

THE GOVERNMENT

No: 85/2007/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

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Ha Noi , Day 25 month 05 year 2007

DECREE

Detailing the implementation of a number of articles of the Law on tax administration

THE GOVERNMENT

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

Pursuant to November 29, 2006 Law No. 78/2006/QH11 on Tax Administration;

At the proposal of the Minister of Finance,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Scope of regulation

1. This Decree details the implementation of a number of articles of the Law on Tax Administration applicable to the management of taxes, charges, fees, land and water surface rents, land use levy, revenue collected from the exploitation of mineral resources and other revenues of the state budget, the collection of which is managed by tax administration agencies according to law.

2. Policies on modernization of tax administration, building of the tax administration force, handling of tax law violations and coercive enforcement of tax administrative decisions are provided for in other legal documents.

Article 2.- Taxpayers

Taxpayers referred to in this Decree include:

1. Organizations, households and individuals that pay taxes, charges, fees or other

revenues of the state budget according to law.

2. Organizations that are tasked to collect charges and fees belonging to the state budget.

3. Organizations and individuals that withhold tax; organizations and individuals that carry out tax procedures on behalf of taxpayers, including:

a/ Organizations and individuals being Vietnamese parties to contracts with foreign organizations and individuals that conduct business in Vietnam not under the investment law and do not practice the Vietnamese accounting regime;

b/ Organizations and individuals withholding tax when paying incomes to persons who have incomes liable to income tax on high income-earners;

c/ Organizations acting as shipping agents or agents for foreign carriers and responsible for withholding enterprise income tax on activities of shipping cargoes from Vietnamese seaports to overseas seaports or between Vietnamese seaports;

d/ Organizations providing services of carrying out tax procedures;

e/ Agents for carrying out customs procedures for imported goods and exported goods;

f/ Organizations and individuals providing postal and international express mail services in case they pay taxes on behalf of tax-paying organizations and individuals;

g/ Credit institutions or other organizations operating under the Law on Credit Institutions in case of guaranteeing tax payment for tax-paying organizations and individuals.

Article 3.- Tax collection mandate

1. Tax administration agencies may mandate other agencies, organizations and individuals to collect some taxes according to the regulations of the Ministry of Finance.

2. Tax collection mandate must be affected through contracts between heads of tax administration agencies and agencies, organizations or individuals mandated to collect taxes.

3. Parties mandated to collect taxes shall notify and urge taxpayers to pay taxes under tax collection mandate contracts; issue tax receipts to taxpayers upon

collecting taxes; remit collected tax amounts into State Treasury accounts of tax administration agencies; finalize collected tax amounts and tax receipts with tax administration agencies; monitor and report to tax administration agencies on new taxpayers or changes in the business scale and lines of taxpayers in localities where they are mandated to collect taxes.

4. Tax administration agencies shall publicly notify cases of mandated tax collection to taxpayers for information and implementation; supply tax receipts to agencies, organizations and individuals mandated to collect taxes, guide, inspect and supervise their collection and remittance of collected tax amounts.

5. Agencies, organizations and individuals mandated to collect taxes defined in this Article enjoy mandated tax collection funds deducted from operating funds of tax administration agencies. The Ministry of Finance shall guide the deduction and use of mandated tax collection funds mentioned in this Clause.

Chapter II

SPECIFIC PROVISIONS

Article 4.- Principles for tax calculation, declaration and payment

1. Except for the cases in which tax administration agencies make tax assessment or calculation under Articles 37, 38 and 39 of the Law on Tax Administration, taxpayers shall calculate tax amounts payable into the state budget they have declared.

2. Taxpayers shall accurately, honestly and fully fill in their tax returns and fully submit vouchers and documents required in tax declaration dossiers to tax administration agencies.

3. If making tax calculation by themselves, taxpayers shall fully pay tax amounts already calculated and declared to tax administration agencies within the time limit for submitting tax declaration dossiers specified in Articles 32 and 33 of the Law on Tax Administration.

4. If tax administration agencies make tax calculation or tax assessment, the tax payment time limit is the time limit stated in tax payment notices or tax collection decisions of tax administration agencies.

Article 5.- Changes in tax registration information

1. In case of a change in information in a submitted tax registration dossier, the taxpayer shall notify it to the direct managing tax agency (stated in the tax

registration certificate) within 10 (ten) working days from the date such change occurs.

2. A taxpayer that relocates its office, which leads to the change of the direct managing tax agency, shall fully pay the tax amount declared before relocating its office and is not required to make tax finalization with the tax agency (except for cases in which the time of office relocation coincides with the time of annual tax finalization).

3. In case of changes in information in tax registration certificates, direct managing tax agencies shall withdraw granted tax registration certificates and grant new ones to taxpayers.

Article 6.- Tax declaration dossiers

1. A tax declaration dossier comprises a tax return made according to a form set by the Ministry of Finance and relevant documents used by a taxpayer for making tax declaration and calculation.

2. A tax return must have the following principal contents:

a/ Its type name and code;

b/ Tax period or time of arising of tax liability;

c/ Information on the taxpayer: name, tax identification number and transaction address;

d/ Information on the bases for calculation of the payable tax amount;

e/ Signature of the taxpayer or his/her lawful representative.

Article 7.- Declaration of value-added tax

1. Declaration of value-added tax is specified as follows:

a/ Declaration on a monthly basis, except for cases of declaration upon each time of arising of tax liability specified at Point b of this Clause and tax declaration by the presumption method specified in Article 18 of this Decree.

b/ Declaration upon each time of arising of tax liability is applicable to:

- Exported goods, imported goods;

- Goods and services sold or provided by taxpayers that are engaged in itinerary construction, installation or sale without setting up affiliated units in provincial-level localities other than localities where they are headquartered (hereinafter referred to as extra-provincial business). If making tax declaration several times in a month, taxpayers may register with tax administration agencies to make value-added tax declaration on a monthly basis.

c/ Declaration for annual tax finalization for cases where value-added tax is directly calculated on the basis of added value.

