

DECREE No. 158/2003/ND-CP OF DECEMBER 10, 2003 DETAILING THE IMPLEMENTATION OF THE VALUE ADDED TAX LAW AND THE LAW AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE VALUE ADDED TAX LAW

THE GOVERNMENT

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

Pursuant to May 10, 1997 Value Added Tax Law No. 02/1997/QH9 and June 17, 2003 Law No. 07/2003/QH11 Amending and Supplementing a Number of Articles of the Value Added Tax Law;

At the proposal of the Minister of Finance,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Value added tax is a tax calculated on the added value of goods or services arising in the process of from production, circulation to consumption.

Article 2.- Subject to value added tax are goods and services (including services purchased from foreign-based organizations or individuals) used for production, business and consumption in Vietnam, except for those prescribed in Article 4 of this Decree.

Article 3.- Value added tax payers include organizations and individuals that produce goods and/or provide services subject to value added tax in Vietnam, irrespective of their business lines, forms and organization (hereinafter called the business establishments) as well as other organizations and individuals that import goods and/or purchase services, which are subject to value added tax, from foreign countries (hereinafter called the importers).

Article 4.- Objects not subject to value added tax include:

1. Products of cultivation (including products from planted forests) and husbandry; cultured and fished aquatic and marine products, which have not yet been processed into other products or have been just commonly preliminarily processed and sold by producing or fishing organizations and/or individuals themselves.

Products which have been just commonly preliminarily processed as prescribed in this Clause are those which have been just dried, frozen, cleaned or peeled, but not yet processed at a higher degree or processed into other products.

2. Products being animal breeds or plant varieties, including eggs, breeds, saplings, seeds, sperms, germs and genetic materials at the stages of culture, importation and commercial operation.

3. Salt products made from seawater, natural rock salt, refined salt, iodized salt.

4. Equipment, machinery and special-use transport means in technological chains, and construction supplies which cannot be produced at home and need to be imported for the formation of enterprises' fixed assets; equipment, machinery, supplies and transport means which cannot be produced at home and need to be imported for direct use in scientific research and technological development activities; aircraft, derricks and ships hired from foreign countries for use in production and business, which cannot be produced at home; equipment, machinery, spare parts, special-use transport means and supplies which cannot

be produced at home and need to be imported for activities of prospecting, exploring and developing oil and gas fields.

In cases where the establishments import equipment and machinery chains in complete sets, which are not subject to value added tax, but such complete chains include equipment and machinery which can be produced at home, the whole complete equipment and machinery chains shall not be subject to value added tax.

To assign the Ministry of Planning and Investment to assume the prime responsibility for, and coordinate with the concerned ministries and agencies in, promulgating the list of equipment, machinery, spare parts, special-use transport means and construction supplies which can be produced at home for use as basis for distinguishing them from those which cannot be produced at home and need to be imported and are not subject to value added tax as prescribed in this Clause.

The Ministry of Finance shall guide procedures and dossiers applicable to cases not subject to value added tax prescribed in this Clause.

5. State-owned dwelling houses sold by the State to current tenants.

6. Transfer of land use right.

7. Credit services and investment funds, including capital lending activities; loan guarantee; discount of negotiable instruments and valuable papers; sale of loan security assets for debt retrieval, financial leasing by Vietnam-based financial and credit institutions; capital transfer activities and securities trading activities.

8. Life insurance; insurance for school pupils; insurance for domestic animals and cultivation plants, and non-commercial insurance.

9. Medical examination and treatment, prophylactic and human healthcare services, and veterinary services.

10. Cultural, exhibition as well as physical training and sport activities of mass movement nature, physical training and competition activities free of charge or with charges but not for commercial purposes.

Art performance activities such as song and dance, music shows, drama, circus and other art performance activities; art show organization services; production of films of various kinds.

Import, distribution and projection of motion pictures and video documentaries: for motion pictures, regardless of themes and types; for films recorded on video tapes and discs, only newsreels, reportage and scientific films.

11. Teaching and job-training activities, including general education, foreign language and informatics teaching, and training of other jobs.

12. Radio and television broadcasting under programs financed by the State budget.

13. Publication, import and distribution of newspapers, magazines, specialized news bulletins, political books, textbooks (including those in form of audio or video tapes or discs and those recorded with electronic data), course books, books of legal documents, scientific and technical books, books in ethnic minority languages, propaganda and mass mobilization paintings, pictures and posters; money printing.

14. Public services of sanitation and water drainage on streets and in residential quarters; maintenance of zoos, flower gardens, parks, street greenery and public lighting; funeral services.

15. Maintenance, repair and construction of cultural, art and public welfare works, infrastructure and houses of gratitude with funds contributed by people or from humanitarian aids, including cases where the State partially provides support capital of no more than 30% of the actual total costs of such works.

16. Public passenger transportation by bus or tramcar in service of people's travel within inner cities and industrial parks or between urban centers and neighboring industrial parks at uniform fare rates set by competent bodies.

17. The State's basic surveys funded with the State budget, including geological and mineral surveys and exploration; water resources, measuring and mapping, hydro-meteorological and environmental surveys.

18. Water irrigation and drainage in service of agricultural production; clean water exploited by organizations or individuals themselves in mountainous, island, deep-lying and remote areas in service of daily life in such areas.

19. Weapons and military equipment for exclusive use in service of national defense and/or security, specified jointly by the Ministry of Finance, the Ministry of Defense and/or the Ministry of Public Security. For weapons and military equipment purchased or manufactured with the State budget capital source, the tax exemption must be specified in the budget estimates.

