CIRCULAR
PROVIDING GUIDELINES FOR IMPLEMENTATION OF
DECREE 149-2003-ND-CP OF THE GOVERNMENT DATED 4 DECEMBER 2003 MAKING DETAILED PROVISIONS FOR IMPLEMENTATION OF THE LAW ON SPECIAL SALES TAX (AMENDED)

Pursuant to the Law on Special Sales Tax 05-1998-QH10 dated 20 May 1998;

Pursuant to the Law on Amendments and Additions to the Law on Special Sales Tax 08-2003-QH11 dated 17 June 2003;

Pursuant to Decree 149-2003-ND-CP of the Government dated 4 December 2003 making detailed provisions for implementation of the Law on Special Sales Tax and the Law on Amendments and Additions to the Law on Special Sales Tax;

Pursuant to Decree 77-2003-ND-CP of the Government dated 1 July 2003 on the functions, duties, powers and organizational structure of the Ministry of Finance;

The Ministry of Finance hereby provides the following guidelines:

A. SCOPE OF APPLICATION OF SPECIAL SALES TAX (SST)

I. Taxable Subjects and Payers of SST

1. Taxable subjects:

   Taxable subjects as provided for in article 1 of Decree 149-2003-ND-CP of the Government dated 4 December 2003 shall be the following goods and services, except for the goods not subject to SST stipulated in Section II of Part A of this Circular:

   1.1 Goods:

      (a) Cigarettes, cigars;

      (b) Spirits;

      (c) Beer;

      (d) Automobiles of less than twenty four (24) seats;

      (dd) Assorted types of petrol, naphtha, reformate components, and other components to be mixed in petrol;

      (e) Air conditioners with capacity of 90,000 BTU or less;

      (g) Playing cards;

      (h) Votive paper.

   1.2. Services:

      (a) Operating dancehalls, massage lounges, karaoke parlours;

      (b) Operating casinos, offering jackpot games;
(c) Operating betting entertainments;

(d) Golf: selling memberships and tickets for playing golf;

(dd) Operating lotteries.

2. Payers of SST:

Payers of SST as provided for in article 2 of Decree 149-2003-ND-CP of the Government dated 4 December 2003 shall be organizations and individuals (hereinafter referred to as establishments) producing or importing goods and providing services subject to SST.

- Organizations producing or importing goods and providing services shall include the following:
  
  + Business organizations established and registered for business pursuant to the Law on Enterprises, the Law on State Owned Enterprises, and the Law on Co-Operatives;
  
  + Economic organizations of political organizations, socio-political organizations, social organizations, socio-professional organizations, units of the people's armed forces, administrative organizations and other organizations;
  
  + Enterprises with foreign owned capital and foreign parties to business cooperation contracts in accordance with the Law on Foreign Investment in Vietnam; and foreign companies and foreign organizations carrying out business activities in Vietnam which are not under the Law on Foreign Investment in Vietnam;
  
- Individuals, family households, independent groups of business people and other business entities engaged in production, business or importation activities.

II. Goods which are not subject to SST

1. Goods directly exported by production or processing establishments to foreign countries, including goods sold or processed for export processing enterprises.

Establishments which have goods not subject to SST as stipulated in this clause must have a file of documents proving the actual export of goods, specifically as follows:

- Contract for sale of goods or processing contract for a foreign party;

- Sale invoices in respect of exported goods, or payment invoices and receipts in respect of processed goods;

- Declaration of exported goods certified by the customs office;

- Vouchers proving payment via a bank.

In the case of an establishment producing goods subject to SST, if the establishment temporarily exports those goods for re-import in accordance with a licence for temporary export for re-export within the period during which payment of import or export duties is not yet required in accordance with applicable regulations, it shall not be required to pay SST upon re-import. Upon sale of those goods, the production establishment must pay SST.

2. Goods sold by a production establishment or exported by an export trading establishment in accordance with the authorization of a production establishment under an economic contract.
Production establishments which have goods not subject to SST as stipulated in this clause must have a file of documents proving the actual export of goods, specifically as follows:

- Contract for export authorization or contract for sale of goods for export between the production establishment and the export trading establishment;

- Sale invoices or orders for delivery of goods for export in accordance with authorization;

- Minutes of liquidation [discharge] of the whole or part of the contract for sale of goods for export, or minutes of liquidation of the contract authorizing export containing the following particulars:
  
  Name, type and quantity of goods; selling price of goods actually exported; form of payment; sum paid, and number and date of payment voucher via a bank to the export establishment by the foreign purchaser; sum paid, and number and date of payment voucher via a bank to the exporting establishment or to the establishment authorized to export by the production establishment; number and date of export contract and the customs declaration for the exported goods.

In the case of goods purchased or received for export but which are not actually exported but in fact sold domestically, the export establishment must declare and pay SST on such goods when they are sold to a domestic establishment.

3. Goods taken overseas for sale at an overseas fair or exhibition.

Establishments which take goods overseas for sale at a fair or exhibition in a foreign country must conduct the following procedures:

- Have an invitation from, or a certificate registering participation at the overseas fair or exhibition;

- Declaration of actual export of goods certified by the customs office;

- List of goods sold at the fair or exhibition;

- Payment voucher for goods sold at the fair or exhibition, and if payment was received in cash then this must be declared to customs with a voucher proving payment into a bank account in accordance with current regulations.

4. Goods imported in the following cases:

- Humanitarian aid or non-refundable aid;

- Gifts given by foreign organizations or individuals to State bodies, political organizations, socio-political organizations, social organizations, socio-professional organizations and units of the people's armed forces. Gifts shall be determined on the basis of the levels provided for by the Government or the Ministry of Finance;

- Personal belongings of foreign organizations and individuals enjoying diplomatic immunity status provided for by the Government of Vietnam in compliance with international treaties to which Vietnam is a signatory or participant;

- Goods carried within the stipulated quantity of duty-free baggage of Vietnamese persons and foreigners upon exit from or entry into Vietnam through bordergates.

5. Goods in transit between bordergates, goods in transit between countries, or goods transported on roads which cross the borders of Vietnam in the following forms:

- Goods transported directly from an exporting country to an importing country without arriving at a bordergate of Vietnam;
- Goods transported from an exporting country to an importing country via a bordergate of Vietnam without procedures for import into Vietnam and procedures for export from Vietnam being carried out;

- Goods transported from an exporting country to an importing country via a bordergate of Vietnam and deposited in a customs bond warehouse without procedures for import into Vietnam and procedures for export from Vietnam being carried out;

- Goods in transit or goods transported on roads which cross bordergates or borders of Vietnam on the basis of a treaty signed between two governments or branches or local authorities as permitted by the Prime Minister of the Government.

