

CIRCULAR No. 03/2002/TT-BTC OF JANUARY 14, 2002 GUIDING THE TAX COLLECTION MANAGEMENT REGIME APPLICABLE TO AQUATIC RESOURCE-EXPLOITING ESTABLISHMENTS

Pursuant to May 10, 1997 Law No. 02/1997/QH9 on Value -Added Tax and documents guiding the implementation thereof;

Pursuant to May 10, 1997 Law No. 03/1997/QH9 on Enterprise Income Tax and documents guiding the implementation thereof;

Pursuant to the Ordinance on Natural Resource Tax promulgated on April 16, 1998 and documents guiding the implementation thereof;

In order to suit the characteristics of the aquatic and marine resource exploiting activities, after obtaining the opinion of the Ministry of Aquatic Resources, the Ministry of Finance hereby guides the tax collection management regime applicable to natural aquatic and marine resource-exploiting establishments as follows:

I. SCOPE OF APPLICATION

1. Domestic and foreign organizations and individuals (hereinafter called collectively as establishments) engaged in catching natural aquatic and marine resources (hereinafter called collectively as aquatic resources), that are liable to pay VAT, enterprise income tax, natural resource tax and other amounts (if any) under the provisions of the current tax laws and ordinances, are subjects of application of the tax collection management regime guided in this Circular.

2. This Circular shall not cover the following cases:

a/ Exploiting cultured aquatic resources.

b/ Producing, processing, dealing in, exporting and importing aquatic resources.

c/ Other production and business activities and services, including services directly catering for activities of exploiting natural aquatic resources.

II. METHODS OF DETERMINING THE TAX AMOUNTS PAYABLE BY EACH AQUATIC RESOURCE-EXPLOITING ESTABLISHMENT

1. According to the provisions of the current tax laws and ordinances, the aquatic resource exploitation is subject to the policies on license tax, natural resource tax, VAT and enterprise income tax and other payable amounts (if any) as prescribed below:

a/ License tax shall be paid in a lump sum right at the beginning of the year at the rate prescribed on the basis of the operation scope of each exploiting establishment;

b/ Natural resource tax, VAT, enterprise income tax and other payable amounts (if any) shall be paid on the basis of the amounts actually arising in each prescribed period, concretely:

- For aquatic resource-exploiting establishments which have fully and strictly complied with the regimes of accounting, invoices and vouchers, and managed to determine the accurate output, turnover from and expenses for exploiting activities, they shall calculate and pay natural resource tax, VAT, enterprise income tax and other amounts (if any) on the basis of the actually-arising amounts reflected on the accounting books and documents in accordance with the provisions of the current tax laws and ordinances as well as guiding documents.

- For aquatic resource-exploiting establishments which have not yet fully and strictly complied with the regimes of accounting, invoices and vouchers, they shall have to pay natural resource tax, VAT, enterprise income tax and other amounts (if any) at the rates fixed by the tax offices.

2. Method of determining fixed tax rates:

In order to determine the fixed rates of natural resource tax, VAT, enterprise income tax payable by each aquatic resource-exploiting establishment, the tax office must:

2.1. Determine the tax calculation turnover fixed for each aquatic resource-exploiting establishment:

Fixed tax calculation turnover = Fixed output of exploited aquatic resources (kg) x tax calculation price (VND/kg)

a/ In order to determine the fixed output of

exploited aquatic resources (called collectively as fixed outputs), the tax offices should actively coordinate with the aquatic resource offices and grassroots local administrations in performing the following tasks:

- Organizing the survey of each establishment's actual exploitation capability in the three preceding years as well as in the tax calculation year, in terms of the number and capacities (CV) of the means and fishing gear of each exploiting activity, the actual exploitation productivity, the number of laborers engaged in exploitation, inshore and offshore fishing grounds, fishing seasons... so as to project the exploitation outputs in the tax calculation period for each type of means and each exploiting establishment.

- Organizing meetings with fishermen to guide and explain to them the State's tax policy and notify them of the projected exploitation outputs in the period for their comments and suggestion of suitable exploitation outputs, ensuring democracy and fairness. The meetings with establishments must be recorded in minutes which are signed with the full names of the representatives of the tax offices, the aquatic resource offices, the local administrations, and the exploitation establishments.

- Basing themselves on the results of the meetings with fishermen and further reference to the fixed exploitation outputs (if any) of the fishing grounds in the neighborly provinces, the provincial/municipal Tax Departments shall reach agreement with the provincial/municipal Aquatic Resource Services before submitting to the provincial/municipal People's Committees for approval, decision and publicization the fixed exploitation outputs which shall be kept stable for a period of between three and five years so that the establishments can feel at ease in their exploitation (except for cases where establishments increase or reduce by 30% or more the fixed levels, thereby necessitating the re-consideration of such fixed outputs).

b/ The tax calculation prices are the average actual selling prices of each kind of exploited aquatic resource on the local market in the tax calculation period.

