

Legal news

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TAX LAW

Businesses adjust to VAT law

By Vuong Son Ha

On June 3, the National Assembly passed a new law on Value-Added Tax (VAT). It will take effect on January 1, 2009 and replaces a law passed in 2003. This law, together with its twin – the new Law on Corporate Income Tax, are designed to create fairer rules for all players in the context of Vietnam's entering the common house – WTO, and to ensure the economy funded by the budget resources.

In this article, we review some new, amended and supplemented contents in the new law.

Non-taxable objects

Firstly, agriculture-related services are broadened. Apart from irrigation and drainage covered in the current regulations, exemptions from VAT will be extended to ploughing and harrowing land, dredging canals and ditches inside fields for agricultural production and harvesting.

The new law also exempts raw materials imported for manufacture or processing of goods for export in accordance with such manufacture or processing contracts with foreign parties, goods and services purchased and sold between foreign parties and non-tariff zones - or purchased and sold between non-tariff zones.

Continuing exemption will also be applied to credit services, securities-business activities, assignment of capital, and derivative financial services, including interest-rate swaps, forward contracts, futures contracts, options, foreign currency sales and other derivative financial services as stipulated by law - as well as telecommunication and/or postal services for social and public use.

In the meantime, international transport will be subject to a zero tax rate instead of being made VAT exempt, as at present.

Under the new regulations, VAT exemption will no longer be provided for the following goods and services:

1. Specialised machinery, equipment or transportation that forms part of a technological process, and construction materials imported to form the fixed assets of enterprises. This could result in major increases of cost for businesses.
2. Non-profit-making cultural, exhibition and sports activities; artistic performances, film production; the importation, publication and screening of film footage and documentary videos.
3. Geological surveys, exploration, measuring and formulation of maps characterised as surveys of the State.

4. Clean water produced by organisations and individuals for consumption in rural, mountainous and island areas and remote and distant regions: The question is whether this restriction on clean water embarrasses or obstructs foreign and domestic incentives and projects aimed at improving conditions for residents in regions with difficult or special difficult socio-economic conditions?

Tax rates

The new law abandons the enumeration methodology used by the previous regulations. In fact, while the 2003 law provided three categories of tax rates - zero per cent, five per cent, and 10 per cent for each group of goods and services - the new law uses an elimination approach.

It provides two groups of goods and services that can receive tax rates of zero per cent and five per cent. The remaining goods and services will be subject to a tax rate of 10 per cent.

The tax rate of zero per cent shall apply to exported goods and services, international transportation, and to exported goods and services not subject to VAT.

However, the following are exemptions: technology transfers and intellectual-property transfers to foreign countries; reinsurance offshore; credit services, assignment of capital and derivative financial services; post and telecommunications services; and exports of unprocessed natural resources and minerals.

For the difference between VAT exempt and the tax rate of zero per cent, the new law retains a provision stating that except where the tax rate of zero per cent applies, business establishments will not be entitled to a credit and refund of input VAT for goods and services used to make and trade products exempted from VAT.

Tax deductions

As a new point, the new law permits the deduction of input VAT, levied on fixed assets used in manufacturing of and business for both value-added taxable goods and services and non-taxable goods and services.

Besides, the present three-month time limit for claiming input VAT credits has been removed. In addition, business establishments can amend an incorrect input VAT declaration within six months of an error occurring.

Finally, the new regulations stipulate that one of the conditions for claiming input VAT is that there is evidence of payment via a bank for the input purchased goods and services, except for purchases of goods and services with a value below VND20 million. This currently applies only to exported goods and services.

The above changes, in particular the VAT exemption for imported special machinery, equipment and transport, will have considerable impacts on activities of business establishments reconsidering supplies and cash flows.

At the same time, the changes create a flatter playing ground to suppliers. This also complies with a fundamental principle: goods and services locally consumed will be subject to VAT. The problem is if, and how, Vietnamese enterprises catch the opportunity to become suppliers?.

