

On May 10, 1995 the Ministry of Finance issued Circular No 37-TC/TCT on guidelines for tax imposed on foreign economic organizations, individuals doing business in Vietnam and not covered by the Law on Foreign Investment.

This circular takes effect from June 1, 1995, replaces the circulars No 07-TC/TCT dated March 30, 1992 and No 30-TC/TCT dated July 18, 1992 by the Ministry of Finance, and is applied to contracts signed from June 1, 1995. The contracts signed before June 1, 1995 are in conformity with stipulations of circulars No 30-TC/TCT and No 07-TC/TCT for payments defined in the contract until September 30, 1995, as from Oct 1, 1995 these payments will comply with the guidelines of this circular.

This circular has 5 sections and 2 attached appendices. Following are main contents extracted from the circular:

Tax obligations guided in the circular are applied to every foreign organizations and individuals operating in Vietnam beyond investment modes defined in the Law on Foreign Investment, working as contractors or subcontractors (for short contractors) for Vietnamese organizations and individuals.

This circular is not applied to following objectives:

- The foreign organizations and individuals earning copyright income as stipulated in the Ordinance on Transferring Foreign Technology into Vietnam dated Dec 5, 1988 and the Charter on trading licences accompanied by Decree No 201-HĐBT dated Dec 28, 1988 by the Government, which are subject to paying income tax on copyright turnover in compliance with Circular No 08-TC/TCT dated Feb 5, 1992 by the Ministry of Finance.

- The oil companies signing contracts of oil exploration and exploitation in Vietnam as stipulated in Point 8, Article 3 of the Petroleum Law.

- The foreign individuals working in Vietnam in accordance with contracts signed with Vietnamese organizations, individuals or sent to work in Vietnam by overseas establishments, which must pay personal income tax in conformity with the Ordinance on income tax imposed on persons earning high income.

- The purely commercial contracts between Vietnamese buyers and their foreign sellers.

In case the State signed an international convention or agreement or committed an int'l organizations or foreign government to what is relating to issues stipulated in this circular, the stipulations in that convention or agreement or commitment will be applied to these issues.

#### TURNOVER TAX

The contractor making turnover in Vietnam has to pay turnover tax as stipulated by the Law on Turnover Tax.



## TAX ON FOREIGN ORGANIZATIONS AND INDIVIDUALS OPERATING IN VIETNAM AND NOT COVERED BY THE LAW ON FOREIGN INVESTMENT

by LÊ VĂN CHẤN



Taxable turnover is the ones the contractor makes in his/her businesses in Vietnam, it is determined by the Law on Turnover Tax and legal documents on guidelines for implementation of this law.

Turnover tax rates are applied to every business in compliance with List of turnover tax accompanied with Decree 55 CP dated Aug 28, 1995 promulgated by the Government and other legal documents concerning turnover tax rates.

As for oil services, basing on the Decree No 55 CP dated Aug 28, 1993, the Ministry of Finance issued detailed guidelines as follows:

Activities	Tax rates
1. Services of renting offshore platform, drilling ship, seismograph ship, aircraft, machinery and equipment, other tools or means (excluding means for rent stipulated at Point 10, Section VI in the List of Turnover Tax)	4%
2. Technical services: seismograph, engineering geology, testing seam, concreting, settling and resettling issues in document interpretation in Vietnam.	2%
3. Services of water, food and foodstuff supply	1%
4. Services of catering for materials, chemicals, cement, drilling solution and drill.	1%
5. Services of consultancy, supervising construction, supplying labor	4%
6. Service of health insurance	4%
7. Other oil services	4%

#### PROFIT TAX

Profits which the contractor earns from contracts realized in Vietnam are subject to profit tax stipulated in the Law on Profit Tax. The rates are defined at Article 10 of the Law on Profit Tax. In order to make tax payment or collection convenient, the Ministry of Finance stipulates taxable profits calculated by percentage on turnover in line with the contract of every business as follows:

Activities involved in business subject to:	Taxable profit based on turnover (%)	Profit tax rates according to Law on Profit Tax (%)	Profit tax rates calculated on turnover(%)
1. Profit tax rate of 25%: construction, transportation (excluding transporting activities of foreign ships which pay tax in compliance with Circular No 85 TC/TCT dated on Oct 24, 1994 by the Ministry of Finance)	8	25	2
2. Profit tax rate of 35%	10	35	3.5
3. Profit tax rate of 45%	14	45	6.3
Oil services particularly	10	45	4.5

Other taxes such as tariff, personal income tax, tax levied on copyright income...are collected in conformity with current tax laws.

#### REGISTERING TAX

Within 10 days since the signing with the contractor, the Vietnamese party has to declare and register tax to the tax bureau of the locality where the Vietnamese party's head office is situated about activities of the contractor in accordance with the contract signed with the Vietnamese party.

Within 10 days since the reception of tax registration file, the local tax agency is responsible for notifying the Vietnamese party procedures of tax payment of the contractor.

The Ministry of Finance mandates the Vietnamese party to deduct and pay tax of the contractor to the State budget on behalf of him.

#### DECLARING AND PAYING TAX

As for the Vietnamese party which is entitled to deduct tax of the contractor:

- When making every payment to the contractor according to the contract, the Vietnamese party has to declare taxable amount to the tax agency and is liable to deduct the turnover and income taxes and pay them to the State Treasury in line with guidelines of the tax agency within 5 days since the payment to the contractor. In case the tax agency discovers wrong declaration, calculation, it will inform the taxable amount to the Vietnamese party within 5 days.

- After 10 days at the latest since the contract signed with the contractor is finished, the Vietnamese party has responsibility for making final settlement to the tax agency about practical taxable amount.

If permitted to pay tax directly, the contractor has to implement procedures of tax declaration.

#### PROTESTS

Protests about taxes of the contractor will be directly handled by the tax bureau. In case the protester does not agree with the decision made by the executing office of his/her protest, he/she can send written protests to the General Tax Department or the Ministry of Finance. The decision taken by the Minister of Finance is final. While waiting for decision of the competent agency, the protester still has to comply strictly to conclusions of the local tax agency.

Protests of the contractor concerning stipulations of an agreement signed between Vietnamese Government and other government will be settled in compliance with procedures handling protests, disputes stipulated in that agreement.

#### HANDLING OF VIOLATIONS

In case the Vietnamese party or the contractor makes no tax declaration, registration; delays tax payment, makes false declaration so as to evade tax and as a result causes loss of tax to the State; they will be penalized in conformity with the current laws.

#### MANDATE TO DEDUCT TAX

The Vietnamese party, contractor as well is mandated to deduct and pay tax to the State budget on behalf of the contractor or subcontractor will enjoy 0.8% of really collected tax. This amount is deducted from the collected tax before it is paid to the State budget and used for covering expenses of tax collection and payment and for rewarding individuals taking active part in tax activities.