LAW ON ENTERPRISE INCOME TAX
(No. 14/2008/QH12)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10;

The National Assembly promulgates the Law on Enterprise Income Tax.

Chapter I

GENERAL PROVISIONS

Article 1.- Governing scope

This Law provides for enterprise income taxpayers, taxable incomes, tax -exempt incomes, tax bases, tax calculation methods, and tax incentives.

Article 2.- Taxpayers

1. Taxpayers are goods and service production and business organizations which have taxable incomes under the provisions of this Law (below referred to as enterprises), including:

a/ Enterprises established under Vietnamese law;

b/ Enterprises established under foreign laws (below referred to as foreign enterprises) with or without Vietnam-based permanent establishments;

c/ Organizations established under the Law on Cooperatives;

d/ Non-business units established under Vietnamese law;

e/ Other organizations engaged in income-generating production and business activities.

2. Enterprises having taxable incomes under Article 3 of this Law shall pay enterprise income tax as follows:

a/ Enterprises established under Vietnamese law shall pay tax on taxable incomes generated in and outside Vietnam;

b/ Foreign enterprises with Vietnam-based permanent establishments shall pay tax on taxable incomes generated in Vietnam and taxable incomes generated outside Vietnam which are related to the operation of such establishments;

c/ Foreign enterprises with Vietnam-based permanent establishments shall pay tax on taxable incomes generated in Vietnam which are not related to the operation of such permanent establishments.

d/ Foreign enterprises without Vietnam-based permanent establishments shall pay tax on taxable incomes generated in Vietnam.

3. Foreign enterprises' permanent establish-ments are production and business establishment through which foreign enterprises conduct some or all income-generating production and business activities in Vietnam, including:

a/ Branches, executive offices, factories, workshops, means of transport, mines, oil and gas fields, or other places of extraction of natural resources in Vietnam;

b/ Construction sites, construction works, installation and assembly projects;

c/ Establishments providing services, including consultancy services through employees or other organizations or individuals;

d/ Agents for foreign enterprises;

e/ Vietnam-based representatives, in case of representatives which are competent to conclude contracts in the name of foreign enterprises or representatives which are incompetent to conclude contracts in the name of foreign enterprises but regularly deliver goods or provide services in Vietnam.

Article 3.- Taxable incomes

1. Taxable incomes include income from goods and service production and business activities and other incomes specified in Clause 2 of this Article.

2. Other incomes cover income from the transfer of capital or real estate; income from the right to own or use assets; income from the transfer, lease or liquidation of assets; income from interests, loans or foreign currency sales; refund of provisions; recovery of bad debts al ready written off; collection of payable debts of unidentifiable creditors; omitted income from previous years' business activities, and other incomes, including income generated from production and business activities outside Vietnam.

Article 4.- Tax-exempt incomes

1. Income from cultivation, husbandry and aquaculture of organizations established under the Law on Cooperatives.

2. Income from the application of technical services directly for agriculture.

3. Income from the performance of contracts on scien tific research and technological development, trial products and products turned out with technologies applied for the first time in Vietnam.

4. Income from enterprises' goods and service production and business activities exclusively reserved for disabled, detoxified and HIV-infected laborers. The Government shall specify criteria and conditions for the determination of enterprises exclusively reserved for disabled, detoxified and HIV-infected laborers.

5. Income from job-training activities exclusively reserved for ethnic minority people, the disabled, children in extremely disadvantaged circumstances and persons involved in social evils.

6. Incomes divided for capital contribution, joint venture or association with domestic enterprises, after enterprise income tax has been paid under the provisions of this Law.

7. Received financial supports used for educational, scientific research, cultural, artistic, charitable, humanitarian and other social activities in Vietnam.

Article 5.- Tax period

1. An enterprise income tax period is the calendar year or fiscal year, except the cases defined in Clause 2 of this Article.

2. The enterprise income tax period upon each time of income generation applies to foreign enterprises specified at Points c and d, Clause 2, Article 2 of this Law.

Chapter II

TAX BASES AND TAX CALCULATION METHODS

Article 6.- Tax bases

Tax bases include taxed income and tax rate.

Article 7.- Determination of taxed income

1. Taxed income in a tax period is the taxable income minus tax-exempt incomes and losses carried forward from previous years.

2. Taxable income is turnover minus deductible expenses for production and business activities plus other incomes, including income received outside Vietnam.

3. Income from real estate transfer must be separately determined for tax declaration and payment.

The Government shall detail and guide the implementation of this Article.

Article 8.- Turnover

Turnover is the total sales, processing remuneration, service provision charges, subsidies and surcharges enjoyed by enterprises. Turnover is calculated in Vietnam dong; foreign currency turnover, if any, must be converted into Vietnam dong at the average exchange rate on the inter-bank foreign currency market announced by the State Bank of Vietnam at the time foreign-currency turnover is generated.

