

LAW ON VALUE ADDED TAX

In order to boost production, to expand the circulation of goods and services, to promote the development of the national economy and to mobilize part of consumers' income for the State Budget;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam;

This Law defines the value added tax.

Chapter I

GENERAL PROVISIONS

Article 1.- Value added tax

Value added tax is the tax imposed on the added value of goods or services in the process of their production, circulation and consumption.

Article 2.- Tax liability

Goods and services used for production, business and consumption in Vietnam shall be subject to the value added tax, except for those subjects defined in Article 4 of this Law.

Article 3.- Tax payers

An organization or an individual that produces and trades in taxable goods and services (commonly referred to as “business establishments”) and any organizations and individuals that import taxable goods (commonly referred to as “importers”) are liable to value added tax.

Article 4.- Subjects not liable to the value added tax

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

1. Agricultural, husbandry and aquaculture products that are not yet processed into other products or are only primarily processed by organizations or individuals.
2. Salt products;
3. Goods and services that are subject to special consumption tax shall be exempt from the value added tax;
4. Equipment, machinery, specialized transport means which are not manufactured in the country but imported by business establishments to be used as fixed assets of their investment projects;

5. Transfer of land use right, which is subject to the transfer of land use right tax;
6. State-owned houses sold to their present tenants;
7. Credit services, investment funds;
8. Life insurance; school insurance; insurance on domestic animals and plants; and other kinds of insurance of non-business character;
9. Health care services;
10. Non-profit cultural, exhibition and sports activities; art performances; making, distribution and showing of motion pictures and video documentaries;
11. Educational and vocational training;
12. Radio and television broadcast under programs financed by the State Budget;
13. Printing, publishing and distributing of newspapers, magazines, professional news bulletins, political books, text books, books on legal documents, books in ethnic minority languages, money; propaganda postcards, pictures, posters;
14. Public services: sanitation and water drainage in streets and residential quarters, maintenance of zoos, gardens, parks, street greenery, public lighting; funeral services;
15. Maintenance, renovation and construction of cultural, art and public works, infrastructures and “houses of gratitude” financed by contributions of people and humanitarian aid;
16. Mass transit by bus;
17. Geological surveys and exploration, measuring and mapping which are included in the national basic surveys;
18. Irrigation and drainage in service of agricultural production; clean water exploited by organizations and individuals for daily life in rural and mountainous regions, islands, deep-lying and remote areas;
19. Weapons and ammunition for special use in service of national defense and security;
20. Goods imported in the following cases: humanitarian aid; non-refundable aid, gifts for State agencies, political organizations, socio-political organizations, social organizations, socio-professional organizations, people's armed forces units; belongings of foreign organizations and individuals under diplomatic immunity regulations; duty free luggage;

21. Goods on transfer across the border, in transit or transported via Vietnam; goods temporarily imported for re-export; goods temporarily exported for re-import;
22. Goods and services directly supplied for international transportation and consumers outside Vietnam;
23. Transfer of technology;
24. Gold imported in form of ingots or pieces not yet processed into fine art items, jewelleries or other products;
25. Several export products which are unprocessed minerals and shall be specified by the Government;
26. Goods and services of business and production households with low incomes as determined by the Government.

Goods and services that are not subject to value added tax as provided for in this Article shall not be entitled to deductions and rebates on the input value added tax .

Article 5.- Obligations and responsibility to implement the Law on Value Added Tax

1. Business establishments and importers shall be obliged to pay the full amount of tax on time as prescribed by this Law.
2. Tax authorities, within their duties and capacity, shall have to strictly observe the provisions of this Law.
3. State bodies, political organizations, socio-political organizations, social organizations, socio-professional organizations, and people's armed forces units shall, within their functions, duties and capacity supervise and co-ordinate with tax authorities in enforcing the Law on Value Added Tax.
4. Vietnamese citizens shall have to assist tax authorities and tax officials in enforcing this Law.

Chapter II

BASIS AND METHOD OF TAX CALCULATION

Article 6.- Basis of tax calculation

The bases for the calculation of value added tax shall be the taxable price and tax rate.

