

LAW ON VALUE ADDED TAX

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**LAW
ON
VALUE ADDED TAX**

**National Assembly of the
Socialist Republic of Vietnam
Legislature XII, 3rd Session
(May 2008)**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10;

The National Assembly hereby promulgates the *Law on Value Added Tax*.

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Law regulates taxable objects, non-taxable objects, taxpayers, the basis for and method of calculating tax, tax credit and refund of value added tax.

Article 2 *Value added tax*

Value added tax means tax imposed on the added value of goods or services arising during the process from manufacture and circulation up to consumption.

Article 3 *Taxable objects*

Goods and services used for manufacturing, business and consumption in Vietnam shall be the objects subject to value added tax, except for the objects stipulated in article 5 of this Law.

Article 4 *Taxpayers*

Value added taxpayers shall be organizations and individuals engaging in manufacturing and conducting business in value added taxable goods and services (hereinafter all referred to as *business establishments*) and organizations and individuals importing value added taxable goods (hereinafter all referred to as *importers*).

Article 5 *Non-taxable objects*

[The following goods and services shall not be subject to value added tax:]

1. Products of cultivation, husbandry, aquaculture, seafood and fisheries which have not yet been processed into other products or which have only been subject to conventional preliminary treatment by organizations and individuals in the stages of production, catching, sale and import.
2. Products being animal breeding stock and plant varieties including breeding eggs, young animals, seedlings, seeds, sperm, embryos and genetic materials.
3. Water supply and drainage; ploughing and harrowing land; dredging canals and ditches inside fields for agricultural production; services being harvesting agricultural products.
4. Salt products produced from seawater or natural salt mines; pure salt and iodine salt.
5. State owned residential houses sold by the State to existing tenants.
6. Transfer of land use rights.
7. Life insurance, student insurance, insurance of domestic animals and plants varieties, crop insurance and re-insurance.
8. Credit services; securities business activities; assignment of capital; and derivative financial services including interest rate swaps, forward contracts, futures contracts, options, foreign currency sales and other derivative financial services as stipulated by law.
9. Medical health services and veterinary services including medical examination and treatment and disease prevention for humans and for animals.
10. Public postal and telecommunications services and internet services globalized pursuant to the program of the Government.
11. Public hygiene services and water drainage in urban streets and residential areas; maintenance of zoos, public gardens, parks, trees in streets and public lighting systems; and funeral services.
12. Maintenance, repair and construction of cultural, artistic and public buildings and of infrastructure and welfare housing, funded by public contributions and humanitarian aid.
13. Education and vocational training as stipulated by law.
14. Radio and television broadcasting funded by the State Budget.
15. Publication, importation and distribution of newspapers, magazines, specialized newsletters, political books, textbooks, teaching materials, law books, technical and scientific books, books printed in languages of ethnic minorities, propaganda pictures, photos and posters, including in the form of disks, tapes and electronic databases; and printing of money.
16. Public passenger transportation by bus and electrical vehicles.

17. Machinery, equipment and materials which are not yet able to be produced domestically and which are required to be imported for direct use in scientific research and technological development activities; machinery, equipment, replacement parts, specialized means of transportation and materials which are not yet able to be produced domestically and which are required to be imported to carry out prospecting, exploration and development of petroleum and natural gas fields; aircraft, drilling platforms and watercraft which are not yet able to be produced domestically and which are required to be imported to form fixed assets of enterprises or which are leased from foreign parties for use in production and business and in order to be sub-leased.
18. Specialized arms and weaponry required for national defence and security.
19. Imported goods in the following cases: humanitarian aid and non-refundable aid; gifts to State bodies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations and units of the people's armed forces; donations and gifts to individuals in Vietnam at the level stipulated by the Government; personal effects of foreign organizations and individuals under diplomatic immunity regulations; and hand luggage within duty-free limits.

Goods and services sold to international organizations and foreign individuals for humanitarian aid and non-refundable aid for Vietnam.