2. Value-added tax declaration dossiers:

a/ A value-added tax declaration dossier comprises:

- Monthly value-added tax declaration;
- List of goods or service sale invoices;
- List of goods and service purchase invoices.

b/ Dossiers of value-added tax declaration upon each time of arising of tax liability are value-added tax declarations for extra-provincial business or customs dossiers for exported goods and imported goods.

c/ Dossiers of declaration for value-added tax finalization are value-added tax finalization declarations and relevant documents.

Article 8.- Declaration of enterprise income tax

1. Declaration of enterprise income tax is specified as follows:

a/ Declaration for temporary calculation on a quarterly basis, except for cases of tax declaration by the presumption method specified in Article 18 of this Decree;

b/ Declaration upon each time of arising of tax liability for enterprise income from the transfer of land use or land lease rights;

c/ Declaration for annual finalization or declaration for tax finalization up to the date of termination of operation of enterprises or expiration of contracts, enterprise ownership transformation or reorganization.

2. Enterprise income tax declaration dossiers:

a/ Dossiers of enterprise income tax declaration for temporary calculation on a

quarterly basis are quarterly enterprise income tax declarations.

b/ Dossiers of declaration of enterprise income tax on incomes from the transfer of land use or land lease rights are enterprise income tax declarations for incomes from transfer of land use or land lease rights and relevant documents.

c/ A dossier of declaration for enterprise income tax finalization comprises:

- Declaration for enterprise income tax finalization;
- Annual financial statement or financial statement up to the date of termination of operation or contract, enterprise ownership transformation or reorganization;
- Other documents related to tax finalization.

3. The declaration of withheld enterprise income tax on incomes from securities, agency commission or capital transfer shall be specified by the Ministry of Finance.

Article 9.- Declaration of special consumption tax

1. Declaration of special consumption tax is specified as follows:

a/ Monthly tax declaration is applied to goods (except for imported goods specified at Point b of this Clause) and services liable to special consumption tax;

b/ Declaration upon each time of arising of tax liability is applied to imported goods liable to special consumption tax.

2. Special consumption tax declaration dossiers:

a/ A dossier of monthly special consumption tax declaration comprises:

- Monthly special consumption tax declaration;
- List of sale invoices of goods or services liable to special consumption tax;
- List of creditable special consumption tax (if any).

b/ Special consumption tax declaration dossiers for exported goods or imported goods are customs dossiers.

Article 10.- Declaration of export tax or import tax

1. Declaration of export tax or import tax shall be made upon each time of arising of tax liability.

2. Export tax or import tax declaration dossiers are customs declaration dossiers.

3. In case of additional declaration of export tax or import tax, a tax declaration dossier comprises:

a/ Additional tax declaration, clearly stating the reason for additional declaration, additionally declared contents, kind of tax and additionally declared tax amount increase or decrease compared with the previously declared tax amount and handling proposal;

b/ Documents related to the additional declaration.

Article 11.- Declaration of natural resources tax

1. Declaration of natural resources tax is specified as follows:

a/ Monthly declaration is applied to organizations and individuals that exploit natural resources, except for the case specified at Point b of this Clause;

b/ Declaration upon each time of arising of tax liability is applied to cases in which natural resources purchasers pay tax on the behalf of exploiters;

c/ Declaration for annual finalization or up to the date of termination of natural resources exploitation, enterprise ownership transformation or reorganization or operation termination.

2. Natural resources tax declaration dossiers:

a/ Monthly natural resources tax declaration dossiers or dossiers of declaration upon each time of arising of natural resources tax liability are natural resources tax declarations and lists of natural resources purchased;

b/ Dossiers of declaration for natural resources tax finalization are natural resources tax finalization declarations and relevant documents.

Article 12.- Declaration of income tax on high-income earners

1. Declaration of income tax on high-income earners is specified as follows:

a/ Monthly declaration is applied to cases in which the tax is withheld upon payment of regular incomes; or to incomes being lottery or sales promotion prizes

or income subject to temporary tax withholding of 10%.

If the total tax amount monthly withheld is less than VND 5 (five) million, the income-paying agency shall make declaration for temporary tax payment on a quarterly basis. Whether tax declaration can be made on a quarterly basis shall be determined annually and based on the total tax amount withheld in the first month of the tax declaration year.

b/ Declaration upon each time of arising of tax liability is applied to incomes from technology transfer or intellectual property rights assignment.

c/ Declaration for annual tax finalization or up to the date of termination of the tax obligation is applied to the following cases:

- Organizations or individuals that withhold tax when paying regular incomes;
- Individuals that have incomes from different sources and are unable to make tax finalization at the same place through organizations or individuals that withhold and pay tax on their behalf;
- Individuals that register for tax payment with tax agencies.

2. Dossiers of declaration of income tax on high-income earners:

a/ A monthly or quarterly dossier of declaration of income tax on high-income earners comprises:

- Monthly or quarterly return of income tax on high-income earners;
- List of withheld tax amounts.

b/ Dossiers of declaration of income tax on high-income earners upon each time of arising of tax liability are income tax returns upon each time of arising of tax liability and other relevant documents.

c/ Dossiers for finalization of income tax on high-income earners:

- For organizations or individuals that withhold and pay tax on other persons' behalf and conduct tax finalization, a tax finalization dossier comprises: tax finalization declaration, general table of tax finalization detailed by each taxpayer and other relevant documents;
- For individuals who earn incomes from different sources and finalize tax or who register for tax payment directly with tax agencies, a tax finalization dossier

comprises: tax finalization declaration; detailed list of incomes from different sources; income tax receipts or income tax withholding documents; and papers indicating withheld, exempted or reduced tax amounts.

Article 13.- Declaration of excise tax

1. Annual declaration of excise tax is specified as follows:

a/ The declaration of excise tax must be made no later than January 30th of the tax declaration year, except for the case specified at Point b of this Clause;

b/ Taxpayers that have newly commenced their business operation shall make declaration of excise tax not later than the last day of the month of business commencement. For subsequent years, they shall make declaration under the provisions of a Point of this Clause.