6. Goods temporarily imported for re-export; if such goods are actually re-exported within the period during which payment of import or export duties is not yet required in accordance with applicable regulations, the goods which are actually re-exported shall not be subject to SST.

7. Goods temporarily imported for participation in trade fairs and exhibitions provided that such goods are actually re-exported within the period during which payment of import or export duties is not yet required in accordance with applicable regulations.

If, upon expiry of the duration of the fair or exhibition, organizations and individuals fail to re-export the temporarily imported goods, they must declare and pay SST. Any organization or individual failing to make the declaration shall, where the breach is identified or discovered, be subject to penalties, in addition to payment of SST, in accordance with law.

8. Goods imported from a foreign country into an export processing zone or an export processing enterprise.

Procedures, documents, orders and powers to deal with exemption from SST in the cases provided for in clauses 4, 5, 6, 7 and 8 above shall be the same as the procedures, documents, orders and powers to deal with exemption from import duties in such cases as stipulated in the Law on Export and Import Duties.

9. Goods imported for sale in duty-free shops located in sea ports and airports or for sale to customers who are entitled to purchase duty-free goods in accordance with regulations of the Government.

Management of goods, consideration of exemption from tax, and finalization of SST in this case shall be carried out as in the case of consideration of exemption from import duties.

In the case of imported goods which are not subject to SST as stipulated in clauses 4, 5, 6, 7 and 8 referred to above, upon any change in the use purpose compared to the use purpose at the time of importation, within three days from the date on which the use purpose is changed the owner of the imported goods shall make a customs declaration with the office at which the procedures for import of the consignment were completed in order to enable collection of SST. Collection of SST in this case shall be carried out as in the case of collection of import duties.
B. BASIS FOR CALCULATION OF SST AND SST RATES

The basis for calculation of SST shall be the taxable price of goods and services subject to SST and the SST rate.

\[
\text{SST payable} = \text{SST taxable price} \times \text{SST rate}
\]

I. Price used as basis for calculation of SST

The price of goods and services used as the basis for calculation of SST shall be determined as follows:

1. In the case of domestically produced goods: The price used as the basis for calculation of SST shall be the sale price of production establishments excluding SST and excluding value added tax (VAT), which shall be determined as follows:

\[
\text{Price used to calculate SST} = \frac{\text{Sale price excluding VAT}}{1 + \text{tax rate}}
\]

The sale price excluding VAT shall be determined in accordance with the Law on Value Added Tax.

Where a production establishment sells goods subject to SST through branches, shops and subsidiary establishments, the sale price used as the basis for calculation of SST shall be the sale price excluding VAT by the branches, shops and subsidiary establishments. Where the production establishment sells goods through agents at the price provided for by the establishment on a commission basis, the price used as the basis for calculation of SST shall be the sale price excluding VAT fixed by the production establishment without deducting the commission.

In the case of bottled spirits, bottled beer and canned beer sold at a price which includes the empty bottle or can, the price used as the basis for calculation of SST shall be determined as follows:

\[
\text{Price used to calculate SST} = \frac{\text{Sale price excluding VAT less cost of empty bottle or can}}{1 + \text{tax rate}}
\]

In which:

+ The cost of the empty bottle is its purchase price excluding VAT or the manufacturing prime cost if the establishment manufactures its own bottles; and
+ The cost of the empty can shall be fixed at 3,800 dong/litre beer can.

Example 1:

In the case of bottled beer sold with the empty bottle (the empty bottle is not returned): Where the selling price of 1 litre of 330 ml Saigon bottled beer excluding VAT is 20,000 dong, the value of an empty bottle for 1 litre of beer at the price the establishment buys it excluding VAT is 4,000 dong, and the SST rate for a bottle of beer is 75%, then

\[
\text{SST taxable price of 1 litre of beer} = \frac{20,000\text{d} - 4,000\text{d}}{1 + 75\%} = \frac{16,000\text{d}}{1.75} = 9,143\text{d}
\]

Example 2:

In the case of canned beer: Where the selling price of 1 litre of Saigon canned beer excluding VAT is 16,000 dong, with the value of an empty can for 1 litre of beer to be deducted at 3,800 dong, and the SST rate for a can of beer is 75%, then

\[
\text{SST taxable price of 1 litre of canned beer} = \frac{16,000\text{d} - 3,800\text{d}}{1 + 75\%} = \frac{12,200\text{d}}{1.75} = 6,971\text{d}
\]

1 Phillips Fox Note: This is the literal translation.
In the case of bottled beer sold on the basis of return of the empty bottle, the price used as the basis for calculation of SST shall be the sale price excluding VAT.

Example 3:

In the case of bottled beer sold on the basis of return and exchange of the empty bottle, if the selling price of 1 crate of Hanoi bottled beer excluding VAT is 120,000 dong, then

\[
\text{SST taxable price of 1 crate of beer} = \frac{120,000 \text{d}}{1 + 75\%}
\]

Example 4:

In the case of draught beer, if the selling price excluding VAT of the manufacturing establishment is 3,000 per litre of draught beer, and the SST rate for draught beer is 30%, then

\[
\text{SST taxable price of 1 litre of draught beer} = \frac{3,000 \text{d}}{1 + 30\%}
\]

Where a commercial establishment sells goods subject to SST, the sale price used as the basis for calculation of SST shall be the sale price excluding VAT of the production establishment, but it shall not be more than 10% less than the normal price at which the commercial establishment sells such goods.

If the sale price of the production establishment is more than 10% less than the [normal] price at which the commercial establishment sells such goods, then the tax office shall fix the sale price to be used as the basis for calculation of SST pursuant to clause 8(dd) of Part D of this Circular.

2. In the case of imported goods: The price used as the basis for calculation of SST of imported goods subject to SST shall be determined as follows:

\[
\text{Price used to calculate SST} = \text{Price used to calculate import duties} + \text{Import duties}
\]

The price used to calculate import duties shall be determined in accordance with the Law on Export and Import Duties. Where imported goods are entitled to exemption from or reduction of import duties, the import duties used as a component in the price used to calculate SST shall be the remaining amount of import duties payable.

3. In the case of processed goods, the price used as the basis for calculation of SST shall be the sale price excluding SST quoted by the supplier for processed goods.

4. In the case of goods sold by instalment payments, the price used as the basis for calculation of SST shall be the lump sum sale price of such goods, excluding SST, excluding VAT and excluding interest on instalments.

5. Taxable price in the case of services subject to SST shall be the price at which the establishment provides such services excluding SST and excluding VAT, which shall be calculated as follows:

\[
\text{SST taxable price} = \frac{\text{Price for provision of services excluding VAT}}{1 + \text{tax rate}}
\]

For example:

Revenue excluding VAT of an establishment from operating dancehalls in a period is 30,000,000 dong.

\[
\text{SST taxable price} = \frac{30,000,000 \text{d}}{1 + 30\%} = 23,076.923 \text{d}
\]
The price for provision of the following services excluding VAT to be used as the basis for calculating SST taxable prices shall be:

- In the case of operating dancehalls, the price excluding VAT of such business services.

- In the case of operating massage lounges, turnover from providing massages excluding VAT and including providing baths and saunas.

- In the case of golf, revenue actually earned excluding VAT from the sale of memberships cards or tickets for playing golf including fees for playing golf paid by members and security deposits (if any). Where such security deposits are repaid to the people delivering the security deposits, the amount of tax already paid shall be refunded to the establishment by way of credit against the amount to be paid for the following period. If the credit of tax is not made, such amount of tax shall be refunded as stipulated in the regulations. Where a golf establishment engages in business of other goods and services which are not included in the list of goods and services subject to SST, such goods and services shall not be subject to SST.

For example: If a golf business establishment provides hotel or restaurant services, sells goods or offers games, then these goods or services shall not be subject to SST.

- In the case of operating casinos and offering jackpot games, the revenue earned from these activities excluding VAT upon deduction of the amount of money paid to players (excluding VAT), being equal to amounts received from the conversion of money into chips for players prior to playing games at the cash desk, gaming tables or gaming machines minus (-) amounts paid to players upon conversion of chips into money.

- In the case of operating betting entertainments, the revenue earned from the sale of tickets upon deduction of the amount of money awarded as prizes to customers (excluding VAT), excluding revenue earned from sale of tickets to watch games.

- In the case of operating lotteries, the price of the lottery ticket excluding VAT.

- In the case of goods and services subject to SST used for the purposes of promotion, exchange or internal consumption or as gifts or presents, the price used to calculate SST shall be the price used to calculate SST of goods and services of the same or similar kind at the time when such activities arise.

The price used as the basis for calculation of SST in the case of locally produced goods and services subject to SST shall include additional charges (if any) earned by establishments which are not included in the sale price of such goods and services.

If a taxpayer earns revenue in foreign currency from the sale of goods or from the provision of services, such foreign currency shall be converted into Vietnamese dong at the average interbank foreign exchange rate announced by the State Bank of Vietnam at the time the revenue arises in order to determine the price for calculating SST.
II. SST Rates

Pursuant to article 6 of Decree 149-2003-ND-CP of the Government, SST rates shall be applied as follows:

SPECIAL SALES TAX TARIFF

<table>
<thead>
<tr>
<th>No.</th>
<th>Goods</th>
<th>Tax rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td><strong>Goods:</strong></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Cigarettes and cigars:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Filtered cigarettes produced mainly from imported raw materials,</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>cigars</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Filtered cigarettes produced mainly from domestic raw materials</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>(c) Cigarettes without filters</td>
<td>25</td>
</tr>
<tr>
<td>2.</td>
<td>Spirits:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Spirits of 40° or more</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>(b) Spirits from 20° to under 40°</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>(c) Spirits of under 20°, including wines brewed from fruit</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>(d) Medicinal spirits</td>
<td>15</td>
</tr>
<tr>
<td>3.</td>
<td>Beer:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Bottled beer, canned beer, barrel beer</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>(b) Draught beer</td>
<td>30</td>
</tr>
<tr>
<td>4.</td>
<td>Automobiles:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Automobiles of 5 seats or less</td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>- Automobiles of 6 to 15 seats</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>- Automobiles of 16 to under 24 seats</td>
<td>25</td>
</tr>
<tr>
<td>5.</td>
<td>Assorted petroils, napthta, reformate component and other components</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>to be mixed in petrol</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Airconditioners with the capacity of 90,000 BTU or less</td>
<td>15</td>
</tr>
<tr>
<td>7.</td>
<td>Playing cards</td>
<td>40</td>
</tr>
<tr>
<td>8.</td>
<td>Votive paper</td>
<td>70</td>
</tr>
<tr>
<td>II.</td>
<td><strong>Services:</strong></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Operating discotheques, massage lounges, karaoke parlours</td>
<td>30</td>
</tr>
<tr>
<td>2.</td>
<td>Operating casinos, offering jackpot games</td>
<td>25</td>
</tr>
<tr>
<td>3.</td>
<td>Operating betting entertainments</td>
<td>25</td>
</tr>
<tr>
<td>4.</td>
<td>Golf: selling memberships and tickets for playing golf</td>
<td>10</td>
</tr>
<tr>
<td>5.</td>
<td>Lotteries businesses</td>
<td>15</td>
</tr>
</tbody>
</table>

SST rates shall be applied irrespective of whether goods are imported goods or domestically produced goods.

Application of SST rates for some of the items on the above Tariff List shall be provided for in detail as follows:

1. Filtered cigarettes produced mainly from imported raw materials subject to the tax rate of sixty five (65) per cent shall mean cigarettes having fifty one (51) or more per cent of imported tobacco fibres of the total tobacco fibres used for production.

2. Medicinal spirits shall be subject to the tax rate of fifteen (15) per cent irrespective of degree of proof. Establishments producing medicinal spirits must have medicinal spirit
production licences and certificates of registration of names, trademarks and quality of medicinal spirits issued by a health authority or other authorized body. In the case of imported medicinal spirits, certification of medicinal spirits by a health authority or other authorized body shall be required. Where all of the documents provided for above are not available, SST shall be levied at the rate applicable to spirits of the corresponding degree of proof.

3. Votive paper subject to the SST rate of seventy (70) per cent shall not include paper toys for children or paper used for decorative purposes.

4. Regarding application of SST rates to barrel beer and draught beer: The grounds for ascertaining whether beer is barrel beer or draught beer is the technological process, the production equipment and the eco-technical explanatory statement of the investment project or business and production plan of the investor. Establishments producing beer must register the name of their product and the quality standards for their product pursuant to article 9 of the Law on Special Sales Tax which must be consistent with their technological process for producing beer. The SST rate of seventy five (75) per cent shall apply to any establishment producing beer which fails to register the name of its product and has insufficient evidence to prove whether the product it produces or sells is barrel beer or draught beer.

C. REGISTRATION AND DECLARATION FOR TAX PAYMENT, REFUND OF TAX AND TAX FINALIZATION

I. Registration and declaration for tax payment and invoices and source documents

1. Tax registration:

   Tax registration shall be provided for in detail as follows:

   (a) Establishments producing goods or providing services subject to SST, including outlets, branches and subsidiary establishments of such establishments, shall carry out tax registration with the tax office of the locality in which they carry out production or business in accordance with the guidelines on tax registration and registration of codes of taxpayers.

   In the case of new establishments carrying out production or business, the time-limit for tax registration shall be ten (10) days after the date of issuance of the certificate of business registration.

   In the case of merger, consolidation, division, demerger, dissolution or bankruptcy, change in line of business or cessation of business, the production or business establishment must report to the tax office at least five days prior to commencement of the above changes.

   (b) Where an establishment producing goods subject to SST uses a trademark, it must register a sample of the trademark with the tax office of the locality in which the establishment carries out production or business no later than five days after the date on which the trademark is used. When changing the trademark, the establishment shall make declaration thereof with the tax office and register a sample of the new trademark no later than five days after the date of change of the trademark.

   In the case of establishments producing cigarettes, in addition to the registration of trademarks referred to above, they must submit to the tax office a registration of quantity limits of tobacco fibres used for production of each kind of cigarette, specifying the amount of tobacco fibres required for production of a product unit and the ratio of the amount of imported tobacco fibres (if any) to the total amount of tobacco fibres used for production of products, which shall be used as a basis for exact determination of the SST rate.
2. Tax declaration:

Establishments producing or importing goods or providing services subject to SST must declare SST in accordance with the following provisions:

(a) Establishments producing goods or providing services subject to SST must declare SST upon sale of goods or services, delivery of processed goods, use of goods for the purpose of exchange or as gifts or for internal consumption. Tax declarations shall be prepared on a monthly basis and submitted together with a list of sale invoices (in Form 01-TTDB, Form 02A-TTDB and Form 02B-TTDB issued with this Circular). Declarations of SST shall be submitted no later than the tenth day of the following month. For example: the tax declaration of an establishment for February 2004 shall be submitted to the tax office no later than the tenth day of March 2004.

In the case of production establishments with large amounts of SST payable, declarations of SST must be submitted every five or ten (10) days and every month in accordance with the following provisions:

- Establishments producing beer with a capacity of twenty (20) million litres per annum, establishments producing cigarettes with a capacity of twenty (20) million cigarette packets per annum, and establishments producing automobiles, air conditioners or spirits shall declare tax every ten (10) days.

- Establishments producing beer with a capacity of more than twenty (20) million litres per annum and establishments producing cigarettes with a capacity of more than twenty (20) million cigarette packets per annum shall declare tax every five days.

Periodical declarations of tax shall be submitted to the tax office on the first day of the following period of five or ten (10) days; monthly declarations shall be submitted within the stipulated time-limit.

Establishments which declare tax every five days or ten days as stipulated above shall still use the monthly declaration and specify on it that they are making a declaration every five days or ten days.

Where a production establishment sells goods through branches, shops, subsidiary establishments or agents at prices quoted by the establishment on a commission basis, or delivers goods to other establishments for sale, the main production establishment shall declare and pay SST in respect of those goods in the locality where the production establishment has registered for declaration of tax payment. The branches, shops and subsidiary establishments shall submit reports to the production establishment at the same time as sending a copy of such reports to the tax office of the locality in which the branches, shops and subsidiary establishments sell goods for the purpose of information and monitoring.

In cases where no SST arises during a month, the production or business establishment must still prepare and submit a declaration to the tax office for the purpose of information.

Where a production establishment sells goods through branches or subsidiary establishments located in other localities (namely, provinces and cities), it shall prepare declarations on the basis of invoices of the production establishment for delivery of goods and shall prepare tax finalizations on the basis of actual turnover from the sale of goods by the branches and subsidiary establishments.

In the case of processed goods, if there is a difference between the selling price of the supplier for processed goods and the price used as the basis for calculation of SST by the processing establishment, the supplier for processed goods shall make an additional SST declaration and payment for the difference between the selling price of the supplier for processed goods and the selling price of the processing establishment.
b) Any establishment importing goods shall prepare and submit a declaration of imported goods on each occasion of importation at the time of declaration of import duties with the body collecting import duties.

In the case of goods imported by authorized dealers, the authorized dealers shall be the entity required to declare and pay SST.

(c) An establishment producing goods subject to SST from raw materials for which SST has been already paid shall, upon declaration of SST at the production stage, be entitled to deduct the amount of SST already paid in respect of such materials where legal source documents are presented. The amount of SST deducted in respect of such raw materials shall not exceed the amount of SST corresponding to the amount of raw materials used for production of goods sold.

Deduction of SST shall be carried out at the same time as making the declaration for tax payment. In this case, tax payable shall be calculated in accordance with the following formula:

Amount of SST payable for the period shall equal (=) SST payable on goods delivered for sale in the period less (-) SST already paid upon purchase of raw materials corresponding to amount of goods delivered for sale in the period.

For example:

In a tax period, Establishment A conducted the following operations:

+ Imported 10,000 litres of wine and paid 250 million dong of SST upon importation (as proved by the receipt for payment of SST at the import stage);
+ Used 8,000 litres for production of 12,000 bottles of wine;
+ Delivered 9,000 bottles of wine for sale and SST payable thereon was 350 million dong;
+ SST paid at the import stage allocated to the 9,000 bottles of wine sold is 150 million dong.

SST to be paid by Establishment A for the period shall be:

350 million dong - 150 million dong = 200 million dong.

Where the amount of SST already paid on the raw materials corresponding to the amount of products sold in the period cannot be exactly determined, the deductible SST may be temporarily calculated on the basis of the figures of the previous period and shall be finalized on the basis of the actual figures at the end of the month or quarter. In all cases, the maximum amount of deductible SST shall not exceed the amount of SST paid on raw materials used in accordance with the economic and technical standards of the establishment and level of use of materials for products. The production establishment must register its economic and technical standards with the tax office directly responsible for management of the establishment.

d) Where an establishment produces different types of goods or provides different types of services subject to different SST rates, it shall prepare declarations for payment of SST on the basis of each tax rate applicable to each individual type of goods or services; if the establishment producing goods or providing services is unable to calculate separately SST at each tax rate, the highest tax rate applicable to the goods produced or services provided by the establishment shall be applied.

(dd) Where an export trading establishment purchases goods for export but, instead of exporting, it sells such goods on the domestic market, the export trading
establishment shall, no later than five days after the date of delivery of goods for sale, declare and pay SST in full on behalf of the production establishment. In this case of payment of tax on behalf of the production establishment, the price used to calculate SST shall be the purchase price of the export trading establishment; if the purchase price is not determinable, it shall be calculated on the basis of the actual sale price quoted by the establishment excluding SST and excluding VAT.

3. Invoices and source documents:

Establishments producing or importing goods or providing services subject to SST shall strictly comply with the regulations on accounting, invoices and source documents upon the purchase or sale of goods and provision of services and transportation of goods in accordance with law.

