

THE GOVERNMENT

No.: 122/2011/ND-CP

SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom – Happiness

Hanoi, December 27, 2011

DECREE

AMEND AND SUPPLEMENT SOME ARTICLES OF DECREE NO.124/2008/ND-CP
OF DECEMBER 11, 2008 OF THE GOVERNMENT DETAILING THE
IMPLEMENTATION OF SOME ARTICLES OF ENTERPRISE INCOME TAX LAW

THE GOVERNMENT

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

Pursuant to the Law on Corporate Income dated June 03, 2008;

At the proposal of the Minister of Finance;

DECREES:

Article 1. To amend and supplement some Articles of Decree No.124/2008/ND-CP of December 11, 2008 of the Government detailing the implementation of some Articles of Enterprise Income Tax Law as follows:

“Article 3.- Taxable incomes

1. Taxable incomes include income from production and trading of goods and service and other incomes specified in Clause 2 of this Article. For enterprises having registered their business and earning incomes specified in Clause 2 of this Article, will be determined as incomes from their production and business activities.

2. Other incomes cover:

a/ Income from capital transfer, including income from the transfer of part or the whole of the capital amount invested in an enterprise, even in case of sale of enterprises, transfer of securities and other forms of transfer of capital as prescribed by law;

b/ Income from transfer of project, income from transfer of rights of exploration, exploitation, and processing of minerals as prescribed by law; income from the transfer of real estate as prescribed in Clause 9, Article 1 of this Decree;

c/ Income from the right to own or use assets, including earned copyright royalties in any forms and earned royalties from intellectual property rights; income from technology transfer under law; and asset lease in any forms;

d/ Income from the transfer or liquidation of assets (excluding real estate) and other valuable papers;

đ/ Income from savings interests, loan interests or foreign currency sales, including interests on savings deposited at credit institutions, interests on loans in any forms under law, credit guarantee charges and other charges under loan provision contracts; and income from foreign currency sales; the exchange rate differences from revaluation of liabilities payable with origin from foreign currencies at the end of the fiscal year (excluding exchange rate differences arising during the basic construction investment process to form fixed assets that such fixed assets have not been included in production, business.

e/ Refunded provisions (other than refunded provisions for diminution in value of inventories, provisions for losses in financial investment, provisions for bad debt receivable and provision for goods, product warranty in the enterprises; refunded appropriation for salaries) and appropriated amounts previously accounted as expenses which are left unused or have not been used up in the period of their appropriation;

g/ Recovered bad debts which have been written off;

h/ Payable debts of unidentifiable creditors;

i/ Omitted income from previous years business activities to be discovered;

k/ Difference between the collected fines or amount compensated for breaches of economic contracts minus (-) the fines or the amount paid compensations for contract breaches under law;

l/ The grants in cash or in kind received, except for grants provided for in Clause 6, Article 4 of Decree No.124/2008/ND-CP of December 11, 2008 of the Government (hereinafter referred to as Decree No.124/2008/ND-CP);

m/ Difference resulting from the re-valuation of assets under law provisions for capital contribution or transfer upon separation, split, merger, consolidation or transformation of forms of enterprises.

Asset-receiving enterprises may account based on re-valuation prices upon the determination of deductible expenses specified in Clause 5, Clause 6 Article 1 of this Decree;

n/ Incomes received from production and business activities carried out outside Vietnam;

o/ Income from sale of scrap, waste products not related to production and business activities being enjoyed preferential tax and other incomes as prescribed by law.

3. Vietnam-generated taxable incomes of enterprises defined at Points c and d, Clause 2, Article 2 of the Law on Enterprise Income Tax are incomes originating in Vietnam from the provision of services or loans and copyright royalties collected from Vietnamese organizations and individuals or foreign organizations and individuals doing business in Vietnam, regardless of their places of business.

Taxable incomes specified in this Clause exclude income from services provided outside the Vietnamese territory, such as overseas repair of means of transport, machinery or equipment; overseas advertisement, marketing and investment and trade promotion; overseas goods sale brokerage; overseas service sale brokerage; overseas training; and international post and telecommunications service charges divided to foreign parties.

The Ministry of Finance shall specify taxable incomes referred to in this Clause.”

2. To amend and supplement Clause 2, Clause 3, Clause 4, Article 4 as follows:

"2. For income from the performance of scientific research and technological development contracts, income from sale of products from trial production and income from production of products made from new technologies applied for the first time in Vietnam, including income from the transfer of certificate of emission reductions (CERs), the maximum tax exemption duration does not exceed one year from the date of commencing production under scientific research and technological application contracts, trial production or production with new technologies from the date of being granted certificate of emission reductions (CERs).