2. Dossiers of excise tax declaration are excise tax declarations.

Article 14.- Declaration of land taxes and state budget revenues

1. Declaration of land taxes or state budget revenues is specified as follows:

a/ Annual declaration is applied to:

- Land and housing tax;
- Agricultural land use tax;
- Land and water surface rent.

b/ Declaration upon each time of arising of tax liability is applied to:

- Land use levy;
- Land use rights transfer tax.

2. Dossiers of declaration of land taxes or state budget revenue:

a/ Dossiers of declaration of housing and land taxes are housing and land tax declarations.

b/ Dossiers of declaration of agricultural land use tax are agricultural land use tax declarations.

c/ A dossier of declaration of land and water surface rent comprises:

- Land and water surface rent declaration;
- The competent state agency's decision on land and water surface lease;
- Land and water surface lease contract;
- Documents and papers proving that the declaring is eligible for investment incentives;
- Documents and papers related to land compensation or support according to law.

d/ A dossier of declaration of land use levy comprises:

- Land use levy declaration;
- Papers proving that the declaring is not liable to land use levy or is entitled to land use levy exemption or reduction;
- Documents evidencing payment of land use levy upon allocation of land with collection of land use levy;
- Papers related to land compensation or support according to law;
- Other relevant documents.

e/ A dossier of declaration of land use rights transfer tax comprises:

- Land use rights transfer tax declaration;
- Land use rights certificate or other papers of equivalent legality;
- Land use rights transfer contract certified by a competent agency defined by law;
- Documents and papers proving that the declaring is not liable to land use rights transfer tax or is entitled to land use rights transfer tax exemption or reduction.

Article 15.- Declaration of charges, fees and other state budget revenues

1. Declaration of charges, fees and other state budget revenues is specified as follows:

a/ Monthly declaration is applied to charges and fees other than those specified at

Point b of this Clause;

b/ Declaration upon each time of arising of charge or fee liability is applied to registration fee and customs fee;

c/ Declaration for annual finalization or for finalization up to the date of operation termination is applied to the cases specified at Point a of this Clause.

2. Dossiers of declaration of charges, fees and other state budget revenues specified in Clause 1 of this Article are charge or fee declarations or declarations for finalization of charges, fees or other state budget revenues and other relevant documents.

Article 16.- Declaration of value-added tax and enterprise income tax of foreign contractors that do not practice the Vietnamese accounting regime

1. Declaration of value-added tax and enterprise income tax of foreign contractors that do not practice the Vietnamese accounting regime (below referred to as foreign contractor tax) is specified as follows:

a/ Declaration of foreign contractor tax upon each time of arising of tax liability. If making tax declaration several times in a month, taxpayers may register with tax administration agencies to switch to make monthly tax declaration;

b/ Declaration for foreign contractor tax finalization upon expiration of the contractors' contracts.

2. Dossiers of declaration of foreign contractor tax is specified as follows:

a/ A dossier of declaration of foreign contractor tax upon each time of arising of tax liability or monthly declaration comprises:

- Foreign contractor tax declaration;
- Copies of contracts and sub-contracts and contract summaries in Vietnamese related to declared tax amounts (for the first tax declaration of the contract).

b/ A dossier of declaration for foreign contractor tax finalization comprises:

- Tax finalization declaration;
- List of contractors and sub-contractors joining the contract performance;

- List of tax payment receipts;
- Written record of contract liquidation.

Article 17.- Declaration of tax on exploitation and export of crude oil

1. Declaration of tax on exploitation and export of crude oil is specified as follows:

a/ Declaration of export tax, natural resources tax and enterprise income tax upon each exportation of crude oil;

b/ Declaration for annual finalization of natural resources tax and enterprise income tax or upon expiration or termination of petroleum exploitation contracts.

2. The Ministry of Finance shall specify the tax declaration and payment for exploitation and export of crude oil to suit oil export transactions and exported oil payments.

Article 18.- Tax declaration for cases of tax payment by the presumption method

1. Monthly, quarterly or annual tax declaration may be applied to regular business activities of business households and individuals.

2. Tax declaration upon each time of arising of tax liability is applied to irregular business activities of business households and individuals.

3. The Ministry of Finance shall specify the tax declaration and the determination of payable tax amounts for the cases of tax declaration specified in this Article to suit the business scale of business households and individuals in each period.

Article 19.- Time limit for submission of tax declaration dossiers

1. The time limit for submission of tax declaration dossiers is defined in Articles 32 and 33 of the Law on Tax Administration.

2. For housing and land taxes, agricultural land use tax, land and water surface rent, if in a year there is a change in the land area for tax or rent calculation, the taxpayer shall make an additional declaration within 10 (ten) days after such change occurs.

Article 20.- Places for submission of tax declaration dossiers

1. Except for cases specified in Clauses 2 and 3 of this Article, taxpayers shall

submit their tax declaration dossiers, dossiers of declaration of charges, fees or other state budget revenues to tax agencies directly managing them.

2. Dossiers of declaration of housing and land taxes, dossiers of declaration of agricultural land use tax, dossiers of declaration of land use rights transfer tax, dossiers of declaration of registration fee, dossiers of declaration of value-added tax on extra-provincial business activities and dossiers of declaration for tax payment by the presumption method shall be submitted to district-level Tax Sub-Departments of localities where these taxes and fees arise.

3. Dossiers of tax declaration for exported goods or imported goods shall be submitted to customs offices where customs declarations are registered.

4. If state management agencies in the same locality issue regulations on coordination in handling administrative procedures, including tax declaration procedures and dossiers, under the "one-stop shop" mechanism, tax declaration dossiers shall be submitted to the place defined in those regulations.

Article 21.- Order of paying taxes and fines

1. The order of paying taxes and fines for administrative violations of tax law is defined in Article 45 of the Law on Tax Administration.

2. Tax amounts and fine amounts for administrative violations of tax law shall be remitted into the state budget revenue account opened at the State Treasury.