20. Goods imported in the following cases: humanitarian aid and non-refundable aid goods; gifts for State agencies, political organizations, socio-political organizations, social organizations, socio-professional organizations and people's armed force units; gifts and donations for individuals in Vietnam within the limits set by the Government; foreign organizations' and individuals' personal effects under diplomatic-immunity quotas; belongings within the duty-free luggage limits; personal effects of overseas Vietnamese brought along upon their returns to the country.

Goods sold to international organizations or foreigners for use as humanitarian aid or non-refundable aid to Vietnam.

21. Goods which are transshipped, transited or transported through Vietnam; goods temporarily imported for re-export; goods temporarily exported for re-import; raw materials and materials imported for production or processing of export goods under the production or processing contracts with foreign countries.

22. International transportation; goods and services directly supplied for international transportation and re-insurance services to foreign countries.

International transportation includes passenger and cargo transportation from Vietnam to foreign countries in various forms.

Goods and services supplied for international transportation mean goods and services directly sold by Vietnam-based business establishments to Vietnamese and foreign international transport means for direct use for international transport means' activities according to the Finance Ministry's regulations.

23. Technology transfer under the provisions of Chapter III of the Civil Code of the Socialist Republic of Vietnam. For contracts on technology transfer accompanied by

transfer of machinery and equipment, the tax exemption shall apply only to the value of the transferred technologies; computer software, except for export computer software.

24. Post, telecommunications and Internet services universalized under the Government's programs.

25. Gold imported in form of ingots or pieces and gold of various kinds not yet processed into fine-art articles, jewelry or other products. Gold in form of ingots or pieces and unprocessed gold of various kinds which are defined in accordance with international regulations.

26. Export products which are mineral resources exploited but not yet processed into other products and specified as follows:

- Crude oil;
- Stone slabs, sand, rare earth;
- Gems;
- Manganese, tin, iron, chromite, emenbite and apatite ores.

The Ministry of Finance shall coordinate with the Ministry of Natural Resources and Environment and relevant agencies in basing themselves on the State's requirements on natural resource and mineral management in each period to submit to the Government for adjustment the list of mineral resources of various kinds prescribed in this Clause.

27. Products being artificial parts used for substitution of diseased people's organs; crutches, wheelchairs and other tools used exclusively for the disabled;

28. Goods and services of business individuals with a monthly average income level lower than the minimum wage level prescribed by the State for State employees. Such income shall be determined to be the turnover minus reasonable expenses for business activities of such business individuals.

Business establishments shall not be entitled to the deduction and reimbursement of input value added tax on goods and services used for production and/or trading of goods and services not subject to value added tax prescribed in this Article, but shall have to calculate it into the value of goods and services, fixed assets' original prices or business expenditures.

Chapter II

TAX CALCULATION BASES AND METHODS

Article 5.- The bases for calculating value added tax are the tax calculation prices and tax rates.

Article 6.- The value added tax calculation prices are prescribed as follows:

1. For goods and services sold by production/business establishments, they shall be the sale prices excluding the value added tax. For goods and services subject to special consumption tax, they shall be the sale prices including the special consumption tax but not the value added tax.

2. For import goods and services purchased from organizations or individuals overseas:

a/ For import goods, they shall be the border-gate import prices plus (+) import tax (if any) plus (+) special consumption tax (if any). The border-gate import prices shall be determined according to the regulations on import tax calculation prices;

b/ For services purchased from organizations or individuals overseas, they shall be the prices paid to such foreign organizations or individuals, not yet including the value added tax.

3. For goods and services used for exchange or internal consumption (except for cases where goods and services are internally transferred for continuing the production/business process and not subject to the value added tax), gifts and donations, they shall be the value added tax calculation prices of goods or services of the same or equivalent kinds at the time such activities are conducted.

4. For property leasing activities, irrespective of kinds of property and leasing forms, they shall be the leasing prices exclusive of tax. In cases where the rental is paid in installments or in advance for a certain leasing duration, they shall be such rental exclusive of value added tax, paid in installments or in advance.

For cases of renting foreign derricks, machinery, equipment and/or transport means which cannot be produced at home for sub-lease, the tax calculation prices shall exclude the rentals to be paid to foreign countries.

5. For goods sold by mode of installment payment, they shall be the non-tax sale prices of such goods, paid in lump sum (excluding the installment payment interests), but not calculated according to the amount of money paid in each installment.

6. For goods processing, they shall be the non-tax processing prices (including remuneration, fuel, power, auxiliary materials and other processing expenses).

7. For construction and installation activities, they shall be the non-tax construction or installation prices of projects, project items or work volume completed; in cases where the project construction or installation is paid according to the unit prices, project item volumes or work volumes completed and handed over, the value added tax shall be calculated on the value of the completed and handed-over volumes. In cases where construction and installation also involve the supply of raw materials, materials and machinery, the value added tax calculation prices shall include also the value of such raw materials, materials and machinery. In cases where construction and installation do not involve the supply of raw materials, materials and machinery, the value added tax calculation prices shall be the construction or installation value excluding the value of raw materials, materials, machinery and equipment.

For activities of investment in the construction of houses for sale or construction of infrastructure for transfer by units assigned land by the State, the tax calculation prices shall be the sale prices of houses and infrastructure attached to land, minus (-) the land-use levies to be paid to the State budget.

For activities of investment in infrastructure for lease, the tax calculation prices shall exclude (-) the land rentals to be paid to the State budget.

8. For real-estate dealing activities, the value added tax calculation prices shall exclude (-) the land prices as prescribed to determine the land-use levies payable to the State budget or the compensation money when the State recovers land at the time the real estates are sold.

9. For goods and services sale/purchase agency or brokerage activities with commissions, the non-tax prices serving as tax calculation bases shall be the commissions earned from such activities.