Article 7.- Taxable price

The price for the value added tax calculation is provided for as follows:

1. For goods and services, it shall be the selling price without value added tax.
2. For import goods, it shall be the import price at the border gate plus (+) import tax.
3. For goods and services used for purposes of exchange, internal use, gifts, donations, it shall be the price for value added tax calculation applied to goods and services of similar or same types at the time such activities occur.
4. For property leasing activities, it shall be the rental collected in each period of time.
5. For goods sold in the mode of deferred payment, it shall be the selling price paid in a lump sum but not the amount of money paid in each installment.
6. For the processing of goods, it shall be the processing price.
7. For other goods and services, it shall be decided by the Government.

The price for the calculation of value added tax on goods and services defined in this Article shall include the surtax and surcharge enjoyed by business establishments.

Where a tax payer has his/her sale and purchase turnover in foreign currency(ies), he/she must convert such foreign currency(ies) to the Vietnamese Dong at the official rate of exchange announced by the State Bank of Vietnam at the time such turnovers occur to determine the tax calculation price.

Article 8.- Tax rate

Value added tax rates are as follows:

1. 0% for export goods;
2. 5% for the following goods and services:
 - a/ Clean water in service of production and daily life;
 - b/ Fertilizer, ore used for the production of fertilizer; insecticide; growth stimulants for domestic animals and plants;
 - c/ Medical equipment and instruments; medical bandage and cotton;
 - d/ Curative and preventive medicines;

e/ Teaching and learning aids;

f/ Children toys; scientific-technical books, literary and stipulated books, books for children, law books excluding legal document books stipulated in Clause 13, Article 4 of this Law;

g/ Agricultural, husbandry and aquaculture products that have not yet been processed, including animal and plant breeds, seeds excluding those defined in Clause 1 Article 4 of this Law.

h/ Unprocessed forest products (excluding timber and bamboo shoots) fresh and raw foodstuffs;

i/ Products made of jute, reed, bamboo, sedge;

j/ Primarily processed home-grown cotton;

k/ Feeds for cattle, poultry and other domestic animals;

l/ Scientific and technical services;

m/ Services in direct service of agricultural production.

3. 10% tax for the following goods and services:

a/ Oil, gas, coal, ore and other mineral products;

b/ Commercial electricity;

c/ Electronic and engineering products, electric items;

d/ Chemicals, cosmetics;

e/ Yarn, fabrics, garments and embroideries;

f/ Paper and paper products;

g/ Sugar, milk, confectionery, drinks and other processed foodstuff .

h/ Pottery, ceramic, glass, rubber and plastic products, wood and wood products; cement, bricks, tiles and other construction materials;

i/ Construction and installation;

j/ Transportation and loading;

k/ Post, mail and telecommunications services;

l/ Leasing houses, stores, ports, buildings, machinery, equipment and transportation means;

m/ Legal consultancy services;

n/ Photographing, printing and developing films, cassette tape recording, dubbing and renting; video shooting, projecting and reproducing;

o/ Hair dressing, tailoring, dyeing, laundering, bleaching;

p/ Other goods and services that are not defined in clauses 1, 2 and 4 of this Article, excluding goods the production or import of which are liable to special consumption tax.

4. A tax rate of 20% on the following goods and services:

a/ Gold, silver and gems sold and bought by business establishments;;

b/ Hotels, tourism, catering services;

c/ Lottery of all kinds;

d/ Shipping agents;

e/ Brokerage services.

Where necessary, the Standing Committee of the National Assembly may make amendments or supplements to the list of goods and services according to various tax rates prescribed in this Article and submit them to the National Assembly for approval in its nearest session.

Article 9.- Tax calculation method

The payable value added tax shall be calculated either by the method of tax deduction or the method of direct calculation on the added value.

1. The method of tax deduction:

The tax amount payable is equal (=) to the output value-added tax minus (-) the input value added tax.

An output value added tax amount is equal to the tax-calculating price of goods and services to be sold or provided multiplied by the tax rate.

An input value added tax amount is equal to the total paid value added tax written on the invoice of added value of a goods purchase or service provision or a voucher of paid value added tax on import goods.

2. The method of direct calculation on the added value

The tax amount payable is equal (=) to the added value of goods, services multiplied by (x) the value added tax rate.