The Ministry of Finance shall guide the opening of the state budget revenue account at the State Treasury, the accounting of tax amounts of taxpayers and the remittance of paid tax amounts into the state budget.

Article 22.- Handling of overpaid tax amounts

1. Tax amounts are considered overpaid when:

a/ The tax amounts paid by taxpayers are larger than their payable tax amounts;

b/ Taxpayers have tax amounts refundable under laws on value-added tax, special consumption tax, export tax, import tax, income tax on high-income earners and petrol and oil charge.

2. Taxpayers may request tax administration agencies to handle overpaid tax amounts by the following methods:

a/ Clearing overpaid tax amounts against tax and fine arrears, including amounts

of different taxes;

b/ Clearing overpaid tax amounts against payable tax amounts of subsequent tax payment period;

c/ Refunding overpaid tax amounts as soon as taxpayers have no tax and fine arrears.

3. The Ministry of Finance shall specify procedures for clearing tax amounts mentioned at Point a, Clause 2 of this Article.

Article 23.- Tax payment in the course of settling complaints or legal actions

1. While their complaints or legal actions about tax amounts calculated or assessed by tax administration agencies are settled, taxpayers shall still fully pay those tax amounts, unless competent state agencies decide on suspension of enforcement of tax calculation or tax assessment decisions of tax administration agencies.

2. If paid tax amounts are larger than tax amounts determined according to the results of complaint settlement by competent agencies or court judgments or rulings, taxpayers may clear overpaid tax amounts against payable tax amounts of subsequent periods or get overpaid tax amounts refunded with interests thereon.

The duration for calculation and payment of interest is counted from the date taxpayers pay tax amounts to the date tax administration agencies issue tax refund decisions.

Interest rate for calculation of interests is the basic interest rate announced by the State Bank and effective at the time the tax administration agencies issue tax refund decisions.

Article 24.- Extension of tax payment time limit

1. Cases eligible for extension:

Taxpayers are entitled to an extension of the time limit for payment of tax or fine arrears if they are unable to pay taxes within that time limit in the following cases:

a/ They suffer from material loss caused by natural disasters, fires or accidents that directly affect their production or business;

b/ Their places of business are relocated at the request of competent state agencies, thus leading to the cessation of their operation and affecting their production or

business results;

c/ There is a change in state policies that directly affects their production or business results;

d/ They encounter other exceptional difficulties. In this case, extension of the payment time limit shall be decided by the Prime Minister at the request of the Minister of Finance.

2. Tax and fine amounts eligible for payment time limit extension:

a/ For the case specified at Point a, Clause 1 of this Article, eligible for payment time limit extension are total tax and fine amounts owed by taxpayers up to the date of occurrence of a natural disaster, fire or unexpected accident, which must not exceed the value of the material loss;

b/ For the cases specified at Points b, c and d, Clause 1 of this Article, eligible for payment time limit extension are tax and fine amounts arising due to the above reasons.

3. Tax payment time limit extension:

a/ A tax payment time limit extension must not exceed 2 (two) years from the date of expiration of the tax payment time limit, for the case specified at Point a, Clause 1 of this Article;

b/ A tax payment time limit extension must not exceed 1 (one) year from the date of expiration of the tax payment time limit, for the cases specified at Point b, c and d, Clause 1 of this Article.

4. Other regulations on tax payment time limit extension must be consistent with the provisions of the Law on Tax Administration.

Article 25.- Tax assessment

Taxpayers are subject to tax assessment in the following cases:

1. They fail to make tax registration under Article 22 of the Law on Tax Administration.

2. They fail to submit their tax declaration dossiers within 10 (ten) days from the date of expiration of the time limit for submission of tax declaration dossiers or the extended one according to regulations.

3. They fail to supplement their tax declaration dossiers at the request of tax administration agencies or supplement their tax declaration dossiers with incomplete, untruthful and inaccurate tax bases.
4. They fail to produce accounting documents, invoices, vouchers and documents related to the identification of factors to be used as tax bases upon the expiration of the time limit for tax examination or inspection at taxpayers' offices.
5. If tax examination or inspection is conducted at taxpayers' offices, there are grounds to believe that taxpayers have conducted accounting activities improperly or that figures recorded in accounting books are incomplete, inaccurate or untruthful, thus leading to incorrect determination of tax bases.
6. There are signs that they flee away or disperse their assets in order to shirk their tax liability.
7. They have submitted their tax declaration dossiers to tax administration agencies but cannot calculate payable tax amounts by themselves.

Article 26.- Assessment of each factor related to the determination of payable tax amounts

Taxpayers are subject to assessment of each factor related to the determination of payable tax amounts in the following cases:

1. Tax administration agencies have acquired through examining tax declaration dossiers grounds to believe that taxpayers incompletely or incorrectly declared factors used as a basis for determination of payable tax amounts and have requested taxpayers to additionally declare, but taxpayers fail to do so.
2. Tax administration agencies have acquired through inspecting accounting books, invoices and documents related to the determination of payable tax amounts grounds to prove that taxpayers incorrectly or dishonestly accounted factors related to the determination of payable tax amounts.
3. Taxpayers account sale prices of their goods or services not true to actual payment prices, thereby reducing taxable turnover, or account purchase prices of goods and materials used for their production or business inconsistent with common transaction prices in the market, thereby increasing expenditures and creditable value-added tax amounts and reducing payable tax amounts.
4. Taxpayers fail to justify or prove the truthfulness and accuracy of information related to the determination of quantity, type, origin, taxable value, code number,

tax rate or exempted, reduced or refunded tax amount of exported goods or imported goods.

5. Taxpayers submit their tax declaration dossiers without identifying factors used for the determination of tax bases, or have identified those factors but cannot calculate payable tax amounts by themselves.

Article 27.- Bases for tax assessment

Based on one of the following information sources, tax administration agencies shall make tax assessment for the cases specified in Articles 25 and 26 of this Decree:

1. Their databases that contain information from:

a/ Tax declaration dossiers and tax amounts paid in previous tax periods or tax declaration times;

b/ Information on economic transactions between taxpayers and concerned organizations or individuals;

c/ Information supplied by state management agencies;

d/ Other information collected by tax administration agencies.

