respectively. If payment to the foreign contractor must be made before the Vietnamese party receives the photocopy, the Vietnamese party shall declare and pay VAT or CIT on behalf of the foreign contractor or foreign sub-contractor as guided in Clause 3 of this Article.

The foreign contractor or foreign sub-contractor that has been issued with a tax registration certificate must declare and pay VAT (using credit-invoice method) on the revenue earned after the issuance of the tax registration certificate. The VAT paid by the Vietnamese party on behalf of the foreign contractor or foreign sub-contractor shall not be deducted from the amount of VAT payable by the foreign contractor or foreign sub-contractor. The foreign contractor or foreign sub-contractor must not deduct input VAT incurred before the issuance of the tax registration certificate.

b) Declarations of VAT using credit-invoice method shall be made in accordance with instructions in Article 11 of this Circular.

c) A declaration of CIT on revenue shall be made whenever the foreign contractor receives a payment. A terminal declaration shall be made when the contract is finished.

When the foreign contractor receives multiple payments in a month, the taxpayer may request for permission to declare tax every month instead of whenever a payment is received.

c.1) A declaration dossier consists of:

- The declaration of tax (form 03/NTNN enclosed herewith);
- A photocopy of the contract, which is certified by the taxpayer (when declaring tax for the first time);
- A photocopy of the Business license or practice certificate, which is certified by the taxpayer.

c.2) Notice of eligibility for tax exemption or reduction:

If the foreign contractor is eligible for tax exemption or reduction according to a Double taxation agreement between Vietnam and another country/territory, the following procedure shall be followed:

15 days before the deadline for declaring tax, the foreign contractor shall the supervisory tax authority a dossier that consists of: + A Notice of eligibility for tax exemption or reduction (form 01/HTQT enclosed herewith);

+ The original or certified true copy of the Certificate of residence (consularly legalized) issued by the tax authority of the home country before the year in which the Notice of tax exemption or reduction is issued;

+ A photocopy of the contract with the Vietnamese entity, which is certified by the taxpayer.

+ A letter of attorney if the taxpayer authorizes a legal representative to carry out the procedure for applying the Agreement.

If a notice of eligibility tax exemption or reduction has been sent in the previous year, only the photocopies (certified by the taxpayer) of new business contracts with Vietnamese and foreign entities shall be submitted.

15 days before the expiration of the labor contract in Vietnam or the end of the tax year (whichever occurs first), the foreign contractor shall send an the Certificate of residence, which has been consularly legalized in the tax year, to the tax authority where tax is registered.

If no Certificate of residence is available at that time, the foreign contractor shall make a commitment to send the Certificate of residence, which has been consularly legalized, within the quarter after the ending day of the tax year.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in form 01/HTQT mentioned above.

c.3) Terminal declaration dossier:

- A terminal declaration of tax (form 04/NTNN enclosed herewith);

- A list of Vietnamese sub-contractors that enter into the contract (form 02-2/NTNN enclosed herewith);

- A list of tax payment receipts;

- A notice of contract finalization (if any).

5. Some cases of declaring and paying tax:

a) The foreign contractor or foreign sub-contractor that applies one of the three methods mentioned in Clause 2, Clause 3 and Clause 4 of this Article shall keep using that method to declare and pay tax until the end of the contract.

b) If the foreign contractor or foreign sub-contractor that is following one of the three methods signs new contracts in Vietnam before the end of the old contract, the current method shall still be applied to the new contracts.

c) If a contract is signed after the end of the new contract, the foreign contractor or foreign sub-contractor may apply one of the three methods in Clause 2, Clause 3 and Clause 4 of this Article to the new contract.

d) If the foreign contractor or foreign sub-contractor performs multiple contracts at the same time, and the foreign contractor or foreign sub-contractor applies one of the methods, then the same method is also applied to the other contracts, whether they are eligible or not).

dd) If the foreign contractor or foreign sub-contractor that provides goods/services serving petroleum exploration and extraction pays VAT using the direct method, the Vietnamese party shall pay VAT on their behalf.

If the foreign contractor or foreign sub-contractor that provides goods/services serving petroleum exploration and extraction pays VAT using credit-invoice method: If the Vietnam party pays the foreign contractor or foreign sub-contractor before they are issued with the tax registration certificate for applying credit-invoice method, the Vietnam party shall declare and pay tax on behalf of the foreign contractor or foreign sub-contractor. The foreign contractor or foreign sub-contractor that has been issued with a tax registration certificate must apply credit-invoice method to declare and pay VAT on the revenue earned after the issuance of the tax registration certificate. The VAT paid by the Vietnamese party on behalf of the foreign contractor or foreign sub-contractor shall not be deducted from the amount of VAT payable by the foreign contractor or foreign sub-contractor. The foreign contractor or foreign sub-contractor must not deduct input VAT incurred before the issuance of the tax registration certificate.

Example 33:

In January 2013, foreign contractor A signs a contract with a Vietnamese party to provide oil-drilling services for 1 million USD. Before contractor A obtains the tax registration certificate to apply credit-invoice method, contractor A incurs a VAT of 5,000 USD on the purchases serving the contract performance. The Vietnamese party pays 100,000 USD to contractor A (inclusive of VAT, exclusive of CIT). In this case the Vietnamese party shall deduct the VAT incurred by contractor A (70% of 10% VAT on taxable revenue from oil drilling services). Thus the amount of VAT paid by the Vietnam party on behalf of contractor A is 7,000 USD.

On May 01, 2013, contractor A is issued with the tax registration certificate so they can apply credit-invoice method to declare and pay VAT themselves. On May 15, 2013, the Vietnam party pays 200,000 USD to contractor A. Contractor A issues a VAT invoice to the Vietnam party, the tax on which is 20,000 USD (200,000 USD x 10%). Input VAT from May 01, 2013 to May 15, 2013 is 2,000 USD. VAT payable by contractor A is 18,000 USD (20,000 USD - 2,000 USD). Contractor A must not deduct 5,000 USD of input VAT that is incurred before May 01, 2013.

6. Where the foreign contractor enters into a partnership with a Vietnamese business organization to do business in Vietnam under contracts:

a) If the parties to the partnership establish an executive board, and this executive board keeps accounting records, opens bank accounts, and issues invoices, or the Vietnamese organization keeps accounting records and distributes profit, VAT and CIT on the whole revenue from performance of the contract shall be declared and paid by the executive board or the Vietnamese organization in accordance with Article 11 and Article 12 of this Circular.

b) If revenues and/or products are shared among the parties, or each party perform separate tasks of the contract, then each party shall determine the revenue they earn, and the foreign contractor may declare and pay tax as guided in Clause 2, Clause 3 and Clause 4 of this Article.

## **Article 21. Determination and declaration of flat tax**

## 1. Payers of flat tax

Businesspeople, groups of businesspeople or miner shall pay flat tax (hereinafter referred to as flat tax payers), including:

- a) The businesspeople and groups of businesspeople exempt from business registration or tax registration.
- b) The businesspeople and groups of businesspeople that do not adhere to accounting and invoicing practice.
- c) The businesspeople and groups of businesspeople that do not follow accounting and invoicing practice and thus fail to determine the correct amount of tax payable.
- d) The businesspeople and groups of businesspeople that manually, nomadically, or irregularly extract resources.

## 2. The taxes may be paid at flat rates:

- a) VAT.
- b) Special excise tax (SET).
- c) Personal income tax (PIT).
- d) Severance tax.
- dd) Environment protection fees for mineral extraction.

## 3. Declaration of flat tax

- Form 01/THKH enclosed herewith shall be used to declare flat tax.
- The taxpayer that claims deductions shall submit form 01-1/THKH enclosed herewith.
- The taxpayer that uses invoice books quarterly shall submit a list of sold goods/services (form 03/THKH enclosed herewith).
- The taxpayer that uses separate invoices shall declare VAT and PIT on the revenue in invoices whenever tax is incurred (form 01A/KK-HD enclosed herewith).

## 4. Deadline for submitting declarations of flat tax

- a) Flat tax shall be declared annually.

From November 20 to December 05 of the previous year, the tax authority shall send a declaration of flat tax in the next year to every payer of flat tax.

Form 01/THKH shall be used to declare flat tax. The declaration must be submitted by December 15 of the previous year.

If the payer of flat tax has just commenced their business or mineral extraction, the declaration shall be submitted within 10 days from the commencement of the business or mineral extraction.

If the payer of flat tax changes their business line, scale of business or mineral extraction, the declaration shall be submitted within 10 days from the occurrence of such change.

- b) If the taxpayer uses invoice books, the list of sold goods/services must be submitted by the 15<sup>th</sup> of the first month of the next quarter.

c) If the taxpayer uses separate invoices, tax shall be declared when the application for using invoices is submitted to the tax authority.

5. If the revenue earned by the taxpayer does not exceed the level that incurs VAT shall not pay VAT at flat rate.

#### 6. Determination of flat tax

According to the declaration of revenue, income and production of the taxpayer, the database of the tax authority, and the actual revenue, the tax authority shall determine the revenue and flat tax rate applied to the taxpayer, which will be publicly posted.

The group of businesspeople that pays flat tax: According to the fixed taxable income earned by the group, the ratio of income distribution, and deductions for each member, the tax authority shall calculate and notify the amount of tax payable in the year, and the provisional amount of tax payable by each member in the group every quarter.

Flat tax shall be determined every quarter and remain unchanged throughout the year. If the payer of flat tax changes their business line, scale of business or mineral extraction, the tax authority shall adjust the flat tax rate and keep it unchanged until the end of the tax year.

#### 7. Announcement and consultation with local Tax Advisory Councils

##### a) Announcement:

Sub-departments of taxation shall publicly post information about payers of flat tax at proper places (the People's Committees of communes, tax offices, market management boards, etc.) and announce such places Information shall be posted from January 02 to January 10.

The following information shall be posted: the levels of revenue from various businesses that do not incur tax, the list of payers of flat tax exempt from VAT and/or CIT, the list of payers of flat tax, amounts of tax payable, and feedback address.

##### b. Consultation with local Tax Advisory Councils

Sub-departments of taxation shall hold consultations with local Tax Advisory Council about the posted information by January 10. The consultation must be recorded in writing, specifying the opinions about adjustment of revenue and tax payable of every taxpayer.

#### 8. Making and approving tax registers

According to the declarations submitted by flat tax payers, investigation results, minutes of meeting with the Tax Advisory Council of the commune, opinions offered by flat tax payers, Sub-departments of taxation shall make and approve tax registers The flat tax is unchanged throughout the tax year, unless the taxpayer changes their scale or line of business. Tax registers must be approved by January 15 every year.

Every month according to the change in business of the taxpayer (the taxpayer has just commenced the business, the taxpayer suspends or shuts down the business, changes the business line or tax calculation method, etc.), or the changes in tax policies that affect the tax payable by the taxpayer, the Sub-department of taxation shall adjust the tax register and notify the taxpayer of the tax payable in the month or in the quarter. If the tax payable by the taxpayer is adjusted due to a change in the scale or line of business, or change in tax policies, the tax shall remain unchanged throughout the remaining months in the tax year.

Departments of Taxation shall post the list of households that earn revenues or incomes below the taxable level, their status, revenue, tax payable (VAT, PIT, etc.) on the websites of Departments of Taxation by January 30 every year. When a taxpayers has just commenced their business or adjusts the tax payable or business status, the Department of Taxation shall make an adjustment on its website by the last day of the month in which the event occurs.

#### 9. Deadlines for sending tax notices and deadlines for paying tax

##### a) Deadlines for sending tax notices:

a.1) Tax authorities shall send notices of flat tax (form 02/THKH enclosed herewith) to taxpayers (whether they are exempt from VAT or not) by January 20. Only one notice shall be sent to the taxpayer in a quarter if the tax remains unchanged.

If tax payable is changed due to a change in the taxpayer's business line or scale, or a change in tax policies, the tax authority shall send a notice to the taxpayer (form 02/THKH) by the 20<sup>th</sup> of the month in which the change occurs.

a.2) If the taxpayer has just commenced their business or mineral extraction, the tax authority shall send a notice (form 02/THKH) to the taxpayer by the 20<sup>th</sup> of the month in which tax is incurred.

a.2) If an additional amount of VAT/CIT is incurred by the taxpayer because the revenue on the invoice is higher than the flat revenue, the tax authority shall send a notice (form 01-1/TB-HD enclosed herewith) by the 20<sup>th</sup> of the first month of the next quarter.

##### b) Deadlines for paying tax:

b.1) According to the tax notice, the taxpayer shall pay quarterly tax by the last day of the month.

b.2) If the taxpayer uses invoice book, additional payment of PIT and VAT is the 30<sup>th</sup> of the first month of the next quarter.

b.3) If the taxpayer uses separate invoices, PIT and VAT on the revenue on invoices shall be paid when tax is declared.

#### 10. Determination of tax incurred by a taxpayer when revenue changes:

##### a) The taxpayer uses invoice books:

- In the quarter, if the revenue is lower than the flat revenue, tax shall be paid according to the flat revenue. If the revenue earned in the quarter is higher than the flat revenue, but the taxpayer is able to prove that the increase is due to an unexpected cause, not a change in the business line or scale, then the taxpayer must pay additional VAT and PIT. In this case the tax authority shall not adjust the flat revenue and flat tax.

- If the taxpayer that uses invoice books claims a PIT refund, taxable revenue in the year shall be determined as follows:

+ In the year, if the revenue on invoices is lower than the flat revenue, tax of the year shall be paid according to the flat revenue.

+ In the year, if the revenue on invoices is higher than the flat revenue, taxable revenue of the year is the revenue on invoices.



b) If the taxpayer uses the invoices sold separately by the tax authority, 10% PIT on taxable income and VAT shall be paid whenever it is incurred.

c) Where the taxpayer changes their business line, scale, or mining production, another declaration (form 01/THKH) shall be made from the day on which the change is made.

The tax authority shall redetermine the amount of tax payable in the month in which the change is made, and send a notice (form 02/THKH enclosed herewith) to the taxpayer.

- If the taxpayer fails to inform or misinforms the tax authority of such change, or the tax authority have documents proving a change in the scale of the taxpayer's business, which leads to an increase in the revenue, then the tax authority is entitled to request the taxpayer to pay additional tax and impose another flat tax that suits the business scale.

11. When taxpayer suspends or shuts down the business:

The taxpayer must make and send a notice of suspension or shutdown to the tax authority together with an application for tax exemption or reduction (form 01/MGTH enclosed herewith) at least 15 days before the suspension or shutdown. According to the suspension period, the tax authority shall determine the reduction level and issue a Decision on tax exemption or (form 03/MGTH). Determination of reduction level:

If the taxpayer suspends the business for a full month (from 1<sup>st</sup> to the last day of the month) or longer shall have the amount of VAT and PIT payable in the quarter reduced by 1/3. Similarly, VAT and PIT payable in the quarter shall be reduced by 2/3 if the business is suspended for 02 consecutive full months, and VAT and PIT payable in the quarter shall be exempt if the business is suspended for the whole quarter.

The taxpayer does not suspend the business for the full month, no tax reduction shall be given.

If the taxpayer keeps running the business during the suspension period, PIT and VAT shall be paid according to the tax authority's notice.

Example 34: Mr. A is a businessperson who incurs a flat tax of 12.6 million VND in 2014 (including 7.8 million VND in VAT and 4.8 million VND in PIT). In 2014, Mr. A suspends his business from February 20 to the end of January 20. Before that Mr. A sent a notice of business suspension to the local Sub-department of taxation.

Tax liability of Mr. A during the suspension period:

- Mr. A's business is suspended for 03 full months including March, April, and May;
- Monthly VAT is 650,000 VND (7.8 million VND/12 months);
- Monthly PIT is 400,000 VND (4.8 million VND/12 months).

Accordingly:

- In Q1: Mr. A's business is suspended during the whole March, thus he shall not pay 650,000 VND in VAT and 400,000 VND in PIT in March.

- In Q1: Mr. A's business is suspended for 02 full months, thus he shall not pay 1,300,000 VND in VAT and 800,000 VND in PIT in April and May.

## **Article 22. Tax incurred by households and individuals that lease out assets**

1. Tax declaration:

The households and individuals that lease out assets (hereinafter referred to as lessors) must declare, pay VAT, PIT, and license tax according to the notices of tax authorities.

The lessor may choose one of the following methods for declaring VAT and PIT:

Quarterly declaration:

Lessors shall declare tax quarterly and calculate deductions in each quarter.

Taxable revenue in the quarter is the revenue earned in the quarter according to the contractual lease period. If no revenue is earned in the quarter, no tax declaration shall be made.

The level of income that incurs PIT shall be decided according to the Taxable Income Table of the tax authority.

b) Declaring tax whenever a contract is concluded:

b) Declaring tax whenever a contract is concluded:

b.1) When signing a contract for one year or less, the lessor shall declare and pay VAT and PIT whenever tax is incurred, and submit a terminal declaration of PIT if required by laws.

b.2) When signing a contract for more than one year, the lessor shall choose between declaring all PIT in the first year and making a separate terminal declaration every year.

b.2.1) If all PIT is completely paid in the first year, the revenue shall be determined according to the lump sum and deductions shall be calculated only in that year, not in the next years. Tax payable is calculated as follows:

$$\text{VAT payable} = \text{Lump sum} \times \text{VAT rate (\%)}$$

$$\text{PIT payable} = \left( \text{Lump sum} \times \frac{\text{PIT rate (\%)}}{\text{PIT rate (\%)}} - \text{Deductions} \right) \times \text{Tax rate}$$

b.2.2) If PIT is paid annually, the lump sum and deductions shall be provisionally declared in the first year. The lump sum shall be distributed among the months of advance payment to calculate monthly provisional tax. The lessor shall provisionally pay VAT and PIT for the period of advance payment. When making the annual terminal declaration, taxable revenue shall be distributed among the months of the year. Tax payable is calculated as follows:

$$\text{VAT payable} = \text{Lump sum} \times \text{VAT rate (\%)}$$

$$\text{Provisional PIT in the first year} = \text{Provisional monthly tax} \times \text{Months of advance payment}$$

$$\text{Provisional monthly PIT} = \left( \frac{\text{Lump sum}}{\text{Months of advance}} \times \text{Taxable income} - \text{Deductions} \right) \times \text{Tax rate}$$

payment

$$\text{Taxable revenue of the year} = \frac{\text{Lump sum}}{\text{Months of advance payment}} \times \text{Lease months}$$

## 2. Tax declaration:

The lessor shall use form 01/TTS enclosed herewith to declare tax, whether they declare tax quarterly or whenever a contract is signed, and submit it together with the documents related to the lease (the contract, notice of contract finalization, and other documents).

## 3. Places to submit the declaration:

The declaration shall be submitted to the Sub-department of taxation where the asset is located.

## 4. Deadlines for submitting declarations:

- a) If tax is declared monthly, the declaration shall be submitted by the 30<sup>th</sup> of the first month of the next quarter.
- b) If tax is declared whenever a contract is signed, the declaration shall be submitted by the 30<sup>th</sup> of the first month of the quarter succeeding the quarter in which the lease period begins, which is the quarter that has the first month of the lease period.

Example 35: Mr. X signs a lease contract for 03 years from April 10, 2014 to April 10, 2017. He chooses to declare tax whenever a contract is signed, so the deadline for declaring tax is July 30, 2014.

## 5. Deadlines for paying tax:

- a) If tax is declared quarterly, the deadline for paying tax is also the deadline for submitting the declaration.
- b) If tax is declared whenever a contract is signed, it shall be paid when the declaration is submitted to the tax authority.

## **Article 23. Declaring and paying tax on hydroelectricity generation**

### 1. Declaring and paying VAT on hydroelectricity generation

The hydroelectricity producer shall declare VAT in the locality where their head office is situated, and pay VAT to the State Treasuries of the localities where the hydroelectricity plants are situated (turbines, dams, and other primary facilities of hydroelectric power plants). If a hydroelectric power plant spreads over multiple provinces, VAT paid by the producer to each province is proportional to the producer's investment in the facilities of the plant in that province. The producer shall declare VAT in the province where the head office is situated and send copies of the VAT declaration to the tax authorities to which VAT is distributed.

Example 36: Power plant X spreads over province A and province B. VAT incurred by the plant is distributed between two provinces as follows:

Contents	Value (billion VND)			Distribution ratio (%)	
	Province	Province	Total	Province A	Province

		A	B			B
		(1)	(2)	(3)=(1)+(2)	(4)=(1)/(3)	(5)=(2)/(3)
Plant X	Total investment	560	900	1,460	38.36%	61.64%
	- Turbines	0	100	100		
	- Dams	350	280	630		
	- Primary facilities	210	520	730		

Accordingly, 38% of VAT shall be paid in province A, and 62% in province B.

The producer shall use form 01/GTGT enclosed herewith to declare VAT. If the hydroelectricity producer has a hydroelectric power plant in another province and engages in another business, the VAT on hydroelectricity generation must be separated. The hydroelectricity producer shall write the VAT on hydroelectricity generation incurred by each plant on form 01-1/TD-GTGT enclosed herewith. VAT on hydroelectricity generation equals output VAT minus (-) input VAT on hydroelectricity generation. The paid VAT on hydroelectricity generation (according to tax receipts) shall be deducted from the amount of VAT payable according to form 01/VALUE ADDED.

