

Hanoi, 31 December 2008

**CIRCULAR
ON
FOREIGN CONTRACTOR TAX¹**

**Providing guidelines on
performance of tax obligations applicable to
foreign organizations and foreign individuals
doing business or having income in Vietnam**

Pursuant to the current laws and ordinances of the Socialist Republic of Vietnam on taxes, fees and charges, and Decrees of the Government implementing such laws and ordinances;

Pursuant to the *Law on Value Added Tax* 13-2008-QH12 dated 3 June 2008, and Decree 123-2008-ND-CP of the Government dated 8 December 2008 implementing the *Law on Value Added Tax*;

Pursuant to the *Law on Corporate Income Tax* 14-2008-QH12 dated 3 June 2008, and Decree 124-2008-ND-CP of the Government dated 11 December 2008 implementing the *Law on Corporate Income Tax*;

Pursuant to Decree 118-2008-ND-CP of the Government dated 27 November 2008 on functions, duties, powers and organizational structure of the Ministry of Finance;

The Ministry of Finance hereby provides the following guidelines for performance of tax obligations applicable to foreign organizations and foreign individuals doing business or having income in Vietnam:

PART A

Scope of Application

I. Applicable Entities

1. Applicability of this Circular

The guidelines in this Circular shall apply to the following entities (but not to those prescribed in Section II of Part A of this Circular):

- Foreign business organizations with or without a permanent establishment in Vietnam, and foreign business individuals whether they are residents or non-residents of Vietnam (hereinafter all referred to as *foreign contractors*) doing business in Vietnam or having income arising in Vietnam on the basis of a contract, agreement or undertaking between such foreign contractor and a Vietnamese organization or individual.
- Foreign business organizations with or without a permanent establishment in Vietnam, and foreign business individuals whether they are residents or non-residents of Vietnam (hereinafter all referred to as *foreign sub-contractors*) doing business in Vietnam or having income arising in Vietnam on the basis of a contract, agreement or undertaking between such foreign sub-contractor and a foreign contractor to perform part of the work of the latter contractor's contract.

¹ Allens Arthur Robinson footnote: This description is not part of the text and is inserted for reference only.

2. Taxpayers

Taxpayers pursuant to this Circular shall comprise:

2.1 Foreign contractors and foreign sub-contractors satisfying the conditions stipulated in clause 1 of Section II of Part B of this Circular, and doing business in Vietnam or having income in Vietnam including the sea territory of Vietnam and areas outside and attached to the sea territory of Vietnam over which, in compliance with the law of Vietnam and international law, Vietnam has sovereignty over exploration and exploitation of natural resources on or under the seabed and in the water above the seabed; and where the business is conducted on the basis of a contractor's contract with a Vietnamese organization or individual or with another foreign organization or individual currently doing business in Vietnam on the basis of a contractor's contract.

Whether a foreign contractor or foreign sub-contractor has a permanent establishment in Vietnam or is a resident of Vietnam shall be determined in accordance with the *Law on Corporate Income Tax* and the *Law on Personal Income Tax* and their implementing guidelines.

If any double tax avoidance treaty to which the Socialist Republic of Vietnam is a signatory contains different provisions on permanent establishments and residents, then the provisions of such treaty shall apply.

2.2 Organizations established and operating pursuant to the law of Vietnam, organizations registered for operation pursuant to the law of Vietnam, other organizations and individuals conducting production or business or purchasing services including services associated with goods, or paying income arising in Vietnam on the basis of a contractor's contract or a sub-contractor's contract (hereinafter all referred to as a *Vietnamese Party*), and comprising:

- Business organizations established pursuant to the *Law on Enterprises*, the *Law on State Owned Enterprises* (now the *Law on Enterprises*), the *Law on Foreign Investment in Vietnam* (now the *Law on Investment*), and the *Law on Co-Operatives*;
- Economic organizations of political organizations, of socio-political organizations, of social organizations, of socio-professional organizations, of units of the people's armed forces, of professional organizations and of other organizations;
- Petroleum contractors operating in accordance with the *Law on Petroleum*;
- Branches of foreign companies licensed to operate in Vietnam;
- Foreign organizations or their representatives licensed to operate in Vietnam;
- Ticket selling offices and agencies in Vietnam of foreign airlines with the right to transport to and from Vietnam, and conducting transport either directly or in partnership;
- Organizations and individuals conducting business being provision of sea transport services of foreign sea transport firms, and agencies in Vietnam of foreign freight forwarding firms and of foreign delivery firms;
- Securities companies, securities issuing organizations, fund management companies, and commercial banks where securities investment funds or foreign organizations have opened securities investment accounts;
- Other organizations in Vietnam;
- Individuals conducting production or business in Vietnam.