2. Information on:

a/ Taxpayers that deal in the same business line or profession, or of the same business scale for in their localities;

b/ Average payable tax amount of some establishments that deal in the same business line or profession or the same goods item in their localities.

3. Tax examination and inspection documents of tax administration agencies.

Article 28.- Tax payment time limit in the case of tax calculation or assessment by tax administration agencies

1. If tax administration agencies calculate or assess tax, the tax payment time limit is the time limit stated in notices of tax agencies, specifically as follows:

a/ In case of tax payment by the presumption method, the tax payment time limit is specified by the Ministry of Finance;

b/ In case a tax agency makes tax assessment for a taxpayer that delays the submission of a tax declaration dossier, the tax payment time limit is 10 (ten) days after the tax agency signs a decision on tax assessment;

c/ In case a tax agency makes tax assessment according to a tax examination or inspection written record, the tax payment time limit is 10 (ten) days after the tax agency signs a decision on tax assessment. If the assessed tax amount is VND 500,000,000 (five hundred million) or more, the tax payment time limit is 30 (thirty) days after the tax agency issues a decision on tax assessment.

2. If customs offices assess tax, the tax payment time limit is as follows:

a/ For differences between tax amounts assessed by customs offices and those declared and calculated by taxpayers themselves in case of customs clearance of their goods, the tax payment time limit is 10 (ten) days after customs offices sign decisions on tax assessment;

b/ For other cases, the tax payment time limit is as defined in Clauses 3, 4 and 5, Article 42 of the Law on Tax Administration.

Article 29.- Fulfillment of the tax obligation by persons on exit

1. Before their exit from Vietnam, Vietnamese who leave the country to reside permanently abroad, overseas Vietnamese and foreigners shall fulfill the tax obligation.

2. Tax administration agencies shall request in writing the migration office to stop the exit of taxpayers who have not yet fulfilled the tax obligation in the following cases:

a/ They are Vietnamese who leave the country to reside permanently abroad;

b/ They are overseas Vietnamese or foreigners who leave the country upon the expiration of their working duration in Vietnam or the termination of activities of providing services or working as independent practitioners in Vietnam;

c/ They are individuals who show signs of fleeing away from Vietnam to shirk the tax obligation.

3. Upon receipt of notices of tax administration agencies, the migration office shall stop the exit of individuals who have not yet fulfilled the tax obligation until those individuals completely fulfill the tax obligation or take other measures to secure the fulfillment of the tax obligation under Vietnamese law.

Article 30.- Responsibilities of tax administration agencies for handling tax refund dossiers

1. Except for the cases specified in Clause 2 of this Article, tax administration agencies shall refund tax before examining tax refund dossiers according to the tax law.

2. Cases subject to dossier examination before tax refund:

a/ Tax refund is made under treaties to which the Socialist Republic of Vietnam is a contracting party;

b/ Taxpayers request tax refund for the first time;

c/ Taxpayers commit acts of tax evasion or tax fraud within 2 years before the time of request for tax refund;

d/ Taxpayers fail to conduct payment transactions via bank according to regulations;

e/ Enterprises undergo merger, consolidation, division, splitting up or ownership transformation, fall bankrupt or terminate their operation; state enterprises are assigned, sold, contracted or leased;

f/ Taxpayers fail to explain or supplement their tax refund dossiers as requested within the time limit stated in notices of tax administration agencies;

g/ Imported goods are subject to state management according to law.

3. The time limit for handling tax refund dossiers is specified in Clauses 2 and 3, Article 60 of the Law on Tax Administration. If the handling of tax refund dossiers is delayed due to the fault of tax administration agencies, taxpayers are, apart from getting tax amounts refunded according to regulations, entitled to interests on late refunded tax amounts for the duration of delayed refund. The interest rate for calculation of interests is specified in Clause 2, Article 23 of this Decree. The source for payment of interests is the tax refund fund set up under the regulations of the Ministry of Finance.

Article 31.- Determination of tax amounts to be exempted or reduced

1. Except for the cases specified in Clause 2 of this Article, taxpayers shall determine by themselves tax amounts to be exempted or reduced in their tax declaration dossiers or tax exemption or reduction dossiers sent to tax

administration agencies.

2. Tax administration agencies shall determine and issue decisions on tax exemption or reduction in the following cases:

a/ Exemption from or reduction of special consumption tax, natural resources tax, income tax on high-income earners, housing and land tax, agricultural land use tax, land and water surface rents for taxpayers that are unable to pay these taxes or rents according to law due to natural disasters, fires or unexpected accidents;

b/ Exemption from enterprise income tax for cooperatives with an average monthly income for their laborers below the state-prescribed minimum wage level applicable to cadres and public employees;

c/ Exemption for business households and individuals that pay taxes by the presumption method according to the tax law;

d/ Exemption from natural resources tax for products of natural forests exploited by inhabitants of communes with natural forests permitted for exploitation according to the natural resources tax law;

e/ Cases eligible for consideration of exemption from reduction of import tax or export tax under the import tax and export tax law or treaties to which the Socialist Republic of Vietnam is a contracting party;

f/ Other cases specified by the tax law.

Article 32.- Development and management of a system of information on taxpayers

1. Tax administration agencies shall develop a system of information on taxpayers:

a/ To develop a system of information and databases that need to be collected from taxpayers, tax administration agencies and relevant parties; to issue standard forms for information collection and notify those forms to information-supplying organizations and individuals for uniform application, or collect information in available formats used by information-supplying organizations and individuals;

b/ To build and develop a system of technical infrastructures and communication equipment satisfying the requirements on collection, processing, storage, transmission, use and control of information in tax administration agencies.

2. Tax administration agencies shall manage the system of information on

taxpayers as follows:

- a/ To formulate a mechanism for use of information on taxpayers for the tax administration purpose;
- b/ To formulate a mechanism for supply of information to state management agencies for the state management purpose;
- c/ To manage databases and maintain the system of information on taxpayers.