Other Sectors

Finance

- Decision No.101/2008/QD-TTg of the Prime Minister, dated July 18, 2008 promulgating the regime of financial and personnel administration for the system of State treasury for the period from 2009 to 2013.
- On July 17, 2008, the State Bank of Vietnam stipulated Decision No.22/2008/QD-NHNN amending Item 2 of Annex No.3 in the Regulations on the system of banking codes used in payment transactions through the State Bank accompanying Decision No.02/2006/QD-NHNN of the Governor of State Bank, dated January 18, 2006.
- Decision No.51/2008/QD-BTC of the Ministry of Finance, dated July 14, 2008 on the amendment of and supplement to Decision No.90/2007/QD-BTC of the Minister of Finance, dated October 26, 2007 assigning codes for the State Budget-related units.
- On July 17, 2008, the Ministry of Finance issued Decision No.56/2008/QD-BTC promulgating a process of examination on the finalisation of the State budget - funded projects completed.
- Decision No.40/2008/QD-BTC of the Ministry of Finance, dated June 20, 2008 promulgating Regulations on financial management of Fund for Protection of overseas Vietnamese legal or natural persons.
- On June 23, 2008, the People's Committee of Hanoi City stipulated Decision No.35/2008/QD-UBND promulgating the regulations on responsibilities in the finalization of capitals for investment in basic construction and finalization of accounts at the State treasury regarding projects using capital from the State budget of Hanoi City.
- Circular No.59/2008/TT-BTC of the Ministry of Finance, dated July 4, 2008 guiding the management and use of money sources collected from dealing with breaches of law in the field of fighting against smuggling, commercial frauds and counterfeit goods.

Taxation

- On July 21, 2008, the Ministry of Finance issued Decision No.58/2008/QD-BTC repealing the regulations on the collection of tax levied on agricultural land use with respect to agricultural lands belonging to the land fund reserved for communes' public demands as stipulated in Circular No. 89/TC-TCT of the Ministry of Finance, dated November 9, 1993.

- Circular No.66/2008/TT-BTC of the Ministry of Finance, dated July 21, 2008 on the amendment of and supplement to Circular No.104/2000/TT-BTC of the Ministry of Finance, dated October 23, 2000 guiding the implementation of Decree No.19/2000/ND-CP, dated June 8, 2000 detailing the implementation of the Law on Tax for transfer of land use right and the Law amending and supplementing a number of articles of this Law.

Trade

- On July 24, 2008, the 127 central Steering Committee stipulated Decision No.24/QD-BCD promulgating Working Rules of the central Steering Committee on anti-smuggling, counterfeit goods and commercial frauds and its executive organ.
- Decision No.106/2008/QD-TTg of the Prime Minister, dated July 21, 2008 on the list of the State's secrets at Extreme confidential and Top secret levels in the sector of industry and trade.
- On July 21, 2008, the Prime Minister issued Decision No.104/2008/QD-TTg promulgating the absolute rates of export tax for rice and fertilizers for export.
- Decision No.57/2008/QD-BTC of the Ministry of Finance, dated July 21, 2008 on the selling price of gasoline and petroleum oil.
- On July 18, 2008, the Prime Minister stipulated Decision No.940/QD-TTg on the merger of regional units of national reserve under the Department of National Reserve, the Ministry of Finance.
- Decision No.18/2008/QD-BCT of the Ministry of Industry and Trade, dated July 18, 2008 promulgating the regulations on price list of avoidable costs and the standard power sale and purchase contract applicable to small power plants using regenerative energy.
- On July 15, 2008, the Ministry of Finance issued Decision No.54/2008/QD-BTC on the rates of import tax for imported goods of Laotian origin.
- Decision No.16/2008/QD-BCT of the Ministry of Industry and Trade, dated July 3, 2008 on the temporary application of the automatic granting system of export licences for steels and irons.
- On July 18, 2008, the Ministry of Finance stipulated Circular No.64/2008/TT-BTC on the amendment of and supplement to Circular No.67/2004/TT-BTC of the Ministry of Finance, dated July 7, 2004 providing the regime of collection, submission and use management of fees for granting advertisement licences.
- Circular No.61/2008/TT-BTC of the Ministry of Finance, dated July 4, 2008 guiding the refund of import tax levied on automobile chassis for production and assembly of special automobiles.