10. For particular goods and services entitled to the use of payment vouchers in which the inscribed payment prices are the prices inclusive of the value added tax, the non-tax prices

serving as tax calculation bases shall be the prices inclusive of tax divided by $[1 + \text{tax rates} (\%)]$ of such goods or services].

The tax calculation prices of goods and/or services defined in this Article shall also include additional levies and surcharges enjoyed by the business establishments.

The Ministry of Finance shall provide specific guidance on the value added tax calculation prices of goods and services specified in this Article.

Article 7.- Value added tax rates

1. The tax rate of 0% shall apply to export goods and services, including also goods processed for export, as well as export goods and services not subject to value added tax.

a/ Export services are those directly provided to foreign-based organizations and individuals and consumed outside the Vietnamese territory.

b/ Export goods include those exported to foreign countries, goods exported into export-processing zones or goods exported to export-processing enterprises, and other specific cases regarded as export under the Government's regulations.

c/ The following cases shall not be subject to the value added tax rate of 0%:

- International transportation; goods and services directly supplied for international transportation; tour services to foreign countries; reinsurance services to foreign countries; credit services, financial investment and securities investment to foreign countries; export products being unprocessed exploited mineral resources prescribed in Clause 26, Article 4 of this Decree, which are not subject to value added tax.

- Goods and services sold to export-processing enterprises and export-processing zones, including insurance, banking, post, telecommunications, consultancy, audit, accountancy, transportation, loading and unloading, lease of houses, working offices, warehouses storing yards, consumption services for individual laborers, petrol and oil sold to transport means which are subject to value added tax at the prescribed rates applicable to goods consumed in Vietnam.

2. The tax rate of 5% shall apply to the following goods and services:

a/ Clean water in service of production and daily life, except for clean water not subject to tax mentioned in Clause 18, Article 4 of this Decree and assorted beverages subject to the tax rate of 10%.

b/ Fertilizers, ores for fertilizer production; insecticides as well as domestic animal and plant growth stimulants.

c/ Medical special-use equipment, machinery and instruments; medical cotton and bandage; curative and preventive medicines; chemical-pharmaceutical products and materia medica being raw materials for the production of curative and preventive medicines.

d/ Teaching and learning aids being models, paintings, boards, chalks, rulers and pairs of compasses as well as equipment and instruments used exclusively for teaching, research and testing.

e/ Printing of assorted products not subject to value added tax, prescribed in Clause 13, Article 4 of this Decree, except for money printing.

f/ Children toys; assorted books, except for books not subject to value added tax prescribed in Clause 13, Article 4 of this Decree; magnetic tapes and discs, programmed or not.

g/ Cultivation and husbandry products; fished aquatic and marine products which have not yet been processed or have just been cleaned, frozen, dried or peeled at the stage of commercial operation.

h/ Fresh and raw foodstuff, food, forestry products (except for timber and bamboo shoots) not yet processed at the stage of commercial operation, except for objects prescribed in Clause 1, Article 4 of this Decree.

Food includes paddy, rice, maize, sweet potato and manioc; wheat, rice flour, maize powder, sweet potato powder, manioc powder, wheat flour.

Fresh and raw foodstuffs are those which have not yet been processed or have just been preliminarily processed.

Unprocessed forestry products are those exploited from natural forests belonging to the groups of rattan, bamboo, mushrooms, Jew's ears; roots, leaves, flowers, medicinal plants and forestry products of other kinds.

i/ Sugar; by-products in sugar production, including molasses, bagasse, sludge.

j/ Products made of jute, rush, bamboo and leaves, which are those produced or processed from main raw materials belonging the groups of jute, rush, bamboo, rattan, fan-palm, coconut.

k/ Cotton preliminarily processed from home-grown cotton, which is shelled, seeded and classified.

l/ Feeds for cattle, poultry and other domestic animals.

m/ Scientific and technological services, except for those not subject to value added tax prescribed in Article 4 of this Decree.

n/ Services in direct service of agricultural production, including such activities as plowing, raking soil for agricultural production; digging, embanking and dredging canals, ditches, ponds and lakes in service of agricultural production; rearing, planting, tending and farming products, preventing insects and diseases; harvesting, preliminary processing and preservation of agricultural products.

o/ Pit-coal, soil, stone, sand, gravel.

p/ Base chemicals; mechanical products (except for consumer mechanical products); molds of various types; explosive materials; grinding stones; newsprint; insecticide sprayers; preliminarily processed rubber latex; artificial plywood; industrial concrete products, including concrete bridge girder, concrete house beams and frames, concrete piles, concrete electric poles, concrete culvert pipe, concrete boxes of various types, non-standard prefabricated panels and reinforced concrete structures, merchandise concrete; tires and sets of tires and inner tubes of 900-20 size or larger; neutral glass tubes (tubes and shaped cylinders); nets, ropes and fibers for knitting fishing nets.

q/ Refined, rolled and pulled products of ferrous metal, non-ferrous metal and precious metal, except for import gold prescribed in Clause 25, Article 4 of this Decree.

r/ Automatic data processors and parts as well as accessories thereof (including assorted computers and their parts and accessories).

s/ Maintenance, repair and restoration of historical-cultural relics and museums, except for activities prescribed in Clause 15, Article 4 of this Decree.

t/ Transportation, loading and unloading; dredging channels, canals, river ports and seaports; salvage and rescue activities;

u/ Distribution and screening of video films (except for the distribution and screening of video documentaries prescribed in Clause 10, Article 4 of this Decree).