Article 33.- Responsibility of state agencies to supply information

State agencies shall supply information on taxpayers to tax administration agencies as follows:

1. Agencies granting business registration certificates and agencies granting establishment and operation licenses shall supply information on the contents of business registration certificates, establishment and operation licenses or certificates of changes in business registration contents, decisions on merger, division, splitting up, dissolution or bankruptcy of taxpayers within 7 (seven) working days from the date of grant of these certificates, licenses or decisions, and other information at the request of tax administration agencies.
2. The State Treasury shall supply information on paid or refunded tax amounts of taxpayers to tax administration agencies.
3. State management agencies in charge of houses and land shall supply information on changes in the actual land use or house ownership by organizations, households and individuals related to tax administration on a monthly basis or at the request of tax administration agencies.
4. Police offices shall supply and exchange information on the prevention and combat of economic crimes; information on individuals who are on exit or entry, temporarily reside in or are temporarily absent from their localities; information on activities of hotels, guest houses and inns in their localities; information on the registration and management of means of transport at the request of tax administration agencies.
5. Inspectorates shall supply information on the observance of tax law by inspected taxpayers at the request of tax administration agencies.
6. State management agencies in charge of commerce shall supply information on policies on management of activities of international trading of goods, including export, import, temporary import for re-export, temporary export for re-import,

border-gate transfer, entrusted import and export, goods purchase and sale agency, processing and transit, of Vietnamese and foreign traders.

7. Other state agencies shall supply information at the request of tax administration agencies.

Article 34.- Responsibility of concerned organizations and individuals to supply information

1. Commercial banks and credit institutions shall supply the following information at the request of tax administration agencies:

a/ Dossiers and information on transactions via bank accounts of taxpayers; information on bank guarantee amounts for taxpayers;

b/ Dossiers, documents, numbers of payment accounts, copies of accounting books containing payment account details, copies of international payment, domestic payment and via-bank border trade payment document sets of organizations and individuals;

c/ Other information necessary for information collection and processing, tax examination and inspection by tax administration agencies.

2. Organizations providing services of carrying out tax procedures and independent audit companies shall supply information at the request of tax administration agencies.

3. Organizations and individuals that are business partners or customers of taxpayers shall supply information on taxpayers at the request of tax administration agencies.

4. The Vietnam Chamber of Commerce and Industry shall supply information on the issuance of certificates of origin for Vietnamese goods exported to foreign countries; information on registration and protection of intellectual property rights and technology transfer in Vietnam and foreign countries at the request of tax administration agencies.

5. Other organizations and individuals shall supply information at the request of tax administration agencies.

6. Information supplied or exchanged between tax administration agencies and organizations and individuals must be in written or electronic form. Unless otherwise provided for by law, organizations and individuals shall notify

taxpayers of the supply of information to tax administration agencies.

Article 35.- Disclosure of information on taxpayers

Tax administration agencies may disclose information on tax law violations of taxpayers in the following cases:

1. Taxpayers evade tax, appropriate tax amounts, illegally purchase or sell invoices, lose invoices, commit tax law violations then flee away from their business offices, connive with others in committing tax evasion, fail to pay tax amounts within the set time limit after tax administration agencies apply measures of sanctioning violations or coercing the payment of tax arrears.
2. Taxpayers commit acts of tax law violation affecting the interests and tax obligation of other organizations and individuals.
3. Taxpayers fail to comply with requests of tax administration agencies as defined by law: Refusing to supply information and documents to tax administration agencies; failing to abide by decisions on examination or inspection and satisfy other requests of tax administration agencies as defined by law.
4. Taxpayers oppose or prevent tax officers and customs officers from performing their duty.
5. Other information permitted by law to be disclosed.

Article 36.- Cases of tax inspection

1. Tax administration agencies shall conduct tax inspection in the cases specified in Article 81 of the Law on Tax Administration.
2. A customs office shall conduct tax inspection when it detects any of the following signs of tax law violation of a taxpayer:
 - a/ The taxpayer commits an act of tax law violation repeatedly, in different localities or involving many organizations or individuals, or shows signs of tax evasion;
 - b/ In the course of tax examination at the taxpayer's office, the taxpayer shows signs of dispersing relevant documents and exhibits for the purpose of tax evasion or tax fraud;
 - c/ After conducting tax examination or prolonging the tax examination duration,

the customs office has grounds to believe that the taxpayer shows signs of a new violation or the examined case is complicated or severe.

Article 37.- Inspection plans

1. Heads of tax administration agencies shall approve annual inspection plans for the case specified in Clause 1, Article 81 of the Law on Tax Administration.

2. An inspection plan consists of the following principal contents:

a/ Inspected subject;

b/ Inspection period;

c/ Tax subject to inspection;

d/ Planned inspection duration.

3. Inspection plans of tax administration agencies shall be sent to their superiors. If inspection plans of different tax administration agencies have the same inspected subject, their superior tax administration agency shall conduct inspection of that subject.

4. If a state inspectorate has a tax inspection plan identical to an inspection plan of a tax administration agency, the state inspectorate's tax inspection plan is prioritized.

Article 38.- Tax inspectors

1. When conducting tax inspection, a tax inspection team must have at least one member being a tax inspector.

2. Tax inspectors have the following tasks and powers:

a/ The tasks and powers specified by the inspection law and tax law;

b/ To sanction or request competent agencies or organizations to sanction administrative violations according to law;

c/ To use tax inspector cards in emergency cases to promptly prevent acts of tax law violation without having to obtain decisions of competent authorities, and to report the cases to heads of tax administration agencies immediately after the handling.

3. Tax inspectors must satisfy all criteria required by the tax administration.

The Ministry of Finance shall assume the prime responsibility for, and coordinate with the Ministry of Home Affairs and the Government Inspectorate in, promulgating regulations on criteria of tax inspectors.

4. If applying in the course of tax inspection measures against tax evasion or tax fraud, tax inspectors shall fully comply with the order and procedures specified by inspection law.