The taxpayers defined in clause 2.2 above must withhold the amount of VAT and of CIT calculated in accordance with the guidelines in Section III of Part B, prior to paying foreign contractors.

3. Applicable taxes

- 3.1 Foreign contractors and sub-contractors being economic organizations shall perform VAT and CIT obligations in accordance with this Circular.
- 3.2 Foreign contractors and sub-contractors being foreign business individuals shall perform VAT obligations in accordance with this Circular, and CIT obligations in accordance with the law on CIT.
- 3.3. Foreign contractors and sub-contractors shall perform tax obligations being other taxes, fees and charges in accordance with the current legal instruments on such other taxes, fees and charges.

II. Non-Applicable Entities

The guidelines in this Circular shall not apply to the following:

1. Foreign organizations or individuals conducting business in Vietnam in accordance with the *Law on Investment*, the *Law on Petroleum* or the *Law on Credit Institutions*.
2. Foreign organizations or individuals supplying goods to Vietnamese organizations or individuals not associated with services provided in Vietnam, in the following forms:
 - Delivery of goods at a foreign bordergate when the seller bears all liability, costs and risks relating to export and delivery of the goods at the foreign bordergate; and the purchaser bears all liability, costs and risks relating to receipt and transportation of the goods from the foreign bordergate to Vietnam.
 - Delivery of goods at a Vietnamese bordergate when the seller bears all liability, costs and risks relating to the goods up to the place of delivery of the goods at the Vietnamese bordergate; and the purchaser bears all liability, costs and risks relating to receipt and transportation of the goods from the Vietnamese bordergate.
3. Foreign organizations and individuals having income from services performed and consumed outside Vietnam.

Example:

Company H of Hong Kong provides cargo handling services at the Hong Kong port for a fleet of international ships belonging to Company A of Vietnam. Company A is obliged to pay Company H cargo handling service fees at the Hong Kong port.

In this case, the cargo handling services at the Hong Kong port are services which are performed and consumed in Hong Kong and accordingly are not taxable in Vietnam.

4. Foreign organizations or individuals providing the following services for Vietnamese organizations or individuals when such services are performed overseas:
 - Repair of transportation means (aircraft, aircraft engines, aircraft spare parts and sea-going vessels), and machinery and equipment (including sea cables and transmission equipment) with or without replacement spare parts and equipment;
 - Advertising and marketing services;
 - Investment and commercial promotion services;
 - Brokerage services for sale of goods;
 - Training services;

- Sharing freight charges paid for international post or telecommunications services in accordance with the *Ordinance on Post and Telecommunications* as between the Vietnamese party and foreign parties where such services are performed outside Vietnam; and services of leasing transmission lines and satellite bands from overseas parties.

III. Terms Used in this Circular

In this Circular, the following terms shall be construed as follows:

1. *Contractor's contract* means a contract, agreement or undertaking between a foreign contractor and a Vietnamese party.
2. *Sub-contractor's contract* means a contract, agreement or undertaking between a sub-contractor and a foreign contractor.

Sub-contractors include both foreign and Vietnamese sub-contractors.

PART B

Bases and Method of Tax Calculation

I. Objects Subject to Value Added Tax ("VAT") and Corporate Income Tax ("CIT")

1. Objects subject to VAT

- 1.1 VAT-taxable services or services associated with goods which are supplied by a foreign contractor or foreign sub-contractor on the basis of a contractor's contract or sub-contractor's contract and which are used for production or business and which are consumed in Vietnam (except for the services stipulated in Section II of Part A), comprising:

- VAT-taxable services or services associated with goods which the foreign contractor or foreign sub-contractor supplies in Vietnam and which are consumed in Vietnam;
- VAT-taxable services or services associated with goods which the foreign contractor or foreign sub-contractor supplies outside Vietnam and which are consumed in Vietnam.