Labour

- On July 21, 2008, the Prime Minister issued Decision No.103/2008/QD-TTg approving a project on the assistance of youth's vocational learning and job creation for the period from 2008 to 2015.
- Decision No.86/2008/QD-TTg of the Prime Minister, dated July 3, 2008 providing the functions, duties, authority and organizational structure of the General Department of Vocational Education under the Ministry of Labour, War Invalids and Social Affairs.
- On July 22, 2008, the Ministry of Labour, War Invalids and Social Affairs stipulated Circular No.12/2008/TT-BLDTBXH providing additional guidelines on the provision of meals between shifts for workers, employees and public servants to take part in constructing hydraulic power plants.
- Inter-ministerial Circular No.11/2008/TTLT-BLDTBXH-BTC of the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Finance, dated July 21, 2008 guiding the management and use of the Overseas Job Assistance Fund.

Health

- On July 18, 2008, the Government issued Decree No.79/2008/ND-CP providing the organizational system of administration, inspection and testing of foods' hygiene and safety.
- Decision No.59/2008/QD-BTC of the Ministry of Finance, dated July 21, 2008 on the amendment of and supplement to Decision No.44/2005/QD-BTC of the Minister of Finance, dated July 12, 2005 providing the regime of collection, submission, management and use of fees for the assessment of conditional business and commerce in the field of health care; fees for the assessment of practicing standards and conditions for health care and pharmaceutical professions; fees for the issuance of import and export licences, and for the issuance of practicing certificates of health care and pharmaceutical professions.
- On July 15, 2008, the Ministry of Agriculture and Rural Development stipulated Decision No.81/2008/QD-BNN promulgating the additional list of veterinary medicines, vaccines, biological products, micro-organisms and chemicals for veterinary use, which are permitted for circulation in Vietnam, 1st instalment in 2008;
- Decision No.25/2008/QD-BYT of the Ministry of Health, dated July 14, 2008 approving a programme of legal promulgation and education on health care for the period from 2008 to 2012.
- On July 11, 2008, the Ministry of Health issued Decision No.24/2008/QD-BYT promulgating the regulations on organization and operation of pharmacies in hospitals.

- Decision No.23/2008/QD-BYT of the Ministry of Health, dated July 7, 2008 providing the use of vaccines and biological productions in prevention and treatment.

Education

- On July 25, 2008, the Ministry of Labour, War Invalids and Social Affairs stipulated Decision No.60/2008/QD-BLDTBXH promulgating standard Regulations on the management of in the rehabilitation centers for Disease Treatment - Education – Social Labour;
- Decision No.59/2008/QD-BLDTBXH of the Ministry of Labour, War Invalids and Social Affairs, dated July 18, 2008 promulgating Regulations on the assignment, recognition, re-assignment, re-recognition, removal, cease of recognition, and resignation of Directors of vocational high colleges and intermediate schools, and of vocational education centres.
- On July 7, 2008, the Ministry of Industry and Trade issued Decision No.17/2008/QD-BCT promulgating the regulations on elaboration of training documents funded by industry promotion budget.
- Decision No.33/2008/QD-BGDDT of the Ministry of Education and Training, dated July 1, 2008 promulgating the programme of legal subjects used for training at professional intermediate level.
- On June 23, 2008, the Ministry of Education and Training stipulated Decision No.31/2008/QD-BGDDT promulgating the regulations on improving pedagogic profession.