The Government shall detail and guide the implementation of this Article.

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

1. Except the expenses specified in Clause 2 of this Article, enterprises are entitled to deduction of all expenses which fully meet the following conditions:

a/ They are actually paid expenses related to production and business activities;

b/ They are accompanied with adequate invoices and documents as prescrib ed by law.

2. Non-deductible expenses upon determination of taxable incomes include:

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

b/ Fine for administrative violations;

c/ Expense already covered by other funding sources;

d/ Business administration expense allocated by foreign enterprises to their Vietnam -based permanent establishments in excess of the level calculated according to the allocation method prescribed by Vietnamese law;

e/ Expense in excess of the law -prescribed norm for the deduction and setting up of provisions;

f/ Expense for raw materials, materials, fuel, energy or good s in excess of the wastage rate set by enterprises and notified to tax offices and the actual ex -warehousing price;

g/ Payment for interests on loans for production and business activities of entities other than credit institutions or economic organization s in excess of 150% of the basic interest rate announced by the State Bank of Vietnam at the time of loaning;

h/ Fixed asset depreciation made in contravention of law;

i/ Expenses advanced in contravention of law;

j/ Salaries and wages of owners of private enterprises; remuneration paid to enterprise founders who do not personally administer production and business activities; salaries, wages and other accounted amounts payable to laborers which have actually not been paid to them or paid without invoices or documents as prescribed by law;

k/ Loan interests paid corresponding to the insufficient amount of the charter capital;

l/ Credited input value-added tax, value-added tax to be paid according to the credit method, and enterprise income tax;

m/ Expense for advertisement, marketing, sales promotion and brokerage commissions; 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 newly set up enterprises, such expense in excess of 15% of total deductible expenses for the first 3 years from the date of setting up. Total deductible expenses excl ude the expenses specified at this Point; for trade activities, total deductible expenses exclude purchasing prices of sold goods;

n/ Financial supports, excluding those for educational and healthcare activities and for mitigating natural disaster consequences and building houses of gratitude for the poor as prescribed by law.

3. Deductible foreign currency expenses upon the determination of taxable incomes must be converted into Vietnam dong at the average exchange rate on the inter-bank foreign currency market announced by the State Bank of Vietnam at the time foreign currency expenses arise.

The Government shall detail and guide the implementation of this Article.

Article 10.- Tax rates

1. The enterprise income tax rate is 25%, except the cases specified in Clause 2, this Article, and Article 13, of this Law.

2. The enterprise income tax rate applicable to activities of prospecting, exploring and exploiting oil and gas and other precious and rare natural resources is between 32% and 50%, depending on each project or business establishment.

The Government shall detail and guide the implementation of this Article.

Article 11.- Tax calculation method

1. An enterprise income tax amount payable in a tax period is the taxed income multiplied by the tax rate; in case an enterprise has paid income tax outside Vietnam, the paid tax amount may be subtracted but must not exceed the enterprise income tax amount payable under the provisions of this Law.

2. The tax calculation method applicable to enterprises listed at Points c and d, Clause 2, Article 2 of this Law complies with the Government's regulations.

Article 12.- Places for tax payment

Enterprises shall pay tax at places where they are headquartered. In case an enterprise has a dependent cost-accounting production establishment operating in a province or centrally run city other than the place of its headquarters, the payable tax amount shall be calculated based on the ratio of expenses between the place where the production establishment is located and the place where the enterprise is headquartered. The decentralization, management and use of tax revenues comply with the State Budget Law.

The Government shall detail and guide the implementation of this Article.

Chapter III

ENTERPRISE INCOME TAX INCENTIVES

Article 13.- Tax rate incentives

1. Newly set up enterprises under investment projects in geographical areas with extreme socio-economic difficulties, economic zones or hi-tech parks; newly set up enterprises under investment projects in the domains of high technology, scientific research and technological development, development of the State's infrastructure works of special importance, or manufacture of software products are entitled to the tax rate of 10% for fifteen years.

2. Enterprises operating in education-training, vocational training, healthcare, cultural, sports and environmental domains are entitled to the tax rate of 10%.

3. Newly set up enterprises under investment projects in geographical areas with socio -economic difficulties are entitled to the tax rate of 20% for ten years.

4. Agricultural service cooperatives and people's credit funds are entitled to the tax rate of 20%.

5. For large-scale and hi-tech projects in which investment should be particularly attracted, the duration for application of tax rate incentives may be extended but must not exceed the duration specified in Clause 1 of this Article.

6. The duration for application of tax rate incentives specified in this Article is counted from the first year an enterprise has turnover.

The Government shall detail and guide the implementation of this Article.

Article 14.- Tax exemption and reduction duration incentives

1. Newly set up enterprises under investment projects in geographical areas with extreme socio -economic difficulties, economic zones or hi-tech parks; newly set up enterprises under investment projects in the domains of high technology, scientific research and technological development, development of the State's infrastructure works of special importance or manufacture of software products; newly set up enterprises operating in education -training, vocational training, healthcare, cultural, sports and environmental domains are entitled to tax exemption for no more than four years and a 50% reduction of payable tax amounts for no more than nine subsequent years.

2. Newly set up enterprises newly set up under investment projects in geographical areas with socio-economic difficulties are entitled to tax exemption for no more than two years and a 50% reduction of payable tax amounts for no more than four subsequent years.

3. The tax exemption or reduction duration specified in this Article is counted from the first year an enterprise has taxable income; in case an enterprise has no taxable income for the first three years from the first year it has turnover, the tax exemption or reduction duration is counted from the fourth year.

The Government shall detail and guide the implementation of this Article.

Article 15.- Other cases eligible for tax reduction

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

2. Enterprises which employ many ethnic minority laborers are entitled to reduction of enterprise income tax amounts equal to additional expenses for ethnic minority laborers.

The Government shall detail and guide the implementation of this Article.

Article 16.- Carrying forward of losses

1. Loss-suffering enterprises may carry forward their losses to the subsequent year; those losses may be included in taxed income. The time limit for carrying forward losses is five years, counting from the year following the year the losses arise.

2. Enterprises suffering losses from real estate transfer activities may only carry forward losses into those activities' taxed income.

Article 17.- Deduction for setting up of enterprises' scientific and technological development funds

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

2. Within five years after being set up, if a scientific and technological development fund is not used, has been used below 70% or used for improper purposes, the enterprise shall remit into the state budget the enterprise income tax amount calculated on the income already deducted for setting up the fund but not used or used for improper purposes and the interest on that enterprise income tax amount.

The enterprise income tax rate used for calculating the to-be-recovered tax amount is the tax rate applicable to the enterprise during the time of operating the fund.

The interest rate for calculating the interest on the to-be- recovered tax amount calculated on the unused fund amount is the interest rate for one-year term treasury bonds applicable at the time of recovery, and the interest payment period is two years.

The interest rate for calculating the interest on the to-be- recovered tax amount calculated on the fund amount used for improper purposes is the interest used for late payment fines under the provisions of the Tax Administration Law, and the interest payment period is counted from the time a fund is set up to the time of recovery.

3. Enterprises may not account expenses covered by their scientific and technological development funds as deductible ones upon the determination of taxable incomes in a tax period.

4. Enterprises' scientific and technological development funds may be used only for scientific and technological investment in Vietnam.

Article 18.- Conditions for application of tax incentives

1. Enterprise income tax incentives specified in Articles 13, 14, 15, 16 and 17 of this Law apply only to enterprises which implement regulations on accounting, invoices and documents and pay tax according to declaration.

2. Enterprises shall account separately income from production and business activities eligible for tax incentives specified in Articles 13 and 14 of this Law from income from production and business activities ineligible for tax incentives; if those incomes cannot be separately accounted, income from production and business activities eligible for tax incentives shall be determined based on the ratio between turnover from production and business activities eligible for tax incentives and total turnover.

3. Enterprise income tax incentives specified in Articles 13 and 14 of this Law do not apply to:

a/ Incomes specified in Clause 2, Article 3 of this Law;

b/ Income from activities of prospecting, exploring and mining oil, gas and other precious and rare natural resources;

c/ Income from prize-winning game or betting business as prescribed by law;

d/ Other cases specified by the Government.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 19.- Implementation effect

1. This Law takes effect on January 1, 2009.

2. This Law replaces Enterprise Income Tax Law No. 09/2003/QH11.

3. Enterprises which enjoy enterprise income tax incentives under Enterprise Income Tax Law No. 09/2003/QH11 may continue enjoying those incentives for the remaining duration under Enterprise Income Tax Law No. 09/2003/QH11; in case enterprise income tax incentives, including tax rate incentives and tax exemption and reduction duration, are lower than the tax incentives specified in this Law, the tax incentives under this Law apply for the remaining duration.

4. Enterprises which are entitled to tax exemption or reduction duration under Enterprise Income Tax Law No. 09/2003/QH11 but have no taxable income yet, the tax exemption or reduction duration will be counted under this Law and from the date this Law takes effect.

Article 20.- Implementation guidance

The Government shall detail and guide the implementation of Articles 4, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 18 and other necessary contents of this Law to meet management requirements.

This Law was passed on June 3, 2008, by the XIIth National Assembly of the Socialist Republic of Vietnam at its third session.

Chairman of the National Assembly
NGUYEN PHU TRONG