The hydroelectricity producers affiliated to EVN, the hydroelectricity producers affiliated to electricity general companies shall use form 01/TD-GTGT enclosed herewith to declare VAT.

If the hydroelectricity producer pays VAT to provincial budgets in proportion to the investment in the provinces, the producer shall submit a table of VAT distribution using form 01-2/TD-GTGT enclosed herewith, together with a VAT declaration to every tax authority to which VAT is distributed.

## 2. Declaring and paying corporate income tax (CIT) on hydroelectricity generation:

Hydroelectricity producers shall declare CIT in accordance with Article 12 of this Circular.

Some cases of declaring and paying CIT:

a) Every hydroelectricity company that keeps accounting records independently shall pay CIT in the province where their head office is situated. If such company has affiliated hydroelectricity producers in other provinces, CIT shall be paid in the provinces where the head office and the hydroelectricity producers are located according to the laws on CIT;

The hydroelectricity producers affiliated to EVN, the hydroelectricity producers affiliated to electricity general companies that are situated in other provinces than the head office of EVN and the general companies, CIT shall be paid in the provinces where the head office and the affiliated hydroelectricity producers are located.

b) In case the hydroelectric power plant (having the turbines, hydroelectric dams, and primary facilities) spreads over multiple provinces, the corporate income tax incurred by the hydroelectric power plant shall be paid to provincial budgets in proportion to the investment in the provinces. The hydroelectricity producer shall send a table of corporate income tax distribution to each province (form 02-1/TD-TNDN enclosed herewith) The hydroelectricity producer shall declare CIT in the province where the head office is situated, then send a

photocopy of the CIT declaration, form 01-1/TNDN (CIT calculation table), and form 02-1/TD-TNDN (table of CIT distribution) to the tax authorities to which CIT is distributed.

c) If the expense incurred by each hydroelectric power plant of the hydroelectricity producer is not determinable, the CIT to be paid in the province where the hydroelectric power plant is situated equals (=) the CIT payable in the period multiplied by (x) the ratio of generation of the plant to the total generation of the hydroelectricity producer.

### 3. Declaring and paying severance tax on hydroelectricity generation

Hydroelectricity producers shall declare and pay severance tax in the province where the declaration is submitted (form 03/TD-TAIN enclosed herewith). If the reservoir of the hydroelectricity producer spreads over multiple provinces, the severance tax incurred by the hydroelectricity producer shall be distributed among the provinces. The declaration of severance tax shall be submitted to the tax authority where tax is registered and its photocopies shall be sent to the other tax authorities to which severance tax is distributed. Severance tax shall be transferred to the budgets of the provinces in proportion to the reservoir area, the cost of compensation for land clearance and relocation, the number of relocated households, and damage to the reservoir.

Example 37: The reservoir of power plant X spreads over province A and province B. Severance tax incurred by the plant is distributed between two provinces as follows:

Plant	Contents	Province A			Province B		
		Quantity	Ratio	Average ratio	Quantity	Ratio	Average ratio
Plant X	Reservoir area (hectares)	1,500	79%	63.60%	400	21%	36.40%
	Number of relocated households	71	42.77%		95	57.23%	
	Damage to the reservoir (billion VND)	351	86.03%		57	13.97%	
	Cost of compensation for land clearance and relocation (billion VND)	28	46.67%		32	53.33%	

Accordingly, 68% of severance tax shall be paid to province A and 36% to province B.

If severance tax paid by the hydroelectricity producer is distributed among the provinces, the hydroelectricity producer shall send a table of severance tax distribution (form 03-1/TD-TAIN)

together with the declaration of severance tax to the tax authorities of the provinces to which severance tax is distributed.

Hydroelectricity producers shall use form 03A/TD-TAIN enclosed herewith to make the terminal declaration of severance tax.

4. If a hydroelectricity producer that spreads over multiple provinces adjusts the amount of VAT, CIT, or severance tax, then the increase/decrease of VAT, CIT, or severance tax shall be distributed among the provinces to which revenues are distributed as guided in Clause 1, Clause 2, and Clause 3 of this Article.

5. Procedure for paying tax:

The head office (or the office where tax is registered) shall pay VAT, CIT, and severance tax in the province where the head office is situated (or where tax is registered) and in other provinces where VAT is distributed on behalf of its affiliates.

According to the VAT, CIT, and severance tax distributed to the province where the head office is situated (or where tax is registered) and the other provinces in the declarations of VAT, CIT, and severance tax, the appendices form 01-1/TD-GTGT, form 01-2/TD-GTGT, form 01-1/TNDN, form 03-8/TNDN, form 02-1/TD-TNDN, and 03-1/TD-TAIN, the company shall send tax receipts to the province where the head office is situated and the other provinces to which VAT, CIT, and severance tax are distributed. The taxpayer must declare that tax is paid to an account at a State Treasury at the same level as the tax authority where the head office is situated and the other provinces to which VAT, CIT, and severance tax are distributed.

6. If VAT, CIT, and severance tax paid by the hydroelectricity producer is distributed among multiple provinces, the Department of Taxation of the province where the producer's head office is situated shall cooperate with the investor and the Departments of Taxation of the provinces where the investor's hydroelectric power plants are situated in determining the investment in the plants, the reservoir area, the compensation for land clearance and relocation, the number of relocated households, and damage to the reservoir in every province, then send a report to the Ministry of Finance (the General Department of Taxation) by June 30 of the year preceding the year in which the plant commences its operation.

7. The instructions in Clause 1, Clause 2 and Clause 3 of this Article are applied to the hydroelectric power plants that commence their operation from January 01, 2011.

#### **Article 24. Declaring, paying severance tax and CIT on extraction and sale of crude oil or natural gas**

1. Responsibility to submit declarations:

The taxpayer shall submit the declarations of CIT and severance tax to the tax authority of the province where the taxpayer's head office is situated.

According to the intended production of crude oil and natural gas, the taxpayer shall e provisional rates of severance tax and CIT, then send the report on intended petroleum production and provisional tax rates (form 01/BCTL-DK enclosed herewith) to the supervisory tax authority by December 01 of the previous tax year.

In the tax year, if the intended production of crude oil and natural gas, or the intended duration of petroleum extraction in the last 6 months is changed and causes an increase or decrease in

severance tax rate by 15% or more in comparison to the provisional rate, then the taxpayer shall recalculate the rate of severance tax and CIT, then notify it to the tax authority by May 01 of that year.

## 2. Declaring CIT:

### a) Declaring provisional CIT on extraction and sale of crude oil:

#### a.1) Declaring provisional CIT on extraction and sale of crude oil whenever a sale is made:

The declaration of CIT on a sale of crude oil shall be submitted within 35 days from the day on which the sale is made (if crude oil is sold domestically), or from the day on which the customs procedure is completed (if crude oil is exported).

#### a.2) A declaration dossier consists of:

- A declaration of provisional CIT on crude oil (form 01A/TNDN-DK enclosed herewith).
- An appendix specifying tax liabilities of petroleum contractors (form 01/PL-DK enclosed herewith).

### b) Declaring provisional CIT on natural gas:

#### b.1) Provisional CIT on extraction and sale of natural gas shall be declared monthly or quarterly.

- The monthly provisional declaration of provisional CIT shall be submitted by the 20<sup>th</sup> of the month succeeding the month in which tax is incurred.
- The quarterly provisional declaration of provisional CIT shall be submitted by the 30<sup>th</sup> of the quarter succeeding the quarter in which tax is incurred.

#### b.2) A declaration dossier consists of:

- Form 01A/TNDN-DK (monthly provisional declaration of CIT on petroleum) or form 01B/TNDN-DK (quarterly provisional declaration of CIT on natural gas) enclosed herewith.
- An appendix specifying tax liabilities of petroleum contractors (form 01/PL-DK enclosed herewith).

### c) A terminal declaration dossier consists of:

- A terminal declaration of CIT on petroleum (form 02/TNDN-DK enclosed herewith).
- An appendix specifying tax liabilities of petroleum contractors (form 01/PL-DK enclosed herewith).
- The annual financial statement or a financial statement upon the end of the petroleum contract.

### d) The terminal declaration must be submitted within:

- 90 days from the end of the calendar year or tax year.
- 45 days from the end of the petroleum contract.

## 3. Declaring severance tax on extraction and sale of crude oil or natural gas:

### a) Declaring provisional severance tax on extraction and sale of crude oil or natural gas:

#### a.1) Declaring provisional severance tax on extraction and sale of crude oil whenever a sale is made:

The declaration of severance tax on a sale of crude oil shall be submitted within 35 days from the day on which the sale is made (if crude oil is sold domestically), or from the day on which the customs procedure is completed (if crude oil is exported).

a.2) A declaration dossier consists of:

- A provisional declaration of severance tax on crude oil (form 01/TAIN-DK enclosed herewith).
- An appendix specifying tax liabilities of petroleum contractors (form 01/PL-DK enclosed herewith).

b) Declaring provisional severance tax on natural gas:

b.1) Severance tax on extraction and sale of natural gas shall be declared monthly;

The monthly provisional declaration of provisional severance tax shall be submitted by the 20<sup>th</sup> of the month succeeding the month in which tax is incurred.

b.2) A declaration dossier consists of:

- A provisional declaration of severance tax on crude oil (form 01/TAIN-DK enclosed herewith).
- An appendix specifying tax liabilities of petroleum contractors (form 01/PL-DK enclosed herewith).

c) A terminal declaration dossier consists of:

- A terminal declaration of severance tax on petroleum (form 02/TAIN-DK enclosed herewith).
- An appendix specifying tax liabilities of petroleum contractors (form 01/PL-DK enclosed herewith).
- An appendix specifying the production and revenue for petroleum sale (form 02-1/PL-DK enclosed herewith).

d) Deadlines for submitting the terminal declaration of severance tax on extraction and sale of crude oil or natural gas.

- Within 90 days from the end of the calendar year or tax year.
- Within 45 days day from the end of the petroleum contract.

## **Article 25. Tax imposition when taxpayers violate tax law**

1. The tax authority is entitled to impose tax in the following cases:

a) The taxpayer fails to apply for tax registration as prescribed in Article 22 of the Law on Tax administration;

b) The taxpayer fails to submit the tax declaration within 10 days from the deadline for declaration submission or from the end of the extended period;

c) The taxpayer fails to provide supplementary documents at the request of the tax authority, or the tax basis in the documents provided is not accurate or ample enough to determine the tax payable;

d) The taxpayer fails to present accounting documents, invoices, and the documents related to determination of tax basis by the end of the tax inspection at the taxpayer's premises;



- dd) The tax inspection proves that the taxpayer fails to follow the accounting practice, or the data in accounting books is insufficient or incorrect that leads to incorrect calculation of tax payable;
- e) The taxpayer is suspected of making a getaway or liquidating assets to avoid tax liability;
- g) The taxpayer fails to calculate the amount of tax payable after submitting the declaration to the tax authority.

## 2. Imposition of each factor related to the determination of tax payable

Each factor related to the determination of tax payable shall be imposed in the following cases:

- a) The tax inspector proves that the taxpayer fails to follow the accounting practice, the data in Provides incorrect information in accounting books that lead to incorrect determination of tax basis, unless tax is imposed.
- b) The inspector finds that the taxpayer record incorrect sale prices and purchase prices of goods.

The tax authority may refer to the prices of goods and services announced by a authority, or sale prices, purchase prices of similar companies, or sale prices of a large-scale company that sells the same products to determine appropriate prices

3. The tax authority shall impose VAT, ratio of taxable income on revenue, taxable revenue or taxable income if the inspector finds that the accounting books, invoices, and receipts are inadequate, the taxpayer commits tax offences, or the declarations made by the taxpayer are unreasonable. The imposition of taxable revenue or taxable income is based on certain criteria such as building rent, cost of labor, depreciation, cost of raw materials, etc. The Ministry of Finance shall specify the imposition on a case-by-case basis.

## 4. Basis for tax imposition

The tax authority shall impose tax if the taxpayer is considered violating tax law according to the following basis:

a) The database of the tax authority is collected from:

- The taxpayer's declarations of revenue, expense, income, and tax payable in the previous periods.
- The organizations and individuals relevant to the taxpayer.
- Other state authorities.

b) Information about:

b.1) The local taxpayers that provide the same type of goods or services. If such information about local taxpayers is not available, information about taxpayers in other areas may be used;

b.2) Average amount of tax payable by some local companies that provide the same type of goods or services. If information about local companies is not available, information about such companies in other areas may be used.

c) Unexpired inspection results and documents.

5. When imposing tax, the tax authority shall send a Decision on tax imposition (form 01/ADTH enclosed herewith) to the taxpayer.

6. Tax must be paid within 10 days from the day on which the Decision on tax imposition is signed. If the tax imposed by the tax authority is 500 million VND or more, it must be paid within 30 days from the day on which the Decision on tax imposition is signed.

If the taxpayer submits a tax declaration after the tax authority signs the decision on tax imposition, the decision still applies.

The amount of tax mentioned in such declaration shall be considered by the tax authority to determine whether the taxpayer's liability is fulfilled. The tax authority shall notify the taxpayer in writing if the declared tax is not accepted.

If the taxpayer does not concur with the tax imposed by the taxpayer, the taxpayer still has to pay such tax and is entitled to request an explanation from the tax authority, or file a complaint against the tax imposition.

### **Chapter III**

#### **TAX PAYMENT**

##### **Article 26. Deadlines for paying tax**

1. Taxpayers must pay tax sufficiently and on schedule.
2. The deadline for paying tax is the deadline for submitting the tax declaration if tax is calculated by the taxpayer, or the deadline imposed by the tax authority or a competent authority.

License tax shall be paid by January 30 of the year in which tax is incurred. If the taxpayer has just commenced their business, the deadline for paying tax is the deadline for submitting the tax declaration.

3. The deadlines for paying tax, fees, charges, and other amounts payable to government budget shall be the deadline for competent authorities to record such amounts.

##### **Article 27. Currencies**

1. The currency for paying tax is VND.
2. In the cases when the Ministry of Finance allows tax payment in foreign currencies:
  - a) Taxpayers may only pay tax in the convertible foreign currencies according to regulations of the State bank.

If the taxpayer is required to pay tax in foreign currency but a competent authority allows payment in VND, the amount must be converted into VND according to the average exchange rate on inter-bank foreign exchange market announced by the State bank when tax is paid by the taxpayer.

- b) The amount of foreign currencies paid to government budget shall be managed in accordance with regulations of the Ministry of Finance.

##### **Article 28. Places and procedures for tax payment**

1. Taxpayers shall pay tax, late payment penalties, and fines at:
  - a) Commercial banks, other credit institutions, and other service providers prescribed by law;
  - b) State Treasuries;

c) Tax collection agencies;

d) The organizations authorized by tax authorities to collect tax;

Commercial banks, other credit institutions, service providers, State Treasuries, tax collection agencies, the organizations authorized by tax authorities to collect tax (hereinafter referred to as tax collectors) must prepare the locations, equipment, personnel to enable taxpayers to pay tax, late payment penalties and fines.

2. Procedure for paying tax:

a) Taxpayers shall pay tax in cash, by wire transfer, or in other electronic means according to the instructions of the Ministry of Finance.

Tax collectors shall:

- Provide guidance on making tax receipts according to the methods of payment.

- Add certification on the tax receipts or issue certifications of tax payment to taxpayers as prescribed.

Taxpayers must write sufficient information on the tax receipts or to tax collectors for them to write such information on the tax receipts.

Payers of incomes subject to personal income tax, if eligible, may print and issue deduction notes to the individuals that have tax deducted from their incomes. Deduction notes shall be printed in accordance with the instructions of the Ministry of Finance on printing, using, and managing deduction notes.

b) Tax authorities shall open collection accounts at commercial banks and other credit institutions to collect the payables (unless such amounts are paid by taxpayers directly at State Treasuries in accordance with instructions of the Ministry of Finance). At the end of the working day, the amounts paid by taxpayers to the aforementioned collection accounts must be transferred to government budget.

Taxpayers and tax collectors shall transfer the tax, late payment penalties, and fines to the collection accounts. Tax collectors shall instruct taxpayers to pay tax, late payment penalties, fines, and other amounts to such accounts.

The opening of accounts at commercial banks, other credit institutions; the transfer of payment to collection accounts; the payment procedure, the bookkeeping of tax, late payment penalties, and fines paid to government budget from collection accounts must comply with instructions of the Ministry of Finance.

3. The State Treasury where the investor opens their business account shall deduct the 2% VAT on the payment for the fundamental works funded by government budget, the payments for the fundamental works of ODA-funded projects funded by government budget (reciprocal capital paid for fundamental works of ODA projects at State Treasuries). The State Treasury shall not deduct VAT before any fundamental work is finished when the investor applies for advance capital.

The repayments for investments in fundamental constructions without business contracts such as: payment for project management by the investor, payments by the project management board, payments for land clearance and the projects carried out by local residents, etc.; the repayments

for investments in fundamental works of ODA projects that are not made via accounts opened by the investors at State Treasuries; the repayment for investments in national defense and security projects from the accounts advertisement State Treasuries that are not controlled by State Treasuries. VAT shall be deducted if the taxpayer is able to prove the sufficient payment of tax.

Investors shall make tax receipts using form C2-02/NS, form C3-01/NS, or form C4-02/NS enclosed with the Circular No. 08/2013/TT-BTC dated January 101, 2013 on government bookkeeping applicable to Treasury and Budget Management Information System (TABMIS) and send them to State Treasuries where the business accounts are opened to monitor the payments, then provide detailed information about the names, tax code, local tax authority of the contractor or where the construction site is located (if the construction site is located in another province than the contractor's head office). The collected amounts shall be recorded as tax to deduct VAT and record government revenues.

After the State Treasury check and approve the receipts for payments for fundamental works funded by government budget, ODA projects that are subject to VAT, the State Treasury shall add certification on the receipts, record the deducted VAT as government revenues, and transfer the receipts to the tax authority according to information on the receipts.

According to the approved receipts, the State Treasury shall make a payment to the contractor (equal to total amount minus deducted VAT). State Treasury shall give 2 slips of the receipt to the investor; the investor shall give one of them to the contractor. The amount of VAT deducted by the State Treasury according to the receipt shall be deducted from the VAT payable by the contractor. The investor shall monitor the circulation of receipts between the investor and the contractors.

The State Treasury shall cooperate with the tax authority at the same level in deducting VAT on local fundamental works funded by government budget, and record the deducted VAT as government revenues as follows:

Deducted VAT shall be recorded in the budget of the province where the fundamental work is located.

For extraprovincial works, the investor shall determine the revenue from each province and send a report to the State Treasury.

If the works are located in another district or multiple districts, records shall be kept in the district where the contractor's head office is situated.

4. According to the list sent by the tax authority, the State Treasury where the investor's account is opened shall deduct the rescheduled tax debt (according to Point c Clause 1 Article 31) owed by the taxpayer when the investor is following the payment procedure. The deducted tax must not exceed the rescheduled tax debt owed by the taxpayer. Deducted tax shall be recorded in accordance with Clause 3 of this Article.

5. The taxpayer shall transfer VAT arrears (whether discovered by the taxpayer or the tax authority) to the VAT collection accounts (if VAT was refunded) or the government budget account (if VAT was overpaid according to Clause 3 Article 1 of the Law No. 21/2012/QH13 on amendments to the Law on Tax administration).

6. Enforcement of administration decision on taxation (hereinafter referred to as tax decision):

a) Wire transfer: according to the Decision on enforcement of tax decision and the payment request (form 01/LT enclosed with the Circular No. 08/2013/TT-BTC dated January 13, 2013 of the Ministry of Finance and the amendments thereto), the State Treasury, the State bank, commercial bank, or credit institution where the taxpayer's account is opened shall transfer money from the taxpayer's account to government budget.

b) Asset distraint: the enforcing agency shall follow the procedure for distraining or liquidating assets to collect tax, late payment penalties and fine.

7. Within 08 working hours from the collection of tax, late payment penalties and fine, the tax collector must transfer all of the amount to the account mentioned in Point b Clause 2 of this Article. When collecting tax, late payment penalties and fine in highlands, remote areas, or islands where traveling is difficult, the collected amount shall be transferred to government budget within 05 working days from the collection date.

If tax, late payment penalties and fine are collected electronically within the working days, the tax collector shall immediately transfer such amount to the account mentioned in Point b Clause 2 of this Article. If tax, late payment penalties and fine are collected electronically beyond working hours, the tax collector shall immediately transfer such amount to government budget on the next working day.

#### **Article 29. Payment of tax, late payment penalties and fines**

1. If the taxpayer owes tax debt, tax arrears, late payment penalties, fines and new tax, the taxpayer must write such amounts in the following orders:

- a) Tax debt;
- b) Tax arrears;
- c) Late payment penalties;
- d) New tax;
- dd) Fines.

If the deadlines for paying such amounts are different, the amount that is due first shall be paid first.

2. If the taxpayer separates the tax, late payment interest, and fines in the tax receipt, the tax authority shall record such amounts in the order mentioned in Clause 1 of this Article.