In order to ensure the tax calculation prices be close to the market ones, the provincial/municipal Tax Departments must regularly coordinate with the concerned local agencies (the Finance and Pricing

Services, the Aquatic Services, etc.) in investigating the market prices and proposing appropriate tax calculation prices, then submit them to the provincial/municipal People's Committees for setting the tax calculation prices of locally-exploited aquatic resources and publicizing them for implementation by fishermen.

For those provinces and/or cities sharing the common fishing grounds, before submitting the tax calculation prices to the provincial People's Committees for decision, the provincial/municipal Tax Departments should consult with one another so as to reach agreement on the tax calculation prices, ensuring fair contribution on the one hand, and avoiding budget revenue losses on the other. Where the market prices of aquatic resources fluctuate (increase or decrease) by 20% or over, they must submit to the provincial People's Committees for decision suitable adjustments.

2.2. Determining the proportion (%) of the payable tax to turnover (called collectively as the % proportion of payable tax) applicable to each aquatic resource-exploiting establishment:

In order to simplify the tax calculation and payment procedures for aquatic resource-exploiting establishments and have basis for accounting revenues of the State budget according to its classification index, it is required to determine the proportion (%) of the total payable tax amount (including natural resource tax, VAT and enterprise income tax) as well as the % proportion of each kind of payable tax to turnover according to the following formula:

$$\frac{\text{The proportion (\%) of the payable tax amount}}{\text{The payable tax amount}} = \frac{\text{The payable tax amount}}{\text{Turnover}}$$

a/ The payable amount of each kind of tax shall be determined as follows:

- Natural resource tax = the fixed output of exploited aquatic resources x the tax calculation price set by the provincial People's Committee x the tax rate.

- VAT = the added value (according to the % proportion of added value to turnover set by the provincial/municipal Tax Department for application to each business line and the fixed tax calculation turnover) x the VAT rate prescribed for the exploited

aquatic goods.

- Enterprise income tax = the taxable income (according to the % proportion of taxable income to turnover, prescribed by the provincial/municipal Tax Department for application to each business line and the fixed tax calculation turnover) x the enterprise income tax rate.

b/ Turnover serving as basis for determining the proportion of the payable tax is the tax calculation turnover fixed at the time of determination of the proportion under the guidance at Point 2.1 of this Section.

On the basis of the % proportion of the payable tax as determined above, the provincial/municipal Tax Departments shall notify the establishments of tax declaration and payment. To help the exploiting establishments take initiative in developing their production and business and fulfil their obligation to pay taxes to the State, the proportions of the payable taxes notified to the exploiting establishments may be kept unchanged for three to five years; except for cases where the tax policies and exploitation conditions see big changes, they may be adjusted suitably.

2.3. Determining the total payable tax amount (including natural resource tax, VAT and enterprise income tax) set for each exploiting establishment by each tax, year and each period of the tax calculation year. Specifically:

- The tax amount payable for the whole year = the % proportion of the payable tax (notified by the provincial/municipal Tax Department) x the tax calculation turnover of the tax calculation year (according to the fixed exploitation output and the tax calculation price set by the provincial People's Committee at the time of tax calculation).

- The tax amount payable for each period of the year is determined on the basis of the tax amount payable for the whole year divided by the time of actual aquatic resource exploitation in such year. For example: In province A the aquatic resource-exploitation season in a year lasts for nine months, the tax amount payable for each month shall be equal to (=) the total tax amount payable for the whole year divided by nine months.

2.4. On the basis of the above-said norms, annually the tax offices directly managing the

exploiting establishments shall send notices to these establishments and also to the State treasuries which directly collect the taxes, on the proportion of the total payable tax amount (with the specific proportions of each kind of tax), the tax calculation turnover, the tax amounts payable for the whole year and for each period, the tax payment periods, the payment deadlines for each period, and the places for tax payment into the State budget. Where there appear in the year changes, resulting in the adjustment of one of the notified norms, the timely notices thereon must be issued.

III. TAX REGISTRATION, DECLARATION AND PAYMENT

1. According to the current tax laws and ordinances, the aquatic resource-exploiting establishments must register, declare and pay taxes into the State budget as follows:

a/ All aquatic resource -exploiting establishments must register the taxes (license tax, natural resource tax, VAT, enterprise income tax and other payable amounts, if any) with the tax offices which directly manage them in the localities where they are headquartered or in the places where the heads of the aquatic resource-exploiting households register their permanent residence, the exploitation business lines, the number of ships and the capacity of each ship engaged in the exploiting activities, the fishing gear capacity, the number of laborers engaged in exploiting activities, the expected fishing grounds, and the projected annual output of exploited aquatic resources, etc.