3. The tax rate of 10% shall apply to the following goods and services:

a/ Petroleum oil, gas, ores and other mineral products.

b/ Merchandise electricity sold by electricity production/business establishments.

c/ Electronic products; consumer mechanical products, electric items.

d/ Chemicals (except for base chemicals prescribed at Point q, Clause 2 of this Article), cosmetics.

e/ Fibers, fabrics, garment and embroidered products; sanitary napkin and baby's nappy.

f/ Paper (except for newsprint prescribed at Point q, Clause 2 of this Article) and paper products.

g/ Milk, confectionery, beverages and other processed foodstuffs.

h/ Porcelain, china, glass, rubber and plastic products; timber and timber products; cement, bricks, tiles and other construction materials (except for products subject to the tax rate of 5%).

i/ Construction and installation; houses and technical infrastructures of establishments assigned or leased land by the State for construction investment for business purposes.

j/ Post, telecommunications and Internet services (except for post, telecommunications and Internet services prescribed in Clause 24, Article 4 of this Article).

k/ Lease of houses, working offices, warehouses, wharves and storing yards, workshops, machinery, equipment and transport means.

l/ Legal consultancy services and other consultancy services.

m/ Audit, accountancy, survey and design services.

n/ Photo taking, printing and enlargement; tape printing, recording and rent; videoing; photocopying.

o/ Hotel, tourism, food- and drink-catering.

p/ Goods and services subject to special consumption tax.

q/ Gold, silver, gems (except for import gold prescribed in Clause 25, Article 4 of this Decree).

r/ Ocean shipping agency.

s/ Brokerage services.

t/ Other goods and services not prescribed in Article 4 and Clauses 1 and 2 of this Article.

Basing itself on the tax rates prescribed in this Article, the Finance Ministry shall provide specific guidance on the application of tax rates to assorted goods and services.

Article 8.- Value added tax calculation methods

1. Tax deduction method:

The payable value added tax amount shall be determined as equal to the output value added tax amount minus (-) the deductible input value added tax amount.

a/ An output value added tax amount shall be equal to the tax calculation price of the sold taxable goods or service multiplied (x) by the value added tax rate of such goods or service.

In cases where an establishment sells goods or provides services, which are subject to value added tax, but fails to specifically inscribe the non-tax sale prices and value added tax on added value invoices, the output value added tax shall be calculated on the sale prices of such goods or services, except for cases where added value invoices are allowed to be inscribed with payment prices being the prices inclusive of value added tax.

b/ Deductible input value added tax shall be equal to the total value added tax amount inscribed in the added value invoices for purchase of goods or services; vouchers on payment of value added tax on import goods used for production of or trading in goods or services subject to value added tax; vouchers on payment of value added tax on behalf of foreign organizations or individuals as prescribed at Point f, Clause 1, Article 9 of this Decree.

c/ The tax deduction method shall apply to all business establishments, except for those subject to the method of direct calculation on the added value according to the provisions of Clause 2 of this Article.

2. The method of direct calculation on the added value:

The payable value added tax amount shall be equal to the added value of the sold taxable goods or services multiplied (x) by the value added tax rate applicable to such goods or services.

a/ The added value of goods or services shall be determined as equal to the payment price of goods sold or service provided minus (-) the payment price of corresponding purchased goods or services.

The payment prices of goods or services purchased or sold are the actual purchase or sale prices inscribed on the purchase or sale invoices of such goods or services, including the value added tax and additional levies and/or surcharges enjoyed by the sellers.

The payment prices of purchased goods or services shall be determined as equal to the value of purchased goods or services, including the value added tax, which have been used for production of, or trading in, sold goods or services subject to value added tax.

In cases where a business establishment fails to effect the purchase and/or sale of goods and services with full invoices and vouchers used as basis for determining the added value according to the above-said regulations, the added value shall be determined as follows:

- For business establishments that sell goods or services with full invoices and vouchers as required, thus accurately determining their turnover from the sale of goods or services, but fail to sufficiently acquire purchase invoices of goods or services, the added value shall be determined as equal to the turnover multiplied (x) by the percentage (%) of the added value calculated on the turnover.

- For business individuals who fail to apply or improperly apply the invoices for purchase and sale of goods or services, the tax agencies shall base themselves on the business situation of each business individual to fix the taxable turnovers; the added value shall be determined as equal to the fixed turnover multiplied (x) by the percentage (%) of the added value calculated on the turnover.

b/ The percentage (%) of the added value calculated on the turnover used as basis for determining the added value shall be set by the tax agencies, suitable to each business line.

The Finance Ministry shall guide the determination of specific added value for each business line.

c/ The method of direct calculation on the added value shall apply only to the following subjects:

- Vietnamese production/business individuals as well as foreign organizations and individuals doing business in Vietnam not under the Law on Foreign Investment in Vietnam, that fail to fully meet the conditions on accounting, invoices and vouchers for use as bases for tax calculation by the tax deduction method.

- Business establishments trading in gold, silver, gems and foreign currencies, which pay value added tax by the method of direct calculation on the added value. In cases where an establishment that pays tax by the tax deduction method and conducts business activities of trading in gold, silver or gems, it shall be entitled to calculate and declare the tax separately paid for such business activities of trading in gold, silver or gems by the method of direct calculation on the added value.

Article 9.- Input value added tax deduction:

1. Business establishments that pay value added tax by the tax deduction method shall be entitled to the deduction of input value added tax as follows:

a/ Value added tax on goods and services purchased for production of, or trading in, goods and services subject to value added tax shall be fully deducted.

b/ For input value added tax on goods and services purchased for production of, or trading in, goods and services which are subject to value added tax and which are not subject to value added tax, only the input tax on goods and services used for production of, or trading in, goods and services subject to value added tax shall be deducted.