Environment

- Decision No.04/2008/QD-BTNMT of the Ministry of Natural Resource and Environment, dated July 18, 2008 promulgating the national technical standards and specifications on environment.
- On June 23, 2008, the Prime Minister issued Decision No.767/QD-TTg on the non-business professional units under the Ministry of Natural Resource and Environment.
- Decision No.74/2008/QD-BNN of the Ministry of Natural Resource and Environment, dated June 20, 2008 promulgating the list of species of wild animals and plants stipulated in annexes of the Convention on international trade of endangered wild animals and plants.
- On July 21, 2008, the Ministry of Finance stipulated Circular No.67/2008/TT-BTC guiding the implementation of Decree No.63/2008/ND-CP, dated May 13, 2008 on the fees of environmental protection for exploitation of minerals.

- Inter-ministerial Circular No.03/2008/TTLT-BTNMT-BNV of the Ministry of Natural Resource and Environment and the Ministry of Interior Affairs, dated July 15, 2008 guiding the functions, duties, authority and organizational structure of professional bodies on natural resources and environment under people's committees at different levels.
- On July 4, 2008, the Ministry of Finance and the Ministry of Natural Resource and Environment jointly issued Inter-ministerial Circular No.58/2008/TTLT-BTC-BTNMT guiding the implementation of a number of articles of Decision No.130/2007/QD-TTg of the Prime Minister, dated August 2, 2007 on a number of financial mechanisms and policies for investment projects of "clean" development trend.

Science - Technology

- Decision No.08/2008/QD-BKHCHN of the Ministry of Science and Technology, dated July 8, 2008 promulgating Regulations on organization and operation of main laboratories.
- On July 7, 2008, the Prime Minister stipulated Decision No.89/2008/QD-TTg approving a development strategy of coal branch to 2015 with orientation to 2025.
- Decision No.47/2008/QD-BTC of the Ministry of Finance, dated July 3, 2008 providing the collection rates; the regime of collection, submission, management and use of fees for technical verification of machineries, equipment, materials and substances subject to strict requirements on specific safety of industry branch.
- On July 1, 2008, the Ministry of Construction issued Decision No.11/2008/QD-BXD promulgating Regulations on recognition and operation management regarding laboratories of construction speciality.
- Decision No.15/2008/QD-BCT of the Ministry of Industry and Trade, dated July 1, 2008 on the amendment of and supplement to a number of articles of the regulations on conditions, process and procedures for granting, amending, supplementing, revocation and administration of electricity operation permits accompanying Decision No.32/2006/QD-BCN of the Minister of Industry, dated September 6, 2006.
- On July 1, 2008, the Ministry of Planning and Investment stipulated Circular No.03/2008/TT-BKH guiding the implementation of a number of articles of Decree No.04/2008/ND-CP, dated January 11, 2008 on the amendment of and supplement to a number of articles of Decree No.92/2006/ND-CP, dated September 7, 2006 on the preparation, approval and management of master planning on socio-economic development and of Decision No.281/2007/QD-

BKH of the Minister of Planning and Investment, dated March 26, 2007 promulgating quotas of cost for preparation and assessment of planning and adjustment of master planning on the socio – economic development, sector planning and planning for development of a number of main products.

Information - Communication

- Decision No.61/2008/QD-UBND of the People’s Committee of Ho Chi Minh City, dated July 17, 2008 providing the management work of projects and items of information technology application activities funded by the State budget of Ho Chi Minh City.
- On July 8, 2008, the Ministry of Information and Communication issued Decision No.41/2008/QD-BTTTT providing the functions, duties, authority and organizational structure of the Department of Telecommunications.
- Decision No.88/2008/QD-TTg of the Prime Minister, dated July 4, 2008 providing the functions, duties, authority and organizational structure of the Bureau of Wireless Frequency under the Ministry of Information and Communication.
- On July 2, 2008, the Ministry of Information and Communication stipulated Decision No.40/2008/QD-BTTTT promulgating the quotas of assistance for maintenance and development of telecommunication services of social and public use for the period from 2008 to 2010.