- 1.2 When goods are supplied pursuant to a contract in the forms stipulated below, the value of the goods shall only be subject to VAT at the import stage, while the value of the services shall be subject to VAT in accordance with this Circular. If the contract does not separate out the value of the goods and the value of the associated services, then VAT shall be calculated on the whole of the contract. These forms are:

The receipt and delivery point for the goods is within the territory of Vietnam (including the sea territory of Vietnam and areas outside and attached to the sea territory of Vietnam over which, in compliance with the law of Vietnam and international law, Vietnam has sovereignty over exploration and exploitation of natural resources on or under the seabed and in the water above the seabed); or the supply of goods is accompanied by services provided in Vietnam such as installation, commissioning, warranty, maintenance, replacement or other services attached to the supply of goods, whether or not the provision of such services is included in the value of the contract for supply of goods.

Example:

Enterprise A in Vietnam signs a contract with Enterprise B overseas to purchase a machinery and equipment production line for a Cement Plant project. The total contract value is USD 100 million, comprising the value of the machinery and equipment at USD 80 million (the equipment component is VAT-taxable at the rate of 10%), and the value of services being guiding installation and supervising installation, warranty and maintenance at USD 20 million.

When Enterprise A imports the production line, it must pay VAT at the import stage on the value of VAT-taxable imported equipment.

Enterprise B must perform VAT tax obligations on the value of the contract signed with Enterprise A as follows:

- VAT shall be calculated on the value of the services (USD 20 million), but not on the value of the imported production line.
- If the contract did not separate out the value of the production line from the value of the services, then VAT shall be calculated on the total contract value of USD 100 million.

2. Income subject to CIT

- 2.1 Income of a foreign contractor or foreign sub-contractor arising from the provision of services including services associated with goods in Vietnam on the basis of a contractor's contract or a sub-contractor's contract (except for the goods and services stipulated in Section II of Part A).
- 2.2 When goods are supplied in the following forms, the total value of the goods and services shall be CIT-taxable income of the foreign contractor or foreign sub-contractor, namely:

The receipt and delivery point for the goods is within the territory of Vietnam (including the sea territory of Vietnam and areas outside and attached to the sea territory of Vietnam over which, in compliance with the law of Vietnam and international law, Vietnam has sovereignty over exploration and exploitation of natural resources on or under the seabed and in the water above the seabed); or the supply of goods is accompanied by services provided in Vietnam such as installation, commissioning, warranty, maintenance, replacement or other services attached to the supply of goods, whether or not the provision of such services is included in the value of the contract for supply of goods.

Example:

Company A in Vietnam signs a contract with Company B overseas to purchase a machinery and equipment production line for a Cement Plant project. The total contract value is USD 100 million (excluding VAT), comprising the value of the machinery and equipment at USD 80 million, and the value of services being guiding installation and supervising installation, warranty and maintenance at USD 20 million.

Company B must perform CIT tax obligations on the value of the contract as follows:

- CIT shall be calculated separately on the value of the imported production line (USD 80 million), and on the value of the services (USD 20 million) multiplied by the appropriate CIT rate.
 - If the contract did not separate out the value of the production line from the value of the services, then CIT shall be calculated on the total contract value (USD 100 million) multiplied by the appropriate CIT rate.
- 2.3 Income arising in Vietnam of a foreign contractor or foreign sub-contractor being all items of income receivable in any form on the basis of a contractor's contract or sub-contractor's contract (except for provision of services stipulated in Section II of Part A), irrespective of the location of business operation of the foreign contractor or foreign sub-contractor [shall be income subject to CIT] comprising:
- Income from the transfer of ownership of or right to use assets.
 - Income being royalties in any form paid for the use right or for the transfer of intellectual property rights or for technology transfer (including payments for the right to use and for transfers of rights of an author and rights of the owner of a work; for transfers of industrial property rights; and for technology transfer).

- *Rights of an author and rights of the owner of a work, industrial property rights and technology transfer* shall be as defined in the Civil Code of the Socialist Republic of Vietnam and its implementing guidelines.
- Income from the assignment [and/or] liquidation of assets.
- Income being loan interest, namely income of lenders earned from loans in any form irrespective of whether such loans are secured by a mortgage or whether the lender is entitled to income or dividends of the borrower; income from interest on deposits (except for interest on deposits of foreign individuals and interest on deposits in deposit bank accounts which are to maintain operations in Vietnam of diplomatic representative offices, representative offices of international organizations or non-governmental organizations in Vietnam), including any bonuses accompanying the deposits; and income from interest on late payments under economic contracts.