The business establishments shall have to separately account deductible and non-deductible input tax; in cases where they cannot do so, they shall be entitled to deduct tax according to the percentage (%) between the taxable turnover and the total sale turnover.

c/ Deductible input tax incurred in any month shall be declared and deducted upon the determination of the payable tax amount of such month. The time limit for declaration shall be within 3 months after tax incurred in a month is declared. For added value invoices of purchased goods and services, which are over 3 months, the business establishments must not declare and deduct tax but have to include it in the value of goods, services, fixed assets' original prices or business expenditures.

Particularly for fixed assets, if the deductible input tax amount is large, it shall be gradually deducted or reimbursed according to the provisions of Article 15 of this Decree.

d/ To be entitled to deduction or reimbursement of input value added tax, export goods and services must fully satisfy the following conditions and procedures:

- Export goods declarations with the customs offices' certification that export procedures have been carried out for the goods (applicable to export goods);

- Contracts on goods sale or processing (applicable to goods processing), or on provision of services to foreign organizations and/or individuals;

- Making via-bank payment and cases regarded as via-bank payment such as: deduction from foreign loan debts, foreign parties authorize the third parties being foreign-based organizations or individuals to make via-bank payment (except for cases where export is paid in form of goods barter, debt payment for the State, labor export with money directly collected from exporting laborers; export goods sold at overseas fairs, exhibitions and a number of export goods and services subject to special form of payment decided by the Prime Minister);

- Invoices of sale of goods and/or services to foreign traders.

In cases where export goods and services have been certified by the customs offices (for export goods) but fail to satisfy one of the other conditions and procedures mentioned above, the business establishments shall not be entitled to deduct the input value added tax but have to include it in their business expenditures. The Finance Ministry shall provide specific guidance on procedures and conditions for the application of this case.

For business establishments that pay value added tax by the method of direct calculation on the added value, if they shift to pay the value added tax by tax deduction method, they shall only be entitled to calculate and deduct input value added tax as prescribed for invoices and vouchers made after the date the value added tax is calculated according to the tax deduction method.

e/ For business establishments purchasing particular goods and services from foreign business organizations and/or individuals that pay value added tax by the tax deduction method and use added value invoices inscribed with payment prices being the prices inclusive of the value added tax, the prices inclusive of tax shall serve as basis for determination of the non-tax prices and deductible input value added tax according to the calculation method mentioned in Clause 10, Article 6 of this Decree.

f/ In cases where establishments do business in Vietnam and purchase goods and services from foreign organizations and/or individuals doing business in Vietnam, that do not belong to investment forms under the Law on Foreign Investment in Vietnam or implement Vietnamese accounting regimes, they shall have to pay value added tax on behalf of foreign contractors. Establishments doing business in Vietnam shall be entitled to calculate and deduct the value added tax amount already paid on the latter's behalf.

2. Bases for determining the deductible input value added tax amount prescribed above shall be as follows:

a/ For purchased goods or services, it shall be the value added tax amount inscribed on the added value invoices of goods or service purchase; for cases where the tax has been paid on behalf of foreign contractors or other subjects as prescribed by law, it shall be vouchers of the on-behalf payment of tax.

b/ For import goods, it shall be the already paid value added tax amount inscribed on the vouchers of payment of value added tax on import goods.

c/ For goods and services purchased by business establishments which pay value added tax by the tax deduction method, are entitled to use invoices inscribed with payment prices being the prices inclusive of the value added tax, such invoices shall serve as bases for calculation of the deductible input tax amount according to the provisions at Point e, Clause 1 of this Article.

3. Business establishments shall not be entitled to deduct input value added tax for added value invoices used not according to law provisions such as the use of forged invoices or vouchers on payment of value added tax, falsely-declared invoices (goods or services are

not purchased or sold), or invoices inscribed with a value higher than the actual value of sold goods or services.

Article 10.- Business establishments shall have to effect the purchase and sale of goods and services with full invoices and vouchers strictly according to law provisions. Invoices on purchase and sale of goods and services prescribed for business establishments shall be as follows:

1. Business establishments that pay tax by the tax deduction method shall have to use the added value invoices. When making goods and service sale invoices, business establishments shall have to fully and accurately fill in the items on the invoices; regarding sale prices, they must clearly inscribe: non-tax sale prices, surcharges and charges outside the sale prices (if any), value added tax, payment prices inclusive of tax.
2. Business establishments that pay tax by the method of direct calculation on the added value shall use goods sale invoices. The sale prices of goods and services inscribed on the invoices shall be the payment prices inclusive of the value added tax.
3. Business establishments that use invoices and vouchers printed by themselves shall have to register the specimens of their invoices and vouchers with the Finance Ministry (the General Department of Tax) and may use them only after obtaining written notices of the Finance Ministry (the General Department of Tax).
4. Business establishments that directly retail their goods to consumers at sale prices lower than the set prices shall have to make the added value invoices or goods sale invoices. If they fail to make invoices, they shall have to make lists of retailed goods according to the form set by the tax agencies for use as basis for value added tax calculation; in cases where the purchasers request added value invoices or goods sale invoices, they shall have to make such invoices strictly according to regulations.
5. Business establishments that commit acts of printing, distributing or using invoices in contravention of regulations in order to evade tax or commit frauds in value added tax deduction or reimbursement shall, apart from having the evaded tax amounts retrospectively collected or reimbursed, be sanctioned for tax-related administrative violations, if their violations are serious, they shall be examined for penal liability according to law provisions.