The added value is equal (=) to the payment price of goods sold and services provided minus (-) the payment price of equivalent goods and services purchased.

The method of direct calculation on added value shall be applied only to the following subjects:

a/ Individuals producing goods and doing business, foreign organizations and individuals doing business in Vietnam that are not governed by the Law on Foreign Investment in Vietnam and that fail to fully implement regulations on accounting, invoices, vouchers to serve as bases for tax calculation by the method of tax deduction;

b/ Business establishments selling and purchasing gold, silver and gem stones.

Article 10.- Deduction of input value added tax

1. A business establishment that pays value added tax by the method of tax deduction shall be entitled to the deduction of input value added tax (called “input tax”) as follows:

a/ Input tax imposed on goods and services used for the production and trading of goods and services liable to value added tax shall be fully deducted.

b/ Input tax imposed on goods and services which are used for the production and trading of goods and services liable to value added tax and which are not subject to value added tax shall be deducted only from the input tax imposed on goods and services used for the production and trading of goods and services liable to value added tax.

c/ Any input tax incurred in a month shall be declared and deducted upon the calculation of payable tax amount of such month.

In particular, with respect to fixed assets, if the amount of input tax deduction is large, it shall be deducted gradually or the tax shall be returned in accordance with the regulations of the Government.

d/ In cases where a production and/or processing establishment purchases unprocessed agricultural, forest or aquatic products without added value invoice, the input tax shall be deducted at a rate of 1% to 5% on the price of agricultural, forestry and aquatic products bought. Specific deduction rates for each kind of goods shall be determined by the Government.

The tax deduction provided for in this Article shall not be apply to exports.

e/ For a number of other exceptional cases, the input tax deduction shall be determined by the Government.

2. The following bases shall be used to determine the input tax amount to be deducted:

a/ The amount of value added tax written on the added value invoice for the purchase of goods or services or the voucher of the payment of the value added tax. For goods or services bought without added value invoices or with invoices that fail to state the added value amount tax deductions must not be made.

b/ The invoice shall comply with the form set by the tax authority for the types of goods defined at Point d, Clause 1 of this Article.

Article 11.- Invoices, vouchers

1. Any purchases and sales of goods and services must have invoices and vouchers as prescribed by law.

2. Business establishments paying tax by the method of tax deduction shall have to use the added value invoice where all prescribed items including sale price, surcharges, surtax, value added tax amounts, payment price must be fully and accurately stated.

Where the invoice fails to state the value added tax amount, such value added tax shall be determined by the invoiced payment price multiplied by (x) the value added tax rate.

3. With respect to the stamps and tickets that are considered payment vouchers with the prices for payment being already printed therein, such payment prices are considered having already included the value added tax.

Chapter III

REGISTRATION, DECLARATION, PAYMENT AND SETTLEMENT OF TAX

Article 12.- Tax payment registration

1. All business establishments including their member units shall have to register their value added tax payment at the tax authorities that directly manage them according to the latter's guidances. For newly set up business establishments, the time-limit for registration of value added tax payment shall not be more than 10 days from the date they are granted business registration certificates. In case of a merger, consolidation, splitting, division, dissolution, bankruptcy or change in

business line, a business establishment shall have to make declaration with the tax authority within 5 in advance.

2. If the business establishments that pay tax by the method of direct calculation on added value fully comply with all regulations on vouchers, invoices, books of account and voluntarily apply for tax payment by the method of tax deduction, the tax authority shall consider and decide the implementation.

Article 13.- Tax declaration

1. A business establishment shall have to make monthly declaration of value added tax and submit such declaration to the tax authority within the first ten days of the following month. Where input tax and output tax do not incur, the business establishment still have to make and submit the tax declaration to the tax authority. Business establishments must fully complete the declaration form and be responsible for the accuracy of their declaration.

2. Business establishments and goods importers shall have to make and submit a declaration of value added tax upon each importation, together with a declaration of import tax to the tax authority at the border gate where the goods are imported.

3. Business establishments engaged in consignment trade must declare and pay tax for each consignment of goods to the tax authority of the locality where they purchase goods before transporting such goods.