20. Goods in bordergate transit or transit via the territory of Vietnam; goods temporarily imported and re-exported and goods temporarily exported and re-imported; raw materials imported for manufacture or processing of goods for export in accordance with manufacturing or processing for export contracts with foreign parties; goods and services purchased and sold as between foreign parties and non-tariff zones, and purchased and sold as between non-tariff zones.
21. Technology transfers pursuant to the *Law on Technology Transfer*; intellectual property transfers pursuant to the *Law on Intellectual Property*; and computer software.
22. Gold imported in bar and foil which has not yet been processed into fine art articles, jewellery and other products.
23. Export products being exploited natural resources and [mined] minerals which have not yet been processed as stipulated in regulations of the Government.
24. Artificial body parts for ill people; crutches, wheelchairs and other specialized apparatus used by disabled people.
25. Goods and services of business individuals being people with an average monthly income lower than the minimum wage applicable to domestic organizations and enterprises.

Business establishments shall not be entitled to a credit and refund of input value added tax in respect of goods and services used in manufacturing and business of goods or services which are not subject to value added tax as stipulated in this article, except where the tax rate of zero (0) per cent applies as stipulated in article 8.1 of this Law.

CHAPTER II

Bases for and Methods of Tax Calculation

Article 6 *Bases for tax calculation*

The bases for calculation of value added tax shall be taxable prices and tax rates.

Article 7 *Taxable prices*

1. Value added taxable prices¹ shall be regulated as follows:

- (a) The VAT taxable price of goods and services sold or supplied by production or business establishments shall be the sale price excluding VAT. In respect of goods and services subject to special sales tax, the VAT taxable price shall be the sale price including SST but excluding VAT.
- (b) The VAT taxable price of imported goods shall be the import price at the bordergate plus import duties (if any) plus SST (if any). The import price at the bordergate shall be determined in accordance with the provisions on dutiable prices of imported goods.
- (c) The VAT taxable price of goods and services used for the purposes of exchange, internal consumption, gift or donation shall be the taxable price of goods and services of the same or equivalent category at the time of such use or activity.
- (d) The VAT taxable price of asset leasing activities shall be the rent excluding VAT.

In the case of leases for which rent is receivable in periodic instalments or received in advance for a period of the lease, the VAT taxable price shall be the amount of rent received in each periodic instalment or received in advance for a period of the lease, excluding VAT.

In the case of leases of machinery, equipment and means of transportation which are not yet able to be produced domestically and which are leased from foreign parties in order to be sub-leased, the VAT taxable price shall not include the value of the rent payable to the foreign parties.

- (dd) The VAT taxable price of goods sold by instalments or on deferred payment shall be the lump sum price of the goods excluding VAT on one occasion, and excluding interest on instalments or on deferred payment.
- (e) The VAT taxable price of goods processing activities shall be the processing price, excluding VAT.
- (g) The VAT taxable price of construction and installation activities shall be the value of the works, items of works or part of the works completed and delivered, excluding VAT. In respect of construction and installation in which the supply of raw materials, machinery and equipment is not included in the contract, the VAT taxable price shall be the value of the construction and installation not including the value of the raw materials, machinery and equipment.

¹ Allens Arthur Robinson footnote: For ease of reference, "value added tax" is hereinafter abbreviated to "VAT", and "special sales tax" to SST.

- (h) The VAT taxable price of real estate business activities shall be the selling price of the real estate, excluding VAT and excluding the price of the transfer of the land use right or lease rent payable to the State budget.
- (i) The VAT taxable price of agency and broking activities for the purchase and sale of goods and services for which commission is received shall be the commission receivable from such activities, excluding VAT.
- (k) In respect of goods or services which use payment vouchers recording the payment price as VAT inclusive, the VAT taxable price shall be determined in accordance with the following formula:

$$\text{Pre-VAT price} = \frac{\text{Payment price}}{1 + \text{applicable VAT rate for such goods or services (\%)}}$$

- 2. Value added taxable prices of goods and services regulated in clause 1 of this article shall include any additional charges or fees to which a business establishment is entitled.
- 3. Taxable price shall be calculated in Vietnamese dong. Any taxpayer with turnover in foreign currency must convert it into Vietnamese dong at the average trading exchange rate on the inter-bank foreign currency market as published by the State Bank of Vietnam at the time when the turnover in foreign currency is generated, for the purpose of calculating the taxable price.

Article 8 *Tax rates*

- 1. The tax rate of zero (0) per cent shall apply to exported goods and services, international transportation, and to goods and services which are not subject to VAT and which are exported, except for the following: technology transfers and intellectual property transfers to foreign countries; services being reinsurance offshore; credit services, assignment of capital and derivative financial services; post and telecommunications services; and export products being exploited natural resources and mined minerals which have not yet been processed as prescribed in article 5.23 of this Law.
- 2. The tax rate of five (5) per cent shall apply to the following goods and services:
 - (a) Clean water for manufacturing and for living purposes.
 - (b) Fertilizers; ore used for production of fertilizers; pesticides and growth stimulants for animals and crops.
 - (c) Feed for cattle, poultry and other animals.
 - (d) Services of digging and ploughing, and dredging canals, ditches, ponds and lakes for agricultural production; planting, raising and pest control of crops; semi-processing and preserving agricultural products.
 - (dd) Products of cultivation, husbandry and aquaculture which have not yet been processed, except for the products prescribed in article 5.1 of this Law.
 - (e) Semi-processed latex; semi-processed resin; and netting, cord and fibre used for weaving into fishing nets.

- (g) Fresh food produce; and forestry products which have not yet been processed except for wood, bamboo shoots and the products prescribed in article 5.1 of this Law.
 - (h) Sugar; and by-products obtained in manufacture of sugar comprising sugar-cane dregs, bagasse and sugar dregs.
 - (i) Products made from jute, sedge, bamboo, rattan, thatch, coconut fibre, coconut shell, water hyacinth, and other handmade products produced by using agricultural raw materials; semi-processed cotton; and newsprint.
 - (k) Specialized machinery and equipment for agricultural production including ploughs, harrows, sowing machines, seeding machines, rice plucking machines, reaping machines, combined reaping and threshing machines, harvesters for agricultural produce, and insecticide spraying machines and pumps.
 - (l) Medical equipment and instruments; medical sanitary cotton and bandages; preventive and curative medicines; and pharmaceutical products and pharmaceutical materials which are the raw materials for producing preventive and curative medicines.
 - (m) Teaching and study aids used for teaching and studying including various types of models, drawings, blackboards, chalk, rulers, compasses and various types of specialized equipment and tools for teaching, research and scientific experiments.
 - (n) Cultural activities; exhibitions; physical training and sports activities; artistic performances; film production; and importation, distribution and screening of films.
 - (o) Children's games; books of all types, except for the books prescribed in article 5.1 of this Law.
 - (p) Scientific and technological services as stipulated in the *Law on Science and Technology*.
3. The tax rate of ten (10) per cent shall apply to goods and services not prescribed in clauses 1 and 2 of this article.

Article 9 *Method of calculating tax*

VAT payable shall be calculated by the tax credit method or by calculating tax directly on the basis of added value.

Article 10 *Tax credit method*

1. The tax credit method shall be regulated as follows:
- (a) The amount of VAT payable pursuant to the tax credit method shall equal the amount of output VAT less the amount of creditable input VAT.
 - (b) The amount of output VAT shall equal the total VAT of the goods or services sold as recorded on the added value invoice.
 - (c) The amount of creditable input VAT shall equal the total VAT as recorded on the added value invoice for the purchase of such goods or services [or] on the receipt for payment of VAT on

the goods when imported goods which satisfy the conditions prescribed in article 12 of this Law.

2. The tax credit method shall apply to business establishments which fully implement the regime on accounting, invoices and source vouchers as stipulated by the law on accounting, invoices and source vouchers, and which register to pay VAT by the tax credit method.

Article 11 *Calculation of tax directly on the basis of added value*

1. The method of calculating tax directly on the basis of added value shall be regulated as follows:
 - (a) The amount of value added tax payable shall equal the added value of the goods or services sold, multiplied by the value added tax rate.
 - (b) The added value shall equal the output sale price of the goods or services less their input purchase price.
2. The method of tax calculation based directly on added value shall only apply to the following:
 - (a) Business establishments and foreign organizations and individuals conducting business without a resident establishment in Vietnam which have income arising in Vietnam and which do not yet implement the regime on accounting, invoices and source documents
 - (b) Activities of purchasing and selling gold, silver and precious stones.

CHAPTER III

Tax Credit and Tax Refund

Article 12 *Credit of input value added tax*

1. Business establishments which pay VAT in accordance with the tax credit method shall be permitted a credit of input VAT as follows:
 - (a) Input VAT levied on goods and services used in manufacturing of and business in value added taxable goods and services shall be fully credited.
 - (b) In the case of input VAT levied on goods and services used in manufacturing of and business in both value added taxable goods and services and non-taxable goods and services, only the amount of input VAT levied on the goods and services used in manufacturing of and business in taxable goods and services shall be credited. Input VAT levied on fixed assets used in manufacturing of and business in both value added taxable goods and services and non-taxable goods and services shall be fully credited.
 - (c) Input VAT levied on goods and services sold to organizations and individuals for use as the source of humanitarian aid and non-refundable aid shall be fully credited.
 - (d) Upon determination of the tax payable for a month, creditable input VAT arising during such month shall be declared and credited. Any business establishment which discovers that an amount of input VAT declared and credited was erroneous shall be permitted to conduct a

supplementary declaration and credit within a time-limit of a maximum of six (6) months after the date of discovery of the error.

2. The following conditions must be satisfied for entitlement to a credit of input VAT:
 - (a) There is an added value invoice for purchase of the goods and services or a receipt for payment of VAT at the import stage.
 - (b) There is evidence of payment via a bank for the input purchased goods and services, except in the case of purchase of goods and services on each occasion with a value below twenty (20) million dong.
 - (c) Exported goods or services must, in addition to satisfying the conditions in sub-clauses (a) and (b) above, have a contract signed with the foreign party regarding the sale [or] processing of the goods [or] for provision of the services; an invoice for the sale of the goods and services; proof of payment via a bank; and a customs declaration in the case of exported goods.

Payment for the sale of exported goods and services by set off with imported goods or services [and/or] by payment of a debt on behalf of the State shall also be deemed to be payment via a bank.

Article 13 *Cases in which tax shall be refunded*

1. Any business establishment paying tax in accordance with the tax credit method and which has creditable input tax which has not been fully credited in three or more consecutive months shall be entitled to a VAT refund.

Any business establishment which has registered to pay tax in accordance with the tax credit method, which has a new investment project and is in the investment phase, and which has VAT on goods and services purchased for use for the investment which has not yet been fully credited and the remaining amount of tax is two hundred (200) million dong or more, shall be entitled to a VAT refund.

2. Any business establishment which within one month has exported goods and services, and creditable input tax which has not yet been fully credited of two hundred (200) million dong or more, shall be entitled to a VAT refund for the month.
3. Any business establishment paying tax in accordance with the tax credit method shall be entitled to a refund if on its conversion of ownership, conversion of [form of] enterprise, merger, consolidation, division, demerger, dissolution, bankruptcy or termination of operation, it has an excess amount of VAT already paid or an amount of input tax which has not been fully credited.
4. Tax refunds shall be made pursuant to a decision of the competent body in accordance with law, and pursuant to cases entitled to a refund of VAT as stipulated in any international treaty of which the Socialist Republic of Vietnam is a member.

Article 14 *Invoices and source documents*

1. The purchase and sale of goods and services must be recorded in invoices and source vouchers in accordance with law and the following provisions:
 - (a) Business establishments paying tax in accordance with the tax credit method must use added value invoices recording fully and correctly the stipulated items including additional charges and fees (if any). If goods and services subject to value added tax are sold with an invoice which does not record the amount of value added tax, then output value added tax shall be calculated by multiplying the payment price recorded on the invoice by the tax rate, except for the cases stipulated in clause 2 of this article.
 - (b) Business establishments paying tax directly on the basis of added value shall use sales invoices.
2. In the case of stamps and tickets deemed to be payment source vouchers with pre-printed payment prices, the payment price on the stamp or ticket shall include value added tax.

CHAPTER IV

Implementing Provisions

Article 15 *Effectiveness*

1. This Law shall be of full force and effect as from 1 January 2009.
2. This Law replaces the following legal instruments:
 - (a) *Law on Value Added Tax 1997*.
 - (b) *Law 07-2003-QH11 on Amendments to the Law on Value Added Tax*.
3. Article 2 of *Law 57-2005-QH11 on Amendments to the Law on Special Sales Tax and the Law on Value Added Tax* is hereby repealed.

Article 16 *Implementing guidelines*

The Government shall provide detailed regulations and guidelines for implementation of articles 5, 7, 8, 12 and 13 of this Law and of other necessary items as required for management purposes.

This Law was passed by Legislature XII of the National Assembly of the Socialist Republic of Vietnam at its 3rd Session on 3 June 2008.

Chairman of the National Assembly
NGUYEN PHU TRONG