Chapter III

TAX REGISTRATION, DECLARATION, PAYMENT AND SETTLEMENT

Article 11.- Business establishments shall make tax registration and payment as follows:

1. All business establishments liable to pay value added tax prescribed in Article 3 of this Decree, including their attached units and affiliates, shall have to register with the tax agencies of the localities where they conduct their business activities the business locations, business lines, existing number of laborers, capital, tax payment places and other relevant criteria under the tax agencies' guidance.

For newly set up establishments, the time limit for tax registration shall be within ten days after they are granted business registration certificates; in cases where they have not yet been granted business registration certificates but conduct business activities, they must register tax payment before conducting business activities. For business establishments that have already registered tax payment, in case of a merger, consolidation, division, splitting, change of ownership form, dissolution, bankruptcy or change of business lines or places,

the business establishments shall also have to declare such with the tax agencies at least 5 days before such changes are made.

2. For business establishments that pay tax by the method of direct calculation on the added value, if they fully meet the conditions on the regime of invoices, vouchers and accounting books, make tax declaration and payment strictly according to regulations and voluntarily register the application of tax calculation by the tax deduction method, which have been examined and certified by the tax agencies, the tax agencies shall notify such to the establishments for implementation; in the course of implementation, if the establishments fail to strictly observe the prescribed conditions, the tax agencies shall make notices on the suspension of tax calculation according to the tax deduction method.

The Finance Ministry shall guide procedures for tax registration and payment and competence to consider and permit business establishments which are liable to pay tax by the method of direct calculation on the added value to pay tax according the tax deduction method prescribed in this Article.

Article 12.- Business establishments and importers shall have to make value added tax declaration according to the following regulations:

1. Business establishments that deal in goods and services subject to value added tax shall have to make monthly value added tax declaration and submit tax declarations together with lists of purchased/sold goods and services, which shall serve as bases for determining monthly payable tax amounts, to the tax agencies within the first ten days of the subsequent month. Even in cases where there is no turnover from the sale of goods or services, where input tax and output tax do not arise, the business establishments shall still have to make and submit declarations to the tax agencies. The establishments shall have to fully declare tax strictly according to the set form and bear legal responsibility for the accuracy of their declaration.

The time for calculating arising output value added tax shall be the time the business establishments have transferred ownership (use right, for case of sale in form of installment payment) of goods or provided services to the purchasers, irrespective of whether the purchasers have paid or not yet paid therefor. When selling goods or providing services, the business establishments shall have to make invoices according to law provisions.

Foreign-based organizations and individuals that do not have their Vietnam-based offices but provide goods and/or services subject to value added tax to Vietnam-based organizations and individuals, the latter shall have to make value added tax declaration and payment on behalf of foreign-based organizations and individuals.

2. Business establishments and importers that import goods subject to value added tax shall have to make and submit value added tax declaration upon each importation together with the import tax declaration with the import tax-collecting agencies.

3. Business establishments that deal in different kinds of goods and services with different value added tax rates shall have to make value added tax declaration at each tax rate prescribed for each kind of goods or services; if business establishments cannot determine value added tax at each tax rate, they shall have to calculate and pay the tax at the highest tax rate of goods produced or services provided by the establishments.

Article 13.- Payment of value added tax into the State budget

1. Business establishments shall have to pay value added tax fully and on time into the State budget.

a/ For business establishments that pay tax according to the tax deduction method, after submitting the value added tax declarations to the tax agencies, they shall have to pay value added tax into the State budget. The deadline for monthly tax payment shall be the 25th day of the subsequent month. In cases where business establishments have large amounts of payable value added tax amounts (an average of VND 200 million/month or more), they shall have to pay tax once every 5 or 10 days in a month. At the month-end, after making tax declaration and calculation, business establishments shall have to pay the outstanding tax amounts into the State budget. The deadline for paying the outstanding tax amounts shall be the 25th day of the subsequent month.

b/ Business establishments, that fail to fully abide by the regimes on accounting and tax payment invoices and vouchers according to the method of direct calculation, shall have to pay value added tax fully and on time into the State budget according to the tax agencies' tax payment notices. The deadline for monthly tax payment shall be the 25th day of the subsequent month.

c/ For business households and individuals that are based in areas far from the State treasuries or that conduct itinerant or irregular business activities, the tax agencies shall collect and remit tax into the State budget. The time limit for the tax agencies to remit the collected tax amounts into the State budget shall be within 3 days, or 6 days for mountainous areas, islands and areas where travel is difficult, after the tax amounts are collected.

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

The time limit for notifying and the time limit for paying the value added tax on import goods shall coincide with the time limit for notifying the import tax payment. For goods not subject to import tax, the time limit for value added tax declaration and payment shall comply with the regulations applicable to goods subject to import tax.

For import goods not subject to value added tax as prescribed in Clause 4, Article 4 of this Decree, if establishments sell them or use them for other purposes, they shall have to make value added tax declaration and payment according to the regulations applicable to other goods.

3. In a tax calculation period (a month), if business establishments have overpaid tax amounts of the previous period, such overpaid amounts shall be deducted from the payable tax amount of the subsequent period, if they have not fully paid tax, they shall have to fully pay the outstanding tax amount of the previous period. Business establishments liable to pay value added tax according to the tax deduction method, which have the input tax amount larger than the output tax amount in a tax calculation period, shall be entitled to deduct such larger tax amount from the subsequent tax calculation period. In cases where business establishments make new investment in fixed assets and have large amounts of deductible input tax, they shall be entitled to gradual tax deduction or tax reimbursement according to the provisions of Article 15 of this Decree.

4. Value added tax shall be remitted into the State budget in Vietnam dong.

In cases where business establishments have turnovers in foreign currencies, they must convert such foreign currencies into Vietnam dong at the exchange rates announced by Vietnam State Bank at the time the foreign currency turnovers are generated in order to determine the payable tax amounts.