A production establishment must use sale invoices upon sale or delivery of goods to branches, subsidiary establishments and agents. Where a branch or subsidiary shop is located in the same province or city as the production establishment, or where goods are delivered between different warehouses, the establishment shall be permitted to use ex-warehouse forms for internal transportation purposes.

In the case of goods delivered to branches and agents for sale at the quoted price on a commission basis, the price stated in invoices shall be the sale price quoted by the production establishment to the branches and agents.

4. Tax payment:

SST shall be paid to the State Budget in accordance with the following provisions:

(a) An establishment producing goods, processing goods or providing services subject to SST shall pay SST to the State Budget in the locality where the establishment produces goods, processes goods or provides services.

The time-limit for monthly tax payment shall be no later than the twenty fifth day of the following month.

In the case of production or business establishments with large amounts of SST payable (as stipulated in clause 2a of Section I of Part C of this Circular), SST must be declared every five or ten (10) days and paid immediately after declaration.

Where individuals and households producing goods or providing services subject to SST are located at a distance from the State Treasury, the tax office shall collect and pay the tax to the State Budget. The time-limit for the tax office to pay such tax to the State Budget shall be three days after the date of collection of monies.

(b) An establishment importing goods subject to SST shall pay SST upon each occasion of importation at the location of tax declaration for payment of import duties. The time-limit for issuing notices and for paying SST in respect of imported goods shall be the same as the time-limit for issuing notices and for paying import duties.

(c) SST shall be paid to the State Budget in Vietnamese dong.

5. SST finalization:

Establishments producing goods or providing services subject to SST shall carry out SST finalization in accordance with the following provisions:

(a) Any establishment producing goods or providing services subject to SST shall carry out annual SST finalization with the tax office. The establishment must declare all items relating to amount of tax payable, amount already paid, shortfall or excessive amount as at the time of finalization in the tax finalization form (Form 05-TTDB issued with this Circular), which shall be submitted to the tax office within the
stipulated time-limit. The tax finalization year shall be the Gregorian year. Where any business establishment is permitted to apply a fiscal year other than the Gregorian year, it shall still carry out SST finalization on the basis of the Gregorian year. The time-limit for production or business establishments to submit tax finalizations to the tax office shall be no later than forty five (45) days after the thirty first day of December of the tax finalization year.

Where a production establishment sells goods through branches or subsidiary establishments in localities other than the location of production, it shall prepare tax finalization on the basis of actual turnover from the sale of goods by the branches and subsidiary establishments.

In the case of processed goods, both the supplier for processed goods and the processing establishment shall carry out annual SST finalization with the tax office at the location of production and business.

The production or business establishment must pay any SST shortfall to the State Budget with ten (10) days from the date of submission of the tax finalization report; any excessive amount shall be deducted from the amount of tax payable for the following period or refunded in accordance with applicable regulations.

(b) In the case of merger, consolidation, division, demerger, dissolution, bankruptcy, change in line of business; or in the case of a State owned enterprise conversion of form of ownership, assignment, sale, contract management or lease, establishments shall carry out tax finalization with the tax office and send a tax finalization report to the tax office within forty five (45) days from the date of the decision on any of the above changes and shall pay any shortfall in full to the State Budget within ten (10) days from the date of submission of the tax finalization report; any excessive amount shall be deducted from the amount of tax payable for the following period or refunded in accordance with applicable regulations.

The production or business establishment shall be responsible for the truthfulness and accuracy of figures in the finalization. If the establishment submits a false report for the purpose of evading or reducing tax, it shall be subject to penalties in accordance with law.

II. Refund of SST

Establishments producing or importing goods or providing services subject to SST shall be considered for refund of SST already paid in the following cases and subject to the following procedures and documentation and powers for dealing with refund of tax:

1. In respect of imported goods:
   (a) In the case of temporarily imported goods for which SST has been paid, upon re-export, the amount of SST already paid on the corresponding amount of re-exported goods shall be refunded.

   In the case of imported goods in respect of which SST has been paid and which are still in storage in the bordergate area but which are now permitted to be re-exported, a refund of tax in respect of re-exported goods shall be considered.

   (b) In the case of imported goods for which SST has been paid as declared but the quantity of goods actually imported is less than the quantity declared, or in the case of imported goods for which SST has been paid and which are damaged or lost for valid reasons during the importation process.

   (c) Where goods imported are inconsistent in quality or type with the contract or import licence (due to the fault of the overseas sender) as verified by an authorized body and confirmed by the overseas sender, the customs office shall verify and certify the amount of SST payable. Any excessive amount shall be refunded and any shortfall shall be paid in full.
Where the goods are permitted to be exported back to the overseas sender, the amount of SST already paid in respect of the goods exported back to the overseas sender shall be refunded.

Where goods are exported back to the overseas sender within the period during which payment of import or export duties is not yet required in accordance with applicable regulations, the customs office shall verify the procedures and not collect SST in respect of the imported goods exported back to the overseas sender.

(d) Goods which are temporarily imported for participation in trade fairs and exhibitions and for which SST has been paid shall be entitled to a refund of tax upon re-exportation.

(dd) Raw materials imported for production or processing of goods for export.

The total amount of SST to be refunded shall not exceed the amount of SST already paid in respect of the raw materials imported for production or processing of goods for export.

(e) Where goods are imported by a Vietnamese enterprise in the capacity of an agent for delivery or sale to overseas buyers with prior registration with the tax-collecting body at the importation stage, tax shall be refunded in respect of the goods actually exported and sold out of Vietnam.

Procedures, documents, orders and powers to deal with refunds of SST in respect of imported goods in the cases referred to above shall be as provided for in the case of refund of import duties in accordance with the Law on Import and Export Duties.

2. (a) Where a production or business establishment carrying out tax finalization upon merger, consolidation, division, demerger, dissolution or bankruptcy; or in the case of a State owned enterprise conversion of form of ownership, assignment, sale, contract management or lease, has any excessive amount of SST, it shall have the right to request the tax office to refund the excessive amount. Procedures and documents shall include the following:

- Official letter requesting refund of excessive amount of SST;
- Decision issued by the competent authority on merger, consolidation, division, demerger, dissolution or bankruptcy; or in the case of a State owned enterprise conversion of form of ownership, assignment, sale, contract management or lease;
- SST finalization as at the time of merger, consolidation, division, demerger, dissolution or bankruptcy; or in the case of a State owned enterprise conversion of form of ownership, assignment, sale, contract management or lease;
- Minutes of check of the SST finalization as at the time of merger, consolidation, division, demerger, dissolution or bankruptcy; or in the case of a State owned enterprise conversion of form of ownership, assignment, sale, contract management or lease.

In this case, the director of the Taxation Department of the province or city in which the production or business establishment has registered, declared and paid tax shall have the power to consider and decide on tax refund.

3. A production or business establishment shall be refunded SST on the basis of a decision on tax refund to the establishment issued by an authorized body in accordance with the provisions of the law or the Minister of Finance.
Tax offices shall be responsible for verifying documents and determining the amount of tax to be refunded in the cases within their respective powers as provided for in clause 2 above and shall refund tax to taxpayers by way of deduction from tax to be paid in the following period. Where deduction is not made, the tax office shall forward to the appropriate financial body for completion of the procedures for tax refund in accordance with the regulations of the Ministry of Finance.

D. DUTIES, POWERS AND RESPONSIBILITIES OF TAX OFFICES

Tax offices shall have the following powers, duties and responsibilities:

1. To guide taxpayers to comply with the procedures for registration, declaration and payment of tax in accordance with the provisions of the laws on taxation.

   If any production or business establishment fails to comply with the provisions on registration, declaration and payment of tax, the tax office shall impose administrative penalties for taxation offences in accordance with law.

2. To issue tax notices (to taxpayers being individuals, family households and business entities trading in goods and services for which SST must be paid where such taxpayers do not implement the regime on invoices and source documents) and activate them to pay tax correctly in accordance with the regulations. A tax notice must be sent to the taxpayer at least three days prior to the date of tax payment stated in the notice. The time-limit for payment of monthly tax shall be no later than the twenty fifth day of the following month. In the case of business individuals paying tax calculated on the basis of fixed turnover, the notice (in Tax Notice Form 03B-TTDB issued with this Circular) shall stipulate the amount of tax payable and the date of tax payment in the month or at the beginning of the following month.

   Where a taxpayer fails to pay tax within the time-limit stated in the notice, the tax office shall issue the first late payment notice stating the amount of tax payable and the fine for late payment as stipulated in clauses 2 and 3 of article 17 of the Law on Special Sales Tax.

   The period for calculating a fine for late payment of monthly tax shall commence on the twenty sixth day of the following month; in respect of imported goods and goods in other cases, the period for calculating a fine for late payment shall commence on the date following the date of payment stipulated by law. If the establishment continues to fail to pay the tax and fine in accordance with the tax notice, the tax office shall have the right to take, or to request the authorized body to take, measures for dealing with administrative offences in relation to taxation as provided for in clause 4 of article 17 of the Law on Special Sales Tax in order to collect the tax and fine in full. Where the establishment continues to fail to pay in full the tax and fine after measures for dealing with administrative offences in relation to taxation have been taken, the tax office shall refer the relevant files to the authorized body for resolution in accordance with the provisions of the law.

3. The tax office directly managing a production establishment which sells goods for export shall rely on List 02B-TTDB to promptly provide a written notice to the tax office managing the export establishment, stating the name of the entity which purchased goods for export; and the name, quantity, type and value of goods purchased for export. The tax office managing the export establishment shall be responsible to monitor goods actually exported, and if goods purchased for export are not in fact exported but are sold domestically, the tax office shall be responsible to require the export establishment to declare and pay SST on such goods.

4. To examine and inspect the declaration, tax payment and tax finalization of production or business establishments in order to ensure strict compliance with the law.

5. To deal with administrative offences in relation to taxation and to resolve complaints about taxation in accordance with law.

© Phillips Fox

15
6. To require taxpayers to provide accounting books, invoices and source documents and other documents relating to the calculation and payment of tax; to request credit institutions, banks and other organizations and individuals concerned to provide documents relating to the calculation and payment of tax.

7. To maintain and use the data and documents provided by taxpayers and by others as stipulated.

8. The tax office shall be entitled to fix the amount of SST payable by taxpayers in the following cases:

(a) A production or business establishment fails to implement or to properly implement the regime on invoices and source documents.

In the case where production or business individuals or small households (hereinafter referred to as "business households") fail to maintain in full invoices and source documents relating to purchases or sales of goods and services, the tax office shall fix the turnover and the amount of tax payable on the basis of the taxpayer’s production or business situation and shall notify the taxpayer for implementation.

A fixed amount of tax payable each time may be used as the basis for stable tax collection for a period of three, six or twelve (12) months, depending on each line of business, changes in prices and business situation of each taxpayer. The tax office shall be responsible for publicly notifying these taxpayers of the fixed turnover and amount of tax. Where business households suspend their business activities, they must notify the tax office; if business activities are suspended for a month, they shall be exempted from payment of the fixed amount of tax for such month.

In respect of small business households paying tax on the basis of an amount fixed from time to time, if their business activities are suspended for a whole month, they shall be considered for exemption from payment of the fixed amount of tax provided that they prepare and submit an application (in accordance with the form and guidelines of the tax office) specifying reasons for business suspension and number of days of business suspension to the district tax office. The tax office shall verify the actual situation and resolve the application in accordance with the regulations.

Small business households shall be classified on the basis of each category of goods or line of business in conformity with the particular situation of each locality in accordance with the regulations of the Ministry of Finance. Taxation Departments shall, on the basis of the business situation of households, provide detailed guidelines for the classification of the particular types of small households within their respective localities for the purpose of managing and collecting tax in accordance with general regulations.

(b) Failure to declare or submit a declaration within the time-limit for submission of declarations and continued failure to do so despite reminder by notice; submission of a declaration in which bases for determination of SST are incorrectly declared.

(c) Refusal to provide accounting books, invoices, vouchers or documents required for calculation of SST.

(d) Discovery of business having been conducted without business registration or without registration for tax payment.

(dd) Declaration of a selling price as the basis for calculation of SST which is not the true selling price or which is 10% less than the price at which goods or services of the same type are sold on the market. The tax office managing the taxpayer shall rely on the market price in order to fix the SST payable.
The tax office shall determine the amount of tax to be paid by each establishment in the above cases on the basis of documents acquired from investigation of the production or business operations of the taxpayer or on the basis of the amount of tax payable by other production or business establishments in the same line of business having a similar scale of business.

Where any taxpayer is not satisfied with the fixed amount of tax payable, the taxpayer may lodge a complaint to the tax office fixing tax or the superior tax office of the tax office fixing tax. Pending resolution, the taxpayer must pay the amount of tax fixed by the tax office.

**DD. REDUCTION OF AND EXEMPTION FROM SST**

Pursuant to article 16 of Decree 149-2003-ND-CP of the Government, reduction of and exemption from SST shall be considered in accordance with the following procedures, documentation and order:

1. Taxpayers entitled to, and procedures and documentation for, tax exemption and reduction:

   (a) Where an enterprise producing goods subject to SST encounters difficulties due to natural disasters, war or unexpected accident and suffers losses, it shall be considered for reduction of SST. The amount of reduction of SST shall be determined on the basis of the losses caused by the natural disaster, war or unexpected accident, but shall not exceed the value of damaged assets after compensation is paid (if any) and shall not account for more than thirty (30) per cent of the amount of SST otherwise payable in accordance with law for the year in which it suffers damage.

   In order to provide grounds for consideration of reduction of SST in accordance with the above provision, the production establishment must complete the following files and procedures:

   + Application for reduction of SST, specifying time and cause of damage, value of damaged assets, amount of losses caused by the natural disaster, war or other unexpected accident, amount of tax payable and amount of tax for which a tax reduction is sought;

   + Minute of assessment of the level and value of damage of assets prepared by an authorized body and certified by the local authority at the district or higher level;

   + Financial statement accompanied by explanatory statements and analyses for the purposes of determining the amount of damage and loss incurred;

   + Tax finalization and minutes of checking the tax finalization with the tax office.

   The above files and documents shall be submitted to the tax office directly responsible for management of the establishment.

   The tax office responsible for management of the establishment shall receive and verify the documents and shall prepare and forward a written proposal accompanied by the file for tax reduction of the establishment to the authorized body for decision.

   Pending decision on tax reduction, the establishment must still declare and pay in full the taxes as stipulated. Following a decision on tax reduction, the amount of reduction granted shall be offset against the tax amount for the subsequent period.

   Where an establishment which produces goods subject to SST encounters difficulties due to natural disasters, war or other contingencies and suffers heavy damage and the establishment loses the ability to conduct production or business
and to pay SST, it shall be considered for exemption from the amount of SST that it is unable to pay. The Ministry of Finance shall consider and decide on tax exemption on a case-by-case basis. Procedures and documents requesting exemption from SST in this case shall be the same as in the case of consideration of tax reduction referred to above, except that the losses and inability to conduct production or business and to pay SST must be specified.

(b) Establishments assembling or manufacturing automobiles shall be entitled to a reduction of the tax rates provided for in article 6 of Decree 149-2003-ND-CP from the first day of January 2004 until the end of the thirty first day of December 2006 as follows:

Year 2004, seventy (70) per cent reduction; year 2005, fifty (50) per cent reduction; year 2006, thirty (30) per cent reduction; and as from year 2007, they shall pay the correct rate as stipulated.

Accordingly, the rate of SST payable after the above reduction shall be:

<table>
<thead>
<tr>
<th>Item</th>
<th>SST Rate 2004</th>
<th>SST Rate 2005</th>
<th>SST Rate 2006</th>
<th>SST Rate 2007 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobiles of 5 seats or less</td>
<td>24</td>
<td>40</td>
<td>56</td>
<td>800</td>
</tr>
<tr>
<td>Automobiles of 6 to 15 seats</td>
<td>15</td>
<td>25</td>
<td>35</td>
<td>50</td>
</tr>
<tr>
<td>Automobiles of 16 to under 24 seats</td>
<td>7.5</td>
<td>12.5</td>
<td>17.5</td>
<td>25</td>
</tr>
</tbody>
</table>

For example:

In the 2004 period for tax declaration, the situation of manufacture of automobiles by Establishment A is as follows:

- Turnover from the sale of automobiles of 5 seats or less calculated on sale price excluding VAT is 15 billion dong.
- Turnover from the sale of automobiles of 6 to 15 seats calculated on sale price excluding VAT is 10 billion dong.
- Turnover from the sale of automobiles of 16 to under 24 seats calculated on sale price excluding VAT is 5 billion dong.

Establishment A shall declare and pay SST as follows:

\[
\frac{15}{1+0.24} \times 24\% + \frac{10}{1+0.15} \times 15\% + \frac{5}{1+0.075} \times 7.5\% = 2.9 + 1.3 + 0.35 = 4.55 \text{ billion dong.}
\]

2. Powers and order for consideration of tax reduction and exemption:

(a) Powers for consideration of tax reduction and exemption in the cases provided for in clause 1(a) shall be as follows:

- The General Director of the General Department of Taxation shall consider and decide on tax reductions or exemptions of less than five hundred (500) million Vietnamese dong per annum;
- The Minister of Finance shall consider and decide on tax reductions or exemptions of five hundred (500) million or more Vietnamese dong per annum.
(b) Order for consideration of reduction and exemption from SST:

- Upon receipt of a file for reduction of or exemption from SST submitted by an establishment, a Taxation Department or Division shall be responsible for verifying the file and determining an amount of tax reduction or exemption and shall then submit a proposal accompanied by the file to the superior tax office within a period of fifteen (15) working days from the time of receipt of a complete file. Where a Taxation Department receives a file forwarded by a Taxation Division, the time-limit for forwarding a proposal to the superior tax office shall be ten (10) working days.

- The General Department of Taxation shall consider and decide on tax reduction or exemption for the establishment within a period of fifteen (15) working days from the time of receipt of a complete file.

Where an establishment is not within the category of entities entitled to be considered for tax reduction or a file as provided is not proper, the body receiving the file for tax reduction or exemption must reply or notify the establishment for further information or supplementation of the file within a time-limit of ten (10) working days.

E. DEALING WITH BREACHES AND REWARDS

I. Dealing with breaches in relation to taxation

1. In respect of taxpayers:

Pursuant to the Law on Special Sales Tax, the Law on Amendments and Additions to the Law on Special Sales Tax and Decree 149-2003-ND-CP of the Government, any taxpayers committing a breach of the Law on Special Sales Tax shall be dealt with as follows:

(a) Taxpayers failing to comply with the stipulations on procedures for business registration, tax registration, declaration, payment and finalization, declaration for establishment of books of account, or keeping of records and vouchers relating to calculation and payment of tax shall, depending on the seriousness of the breach, be subject to a warning or fine.

(b) Taxpayers making late payment of taxes or fines required by tax notices, tax collection orders or fine decisions shall be liable to pay, in addition to payment in full of tax or fines stipulated by law, a penalty equal to one tenth of one (0.1) per cent of the delayed amount for each day of delay.

(c) Taxpayers making false declarations or evading payment of tax shall be liable to pay, in addition to tax or fines in accordance with the provisions of the Law on Special Sales Tax, and depending on the seriousness of the breach, a fine equal to one to five times the amount of evaded tax; taxpayers evading payment of a large amount of tax, committing another breach after having been subject to an administrative penalty relating to taxation, or committing any other serious breach shall be subject to criminal prosecution in accordance with the provisions of the law.

(d) Taxpayers failing to make payment of tax or fines shall be dealt with as follows:

- The amount of tax or fines shall be deducted from the bank account of the taxpayer at a bank, treasury or other credit institution.