Ministry of Finance guides specifically the provisions of this clause.

3. Income from the production and trading of goods and service of enterprises employing from 30% of the average number of employees in the year or more to be disabled, detoxified and people with HIV / AIDS.

The enterprises that are exempted tax as specified in this clause are the enterprises with the average number of employees during the year from 20 people or more, excluding the enterprises operating in the sector of finance, real estate business.

Tax-exempted incomes specified in this Clause exclude other incomes specified in point 2 Clause 1, Article 1 of this Decree.

Income tax exemption specified in this paragraph does not include other income specified at Point 2, Clause 1, Article 1 of this Decree.

4. Income from vocational training activities exclusively reserved for ethnic minority people, the disabled, children in extremely disadvantaged circumstances and persons involved in social evils, those who are being detoxified, have been detoxified, people with HIV/AIDS . vocational training establishment including other objects, tax-exempted income shall be determined based on the ratio between the number of ethnic minority people, the disabled, children in extremely disadvantaged circumstances and persons involved in social evils those who are being detoxified, have been detoxified, people with HIV/AIDS and the total number of job trainees of the establishment”

3. To amend and supplement Clause 2, Clause 3 of Article 6 as follows:

"2. Taxable income is determined as follows:

Taxable income = [Turnover - Expenses deducted] + Other Incomes

For an enterprise conducting different business activities, taxable income from production and business activities is the total of incomes from all business activities. If a business activity makes losses, the enterprise may offset such losses with the taxable income of an income-generating business activity selected by the enterprise. The residual income after loss offsetting is subject to the rate of enterprise income tax of the income-generating business activities.

Income from real estate transfer, project transfer, and transfer of the rights of exploration, exploitation, processing of minerals must be separately accounted for tax declaration and payment and must not be included in incomes or losses of other business activities but used to offset interests, losses of these activities together.

3. Taxable incomes from some production and business activities shall be determined as follows a) For income from capital transfer (excluding income from securities transfer specified at Point b of this Clause), is determined by the total sum of money collected under a transfer contract minus (-) the purchase price of the transferred capital amount, minus (-) costs directly related to the transfer;

Where enterprises with capital transfer that do not received in money, but by property and other material benefits (such as shares and fund certificates), which generate income subject to enterprise income tax.

b) For income from securities transfer determined by the selling price minus (-) the purchase price of the transferred securities, minus (-) costs directly related to the securities transfer;

In case of joint stock companies to issue shares, the difference between issue price and par value is not subject to enterprise income tax.

In case of joint stock companies to conduct separation, consolidation, merger, which implements the exchange of shares at the time of separation, consolidation, merger if income is generated, such income is subject to enterprise income tax.

Where enterprises have transferred securities that do not received in money, but by property, and other material benefits (such as shares and fund certificates), with income generation, it is subject to enterprise income tax.

c) For income from intellectual property copyright or technology transfer is determined by the total collected sum of money minus (-) the prime cost or expense for creating the transferred intellectual property right or technology, minus (-) the expense for maintaining, upgrading or developing the transferred intellectual property right or technology, and other deductible expenses;

d) For income from asset lease is determined by the lease turnover minus (-) basic depreciations, expense for asset renovation, repair or maintenance, expense for lease of assets for sublease (if any) and other deductible expenses related to the asset lease;

đ) For income from transfer or liquidation of assets (except real estate), is determined by the received amount from assets transfer or liquidation minus (-) the remaining value of

assets recorded in the account books at the time of transfer or liquidation and deductible expenses related to the transfer or liquidation of assets;

e) For income from foreign currency sales, is determined by the total sum of money collected from foreign currency sales minus (-) the purchase price of the quantity of sold foreign currencies (excluding foreign exchange difference resulting from the re-valuation of monetary items of foreign currency origin at the end of a fiscal year or foreign exchange difference arising in the course of capital construction investment before production and business activities are carried out);

g) For difference resulting from the re-valuation of assets is determined as the difference between the re-valuated value and the residual value recorded in the account books of assets; for fixed assets upon capital contribution is determined as the difference between the re-valuated value and the residual value of fixed assets being recorded in the account books; and for fixed assets be transferred upon division, separation, consolidation, merger, transformation of enterprises, is determined as the difference between the value of re-valuation and the residual value of fixed assets being recorded in the account books.

Differences resulting from revaluation of fixed assets upon capital contribution, assets transferred upon division, separation, consolidation, merger, transformation of enterprises are included in other income in the tax calculating period; particularly differences due to revaluation of the value of land use right for capital contribution shall be calculated gradually in other income in the maximum period not exceeding 10 years from the year with assets contributed as capital.

h) For incomes received from overseas production, business or service activities are determined as the total of pre-tax incomes.”