The Finance Ministry shall provide specific guidance on tax payment procedures suitable to each mode of tax payment and each tax payer prescribed in this Article.

Article 14.- Business establishments shall have to make annual tax settlement with the tax agencies. The tax settlement years shall be the calendar years. Within sixty days after the year-end, business establishments shall have to send tax settlement reports to the tax agencies and fully remit the outstanding tax amounts into the State budget within ten days after submitting the tax settlement reports; in case of overpayment, the overpaid amounts shall be deducted from the payable tax amounts of the subsequent period.

In case of merger, consolidation, division, splitting, dissolution, bankruptcy or change of ownership form; assignment, sale, contracting or lease of State enterprises, business establishments shall have to make tax settlement with the tax agencies and send tax settlement reports to the tax agencies within forty five days after the issuance of the decisions on such merger, consolidation, division, splitting, dissolution, bankruptcy or change of ownership form; assignment, sale, contracting or lease of State enterprises.

Business establishments shall have to declare all the payable tax amounts, the already paid amounts, the outstanding amounts or overpaid amounts by the time prescribed for tax settlement. The establishments shall have to fully and accurately declare the criteria and data according to the tax settlement forms; send tax settlements to the tax agencies of the localities where they register the tax payment within the time limits prescribed above.

The Finance Ministry shall set forms and guide the value added tax settlement prescribed in this Article.

Article 15.- The reimbursement of the paid value added tax as prescribed in Article 16 of the Value Added Tax Law is specified as follows:

1. Business establishments liable to pay tax according to the tax deduction method shall be considered for tax reimbursement if after three consecutive months or more their input tax amounts have not yet fully been deducted. Business establishments entitled to tax reimbursement consideration in this case shall include also those that make extensive or intensive investment.

Business establishments that export goods and/or services in large volumes and values according to seasons or business affairs, if the amount of input value added tax on export goods or services not yet fully deducted in the month is VND 200 million or more, they shall be considered for monthly tax reimbursement. Business establishments that have export goods eligible for value added tax reimbursement must fully satisfy the conditions and procedures prescribed at Point d, Clause 1, Article 9 of this Decree.

2. Business establishments that make new investment, have already registered their business and tax payment by the tax deduction method, are being in investment period, have not yet operated, if the investment period is 1 year or longer, shall be considered for annual value added tax reimbursement for goods and services used for investment. In cases where establishments have the amounts of value added tax on goods and services used for investment of VND 200 million or more, they shall be considered for quarterly tax reimbursement.

3. Operating business establishments liable to pay tax according to the tax deduction method, that have projects for investment in new production establishments, which are in the investment period, have not yet operated, registered their business or tax, and have the amounts of value added tax on goods and services used for investment projects of VND 200 million or more, shall be considered for quarterly tax reimbursement. Business

establishments shall have to separately declare and make dossiers on tax reimbursement for such investment projects.

4. Business establishments, that make tax settlement upon their division, splitting, dissolution, bankruptcy or change of ownership form; assignment, sale, contracting or lease of State enterprises, have input value added tax amount not yet fully deducted or have overpaid value added tax amounts.

5. Value added tax reimbursement for projects funded by the Official Development Assistance (ODA) capital sources:

a/ For projects funded with non-refundable ODA capital: The project owners or principal contractors shall be reimbursed the value added tax amounts already paid within the purchase prices of goods or services used for their projects.

b/ For projects funded with ODA capital being non-refundable State budget capital: the projects owners or principal contractors shall be reimbursed the value added tax amounts already paid upon the importation or purchase of domestic goods and services used for their projects.

6. Vietnam-based organizations, which use foreign organizations' or individuals' humanitarian aids for the purchase of value added tax-liable goods in Vietnam to provide humanitarian aids, shall be reimbursed the value added tax amounts on such goods.

7. Subjects enjoying the diplomatic privileges and immunities under the provisions of the Ordinance on Diplomatic Privileges and Immunities, that purchase goods and/or services in Vietnam at the prices inclusive of the value added tax for use shall be reimbursed the paid value added tax amounts inscribed in the added value invoices.

8. Business establishments that have tax reimbursement decisions of competent agencies according to law provisions.

To be entitled to tax reimbursement according to the provisions of this Article, organizations and individuals shall have to send their written requests enclosed with tax reimbursement dossiers to the grassroots tax collection managing agencies. The tax agencies shall have to examine and determine the to be-reimbursed tax amounts and carry out procedures for tax reimbursement or request competent agencies to make tax reimbursement to the establishments.

The Finance Ministry shall prescribe the procedures, time limits and competence for tax reimbursement prescribed in this Article.

Article 16.- The tax agencies shall have the following tasks, powers and responsibilities:

1. To guide business establishments that have registered their business in making value added tax registration, declaration and payment strictly according to the provisions of the Value Added Tax Law.

For business establishments that fail to strictly observe the regulations on tax registration, declaration and payment, the tax agencies shall issue the first notices, if after receiving the first notices, the establishments still fail to implement them, the tax agencies may handle tax-related administrative violations.

2. To notify the business establishments that pay tax according to the tax deduction method to make explanations, adjustments, supplements or re-declaration in cases where their value added tax declarations have failed to state the full and accurate payable tax amounts. To notify the business establishments that pay tax according to the method of direct

calculation of the payable tax amounts and the time limits for tax payment as prescribed. Tax payment notices must be sent to the tax payers 3 days before the date of tax payment inscribed in the notices.