Article 39.- Collection and supply of information on acts of tax evasion or tax fraud

1. Heads of tax administration agencies may request organizations and individuals to supply written information on acts of tax evasion or tax fraud:

a/ Written requests for information supply shall be sent directly to organizations and individuals requested to supply information;

b/ The information supply time limit is counted from the date a written request for information supply is sent to a person responsible for supplying information or a third party responsible for delivering that written request to the person responsible for supplying information;

c/ If the information supplier is a representative of the tax-paying organization, information supply documents must bear the signature, full name and title of the information supplier and the seal of the organization. If the information supplier is an individual, information supply documents must bear the signature, full name, serial number of the identity card or other equivalent information on the information supplier.

2. Heads of tax administration agencies may request organizations and individuals that have information on acts of tax evasion or tax fraud to supply that information in verbal form according to the following procedures:

a/ The head of the tax administration agency shall make a written request for information supply, stating the name of the organization or individual responsible for supplying information, information requested to be supplied, accompanying documents, date and venue of meeting between the information supplier and collector;

b/ The tax inspector tasked to collect information shall show his/her tax inspector card when conducting information collection;

c/ The place for information collection is the office of the tax administration agency;

d/ When collecting information, the tax inspector shall make a written record with the following principal contents:

- Starting time and ending time of information collection, questions and answers, supplied documents, audiovisual recording, signatures of the information supplier and the tax inspector conducting information collection;

- The information supplier may read or listen to the written record and write his/her opinions in the written record;

- The information supplier may keep one copy of the written record of information supply.

e/ Persons responsible for supplying information will have their travel and accommodation expenses paid by the tax administration agency according to regulations;

f/ Tax administration agencies shall keep confidential information suppliers, documents and proofs collected from information suppliers.

Article 40.- Temporary seizure of documents and exhibits related to acts of tax evasion or tax fraud

1. Heads of tax administration agencies or tax inspection teams may decide on temporary seizure of documents and exhibits related to acts of tax evasion or tax fraud.

A decision on temporary seizure of documents and exhibits has the following principal contents: Temporarily seized documents and exhibits, person conducting temporary seizure, mode of temporary seizure (seizure with on-spot sealing or takeaway seizure) and seizure duration. Decisions on temporary seizure shall be handed to persons whose documents and exhibits are temporarily seized.

2. Temporary seizure of documents and exhibits related to acts of tax evasion or tax fraud is applied when it is necessary to verify circumstances to serve as a basis for the issuance of decisions on handling or prompt prevention of acts of tax evasion or tax fraud.

3. In the course of tax inspection, if inspected subjects show signs of dispersion or destruction of documents and exhibits related to acts of tax evasion or tax fraud,

tax inspectors on duty may temporarily seize those documents and exhibits.

Within 24 (twenty four) hours after temporarily seizing documents and exhibits, tax inspectors shall report the seizure to heads of tax administration agencies or tax inspection teams for issuance of decisions on temporary seizure.

Within 8 (eight) working hours after receiving reports, competent persons shall consider and issue decisions on temporary seizure of documents and exhibits. If competent persons disagree with the temporary seizure, tax inspectors shall return documents and exhibits within 8 (eight) working hours.

4. When temporarily seizing documents and exhibits related to acts of tax evasion or tax fraud, tax inspectors shall make a written record of temporary seizure. Such a written record must clearly state titles, names, quantity and types of temporarily seized documents and exhibits; signatures of the person conducting temporary seizure and the person managing those documents and exhibits. Persons issuing decisions on temporary seizure shall preserve temporarily seized documents and exhibits and be held responsible before law for the loss, fraudulent exchange or damage of those documents and exhibits.

When documents and exhibits need to be sealed, the sealing must be witnessed by persons who have these documents and exhibits. If those persons are absent, the sealing must be witnessed by representatives of their families or related organizations and representatives of commune-level administrations.

5. Material evidence, including Vietnamese currency, foreign currencies, gold, silver, gems, precious metals and objects under special management, must be preserved according to law; material evidence that is perishable goods and articles must be listed in the written records made by persons issuing decisions on temporary seizure and promptly sold so as to avoid damage; proceeds from the sale of goods and articles must be remitted into a State Treasury custody account in order to ensure full collection of tax and fine amounts.

6. Within 10 (ten) working days from the date of temporary seizure of documents and exhibits, persons issuing decisions on temporary seizure shall dispose of temporarily seized documents and exhibits by measures stated in disposal decisions or, if the measure of confiscation of temporarily seized documents and exhibits is not applied, return them to individuals or organizations. Documents used by taxpayers on a daily basis may be temporarily seized by tax administration agencies for 10 (ten) working days at most. The duration of temporary seizure of documents and exhibits may be prolonged for complicated cases in which verification is required but must not exceed 60 (sixty) days from the date of temporary seizure. The prolongation of the duration of temporary

seizure of documents and exhibits must be decided by competent persons defined in Clause 1 of this Article. For the return of temporarily seized documents and exhibits to their owners, a written record of the handover between the parties must be made.

7. Tax administration agencies shall hand 01 (one) copy of the decision on and the written record of temporary seizure of documents and exhibits, the decision on disposal and the written record of the return of documents and exhibits to organizations or individuals owning these documents and exhibits.

8. If documents and exhibits are lost, fraudulently exchanged, damaged or returned beyond the temporary seizure duration, thus causing damage to their owners, tax administration agencies shall pay compensations for those persons according to law.

Article 41.- Search of hiding places of documents and exhibits related to acts of tax evasion or tax fraud

1. Search of hiding places of documents and exhibits may be conducted when there are grounds to believe that documents and exhibits related to acts of tax evasion or tax fraud are hidden there.

2. Heads of tax administration agencies may decide on search of hiding places of documents and exhibits related to acts of tax evasion or tax fraud. If hiding places of documents and exhibits related to acts of tax evasion or tax fraud are places of residence, written approval of presidents of People's Committees of districts where the search is conducted is required.

A decision on search of a hiding place of documents and exhibits has the following principal contents: place to be searched, composition of the search team, search contents, search duration, and effect of the decision.