4. A business establishment that trades different kinds of goods and services with different value added tax rates, shall have to declare the value added tax according to the tax rate set for each kind of goods and service; if a business establishment fails to determine payable tax amount according to each tax rate, it shall have to calculate and pay tax at the highest rate imposed on goods and services of such business establishments.

The Ministry of Finance shall issue the tax declaration form and provide guidance on the declaration.

Article 14.- Tax payment

Value added tax shall be paid to the State budget in accordance with the following regulations:

1. Business establishments shall have to pay fully and on time the value added tax into the State budget under the tax payment notice issued by the tax authority.

The deadline for tax payment for a month as stated in the notice shall not be later than the 25 th day of the following month;

2. Business establishments and importers shall have to pay the value added tax upon each importation;

The deadlines for issuing notice and payment of value added tax on import goods shall be the deadlines for the import tax notice and payment;

3. During a taxation period if a business establishment that pays the value added tax by the method of tax deduction has the input tax amount larger than the output tax, it shall be entitled to tax deduction for the following taxation period.

Where a business establishment makes new investment on fixed assets and has large amount of deducted input tax, Point c, Clause 1, Article 10 of this Law shall apply.

4. Value added tax shall be paid into the State budget in Vietnamese Dong.

Article 15.- Tax settlement

Business establishments shall have to make the annual tax settlement with the tax authority. A tax settlement year shall be the solar calendar year. Within 60 days from the end of a year, a business establishment shall have to submit a report on tax settlement to the tax authority and pay the outstanding tax amount to the State budget within 10 days from the date of submitting the report; in case of overpayment, such amount of overpayment shall be minused from the tax amount payable for the following period.

In case of a merger, amalgamation, division, splitting up, dissolution or bankruptcy, a business establishment shall have to make the tax settlement and submit the report thereon to the tax authority within 45 days from the date of the issue of the decision on merger, amalgamation, division, splitting up, dissolution or bankruptcy.

Article 16.- Tax reimbursement

The value added tax shall be reimbursed in the following cases:

1. A business establishment that is subject to the tax payment by the method of tax deduction shall be considered for quarterly tax reimbursement if its deducted input tax amount of the quarter is larger than the output tax or the input tax on its fixed assets is reimbursed according to Point c, Clause 1, Article 10 of this Law;

2. There is an overpaid tax amount in the tax settlement upon a merger, amalgamation, division, splitting, dissolution or bankruptcy

3. Decision on tax reimbursement, issued by the competent authority as prescribed by law.

The Ministry of Finance shall provide for in details procedures and powers to settle the tax reimbursement prescribed in this Article.

Article 17.- Duties, power and responsibilities of tax authorities

A tax authority shall have the following duties:

1. To guide business establishments that have business registration in observing the regulations on tax registration, declaration and payment as prescribed by this Law.
2. To send business establishments notices on payable tax amount and the deadline for such payment in conformity with the regulations; to issue another notice on the payable tax amount and fine for deferred payment under Clause 2 Article 19 of this Law if past the deadline stated in the first notice a business establishment still fails to pay tax; if a business establishment still fail to fully pay tax and fine for deferred payment stated in the second notice, handling measures provided for in Clause 4 Article 19 of this Law shall be applied to guarantee full collection of tax and fine; if a business establishment still fails to pay full amount of tax and fine even after the handling measures have been taken, the dossier shall be submitted to the competent State body for handling in accordance with law;
3. To examine and inspect the tax declaration, payment and settlement by business establishments to ensure compliance with law.
4. To deal with administrative violations of tax and settle complaints and protests about tax;
5. To request taxpayers to provide books of accounts, invoices, vouchers, and other documents relating to the calculation and payment of tax; to request concerned credit institutions, banks, organizations and individuals to provide documents relating to the calculation and payment of tax;
6. To keep and use data, materials provided by business establishments and other subjects in accordance with regulations.

Article 18.- Right to set tax

1. Tax authorities shall set the payable value added tax amount for a taxpayer in the following cases:
 - (a) Failure to implement or having implemented improperly the regulations on accounting, invoices and vouchers;
 - (b) Failure to declare tax or to submit the tax declaration within the time-limit stated in the notice; or having submitted the tax declaration but falsely declared the basis for determining the amount of value added tax;
 - (c) Refusing to produce books of accounts, invoices, vouchers and necessary documents relating to the calculation of value added tax;

(d) Found out to conduct business without business registration.