3. If a cancellation, adjustment, or deferral of tax debt, tax arrears, late payment interest, additional tax, or fine is being considered (on account of the tax authority's errors), it shall not be paid. After the cancellation or adjustment is decided, or at the end of the deferral period, the remaining amounts shall be paid in the order in Clause 1 of this Article.

4. Tax authorities shall instruct taxpayers to follow the order in Clause 1, Clause 2 and Clause 3 of this Article. When a taxpayer fails to determine the order, the tax authority shall make the payment and send a notification to the taxpayer (form 01/NOPT enclosed herewith) by the 10<sup>th</sup> of the month succeeding the month in which the payment is made.

#### **Article 30. Determination of tax payment date**

1. Determination of tax payment date:

a) If payment is made in cash or wire transfer, the payment date is the day on which the taxpayer certifies, signs and adds a seal on the tax receipt.

b) If the payment is made electronically: the payment date is the day on which the taxpayer transfers money from their account at a bank or credit institution to pay tax, and the payment system of such bank or credit institution certifies that the payment has been made.

c) The tax authority shall offset the overpaid tax, late payment penalties, and fines against the outstanding tax, late payment penalties, and fines on the Decision to refund and offset tax (form 02/QDHT enclosed herewith).

2. Government revenues shall be recorded in the year in which tax is paid.

### **Article 31. Deferring tax payment**

1. Tax payment may be deferred in the following cases:

a) Property damage caused by natural disasters, blazes, or accidents that affects the business:

Property damage means the damage to the taxpayer's property that can be measured by money, such as: machinery, equipment, supplies, goods, buildings, cash, and valuable papers.

Accidents are the unexpected incidents due to external causes that affect the taxpayer's business, not violations of law.

b) The business must be suspended when the business establishment is moved at the request of a competent authority, which affects the business.

c) The investment in fundamental construction capital has not been repaid.

d) The taxpayer fails to pay tax on time due to other difficulties.

2. Amount of outstanding tax, fines, penalties for late payment of tax or fines (hereinafter referred to as tax) that can be deferred; deferral period:

a) When the natural disaster, blaze or accident happens, the taxpayers mentioned in Point a Clause 1 of this Article may defer paying an amount of outstanding tax that does not exceed the property damage. The property damage equals the value of damaged property minus the compensation paid by responsible entities as prescribed by law.

Tax payment may be deferred for up to 02 years from the deadline. In particular:

a.1) If the taxpayer suffers from a property damage that does not exceed than 50% of the total property in the accounting book of the quarter before the damage is incurred, tax payment may be deferred for up to 01 year from the deadline.

Example 38: On October 01, 2013, the tax authority receives a request for tax deferral from company A. When the blaze occurs in June 01, 2013, company A is owes 700 million VND in tax (lower than the property damage which is 900 million VND), including 300 million VND in VAT that is due on April 22, 2013, and 400 million VND in corporate income tax that is due on May 02, 2012.

If documents are satisfactory, company A may defer the payment of 300 million VND in VAT until April 22, 2014, and may not defer 400 million VND in corporate income tax because it has been more than 01 year from the deadline to occurrence of the blaze.

a.2) If the taxpayer suffers from a property damage higher than 50% of the total property in the accounting book of the quarter before the damage is incurred, tax payment may be deferred for up to 02 year from the deadline.

Example 39: On October 01, 2013, the tax authority receives a request for tax deferral from company B. When the blaze occurs in June 01, 2013, company B is owes totally 700 million VND in tax (lower than the property damage which is 900 million VND), including 300 million VND in VAT that is due on April 22, 2013, and 400 million VND in corporate income tax that is due on July 30, 2012.

If documents are satisfactory, company B may defer the payment of 300 million VND in VAT until April 22, 2015, and 400 million VND in corporate income tax until July 30, 2014.

b) The taxpayers mentioned in Point b of this Clause may defer the outstanding tax when their business is suspended. The tax debt being rescheduled must not exceed the cost of moving and the damage caused by moving. The cost of moving does not include the cost of building the new establishment. Tax payment must not be deferred for more than 01 year from the deadline.

If the competent authority finds that the taxpayer does not actually moves the business, a late payment interest on the deferred tax shall be charged.

Example 40: On October 01, 2013, the tax authority receives a request for tax deferral from company C.

The business is suspended for moving on June 01, 2013, company C is owes totally 700 million VND in tax (lower than the moving cost which is 750 million VND), including 400 million VND in VAT that is due on May 20, 2013, and 300 million VND in corporate income tax that is due on March 30, 2012.

If documents are satisfactory, company C may defer the payment of 400 million VND in VAT until May 20, 2014, and may not defer the payment of 300 million VND in corporate income tax because it has been more than 01 year from the deadline to suspension of the business.

c) The taxpayers mentioned in Point c Clause 1 of this Article may defer the payment of tax debt. The amount of deferred tax must not exceed the amount of unsettled liabilities to government budget, including the cost of consultancy, supervision, survey, design, planning of the contracts for fundamental works between the taxpayer and the investor, which is covered or funded by government budget. Tax payment must not be deferred for more than 01 year from the deadline.

Example 41: On December 27, 2013, the tax authority receives a request for tax deferral from company D, which is made on December 23, 2013.

According to the investor's certification, the outstanding amount payable by government budget to the taxpayer is 100 million VND. Company D is owes totally 250 million VND in tax, including 60 million VND in VAT that is due on July 22, 2013, and 190 million VND in corporate income tax that is due on July 30, 2013.

If documents are satisfactory, company D may defer totally 100 million VND in tax, including 60 million VND in VAT until July 22, 2014, and 40 million VND in corporate income tax until July 30, 2014. The remaining 150 million VND must be paid to government budget.

c.1) If the government budget repays the investment of fundamental construction during the deferral period, the taxpayer shall pay tax right after the date of payment. In particular:

- If repaid investment is equal to or higher than the amount of deferred tax, the taxpayer shall immediately pay the deferred tax.

- If repaid investment is smaller than the amount of deferred tax, the taxpayer shall immediately pay an amount tax equal to the repaid investment. The taxpayer may choose to pay one of the deferred taxes in part or in full.

The remaining outstanding tax shall be deferred until the end of the deferral period, or until investment is repaid by government budget during the deferral period.

c.2) If the competent authority finds that the taxpayer does not pay the deferred tax when investment is repaid by government budget, a late payment interest on the deferred tax shall be charged from the day succeeding the date of payment according to Article 34 of this Circular.

d) The taxpayers mentioned in Point d Clause 1 of this Article may defer the payment of tax debt if they are suffering special difficulties. The amount of deferred tax must not exceed the damage caused by such difficulties. Tax must not be deferred for more than 01 year from the deadline.

### 3. Procedure and documentation:

The taxpayer that wishes to defer tax payment shall make and send a dossier to the supervisory tax authority. The dossier consists of:

a) In the cases mentioned in Point a Clause 1 of this Article:

- A written request for tax deferral (form 01/GHAN enclosed herewith);
- An assessment of property damage made by the taxpayer or their legal representative;
- A written certification that the taxpayer suffers from damage where the natural disaster, blaze, or accident occurs and of the occurrence time. The certification must be made by either a police station, the People's Committee of the commune, the management board of the industrial zone, export-processing zone, or economic zone where the incident occurs, or a rescue organization;
- A compensation claim approved by the insurer (notarized or authenticated copy if available); documents specifying the responsibilities of the compensation provider (notarized or authenticated copy if available). If the taxpayer is a legal entity, the aforesaid documents must be original or copies bearing the signature of the legal representative and the company's seal.

b) In the cases mentioned in Point b Clause 1 of this Article:

- A written request for tax deferral (form 01/GHAN enclosed herewith);
- A decision of competent authorities to move the taxpayer's business establishment;
- A moving plan made by the taxpayer;
- The documents proving the business suspension, specifying the beginning day, the moving cost, the damage caused by moving and suspension (if any).

c) In the cases mentioned in Point c Clause 1 of this Article:

- A written request for tax deferral (form 01/GHAN enclosed herewith);
- Business contracts with the investor; records on terminal assessments and transfer of works (notarized or authenticated copies);



- An investor's certification that the works are in progress, specifying the numbers, dates of the competent authorities' documents about allocation of capital from government budget, names and positions of the signers, the total value of the construction, the value of finished works, the amount of investment repaid by the investor, the amount of investment that has not been repaid by the investor before the request for tax deferral is made.

d) In the cases mentioned in Point d Clause 1 of this Article:

- A written request for tax deferral (form 01/GHAN enclosed herewith);
- Documents sent by the supervisory tax authority to its superior tax authority, certifying the special difficulties that cause the taxpayer to not pay tax on time;
- Copies of the documents about the deferral, cancellation, exemption, reduction of tax issue by the tax authority over the previous 02 years (if any);
- The decisions of competent authorities that affect the taxpayer's business.

#### 4. Deadlines

a) If the documents are not sufficient or the property damage stated is suspected to be incorrect, within 03 working days from the day on which the documents are received, the tax authority shall request the taxpayer in writing (form 03/GHAN) to provide explanation or additional documents. The taxpayer may not defer tax payment if the taxpayer fails to comply with the request of the tax authority.

b) If the documents are sufficient, within 10 working days from the day on which the documents are received, the supervisory tax authority shall send the taxpayer:

b.1) A written refusal of tax deferral (form 04/GHAN enclosed herewith) if the taxpayer fails to meet the requirements.

b.2) A written approval for tax deferral (form 02/GHAN enclosed herewith) if the taxpayer meets the requirements.

c) In the case mentioned in Point d Clause 1 of this Article, tax authority shall follow Point a and Point b of this Clause after receiving documents from the taxpayer. If the taxpayer is eligible for tax deferral and submits sufficient documents, the taxpayer shall send a written request for tax deferral to the superior tax authority (together with the dossier).

d) The tax authority shall not enforce the payment of deferred tax if the taxpayer submits sufficient documents. The enforcement shall be delayed until a written refusal of deferral is issued.

#### 5. Entitlements to approve tax deferral

a) In the cases mentioned in Point a, Point b and Point c Clause 1 of this Article: the Director of the supervisory tax authority shall decide the amount of deferred tax and the deferral period.

b) In the case mentioned in Point d Clause 1 of this Article, if the estimate of government revenue that is decided by the National Assembly is not adjusted:

- The Government shall grant tax deferral when supporting the market to resolve business difficulties.
- The Prime Minister shall decide tax deferral on a case-by-case basis.

After the Prime Minister makes a written approval for tax deferral, the Director of the Department of Taxation shall issue a decision on tax deferral in accordance with instructions of the Ministry of Finance and the General Department of Taxation.

c) The decision on tax deferral must be posted on the websites of tax authorities within 03 working days from the day on which the decision is issued.

- The decisions on deferral made by Sub-departments of taxation or Department of Taxation shall be posted on the website of the Department of Taxation.

- The decisions on deferral made by the Prime Minister shall be posted on the website of the General Department of Taxation.

6. During the deferral period, late payment interest on the deferred tax shall not be charged. At the end of the deferral period, the taxpayer must pay tax. If the taxpayer fails to pay tax sufficiently after the deferral, late payment interest shall be charged and tax payment shall be enforced.

### **Article 32. Paying tax debt in instalments**

1. The taxpayer may pay tax debt in instalments over not more than 12 months from the day on which the tax decision is enforced if the following requirements are met:

a) the tax authority has issued a decision on enforcement of tax decision, but the taxpayer fails to pay all the tax and late payment interest (hereinafter referred to as tax) all at once.

b) A credit institution offers a payment guarantee. The credit institution must be established and operated in accordance with the Law on credit institutions, and is responsible for the eligibility to offer guarantee as prescribed by law.

c) A letter of guarantee is sent to the relevant tax authority (the obligee) saying that the guarantor will pay all the tax on behalf of the taxpayer (the obligor) when the taxpayer defaults.

The letter of guarantee must contain sufficient information prescribed by law, specifying the name, address, phone number, fax number of the obligee, guarantee basis, type and amount of guaranteed tax; name, tax code, account number, address, phone number, and fax number of the obligor, name, tax code, account number, address, phone number, and fax number of the guarantor. The letter of guarantee is effective until all of the guaranteed tax debt is paid off. If the taxpayer does not pay or sufficiently pay off tax according to the instalment plan at the end of the instalment period, the guarantor must fulfill their obligations in accordance with Clause 2 Article 114 of the Law on Tax administration and Article 39 of the Decree No. 83/2013/ND-CP dated July 22, 2013 elaborating the implementation of some Article of the Law on Tax administration and the Law on amendments to the Law on Tax administration.

The letter of guarantee shall be signed by the legal representative of the credit institution, the person in charge of risk management, and the guarantee assessor. Another person may be authorized in writing to sign the letter of guarantee.

Example 42: According to the letter of guarantee of commercial bank A, the tax authority has issued a decision to allow company X to pay 100 million VND in tax debt in instalments by June 30, 2014. At the end of June 30, 2014, company X has not paid this amount and interest charged over the instalment period. From July 01, 2014, bank A shall pay 100 million VND in tax and interest.

d) The taxpayer must make a commitment to equally divide the guarantee tax to pay monthly by the end of the months.

2. Responsibilities of the taxpayer, the guarantor, and the tax authority:

a) The taxpayer shall pay an interest on the tax paid in instalments at 0.05% per day.

b) The guarantor shall:

b.1) Send a letter of guarantee to the supervisory tax authority of the taxpayer.

b.2) Pay on behalf of the taxpayer the tax, interest at 0.05% per day before the deadline, and 0.07% per day after the deadline if the taxpayer defaults.

c) Within 05 working days from the end of the instalment period, the tax authority shall make and send a written request for fulfillment of guarantor's obligations (form 06/NDAN enclosed herewith) to the guarantor, and to the taxpayer if the taxpayer fails to pay tax or the guarantor fails to pay tax on the taxpayer's behalf.

3. Settlement:

The Director of the supervisory tax authority shall decide the amount of tax paid in instalments and the length of instalment period.

4. Documentation for paying tax in installments

a) A written request for permission to pay tax in instalments (form 01/NDAN enclosed herewith), specifying the amount of outstanding tax, the requested amount paid in instalment, the requested length of instalment period, and a commitment to adhere to the payment schedule.

b) A letter of guarantee made by the guarantor.

c) A decision on enforcement of tax decision issued by the Director of the supervisory tax authority of the taxpayer regarding the tax paid in instalment mentioned in Point a Clause 1 of this Article.

5. Deadlines

a) If documents are not sufficient, within 03 working days from the day on which the documents are received, the tax authority shall request the taxpayer in writing (form 03/NDAN enclosed herewith) to provide additional documents.

The taxpayer must provide sufficient documents within 05 working days from the day on which the tax authority's request is received. If the taxpayer fails to provide sufficient documents at the request of the tax authority, the tax authority shall enforce the tax payment.

b) If the documents are sufficient, within 10 working days from the day on which the documents are received, the supervisory tax authority shall send the taxpayer:

b.1) A written refusal of instalment plan (form 04/NDAN enclosed herewith) if the taxpayer fails to meet the requirements in Clause 1 of this Article.

If the letter of guarantee is suspected to be illegitimate, the tax authority shall send a notification (form 05/NDAN enclosed herewith) to the guarantor to verify.

The guarantor shall send a verification result to the tax authority by the deadline prescribed by law.

b.2) A written approval for instalment plan (form 02/NDAN enclosed herewith) if the taxpayer meets the requirements in Clause 1 of this Article.

The instalment period and amount of tax paid by instalment in the decision on instalment plan must be consistent with the guaranteed period and amount of the guarantor.

6. During the instalment period, the measures for enforcement of tax decision are suspended.

### **Article 33. Settlement of overpaid tax, late payment penalties, and fines**

1. An amount of tax, late payment penalties, or fines is considered overpaid when:

a) The tax, late payment interest, and fines paid by the taxpayer is higher than the amounts payable within 10 years from the day on which the amounts are paid to government budget. If terminal declarations must be made, the taxpayer may only determine overpaid tax when the paid tax is higher than the tax payable according to the terminal declaration.

b) The taxpayer claims a tax refund in accordance with the laws on VAT, special excise tax, environmental protection tax, personal income tax (except for the case in Point a of this Clause).

2. The taxpayer is entitled to settle the overpaid tax, late payment penalties, and fines in the following order:

a) Offset the overpaid amount against the outstanding tax, late payment interest, or fines of the same tax according to Clause 1 Article 29 of this Circular (except for the case in Point b Clause 1 of this Article).

b) Offset the overpaid amount against the outstanding tax, late payment interest, or fines of the same tax according to Clause 1 Article 29 of this Circular (except for the case in Point b Clause 1 of this Article). If no liability is incurred after 06 months from the overpayment, instructions in Point c of this Clause shall be followed.

c) After following the instructions in Point a and Point b of this Clause, if the overpaid amount is not cleared, the taxpayer shall submit a claim for tax refund to the local tax authority in accordance with Chapter VII of this Circular.

- If the taxpayer still owes tax, late payment interest or fines, the overpaid amount must be offset against the outstanding amounts before receiving the refund. The offsetting order is specified in Article 29 of this Circular.

If the inspector concludes that the taxpayer has both overpaid tax and tax arrears, the tax authority shall issue a decision on penalties and offset the refundable tax against the tax arrears.

If the outstanding tax, late payment interest, or fines must be paid to both the government revenue account and provisional account, it must be offset against the payable to the government revenue account first.

If the taxpayer owes tax, late payment interest and fines in different localities, the outstanding amounts shall be offset against the overpaid tax in the same locality.

If the taxpayer owes tax, late payment interest and fines at different tax authorities, the outstanding amounts shall be offset against the overpaid tax at the same tax authority.

If the taxpayer still owes tax debt, late payment interest or fines, but does not wish to offset them against the refundable amount, the tax authority shall notify the taxpayer in writing that the refundable amount must be offset against the debt.

- If the overpaid amount is not cleared after offsetting, the taxpayer shall receive a refund from government budget.

If the overpaid tax is paid in different localities, the tax authority must specify the amount refunded by government budget in each locality in proportion to the amount of tax paid in such locality when offsetting the overpaid tax against the outstanding amounts mentioned in Point c of this Clause.

d) The application for tax refund, the procedures for refunding tax and offsetting refunded tax against government revenues are specified in Chapter VII of this Circular.

3. The overpaid tax, late payment interest or fines paid by a taxpayers that is dead, missing, or incapable of civil acts shall be refunded as follows:

a) The taxpayer is considered dead by law:

If the inheritance has been divided, tax shall be refunded to the inheritors in proportion to the inheritance they receive, unless otherwise agreed.

If the inheritance has not been divided, tax shall be refunded to inheritance manager.

If the government or an organization is also a beneficiary of the inheritance according to the taxpayer's will, they shall also receive the refund.

If there is no inheritor or the inheritor refuses to receive the inheritance, tax shall be refunded in accordance with civil laws.

b) If the taxpayer is declared missing or late payment interest, tax shall be refunded by the person assigned by the court to manage the taxpayer's property.

c) Tax overpaid by the taxpayer that is dead or incapable of civil acts shall be refunded in accordance with Clause 2 of this Article.

4. The wage payer authorized by the income earner to make the terminal declaration of personal income tax shall offset the overpaid tax against the tax payable. The income earner shall refund the overpaid tax to the earner from their budget, and then settle it with the tax authority as follows:

a) If overpaid tax is shown in the terminal declarations (form 05/KK-TNCN enclosed herewith) made on behalf of the individuals:

- If only overpaid taxes are shown in the list (form 05-1/BK-TNCN), the income payer shall offset or refund them in accordance with Clause 5 of this Article.

- If the total amount overpaid tax in form 05-1/BK-TNCN is higher than the outstanding tax, the income earner shall deduct the refund from the income of the individuals that underpays their tax. After deducting tax, the income payer shall offset or refund tax in accordance with Clause 5 of this Article.

b) If tax liabilities are shown in the terminal declarations made on behalf of the individuals, the income payer shall deduct the refund from the income of the individuals that underpays their tax. After deducting tax, the income payer shall offset or refund tax in accordance with Clause 5 of this Article.

5. Tax in the terminal declarations shall be offset against tax in the declarations of deducted tax made by the income payer on the individuals' behalf.

- If the terminal declarations indicate overpaid tax, and the declarations of tax deduction also indicate overpaid tax, the income earner shall make a written request for refund using form 01/DNHT enclosed herewith and send it to the supervisory tax authority for refund.
- If the terminal declarations indicate overpaid tax, and the declarations of tax deduction do not indicate any overpaid or underpaid tax (tax =0), the income earner shall make a written request for refund using form 01/DNHT enclosed herewith and send it to the supervisory tax authority for refund.
- If the declarations of tax deduction indicate overpaid tax, and the terminal declarations do not indicate any overpaid or underpaid tax (tax =0), the income earner shall make a written request for refund using form 01/DNHT enclosed herewith and send it to the supervisory tax authority for refund.
- If the terminal declarations indicate overpaid tax and the declarations of tax deduction indicate tax liability, or the terminal declarations indicate tax liability and the declarations of tax deduction indicate overpaid tax, the income earner shall make a written request for refund using form 01/DNHT enclosed herewith and send it to the supervisory tax authority, specifying the overpaid tax being offset against tax liability, then send it to the supervisory tax authority for tax refund.