3. Search of hiding places of documents and exhibits related to acts of tax evasion or tax fraud must not be conducted at night, on holidays, lunar new year festivals or when owners of searched places proceed with weddings or funerals, except when illegal acts are caught on *flagrant delicto*, and the reasons for the search must be clearly stated in written records.

4. Search of hiding places of documents and exhibits must be conducted in the presence of their owners and witnesses. Search of offices of agencies or organizations must be conducted in the presence of representatives of those agencies or organizations. When owners of searched places or representatives of those agencies or organizations are absent but the search cannot be delayed, the

presence of representatives of administrations of communes where the search is conducted and two witnesses is required.

5. Persons in whose presence a search is conducted are not allowed to leave the searched place or communicate with one another until the search is completed.

6. All cases of search of hiding places of documents and exhibits related to acts of tax evasion or tax fraud must be decided and recorded in writing. Copies of the decision on and written record of the search of a hiding place shall be handed to the owner of the searched place.

7. A written record of the search of a hiding place of documents and exhibits related to an act of tax evasion or tax fraud has the following principal contents:

a/ Reason(s) for the search, serial number of the search decision or name of the head of the tax administration agency approving the search;

b/ Starting time and ending time of the search;

c/ Searcher(s);

d/ Place to be searched;

e/ Owner or manager of the searched place;

f/ Information acquired or objects discovered in the search;

g/ Proposed measure to process information or dispose of objects related to the act of tax evasion or tax fraud.

Article 42.- Right of taxpayers, organizations and individuals to lodge complaints or denunciations

1. Taxpayers, organizations and individuals may lodge complaints with tax administration agencies or competent state agencies about administrative decisions or administrative acts of tax administration agencies or tax officers and asking the review thereof when they have grounds to believe that those decisions or acts are illegal or infringe upon their lawful rights and benefits.

2. Administrative decision means a written decision of a tax administration agency or a competent person in a tax administration agency to be applied once to one or several specific subjects regarding a specific matter in tax administration. Administrative decisions of tax administration agencies include:

- a/ Tax assessment decision; tax payment notice;
- b/ Tax exemption or tax reduction decision;
- c/ Tax refund decision;
- d/ Decision on administratively sanctioning an act of tax law violation;
- e/ Decision on enforcement of a tax administrative decision;
- f/ Other tax administrative decisions as defined by law.

3. Administrative act means an action or inaction in performing tax administration tasks by a tax administration agency, a tax officer or a person assigned to perform tax administration tasks.

4. Citizens may denounce acts of tax law violation of taxpayers, tax administration agencies, tax officers or other organizations and individuals according to law.

Article 43.- Competence of tax administration agencies at all levels to settle complaints and denunciations

1. Directors of district-level Tax Sub-Departments, Customs Sub-Departments or Post-Customs Clearance Inspection Sub-Departments, and heads of anti-smuggling control teams are competent to settle complaints about their administrative decisions or acts and decisions or acts of responsible persons under their direct management.

2. Directors of provincial-level Tax Departments, Customs Departments or Post-Customs Clearance Inspection Departments, and directors of Anti-Smuggling Investigation Departments are competent to:

- a/ Settle complaints about their administrative decisions or acts and decisions or acts of responsible persons under their direct management;

- b/ Settle complaints already settled by directors of district-level Tax Sub-Departments, Customs Sub-Departments or Post-Customs Clearance Inspection Sub-Departments or heads of anti-smuggling control teams but later further lodged with their departments.

3. The General Director of Taxation and the General Director of Customs are competent to:

- a/ Settle complaints about their administrative decisions or acts and decisions or

acts of responsible persons under their direct management;

b/ Settle complaints settled for the first time by directors of provincial-level Tax Departments, Customs Departments or Post-Customs Clearance Inspection Departments, or by the director of the Anti-Smuggling Investigation Department but later further lodged.

4. The Minister of Finance is competent to:

a/ Settle complaints about his/her administrative decisions or acts and decisions or acts of responsible persons under his/her direct management;

b/ Settle complaints already settled for the first time by the General Director of Taxation or the General Director of Customs but later further lodged.

5. Competence to settle denunciations complies with the provisions of law on denunciations.

Article 44.- Time limit and procedures for settling complaints and denunciations

Time limit and procedures for lodging and settling complaints and denunciations comply with the provisions of law on complaints and denunciations.

Article 45.- Responsibilities and powers of tax administration agencies in settling tax-related complaints and denunciations

1. Upon receiving tax-related complaints, tax administration agencies shall consider and settle them within the time limit set by the law on complaints and denunciations.

2. Tax administration agencies that receive tax-related complaints may request complainants to supply dossiers and documents relevant to their complaints. If complainants refuse to supply relevant dossiers and documents, tax administration agencies may refuse to consider and settle their complaints.

3. Tax administration agencies shall refund tax and fine amounts incorrectly collected from taxpayers or third parties and interests thereon at the interest rate specified in Clause 2, Article 23 of this Decree within 15 (fifteen) days from the date of issuance of decisions on settlement of complaints or denunciations or the date of receipt of handling decisions of competent agencies.

4. If payable tax amounts determined in decisions on settlement of complaints are higher than those determined in complained administrative decisions, taxpayers shall fully pay outstanding tax amounts within 10 (ten) days from the date of

receipt of complaint settlement decisions.

Article 46.- Institution of lawsuits

Lawsuits against administrative decisions of tax administration agencies or administrative acts of tax officers shall be instituted in accordance with the law on complaints and denunciations and the law on procedures for handling administrative cases.

Chapter III

IMPLEMENTATION PROVISIONS

Article 47.- Implementation effect

1. This Decree takes effect on July 1, 2007.
2. In the period from the effective date of this Decree to the end of December 31, 2008, principal experts and principal controllers of tax administration agencies may conduct tax inspection.

Article 48.- Organization of implementation

1. The Ministry of Finance shall guide the implementation of this Decree.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and presidents of provincial/municipal People's Committees shall implement this Decree.