2. The tax authorities shall set the payable tax amount, based on their studies of business operations of specific business establishments or on the payable tax amounts of other business establishments with similar business lines and scale.

Where a business establishment disagrees with the set payable tax amount, it shall be entitled to lodge complaints directly to a senior tax authority; pending a resolution, such business establishment is still obliged to pay the set amount of tax.

Chapter IV

HANDLING VIOLATIONS; REWARD

Article 19.- Handling tax violations by tax payers

A tax payer who violates the Law on Value Added Tax shall be dealt with as follows:

1. A tax payer who fails to comply with the regulations on tax registration, declaration, payment and settlement, on the regime of accounting and vouchers and invoices as provided for in Articles 11, 12, 13, 14 and 15 of this Law shall, depending on the seriousness of their violations, be administratively sanctioned for tax violations.

2. A tax payer who fails to pay tax or fine on time as prescribed or as prescribed by a decision on tax settlement shall, in addition to the full payment of such amounts of tax and fine, be subject to a fine equal to 0.1% (zero Point one percent) of the deferred payment each day.

3. A tax payer who makes a false tax declaration or evades tax shall, in addition to the full payment of value added tax prescribed by this Law, be subject to a fine equal to one to five times of the fraudulent tax amount, depending on the nature and seriousness of the violation; A tax payer evades a large amount of tax or repeats a tax violation for which he/she/it was administratively sanctioned, or commits another serious violation, shall be examined for penal liability as prescribed by law;

4. A tax payer who fails to pay tax or fine under the notice or decision on tax settlement shall be dealt with as follows:

a/ An amount of money shall be deducted from the tax payer's deposit account at the bank, treasury, credit institution to pay such tax and fine;

The bank, treasury or credit institution shall have to deduct a sum of money from the tax payer's deposit account for payment of tax and fine into the State budget under the tax settlement decision of the tax authority or the competent authority prior to debt collection.

- b/ To seize goods, material evidences to guarantee the full collection of tax and fine;
- c/ To inventorize the properties according to the provisions of law so as to secure full collection of outstanding tax and fine.

Article 20.- Tax authorities' competence to handle tax violations

1. The head of the tax authority that directly manage the tax collection shall be entitled to handle violations committed by tax payers defined in Clauses 1, 2 and 3, Article 19 of this Law.
2. The head of the Tax Department or sub-department that directly manages the tax collection shall be entitled to apply measures prescribed in Clause 4, Article 19 of this Law, and forward dossiers to the competent body for handling in accordance with the provisions of law with regard to the violations described in Clause 3, Article 19 of this Law.

Article 21.- Handling violations committed by tax officials and other individuals

A tax official or individual who abuses his/her position and power to misuse, misappropriate tax payments or fines shall have to return to the State the whole tax payments or fines he/she has misused or misappropriated and shall, depending on the seriousness and nature of his/her breach, be disciplined or examined for penal liability as prescribed by law.

2. A tax official or individual who, due to irresponsibility or mishandling, causes damage to taxpayers shall have to make compensation in accordance with the provisions of law and depending on the seriousness and nature of his/her breach, be disciplined or examined for penal liability as prescribed by law.
3. A tax official or individual who abuses his/her position and power to act in complicity with or cover up the violators of the Law on Value Added Tax or commits other acts of violating the provisions of this Law, shall, depending on the nature and seriousness of his/her breach, be disciplined or examined for penal liability as prescribed by law.
4. Those who hinder or incite other people to hinder the enforcement of the Law on Value Added Tax shall, depending on the nature and seriousness of his/her violation, be subject to administrative sanctions or examination for penal liability as prescribed by law.

Article 22.- Reward

Any tax authorities or tax official that well perform their assigned tasks; any organizations or individuals that record achievements in implementing the Law on Value Added Tax; and any tax payers who fulfil their tax obligations shall be rewarded.

The Government shall provide for details of the reward.

Chapter V

COMPLAINTS AND THE STATUTE OF LIMITATIONS

Article 23.- Rights and responsibilities of taxpayers in making complaints about tax

1. Tax payers shall have the right to complain about improper enforcement of the Law on Value Added Tax by tax officials and tax authorities.