#### **Article 34. Calculating late payment interest**

1. Late payment interest shall be charged when:

- a) The taxpayer fails to pay tax by the deadline for paying tax, the end of the extended period, the deadline written in the notice of the tax authority, or the deadline in the decision on penalties for tax offences.
- b) If the taxpayer pays tax insufficiently because of incorrect statement of tax payable, exempt tax, reduced tax, or refunded tax in the previous periods.
- c) The tax collector authorized by the tax authority fails to transfer the collected tax to government budget on schedule.

2. Determination of late payment interest

a) If tax debt is incurred from July 01, 2013, late payment interest shall be charged at:

0.05% per day from the deadline for paying tax to the 90<sup>th</sup> day;

0.07% per day from 91<sup>st</sup> day.

Example 43: Taxpayer A owes 100 million VND in VAT, which is due on July 22, 2013 (July 20 is a day off). Taxpayer A pays 100 million VND on October 31, 2013. The late payment period extends from July 23, 2013 to October 31, 2013. The late payment interest paid by taxpayers A is 5.26 million VND. In particular:

From July 23, 2013 to October 20, 2013 (90 days):  $100 \text{ million VND} \times 0.05\% \times 90 \text{ days} = 4.5 \text{ million VND}$ .

From October 21, 2013 to October 31, 2013 (11 days):  $100 \text{ million VND} \times 0.05\% \times 11 \text{ days} = 0.77 \text{ million VND}$ .

b) If tax debt is owed before July 01, 2013 but is not paid after July 01, 2013, late payment interest shall be charged in accordance with the Law on Tax administration for the days before

July 01, 2013, and in accordance with the Law on the amendments to the Law on Tax administration for the days after July 01, 2013.

Example 44: Taxpayer B owes 100 million VND in corporate income tax according to the terminal declaration 2012, which is due on April 01, 2013 (March 31, 2013 is a day off). Taxpayer B pays tax on October 04, 2013. The late payment period extends from April 02 2013 to October 04, 2013.

Before July 01, 2013, interest is charged as follows: For 90 days from April 02, 2013 to June 30, 2013:  $100 \text{ million VND} \times 0.05\% \times 90 \text{ days} = 4.5 \text{ million VND}$ .

There are 96 late payment days that remain from July 01, 2013, including:

90 days from July 01, 2013 to September 28, 2013:  $100 \text{ million VND} \times 0.05\% \times 90 \text{ days} = 4.5 \text{ million VND}$ ;

06 days from September 29, 2013 to October 04, 2013:  $100 \text{ million VND} \times 0.07\% \times 06 \text{ days} = 0.42 \text{ million VND}$ .

The late payment interest payable by taxpayer B:  $4.5 \text{ million VND} + 4.5 \text{ million VND} + 0.42 \text{ million VND} = 9.42 \text{ million VND}$ .

c) The late payment period (including days off and holidays) begins on the day after the deadline for paying tax, the end of the extended period, the deadline written in the notice of the tax authority, or the deadline in the decision on penalties for tax offences, until tax is paid off by the taxpayer.

Example 45: Taxpayer C owes 50 million VND in VAT, which is due on August 20, 2013. Taxpayer C pays tax on August 26, 2013. The number of late payment days is 06 days from August 21, 2013 to August 26, 2013.

Example 46: Taxpayer D is permitted by the tax authority to defer the payment of 50 million VND in VAT, which is due on May 20, 2014, until November 21, 2014. Tax is paid off by the taxpayer on November 21, 2014. So there is only one day of late payment (November 21, 2014).

Example 47: After an inspection, taxpayer E incurs a fine of 500 million VND on April 15, 2014, which is due on May 14, 2014. The fine is paid off by the taxpayer on May 30, 2014. The number of late payment days is 16 days from May 15, 2014 to May 30, 2014.

3. The taxpayer shall determine the late payment interest himself. Late payment interest is determined according to the amount of late payment, the number of days of late payment, and the rate (%) per day as prescribed in Clause 2 of this Article.

In case the late payment interest is not imposed according to Clause 1 of this Article but the taxpayer has paid it, the taxpayer shall make an adjustment himself.

4. Every month, if the taxpayer has not paid tax, fines, late payment interest incurred in the previous month, the tax authority shall notify the taxpayer of the outstanding tax, fines and late payment interest if the amount has been incurred for more than 30 days. If the amount outstanding tax is incorrect, the tax authority shall adjust the late payment interest and notify the taxpayer.

### **Article 35. Exemption of late payment interest and entitlement to grant exemption**

1. The taxpayer that must pay late payment interest according to Article 34 of this Circular may request an exemption of late payment interest if the taxpayer faces a natural disaster, blaze, accident, epidemic, or fatal disease, or other force majeure circumstances.

The lists of fatal diseases are provided in other legislative documents.

2. The exemption level must not exceed the damage or the cost of medical treatment.

3. An application for exemption of late payment interest consists of:

a) A written request for exemption made by the taxpayer, specifying the name, tax code, address of the taxpayer, basis for exemption, and amount of late payment interest being exempt;

b) Additional documents must be provided on a case-by-case basis:

b.1) The following documents must be provided if the damage is caused by a natural disaster, blaze, accident, or epidemic:

- An assessment of property damage made by the taxpayer or the legal representative;
- A written certification that the taxpayer suffers from damage caused by a natural disaster, blaze, accident, or epidemic and the occurrence time made by the police station of the commune, the People's Committee of the commune, the management board of the industrial zone, export-processing zone, or economic zone where the natural disaster, accident, or epidemic occurs;
- A claim for compensation approved by the insurer (if any);
- The documents specifying the responsibilities of the entities responsible for paying compensation (if any).

b.2) If the individual suffers from a fatal disease, a certification of medical treatment issued by a medical facility, and the receipts for medical examination and treatment;

b.3) If a force majeure circumstance occurs, it is required to submit the documents proving the objective causes of the event, and that the taxpayer has taken every measure possible for reducing the damage but still suffers a loss.

4. The Director of a tax authority is entitled to issue a decision on exemption of the late payment interest (form 01/MTCN) he charged.

A decision on exemption of late payment interest must contain the date of the decision, name, tax code, address of the taxpayer that has late payment interest exempted, exempted amount, signature and seal of the issuer.

Decisions on exemption of late payment interest must be posted on the website of the Department of Taxation for at least 03 working days from the day on which the decisions are issued.

## **Chapter IV**

### **AUTHORIZING TAX COLLECTION**

#### **Article 36. Entitlement to authorize tax collection**

1. Tax authorities may authorize other organizations and individuals to collect the following taxes:

- Tax on agricultural land of households and individuals;



- Tax on non-agricultural land of households and individuals;
- Tax incurred by the business households that pay flat tax;
- Personal income tax.

Tax authorities may authorize other organizations and individuals to collect other taxes if approved by the Minister of Finance.

2. Tax collection shall be authorized under a contract between the Director of the tax authority and the legal representative of the authorized entity, except for authorization of collection of tax on irregular incomes.

3. The range of authorization of collection of tax from the business households that pay flat tax shall be decided by the Director of the General Department of Taxation. Before signing a contract to authorize tax collection, the authorized party must send the tax authority with a list of tax-collecting employees. The Director of the Department of Taxation shall impose standards of local tax-collecting employees.

4. The authorization contract (form 01/UNTH enclosed herewith) must contain:

- The taxes authorized to collect;
- The areas of tax collection;
- The delegated tasks: dispensing tax declarations, urging taxpayers to submit tax declarations, collecting tax declarations and submit them to tax authorities; dispensing tax notices, collecting tax and transferring collected tax to government budget; providing information about new taxpayers or the taxpayers that change their business lines or scale.
- Rights and responsibilities of the authorizing party and authorized party;
- Regulations on reporting contract performance; regulations on settlement of tax receipts;
- Authorization period and authorization cost.

At the end of the authorization period or when the authorization contract terminates because one party violates the contract, both parties must make a notice of contract finalization (form 02/UNTH enclosed herewith).

Appendices shall be made when more tasks are added or when the contract is extended.

### **Article 37. Responsibilities of the authorized party**

The authorized party must mobilize qualified employees to perform the contract. The authorized party must not authorize any third party to perform the authorization contract signed with the tax authority.

1. The authorized party shall receive tax declarations from the tax authority, dispense them, provide instructions on declaring tax, urge taxpayers to declare tax, collect tax declarations from taxpayers and send them to the tax authority on schedule.

2. The authorized party shall receive tax notices from the tax authority and send them to taxpayers at least 05 days before the deadline written on the tax notices, and urge taxpayers to pay tax properly.

3. The authorized party must issue tax receipts to taxpayers when collecting tax, and manage such receipts properly.

4. Transferring collected tax to government budget:

The authorized party shall transfer in full the collected tax and other amounts to State Treasuries. The total amount transferred to government budget is the total amount of collected tax on the tax receipts.

When transferring tax to the State Treasury, the authorized party must make a list of tax receipts and a deposit slip. The State Treasury shall send the documents about the transferred tax to the tax authority.

The tax authority shall specify the time and amount of tax the authorized party must transfer to State Treasury. The authorized party shall transfer tax to the State Treasury within 05 days if tax is collected in remote areas where traveling is difficult, or 03 days otherwise. If the collected tax is higher than 10 million VND, it must be immediately transferred to government budget. The Director of the Department of Taxation might consider allowing the taxpayer to make the transfer on the next working day if tax is collected in a disadvantaged or severely disadvantaged area.

5. Reporting collected tax and tax receipts

a) Reporting collected tax:

By the 5<sup>th</sup> of the next month, the authorized party shall make and send a report on the tax collected and transferred in the previous month (form 03/UNTH enclosed herewith) to the tax authority. The report must show the collected amount, uncollected amount, causes, and suggested solutions. The Sub-department of taxation that receives the report from the authorized party shall check every receipt, the collected amount, the transferred amount, and compare them with the amount verified by the State Treasury. Any difference found must be investigated to attribute responsibility.

b) Tax receipts:

Every month by the 5<sup>th</sup> of the next month, the authorized party shall make and send a list of used and unused tax receipts to the tax authority.

After 10 days from the end of the calendar year, the authorized party shall send a report on the quantity of used receipts (form 04/UNTH enclosed herewith) to the tax authority, and transfer the unused receipts to the year. In case the contract is terminated ahead of schedule, the authorized party shall finalize the contract and collect the receipts as prescribed.

The party shall face penalties for late settlement of receipts, late transfer of collected tax to government budget, collecting tax without receipts, or issuing incorrect invoices.

6. Monitoring and notifying the tax authority of new taxpayers or changes in the scale or business lines of local taxpayers.

### **Article 38. Responsibilities of the authorizing tax authority**

The tax authority is responsible for the implementation of policies and administration of taxes locally.

1. Announce cases taxpayers must pay tax via authorized tax collectors, the authorized tax collectors, and the deadlines for paying tax.
2. Give tax notices and tax records to the authorized tax collector at least 10 days before the deadline for sending tax notices mentioned in Chapter III of this Circular.
3. Provide sufficient tax receipts for the authorized tax collector; instruct the authorized tax collector to use and manage the receipts properly. The person assigned by the authorized tax collector to receive the receipts must present the written request and the letter of introduction.
4. Pay for the authorization cost according to the authorization contract.
5. Inspect the collection and transfer of collected tax by the authorized tax collector

According to the receipts for collected tax and the deposit slip, which certifies the transfer of collected tax, the tax authority shall record the tax and determine the amount of outstanding tax.

The tax authority shall issue decisions on penalties for late payment of tax, transfer them to the authorized tax collector, then the authorized tax collector shall give them to taxpayers. The authorized tax collector is responsible for urging taxpayers to pay tax and late payment interest in full.

#### **Article 39. Funding for authorization**

The funding for authorization is extracted from the tax authority's budget. The Director of the General Department of Taxation shall decide the amount paid to the authorized tax collector according to the local conditions and the taxes.

Funding shall be provided by wire transfer to the authorized collector's account at a bank or State Treasury, not in cash. The tax authority must pay the authorized collector for the collection cost according to the amount of tax transferred to government budget.

### **Chapter V**

#### **RESPONSIBILITY TO FULFILL TAX LIABILITY**

##### **Article 40. Fulfillment of tax liability before leaving Vietnam**

1. The Vietnamese people that emigrate to reside overseas, Vietnamese people residing overseas, foreigners must fulfill their tax liability before leaving Vietnam.
2. The taxpayers mentioned in Clause 1 of this Article must obtain certifications of fulfillment of tax liability before departure. Tax authority shall issue written certifications of fulfillment of tax liability at the taxpayer's request.
3. The immigration agency must stop an individual from leaving Vietnam when receiving a written or electronic notification from a tax authority that the person has not fulfilled their tax liability.

##### **Article 41. Fulfillment of tax liability upon dissolution, bankruptcy, shutdown**

1. Fulfillment of tax liability upon dissolution or bankruptcy must comply with Article 54 of the Law on Tax administration and Clause 16 Article 1 of the Law on the amendments to the Law on Tax administration, laws on companies, cooperatives, and bankruptcy.

The owner of the private company, the board of members or owner of the limited liability company, the Executive Board of the joint-stock company, or the organization in charge of liquidation is responsible for the fulfillment of tax liability of the company when it is dissolved.

The cooperative dissolution council is responsible for the fulfillment of tax liability of the cooperative when it is dissolved.

The asset management and liquidation board is responsible for the fulfillment of tax liability of the company when it is dissolved.

2. Responsibility to fulfill tax liability when the company is shut down without following the dissolution or bankruptcy procedure.

a) If the company is shut down without following the dissolution or bankruptcy procedure, the owner of the private company, the president of the board of members or owner of the limited liability company, the president of Executive Board of the joint-stock company, or the head of the cooperative shall pay the outstanding tax.

b) If a household or individual that shuts down the business without fulfilling tax liability, the householder shall pay the outstanding tax.

c) When an artel is shut down without fulfilling tax liability, the householder shall pay the outstanding tax.

d) The persons responsible for fulfilling tax liability mentioned in Point a, Point b, and Point c of this Clause are entitled to request the joint obligors to fulfill their liability.

#### **Article 42. Fulfillment of tax liability upon restructuring**

1. The divided company must fulfill tax liability before the decision. If the divided company has not fulfilled tax liability, the new companies derived from the divided company shall fulfill tax liability.

2. The split, amalgamated, or merged company must fulfill tax liability before the split, amalgamation, or merger. Otherwise, the new companies derived from the old company must fulfill tax liability.

3. When a company is converted, tax liability must be fulfilled before the conversion. Otherwise the new company derived from the conversion shall fulfill tax liability.

4. The restructuring of a company does not affect the deadline for paying tax. Any company that is restructured or a new company established without paying tax by the deadline shall face the penalties prescribed by law.

5. The tax authority is entitled to request one of the companies that are jointly responsible to fulfill tax liability. When a company has fulfilled tax liability, it is entitled to request the companies that are jointly responsible to fulfill their obligations in accordance with civil laws.

#### **Article 43. Inheritance of tax liability of a person that is dead, incapable of civil acts, or missing according to civil laws**

1. The tax liability of a person that is considered dead shall be fulfilled by his inheritor within the value of inheritance left by the dead person.

If the inheritance has not been divided, the inheritance manager shall fulfill tax liability.

If the inheritance has been divided, the inheritors shall fulfill tax liability according to the proportion of inheritance they receive, unless otherwise agreed.

If the government or an organization is also an inheritor according to the will, they must fulfill the tax liability left by the dead person as if they are an individual.

If no inheritor is available according to the will or law, or the inheritor refuses the inheritance, the dead person's tax liability shall be fulfilled in accordance with civil laws.

2. Tax liability of a person declared missing or incapable of civil acts shall be fulfilled by the person assigned by the court to keep the former's property within the inheritance left by the former.

3. If the declaration that a person is dead, missing, or incapable of civil acts is revoked by a competent authority, the decision on cancellation of outstanding tax shall also be revoked according to Article 65 of the Law on Tax administration and Clause 20 Article 1 of the Law on the amendments to the Law on Tax administration, but no late payment interest shall be charged on the period over which the taxpayer is declared dead, missing, or incapable of civil acts.

#### **Article 44. Certification of tax liability fulfillment**

1. The taxpayer is entitled to request the supervisory tax authority to certify the fulfillment of their tax liability (except for the taxes incurred during exportation or importation), or request the supervisory tax authority to certify the amount of tax, late payment interest and fines payable hitherto.

The individual or foreign contractor that pays tax at source (via the income payer) shall request the supervisory tax authority of their income payer to certify the fulfillment of tax liability.

2. The certification of tax liability fulfillment must contain:

- Name and tax code of the taxpayer;
- The taxes incurred, including those stated in the declarations submitted to the tax authority, flat tax and imposed tax;
- Fines for tax offences;
- Paid tax and fines;
- Outstanding tax and fines (if any).

3. Within 05 working days from the receipt of the request for certification from the taxpayer, the tax authority shall issue the certification. If information about the fulfillment of tax liability needs verifying, the tax authority shall notify the taxpayer of the reasons for delaying the certification.

4. Deducting foreign tax from tax payable in Vietnam

The organizations and individuals that are Vietnamese residents and have paid tax in a country that signs a tax treaty with Vietnam in accordance with that country's law and the treaty shall have the paid tax deducted from the tax payable in Vietnam. Tax shall be deducted as follows:

a) The taxpayer shall submit an application for deduction of paid tax from the tax payable in Vietnam to the tax authority of the province where tax is registered. The application consists of:

a.1) A written request for deduction of paid tax against the tax payable in Vietnam (form 02/HTQT enclosed herewith), providing information about the transactions related to the paid tax which is deduct from tax payable in Vietnam.

If the taxpayer fails to provide sufficient information or documents as prescribed in Point a Clause 4 of this Article, explanation must be provided in the written request.

a.2) Other documents: - For direct deduction:

+ A photocopy of the declaration of overseas income, which is certified by the taxpayer;

+ Photocopies of overseas tax receipts, which are certified by the taxpayer;

+ The original certification of the paid tax issued by the foreign tax authority.

- For deduction of flat tax:

+ A photocopy (certified by the taxpayer) of the declaration of overseas income;

+ A photocopy (certified by the taxpayer) of the of the Certificate of Business registration or documents certifying the overseas business;

+ A certification issued by a foreign authority of the tax exemption or reduction, and the conformity of tax deduction with the treaty and laws of contracting countries.

- For indirect deduction:

+ The documents proving the relationship with and contribution ratio of the applicant for deduction;

+ A photocopy (certified by the taxpayer) of the declaration of overseas income earned by the dividend payer to which capital is contributed;

+ A photocopy (certified by the taxpayer) of the declaration of tax deducted at source from dividends;

+ A certification issued by the foreign tax authority of the payment of tax on dividends and income tax paid made by the company before paying dividends.

a.3) A letter of attorney if the taxpayer authorizes a legal representative to follow the procedure.

b) The tax authority shall consider allowing tax deduction according to the treaty and this Circular within 10 working days from the receipt of all the documents mentioned in Point a of this Clause. The aforesaid 10-day period does not include the time for providing additional documents and explanation.

## 5. Procedure for certifying tax paid in Vietnam by foreign residents

When a resident of a contracting country has to pay income tax in Vietnam according to the treaty and Vietnam's tax laws, and wishes to have the tax paid in Vietnam certified so that it could be deducted from the tax payable in his home country, the following procedure shall be followed:

a) The taxpayer that wishes to have the tax paid in Vietnam certified shall submit an application to the Department of Taxation of the province where tax is registered. The application consists of:

a.1) A written request for certification of tax paid in Vietnam (form 03/HTQT enclosed herewith), specifying information about the transactions related to the taxable income and the tax incurred under the treaty.

a.2) The original copy (or certified true copy) of the Certificate of residence (consularly legalized) issued by the tax authority of the home country (specifying the tax period).

a.3) A letter of attorney if the taxpayer authorizes a legal representative to follow the procedure.

If the taxpayer fails to provide sufficient information or documents as prescribed in Point a Clause 5 of this Article, explanation must be provided in form 03/HTQT mentioned above.

Within 07 working days from the receipt of sufficient documents, the Department of Taxation shall issue a certification of tax paid in Vietnam (form 04/HTQT or 05/HTQT enclosed herewith). Form 04/HTQT shall be used for certifying the payment of personal income tax and corporate income tax; form 05/HTQT shall be used for certifying the payment of tax on dividends, loan interest, payment for copyright or technical services. The aforesaid 7-day period does not include the time for providing additional documents and explanation.

b) The taxpayer incurs a tax in Vietnam but is not required to pay it because of eligible for tax incentives. This tax is considered paid and may be deducted from the flat tax in the home country. In this case an application shall be sent to the Department of Taxation, which consists of:

b.1) A written request for certification of tax paid in Vietnam (form 03/HTQT enclosed herewith), specifying information about the transactions related to the taxable income and the tax incurred, and the tax incentives under the treaty.

b.2) The consularly legalized Certificate of residence issued by a tax authority of the home country, specifying the tax period;

b.3) A letter of attorney if the taxpayer authorizes a legal representative to follow the procedure.