Loan interest shall include charges payable by the Vietnamese party in accordance with the loan agreement.

- Income from investment and securities.
- Fines and penalties receivable from another party for contractual breach.
- Other items of income as stipulated by law.

II. Payment of VAT in accordance with the Tax Credit Method and Payment of CIT on the basis of a Declaration of Revenue and Expenses in order to Calculate CIT-Taxable Income

1. Applicable entities and conditions for application

Any foreign contractor or foreign sub-contractor shall pay tax in accordance with the guidelines in this Section II of Part B if the following conditions are satisfied:

- (i) The foreign contractor or foreign sub-contractor has a permanent establishment in Vietnam or is a resident of Vietnam;
- (ii) The period of conducting business in Vietnam pursuant to the contractor's or sub-contractor's contract is one hundred and eighty three (183) days or more as from the date on which such contract took effect;
- (iii) The foreign contractor or foreign sub-contractor adopts the Vietnamese accounting system.

The Vietnamese party signing a contract with a foreign contractor or sub-contractor shall be responsible to provide written notice to the tax office within twenty (20) business days from the date of signing the contract, that such foreign contractor or sub-contractor will pay VAT in accordance with the tax credit method and CIT on the basis of a declaration of revenue and expenses in order to calculate CIT-taxable income.

2. VAT

VAT shall be implemented in accordance with the *Law on VAT* and its implementing guidelines.

3. CIT

CIT shall be implemented in accordance with the *Law on CIT* and its implementing guidelines.

4. **Signing a second contract²**

Any foreign contractor or foreign sub-contractor performing tax obligations in accordance with this Section II who then signs another contractor's or sub-contractor's contract in Vietnam prior to finishing performance of the former contract or sub-contract, shall continue to declare and pay tax in accordance with the guidelines in this Section II.

In such case, if the new contract is signed and performed when the former contract has been completed and the conditions stipulated in clause 1 of this Section II are satisfied, then such foreign contractor or sub-contractor shall perform tax obligations for the new contract in accordance with the guidelines in this Section II.

If a foreign contractor or sub-contractor is performing a number of contracts one of which satisfies the conditions for tax to be paid in accordance with this Section II, then tax shall be paid in accordance with the guidelines in this Section II for all the contracts (including those which do not satisfy such conditions).

III. Payment of VAT Directly on the basis of Added Value and Payment of CIT as a Percentage (%) of Turnover

1. Applicable entities and conditions for application

The Vietnamese party shall pay tax on behalf of the foreign contractor or foreign sub-contractor required to pay tax in accordance with clauses 2 and 3 of this Section III of Part B if such foreigner does not satisfy any one of the conditions stipulated in clause 1 of Section II of Part B.

The Vietnamese party must, within twenty (20) business days from the date of signing the contract, register with the tax office to pay tax on behalf of the foreign contractor or foreign sub-contractor.

2. VAT

The bases for tax calculation shall be the added value of VAT-taxable services including services associated with goods, and the appropriate VAT rate.

Amount of VAT payable = Added value x VAT rate.

2.1 Added value

The added value of VAT-taxable services including services associated with goods shall be VAT-taxable turnover multiplied by the added value rate as a percentage (%) of turnover.

2.1.1 VAT-taxable turnover

- (a) VAT-taxable turnover shall be the total turnover from supply of goods including services associated with goods subject to VAT, without any deduction of payable taxes, receivable by the foreign contractor or foreign sub-contractor, including expenses (if any) paid by the Vietnamese party on behalf of such foreign contractor or sub-contractor.
- (b) Determining VAT-taxable turnover in some specific cases
- (b1) Where the turnover receivable by the foreign contractor or foreign sub-contractor does not include payable VAT as stipulated in the contractor's or sub-contractor's contract, then the VAT-taxable turnover shall be converted into turnover including VAT according to the following formula:

² Allens Arthur Robinson footnote: This description is not part of the text and is inserted for reference only.

$$\text{VAT-taxable turnover} = \frac{\text{VAT-exclusive turnover}}{1 \text{ minus (-) rate of added value as percentage (\%) of turnover multiplied by (x) VAT rate.}}$$

Example:

Contractor A provides a Vietnamese party with services of supervising the construction volume of Cement Plant Z with a contract price excluding tax of USD 300,000. In addition, the Vietnamese party arranges accommodation and a working place for managers of the foreign contractor valued at USD 40,000. Under the contract, the Vietnamese party is responsible to pay VAT on behalf of the foreign contractor. The amount of VAT payable by the foreign contractor shall be calculated as follows:

Calculation of taxable turnover:

$$\text{VAT-taxable turnover} = \frac{300,000 + 40,000}{1 - 50\% \times 10\%} = \text{USD } 357,894.73$$

- (b2) If a foreign contractor signs a contract with either a Vietnamese or foreign sub-contractor paying tax in accordance with Section II of Part B in order to allocate part of the work of the former contractor's contract signed with the Vietnamese party, then VAT-taxable turnover of such foreign contractor shall not include the value of the work or the value of the machinery and equipment to be implemented by such Vietnamese or foreign sub-contractor.

The Vietnamese or foreign sub-contractor shall declare and pay tax in accordance with clauses 2 and 3 of Section II of Part B.

This provision shall not apply to a foreign contractor signing contracts with suppliers in Vietnam for the purchase of goods and services serving performance of the foreign contractor's contract.

Example:

Foreign Contractor A signs a contract with a Vietnamese party for the construction of Cement Plant Z with a total contract value (including VAT) of USD 10 million, and such contract specifically stipulates that the foreign contractor will assign part of the value of construction and installation to Vietnamese Sub-contractor B for a price of USD 1 million.

The VAT-taxable turnover of foreign contractor A shall be determined as follows:

$$\text{VAT-taxable turnover} = \text{USD } 10 \text{ million} - \text{USD } 1 \text{ million} = \text{USD } 9 \text{ million.}$$

- (b3) If the sub-contractor is a foreign sub-contractor paying tax in accordance with Section III of Part B, then the VAT-taxable turnover of the foreign contractor shall be the total turnover receivable by such foreign contractor pursuant to the contract signed with the Vietnamese party. The foreign sub-contractor shall not be required to pay VAT on the value of the work which it performs in accordance with the provisions in the contract signed by such sub-contractor with the foreign contractor.
- (b4) In the case of services being international freight forwarding services, VAT-taxable turnover shall not include international transport charges payable to the aviation or sea transportation firm.
- (b5) In the case of international delivery services from Vietnam to overseas countries, VAT-taxable turnover shall be the total turnover receivable by the foreign contractor.

2.1.2 Value added rates

- (a) Value added rates as a percentage (%) of taxable turnover shall apply to the following business lines:

No.	Business lines	Value added rate as % of taxable turnover
1.	Services, machinery and equipment leasing business, and insurance.	50
2.	(a) Construction and assembly and installation where the tender included supply of materials, machinery and equipment in the construction work. (b) Construction and assembly and installation where the tender did not include supply of materials, machinery and equipment in the construction work.	30 50
3.	Transportation and other business and production.	30

- (b) Value added rates as a percentage (%) of VAT-taxable turnover in a number of other specific cases
- (b1) Where a contractor's or sub-contractor's contract comprises different business activities or where a part of the contract value is not subject to VAT, then application of value added rate as a percentage of VAT-taxable turnover when fixing the amount of VAT payable shall depend on the VAT taxable turnover from each business activity which the foreign contractor or sub-contractor performs in accordance with such contractor's or sub-contractor's contract. If the value of each activity cannot be separated, then the highest value added rate applicable to the business line and the highest tax bracket for the whole of the contract value shall apply.
- (b2) In the case of a contract for the supply of machinery and equipment accompanied by services being guiding installation, training, operation and commissioning, if it is possible to separate the value of the machinery and equipment from the value of the services when determining the amount of VAT payable, then a value added rate shall apply to each part of the contract value. If the contract fails to separate the value of each of the two activities referred to above, the deemed value added rate of thirty per cent (30%) of taxable turnover shall apply.

Example:

Contractor H of Korea, which has not adopted the Vietnamese accounting system, performs a contract signed with Enterprise B in Vietnam to supply a machinery and equipment production line accompanied by services being installation, operation, testing and commissioning with a value of USD 10 million. The contract fails to separate the value of the machinery and equipment from the value of such services, and accordingly the applicable value added rate of 30% shall apply.