Besides, for exploiting establishments which move to other fishing grounds, apart from the fishing grounds in the localities where their head offices are based or their permanent residence is registered, they must also make tax registration with the tax offices in the localities where they move to within 10 days counted from the time they start exploiting in the new fishing grounds.

b/ Tax declaration and payment in the localities shall comply with the following regulations:

- Natural resource tax shall be paid in the localities where the aquatic resources are actually exploited.

- License tax, VAT, enterprise income tax and other payable amounts (if any) shall be paid in the localities

where the exploiting establishments are headquartered or the heads of the aquatic resource-exploiting households register their permanent residence.

2. On the basis of the tax payment notices sent in by the tax offices, the aquatic resource-exploiting establishments shall pay money into the State treasuries according to the deadlines and addresses indicated therein.

If in a locality the State treasury has no convenient tax-collection place for the exploiting establishments to pay money directly, the tax office therein shall collect taxes or may authorize the commune People's Committees to directly collect the taxes for remittance into the State budget. When collecting the taxes from each exploiting establishment, the collector must issue tax collection receipts to the establishment; such a receipt must be inscribed with the total tax amount already paid and the specific amounts of natural resource tax, VAT and enterprise income tax in compliance with the State budget classification index. The tax offices or the commune People's Committees that directly collect taxes must remit the collected tax amounts into the State budget in time according to current regulations, must not retain the tax money for illegal spending.

Where the tax offices authorize the commune People's Committees to directly collect taxes, before authorizing, the tax offices must determine the payable tax amounts and make tax books for each exploiting establishment. In the course of implementation, the tax offices must guide and supervise the authorized tax collection; if there appear any tax-related changes (policy changes, tax exemption or reduction, etc.) they must modify in time the tax books accordingly and notify the commune People's Committees authorized to collect taxes thereof for implementation.

3. For exploiting establishments moving to other fishing grounds (other than those in the localities where they make tax registration), while moving to other fishing grounds, they may temporarily postpone the natural resource tax payment in the localities where they make tax registration, but shall register and declare tax payment with the tax offices in the localities where they move in. Concretely:

a/ For exploiting establishments paying fixed tax amounts by fishing seasons, if they have exploited

aquatic resources for the whole season, they must pay (without postponement) the whole tax amounts in the localities where they have made tax registration before moving to other fishing grounds; after moving to the new fishing grounds, they shall have to register, declare and pay natural resource tax in the localities where they move in.

b/ For exploiting establishments paying fixed tax amounts by year, which are evenly divided by month or quarter, before moving, they must pay all tax debts to the budget toward the moving date and may temporarily postpone the payment of payable natural resource tax amounts already recorded in the tax books during the time of moving to new fishing grounds, but shall register, declare and pay taxes in the localities where they move in.

The exploiting establishments' temporary postponement of natural resource tax payment during the time of moving to new fishing grounds shall be decided by the tax offices that directly manage the exploiting establishments (where the establishments have made tax registration) on the basis of the written requests for temporary postponement of tax payment due to their moving to new fishing grounds, which are sent in by the exploiting establishments. Such requests need to clearly state the time of moving to new fishing grounds, the payable tax amounts, the already-paid tax amounts, the remaining tax amounts to be paid before moving and the natural resource tax amount for postponed payment. The commune or ward tax teams (or sections) which directly manage the tax payment by the exploiting establishments and receive such written requests shall have to examine them, compare with the tax books so as to determine whether or not the establishments have any tax debts, ask the establishments to pay in full such tax debts, if any; make a list thereof and send it to the leading officials of the district Tax Sub-Departments (or of the provincial/municipal Tax Departments, for tax sections attached to the Tax Departments) for approval, then send written notices on the temporary postponement of natural resource tax payment to the establishments for use as basis for deduction into the exploiting establishments' tax amounts payable during the time they move to new fishing grounds. Within 15 days as from the date on which the temporary postponement decisions are issued, the district Tax Sub-Departments must report to the provincial/municipal Tax Departments on the natural

resource tax amounts of which the exploiting establishments may temporarily postpone the payment due to their moving to new fishing grounds.

Within 30 days after the end of the duration of moving to new fishing grounds, the exploiting establishments must present to the commune or ward tax teams (or sections) where they have made tax registration the receipts (original) of natural resource tax payment in the localities where they exploit natural resources, compatible with the actual duration of moving to new fishing grounds (according to the establishments' written requests).