If the taxpayer fails to provide sufficient information or documents as prescribed in Point b Clause 5 of this Article, explanation must be provided in form 03/HTQT mentioned above.

Within 07 working days from the receipt of sufficient documents, the Department of Taxation shall issue a certification of tax incurred in Vietnam that is exempted because of tax incentive. The aforesaid 7-day period does not include the time for providing additional documents and explanation.

## 6. Procedure for certifying residents of Vietnam

a) The applicant for the certification of residence in Vietnam under the treaty shall follow the procedure below:

a.1) If the applicant is a taxpayer, the request for certification of residence in Vietnam (form 06/HTQT enclosed herewith) and a letter of attorney (if the taxpayer authorizes a legal representative to follow the procedure) shall be submitted to the Department of Taxation of the province where tax registration is applied for.

a.2) If the application is not a taxpayer:

- A written request mentioned in Point a.1 Clause 6 of this Article;

- A certification issued by the local authority of the permanent residence (for individuals) or the registered address (for organizations);
- A certification issued by the income payer (if any). If this certification is not available, the applicant shall make a declaration in the request and take responsibility for it;
- A letter of attorney if the taxpayer authorizes a legal representative to follow the procedure.

b) Within 07 working days from the receipt of the application, the Department of Taxation shall consider issuing the certificate of residence (form 07/HTQT enclosed herewith) to the applicant in accordance with the definitions of residents in the treaty. The aforesaid 7-day period does not include the time for providing additional documents and explanation.

If the tax authority of the contracting country requests a resident of Vietnam to provide a certificate of residence issued by a Vietnamese tax authority using the form provided in the treaty in order to apply the treaty in that contracting country, the Department of Taxation shall add a certification to the form if it contain similar information to the form 07/HTQT mentioned above.

## **Chapter VI**

### **PROCEDURE FOR TAX EXEMPTION, TAX REDUCTION, CANCELLATION OF TAX AND FINES**

#### **Article 45. When the taxpayer is able to determine the amount of exempt or reduced tax**

1. The taxpayer shall write the amount of exempt or reduced tax in the tax declaration or in the application for tax exemption or reduction and send it to the supervisory tax authority, except for the cases in Article 6 of this Circular.
2. Documents about the determination of tax exemption or reduction shall be enclosed with the declaration.

#### **Article 46. When the tax authority issues a decision on tax exemption or reduction**

The tax authority shall check the application and issue a decision on tax exemption or reduction in the following cases:

1. Exemption or reduction of personal income tax:
  - a) Rules for exemption or reduction of personal income tax:
    - If the taxpayer suffers from a natural disaster, blaze, accident, or fatal disease, reduction of personal income tax shall be considered every calendar year.
    - When a business individual or group of individuals that pays flat tax suspends or shuts down the business, reduction of flat tax shall be considered in the month when the business is suspended or shut down. Instructions on determination of reduced tax and procedure for tax reduction are provided in Article 21 of this Circular.
    - The individuals that are eligible for exemption or reduction of personal income tax according to the regulations on foreign experts of ODA projects in Vietnam, foreign experts of non-governmental aid programs in Vietnam, foreigners working in offices of non-governmental organizations, and the individuals working in economic zones shall follow separate procedures for tax exemption or reduction provided by the Ministry of Finance.



b) Application for tax exemption or reduction

b.1) If the taxpayer suffers from a natural disaster or blaze:

- A written request for tax reduction (form 18/MGT-TNCN enclosed herewith) certified by the authority of the commune where the event happens.
- An assessment of property damage made by a competent agency and certified by the authority of the commune where the event happens (form 02/MGTH enclosed herewith);

The agency competent to assess damage is a finance agency or a damage assessment agency.

If damage is inflicted upon goods or services, the taxpayer shall submit the damage assessment form made by the damage assessment agency. The damage assessment agency is responsible for the accuracy of the assessment form.

If damage is inflicted upon land or crops, damage shall be assessed by a finance agency.

- The receipts for compensation of the insurer (if any), or an agreement to pay compensation of the person responsible for the blaze (if any).
- Receipts for recovery expenses.
- The terminal declaration of personal income tax (if required).

b.2) If the taxpayer suffers from an accident

- A written request for tax reduction (form 18/MGT-TNCN enclosed herewith).
- An accident record certified by the police, or an injury assessment certified by a medical facility.
- The receipts for compensation of the insurer (if any), or an agreement to pay compensation of the person responsible for the conflagration (if any).
- Receipts for recovery expenses.
- The terminal declaration of personal income tax (if required).

b.3) If the taxpayer suffers from a fatal disease

- A written request for tax reduction (form 18/MGT-TNCN enclosed herewith).
- Photocopies of medical records.
- Documents proving medical expenses provided by the medical facility, or receipts for medicines enclosed with prescriptions.
- The terminal declaration of personal income tax (if required).

c) Places to submit the application for tax exemption or reduction

The taxpayer that suffers from a natural disaster, blaze, accident, or fatal disease shall submit the application to the local tax authority.

2. Exemption or reduction of special excise tax, rent for land or water surface, tax on non-agricultural land or agricultural land for taxpayers that suffer from natural disasters, blazes, accidents and thus are not able to pay tax.

An application for tax exemption or reduction consists of:

- A written request for tax exemption or reduction (form 01/MGTH enclosed herewith) specifying the time, causes of damage, level of damage, the loss caused by the natural disaster or accident, the tax payable, the exempt or reduced tax, and a list of enclosed documents;
- An assessment of property damage made by a competent authorities and certified by the authority of the commune where the natural disaster, blaze, or accident happens (form 02/MGTH enclosed herewith);

The agency competent to assess damage is a finance agency or an independent damage assessment agency.

If damage is inflicted upon goods or services, the taxpayer shall submit the damage assessment form made by the assessing agency. The assessing agency is responsible for the accuracy of the assessment form.

The damage is inflicted upon land or crops (for exemption/reduction of tax on agriculture or non-agricultural land) shall be determined by a finance agency.

- A financial statement (for companies) enclosed with analysis of damage and loss.

### 3. Exemption or reduction or severance tax incurred by miners according to Article 9 of the Law on Severance tax

a) An application for tax exemption or reduction consists of:

- A written request for tax reduction (form 01/MGTH enclosed herewith).
- An assessment of property damage caused by the natural disaster, blaze, or accident, which is made by a competent authorities and certified by the authority of the commune where the event happens (form 02/MGTH enclosed herewith);

The agency competent to assess damage is a finance agency or a damage assessment agency.

If damage is inflicted upon goods, the taxpayer shall submit the damage assessment form made by the assessing agency. The assessing agency is responsible for the accuracy of the assessment form.

The damage is inflicted upon natural water supply shall be assessed by a finance agency.

- Documents related to the exemption or reduction of severance tax.

b) Some cases of severance tax exemption without monthly declarations of severance tax and annual terminal declarations: natural water used for industry, forestry, fishery, salt production, and natural water for daily life.

c) Procedure for exemption of severance tax in some cases:

- Procedure for exemption of tax on natural water used by households and individuals for hydroelectricity generation serving everyday life: the household or individual shall submit an application for tax exemption together with the explanation for the hydroelectricity generation equipment, which is certified by the People's Committee of the commune. The household shall submit a declaration to the local tax authority when the generation is commenced to be entitled for the exemption.

- Procedure for exemption of tax on allocated or leased land:

The land user (including the contractor) must submit an application for tax exemption together with certified true copy of the decision on land allocation or land lease and relevant documents to the authority competent to approve local constructions, then send a dossier to the local tax authority.

#### 4. Exemption or reduction of land levy

An application for exemption or reduction of land levy consists of:

- A declaration of land levy (form 01/TSDD enclosed herewith);
- The documents proving the eligibility for exemption or reduction of land levy (notarized or authenticated copy), in particular: certificate of investment incentives; written approval for project of investment (for commercial public facilities, dormitories, houses for national contributors, multistory apartment buildings for workers in industrial parks; decision on moving the factory according to planning and approved project of investment; a poor household must submit a certification of poor household; a household of ethnic minorities must submit the family register or a certification by the People's Committees of the commune (if the family register is not available); the household or individual that is a national contributor must submit the documents proving the eligibility for exemption or reduction of land levy and the decision on exemption or reduction of land levy issued by the People's Committee of the province.

The application for exemption or reduction of land levy shall be sent to Land Registry or Land and Resources Authority or the People's Committee of the commune.

#### 5. Exemption or reduction of rent for land or water surface (hereinafter referred to as land rent)

a) An application for exemption or reduction of land rent consists of:

- A written request for exemption or reduction of land rent, specifying the land area, lease period, reasons for exemption or reduction of land rent, exemption or reduction period.
- A declaration of land rent.
- The project of investment approved by competent authorities (unless the land, on which tax is exempt or reduced, is not a project of investment).
- A decision on land lease made by a competent authority; a land lease contract (and a land allocation agreement between the agricultural company or cooperative and its members according to Point 3 section II and Point 3 section III part C of the Circular No. 120/2005/TT-BTC, amended in Point b Section VII and Point 3 Section VIII of the Circular No. 141/2007/TT-BTC dated November 30, 2007 of the Ministry of Finance).
- A investment license or Certificate of Business registration.
- A certificate of investment issued by a competent authority if the project of investment must be written on the certificate of investment, or the project is exempt from registration but the investor requests a certification of investment incentives.

b) If the taxpayer is eligible for exemption or reduction of land rent, the application consists of:

- A written request for exemption or reduction of land rent, specifying the land area, lease period, reasons for exemption or reduction of land rent, exemption or reduction period, the number and date of the decision on land rent exemption or reduction, reasons for changes in exemption or reduction (if any).

- A declaration of land rent.

c) Apart from the documents in Point a above, the following documents are also required in some cases:

c.1) If the project must be suspended from construction or operation, thus land rent is exempt during the suspension period:

- The taxpayer must send the following documents to the tax authority within 30 days from the day on which the certification of suspension from construction or operation is issued by the issuer of the investment license or business registration certificate:

+ A written request for land rent exemption or reduction, specifying the reasons for and period of suspension.

+ If the construction is suspended, it is required to have appendices to the construction contract or a suspension record between the investor and contractor.

- A certification of an investment authority of the necessity of the suspension, which slows down the progress of the project (if the capital is below 15 billion VND).

c.2) If land rent is exempt over the construction period, documents shall be submitted 2 times:

c.2.1) During the construction: the tenant must submit the documents used for provisional determination of exemption period, including:

- A license for construction issued by a competent authority, unless the project is situated in a new urban area, industrial park, or industrial complex where license for construction is exempt.

- A construction contract; If the construction is executed by the tenant without a construction contract, it must be mentioned in the request for land rent exemption.

- A land transfer record.

c.2.2) After the work is completed and put into operation, the tenant must present all the documents to the tax authority as the basis for issuing the decision on land rent exemption, including:

+ A record on terminal assessment and transfer of completed works between the investor and the contractor, or the documents proving the tenant executes the fundamental construction themselves.

c.3) If land rent is exempt or reduced because of investment incentives, or a new business establishment is moved according to planning or because of environmental pollution:

- Notarized or authenticated copies of documents about investment incentives such as certificate of investment incentives, investment license, certificate of investment issued by a competent authority.

- The decision made by a competent authority on moving the business establishment according to planning or because of environmental pollution.

- The decision on land lease, land lease contract, or land transfer record of the new business establishment.

c.4) If exemption or reduction is given to an office building project or leased land belonging to an office building project of a diplomatic mission, consular office, or representative office of a

international organization in Vietnam according to an international agreement to which Vietnam is a signatory or according to principle of reciprocity, the tenant must present the agreement between the Vietnamese government and the international organization on land rent exemption or reduction, or a certification issued by the Ministry of Foreign Affairs of Vietnam or a local foreign affairs agency authorized by the Ministry of Foreign Affairs.

c.5) If the land rent exemption or reduction is decided by the Prime Minister at the request of a Minister, a head of a ministerial agency, Governmental agency, or a Presidents of the People's Committee of a province, the application must be enclosed with a notarized or authenticated copy of the Prime Minister's decision.

#### 6. Deadline for processing application for tax exemption or reduction

Within 30 days from the receipt of sufficient documents, the tax authority shall check the application in accordance with Article 60 of this Circular and issue a decision on tax exemption or reduction (form 03/MGTH), or notify the taxpayer of the reasons for refusal of tax exemption or reduction (form 04/MGTH enclosed herewith).

If the taxpayer fails to provide explanation, additional information or documents at the request of the tax authority, or fails to prove the accuracy of the declared tax, the tax authority shall carry out an on-site inspection. The decision on tax exemption or reduction shall be issued within 60 days from the day on which sufficient documents are received.

#### 7. Entitlement to decide tax exemption and reduction

##### a) Land levy and land rent:

- Directors of Departments of Taxation shall decide the exemption and reduction of land rent and land levy incurred by business organizations, foreign entities, and Vietnamese people that reside overseas.

- Directors of Sub-departments of Taxation shall decide the exemption and reduction of land rent and land levy incurred by households and individuals.

b) The exemption and reduction of other taxes decided by tax authorities: the Director of the tax authority to which the application for tax exemption or reduction is submitted shall decide the tax exemption or reduction.

#### **Article 47. Tax incentives according to international agreements**

1. The organizations and individuals eligible for tax incentives according to the international agreements that are not Double taxation agreements (hereinafter referred to as international agreements) shall follow the instructions in Clause 2 or Clause 3 of this Article.

2. In case a foreign entity declares and pays tax directly at the tax authority:

##### a) Procedure applied to the foreign entity:

Within 03 working days from the day on which the contract is signed with the Vietnamese party, the foreign entity shall send a dossier to the tax authority where tax registration is applied for, which consists of:

- A photocopy of the international agreement.

- A notice of tax exemption or reduction (form 01/MTPDTA enclosed herewith) certified by the agency that proposed the international agreement, except for the international agreements proposed by the Ministry of Finance).
- A photocopy of the contract with the Vietnamese party, certified by the foreign entity or an authorized representative.
- A brief translation of the contract certified by the foreign entity or an authorized representative (if the contract is in a foreign language).

The translation must contain: names of the contract and articles, contractual tasks and tax liability.

- The letter of attorney if the foreign entity authorizes a Vietnamese entity to follow the procedure. The letter of attorney must be signed by representatives of both parties.

If the foreign entity is not able to provide the contract with the Vietnamese party, it may submit equivalent documents and provide explanation in the notice of tax exemption or reduction.

Example 48: A foreign entity invests in securities in Vietnam (without contracts). when registering the securities transaction code with the securities companies or depository banks in Vietnam (Vietnamese parties), the foreign entity sends a dossier to the tax authority where tax is registered. In this case, the foreign entity only needs to send one dossier to a Vietnamese party, which applies to all securities transfers related to the aforesaid tax authority. The dossier consists of a notice of tax exemption or reduction and the letter of attorney (if authorizing).

In case the foreign entity is not able to provide sufficient information or documents, explanation must be provided in the notice (form 01/MTPDTA).

When declaring tax after sending the notice of tax exemption or reduction to the tax authority (see Article 12, Article 16 or Article 20 of this Circular), the foreign entity is not required to pay any tax on the payments made by Vietnamese parties if no information or request is sent from the tax authority.

#### b) Tax authority:

After receiving the notice of tax exemption or reduction from the foreign entity, the tax authority shall check it and compare with the international agreement to ensure its accuracy and truthfulness.

If necessary, the tax authority shall request the foreign entity to explain relevant issues regarding the notice.

### 3. In case a foreign entity does not declare and pay tax directly to the tax authority:

#### a) Procedure applied to the foreign entity:

When signing the contract with the Vietnamese party, the foreign entity shall send the Vietnamese party a dossier, which consists of:

- A photocopy of the international agreement.
- A notice of tax exemption or reduction (form 01/MTPDTA enclosed herewith) certified by the agency that proposed the international agreement, except for the international agreements proposed by the Ministry of Finance).

- A photocopy of the contract with the Vietnamese party, certified by the foreign entity or an authorized representative.
- A brief translation of the contract certified by the foreign entity or an authorized representative (if the contract is in a foreign language).

The translation must contain: names of the contract and articles, contractual tasks and tax liability.

- The letter of attorney if the foreign entity authorizes a Vietnamese entity to follow the procedure. The letter of attorney must be signed by representatives of both parties.
- If the foreign entity is not able to provide the contract with the Vietnamese party, it may submit equivalent documents and provide explanation in the notice of tax exemption or reduction.

Example 49: A foreign entity invests in securities in Vietnam (without contracts). When registering the securities transaction code with the securities companies or depository banks in Vietnam (Vietnamese parties), the foreign entity sends a notice of tax exemption or reduction to the Vietnamese party. The Vietnamese party then submits it to the tax authority where tax is registered. In this case, the foreign entity only needs to request one notice of tax exemption or reduction to a Vietnamese party, which applies to all securities transfers related to the aforesaid tax authority. The dossier consists of a notice of tax exemption or reduction and the letter of attorney (if authorizing).

In case the foreign entity is not able to provide sufficient information or documents, explanation must be provided in the notice (form 01/MTPDTA).

b) Procedure applied to Vietnamese parties:

Within 03 working days from the receipt of the dossier from the foreign entity, the Vietnamese party must send it to the tax authority where the Vietnamese party applies for tax registration.

When declaring tax after sending the notice of tax exemption or reduction to the tax authority (see Article 12, Article 16 or Article 20 of this Circular), the Vietnamese party is not obliged to deduct any tax from the payments to the foreign entity if no information or request is sent from the tax authority.

c) Tax authority:

After receiving the notice of tax exemption or reduction from the foreign entity, the tax authority shall check it and compare with the international agreement to ensure its accuracy and truthfulness.

If necessary, the tax authority shall request the Vietnamese party and/or foreign entity to explain relevant issues regarding the notice of tax exemption or reduction.

**Article 48. Cancellation of tax debts, fines, interest on late payment of tax and fines (hereinafter referred to as tax)**

1. Outstanding tax shall be cancelled when:

- a) The remaining money or assets of the company that is declared bankrupt are not sufficient to pay tax after making the payments prescribed by the laws on bankruptcy.
- b) The assets of the individual that is declared dead, missing, or incapable of civil acts are not sufficient to pay tax.

c) The outstanding tax does not fall into the cases in Point a and Point b Clause 1 of this Article, and the following requirements are met:

c.1) It has been more than 10 years from the deadline for paying tax;

c.2) Tax is not paid in full though the tax authority has taken every measures possible to enforce tax payment;

2. When a tax debt or fine is cancelled, the interest on late payment of such amount is also cancelled.

3. Cancellable amounts

Cancellable amounts include tax and other government revenues collected by tax authorities, except for land levy and land rent.

Outstanding land levy and land rent shall be cancelled in accordance with the Law on land and its guiding documents.

4. Documentation for cancellation of outstanding tax:

a) A written request for cancellation of tax debt made by the supervisory tax authority (form 01/XOANO enclosed herewith). If the tax authority requests cancellation of tax incurred by multiple taxpayers, a list of taxpayers must be enclosed.

The list must specify the names, tax codes, addresses of taxpayers, the basis for tax cancellation, the cancelled taxes, cancelled amount, and deadlines for paying tax.

b) Documents in the application for tax debt cancellation:

b.1) Where a company is declared bankrupt according to Point a Clause 1 of this Article:

- A decision on asset liquidation enclosed with an asset division scheme (notarized or authenticated copy);

- A decision to declare bankruptcy issued by the court (notarized or authenticated copy).

b.2) Where a individual is declared dead, missing, or incapable of civil acts according to Point b Clause 1 of this Article:

- If the individual is declared dead:

+ A death certificate, death notification, or a court' decision to declare a person is dead, or a substitute for the death notification according to the laws on family registration (notarized or authenticated copy);

+ A written certification made by the People's Committee of commune that the dead person does not have assets.

The tax authority shall request the dead person's relatives to provide the aforesaid documents. Otherwise, the tax authority shall request the dead person's relatives to send a written request the President of the People's Committee of the commune where the dead person's last residence is situated for confirmation that the person is dead and has no assets. If the dead person's relative does not make a written request, the tax authority shall make it.

- If the individual is declared missing:

+ A court's decision to declare a person is missing (notarized or authenticated copy);



+ A written certification made by the People's Committee of the commune that the dead person does not have assets.

The tax authority shall request the dead person's relatives to provide the aforesaid documents.

- If the individual is declared incapable of civil acts:

+ A court's decision to declare a person is incapable of civil acts (notarized or authenticated copy);

+ A guardian's certification and a certification of the People's Committee of the commune that the person has no assets.

The tax authority shall request the person's guardian to provide the aforesaid documents.

b.3) Tax has been owed for more than 10 years, and the tax authority has taken every measure possible to enforce the payment according to Point c Clause 1 of this Article:

- If tax is incurred before July 01, 2007:

Documents (stamped photocopies) of the tax authority about the implementation of decisions on penalty imposition according to the Government's Decree No. 100/2004/ND-CP dated February 25, 2004 on administrative penalties for tax offences, or implementation of all measures for enforcement of tax decisions according to the Law on Tax administration and the Law on amendments to the Law on Tax administration.