Judiciary

- Decree No.78/2008/ND-CP, dated July 17, 2008 on the management of international co-operation on laws.
- On July 16, 2008, the Government issued Decree No.77/2008/ND-CP on the legal consultancy.
- Decree No.76/2008/ND-CP, dated July 4, 2008 detailing the implementation of a number of the Law on Special Amnesty.
- On July 9, 2008, the Ministry of Justice stipulated Decision No.1277/QD-BTP promulgating the list of working positions of which the holder required to be periodically changed in the professional fields under the management authority of the Ministry of Justice.
- Inter-ministerial Circular No.68/2008/TTLT-BTC-BTP of the Ministry of Finance and the Ministry of Justice, dated July 21, 2008 guiding the regime of collection, submission, management and use of fees for enforcement of court judgments and decisions.

- On July 21, 2008, the Ministry of Finance issued Circular No.65/2008/TT-BTC guiding the management and use of expenditures from the State budget to ensure the implementation of international conventions and agreements.

Agriculture

- Decision No.80/2008/QD-BNN of the Ministry of Agriculture and Rural Development, dated July 15, 2008 promulgating the regulations on prevention and Porcine Reproductive and Respiratory Syndrome (PRRS);
- On July 8, 2008, the Ministry of Agriculture and Rural Development stipulated Decision No.79/2008/QD-BNN promulgating "the additional list of permitted fertilizers for production of, business and use in Vietnam".
- Decision No.76/2008/QD-BNN of the Ministry of Agriculture and Rural Development, dated June 25, 2008 adding a number of insecticides to the list of insecticides permitted to be used in Vietnam.

Miscellaneous

- On July 23, 2008, the Ministry of Planning and Investment issued Decision No.937/2008/QD-BKH promulgating standard forms of invitation dossier to bid for short listing with respect to the construction and installation package.
- Decision No.883/2008/QD-BKH of the Ministry of Planning and Investment, dated July 14, 2008 promulgating a plan of action to improve the status of implementation of ODA programmes and projects for the period from 2008 to 2009.
- On July 9, 2008, the Ministry of Culture, Sport and Tourism stipulated Decision No.49/2008/QD-BVHTTDL promulgating Regulations on assessment and grant of licence for film projection.
- Decision No.49/2008/QD-BTC of the Ministry of Finance, dated July 8, 2008 on the amendment of and supplement to Decision No.02/2008/QD-BTC of the Minister of Finance, dated January 14, 2008 providing the duties, authority and organizational structure of divisions, Office, representative body and inspectorate of the State Securities Commission.
- On July 29, 2008, the Ministry of Planning and Investment, the Ministry of Finance, and the Ministry of Public Security jointly issued Inter-ministerial Circular No.05/2008/TTLT-BKH-BTC-BCA guiding the mechanism of co-ordination between authorities handling business registration, tax registration and seal registration for enterprises established and operating under the Law on Enterprises.

Contact Details

Hanoi Head Office

Mr. Pham Nghiem Xuan Bac

Managing Partner

Mr. Pham Minh Hai

Partner, Consulting Practice

Ms. Le Quynh Anh

Executive Partner, Legal Practice

Ms. Le Thi Kim Dzung

Partner, Intellectual Property Practice

Unit 308-310, 3rd Floor, Hanoi Towers
49 Hai Ba Trung, Hanoi, Vietnam
Tel: 84-4 934-0629 / 826-4797 Fax: 84-4 934-0631
E-mail: vision@hn.vnn.vn

Ho Chi Minh City Office

Mr. Luu Tien Ngoc

Partner, HCMC office

Ms. Charlene Yuen

Foreign Lawyer

Unit 1801, 18th Floor, Saigon Trade Centre
37 Ton Duc Thang Street, District 1
Ho Chi Minh City, Vietnam.
Tel: 84-8 823-6495 Fax: 84-8 823-6496
E-mail: hcmvision@hcm.vnn.vn

www.vision-associates.com