- (b3) In cases of lease of machinery, equipment and means of transportation, VAT-taxable turnover shall be the total rent and if turnover from the lease includes costs directly paid by the lessor such as insurance of means of transportation, maintenance, certification of registration of means and persons operating means of transportation or machinery, and costs of bringing such machinery and equipment into Vietnam from overseas, then VAT-taxable turnover shall exclude such costs if there are documents proving actual expenditure.

2.2 VAT rates

VAT rates on VAT-taxable goods and services shall be the rates stipulated in the *Law on VAT* and its implementing guidelines.

Foreign contractors and foreign sub-contractors which pay VAT directly on the basis of added value as stipulated in clause 1 of this Section III of Part B, shall not be permitted to credit VAT on goods and services purchased for performance of the contractor's or sub-contractor's contract (including VAT on a sub-contractor's contract performed by a Vietnamese sub-contractor).

3. CIT

The bases for tax calculation shall be CIT-taxable income and CIT rates as a percentage (%) of taxable turnover.

Amount of CIT payable = CIT-taxable turnover x CIT rate as a percentage (%) of taxable turnover.

3.1 CIT-taxable turnover

(a) CIT-taxable turnover

CIT-taxable turnover shall be total turnover excluding VAT and without deduction of any taxes payable, receivable by the foreign contractor or foreign sub-contractor. CIT-taxable turnover shall include any costs which the Vietnamese party has paid on behalf of such contractor or foreign sub-contractor.

(b) Determining CIT-taxable turnover in some specific cases

(b1) Where pursuant to the contractor's or sub-contractor's contract, turnover receivable by the foreign contractor or sub-contractor excludes payable CIT, then the CIT-taxable turnover shall be calculated according to the following formula:

$$\text{CIT-taxable turnover} = \frac{\text{Turnover excluding CIT}}{1 \text{ minus (-) CIT rate as percentage (\%) of taxable turnover}}$$

Example:

Foreign contractor A provides a Vietnamese party with the service of supervising the construction volume of Cement Plant Z with the contract price excluding tax of USD 300,000. In addition, the Vietnamese party arranges accommodation and a working place for managers of the foreign contractor valued at USD 23,000. Under the contract, the Vietnamese party is responsible to pay CIT and VAT on behalf of the foreign contractor. The amount of CIT payable by the foreign contractor shall be calculated as follows:

Calculation of taxable turnover:

$$\text{CIT-taxable turnover} = \frac{300,000 + 23,000}{(1 - 0.05)} = \text{USD } 340,000$$

(b2) If a foreign contractor signs a contract with either a Vietnamese or foreign sub-contractor paying tax in accordance with this Section II of Part B in order to allocate part of the work of the former contractor's contract signed with the Vietnamese party, then CIT-taxable turnover of

such foreign contractor shall not include the value of the work or the value of the machinery and equipment to be implemented by such Vietnamese or foreign sub-contractor.

The Vietnamese or foreign sub-contractor shall declare and pay tax in accordance with clauses 2 and 3 of this Section II of Part B.

This provision shall not apply to a foreign contractor signing contracts with suppliers in Vietnam for the purchase of goods and services serving performance of the foreign contractor's contract.

Example:

Foreign Contractor A signs a contract with a Vietnamese party for the construction of Cement Plant Z with a total contract value (excluding VAT) of USD 10 million, and the contract specifically stipulates that foreign contractor A will assign part of the value of construction and installation to Vietnamese Sub-contractor B for a price of USD 1 million.

CIT-taxable turnover of foreign contractor A shall be determined as follows:

CIT-taxable turnover = USD 10 million – USD 1 million = USD 9 million.

- (b3) If the sub-contractor is a foreign sub-contractor paying tax in accordance with this Section III of Part B, then CIT-taxable turnover of the foreign contractor shall be the total turnover receivable by such foreign contractor pursuant to the contract signed with the Vietnamese party. The foreign sub-contractor shall not be required to pay CIT on the value of the work which it performs in accordance with the provisions in the contract signed by such sub-contractor with the foreign contractor.
- (b4) In cases of lease of machinery, equipment and means of transportation, CIT-taxable turnover shall be the total rent and if turnover from the lease includes costs directly paid by the lessor such as insurance of means of transportation, maintenance, certification of registration of means and persons operating means of transportation or machinery, and costs of bringing such machinery and equipment into Vietnam from overseas, then CIT-taxable turnover shall exclude such costs if there are documents proving actual expenditure.
- (b5) With respect to foreign airline carriers, CIT-taxable turnover shall be turnover from sale of passenger tickets and air freight bills of lading and other income (excluding income collected on behalf of the State or other organizations pursuant to law) in Vietnam for transportation of passengers, cargo and other objects on flights of such foreign airline carrier conducted directly or in partnership.