Complaints shall be lodged to the tax authority that directly manages the tax collection within 30 days from the date of receipt of notice or handling decision of tax officials or tax authorities.

Pending a resolution, a tax payer shall still have to comply with the notice or the handling decision of the tax authority.

2. In cases where a complainant disagrees with a decision of the agency in charge of handling complaints, or the complaint is not settled within the time limit set out in Article 24 of this Law, he/she shall be entitled to lodge a complaint to the immediate higher tax authority or initiate a lawsuit in accordance with the provisions of law.

Article 24.- Rights and responsibilities of the tax authority handling tax complaints

1. Within 15 days from the date of receipt of a tax complaint, the tax authority shall have to consider and settle such complaint; for complicated cases, such time limit may be extended but not exceeding 30 days; if the case is not within its jurisdiction, the tax authority shall have to forward the dossiers or send a report to a competent body for settlement and inform the complainant thereof within 10 days from the date of receipt of the complaint.

2. The tax authority that receives complaints shall have the right to request complainants to provide dossiers and documents relating to their complaints; if the complainants refuse to do so, the tax authority shall be entitled to decline the consideration and settlement of such complaints.

3. The tax authority shall have to return to tax payers the amounts of tax or fines improperly collected within 15 days from the date of receipt of a decision from the superior tax authority or the competent agency as provided for by law.

4. Upon the discovery of and the conclusion on a false tax declaration, tax evasion or errors, the tax authority shall have to collect the tax or fine arrears or reimburse tax payment dating back 5 years from the date of discovery of false tax declaration, tax evasion, tax errors. In cases where a business establishment fails to register,

declare and pay tax, the duration for collection of tax shortfall or fines shall be dated back to the date the business establishment commenced its operation.

5. The head of a superior tax authority shall have to handle tax complaints lodged by tax payers against the subordinate tax authorities.

The Minister of Finance's decisions on the settlement of tax complaints shall be final.

Chapter VI

ORGANIZATION OF IMPLEMENTATION

Article 25.- The Government shall direct the organization of the implementation of the Law on Value Added Tax throughout the country.

Article 26.- The Minister of Finance shall have to organize and inspect the implementation of the Law on Value Added Tax throughout the country.

Article 27.- The People's Committees of all levels shall, within their respective duties and power, direct the implementation and inspect the observance of the Law on Value Added Tax in their localities.

Chapter VII

IMPLEMENTATION PROVISIONS

Article 28.- The Law on Value Added Tax shall come into effect from 1 January 1999.

The Law on Turnover Tax, the Law Amending and Supplementing a Number of Articles of the Law on Turnover Tax and regulations on turnover tax in other legal documents shall be repealed as from the effective date of the Law on Value Added Tax.

All remaining issues relating to tax, tax settlement, tax exemption and reduction and the settlement of breaches of the Law on Turnover Tax prior to 1 January 1999 shall be dealt with in accordance with relevant regulations of the Law on Turnover Tax, the Law Amending and Supplementing a Number of Articles to the Law on Turnover Tax and regulations on turnover tax in other legal documents.

For production, construction and transportation establishments which, during the first years of application of the Law on Value Added Tax, suffer from losses due to the fact that the amount of payable value added tax is larger than the tax amount they previously paid according to the turnover tax, they shall be considered and entitled to reduction of payable value added tax amount. The value added tax amount to be reduced shall be equal to the losses they have suffered due to this

reason but shall not exceed 50% of the payable tax amount. The duration of tax reduction shall be considered annually and calculated according to the solar year but shall not exceed 3 years from the effective date of the Law on Value Added Tax.

The Government shall provide for detail of the reduction of value added tax in accordance with the provisions of this Article.

Article 29.- In cases where an international treaty which the Socialist Republic of Vietnam has signed or acceded to contains provisions different from those of this Law, the value added tax shall be applied in accordance with the provisions of such treaty.

Article 30.- The Government shall detail the implementation of this Law.

This Law was adopted by the XI th National Assembly of the Socialist Republic of Vietnam at its 11 th session, on 10 May 1997.

Chairman of the National Assembly
NONG DUC MANH