- If tax is incurred from July 01, 2007 onwards:

Documents (stamped photocopies) of the tax authority about the implementation of all measures for enforcement of tax decisions according to the Law on Tax administration and the Law on amendments to the Law on Tax administration.

5. Procedure and entitlement to cancel tax debt:

a) If the taxpayer is eligible for tax debt cancellation according to Point a, Point b or Point c Clause 1 of this Article, the supervisory tax authority shall make an application for tax debt cancellation, specifying the cancellation basis, and send it to the superior agency in the following order:

a.1) The documents made by a Sub-department of taxation shall be sent to a Department of Taxation:

If the taxpayer is not eligible for tax debt cancellation, the Department of Taxation shall notify the Sub-department of taxation using form 07/XOANO enclosed herewith;

If the taxpayer is eligible for tax debt cancellation but the documents are not sufficient, the Department of Taxation shall request the Sub-department of taxation to provide additional documents using form 02/XOANO enclosed herewith;

If the taxpayer is eligible for tax cancellation and documents are sufficient, the Department of Taxation shall send a written request for consideration enclosed with the documents to the People's Committee of the province.

a.2) If documents are made by a Department of Taxation:

If the taxpayer is eligible for tax cancellation and documents are sufficient, the Department of Taxation shall send a written request for consideration enclosed with the documents to the People's Committee of the province.

b) If the taxpayer is a company eligible for tax debt cancellation according to Point c Clause 1 of this Article, the supervisory tax authority shall make an application for tax debt cancellation, specifying the cancellation basis, and send it to the superior agency in the following order:

b.1) If the debt being cancelled (exclusive of late payment interest) is below 05 billion VND:

- The Sub-department of taxation shall make and send documents to the Department of Taxation for examination according to Point a.1 of this Clause. After consideration, if the taxpayer is eligible for tax cancellation, the Department of Taxation shall send the documents to the Department of Taxation.

- The Department of Taxation shall make documents about the taxpayer and send them to the General Department of Taxation for consideration.

- The General Department of Taxation shall examine the documents:

If the taxpayer is not eligible for tax debt cancellation, the General Department of Taxation shall notify the Department of taxation using form 07/XOANO enclosed herewith;

If the taxpayer is eligible for tax debt cancellation but the documents are not sufficient, the General Department of Taxation shall request the Department of taxation to provide additional documents using form 02/XOANO enclosed herewith;

If the taxpayer is eligible for tax debt cancellation and the documents are sufficient, the General Department of Taxation shall issue a decision on tax debt cancellation using form 04/XOANO enclosed herewith.

b.2) If the debt being cancelled (exclusive of late payment interest) is from 05 billion VND to below 10 billion VND:

- The Sub-department of taxation and the Department of Taxation shall make and send documents in accordance with Point b.1 Clause 5 of this Article;

- The General Department of Taxation shall examine the documents:

If the taxpayer is not eligible for tax debt cancellation or additional documents must be provided, the General Department of Taxation shall notify the Department in accordance with Point b.1 Clause 5 of this Article;

If the taxpayer is eligible for tax debt cancellation and the documents are sufficient, the General Department of Taxation shall draft a decision on tax debt cancellation (form 05/XOANO) and send it to the Ministry of Finance for consideration.

b.3) If the debt being cancelled (exclusive of late payment interest) is 10 billion VND and over:

- The Sub-department of taxation, the Department of Taxation, and the General Department of Taxation shall make and process documents in accordance with Point b.1 Clause 5 of this Article;

- If the taxpayer is eligible for tax debt cancellation and the documents are sufficient, the General Department of Taxation shall draft a decision on tax debt cancellation (form 06/XOANO) and send it to the Ministry of Finance and the Prime Minister for consideration.

c) If the documents are not sufficient, within 05 working days from the receipt of such documents, the recipient must send a request (form 02/XOANO enclosed herewith) to the sender for additional documents.

d) If the taxpayer is not eligible for tax debt cancellation, within 10 working days from the receipt of such documents, the recipient must notify the sender using form 07/XOANO enclosed herewith.

dd) Within 60 working days from the receipt of sufficient documents, a competent persons shall issue a decision on tax debt cancellation using form 03/XOANO, 04/XOANO, 05/XOANO, or 06/XOANO on a case-by-case basis.

The decision on tax debt cancellation must contain its date of issue; name, address, tax code of the taxpayer; the kind and amount of tax, late payment interest, and cancelled interest; signature and seal of the issuer.

e) The decision on tax debt cancellation shall be posted on the website of the tax authority within 03 working days from its date of issue.

- The entitlements to cancel tax debt decided by the People's Committee of the province shall be posted on the website of the Department of Taxation.

- The entitlements to cancel tax debt decided by the General Department of Taxation, the Ministry of Finance, and the Prime Minister shall be posted on the websites of the General Department of Taxation and Departments of Taxation.

6. The total amount of tax debt cancelled shall be reported to the Ministry of Finance annually.

a) Annually, Departments of Taxation shall report the total amount of cancelled tax debt in the province to the People's Committee of the province and the General Department of Taxation.

b) The General Department of Taxation shall aggregate the total amount of cancelled tax debt annually in the cases in Point b Clause 5 of this Article.

c) Annually, the General Department of Taxation shall report the total amount of cancelled tax debt in the year to the Minister of Finance when the government submits the terminal statement of government budget to the National Assembly.

## **Chapter VII**

### **REFUNDING AND OFFSETTING TAX**

**Article 49.** Form 01/DNHT enclosed herewith shall be used to claim refund of VAT when input tax is not completely deducted, or no output VAT is incurred during the investment period, or when VAT on purchased goods and services serving the project is offset against VAT on the business.

#### **Article 50. Refund of VAT on ODA projects**

1. For project owner and primary contractor

a) Submission of application for VAT refund:

The owner of the ODA project eligible for VAT refund shall submit an application for VAT refund to the Department of Taxation of the province where the project is executed whenever refundable input VAT is incurred during the project execution. If the ODA project is related to

multiple provinces, the application shall be submitted to the Department of Taxation of the province where the project owner's head office is situated.

The foreign contractors eligible for VAT refund shall submit the application for VAT refund to the tax authority where the tax declaration is submitted.

b) An application for VAT refund consists of:

- A claim for refund (form 01/DNHT enclosed herewith);
- A list of invoices and receipts for purchases goods and services (form 01-1/DNHT enclosed herewith);
- A decision of a competent authority to approve the project funded by non-refundable ODA or loaned ODA allocated by the state (photocopy bearing the seal and signature of a competent person). This decision shall only be presented when refund is claimed for the first time.
- A photocopy (certified by the taxpayer) of the certification made by the governing body of the ODA project that ODA is non-refundable or allocated by the State and no counterpart fund is provided to pay VAT. The taxpayer must submit this document together with the first application for tax refund of the project.

if the application is made by the primary contractor, apart from the documents mentioned in this Point, it is also required to have a project owner's certification that no counterpart fund is provided by the state to pay the contractor at VAT-inclusive prices, and the winning prices are exclusive of VAT.

2. Representative office of sponsor for ODA project

a) Submission of application for VAT refund:

The representative office shall submit the application for VAT refund to the local Department of Taxation whenever refundable input VAT is incurred during the execution of the project.

b) An application for VAT refund consists of:

- A claim for refund (form 01/DNHT enclosed herewith);
- A list of invoices and receipts for purchases goods and services (form 01-1/DNHT enclosed herewith);
- The written agreement between a Vietnamese competent authority and the sponsor on the establishment of the representative office (a photocopy certified by the representative office).
- The decision of the competent authority on the establishment of the representative office (a photocopy certified by the representative office).

**Article 51. Refund of tax incurred by foreign entities, organizations in Vietnam that use money from humanitarian aid and/or non-refundable aid to buy charitable goods that subject to VAT in Vietnam**

1. Submission of application for VAT refund:

The aforesaid entities shall submit the application for VAT refund whenever refundable input VAT is incurred.

2. An application for VAT refund consists of:

- A claim for refund (form 01/DNHT enclosed herewith);
- A list of invoices and receipts for purchases goods and services (form 01-1/DNHT enclosed herewith);
- The written approval for the aid made by a competent authority (a photocopy certified by the taxpayer);
- The certification made by the Ministry of Finance (if the aid is transferred to the central budget) or Service of Finance (if the aid is transferred to the provincial budget) of the aid provided by the foreign non-governmental organization, specifying the name of the aid provider, the recipient, the manager, and the aid value.

### **Article 52. Refund of VAT for beneficiaries of diplomatic immunity**

#### 1. Submission and processing of application for VAT refund

Within ten first days of the first month of the quarter, the diplomatic missions eligible for VAT refund shall make an application for the refund of tax in the previous quarter and send it to Directorate of State Protocol for verification.

Within 15 working days from the receipt of the satisfactory application, Directorate of State Protocol shall verify the eligibility for VAT refund, the names and quantity of goods/services eligible for VAT refund. After Directorate of State Protocol verifies the application for VAT refund, it shall be sent to the Department of Taxation.

If the diplomatic mission is not eligible for VAT refund or the application for VAT refund is not satisfactory, Directorate of State Protocol shall return the application within 05 days from its receipt.

#### 2. An application for VAT refund consists of:

- A request for refund (form 01/DNHT enclosed herewith) certified by Directorate of State Protocol.
- A list of VAT on purchased goods and services serving the operation of the diplomatic mission (form 01-2/DNHT enclosed herewith) and a list of VAT on purchased goods and services serving the foreign service officer (form 01-3/DNHT enclosed herewith).
- The original and 02 photocopies of the VAT invoice bearing the seal of the diplomatic mission. The tax authority shall return the original invoices to the diplomatic mission after VAT is refunded.

### **Article 53. Refund of personal income tax (PIT)**

Only the individuals that have tax codes shall receive PIT refund.

When an individual authorizes the income payer to make the terminal declaration, tax shall be refunded via the income payer.

If the individual submits the terminal declaration himself, overpaid tax shall be refunded or offset against the tax payable in the next period.

1. When an individual authorizes the income payer to make the terminal declaration, tax shall be refunded via the income payer.

After offsetting overpaid tax against tax arrears and tax is still overpaid, the income owner shall submit an application for tax refund to the local tax authority. An application for tax refund consists of:

- A request for refund (form 01/DNHT enclosed herewith);
- Photocopies of tax receipts bearing the signature of the legal representative of the income earner.

2. If tax is overpaid by the individual that earns income from business or wages and directly submits the terminal declaration, the individual shall write the amount of tax refund in box 45 “Amount of tax refund” or box 47 “Tax offset against next period” in the terminal declaration (form 09/KK-TNCN).

3. If tax is overpaid by the individual that earns income from securities transfer, the individual shall write the amount of tax refund in box 31 “Amount of tax refund” or box 33 “Tax offset against next period” in the terminal declaration form 13/KK-TNCN.

#### **Article 54. Tax refund according to Double taxation agreements**

1. Submission of application for tax refund:

The application for tax refund according to a Double taxation agreement shall be submitted to the Department of Taxation of the province where the head office of the organization or the permanent residence of the individual is situated, or the Department of Taxation where tax was overpaid.

2. An application for tax refund consists of:

- A written request for tax refund according to a Double taxation agreement (form 02/DNHT enclosed herewith).
- The original copy (or certified true copy) of the consularly legalized Certificate of residence issued by a tax authority of the home country, specifying the tax year.
- Photocopies of business contracts, service contract, agent contract, entrustment contract, technology transfer contract, or documents proving the shipping business (if the taxpayer is an international transport company), or labor contract with the Vietnamese entity, certificate of deposit in Vietnam, certificate of capital contribution to a company in Vietnam (depending on the income earned) that are certified by the taxpayer.
- Tax receipts certified by a State Treasury, commercial bank, credit institution, or tax authority, or photocopies of tax receipts certified by the taxpayer.
- Certification of the operation period and performance according to the contract by the Vietnamese party.
- A letter of attorney if the taxpayer authorizes a legal representative to follow the procedure. If the taxpayer authorizes a legal representative to claim tax refund that is transferred to the account of another entity, consular legalization (if the authorization is made overseas) or notarization (if the authorization is made in Vietnam) is required.

If the taxpayer fails to provide sufficient information or documents, explanation must be provided in the aforesaid request for refund (form 02/DNHT).

**Article 55. Refund of overpaid tax and fees upon merger, amalgamation, division, bankruptcy, ownership transfer, or shutdown**

An application for refund consists of:

- A request for refund (form 01/DNHT enclosed herewith);
- A decision of a competent authority on the merger, amalgamation, division, bankruptcy, ownership transfer, or shutdown;
- A declaration or terminal declaration of tax upon merger, amalgamation, division, bankruptcy, ownership transfer, or shutdown.

**Article 56. Refund of VAT on specialized machinery, equipment, and vehicles in a technological line, building materials that cannot be manufactured in Vietnam and must be imported to form fixed assets**

1. Article 1 of the Circular No. 92/2010/TT-BTC dated June 17, 2010 of the Ministry of Finance providing guidance on deferral and refund of tax on specialized machinery, equipment, and vehicles in a technological line, building materials that cannot be manufactured in Vietnam and must be imported to form fixed assets shall be applied.

- If the company derived from a project of investment is not inaugurated and tax refund is claimed before VAT on imported goods is paid, an application for refund of tax on the imported goods that cannot be manufactured in Vietnam shall be made and mentioned in the declaration of VAT on project of investment.

- If an operating business establishment that pays VAT using credit-invoice method is making investment in a manufacturing line:

+ if the project of investment is located in the same province as the head office, the business establishment must declare the VAT on imported goods and VAT on the current business. If VAT on imported goods is not cleared after offsetting, tax shall be refunded.

+ If the project of investment is located in another province than the head office and tax refund is claimed before VAT on imported goods is paid, an application for refund of tax on the imported goods that cannot be manufactured in Vietnam shall be made and mentioned in the declaration of VAT on project of investment.

2. An application for tax refund consists of:

- A request for refund (form 01/DNHT enclosed herewith) specifying the VAT on specialized machinery, equipment, and vehicles in a technological line, building materials that cannot be manufactured in Vietnam and must be imported to form fixed assets.

- A manifest of imported goods (form 01-4/DNHT enclosed herewith).

3. Deciding tax refund

- Within 02 working days from the receipt of the application, the tax authority shall request the taxpayer to complete the application if it is not satisfactory.

- If the documents are sufficient, accurate and conformable, the tax authority shall examine the application in accordance with the procedure for VAT refund.

Within 06 working days from the day on which the sufficient documents are submitted, the tax authority shall notify the taxpayer that the application is approved (including inspections before refund), and request the taxpayer to submit the receipt for VAT on imported goods before issuing a decision to refund tax.

- Within 03 working days from the day on which the VAT receipt is received, the tax authority shall compare it with the figures in the application for tax refund and issue a decision to refund tax. If the amount of paid VAT on the receipt is smaller than the claimed refund, the refundable amount is the amount on the receipt; if the amount of paid VAT on the receipt is greater than the claimed refund, the refundable amount is the claimed refund.

4. The taxpayer must write the input VAT on imported goods in the declaration of VAT on project of investment. If the taxpayer has received a refund of such input VAT before submitting the tax declaration, the declaration shall be made as usual but the taxpayer must not request a refund of the VAT on imported goods that was refunded.

#### **Article 57. Refund of other taxes and fees**

A request for refund (form 01/DNHT enclosed herewith) enclosed with other documents.

#### **Article 58. Processing application for tax refund**

1. Places to submit applications for tax refund:

a) The application for tax refund of a organization or individual that is a taxpayer and has a tax code shall be submitted to their supervisory tax authority.

The application for tax refund of a organization or individual that is not a taxpayer shall be submitted to the Department of Taxation of the province where the head office of the organization or the permanent residence of the individual is situated.

a) The applications for tax refund of income payers or individuals that submit the terminal declarations directly code shall be submitted to place where the terminal declarations are submitted.

b) If the application for tax refund is submitted directly to the tax authority, the recipient shall add a seal on the application, record the date of receipt and the enclosed documents.

c) If the application for tax refund is sent by post, the recipient shall add date stamp on the application.

d) If the application for tax refund is submitted electronically, it shall be received, checked, and accepted via a electronic data processing system.

dd) Within 03 working days from the receipt of the application, the tax authority shall request the taxpayer to complete the application if it is not satisfactory.

2. Cases of inspection before tax refund

- Refund is demanded according to a international agreement to which Vietnam is a signatory.

- The taxpayer claims the refund of tax for the first time (except for personal income tax). If the taxpayer submits the application for tax refund for the first time and is eligible for tax refund, inspection shall be carried out before tax refund. If the taxpayer submits the application for tax refund for the first time but is not eligible for tax refund, the next application for tax refund is still considered the first application.



- The taxpayer claims a tax refund within 02 years from the imposition of penalty for tax offences.

When the taxpayer makes multiple claims for tax refund over the aforesaid 02-year period: if the tax authority does not found understatement of tax payable or overstatement of refundable tax according to Clause 33 Article 1 of the Law on the amendments to the Law on Tax administration, or any of the tax offences mentioned in Article 108 of the Law on Tax administration and Clause 34 Article 1 of the Law on the amendments to the Law on Tax administration, the taxpayer is exempt from inspection before tax refund from the second claim. When making the subsequent claims, if the taxpayer is found making incorrect declaration or committing one of the tax offences in Clause 33 Article 1 of the Law on the amendments to the Law on Tax administration, Article 108 of the Law on Tax administration, and Clause 34 Article 1 of the Law on the amendments to the Law on Tax administration, inspection shall be carried out before refund over the 02-year period.

- The payment for goods and services mentioned in the application for tax refund is not made via a bank, including the goods traded domestically, imported goods, and exported goods. This regulation is not applied to applications for VAT refund. In particular: If payment for the goods and services in the application is not made via a bank, the tax authority shall not carry out an inspection at the taxpayer's premises before refund, and shall not refund the VAT on such goods and services.

- The company is merged, amalgamated, split, divided, dissolved, bankrupt, converted, or shut down; the state-owned company is allocated, sold, or leased.

- The taxpayer fails to provide explanation or complete the application for tax refund, or fails to prove the accuracy of the tax declared. This regulation is not applicable to the goods and services eligible for tax refund.

### 3. Responsibility to process application for tax refund

a) If an inspection must be carried out before refund (except for the case in Point c of this Clause), within 06 working days from the receipt of the sufficient application for tax refund, the head of the tax authority must send a notice of inspection before refund (form 01/HT-TB enclosed herewith), or a decision to refund tax (form 01/QDHT), or a decision to refund and offset tax (form 02/QDHT enclosed herewith), and/or a notice of ineligibility for tax refund (form 02/HT-TB enclosed herewith) to the taxpayer.

In this case, if the taxpayer is eligible for tax refund before inspection, the period from the day on which the tax authority makes the request for explanation to the day on which the tax authority receives the explanation is not included in the time limit for processing the application.

b) If the taxpayer is not eligible for tax refund before inspection (except for the case in Point c of this Clause), within 30 days from the receipt of the sufficient application for tax refund, the head of the tax authority must send a decision to refund tax (form 01/QDHT), or a decision to refund and offset tax (form 02/QDHT) and/or a notice of ineligibility for tax refund (form 02/HT-TB enclosed herewith) to the taxpayer

If the inspection is delayed on account of the taxpayer, the delay is not included in the time limit for processing the application.

c) If the application for tax refund according to Clause 13 Article 1 of the Law No. 21/2012/QH12 on amendments to the Law on Tax administration is certified by a competent authority (such as: a certification of overpaid VAT during importation by a customs authority, or a tax inspection record certifying the overpaid tax): within 05 working days from the receipt of the sufficient application for tax refund, the head of the tax authority shall send a decision to refund tax (form 01/QDHT) or a decision on tax refund and offsetting (form 02/QDHT) to taxpayers without considering the necessity of inspection before tax refund.

d) If the tax authority finds that the refundable tax is different from the claimed refund:

- If the claimed refund is greater than the refundable tax, the taxpayer shall receive an amount equal to the refundable tax.

- If the claimed refund is smaller than the refundable tax, the taxpayer shall receive an amount equal to the claimed refund.

While the application for tax refund is being processed, the taxpayer shall receive the refundable amount before the tax authority finishes processing the application. The tax authority shall request the taxpayer to provide explanation and additional documents about the claimed refund that need verifying.

dd) Entitlement to refund tax

According to refundable tax, outstanding tax, the head of the tax authority shall:

- Issue a decision to refund tax (form 01/QDHT enclosed herewith) if the taxpayer does not owe any tax, late payment interest, or fines; or

- Issue a decision to refund and offset tax (form 02/QDHT enclosed herewith) if the taxpayer owes outstanding tax, late payment interest, or fines.

The Department of Taxation shall decide the refunds of taxes incurred by the taxpayers under the management of Sub-departments of taxation.