4. To amend and supplement point d Clause 3 Article 8 as follows:

"d) For asset leasing activities is determined as the amount that the lessee pays for each term under the lease contract. If the lessee pays rent in advance for many years, the turnover for calculating taxable income is calculated gradually for the number of years paid in advance or determined by turnover of lump-sum payment. Where enterprises being enjoyed tax incentives, the determination of tax incentives must be based on total enterprise income tax of the years paid in advance divided by (:) for number of years that the lessee paid in advance.”

5. To amend and supplement Clause 1 of Article 9 as follows:

"1. Except for expenses specified at Points a, b, c, d, e, h, i, k, Clause 2 of Article 9 of Decree No.124/2008/ND-CP and clause 6 of Article 1 of this Decree, enterprises are subtracted all expenses if they satisfy the following conditions:

a) Expenses actually incurred related to the business, production activities of the enterprise;

b) Expenses having enough invoices and vouchers as prescribed by law.

For the cases of: purchase of agricultural, forestry or fishery products from producers or fishermen; purchase of handicraft products made of jute, sedge, bamboo, leaf, rattan, straw, coconut husk or shell or materials taken from agricultural products, from craftsmen; purchase of soil, rock, sand or gravel from local mining inhabitants; purchase of scraps from individual collectors or second-hand domestic appliances from households or individuals, and purchase of services from non-business individuals, there must be documents of payment to sellers and lists of purchasing goods or services signed and take responsibility by legal representatives or authorized persons of enterprises.

The actual expenses for the prevention, combat of HIV/AIDS at the work place of the enterprises under the guidance of the Ministry of Health (including the cost of staffs training on prevention and combat of HIV/AIDS of the enterprise, the cost of supporting the media for prevention and combat of HIV/AIDS for employees of the enterprise, the fees for implementing consultancy, examination and testing for HIV, the cost of supporting people with HIV who are employees of business establishments) also deducted as determining taxable income. "

6. To amend and supplement points d, g, l and add point m, point n clause 2 of Article 9 as follows:

a) To amend and supplement Point d, Clause 2 of Article 9 as follows:

"d) Advanced expenses in contravention of law

Advanced expenses include those for regular overhaul of fixed assets; those for activities of which turnover has been accounted but contractual obligations must be continued to fulfill including the cases of asset lease advance collected money for many years that the lessee accounted all into turnover of the collecting year, the other advanced expenses under the provisions of the Finance Ministry. "

b) To amend and supplement Point g, Clause 2 of Article 9 as follows:

"g) The expense for advertisement, marketing, sales promotion and brokerage commissions (excluding insurance brokerage commissions under the law provisions on insurance business or commissions for agents selling goods at set prices, commission paid to distributors of multi-level sales company); expense for reception, protocol and conferences; expense in support for marketing, for cost and discount of payment; expense for press agencies' newspapers given as presents or gifts (excluding newspapers given as presents or gifts to subjects who have contributed to the revolution, war invalids, sick soldiers; the officers and soldiers in the islands and remote areas, areas with special difficulties) directly related to production and business activities, in excess of 10% of total deductible expenses. For enterprises newly established January 01, 2009, is the expense in excess of 15% of the first 3 years from the date of establishment.

Total deductible expenses exclude the expenses specified above; for trade activities, it excludes the purchase prices of sold goods."

c) To amend and supplement Point l, clause 2 of Article 9 as follows:

“l) Foreign exchange rate difference resulting from the re-valuation of monetary items of foreign currency origin at the end of a tax period minus the difference of foreign exchange rate resulting from the re-valuation of debts payable of foreign currency origin at the end of a tax period; the exchange rate difference arising in the course of basic construction investment.”

d) To add point m, point n into clause 2 Article 9 as follows:

“m) The amount appropriated for reserve fund of unemployment allowance (except for the case that enterprises are not subject to mandatory participation in unemployment insurance as prescribed by law).

n) Wages, salaries of owners of private enterprises; remuneration paid to founding members of enterprises not directly participating in the administration of production or business; salaries, wages and other expenditure items accounted for paying to workers but not paid actually or having no bills or vouchers as prescribed by law; the bonus payments, expenses for purchasing life insurance for employees not specified conditions of enjoying and the level of enjoying in one of the following documents: Contract of labor; collective labor agreements; Financial Regulations of the Company, Corporation, Group; reward Regulations defined by the Chairman of the Management Board, General Director, Director under the financial Regulations of the Company and.”