If past the prescribed tax payment time limits, the business establishments fail to pay tax, to notify them of the tax amounts and fines for deferred tax payment according to the provisions of Clause 2, Article 19 of the Value Added Tax Law. The time limits for calculating monthly fines for deferred tax payment shall count from the 26th day of the subsequent month or from the date of tax payment notified by the tax agencies to the tax payers. The time limits for calculating fines for deferred payment for import goods and other cases shall be after the prescribed date of tax payment inscribed in the tax notices. If business establishments still fail to pay tax and fine amounts stated in the notices, the tax agencies may apply or request competent agencies to apply handling measures prescribed in Clause 4, Article 19 of the Value Added Tax Law in order to ensure the full collection of tax and fine amounts. If the above-mentioned handling measures have been applied, but the business establishments still fail to fully pay tax and fine amounts, the tax agencies shall transfer the dossiers of the cases to law bodies for handling.

3. To examine and inspect the tax declaration, payment and settlement by business establishments strictly according to law provisions.

4. To handle tax-related administrative violations and settle tax-related complaints according to law provisions.

5. To request tax payers to provide accounting books, invoices, vouchers as well as other dossiers and documents related to tax calculation and payment; to request credit institutions, banks as well as other relevant organizations and individuals to provide documents related to tax calculation and payment.

6. To keep and use data and documents provided by business establishments and other subjects in accordance with the prescribed regime.

Article 17.- The tax agencies may determine the payable value added tax for the tax payers in the following cases:

1. Tax payers fail to implement or improperly implement the regimes on accounting, invoices and vouchers.

For business establishments liable to pay tax according to the method of direct calculation on the added value, that fail to effect or fully effect the goods purchase/sale with invoices and vouchers, the tax agencies shall base themselves on their business situation to determine the added value and the payable tax amounts according to the tax calculation method prescribed in Clause 2, Article 8 of this Decree.

For individuals conducting medium- and small-scale business, the fixed tax amount to be paid each time shall be determined for use as basis for tax collection in each period of 6 or 12 months, depending on business lines and price fluctuations as well as business situation of the tax payers. The tax agencies shall have to publicly notify the tax levels set for such subjects.

For individuals conducting medium- and small-scale business that pay tax at the levels prescribed for each period, if there are any changes in their business lines, scales or turnovers, they shall have to declare such with the tax agencies for consideration and adjustment of the set tax levels. In cases where they fail to make declaration or make untruthful declaration, the tax agencies may set the payable tax levels suitable to practical business situation. Individuals that cease to conduct business activities shall have to

declare such with the tax agencies for tax exemption or reduction consideration; if they cease their business activities for 15 days or more in a month, they shall be considered for 50% reduction of the payable tax amounts of the month, if they cease their business activities for the whole month, they shall be exempt from tax for such month.

The Finance Ministry shall guide the determination of the percentage (%) of the added value calculated on the turnovers for use as basis for determination of the payable value added tax suitable to each business line; as well as the procedures for declaring business cessation and the tax reduction for business households prescribed in this Article.

2. Tax payers fail to declare or, if past the prescribed time limits for submitting declarations, they have been reminded thereof but still fail to strictly comply therewith, or have submitted their tax declarations but falsely declared the bases for determining the value added tax amounts.

3. Tax payers refuse to produce accounting books, invoices, vouchers and relevant necessary documents related to value added tax calculation.

4. Tax payers conduct business without business registration, without tax payment registration and/or declaration, as detected through inspection.

The tax agencies shall base themselves on the investigation documents on establishments' business activities or the tax amounts to be paid by other business establishments engaged in the same business lines with equivalent scales to determine the tax amounts to be paid by each business establishment mentioned above.

In cases where business establishments disagree with the determination of the payable tax amounts, they may lodge complaints to the tax agencies which have determined tax or the immediate superior tax agencies of the tax agencies which have determined tax. Pending the settlement, business establishments or complainants shall still have to pay tax at the levels determined by the tax agencies.

Chapter IV

HANDLING OF VIOLATIONS AND COMMENDATION

Article 18.- Tax payers or tax officials that violate the Value Added Tax Law shall, depending on their acts and the seriousness of their violations, be handled according to the provisions of Articles 19 and 21 of the Value Added Tax Law.

Article 19.- Tax agencies and tax officials that well fulfil the assigned tasks; organizations and individuals that record achievements in the implementation of the Value Added Tax Law; and tax payers that well fulfil their tax payment obligations shall be rewarded and/or commended according to the Government's regulations.

Chapter V

IMPLEMENTATION PROVISIONS

Article 20.- The collection of value added tax is prescribed as follows:

1. The tax agencies shall have to collect value added tax and reimburse value added tax for goods and services of production/business establishments.
2. The customs offices shall have to collect value added tax on import goods.
3. The tax agencies and the customs offices shall have to coordinate with each other in managing the value added tax collection nationwide.

The Finance Ministry shall specify the collection of value added tax prescribed in this Article.

Article 21.- The value added tax amounts to be reimbursed to the subjects prescribed in Article 15 of this Decree shall be paid from the tax reimbursement funds which are set up with deductions from the collected value added tax amounts. The Finance Ministry shall specify the tax reimbursement and accounting of value added tax collection and reimbursement prescribed in this Article.

Article 22.- This Decree takes implementation effect as from January 1, 2004 and replaces the Government's Decrees No. 79/2000/ND-CP of December 29, 2000, No. 76/2002/ND-CP of September 13, 2002, No. 95/2002/ND-CP of November 11, 2002 and No. 108/2002/ND-CP of December 25, 2002 detailing the implementation of the Value Added Tax Law.

Article 23.- The Finance Ministry shall guide the implementation of this Decree.

The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the provincial/municipal People's Committees shall have to implement this Decree.

On behalf of the Government
Prime Minister
PHAN VAN KHAI