The decision to refund tax must specify the name of the taxpayer, the refundable tax, and the place to receive the refund.

e) If the application for tax refund is processed behind schedule on account of the tax authority, the taxpayer shall also receive an interest on the refundable amount on top of the refundable amount. The interest on late refund is the fundamental interest announced by the State bank when the decision on tax refund is issued. The number of days to calculate interest is from the day succeeding the deadline for processing the application for tax refund to the day on which the decision to refund tax or the decision to refund and offset tax is issued, including days off (Saturdays, Sundays, holidays).

The interest shall be written in the decision to refund tax. The taxpayer shall receive the refund and the interest.

The interest shall be provided by the Tax Refunding Fund according to regulations of the Ministry of Finance.

4. Inspection after tax refund

a) In the following cases, the inspection must be carried out within 01 year from the day on which the decision to refund tax is issued:

- The company declares a loss in 02 consecutive years preceding the year in which the decision to refund tax is issued, or suffers from a loss that exceeds the owner's equity in the year preceding the year in which the decision to refund tax is issued. The loss is determined according to the terminal declaration of corporate income tax or the inspection record made by a competent authority (if any).

- If tax on real estate trading, sale, and service provision is refunded but the company fails to separate the refundable tax on real estate trading, sale, and service provision, and the ratio of revenue from real estate trading, sale, and service provision to the total revenue is 50% or more when the refund is claimed, an inspection shall be carried out after refund (within 01 year from the day on which the decision to refund tax is issued). - The company changes its location twice over 12 months before the issuance of the decision to refund tax.

- The company's taxable income and refundable tax fluctuate sharply over 12 months before the issuance of the decision to refund tax.

b) In other cases than those in Point a of this Clause, inspection shall be carried out after tax refund in accordance with risk management principles within 10 years from the day on which the decision to refund tax is issued.

#### **Article 59. Refunding tax, offsetting refundable tax against other payables to government budget**

##### 1. VAT refund:

a) The Department of Taxation shall make an Order to refund according to the decision to refund and offset tax (01/QDHT), or an Order to refund and offset according to the decision to refund and offset tax (form 02/QDHT), then send it to the State Treasury of the same province.

b) The State Treasury of the same province shall offset payables to government budget or request the State Treasury to which the taxpayer owes a debt to collect the payables by offsetting, make refunds by wire transfer or in cash, then request the superior State Treasury to draw money from VAT Refunding Fund.

When refunding VAT in the case mentioned in Point a Clause 1 Article 33 of this Circular, instructions in Point b and Point d Clause 2 of this Article shall be followed.

##### 2. Refund of other taxes:

a) The Department of Taxation shall make an Order to refund according to the decision to refund tax (01/QDHT), or an Order to refund and offset according to the decision to refund and offset tax (form 02/QDHT), then send it to the State Treasury of the same province. The State Treasury of the same province shall offset the payables to government budget, then refund the taxpayer in cash or by wire transfer.

b) When refunding taxes (except for personal income tax), if the taxpayer applies for tax registration in one locality but pay tax in the others, the tax authority where tax declarations are submitted shall make and send the Order to refund to the State Treasury in the same locality. The tax authority must determine and distribute the refundable amount among the localities to which government revenues are distributed. Each and every of them must be enumerated in the Order. The State Treasury in the same province shall transfer the refunded amount to the taxpayer in full, record the refund, transfer debit notes to the State Treasuries where revenues are collected and credit notes to the State Treasuries to which the revenues are distributed.

c) If the taxpayer pays tax in multiple localities but submits the terminal declaration and claims refund at a tax authority, such tax authority shall make and send an Order to refund or Order to refund and offset to the State Treasury of the same locality. The State Treasury shall refund personal income tax and records the refunds of personal income tax where the taxpayer submits the terminal declaration and claims tax refund.

d) Two cases of recording tax refunds:

- If the refunds are completely made before the deadline for adjusting government revenue settlement in the year, the State Treasury shall record a decrease in government revenues.

If personal income tax is refunded in the form of a decrease in government revenue, but the total amount of personal income tax collected locally at the time is not sufficient to make the refunds, the State Treasury shall withdraw from the budget to make the refunds.

- If the revenues are refunded after the deadline for adjusting government revenue settlement, the State Treasury shall record the expenditures in the year in proportion to the distribution of revenues.

### 3. Documents circulation

According to the method of payment (cash or wire transfer), the tax authority shall send the Orders to refund or Orders to refund and offset to relevant entities. In particular:

- The taxpayer that receives the refund shall be given 01 stub;

- The tax authority that issues the decision on refund shall receive 01 stub after certifying the refund;

- The State Treasury shall keep 01 stub as evidence;

- The bank shall receive 01 stub if the refund is transfer to the bank account.

4. According to the decision to refund tax or decision to refund and offset tax, the tax authority shall record the refunded and offset amounts to monitor the fulfillment of tax liability of the taxpayer.

## **Chapter VIII**

### **TAX EXAMINATION, TAX INSPECTION AND RISK MANAGEMENT**

#### **Section 1. TAX EXAMINATION**

##### **Article 60. Examination of tax declarations at tax authorities**

###### 1. Examination sufficiency of tax declarations

If a tax declaration is found insufficient, the tax authority shall request the taxpayer to complete the declaration within 03 working days from the date of receipt.

###### 2. Examination to determine the information that needs supplementing

a) During the examination, if the information or figures provided are inaccurate, or information about the tax payable, reduced, exempt, refunded tax needs verifying, the tax authority shall request the taxpayer in writing (form 01/KTTT enclosed herewith) to provide additional information/documents.

Explanation or additional information/documents must be provided within 10 working days from the day on which the taxpayer receives the request from the tax authority. The taxpayer may give explanation in writing or directly at the tax authority.

If the taxpayer gives explanation directly at the tax authority, a record must be made (form 02/KTTT enclosed herewith).

b) If the taxpayer has provided satisfactory explanation or additional information/documents at the request of the tax authority, and proves the truthfulness of the declared tax, the explaining documents, additional information/documents shall be kept together with the tax declaration.

c) If the taxpayer has provided satisfactory explanation or additional information/documents but is not able to prove the truthfulness of the declared tax, the tax authority shall request the taxpayer to adjust the declaration. The declaration must be adjusted within 10 working days from the day on which the tax authority makes the requests for adjustment.

d) By the deadline imposed by the taxpayer, if the taxpayer fails to provide explanation, additional information/documents, adjust the declaration, or does so without being able to prove the truthfulness of the declared tax, the tax authority shall impose tax and notify the taxpayer using form 01/ADTH enclosed herewith, or makes a decision on tax examination at the taxpayer's premises if the basis for imposing tax is not ample.

#### **Article 61. Tax examination at taxpayer's premises**

1. An examination shall be carried out at the taxpayer's premises if the taxpayer fails to provide explanation or additional information/documents at the request of the tax authority, fails to satisfactorily, adjust the declaration, or does so without being able to prove the truthfulness of the declared tax, or the tax authority does not have ample basis to impose tax as mentioned in Article 60 of this Circular.

2. An examination shall be carried out if the taxpayer is suspected of committing tax offences.

The database mentioned in Article 70 of this Circular shall be used to determine the signs of tax offences such as false statement of tax payable, reduced, exempt, refunded tax, using illegal invoices, tax evasion, or tax fraud.

The tax authority shall issue a decision to carry out an inspection at the taxpayer's premises if the taxpayer is suspected of committing tax offences.

3. Examination before tax refund and examination after tax refund:

The basis for examination before tax refund in Clause 2 Article 41 and the basis for examination after tax refund in Clause 4 Article 41 of the Decree No. 83/2013/ND-CP shall be applied to decide the inspection at the taxpayer's premises.

4. Planned examination: Annually, tax authority shall formulate an examination plan according to the manpower for examination, the number of operative taxpayers, and the situation of the locality. The head of the superior tax authority shall provide instructions, examine, and adjust the examination plan.

5. Tax authority may apply any of the aforesaid methods to carry out examinations upon division, splitting, amalgamation, merger, dissolution, equitization, relocation of an entity, or to carry out unscheduled examinations and other examinations at the request of competent authorities.

## 6. Examination scope and frequency

In the cases mentioned in Clause 2 and Clause 4 of this Article, no more than one examination of the taxpayer's adherence to tax laws shall be carried out in a year. Examination of separate operations shall be carried out in Clause 1 and Clause 3 of this Article.

## 7. Elimination of overlapping examinations:

- If the examination plan made by an inferior tax authority and an examination plan of Government Inspectorate, State Audit Agency, Inspectorate of the Ministry of Finance, or a superior tax authority are overlapping, the plan of the superior authority shall apply.
- If an examination plan is overlap with that of a provincial inspectorate, Service of Finance, or local inspectorate, the Director of the Department of Taxation shall cooperate with the chief inspector of the province or the Director of the Service of Finance in considering the case and requesting the Director of the General Department of Taxation to decide.

## **Article 62. Procedure for tax examination at taxpayer's premises**

### Issuance of decision on tax examination

a) The head of the tax authority issues a decision on tax examination in accordance with Article 61 of this Circular. Tax examination shall only be carried out at the taxpayer's province after a decision on tax examination at the taxpayer's premises is issued. The taxpayer is entitled to refuse the examination if no decision on tax examination is presented.

The decision on tax examination at the taxpayer's premises shall be issued by the head of the tax authority (form 03/KTTT enclosed herewith).

The examination must not extend beyond 05 working days from the day on which the decision on inspection is announced. If more time is needed to verify information and collect evidence, the chief examiner must request the head of the tax authority to extend the deadline. The deadline shall only be extended once (form 18/KTTT enclosed herewith). The extended period must not exceed 05 working days.

b) The decision on tax examination must be sent to the taxpayer within 03 days from its date of issue.

c) In the case mentioned in Clause 2 Article 60 of this Circular, within 05 working days from the receipt of the decision on tax examination, or before the decision on tax examination, if the taxpayer is able to prove the truthfulness of the declared tax, or pays off the tax and fines, the head of the tax authority shall issue a decision to revoke the decision on tax examination using form 19/KTTT enclosed herewith.

d) If the decision on tax examination has been issued but the taxpayer has left the business premises, or the legal representative is absent for a long time because of force majeure circumstances, or a competent authority is conducting an investigation at the taxpayer's premises, the head of the tax authority shall issue a decision to revoke the decision on tax examination using form 19/KTTT enclosed herewith.

2. The examination must be carried out within 10 working days from the day on which the decision on tax examination is issued. When initiating the examination, the chief examiner must announce the decision on tax examination make an announcement record (form 05/KTTT enclosed herewith), and explain the decision to the taxpayer.

3. When receiving the decision on examination, if the taxpayer wishes to delay the examination, a written request must be sent to the tax authority, specifying the reasons and the delay length. Within 05 working days from the receipt of the request for delay, the tax authority shall notify the taxpayer of their approval or refusal.

4. If the tax examination must be suspended because of force majeure circumstances, the chief examiner shall send a report to the head of the examination department, specifying the causes and the suspension period. The suspension period is not included in the examination period.

5. If the taxpayer fails to comply with the decision on tax examination within 03 working days, delays or avoids providing documents, invoices, receipts, and accounting documents related to tax liability within 06 working hours from the receipt of the request from a competent authority, the taxpayer shall incur administrative penalties as prescribed.

#### 6. Tax examination record

The tax examination record (form 04/KTTT enclosed herewith) must be made and signed within 05 working days from the end of the examination.

The examination record must contain:

- The legal basis.
- The conclusion about the inspected operations, the offences, the penalties within and beyond the competence of the examiners.

The examination record must be announced to the examiners and the taxpayer. Every page of the examination record must bear the signatures and seals of the chief examiner and the taxpayer (or the legal representative of the taxpayer).

The difficulties with policies that need opinions from superior authorities shall be written in the province. When a written response is made by a superior authority, the examiner and the taxpayer shall make an appendix.

If the taxpayer refuses to sign the examination record, the chief examiner shall request the person that issues the decision on examination to issue a decision on penalty imposition within 05 working days from the announcement of the examination record, and request the taxpayer to sign the examination record. If the taxpayer still refuses to sign the examination record, within 30 working days from the announcement of the examination record, the head of the tax authority shall issue a decision to collect tax arrears, impose penalties for tax offences according to the examination record and the information collected during the examination.

#### 7. Handling tax examination results

- Within 05 working days from the day on which the examination record is signed, the chief examiner must report the examination results to the issuer of the decision on examination. If the examination result leads to tax collection and imposition of penalties, within 07 working days from the day on which the record is signed (or 30 working days if the case is complicated), the head of the tax authority shall issue a decision on penalties for tax offences using form 20/KTTT enclosed herewith. If the examination result does not lead to tax collection or imposition of penalties, the head of the tax authority shall issue a conclusion about the examination.

- If tax evasion or tax noncompliance is suspected during the examination, within 07 working days from the end of the examination (or 30 working days if the case is complicated), the

examiners shall request the tax authority to decide necessary actions or transfer the case to the investigation department.

### **Article 63. Rights and obligations of the taxpayer during examination**

1. The taxpayer is entitled to:

- a) Refuse the examination if no decision on tax examination is presented;
- b) Refuse to provide information and documents that are not relevant to the examination;
- c) Receive the examination record and demand explanation for its contents;
- d) Conserve their opinions in the examination record;
- dd) Lodge complaints, lawsuits, and claim damages in accordance with law;
- e) Report violations of law during the examination.

2. The taxpayer is obliged to:

- a) Comply with the decision on tax examination;
- b) Provide accurate and sufficient information/documents (and soft copies if the taxpayer uses accounting software) related to the examination at the request of the examiner; take responsibility for the accuracy and truthfulness of the provided information/documents;
- c) Sign the examination record within 05 working days from the end of the examination;
- d) Comply with the decision to handle examination results.

### **Article 64. Tasks and entitlements of the head of the tax authority that issues the decision on tax examination and tax officials**

1. Tasks and entitlements of the head of the tax authority that issues the decision on tax examination:

- a) Direct the implementation of the decision on tax examination;
- b) Impounding money, items, and licenses related to tax evasion or tax fraud according to Article 90 of the Law on Tax administration;
- c) Delay or suspend the tax examination where necessary;
- d) Decide collection of tax arrears and imposition of penalties for administrative violations, or request competent persons to do so;
- d) Settle the complaints and denunciations related to the acts and decisions of tax officials.

2. Tasks and entitlements of tax officials during an examination:

- a) Comply with the decision on tax examination;
- b) Refuse to provide information and documents that are not relevant to the examination;
- c) Make a record certifying the figures and an examination record; report the examination results to the issuer of the decision on tax examination and take responsibility for the accuracy and truthfulness of such reports and records;
- d) Impose penalties for administrative violations, or request competent persons to do so.



## **Section 2. TAX INSPECTION**

### **Article 65. Inspection at taxpayer's premises**

Cases of inspection at taxpayer's premises:

- Inspections according to plan.
- Unscheduled inspections when taxpayers are suspected of committing tax offences; inspections to settle complaints and lawsuits; inspections upon division, splitting, merger, amalgamation, dissolution, bankruptcy, equitization; inspections at the request of heads of tax authorities or the Minister of Finance.

#### 2. Annual inspection plan:

a) Annual inspection plans shall be according to the requirements for tax administration, instructions of the Ministry of Finance, taxpayers' information analysis and risk assessment.

b) An annual inspection plan consists of: the basis for planning, list of inspected taxpayers, and the draft decision to approve the inspection plan.

c) A list of inspected taxpayers consists of:

- Names and tax codes of taxpayers;
- The inspection subject (if any).
- The date and contents of inspection if necessary.

#### 3. Formulating and approving annual inspection plans:

According to the orientation, instructions of the Ministry of Finance and requirements for tax administration, the General Department of Taxation shall provide instructions on inspection plans by October 15.

The General Department of Taxation shall make their own inspection plan and send it to the Ministry of Finance by November 01.

The Ministry of Finance shall approve the inspection plan of the General Department of Taxation by November 25.

Departments of Taxation shall make their inspection plans to the General Department of Taxation by November 25.

The Director of the General Department of Taxation shall approve the inspection plans sent by Departments of Taxation by November 25.

Sub-departments of taxation shall make their inspection plans to Departments of Taxation by December 05.

The Directors of Departments of Taxation shall approve the inspection plans sent by Sub-departments of Taxation by December 20.

#### 4. Adjustment to annual inspection plan:

a) An annual inspection plan that has been approved shall be adjusted in the following cases:

- The adjustment is requested by the Ministry of Finance or the head of a superior tax authority:

According to the request of the Ministry of Finance or the head of a superior tax authority, the inferior tax authority shall draft an adjustment to the inspection plan and send it to the person entitled to approve inspection plans for consideration.

- The adjustment is requested by the head of the tax authority assigned to implement the inspection plan:

The head of the tax authority assigned to implement the inspection plan shall adjust the approved inspection plan and request the person entitled to approve inspection plans to consider the adjustment.

b) Entitlements to approve adjustments to annual inspection plans:

- The Minister of Finance shall approve adjustments to inspection plans of the General Department of Taxation.

- The Director of the General Department of Taxation shall approve adjustments to inspection plans of Departments of Taxation.

- Directors of Departments of Taxation shall approve adjustments to inspection plans of Sub-departments of taxation.

c) The procedure for approving adjustments to an inspection plan is similar to the procedure for approving annual inspection plans. The reasons for adjustment must be stated.

Annually before September 30, Departments of Taxation and Sub-departments of taxation shall consider implementing the approved inspection plans and report the adjustments to annual inspection plans (if any) by October 05.

5. Elimination of overlapping inspections:

If an inspection plan of an authority overlaps with that of a superior authority, the latter shall apply.

If the inspection plan of a tax authority overlaps with that of Government Inspectorate, State Audit Agency, or Inspectorate of the Ministry of Finance, the latter shall apply.

The Director of the General Department of Taxation shall settle the overlapping inspection plans of inferior units, and request the Chief Inspector of the Ministry of Finance to consider where necessary.

6. Disclosure of annual inspection plan:

The annual inspection plan must be notified to taxpayers and tax authorities within 30 days from the day on which the decision to approve the inspection plan is issued.

The taxpayer must be notified if the inspection plan is adjusted because of overlapping with the plan of a superior authority.

7. If a decision on tax inspection has been issued but the taxpayer has left the business premises, or the legal representative is absent for a long time because of force majeure circumstances, or a competent authority is conducting an investigation, the head of the tax authority shall issue a decision to revoke the decision on tax inspection using form 19/KTTT enclosed herewith.

## **Article 66. Procedure for tax inspection at taxpayer's premises**

Issuance of decision on tax inspection

a) Heads of tax authorities shall issue decision on inspections using form 03/KTTT enclosed herewith.

b) A decision on tax inspection shall be issued when:

- The inspection plan has been approved;
- The inspection is requested by the head of a state authority;
- Tax offences are suspected;
- The inspection is necessary for taking actions against the taxpayer's tax offences
- The inspection is necessary for making the terminal declaration of tax upon the division, split, merger, amalgamation, dissolution, bankruptcy, or equitization of a company.

c) A decision on tax inspection must contain:

- The legal basis;
- The inspected taxpayer (if the taxpayer has affiliates, the decision on inspection must enumerate such affiliates);
- Inspection tasks;
- Inspection period;
- The chief and members of the inspectorate. A deputy may be appointed to assist the chief where necessary, and is responsible to the chief for the assigned tasks.

The decision on tax inspection must be sent to the taxpayer within 03 days from its date of issue.

d) The inspection carried out by the General Department of Taxation must not extend beyond 45 working days (or 70 working days if the case is complicated); that carried out by a Department of Taxation or Sub-department of taxation must not extend beyond 30 working days (or 45 working days if the case is complicated).

The inspection period begins on the day the decision on tax inspection is announced and ends when the inspection is finished.

If more time is needed to verify information and collect evidence, the chief of the inspectorate must request the issuer of the decision on tax inspection to extend the deadline at least 05 days before the end of the inspection period. The inspection period shall only be extended once. The total duration of an inspection after extension must not exceed the duration of a complicated case.

2. Request for information and documents from taxpayers:

The inspectorate is entitled to request the taxpayer to provide information, documents, or explanation related to the inspection before carrying out the inspection.

3. When receiving the decision on inspection, if the taxpayer wishes to delay the inspection, a written request must be sent to the tax authority, specifying the reasons and the length of delay. Within 05 working days from the receipt of the request for delay, the tax authority shall notify the taxpayer of their approval or refusal.

4. Carrying out the inspection

a) Announcing the decision on tax inspection

Within 15 days from the issuance of the decision on tax inspection, the chief of the inspectorate must announce it to the inspected taxpayer.

Before announcing, the chief of the inspectorate must notify the taxpayer of the announcement. If necessary, the taxpayer shall notify the taxpayer in writing of the time and participants. When announcing the decision on tax inspection, the chief of the inspectorate must explain the contents of the decision, announce the inspection schedule and other tasks related to the inspection.

A record on the announcement must be made using form 05/KTTT enclosed herewith.

b) Initiating the inspection

- The inspectorate shall request the taxpayer to provide relevant information and documents such as documents about business registration and tax registration, invoices, invoicing reports, accounting books, accounting documents, financial statements, tax declarations, etc. The taxpayer must provide accurate and sufficient information/documents (and soft copies if the taxpayer uses accounting software) related to the inspection at the request of the inspectorate. The taxpayer is entitled to refuse to provide the information and documents that are not relevant to the inspection, the information and documents classified as state secrets, unless otherwise prescribed by law. When receiving the documents provided the taxpayer, the inspectorate must check, preserve, and use them properly without losing any of them. If there is evidence that the taxpayer commits tax offences, the chief of the inspectorate shall seal part or all of the relevant documents. The seal shall be broken in accordance with law.

- During the inspection, the inspectorate shall compare information in the declarations and accounting documents, financial statements, relevant documents, or check the taxpayers' assets if necessary to clarify the issues and draw an objective conclusion.

- The inspectorate shall request the taxpayer to explain the vague events and unclear documents in writing. If the written explanation of the taxpayer is not satisfactory, the inspectorate shall hold a discussion with the taxpayer to clarify the issues and responsibilities. A record on the discussion must be made, bearing the signatures of both parties and. The discussion may be recorded if necessary.

- If the documents must be verified, the chief shall send a report to the issuer of the decision on tax inspection. The inspectorate shall make a record on the documents (and items, if any) being verified, specifying their conditions and send it to the verifying authority.

- During the inspection, if the taxpayer is suspected of committing tax evasion or tax fraud that is complicated or related to another entity, the tax authority is entitled to take the measures mentioned in Article 89, Article 90, Article 91 of the Law on Tax administration and the Article 69 of this Circular.

- During the inspection, members of the inspectorate must report the progress, the accomplishment of their tasks, and the issues beyond their competence to the chief.

The chief of the inspectorate must consider the recommendations given by its members, and report the issues beyond their competence to the issuer of the decision on tax inspection.

c) Reporting inspection progress:

- The chief of the inspectorate must report the progress of the inspection to the issuer of the decision on tax inspection every 10 days (form 21/KTTT enclosed herewith) or at his request.

- The report must be made in writing, specifying the initiated works, the finished works, pending works, difficulties, and recommendations (if any).

d) If the tax inspection must be suspended because of force majeure circumstances, the chief of the inspectorate shall send a report to the head of the inspection department, specifying the causes and the suspension period. The suspension period is not included in the inspection period.

dd) If an offence beyond the decision on tax inspection is found during the inspection, the chief shall send request its issuer to expand the scope of inspection.

e) If the taxpayer refuses to comply with the decision on tax inspection within 03 working days, delays or avoids providing documents, invoices, receipts, and accounting documents related to tax liability within 06 working hours from the receipt of the request from a competent authority, the taxpayer shall incur administrative penalties as prescribed.

g) Tax inspection records:

The record on the tax inspection shall be made using form 04/KTTT enclosed herewith.

The record must contain:

- The legal basis.

- Conclusion about the inspected operations, the offences, and penalties.

The inspection record must be announced to the inspectorate and the taxpayer. Every page of the inspection record must bear the signatures and seals of the chief of the inspectorate and the taxpayer (or the legal representative of the taxpayer).

The taxpayer is entitled to receive the inspection record, request explanation for the record, and conserve their opinions in the records.

The difficulties in the policies shall also be written in the record; When a written response is made by a superior authority, the inspectorate and the taxpayer shall make an appendix.

At the end of the inspection, if the taxpayer refuses to sign the inspection record, the chief of the inspectorate shall request the person that issues the decision on inspection to issue a decision on penalties within 05 working days from the announcement of the inspection record, and request the taxpayer to sign the inspection record. If the taxpayer still refuses to sign the inspection record, within 30 working days from the announcement of the inspection record, the head of the tax authority shall issue a decision to collect tax arrears, impose penalties for tax offences according to the inspection record and the information collected during the inspection.

## 5. Reporting inspection result

a) Within 15 working days from the end of the inspection, the chief of the inspectorate must send a report on the inspection result to the issuer of the decision on tax inspection.

b) The report must contain:

- Result of every inspected operation;

- Difference between the opinions of members and opinions of the chief of inspectorate about the inspection result (if any);

- The laws being the basis for determining the nature and severity of the violations, and suggested actions.

6. Conclusion about the inspection, decision on tax arrears collection, and decision on penalty imposition

a) The head of the tax authority that issues the decision on tax inspection shall make a written conclusion (form 06/KTTT enclosed herewith) and a decision on penalties for tax offences (form 20/KTTT enclosed herewith)

Within 15 working days from receipt of the report on inspection result, the issuer of the decision on tax inspection must issue a conclusion, unless opinions from specialized agencies or competent organizations are being requested.

b) The record must contain:

- The assessment of the taxpayer's adherence to tax law;
- The conclusion about the tax inspection;
- The nature and severity of the offences, causes and responsibilities of the violator (if any);
- Imposition of penalties for administrative violations.

c) While making the conclusion about the inspection, decision on tax arrears collection, and decision on penalty imposition, the head of the tax authority is entitled to request the chief or member of the inspectorate to report, and request the taxpayer to provide explanation necessary for making such conclusion and decisions.

d) The conclusion about the inspection, decision on tax arrears collection, and decision on penalty imposition must be sent to the taxpayer and the head of the superior authority of the taxpayer. The conclusions about internal inspections shall be sent in accordance with Article 5 of the Circular No. 19/2013/TT-BTC dated February 20, 2013 of the Ministry of Finance on finance inspection.

dd) The conclusion must be disclosed in accordance with the Law on Inspection and its guiding documents.

e) The tax authority must supervise the implementation of the conclusion and the decision on penalty imposition, inspect the implementation of them by the taxpayer and relevant organizations and individuals.

7. During the inspection, if the taxpayer is suspected of committing criminal tax evasion, the inspectorate shall suspend the inspection, send a report to the head of the inspection department to request the issuer of the decision on tax inspection to transfer the case to an investigation agency.

#### **Article 67. Reinspecting conclusion about tax inspection**

1. The following persons are entitled to reinspect the cases that have been concluded but are suspected for tax offences:

a) The Chief Inspector of the Ministry of Finance shall decide the reinspection of the cases concluded by the General Department of Taxation but suspected of tax offences.

b) The Director of the General Department of Taxation shall decide the reinspection of the cases concluded by Directors of Departments of Taxation but suspected of tax offences.

c) Directors of Departments of Taxation shall decide the reinspection of the cases concluded by Directors of Sub-departments of Taxation but suspected of tax offences.

2. The contents of a decision on reinspection are prescribed in Point Clause 1 Article 66 of this Circular. Within 03 working days from the day on which the decision on reinspection is issued, the issuer must send it to the person that signs the decision on tax inspection and the inspected taxpayer.

3. A reinspection shall be carried out when:

- Serious violations are committed during the inspection procedure.
- Laws are erroneously applied when making the conclusion about the inspection
- The conclusion is not consistent with the evidence collected during the inspection.
- The issuer of the decision on tax inspection, the chief or members of the inspectorate, the officials appointed as inspectors deliberately falsify the case documents or make illegal conclusion.
- Serious offences committed by the taxpayer are not completely found during the inspection.

4. The reinspection procedure tasks and entitlements are the same as inspection.

5. The time limit for carrying out a reinspection is 01 year from the day on which the conclusion is signed.

6. The conclusion about reinspection made by the Chief Inspector of the Ministry of Finance shall be sent to the Minister of Finance and Government Inspectorate. The conclusion about reinspection made by the Director of the General Department of Taxation shall be sent to the Inspectorate of the Minister of Finance. The conclusion about reinspection made by the Directors of Departments of Taxation shall be sent to the Director of the General Department of Taxation.

#### **Article 68. Inspection documentation**

Inspection documentation includes: the decision on inspection, inspection record; report, explanation of the inspected taxpayers (if any); report on inspection result; inspection conclusion; decision on tax arrears collection and decision on penalty imposition (if any);

The chief of the inspectorate shall make a list of documents and give the documents to the archive department.

#### **Article 69. Dealing with suspicion of tax evasion, tax fraud, or obstruction of inspection**

1. Collecting information related to tax evasion or tax fraud:

The head of the tax authority is entitled to request relevant organizations and individuals to provide information related to tax evasion tax fraud orally or in writing (if they have any).

a) Providing information in writing:

- A written request for information provision (form 07/KTTT enclosed herewith) shall be sent to the entity that has information.

- The time limit for providing information begins when the request is given to the person in charge of information provision (hereinafter referred to as information provider) or any third person assigned to receive and transfer the request to the information provider.
- The documents providing information must identify the information provider. If the information provider is a representative of a tax-paying organization, the documents must bear the signature, full name, position of the information provider, and the seal of the organization. If the information provider is an individual, the documents must bear the signature, full name, ID number or similar information about the information provider.
- Information must be provided by the deadline imposed by the tax authority. If information cannot be provided, a written response and explanation must be made.

b) Providing information orally:

- A written request for oral information provision (form 08/KTTT enclosed herewith) shall be made, specifying the name of the information provider, the necessary information and documents, time and place.
- The official assigned to collect information must present the official's card when collecting information.
- Information shall be provided at the tax authority office.
- When collecting information, the official shall make a record using form 09/KTTT enclosed herewith, which specifies:
  - + The beginning time, ending time, questions and answers, provided documents, audio and video recordings, signature of the information provider and the official.
  - + The information provider may read or listen to the record, and give his opinions in the record.
  - + The information provider may keep a copy of the record.
- The information provider shall have the reasonable cost of traveling and accommodation covered by the tax authority.
- The tax authority must keep secret about the information provider, the documents, handwriting, and evidence provided by the information provider.

2. Impounding money, items, and licenses

- a) The head of the tax authority or chief of the inspectorate is entitled to decide the impoundment of the money, items, and licenses related to the tax evasion or tax fraud.
- b) The money, items, and licenses related to the tax evasion or tax fraud shall be impounded if they are the basis for dealing with or preventing the tax evasion or tax fraud.
- c) During the tax inspection, if the illegal use of money, items and licenses needs to be immediately stopped, the chief of the inspectorate shall request the issuer of the decision on tax inspection to issue a decision to impound the money, items and licenses.

The decision on impoundment (form 10/KTTT enclosed herewith) must specify the impounded money, items and licenses, duration and method of impoundment (sealed on site or taken to other places), responsibilities of the decision issuer and the entity that owns the impounded money,



items, or licenses (hereinafter referred to as owner). The items and licenses may be sent to a suitable agency for impoundment.

d) When impounding the money, items, and licenses related to the tax evasion or tax fraud, the inspectorate must make an impoundment record using form 11/KTTT enclosed herewith. The record must specify the names, quantity, categories of the money, items and licenses impounded, bear the signatures of the person in charge of impoundment. The inspectorate is responsible for preserving the impounded money, items and licenses, and is responsible if they are lost, sold, swapped, or damaged.

If the money, items and licenses must be sealed, they must be sealed in front of the owner. If the owner is absent, they shall be sealed in front of a representative of his family or the organization, the representative of the commune authority, and the witness.

dd) Within 10 working days from the day on which the decision on impoundment is issued, a decision on handling impounded money, items and licenses (form 12/KTTT enclosed herewith) shall be issued, then the measures written in the decision shall be taken or the impounded money, items, and licenses shall be returned to the owner if they are not confiscated as a punishment. The time limit for impoundment may be extended if the case is complicated, but must not exceed 60 days. The extension of time limit shall be decided by the issuer of the decision on impoundment. The return of impounded money, items, and licenses must be recorded in writing using form 13/KTTT enclosed herewith.

e) One copy of the Decision on impoundment, impoundment record, and decision to return the impounded money, items, and licenses shall be given to the owner.

g) If the money, items, or licenses are lost, swapped, damaged, or returned behind schedule, the tax authority must pay compensation to the owner.

h) If the impoundment is considered unnecessary, the issuer of the decision on impoundment must revoke it.

### 3. Sealing documents

a) During the inspection, if the documents must be kept intact, the chief of the inspectorate may seal part or all of the documents related to the inspection.

The decision to seal documents (form 14/KTTT enclosed herewith) must specify the documents that need sealing, the sealing duration, and responsibilities of the taxpayer. A list of sealed documents may be made if necessary. The list must bear the signatures of the taxpayer and representative of the inspectorate.

b) A record on sealing documents (form 15/KTTT) must be made and signed by the taxpayer and the chief of the inspectorate.

c) The sealing duration must not exceed the inspection period. The use of sealed documents is subject to approval by the chief of the inspectorate.

d) If sealing documents is considered unnecessary, the issuer of the decision on sealing documents must revoke it.

### 4. Inventory checking

a) The chief of the inspectorate or the issuer of the decision on tax inspection shall decide the inventory checking if the figures in books are different from the actuality, or the taxpayer is suspected of embezzlement.

The decision to inventory checking (form 16/KTTT enclosed herewith) must specify the assets that need checking, time, location, responsibilities of the checker and the asset owner.

b) A record on inventory (form 17/KTTT) must be made and signed by the taxpayer and the chief of the inspectorate.

c) If inventory checking is considered unnecessary, the issuer of the decision on inventory checking must revoke it.

d) The assets may be sent to a suitable agency for impoundment.

dd) The assets under private ownership shall be checked in accordance with law.

### **Section 3. RISK MANAGEMENT**

#### **Article 70. Risk management by tax authorities**

1. The following information about the taxpayer shall be collected for risk management:

a) Information about legal records of the taxpayer.

b) Information about the taxpayer's tax declarations.

c) Information about the taxpayer's adherence to tax laws in terms of tax declaration, tax payment, tax refund, tax exemption or reduction, tax examination, and tax inspection.

d) Information from the units affiliated to Ministries and agencies.

dd) Information from third parties such as business associations or business partners of the taxpayer.

e) Information from denunciations of tax evasion or tax fraud.

g) Information from abroad according to Clause 1 Article 46 the Decree No. 83/2013/ND-CP.

h) Other information (including purchasable information prescribed by law).

2. Establishing criteria serving risk management.

a) According to the actual situation, the General Department of Taxation shall establish various sets of criteria that are suitable for various periods of tax administration.

b) The sets of criteria must conform with tax law and state management policies.

c) The General Department of Taxation shall submit the sets of criteria to the Minister of Finance for adoption.

3. Tax authorities shall develop information technology application systems that automatically assess the risks posed by taxpayers according to their adherence to tax laws.

4. According to the regulations on risk management, tax authorities shall assess taxpayers' adherence to tax laws in terms of tax registration, tax declaration, tax payment, tax debt, tax exemption, tax reduction, or tax refund in order to assist in tax administration and select the taxpayers that need inspecting.

## **Chapter IX**

### **COMPLAINTS, DENUNCIATIONS, AND LAWSUITS OVER TAXATION**

#### **Article 71. Administrative decisions and administrative acts against with complaints or lawsuits may be filed**

1. Taxpayers, organizations, and individuals are entitled to file complaints against the following administrative decisions of tax authorities:

- a) Decisions on tax imposition; Tax notices;
- b) Decisions on tax exemption or reduction;
- c) Decisions to refund tax;
- d) Decisions on penalties for tax offences;
- dd) Decisions on enforcement of tax decision;
- e) Conclusion about tax inspection;
- g) Decisions on complaint settlement;
- h) Other administrative decisions prescribed by law.

The documents of a tax authority in the form of dispatches, notifications, etc. that indicate a decision of the tax authority on a particular issue that is applied to one or multiple subjects are also considered administrative decisions of the tax authority.

2. Taxpayers, individuals, and organizations are entitled to file complaints against administrative acts committed by the tax authorities, tax officials, and other persons in charge of tax administration when there are evidence that such acts are illegal or infringe their the lawful rights and interests. Omission is also considered an administrative act.

3. Tax authorities, tax officials, and other persons in charge of tax administration must reconsider their administrative decisions or administrative acts, rectify them if unlawful to avoid complaints and denunciations.

#### **Article 72. Entitlements of tax authorities to settle complaints and denunciations**

1. Entitlements of tax authorities to settle complaints:

a) Directors of Sub-departments of taxation are entitled to settle complaints against their administrative decisions and administrative acts, or those committed by the persons under their management.

b) Directors of Departments of Taxation are entitled to:

b.1) Settling complaints against administrative decisions and administrative acts committed by their subordinates.

b.2) Settling the complaints that are not completely settled by Directors of Sub-departments of taxation.

c) The Director of the General Department of Taxation is entitled to:

c.1) Settling complaints against administrative decisions and administrative acts committed by their subordinates.

c.2) Settling the complaints that are not completely settled by Directors of Departments of taxation.

d) The Minister of Finance is entitled to:

d.1) Settling complaints against administrative decisions and administrative acts committed by their subordinates.

d.2) Settling the complaints that are not completely settle by the Director of the General Department of Taxation.

2. Entitlements of tax authorities to settle denunciations:

a) Tax authorities shall settle the denunciations against the persons under their management.

b) The head of a tax authority shall settle the denunciations against its staff.

c) The tax authority shall settle the denunciations against the heads of its inferior tax authorities.

**Article 73. Discussion with complainants and denunciators (hereinafter referred to as plaintiffs)**

1. The head of the tax authority must directly discuss with plaintiffs and organize the discussions with plaintiffs; appoint the officials that are righteous, responsible, and knowledgeable about laws and policies to discuss with plaintiffs.

2. Discussions with plaintiffs shall be held in a separate office. The tax authority must prepare a suitable office to hold discussions with plaintiffs.

Discussion schedule and regulations must be put up in the discussion office.

3. Responsibility of heads of tax authorities to discuss with plaintiffs:

a) Directors of Sub-departments of taxation shall discuss with plaintiffs at least one day in a month;

b) Directors of Departments of taxation shall discuss with plaintiffs at least two days in a month;

c) The Director of the General Department of Taxation shall discuss with plaintiffs at least one day in a month;

d) Apart from periodic discussions, heads of tax authorities must hold a discussion with plaintiffs whenever a discussion is urgent.

4. Responsibility of heads of the department in charge of settling complaints and denunciations to discuss with plaintiffs:

a) At Sub-departments of taxation: at least 03 days a week;

b) At Departments of taxation: at least 02 days a week;

c) At the General Department of Taxation: at least 04 day in a month.

**Article 74. Settling overpaid and underpaid tax after decisions are made by competent authorities**

1. The tax authority must return the overpaid tax and fines, then pay an interest on the overpaid amount to the taxpayer or the third party within 15 days from the day on which a decision on

settlement of a competent authority is issued or received. Interest shall be charged at the basic rate announced by the State bank.

Decisions on settlement of competent authorities include: decisions of state administrative agencies, judgments or decisions of competent courts.

2. If the tax payable in the decision on settlement of complaint is higher than that in the administrative decision complained against, the taxpayer must pay the tax arrears within 10 days from the receipt of the decision on settlement of complaint.

## **Chapter X**

### **ORGANIZATION OF IMPLEMENTATION**

#### **Article 75. Effect**

1. This Circular takes effect on December 20, 2013 and supersedes the Circular No. 28/2011/TT-BTC dated February 28, 2011 of the Ministry of Finance.

The guidance on the regulations on tax administration in the Law on the amendments to the Law on Tax administration and the Decree No. 83/2013/ND-CP take effect on July 01, 2013.

The regulations on tax declarations in this Circular are applied to all tax periods from January 01, 2014.

2. The current legislative documents are still applied to petroleum operations and the regulations that are not amended in this Circular.

3. Input VAT incurred in a tax period shall be declared and deducted when calculating tax payable in that tax period. Before January 01, 2014, if the available capacity finds an error in the declared input VAT, an adjustment may be made in the corresponding tax period by the deadline for making adjustment according to the laws on VAT.

Example 50: Company A declares VAT quarterly from July 01, 2013. In November 2013, company A finds an error in an invoice for input VAT incurred in May 2013, company A may make an adjustment in the tax period of Q4 2013.

4. The regulations on tax administration that are issued by the Ministry of Finance before this Circular takes effect and are not conformable with this Circular are abrogated.

#### **Article 76. Responsibility to implementation**

1. Tax authorities must instruct organizations, individuals, and taxpayers to implement this Circular.

2. The organizations, individuals, and taxpayers regulated by this Circular must follow all the instructions in this Circular.

Any difficulty that arises during the implementation should be reported to the Ministry of Finance for consideration./.

**PP THE MINISTER  
DEPUTY MINISTER**

**Do Hoang Anh Tuan**

**Form 04 - 2/TNCN**

**SOCIALIST REPUBLIC OF VIETNAM**  
**Independence - Freedom - Happiness**  
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**LETTER OF AUTHORIZATION**  
**TO SETTLE PERSONAL INCOME TAX**

.....

My name is: ..... Nationality:.....

Tax code: .....

In ..... I only earn taxable income from .....  
..... ;

In ..... I earn taxable income from .....  
..... and  
extra income from other places, which does not exceed 10 million VND per month  
averagely and has been deducted at source by the income payers;

In ..... I earn taxable income from .....  
..... and  
also earn income from the lease on houses, premises, right to use land that does not  
exceed 20 million VND per month averagely and has been paid to the tax authority  
where such property is located.

I, the undersigned, hereby authorizes .....  
..... (tax code:.....) to  
declare and settle my personal income tax in ..... with the tax authority on my  
behalf.

I am totally responsible if the tax authority discovers any income I earn from other  
places./.

....., .....

**AUTHORIZER**

(Signature and full name)

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