The bank, treasury or other credit institution concerned shall be responsible for transferring money from the account of the taxpayer to the State Budget for the purpose of payment of tax or fines in accordance with the decision dealing with tax made by the tax office or authorized body prior to recovery of the debt.
- Goods and chattels of the taxpayer shall be impounded as security for full payment of tax or fines payable.

- Assets shall be seized in accordance with law as security for full payment of outstanding tax or fines.

Dealing with breaches in relation to SST as referred to above shall be in accordance with the procedures and order provided for in legal instruments on dealing with taxation offences.

2. In respect of tax officers and other individuals:

Pursuant to article 19 of the Law on Special Sales Tax and article 17 of Decree 149-2003-ND-CP of the Government, tax officers and other individuals committing breaches of the Law on Special Sales Tax shall be dealt with as follows:

(a) Any tax officer or other individual who takes advantage of his or her position and power to use or appropriate illegally any tax or fines paid shall repay in full to the State the tax or fines illegally used or appropriated and shall, depending on the nature and seriousness of the offence, be subject to disciplinary action or criminal prosecution in accordance with law.

(b) Any tax officer or other individual who is irresponsible or deals with a case incorrectly, thereby resulting in damage being suffered by a taxpayer, shall pay compensation in accordance with civil legislation. Any tax officer or individual who causes damage shall, depending on the nature and seriousness of the offence, be subject to disciplinary action or criminal prosecution in accordance with law.

(c) Any tax officer or other individual who takes advantage of his or her position and power for the purpose of collusion with, or protection of, anyone breaching the provisions of the Law on Special Sales Tax or who otherwise breaches the provisions of the Law on Special Sales Tax shall, depending on the nature and seriousness of the offence, be subject to disciplinary action or criminal prosecution in accordance with law.

(d) Any individual who obstructs, or incites others to obstruct, the implementation of the Law on Special Sales Tax shall, depending on the nature and seriousness of the offence, be subject to administrative penalty or criminal prosecution in accordance with law.

II. Rewards

Pursuant to article 20 of the Law on Special Sales Tax and article 18 of Decree 149-2003-ND-CP of the Government, tax offices and tax officers satisfactorily carrying out their assigned duties, organizations and individuals making notable achievements in the implementation of the Law on Special Sales Tax, and taxpayers satisfactorily fulfilling their tax payment obligations shall be rewarded.

III. Powers to deal with taxation offences

Upon discovery of any breach of the Law on Special Sales Tax by business establishments, tax offices at all levels must clearly determine the conduct causing the breach, its seriousness and the responsibilities of organizations or individuals for the breach and shall prepare a file as stipulated. On the basis of the regulations and the levels of penalties for administrative offences in relation to taxation, tax bodies at each level shall, depending on their respective powers to deal with breaches, issue a penalty decision or shall propose that it be dealt with by a superior tax office or legal authority within their respective powers, in particular:

1. The head of the tax office directly managing tax payment shall have the power to deal with the breaches of taxpayers as stipulated in clauses 1(a) and 1(b), and to impose
penalties for administrative offences in relation to taxation as stipulated in clause 1(c), of Section I of Part E of this Circular.

2. The head of a Taxation Department or Division directly responsible for collection of taxes shall have the power to apply the measures stipulated in clause 1(d) of Section I of Part E of this Circular in accordance with law and to refer files to an authorized body to be dealt with in accordance with law in the case of the breaches provided for in clause 1(c) of Section I of Part E of this Circular.

G. COMPLAINTS AND TIME-LIMITS

1. Rights and responsibilities of taxpayers regarding complaints about taxation:

Pursuant to article 21 of the Law on Special Sales Tax, all organizations and individuals shall have the right to lodge complaints against the incorrect application of the Law on Special Sales Tax by tax officers or tax offices. A complaint shall be lodged at the tax office issuing the tax notice, tax order or penalty decision within a time-limit of thirty (30) days from the date of receipt of the notice, order or penalty decision. Pending resolution of the complaint, the complainant must pay the required tax or fines in full and in a timely manner. If the complainant disagrees with a decision of the tax office which deals with the complaint, or does not receive the decision on resolution within the time-limit of thirty (30) days from the date of delivery of the complaint, the complainant may petition the superior tax office or commence legal action at court in accordance with the provisions of the law.

The procedures and order for complaints or commencement of legal action and consideration and resolution shall be implemented in accordance with the laws currently in force.

2. Responsibilities and powers of tax offices in dealing with complaints about taxation:

Pursuant to article 22 of the Law on Special Sales Tax, tax offices at all levels which receive a complaint of a taxpayer about taxation shall consider and resolve it within a time-limit of fifteen (15) days from the date of receipt of the complaint. In more complicated cases where investigation and verification requires a longer time, the tax office must notify the complainant and the time-limit for resolution shall not exceed thirty (30) days from the date of receipt of the complaint. If the case does not fall within its power of resolution, the tax office shall refer the file or report to the authorized body for resolution and shall inform the complainant thereof within ten (10) days from the date of receipt of the complaint. Where the tax office examines, identifies or finds any false declaration, evasion or error relating to tax or a penalty decision, the tax office shall have the responsibility to collect or repay the tax or fines for a period of five years retrospectively from the date of discovery of such fraudulent declaration, tax evasion or error relating to taxation. Where an establishment does not register and declare for tax payment, the time-limit for collection of unpaid tax and fines shall be from the time the taxpayer commenced its operations.

H. ORGANIZATION OF IMPLEMENTATION

1. This Circular shall be of full force and effect as of 1 January 2004 and shall replace all previous legal instruments relating to SST issued by the Ministry of Finance.

2. All existing issues regarding SST prior to 1 January 2004 shall be dealt with in accordance with the relevant provisions of the Law on Special Sales Tax and other legal instruments relating to SST in force at the time.

3. Where an international treaty to which the Socialist Republic of Vietnam is a signatory or participant contains provisions inconsistent with the Law on Special Sales Tax, SST shall be implemented in accordance with the provisions of the international treaty.
4. Collection of SST shall be carried out as follows:

(a) The tax office shall be responsible for collecting special sales tax in respect of establishments producing goods or providing services subject to special sales tax.

(b) The customs office shall be responsible for collecting special sales tax in respect of establishments importing goods subject to special sales tax.

(c) The tax office and the customs office shall be responsible for co-ordinating in management of collection of special sales tax throughout the country.

If any problems arise during the implementation of this Circular, establishments and bodies shall report in a timely manner to the Ministry of Finance for consideration, guidance and addition.

For the Minister of Finance
Deputy Minister

TRUONG CHI TRUNG