7. To amend and supplement clause 2 Article 10 as follows:

“2. The enterprise income tax rate applicable to activities of prospecting, exploring, and extracting oil and gas and other precious and rare natural resources in Vietnam is between 32% and 50%. For the mines of oil and gas, the tax rate complies with the provisions of the Law on Petroleum. For the mines of precious and rare natural resources (except for oil and gas), the the tax rate is 50%, For the mines with 70% or more of assigned area in the regions with extremely disadvantage socio-economic conditions on the list of localities subject to enterprise income tax incentives promulgated together with Decree No.124/2008/ND-CP, enterprise income tax rate is 40%.

Other precious and rare natural resources mentioned in this Clause include platinum, gold, silver, tin, tungsten, antimony, gems and rare earths.”

8. To amend and supplement Clause 3 of Article 11 as follows:

"3. For enterprises defined at Points c and d, Clause 2, Article 2 of the Law on Enterprise Income Tax, the payable enterprise income tax amount is calculated by the percentage (%) of the sales turnover of goods and services in Vietnam, specifically:

a) Service: 5%, but the management service of restaurants, hotels and casinos: 10% in cases of service provision associated with the goods is calculated by a proportion of 1%;

b) Royalties: 10%;

c) Rental of aircraft (including aircraft engines or spare parts) or seagoing ships: 2%;

d) Hire of rigs, machinery, equipment or means of transport (except those specified at Point c of this Clause): 5%;

đ) Loan interests: 5%;

e) Offshore transfer of securities, reinsurance: 0.1%;

g) Arising financial services: 2%;

h) Construction, transportation and other activities: 2%. "

9. To amend and supplement Article 13 as follows:

"Article 13. Incomes from real estate transfer include income from the transfer of land use or lease rights; income from sublease of land of real estate-trading enterprises under the land law, regardless of whether infrastructure or architectural works attached to land are available or not, including the assets associated with houses, construction works regardless of whether or not the transfer of land use or lease rights; income from the transfer of other assets attached to land. "

10. To amend and supplement Clause 1 of Article 14 as follows:

"1. Turnover used for calculating taxable income shall be determined based on the real price of real estate transfer under the contract of purchasing real estate in accordance with the provisions of law.

If the price of transfer of land use rights under the contract of purchasing real estate is lower than the land price set by the People's Committee of provinces, cities under the central government, at the time of signing contract, it will be calculated by the land price set by the People's Committee of provinces, cities under the central government."

11. To amend and supplement Clause 3, Clause 5 Article 15 as follows:

"3. The tax rate of 10% is applicable to incomes of enterprises operating in the sectors of education-training, vocational training, healthcare, cultural, sports and environmental domains (below collectively referred to as socialized domains) throughout their operation duration and the income from publishing activities in accordance with the Law on Publishing.

The Prime Minister shall promulgate a list of socialized domains mentioned in this Clause.

5. The incentive tax rate of 20% is applicable to agricultural service cooperatives and peoples credit funds and microfinance institutions throughout their operation duration

After the expiration of the duration for application of the tax rate of 10% specified at Point a, Clause 1 of Article 15 of Decree No. 124/2008 / ND-CP, agricultural service cooperatives and peoples credit funds, microfinance institutions shall switch to apply the tax rate of 20%.

Microfinance institutions specified in this clause are the organizations established and operating under the provisions of the Law on Credit Institutions. "

12. To amend and supplement Clause 2 of Article 19 as follows:

"2. Incomes ineligible for enterprise income tax incentives include incomes specified at Points a, b and c, Clause 3, Article 18 of the Law on Enterprise Income Tax, and incomes from trading services subject to special consumption tax, and incomes from mining activities."

Article 2. Implementation provisions

1. This Decree takes effect from March 01, 2012 and applies to tax period from 2012 onwards.

2. Enterprises during time enjoyed the preferential enterprise income tax by meeting the favorable conditions on the export rate which shall be terminated the preferential enterprise income tax from January 01, 2012 due to the implementation of WTO commitment are selected to continue to enjoy tax incentives for the remaining preferential duration corresponding to the actual conditions the the enterprises meet the investment incentives (in addition to favorable conditions because of meeting the conditions on the rate of import and use of domestic raw materials) as stipulated in the legal documents on enterprise income tax during the period from the date of the enterprises to be licensed for establishment till before the effective date of Decree No.24/2007/ND-CP dated February 14, 2007 of the Government detailing the implementation of enterprise income tax law or as stipulated in the legal documents on enterprise income at the time to be adjusted tax incentives due to the implementation of WTO commitment (end of December 31, 2011).

Enterprises shall notify the tax authorities the choice of tax incentives specified in this clause.

3. Ministry of Finance guides the implementation of this Decree.

4. The ministers, heads of ministerial-level agencies, heads of governmental agencies, presidents of People's Committees of provinces and cities directly under the Central Government shall implement this Decree./.

**FOR THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung