

2017-06-13, 2:45 PM

- e) Refunded provisions and amounts previously accounted as expenses which are left unused or have not been used up in the period of their deduction;
 - g) Recovered bad debts which have been written off;
 - h) Payable debts of unidentifiable creditors;
 - i) Omitted income from previous years business activities;
 - k) Difference between the collected fines or damages for breaches of economic contracts and the paid fines or compensations for contract breaches under law;
 - l) Received aid in cash or in kind, except that specified in Clause 6, Article 4 of this Decree;
 - m) Difference resulting from the re-valuation of assets under law for capital contribution or transfer upon separation, split, merger, consolidation or transformation of enterprises, excluding the case of re-valuation of fixed assets upon transformation of state enterprises into joint-stock companies.
- Asset-receiving enterprises may make accounting based on re-valuation prices upon the determination of deductible expenses specified in Article 9 of this Decree;
- n) Incomes from production and business activities carried out outside Vietnam;
 - o) Other incomes provided for 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 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.

Article 4. Tax-exempt incomes

Tax-exempt incomes are specified in Article 4 of the Law on Enterprise Income Tax.

1. Tax-exempt incomes from the provision of technical services directly for agriculture include income from such services as irrigation and water drainage; soil ploughing and harrowing, and dredging of intra-field canals and ditches; prevention and control of crop and animal pests and diseases; and harvest of agricultural products.

2. For income from the performance of scientific research and technological development contracts, sale of products turned out from trial production and with technologies applied for the first time in Vietnam, the maximum tax exemption duration is one year from the date of commencing production under scientific research and technological application contracts, trial production or production with new technologies.

The Ministry of Finance shall specify this Clause.

3. Income from goods production and trading and service provision activities of enterprises employing disabled, detoxified and HIV-infected persons who account for at least 51% of the average number of laborers in a year.

Tax-exempt incomes specified in this Clause exclude other incomes specified in Clause 2, Article 3 of this Decree.

4. Income from job-training activities exclusively reserved for ethnic minority people, the disabled, children in extremely disadvantaged circumstances and persons involved in social evils. If an establishment also provides job training for other categories of people, tax-exempt 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 and the total number of job trainees of the establishment.

5. Incomes divided from capital contribution, share purchase, joint venture or association with domestic enterprises, after contributed capital recipients, bond issuers or joint venture or association parties, including those enjoying tax incentives under Chapter IV of this Decree, have paid tax under the Law on Enterprise Income Tax.

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

Aid beneficiaries that improperly use the aid shall pay enterprise income tax at 25% of the improperly used aid amount.

Aid beneficiaries defined in this Clause are organizations established and operating under law and strictly observing the laws on accounting and statistics.

Chapter II

TAX BASES AND TAX CALCULATION METHODS

Article 5. Tax bases

Tax bases include taxed income in a tax period and tax rate.

Tax period is specified in Article 5 of the Law on Enterprise Income Tax and the provisions of the law on tax administration.

Enterprises may choose to apply a tax period according to a calendar year or fiscal year and must register it with tax agencies before application.

Article 6. Determination of taxed incomes

1. Taxed income in a tax period shall be determined as follows:

Taxed income = Taxable income - (Tax-exempt income + Losses carried forward under regulations)

2. Taxable income shall be determined as follows:

Taxable income = (Turnover - Deductible expenses) + 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 remaining income after loss offsetting is subject to the rate of enterprise income tax on income-generating business activities.

Income from real estate transfer must be separately accounted for tax declaration and payment and must not be included in incomes or used to offset losses made by other business activities.

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), taxable income is the total sum of money collected under a transfer contract minus (-) the purchase price of the transferred capital amount, minus (-) expenses for the transfer;

b) For income from securities transfer, taxable income is the selling price minus (-) the purchase price of the transferred securities, minus (-) expenses for the transfer;

c) For income from intellectual property copyright or technology transfer, taxable income is the total collected sum of money minus (-) the 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, taxable income is the lease turnover minus (-) basic depreciation, expense for asset renovation, repair or maintenance, expense for lease of assets for sublease (if any) and other deductible expenses related to the lease;

d) For income from transfer or liquidation of assets (except real estate), taxable income is the sum of money collected from asset transfer or liquidation minus (-) the residual book value of assets at the time of transfer or liquidation and deductible expenses related to the transfer or liquidation;

e) For income from foreign currency sales, taxable income is 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 fixed assets upon capital contribution, taxable income is the difference between the re-valuated value and the residual value of fixed assets, and shall be allocated to the number of years during which depreciation may be made for the re-valuated fixed assets at capital contributing enterprises.

For fixed assets transferred upon separation, split, consolidation, merger or transformation of enterprises, taxable income is the difference between the re-valuated value and the book value or the residual value of fixed assets.

For assets other than fixed assets, taxable income is the difference between the re-valuated value and the book value;

h) For incomes received from overseas production, business or service activities, taxable income is the total of pre-tax incomes.

4. Incomes from oil and gas exploration and extraction activities shall be determined based on each oil and gas contract.

Article 7. Determination and carrying forward of losses

1. Loss arising in a tax period is the negative (-) taxable income amount to be determined according to the formula specified in Clause 2, Article 6 of this Decree.

2. Loss-suffering enterprises may carry forward their losses to the subsequent year; these losses may be offset with taxable income. The maximum duration for carrying forward losses is five consecutive years, counting from the year following the year the losses arise.

3. Losses from real estate transfer must be separately accounted and may only be offset with this activity's taxable income. The maximum duration for carrying forward losses is five consecutive years, counting from the year following the year the losses arise.

Article 8. Turnover

Turnover used for calculating taxable income is specified in Article 8 of the Law on Enterprise Income Tax.

1. Turnover used for calculating taxable income is the total of sales, processing remunerations and service charges, including also subsidies and surcharges enjoyed by enterprises, regardless of whether money has been collected or not.

For enterprises declaring and paying value-added tax according to the tax credit method, turnover used for calculating enterprise income tax is exclusive of value-added tax. For enterprises declaring and paying value-added tax according to the method of calculation of tax based directly on added value, turnover used for calculating enterprise income tax is inclusive of value-added tax.

2. The time of determining turnover used for calculating taxable income for sold goods is the time of transfer of the right to own or use goods to purchasers.

The time of determining turnover used for calculating taxable income for services is the time of completing the provision of services to purchasers or the time of making service provision invoices.

3. Turnover used for calculating taxable income in some cases is specified as follows:

a) For goods sold by installment payment, it shall be determined based on the lump-sum selling price, excluding installment or deferred payment interests;

b) For goods and services used for barter, donation or internal consumption, it shall be determined based on the selling price of products, goods or services of the same or similar categories at the time of barter, donation or internal consumption;

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

d) For asset lease, it is the rental paid periodically by the lessee under the lease contract. In case the lessee advances the rental for many years, it shall be allocated to the number of years for which the rental has been advanced;

- d) For credit or financial leasing activities, it is receivable loan interest or financial lease turnover arising in a tax period;
- e) For golf course business activities, it is the proceeds from the sale of membership cards and golf playing tickets and other revenues in a tax period;
- g) For transportation activities, it is the whole turnover from freights for passenger, cargo and luggage transportation arising in a tax period;
- h) For electricity and clean water supply activities, it is the sum of money indicated on the value-added invoice;
- i) For insurance or re-insurance business activities, it is the receivable sum of principal insurance premiums; agency service charges (including those for loss survey, indemnity consideration, claim for a third party to pay indemnities, disposal of goods subject to 100% indemnity); re-insurance undertaking charges; re-insurance commissions; and other revenues minus (-) refunded or reduced insurance premiums, re-insurance undertaking charges and refunded or reduced re-insurance transfer commissions;

In case of co-insurance, turnover used for calculating taxable income is principal insurance premiums allocated according to the co-insurance ratio, exclusive of value-added tax.

For insurance policies containing an agreement on periodical payment of premiums, it is the receivable sum of money arising in each period.

k) For construction and installation activities, it is the value of the work, work item or work volume tested upon take-over. If construction or installation activities do not involve the supply of materials, machinery and equipment, it is exclusive of the value of materials, machinery or equipment;

l) For business activities conducted under business cooperation contracts without the establishment of legal persons:

- If parties to a business cooperation contract divide business results based on the sales turnover of goods or services, it is the turnover divided to each party under the contract;
- If parties to a business cooperation contract divide business results based on products, it is the turnover of products divided to each party under the contract;
- If parties to a business cooperation contract divide business results based on pre-tax profits, it is the goods or service sales under the contract.

m) For casino, prize-winning video game or betting entertainment business services, it is the excise tax-inclusive proceeds from these services minus (-) prizes already paid to customers;

n) For securities trading, it is the proceeds from securities brokerage, dealing, issuance underwriting and investment consultancy, investment fund management, fund certificate issuance, market organization and other securities services under law;

o) For oil and gas prospecting, exploration and extraction activities, it is the whole oil and gas sales turnover under arms length contracts in a tax period.

p) For derivative financial services, it is the proceeds from the provision of derivative financial services in a tax period;

The Ministry of Finance shall specify this Article and some other specific cases.

Article 9. Deductible and non-deductible expenses upon determination of taxable incomes

1. Except for the expenses specified in Clause 2 of this Article, enterprises may deduct any expenses which fully meet the following conditions:

- a) They are actually paid for production and business activities;
- b) They are accompanied with adequate invoices and documents as prescribed by law.

In case 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 goods or services signed by responsible at-law representatives or authorized persons of enterprises.

2. Non-deductible expenses upon determination of taxable incomes provided for in Clause 2, Article 9 of the Law on Enterprise Income Tax are specified as follows:

a) Expenses not fully satisfying the conditions specified in Clause 1 of this Article, except the uncompensated value of losses caused by natural disasters, epidemics, fires or other force majeure circumstances;

Uncompensated value of losses caused by natural disasters, epidemics, fires or other force majeure circumstances is the total value of losses minus (-) the value which must be compensated by insurance enterprises or other organizations or individuals under law.

b) The business administration expense allocated by an overseas enterprise to its Vietnam-based permanent establishment in excess of the prescribed level shall be calculated according to the following formula:

Business administration
expense allocated by an
overseas company to its
Vietnam-based permanent
establishment in a tax period

=

Taxed turnover of Vietnam-based
permanent establishment in a tax period

x

Total business
administration
expenses of the
overseas company
in a tax period

c) Expense in excess of the prescribed level of deduction for the setting up of provisions;

d) Fixed asset depreciation made in contravention of the Finance Ministry's regulations, including depreciation for passenger cars of 9 seats or less (except cars used for commercial transportation of passengers or for tourist or hotel business) corresponding to the historical cost in excess of VND 1.6 billion/car; depreciation for civil aircraft or yachts not used for commercial cargo or passenger transportation or for tourist or hotel business;

4 of 92017-06-13, 2:45 PM

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 have not yet been fulfilled; and other advanced expenses under the Finance Ministry's regulations.

e) Loan interests paid corresponding to insufficient charter capital amount to be contributed according to the schedule indicated in the enterprises charter; interests on loans for the performance of oil and gas prospecting, exploration and extraction contracts;

g) Expense for advertisement, marketing, sales promotion and brokerage commissions (excluding insurance brokerage commissions under the law on insurance business or commissions for agents selling goods at set prices); expense for reception, protocol and conferences; expense in support of marketing and payment discount; expense for press agencies newspapers given as presents or gifts directly related to production and business activities, in excess of 10% of total deductible expenses. For enterprises established on or after January 1, 2009, such expense is in excess of 15% of total deductible expenses for the first 3 years from the date of establishment.

Total deductible expenses exclude the expenses specified above; for trade activities, total deductible expenses exclude purchasing prices of sold goods.

h) Recovered expenses in excess of the ratio set in approved oil and gas contracts; if an oil and gas contract does not set the ratio of recoverable expenses, the expense in excess of 35% must not be included in deductible expenses;

Expenses which may not be included in recoverable expenses include:

- Expenses specified in Clause 2, Article 9 of the Law on Enterprise Income Tax;
- Expenses arising before oil and gas contracts come into force, except those agreed under oil and gas contracts or decided by the Prime Minister;
- Oil and gas commissions and other expenses not included in recoverable expenses under contracts;
- Interests on investments in prospecting, exploration and development of oil and gas fields and oil and gas extraction;
- Fines and damages.

i) Credited input value-added tax, enterprise income tax and other taxes, charges, fees and revenues not allowed to be accounted as expenses under the Finance Ministry's regulations;

k) Expenses not corresponding to taxed turnover;

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

The Ministry of Finance shall specify deductible and non-deductible expenses mentioned in this Article.

Article 10. Tax rates

Enterprise income tax rates are specified in Article 10 of the Law on Enterprise Income Tax.

1. The enterprise income tax rate is 25%, except the cases specified in Clause 2, this Article, and Article 15, of this Decree.
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%. Based on the location, mining conditions and reserves of mines, the Prime Minister shall, at the proposal of the Minister of Finance, decide on a specific tax rate applicable to each project or business establishment.

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

Article 11. Tax calculation method

1. An enterprise income tax amount payable in a tax period is equal to taxed income multiplied by (x) the tax rate; in case an enterprise has paid income tax on incomes arising overseas, the paid tax amount may be subtracted but must not exceed the enterprise income tax amount payable under the Law on Enterprise Income Tax.

2. The payable enterprise income tax amount applicable to real estate trading is income from real estate trading multiplied by (x) the tax rate of 25%.

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 the percentage (%) of the sales turnover of goods and services in Vietnam, specifically:

- a) Services: 5%, goods supplied together with services: 1%;
- b) Copyright royalties: 10%;
- c) Charter of aircraft (including aircraft engines or spare parts) or seagoing ships: 2%;
- d) Hire of machinery, equipment or means of transport (except those specified at Point c of this Clause): 5%;
- d) Loan interests: 10%;
- e) Securities transfer: 0.1%;
- g) Offshore construction, transportation or re-insurance, and other activities: 2%.

4. For oil and gas extraction under contracts indicating the accounting of turnover and expenditures in a foreign currency, taxed income and payable tax amount shall be calculated in such foreign currency.

Article 12. Places for tax payment

1. Enterprises shall pay tax in localities where they are headquartered. For an enterprise that has a dependent cost-accounting production establishment operating in a province or centrally run city other than the locality where it is headquartered, the tax amount shall be calculated and paid in the locality where the enterprise is headquartered and the locality where its production establishment is based.

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

by the production establishment and total expenses incurred by the enterprise.

Tax payment specified in this Clause is not applicable to works, work items or dependent cost-accounting construction establishments.

The decentralization, management and use of enterprise income tax revenues must comply with the State Budget Law.

2. Dependent cost-accounting units of enterprises practicing cost-accounting in the whole system that have incomes from activities other than their major business activities shall pay tax in provinces or centrally run cities where other activities are carried out.

3. The Ministry of Finance shall guide places for tax payment referred to this Article.

Chapter III

INCOMES FROM REAL ESTATE TRANSFER

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.

Article 14. Taxable income from real estate transfer is turnover from real estate transfer activities minus the cost of real estate and deductible expenses related to real estate transfer.

1. Turnover used for calculating taxable income shall be determined based on the real price of each transfer.

If the price of a transfer of land use rights is lower than the land price set by the provincial-level Peoples Committee, the price set by the provincial-level Peoples Committee at the time of real estate transfer will be applied.

2. The time of determining turnover used for calculating taxable income is the time of handover of real estate.

If money is advanced according to schedule, the time of determining turnover used for calculating the enterprise income tax amount to be temporarily paid is the time of money collection. The Ministry of Finance shall guide the temporary tax payment referred to this Clause.

3. Deductible expenses for real estate transfer:

a) The cost of transferred land, to be determined according to the origin of land use rights, specifically:

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

- For land transferred from other organizations or individuals, its cost is based on contracts and lawful payment documents upon the receipt of land use or lease rights; if contracts and lawful payment documents are unavailable, such cost shall be calculated based on the price set by the provincial-level Peoples Committee at the time the enterprise receives real estate transferred;

- For land contributed as capital, its cost is the price agreed upon capital contribution;

- For inherited or donated land with unidentifiable cost, such cost shall be determined based on the land price set by the provincial-level Peoples Committee at the time of inheritance or donation.

For land inherited or donated before 1994, its cost shall be determined based on the land prices set in 1994 by the provincial-level Peoples Committee on the basis of the Table of land price brackets in the Governments Decree No. 87/CP of August 17, 1994.

b) Expense for compensations and supports upon land recovery by the State;

c) Charges and fees related to the grant of land use rights under law;

d) Expense for soil improvement or ground leveling;

d) Value of infrastructure or architectural works on land;

e) Other expenses related to transferred real estate.

Chapter IV

ENTERPRISE INCOME TAX INCENTIVES

Article 15. Tax rate incentives

1. The incentive tax rate of 10% for 15 years is applicable to:

a) New enterprises established under investment projects in geographical areas with extreme socio-economic difficulties specified in the Appendix to this Decree, economic zones or hi-tech parks established under the Prime Ministers decisions;

b) New enterprises established under investment projects in the domains of:

- High technology as prescribed by law; scientific research and technological development;

- Development of water plants, power plants, water supply and drainage systems; bridges, roads, railways; airports, seaports, river ports; airfields, stations and other infrastructure works of special importance as decided by the Prime Minister;

- Manufacture of software products.

2. For new large and hi- or new-tech enterprises established under investment projects in the domains specified at Point b, Clause 1 of this Article in which investment should be specially attracted, the duration for application of the incentive tax rate may be extended but must not exceed 30 years. The Prime Minister shall, at the proposal of the Minister of Finance, decide on the extension mentioned in this Clause.

3. The tax rate of 10% is applicable to incomes of enterprises operating in education-training, vocational training, healthcare, cultural, sports and environmental domains (below collectively referred to as socialized domains) throughout their operation duration.

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

4. The incentive tax rate of 20% for 10 years is applicable to new enterprises established under investment projects in geographical areas with socio-economic difficulties specified in the Appendix to this Decree.

5. The incentive tax rate of 20% is applicable to agricultural service cooperatives and peoples credit funds 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 this Article, agricultural service cooperatives and peoples credit funds shall switch to enjoy the tax rate of 20%.

6. The duration for application of incentive tax rates specified in this Article is counted consecutively from the first year an enterprise has turnover from activities eligible for tax incentives.

Article 16. Tax exemption and reduction

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

- a) New enterprises established under investment projects specified in Clause 1, Article 15 of this Decree;
- b) New enterprises operating in socialized domains in geographical areas with socio-economic difficulties or extreme socio-economic difficulties specified in the Appendix to this Decree.

2. Tax exemption for 4 years and 50% reduction of payable tax amounts for 5 subsequent years are applicable to new enterprises operating in socialized domains in geographical areas outside the list of those with socio-economic difficulties or extreme socio-economic difficulties specified in the Appendix to this Decree.

3. Tax exemption for 2 years and 50% reduction of payable tax amounts for 4 subsequent years are applicable to new enterprises established under investment projects in geographical areas with socio-economic difficulties specified in the Appendix to this Decree.

4. The tax exemption or reduction duration specified in this Article is counted consecutively from the first year an enterprise has taxable income from an investment project; in case an enterprise has no taxable income during the first three years, counting from the first year it has turnover from an investment project, the tax exemption or reduction duration is counted from the fourth year.

In the first tax year, if an enterprises production and business duration eligible for tax exemption or reduction is less than 12 (twelve) months, the enterprise is entitled to tax exemption or reduction right in that year or may register with the tax agency for enjoyment of tax exemption or reduction from the subsequent tax year.

Article 17. Tax reduction in other cases

1. Production, construction or transport enterprises which employ many female laborers are entitled to reduction of enterprise income tax amounts equal to additional expenses paid for female laborers, including:

- a) Expense for job re-training;
- b) Salaries and allowances (if any) for teachers in cregraves;ches or kindergartens organized and managed by the enterprises;
- c) Expense for additional medical check-ups in a year;
- d) Post-natal allowances for female laborers. The Ministry of Finance shall, pursuant to the labor law, coordinate with the Ministry of Labor, War Invalids and Social Affairs in specifying allowance levels mentioned in this Clause;
- d) Salaries and allowances for female laborers who return to work during their prescribed maternity leave.

2. Enterprises which employ ethnic minority laborers are entitled to reduction of enterprise income tax amounts equal to additional expenses for job training, housing subsidies, social insurance premiums and health insurance premiums for these laborers, if they have not yet received the States supports under regulations.

Article 18. Deduction for setting up of enterprises scientific and technological development funds

The deduction for setting up of enterprises scientific and technological development funds is specified in Article 17 of the Law on Enterprise Income Tax.

1. Enterprises established and operating under Vietnamese law may deduct up to 10% of annual taxed income for setting up their scientific and technological development funds.

Annually, enterprises may decide by themselves on the level of deduction for setting up their scientific and technological development funds under the above provision and make reports on the setting up and use of these funds, enclosed with enterprise income tax finalization declarations.

The Ministry of Finance shall set the form of report on the setting up and use of enterprises scientific and technological development funds.

2. For operating enterprises which undergo ownership transformation, are consolidated or merged, the new enterprises set up as a result of such ownership transformation, consolidation or merger may take over the former enterprises scientific and technological development funds and shall take responsibility for the management and use of these funds.

If the scientific and technological development fund of an enterprise is not used up upon its separation or split, the new enterprise set up as a result of such separation or split may take over the former enterprises scientific and technological development fund and shall take responsibility for the management and use of this fund. Enterprises shall decide on and register with tax agencies the division of their scientific and technological development funds.

Article 19. Conditions for application of enterprise income tax incentives

Conditions for application of enterprise income tax incentives are specified in Article 18 of the Law on Enterprise Income Tax.

1. Enterprises shall separately account income from production and business activities eligible for enterprise income tax incentives (including incentive tax rates or tax exemption or reduction); any turnover or deductible expenses which cannot be separately accounted shall be determined based on the ratio between the deductible expenses or turnover from production and business activities eligible for tax incentives and the total deductible expenses or turnover of enterprises.

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 mining activities.

3. In the same duration, an enterprise which is entitled to different tax incentives for the same income may choose to apply the most beneficial incentive.

4. In a tax year within the duration eligible for enterprise income tax incentives, if an enterprise fails to satisfy one of the conditions for enjoyment of tax incentives specified in Article 18 of the Law on Enterprise Income Tax and this Article, it is not entitled to tax incentives in such tax year and shall pay tax at the rate of 25%.
5. New enterprises established under investment projects eligible for tax incentives specified in Articles 15 and 16 of this Decree are enterprises making business registration for the first time, excluding:
- a) Enterprises established as a result of separation, split, merger or consolidation under law;
 - b) Enterprises established as a result of form conversion or ownership transformation, except the case of assignment, contracting or lease of state enterprises;
 - c) Newly established private enterprises and one-member limited liability companies whose owners are heads of individual business households and which see no changes in business lines;
 - d) Newly established private enterprises, partnerships, limited liability companies or cooperatives with their at-law representatives (unless at-law representatives are other than capital contributors), partners or contributors of largest capital amounts having participated in business activities in the capacity as at-law representatives, partners or contributors of largest capital amounts in operating enterprises or enterprises dissolved within less than 12 months counting from the time of dissolution of old enterprises to the time of establishment of new enterprises.

Chapter V

IMPLEMENTATION PROVISIONS

Article 20. Effect

1. This Decree takes effect on January 1, 2009.
2. Enterprises enjoying enterprise income tax incentives under Enterprise Income Tax Law No. 09/2003/QH11, the Petroleum Law and the Governments legal documents promulgated before the effective date of this Decree may continue to enjoy such incentives for the remaining duration; in case enterprise income tax incentives (including tax rate incentives and tax exemption or reduction) are lower than incentives specified in this Decree, enterprises are entitled to tax incentives under this Decree for the remaining duration.

The remaining duration for enjoyment of tax incentives shall be counted consecutively from the time of implementation of tax incentives under legal documents on foreign investment in Vietnam, domestic investment promotion and enterprise income tax, which are promulgated before the effective date of this Decree.

Business establishments which were granted investment licenses, business registration certificates or investment incentive certificates before the date the Socialist Republic of Vietnam became a full-fledged member of the World Trade Organization (i.e., January 11, 2007) which have income from export of goods (except garments) and are enjoying enterprise income tax incentives for their satisfaction of the export ratio conditions specified in legal documents on foreign investment in Vietnam, domestic investment promotion and enterprise income tax, may continue to enjoy tax incentives under these legal documents till the end of 2011.

3. Enterprises having operated in socialized domains before the effective date of this Decree which are applying the tax rate higher than 10% may switch to apply the tax rate of 10% from the effective date of this Decree.
4. Enterprises having investment projects on production expansion which, by December 31, 2008, are under construction and expected to be completed and put into production or business in 2009, may continue to enjoy tax incentives regarding expanded investment conditions under Enterprise Income Tax Law No. 09/2003/QH11 and the Governments legal documents promulgated before the effective date of this Decree.

5. For enterprises in the tax exemption or reduction duration under Enterprise Income Tax Law No. 09/2003/QH11 and the Governments legal documents promulgated before the effective date of this Decree, which, by the end of the 2008 tax period:

- a) Have no turnover yet, their tax exemption or reduction duration shall be counted from the first year when taxable income is generated; if no taxable income is generated within the first 3 years, counting from the first year when turnover is earned, their tax exemption or reduction duration shall be counted from the fourth year;
- b) Have turnover but for less than 3 years, counting from the time turnover is earned, their tax exemption or reduction duration shall be counted from the first year when taxable income is generated; if no taxable income is generated within the first 3 years, counting from the first year when turnover is earned, their tax exemption or reduction duration shall be counted from the fourth year;
- c) Have turnover for 3 years or more, their tax exemption or reduction duration shall be counted from the 2009 tax year.

6. Enterprises set up as a result of form conversion, ownership transformation, separation, split, merger or consolidation shall pay enterprise income tax (including fines, if any) and, at the same time, may enjoy enterprise income tax incentives (including losses not yet carried forward) of former enterprises if still satisfying the conditions for enterprise income tax incentives and loss carrying-forward under law.

7. The settlement of tax-related problems and tax finalization, exemption and reduction before January 1, 2009, must comply with the laws on enterprise income tax, foreign investment in Vietnam and domestic investment promotion, and other legal documents promulgated before the effective date of this Decree.

Article 21. The Ministry of Finance shall guide the implementation of this Decree.

Ministers, heads of ministerial-level agencies, heads of government-attached agencies, presidents of provincial-level Peoples Committees, and concerned organizations and individuals shall implement this Decree.

nbsp;

APPENDIX

LIST OF GEOGRAPHICAL AREAS ELIGIBLE FOR ENTERPRISE INCOME TAX INCENTIVES

(To the Governments Decree No. 124/2008/ND-CP of December 11, 2008)

No.	Province	Geographical areas with extreme socio-economic difficulties	Geographical areas with socio-economic difficulties
-----	----------	---	---

nbsp;

Bộ Tư pháp

Liên hệ

Phản hồi

CÔNG THÔNG TIN ĐIỆN TỬ BỘ TƯ PHÁP
Địa chỉ: 60 Trần Phú, Ba Đình, Hà Nội. **Điện thoại:** 04.62739718 - **Fax:** 04.62739359. **Email:** banbientap@moj.gov.vn; cntt@moj.gov.vn.
Giấy phép cung cấp thông tin trên internet số 28/GP-BC ngày 25/03/2005.
Trưởng Ban biên tập: Nguyễn Tiến Dũng - Cục trưởng Cục Công nghệ thông tin.
Ghi rõ nguồn Cổng thông tin điện tử Bộ Tư pháp (www.moj.gov.vn) khi trích dẫn lại tin từ địa chỉ này.