Example:

In the first quarter of year 2009, foreign airline A generates turnover of USD 100,000, comprising turnover from sales of passenger tickets at USD 85,000, air freight bills of lading of USD 10,000, and sales of MCO³ tickets of USD 5,000; at the same time it collects USD 1,000 being airport charges on behalf of the State, and refunds USD 2,000 to customers who handed in their tickets.

CIT-taxable turnover of foreign airline A for the first quarter of 2009 shall be determined as follows:

CIT-taxable turnover = 100,000 – (1,000 + 2,000) = USD 97,000.

³ Allens Arthur Robinson footnote: "MCO" is the abbreviation for "miscellaneous charge order".

The ticket selling office or agent in Vietnam of the foreign airline shall declare CIT on the standard form declaration issued with this Circular⁴, and pay the amount of tax declared into the State budget.

- (b6) With respect to foreign sea transport firms, CIT-taxable turnover shall be the total amount of fees (including any additional fees) receivable for transporting passengers and cargo from loading or unloading ports in Vietnam to the final port of discharge or disembarkation (including fees for transferring consignments of goods between intermediate ports) and/or fees receivable for transferring cargo between Vietnamese ports.

Transportation fees as the basis for calculating CIT shall not include fees on which CIT payable by the foreign ship owner has been assessed at Vietnamese ports, and fees payable to any Vietnamese transportation enterprises participating in transferring cargo from a Vietnamese port to an intermediate port.

Example:

Company A acts as agent for foreign sea transport carrier X, and the contract stipulates that Company A shall represent firm X in receiving cargo for transportation to overseas, in issuing bills of lading, in collecting transportation fees and so forth.

Enterprise B of Vietnam hires firm X (via Company A) to forward freight from Vietnam to the US with total freight fees of USD 100,000.

Company A charters the ship of a Vietnamese enterprise or a foreign ship to transfer the cargo from Vietnam to Singapore with transportation fees of USD 20,000, and the cargo will then be transported from Singapore to the US by a ship belonging to firm X.

CIT-taxable turnover of foreign sea transport firm X shall be determined as follows:

$$\text{CIT-taxable turnover} = 100,000 - 20,000 = \text{USD } 80,000.$$

- (b7) In the case of international freight forwarding services, CIT-taxable turnover shall not include international transport fees payable to the aviation or sea transportation firm.
- (b8) In the case of international delivery services from Vietnam to overseas countries, CIT-taxable turnover shall be the total turnover receivable by the foreign contractor.
- (b9) In the case of reinsurance, CIT- taxable turnover shall be premiums for ceding offshore reinsurance.
- (b10) In the case of transfers of securities, CIT-taxable income shall be determined as follows:
- + In a case of assignment of securities (except for bonds which are tax free), it shall be total turnover from the sale of securities at the time of the assignment.
 - + In the case of bonds (except for bonds in the category of tax free), it shall be total turnover from the sale of the bonds (including par value recorded on the bonds and the amount of interest receivable) as at the date of receipt of interest.

⁴ Allens Arthur Robinson footnote: This is the only Appendix to the Circular, a one page Declaration, and has not been translated.

(b11) Loan interest under foreign loan agreements signed before 1 January 1999 shall not be subject to tax in accordance with the guidelines in this Circular.

- + Where an extension or adjustment of the term of the loan is made without any change of the terms on the interest rate or on payment agreed in the loan agreement, and the maximum extension of the term of a short-term loan is equal to a business or production cycle but does not exceed twelve (12) months or the maximum extension of the term of a long or medium-term loan is equal to a half of the term of the loan agreed in the loan agreement, then the loan interest shall not be subject to CIT.
- + In the case of signing a new loan agreement where the [new] loan agreement is to provide a new loan to replace the old loan without any change of the lender and with the terms on the interest rate or on payment more favourable than the old loan agreement signed before 1 January 1999, then the loan interest shall not be subject to CIT.
- + Where the extension or adjustment of the term of the loan is made without any change of the terms on the interest rate or on payment agreed in the loan agreement, but the extension exceeds the above maximum time-limits for extension, then the loan interest accrued as from the expiry of the above maximum time-limit for extension shall be subject to CIT.
- + Where the amendments of a loan agreement include changes of the main terms of the agreement such as the interest rate, method of lending, terms on payment or term of the loan, then the loan interest accrued as from expiry of effectiveness of the original loan agreement shall be subject to CIT.

3.2 CIT rates as a percentage (%) of taxable turnover

(a) CIT rates as a percentage (%) of taxable turnover

No.	Business lines	CIT rates as a percentage (%) of taxable turnover
1.	Trading: distribution and supply of goods, raw materials, supplies, machinery and equipment associated with services in Vietnam.	1
2.	Services, lease of machinery and equipment, insurance.	5
3.	Construction.	2
4.	Other production or business activities and transportation (including sea and air transportation).	2
5.	Lease of aircraft, aircraft engines, aircraft spare parts and sea going vessels.	2
6.	Reinsurance.	2
7.	Assignments [transfer] of securities.	0.1
8.	Loan interest.	10
9.	Income from royalties.	10

(b) CIT rates as a percentage (%) of taxable turnover in some specific cases

(b1) For the purpose of calculating the amount of CIT payable on a contractor's or sub-contractor's contract for a number of different business activities, CIT rates shall be applied on the basis of

the CIT-taxable turnover from each business activity performed by the foreign contractor or foreign sub-contractor under the contract. Where the value of each business activity is not able to be calculated separately, the CIT rate for the line of business which is subject to the highest tax rate shall apply to the total value of the contract.

- (b2) In the case of contracts for supply of machinery and equipment which include services of providing instructions on guiding installation, training, operating and test trials where the value of the machinery and equipment is separable from the value of the services, then tax shall be assessed as the percentage applicable to each activity. If the contract does not separate the value of the machinery and equipment from the value of the services, then the CIT rate of 2% shall apply to the total value of the contract.

Example:

Foreign Contractor A signs a contract with a Vietnamese party to construct Power Plant F with the contract value of USD 70 million, comprising:

- Value of machinery and equipment supplied to the project: USD 50 million;
- Value of design of technological line and other designs: USD 5 million;
- Value of buildings, other supportive systems, construction and installation: USD 10.5 million;
- Value of services of supervising and instructing installation: USD 3 million;
- Value of services of technical training and commissioning: USD 1.5 million.

In this case it is possible to separate the value of the machinery and equipment from the value of the services, so the CIT rates shall be applied as follows: the tax rate for the commercial sector shall apply to the value of machinery and equipment; the tax rate for the service sector shall apply to the value of services of design, supervision of installation, training and commissioning; and the tax rate for the construction sector shall apply to the value of construction and installation (being USD 10.5 million).

If it had not been possible to separate the value of the machinery and equipment from the value of the services, then the CIT rate of 2% would have applied to the total value of the contract (USD 70 million).

4. Procedures for declaration and payment of tax where a foreign contractor forms a partnership with a number of parties or Vietnamese economic organizations to do business in Vietnam on the basis of a contractor's contract.
- Where the parties to the partnership establish a Partnership Management Committee which carries out cost accounting, has bank accounts and is responsible for producing invoices; or a Vietnamese economic organization participating in the partnership is responsible for conducting overall cost accounting and distributing profits to the parties, then the Partnership Management Committee or the Vietnamese economic organization shall be responsible for declaring, paying and finalizing VAT and CIT as stipulated above on the total turnover from performance of the contractor's contract.
 - Where the parties to the partnership share turnover and products or form a partnership which receives the contracted works but each party to the contract implements a distinct part of the works and itself determines the part of the turnover receivable by it, then each party may pay tax in accordance with the guidelines in Part B of this Circular.

PART C

Organization of Implementation

This Circular shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette, and shall apply from 1 January 2009.

This Circular shall replace the following: Circular 05-2005-TT-BTC of the Ministry of Finance dated 11 January 2005 on foreign contractors tax, and Circular 16-1999-TT-BTC of the Ministry of Finance dated 4 February 1999 providing guidelines for collection of freight tax for foreign transport firms carrying on cargo transportation by vessels in Vietnam.

Any problems arising during implementation should be promptly reported to the Ministry of Finance for resolution.

For the Minister of Finance
Deputy Minister
DO HOANG ANH TUAN