On the basis of the tax payment receipts of the establishments, after comparing them with the dossiers and tax payment postponement decisions, the commune or ward tax teams (or sections) shall certify the reduced tax amounts of the exploiting establishments and send the dossiers to the Tax Sub-Departments (or Tax Departments) for examination and approval of the reduced amounts of the taxes payable in the places of tax registration and notify the establishments thereof within 15 days after receiving the complete dossiers from the commune or ward tax teams (or sections). The natural resource tax amounts to be reduced in the tax registration places are the tax amounts actually paid by the establishments as inscribed in the tax payment receipts issued in the exploitation places, which, however, must be no more than the natural resource tax amounts payable at the rate calculated on turnover already recorded into the tax books in the tax registration places.

IV. TAX EXEMPTION AND REDUCTION

The tax exemption and reduction for aquatic resource-exploiting establishments shall comply with Article 10 of the Ordinance on Natural Resource Tax; Article 28 and Clause 26, Article 4 of the Value Added Tax Law; Articles 17, 18, 19, 20 and 21 of the Enterprise Income Tax Law; Articles 20, 21, 22, 23, 24, 25 and 26 of Domestic Investment Promotion Law (amended) No. 3/1998/QH10 of May 20, 1998.

To ensure the correct implementation of the preferential policies towards aquatic resource-exploiting establishments, the tax offices which directly manage these establishments shall have the responsibility to:

1. Publicly notify the aquatic resource-exploiting establishments of the law provisions on tax-free subjects as well as subjects eligible for tax exemption and/or reduction.

2. Guide the exploiting establishments to complete the dossiers and procedures of application for tax exemption and/or reduction according to the provisions of the current tax legislation.

For establishments actually engaged in off-shore fishing and eligible for preferences under the provisions of the Ordinance on Natural Resource Tax, the Enterprise Income Tax Law and the Domestic Investment Promotion Law (including establishments which have or have not implemented the cost-accounting accountancy regime as prescribed), apart from the dossiers and procedures as currently prescribed, they must add the following:

- Business registration certificate issued by a competent State body to the establishment, clearly stating that fishing activities are conducted in off-shore sea areas.

- Ship registry certificate, clearly stating the criteria: ship's tonnage and capacity, fishing methods (hooking, trawl, seine, dredge, etc.).

- The offshore fishing ships must have the main engine (hydraulic engine or other substitute engine fit to the ship) of a capacity of 90 CV or higher and the minimum tonnage as below:

Ordinal number	Fishing method	Ship tonnage (in tons)
1	Hooking	15
2	Trawl, seine	20
3	Dredge	40

3. The consideration of the tax exemption and reduction for each exploiting establishment must be made on an annual basis.

Where in a year or in a period the exploitation outputs and tax-to-turnover proportions (%) are kept stable as mentioned above (including cases where the tax dossiers have been compiled), but if deeming that the establishments are eligible for tax exemption and/or reduction according to the provisions of the tax laws and the Domestic Investment Promotion Law (or not subject to VAT as prescribed in Clause 26,

Article 4 of the VAT Law) and due to the occurrence of natural disasters, typhoons, floods, unexpected accidents, material losses (ships, fishing gear...), they were forced to stop fishing or reduce the fishing outputs, the product consumption met with difficulties, the prices fell, thus affecting turnover and incomes of fishermen, the tax offices must consider in time and refrain from collecting taxes or issue decisions on tax reduction or exemption on a case-by-case basis according to regulations.

4. The competence to consider and decide tax exemption and reduction (for natural resource tax, VAT and enterprise income tax) shall be as follows:

- The directors of the provincial/municipal Tax Departments shall consider and decide on tax exemption and reduction for exploiting establishments under their management.

- The directors of the Tax Sub-Departments shall consider and decide on tax exemption and reduction for exploiting establishments under their management.

V. ORGANIZATION OF IMPLEMENTATION

1. Aquatic resource-exploiting organizations and individuals must comply with the tax laws and ordinances as guided and specified in this Circular. All breaches of the tax policies shall be penalized according to the provisions of the current tax legislation.

2. In order to organize the strict management of tax collection with regard to the aquatic resource-exploiting establishments, the tax offices ought to closely coordinate with the aquatic resource offices and make use of the leadership of the People's Committees at all levels so as to ensure the concentrated and unified direction, urging the aquatic resource-exploiting establishments to comply with laws and guidance in this Circular. In case of necessity, in complicated localities situated far away from the tax offices, other agencies may be authorized to collect taxes on aquatic resource-exploiting activities under decisions of the provincial/municipal Tax Department directors, which, before remitting the taxes into the State budget, may enjoy a remuneration equal to 5% (five per cent) of the actually-collected tax amounts to cover expenses for

the collection of taxes on aquatic resource-exploiting activities.

3. This Circular takes implementation effect as from February 1, 2002; all previous provisions contrary to this Circular are hereby annulled.

For the Minister of Finance
Vice Minister
VU VAN NINH